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Briefing on How To Use the Federal Register—
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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
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4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: November 4; at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC
RESERVATIONS: 202-523-5240

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Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 870

Premium Rates for Life Insurance

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management has re-evaluated the premium rates for the 50% Reduction and No Reduction levels of post-retirement Basic Life Insurance coverage on the basis of improved mortality experience and changed demographic and economic assumptions. This re-evaluation has resulted in a reduction in the premium rates for the two levels of post-retirement coverage. The reductions will be effective December 1, 1988, for insured individuals who elect one of these levels of continued coverage during receipt of annuity or compensation payments commencing on or after that date. For the current retirees, the reductions in premium levels will be reflected in their January 1, 1989, annuity payment.

EFFECTIVE DATE: December 1, 1988.

ADDRESSES: Written comments may be sent to Reginald M. Jones, Jr., Assistant Director, Office of Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or delivered to OPM, room 4351, 1900 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Bill Smith, (202) 632–4634.

SUPPLEMENTARY INFORMATION: Pursuant to section 553(b)(3)(B) of title 5 of the U.S. Code, I find that good cause exists for waiving the general notice of proposed rulemaking. This notice is being waived in order to reduce the premiums required under the Federal Employees' Group Life Insurance Program at the earliest date administratively possible. This reduction represents a savings to both individuals and the Government.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect Federal employees and annuitants only.

List of Subjects in 5 CFR Part 870

Administrative practice and procedure, Government employees, Life Insurance, Retirement, Workers' compensation.

U.S. Office of Personnel Management.
Constance Horner,
Director.

Accordingly, OPM is amending Part 870 of Title 5 of the Code of Federal Regulations as follows:

PART 870—BASIC LIFE INSURANCE

1. The authority citation for Part 870 continues to read as follows:

Authority: 5 U.S.C. 8716.

2. In § 870.401, paragraphs (f)(2) and (f)(3) are revised to read as follows:

§ 870.401 Withholdings and contributions.

* * * * *

(f) * * *

(2) An insured person who elects continued basic life insurance coverage during receipt of annuity or compensation payments as provided under §§ 870.601(c)(3) or 870.701(c)(3) (maximum reduction of 50 percent after age 65) shall have withheld from his/her payments basic life insurance withholdings at the monthly rate (for annuitants) of $0.52 for each $1,000 of the BIA or at the weekly rate (for compensationers) of $0.12 for each $1,000 of the BIA.

(3) An insured person who elects continued basic life insurance coverage during receipt of annuity or compensation payments as provided under §§ 870.601(c)(4) or 870.701(c)(4) (no reductions) shall have withheld from his/her payments basic life insurance withholdings at the monthly rate (for annuitants) of $1.69 for each $1,000 of the BIA or at the weekly rate (for compensationers) of $0.39 for each $1,000 of the BIA.

* * * * * *

[FR Doc. 88–23942 Filed 10–17–88; 8:45 am]
BILLING CODE 6325–01–M

5 CFR Parts 870 and 890

Continuation of Health and Life Insurance Coverage During Retirement

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations concerning the continuation of Federal Employees Health Benefits (FEHB) and Federal Employees' Group Life Insurance (FEGLI) coverage during retirement to specify that the statutory minumum-participation requirements for continuing such coverage(s) must be met as of the commencing date of the affected individual's annunity. The FEHB and FEGLI laws set forth the minimum participation requirements a retiring employee must meet "immediately before retirement" in order to continue insurance coverages. However, the Civil Service Retirement (CSR) law provides for various commencing dates of annuity payments for immediate annuities determined, in part, by the date pay ceased, or the date the employee separates from Federal service. In the past, some confusion has been expressed as to what constituted the employee's "retirement date" for the purpose of continuing FEHB and/or FEGLI coverage during retirement. These amendments to the FEHB and FEGLI regulations should remove any ambiguity which existed and clarify for both Federal agencies and employees at what point in time the statutory minimum-participation requirements must be met.

EFFECTIVE DATE: November 17, 1988.

FOR FURTHER INFORMATION CONTACT: Bill Smith, (202) 632–4634.

SUPPLEMENTARY INFORMATION: The FEHB law and the FEGLI law both specify that for coverage to continue during retirement, the retiring employee must retire on an immediate annuity and

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have participated in the respective program for the 5 years of service immediately before becoming an annuitant or for the full period or periods of service during which the employee was eligible for coverage, if covered for less than 5 years. The Civil Service Retirement (CSR) law provides that in the case of an optional retirement, the annuity begins on the first day of the month after the employee separates from Federal service *or* after the pay ceases and the age and service requirements have been met. The Federal Employees Retirement System (FERS) law provides that a FERS optional retirement annuity begins on the first day of the month after the employee separates. Other annuities, such as those based on an involuntary separation or for disability, begin on the day after separation from the service *or* the day after pay ceases and the age and service or disability requirements for title to annuity have been met.

The insurance laws specify that an employee must be enrolled for 5 years (or from the first opportunity for coverage) *immediately before becoming an annuitant.* The retirement laws provide for any one of three determinants in establishing the commencing date of annuity—last day of pay, the date following the last day of pay on which the age and service requirements have been met, or the date of separation. In some instances, such as might occur in a disability retirement where the employee is placed on leave without pay while a disability application is pending, the employee might meet the eligibility requirements for an immediate annuity on the day after the last day of pay but not meet the minimum participation requirements for continued FEHB coverage until the date of separation. (This can occur if an employee has not been covered by the FEHB or FEGLI Program throughout his or her entire Federal career.) In these circumstances, the employee may want to base the annuity commencing date on the last day of pay but to establish eligibility for continued insurance coverage based on the later separation date. However, we have found that it is simply inconsistent to claim one date as the date of retirement for one purpose (as in the commencing date of annuity) and then settle upon a different date as the date of retirement for other purposes (such as the continuation of health benefits and life insurance). If the former employee's annuity benefits begin as of a certain date, he or she must be considered as "retired" for purposes of the FEHB and FEGLI Programs on that date as well.

Therefore, OPM proposed to revise its regulations in the areas of health benefits and life insurance to provide that the statutory requirements for continuing coverage as an annuitant must be met by the commencing date of annuity.

The proposed amendment was published in the **Federal Register** on February 29, 1988, (53 FR 5964) with comments due on or before April 29, 1988. The one comment received suggested that the regulations, as amended, require notification of the employee if he or she would not meet the requirements for continued coverage by the date he or she claims as the commencing date of his or her annuity. The employee would then be afforded the opportunity to change his or her commencing date. We believe it would be inappropriate to place such a requirement on agencies because they do not always know in advance of the retirees' retirement plans. However, OPM is providing information about notifying employees that the 5 year requirement must be met on the date annuity commences in a Federal Personnel Manual (FPM) Letter, which is being issued to all Federal agencies. Therefore, it is not necessary to include this as part of the regulation.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because their effect will be limited solely to retiring Federal employees.

List of Subjects in 5 CFR Parts 870 and 890

Administrative practice and procedure, Government employees, Health benefits, Life insurance, Retirement, Worker's compensation.

U.S. Office of Personnel Management.
Constance Horner,
Director.

Accordingly, OPM amends Parts 870 and 890 of Title 5 of the Code of Federal Regulations as follows:

PART 870—BASIC LIFE INSURANCE

1. The authority citation for Part 870 continues to read as follows:

Authority: 5 U.S.C. 8716.

2. In § 870.601 of Subpart F, paragraph (a)(2) is revised to read as follows:

§ 870.601 Eligibility for life insurance.

(a) * * *

(2) Has been enrolled for basic life insurance for the five years of service immediately preceding the commencing date of annuity payments or for the full period(s) of service during which he/she was entitled to be insured.

* * * * *

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

3. The authority citation for Part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.102 also issued under 5 U.S.C. 1104.

4. In Subpart C of Part 890, § 890.303(a) is revised to read as follows:

§ 890.302 Continuation of enrollment.

(a) *On transfer or retirement.* (1) Except as otherwise provided by this part, the registration of an employee or annuitant eligible to continue enrollment continues without change when he or she moves from one employing office to another, without a break in service of more than 3 days, whether the personnel action is designated as a transfer or not.

(2) In order for an employee to continue an enrollment as an annuitant, he or she must meet the participation requirements set forth at 8905(b) of title 5, United States Code, for continuing an enrollment as an annuitant as of the commencing date of his or her annuity or monthly compensation.

(3) For the purpose of this part, an employee is considered to have enrolled at his or her first opportunity if the employee registered to be enrolled during the first of the periods set forth in § 890.301 in which he or she was eligible to register or was covered at that time by the enrollment of another employee or annuitant, or registered to be enrolled effective not later than December 31, 1964.

* * * * *

[FR Doc. 88-23943 Filed 10-17-88; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 16

Restriction on Importation of Meat From Australia and New Zealand

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the regulations in 7 CFR Part 16, Subpart A entitled "Section 204 Import Regulations" to carry out the voluntary restraint agreements concerning the level of 1988 meat imports from Australia and New Zealand entered into by those countries with the United States.

EFFECTIVE DATE: October 13, 1988. See Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Norman R. Kallemeyn, (202) 447-6031, Dairy, Livestock and Poultry Division, Foreign Agricultural Service, USDA, Room 6616 South Building, Washington, DC 20250.

SUPPLEMENTARY INFORMATION: Pursuant to the authority of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and Executive Order 11539, as amended, the Office of the United States Trade Representative has negotiated agreements with the Governments of Australia and New Zealand whereby those countries have voluntarily agreed to limit the quantity of certain meats exported to the United States during calendar year 1988. The Secretary of Agriculture, with the concurrence of the Secretary of State and the United States Trade Representative, is authorized to carry out such agreements and to implement such action.

Presently, Title 7 of the Code of Federal Regulations, Part 16, Subpart A entitled "Section 204 Import Regulations" governs the entry or withdrawal from warehouse of certain meats imported from Australia and New Zealand during calendar year 1987. This rule would amend Subpart A to delete the provisions relating to Australia and New Zealand for calendar year 1987 which no longer are in effect and insert new provisions to carry out the voluntary restraint agreements entered into by Australia and New Zealand with the United States for calendar year 1988.

The definition of meat in the regulations encompasses the Tariff Schedules of the United States (TSUS) items which are the subject of the voluntary restraint agreements with Australia and New Zealand. In order to prevent circumvention of the import limitations, the definition also includes meat that would fall within such definition but for processing in Foreign-Trade Zones, territories, or possessions of the United States. In addition, the regulations impose transshipment restrictions which prevent the entry or withdrawal from warehouse for consumption of meat from Australia and New Zealand unless exported from those countries as direct shipments or on through bills of lading or, if processed in Foreign-Trade Zones, territories or possessions of the United States, shipped as direct shipments or on through bills of lading from such areas.

EFFECTIVE DATE: Meat released under the provisions of sections 448(b) and 484(a)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1448(b) (immediate delivery), and 19 U.S.C. 1484(a)(1)(A) (entry)), prior to October 13, 1988, shall not be denied entry.

The action taken herewith has been determined to involve foreign affairs functions of the United States. Therefore, this regulation falls within the foreign affairs exception to Executive Order 12291 and the provisions of 5 U.S.C. 553 with respect to proposed rulemaking. Further, the provisions of the Regulatory Flexibility Act do not apply to this rule since the proposed rulemaking provisions of 5 U.S.C. 553 do not apply.

List of Subjects in 7 CFR Part 16

Meat and meat products, Imports.

Accordingly, the regulations at 7 CFR Part 16, Subpart A entitled "Section 204 Import Regulations" are amended as follows:

PART 16—[AMENDED]

1. The authority citation for Part 16 continues to read as follows:

Authority: Sec. 204, Pub. L. 540, 84th Cong., 70 Stat. 200, as amended (7 U.S.C. 1854), and E.O. 11539 (35 FR 10733), as amended by E.O. 12188 (45 FR 989).

2. Section 16.4 is revised to read as follows:

§ 16.4 Transshipment restrictions.

During calendar year 1988, no meat of Australian or New Zealand origin may be entered or withdrawn from warehouse for consumption in the United States unless (a) it is exported into the Customs Territory of the United States as a direct shipment or on a through bill of lading from the country of origin or, (b) if processed in Foreign-Trade Zones, territories, or possessions of the United States, it is exported into the Customs Territory of the United States as a direct shipment on a through bill of lading from the Foreign-Trade Zone, territory or possession of the United States in which it was processed.

3. Section 16.5 is revised to read as follows:

§ 16.5 Quantitative restrictions.

(a) *Imports from Australia.* During calendar year 1988, no more than 800 million pounds of meat exported from Australia in the form in which it would fall within the definition of meat in TSUS items 106.10, 106.22, 106.25, 107.55, 107.61 or 107.62 may be entered or withdrawn from warehouse for consumption in the United States, whether shipped directly or indirectly from Australia to the United States.

(b) *Imports from New Zealand.* During calendar year 1988, no more than 445 million pounds of meat exported from New Zealand in the form in which it would fall within the definition of meat in TSUS items 106.10, 106.22, 106.25, 107.55, 107.61 or 107.62 may be entered or withdrawn from warehouse for consumption in the United States, whether shipped directly or indirectly from New Zealand to the United States.

Issued at Washington, DC this 13th day of October, 1988.

Roland R. Vautour,
Acting Secretary.

[FR Doc. 88-24046 Filed 10-13-88; 4:56 pm]
BILLING CODE 3410-10-M

Federal Crop Insurance Corporation

7 CFR Part 401

[Amdt. No. 39; Doc. No. 6006S]

General Crop Insurance Regulations; Sunflower Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1989 and succeeding crop years, to restore a provision for a replanting payment on insured sunflower crops in the Sunflower Endorsement. The intended effect of this rule is to restore the provision allowing a replant payment, previously included in the sunflower policy in effect for the 1988 crop year.

EFFECTIVE DATE: November 17, 1988.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is April 1, 1992.

John Marshall, Manager, FCIC: (1) Has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) an annual effect on the economy of

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$100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Wednesday, November 25, 1987, FCIC published a final rule in the **Federal Register** at 52 FR 45155, to amend the General Crop Insurance Regulations (7 CFR Part 401) by adding a new 7 CFR 401.124, Sunflower Seed Crop Endorsement, effective for the 1988 and succeeding crop years, to contain the provisions for crop insurance protection on sunflowers in an endorsement to the general crop insurance policy.

The provision allowing for a replant payment, which had been previously included in the sunflower policy in effect for the 1986 crop year, was omitted in the rule published at 52 FR 45155.

On Thursday, August 4, 1988, FCIC published a notice of proposed rulemaking in the **Federal Register** at 53 FR 29341 proposing to restore that provision to the sunflower crop insurance policy.

The public was invited to comment on this rule for 30 days after publication in the **Federal Register**, but no comments were received.

In reviewing the rule, it was determined that the amendatory language and the subsection heading were incorrect.

The amendatory language states that 7 CFR 401.124 is amended by adding a new subsection 1.c. This should have read subsection 7.c. Further, the heading for the subsection was incorrectly cited as 1. Insured Crop. This should have read 7. Claim for Indemnity. These corrections are made herein.

List of Subjects in 7 CFR Part 401

Crop insurance, Sunflowers.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the General Crop Insurance Regulations (7 CFR Part 401), by amending the Sunflower Endorsement (7 CFR 401.124), effective for the 1989 and succeeding crop years as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 is revised to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR 401.124—Sunflower Endorsement is amended by adding a new subsection 7.c., effective for the 1989 and succeeding crop years, to read as follows:

§ 401.124 Sunflower seed crop endorsement.

* * * * *

7. Claim for Indemnity.

* * * * *

c. A replant payment is available under the Sunflower Endorsement. No replant payment will be made on acreage on which our appraisal exceeds 90 percent of the guarantee. The payment per acre will not exceed the product obtained by multiplying 175 pounds times the price election, times your share.

* * * * *

Done in Washington, DC, on October 11, 1988.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 88-23928 Filed 10-17-88; 8:45 am]

BILLING CODE 3410-08-M

Rural Electrification Administration

7 CFR Part 1710

Electric Loan Policies and Application Procedures

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) hereby revises 7 CFR Chapter XVII, by adding a new part, Part 1710, Electric Loan Policies and Application Procedures and adding Subpart C, §§ 1710.50–1710.55, Alternate Loan Application Procedures. The new Part develops electric loan policies and application procedures. The Sections establish a simplified alternate loan application procedure for distribution borrowers meeting specified financial, operational and managerial criteria. The basic loan application procedure for borrowers not meeting the simplified criteria will remain unchanged and is set forth in Section IX, Application Procedures, of REA Bulletin 20–2, "Electric Loan Policies and Application Procedures", (Bulletin 20–2) and REA Bulletin 20–14, "Supplemental Financing for Loans Considered Under Section 4 of the Rural Electrification Act" (Bulletin 20–14).

EFFECTIVE DATE: October 18, 1988.

FOR FURTHER INFORMATION CONTACT: Archie W. Cain, Director, Electric Staff Division, U.S. Department of Agriculture, Rural Electrification Administration, Room 1246–S, 14th & Independence Avenue SW., Washington, DC 20250; Telephone: (202) 382–1900.

SUPPLEMENTARY INFORMATION: This Rule sets forth a new procedure for submitting a loan application as an alternate to that prescribed in Section IX of Bulletin 20–2 and in Bulletin 20–14 (Appendix A Bulletins). This action has been reviewed in accordance with Executive Order 12291, Federal Regulations. This action does not: (1) Have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices to consumers, individual industries, Federal, state or local government agencies, or geographic regions; (3) result in significant adverse effects on competition, employment, investment or productivity, and therefore, has been determined to be "not major."

REA has concluded that promulgation of this rule does not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and therefore, does not require an environmental impact statement or an environmental assessment. This rule is a categorical exclusion under REA's 7 CFR Part 1794, Environmental Policies and Procedures (*i.e.*, 7 CFR 1794.31 (b)(17)).

Recordkeeping requirements for this regulation have previously received

Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980 [44 U.S.C. 3507 *et seq.*]. This rule will reduce the reporting burden for approximately 70 percent of electric borrowers from the reporting burden imposed by the current standard loan application procedure. Reporting burden hours include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing, reviewing and copying the collected data. The amount of the standard loan application burden is yet to be fully determined. The OMB has requested REA to review and develop a new rule codifying the current loan policy and application procedures as reflected in REA Bulletins 20–2, 20–6, 20–14, 20–22, and 20–23. It was previously determined that a reporting burden of 562,500 hours would be charged against the borrower's development of its long-range and Construction Work Plan (CWP). REA believes that this reporting burden is excessive and has submitted a request to OMB that the hours be changed to reflect the current actual situation.

This action does not fall within the scope of the Regulatory Flexibility Act. This program is listed in the Catalog of Federal Domestic Assistance under No. 10.850, Rural Electrification Loans and Loan Guarantees. For the reasons set forth in the Final Rule related Notice to 7 CFR Part 3015, Subpart V in 50 FR 47034, November 14, 1985, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Background

REA is the lead lender to approximately 924 active electric distribution utility systems serving rural areas throughout the Nation. REA has determined that a considerable number of the distribution systems that submit loan applications have sufficient financial strength, as well as demonstrated operational and managerial experience, to enable REA to make a determination of adequate loan security and feasibility without submitting all the material routinely required in a loan application. In determining the applicant's financial strength, REA will consider the applicant's current equity position and its earnings and cash flows over the previous three years. The minimum equity level of 25 percent, coupled with the limitation on the loan application of 20 percent of Total Utility Plant, will limit the risk to REA of the equity level rapidly falling to a level requiring a more detailed review in the loan consideration process.

The earnings ratio, called a Modified Times Interest Earned Ratio (MTIER), considers the earnings of the loan applicant before patronage capital and dividends have been added. REA believes that using the MTIER and setting the minimum qualifying level at 1.50 will offer sufficient earnings coverage over and above the level REA has historically required for all distribution borrowers.

Similarly, a Modified Debt Service Coverage (MDSC) ratio that excludes patronage capital and dividends which is at least at a level of 1.25 is an indication of a loan applicant that requires less REA review as to the degree of risk associated with a loan application.

In addition to the financial tests, REA will continue to require loan applicants to maintain for their use the necessary engineering planning and financial forecasting documents currently submitted by all loan applicants. The review of these documents will be done by the REA field staff as they are routinely developed by the borrowers for their own use. This should reduce the adminstrative requirements on both the borrower and REA at the time that a loan application is being considered. Borrowers and their advisory organizations have encouraged REA to reduce the loan processing time and the number of documents which must be submitted.

REA will benefit from the alternative loan application procedures since it will allow the headquarters staff to spend more time evaluating loan applications from borrowers with less financial or operational strength which pose greater loan security risk.

Comments

On April 28, 1988, REA published a Proposed Rule to revise 7 CFR Chapter XVII, by adding a new part, Part 1710, Electric Loan Policies and Application Procedures and adding §§ 1710.50–1710.55, Alternate Loan Application Procedures. In the Proposed Rule notice, REA invited interested parties to file comments on or before June 27, 1988. All responses received have been considered in preparing this Final Rule.

Four different borrower organizations commented on the Proposed Rule. All comments received were in favor of the Proposed Rule. Two borrowers felt a reduction in administrative requirements and loan processing time would be beneficial. One borrower favored the Rule, but added that REA should process applications for insured and guaranted loans up to the ceiling levels as authorized by law. Another borrower suggested special consideration should be given if, for example, equity level is slightly below 25 percent but Modified TIER and DSC are very strong, to allow more borrowers to follow the alternative procedure and further reduce administrative requirements.

List of Subjects in 7 CFR Part 1710

Electric power, Loan programs—energy, Rural areas.

In view of the above, REA hereby amends 7 CFR Part XVII by adding Part 1710, Subpart C and §§ 1710.50–1710.55 to read as follows:

PART 1710—ELECTRIC LOAN POLICIES AND APPLICATION PROCEDURES

Subparts A–B—[Reserved]

Subpart C—Alternate Loan Application Procedure

Sec.

1710.50 Purpose.
1710.51 Policy.
1710.52 Definitions.
1710.53 Alternate loan application.
1710.54 Qualification criteria.
1710.55 Procedure.

Authority: 7 U.S.C. 901–950b, Rural Electrification Act of 1936, as amended (RE Act); Pub. L. 99–591, Delegation of Authority by the Secretary of Agriculture, 7 CFR 2.23; Delegation of Authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72.

Subpart A–B—[Reserved]

Subpart C—Alternate Loan Application Procedure

§ 1710.50 Purpose.

It is the purpose of this policy to set forth an alternative procedure to that prescribed in Section IX, REA Bulletin 20–2, Electric Loan Policies and Application Procedures, dated June 13, 1977 (a Part 1701, Appendix A Bulletin) for submitting to the Rural Electrification Administration (REA) a loan application.

§ 1710.51 Policy.

It is the policy of the REA to provide an alternative procedure for submitting a loan application for those distribution borrowers meeting certain financial, operational and managerial tests:

§ 1710.52 Definitions.

As used in this Part:

(a) "Equity" means Total Margins & Equity divided by Total Assets & Other Debits. The equity percentage is obtained from REA Form 7, Financial

and Statistical Report, Part C, by dividing line 32 by line 25 and multiplying by 100.

(b) "MTIER" means Modified Times Interest Earned Ratio calculated as:

$$\frac{A15+A27-A24-A25}{A15}$$

where:

(1) A15=Interest on Long-term Debt as set forth in Part A, Line 15 of REA Form 7 (Financial and Statistical Report) except that Interest on Long-term Debt shall be increased by ⅓ of the amount, if any, by which the rentals of Restricted Property (Part M, Line 3 of Form 7) exceeds two percent of Total Margins and Equities (Part C, Line 32 of Form 7).

(2) A27=Patronage Capital or Margins as set forth in Part A, Line 27 of Form 7.

(3) A24=Generation and Transmission Capital Credits as set forth in Part A, Line 24 of Form 7.

(4) A25=Other Capital Credits and Patronage Dividends as set forth in Part A, Line 25 of Form 7

(c) "MDSC" means Modified Debt Service Coverage calculated as:

$$\frac{A12+A15+A27-A24-A25}{\text{Debt service billed (REA+CFC+other)}}$$

where:

(1) A12=Depreciation and Amortization Expense as set forth in Part A, Line 12 of REA Form 7 (Financial and Statistical Report).

(2) A15=Interest on Long-term Debt as set forth in Part A, Line 15 of REA Form 7 (Financial and Statistical Report) except that Interest on Long-term Debt shall be increased by ⅓ of the amount, if any, by which the rentals of Restricted Property (Part M, Line 3 of Form 7) exceeds two percent to Total Margins and Equities (Part C, Line 32 of Form 7).

(3) A27=Part A, Line 27, Patronage Capital or Margins as set forth in Part A, Line 27 of REA Form 7.

(4) A24=Generation and Transmission Capital Credits as set forth in Part A, Line 24 of Form 7.

(5) A25=Other Capital Credits and Patronage Dividends as set forth in Part A, Line 25 of Form 7.

(6) Debt Service Billed (REA+CFC+Other)=All interest and principal billed during the appropriate calendar year plus ⅓ of the amount, if any, by which the rentals of Restricted Property (Part M, Line 3 of Form 7) exceeds two percent of Total Margins and Equities (Part C, Line 32 of Form 7).

(d) "Total Utility Plant" means the amount set forth in Part C, Line 3 of REA Form 7, Financial and Statistical Report.

§ 1710.53 Alternate loan application.

(a) For distribution borrowers which meet the qualification criteria in § 1710.54, Qualification Criteria, REA will accept 2-year loan applications consisting of the following:

(1) A certified resolution of the board of directors requesting the loan, affirming that the borrower will continue to meet the requirements of the REA mortgage relative to Times Interest Earned Ratio (TIER) and Debt Service Coverage (DSC), and identifying the supplemental lender.

(2) A properly completed and excuted REA Form 740c, "Cost Estimates and Loan Budget for Electric Borrowers," which clearly indentifies the facilities to be financed, and, if applicable, REA Form 740g, "Application for Headquarters Facilities;" and

(3) A letter signed by the borrower's manager summarizing any litigation pending against the borrower which could have an adverse financial impact on the borrower.

(b) The items referred to above will constitute a complete loan application and should be submitted through REA's General Field Representative (GFR) to the REA Area office.

§ 1710.54 Qualification criteria.

(a) In order to submit the alternate loan application procedure specified in § 1710.53 borrowers must meet all of the following criteria:

(1) The borrower's equity must be at least 25 percent in the year-end report for the last calendar year preceding the date of the completed loan application.

(2) The borrower must have achieved a MTIER of at least 1.50 and a MDSC of at least 1.25 for two of the three calendar years last preceding the date of the completed loan application.

(3) The financing request (REA and Supplemental components) must not exceed 20 percent of Total Utility Plant in the year-end report for the last calendar year preceding the date of the completed loan application.

(4) Additionally, the borrower must demonstrate to the satisfaction of the GRF that:

(i) The facilities requested are consistent with its REA approved Construction Work Plan and the associated Borrowers's Environmental Report,

(ii) Its plant is being adequately maintained,

(iii) Its long-range engineering plan and 5-year financial forecast are adequate,

(iv) It has a current REA Form 268, "Report of Compliance and Participation," on file with REA, and

(v) It is in compliance with 7 CFR 1788.40 and 1788.41 relating to flood hazard insurance.

(b) The above procedure will not be available to distribution members of any power supply borrower which is delinquent in its payments to REA or in bankruptcy proceedings. For these and all other borrowers not meeting the criteria outlined above, the existing loan application procedures set forth in Section IX, Application Procedures, of REA Bulletin 20-2, Electric Loan Policies and Application Procedures, dated June 13, 1977 (as Appendix A Bulletin) must be complied with.

(c) REA reserves the right, when it determines that special circumstances exist, to require additional data from borrowers before acting on these simplified loan applications.

§ 1710.55 Procedure.

Any borrower planning to submit a loan application should contact REA's General Field Representative who will review the matter and advise the borrower on which procedure to follow in submitting the application, i.e. alternate or regular loan application procedure.

Dated: September 1, 1988.

Jack Van Mark,

Acting Administrator.

[FR Doc. 88-23860 Filed 10-17-88; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 32

[Docket No. 88-10]

National Bank Lending Limits; Correction to Temporary Rule

AGENCY: Comptroller of the Currency; Treasury.

ACTION: Technical correction to temporary rule.

SUMMARY: In a temporary rule with request for comment on national bank lending limits published on June 24, 1988 (53 FR 23752), the last sentence was inadvertently omitted from the definition of "contractual commitment to advance funds" in § 32.2(d). This document corrects that error.

FOR FURTHER INFORMATION CONTACT: James F.E. Gillespie, Jr., Assistant Director, Litigation Division, (202) 447-1893; Peter Liebesman, Assistant Director, Legal Advisory Services Division, (202) 447-1880; William C. Kerr, National Bank Examiner, Commercial Activities Division, (202) 447-1164; James R. McDonald, National Bank Examiner, Multinational and Regional Bank Analysis Division, (202) 447-1747.

SUPPLEMENTARY INFORMATION: On June 24, 1988, the Office of the Comptroller of the Currency ("OCC") published document number 88-14344 (53 FR 23752), a temporary rule with request for comment with respect to the treatment of loan commitments, 12 CFR Part 32. Although the temporary rule was effective immediately, OCC requested comments from the public. The comment period ended September 22, 1988. However, OCC inadvertently omitted the last sentence from the definition of "contractual commitment to advance funds" in § 32.2(d) which had been a part of the regulation prior to issuance of the temporary rule. This document corrects this inadvertent omission by amending the temporary rule. OCC retains under consideration whether to adopt the temporary rule as a final rule.

Since this is a technical correction, no further comment period is necessary.

PART 32—LENDING LIMITS

1. The authorization for Part 32 continues to read as follows:

Authority: 12 U.S.C. 84 and 12 U.S.C. 93a.

§ 32.2 [Amended]

2. The following sentence is added at the end of § 32.2(d) defining "contractual commitment to advance funds": The definition also does not include commercial letters of credit and similar instruments where the issuing bank expects the beneficiary to draw upon the issuer, which do not "guarantee" payment of a money obligation, and which do not provide for payment in the event of default by the account party.

* * * * *

Date: October 13, 1988.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 88-23989 Filed 10-17-88; 8:45 am]

BILLING CODE 4810-33-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 26096A; File No. S7-47-85]

Lost and Stolen Securities Program; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of amendments; Correction.

SUMMARY: On September 29, 1988, the Commission issued a release adopting amendments to rule 17f-1 under the Securities Exchange Act of 1934. This document corrects an inadvertent error in the amendatory language in that release. (53 FR 37281 (September 26, 1988).)

FOR FURTHER INFORMATION CONTACT: Ester Saverson, Jr., at (202) 272-2775.

Accordingly, in FR Doc. 88-21919 at page 37289, in the issue of September 26, 1988, the amendatory language for number 2 is corrected to read as follows and five asterisks are added after paragraph (f).

"2. By amending § 240.17f-1 by revising paragraphs (a) through (f) as follows:".

Paragraph (g) remains in effect.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-24045 Filed 10-17-88; 8:45 am]

BILLING CODE 8010-01-M

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17 CFR Part 240

[Rel. No. 34-26169]

Confirmation of Securities Transactions

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; Technical amendment.

SUMMARY: Rule 10b-10, 17 CFR 240.10b-10, which requires broker-dealers to provide written confirmations of securities transactions, was adopted by the Commission in 1977, Securities Exchange Act Release No. 13508 (May 5, 1977), 42 FR 25318, and has subsequently been amended, most recently in 1985, Securities Exchange Act Release No. 22397 (Sept. 11, 1985), 50 FR 37648. Subparagraph (a)(8)(ii) of Rule 10b-10, relating to disclosure of a broker-dealer's status as a market maker in equity securities, has remained effective since its adoption, but was inadvertently omitted from the 1986 edition and subsequent editions of the Code of Federal Regulations ("CFR"). [1] This technical amendment restores to the CFR that subparagraph as it was published in the Federal Register. This action relates solely to a correction of an error in the CFR; therefore, the Commission finds that notice and request for comment pursuant to 5 U.S.C. 551 *et seq.* are unnecessary. Moreover, because the provision to be added was inadvertently omitted from the CFR and the rule has remained effective since its adoption, the Commission finds good cause to make this action effective upon publication.

EFFECTIVE DATE: October 18, 1988.

FOR FURTHER INFORMATION CONTACT: Edward L. Pittman, Special Counsel, (202) 272-2848, Division of Market Regulation, Mail Stop 5-1, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

List of Subjects in 17 CFR Part 240

Securities, Reporting and recordkeeping requirements.

Text of Amendment

Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read as follows:

Authority: Sec. 23, 48 Stat. 901, as amended (15 U.S.C. 78w), unless otherwise noted.

2. Section 240.10b-10 is amended by adding paragraph (a)(8)(ii) as follows:

§ 240.10b-10 Confirmation of transactions.

(a) * * *

(8) * * *

(ii) In the case of a transaction in an equity security, whether he is a market maker in that security (otherwise than by reason of his acting as a block positioner in that security).

* * * * *

By the Commission.

Jonathan G. Katz,

Secretary.

Date: October 11, 1988.

[FR Doc. 88-24040 Filed 10-17-88; 8:45 am]

BILLING CODE 8010-01-M

[1] A correct version of subparagraph (a)(8) of Rule 10b-10 has been published in the Federal Securities Law Reporter (CCH) ¶ 22,729A and in the NASD Manual (CCH) ¶ 4408.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 4 and 292

[Docket No. RM87-13-001; Order No. 499-A]

Implementation of Section 8 of the Electric Consumers Protection Act of 1986; Hydroelectric Applicants With Projects at a New Dam or Diversion Seeking Benefits Under the Public Utility Regulatory Policies Act of 1978

Issued October 13, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final Rule, Order Granting in Part and Denying in Part Rehearing.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is granting in part and denying in part the joint rehearing request of the American Rivers and Friends of the Earth (AR) on Order No. 499 (53 FR 26,992 (July 18, 1988, III FERC Stats. & Regs. 30,822 (July 11, 1988)). Order No. 499 implements section 8 of the Electric Consumers Protection Act of 1986 (ECPA). Section 8 of ECPA establishes three new requirements for a developer with a project located at a new dam or diversion who is seeking benefits under the Public Utility Regulatory Policies Act of 1978 (PURPA).

This order on rehearing grants AR's request to have an applicant, during pre-filing consultation, specifically ask for an agency's views on whether or not the project is a new dam or diversion. In addition, the order amends the final rule to provide that written notice be given to all intervenors in a proceeding involving a petition for determination of whether a project has a substantial adverse effect on the environment.

This order denies the other requests of AR on the basis that the current regulations are adequate and require no further clarification.

EFFECTIVE DATE: This rule is effective November 17, 1988.

FOR FURTHER INFORMATION CONTACT: Roger E. Smith, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 375-8530.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the Federal Register, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street, NE., Washington, DC 20426.

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Before Commissioners: Martha O. Hesse, Chairman; Charles G. Stalon and Charles A. Trabandt.

Order Granting and Denying Rehearing

I. Introduction

On August 10, 1988, American Rivers and Friends of the Earth (AR) filed for rehearing of Order No. 499, a final rule issued on July 11, 1988 (Docket No. RM87-13-000).[1] Order No. 499 implements section 8 of the Electric Consumers Protection Act of 1986 (ECPA).[2]

II. Background

A. Section 8 of ECPA

Section 8 of ECPA accomplishes three main congressional objectives: (1) it establishes three new environmental requirements for obtaining PURPA benefits by developers with a hydroelectric project located at a new dam or diversion (section 8(a)), (2) it establishes a moratorium on PURPA benefits for such projects (section 8(e)), and (3) it mandates that the Commission conduct a study to evaluate whether PURPA benefits should be available for such projects (section 8(d)).

In addition, section 8 of ECPA creates certain exceptions to the new environmental requirements. The exceptions are intended to grandfather certain projects whose developers had, at the time of ECPA's enactment, relied on existing law and had spent significant amounts of time, effort and money on their projects. Finally, section 8(e) of ECPA provides that any developer who qualifies for one of the exceptions is exempt from the moratorium on PURPA benefits. The result of this framework is that the new requirements in section 210(j) of PURPA [3] can have immediate application even though there is a moratorium on PURPA benefits. For any developer who qualifies for one of the exceptions, the moratorium is not in effect, the developer can seek PURPA benefits, and the developer must comply with the remaining requirements in section 210(j) of PURPA (i.e., those from which the developer is not excepted).

Under the new section 210(j), PURPA benefits will not be available to hydroelectric projects located at a new dam or diversion unless the project meets each of the following requirements:

(1) *No Substantial Adverse Effects.* At the time of issuance of the license or exemption for the project, the Commission finds that the project will not have substantial adverse effects on the environment, including recreation and water quality. Such finding shall be made by the Commission after taking into consideration terms and conditions imposed under either paragraph (3) of this subsection or section 10 of the Federal Power Act (whichever is appropriate as required by the that Act or the Electric Consumers Protection Act 1986) and compliance with other environmental requirements applicable to the project.

(2) *Protected Rivers.* At the time application for a license or exemption for the project is accepted by the Commission (in accordance with the Commission's regulations and procedures in effect on January 1, 1986, including those relating to environmental consultation), such project is not located on either of the following:

(A) Any segment of a natural watercourse which is included in (or designated for potential inclusion in) a State or national wild and scenic river system.

(B) Any segment of a natural watercourse which the State has determined, in accordance with applicable State law, to possess unique natural, recreational, cultural, or scenic attributes which would be adversely affected by hydroelectric development.

(3) *Fish and Wildlife Terms and Conditions.* The project meets the terms and conditions set by fish and wildlife agencies under the same procedures as provided for under section 30(c) of the Federal Power Act.

B. Procedural History

The Commission issued an interim rule on February 13, 1987, that implemented portions of section 8 of ECPA.[4] The interim rule was necessary because of a provision in section 8(b)(4) of ECPA (one of the exceptions) that required the Commission to issue a rule within 120 days from ECPA's enactment. On October 5, 1987, the Commission issued a notice of proposed rulemaking (NOPR) in order to implement remaining portions of section 8 of ECPA.[5] In the NOPR, the Commission proposed filing requirements that would allow the Commission to enforce the new requirements in section 210(j) of PURPA. The Commission also proposed to define "substantial adverse effect on the environment" for the purposes of section 210(j)(1) of PURPA. In addition, the Commission proposed to implement that portion of the exception in section 8(b)(4) of ECPA which was not addressed in the interim rule (i.e., section 8(b)(4)(C)). American Rivers and Friends of the Earth filed joint comments in response to both the interim rule and the NOPR. On July 11, 1988, the Commission issued a final rule implementing section 8 of ECPA (Order No. 499).[6]

III. Discussion

AR has three objections to Order No. 499: (1) The regulations do not comply with Congress' direction to the Commission to obtain the views of state and Federal agencies and other interested persons on whether or not a project is located at a new dam or diversion; (2) the regulations do not include adequate mechanisms for identifying state protected rivers; and (3) the regulations are inconsistent with section 8(b)(4)(c) of ECPA because they do not recognize that a state may prevent a presumption of no substantial adverse effects from operating by taking action to protect a river at any time before the Commission makes a final decision. The Commission grants AR's rehearing request in part and denies it in part.

A. Determination of New Dam or Diversion Status.

ECPA section 8 distinguishes between new dams and diversions and existing dams for the purpose of obtaining PURPA benefits. Three new environmental requirements are imposed on projects located on new dams or diversions. Therefore, in order to comply with ECPA, the Commission must verify whether or not a project is located at a new dam or diversion. In making this determination, the Commission obtains the views of interested parties, including various Federal and state environmental agencies.[7]

As noted in the preamble to the final rule, the views of the appropriate Federal and state agencies are obtained through the pre-filing consultation process specified in § 4.38 of the Commission's regulations. Section 4.38 is applicable to all hydroelectric license or exemption applications. It requires an applicant, before submitting its application to the Commission, to provide detailed information to each appropriate agency, to consult with each agency, and to conduct certain studies deemed necessary. At the time of filing, an applicant must then serve a copy of the application on each agency it has consulted and must document in its application that all stages of the consultation process have been fully satisfied.

In the NOPR, the Commission had proposed that every applicant for a project with a power capacity of 80 megawatts (MW) or less state in its application whether or not PURPA benefits will be sought, and if so, whether the project is located at a new dam or diversion. In the final rule, the Commission adopted the suggestion of the New York State Department of Environmental Conservation (NYDEC) to have an applicant state its intention to seek PURPA benefits at the time pre-filing consultation begins, rather than at the time the applicant files its application. The Commission indicated that requiring an applicant to state its intention during pre-filing consultation will ensure that the Commission receives the views of appropriate Federal and state agencies on the issue of whether the project is a new dam or diversion.

AR contends that if an applicant, during the pre-filing consultation process, simply asserts whether or not the project is located at a new dam or diversion, agency personnel "will have no way of knowing that a response is appropriate or even possible on that issue." [8] AR suggests amending § 4.38(b)(1)(vi)(B) to specifically require an applicant to provide appropriate agencies both with a statement that the project is located at a new dam and a statement requesting the agencies' views on that belief.

The Commission has no objection to including AR's suggested language, and § 4.38(b)(1)(vi)(B) will be amended accordingly. As amended, this section requires applicants to state during the pre-filing consultation process whether or not the project is located at a new dam or diversion and to request the agencies' views on that belief. Agencies are expected to treat this statement as they would any other information given to them during the pre-consultation process outlined in § 4.38, *i.e.*, to review the information and, if they disagree, to inform the Commission of the basis for their disagreement.[9]

In addition, AR maintains that the Commission's regulation provides no opportunity for "other interested persons" to address whether or not a project is at a new dam or diversion. AR requests that the Commission amend its regulations to state, as a matter of policy, that in each Federal Register notice related to a project for which the applicant seeks PURPA benefits, the Commission will specifically request public comment on whether or not the project is located at a new dam or diversion.

Such a policy statement is not necessary. The Commission's public notices currently indicate, and will continue to indicate, whether the application states that the project is at an existing or new dam, and interested persons may address this issue in their filings. Moreover, any person can always file a protest to object to any application.[10] In addition, any person can file a motion to intervene in an application proceeding.[11] Requiring the applicant to state whether the project is located at a new dam or diversion during pre-filing consultation simply means that the agencies consulted will be able to comment on the issue prior to the filing of the application; it does not mean that there will be no opportunity for other interested persons to comment on that issue.

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[1] "Implementation of Section 8 of the Electric Consumers Protection Act of 1986; Hydroelectric Applicants with Projects at a New Dam or Diversion Seeking Benefits Under the Public Utility Regulatory Policies Act of 1978," Order No. 499, 53 FR 26,992 (July 18, 1988), III FERC Stats. & Regs. 30,822 (July 11, 1988).

[2] Pub. L. No. 99-495; 100 Stat. 1243 (Oct. 16, 1986).

[3] Section 8(a) of ECPA amends section 210 of PURPA to add a new section 210(j) that establishes the three new environmental requirements.

[4] Hydroelectric Applicants Seeking Benefits Under section 210 of the Public Utility Regulatory Policies Act of 1978 for Projects Located at a New Dam or Diversion, Docket No. RM87-8-000, 52 FR 5276 (Feb. 20, 1987), III FERC Stats. & Regs. 30,729 (Feb. 13, 1987).

[5] Implementation of section 8 of the Electric Consumers Protection Act of 1986, Hydroelectric Applicants with New Dam or Diversion Projects, 52 FR 38,460 (Oct. 16, 1987), FERC Stats. & Regs [Proposed Regulations (1982-1987)] 32,453 (Oct. 5, 1987).

[6] Implementation of section 8 of the Electric Consumers Protection Act of 1986; Hydroelectric Applicants With Projects at a New Dam or Diversion Seeking Benefits Under the Public Utility Regulatory Policies Act of 1978, Order No. 499, 53 FR 26,992 (July 18, 1988), III FERC Stats. & Regs. 30,822 (1988).

[7] This process is consistent with the discussion in the conference report on ECPA. *See* H.R. Rep. No. 934, 99th Cong., 2nd Sess. at 30 (1986).

[8] Rehearing request of AR at p. 3.

[9] The Commission also notes that it will make its own independent determination of whether a dam is a new or existing dam and that agencies may participate in the licensing process.

[10] *See* Commission Rule 211, 18 CFR 385.211 (1988).

[11] *See* Commission Rule 214, 18 CFR 385.214 (1988).

Continued

B. Protected Rivers Requirement.

AR's second objection is that the regulations "do not contain adequate information for the States to determine whether or not rivers identified as protected by the States will be deemed protected rivers by the Commission pursuant to section 210(j)(2)(B) of PURPA." [13] In addition, AR alleges that the regulations provide "absolutely no guidance to the States." [13]

The Commission disagrees. Under new § 292.208(c)(2) there are three ways that a segment of a natural watercourse can qualify as a protected river. First, a river is protected if it is included in, or designated for potential inclusion in, either the National Wild and Scenic River System or a state scenic river system. Second, a river is protected if it crosses an area designated, or recommended for designation, under the Wilderness Act as a wilderness area or a wilderness study area. Finally, a river is protected if a state, either by or pursuant to an act of the state legislature, has determined that the watercourse possesses unique natural recreational, cultural or scenic attributes that would be adversely affected by hydroelectric development. This final provision means that: (1) The state could enact a specific statute to protect a specific river, or (2) the state or a political subdivision thereof (*e.g.*, a department of wildlife conservation, a department of environmental conservation, a fish and wildlife department, etc.) could, pursuant to a statute, designate a river for protected status under state law. The Commission believes § 292.208(c)(2) provides ample guidance for the states and therefore this aspect of AR's request is denied.

In discussing this second objection, AR notes a statement in the preamble to the final rule indicating the Commission's intention to contact appropriate state agencies to determine if projects are located on any natural water course. AR contends that these contacts are "apparently limited to the specific exception described in section 8(b)(3) of ECPA." [14] This is incorrect. In fact, the Commission keeps track of all pending applications that would utilize new dams or diversions and whose developers are seeking PURPA benefits. When an application is found to be acceptable for processing, the Commission sends a letter to the state agency responsible for making state protected river determinations and asks whether the project would be located on a river that has been protected as of the acceptance date of the application. The Commission does not rely exclusively on the assertions of the applicants.

C. Rebuttable Presumption in Section 8(b)(4)(C) of ECPA.

AR's final objection is that the Commission's regulations do not recognize that a state may prevent a presumption of no substantial adverse effect from operating if the state takes action to protect a river at any time before the Commission issues the license or exemption. The Commission agrees with AR that the state, under section 8(b)(4)(C) of ECPA, has up until the time the license or exemption is issued to prevent the presumption from taking effect. However, the Commission believes this intent is clearly expressed in § 292.211(k) of its regulations; accordingly, the Commission denies AR's request.

Section 292.211(k) states that "If, between the Commission's initial and final findings in the AEE petition, the State does not take any action under § 292.208(b)(2), the failure to take action can be the basis for a presumption that there is not a substantial adverse effect on the environment (as that term is defined in § 292.202(g))." [15] Thus, the Commission's regulations allow a state to take action up until the Commission's final finding on the AEE petition. In addition, ECPA mandates that the final finding be made at the time of issuance.[16] Therefore, a state may prevent the presumption from operating at any time before the license or exemption is issued.

Finally, AR requests that § 292.211(g)(3)(i) of the final rule be amended to provide that the Commission will give written notice to all intervenors, as well as to Federal and state agencies, of the initial finding on any AEE petition (*i.e.*, a petition for determination on whether a project has a substantial adverse effect on the environment). The Commission grants this request, and the regulation is amended accordingly.

IV. Effective Date

This rule is effective November 17, 1988.

List of Subjects

18 CFR Part 4

Electric power, Reporting and recordkeeping requirements.

18 CFR Part 292

Electric power plants, Electric utilities, Natural gas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Parts 4 and 292, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By the Commission

Lois D. Cashell,

Secretary.

PART 4—LICENSES, PERMITS, EXEMPTIONS, AND DETERMINATION OF PROJECT COSTS

1. The authority citation for Part 4 continues to read as follows:

Authority: Federal Power Act, 16 U.S.C. 791a–825r, as amended by the Electric Consumers Protection Act of 1986, Pub. L. No. 99–495; Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601–2645 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); EO 12009, 3 CFR 1978 Comp., p. 142.

2. In § 4.38, paragraph (b)(1)(vi)(B) is revised to read as follows:

§ 4.38 Pre-filing consultation requirements.

* * * * *

(b) * * *

(1) * * *

(vi) * * *

(B) If benefits under section 210 of PURPA are sought, a statement on whether or not the applicant believes the project is located at a new dam or diversion (as that term is defined in § 292.202(p) of this chapter) and a request for the agencies' view on that belief, if any.

* * * * *

PART 292—REGULATIONS UNDER SECTIONS 201 AND 210 OF THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978 WITH REGARD TO SMALL POWER PRODUCTION AND COGENERATION

3. The authority citation for Part 292 is revised to read as follows:

Authority: Federal Power Act 16 U.S.C. 791a–825r (1982), as amended by Electric Consumers Protection Act of 1986, Pub. L. No. 99–495; Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); EO 12009, 3 CFR 1978 Comp., p. 142; Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982), as amended.

4. In § 292.211, paragraph (g)(3)(i) is revised to read as follows:

[13] AR's rehearing request at p. 4.

[14] *Id.* at 3.

[15] AR's rehearing request at p. 4.

[16] 18 CFR 292.211(k) (1988).

[17] Section 8(b)(4)(C) requires that the Commission make its final finding at the time the license or exemption is issued.

§ 292.211 Petition for initial determination on whether a project has a substantial adverse effect on the environment (AEE petition).

* * * * *

(g) * * *

(3)(i) The Commission will provide written notice of the Director's initial finding on the petition to the applicant, to the federal and state agencies that the applicant must consult under § 4.38 of this chapter and to any intervenors in the proceeding.

* * * * *

[FR Doc. 88-24027 Filed 10-17-88; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 444

[Docket No. 88N-0245]

Antibiotic Drugs; Gentamicin Sulfate-Prednisolone Acetate Ophthalmic Suspension

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for a new combination and dosage form containing gentamicin sulfate, gentamicin sulfate-prednisolone acetate ophthalmic suspension. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: November 17, 1988; comment, notice of participation, and request for hearing by November 17, 1988; data, information, and analyses to justify a hearing by December 19, 1988.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter A. Dionne, Center for Drug Evaluation and Research (HFD–520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new combination and new dosage form containing gentamicin sulfate, gentamicin sulfate-prednisolone acetate ophthalmic suspension. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in 21 CFR Part 444 by adding new § 444.320c to provide for the inclusion of accepted standards for this product.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Submitting Comments and Filing Objections

This final rule announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this final rule is not controversial and because when effective it provides notice of accepted standards, FDA finds that notice and comment procedure is unnecessary and not in the public interest. This final rule, therefore, becomes effective November 17, 1988. However, interested persons may, on or before November 17, 1988, submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before November 17, 1988, a written notice of participation and request for hearing, and (2) on or before December 19, 1988, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 444

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 444 is amended as follows:

PART 444—OLIGOSACCHARIDE ANTIBIOTIC DRUGS

1. The authority citation for 21 CFR Part 44 continues to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357); 21 CFR 5.10.

2. New § 444.320c is added to Subpart D to read as follows:

§ 444.320c Gentamicin sulfate-prednisolone acetate ophthalmic suspension.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Gentamicin sulfate-prednisolone acetate ophthalmic suspension is an aqueous suspension containing in each milliliter gentamicin sulfate equivalent to 3.0 milligrams of gentamicin and 10.0 milligrams of prednisolone acetate. It may contain one or more suitable and harmless chelating agents, tonicity agents, buffers, and preservatives. Its gentamicin content is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of milligrams of gentamicin that it is represented to contain. Its prednisolone acetate content is satisfactory if it is not less than 90 percent and not more than 110 percent

of the number of milligrams of prednisolone acetate that it is represented to contain. Its pH is not less than 5.4 and not more than 6.0. It is sterile. The gentamicin sulfate used conforms to the standards prescribed by § 444.20(a)(1). The prednisolone acetate used conforms to the standards prescribed by the USP XXI.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(A) The gentamicin sulfate used in making the batch for potency, loss on drying, pH, specific rotation, content of gentamicin C_1, C_{1a}, C_2, and identify.

(B) The prednisolone acetate used in making the batch for all USP XXI specifications.

(C) The batch for gentamicin content, prednisolone acetate content, sterility, and pH.

(ii) Samples, if required by the Director, Center for Drug Evaluation and Research:

(A) The gentamicin sulfate used in making the batch: 10 packages, each containing not less than 500 milligrams.

(B) The batch:

(*1*) For all tests except sterility: A minimum of 15 immediate containers.

(*2*) For sterility testing: 20 immediate containers, collected at regular intervals throughout each filling operation.

(b) *Tests and methods of assay*—(1) *Gentamicin content.* Proceed as directed in § 436.105 of this chapter, preparing the sample for assay as follows: Dilute an accurately measured representative portion of the sample with 0.1*M* potassium phosphate buffer, pH 8.0 (solution 3), to the reference concentration of 0.1 microgram of gentamicin per milliliter (estimated).

(2) *Prednisolone acetate content.* Proceed as directed in § 436.216 of this chapter, using ambient temperature, an ultraviolet detection system operating at a wavelength of 254 nanometers, a column packed with octadecyl hydrocarbon bonded silicas, a flow rate of 2.0 milliliters per minute, and an injection volume of 30 microliters. Mobile phase, reference standard and sample solutions, system suitability requirements, and calculations are as follows:

(i) *Mobile phase.* Mix acetonitrile distilled deionized water (40:60). Filter the mobile phase through a suitable glass fiber filter or equivalent which is capable of removing particulate contamination to 1 micron in diameter.

(ii) *Reference standard and sample solutions*—(A) *Preparation of reference standard solution.* Accurately weigh approximately 60 milligrams of prednisolone acetate reference standard into a 50-milliliter volumetric flask. Dissolve and dilute to volume with methyl alcohol and mix well. Transfer 5 milliliters of this solution into a 50-milliliter volumetric flask, dilute to volume with 70 percent methyl alchohol, and mix well.

(B) *Preparation of sample solution.* Transfer 1.0 milliliter of the sample into a 50-milliliter volumetric flask, dilute to volume with 70 percent methyl alcohol, and mix well.

(iii) *System suitability requirements*—(A) *Tailing factor.* The tailing factor (*T*) is satisfactory if it is not more than 1.25 at 5 percent of peak height.

(B) *Efficiency of the column.* The efficiency of the column (*n*) is satisfactory if it is greater than 2,000 theoretical plates.

(C) *Coefficient of variation.* The coefficient of variation (S_R in percent) of five replicate injections is satisfactory if it is not more than 2.0 percent. If the system suitability requirements have been met, then proceed as described in § 436.216(b) of this chapter.

(iv) *Calculations.* Calculate the milligrams of prednisolone acetate per milliliter of sample as follows:

$$\text{Milligrams of prednisolone acetate} = \frac{A_u \times C_S \times d}{A_s}$$

where:

A_u = Area of the prednisolone acetate peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);

A_s = Area of the prednisolone acetate peak in the chromatogram of the prednisolone acetate reference standard;

C_S = Concentration of prednisolone acetate in the reference standard solution in milligrams per milliliter; and

d = Dilution factor of the sample.

(3) *Sterility.* Proceed as directed in § 436.20 of this chapter, using the method described in paragraph (e)(2) of that section.

(4) *pH.* Proceed as directed in § 436.202 of this chapter, using the undiluted sample.

Dated: October 6, 1988.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 88-23993 Filed 10-17-88; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Parts 510, 520, 522, 524, 546, and 555

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor of various approved new animal drug applications from Med-Tech, Inc., and Medico Industries, Inc., to Fermenta Animal Health Co.

EFFECTIVE DATE: October 18, 1988.

FOR FURTHER INFORMATION CONTACT: David L. Gordon, Center for Veterinary Medicine (HFV-238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6243.

SUPPLEMENTARY INFORMATION: Fermenta Animal Health Co., 7410 NW. Tiffany Springs Parkway, P.O. Box 901350, Kansas City, MO 64190-1350, has requested FDA to change the sponsor name of the NADA's held by Med-Tech, Inc., and Medico Industries, Inc., and consolidate them under the Fermenta sponsor name and labeler code. Med-Tech, Inc., and Medico Industries, Inc., are subsidiaries of Fermenta Animal Health Co. The NADA's affected are:

NADA	Product
011-571	Dizan® Tablets (Dithiazanine Iodide)
011-574	Dizan® Soluble Powder
012-469	Dizan® Suspension
065-491	Chloramphenicol Tablets
065-498	Tetracycline Hydrochloride Soluble Powder
092-937	D.E.C. Sol™ Liquid (Diethylcarbamazine Citrate)
098-589	Medecide® SDM 10+Injection (Sulfadimethazine)
105-772	Iron Hydrogenated Dextran
108-993	Oxytetracycline Hydrochloride Injection
109-305	Oxydoxin Solution
117-531	Acepromazine Maleate Injection
117-532	Acepromazine Maleate Tablets
117-858	Neuroxym™ (Primidone) Tablets
125-787	Nitrofurazone Dressing
126-923	Nitrofurazone Solution
126-236	Nitrofurazone Soluble Powder
128-676	D&T Worm Capsules (Dichlorophene/Toluene)
127-034	Furosemide Injectable
127-427	Diethylcarbamazine Citrate Tablets
128-089	Diethylcarbamazine Citrate Chewable Tablets
128-034	Furosemide Tablets
131-538	Furosemide Injectable
132-628	Sodium Thiamylal for Injection
134-706	Iron Dextran
135-771	Methylprednisolone Tablets
135-212	Methylprednisolone Acetate Injection
137-318	Maintenance Solution
137-884	Triamcinolone Acetonide TABLETS
138-955	Tylosin Injection
138-888	Triamcinolone Acetonide Injection
140-270	Sulfamethazine Sustained-Release Bolus
140-442	Xylazine Hydrochloride Injection

The agency is amending 21 CFR 510.600, 520.23, 520.580, 520.622a, 520.622b, 520.622c, 520.763a, 520.763b, 520.763c, 520.1010a; 520.1408, 520.1900, 520.2260b, 520.2461, 522.23, 522.1010, 522.1044, 522.1182, 522.1183, 522.1410, 522.1662a, 522.1680, 522.2220, 522.2424, 522.2483, 522.2640a, 522.2662, 524.1580b, 524.1580c, 524.1580d, 546.180d, and 555.110a to reflect the change of sponsor.

In addition, in the Federal Register of April 23, 1982 (47 FR 17482), FDA published a document reflecting approval of Medico's NADA 125-797 for a nitrofurazone ointment (i.e., dressing). An amendment to 21 CFR 524.1580b codified that approval. Another amendment to that section (April 30, 1982; 47 FR 18580) failed to reflect the Medico Industries, Inc., approval. In this document, the amendment to § 524.1580b corrects that error and adds the new sponsor number to that section.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 520

Animal drugs.

21 CFR Part 522

Animal drugs.

21 CFR Part 524

Animal drugs.

21 CFR Part 546

Animal drugs, Antibiotics.

21 CFR Part 555

Animal drugs, Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 510, 520, 522, 524, 546, and 555 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a) (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table of paragraph (c)(1) by removing the entries for "Med-Tech, Inc.", and "Medico Industries, Inc.", and in paragraph (c)(2) by removing the entries from the table for Nos. "012957" and "015562".

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

3. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 520.23 [Amended]

4. Section 520.23 *Acepromazine maleate tablets* is amended in paragraph (a)(2) by removing No. "013963" and adding in its place No. "054273".

§ 520.580 [Amended]

5. Section 520.580 *Dichlorophene and toluene capsules* is amended in paragraph (b)(2) by removing No. "015562" and numerically adding No. "054273".

§ 520.622a [Amended]

6. Section 520.622a *Diethylcarbamazine citrate tablets* is amended in paragraph (a)(6) by removing No. "013963" and adding in its place No. "054273".

§ 520.622b [Amended]

7. Section 520.622b *Diethylcarbamazine citrate syrup* is amended in paragraph (c)(2) by removing No. "013963" and adding in its place No. "054273".

§ 520.622c [Amended]

8. Section 520.622c *Diethylcarbamazine citrate chewable tablets* is amended in paragraph (b)(6) by removing No. "013963" and adding in its place No. "054273".

§ 520.763a [Amended]

9. Section 520.763a *Dithiazanine iodide tablets* is amended in paragraph (c) by removing No. "015562" and adding in its place No. "054273".

§ 520.763b [Amended]

10. Section 520.763b *Dithiazanine iodide powder* is amended in paragraph (c) by removing No. "015562" and adding in its place No. "054273".

§ 520.763c [Amended]

11. Section 520.763c *Dithiazanine iodide and piperazine citrate suspension* is amended in paragraph (b) by removing No. "015562" and adding in its place No. "054273".

§ 520.1010a [Amended]

12. Section 520.1010a *Furosemide tablets or boluses* is amended in paragraph (b) by removing No. "013963" and adding in its place No. "054273".

§ 520.1408 [Amended]

13. Section 520.1408 *Methylprednisolone tablets* is amended in paragraph (b) by removing No. "013963" and adding in its place No. "054273".

§ 520.1900 [Amended]

14. Section 520.1900 *Primidone tablets* is amended in paragraph (b) by removing No. "013963" and adding in its place No. "054273".

§ 520.2260b [Amended]

15. Section 520.2260b *Sulfamethazine sustained-release boluses* is amended in paragraph (f)(1) by removing No. "015562" and adding in its place No. "054273".

§ 520.2461 [Amended]

16. Section 520.2461 *Triamcinolone acetonide tablets* is amended in paragraph (b) by removing No. "013963" and numerically adding No. "054273".

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

17. The authority citation for 21 CFR Part 522 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 522.23 [Amended]

18. Section 522.23 *Acepromazine maleate injection* is amended in the introductory text of paragraph (c) by removing No. "013963" and adding in its place No. "054273".

§ 522.1010 [Amended]

19. Section 522.1010 *Furosemide injection* is amended in paragraph (b) by removing No. "013963" wherever it appears and adding in its place No. "054273".

§ 522.1044 [Amended]

20. Section 522.1044 *Gentamicin sulfate injection* is amended in paragraph (b)(3) by removing No. "013963" and adding in its place No. "054273".

§ 522.1182 [Amended]

21. Section 522.1182 *Iron dextran complex injection* is amended in paragraph (b)(2)(i) by removing No. "015562" and adding in its place No. "054273".

§ 522.1183 [Amended]

22. Section 522.1183 *Iron hydrogenated dextran injection* is

amended in paragraph (e)(1) by removing No. "015562" and numerically adding No. "054273".

§ 522.1418 [Amended]

23. Section 522.1418 *Sterile methylprednisolone acetate suspension* is amended in paragraph (b) by removing No. "013963" and adding in its place No. "054273".

§ 522.1662a [Amended]

24. Section 522.1662a *Oxytetracycline hydrochloride injection* is amended in paragraph (h)(2) by removing No. "015562" and adding in its place No. "054273".

§ 522.1660 [Amended]

25. Section 522.1660 *Oxytocin injection* is amended in paragraph (b) by removing No. "015562" and numerically adding No. "054273".

§ 522.2220 [Amended]

26. Section 522.2220 *Sulfadimethoxine injection* is amended in paragraph (c)(2) by removing No. "015562" and adding in its place No. "054273".

§ 522.2424 [Amended]

27. Section 522.2424 *Sodium thiamylal for injection* is amended in paragraph (b) by removing No. "013963" and adding in its place No. "054273".

§ 522.2460 [Amended]

28. Section 522.2460 *Sterile triamcinolone acetonide suspension* is amended in paragraph (b) by removing No. "013963" and numerically adding No. "054273".

§ 522.2640a [Amended]

29. Section 522.2640a *Tylosin injection* is amended in paragraph (b)(2) by removing No. "015562" and adding in its place No. "054273".

§ 522.2662 [Amended]

30. Section 522.2662 *Xylazine hydrochloride injection* is amended in paragraph (b) by removing No. "013963" and numerically adding No. "054273".

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

31. The authority citation for 21 CFR Part 524 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 524.1580b [Amended]

32. Section 524.1580b *Nitrofurazone ointment* is amended in paragraph (b) by removing the "and" before "063617" and adding after the same number ", and 054273".

§ 524.1580c [Amended]

33. Section 524.1580c *Nitrofurazone soluble powder* is amended in paragraph (b) by removing No. "015562" and adding in its place No. "054273".

§ 524.1580d [Amended]

34. Section 524.1580d *Nitrofurazone solution* is amended in paragraph (b) by removing No. "015562" and numerically adding No. "054273".

PART 546—TETRACYCLINE ANTIBIOTIC DRUGS FOR ANIMAL USE

35. The authority citation for 21 CFR Part 546 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

§ 546.1660 [Amended]

36. Section 546.1660d *Tetracycline soluble powder* is amended in paragraphs (c)(6)(i)(*c*)(*3*), (c)(6)(iii)(*d*)(*3*), and (c)(6)(iv)(*c*)(*3*) by removing No. "015562" and adding in its place No. "054273".

PART 555—CHLORAMPHENICOL DRUGS FOR ANIMAL USE

37. The authority citation for 21 CFR Part 555 continues to read as follows:

Authority: Sec. 512(i) and (n), 82 Stat. 347, 350–351 (21 U.S.C. 360b(i) and (n)); 21 CFR 5.10 and 5.83.

§ 555.110a [Amended]

38. Section 555.110a *Chloramphenicol tablets* is amended in paragraph (c)(1)(ii) by removing No. "013963" and adding in its place No. "054273".

Dated: October 5, 1988.

Robert C. Livingston,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 88-23997 Filed 10-17-88; 8:45 am]

BILLING CODE 4160-01-M

Food and Drug Administration

21 CFR Parts 510 and 522

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor of a new animal drug application (NADA) from Vet Labs Limited, Inc., to Chemdex, Inc.

EFFECTIVE DATE: October 18, 1988.

FOR FURTHER INFORMATION CONTACT: John R. Markus, Center for Veterinary Medicine (HFV–142), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2871.

SUPPLEMENTARY INFORMATION: Chemdex, Inc., 12340 Santa Fe Dr., Lenexa, KS 66215, is now the sponsor of NADA 138–255 (iron hydrogenated dextran injection) formerly held by Vet Labs Limited., Inc. Vet Labs Limited., Inc., informed FDA of the change of corporate ownership and a subsequent change of sponsor. The agency is amending 21 CFR 510.600(c) (1) and (2) and 522.1183(e)(1) to reflect the new sponsor.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 510 and 522 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a) (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

2. Section 510.600 is amended in the table of paragraph (c)(1) by alphabetically adding an entry for "Chemdex, Inc.", and in paragraph (c)(2) by numerically adding an entry in the table for "017287" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Chemdex, Inc., 12340 Santa Fe Dr., Lenexa, KS 66215	017287
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
017287	Chemdex, Inc., 12340 Santa Fe Dr., Lenexa, KS 66215.
* * * * *	

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

3. The authority citation for 21 CFR Part 522 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 522.1183 [Amended]

4. Section 522.1183 *Iron hydrogenated dextran injection* is amended in paragraph (e)(1) by removing "054016" and adding in numerical sequence "017287".

Dated: October 4, 1988.

Robert C. Livingston,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 88-23994 Filed 10-17-88; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Parts 510, 540, and 558

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor of three NADA's from Solvay Veterinary, Inc., to Salsbury Laboratories, Inc.

EFFECTIVE DATE: October 18, 1988.

FOR FURTHER INFORMATION CONTACT: John R. Markus, Center for Veterinary Medicine (HFV–142), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2871.

SUPPLEMENTARY INFORMATION: Salsbury Laboratories, Inc., 2000 Rockford Rd., Charles City, IA 50616–0989, has informed FDA of a sponsor change for three NADA's from Solvay Veterinary, Inc., P.O. Box 7348, Princeton, NJ 08540. The NADA's affected are: (1) NADA 12–660 mycostatin-20 (nystatin), (2) NADA 46–666 procaine penicillin G 50 percent for animal feeds, and (3) NADA 55–000 potassium penicillin G.

These NADA's were originally held by E.R. Squibb & Sons, Inc. In May 1985 Solvay Veterinary, Inc., acquired the U.S. Animal Health Division of E.R. Squibb & Sons, Inc., including these NADA's. Although Squibb was no longer the sponsor of any approved NADA's, the entry in 21 CFR 510.600 was not removed and the sponsor change in 21 CFR 558.430 was not revised to reflect the change of sponsor.

The agency is now amending 21 CFR 510.600(c)(1) and (2), 540.181b(c)(2), and 558.430(a) to reflect the change of sponsor.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 540

Animal drugs, Antibiotics.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 510, 540, and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a) (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table of paragraph (c)(1) by removing the entry for "E.R. Squibb & Sons, Inc.," and in paragraph (c)(2) by removing the entry in the table for No. "000003."

PART 540—PENICILLIN ANTIBIOTIC DRUGS FOR ANIMAL USE

3. The authority citation for 21 CFR Part 540 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

§ 540.181b [Amended]

4. Section 540.181b *Potassium penicillin G in drinking water* is amended in paragraph (c)(2) by removing No. "053501" and adding in its place No. "017210."

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

5. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

§ 558.430 [Amended]

6. Section 558.430 *Nystatin* is amended in paragraph (a) by removing No. "000003" and adding in its place No. "017210."

Dated: October 4, 1988.

Robert C. Livingston,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 88-23995 Filed 10-17-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 211

Appeal of Decisions Concerning the National Forest System

AGENCY: Forest Service, USDA.

ACTION: Final rule; correction.

SUMMARY: The Department of Agriculture is correcting a typographical error made in the final rule establishing procedures for appeals of decisions by Forest Service officers to reoffer for sale returned or defaulted timber sales on National Forest System lands. The rule was published April 22, 1988, at 53 FR 13263.

EFFECTIVE DATE: This rule is effective October 18, 1988.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Hill, Staff Assistant for National Forest Systems Operations, Forest Service, USDA, P.O. Box 96001, Washington, DC 20090–6090, (202) 382–9759.

SUPPLEMENTARY INFORMATION: On April 22, 1988, the Department published a final rule establishing procedures by which the public may appeal decisions to resell returned or defaulted National Forest timber sales. The agency has subsequently discovered two typographical errors and an omission in paragraph (p) of 36 CFR 211.17. This paragraph mandates that Reviewing Officers dismiss appeals without a decision on the merits under the circumstances listed. Paragraph (p)(1)(iii) states that the Reviewing Officer shall dismiss an appeal when "The notice of appeal does not meet the requirements of paragraph (i) of this section". This incorrectly refers users of the rule to the paragraph on extensions of time. The rule is being corrected to refer to paragraphs (j) and (k) which cover the contents of a notice of appeal.

Therefore, the following changes are made to the final rule published on April 22, 1988, at 53 FR 13263–13266:

BEST COPY AVAILABLE

§ 211.17 [Corrected]

1. In paragraph (p)(1) of 36 CFR 211.17, appearing on page 13266, column 2, line 63, change "and" to "as" so that the line reads: "shall dismiss an appeal without".

2. In paragraph (p)(1)(iii) of 36 CFR 211.17, appearing on page 13266, column 3, line 5, change the reference to "paragraph (i)" to read: "paragraph (j) or (k)".

Date: October 6, 1988.

Richard E. Lyng,

Secretary.

[FR Doc. 88-24023 Filed 10-17-88; 8:45 am]

BILLING CODE 3410-11-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Federal Insurance Administration

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations will be used in calculating flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

DATES: The effective dates for these modified base flood elevations are indicated on the following table and amend the Flood Insurance Rate Map(s) (FIRM) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed on the following table.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified flood elevations for each community listed. These modified elevations have been published in newspaper(s) of local circulation and ninety (90) days have elapsed since that publication. The Administrator, has resolved any appeals resulting from this notification.

Numerous changes made in the base (100-year) flood elevations on the FIRMs for each community make it administratively infeasible to publish in this notice all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR Part 65.

For rating purposes, the revised community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management measures required by 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities.

These modified base flood elevations shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

The changes in the base flood elevations are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made in designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains.

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

State and County	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Georgia: DeKalb (docket No. FEMA-6831).	Unincorporated areas	June 22, 1988, June 30, 1988, Decatur-DeKalb News/Era.	The Honorable Manuel J. Maloof, Chief Executive Officer, DeKalb County, 556 North McDonough, Decatur, Georgia 30030.	June 14, 1988	130065

Harold T. Duryee,

Administrator, Federal Insurance Administration.

Issued October 11, 1988.

[FR Doc. 88-23954 Filed 10-17-88; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 65

[Docket No. FEMA-6840]

Changes in Flood Elevation Determinations; Florida et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Interim Rule.

SUMMARY: This rule lists those communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations

for new buildings and their contents and for second layer insurance on existing buildings and their contents.

DATES: These modified elevations are currently in effect and amend the Flood Insurance Rate Map (FIRM) in effect prior to this determination.

From the date of the second publication of notice of these changes in a prominent local newspaper, any person has ninety (90) days in which he can request through the community that the Administrator, reconsider the changes. These modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevation determinations are available for inspection at the office of the Chief Executive Officer of the community, listed in the fifth column of the table. Send comments to that address also.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The numerous changes made in the base (100-year) flood elevations on the FIRM(s) make it administratively infeasible to publish in this notice all of the modified base (100-year) flood elevations contained on the map. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

Any request for reconsideration must be based on knowledge of changed conditions, or new scientific or technical data.

These modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 65.4.

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

These elevations, together with the floodplain management measures required by 60.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time, enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in the base (100-year) flood elevation listed below are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made in designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains.

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Florida: Dade	Unincorporated areas	Sept. 29, 1988, Oct. 6, 1988, *Miami Herald.*	Hon. Joaquin Avino, County Manager, Dade County, Metro Dade Center, 111 N.W. 1st Street, Suite 2910, Miami FL 33128-1971.	Sept. 19, 1988	125096
Georgia: De Kalb	Unincorprated areas	Sept. 22, 1988, Sept. 29, 1988, *Decatur-De Kalb News/Era.*	Hon. Manuel J. Maloof, Chief Executive Officer, De Kalb County, 556 North McDonough, Decatur, GA 30030.	Sept. 13, 1988	[illegible]
Massachusetts: Norfolk	City of Quincy	Oct. 14, 1988, Oct. 21, 1988, *The Patriot Ledger.*	Hon. Francis X. McCaughey, Mayor of the City of Quincy, 1305 Hancock Street, Quincy, MA [illegible]	Sept. 30, 1988	[illegible]
Mississippi: DeSoto	City of Southaven	Oct. 13, 1988, Oct. 20, 1988, *DeSoto Times.*	Hon. Joseph Cates, Mayor, City of Southaven, P.O. Box 425, Southaven, MS 38671.	Oct. 3, 1988	[illegible]
Missouri: Jefferson	City of Festus	Oct. 13, 1988, Oct. 20, 1988, *Daily News Democrat.*	Hon. Joseph Groha, Jr., Mayor, City of Festus, City Hall, 711 West Main, Festus, [illegible]	Oct. 3, 1988	[illegible]
New York: Monroe	Town of Penfield	Oct. 13, 1988, Oct. 20, 1988, *Penfield Press.*	Hon. Donald Mack, Supervisor of the Town of Penfield, 3100 Atlantic Avenue, Penfield, NY [illegible]	Sept. 27, 1988	3604268
Texas: Denton	City of Denton	Oct. 12, 1988, Oct. 19, 1988, *Denton Record-Chronicle.*	Hon. Ray Stephens, Mayor of the City of Denton, 215 East McKinney Street, Denton, TX [illegible]	Sept. 27, 1988	480194D

Harold T. Duryee,

Administrator, Federal Insurance Administration.

Issued October 11, 1988.

[FR Doc. 88-23953 Filed 10-17-88; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

Final Flood Elevation Determinations; Massachusetts et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of

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being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing modified base flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the Federal Register for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal the proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in flood-prone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 USC 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been proposed. It does not involve any collection of information for purposes of The Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
MASSACHUSETTS	
Leominster (city), Worcester County (FEMA Docket No. 6813)	
North Nashua River:	
Approximately 350 feet upstream of Hamilton Street	*231
At upstream corporate limits	*233
Approximately 350 feet upstream of corporate limits	*234
Maps available for inspection at the City Hall, 25 West Street, Leominster, Massachusetts.	
North Reading (town), Middlesex County (FEMA Docket No. 6827)	
Martins Brook:	
At most upstream corporate limits	*52
Upstream side of Burroughs Road	*83
Martins Pond: Entire shoreline	*83
Shaj River:	
At confluence with Martins Pond	*83
Upstream side of Central Street	*89
Maps available for inspection at the Town Hall, Park Street, North Reading, Massachusetts.	
NEW JERSEY	
Franklin (township), Somerset County (FEMA Docket No. 6824)	
Seeley's Brook:	
At confluence with Raritan River	*20
At confluence of Tributary B	*48
Approximately 1,250 feet upstream of John F. Kennedy Boulevard	*63
Tributary A:	
At confluence with Seeley's Brook	*38
Approximately 85 feet upstream of Division Drive	*54
Tributary B:	
At confluence with Seeley's Brook	*48
Approximately 60 feet upstream of Lagge Road	*58
Maps available for inspection at the Municipal Building, 475 Deklalb Lane, Somerset, New Jersey.	
PENNSYLVANIA	
South Fayette (township), Allegheny County (FEMA Docket No. 6827)	
Chartiers Creek:	
Approximately 2,300 feet downstream of Mayview Road	*836
Approximately 3,400 feet downstream of Mayview Road	*837
Maps available for inspection at the Municipal Building, Millers Run Road, Morgan, Pennsylvania 15064.	
VIRGINIA	
Prince William County (FEMA Docket No. 6825)	
Bull Run:	
Approximately 2,000 feet downstream of confluence with Bull Run Tributary	*169
Approximately 650 feet downstream of Interstate Highway 66	*171
Approximately 65 feet upstream of Interstate Highway 66	*175
Bull Run Tributary D: Approximately 2,700 feet upstream of confluence with Bull Run	*169
Maps available for inspection at the Department of Development Administration, 1 County Complex Court, Prince William County, Virginia.	

Issued: October 11, 1988.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 88–23955 Filed 10–17–88; 8:45 am]

BILLING CODE 6718–03–M

Proposed Rules

Federal Register
Vol. 53, No. 201
Tuesday, October 18, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1036

[Docket No. AO–179–A52; DA–88–113]

Milk in the Eastern Ohio-Western Pennsylvania Marketing Area; Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: The hearing is being held to consider changes in the Eastern Ohio-Western Pennsylvania order proposed by five proprietary handlers and a cooperative association. The proposals would allow dumped or spilled milk to be classified in Class III without prior notification of the market administrator, classify buttermilk biscuit and pancake mixes as Class III rather than Class I, and remove lowfat eggnog from the Fluid Milk Product definition. Handlers and producers would also have an opportunity to express views and submit data on the need for the Director of the Dairy Division to temporarily increase the pool supply plant delivery requirement to pool distributing plants. Proponents contend that the modifications are needed to reflect changed marketing conditions.

DATE: The hearing will convene at 9:00 a.m., local time, on November 1, 1988.

ADDRESS: The hearing will be held at the Holiday Inn, 7230 Engle Road, (junction of I–71 and Bagley Road), Middleburg Heights, Ohio 44130, (216) 243–4040.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–7183.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Notice is hereby given of a public hearing to be held at the Holiday Inn, 7230 Engle Road (junction of I–71 and Bagley Road), Middleburg Heights, OH 44130, beginning at 9:00 a.m., local time, on November 1, 1988, with respect to proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (Pub. L. 96–354). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purposes of the Act, a dairy farm is a "small business" if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

List of Subjects in 7 CFR Part 1036

Milk marketing orders, Milk, Dairy products.

PART 1036—[AMENDED]

The authority citation for 7 CFR Part 1036 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Milk Marketing Inc. and Superior Dairy, Inc.

Proposal No. 1

This proposal would give interested persons an opportunity to comment on whether the percentage of milk required by § 1036.7(b) to be shipped by pool supply plants to pool distributing plants should be increased temporarily under the authority of the Director of the Dairy Division pursuant to § 1036.7(f).

Proposed by Superior Dairy, Inc.

Proposal No. 2

This proposal to revise § 1036.15 would specifically exclude "lowfat eggnog" from the Fluid Milk Product definition, resulting in the Class III classification of that product, as follows:

§ 1036.15 Fluid milk product.

"Fluid milk product" means the following products or mixtures in either fluid or frozen form, including such products or mixtures that are flavored, cultured, modified (with added nonfat milk solids), concentrated, or reconstituted: Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, milk shake mixes containing less than 20 percent total solids, and mixtures of cream and milk or skim milk containing less than 10.5 percent butterfat. The term "fluid milk product" shall not include lowfat eggnog [containing less than 3½ percent milk fat) or those products and mixtures listed in § 1036.40(b)(1) and (3), and (c)(1).

Proposed by Seni Dairy and Oberlin Farms Dairy, Inc.

Proposal No. 3

In § 1036.40, revise paragraph (c)(1) to classify buttermilk biscuit mixes as Class III, as follows:

§ 1036.40 Classes of utilization.

* * * * *

(c) * * *

(1) Skim milk and butterfat used to produce butter, cheese (excluding cottage cheese and cottage cheese curd), evaporated or condensed milk or skim milk (plain or sweetened) in a consumer-type package, any concentrated milk product in bulk, fluid form used to produce Class III products, nonfat dry milk, dry whole milk, dry whey, condensed or dry buttermilk biscuit mixes, any product containing six percent or more nonmilk fat (or oil) and sterilized products (except fluid cream products and those products listed in paragraph (b)(3) of this section) in hermetically sealed glass or metal containers;

* * * * *

Proposed by Taylor Milk Company

Proposal No. 4

In § 1036.40, revise paragraph (c)(1) to classify buttermilk mixes, buttermilk or buttermilk blend for use in on-premises baking by a retail business in Class III, as follows:

§ 1036.40 Classes of utilization.

* * * * *

(c) * * *

(1) Skim milk and butterfat used to produce frozen desserts and frozen dessert mixes, eggnog, frozen cream, butter, cheese (excluding cottage cheese and cottage cheese curd), evaporated and condensed milk (plain or sweetened), nonfat dry milk, dry whole milk, dry whey, condensed or dry buttermilk, buttermilk biscuit mixes, buttermilk or buttermilk blend for use in on-premises baking by a retail business and any product containing 6 percent or more nonmilk fat (or oil), milk shake mixes containing 12 percent or more total milk solids, and sterilized products (except fluid cream products and those products listed in paragraph (b)(3) of the section) in hermetically sealed glass or metal containers;

* * * * *

Proposed by Sani-Dairy, Oberlin Farms Dairy, Inc., and Turner Dairy Farms, Inc.

Proposal No. 5

This proposal would allow milk dumped, spilled or used for livestock feed to be classified as Class III without prior notification of such action to the market administrator by revising § 1036.40(c)(2) and reserving § 1036.40 (c)(3) as follows:

§ 1036.40 Classes of utilization.

* * * * *

(c) * * *

(2) Skim milk and butterfat in fluid milk products, fluid cream products and products listed in paragraph (b)(3) of this section that are dumped, spilled, or disposed of for livestock feed.

(3) [Reserved]

* * * * *

Proposed by the Dairy Division, Agricultural Marketing Service

Proposal No. 6

Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the market administrator, C. Mack Endsley, P.O. Box 30128, Cleveland, Ohio 44130, or from the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Division, Agricultural Marketing Service (Washington office only)
Office of the Market Administrator, Eastern Ohio-Western Pennsylvania Marketing Area

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, DC, on October 13, 1988.

J. Patrick Boyle,
Administrator.

[FR Doc. 88-24022 Filed 10-17-88; 8:45 am]
BILLING CODE 3410-02-M

Rural Electrification Administration

7 CFR Part 1751

Loan Processing Procedures; Telephone Program

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed Rule.

SUMMARY: The Rural Electrification Administration (REA) proposes to add Part 1751, Loan Processing Procedures—Telephone Program, to 7 CFR Chapter XVII. This new part consolidates, revises, and clarifies the policies, requirements, and procedures presently contained in various REA publications, including REA Bulletin 320-4, "Preloan Procedures for Telephone Loan Applicants," pertaining to the methodology to be used by REA in reviewing and approving loans and releases of loan funds.

The above Bulletin also contains certain other policies, requirements, and procedures that will be incorporated into other CFR parts. This Bulletin will then be rescinded.

Part 1751 sets forth the provisions and requirements of the RE Act and the REA administrative policies, requirements, and procedures concerning loan budgets, feasibility studies, characteristics letters, loan recommendations, and releases of funds. The primary objectives of the proposed rule are to update, consolidate, clarify, and simplify REA policies and procedures; to lessen the paperwork burden on borrowers; and to decrease processing time by REA.

All borrowers applying for or receiving loans or releases of loan funds will be affected by this rule.

DATE: Public comments concerning this proposed rule must be received by REA no later than November 17, 1988.

ADDRESS: Comments may be mailed to F. Lamont Heppe, Jr., Chief, Loans and Management Branch, Telecommunications Staff Division, Rural Electrification Administration, Room 2250, South Building, U.S. Department of Agriculture, Washington, DC 20250. Comments received may be inspected in Room 2250 between 8:15 a.m. and 4:45 p.m.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Chief, Loans and Management Branch, Telecommunications Staff Division, Rural Electrification Administration, Room 2250, South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone number (202) 382-9550. The Draft Regulatory Impact Analysis describing the options considered in developing this rule is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: This rule is issued in conformity with Executive Order 12291, Federal Regulation. This action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment or productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, this rule has been determined to be "not major."

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq. (1976)) and, therefore, does not require an environmental impact statement or an environmental assessment.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. For the reasons set forth in the final rule related Notice to 7 CFR Part 3015, Subpart V (50 FR 47034, November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping provisions that are included in these proposed rules have been submitted for approval to the Office of Management and Budget (OMB). They will not be effective until approved by OMB.

Public reporting burden for this collection of information is estimated to average 16 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Agriculture, Clearance Officer, ORIM, Room 404-W, Washington, DC 20250; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for REA, Washington, DC 20503.

Background:

Currently, the policies and requirements concerning loan budgets, feasibility studies, characteristics letters, loan recommendations, and releases of funds are contained in numerous REA publications. Many of these are outdated and contain conflicting information. It is necessary to consolidate the information and make it available to the public by publishing it in the Federal Register.

This proposed rule eliminates some reporting requirements and streamlines others, reducing the borrowers' burden, while permitting REA to maintain the security of the Government's loans.

Specifically, the limitations on the amounts REA will lend for office equipment (other than furniture), operating funds, and contingencies have been changed.

7 CFR Part 1751 supersedes any sections of REA Bulletins with which it is in conflict.

List of Subjects in 7 CFR Part 1751

Loan programs—communications, Telecommunications, Telephone.

Therefore, REA proposes to amend 7 CFR Chapter XVII by adding the following new Part 1751:

PART 1751—LOAN PROCESSING PROCEDURES—TELEPHONE PROGRAM

Subpart A—General

Sec.

1751.1 General statement.
1751.2 Definitions.
1751.3 Availability of forms.

Subpart B—Review of Application

1751.10 Review of Completed Loan Application.
1751.11 Approval of Loan Design.

Subpart C—Estimate of Total Project Costs

1751.20 Telephone Loan Budget.
1751.21 Cost Allocation for Rural and Nonrural Areas.

Subpart D—Feasibility Study

1751.30 Description of Feasibility Study.

Subpart E—Characteristics Letter

1751.40 Description of Characteristics Letter.

Subpart F—Loan Approval

1751.50 Loan Approval Requirements.
1751.51 Approval.
1751.52 Loan Documents.

Subpart G—Release of Funds

1751.60 Prerequisites to the Advance of Funds.
1751.61 Amounts Spent for Preloan Activities.

Authority: 7 U.S.C. 901 et seq., 7 U.S.C. 1921 et seq.

Subpart A—General

§ 1751.1 General statement.

(a) This part sets forth the policies, procedures, and requirements of REA during the period from its receipt of a completed loan application until the advance of funds. This part concerns the factors REA considers in determining the characteristics of a loan, such as the amount of the loan, repayment period, interest rate, and conditions to the advance of funds. Involved in this determination are: a loan budget, feasibility study, characteristics letter, loan recommendation, and release of funds. This CFR part supersedes all REA Bulletins that are in conflict with it.

(b) See 7 CFR Part 1745 on general policies, 7 CFR Part 1749 for details on submitting a loan application, and 7 CFR Part 1754 on the advance of funds.

§ 1751.2 Definitions.

As used in this part:

(a) "Acquisition" means the purchase of another telephone system, lines, or facilities whether by acquiring telephone plant in service or majority stock interest of one or more organizations.

(b) "Administrator" means the Administrator of REA.

(c) "Borrower" means any organization which has an outstanding loan made or guaranteed by REA, or which is seeking such financing.

(d) "Feasibility study" means the analysis performed by REA of the borrower's current and projected financial condition to determine the economic feasibility of a loan.

(e) "Interim financing" means funding for a project the borrower desires to be financed by an REA loan but for which no REA loan funds have been made available.

(f) "Loan" means any loan made or guaranteed by REA.

(g) "Project" means the improvements and telephone facilities financed by a particular REA loan.

(h) "RE Act" means the Rural Electrification Act of 1936, as amended (7 U.S.C. 9801 et seq.).

(i) "Reserves" means loan or nonloan funds that have not been encumbered. Funds are encumbered when they have been approved for advance by REA for a particular loan purpose.

(j) "Rural area" means any area of the United States not included within the boundaries of any incorporated or unincorporated city, village or borough having a population exceeding 1,500. The population figure is obtained from the most recent data available from the Bureau of the Census and Rand McNally and Company. The determination of

whether an area is rural is based on the population within the corporate limits or boundaries or unincorporated areas in existence at the time the facilities to serve the community were first financed by REA. If a community is considered rural at that time, it will always be considered rural.

(k) "Special Project" means facilities involving investment in excess of $100,000 for any single subscriber.

(l) "Telephone service" means any communication service for the transmission of voice, sounds, signals, pictures, writing, or signs of all kinds through the use of electricity between the transmitting and receiving apparatus, includes all telephone lines, facilities, or systems used to render such service. It does not mean

(1) Message telegram service, (2) community antenna television system services or facilities other than those intended exclusively for educational purposes, or (3) radio broadcasting services or facilities within the meaning of section 3(o) of the Communications Act of 1934, as amended.

(m) "Times Interest Earned Ratio" (TIER) means the ratio of a borrower's net income plus interest expense plus taxes based upon income, all divided by interest expense.

§ 1751.3 Availability of forms.

Single copies of REA forms and publications cited in this part are available from Administrative Services Division, Rural Electrification Administration, United States Department of Agriculture, Washington, DC 20250. These REA forms and publications may be reproduced.

Subpart B—Review of Application

§ 1751.10 Review of Completed Loan Application.

(a) The completed loan application consists of:

(1) A completed REA Form 490, "Application for Telephone Loan or Loan Guarantee,"

(2) A market survey called the Area Coverage Survey (ACS),

(3) The plan and associated costs for the proposed construction, called the Loan Design (LD), and

(4) Various supplementary information.

See 7 CFR Part 1749 for additional information.

(b) REA shall review the completed loan application, particularly noting subscriber data, grades of service, extended area service (EAS) connecting company commitments, commercial facilities, system and exchange boundaries, and proposed acquisitions. REA shall review the LD to determine that the system design is acceptable to REA, that the design is technically correct, that the cost estimates are reasonable, and that the design provides for area coverage service. REA shall also review the population and incorporation status of all communities served or to be served by the borrower to determine if any nonrural areas are served and if municipal franchises are required. Any REA lending for nonrural areas must be in accordance with 7 CFR Part 1745.

(c) REA will notify the borrower if REA recommends major changes in subscriber projections, design, cost estimates, or other significant matters. REA will not continue loan processing until REA and the borrower agree on all major changes.

§ 1751.11 Approval of loan design.

REA shall notify the borrower when the preloan data concerning the system design and costs and subscriber projections have been approved. If found acceptable, REA will approve the LD with any required changes. A copy of the approved LD, with any significant changes, as determined by REA, will be returned to the borrower.

Subpart C—Estimate of Total Project Costs

§ 1751.20 Telephone loan budget.

(a) REA shall prepare a "Telephone Loan Budget" (REA Form 493) showing all costs for the proposed project and the amount of loan and nonloan funds to be used. The budget shall show, as applicable, amounts for central offices, outside plant and station equipment, right-of-way procurement, land, buildings, removal costs, special projects, engineering, vehicles and work equipment, office equipment, operating funds, refinancing with loan funds, debt retirement with nonloan funds, acquisitions, and contingencies. The amounts budgeted, exclusive of prior loan reserves, generally shall be rounded to the nearest $1,000.

(1) If the loan is to be made concurrently with the Rural Telephone Bank (RTB), the budget shall include the amount required for the purchase of RTB Class B stock. This is 5 percent of the amount to be borrowed from RTB for all purposes other than the purchase of RTB Class B stock. The borrower may elect to use nonloan funds for all or part of this requirement.

(2) The amount of funds included in any loan shall be limited for certain items.

(i) Operating funds for working capital or current operating deficiencies shall be included only in cases of financial hardship as determined by the Administrator.

(ii) Contingencies shall not exceed 3 percent of the total amount of loan funds to be used for construction, engineering, operating equipment, RTB Class B stock, and operating funds.

(b) REA shall prepare the cost estimates based on the data in REA Form 494, "Loan Design Summary," and REA Form 495, "Construction Cost Estimates," and other parts of the LD submitted by the borrower, and on other pertinent information. See 7 CFR Part 1749. The amounts included in the proposed budget shall be the estimated costs, less the value of materials and supplies on hand or acquired that can be used in the proposed construction. The cost estimates in the LD may be adjusted by REA in consultation with the borrower and, as appropriate, its engineer. See § 1751.10(c).

(c) Generally, the new loan shall be reduced by any required equity funds and funds available in reserves to determine the proposed loan requirement.

(d) Where amounts are available in reserves, REA may, at its option, deny further advances of these funds if they will be used to finance projects in the proposed loan.

(e) The budget shall also show, if applicable, the reserves for each budget purpose as of the date of the latest REA Form 481, "Financial Requirement Statement," submitted by the borrower. Any amounts representing nonloan funds deposited for construction under interim financing and not yet reimbursed with loan or equity funds shall be excluded.

(f) Encumbered funds generally shall not be considered available for new loan purposes.

§ 1751.21 Cost allocation for rural and nonrural areas.

(a) Pursuant to the requirements in 7 CFR Part 1745, if loan funds are proposed to be used to construct facilities to serve subscribers in nonrural areas, REA shall allocate costs between rural and nonrural areas. This allocation will be used in the determination of whether the use of loan funds in nonrural areas is necessary and incidental to furnishing and improving telephone service in rural areas. Cost estimates shall be provided by the borrower in the LD. See 7 CFR Part 1749. REA will use the following methods to review the cost breakdowns and to determine their appropriateness:

(1) The costs of facilities associated directly with particular subscribers shall be allocated to those subscribers.

(2) The costs of facilities that serve both rural and nonrural subscribers shall be allocated based on the relative number of rural and nonrural subscribers receiving service from those facilities.

(3) Where a borrower's exchange that includes a nonrural community will have EAS with other exchanges of the borrower, the breakdown of subscribers and funds in the allocation for rural and nonrural areas included in the proposed loan shall show the number of rural and nonrural subscribers, and the costs to serve each group as determined per paragraphs (a)(1) and (a)(2) of this section, in both the subject exchange and in all exchanges connected by EAS, as a whole.

(b) If REA determines that costs cannot be adequately allocated using the procedures in paragraph (a)(1) through (a)(3) of this section, REA shall, on a case by case basis, allocate costs between the rural and nonrural subscribers using whatever methodology it deems reasonable. Any such allocation shall be justified.

Subpart D—Feasibility Study

§ 1751.30 Description of Feasibility Study.

(a) In connection with each loan REA shall prepare a feasibility study that includes sections on consolidated loan estimates, operating statistics, projected telecommunications plant, projected retirement computations, and projected revenue and expense estimates, including detailed estimates of depreciation and amortization expense, scheduled debt service payments, local service revenues, and toll and access charge revenues. Normally, projections will be for a 5-year period and used to determine the ability of the borrower to repay its loans in accordance with the terms thereof and all other expenses.

(b) REA makes loans only to rural telephone systems that are financially feasible. REA shall consider the factors discussed in paragraph (c) through (g) of this section in determining feasibility.

(c) The revenue and expense estimates for the feasibility study generally will be based on the borrower's operating experience provided that:

(1) Adjustments are made for any nonrecurring revenues and expenses that are not representative of the borrower's past operations and would thus make the borrower's experience data inappropriate for the forecast; and

(2) Adjustments are made for any special or new characteristics or other considerations deemed necessary by the Administrator.

(d) The financial and statistical data are derived from REA Form 479, "Financial and Statistical Report for Telephone Borrowers," or for initial loan borrowers who have not reported on REA Form 479, the data may be obtained from the borrower's financial statements and other reports.

(e) When the borrower's operating experience is not adequate, the estimates in the feasibility study normally will be developed from state and regional standards based on the experience of REA telephone borrowers. These standards are included in the Borrower's Statistical Profile (BSP), which is revised annually by REA. If the borrower's operating experience is not the basis for one or more per-subscriber estimates used in the feasibility study, the estimates generally may not vary from the standard by an amount in excess of 20 percent to reflect the particular characteristics of the loan applicant. Any variation from the standard shall be justified.

(f) In cases where these per-subscriber standards do not represent a reasonable forecast of a particular borrower's operations (for example, when a variation greater than 20 percent is necessary), estimates based upon a special analysis of the borrower's projected operations shall be used. The special analysis will accompany the feasibility study.

(g) When it is reasonably expected that a subscriber, classified as a special project, may discontinue service, a second feasibility study will be prepared, for comparison purposes, omitting revenues and expenses from this subscriber.

Subpart E—Characteristics Letter

§ 1751.40 Description of Characteristics Letter.

(a) After all of the studies and exhibits for the proposed loan have been prepared, but before the loan is recommended, REA shall inform the borrower, in writing, of the characteristics of the proposed loan. The purpose of the characteristics letter is to obtain the borrower's concurrence, before consideration of loan approval and the preparation of legal documents relating to the loan, in such matters as the amount of the proposed loan, its purposes, rate of interest, length of repayment period, local service rates required for feasibility, loan security requirements, and other prerequisites to the advance of loan funds. The letter, whether or not concurred in by the borrower, does not commit REA to approve the loan on these or any other terms.

(b) The Forecast of Revenues and Expenses and a copy of REA Form 493, "Telephone Loan Budget," shall be enclosed with the characteristics letter. This copy of the budget shall be subject to change by REA with the borrower's agreement.

Subpart F—Loan Approval

§ 1751.50 Loan approval requirements.

(a) In addition to requirements set forth in 7 CFR Part 1745, 7 CFR Part 1749 and other applicable parts of 7 CFR Chapter XVII, the following are certain additional requirements that must be met before REA will approve a loan.

(1) If the borrower had 100 or more employees as of the prior December 31, then it must have submitted the current annual Employer Information Report EEO–1, Standard Form 100. The completion of this form is a Department of Labor requirement; see 29 CFR 1602.7 through 1602.14.

(2) The borrower must be in compliance with regulations on nondiscrimination. See 7 CFR Part 1701 (or REA Bulletin 320–19).

(3) For subsequent loans, REA must determine whether the borrower's accounting records are adequate. If the records are not adequate, as determined by REA, a provision will be included in the loan contract requiring the borrower to improve its records to an adequate level.

(4) As determined by REA, the local service rates used as the basis for loan feasibility must be appropriate to the area.

(5) The borrower must not have any receivables, loans, guarantees, investments, or other obligations that are contrary to the mortgage provisions (See 7 CFR Part 1758) or REA policy. If the borrower does have any of these items, the loan contract shall contain a provision requiring that they be eliminated prior to the advance of funds.

(6) REA must make a determination on flood insurance requirements.

(i) In accordance with the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) REA shall not approve financial assistance for acquisition or construction of buildings and equipment therein in an area identified by the Secretary of Housing and Urban Development (HUD) as having special flood hazards unless the community in which such area is situated is then participating in the national flood insurance program and the property owners obtain flood insurance as required under the Flood Act.

Accordingly, a finding shall be made on whether loan funds will be used to finance buildings or equipment located in a flood hazard area. If loan funds are to be used in a flood hazard area, a provision restricting the release of funds will be included in the loan contract.

(ii) The REA field representative shall determine the exact location of each building that the borrower owns or occupies, or that it will construct or acquire, that is located within a flood hazard area and for each such building determine whether or not the community in which the building is located or to be located is participating in the flood insurance program.

(7) All environmental requirements must have been met by the borrower. See 7 CFR part 1794.

§ 1751.51 Approval.

(a) A loan is approved when the Administrator, or whoever is delegated authority, signs the administrative findings and the letter to the borrower announcing the loan.

(b) If the loan is not approved, REA shall notify the borrower, in writing, of the reasons for such a decision.

§ 1751.52 Loan Documents.

Following approval of the loan, REA shall forward the necessary loan documents to the borrower for execution, delivery, recording, and filing, as directed by REA. See 7 CFR Part 1758 for details.

Subpart G—Release of Funds

§ 1751.60 Prerequisites to the Advance of Funds.

(a) Standard prerequisites to the advance of funds, generally applied to all loans, are set forth in Article II of the form of loan contract attached as Appendix A to 7 CFR Part 1758. Additional prerequisites may be added on a case by case basis to a particular borrower's loan contract.

(b) REA must approve a release of funds before any loan funds can be advanced. The release of funds is the determination that the borrower has complied with all of the conditions prerequisite to advances as set forth in the loan contract to the extent deemed necessary by REA for approval of the use of loan funds and any required equity or other nonloan funds.

(c) REA approves the release of funds only after it determines that all prerequisites to the advance of loan funds have been met or funds should be advanced even though loan contract prerequisites remain unsatisfied.

(d) Following approval, loan funds and related nonloan funds may be advanced in accordance with 7 CFR Part 1751.

(e) The borrower may be required to discharge indebtedness and/or to close acquisitions before advances can be made for construction purposes. In such cases, the borrower shall submit evidence that these actions have been completed. If the evidence is satisfactory to REA, REA shall allow the remaining loan funds to be advanced in accordance with 7 CFR Part 1754.

§ 1751.61 Amounts spent for Preloan Activities.

If the borrower desires to credit amounts spent for preloan activities against any equity or general funds required by the loan contract, it shall submit an itemized statement of such expenditures to the Area Office. If REA determines that the amounts spent are reasonable and that the items are acceptable as preloan expenditures, they will be accounted for on REA Form 503, "Release of Telephone Loan Funds." Statements of preloan expenditures will be verified as to accuracy when loan fund audits are made by REA.

Dated: October 12, 1988.

Harold V. Hunter,

Administrator, Rural Electrification Administration.

[FR Doc. 88-23966 Filed 10-17-88; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. 1

[Docket No. 25717; Summary Notice No. PR-88-12]

Summary of Rulemaking Petition Received From American Airlines, Inc.

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Notice of Petition for Rulemaking.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of a petition by American Airlines, Inc., to limit operations at Midway Airport and Meigs Field in Chicago, and to determine operations levels for the Chicago area air traffic system generally. The purpose of this notice is to improve the public's awareness of this aspect of FAA's regulatory activities. Neither the publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and be received on or before December 19, 1988.

ADDRESSES: Send comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket [AGC-210], Docket No. 25717, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: David L. Bennett, Office of the Chief Counsel, AGC-230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267-3491.

SUPPLEMENTARY INFORMATION: The Petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rule Docket [AGC-210], Room 915, FAA Headquarters Building [FOB-10A], Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

Petitioner requests that the requirements of Part 93, Subpart K of the Federal Aviation Regulations (14 CFR Part 93, Subpart K) be amended to add Midway Airport to the airports subject to the high density traffic airport rule as defined in Part 93, Subparts K and S, and to take similar or other equivalent action to limit instrument flight rules (IFR) operations at Meigs Field. Current regulations apply the requirements of the rule to operations at four (4) airports—O'Hare, National, JFK, and LaGuardia Airports. The petitioner further requests that the FAA determine the aggregate number of IFR operations that can be handled safely and efficiently by the Chicago area air traffic control system on an average day and to apply that number to establish slot levels at O'Hare, at Midway, and, in the case of IFR operations, at Meigs Field. Petitioner proposes that any slots withdrawn at O'Hare Airport should be withdrawn in accordance with the procedures contained in 14 CFR 93.223. Petitioner states that these changes are necessary because current operations at O'Hare, Midway, and Meigs are placing a heavy burden on the Chicago area air traffic control system.

Finally, petitioner requests that public notice and comment on this petition be waived and that the FAA refrain from publishing this petition for rulemaking, and instead proceed immediately to the publication of a notice of proposed rulemaking with an abbreviated comment period. The FAA believes, however, that all interested and affected parties should be given the opportunity to comment on this petition, in consideration of the complexity and potential impacts of the rulemaking action requested. Therefore, the FAA is publishing the petition for public comment in accordance with the procedures contained in agency regulations, 14 CFR Part 11.

Issued in Washington, DC on October 13, 1988.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

[FR Doc. 88-23950 Filed 10-17-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 251

Ski Area Permits

AGENCY: Forest Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Department hereby proposes to make certain technical changes and to add several new provisions to the rules governing issuance and administration of special uses of National Forest System lands. These amendments implement the authority granted by the National Forest Ski Area Permit Act of October 22, 1986, to authorize nordic and alpine ski areas and facilities with a single permit for up to 40 years.

DATE: Comments must be received in writing by December 19, 1988.

ADDRESSES: Send written comments to F. Dale Robertson, Chief (2710), Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090-6090.

FOR FURTHER INFORMATION CONTACT: John Shilling, Recreation Management Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20013-6090. (202)-382-0428.

SUPPLEMENTARY INFORMATION:

Background

Two Acts in combination have authorized the Secretary of Agriculture to issue permits for and regulate occupancy and use of ski areas on National Forest System lands—the Act of March 4, 1915 (16 U.S.C. 497b), known as the "Term Permit Act"; and the Act of June 4, 1897 (16 U.S.C. 551), known as the "Organic Administration Act."

Under the Term Permit Act, permits can be issued for a maximum of a 30-year term and for a maximum of 80 acres for facilities and structures. The Organic Administration Act provides for the Secretary of Agriculture to make rules and regulations for the national forests to "regulate their occupancy and use." In order to accommodate most ski area developments, therefore, it has been necessary to issue two permits; one long-term permit to provide for areas including facilities having high investments such as ski lifts and lodges, and a second permit under the authority of the Organic Administration Act for the areas necessary for ski runs. The term permits usually have been issued with a term of 20 years, 30 years for a major development, while the second permit for ski runs has been renewed annually.

While this dual permit system has withstood court challenges, it has proved cumbersome and confusing. Additionally, many permit holders felt that the insecurity of the annual permit had a negative influence on the normal banking and business arrangements needed to secure the loans necessary for major ski area development.

The National Forest Ski Area Permit Act of 1986 (16 U.S.C. 497b) seeks to remedy this situation by increasing the maximum term to 40 years and removing the statutory acre limitation. Under the Act, a permit holder now may receive a single term permit for a ski area for up to 40 years, and the permit can encompass such acreage as the Forest Service, acting for the Secretary of Agriculture, determines necessary to accommodate the total ski area operation and facilities. The Act recognizes that ski area authorizations are subject to periodic revision as a result of decisions made in forest and resource land management plans. In addition, Section 3(c) of the Act requires the Secretary of Agriculture to promulgate rules and regulations to carry out the Act and to convert existing permits, with consent of existing permit holders, by October 22, 1989, to permits issued under the Act. The Act does not apply to issuance of ski area permits when the improvements are the property of the the United States. In those few cases, the authority remains the Granger-Thye Act of 1950, the only authority the Forest Service has to rent or lease facilities. Also the Act does not apply to commercial nordic skiing where little or no development or permanent improvement on the land is required. This type of skiing shall continue to be allowed as an outfitting and guiding activity and authorized under the Organic Administration Act.

Proposed Rule

During consideration of rules that might be needed to implement the Ski Area Permit Act the Forest Service carefully examined the provisions of the Act in the context of the existing regulations governing special uses on National Forest System lands. The existing rules are set forth at 36 CFR Part 251, Subpart B and apply to all forms of permitted activities authorized by various statutes except disposal of timber and minerals and the grazing of livestock. Specifically, the current regulations cover application procedures; nature of interest conveyed; terms and conditions to be in the permit; rental fees; transfer of special use privileges; when and how permits may be terminated, revoked, or suspended; and procedures for modifications, acceptance, and renewals.

The Agency reviewed several approaches to implementing the Act, including promulgating additional regulations. Having reviewed the provisions of the Act against the existing requirements of the special uses rules, the Agency concludes that the existing regulations need to be amended in three ways: first, to add a definition of what constitutes a ski area and therefore what sites are included under the Act; second, to provide guidance to the authorized officer in exercising discretion not to issue a permit for the full term provided for by the Act; and, third, to establish procedures for administering the conversion of existing special use permits to new permits authorized by the Act. The existing special use regulations at 36 CFR Part 251, Subpart B are otherwise sufficient and adequate for implementing the provisions of the Ski Area Permit Act and do not require further amendment to carry out the statute.

The language of the Act is consistent with many provisions of the existing regulations: the Act requires that ski area permit fees by based on fair market value; this requirement exists for all permits at § 251.57. The provision of the Act that allows renewal of ski area permits at the discretion of the Secretary is provided for at § 251.64, and provisions of the statute related to termination and modification of permits and establishing terms and conditions for ski area permits are provided for in § 251.60, 251.61, and 251.56 respectively. There is nothing in the Act that in and of itself appears to merit or require substantive revision of the special uses rules or agency procedure.

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To fully implement the Act, the Forest Service proposes to make certain technical changes and to add several new provisions to the existing rules in Subpart B of Part 251 as follows:

1. *Authority Citation.* The Act would be added to the authority citation for the subpart.

2. *Section 251.51—Definitions.* This section is proposed to be changed by including a definition of what constitutes a ski area. This is necessary to determine what specific existing and future resorts and facilities would qualify for a special use authorization under this National Forest Ski Area Permit Act. This section will be revised by removing the alphabetical designations and placing all defined terms in alphabetical order.

3. *Section 251.53—Authorities.* The introductory text to § 251.53, listing the types of special uses that may be permitted on National Forest System Lands and the applicable statute authorizing each permissible use, would be revised to remove redundancy and to improve clarity. Section 251.53 would be further revised to add a new paragraph (n) citing authority to issue special use authorizations for nordic and alpine ski areas and facilites for up to 40 years and for such acreage as necessary.

4. *Section 251.56—Terms and Conditions.* Paragraph (b) of this section in the existing regulation addresses duration and renewability for all special use authorizations. Under the proposed rule the existing text would be redesignated as (b)(1) *Requirements applicable to all permits.* A new paragraph (b)(2) would be added to provide guidance to authorized officers on when to issue 40 year ski area permits and the criteria to apply in determing whether a permit term of less than 40 years is appropriate.

The proposed rule would direct the authorized officer normally to issue a ski area permit for 40 years if, upon consideration of information from the applicant, the officer finds that existing or planned investment meets the following criteria: (1) The investment is sufficiently related to development of ski area facilities primarily located on National Forest System lands, (2) It is not for operation and maintenance, (3) It is for non-Government owned facilities, and (4) The number and magnitude of the facilities clearly require long-term financing and/or operation consistent with the stated purpose of the Ski Area Permit Act. The criteria address the extent of proposed private investment in ski area development and places the burden on the applicant to demonstrate in the application that a full 40-year term is required to finance the development.

At paragraph (b)(2)(ii), the proposed rule would establish the criteria the authorized officer shall apply in deciding whether a permit of less than 40 years is appropriate. Specifically the rule would authorize a shorter duration if, in the judgment of the authorized officer, the information submitted by the applicant indicates that a shorter term is sufficient for financing the ski area development, the development does not meet the standards required for a 40-year term permit, or the 40-year term would be inconsistent with the forest resource and land management plan for the area. These criteria are consistent with the intent of the National Ski Area Permit Act, which preserves the discretion of the authorized officer to determine the duration of a permit.

5. Two new paragraphs would be added to § 251.56 becoming § 251.56(g) and § 251.56(h). The first (g) would specify criteria for converting existing special use authorizations for ski areas, restating the Congressional intent that all authorizations after October 22, 1988, for ski areas will be under the authority of the Act. All current holders of ski area special use authorizations would be requested to convert to a new special use authorization consistent with the provisions of the National Forest Ski Area Permit Act; the right to give or withhold consent remains with the permit holder as provided for in the Act. The holder must be in good standing by being in compliance with the existing permit, by having paid all fees currently due for the use of National Forest System land for the permitted use, and by meeting the standards provided for in paragraphs (b)(2)(i)(A)–(F) of the proposed rule for the existing or planned development. The second paragraph § 251.56(h), would require the Forest Service when issuing a ski area permit to specify those provisions of the permit subject to periodic revision. The Act provides that the ski area authorization issued under the Act may be modified to accommodate changes in plans or operations. In fairness to holders of the special use authorization, it is important that they be made aware of those clauses of the authorization which may be subject to change under this provision of the Act. A current rule at § 251.56(b) provides that terms and conditions for permits issued for more than 30 years may be modified to reflect changing times and conditions. This rule is not proposed to be changed, and is necessary to comply with the National Forest Management Act. Section 6(i) of that Act requires that the various agreements permitting the use and occupancy of National Forests System lands be consistent with land management plans.

6. *Section 251.57—Rental Fees.* This section would be amended to require a clause providing in ski area permits for changing the fee system or for making changes to the current fee system. Current regulation and the Act require a fee based on fair market value. The current fee system for ski areas and other resorts is 20 years old. In the event a new method of obtaining fair market value is developed, all ski areas should become subject to the new system. Otherwise, technical changes to the Graduated Rate Fee System will continue and be placed in special use permits as provided for in § 251.61(a)(1).

Regulatory Impact

This rule has been reviewed under USDA procedures and Executive Order 12291. It has been determined that this regulation is not a major rule. Little or no effect on the economy will result from this regulation since it affects only those parties who occupy or use land within the National Forest System for ski area development. The effect of the law is to marginally increase net benefits to the Government and the permittees by reducing the number of special use permits issued and thus the administrative costs associated with issuance. The issuing of regulations and the conversion of all existing ski area permits to the new authority, subject to permittee concurrence, are requirements of the law governing ski area permits. The rule itself will have no effect on the amounts paid the government for the use of National Forest System lands.

The Department of Agriculture has determined that this action will not have a significant effect on a substantial number of small entities. furthermore, it does not directly result in additional procedures or paperwork not already required by law. The special use authorization and application procedures applicable to obtaining new ski area permits are already cleared for the uses of this proposed rule and have been assigned OMB control No. 0596–0082. These information collection requirements are approved for use through August 31, 1989.

Where, as provided by this proposed rule, permittees seek to convert an existing permit to a permit issued under the authority of the Ski Area Permit Act and to request modifications in the terms and conditions of the existing permit, permittees may be required to provide additional financial information in order for the authorized officer to determine that a 40-year term or other modification of permit provisions is appropriate and meets the standards of § 251.56(b) of the proposed rule. The Forest Service estimates that about 10 of the existing 165 permittees might be subject to a request for additional financial information requiring 80–160 hours per permittee to collect and submit the information.

The Office of Management and Budget has determined that this requirement for additional financial information represents a new information requirement as defined in 5 CFR Part 1320. In accordance with those rules and the Paperwork Reduction Act (44 U.S.C. 3507), the Forest Service is requesting Office of Management and Budget review and approval of the requirement for additional financial information. Reviewers who wish to comment on this information requirement should submit their views to the Chief of the Forest Service at the address listed earlier in this document as well as to the: Forest Service Desk Office, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Based on past experience and environmental analysis, this rule in and of itself will have no significant effect on the human environment, individually of cumulatively. Therefore, it is hereby excluded from documentation in an environmental assessment or an environmental impact statement (40 CFR 1508.4)

List of Subjects in 36 CFR Part 251

Electrical power, Mineral resources, National forests, Public lands rights-of-way, Reporting and recordkeeping requirements, Water resources.

Therefore, for the reasons set forth in the preamble, Subpart B—Special Uses of Part 251 of Title 36 of the Code of Federal Regulations is proposed to be amended as follows:

PART 251—LAND USES

Subpart B—Special Uses

1. The authority citation for Subpart B is revised to read as follows:

Authority: 16 U.S.C. 472, 497b, 551, 1134, 3210; 30 U.S.C. 185; 43 U.S.C. 1740, 1761–1771.

2. In § 251.51, remove the lettered paragraph designations and add the following definition in the appropriate alphabetical order:

§ 251.51 Definitions.

* * * * *

"Ski area"—a site and attendant facilities expressly developed to accommodate alpine or nordic skiing and from which the preponderance of revenue is generated by the sale of lift tickets and fees for ski rentals, for skiing instruction and for the use of permittee-maintained ski trails. A ski area may also include ancillary facilities directly related to the operation and support of skiing activities.

* * * * *

3. In § 251.53, revise the introductory text and add a new paragraph (n) to read as follows:

§ 251.53 Authorities.

Subject to any limitations contained in applicable statutes, the Chief of the Forest Service, or other Agency official to whom such authority is delegated, may issue special use authorizations for National Forest System land under the authorities cited and for the types of use specified in this section as follows:

* * * * *

(n) Operation of nordic and alpine ski areas and facilities for up to 40 years and encompassing such acreage as determined necessary as authorized by the National Forest Ski Area Permit Act of 1986 (16 U.S.C. 497b).

4. In § 251.56 revise paragraph (b) and add new paragraph (g) and (h) to read as follows:

§ 251.56 Terms and conditions.

* * * * *

(b) *Duration and renewability*—(1) *Requirements applicable to all authorizations.* If appropriate, each special use authorization will specify its duration and renewability. The duration shall be no longer than the authorized officer determines to be necessary to accomplish the purpose of the authorization and to be reasonable in light of all circumstances concerning the use, including (i) Resource management direction contained in land management and other plans; (ii) public benefits provided; (iii) cost and life expectancy of the authorized facilities; (iv) financial arrangements for the project; and (v) the life expectancy of associated facilities, licenses, etc. Authorizations exceeding 30 years shall provide for revision of terms and conditions at specified intervals to reflect changing times and conditions.

(2) *Ski area permits.* (i) For authorizations issued under the National Forest Ski Area Permit Act of 1986, the authorized officer normally shall issue a ski area authorization for 40 years, if, upon consideration of information submitted by the applicant, the authorized officer finds that the ski area development meets the following standards:

(A) In the case of an existing permit holder, existing on-site investment is of sufficient magnitude to justify authorization for 40 years;

(B) In the case of an existing permit holder, existing investment of capital is in ski-related facilities;

(C) Planned investment capital is directly related to development of ski area facilities and is not for financing regular, ongoing operation and maintenance costs;

(D) Ski facilities requiring long-term investment are, or will be, located predominately on land authorized under a permit;

(E) The number and magnitude of planned facilities, as detailed in a Master Development Plan, clearly require long-term financing and/or operation;

(F) The United States is not the owner of the principal facilities within the authorized ski area.

(ii) A term of less than 40 years shall be authorized for a ski area when the applicant requests as shorter term or when, in the authorized officer's discretion:

(A) Analysis of the information submitted by the applicant indicates that a shorter term is sufficient for financing of the ski area;

(B) The ski area development, whether existing or proposed, does not meet the standards of paragraph (b)(2)(i)(A)–(F) of this section; or

(C) A 40-year authorization would be inconsistent with the approved forest land and resource management plan governing the area (36 CFR Part 219).

* * * * *

(g) *Conversion of ski area authorizations.* (1) The Forest Service shall request that all existing permit holders convert existing authorizations for ski areas to a new authorization issued pursuant to the National Forest Ski Area Permit Act.

(2) Any current holder of a ski area permit who wishes to convert an existing permit to one issued pursuant to the National Forest Ski Area Permit Act must submit a written request for the new authorization to the authorized officer.

(3) With the consent of the holder, the authorized officer shall convert the authorization if:

(i) The holder is in compliance with the existing authorization;

(ii) All fees currently due under the existing authorization are paid in full; and

(iii) Any proposed modifications of term and conditions of the existing authorization included in a request for conversion meet the standards of paragraphs (b)(2)(i)(A)–(F) of this

section and the relevant requirements of this subpart.

(4) A holder retains the right to decline a new authorization offered pursuant to this paragraph and to continue to operate under the terms of the existing permit. However, renewals and, pursuant to the rules at § 251.61 of this subpart, major modifications of existing permits require conversion to a permit issued under the authority of the National Forest Ski Area Permit Act.

(h) *Periodic revisions of ski area authorizations.* Each ski area authorization issued pursuant to the National Forest Ski Area Permit Act of 1986 shall be subject to modification of its provisions at 10-year intervals or upon amendment of the forest land and resource management plan governing the area (36 CFR Part 219). The permit shall specify those clauses or provisions subject to modification.

7. In § 251.57, add a new paragraph (h) as follows:

§ 251.17 Rental fees.

* * * * *

(h) Each ski area authorization issued under the authority of the National Forest Ski Area Permit Act shall include a clause that the Forest Service may adjust and calculate future rental fees to reflect Agency revisions to the existing fee determination system or to comply with any new determination system that may be adopted after issuance of the authorization.

Date: September 8, 1988.

George M. Leonard,

Associate Chief.

[FR Doc. 88-24025 Filed 10-17-88; 8:45 am]

BILLING CODE 3410-11-M

VETERANS ADMINISTRATION

38 CFR Part 36

Loan Guaranty; Suspension of Individual Employees of Manufactured Home Dealers and Manufactured Home Park Owner/Operators; Suspension of Real Estate Brokers and Agents

AGENCY: Veterans Administration.

ACTION: Proposed regulation.

SUMMARY: The Veterans Administration (VA) is proposing to amend its loan guaranty regulations (38 CFR Part 36) by providing for the suspension of individual owners, officers, and employees of a manufactured home dealer or a manufactured home park owner/operator who are directly responsible for fraud or misrepresentation in marketing and selling manufactured homes purchased with VA guaranteed loans or in renting or selling sites for such homes. The proposal also provides for the suspension of any participating dealer or park owner/operator employing a suspended individual, as a lot manager, sales manager, sales person, or in any other position with responsibility in marketing and selling manufactured homes with VA-guaranteed loans, or in renting or selling sites for such homes. In addition, any real estate brokers or agents responsible for fraud or misrepresentation in selling sites for such homes may be suspended under this proposal. The purpose of the proposed amendment is to give the VA more flexibility in applying sanctions to individuals who are working as employees of a dealer or of a park owner/operator and are found to have committed fraud or to have been responsible for material misrepresentation in the marketing and sale of manufactured homes purchased with loans guaranteed by the VA or in the rental or sale of sites for such homes.

DATES: Comments must be received on or before November 17, 1988. Comments will be available for public inspection until December 2, 1988. The VA proposes to make these regulations effective 30 days after publication of the final regulations.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this proposal to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Service Unit, Room 132 of the above address, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays) until December 2, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. George D. Moerman, Assistant Director for Loan Policy (284), Loan Guaranty Service, Department of Veterans Benefits, (202) 233-3042.

SUPPLEMENTARY INFORMATION: The governing statutes and regulations currently provide that the Administrator may, subject to notice and the opportunity for a hearing, refuse to guarantee loans for purchase of manufactured homes offered for sale by a dealer. These sanctions may be imposed upon a finding by the VA that the dealer has used marketing practices that are unfair or prejudicial to the veteran, or has used an unfair contract of sale, or has failed or is unable to meet the terms of the sales contract, or has offered manufactured homes for sale that have substantial deficiencies. The statutes and regulations also currently provide that the Administrator may, subject to notice and the opportunity for a hearing, refuse to approve any site in a manufactured home park or subdivision owned or operated by any person whose rental or sale methods or whose procedures, requirements or practices are determined to be unfair or prejudicial to veterans renting or purchasing such sites.

This proposal will define the terms "dealer" and "manufactured home park owner/operator" in the suspension regulations to include principals, officers, and employees. This will provide specific regulatory authority for suspending individuals who are directly responsible for material misrepresentation or fraud in the marketing and sale of manufactured homes purchased with VA-guaranteed loans or in the rental or sale of sites for such homes. It will also provide authority for suspending individuals in a supervisory or managerial position who either willfully or negligently encourage or overlook irregular practices by employees under their supervision or otherwise do not exercise supervisory controls of employees taking actions which are detrimental to veterans or the Government.

The proposal will make it possible for the VA to suspend specific employees of a dealership or of a park who are responsible for fraud or material misrepresentation in the sale of manufactured homes purchased with VA-guaranteed loans or in the rental or sale of sites for such homes without the necessity of first suspending the dealer or park owner/operator for whom that employee is working. Some large dealers and park owners/operators operate regionally or nationwide. It would be inequitable and counterproductive in some circumstances to suspend an entire regional or national dealer or an entire regional or national park owner/operator because of the improper conduct of one or more employees of that firm located in one of its branches. It would, however, be appropriate for the VA to suspend the errant employee or employees in that office from further participation in the sale of manufactured homes purchased with VA-guaranteed loans or in the rental or sale of sites for such homes. This situation demonstrates the need for a revision of the regulations to provide a definition of the terms dealer and manufactured home park owner/operator that includes officers, principals, and employees.

Under present procedures a notice of suspension to a dealer or park owner/operator is effective as to agents, representatives, and correspondents when acting for or on behalf of the person or entity suspended. When these individuals, including employees of the suspended dealer or park owner/operator, (are not specifically named and included in a suspension, they may then be employed by a different dealer or park owner/operator) with impunity. Individual employee suspensions would be an effective method of preventing these individuals from becoming employed by a different dealership or park owner/operator, where they might continue fraudulent or irregular practices in selling manufactured homes with the assistance of VA-guaranteed loans.

In addition to providing a definition of dealer and manufactured home park owner/operator, the proposed amendments will provide for the VA to suspend a dealer or park owner/operator who employs a suspended person as a salesperson, lot manager, sales manager, or in any other managerial capacity with responsibility in the decisionmaking process. Any secondarily suspended dealer or park owner/operator would have a right to notice and an opportunity for a hearing in the same manner as any program participant that has been sanctioned by the VA. Any secondarily suspended dealer or park owner/operator would be reinstated automatically upon terminating the employment of the suspended employee.

The regulations currently provide that the Administrator may, subject to notice and the opportunity for a hearing, suspend a real estate agent or broker whom the Administrator has determined is responsible for fraud or material misrepresentation in the sale of residential properties, including manufactured home sites, purchased with loans guaranteed by the VA under 38 U.S.C. 1810. The proposed amendments will extend this suspension authority of the VA to include brokers and agents who sell manufactured home sites purchased with loans guaranteed under 38 U.S.C. 1812.

In addition, 38 CFR Part 44, Nonprocurement Debarment and Suspension, contains regulations on interagency debarment and suspension of program participants, including the parties subject to these proposed amendments.

Technical amendments have been made to the appropriate sections of the regulations to change the term "mobile home" to "manufactured home." These changes are made so that the terminology of the regulations will be in conformity with the language of Pub. L. 97-306, 96 Stat. 1429, enacted October 14, 1982.

The Administrator hereby certifies that these proposed regulatory amendments will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. The reason for this certification is that these proposed amendments will not directly affect any small entity except to the extent that it may be precluded from employing a small number of suspended individuals.

The Administrator has also determined that the proposed regulatory amendments are not a "major rule" within the meaning of Executive Order 12291, Federal Regulation. They will not have an annual effect on the economy of $100 million or more, and will not cause a major increase in costs or prices for consumers or individual industries, nor will they have other significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance Program numbers are 64.114 and 64.119.

These amendments are proposed under the authority granted the Administrator by sections 210(c) and 1812 of Title 38, United States Code.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing loan program—Housing and community development, Manufactured homes, Veterans.

Approved: September 13, 1988.

Thomas K. Turnage,

Administrator.

PART 36—[AMENDED]

38 CFR Part 36, Loan Guaranty, is amended as follows:

1. The "NOTE" preceding § 36.4201 is revised to read as follows:

Note.—Those requirements, conditions or limitations which are expressly set forth in 38 U.S.C. 1812 and are not restated herein must be taken into consideration in conjunction with the § 36.4200 series.

§ 36.4201 [Amended]

2. In § 36.4201 remove the words "38 U.S.C. 1819" and add, in their place the words "38 U.S.C. 1812".

3. Section 36.4202 is revised to read as follows:

§ 36.4202 Definitions.

Wherever used in 38 U.S.C. 1812 or the § 36.4200 series, unless the context otherwise requires, the terms defined in this section shall have the meaning herein stated.

"Administrator." The Administrator of Veterans Affairs, or any employee of the VA authorized to act in the Administrator's stead.

"Date of first uncured default." The due date of the earliest payment not fully satisfied by the proper application or available credits or deposits.

"Dealer." A sole proprietorship, partnership, or corporation engaged in buying and selling manufactured homes. This term also includes the owners, officers, and employees of a sole proprietorship, partnership, or corporation undertaking the sale of manufactured homes purchased with loans guaranteed by the VA.

(Authority: 38 U.S.C. 1812(k))

"Default." Failure of a borrower to comply with the terms of a loan agreement.

"Guaranty." The obligation of the United States, assumed by virtue of 38 U.S.C. 1812, to repay a specified percentage of a loan upon default of the primary debtor, which guaranty payment shall be made after liquidation of the security for the loan and an accounting with the Administrator.

"Holder." The lender or any subsequent assignee or transferee of the guaranteed obligation.

"Indebtedness." The unpaid principal and interest plus any other amounts allowable under the terms of a loan including those authorized by statute and consistent with the 36.4200 series, which have been paid and debited to the loan account. Unpaid late charges may not be included in the indebtedness.

"Lender." The payee or assignee or transferee of an obligation at the time it is guaranteed. This term also includes any sole proprietorship, partnership, or corporation and the owners, officers, and employees of a sole proprietorship, partnership, or corporation engaged in the origination, procurement, transfer, servicing or funding of a loan which is guaranteed by the VA.

(Authority: 38 U.S.C. 1804(d); 1819(g))

"Lien." Any interest in, or power over, real or personal property, reserved by the vendor, or created by the parties or by operation of law, chiefly or solely for the purpose of assuring the payment of the purchase price, or a debt, and irrespective of the identity of the party in whom title to the property is vested, including but not limited to mortgages,

deeds with a defeasance therein or collaterally, deeds of trust, security deeds, security instruments, mechanics' liens, lease-purchase contracts, conditional sales contracts, consignments.

"Loan." Unpaid principal balance plus unpaid earned interest due under the terms of the obligation.

"Lot." A parcel of land acceptable to the Administrator as a manufactured home site.

(Authority: Pub. L. 97-306, sec. 408)

"Manufactured home." A movable dwelling unit designed and constructed for year-round occupancy on land by a single family, which dwelling unit contains permanent eating, cooking, sleeping, and sanitary facilities: A double-wide manufactured home is a movable dwelling designed for occupancy by one family consisting of (1) two or more units intended to be joined together horizontally when located on a site, but capable of independent movement or (2) a unit having a section or sections which unfold along the entire length of the unit.

(Authority: Pub. L. 97-306, sec. 408)

"Manufactured home park owner/operator." A sole proprietorship, partnership, or corporation engaged in renting or selling sites in a manufactured home park or subdivision. This term also includes the owners, officers, and employees of a sole proprietorship, partnership, or corporation undertaking the sale or rental of sites for manufactured homes purchased with loans guaranteed by the VA.

(Authority: 38 U.S.C. 1812(k))

"Manufacturer's invoice cost." That figure shown on a document acceptable in form and content to the Administrator issued by the manufacturer which represents the wholesale price of a specifically identified manufactured home including any furnishings, equipment and accessories installed by the manufacturer, which document is certified as the true manufacturer's invoice for that particular manufactured home and which separately states the amount of freight or transportation cost charged to the dealer, if any.

(Authority: Pub. L. 97-306, sec. 408)

"Necessary site preparation." Those improvements essential to render a manufactured homesite acceptable to the Administrator including, but not limited to, the installation of utility connections, sanitary facilities and paving, and the construction of a suitable pad.

(Authority: Pub. L. 97-306, sec. 408)

"New manufactured home." A manufactured home which, at the time of purchase by the veteran-borrower, has not been previously occupied and was manufactured less than 1 year prior to the date of application to the VA for loan guaranty.

(Authority: Pub. L. 97-306, sec. 408)

"Reasonable value." That figure which represents the amount a reputable and qualified appraiser, unaffected by personal interest, bias, or prejudice, would recommend to a prospective purchaser as a proper price or cost in the light of prevailing conditions.

"Repossession-repossessed." Recovery or acquisition of such physical control of property (pursuant to the provisions of the security instrument or as otherwise provided by law) as to make further legal or other action unnecessary in order to obtain actual possession of the property or to dispose of the same by sale or otherwise.

"Resale." Sale of the property by the holder to a third party for the purpose of liquidating the security for the loan after having acquired the property by repossession, public or private sale, or by any other means.

"Used manufactured home." A manufactured home which has been previously occupied or which was manufactured more than 1 year prior to date of loan application.

§ 36.4203 [Amended]

4. In § 36.4203, in the section heading, remove the words "38 U.S.C. 1819" and add, in their place, the words "38 U.S.C. 1912".

In paragraph (b) remove the words "38 U.S.C. 1810, 1811, and 1819" where they appear and add, in their place, the words "38 U.S.C. 1810, 1811, and 1812".

In the authority citation at the end of § 36.4203 remove the words "38 U.S.C. 1819(b) (1) and (2) and (c)(4)" and add, in their place the words "38 U.S.C. 1812(b) (1) and (2) and (c)(4)".

§ 36.4204 [Amended]

5. In the authority citation at the end of § 36.4204 remove the words "38 U.S.C. 1819(a)(1)" and add, in their place, the words "38 U.S.C. 1812(a)(1)".

§ 36.4234 [Amended]

6. In § 36.4234 remove the word "mobile" and add, in its place, the word "manufactured" in the following places:

(a) § 36.4234(a) introductory text;

(b) § 36.4234(a)(1);

(c) § 36.4234(b);

(d) § 36.4234(c).

7. In § 36.4235, the section heading and paragraph (a) are revised to read as follows:

§ 36.4236 Suspension of dealers and manufactured home park operators.

(a) A dealer may be suspended from guaranty of loans for veterans to purchase manufactured homes offered for sale by the dealer if substantial deficiencies have been discovered in such homes, or if the Administrator determines that there has been a failure or indicated inability of the dealer to discharge contractual liabilities to veterans, or that the type of contract of sale or methods, procedures, or practices pursued by the dealer in the marketing of such properties have been unfair or prejudicial to veteran purchasers. A dealer may also be suspended under this section if the company is owned by, or employs as an officer, supervisor, lot manager, sales manager, salesperson, or in any other position, a person who engages in or is responsible for the marketing and sale of manufactured homes purchased with loans guaranteed by the VA or if that person is suspended by the VA. A manufactured home park owner/operator may be suspended from having sites approved as acceptable for sale or rental to veterans purchasing manufactured homes with VA-guaranteed loans if the Administrator determines that the rental or sale methods, procedures, requirements, or practices used in selling or renting such sites are unfair or prejudicial to veterans. A manufactured home part owner/operator may also be suspended under this section if the company is owned by, or employs as an officer, supervisor, salesmanager, salesperson, or in any other position, a person who engages in, or is responsible for, the rental or sale of sites for manufactured homes purchased with VA-guaranteed loans, if that person has previously been suspended by the VA under this section.

(Authority: 38 U.S.C. 1812(k))

* * * * *

8. In § 36.4285, the introductory text of paragraph (f) is revised to read as follows:

§ 36.4285 Subrogation and indemnity.

* * * * *

(f) If, on or after July 1, 1972, any veteran disposes of residential property securing a guaranteed loan obtained by him or her under 38 U.S.C. 1812, without securing release from liability with respect to such loan under 38 U.S.C. 1813(a) and a default subsequently occurs which results in liability of the veteran to the Administrator on account of the loan, the Administrator may relieve the veteran of such liability if the Administrator determines that:

* * * * *

§ 36.4286 [Amended]

9. In § 36.4286(b) introductory text and (b)(1) remove the words "38 U.S.C. 1819" and add, in their place, the words "38 U.S.C. 1812".

10 Section 36.4286 is added to read as follows:

§ 36.4286 Right of the Administrator to refuse to appraise sites for manufactured homes.

The Administrator may, subject to notice and opportunity for a hearing, refuse to appraise sites for manufactured homes to which a request for appraisal relates if the Administrator determines that any party or parties involved or substantially interested in the sale of such site has used sales methods, procedures, requirements, or practices determined by the Administrator to be unfair or prejudicial to veterans purchasing such sites. The refusal to appraise procedures prescribed in § 36.4361 of this part may be applied to a site to which a request for appraisal relates where the veteran will place a manufactured home on the site and where all or part of the cost of acquiring the site is financed by a loan guaranteed under 38 U.S.C. 1812.

(Authority: 38 U.S.C. 1812(k))

[FR Doc. 88-23934 Filed 10-17-88; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3464-1; Ky-031]

Approval and Promulgation of Implementation Plans; Kentucky; Alcan Foil Products Bubble

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to disapprove a State Implementation Plan (SIP) revision submitted by the Commonwealth of Kentucky for the Air Pollution Control District of Jefferson County (District). The SIP revision would provide for the Alcan Foil Products (Alcan) facility in Louisville, Kentucky (Jefferson County), to achieve compliance with the applicable volatile organic compound (VOC) reasonably available control technology (RACT) regulations by averaging or "bubbling" of emissions within the facility. The proposed bubble is not consistent with current Agency policy.

The public is invited to submit written comments on this proposed action.

DATE: To be considered, comments must reach us on or before November 17, 1988.

ADDRESSES: Written comments should be addressed to Kay T. Prince of EPA Region IV's Air Programs Branch (see ERA Region IV address below). Copies of the materials submitted by Kentucky may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365.

Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet, Division of Air Pollution Control, 18 Reilly Road, Building #2, Fort Boone Plaza, Frankfort, Kentucky 40601.

Air Pollution Control District of Jefferson County, 914 East Broadway, Louisville, Kentucky 40204.

FOR FURTHER INFORMATION CONTACT: Kay T. Prince, Air Programs Branch, EPA Region IV, at the above address and telephone number (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: The Alcan facility in Louisville contains eight laminators and two coaters which are capable of performing either coating or rotogravure printing on aluminum foil. Such operations are generally covered by the paper coating and the graphic arts control technology guideline (CTG) documents, respectively. EPA policy mandates, however, that where both coating and printing are performed on the same machine, the graphic arts CTG shall apply. Therefore, each unit was determined to be subject to District Regulation 6.29, "Standard of Performance for Existing Graphic Arts Facilities Using Rotogravure and Flexography." The graphic arts RACT regulation required a 65 weight percent reduction in VOC emissions from each rotogravure printing line. Water-borne inks with a volatile portion of 75 volume percent water and 25 volume percent organic solvent (or lower VOC content) are exempt from the provisions of Regulation 6.29.

On March 3, 1986, the Commonwealth of Kentucky, through the Natural Resources and Environmental Protection Cabinet, officially submitted a source-specific SIP revision prepared by the District for the Alcan facility. The SIP revision would allow Alcan to average or "bubble" VOC emissions from the eight laminators and two coaters in lieu of achieving compliance with the graphic arts RACT regulation on a line by line basis. Specifically, the proposed bubble provided for demonstration of compliance by: (1) Utilizing a monthly averaging period with a daily cap of 6.0 tons per day; (2) taking credit for reductions in emissions due to incineration and water based coatings; and (3) purchasing approximately 50 tons of emission reduction credits. The District was advised on May 22, 1986, and again on July 7, 1986, that the proposed SIP revision was deficient and that upon publication of EPA's final emissions trading policy the Alcan bubble should be revised. On December 4, 1986, (51 FR 43814), EPA published the final Emissions Trading Policy Statement (ETPS). However, the District neither revised nor withdrew the proposed SIP revision. The Alcan bubble has been determined to be inconsistent with current Agency policy.

First of all, monthly averaging of VOC emissions is not generally allowed. Current Agency policy, as is specified in the January 20, 1984, John O'Connor memorandum concerning "averaging times for compliance with VOC emission limits," expressly prohibits averaging periods from exceeding 24 hours. However, the memorandum states that "where the source operations are such that daily VOC emissions cannot be determined or where the application of RACT for each emission point (line, machine, etc.) is not economically or technically feasible on a daily basis, longer averaging times (greater than 24-hour averaging) can be permitted under certain conditions." This memorandum was incorporated into EPA's ETPS in Appendix D of the Technical Issues Document. No such demonstration has been submitted by the District.

Secondly, the ETPS states that only reductions which are surplus, enforceable, permanent, and quantifiable can qualify as emission reduction credits to be used in a trade (51 FR 43831). Surplus emission reductions are defined as those reductions which are not required by current regulations in the SIP, not already relied on for SIP planning purposes, and not used by the source to meet any other regulatory requirement. The Alcan bubble claims credit for reductions in VOC emissions achieved as the result of incineration. An incinerator was installed on laminator #12 in 1974 while the base year for the 1982 SIP was 1980. Generally, there can be no credit for reductions in emissions prior to the base year. An exception to

the rule would be if it could be established that the emission reductions resulting from the incinerator were not accounted for nor relied upon in the SIP's attainment demonstration. However, the county was unable to provide any data which would support such a claim. Therefore, the emission reductions resulting from the installation of the incinerator on line #12 are not surplus to the demonstration and cannot be used as credit in a trade.

In addition to the deficiencies listed herein, this action fails to meet several other requirements of the Clean Air Act, EPA's ETPS, or other EPA policy or regulations. These include the emission limits not being expressed in an enforceable form as required by the ETPS and the baseline not being calculated consistent with the requirements of the ETPS. This notice does not discuss these deficiencies because the submission does not meet the requirement of the ETPS that the trade be surplus and contains averaging times greater than 24 hours without meeting the requirements specified in the January 20, 1984, John O'Connor memorandum. These two deficiencies in themselves provide enough reason to propose disapproval of the action. To determine the applicable requirements and ascertain how this action may be rewritten as an approvable emissions trade, the applicant or state agency should consult the December 4, 1986, ETPS (51 FR 43814), Appendix D of the proposed Ozone/Carbon Monoxide Nonattainment policy of November 24, 1987 (52 FR 45105), and the enforceability checklist included in a September 23, 1987, memorandum from J. Craig Potter, Thomas L. Adams, Jr., and Francis S. Blake re: "Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency."

Furthermore, on May 26, 1988, EPA issued an ozone SIP call for the Louisville metropolitan statistical area (MSA). Therefore, any future revision of the bubble package will require application of lowest of actual-SIP-allowable-or-RACT-allowable emissions baseline and at least a 20% emissions reduction from that baseline as well as state assurances required by the ETPS for bubbles in areas lacking an approved attainment demonstration. In order for Louisville to demonstrate attainment with the ozone standard, additional reductions required may directly impact this source.

For a more detailed discussion, please refer to the Technical Support Document which is available for inspection at the EPA Region IV office.

Proposed Action

The Alcan bubble is not consistent with EPA's ETPS. Therefore, EPA is today proposing to disapprove this revision to the Jefferson County, Kentucky SIP.

The public is invited to participate in this rulemaking by submitting written comments on the proposed action.

Under 5 U.S.C. Section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities because it applies to only one source, Alcan. (See 46 FR 8709.)

Under Executive Order 12291, this action is not "major." It has been submitted to the Office of Management and Budget (OMB) for review.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone.

Authority: 42 U.S.C. Sections 7401–7642.

Date: August 26, 1987.

Lee A. DeHihns III,

Acting Regional Administrator.

[FR Doc. 88–23662 Filed 10–17–88; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[FRL–3483–8; TN–058]

Approval and Promulgation of Implementation Plans; Tennessee: William L. Bonnell Company Variance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to approve a request by Tennessee that a temporary variance granted to the William L. Bonnell Company ("Bonnell Company") to use a special coating on its architectural extrusions and panels be incorporated into the Tennessee State Implementation Plan (SIP). This proposed approval is contingent upon a submittal by the State of Tennessee which adequately demonstrates that add-on controls are infeasible financially and/or technologically. These operations are governed by Rule 1200–3–18–.21 of the Tennessee Air Pollution Control Regulations (Surface Coating of Miscellaneous Metal Parts). The Tennessee Air Pollution Control Board has approved a revision to Rule 1200–3–18–.21 to establish a special standard for the high performance architectural coatings. The revision will not become effective until it completes the State rulemaking process. The temporary variance extends until September 16, 1987, or until the revision establishing the special standard for the high performance architectural coatings is effective, whichever, is sooner. EPA will act on the regulation revision adding a special standard for high performance architectural coatings in a separate notice.

The public is invited to submit written comments on this proposed action.

DATES: To be considered, comments must reach us on or before November 17, 1988.

ADDRESSES: Written comments should be addressed to Kay Prince of EPA Region IV's Air Programs Branch (see EPA Region IV address below). Copies of the materials submitted by Tennessee may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365.

Tennessee Air Pollution Control Division, Customs House, 4th Floor, 701 Broadway, Nashville, Tennessee 37219.

FOR FURTHER INFORMATION CONTACT: Kay Prince, Air Programs Branch, EPA Region IV, at the above address and telephone number 404/347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: The Bonnell Company architectural extrusions and panels at its plant in Carthage, Tennessee. Carthage is located in Smith County, Tennessee; Smith County is an unclassified area for ozone. Coating on aluminum panels is currently governed by Rule 1200–3–18–.21 (Surface Coating of Miscellaneous Metal Parts) of the Tennessee Air Pollution Control Regulations. Rule 1200–3–18–.21 requires that VOC emissions be less than 3.5 pounds per gallon (0.43 kilogram per liter) of coating, excluding water, delivered to a coating applicator in an extreme performance coating operation.

The Bonnell Company is operating under a temporary variance which extends from September 17, 1986 to September 16, 1987 and which allows the facility to increase its VOC emission limit for high performance architectural coatings from 3.5 pounds per gallon to 6.2 pounds per gallon.

The Tennessee Air Pollution Control Board has approved a proposal to establish a special standard for the high performance architectural coatings. The proposed revision to Rule 1200–3–18–.21 contains the same emission standard (0.75 kilogram per liter; 6.2 pounds per gallon) set forth in the temporary variance. An emission limit of 0.75 kg/l is currently used for high performance architectural coatings in California. EPA will act on this revision of Rule 1200–3–18–.21 in a separate notice. The temporary variance extends until September 16, 1987, or until the revision establishing the special standard for the high performance coatings is effective, whichever is sooner.

Smith County is adjacent to the metropolitan statistical area (MSA) surrounding the Nashville nonattainment area. However, due to the Bonnell Company's location in Smith County and the fact that Smith County is an unclassified area for ozone, it is presumed that the temporary variance will not have an adverse effect on air quality in the Nashville MSA. Approval of this SIP revision will not increase the historical VOC emission level from this source. Under U.S. EPA's existing policy, no demonstration of attainment or maintenance is required in the SIP for unclassified areas for ozone.

For more detailed information, please refer to the Technical Support Document. This document is available for inspection at the EPA Region IV office.

Proposed Action

The proposed SIP revision to the Tennessee ozone SIP is consistent with current agency policy. Therefore, EPA is today proposing to grant a temporary variance which allows the Bonnell Company to use noncomplying coatings in its high performance architectural coating operations. This proposed approval is contingent upon submission by the State of Tennessee of a study which adequately demonstrates that add-on controls are infeasible economically and/or technologically.

The public is invited to participate in this rulemaking by submitting comments on the proposed action.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

Authority: 42 U.S.C. 7401–7642.

Date: August 31, 1988.

Lee A. DeHihns III

Acting Regional Administrator.

[FR Doc. 88–23650 Filed 10–17–88; 8:45 am]

BILLING CODE 6560–50–M

VOL 53 ISS 201 OCT 18 1988 UMI

Notices

Federal Register
Vol. 53, No. 201
Tuesday, October 18, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Administration; Public Meeting

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92-463), notice is hereby given of a meeting of the Special Committee on Financial Services of the Administrative Conference of the United States. The Committee has scheduled this meeting to develop proposed recommendations dealing with Bank Failures Risk Monitoring, and the Market for Corporate Control, based upon a report by Professors' Jonathan R. Macey of Cornell University Law School and Geoffrey Miller of the University of Chicago Law School. Copies of the Committee's report and draft recommendation may be obtained from the contact person named in this notice.

Date: Wednesday, October 19, 1988, at 9:30 a.m.

Location: Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037.

Public Participation: Committee meetings are open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to the meeting. The committee chairman may permit members of the public to present oral statements at the meetings. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

FOR FURTHER INFORMATION CONTACT: Brian C. Murphy, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037. Telephone: (202) 254-7020.

Jeffrey S. Lubbers,
Research Director.
October 9, 1988.
[FR Doc. 88-23991 Filed 10-17-88; 8:45 am]
BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Forest Service

Gravina-Big Islands Management Area Analysis

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service is preparing an environmental impact statement for proposed activities to occur under Management Area Analysis for the Gravina and Big Islands Management Areas in Prince William Sound, Chugach National Forest, Alaska. Notice of Intent was published in 52 FR 37808 on October 9, 1987. The draft environmental impact statement (DEIS) was originally scheduled for completion in June 1988.

The two management areas are very distinct in terms of management activities proposed for the areas and issues identified by the public. They are also two distinct geographic areas that lend themselves to separate analysis. For this reason I have decided to conduct separate analysis of the two areas. The DEIS for the Big Islands Management Area is scheduled for release January 1989. The DEIS for the Gravina Management Area is scheduled for operation March 1989.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and environmental impact statement should be directed to Fred Patten, Forest Planning Staff Officer, Chugach National Forest, 201 E. Ninth Avenue, Anchorage, Alaska 99501; phone 907-271-2557.

Date: October 4, 1988.

Dalton Du Lac,
Forest Supervisor.
[FR Doc. 88-23936 Filed 10-17-88; 8:45 am]
BILLING CODE 3410-11-M

Bear Creek Timber Sale Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service USDA will prepare an environmental impact statement for timber harvest including road construction and reforestation within the former Pettison roadless area of the Hayfork Ranger District, Shasta-Trinity National Forests, Trinity County, California. The agency invites written comments and suggestions on the scope on the analysis. In addition, the agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope of the analysis must be received by November 15, 1988.

ADDRESS: Submit written comments and suggestions concerning the scope of the analysis to: Forest Supervisor Robert R. Tyrrel, Shasta-Trinity National Forests, Attn: Bear Creek Timber Sale EIS, 2400 Washington Avenue, Redding, CA 96001.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and environmental impact statement to District Ranger David Wickwire, Hayfork Ranger District, Hayfork, California 96041. Telephone (916) 628-5227.

SUPPLEMENTARY INFORMATION: This project proposes the development of a currently unroaded area that was identified during the RARE II (Roadless Area Review and Evaluation) analysis as the Pattison area. This area was released for multiple-use management by the 1984 California Wilderness Act.

The environmental impact statement will be prepared in accordance with existing approved land and resource management plans. The analysis will set standards and guidelines for management activities, and provide a schedule of these activities. Alternative locations of timber harvest units and roads will be identified and evaluated.

A range of alternatives will be examined to deal with the significant issues developed during the scoping process. One alternative will be No Action. Other alternatives will consider various levels, types, and locations of timber harvest and alternative locations and methods of access.

Robert R. Tyrrel, Forest Supervisor, Shasta-Trinity National Forests, Redding, California, is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft environmental impact statement (DEIS).

The scoping process includes:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploration of additional alternatives.
5. Identification of potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determination of potential cooperating agencies and task assignments.

The draft environmental impact statement (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by March 1989. At that time EPA will publish a notice of availability of the DEIS in the Federal Register.

The comment period on the draft environmental impact statement will be 45 days from the date the EPA notice of availability appears in the Federal Register. It is very important that those interested in the management of the above described areas participate at that time. To be the most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S.; 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement. The final EIS is scheduled to be completed by July 1989. In the final EIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsive official will consider the comments, responses, environmental consequences discussed in the EIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to the administrative review process.

Robert R. Tyrrel,
Forest Supervisor.
Date: October 11, 1988.

[FR Doc. 88-24018 Filed 10-17-88; 8:45 am]
BILLING CODE 3410-11-M

Rural Electrification Administration

Oglethorpe Power Corp.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Finding of No Significant Impact relating to the construction of 230 kV transmission line and substation facilities in Fayette County, Georgia.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality Regulations (40 CFR Parts 1500-1508), and REA Environmental Policies and Procedures (7 CFR Part 1794), has made a Finding of No significant Impact (FONSI) with respect to construction of a 4.7 mile, double circuit, 230 kV transmission line on single steel support structures and a new 230/12 kV substation. Oglethorpe Power Corporation (OPC), of Tucker, Georgia, has requested approval to use general funds to construct the project.

FOR FURTHER INFORMATION CONTACT: Alex M. Cockey, Jr., Director, Southeast Area—Electric, Room 0270, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, telephone (202) 382-3435.

SUPPLEMENTARY INFORMATION: REA, in conjunction with a request from OPC for approval to use general funds to construct the project, required that OPC develop a Borrower's Environmental Report (BER) reflecting the potential impacts of the project. The BER, which includes input from certain state and Federal agencies, has been adopted by REA as its Environmental Assessment (EA). REA has concluded that the BER represents an accurate assessment of the environmental impacts of the proposed project. The project will allow OPC to continue to meet its responsibilities to serve its load in a reliable and economical manner.

The length of the proposed transmission line is approximately 4.7 miles. It will tap existing 230 kV Union City-South Griffin transmission lines, and terminate at a proposed Highway 54 Substation in Fayette County. The double circuit 230 kV line will require new right-of-way (ROW) 100 feet in width. The Highway 54 Substation will require 2.5 acres of area that will be cleared and fenced to accommodate the facility.

REA has concluded that the proposed project will have no significant impact on wetlands, prime farmland, floodplains, threatened or endangered species or critical habitat, property listed or eligible for listing in the National Register of Historic Places, air quality, water quality and the health of humans or animals. Floodplains, wetlands, and prime farmland are located in the preferred line ROW. Some transmission line support structures may be located within these areas; however, REA believes that transmission line structure placement will have no significant impact to these areas. No practical alternative routes that could avoid these areas were identified. The substation will not be located in the 100-year floodplain or wetlands. The substation will displace approximately ½ acre of prime farmland; however, the site alternative with the least amount of impact to agricultural use was selected. Certain other impacts resulting from the proposed project are unavoidable such as the cutting of trees and vegetation for the right-of-way clearing and the aesthetic impact on the visual quality of the area.

Alternatives examined for the proposed project included no action,

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electrical alternatives, alternative line routes and alternative substation sites. REA determined that there is a demonstrated need for the project and constructing it within the preferred ROW will have no significant impact to the environment. Therefore, REA has concluded that its approval to allow OPC to use general funds to construct the proposed project does not constitute a major Federal action significantly affecting the quality of the human environment. REA has reached a FONSI with respect to the proposed project.

Copies of the EA and FONSI can be obtained from the offices of REA in the South Agriculture Building, Room 0270, 14th and Independence Avenue, SW., Washington, DC 20250 or at the office of Oglethorpe Power Corporation, P.O. Box 1349, Tucker, Georgia 30085–1349.

In accordance with REA Environmental Policies and Procedures, 7 CFR 1794, OPC had a notice and advertisement published in the Fayette County News which has a general circulation in Fayette County. The notice appeared in the August 31, 1988 issue. The notice described the project, announced the availability of the BER and gave information where the BER could be obtained for review and where comments could be sent. The advertisement appeared in the same issue of the newspaper and briefly described the project and referred the reader to the legal notice. The public was given at least 30 days to respond to the notice. No responses to the notice were received by OPC or REA.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.850—Rural Electrification Loans and Loan Guarantees. For the reasons set forth in the final rule related Notice to 7 CFR part 3015, Subpart V, this program is excluded from the scope of Executive Order 312372 which requires intergovernmental consultation with state and local officials.

Date: October 7, 1988.

John H. Arnesen,

Assistant Administrator—Electric.

[FR Doc. 88-23884 Filed 10-17-88; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Export Trade Certificate of Review, Application No. 88-00010.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to Michigan Export Development Authority (MEDA). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: Thomas H. Stillman, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97–290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct 83

Export Trade

Products

All products and services.

Related Services

Shipping (overseas freight transportation, inland freight to the terminal or port, terminal or port storage, packing and crating, freight forwarding, chartering of vessels, consolidation of shipments, documentation, wharfage and handling charges, and other services directly related to the movement of goods being exported or in the course of being exported), credit and banking terms, financing, insurance, legal, foreign exchange, product adaptation, taxation, and marketing services.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

MEDA may:

1. Enter into joint discussions and negotiations with foreign buyers concerning:

(a) Standardized production specifications, quantities, timing, shipping, packing, credit and banking terms necessary to meet the needs of the foreign buyer, MEDA, and members;

(b) Standardized quality standards that meet foreign buyer specifications; and

(c) Standardized bidding procedures acceptable to foreign buyers.

2. Act jointly to negotiate charges and other terms and to negotiate contracts with providers of transportation services, including advantageous freight contracts with individual carriers and carrier conferences, including chartering of vessels for MEDA and members, and negotiations for inland transportation for Products in the course of being exported.

3. Enter into agreements among MEDA and members on the terms of each party's participation in the negotiation and fulfillment of transportation contracts, including participation in inland transportation negotiations for Products in the course of being exported.

4. Refuse to deal with an individual or company with respect to the export of any Products to a foreign buyer.

5. Refuse to deal with respect to the export of any Products to a foreign buyer with any member not complying with the standards, agreements, or other terms of export trade set by MEDA and/or its members.

6. Exchange information and make agreements concerning the extent of member participation in transactions which involve MEDA and/or members. The information to be exchanged includes:

(a) Information that is already available to the trade or to the general public;

(b) Information (such as selling strategies, prices, projected demand, customary terms of sale) solely about the Export Markets;

(c) Information on costs specific to the Export Markets (such as ocean freight, inland freight to the terminal or port, terminal or port storage, wharfage and handling charges, insurance, agents, commissions, export sales documentation and service, and export sales financing);

(d) Information about U.S. and foreign legislation and regulation affecting sales to Export Markets;

(e) Information about the price, quality, quantity, source, and delivery dates of Products available from members for export;

(f) Information about terms and conditions of contracts for sales in the Export Markets to be considered and/or bid on by MEDA and its members; and

(g) Any other commercial, financial, or industrial information (such as production capacity or quality control procedures) strictly regarding exports that is not already generally available to the trade or public from members or suppliers to a transaction.

7. Enter into exclusive or nonexclusive agreements with Export Intermediaries to act for or provide Related Services to MEDA and members, whereby each Export Intermediary may agree not to represent competitors of MEDA or members in the sale of Products in any Export Market and not to buy any Products from any competitors of MEDA or members for resale in any Export Market.

8. Enter into exclusive or nonexclusive agreements with foreign customers, whereby each customer may agree not to purchase Products from competitors of MEDA or its members.

9. Enter into exclusive or nonexclusive agreements with Export Intermediaries for the provision of Related Services.

10. Limit membership in MEDA to businesses operating in Michigan and to Michigan residents.

11. Enter into joint ventures for a specific transaction or sale as needed between members and nonmembers (including nonmembers located outside Michigan) that specify or meet standards on quality, quantity, and price specifications for transactions. MEDA will engage in price, quantity, quality, and other negotiations directly with the foreign buyer when appropriate. Otherwise, such specifications will be set by agreement between MEDA and members and the customer.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Date: October 13, 1988.

Thomas H. Stillman,

Director, Office of Export Trading Company Affairs.

[FR Doc. 88-24017 Filed 10-17-88; 8:45 am]

BILLING CODE 3510-DR-M

Minority Business Development Agency

Business Development Center Applications: Chicago, IL

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for approximately a 3 year period, subject to available funds. The cost of performance for the first (12) months is estimated at $276,500 in Federal funds and a minimum of $46,794 in non-federal contributions for the budget period May 1, 1989 thru April 30, 1990. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Chicago, Illinois geographic service area. The award number of this MBDC will be 05-10-89005-01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDCs shall be required to contribute at least 15% of the total project cost through non-federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

Closing Date: The closing date for applications is *November 30, 1988.* Applications must be postmarked on or before *November 30, 1988.*

ADDRESS: Chicago Regional Office, Minority Business Development Agency, 55 East Monroe Street, Suite 1440, Chicago, Illinois 60603, 312/353–0182.

FOR FURTHER INFORMATION CONTACT: *David Vega,* Regional Director, *Chicago* Regional Office.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

David Vega,

Regional Director, Chicago Regional Office.

Date: October 12, 1988.

[FR Doc. 88-23988 Filed 10-17-88; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

New England Fishery Management Council; American Lobster Amendment 3; Public Hearing

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of a public hearing and request for comments.

SUMMARY: The New England Fishery Management Council (Council) will hold a public hearing to solicit public input into proposed measures to be included in Amendment 3 to the American Lobster Fishery Management Plan. Individuals and organizations may comment in writing to the Council before the hearing date.

DATE: The hearing will be held October 24, 1988, from 11:00 a.m. to 12:00 p.m.

ADDRESSES: The hearing will take place at the Sheraton Falmouth, 291 Jones Road, Falmouth, Massachusetts.

Written comments should be sent to Chairman, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906.

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director, New England Fishery Management Council, 617–231–0422.

SUPPLEMENTARY INFORMATION: The Council seeks input from the public on the following proposals scheduled for possible inclusion in Amendment 3 to the American Lobster Fishery Management Plan: (1) Delay the effective date of the increase in escape vent size from January 1, 1990, to January 1, 1992; and (2) effective January 1, 1992, lobster traps must contain an escape panel or equivalent mechanism to keep a trap from ghost fishing after it has been abandoned or lost for 12 months or more. The Director, Northeast Region, will publish a list of acceptable methods for complying with this requirement at least one year prior to the implementation date. If the list is not published by January 1, 1991, the measure will become effective one year after the actual publication date.

Date: October 12, 1988.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–24059 Filed 10–17–88; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Request for Modification: Brent Stewart (P27BC)

Notice is hereby given that Mr. Brent Stewart, Hubbs Marine Research Institute, 1700 South Shores Road, San Diego, California 92109 has requested a modification to Permit No. 579 issued on January 10, 1987 (52 FR 3037) under the authority of the Marine Mammal Protection Act (16 U.S.C. 1361–1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act (16 U.S.C. 1531–1543), and the regulations governing endangered fish and wildlife, and as modified on January 21, 1988 (53 FR 1657).

The current Permit allows the chemical immobilization of up to 40 male and 40 female elephant seals (*Mirounga angustirostris*) for the attachment of Time Depth Recorders. The Holder requests to modify the Permit to allow blood samples to be taken from these immobilized seals on San Nicolas and San Miguel Islands. He also would like to give intramuscular injections of Decapeptyl-CR (16 mg per injection) to each of the males during breeding season to determine if sex steroid serum levels can be lowered to reduce aggressive behavior.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC, on or by November 17, 1988. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, Silver Spring, Maryland 20910; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Date: October 7, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88–23971 Filed 10–17–88; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Department of Defense.

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: DoD FAR Supplement, Part 42, Contract Administration, Part 52.242 and Related Forms; DD Forms 375, 375C, 1639 and 1659; OMB Control Number 0704–0250.

Type of Request: Revision.

Average Burden Hours/Minutes Per Response: .283 hours.

Frequency of Response: On needed.

Number of Respondents: 47,054.

Annual Burden Hours: 84,102.

Annual Responses: 317,504.

Needs and Uses: A. Basic Part 42 coverage reporting requirements are necessary to support contract administration functions including unique requirements of the Defense Logistics Agency.

B. DD Form 1659 is presently used by contractors to obtain Government shipping documentation and/or instructions.

Affected Public: Businesses or other for-profit; Non-profit institutions; and Small businesses or organizations.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Ms. Eyvette R. Flynn.

Written comments and recommendations on the proposed information collection should be sent to Ms. Eyvette R. Flynn at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone (202) 746–0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 13, 1988.

[FR Doc. 88–23973 Filed 10–17–88; 8:45 am]

BILLING CODE 3810-01-M

Base Realignment and Closure Commission; Meeting

ACTION: Notice of closed meetings.

SUMMARY: The Defense Secretary's Commission on Base Realignment and Closure will hold closed meetings on November 14–15 and 28–29, 1988. They will meet for the purpose of individual base deliberations. These meetings will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (9)(B) thereof, and Title 5 U.S.C., Appendix 2, subsection 10(d).

FOR FURTHER INFORMATION, CONTACT: Russel Milnes, (202) 653–0160, address: Defense Secretary's Commission on Base Realignment and Closure, 1825 K Street, NW., Suite 310, Washington, DC 20006.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Office, Department of Defense.

October 13, 1988.

[FR Doc. 88–23972 Filed 10–17–88; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Intent To Prepare an Environmental Impact Statement for Proposed Redevelopment of Navy Land Known as the Broadway Complex, San Diego, CA.

Pursuant to the procedural provisions of the Council on Environmental Quality regulations (40 CFR Parts 1500–1508) implementing the National Environmental Policy Act (NEPA), the Department of the Navy gives notice that an Environmental Impact Statement (EIS) is being prepared, in coordination with the City of San Diego, for proposed redevelopment of Navy land known as the Broadway Complex, San Diego, California.

The project site is located on approximately 16 acres in downtown San Diego adjacent to the San Diego Bay waterfront. The site consists of eight city blocks that are bounded by Harbor Drive on the west, Market Street on the south, Pacific Highway on the east, and Broadway on the north. The site is currently improved with a series of sixteen miscellaneous office and warehouse buildings containing approximately one million square feet of gross floor area. The buildings were constructed between 1922 and 1945.

The Navy is proposing to consolidate in modern facilities the general regional administrative activities of the naval shore establishment in the San Diego area. These facilities are to be central to the San Diego naval commands, the commuting work force of the San Diego area, and regional transportation systems. The Navy's objective is to redevelop this site through a public/private partnership designed to meet the Navy's regional administrative office space needs in a manner that will complement San Diego's bayfront redevelopment. Approximately one million square feet of Navy office space is contemplated to be developed on the site by a private developer(s) for use by the Navy. Additional mixed-use (e.g., office, hotel, specialty retail) private development on the site will be allowed which is intended to offset the cost of the Navy-occupied space, thereby reducing cost to the taxpayer.

A conceptual master plan and urban design guidelines will be prepared in coordination with the San Diego community through the City of San Diego to guide the development of the site. It is proposed that the Navy and the City will enter into a development agreement as the mechanism for approval and control of the site's development.

It is our understanding that the City of San Diego will prepare environmental documentation (EIR) for its proposed actions in compliance with the California Environmental Quality Act (CEQA). Because of issues common to both and to facilitate administration, joint hearings and meetings will be conducted for the NEPA and CEQA processes.

The EIS will be a full scope document that will cover all matters of potential environmental concern. The environmental analysis will address, but not be limited to, traffic and circulation, land use and planning, waterfront access, aesthetics and view corridors, public services and utilities, socioeconomics, geology and seismicity, extractable resources, hydrology and drainage, biology, endangered species and critical habitat, air quality, noise, cultural resources, coastal zone management, public health and safety, and energy conservation.

Alternatives that are being considered include variations of private and Navy development on the Broadway Complex site, Navy-only development of the site, development of an alternative site in downtown San Diego, and no action.

The Department of the Navy is requesting any comments you may have regarding the scope of the environmental analysis in the EIS. Please submit comments and/or questions to the address given below no later than December 16, 1988:

Officer in Charge, Western Division, Naval Facilities Engineering Command Detachment, Broadway Complex, 1220 Pacific Highway, San Diego, California 92132–5190, ATTN: CAPT Wayne Goodermote, CEC, USN.

Telephone inquiries may be directed to Mr. Anthony Principi at (619) 532–3291.

Joint public scoping meetings will be held to receive written and oral testimony from governmental agencies and the public about issues and concerns that should be addressed in the Navy EIS and the City EIR. A morning session has been scheduled for agency representatives and an evening session for members of the public. Both meetings will be open to the general public at the times and locations given below. The evening session will adjourn at 11:30 p.m. or earlier, if all comments have been received. The scoping meetings will be conducted by Captain Wayne Goodermote, the Officer-in-Charge of the Broadway Complex Project Office. The meeting will be informal. Individual speakers will be requested to limit their statements to five minutes. Written statements will be accepted at the meeting or they may be mailed to the address given above. All comments must be received on or before December 16, 1988.

Morning session	Evening session
November 14, 1988—9:00 a.m., City Administration Building, 12th Floor, 202 C Street, San Diego, CA 92101.	November 14, 1988—7:00 p.m., City Administration Building, 12th Floor, 202 C Street, San Diego, CA 92101.

Date: October 13, 1988.

Jane M. Virga,

LT., JAGC, USNR, Federal Register Liaison Officer.

[FR Doc. 88–23963 Filed 10–17–88; 8:45 am]

BILLING CODE 3810-AE-M

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, October 26, 1988 beginning at 1:00 p.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey. The hearing will be part of the Commission's regular business meeting which is open to the public.

An informal pre-meeting conference among the Commissioners and staff will be open for public observation at about 11:00 a.m. at the same location.

The subjects of the hearing will be as follows:

Proposed Amendment to the Comprehensive Plan and Water Code of the Delaware River Basin. Notice was given in the September 15, 1988 Federal Register, Vol. 53, No. 179, pp. 35889–35890, that the Commission would hold a public hearing on October 26, 1988 to receive comments on a proposed amendment to its Comprehensive Plan and Water Code to include a drought management plan for the Christina River

Basin, Chester County, Pennsylvania and New Castle County, Delaware. In order to address the unique hydrologic circumstances of the Christina River Basin, a drought management plan was developed which establishes drought criteria based on both surface and ground water conditions within the Christina River Basin and recommends actions to be undertaken on a coordinated basis as conditions dictate, notwithstanding the absence of a Commission drought declaration. The plan is incorporated in the drought management plan of the Commonwealth of Pennsylvania and the State of Delaware and is now proposed for inclusion in the Commission's Comprehensive Plan. The proposed amendment defines the area to be governed by the plan; the plan administration; drought indicators, criteria, and actions; enforcement and plan amendment procedures.

Current Expense and Capital Budgets. A proposed current expense budget for the fiscal year beginning July 1, 1989, in the aggregate amount of $2,535,800 and a capital budget for the same period in the amount of $1,202,000 in revenue and $1,121,000 in expenditures. Copies of the current expense and capital budget are available from the Commission on request.

A Proposal To Adopt the 1988 Water Resources Program. A proposal that the 1988 Water Resources Program approved on November 30, 1983, as extended and adopted respectively by DRBC Resolution Nos. 84–27, 85–42, 86–27, and 87–29, as the 1984, 1985, 1986, and 1987 Water Resources Program, be extended and adopted as the 1988 Water Resources Program, in accordance with the requirements of section 13.2 of the Delaware River Basin Compact.

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact:

1. *Holdover Project: Northeastern Power Company D–86–53 (Revised).* An application to modify an approved water withdrawal and wastewater discharge for a proposed steam/electric cogeneration project located in Kline Township, Schuylkill County, Pennsylvania. The refuse coal-to-energy plant is designed to cogenerate about 45 MW of electricity. The applicant previously planned to pump 0.84 million gallons day (mgd) of mine water from subsurface mining shafts and consumptively use approximately 0.64 mgd. Now, the applicant proposes to withdraw only about 0.112 mgd from the Silverbrook Mine outfall, and to discharge only approximately 15,000 gallons per day (gpd) to the Little Schuylkill River. The water conservation resulted from a change to "dry" cooling. This hearing continues that of September 28, 1988.

2. *Camden County Municipal Utilities Authority D–71–9 CP (Revision 4).* A request to revise the previously approved service area of the Camden County Delaware No. 1 Regional Sewage Treatment Plant. The municipalities of Chesilhurst Borough and Waterford and Winslow Townships would be added to the service area of the Delaware No. 1 Sewage Treatment Plant which will result in the importation of sewage from the Atlantic Basin for treatment and discharge into the Delaware River. The project is located in the City of Camden, Camden County, New Jersey. The facility discharges to the Delaware River Estuary—Zone 3—at River Mile 97.93.

3. *Pennsylvania Department of Environmental Resource (PADER) D–78–50 CP (Revised).* An application by PADER to include in DRBC's Comprehensive Plan the 5.2 mile segment of Schuylkill River between Norristown Dam and Spring Mill Creek is a Modified Recreational segment under the Pennsylvania Scenic Rivers System. The segment had previously been labeled as Conditional—Modified Recreational by PADER and included in the Comprehensvie Plan with that status.

4. *Borough of East Stroudsburg D–87–15 CP (Revised).* An application to revise a sewage treatment plant expansion proposal. The applicant had originally planned to expand an existing 1.3 mgd plant to treat a design average flow of 2.25 mgd. Now, the applicant proposes to treat only 2.1 mgd via an innovative treatment process. A sequencing batch reactor system will be constructed, rather than the additional trickling filter previously proposed. The project is designed to serve an equivalent population of 28,000 persons in East Stroudsburg Borough, Monroe County, Pennsylvania through the year 2005. Treatment plant effluent will continue to be discharged to Brodhead Creek through the existing outfall.

5. *Willingboro Municipal Utilities Authority D–87–42 CP.* An application to replace the withdrawal of water from Well No. 4 in the applicant's water supply system which has become an unreliable source of supply. The applicant requests that the withdrawal from replacement Well No. 11 be limited to 60.48 million gallons (mg)/30 days. The project is located in Willingboro Township, Burlington County, New Jersey.

6. *Valley Township Authority D–88–31 CP.* An application for approval of a ground water withdrawal project to supply up to 4.5 mg/30 days of water to the applicant's distribution system from new Well Nos. V1, V2, and V4. The project is located in Valley Township, Chester County, Pennsylvania.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Susan M. Weisman,
Secretary.
October 11, 1988.

[FR Doc. 88-24002 Filed 10-17-88; 8:45 am]
BILLING CODE 6360-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before November 17, 1988.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) title; (3) frequency of collection; (4) the affected public; (5) reporting burden; and/or (6) recordkeeping burden; and (7) abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: October 13, 1988.

Carlos U. Rice,
Director for Office of Information Resources Management.

Office of Bilingual Education and Minority Language Affairs

Type of Review: Extension.
Title: Application for Emergency Immigrant Education Program.
Frequency: Annually.
Affected Public: State or Local Governments.
Reporting Burden:
Responses: 57.
Burden Hours: 8,892.
Recordkeeping:
Recordkeepers: 0.
Burden Hours: 0.

Abstract: This form will be used by State agencies to apply for funding under the Emergency Immigrant Education Program. The Department uses the information to make grant awards.

Office of Postsecondary Education

Type of Review: Extension.
Title: Loan Transfer Statement.
Frequency: On occasion.
Affected Public: State or Local Governments; Businesses or other for profit; and Non-profit institutions.
Reporting Burden:
Responses: 1,400.
Burden Hours: 1,400.
Recordkeeping:
Recordkeepers: 0.
Burden Hours: 0.

Abstract: Lenders use this form to show the transfer or sale of a Federal Insured Student Loan (FISL). The Department uses this information to determine which lender may receive benefits payable on a FISL note and to track the transfer of loans.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.
Title: Annual Report on Post-Employment Services and Annual Reviews.
Affected Public: State or Local Governments.
Frequency: Annually.
Reporting Burden:
Responses: 80.
Burden Hours: 74.
Recordkeeping:
Recordkeepers: 0.
Burden Hours: 0.

Abstract: State Vocational Rehabilitative (VR) agencies submit this report to the Department of the Post-employment status of handicapped individuals. The Department uses the information collected to monitor post-closure activities of the VR clientele.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.
Title: Annual Vocational Rehabilitation Program/Cost Report.
Affected Public: State and Local Governments.
Frequency: Annually.
Reporting Burden:
Responses: 84.
Burden Hours: 395.
Recordkeeping:
Recordkeepers: 0.
Burden Hours: 0.

Abstract: State vocational Rehabilitative agencies submit this report to the Department. The Department uses the information to analyze expenditures, evaluate program accomplishments, and to examine data for indicators of problem areas.

Office of Vocational and Adult Education

Type of Review: New.
Title: Financial Status and Performance Report for the Adult Education for the Homeless Program.
Frequency: Annually.
Affected Public: State or local government.
Reporting Burden:
Responses: 52.
Burden Hours: 468.
Recordkeeping:
Recordkeepers: 0.
Burden Hours: 0.

Abstract: State educational agencies that have participated in the Adult Education for the Homeless Program are to submit these reports to the Department. The Department uses the information to monitor expenditure of funds and to povide reports to Congress.

Office of Elementary and Secondary Education

Type of Review: Reinstatement.
Title: Certification: Indian Student Enrollment.
Frequency: Annually.
Affected Public: Individuals or Households; State or Local Governments.
Reporting Burden:
Responses: 28,115.
Burden Hours: 33,010.
Recordkeeping:
Recordkeepers: 1,115.
Burden Hours: 558.

Abstract: A completed student certification form for each Indian Student must be on file in the office of the applicant in order to qualify for a formula grant under the Indian Education Act, as amended. The Department uses the information to make grant awards.

[FR Doc. 88-24029 Filed 10-17-88; 8:45 am]
BILLING CODE 4000-01-M

[CFDA No.: 84.055]

Cooperative Education Program; Notice Inviting Applications for New Awards for Fiscal Year 1989

Purposes of the Program: Provides Federal financial assistance for three type of cooperative education projects (1) Administration Projects: Grants may be awarded to institutions of higher education and combinations of institutions of higher education to help them plan, establish, operate, or expand cooperative education projects, including institution-wide projects; (2) Demonstration Projects: Grants may be awarded to institutions of higher education, combinations of institutions of higher education, and public and private nonprofit organizations and agencies to demonstrate or determine the feasibility or value of innovative methods of cooperative education; and (3) Training and Resources Center Projects: Grants may be awarded to institutions of higher education, combinations of institutions of higher education, and public and private nonprofit organizations and agencies that provide training to individuals who participate in, or are planning to participate in the planning, establishment and administration of cooperative education.

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Deadline For Transmittal of Applications: January 10, 1989.

Applications Available: November 14, 1988.

Available Funds: The Congress has appropriated $13,622,000 for this program for fiscal year 1989. Of that amount, approximately $8,527,200 will be available for new grants as follows:

Administration Grants—$7,412,900
Demonstration Grants—$257,700
Training and Resources Center Grants—$857,100

Estimated Range of Awards

Administration Grants—$26,000–$200,000
Demonstration Grants—$67,000–$160,000
Training and Resources Center Grants—$57,000–$152,000

Estimated Average Size of Awards

Administration Grants—$75,500
Demonstration Grants—$85,900
Training and Resources Center Grants—$115,100

Estimated Number of Awards

Administration Grants—98
Demonstration Grants—3
Training and Resources Center Grants—7

Note: The Department is not bound by any estimates in this notice.

Project Periods

Administration Projects—12–60 months
Demonstration Projects—12–36 months
Training and Resources Center Projects—12–36 months

Priority: The Department's Fiscal Year 1989 Appropriation Act (Pub. L. 100–436) requires the Secretary to establish a priority for administration grants for applications from private urban institutions of higher education, or combinations of private urban institutions of higher education, that have minority student enrollments exceeding 60 percent of total student enrollment and that plan to develop from a traditional academic curriculum to an institution-wide cooperative education program applicable to all undergraduate four year major fields of study. In accordance with Pub. L. 100–436 and 34 CFR 75.105(c)(2), applications meeting this priority will be awarded ten points in addition to the 100 possible points under the selection criteria in 34 CFR 632.20 and 20 possible points under the special funding consideration in 34 CFR 632.21.

Applicable Regulations: (a) Regulations governing the Cooperative Education Program as codified in 34 CFR Parts 631 (General), 632 (Administration Projects), 633 (Demonstration Projects), and 635 (Training and Resource Center Projects) (Final regulations for this program were published in the **Federal Register** on August 5, 1987 (52 FR 29140); and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78.

For Applications Contact: Vicki Payne, U.S. Department of Education, Division of Higher Education Incentive Programs, 400 Maryland Avenue SW., Washington, DC 20202–5251. Telephone (202) 732–4414.

For Program Information Contact: Darlene Collins or Elizabeth Slany (at the address given above). Telephone: (202) 732–4404 and 732–4861, respectively.

Program Authority: 20 U.S.C. 1133–1133b.

Dated: October 6, 1988.

Kenneth D. Whitehead,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 88–24033 Filed 10–17–88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. PP–99EA]

Application for Electricity Export Authorization by Rio Grande Electric Cooperative, Inc.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of application by Rio Grande Electric Cooperative, Inc., for authorization to export electric energy to Mexico.

SUMMARY: On September 23, 1988, the Rio Grande Electric Cooperative, Inc. (RGEC), filed an application with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for authorization to export electric energy to Mexico pursuant to section 202(e) of the Federal Power Act. RGEC requests authority to export up to 300 kilowatts (KW) of electric power to the townsite of Boquillas de Carmen, Coahuila, Mexico, by means of a three phase, 4 wire, 60 cycle distribution line rated 14,400/24,900 volts.

FOR FURTHER INFORMATION CONTACT:

William H. Freeman, Economic Regulatory Administration (RG–22), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–5863.

Lise Courtney M. Howe, Office of General Counsel (GC–41), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2900.

SUPPLEMENTARY INFORMATION: On September 23, 1988, the Rio Grande Electric Cooperative, Inc., filed an application with the ERA for authorization to export electric energy to Mexico pursuant to section 202(e) of the Federal Power Act. Specifically, RGEC has applied for authorization to transmit electricity from the United States to Mexico over a three phase, 4 wire, 60 cycle distribution line rated at 14,400/24,900 volts.[1] This line will interconnect with facilities of the Comision Federal de Electricidad (CFE), an electric utility in Mexico. The point of delivery will be approximately one-half mile north of Rio Grande Village in Big Bend Park, Texas. This export will be used to provide electricity to the town site of Boquillas de Carmen, Coahuila, Mexico, which is currently without electric service.

According to RGEC, the maximum rate of transmission to Mexico will be 300 kilowatts. The terms and conditions of the sale of power are set forth in the Contract for Electric Service and Agreement between RGEC and CFE which was filed with the subject application.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, in accordance with § 1.8 or 1.10 of the Rules of Practice and Procedure (18 CFR 1.8, 1.10).

Any such petitions and protests should be filed with the ERA no later than November 17, 1988. Protests will be considered by the ERA in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a petition to intervene. Copies of this application will be made available, upon request, for public inspection and copying at the Department of Energy's Freedom of Information Room, Room 1E–090, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, from 9:00 a.m. to 4:00 p.m., Monday through Friday.

[1] The facilities required to effect this export are the subject of an application filed on June 28, 1988, by CFE for a Presidential permit to construct, connect, operate and maintain electric transmission facilities at the international border between the U.S. and Mexico. This application was noticed in the **Federal Register** on September 15, 1988 (53 FR 35971).

Issued in Washington, DC, on October 6, 1988.

Anthony J. Como,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–24030 Filed 10–17–88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. QF84–152–008 et al.]

Ultrapower Inc., Rio Bravo Poso, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Ultrapower Incorporated, Rio Bravo Poso

[Docket No. QF84–152–008]

October 11, 1988.

On September 28, 1988, Ultrapower Incorporated, Rio Bravo Poso (Applicant), of 16845 Von Karman Avenue, Irvine, California 92714 submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Kern County, California. The facility will consist of an atmospheric fluidized bed boiler, a steam turbine generator and related auxiliary equipment. The primary source of energy will be petroleum coke.

The original application was granted certification on March 27, 1984 (QF84–152–000 28 FERC ¶62,309), and subsequently recertified on March 19, 1985 (QF84–152–001, 30 FERC ¶62,311), as a small power production facility.

The recertification is requested due to change in ownership. Applicant states that utility ownership of the facility will be approximately 50%.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

2. Ultrapower, Inc., Rio Bravo Jasmin

[Docket No. QF88–194–004]

On September 28, 1988, Ultrapower, Incorporated, Rio Bravo Jasmin (Applicant), of 16845 Von Karman Avenue, Irvine, California 92714, submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Kern County, California. The facility will consist of an atmospheric fluidized bed boiler, a steam turbine generator and related auxiliary equipment. The primary source of energy will be petroleum coke.

The original application was granted certification on January 16, 1986 (QF86–149–000, 34 FERC ¶62,144).

The recertification is requested due to change in ownership. Applicant states that utility ownership of the facility will be approximately 50%.

Comment date: Thirty days from publication in the **Federal Register** in accordance with Standard Paragraph E at the end of this notice.

3. Ultrapower, Inc., Rio Bravo Jasmin

[Docket No. QF86–149–005]

On September 28, 1988, Ultrapower Incorporated, Rio Bravo Jasmin (Applicant), of 16845 Von Karman Avenue, Irvine, California 92714 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is located in Kern County, California. The facility will consist of an atmospheric fluidized bed boiler, a steam turbine generator and related auxiliary equipment. The primary source of energy will be coal. Steam recovered from the facility will be used in enhanced oil recovery.

By order issued April 16, 1986, the Commission granted certification of the facility as a cogeneration facility (QF86–149–001, 35 FERC ¶62092).

The recertification is requested due to change in the ownership of the facility, date of installation and increase in capacity. Accordingly to the Applicant the net electric power production capacity will increase from 28.85 M.W. to 30.70 M.W. Applicant states that utility ownership of the facility will be approximately 50%. Installation date of the facility was changed from February 1, 1986 to January 20, 1988.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

4. Ultrapower Incorporated, Rio Bravo Poso

[Docket No. QF84–152–009]

October 12, 1988.

On September 28, 1988, Ultrapower Incorporated, Rio Bravo Poso (Applicant), of 16845 Von Karmann Avenue, Irvine, CA 92714 submitted for filing an application for recertification of a facilty as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Kern County California. The facility will consist of an atmospheric fluidized bed boiler, a steam turbine generator and related auxiliary equipment. The primary energy source will be coal. Steam recovered from the facility will be used in enhanced oil recovery.

By order issued January 29, 1986, the Commission granted certification of the facility as a cogeneration facility (QF84–152–002, 34 FERC ¶62,237).

The recertification is requested due to change in ownership of the facility, date of installation and increase in capacity. According to the Applicant the net electric power production capacity will increase from 27.78 MW to 31.7 MW. Applicant states that utility ownership of the facility will be approximately 50%. Installation date was changed from July 1, 1988 to March 29, 1988.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–24010 Filed 10–17–88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-861-000 et al.]

United Gas Pipe Line Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. United Gas Pipe Line Company

[Docket No. CP88-861-000]

October 11, 1988.

Take notice that on September 29, 1988, United Gas Pipe Line Company (United) P.O. Box 1478, Houston, Texas, 77251-1478, filed in Docket No. CP88-861-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for Pennzoil Gas Marketing Company (Pennzoil) a producer and marketer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport on an interruptible basis up to 51,500 MMBtu of natural gas equivalent per day on behalf of Pennzoil pursuant to a transportation agreement dated July 18, 1988, between United and Pennzoil. United would receive gas at three existing points of receipt on its system in Nueces and Bee Counties, Texas and redeliver equivalent volumes at two existing points of delivery in Ouchita Parish, Louisiana.

United further states that the estimated average daily and annual quantities would be 51,500 MMBtu and 18,797,500 MMBtu, respectively. Service under § 284.223(a) commenced on September 1, 1988, as reported to the Commission September 15, 1988, in Docket No. ST88-5635.

Comment date: November 25, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. United Gas Pipe Line Company

[Docket No. CP88-881-000]

October 11, 1988.

Take notice that on September 30, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP88-883-000, a prior notice request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas on an interruptible basis on behalf of Louisiana State Gas Corporation, an intrastate gas pipeline company, under its blanket certificate issued in Docket No. CP88-6-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United states that it proposes to transport on an interruptible basis pursuant to a gas transportation agreement, dated August 25, 1988, a maximum daily quantity of 37,080 MMBtu of natural gas. United further states that service commenced September 1, 1988, as reported in Docket No. ST88-5603, pursuant to § 284.223(a) of the Commission's Regulations. United also states that the average day and annual quantities would be 37,080 MMBtu and 4,449,600 MMBtu, respectively.

Comment date: November 25, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. Panhandle Eastern Pipe Line Company

[Docket No. CP88-3-000]

October 12, 1988.

Take notice that on October 3, 1988, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP88-3-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon jurisdictional sales service provided to Michigan Gas Utilities Company (MGU), and the related transportation and storage service provided to MGU, all as more fully set forth in application which is on file with the Commission and open to public inspection.

Panhandle states that MGU is served pursuant to Panhandle's Rate Schedule G-1 and a Gas Sales Contract (Contract) dated September 16, 1981. Panhandle also states that the Contract expires on October 31, 1988. It is stated that Panhandle currently provides an average quantity of approximately 32,900 Mcf of natural gas per day of firm sales service to MGU. It is further stated that on August 12, 1988, in Docket No. CP88-674-000, Panhandle filed to reduce MGU's monthly contract demand by 3,004 Mcf/d pursuant to a conversion under § 284.10 of the Commission's Regulations. Panhandle states it proposed such conversion to be effective April 1, 1988, pursuant to a gas sales contract dated April 1, 1988. According to Panhandle, that application is still pending before the Commission.

Panhandle alleges that by letter dated March 18, 1987, MGU informed Panhandle that in accordance with Article 5 of the Contract it no longer requires any sales service from Panhandle effective October 31, 1988 (Termination Notice). It is stated that associated with, and dependent upon, the sales service provided under the Contract, is a transportation and storage service provided by Panhandle to MGU pursuant to Rate Schedule TS-6 of Panhandle's FERC Gas Tariff Original Volume No. 2, and a Gas Storage and Transportation Agreement between Panhandle and MGU dated May 29, 1984 (Storage Agreement). Panhandle states that by Commission order issued December 9, 1977, in Docket No. CP77-253, as amended, it was authorized to utilize a portion of the storage capacity it had contracted with Michigan Consolidated Gas Company (MichCon) for the storage needs of certain of Panhandle's customers, including MGU.

It is stated that pursuant to Article IV *TERM*, the storage Agreement shall continue in effect "* * * until March 30, 1991, or the date of termination of the Contract, whichever occurs first." Panhandle states that the Storage Agreement defines 'Contract' as the Gas Sales Contract dated September 16, 1981, between Panhandle and MGU. Therefore, by its own terms, the Storage Agreement, according to Panhandle may not continue in effect after the expiration of the Contract on October 31, 1988. Accordingly, Panhandle seeks to also abandon the Storage Agreement, effective October 31, 1988. Panhandle states that it does not seek to abandon any portion of the storage capacity it has contracted with MichCon; Panhandle will utilize such storage in the future to satisfy its own system requirements.

It is further asserted that there would be no abandonment of facilities, only the jurisdictional sales service together with the associated transportation and storage service provided to MGU. The facilities presently in place will be used to provide transportation service as may be required by MGU and other shippers.

Panhandle states that it has filed revised tariff sheets in Docket Nos. RP88-240 and RP88-241 to recover portions of prudently incurred take-or-pay costs from each of its customers, including MGU. It is averred that the portion of such costs attributable to MGU are defined therein, and may be amended, supplemented, revised or modified pursuant to Commission authorizations or otherwise as permitted or required by law. According to Panhandle, nothing in this filing is to be deemed to be prejudicial to Panhandle's rights to recover those costs from MGU or to recover any other costs attributable to MGU.

Finally, it is submitted that the abandonment is in the public interest because MGU requested such abandonment and has advised Panhandle that Panhandle's services are no longer required by it; the proposed abandonment will make more capacity available in Panhandle's system for use by others.

Comment date: November 2, 1988, in accordance with Standard Paragraph F at the end of this notice.

4. Columbia Gas Transmission Corporation

[Docket No. CP88-866-000]

October 12, 1988.

Take notice that on September 28, 1988, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S. E., Charleston, West Virginia 25314, filed in Docket No. CP88-866-000, an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the continued operation of certain existing natural gas storage fields and related facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia states that the purpose of its application is to assure its ability to acquire by eminent domain exclusive gas storage easements under section 7(h) of the Natural Gas Act, as amended, and thereby protect the integrity of its storage fields. This application results from a Court's holding that Columbia did not have the right of eminent domain for a certain tract of land in one of its storage fields because it was located outside the geographic area designated on the exhibit maps contained in the application in which Columbia obtained certificate authorization for the operation of the storage field, it is explained.

Specifically, Columbia requests a certificate of public convenience and necessity for the continued operation, as presently constituted, of the following storage fields and related facilities:

(1) Majorsville-Heard Storage Complex in Marshall County, West Virginia, and Greene and Washington Counties, Pennsylvania; and

(2) Dundee Storage field in Yates, Steuben, and Schuyler Counties, New York.

Comment date: November 2, 1988, in accordance with Standard Paragraph F at the end of this notice.

5. Natural Gas Pipeline Company of America

[Docket No. CP88-869-000]

October 12, 1988.

Take notice that on September 29, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP88-869-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon 236 feet of 8⅝ inch lateral and appurtenant facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural proposes to abandon 236 feet of 8⅝ inch lateral and appurtenant facilities constructed at a cost of $1,305,617 to receive natural gas from Union Oil Company's, currently Union Exploration Partners, Ltd. (Partners), platform located in Brazos Block A-105, offshore Texas. Natural states that the ownership of the lateral would be transferred to Partners as part of an agreement to reform certain gas purchase contracts and resolve differences between Natural and Partners regarding take or pay and other quantity related claims. Further Natural states that Partners has agreed not to charge Natural for any gas purchased by Natural and moved through this lateral during the term of the gas purchase contract between Natural and Partners covering Brazos Block A-105, offshore Texas.

Comment date: November 2, 1988, in accordance with Standard Paragraph F at the end of this notice.

6. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP88-891-000]

October 12, 1988.

Take notice that on September 30, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP88-891-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct one delivery point and appurtenant facilities to accommodate natural gas deliveries to Midwest Natural Gas, Inc. (Midwest) under its blanket certificate issued in Docket No. CP82-401-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Specifically, Northern states it requests authority to construct, operate, and maintain an additional delivery point as a second town border station to accommodate natural gas deliveries for the community of Westby, Wisconsin, to be served by Midwest. It is further stated that the estimated peak day and annual volumes to be delivered to Midwest at the subject delivery point in the fifth year of service would be 39 Mcf and 6,341 Mcf, respectively.

Northern indicates that the volumes to be delivered to Midwest at the proposed delivery point would be within its currently authorized firm entitlement, as originally authorized by order issued on November 9, 1987, in Docket No. RP85-206-011 through RP85-206-027, and as currently pending before the Commission in a section 7(b) and 7(c) proceeding in Docket No. CP88-774-000. Northern further indicates that delivery of such volumes would, therefore, have no impact on its peak day and annual volumes. Northern states that the required volumes would be served from the firm entitlement currently designated by Midwest for delivery to Westby, Wisconsin. The total estimated cost to construct the proposed delivery point would be $8,520, it is stated, and would be financed from funds on hand.

Comment date: November 28, 1988, in accordance with Standard Paragraph G at the end of this notice.

7. Southern Natural Gas Company

[Docket No. CP88-892-000]

October 12, 1988.

Take notice that on September 30, 1988, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP88-892-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport gas on an interruptible basis for Rangeline Corporation (Rangeline) under its blanket certificate issued in Docket No. CP88-316-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern states that it would perform the proposed transportation service for Rangeline, a marketer, pursuant to a service agreement dated July 22, 1988, under Southern's Rate Schedule IT. It is stated that the service would have a primary term of one month with successive terms of one month thereafter unless cancelled by either party. Southern proposes to transport 15,000 MMBtu of gas on a peak day; 6,428 MMBtu of gas on an average day; and 2,346,429 MMBtu of gas for Rangeline on an annual basis. Southern proposes to receive the gas at various receipt points in Louisiana and offshore Louisiana for delivery to an end user in Georgia. Southern asserts that no new facilities are required to implement the proposed service.

Southern states that it commenced transportation of natural gas for

Rangeline on July 29, 1988, as reported in Docket No. ST88-5514 pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's Regulations.

Comment date: November 28, 1988, in accordance with Standard Paragraph G at the end of his notice.

Standard Paragraphs:

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24009 Filed 10-17-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-152-002]

Alabama-Tennessee Natural Gas Co.; Filing

October 12, 1988.

Take notice that on October 5, 1988, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee) filed Fifth Revised Sheet No. 47 to its FERC Gas Tariff, First Revised Volume No. 1, to be effective June 1, 1988.

Alabama-Tennessee states that the purpose of this filing is to clarify and correct an inadvertent omission of language relating to a change in the current adjustment.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such motions of protests should be filed on or before October 21, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24008 Filed 10-17-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT88-25-001]

Arkla Energy Resources, a Division of Arkla, Inc.; Proposed Changes in FERC Gas Tariff Pursuant to Order No. 497

October 11, 1988.

Take notice that on October 7, 1988, Arkla Energy Resources, a division of Arkla, Inc., tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and section 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Original Volume No. 1-A:

First Substitute Third Revised Sheet No. 70
First Substitute Original Sheet No. 76A
First Substitute Third Revised Sheet No. 82
First Substitute Third Revised Sheet No. 83

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211. All such motions or protests must be filed by October 18, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24012 Filed 10-17-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-200-001]

CNG Transmission Corp.; Filing

October 12, 1988.

Take notice that on October 5, 1988, CNG Transmission Corporation (CNG) filed First Revised Tariff Sheet No. 123 to its FERC Gas Tariff, Original Volume No. 1, to be effective September 27, 1988.

CNG states that this tariff sheet was inadvertently omitted from its original filing.

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such motions or protests must be filed on or before October 19, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24015 Filed 10-17-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-2-000]

Natural Gas Pipeline Co. of America; Petition for Waiver

October 12, 1988.

Take notice that on October 6, 1988, Natural Gas Pipeline Company of America (Natural) filed a petition for waiver of § 154.305(i) of the Commission's Regulations to allow Natural to credit supplier refunds which have accumulated as of August 31, 1988, to Account No. 191 instead of disbursing them in cash to its customers. Natural further requests that the Commission grant it such waiver of its Tariff and the Regulations as are necessary to effectuate the foregoing request.

Natural believes that current market conditions, as well as the substantial balance in its deferred account, justify implementation of a crediting mechanism for any balances of supplier refunds in the appropriate subaccount of Account No. 191. Natural believes that such a proposal is reasonable and no sound purpose would be served by requiring Natural to disburse supplier refunds in cash at this time. Natural states that the crediting mechanism sought herein would render Natural's gas more marketable and foster the Commission's objective of enhancing the competitiveness of gas supplies in general.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such motions or protests should be filed on or before October 20, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24006 Filed 10-17-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-233-011]

Northern Natural Gas Co.; Filing

October 12, 1988.

Take notice that on October 6, 1988, Northern Natural Gas Company (Northern) filed Substitute Fifth Revised Sheet No. 1856 and Fifth Revised Sheet No. 1954 to its FERC Gas Tariff, Original Volume No. 2, to be effective October 27, 1988.

Northern states that these tariff sheets correct errors contained in its September 28 filing. Substitute Fifth Revised Sheet No. 1856 reflects the correct lower proposed rate for service. Fifth Revised Sheet No. 1954 corrects an error in the pagination of the sheet.

Northern states that a copy of this filing has been served upon all parties who were served in the instant filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such motions or protests should be filed on or before October 20, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24007 Filed 10-17-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-831-000]

Northern Natural Gas Company, a Division of Enron Corp.; Request Under Blanket Authorization

October 11, 1988.

Take notice that on September 23, 1988, Northern Natural Gas Company, A Division of Enron Corp., (Northern), 1400 Smith Street, Houston, TX 77002, filed in Docket No. CP88-831-000, as supplemented on October 5, 1988, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct one delivery point and appurtenant facilities and to realign certain volumes in order to accommodate natural gas deliveries to Ft. McCoy, Wisconsin, under its blanket certificate issued in Docket No. CP82-401-000 on September 1, 1982, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern proposes to construct a large-volume delivery point for Ft. McCoy, Wisconsin, and to transfer certain volumes from the community of Tomah, Wisconsin, to the proposed Ft. McCoy delivery point, all to be served by Wisconsin Gas Company (Wisconsin Gas). It is stated that the volumes delivered to Ft. McCoy would be served from the existing firm entitlement of Wisconsin Gas. Northern states that the total estimated cost of constructing the proposed facilities is $70,120.

It is stated that the realignment of volumes would be as follows:

Delivery point	Volumes in Mcf per day				
	Existing authority		Proposed		
	CD-1	SS-1	CD-1	SS-1	change
Ft. McCoy, Wisconsin	0	0	[illegible]	[illegible]	242
Tomah, Wisconsin	1,910	[illegible]	1,741	747	[illegible]

Northern states that due to an urgent need to provide natural gas service prior to the winter heating season, Northern is concurrently proceeding to install and operate the Ft. McCoy delivery point under section 311 of the Natural Gas Policy Act. Northern states that such service is an interim measure, intended solely to ensure the prompt commencement of service to Ft. McCoy, and that jurisdictional natural gas sales service would commence immediately upon approval of the authority requested herein.

It is further stated that the instant proposal is in lieu of the request filed in Docket No. CP85–62–000 but never implemented, and that the request in Docket No. CP85–62–000 did not involve a realignment of volumes. Northern estimates that the peak day and annual volumes for the proposed deliveries in the fifth year of service would be 393 Mcf and 58,140 Mcf, respectively. Northern advises that the end-use of the gas would be residential.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 88–24016 Filed 10–17–88; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2453–003]

Pennsylvania Hydroelectric Development Corp.; Establishing Deadline for Submitting Supplemental Information

October 11, 1988.

By order dated August 16, 1988,[1] the Commission issued a license to Pennsylvania Hydroelectric Development Corporation (PHDC) for the proposed Flat Rock Dam Project No. 2803, to be located at the existing state-owned Flat Rock Dam on the Schuylkill River, on the border between the City of Philadelphia and Lower Marion Township, Pennsylvania. On September 15, 1988, PHDC filed a timely request for rehearing of the Commission's order.

In its request for rehearing PHDC petitioned the Commission to reopen the record to submit supplemental information regarding certain articles of the license. Since the supplemental information PHDC wishes to submit may help clarify important issues relevent to the proceeding, notice is hereby given that PHDC is given until October 18, 1988, to file its supplemental information.

Lois D. Cashell,

Secretary.

[FR Doc. 88–24011 Filed 10–17–88; 8:45 am]

BILLING CODE 6717–01–M

[1] 44 FERC ¶ 61,252 (1988).

[Docket No. MT88–7–001]

Sabine Pipe Line Co.; Proposed Changes in FERC Gas Tariff Pursuant to Order No. 497

October 11, 1988.

Take notice that on October 7, 1988, Sabine Pipe Line Company tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, First Revised Volume No. 1:

First Revised Sheet No. 200
Substitute Original Sheet No. 200A
Second Revised Sheet No. 204
Substitute Second Revised Sheet No. 205
Substitute Original Sheet No. 205A
Substitute Original Sheet No. 205B
Substitute Original Sheet No. 205C
Substitute Original Sheet No. 205D
Second Revised Sheet No. 206
Second Revised Sheet No. 207
Second Revised Sheet No. 208
First Revised Sheet No. 229
Original Sheet No. 230
Original Sheet No. 231
Substitute Original Sheet No. 232
Original Sheet No. 233
Original Sheet No. 234

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211. All such motions or protests must be filed by October 18, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–24013 Filed 10–17–88; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2113 Wisconsin]

Wisconsin Valley Improvement Co.; Intent to File an Application for a New License

October 13, 1988.

Take notice that on July 25, 1988, Wisconsin Valley Improvement Company, the existing licensee for the Wisconsin Valley Project No. 2113, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99–495. The original license for Project No. 2113 was issued effective August 1, 1943, and expires July 31, 1993.

The project has no installed hydroelectric generating equipment but consists solely of twenty-one storage reservoirs located on the Wisconsin River and its tributaries, and which are operated to regulate the flow on the main stem of the river. Because of its effect on the production of electricity by twenty-six hydroelectric plants on the river, the project is licensed as a major water power project. The project reservoirs are located in the Wisconsin counties of Marathon, Lincoln, Oneida, Vilas, and Forest, and in Gogebic County, Michigan.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87–7–000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 2301 North Third Street, Wausau, Wisconsin 54401.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by July 30, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 88–24028 Filed 10–17–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT88–8–001]

Equitrans, Inc., Proposed Changes in Ferc Gas Tariff Pursuant to Order No. 497

October 13, 1988.

Take notice that on October 13, 1988, Equitrans, Inc., tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Original Volume No. 3:

Substitute First Revised Sheet No. 21
Substitute Original Sheet No. 21A
Substitute Original Sheet No. 21B
Substitute Original Sheet No. 23A
Substitute First Revised Sheet No. 25
Substitute Original Sheet No. 25A
Substitute Original Sheet No. 25B
Substitute First Revised Sheet No. 27
Substitute Original Sheet No. 27A
Substitute Original Sheet Nos. 40 through 46

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211. All such motions or protests must be filed by October 20, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–24038 Filed 10–17–88; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties $1,766,489.03 obtained as a result of a settlement agreement that the DOE entered into with the Holly Corporation (Case No. KEF–0113), a producer of crude oil located in Goliad and Wharton counties, Texas. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Comment must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearing and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to Case Number KEF–0113.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. (202) 586–2390.

SUPPLEMENTARY INFORMATION: In accordance with the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to a July 31, 1987 settlement agreement between the DOE and Holly Corporation (Holly). This settlement agreement was modified by an Amendment in April 1988. The amendment settlement agreement resolves certain disputes between the firm and the DOE concerning Holly's possible violations of DOE regulations in its sales of crude oil. The settlement agreement covers the period June 1979 through December 1980.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of an escrow account in the amount of $1,766,489.03, funded by Holly pursuant to the amended settlement agreement. The determination proposes that the money be placed into a pool of crude oil money for distribution pursuant to the DOE's Statement of Restitutionary Policy for crude oil claims.

Any member of the public may submit written comments regarding the proposed refund procedures. Such parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice. All comments received in this proceeding will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, locaterd in Room 1E–234, 100 Independence Avenue, SW., Washington, DC 20585.

Dated: October 12, 1988.

George B. Breznay,

Director Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Name of Firm: Holly Corporation.
Date of Filing: July 21, 1988.
Case Number: KEF–0113.

On July 21, 1988, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a Petition for the Implementation of Special Refund Procedures (Petition) with the Office of Hearings and Appeals (OHA). In the Petition, the ERA requests that the OHA formulate and implement procedures for distributing funds obtained through the settlement of enforcement proceedings involving the Holly Corporation (Holly). 10 CFR Part 205, Subpart V. This Proposed Decision sets forth the OHA's tentative plan for distributing these funds to qualified refund applicants.

Holly was a "producer" of crude oil as that term is defined in 10 CFR 212.31. During the period June 1979 through December 1980 (the period of the alleged regulatory violations), Holly produced and sold crude oil from three properties located in Goliad and Wharton counties, Texas. Holly was therefore subject to the provisions of the Mandatory Petroleum Price Regulations, 10 CFR Part 212. The ERA conducted an extensive audit of Holly's operations and found in a Proposed Remedial Order that the firm has violated applicable DOE pricing regulations in its sales of crude oil. The Proposed Remedial Order was issued as a final Remedial Order by the OHA on March 29, 1985. *Holly Energy, Inc. and Holly Corporation*, 15 Doe ¶ 83,036 (1985). The Federal Energy Regulatory Commission affirmed the Remedial Order on November 26, 1985. *Holly Corporation and Holly Energy, Inc.*, 37 FERC ¶ 61,187 (1986).[1]

In order to settle the claims and disputes between Holly and the DOE that were raised in the Remedial Order, the two parties entered into a Settlement Agreement on July 31, 1987. In April 1988, the Department of Justice agreed to this Settlement Agreement, modified by an Amendment, in accordance with the terms of the Amendment to the Settlement Agreement, Holly paid $1,766,489.03 to the DOE on April 29, 1988. Neither the Settlement Agreement nor the Amendment makes any

[1] Holly's action seeking judicial review of the Remedial Order was terminated when a Stipulation of Withdrawal was entered by the U.S. District Court for the District of Delaware on June 7, 1988.

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provision for the distribution of the funds remitted by Holly. It its Petition, the ERA states that it has been unable to identify persons injured by the overcharges or the amount which any individual may be entitled to receive. In accordance with the provisions of 10 CFR Subpart V, the ERA therefore requests that OHA establish appropriate procedures for the distribution of the funds remitted by Holly.

I. Proposed Refund Procedures

On July 28, 1986, as a result of the court-approved Settlement Agreement in *In Re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378, the DOE issued a Modified Statement of Restitutionary Policy (MSRP) providing that crude oil overcharge or settlement revenues will be divided among the States, the United States Treasury, and eligible purchasers of crude oil and refined products. 51 FR 27899 (August 4, 1986). Up to 20 percent of the crude oil violation or settlement amounts may be reserved to satisfy claims from injured parties that purchased refined petroleum products between August 19, 1973, and January 27, 1981 (the crude oil price control period). We proposed that such claims be processed through Subpart V special refund procedures. The MSRP also calls for the remaining funds, after deducting the reserve, to be disbursed for indirect restitution. The MSRP states that this disbursement should be made both to the federal government and to the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa and the Northern Marianna Islands (the States). Accordingly, once all valid claims are paid, any remaining funds will be divided equally between the federal government and the States. The federal government's share of the unclaimed funds will ultimately be deposited into the general fund of the Treasury of the United States.

The Holly funds are subject to the MSRP. Therefore we propose to institute a claims process for the $1,766,489.03 in funds involved in this proceeding. In the present case, we have decided to reserve the full 20 percent, or $353,297.81, of the alleged violation amount, plus a proportionate share of the accrued interest, for direct restitution to claimants that purchased refined petroleum products during the crude oil price control period. Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the Holly refund pool of $1,766,489.03 by the total consumption of petroleum products in the United States during the crude oil price control period (2,020,997,335,000 gallons). *Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 at 88,867 (1986) *(Mountain Fuel)*. This approach reflects the fact that crude oil overcharges were spread to every region by the Entitlements Program.[1] The volumetric amount for the crude oil pool established in this proceeding is therefore $0.00000087407 per gallon of refined products purchased ($1,766,489.03/2,020,997,335,000=$0.00000087407).

We propose that the remaining 80 percent of the funds, or $1,413,191.22, be disbursed equally to the federal government and to the States for indirect restitution. We propose to direct the DOE's Office of the Controller to separate and divide this amount, and to distribute $706,595.61 plus appropriate interest to the States' crude oil tracking account [2] and $706,595.61 plus appropriate interest to the federal government crude oil tracking account.

II. Proposed Presumptions Concerning Injury

The process which the OHA will use to evaluate claims based on crude oil violations will be modeled after the process the OHA has used to evaluate claims based on alleged refined product overcharges pursuant to 10 CFR Part 205, Supart V. *Mountain Fuel* 14 DOE at 88,869. As in non-crude oil cases, applicants generally are required to document their purchase volumes and to prove that they were injured by the alleged violations (*i.e.* that they did not pass through the alleged overcharges to their customers). We propose to apply the standards for showing injury that the OHA has developed in analyzing a non-crude oil claims.

See, E.G., Dorchester Gas Corp., 14 DOE ¶ 85,240 (1986). These standards include a finding that end-users and ultimate consumers whose businesses are unrelated to the petroleum industry were injured by a consent order firm's alleged overcharges. From our experience with subpart V refund proceedings, we believe that potential claimants will fall into the following categories: (1) End-users, *i.e.*, consumers who used refined petroleum products; (2) regulated non-petroleum industry entities that used Holly products in their businesses, or cooperatives that purchased Holly products for their businesses; and (3) Refiners, resellers or retailers who resold refined petroleum products.

In establishing the procedures which will govern the Holly Refund Proceeding, we propose to adopt certain presumptions that will permit claimants to participate in the refund process without incurring inordinate expense and will enable the OHA to consider refund applications in the most efficient manner possible. *American Pacific International*, 14 DOE ¶ 85,156 (1986) *(API)* First, we propose to adopt a presumption that the alleged overcharges were dispersed equally in all sales of refined products made during the period of crude oil price controls and that refunds should therefore be made on a pro rata or volumtric per gallon basis. In the absence of better information, a volumetric refund assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.

We also propose to adopt a number of injury presumptions that will simplify and streamline the refund process. These presumptions will excuse members of certain applicant categories from proving that they were injured by Holly's alleged overcharges. We will discuss these presumptions and the showing that each type of applicant must make in Section II(a) below.

(A) Specific Application Requirements for Each Category of Refund Applicants

(1) Refund applications of end-Users. We propose to adopt a finding that end-users or ultimate consumers whose businesses are unrelated to the petroleum industry were injured by the alleged overcharges settled in the consent order. Unlike regulated firms in the petroleum industry, end-users generally were not subject to price controls during the consent order period. Moreover, they were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984) *(Texas)*. Therefore, we propose that end-users of petroleum products need only to establish that they were ultimate consumers of a specific volume of petroleum products to qualify for a refund of their full allocable share.

(2) Refund applications of cooperatives and regulated firms. We also will not require firms whose prices for goods and services are regulated by a government agency or by the terms of a cooperative agreement to demonstrate injury as a result of alleged overcharges on refined products. Although such firms, *e.g.*, public utilities that used petroleum products as feedstocks and agricultural cooperatives, generally would have passed any overcharges through to their customers, they generally would pass through any refunds, as well. Therefore, we will require such applicants to certify that they will pass any refund received through to their customers and provide us with a detailed explanation of how they plan to accomplish this restitution. We will also require them to explain how they will notify the appropriate regulatory body or membership group of their receipt of the refund money. *See Office of Special Counsel*, 9 DOE ¶ 85,538 at 85,303 (1982). We note, however, that a cooperative's sales of petroleum products to non-members will be treated in the same manner as sales by other resellers. Cooperatives should therefore provide the DOE with a breakdown of their sales volumes to members and non-members.

(3) Refund applications of resellers, retailers and refiners. We propose to adopt a presumption that resellers, retailers and refiners were generally able to pass any overcharges through to their customers. In order to qualify for a refund, resellers, retailers and refiners must therefore show that they were unable to pass through the effects of crude oil overcharges to their own customers. It will be extremely difficult for resellers and retailers to make such showing. The Entitlements program spread crude oil overcharges evenly throughout the industry. Because crude oil overcharges equally affected *all* resellers and retailers (*i.e.*, the applicants and their competitors), regardless of supplier, we believe that resellers: and retailers' selling prices generally increased to the same degree. *See A. Tarricone, Inc.*, 15 DOE ¶ 85,495 at 88,896 (1987). It would be unreasonable to presume, therefore, that any reseller or retailer applicants in Subpart V crude oil proceedings were adversely affected or competitively injured by crude oil overcharges. Instead, we require a detailed demonstration that a reseller or retailer was unable to pass through the effects of crude oil overcharges to its customers. For example, a gasoline station would need to show that the minute fraction of a cent per gallon crude oil overcharge was absorbed by it rather than passed through to its customers as a result of overall higher prices in the gasoline market in its area.

(B) General Refund Application Requirements

In addition to the specific requirements outlined above, all Applications for Refund must be in writing and must be signed by the applicant. The OHA has issued a number of Decisions and Orders explaining crude oil refund procedures. Two Decisions describing crude oil refund procedures in detail are *Ernest Allerkamp*, 17 DOE ¶ 85,079 (1988), and *A. Tarricone*, 15 DOE ¶ 85,495 (1985). Individuals who have already filed an application for a crude oil refund will not be required to submit another application in order to be considered for a share of the money paid to the DOE by Holly.

It is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Holly Corporation pursuant to the Amended Settlement Agreement, which became final in April 1988, will be distributed in accordance with the foregoing Decision.

[FR Doc. 88-24031 Filed 10-17-88; 8:45 am]

BILLING CODE 6450-01-M

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[1] The Department of Energy established the Entitlements Program to equalize access to the benefits of crude oil price controls among all domestic refiners and their downstream customers. To accomplish this goal, refiners were required to make transfer payments among themselves through the purchase and sale of entitlements to the lowest priced crude oil. This balancing mechanism had the effect of evenly dispersing overcharges resulting from crude oil miscertifications throughout the domestic refining industry. *See, e.g., Amber Refining, Inc.* 13 DOE ¶ 85,217 (1985).

[2] The funds in the States' crude oil tracking account are distributed to the 50 States, territories and possessions of the United States whenever the total amount of the account equals 10 million dollars or as determined by the Director, OHA.

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59094; FRL-3463-4]

Biotechnology Science Advisory Committee; Health Subcommittee; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: There will be a 2-day meeting of the Health Subcommittee of the Biotechnology Science Advisory Committee. The meeting will be open to the public. The Committee will be informed of and discuss issues associated with the biotechnology health research program of EPA's Office of Research and Development.

DATES: The meeting will be held on Monday and Tuesday, November 7 and 8, 1988, starting at 9 a.m. and ending at approximately 5 p.m.

ADDRESS: The meeting will be held at: Environmental Protection Agency, Crystal Mall #2, Room 1112, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: John R. Fowle III, Ph.D., Environmental Protection Agency, Office of Health Research, Office of Research and Development (RD-683), 401 M St., SW., Washington, DC 20460 (202-382-6900).

SUPPLEMENTARY INFORMATION: Attendance by the public will be limited to available space. The Office of Research and Development will provide summaries of the meeting at a later date.

Dated: October 12, 1988.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 88-23981 Filed 10-17-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3463-8]

Opportunity to Comment; Water Pollution Control; Clean Water Act Class I and II Administrative Penalty Assessments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment.

SUMMARY: EPA is providing notice of a proposed administrative penalty assessment for an alleged violation of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after the commencement of either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1319(g)(4)(a).

Class I proceedings are conducted under EPA's Guidance on Class I Clean Water Act Administrative Penalty Procedures. The procedures through which the public may submit written comment on a proposed Class I order or participate in a Class I proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Guidance. The deadline for submitting public comments on a proposed Class I order is thirty (30) days after issuance of public notice.

On the date identified below, EPA commenced the following Class I proceeding for the assessment of penalties:

In the Matter of Chevron U.S.A. Inc., Barbers Point Refinery, Barbers Point, Honolulu, Hawaii; EPA Docket No. IX-FY88-54; filed on August, 1988 with the

Regional Hearing Clerk, U.S. EPA, Region 9, 215 Fremont St., San Francisco, California 94105, (415) 974-8036; proposed penalty of $10,000, for discharging approximately 104,000 gallons of jet-A fuel from a pipeline into Waiawa Stream and Middle Loch, Pearl Harbor, Hawaii, in violation of section 301(a) of the Clean Water Act.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Guidance, review the Complaint or other documents filed in this proceeding, comment upon a proposed assessment, or otherwise participate in this proceeding should contact the Regional Hearing Clerk identified above. The administrative record for this proceeding is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by the respondent is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide an opportunity for public comment, EPA will issue no final order assessing a penalty in these proceedings prior to thirty (30) days after the date of publication of this notice.

Dated: October 6, 1988.

Harry Seraydarian,

Director, Water Management Division.

[FR Doc. 88-23980 Filed 10-17-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments and protests are found in § 560.7 and/or 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224-011074-002.

Title: Baton Rouge Marine Contractors, Inc., Terminal Agreement.

Parties:

Strachan Shipping Company
I.T.O. Corporation
Cooper/T. Smith Stevedoring
Cavaliar Corporation
Kerr Steamship Co., Inc.

Filing Party: John P. Meade, Attorney, for Baton Rouge Marine Contractors, Inc., Suite 800, 1919 Pennsylvania Avenue NW., Washington, DC 20006-3451.

Synopsis: The agreement amendment empowers Baton Rouge Marine Contractors, Inc. to acquire and operate any marine terminal operation within the Port of Lake Charles in Louisiana.

By Order of the Federal Maritime Commission.

Dated: October 13, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88-23983 Filed 10-17-88; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200046-001.

Title: Port of New Orleans Terminal Agreement.

Parties:

Board of Commissioners of the Port of New Orleans
Delta Petroleum Company, Inc.

Synopsis: The agreement provides for the renewal of the lease agreement of the Tinalia Street Wharf for an additional one year term.

Agreement No.: 224-010910-001.

Title: Port of Oakland Terminal Agreement.

Parties:

Port of Oakland and Neptune Orient Lines, Ltd.
Orient Overseas Container Line, Ltd.,
Nippon Liner Systems, Ltd.
Yamashita-Shinnihon Steamship Co., Ltd.,
Japan Line, Ltd.

Synopsis: The agreement permits the substitution of Nippon Liner Systems, Ltd. (NLS), as a new joint party under the basic agreement on the condition that in the event of termination of the NLS joint service/consortium its individual parties, Yamashita-Shinnihon Steamship Co., Ltd. and Japan Line Ltd., will remain as individual joint parties under Agreement No. 224-010910.

Agreement No.: 224-010954-003.

Title: Georgia Ports Authority Terminal Agreement.

Parties:

Georgia Ports Authority
Mitsui O.S.K. Lines,
Nippon Yusen Kaisha,
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed agreement amends Agreement No. 224-010954 and changes the rate on receiving/delivery of cargoes and special service moves from $30.53 to $30.33.

Agreement No.: 224-004003-001.

Title: Long Beach Terminal Agreement.

Parties:

City of Long Beach
Toyota Motors Sales, U.S.A. (Toyota)

Synopsis: The proposed agreement amends Agreement No. 224-004003 and provides for Toyota to release certain leasehold property to LB and receive therefor a reduction of the annual rental at the Port of Long Beach.

By Order of the Federal Maritime Commission.

Dated: October 11, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88-24021 Filed 10-17-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL MEDIATION AND CONCILIATION SERVICE

Labor-Management Cooperation Program; Application Solicitation

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Request for public comment on draft FY 1989 program guidelines/application solicitation for Labor-Management Committees.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS) is publishing the draft Fiscal Year 1989 Program Guidelines/Application Solicitation for the Labor-Management Cooperation Program to inform the public and obtain public comments. The program is supported by Federal funds authorized by the Labor-Management Cooperation Act of 1978, subject to annual appropriations.

DATE: Comments are due on or before November 15, 1988.

ADDRESS: Send comments to: Peter L. Regner, Director, Staff Operations and Programs, FMCS, 2100 K Street, NW., Washington, DC 20427.

FOR FURTHER INFORMATION CONTACT: Peter L. Regner, 202/653-5320.

Labor-Management Cooperation Program Application Solicitation for Labor-Management Committees—FY 1989

A. Introduction

The following is the draft solicitation for the Fiscal Year 1989 cycle of the Labor-Management Cooperation Program as it pertains to the support of labor-management committees. A separate solicitation will be issued for support of the Fifth National Labor-Management Conference. These guidelines represent the continuing efforts of the Federal Mediation and Conciliation Service to implement the provisions of the Labor-Management Cooperation Act of 1978 which was initially implemented in Fiscal Year 1981. The Act generally authorizes FMCS to provide assistance in the establishment and operation of plant, area, public sector, and industry-wide labor-management committees which:

(A) Have been organized jointly by employers and labor organizations representing employees in that plant, area, government agency, or industry; and

(B) Are established for the purpose of improving labor-management relationships, job security, and organizational effectiveness; enhancing economic development; or involving workers in decisions affecting their jobs, including improving communication with respect to subjects of mutual interest and concern.

The Program Description and other sections that follow, as well as a separately published FMCS Financial and Administrative Grants Manual, make up the basic guidelines, criteria, and program elements a potential applicant for assistance under this program must know in order to develop an application for funding consideration for either a plant, area-wide, industry, or public sector labor-management committee. Directions for obtaining an application kit may be found in Section I. A copy of the Labor-Management Cooperation Act of 1978 follows this solicitation and should be reviewed in conjunction with this solicitation.

B. Program Description

Objectives

The Labor-Management Cooperation Act of 1978 identifies the following seven general areas for which financial assistance would be appropriate:

(1) To improve communication between representatives of labor and management;

(2) To provide workers and employers with opportunities to study and explore new and innovative joint approaches to achieving organizational effectiveness;

(3) To assist workers and employers in solving problems of mutual concern not susceptible to resolution within the collective bargaining process;

(4) To study and explore ways of eliminating potential problems which reduce the competitiveness and inhibit the economic development of the plant, area, or industry;

(5) To enhance the involvement of workers in making decisions that affect their working lives;

(6) To expand and improve working relationships between workers and managers; and

(7) To encourage free collective bargaining by establishing continuing mechanisms for communication between employers and their employees through Federal assistance in the formation and operation of labor-management committees.

The primary objective of this program is to encourage and support the establishment and operation of joint labor-management committees to carry out specific objectives that meet the aforementioned general criteria. The term "labor" refers to employees represented by a labor organization and covered by a formal collective bargaining agreement. These committees may be found at either the plant (worksite), area, industry, or public sector levels. A plant or worksite committee is generally characterized as restricted to one or more organizational or productive units operated by a single employer. An area committee is generally composed of multiple employers of diverse industries as well as multiple labor unions operating within and focusing upon city, county, contiguous multicounty, or statewide jurisdictions. An industry committee generally consists of a collection of agencies or enterprises and related labor unions producing a common product or service in the private sector on a local, state, regional, or nationwide level. A public sector committee consists of government employees and managers in one or more units of a local or state government. Those employees must be covered by a formal collective bargaining agreement. Employees covered by a so-called "meet and confer" agreement are not eligible under this program. In deciding whether an application is for an area or industry committee, consideration should be given to the above definitions as well as to the focus on the committee.

In FY89, competition will be open to plant, area, private industry, and public sector committees. In-plant committee applications should offer an innovative or unique effort. All application budget requests should focus directly on supporting the committee. Applicants should avoid seeking funds for activities that are clearly available under other Federal programs (e.g., job training, mediation of contract disputes, etc.).

Required Program Elements

1. *Problem Statement*—The application, which should have numbered pages, must discuss in detail what specific problem(s) face the plant, area, government, or industry and its workforce that will be addressed by the committee. Applicants must document the problem(s) using as much relevant data as possible and discuss the full range of impacts these problem(s) could have or are having on the plant, government, area, or industry. An industrial or economic profile of the area and workforce might prove useful in explaining the problem(s). This section basically discusses *WHY* the effort is needed.

2. *Results or Benefits Expected*—By using specific goals and objectives, the application must discuss in detail *WHAT* the labor-management committee as a demonstration effort will accomplish during the life of the grant. While a goal of "improving communication between employers and employees" may suffice as one over-all goal of a project, the objectives must, whenever possible, be expressed in measurable terms. Applicants should focus on the impacts or changes that the committee's efforts will have. Existing committees should focus on *expansion* efforts/results expected from FMCS funding. The goals, objectives, and projected impacts will become the

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foundation for future monitoring and evaluation efforts.

3. *Approach*—This section of the application specifies *HOW* the goals and objectives will be accomplished. At a minimum, the following elements must be included in all grant applications:

(a) A discussion of the strategy the committee will employ to accomplish its goals and objectives;

(b) A listing, by name and title, of all existing or proposed members of the labor-management committee. The application should also offer a rationale for the selection of the committee members (e.g., members represent 70% of the area or plant workforce).

(c) A discussion of the number, type, and role of all committee staff persons. Include proposed position descriptions for all staff that will have to be hired as well as resumes for staff already on board;

(d) In addressing the proposed approach, applicants must also present their justification as to why Federal funds are needed to implement the proposed approach;

(e) A statement of how often the committee will meet as well as any plans to form subordinate committees for particular purposes; and

(f) For applications from existing committees (i.e., in existence at least 12 months prior to the submission deadline), a discussion of past efforts and accomplishments and how they would integrate with the proposed expanded effort.

4. *Major Milestones*—This section must include an implementation plan that indicates what major steps, operating activities, and objectives will be accomplished as well as a timetable for *WHEN* they will be finished. A milestone chart must be included that indicates what specific accomplishments (process and impact) will be completed by month over the life of the grant using October 1989 as the start date. The accomplishment of these tasks and objectives, as well as problems and delays therein, will serve as the basis for quarterly progress reports to FMCS.

5. *Evaluation*—Applicants must provide for either an external evaluation or an internal assessment of the project's success in meeting its goals and objectives.

An evaluation plan must be developed which will briefly discuss what basic questions or issues the assessment examine and what baseline data the committee staff already has or will gather for the assessment. This section should be written with the application's own goals and objectives clearly in mind and the impacts or changes that the effort is expected to cause.

6. *Letters of Commitment*—Applications must include current letters of commitment form *all* proposed or existing committee participants and chairpersons. These letters should indicate that the participants support the application and will attend scheduled committee meetings. A blanket letter signed by a committee chairperson or other official on behalf of all members is not acceptable.

7. *Other Requirements*—Applicants are also responsible for the following:

(a) The submission of data indicating approximately how many employees will be covered or represented through the labor-management committee;

(b) From existing committees, a copy of the existing staffing levels, a copy of the by-laws, a breakout of annual operating costs and identification of all sources and levels of current financial support;

(c) A detailed budget narrative based on policies and procedures contained in the FMCS Financial and Administrative Grants Manual;

(d) An assurance that the labor-management committee will not interfere with any collective bargaining agreements; and

(e) An assurance that committee meetings will be held at least every other month and that written minutes of all committee meetings will be prepared and made available to FMCS.

Selection Criteria

The following criteria will be used in the scoring and selection of applications for award:

(1) The extent to which the application has clearly identified the problems and justified the needs that the proposed project will address.

(2) The degree to which appropriate and measurable goals and objectives have been developed to address the problems/needs of the area. For existing committees, the extent to which the committee will focus on expanded efforts.

(3) The feasibility of the approach proposed to attain the goals and objectives of the project and the perceived likelihood of accomplishing the intended project results. For in-plant applicants, this section will address the degree of innovation or uniqueness of the proposed effort.

(4) The appropriateness of committee membership and the degree of commitment of these individuals to the goals of the application.

(5) The feasibility and thoroughness of the implementation plan in specifying major milestones and target dates.

(6) The cost effectiveness and fiscal soundness of the application's budget request, as well as the application's feasibility vs. its goals and approach.

(7) The overall feasibility of the proposed project in light of all of the information presented for consideration; and,

(8) The value to the government of the application in light of the overall objectives of the Labor-Management Cooperation Act of 1978. This includes such factors as innovatives, site location, cost, and other qualities that impact upon an applicant's value in encouraging the labor-management committee concept.

C. Eligibility

Eligibility grantees include State and local units of government, private, non-profit labor-management committees (or a labor or management entity on behalf of a committee that will be created through the grant), and certain third party private non-profit entities on behalf of one or more committees to be created through the grant. Federal government agencies and their employees are not eligible.

Third party private, non-profit entities which can document that a major purpose or function of their organization has been the improvement of labor relations are eligible to apply. However, all funding must be directed to the functioning of the labor-management committee, and all requirements under Part B must be followed. Applications from third-party entities must document particularly strong support and participation from all labor and management parties with whom the applicant will be working. Applicants from third-parties which do not directly support the operation of a new or expanded committee will not be deemed eligible.

Applicants who received funding under this program in the past for committee operations are generally not eligible to apply. The only exception applies to third-party grantees who seek funds on behalf of an entirely different committee.

D. Allocations

FMCS has allocated $630,000 for this program. Specific funding levels will not be established for each type of committee. Instead, the review process will be conducted in such a manner that at least two awards will be made in each category (plant, industry, public sector, and area), providing that FMCS determines that at least two outstanding applications exist in each category. After these applications are selected for award, the remaining applications will be awarded according to merit without regard to category.

FMCS reserves the right to retain up to 5 percent of the FY89 appropriation to contract for program support purposes other than administration.

E. Dollar Range and Length of Grants and Continuation Policy

Awards to continue and expand existing labor-management committees (i.e., in existence 12 months prior to the submission deadline) will be for a period of 12 months. If successful progress is made during this initial budget period and if sufficient appropriations for expansion and continuation projects are available, these grants may be continued up to an additional 12 months at double the initial cash match ratio.

The total project period can thus normally be no more than 24 months.

Initial awards to establish new labor-management committees (i.e., not yet established or in existence less than 12 months prior to the submission deadline), will be for a period of 18 months. If successful progress is made during this initial budget period and if sufficient appropriations for expansion and continuation project are available, these grants may be continued up to an additional 18 months at double the initial cash match ratio. The total project period can thus normally be no more than 36 months.

The dollar range of awards is as follows:

—Up to $35,000, in FMCS funds per annum for existing in-plant applicants;
—Up to $50,000 over 18 months for new in-plant committee applicants;
—Up to $75,000 in FMCS funds per annum for existing area, industry and public sector committees applicants;
—Up to $100,000 per 18-month period for new area, industry, and public sector committee applicants.

Applicants are reminded that these figures represent maximum Federal funds only. If total costs to accomplish the objectives of the application exceed the maximum allowable Federal funding level and its required grantee match, applicants may supplement these funds through voluntary contributions from other sources.

F. Match Requirements and Cost Allowability

Applicants for new labor-management committees must provide at least 10 percent of the total allowable project costs. Applicants for existing committees must provide at least 25 percent of the total allowable project costs. All matching funds may come from state or local government sources or private sector contributions, but may generally not include other Federal funds. Funds generated by grant-supported efforts are considered "project income," and may not be used for matching purposes.

It will be the policy of this program to reject all requests for indirect or overhead costs. In addition, grant funds must not the used to supplant private or local/state government funds currently spent for these purposes. Funding requests from existing committees should focus entirely on the costs associated with the expansion efforts. Also, under no circumstances may business or labor officials participating on a labor-mangement committee be compensated out of grant funds for *time* spent at committee meetings or *time* spent in training sessions. Applicants generally will not be allowed to claim all or a portion of *existing* staff time as an expense or match contribution.

For a more complete discussion of cost allowability, applicants are encouraged to consult the FY89 FMCS Financial and Administrative Grants Manual which will be included in the application kit.

G. Application Submission and Review Process

Applications should be signed by *both* a labor and management representative and be postmarked no later than May 6, 1989. No applications or supplementary materials can be accepted after the deadline. It is the responsibility of the applicant to ensure that the application is correctly postmarked by the U.S. Postal Service or other carrier. An original application, containing numbered pages, *plus three copies* should be addressed to the Federal Mediation and Conciliation Service, Labor-Management Grant Programs, 2100 K Street NW., Washington, DC 20427.

After the deadline has passed, all eligible applications, except for those for the National Conference, will be reviewed and scored initially by one or more FMCS Grant Review Boards. The Board(s) will decide which applications will be recommended for funding consideration. The Director, Labor-Management Grant Programs, will finalize the scoring and selection process for those applications recommended by the Board(s).

All FY89 grant applicants will be notified of results and all grant awards will be made before September 30, 1989. Applications submitted after the deadline date or that fail to adhere to eligibility or other major requirements will be administratively rejected by the Director, Labor-Management Grant Programs.

H. Application Development Training

In FY89, FMCS will offer a half-day training program to assist potential applicants with the development and writing of an FMCS grant application. This training session will be conducted in Washington, DC, on December 8, 1988. Individuals interested in attending the session should contact FMCS to reserve a space. See Section I for contact information.

I. Contact

Individuals wishing to apply for funding under this program should contact the Federal Mediation and Conciliation Service as soon as possible to obtain an application kit. These kits, as well as additional information or clarification, can be obtained free of charge by contacting Lee A. Buddendick or Peter L. Regner, Federal Mediation and Conciliation Service, Labor-Management Grant Programs, 2100 K Street NW., Washington, DC 20427; or by calling 202/653-5320.

Kay McMurray,

Director, Federal Mediation and Conciliation Service.

[FR Doc. 88-23987 Filed 10-17-88; 8:45 am]

BILLING CODE 6732-01-M

Labor-Management Cooperation Program; Application Solicitation

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Request for public comment on draft FY 1989 Program Guidelines/Application Solicitation for National Labor-Management Conference.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS) is publishing the draft Fiscal Year 1989 Program Guidelines/Application Solicitation for the National Labor-Management Conference Program to inform the public and obtain public comments.

DATE: Comments are due on or before November 15, 1988.

ADDRESS: Send comments to: Peter L. Regner, Director, Staff Operations and Programs, FMCS, 2100 K Street NW., Washington, DC 20427.

FOR FURTHER INFORMATION CONTACT: Peter L. Regner, 202/653-5320.

BEST COPY AVAILABLE

Labor-Management Cooperation Program—FY 1989; Application Solicitation for the National Labor-Management Conference

A. Introduction

The following is the draft solicitation for the Fiscal Year 1989 cycle of the Labor-Management Cooperation Program as it pertains to the support of the Fifth National Labor-Management Conference scheduled for May 30–June 1, 1990. A separate solicitation has been issued for grants to support labor-management committees. The Program Description and other sections that follow as well as a separately published FMCS Financial and Administrative Grants Manual make up the basic guidelines, criteria, and program elements a potential applicant must know in order to develop an application for funding consideration. Directions for obtaining an application kit may be found in Section G.

B. Program Description

Objections

The Labor-Management Cooperation Act of 1978 was designed to promote the use of joint labor-management committees to deal with issues of mutual concern between labor and management. Since Fiscal Year 1981, the Federal Mediation and Conciliation Service has awarded about 100 grants for the direct support of these joint committees. In an effort to promote this concept to a larger audience, FMCS has also awarded four grants to support four national conferences which highlight developments and experiences of such committees around the nation. A total of about 4,700 persons have attended these four conferences.

The Fifth National Labor-Management Conference will be supported by FMCS through a competitive cooperative agreement. All application budget requests should focus directly on supporting the conference in cooperation with FMCS.

Required Program Elements

1. *Problem Statement*—The application, which should have numbered pages, must discuss what problems or issues face today's business and labor leaders that can be addressed at the conference. This section basically discussed *WHY* such a conference is needed.

2. *Results or Benefits Expected*—The application must discuss *WHAT* the conference is expected to accomplish.

3. *Approach*—This section specifies in detail *HOW* the applicant will assist FMCS in accomplishing the goals and objectives. At a minimum, the following elements must be included:

(a) What services will the applicant provide in the planning, design, and marketing of the conference.

(b) What services will the applicant provide in the administration of the conference.

(c) What services will the applicant provide in the evaluation of the conference.

(d) What kind of technical assistance will the applicant provide as a follow-up to the conference.

(e) What experience has the applicant had in supporting conferences and/or labor-management cooperation.

(f) What kind of computer-based registration system will be used and its capacities.

4. *Major Milestones*—This section must include an implementation plan that indicates what major steps, operating activities, and objectives will be accomplished as well as WHEN each will be completed

5. *Other Requirements*—Applicants are also responsible for the following:

(a) A detailed budget narrative based on applicable policies and procedures contained in the FMCS Financial and Administrative Grants Manual;

(b) A position description or resume of a proposed/actual person who will act as the Conference Administrator. The Conference Administrator must reside in the Washington, DC area;

(c) A copy of the proposed agreement or contract between the applicant and the Conference Administrator;

(d) An acknowledgement that the selection of the Conference Administrator is subject to prior approval by FMCS.

Selection Criteria

The following criteria will be used in scoring and selecting an applicant for award:

(1) The extent to which an applicant has identified an understanding of the issues and problems facing labor and management that can be addressed through the conference.

(2) The appropriateness of the expectations of what can be accomplished through the conference.

(3) The feasibility of the approach proposed in carrying out the conference. This includes and evaluation of how comprehensive the proposed support services are and the feasibility of the applicant in providing the services in a satisfactory manner.

(4) The feasibility and thoroughness of the implementation plan and major milestones.

(5) The cost effectiveness and fiscal soundness of the applicant's budget request.

C. Eligibility

Applicant eligibility is limited to national scope labor-management committees/organizations or private non-profit organizations which can document that a major purpose or function of other organization has been the improvement of labor relations.

D. Allocations

FMCS has allocated $70,000 for this effort. This amount, plus any project income, must cover all conference expenses including speaker travel, postage, food and beverage, salary, audio-visual equipment rental, etc. Requests for blanket or fixed indirect (overhead) costs will be denied.

E. Length of Award and Match

The length of award will be 19 months beginning March 1, 1989 and ending September 30, 1990. No matching funds will be required for this cooperative agreement.

F. Application Submission and Review

Applications must be postmarked no later than January 28, 1989. No applications or supplementary materials can be accepted after the deadline. It is the responsibility of the applicant to ensure that the application is correctly postmarked by the U.S. Postal Service or other carrier. An original application, plus one copy, should be addressed to the Office of Labor-Management Grant Programs, FMCS, 2100 K Street NW., Washington, DC 20427.

After the deadline has passed, all eligible conference applications will be reviewed, scored, and selected by the Director, Labor-Management Grant Programs who also serves as Conference Coordinator. Due to the special nature of this cooperative agreement, a Grant Review Board will not be used. All conference applicants will be notified of results prior to February 28, 1989. Applications submitted after the deadline date or that fail to adhere to eligibility or other major requirements may be administratively rejected by the Director, Labor-Management Grant Programs.

G. Contact

Individuals wishing to apply for funding under this program should contact the Federal Mediation and Conciliation Service as soon as possible to obtain an application kit. These kits, as well as additional information or clarification, can be obtained free of charge by contacting Peter L. Regner, Labor-Management Grant programs, FMCS, 2100 K Street, NW., Washington, DC 20427, or by calling (202) 653–5320.

Kay McMurray,

Director, Federal Mediation and Conciliation Service.

[FR Doc. 88–23966 Filed 10–17–88; 8:45 am]

BILLING CODE 6732-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Vital and Health Statistics National Committee Meeting

Action: Notice of Meeting.

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the National Committee on Vital and Health Statistics established pursuant to 42 U.S.C. 242k, section 306(k)(2) of the Public Health Service Act, as amended, announces the following meeting.

Name: National Committee on Vital and Health Statistics.

Time and Date: 1:00 pm–4:45 pm—November 2; 9:00 am–5:00 pm—November 3; 9:00 am–12:30 pm—November 4.

Place: Hubert H. Humphrey Building, Room 703A, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The purpose of this meeting is for the Committee to receive and consider reports from each of its subcommittees and to address new business as appropriate.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and roster of Committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, National Committee on Vital and Health Statistics, Room 2–12, Center Building, 3700 East West Highway, Hyattsville, Maryland 20782, telephone (301) 436–7050.

Dated: October 12, 1988.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 88–23970 Filed 10–17–88; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 88N–0364]

Drug Export; Adalat PA–20 (Nifedipine) 20 MG Tablets

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Miles Inc., Pharmaceutical Division has filed an application requesting approval for the export of the human drug Adalat PA–20 (nifedipine) 20 mg Tablets to Canada.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Rudolf Apodaca, Division of Drug Labeling Compliance (HFN–310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8043.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99–660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Miles Inc., Pharmaceutical Division, 400 Morgan Lane, West Haven, CT 06516, has filed an application requesting approval for the export of the drug Adalat PA–20 (nifedipine) 20 mg Tablets, to Canada. This drug is used as an antihypertensive agent. The application was received and filed in the Center for Drug Evaluation and Research on October 4, 1988, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by October 28, 1988, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99–660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: October 7, 1988.

Albert Rothschild,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 88–23968 Filed 10–17–88; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[BERC–463–NC]

Medicare Program; Schedule of Limits on Home Health Agency Costs Per Visit for Cost Reporting Periods Beginning on or After July 1, 1988

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice with comment period.

SUMMARY: This final notice with comment period sets forth an updated schedule of limits on home health agency (HHA) costs that may be reimbursed under the Medicare program. This updated scheduled of limits applies to cost reporting periods beginning on or after July 1, 1988.

DATES: Effective Date: The schedule of limits is effective for cost reporting periods beginning on or after July 1, 1988.

Comment Date: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on December 19, 1988.

ADDRESSES: Mail comments to the following addresses: Health Care Financing Administration, Department of Health and Human Services, Attn: BERC–463–NC, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC.
Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC–463–NC. Comments will be available for public inspection as they are received, generally beginning about three weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202–245–7890).

FOR FURTHER INFORMATION CONTACT: Steven R. Kirsh, (301) 966–5853.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1861(v)(1)(A) of the Social Security Act (the Act) authorizes the Secretary to establish limits on allowable costs incurred by a provider of services that may be reimbursed under the Medicare program, based on estimates of the costs necessary for the efficient delivery of needed health services. The limits may be applied to direct or indirect overall costs or to the costs incurred for specific items or services furnished by the provider. This provision of the statute is implemented under regulations at 42 CFR 413.30. Additional provisions specifically governing the limits applicable to HHAs are contained in section 1861(v)(1)(L) of the Act.

Under this authority, we have maintained limits on home health agency (HHA) per visit costs since 1979. This notice with comment period updates the current schedule of limits published in the **Federal Register** on July 7, 1987 (52 FR 25562), which is applicable to HHA costs for cost reporting periods beginning on or after July 1, 1987. This updated schedule takes into account the effects of inflation on HHA operating costs and is applicable to cost reporting periods beginning on or after July 1, 1988.

On December 22, 1987, the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203) was enacted. Section 4026(a) of Pub. L. 100–203 amended section 1861(v)(1)(L) of the Act to provide that, in establishing the schedule of limits for cost reporting periods beginning on or after July 1, 1988, the Secretary will use a wage index that is based on audited wage data obtained for HHAs and base the limits on the most recent data available which may be for cost reporting periods beginning no earlier than July 1, 1985. Section 411(d)(5) of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100–360), which was enacted on July 1, 1988, provides for an extension of the effective date of the amendment made by extension 4026(a) of Pub. L. 100–203 to July 1, 1989 and amends section 1861(v)(1)(L)(iii) of the Act to provide that the data used to construct the HHA-specific wage index and the schedule of limits for cost reporting periods beginning on or after July 1, 1989 must be "verified" rather than "audited." In addition, section 1861(v)(1)(L)(iii) of the Act is amended by section 411(d)(5)(A)(ii) of Pub. L. 100–360 to provide that in the case of an HHA that refuses to provide data or provides false data requested by the Secretary for purposes of constructing an HHA wage index, the Secretary may withhold up to five percent of the Medicare payment due that HHA until the data are provided. We discuss these statutory provisions below.

II. Update of Limits

The methodology used to develop the schedule of limits set forth in this notice is the same as that used in setting the limits effective for cost reporting periods beginning on or after July 1, 1987. The limits have, however, been updated to include and accommodate the use of more recent cost report data.

A. Use of More Current Data

Under the schedule of limits that was published in the **Federal Register** on July 7, 1987 (52 FR 25562), we extracted actual cost per visit data from Medicare cost reports for periods beginning on or after October 1, 1983. We then adjusted the data using the latest available market basket factors to reflect cost increases occurring between the cost reporting periods contained in our data base and December 31, 1987. In this notice, we are using more recent data. The updated schedule of limits was determined by using data taken from HHA cost reports beginning on or after October 1, 1985. By using more current data, we believe that the new limits will reflect more accurately the costs of HHAs.

Even though these are the most recent data available, we recognize that Pub. L. 100–203 contains a provision the implementation of which may result in some HHAs incurring some costs that would not be reflected in the cost limits. Section 4021 of Pub. L. 100–203 requires changes in home health aide training and certification. While the initial changes are not effective until July 1, 1989, it is possible that, in preparing for these changes, some HHAs may incur aide training costs during their fiscal year beginning on or after July 1, 1988. It is not possible to estimate the overall impact, if any, this provision will have on an agency's total cost. However, this would present a problem only if the agency's costs exceed the cost limits because of these additional training requirements. In those instances in which an HHA's costs do exceed the cost limits because of these training requirements, an agency can apply for an exception to the cost limits under the exceptions process outlined in § 413.30. This situation could be recognized as an "extraordinary circumstance" as defined at § 413.30(f)(2).

B. Add-on for Changes in Billing and Verification Costs

Because we are using post-October 1, 1985 cost report data, it is no longer necessary to retain the add-on for billing and verification costs that was provided in the July 1, 1986 and July 1, 1987 schedule of limits. In September 1986, HCFA changed the forms for HHA billing and verification procedures, and instituted the HCFA 485 series of forms. This series of forms consists of the Plan of Treatment and Home Health Certification Form (HCFA–485), the Medical Information Form (HCFA–486), an Addendum to the HCFA–485 and 486 (HCFA–487), and the HHA Intermediary Medical Information Request (HCFA–488). The information on these forms is needed to determine eligibility of beneficiaries for services.

Many HHAs complained about the costs associated with completing this series of forms. Congress responded to these complaints by enacting section 9315(b)(2) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509) (42 U.S.C. 1395x note). This section requires that, in establishing the HHA limits for cost reporting periods beginning on or after July 1, 1988, HCFA must take into account the changes in costs of HHAs for billing and verification procedures that result from HCFA changing the requirements for these procedures to the extent that these increased costs are not reflected in the data HCFA uses to set the limits. Thus, to satisfy the statutory requirement of section 9315(b) of Pub. L. 99–509, HCFA added to the base limit values for both the July 1, 1986 and the July 1, 1987 limits an amount to account for the increase in an HHA's costs that resulted from the changes to the billing and verification forms.

Since we are using a later data base that includes HHAs' actual costs for billing and verification, we are eliminating this separate estimated add-on from the methodology used to calculate the July 1, 1988 schedule of limits because we believe it is no longer necessary. The data from HHA cost reporting periods beginning on or after October 1, 1985 already reflect the increased costs incurred by providers in completing the HCFA 485 series of forms since these forms were introduced in September 1985. Although we subsequently made changes to these forms between April 1 and June 1, 1988, these changes represent format changes and not changes in content. While we believe that the revisions make the forms less burdensome to complete, the relative cost associated with preparing the forms should be unchanged. Therefore, to continue to provide an add-on would result in the cost limits including a duplicate allowance for billing and verification costs.

C. Wage Index

Although we have not changed the wage index from that which was used in the July 1, 1987 schedule of limits, the contemplated modifications to the wage index and the reasons for not implementing the modifications are discussed below. The wage index is used to adjust the labor-related portion of the limits and the administrative and general (A&G) add-on to reflect differing wage levels among areas. In setting the two previous schedules of limits (that is, the schedule of limits applicable to cost reporting periods beginning on or after July 1, 1986 but before July 1, 1987, and the schedule of limits for cost reporting periods beginning on or after July 1, 1987), we used the HCFA survey-based hospital gross wage index that was developed based on 1982 hospital and salary data obtained from a survey conducted by HCFA. A description of the methodology used to compute the gross wage index was described in the March 25, 1986 proposed notice published in the **Federal Register** (51 FR 10267). That notice discussed the use of the HCFA survey-based wage index in calculating HHA cost limits for cost reporting periods beginning on or after July 1, 1986.

Section 4026(a) of Pub. L. 100–203 added section 1861(v)(1)(L)(iii)(I) of the Act to require that the Secretary, in establishing the HHA cost limits for cost reporting periods beginning on or after July 1, 1988, use a wage index based on audited wage data from home health agencies. However, as discussed above, section 411(d)(5) of Pub. L. 100–360 subsequently extended the effective date for implementing this wage index from July 1, 1988 to July 1, 1989 and provided that the wage index must be based on verified data, rather than audited data. Prior to the enactment of Pub. L. 100–360, in an effort to meet the July 1, 1988 effective date and construct an HHA-specific wage index, we reviewed all data available. However, because of the lack of usable wage data, we were unable to develop such a wage index and have therefore continued to use the wage index methodology used in the July 1, 1987 limits.

Before initiating a new data collection effort, we carefully reviewed the data sources that were available. The first data source we reviewed was Exhibit 7 of the HCFA–339, Provider Wage Index Data Report. Exhibit 7 solicits information on wages, paid hours, hours of service, and fringe benefit ratios from HHAs, hospitals, and skilled nursing facilities. Exhibit 7 was to be submitted with all cost reports filed after December 31, 1985 and before January 1, 1987. A description of this form and the filing requirements are found in Chapter 11 of the Provider Reimbursement Manual (HCFA Pub. 15–2). Even though the data from Exhibit 7 were unaudited, we hoped that they could be easily verified and used to establish a wage index.

Of the approximately 5,900 HHAs, we received about 2,000 HCFA–339s, while the instructions required wage data to be reported on an hourly basis, some of the forms showed wages on an hourly basis, some showed wages on a per visit basis, and on other forms it was not possible to determine on what basis the wages were shown. Therefore, the data could not be used as submitted. Further, we believe it would be more time consuming to correct and verify the data already submitted than it would be to require a new survey.

We also reviewed previously submitted cost report data. Using data from the statistical page and worksheet A of the HCFA–1728, there were approximately 2,599 providers represented in our data base. These were also unaudited data that would have required verification. When we attempted to create a wage index using these data, we found that there were 34 Metropolitan Statistical Areas (MSAs) with no HHAs reporting. In addition to having an insufficient number of HHAs reporting to establish a reliable wage index, much of the data we obtained was of questionable accuracy. For example, there were HHAs reporting aide salaries of less than $2.00 per hour, as well as HHA's with skilled nursing salaries per hour less than aide salaries per hour for the same HHA.

When we compared the HHA wage index computed from our data with the hospital wage index currently used, we found variations that could not be explained except by faulty data reported by the HHAs. The wage index values of 58 percent of the MSAs changed by 10 percent or more. Of these changes, more than half resulted in a decrease in the wage index. Some of the changes were of such magnitude that the data were clearly aberrant. There are 11 MSA wage index values that increased by 50 percent or more and 2 that decreased by the same magnitude. Most of the high magnitude changes point to poor reporting of wages and hours. Clearly, the wage index value in Amarillo, Texas should not have decreased 44 percent from 0.9595 to 05334 and the wage index value for Duluth, MN–WI should not have increased from 0.9930 to 1.9190, a change of 92 percent.

The HHA wage index that we constructed based on data available from HHA cost reports is set forth as an addendum to this notice. We have included the wage index values currently being used by HHAs and shown the percentage increase or decrease from those wage index values to the HHA wage index values. All those areas with no HHAs reporting wage data were assigned a value of 1.0000 so that these areas would not affect the national average wage index value.

Obviously, before the currently available data can be used to construct an HHA wage index, the missing information has to be obtained, the questionable data corrected, and all of the data must be verified. To simply eliminate the questionable data (excessively low or high hourly salaries) would not solve the problem of missing data nor would it eliminate the need for verification.

We have instituted a special data collection to comply with Congress' explicit requirement in section 4026(a) that we use a wage index that is based on wage data obtained from HHAs. These data will come from HHA Medicare cost reports submitted to fiscal intermediaries for the cost reporting periods ending between September 30, 1988 and August 31, 1987. Fiscal intermediaries will contact HHAs to obtain needed data corrections for properly completed cost reports. Even with the delay granted by section 411(d)(5) of Pub. L. 100–360, the time constraint for making these corrections is very limited; therefore, we must have immediate and accurate responses from providers. The development of this wage index is a requirement of the law, and we cannot accept delays in receipt of the data. As disscused above, under amended section 1861(v)(1)(L)(iii) of the Act, if an HHA refuses to provide data requested for the purposes of

constructing the HHA wage index or deliberately provides false data, the intermediary may withhold up to five percent of the amount that is otherwise payable to the HHA until the data have been satisfactorily provided. Any HHA that does not submit accurate data timely as requested by its intermediary is subject to this penalty provision.

III. Provisions of the Notice

The schedule of limits set forth below was calculated using 112 percent of the mean cost of free-standing HHAs, and is based on the latest cost data available at this time and adjusted by the latest estimates in the market basket index.

The proposed schedule of limits effective for cost reporting periods beginning on or after July 1, 1988 provides for the following:

A. A classification system based on whether an HHA is located within an MSA, a NECMA or a non-MSA area. (See Tables IIIa and IIIb in section VII, below, for the listing of MSA/NECMA areas.)

B. The use of a single schedule of limits for hospital-based and freestanding agencies. This single limit is based on the cost experience of freestanding agencies. For each hospital-based discipline, we have provided for an add-on adjustment of the freestanding HHA limit (which is equal to 12.29 percent of the mean cost for the MSA hospital-based group and 12.86 percent for the non-MSA hospital-based group) to account for the higher A & G costs resulting from Medicare cost allocation requirements. The labor-related portion of the add-on, adjusted by the appropriate wage index, plus the nonlabor portion, would be added to each freestanding limit to determine the per discipline limits for hospital-based agencies.

C. The use of the following market basket index developed from the price of goods and services purchased by HHAs to account for the impact of changing wage and price levels on HHA costs. The limit values contained in this schedule reflect the latest available actual and projected rates of inflation in HHA expenses. The categories used were identified through an analysis of 1977 Medicare cost reports and other available home health industry surveys. The categories of expenses are weighted according to the estimated proportion of HHA costs attributable to each category.

The categories used in the market basket contained in this schedule have not changed from those used for the July 1, 1987 schedule. However, the relative cost shares used change over time because of differences in the rate of increase in the various price variables. Categories with higher rates of price increases receive higher weights and vice versa.

In developing the relative weights used in the market basket index contained in this schedule, we obtained historical and projected rates of increase in the resource prices for each category. The price variables and the source of the forecast for calendar years 1988 through 1990 are identified in the third and fourth columns of the updated market basket included in this notice.

HOME HEALTH AGENCY INPUT PRICE INDEX: COST CATEGORIES, RELATIVE IMPORTANCE, FORECASTERS, AND PRICE VARIABLES USED

Cost categories	Relative [1] importance 1989	Forecaster of [illegible] percent (1985–1990)	Price variables used
Wages and salaries	67.19	DRI-CFS	Average hourly earnings of nonsupervisory private hospital workers (SIC 806) Source: U.S. Dept. of Labor, Bureau of Labor Statistics, Employment and Earnings (Monthly).
Employee benefits	7.57	DRI-TL	Supplements to wages and salaries per worker in non-agriculture establishments. Source: For supplements to wages and salaries—U.S. Dept. of Commerce, Bureau of Economic Analysis, Survey of Current Business (monthly.) For total employment—U.S. Department of Labor, Bureau of Labor Statistics, Employment and Earnings (monthly).
Transportation	4.22	DRI-TL	Transportation component of Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, Monthly Labor Review.
Office costs	2.91	DRI-TL	Services Component of Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, Monthly Labor Review.
Medical nursing	2.54	HCFA-HHS	Medical equipment and supplies component of the supplies and rental Consumer Price Index, all urban. Source: U.S. equipment Dept. of Labor, Bureau of Labor Statistics, Monthly Labor Review.
Rent	1.88	DRI-CFS	Residential rent component of Consumer Price Index, all urban. Source: U.S. Dept. of Labor Statistics, Monthly Labor Review.
[illegible] space	1.13	DRI-TL	Composite Fuel and Other Utilities Index. Source: HHS–HCFA Community Hospital Price Index.
[illegible]	6.35	DRI-TL	Consumer Price Index for all items, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, Monthly Labor Review.
Contract services	9.37		Weighted mean of price variables for the preceding eight items.
Total	100.00		

[1] Relative cost weights for 1977 were derived from special studies by HCFA using primarily data from HCFA Medicare cost reports and data from the Council of Home Health Agencies and Community Health services. A Laspeyres price index was constructed using 1977 weights and price variables indicated in this table. The relative importance values change over time in accordance with price changes for each price variable. Cost categories with relatively higher price increases get higher relative importance values and vice versa.

[2] DRI–TL refers to Data Resources, Inc., Trendlong (TL 88Q1), 29 Hartwell Avenue, Lexington, Massachusetts 02173; DRI–CFS refers to Data Resources, Inc., Cost Forecasting Services (CFS–88Q1), 1750 K Street NW., Washington, DC 20006.

D. An adjustment to the limits if the estimated market basket rate differs from the actual rate by more than ⅘ of one percentage point (that is, higher or lower).

E. The use of the HCFA hospital wage index as revised and published in the **Federal Register** on July 7, 1987 (52 FR 25562) as part of the final rule that announced the HHA cost limits effective for cost reporting periods beginning on or after July 1, 1987. The wage index is used to adjust the labor-related portion of the limits and the A&G add-on to reflect differing wage levels among the areas (MSA/NECMA and non-MSA) in which HHAs are located. The employee wage portion of the market basket index (67.19 percent) and the employee benefits portion (7.57 percent), plus a factor representing a proportionate share of contract services (5.52 percent), are used to determine the labor component (80.28 percent) of all HHA per visit costs used to set the limits.

F. Separate treatment of the labor-related and nonlabor components of per visit costs. The separate components of costs are calculated by obtaining actual HHA cost data for each agency for cost periods beginning on and after October 1, 1985 and increasing those data by the actual and projected increases in the HHA market basket. We then separate each HHA's per visit costs into labor and nonlabor portions, and divide the labor portion by the wage index value for the agency's location to control for the effect of wage geographic variations in prevailing wage levels. Separate means are computed for the labor and nonlabor components of per visit costs. For each comparison group, the resulting amounts are shown in Table I of section VI, below.

G. The use of a cost of living adjustment to the nonlabor portion of the limit for HHAs in Alaska, Hawaii, Puerto Rico, and the Virgin Islands.

H. Limits that are determined for the per visit cost of each type of service: Skilled nursing care, physical therapy, speech pathology, occupation therapy, medical social services, and home health aide.

I. Application of the limits in the aggregate after the provider's actual costs are ajdusted. A provider's actual costs are adjusted for individual items of cost that are found to be excessive under Medicare principles of provider reimbursement and for reimbursable costs that are not included in the limitation amount. The limits are applied in the aggregate to the costs remaining after these adjustments are made.

IV. Methodology for Determining Cost Per Visit Limits

A. Data

For this notice, the limit values were determined by extracting actual cost per visit data from Medicare cost reports for periods beginning on and after October 1, 1985 and before October 1, 1986. We then adjusted the data using the latest available market basket factors to reflect cost increases occurring between the cost reporting periods contained in our data base and December 31, 1988 (the midpoint of the first cost reporting period to which the limits will apply). The following annual percentage increases were used to compute the per visit costs:

Calendar year	Percent increase
1986	[1] 3.1
1987	[1] 4.5
[illegible]	[2] 4.9
1989	[2] 5.1
1990	[2] 5.8

[1] Final rate.

[2] Forecasted increases. The projected rate of increase in the market basket index will be adjusted to the actual inflation rate if the actual rate of increase differs from the estimated rate by more than ⅛ of one percentage point. We will notify the Medicare intermediaries of the actual rate of increase and advise them to adjust each HHA's cost limit at the time of final settlement.

B. Standardization for Wage Levels

After adjustment by the market basket index, we divided each HHA's per visit costs into labor and nonlabor portions. The labor portion of costs (80.28 percent) was determined by using the 74.76 percent employee wage and benefit factor from the market basket, plus 5.52 percent, which represents a proportionate share of the market basket relative importance for contract services. We then divide the labor portion of per visit costs by the wage index applicable to the HHA's location to arrive at an adjusted labor cost.

C. Adjustment for "Outliers"

We transformed all per visit cost data into their natural logarithms and grouped them by type of service and MSA/NECMA and non-MSA locations, in order to determine the mean cost and standard deviation for each group. We then eliminated all "outlier" costs, retaining only those per visit costs within two standard deviations from the mean in each service.

D. Basic Service Limit

A basic service limit equal to 112 percent of the mean labor and nonlabor portions of the per visit costs of freestanding HHAs is calculated for each type of service. (See Table I of section VI.)

V. Computing the Adjusted Limit

A. Adjustment of Limits by Wage Index

To arrive at the adjusted limit, which is to be applied to each service furnished by an HHA, the Medicare fiscal intermediary first multiplies the labor-related component of the limit for the comparison group by the appropriate wage index. (See Table I in section VI and Tables IIIa and IIIb in section VII.) The adjusted limit applicable to an HHA is the sum of the nonlabor component plus the adjusted labor-related component.

Example-Calculation of Adjusted Occupational Therapy Limit for a Freestanding HHA in Dallas, TX

Labor component (Table I)	[illegible]
Wage index (Table IIIa)	×1.0733
Adjusted labor component	$54.11
Nonlabor component (Table I)	+13.73
Adjusted occupational therapy limit	$67.84

B. Adjustment for Reporting Year

If an HHA has a cost reporting period beginning on or after August 1, 1988, the adjusted per visit limit for each service is revised by a factor from Table IV that corresponds to the month and year in which the cost reporting period begins. Each factor represents the compounded rate of monthly increase derived from the projected annual increase in the market basket index, and is used to account for inflation in costs that will occur after the date on which the limits become effective.

For example, an HHA's cost reporting period begins January 1, 1989. As calculated in the example in section V.A. of this notice, the labor adjusted per visit limit for occupational therapy for this HHA's group is $67.84.

Computation of Revised Limit for Occupational Therapy

Adjusted per visit limit	$67.84
Adjustment factor from Table IV	×1.0254
Revised per visit limit	[illegible]

In this example, the revised adjusted per visit limit for occupational therapy applicable to this HHA for the cost reporting period beginning January 1, 1989 is $69.56 per visit.

If an HHA uses a cost reporting period that is not 12 months in duration, a special calculation of the adjustment factor must be made. This results from the fact that projections are computed to the midpoint of the cost reporting period. For cost reporting periods of other than 12 months in duration, the calculation must be done specifically for the midpoint of the cost reporting period. In such cases, the intermediary for the HHA must obtain this adjustment factor from HCFA.

C. Adjustment for Hospital-Based Agencies

If an HHA participates in the Medicare program as part of a hospital that is required to file a HCFA–2552 cost report (hospital cost report) (see Chapters 12, 15, and 19 of HCFA Pub. 15–2), and qualifies as hospital-based in accordance with the requirements specified in the schedule of limits

published June 5, 1980 (45 FR 38014), the HHA will be considered a hospital-based agency and will be considered entitled to an adjustment of the per visit limit to account for higher administrative and general costs resulting from the Medicare cost allocation requirements. (See section III.B. of this preamble, above.) The intermediary would compute the adjusted cost limit as described in the example following Table II.

VI. Schedule of Limits

The schedule of limits set forth below applies to cost reporting periods beginning on or after July 1, 1988. The intermediaries compute the adjusted limits using the wage indexes published in Tables IIIa and IIIb of section VII and notify each HHA they service of its applicable limits.

The HHA costs that are subject to the limits include the cost of medical supplies routinely furnished in conjunction with patient care. Medical supplies that are not routinely furnished in conjunction with patient care visits and are directly identifiable as services to an individual patient (that is, medical supplies for which a separate charge is made, in addition to the per visit charge) are excluded from the per visit cost if they meet all of the following criteria:

- The common and established practice of comparable HHAs in the area is to charge separately for the items.
- The HHA follows a consistent charging practice for Medicare and non-Medicare patients receiving the item.
- Generally, the item is not frequently furnished to patients.
- The item is directly identifiable to an individual patient and its cost can be identified and accumulated in a separate cost center.
- The item is furnished at the direction of the patient's physician and is specifically identified in the plan of treatment.

This explanation of nonroutine medical supplies is consistent with instructions for reporting the cost of these supplies on the revised HHA cost report, forms HCFA–1728 and HCFA–2552K. The reasonable cost of durable medical equipment and supplies that are not routinely furnished in conjunction with patient care visits is reimbursed without regard to the schedule of limits.

The intermediary determines the limit for each HHA by multiplying the number of Medicare visits for each type of service furnished by the provider by the respective per visit cost limit. The sum of these amounts is compared to the HHA's total allowable cost.

Example: HHA A, a freestanding agency located in Charlottesville, Virginia made 5,000 skilled nursing, 2,000 physical therapy, and 4,000 home health aide covered visits to Medicare beneficiaries during its 12-month cost reporting period beginning July 1, 1988.

The aggregate cost limit is determined as follows:

Type of visit	Visit	Nonlabor portion	Adjusted labor portion	Adjusted limit	Aggregate limit
Skilled nursing	5,000	$13.50	$47.52	$61.02	$305,100
Physical therapy	2,000	13.05	45.96	59.03	118,060
Home health aide	4,000	7.88	27.36	35.70	143,160
Aggregate cost limit					566,320

Before the limits are applied at cost settlement, the provider's actual costs are reduced by the amount of individual items of cost (for example, administrative compensation or contract services) that are found to be excessive under Medicare principles of provider reimbursement. In this regard, the fiscal intermediaries review the various reported costs against such screens as the cost guidelines for physical therapy under arrangements (see § 413.106) and against the limitation on costs that are substantially out of line with those of comparable agencies (see § 413.9).

TABLE I.—PER VISIT LIMITS FOR HOME HEALTH AGENCIES

Type of visit	Limit	Labor portion	Nonlabor portion [1]
MSA (NECMA) location:			
Skilled nursing care	$64.36	$50.86	$13.50
Physical therapy	62.25	49.20	13.05
Speech pathology	67.61	53.41	14.20
Occupational therapy	64.14	50.41	13.73
Medical social services	93.08	72.98	20.10
Home health aide	37.75	29.86	7.89
Non-MSA location:			
Skilled nursing care	70.81	58.19	12.32
Physical therapy	70.86	58.59	12.27
Speech pathology	76.67	63.30	13.37
Occupational therapy	77.56	63.81	13.75
Medical social services	107.80	88.10	19.70
Home health aide	36.30	29.98	6.32

[1] Nonlabor portion of limits for HHAs located in Alaska, Hawaii, Puerto Rico, and the Virgin Islands will be increased by multiplying them by the following cost-of-living adjustment factors:

Location	Adjustment factor
Alaska	1.250
Hawaii:	
Oahu	1.225
Kauai	1.175
Maui, Lanai, and Molokai	1.200
Hawaii (island)	1.150
Puerto Rico	1.100
Virgin Islands	1.125

TABLE II.—ADD-ON AMOUNTS FOR HOSPITAL-BASED HOME HEALTH AGENCIES

Type of visit	A&G Add-On	Labor portion	Nonlabor portion
MSA (NECMA) location:			
Skilled nursing care	$6.31	$7.29	$2.02
Physical therapy	7.92	6.19	1.73
Speech pathology	8.68	6.75	1.87
Occupational therapy	8.25	6.49	1.88
Medical social services	14.64	11.27	3.37
Home health aide	4.68	3.81	1.08
Non-MSA location:			
Skilled nursing care	10.40	8.58	1.82
Physical therapy	10.51	8.97	1.54

TABLE II.—ADD-ON AMOUNTS FOR HOSPITAL-BASED HOME HEALTH AGENCIES—Continued

Type of visit	A&G Add-On	Labor portion	Nonlabor portion
Speech pathology	10.74	8.95	1.88
Occupational therapy	11.84	9.50	2.14
Medical social services	15.40	13.36	3.34
Home health aide	5.68	4.21	0.88

Example

A hospital-based agency in Orlando, FL has a wage index of 1.0188. It provides the following services:

Skilled nursing
Physical therapy
Home health aides

The published limits for that agency are:

	Limit		Add-On	
	Labor portion	Nonlabor portion	Labor portion	Nonlabor portion
SN	$60.86	$15.50	$7.29	$2.02
PT	49.20	13.05	6.19	1.73
HHA	29.86	7.88	3.81	1.05

CALCULATION OF HOSPITAL-BASED LIMIT WITH ADD-ON

	SN	PT	HHA
Limit labor portion	$60.86	$49.20	$29.86
Add-on labor portion	+7.29	+6.19	+3.81
Total labor portion	$68.14	$55.39	$33.67
Wage index	×1.0188	×1.0188	×1.0188
Adjusted labor portion	$69.43	$56.43	$34.30
Limit nonlabor portion	15.50	13.05	7.88
Add-on nonlabor portion	+2.02	+1.73	+1.05
Adjusted limits	$74.75	$71.21	$43.24

VII. Wage Indexes

TABLE IIIa.—WAGE INDEX FOR URBAN AREAS

Urban area (constituent counties or county equivalents)	Wage index
Abilene, TX	.9003
Taylor, TX	
Aguadilla, PR	[1] .5581
Agualta, PR	
Aguadilla, PR	
Isabella, PR	
Mayaguez, PR	
Akron, OH	1.1080
Portage, OH	
Summit, OH	
Albany, GA	.8183
Dougherty, GA	
Lee, GA	
Albany-Schenectady-Troy, NY	.9246
Albany, NY	
Greene, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Albuquerque, NM	1.1078
Bernalillo, NM	
Alexandria, LA	.8108
Rapides, LA	
Allentown-Bethlehem, PA-NJ	1.0454
Warren, NJ	
Carbon, PA	
Lehigh, PA	
Northampton, PA	
Altoona, PA	1.0028
Blair, PA	
Amarillo, TX	.9886
Potter, TX	
Randall, TX	
Anaheim-Santa Ana, CA	1.2016
Orange, CA	
Anchorage, AK	1.3648
Anchorage, AK	
Anderson, IN	.9882
Madison, IN	
Anderson, SC	.8369
Anderson, SC	
Ann Arbor, MI	1.2607
Washtenaw, MI	
Anniston, AL	.8519
Calhoun, AL	
Appleton-Oshkosh-Neenah, WI	1.0666
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
Arecibo, PR	[1] .6081
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
Quebradillas, PR	
Asheville, NC	.8844
Buncombe, NC	
Athens, GA	.8179
Clarke, GA	
Jackson, GA	
Madison, GA	
Oconee, GA	
Atlanta, GA	.9863
Barrow, GA	
Bartow, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
De Kalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	

TABLE IIIa.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
Atlantic City, NJ	1.0566
Atlantic, NJ	
Cape May, NJ	
Augusta, GA-SC	.9602
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Aurora-Elgin, IL	1.1015
Kane, IL	
Kendall, IL	
Austin, TX	1.1177
Hays, TX	
Travis, TX	
Williamson, TX	
Bakersfield, CA	.9886
Kern, CA	
Baltimore MD	1.1150
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Annes, MD	
Bangor, ME	.9285
Penobscot, ME	
Baton Rouge, LA	.9886
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
Battle Creek, MI	1.0886
Calhoun, MI	
Beaumont-Port Arthur, TX	1.0886
Hardin, TX	
Jefferson, TX	
Orange, TX	
Beaver County, PA	1.0919
Beaver, PA	
Bellingham, WA	1.1471
Whatcom, WA	
Benton Harbor, MI	.8911
Berrien, MI	
Bergen-Passaic, NJ	1.0748
Bergen, NJ	
Passaic, NJ	
Billings, MT	1.0226
Yellowstone, MT	
Biloxi-Gulfport, MS	.8886
Hancock, MS	
Harrison, MS	
Binghampton, NY	.9558
Broome, NY	
Tioga, NY	
Birmingham, AL	.9663
Blount, AL	
Jefferson, AL	
Saint Clair, AL	
Shelby, AL	
Walker, AL	
Bismarck, ND	.9943

TABLE IIIa.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Burleigh, ND	
Morton, ND	
Bloomington, IN	.9689
[illegible]	
Bloomington-Normal, IL	.9844
[illegible]	
Boise City, ID	1.0584
Ada, ID	
[illegible]	
Brockton, MA	1.1560
[illegible]	
[illegible]	
Plymouth, MA	
[illegible]	
Boulder-Longmont, CO	1.1326
[illegible]	
Bradenton, FL	.9166
Manatee, FL	
Brazoria, TX	.8742
[illegible]	
Bremerton, WA	.9613
Kitsap, WA	
Bridgeport-Stamford-Norwalk-Danbury, CT	1.1946
Fairfield, CT	
Brownsville-Harlingen, TX	.8877
Cameron, TX	
Bryan-College Station, TX	.9569
[illegible]	
Buffalo, NY	1.0867
Erie, NY	
Burlington, NC	.7926
[illegible]	
Burlington, VT	1.0131
Chittenden, VT	
Grand Isle, VT	
Caguas, PR	1.0278
Caguas, PR	
[illegible]	
San Lorenzo, PR	
Aguas Buenas, PR	
Cayey, PR	
Cidra, PR	
Canton, OH	1.0060
Carroll, OH	
Stark, OH	
Casper, WY	1.1063
[illegible]	
Cedar Rapids, IA	1.0174
Linn, IA	
Champaign-Urbana-Rantoul, IL	.9985
Champaign, IL	
Charleston, SC	.8912
Berkeley, SC	
[illegible]	
Dorchester, SC	
Charleston, WV	1.0482
Kanawha, WV	
Putnam, WV	
Charlotte-Gastonia-Rock Hill, NC-SC	.8991
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Union, NC	
York, SC	
Charlottesville, VA	.9145
Albemarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
Chattanooga, TN-GA	1.0041

TABLE IIIa.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
Sequatchie, TN	
Cheyenne, WY	.8702
Laramie, WY	
Chicago, IL	1.2351
Cook, IL	
Du Page, IL	
McHenry, IL	
Chico, CA	1.2459
Butte, CA	
Cincinnati, OH-KY-IN	1.1050
Dearborn, IN	
Boone, KY	
Campbell, KY	
Kenton, KY	
Clermont, OH	
Hamilton, OH	
Warren, OH	
Clarksville-Hopkinsville, TN-KY	.8183
Christian, KY	
Montgomery, TN	
Cleveland, OH	1.1585
Cuyahoga, OH	
Geauga, OH	
Lake, OH	
Medina, OH	
Colorado Springs, CO	1.0439
El Paso, CO	
Columbia, MO	1.1022
Boone, MO	
Columbia, SC	.9158
Lexington, SC	
Richland, SC	
Columbus, GA-AL	.7829
Russell, AL	
Chattahoochee, GA	
Muscogee, GA	
Columbus, OH	.9884
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
Union, OH	
Corpus Christi, TX	.9999
Nueces, TX	
San Patricio, TX	
Cumberland, MD-WV	.9999
Allegany, MD	
Mineral, WV	
Dallas, TX	1.0733
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Kaufman, TX	
Rockwall, TX	
Danville, VA	.8047
Danville City, VA	
Pittsylvania, VA	
Davenport-Rock Island-Moline, IA-IL	1.0660
Scott, IA	
Henry, IL	
Rock Island, IL	
Dayton-Springfield, OH	1.0039
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
Daytona Beach, FL	.9131
Volusia, FL	
Decatur, AL	.7564

TABLE IIIa.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Lawrence, AL	
Morgan, AL	
Decatur, IL	.9582
Macon, IL	
Denver, CO	1.2865
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
Des Moines, IA	1.0556
Dallas, IA	
Polk, IA	
Warren, IA	
Detroit, MI	1.1725
Lapeer, MI	
Livingston, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
Saint Clair, MI	
Wayne, MI	
Dothan, AL	.8457
Dale, AL	
Houston, AL	
Dubuque, IA	1.0590
Dubuque, IA	
Duluth, MN-WI	.9230
St. Louis, MN	
Douglas, WI	
Eau Claire, WI	.8998
Chippewa, WI	
Eau Claire, WI	
El Paso, TX	.9437
El Paso, TX	
Elkhart-Goshen, IN	.9850
Elkhart, IN	
Elmira, NY	.9741
Chemung, NY	
Enid, OK	.9626
Garfield, OK	
Erie, PA	.9991
Erie, PA	
Eugene-Springfield, OR	1.1163
Lane, OR	
Evansville, IN-KY	1.0217
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
Fargo-Moorhead, ND-MN	1.0645
Clay, MN	
Cass, ND	
Fayetteville, NC	.8930
Cumberland, NC	
Fayetteville-Springdale, AR	.8078
Washington, AR	
Flint, MI	1.2104
Genesee, MI	
Florence, AL	.7989
Colbert, AL	
Lauderdale, AL	
Florence, SC	.7695
Florence, SC	
Fort Collins-Loveland, CO	1.0546
Larimer, CO	
Fort Lauderdale-Hollywood-Pompano Beach, FL	1.1249
Broward, FL	
Fort Myers-Cape Coral, FL	.9533
Lee, LF	
Fort Pierce, FL	1.0215
Martin, FL	
St. Lucie, FL	
Fort Smith, AR-OK	.8548

TABLE IIIa.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Crawford, AR	
[illegible]	
Sequoyah, OK	
Fort Walton Beach, FL	.8751
Okaloosa, FL	
Fort Wayne, IN	.9588
Allen, IN	
De Kalb, IN	
Whitley, IN	
Fort Worth-Arlington, TX	.9998
Johnson, TX	
Parker, TX	
Tarrant, TX	
Fresno, CA	1.1489
Fresno, CA	
Gadsden, AL	.8777
Etowah, AL	
Gainesville, FL	.9542
Alachua, FL	
Bradford, FL	
Galveston-Texas City, TX	1.1412
Galveston, TX	
Gary-Hammond, IN	1.0978
Lake, IN	
Porter, IN	
Glen Falls, NY	.9807
Warren, NY	
Washington, NY	
Grand Forks, ND	.9471
Grand Forks, ND	
Grand Rapids, MI	1.0663
Kent, MI	
Ottawa, MI	
Great Falls, MT	1.0722
Cascade, MT	
Greeley, CO	1.0763
Weld, CO	
Green Bay, WI	1.0356
Brown, WI	
Greensboro-Winston-Salem-High Point, NC	.9389
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
Greenville-Spartanburg, SC	.9130
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
Hagerstown, MD	.9585
Washington, MD	
Hamilton-Middletown, OH	1.0214
Butler, OH	
Harrisburg-Lebanon-Carlisle, PA	.9868
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
Hartford-Middletown-New Britain-Bristol, CT	1.1486
Hartford, CT	
Middlesex, CT	
Tolland, CT	
Hickory, NC	.8982
Alexander, NC	
Burke, NC	
Catawba, NC	
Honolulu, HI	1.2022
Honolulu, HI	
Houma-Thibodaux, LA	.9229
Lafourche, LA	

TABLE IIIa.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Terrebonne, LA	
Houston, TX	1.06
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
Huntington-Ashland, WV-KY-OH	.9509
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
Huntsville, AL	.8661
Madison, AL	
Indianapolis, IN	1.0584
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
Iowa City, IA	1.2684
Johnson, IA	
Jackson, MI	1.0306
Jackson, MI	
Jackson, MS	.9354
Hinds, MS	
Madison, MS	
Rankin, MS	
Jackson, TN	.7816
Madison, TN	
Jacksonville, FL	.9481
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
Jacksonville, NC	.7986
Onslow, NC	
Janesville-Beloit, WI	.9422
Rock, WI	
Jersey City, NJ	1.1106
Hudson, NJ	
Johnson City-Kingsport-Bristol, TN-VA	.8617
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
Johnstown, PA	.9526
Cambria, PA	
Somerset, PA	
Joliet, IL	1.1253
Grundy, IL	
Will, IL	
Joplin, MO	.8292
Jasper, MO	
Newton, MO	
Kalamazoo, MI	1.2341
Kalamazoo, MI	
Kankakee, IL	.9888
Kankakee, IL	
Kansas City, KS-MO	1.1868
Johnson, KS	
Leavenworth, KS	

TABLE IIIa.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Bland, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
Kenosha, WI	1.0175
Kenosha, WI	
Killeen-Temple, TX	.8649
Bell, TX	
Coryell, TX	
Knoxville, TN	.8996
Anderson, TN	
Blount, TN	
Grainger, TN	
Jefferson, TN	
Knox, TN	
Sevier, TN	
Union, TN	
Kokomo, IN	.9870
Howard, IN	
Tipton, IN	
LaCrosse, WI	1.0161
LaCrosse, WI	
Lafayette, LA	1.0114
Lafayette, LA	
St. Martin, LA	
Lafayette, IN	.9166
Tippecanoe, IN	
Lake Charles, LA	1.0056
Calcasieu, LA	
Lake County, IL	1.1637
Lake, IL	
Lakeland-Winter Haven, FL	.8951
Polk, FL	
Lancaster, PA	1.0366
Lancaster, PA	
Lansing-East Lansing, MI	1.0769
Clinton, MI	
Eaton, MI	
Ingham, MI	
Laredo, TX	.8188
Webb, TX	
Las Cruces, NM	.8707
Dona Ana, NM	
Las Vegas, NV	1.1254
Clark, NV	
Lawrence, KS	1.0180
Douglas, KS	
Lawton, OK	.9469
Comanche, OK	
Lewiston-Auburn, ME	.8826
Androscoggin, ME	
Lexington-Fayette, KY	.8878
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Scott, KY	
Woodford, KY	
Lima, OH	.9866
Allen, OH	
Auglaize, OH	
Lincoln, NE	.8779
Lancaster, NE	
Little Rock-North Little Rock, AR	1.1135
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
Longview-Marshall, TX	.8410

TABLE IIIa.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Gregg, TX	
Harrison, TX	
Lorain-Elyria, OH	1.0280
Lorain, OH	
Los Angeles-Long Beach, CA	1.3280
Los Angeles, CA	
Louisville, KY–IN	1.0091
Clark, IN	
Floyd, IN	
Harrison, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
Shelby, KY	
Lubbock, TX	1.0128
Lubbock, TX	
Lynchburg, VA	.9215
Amherst, VA	
Campbell, VA	
Lynchburg City, VA	
Macon-Warner Robins, GA	.9325
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Madison, WI	1.0899
Dane, WI	
Manchester-Nashua, NH	.9724
Hillsborough, NH	
Mansfield, OH	.9819
Richland, OH	
Mayaguez, PR	1.5732
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
San German, PR	
McAllen-Edinburg-Mission, TX	.8109
Hidalgo, TX	
Medford, OR	1.0356
Jackson, OR	
Melbourne, Titusville, FL	.9378
Brevard, FL	
Memphis, TN–AR–MS	1.0484
Crittenden, AR	
De Soto, MS	
Shelby, TN	
Tipton, TN	
Merced, CA	1.2134
Merced, CA	
Miami-Hialeah, FL	1.0703
Dade, FL	
Middlesex-Somerset-Hunterdon, NJ	1.0349
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
Midland, TX	1.1305
Midland, TX	
Milwaukee, WI	1.1411
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
Minneapolis-St. Paul, MN–WI	1.1772
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Washington, MN	
Wright, MN	
St. Croix, WI	
Mobile, AL	.9337

TABLE IIIa.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Baldwin, AL	
Mobile, AL	
Modesto, CA	1.2103
Stanislaus, CA	
Monmouth-Ocean, NJ	.9924
Monmouth, NJ	
Ocean, NJ	
Monroe, LA	.9343
Ouachita, LA	
Montgomery, AL	.8876
Autauga, AL	
Elmore, AL	
Montgomery, AL	
Muncie, IN	1.0885
Delaware, IN	
Muskegon, MI	.9912
Muskegon, MI	
Naples, FL	1.0448
Collier, FL	
Nashville, TN	.9414
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford, TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
Nassau-Suffolk, NY	1.1909
Nassau, NY	
Suffolk, NY	
New Bedford-Fall River-Attleboro, MA	.9795
Bristol, MA	
New Haven-Waterbury-Meriden, CT	1.1278
New Haven, CT	
New London-Norwich, CT	1.1103
New London, CT	
New Orleans, LA	.9244
Jefferson, LA	
Orleans, LA	
St. Bernard, LA	
St. Charles, LA	
St. John The Baptist, LA	
St. Tammany, LA	
New York, NY	1.3809
Bronx, NY	
Kings, NY	
New York City, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
Newark, NJ	1.1404
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Niagara Falls, NY	.8983
Niagara, NY	
Norfolk-Virginia Beach-Newport News, VA	.9892
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
James City Co., VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City, VA	
Williamsburg City, VA	
York, VA	
Oakland, CA	1.4883

TABLE IIIa.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Alameda, CA	
Contra Costa, CA	
Ocala, FL	.8725
Marion, FL	
Odessa, TX	.9819
Ector, TX	
Oklahoma City, OK	1.0690
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
Olympia, WA	1.0787
Thurston, WA	
Omaha, NE–IA	1.0509
Pottawattamie, IA	
Douglas, NE	
Sarpy, NE	
Washington, NE	
Orange County, NY	.9299
Orange, NY	
Orlando, FL	1.0188
Orange, FL	
Osceola, FL	
Seminole, FL	
Owensboro, KY	.8243
Daviess, KY	
Oxnard-Ventura, CA	1.2851
Ventura, CA	
Panama City, FL	.8354
Bay, FL	
Parkersburg-Marietta, WV–OH	.9121
Washington, OH	
Wood, WV	
Pascagoula, MS	.9078
Jackson, MS	
Pensacola, FL	.8742
Escambia, FL	
Santa Rosa, FL	
Peoria, IL	1.0584
Peoria, IL	
Tazewell, IL	
Woodford, IL	
Philadelphia, PA–NJ	1.1783
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
Phoenix, AZ	1.0801
Maricopa, AZ	
Pine Bluff, AR	.8009
Jefferson, AR	
Pittsburgh, PA	1.1011
Allegheny, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
Pittsfield, MA	1.0246
Berkshire, MA	
Ponce, PR	1.8935
Juana Diaz, PR	
Ponce, PR	
Portland, ME	1.0114
Cumberland, ME	
Portland, OR	1.2074
Clackamas, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Portsmouth-Dover-Rochester, NH	.8973

TABLE IIIa.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Rockingham, NH	
Strafford, NH	
Poughkeepsie, NY	1.0952
Dutchess, NY	
Providence-Pawtucket-Woonsocket, RI	1.0553
Bristol, RI	
Kent, RI	
Providence, RI	
Washington, RI	
Provo-Orem, UT	.9858
Utah, UT	
Pueblo, CO	1.1210
Pueblo, CO	
Racine, WI	1.0002
Racine, WI	
Raleigh-Durham, NC	.8720
Durham, NC	
Franklin, NC	
Orange, NC	
Wake, NC	
Rapid City, SD	.9623
Pennington, SD	
Reading, PA	1.0248
Berks, PA	
Redding, CA	1.2288
Shasta, CA	
Reno, NV	1.1689
Washoe, NV	
Richland-Kennewick, WA	1.0256
Benton, WA	
Franklin, WA	
Richmond-Petersburg, VA	.9564
Charles City Co., VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
Riverside-San Bernardino, CA	1.2517
Riverside, CA	
San Bernardino, CA	
Roanoke, VA	.8987
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
Rochester, MN	1.0264
Olmsted, MN	
Rochester, NY	1.0226
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
Rockford, IL	1.1354
Boone, IL	
Winnebago, IL	
Sacramento, CA	1.2969
El Dorado, CA	
Placer, CA	
Sacramento, CA	
Yolo, CA	
Saginaw-Bay City-Midland, MI	1.1670
Bay, MI	
Midland, MI	
Saginaw, MI	
St. Cloud, MN	1.0018

TABLE IIIa.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Benton, MN	
Sherburne, MN	
Stearns, MN	
St. Joseph, MO	.9487
Buchanan, MO	
St. Louis, MO–IL	1.0827
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Sullivan City, MO	
Salem, OR	1.0971
Marion, OR	
Polk, OR	
Salinas-Seaside-Monterey, CA	1.2571
Monterey, CA	
Salt Lake City-Ogden, UT	1.0364
Davis, UT	
Salt Lake, UT	
Weber, UT	
San Angelo, TX	.8719
Tom Green, TX	
San Antonio, TX	.8943
Bexar, TX	
Comal, TX	
Guadalupe, TX	
San Diego, CA	1.3104
San Diego, CA	
San Francisco, CA	1.6517
Marin, CA	
San Francisco, CA	
San Mateo, CA	
San Jose, CA	1.4883
Santa Clara, CA	
San Juan, PR	1.6187
Barceloneta, PR	
Bayoman, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Luquillo, PR	
Manati, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trujillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Santa Barbara-Santa Maria-Lompoc, CA	1.1822
Santa Barbara, CA	
Santa Cruz, CA	1.2432
Santa Cruz, CA	
Santa Fe, NM	.9889
Los Alamos, NM	
Santa Fe, NM	
Santa Rosa-Petaluma, CA	1.3112
Sonoma, CA	
Sarasota, FL	.9639
Sarasota, FL	
Savannah, GA	.8917

TABLE IIIa.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Chatham, GA	
Effingham, GA	
Scranton-Wilkes Barre, PA	.9982
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Monroe, PA	
Wyoming, PA	
Seattle, WA	1.1579
King, WA	
Snohomish, WA	
Sharon, PA	.9757
Mercer, PA	
Sheboygan, WI	.9885
Sheboygan, WI	
Sherman-Denison, TX	.9619
Grayson, TX	
Shreveport, LA	.9813
Bossier, LA	
Caddo, LA	
Sioux City, IA–NE	1.0068
Woodbury, IA	
Dakota, NE	
Sioux Falls, SD	1.0211
Minnehaha, SD	
South Bend-Mishawaka, IN	1.0867
St. Joseph, IN	
Spokane, WA	1.1568
Spokane, WA	
Springfield, IL	1.0864
Menard, IL	
Sangamon, IL	
Springfield, MO	.9863
Christian, MO	
Greene, MO	
Springfield, MA	1.0060
Hampden, MA	
Hampshire, MA	
State College, PA	1.0772
Centre, PA	
Steubenville-Weirton, OH–WV	.9655
Jefferson, OH	
Brooke, WV	
Hancock, WV	
Stockton, CA	1.2871
San Joaquin, CA	
Syracuse, NY	1.0301
Madison, NY	
Onondaga, NY	
Oswego, NY	
Tacoma, WA	1.1852
Pierce, WA	
Tallahassee, FL	.9509
Gadsden, FL	
Leon, FL	
Tampa-St. Petersburg-Clearwater, FL	.9830
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
Terre Haute, IN	.8456
Clay, IN	
Vigo, IN	
Texarkana-TX-Texarkana, AR	.8650
Miller, AR	
Bowie, TX	
Toledo, OH	1.2267
Fulton, OH	
Lucas, OH	
Wood, OH	
Topeka, KS	1.0632
Shawnee, KS	
Trenton, NJ	1.0317
Mercer, NJ	
Tucson, AZ	1.0090
Pima, AZ	
Tulsa, OK	1.0131

TABLE IIIa.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Creek, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
Tuscaloosa, AL	1.0172
Tuscaloosa, AL	
Tyler, TX	[illegible]
Smith, TX	
Utica-Rome, NY	[illegible]
Herkimer, NY	
Oneida, NY	
Vallejo-Fairfield-Napa, CA	1.3397
Napa, CA	
Solano, CA	
Vancouver, WA	1.1659
Clark, WA	
Victoria, TX	[illegible]
Victoria, TX	
Vineland-Millville-Bridgeton, NJ	[illegible]
Cumberland, NJ	
Visalia-Tulare-Porterville, CA	1.0643
Tulare, CA	
Waco, TX	.9117
McLennan, TX	
Washington, DC-MD-VA	.1966
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Stafford, VA	
Waterloo-Cedar Falls, IA	.[illegible]
Black Hawk, IA	
Grundy, IA	
Wausau, WI	.9971
Marathon, WI	
West Palm Beach-Boca Raton-Delray Beach, FL	.9972
Palm Beach, FL	
Wheeling, WV-OH	.9771
Belmont, OH	
Marshall, WV	
Ohio, WV	
Wichita, KS	1.1[illegible]
Butler, KS	
Harvey, KS	
Sedgwick, KS	
Wichita Falls, TX	.8776
Wichita, TX	
Williamsport, PA	.[illegible]
Lycoming, PA	
Wilmington, DE-NJ-MD	1.[illegible]
New Castle, DE	
Cecil, MD	
Salem, NJ	
Wilmington, NC	.9591
New Hanover, NC	
Worcester-Fitchburg-Leominster, MA	1.[illegible]
Worcester, MA	
Yakima, WA	1.[illegible]
Yakima, WA	
York, PA	.[illegible]
Adams, PA	
York, PA	

TABLE IIIb.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Youngstown-Warren, OH	1.0480
Mahoning, OH	
Trumbull, OH	
Yuba City, CA	1.0480
Sutter, CA	
Yuba, CA	

[1] Approximate value for area.

TABLE IIIb.—WAGE INDEX FOR RURAL AREAS

Non-urban area	Wage index
Alabama	.7455
Alaska	1.[illegible]
Arizona	.9323
Arkansas	.7703
California	1.1365
Colorado	.[illegible]
Connecticut	1.[illegible]
Delaware	.8645
Florida	.[illegible]
Georgia	.7779
Hawaii	1.0157
Idaho	.9130
Illinois	.8917
Indiana	.8685
Iowa	.8719
Kansas	.8481
Kentucky	.8036
Louisiana	.8605
Maine	.8701
Maryland	.8773
Massachusetts	1.0548
Michigan	.9589
Minnesota	.8788
Mississippi	.7705
Missouri	.8325
Montana	.[illegible]
Nebraska	.8310
Nevada	1.0799
New Hampshire	.9234
New Jersey [2]	
New Mexico	.9213
New York	.8700
North Carolina	.8130
North Dakota	.[illegible]
Ohio	.9100
Oklahoma	.[illegible]
Oregon	1.0762
Pennsylvania	.9427
Puerto Rico	[1].5736
Rhode Island	.[illegible]
South Carolina	.7827
South Dakota	.[illegible]
Tennessee	.7739
Texas	.8180
Utah	.9505
Vermont	.[illegible]
Virginia	.8194
Virgin Islands	[1] 1.0000
Washington	1.[illegible]
West Virginia	.8616
Wisconsin	.8995
Wyoming	.9745

[1] Approximate value for area.
[2] All counties within the State are classified urban.

TABLE IV.—COST REPORTING YEAR ADJUSTMENT FACTORS [1]

If the HHA cost reporting period begins:	The adjustment factor is—
Aug. 1, 1988	1.0042
Sept. 1, 1988	1.0085
Oct. 1, 1988	1.0128
Nov. 1, 1988	1.0169
Dec. 1, 1988	1.0211
Jan. 1, 1989	1.0254
Feb. 1, 1989	1.0303
Mar. 1, 1989	1.0348
Apr. 1, 1989	1.0398
May 1, 1989	1.0448
June 1, 1989	1.0498

[1] Based on compounded projected market basket inflation rates of 5.1 percent for 1989 and 5.8 percent for 1990.

These adjustment factors are subject to change based on later estimates of cost increases.

VIII. Regulatory Impact Analysis

A. Introduction

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any notice that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a notice would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all HHAs are treated as small entities.

Based on the date available to us, we estimate the new HHA cost limits will increase Medicare expenditures beyond current Medicare expenditures for HHA services as follows:

Fiscal year	Amount in millions [1]
FY 1988 [2]	2.3
FY 1989	[illegible]
FY 1990	90
FY 1991	100
FY 1992	110
FY 1993	120

[1] FYs 1988–1993 figures are rounded to the nearest ten million.
[2] Since the limits are effective July 1, 1988, expenditures for FY 1988 are limited to July 1, 1988 through September 30, 1988.

As a result of the above cost estimates, this notice is a major rule under E.O. 12291, and a final regulatory impact analysis is required. Additionally, these HHA cost limits will result in a significant beneficial economic impact upon HHAs. Therefore, we have prepared a voluntary regulatory flexibility analysis. The discussion below, in combination with the other sections of this notice, constitutes a combined final regulatory impact analysis and final regulatory flexibility analysis consistent with E.O. 12291 and the RFA.

Section 1102(b) of the Social Security Act requires the Secretary to prepare a regulatory impact analysis if a notice may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside of a Metropolitan Statistical Area. We have no data to indicate that small rural hospitals will be adversely impacted. Therefore, we are not preparing a rural impact statement since we have determined, and the Secretary certifies that this notice will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

B. Affected Entities

The HHA industry has experienced considerable growth. This is the result of several factors, including growth in persons served and an increase in charge per visit. As of January 1987, there were 5,953 home health agencies. Of that number, approximately 39 percent (2,310) were nonprofit; 34 percent (2,036) were proprietary; and 27 percent (1,601) were government-controlled.

We do not have sufficient data to predict exactly which HHAs would be most affected by this notice nor the magnitude of the impact upon individual HHAs. However, it is certain that individual HHAs would be affected to greater or lesser degree depending upon the extent to which their total reimbursement is derived from Medicare.

C. Alternatives Considered

An alternative we considered was maintaining the current limits. We decided that this would be unfair to both beneficiaries and HHAs, because we have data that indicate an increase in costs. Since section 1861(v)(1)(A) of the Act requires that we pay HHAs based on reasonable costs, we believe that it is only equitable to pay HHAs costs based on the most recent data available. We believe that this will benefit Medicare beneficiaries in that there is more assurance that HHAs will provide quality of care if they are being paid at a rate that reflects current costs.

We have retained the July 1, 1987 schedule of limits methodology. For example, this schedule of limits, just like the current schedule, was calculated using 112 percent of the mean cost of freestanding HHAs. This level was required by section 1861(v)(1)(L)(i) of the Act. These limits are based on the latest cost data available at this time and are adjusted by the latest estimates in the market basket index.

However, the July 1, 1988 schedule of limits updates the current schedule in two ways:

- We are using data from HHA cost reports for cost reporting periods beginning on or after October 1, 1985 rather than for cost reporting periods beginning on or after October 1, 1983.
- Because the new schedule of limits uses post-October 1, 1985 data, we are discontinuing use of the separate add-on for billing and verification procedures that was used in setting the limits for the July 1, 1986 and July 1, 1987 schedules. Since the costs attributed to billing and verification are already reflected in the data used to establish the 1988 cost limits, a separate add-on is not necessary.

D. Conclusion

We believe that this increase in cost limits will promote better quality care by enabling HHAs to meet the increases in the cost per unit of care that they have experienced. At the same time, we believe these cost limits represent the costs involved in providing HHA services and are reasonable.

IX. Other Required Information

A. Waiver of Prior Public Comment Period

We ordinarily publish a proposed notice in the Federal Register and provide a period for public comment, or issue this notice with a 30-day delayed effective date. However, we may waive these procedures if we find good cause that notice and comment are impractical, unnecessary, or contrary to the public interest. When we do so, we incorporate an explanation of our findings in the notice to be issued.

We do not believe these limits effectuate significant methodological changes to the current HHA cost limits. The use of post-October 1, 1985 cost report data is not a methodological change but is simply an update to the cost limits, enabling HHA's to have those limits based upon the most recent data available. The discontinuation of the billing and verification add-on is a logical outgrowth of the utilization of post-October 1, 1985 cost report data. Because the post-October 1, 1985 cost report data have billing and verification costs built in, retention of the add-on in these limits would result in double payment for these costs. We therefore do not believe that discontinuation of the add-on is a significant methodological change requiring prior notice and comment. Indeed, the public interest centers incumbent in effectuating this cost limit update as soon as possible weighs heavily against delaying publication in order to institute a prior public comment period.

Section 4039(g) of Pub. L. 100–203 provides that we may issue regulations to implement the amendments made by Subtitle A of Pub. L. 100–203 on an interim or other basis as may be necessary. As originally enacted, the statute provided that the amendments made by section 4026(a) are generally effective on July 1, 1988. We were unable to compile the 1985 data in the time to develop the new cost limits, propose them for public comment, and have them in effect by July 1, 1988. Therefore, we decided to waive publication of a proposed notice and to issue this notice to become effective July 1, [illegible].

However, before we were able to publish this notice and implement section 4026(a) of Pub. L. 100–203, Pub. L. 100–360 was enacted on July 1, 1988. As discussed in detail in section II.C. of this notice, section 411(d)(5) of Pub. L. 100–360 extended the effective date of the amendments made by section 4026(a) of Pub. L. 100–203 to July 1, 1989. Therefore, we are no longer required to implement those amendments through this notice. The changes effectuated by Pub. L. 100–360 caused us to significantly modify the July 1, 1988 schedule of limits originally prepared for publication. Because there is not now adequate time to publish a proposed notice of this schedule of limits and solicit public comment and then publish a final notice before July 1, 1988, we find good cause to waive the notice and comment procedures because they would be impractical and contrary to the public interest attached to updating these limits. Nonetheless, we are

providing a 60-day comment period as indicated at the beginning of this notice.

Because of the large number of items of correspondence we normally receive, we are not able to acknowledge or respond to them individually. However, in preparing the final notice, we will consider all comments that we receive by the date and time specified in the "Dates" section of this preamble of that notice.

B. Waiver of 30-Day Delay in Effective Date

We normally provide a delay of 30 days in the effective date of all final notices. However, we believe that, in this case, the public interest requires that the schedule of limits set forth in this notice take effect on July 1, 1988.

Because one-third of the participating HHAs begin their cost reporting periods on July 1, a delay in the effective date would mean that these cost limits would not apply to one-third of all HHAs and they would continue to be subject to the schedule of limits that was effective for their cost reporting period beginning on July 1, 1987. Since the shedule of limits set forth in this notice will result overall in substantially higher cost limits for all HHAs, failure to apply the revised limits to the large number of HHAs, whose cost reporting periods begin July 1, 1988 would be disadvantageous to those HHAs and not in their best interest. Therefore, we find good cause to waive the 30-day delay in effective date.

C. Paperwork Reduction Act

This notice does not impose information collection requirements. Consequently, it does not need to be reviewed by EOMB under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

(Catalog of Federal Domestic Assistance Programs No. 13.773, Medicare Hospital Insurance)

Dated: June 30, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

August 4, 1988.

Otis R. Bowen,

Secretary.

Addendum: Comparison of HHA Wage Index and Hospital Wage Index

This addendum sets forth a list of the wage index values for both the HCFA hospital wage and the HHA wage index and the percentage change between the two. See section II.c. of the notice for a detailed explanation of the development of the HHA wage index. This comparison is supplied for information only. The HHA cost limits in this notice are based on the values entered in the Hospital Wage Index column.

URBAN AREAS

	Hospital wage index	HHA wage index	Percentage change
Abilene, TX	.9003	.9819	9.054
Aguadilla, PR	.5581	.4424	−20.731
Akron, OH	1.106	1.1071	−.081
Albany, GA	.8183	.8031	−1.856
Albany-Schenectady-Troy, NY	.9246	1.0446	13.347
Albuquerque, NM	1.1078	[1] 1.0000	−9.731
Alexandria, LA	.9168	[1] 1.0000	9.068
Allentown-Bethlehem, PA-NJ	1.0454	1.0436	−.172
Altoona, PA	1.0092	.8568	−14.309
Amarillo, TX	.9595	.5334	−44.409
Anaheim-Santa Ana, CA	1.2616	1.3322	5.598
Anchorage, AK	1.5849	1.4995	−5.388
Anderson, IN	.9982	.6283	−37.057
Anderson, SC	.8288	[1] 1.0000	19.466
Ann Arbor, MI	1.2807	1.1539	−9.075
Anniston, AL	.8519	.7757	−8.827
Appleton-Oshkosh-Neenah, WI	1.0896	.8529	−22.108
Arecibo, PR	.6081	.4636	−23.763
Asheville, NC	.9864	.8506	−3.822
Athens, GA	.8179	[1] 1.0000	22.264
Atlanta, GA	.9663	1.0994	13.774
Atlantic City, NJ	1.0958	1.3054	19.093
Augusta, GA-SC	.9602	1.1253	17.194
Aurora-Elgin, IL	1.1015	1.1406	3.550
Austin, TX	1.1177	1.1395	1.951
Bakersfield, CA	1.2098	1.1498	−4.917
Baltimore, MD	1.115	1.1877	6.520
Bangor, ME	.9285	[1] 1.0000	7.701
Baton Rouge, LA	.9625	1.0008	1.883
Battle Creek, MI	1.0302	.8628	−16.249
Beaumont-Port Arthur, TX	1.0092	.9008	−10.672
Beaver County, PA	1.0918	[1] 1.0000	−8.417
Bellingham, WA	1.1471	.7628	−33.572
Benton Harbor, MI	.8211	.6009	−27.056
Bergen-Passaic, NY	1.0748	.9978	−7.183
Billings, MT	1.0226	1.2206	19.349
Biloxi-Gulfport, MS	.8459	.8676	.556
Binghamton, NY	.9658	.8811	−8.799
Birmingham, AL	.9953	.9497	−2.132
Bismarck, ND	.8943	.6945	−30.152
Bloomington, IN	.9899	.5481	−44.631
Bloomington-Normal, IL	.9844	[1] 1.0000	1.566
Boise City, ID	1.0584	1.1701	10.554
Boston-Lowell-Brockton-Lawrence, MA	1.1590	1.1083	−4.040
Boulder-Longmont, CO	1.1386	.7851	−30.693
Bradenton, FL	.9196	.8547	4.904
Brazoria, TX	.8742	1.3040	49.165
Bremerton, WA	.9813	1.0057	2.456

URBAN AREAS—Continued

	Hospital wage index	HHA wage index	Percentage change
Bridgeport-Stamford-Norw-Danb, CT	1.1548	1.1393	−15.507
Brownsville-Harlingen, TX	.8877	[1] 1.0000	11.196
Bryan-College Station, TX	.9508	1.0428	8.886
Buffalo, NY	1.0567	1.1939	11.715
Burlington, NC	.7926	1.0478	32.188
Burlington, VT	1.0131	.8724	−13.886
Caguas, PR	.6279	.5294	−15.719
Canton, OH	1.0080	1.0080	0.000
Casper, WY	1.1063	.8139	−26.729
Cedar Rapids, IA	1.0174	.6581	−35.591
Champaign-Urbana-Rantoul, IL	.9091	.8261	−9.875
Charleston, SC	.8912	.8758	−1.729
Charleston, WV	1.0482	1.0264	−2.070
Charlotte-Gastonia-RK Hill, NC-SC	.8921	1.0402	16.622
Charlottesville, VA	.8345	.7044	−16.019
Chattanooga, TN-GA	1.0041	.8270	−18.335
Cheyenne, WY	.9702	[1] 1.0000	3.076
Chicago, IL	1.2351	1.2155	−1.587
Chico, CA	1.2553	1.0756	−15.438
Cincinnati, OH-KY-IN	1.1900	1.0854	−.995
Clarksville-Hopkinsville, TN-KY	.8183	1.8911	131.101
Cleveland, OH	1.1565	1.1128	−3.779
Colorado Springs, CO	1.0439	.7899	−24.332
Columbia, MO	1.1022	.4579	−58.601
Columbia, SC	.9785	1.0960	12.026
Columbus, GA-AL	.7928	.5761	−27.053
Columbus, OH	.9681	.9921	2.447
Corpus Christi, TX	.9566	.4031	−59.511
Cumberland, MD-WV	.8996	.8622	−4.157
Dallas, TX	1.0781	1.1312	4.926
Danville, VA	.8587	[1] 1.0000	23.655
Davenport-Rock Island-Moline, IA-IL	1.0662	.8809	−17.392
Dayton-Springfield, OH	1.0000	.8109	−19.609
Daytona Beach, FL	.9139	1.3512	47.844
Decatur, IL	.8888	.9293	−3.117
Denver, CO	1.0766	1.0525	−1.080
Des Moines, IA	1.0356	1.1397	7.967
Detroit, MI	1.1725	1.2380	5.586
Dothen, AL	.8167	.6711	−20.646
Dubuque, IA	1.0000	.7043	−29.726
Duluth, MN-WI	.9930	1.9160	93.253
Eau Claire, WI	.9498	.8961	−5.656
El Paso, TX	.9437	1.3596	44.516
Elkhart-Goshen, IN	.8991	.8269	−8.922
Elmira, NY	.9741	1.4456	48.454
Enid, OK	.8881	1.2103	35.712
Erie, PA	.8981	.8438	−6.055
Eugene-Springfield, OR	1.1163	[1] 1.0000	−10.418
Evansville, IN-KY	1.0217	.8756	−14.554
Fargo-Moorhead, ND-MN	1.0584	.9456	−10.654
Fayetteville, NC	.8330	[1] 1.2318	47.875
Fayetteville-Springdale, AR	.8078	1.0509	30.102
Flint, MI	1.2104	1.0237	−15.425
Florence, AL	.7982	.7618	−4.310
Florence, SC	.7687	1.0000	30.107
Fort Collins-Loveland, CO	1.0416	.9158	−12.143
Fort Lauderdale-Hollywood-Pompano, FL	1.1249	1.0441	−7.147
Fort Myers-Cape Coral, FL	.8525	1.0855	27.356
Fort Pierce, FL	1.0215	1.1442	12.012
Fort Smith, AR-OK	.8243	.7044	−14.487
Fort Walton Beach, FL	.8751	.8841	1.051
Fort Wayne, IN	.9586	.8152	−15.008
Fort Worth-Arlington, TX	.9606	1.8450	94.837
Fresno, CA	1.1490	1.1643	1.375
Gadsden, AL	.8777	[1] 1.0000	13.911
Gainesville, FL	.9542	1.3208	38.509
Galveston-Texas City, TX	1.1412	1.1673	2.287
Gary-Hammond, IN	1.0078	.9318	−15.121
Glen Falls, NY	.9607	.8777	1.770
Grand Forks, ND	.8871	1.0043	1.307
Grand Rapids, MI	1.0663	.8408	−21.071
Great Falls, MT	1.0722	1.0000	−6.734
Greeley, CO	1.0763	1.1654	8.283
Green Bay, WI	1.0234	.8396	−18.090
Greensboro-Winston-Salem-High Pt, NC	.9388	.9311	−0.597
Greenville-Spartanburg, SC	.9136	1.0764	17.834
Hagerstown, MD	.8888	1.0001	10.600
Hamilton-Middletown, OH	1.0214	1.2162	19.072
Harrisburg-Lebanon-Carlisle, PA	.9868	.9975	1.106

URBAN AREAS—Continued

	Hospital wage index	HHA wage index	Percentage change
Hartford-Middletown-New Britain, CT	1.1486	.9969	−13.033
Hickory, NC	[illegible]	[illegible]	−5.377
Honolulu, HI	1.2022	.8614	−43.321
Houma-Thibodaux, LA	[illegible]	[illegible]	[illegible]
Houston, TX	[illegible]	[illegible]	[illegible]
Huntington-Ashland, WV-KY-OH	[illegible]	[illegible]	−20.822
[illegible], IL	.8661	[illegible]	[illegible]
Indianapolis, IN	1.0594	.9765	−7.825
Iowa City, IA	1.3084	1.0510	−19.673
Jackson, MI	[illegible]	[illegible]	−2.018
Jackson, MS	[illegible]	.8210	−12.230
Jackson, TN	.7716	[illegible]	[illegible]
Jacksonville, FL	.9491	.9136	−3.618
Jacksonville, NC	.7799	.7731	−2.950
[illegible]	.9422	.5938	−36.977
Jersey City, NJ	[illegible]	[illegible]	[illegible]
Johnson City-Kingsport-Bristol, TN-VA	[illegible]	[illegible]	[illegible]
Johnstown, PA	[illegible]	.7873	−17.353
Joliet, IL	1.1253	.9399	−16.476
Joplin, MO	.9202	[illegible] 1.0000	8.672
Kalamazoo, MI	1.2141	[illegible]	[illegible]
Kankakee, IL	[illegible]	[illegible] 1.0000	[illegible]
Kansas City, KS-MO	[illegible]	[illegible]	−.197
Kenosha, WI	1.0875	[illegible]	−19.090
Killeen-Temple, TX	.8849	[illegible]	−5.583
Knoxville, TN	[illegible]	[illegible]	−3.135
Kokomo, IN	[illegible]	[illegible]	−17.822
Lacrosse, WI	[illegible]	.9805	−3.561
Lafayette, LA	1.0114	[illegible]	−3.045
Lafayette, IN	.9163	[illegible]	[illegible]
Lake Charles, LA	[illegible]	[illegible]	[illegible]
Lake County, IL	1.1827	[illegible]	−12.211
Lakeland-Winter Haven, FL	[illegible]	[illegible]	[illegible]
Lancaster, PA	[illegible]	[illegible]	−16.035
Lansing-East Lansing, MI	[illegible]	[illegible]	−2.507
Laredo, TX	.8163	[illegible]	[illegible]
Las Cruces, NM	[illegible]	[illegible]	−8.338
Las Vegas, NV	1.1254	[illegible]	19.389
Lawrence, KS	[illegible]	[illegible] 1.0000	−1.768
Lawton, OK	[illegible]	[illegible]	5.608
Lewiston-Auburn, ME	.9426	[illegible]	[illegible]
Lexington-Fayette, KY	.9873	[illegible]	−4.295
Lima, OH	[illegible]	[illegible]	[illegible]
Lincoln, NE	[illegible]	1.1719	[illegible]
Little Rock-North Little Rock, AR	1.1135	[illegible]	−26.538
Longview-Marshall, TX	[illegible]	[illegible]	5.244
Lorain-Elyria, OH	[illegible]	[illegible]	−2.724
Los Angeles-Long Beach, CA	[illegible]	[illegible]	−5.026
Louisville, KY-IN	[illegible]	.9494	−5.823
Lubbock, TX	[illegible]	[illegible]	−18.059
Lynchburg, VA	[illegible]	[illegible]	22.214
Macon-Warner Robins, GA	.9325	.7317	−21.534
Madison, WI	1.0802	.9452	−13.300
[illegible]	[illegible]	.9903	1.841
Mansfield, OH	[illegible]	1.0670	[illegible]
Mayaguez, PR	.5732	.5774	.733
McAllen-Edinburg-Mission, TX	[illegible]	[illegible]	[illegible]
Medford, OR	1.0356	[illegible]	−41.985
Melbourne-Titusville, FL	[illegible]	1.1616	[illegible]
Memphis, TN-AR-MS	[illegible]	[illegible]	[illegible]
Merced, CA	1.2134	[illegible]	−10.631
Miami-Hialeah, FL	1.0703	1.1097	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
Midland, TX	1.1305	[illegible]	−20.274
Milwaukee, WI	1.1411	.9660	−13.592
Minneapolis-St. Paul, MN-WI	1.1772	[illegible]	−7.424
Mobile, AL	[illegible]	.7477	−16.243
Modesto, CA	[illegible]	[illegible]	−27.092
Monmouth-Ocean, NJ	[illegible]	[illegible]	[illegible]
Monroe, LA	[illegible]	[illegible] 1.0000	7.032
Montgomery, AL	.8876	.8838	[illegible]
[illegible], IN	[illegible]	[illegible]	27.432
Muskegon, MI	[illegible]	.7852	−19.774
Naples, FI	1.0448	[illegible]	9.456
Nashville, TN	.9414	[illegible]	[illegible]
Nassau-Suffolk, NY	[illegible]	1.4331	6.956
New Bedford-Fall River-Attleboro, MA	[illegible]	1.5218	55.375
New Haven-Waterbury-Meriden, CT	[illegible]	[illegible]	−5.206
New London-Norwich, CT	1.1103	[illegible]	−19.535

URBAN AREAS—Continued

	Hospital wage index	HHA wage index	Percentage change
New Orleans, LA	[illegible]	1.1447	[illegible]
New York, NY	[illegible]	[illegible]	−11.608
Newark, NJ	[illegible]	1.0124	−11.224
Niagara Falls, NY	[illegible]	[illegible]	112.964
Norfolk-VA Beach-Newport News, VA	[illegible]	1.1429	[illegible]
Oakland, CA	[illegible]	[illegible]	−16.095
Ocala, FL	[illegible]	[illegible]	3.263
Odessa, TX	[illegible]	1.0436	[illegible]
Oklahoma City, OK	[illegible]	[illegible]	11.546
Olympia, WA	[illegible]	[illegible]	[illegible]
Omaha, NE-IA	[illegible]	[illegible]	−[illegible]
Orange County, NY	.9299	[illegible]	[illegible]
Orlando, FL	[illegible]	[illegible]	−10.493
Owensboro, KY	.8243	[illegible]	−24.821
Oxnard-Ventura, CA	[illegible]	[illegible]	[illegible]
Panama City, FL	.8354	[illegible]	−13.335
Parkersburg-Marietta, WV-OH	[illegible]	[illegible]	−[illegible]
Pascagoula, MS	[illegible]	.8650	−8.555
Pensacola, FL	[illegible]	[illegible]	5.531
Peoria, IL	[illegible]	[illegible]	−9.127
Philadelphia, PA-NJ	1.1783	1.0017	−14.968
Phoenix, AZ	[illegible]	[illegible]	[illegible]
Pine Bluff, AR	[illegible]	.4106	−48.706
Pittsburgh, PA	1.1011	1.0572	−3.987
Pittsfield, MA	[illegible]	[illegible]	−16.738
Ponce, PR	[illegible]	.4674	−32.603
Portland, ME	1.0114	[illegible]	−34.477
Portland, OR	1.2074	.9327	−22.751
Portsmouth-Dover-Rochester, NH	.9373	[illegible]	[illegible]
Poughkeepsie, NY	[illegible]	[illegible]	32.322
Providence-Pawtucket-Woonsocket, RI	1.0553	[illegible]	−4.387
Provo-Orem, UT	.9858	[illegible] 1.000	1.440
Pueblo, CO	1.1210	.7514	−32.971
Racine, WI	1.0002	[illegible]	−17.267
Raleigh-Durham, NC	[illegible]	[illegible]	[illegible]
Rapid City, SD	.9623	[illegible] 1.000	3.916
Reading, PA	[illegible]	[illegible]	−11.427
Redding, CA	[illegible]	[illegible] 1.000	−19.329
Reno, NV	1.1839	1.3137	10.964
Richland-Kennewick, WA	[illegible]	1.1502	[illegible]
Richmond-Petersburg, VA	[illegible]	[illegible]	−13.499
Riverside-San Bernardino, CA	1.2517	1.1440	−8.604
Roanoke, VA	[illegible]	[illegible]	[illegible]
Rochester, MN	[illegible]	[illegible]	8.758
Rochester, NY	[illegible]	[illegible]	−13.515
Rockford, IL	[illegible]	.9800	−13.687
Sacramento, CA	[illegible]	[illegible]	[illegible]
Saginaw-Bay City-Midland, MI	[illegible]	[illegible]	−4.444
St Cloud, MN	[illegible]	[illegible]	−16.666
St Joseph, MO	[illegible]	[illegible]	−45.188
St Louis MO-IL	1.0627	[illegible]	[illegible]
Salem, OR	1.0971	[illegible] 1.000	−8.851
Salinas-Seaside-Monterey, CA	1.2571	[illegible]	[illegible]
Salt Lake City, UT	[illegible]	1.3174	[illegible]
San Angelo, TX	[illegible]	[illegible] 1.000	[illegible]
San Antonio, TX	[illegible]	[illegible]	[illegible]
San Diego, CA	[illegible]	1.1176	−14.713
San Francisco, CA	1.6517	[illegible]	−46.964
San Jose, CA	[illegible]	[illegible]	−16.278
San Juan, PR	[illegible]	[illegible]	9.956
Santa Barbara-Santa Maria-Lompoc, CA	1.1822	1.1769	−0.448
Santa Cruz, CA	[illegible]	[illegible] 1.000	−19.562
Santa FE, NM	.9809	[illegible] 1.000	1.947
Santa Rosa-Petaluma, CA	1.3112	[illegible]	−4.782
Sarasota, FL	[illegible]	[illegible]	−13.694
Savannah, GA	[illegible]	.7110	−20.265
Scranton-Wilkes Barre, PA	.9982	1.0033	.511
Seattle, WA	1.1579	1.1937	[illegible]
Sharon, PA	.9757	[illegible]	[illegible]
Sheboygan, WI	[illegible]	[illegible]	−19.373
Sherman-Denison, TX	[illegible]	[illegible]	−11.334
Shreveport, LA	[illegible]	[illegible]	−3.547
Sioux City, IA–NE	[illegible]	.9285	−7.722
Sioux Falls, SD	1.0211	1.0176	−.343
South Bend-Mishawaka, IN	[illegible]	[illegible]	−23.773
Spokane, WA	1.1559	1.1634	−2.379
Springfield, IL	[illegible]	[illegible]	−11.300
Springfield, MO	[illegible]	[illegible]	−23.107
Springfield, MA	[illegible]	.8608	−12.445

URBAN AREAS—Continued

	Hospital wage index	HHA wage index	Percentage change
State College, PA	1.0772	.9598	−20.162
[illegible]	[illegible]	[illegible]	[illegible]
Stockton, CA	1.2671	.6720	−47.790
Syracuse, NY	1.0301	.8894	−13.562
Tacoma, WA	1.1052	1.1781	[illegible]
Tallahassee, FL	.9509	1.2652	33.053
Tampa-St. Petersburg-Clearwater, FL	.9530	.9093	−4.586
Terre Haute, IN	.8458	.4336	[illegible]
Texarkana, AR–TX	.8690	1.1701	[illegible]
Toledo, OH	1.2267	.8906	−27.236
Topeka, KS	1.0632	1.2870	[illegible]
Trenton, NJ	1.0317	1.0417	00.592
Tucson, AZ	1.0990	1.5635	[illegible]
Tulsa, OK	1.0131	.7707	−23.927
Tuscaloosa, AL	1.0172	.8375	−17.666
Tyler, TX	1.0035	1.3168	31.231
Utica-Rome, NY	.8840	.8693	−1.663
Vallejo-Fairfield-Napa, CA	1.3397	1.0103	[illegible]
Vancouver, WA	1.1658	1.0578	−.289
Victoria, TX	.8205	.5439	−33.711
Vineland-Millville-Bridgeton, NJ	.9228	1.0241	[illegible]
Visalia-Tulare-Porterville, CA	1.0643	[1] 1.0000	−6.042
Waco, TX	.9117	.8944	−1.898
Washington, DC–MD–VA	1.1985	1.2090	[illegible]
Waterloo-Cedar Falls, IA	.9993	.8201	−17.933
Wausau, WI	.9871	[1] 1.0000	[illegible]
West Palm Beach-Boca Raton-Delray, CA	.9973	.8764	−12.114
Wheeling, WV–OH	.9771	.8648	−11.493
Wichita, KS	[illegible]	[illegible]	−22.814
Wichita Falls, TX	.8776	.9600	−2.005
Williamsport, PA	.9048	.7858	−13.141
Wilmington, DE–NJ–MD	[illegible]	.9068	−14.356
Wilmington, NC	.9591	.7546	−21.322
Worcester-Fitchburg-Leominster, MA	1.0094	1.0081	−.129
Yakima, WA	[illegible]	1.1713	12.744
York PA	.9853	1.0227	[illegible]
Youngstown-Warren, OH	1.0480	.9425	−10.067
Yuba City, CA	1.0492	[1] 1.0000	−4.398

[1] Areas for which no wage data were reported.

RURAL AREAS

	Hospital wage index	HHA wage index	Percentage change
[illegible]	0.7458	0.7147	−4.273
Alaska	1.2000	1.2000	−16.545
[illegible]	.8822	1.413	51.561
Arkansas	.7703	.4234	−45.034
California	1.1386	1.0993	−4.234
Colorado	[illegible]	1.0553	13.157
Connecticut	1.0000	.9544	−12.279
Delaware	.9645	.9031	4.465
Florida	[illegible]	[illegible]	1.543
Georgia	.7779	.7581	1.311
Hawaii	1.0157	.9362	−7.827
Idaho	.9130	1.0508	16.199
Illinois	[illegible]	.8569	−5.921
Indiana	[illegible]	.7977	−8.152
Iowa	.8718	.7783	−10.758
Kansas	[illegible]	.8118	[illegible]
Kentucky	.8036	.8351	3.871
Louisiana	[illegible]	.8115	[illegible]
Maine	.8701	1.0328	19.489
Maryland	.8773	[illegible]	2.585
[illegible]	1.0548	1.1508	9.101
Michigan	[illegible]	1.007	5.016
Minnesota	[illegible]	.8624	[illegible]
[illegible]	[illegible]	.8571	[illegible]
Missouri	.8325	.8869	6.535
Montana	.8154	[illegible]	8.117
Nebraska	.8310	.6838	−17.738
Nevada	[illegible]	[illegible]	[illegible]
New Hampshire	[illegible]	[illegible]	−3.850

RURAL AREAS—Continued

	Hospital wage index	HHA wage index	Percentage change
New Mexico	[illegible]	.8761	−4.689
New York	.8730	1.0098	15.670
North Carolina	.8130	.8822	8.512
North Dakota	.9061	.7867	−13.177
Ohio	.8500	.9906	8.857
Oklahoma	[illegible]	[illegible]	12.113
Oregon	1.0782	1.1002	2.040
Pennsylvania	[illegible]	.9011	−4.413
Puerto Rico	.5736	.5162	−10.007
Rhode Island	.9553	.9643	−7.432
South Carolina	.9827	.5808	[illegible]
South Dakota	.8263	.7192	−12.961
Tennessee	.7732	.9021	16.658
Texas	.8180	.8592	5.037
Utah	.9505	[1] 1.0000	5.208
Vermont	[illegible]	.8551	−2.667
Virginia	.8184	1.0795	26.861
Washington	1.0073	1.0093	−1.752
West Virginia	.8616	1.0041	[illegible]
Wisconsin	.8995	.9664	7.437
Wyoming	.9745	.8043	−17.445

[1] Areas for which no wage data were reported.

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National Institutes of Health

Division of Research Resources; Meetings of the Subcommittees of the Animal Resources Review Committee

Pursuant to Pub. L. 92-463, notice is hereby given of Subcommittee meetings of the Animal Resources Review Committee, Division of Research Resources, National Institutes of Health.

These meetings will be open to the public as listed below for a brief staff presentation on the current status of the Animal Resources Program and the selection of future meeting dates. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meetings will be closed to the public as listed below for the review, discussion and evaluation of individual grant applications submitted to the Animal Resources Program. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Subcommittee: Subcommittee on Primate Research Centers.

Date of Meeting: October 21, 1988.

Place of Meeting: Nendels Inn, Sunset Room, 6900 S.W. Canyon Road, Portland, OR 97225.

Open: 10:30 a.m.–12:00 noon.

Closed: 8:30 a.m.–10:30 a.m.

Name of Subcommittee: Subcommittee on Animal Resources.

Date of Meeting: October 27, 1988.

Place of Meeting: National Institutes of Health, Building 31, Conference Room 4, 9001 Rockville Pike, Bethesda, MD 20892.

Open: 3:00 p.m.–5:00 p.m.

Closed: 8:00 a.m.–3:00 p.m.

Mr. James Augustine, Information Officer, Division of Research Resources, National Institutes of Health, Building 31, Room 5B13, Bethesda, Maryland 20892, (301) 496-5545, will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Arthur D. Schaerdel, Executive Secretary of the Animal Resources Review Committee, Division of Research Resources, National Institutes of Health, Building 31, Room 5B55, Bethesda, Maryland 20892, (301) 496-5175, will furnish substantive program information upon request.

(Catalog of Federal Domestic Assistance Programs No. 13.306, Laboratory Animal Sciences, National Institutes of Health)

Dated: October 6, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-23909 Filed 10-17-88; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Health Resources and Services Administration; Telecommunications Demonstration Projects; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority of October 3, 1988 from the Assistant Secretary for Health to the Administrator, Health Resources and Services Administration, the Administrator has redelegated the authorities delegated to him under Title IV, Subtitle A, Part 4, section 4094(e) of Pub. L. 100-203, The Omnibus Budget Reconciliation Act of 1987, pertaining to Telecommunications Demonstration Projects to the Director, Office of Rural Health Policy, Health Resources and Services Administration.

Redelegation: This authority may not be redelegated.

Effective Date: This delegation became effective on October 17, 1988.

John H. Kelso,

Acting Administrator, Health Resources and Services Administration.

Date: October 11, 1988.

[FR Doc. 23902 Filed 10-17-88; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Meeting of the California Desert District Advisory Council

Summary

Notice is hereby given, in accordance with Pub. L. 94-460 and 94-379, that the California Desert District Advisory Council in the Bureau of Land Management, U.S. Department of the Interior, will meet in formal session on Wednesday, November 2, 1988, from 8 a.m. to 5 p.m., at the Nautical Inn Hotel and Convention Center, 1000 McCulloch Boulevard, Lake Havasu City, AZ.

Agenda items will include: Council review of analysis on 1988 amendments to the California Desert Plan; plan amendment for the boundary adjustment at Death Valley and Joshua Tree National Monuments; updates on the U.S. Navy withdrawal agreement in Imperial County and the U.S. Army proposed expansion of Fort Irwin in San Bernardino County; District ACEC plan progress at Rand Mountain and Afton Canyon; and, discussion of technical review team work.

The following day, Thursday, November 3, the California Desert District Advisory Council will participate in a joint meeting with the Yuma, AZ District and the Las Vegas, NV District Advisory Councils for a one-day discussion and participation in subjects of common interest to the three Advisory Councils.

All District Advisory Council meetings are open to the public, with time allocated for public comments. Written comments may be filed in advance of the meeting with the California Desert District Advisory Council Chairman, Dr. Loren Lutz, c/o Bureau of Land Management Public Affairs Office, 1695 Spruce Street, Riverside, CA 92507. Written comments are also accepted at the time of the meeting.

For Further Information and Meeting Confirmation: Contact the Bureau of Land Management, California Desert District, Public Affairs Office, 1695 Spruce Street, Riverside, CA 92507 (714) 351-6352.

Date: October 4, 1988.

Wesley T. Chambers,

Acting District Manager.

[FR Doc. 88-24169 Filed 10-17-88; 8:45 am]

BILLING CODE 4310-40-M

National Park Service

Concession Contract Negotiations; Amfac Hotels and Resorts, Inc.

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate a concession contract with Amfac Hotels and Resorts, Inc., authorizing it to continue to provide lodging, food, beverage, merchandise, grocery, service station and related facilities and services for the public at Stovepipe Wells within Death Valley National Monument, California for a period of fifteen (15) years from January 1, 1989 through December 31, 2003.

EFFECTIVE DATE: December 19, 1988.

ADDRESS: Interested parties should contact the Regional Director, Western Region, 450 Golden Gate Avenue, San Francisco, California 94102, for information as to the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: This contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act, and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on December 31, 1988, and therefore pursuant to the provisions of section 5 of the Act of October 9, 1965 (70 Stat. 968; 16 U.S.C. 20), is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Stanley T. Albright,

Regional Director, Western Region.

Date: August 9, 1988.

[FR Doc. 88-23870 Filed 10-17-88; 8:45 am]

BILLING CODE 4310-70-M

BEST COPY AVAILABLE

Concession Permit Negotiations; Cades Cove Riding Stables, Inc.

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate a concession permit with Cades Cove Riding Stables, Inc., authorizing it to continue to provide saddle horse livery, guide service and hayrides for the public at Great Smoky Mountains National Park, Tennessee, for a period of five (5) years from January 1, 1989, through December 31, 1993.

EFFECTIVE DATE: December 19, 1988.

ADDRESS: Interested parties should contact the Regional Director, Southeast Region, 75 Spring Street SW., Atlanta, Georgia 30303, for information as to the requirements of the proposed permit.

SUPPLEMENTARY INFORMATION: This permit has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which expires by limitation of time on December 31, 1988, and therefore pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit as defined in 36 CFR, 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

C.W. Ogle,

Acting Regional Director, Southeast Region.

Date August 16, 1988.

[FR Doc. 88-23675 Filed 10-17-88; 8:45 am]

BILLING CODE 4310-70-M

Concession Contract Negotiations; Cades Cove Campground Store, Inc.

August 17, 1988.

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate a concession contract with Cades Cove Campground Store, Inc., authorizing it to continue to provide a campground store and bicycle rental facilities and services for the public at Great Smoky Mountain National Park, Tennessee, for a period of five (5) years from January 1, 1989, through December 31, 1993.

EFFECTIVE DATE: December 19, 1988.

ADDRESS: Interested parties should contact the Regional Director, Southeast Region, 75 Spring Street SW., Atlanta, Georgia 30303, for information as to the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: This contract has been determined to be categorically excluded from the procedural provisions of the national Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on December 31, 1988, and therefore pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR, 51.5

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Robert M. Baker,

Regional Director, Southeast Region.

Date: August 17, 1988.

[FR Doc. 88-23676 Filed 10-17-88; 8:45 am]

BILLING CODE 4310-70-M

Martin Luther King, Jr., National Historic Site; Advisory Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of advisory commission meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Martin Luther King, Jr., National Historic Site Advisory Commission will be held at 10:30 a.m. at the following location and date.

DATE: October 26, 1988.

ADDRESS: The Martin Luther King, Jr., Community Center, 450 Auburn Avenue NE., Atlanta, Georgia 30312.

FOR FURTHER INFORMATION CONTACT: Mr. Randolph Scott, Superintendent, Martin Luther King, Jr., National Historic Site, 522 Auburn Avenue NE., Atlanta, Georgia 30312.

SUPPLEMENTARY INFORMATION: The purpose of the Martin Luther King, Jr., National Historic Commission is to consult and advise with the Secretary of the Interior or his designee on matters of planning and administration of the Martin Luther King, Jr., National Historic Site. The members of the Advisory Commission are as follows:

Ms. Portia Scott, Chairperson
Mr. William W. Allison
Mr. Arthur J. Clement
Mr. John Cox
Mrs. Christine King Farris
Mrs. Valerie Hendrieux
Mr. C. Randy Humphrey
Dr. Elizabeth A. Lyon
Mr. Daniel H. Hall
Rev. Joseph E. Roberts
Mrs. Coretta Scott King, Ex-Officio Member
Director, National Park Service, Ex-Officio Member

The matters to be discussed at this meeting will include: (1) The status of park development and interpretive activities.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Written statements may also be submitted to the Superintendent at the address above. Minutes of the meeting will be available at Park Headquarters for public inspection approximately 4 weeks after the meeting.

Dated: October 6, 1988.

C.W. Ogle,

Acting Regional Director, Southeast Region.

[FR Doc. 88-23677 Filed 10-17-88; 8:45 am]

BILLING CODE 4310-70-M

Concession Permit Negotiation, Craftsmen Guild of Mississippi, Inc.

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate a concession permit with Craftsmen's Guild of Mississippi, Inc., authorizing it to continue to provide sales, exhibits, workshops and demonstrations of Mississippi crafts for the public at Natchez Trace Parkway for a period of four (4) years from January 1, 1989, through December 31, 1992.

EFFECTIVE DATE: December 19, 1988.

ADDRESS: Interested parties should contact the Regional Director, Southeast Region, 75 Spring Street SW., Atlanta, Georgia 30303, for informaiton as to the requirements of the proposed permit.

SUPPLEMENTARY INFORMATION: This permit has been determined to be categorically excluded form the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which expires by limitation of time on December 31, 1988, and therefore pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit as defined in 36 CFR, 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Robert L. Deskins,

Acting Regional Director, Southeast Region.

Date: September 30, 1988.

[FR Doc. 88-23677 Filed 10-17-88; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 8, 1988. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by November 2, 1988.

Beth Boland,

Acting Chief of Registration, National Register.

CALIFORNIA

San Francisco County

SS Rio De Janeiro Shipwreck, Address Restricted, San Francisco vicinity, 88002234

COLORADO

Adams County

Bowles House, 3626 W. 72nd Ave., Westminster, 88002238

Denver County

Brown, J.S., Mercantile Building, 1034 16th St., Denver, 88002236

Buchtel Bungalows, 2700 S. Columbine St., Denver, 88002237

El Paso County

Lewis, Inez Johnson, School, 146 Jefferson St., Monument, 88002239

Weld County

United Church of Christ of Highlandlake, 16698 Weld CR 5, Mead vicinity, 88002237

GEORGIA

Spalding County

Griffin Commercial Historic District, Roughly bounded by Central Alley, Sixth, Taylor and Eighth Sts., Griffin, 88002240

ILLINOIS

Cook County

Fairbanks, Morse and Company, Building, 900 S. Wabash Ave., Chicago, 88002233

Shakespeare Garden, Northwestern University campus, Evanston, 88002234

Twin Tower Sanctuary, 9987 W. 144th St., Orland Park, 88002235

Fulton County

Vermont Masonic Hall, N. Main St., Vermont, 88002228

La Salle County

Hotel Kaskaskia, 217 Marquette St., LaSalle, 88002229

Vermilion County

Holland Apartments, 206-326 N. Vermilion St., Danville, 88002232

KENTUCKY

Scott County

Garth School, 508 S. Hamilton St., Georgetown, 88002187

Suggett, William, Agricultural and Industrial District, SW of jct. of Cane Run Rd. and US 460, Georgetown, 88002236

MARYLAND

Somerset County

Waddy House, Pennyhawkin Rd., Princess Anne vicinity, 88002222

MISSISSIPPI

Claiborne County

Owens Creek Bridge (Historic Bridges of Mississippi TR), Spans Owens Creek on Old CR, Utica vicinity, 88002398

Widow's Creek Bridge (Historic Bridges of Mississippi TR), Spans Widow's Creek on CR, Port Gibson vicinity, 88002409

Clark County

Enterprise Bridge (Historic Bridges of Mississippi TR), Spans Chickasawhay River on Bridge St., Enterprise, 88002402

Highway 11 Bridge over Chunky River (Historic Bridges of Mississippi TR), Spans Chunky River on US 11, Enterprise vicinity, 88002400

Shubuta Bridge (Historic Bridges of Mississippi TR), Spans Chickasawhay River on CR 5 of Shubuta, Shubuta vicinity, 88002490

Clay County

Tibbee Bridge (Historic Bridges of Mississippi TR), Spans Tibbee Creek on Old Tibbee Rd., West Point vicinity, 88002457

Waverly Bridge (Historic Bridges of Mississippi TR), Spans Tombigbee River on Columbus and Greenville RR, Waverly vicinity, 88002237

Copiah County

Gateswille Bridge (Historic Bridges of Mississippi TR), Spans Pearl River of CR 8 of Gatesville, Gatesville vicinity, 88002408

Homochitto River Bridge (Historic Bridges of Mississippi TR), Spans Homochitto River on CR, Harrisburg vicinity, 88002240

Rockport Bridge (Historic Bridges of Mississippi TR), Spans Pearl River on CR 9 of Georgetown, Georgetown vicinity, 88002414

Franklin County

Edicetor Bridge (Historic Bridges of Mississippi TR), Spans Homochitto River on CR, Edicetor vicinity, 88002406

Green County

Leaf River Bridge (Historic Bridges of Mississippi TR), Spans Leaf River N of McClain on CR, McClain vicinity, 88002478

Hinds County

Wilson, Woodrow, Bridge (Historic Bridges of Mississippi TR), Spans Pearl River on Silas Brown St., Jackson, 88002485

Lauderdale County

Stuckey's Bridge (Historic Bridges of Mississippi TR), Spans Chunky River on CR, Meridian vicinity, [illegible]

Lawrence County

Bahala Creek Bridge (Historic Bridges of Mississippi TR), Spans Bahala Creek on CR SW of Oma, Oma vicinity, 88002417

Leflore County

Keesler Bridge (Historic Bridges of Mississippi TR), Spans Yazoo River at Fulton St., Greenwood, [illegible]

Lowndes County

Columbus Bridge (Historic Bridges of Mississippi TR), Spans Tombigbee River on Old US 82, Columbus, [illegible]

Motley Slough Bridge (Historic Bridges of Mississippi TR), Spans Motley Slough on Shaeffer's Chapel Rd., Columbus vicinity, [illegible]

Monroe County

Rogers, Francis M., House (Aberdeen MRA), High and Hickory Sts., Aberdeen, 88002222

Noxubee County

Running Water Creek Bridge (Historic Bridges of Mississippi TR), Spans Running Water Creek on CR, Shuqualak vicinity, 88002487

Stone County

McHenry, George Austin, House, McHenry Ave. and Fifth St., McHenry, 88002223

Sunflower County

Woodburn Bridge (Historic Bridges of Mississippi TR), Spans Big Sunflower River on CR SE of Indianola, Indianola vicinity, 88002492

Tate County

Hickahala Creek Bridge (Historic Bridges of Mississippi TR), Spans Hickahala Creek on CR, Senatobia vicinity, 88002479

Warren County

Big Black River Railroad Bridge (Historic Bridges of Mississippi TR), Spans Big Black River E of Bovina, Bovina vicinity, 88002418

Confederate Avenue Brick Arch Bridge (Historic Bridges of Mississippi TR), Confederate Ave., Vicksburg, 88002421

Confederate Avenue Steel Arch Bridge (Historic Bridges of Mississippi TR), Spans Jackson Rd. in Vicksburg National Military Park, Vicksburg, 88002483

Fairground Street Bridge (Historic Bridges of Mississippi TR), Spans ICG RR yard on Fairground St., Vicksburg, 88002420

Mississippi River Bridge (Historic Bridges of Mississippi TR), Spans Mississippi River on Old US 80, Vicksburg, 88002423

Wayne County

Waynesboro Bridge (Historic Bridges of Mississippi TR), Spans Chickasawhay River on Old US 84, Waynesboro vicinity, 88002494

Yellow Creek Bridge (Historic Bridges of Mississippi TR), Spans Yellow Creek on Cr NW of Waynesboro, Waynesboro vicinity, 88002493

NEW YORK

Albany County

US Post Office—Delmar (US Post Offices in New York State, 1858–1943, TR), 367 Delmar, Delmar, [illegible]

Allegany County

US Post Office—Wellsville (US Post Offices in New York State, 1858–1943, TR), 40 E. Pearl St., Wellsville [illegible]

Bronx County

US Post Office—Morrisania (US Post Offices in New York State, 1858–1943, TR), 442 E. 157th St., New York, 88002456

Broome County

US Post Office—Endicott (US Post Offices in New York State, 1858–1943, TR), 200 Washington Ave., Endicott, 88002498

US Post Office—Johnson City (US Post Office in New York State, 1858–1943, TR), 307 Main St., Johnson City, 88002336

Cattaraugus County

US Post Office—Little Valley (US Post Offices in New York State, 1858–1943, TR), 115 Main St., Little Valley, 88002344

US Post Offices—Olean (US Post Offices in New York State, 1858–1943, TR), 102 S. Union St., Olean, [illegible]

Chautauqua County

US Post Office—Dunkirk (US Post Offices in New York State, 1858–1943, TR), 410 Central Ave., Dunkirk, [illegible]

US Post Office—Fredonia (US Post Offices in New York State, 1858–1943, TR), 21 Day St., Fredonia, [illegible]

Chemung County

Sherburne High School, 16 Chapel St., Sherburne, [illegible]

US Post Office—Norwich (US Post Offices in New York State, 1858–1943, TR), 20–22 E. Main St., Norwich, [illegible]

US Post Office—Oxford (US Post Offices in New York State, 1858–1943, TR), S. Washington Ave., Oxford, 88002392

Columbia County

US Post Office—Hudson (US Post Offices in New York State, 1858–1943, TR), 402 Union St., Hudson, [illegible]

Cortland County

US Post Office—Cortland (US Post Offices in New York State, 1858–1943, TR), 66 Main St., Cortland, [illegible]

US Post Office—Homer (US Post Offices in New York State, 1858–1943, TR), 2 S. Main St., Homer, [illegible]

Delaware County

US Post Office—Delhi (US Post Offices in New York State, 1858–1943, TR), 10 Court St., Delhi, [illegible]

US Post Office—Walton (US Post Offices in New York State, 1858–1943, TR), 34–36 Gordon Pl., Walton, [illegible]

Dutchess County

US Post Office—Beacon (US Post Offices in New York State, 1858–1943, TR), 369 Main St., Beacon, [illegible]

US Post Office—Hyde Park (US Post Offices in New York State, 1858–1943, TR), E. Market St. and US 9, Hyde Park, [illegible]

US Post Office—Poughkeepsie (US Post Offices in New York State, 1858–1943, TR), Mansion St., Poughkeepsie, [illegible]

US Post Office—Rhinebeck (US Post Offices in New York State, 1858–1943, TR), 14 Mill St., Rhinebeck, [illegible]

US Post Office—Wappingers Falls (US Post Offices in New York State, 1858–1943, TR), 2 South Ave., Wappingers Falls, 88002440

Erie County

US Post Office—Akron (US Post Offices in New York State, 1858–1943, TR), 116 Main St., Akron, [illegible]

US Post Office—Angola (US Post Offices in New York State, 1858–1943, TR), 80 N. Main St., Angola, 88002452

US Post Office—Depew (US Post Office in New York State, 1858–1943, TR), Warsaw St., Depew, [illegible]

US Post Office—Lancaster (US Post Office in New York State, 1858–1943, TR), 5084 Broadway, Lancaster, [illegible]

US Post Office—Springville (US Post Offices in New York State, 1858–1943, TR), 75 Franklin St., Springville, 88002433

US Post Office—Tonawanda (US Post Offices in New York State, 1858–1943, TR), 99 Seymour St., Tonawanda, 88002437

Essex County

Black Watch Library (Ticonderoga MRA), 101 Montcalm St., Ticonderoga, 88002199

Burleigh, H.G., House (Ticonderoga MRA), 307 Champlain Ave., Ticonderoga, 88001902

Central School (Ticonderoga MRA), 334 Champlain Ave., Ticonderoga, 88002202

Clark House (Ticonderoga MRA), 331 Montcalm St., Ticonderoga, 88002204

Community Building (Ticonderoga MRA), Montcalm and Champlain Sts., Ticonderoga, [illegible]

Delano, Clayton H., House (Ticonderoga MRA), 25 Father Jogues Pl., Ticonderoga, 88002196

Ferris House (Ticonderoga MRA), 16 Carillon Rd., Ticonderoga, 88002203

Gilligan and Stevens Block (Ticonderoga MRA), 115 Montcalm St., Ticonderoga, 88002198

Hancock House (Ticonderoga MRA), Montcalm and Wicker Sts., Ticonderoga, 88002197

Moore, Silas B., Gristmill (Ticonderoga MRA), 218 Montcalm St., Ticonderoga, [illegible]

NVS Armory (Ticonderoga MRA), 315 Champlain Ave., Ticonderoga, 88002200

PAD Factory, The (Ticonderoga MRA), 109 Lake George Ave., Ticonderoga, 88002205

St. Mary's Church and Rectory (Ticonderoga MRA), 10–12 Father Jogues Pl., Ticonderoga, [illegible]

Ticonderoga High School (Ticonderoga MRA), Calkins Pl., Ticonderoga, 88002201

Ticonderoga National Bank (Ticonderoga MRA), 101 Montcalm St., Ticonderoga, 88002194

Ticonderoga Pulp and Paper Company Office (Ticonderoga MRA), Montcalm St., Lake Placid, [illegible]

US Post Office—Lake Placid (US Post Offices in New York State, 1858–1943, TR), 201 Main St., Lake Placid, [illegible]

US Post Office—Ticonderoga (US Post Offices in New York State, 1858–1943, TR), 123 Champlain Ave., Ticonderoga, 88002436

Franklin County

US Post Office—Malone (US Post Offices in New York State, 1858–1943, TR), E. Main and Washington St., Malone, 88002350

Fulton County

US Post Office—Johnstown (US Post Offices in New York State, 1858–1943, TR), 14 N. William St., Johnstown, 88002337

Genesee County

US Post Office—Le Roy (US Post Offices in New York State, 1858–1943, TR), 2 Main St., Le Roy, [illegible]

Greene County

US Post Office—Catskill (US Post Offices in New York State, 1858–1943, TR), 270 Main St., Catskill, 88002471

Herkimer County

US Post Office—Dolgeville (US Post Offices in New York State, 1858–1943, TR), 41 S. Main St., Dolgeville, 88002466

US Post Office—Frankfort (US Post Offices in New York State, 1858–1943, TR), E. Main St., Frankfort, [illegible]

US Post Office—Ilion (US Post Offices in New York State, 1858–1943, TR), 48 First St., Ilion, [illegible]

US Post Office—Little Falls (US Post Offices in New York State, 1858–1943, TR), 25 W. Main St., Little Falls, [illegible]

US Post Office—Herkimer (US Post Offices in New York State, 1858–1943, TR), 135 Park Ave., Herkimer, [illegible]

Jefferson County

US Post Office—Carthage (US Post Offices in New York State, 1858–1943, TR), 521 State St., Carthage, 88002470

Kings County

US Post Office—Flatbush Station (US Post Offices in New York State, 1858–1943, TR), 2273 Church Ave., New York 88002460

US Post Office—Kensington (US Post Offices in New York State, 1858–1943, TR), 421 McDonald Ave., New York, 88002461

US Post Office—Metropolitan Station (US Post Offices in New York State, 1858–1943, TR), 47 Debevoise St., New York, 88002462

US Post Office—Parkville Station (US Post Offices in New York State, 1858–1943, TR), 6618 20th Ave., New York, 88002463

Livingston County

US Post Office—Dansville (US Post Offices in New York State, 1858–1943, TR), 100 Main St., Dansville, [illegible]

Madison County

US Post Office—Canastota (US Post Offices in New York State, 1858–1943, TR), 118 S. Peterboro St., Canton, 88002467

US Post Office—Hamilton (US Post Offices in New York State, 1858–1943, TR), 32 Broad St., Hamilton, [illegible]

US Post Office—Oneida (US Post Offices in New York State, 1858–1943, TR), 133 Farrier Ave., Oneida, 88002390

Monroe County

Madison Square—West Main Street Historic District, Roughly bounded by Silver, Canal, W. Main and Madison Sts., Rochester, 88002382

US Post Office—East Rochester (US Post Offices in New York State, 1858–1943, TR), 306 W. Commercial St., East Rochester 88002495

US Post Office—Honeoye Falls (US Post Offices in New York State, 1858–1943, TR), W. Main St. and Episcopal Ave., Honeoye Falls, [illegible]

Montgomery County

US Post Office—Amsterdam (US Post Offices in New York State, 1858–1943, TR), 12–16 Church St., Amsterdam, [illegible]

US Post Office—Canajoharie (US Post Offices in New York State, 1858–1943, TR), 50 W. Main St., Canajoharie 88002464

US Post Office—Fort Plain (US Post Offices in New York State, 1858–1943, TR), 41 River St., Fort Plain, [illegible]

US Post Office—St. Johnsville (US Post Offices in New York State, 1858–1943, TR), Main St., St. Johnsville, 88002434

Nassau County

US Post Office—Freeport (US Post Offices in New York State, 1858–1943, TR), 132 Merrick Rd., Freeport, 88002517

US Post Office—Garden City (US Post Offices in New York State, 1858–1943, TR), 600 Franklin St., Garden City, 88002521

US Post Office—Glen Cove (US Post Offices in New York State, 1858–1943, TR), 2 Glen Cove St., Glen Cove 88002525

US Post Office—Great Neck (US Post Offices in New York State, 1858–1943, TR), 1 Welwyn Rd., Great Neck Plaza, 88002526

US Post Office—Hempstead (US Post Offices in New York State, 1858–1943, TR), 200 Fulton Ave., Hempostead, 88002499

US Post Office—Long Beach (US Post Offices in New York State, 1858–1943, TR), 1001 E. Park Ave., Long Beach 88002347

US Post Office—Mineola (US Post Offices in New York State, 1858–1943, TR), Main and First Sts., Mineola [illegible]

US Post Office—Oyster Bay (US Post Offices in New York State, 1858–1943, TR), Shore Ave., Oyster Bay, 88002393

US Post Office—Rockville Centre (US Post Offices in New York State, 1858–1943, TR), 250 Merrick Rd., Rockville Centre, 88002425

New York County

US Post Office—Canal Street Station (US Post Offices in New York State, 1858–1943, TR), 350 Canal St., New York, 88002358

US Post Office—Church Street Station (US Post Offices in New York State, 1858–1943, TR), 90 Church St., New York, 88002359

US Post Office—Cooper Station (US Post Offices in New York State, 1858–1943, TR), 96 Fourth St., New York, 88002360

US Post Office—Inwood Station (US Post Offices in New York State, 1858–1943, TR), 90 Vermilyea Ave., New York, 88002361

US Post Office—Knickerbocker Station (US Post Offices in New York State, 1858–1943, TR), 130 E. Broadway, New York 88002362

US Post Office—Lenox Hill Station (US Post Offices in New York State, 1858–1943, TR), 221 E. 70th St., New York 88002363

US Post Office—Madison Square Station (US Post Offices in New York State, 1858–1943, TR), 149–153 E. 23rd St., New York 88002364

US Post Office—Old Chelsea Station (US Post Offices in New York State, 1858–1943, TR), 217 W. 18th St., New York 88002365

Niagara County

US Post Office—Lockport (US Post Offices in New York State, 1858–1943, TR), 1 East Ave., Lockport, 88002345

US Post Office—Middleport (US Post Offices in New York State, 1858–1943, TR), 42 Main St., Middleport, 88002353

US Post Office—Niagara Falls Main (US Post Offices in New York State, 1858–1943, TR), Main and Walnut Sts., Niagara Falls, 88002370

US Post Office—North Tonawanda (US Post Offices in New York State, 1858–1943, TR), 141 Goundry St., North Tonawanda, 88002357

Oneida County

First Presbyterian Church, 1605 Genesee St., Utica, [illegible]

US Post Office—Boonville (US Post Offices in New York State, 1858–1943, TR), 101 Main St., Boonville, 88002457

Onondaga County

Brown, Alexander, House, 726 W. Onondaga St., Syracuse, 88002376

Ontario County

US Post Office—Canadaigua (US Post Offices in New York State, 1858–1943, TR), 28 N. Main St., Canadaigua 88002465

US Post Office—Geneva (US Post Offices in New York State, 1858–1943, TR), 67 Castle St., Geneva, 88002523

Orange County

US Post Office—Goshen (US Post Offices in New York State, 1858–1943, TR), Grand St., Goshen, [illegible]

US Post Office—Newburgh (US Post Offices in New York State, 1858–1943, TR), 215–217 Liberty St., Newburgh, 88002367

US Post Office—Pearl River (US Post Offices in New York State, 1858–1943, TR), Franklin and Main Sts., Pearl River, 88002399

US Post Office—Port Jervis (US Post Offices in New York State, 1858–1943, TR), 20 Sussex St., Port Jervis, 88002408

Orleans County

US Post Office—Albion (US Post Offices in New York State, 1858–1943, TR), Main St., Albion, [illegible]

US Post Office—Medina (US Post Offices in New York State, 1858–1943, TR), 128 W. Center St., Medina, 88002351

Oswego County

Barlow, Smith H., House (Sandy Creek MRA), Harwood Dr., Sandy Creek, 88002214

First Baptist Church (Sandy Creek MRA), Harwood Dr., Sandy Creek, 88002218

First National Bank of Lacona (Sandy Creek MRA), Harwood Dr. and Salina St., Sandy Creek, [illegible]

Holyoke Cottage (Sandy Creek MRA), Seber Shore Rd., Sandy Creek vicinity, 88002216

Lacona Clock Tower (Sandy Creek MRA), Harwood Dr., Sandy Creek, [illegible]
Methodist Church (Sandy Creek MRA), Harwood Dr., Sandy Creek, 88002212
Pitt, Newton M., House (Sandy Creek MRA), 8114 Harwood Dr., Sandy Creek, 88002209
Sadler, Samuel, House (Sandy Creek MRA), N. Main St., Sandy Creek, 88002212
Salisbury, Charles, M., House (Sandy Creek MRA), 9089 Church St., Sandy Creek, 88002217
Sandy Creek Historic District (Sandy Creek MRA), jct. of Lake Rd. and US 11, Sandy Creek, [illegible]
Shoercraft, Matthew, House (Sandy Creek MRA), Ridge Rd. at Smartsville Rd., Sandy Creek, [illegible]
Smart, Fred, House (Sandy Creek MRA), Salina St., Sandy Creek, 88002215
Tuttle, Newman, House (Sandy Creek MRA), Harwood Dr. at Ridge Rd., Sandy Creek, [illegible]
US Post Office—Fulton (US Post Offices in New York State, 1858–1943, TR), 214 S. First St., Fulton, [illegible]
Van Buren, John, Tavern, NY 57 and Van Buren Dr., Fulton vicinity, 88002377

Otsego County

US Post Office—Cooperstown (US Post Offices in New York State, 1858–1943, TR), 28–40 Main St., Cooperstown, 88002473
US Post Office—Richfield Springs (US Post Offices in New York State, 1858–1943, TR), 12 E. Main St., Richfield Springs, 88002422

Queens County

US Post Office—Far Rockaway (US Post Offices in New York State, 1858–1943, TR), 16–36 Mott Ave., New York, [illegible]
US Post Office—Flushing Main (US Post Offices in New York State, 1858–1943, TR), 41–65 Main St., New York, 88002507
US Post Office—Forest Hills Station (US Post Offices in New York State, 1858–1943, TR), 106–28 Queens Blvd., New York, [illegible]
US Post Office—Jackson Heights Station (US Post Offices in New York State, 1858–1943, TR), 78–08 37th Ave., New York, 88002504
US Post Office—Jamaica Main (US Post Offices in New York State, 1858–1943, TR), 89–45 164th St., New York, [illegible]
US Post Office—Long Island City (US Post Offices in New York State, 1858–1943, TR), 45–02 21st St., New York, [illegible]

Rensselaer County

US Post Office—Hoosick Falls (US Post Offices in New York State, 1858–1943, TR), 16 Main St., Hoosick Falls, [illegible]
US Post Office—Troy (US Post Offices in New York State, 1858–1943, TR), 400 Broadway, Troy, 88002438

Rockland County

US Post Office—Haverstraw (US Post Offices in New York State, 1858–1943, TR), 86 Main St., Haverstraw, [illegible]
US Post Office—Nyack (US Post Offices in New York State, 1858–1943, TR), 48 S. Broadway, Nyack, [illegible]
US Post Office—Spring Valley (US Post Offices in New York State, 1858–1943, TR), 7 N. Madison Ave., Spring Valley, 88002432
US Post Office—Suffern (US Post Offices in New York State, 1858–1943, TR), 15 Chestnut St., Suffern, [illegible]

St. Lawrence County

US Post Office—Canton (US Post Offices in New York State, 1858–1943, TR), Park St., Canton, [illegible]
US Post Office—Gouverneur (US Post Offices in New York State, 1858–1943, TR), 36 Crane St., Gouverneur, [illegible]
US Post Office—Potsdam (US Post Offices in New York State, 1858–1943, TR), 21 Elm St., Potsdam, [illegible]

Saratoga County

US Post Office—Ballston Spa (US Post Offices in New York State, 1858–1943, TR), 1 Front St., Ballston Spa, [illegible]
US Post Office—Saratoga Springs (US Post Offices in New York State, 1858–1943, TR), 475 Broadway, Saratoga Springs, [illegible]

Schenectady County

US Post Office—Schenectady (US Post Offices in New York State, 1858–1943, TR), Jay and Liberty Sts., Schenectady, [illegible]
US Post Office—Scotia Station (US Post Offices in New York State, 1858–1943, TR), 224 Mohawk Ave., Scotia, [illegible]

Schoharie County

US Post Office—Middleburgh (US Post Offices in New York State, 1858–1943, TR), 102 Main St., Middleburgh, [illegible]

Schuyler County

US Post Office—Watkins Glen (US Post Offices in New York State, 1858–1943, TR), 810 N. Franklin St., Watkins Glen, [illegible]

Seneca County

US Post Office—Seneca Falls (US Post Offices in New York State, 1858–1943, TR), 24–42 State St., Seneca Falls, [illegible]
US Post Office—Waterloo (US Post Offices in New York State, 1858–1943, TR), 2 E. Main St., Waterloo, [illegible]

Steuben County

US Post Office—Bath (US Post Offices in New York State, 1858–1943, TR), 101 Liberty St., Bath, [illegible]
US Post Office—Corning (US Post Offices in New York State, 1858–1943, TR), 120 Walnut St., Corning, [illegible]
US Post Office—Painted Post (US Post Offices in New York State, 1858–1943, TR), 112 N. Hamilton St., Painted Post, [illegible]

Suffolk County

US Post Office—Bay Shore (US Post Offices in New York State, 1858–1943, TR), 16 Bay Shore Ave., Bay Shore, 88002435
US Post Office—Northport (US Post Offices in New York State, 1858–1943, TR), 246 Main St., Northport, [illegible]
US Post Office—Patchogue (US Post Offices in New York State, 1858–1943, TR), 170 E. Main St., Patchogue, [illegible]
US Post Office—Riverhead (US Post Offices in New York State, 1858–1943, TR), 23 W. Second St., Riverhead, [illegible]
US Post Office—Westhampton Beach (US Post Offices in New York State, 1858–1943, TR), Main St., Westhampton Beach, 88002446

Tioga County

US Post Office—Owego (US Post Offices in New York State, 1858–1943, TR), 8 Lake St., Owego, [illegible]
US Post Office—Waverly (US Post Offices in New York State, 1858–1943, TR), 434–348 Waverly St., Waverly, [illegible]

Tompkins County

US Post Office—Ithaca (US Post Offices in New York State, 1858–1943, TR), 213 N. Tioga St., Ithaca, 88002514

Ulster County

US Post Office—Ellenville (US Post Offices in New York State, 1858–1943, TR), Liberty Pl., Ellenville, [illegible]

Warren County

US Post Office—Lake George (US Post Offices in New York State, 1858–1943, TR), Canada and James St., Lake George, 88002336

Washington County

US Post Office—Granville (US Post Offices in New York State, 1858–1943, TR), 41 Maine St., Granville, [illegible]
US Post Office—Hudson Falls (US Post Offices in New York State, 1858–1943, TR), 134 Main St., Hudson Falls, [illegible]
US Post Office—Whitehall (US Post Offices in New York State, 1858–1943, TR), 66 Broadway, Whitehall, 88002447

Wayne County

US Post Office—Clyde (US Post Offices in New York State, 1858–1943, TR), 26 S. Park St., Clyde, [illegible]
US Post Office—Lyons (US Post Offices in New York State, 1858–1943, TR), 1–5 Pearl St., Lyons, 88002347
US Post Office—Newark (US Post Offices in New York State, 1858–1943, TR), Maple Ct., and S. Main St., Newark, [illegible]

Westchester County

US Post Office—Bronxville (US Post Offices in New York State, 1858–1943, TR), Pondfield Rd., Bronxville, [illegible]
US Post Office—Dobbs Ferry (US Post Offices in New York State, 1858–1943, TR), Main St., Dobbs Ferry, [illegible]
US Post Office—Harrison (US Post Offices in New York State, 1858–1943, TR), 258 Halstead Ave., Harrison, [illegible]
US Post Office—Larchmont (US Post Offices in New York State, 1858–1943, TR), 1 Chatsworth Ave., Larchmont, [illegible]
US Post Office—Mount Vernon (US Post Offices in New York State, 1858–1943, TR), 15 S. First St., Mount Vernon, [illegible]
US Post Office—New Rochelle (US Post Offices in New York State, 1858–1943, TR), 255 North Ave., New Rochelle, 88002368
US Post Office—Peekskill (US Post Offices in New York State, 1858–1943, TR), 736 South St., Peekskill, [illegible]
US Post Office—Port Chester (US Post Offices in New York State, 1858–1943, TR), 243 Westchester Ave., Port Chester, 88002406
US Post Office—Rye (US Post Offices in New York State, 1858–1943, TR), 41 Purdy Ave., Rye, 88002426

US Post Office—Scarsdale (US Post Offices in New York State, 1858–1943, TR), Chase Rd., Scarsdale, [illegible]
US Post Office—Yonkers (US Post Offices in New York State, 1858–1943, TR), 79–81 Main St., Yonkers, [illegible]

Wyoming County

US Post Office—Attica (US Post Offices in New York State, 1858–1943, TR), 76 Main St., Attica, [illegible]
US Post Office—Warsaw (US Post Offices in New York State, 1858–1943, TR), 35 S. Main St., Warsaw, [illegible]

Yates County

US Post Office—Penn Yan (US Post Offices in New York State, 1858–1943, TR), 159 Main St., Penn Yan, [illegible]

Pennsylvania

Bedford County

Bedford County Alms House, Cumberland Rd., 4 mi. S of Bedford, Bedford vicinity, [illegible]

Berks County

Hamburg Public Library, 35 N. Third St., Hamburg, [illegible]
Lincoln, Mordecai, House, Lincoln Rd., Lenhartsville, [illegible]

Bucks County

Hammerstein, Oscar, II, Farm, 70 East Rd., Doylestown, 88002374

Chester County

French Creek Farm, Kimberton Rd., Kimberton, [illegible]

Dauphin County

Todd, John, House, S. Meadow Ln., Hummelstown vicinity, 88002371

Delaware County

Westlawn, 123 N. Providence Rd., Wallingford, 88002186

Lackawanna County

Warner, Oliver, Farmstead, NY 68, Clifton Springs vicinity, 88002189

Lancaster County

Kagerise Store and House, 84–86 W. Main St., Adamstown, [illegible]

Luzerne County

Forty Fort Meetinghouse River St., and Wyoming Ave., Forty Fort, 88002373

Northumberland County

Northumberland Historic District, Roughly bounded by Forth and A Sts., North Shore RR and Wheatley Ave., Northumberland, 88002313

Philadelphia County

Adamson, William, School (Philadelphia Public Schools TR), 2837—2847 N. 4th St., Philadelphia, [illegible]
Alcorn, James, School (Philadelphia Public Schools TR), 1500 S. 32nd St., Philadelphia 88002225
Allen, Ethan, School (Philadelphia Public Schools TR), 3001 Robbins Ave., Philadelphia, 88002227
Audenried, Charles V., Junior High School (Philadelphia Public Schools TR), 1601 S. 33rd St., Philadelphia, 88002230
Axe, William W., School (Philadelphia Public Schools TR), 1709—1733 Kinsey St., Philadelphia, [illegible]
Barton, Clara, School (Philadelphia Public Schools TR), 300 E. Wyoming Ave., Philadelphia, 88002242
Beeber, Dimner, Junior High School (Philadelphia Public Schools TR), 5901 Malvern Ave., Philadelphia, 88002244
Belmont School (Philadelphia Public Schools TR), 4030—4060 Brown St., Philadelphia, 88002245
Birney, Gen. David B., School (Philadelphia Public Schools TR), 900 W. Lindley St., Philadelphia, 88002246
Blankenburg, Reudolph, School (Philadelphia Public Schools TR), 4600 Girard Ave., Philadelphia, 88002248
Bregy, F. Amadee, School (Philadelphia Public Schools TR), 1700 Bigler St., Philadelphia, 88002249
Brideburg School (Philadelphia Public Schools TR), 2624 Haworth St., Philadelphia, 88002265
Brown, Joseph H., School (Philadelphia Public Schools TR), 6118—6120 Frankford Ave., Philadelphia, 88002250
Carnell, Laura H., School (Philadelphia Public Schools TR), 6101 Summerdale Ave., Philadelphia, 88002251
Cassidy, Lewis C., School (Philadelphia Public Schools TR), 6523—6543 Lansdowne Ave., Philadelphia, 88002252
Catharine, Joseph W., School (Philadelphia Public Schools TR), 6600 Chester Ave., Philadelphia, 88002253
Chandler, George, School (Philadelphia Public Schools TR), 1050 E. Montgomery St., Philadelphia, 88002255
Childs, George W., School (Philadelphia Public Schools TR), 1501 S. 17th St., Philadelphia, 88002257
Comly, Watson, School (Philadelphia Public Schools TR), 13250 Trevose Rd., Philadelphia, 88002324
Conwell, Russell H., School (Philadelphia Public Schools TR), 1829—1951 E. Clearfield St., Philadelphia, 88002258
Cooke, Jay, Junior High School (Philadelphia Public Schools TR), 4735 Old York Rd., Philadelphia, 88002259
Creighton, Thomas, School (Philadelphia Public Schools TR), 5401 Tabor Rd., Philadelphia, 88002260
Crossan, Kennedy, School (Philadelphia Public Schools TR), 7341 Palmetto St., Philadelphia, 88002261
Disston, Hamilton School (Philadelphia Public Schools TR), 6801 Cottage St., Philadelphia, 88002262
Disston, Mary, School (Philadelphia Public Schools TR), 4521 Longshore Ave., Philadelphia, 88002319
Dobbins, Murrell, Vocational School (Philadelphia Public Schools TR), 2100 Lehigh Ave., Philadelphia, 88002263
Dobson, James, School (Philadelphia Public Schools TR), 4695 Umbria St., Philadelphia, 88002264
Durham, Thomas, School (Philadelphia Public Schools TR), 1600 Lombard St., Philadelphia, 88002265
Edmunds, Henry R., School (Philadelphia Public Schools TR), 1101—1197 Haworth St., Philadelphia, [illegible]
Elverson, James, Jr., School (Philadelphia Public Schools TR), 1300 Susquehanna Ave., Philadelphia, 88002231
Emlen, Eleanor Cope, School of Practice (Philadelphia Public Schools TR), 6501 Chew St., Philadelphia, 88002267
Fell, D. Newlin, School (Philadelphia Public Schools TR), 900 Oregon Ave., Philadelphia, [illegible]
Feltonville School No. 2 (Philadelphia Public Schools TR), 4901 Rising Sun Ave., Philadelphia, [illegible]
Ferguson, Joseph C., School (Philadelphia Public Schools TR), 2000—2046 7th St., Philadelphia, [illegible]
Finletter, Thomas K., School (Philadelphia Public Schools TR), 6101 N. Front St., Philadelphia, 88002271
Fitzsimons, Thomas, Junior High School (Philadelphia Public Schools TR), 2801 W. Cumberland St., Philadelphia, 88002272
Forrest, Edwin, School (Philadelphia Public Schools TR), 4300 Bleigh St., Philadelphia, 88002273
Franklin, Benjamin, School (Philadelphia Public Schools TR), 5737—5741 Rising Sun Ave., Philadelphia, 88002274
Gillespie, Elizabeth Duane, Junior High School (Philadelphia Public Schools TR), 3901—3961 N. 16th St., Philadelphia, 88002275
Gratz, Simon, High School (Philadelphia Public Schools TR), 3901—3961 N. 16th St., Philadelphia, 88002276
Harding, Warren G., Junior High School (Philadelphia Public Schools TR), 2000 Wakeling St., Philadelphia, 88002277
Harrison, William H., School (Philadelphia Public Schools TR), 1012—1020 W. Thompson St., Philadelphia, 88002278
Henry, Charles Wolcott, School (Philadelphia Public Schools TR), 601—645 W. Carpenter Ln., Philadelphia, 88002279
Holmes Junior High School (Philadelphia Public Schools TR), 5429–5455 Chestnut St., Philadelphia, 88002281
Hopkinson, Francis, School (Philadelphia Public Schools TR), 1301–1331 E. Luzerne Ave., Philadelphia, 88002282
Houston, Henry H., School (Philadelphia Public Schools TR), 135 W. Allen's Ln., Philadelphia, 88002283
Howe, Julia Ward, School (Philadelphia Public Schools TR), 1301–1331 Grange St., Philadelphia, 88002284
Jefferson, Thomas, School (Philadelphia Public Schools TR), 1101–1125 N. 4th St., Philadelphia, 88002280
Jenks, John Story, School (Philadelphia Public Schools TR), 6301–8317 Germantown Ave., Philadelphia, 88002286
Jones, John Paul, Junior High School (Philadelphia Public Schools TR), 2922 Memphis St., Philadelphia, 88002287
Kensington High School for Girls (Philadelphia Public Schools TR), 2075 E. Cumberland St., Philadelphia, 88002288
Kirkbride, Eliza Butler, School (Philadelphia Public Schools TR), 626 Dickinson St., Philadelphia, 88002290

Lawnside School (Philadelphia Public Schools TR), 800 Haddonfield St., Philadelphia, 88002294
Lea, Henry C., School of Practice (Philadelphia Public Schools TR), 342 S. 47th St., Philadelphia, 88002291
Levering, William, School (Philadelphia Public Schools TR), 5036 Ridge Ave., Philadelphia, 88002302
Logan Demonstration School (Philadelphia Public Schools TR), 5000 N. 17th St., Philadelphia, 88002295
Longfellow, Henry, School (Philadelphia Public Schools TR), 5034–5098 Tenney N. 6th St., Philadelphia, 88002298
Lowell, James Russell, School (Philadelphia Public Schools TR), 5001–5051 W. 5th St., Philadelphia, Public Schools TR), 5001–5051 W. 5th St., Philadelphia, 88002296
Ludlow, James R., School (Philadelphia Public Schools TR), 1323–1345 N. 6th St., Philadelphia, 88002299
Mann, William, School (Philadelphia Public Schools TR), 1835–1869 N. 54th St., Philadelphia, 88002297
Marshall, John, School (Philadelphia Public Schools TR), 1501–1527 Sellers St., Philadelphia, 88002303
Martin, James, School (Philadelphia Public Schools TR), 3340 Richmond St., Philadelphia, 88002300
McClure, Alexander K., School (Philadelphia Public Schools TR), 4139 N. 6th St., Philadelphia, 88002305
Meehan, Thomas, School (Philadelphia Public Schools TR), 5347–5353 Pulaski St., Philadelphia, 88002312
Mifflin, Thomas, School (Philadelphia Public Schools TR), 3500 Midvale Ave., Philadelphia, 88002301
Morrison, Andrew J., School (Philadelphia Public Schools TR), 300 Dauphin St., Philadelphia, 88002302
Muhlenberg School (Philadelphia Public Schools TR), 1940 Master St., Philadelphia, 88002247
Mebinger, George W., School (Philadelphia Public Schools TR), 601–627 Carpenter St., Philadelphia, 88002303
Nichols, Jeremiah, School (Philadelphia Public Schools TR), 1235 S. 16th St., Philadelphia, 88002241
Overbrook School (Philadelphia Public Schools TR), 6201–6231 Lebanon Ave., Philadelphia, 88002304
Paterson, John M., School (Philadelphia Public Schools TR), 7001 Buist Ave., Philadelphia, 88002325
Peirce, William S., School (Philadelphia Public Schools TR), 2400 Christian St., Philadelphia, 88002307
Penn Treaty Junior High School (Philadelphia Public Schools TR), 600 E. Thompson St., Philadelphia, 88002311
Pennell, Joseph, School (Philadelphia Public Schools TR), 1600–1656 Nedro St., Philadelphia, 88002308
Pennypacker, Samuel W., School (Philadelphia Public Schools TR), 1600–1650 E. Washington La., Philadelphia, 88002314
Reynolds, Gen. John F., School (Philadelphia Public Schools TR), 2900 Jefferson St., Philadelphia, 88002315
Richmond School (Philadelphia Public Schools TR), 2041 Belgrade St., Philadelphia, 88002315
Roosevelt, Theodore, Junior High School (Philadelphia Public Schools TR), 420 E. Washington La., Philadelphia, 88002317
Rowen, William, School (Philadelphia Public Schools TR), 5401 N. 19th St., Philadelphia, 88002318
Sharswood, George, School (Philadelphia Public Schools TR), 230 Wolf St., Philadelphia, 88002320
Shaw, Anna Howard, Junior High School (Philadelphia Public Schools TR), 5401 Warrington St., Philadelphia, 88002321
Sheridan, Philip H., School (Philadelphia Public Schools TR), 809–815 E. Ontario St., Philadelphia, 88002322
Smedley, Franklin, School (Philadelphia Public Schools TR), 5199 Mulberry St., Philadelphia, 88002323
Stanton, Edwin M., School (Philadelphia Public Schools TR), 1810–1844 Christian St., Philadelphia, 88002326
Sullivan, James J., School (Philadelphia Public Schools TR), 3300 Ditman St., Philadelphia, 88002327
Sulzberger, Mayer, Junior High School (Philadelphia Public Schools TR), 701–741 N. 42th St., Philadelphia, 88002328
Taylor, Bayard, School (Philadelphia Public Schools TR), 3614–3630 N. Randolph St., Philadelphia, 88002329
Thomas, George C., Junior High School (Philadelphia Public Schools TR), 2740 S. 9th St., Philadelphia, 88002330
Vare, Edwin H., Junior High School (Philadelphia Public Schools TR), 2101 S. 24th St., Philadelphia, 88002331
Vaux, Roberts, Junior High School (Philadelphia Public Schools TR), 250–2344 W. Master St., Philadelphia, 88002332
Whittier, John Greenleaf, School (Philadelphia Public Schools TR), 2500 Clearfield St., Philadelphia, 88002334
Wilmot, David, School (Philadelphia Public Schools TR), 1734 Meadow St., Philadelphia, 88002335
Wister, Mary Channing, School (Philadelphia Public Schools TR), 843–859 N. 63 St., Philadelphia, 88002336
Wolf, George School (Philadelphia Public Schools TR), 6300 Lyons Ave., Philadelphia, 88002343

SOUTH CAROLINA

Georgetown County

Winyah Indigo School, 1300 Highmarket St., Georgetown, 88002308

TENNESSEE

Tipton County

DeBow, James R., House, TN 28, Hartsville vicinity, 88002361

TEXAS

Cameron County

La Madrilena, 1002 E. Madison, Brownsville, 88002306

VERMONT

Bennington County

Hard, Zara, House, River Rd., Manchester, 88002304

Chittenden County

South Willard Street Historic District, S. Willard St., Burlington, 88002226

Franklin County

Richwood Estate, N of St. Albans off US 7, St. Albans vicinity, 88002175

VIRGINIA

Chesterfield County

Bon Air Historic District, Roughly bounded by Forest Hill Rd., N. Robert, W. Bon View Dr., and McRae Rd., Richmond vicinity, 88002178

Henry County

Carter, John Waddey, House, 324 E. Church St., Martinsville, 88002180

Madison County

Greenway, US 15, Madison Mills vicinity, 88002306

Rockbridge County

Tankersley Tavern, VA 631, Lexington vicinity, 88002179

Sussex County

Nottoway Archeological Site 44SX6, 44SX7, 44SX98, 44SX162), Address Restricted, Stoney Creek vicinity, 88002181

Newport News Independent City

Harwick County Courthouses, Old Courthouse Way, Newport News (Independent City), 88002166

WISCONSIN

Ashland County

Soo Line Depot, Third Ave. W. at Fourth St., Ashland, 88002177

Dane County

McFarland House, 5923 Exchange St., McFarland, 88002234

Wisconsin Memorial Hospital Historic District, 816 Troy Dr., Madison, 88002183

Milwaukee County

Case-Juneau Street Historic District, Roughly bounded by E. Knapp and Marshall Sts., Juneau Ave, and Van Buren St., Milwaukee, 88002389

Rock County

Carlton Hotel, 14 N. Henry St., Edgerton, 88002173

Vernon County

Cade Archeological District, Address Restricted, Newton vicinity, 88002176

Waukesha County

Cutler Mound Group, address Restricted, Waukesha vicinity, 88002184

[FR Doc. 88-23879 Filed 10-17-88; 8:45 am]

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INTERSTATE COMMERCE COMMISSION

[Docket No. AB-290 (Sub-No. 36)]

Southern Railway—Carolina Division and Southern Railway Co.—Abandonment and Discontinuance of Service—In Cleveland and Rutherford Counties, NC; Findings

The Commission has issued a certificate authorizing: (a) Southern Railway-Carolina Division to abandon, and Southern Railway Company to discontinue service over, 13.94 miles of railroad between Washburn (milepost SB–160) and Lattimore (milepost SB–161.1) and between a point south of Forest City (milepost SB–175.5) to a point north of Gilkey (milepost SB–188.34); and (b) Southern Railway Company to discontinue 19.05 miles of trackage rights over a line owned by CSX Transportation, Inc., between milepost SB–158.1 (CSX milepost SF–388.35) and Forest City at milepost SB–178.5 (CSX milepost SF–407.4), for a total distance of 32.99 miles in Cleveland and Rutherford Counties, NC. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

Noreta R. McGee,
Secretary.

[FR Doc. 88–24034 Filed 10–17–88; 8:45 am]

BILLING CODE 7035-01-M

Forms Under Review by Office of Management and Budget

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44) U.S.C. Chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Ray Houser (202) 275–6723. Comments regarding this information collection should be addressed to Ray Houser, Interstate Commerce Commission, Room 1325, 12th and Constitution Ave., NW., Washington, DC 20423 and to Gary Waxman, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503, (202) 395–7340.

Type of Clearance: Reinstatement.
Bureau/Office: Office of Proceedings.
Title of Form: Rules for System Diagram maps, Financial Assistance of Railroad Lines.
OMB Form No.: 3120–0045.
Agency Form No.: N/A.
Frequency: System Diagram Maps—Annually, Financial Asst.—Non-Recurring.
Respondents: Railroads.
No. of Respondents: Diagram maps—300, Financial Asst. 28.
Total Burden Hrs.: 10,075.

It is estimated that an average of 50 (Diagram Maps) & 36.25 (Financial Asst.) burden hours per response are required to complete this collection of information. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments concerning the accuracy of this burden estimate or suggestions for reducing this burden should be directed to the Section of Administrative Services, Interstate Commerce Commission and the Office of Information and Regulatory Affairs, Office of Management and Budget.

Brief Description of the need & proposed use: Rules, regulations and reporting requirements for the filing of system diagram maps & financial assistance offers which relate to the filing of applications for authority for abandonment of all or part of a railroad line. These rules are necessary for the commission to learn what lines are contemplated for abandonment and what financial assistance may be available to the railroad.

Noreta R. McGee,
Secretary.

[FR Doc. 88–24035 Filed 10–17–88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging a Consent Decree Pursuant to the Clean Air Act; General Battery Corp.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on *September 22, 1988* a proposed Consent Decree in *United States* v. *General Battery Corp.*, Civil Action No. C87–3028, was lodged with the United States District Court for the Northern District of Iowa.

The Complaint filed by the United States alleged that the defendants had violated the New Source Performance Standard ("NSPS") for Lead-Acid Battery Manufacturing Plants, 40 CFR Part 60, and the Clean Air Act, 42 U.S.C. 7412, and requested injunctive relief and the imposition of civil penalties. The proposed Consent Decree requires the defendant to comply with all reporting provisions of the NSPS and to pay a total civil penalty of $20,000.00.

The Department of Justice will receive for a period of thirty days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *General Battery Corp.*, DOJ# Ref. 90–5–2–1–1120. The proposed Consent Decree may be examined at the office of the United States Attorney, Southern District of Iowa, U.S. Courthouse, E. 1st & Walnut Streets, Des Moines, Iowa 50309. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice.

Roger J. Marzulla,
Assistant Attorney General Land and Natural Resources Division.

[FR Doc. 88–24033 Filed 10–17–88; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–26,720]

Burlington Industries Inc., Klopman Fabrics Division, Mountain City, TN; Negative Determination Regarding Application for Reconsideration

By an application dated September 8, 1988 the petitioners requested administrative reconsideration on the subject petition for trade adjustment assistance. The denial notice was signed on August 25, 1988 and published in the Federal Register on September 7, 1988 (53 FR 34598).

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Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petitioners with Congressional support claim that workers, at Mountain City should be certified eligible to apply for adjustment assistance since a significant amount of their production was integrated with that of a sister plant in Dublin, Virginia whose workers are currently under a certification for adjustment assistance, TA–W–20,123.

Investigation findings show that Mountain City's production in 1987 consisted of about equal amounts of woven fabric and texturized yarn. Most of the texturized yarn was for internal use with the remainder being shipped to domestic corporate plants whose workers are not under a certification. The findings also show that the amount of integrated production of fabric from Mountain City to the Newbern plant in Dublin was not important.

Investigation findings also show that the increased import criterion for workers producing polyester fabric at Mountain City was not met. In early 1988 corporate officials announced the pending termination of operations at the Mountain City plant. All production will be transferred to domestic corporate plants. A domestic transfer of production would not, in itself, form a basis for certification.

U.S. imports of finished fabrics which include polyester fabric declined absolutely and relative to domestic shipments in 1987 compared to 1986 and declined absolutely in the first quarter of 1988 compared to the same quarter in 1987. Further, the Department's survey of major customers revealed that none of the respondents purchased imported heavy or light weight polyester fabric.

Investigation findings also show that corporate sales of polyester fabric and plant production of polyester fabric and texturized yarn increased in 1987 compared to 1986.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 6th day of October 1988.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 88–24051 Filed 10–17–88; 8:45 am]

BILLING CODE 4510–30–M

[TA-W-20, 731]

At-A-Glance, Division of Keith Clark, Inc., Pittsfield, MA; Negative Determination Regarding Application for Reconsideration

By an application dated September 21, 1988, Local 982 of the United Paperworkers Union requested administrative reconsideration on the subject petition for trade adjustment assistance. The denial notice was signed on August 10, 1988 and published in the **Federal Register** on August 30, 1988 (53 FR 33182).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Office, a misinterpretation of facts or of the law justified reconsideration of the decision.

The At-A-Glance workers produced appointment books and calendars at their plant in Pittsfield, Massachusetts.

The subject plant had three owners during the applicable period under the petition—Textron's Sheaffer Eaton; Gefinor and Keith Clark. Textron sold Sheaffer Eaton to Gefinor in August, 1987. Sheaffer Eaton produced four lines of products: At-A-Glance appointment books and calendars at the subject plant, stationery and typewriter paper at the Eaton plant also in Pittsfield and pens at Fort Madison, Iowa.

The union claims that stationery, pens and diaries were imported. The findings show that At-A-Glance did not produce stationery or pens. The Eaton plant which was not sold to Keith Clark was producing stationery and typewriter paper when production ceased in July, 1987. Company imports of stationery accounted for a minor percent of stationery production and imports declined in 1987 when the company went out of the stationery business. Production of typewriter paper was contracted out of domestic suppliers and this business was sold to Keith Clark in February 1988 along with At-A-Glance.

The Pittsfield plant did not produce typewriter paper but kept Eaton's domestic supplier in order to service its new accounts. Appointment books were the major portion of At-A-Glance's business.

The Department's denial of the At-A-Glance workers was based on increased production and sales of appointment books and calendars in 1987 compared to 1986. Production increased in the first six months of 1988 compared to the same period in 1987. The new owners decided to close the subject plant and transfer production to another corporate plant in Sidney, New York. The Sidney plant had increased production and sales in the first six months of 1988 compared to the same period in 1987. A domestic transfer or production would not form a basis for a certification.

The findings also show that some production was contracted out to unaffiliated domestic sources in 1987 and in the first half of 1988 resulting in further employment declines. Company imports of all items—appointment books, calendars and diaries were negligible in 1987 compared to 1986 and in the first half of 1988 compared to the same period in 1987.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied. Signed at Washington, DC, this 5th day of October 1988.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 88–24052 Filed 10–17–88; 8:45 am]

BILLING CODE 4510–30–M

[TA-W-20,889]

Key Tronic Corp., Research and Administration Building, Spokane, WA; Negative Determination Regarding Application for Reconsideration

By an application dated August 17, 1988 the petitioners requested administrative reconsideration on the subject petition for trade adjustment assistance. The denial notice was signed on July 15, 1988 and published in the **Federal Register** on August 10, 1988 (53 FR 30122).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Workers at Key Tronic Corporation produce keyboards at three different facilities in the Spokane area. Investigative findings show that production was integrated among the three facilities. The alleged loss of some customers did not adversely affect sales and production since investigation findings show that domestic sales and production of keyboards in the Spokane region increase in fiscal year (FY) 1988 compared to FY 1987 and in the fourth quarter of FY 1987 compared to the same quarter in the FY 1988. The earliest possible impact date that could occur if all the group eligibility requirements of the Trade Act of 1974 were met would be in the fourth quarter of FY 1987.

The findings also show that in early 1988 corporate officials announced the consolidation of manufacturing operations at two facilities and the termination of production at the third facility—the Research and Administration (R&A) Building. As a result of the consolidation, all the high volume products are produced at one plant and all the low volume products are produced at the remaining plant. The R&A building was closed since it was the smallest facility. Company officials states that the consolidation was necessary because of a different product mix which was lower in price and of marginal profitability. The different product mix affected the profitability of the firm.

The findings also show that Key Tronics has two subsidiaries—Key Tronic Europe Ltd. and Key Tronic Taiwan, which serve the European and Far Eastern markets, respectively. Domestic operations, however, account for the preponderance of the corporate business. Although there were some imports of keyboards for a six month time period in 1987, they did not account for an important portion of Key Tronic's domestic sales in 1987. Key Tronic ceased importing keyboards in 1987 after a trial run.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 5th day of October 1988.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 88–24053 Filed 10–17–88; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

[Docket No. M–88–163–C]

Golden Oak Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Golden Oak Mining Company, Route 2, Box 177, Whitesburg, Kentucky 41858 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Black Oak No. 8 Mine (I.D. No. 15–16392) located in Knott County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. Petitioner states that the use of cabs or canopies would result in a diminution of safety because the cabs or canopies would limit the equipment operator's visibility, causing the operator to lean out while in motion, exposing himself and others to danger. The cabs or canopies would create cramped conditions causing unnecessary fatigue resulting in reduced alertness and safety. Limited operating space would hinder the operators escape from the equipment in case of an emergency and the cabs or canopies would hit the roof bolt plates and damage the roof support.

3. For these reasons, petitioner requests a modification or the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulation and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 17, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: October 11, 1988.

[FR Doc. 88–24054 Filed 10–17–88; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–88–176–C]

Greenwich Collieries; Petition for Modification of Application of Mandatory Safety Standard

Greenwich Collieries, P.O. Box 367, Ebensburg, Pennsylvania 15931, has filed a petition to modify the application of 30 CFR 75.1711–1 (sealing of shaft openings) to its No. 1 Mine (I.D. No. 36–02406) located in Indiana County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that caps be equipped with a vent pipe at least 2 inches in diameter extending for a distance of at least 15 feet above the surface of the shaft.

2. As an alternate method, petitioner proposes to install three vent pipes six inches in diameter, extending for a distance of eight feet above the surface of three shafts.

3. In support of this request, petitioner states that—

(a) An eight-foot vent pipe would be installed on each shaft cap;

(b) The vent pipes would be Schedule 40 PVC pipe, which exceed one-quarter inch in wall thickness and six inches in diameter;

(c) The pipes would be attached to the steel caps on the shafts by means of a steel mounting bracket, and would be protected at its mouth by a fine mesh screen;

(d) Each shaft would be completely enclosed by a heavy gauge chain link fence; and

(e) Access to the shaft areas would be blocked by existing locked gates, and the areas would be posted with "No Trespassing" signs.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health

Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 17, 1988. Copies of the petition are available for inspection at that address.

Date: October 11, 1988.

Patricia W. Silvey,
Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-24055 Filed 10-17-88; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-88-165-C]

Old Ben Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Old Ben Coal Company, 200 Public Square, Room 7-D, Cleveland, Ohio 44114 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Mine No. 25 (I.D. No. 11-20392) located in Franklin County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that trolley wires and trolley feeder wires, high-voltage cables and transformers not be located inby the last open crosscut and be kept at least 150 feet from pillar workings.

2. The longwall mining equipment in use at the mine is powered by 950-volt, a.c. electricity. The circuit breakers and cables used in this medium-voltage system are at the practical limits of safe and efficient operation.

3. This equipment is subject to unacceptable voltage drops across the system which causes a decrease in the working torques of the drive motors and leads to excessive strain on equipment and high-current loads in the electric circuitry. In order to maintain compliance with overcurrent protection in low- or medium voltage systems, it is necessary to split the loads and increase the number of cables. This doubles the amount of cable handling and electrical connections that has to be done and results in a diminution of safety to miners.

4. As an alternate method, petitioner proposes that throughout the mine beginning with Panel No. 14, 2400-volt a.c. electricity would be used to power longwall mining equipment inby the last open crosscut and within 150 feet of gob areas with specific conditions as outlined in the petition.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 17, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,
Director, Office of Standards, Regulations and Variances.

Date: October 11, 1988.

[FR Doc. 88-24056 Filed 10-17-88; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-88-175-C]

Quarto Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Quarto Mining Company, 1600 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Powhatan No. 4 Mine (I.D. No. 33-01157) located in Monroe County, Ohio. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that air currents used to ventilate structures of areas enclosing electrical installations be coursed directly into the return.

2. Petitioner states that a power distribution room and an air compressor room are located near the underground rotary dump. Deteriorating roof conditions have prevented the rectifier from properly being ventilated to the return. Even if ventilation tubing could be installed to the return, it would be ineffective due to the extreme distance. Rehabilitating these areas leading to the return would pose unnecessary risks to the miners.

3. As an alternate method, petitioner proposes that—

(a) The two electrical installations would be housed in a fireproof structure, equipped with automatically closing fire doors activated by thermal devices with an activation temperature not greater than 165 degrees Fahrenheit. Such fire doors would be designed to enclose all associated electric components in a reasonably airtight enclosure in case of a fire or excessive temperature;

(b) A signal, activated by the heat sensors, would be located so that it can be seen or heard by a responsible person;

(c) The electric equipment would be protected with thermal devices, or equivalent, designed and installed to interrupt all power circuits supplying electric equipment within the fireproof structure;

(d) A suitable automatic fire suppression system would be installed and maintained in the fireproof structure in accordance with applicable provisions;

(e) Ground-phase devices protecting three-phase circuits would be adjusted to remove incoming power at not more than 40 percent of the available ground fault current; and

(f) Only the power distribution installation room would have a fan which would cool the area to help dissipate the heat generated by the electrics.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 17, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,
Director, Office of Standards, Regulations and Variances.

Date: October 11, 1988.

[FR Doc. 88-24057 Filed 10-17-88; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-88-181-C]

Jim Walter Resources, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Jim Walter Resources, Inc., P.O. Box C-79, Birmingham, Alabama 35283 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its No. 4 Mine (I.D. No. 01-01247) location in Tuscaloosa County, Alabama. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that trolley wires and trolley feeder wires, high-voltage cables and transformers not be located inby the last open crosscut and be kept at least 150 feet from pillar workings.

2. As an alternate method, petitioner proposes to use a.c. high-voltage cables to supply power to permissible longwall face equipment on a mine wide basis with specific equipment and conditions as outlined in the petition.

3. In order to safely and efficiently mine the coal seam, a 500 horsepower shearing machine, an approximately 1,000 horsepower face conveyor and a stage loader with a crusher unit driven by 150 horsepower motors would be used.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standards.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 17, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,
Director, Office of Standards, Regulations and Variances.

Date: October 11, 1988.

[FR Doc. 24058 Filed 10-17-88; 8:45 am]
BILLING CODE 4510-43-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Council on the Arts and the Humanities Arts and Artifacts Indemnity Panel Advisory Committee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463 as amended) notice is hereby given that a meeting of the Arts and Artifacts Indemnity Panel of the Federal Council on the Arts and Humanities will be held at 1100 Pennsylvania Avenue, NW., Washington, DC 20506, in Room 730, from 9:00 a.m. to 5:00 p.m. on Tuesday, November 22, 1988.

The purpose of the meeting is to review applications for Certificates of Indemnity submitted to the Federal Council on the Arts and Humanities for exhibitions beginning after January 1, 1989.

Because the proposed meeting will consider financial and commercial data and because it is important to keep values of objects, methods of transportation and security measures confidential, pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated April 10, 1978, I have determined that the meeting would fall within exemptions (4) and (9) of U.S.C. 552(b) and that it is essential to close the meeting to protect the free exchange of views and to avoid interference with the operations of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Stephen J. McCleary, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, or call 202/786-0322.

Stephen J. McCleary,
Advisory Committee Management Officer.

[FR Doc. 88-23967 Filed 10-17-88; 8:45 am]
BILLING CODE 7536-01-M

Humanities Panel; Cancellation of Panel Meeting

The Humanities panel meeting scheduled for October 27-28, 1988, to be held at 1100 Pennsylvania Ave., NW., Room 430, Washington, DC 20506, published in the **Federal Register** on October 4, 1988 at page 38982 has been cancelled. The panel meeting was to review applications submitted to Humanities Projects in Libraries Program, submitted to the Division of General Programs, for projects beginning after September 1, 1989.

Stephen J. McCleary,
Advisory Committee Management Officer.

[FR Doc. 88-23966 Filed 10-17-88; 8:45 am]
BILLING CODE 7536-01-M

Humanities Panel Meeting

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Advisory Committee Act (Pub. L. 92-463, as amended) notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786-0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552 of Title 5, United States Code.

1. *Date:* October 31-November 1, 1988.
Time: 9:00 a.m. to 5:30 p.m.
Room: 430
Program: This meeting will review applications submitted to Public Humanities Projects program during the September 1988 deadline, submitted to the Division of General Programs, for projects after April 1, 1989.

2. *Date:* November 3-4, 1988.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications submitted for Humanities Projects in Media, submitted to the Division of General Programs, for projects beginning after April 1, 1989.

3. *Date:* November 4, 1988.
Time: 9:00 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review Translations applications in Asian Studies, submitted to the Division of Research Programs, for projects beginning after April 1, 1989.

4. *Date:* November 7, 1988.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.

Program: This meeting will review applications in Higher Education Programs, submitted to the Division of Education Programs, for projects beginning after April 1, 1989.

5. *Date:* November 7, 1988.
Time: 9:00 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review Translation applications in African, Asian and American Studies, submitted to the Division of Research Programs, for projects beginning after April 1, 1989.

6. *Date:* November 8, 1988.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Conferences Category, submitted to the Division of Research Programs, for projects beginning after April 1, 1989.

7. *Date:* November 9, 1988.
Time: 8:30 a.m. to 5:00 p.m.
Room: 430.
Program: This meeting will review applications for Higher Education Programs, submitted to the Division of Education Programs, for projects beginning after April 1, 1989.

8. *Date:* November 9, 1988.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Conferences Category, submitted to the Division of Research Programs, for projects beginning after April 1, 1989.

9. *Date:* November 9–10, 1988.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted for Humanities Projects in Media, submitted to the Division of General Programs, for projects beginning after April 1, 1989.

10. *Date:* November 14–15, 1988.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted for Humanities Projects in Media, submitted to the Division of General Programs, for projects beginning after April 1, 1989.

11. *Date:* November 15, 1988.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Higher Education Programs, submitted to the Division of Education Programs, for projects beginnng after April 1, 1989.

Stephen J. McCleary,
Advisory Committee Management Officer.
[FR Doc. 88-23988 Filed 10-17-88; 8:45 am]
BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-538]

Environmental Assessment and Finding of No Significant Impact Regarding Termination of Facility Operating License No. R-127; Memphis State University, AGN-201 Reactor Facility

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an Order terminating Facility Operating License No. R–127 for the Memphis State University AGN–201 Reactor Facility located in Memphis, Tennessee in accordance with the application dated November 10, 1988, as supplemented.

Environmental Assessment

Identification of Proposed Action

By application dated November 10, 1988, as supplemented, Memphis State University requested authorization to decontaminate and dismantle its AGN-201 Reactor Facility, to dispose of its component parts in accordance with the proposed dismantling plan, and to terminate Facility Operating License No. R–127. Following an "Order Authorizing Dismantling of Facility and Disposition of Component Parts," dated January 28, 1988, Memphis State University completed the dismantlement and submitted a final survey report on March 24, 1988, as supplemented. Region II conducted a final survey during June and August 1988. This survey is documented in Region II Inspection Report No. 50–538/88–01. The staff agrees with the analysis and the conclusion in the Memphis State University final survey report, as amended.

Need for Proposed Action

In order to release the facility for unrestricted access and use, Facility Operating License No. R–127 must be terminated.

Environmental Impact of License Termination

The Memphis State University indicates that the residual contamination and dose exposures are less than the requirements of Regulatory Guide 1.86, Table I and the maximum exposure of 5 microR/hr above background at one meter. These measurements have been verified by the NRC. The NRC finds that since these criteria have been met there is no significant impact on the environment and the facility can be released for unrestricted use.

Alternatives to the Proposed Action

Since the reactor and component parts have been dismantled and disposed of in accordance with NRC regulations and guidelines, there is no alternative to termination of Facility Operating License No. R–127.

Agencies and Persons Consulted

No outside agencies or persons were consulted in relation to this action.

Finding of No Significant Impact

The Commission has determined not to prepare an Environmental Impact Statement for the proposed action. Based upon the foregoing Environmental Assessment, the Commission has concluded that the issuance of the Order will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the application for termination of Facility Operating License No. R–127, dated November 10, 1988, as supplemented. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland this 12th day of October 1988.

For the Nuclear Regulatory Commission.

Charles L. Miller,
Acting Director, Standardization and Non-Power Reactor Project Directorate Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.
[FR Doc. 88-23980 Filed 10-17-88; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 30-19836, License No. 35-21144-01, EA No. 88-169]

Penn Inspection Co.; Order Modifying License, Effective Immediately and Order to Show Cause

I

Penn Inspection Company (licensee) Route 3, Box 311, Chickasha, OK, is the holder of byproduct material license No. 35–21144–01 (license) issued by the NRC, which authorizes the licensee to possess iridium-192, cobalt-60, and cesium-137 in sealed sources for use in industrial radiography. The license, scheduled to expire on September 30, 1987, remains in effect pending NRC action on a license renewal application dated August 27, 1987.

II

On May 28, 1988, a physician at Grady Memorial Hospital in Chickasha, Oklahoma, reported to NRC Region IV that an individual had sought medical evaluation on that day for a potential overexposure to radiation. The individual Michael L. Moon (radiographer), claimed that he had been performing industrial radiography work for Penn Inspection Company and that he had used his hands to free a radioactive source that had become stuck in an unshielded position, thus exposing himself to a potentially high radiation exposure. NRC immediately contacted the licensee to discuss this information. Based on this telephone conversation, the licensee agreed to suspend licensed radiographic operations in areas of NRC jurisdiction until NRC concurred on resumption of these activities. This action was documented in a Confirmation of Action letter dated May 31, 1988. On May 31, 1988, the NRC conducted a special inspection of activities being carried out by the licensee under the terms of its NRC license prompted by the May 28, 1988 reported potential overexposure. It was later concluded, based on reenactments of the incident during the inspection that the radiographer described and based on subsequent medical evaluation, that it was unlikely that the radiographer had been subjected to a radiation exposure in excess of NRC-established limits. However, the inspection disclosed that on May 12, 1988, the date of the incident, several of the radiographer's actions were in violation of NRC requirements and, on the whole, were an indication that the radiographer was not adequately knowledgeable of NRC regulations and license requirements. Specifically, the inspection disclosed that on May 12, 1988, the radiographer failed to use personnel radiation monitoring devices while performing industrial radiography, failed to maintain access to and to follow Penn Inspection Company's Operating and Emergency Procedures, and failed to straighten the source transfer tube as required before making an initial radiographic exposure. Each of these failures is a violation of NRC requirements and each contributed to making the incident on May 12 a serious event in terms of its potential for a radiation overexposure. Following this incident, the radiographer did not report the seriousness of the incident to either company officials or the NRC. As a result of the inspection, and discussions with a licensee's representative on June 2, 1988, the NRC allowed resumption of licensed radiographic operations based on licensee's agreement to not allow the radiographer to perform or assist in those operations and to cooperate with the NRC specified physician by providing the radiographer for cytogenetic studies related to the potential overexposure. This agreement was documented in a Confirmation of Action letter dated June 3, 1988.

III

After consideration of the facts, the NRC has concluded that the radiographer's actions on May 12 displayed a careless disregard for NRC requirements important to radiation safety. In addition, his failure to report the seriousness of this incident, either to officials of the Penn Inspection Company or to the NRC, was irresponsible. In total, Mr. Moon did not display the understanding of NRC regulations and license requirements that is required for radiographers by 10 CFR Part 34. A "radiographer" as defined in § 34.2 of 10 CFR Part 34 is any individual who performs or who, in attendance at the site where the sealed source or sources are being used, personally supervises radiographic operations and who is responsible to the licensee for assuring compliance with the requirements of the Commission's regulations and conditions of the license. Based on Mr. Moon's actions as stated above, there is no longer reasonable assurance that he can be relied upon to comply with Commission requirements concerning his use of licensed material during radiographic operations or personally supervising the use of licensed material in radiographic operations. Therefore, I have determined pursuant to 10 CFR 2.202 that the public health, safety and interest require that the license should be modified, as described below, effective immediately, and that no prior notice is required.

IV

Accordingly pursuant to sections 81, 161(b) and (i) of the Atomic Energy Act of 1954, as amended (Act), and the Commission's regulations in 10 CFR 2.202 and Parts 30 and 34, *It is hereby ordered, effective immediately that:*
NRC License No. 35–21144–01 is modified to prohibit Mr. Michael L. Moon from acting as a radiographer without specific NRC approval.

The Regional Administrator, Region IV, or his designee may relax or rescind any of the above provisions for good cause.

V

The licensee or Mr. Moon may show cause why this Order should not have been issued and should be vacated by filing a written answer under oath or affirmation within 30 days of the date of this Order which sets forth the matters of fact and law on which the licensee or Mr. Moon relies. The licensee or Mr. Moon may answer as provided in 10 CFR 2.202(d) by consenting to this Order. If the licensee fails to answer within the specified time or consents to this Order, this Order shall be final unless Mr. Moon shows cause why the Order should not have been issued or requests a hearing.

VI

The licensee or any other person adversely affected by this Order may within 30 days of the date of this Order request a hearing. A request for a hearing shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy of the hearing request shall also be sent to the Assistant General Counsel for Enforcement, Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the Regional Administrator, Region IV, 611 Ryan Plaza Drive, Suite 1000, Arlington, Texas 76011. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which the petitioner's interest is adversely affected by this Order and should address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this order shall be effective without further proceedings. An answer to this order or a request for hearing shall not stay the immediate effectiveness of this order.

In the event the Licensee or any other person requests a hearing as provided above, the issue to be considered at such hearing shall be whether this Order should be sustained.

For the Nuclear Regulatory Commission.

James M. Taylor,
Deputy Executive Director for Regional Operations.

Dated at Rockville, Maryland, this 6th day of October 1988.

[FR Doc. 88-23982 Filed 10-17-88; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50-443-OL-1 and 50-444-OL-1; ASLBP No. 86-529-01-OLR]

Public Service Co. of New Hampshire, et al., Seabrook Station, Units 1 and 2, Onsite Emergency Planning and Safety Issues; Clarification

This is to clarify that in view of the Commission's amendment to 10 CFR 50.47, 53 FR. 30655 (September 23, 1988), and the Commission's Order dated October 7, 1988 regarding same (CLI-88-09), the onsite Licensing Board, comprised of Sheldon J. Wolfe, Chairman; Jerry Harbour; and Emmeth A. Luebke, has jurisdiction over and shall consider and decide the now full-power notification issue—i.e., the Amended Contention On Notification System For Massachusetts (and certain bases) admitted in the onsite Board's Memorandum and Order of June 2, 1988 (unpublished).

The Board comprised of Ivan W. Smith, Chairman; Jerry Harbour; and Gustave A. Linenberger, Jr., and its newly added Alternate Members, John H. Frye, III and James H. Carpenter, will continue to preside in all other proceedings pertaining to offsite emergency planning for the Seabrook Station, which are being heard under Docket Nos. 50-443-OL and 50-444-OL (Offsite Emergency Planning).

Robert M. Lazo,

Acting Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

Issued at Bethesda, Maryland, this 12th day of October 1988.

[FR Doc. 88-23984 Filed 10-17-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-443-OL and 50-444-OL; ASLBP No. 82-471-02-OL]

Public Service Co. of New Hampshire, et al., Seabrook Station, Units 1 and 2, (Offsite Emergency Planning); Notice of Appointment of Alternate Atomic Safety and Licensing Board Members

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and § 2.721 of the Commission's Regulations, as amended, and pursuant to the Statement of Policy on Conduct of Licensing Proceedings, 13 N.R.C. 452 (1981), two Alternate Members are appointed to the Atomic Safety and Licensing Board already established to preside in the Offsite Emergency Planning phase of this operating license proceeding.

Public Service Co. of New Hampshire, et al.

Seabrook Station, Units 1 and 2 (Offsite Emergency Planning) Construction Permit Nos. CPPR-135 and CPPR-136

This action is taken pursuant to 10 CFR 2.721(b) because it is anticipated that it may become necessary, for reasons of panel resource management to reconstitute this Licensing Board in the future.

The Alternate Members of this Licensing Board are:

John H. Frye, III, Alternate Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

James H. Carpenter, Alternate Technical Member, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Robert M. Lazo,

Acting Chief Administrative Judge Atomic Safety and Licensing Board Panel.

Issued at Bethesda, Maryland, this 12th day of October 1988.

[FR Doc. 88-23985 Filed 10-17-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-346]

Toledo Edison Co., et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 124 to Facility Operating License No. NPF-3, issued to The Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensee), which revised the Technical Specifications for operation of the Davis-Besse Nuclear Power Station, Unit No. 1 (the facility) located to Ottawa County, Ohio. The amendment was effective as of the date of its issuance.

The amendment revised the TS's relating to the number of manual initiation pushbuttons required. Specifically, Technical Specification 3.3.2.2, Table 3.3-11, "Steam and Feedwater Rupture Control System" (SFRCS), is revised to reflect a design modification that simplifies manual initiation of SFRCS.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter 1, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on May 3, 1988 (53 FR 15757). No request for hearing or petition for leave to intervene was filed following this notice.

For further details with respect to this action see (1) the application for amendment dated January 30, 1988 (2) Amendment No. 124 to License No. NPF-3, (3) the Commission's letter dated October 5, 1988 and (4) the Environmental Assessment dated September 23, 1988 (53 FR 36128). All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland this 8th day of October 1988.

For the Nuclear Regulatory Commission.

Joseph G. Gitter,

Project Manager, Project Directorate III-3, Division of Reactor Projects III, IV, V and Special Project.

[FR Doc. 88-23981 Filed 10-17-88; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP); Review of Timex Corporation Petition and Public Hearings; Correction

In a document published in the **Federal Register** on Friday, October 7, 1988, pages 39576-39578, FR Doc. 88-23176; the following paragraphs were omitted. On page No. 39576, after the third paragraph in the third column, please insert the following text:

2. *Communications.* All communications with regard to these hearings should be addressed to: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW., Room 517, Washington, DC 20506. The telephone number of the Secretary of the GSP Subcommittee is (202) 395-6971. Questions may be directed to any member of the staff of the GSP Information Center.

II. Deadline for Receipt of Requests To Participate in the Public Hearings

The GSP Subcommittee of the TPSC invites submissions in support of or in opposition to the petition listed in this notice. All such submissions should conform to 15 CFR Part 2007, particularly §§ 2007.0, 2007.1(a)(1), 2007.1(a)(2), and 2007.1(a)(3). All submissions should identify the product of interest in terms of the Harmonized System tariff nomenclature.

Hearings will be held on November 15-17 beginning at 10:00 a.m. in the Commerce Department auditorium, 14th and Constitution Avenue, NW., Washington, DC. The hearings will be open to the public and a transcript of the hearings will be made available for public inspection or can be purchased from the reporting company.

Sandra J. Kristoff,

Chairwoman, Trade Policy Staff Committee.

[FR Doc. 88-23939 Filed 10-17-88; 8:45 am]

BILLING CODE 3190-01-M

PENSION BENEFIT GUARANTY CORPORATION

Request for Approval of Special Withdrawal Liability Rules: Steamship Trade Association of Baltimore, Inc.—International Longshoremen's Association Pension Plan

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of pendency of request.

SUMMARY: This notice advises interested persons that the Pension Benefit Guaranty Corporation ("PBGC") has received a request from the Steamship Trade Association of Baltimore, Inc.—International Longshoremen's Association Pension Plan for approval of plan amendments providing for special withdrawal liability rules. Under section 4203(f) of the Employee Retirement Income Security Act of 1974, as amended, the PBGC may prescribe regulations under which plans in industries other than the construction or entertainment industries may be amended to provide for special withdrawal liability rules, if the PBGC determines that the rules apply to an industry in which the characteristics that would make use of the special rules appropriate are clearly shown, and that, in each instance, the rule would not pose a significant risk to the PBGC. The PBGC has prescribed such regulations at 29 CFR Part 2645. Pursuant to those regulations, as soon as practicable after receiving a request for approval of a plan amendment containing all the required information, the PBGC shall publish a notice of the pendency of the request in the Federal Register, containing a summary of the request and inviting the submission of written comments. This notice is to advise interested persons of a request for approval of special withdrawal liability rules and to invite interested persons to submit written comments on it, pursuant to 29 CFR 2645.4(b).

DATES: Comments must be submitted on or before December 2, 1988.

ADDRESSES: All written comments (at least three copies) should be addressed to: Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006, Attn: Deborah C. Murphy. The complete request for approval is available for public inspection at the PBGC Communications and Public Affairs Department, Suite 7100, at the above address, between the hours of 9:00 a.m. and 4:00 p.m. Any comments received will also be made available to the public at the above address at those times.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006; 202-778-8820 (202-778-8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

Under section 4203(a) of the Employee Retirement Income Security Act of 1974 (ERISA), a complete withdrawal from a multiemployer plan occurs when an employer permanently ceases to have an obligation to contribute under the plan or permanently ceases all covered operations under the plan. Under section 4205, a partial withdrawal occurs, generally, when: (a) An employer reduces contributions by seventy percent in each of three consecutive years; or, (b) permanently ceases to have an obligation to contribute under one or more but fewer than all collective bargaining agreements, while continuing to perform work in the jurisdiction of the collective bargaining agreement of the type for which contributions were previously required or transfers such work to another location; or, (c) permanently ceases to have an obligation to contribute for work performed at one or more but fewer than all of its facilities, while continuing to perform work at the facility of the type for which the obligation to contribute ceased. Thus, the general rules on complete and partial withdrawal identify events that normally result in a loss to the plan's contribution base.

However, Congress recognized that, in certain industries and under certain circumstances, a complete or partial cessation of the obligation to contribute does not normally weaken the plan's contribution base. For that reason, Congress established special withdrawal rules for the construction and entertainment industries.

For construction industry plans and employers, ERISA section 4203(b) provides a special complete withdrawal rule. Under section 4203(b)(2), a complete withdrawal occurs only if an employer ceases to have an obligation to contribute under a plan and either continues to perform previously covered work in the jurisdiction of the collective bargaining agreement, or resumes such work within five years without renewing the obligation to contribute at the time of resumption. Section 4203(c)(1) applies the same special definition of complete withdrawal to the entertainment industry, except that the pertinent jurisdiction is the jurisdiction of the plan rather then the jurisdiction of the collective bargaining agreement. In contrast, the general definition of complete withdrawal in section 4203(a) defines a permanent cessation of the obligation to contribute as a withdrawal, regardless of the continued activities of the withdrawn employer.

Congress also established special partial withdrawal liability rules for the construction and entertainment industries. ERISA section 4208(d)(1) provides that an employer to which section 4203(b) (relating to the building and construction industry) applies is liable for a partial withdrawal "only if the employer's obligation to contribute under the plan is continued for no more than an insubstantial portion of its work in the craft and area jurisdiction of the collective bargaining agreement of the type for which contributions are required." Under ERISA section 4208(d)(2), an employer to which section 4203(c) (relating to the entertainment industry) applies has no liability for a partial withdrawal "except under the conditions and to the extent prescribed by the [Pension Benefit Guaranty Corporation] by regulation."

ERISA section 4203(f) provides that the PBGC may prescribe regulations under which plans in industries other than the construction or entertainment industries may be amended to provide for special withdrawal liability rules similar to the rules prescribed in section 4203(b) and (c) for the construction and entertainment industries. Section 4203(f)(2) provides that such regulations shall permit the use of special withdrawal liability rules only in

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industries (or portions thereof) in which, as determined by the PBGC, the characteristics that would make use of such rules appropriate are clearly shown, and only if the PBGC determines, in each instance in which special withdrawal liability rules are permitted, that use of such rules will not pose a significant risk to the PBGC under Title IV of ERISA. Section 4208(e)(3) provides that the PBGC shall prescribe by regulation a procedure by which a plan may by amendment adopt rules for the reduction or elimination of partial withdrawal liability under conditions, other than those described in sections 4208(e) (1) and (2), subject to the approval of the PBGC based on its determination that the adoption of such rules is consistent with the purposes of Title IV of ERISA.

The PBGC's regulations on Extension of Special Withdrawal Liability Rules (29 CFR Part 2645) prescribed procedures whereby a multiemployer plan may, pursuant to sections 4203(f) and 4208(e)(3), request the PBGC to approve a plan amendment that establishes special complete or partial withdrawal liability rules. Under 29 CFR 2645.2(a), a complete withdrawal rule adopted pursuant to Part 2645 must be similar to the rules for the construction and entertainment industries described in section 4203 (b) and (c) of ERISA. A partial withdrawal liability rule adopted pursuant to Part 2645 must be consistent with the complete withdrawal rule adopted by the plan. Pursuant to 29 CFR 2645.2(b), a plan amendment adopted pursuant to Part 2645 may cover an entire industry or industries, or may be limited to a segment of an industry, and may apply to cessations of the obligation to contribute that occurred prior to the adoption of the amendment.

Each request for approval of a plan amendment establishing special withdrawal liability rules must contain the information specified in § 2645.3(d). In acting on such a request, 29 CFR 2645.4(a) provides that the PBGC shall approve a plan amendment providing for the application of special withdrawal liability rules upon a determination by the PBGC that the plan amendment—

(A) Will apply only to an industry that has characteristics that would make use of the special withdrawal rules appropriate, and

(B) Will not pose a significant risk to the insurance system.

Finally, § 2645.4(b) requires the PBGC to publish a notice of the pendency of a request for approval of a plan amendment containing all the information required under § 2645.3 in the **Federal Register**, and to provide interested parties with an opportunity to comment on the request.

The Request

The PBGC has received a request from the Steamship Trade Association of Baltimore, Inc.—International Longshoremen's Association Pension Plan ("Plan") for approval of a Plan amendment providing for special withdrawal liability rules. The request sets forth the following information.

The Plan

The Plan is maintained pursuant to collective bargaining agreements between the International Longshoremen's Association ("ILA") and the Steamship Trade Association of Baltimore, Inc. ("STA"). The Plan covers employees employed by the STA and its members and former members and engaged in work covered by the agreements. The agreements cover rigging up, loading and unloading ships; tallying and checking cargoes being loaded and unloaded; shifting and securing cargoes; handling baggage, mail and stores; lashing, container and chassis repairs; handling lines in the docking and undocking of ships; and work performed by ship ceilers, grain ceilers, cattle fitters, carpenters aboard vessels, timekeepers, foremen, checkers, freight handlers, cargo space cleaners, bilge cleaners, and markers, in the Port of Baltimore, Maryland, and vicinity. The employees are employed by shipping lines, agents for shipping lines, stevedoring companies, terminal employers, and allied service employers in the Port of Baltimore. The Plan also covers union representatives of the ILA and individuals employed by the Plan and other STA-ILA jointly trusteed funds in the Port of Baltimore.

Approximately 25 employers contribute to the Plan. Contributions are based on man-hours worked, at a rate set in the collective bargaining agreement (see below). The collective bargaining agreements also require employers to pay container royalties (for containers loaded or unloaded away from the pier by non-ILA labor) and sugar royalties (for the unloading of raw bulk sugar). During the Plan year ended September 30, 1986 ("PYE 86"), the Plan received $13,894,563 in employer contributions, $3,249,751 in container royalties, and $151,218 in sugar royalties.

The Plan currently provides a monthly benefit of $47.30 per year of service, with a maximum benefit of $1,892 per month. The benefit formula has recently been increased. Benefits paid in PYE 86 totaled $13,163,841. As of October 1, 1986, the Plan covered 2,280 active participants, 1,396 retired and terminated vested participants, and 603 beneficiaries of deceased participants.

As of October 1, 1986, Plan assets had a market value of $301,983,655, equal to 143 percent of the present value of vested benefits under the Plan ($210,734,300), and up by 110 percent (from $143,825,442) since October 1, 1982. For PYE 86, the Plan received $17,295,552 in contributions and container and sugar royalties, and had net dividend and interest income of $21,129,637. It paid benefits totaling $13,163,841, and administrative expenses in the amount of $447,268.

The Plan's unfunded actuarial accrued liabilities ($88,900, as of October 1, 1986) have decreased in recent years, while the credit balances to its minimum funding standard account have increased ($119,911,500 as of October 1, 1986). Based on expected contributions, the Plan expects to satisfy and exceed minimum funding requirements for the next five years. The Plan attributes its favorable financial condition to productivity gains in the shipping industry, as a result of containerization and mechanization.

Industry Characteristics[1]

Trade patterns in the shipping industry have shifted away from northern Europe—the historical strength of the Port of Baltimore and other north Atlantic ports—to Asia. Competition has increased as a result of deregulation and overcapacity, and even advantageous locations, like Baltimore, have been affected. Land transportation has been substituted for water transportation, with many Asian goods reaching Atlantic Coast markets via rail or truck links from Pacific Coast ports. In the late 1970's, the north Atlantic ports began to lose market share to Pacific ports, while south Atlantic ports have grown over the last ten years. There is aggressive competition among both United States and Canadian ports for Port of Baltimore cargoes.

North Atlantic ports as a group lost almost ten percent of the total United States market between 1982 and 1985. During that time, Baltimore's share of the market for foreign general cargo moving between the midwest and north Atlantic ports declined from 44 to 36 percent, its share of imports dropped from 39 to 36 percent, and its share of exports from 50 to 36 percent. Total tonnage of foreign commerce (bulk and general cargo) declined 31 percent in the Port of Baltimore between 1980 and 1985. Most of the drop was in bulk cargo.

The Maryland Port Administration has undertaken a number of programs to keep the Port of Baltimore competitive. Terminal tariffs have been reduced. Reductions in rail shipping rates between Baltimore and key interior markets have been arranged, and provision has been made for double-stacking of shipping containers on rail shipments between Baltimore and Chicago. Long-term leases have been entered into with shipping lines and terminal operators, committing them to certain cargo volumes over a period of years. Streamlined customs clearance procedures and facilities have been arranged. Channel improvements have been made, and new terminal facilities are being developed. Sales and advertising programs have been initiated. In light of these developments, the Plan believes that the Port of Baltimore will continue to fill the important role in maritime commerce that it has historically played.

Most of the shipping activity in the Port of Baltimore relating to the loading and unloading of commercial cargo is covered by collective bargaining agreements between the ILA and the STA. These agreements cover all of the shipping lines and most of the agents for the shipping lines, stevedoring companies, and terminal employers doing business in the area. The commercial activity not covered by the agreements is limited to a few occupations such as waterfront guards. Most of the employees working in the area for the covered employers are members of the ILA.

The work covered by the Plan involves the transfer of import cargoes from ships in the Port of Baltimore to trains and trucks that carry the cagoes inland, and of export cargoes from trains and trucks to ships in the port. The work therefore is local to the Port of Baltimore.

Most of the work covered by the Plan depends on the presence of ships in the Port of Baltimore to be loaded or unloaded. The ships arrive irregularly. The STA and ILA jointly maintain a hiring hall system for dispatching workers to particular jobs with particular employers each day. Employees may work for the same employer for several days until a particular job is finished, but usually do not remain steadily with the same employer. Work is typically done on a project-by-project basis, a project being, for example, the unloading of a single ship. There is a high degree of employee mobility and of fluctuation in the employers' covered work, and employment is intermittent in nature.

A small percentage of employees have special skills that make them constantly in demand. These employees have more permanent relationships with individual employers, although cross-overs to other employers do sometimes occur when the flow of shipping is such that the regular employer is not fully occupied. Employers of such employees typically contract to perform work for other covered employers.

Finally, a few employees work for the ILA, the Plan itself, and other jointly-trusted ILA-STA funds. These employees work steadily for a single employer. However, the employers—the ILA, the Plan and other funds—are unlikely to cease Plan contributions except as part of a mass withdrawal of all employers.

The Plan has had a relatively stable population of contributing employers. Within the last ten years, only a few employers have left the Plan, and only a few more have entered the Plan.

Based on the charcteristics of the industry covered by the Plan, contends that—

[a]n employers' withdrawal should not affect the aggregate level of work in or the amount of tonnage flowing through the Port of Baltimore

and that—

[t]he Plan's contribution base should be unaffected by any withdrawal.

The Plan also contends that—

[e]ven if a withdrawal were to affect the aggregate level of work or the amount of tonnage in the Port of Baltimore shipping industry, the Plan's financial condition [discussed below] assures that there will be no risk to the insurance system.

Actuarial Data

As part of the request, the Plan submitted an actuarial valuation report and other financial data. The results are summarized in the table below.

Plan costs for minimum funding purposes are determined using the entry age normal method. The normal costs reported by the 1986 valuation was significantly lower than that reported for 1984. It is likely that the decrease in the number of active participants between 1984 and 1986 was largely responsible for the decrease in normal cost.

The ratio of assets to vested liabilities declined from 1982 to 1984 and increased from 1984 to 1986. The decline from 1982 to 1984 resulted in large measure from significant benefit increases.

Contributions for the Plan are bargained for on a two year cycle. The hourly contribution rate increased from $3.25 to $3.75 per hour during the period from 1981 to 1985.

The Plan's benefit structure provides for normal retirement at age 62, but a participant may elect to begin receiving accrued benefits as early as age 55 with a 6 percent per year reduction from age 62 early benefit commencement, or at any age with 25 years of pension service. The monthly benefit is $47.30 per year of service. The monthly benefit per year of service has increased steadily from $25 since 1981. Plan amendments since October 1, 1981, have increased the actuarial liability by $136 million.

SUMMARY OF ACTUARIAL VALUATION RESULTS [1] STEAMSHIP TRADE ASSOCIATION OF BALTIMORE, INC.—INTERNATIONAL LONGSHOREMEN'S ASSOCIATION PENSION PLAN

	Oct. 19, 1986	Oct. 19, 1984	Oct. 19, 1982
A. Number of participants:			
1. Active and terminated vested	[illegible]	2,540	2,690
2. Retirees and beneficiaries	[illegible]	1,473	1,771
B. Annual contributions and benefits ($000s) [2]			
1. Employer contributions [3]	[illegible]	[illegible]	[illegible]
2. Benefits paid	(*)	[illegible]	8,624
C. Plan assets and liabilities ($000s):			
1. Plan assets	[illegible]	[illegible]	143,825
2. Liability for vested benefits [4]	[illegible]	[illegible]	88,319
a. Retirees and beneficiaries	[illegible]	[illegible]	62,256
b. Other participants	[illegible]	120,319	

[1] The PBGC has made no independent investigation of industry characteristics, and the following description is based on information supplied by the plan.

SUMMARY OF ACTUARIAL VALUATION RESULTS [1] STEAMSHIP TRADE ASSOCIATION OF BALTIMORE, INC.—INTERNATIONAL LONGSHOREMEN'S ASSOCIATION PENSION PLAN—Continued

	Oct. 19, 1986	Oct. 19, 1984	Oct. 19, 1982
3. 1 + 2c (per cent)	143.3	95.0	110.2
4. Normal cost	4,107	4,796	3,057
5. Unfunded actuarial liability [6]	[illegible]	[illegible]	14,223

[1] Figures for 1986 taken from actuarial report; other figures from Forms 5500.
[2] For the plan year following the valuation date.
[3] Estimated.
[4] Not available.
[5] Assumed interest rate is 6.5 percent for 1986 and 6 percent for 1984 and 1982.
[6] Entry age normal method with assumed interest at 6.5 percent for 1986 and 6 percent for 1984 and 1982.

Special Withdrawal Liability Rules

The Plan has adopted an amendment prescribing special withdrawal liability rules. The amendment provides that the special rules shall be effective for withdrawals occurring on and after June 1, 1988, but shall be effective "only with and at the time of approval of PBGC." If the amendment is approved, the Plan's complete and partial withdrawal rules will read as follows:

Section 8.02 Complete Withdrawal Defined.

(a) A complete withdrawal occurs under the same conditions and as a result of the same events as it does under ERISA, except that a complete withdrawal from the Plan by an Employer shall not occur merely because the Employer ceases to have an obligation to contribute to the Fund unless the Employer either:

(1) Continues to perform work in the Port of Baltimore of the type for which contributions were previously required in accordance with the Collective Bargaining Agreement under which the Plan is maintained, or

(2) Resumes such work within five years after the date the Employer's contribution obligation ceases without renewing or becoming bound by the obligation to contribute to the Fund at that time.

(b) If a complete withdrawal of an Employer occurs, the date of such complete withdrawal is the date the Employer's obligation to contribute permanently ceases.

(c) Notwithstanding any other provision of this Section, if all or substantially all contributing Employers withdraw from the Plan pursuant to an agreement or arrangement, as determined under ERISA sections 4209 and 4219 (c)(1)(D), the withdrawal liability of each such Employer shall be determined in accordance with those ERISA sections.

Section 8.08 Partial Withdrawal.

(a) A partial withdrawal occurs under the same conditions and as a result of the same events as it does under ERISA, except that no partial withdrawal shall be deemed to occur with respect to an Employer, if the Employer continues to have an obligation to contribute to the Fund for all work of the type for which contributions are required in accordance with the Collective Bargaining Agreement under which the Plan is maintained for a period of five years after the year of such conditions or events.

(b) If a partial withdrawal of an Employer occurs, the date of such partial withdrawal is the last day of the calendar year during which the partial withdrawal occurs.

Section 8.11 Miscellaneous.

Any provisions of this Plan to the contrary notwithstanding, the provisions of Section 8.02 (complete withdrawal) and 8.08 (partial withdrawal) above shall apply only to those Employers which are subject to the provisions of the agreement between the Steamship Trade Association of Baltimore, Inc. acting on behalf of its members, and the International Longshoremen's Association (AFL-CIO) acting on behalf of its Locals 333, 921, 953, 1355 and 1429 relating to work done in the Port of Baltimore and Vicinity and which Employers, in accordance with said Agreements, are obliged to make contributions to this Fund for persons who perform the various categories of longshoring and associated work referred to in the above agreements and to persons who are the union officials in the Port of Baltimore of the ILA and of the locals referred to above and for persons who are employed by this Fund and other STA/ILA Funds in the Port of Baltimore.

Categories of longshore and associated work include the following: Rigging up and shifting of cargoes, loading and unloading cargoes of deepwater ships, handling of baggage, mail and stores, lashing of cargoes, loading and unloading of grain cargoes, tallying and checking cargoes during loading and unloading of deepwater ships, timekeeping with respect to cargo gangs, woodwork pertaining to the fitting of ships, dustproofing of cargo and other parts of ship, grain fittings, erection of steel stanchions for grain, binding of cargo, securing of cargo, receiving and delivery clerking pertaining to the receiving, delivering and marking of freight from and to all vehicles, power boats, lighters, barges and railroad cars, ship cargo space and bilge cleaners, cargo marking, container and chassis repairs, handling and lines in connection with the docking and undocking of ships.

The PBGC notes that the sale of assets provisions of ERISA section 4204 apply to withdrawals from the Plan.

Notice

A notice of the adoption of the amendment by the Plan and of this request for PBGC approval has been mailed to all employers who have an obligation to contribute under the Plan and to the employee organization representing employees covered under the Plan.

Comments

All interested persons are invited to submit written comments concerning the pending request to the PBGC at the above address, on or before December 2, 1988. All comments will be made a part of the record. Comments received, as well as the application for approval of the plan amendments, will be available for public inspection at the address set forth above.

Issued at Washington, DC, on this 29th day of September, 1988.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 88-23986 Filed 10-17-88; 8:45 am]

BILLING CODE 7708-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26172; File No. SR-NASD-88-42]

Self-Regulatory Organizations; Temporary Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Minimum Exposure Limit of SOES Market Makers

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 21, 1988, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing a pilot system change to the Small Order Execution System ("SOES") to permit a SOES market maker to manually override the system for the day to reduce the firm's minimum exposure limit in SOES from five times the maximum order size for that security down to the respective maximum order size itself (*e.g.*, 1,000, 500 or 200 shares). The manual override must be performed as to each security for which the market maker wants a smaller limit. The system change will be in effect only for a six month period from the date of approval by the Commission.

In the absence of manual override, SOES will continue to automatically establish a minimum exposure limit of five times the order size for all SOES securities and market makers will continue to be able to increase their exposure limit.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under the newly amended SOES Rules, market makers in a NASDAQ National Market System (NASDAQ/NMS) security are required to participate in SOES and are subject to a minimum exposure limit equal to five times the maximum order size (e.g. 1,000, 500 or 200 shares). *See* File No. SR-NASD-88-1, Securities Exchange Act Release No. 25791 (June 9, 1988). Recently, it has come to the attention of the NASD that an increasing number of SOES Order Entry Firms and their customers have been engaging in trading abuses of the SOES service which result in multiple executions against quotes by one or more SOES market makers prior to the market makers being able to adjust their quotes to reflect the true market. *See e.g.* File No. SR-NASD-88-37, dated August 25, 1988. This can occur during a market where quotations in a security are changing and where the company has released material news, but trading has not been halted in its security. This abusive activity is resulting in substantial lost revenue incurred daily by SOES market makers who are limited in their ability to withdraw from SOES under the recently amended SOES Rules.

The NASD is proposing a temporary pilot system change for a six-month period to SOES to permit SOES market makers to avoid receiving multiple 1,000 share SOES executions before the market maker can adjust its quotations in SOES. The proposed rule change would permit a SOES market maker to manually override the system and elect to reduce its minimum exposure limit in SOES from five times the maximum order size for that security down to the respective tier size itself (*e.g.* 1,000, 500 or 200 shares). Once that limit is exhausted through SOES executions, the market maker's quotations will be suspended and the firm will be given five minutes to update its quotations or its exposure in SOES. Any time a market maker changes its quotes during the trading day, its minimum exposure will be restored to five times the tier size of the security. Under the proposed temporary rule change, however, the market maker will be able to immediately reduce that exposure back to the tier size itself. Market makers will still retain the ability to set a larger exposure limit in order to reduce the likelihood of having their quotes removed from the NASDAQ display. The NASD is proposing that the pilot system change be in effect for a six month period from the date of approval by the Commission. The NASD believes this temporary system change will give market makers greater flexibility in responding, on a stock-by-stock basis, to perceived abuses of SOES by SOES Order Entry Firms.[1]

Because the proposed temporary rule change will result in the elimination of abusive trading penalties in connection with the operations of SOES, the NASD believes that the proposed rule change is consistent with section 15A(b)(6) under the Act which mandates, in pertinent part, that the rules of the Association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, facilitate transactions in securities and "to remove impediments to and perfect the mechanism of a free and open market and a national market system * * *"

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Association requests the Commission to find good cause pursuant to section 19(b)(2) for approving the proposed rule change prior to the 30th day after its publication in the **Federal Register**. As indicated above, a number of SOES Order Entry Firms appear to be routinely engaging in trading abuses of the SOES service. These abuses result in substantial lost revenue incurred daily by SOES market makers who are limited in their ability to withdraw from SOES under the recently amended SOES rules. The NASD is concerned that, notwithstanding the penalties for unexcused withdrawal, the increase in abusive trading practices in SOES will

[1] The NASD has undertaken to compile certain statistics to compare SOES market operations prior to adoption of the rule change with operations three months afterwards. (*See* letter from Suzanne Rothwell, Associate General Counsel, NASD, to Katherine A. England, Branch Chief, OTC Branch, dated September 28, 1988.)

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result in a substantial number of SOES market makers electing to withdraw from the system, with a consequential decrease in the depth and liquidity of the SOES market.

Because (1) the Association believes the proposed rule change is essential to the efficient operation and regulation of the system; (2) the change to minimum exposure limit constitutes a system change to the SOES service that the market maker may or may not elect to apply to its SOES trades, and (3) the proposed system change will only be in effect for six months, the NASD requests the Commission to accelerate the effectiveness of the proposed rule change prior to the 30th day after its publication in the Federal Register.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A and the rules and regulations thereunder. The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in that accelerated approval and the elimination of trading abuses of SOES will benefit public investors by assuring that SOES market makers have the opportunity to adjust their quotations with an order exposure limit of less than five times the maximum order size. The Commission also notes that the proposed rule change is temporary and that SOES market makers may elect either to continue to establish a minimum exposure limit of five times the order size for the security or to reduce the exposure limit to a smaller size down to the maximum order size itself. Therefore, the Commission believes that the benefits of approval of this temporary rule change outweigh any potential adverse effects to the commentators or other market participants during the period of the rule change's effectiveness.

The NASD has informed the Commission that it will not be able to implement the system change until October 14, 1988.[2] Therefore, the Commission has determined and the NASD has agreed, that the proposed rule change will become effective on October 14, 1988 and shall remain in effect for six months from the date.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number SR-NASD-88-42 and should be submitted by November 8, 1988.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved effective October 14, 1988 through April 14, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: October 12, 1988.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-24042 Filed 10-17-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16896; 812-7113]

Application for Exemption; Baldwin Life Insurance Co., et al.

October 12, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

Applicants: Baldwin Life Insurance Company ("Baldwin"), Baldwin Variable Annuity Account (the "Variable Account") and CNL, Inc. ("CNL") (collectively, the "Applicants").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from sections 26(a)(2) and 27(c)(2).

Summary of Application: Applicants seek an order to the extent necessary to permit them to issue variable annuity contracts which provide for the deduction of mortality and expense risk charges from the assets of the Variable Account.

Filing Date: The application was filed on September 1, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on November 7, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549; Applicants, Baldwin Life Insurance Company, 315 Park Avenue South, New York, New York 10010.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Ulness, Attorney (202) 272-2028 or Clifford E. Kirsch, Special Counsel (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. Baldwin, a stock life insurance company incorporated under New York law on December 18, 1981, is an indirect wholly-owned subsidiary of Leucadia National Corporation, a New York corporation ("Leucadia"). Leucadia is a diversified holding company, the common stock of which is listed on the New York Stock Exchange and the Pacific Stock Exchange.

2. The Variable Account was established under New York law on June 8, 1988, and is registered as a unit investment trust under the Act. The Variable Account was established by Baldwin in connection with the proposed issuance of certain variable annuity contracts (the "Contracts"). The Variable Account will invest exclusively in the Scudder Variable Life Investment Fund (the "Fund").

3. The Contracts are single premium variable deferred annuities which, subject to certain conditions and limitations, allow contract owners to make additional payments of premiums. The Contracts may be purchased with a minimum initial premium of $10,000.

4. CNL will serve as the principal underwriter for the Contracts. CNL is registered with the SEC under the Securities Exchange Act of 1934 as a broker-dealer and is a member of the National Association of Securities Dealers, Inc.

5. A charge is made against the value of net assets in each subaccount of the Variable Account to reimburse Baldwin for certain mortality and expense risks assumed under the Contracts and for the costs of administering the Contracts and the Variable Account. The mortality risk borne by Baldwin under the Contracts arises from the contractual obligation to pay death benefits prior to the maturity date and to make periodic annuity payments regardless of how long all annuitants or any individual annuitant may live. The expense risk assumed by Baldwin is that the actual expenses involved in issuing and administering the Contracts will be greater than estimated and therefore will exceed the amount recovered from the contract administration charge and the records maintenance charge.

6. The mortality and expense risk charge will be deducted from the value of net assets in each subaccount on a daily basis in an amount equal to an effective annual rate of .90%. Of that amount, approximately .70% is charged to cover the mortality risk and approximately .20% is charged to cover the expense risk. The rate of this charge is guaranteed not to increase over the life of the Contracts and is applicable only during the period from the effective date to the maturity date.

7. A daily charge is deducted from the value of net assets in each subaccount to cover the cost of administering the Contracts and the Variable Account in an amount equal to an effective annual rate of .40%. In addition, if a Contract has an Accumulated Value of less than $50,000 on a Contract Anniversary, a records maintenance charge of $30 will be deducted from the Accumulated Value on that date. The administration charge and the records maintenance charge represent reimbursement only for the administrative costs expected to be incurred over the life of the contract. Baldwin does not expect or intend to make a profit from these charges. The rates of these charges are guaranteed not to increase over the life of the Contracts.

8. Baldwin does not impose a sales charge at the time a premium is paid under the Contract. However, a contingent deferred sales charge ("Surrender Charge") is imposed on certain partial and full surrenders to cover certain expenses relating to the sale of the Contracts.

9. The Surrender Charge for withdrawal of a premium in the contract year a premium is paid is 6% of such premium. The Surrender Charge decreases by 1% for each additional contract year the premium remains on deposit under the Contract before withdrawal. The amount of any applicable Surrender Charge is calculated on the premiums not previously withdrawn without regard to any increase or decrease in the Accumulated Value. The amount of the Surrender Charge will be calculated as a percentage of each premium paid under the Contract. The applicable Surrender Charge will be determined based upon the date the written request for surrender is received by Baldwin and will be calculated with respect to premiums paid under the Contract on a first-in, first-out basis.

10. Applicants represent that the mortality and expense risk charge is a reasonable charge to compensate Baldwin for the risk that (i) annuitants under the Contracts will live longer as a group than has been anticipated in setting the annuity rates guaranteed in the Contracts, (ii) the mortality rate of annuitants prior to the maturity date will be greater than anticipated in establishing the death benefit payable under the Contract, and (iii) administrative expenses will be greater than the amounts derived from the contract administration charges, including the records maintenance charge.

11. Baldwin represents that the charge of .90% for mortality and expense risks assumed by Baldwin is within the range of industry practice with respect to comparable annuity products. This representation is based upon Baldwin's analysis of publicly available information about similar industry products, taking into consideration such factors as the current charge levels, existence of charge level guarantees, and guaranteed annuity rates of such contracts. Baldwin represents that, as a further condition for this relief, it will maintain at its administrative offices, and make available to the SEC, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey made to support this representation.

12. Applicants acknowledge that the surrender charge may be insufficient to cover all distribution expenses. Baldwin represents that it has concluded that there is a reasonable likelihood that the proposed distribution financing arrangement will benefit the Variable Account and Contract owners. Applicants represent that a memorandum, setting forth the basis for this representation, will be maintained by Baldwin at its administrative offices and will be available to the SEC.

13. Baldwin represents that the Variable Account will invest only in management investment companies which undertake, in the event any such company adopts a plan to finance distribution expenses under Rule 12b-1 under the Act, to have a board of directors, a majority of whom are not interested persons of the investment company formulate and approve any such distribution plan pursuant to the provisions of Rule 12b-1 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-24039 Filed 10-17-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16897; File No. 811-2201]

Application for an Order; Premier Variable Annuity Account

October 12, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Premier Variable Annuity Account ("Applicant").

Relevant 1940 Act Sections: Order requested under section 8(f).

Summary of Application: Applicant seeks an order under section 8(f) of the 1940 Act declaring that it has ceased to be an investment company.

Filing Date: The application was filed on April 1, 1988 and amended on July 29, 1988, August 15, 1988 and September 12, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m., on November 7, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a

[2] This information was provided by Dennis Hensley, Deputy General Counsel, NASD to Katherine England, Branch Chief, SEC in a telephone conversation on October 6, 1988.

hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 5th Street, NW., Washington, D.C. 20549. Premier Variable Annuity Account, 4333 Edgewood Road NE., Cedar Rapids, Iowa 52499.

FOR FURTHER INFORMATION CONTACT: Cindy J. Rose, Financial Analyst (202) 272–2058 or Clifford E. Kirsch, Special Counsel (202) 272–2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. On June 30, 1982, the Applicant filed a notification of registration on Form N–8A and a registration statement Form N–8B–2. On June 30, 1982, the Applicant filed a registration statement on Form S–6 which was made effective on August 12, 1983. No public offering or sales of the Applicant's securities were ever made.

2. The Applicant did not transfer any of its assets to a separate trust within the last 18 months.

3. On December 31, 1987, the Applicant distributed all of its remaining assets to its sole shareholder, Pacific Fidelity Insurance Company.

4. Applicant has no security holders and is not now engaged, nor does it propose to engage, in any business activities other than those necessary for winding up of its affairs. No assets are retained by the Applicant. Applicant is not a party to any litigation or administrative proceeding.

For the Commission, by the Division of Investment Management, under delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88–24040 Filed 10–17–88; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–16522; (812–3139)]

Application for De-Registration; UBZ Corp.

October 12, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for de-registration under the Investment Company Act of 1940 ("1940 Act").

Applicant: UBZ Corporation.

Relevant 1940 Act Section: Application filed pursuant to section 8(f) and Rule 8f–1.

Summary of Application: Applicant requests an order declaring that it has ceased to be investment company under the 1940 Act.

Filing Dates: The application was filed on August 26, 1987, and amended on April 15 and August 1, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on November 4, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicant, 43 Victoria Place East, Fort Lee, New Jersey, 07024.

FOR FURTHER INFORMATION CONTACT: Thomas Mira, Staff Attorney (202) 272–3047, or Brion R. Thompson, Branch Chief (202) 272–3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant is registered under the 1940 Act as a closed-end diversified management investment company. Organized under the laws of the State of Delaware, Applicant became registered under the 1940 Act on February 1, 1961, and filed its registration statement pursuant to Section 8(b) of the 1940 Act on or about May 29, 1961. Applicant filed a registration on Form S–1 pursuant to the Securities Act of 1933 on or about April 30, 1968, and commenced its initial public offering on July 10, 1968. Prior to registering under the 1940 Act Applicant was engaged in the business of manufacturing, processing and selling welding equipment and supplies. On December 12, 1980, Applicant sold its operating assets and subsequently registered under the 1940 Act.

2. On May 18, 1987, pursuant to an Agreement and Plan of Reorganization approved by a majority of Applicant's shareholders, Applicant exchanged substantially all of its assets for shares of beneficial interest of Van Kampen Merritt Tax Free Fund, Inc. (File No. 811–4718, "Fund"). Assets with an aggregate value of $11,784,842.72 of Applicant were transferred to the Fund in exchange for $11,784,842.72 Fund shares having an aggregate value of $11,784,842.72. Applicant represents that the exchange of shares was based upon their relative net asset values. Such shares were distributed, pro rata, to Applicant's shareholders of record as of May 18, 1987, as a distribution in partial liquidation of Applicant. Applicant has retained assets sufficient to satisfy its outstanding liabilities, which assets are being held in a liquidating trust. Most of the assets retained by Applicant consist of tax refund receivables and none of such assets have been or will be invested in any securities.

3. A Certificate of Dissolution on behalf of Applicant was submitted to the Secretary of the State of Delaware. Applicant is not a party to any litigation or administrative proceeding and does not propose to engage in any business activities other than those necessary to effectuate the winding-up of its affairs. As soon as all liabilities have been satisfied, distribution of the remaining assets (if any), in complete liquidation, will be made to the beneficial owners of the liquidating trust, namely Applicant's shareholders of record as of May 18, 1987.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88–24041 Filed 10–17–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–26171; File No. SR–OCC–87–20]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change of the Options Clearing Corp. Relating to Investment in a Wholly-Owned Subsidiary

On November 19, 1987, the Options Clearing Corporation ("OCC") filed a proposed rule change (File No. SR–OCC–87–20), with the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] to authorize OCC to invest

[1] 15 U.S.C. 78s(b)(1).

excess funds in a wholly-owned subsidiary, International Clearing Systems, Inc. ("ICSI"), to develop data processing and communications services for foreign currency exchange transactions and related collateral and settlement obligations. On March 9, 1988, the Commission published notice of this proposed rule change in the Federal Register to solicit comments from interested persons.[2] No comments were received. OCC filed ICSI's bylaws as an amendment to the proposed rule change on April 27, 1988. This Order approves the proposal for the reasons stated below.

I. Description

a. ICSI's Structure and Relationship to OCC

OCC proposes to establish and invest funds in ICSI, which was developed to provide data processing and other support services to clearing houses or banking entities that process, clear, and settle transactions in foreign and United States currencies.[3] ICSI is a separate corporate entity from OCC, and will have separate staff, books, records, funds, and operational and computer facilities. ICSI also will be legally independent from the foreign currency clearing houses. Currently, OCC owns all of ICSI's shares and ICSI's Board of Directors is composed of individuals from OCC; however, as ICSI evolves the clearing houses and ICSI may negotiate different ownership and governance structures.

ICSI currently is contracting with consultants and system designers to develop data processing and communications systems to process foreign currency forward and spot exchange contracts among financial institutions. After the systems are developed, ICSI would establish long-term contracts with foreign exchange clearing houses to process those transactions.

OCC states in its filing that it may perform facilities management services for ICSI or may enter into a consulting agreement with ICSI to allow ICSI to obtain the benefits of OCC's technical expertise.[4] OCC will not be involved in policy formulation or the governance decisions of any foreign exchange clearing house.

OCC will provide ICSI with start-up capital.[5] After ICSI is operational it is intended to be self-supporting and obtain revenues by charging fees to its users, *e.g.*, clearing houses, broker-dealers and banks conducting foreign currency trades. Because OCC and ICSI were structured as separate corporations, OCC would not be legally responsible for ICSI's future debts and liabilities.[6]

b. ICSI's Proposed Services

ICSI will perform service bureau functions for foreign currency clearing houses, broker-dealers and banks that conduct foreign currency trades. The broker-dealers and banks will use ICSI's software and computers to communicate with the foreign currency clearing houses. The foreign currency clearing houses will use ICSI's services to communicate with their members and to provide computer services to implement the clearing house's procedures and rules.

OCC and ICSI do not intend to affect the manner in which broker-dealers and banks conduct trades; traders will continue to use current trading mechanisms.[7] After trade terms are negotiated between the parties, each party will submit trade information [8] to ICSI's computer (on behalf of the clearing house) either via an ICSI personal computer (PC) or through a link with the trader's in-house computer system. ICSI's computer will process those transactions on a real-time basis.

ICSI's computer processing will include: edit checks on the trade data, risk algorithems to determine whether the trade is within permissible margin and position limits, determination of the appropriate collateral (the clearing house will establish margin and position limits), and matching of corresponding trades. If ICSI cannot establish a match, it would store trade instructions in a pending file and await new instructions that create a match. ICSI also would track the amount of time trade instructions remain unmatched. If trade data remains in the pending file longer than a prescribed time (for example, five minutes) ICSI would inform the submitting side that the trade has not matched. The submitting side could use this information to contact the *contra* side and attempt to create a matched trade.[9] ICSI also would inform each participant when matches occur.[10] Knowledge of when matches occur is particularly important because when a trade matches, a novation occurs and the clearing house becomes the *contra* party.

ICSI's computer also would monitor the amount of collateral each participant has deposited with the clearing house. Each clearing house participant would be responsible for ensuring that it has deposited sufficient collateral with the clearing house before it conducts each trade to minimize the risk that trades will fail to settle. If a member has not deposited sufficient collateral and attempts to trade, the clearing house would reject the trade.

II. OCC's Rationale

OCC believes that establishing ICSI is consistent with the standards developed by the Commission under the Act. OCC states in its filing that establishing a

[2] Securities Exchange Act Release No. 25415 (March 2, 1988), 53 FR 7616.

[3] Although OCC contemplates that ICSI would provide data processing services to foreign exchange clearing houses, foreign currency exchange clearing houses have not yet been established. OCC states that plans are being developed by banks in several countries to establish foreign currency exchange clearing houses. Each foreign clearing house would be organized under the laws of the host country and subject to the regulatory structure imposed by the host country. The first clearing house is expected to be in Canada and is expected to begin operations in the last quarter of 1988. Other clearing houses, located worldwide in major financial centers, are expected to be established beginning in 1989. Initially, each clearing house could only clear and settle trade among its members. After several clearing houses are established, the clearing houses are expected to begin negotiations to develop mechanisms and procedures to clear and settle trades among the clearing houses. Telephone conversation between Robert Wilcox, Outside Counsel for OCC, Larry Recknagel, Vice President, OCC, and Gerald Greiner, Branch Chief, and Cynthia Peoras, Attorney, Division of Market Regulation, May 23, 1988.

[4] If OCC and ICSI enter into either a service agreement or a consulting agreement, OCC has agreed to submit the appropriate documents establishing the parameters of the agreement to the Commission for review under section 19 of the Act. Telephone conversation between Lori Burns, Associate General Counsel, OCC and Cynthia Peoras, Attorney, April 13, 1988. Under those circumstances, the Commission would obtain assurances from OCC that any services provided to ICSI would not affect OCC's operations or its responsibilities under the Act.

[5] In the future, ICSI may establish a plan to repay OCC for the capital outlays OCC plans to make on ICSI's behalf or provide OCC with income in the form of dividends on its investment.

[6] While OCC does not expect to incur any debts or assume any liabilities from its involvement with ICSI, OCC has agreed to inform the Commission of any events related to ICSI that could have a materially adverse effect on OCC's financial position or operational capabilities. Letter from Lori Burns, Associate General Counsel, OCC, to Cynthia Peoras, Attorney, dated April 28, 1988.

[7] The Commission understands that trades generally are conducted via the telephone.

[8] Foreign currency trades generally are not standardized. The parties to each trade must negotiate all the terms including the quantity, price, and settlement date (which also is called the value date) and submit these terms to the clearing house and ICSI.

[9] Clearing house participants also would have access to ICSI's inquiry function, which would enable them to ask the computer for this information and other trade information.

[10] ICSI also would perform a secondary risk assessment to ensure that because of the timing of the transactions no additional transactions had occurred during the intervening time to pose new risks.

subsidiary to provide a centralized service to develop data processing and communications systems adequate to process trade data, settlement data, and related clearing information for foreign currency forward and spot exchange contracts among financial institutions will promote safety and efficiency in foreign currency exchange markets and banking markets.

III. Discussion

As discussed below, the Commission believes that this proposal is consistent with the Act. In making such a determination, the Commission must find that the proposed OCC investment is consistent with the requirements of Section 17A that, among other things, a registered clearing agency (1) safeguard securities and funds in its possession or for which it is responsible, and (2) facilitate the prompt and accurate clearance and settlement of securities transactions. The Commission believes that, to the extent a registered clearing agency's subsidiary engages in activities outside of the Commission's direct oversight, the Commission's responsibility generally is to assure that those activitives do not undermine the clearing agency's ability to conduct its securities clearance and settlement activities in a manner that is consistent with the Act.[11]

The Commission believes that OCC has taken appropriate measures to ensure that its involvement with ICSI does not adversely effect OCC's ability to conduct its clearance and settlement activities or to satisfy its statutory obligations under the Act.[12] OCC generally should be insulated from any potential liabilities arising from ICSI's operations because as a matter of general corporate law, OCC as a parent corporation is not responsible for the debts or other liabilities of its subsidiary, ICSI. OCC has structured ICSI as a separate corporation with separate facilities, operations, staff, books, and records to ensure that the two corporations remain distinct and that each entity is insulated from financial exposure arising from the other's activities. In addition, OCC is user-governed, which should prevent OCC from subsidizing ICSI to the detriment of OCC and its clearing members.[13] Nevertheless, the Commission understands that OCC's initial investment in ICSI is intended by OCC to cover development and start-up costs for ICSI. The Commission believes that future investments by OCC in ICSI must be carefully monitored to ensure that they do not impair OCC's ability to perform its obligations under the Act. Accordingly, OCC must file with the Commission, as a proposed rule change under section 19(b)(2) of the Act, any proposed material OCC investment in ICSI that has not been committed to ICSI as of today.

ICSI also may provide OCC and its members with indirect benefits. ICSI is designed to recover its costs and make a profit, so it may provide OCC with a return on its investment that could be used to fulfill its responsibilities under section 17A of the Act. Moreover, existing OCC members are expected to use ICSI to more efficiently handle their foreign currency trade operations and thus could benefit from the proposal.

Based on the above discussion, the Commission believes that OCC has taken sufficient steps to ensure that its involvement with ICSI will not undermine its ability to conduct securities clearance and settlement activities in a manner consistent with the Act. Because ICSI as currently proposed will provide only data processing services for foreign exchange transactions, ICSI will not be subject to direct Commission oversight under the Act. The Commission, however, will continue to monitor OCC's relationship and activities with ICSI.

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the Act and, in particular, Section 17A.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-OCC-87-20) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 12, 1988.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-24044 Filed 10-17-88; 8:45 am]

BILLING CODE 8010-01-M

[11] *See* Securities Exchange Act Release No. 21708 (February 4, 1985), 50 FR 5343I.

[12] As noted above, to the extent OCC provides services to ICSI, the Commission will obtain assurances from OCC that providing such services will not affect adversely OCC's operations.

[13] *Id.*

[Release No. 34-26174; File No. SR-Phlx-88-07, Amdts. Nos. 2 and 3]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to 2nd and 3rd Amendments to CIP Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 20 and October 11, 1988 the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange ("Phlx" or "Exchange") hereby submits its second and third set of amendments to its proposed rule change to trade Cash Index Participations ("CIPs"). In summary, Phlx is proposing to change its CIP contract to reflect a daily cash-out feature as opposed to a quarterly cash-out feature. [The following are amendments to the proposed text of CIP trading rules filed with the Commission in February, 1988; new language is italicized, deleted language is bracketed, and Rule 1008B is all new text.]

Rules Applicable to Trading of Cash Index Participations Applicability and Definitions

Rule 1000B. (a) No change.

(b) Definitions. The following terms as used in the Rules shall, unless the context otherwise indicates, have the meaning herein specified.

(1) No change.

[(2) Cash-Out Time—The term "cash-out time" means the point in time each quarter of the year when a purchaser of a CIP may obtain the closing index value upon exercise of the cash-out privilege. The cash-out time for each quarter will be determined and made public by the Exchange before the beginning of the quarter.]

[(3)] *(2)* No further change.

* * * * *

Cash-Out Privilege

Rule 1004B. The purchaser of a CIP may [obtain on each cash-out time the CIP closing index value. The deadline for exercising the cash-out privilege will be determined and made public by the Exchange before the beginning of the quarter.] *exercise the CIP cash-out privilege at any time after establishing a CIP position. Exercise of the CIP cash-out privilege entitles the holder of a long CIP position to obtain the CIP closing index value as specified in Rule 1008B relating to exercise of the cash-out privilege.*

* * * * *

Exercise of Cash-Out Privilege

Rule 1008B. (a) Exercise of the cash-out privilege shall entitle the holder of the CIP to receive the CIP index value less one half of one percent of that value as calculated at the close of trading on the business day following the date of the exercise of the cash-out privilege. For exercises occurring on the business day preceding the third Friday of March, June, September, and December (or when the third Friday is not a trading day, the business day preceding the third Thursday) ("Quarterly Expiration Day"), the exercise of the cash-out privilege shall entitle the holder of the CIP to receive the closing index value of the CIP, based on the opening prices of each of the component stocks of the index on the Quarterly Expiration Day. If one or more of the underlying securities that are the basis of the index do not open for trading on the Quarterly Expiration Day, the closing index value shall be calculated based on the last reported price of such securities prior to that day.

(b) Except as provided in paragraph (c) below, notice of exercise of the CIP cash-out privilege must be provided by a purchaser of a CIP in accordance with the rules and procedures of The Options Clearing Corporation ("OCC"). An exercise notice may be tendered to the OCC only by the clearing member in whose account with the OCC the CIP is carried. Members and member organizations, to the extent that they do not conflict with the rules and procedures of the Exchange and the OCC, shall establish fixed procedures as to the latest hour at which they will accept exercise notices from their customers.

(c) Solely with respect to exercising the CIP cash-out privilege on the business day preceding the Quarterly Expiration Day, clearing members are required to follow the procedures of The Options Clearing Corporation for tendering exercise notices, and member organizations also are required to comply with the following procedures:

(i) A memorandum to exercise the cash-out privilege with respect to any CIP issued or to be issued in a customer, firm, or market maker account at The Options Clearing Corporation must be received and/or prepared by the member organization no later than 4:15 p.m. Eastern Time ("exercise cut-off time") and must be time-stamped at the time it is received and/or prepared. Member organizations must accept exercise instructions until 4:15 p.m. Eastern Time on this day.

(ii) Any member or member organization that intends to submit an exercise notice for 25 or more CIP round lots on the same underlying Exchange CIP index on behalf of an individual customer, specialist, market maker, or firm account must deliver an "exercise advice" on a form prescribed by the Exchange, no later than 4:15 p.m. Eastern Time. For purposes of this rule, exercises of all accounts controlled by the same individual must be aggregated.

(iii) Notwithstanding subparagraph (i) above, member organizations may receive exercise instructions after the exercise cut-off time but prior to any exercise notice receipt cut-off time of The Options Clearing Corporation (1) in order to remedy mistakes made in good faith, (2) to take appropriate action as the result of a failure to reconcile unmatched Exchange CIP transactions or (3) where exceptional circumstances relating to a customer's ability to communicate exercise instructions to the member organization (or the member organization's ability to receive exercise instructions) prior to such time warrant such action.

* * * Commentary

.01 All memoranda of exercise instructions prepared pursuant to this rule are subject to the requirements of SEC Rule 17a-3(a)(6) and 17a-4(b).

.02 In the event a member organization receives an exercise instruction or tenders an exercise notice pursuant to an exception set forth in subparagraph (iii) of paragraph (c) of this rule, the member organization shall maintain a memorandum setting forth the circumstances giving rise to such exception and shall promptly file a copy of the memorandum with the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The proposed rule change represents amendments to SR-PHLX-88-7 regarding the PHLX's proposal to trade CIPs. As originally filed, a CIP holder was permitted to exercise the cash-out privilege once each quarter. In Amendment No. 2 to the CIP rule filing, the original proposal was amended to provide for a daily as opposed to quarterly ability of a CIP holder to exercise the cash-out privilege. This change and how it will operationally work necessitates changes in proposed Rule 1008B to delineate precisely requirements for tendering exercise instructions to The Options Clearing Corporation ("OCC").

The Exchange has re-evaluated the cash-out privilege and has determined to provide CIP holders the ability to cash-out their CIP positions on a daily basis rather than just on a quarterly basis. With the exception noted below, those exercising the cash-out privilege will receive the CIP index value less one half of one percent of that value as calculated at the close of trading one business day following the date on which the cash-out privilege is exercised. The Exchange has determined that those exercising the cash-out privilege on any business day by 4:15 p.m. may receive the closing index value as calculated on the business day following the exercise day of the cash-out privilege. As an exception to exercise of the cash-out privilege set forth above, those exercising the cash-out privilege on the business day prior to the third Friday of March, June, September and Decemer will receive the full CIP index value based on the opening prices of each of the securities in the underlying CIP index on those respective third Fridays. This coincides with the quarterly payment of dividend equivalents by the CIP sellers to CIP purchasers, as well as the expiration of certain stock index options and stock index futures.

The Exchange believes this change will make CIPs more attractive to public investors that may wish to acquire CIP positions. It should also aid in assuring that CIPs do not trade at prices too far below the value of the underlying index. The ½ percent differential from the index value enjoyed by CIP holders exercising the cash-out privilege on any day except the business day prior to the third Friday of March, June, September

and December reflects that the daily cash-out privilege is a distinct benefit to CIP holders who also have the ability to close out their positions for cash in the market and avoid such discount. In this regard, CIP writers who were assigned a CIP exercise on all but the quarterly exercise dates need only tender 99⅛% of the closing index value to exercising CIP holders.

Generally, for daily exercises, exercise instructions must be delivered to the OCC pursuant to the OCC's procedures, currently by 8:00 p.m. Eastern Time of the day the particular CIP position is exercised. Upon exercise of the cash-out privilege, the CIP holder is entitled to the following business day's closing index value. The PHLX is mindful that the proposed rule change would permit the exercise of the cash-out privilege based on public news and events transpiring after the close of CIP trading and the stocks comprising the CIP indices up to 8:00 p.m. Eastern Time, the OCC's cut-off time for receiving exercise instructions. The PHLX, however, does not believe that this exercise instruction cut-off procedure disadvantages CIP writers as exercising CIP holders are not assured of the index price upon which they are cashed out until after the lapse of one trading day.

On quarterly exercise, because exercising CIP holders will be given the following business day's opening CIP index value, exercising CIP holders will be precluded from taking advantage of information occurring after the close of trading on the day of exercise. Accordingly, exercising CIP holders on the Quarterly Exercise Day must tender exercise instructions and prepare such instructions by 4:15 p.m. Eastern Time. Additionally, the proposed rule change requires PHLX member organizations tendering exercise notices for 25 or more CIP round lots on behalf of their own account or customers to send a memorandum informing the PHLX of such by 4:15 p.m. Eastern Time.

The proposed rule change is consistent with section 6(b)(5) of the Act, which provides in part that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The PHLX has prepared this rule change in close coordination with the OCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days or such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 8, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 13, 1988.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-24043 Filed 10-17-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26172; File No. SR-PHLX-88-21]

Self-Regulatory Organizations; Delta Government Option Corp.; Notice of Amended Application for Registration as a Clearing Agency.

On October 7, 1988, Delta Government Options Corp. ("Delta") filed with the Commission an amendment to its application for registration as a clearing agency pursuant to section 17A of the Securities Exchange Act of 1934, 15 U.S.C. 78q-1 ("Act").[1] The amendment reflects, among other things, revisions to the Procedures ("Revised System Procedures") of the Over-The-Counter Options Trading System ("System"), proposed clearing fees, and revisions to Delta's Registration Statement on Form S-1 under the Securities Act of 1933 ("Amended Registration Statement"), which is incorporated by reference in Delta's application for registration as a clearing agency.[2] As a result of these revisions, Delta has withdrawn several of its requests for exemption from the requirements of Section 17A of the Act and modified other exemption requests. Furthermore, Delta has attached as an exhibit to its Amended Registration Statement the Amended And Restated Operating And Brokerage Services Agreement Relating to the Over-The-Counter Options Trading System. This agreement describes in detail the operation of the System and the specific functions performed by Delta, RMJ Options Trading Corporation, and Security Pacific National Trust Company (New York).

As discussed below, the Commission invites your views concerning Delta's revised application and exemption requests. In preparing submissions on this matter, commentators are urged to review the text of Delta's revised application, rules and submissions, which are available from the Commission's Public Reference Room as described below, and should not rely on the terms of this release for that purpose.

In its original application for registration as a clearing agency, Delta requested, pursuant to section 17A(b)(1) of the Act,[3] several exemptions from the requirements of section 17A of the Act. First, Delta requested confirmation that the phrase "rules of the clearing agency" as contained in section 17A(b)(3)(A) of the Act will not be construed to apply to Delta's Certificate of Incorporation, By-Laws, shareholders' agreements, or related instruments. In its amended application, Delta seeks confirmation, in the form of an exemption request if necessary, that its "rules" do not include the above items except to the extent those items: (1) Set forth rights duties, and obligations of Delta's participants; or (2) deal with the safeguarding of participant funds or securities.

Second, Delta requested an exemption from the participant admission requirements of section 17A(b)(3)(B) of the Act. The Revised System Procedures (sections 201–203) provided specific standards for the admission of banks, brokers or dealers, and insurance companies as participants. The Revised System Procedures also provide more general standards for the admission of other participants. In its amended application, Delta represents, that, if necessary in the future, it will formulate further specific admission standards to deal with other classes of potential participants. Delta believes that the Revised System Procedures are consistent with section 17A(b)(3)(B), and, therefore, Delta has withdrawn its exemption request concerning that Section.

Third, Delta originally requested an exemption from section 17A(b)(3)(C) of the Act, which provides that the rules of the clearing agency assure a fair representation of its shareholders and participants in the selection of its directors and administration of its affairs. The Revised System Procedures (section 1401) provide for a participants' committee, consisting of from five to fifteen members, to advise Delta on matters pertaining to the operation of the System. As noted in Delta's original clearing agency registration application, Delta's Board of Directors would be elected solely by its shareholders. Delta requests confirmation that the establishment of the participants' committee satisfies the section 17A(b)(3)(C) requirement, or, alternatively, that Delta be accorded partial exemptive relief from that section.

Fourth, Delta originally requested partial exemptions from sections 17A(b)(3)(F) and 17A(b)(3)(G) of the Act. Delta had requested an exemption from section 16A(b)(3)(F), which requires a clearing agency's procedures to be designed to foster cooperation and coordination with other clearing agencies and to remove impediments to and perfect a mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. Delta requested an exemption from section 17A(b)(3)(G) of the Act to the extent that it would prohibit Delta from exercising its discretion in responding to particular participant defaults and the circumstances under which they may arise. Delta believes that the Revised System Procedures are designed to comply fully with sections 17A(b)(3)(F) and 17A(b)(3)(G) of the Act, and, therefore, Delta has withdrawn its previous exemption requests concerning those sections.

Fifth, Delta originally requested exemptions from the due process requirments of section 17A(b)(3)(H) and 17A(b)(5) of the Act. Delta believes the Revised System Procedures satisfy the due process requirements of sections 17A(b)(3)(H) and 17A(b)(5), and, therefore, Delta has withdrawn its exemptions requests concerning those sections.

Finally, Delta originally requested an exemption from the standard requiring a clearing agency to perform annually an independent audit of its system of internal accounting controls. Delta has withdrawn this exemption request and represents that it will comply with that standard.

You are invited to submit written data, views, and arguments concerning the foregoing amended application within twenty-one days of the date of publication of this notice in the **Federal Register**. Such written data, views, and arguments will be considered by the Commission in deciding whether to approve Delta's clearing agency registration application and grant Delta's remaining exemption requests. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC. 20549. Reference should be made to File No. 600–24. Copies of the application and of all written comments will be available for inspection at the Securities and Exchange Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 12, 1988.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-24047 Filed 10-17-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26169; File No. SR-MSTC-88-5]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by Midwest Securities Trust Company Relating to a Revised Fee Schedule

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 16, 1988, the Midwest Securities Trust Company filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement on the Terms of Substance of the Proposed Rule Change

Attached as Exhibit A is the Administrative Bulletin defining the revised fee schedule for services provided to Participants of Midwest Securities Trust Company ("MSTC").

II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

The MSTC Revised Fee Schedule more accurately reflects the costs of providing timely services to its participants, particularly labor intensive functions such as deposits, withdrawals,

[1] Delta filed its application for registration as a clearing agency on July 29, 1988. See Securities Exchange Act Release No. 25880 (August 1, 1988), 53 FR 29038. On August 24, 1988, the Commission extended the time for public comment on that application to September 8, 1988. See Securities Exchange Act Release No. 26024 (August 24, 1988), 53 FR 32526.

[2] Delta filed with the Commission, simultaneously with its amended clearing agency registration application, a second amendment to its Registration Statement.

[3] Section 17A(b)(1) of the Act permits the Commission to grant exemptions from the requirements of section 17A if it finds such exemptions are consistent with the public interest, the protection of investors, and the purposes of section 17A.

stock and cash dividend processing and settlement services. At the same time, improvements in automated clearing and settlement systems have reduced the costs of other services. For example, fees for book-entry deliveries (DDI) and interactivity movements between MSTC and Midwest Clearing Corporation accounts have been reduced.

The Revised Fee Schedule is consistent with section 17A of the Securities Exchange Act of 1934 in that it provides for the equitable allocation of reasonable dues, fees and other charges among MSTC's Participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Securities Trust Company does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were solicited, however none were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to file number SR–MSTC–88–5 and should be submitted by November 8, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: October 7, 1988.

Exhibit A—Proposed Service Fee Changes

(1) Depository Delivery Instruction (DDI)—Bearer & Registered

Inter-Participant Delivery—$0.45/delivery
Inter-Participant Receipt—$0.45/receipt
Intra-Participant Delivery—$0.45/delivery
The old DDI fee was $0.65/deliver and receive.

(2) Inter-Activity Long (IAL) and Inter-Activity Short (IAS)

CNS Inter-activity Long & Short—$0.75/item
The old inter-activity fee was—$0.85/item

*Volume Discount for Inter-Activity Movements

Range and Discount

1–1500 items/month—No Discount
1501–2000 items/month—$0.15/item
2001–3000 items/month—$0.25/item
3001–4000 items/month—$0.45/item
Over 4000 items/month—$0.65/item

*Volume discounts are subject to MSTC achieving predetermined revenues. If the anticipated revenues vary, the discounts may be increased or decreased as determined appropriate. Discounts do not apply to those accounts established primarily to use the Automatic Stock Loan Program.

(3) Certificate Deposits—Registered Items

7:30 a.m.–11:00 a.m. CST—$2.00/item*
11:30 a.m.–4:00 p.m. CST—$1.50/item*
(Next day credit)
The old deposit fees were:
7:30 a.m.–11:00 a.m.—$1.50
11:30 a.m.–4:00 p.m. for next day credit—$1.00
No change was made in the 11:00 a.m.–11:30 a.m. period.

(4) Registered Deposit Reclamation

Reclamation Charge—$10.00/item
The old reclamation charge was—$8.00/item

*Plus transfer agent fee, if applicable.

(5) Legal Deposits

1–500 items/month—$6.50/item (no change)
501–2000 items/month—$5.50/items (no change)
2001–4000 items/month—$4.50/item (no change)
Over 4000 items/month—$3.00/item
The old Over 4000 items/month charge was $3.50/item.

(6) Street Withdrawals

Withdrawal by Street Request—$10.00/request
The old street withdrawal fee was—$8.00/request

(7) Bearer Bond Withdrawal

Bearer Bond Withdrawal—$10.00/request
The old bearer bond withdrawal fee was—$7.50/request

(8) Dividends and Bond Interest

Stock Dividend Credits—$11.00/credit
Registered Bond Interest Credit—$1.60/credit
The old stock dividend credit was $4.00/credit and the registered bond interest credit was $1.50/credit.

(9) Daily Pay and Collect Physical Check Fee

For participants who require a physical check to pay or collect their daily settlement figure, a check handling charge of $50.00/month has been established.

(10) Bearer Bond Safekeeping Value Charges

Two categories were changed.
0–.5 billion—No change
.5–1 billion—.00030/day/5000 face value
Over 1 billion—.000295/day/5000 face value
The old fee for these categories was $0.00022/day/5000 face value in the .5 to 1 billion category for bearer safekeeping and $0.00011/day/5000 face value in the 1–5 billion category. Over 5 billion in safekeeping value positions was charged at the rate of $0.00005/day per 5000 face value in bearer bonds.

[FR Doc. 24048 Filed 10–17–88; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 5521]

Declaration of Disaster Loan Area; Texas

As a result of the President's major disaster declaration on October 5, 1988, I find that the Counties of Bexar, Cameron, and Hidalgo, in the State of Texas, constitute a disaster loan area due to damages from Hurricane Gilbert which occurred September 15–17, 1988. Eligible persons, firms, and organizations may file applications for physical damage until the close of business on December 5, 1988 and for economic injury until the close of business on July 5, 1989, at the address listed below:

Disaster Area 3 Office, Small Business Administration, 2306 Oak Lane, Suite 110, Grand Prairie, Texas 75051.

or other locally announced locations.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (Non-profit organizations including charitable and religious organizations)	9.000

The number assigned to this disaster is 232106 for physical damage and for economic injury the number is 666700.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Date: October 6, 1988.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 88–23944 Filed 10–17–88; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area No. 6665]

Declaration of Disaster Loan Area; Wyoming

The Counties of Fremont, Park, Sublette, and Teton, in the State of Wyoming, constitute an Economic Injury Disaster Loan Area as a result of damages from forest fires which began on July 11, 1988, and continue. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on July 6, 1989, at the address listed below:

Disaster Area 4 Office, Small Business Administration, P.O. Box 13795, Sacramento, California 95853–4795.

or other locally announced locations. The interest rate for eligible small business concerns without credit available elsewhere is 4 percent and 9 percent for eligible small agricultural cooperatives without credit available elsewhere.

(Catalog of Federal Domestic Assistance Program No. 59002)

Date: October 6, 1988.

James Abdnor,

Administrator.

[FR Doc. 88–23495 Filed 10–17–88; 8:45 am]

BILLING CODE 8025–01–M

Region III Advisory Council; Public Meeting

The U.S. Small Business Administration Region III Advisory Council, located in the geographical area of Philadelphia, Pennsylvania, will hold a public meeting on Thursday, November 17, 1988 at 5:00 p.m. and on Friday, November 18, 1988 at 8:30 a.m. to 3:00 p.m., at the Sheraton Harrisburg East, 800 East Park Drive, Harrisburg, PA 17111, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call William T. Gennetti, District Director, U.S. Small Business Administration, Allendale Square, 475 Allendale Road, King of Prussia, PA 19406, 215/962–3795.

October 12, 1988.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 88–23946 Filed 10–17–88; 8:45 am]

BILLING CODE 8025–01–M

Region X Advisory Council; Public Meeting

The U.S. Small Business Administration Region X Advisory Council, located in the geographical area of Boise, Idaho, will hold a public meeting at 9:30 a.m. on Wednesday, October 26, 1988, at the Owyhee Plaza "Capital Room," 1109 Main Street, Boise, Idaho, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Joseph G. Kaeppner, District Director, U.S. Small Business Administration, 1020 Main Street, Suite 290, Boise, Idaho, (208) 334–9641.

October 11, 1988.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 88–23946 Filed 10–17–88; 8:45 am]

BILLING CODE 8025–01–M

[License No. 06/06–0297]

UNCO Ventures, Inc.; Issuance of Small Business Investment Company License

On August 10, 1988, a notice was published in the **Federal Register** (53 FR 30159) stating that an application had been filed by UNCO Ventures, Inc. with the Small Business Administration (SBA) pursuant to 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1988)) for a license to operate as a small business investment company.

Interested parties were given until close of business September 9, 1988 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 06/06–0297 on September 30, 1988, to UNCO Ventures, Inc. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 11, 1988.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 88–23947 Filed 10–17–88; 8:45 am]

BILLING CODE 8025–01–M

Region IV Advisory Council Meeting, Public Meeting

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of North Carolina, will hold a public meeting at 10:00 a.m. on Tuesday, November 15, 1988 at the Capitol City Club in Raleigh, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Gary A. Keel, District Director, U.S. Small Business Administration, 222 S. Church Street, Suite 300, Charlotte, North Carolina 28202, 704/371–6561.

Jean M. Nowak,

Director, Office of Advisory Councils.

October 12, 1988.

[FR Doc. 88–23998 Filed 10–17–88; 8:45 am]

BILLING CODE 8025–01–M

Region X Advisory Council Meeting, Public Meeting

The U.S. Small Business Administration, Region X Advisory Council, located in the geographical area of Seattle, Washington, will hold a public meeting on November 17, 1988 at 1:00 p.m. to 4:30 p.m. at the Senior Council Chamber, Greater Seattle Chamber of Commerce, Twelfth Floor, One Union Square, Seattle, Washington, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call John J. Talerico, District Director, U.S. Small Business Administration, 915 Second Avenue, Federal Building-Room 1792, Seattle, Washington 98174–1088, 206/399–2786.

Jean M. Nowak,

Director, Office of Advisory Councils.

October 12, 1988.

[FR Doc. 88–23969 Filed 10–17–88; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended April 29, 1988

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 45299

Date Filed: April 25, 1988.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 9, 1988.

Description: Application of Corse-Air International, S.A., pursuant to section 402 of the Act and Subpart Q of the Regulations applies for a foreign air carrier permit authorizing it to engage in foreign charter air transportation of passengers, property and mail, including combination charters, between France and the United States.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 88–23949 Filed 10–17–88; 8:45 am]

BILLING CODE 4910–62–M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 201
Tuesday, October 18, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 39570, Friday, October 7, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (eastern time) Monday, October 17, 1988.

CHANGE IN THE MEETING: The Closed Session of the meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer, Executive Secretariat, (202) 634–6748.

Frances M. Hart,

Executive Officer, Executive Secretariat.

This Notice Issued October 12, 1988.

[FR Doc. 88–24082 Filed 10–14–88; 3:14 pm]

BILLING CODE 6570–06–M

FEDERAL HOME LOAN MORTGAGE CORPORATION

DATE AND TIME: Wednesday, October 19, 1988, 9:00 a.m.

PLACE: 1776 G Street, NW. Board Room, Third Floor, Washington, DC 20006.

STATUS: Closed.

CONTACT PERSON FOR MORE INFORMATION: Keith Earley, 1759 Business Center Drive, P.O. Box 4115, Reston, Virginia 22090, (703) 759–8414.

MATTERS TO BE CONSIDERED:

Closed—Minutes of the September 28, 1988 Board of Directors' meeting
Closed—President's report
Closed—Structured financings
Closed—Corporate investments
Closed—Financial report

Date sent to **Federal Register** October 13, 1988.

Maud Mater,

Secretary.

[FR Doc. 88–24113 Filed 10–14–88; 3:14 pm]

BILLING CODE 6719–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, October 24, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed purchase of office automation equipment within the Federal Reserve System.
2. Proposed purchase of disk equipment within the Federal Reserve System.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board: (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: October 14, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–24137 Filed 10–4–88; 3:17 pm]

BILLING CODE 6210–01–M

INTER-AMERICAN FOUNDATION BOARD MEETING

TIME AND DATE: October 31, 1988, 6:00–9:30 p.m.

PLACE: 1515 Wilson Boulevard, Fifth Floor, Rosslyn, Virginia 22209.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. The Chairman's Report
2. The President's Report
3. Preview and Discussion of Peruvian Video
4. Report and Discussion on New SPTF Agreement
5. Board Adult Committee Report
6. Approval of the Minutes of the May 9–10, 1988, Board Meeting

CONTACT PERSONS FOR MORE INFORMATION: Charles M. Berk, Secretary to the Board of Directors, (703) 841–3812.

Date: October 11, 1988.

Charles M. Berk,

Sunshine Act Officer.

[FR Doc. 88–24128 Filed 10–14–88; 3:13 pm]

BILLING CODE 7025–01–M

PAROLE COMMISSION, DEPARTMENT OF JUSTICE

DATE AND TIME: Wednesday, October 26, 1988, 9:00 a.m., eastern daylight time.

PLACE: 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

STATUS: Open—Meeting.

MATTERS TO BE CONSIDERED: The following matter has been placed on the agenda for the open Parole Commission meeting:

1. Adoption of minutes of previous Commission meeting.
2. Reports from the Chairman, Vice Chairman, Commissioners, Legal, Research, Case Management and Administrative Sections.
3. Consideration of Resource Allocation of FY 1989 (Discussion only).
4. Report on the Community Sanction/Home Detention Program.
5. Review of the Community Based Programs (Discussion only).
6. Consideration of proposal to set severity rating for Stolen/Fraudulent Credit Cards.
7. Consideration of proposal granting Superior Program Achievement from presumptive parole dates rather than statutory release dates.
8. Consideration of proposal adding Community Service as a parole condition (Discussion only).
9. Consideration of a proposal setting special conditions for high risk cases (Discussion only).
10. Consideration of a proposal setting a special condition of parole—Victim Assistance.
11. Consideration of a proposal requesting notification from INS and other agencies of inmates released from detainers (Discussion only).
12. Promulgation of an interpretative rule concerning forfeiture of street time.
13. Consideration of modification of regulations to reflect parole eligibility for Gun Control Offenses.
14. Adoption of a final rule which extends *Watts* procedures to all YCA offenders.
15. Consideration of a proposed revision of § 2.24 to reflect change from Institutional Disciplinary Committee (IDC) System to Disciplinary Hearing Officer (DHO) System.

AGENCY CONTACT: Jim Beck, Director Research Section, United States Parole Commission (301) 492–5836.

Date: October 14, 1988.

Michael A. Stover,

Acting General Counsel, U.S. Parole Commission.

[FR Doc. 88–24083 Filed 10–14–88; 3:14 pm]

BILLING CODE 4410–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of October 17, 24, 31, and November 7, 1988.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of October 17

Wednesday, October 19

2:00 p.m.
Briefing on Different Cask Designs for Shipping and Storing Nuclear Materials (Public Meeting)

Thursday, October 20

2:00 p.m.
Briefing on Safety Goal Implementation Plan (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of October 24—Tentative

Tuesday, October 25

11:00 a.m.
Periodic Briefing by TMI-2 Advisory Panel (Public Meeting)

Wednesday, October 26

10:00 a.m.
Briefing on Interrelationship of Standardization, Severe Accidents, Safety Goals, and Advanced Reactors (Public Meeting)

Thursday, October 27

11:00 a.m.
Periodic Briefing by the Advisory Committee on Nuclear Waste (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of October 31—Tentative

There are no meetings scheduled for the Week of October 31.

Week of November 7—Tentative

Wednesday, November 9

2:00 p.m.
Briefing on Status of NUREG–1150 (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Thursday, November 10

11:00 a.m.
Briefing on Final Rule on Standards for Protection Against Radiation—Part 20 (Public Meeting)

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING) (301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

William M. Hill, Jr.,
Office of the Secretary.
October 14, 1988.

[FR Doc. 88–24129 Filed 10–14–88; 8:45 am]
BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [53 FR 39716 October 11, 1988].

STATUS: Open Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Wednesday, October 5, 1988.

CHANGE IN THE MEETING: Deletion.

The following item will not be considered at an open meeting on Friday, October 14, 1988, at 9:00 a.m.

Consideration of whether to publish for comment a release proposing alternative versions of new Rule 144A that would provide a safe harbor from the registration requirements of the Securities Act of 1933 for resale of securities to institutional investors. Additionally, consideration of whether to public for comment a proposal to amend Rules 144 and 145 under the Securities Act, under which the holding period for restricted securities would commence at the time the securities are sold by the issuer or its affiliate. For further information, please contact Sara Hanks or Samuel Wolff at (202) 272–3246, or as to changes to Rules 144 and 145, Catherine Dixon at (202) 272–2573.

Commissioner Cox, as duty officer, determined that Commission business required the above change.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Amy Kroll at (202) 272–2092.

Shirley E. Hollis,
Assistant Secretary.
October 13, 1988.

[FR Doc. 88–24135 Filed 10–14–88; 3:13 pm]
BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [To be published].

STATUS: Open meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Tuesday, October 11, 1988.

CHANGE IN THE MEETING: Additional meeting.

The following items will be considered at an open meeting on Wednesday, October 19, 1988, at 10:00 a.m.:

1. The Commission will consider whether to publish for comment amendments to Schedules 13D, 14D–1, 14B and 13E–3 under the Securities Exchange Act of 1934, which among other things, would require the disclosure of information concerning the identity and background of limited partners and other participants holding significant investments in the limited partnership or other entity engaging in a particular transaction. For further information, please contact David A. Sirignano or Richard E. Baltz at (202) 272–3097.

2. The Commission will consider whether to publish for comment amendments to Rules 13d–1, 13d–2 and 13d–7 and Schedules 13D and 13G under the Securities Exchange Act of 1934, which, among other things, would provide that any person, other than an institutional investor currently entitled to file on Schedule 13G in certain circumstances, who aquires or holds more than five percent, but not 15 percent or more, of a class of equity securities with a passive investment purpose, must report that acquisition on short-form Schedule 13G, within 10 days after the acquisition. For further information, please contact David A. Sirignano or Richard E. Baltz at (202) 272–3097.

Commissioner Cox, as duty officer, determined that Commission business required the above changes.

At time changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Alden Adkins at (202) 272–2000.

Shirley E. Hollis,
Assistant Secretary.
October 13, 1988.

[FR Doc. 88–24136 Filed 10–14–88; 3:13 pm]
BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of October 17, 1988.

A closed meeting will be held on Tuesday, October 18, 1988, at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at closed a meeting.

Commissioner Cox, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, October 18, 1988, at 2:30 p.m., will be:

Formal order of investigation.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Settlement of injunctive actions.
Institution of injunctive actions.
Regulatory matter regarding financial institutions.

At times changes in Commission priorities require altersations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Alden Adkins at (202) 272–2000.

Jonathan G. Katz,
Secretary.
October 11, 1988.

[FR Doc. 88–24050 Filed 10–14–88; 9:04 am]
BILLING CODE 8010–01–M

VOL 53 ISS 201 OCT 18 1988 UMI

Corrections

Federal Register
Vol. 53, No. 201
Tuesday, October 18, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Thailand

Correction

In notice document 88-23042 beginning on page 38330 in the issue of Thursday, October 6, 1988, make the following correction:

On page 38330, in the third column, in the table, the eighth entry in the second column should read "2,604,033 pounds.".

BILLING CODE 1505-01-D

DEPARTMENT OF EDUCATION

[CFDA No. 84.003]

Office of Bilingual Education and Minority Languages Affairs

Correction

In notice document 88-22456 beginning on page 38320 in the issue of Friday, September 30, 1988, make the following corrections:

1. On page 38321, in the table, in the second column, in the third line, "do." should read "October 14, 1988".

2. On the same page, in the table, in the third column, in the third line, "do." should read "November 8, 1988".

3. On the same page, in the table, in the fourth column, in the third line, "Do." should read "January 6, 1988".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300178; FRL-3449-6]

Chlordimeform; Revocation and Amendment of Tolerances

Correction

In proposed rule document 88-21263 beginning on page 36426 in the issue of Monday, September 19, 1988, make the following correction:

§ 180.285 [Corrected]

On page 36427, in the second column, under § 180.285, in the fourth line, "formamidine" was misspelled.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 185 and 186

[OPP-300177; FRL-3449-7]

Chlordimeform; Revocation of Food and Feed Additive Regulations

Correction

In proposed rule document 88-21262 beginning on page 36427 in the issue of Monday, September 19, 1988, make the following correction:

On page 36427, in the third column, under SUMMARY, in the fifth line, "§ 185.750" should read "§ 186.750".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-50693; FRL-3448-8]

Issuance of Experimental Use Permits

Correction

In notice document 88-20905 beginning on page 35549 in the issue of Wednesday, September 14, 1988, make the following corrections:

1. On page 35549, in the second column, under SUPPLEMENTARY INFORMATION, in the fourth line, "*7969—EUP—24.*" should read "*7969—EUP—24.*".

2. On page 35550, in the first column, in the sixth line, "sulfonyl" was misspelled.

3. On the same page, in the same column, in the first complete paragraph, in the 14th line, "Delaware" was misspelled.

4. On the same page, in the second column, in the seventh line, "methyl" was misspelled.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51713; FRL-3446-9]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

Correction

In notice document 88-20906 beginning on page 35555 in the issue of Wednesday, September 14, 1988, make the following corrections:

1. On page 35556, in the second column, under P 88-1867, in the third line, "in" should read "an".

2. On page 35556, in the second column, under P 88-1868, in the fourth line, "nitro-" was misspelled.

3. On the same page, in the same column, in the same paragraph, in the seventh line, "*Toxicity Date.*" should read "*Toxicity Data.*".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51714; FRL-3452-9]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

Correction

In notice document 88-21778 beginning on page 37048 in the issue of Friday, September 23, 1988, make the following corrections:

1. On page 37049, in the second column, in the third line, "oxiranylmethyl" was misspelled.

2. On the same page, in the third column, under P 88-1883, in the third line, "trimethylphenylmethanone" was misspelled.

3. On page 37050, in the first column, in the third line, "Etch" was misspelled.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59253; FRL-3447-1]

Toxic and Hazardous Substances; Test Market Exemption Applications

Correction

In notice document 88-20907 beginning on page 35556 in the issue of Wednesday, September 14, 1988, make the following correction:

On page 35557, in the second column, under T 88-19, in the first line, "October 8, 1988" should read "October 14, 1988".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 886

[Docket No. 88N-0013]

Ophthalmic Devices; Exemptions From Premarket Notification

Correction

In rule document 88-20892 beginning on page 35602 in the issue of Wednesday, September 14, 1988, make the following corrections:

§ 886.1150 [Corrected]

1. On page 35603, in the third column, in § 886.1150(b), the first line should read, "(b)*Classification.* Class I. The device is".

§ 886.1790 [Corrected]

2. On page 35605, in the third column, in § 886.1790(b), the second line should read "is exempt from the premarket".

§ 886.1840 [Corrected]

3. On the same page, in the same column, in § 886.1840, in the section heading, "Simulation" should read "Simulatan".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 75

[Airspace Docket No. 88-AWP-13]

Proposed Alteration of Jet Route J-5, CA

Correction

In proposed rule document 88-21712 appearing on page 36998 in the issue of Friday, September 23, 1988, make the following correction:

In the first column, in the SUMMARY, in the sixth line, "J-5" should read "J-50".

BILLING CODE 4910-13-D

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federal register

Tuesday
October 18, 1988

Part II

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 785 and 823

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Prime Farmland; Final Rule

VOL 53 ISS 201 OCT 18 1988 UMI

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 785 and 823

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Prime Farmland

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the U.S. Department of the Interior (DOI), in cooperation with the USDA, Soil Conservation Service (SCS), is amending certain portions of its rules applicable to prime farmland, including § 785.17 of 30 CFR Part 785 and §§ 823.11, 823.12, and 823.14 of 30 CFR Part 823. This action is being taken, in part, to implement a decision of the U.S. District Court for the District of Columbia. The amended rules: (1) Provide guidance in implementing an exclusion from the Surface Mining Act's prime farmland provisions for coal mine waste storage areas associated with underground mines; (2) provide special consideration for the removal and replacement of B and C soil horizons, where removal is unnecessary and would not normally be required; and (3) eliminate the water body exemption in consideration of the district and appeals courts' decisions. The rule also provides clarification that water bodies continue to be allowed on post-mining non-prime farmland portions of permit areas provided that the aggregate total prime farmland acreage is not decreased from that which existed prior to mining and that certain other conditions are met.

EFFECTIVE DATE: November 17, 1988.

ADDRESS: Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dermot M. Winters, telephone: (202) 343-1928 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Final Rule and Response to Comments
III. Procedural Matters

I. Background

Statutory Background

The Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act), 30 U.S.C. 1201 *et seq.*, contains special permitting and performance standards governing mining on prime farmland as defined in section 701(20) of the Act. Permit application information and approval requirements are contained in sections 507(b)(16), 508(a)(2)(C), 508(a)(5) and 510(d) of the Act.

Section 507(b)(16) of the Act requires that permit applications include a soil survey for those lands in the application which a reconnaissance inspection suggests may be prime farmland. Section 508(a)(2)(C) of the Act requires that permit applications contain a statement of the productivity of the land prior to mining including the appropriate classification as prime farmland, as well as the average yield of food, fiber, forage or wood products from such lands obtained under high levels of management. Section 508(a)(5) of the Act requires a plan for soil reconstruction, replacement, and stabilization pursuant to the prime farmland performance standards of section 515(b)(7) of the Act. Moreover, section 510(d)(1) of the Act provides that the regulatory authority shall grant a permit to mine on prime farmland only after consultation with the Secretary of Agriculture, and if the regulatory authority finds in writing that the operator has the technological capability to restore such mined area, within a reasonable time, to equivalent or higher levels of yield as non-mined prime farmland in the surrounding area under equivalent levels of management and can meet the soil reconstruction standards in section 515(b)(7) of the Act.

Statutory performance standards for prime farmland are found in sections 515(b)(7) and (b)(20) of the Act. Section 515(b)(7) sets forth minimum requirements for soil removal, storage, replacement, and reconstruction. Section 515(b)(20) establishes when the period of responsibility for successful revegetation begins and provides an exception to vegetative cover requirements when the regulatory authority makes a written finding approving a long-term, intensive, agricultural postmining land use. In addition, section 519(c)(2) states that performance bonds shall not be released until soil productivity for prime farmland has returned to equivalent levels of yield as unmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey.

Section 516 of the Act requires the Secretary to promulgate rules to regulate the surface effects of underground coal mining operations. However, in adopting such performance standards, permit requirements, and bonding rules, the Secretary must consider the distinct differences between surface coal mining and underground coal mining in accordance with section 516(a), section 516(b)(10), which makes the prime farmland performance standards applicable, and section 516(d), which makes the permit application and bonding requirements applicable. Also, according to section 516(a), such rules shall not conflict with nor supersede any provision of the Federal Coal Mine Health and Safety Act of 1969 or rules implementing that act.

With respect to coal mine wastes incident to underground mining operations, section 516(b)(3) of SMCRA requires operators to maximize to the extent technologically and economically feasible the return of coal wastes to the mine workings or excavations. Under 30 CFR 784.25 and 817.81(f), disposal of coal mine waste in abandoned underground mine workings must be performed in accordance with a plan approved by the regulatory authority and the Mine Safety and Health Administration.

Note.—Apart from the SMCRA requirements, it is also necessary to have the approval of the Environmental Protection Agency, pursuant to their regulations governing water quality, before coal mine wastes can be returned to underground workings.

To the extent the surface disposal of coal mine waste cannot be avoided, section 516(b)(4) of SMCRA requires that any remaining waste piles be stabilized, leachate meet applicable Federal and State laws, the final contours be compatible with natural surroundings, and that the site be revegetated in accordance with section 519. Also, where the surface disposal of coal mine wastes occurs, section 516(b)(5) of SMCRA requires the operator to treat all existing and new coal mine waste piles used either temporarily or permanently as dams or embankments in accordance with standards and criteria that conform to the standards and criteria used by the Chief of Engineers (U.S. Army Corps of Engineers) to insure that flood control structures are safe and effectively perform their intended function. In addition, OSMRE's standards and criteria must provide for regulatory approval, inspection, and oversight of all aspects of the design, construction, modification, maintenance, removal, and abandonment of coal waste impounding structures. Those standards and criteria are implemented by 30 CFR 817.49, 817.81, 817.83, and 817.84 of the permanent program performance standards.

Rules implementing prime farmland permitting, bonding and performance provisions are found at 30 CFR 785.17, 816.49 and Part 823.

Regulatory Background and Court Decisions

On March 13, 1979, OSMRE published prime farmland rules which affected both surface and underground mining operations. Complaints were made in the district court that: (1) The prime farmland requirements should only refer to the mining area and not support facility areas; (2) underground mining operations create minimal surface disturbance to the environment and therefore are a de minimus problem; and (3) the maintenance of soil stockpiles for 20 to 40 years would create little agricultural gain, but would necessitate great operator expense and effort. The district court ruled that the prime farmland performance standards of the Act do apply to the surface effects of underground mining operations but suggested that a limited exemption be made for surface facilities which are actively used over extended periods of time but which affect a minimal amount of land.

On May 3, 1982 (47 FR 19076 *et seq.*), OSMRE proposed rules in consideration of the U.S. District Court order of May 16, 1980, remanding to the Secretary of the Interior portions of his March 13, 1979 prime farmland rules as they applied to underground mining. *In re: Permanent Surface Mining Regulation Litigation*, No 79-1144 (D.D.C.) May 16, 1980, Mem. Op. at 1-3 (*In re: Permanent*).

Final rules implementing that decision were published on May 12, 1983 (48 FR 21446 *et seq.*), and became effective on June 13, 1983. At that time OSMRE published final § 823.11(a) which excluded from the special prime farmland performance standards land occupied by coal preparation plants, support facilities, and roads associated with surface and underground mines. Following promulgation of the final rule, the National Wildlife Federation (NWF) challenged the exemption insofar as it applied to surface facilities of surface mines. NWF also asserted that the rule did not contain adequate guidance on the spatial and temporal limits concerning excluded land for underground mines. On October 1, 1984, the U.S. District Court for the District of Columbia remanded the regulation which extended the exemption to surface facilities associated with surface mines. (*In re: Permanent Surface Mining Reclamation Litigation II*, No. 79-1144 (D.D.C.) October 1, 1984, Mem. Op. at 21-23 (*In re: Permanent II*)). The court explained that the rationale for its 1980 opinion, the difference between surface and underground mining operations, does not apply to surface mines where topsoil need not be stored for many years but can be redistributed over the areas disturbed by surface operations. The court agreed that the exemption from the special prime farmland standards did apply to the listed surface facilities for underground mines. The court also held that the Secretary has a duty to "flesh out" the statutory requirements and provide guidelines limiting the scope of this exemption. (*In re: Permanent II* at 23).

On March 19, 1986, OSMRE involved major external groups in its regulatory process through an outreach program designed to obtain comments on initial drafts of significant rulemakings prior to development of proposed regulations. Nine commenters provided comments to OSMRE on the initial draft of these prime farmland rules.

On March 25, 1987 (52 FR 9844), OSMRE proposed rulemaking to respond to the court's October 1, 1984 ruling. In that notice, OSMRE solicited public comments and made provision to hold public hearings upon request. During the 70-day comment period, eight commenters, including representatives of industry, government agencies, and citizen and environmental groups submitted numerous comments on the proposed rule. No public meetings or hearings were requested, and none were held.

Subsequently, on January 29, 1988 the U.S. Court of Appeals, D.C. Circuit, upheld the decision by the U.S. District Court for the District of Columbia on the issue of the construction of water impoundments on prime farmland. *NWF v. Hodel*, 839 F2d 694, at 719. (D.C. Cir., 1988) (*NWF v. Hodel*). The appeals court decision came at a time when the Office of Surface Mining Reclamation and Enforcement (OSMRE) was in the process of preparing this final rule. To ensure that the final rule would be responsive both to the Court decisions and to comments received on the proposed rule, OSMRE decided to make a careful reexamination of certain issues involving the restoration of prime farmland and related to the creation of water bodies on permit areas containing prime farmland prior to promulgating this final rule.

Therefore, on March 23, 1988 (53 FR 9453) OSMRE reopened the public comment period on the water bodies issue for 30 days. Subsequently, in response to a written request from the American Mining Congress the reopened comment period on the water bodies issue was extended until May 12, 1988. In the March 23 notice OSMRE solicited the views of regulatory authorities, SCS State Conservationists, surface mine operators, and all other interested persons on the circumstances under which impoundments may be created within permit areas containing prime farmland and on the related experiences of the regulatory authorities, SCS State Conservationists, and surface coal mine operators in relocating prime farmland soils within permit areas.

II. Discussion of Final Rule and Response to Comments

During the reopened comment period commenters including representatives of industry, regulatory authorities, SCS State Conservationists, and citizen/environmental groups, provided OSMRE with numerous comments. Two commenters generally supported the revised proposal, and one was generally opposed. In addition, two commenters reiterated comments they had made during the 1987 comment period and one of them expressed impatience, insisting that OSMRE must not delay further in implementing these rules. Specific comments on the entire rule, including the original 1987 proposal and the revised 1988 proposal are discussed in detail below.

A. Section 785.17(e)—Requirements for Permits for Special Categories of Mining—Prime Farmland.

Withdrawal of Proposed §§ 785.17(e)(1) and 823.11(b)

On March 25, 1987 (52 FR 9844), OSMRE proposed to create a limited exemption from the prime farmland restoration and productivity standards, provided certain conditions were met, for prime farmland soils removed in the process of creating water bodies on permit areas containing prime farmland. Proposed §§ 785.17(e)(1) and 823.11(b) were intended to provide this limited exemption from the prime farmland standards for water bodies where the total acreage of prime farmland would not be decreased in the permit area and surface land owner consent was obtained. Under this proposal, operators would have been allowed to plan and install a water body on an area of prime farmland soil as long as the prime farmland soils obtained from the excavation of the water body were handled in conformity with the requirements of Part 823 and an equal amount of prime farmland acreage was reconstructed on non-prime farmland portions of the permit area.

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Proposed §§ 785.17(e)(1) and 823.11(b) would have worked in tandem to provide this limited exemption. Under proposed § 785.17(e)(1), OSMRE would have authorized the approved postmining land use of prime farmland to include impoundments so long as the aggregate premining prime farmland acreage within the permit area was retained and the consent of affected property owners within the permit area was obtained. This would preserve the number of prime farmland acres which were present prior to mining, although there would be a shift in the location of prime farmland soil placement to accommodate the creation of water bodies. All resulting postmining prime farmland would have been required to meet the soil reconstruction and productivity standards of Part 823, with no net loss of prime farmland acreage within the permit area. Protection from the potential economic consequences of shifting the location of prime farmland would have been provided to property owners through the requirement that operators obtain property owner consent before an impoundment would be allowed. Proposed § 823.11(b) would have granted water bodies created under the authority of proposed § 785.17(e)(1) an exemption from the restoration and productivity requirements of §§ 823.14 and 823.15.

Among those commenters commenting on the water bodies issue prior to the 1988 reopening of the public comment period were three who were in favor of the 1987 proposal for an exemption and two who were opposed to that proposal. Insofar as their specific comments remain relevant to this final rule, they are discussed below along with the comments received on the revised proposal put forward during the 1988 reopened comment period. Also, during the reopened comment period one commenter reiterated its opposition to the 1987 proposal.

Proposed §§ 785.17(e)(1) and 823.11(b) have been withdrawn and final § 785.17(e)(5) is promulgated herein.

Final § 785.17(e)(5)

As described above, under the 1987 proposed rule, operators would have been allowed an exemption from the prime farmland standards to plan and install a water body in a portion of a permit area provided the prime farmland acreage postmining was not decreased from the premining amount and that surface owner consent was obtained. Although a specific exemption from the Part 823 performance standards for prime farmland was first added to the rules in 1983 (48 FR 21446, May 12, 1983), the concept of allowing an exemption can be traced back to 1979 when OSMRE stated that "last cut" lakes were acceptable as an alternative postmining land use on prime farmland (44 FR 15087, March 13, 1979). However, the 1983 rules did not include the 1987 proposal's requirement that the postmining prime farmland acreage not be less than the premining prime farmland acreage.

In *In re: Permanent II*, the National Wildlife Federation challenged the 1983 rule at § 823.11(b), which set forth an exemption from the prime farmland performance standards for water bodies that had been approved by the regulatory authority as an alternative postmining land use. The district court struck down the exemption and held that it provided a broad and impermissible variance from the postmining use of prime farmland. *In re: Permanent II*, No. 79–1144, pp. 19–21. The issue was then appealed to the U.S. Court of Appeals, D.C. Circuit. On January 29, 1988, the appeals court affirmed the district court's decision overturning the exemption for last-cut impoundments on prime farmland, noting that section 515(b)(7) "plainly supports the district court's conclusion that a general exception for water impoundments authorizes impermissible postmining uses of prime farmland."

In response to this decision of the appeals court and despite the fact that OSMRE has viewed its March 25, 1987, proposed § 785.17(e)(1) exemption as consistent with the prime farmland provisions of the Act, since it was meant to maintain the number of prime farmland acres at premining levels as well as to maintain the soil productive capacity of those lands, OSMRE, as indicated above, reopened the comment period on March 23, 1988 (53 FR 9453), to withdraw this proposal and replace it with an alternative more consistent with the court decisions.

OSMRE believes it was generally misleading to characterize the 1987 proposed rule as an exemption. As indicated in the notice reopening the public comment period, OSMRE no longer believes that an exemption to the prime farmland rules is necessary to allow operators to create water bodies within permit areas containing prime farmland so long as the aggregate premining prime farmland acreage within the permit area is retained and certain other conditions are met. OSMRE has further evaluated the relocation of reclaimed soils during contemporaneous reclamation activities on permit areas which contain less than 100 percent prime farmland prior to mining. OSMRE concludes that on such areas, a site on which non-prime farmland soil would otherwise be relocated may be used to create a water body under existing requirements and practices. The shifting of prime farmland soils from a pre-mining location to a post-reclamation location is currently authorized and can properly be considered part of normal practice in restoring prime farmland pursuant to Part 823.

This position is not new. Since 1979, OSMRE has authorized the relocation of prime farmland soils within the permit area. OSMRE stated in a brief filed with the Federal District Court that "The Secretary's regulations provide that small or odd-shaped plots [of prime farmland] can be consolidated and relocated in meeting the reclamation standards of the Act. The only limitations on soil placement pertain to restoration of the soil to insure its productive capacity. There is no requirement, however, that the reconstructed prime farmland soil be placed in the same location as before mining. Therefore, so long as the aggregate amount of prime farmland that is restored equals the amount that existed before mining, the Secretary's reconstruction requirements will be satisfied." *In Re: Permanent*, Memorandum in support of cross-motion for summary judgment, filed December 21, 1979, at pp. 100–101.

Consequently, when OSMRE reopened the public comment period on the issue of water bodies, it indicated it was interested in determining with greater specificity: (1) How SCS-approved restoration has proceeded in those situations where permit areas contained less than 100 percent prime farmland prior to mining, (2) the extent to which prime farmland soils have been shifted within the permit area from pre-mining to different post-reclamation locations during the typical process of prime farmland restoration, and (3) the extent to which the creation of water bodies has been allowed by regulatory authorities on post-reclamation non-prime farmland portions of permit areas which contained prime farmland soils prior to mining. OSMRE also indicated it was interested in receiving comments on other reasons for relocating prime farmland soils. It was necessary to ask these questions because the creation of water bodies and the relocation of prime farmland soils in the typical permit area containing prime farmland are necessarily linked and whatever regulatory scheme is developed must address the water body issue in that context. This is so because the typical permit area containing prime farmland, irrespective of whether water bodies are left in the permit area postmining. OSMRE has also been made aware that relocation of prime farmland soils without any decrease in prime farmland acreage has occurred as part of normal reclamation practice in several states. The construction of water bodies on postmining non-prime farmland portions of permit areas in locations formerly containing prime farmland soils has been performed in conjunction with these soil relocation practices. In fact, a commenter described a net increase in prime farmland acreage after reclamation. These commenters all indicated their support for continuation of the practice so long as the postmining prime farmland acreage is not less than the premining prime farmland acreage. Commenters also indicated that the practice of relocating prime farmland was often necessary or desirable. Relocation of prime farmland soils within a permit area has been allowed by regulatory authorities for a number of valid reasons, including the following:

1. Prime farmland soils areas prior to mining are generally irregular in shape and interspersed with non-prime soils. This makes reconstruction in the same location virtually impossible.

2. Prime farmland soils removed in advance of the mining operation are replaced on areas where rough grading has been completed so as to facilitate the practice of concurrent reclamation and to avoid stockpiling.

3. Prime farmland soils are often grouped during reclamation into larger fields for ease of management and to facilitate an orderly testing of productivity standards.

4. Small isolated areas of prime farmland have been consolidated to improve their farmability.

5. The relocation of prime farmland soils couple with the topographic changes resulting from mining and reclamation occasionally has made it possible for the aggregate total prime farmland acreage to be increased postmining from that which existed prior to mining.

Two commenters stated that, particularly in the last two types of instances, the relocation of prime farmland soils can be beneficial to long-term productivity.

Therefore, viewed in the context of typical soil reclamation practices and applicable restrictions on location, acreage, and productivity, the placement of prime farmland soils so as to allow the creation of a water body can be properly considered as being no different than any other normal and routine relocation of prime farmland soils within a permit area during the reclamation and restoration process. Consequently, no exemption is necessary to allow this practice so long as the pre-mining prime farmland acreage in the permit area is not decreased, any water body created is located on the post-reclamation non-prime farmland portion of the permit area, and all resulting postmining prime farmland meets the soil reconstruction and productivity standards of Part 823. The ultimate effect of such relocation is that certain non-prime farmland soils will be replaced by the impoundment, and the post-mining prime farmland acreage is maintained and relocated within the permit area in a manner and to a degree which has been approved by regulatory authorities in the past.

Because OSMRE referred in the March 25, 1987 proposed rule to a provision for such a change in land use as a proposed exemption where the total acreage of prime farmland is not decreased in the permit area, OSMRE revised its position in the 1988 notice reopening the comment period to make clear that no exemption from the prime farmland criteria will be provided in these rules, since existing rules already allow relocation of prime farmland soils within the permit area.

One commenter stated that water impoundments can only be created through use of the alternative postmining land use provisions of the Act, and that this included the "higher or better use" test. This commenter was concerned that "* * * de facto automatic approval of end cut lake impoundments which sacrifice non-prime cropland" not be allowed. OSMRE agrees that the creation of water impoundments, where none existed previously, can be permitted only through the alternative land use provisions of the Act. Under this final rule that continues to be the only way that they can be allowed. Where non-prime farmland areas are found on permit areas, these areas may be subjected to land use changes, including the creation of water bodies, provided the alternative postmining land use requirements of 30 CFR 779.22, 780.23, 783.22, 784.15, 816.133, and 817.133 are met. No prime farmland would be left unreclaimed, however, and no prime farmland would be converted to impoundments. OSMRE believes that this approach fully addresses the concerns expressed by the district court and appeals court in *In re: Permanent II* and *NWF v. Hodel*.

Therefore, the final rules no longer treat the creation of water bodies as an

contains less than 100 percent prime farmland. When such a permit area is to be surface mined, irrespective of whether a water body is contemplated as a post mining land use, the postmining prime farmland acreage configuration will be changed from the premining configuration as a normal consequence of the properly executed mining and reclamation process. Numerous comments were received in response to the request for comments. These comments and other relevant comments received during the 1987 comment period are addressed below.

A number of comments were received supporting OSMRE's position articulated in its 1988 notice reopening the comment period, on the issue of the creation of water bodies under certain conditions in those permit areas which contain less than 100 percent prime farmland.

Since most permit areas in prime farmland regions do not contain solely prime farmland soils and there were commenters who wanted more certainty concerning under what circumstances water bodies may be created in those permit areas which contain less than 100 percent prime farmland, this final rule clarifies under what circumstances water bodies may be permitted by the regulatory authorities. In essence, such bodies are now and can continue to be allowed whenever there is surface owner consent and (1) the water body will be located on the postmining non-prime farmland portion of the permit area, (2) the aggregate prime farmland acreage existing prior to mining will not be decreased and its soil productivity will be maintained, and (3) the alternative postmining land-use provisions of section 515(b) (2) and (8) of the Act will be met. In every instance, the soil removal, segregation, and stockpiling requirements of § 823.12 would continue to apply as the water body is being excavated to assure that sufficient reclamation material is available to reconstruct prime farmland within the permit area equal or greater in acreage to that which existed prior to mining. In effect, although the operator must replace all prime farmlands disturbed, they may be moved from their original location to a different location within the same permit area, provided the soil reconstruction and productivity requirements of §§ 823.14 and 823.15, respectively, are met.

A number of 1987 and 1988 commenters, including several state regulatory authorities, confirm and reinforce OSMRE's understanding that the relocation of prime farmland soils within a permit area is normal practice,

exemption to Part 823, but clarify existing practices.

As proposed in the March 23, 1988 notice reopening the comment period, § 785.17(e)(5) would have read as follows:

"(5) Where the permit area contains less than 100 percent prime farmland acreage, the aggregate total prime farmland acreage before and after mining shall not be decreased."

One regulatory authority commented that the proposed regulatory language, when not read in concert with the accompanying discussion, was not clear as to whether the relocation of prime farmland soils is authorized. Another regulatory authority felt the proposed language was awkward and unclear and provided suggested revised language. In addition, two other commenters seemed to have similar problems since both indicated they thought the proposed language could be interpreted to allow the amount of postmining prime farmland acreage in a permit area to be less than the premining amount for permit areas containing 100 percent prime farmland.

OSMRE indicated in its March 23, 1988 notice reopening the comment period that such an interpretation was not, in consideration of the appeals court decision, the intent of the proposal. However, the proposed language read independently of the preamble discussion could have been interpreted in such a manner.

Therefore, OSMRE is in agreement with these commenters and has revised the final rule language at § 785.17(e)(5) to read as follows:

"(5) The aggregate total prime farmland acreage shall not be decreased from that which existed prior to mining. Water bodies, if any, to be constructed during mining and reclamation operations must be located within the post-reclamation non-prime farmland portions of the permit area. The creation of any such water bodies must be approved by the regulatory authority and the consent of all affected property owners within the permit area must be obtained."

Although the rule language has been revised to address the creation of water bodies within permit areas which contain less than 100 percent prime farmland prior to mining, the net effect has not changed significantly from the March 25, 1987 proposal. This final rule continues to require prime farmland soils removed for water bodies to be separately removed, segregated and stockpiled, but not replaced within the impoundment. These prime farmland soils are to be reconstructed in the same way other prime farmland soils are reconstructed within the permit area and with the review and concurrence of the SCS.

One 1987 commenter stated that, in practical application, this rule would appear to authorize the disturbance of non-prime farmlands and destruction and reconstruction of the soils of borrow areas in order to maintain the pre- and post-mining prime farmland acreage, while allowing for final cut impoundments.

OSMRE does not intend this final rule to allow the disturbance of non-prime farmland areas which would not otherwise be disturbed by mining operations in order to create prime farmland as suggested by this commenter. Because excavated prime farmland soils are removed, stored, and replaced in conformance with Part 823, no borrow areas will be needed to create prime farmland. In other words, prime farmland soils may not be moved from a pre-mining location to a post-mining location within a permit area if the pre-mining area would not normally be disturbed in order to extract the coal. As previously described, when the shifting of the location of prime farmland soils is part of a complete mining and reclamation plan, such soil relocation will be kept to a minimum, will be reviewed and concurred in by the SCS, and must still meet the prime farmland soil reconstruction and bond release standards.

Two commenters objected to the 1987 proposed rule's adjustment of land uses within the permit area, claiming it is illegal because it allows a broad variance from the prime farmland rules. They claim the location of these impoundments has often had the effect of making impractical the large-scale farming of areas due to inappropriate location of the water bodies. They also claim there is no evidence in the record which shows impoundments to be necessary for prime farmland agricultural activity, there is scant data to support the technical capability to create prime farmlands from sub-prime farmlands, and the system proposed by OSMRE in 1987 would allow coal operators and land owners to make decisions to contravene the express intent of Congress.

OSMRE has no evidence that large-scale farming operations would be affected by any such change in location of prime farmland soils (either under the 1987 or the 1988 proposal), but under final § 785.17(e)(5) if the property owner/farmer is affected by such a change in the location of prime farmland soils, he will have the opportunity to approve or disapprove of the location change within the permit area before approval. This approval requirement ensures that the viability of farming operations will be considered in any decision to allow the relocation of prime farmland soils.

A number of comments were received on the issue of property owner consent. A 1987 commenter stated that there was no need for property owner consent where an impoundment is proposed as an alternative postmining land use because the premining and postmining prime farmland acreage remains the same. This commenter also noted that the rules should acknowledge that prior consent is acceptable including that found in existing leases. During the 1988 reopening of the comment period, commenters representing industry, environmental and citizen organizations and a regulatory authority remarked that the revised proposal should or must require property owner consent before a water body may be created. No comments were received in opposition to requiring property owner consent during the reopened comment period.

OSMRE agrees with the 1988 commenters and believes specific consent of the current property owner (or property owners) is desirable, especially where a permit area involves more than one property owner and prime farmland acres would be transferred between property owners. Furthermore, OSMRE's existing alternative postmining land use regulations at §§ 780.23(a)(4) and 816.133(c) already require consultation with the property owner. Accordingly, the 1988 proposed language has been revised and final § 785.17(e)(5) specifies that property owner consent is required.

Various commenters cited reasons why water bodies should be allowed under the conditions stipulated in the 1988 proposal. One regulatory authority remarked that the proposal creates no environmental degradation and may help in creating an agricultural system which is more sustainable than that which existed before relocation, because of the consolidation of small plots of prime farmland, added potential for irrigation, potential for aquaculture, and other uses. Another commenter provided copies of a number of studies which lend support to the proposal. According to this commenter, water bodies on prime farmland serve as a valuable resource for cropland uses, area drainage, recharge areas, and for many farm uses, including irrigation.

Other commenters were either opposed or had concerns about the proposal. One 1987 commenter claimed that an impoundment has a negative impact on agricultural productivity by creating physical barriers to normal movement of farm machinery, by creating farmland areas too small to be economically tilled, and by creating greater water edges which are inherently less productive. For these reasons, this commenter claimed that impoundments have a far greater negative impact on overall productivity than simply replacing a certain number of acres of prime farmland with water. Two 1988 commenters also expressed concern about the possible negative effects of water bodies on prime farmland. One of the 1988 commenters claimed the presence of impoundments have a negative effect on prime farmland's economic viability, suitability for current farm techniques, and crop production, and therefore, that water impoundments are not needed for and can be detrimental to the restoration of prime farmland.

The other 1988 commenter was concerned about the effect of soil erosion on banks surrounding water bodies and about the water quality of such water bodies. This commenter cautioned that without proper design and attention to vegetative cover, water bodies can become sediment basins.

The potential for detrimental effects on prime farmland from nearby water bodies is minimized under these final rules. The requirement that prime farmland acreage remain undiminished after mining, coupled with the § 823.15 productivity requirements, should preclude the approval of a water body in a location that would result in detrimental effects on prime farmland soils. OSMRE agrees with the second 1988 commenter that proper design and attention to vegetative cover is necessary in the creation of water bodies. The existing performance standards at 30 CFR 816.49(b) require that appropriate measures be taken in this regard and the regulatory authorities under their approved State programs must require such measures prior to approving any reclamation plan which includes the creation of a water body. Furthermore although in some instances the presence of impoundments is capable of producing the negative effects claimed by these commenters, this is not universally true. As noted above, there has been considerable evidence submitted to the OSMRE administrative record which indicates that the opposite is often true. As a 1987 commenter asserted, water bodies can be needed and highly sought after, especially where there is a monoculture of cropland. The creation of water bodies on the non-prime farmland portions of permit areas is allowed only when the alternative postmining land use criteria of section 515(b) (2) and (3) of the Act have been met. Those provisions, coupled with the standards for restoration of productivity at 30 CFR 823.15, ensure that any impoundments created will not have a negative effect on prime farmland productivity.

Another 1987 commenter was skeptical of the likelihood of enhancing acreage classified as non-prime farmland to achieve prime farmland and suggested that OSMRE should have performance standards for creating prime farmland. This commenter pointed out that other portions of the prime farmland rules need to be amended to make the rule work, e.g. soil maps in permitting; avoid small isolated areas of prime farmland soils; the SCS should be involved in evaluating technological capability; soil removal, stockpiling, and replacement performance standards must be set forth in detail. This commenter stated that without these, the rule is not workable.

As described above, OSMRE, regulatory authorities and the SCS have had successful experience in moving prime farmland soils within permit areas. For instance, the natural progression of a typical surface mine in the mid-west will relocate prime farmland soils three to four spoil ridges from the original location when contemporaneous reclamation is practiced (that is, immediate soil removal and replacement where soil storage is not necessary). Also, in the past, OSMRE and the SCS have encouraged the physical relocation and consolidation of small odd-shaped parcels of prime farmland, thus benefitting the mine operator and property owner/farmer. The commenter, in suggesting small isolated areas of prime farmland soils be avoided, also implies that prime farmland soils are farmed differently than non-prime farmland soils, which is not the case. Typically, farms do not work isolated parcels of prime farmland soils any differently than the surrounding non-prime farmland soils. Therefore, since prime farmland soil boundaries are not delineated by legal or farming boundaries, such as fence rows or county lines, OSMRE expects that prime farmland soils would be farmed identically, without distinction or demarcation from the non-prime farmland soils. For example, a large field of wheat may contain only 40 percent prime farmland due to the topography and hydrology of the field; yet the field of wheat is farmed as one unit, rather than two units, one prime and one non-prime.

OSMRE believes that for economic reasons the mine operator will rebuild the prime farmland soils as close to the original prime farmland location as possible due to the cost of transporting soils. Where this displacement is part of a complete mining and reclamation plan, prime farmland soil displacement will be kept to a minimum, will be reviewed and commented upon by the SCS, and must still meet the prime farmland soil reconstruction and bond release standards. Contrary to the commenter's view, OSMRE believes that the present prime farmland soil reconstruction specifications, supplemented with the specific SCS soil reconstruction specifications for each State, are sufficient to guarantee equal or higher levels of soil productivity for relocated prime farmland soils. OSMRE does not see the need for an alternative set of soil reconstruction specifications for relocated prime farmland soils.

Three 1988 commenters addressed the issue of allowing the creation of water bodies which would replace prime farmland as the postmining land use. One commenter noted it would prefer the flexibility to construct a permanent impoundment without the necessity of creating compensating prime farmland. A second commenter was not sure whether OSMRE was in fact proposing an exemption for water bodies that are necessary or beneficial for cropland land uses. This commenter asked that it be given the opportunity to review and comment on any such proposal before implementation. The third commenter suggested that, provided the property owner consents, an exemption should be permitted to allow water bodies in lieu of prime farmland under any of the following circumstances:

1. Where the aggregate prime farmland acreage would be retained, or
2. The impoundment is necessary *or* beneficial for cropland use, or
3. There is another appropriate postmining land use for the impoundment.

Concerning the first circumstance, as described above, a water body may be placed at a location where there was prime farmland before mining, if the prime farmland acreage will be relocated and not reduced, the alternative postmining land use criteria are met, and property owner consent is obtained. Regarding the second circumstance, the court has indicated that a narrow exemption might be acceptable in situations where an impoundment is necessary *or* beneficial. OSMRE believes that whether an impoundment is necessary or beneficial is so dependent on site-specific factors

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such as geology, hydrology, topography, soils, and climate that nationwide standards for creating such an exemption may not be practicable and, at a minimum would require much additional research before any attempt at promulgation. Therefore, the agency does not intend either to propose or to implement such an exemption at this time. The third circumstance, taken alone, would not provide an independent basis for an exemption in view of the court decisions that prime farmland can not be replaced by any other postmining land use.

Two 1988 commenters emphasized that the court rulings require that all prime farmland be reclaimed to prime farmland cropland postmining without any exceptions and, therefore, the prime farmland acreage in a permit area must be the same after mining as before mining.

OSMRE agrees that all prime farmland must be reclaimed to prime farmland cropland after mining. The final rule does not eliminate the requirement that all prime farmland be reclaimed to prime farmland cropland after mining. Although the final rule does not require that the prime farmland acreage in the permit areas always must be in the same location after mining as before, it does require that postmining prime farmland acreage never may be less than premining prime farmland acreage. Thus the rule is consistent with the Act.

Two commenters felt that proposed § 785.17(e)(5) was unnecessary. One of these commenters indicated that since existing § 785.17(e)(1) requires all prime farmland to be reclaimed to prime farmland cropland postmining that § 785.17(e)(5) was redundant. The other commenter indicated it thought OSMRE intended proposed § 785.17(e)(5) to allow a postmining decrease in prime farmland acreage in permit areas containing 100 percent prime farmland prior to mining. Thus the commenter concluded the 1988 proposal was illegal.

Since neither proposed nor final § 785.17(e)(5) allow a postmining decrease in the prime farmland acreage, the rule cannot be illegal for that reason.

OSMRE believes the rule is necessary for several reasons. First, the comments received during the public comment period, and especially during the March 23 to May 12, 1988 reopened comment period clearly indicate uncertainty as to whether and under what circumstances water bodies can be allowed on permit areas containing prime farmland. Second, there also appears to be uncertainty over whether and how the relocation of prime farmland during reclamation is authorized. Third, under typical geologic, hydrologic and topographic conditions, the most common type of permit area containing prime farmland will be the permit area with less than 100 percent prime farmland. For these reasons, whether and where water bodies may be located in permit areas containing prime farmland is linked to the practice of relocating prime farmland. Thus, the proper implementation of the prime farmland requirements of the Act for the typical permit area (containing less than 100 percent prime farmland) is critical for providing the protections Congress intended for prime farmland.

A commenter claimed that the question of when and where impoundments are permissible should not be addressed as part of this rulemaking because, in this commenter's view, the only legitimate provisions in prime farmland rules relating to impoundments are a clear prohibition of them as a postmining land use on prime farmland, and a requirement that their presence elsewhere not detract from prime farmland restoration. The commenter further contended that any rules providing for postmining relocation or consolidation of premining land classes, uses or capabilities should be part of a separate rulemaking specifically on that subject because any such effort in the context of this rulemaking would be illegal under the requirements for adopting federal regulations.

OSMRE disagrees with this commenter's views. As discussed above in response to those commenters who claimed § 785.17(e)(5) was unnecessary, the question of how and where impoundments are permissible on areas containing prime farmland is necessarily linked to this prime farmland rulemaking. Since many permit areas containing prime farmland contain less than 100 percent prime farmland, they will be candidates for the creation of water bodies. In light of the necessity to respond to the decision in *NWF* v. *Hodel*, and the uncertainty expressed by commenters on this rulemaking, clarification of how such situations are to be treated is both appropriate and necessary to this rulemaking.

More importantly, these rules are not intended to serve and do not serve to authorize the postmining relocation or consolidation of premining soils or uses. That authority already exists under current § 785.17(e)(1) which is not being revised by this final rule. As discussed previously the postmining relocation and/or consolidation of prime farmland has been and will continue to be a legitimate part of normal reclamation practice. This rulemaking merely clarifies for those interested parties who have been heretofore unsure, that such practices have been and continue to be authorized. It is intended, especially, to show that, under certain conditions, a water body legitimately approved under the alternative postmining land use provisions of the Act may be created and located where prime farmland existed prior to mining without resulting in the illegal replacement of prime farmland by a water body.

One commenter stated that all prime farmland must be restored to cropland and subject to the complete prime farmland requirements. OSMRE agrees. These final rules do not change that existing requirement.

This same commenter, addressing a related issue, claimed OSMRE has an obligation to ensure that reclamation plans and postmining land use plans for all permits containing prime farmland do not in any way limit the restoration and postmining productivity for every acre of prime farmland and that this responsibility includes a careful review of the interaction of prime farmland with other aspects of the permit. OSMRE agrees, all reclamation plans and postmining land use plans must not limit the restoration and postmining productivity of any prime farmland. This final rule does not change that existing requirement. However, in primacy states the regulatory authorities under their approved State programs, not OSMRE, have the primary responsibility to ensure that these requirements are met.

On yet another related subject, this commenter insisted that water bodies, if allowed as an alternative postmining land use on non-prime farmland, cannot be allowed to diminish prime farmland's farmability or productivity. OSMRE agrees that an alternative postmining land use on adjacent nonprime farmland must not diminish prime farmland's productivity. Section 510(d)(1) of SMCRA requires prime farmland soil to be restored, within a reasonable amount of time, to equivalent or higher levels of yield as non-mined prime farmland in the surrounding area under equivalent levels of management. This requirement is implemented by the performance standards at 30 CFR 823.15(b). Regulatory authorities have the responsibility to disapprove any alternative postmining land use plans they believe will preclude meeting the productivity standards. Therefore, if a regulatory authority determines that the location of a water body, as an alternative land use for non-prime farmland, would result in non-attainment of the § 823.15(b) productivity standards for nearby prime farmland, it is the responsibility of that regulatory authority to reject the proposed alternative land use plan.

Lastly, a regulatory authority commenting on the 1987 proposed rules suggested that provisions are needed in § 785.17 to provide for an applicant to document if the exemption criteria of § 823.11(a)(1)(i) are met and, if so, to be excluded from the requirements of § 785.17 (c), (d), and (e). As detailed below, under discussion of Part 823, proposed § 823.11(a)(1)(i) has not been adopted in this final rule. If prime farmland is to be reconstructed elsewhere in the permit area, the applicable provisions of §§ 785.17 and 800.40 and Part 823 do apply to these relocated prime farmland soils.

B. Section 823.11 (a) and (b)—Special Permanent Program Performance Standards—Operations on Prime Farmland

Proposed 3 Percent Exemption for Surface Facilities

Proposed § 823.11(a)(1)(i) provided for an exemption from the prime farmland standards for those coal preparation plants, support facilities, and roads which are actively used over extended periods but which affect a minimal amount of land in connection with underground mines. The exemption proposed was for an area not to exceed 3 percent of the underground extraction area for the life of the mine. OSMRE received a number of comments critical of the proposed exemption.

Two commenters stated that the exemption allowed was excessive and irrational and that no rationale is presented for such an excessively large surface disturbance, especially since disposal areas are being treated independently of this exemption. One of these commenters asserted that current mines in Illinois would receive exemptions of 24 to 369 acres. The commenter believes OSMRE has provided no basis for demonstrating that increasing the real extent of underground workings necessarily increases the size of a preparation facility or of a road from the mine.

One regulatory authority pointed out that certain surface facilities, e.g. preparation plants, may be issued separate permits from those issued for one or more underground mines which ship their coal to that preparation plant. Also, some underground mines may contract their refuse removal and disposal to another party who is issued a separate permit to dispose of waste from that mine. In such situations the regulatory authority is dealing with one mine complex operated with multiple permits. Clearly, a standard such as the proposed 3 percent of permit area, makes little sense in respect to multiple-permit mine complexes.

One commenter suggest that OSMRE include a provision whereby the regulatory authority may expand the 3 percent spatial limit where unique circumstances exist. This commenter pointed out that OSMRE's choice of 3 percent spatial limitation arises from the mean for current permits within Illinois and that half of the operations contained in the survey already exceeded the mean. Therefore these operations were permitted under the existing standard for "affecting a minimal amount of land." This commenter felt that circumstances will arise where a well-planned mine will require greater spatial accommodation than the 3 percent standard, while still affecting a minimal amount of land.

Despite their different perspectives, each of these comments has some merit. Although OSMRE continues to believe that there is a rational basis for assuming that increases in the extent of underground workings correlate with an increased requirement for surface facilities area, it is no longer convinced, especially in view of the nature of the types of operations being separately permitted (i.e., not all permit areas are mines and an individual mining operation may be composed of several distinct permit areas), that the proposed 3 percent spatial limitation is either appropriate or practical to administer. OSMRE now believes that some other percent or some fixed acreage maximum related to entire mining operations, rather than to permit areas, would be more varied. It has become apparent from a review of the data currently available to OSMRE that the regulatory authority that commented about the relationship of permit areas to mines has raised a critical issue and that determining the appropriate exemption for a mining operation in a typical prime farmland State, such as Illinois, is not possible without collecting data on an operation by operation rather than on a permit basis. Such data is not currently available to OSMRE in a usable form. Therefore, OSMRE is postponing final rulemaking on this issue pending further study. Existing § 823.11(a), as modified by the February 21, 1985 suspension notice (50 FR 7278), is being retained in the interim.

Exclusion for Coal Mine Waste Storage Areas

Proposed § 823.11(a)(1)(ii) provided an exception from the exemption of proposed § 823.11(a)(1)(i). Final § 823.11(b) has replaced proposed § 823.11(a)(1)(i) and provides an exclusion from the prime farmland performance standards of Part 823 for coal mine waste storage areas associated with underground coal mines.

The exclusion for coal mine waste storage areas applies only where the coal mine waste from underground mines cannot be technologically and economically stored in underground mines or on non-prime farmland. The operator must continue to avoid prime farmland areas where possible, and must show that the waste cannot be stored underground or on non-prime farmland because of technological and economic factors. Also, the operator must minimize the surface area used for storing waste, and must restore these coal mine waste storage areas in accordance with the criteria found in § 817.83. The bond release criteria for these coal mine waste storage areas include the soils and revegetation requirements of §§ 817.22 and 817.111 through 817.116.

Justification for final § 823.11(b) is found in § 516 of SMCRA, which requires consideration of the distinct differences between surface and underground coal mining. Some of these differences with respect to coal mine water are: (1) The greater availability of disposal sites for coal mine waste at surface mines; (2) the technological and economic feasibility for placing the waste into the underground mining excavations; (3) the relative restrictions on waste storage related to health and safety of miners at surface and underground mines; and (4) current coal mine waste disposal techniques for surface and underground mines.

Coal mine waste disposal areas are more available at surface mines than at underground mines because of the surface operator's access to the open pit for waste disposal. Also, the need for coal mine waste storage areas for surface mines is generally less because proportionately less waste is created by surface mines. The technological and economic feasiblility of returning coal mine wastes to active or inactive underground coal mines is uncertain, as was reported in the National Academy of Sciences report "Underground Disposal of Coal Mine Wastes" (NAS, 1975). In the proposed rule, OSMRE specifically requested comment on the technological and economic feasibility of returning coal mine waste to active and inactive underground coal mine workings. Two commenters supported the exclusion for coal mine waste storage areas, while two did not.

One of the two commenters who opposed the proposed exclusion asserted that the disposal of coal development and processing waste is not unique to underground mining, the inclusion of an economic feasibility test for allowing waste disposal on prime farmlands makes protection of such lands servient of economic advantage, and the failure of OSMRE to set any limitations on the size or location of such waste disposal areas creates a direct conflict between such a proposal and the district court's decisions in *In re: Permanent* and *In re: Permanent II*. Both commenters agreed that section 516 allows a certain degree of flexibility in the adoption of standards for surface and underground mining based on the differences in the mining practices themselves, but not in the disposal of wastes common to both forms of mining. One of these commenters felt that waste disposal must occur by a return to underground workings, where approved, or by surface disposal on non-prime farmland areas. Another commenter, citing an article which appeared in the March 1988 edition of *Coal Age* Magazine, stated that evidence exists to suggest that on both technological and economic grounds, the disposal of coal mine waste to the underground workings is a feasible alternative.

OSMRE's position remains essentially as discussed at 48 FR 44013 on September 26, 1983, with respect to this issue. OSMRE disagrees with the commenter who believes that coal mine waste must be disposed only by a return to underground workings or by surface disposal on non-prime farmland areas. The Act does not contain such a requirement. The impact of coal mine waste from underground mines is regulated under section 516(b)(3) through (5) of SMCRA. Section 516(b)(3) requires the return of coal mine waste to the underground mine workings "to the extent technologically and economically feasible." Neither section 516(b)(4) nor (5), which establish requirements for the surface disposal of coal mine wastes, provides any specific protections for prime farmlands. Prime farmland protections are provided under section 515 of SMCRA, which applies to surface mines. Section 516(b)(10) makes section 515 applicable to those surface impacts of underground mining which are not specified in section 516(b). Since surface impacts of coal mine waste from underground mines are regulated in section 516(b), no further restrictions can be incorporated by application of section 516(b)(10), and the section 515 prime farmland standards do not apply to underground coal mine waste disposal sites. On January 29, 1988, in *NWF v. Hodel*, 839 F.2d 694 at pp. 739–741, the holding of the U.S. Court of Appeals (D.C. Cir.) was consistent with this concept. In ruling on an attempt by OSMRE to use section 516(b)(10) as the legal justification for applying the general restoration duties of the section 515 requirements, which otherwise only apply to surface mining, to surface lands damaged by subsidence, the district court held that "* * * section 516(b)(10) is triggered only by 'surface impacts not specified' " elsewhere in section 516(b). *NWF v. Hodel*, 839 F.2d at pp. 740–741. Thus, the surface disposal of coal mine wastes is not subject to the requirements to protect prime farmland found in section 515 of SMCRA and implemented at 30 CFR Part 823. Nevertheless, OSMRE is requiring in section 823.11(b) that the operator minimize the area of prime farmland used for surface disposal of that coal mine waste which cannot, for technological and economic reasons, be returned to the underground workings.

OSMRE also has examined the *Coal Age* article in question and concluded that it does not support the commenters' conclusion that disposal of coal mine waste to underground workings is a feasible alternative. The article reports that some technological progress has been made with pneumatic stowing methods and that as a result the economics are improving. Specifically, the article states that applications of pneumatic stowing "appear to be showing economic promise." Then, after stating "it is probably true that pneumatic stowing is currently still more costly than traditional [surface] disposal methods," the article concludes that the economic viability of pneumatic stowing may now have reached the point where for certain specific operations it may be desirable to examine the site specific economics.

More significantly, however, the article does not address other critical issues which are the concern of the Mine Safety and Health Administration (MSHA) and the Environmental Protection Agency (EPA). Each area proposed for coal mine waste storage must also be evaluated on the basis of site specific environmental, health, safety, and other considerations. Any plan to return coal mine waste to underground workings would require close coordination with both MSHA and EPA and must be arranged by the regulatory authority and coal mine operator. In most cases, the MSHA and EPA requirements, combined with what are, at least, the marginal economics of pneumatic stowing, will render the return of coal wastes to underground workings technologically and economically unfeasible. An extensive discussion of MSHA and EPA concerns was published at 48 FR 44015 (September 26, 1983). Therefore, OSMRE remains unconvinced that underground waste disposal is consistently or typically a viable nationwide alternative.

One State regulatory authority commented that the determination of technologic and economic feasibility will likely result in very subjective and inconsistent evaluations by regulatory authorities, and suggested that further guidance is needed. However, since the phrase "technologically and economically feasible" is the precise wording of section 516(b)(3) of the Act, OSMRE believes that any determination of the technological and economic feasibility of returning coal mine wastes to underground workings must be performed by the regulatory authority, which must consider all relevant information provided by the coal mine operator when the regulatory authority reviews the mining and reclamation plans. As described in the March 1988 *Coal Age* article discussed above, the technological and economic evaluation of this alternative is extremely complex and must be evaluated on a site-by-site basis. OSMRE believes that no further guidance is possible or appropriate at the national level because of the site-specific nature of this problem.

Two commenters supported this exclusion. In expressing support, one of the two noted that the technological and economic feasibility of returning coal mine waste to active and inactive underground coal mine workings remains limited. In this context, the commenter mentions that the technological and economic feasibility of returning such waste to underground workings is dependent on whether the approval of both MSHA and EPA can be obtained. As OSMRE has indicated above, such approval is often unobtainable.

This same commenter also suggested that slurry ponds should be recognized as part of the coal mine waste exclusion. OSMRE agrees and refers the reader to 48 FR 44009–10, September 26, 1983, where an extensive discussion of "coal processing waste," "coal mine waste," and "impounding structures" can be found. The discussion found there clarifies that the term "impoundments" includes dams and embankments designed to hold coal mine waste slurry or sediment in a semi-liquid state. The coal mine waste impounding structure rules augment and do not replace the rules governing impoundments.

A regulatory authority was unclear as to whether coal refuse disposal areas would be included in this exclusion. OSMRE believes that a "refuse pile" may contain coal processing waste and/or underground development waste, both of which are included in this exclusion, providing that they are derived form underground sources. (48 FR 44010, September 6, 1983)

Another commenter had no objections to the proposed rule provided that OSMRE clarified that the waste disposal area includes areas where soil cover is obtained to meet the requirements of § 817.83 when sufficient cover cannot be obtained immediately below the coal waste or from nonprime farmland areas. OSMRE's rule at § 817.83(c)(4) requires that waste disposal areas are to be covered by 4 feet of the best available material, or less than 4 feet as approved by the regulatory authority if there is a demonstration that the coal mine waste storage area will meet the revegetation and environmental protection provisions of the revegetation rules at §§ 817.111 through 817.116. In conformity with the requirements of § 817.83(c)(4), it is appropriate for the regulatory authority to consider site-by-site variations. Nevertheless, OSMRE does not intend to require, and does not expect the regulatory authority to require, the operator to create borrow areas to obtain cover materials, unless such borrow areas are necessary to prevent combustion or ensure that the revegetation requirements are met. Also, since these coal mine waste storage areas are created pursuant to section 516(b)(3) through (5), they are excluded from the prime farmland soil reconstruction and productivity requirements of 30 CFR 823.14 and 823.15, as those requirements implement section 515 of SMCRA.

C. Proposed § 823.11(a)(2)—"Grandfathered" Prime Farmland

Existing § 823.11(c) states that the requirements of Part 823 are not applicable to prime farmlands that have been excluded in accordance with § 785.17(a) of this Chapter, that is, "grandfathered" prime farmland.

On March 25, 1987 (52 FR 9844), OSMRE proposed to redesignate existing § 823.11(c) as § 823.11(a)(2). This final rule does not require § 823.11(c) to be redesignated. No change other than redesignation was proposed or contemplated. Therefore, the "grandfathered" prime farmland provisions of the May 12, 1983 final rules remain unchanged, and at § 823.11(c).

D. Proposed § 823.11(b)—Water Body Exemption

As described at length above, proposed §§ 823.11(b) and 785.17(e)(1) if adopted, would have provided an exemption from the prime farmland performance standards for water bodies that have been approved by the regulatory authority as an alternative post-mining land use as long as the same number of prime farmland acres before mining were reconstructed after mining. Proposed § 823.11(b) would have excluded those areas on which impoundments were authorized by proposed § 785.17(e)(1) from the soil reconstruction and productivity requirements of §§ 823.14 and 823.15, respectively. In practice, however, that exemption would have been almost meaningless in view of the requirement of § 785.17(e)(1) that the same number of prime farmland acres be present postmining as premining. That requirement, as a practical matter, would have necessitated the relocation and reconstruction of those prime farmland soils elsewhere in the permit area.

During the reopened comment period two commenters supported the elimination of proposed 30 CFR 823.11(b) which would have exempted impoundments from the soil replacement and proof of productivity requirements for prime farmlands. One of these commenters felt that the notice of reopening of the comment period did not clearly withdraw that proposed language.

The 1988 notice of reopening of the comment period did propose the withdrawal of 30 CFR 823.11(b) and, more importantly, this final rule does withdraw proposed 30 CFR 823.11(b) as supported by these commenters.

As this final rule clarifies, operators are allowed to remove, store, and utilize elsewhere in a permit area prime farmland soils disturbed in mining for coal. Section 785.17(e)(1) in conjunction with §§ 823.12, 823.14, and 823.15, which require prime farmland soils removed for water bodies to be separately removed, segregated and stockpiled, but not replaced within the impoundment, produces this result. These prime farmland soils are reconstructed in the same way other prime farmland soils are reconstructed within the permit area and with the review and comment of the USDA Soil Conservation Service and the concurrence of affected property owners within the permit area. Thus, there is no impermissible broad variance from the prime farmland standards because prime farmland soils are removed, stored, and replaced in accordance with Part 823 and the same or greater number of prime farmland acreas are restored within the permit area after mining than there were before mining.

As indicated above, proposed § 823.11(b) has been withdrawn.

E. Sections 823.12(c)(2) and 823.14(d)—Soil Removal and Stockpiling; Soil Replacement—Exceptions for B and C Soil Horizons Which Otherwise Would Not Be Removed by Mining Activities

Section 515(b)(7) of SMCRA requires that for all prime farmlands to be *mined and reclaimed*, the Secretary of Agriculture shall establish specifications for soil removal, storage, replacement, and reconstruction, and that the mine operator shall be required to segregate, store, and replace prime farmland soils. This provision is implemented in 30 CFR 823.12 and 823.14. However, in areas that are not mined and where the B and C soil horizons would not otherwise be removed, such as areas beneath surface support facilities, B and C horizon removal and segregation may serve little purpose. Therefore, final §§ 823.12(c)(2) and 823.14(d) authorize the regulatory authority to approve an exception from the requirement to remove and reconstruct the B and C soil horizons when the B and C horizons would not otherwise be removed by mining activities. Although the B and C soil horizons would not be removed under this final rule, as indicated in the Secretary's Memorandum in support of cross-motion for summary judgment, filed December 21, 1979, at pp. 100–101 (*In re: Permanent*), the requirement to reestablish the productive capacity of the prime farmland soil must still be met. In its *In re: Permanent* opinion, the court summarized the soil handling requirements in such situations as follows: "[A]n operator need only engage in deep tilling to restore compacted land to prime farmland where support facilities have compacted the soil. The operator would still, however, be required to engage in a pre-application investigation and also comply with the permit and bonding requirements." (*In re: Permanent* at 3, footnote 4.)

OSMRE agrees with the court's summary, but also recognizes that there may be instances when the B or C soil horizons may need to be protected from chemical or other types of contamination in order to achieve the applicable vegetative cover and productivity required by §§ 800.40 and 823.15. Under existing § 816.22(e), as well as under Part 823, the regulatory authority could require that the B or C

soil horizons be separately removed, segregated, stockpiled, and replaced to ensure retention of soil capabilities. The regulatory authority also could provide the operator the option to preserve the productive capacity of prime farmland soils in place by taking measures such as placing a protective barrier between the surface coal mining activity causing contamination and the B and C soil horizons.

Three commenters approved of this exception, while one commenter objected. One commenter felt that this exception is absolutely necessary in light of OSMRE's proposal to restrict substantially the support facility exemption from the prime farmland standards. Another commenter, a regulatory authority, concurred. However, it stated that special provisions should be made for leaving the A horizon in place for minor disturbances such as in § 816.22(a)(3). This regulatory authority believes that § 816.22(a)(3) is applicable to prime farmland situations as well. OSMRE agrees with this regulatory authority that the narrow exceptions allowed for insignificant disturbances of topsoil also refers to prime farmland soils. See 48 FR 22094, May 16, 1983, which applies to all topsoil, including that of prime farmland, for a full discussion of this concept.

Another commenter stated that this blanket exception is inappropriate and inconsistent with the Act. This commenter stated that while there may be situations in which B and C soil horizon removal may not be necessary, there are other circumstances in which it is necessary. This commenter's concerns are about soil compaction, soil horizon loss, and soil chemical contamination. This commenter also felt that protection of the from contamination should be incorporated into the regulations and not simply noted in the preamble. OSMRE agrees and has added the phrase "* * * and where soil capabilities can be retained" to § 823.12(c)(2). In this manner prime farmland sub-soils will be protected from all forms of contamination as well as compaction.

F. Section 823.15(b)—Prime Farmland Soil Productivity

Neither OSMRE's 1987 proposal nor its 1988 revised proposal attempted to make any changes to the revegetation success standards for reconstructed prime farmland found at 30 CFR 823.15(b). Nevertheless, a regulatory authority commenting during the reopened comment period recommended OSMRE develop a rulemaking which would allow the evaluation of soil properties to be used as an alternative to cropping for demonstrating the productivity potential of reconstructed prime farmlands.

As mentioned above, existing § 823.15(b) requires, as the measure of soil productivity, the actual growth of crops. Before revegetation will be accepted as successful, average yield of the restored soil over a period of three or more crop years must equal or exceed the average yield of a carefully selected comparison area. The legality of this requirement was challenged by Industry in *In re:Permanent II* and the U.S. District Court upheld OSMRE's position as a reasonable exercise of its discretion. Industry subsequently appealed the district court's decision to the U.S. Court of Appeals, D.C. Circuit. On January 29, 1988 the appeals court upheld the district court decision. See *NWF v. Hodel* at 718. While OSMRE is not incorporating the suggested change, when the necessary techniques are available to use surveys of reconstructed prime farmland soils for the purpose of predicting productivity OSMRE will consider such a rulemaking. However, in consideration of the uncertainty surrounding the method suggested, OSMRE does not intend to propose any change to the requirements of § 823.15(b) at this time.

Reference Material

Coal Age, Vol. 21, No. 3, March 1960, Pneumatic Stowage Becomes Affordable, 5 pp., James M. Roberts et al. (See Administrative Record.)

NAS (National Academy of Sciences), 1975, Underground disposal of coal mine wastes, 172 pp. (See Administrative Record No. 408.)

Office of Technology Assessment, Congress of the United States, December, 1985, Staff Memorandum, Reclaiming Prime Farmlands and Other High-Quality Croplands After Surface Coal Mining, 143 pp. (See Administrative Record No. 1005E.)

Economic Research Service, U.S. Department of Agriculture, August, 1981, Rural Development Research Report Number 29, Coal Development in Rural America—The Resources at Risk, 84 pp. (See Administrative Record No. 919E.)

Effect in Federal Program States

The final rules are applicable through cross-referencing in those States with Federal programs. This includes California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for these States appear at 30 CFR Parts 905, 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947, respectively. OSMRE specifically requested comment as to whether unique conditions exist in any of these Federal program States which should be reflected either as changes to the national rules or as State-specific amendments to any or all of the Federal programs. No comments were received in response to this request.

III. Procedural Matters

Executive Order 12291

The Department of the Interior (DOI) has examined these final rules according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that these are not major rules within the standards established by the Executive Order and, therefore, no regulatory impact analysis is required. These rules allow certain exclusions from the prime farmland soil reconstruction provisions of Part 823, thus lessening the regulatory burden in special situations for coal preparation plants, support facilities and roads, and certain coal waste disposal areas associated with underground mining.

Federal Paperwork Reduction Act

There are no information collection requirements in these final rules requiring review by the Office of Management and Budget under 44 U.S.C. 3507.

Regulatory Flexibility Act

The DOI has determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that the final rule will not have a significant economic impact on a substantial number of small entities.

National Environmental Policy Act

OSMRE has prepared an environmental assessment (EA) on the impacts on the human environment of this rulemaking. This EA is on file in the OSMRE Administrative Record at the address listed in the "Addresses" section of this preamble.

Authors

The authors of this regulation are Dermot M. Winters and Donald F. Smith, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; telephone Mr. Winters at (202) 343-1928 (Commercial or FTS).

List of Subjects

30 CFR Part 786

Reporting and recordkeeping requirements, Surface mining, Surface Mining Reclamation and Enforcement Office, Underground mining.

30 CFR Part 823

Agriculture, Environmental protection, Surface mining, Surface Mining Reclamation and Enforcement Office, Underground mining.

Accordingly, 30 CFR Parts 785 and 823 are amended as follows:

Date: August 30, 1988.

J. Steven Griles,

Assistant Secretary—Land and Minerals Management.

PART 785—REQUIREMENT FOR PERMITS FOR SPECIAL CATEGORIES OF MINING

1. The authority citation of Part 785 is revised to read as follows:

Authority: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*; Pub. L. 100-34.

2. Paragraph (e) of § 785.17 is amended by adding a new paragraph (e)(5) to read as follows:

§ 785.17 Prime farmland.

* * * * *

(e) * * *

(5) The aggregate total prime farmland acreage shall not be decreased from that which existed prior to mining. Water bodies, if any, to be constructed during mining and reclamation operations must be located within the post-reclamation non-prime farmland portions of the permit area. The creation of any such water bodies must be approved by the regulatory authority and the consent of all affected property owners within the permit area must be obtained.

PART 823—SPECIAL PERMANENT PROGRAM PERFORMANCE STANDARDS—OPERATIONS ON PRIME FARMLAND

3. The Authority citation for Part 823 is revised to read as follows:

Authority: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*; Pub. L. 100-34.

4. Section 823.11 is amended by removing the suspension of paragraph (b) and revising it and republishing the introductory text to the section to read as follows:

§ 823.11 Applicability.

The requirements of this part shall not apply to—

* * * * *

(b) Disposal areas containing coal mine waste resulting from underground mines that is not technologically and economically feasible to store in underground mines or on non-prime farmland. The operator shall minimize the area of prime farmland used for such purposes.

* * * * *

5. The first sentence of § 823.12(c)(2) is revised to read as follows:

§ 823.12 Soil removal and stockpiling.

* * * * *

(c) * * *

(2) Separately remove the B or C soil horizon or other suitable soil material to provide the thickness of suitable soil required by § 823.14(b), except as approved by the regulatory authority where the B or C soil horizons would not otherwise be removed and where soil capabilities can be retained. * * *

* * * * * *

6. Section 823.14(d) is revised to read as follows:

§ 823.14 Soil replacement.

* * * * * *

(d) The operator shall replace the B horizon, C horizon, or other suitable material specified in § 823.12(c)(2) to the thickness needed to meet the requirements of paragraph (b) of this section. In those areas where the B or C horizons were not removed but may have been compacted or otherwise damaged during the mining operation, the operator shall engage in deep tilling or other appropriate means to restore pre-mining capabilities.

* * * * * *

[FR Doc. 88-23648 Filed 10-17-88; 8:45 am]
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Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 139

Airport Certification; Extension of Certain Compliance Dates; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 139

[Docket No. 24812; Amdt. No. 139-14]

RIN [2120-AA-15]

Airport Certification; Extension of Certain Compliance Dates

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; extension of compliance dates.

SUMMARY: This amendment extends the compliance date for certain new requirements applicable to airports certificated under 14 CFR Part 139. In the November 18, 1987, issue of the Federal Register (52 FR 44276), the FAA published a final rule revising and reorganizing 14 CFR Part 139. The final rule was effective on January 1, 1988. Subsequent to the issuance of the final rule, numerous airports have petitioned the FAA for exemption from various requirements of the rule. Three new requirements have generated the overwhelming percentage of the petitions. The petitions for exemption have requested additional time to permit the airports an opportunity to come into compliance. The FAA has concluded that the exemption process is an unnecessarily burdensome and inefficient approach for providing an adequate transition period. This document serves to address the problem by amending the final rule published November 18, 1987, to extend the compliance dates for these three requirements to permit airports an opportunity to come into compliance without the need for obtaining an exemption.

EFFECTIVE DATE: October 18, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Jose Roman, Jr., Safety and Compliance Division (AAS-300), Office of Airport Standards, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-8724.

SUPPLEMENTARY INFORMATION: On November 18, 1987, the FAA published a final rule revising and reorganizing 14 CFR Part 139. The final rule resulted in numerous changes in the requirements applicable to certificated airports. Subsequent to the issuance of the final rule, the FAA has received in excess of 600 petitions for exemption. The majority of petitions involve runway marking and lighting (14 CFR 139.311), training of personnel in emergency medical care (14 CFR 139.319(j)(4)), or training of fueling personnel in fire safety (14 CFR 139.321(b)(6)).

With respect to the marking and lighting provision, the FAA recognizes that immediate compliance with the new requirements by all airports is not possible. Indeed, the preamble in the notice of proposed rulemaking (NPRM) stated that the "FAA would work with airports whose lighting and marking systems do not comply with current standards to bring them into compliance over a 4 to 5-year period." 50 FR 43087. However, at the NPRM stage the FAA believed that "the vast majority of affected airports have these lighting and marking systems." 50 FR 43087. It was envisioned that those airports not in compliance would be granted exemptions pending completion of the needed airport improvements over the next several years.

It is now clear that a significant number of airports do not meet the marking and lighting requirements in at least some fashion, thus making the exemption approach to noncompliance burdensome and inefficient for both airports and the FAA. Indeed, given the large number of airports requiring exemptions, general rulemaking is a far more appropriate administrative approach. The extension of the compliance date will permit airports to come into compliance within the time period identified in the NPRM and without the burden of the exemption process. The amended rule makes clear, however, that marking and lighting systems that are on the airport must be maintained.

Similarly, the limited extension in the compliance date for the two training requirements is designed to better transition from the previous rule requirements to those of the current rule. While there is already substantial compliance with the training provisions, scheduling and completing the training for the remaining individuals will take several more months. Neither the FAA nor the commenters to the NPRM fully appreciated the logistical implications of these otherwise straightforward requirements.

Notice and Public Procedure

Since this final rule merely extends the compliance date for three provisions of a regulation recently issued after an extended rulemaking process, addresses issues fully explored in the process, and imposes no additional burdens on any person, the FAA has determined that notice and public procedure are not necessary. Furthermore, since this final rule involves a situation requiring immediate action to relieve the burden on airports to petition for exemptions, notice and public procedure are also impractical. This final rule shall become effective in less than 30 days to avoid the burden that would otherwise be imposed on airports and the FAA by adherence to the exemption process.

Trade Impact Statement

This final rule affects only domestic airports subject to Part 139 of the Federal aviation regulations. Accordingly, this rule has no impact on trade opportunities for U.S. firms doing business in the United States.

Federalism Implications

The regulations adopted herein do not have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of Government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

Conclusion

The FAA has determined this final rule will not impose any costs on airport operators. The FAA has not quantified any specific economic benefits from the final rule, although it is expected that the rule will save airport operators some time and expense by eliminating the need to petition for exemptions. For this reason, it has been determined that the expected economic impact of the amendment is so minimal that a full Regulatory Evaluation is not warranted. Therefore, the FAA has determined that this final rule involves a regulation which is not major under Executive Order 12291. The FAA has determined also that this final rule is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is certified that this final rule would not have a significant economic impact, positive or negative, on a substantial number of small entities.

List of Subjects in 14 CFR Part 139

Air carriers, Aircraft, Airports, Airplanes, Air Safety, Aviation Safety, Air Transportation, Helicopters, Heliports, Rotocraft, Safety, Transportation.

The Amendment

In consideration of the foregoing, 14 CFR Part 139 is amended as follows:

PART 139—[AMENDED]

1. The authority citation for Part 139 continues to read as follows:

Authority: 49 U.S.C. 1354(a) and 1432; 49 U.S.C. Section 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

§ 139.311 [Amended]

2. In § 139.311, paragraph (f) is added to read as follows:

* * * * *

(f) Not withstanding paragraphs (a) and (b) of this section, a certificate holder is not required to provide the identified marking systems or lighting systems until January 1, 1991. Each certificate holder shall maintain each marking system and lighting system that meets paragraphs (a) and (b) of this section.

§ 139.319 [Amended]

3. In § 139.319, the first sentence of paragraph (j)(4) is revised to read as follows:

* * * * *

(j) * * *

(4) After January 1, 1989, at least one of the required personnel on duty during air carrier operations has been trained and is current in basic emergency medical care. * * *

§ 139.321 [Amended]

4. In § 139.321, paragraph (b)(6) is revised to read as follows:

* * * * *

(b) * * *

(6) After January 1, 1989, training of fueling personnel in fire safety in accordance with paragraph (e) of this section.

Issued in Washington, DC on October 12, 1988.

T. Allan McArtor,
Administrator.

[FR Doc. 88-23851 Filed 10-17-88; 8:45 am]
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Part IV

Department of Agriculture

Agricultural Marketing Service

Public Hearing Regarding the Madison and Live Oak, Florida Tobacco Markets; Notice

Public Hearing Regarding the Madison and Stoneville, North Carolina Tobacco Markets; Notice

Public Hearing Regarding the Williamston and Robersonville, North Carolina, Tobacco Markets; Notice

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[TB-88-109]

Public Hearing Regarding the Madison and Live Oak, Florida Tobacco Markets

Notice is hereby given of a public hearing regarding the Madison and Live Oak, Florida tobacco markets.

Date: November 7, 1988.

Time: 10 a.m. local time.

Place: Madison County Courthouse, Main Street, Madison, Florida.

Purpose: To hear testimony and to receive evidence regarding an application for tobacco inspection and price support services to a new market, which would be a consolidation of the currently designated markets of Madison and Live Oak, Florida. The application was made by Paul Ragans, President, Madison County Tobacco Warehouse, Inc., Madison, Florida, Ralph Duncan, Operator, Freeman Brothers Tobacco Market, Madison, Florida, and Edwin and R.C. Freeman, Owners, Freeman Brothers Tobacco Market, Madison, Florida.

This public hearing will be conducted pursuant to the joint policy statement and regulations governing the extension of tobacco inspection and price support services to new markets and to additional sales on designated markets (7 CFR 29.1 through 29.3).

Dated: October 12, 1988.

Robert Melland,

Acting Deputy Secretary for Marketing and Inspection Services.

[FR Doc. 88-23956 Filed 10-17-88; 8:45 am]

BILLING CODE 3410-02-M

[TB-88-107]

Public Hearing Regarding the Madison and Stoneville, North Carolina Tobacco Markets

Notice is hereby given of a public hearing regarding the Madison and Stoneville, North Carolina, tobacco markets.

Date: November 10, 1988.

Time: 10 a.m. local time.

Place: Courtroom of the Municipal Building, Route 220 N. (Business) Madison, North Carolina.

Purpose: To hear testimony and to receive evidence regarding an application for tobacco inspection and price support services to a new market, which would be a consolidation of the currently designated markets of Madison and Stoneville, North Carolina. The application was made by Garland Rakestraw, Piedmont Warehouse, Stoneville, North Carolina; Ray White, New Madison Tobacco Warehouse, Madison, North Carolina, and Keith Stovall, Sharpe and Smith Warehouse, Madison, North Carolina.

This public hearing will be conducted pursuant to the joint policy statement and regulations governing the extension of tobacco inspection and price support services to new markets and to additional sales on designated markets (7 CFR 29.1 through 29.3).

Dated: October 12, 1988.

Robert Melland,

Acting Deputy Secretary for Marketing and Inspection Services.

[FR Doc. 88-23958 Filed 10-17-88; 8:45 am]

BILLING CODE 3410-02-M

[TB-88-108]

Public Hearing Regarding the Williamston and Robersonville, North Carolina, Tobacco Markets

Notice is hereby given of a public hearing regarding the Williamston and Robersonville, North Carolina, tobacco markets.

Date: November 9, 1988.

Time: 10 a.m. local time.

Place: Superior Court Courtroom, Martin County Governmental Center, Main Street, Williamston, North Carolina.

Purpose: To hear testimony and to receive evidence regarding an application for tobacco inspection and price support services to a new market, which would be a consolidation of the currently designated markets of Williamston and Robersonville, North Carolina. The application was made by John M. Rogers, Rogers Warehouse, Williamston, North Carolina; William C. Lilley, New Dixie Warehouse, Williamston, North Carolina; Harry T. Gray, Gray's Red Front and Central Warehouse, Robersonville, North Carolina and H. Edwin Lee, Hardee Warehouse, Robersonville, North Carolina.

This public hearing will be conducted pursuant to the joint policy statement and regulations governing the extension of tobacco inspection and price support services to new markets and to additional sales on designated markets (7 CFR 29.1 through 29.3).

Dated: October 12, 1988.

Robert Melland,

Acting Deputy Secretary for Marketing and Inspection Services.

[FR Doc. 88-23957 Filed 10-17-88; 8:45 am]

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Part V

Department of Transportation

Urban Mass Transportation Administration

49 CFR Part 663

Pre-award and Post-delivery Audits of Rolling Stock Purchases; Notice of Proposed Rulemaking

BEST COPY AVAILABLE

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

49 CFR Part 663

[Docket No. 88-H]

RIN 2132-AA29

Pre-award and Post-delivery Audits of Rolling Stock Purchases

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 319 of the Surface Transportation and Uniform Relocation Assistance Act of 1987, directs the Urban Mass Transportation Administration (UMTA), by delegation from the Secretary of Transportation, to issue regulations requiring pre-award and post-delivery audits of rolling stock purchases made with Federal financial assistance under the Urban Mass Transportation Act of 1964, as amended. The audits are for the purpose of assuring compliance with Federal motor vehicle safety standards, Federal "Buy America" requirements, and bid specifications. Accordingly, this notice of proposed rulemaking seeks comment on this proposed regulation which would require pre-award and post-delivery audits of rolling stock purchases.

DATE: Comments should be received by December 19, 1988.

ADDRESS: Comments should be addressed to: Department of Transportation, Urban Mass Transportation Administration, Office of Chief Counsel, Docket No. 88-H, 400 Seventh Street SW., Room 9316, Washington, DC 20590. Comments will be available for review by the public at this address from 9:00 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Daniel Duff, Assistant Chief Counsel, Office of the Chief Counsel, (202) 366-4063, or Albert L. Neumann, Senior Mechanical Engineer, Office of Grants Management, (202) 366-1638.

SUPPLEMENTARY INFORMATION:

I. Discussion

A. Background

The quality of mass transportation service depends in large part on the quality of the equipment used. Inspection of equipment at the time of its purchase for compliance with the buyer's requirements is essential to ensuring quality mass transportation. Such inspection also assists in ensuring the proper use of Federal financial assistance. UMTA requires a recipient of Federal financial assistance to provide adequate technical inspection and supervision of all work in progress when it purchases equipment. UMTA permits this inspection and supervision to be done directly by the recipient or through technical consultants. The cost of the technical inspection and supervision has always been eligible for UMTA funding. Additionally, UMTA requires that recipients comply with all the terms of their grant agreements, applicable statutes, codes, ordinances and safety standards.

Because Congress was concerned about the quality of mass transportation equipment purchased with Federal financial assistance, and the inspection and verification procedures used in the procurement process, the Surface Transportation and Uniform Relocation Assistance Act of 1987, Pub. L. 100-17, mandated pre-award and post-delivery audits with respect to any UMTA grant for the purchase of buses or other rolling stock. Specifically, section 319 of that Act directs UMTA, by delegation from the Secretary, to require pre-award and post-delivery audits to ensure compliance with Federal motor vehicle safety requirements, the Buy America requirements of section 165 of the Surface Transportation Assistance Act of 1982, as amended, and the recipient's own specified bid requirements. Additionally, section 319 provides that UMTA must require independent inspection and audits, noting that a manufacturer's certification of compliance with certain requirements is not sufficient. This notice of proposed rulemaking is issued to implement section 319.

B. The Proposed Regulation

The provisions of section 319 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 require a recipient of Federal financial assistance to take steps to ensure the quality of the equipment it purchases with that assistance. While section 319 applies to funds made available under the Urban Mass Transportation Act of 1964, as amended, UMTA intends to extend the coverage of the proposed regulation to purchases of revenue-producing rolling stock with funds available under 23 U.S.C. 103(e)(4) and section 14 of the National Capital Transportation Act of 1969, as amended (Stark-Harris legislation; Pub. L. 96-184). UMTA does this under the general authority available to the Secretary provided in the UMT Act and under the other two laws. UMTA believes that this consistency in approach will enhance the Federal oversight of the transit program.

The audits required by section 319 are in function as a double check for compliance with existing requirements. While Congress made it clear that a certification from a manufacturer would not meet the requirements of section 319, language in the bill's conference report also provides that "[i]t is the intent of the Conferees that any paperwork requirements imposed by this provision will not create a significant cost burden." (House Report 100-27, p. 231.) In an effort to limit the cost burden on grantees, the proposed regulation would allow the use of certifications by the grantee with independent support documentation wherever possible. These certifications would be similar to other self-certifications UMTA currently uses under the section 9 program, and would be maintained as part of a grantee's files and subject to UMTA verification during the triennial review process or other UMTA audit or grant oversight review.

Consistent with the provision's legislative history, the proposed regulation's application is limited to rolling stock which carries passengers in revenue service (House Report 99-665, p. 74). The proposed regulation would affect the procurement of transit vehicles generally considered to be revenue rolling stock, including buses, vans, cars, railcars, locomotives, trolley cars and buses, ferry boats, and vehicles for fixed guideways and incline planes. The proposed regulation would not affect the procurement of vehicles used for maintenance purposes, or other rolling stock which does not carry passengers in revenue service. UMTA recognizes that cars and vans are certified for safety by the manufacturer and that such certification is routinely accepted for other government purposes. UMTA requests comment on whether cars and vans should be treated differently than other rolling stock for purposes of safety certification.

C. Section-By-Section Analysis

The proposed regulation is divided into three subparts. Subpart A sets out general information on the audit requirements. Subpart B describes the pre-award audit and Subpart C describes the post-delivery audit.

Subpart A has general information about the audit requirements. Sections 663.1 and 663.3 set out the purpose and scope of the regulation. Section 663.5 defines the terms used in the regulation, including "revenue service" and "rolling stock". Section 663.7 sets out the pre-award and post-delivery requirement of section 319 of the Surface Transportation and Uniform Relocation Assistance Act of 1987. Section 663.9 reflects the language of section 319 of the Act and lists the three components of the required audits. The audits are to verify compliance with (1) applicable Federal safety requirements, (2) Buy America requirements, and (3) bid specifications. This section also states that these audits are separate from the single annual audit required by the Office of Management and Budget. In order to be consistent with the law, the proposed regulation uses the term "audit" to refer to the reviews mandated by the law. However, UMTA does not intend that the standards used for financial audits should be used on audits under this proposed regulation. Section 663.11 reflects UMTA's position that the costs of testing and auditing a rolling stock purchase are eligible costs of an UMTA grant. Section 663.13 provides that this regulation does not change the compliance or verification of compliance provisions of the Buy America regulation in 49 CFR Part 661, but is in addition to them.

Subpart B sets out the specifics of the pre-award audits. Section 663.21 specifies that a pre-award audit must be complete before a recipient enters into a formal contract to purchase the rolling stock.

Section 663.23 explains that a pre-award audit consists of a report with three separate certifications regarding each of the three items listed in section 319: A safety certification, a Buy America certification, and a purchaser's requirements certification.

Section 663.25 describes the safety certification. The safety certification must be made by a person who is not an agent or employee of the manufacturer and it must state that the rolling stock the recipient is purchasing has been tested by an independent laboratory and found to comply with all applicable Federal motor vehicle safety standards. In some cases, the National Highway Traffic Safety Administration (NHTSA) may have tested a vehicle for compliance. If this is so, a certification from NHTSA may be substituted for that of the independent laboratory. UMTA recognizes that not all rolling stock which would be audited under this part is subject to the Federal motor vehicle safety standards and the regulation provides for certification of non-applicability. In order to avoid duplication of effort, this section also provides that a laboratory or NHTSA may reissue a safety certification it issued for one recipient if another recipient is purchasing the same rolling stock. It was of particular concern to Congress that transit agencies be able to share this information. (House Report 99-665, p. 74.) This provision attempts to address that concern.

Section 663.27 describes the pre-award Buy America certification. The pre-award Buy America certification must be made by a person who is not an agent or employee of the manufacturer and it must state that there is a letter from UMTA which determines that the rolling stock to be purchased has received a waiver under the Buy America requirements or that the person making the certification is satisfied that the rolling stock to be purchased meets the Buy America requirements of 49 CFR Part 661. Before a person can make this certification, the person must have reviewed documentation provided by the manufacturer as to the cost of the components and subcomponents of the rolling stock, their country of origin and the location of final assembly and the activities that will take place at that location. UMTA anticipates that the review required by this section will be performed by an independent contractor in most instances since the information that must be reviewed is generally considered proprietary. However, a recipient may perform the review required by this section if the manufacturer will provide the recipient with the information necessary.

Section 663.29 describes the pre-award purchaser's requirements certification. The pre-award purchaser's requirements certification must be made by a person who is not an agent or employee of the manufacturer and it must state that the rolling stock to be purchased meets the purchaser's requirements as set out in the bid specifications or request for proposals.

Subpart C sets out the specifics of a post-delivery audit. Section 663.31 specifies the time period for the post-delivery audit. This post-delivery audit is in addition to the in-plant inspections which are done throughout the manufacturing process.

Section 663.33 describes the post-delivery audit, which consists of a post-delivery Buy America certification and a post-delivery purchaser's requirements certification. The regulation does not require a post-delivery safety certification because the pre-award safety certification is based on documentation regarding the particular model purchased. However, the post-delivery purchaser's requirements certification must be based on visual inspection and operational testing of the rolling stock. It is UMTA's position that the pre-award audit of safety standards combined with the purchaser's visual inspection and operational testing should adequately ensure compliance with Federal motor vehicle safety requirements.

Section 663.35 describes the post-delivery Buy America certification. The post-delivery Buy America certification must be made by a person who is not an agent or employee of the manufacturer and, like the pre-award Buy America certification, must state that there is a letter from UMTA which determines that the rolling stock to be purchased has received a waiver under the Buy America requirements or that the person making the certification is satisfied that the rolling stock to be purchased meets the Buy America requirements of 49 CFR Part 661. Before a person can make this certification, the person must have reviewed documentation provided by the manufacturer as to the cost of the components and subcomponents of the rolling stock, their country of origin and the location of final assembly and the activities that took place at that location.

Section 663.37 describes the post-delivery purchaser's requirements certification. The post-delivery purchaser's requirements certification must be made by a person who is not an agent or employee of the manufacturer and it must state that the rolling stock received has been visually inspected and operationally tested and determined to meet the terms of the contract. Visual inspection would include verifying design features and could even include looking at the label on the seats to see if they are marked with their country of origin and that the country of origin matches the documentation supplied for the post-delivery Buy America certification. Operational inspection would include making sure the various systems and ancillary equipment all work at the time of delivery.

Section 663.39 prohibits the recipient from finally accepting the rolling stock if it cannot certify that the rolling stock meets applicable Buy America requirements. The section also states that the recipient does not have to accept the rolling stock if the recipient cannot certify that the rolling stock meets the terms of the contract.

D. Request for Comments

Accordingly, this notice of proposed rulemaking seeks comment on this proposed regulation requiring pre-award and post-delivery audits of rolling stock purchases. Because Congress was concerned that this regulation not impose a significant cost burden, UMTA particularly seeks comment on the anticipated cost of compliance with the proposed regulation, as published today.

Commenters wishing acknowledgement of their comments should include a self-addressed, stamped postcard with their comments. The Docket Clerk will stamp the card with the date and time the comments are received and return the card to the commenter.

II. Regulatory Impacts

A. Executive Order 12291

This action has been reviewed under Executive Order 12291, and it has been determined that it is not a major rule. It will not result in an annual effect on the economy of $100 million or more.

B. Regulatory Evaluation

This regulation is not significant under the Department's Regulatory Policies and Procedures. UMTA has prepared a preliminary regulatory evaluation in support of this rulemaking. This preliminary regulatory evaluation is on file as part of the docket to this rulemaking. A final regulatory evaluation will be prepared before this proposed rule becomes final.

C. Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Pub. L. 96-354, UMTA certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Act.

D. Paperwork Reduction Act

The collection of information requirements in this rule are subject to the Paperwork Reduction Act, Pub. L. 96-511, 44 U.S.C. Chapter 35. Section 319 of the Surface Transportation and Uniform Relocation Assistance Act specifically requires a grantee to perform pre-award and post-delivery audits. These required audits are reflected in this rule and are being submitted to the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB) for approval.

E. Federalism—Executive Order 12612

UMTA has reviewed this proposed rule in light of the Federalism considerations set forth in Executive Order 12612. Although this rule would have definite Federalism implications because it would impose additional requirements on States, local governments, and public transit operators receiving Federal financial assistance from UMTA, this rulemaking is required by statute. UMTA considered the Federalism implications of this rulemaking in formulating this proposal, and has designed it to provide recipients with as much flexibility as possible under the law. UMTA does not expect that this proposed rule will have a substantial direct effect on the relationship between the Federal Government and the States or the distribution of power and responsibilities among the various levels of government. In addition, UMTA has considered the Federalism implications of this rulemaking on public transit operators which are quasi-governmental or instrumentalities of States and local governments, and UMTA does not expect that this proposed rule will have a substantial direct effect on the relationship between those public operators and the governmental entities with which they are associated. Accordingly, UMTA has determined that the preparation of a Federalism Assessment under Executive Order 12612 is not warranted.

List of Subjects in 49 CFR Part 663

Government contracts, Grant programs—transportation, Mass transportation.

III. New 49 CFR Part 663

Accordingly, for the reasons described in the preamble, 49 CFR Chapter VI would be amended by adding new Part 663 to read as follows:

PART 663—PRE-AWARD AND POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES

Subpart A—General

Sec.
663.1 Purpose.
663.3 Scope.
663.5 Definitions.
663.7 Audit requirement.
663.9 Audit limitations.
663.11 Audit financing.
663.13 Buy America Requirements.

Subpart B—Pre-award Audits

663.21 Pre-award audit requirement.
663.23 Description of pre-award audit.
663.25 Safety Certification.
663.27 Pre-award Buy America Certification.
663.29 Pre-award Purchaser's Requirements Certification.

Subpart C—Post-delivery Audits

663.31 Post-delivery audit requirement.
663.33 Description of post-delivery audit.
663.35 Post-delivery Buy America Certification.
663.37 Post-delivery Purchaser's Requirements Certification.
663.39 Post-delivery audit review.

Authority: Sec. 319, Pub. L. 100-17 (49 U.S.C. 1609(j)); 23 U.S.C. 103(e)(4); Sec. 14 of the National Capital Transportation Act of 1969, as amended; 49 CFR 1.51.

Subpart A—General

§ 663.1 Purpose.

This Part implements section 12(j) of the Urban Mass Transportation Act of 1964, as amended, which was added by section 319 of the Surface Transportation and Uniform Relocation Assistance Act (Pub. L. 100-17). Section 12(j) requires the Urban Mass Transportation Administration, by delegation from the Secretary of Transportation, to issue regulations requiring pre-award and post-delivery audits when a recipient of Federal financial assistance purchases rolling stock with funds made available under the Urban Mass Transportation Act of 1964, as amended.

§ 663.3 Scope.

This Part applies to a recipient purchasing rolling stock to carry passengers in revenue service with funds from the UMTA under the Urban Mass Transportation Act of 1964, as amended; 23 U.S.C. 103(e)(4); and section 14 of the National Capital Transportation Act of 1969, as amended.

§ 663.5 Definitions.

As used in this Part—

(a) "Pre-award" means the time period in the procurement process after a supplier is selected but before the recipient enters into a formal contract with the supplier.

(b) "Post-delivery" means the time period in the procurement process from when the rolling stock is delivered to the recipient until title to the rolling stock is transferred to the recipient or the rolling stock is put into revenue service, whichever is first.

(c) "Recipient" means a person who receives Federal financial assistance from UMTA, including a person who receives Federal financial assistance from UMTA through a State or other public body.

(d) "Revenue service" means operation of rolling stock for the transportation of passengers as anticipated by the recipient.

(e) "Rolling stock" means buses, vans, cars, railcars, locomotives, trolley cars and buses, ferry boats, and vehicles used for guideways and incline planes.

(f) "UMTA" means the Urban Mass Transportation Administration.

§ 663.7 Audit requirement.

A recipient purchasing revenue service rolling stock with UMTA funds must conduct, or cause to be conducted, pre-award and post-delivery audits as prescribed in this Part.

§ 663.9 Audit limitations.

(a) An audit conducted under this Part is limited to verifying compliance with:

(1) Applicable Federal motor vehicle safety requirements;

(2) Applicable Buy America requirements (section 165 of the Surface Transportation Assistance Act of 1982, as amended,); and

(3) Bid specification requirements of the recipient.

(b) An audit conducted under this Part is separate from the single annual audit requirement established by Office of Management and Budget Circular A-128, "Audits of State and Local Governments," dated May 16, 1985.

§ 663.11 Audit financing.

A recipient purchasing revenue service rolling stock with UMTA funds may charge the cost of activities required by this Part to the grant which UMTA made for the purchase.

§ 663.13 Buy America requirements.

A Buy America certification under this Part is in addition to any certification which may be required by Part 661 of this title. Nothing in this Part precludes UMTA from conducting a Buy America investigation under Part 661 of this title.

Subpart B—Pre-award Audits

§ 663.21 Pre-award audit requirement.

A recipient purchasing revenue service rolling stock with UMTA funds must ensure that a pre-award audit under this Part is complete before the recipient enters into a formal contract for the purchase.

§ 663.23 Description of pre-award audit.

A pre-award audit under this Part is a report which contains—

(a) A safety certification as described in § 663.25 of this Part;

(b) A Buy America certification as described in § 663.27 of this Part; and

(c) A purchaser's requirements certification as described in § 663.29 of this Part.

§ 663.25 Safety certification.

(a) For purposes of this Part, a safety certification is a certification from a person, except an employee or agent of the manufacturer, that—

(1) There is documentation from a source other than the manufacturer that the rolling stock to be purchased has been tested and found to comply with all applicable Federal motor vehicle safety standards as issued by the National Highway Traffic Safety Administration in Part 571 of this title; or

(2) The rolling stock to be purchased is not subject to the Federal motor vehicle standards issued by the National Highway Traffic Safety Administration in Part 571 of this title.

(b) For purposes of a safety certification under this Part, an independent laboratory or the National Highway Traffic Safety Administration may reissue a report as to whether a vehicle the laboratory has tested meets the Federal motor vehicle safety standards, if it certifies that to the best of its knowledge neither the standards nor the vehicle have been changed since the vehicle was tested.

§ 663.27 Pre-award Buy America Certification.

For purposes of this Part, a pre-award Buy America certification is a certification from any person, except an employee or agent of the manufacturer, that—

(a) There is a letter from UMTA which grants a waiver to the rolling stock to be purchased from the Buy America requirements under section 165 (b)(1), (b)(2), or (b)(4) of the Surface Transportation Assistance Act of 1982, as amended; or

(b) The person is satisfied that the rolling stock to be purchased meets the requirements of section 165(a) of the Surface Transportation Assistance Act of 1982, as amended, after having reviewed documentation provided by the manufacturer which lists—

(1) Component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and cost; and

(2) The location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

§ 663.29 Pre-award purchaser's requirements certification.

For purposes of this Part, a pre-award purchaser's requirements certification is a certification from a person, except an employee or agent of the manufacturer, that the rolling stock the recipient is agreeing to purchase is the same item set out in the purchaser's bid specification or request for proposal.

Subpart C—Post-delivery Audits

§ 663.31 Post-delivery audit requirement.

A recipient purchasing revenue service rolling stock with UMTA funds must ensure that a post-delivery audit under this Part is complete before title to the rolling stock is transferred to the recipient or before the rolling stock is introduced into revenue service.

§ 663.33 Description of post-delivery audit.

A post-delivery audit under this Part is a report which contains—

(a) A post-delivery Buy America certification as described in § 663.35 of this Part; and

(b) A post-delivery Purchaser's requirements certification as described in § 663.37 of this Part.

§ 663.35 Post-delivery Buy America certification.

For purposes of this Part, a post-delivery Buy America certification is a certification from any person, except an employee or agent of the manufacturer, that—

(a) There is a letter from UMTA which grants a waiver to the rolling stock received from the Buy America requirements under sections 165 (b)(1), (b)(2), or (b)(4) of the Surface Transportation Assistance Act of 1982, as amended; or

(b) The person is satisfied that the rolling stock received meets the requirements of section 165(a) of the Surface Transportation Assistance Act of 1982, as amended, after having reviewed documentation provided by the manufacturer which lists—

(1) Component and subcomponent parts of the rolling stock identified by manufacturer of the parts, their country of origin and cost; and

(2) The actual location of the final assembly point for the rolling stock, including a description of the activities which took place at the final assembly point and the cost of final assembly.

§ 663.37 Post-delivery purchaser's requirements certification.

For purposes of this Part, a post-delivery purchaser's requirements certification is a certification from a person, except an employee or agent of the manufacturer, that the rolling stock received has been visually inspected and operationally tested and determined to meet the terms of the contract.

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§ 663.39 Post-delivery audit review.

(a) If a recipient cannot complete a post-delivery audit because it cannot certify that the rolling stock is exempt from or complies with the Buy America requirements, the recipient may not finally accept the vehicle.

(b) If a recipient cannot complete a post-delivery audit because it cannot certify that the rolling stock meets the terms of the contract, the recipient is not required to finally accept the rolling stock and may exercise any legal rights under the contract.

Issued on October 13, 1988.

Alfred A. Delli Bovi,

Administrator.

[FR Doc. 88-24000 Filed 10-17-88; 8:45 am]

BILLING CODE 4910-57-M

federal register

Tuesday
October 18, 1988

Part VI

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

October 1, 1988.

This report is submitted in fulfillment of the requirements of section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of October 1, 1988 of 10 deferrals contained in the first special message of FY 1989. There have been no rescissions proposed. This message was transmitted to the Congress of September 30, 1988.

Rescissions (Table A and Attachment A)

As of October 1, 1988, there was no rescission proposals pending before the Congress.

Deferrals (Table B and Attachment B)

As of October 1, 1988, $2,018.2 million in budget authority was being deferred from obligation. Attachment B shows the history and status of each deferral reported during FY 1989.

Information From Special Messages

The special message containing information on the deferrals covered by this cumulative report is printed in the **Federal Register** listed below: [1]

James C. Miller III,
Director.

BILLING CODE 3110-01-M

[1] Not available at the time of signature.

TABLE A

STATUS OF 1989 RESCISSIONS

	Amount (In millions of dollars)
Rescissions proposed by the President	0
Accepted by the Congress	0
Rejected by the Congress	0
Pending before the Congress	0

****

TABLE B

STATUS OF 1989 DEFERRALS

	Amount (In millions of dollars)
Deferrals proposed by the President	2,024.2
Routine Executive releases through October 1, 1988 (OMB/Agency releases of $6.0 million and cumulative adjustments of $0)	-6.0
Overturned by the Congress	0
Currently before the Congress	2,018.2

Attachments

Attachment A - Status of Rescissions - Fiscal Year 1989

As of October 1, 1988 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
NONE								

Attachment B - Status of Deferrals - Fiscal Year 1989

As of October 1, 1988 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 10-1-88
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance Economic support fund	D89-1	592,760		09-30-88					592,760
Special Assistance for Central America Promotion of stability and security in Central America	D89-2	1,000		09-30-88					1,000
DEPARTMENT OF AGRICULTURE									
Forest Service Expenses, brush disposal	D89-3	144,649		09-30-88					144,649
Cooperative work	D89-4	335,263		09-30-88					335,263
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations Wildlife conservation, Defense	D89-5	1,212		09-30-88					1,212
DEPARTMENT OF ENERGY									
Power Marketing Administration Southwestern Power Administration, Operation and maintenance	D89-6	2,800		09-30-88					2,800
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Social Security Administration Limitation on administrative expenses (construction)	D89-7	6,745		09-30-88					6,745
DEPARTMENT OF JUSTICE									
Office of Justice Programs Crime victims fund	D89-8	90,000		09-30-88					90,000

Attachment B - Status of Deferrals - Fiscal Year 1989

As of October 1, 1988 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 10-1-88
DEPARTMENT OF STATE									
Bureau for Refugee Programs United States emergency refugee and migration assistance fund, executive.....	D89-9	26,135		09-30-88	6,001				20,134
DEPARTMENT OF TRANSPORTATION									
Federal Aviation Administration Facilities and equipment (Airport and airway trust fund).....	D89-10	823,608		09-30-88					823,608
TOTAL, DEFERRALS.....		2,024,171	0		6,001	0		0	2,018,171

[FR Doc. 88-24081 Filed 10-17-88; 8:45 am]
BILLING CODE 3110-01-C

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Part VII

The President

Proclamation 5882—National Forest Products Week, 1988

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Presidential Documents

Title 3—

The President

Proclamation 5882 of October 14, 1988

National Forest Products Week, 1988

By the President of the United States of America

A Proclamation

Our observance of National Forest Products Week reminds us that, in one way or another, forest resources affect all of us, city and country dwellers alike. Forests supply many material needs, from lumber for homes to paper products to the baseball bats of our national pastime. And, whether in national and city parks or in local woods, forests enhance our physical and spiritual well-being with their scenic vistas and recreational opportunities.

Forestry and agriculture have been vital to our economic life from the start. Today, we are seeking to expand our market for forest products. We have the technological and resource capabilities to boost our competitiveness in exporting forest products. Our active competition in the international marketplace will foster a more robust economy and healthier and more productive forests. We continue to develop new resource management practices and to foster innovations in forest products. We can provide these and other products for ourselves and the people of the world; we will succeed as long as we continue to understand the great importance of our forests and the need to nurture them.

To promote greater awareness and appreciation of the many benefits of forests for our Nation, the Congress, by Public Law 86–753 (36 U.S.C. 163), has designated the week beginning on the third Sunday in October of each year as "National Forest Products Week" and authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of October 16 through October 22, 1988, as National Forest Products Week, and I call upon all Americans to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of October, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-24218
Filed 10-17-88; 11:01 am]
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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

S.J. Res. 364/Pub. L. 100-484

To designate the week of October 2 through October 8, 1988, as "National Paralysis Awareness Week." (Oct. 13, 1988; 102 Stat. 2342; 1 page) Price: $1.00

H.R. 1720/Pub. L. 100-485

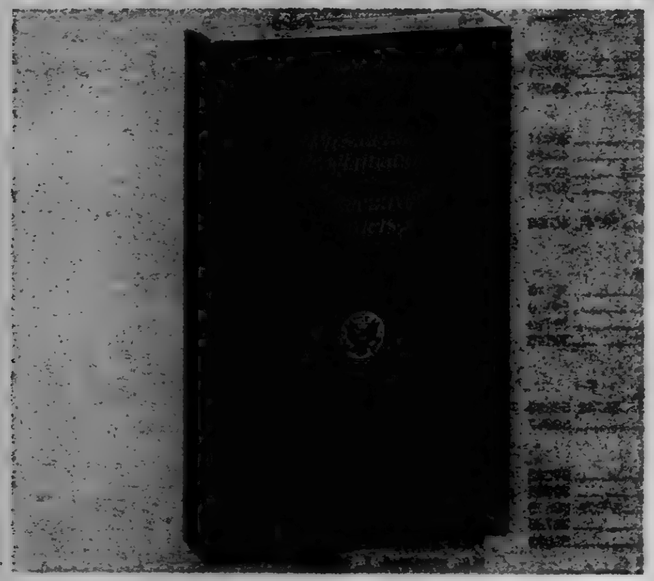
Family Support Act of 1988 (Oct. 13, 1988; 102 Stat. 2343; 86 pages) Price: $2.50

S. 1165/Pub. L. 100-486

To authorize the Secretary of the Interior to provide for the development and operation of a visitor and environmental education center in the Pinelands National Reserve, in the State of New Jersey. (Oct. 13, 1988; 102 Stat. 2429; 2 pages) Price: $1.00

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 88-159]

Mediterranean Fruit Fly; Addition to the Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mediterranean fruit fly regulations by adding an additional portion of Los Angeles County in California to the list of quarantined areas. This action is necessary on an emergency basis to prevent the spread of the Mediterranean fruit fly into noninfested areas of the United States.

DATES: Interim rule effective October 14, 1988. Consideration will be given only to comments postmarked or received on or before December 19, 1988.

ADDRESSES: Send an original and three copies of written comments to Regulatory Analysis and Development, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 88-159. Comments received may be inspected at USDA, Room 1141, South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Eddie Elder, Chief Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, Room 661, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6365.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables, especially citrus fruits. The Mediterranean fruit fly can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

A document published in the Federal Register on August 8, 1988, (53 FR 29633-29639, Docket Number 88-127) established the Mediterranean fruit fly regulations (7 CFR 301.78 *et seq.*; referred to below as the regulations). The regulations impose restrictions on the interstate movement of regulated articles from quarantined areas in order to prevent the spread of the Mediterranean fruit fly to noninfested areas.

The regulations, among other things, designated portions of Los Angeles County in California as a quarantined area. This area remains infested with Mediterranean fruit fly.

Recent trapping surveys by inspectors of California state and county agencies and by inspectors of Plant Protection and Quarantine, a unit within the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, reveal that another portion of Los Angeles County, California, is also infested with the Mediterranean fruit fly.

Specifically, inspectors collected more than 40 adult Mediterranean fruit flies near Culver City, California, during the period of September 28 to October 3, 1988. During this period, inspectors also found 36 Mediterranean fruit fly larvae infesting fruit in the same area.

The regulations in § 301.78-3 provide that the Administrator of the Animal and Plant Health Inspection Service shall list as a quarantined area each state, or each portion of a state, in which the Mediterranean fruit fly has been found by an inspector, in which the Administrator has reason to believe the Mediterranean fruit fly is present, or that the Administrator considers necessary to regulate because of its proximity to the Mediterranean fruit fly or its inseparability for quarantine enforcement purposes from localities where Mediterranean fruit fly has been found.

In accordance with these criteria, we are designating as a quarantined area the following area in Los Angeles County in California:

Los Angeles County

That portion of the county in the Culver City area bounded by a line beginning at the intersection of Sunset Boulevard and Interstate Highway 405; then southeast along Interstate Highway 405 to its intersection with Wilshire Boulevard; then southwest along Wilshire Boulevard to its intersection with Bundy Drive; then southeast along Bundy Drive to its intersection with Centinella Avenue; then southeast along Centinella Avenue to its intersection with Jefferson Boulevard; then northeast along Jefferson Boulevard to its intersection with Centinella Avenue; then southeast along Centinella Avenue to its intersection with Florence Avenue; then east along Florence Avenue to its intersection with Vermont Avenue; then north along Vermont Avenue to its intersection with U.S. Highway 101; then northwest along U.S. Highway 101 to its intersection with Hollywood Boulevard; then west along Hollywood Boulevard to its intersection with Laurel Canyon Boulevard; then south along Laurel Canyon Boulevard to its intersection with Sunset Boulevard; then southwest along Sunset Boulevard to the point of beginning.

There does not appear to be any reason to designate other quarantined areas in California other than the area specified above. California has adopted and is enforcing regulations imposing restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed on the interstate movement of regulated articles under this subpart.

Emergency Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that an emergency situation exists, which warrants publication of this interim rule without prior opportunity for public comment. Because the Mediterranean fruit fly could be spread to noninfested areas of the United States, it is necessary to act immediately to prevent its spread.

Since prior notice and other public procedures with respect to this rule are impracticable and contrary to the public interest under these emergency conditions, there is good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments postmarked or received within 60 days

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of publication of this rule in the Federal Register. Any amendments we make to this rule as a result of these comments will be published in the Federal Register following the close of the comment period.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This regulation affects the interstate movement of regulated articles from a portion of Los Angeles County, California. It appears that there is very little commercial activity that may be affected by this rule in the quarantined area. The small entities that may be affected by this regulation appear to consist of approximately 65 nurseries, 50 open fruit stands, 5 community gardens, 10 regularly scheduled swap meets (flea markets), 10 caterers who send lunch "chuckwagons" to job sites in the quarantined area, 200 mobile vendors, 7 wholesale distributors, and 20 dooryard fruit producers (producers who contract residentially-produced fruit for commercial sale).

It appears that most of these small entities sell regulated articles primarily for local intrastaste, not interstate, markets. Also, a number of these small entities sell other items in addition to the regulated articles so that the effect, if any, of this regulation on these entities will be minimal.

Further, the conditions in the Mediterranean fruit fly regulations and the treatments in the Plant Protection and Quarantine Treatment Manual, incorporated by reference in the regulations, allow interstate movement of most articles without significant added costs.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations in this subpart contain an information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation, Mediterranean fruit fly, Incorporation by reference.

Accordingly, 7 CFR Part 301 is amended to read as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for 7 CFR Part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 301.78–3(c), the designation of the quarantined areas in Los Angeles County, California, is amended by adding a new paragraph as follows:

§ 301.78–3 Quarantined areas.

* * * * *

(c) * * *

California

Los Angeles County

* * * * *

That portion of the county in the Culver City area bounded by a line beginning at the intersection of Santa Monica Boulevard and Interstate Highway 405; then southeast along Interstate Highway 405 to its intersection with Wilshire Boulevard; then southwest along Wilshire Boulevard to its intersection with Bundy Drive; then southeast along Bundy Drive to its intersection with Centinella Avenue; then southeast along Centinella Avenue to its intersection with Jefferson Boulevard; then northeast along Jefferson Boulevard to its intersection with Centinella Avenue; then southeast along Centinella Avenue to its intersection with Florence Avenue; then east along Florence Avenue to its intersection with Vermont Avenue; then north along Vermont Avenue to its intersection with U.S. Highway 101; then northwest along U.S. Highway 101 to its intersection with Hollywood Boulevard; then west along Hollywood Boulevard to its intersection with Laurel Canyon Boulevard; then south along Laurel Canyon Boulevard to its intersection with Sunset Boulevard; then southwest along Sunset Boulevard to the point of beginning.

* * * * *

Done at Washington, DC, this 14th day of October, 1988.

Billy G. Johnson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–24189 Filed 10–18–88; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 212

[INS Number: 1102–88]

Documentary Requirements; Nonimmigrants; Waivers; Admission of Certain Inadmissible Aliens; Parole

AGENCY: Immigration and Naturalization Service (INS), Justice.

ACTION: Final rule.

SUMMARY: This rule expands the coverage of the waiver of inadmissibility of mentally retarded aliens seeking entry as nonimmigrants. Presently, a blanket waiver is provided in the case of Canadian nationals and alien residents of Canada having a common nationality with Canadians. Based on experience in administering the present limited Canadian waiver, it is the Service's view that the same blanket waiver should be made available to all nationalities. This rule will facilitate travel of mentally retarded individuals and their families.

EFFECTIVE DATE: October 19, 1988.

FOR FURTHER INFORMATION CONTACT: Janice B. Podolny, Associate General Counsel, Room 7048, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone: (202) 633–1250.

SUPPLEMENTARY INFORMATION: The Immigration and Naturalization Service published a notice of proposed rulemaking on February 5, 1988 to provide a blanket waiver of inadmissibility for mentally retarded aliens seeking admission as nonimmigrants, if accompanied by a family member or guardian who would be responsible for the individual. The proposed rule was published at 53 FR 3403, with a 60 day comment period which closed on April 5, 1988. One comment was received by the Service. The commenter requested that INS broaden the definition of guardian to mean someone who has authority or control over the person for a limited duration of time, such as school administrator leading his or her students on a trip to the United States, rather than limiting it to a permanent legal guardian, whose guardianship authority must be established by a court or other legal authority. The plain language in the rule makes it clear that the guardian need only be responsible for the alien during the period of admission authorized. Thus the commenter's example of a school administrator escorting students on a trip to the United States would satisfy the rule's requirement that the alien be accompanied by a guardian, assuming that the school administrator was responsible for the alien in question during the period of admission authorized. In addition, an amendment to the Act (section 7(a)) dated November 14, 1986, Pub. L. 99–653, 100 Stat. 3655, repealed section 212(a)(24); therefore, reference to section 212(a)(24) of the Act which appeared in the proposed rule was not included in the final rule.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant economic impact on a substantial number of small entities. This is not a major rule as defined in section 1(b) of E.O. 12991, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

List of Subjects in 8 CFR Part 212

Administrative practice and procedure, Aliens, Discretionary relief, Health.

Accordingly Title 8, of the Code of Federal Regulations is amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for Part 212 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1228, 1252.

2. Section 212.4 is amended by revising paragraph (e) as follows:

§ 212.4 Applications for the exercise of discretion under section 212(d)(3).

* * * * *

(e) *Inadmissibility under section 212(a)(1).* Pursuant to the authority contained in section 212(d)(3) of the Act, the temporary admission of a nonimmigrant visitor is authorized notwithstanding inadmissibility under section 212(a)(1) of the Act, if such alien is accompanied by a member of his/her family, or a guardian who will be responsible for him/her during the period of admission authorized.

* * * * *

Dated: July 18, 1988.

Richard E. Norton,

Associate Commissioner, Examinations.

[FR Doc. 88–24095 Filed 10–18–88; 8:45 am]

BILLING CODE 4410–10–M

FARM CREDIT ADMINISTRATION

12 CFR Part 618

General Provisions; Member Insurance; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published final regulations under Part 618, September 13, 1988 (53 FR 35303). The final regulations to Part 618 relate to the authority of Farm Credit Banks (excluding banks for cooperatives) and associations to sell credit-related forms of insurance to their members and borrowers, on an optional basis. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the Federal Register during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is October 13, 1988.

EFFECTIVE DATE: October 13, 1988.

FOR FURTHER INFORMATION:

Dennis Carpenter, Senior Credit Specialist, Financial Analysis and Standards Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4498

or

Joanne P. Ongman, Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4020, TDD (703) 883–444.

(12 U.S.C. 2252(a)(9) and (10))

Dated: October 14, 1988.

David A. Hill,

Secretary, Farm Credit Administration.

[FR Doc. 88–24193 Filed 10–18–88; 8:45 am]

BILLING CODE 6705–01–M

FEDERAL TRADE COMMISSION

16 CFR Part 2

Nonadjudicative Procedures

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Commission has approved two procedural amendments to Rule 2.51(a) of its Rules of Practice and Procedure. The rule governs requests to reopen and modify final orders. The first amendment provides that such requests must be supported by affidavit(s). Under section 5(b) of the FTC Act, 15 U.S.C. 45(b), requests to reopen must make a "satisfactory showing" of the basis for relief. The Commission has concluded that affidavits are required to support factual assertions made in requests filed under section 5(b). The second amendment provides that requests to reopen must contain at the time they are filed "[a]ll information and material that the requester wishes the Commission to consider." This change is intended to ensure that all the information filed in support of the request is available to the public during the public comment period, and that the entire 120-day statutory period is available for Commission consideration of all submitted materials relevant to the request.

EFFECTIVE DATE: The rule is effective October 19, 1988, and applies to requests to reopen and modify filed after that date.

FOR FURTHER INFORMATION CONTACT: Elliot Feinberg, Bureau of Competition, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580, (202) 326–2687.

SUPPLEMENTARY INFORMATION: The Commission has clarified the requirements of Rule 2.51(b) of its Rules of Practice regarding the filing of requests to reopen and modify final orders. Commission orders represent the final resolution of the Commission's law enforcement efforts. Before reopening and modifying such orders, the Commission wishes to ensure that requesters meet the tests of section 5(b) of the FTC Act and Commission Rule 2.51(b), which require a petitioner to make a "satisfactory showing" that reopening and modification are mandated by changed conditions or that reopening and modification are in the public interest. Requests to reopen orders must not only allege facts that, if true, would constitute the necessary showing, but must also credibly demonstrate that the factual assertions

are reliable. The amended rule therefore specifically requires that requesters provide one or more affidavits to support facts alleged in petitions to reopen and modify orders. This amendment will not only help the Commission in its decision making process but, by clarifying the applicable standard, aid requesters in presenting meritorious cases. In the past, the Commission required substantiation for material factual allegations contained in these petitions. This amendment specifies the procedural method for substantiating factual assertions.

The Commission further wishes to ensure that the entire 120-day statutory period within which the Commission must act (see 15 U.S.C. 5(b)) is available for consideration of all submitted materials relevant to the request. The Commission seeks also to assure that all submitted information is available to the public during the 30-day comment period applicable to petitions to reopen. See Rule 2.51(c). Therefore, the second amendment to Rule 2.51(b) provides that all the material that the requester wishes the Commission to consider must be contained in the request at the time of filing. This amendment will promote more knowledgeable and relevant public comments and thus increase their utility to the Commission. This amendment also reflects procedures contained in the Commission's July 1964 "Statement of Policy Concerning Supplementation of Requests to Reopen." Under that statement, which discusses in greater detail how the Commission views supplementation of requests to reopen, a requester wishing to supplement its request to reopen must generally withdraw the request and file a supplemented version, thus restarting the statutory 120-day time period.[1]

For these reasons, the Commission has amended Rule 2.51(b) of its Rules of Practice to require that requests to reopen and modify a final order be supported by affidavit(s) and to make clear that requests to reopen must be complete when filed.

List of Subjects in 16 CFR Part 2

Administrative practice and procedure, Requests to reopen.

16 CFR Part 2 is amended to read as follows:

PART 2—NONADJUDICATIVE PROCEDURES

1. The authority for Part 2 continues to read as follows:

Authority: Sec. 6, 38 Stat. 721 (15 U.S.C. 46).

2. Section 2.51(b) is revised to read as follows:

§ 2.51 Requests to reopen.

(a) * * *

(b) *Contents.* A request under this section shall contain a satisfactory showing that changed conditions of law or fact require the rule or order to be altered, modified or set aside, in whole or in part or that the public interest so requires. This requirement shall not be deemed satisfied if a request is merely conclusory or otherwise fails to set forth by affidavit(s) specific facts demonstrating in detail the nature of the changed conditions and the reasons why these changed conditions or the public interest require the requested modifications of the rule of order. Each affidavit shall set forth facts that would be admissible in evidence and shall show that the affiant is competent to testify to the matters stated therein. All information and material that the requester wishes the Commission to consider shall be contained in the request at the time of filing.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

Statement of Policy Concerning Supplementation of Requests To Reopen

The Federal Trade Commission is releasing this statement of policy to clarify for the legal and business communities the Commission's treatment of supplemental information provided to support requests filed pursuant to Rule 2.51 of the Commission's Rules of Practice for the purpose of modifying final orders to cease and desist. Section 5(b) of the Federal Trade Commission Act and Rule 2.51 require the Commission to act on requests to reopen within 120 days of the time of filing. Rule 2.51 further specifies that such requests must set forth specific facts demonstrating in detail the nature of any changed conditions alleged and the reasons why these changed conditions require the requested modifications.[2] Given the limited time for review and the need to evaluate fully the facts and arguments presented, the Commission generally will not accept or consider additional information to support a request to reopen supplied by the requester after the date of filing, unless the requester states in writing that the Commission should consider the request withdrawn and refiled as supplemented, thus restarting the statutory time period.

Additionally, the Commission would be deprived of the full benefits of public comments were it to accept and consider materials supplementing a request to reopen after comments on the original request had been filed. The Commission's purpose in seeking such comments, which is to aid it in making informed decisions, might be hindered to the extent persons commenting on a given request had not reviewed all of the facts and arguments on which the request is premised. Moreover, the absence of such facts and arguments from what is placed on the public record might affect even decisions on whether to comment. Therefore, when a pending request to reopen is supplemented, not only must the 120-day statutory period for the Commission's consideration of the request be restarted, but the entire refiled request, as supplemented, must be placed on the public record for comments as provided in Rule 2.51(c).[3]

The Commission recognizes that comments filed in response to requests to reopen may sometimes raise new issues which those requesting modification may want to address. Therefore, the Commission will consider replies by requesters that are limited in scope to issues raised by such comments, provided that any reply to comments on a given request is filed within ten days of the close of the comment period. However, if a reply exceeds the scope of the comments, the Commission will not consider the reply unless the requester states in writing that the Commission should consider the request withdrawn and refiled as supplemented by the reply. Moreover, the Commission will not reopen an order where an essential element of the "satisfactory showing" that modification is required (as described in Rule 2.51) was not contained in the original request, but only in a reply to comments on the original request. Therefore, unless the Commission requires otherwise

[1] The full text of the Commission's Statement is included as an appendix to this notice.

[2] While Section 5(b) of the Federal Trade Commission Act provides for requests to reopen solely on the basis that changed conditions of law or fact require that an order be modified, the section also provides that the Commission may modify orders on its own motion if, in the opinion of the Commission, the public interest so requires. Thus, Rule 2.51 invites respondents requesting reopening to address public interest considerations that may favor reopening as well. As with requests premised on changed conditions, such requests must demonstrate in detail the reasons why the public interest may require the desired modifications.

[3] Rule 2.51(c) recognizes that the Commission's interest in receiving public comments is subject to the rights of requesters, pursuant to the Federal Trade Commission Act, to maintain the confidentiality of trade secrets and financial or commercial information that is privileged or [illegible].

when a pending request to reopen is supplemented, not only must the 120 day statutory period for the Commission's consideration be restarted, but the entire refiled request, as supplemented, will generally be placed on the public record for comments as provided in Rule 2.51(c).

This statement of policy does not preclude the Commission's staff from asking requesters to provide documents or other additional information in order to clarify the arguments and factual claims made in connection with the requests to reopen. The staff may, at any time, also seek from third parties information concerning such requests. The supplying of such information will not affect the Commission's obligation to decide a request within 120 days of the date it was filed. However, where supplemental information supplied by a Requester is necessary to show that changed conditions or the public interest require modification, refiling of the request will be necessary. Generally, supplemental information will require refiling when the Request does not address an issue necessary to finding that modification is required or when the information in the request is too conclusory to warrant modification of a final order. The determination whether supplemental information is essential to show that modification is required will depend on the facts of the particular case and necessarily must be decided on a case-by-case basis. Of course, requesters retain the right to have the Commission act on requests to reopen as originally filed, without consideration of any additional information.

In summary, except as provided above the Commission will not consider supplemental information provided after a request to reopen has been filed unless the requester, in writing, asks the Commission to consider the request withdrawn and refiled as of the time the supplemental information is submitted to the Commission.[4] In that case, the Commission will again place the request, including the supplementary materials, on the public record in accordance with Rule 2.51(c). The Commission will consider the original petition and supplementary materials, any additional public comments filed in response to the original petition as well as any comments filed in response to the amended request. The Commission will also consider, without requiring the refiling of a request, a reply by the requester made in response to any comments if it is filed within 10 days of the close of the comment period and if it does not exceed the scope of the comments.[5]

[FR Doc. 88-24106 Filed 10-18-88; 8:45 am]

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[4] In the event a requester should, during the 120-day period, decide to modify its request to reopen to seek only part of the relief originally requested, while rescinding other parts of the request, refiling of the request will not be necessary unless the Commission determines that it would be in the public interest to do so.

[5] This statement of policy is intended only to provide general guidance and information. When time, circumstances, or the public interest require, this statement may be amended or superseded by subsequent Commission action without prior notice. This statement is not a rule or regulation. It does not modify the scope or coverage of any provision of the Federal Trade Commission Act or the Commission's Rules of Practice.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket No. RM87-35-000]

Generic Determination of Rate of Return on Common Equity for Public Utilities

October 14, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of benchmark rate of return on common equity for public utilities.

SUMMARY: In accordance with § 37.5 of its regulations, the Federal Energy Regulatory Commission, by its designee, the Director of the Office of Economic Policy, issues the update to the "advisory" benchmark rate of return on common equity applicable to rate filings made during the period November 1988 through January 1989. This benchmark rate is set at 12.44 percent.

EFFECTIVE DATE: November 1, 1988.

FOR FURTHER INFORMATION CONTACT: Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, (202) 357-[illegible].

SUPPLEMENTARY INFORMATION:

Benchmark Rate of Return on Common Equity for Public Utilities

Issued October 14, 1988.

On January 27, 1988, the Federal Energy Regulatory Commission (Commission) issued a final rule which readopted the quarterly indexing procedure for establishing and updating the benchmark rate of return on common equity applicable to electric rate filings.[1] Based on this procedure, the Commission, by its designee, the Director of the Office of Economic Policy, determines that the benchmark rate of return on common equity applicable to rate filings made during the period November 1, 1988 through January 31, 1989, is 12.44 percent.

Section 37.9 of the Commission's regulations [2] requires that the quarterly benchmark rate of return be set equal to the average cost of common equity for the jurisdictional operations of public utilities. This average cost is based on the average of the median dividend yields for the two most recent calendar quarters for a sample of 99 utilities.[3] The average yield is used in the following formula with fixed adjustment factors (determined in the most recent annual proceeding) to determine the cost rate:

$k_t = 1.02\ Y_t + 4.36$

where k_t is the average cost of common equity and Y_t is the average dividend yield.

The attached appendix provides the supporting data for this update. The median dividend yields for the 99-company sample of utilities for the second an third quarters of 1988 are 7.91 and 7.92 percent, respectively. The average yield for those two quarters is 7.92 percent. Use of the average dividend yield in the above formula produces an average cost of common equity of 12.44 percent.

This notice supplements the generic rate of return rule announced in Order No. 489, issued January 29, 1988 and effective on February 1, 1988.

List of Subjects in 18 CFR Part 37

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Part 37, Chapter I, Title 18 of the *Code of Federal Regulations*, as set forth below, effective November 1, 1988.

Bernard W. Tenenbaum,

Acting Director, Office of Economic Policy.

[1] Generic Determination of Rate of Return on Common Equity for Public Utilities, Order No. 489, 53 FR 3342 (February 5, 1988), III FERC Stats. and Regs. 30,795 (January 29, 1988).

[2] 18 CFR 37.9 (1987).

[3] As a result of the acquisition of Savannah Electric and Power Company by the Southern Company, the Commission has reduced the number of companies in the sample for the most recent quarter to 99. It has made this change in accordance with the criteria for inclusion in the sample specified in 18 CFR 37.9(c) (1987).

PART 37—GENERIC DETERMINATION OF RATE OF RETURN ON COMMON EQUITY FOR PUBLIC UTILITIES

1. The authority citation for Part 37 continues to read as follows:

Authority: Federal Power Act, 16 U.S.C. 791a–825r (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982).

2. In § 37.9, paragraph (d) is revised to read as follows:

§ 37.9 Quarterly indexing procedure

* * * * *

(d) *Table of Quarterly Benchmark Rates of Return.*

The following table presents the quarterly benchmark rates of return on common equity:

Benchmark applicability period	Dividend increase adjustment factor	Expected growth adjustment factor	Current dividend yield	Cost of common equity	Benchmark rate of return
(t)	(a)	(b)	(Y_d)	(k_c)	
2/1/88–4/30/88	1.02	4.54	8.03	12.75	13.15
5/1/88–7/31/88	1.02	4.54	8.17	13.06	13.25
8/1/88–10/31/88	1.02	4.54	7.49	12.18	12.75
11/1/88–1/31/87	1.02	4.54	6.75	11.43	12.25
2/1/87–4/30/87	1.02	4.53	6.44	11.20	11.20
5/1/87–7/31/87	1.02	4.53	6.54	11.30	11.30
8/1/87–10/31/87	1.02	4.53	6.97	11.74	11.74
11/1/87–1/31/88	1.02	4.53	7.48	12.27	12.27
2/1/88–4/30/88	1.02	4.36	7.58	12.42	12.42
5/1/88–7/31/88	1.02	4.36	7.68	12.51	12.51
8/1/88–10/31/88	1.02	4.36	7.84	12.36	12.36
11/1/88–1/31/89	1.02	4.36	7.91	12.44	12.44

Note: The appendix will not be published in *Code of Federal Regulations*

Appendix

Exhibit No.	Title
1	Total sample of utilities.
II	Utilities excluded from the sample for the indicated quarter due to either zero dividends or a cut in dividends for this quarter or the prior three quarters.
3	Annualized dividend yields for the indicated quarter for utilities retained in the sample.

Source of data: Standard and Poor's Compustat Services, Inc., Utility COMPUSTAT II Quarterly Data Base.

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Exhibit 1

Sample of Utilities

Utility	Ticker Symbol	Industry Code	Utility	Ticker Symbol	Industry Code
ALLEGHENY POWER SYSTEM	AYP	4911	MIDDLE SOUTH UTILITIES	MSU	4911
AMERICAN ELECTRIC POWER	AEP	4911	MIDAMERI ENERGY CO	MME	4931
ATLANTIC ENERGY INC	ATE	4911	MINNESOTA POWER & LIGHT	MPL	4911
BALTIMORE GAS & ELECTRIC	BGE	4931	MONTANA POWER CO	MTP	4931
BLACK HILLS CORP	BKH	4911	NCCO ENTERPRISES INC	NPT	4911
BOSTON EDISON CO	BSE	4911	NEVADA POWER CO	NVP	4911
CAROLINA POWER & LIGHT	CPL	4911	NEW ENGLAND ELECTRIC SYST	NES	4911
CENTERIOR ENERGY CORP	CX	4911	NEW YORK STATE ELEC & GAS	NGE	4931
CENTRAL & SOUTH WEST CORP	CSR	4911	NIAGARA MOHAWK POWER	NMK	4931
CENTRAL HUDSON GAS & ELEC	CHN	4931	NIPSCO INDUSTRIES INC	NI	4931
CENTRAL ILL PUBLIC SERVIC	CIP	4931	NORTHEAST UTILITIES	NU	4911
CENTRAL LOUISIANA ELECTRI	CNL	4911	NORTHERN STATES POWER-MN	NSP	4931
CENTRAL MAINE POWER CO	CTP	4911	OHIO EDISON CO	OEC	4911
CENTRAL VERMONT PUB SERV	CV	4911	OKLAHOMA GAS & ELECTRIC	OGE	4911
CILCORP INC	CER	4931	ORANGE & ROCKLAND UTILITI	ORU	4931
CINCINNATI GAS & ELECTRIC	CIN	4931	PACIFIC GAS & ELECTRIC	PCG	4931
CMS ENERGY CORP	CMS	4931	PACIFICORP	PPW	4931
COMMONWEALTH EDISON	CWE	4911	PENNSYLVANIA POWER & LIGH	PPL	4911
COMMONWEALTH ENERGY SYSTE	CES	4931	PHILADELPHIA ELECTRIC CO	PE	4911
CONSOLIDATED EDISON OF NY	ED	4931	PINNACLE WEST CAPITAL COR	PNW	4911
DELMARVA POWER & LIGHT	DEW	4931	PORTLAND GENERAL CORP	PGN	4911
DETROIT EDISON CO	DTE	4911	POTOMAC ELECTRIC POWER	POM	4911
DOMINION RESOURCES INC-VA	D	4931	PSI HOLDINGS INC	PIN	4911
DPL INC	DPL	4931	PUBLIC SERVICE CO OF COLO	PSR	4931
DUKE POWER CO	DUK	4911	PUBLIC SERVICE CO OF N H	PNH	4911
DUQUESNE LIGHT CO	DQU	4911	PUBLIC SERVICE CO OF N ME	PNM	4931
EASTERN UTILITIES ASSOC	EUA	4911	PUBLIC SERVICE ENTERPRISE	PEG	4931
EMPIRE DISTRICT ELECTRIC	EDE	4911	PUGET SOUND POWER & LIGHT	PSD	4911
FITCHBURG GAS & ELEC LIGH	FGE	4931	ROCHESTER GAS & ELECTRIC	RGS	4931
FLORIDA PROGRESS CORP	FPC	4911	SAN DIEGO GAS & ELECTRIC	SDO	4931
FPL GROUP INC	FPL	4911	SCANA CORP	SCG	4931
GENERAL PUBLIC UTILITIES	GPU	4911	SCECORP	SCE	4911
GREEN MOUNTAIN POWER CORP	GMP	4911	SIERRA PACIFIC RESOURCES	SRP	4931
GULF STATES UTILITIES CO	GSU	4911	SOUTHERN CO	SO	4911
HAWAIIAN ELECTRIC INDS	HE	4911	SOUTHERN INDIANA GAS & EL	SIG	4911
HOUSTON INDUSTRIES INC	HOU	4911	ST JOSEPH LIGHT & POWER	SAJ	4911
I E INDUSTRIES INC	IEL	4931	TECO ENERGY INC	TE	4911
IDAHO POWER CO	IDA	4911	TEXAS UTILITIES CO	TXU	4911
ILLINOIS POWER CO	IPC	4931	THP ENTERPRISES INC	THP	4911
INTERSTATE POWER CO	IPW	4931	TUCSON ELECTRIC POWER CO	TEP	4911
IOWA RESOURCES INC	IOR	4911	UNION ELECTRIC CO	UEP	4911
IOWA-ILLINOIS GAS & ELEC	IWG	4931	UNITED ILLUMINATING CO	UIL	4911
IPALCO ENTERPRISES INC	IPL	4911	UNITIL CORP	UTL	4911
KANSAS CITY POWER & LIGHT	KLT	4911	UTAH POWER & LIGHT	UTP	4911
KANSAS GAS & ELECTRIC	KGE	4911	UTILICORP UNITED INC	UCU	4931
KANSAS POWER & LIGHT	KAN	4931	WASHINGTON WATER POWER	WWP	4931
KENTUCKY UTILITIES CO	KU	4911	WISCONSIN ENERGY CORP	WEC	4931
LONG ISLAND LIGHTING	LIL	4931	WISCONSIN PUBLIC SERVICE	WPS	4931
LOUISVILLE GAS & ELECTRIC	LOU	4931	WPL HOLDINGS INC	WPH	4931
MAINE PUBLIC SERVICE	MAP	4911			

N = 99

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Exhibit 2

Utilities Excluded from the Sample for the Indicated Quarter
Due to Either Zero Dividends or a Cut in the Dividends for
This Quarter or the Prior Three Quarters

---------- Year = 88 Quarter = 3 ----------

Ticker Symbol	Utility	Reason for Exclusion
CX	CENTERIOR ENERGY CORP	Dividend rate was reduced for the quarter CALENDAR 8802
CNN	CENTRAL HUDSON GAS & ELEC	Dividend rate was reduced for the quarter CALENDAR 8801
CNS	CNS ENERGY CORP	Dividend rate was zero for quarter CALENDAR 8803
GSU	GULF STATES UTILITIES CO	Dividend rate was zero for quarter CALENDAR 8803
LIL	LONG ISLAND LIGHTING	Dividend rate was zero for quarter CALENDAR 8803
NSU	NIAGARA MOHAWK UTILITIES	Dividend rate was zero for quarter CALENDAR 8803
NGE	NEW YORK STATE ELEC & GAS	Dividend rate was reduced for the quarter CALENDAR 8801
PCG	PACIFIC GAS & ELECTRIC	Dividend rate was reduced for the quarter CALENDAR 8803
PIN	PSI HOLDINGS INC	Dividend rate was zero for quarter CALENDAR 8803
PNM	PUBLIC SERVICE CO OF N M	Dividend rate was zero for quarter CALENDAR 8803
PNH	PUBLIC SERVICE CO OF N HE	Dividend rate was reduced for the quarter CALENDAR 8802

N = 11

Exhibit 3

Annualized Dividend Yields for the Indicated Quarter for
Utilities Retained in the Sample

---------- Year = 88 Quarter = 3 ----------

Ticker Symbol	Price, 1st Month of Qtr-High	Price, 1st Month of Qtr-Low	Price, 2nd Month of Qtr-High	Price, 2nd Month of Qtr-Low	Price, 3rd Month of Qtr-High	Price, 3rd Month of Qtr-Low	Average Price	Dividends Annual Rate	Annualized Dividend Yield
AEP	29.000	27.000	28.875	26.125	28.125	26.625	27.625	2.370	8.579
ATE	33.625	32.375	33.500	31.875	33.625	32.000	32.833	2.760	8.406
AYP	37.875	36.500	38.250	36.625	38.375	37.125	37.458	3.000	8.009
BGE	32.750	30.375	32.375	30.000	32.125	30.250	31.312	2.600	8.307
BKN	28.125	27.000	27.875	26.500	28.250	26.750	27.417	1.480	5.106
BSE	15.250	14.500	15.000	14.000	16.125	14.250	14.854	1.820	12.252
CER	34.250	31.625	32.875	31.000	32.875	31.125	32.292	2.480	7.682
CES	31.000	29.375	30.500	29.250	33.000	29.500	30.437	2.800	9.199
CIN	28.000	26.250	26.750	25.375	26.875	26.000	26.542	2.260	8.440
CIP	21.875	21.125	21.750	20.250	21.875	20.750	21.271	1.760	8.274
CNL	33.125	31.000	32.375	31.250	32.875	32.000	32.104	2.320	7.226
CPL	34.500	32.500	34.250	32.625	35.875	33.875	33.937	2.760	8.133
CSR	32.125	30.500	31.750	29.875	31.750	30.000	31.000	2.440	7.871
CTP	18.000	17.000	18.125	16.875	18.375	17.250	17.604	1.480	8.407
CV	25.500	23.625	25.250	23.625	25.250	24.000	24.542	1.980	8.068
CWE	30.125	26.750	30.125	28.125	31.125	29.750	29.333	3.040	10.227
D	43.750	41.375	43.000	41.375	43.875	41.750	42.521	3.080	7.244
DEW	18.625	17.000	17.625	16.875	17.500	16.750	17.396	1.460	8.393
DPL	26.750	25.500	26.750	24.500	26.500	24.875	25.812	2.160	8.368
DQU	15.500	14.875	15.500	15.000	15.875	15.250	15.333	1.080	7.026
DTE	14.625	13.000	15.125	14.000	15.500	14.375	14.437	1.680	11.634
DUK	46.250	44.250	46.000	42.625	45.750	42.875	44.625	2.960	6.633
ED	44.375	43.000	45.125	42.125	44.875	42.375	43.646	3.260	7.332
EDE	30.375	29.125	29.500	28.875	29.375	28.750	29.333	2.120	7.227
EUA	26.125	24.250	26.000	24.500	29.000	25.500	25.896	2.400	9.268
FGE	27.875	26.250	26.250	25.500	26.375	25.500	26.292	1.720	6.543
FPC	35.125	33.500	35.000	34.000	34.875	33.750	34.375	2.480	7.215
FPL	30.750	29.250	30.625	29.125	31.375	29.500	30.104	2.200	7.308
GNP	24.500	23.750	24.500	23.000	25.375	23.500	24.104	1.900	7.903
GPU	35.625	34.125	35.250	32.750	35.500	33.875	34.521	1.200	3.476
HE	30.625	28.125	28.875	28.000	29.250	28.375	28.875	1.920	6.649
HOU	31.875	30.500	32.125	28.625	29.875	28.500	30.250	2.960	9.785
IDA	22.500	20.500	22.125	20.250	22.625	21.000	21.500	1.800	8.372
IEL	23.375	22.625	23.875	22.500	24.375	23.000	23.292	2.020	8.673
IOR	17.250	15.500	16.875	15.750	18.000	16.125	16.583	1.660	10.010
IPC	19.500	18.250	19.000	18.000	20.375	18.375	18.917	2.640	13.956
IPL	23.375	22.875	23.875	22.375	23.250	21.875	22.937	1.640	7.150
IPW	21.875	20.875	21.875	20.375	22.250	21.250	21.417	1.960	9.152
IWG	37.750	35.875	36.875	35.250	38.875	36.125	36.792	3.100	8.423
KAN	25.125	23.750	24.625	23.250	23.875	22.750	23.896	1.720	7.198
KGE	19.750	18.500	20.125	18.125	20.125	18.750	19.229	1.480	7.697
KLT	29.500	27.875	30.000	28.625	30.250	28.500	29.125	2.440	8.378
KU	19.125	17.625	18.500	17.500	18.500	17.625	18.146	1.340	7.385
LOU	34.500	31.625	32.625	31.125	33.000	32.375	32.875	2.720	8.274

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Exhibit 3 (continued)

Annualized Dividend Yields for the Indicated Quarter for Utilities Retained in the Sample

Year = 88 Quarter = 3

Ticker Symbol	Price, 1st Month of Qtr-High	Price, 1st Month of Qtr-Low	Price, 2nd Month of Qtr-High	Price, 2nd Month of Qtr-Low	Price, 3rd Month of Qtr-High	Price, 3rd Month of Qtr-Low	Average Price	Dividends Annual Rate	Annualized Dividend Yield
AAP	31.375	30.625	37.250	30.875	37.125	35.375	33.771	2.660	7.899
AEL	25.000	23.375	25.000	23.750	24.875	23.875	24.312	1.720	7.075
AEP	34.750	33.250	34.750	33.875	36.500	34.375	34.583	2.680	7.749
AAE	19.500	18.250	19.375	17.875	19.625	19.000	18.937	1.560	8.238
AES	23.875	22.250	24.000	22.625	24.000	22.500	23.208	2.040	8.790
AT	11.875	10.500	11.500	10.875	12.125	11.125	11.333	0.600	5.294
AWK	15.375	13.250	13.750	12.875	14.125	13.500	13.812	1.200	8.688
AFT	19.250	18.625	18.500	17.875	18.125	17.750	18.354	1.500	8.173
BSP	31.375	30.000	31.750	30.125	32.875	31.000	31.187	2.120	6.798
BEL	20.000	18.625	19.625	18.250	20.625	18.625	19.292	1.760	9.123
BVP	21.250	19.500	20.875	19.000	20.875	19.500	20.167	1.520	7.537
CEC	19.000	17.750	18.875	17.875	18.750	17.875	18.354	1.960	10.679
CGE	32.250	29.875	31.500	29.875	32.875	31.000	31.229	2.280	7.301
CNU	31.250	29.250	30.125	28.500	30.625	29.500	29.875	2.260	7.565
PE	19.000	18.000	19.000	17.125	19.000	17.625	18.292	2.200	12.027
PEG	24.750	22.375	24.000	22.375	24.625	22.000	23.354	2.000	8.564
PGN	23.125	21.000	21.750	20.250	21.625	20.250	21.333	1.960	9.187
PNW	25.750	23.375	23.875	21.000	23.125	22.125	23.208	2.800	12.065
PSN	22.875	20.375	21.000	20.000	21.000	20.000	20.875	1.380	6.611
PPL	36.375	34.000	35.625	33.750	35.875	34.625	35.042	2.760	7.876
PPW	36.625	33.500	35.250	34.000	35.875	34.625	34.979	2.640	7.547
PSD	19.625	18.375	19.125	18.000	19.500	18.500	18.854	1.760	9.335
PSR	22.375	21.375	22.000	19.500	22.000	20.875	21.354	2.000	9.366
RGS	18.250	17.500	18.000	16.375	17.875	17.125	17.521	1.560	8.561
SAJ	22.250	21.250	22.750	21.000	22.750	21.000	21.833	1.400	6.412
SCE	32.875	30.750	32.750	31.250	33.625	31.500	32.125	2.480	7.720
SCG	32.625	30.250	31.375	29.750	31.125	29.750	30.812	2.400	7.789
SDO	34.500	32.750	35.500	33.500	36.000	33.500	34.292	2.600	7.582
SIG	30.125	28.500	29.250	26.500	27.625	26.500	28.083	1.700	6.053
SO	23.500	21.875	22.750	21.375	21.875	20.375	21.958	2.140	9.746
SRP	23.500	21.625	22.125	20.875	22.500	21.125	21.958	1.760	8.015
TE	23.875	22.125	23.375	21.750	23.875	22.875	22.979	1.420	6.180
TCP	55.875	52.125	53.000	50.000	54.500	51.500	52.833	3.900	7.382
TNP	20.500	19.500	20.000	18.500	19.875	19.000	19.542	1.470	7.514
TNU	28.500	26.125	29.125	27.750	28.625	27.625	27.958	2.880	10.301
UCU	18.750	17.500	18.875	17.500	19.375	18.500	18.417	1.120	6.081
UEP	23.375	22.500	23.250	21.500	23.875	22.375	22.812	1.920	8.416
UIL	25.750	22.625	23.875	21.875	24.250	21.750	23.021	2.320	10.078
UTL	28.500	27.750	28.000	27.500	29.625	28.000	28.229	2.040	7.227
UTP	30.125	28.500	30.625	28.750	31.125	29.625	29.792	2.320	7.787
WEC	27.125	25.375	26.750	25.250	27.000	25.625	26.167	1.540	5.881
WPN	23.500	22.000	23.125	21.437	23.625	22.125	22.635	1.620	7.157
WPS	22.500	21.125	22.250	21.000	21.500	21.000	21.562	1.580	7.328
WAP	28.000	26.500	27.750	25.750	27.750	26.125	26.979	2.480	9.192

N = 88

[FR Doc. 88-24177 Filed 10-18-88; 8:45 am]

BILLING CODE 6717-01-C

18 CFR Parts 141, 260, and 357

[Docket No. RM88-16-000; Order No. 565]

Statement of Cash Flows To Replace Statement of Changes in Financial Position in FERC Annual Report Forms

Issued October 13, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Amendment of forms.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its annual report forms for electric utilities (FERC Form Nos. 1 and 1–F), natural gas companies (FERC Form Nos. 2 and 2–A) and oil pipeline companies (FERC Form No. 6). The Commission is replacing the current "Statement of Changes in Financial Position," which is one of the basic financial statements in the annual report forms filed by companies subject to Commission regulation, with a "Statement of Cash Flows". The change in statement complies with the Financial Accounting Standards Board's (FASB) Statement of Financial Accounting Standards No. 95 (SFAS No. 95), issued in November 1987.

EFFECTIVE DATE: This order is effective November 18, 1988.

FOR FURTHER INFORMATION CONTACT: Julia Lake White, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357–8530.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357–8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this order will be available on CIPS for 10 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

Before Commissioners: Martha O. Hesse, Chairman; Charles G. Stalon and Charles A. Trabandt.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending its annual report forms for electric utilities, natural gas companies, and oil pipeline companies. The Commission is replacing the current "Statement of Changes in Financial Position," which is one of the basic financial statements in the annual report forms filed by companies subject to Commission regulation, with a "Statement of Cash Flows". The change in statements complies with the Financial Accounting Standards Board's (FASB)[1] Statement of Financial Accounting Standards No. 95 (SFAS No. 95), issued in November 1987. FASB requires a company to implement this change in financial statements for fiscal periods ending after July 15, 1988.

II. Background

FASB published SFAS No. 95 in response to problems associated with the statement of changes in financial position, which is a basic financial statement. These problems include the use of ambiguous terms, such as "funds", the lack of comparability due to a particular company's emphasis (*i.e.*, whether to emphasize cash, or cash and short-term investments or working capital), and differences resulting from the format of the statement (sources and uses format or activity format). Additionally, FASB intended to recognize an increased interest in a company's cash flows, that is, a company's cash receipts and cash payments during a reporting period, as a measure of liquidity.

On June 6, 1988, the Commission issued a notice of proposed rulemaking (NOPR) proposing to replace the current "Statement of Changes in Financial Position" in FERC Annual Report Form Nos. 1 and 1–F (electric utilities), 2 and 2–A (natural gas companies) and 6 (oil pipeline companies) with a "Statement of Cash Flows."[2] Rather than report total cash and noncash sources and applications of funds, the proposed statement would require a company to report detailed information about cash receipts and cash payments classified by operating, investing and financing activities.[3] The company would show a net cash provided or used total for each activity.

The Commission proposed to adopt the indirect method of reporting net cash flow from operating activities, rather than the direct method. FASB allows either the direct method (reporting cash flows by showing major classes of operating cash receipts and cash payments) or the indirect method (reconciliation of net income to net cash flow by specific adjustments to remove deferrals and accruals of receipts and payments and noncash items). While FASB encourages the use of the direct method, it permits reporting by either method. However, if the direct method is used, a company must also show in a separate schedule the reconciliation of net income to net cash flow. In its proposal, the Commission noted that by adopting the indirect method, a company would not need to separately report the reconciliation of net income to net cash flow which is required by the direct method. Additionally, the Commission believed the indirect method would be administratively easier for most companies.

Although SFAS No. 95 does not specifically address the Allowance for Funds Used During Construction (AFUDC), the Commission proposed to retain the equity portion of AFUDC (Account No. 419.1, Allowance for Other Funds Used During Construction) as a deduction from both net income and gross additions to plant. This type of reporting treats the equity portion of AFUDC as a noncash item, which is deducted from net income. The borrowed funds portion of AFUDC (Account No. 432, Allowance for Borrowed Funds Used During Construction), or capitalized interest, would be treated as a cash item, the same as other capitalized expenditures (material, labor, taxes, etc.), which is not deducted from net income.

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[1] The Securities Exchange Commission has statutory authority to establish financial accounting and reporting standards for publicly-held companies under the Securities and Exchange Act of 1934. Since 1973 the SEC has recognized the FASB as the designated organization in the private sector responsible for establishing financial accounting and reporting standards. The mission of the FASB is to establish and improve standards of financial accounting reporting for the guidance and education of the public, including issuers, auditors, and users of financial information. Those standards are, in effect, rules governing the preparation of financial reports. They are officially recognized as authoritative by the SEC (Accounting Series Release No. 150, dated December 20, 1973), and the American Institute of Certified Public Accountants (Code of Professional Conduct as adopted January 12, 1988).

[2] 53 FR 21,853 (June 10, 1988); 43 FERC 61,405 (June 6, 1988).

[3] The proposed "Statement of Cash Flows" appears in Appendices 1, 2, and 3 not published in the **Federal Register**.

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The Commission also noted that companies would use the present schedule for "Notes to Financial Statements" in the FERC annual report forms for other required separate disclosures, such as for noncash investing and financing activities and other events specified by SFAS No. 95. Finally, the Commission noted that the proposed change in statements in the annual report forms would not require any change in the Commission's regulations in Parts 141, 260 and 357.

Fourteen companies filed comments in this rulemaking docket.[4] These commenters generally support the proposed changes. Several commenters proposed certain modifications to the report forms. These modifications generally address minor problems requiring clarification of certain proposed line items. The Commission is essentially adopting the NOPR as proposed, incorporating some of the commenters' modifications.

III. Discussion

A. Reporting Burden

The public reporting burden for this collection of information is estimated to average 1,215 hours per response for FERC Form No. 1; 30 hours per response for FERC Form No. 1–F; 2,475 hours per response for FERC Form No. 2; 30 hours per response for FERC Form No. 2–A; and 150 hours per response for FERC Form No. 6. These hours include time for reviewing instructions, searching existing data resources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The Commission points out that these hours reflect the total amount of time required to complete these annual report forms. The Commission believes that the replacement of one schedule with another similar one will not change or increase the reporting burden for these annual report forms. Send comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for reducing these burdens, to the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, DC 20426 (Attention: Marian Obis (202) 357–8173); and to the Office of Management and Budget, Washington, DC 20503 (*Attention:* Desk Officer for the Federal Energy Regulatory Commission).

[4] See Appendix A for a list of the commenters.

B. Comment Analysis

1. Required Use of Indirect Method for Operating Activities

Seven of the eleven commenters [5] discussing this issue agree with the Commission's decision to require the use of the indirect method for the operating activities part of the Cash Flow Statement. They state that it is consistent with the current method; allows users to assess differences between accrual basis income and cash flows; is required even for those using the direct method; and is administratively easier for most companies. The remaining commenters believe the Commission should permit the use of either method as does SFAS No. 95.[6] Further, they contend that the direct method is preferred by FASB and is more meaningful as a measure of cash flows from operating activities.

After considering the merits of the opposing viewpoints, the Commission has decided to retain the requirement to use the indirect method. Uniform reporting is a factor in the Commission's decision, but other factors include compatibility with the present Statement and the likelihood that the indirect method would be used by most companies because it is administratively easier. Moreover, a reconciliation of net income to net cash provided by operating activities is required if the direct method is used.

2. Net Changes in Receivables, Inventory and Payables (Line 10)

Of the four commenters addressing this item, American Electric Power (AEP) and Transcontinental Gas Pipe Line Corporation (Transco) state, correctly, that paragraph 121 of SFAS No. 95 requires "enterprises that use the indirect method to report separately changes in inventory, receivables and payables". In addition, Ohio Edison Co. and the New York State Department of Public Service urge the Commission to separate changes in receivables, payables and inventory that are related to operations from those that are related to construction (investing activities). These two commenters contend that this separation is required by SFAS No. 95. AEP also suggests that payables be combined with line 11 to read "Increase (Decrease) in Payables and Accrued Expenses," in accordance with the example in paragraph 132 of SFAS No. 95.

The Commission agrees with the above comments that SFAS No. 95 requires separate reporting for net changes in receivables, inventory and payables by operating and investing (construction) activities and has revised the Cash Flow Statement accordingly. We also agree with AEP's suggestion that payables be combined with accrued expenses as shown in paragraph 132 of SFAS No. 95. This was an inadvertent omission in the proposed rule.

3. Treatment of Borrowed Funds Portion of AFUDC as a Cash Item

Two commenters agreed [7] and two disagreed [8] with the treatment of the borrowed funds portion of AFUDC as a cash item. The Commission adheres to its proposal that the borrowed funds portion of AFUDC is a cash item and a cost that has been incurred to construct plant. It is a cash outflow the same as other capitalized expenditures such as labor, property taxes, etc.

4. Capital Leases

Certain commenters argue for the elimination of the items concerning capital leases at lines 34, 63 and 68. They state that SFAS No. 95 requires noncash transactions to be disclosed separately. AEP contends that lease payments should be included as cash items in operating activities (so no adjustment is necessary) and cites the Uniform System of Accounts Instruction 20, paragraphs C and D to support its position.

Under the Uniform System of Accounts, capitalization accounting for a lease arrangement is a noncash item. Lease payments made are accounted for through the operating activities of the company and do not require separate disclosure on this Statement. The Commission is deleting proposed items at lines 34, 63 and 68 which address leasing arrangements. The necessary information for leases will be shown on page 122, Notes to Financial Statements, as a noncash reconciliation item.

5. Other Operating Activities Items

Other suggestions pertaining to operating activities include: (1) Changing instruction No. 3 to specifically exclude gains and lossses from financing and investing activities; (2) adding "undistributed subsidiary earnings" as a line item to be deducted from net income; and (3) ensuring that interest paid (net of amounts capitalized) and income taxes paid are separately reported in accordance with SFAS No. 95.

The Commission agrees with the above suggestions and the Statement has been revised to address these concerns.

6. Investing Activities

Three commenters express concern about noncurrent assets.[9] One concern relates to the elimination from the purchase and sale of noncurrent assets of code (e) (Statement of Changes in Financial Position), which requires the respondent to separately identify investments, fixed assests, and intangibles, etc. This code was inadvertently omitted in the proposed Statement. The Commission has decided to retain this code and has redesignated the line item as code (d).

AEP suggests that the item on line 41 should be changed to read "Disposition" rather than "Sale" since it is conceivable that this line could be used to report a return of capital or a repayment of an advance, and not just a sale of the associated company. Pennsylvania Power & Light Company asks whether the Commission intends that an initial investment to acquire a subsidiary company be shown on line 31 with subsequent investments to be shown on line 40.

We have changed the item on line 41 to 50 read "Disposition of Investments in and Advances to Associated and Subsidiary Companies," to reflect not only a sale of an investment in an associated company but also returns of capital and repayments of advances. In answer to the question of Pennsylvania Power & Light Company, initial and subsequent investments in a subsidiary company should be reported on line 40, whereas lines 26 through 34 should be used to record plant construction and plant purchase costs.

Finally, the Bureau of Economic Analysis at the United States Department of Commerce requests and expansion of "Gross Additions to Utility Plant" (line 26) to a three part allocation, *i.e.*, purchases of land, purchases of equipment and purchases of structures. The Bureau notes that the information provided to the Commission is used not only by the Commission, but also by the Bureau to prepare the official estimates of the gross national product.

The Commission prefers not to include this proposed change in the order. The data is not needed for this Commission's regulatory processes, and we are not in a position to determine the potential value of the information in relation to the additional burden entailed in reporting it in this manner.

7. Financing Activities

Northeast Utilities and Pennsylvania Power & Light Company express concern that the Commission would require reporting financing transactions on a net proceeds (payments) basis. Northeast Utilities proposes showing financings and redemptions on a gross basis by type of issue and "segregating (as one line item) financing expenses and gains/losses resulting from redemption."[10]

Pennsylvania Power & Light Company contends that reporting short-term debt such as commerical paper on a gross basis would not be meaningful, and notes that FERC Form No. 1 requires reporting short-term debt on a net proceeds basis. Pennsylvania Power & Light Company also requests that the item on line 65, "Contributions and Advances from Associated and Subsidiary Companies," be reclassified as an investing activity.

The Commission agrees that, for purposes of comparison with the balance sheet, it would be more meaningful to show long-term financings and redemptions on a gross basis, with a separate line item under "Other" for financing expenses and gains or losses resulting from redemptions, and we have revised the Statement accordingly. The Commission also agrees that it would be more meaningful to report short-term debt as a "net increase (decrease)" for the year and this change has been made in the revised Statement.

Upon reflection, the Commission believes that transactions between associated companies are so intertwined that more meaningful reporting and disclosure would be accomplished by reclassifying "Contributions and Advances from Associated and Subsidiary Companies" as an investing activity. Accordingly, the item on line 65 has been repositioned to line 39.

8. Cash and Cash Equivalents

Ohio Edison asks how the Commission intends "to tie the beginning and ending cash and cash equivalent balances to the balance sheet included in Form No. 1" as is required by paragraph 7 of SFAS No. 95.[11] Also, Ohio Edison asks, since paragraph 8 of SFAS 95 "defines cash equivalents as, generally, only investments with original maturities of three months or less", does the Commission plan to require a division of Account 136, Temporary Investments, into one account for investments of three months or less and one for other investments. If this is not done, then Ohio Edison suggests that the Commission should be more specific about what it means by cash and cash equivalents and whether there needs to be a direct relationship between the proposed statement and the Form No. 1 balance sheet.

The Commission adopts the definition of cash equivalents at paragraph 8 of SFAS No. 95. The Commission does not intend to divide Account No. 136 into short and long term portions, but instead believes that the same purpose will be accomplished by requiring a reconciliation between cash and cash equivalents on the Cash Flow Statement and the related accounts on the balance sheet. Therefore, Instruction No. 1 has been expanded to require such a reconciliation on page 122, Notes to Financial Statements.

9. Miscellaneous

Columbia Gas Transmission Corporation and Pennsylvania Power & Light Company recommend that the Commission revise lines 22, 52 and 84 of the Statement to make it more explicit that the total for each section may have a positive or negative cash flow. The Commission agrees and has revised the Statement accordingly.

IV. Paperwork Reduction Act

The Paperwork Reduction Act (PRA) [12] and the Office of Management and Budget's (OMB) regulations [13] require that OMB approve certain information and recordkeeping requirements imposed by an agency. The information collection requirements in this order are contained in FERC Form No. 1, "Annual Report or Major electric utilities, licensees and others"; FERC Form No. 1–F, "Annual report for Nonmajor public utilities and licensees"; FERC Form No. 2, "Annual report for natural gas companies"; FERC Form No. 2–A, "Annual report for Nonmajor natural gas companies" and FERC Form No. 6, "Annual report of oil pipeline companies."

The Commission uses the data collected in these annual reports to carry out its regulatory responsibilities pursuant to the Federal Power Act, the

[5] *See* Northeast Utilities, American Electric Power, Detroit Edison, New York State Department of Public Service, Ohio Edison, Penn Waterborne and Public Service Company of Indiana.

[6] *See* New York State Electric & Gas Corporation, Columbia Gas Transmission Corporation, Public Service Electric and Gas Company and Transcontinental Gas Pipe Line Corporation.

[7] Detroit Edison and Transcontinental Gas Pipe Line Corporation.

[8] New York State Department of Public Service and Public Service Electric and Gas Company.

[9] *See* American Public Power Association, AEP and Pennsylvania Power & Light Co.

[10] Northeast Utilities comments at p. 2.

[11] Ohio Edison's comments at p. 2.

[12] 44 U.S.C. 3501–3520 (1982).

[13] 5 CFR 1320.12 (1986).

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Natural Gas Act and the Interstate Commerce Act. Electric utilities, natural gas companies and oil pipeline companies subject to the Commission's jurisdiction are required to file these forms annually. The hours listed previously in this preamble reflect the total amount of time required to complete these annual report forms. The Commission believes the replacement of one statement with another similar one will not change or increase the reporting burden for these annual report forms. Additionally, the Commission notes that the information requested is already available to the regulated companies. The Commission also believes the change will avoid a burden increase since the regulated "companies" will not be required to prepare one statement for general reporting purposes and another statement for the Commission's reporting requirements.

The change in statements provided in this order will not change either the number of filings or the time requirements currently in the OMB inventory for each determination. The Commission estimates that the total annual reporting burden for each of these annual reports will remain the same.

This order is being submitted to the OMB for its information collection review. Interested persons may obtain information on the requirements of the proposed statement by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 (Attention: Marian Obis, (202) 357–8713). Comments on the information collection requirements in the proposed statement can be sent to the Office of Information and Regulatory Affairs of OMB, Executive Office Building, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA) [14] requires agencies to prepare certain statements, descriptions and analyses of proposed rules that will have a "significant economic impact on a substantial number of small entities". The Commission is not required to make such analyses if a rule would not have such an impact.

As the commission noted in the NOPR, most electric utilities, natural gas companies and oil pipeline companies that will be affected by this order do not fall within the RFA's definition of small entity. There were no comments on the Commission's certification in the NOPR. Therefore, the Commission certifies that this order will not have a significant economic impact on a substantial number of small entities.

VI. Environmental Statement

The Commission will not prepare an environmental assessment or an environmental impact statement in this rulemaking docket. This order involves information gathering, analysis and dissemination and therefore is categorically exempt from the requirement to prepare an environmental assessment. [15]

VII. Effective Date

This order is effective November 18, 1988.

List of Subjects

18 CFR Part 141

Electric power, Reporting and recordkeeping requirements.

18 CFR Part 260

Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 357

Pipelines, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission is amending the annual report forms referenced in Parts 141, 260 and 357 in Chapter I, Title 18, *Code of Federal Regulations.*

By the Commission.

Lois D. Cashell,

Secretary.

Appendix A—Companies Filing Comments in Docket No. RM88–18–000

(1) American Electric Power Service Corporation
(2) American Public Power Association
(3) Columbia Gas Transmission Corporation
(4) U.S. Department of Commerce, Bureau of Economic Analysis
(5) Detroit Edison
(6) New York State Department of Public Service
(7) New York State Electric and Gas Corporation
(8) Northeast Utilities
(9) Ohio Edison
(10) Pennsylvania Power and Light Company
(11) Price Waterhouse
(12) Public Service Electric and Gas Company
(13) Public Service Indiana
(14) Transcontinental Gas Pipe Line Corporation

[FR Doc. 88–24028 Filed 10–18–88; 8:45 am]

BILLING CODE 6717–01–M

[14] 5 U.S.C. 601–612 (1982).

[15] *See* 18 CFR 380.4(a)(5) (1988).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 86F–0281]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Aspartame

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of aspartame as a sweetener in the fillings of cookies. This action responds to a petition filed by Holland American Wafer Co. and to a comment on the petition.

DATES: Effective October 19, 1988; written objections and requests for a hearing by November 18, 1988.

ADDRESS: Written objections may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Carl L. Giannetta, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–426–5427.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of July 22, 1986 (51 FR 26308), FDA announced that a food additive petition (FAP 6A3912) had been filed by Holland American Wafer Co., 3300 Roger B. Chaffee Dr. SE., Grand Rapids, MI 49508, proposing that § 172.804 *Aspartame* (21 CFR 172.804) be amended to provide for the safe use of aspartame as a sweetener in wafer cookies.

The agency has determined that the phrase "use of aspartame as a sweetener in wafer cookies" used in the filing notice is confusing. The petition requested the use of aspartame in the filling for any wafer-like cookie and not in the wafer itself. Therefore, to clarify the intent of the petition, the agency has reworded the requested use to "the safe use of aspartame as a sweetener in the filling of wafer cookies."

The agency received one comment on the notice. The comment requested that FDA consider the petition to be asking for a regulation for the use of aspartame in all fillings, between cookies and crackers, that do not undergo heat treatment. The comment did not provide data to support its request for the use as aspartame in all fillings used between cookies and crackers. The petition, however, contains sufficient information to support the use of aspartame in all fillings that are used between cookies, as suggested in the comment. This finding has been incorporated in the order set forth below. However, additional data in the form of a petition are required before the use of aspartame in the fillings used between crackers can be allowed.

Based on its evaluation of the comment, the data in the petition, and other relevant material, FDA concludes that the proposed use is safe. Therefore, the agency is amending 21 CFR 172.804 by adding a new paragraph (c)(18) as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before November 18, 1988 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR Part 172 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 172.804 is amended by adding a new paragraph (c)(18) to read as follows:

§ 172.804 Aspartame.

* * * * *

(c) * * *

(18) The fillings of prebaked cookies.

* * * * *

Dated: October 12, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–24159 Filed 10–18–88; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8232]

Income Tax; Credit for Clinical Testing Expenses for Certain Drugs for Rare Diseases or Conditions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Corrections to final regulations.

SUMMARY: This document contains corrections to final regulations that were published in the **Federal Register** on October 3, 1988 (53 FR 38708) as Treasury Decision 8232. The rules relate to the credit for clinical testing expenses for certain drugs for rare diseases or conditions.

FOR FURTHER INFORMATION CONTACT: Stuart G. Wessler, (202) 566–3822 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final rules that are the subject of this correction notice provided the public with the guidance needed to comply with the law (as enacted by the Orphan Drug Act) and affect taxpayers seeking to obtain the credit.

Need for Corrections

As published, Treasury Decision 8232 contains several typographical errors that might cause confusion to taxpayers and practitioners.

Correction of Publication

Accordingly, the publication of Treasury Decision 8232, which was the subject of FR Doc. 88–22375, is corrected as follows:

PART 1—[AMENDED]

§ 1.28–0 [Amended]

Paragraph 1. In § 1.28–0(d)(5)(iv), on page 38711, column 1, lines 13 and 14, which read, "(D) Lease payments and payments for supplies." should be removed and the language "(D) Lease payments." added in its place.

Par. 2. In § 1.28–0(d)(5)(iv), on page 38711, column 1, the language "(E) Payments for supplies." should be added immediately after the line which was corrected to read, "(D) Lease payments."

§ 1.28–1 [Amended]

Par. 3. In § 1.28–1(d)(1)(ii), on page 38712, column 2, line 4, which reads, "this subdivision, the taxpayer's" should be removed and the language "this paragraph (d)(1)(ii), the taxpayer's" added in its place.

Note.—For a **Federal Register** correction to this document see the Corrections section of this issue.

Dale D. Goode,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 88–24014 Filed 10–18–88; 8:45 am]

BILLING CODE 4830–01–M

VOL 53 ISS 202 OCT 19 1988 UMI

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Under Secretary of the Navy has determined that USS GUNSTON HALL (LSD-44) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a naval dock landing ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: October 3, 1988.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Under Secretary of the Navy, under authority delegate by the Secretary of the Navy, has certified that USS GUNSTON HALL (LSD-44) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3 (a), pertaining to the placement of the after masthead light and the horizontal distance between the forward and after masthead lights, without interfering with its special functions as a Navy ship. The Under Secretary of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Five of § 706.2 is amended by adding the following vessel:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	AR masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i)	AR Masthead lights not inclose over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 2(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained.
USS GUNSTON HALL	LSD-44							X	64

Approved:

H. Lawrence Garrett III,

Under Secretary of the Navy.

Date: October 3, 1988.

[FR Doc. 88-24158 Filed 10-18-88; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD7 88-88]

Special Local Regulation; 1988 Key West Offshore World Cup Race

AGENCY: Coast Guard, DOT.

ACTION: Final Rule.

SUMMARY: Special local regulations are being adopted for the CROPBRA 1988 Key West Offshore World Cup Race. This event will be held on November 08, 10, and 12th between 0900 and 1400 local time. The regulations are needed to promote safety of life on navigable waters.

EFFECTIVE TIMES: These regulations become effective at 9:00 a.m. local time on November 8, 10, and 12, 1988 and terminate at 2:00 p.m. local time, each day.

FOR FURTHER INFORMATION CONTACT: QMC Kemnitz, (305) 292-8727.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation are QMC C. R. Kemnitz, project officer, USCG Group Key West, and LCDR S. T. Fuger, Jr., project attorney, Seventh Coast Guard District Legal Office.

Discussion of Regulations

The 1988 Key West/NPBA World Series Kilo Race will be held from the Milling Area West of Wisteria Island in Key West Harbor to Check Point 1 (24-28-44N 81-51-55W) to Check Point 2 (24-49-22N 81-44-12W) to Check Point 3 (24-32-48N 81-44 15W) to Check Point 4 (24-32-16N 81-48-25W) through Key West Harbor, and back to the Milling Area West of Wisteria Is.

Approximately 85 power boats are expected to participate. Regulations are issued by Commander, Seventh Coast Guard District in order to promote the safety of life on the navigable waters.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35-T07-29 is added to read as follows:

§ 100-35-T07-29 Key West Offshore World Cup Race.

(a) *Regulated area.* All navigable waters in an area bounded by:

(1) 24-32-42N SW of Ft Taylor, Key West 81-48-48W
(2) 24-32-54N Key West Main Channel Buoy 15 81-48-57W
(3) 24-33-36N Key West Main Channel Buoy 17 81-48-65W
(4) 24-33-32N Key West Main Channel Buoy 19 81-48-44W
(5) 24-33-00N Key West Harbor Turning Basin Lt 27 81-48.25W
(6) 24-34-06N NW Point Wisteria Island 81-48-25W
(7) 24-34-30N Fleming Key Front Range Lt 81-47-48W
(8) 24-34-16N SW Point Fleming Key 81-48-02W
(9) 24-34-03N NW Corner Pier D3 81-48-27W
(10) 24-33-41N Pier House Restaurant 81-48-27W
(11) 24-33-42N Origin 81-48-48W

(b) *Special Local Regulations.* (1) Entry into the regulated area is prohibited unless authorized by the patrol commander.

(2) Spectator boats may observe the race in the designated spectator area West of the following positions:

(i) 24-33-30N Key West Main Channel Buoy 17 81-48-51W
(ii) 24-33-33N Key West Main Channel Buoy 19 81-48-25W
(iii) 24-34-06N Key West Harbor Turning Basin Lt 27 81-48-25W
(iv) 24-34-06N NWPt Wisteria Is 81-48-33W

(3) A succession of not less than 5 short whistle or horn blasts from a patrol vessel will be the signal for any non-participating vessel to stop immediately. The display of a red distress flare from a patrol vessel will be signal for any and all vessels to stop immediately.

Dated: October 3, 1988.

Martin H. Daniell,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 88-23826 Filed 10-18-88; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3457-4; TN-032]

Approval and Promulgation of Implementation Plans; Tennessee Stack Height Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, EPA is approving Tennessee's stack height regulations, submitted as revisions to Chapter 1200-3-24 of the State's regulations. Approval was proposed on May 28, 1987 (52 FR 19540). These regulations are equivalent to EPA requirements promulgated at Part 51 of Chapter I, Title 40 of the Code of Federal Regulations. Although EPA generally approves Tennessee's stack height rules on the grounds that they satify 40 CFR Part 51, this action may be subject to modification when EPA completes rulemaking in response to the decision in *NRDC* vs *Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). If EPA's response to the NRDC remand modifies the July 8, 1985, stack height regulations, EPA will notify the State of Tennessee that its rules must be changed to comport with EPA's modified requirements. This may result in revised emission limitations or may affect other actions taken by Tennessee and source owners or operators.

DATE: This action is effective November 18, 1988.

ADDRESSES: Copies of the materials submitted by the State may be examined during normal business hours at the following locations:

Air Program Branch, Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Tennessee Department of Health and Environment, 701 Broadway, Nashville, Tennessee 37219-5403.

FOR FURTHER INFORMATION CONTACT: Beverly T. Hudson, EPA Region IV, Air Program Branch at the above listed address, telephone (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: In the Federal Register of July 8, 1985 (50 FR 27892), EPA published final regulations to implement section 123 of the Clean Air Act (CAA), which regulates the manner in which dispersion of pollutants from a source may be considered in setting emission limitations. Pursuant to these regulations and the Clean Air Act Amendments of 1977, all states were required to: (1) Review and revise, as necessary, their state implementation plans (SIPs) to include provisions that limit stack height credit and dispersion techniques in accordance with the revised regulations, and (2) review all existing emission limitations to determine whether these limitations have been affected by stack height credits above Good Engineering Practice (GEP) or any other dispersion techniques. For any limitations so affected, states were to prepare revised limitations consistent with their revised SIPs. All SIP revisions and revised emission limits were to be submitted to EPA within nine months of promulgation.

Subsequently, EPA issued detailed guidance on carrying out the necessary review. For the review of emission limitations, states were to prepare inventories to stacks greater than 65 meters in height and sources with emission of sulfur dioxide (SO_2) in excess of 5000 tons per year. These limits correspond to the de minimis GEP stack height and the de minimis SO_2 emission exemption from prohibited dispersion techniques. These sources were then to be subjected to detailed review for conformance with the revised regulations. State submissions were to contain an evaluation of each stack and source in the inventory.

EPA's stack height regulations were challenged in *NRDC* vs. *Thomas*, F2d 1224 (D.C. Cir. 1988). On January 22, 1988, the U.S. Appeals Court for the D.C. Circuit issued a decision affirming the regulations in large part, but remanding three provisions to EPA for reconsideration:

1. Grandfathering pre-October 11, 1983, within-formula stack height increases from dispersion techniques requirements (40 CFR 51.100(kk)(2)).

2. Dispersion credit for sources originally designed and constructed with merged or multi-flute stacks (40 CFR 51.100(hh)(2)(ii)(A)).

3. Grandfathering pre-1979 use of the refined $H+1.5L$ formula (40 CFR 51.100(ii)(2))).

If EPA's response to the NRDC remand modified the July 8, 1985, stack height regulations, EPA will notify the State of Tennessee that its rules must be changed to comport with EPA's modified requirements. This may result in revised emission limitations or may affect other actions taken by Tennessee and source owners or operators.

State Submission

On August 18, 1988, the Tennessee Department of Public Health and Environment submitted to EPA a regulation (part of Chapter 1200–3–24 of the State's regulations) on stack heights, which satisfied EPA's stack height requirements. On May 28, 1987 (52 FR 19540.), EPA proposed to approve the regulation. (The proposal was made on the assumption that the regulation would not change significantly before it became State-effective. It became State-effective without significant changes on November 22, 1987). The regulation applies to all stacks not in existence on December 31, 1970, and all dispersion techniques implemented since December 31, 1970. The regulation applies to both new and existing sources, thereby satisfying requirements for state new source review regulations at 40 CFR 51.164. There were no comments on EPA's proposal to approve the Tennessee stack height regulations. Tennessee's revisions bring their existing regulations into conformance with the federal stack height rules.

Final Action

EPA is approving Tennessee's stack height regulations. These revisions are consistent with EPA's stack height requirements at Part 51 of Chapter I, Title 40 of the Code of Federal Regulations. However, EPA points out again that this action may be subject to modification when EPA completes rulemaking to respond to the decision in *NRDC* vs. *Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). If EPA's response to the NRDC remand modifies the July 8, 1985, stack height regulations, EPA will notify the State of Tennessee that its rules must be changed to comport with EPA's modified requirements. This may result in revised emission limitations or may affect other actions taken by Tennessee and source owners or operators.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 19, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Incorporation by reference.

Note.—Incorporation by reference of the Tennessee State Implementation Plan was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 28, 1988.

Lee M. Thomas,

Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart RR—Tennessee

2. Section 52.2220 is amended by adding paragraph (c)(93) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(93) Stack height regulations were submitted to EPA on August 18, 1988, by the Tennessee Department of Health and Environment.

(i) Incorporation by reference.

(A) Tennessee Air Pollution Control Regulations, Good Engineering Practice Stack Height Regulations, which became effective on November 22, 1987.

(ii) Other material—none.

[FR Doc. 88–23826 Filed 10–18–88; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 700

[OPTS–2600001A; FRL–3465–1]

Fees for Processing Premanufacture Notices, Exemption Applications and Notices, and Significant New Use Notices; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: In FR Doc. 88–18452 in the Federal Register of August 17, 1988, the following correction is made: In § 700.45, on page 31253 in the middle column in paragraph (a)(2) in the fourth line, correct "P.O. 360227M" to read "P.O. 360277M."

EFFECTIVE DATE: October 18, 1988.

FOR FURTHER INFORMATION CONTACT: Mike Stahl, Acting Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Room EB–44, 401 M Street SW., Washington, DC 20460, (202) 554–1404, *TDD:* (202) 557–0551.

Dated: October 12, 1988.

Victor J. Kimm,

Acting Assistant Administrator, for Pesticides and Toxic Substances.

[FR Doc. 88–24123 Filed 10–18–88; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 761

[OPTS–62051A; FRL–3464–8]

Polychlorinated Biphenyl Spill Cleanup Policy; Amendments and Clarifications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendment and clarification of policy statement.

SUMMARY: This document makes two changes in the polychlorinated biphenyl (PCB) spill cleanup policy, published in the Federal Register of April 2, 1987 (52 FR 10688), and answers some questions that have arisen about the policy. The changes make the PCB spill quantity notification requirement conform to the quantity requirement for reporting PCB spills under the National Contingency Plan (NCP). The other change involves inserting an explanatory reference to the branch office to which telephone calls should be made. This document amends and clarifies EPA's spill cleanup policy and is exempt from notice and comment requirements under section 553(b)(A) of the Administrative Procedure Act.

EFFECTIVE DATE: October 19, 1988.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Room EB–44, 401 M Street SW., Washington, DC 20460, (202–554–1404), TDD: (202–554–0551).

SUPPLEMENTARY INFORMATION: In the PCB spill cleanup policy, published in the Federal Register of April 2, 1987 (52 FR 10688), EPA established the measures to be taken following a spill that the Agency considered would constitute adequate cleanup for the majority of PCB spills and by which the Agency would judge cleanup for enforcement purposes. This document changes one notification requirement in the policy, adds an office name parenthetically, and clarifies other issues.

I. Change in Notification Provisions

In both the discussion in the preamble to the April 2, 1987 policy, under Units IV.A.1. and IV.A.1.c. and also in § 761.125 (a)(1) and (a)(1)(iii), the policy

states that spills of 10 pounds or more of PCB material must be reported to the National Response Center under the NCP. The NCP requires spills of 10 pounds or more by weight of PCBs, not PCB-containing material, to be reported. In order to be consistent with this reporting requirement, EPA is changing § 761.125 (a)(1) and (a)(1)(iii) to require spills of 10 pounds or more by weight of PCBs, not PCB-containing material, to be reported to the appropriate EPA regional office. This change in reporting requirements is not intended to relieve persons from other requirements involving cleanup.

II. Clarifications

EPA has received questions on certain features of the policy and is taking this opportunity to clarify them.

1. A questioner asked why § 761.125(b)(3)(iii) requires a certification statement by the responsible party for cleanup of spills of small quantities of low concentration PCBs, involving less than 1 pound of PCBs by weight, while § 761.125(c)(5) does not require a certification statement that cleanup requirements for spills of large quantities and high concentrations of PCBs have been met. The reason for not requiring a certification statement for the cleanup of large quantities of low concentration spills and all quantities of high concentration spills is that these spills require post cleanup sampling. The post cleanup sampling data give the equivalent of a certification statement. The spills of small quantities of low concentrations do not require post cleanup sampling.

2. A questioner asked why in both the preamble under Unit IV.A. and in § 761.125(a)(1) (i) and (ii) when notification to the regional office is required, the specific office to report to, Pesticides and Toxic Substances Branch, is named parenthetically, while in § 761.125(a)(1)(iii) the specific office within EPA is not named. The omission is an oversight and § 761.125(a)(1)(iii) is being amended to correct it.

3. Concern was expressed regarding the effect on cleanup levels by the measurement of the distance between a spill in a restricted access area and a nonrestricted access area. The distance of 0.1 kilometer, which is the cut-off distance, is measured from the spill to the actual area where people live or work. That is, a restricted access area would have to be cleaned to the level for a residential/commercial area if the spill occurred within 0.1 kilometer of where people live or work.

4. Several persons asked whether cement is porous or nonporous. Under definitions in Unit III.13. of the preamble and in § 761.123 under "Nonimpervious solid surfaces," cement is given as an example of a porous surface. A question to EPA referred to § 761.65(b)(1)(iv) where Portland cement is given as an example of an impervious material. In short, Portland cement is porous for purposes of spill cleanup standards in that PCBs can penetrate its surface, but impervious to penetration beyond the cement for purposes of PCB storage requirements. In the storage regulations, § 761.65(b)(1)(iv), Portland cement concrete is considered an adequately impervious flooring for PCBs stored for disposal. That is, it acts as a barrier keeping PCBs from migrating through the cement into the environment below, usually soil. The surface of the Portland cement concrete, however, although it has a very fine, tight texture, is rough and porous to the extent that it cannot be readily cleaned. Human exposure from a spill on Portland cement would occur through respiratory or dermal contact. Hence, the policy requires that the surfaces be cleaned to the nonimpervious standard of the policy.

5. Persons responsible for the cleanup of spills were concerned about meeting the 24-hour timeframe for notification or consultation with the appropriate regional office since there was no way to contact some of the regions at night and during holidays and weekends. In most regions, the Emergency Response Office will take such calls. If the regional office cannot be reached at night and during holidays and weekends, the responsible party should keep a record of the attempts to notify the region by telephone and should telephone the region on the next working day and report the spill and the unsuccessful attempts to make telephone contact. In the meantime, however, all possible immediate steps to contain and decontaminate the area should be initiated at once.

6. Under § 761.125(c)(4)(v), contaminated soil in nonrestricted access areas must be decontaminated down to 10 parts per million (ppm) by weight of PCBs, provided that the soil is excavated to a minimum of 10 inches and the hole then filled in with a cap of 10 inches of clean soil, that is, soil that contains less than 1 ppm PCBs. Excavating a minimum of 10 inches is required to ensure that where a level of 10 ppm PCBs remains, it will be covered by 10 inches of clean soil. However, if less than 1 ppm PCBs is found in the soil before the 10-inch minimum is reached, no further excavation is required.

III. Corrections

Two corrections are made in the preamble of the policy. Two lines from the bottom of the middle column on page 10692, the parenthetical information is corrected to read "(10 µg/100 cm²)." At the end of the first paragraph on page 10698, the citation for the health effects of PCBs is corrected to read "July 10, 1984 Federal Register (49 FR 28172)."

IV. Other Statutory Requirements

A. Administrative Procedure Act

The spill cleanup policy was published without notice and comment because policy statements are exempt from notice and comment requirements under the Administrative Procedure Act. For the same reason the revisions of §§ 761.125 (a)(1) and (a)(1)(iii) of the spill cleanup policy are being published without notice and comment and are effective upon publication.

B. Executive Order 12291

Under Executive Order 12291, issued February 17, 1981, EPA must judge whether a rule is a "major rule" and, therefore, subject to the requirement that a regulatory impact analysis be prepared. EPA has determined that this policy is not a "major rule" as that term is defined in section 1(b) of the Executive Order and therefore is not subject to the requirement that a regulatory impact analysis be prepared.

This policy amendment was submitted to the Office of Management and Budget as required by Executive Order 12291.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Administrator may certify that a rule will not, if promulgated, have a significant impact on a substantial number of small entities and, therefore, does not require a regulatory flexibility analysis. EPA certifies that this policy amendment will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. 3501 *et seq.*, authorizes the Director of OMB to review certain information collection requests by Federal agencies. This amendment does not contain any information collection

or recordkeeping requirements as defined in the PRA.

List of Subjects in 40 CFR Part 761

Environmental protection, Hazardous substances, Labeling, Polychlorinated biphenyls, Reporting and recordkeeping requirements.

Dated: October 7, 1988.

Victor J. Kimm,

Acting Assistant Administrator, Office of Pesticides and Toxic Substances.

Therefore, 40 CFR Part 761 is amended as follows:

PART 761—[AMENDED]

1. The authority citation for Part 761 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, and 2611; Subpart G is also issued under 15 U.S.C. 2614 and 2616.

2. In § 761.125, the introductory text of paragraph (a)(1) and paragraph (a)(1)(iii) are revised to read as follows:

§ 761.125 Requirements for PCB spill cleanup.

(a) * * *

(1) *Reporting requirements.* The reporting in paragraphs (a)(1) (i) through (iv) of this section is required in addition to applicable reporting requirements under the Clean Water Act (CWA) or the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA). For example, under the National Contingency Plan all spills involving 10 pounds or more by weight of PCBs must currently be reported to the National Response Center (1–800–424–8802). The requirements in paragraphs (a)(1) (i) through (iv) of this section are designed to be consistent with existing reporting requirements to the extent possible so as to minimize reporting burdens on governments as well as the regulated community.

* * * * *

(iii) Where a spill exceeds 10 pounds of PCBs by weight and is not addressed in paragraph (a)(1) (i) or (ii) of this section, the responsible party will notify the appropriate EPA regional office (Pesticides and Toxic Substances Branch) and proceed to decontaminate the spill area in accordance with this TSCA policy in the shortest possible time after discovery, but in no case later than 24 hours after discovery.

* * * * *

[FR Doc. 88–24124 Filed 10–18–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 1

[General Docket 86–285; FCC 88–301]

Fee Collection Program

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission's rules relating to the procedures for implementation of a fee collection program under 47 U.S.C. 158 (1986), are amended in response to petitions for reconsideration, comments, requests for clarifications, and waivers.

EFFECTIVE DATE: October 11, 1988.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Martin Blumenthal, Office of General Counsel, Federal Communications Commission, (202) 632–6990.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order in Gen. Docket No. 86–285, adopted September 22. 1988, and released October 11, 1988. The new procedures make certain adjustments in the Commission's *Fee Collection Program*, (summarized at 52 FR 5285, February 20, 1987); 2 FCC Rcd. 947.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Summary of Memorandum Opinion and Order

1. In response to petitions for reconsideration of the Commission's *Fee Collection Program, supra*, as well as responsive pleading, comments, petitions for declaratory rulings, requests for fee waivers and/or refunds, general correspondence, and the Commission's experience in administering the fee program, certain clarifications and changes in that program are warranted. The issues considered include: fees for applications that are untimely, resubmitted after dismissal by staff action, or necessitated by rule changes; fee exemptions for noncommercial educational applicants; petitions requesting "significantly viewed" status under section 76.54 (47 CFR 76.54); the applicability of the mass media hearing charge in cases where only one applicant is prosecuting its application; and extensions of time within which to consummate a sale in the common carrier services; and various matters concerning the method of fee payment.

2. The *Fee Program* concluded that fees would be retained irrespective of the disposition of the application. The fees submitted with untimely window applications filed directly with the Commission are therefore retained, but, under the procedures established by the Mellon Bank, untimely window applications are returned with the fee payments. To avoid such unequal treatment, we will refund fees in cases where the window filing is untimely. If an application dismissed by the staff is refiled, it must be accompanied by a fee payment. Such applications may require as much, and possibly more, work than the original application. However, applications required by rule changes are exempt from fee requirements.

3. Full service noncommercial educational radio and television stations are exempt from the fee requirements, but translator and LPTV applicants are exempt from fees only if the applicant is also the licensee of a noncommercial educational full power station. The congressional exemption for noncommercial educational applicants was intended to enhance the financial support for these services. In this regard, the weight of the policy bears equally on translator or LPTV applicants that propose to operate as noncommercial educational stations. Recognizing that LPTV stations can change from noncommercial to commercial operation without notifying the Commission, LPTV applicants not otherwise exempt must pay the applicable fees, but they will be entitled to a refund after grant upon a showing that the applicant has obtained NTIA funding or satisfies the Commission's rule requirements for noncommercial educational eligibility and operation.

4. Similarly, although there are no fees for ITFS applications, licensees may file applications for microwave facilities that are subject to fees. ITFS is an "instructional" service, as opposed to a "noncommercial educational" service. Nevertheless, there is much to be gained and little to be lost in providing fee waivers for ITFS licensees when they apply for interconnection facilities to be used in providing their noncommercial educational or instructional service.

5. Requests for significantly viewed status under § 76.54 of the Commission's rules are not subject to a fee. The fee legislation provides for a $700 fee for "Cable Special Relief Petitions." 47 U.S.C. 158. The legislative history defines "Cable Special Relief Petitions" as petitions "seeking waiver of any provision of the rules relating to cable television systems, or the imposition of additional or different requirements, or the issuance of a ruling on a complaint or disputed question." Conference Report at 428; see also *Fee Program*, 2 FCC Rcd at 970–71. A petition requesting significantly viewed status does not request a waiver of the Commission's rules nor the imposition of additional or different requirements. In such circumstances, "significantly viewed" petitions which offer the showings as required in § 76.54 are not "special relief" petitions within the definition in the Conference Report.

6. The fee legislation imposes a $6,000 hearing charge, "levied when an application is designated for hearing." Conference Report at 427. However, the Commission determined that the fee should not apply to "enforcement actions," because a party should not be charged a fee to defend itself. The fee must be paid with the filing of the Notice of Appearance. *Fee Program*, 2 FCC Pcd at 968; see also 47 CFR 1.221(f). Since the adoption of the *Fee Program*, there have been cases designated as comparative proceedings that become noncomparative in nature. The cases include situations in which only one of the designated applicants files a Notice of Appearance, as well as settlement cases in which the surviving applicant must resolve a basic qualifying issue before it can be granted. In either situation, the case is neither a comparative proceeding nor an enforcement action.

7. Where the surviving applicant is immediately grantable, imposition of the fee has the appearance of fundamental unfairness. Accordingly, no hearing fee will be required in such cases. If the surviving applicant paid the fee with its Notice of Appearance, it will be entitled to a refund. However, if the surviving applicant is not immediately grantable, the feel will be paid. That payment will be refunded if the applicant can be granted without a decision on the merits, but it will be retained in cases where the Commission's evidentiary processes must be utilized to resolve any outstanding matters. In this regard, a decision by a presiding judge that deletes all outstanding issues is not a decision on the merits. On the other hand, where the applicant can only be granted after consideration of post-designation amendments and/or evidentiary submissions, the presiding judge's decision would be on the merits, and the hearing fee would be retained.

8. It does not appear that the fee legislation contemplated a fee for extension of time within which to consummate a previously approved sale. Thus, no fee will be due for these requests.

9. The requirement that filings subject to fees be accompanied by the full and proper payment of fees appears to have resulted in some confusion. Thus, § 1.1107(b) is amended to make it clear that filings submitted without a fee, with an insufficient fee, with a fee payment in an improper form, or with a payment instrument that is uncollectible will be dismissed. Moreover, § 1.1116 is amended to specify that applicants seeking reconsideration and/or review of a fee determination must pay the applicable fee in order for their request to be considered on the merits.

10. Applicants may correct a faulty fee payment before staff action by resubmitting the application together with the entire fee. The Commission would then refund the prior payment. However, when an applicant corrects an insufficient or failed fee, the filing date of the corrected, sufficient fee shall be considered the filing date of the resubmitted application. Thus, the corrected fee and resubmitted application must be received on or before the established deadline in order to be considered timely filed.

11. Section 1.1108(b) requires that fee payments be made with "one check, bank draft or money order with each application." The rule is intended to ease the administrative burden of tracking payment instruments. *Fee Program*, 2 FCC Rcd at 965. However, there are limits on the amount for which single money orders can be written, and those maximums may be lower than the amount of the required fee. Recognizing the importance of money orders as a means of payment for persons without checking accounts or regular access to a bank, the Memorandum Opinion and Order permits fee payments with multiple money orders. On the other hand, there is no public interest benefit to a proposal to permit fee payment by two checks in assignment and transfer cases.

12. Section 1.1108(a) provides that fee payments should be "denominated in U.S. dollars and deposited in United States financial institutions." 47 CFR 1.1108(a). We are aware that some applicants may be based abroad, and the quoted language may impose certain difficulties in the payment of the required fees. However, the rule provision is not inconsistent with the Convention on the Organization for Economic Co-operation and Development (OECD), December 14, 1960, 12 U.S.T. 1728, T.I.A.S. No. 4891. Moreover, we do accept fee payments with foreign checks, bank drafts, or international money orders, denominated in U.S. dollars, that indicate a corresponding domestic bank for collection.

13. The *Fee Program* indicated that the Commission's depository bank would present "all instruments to the drawer's bank twice before returning the instrument to the Commission as an uncollectible item." 2 FCC Rcd at 957. By this, we mean that the Commission's bank will handle fee submissions in the normal manner in which checks are cleared by banks. Generally, checks returned for insufficient or uncollected funds are presented a second time. That is not the case for checks that are returned because the account has been closed or payment has been stopped. Although the *Fee Program* indicated that the ultimate responsibility for the payment of fees rests with the applicant (2 FCC Rcd at 957), the dismissal of an application because of a bank error may be an unduly harsh result, and an applicant could be left without a suitable remedy. Thus, where a payment is dishonored due solely to a bank error, upon an appropriate showing, the applicant would be entitled to reinstatement with a substitute payment.

14. The Commission previously determined that it would not provide receipts for fee submissions. *Fee Program*, 2 FCC Rcd at 950. However, the staff would continue to date stamp copies of applications when provided with a copy for that purpose. Section 1.1107 is amended to reflect the stamp-in procedure, but, it should be noted that, for practical reasons, a stamped copy of the application does not establish that the fee was actually paid.

15. In 1986, the Commission adopted a frequency coordination procedure for certain Private Land Mobile Radio Services *Frequency Coordination in the Private Land Mobile Radio Services*, 103 FCC 2d 1093 (1986). Therein, it was determined that coordinated applications would be filed by the frequency coordinator. 47 CFR 1.912. To accommodate this procedure, the *Fee Program* concluded that frequency coordinators should forward an applicant's fee payment to the Commission along with the application. An applicant may enclose its fee

payment with the application sent to the coordinator, to be held until the application was filed, or await the completion of coordination before sending the fee to the coordinator to be filed with the application. *Fee Program*, 2 FCC Rcd at 953.

16. The *Fee Program* made it abundantly clear that the frequency coordinator is not serving as a collection agent for the government. 2 FCC Rcd at 953. Rather, its role with regard to fee payments is that of a conduit that forwards the applicant's fee payment along with the application to the Commission. The statutory authority to utilize frequency coordinators presumed that the Commission would implement frequency coordination with procedures reasonably designed to facilitate the efficient handling of applications. The determination as to filing procedures in *Frequency Coordination* was based on efficient processing practices, and the requirement that frequency coordinators also forward the fee payment is intended to maintain those efficiencies. In this regard, §1.1102 is amended to specify the options available to applicants that must file through frequency coordinators. Moreover, frequency coordinators are expected to act in a responsible manner, and a refusal to inform an applicant of the results of coordination would be in derogation of this duty. Similarly, upon request by the applicant, frequency coordinators should provide an extra copy of the application as filed to the date stamped by the Commission for return to the applicant.

17. We have carefully considered the formal and informal requests to reconsider, modify and/or clarify various aspects of the *Fee Program*. On the basis of that review and our own experiences administering the program for the past year, we believe that the modifications and clarifications made herein will facilitate the collection of fees and make the program more equitable to the benefit of the public and the government.

18. In addition to the changes noted above, the rules containing the fee schedules (47 CFR 1.1102, 1.1103, 1.1104, and 1.1105) are being reformed for clarity and ease of application. While so doing, we have corrected a typographical error in the old § 1.1102 n.6. See 47 CFR 1.1102(b)(2).

19. The decision contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection, and/or record keeping, labeling, disclosure, or record retention requirements, and it will not increase or decrease burden hours imposed on the public.

20. According, *it is ordered*, that Parts 0 and 1 of the Commission's rules, 47 CFR Parts 0, 1, *are amended*, as set forth below.

21. As the rule changes set forth below are all procedural, they will be effective immediately upon release of this Memorandum Opinion and Order. 5 U.S.C. 553(d). Moreover, it is our intention to apply the rules, clarifications and policies enunciated herein to all pending cases involving the collection of fees unless it appears that the filer acted in reliance on prior contrary pronouncements to its detriment. On the other hand, we will not apply these rules, clarifications and policies to cases in which a final determination on the applicability of fees has been made.

22. Authority for this action is contained in sections 4(i) and 8(f) of the Communications Act of 1934, as amended.

23. For further information on this proceeding, contact Martin Blumenthal, Office of General Counsel, 202/254–6530.

List of Subjects

47 CFR Part 0

Organization and functions (Government agencies).

47 CFR Part 1

Administrative practice and procedure, Communications, Common carriers, Radio, Television.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

PART 0—[AMENDED]

1. The authority citation for Part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1066, as amended; 47 U.S.C. 155, unless otherwise noted.

§ 0.401 [Amended]

2. Section 0.401 is amended by adding new paragraph (b)(1)(iii) as follows:

* * * * *

(b) * * *

(1) * * *

(iii) Applications for a new television translator or a new low power television station or for major changes in the authorized facilities of such stations can be filed only during certain window periods specified in separate Commission Public Notices. The application delivery locations and addresses for such window filings are announced in those Public Notices.

* * * * *

PART 1—[AMENDED]

3. The authority citation for Part 1, Subpart G continues to read as follows:

Authority: Sec. 5002 (e) and (f), Pub. L. 99–272, 100 Stat., 82, 118–121, 47 U.S.C. 158.

4. Section 1.1102 is revised to read as follows:

§ 1.1102 Schedule of charges for private radio services.

Except as provided elsewhere in this subpart, the charges prescribed below are required for all requests for private radio authorizations submitted to the Commission.

(a) Marine Coast Stations (includes classes of station listed in § 80.17, except "Ship Station"):

(1) New Authorization.....$80
(no fee for special temporary authority or duplicate licenses)
(2) Modification or Assignment.....$80
(no fee to inform the FCC of changes in licensee name or address, vessel name, or that station is no longer in service)
(3) Renewal.....$80
(concurrent modification and renewal on FCC Form 503 requires a fee of $80 per station)

(b) Operational Fixed Microwave Stations:

(1) New Authorization.....$135
(no fee for special temporary authority or duplicate license)
(2) Modification or Assignment.....$135
(no fee to inform the FCC of changes of licensee name or address, or that station is no longer in service)
(3) Renewal.....$135
(concurrent modification and renewal on FCC Form 402 requires a fee of $135 per station)

(c) Aviation Ground Stations (includes all radio stations licensed under Part 87 except Civil Air Patrol stations):

(1) New Authorization.....$80
(no fee for special temporary authority or duplicate licenses)
(2) Modification or Assignment.....$80
(no fee to inform the FCC of changes in licensee name or address, or that a station is no longer in service)
(3) Renewal.....$80
(concurrent modification and renewal on FCC Form 408 requires a fee of $80 per station)

(d) Land Mobile Radio Licenses (includes all radio services regulated under Part 90 as well as the general mobile radio services (Part 95); for applications filed by certified frequency coordinators under 47 CFR 1.912(b), applicants may either attach the fee payment instrument, payable to the Federal Communications Commission, to the application when it is submitted for coordination or request that the coordinator report the results of coordination before the fee instrument is submitted to the coordinator for attachment to the application to be forwarded to the Commission):

(1) New Authorization.....$30
(each request consisting of not more than six specific fixed stations requires a fee of $30; an additional fee of $30 is required for each increment of six fixed stations; no fee for special temporary authority or duplicate licenses)
(2) Modification or Assignment.....$30
(fee required for each increment of six fixed stations; no fee to inform FCC of changes in licensee name or address, the number or locations of station control points, the number or location of control stations meeting the requirements of § 90.119(a)(2)(ii), the number of mobile units operated by radiolocation service licensees, or that the station is no longer in service)
(3) Renewal.....$30
(concurrent modification and renewal made on FCC Form 574 requires a fee of $30 per station license)

5. Section 1.1103 of the Commission's rules is revised to read as follows:

§ 1.1103 Schedule of charges for equipment approval services.

Except as provided elsewhere in this subpart, the charges prescribed below are required for all requests for equipment approvals submitted to the Commission.

(a) Certification (fees are also required under the abbreviated procedures for private label equipment and non-permissive changes):

(1) Receiver (except TV & FM receivers).....$250
(2) All Other Devices (per device).....$650

(b) Type Acceptance:

(1) Approval of Subscription TV System.....$2,000
(modifications that require a new application for advance approval will require an additional fee of $2000)
(2) All Other.....$325
(fee also applies for non-permissive changes that require a new application for type acceptance)

(c) Type Approval (all devices):

(1) With Testing.....$1,300
(also applies to major modifications that require testing)
(2) Without Testing.....$150
(applies to previously tested and approved equipment resubmitted for approval under new identification or for minor modification without FCC testing)
(d) Notification.....$100

6. Section 1.1104 is revised to read as follows:

§ 1.1104 Schedule of charges for mass media services.

Except as provided elsewhere in this subpart, the charges prescribed below are required for all requests for mass media authorizations submitted to the Commission.

(a) Commercial TV Stations:

(1) New or Major Change Construction Permit.....$2,250
(2) Minor Change.....$500
(no fee for requests for special temporary authority, requests for extension of time and/or replacement of construction permits, requests for remote control operation, or modifications that may be made without prior FCC authorization)
(3) Hearing.....$6,000
(for each application designated for a comparative hearing; fee is due with notice of appearance (§ 1.221); see also § 1.1111(c))
(4) License.....$150
(no fee to request a modified station license to reflect changes that do not require prior FCC authorization)
(5) Assignment or Transfer (per station, regardless of number of forms used):
(i) Form 314/315.....$500
(ii) Form 316.....$70
(6) Renewal.....$30

(b) Commercial Radio Stations:

(1) New or Major Change Construction Permit:
(i) AM Station.....$2,000
(ii) FM Station.....$1,800
(2) Minor Change (no fee for requests for special temporary authority, requests for extension of time and/or replacement of construction permits, requests for remote control operation, or modifications that do not require prior FCC authorization)
(i) AM.....$500
(ii) FM.....$500
(3) Hearing.....$6,000
(see paragraph (a)(3) of this section)
(4) License:
(no fee to request a modified station license to reflect changes that do not require prior FCC authorization)
(i) AM.....$325
(no fee for requests to determine power by the direct method)
(ii) AM Directional Antenna.....$375
(in addition to the AM License Fee)
(iii) FM.....$100
(5) Assignment or Transfer:
(per station, regardless of number of forms used)
(i) Forms 314/315.....$500
(ii) Form 316.....$70
(6) Renewal.....$30

(c) FM Translators:

(1) New or Major Change Construction Permit.....$375
(2) License.....$75
(3) Assignment or Transfer.....$75
(Forms 345/316; per station, regardless of number of forms used)
(4) Renewal.....$30

(d) TV Translators and LPTV Stations:

(1) New or Major Change Construction Permit.....$375
(2) License.....$75
(no fee to obtain a modified station license to reflect change in type of TV transmitter antenna or output power of TV aural or visual transmitters to accommodate a change in the antenna type or transmission line)
(3) Assignment or Transfer.....$75
(Forms 345/316; per station, regardless of number of forms used)
(4) Renewal.....$30

(e) Auxiliary Services (includes Remote Pickup stations, TV Auxiliary Broadcast stations, Aural Broadcast STL and Intercity Relay stations, and Low Power Auxiliary stations):

(1) Application.....$75
(fee for major application: new station; change in frequency, antenna system, power, and number of mobiles; relocation of stations; addition of a base station; and replacement of equipment)
(2) Renewals.....$30
(no fee for renewal of auxiliaries held by a broadcast licensee when requested in conjunction with the renewal application for its broadcast station)

(f) Cable Television Service:

(1) Cable Television Relay Service:
(i) Construction Permit.....$135
(ii) Assignment or Transfer.....$135
(Form 327; per station, regardless of number of forms used)
(iii) Renewal.....$135
(iv) Modification.....$135
(2) Cable Special Relief Petition.....$700
(fee for filings under section 76.7 of the rules seeking an exemption from the rules or the imposition of special requirements beyond those provided in the rules)

(g) Direct Broadcast Satellite:

(1) New or Major Change Construction Permit:
(i) Application.....$1,800
(a major change is considered any modification involving a significant, additional use of the orbit/spectrum resource)
(ii) Issuance of Construction Permit & Launch Authority.....$17,500
(iii) License to Operate Satellite.....$500
(2) Hearing.....$6,000
(see paragraph (a)(3) of this section)

7. Section 1.1105 is revised to read as follows:

§ 1.1105 Schedule of charges for common carrier service requests.

Except as provided elsewhere in this subpart, the charges prescribed below are required for all requests for common carrier authorizations submitted to the Commission, including requests for developmental authorizations.

(a) Domestic Public Land Mobile Stations (includes Base Dispatch, Control and Repeater Stations):

(1) New or Additional Facility (per transmitter).....$270
(2) Assignment or Transfer (per call

sign)....$200
(3) Renewal (per call sign)....$20
(4) Minor Modification (per call sign)....$20

(b) Air-Ground Individual License (per station):

(1) Initial License....$30
(2) Renewal....$20
(3) Modification....$20

(c) Cellular Systems (per system):

(1) New or Major Change Construction Permit....$200
(2) Assignment or Transfer....$200
(3) Initial covering license
(i) Wireline carrier....$525
(ii) Nonwireline carrier....$50
(4) Renewal....$20
(5) Minor modification....$50
(6) Additional license....$50

(d) Rural Radio (includes Central Office, Interoffice or Relay Facilities):

(1) Initial Construction Permit (per transmitter)....$90
(2) Assignment or Transfer (per call sign)....$90
(3) Renewal (per call sign)....$20
(4) Modification (per call sign)....$20

(e) Offshore Radio Service (fees would also apply to any expansion of this service into coastal waters other than the Gulf of Mexico):

(1) Initial Construction Permit (per transmitter)....$90
(2) Assignment or Transfer (per transmitter)....$90
(3) Renewal (per call sign)....$20
(4) Modification (per call sign....$20

(f) Domestic Public Fixed Radio Services (Part 21):

(1) Point-to-point Microwave and Local Television Radio Service—
(i) Conditional License (per station)....$135
(no fee to request special temporary authority or waiver of construction authorization requirements)
(ii) Modification of Conditional License....$135
(per station; no fee for permissive changes that do not require a modified conditional license)
(iii) Initial License for New Frequency (per station)....$135
(certification of completion of construction, in addition to fee for conditional license)
(iv) Renewal (per licensed station)....$135
(v) Assignment or Transfer (per authorized station)....$45
(2) Multipoint Distribution Service (including multichannel MDS)—
(i) Conditional License (per station)....$135
(no fee for requests for special temporary authority or a waiver of the construction authorization requirements)
(ii) Modification of Conditional License....$135
(per station; no fee for permissive changes that do not require modified conditional license)
(iii) Initial License for New Frequency....$400
(per channel; certification of completion of construction, in addition to the fee for conditional license)
(iv) Renewal (per licensed station)....$135
(v) Assignment or Transfer (per authorized station)....$45
(3) Digital Electronic Message Service—
(i) Conditional License (per nodal station)....$135
(no fee for requests for special temporary authority or a waiver of the construction authorization requirements)
(ii) Modification of Conditional License....$135
(per nodal station; no fee for permissive changes that do not require modified conditional license)
(iii) Initial License (per nodal station)....$135
(certification of completion of construction, in addition to the fee for conditional license)
(iv) Renewal (per licensed nodal station)....$135
(v) Assignment or Transfer....$45
(per authorized nodal station)

(g) International Fixed Public Radio (Public and Control Stations):
(1) Initial Construction Permit (per station)....$450
(2) Assignment or Transfer (per application)....$450
(3) Renewal (per license)....$325
(4) Modification (per station)....$325

(h) Satellite Services:

(1) Transmit Earth Stations (per earth station)—
(i) Initial Station Authorization....$1,350
(per application to construct and/or operate a domestic or international transmitting earth station for private or common carrier service or for telemetry, tracking, and command functions)
(ii) Assignment or Transfer....$450
(iii) All Other Applications....$90
(includes applications for regular or temporary authorization, renewal or modification of station authorizations, or waiver)
(2) Small Transmit/Receive Earth Stations (2 meters or less operating in the 4/6 GHz frequency band)—
(i) Lead Authorization (per application)....$3,000
(the first earth station authorization in a network)
(ii) Routine Authorization (per earth station)....$30
(requested under the terms and conditions of the lead authorization)
(iii) All Other Applications (per earth station)....$90
(includes, but is not limited to, regular or temporary authorizations, renewals, transfers, assignments, modifications, waivers, and development authority)
(3) Receive Only Earth Stations (these requests involve regular commercial receive-only earth stations for which protection from interference is being requested)—
(i) Initial Station Authorization....$200
(ii) All Other Applications....$90
(see paragraph (h)(2)(iii) of this section).
(4) Space Stations—
(i) Application for Authority to Construct....$1,600
(for domestic and international space stations, also applies to requests to construct an in-orbit or on-ground spare)
(ii) Application for Authority to Launch and Operate)....$18,000
(also applies to request launch and later operate an in-orbit spare)
(5) Satellite System Application (technically identical small earth station antennas that operate in bands where frequency coordination is not required, such as the 12/14 GHz, and interconnect with each other; fees apply to fixed-satellite systems, the radiodetermination satellite service and the mobile satellite service)—
(i) Initial Authorization (per system)....$5,000
(ii) Assignment or Transfer (per system)....$1,333
(iii) All Other Applications (per request)....$90

(i) Section 214 Applications (each 214 request to install or acquire communications channels, regardless of the number of communications channels requested, will require only one multiple of the applicable fee)

(1) Overseas Cable Construction....$8,100
(2) Domestic Cable Construction....$540
(3) All Other 214 Applications....$540
(no fee for requests to reduce or discontinue service, or 214 applications that are submitted purely for notification purposes)
(4) Telephone Equipment Registration (Part 68)....$135

(j) Tariff Filings

(1) Filing Fee....$250
(for each Tariff Publication which is accompanied by a Letter of Transmittal)
(2) Special Permission Filing (per filing)....$20

§ 1.1107 [Amended]

8. Section 1.1107 is amended by revising paragraph (b) to read as follows:

* * * * *

(b) Filings subject to a fee under this subpart that are submitted without a fee, with an insufficient fee, with a fee payment in an improper form (see § 1.1108), or with a payment instrument that is uncollectable shall be dismissed and the application returned to the applicant or its designated agent without processing. See also § 1.1114.

* * * * *

§ 1.1108 [Amended]

9. Section 1.1108 is amended by the addition of new paragraphs (b)(4) and (d), as follows:

* * * * *

(b) * * *

(4) The Commission may accept multiple money orders in payment of a fee for a single application where the fee exceeds the maximum amount for a money order established by the issuing agency and the use of multiple money orders is the only practical method available for fee payment.

* * * * *

(d) Receipts for fee submissions will not be furnished. An applicant may request a copy of its application date stamped by the Commission. An extra copy of the application should be provided for this purpose, and those filing by mail should provide a stamped, self-addressed envelope for the return of the date stamped copy of the application. Applicants filing through frequency coordinators (see §§ 1.912 and 1.1102 of this part) may obtain a date stamped copy of their application as filed in this manner.

10. Section 1.1108 is amended by removing the "Note" at the end of the section.

§ 1.1111 [Amended]

11. Section 1.1111 is amended by adding new paragraphs (b) and (c), as follows:

* * * * *

(b) When an application for new or modified facilities is not timely filed in accordance with the filing window as established by the Commission in a public notice specifying the earliest and latest dates for filing such applications.

(c) Applicants in the Mass Media Services designated for comparative hearings will be entitled to a grant without payment of the hearing fee or a refund of the hearing fee paid in the following circumstances.

(1) When a settlement agreement filed with the presiding judge by the Notice of Appearance deadline (see § 1.221) provides for the dismissal of all but one of the applicants, and the single remaining applicant is immediately grantable, no hearing fee is due. However, if the applicant cannot be granted without resolution of matters specified in the designation order, it must pay the hearing fee. That payment will be refunded upon request if all outstanding matters can be deleted. See § 1.229.

(2) When only one applicant files a Notice of Appearance and pays the hearing fee, that single remaining applicant will be entitled to a refund of the hearing fee upon request if it is immediately grantable or if all matters specified in the designation order and requiring resolution can be deleted. See § 1.229.

(3) However, hearing fees paid pursuant to (1) or (2) above will be retained by the Commission in any case requiring a decision on the merits of an applicant's post-designation amendment or evidentiary showing, whether by Summary Decision or otherwise. See §§ 1.251 and 1.267.

§ 1.1112 [Amended]

12. Section 1.1112 is amended by revising paragraphs (a) and (e) to read as follows:

* * * * *

(a) Applications filed for the sole purpose of modifying an existing authorization (or a pending application for authorization) in order to comply with new or additional requirements of the Commission's rules or the rules of another Federal agency. However, if the applicant also requests an additional modification, renewal, or other action, the appropriate fee for such additional request must accompany the application. Cases in which a fee will be paid include applications by FM and TV licensees or permittees seeking to upgrade channel after a rulemaking.

* * * * *

(e) Other applicants, permittees, or licensees providing, or proposing to provide, a noncommercial educational or instructional service, but not qualifying under § 1.1112(c), may be exempt from filing fees, or be entitled to a refund, in the following circumstances.

(1) An applicant is exempt from filing fees if it is an organization that, like the Public Broadcasting Service or National Public Radio, receives funding directly or indirectly through the Public Broadcasting Fund, 47 U.S.C. 396(k), distributed by the Corporation for Public Broadcasting, where the authorization requested will be used in conjunction with the organization on a noncommercial educational basis;

(2) An applicant for a translator or low power television station that proposes a noncommercial educational service will be entitled to a refund of fees paid for the filing of the application when, after grant, it provides proof that it has received funding for the construction of the station through the National Telecommunications and Information Administration (NTIA) or other showings as required by the Commission.

(3) An applicant that has qualified for a fee refund under § 1.1112(e)(2) and continues to operate as a noncommercial education station is exempt from fees for broadcast auxiliary stations (Subparts D, E, and F of Part 74) or stations in the private radio or common carrier services where such authorization is to be used in conjunction with the noncommercial educational translator or low power station.

(4) An applicant that is the licensee of an instructional television fixed station (§ 74.901 *et seq.*) is exempt from filing fees where the authorization requested will be used by the applicant in conjunction with the provision of the instructional service.

* * * * *

§ 1.1114 [Amended]

13. Section 1.1114 is amended by revising paragraph (a), as follows:

(a) Filings subject to fees and accompanied by defective fee submissions will be dismissed under § 1.1107(b) of this subpart where the defect is discovered by the Commission's staff within 30 calendar days from the receipt of the application or filing by the Commission.

(1) A defective fee may be corrected by resubmitting the application or other filing, together with the entire correct fee.

(2) For purposes of determining whether the filing is timely, the date of resubmission with the correct fee will be considered the date of filing. However, in cases where the fee payment fails due entirely to bank error, the date of the original submission will be considered the date of filing.

* * * * *

§ 1.1116 [Amended]

14. Section 1.1116 is amended by designating the present text as paragraph (a) and adding a new paragraph (b), as follows:

(a) * * *

(b) Actions taken by the Fee Section staff are subject to the reconsideration and review provisions of §§ 1.106 and 1.115 of this part, EXCEPT THAT reconsideration and/or review will only be available where the applicant has made the full and proper payment of the underlying fee as required by this subpart.

(1) Petitions for reconsideration and/or applications for review submitted by applicants that have not made the full and proper fee payment will be dismissed; and

(2) If the fee payment should fail while the Commission is considering the matter, the petition for reconsideration or application for review will be dismissed.

[FR Doc. 88-24093 Filed 10-18-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-108; RM-6068]

Radio Broadcasting Services; Yreka, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 249C2 for Channel 249A at Yreka, California, and modifies the Class A license of Dalmation Enterprises, Inc. for Station KYRE(FM), as requested, to specify operation on the higher class channel, thereby providing that community with its first wide coverage area FM service. Reference coordinates for Channel 249C2 at Yreka are 41–36–37 and 122–37–127. With this action, the proceeding is terminated.

EFFECTIVE DATE: November 15, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–108, adopted September 9, 1988, and released October 3, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments for Yreka, California, is amended by removing Channel 249A and adding Channel 249C2.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–24144 Filed 10–18–88; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 87-601 RM-5990]

Radio Broadcasting Services; Galliano, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 232C2 for Channel 232A at Galliano, Louisiana, and modifies the license of Station KBAU(FM) to specify operation on the higher class co-channel, at the request of Callais Broadcasting, Inc. This action provides Galliano with its first wide coverage area FM service. A site restriction of 27.9 kilometers (13.3 miles) west of the community is required. The restricted site coordinates are 29–24–19 and 90–35–00. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 14, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–601, adopted August 31, 1988, and released September 30, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended, under Louisiana, by removing Channel 232A and adding Channel 232C2 at Galliano.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–24139 Filed 10–18–88; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 88-47; RM-5877, RM-6146, RM-6364, RM-6365]

Radio Broadcasting Services; Oakdale, Tioga, and West Monroe, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 254C2 for 285A at Oakdale, Louisiana, and modifies the license of Station KICR–FM to specify operation on the higher class channel, as requested by Oakdale Limited Partnership. This action also substitutes Channel 278C2 for Channel 252A at Tioga, Louisiana, and modifies the license of Station KISY(FM) to reflect operation on the higher class channel, at the request of Cavaness Broadcasting, Inc. Channel 254C2 requires a site restriction of 7.5 kilometers (4.6 miles) northeast of Oakdale. The restricted site coordinates are 30–51–42 and 92–36–52. Channel 278C2 also requires a site restriction of 11.2 kilometers (7 miles) northeast of Tioga. The restricted site coordinates are 31–28–18 and 92–22–17. Oakdale and Tioga will be provided with a first wide coverage area FM service. The substitution of Channel 252C2 for Channel 252A at West Monroe, Louisiana (RM–6365), will be the subject to a *Second Report and Order*. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 30, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's First Report and Order, MM Docket No. 88–47, adopted September 7, 1988, and released September 30, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments, is amended under Louisiana by adding Channel 254C2 and removing Channel 285A at Oakdale; and adding Channel 278C2 and removing Channel 252A at Tioga.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–24138 Filed 10–18–88; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 87-304; RM-5537, RM-6120, and RM-6121]

Radio Broadcasting Services; Albert Lea, Red Wing, and Stewartville, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 235C2 for Channel 237A at Albert Lea, Minnesota and modifies the license of Station KCPI–FM. This action is taken in response to a petition filed by Communications Properties, Inc. The coordinates for Channel 235C2 at Albert Lea are 43–51–48 and 93–09–48. To accommodate the upgrade at Albert Lea, it is necessary to make substitutions in two other Minnesota communities. Channel 290A can be substituted for Channel 288A at Red Wing at the current site of Station KWNG. The coordinates for Channel 290A at Red Wing are 44–32–20 and 92–31–25. Channel 287C2 can be substituted for vacant Channel 235A at Stewartville with a site restriction 23.1 kilometers southwest of the community. The coordinates for Channel 287C2 at Stewartville are 43–43–09 and 92–42–12. Channel 235A at Stewartville was made available for filing applications in Window Number 68 which opened on May 12, 1988 and closed on June 16, 1988. The Public Notice announcing the acceptance of applications for Stewartville indicated the possibility of an upgrade and explained that if the proposal was adopted, applicants for the Class A channel would be required to specify the higher class channel and would be afforded cut-off protection against any applications not filed during this window. The Commission will not open another window for the Class C2 channel at Stewartville as public notice has been given of the channel upgrade. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 21, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–306, adopted September 1, 1988, and released October 4, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments, is amended under Minnesota, by removing Channel 237A and adding Channel 235C2 at Albert Lea, by removing Channel 288A and adding Channel 290A at Red Wing, and by removing Channel 235A and adding Channel 287C2 at Stewartville.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–24140 Filed 10–18–88; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 87-209, RM-5709, RM-5764, RM-5925, RM-5979, RM-6049]

Radio Broadcasting Services; New Ulm, Bryan, Huntsville, Cameron, Creedmoor, and La Grange, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 222A to New Ulm, Texas, and Channel 235A to Huntsville, Texas, as requested by New Ulm Broadcasting and Carolyn G. Vance, respectively. The new allotments could provide a first local FM service at New Ulm and Huntsville with its second local FM service. In addition, this action substitutes Channel 284C2 for Channel 285A at Bryan, Texas, and modifies the license of Station KKYS(FM) to specify operation on the higher class adjacent channel, at the request of Radio U.S.A. Ltd.; and substitutes Channel 280C2 for Channel 276A at Cameron, Texas, and modifies the license of Station KCRM(FM) to specify operation on the higher class non-adjacent channel, at the request of KCRM Broadcasting, Inc. A first wide coverage area FM service could be provided to both Bryan and Cameron. Channel 222A at New Ulm requires a site restriction of 4.0 kilometers (2.5 miles) west of the community, at coordinates 29–54–09 and 96–31–45. Channel 235A at Huntsville, Texas, requires a site restriction of 5.5 kilometers (3.4 miles) northwest of the city, at coordinates 30–43–24 and 95–33–00. The substitution of Channel 284C2 at Bryan requires the transmitter site for Station KYYS(FM) to be relocated to a site 5.8 kilometers (3.6 miles) north of the city at coordinates 30–43–30 and 96–21–30. The current transmitter site of Station KCRM(FM) can be used for the Channel 280C2 substitution, at coordinates 30–45–16 and 96–54–30. This action further dismisses the petition of Don Werlinger, d/b/a The Broadcast Development Group, Inc. (RM–6079), proposing to allot Channel 285A to Creedmoor, Texas, at its request. With this action, this proceeding is terminated.

DATES: Effective November 21, 1988; the window period for filing applications for Channel 222A at New Ulm, Texas and Channel 235A at Huntsville, Texas, will open on December 22, 1988, and close on December 22, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–209, adopted September 14, 1988, and released October 4, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended, under Texas by adding New Ulm, Channel 222A, by adding Channel 235A at Huntsville; by removing channel 285A and adding Channel 284C2 at Bryan; and by removing channel 276A and adding Channel 280C2 at Cameron.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-24142 Filed 10-18-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-544; RM-6070, RM-6256]

Radio Broadcasting Services; Ravenswood and Spencer, WV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 284A to Spencer, West Virginia, as that community's first FM service, at the request of Star Communications Inc. The allotment requires a site restriction of 3.6 kilometers (2.3 miles) northeast of Spencer at coordinates 38-49-31 and 81-19-21. This action also dismisses a petition filed by Ohio River Broadcasting (RM-6070), proposing the allotment of Channel 284A to Ravenswood, West Virginia, due to a lack of continuing interest in the proposal. With this action, this proceeding is terminated.

DATES: Effective November 21, 1988; the window period for filing applications will open on November 22, 1988, and close on December 22, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-544, adopted September 14, 1988, and released October 4, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended under West Virginia, by adding Channel 284A, Spencer.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-24141 Filed 10-18-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-73; RM-5244]

Radio Broadcasting Services; Ouray, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 289C2 for Channel 285A at Ouray, Colorado, and modifies the Class A license of Ouray Broadcasting Co., Inc. for Station KURA(FM), as requested, to specify operation on the higher class channel, thereby providing that community with its first wide coverage area FM service. Reference coordinates for Channel 289C2 at Ouray are 38-10-54 and 107-46-29. With this action, the proceeding is terminated.

EFFECTIVE DATE: November 14, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-73, adopted September 9, 1988, and released September 30, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1910 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

In § 73.202(b), the Table of FM Allotments for Ouray, Colorado, is amended by removing channel 285A and adding Channel 289C2.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-24152 Filed 10-18-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-438; RM-5894]

Radio Broadcasting Services; West Palm Beach, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of J. J. Taylor Companies, Inc. substitutes Channel 282C for Channel 282C1 at West Palm Beach, Florida, and modifies its license for Station WEAT-FM to specify the higher powered channel. Channel 282C can be allotted to West Palm Beach in compliance with the Commission's minimum distance separation requirements with a site restriction of 26.5 kilometers (16.5 miles) southwest. The coordinates for this allotment are North Latitude 26-30-00 and West Longitude 80-10-00. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 14, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-438, adopted September 1, 1988, and released September 30, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the FM Table of Allotments for West Palm Beach, Florida is amended by removing Channel 282C1 and adding Channel 282C.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-24151 Filed 10-18-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-593; RM-6046]

Radio Broadcasting Services; Baker, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 297A to Baker, Louisiana, as that community's first FM service, at the request of Jeffrey G. Welsh. The allotment can be used at the reference coordinates, which are 30-35-18 and 91-10-06. With this action, this proceeding is terminated.

DATES: Effective November 14, 1988; the window period for filing applications will open on November 15, 1988, and close on December 15, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-593, adopted August 31, 1988, and released September 30, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended under Louisiana by adding Channel 297A, Baker.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-24146 Filed 10-18-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-555; RM-6077]

Radio Broadcasting Services; New Richmond, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 296C2 for Channel 296A at New Richmond, Wisconsin, and modifies the license of Station WIXK-FM to specify operation on the higher class frequency, as requested by Smith Broadcasting, Inc. The channel substitution could provide New Richmond with its first wide coverage area FM service. The station's current transmitter site must be relocated to a restricted site 21.1 kilometers (13.1 miles) northeast of the community, at coordinates 45-16-03 and 92-21-34. Concurrence has been obtained from the Canadian government. With this action, this proceeding is terminated.

EFFECTIVE DATES: November 14, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-555, adopted August 31, 1988, and released September 30, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended under

Wisconsin, by removing Channel 296A and adding Channel 296C2 at New Richmond.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-24149 Filed 10-18-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-524; RM-6020]

Radio Broadcasting Services; Verona, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 288A to Verona, Wisconsin, as that community's first FM service, at the request of Son Communications of Madison, Wisconsin. The allotment can be made consistent with the Commission's minimum distance separation requirements at the reference coordinates, which are 42-59-24 and 89-32-00. With this action, this proceeding is terminated.

DATES: Effective November 14, 1988; the window period for filing applications will open on November 15, 1988, and close on December 15, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-524, adopted August 31, 1988, and released September 30, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended under Wisconsin by adding Channel 286A, Verona.

Steve Kaminer,
Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-24147 Filed 10-18-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-174; RM-6283]

Radio Broadcasting Services; Waunakee, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 286A to Waunakee, Wisconsin, as that community's first FM service, at the request of WIBU, Inc. A restricted site 5.7 kilometers (3.5 miles) northeast of the community is required at the coordinates 43-12-34 and 89-23-28. With this action, this proceeding is terminated.

DATES: Effective November 14, 1988; the window period for filing applications will open on November 15, 1988, and close on December 15, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-174, adopted August 31, 1988, and released September 30, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended under Wisconsin by adding Channel 286A, Waunakee.

Steve Kaminer,
Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-24148 Filed 10-18-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 90

[PR Docket No. 87-312]

Amendment Of Commission's Rules To Permit Commercial Enterprises To Be Licensed Directly in the Special Emergency Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; Order extending comment period for oppositions to petitions for reconsideration.

SUMMARY: In response to a Motion for Extension of Time filed by ProNet, the Commission adopted an Order extending the time period in which to file oppositions to the petitions for reconsideration in this proceeding.

DATES: Oppositions to the petitions for reconsideration are due by September 28, 1988; Replies to oppositions are due by November 3, 1988.

FOR FURTHER INFORMATION CONTACT: Irene Bleiweiss, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION: Notice of the petitions for reconsideration was published on August 29, 1988 at 53 FR 32940.

As a result of an oversight, this document was not published in a timely fashion. Because of this, the period for replies has been extended beyond the usual point of ten days after oppositions are due.

Order Extending Comment Period

Adopted: September 14, 1988.
Released: October 3, 1988.

By the Acting Chief, Private Radio Bureau.

1. On May 18, 1988, the Commission adopted a *Report and Order* in the above captioned matter. This *Report and Order* appeared in the **Federal Register**, 53 FR 25607, on July 8, 1988. Timely petitions for reconsideration were received from Associated Public-Safety Communications Officers, Inc., the International Municipal Signal Association, the International Association of Fire Chiefs, Inc., and the National Association of State EMS Directors. Public notice of the petitions for reconsideration appeared in the **Federal Register**, 53 FR 32940, on August 29, 1988. Oppositions to the petitions for reconsideration were due by September 14, 1988.

2. On September 9, 1988, ProNet filed a request to extend the time period for filing oppositions in this proceeding to September 28, 1988. ProNet, the original proponent of this rule making states that it can provide the Commission with valuable information regarding the issues under consideration if it is given additional time in which to consult with entities in the medical community. Counsel for the parties who filed the petitions for reconsideration do not object to the extension.

3. We recognize the importance of input from the medical community in this proceeding. Therefore, to permit the gathering of adequate information from such entities we are extending the period in which to file oppositions. This action will assure a complete record in this proceeding.

4. Accordingly, *it is ordered*, pursuant to the authority set forth in § 0.331 of the Commission's Rules and Regulations, that interested parties will have until September 28, 1988, to file oppositions to the petitions for reconsideration in this proceeding. Replies to oppositions will be due by November 3, 1988.

Federal Communications Commission.

Beverly G. Baker,
Acting Chief, Private Radio Bureau.

[FR Doc. 88-24091 Filed 10-18-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 71147-8822]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustment.

SUMMARY: NOAA announces the apportionment of amounts of yellowfin sole from domestic fishermen processing fish or delivering fish to domestic processors (DAP) to domestic fishermen delivering fish to foreign processors (JVP). This action, taken under provisions of the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands (BSAI), assures optimum use of of groundfish in the yellowfin sole fishery and in other directed fisheries that take yellowfin sole as bycatch.

DATES: Effective: October 14, 1988. Comments will be accepted through October 31, 1988.

ADDRESS: Comments should be mailed to James W. Brooks, Acting Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802, or delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Mike Sigler, Fishery Research Biologist, NMFS, 907-586-7229.

SUPPLEMENTARY INFORMATION: Rules appearing at 50 CFR 611.93 and Part 675 implement the FMP.

Initially, 15 percent of the 1988 total allowable catch (TAC) for each species or species group in the BSAI area was placed in reserve, DAP was specified, and remaining amounts were provided to JVP (53 FR 894, January 14, 1988). No amount of groundfish was provided for foreign harvest because U.S. fishermen are able to harvest the entire 1988 TAC.

The following inseason actions have reapportioned amounts from the reserve to DAP, JVP, or both, or amounts from DAP to JVP: April 19 (53 FR 12772), May 10 (53 FR 16552), May 25 (53 FR 18841), June 22 (53 FR 23402), July 14 (53 FR 28599), July 27 (53 FR 28229), August 30 (53 FR 33140), September 9 (53 FR 35061), October 3 (53 FR 38725) (sablefish), and October 5 (53 FR 39097) (other rockfish).

The Acting Director, Alaska Region, NMFS, has determined from fishery information, including DAP catch to date and a recent survey of DAP processors, that the amount of yellowfin sole assigned to DAP in the BSAI area will not be reached before the end of 1988. Accordingly, 8,850 mt of DAP are reapportioned to JVP. With this action, the JVP apportionment of 203,544 mt is increased to 212,394 mt.

These apportionments will not result in overfishing of yellowfin sole because the sum of the adjusted DAP amount and the JVP amount for yellowfin sole does not exceed the allowable biological catch (ABC) for this species.

TABLE 1.—BERING SEA AND ALEUTIAN ISLANDS AREA (BSAI) REAPPORTIONMENTS OF INITIAL TAC

[All values are in metric tons]

		Current	This action	Revised
BSAI yellowfin sole:				
TAC=254,000	DAP	[illegible]	−8,850	[illegible]
	JVP	203,544	+8,850	[illegible]
BSAI all species:				
	DAP	[illegible]	−8,850	700,173
	JVP	1,282,784	+8,850	1,291,634
	Reserve	8,193	[1]	8,193
	Total (TAC)	2,000,000		

[1] No change.

Classification

This action is taken under the authority of 50 CFR 675.20(b) and complies with Executive Order 12291.

The Assistant Administrator for Fisheries finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment. Immediate effectiveness of this notice will allow JVP fishermen to continue directed fishing for yellowfin sole. Interested parties are invited to submit comments in writing to the address above for 15 days after the effective date of this notice, in accordance with § 675.20(b)(2)(i).

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 14, 1988.

Richard H. Schaefer,
Director, Office of Fisheries Conservation and Management.

[FR Doc. 88-24183 Filed 10-14-88; 4:28 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 53, No. 202
Wednesday, October 19, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1750

Acquisitions, Mergers, and Consolidations; Telephone Program

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration (REA) proposes to add Part 1750, Acquisitions, Mergers, and Consolidations—Telephone Program, to 7 CFR Chapter XVII. This new part consolidates, revises, and clarifies the policies, requirements, and procedures presently contained in various REA publications pertaining to acquisitions, mergers, and consolidations, including the following REA Bulletins:

320–4 Preloan Procedures for Telephone Loan Applicants
325–1 Financing Lines, Facilities, or Systems Outside of Rural Areas
326–1 Acquisitions of Telephone Facilities and Systems

The above Bulletins also contain certain other policies, requirements, and procedures that will be incorporated into other CFR parts. These Bulletins will then be rescinded.

Part 1750 sets forth the provisions and requirements of the RE Act and the REA administrative policies, requirements, and procedures concerning the acquisition, merger, or consolidation of telephone facilities and systems. The primary objectives of the proposed rule are to update, consolidate, clarify, and simplify REA policies and procedures; to lessen the paperwork burden on borrowers; and to decrease processing time by REA.

All borrowers that are parties to an acquisition, merger, or consolidation will be affected by this rule.

DATE: Public comments concerning this proposed rule must be received by REA no later than November 18, 1988.

ADDRESS: Comments may be mailed to F. Lamont Heppe, Jr., Chief, Loans and Management Branch, Telecommunications Staff Division, Rural Electrification Administration, Room 2250, South Building, U.S. Department of Agriculture, Washington, DC 20250. Comments received may be inspected in Room 2250 between 8:15 a.m. and 4:45 p.m.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Chief, Loans and Management Branch, Telecommunications Staff Division, Rural Electrification Administration, Room 2250, South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone number (202) 382–9550. The Draft Regulatory Impact Analysis describing the options considered in developing this rule is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: This rule is issued in conformity with Executive Order 12291, Federal Regulation. This action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment or productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, this rule has been determined to be "not major."

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.* (1976)) and, therefore, does not require an environmental impact statement or an environmental assessment.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. For the reasons set forth in the final rule related Notice to 7 CFR Part 3015, Subpart V (50 FR 47034, November 14, 1985) this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping provisions that are included in these proposed rules have been submitted for approval to the Office of Management and Budget (OMB). The will not be effective until approved by OMB.

Public reporting burden for this collection of information is estimated to average 18 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, DC 20250; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for REA, Washington, DC 20503.

Background

Currently, the policies and requirements concerning the acquisition, merger, or consolidation of the telephone facilities and systems are contained in numerous REA Bulletins and REA Staff Instructions (internal instructions for REA personnel). Many of these are outdated and contain conflicting information. It is necessary to consolidate the information and make it available to the public by publishing it in the Federal Register.

This proposed rule eliminates some reporting requirements and streamlines others, reducing the borrowers' burden, while permitting REA to maintain the security of the Government's loans.

REA will no longer (1) place a valuation on facilities acquired with funds other than loan funds, nor (2) permit loan funds to be used to acquire any stock or telephone plant in service or under construction of an affiliated company. Additionally, REA Forms 507, "Report on Telephone Acquisition," and 507a, "Report on Telephone Acquisitions—by Exchange," have been combined and considerably shortened.

Article II, section 15(c), of the mortgage, which applies to each borrower with an adjusted net worth of

less than 20 percent of its adjusted assets, includes certain requirements in the event of a change in ownership interests of the borrower, which in the sole opinion of the majority noteholders might adversely affect their security. Currently, these requirements are normally applied if the ownership and control of a borrower is to be transferred to a non-operating holding company. As proposed, transfer of ownership to a non-operating holding company, in and of itself, will not be considered to have an adverse effect on REA's security.

7 CFR Part 1750 supersedes any sections of REA Bulletins with which it is in conflict.

List of Subjects in 7 CFR Part 1750

Loan programs—communications, Telecommunications, Telephone.

Therefore, REA proposes to amend 7 CFR Chapter XVII by adding the following new Part 1750:

PART 1750—ACQUISITIONS, MERGERS, AND CONSOLIDATIONS—TELEPHONE PROGRAM

Subpart A—General

Sec.

1750.1 General statement.
1750.2 REA field representative assistance.
1750.3 Definitions.
1750.4 Availability of forms.

Subpart B—Mortgage Controls on Acquisitions and Mergers

1750.10 Specific provision.
1750.11 Approval of criteria.
1750.12 Approval of acquisitions and mergers.

Subpart C—Acquisitions Involving Loan Funds

1750.20 Use of loan funds.
1750.21 Nonrural areas.
1750.22 Acquisition agreements.
1750.23 Loan design.
1750.24 Submission of data.
1750.25 Interim financing.
1750.26 Acquisition of affiliates.
1750.27 Release of loan funds, requisitions, advances.

Subpart D—Acquisitions or Mergers Not Involving Additional Loan Funds

1750.30 Submission of data.

Subpart E—Requirements for all Acquisitions and Mergers

1750.40 Preliminary approvals.
1750.41 Location of facilities.
1750.42 Accounting considerations.
1750.43 Notes.
1750.44 Final approval and closing procedure.
1750.45 Unadvanced loan funds.

Subpart F—Toll Line Acquisitions

1750.50 Use of loan funds.
1750.51 With nonloan funds.

Authority: 7 U.S.C. 901 *et seq.*, 7 U.S.C. 1921 *et seq.*

Subpart A—General

§ 1750.1 General statement.

(a) The standard REA loan security documents (see 7 CFR Part 1758) contain provisions regarding acquisitions, mergers, and consolidations. This CFR part implements those provisions by setting forth the policies, procedures, and requirements for telephone borrowers planning to acquire existing telephone lines, facilities, or systems with REA loan or other funds, or planning to merge or consolidate with another system. This CFR part supersedes all REA Bulletins that are in conflict with it.

(b) This CFR part also details REA's requirements with respect to mergers and acquisitions involving REA loan funds.

(c) Suggested guideline for borrowers planning acquisitions, mergers, or consolidations are provided in Telecommunications Operations Manual (TOM) section 1026.

§ 1750.2 REA field representative assistance.

Borrowers contemplating acquisitions or mergers should first discuss their plans with the REA general field representative who will provide advice and assistance.

§ 1750.3 Definitions.

As used in this part.

(a) "Acquisition" means the purchase of another telephone system, lines, or facilities whether by acquiring telephone plant in service or majority stock interest of one or more organizations.

(b) "Acquisition agreement" means the agreement, including a sales agreement, between the seller and purchaser outlining the terms and conditions of the acquisition. Acquisition agreements also include any other agreements, such as options and subsidiary agreements relating to terms of the transaction.

(c) "Adjusted assets" has the meaning as defined in Article II, section 15(d) of the standard REA mortgage. See 7 CFR Part 1758.

(d) "Adjusted net worth" has the meaning as defined in Article II, section 15(d) of the standard REA mortgage. See 7 CFR Part 1758.

(e) "Administrator" means the Administrator of REA.

(f) "Affiliate" means an organization that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the borrower.

(g) "Borrower" means any organization which has an outstanding loan made or guaranteed by REA, or which is seeking such financing.

(h) "Consolidation" means the combination of two or more borrower or nonborrower organizations, pursuant to state law, into a new successor organization that takes over the assets and assumes the liabilities of those organizations.

(i) "Construction fund" means the REA Construction Account required by section 2.4 of the standard loan contract into which all REA loan funds are advanced. See 7 CFR Part 1758.

(j) "Interim financing" means funding for a project the borrower desires to be financed by an REA loan but for which no REA loan funds have been made available.

(k) "Loan" means any loan made or guaranteed by REA.

(l) "Loan contract" means the loan agreement between REA and the borrower, including all amendments thereto.

(m) "Loan funds" means funds provided by REA through direct or guaranteed loans.

(n) "Majority noteholders" means the holder or holders of a majority in principal amount of the notes outstanding at a particular time.

(o) "Merger" means the combining, pursuant to state law, of one or more borrower or nonborrower organizations into an existing survivor organization that takes over the assets and assumes the liabilities of the merged organizations. While the terms merger and consolidation have different meanings, for the purpose of this part, "mergers" also include consolidations as defined above. Furthermore, "mergers" also include acquisitions where the acquired systems, lines, or facilities and the acquiring system are operated as one system.

(p) "Mortgage" means the security agreement between REA and the borrower, including any amendments and supplements thereto.

(q) "Rural area" means any area of the United States not included within the boundaries of any incorporated or unincorporated city, village or borough having a population exceeding 1,500. The population figure is obtained from the most recent data available from the Bureau of the Census and Rand McNally and Company. The determination of whether an area is rural is based on the population within the corporate limits or boundaries of unincorporated areas in existence at the time the facilities to serve the community were first financed by REA. If a community is considered

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rural at that time, it will always be considered rural.

(r) "Survivor" means (1) the successor corporation formed by the consolidation of one or more borrowers, (2) the corporation remaining after completion of a major involving one or more borrowers, and (3) a corporation assuming all or a portion of an REA loan in connection with an acquisition.

(s) "Telephone service" means any communication service for the transmission of voice, sounds, signals, pictures, writing, or signs of all kinds through the use of electricity between the transmitting and receiving apparatus, and includes all telephone lines, facilities, or systems used to render such service. It does not mean (1) message telegram service, (2) community antenna television system services or facilities other than those intended exclusively for educational purposes, or (3) radio broadcasting services or facilities within the meaning of section 3(o) of the Communications Act of 1934, as amended.

§ 1750.4 Availability of forms.

Single copies of REA forms and publications cited in this part are available from Administrative Services Division, Rural Electrification Administration, United States Department of Agriculture, Washington, DC 20250. These REA forms and publications may be reproduced.

Subpart B—Mortgage Controls on Acquisitions and Mergers

§ 1750.10 Specific provisions.

(a) The standard form of REA mortgage (see 7 CFR Part 1758) contains certain provisions concerning mergers and acquisitions:

(1) Article II, section 4(a) requires the borrower to obtain the written approval of the majority noteholders before taking any action to reorganize, or to consolidate with or merge into any other corporation.

(2) Article II, section 4(b), if made applicable, provides certain exceptions to the requirements of section 4(a).

(3) Article II, section 15(c), which applies to each borrower with an adjusted net worth of less than 20 percent of its adjusted assets, sets forth, among other matters, certain requirements in the event of a change in ownership interests of the borrower, which in the sole opinion of the majority noteholders might adversely affect its or their security.

(b) Similar provisions are contained in other forms of documents executed by borrowers that have not entered into the standard form of mortgage.

(c) Mortgages and loan contracts may contain other provisions concerning mergers and acquisitions.

§ 1750.11 Approval criteria.

(a) If a borrower is required by the terms of its mortgage or loan contract to obtain REA approval of a merger or acquisition, the borrower shall request REA approval and shall provide REA with such data as REA may request.

(b) If loan funds are requested, the borrower shall comply with Subpart C of this part. If no additional loan funds are involved, the borrower shall comply with Subpart D of this part.

(c) In considering whether to approve the request, REA will take into account, among other matters:

(1) Whether the operation, management, and the economic and loan repayment feasibility characteristics of the proposed system are satisfactory;

(2) Whether the merger or acquisition may result in any relinquishment, impairment, or waiver of a right or power of the Government;

(3) Whether the proposed merger or acquisition is in the best interests of the Government as note holder; and

(4) Whether the proposed purchase price and terms of an acquisition are reasonable, regardless of the source of funds used to pay for the purchase. REA will consider the purchase price unreasonable if, in REA's opinion, it will require excessive rates to be paid by the subscribers for telephone service or endanger financial feasibility.

§ 1750.12 Approval of acquisitions and mergers.

(a) If a proposal is unsatisfactory to REA, then REA shall inform the borrower in writing of those features it considers objectionable and present recommended corrective action, if appropriate.

(b) If a proposal is satisfactory to REA, then REA shall inform the borrower in writing of its approval and any conditions of such approval. Among the conditions of approval are the following:

(1) REA shall require a compensating benefit in return for any relinquishment, impairment, or waiver of its rights or powers.

(2) If the survivor is an affiliate of another company, REA shall require that any investments in, advances to, accounts receivable from, and accounts payable to the affiliated company contrary to mortgage provisions shall be eliminated in a manner satisfactory to the Administrator.

(3) REA requires that the borrower agree not to extend credit to, perform services for, or receive services from any affiliated company unless specifically authorized in writing by the Administrator or pursuant to contracts satisfactory in form and substance to the Administrator.

(4) REA may require the borrower to execute additional mortgages, loan agreements, and associated documentation.

Subpart C—Acquisitions Involving Loan Funds.

§ 1750.20 Use of loan funds.

(a) See 7 CFR Parts 1745 and 1749 for REA's general loan policies and requirements.

(b) REA will finance an acquisition by a borrower only when the acquisition is necessary and incidental to furnishing or improving rural telephone service and the service area is eligible for REA assistance.

(c) REA does not make loans for the sole purpose of merging or consolidating telephone organizations.

(d) REA will not consider making a loan for the acquisition of an existing borrower unless the likelihood of repayment of an outstanding REA loan.

(e) In determining the amount it will lend for each acquisition, REA shall place a valuation on all telephone facilities that are to be acquired with loan funds. REA may consider fair market value, the original cost less depreciation of the facilities, income generating potential, any improvement in the financial strength of the borrower as a result of the acquisition, and any other factors deemed relevant by REA to determine the reasonableness of the acquisition price and the amount of loan funds REA will provide for an acquisition. REA shall not consider the acquisition price reasonable nor approve a loan if, in the Administrator's opinion, the acquisition price will require excessive rates to be paid by the subscribers for telephone service or endanger financial feasibility. If the acquisition price exceeds the amount REA will lend, the borrower provides the remainder.

(f) When a borrower intends to request REA loan funds for an acquisition, it shall present a proposal in writing to the Area Office as soon as possible. The borrower must either obtain REA approval *prior* to making any binding commitments with the seller or make the commitments subject to REA's approval. Failure to comply with these requirements will disqualify the borrower from obtaining an REA loan for the acquisition unless the

Administrator determines there were extenuating circumstances.

§ 1750.21 Nonrural areas.

Loan funds may be approved for the acquisition and improvement of facilities to serve nonrural subscribers only if the principal purpose of the loan is to furnish and improve rural service and only if the use of loans funds to serve nonrural subscribers is necessary and incidental to the principal purpose of the loan. For example, when the acquisition of an existing system located in and serving a nonrural area is necessary to serve as the nucleus of an expanded system to furnish area coverage service in rural areas, the loan may include funds to finance the acquisition. Approval for the use of loan funds in these circumstances shall be made only on a case by case basis by the Administrator.

§ 1750.22 Acquisition agreements.

When borrowers are seeking REA financing, acquisition agreements between the borrower and the seller must be in form and substance satisfactory to REA and shall be expressly conditioned on approval of the agreement by REA and on obtaining an REA loan. Normally, the acquisition agreement will not be approved by REA until the loan has been approved.

§ 1750.23 Loan design.

When loan funds are requested for an acquisition, details of the proposed acquisition shall be included in the Loan Design. See 7 CFR Part 1749.

§ 1750.24 Submission of data.

(a) REA will not approve acquisition, other than for toll facilities (see Subpart F of this part), financed in whole or in part with loan funds until the borrower submits the following data to the REA general field representative:

(1) For any nonborrowers involved, their most recent balance sheets, operating statements, detail of plant account, reports to the state commission, and audits, if available.

(2) Completed REA Form 507, "Report on Telephone Acquisition."

(3) A map (such as a road map) showing county lines, the boundaries of the proposed acquisition and the borrower's existing service territory, and the names of other telephone companies serving adjoining areas.

(4) Plans for incorporating the acquired facilities into the borrower's existing system.

(5) The number of subscribers currently receiving service in the area to be acquired and the number of new subscribers that will be served over the next 5 years as a result of the acquisition.

(6) The proposed purchase price.

(7) Two copies of any options, bills of sale, or deeds, and four copies of any acquisition agreements. All of these documents are subject to REA approval. If the acquisition agreement is approved by REA, two copies of it shall be returned to the borrower.

(8) An appraisal by the borrower's consulting engineer or other qualified person of the physical plant to be acquired. The appraisal shall include the following:

(i) Inspection of each central office, noting the age and condition of the switch and associated equipment, and the extent and quality of maintenance of the equipment and premises.

(ii) Inspection of the outside plant, noting the general age and condition of cable and wire, poles and related hardware, pedestals, and subscriber drops. Any joint use or ownership shall be explained.

(iii) Inspection of miscellaneous items such as commercial office facilities, vehicles, furniture, tools and work equipment, and materials and supplies in stock, noting age and condition.

(iv) Inspection of all buildings and other structures (such as radio towers), noting age and condition.

(v) Detailed description of all real estate indicating the present market value that local real estate dealers, bankers, insurance agents, etc. place on the property.

(vi) In estimating the condition of the facilities in paragraph (a)(8)(i) through (a)(8)(iv) of this section, any widely accepted method, subject to REA approval, may be used. The "percent condition" method is recommended. See TOM section 1028 for details.

(9) Copies of deeds to real estate to be acquired, with an explanation of the proposed use of the land.

(10) Copies of leases to be acquired.

(11) Copies of any existing mortgages with parties other than REA, indentures, deeds of trust, or other security documents or financing agreements relating to the property to be acquired and any contracts or other rights or obligations to be assumed as part of the acquisition.

(12) A list of all counties in which the proposed system will have facilities.

(13) If the borrower is a cooperative-type organization, a description of its plans for taking subscribers in as members, membership fees, equity payments required because of the acquisition, and extent of membership support.

(14) Any other data deemed necessary by the Administrator for an evaluation of the acquisition.

(b) For stock acquisitions, the borrower shall submit the following in addition to the items listed in Paragraph (a) of this section.

(1) A list of all stockholders of the company to be acquired and the number of shares each owns.

(2) Guarantees and indemnifications to be obtained from the sellers of the stock.

§ 1750.25 Interim financing.

(a) A borrower may submit a written request for REA approval of interim financing if it is necessary to close an acquisition before the loan to finance the acquisition is approved and the borrower has or can obtain funds for the acquisition from a source other than REA. Loan funds shall not be used to reimburse acquisition costs unless REA has granted approval of interim financing prior to the closing of the acquisition.

(b) REA will approve interim financing of acquisitions only in cases where loan funds cannot be made available in time for the closing.

(c) REA will not approve interim financing until it has found the following information acceptable:

(1) A written request for approval of interim financing, including a brief description of the acquisition; an explanation of the urgency of proceeding with the acquisition, and the source of funds to be used.

(2) A completed REA From 490, "Application for Telephone Loan or Loan Guarantee." See 7 CFR Part 1749.

(3) The portions of the Loan Design that cover the proposed acquisition, including cost estimates and information on any investments in nonrural areas. See 7 CFR Part 1749.

(4) The information required in § 1750.24 (a)(1) through (a)(7) and (b)(1).

(5) Any other data deemed necessary by the Administrator to approve the interim financing of the acquisition.

(d) Furthermore, REA will not approve interim financing if, in REA's judgment, the proposed acquisition will not qualify for REA financing or the proposed interim financing presents unacceptable loan security risks to REA.

(e) Because REA approval of interim financing is not a commitment to make a loan, REA will not approve interim financing unless the borrower is prepared to assume responsibility for financing all obligations incurred.

(f) If the borrower plans to proceed with the closing after receiving REA approval of interim financing, it must

first receive preliminary approval from REA. See § 1750.40.

(g) See 7 CFR Part 1749 for regulations on interim financing for construction.

§ 1750.26 Acquisition of affiliate.

A borrower shall not use REA loan funds to acquire any stock or telephone plant in service or under construction of an affiliate.

§ 1750.27 Release of loan funds, requisitions, advances.

(a) REA will not approve the advance of loan funds until the borrower has fulfilled all loan contract provisions to the extent deemed necessary by REA.

(b) The first advance of loan funds pursuant to the loan contract normally shall provide funds needed for the acquisition. Unless the borrower has received approval of interim financing, it must submit the requisition in time for the advance to be made by the closing date.

(c) After the borrower has closed the acquisition, it shall furnish REA all documents necessary to demonstrate to REA's satisfaction that the transaction has been closed.

(d) Advances for improvements or expansion of the acquired facilities will not be approved until REA has determined that the transaction has been closed and the borrower has obtained satisfactory title to the acquired facilities, as set forth in REA Bulletin 380–1, Right-of-Way and Title Procedures, Telephone.

(e) See 7 CFR Part 1751 for additional requirements for releases of loan funds and 7 CFR Part 1754 for additional requirements for requisitions and advances.

Subpart D—Acquisitions or Mergers Not Involving Additional Loan Funds

§ 1750.30 Submission of data.

When a borrower is not requesting loan funds for an acquisition or merger, the borrower shall first notify REA and submit for review by REA those of the documents and information listed in (a) through (l) of this section required by REA.

(a) For any nonborrowers involved, their most recent balance sheets, operating statements, detail of plant accounts, reports to the state commission, and audits, if available.

(b) Completed REA Form 507, "Report on Telephone Acquisition."

(c) A map (such as a road map) showing county lines, the boundaries of the proposed acquisition and the borrower's existing service territory, and the names of other telephone companies serving adjoining areas.

(d) Plans for incorporating the acquired facilities into the borrower's existing system.

(e) The number of subscribers currently receiving service in the areas involved in the acquisition or merger and the number of new subscribers that will be served over the next 5 years as a result of the acquisition or merger.

(f) Copies of deeds of real estate to be acquired, with an explanation of the proposed use of the land.

(g) Copies of security documents of any other lenders involved and any contracts or other rights or obligations to be assumed by the survivor.

(h) A list of all counties in which the proposed system will have facilities.

(i) If Article II, section 4(b) of the standard mortgage has not been made applicable, plans for operating the unified system.

(j) In the case of a merger, the proposed articles of merger that are to be used.

(k) In the case of an acquisition, the proposed purchase price, plus two copies of any options, bills of sale, or deeds, and four copies of any acquisition agreements. All of these documents are subject to REA approval. If the acquisition agreement is approved by REA, two copies of it shall be returned to the borrower.

(l) Any other data deemed necessary by the Administrator for an evaluation of the acquisition or merger.

Subpart E—Requirements for All Acquisitions and Mergers

§ 1750.40 Preliminary approvals.

(a) In cases where the borrower's schedule for completion of the proposed action leaves insufficient time for REA to prepare and process the required documentation, including new mortgages and replacement notes, the borrower may request REA to give preliminary approval to the acquisition or merger. However, the borrower may not obtain additional loan funds until the documentation is completed to REA's satisfaction.

(b) Consideration of preliminary approvals generally will not be practicable in cases in which compensating benefits are required.

(c) REA will not give preliminary approval when the lien of the mortgage on after-acquired property may be affected.

(d) Before REA will grant preliminary approval, the borrower shall submit:

(1) Merger or acquisition documents required by state law;

(2) Acquisition agreements covering the transaction;

(3) Any required franchises, licenses, and permits;

(4) All required regulatory body approvals;

(5) All required corporate actions;

(6) Leases, contracts, and evidence of titles to be assigned to the purchaser; and

(7) The latest audited financial statements for any nonborrowers involved.

(e) If the information in paragraph (d) of this section is acceptable to REA, the borrower may proceed with the closing.

§ 1750.41 Location of facilities.

Telephone facilities to be acquired must be so located that they can be efficiently operated by the borrower and provide adequate security for the REA loan.

§ 1750.42 Accounting considerations.

(a) Proper accounting shall be applied to all acquisitions and mergers, as required by the regulatory commission having jurisdiction, or in the absence of such a commission, as required by REA.

(b) If REA determines that the plant accounts are not properly depreciated, the borrower should adjust its depreciation rates. Depending upon the characteristics of the case, commission jurisdiction and requirements, and similar factors, one of the following actions shall be taken:

(1) In states where commission approval of depreciation rates is required, a covenant shall be included in the loan contract that requires the borrower to:

(i) Have the consulting engineer make an original cost less depreciation inventory and appraisal of retained plant as part of the final inventory, and

(ii) Request commission approval of adjustments to its records on the basis of this inventory.

(2) In states where commision approval is not required, informal discussions between REA and the borrower may be undertaken to reach satisfactory voluntary adjustments. If this does not resolve the situation to REA's satisfaction, a covenant similar to that in paragraph (b)(1)(i) of this section shall be included in the loan contract and the borrower shall agree to submit evidence satisfactory to the Administrator that it has adjusted its records on the basis of the inventory.

§1750.43 Notes.

Substitute notes may be required in the case of an acquisition or merger, regardless of the source of funds.

§1750.44 Final approval and closing procedure.

(a) Legal documents relating to the acquisition or merger, including copies of required franchises, commission orders, permits licenses, leases, title evidence, corporate proceedings, and contracts to be assigned to the purchaser shall be forwarded to the Area Office prior to closing.

(b) The Administrator will not give final approval to any acquisition or merger until all REA requirements relating to the transaction are satisfied.

(c) Following the Administrator's final approval of the proposal, the Area Office shall inform the borrower in writing of the necessary legal and other actions required for the advance of loan funds to finance the acquisition, including the submission, in form and substance satisfactory to the Administrator, of

(1) All information and documents necessary to demonstrate that the transaction has been completed, and

(2) All loan contracts, notes, mortgages, and related documents and materials required by REA.

(d) Deeds reflecting the change in ownership, executed bills of sale, and opinions of counsel shall be forwarded to the Area Office following closing.

(e) REA will not advance loan funds to furnish or improve service in the acquired or merged areas until the Administrator has given final approval and the transaction has been closed. REA may, however, advance funds if it determines that loan security will not be jeopardized.

(f) At the discretion of REA, an REA field representative may be present at the closing to assist the borrower and protect the interests of REA. Under certain circumstances the closing may take place prior to REA granting final approval for the transaction and the execution of amended loan security documents.

§1750.45 Unadvanced loan funds.

(a) The unadvanced loan funds of a borrower that will not be a survivor of an acquisition or merger shall be advanced only to the survivor and only under the following circumstances.

(1) If the funds are to be used for purposes approved in prior loans, the funds shall be advanced after the affective date of the proposed action only when all loan contract prerequisites have been met and documents have been submitted in form and substance satisfactory to the Administrator.

(2) If the funds are to be used for new purposes, then in addition to the requirements in paragraph (a)(1) of this section. REA must also approve the change in purpose.

(b) No loan or other money in the construction fund shall be used to finance facilities outside areas to be served by projects approved by REA.

Subpart F—Toll Line Acquisitions

§1750.50 Use of loan funds.

When an acquisition of toll line facilities is to be financed with loan funds, the borrower shall submit to REA the acquisition agreement, the original cost less depreciation of the facilities, any concurrences with the connecting companies involved, and a detailed inventory of the facilities to be purchased. The borrower must submit to REA evidence, satisfactory to the Administrator, of the borrower's ownership of the toll line facilities before loan funds for improvement of those facilities will be advanced. Any such acquisition must be necessary and incidental, as determined by the Administrator, to furnishing or improving telephone service in rural areas.

§1750.51 With nonloan funds.

When an acquisition is limited to toll line facilities and loan funds are not involved, REA approval of the acquisition is not required. The borrower, however, shall submit to REA for its approval all concurrences with the connecting companies involved and any other proof of ownership of the toll facilities required by REA.

Dated August 25, 1988.

Jack Van Mark

Acting Administrator, Rural Electrification Administrator, Rural Electrification Administration.

[FR Doc 88-24186 Filed 10-18-88; 8:45 am]

BILLING CODE 3410-15-M

RAILROAD RETIREMENT BOARD

20 CFR Part 217

Application for Annuity or Lump Sum

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) proposes to amend Part 217 to incorporate amendments made to the Railroad Retirement Act in 1981 and 1983. In addition, the Board proposes to incorporate into this part internal procedures with respect to applications for benefits under the Railroad Retirement Act and make technical changes to this part.

DATE: Comments must be received by November 18, 1988.

ADDRESS: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dabado, General Attorney, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4945 (FTS 386–4945).

SUPPLEMENTARY INFORMATION: Part 217 was added to the Railroad Retirement Board's regulations effective February 22, 1982, and was intended to update the regulations pursuant to the requirements imposed under the Railroad Retirement Act of 1974 (Act). Amendments to the Act in 1981 and 1983 require amendment of Part 217. In addition, certain internal procedures concerning applications for benefits which were not yet established when Part 217 was published are proposed to be added.

Public Law 97–35, the Omnibus Budget Reconciliation Act of 1981, provided for the first time for benefits for divorced spouses, surviving divorced spouses, and remarried widow(er)s which are like those provided under the Social Security Act. Sections 217.6 and 217.9(b)(2) are proposed to be amended to reflect these additional categories of applicants.

The Railroad Retirement Solvency Act of 1983 (Pub. L. 98–76) narrowed the category of student beneficiaries under the Railroad Retirement Act to those who are less than 19 years old and full-time elementary or secondary school students. Section 217.17(a) is proposed to be amended to delete the present second sentence, which permits a parent or person standing in place of a parent to sign an application for a student under 22 years of age.

Under authority conferred on the Board by section 7(d) of the Railroad Retirement Act (45 U.S.C. 231f(d)), an application for an employee disability annuity under that Act is also considered to be an application for a period of disability under the provisions of the Social Security Act. Proposed § 217.9(c)(4) reflects regulations of the Social Security Administration concerning when an application for a period of disability must be filed.

Section 217.17 currently establishes who may sign an application for benefits under the Railroad Retirement Act. The current regulation does not recognize "good cause" to allow for someone other than a competent claimant or the claimant's representative (in the case of an incompetent claimant) to sign an application, when necessary, to prevent loss of benefits. This lack of a provision for signature by another person for good cause has been a source of trouble

which has resulted in a number of unfavorable decisions over the years. The regulations of the Social Security Administration, which administers a benefit program similar to that administered by the Board, do recognize good cause to allow for someone other than the claimant to sign an application. Typically, illness of the claimant is cited as the reason for good cause, and good cause can only be invoked when a loss of benefits would otherwise result. Usually, it is the claimant's spouse or friend who is allowed to sign the application. A new paragraph (e) is proposed to be added to § 217.17 in order to permit someone other than the claimant to sign an application where good cause is established.

A new paragraph (c) is proposed to be added to § 217.20 so as to provide for the preparation of a written statement by Board personnel on behalf of a claimant who telephones a Board office but who cannot actually file an application before the end of the month. The proposed regulation would allow the date of the telephone contact to be used to protect the application filing date when it appears that a loss of benefits would otherwise result. The proposed amendment reflects an internal Board procedure which has been in effect since 1982.

Finally, certain technical amendments are proposed. A number of changes in terminology are proposed so that references to the various categories of applicants are uniform throughout Part 217. Section 217.1 is proposed to be amended to clarify that Part 217 deals only with applications.

The information collections imposed by the proposed amendments to Part 217 have been approved by the Office of Management and Budget under control numbers 3220-0002, 3220-0030, 3220-0031, and 3220-0042.

The Board has determined that this is not a major rule under Executive Order 12291; therefore, no regulatory impact analysis is required.

List of Subjects in 20 CFR Part 217

Railroad employees, Railroad retirement.

For the reasons set out in the preamble, Title 20, Chapter II of the code of Federal regulations is proposed to be amended as follows:

PART 217—APPLICATION FOR ANNUITY OR LUMP SUM

1. The authority citation for Part 217 is revised to read as follows:

Authority: 45 U.S.C. 231d and 45 U.S.C. 231f.

2. Section 217.1 is revised to read as follows:

§ 217.1 Introduction.

This part prescribes how to apply for an annuity or lump-sum payment under this chapter. It contains the rules for the filing and cancellation of an application and the period of time the application is in effect. Eligibility requirements for an annuity and for a lump-sum payment are found respectively in Parts 216 and 234 of this chapter.

§ 217.8 [Amended]

3. Section 217.8 is amended by revising paragraph (d); by redesignating paragraph (j) as paragraph (s); by revising paragraphs (e) through (i) and redesignating them as paragraphs (f), (h), (i), (j) and (k), respectively; and by adding new paragraphs (e), (g), and (l) through (r) to read as follows: § 217.8 When one application satisfies the filing requirement for other benefits.

* * * * *

(d) A widow(er)'s annuity if the widow(er) was entitled to a spouse annuity in the month before the month the employee died.

(e) A widow(er)'s annuity if the widow(er) was included in the computation of the employee's annuity under the social security overall minimum provision of the Railroad Retirement Act in the month before the month the employee died.

(f) A child's annuity if the spouse of the employee had the child "in care" and was entitled to a spouse annuity in the month before the month the employee died.

(g) A child's annuity or child's full-time student annuity if the child of the employee was included in the computation of the employee's annuity under the social security overall minimum provision of the Railroad Retirement Act in the month before the employee died.

(h) A widow(er)'s annuity based on age if the widow(er) was entitled to a widow(er)'s annuity based on disability in the month before the month in which he or she attains age 60.

(i) A widow(er)'s annuity based on age or disability if a widow(er), who was receiving an annuity because he or she had the employee's child "in care", is eligible for an age or disability annuity when he or she no longer has an eligible child "in care".

(j) A spouse annuity based on age if a spouse, who was receiving an annuity because he or she had the employee's child "in care", is eligible for an unreduced age annuity when he or she no longer has an eligible child "in care".

(k) A widow(er)'s annuity based upon having the employee's child "in care" if during the time the widow(er) is entitled to an annuity based on disability, he or she has "in care" a child of the deceased employee.

(l) A divorced spouse annuity if the divorced spouse was entitled to a spouse annuity reduced for age in the month before the month of the effective date of the final decree of divorce.

(m) A divorced spouse annuity if the divorced spouse was entitled to a spouse annuity not reduced for age in the month before the month of the effective date of the final decree of divorce and would also be entitled to a divorced spouse annuity not reduced for age.

(n) A surviving divorced spouse annuity if the surviving divorced spouse was entitled to a divorced spouse annuity in the month before the month the employee died.

(o) A remarried (widow(er)'s annuity if the remarried widow(er) was entitled to a widow(er)'s annuity in the month before the month of remarriage.

(p) A remarried widow(er)'s annuity or a surviving divorced spouse annuity based on age or disability if the remarried widow(er) or surviving divorced spouse, who was receiving an annuity because he or she had the employee's child "in care", is eligible for an age or disability annuity when he or she no longer has an eligible child "in care".

(q) A remarried widow(er)'s annuity or a surviving divorced spouse annuity based on age if the remarried widow(er) or the surviving divorced spouse was entitled to an annuity based on disability in the month before the month in which he or she attains age 65.

(r) A remarried widow(er)'s annuity or a surviving divorced spouse annuity based on age if the remarried widow(er) or surviving divorced spouse, who was receiving an annuity based on disability, is 60 years old or older when he or she recovers from the disability.

(s) A benefit under Title II of the Social Security Act unless the applicant restricts the application only to an annuity payable under the Railroad Retirement Act.

4. In § 217.9, paragraph (b)(2) is revised, and paragraph (c)(4) is added to read as follows:

§ 217.9 Effective period of application.

* * * * *

(b) * * *

(2) *Application for disability annuity.* If the Board determines that a claimant for a disability annuity is disabled under Part 200 of this chapter, beginning with a date after the application is filed and before a final decision is made, the application is treated as though it were filed on the date the claimant became disabled. The claimant may be an employee, widow(er), surviving divorced spouse, remarried widow(er), or surviving child.

(c) * * *

(4) *Application for a period of disability.* In order to be entitled to a period of disability under Part 220 of this chapter, an employee must apply while he or she is disabled under Part 220 or not later than 12 months after the month in which the period of disability ends except that an employee who is unable to apply within the 12-month period after the period of disability ends because his or her physical condition limited his or her activities to the extent that he or she could not complete and sign an application or because he or she was mentally incompetent, may apply no later than 36 months after the period of disability ends.

(Approved by the Office of Management and Budget under control number 3220-0002)

5. In § 217.10, the introductory paragraph is removed and paragraph (c) is revised to read as follows:

§ 217.10 Application filed after death.

* * * * *

(c) A widow(er) or surviving divorced spouse may file an application for a spouse or divorced spouse annuity after the death of the employee if the widow(er) or surviving divorced spouse was eligible for a spouse or divorced spouse annuity in any month before the month the employee died. The spouse or divorced spouse annuity is payable from the beginning date set forth in Part 218 of this chapter.

6. Section 217.17 is amended by revising paragraph (a) and adding paragraph (e) to read as follows:

§ 217.17 Who may sign an application.

* * * * *

(a) A claimant who is 18 years old or older, competent (able to handle his or her own affairs), and physically able to sign the application, must sign in his or her own handwriting, except as provided in paragraph (e) of this section. A parent or a person standing in place of a parent must sign an application for a child who is not yet 18 years old, except as shown in paragraph (d) of this section.

* * * * *

(e) If it is necessary to protect a claimant from losing benefits and there is good cause for the claimant not personally signing the application, the Board may accept an application signed by someone other than a person described in paragraphs (a), (b), (c), and (d) of this section. A person who signs an application for someone else will be required to provide evidence of his or her authority to sign the application for the person claiming benefits under the following rules:

(1) If the person who signs is a court-appointed representative, he or she must submit a certificate issued by the court showing authority to act for the claimant.

(2) If the person who signs is not a court-appointed representative, he or she must submit a statement describing his or her relationship to the claimant. The statement must also describe the extent to which the person is responsible for the care of the claimant.

(3) If the person who signs is the manager or principal officer of an institution which is responsible for the care of the claimant, he or she must submit a statement indicating the person's position of responsibility at the institution.

(4) The Board may, at any time, in its sole discretion require additional evidence to establish the authority of a person to sign an application for someone else.

(Approved by the Office of Management and Budget under control numbers 3220-0002, 3220-0030, 3220-0031 and 3220-0042)

7. Section 217.20 is amended by adding paragraph (c) to read as follows:

§ 217.20 When a written statement is used to establish the filing date.

* * * * *

(c) *Telephone contact with the Board.* If an individual telephones a Board office and advises a Board employee that he or she intends to file an application but cannot do so before the end of the month, the Board employee will prepare and sign a written statement which may be used to establish the filing date of an application if all of the following requirements are met:

(1) The inquirer expresses a clear and positive intent to claim benefits for himself or herself or for some other person;

(2) The prescribed application cannot be filed by the end of the current month;

(3) The inquirer is either the potential claimant or the person who will file an application as representative payee therefor;

(4) The inquiry is received by an office of the Board no more than 3 months before eligibility exists;

(5) It appears that a loss of benefits might otherwise result;

(6) The telephone inquirer files an application with the Board of one of the forms described in Part 200 of this chapter within 90 days after the date a notice is sent advising the person of the need to file an application; and

(7) The claimant is alive when the application is filed, except as provided in § 217.10 of this part.

Dated: October 12, 1988.

By Authority of the Board.

Beatrice Ekweki,

Secretary to the Board.

[FR Doc. 88-24174 Filed 10-18-88; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 968

[Docket No. R-88-1422; FR-2345]

Comprehensive Improvement Assistance Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would make changes in "special purpose modernization" under the Comprehensive Improvement Assistance Program (CIAP) to implement statutory amendments contained in section 120 of the Housing and Community Development Act of 1987 (1987 Act), along with related funding provisions reflecting the statutory policy, as follows:

- Revision of the definition of "special purpose modernization" to expand the types of physical improvements which may be funded under a special purpose modernization program, subject to a HUD determination that the improvements are necessary and sufficient to extend substantially the useful life of the project;
- Revision of the procedural instructions regarding preliminary applications and joint reviews, to provide for a comprehensive or specialized needs assessment of projects for which the PHA requests special purpose modernization funds;
- Authority for HUD to establish funding set-asides for special purpose modernization, as necessary to assure that special purpose needs are appropriately addressed;
- Where a project has not been comprehensively modernized, a one-time limitation on special purpose

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funding for certain types of physical improvements, so that if any additional needs of these types arise for the same project, they would then have to be addressed as a part of a comprehensive program; and

- Placing certain conditions on special purpose funding for physical improvements to reduce the number of vacant, substandard units.

DATES: Comment due date: November 18, 1988.

ADDRESS: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ilene Blinick, Project Management Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington DC 20410, telephone (202) 755-6640. A telecommunications device for deaf persons (TDD) is available at (202) 472-6725. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

Under the Comprehensive Improvement Assistance Program (CIAP)—which is governed by Section 14 of the United States Housing Act of 1937 (1937 Act) and the HUD regulations at 24 CFR Part 968—HUD provides grants to public housing agencies (PHAs) to pay for physical improvements to existing public housing projects and to upgrade the management and operation of projects to the extent necessary to maintain the physical improvements.

Under the existing regulation, CIAP funding may be provided to PHAs under five categories: (1) Comprehensive modernization; (2) emergency modernization; (3) special purpose modernization; (4) homeownership modernization; and (5) lead based paint modernization. Comprehensive modernization is the main category, reflecting the primary objective of the CIAP: complete rehabilitation of viable public housing projects, to address all physical improvement needs and make any management improvements needed to sustain the physical improvements.

The proposed amendments to the existing CIAP regulation are limited to provisions on special purpose modernization and do not modify the essential structure or objectives of the program. These changes implement statutory amendments to Section 14 of the 1937 Act, included in Section 120 of the Housing and Community Development Act of 1987 (1987 Act).

Although Part 968 currently applies to Indian housing, the Department is planning to consolidate all public housing regulations for Indian housing in Part 905 (see proposed rule, 53 FR 24554, published June 29, 1988). Persons interested in Indian housing should nevertheless comment on this proposed rule, because the Department intends to incorporate its provisions in Part 905 without having to publish a separate proposed rule to amend Part 905.

In general, the potential availability of funds for special purpose modernization would be expanded and PHAs would be afforded more flexibility in addressing special purpose needs, as a result of a broader definition of the types of work eligible for special purpose funding and an authorization for HUD to set aside a portion of available CIAP funds for special purpose use. In addition, the proposed rule includes a number of new conditions for special purpose funding, designed to implement the statutory policy by striking a proper balance between the primary objective of comprehensive modernization and the considerations which may justify special purpose improvements in particular situations.

All other program requirements under the existing CIAP regulation would continue to apply to special purpose modernization, unless otherwise stated in the proposed amendments. An example is the requirement for a PHA to certify that its proposed modernization cannot be funded from current operating funds.

All types of special purpose modernization would continue to be limited to physical improvements, as defined in existing § 968.4(a). Under the amended regulation, management improvements would continue to be eligible for inclusion in comprehensive modernization programs only.

While the proposed rule would make some changes in the existing regulatory provisions on PHA planning, there would be no essential change in the five-year comprehensive planning requirements. The comprehensive plan would have to be modified as necessary to address any special purpose needs not already reflected in the plan.

The rationale for special purpose modernization is that, in some situations, there may be needs for limited physical improvements which—though not so urgent as those eligible for emergency or lead based paint modernization—merit action apart from comprehensive modernization.

The project might already be in generally sound condition (because it had never deteriorated enough to need modernization or because it had previously been modernized) so that the kind of major rehabilitation usually involved in comprehensive modernization is not needed. Nevertheless, the need may arise for some limited physical improvements, such as for replacement of heating equipment or for additional accessibility for elderly and handicapped residents.

In other cases, where major rehabilitation is still needed, there may be an interim need to make limited physical improvements before a complete program of comprehensive modernization can be developed, funded and carried out. For example, under the expanded definition in the proposed rule, special purpose modernization might be justified to pay for major roof repairs needed to preserve a potentially viable building pending subsequent funding for a comprehensive modernization program to complete total rehabilitation of the property.

Under § 968.3 of the existing rule, the definition of special purpose modernization is restricted to physical improvements for cost-effective energy conservation. The 1987 statutory amendment expanded the scope of special purpose modernization by specifying four additional types of eligible work items. The new statutory language, inserted under Section 14(i)(1)(D) of the 1937 Act, reads as follows:

> (ii) physical improvement needs eligible under this subparagraph shall include replacing or repairing major equipment systems or structural elements, upgrading security, increasing accessibility for elderly families and handicapped families (as such terms are defined in section 3(b)(3)), reducing the number of vacant substandard units, and increasing the energy efficiency of the units, except that the Secretary may make financial assistance available under this clause only if the Secretary determines that the physical improvements are necessary and sufficient to extend substantially the useful life of the project.

The proposed rule would therefore revise the definition of "special purpose modernization" under § 968.3 to include all five of the types of physical improvements now enumerated by the statute, citing a few examples. A special purpose modernization program could consist exclusively of physical improvements of any one type or any combination of two or more types listed in the proposed definition, subject to the further requirements of the Public Housing Modernization Standards Handbook, 7485.2, REV-1.

The revised definition would also incorporate the general statutory restriction, as prescribed by the exception clause of the above-quoted 1987 amendment, allowing CIAP funding for special purpose modernization only if HUD determines that "the physical improvements are necessary and sufficient to extend substantially the useful life of the project." It is not enough that the proposed work items meet the basic eligibility tests under the revised definition and the Modernization Standards Handbook. They must also be both *necessary* to extend *substantially* the useful life of the project, and *sufficient* to do so.

This "necessary and sufficient" test is a matter of common sense judgment, looking at the needs of the particular project. A particular physical improvement may clearly be necessary, but still insufficient, of itself, to effect a substantial extension of the project's useful life. For example, repair of a building foundation, though necessary, might be insufficient without related drainage work. On the other hand, related landscaping work, though eligible for inclusion in a comprehensive modernization program, might not be necessary by the special purpose standard. The "necessary and sufficient" test is thus both a maximum and minimum standard; the work must be no more and no less than what is required for substantial extension of the project's useful life.

The proposed rule would revise the existing procedures for preliminary applications and joint reviews under § 968.5. The main change here would be in § 968.5(e)(2), regarding the needs assessment to be completed by the PHA in preparation for the joint review. As a general rule, a comprehensive assessment of all physical and management needs would be required for any project for which the PHA is currently requesting comprehensive or special purpose funding. However, where a special purpose request for a project is limited to physical improvements relating to accessibility for elderly and handicapped families and energy efficiency, a specialized needs assessment would suffice unless HUD determined that there was evidence indicating that the project had major problems justifying a comprehensive assessment. (Emergency, homeownership and lead-based paint modernization would continue to be subject to a specialized assessment of project needs.)

For consistency with this revision of § 968.4(c)(1), the related provision on the PHA's five-year plan (§ 968(c)(1)) would also be revised. If the PHA wished to request special purpose funds not previously included in its five-year plan, it would have to modify the plan before HUD would consider funding those needs.

The proposed rule would add, under § 968.5(h), a new paragraph (4), authorizing HUD to set aside for special purpose modernization a portion of the total CIAP funds available for any Federal Fiscal Year (FFY), as determined by HUD to be necessary to assure that special purpose needs are appropriately addressed. Special purpose modernization applications would be ranked as a separate group and would compete only with each other for the set-aside funds—not with applications for comprehensive modernization or other modernization categories. In view of this provision, references to "special purpose" would be deleted from existing paragraphs (2) and (3) of § 968.5(h).

The actual amount of each year's special purpose set-aside would be stated in the Department's annual CIAP processing notices to PHAs and HUD Regional and Field Offices. For FFY 1989, the Department's intention (subject to final rulemaking) is to set aside for special purpose funding 20 percent of each HUD Regional Office's total CIAP funds. If any Regional Office finds that less than the total amount of its special purpose set-aside is needed to fund special purpose improvements, then the remaining funds could be used for other needs.

In addition, the proposed rule would add a new § 968.10, entitled "Additional provisions for special purpose modernization". This new section would set two conditions, each relating to funding for certain types of special modernization.

These conditions are designed to reinforce the overall CIAP policy established by section 14 of the 1937 Act, considering the intent of the 1987 amendment for special purpose modernization within the broader policy context of the program as a whole. This policy still emphasizes the primary importance of a comprehensive approach to modernization, while recognizing a variety of situations where special purpose modernization may be justified. The Department believes that the conditions stated in the proposed new § 968.10, along with the other provisions of this proposed rule, strike a proper balance between these two policy goals.

Proposed § 968.10(a) would limit the number of times a PHA could obtain special purpose funding for a project that has not yet been comprehensively modernized, with respect to three of the five types of physical improvements listed in the revised definition. For such a project, special purpose funds could be obtained only once for each of the types of physical improvements relating to major equipment systems or structural elements, security, and reduction of vacant, substandard units. If any additional physical improvements to the same project for these three purposes become needed at a later time, they would have to be funded as a part of a comprehensive modernization program, addressing the total physical and management needs of the project. Such comprehensive modernization may not necessarily involve extensive rehabilitation. However, it will be the case that *all* the needs of the project will be met, so that the total project will meet the modernization standards at one point in time.

The Department believes that this limitation is necessary to assure that all projects are brought up to the modernization standards and that no project is permitted to continue in generally poor repair overall, occasionally receiving some special purpose or emergency modernization, but never reaching modernization standards.

This limitation would not, however, apply to the other two types of eligible special purpose work—those related to accessibility and energy efficiency. Special purpose funding for these two purposes could be provided as many times as might be justified.

This provision would have no applicability at all to a project which had already been comprehensively modernized. For such a project, there would be no limitation on the number of times special purpose funding could be provided for any of the five types of eligible physical improvements, if justified. For example, if the prohibition against premature replacement resulted in a need to replace old heating equipment after completion of comprehensive modernization, that need could then be addressed by a special purpose modernization program, as could any other eligible need that might subsequently arise.

The rationale for the proposed § 968.10(a) is that the three types of work items to which its restrictions would be applicable merit special safeguards against poor PHA planning where the project has not been comprehensively modernized. The fact

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that this limitation would apply only in that situation must not be taken as a sanction for piecemeal modernization in other situations. The 1987 legislation was not intended to repeal the statutory requirements for sound PHA planning and a comprehensive approach to its overall modernization needs.

Proposed § 968.10(b) would subject one of the types of special purpose work items—physical improvements to reduce the number of vacant, substandard units—to restrictions related to unit turnover. Note that routine turnover repairs which do not satisfy the definition of "physical improvements" would continue to be ineligible for funding under special purpose modernization or any other CIAP category.

The proposed rule would further restrict special purpose funding for vacant unit repairs which might otherwise be eligible for CIAP funding. Such repairs would be limited to work necessary to meet local code requriements and return the vacant units to a habitable condition, comparable to that of occupied units in the same project.

In any even, special purpose funding could be provided for this purpose only if the PHA's average number of vacancy days per turnover of untis on the market did not exceed 30 calendar days. This would ensure that special purpose funding for reduction of vacancies would be limited to PHAs with capable management. A longer average turnover time indicates that there may be ineffective management in regard to turnover. The PHA might need to address its management problems before funds could be spent effectively on physical improvements. In such cases, the most effective treatment might be comprehensive modernization, with management improvement funding in the first year.

Findings and Certifications

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at CFR Part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

This rule would not constitute a "major rule", as that term is defined in section 1(b) of Executive Order 12291 issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it would not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreignbased enterprises in domestic or export markets.

Under the Regulatory Flexibility Act (5 U.S.C. 601), the undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. The rule would expand the definition of special purpose modernization, to permit CIAP funding for the four additional types of physical improvements now authorized by statute, and would prescribe certain conditions and procedures for such funding. It would thus tend to give PHAs more flexibility and tend to make their modernization effects less burdensome.

The rule would apply to all PHAs, large and small, which apply for special purpose modernization funds. It would not have a significant economic impact on any HUD assistance recipients, including small PHAs or any other small entities.

This rule was not listed in the Department's semiannual agenda of regulations published on April 25, 1988 (53 FR 13854) under Executive Order 12291 and the Regulatory Flexibility Act at 49 FR 15660.

An abbreviated 30-day public comment period is provided, because the Department is making every effort to achieve publication of a final rule for implementation in connection with the Federal Fiscal Year 1989 funding cycle. Early publication of a final rule would allow PHAs maximum opportunity, in their FY 1989 planning, for a more flexible approach to special purposes needs.

List of Subjects in 24 CFR Part 968

Public housing.

Accordingly, 24 CFR Part 968 would be amended as follows:

PART 968—COMPREHENSIVE IMPROVEMENT ASSISTANCE PROGRAM

1. The authority citation for Part 968 would continue to read as follows:

Authority: Secs. 6 and 14, United States housing Act of 1937 (42 U.S.C. 1437d, 1437l); sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 968.3, the definition of "Special purpose modernization" would be revised to read as follows:

§ 968.3 Definitions.

* * * * *

"Special purpose modernization" means a modernization program for a project that is limited to any one or more of the following types of physical improvements otherwise eligible for CIAP funding under this part, subject to a HUD determination that the physical improvements are necessary and sufficient to extend substantially the useful life of the project:

(1) Physical improvements to replace or repair major equipment systems (such as elevators and heating, cooling, electrical, and water and sewer systems) or structural elements (such as roofs, walls and foundations);

(2) Physical improvements to upgrade security, such as installation of additional lighting, security screens on windows, better locks, or design changes to enhance security (excluding non-physical improvements, such as security staffing and services);

(3) Physical improvements to increase accessibility for elderly and handicapped families, according to the applicable standards of 24 CFR Part 8;

(4) Physical improvements to reduce the number of units which are vacant and substandard, including any improvements necessary to meet local code requirements and return the units to occupancy; and

(5) Cost-effective physical improvements to increase the energy efficiency of the project.

* * * * *

3. In § 968.5, the reference in paragraphs (h)(2) and (b)(3) to "special purpose" and the comma immediately preceding those words would be removed, paragraphs (c)(1) and (e)(2) would be revised, and a new paragraph (h)(4) would be added, as follows:

§ 968.5 Procedures for obtaining approval of a modernization program.

* * * * *

(c) * * *

(1) A five-year plan, which is the PHA's initial comprehensive assessement of the modernization funds to be requested over a five-year period to meet the total physical and management improvement needs of its projects for all categories of modernization authorized by this part. The plan shall include a gross estimate of the modernization funds to be requested for each project.

* * * * *

(e) * * *

(2) Completing an assessment of the needs of each project for which the PHA is requesting funds in the current FFY. The PHA will complete a detailed, comprehensive assessment, in a form prescribed by HUD, of the total physical and management needs of each project for which the PHA is requesting Comprehensive or special purpose modernization; except that if the request for a particular project is limited to physical improvements to increase accessibility for elderly and handicapped familes and to increase energy efficiency, a specialized assessment will be completed unless HUD determines that there is evidence indicating that the project has major problems which justify a comprehensive assessment. An assessment of specialized physical improvement needs will be completed for each project for which th PHA is requesting emergency, homeownership or lead-based paint modernization.

* * * * *

(h) * * *

(4) HUD may set aside for special purpose modernization a portion of the total modernization funds available for nay FFY, as determined by HUD to be necessary to assure that special purpose needs are appropriately addressed.

* * * * *

§ 968.9 Amended

4. In § 968.9, paragraph (h)(4) would be amended by revising the reference to "§ 968.19" to read "§ 968.20".

§§ 968.10 through 968.19 [Redesignated as §§ 968.11 through 968.20]

5. Sections 968.10 through 968.19 would be redesignated as §§ 968.11 through 968.20, respectively, and a new § 968.10 would be added, to read as follows:

§ 968.10 Additional limitation of special purpose modernization.

(a) For each of the three types of special purpose modernization relating to major equipment systems or structural elements, security, and reduction of vacant, substandard units, a PHA may obtain special purpose modernization funding only once for a project that has not been comprehensively modernized. Subsequent funding for the same project for any additional physical improvements of these types may be provided only as a part of a program which addresses all of the physical and management improvement needs of the project under the comprehensive modernization.

(b) Special purpose modernization to reduce the number of vacant, substandard units will be limited to physical improvements which are necessary to meet local code requirements and return such units to a condition that is comparable to the condition of occupied units in the same project. To be eligible for funding under this type of special purpose modernization, the PHA's average number of vacancy days per turnover of units on the market may not exceed 30 calendar days.

§ 968.4 [Amended]

6. In § 968.4(a), the reference to § 968.18 would be revised to refer to § 968.19.

§ 968.8 [Amended]

7. In § 968.8(b)(3), reference to § 968.10 would be revised to refer to § 968.11.

§ 968.14 [Amended]

8. In § 968.14(b), as redesignated in this rule, the reference to § 968.14 would be revised to refer to § 968.15.

Dated: September 15, 1988.

James E. Baugh,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 88-24004 Filed 10-18-88; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4 and 12

[Notice No. 674, Ref. Notice No. 662]

Nongeneric Designations of Grape Wine Having Geographic Significance

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Extension of comment period.

SUMMARY: This notice extends the comment period for Notice No. 662, a previous extension of Notice No. 657, an advance notice of proposed rulemaking, published in the **Federal Register** on April 12, 1988 (53 FR 12024). ATF has since received a request from the Wine Institute in San Francisco for an extension of the comment period to forty-five days. The governments of Italy and the Republic of West Germany have asked for extensions, also, in order to provide sufficient time for all interested parties to respond to the complex issues addressed in the advanced notice. This comment period, therefore, is granted for an additional 45 days, until November 25, 1988.

DATE: Written comments must be received on or before November 25, 1988.

ADDRESS: Please submit all comments to the Chief, Alcohol Import-Export Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385 (Attn: Notice No. 674).

FOR FURTHER INFORMATION CONTACT: John Colozzi, Specialist, Alcohol Import-Export Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennslyvania Avenue, NW., Washington, DC 20226 (202-535-8245).

SUPPLEMENTARY INFORMATION:

Background

On April 12, 1988, The Bureau of Alcohol, Tobacco and Firearms published a Notice of Proposed Rulemaking, Number 657, Nongeneric Designations of Grape Wine Having Geographic Significance. It details a proposed regulatory change to Title 27, Code of Federal Regulations, Part 4, "Labeling and Advertising of Wine." Names of geographic significance may be used only to designate wine of the origin indicated by that name.

The purpose of this change is to expand the list of foreign names of geographic significance for the purpose of labeling and advertising wine. Numerous foreign countries, including members of the European Economic Community, have petitioned ATF to recognize names of geographic significance used in connection with foreign wines. ATF plans to list these names in a new Part 12, entitled "Foreign Names of Geographic Significance."

Furthermore, § 4.24 provides that certain nongeneric names may be used as "distinctive" designations of wines, if approved by ATF, and certain of these names have been found by the Director to be "distinctive" designations of specific grape wines when they are known to the consumer and to the trade as the designation of a specific wine of a particular place, or region, distinguishable from all other wines. Examples of this distinctive type are "Liebfraumilch" and "Lacryma Christi."

Originally, the date for closing of comments was July 11, 1988. Written requests from U.S. businesses, organizations, and foreign governments resulted in an extension to October 11, 1988. After further consultation with these various groups, another extension of forty-five days is granted until November 25, 1988.

Respondents should take note of a typographical error that appears in the

April 12, 1988, Notice of proposed rulemaking. In the introductory text of § 12.21 in *Subpart C—Foreign Names of Geographic Significance*, on page 12028, the phrase "27 CFR 4.24(c)(2)" should have read "27 CFR 4.24(c)(1)".

Drafting Information

The principal author of this document was John Colozzi, Alcohol Import-Export Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 4

Advertising, Consumer protection, Imports, Labeling, Packaging and Containers, Wine.

27 CFR Part 12

Administrative practice and procedures, Imports, Labeling, Wine.

Signed: October 12, 1988.

Stephen E. Higgins,

Director.

[FR Doc. 88-23941 Filed 10-13-88; 3:25 pm]

BILLING CODE 4810-31-M

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27 CFR Part 19

[Notice No. 673; Ref. Notice No. 669]

Labels for Export Spirits

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Extension of comment period.

SUMMARY: This notice extends for thirty days the comment period for Notice No. 669, a notice of proposed rulemaking published in the **Federal Register** on August 24, 1988 (53 FR 32255). Notice 669 invites comments from the public and industry as to whether 27 CFR 19.395 should be amended to give the Director ATF the authority to waive all of the labeling requirements for bottled distilled spirits which are to be exported. This proposal would enable distilled spirits products intended for exportation to be bottled in this country at less than the minimum bottling proofs established by regulation (27 CFR 5.22) without the necessity that the labels for such products bear the word "diluted." ATF has received a request from the Distilled Spirits Council of the United States, Inc., an organization which represents manufacturers and importers of distilled spirits, for an extension of the comment period in order that more time will be available for the organization and its members to consider the proposal.

DATE: Written comments must be received on or before November 23, 1988.

ADDRESS: Send written comments to: Chief, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044–0385 *Attn:* Notice No. 669.

FOR FURTHER INFORMATION CONTACT: Robert Petrangelo or Colleen Then, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226 (202–566–7531).

SUPPLEMENTARY INFORMATION:

Drafting Information

The authors of this document are Robert Petrangelo and Colleen Then, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Chemicals, Customs duties and inspection, Electronic funds transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Surety bonds, Transportation, Virgin Islands, Warehouses, Wine.

Authority and Issuance

This notice is issued under the authority in 27 U.S.C. 5201 and 27 U.S.C. 5301.

Signed: October 12, 1988.

Stephen E. Higgins,

Director.

[FR Doc. 88-23940 Filed 10-18-88; 8:45 am]

BILLING CODE 4810-31-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-3481-6]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List; Cooper Road Site

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete Cooper Road Site from the National Priorities List; request for comments.

SUMMARY: The Environmental Protection Agency (EPA), Region II Office, announces its intent to delete the Cooper Road site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the State of New Jersey have determined that no further fund financed remedial actions are appropriate at this site and actions taken to date are protective of the public health, welfare, and the environment.

DATE: Comments concerning this site may be submitted on or before November 18, 1988.

ADDRESSES: Comments may be mailed to: Stephen D. Luftig, Director, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, New York, NY 10278.

Comprehensive information on this site is available through the EPA public docket, which is located at EPA's Region II Office in New York City, and is available for viewing by appointment only from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays. Requests for appointments or copies of the background information from the Regional public docket should be directed to the EPA Region II docket office. The Address for the Regional docket office is: Mr. Donald Lynch, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, Room 711, New York, NY 10278, (212) 264–1870.

FOR FURTHER INFORMATION CONTACT: Background information from the Regional public docket is also available for viewing at the Cooper Road site information repository located with: Mr. John Connolly, Zoning Officer, Township of Voorhees Health Department, 620 Berlin Road, Voorhees, New Jersey 08043.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

The Environmental Protection Agency (EPA), Region II Office, announces its intent to delete the Cooper Road site, in Voorhees Township, New Jersey from the National Priorities List (NPL), which constitutes Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), and requests comments on this deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare or the environment, and maintains the

NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Response Trust Fund (Fund). Pursuant to section 105(e) of CERCLA, any site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action.

The EPA will accept comments on this site for thirty days after publication of this notice in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses how the site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.66(c)(7), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will consider whether any of the following criteria have been met:

(i) EPA, in consultation with the State, has determined that responsible or other parties have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented and EPA, in consultation with the State, has determined that no further cleanup by responsible parties is appropriate; or

(iii) Based on a remedial investigation, EPA, in consultation with the State, has determined that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Before deciding to delete a site, EPA must first determine that the remedy (or no remedy if appropriate) is protective of public health, welfare, and the environment, considering environmental requirements which are applicable or relevant and appropriate. In addition, section 121(f)(1)(c) of CERCLA requires State concurrence for deleting a site from the NPL.

Deletion of a site from the NPL does not preclude eligibility for subsequent Fund-financed actions if future conditions warrant such actions. Section 105(e) of CERCLA states:

> Whenever there has been, after January 1, 1985, a significant release of hazardous substances or pollutants or contaminants from a site which is listed by the President as a "Site Cleaned Up to Date" on the National Priorities List, the site shall be restored to the National Priorities List without application of the hazard ranking system.

III. Deletion Procedures

In the NPL rulemaking published in the **Federal Register** on October 15, 1984 (49 FR 40320), the Agency solicited and received comments on whether the notice and comment procedures followed for adding sites to the NPL should also be used before sites are deleted. Comments were also received in response to the amendments to the NCP that were proposed in the **Federal Register** on February 12, 1985 (50 FR 5862). Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for information purposes and to assist Agency management. As is mentioned in section II of this notice, section 105(e) of CERCLA makes clear that deletion of a site from the NPL does not preclude eligibility for future Fund-financed response actions.

EPA Region II will accept and evaluate public comments. The Agency believes that deletion procedures should focus on notice and comment at the local level, similar to those procedures for local comment outlined in EPA's March 27, 1984 "Interim Procedures for Deleting Sites from the NPL." Comments from the local community are likely to be the most pertinent to deletion decisions. The following procedures were used for the intended deletion of this site:

1. EPA Region II has recommended deletion and has prepared the relevant documents.

2. The State of New Jersey has concurred with the deletion decision.

3. Concurrent with this National Notice of Intent to Delete, a local notice has been published in local and community newspapers and has been distributed to appropriate Federal, State and local officials, and other interested parties. This local notice announces a thirty (30) day public comment period on the deletion package.

4. The Region has made all relevant documents available in the Regional Office and local site information repository.

The comments received during the notice and comment period will be evaluated before the final decision to delete. The Region will prepare a Responsiveness Summary, which will address the comments received during the public comment period.

A deletion will occur after the Assistant Administrator for Solid Waste and Emergency Response places a notice in the **Federal Register**. The NPL will reflect any deletions in the next final update. Public notices and copies of the Responsiveness Summary will be made available to local residents by Region II.

IV. Basis for Intended Site Deletion

The following summary provides the Agency's rationale for recommending deletion of the Cooper Road site in Voorhees Township, New Jersey from the NPL.

The Cooper Road site is located on a small tract of land, less than 100 square feet, near the intersection of Treebark Terrace and Courtland Drive in Voorhees Township, Camden County, New Jersey.

In mid-1982, the New Jersey Department of Environmental Protection (NJDEP) was informed by the State Police of the presence of several dozen one- and two-ounce vials containing liquid chemicals of an unknown nature. Subsequent analysis of the contents of the vials indicated the presence of several hazardous substances including benzene, ethylbenzene, xylene, methane, naphthalene and hexachlorocyclopentadiene. Based on the potential for ground water contamination the site was proposed for inclusion on the NPL in August 1983 and appeared on the final NPL in November 1984.

In May 1984, pursuant to a Directive Letter from the NJDEP, the site owner conducted a removal of the vials and six inches of the underlying soil. EPA was apprised of the surface cleanup. In October 1984, EPA determined that an investigation of the subsurface conditions at the site was necessary in order to determine if a release of contamination into the underlying soils and/or ground water had occurred in the vicinity of the vials.

Due to the moderately low ranking of the site on the NPL, and because of the previous surface cleanup activities, funds for a remedial investigation did not become available until 1986.

In April 1987, EPA completed a modified remedial investigation which included soil, ground water and potable well sampling. Results of ground water and soil analysis found background levels of metals and other elements normally associated with the aquifer and soil conditions in southern New Jersey. Potable well samples did not detect any contaminants.

The results of field investigations revealed that no levels of contaminants attributable to the contamination which previously existed at Cooper Road remained in the environment. EPA and NJDEP evaluations of the cleanup performed at the site indicated that there was no longer a source of contamination nor has there been any

migration of contaminants into the air, ground water, surface water or soil. Therefore, the Record of Decision signed on September 30, 1987 called for no further action at the Cooper Road site.

The Agency for Toxic Substances and Disease Registry (ATSDR) completed a health consultation for the site in August 1987. ATSDR concluded that the ground water does not pose a threat to public health.

The EPA community relations activities at the site included a public meeting in September 1987 to present the Agency's preferred remedial alternatives. Public comments were received and addressed.

EPA, with concurrence of the State of New Jersey, has determined that there is no longer a release that poses a significant threat to public health or the environment and, therefore, the taking of further remedial measures is not appropriate.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 88-22186 Filed 10-18-88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 300

[FRL-3485-9]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List; Krysowaty Farm Site

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete Krysowaty Farm Site from the National Priorities List; request for comments.

SUMMARY: The Environmental Protection Agency (EPA), Region II Office, announces its intent to delete the Krysowaty Farm site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the State of New Jersey have determined that no further fund financed remedial actions are appropriate at this site and actions taken to date are protective of the public health, welfare, and the environment.

DATE: Comments concerning this site may be submitted on or before November 18, 1988.

ADDRESSES: Comments may be mailed to: Stephen D. Luftig, Director, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, New York, NY 10278.

Comprehensive information on this site is available through the EPA public docket, which is located at EPA's Region II Office in New York City, and is available for viewing by appointment only from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays. Requests for appointments or copies of the background information from the Regional public docket should be directed to the EPA Region II docket office.

The Address for the Regional docket office is: Mr. Ronald Borsellino, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, Room 711, New York, NY 10278, (212) 264-1670.

FOR FURTHER INFORMATION CONTACT: Background information from the Regional public docket is also available for viewing at the Krysowaty site information repository located with: Mr. Glen Belnay, Health Officer, Hillsborough Township Health Department, 330 Amwell Road, Neshanic, New Jersey 08853.

SUPPLEMENTARY INFORMATION:

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I. Introduction
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I. Introduction

The Environmental Protection Agency (EPA), Region II Office, announces its intent to delete the Krysowaty Farm site, in Voorhees Township, New Jersey from the National Priorities List (NPL), which constitutes Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), and requests comments on this deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare or the environment, and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Response Trust Fund (Fund). Pursuant to section 105(e) of CERCLA, any site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action.

The EPA will accept comments on this site for thirty days after publication of this notice in the **Federal Register.**

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses how the site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.66(c)(7), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will consider whether any of the following criteria have been met:

(i) EPA, in consultation with the State, has determined that responsible or other parties have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented and EPA, in consultation with the State, has determined that no further cleanup by responsible parties is appropriate; or

(iii) Based on a remedial investigation, EPA, in consultation with the State, has determined that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Before deciding to delete a site, EPA must first determine that the remedy (or no remedy if appropriate) is protective of public health, welfare, and the environment, considering environmental requirements which are applicable or relevant and appropriate. In addition, section 121(f)(1)(c) of CERCLA requires State concurrence for deleting a site from the NPL.

Deletion of a site from the NPL does not preclude eligibility for subsequent Fund-financed actions if future conditions warrant such actions. Section 105(e) of CERCLA states:

> Whenever there has been, after January 1, 1985, a significant release of hazardous substances or pollutants or contaminants from a site which is listed by the President as a 'Site Cleaned Up To Date' on the National Priorities List, the site shall be restored to the National Priorities List without application of the hazard ranking system.

III. Deletion Procedures

In the NPL rulemaking published in the **Federal Register** on October 15, 1984 (49 FR 40320), the Agency solicited and received comments on whether the notice and comment procedures followed for adding sites to the NPL should also be used before sites are deleted. Comments were also received in response to the amendments to the NCP that were proposed in the **Federal Register** on February 12, 1985 (50 FR 5862). Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist

Agency management. As is mentioned in section II of this notice, section 105(e) of CERCLA makes clear that deletion of a site from the NPL does not preclude eligibility for future Fund-financed response actions.

EPA Region II will accept and evaluate public comments. The Agency believes that deletion procedures should focus on notice and comment at the local level, similar to those procedures for local comment outlined in EPA's March 27, 1984 "Interim Procedures for Deleting Sites from the NPL." Comments from the local community are likely to be the most pertinent to deletion decisions. The following procedures were used for the intended deletion of this site:

1. EPA Region II has recommended deletion and has prepared the relevant documents.

2. The State of New Jersey has concurred with the deletion decision.

3. Concurrent with this National Notice of Intent to Delete, a local notice has been published in local and community newspapers and has been distributed to appropriate federal, state and local officials, and other interested parties. This local notice announces a thirty (30) day public comment period on the deletion package.

4. The Region has made all relevant documents available in the Regional Office and local site information repository.

The comments received during the notice and comment period will be evaluated before the final decision to delete. The Region will prepare a Responsiveness Summary, which will address the comments received during the public comment period.

A deletion will occur after the Assistant Administrator for Solid Waste and Emergency Response places a notice in the **Federal Register.** The NPL will reflect any deletions in the next final update. Public notices and copies of the Responsiveness Summary will be made available to local residents by Region II.

IV. Basis for Intended Site Deletion

The following summary provides the Agency's rational for recommending deletion of the Krysowaty Farm site, Hillsborough Township, New Jersey from the NPL.

The Krysowaty Farm site is located on a 42-acre tract in Hillsborough Township, Somerset County, New Jersey, near the Village of Three Bridges. The site consisted of a waste disposal area approximately one acre in size.

An estimated 500 drums of paint and dye waste sludges, waste oils, and various other waste materials were allegedly dumped, crushed, and buried at the site from 1965 to 1970. Complaints from local residents of health problems and odors in their well water, coupled with an eyewitness account of the alleged waste disposal, brought the site to the attention of the local health department. The New Jersey Department of Environmental Protection (NJDEP) became aware of the site in October 1979. Since 1979, local, state, and federal officials have conducted site investigations and sampling. In 1982, the Township began to provide bottled water to nearby residents. The site was proposed for inclusion on the NPL on July 23, 1982 and appeared on the final NPL on December 30, 1982.

In 1984, the EPA completed a remedial investigation and feasibility study (RI/FS). The RI/FS studied the soil, sediment, surface water, a leachate seep, and ground water. Volatile organics, pesticides, base/neutral compounds and trace PCB contamination were found in the waste disposal area. On June 20, 1984, EPA signed a Record of Decision (ROD) selecting a remedy for the Krysowaty Farm site.

The ROD called for the following remedial activities at the site: Excavation and removal of the wastes disposal area; transport and disposal of waste to an approved hazardous waste disposal facility; provision of a permanent alternate water supply for potentially affected residences; monitoring of on-site wells, semi-annually, for a five-year period.

The EPA community relations activities at the site included a public meeting in May 1983 to present the work plan for performing the RI/FS, and a meeting in March 1984 to present findings of the RI/FS and the preferred alternative. Public comments were received and addressed. A major concern of the public and local officials was the need for an alternative water supply. In July 1984, EPA held another public meeting to discuss the selected remedial alternative, which included the alternate water supply. EPA conducted a public meeting in November 1985 to present an overview of the remedial actions, focusing on the excavation of wastes.

The remedial actions at the site began in August 1985 and were completed in January 1986. The Elizabethtown Water Company water main was extended to the affected residences and 13,763 cubic yards of visibly contaminated soils and debris were excavated and disposed of off-site in an approved hazardous waste disposal facility. The site was backfilled with clean fill, covered with six inches of top soil, and seeded in the spring of 1986.

The Agency for Toxic Substances and Disease Registry (ATSDR) completed a health assessment for the site in September 1986. ATSDR reviewed the residual soil data and determined that the concentrations of contaminants measured did not pose an imminent health threat via either ingestion or inhalation pathways. To ensure that the remediated area is left undisturbed, ATSDR recommended institutional controls and ground water monitoring.

The institutional controls for the site include a zoning ordinance by Hillsborough Township, which precludes land development due to the slope of the remediated area, and the mandatory water connection ordinance, which prohibits private well installation and use at the site. Both institutional controls have been implemented. A five year ground water monitoring program is being implemented by the State of New Jersey. That program commenced in May 1987.

EPA, with concurrence of the State of New Jersey, has determined that all appropriate Fund-financed responses under CERCLA at the Krysowaty Farm site have been completed, and that no further cleanup by responsible parties is appropriate.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 88-22185 Filed 10-18-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6839]

Proposed Flood Elevation Determinations; California et al.

AGENCY: Federal Insurance Administration Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed modified base (100-year) flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the Natural Flood Insurance Program.

DATES: The period or comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of modified base (100-year) flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed modified flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevation prescribed how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirements: of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Alabama	City of Northport, Tuscaloosa County.	Twomile Creek Diversion	Confluence with Twomile Creek	None	*152
			Divergence with Twomile Creek	None	*153
		Twomile Creek Tributary No. 1.	Just downstream of 9th Avenue	*163	*165
			Just downstream of U.S. Highway 69	*172	*175
			About 350 feet downstream of 20th Avenue	*187	*187
Maps available for inspection at the City Hall, Northport, Alabama.					
Send comments to The Honorable Edward D. Robertson, Major, City of Northport, City Hall, P.O. Drawer 969, Northport, Alabama 35476.					
California	City of Ione Amador County	Sutter Creek	Approximately 20 feet upstream of the western corporate limits of the city.	None	*270
			Approximately 1,760 feet downstream of Preston Avenue.	None	*290
			Approximately 80 feet downstream of Preston Avenue.	None	*298
			Approximately 1,220 feet upstream of Preston Avenue.	None	*312
		Sutter Creek Overflow	Approximately 2,000 feet downstream of Depot Road.	None	*278
			At intersection of West Marlette Street and Depot Road.	None	*288
			At intersection of West Marlette Street and West Mill Street.	None	*296
			At point of divergence from Sutter Creek	None	*304
Maps are available for inspection at City Hall, 1 Main Street, Ione, California.					
Send comments to The Honorable Margaret Singer, Mayor, City of Ione, P.O. Box 398, Ione, California 95640.					
Colorado	City of Littleton Arapahoe and Douglas Counties.	South Platte River	Fairway Lane extended	*5,338	*5,338
			Approximately 2,300 feet upstream of Fairway Lane.	*5,343	*5,340
			At West Mineral Avenue Bridge	*5,351	*5,348
			At confluence with SJCD 6200	*5,355	*5,352
			At State Highway 470	*5,365	*5,365
			Lee Gulch at South Broadway	None	*5,537
			At East Mineral Avenue	None	*5,578
			At South Pennsylvania Avenue	None	*5,575

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps are available for inspection at the City of Littleton Department of Community Development, 2255 West Berry Avenue, Littleton, Colorado.					
Send comments to the Honorable Charley Emley, President, City Council, City of Littleton, 2255 West Berry Avenue, Littleton, Colorado 80165.					
Georgia	Unincorporated Areas of Cobb County.	Butler Creek	Above 2,270 feet upstream of Mack Dobbs Road.	*971	*971
			About 0.99 mile upstream of Mack Dobbs Road.	[illegible]	[illegible]
			Just downstream of Pine Mountain Road	[illegible]	[illegible]
Maps available for inspection at the Cobb County Development Control Department, 47 Waddell Street, Marietta, Georgia.					
Send comments to The Honorable Earl Smith, Chairman, Cobb County Board of Commissioners, 10 East Park Square, Cobb County Administration Building, Marietta, Georgia 30060.					
Georgia	City of LaGrange, Troup County.	Dixie Creek	About 2,500 feet downstream of State Highway 219.	None	*849
			About 0.8 miles upstream of State Highway 219.	*881	[illegible]
		Airport Branch 1	Just upstream of Forrest Avenue	*885	*885
			Just upstream of Gordon Commercial Drive	None	[illegible]
		Blue John Creek	At confluence of Airport Branch 1	None	[illegible]
			About 700 feet downstream of Orchard Hill Road.	*944	*944
Maps available for inspection at the City Hall, 200 Ridley Avenue, LaGrange, Georgia.					
Send comments to The Honorable J.-Gardner Newman, Mayor, City of LaGrange, P.O. Box 430, LaGrange, Georgia 30241.					
Iowa	Unincorporated Areas of Mills County.	Missouri River	About 2.7 miles downstream of U.S. Route 34.	*957	*957
			About 0.5 mile upstream of Burlington Northern railroad.	[illegible]	[illegible]
			About 3.5 miles upstream of Burlington Northern railroad.	*965	[illegible]
		Shallow flooding (ponding from interior drainage).	About 1.5 miles upstream from State Route 370 along the Missouri River on the landward side of the levee.	None	[illegible]
			About 0.4 mile up State Route 370 from the east bank of the Missouri River on the landward side of the levee.	None	*962
			About 2.5 miles downstream from State Route 370 along the Missouri River on the landward side of the levee.	[illegible]	[illegible]
			Just west of the Interstate 29 interchange at Folsom Lake.	[illegible]	*968
			About 3.5 miles upstream from Burlington Northern railroad along the Missouri River on the landward side of the levee.	[illegible]	[illegible]
			About 2.0 miles upstream from Burlington Northern railroad along the Missouri River on the landward side of the levee.	[illegible]	[illegible]
			The intersection of U.S. Route 34 and Eaton Ditch.	[illegible]	[illegible]
Maps available for inspection at the County Courthouse, Mills County, Glenwood, Iowa.					
Send Comments to The Honorable Wayne Keith, Chairman, County Board of Supervisors, Mills County, County Courthouse, Glenwood, Iowa 51534.					
Maryland	Allegany County Unincorporated Areas.	Wills Creek	Approximately 60 feet downstream of Locust Grove Road.	[illegible]	[illegible]
			Approximately 60 feet downstream of State boundary.	None	*730
		Jennings Run	Confluence with Wills Creek	*712	*715
			Approximately 360 feet upstream of confluence with Wills Creek.	*714	*715
		Braddock Run	Confluence with Wills Creek	[illegible]	*667
			Approximately 550 feet upstream of confluence with Wills Creek.	[illegible]	[illegible]
Maps available for inspection at the Allegany County Planning and Zoning Commission, County Office Building, Cumberland, Maryland.					
Send comments to The Honorable Arthur T. Bond, President of the Allegany County Commission, County Office Building, Three Pershing Street, Cumberland, Maryland 21502.					
Minnesota	City of Hanover, Wright and Hennepin Counties.	Crow River	About 2.31 miles downstream of County Highway 123.	[illegible]	*888
			About 0.90 mile upstream of County Highway 123.	[illegible]	*900

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the City Hall, 11250 5th Street, N.W., Hanover, Minnesota.					
Send comments to The Honorable Maxine Ladde, Mayor, City of Hanover, City Hall, 11250 5th Street, N.E., Hanover, Minnesota 55341.					
New Jersey	Bridgewater Township, Somerset County.	Raritan River	Area south of Main Street and west of Interstate 287 at American Cyanamid Plant.	None	*38
			Area west of Cuckels Brook and south of Maine Street at American Cyanamid Plant.	None	*43
Maps available for inspection at the Municipal Building, 700 Garretson Road, Bridgewater, New Jersey.					
Send comments to The Honorable James T. Dowden, Mayor of the Township of Bridgewater, Somerset County, P.O. Box 6300, Bridgewater, New Jersey 08807.					
North Caroline	Unincorporated Areas of Cabarrus County.	Rocky River	At confluence of Mallard Creek	*570	*570
			About 0.8 mile upstream of SR 1600	None	*650
Maps available for inspection at the County Courthouse, 77 Union Street South, Concord, North Caroline.					
Send comments to The Honorable Martha Melvin, Acting County Manager, Cabarrus County, County Courthouse, 77 Union Street South, P.O. Box 707, Concord, North Carolina 28025.					
Pennsylvania	Eldred Borough, McKean County.	Barden Brook	Approximately 50 feet upstream of Bennett Street.	*1,446	*1,448
			Approximately 140 feet upstream of corporate limits.	None	*1,457
Maps available for inspection at the Borough Building, Three Bennett Street, P.O. Box 94, Eldred, Pennsylvania.					
Send comments to The Honorable William Luce, Mayor of the Borough of Eldred, McKean County, 184 Main Street, Eldred, Pennsylvania 16731.					
Tennessee	City of Cleveland, Bradley County.	South Mouse Creek	About 0.67 miles downstream of Mohawk Drive.	*758	*758
			Just downstream of Kile Road	*854	*852
			Just upstream of Kile Road	*855	*864
			Just downstream of Norfolk Southern Railway.	*855	*854
			Just upstream of Norfolk Southern Railway	*872	*876
			JUst upstream of Norfolk Southern Railway Spur.	None	*885
Maps available for inspection at the City of Cleveland, Engineering Department, Cleveland, Tennessee.					
Send comments to The Honorable Bill Schultz, Mayor, City of Cleveland, P.O. Box 1519, Cleveland, Tennessee 37364–1519.					
Utah	City of Salt Lake City, Salt Lake Co.	Little Cottonwood Creek	Approximately 4,360 feet above Little Cottonwood Creek Road.	*4,753	*4,763
			Approximately 4,760 feet above Little Cottonwood Creek Road.	*4,758	*4,769
			Approximately 5,760 feet above Little Cottonwood Creek Road.	*4,796	*4,794
			Approximately 6,740 feet above Little Cottonwood Creek Road.	*4,823	*4,829
			Approximately 7,700 feet above Little Cottonwood Creek Road.	*4,858	*4,854
			Approximately 9,060 feet above Little Cottonwood Creek Road.	*4,902	*4,902
Maps are available for inspection at the Flood Control and Highway Division, 2001 South State Street, #N3300, Salt Lake City, Utah.					
Send comments to The Honorable Bart Barker, Chairman, Salt Lake County Board of Commissioners, City and County Building, Salt Lake City, Utah 84111.					

Issued: October 11, 1988.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 88–24088 Filed 10–18–88; 8:45 am]

BILLING CODE 6718–03–M

LEGAL SERVICES CORPORATION

45 CFR Part 1626

Restrictions on Legal Assistance to Aliens

AGENCY: Legal Services Corporation.

ACTION: Proposed rule.

SUMMARY: Revisions to 45 CFR Part 1626 are proposed to conform the rule to changes required by the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99–603, 100 Stat. 3359 (1986), and to LSC's appropriations act for fiscal year 1988, Pub. L. 100–459, 102 Stat. 2186 (1988).

DATE: Comments must be submitted on or before November 18, 1988.

ADDRESS: Comments should be mailed to the Office of the General Counsel, Legal Services Corporation, 400 Virginia Avenue, SW., Washington, DC 20024–2751.

FOR FURTHER INFORMATION CONTACT: Timothy B. Shea, General Counsel, 400 Virginia Avenue, SW., Washington, DC 20024–2751, (202) 863–1823.

SUPPLEMENTARY INFORMATION: Part 1626 was originally promulgated to implement the terms of Pub. L. 96–377, 96 Stat. 1874 (1982), the appropriations act for fiscal year 1983, which restricts the availability of legal assistance to certain aliens. 48 FR 19750 (May 2, 1983) (proposed rule); 48 FR 28089 (June 20, 1983) (final rule).

Part 1626 now requires revision to conform the rule to LSC's current appropriations act and to the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99–603, 100 Stat. 3359.

In August 1987, the Immigration and Naturalization Service (INS) published a proposed rule pursuant to requirements of IRCA. 52 FR 31784 (August 24, 1987), which would include legal services provided by LSC recipients in the list of benefits or services unavailable to immigrants legalized under IRCA. The disqualification for services, which extends for five years, is based on section 245A(h)(1)(A)(i) of IRCA, which prohibits aliens newly legalized under IRCA from receiving benefits or services from any program of financial assistance furnished under Federal law on the basis of financial need. Pub. L. 99–603, 100 Stat. 3401.

LSC's appropriations act allows the provision of legal assistance to permanent resident aliens as defined by section 101(a)(20) of the Immigration and Nationality Act (INA), 8 U.S.C. 1101(a)(20). Aliens who have acquired the status of temporary resident aliens under IRCA cannot qualify. However, within nineteen months of becoming temporary residents, aliens may apply for and receive the status of permanent resident aliens pursuant to section 245A(b) of IRCA, Pub. L. 99–603, 100 Stat. 3395. When they acquire permanent status, such aliens still do not become eligible for Corporation-funded legal assistance, because the five-year prohibition on receipt of such services applies during the five-year period regardless of their status. Section 1626.4(a)(1) has been revised to reflect this restriction on the availability of legal services to aliens.

IRCA delineates two new categories of aliens who are eligible for legal assistance from LSC recipients: Special Agricultural Workers admitted as permanent residents pursuant to section 101(a)(20) of INA, Pub. L. 99–603, 100 Stat. 3422; and H–2 workers who become eligible for legal services only with respect to certain specific matters, Pub. L. 99–603, 100 Stat. 3431.

Section 1626.3(c)

Section 1626.3(c) has been amended to conform to the terms of the alien restriction in Pub. L. 100–459. Public Law 100–459 repeats the terms of Pub. L. 97–377, LSC's appropriations act for fiscal year 1983, which originally contained the alien restriction, as have all subsequent appropriation acts. The present regulation allows representation of an eligible client which directly benefits an ineligible alien, except when there is no benefit to the eligible client. It expands the scope of legal assistance provided for in the act by, in effect, allowing representation "on behalf of" an ineligible alien under a pretense of representing an eligible client.

LSC's appropriation act, Pub. L. 100–459, 102 Stat. 2186, disallows the use of LSC funds to provide legal assistance "for or on behalf of" aliens, except for four categories of aliens. An alien may receive LSC-funded legal assistance if he or she is: (1) An alien who is present in the United States and is a lawfully admitted permanent resident as defined in section 101(a)(20) of INA; (2) an alien who is present in the United States and is a spouse or minor child of a United States citizen, and has filed an application for permanent resident status that has not been rejected; (3) an alien who is lawfully present in the United States pursuant to section 207 of INA (refugee admissions) or has been granted asylum by the Attorney General, or who is lawfully present in the United States as a result of receiving conditional entry pursuant to section 203(a)(7) of INA because of persecution or fear of persecution or being uprooted by catastrophic natural calamity; or (4) an alien who is lawfully present in the United States as a result of the Attorney General's withholding of deportation under section 243(h) of INA. Unless an alien falls within one of these categories, no LSC funds should be used to provide legal assistance "on behalf of" the alien. The present language of the regulation may allow such unintended representation.

It is clear that Congress intended the words "on behalf of" to preclude representation that "render[s] legal assistance to an eligible client which directly benefits an ineligible alien," *see* § 1626.3(c), when the ineligible alien is the intended beneficiary of the legal assistance. For example, one category of aliens eligible for legal assistance are the spouses and minor children of United States citizens. The present language of § 1626.3(c) would allow representation of an eligible permanent resident alien who is seeking to adjust the immigration status of relatives. Of course, while the eligible resident alien may be said to receive some legal services under such circumstances, the relatives of the eligible resident alien, who are ineligible for legal services, are clearly the principal beneficiaries of the service. Such representation would be at odds with the language and intent of LSC's alien restrictions, which allow representation for the spouses and minor children of United States citizens only, not family members of permanent resident aliens.

Congressional efforts in 1984 to add language to LSC's appropriations act that would have allowed representation of family members of permanent resident aliens were defeated, and Congress voted to retain the language of the 1983 funding act. 129 CONG. REC. H7024 (1983); 129 CONG. REC. 14446–14447 (1983). This same restrictive language has been retained in all subsequent LSC appropriations acts. Thus, in order to conform to the language of the appropriations act and congressional intent, the revised regulation would prohibit representation of an eligible client which directly benefits an ineligible alien, unless the benefit to the ineligible alien is incidental to the relief obtained for the eligible client.

Section 1626.4

The language of § 1626.4(a) has been changed to conform to the language of the appropriations act, which requires an alien to be present in the United States in order to be eligible for legal assistance. Pub. L. 100–459.

Section 1626.4(a)(1) has been revised to reflect the rule that aliens legalized pursuant to IRCA are not eligible for Corporation-funded legal assistance for five years from the day they receive their temporary resident status, whether or not they adjust their status to become permanent resident aliens during the five-year period.

The listing of categories of ineligible aliens in § 1626.4(b) has been deleted as unnecessary.

Section 1626.5

Section 1626.5 has been changed to delete the listing of documents which do not provide evidence of eligible alien status as unnecessary. The list of the documents identified in § 1626.5(b) to demonstrate eligibility is considered sufficient. No change in substance is intended.

The new paragraph (c) of § 1626.5 establishes that a Special Agricultural Worker who presents an INS Form I–688 is eligible for legal services.

Under the provisions of § 1626.5(e), legal assistance to potentially ineligible clients may be provided in an emergency situation, because the emergency provision is considered to be

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the only instance in which a deviation from the verification requirement is warranted. Accordingly, § 1626.5(f), which permitted brief advice to potentially ineligible clients by telephone, has been deleted.

Section 1626.10(c)

Paragraph (a) has been revised to make the language of § 1626.10(a) more precise and, in addition, restates congressional intent that residents of these political entities are eligible to be clients of a legal services program.

A new paragraph (c) has been added to § 1626.10 to implement the provision of section 302 of the Immigration Reform and Control Act of 1986, 100 Stat. 3422, 8 U.S.C. 1160(g). Since Special Agricultural Workers are considered permanent resident aliens for all purposes after an adjustment in status to temporary resident aliens, these individuals are entitled to legal assistance. They are the only aliens who are entitled to legal assistance after an adjustment in status. Aliens who adjust their status under the general amnesty provisions of IRCA, 8 U.S.C. 1255a, are not entitled to legal assistance.

Section 1626.11

A new section to Part 1626 has been added in order to implement the provisions of section 305 of IRCA which delineate the circumstances under which H–2 workers are entitled to legal assistance. 100 Stat. 3434, 8 U.S.C. 1101 note.

Technical Corrections

The authority section of Part 1626 has been revised to reflect LSC's current appropriations act. In addition, § 1626.3(a) has been amended to provide that the regulation will continue in effect if the alien restriction continues to appear in succeeding appropriations acts.

List of Subjects in 45 CFR Part 1626

Aliens, Legal Services, Privacy, Reporting and recordkeeping requirements.

For the reasons set out above, 45 CFR Part 1626 is proposed to be amended as follows:

PART 1626—RESTRICTIONS ON LEGAL ASSISTANCE TO ALIENS

1. The table of contents is revised to read as follows:

Sec.
1626.1 Purpose.
1626.2 Definitions.
1626.3 Prohibition of legal assistance "for or on behalf of" an ineligible alien.
1626.4 Alien status and eligibility.
1626.5 Verification of citizenship and eligible alien status.
1626.6 Disposition of cases involving ongoing representation of ineligible aliens.
1626.7 Change in circumstances.
1626.8 Records.
1626.9 Use and confidentiality of records pertaining to determination of eligible alien status.
1626.10 Special eligibility questions.
1626.11 H–2 agricultural workers.

2. The authority citation for Part 1626 is revised to read as follows:

Authority: Sec. 1006(e); Pub. L. 93–355, 88 Stat. 378 (42 U.S.C. 2996g(e)); Pub. L. 99–603, 100 Stat. 3417; Pub. L. 100–459, 102 Stat. 2186.

3. Section 1626.1 is revised to read as follows:

§ 1626.1 Purpose

This part is designed to assist recipients in determining the eligibility and immigration status of persons who seek legal assistance, to provide guidelines for referral of ineligible persons, and to protect the confidentiality of information obtained from clients and prospective clients. This part does not apply to any case or matter in which assistance is not being provided with funds appropriated under Pub. L. 100–459 or any succeeding act which contains similar restrictions.

4. Section 1626.2 paragraph (b) is revised to read as follows:

§ 1626.2 Definitions.

* * * * *

(b) "Ineligible alien" means an alien who does not meet the requirements of § 1626.4(a) and who is consequently determined not to be eligible to receive legal assistance under Pub. L. 100–459 or any succeeding act which contains similar restrictions.

* * * * *

5. Section 1626.3 paragraphs (a), (b)(1), (b)(2), and (b)(3) are revised, and paragraphs (c)(1) and (c)(2) are added to read as follows:

§ 1626.3 Prohibition of legal assistance "for or on behalf of" an ineligible alien.

(a) *General.* No funds made available to a recipient by the Corporation under the authority of Pub. L. 100–459 or any succeeding act which contains similar restrictions shall be used to provide legal services for or on behalf of any person unless that person is a citizen of the United States or an eligible alien.

(b) * * *

(1) To provide legal assistance "for" an ineligible alien is equivalent to furnishing legal assistance to a client and it shall be deemed to be coextensive with accepting an ineligible alien as a client. Consequently, all recipients are prohibited from using Corporation funds to pay any costs connected with furnishing legal assistance to clients who are ineligible aliens.

(2) Normal intake procedures and referral of ineligible alien clients by the same procedures used to refer other classes of ineligible clients are excepted from this prohibition. If a referral is not possible, and ineligible alien client may not be represented with Corporation funds that contain similar restrictions on such representation. If such an ineligible alien client is referred, a recipient may not participate further in the case using Corporation funds.

(3) The provisions of Section 1010(c) of the Legal Services Corporation Act, 42 U.S.C. 2996i(c), do not apply to the expenditure of funds to represent ineligible aliens. Such aliens may be represented if all costs of such representation, including staff time, are funded from non-Corporation sources.

(c) * * *

(1) To provide legal assistance "on behalf of" an ineligible alien is to render legal assistance to an eligible client which directly benefits an ineligible alien. Ineligible aliens may benefit only as an incidental result of the relief obtained for eligible clients. As an example, where a group of individuals renting a residence is faced with eviction, and one of the group is an eligible alien or a citizen, representation of that individual is allowed because there is a direct benefit inuring to the client represented which would exist even absent the involvement of ineligible clients. The other aliens may not be named as parties or represented and no relief may be sought for them, but they may receive an incidental benefit if successful representation of the eligible client leads to their not being evicted.

(2) Any case in which an eligible client seeks legal assistance to facilitate immigration of or adjustment of status of an ineligible alien constitutes provision of legal assistance "on behalf of" an ineligible alien, even if there is some benefit to the eligible client. The benefit to the eligible client occurs only as a consequence of the benefit to the ineligible alien. Consequently, the prohibition of assistance on behalf of an ineligible alien.

6. Section 1626.4 paragraphs (a) introductory text, (a)(1), and (b) are revised to read as follows:

§ 1626.4 Alien status and eligibility.

(a) Subject to all other eligibility requirements of the Act, an alien who is present in the United States and who is within one of the following categories shall be eligible for legal services:

(1) An alien lawfully admitted for permanent residence as an immigrant as defined by Section 1101(a)(20) of the Immigration and Nationality Act (INA) (8 U.S.C. 1101 (a)(20)) except that an alien who has adjusted his status to that of temporary resident alien under the provisions of Section 245A of INA (§ 201 of IRCA, 100 Stat. 3394, 8 U.S.C. 1255a) shall not be eligible for legal assistance pursuant to the provisions of 245A(h) of INA (8 U.S.C. 1255a(h)) for a period of five years, which commences on the date the alien is granted temporary resident alien status whether or not such alien acquires the status of permanent resident alien during the five-year period, unless the alien can qualify under another exception to the general restriction;

* * * * *

(b) An alien who is not within one of the eligibility categories defined in § 1626.4(a) shall not be eligible for legal services.

7. Section 1626.5 paragraphs (a)(5), (b)(1), and (c) are revised and paragraphs (a)(6) and (f) are removed as follows:

§ 1626.5 Verification of citizenship and eligible alien status.

(a) * * *

(5) Baptismal certificate showing place of birth within the United States and date of baptism within two months after birth.

* * * * *

(b) * * *

(1) An alien in the category specified in § 1626.4(a)(1) shall present an Alien Registration Receipt Card (INS Forms I–151 or I–551), or a valid passport and immigration visa.

* * * * *

(c) A Temporary Resident Card (INS Form I–688) shall be considered evidence of eligible alien status in the case of a Special Agricultural Worker. *See* § 1626.10(c). This form shall not be considered evidence of eligible alien status in the case of an alien who has obtained an adjustment in status under the General Amnesty provisions of Immigration Reform and Control Act (IRCA). 8 U.S.C. 1255a. *See* § 1626.4(a)(1).

* * * * *

8. Section 1626.6 paragraphs (a) introductory text, (a)(3), and (b)(1) are revised to read as follows:

§ 1626.6 Disposition of cases involving ongoing representation of ineligible aliens.

(a) A recipient may not use funds available to it under the authority of Pub. L. 100–459 or any succeeding act which contains similar restrictions to provide legal assistance to ineligible aliens; other alternatives must be used to dispose of pending cases in which the client is an ineligible alien. Generally three alternatives are available:

* * * * *

(3) Continuance of representation supported by funds available to the recipient either from non-Corporation sources or from unexpended carryover balances of pre-1983 Corporation funds. As such other funds will normally be limited, referral or discontinuance of representation should be chosen whenever not inconsistent with an attorney's professional responsibilities.

(b)(1) Where referral or discontinuance of representation is not possible and no other funds are available, the recipient may permit a staff attorney to complete the case (or bring it to a stage where referral or discontinuance is possible) on an uncompensated basis. In such instances, the attorney may use the necessary minimum of recipient overhead support, but direct expenditures of funds appropriated by Pub. L. 100–459 or any succeeding act which contains similar restrictions will not be permitted.

* * * * *

9. Section 1626.7 paragraphs (a) introductory text and (b) are revised to read as follows:

§ 1626.7 Change in circumstances.

(a) A recipient shall not use funds made available to it under the authority of Pub. L. 100–459 or any succeeding act which contains similar restrictions to provide legal assistance for or on behalf of an alien if:

* * * * *

(b) A recipient shall discontinue representation supported by funds authorized by the Corporation under the circumstances described in § 1626.7(a), provided discontinuance is not inconsistent with the attorney's professional responsibilities.

In discontinuing representation, a recipient shall follow the procedures set out in § 1626.6. In the event of discovery of false information relating to eligibility as set forth in § 1626.7(a)(3), steps to discontinue representation shall be taken immediately.

10. Section 1626.10 paragraph (a) is revised and paragraph (c) is added to read as follows:

§ 1626.10 [Amended]

(a) *Micronesia.* The alien restriction stated in the appropriations act is not applicable to the legal services program in the following Pacific Island entities:

(1) Commonwealth of the Northern Mariana Islands;
(2) Republic of Palau;
(3) Federated States of Micronesia;
(4) Republic of the Marshall Islands.

All citizens of these entities are eligible to receive legal assistance, provided they are otherwise eligible under the Act.

* * * * *

(c) *Special Agricultural Workers.* An alien who qualifies as a special agricultural worker and whose status is adjusted to that of temporary resident alien under the provisions of IRCA is considered a permanent resident alien for all purposes except immigration under the provisions of section 302 of Pub. L. 99–603, 100 Stat. 3422, 8 U.S.C. 1160(g). Since the status of these aliens is that of permanent resident alien under section 1101(a)(20) of Title 8, these workers are eligible for legal assistance. These workers are ineligible for legal assistance in order to obtain the adjustment of status to temporary resident under IRCA, but are eligible for legal assistance after the adjustment of status to that of temporary resident.

11. Section 1626.11 is added to read as follows:

§ 1626.11 H–2 agricultural workers.

(a) Nonimmigrant agricultural workers admitted under the provisions of 8 U.S.C. 1101(a)(15)(H)(ii), commonly called H–2 workers, are considered to be aliens described in 8 U.S.C. 1101(a)(20) and, as such, are eligible for legal assistance regarding the matters specified in section 305 of the Immigration Reform and Control Act of 1986. Pub. L. 99–603, 100 Stat. 3434, 8 U.S.C. 1101 note.

(b) The following matters which arise under the provisions of the worker's specific employment contract may be the subject of legal assistance by an LSC-funded program:

(1) Wages;
(2) Housing;
(3) Transportation; and
(4) Other employment rights as provided in the worker's specific contract under which the nonimmigrant worker was admitted.

October 14, 1988.

Timothy B. Shea,
General Counsel.

[FR Doc. 88–24154 Filed 10–18–88; 8:45 am]
BILLING CODE 7050-01-M

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[General Docket 88-486; FCC 88-291]

Request for Declaratory Ruling; Radiofrequency Radiation Compliance

AGENCY: Federal Communications Commission (FCC).

ACTION: Proposed rule.

SUMMARY: This item proposes amending Part 1 of the Commission's Rules to establish a new category for exclusion from the requirements concerning routine evaluation of environmental radiofrequency (RF) radiation. This proposal is a result of a petition for declaratory ruling filed by Hammett & Edison, Inc. The new category would include any proposed facility or modification that would not cause an increase in RF levels of more than 1% of the allowable limits in any accessible area. It is also proposed to amend Part 1 so that, in accessible areas where the exposure limits are exceeded due to the presence of multiple transmitters, the responsibility for compliance with the RF guidelines will be shared by all transmitters contributing in excess of 1% of the limits. Another matter raised by the petitioner, the issue of measuring field intensities near re-radiating conductive objects and the creation of "hot spots," is discussed in this item. Although no specific proposal is made for amending the Rules with respect to the latter issue, further guidance is provided to licnensees.

DATES: Comments due December 13, 1988; reply comments due January 12, 1989.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Cleveland, Office of Engineering and Technology, FCC, (202) 653-8199.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making*, General Docket 88-469, FCC 88-291, Adopted September 7, 1988, and Released Octobor 7, 1988.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rule Making

1. In order to fulfill its responsibilities under the National Environmental Policy Act (NEPA), the Commission has previously adopted rules (47 CFR 1.1301 *et seq.*) to provide for environmental processing of applications for facilities that might have environmental impact. Potential environmental impact from FCC-regulated services is possible due to human exposure to radiofrequency (FR) radiation from transmitting sources. Therefore, in 1985, the Commission adopted a *Report and Order* (50 FR 11151, 1985) to provide for evaluation for environmental RF radiation from certain FCC-authorized facilities and services. This was followed by a *Second Report and Order* (52 FR 13240, 1987) further defining FCC policy and providing for categorical exclusion of certain facilities. The Commission's policy in this area is set forth in § 1.1307(b) of the rules.

2. In 1987, the firm of Hammett & Edison, Inc. filed with the Commission a request for declaratory ruling with regard to evaluating compliance with safety guidelines for RF radiation. The Commission considered this request as a petition for rule making, and comments on the petition were solicited. The petitioner had requested clarification of Commission policy in three areas: (1) The definition of a broadcast "site"; (2) the term "significant" as quoted in the rules in NEPA; and (3) the treatment of intensified, localized electromagnetic fields found near re-radiating objects ("hot spots").

3. This item proposes establishing a new criterion for categorical exclusion from the requirements for routine evaluation of environmental RF radiation. The new excluded category would include any proposed facility or modification that would not cause an increase in RF levels in any accessible area of more than 1% of the allowable limits. Furthermore, it is proposed that in accessible areas where exposure limits are exceeded due to the presence of multiple transmitters, the responsibility for compliance with the guidelines will be shared by all transmitters contributing in excess of 1% of the limits.

4. The item also discusses the issue, raised by the petitioner, of measuring field intensities near re-radiating conductive objects and the creation of so-called "hot spots." No specific proposal is made for amending the Commission's rules with respect to this issues. However, further guidance is provided to licensees, and comment is solicited on this topic.

Initial Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. section 605, an initial regulatory flexibility analysis has been prepared. It is available for public viewing as part of the full text of this decision, which may be obtained from the Commission or its copy contractor. There should be no significant economic impact on a substantial number of small, regulated entities as a result of this action. Any action that might occur should be primarily limited to reducing costs of a proposed facility or modification by eliminating the economic burden of unnecessary environmental evaluation.

Ex Parte

This is a non-restricted notice and comment rule making proceeding. *See* § 1.1231 of this Commission's rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

Ordering Clauses

Accordingly, *it is ordered* that, there is hereby instituted a *Notice of Proposed Rule Making* in this proceeding to amend Part 1 of the Commission's Rules and Regulations as set forth below. All interested parties may file comments on this specific proposal on or before December 13, 1988. Reply comments shall be filed on or before January 12, 1989. In accordance with § 1.1419, an original and five (5) copies of all filings shall be furnished to the Commission. Copies of comments and reply comments filed in this proceeding will be available for public inspection during regular business hours in the commission's Reference Room at 1919 M Stree, NW., Washington, DC 20554.

List of Subjects in 47 CFR Part 1

Practice and procedure, National Environmental Policy Act, radiofrequency radiation.

Proposed Rule Changes

It is proposed that Part 1, Chapter I, of Title 47 of the Code of Federal Regulations be amended as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for Part 1 continues to read:

Authority: Secs. 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 303(r).

§ 1.1307 [Amended]

In § 1.1307, the note following paragraph (b) is revised as follows:

§ 1.1307 Actions which may have a significant environmental effect, for which environmental assessments (EAs) must be prepared.

* * * * *

(b) * * *

Note 1: Paragraph (b) shall apply to facilities and operations licensed or authorized under Parts 5, 25, 73, 74 (Subparts A and G only), and 80 (ship earth stations only). Facilities and operations licensed or authorized under all other Parts, Subparts, or Sections of the Commission's Rules shall be categorically excluded from consideration under this paragraph (b).

Note 2: A transmitter shall be categorically excluded from consideration under this paragraph (b) provided it can be shown that the transmitted does not or will not create electromagnetic fields in any accessible area that exceed 1% of the exposure limits (specified in this paragraph (b)) that apply to that transmitter.

Note 3: If the exposure guidelines specified in this paragraph (b) are exceeded in an accessible area due to emissions from multiple transmitters, responsibility for compliance shall be shared among all licensees whose transmitters contribute 1% or more of the exposure limit to the area of excessive radiation.

Note 4: The exclusions, noted above, of facilities, operations, or modifications from the provisions of this paragraph (b) may be superseded by actions taken by the Commission under the provisions of paragraph (c) or (d) of this section.

* * * * *

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 88-24090 Filed 10-18-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-473, RM-6360]

Radio Broadcasting Services; Prescott Valley, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed on behalf of Lucky Communications, Inc., seeking the allotment of FM Channel 252C2 to Prescott Valley, Arizona, as that community's first wide coverage area FM broadcast service. Reference coordinates for this proposal are 34-31-50 and 112-15-12.

DATES: Comments must be filed on or before November 21, 1988, and reply comments on or before December 6, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Barry A. Friedman, Esq., Wilner and Scheiner, 1200 New Hampshire Ave., NW., Suite 300, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-473, adopted August 31, 1988, and released September 30, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-24150 Filed 10-18-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-512; RM-5933]

Radio Broadcasting Services; Beaver, UT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of proposal.

SUMMARY: This document dismisses a petition filed by McAlester Broadcasting Systems of Utah, Ltd., proposing the allotment of Channel 284C2 to Beaver, Utah, as that community's first FM service, because of a lack of an expression of interest. With this action, this proceeding is terminated.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-512, adopted September 1, 1988, and released September 30, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-24092 Filed 10-18-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 81-742; DA 88-1540]

Broadcast Service; License Renewal Process and Abuses of That Process

AGENCY: Federal Communications Commission.

ACTION: Order extending time for filing comments.

SUMMARY: This action grants a motion for an extension of time for filing comments in response to the *Second Further Notice of Inquiry and Notice of Proposed Rule Making* (*Notice*) in BC Docket No. 81-742, 53 FR 31804 (August 22, 1988). The National Association of Broadcasters (NAB) requested that the deadline for filing comments be extended from October 7, 1988, to October 14, 1988, but that the November 7, 1988 deadline for filing reply comments not be altered. In support of this motion, NAB contended that a one week extension of time would allow for its analysis and presentation of relevant data regarding abuses of the renewable process that could be utilized by the Commission in its ultimate resolution of this proceeding. Since the *Notice* requested the type of data that NAB has gathered and since the requested extension appears reasonably necessary to facilitate analysis of this data, the Commission is extending the date for filing comments in this proceeding.

However, the date for filing reply comments is not being changed.

DATES: Comments are now due on or before October 14, 1988. Reply comments remain due on or before November 7, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Policy and Rules Division, Mass Media Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order Granting Motion for Extension of Time for Filing Comments*. The full text of this order is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC 20554. The complete text of this order may also be purchased from the Commission's copy contractor, International Transcription Services (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037..

Federal Communications Commission.

Alex D. Felker,

Chief, Mass Media Bureau

[FR Doc. 88-24145 Filed 10-18-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 76

[MM Docket No. 85-39; FCC 87-376]

Review of the Technical and Operational Requirements of Cable Television

AGENCY: Federal Communications Commission.

ACTION: Further Notice of Proposed Rule Making.

SUMMARY: This *Further Notice of Proposed Rule Making* proposes to extend the technical signal quality guidelines and policies the Commission adopted for Class I cable channels in the *Report and Order* in this proceeding to the television transmissions on Class II, III, and IV cable channels. These guidelines serve as both the non-mandatory federal signal quality standards for cable systems and the maximum performance standards that may be applied, but not exceeded, by state and local franchising authorities in their regulation of cable systems. This action is in response to a recent ruling by the U.S. court of Appeals that vacated the portion of the Commission's decision in the *Report and Order* relating to Class II, III, and IV cable channels and remanded the issue to the Commission for further proceedings.

DATES: Comments due December 12, 1988; replies due January 11, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Judith Herman, Mass Media Bureau [202] 632-6302.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Further Notice of Proposed Rule Making* MM Docket No. 85-39, adopted August 4, 1988, and released October 11, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, Northwest, Suite 140, Washington, DC 20037.

Summary of the Further Notice of Proposed Rule Making

1. In the *Report and Order* in this proceeding, the Commission eliminated all federal enforcement of cable signal quality standards, while at the same time retaining its federal pre-emption policy which prohibits local regulatoin of cable technical standards that exceed federal standards. The Commission reinstituted these technical standards, which historically applied to Class I (broadcast television signals) cable channels only, as guidelines. As such, these guidelines serve as both the non-mandatory federal standards for cable systems and the maximum standards that may be applied by state and local franchising authorities in their regulation of cable systems. The Commission also declined to adopt any guidelines for Class II (non-encoded, non-broadcast cable programming), Class III (encoded video and nonvideo programming), or Class IV (two-way transmission) channels and continued its policy of preempting state regulation of these channels. These rule and policy changes eliminated unnecessary federal regulation while also ensuring that cable systems are not subject to overly stringent or conflicting local technical regulations that may impede the growth and development of cable service.

2. On review, the U.S. Court of Appeals for the District of Columbia Circuit vacated the portion of the Commission's *Report and Order* addressing the Class II, III, and IV cable channels, stating that the absence of federal technical standards applicable to these classes of cable channels when combined with our pre-emption policy, might make it impossible for local franchising authorities to carry out their responsibilities to evaluate cable signal quality under the license renewal provisions of section 626 of the Cable Act. It ruled that the Commission's failure to consider the impact of this section of the Cable Act on its decision was arbitrary and capricious. The court, therefore, vacated the Commission's decision as it relates to Class II, III, and IV channels and remanded the case in the Commission for further proceedings consistent with its opinion.

3. In light of the court's ruling, the *Further Notice of Proposed Rule Making* proposes to extend the existing technical guidelines to the television transmissions on Class II, III, and IV cable channels. Application of our current Class I channel policies to the other classes of cable channels will provide local franchising authorities with adequate flexibility to establish objective standards for evaluating cable signal quality. Franchisors will then be able to fulfill effectively their responsibility to review a cable operator's signal quality as part of the application for license renewal under section 626 of the Cable Act. The Commission believes this proposal satisfies the court's concern that our rules not preclude franchisors from carrying out their statutory responsibilities, and also will prevent any adverse impact on cable television service that might result from overly stringent or conflicting technical regulations at the local level. The Commission also seeks comment with respect to what standards should be established for the nonvideo transmissions on Class III and IV cable channels. These services are still developing and we are concerned about the potential for technical regulations to stifle their growth and development.

4. This is a non-restricted notice and comment rule making proceeding. *See* § 1.1231 of the Commission's Rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

5. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, this proceeding proposes to extend the technical signal quality guidelines and policies the Commission adopted for Class I cable channels to television transmissions on Class II, III, and IV cable channels. Local franchising authorities will be provided with adequate flexibility to establish objective standards for evaluating cable signal quality and these rules also will prevent any adverse impact on cable television service that might result from overly stringent or conflicting technical regulations at the local level. Public comment is requested on the initial regulatory flexibility analysis set out in full in the Commission's complete decision.

6. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose no information collection requirement on the public.

7. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before December 12, 1988, and reply comments on or before January 11, 1988. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Appendix

47 CFR Part 76 is proposed to be amended as follows:

PART 76—[AMENDED]

1. The authority citation for Part 76 would continue to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. 47 CFR 76.605 is proposed to be amended by revising paragraph (a) introducing text.

§ 76.605 Technical standards.

(a) The following requirements apply to the performance of a cable television system as measured at any subscriber terminal with a matched termination, and to the delivery of a television (video) signal on each channel in any of the classes of cable television channels the system may provide (*i.e.*, Class I, Class II, Class III, and IV as defined in § 76.5(t) through (w) of this chapter). In the case of encoded signals on Class III and IV channels, signal performance shall be measured after any decoding or related processing.

* * * * *

[FR Doc. 88-24089 Filed 10-18-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Denial of Petition for Rulemaking on Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition.

SUMMARY: NHTSA denies a petition from Insurance Institute for Highway Safety (IIHS) for reconsideration of the agency's termination of rulemaking on daytime running lights (DRLs). Petitioner argued that there is a substantial safety need addressed by optional use of DRLs, and that a Federal regulation permitting their use would promote the international harmonization of safety standards. Furthermore, petitioner argued, the benefits would outweigh the effects of preempting state or local laws or regulations. The agency denies the petition on the basis that the petitioner failed to submit any arguments to substantiate its position that the agency did not consider in its original decision to terminate rulemaking.

FOR FURTHER INFORMATION CONTACT: Jere Medlin, Office of Rulemaking, NHTSA (202-366-5276).

SUPPLEMENTARY INFORMATION: On June 23, 1988, NHTSA published a notice of Termination of Rulemaking with regard to daytime running lights (DRLs) 53 FR 23673. The agency had proposed that DRLs be optional on passenger cars, but terminated rulemaking for several reasons. First, manufacturers who commented on the proposal did not intend to take present advantage of such an option. Second, because a national safety need warranting mandatory adoption of DRLs had not been shown, in accordance with the guidelines of Executive Order 12612 "Federalism", the agency declined to adopt a rule that would have a preemptive effect on State laws.

On July 22, 1988, the Insurance Institute for Highway Safety (IIHS) filed a petition for reconsideration of the decision to terminate rulemaking. The agency notes that its rulemaking procedural rules do not contemplate a petition for reconsideration of a rulemaking petition denial. See generally 49 CFR Part 552; compare with 49 CFR 553.35. The denial of such petitions is a final agency action. Therefore, the agency has treated the IIHS request as a new petition for rulemaking. In that context, the agency has considered the arguments put forth by IIHS and will explain why it is not opening a rulemaking proceeding to provide for the optional use of DRLs.

The petition contained four primary arguments related to potential safety benefits, manufacturer support, a balance of safety and preemption issues, and the promotion of international harmonization.

With respect to potential safety benefits, IIHS argued that "NHTSA concluded that there was no national safety need demonstrated for their use", then cited the accident reduction figures of the Scandinavian experience. In fact, what NHTSA said was that no national safety need that warranted *mandating* this item of equipment had been demonstrated. The level of accident reduction benefits that could be expected from use of DRLs in the United States is not clear. The experiences of Scandinavian countries with DRLs are not completely applicable to the United States. The results of the U.S. fleet study conducted by the IIHS were not statistically significant. As previously noted, NHTSA believes there may be some safety benefit in the use of DRLs in the U.S., and will carefully evaluate any new data on their effectiveness. However, there is not yet sufficient evidence to support a mandatory DRL rule.

With respect to support of DRLs by manufacturers, IIHS cited statements that some manufacturers were "considering" them but "not before 1990". As NHTSA indicated in its June notice, it found no actual plans to introduce DRLs in production. It is not inconsistent for manufacturers to support the concept of DRLs without obligating themselves to manufacture vehicles with them. The agency's decision hinged on the absence of manufacturer plans to produce vehicles with DRLs even if the proposed rule had been adopted.

IIHS also noted that General Motors had indicated that the corporate average fuel economy (CAFE) standards constrained its ability to offer DRLs on its vehicles sold in the U.S. NHTSA recently revised the passenger car CAFE standards for model year 1988, and plans to issue a decision on the 1990 model year standards later this year. If manufacturers should subsequently decide to introduce DRLs on their vehicles (because of revised CAFE standards or for other reasons), *and* State laws appear to present barriers to such equipment, then NHTSA would be willing to reconsider the need for a Federal "permissive" standard on DRLs.

However, the agency believes that it would be faster for all parties concerned (insurers, automakers, NHTSA and State safety agencies) to work directly for State action to eliminate any barriers to DRLs under State laws. That approach seems particularly appropriate where, as here, all parties agree that such barriers are entirely inadvertent and do not reflect opposition by States to the DRL concept.

With respect to balancing of safety and preemption issues, IIHS argued that preemption of State laws is consistent with the express provisions of 15 U.S.C. 1392(d), and with Executive Order 12612 when the problem is national in scope. Although vehicle collision is a problem that occurs nationwide, the effectiveness of a regulatory remedy of a mandatory DRL was not demonstrated. Therefore, no need was shown for preemption of State laws that might prevent DRLs.

Finally, IIHS argued that DRLs promote international harmonization, and that conflicting State laws will serve as a barrier to the free movement of traffic between the United States and Canada (which recently adopted a requirement for DRLs on new vehicles sold in that country). IIHS said that if NHTSA does not take action to preempt conflicting State laws, those laws will serve as obstacles to foreign manufactured vehicles that are equipped with DRLs. It cited Title IV of the Trade Agreement Act of 1979 under which Federal agencies shall, in developing standards, take into consideration international standards, and not engage in any standards-related activity that creates unnecessary obstacles to the foreign commerce of the United States. NHTSA's actions are consistent with Title IV. It took the Canadian proposal into account in developing the proposed U.S. Federal standard. If NHTSA's proposal had been adopted, the U.S. Federal standard would have been consistent with the Canadian one. However, NHTSA does not read Title IV as obligating the United States to issue a standard solely for the purpose of preempting the laws of the individual States, as a means of facilitating international commerce. Further, this agency is not aware of any actual conflicts between State laws and foreign registered vehicles that were manufactured to specifications other than those of the United States and are in daily use by tourists in this country.

Finally, NHTSA wishes to reiterate its continuing interest in DRLs, and its intent to monitor any safety benefit studies made by the Canadian Government. It will work with the States to remove any legislation that may prohibit the use of DRLs, and will encourage organizations such as the American Association of Motor Vehicle Administrators and the National Committee on Uniform Traffic Laws and Ordinances to urge the States to cooperate in this endeavor.

(15 U.S.C. 1410a; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on October 14, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88-24190 Filed 10-18-88; 8:45 am]

BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1312

[Ex Parte No. 290 (Sub-No. 6)]

Amendments to Rail Carrier Cost Recovery Tariffs

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time to file comments to advance notice of proposed rulemaking.

SUMMARY: In the **Federal Register** advance notice of proposed rulemaking, August 19, 1988, (53 FR 31720), the Commission sought comments dealing with problems encountered by users of the rail carrier cost recovery tariffs and suggestions for changes of the rules pertaining to the tariffs. The notice was prompted by the receipt of informal criticisms which indicated that the tariffs have become extremely cumbersome to follow and apply. Comments are due October 18, 1988. The Fertilizer Institute has requested that this date be postponed for 30 days. This matter was considered at a recent conference of The Fertilizer Institute's Transportation Committee and the additional time will be needed for the formulation of comments. Since it is the desire of the Commission to elicit meaningful comments from all parties, an extension of 20 days is granted.

DATES: Comments must be submitted by November 7, 1988.

ADDRESS: Send an original and 10 copies of comments referring to Ex Parte No. 290 (Sub-No. 6), to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Lawrence C. Herzig, (202) 275-7358 or Charles E. Langyher (202) 275-7739. TDD for hearing impaired (202) 275-1721..

Decided: October 14, 1988.

By the Commission, Heather J. Gradison, Chairman.

Noreta R. McGee,

Secretary.

[FR Doc. 88-24203 Filed 10-18-88; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 53, No. 202
Wednesday, October 19, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Adjudication, Committee on Judicial Review and Working Group on Model Rules; Public Meetings

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of meetings of the Committee on Adjudication, Committee on Judicial Review and the Working Group on Model Rules of the Administrative Conference of the United States.

Committee on Adjudication

Date: Friday, October 28, 1988.
Time: 1:00 p.m.
Location: Administrative Conference of the United States Library, 2120 L Street, NW., Suite 500, Washington, DC 20037.
Agenda: The committee will meet to discuss a study by Professor Timothy S. Jost of Ohio State University College of Law, on peer review and sanctions in the Medicare program.
Contact: Phyllis Gottesman, 202-254-7065.

Committee on Judicial Review

Date: Wednesday, October 26, 1988.
Time: 10:00 a.m.
Location: Administrative Conference of the United States Library, 2120 L Street NW., Suite 500, Washington, DC.
Agenda: The Committee will be discussing a draft report by Professor Robert A. Anthony of George Mason University concerning which statutory interpretations by federal administrative agencies (e.g., those made in legislative regulations, in formal adjudications, in instructions to agency staff, in correspondence, etc.) should be entitled to full deference by the Federal courts under *Chevron U.S.A., Inc. v. National Resources Defense Counsel, Inc.*, 467 U.S 837 (1984).
Contact: Mary Candace Fowler 202-254-7065.

Working Group on Model Rules

Date: Friday, November 4, 1988.
Time: 12:00 p.m.
Location: Administrative Conference of the United States Library, 2120 L Street, NW., Suite 500, Washington, DC.
Agenda: The Working Group will meet as part of an ongoing effort to develop model rules of practice and procedure which can be used by Federal agencies in formal adjudications.
Contact: Gary J. Edles, 202-254-7020.

Public Participation

Attendance at the committee meetings in open to the public, but limited to the space available. Persons wishing to attend should notify the contact person at least three days in advance of the meeting. The committee chairmen may permit members of the public to present oral statements as meetings. Any member of the public may file a written statement with a committee before, during, or after a meeting. Minutes of the meetings will be available on request to the contact persons. The contact person's mailing address is: Administrative Conference of the United States, 2120 Street, NW., Suite 500, Washington, DC 20037.

October 17, 1988.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 88-24281 Filed 10-18-88; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Invitation for Nominations to a Dietary Guidelines Advisory Committee

The Department of Agriculture will shortly be announcing its intention to establish, in cooperation with the Department of Health and human Services, a Dietary Guideline Advisory Committee to advise the Secretary of Agriculture and the Secretary of Health and Human Services as to whether a revision of the Dietary Guidelines for Americans is warranted as the present time based on advances in scientific knowledge and if such a revision is warranted to advise the Secretaries regarding any recommended revision to the Guidelines. Prospective members should be familiar with current scientific knowledge in the field of human nutrition. Based on their knowledge current research related to dietary guidance issues, the Committee members will determined if revision of the 1985 edition of "Nutrition and your Health: Dietary Guidelines for Americans" is warranted at this time.

The Department invites nominations for Committee membership of individuals who are qualified to carry out the above-mentioned tasks. Such noiminations should describe and document the noninee's qualifications in the relevant subject areas. Nominations for the initial formation of the Committee may be submitted to the Deputy Assistant Secretary for Food and Consumer Services, U.S. Department of Agriculture, Room 207-W, Administration Building, Washington, DC 20250, until November 4, 1988.

Done at Washington, DC, this 14th day of October, 1988.

Suzanne S. Harris,

Deputy Assistant Secretary for Food and Consumer Services.

[FR Doc 88-24188 Filed 10-18-88; 8:45 am]

BILLING CODE 3410-30-M

Forest Service

Umpqua National Forest Boundary Extension, Tiller Administrative Site; Oregon Correction to Land Description

AGENCY: Forest Service, USDA.

ACTION: Final notice; correction.

SUMMARY: On August 5, 1988, at 53 FR 29506, the Forest Service published a Notice of Boundary Extension for the Umpqua National Forest, Oregon. This notice corrects elements of the legal land description as follows:.

1. On page 29506, in the third column, under Douglas County, in the second paragraph, in the second line, "918.34" should read "916.34".

2. On page 29506, in the third column, under Douglas County, in the second paragraph, in the fourth line, "S23°48'W" should read "S23°48'E".

Dated: October 11, 1988.

Larry Hanson,

Associate Deputy Chief.

[FR Doc. 88-24024 Filed 10-18-88; 8:45 am]

BILLING CODE 3410-11-M

Implementation of Management Activities in the Van Alder Area

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to analyze and disclose the environmental impacts of site-specific forest management activities necessary for implementation of the Flathead National Forest Land and Resource Management Plan (EIS and Record of Decision, January 22, 1986) in the Van Alder area of the Swan Lake Ranger District, Flathead National Forest, Lake County, Montana. Management activities may include trail and/or trailhead renovation, wildlife habitat improvement, timber harvest, livestock grazing, road construction and reconstruction, timber stand improvement, and road management for the approximate period from 1989 to 1998. The agency invites written comments and suggestions on the scope of the analysis and management opportunities. In addition, the agency gives notice of the full environmental analysis and decision making process that will occur on the proposal so that interested and affected parties are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope of the analysis must be received by November 15, 1988.

ADDRESS: Send written comments to William L. Pederson, District Ranger, Swan Lake Ranger District, P.O. Box 370, Bigfork, MT 59911.

FOR FURTHER INFORMATION CONTACT: The Van Alder Interdisciplinary Team Leader, Swan Lake Ranger District, Flathead National Forest, P.O. Box 370, Bigfork, MT 59911.

SUPPLEMENTARY INFORMATION: The Forest Service proposes to implement forest management activities in the Van Alder area over the approximate period from 1989 to 1998. These management activities may include trail and/or trailhead renovation, wildlife habitat improvement, timber harvest, livestock grazing, road construction and reconstruction, timber stand improvement, and road management.

Management activities under construction would occur in an area encompassing approximately 20,000 acres of multi-ownership lands in the northeastern portion of the Upper Swan Geographic Unit, as delineated in the Flathead Forest Plan. Of this total, approximately 9,000 acres are National Forest System lands.

Included in the area of analysis are all or portion of the following drainages:

Lion, Pony, Alder, Dog, Meadow, and Cat Creeks. The area is bordered on the west by the Swan River, on the east by the proposed Swan Front Wilderness, the Missoula/Lake County line on the south, and Van Lake on the north. Proposed management activities will be considered in all or portions of sections 2, 4, 8, 10, 12, 14, 16, 22, 24, 26, 34, and 36, T22N, R17W; section 2, T21N, R17W; sections 19 and 30, T22N, R16W; and section 6, T21N, R16W, Principal Montana Meridian.

The analysis will consider a range of alternatives. One of these will be the "no-action" alternative, in which all activities would be deferred during the decade. Another alternative may include management activities to optimize security for deer and elk on winter range. Other alternatives may include management activities which vary in time and space to emphasize a balance between winter habitat and timber production, or to emphasize timber production. The analysis will disclose the environmental effects of alternative ways of implementing land and resource management direction contained in the Flathead National Forest Land and Resource Management Plan (EIS and Record of Decision, January 22, 1986).

Public participation is important during the analysis. The first point of public participation is during the scoping process (40 CFR 1501.7). The Forest Service is seeking information and comments from Federal, State, and local agencies and individuals or organizations who may be interested in or affected by the proposed action. This information will be used in preparation of the draft environmental impact statement (DEIS). The scoping process includes:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Identification of additional reasonable alternatives.
5. Identification of potential environmental effects of the alternatives (i.e., direct, indirect, and cumulative effects, and connected actions).
6. Determination of potential cooperating agencies and task assignments.

Scoping has already been utilized for the development of an environmental assessment (EA). Initial scoping began on January 8, 1987 through letters sent to potentially affected parties. Numerous newspaper articles have described the analysis process. An open house and field trip were also offered to the public in order to solicit comments and information. An EA was prepared in April, 1988. Approximately 50 copies of the EA were distributed to persons or groups indicating interest in the analysis. Numerous written responses to the assessment have been received.

Notwithstanding the scoping that has been done to date, additional comments or questions are being solicited at this time. Comments received by November 15, 1988 will be considered in the preparation of the DEIS. The Forest Service has not yet determined whether any public meetings will be held.

The U.S. Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species.

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in January, 1989. At that time the EPA will publish a notice of availability of the DEIS in the **Federal Register**.

The comment period on the DEIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in the management of the Van Alder area participate at that time. To be most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the DEIS or the merits of the alternatives discussed (40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions (*Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519 (1978)). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement (FEIS) (*Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningful consider them and respond to them in the FEIS.

Following the comment period for the DEIS the comments will be analyzed and considered by the Forest Service in preparing the FEIS. The Forest Service is required to respond in the FEIS to the comments received (40 CFR 1503.4). The FEIS is scheduled to be completed in March, 1989.

The responsible official will consider the comments and responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies in making a decision regarding the proposal. The responsible official will document the decision and the rationale for the decision in the Record of Decision. That decision will be subject to review under applicable Forest Service regulations.

William L. Pederson, District Ranger for the Swan Lake Ranger District, Flathead National Forest, is the Responsible Official.

Dated: October 7, 1988.

William L. Pederson,

District Ranger, Swan Lake Ranger District, Flathead National Forest.

[FR Doc. 88-24173 Filed 10-18-88; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Arizona Advisory Committee; Agenda and Notice of Public Forum

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Arizona Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 3:00 p.m. on November 3, 1988, at the Holiday Inn, 181 West Broadway, Tucson, Arizona 85701. The Advisory Committee will conduct a forum to obtain information on the Phase I and Phase II provisions of the Immigration Reform and Control Act of 1986.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, John White or Philip Montez, Director of the Regional Division (213) 894-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provision of the rules and regulations of the Commission.

Dated at Washington, DC., October 7, 1988.

Melvin Jenkins,

Acting Staff Director.

[FR Doc. 88-24163 Filed 10-18-88; 8:45 am]

BILLING CODE 6335-01-M

New Mexico Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New Mexico Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m. on November 10, 1988 at the Hilton of Santa Fe, 100 Sandoval Street, Santa Fe, New Mexico 87501. The purpose of the meeting is to discuss civil rights issues affecting the State, and to plan future Advisory Committee projects.

Person desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Vincent Montoya, or Philip Montez, Director of the Western Regional Division, (213) 894-3437, (TDD 213-894-3437). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 11, 1988

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 88-24073 Filed 10-18-88; 8:45 am]

BILLING CODE 6335-01-M

South Carolina Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the South Carolina Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 1:00 p.m. on Thursday, November 10, 1988, in the Humphries Hall Room, Columbia College, North Main St., University of South Carolina, Columbia, SC 29203. The Committee will meet for orientation of new members, staff reports on the status of the agency and Committee actions, and program planning.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Dennis W. Shedd or John I. Binkley, Director, Eastern Regional Division at (202) 523-5264, TDD (202) 376-8117. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Eastern Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 7, 1988.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 88-24164 Filed 10-18-88; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration.
Title: Request for Special Priorities Assistance.
Form Numbers: Agency—ITA-999.
OMB—0625-0715.
Type of Request: Extension of the expiration date of a currently approved collection.
Burden: 1,800 respondents; 900 reporting hours.
Average Hours Per Response: 30 minutes.
Needs And Uses: Defense contractors may request Special Priorities Assistance (SPA) when placing defense rated orders with suppliers to obtain timely delivery of products or materials from suppliers, or for any other reason under the Defense Priorities and Allocations System (DPAS), in support of authorized national defense and energy programs. Form ITA-999 is the method by which information concerning DPAS problems can be communicated in writing by the contractors to the appropriate defense agency and OIRA officials for assistance and resolution. The information is used by the Department of Defense and its associated agencies, the Department of Energy, and the Office of Industrial Resource Administration (ORIA) within the International Trade Administration to provide SPA.
Affected Public: Businesses or other for profit; small businesses or organizations; Federal agencies or employees.
Frequency: On occasion.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Donald Arbuckle, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622,

14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Donald Arbuckle, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503.

Dated: October 14, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-24169 Filed 10-18-88; 8:45 am]

BILLING CODE 3510-CW-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration.

Title: Defense Priorities and Allocations System (DPAS). OMB—0625–0107.

Form Numbers: Agency—DPAS.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 25,000 respondents; 10,667 reporting hours.

Average Hours Per Response: 1 minute.

Needs and Uses: The recordkeeping requirement is necessary to support the administration and enforcement of the DPAS regulation. It assures the availability of records for at least 3 years of transactions that are directly related to the placement of contracts or purchase orders under DPAS by contractors with supplies to acquire items (materials, products, and services) needed to fill defense orders. This facilitates the audit process included in the DPAS regulation.

Affected Public: Businesses or other for profit; small businesses or organizations; Federal agencies or employees.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Donald Arbuckle, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Donald Arbuckle, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503.

Dated: October 13, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-24170 Filed 10-18-88; 8:45 am]

BILLING CODE 3510-CW-M

Assistant Secretary for Communications and Information

Advisory Committee on Advanced Television; Establishment

In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2, and the General Services Administration (GSA) rules on Federal Advisory Committee Management, 41 CFR Part 101–6, and after consultation with GSA, the Secretary of Commerce has determined that the establishment of the Advisory Committee on Advanced Television is in the public interest in connection with the performance of duties imposed on the Department by law.

The Committee will advise the Secretary on the impact of advanced television on the competitiveness of U.S. industry, what policies may be pursued to heighten the development of advanced television in the public interest, and other related issues.

The Committee will consist of ten members to be appointed by the Secretary to ensure a balanced representation of private industries that will likely be affected by advanced television and the academic community.

The Committee will function solely as an advisory body, and in compliance with provisions of the Federal Advisory Committee Act. The charter will be filed under the Act, fifteen days after the publication of this notice.

Interested persons are invited to submit comments regarding the establishment of this committee to Richard M. Firestone, Chief Counsel (Acting), National Telecommunications and Information Administration, U.S. Department of Commerce, Room 4717, Washington, DC 20230, telephone 202–377–1816.

Dated: October 14, 1988.

Alfred C. Sikes,

Assistant Secretary for Communications and Information.

[FR Doc. 88-24192 Filed 10-18-88; 8:45 am]

BILLING CODE 3510-60-M

International Trade Administration

[A-588-067]

Portable Electric Typewriters From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On June 3, 1988, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on portable electric typewriters from Japan. The review covers eleven manufacturers and/or exporters of this merchandise to the United States and various periods from April 1, 1982 through April 30, 1986 (but generally from May 1, 1982 through April 30, 1986).

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received and the correction of certain clerical errors, we have changed the margins from those presented in our preliminary results.

EFFECTIVE DATE: October 19, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Kelleher or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–2923.

SUPPLEMENTARY INFORMATION:

Background

On June 3, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 20353) the preliminary results of its administrative review of the antidumping duty order on portable electric typewriters ("PETs") from Japan (45 FR 30818, May 9, 1980). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Imports covered by this review are shipments of portable electric typewriters currently classified under Tariff Schedules of the United States Annotated ("TSUSA") item 676.0510, and some currently classifiable under TSUSA item 676.0540, and Harmonized Tariff System item numbers HS 8469.21.80 and 8469.29.01.

As stated in the preliminary results notice, the scope of the antidumping duty order is currently in litigation. On September 20, 1988, the Court of International Trade upheld the Department's determination, upon remand, that portable electric typewriters incorporating a calculating mechanism are within the scope of the antidumping duty order, and reversed the Department's determination that portable electric typewriters with text memory ("automatic portable electric typewriters), are not included in the scope of the order. *See Smith Corona Corporation v. United States*, Slip Op. 88–127 (September 20, 1988). If this decision is finally affirmed by the courts, we will separately review unliquidated entries of automatic portable electric typewriters, and portable electric typewriters incorporting a calculating mechanism. The products subject to this review are non-automatic portable electric typewriters that do not incorporate a calculating mechanism.

The review covers eleven manufacturers and/or exporters of Japanese portable electric typewriters to the United States and various periods from April 1, 1982 through April 30, 1986 (but generally from May 1, 1982 through April 30, 1986).

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received timely comments from the petitioner, Smith Corona Corporation ("SCM"), and seven respondents, Brother Industries Ltd. and Brother International Corporation ("Brother"), Canon Inc. and Canon U.S.A. ("Canon"), Nakajima All Co., Ltd. ("Nakajima"), Silver Seiko, Ltd. and Silver Reed America ("Silver"), Towa Sankiden Corporation ("Towa"), Juki Corporation and Juki Office Machine Corporation ("Juki"), and Matsushita Electric Corporation of America ("Matsushita").

We also received comments from one respondent, Ricoh Corporation, and one importer, Sears Roebuck and Co., on July 15, 1988 and August 31, 1988, respectively. Because these comments were received after the close of the comment period, we have not considered them for these final results.

Analysis of Petitioner's Comments

Comment 1: SCM argues that U.S. prices should be reduced by the full amount of advertising expenses incurred by Brother in Japan and in the United States for sponsorship of the 1984 Olympic games. The Olympic advertising campaign was image-building for the company's entire typewriter line and the expenses should be attributed to all U.S. typewriter sales. Many models covered by the scope of this review are sold through office equipment dealers in addition to consumer product outlets. SCM maintains that, although it was determined in the review of the 1981–82 period that the 1984 Olympic campaign was directed towards Brothers' office typewriter line, a portion of the expenses are attributable to PET models sold by office equipment dealers, because they benefited directly from the Olympic advertising campaign.

SCM states that deductions for this expense were improperly allocated to third-country and home market sales as well as to U.S. sales. SCM argues that even indirect selling expenses must be attributed to a particular market. To allocate these expenses as direct selling expenses on the basis of the value of world-wide sales is contrary to Department precedent. Furthermore, Brother has failed to establish that the expenses could be reasonably allocated to markets on the basis of sales value. Therefore, all Olympic advertising expenses should be allocated only over U.S. sales.

Brother argues that the deduction of the Olympic advertising expenses is contrary to agency practice. *See Color Television Receivers from Korea* (49 FR 50420, December 24, 1984), *Television Receiving Sets, Monochrome and Color, from Japan* (50 FR 24278, June 10, 1985) and *Color Picture Tubes from Japan* (52 FR 44171, November 18, 1987). Brother asserts that in these cases it was established that model-specific or product-specific advertisements are directly related to the product shown or described in the advertisement. Therefore, the cost for each advertisement may be deducted in calculating United States price ("USP"), or foreign market value ("FMV"), only for the product or model in the advertisement. Brother stresses that verification of this expense in the prior review indicated that all Olympic advertisement were directed towards Brother's "office" typewriters and all model-specific advertisements depicted an EM-series office machine.

In addition, Brother contends that the deduction of Olympic advertising expenses in the USP calculations for the 1982–83, 1983–84, and 1984–85 periods is an abrupt reversal of the policy announced in the *Final Results of Administration Review of Portable Electric Typewriters from Japan* for the 1981–82 period (52 FR 1504, January 14, 1987). The Department is attempting to distinguish Brother's Olympic advertisement from the above-cited cases because Brother International Corporation ("BIC") sells PETs through both its office equipment division ("OED") and consumer products division ("CPD"). This does not justify deviation from the policy established in these cases, and the Department has neglected to explain the deviation. Furthermore, Brother contends the Department's allocation methodology is flawed.

Department's Position: We agree with Brother and have revised our position. Consistent with the final results in the review covering 1981–82 sales of PETs, we have not made a deduction from USP for Brother's sponsorship of the 1984 games. We disregard advertising expenses when such expenses are incurred exclusively for models outside the scope of the order. In the previous review, we determined that Brother's 1984 Olympic advertising campaign was devoted exclusively to Brother's EM-series office machines. SCM has not submitted convincing evidence that Brother's PET models directly benefited from the Olympic advertisements. Furthermore, it would be inappropriate to allocated some of these expenses, which have been determined to be attributable to Brother's office typewriters, to PET models simply because they are sold through OEDs. We consider the advertising to be related to particular products, not to a particular channel of distribution.

Comment 2: SCM argues that Olympic advertising expenses should be deducted from the U.S. sales price of all models sold through OEDs, rather than from only the sales price of the seven models noted in the Department's preliminary results analysis memorandum.

Department's Position: For these final results, we make no adjustment for Olympic advertising expenses. (See our response to Comment 1.)

Comment 3: SCM argues that the expenses for financing a trip to the 1984 Olympics for Brother's "National Accounts" customers should be specifically and solely allocated to purchase price sales.

Brother maintains that the term "National Accounts" has no relationship to BIC's PET purchase price sales but rather refers to customers who are serviced directly by Brother Industries Ltd. ("BIL") headquarters.

Department's Position: SCM has submitted no evidence that "National Accounts" expenses are related to U.S. sales. Therefore, we have made no change in our calculation.

Comment 4: SCM argues that advertising expenses for the 1988 Olympics should be deducted from the U.S. sales price of all models during the 1985–88 review period, based on the best information available. Brother

incurred expenses for its sponsorship of the 1984 Olympic games as early as January 1981; therefore, it is likely that Olympic advertising expenses for the 1988 games were incurred prior to the end of the 1985–86 review period.

Brother asserts that neither BIC nor BIL incurred any Olympic advertising expenses during the 1985–86 review period. It states that the sponsorship agreement for the 1988 Olympic games was not signed until March 31, 1987, and SCM's reliance on what happened with respect to the 1984 Olympics is irrelevant to Brother's experience with the 1988 Olympics.

Department's Position: We agree with Brother and have not made a deduction from USP in the 1985–86 review period for Brother's sponsorship of the 1988 Olympic games. The advertising expenses for this campaign will be considered in administrative reviews for subsequent periods. We are satisfied that Brother did not begin incurring the expenses until after the close of the period under review.

Comment 5: SCM argues that Brother's export sales division expenses incurred in Japan should be deducted from exporter's sales price ("ESP").

Department's Position: For the final results we have allocated the selling, general, and administrative ("SG&A") expenses incurred by Brother International Corporation/Japan ("BIC/Japan"), BIL's related company which handles export sales, over total sales made through BIC/Japan, and made the appropriate deduction from ESP.

Comment 6: SCM argues that Brother's credit costs should be computed by customer and by period, due to extended credit terms offered during promotional periods. It maintains that the use of average credit periods distorts the calculation of ESP.

Brother argues that it would be impossible to report transaction-specific payment periods because payments are not linked to sales of specific products, but rather to invoices, and payments would have to be traced to the large number of invoices issued. Moreover, the Department has permitted averaging of credit expenses in the past in this and other cases.

Department's Position: We have determined, as in the prior review, that the use of averaged collection periods is [illegible].

Comment 7: SCM argues that the imputed inventory carrying cost referred to by SCM as imputed credit costs, was incorrectly based on the BIL/BIC transfer prices, and that these prices are not reliable. SCM suggests that the Department recompute this cost using net U.S. selling prices rather than the transfer prices.

Brother asserts that the transfer prices are the correct basis for computing inventory carrying costs because they reflect the cost to BIC of holding the merchandise in inventory prior to the U.S. sales. Also, the use of transfer prices is consistent with post practice.

Department's Position: The F.O.B. prices charged by the parent company of its U.S. subsidiary are an accurate basis upon which to calculate the cost of holding inventory prior to the sale to an unrelated U.S. customer. The transfer prices best reflect the cost of the merchandise as it is entered into inventory. The selling price from BIC to the unrelated purchase reflects selling costs incurred by BIC as well as BIC's profit. BIL does not extend credit for these purposes; therefore, it would be inappropriate to impute to BIL an interest expense for these additional costs and profit. The use of transfer prices in computing this expense is consistent with Department practice. *See Television Receivers, Monochrome and Color, from Japan* (53 FR 4050, February 11, 1988).

Comment 8: SCM argues that the SG&A expenses incurred by Brother's OED should be allocated to those EPT models sold through the OED and deducted from ESP.

Department's Position: As in the preliminary results, we continue to make a deduction from ESP for the SG&A expenses incurred by Brother's OED from sales made through that division. A portion of the expenses incurred by this division are attributable to certain PET models, and Brother has appropriately included the expenses in BIC's corporate overhead claim.

Comment 9: SCM argues that the cost of freight insurance associated with Brother's U.S. sales is a direct selling expense. It is directly related to the sales of PETs, and should not be treated as an indirect expense.

Department's Position: Freight insurance expenses incurred in transporting PETs from the Japanese port to BIC's warehouse have been deducted properly as a movement expense, and have not been treated as an indirect selling expense. The expense to which SCM refers is a blanket policy for marine and property insurance for all products and is not directly related to the PET sales under consideration. It has been properly categorized as an indirect expense.

Comment 10: SCM suggests that the Department ensure that the adjustment for warranty costs in the home market is based solely on repair expenses incurred in servicing warranty claims. SCM notes that in the review of the 1980–81 period, the Department made an adjustment to BIC's claimed warranty expense for revenues generated from non-warranty work.

Department's Position: Based on our verification of Brother's response for the 1985–86 period, we are satisfied that the home market warranty expenses were based on repair expenses incurred on claims made under warranty.

Comment 11: SCM agrees with the Department's preliminary decision to reject Brother's U.S. sales data for purchase price sales of three models for the 1984–85 review period because the data were not submitted in a timely fashion. Moreover, SCM claims that, because the Department did not verify Brother's responses for the 1983–84 and 1984–85 review periods, the late submission of data on additional sales raises questions as to the completenes of those responses. Therefore, the highest rate found for any review period should be used as the best information available for both of these review periods.

Brother disagrees with the Department's application of the highest margin found on a sale during the 1984–85 review period to the purchase price sales inadvertently omitted from its original response for that period. Brother, which itself discovered the omission and voluntarily submitted the missing information, argues that such application is a disincentive for an importer to voluntarily correct errors. Brother suggests that the Department either properly analyze these sales, assign to them the margin found to exist on ESP sales of these models, or assign them the highest weighted-average margin determined to exist for a responding firm during the review period.

Department's Position: Although the Department does have discretion to use in unusual situations, information untimely submitted, respondents making untimely submissions run a high risk that the Department will use the best information otherwise available to calculate dumping margins. Absent this approach, respondents would have no incentive to make timely submissions. In this case, time constraints alone are sufficient to prevent us from using Brother's late-submitted sales data.

We disagree with SCM's position that the new data calls into question the reliability of Brother's submissions for the unverified periods, since the information was voluntarily submitted We continue to use the best information otherwise available only for the sales in question, and not for all sales for the

1983–84 and 1984–85 periods. Furthermore, we agree with Brother that the margin applied to these sales in the preliminary results could serve as a disincentive for respondents otherwise willing to volunteer information inadvertently omitted from the original response. For the final results, we have applied the highest weighted-average margin found to exist for a responding firm during the 1984–85 review period to Brother's late-submitted purchase price sales.

Comment 12: SCM argues that Brother's home market sales of the Electra-50 were below cost during the 1985–86 review period. Earlier in this proceeding, SCM submitted its estimate of the cost of producing the Electra-50, compared this to Brother's home market prices for this model, and concluded that Brother had made sales of this model at prices below the cost of production. To counter SCM's allegation, Brother voluntarily submitted cost of production information for the Electra-50. SCM argues that, absent verification, the Department cannot rely upon Brother's submitted production costs, and must use constructed value, based on costs submitted by SCM, as the basis for FMV.

Department's Position: We see no justification for rejecting Brother's production cost data based on SCM's contention that it was not verified. Brother submitted cost information to support its difference in merchandise adjustment claims, and this information was subject to verification. Although certain cost of production information was not submitted until after SCM's post-verification allegation of sales below cost, the information was not so substantial that a new verification was warranted. The Department has discretion, in accordance with section 618 of the Trade and Tariff Act of 1984 ("the 1984 Act"), to determine when submitted information should be subject to verification, and when information submitted subsequent to verification should be verified. *See Cyanuric Acid and Its Chlorinated Derivatives from Japan* (51 FR 45495, December 19, 1986). Furthermore, SCM's cost allegations with respect to Brother's 1985–86 home market sales were untimely and its request for verification of data at this point in the proceeding is inappropriate and inconsistent with sound administative practices. *See Color Television Receivers from Japan* (49 FR 7620, March 1, 1984).

Comment 13: SCM argues that the Department neglected to collect all home market sales data concerning electronic typewriters incorporating calculators, text memory, or Japanese language capability, which may potentially be "such or similar" to the models sold to the United States.

Department's Position: We are satisfied that all home market sales of merchandise "such or similar" to the merchandise sold in the United States have been reported. The Department determines what constitutes such or similar merchandise for comparison purposes, taking into consideration information on the record. Based on that information, we did not require Brother to provide data on models deemd outside of the scope of the order. It is inappropriate to require respondents to submit data on sales of merchandise outside of the scope when there are adequate sales of more comparable models within the scope of the order. Models with calculators and text memory, even if within the scope, are less similar than the reported home market models to the U.S. models subject to this review, and would not have been used in determining FMV.

Comment 14: SCM argues that all of Brother's claimed adjustments for home market promotional expenses should be denied because Brother failed to establish that the promotions were directed to the ultimate consumers.

Department's Position: Brother adequately demonstrated in its response and at verification that the promotional activities were directed to end-users.

Comment 15: SCM argues that, assuming Brother's home market advertising expenses are directly related to sales of PETs, its failure to separately tie promotional expenses to particular models of typewriters requires the Department to reject the adjustment claim, or, at a minimum, permit the adjustment only as an offset to U.S. indirect selling expenses.

Department's Position: We are satisfied with Brother's allocation of its promotional expense amount. The Department does not require respondents to tie promotional expenses to sales of specific models as a condition of considering such expenses direct selling expenses. See *Color Television Receivers from Korea* (49 FR 50420, December 28, 1984).

Comment 16: SCM argues that, as a more precise allocation, multi-product advertisement expenses should be based on the relative "value of sales of each relevant PET model," as approved by the Court in *Brother Industries Ltd. v. United States*, 3 CIT 125, 152 540 F. Supp. 1341, 1365 (1982), rather than on the basis of sales value, as noted in the verification report.

Department's Position: The sales value by which we allocated multi-product advertising expenses is, in fact, the value of sales of each relevant PET model.

Comment 17: SCM argues that home market warranty expense should not be allocated across all models or product lines but must be identified with particular PET models. If this cannot be done, then the expenses should be treated as indirect expenses subject to the ESP cap. Furthermore, SCM asserts that only parts costs should be included in the adjustment for warranty expenses because repairmen's salaries and overhead are not directly related to the sales and should be excluded from the adjustment.

Department's Position: Brother's warranty expense deduction is based solely on variable costs for repairs to PETs, and therefore is directly related to sales. We did not require Brother to report model-specific warranty expenses. Therefore, we have continued to allow Brother's warranty expense claim for the final results.

Comment 18: SCM argues that Brother's export division expenses must be removed from the pool of home market indirect selling expenses. To the extent that these cannot be segregated from the total indirect selling expense amount claimed by Brother, the entire home market indirect selling expense adjustment should be denied.

Department's Position: As in the preliminary results, we have not made a deduction from FMV for these expenses.

Comment 19: SCM argues that, because Brother did not identify the cost of the U.S. promotional trips included in the reported corporate advertising expense incurred in Japan, no corporate advertising expenses may be included in the ESP offset. Additionally, it contends the expenses must be deducted from USP.

Brother argues that the costs for incentive trips have been paid by its U.S. subsidiary BIC, are recorded in BIC's accounting records, and have been reported in the questionnaire responses.

Department's Position: We are satisfied that the expenses for these trips are included in BIC's reported corporate overhead expense amounts and have been deducted from USP.

Comment 20: SCM argues that, based on its own calculation of the production costs of the model S–15, Canon's home market sales of the S–15 were made below the cost of production. SCM estimated a constructed value figure for the S–15 based on cost of manufacture data submitted by Canon for the S–15 and from information provided for

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another model. Based on that estimated, SCM maintains that a significant volume of these sales were made below cost. Thus, as the basis for foreign market value, the Department should rely on the constructed value of this model for all sales made below the constructed value estimated by SCM.

Canon argues that SCM's cost of production figure is inaccurate because it double counts the variable costs and depreciation expenses included in the fixed factory overhead.

Department's Position: We have rejected SCM's allegation of below-cost sales of the model S–15 in the home market because it was untimely. SCM had access to Canon's cost information, on which it based its allegation, for almost one year before raising the issue. A petitioner is obligated to make sales below cost allegations "at the earliest possible time during the course of a review in order to avoid unduly delaying the review." *See certain Welded Carbon Steel Pipes and Tubes from Korea* (52 FR 33460, September 3, 1987). In addition, SCM's allegation was presented after verification of the Canon response. SCM's pre-verification comments, dated January 13, 1987, did not question Canon's cost.

Even had the allegations been timely submitted, SCM's calculation of Canon's cost is flawed. We confirmed at verification that Canon's in-house processing is included in its variable costs and depreciation is included in the reported fixed factory overhead. In addition, we verified portions of production cost information for Canon models S–15 and S–55 and are satisfied with the submitted figures. Finally, SCM's claim that a "significant volume" of these sales were made below SCM's cost of production calculation is not substantiated by the evidence on the record. Our review of the sales data indicates that the selling prices for a very insignificant number of S–15 sales fell below even SCM's submitted cost figure.

Comment 21: SCM contends that the Department should compare Canon's sales to both related and unrelated dealers to determine whether the sales to related firms are arm's-length transactions which may be included in the calculation of FMV.

Canon asserts that only a small percentage of home market sales were made to related dealers and that the prices charged were within the range of prices charged to unrelated large dealers; therefore, there is no justification for excluding the related party transactions from the calulation of foreign market value.

Department's Position: We have made the comparison suggested by SCM, and, as a result, we have excluded sales to related parties from the calculation of FMV for these final results. We found that the selling prices to Canon's related customers were consistently lower than those to its unrelated customers, and therefore we are not satisfied that these sales were arm's-length transactions.

Comment 22: SCM argues that Canon's method of adjusting the sales database to account for negative invoices is unreliable and distorts the prices of reported sales. It argues that Canon's attempt to "match' the negative and positive invoices on a first in-first out ("FIFO") basis is flawed and that the database is unverifiable. Therefore, the foreign market value should be based on the original prices quoted, without an adjustment for negative invoices.

Canon asserts that because the information necessary to match negative and positive invoices was not computerized, it developed a computer methodology based on a FIFO system. Furthermore, Canon maintains that this methodology was approved in discussions with Department personnel and was subject to extensive verification by the Department.

Department's Position: Contrary to SCM's assertion that the total quantity and value of Canon's reported sales could not be verified because of the negative invoices, the Department was able to verify the accuracy of the net sales results. The verifier noted that, although corresponding sales and invoices were not chosen on the basis of identical matches, "there was no effect for the purpose of reporting complete and accurate sales information." Canon's computerized matching system was discussed with Department staff prior to the submission of the questionnaire response, and verification confirmed that the system resulted in accurately reported sales prices and quantities. In its comments, SCM refers to the total quantity and sales value reported by Canon and the "discrepancy" noted in the verification report. However, further reading of the report indicates that the "variance in question was resolved" and that Canon reported both the total quantity and value of initial sales, total quantity and value of negative-invoiced units, and total final quantity and value of units sold. Given the results of the verification, there is no justification for rejecting Canon's database as unreliable.

Comment 23: SCM argues that Canon's home market sales listing is incomplete because it excludes sales of Japanese-language PETs and PETs incorporating calculators or text memory functions.

Canon maintains that it included in its response a listing of all PETs sold in the home market and the United States, as well as specification sheets and brochures for all PET models. In accordance with the final results of the Department's most recent review in this case (52 FR 1504, January 14, 1987), in which the Department determined that typewriters incorporating calculators or text memory functions were not covered by the scope of the antidumping order, this review was limited to four typewriter models sold to the United States. Canon maintains the Department had all of the information necessary to determine which home market sales models were most appropriate for comparison purposes, and the selections should not be revised for the final results. Canon states that it does not produce "Japanese-language portable electric typewriters" and that the two models to which SCM refers, the CM–3 and CM–5, are Japanese word processors not subject to this review.

Department's Position: We agree with Canon and note that the Department decided, based on information provided by Canon at the outset of this proceeding, which home market models would be appropriately compared to the U.S. models. Since Canon had adequate sales of comparable models that fall within the scope of the order, it was not necessary to look to merchandise outside the scope for comparisons.

Comment 24: SCM argues that repair expenses incurred on merchandise not under warranty cannot be allocated to home market sales or deducted from FMV.

Department's Position: Based on the results of verification of Canon records for the review period, we are satisfied that the warranty expense reported did not include expenses for warranty-expired PETs or for anyother products.

Comment 24: SCM argues that Canon's verified home market warranty costs should be allocated over all Japanese sales rather than just the Tokyo Division sales. Typewriters sold by any of Canon's divisions could have been repaired by Canon dealers in any part of Japan, and those dealers could have submitted the warranty claims to the Tokyo Division.

Canon maintains that is warranty claim was verified and that there is no evidence suggesting that PETs not sold by the Tokyo division were serviced by that division. The Tokyo Division warranty expenses are incurred as a result of services performed by this division for PETs sold by this division.

Department's Position: The figures reported by Canon were verified, and SCM has presented no evidence to substantiate its claim.

Comment 26: SCM argues that Canon's claimed advertising expenses for brochures/flyers, posters, price lists, trade shows, and golf tournament sponsorship cannot be directly attributed to home market resales of PETs by Canon's customers. Therefore, the Department should disallow the claimed advertising expenses adjustment. It contends that brochures, posters, and price lists are commonly distributed by a manufacturer to its own customers, particularly in a situation in which the manufacturer has recently entered the typewriter market.

SCM further contends that Canon failed to establish that the products displayed and advertised for its sponsorship of the golf tournament included typewriters, much less the particular models subject to this review proceeding.

Department's Position: Certain of Canon's advertisements, including such items as brochures, and newspaper, magazine and catalogue advertisements, were directed to Canon's customers' customers, and were related to the PET models under review. Therefore, an adjustment for direct selling expenses was appropriately made. Expenses incurred for trade shows, billboards, and sponsorship of a golf tournament, which were allocated on the basis of relative sales value, were for corporate/institutional advertising; therefore, we treated them as indirect selling expenses.

We verified Canon's advertising expenses. Canon does not account for its advertising expenses on a model-by-model basis. Canon had all advertising vouchers and 90 percent of all original advertisements available for the Department's inspection. The results of Canon's vertification confirm that reported claims were accurate.

Comment 27: SCM argues that, on the basis of verification, the promotional expenses incurred by Canon which consisted of "assistance money" to certain dealers with excess inventory and to part-time hires for sales on college campuses, and "recruitment expenses" for the part-time hires, do not qualify as direct selling expenses. Even if the expenses were incurred on Canon's customers' behalf, they must also be directly related to sales of PETs; otherwise the adjustment should be denied.

Canon states that the funds were used to finance sales expansion campaigns designed to increase the dealers' sales to end-users and were paid pursuant to contractual arrangements designed to promote the sale of specific typewriter models. A circumstance-of-sale adjustment should be made for these expenses.

Department's Position: Section 353.15(b) of the Commerce Regulations provides, as an example of an allowable direct expense, assumption of a purchaser's selling costs. Payment of the purchaser's sales personnel is such an assumption. We do not interpret this allowance as limited to only an assumption of the direct selling expenses. Therefore, we allowed for these payments as a circumstance-of-sale adjustment.

Comment 28: SCM argues that the after-sale rebates and discounts reported by Canon cannot be relied upon because Canon routinely deviated from the terms of the sale contracts. Therefore, the rebates and discounts cannot be directly related to the sales under consideration and should be rejected as direct adjustments to FMV. At most, these claims should be treated as indirect expenses.

Department's Position: We examined Canon's rebate contracts at verification and determined that the rebates were known at the time of sale and were contingent upon the sales of particular models; therefore, these rebates were tied to the sales under consideration. Canon resubmitted data concerning rebates on a sale-by-sale basis in accordance with the Department's request. We are satisfied that Canon's revised rebate submission was an accurate reflection of actual rebates paid and have allowed the deduction. The terms of the discounts were also examined at verification and no discrepancies were found. Therefore, we made deductions from FMV for both discounts and rebates.

Comment 29: SCM claims that the differenes in merchandise adjustment for one Canon comparison model, the S–15, was not fully verified. In particular, the Department did not examine the actual costs of Canon's subsidiary in manufacturing the model S–15, nor did it compare prices paid by Canon to unrelated suppliers for assembly with transfer prices paid to the subsidiary. Absent such verification, the difference-in-merchandise adjustment must be based on the best information otherwise available.

Department's Position: We agree with Canon and are satisfied that Canon reported actual production costs for the major components and that the verified labor and overhead costs for the model S–15 were accurate. Source documents from Canon's related subsidiary responsible for the main assembly of the S–15 were examined and no discrepancies were discovered in the reported amounts. We confirmed that all parts for both the S–15 and S–55 were purchased from unrelated companies.

Comment 30: SCM argues that all of Canon's U.S. export-related expenses incurred in Japan must be stripped out of the home market selling expenses and deducted from ESP. It maintains that the cost of advertising materials, hosting of the "Tokyo Seminars," and the "computerized parts warehouses" are attributable to export sales and should be deducted from USP rather than allocated to home market sales.

Department's Position: Cost incurred for the brochure and price lists printed in Japan were deducted as direct selling expenses from the U.S. sales price and there is nothing to indicate that these expenses have also been deducted from FMV. Canon properly included expenses incurred for hosting seminars in its corporate overhead claim. Furthermore, Canon did not include the cost of providing warranty parts for export sales in the home market warranty expenses.

Comment 31: SCM argues that Canon's method of matching negative and positive invoices for its U.S. sales is unreliable. In cases of price protection, the Department should consider the lower price reported to be the correct one for use in the calculation of USP. (Price protection is a practice by which a manufacturer/seller reimburses it customer for the revenues lost by the latter due to a decrease in the price list price of merchandise in the customer's inventory at the time of the price list change.)

Department's Position: The method Canon used in applying negative to positive invoices is reasonable. We verified that the methodology was correctly applied. See our response to Comment 22 concerning negative invoices in the home market.

Comment 32: SCM argues that Canon's allocation of U.S. warranty and technical expenses is improper because it is based on the number of repairs of typewriters relative to the number of all repairs made by the Calculator Service Department. The Department should allocate the entire amount of warranty and technical service expenses only over U.S. typewriter sales, not over all sales of the Calculator Service Department.

Department's Position: We found at verification that the unit repair expenses for other products in the Calculator Service Department were approximately the same as the unit costs reported for PETs. We are satisfied that the figures

submitted are a reasonable reflection of actual repair costs incurred by Canon on sales of its PETs.

Comment 33: SCM argues that, due to the inaccuracies in Canon's categorization of U.S. advertising expenses, the Department should treat all such expenses as direct selling expenses.

Department's Position: At verification Canon was asked to resubmit its information concerning promotional materials and advertising expenses. This was necessary due to the miscategorization of these items in its original reponse. As stated in the verification report, the actual amounts were verified. However, the individual expense items were miscategorized. Canon provided supporting documentation for its claim. We are satisfied that all information is now accurate and have made the adjustments accordingly.

Comment 34: SCM argues that Nakajima's production cost data should be rejected for each of the review periods for the following reasons: (1) Nakajima cost data for the already completed 1981–82 review failed verification; (2) verification is virtually impossible given Nakajima's lack of a valid cost accounting system; and (3) the 1985–86 verification was flawed in various respects.

Department's Position: SCM's assertion that we should reject Nakajima's cost information for this review based on verification results of a previous review is not justified. Each review proceeding and administrative record stands independently from that of prior reviews. We are satisfied with the results of the cost of production verification for the 1985–86 review period. Nakajima's performance in prior verifications is not relevant in view of verification of the current period.

Comment 35: SCM argues that Nakajima's cost calculation methodology was not valid because Nakajima did not develop costs from the logs of machine time, or allocate overhead or depreciation on the basis of machine time. Therefore, the Department's verification of work-in-process and fabrication costs was flawed.

Department's Position: We are satisfied with Nakajima's calculation of fabrication costs. Nakajima's allocation of overhead was appropriately based on direct labor cost. The development and allocation of Nakajima's fabrication costs were traced to source documents and verified as accurate.

Comment 36: SCM argues that, because the Department failed to seek time-and-motion studies from Nakajima, it has no means to independently test the accuracy of Nakajima's labor cost.

Department's Position: The Department did not require Nakajima to submit these studies because, as stated in the verification report, we examined actual labor costs. Time and motion studies are relevant only to standard times and costs, which we did not use.

Comment 37: SCM argues that the Department's verification of direct labor hours was further flawed because: (1) The Department failed to verify the composition of work groups that Nakajima assigned to direct labor pools; (2) the allocation of overhead to product line on the basis of direct labor cost does not produce a model-specific cost of production; and (3) Nakajima omitted payroll taxes and overtime from its direct labor cost.

Department's Position: We disagree. We did, in fact, examine the composition of work groups at verification. The allocation of factory overhead by product line was reasonable for Nakajima All Precision Co., Ltd. ("Precision") and Nakajima All Denshi Industrial Co. ("Denshi"), the only two members of the Nakajima group for which such allocation was done, because the operations performed by Precision and Denshi vary little among models. Finally, payroll taxes and overtime were included in Nakajima's reported direct labor costs.

Comment 38: SCM argues that Nakajima's factory overhead expenses and depreciation, both of which are allocated to product lines on the basis of direct labor costs, are unreliable. SCM maintains that (1) pooling of depreciation expenses across product lines is inappropriate because of varying capacity utilization rates and useful lives, and (2) allocation of depreciation should be based on machine hours.

Department's Position: We are satisfied that Nakajima's allocation methodology for both factory overhead and depreciation as verified is reasonable.

Comment 39: SCM argues that the Department's reliance upon the consolidated financial statement for companies within the Nakajima group, which reported cost of production rather than transfer prices tested against arm's length market prices, may understate the cost Nakajima incurred in purchasing parts and processing services.

Department's Position: We disagree. Because profit within the Nakajima group is not an issue in calculating cost of production, we consider use of the actual costs incurred by related suppliers or subcontractors to be appropriate. *See Red Raspberries from Canada* (53 FR 20150, June 2, 1988).

Comment 40: SCM argues that Nakajima understated its cost of production by consolidating subcontractors' SG&A with its own SG&A, rather than treating those subcontractor expenses as Nakajima's material, labor, or factory overhead. Furthermore, since Nakajima has an incentive to misallocate expenses to achieve the statutory minimum, absent verification of subcontractors' costs, the Department cannot assume correct reporting and allocation.

In addition, Nakajima included indirect labor in its reported SG&A expenses, and may have also included depreciation on machinery and equipment used in the manufacture of PETs.

Department's Position: We disagree. The verification report shows that there was an extensive examination of the line items that comprised SG&A. Costs incurred were tied to the questionnaire response through a consolidated financial statement which took into account the cost of materials and services as they were initially incurred by each of Nakajima's related subcontractors. Each line item expense was extracted from source documents of each of Nakajima's related subcontractors. Worksheets were provided and sample transactions from each subcontractor's general ledger were examined. We concluded that Nakajima properly classified and took into account the SG&A expenses of each member of the Nakajima group.

Comment 41: SCM argues that Nakajima's use of the last transaction value of the month, rather than a monthly weighted-average, to value inventory, is distortive. Therefore, the Department should use, as the best information available for parts cost, the highest single value found for each part.

Department's Position: The Department verified that end-of-month inventory valuations accurately represented the value of inventory during the month. Nakajima uses end-of-month inventory valuation in its normal record-keeping, in accordance with Japanese generally accepted accounting principles ("GAAP"). Therefore, we accept the parts cost reported by Nakajima.

Comment 42: SCM argues that Nakajima's scrap loss was not reported in its accounting system.

Department's Position: We verified that the costs due to scrap loss were added to the material costs reported by Nakajima.

Comment 43: SCM argues that scrap costs were not accounted for in subcontractors' invoice prices to Precision. Because Nakajima's consolidated financial statement took into account only the costs of inputs purchased from related parties, the cost of waste, scrap, and defective parts that would have been captured in the transfer prices from related subcontractors to Precision were eliminated from Nakajima's calculated cost of production.

Department's Position: Nakajima fully accounted for subcontractor scrap loss. The verified loss-ratio figure took into consideration the loss of parts transferred to subcontractors for assembly.

Comment 44: SCM notes an apparent inconsistency between Nakajima's response and the verification report with respect to transportation costs between related subcontractors for materials transportation. SCM contends that these transportation costs should be included in material costs. Because it appears that such costs have not been attributed to materials costs, the Department should use the best information available to value materials.

Department's Position: There is no inconsistency between the response and verification report with respect to this issue. The section in the verification report that SCM cites refers to materials purchased from related subcontractors, while the response refers to purchases from unrelated parties. Nakajima's categorization of the costs of salaried drivers and of vehicles for such transportation as overhead expenses was reasonable.

Comment 45: SCM argues that Nakajima made unwarranted deductions from its reported SG&A for export selling expenses and the SG&A of Precision.

Department's Position: This expense item was verified. The expenses related to Nakajima's export sales have been properly allocated to SG&A.

Comment 46: SCM argues that Nakajima failed to allocate corporate R&D and R&D incurred by subdivisions to the product under investigation.

Department's Position: We disagree. Nakajima's R&D expenses incurred for the products under review were included in the manufacturing overhead costs of these products and those associated with future products were appropriately classified as general R&D and included in SG&A expenses. This is supported by the verfication report which indicates that actual costs were reflected in the financial statement and allocated to electric typewriters and printers. The methodology used to account for these costs is fully explained in the report and is consistent with both U.S. and Japanese Generally Accepted Accounting Principles.

Comment 47: SCM argues that Nakajima's cost data for the 1982–85 review periods be rejected as unreliable because it was not verified.

Department's Position: We disagree. SCM requested verification of Nakajima's submitted information for only the 1985–86 review period based on the understanding that if problems were found for this period the Department would then verify data from the earlier review periods as well. The Department is satisfied with the results of the 1985–86 period verification. There is no basis for rejecting Nakajima's submitted data and using the best information available for the 1982–85 review periods.

Comment 48: SCM contends that Silver's data of sale in the United States is unreliable because the Department found at verification that, in many instances, the payment amounts did not correspond to the invoices, and only through the tracing of off-invoice discounts could Silver reconcile payment amounts to invoices and substantiate the accuracy of the sale prices reported. Therefore, the Department should, as the best information available, assume that price protection was granted on every U.S. sale.

Silver states that most of the "discrepancies" found in the reported sales data were instances in which the amounts received by Silver Reed America ("SRA") were greater than the amounts reported because separate checks were not received for each invoice, but a combined payment for several invoices were instead made.

Department's Position: We agree with Silver that in most instances in which the payment amounts differed from invoice amounts, payments were greater than invoice amounts. SCM's assertion that sale prices reported could only be confirmed through tracing of discounts is not supported by evidence on the record. On a few sales traced at verification, discounts were granted to Silver's customers. We verified the amounts of the discounts and confirmed that the actual prices paid were reported.

Comment 49: SCM argues that model-specific advertising expenses incurred with respect to U.S. sales may have been improperly treated as indirect expenses. It maintains that the advertisements classified as institutional should be examined to ensure they have been properly categorized as indirect, given SRA's incentive to understate direct U.S. selling costs.

Department's Position: At verification we examined samples of the advertisements claimed to be institutional, and confirmed that they were properly categorized as such.

Comment 50: SCM contends that the averaging of credit costs does not reasonably reflect Silver's costs associated with promotional period sales. It maintains that credit costs should be computed on a transactional or a seasonal basis, or at a minimum by [redacted].

Silver emphasizes that SRA does not maintain an ongoing record of each customer's accounts receivable payment profile and the burden of measuring the exact time period between shipment and payment for the thousands of individual payments would be unreasonable.

Department's Position: We agree with Silver. The reporting of credit expenses based on monthly accounts receivables adequately reflects experience during promotional periods. Reporting on a customer-by-customer basis, as petitioner suggests, would not take into account such seasonal fluctuations.

Comment 51: SCM argues that Silver's claim for deduct-from-invoice ("DFI") discounts submitted after verification cannot be relied upon. The Department should calculate the deduction based upon the highest DFI discounts given, as the best information available, and make deductions for all sales to each eligible dealer.

Department's Position: Silver originally erred in reporting, as direct deductions from U.S. price, deductions that were actually indirect, thereby understating the net USP. This error, which was to Silver's disadvantage, was revealed at verification. Due to the overstatement of direct selling expenses, we allowed Silver to resubmit its claim for this expense. The actual amounts were verified and Silver was required to submit all invoices for inspection. We have continued to make an adjustment for Silver's DFI discounts for the final results.

Comment 52: SCM argues that expenses incurred by SRA for its cash disbursement payments to customers should be treated as direct rather than indirect selling expenses, since of the two allegedly indirect advertisements examined at verification, one was found to be direct.

Department's Position: SCM is mistaken. We verified that Silver correctly classified portions of its cash disbursement payments as direct expenses and other portions as indirect expenses. For these final results, as for the preliminary results, we have treated

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these expenses as direct or indirect, as appropriate.

Comment 53: SCM alleges that Silver did not identify any expenses for providing point-of-sale materials or other promotional programs for the U.S. market, and that these expenses must therefore have been improperly reported as indirect expenses. Consequently, the entire category of corporate advertising should be treated as a direct selling expense.

Department's Position: SCM provides no support specific to Silver for its contention that such expenses were incurred and were improperly reported. Furthermore, questions regarding the adequacy of a response should be raised prior to verification. In the interest of timeliness the Department will not investigate unsupported allegations regarding the accuracy of a response subsequent to verification.

Comment 54: SCM contends the Department should make a deduction for commissions paid by Silver in the United States to selected salesmen because such commissions were directly related to specific sales of the merchandise.

Department's Position: Silver reported, and the Department deducted from USP, all commissions for sales to the U.S.

Comment 55: SCM argues that technical service costs should be treated as direct selling expenses for newly introduced typewriter models, because it is likely that model-specific repair training was provided. Furthermore, based on the verification report, it appears that the indirect expenses were claimed on the basis of a line item listing of expenses by model. Therefore, a direct deduction should be made on a model-by-model basis. If model-specific data is not available, the technical service expense amount should be allocated to all typewriter sales and treated as a direct expense.

Department's Position: The line-item listing by model does not show itemized expense amounts incurred on a model-by-model basis, but rather indicates the total expense amounts allocated to each model. Petitioner's speculation regarding the likelihood of model-specific training is not a sufficient reason to reclassify the expenses as direct.

Comment 56: SCM argues that Silver's purchase price customers must have demanded, as a condition of sale, that Silver warehouse PETs in the United States. Such warehousing is directly related to specific sales of PETs and should be deducted from USP as a direct expense.

Department's Position: We agree with the petitioner that such an expense for post-sale warehousing would be taken as a direct deduction from the USP. However, we have no evidence that Silver incurred such expenses.

Comment 57: SCM argues that Silver's home market sales database cannot be relied upon because Silver could not account for the effect of negative invoices on individual sales. At a minimum, the negative line items should be dropped from the home market database.

Silver maintains that the negative invoices reported were returns of previous sales which have been properly disregarded from the calculations, and that all home market sales were reported.

Department's Position: As in the preliminary, we have disregarded all negative invoices in the final result calculations and are satisfied that these were issued as the result of returned merchandise.

Comment 58: SCM argues that Silver's home market database is incomplete because Silver did not report sales of Japanese-language PETs or PETs which incorporate calculators or text memory.

Department's Position: We are satisfied that Silver reported home market sales of all non-automatic PETs not incorporating a calculating mechanism, in accordance with the Department's request. Japanese language PETs or PETS which incorporate calculators or text memory would be less similar to the U.S. models being reviewed, and thus, even if reported, not used to determine FMV. See our discussion of the scope in the background section.

Comment 59: SCM argues that the Department should not allow an adjustment for rebates in the home market because they were neither shown to have been a condition of sale, nor proven to be directly related to the sales under consideration. At most, the adjustment should be permitted as an indirect selling expense.

Silver contends that the rebates paid to its customers were provided for in contracts which specify both the amounts of and the conditions for the rebates. Furthermore, in a previous review, rebates of this same type were determined to be directly related to the sales of the merchandise under investigation.

Department's Position: We agree with Silver and have continued to deduct rebates paid for the final results. Silver provided various agreements and supporting documents at verification indicating the rebates were known at the time of sale and applied to the sales under consideration.

Comment 60: SCM alleges that Silver's reported warranty costs are overstated because they include costs incurred for periods other than those subject to this review.

Department's Position: We agree with petitioner. Because the warranty expense amount incurred for the review period has not been separately quantified, we have denied this adjustment for these final results.

Comment 61: SCM states that it is not clear whether Silver's difference in merchandise adjustments include SG&A expenses; if so, they should be adjusted to reflect only variable manufacturing costs.

Department's Position: The difference in merchandise adjustment figures reflect only the variable manufacturing costs and do not include SG&A expenses.

Comment 62: SCM argues that, consistent with past agency practice and the method employed for other respondents in this review proceeding, the Department should deduct from Silver's total home market freight expense the pre-sale costs of freight from the factory to distribution centers.

Department's Position: We agree with petitioner and have accordingly reduced the deduction.

Comment 63: SCM argues that Silver improperly included headquarters' SG&A expenses in its indirect selling expense claim, because it is the Department's practice to allow an adjustment for indirect expenses only when indirect expenses are incurred by a sales subsidiary.

Department's Position: Silver Business Machine is responsible for the marketing of PETs in the home market. The expense item was properly allocated from Silver Business Machine ("SBM") to total sales of PETs, based o the ratio of the number of employees in SBM to the number of employees in the headquarters operation. As a general rule we do not allow allocation of headquarters' SG&A to home market indirect selling expenses unless the respondent can demonstrate actual expenses incurred by the selling operation. *See Television Receivers, Monochrome and Color, from Korea* (49 FR 50420, December 28, 1984). We are satisfied that Silver adequately demonstrated the actual expenses incurred by SBM and we have made the appropriate allocation.

Comment 64: SCM argues that Silver overstated its indirect selling expenses in the home market by failing to deduct credit costs associated with export sales from the pool of home market indirect expenses.

Department's Position: We disagree. Credit costs associated with U.S. export sales were not included in the indirect selling expenses in the home market.

Comment 65: SCM notes that the Department properly declined to make a direct selling expense deduction from FMV for home market technical service expenses, as Silver failed to demonstrate that they were directly related to the sales under consideration. However, the Department should ensure that these expenses have not been improperly categorized as indirect selling expenses.

Department's Position: There is no evidence to indicate that technical service expenses have been improperly included in Silver's indirect selling expense claims.

Comment 66: SCM argues that unless Silver's Business Machine Division is involved in the marketing of PETs, expenses, incurred by this division should be excluded from the amount of indirect selling expenses in the home market.

Department's Position: Silver's Business Machine Division is involved in the marketing of PETs and, therefore, a portion of expenses incurred by this division are attributable to sales of PETs.

Comment 67: SCM contends the Department neglected to investigate whether Juki granted seasonal price reductions for its U.S. sales similar to the price protections offered by other respondents.

Department's Position: We are satisfied with Juki's contention that no such rebates were paid to its customers, and SCM has not submitted evidence to the contrary with regard to Juki. There is no justification for simply assuming such a program existed.

Comment 68: SCM agrees that Juki's U.S. selling expenses were properly deducted as direct selling expenses from ESP. However, it states that information in the record is insufficient to determine if the amount included warranty and technical service expenses, and how these were allocated among different products.

Juki confirms that warranty and technical service expenses were included in the U.S. selling expenses as reported, and a detailed explanation with worksheets was provided to demonstrate that they were properly allocated among the different product groups sold by Juki Office Machine Corporation.

Department's Position: We have continued to deduct Juki's U.S. selling expenses as a direct expense from ESP for the final results, and are satisfied with Juki's explanation and worksheets, submitted in March 1987, detailing the allocation methodology.

Comment 69: SCM states that the Department should ensure that Juki's U.S. co-op advertising expenses are not commingled with indirect expenses. Furthermore, since Juki claimed it was unable to identify co-op advertising on a customer-specific basis, and because Juki was known to have incurred co-op advertising expenses in the amount of three percent of the selling price, the Department should deduct three percent from all sales for co-op advertising as a direct selling expense, and make the necessary adjustments to the direct and indirect selling expense totals for the co-op advertising expenses.

Department's Position: We are satisfied that the advertising expenses have been properly reported for the 1985–86 period.

Comment 70: SCM argues that the Department should make a deduction from Juki's USP for promotional trips as a direct selling expense.

Department's Position: We disagree. SCM provided no evidence that Juki incurred promotional trip expenses during the review period.

Comment 71: SCM questions Juki's assertion that typewriters are shipped immediately upon sale, and argues that the cost of warehousing in the United States should be based on the warehousing period used for the imputed credit cost calculation. The warehousing cost should be deducted from each U.S. sale as an indirect selling expense.

Juki maintains that the Department deducted from each U.S. sale an imputed amount for interest expenses, including the warehousing period expenses, as an indirect selling expense.

Department's Position: We have continued to make the appropriate deduction for the imputed interest expenses incurred by Juki for the warehousing period as an indirect expense for the final results.

Comment 72: SCM argues that the highest monthly interest rate, rather than the average of monthly rates incurred during the review period, should be used to calculate U.S. credit expenses. A simple average does not provide the necessary level of detail to insure that U.S. credit expenses have not been understated. Furthermore, based on information that SCM submitted, Juki offered terms as long as ninety days or a seven percent discount. Absent evidence to support Juki's "actual" credit period, SCM proposes that the Department assume seven percent discounts were granted on all sales of Juki's PETs.

Department's Position: We consider the twelve-month average used for the preliminary calculations reasonable because it is representative of the monthly rates for the period. We used the actual terms of payment for each sale, and have continued to make a deduction for early payment discounts actually incurred. There is no reason to assume discounts were granted beyond the terms of each of the sales in question. Further, we note that information regarding terms and discounts provided by SCM is from outside the review period.

Comment 73: SCM argues that Juki's submitted cost data is unreliable because the allocation of variances for labor and materials is based on production quantities and the allocation of corporate SG&A is done on the basis of number of employees. It further argues that various plant-level expenses were improperly classified as SG&A expenses rather than factory overhead. Finally, general R&D expenses should be included in the cost of production and allocated to factory overhead and SG&A.

Juki argues that the production cost data was supported by worksheets, and the allocation methods were the same as those submitted in responses for earlier reviews which were verified as accurate. It maintains the corporate SG&A expenses, allocated on the basis of number of employees at the General Affairs Division, is reasonable and in accordance with GAAP. Juki states that no factory overhead expenses were improperly classified as SG&A and the data submitted includes product-specific and general R&D.

Department's Position: We consider Juki's allocation methodology reasonable and, as in the prior review, accept Juki's costs as submitted in accordance with that methodology.

Comment 74: SCM argues that, contrary to the Department's statement in the preliminary that Matsushita had no sales of merchandise within the scope of the order during the review period, three models of typewriters sold by Matsushita (the KX–E400, KX–E500, and KX–E500B) are included in the scope of the antidumping duty order. Since there is disagreement as to the application of the order to these models, the Department should suspend liquidation of these models and rule on Matsushita's exclusion request.

Matsushita asserts that these three models are office typewriters, and based on their physical characteristics are properly excluded from the scope of the order. It maintains that all three models are non-portable, not sold with a handle

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or carrying case, and are more durable than the typical PET. Furthermore, it states that they are sold exclusively through OEDs, and are wider and deeper than the models included under the scope.

Department's Position: The Department will issue a determination, separate from these final results, as to whether the KX–E400, KX–E50[illegible], and KX–E500S are included in the scope of the antidumping duty order. If we determine that any of these models are included in the scope, we will separately review Panasonic's unliquidated entries of those models for the May 1, 1985 through April 30, 1986 period.

Comment 75: SMC argues that, contrary to the Department's March 18, 1986 revised scope determination submitted to the Court of International Trade, PETs with text memory capability of 2K or more ("automatic typewriters") are covered by the scope of the antidumping duty order.

Department's Position: The merchandise subject to this review is defined as non-automatic portable electric typewriters not incorporating a calculating mechanism, in accordance with the scope of the order as stated in the most recently published final results of administrative review. For a further discussion, see the background section.

Analysis of Respondents' Comments

Comment 76: Brother objects to the retroactive application of the section 615 changes of the 1984 Act to merchandise exported prior to October 30, 1984, the effective date of the 1984 Act. This provision changed the point in time at which FMV is calculated for ESP transactions. The Department's decision to apply the change retroactively caused certain of Brother's U.S. sales to lack comparison sales of such or similar merchandise in the home market. Brother does not object to the use of sale date for calculating FMVs for all shipments exported after October 30, 1984. However, Brother objects to the retroactive application of the section 615 changes to merchandise exported prior to this date.

Department's Position: We disagree with Brother and have based exchange rate calculations and home market comparison sale selections for sales date rather than export date. This is consistent with the Department's practice in conducting administrative reviews which were initiated after and covered sales prior to October 30, 1984. The initiation notices of antidumping duty administrative review for the periods subject to this review were published on June 23, 1986 and July 9, 1986. Also, the use of sale date rather than export date is consisitent with the final results of the administrative review of this case covering the 1981–82 period (52 FR 1504, January 14, 1987).

Comment 77: Brother asserts that it did not compare a home market manual typewriter with any electric export PET models despite the statement in the Department's analysis memorandum which suggests that Brother mixed manual and electric model typewriters for comparison.

Department's Position: We acknowledge that the word "manual" in the analysis memorandum should read "electro-mechanical," and recognize that no manual typewriters were suggested by Brother for use as home market comparision models.

Comment 78: Brother argues that, because of the distinction between electro-mechanical PETs and electronic PETs, it would be inappropriate to compare the electro-mechanical models sold in the United States with a more advanced electronic model sold in the home market. For those U.S. sales of electro-mechanical models that Brother suggested be compared with the New Porta-8, the Department should not use the best information otherwise available, but rather consider the New Porta-8 a comparable model. It asserts that, in terms of production costs, the New Porta-8 is more comparable to the U.S. models in question than are any of the other home market models suggested by Brother as alternatives.

Furthermore, Brother objects to the Department's application of the highest margin found on any one sale during the relevant review period to all U.S. sales of models determined by the Department not to have a comparable home market sale model.

SCM contends that the Department was correct in rejecting Brother's model match selections for certain U.S. model PETs because section 771(c) defines similar merchandise in term of merchandise which is approximately equal in commercial value and merchandise which the Department determines may be reasonably compared.

Department's Position: We have reconsidered our position with respect to those U.S. models previously determined not to have home market comparisons. In determining whether a home market model is similar to a particular U.S. model, we took into consideration the physical characteristics of both models, as well as a comparison of direct production costs. If the difference in direct production costs was too great, then we did not consider the home market model similar for comparison purposes. The cost information used in this analysis was provided in Brother's April 18, 1988 constructed value submission.

Subsequent to the preliminary results notice and based on comments received, we reviewed the constructed value submission to determine if Brother's original home market model selections could be accepted as comparisons. With three exceptions, the U.S. models in question can be considered comparable to the New Porta-8, as suggested by Brother, based on physical characteristics and differences in direct costs. For the other three U.S. models, the XL80, the XL20+3, and L10+3, we used constructed value for FMV, based on the cost information provided by Brother. Since we considered the April 18, 1988 submission in determining whether particular home market models are comparable to certain U.S. models, we also determined it appropriate to use the constructed value information as a basis for FMV for the three remaining U.S. sales models that did not have similar home market comparison models, rather than apply a best information available rate to sales of these three models.

Comment 79: Brother argues that the Department inappropriately deemed its constructed value submission untimely, given the extent of information requested involving numerous typewriter models and review periods. Furthermore, it notes that the Department requested additional information from Brother concerning another expense, thus causing delays in the submission of the constructed value information. Therefore, rejection of the constructed value submission as "untimely" is unreasonable.

Department's Position: As stated above, we considered Brother's constructed value submission for the purpose of determining whether home market model selections were comparable to the U.S. models based on the difference in direct production costs, as well as for calculating constructed values for the three models for which we found no sales of such or similar merchandise in the home market. Although the submission was late and the Department was not required to use it, it was reasonable to do so because Brother was originally given a short period of time to respond to our request for constructed value data, while at the same time responding to other Department requests for information. Furthermore, we had used the submission in determining the suitability of Brother's proposed home market model matches; see our response to Comment 78.

Comment 80: Brother argues that the deduction from ESP of an imputed credit expense, for the period from the date of sale to the date of payment, and imputed interest, for the period from the date of export to the date of sale to the first unrelated customer, is illegal and improper. Even assuming *arguendo* the propriety of deducting these imputed costs, the additional deduction of actual interest expenses represents a double deduction of credit cost. Brother maintains that the actual credit expenses should be allocated over all sales during the period, and the imputed inventory carrying cost deduction should be made in the FMV calculations as well as in in the USP calculations.

Department's Position: We continue to deduct an imputed credit expense and imputed inventory carrying cost in the ESP calculations. Deductions for imputed costs were upheld in *Silver Reed America, Inc. v. United States*, Slip Op. 88–37 (March 18, 1988), and are consistent with the Department's practice as seen in the *Final Results of Administrative Review of Color Television Receivers from Korea* (51 FR 41365, November 14, 1986). Further, Brother's contention that the deduction for actual credit expenses represents a double deduction is in error. The long-term expenses allegedly incurred by Brother to finance inventory are not attributable to the specific sales under consideration. We have not made an adjustment for imputed inventory carrying costs in the home market because Brother made no such claim nor is there information in the record to quantify such an adjustment.

Comment 81: Brother requests that the Department recalculate its U.S. warranty expense deduction, differentiating between the fixed and variable cost components, and treating the labor and other fixed costs as indirect rather than direct expenses. Furthermore, it argues that the indirect costs calculated should be added to BIC's other indirect costs, increasing the ESP cap.

Department's Position: We agree with Brother. We have separated BIC's claimed warranty expense into fixed and variable components, and have made the requested adjustments to direct and indirect costs for the final results.

Comment 82: Brother argues that the Department failed to increase the ESP offset by the amount of commissions paid in the U.S. market. Where a commission is paid in the U.S. market, the ESP offset should be increased by the amount that such commission exceeds the home market commission.

Department's Position: We disagree with Brother. Direct commission expenses incurred in both markets were properly adjusted. Only where no commission (not a lower commission) is paid in one market will allowance be made for indirect expenses up to the amount of the commission in the other market.

Comment 83: Brother argues that the Department neglected to deduct Brother's period rebate in the FMV calculations for 1984–85 and 1985–86. Also, for the 1985–86 period, an incorrect credit expense was deducted in the FMV calculations.

Department's Position: We have corrected Brother's credit and rebate adjustments for the applicable review periods and have made the appropriate adjustments to FMV for the final results.

Comment 84: Brother argues that because negative invoices were a result of erroneous input data, the Department should revise the preliminary results and include the negative invoices in the FMV calculations. At a minimum, Brother requests that the Department correlate the negative invoices to the positive invoices and factor them into the FMV calculations.

Department's Position: For the final results we have excluded both the negative and the corresponding positive invoices from the calculations. Review of the positive sales transactions which Brother intended to offset with negative invoices reveals obvious computer input errors, and, therefore, these positive and negative invoices were excluded from the analysis.

Comment 85: Canon argues that the Department should treat expenses for freight to regional warehouses in both the U.S. and home markets as direct expenses. It maintains that, like the freight expenses for shipment to U.S. warehouses, the shipment costs in the home market represent a variable expense directly attributable to Canon Sales Company's ("CSC's") subsequent sales of the merchandise.

Department's Position: We have disallowed the deduction from home market prices for the cost of shipment from Canon's central warehouse to regional warehouses as a direct expense because the cost was not attributable to specific sales under consideration, consistent with *Silver Reed America Inc. v. United States*, 7 CIT 23, 561 F.Supp. 1,290 (CIT 1984).

Comment 86: Canon argues that, based upon prior practice, the Department should deduct an imputed interest expense from Canon's home market sales. The expense should include costs for financing during shipment from Canon Inc.'s central warehouse to CSC's regional warehouses, and inventory carrying costs at the CSC regional warehouses.

Department's Position: We agree that such expenses are appropriate adjustments to FMV. However, Canon failed to identify and quantify the expense items until after the preliminary results; therefore, we have disallowed the claim. *See Large Power Transformers from Japan* (51 FR 21197, June 11, 1986).

Comment 87: Canon argues that because the model S–15 was not introduced until late in the review period, its warranty experience during 1985–86 understates the actual warranty costs eventually incurred by the company. Therefore, as the best information available, the Department should apply the warranty costs associated with sales of the Typestar 5 model to the S–15 models sold in Japan.

Department's Position: Canon claimed a warranty expenses deduction for the model S–15 in its response based on actual costs incurred. Despite Canon's contention that this figure is low, its claim that we should impute the warranty costs for another model to the S–15 is inappropriate when the actual costs are available and have been verified. If we were to include future costs that were not yet incurred during the period, the possibility exists that such costs will also be considered in the subsequent review and therefore allowed as a deduction twice. Moreover, we cannot assume that the warranty experience for the S–15 will be similar to that for the Typestar 5. We have deducted only the actual warranty costs incurred for this model during the review period.

Comment 88: Canon argues that Canon U.S.A.'s inventory clearance sales should be excluded from the analysis for the final results because the did not constitute a significant portion of the company's total U.S. PET sales during the 1985–86 period. Alternatively, if the sales are inlcuded, the Department should make a circumstance-of-sale adjustment to FMV to reflect the difference between the lowest wholesale prices on its Consumer Typewriter Price List for Typestar 5 and Typestar 50X machines and Canon U.S.A.'s special closeout prices.

Department's Position: We continue to include the sales at their reduced prices in the calculations. Canon's reduced prices were offered only on the beige-and-white Typestar 5 models. Color appears to be the only difference between the "outdated" models and the new models not sold at discount. We

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will not ignore the U.S. sales of these typewriters based on their obsolescence. As the Department determined in *Certain Internal-Combustion Industrial Forklift Trucks from Japan* (53 FR 12552, April 15, 1988), "the physical characteristics and functions of these models do not differ significantly from the models being produced and sold under a new model number." Furthermore, there is no provison in the regulations for a circumstance-of-sale adjustment due to inventory clearance sales, and no support on the record for quantifying such an adjustment.

Comment 89: Canon argues that costs incurred by Canon U.S.A. in selling sample demonstration models typewriters at a discount to independent sales representatives are direct selling expenses that should be allocated over all of the company's U.S. sales on a model-by-model basis.

Department's Position: Canon's reliance on *Cyanuric Acid and its Chlorinated Derivatives from Japan* (51 FR 45495, 1986), where we determined that "free samples" to home market customers who had already purchased a significant quantity could be treated as a selling expense, is misplaced. Canon's situation is different in that these sample typewriters were entered into the United States for consumption and ownership was transferred from the exporter. Our determination is consistent with *Television Receiving Sets, Monochrome and Color, from Japan* (50 FR 24278, 1985), where it was determined that sales to employees and sales representatives are transfers of ownership and should be included in the analysis. Therefore, we have continued to treat these sample sales as sales, rather than as a circumstance-of-sale adjustment.

Comment 90: Nakajima disagrees with the methodology the Department used to calculate FMVs for comparison with U.S. sales to two of its customers. In these instances, rather than compare a U.S. sale with a third-country sale to a customer related to the U.S. customer, the Department excluded sales to that third-country customer in its calcualtion of FMV. Nakajima asserts that the Department has no authority for such an exclusion pending further investigation, and argues that it is unfair for the Deaprtment to apply, on a retroactive basis, a new methodology unsupported by authority in the statute or regulations.

SCM supports the position taken by the Department's preliminary results. SCM points out that the existence of related customers in different countries raises the possibility of transshipments. Furthermore, it asserts that the Department should send questionnaires to each of these customers because it may be appropriate to use the resale prices from Nakajima's third-country customers to the first unrelated purchasers as the basis for FMV, in accordance with section 773(f) of the Tariff Act.

Department's Position: Nakajima has submitted information clarifying the nature of the sales transactions in question. Nakajima produces PETs (for shipment to the U.S. and other markets) pursuant to contracts with certain unrelated third-country customers. Those customers then resell the product to related firms in the United States and elsewhere. Nakajima knows at the time that the contracts are negotiated the destination of the units it will produce.

For these final results, we have determined not to exclude from the calculation of FMV Nakajima's sales to the third-country customers, if those sales were destined for the third-country market. Rather, we have based the FMVs on all Nakajima sales into the third-country market or markets, as applicable. Similarly, we continue to base USP on Nakajima's prices to the third-country customers for shipment to the United States. This approach is consistent with our normal practice of determining USP and FMV when the seller knows the ultimate destination of the merchandise at the time of the sale to an unrelated party. *See, Certain Forged Crankshafts from Japan* (52 FR 38984, October 2, 1984) and *Nylon Impression Fabric from Japan* (51 FR 15816, April 2, 1987). *See also, The Trade Agreement Act of 1979, Report on H.R. 4537 by the Committee on Finance, United States Senate*, 96th Cong., 1st Sess. 94 (1979). We are not now convinced that we should change this practice, even given the relationship between the third-country customer and the U.S. purchaser.

We have no evidence that PETs manufactured by Nakajima and destined for the United States have been transshipped through third countries.

Comment 91: Nakajima argues that the FMVs should be based on sales to one third country, in accordance with § 353.5(c) of the Commerce regulations, rather than on an aggregate of sales to numerous third countries. It maintains that the Department should base FMVs for each period on sales to the third country with the largest volume of sales because those sales represent a truer measure of pricing policies than do sales of lesser quantities to other third countries. Nakajima maintains that the Department may aggregate sales to other third countries only if the single third country with the largest volume of sales of the product at issue in a month that is within the six-month time period contemporaneous with the date of the U.S. sale does not provide an adequate sample. Nakajima contends that the Department's decision to aggregate all markets for comparison in order to find contemporaneous sales for comparison to U.S. sales is improper and results in comparisons of large volume U.S. sales at reduce prices to third-country market sales of lesser quantities.

Department's Position: For the final results we first attempted to match all U.S. sales with contemporaneous sales of such or similar models in the third-country market with the largest sales volume. After this step, for all remaining U.S. sales for which no contemporaneous sale of such or similar merchandise existed in that market, we attempted to match the U.S. sale with sales of such or similar merchandise in the aggregate of all other third-country markets. This was necessitated by the time constraints imposed by the Court of International Trade. Any use of a smaller pool of third-country sales, even if desirable, would not have been possible, since we would not have had time to keep enlarging the pool until matches for all U.S. sales had been found. For all those U.S. sales of models that we were still unable to match with third-country sales, we calculated a constructed value as the basis of FMV.

The aggregate of all third country markets for FMV comparison is allowed pursuant to § 353.5(d) of the Commerce Regulations, which states: "if such sales to a single country selected * * * do not provide an adequate sample, sales to additional countries selected * * * may be aggregated." Nakajima improperly relies on this section of the regulations to argue that the Department is obligated to consider the quantities of individual sales in determining whether they are adequate to be used in comparison with the U.S. sales. Section 353.5(d) discusses overall adequacy of the market, and not comparability of quantities of individual U.S. and third-country sales. Furthermore, although Nakajima complains of our comparison of large quantity U.S. sales with small quantity third-country sales, we note that sales to both markets were made in a wide range of quantities.

Comment 92: Nakajima argues that the Department failed to adjust for third-country credit expenses and packing costs.

Department's Position: In most instances, Nakajima's narrative submission with respect to these expenses does not correspond with the values submitted on its computer tapes. It is not the Department's responsibility to correct faulty data submitted by the respondent. Where the failure to adjust for either expense was discovered to be the Department's error we made the appropriate correction. However, we have not altered any data provided by Nakajima in any of its tapes submitted for any review period.

Comment 93: Nakajima argues that in the Department's calculation of constructed value an adjustment must be made for differences in merchandise and differences in packing.

Department's Position: We disagree. The Department calculated the constructed values using direct production costs and packing costs of the U.S. models for those U.S. sales that could not be matched with sales in the third countries; therefore; there is no basis for difference in merchandise or difference in packing adjustments.

Comment 94: Nakajima identifies computer input errors concerning certain typewriter models, negative numbers, currency conversions and differences in merchandise values for each review period and requests that changes be made prior to the final results.

Department's Position: The clerical errors are primarily the result of errors in the computer tapes submitted by Nakajima. In many instances Nakajima's narrative submissions did not correspond with the computer tapes it submitted. As stated in our response to Comment 90, when the error is in the Department's analysis rather than the result of faulty data provided by Nakajima, the appropriate corrections have been made for the final results.

Comment 95: Nakajima argues that the Department should base the difference in merchandise adjustments for the 1985–86 review period on the difference in production costs at the time of the U.S. sale. Nakajima asserts that the cost of certain components should be determined as of the date of the U.S. sale, rather than the date of reporting. It maintains that only on this basis can it monitor selling prices to the United States and third countries to ensure that its USPs are at not less than FMV.

Department's Position: The constructed value provision of the statute requires that the cost of materials and fabrication be determined "at a time preceding the date of exportation of the merchandise under consideration which would ordinarily permit the production of that particular merchandise in the ordinary course of business" (19 U.S.C. 1677b(e)(1)(A)). There is no provision for the reduction in the cost of components solely because of a decline in prevailing market prices.

Comment 96: Silver argues the Department improperly used the original difference in merchandise figures submitted rather than the revised figures submitted for the 1985–86 review period, and requests that this be corrected for the final results.

Department's Position: We agree and the change is reflected in the final results.

Comment 97: Silver argues that Department's methodology of deducting selling expenses incurred in the home market from the home market price and selling expenses incurred in the United States from USP is inconsistent with the CIT's ruling in *Timken Co. v. United States*. Slip Op. 87–116, 673 F. Supp. 495 (CIT 1987). In that case, the Court decided that in ESP situations the adjustment for direct selling expenses can only be made to FMV. It requests that all adjustments for its selling expenses be made as additions to or deductions from home market price, and that no deductions be made from USP.

Petitioner argues that the *Timken* Court erred in ruling that adjustments for selling prices should be made to the prices in the market in which the selling expense was incurred. Because the statute makes no distinction between direct and indirect selling expenses, it is proper to deduct all selling expenses (direct or indirect) from ESP, pursuant to sections 772 (d) and (e) of the Tariff Act.

Department's Position: We disagree with Silver. The Department continues to make deductions, as appropriate, from both the U.S. and home market prices, pursuant to sections 772 and 773 of the Tariff Act. The *Timken* decision is not yet final.

Comment 98: Silver argues that as a basis for FMV the Department should consider only sales to the two largest retail outlets in Japan, which obtain special discounted prices, because these two customers accounted for more than 20 percent of Silver's total volume of home market sales.

Department's Position: This argument was raised by Silver in the 1981–82 administrative review. As indicated in the final notice for that review, § 353.14 of the Commerce regulations deals with the granting of quantity discounts and does not apply here, where different categories of customers purchase different quantities but where there is no established policy for granting discounts across the board.

Comment 99: Silver argues that, contrary to the ruling in *Silver Reed America v. United States*, Slip Op. 88–37 (March 18, 1988), on the following two issues, the department should (1) deduct from U.S. and home market prices the actual interest expenses incurred rather than the imputed interest costs, and (2) adjust the home market prices for differences in production runs.

Department's Position: We disagree. As the Court observed in *Silver Reed*, "if ITA were precluded from deducting this imputed interest expenses from the ESP, the essential price comparison to determine the margin of dumping, if any, becomes distorted and contrary to the purpose of the dumping law to achieve a fair price comparison." Slip Op. at p. 9. Also, with respect to the claimed adjustment for differences in prices attributable to different quantities produced for sale in the U.S. and home markets, as stated in our response to Silver's claim in the previous review, "the adjustment cannot be allowed since it is not based on quantificable physical differences in the products produced for the two comparison markets."

Comment 100: Towa argues that the Department should have calculated foreign market value on the basis of its sales to unrelated parties in third countries rather than apply the highest rate for a responding firm during the period to its sales as the best information available. It argues that there is a preference for using third-country sales for the calculation of foreign market value in the absence of home market sales of the merchandise. The Department should not have disregarded the third-country sales information that was submitted. Towa contends that there were substantial sales to unrelated parties in third countries and that complete and timely information was submitted to the Department. Therefore, the Department should not have sought constructed value information.

Department's Position: We have revised our decision for the final results and have calculated a margin based on the comparison between Towa's U.S. sale prices and Towa's third-country sale prices. The best information available, the highest rate determined to exist for a responding firm during the review period, was applied to Towa's U.S. sales for the preliminary because Towa failed to respond to our request for constructed value information. However, we have determined that FMV was appropriately based on Towa's sales to third countries.

Final Results of the Review

As a result of the comments received and the correction of clerical errors, we determine that, the following margins exists:

Manufacturer/exporter	Time period	Margin (percent)
Brother Industries, Ltd.	05/21/82 to 05/20/83	0.02
	05/21/83 to 05/20/84	0.32
	05/21/84 to 04/30/85	0.44
	05/01/85 to 04/30/86	4.00
Canon, Inc.	05/01/85 to 04/30/86	5.51
Nakajima All Pts. Ltd.	05/01/82 to 04/30/83	0.01
	05/21/83 to 04/30/84	0.34
	05/01/84 to 04/30/85	0
	05/01/85 to 04/30/86	0
Silver Seiko, Ltd.	04/21/82 to 03/31/83	0.06
	04/01/83 to 03/31/84	0.57
	04/01/84 to 04/30/85	5.20
	05/01/85 to 04/30/86	8.85
Tokyo Juki Industrial Co., Ltd.	05/01/85 to 04/30/86	8.45
Tower Sankikan Corp.	05/01/85 to 04/30/86	1.41
Yamamoto (Matsushita)	05/01/85 to 04/30/86	[1] 4.92
Fujitsu, Ltd.	05/01/85 to 04/30/86	[1] 5.25
Tokyo Electric Co., Ltd.	05/01/85 to 04/30/86	[1] 4.92

[1] No shipments during the review period. Rates based on shipments in a prior period.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions for each exporter directly to the Customs Service.

As provided for in section 751(a) of the Tariff Act, a cash deposit of estimated antidumping duties based on the most recent of the above rates shall be required for these firms. Since the most recent margin for Nakajima is zero the Department shall not require a cash deposit of estimated antidumping duties for Nakajima. For any shipments of this merchandise manufactured or exported by the remaining known manufacturers and/or exporters not covered in this review, the cash deposit will continue to be at the rates published in the final results of the last administrative review for each of those firms (52 FR 1504, January 14, 1987). For any future entries of this merchandise from a new exporter, not covered in this or prior reviews, whose first shipments occurred after April 30, 1986, and who is unrelated to any reviewed firm or any previously reviewed firm, a cash deposit of estimated antidumping duties of 8.85 percent shall be required. These deposit requirements are effective for all shipments of portable electric typewriters entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until the publication of the final results of the next administrative review.

This administrative review, and notice are in accordance with sections 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.53a.

Date: October 14, 1988.

Timothy N. Bergen,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-24202 Filed 10-18-88; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Applications; North Carolina

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first *12* months is estimated at *$194,118* for the project performance of *03/1/89* to *02/28/90*. The MBDC will operate in the *Charlotte, North Carolina,* Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of *$165,000* in Federal Funds and a minimum of *$29,118* in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDC supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and it staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDC based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing date: The closing date for application *November 22, 1988.* Applications must be postmarked on or before *November 22, 1988.*

ADDRESS: Atlanta Regional Office, Minority Business Development Agency, U.S. Department of Commerce, Suite 505, Atlanta, Georgia 30309, 404/347-[illegible].

FOR FURTHER INFORMATION CONTACT: *Carlton L. Eccles, Regional Director* of the *Atlanta* Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Note: A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 1371 Peachtree Street NE., Suite 505, Atlanta, Georgia, Wednesday, November 9, 1988, at 10:00 a.m.

Dated: October 13, 1988.

Carlton L. Eccles,

Regional Director, Atlanta Regional Office.

[FR Doc. 88-24108 Filed 10-18-88; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

South Atlantic Fishery Management Council; Coastal Migratory Pelagics; Public Hearing

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of an additional public hearing.

SUMMARY: A notice of public hearings being held by the South Atlantic Fishery Management Council (Council) to solicit input for proposed Amendments 3 and 4 to the Coastal Migratory Pelagic Resources Fishery Management Plan was published in the **Federal Register** on October 3, 1988 (53 FR 38761). The Council has announced that an additional hearing is being held. All other information remains the same as published on October 3, 1988.

DATE: The additional hearing is scheduled for Wednesday, October 26, 1988, from 7:00 to 10:00 p.m.

ADDRESS: The hearing will be held at Carteret Community College, Joselyn Auditorium, 3505 Arendell Street, Morehead City, North Carolina.

Dated: October 13, 1988.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-24184 Filed 10-18-88; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council's Bycatch Committee and the Council's Gulf of Alaska Groundfish Plan Team will convene public meetings as follows:

Bycatch Committee

On October 17, 1988, at 1:30 p.m., will convene at the Senior Citizen's Center, 402 Lake Street, Sitka, AK, to focus on Gulf of Alaska bycatch problems. Specifically, the Committee will complete its recommended bottom trawl time/area closure plan around Kodiak, continue to develop directed fishing definitions, and examine sablefish bycatch in the rockfish fisheries. The public meeting will adjourn on October 21. On November 7 the Committee will convene at the Northwest and Alaska Fisheries Center, National Marine Fisheries Service, 7600 Sand Point Way, NE., Room 2039, Building 4, Seattle, WA, to wrap up its work on Gulf of Alaska bycatch issues. The public meeting will adjourn on November 11.

Gulf of Alaska Groundfish Plan Team

On November 7 will convene at the Northwest and Alaska Fisheries Center, Room 2079 (address above), to prepare the Team's final Resource Assessment Document, to recommend acceptable biological catches and bycatch rates for 1989 fisheries, and to review groundfish amendment proposals. The public meeting will adjourn on November 11.

For further information contact Mr. Steve Davis, Deputy Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271-2809.

Date: October 4, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-24185 Filed 10-18-88; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit: Dr. Randall S. Wells (P319E)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. *Applicant:* Dr. Randall S. Wells, Dolphin Biology Research Associate, c/o Long Marine Laboratory, 100 Shaffer Road, Santa Cruz, California 95060.

2. *Type of Permit Requested:* The applicant requests authorization to capture, sample, mark and release as many as 150 Atlantic bottlenose dolphins (*Tursiops truncatus*) over the next five (5) years, and to recapture selected individuals as many as three times each year for follow-up testing. One of the primary goals of the research program is to thoroughly examine a free-ranging population of bottlenose dolphins in order to determine the age and sex structure of the population and to determine the genetic relationships between individuals. To these ends the applicant proposes to continue capturing dolphins of all ages and both sexes, except females believed to be pregnant and female-calf pairs containing calves less than one year of age, as determined from previous observations. This research is a continuation of a long-term study of the behavior and ecology of a resident community of bottlenose dolphins. Research will be conducted along the central west coast of Florida, from St. Petersburg southward to Fort Myers. Most of the field work will involve the shallow inshore waters near Bradenton and southern Tampa Bay.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, c/o Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, Room 7330, Silver Spring, Mayland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this notice of application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East-West Highway, Room 7330, Silver Spring, Maryland 20910;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Director, Southwest Region, National Marine fisheries Service, 300 South Ferry street, Terminal Island, California 90731.

Dated: October 14, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88-24075 Filed 10-18-88; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of an Import Limit for Certain Wool Textile Products Produced or Manufactured in Jamaica

October 14, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: October 21, 1988.

Authority: E.O 11651 of March 3, 1972, as amended; Sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: At the request of the Government of Jamaica, the current designated consultation level for Category 447 is being increased to cover additional GAL-qualifying shipments prior to implemention of the Guaranteed Access Level (GAL).

A copy of the current bilateral agreement between the Governments of the United States and Jamaica is available from the Textiles Division, Economic Bureau, U.S. Department of State, (202) 647-1998.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 53 FR 22201, published on June 14, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 14, 1988.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on June 9, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Jamaica and exported, in the case of Category 447, during the period which began on July 1, 1988 and extends through December 31, 1988.

Effective on October 21, 1988, the directive of June 9, 1988 is being amended to increase to 20,000 dozen[1] the limit for wool textile products in Category 447.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-24167 Filed 10-18-88; 8:45 am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to account for any imports exported after June 30, 1988.

Adjustment of an Import Limit for Certain Wool Textile Products Produced or Manufactured in the Socialist Federal Republic of Yugoslavia

October 14, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: October 17, 1988.

Authority: E.O. 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: The current limit for wool textile products in Category 434 is being increased for carryover.

A description of the textile and apparel categories in terms of T.S.U.S.A. numbers is available in the *correlation:* Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 4774, published on December 6, 1987). Also see 53 FR 49064, published on December 29, 1987.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

October 14, 1988.

Committee for the Implementation of Textile Agreements

Commissioner of Customs
Department of Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 21, 1987 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Socialist Federal Republic of Yugoslavia and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on October 17, 1988 the directive of December 21, 1987 is amended to increase to 9,354 dozen[1] the current limit for wool textile producers in Category 434, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Socialist Federal Republic of Yugoslavia.

The Committee for the Implementation of Textile Agreements has determined that his action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-24168 Filed 10-18-88; 8:45 am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to account for any imports exported after December 31, 1987.

DEPARTMENT OF DEFENSE

Department of the Navy

Chief of Naval Operations Executive Panel Advisory Committee, Closed Meeting of the Radio-Electric Battle Management Task Force

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Radio-Electric Battle Management Task Force will meet November 9–10, 1988 from 9 a.m. to 5 p.m. each day, in San Diego, California. All sessions will be closed to the public.

The purpose of this meeting is to discuss the development of a Battle Management System that can survive the Soviet challenge, and provide the minimal information advantage necessary to prevail in extended combat environments. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Date: October 14, 1988.

Jane M. Virga,

Lieutenant, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 88-24155 Filed 10-18-88; 8:45 am]

BILLING CODE 3810-AE-M

Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting of the Radio-Electric Battle Management Task Force

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Radio-Electric Battle Management Task Force will meet December 13–14, 1988 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to discuss the development of a Battle Management System that can survive the Soviet challenge, and provide the minimal information advantage necessary to prevail in extended combat environments. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Date: October 14, 1988.

Jane M. Virga,

Lieutenant, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 88-24156 Filed 10-18-88; 8:45 am]

BILLING CODE 3810-AE-M

Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting of the Radio-Electric Battle Management Task Force

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Radio-Electric Battle Management Task Force will meet Janaury 4–5, 1989 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to discuss the development of a Battle Management System that can survive the Soviet challenge, and provide the minimal information advantage necessary to prevail in extended combat environments. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Date: October 14, 1988.

Jane M. Virga,

Lieutenant, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 88-24157 Filed 10-18-88; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Office of Fossil Energy; Coal Policy Committee, National Coal Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Coal Policy Committee of the National Coal Council.

Date and Time: Tuesday, November 15, 1988, 2:00 p.m.

Place: Stouffer Concourse Hotel, 2399 Jefferson Davis Hwy., Arlington, VA.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE-1), Washington, DC 20585, Telephone: 202/586-4695.

Purpose of the Parent Council

To provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues.

Purpose of the Meeting

To approve final drafts of the three studies the NCC has just completed.

Tentative Agenda

Call to order by Irving Leibson, Chairman.

Approve final drafts of the three studies just completed by the NCC: ("Innovative Clean Coal Technology Deployment," "Use of Coal in Non-Utility Applications," and "The Impact of Substituting U.S. Coal for Imported Energy.")

Discuss and agree on any new studies the Committee wishes to pursue.

Discuss any other business properly brought before the National Coal Council Coal Policy Committee.

Adjournment.

Public Participation

The meeting is open to the public. The Chairman of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcripts

Available for public review and copying at the Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Dated: October 13, 1988.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 88-24178 Filed 10-18-88; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy Committee on Petroleum Storage and Transportation, National Petroleum Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Committee on Petroleum Storage and Transportation of the National Petroleum Council.

Date and Time: Sunday, November 13, 1988, 4:00 p.m.

Place: New York Hilton and Towers Hotel, Sutton Parlor South, 1335 Avenue of the Americas, New York, New York.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE-1), Washington, DC 20585, Telephone: 202/586-4695.

Purpose of the Parent Council

To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

Purpose of the Meeting

Review and discuss the final draft of their study on "National Gas Trasnportation, Petroleum Inventories and Storage, and Petroleum Liquids Transportation.

Tentative Agenda

Opening remarks by the Chairman and Government Cochairmen.

Review and discuss the Committee's proposed final draft report volumes on Natural Gas Transportation, Petroleum Inventories and Storage, and Petroleum Liquids Transportation.

Review and discuss outline for final summary volume.

Discuss the Committee's schedule for completion of the study.

Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

Public Participation

The meeting is open to the public. The Chairman of the Committee on Petroleum Storage and Transportation is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcripts

Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Dated: October 14, 1988.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 88-24180 Filed 10-18-88; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy; National Coal Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: National Coal Council.

Date and Time: Wednesday, November 16, 1988, 9:30 a.m.

Place: Stouffer Concourse Hotel, 2399 Jefferson Davis Hwy, Arlington, VA.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–1), Washington, DC 20585, Telepone: 202/586–4805.

Purpose of the Council:

To provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal coal industry issues.

Tentative Agenda

Call to order by James G. Randolph, Chairman.

Remarks by Department of Energy official.

Guest speaker.

Report of the Coal Policy Committee.

Consideration of administrative matters.

Discussion of any other business properly brought before the Council.

Public comment—10-minute rule.

Adjournment.

Public Participation

The meeting is open to the public. The chairman of the Council is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Council will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcripts

Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Dated: October 13, 1988.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 88-24179 Filed 10-18-88; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not include information collection requirements contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) collection number(s); (3) current OMB docket number (if applicable); (4) collection title; (5) type of request, e.g., new, revision, or extension; (6) frequency of collection; (7) response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) affected public; (9) an estimate of the number of respondents per report period; (10) an estimate of the number of responses annually; (11) an estimate of the average hours per response; (12) the estimated total annual respondent burden, and (13) a brief abstract describing the proposed collection and the respondents.

DATE: Comments must be filed on or before November 18, 1988.

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 720 Jackson Place, NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards, at the address below.).

FOR FURTHER INFORMATION CONTACT: Carole Patton Office of Statistical Standards (EI–70), Energy Information Administration, M.S. IH–023, Forrestal Building, 1000 Independence Avenue., SW., Washington, DC 20585, (202) 586–2171.

SUPPLEMENTARY INFORMATION: If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this Notice, you should advise the OMB DOE Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084.

The energy information collection submitted to OMB for review was:

1. Energy Information Administration.
2. EIA–23, 23P, and 64A.
3. 1905–0057.
4. Oil and Gas Reserve System Surveys.
5. Extension through December 31, 1991.
6. Annually.
7. Mandatory.
8. Businesses or other profit.
9. 9,029 respondents annually.
10. 9,029 reponses annually.
11. The estimated average hours per response for the forms in the Oil and Gas Reserves System Surveys are: EIA–23, 25.47 hours; EIA–23P, .25 hours; and EIA–64A, 5.90 hours.
12. 123,719 hours annually (total).
13. These surveys provide data on the reserves of crude oil, natural gas, and natural gas liquids, determine the status and approximate level of production, and provide data used to estimate natural gas liquids production and reserves. Data are published in various EIA publications. Respondents are domestic oil and gas well operators, and natural gas processing plant operators.

Statutory Authority:

Secs. 5(a), 5(b), 13(b), and 52, Pub. L. 93–275, Federal Energy Administration Act of 1974), 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, October 14, 1988.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 88-24182 Filed 10-18-88; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research; Basic Energy Science Advisory Committee; Renewal

Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act, and § 101–6.1015 of the Final Rule on Federal Advisory Committee Management, (41 CFR 101–6.1015) and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Basic Energy Sciences Advisory Committee has been renewed for a 2-year period ending October 16, 1990. The Committee will continue to provide advice to the Secretary of Energy on the Basic Energy Sciences (BES) program.

The renewal of the Basic Energy Sciences Advisory Committee has been determined to be essential to the conduct of the Department's business and to be in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Committee will operate in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463), the Department of Energy Organization Act (Pub. L. No. 95–91), and regulations and directives implementing those statutes.

Further information regarding this advisory committee can be obtained from Elinor Donnelly (202–586–3448).

Issued in Washington, DC, on October 13, 1988.

Howard H. Raiken,

Advisory Committee Management Officer.

[FR Doc. 88-24181 Filed 10-18-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 3407-020]

Magic Reservoir Hydroelectric, Inc.; Availability of Environmental Assessment

Issued October 13, 1988.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for amendment of license for the Magic Dam Hydroelectric Project and has prepared an Environmental Assessment (EA) for the proposed amendment. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed amendment and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24161 Filed 10-18-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9214-001]

Provo Hydro Associates; Availability of Environmental Assessment

October 14, 1988

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR, Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the Murdock Dam Hydroelectric Project and has prepared an environmental assessment (EA) for the proposed project. In the EA, the Commission's staff analyzes the potential environmental impacts of the proposed project and concludes that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24176 Filed 10-18-88; 8:45 am]

BILLING CODE 6717-01-M

[EL88-34-000, et al.]

Hydroelectric Applications [Windsor Machinery Co., et al]; Applications Filed with the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1a. *Type of Application:* Declaration of Intention.

b. *Project No:* EL88–34.

c. *Date Filed:* July 7, 1988

d. *Applicant:* Windsor Machinery Company.

e. *Name of Project:* Tuck-Brookfield.

f. *Location:* On Still River, near the intersection of routes 25 and 7, Fairfield County, CT.

g. *Filed Pursuant to:* Section 23(b) of the Federal Power Act, 16 U.S.C. § 817(b)

h. *Applicant Contact:* Mr. Harry A. Terbush, President, Windsor Machinery Company, Inc., R.D. #3, Box 157 Orbit Lane, Hopewell Junction, NY 12533, (914) 897–4194.

i. *FERC Contact:* Diane M. Scire, (202) 376–1758.

j. *Comment Date:* November 17, 1988.

k. *Description of Project:* The project would consist of: (1) An existing reservoir with a surface area of less than 1 acre; (2) an existing 8.5-foot-high and 47-foot-long concrete dam; (3) flashboards; (4) a turbine to be refurbished or replaced, with an estimated kilowatt rating of 40–60kw; (5) a 3-foot-diameter and 15-foot-long existing penstock; (6) a proposed transmission line approximately 428.5 feet long; and (7) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Purpose of Project:* Power generated will be utilized for the applicant's electroplating operation. The project is interconnected with the local utility (Connecticut Light and Power).

m. This notice also consists of the following standard paragraphs: B, C, and D1.

2a. *Type of Application:* Declaration of Intention.

b. *Project No:* EL88–36–000.

c. *Date Filed:* August 25, 1988.

d. *Applicant:* Patrick O. Clemans.

e. *Name of Project:* Ashley Creek Hydro.

f. *Location:* Ashley Creek in Lake County, Montana.

g. *Filed Pursuant to: Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b)*

h. *Applicant Contact:* Patrick O. Clemans, P.O. Box 173, Homer, AK [illegible].

i. *FERC Contact:* Etta Foster, (202) 376–0004.

j. *Comment Date:* November 14, 1988.

k. *Description of Project:* The proposed project would consist of: (1) A proposed concrete/framed wood dam of less than 200-feet-long and less than 10-feet high; (2) a small pool at elevation 3800 feet m.s.l. of negligible size and storage capacity; (3) an inlet with trash racks; (4) a 12-inch-diameter, 3000-foot-long penstock; (5) a powerhouse containing 1 or 2 turbines with an installed capacity of 99 kW; (6) a 300-foot-long transmission line and (7) appurtenant facilities. The applicant request that the Commission investigated and determine whether the proposed project is subject to licencing pursuant to section 23(b) of the Federal Power Act.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Purpose of Project:* Applicant intends to sell excess power to Montana Power Company.

m. This notice also consists of the following standard paragraphs: B, C, and D2.

a. *Type of Application:* Declaration of Intention.

b. *Project No:* EL88–37–000.

c. *Date Filed:* September 1, 1988.

d. *Applicant:* Kentucky Utilities Company.

e. *Name of Project:* Dix Project.

f. *Location:* Located in Mercer and Garrard Counties, Kentucky, at a point approximately two miles above the junction of Dix River with the Kentucky River.

g. *Filed Pursuant to:* Section 23(b) of the Federal Power Act, 16 U.S.C. § 817(b).

h. *Applicant Contact:* Malcolm Y. Marshall, David Lott Hardy, Barnett and Alagia, 444 South Fifth Street, Louisville, KY 40202, (502) 585–4131.

i. *FERC Contact:* Diane M. Scire, (202) 376–1758.

j. *Comment Date:* November 14, 1988.

k. *Description of Project:* The Dix Project, owned and operated by Kentucky Utilities Company, consists of: (1) A 3,600-acre reservoir, with a storage capacity of approximately 300,000 acre-feet; (2) a 1,100-foot-long, 280-foot-high rock-fill dam; (3) a 24-foot-diameter, 913-foot-long tunnel; (4) three 8-foot-diameter, 150-foot-long steel penstocks; (5) a 114-foot-long, 50-foot-wide powerhouse, containing 3 generating units, each rated at 8,000 kilowatts; and (6) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Purpose of Project:* The generated energy is transmitted to the Kentucky Utilities power system. Dix Dam also provides water supply storage for Danville and Boyle Counties.

m. This notice also consists of the following standard paragraphs: B, C, and D2.

4a. *Type of Application:* New License (Over 5 MW).

b. *Project No:* 1864–003.

c. *Date Filed:* December 24, 1987.

d. *Applicant:* Upper Peninsula Power Company.

e. *Name of Project:* Bond Falls.

f. *Location:* On the Ontonagon River in Ontonagon, and Gogebic Counties, Michigan, and Vilas County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Elio Argentati, Upper Peninsula Power Company, 816 Shelden Avenue, Houghton, MI 49931, (906) 482–0220.

i. *FERC Contact:* Michael Dees, (202) 376–9414.

j. *Comment Date:* November 10, 1988.

k. *Description of Project:* The Bond Falls Project consists of four developments:

(A) The existing Victoria Development consists of: (1) An earthfill structure (north embankment) 50 feet high and 178 feet long; (2) a reinforced concrete intake structure with a 14-foot-wide and 14-foot-high steel intake gate; (3) an archbuttress dam, 115 feet high and 301 feet long, consisting of four arches; (4) an ogee type concrete spillway 100 feet long, consisting of four bays each 22 feet wide equipped with 22-foot/wide and 13-foot-high steel radial gates; (5) an earth and rockfill structure (south embankment) 68 feet long and 20 feet high; (6) a 250-acre reservoir with a storage capacity of 10,500 acre-feet at a normal maximum surface elevation of 910 fet msl; (7) a 6,300-foot-long, 10-foot/diameter woodstave, steel-banded penstock; (8) a 491,300 gallon surge tank; (9) a brick veneer concrete powerhouse, 30 feet wide, 82 feet long and 50 feet high housing two 6,000-kW turbine-generator units; (10) an excavated tailrace 45 feet wide and approximately, 300 feet long; (11) two 69-kV transmission lines; (12) a 11.5/69kV substation; and (13) appurtenant facilities.

(B) The existing Bond Falls Development consists of: (1) An earth-filled main dam approximately 45 feet high and 900 feet long with a central concrete spillway section; (2) an earthfilled control dam approximately 35 feet high and 850 feet long; (3) three earth-filled dikes on the rim of the reservoir; (4) a storage reservoir with a water surface area of 2,160 acres, an effective storage capacity of 39,000 acre-foot, and a normal maximum surface elevation of 1,475.9 msl; (5) a trapezoidal canal 20 feet wide and 7,500 feet long; and (6) appurtenant facilities.

(C) The existing Bergland Storage Development consists of: (1) A wood and steel I beam dam approximately 4 feet high and 179 feet long situated between concrete retaining walls; (2) Lake Gogebic storage capacity of 276,000 acre-feet, and a normal maximum surface elevation of 1,298.2 feet msl; and (3) appurtenant facilities.

(D) The existing Cisco Lakes Storage Development consists of: (1) A timber decked concrete dam 11 feet high and 21 feet long; (2) a chain of lakes with a water surface area of 4,025 acres, a storage capacity of 4,025 acre-feet, and a water surface elevation of 1,683.5 feet msl; and (3) appurtenant facilities.

The applicant estimated from historical generation that the average annual energy generation will be 72,010 MWh. The applicant is the sole owner of the existing project facilities and has no plans to modify the existing facilities or operation.

The existing project would also be subject to Federal takeover under sections 14 and 15 of the Federal Power Act. The net investment cost for the project is $4,702,000.

l. This notice also consist of the following standard paragraphs: B, C, and D1.

5a. *Type of Application:* New License Major (over 5 MW).

b. *Project No.:* 2206–008.

c. *Date Filed:* May 27, 1987.

d. *Applicant:* Central Vermont Public Service Corporation.

e. *Name of Project:* Lamoille River Project.

f. *Location:* Lamoille River in Chittenden, Franklin, and Lamoille Counties, Vermont.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Darrow R. McLeod, Vice President—Engineering and Operations, Central Vermont, Public Service Corp., 77 Grove Street, Rutland, VT 05701, (602) 773–2711.

i. *FERC Contact:* Robert Bell, (202) 376–2237.

j. *Comment Date:* November 14, 1988.

k. *Description of Project:* The existing 4 developments consist of:

Peterso Developme

(1) Dam: Concrete gravity spillway-dam, 347 feet long between 51 and 75 feet high.

(a) 100-foot-long bascule gate, 6 feet high, El. 151.0 top;

(b) 247 feet of flashboards, 5 feet high, El. 152.0 top;

(c) Dam crest El. 145.0; and

(d) 60-foot intake section in left bank.

(2) Reservoir: 2.5 miles of pondage upstream to Milton Dam.

(a) Normal pool elevation 151 feet;

(b) Normal operating head 52 feet;

(c) Surface area, 136 acres; and

(d) Storage, 2840 acre-feet.

(3) Intake:

(a) 60-foot section, integral part of dam;

(b) 24-foot intake channel in left bank; and

(c) 14-foot diameter penstock with intake gate through dam.

(4) Powerhouse:

(a) Concrete substructure, steel frame, brick walls;

(b) Turbine, 8,100 hp adjustable blade, propeller-type at 55-foot head;

(c) 5,000 kW generator;

(d) Remote controlled from the Milton Plant; and

(e) Substation, 2.76 miles of 33–kV transmission line, access road and other necessary appurtenances.

Milton Developme

(1) Dam: Concrete gravity spillway dam 136 feet long, 25 feet high.

(a) 136-foot spillway controlled by flashboards 2'10" high;

(b) Dam crest El. 243.4; top of flashboards El. 245.2; and

(c) Canal forebay channel 200 feet long with headgate.

(2) Reservoir:

(a) Surface area 11 acres; and

(b) Storage, 93 acre-feet.

(3) Intake:

(a) 11-foot-diameter steel penstock 380 feet long;

(b) One 16-foot diameter surge tank with provisions for an additional surge tank; and

(c) Two 7-foot 9-inch diameter penstocks about 70 feet long to the powerhouse.

(4) Powerhouse:

(a) Concrete substructure, brick superstructure;

(b) Two 4,500 hp Francis turbines, net operating head 97 feet;

(c) Two 3,000 kW generators;

(d) Excavated tailrace; and

(e) Substation, trash rack and other necessary appurtenances.

Clark Falls

(1) Dam: Concrete gravity spillway-dam 40 feet high.

(a) 387 feet length of spillway as follows: 170 feet of stanchion flashboards 20.5 feet high, three 24-foot-wide taintor gates 23.5 feet high, 100 feet of crest controlled by 2-foot-high flashboards;

(b) Impervious earth core dike 440 feet long; and

(c) 23-foot intake gate section.

(2) Reservoir: Storage, 6,000 acre-feet; surface area 690 square miles.

(3) Intake:

(a) 12-foot-diameter penstock 360 feet long to;

(b) Forebay 28 × 22 feet; and

(c) 2 gates between forebay and powerhouse.

(4) Powerhouse:

(a) Concrete substructure, steel frame, brick walls;

(b) Turbine, 4,000 hp adjustable blade, propeller-type at 42 feet of head;

(c) 3,000-kW generator;

(d) Excavated tailrace;

(e) Remote controlled from Milton plant; and

(f) Substation and 0.25 mile of 33-kV transmission line.

Fairfax Falls Development

(1) Dam: Concrete gravity spillway dam in two sections.

(a) A 90-foot-long section with 2-foot-high flashboards and a 165-foot-long section with 3-foot-high flashboards;

(b) A 53.5-foot-long section with a waste, trash and sand sluice together with two penstock openings; and

(c) A left bank concrete wing wall.

(2) Reservoir: Storage, 142 acre-feet; surface area 529 square miles.

(3) Intake:

(a) Intake with head gates; and

(b) Two 27-foot-diameter steel penstocks each 27 feet long.

(4) Powerhouse:

(a) Concrete and brick structure;

(b) 2 Francis type turbines each rated at 2,000 hp at 80-foot net head;

(c) Two 21,400 kW generators;

(d) Excavated tailrace; and

(e) Substation.

The Lamoille River Project, as proposed, would consist of: The Milton, Clark Falls, and Peterson Developments would remain the same. The Fairfax Falls Development would remain the same on the west bank, except that on the east bank there would be proposed facilities consisting of: (1) A proposed intake structure; (2) a proposed 8-foot-diameter concrete power tunnel 60 feet long; (3) a proposed powerhouse built in the existing 1904 underground rock powerhouse cavern having one generating unit with an installed capacity of 3,500-kW; (4) an enlarged existing tailrace; (5) a proposed 450-foot-long 34.5-kV transmission line to tie in at the existing switchyard at the west bank powerhouse; and (6) appurtenant facilities. The applicant estimates the average annual generation would be 113,700,000-kWh. The applicant owns all of the existing project facilities.

The existing project would also be subject to Federal take-over under sections 14 and 15 of the Federal Power Act. Based on the license expiration of December 31, 1987, the applicant's estimated net investment in the project would amount to $2,305,361, and the estimated severance damages would amount to $42,975,000.

l. *Purpose of Project:* All project energy generated would be utilized by the applicant for sale to its customers.

m. This notice also consists of the following standard paragraphs: B and C.

6a. *Type of Application:* New License (< 5 mw).

b. *Project No.:* 2386–001.

c. *Date Filed:* February 19, 1988.

d. *Applicant:* City of Holyoke, Massachusetts.

e. *Name of Project:* Holyoke Number 1 Hydro Project.

f. *Location:* On the canal system fed by the Connecticut River in Holyoke, Hampden County, Massachusetts.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. George E. Leary, Holyoke Gas and Electric Department, 70 Suffolk Street, Holyoke, MA 01040, (413) 536–9300.

i. *FERC Contact:* Michael Dees, (202) 376–9414.

j. *Comment Date:* December 5, 1988.

k. *Description of Project:* The existing project consists of: (1) A brick powerhouse 38 feet wide and 50 feet long containing two 240-kW and two 288-kW turbine-generators with a total capacity of 1,056 kW; (2) two steel penstocks 10 feet in diameter and 36.5 feet long; (3) two tailraces 328.5 feet long and 20 feet wide; and (4) appurtenant facilities. The applicant estimates from historical generation that the average annual generation is 3.3 GWh. The applicant is the owner of the existing project facilities and has no plan to modify the existing facilities or operation. The existing project is subject to Federal takeover under section 14 of the Federal Power Act.

l. This notice also consists of the following standard paragraphs: B, C, and D1.

7a. *Type of Application:* Amendment of License.

b. *Project No.:* 2735–012.

c. *Date Filed:* August 1, 1988.

d. *Applicant:* Pacific Gas and Electric Company.

e. *Name of Project:* Helms Pumped Storage Project.

f. *Location:* The project utilizes the Courtright and Wishon reservoirs in Fresno County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Rodney J. Strub, Manager, Hydro Generation, Pacific Gas and Electric Company, 77 Beale Street, Room F759A, San Francisco, CA 94106.

i. *FERC Contact:* Ken Fearon, (202) 376–5705.

j. *Comment Date:* November 14, 1988.

k. *Description of Amendment:* The licensee proposes to change the authorized project boundary to include: (1) The existing 21–kV wood pole transmission line which extends from the Woodchuck Substation (FERC Project No. 1988) to the Helms Powerhouse access tunnel portal; (2) the existing 21–kV wood pole transmission line which extends from the Woodchuck Substation through Wishon Village and then along McKinley Grove Road generally westerly to a point on the easterly perimeter of the Helms Support Facilities; (3) the existing Helms Support Facilities; (4) proposed permanent employees housing up to a maximum of 30 home sites; and (5) an 80 acre wildlife habitat management area.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

8a. *Type of Application:* Surrender of License.

b. *Project No.:* 2922–010.

c. *Date Filed:* August 24, 1988.

d. *Applicant:* The Electric Plant Board of the City of Glasgow, Kentucky.

e. *Name of Project:* Nolin River Reservoir Dam Project.

f. *Location:* On the Nolin River in Edmonson County, Kentucky.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. William J. Ray, P.E., The Electric Plant Board of the City of Glasgow, 100 Mallory Drive, Glasgow, Kentucky 42141, (502) 651–8141.

i. *FERC Contact:* Steven H. Rossi, (202) 376–9814.

j. *Comment Date:* November 14, 1988.

k. *Description of Proposed Surrender:* The proposed project would have consisted of: (1) A 66-foot-high, two-level intake structure; (2) a 900-foot-long, 164-inch-diameter steel lined tunnel; (3) a turbine house containing three generating units, two each of 4.25 MW, and one of 1.5 MW for a total capacity of 10 MW, and located downstream of the existing dam on the right bank of the Nolin River; (4) a 145-foot-long stilling basin; (5) a trapezoidal discharge channel about 900 feet long, and leading to the Nolin River; (6) a 69-kV transmission line, approximately 2 miles long, interconnecting with the Warren Rural Electric Cooperative system; and (7) appurtenant facilities.

The licensee states that due to its inability to obtain a power sales contract, the licensee wishes to surrender its license. No construction has started.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

9a. *Type of Application:* Surrender of License.

b. *Project No.:* 2823–010.

c. *Date Filed:* August 24, 1988.

d. *Applicant:* The Electric Plant Board of the City of Glasgow, Kentucky.

e. *Name of Project:* Green River Reservoir Dam Project.

f. *Location:* On the Green River in Taylor County, Kentucky.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. William J. Ray, P.E., The Electric Plant Board of the City of Glasgow, 100 Mallory Drive, Glasgow, Kentucky 42141, (502) 651–8141.

i. *FERC Contact:* Steven H. Rossi, (202) 376–9814.

j. *Comment Date:* November 14, 1988.

k. *Description of Proposed Surrender:* The proposed project would have consisted of: (1) A 140-foot-high, two-level intake structure; (2) a 1,300-foot-long steel lined tunnel 162 inches in diameter; (3) a semi-outdoor powerhouse approximately 1,500 feet downstream of the dam, containing four generating units, two each for 4.75 MW, and two of .75 MW capacity, for a total capacity of 11.0 MW; (4) a trapezoidal discharge channel, approximately 500 feet long leading to the existing discharge channel to the Green River; (5) a 69-kV transmission line, approximately 6-miles-long, interconnecting with the Taylor County Rural Electric Cooperative system; and (6) appurtenant facilities.

The licensee states that due to its inability to obtain a power sales contract, the licensee wishes to surrender its license. No construction has started.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

10a. *Type of Application:* Transfer of License.

b. *Project No.:* 3823–019.

c. *Date Filed:* August 11, 1988.

d. *Applicant:* The Borough of Seven Springs.

e. *Name of Project:* Youghiogheny Project.

f. *Location:* Borough of Seven Springs, Somerset County, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* James N. McClure, Chairman, Youghiogheny Hydroelectric Authority, Seven Springs Mountain Resort Executive Offices, Champion, PA 15622–9801, (814) 352–7777.

i. *FERC Contact:* Mary Nowak, (202) 376–9634.

j. *Comment Date:* November 14, 1988.

k. *Description of Transfer:* The Borough of Seven Springs proposes to transfer its license, the Youghiogheny Project, to the Youghiogheny Authority for the following reasons. (1) The Youghiogheny Authority can act much quicker on management of day-to-day operations of the plant, thus fulfilling license requirements. (2) It would be more economically feasible to have the Youghiogheny Authority operate the project.

l. This notice also consists of the following standards paragraphs: B, C, D2.

11a. *Type of Application:* Transfer of License.

b. *Project No.:* 3991–006.

c. *Date Filed:* September 14, 1988.

d. *Applicant:* STS Energenics Ltd., Inc. and STS Consultants Inc.

e. *Name of Project:* Cross Cut Diversion Dam Water Power Project.

f. *Location:* On the Henrys Fork of the Snake River, in Fremont County, Idaho.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Peter Bulandr, Vice President, STS Energenics Ltd., Inc., 111 Pfingsten Road, Northbrook, IL 60062, (312) 272–6520; Mr. Douglas E. Keats, President, STS Consultants Ltd., 111 Pfingsten Road Northbrook, IL 60062, (312) 272–6520.

i. *FERC Contact:* Thomas Dean, (202) 376–9562.

j. *Comment Date:* November 14, 1988.

k. *Description of Application:* STS Energenics Ltd., Inc. (transferor) proposes to transfer its license issued on September 29, 1986, to STS Consultants Ltd. (transferee). The transferee is a private corporation organized under the laws of the State of Wisconsin, and domesticated in the State of Illinois.

l. This notice also consists of the following standard paragraphs: B and C (except for notice of intent to file competing application and competing application filings, which are not applicable to transfer of license applications).

12a. *Type of Application:* Amendment of License.

b. *Project No.:* 4639–006.

c. *Date Filed:* June 30, 1988.

d. *Applicant:* Christine Falls Corporation.

e. *Name of Project:* Christine Falls Project.

f. *Location:* On the Sacandaga River in Hamilton County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Neal F. Dunlevy, 185 Genesee Street, Utica, NY 13501, (315) 793–0366.

i. *FERC Contact:* Robert Bell, (202) 376–0237.

j. *Comment Date:* November 17, 1988.

k. *Description of Project:* Project works consisting of: (a) The concrete gravity dam 12 feet high and 165 feet long, with 3-foot-high flashboards; (b) a reservoir having a surface area of 1.1 acres with negligible storage and a normal water surface elevation of 1,699.6 feert m.s.l.; (c) an intake structure; (d) a steel penstock 650 feet long and 66 inches in diameter; (e) a powerhouse containing two generating units with a total capacity of 725 kW; (f) a 4.8–kV transmission line 9,500 feet long; and (g) appurtenant facilities.

The amended project would consist of: (a) A concrete gravitgy dam 12 feet high and 165 feet long, with 3-foot-high flashboards; (b) a reservoir having a surface area of 1.1 acres with negligible storage and a normal water surface elevation of 1,699.2 feet m.s.l.; (c) an intake structure; (d) a steel penstock 72 inches in diameter and 650 feet long; (e) a powerhouse containing two generating units with a total installed capacity of 850 kW; (f) a 4.8–kV transmission line 9,500 feet long; and (g) appurtenant facilities.

The average annual generation would remain the same as licensed although the installed capacity increased from 725 kW to 850 kW.

l. *Purpose of Project:* Applicant proposes to sell all energy generated to a local utility.

m. This notice also consists of the following standard paragraph: B, C, and D1.

13a. *Type of Application:* Surrender of License.

b. *Project No.:* 7188–006.

c. *Date Filed:* August 5, 1988.

d. *Applicant:* Public Service Company of New Hampshire.

e. *Name of Project:* Murphy Dam Project.

f. *Location:* On the Connecticut River in Coos County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Thomas B. Getz, Public Service Company of New Hampshire, 1000 Elm Street, Manchester, NH 03105.

i. *FERC Contact:* Robert Bell, (202) 376–0237.

j. *Comment Date:* November 17, 1988.

k. *Description of Project:* The project consists of: (a) 112–foot-high and 2,100-foot-long Murphy Dam; (b) a reservoir (Lake Francis) with a storage capacity of 96,000 acre-feet and normal surface elevation fluctuating between 1,385 and 1,340 feet USGS; (c) a 13-foot-diameter steel-lined concrete conduit through the dam; (d) an 8-foot-diameter and 540-foot-long penstock; (e) a powerhouse with one 2,250 kW turbine-generator unit; (f) a 100-foot-long tailrace; (g) 4.16-kV generator leads, a 3-phase 4.16/34.5-kV 2.5 MVA transformer, a 500-foot-long and 34.5-kV transmission line; and (h) other appurtenances.

The licensee is surrendering because the proposed project is no longer feasible for it. No construction has taken place at this site.

l. This notice also consists of the following standard paragraphs: B, C and D2.

14a. *Type of Application:* Surrender of License.

b. *Project No.:* 8955–004.
c. *Date Filed:* September 19, 1988.
d. *Applicant:* D.J. Pitman International Corporation.
e. *Name of Project:* Oakland Mills Hydro Project.
f. *Location:* On the Skunk River in Henry County, Iowa.
g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Mr. Miriam W. Newman, 21 Green Street, Concord, NH 03301, (603) 225–9716.
i. *FERC Contact:* Ed Lee on (202) 376–5786.
j. *Comment Date:* November 23, 1988.
k. *Description of Project:* The license for this project was issued on August 22, 1986, for an installed capacity of 1,060 kW. The licensee states that it was determined that the project would be economically infeasible. No construction has commenced at the project site.
l. This notice also consists of the following standard paragraphs: B and C.
15a. *Type of Application:* Preliminary Permit.
b. *Project No.:* 10628–000.
c. *Date Filed:* July 15, 1988.
d. *Applicant:* Tionesta Hydro Associates.
e. *Name of Project:* Tionesta Dam Hydro Project.
f. *Location:* On the Tionesta Creek in Forest County, Pennsylvania.
g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Mr. David M. Coombe, Synergics, Inc., 410 Severn Avenue, Suite, 313 Annapolis, MD 21403, (301) 268-8830.
i. *FERC Contact:* Mary Nowak, (202) 376–9634.
j. *Comment Date:* November 10, 1988.
k. *Description of Project:* The proposed project would utilize the existing U.S. Corps of Engineers Tionesta dam and would consist of: (a) A proposed penstock approximately 50 feet long and 12 feet in diameter connected to an existing intake structure located approximately 2,000 feet upstream from the dam; (b) a proposed powerhouse containing two new turbine-generator units having a total installed capacity of 5,000 kilowatts; (c) a 75-foot-wide by 50-foot-long tailrace; (d) a proposed transmission line; and (e) appurtenant facilities. The proposed project would have an average annual generation of approximately 19 gigawatthours. The applicant estimates that the studies under permit would be about $150,000.
l. *Purpose of Project:* All project energy generated would be sold to the Pennsylvania Electric Company.
m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.
16a. *Type of Application:* Preliminary Permit.
b. *Project No.:* 10633–000.
c. *Date Filed:* August 8, 1988.
d. *Applicant:* Marble Creek Hydro Associates.
e. *Name of Project:* Marble Creek Hydroelectric Project.
f. *Location:* On Marble Creek in Shoshone County, Idaho.
g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Dominique Darne, Might Development Corporation, 1900 L Street, NW., Suite 608, Washington, DC 20036, (202) 775–4692.
i. *FERC Contact:* Nanzo Coley, (202) 376–9410.
j. *Comment Date:* December 2, 1988.
k. *Description of Project:* The proposed project would occupy lands under the jurisdiction of the U.S. Forest Service and the Bureau of Land Management. The proposed project would consist of: (1) A proposed diversion structure approximately 6 feet high, which would create an impoundment of less than 2 acre-feet; (2) a proposed 60-inch-diameter penstock, which would be approximately 4,150 feet long; (3) a proposed powerhouse containing two generating units with a total rated capacity of 3,200 kW; (4) a proposed tailrace; (5) a proposed 24-kV, 2 mile-long transmission line; and (6) appurtenant facilities. The estimated average annual energy output for the project is 10,000,000 kWh. The applicant estimates that the cost of the work to be performed under the preliminary permit would be $135,000.
l. *Purpose of Project:* Power produced at the project would be sold to a local utility.
m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.
17a. *Type of Application:* Preliminary Permit.
b. *Project No.:* 10645–000.
c. *Date Filed:* August 15, 1988.
d. *Applicant:* City of Richmond, Virginia.
e. *Name of Project:* Hollywood-Belle Isle.
f. *Location:* On the James River in the City of Richmond, Virginia.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Mr. David B. Kearney, City Hall, Room 300, 900 East Broad Street, Richmond, Virginia 23219, (804) 780–7952.
i. *FERC Contact:* Mr. Michael Dees, (202) 376–9414.
j. *Comment Date:* December 14, 1988.
k. *Competing Application:* Project No. 10555–000. Date Filed: March 9, 1988.
l. *Description of Project:* The proposed project would consist of: (1) The existing Hollywood Dam approximately 3,800 feet long and ranging in height from three to 12 feet, and the existing breached Belle Isle Dam, approximately 1,400 feet long and ranging in height from three to 10 feet; (2) an existing inlet race at Belle Isle approximately 800 feet long and 100 to 125 feet wide; (3) an existing powerhouse 40 feet by 70 feet housing three proposed hydropower units with a total capacity of 3,000 kW; (4) an existing tailrace approximately 100 feet long; (5) a proposed 4.16-kV transmission line approximately 800 feet long; and (6) appurtenant facilities. The applicant estimates that the average annual energy generation would be 12.3 GWh and that the cost of the studies to be conducted under the permit would be $100,000. The applicant is the owner of the dams.
m. This notice also consists of the following standard paragraphs: A8, A10, B, C and D2.
18a. *Type of Application:* Preliminary Permit.
b. *Project No.:* 10647–000.
c. *Date Filed:* August 19, 1988.
d. *Applicant:* City of Seattle.
e. *Name of Project:* Cedar Falls Project.
f. *Location:* On the Cedar River in King County, Washington.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Mr. Randall Hardy, City Light Department, 1015 Third Avenue, Seattle, Washington 98104, (206) 684–3203.
i. *FERC Contact:* Nanzo T. Coley, (202) 376–9410.
j. *Comment Date:* November 28, 1988.
k. *Description of Project:* The existing dam and associated facilities are owned by the City of Seattle. The existing project consist of: (1) A concrete dike that is 440 feet long and 40 feet high; (2) the Chester Morse Lake with a surface area of 1,757 acres and a storage capacity of 78,480 acre-feet at an elevation of 1,560 feet m.s.l.; (3) the Masonry dam which is 980 feet long and 100 feet high, located 4,000 feet downstream of the dike; (4) the Masonry reservoir with a surface area of 177 acres and a storage capacity of 6,085 acre-feet at an elevation of 1,500 feet m.s.l.; (5) an 11-foot-diameter, 1,500-foot-long concrete tunnel that connects to two 78-inch-diameter, 7,500-foot-long penstocks; (6) a powerhouse containing two generators with a total rated capacity of 30,000 kW; (7) the 115-kV, 21.1 mile-long transmissin line; and (8)

appurtenant facilities. The average annual energy output is 97,683,000 kWh.
l. *Purpose of Project:* Energy produced at the project is utilized by the applicant.
m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.
19a. *Type of Application:* Preliminary Permit.
b. *Project No.:* 10652–000.
c. *Date Filed:* August 25, 1988.
d. *Applicant:* The Eyak Corporation.
e. *Name of Project:* Power Creek.
f. *Location:* On Power Creek in Sections 3, 4, 5, 8 and 9, Cooper River Meridan near Cordova, Alaska.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(5).
h. *Applicant Contact:* Mr. Stephen M. Rehnberg, P.O. Box 340, Cordova, AK 99574, (907) 424–7161.
i. *FERC Contact:* Ms. Julie Bernt, (202) 376–1935.
j. *Comment Date:* November 14, 1988.
k. *Competing Application:* Project No. 10524. Date Filed: December 10, 1987.
l. *Description of Project:* The proposed run-of-river project would consist of: (1) A diversion weir at elevation 425 feet; (2) two 72-inch-diameter, 6,350-foot-long penstocks; (3) a powerhouse containing two generating units each with a rated capacity of 5,000 kW; (4) an open channel tailrace; and, (5) a 6.5-mile-long transmission line. Applicant estimates the average annual energy production to be 32 GWh and the cost of the work to be performed under the preliminary permit to be $170,000.
m. *Purpose of Project:* The power produced would be sole to the local power company.
n. This notice also consists of the following standard paragraphs: A8, A10, B, C and D2.
20a. *Type of Application:* Preliminary Permit.
b. *Project No.:* 10660–000.
c. *Date Filed:* September 12, 1988.
d. *Applicant:* Arnold J. Wise.
e. *Name of Project:* Cape Fear River Locks and Dams Nos. 1, 2, and 3 Hydro Project.
f. *Location:* On the Cape Fear River near Fayettsville, Bladen County, North Carolina.
g. *Filed Pursuant to:* Federal Power Act 16, U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Mr. Arnold J. wise, 105 Holly Court, Puquay-Varina, NC 27526, (919) 552–5559.
i. *FERC Contact:* Ed Lee, (202) 376–5786.
j. *Comment Date:* December 14, 1988.
k. *Description of Project:* The proposed project would consist of three developments that would utilize the existing U.S. Army Corps of Engineers' Cape Fear River Locks and Dams Nos. 1, 2, and 3. The three developments would be: (A) The Lock and Dam No. 1 consisting of a steel penstock, a powerhouse containing two 2,000-kW generating units, a proposed tailrace, a new 2-mile-long, 115-kV transmission line, and appurtenant facilities; (B) the Lock and Dam No. 2 consisting of a steel penstock, a powerhouse containing two 2,000-kW generating units, a proposed tailrace, a new 2.25-mile-long, 115-kV transmission line, and appurtenant facilities; and (C) the Lock and Dam No. 3 consisting of a steel penstock, a powerhouse containing two 2,000-kW generating units, a new 2.5-mile-long, 115-kV transmission line, and appurtenant facilities. The applicant estimates the total installed capacity would be 12,000 kW, and the average annual generation would be 68.1 GWh. The cost of the work to be performed under the permit by the applicant would be $25,000.
l. *Purpose of Project* The applicant anticipates that the power generated will be sold to a nearby utility company.
m. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

Standard Paragraphs

A5. Preliminary Permit

Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit

Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 (b)(1) and (9) and 4.36.

A8. Preliminary Permit

Public notice of the filing of the initial preliminary permit application, which has already been given established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in a response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A9. Notice of Intent

A notice of intent must specifiy the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies Under Permit

A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received

on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents

Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Dean Shumway, Director, Division of Project Review, Federal Energy Regulatory Commission, Room 203–RB, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency Comments

States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural or other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. 88–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313(b) of the Federal Power Act, 16 U.S.C. § 8251(b), that Commission findings as to facts must be supported by substantial evidence.

All other Federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If any agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be sent to the Applicant's representatives.

D2. Agency Comments

Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: October 14, 1988.

Lois D. Cashell,

Secretary.

[FR Doc. 88–24094 Filed 10–18–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA89–2–53–002]

Carnegie Natural Gas Co.; Compliance Filing

October 14, 1988.

Take notice that Carnegie Natural Gas Company ("Carnegie") on October 7, 1988, tendered for filing the following revised tariff sheets in its FERC Gas Tariff, First Revised Volume No. 1:

Substitute Ninth Revised Sheet No. 47
Second Substitute Ninth Revised Sheet No. 46
Substitute Tenth Revised Sheet No. 47
Substitute Tenth Revised Sheet No. 48

The proposed effective dates are: (a) September 1, 1988, for Substitute Ninth Revised Sheet No. 47 and Second Substitute Ninth Revised Sheet No. 46, and (b) October 1, 1988, for Substitute Tenth Revised Sheet Nos. 47 and 48.

Carnegie states that the revised tariff sheets are being filed in compliance with a Commission Letter Order dated August 26, 1988, and reflect the rates actually put into effect by its pipeline supplier, Texas Eastern Transmission Corporation, on September 1, 1988.

Carnegie states that copies of the filing were served upon Carnegie's jurisdictional customers and interested state regulatory commissions.

Any person desiring to be here or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 21, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 88–24097 Filed 10–18–88 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–187–004]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 14, 1988.

Take notice that Columbia Gas Transmission Corporation (Columbia) on October 7, 1988, tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective September 22, 1988:

Fifteenth Revised Sheet No. 16B
Fifth Revised Sheet No. 16B1
Fifth Revised Sheet No. 16B2

Columbia states that the foregoing tariff sheets relate to Columbia's previous filings in Docket No. RP88–187 in which Columbia established procedures pursuant to Order No. 500 to recover from its customers the take-or-pay and contract reformation costs billed to Columbia by its pipeline suppliers. Specifically, Columbia proposes to supplement its earlier filings to permit it to flowthrough additional take-or-pay and contract reformation costs to be billed to it by Texas Gas Transmission Corporation in Docket No. RP88–230, relating to costs to be incurred by Texas Gas from Tennessee Gas Pipeline Company, and by Texas Eastern Transmission Corporation in Docket No. RP88–60, relating to costs to be incurred by Texas Eastern from Southern Natural Gas Company.

Copies of the filing were served upon Columbia's jurisdictional customers and interested state commissions and to each person designated on the official service list compiled by the Commission's Secretary in Docket No. RP88–187–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 21, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–24096 Filed 10–18–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–187–004]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 14, 1988.

Take notice that Columbia Gas Transmission Corporation (Columbia) on October 7, 1988 tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1:

To Be Effective June 4, 1988
Second Substitute Second Revised Sheet No. 16
To Be Effective August 1, 1988
Fourteenth Revised Sheet No. 16B
Fourth Revised Sheet No. 16B1
Fourth Revised Sheet No. 16B2

Columbia states that the foregoing tariff sheets relate to Columbia's June 3, 1988 filing in Docket No. RP88–187–000 in which Columbia established procedures pursuant to Order No. 500 to recover from its customers the take-or-pay and contract reformation costs billed to Columbia by its pipeline suppliers. Specifically, Columbia proposes to:

(A) Supplement its earlier filings to permit it to flowthrough additional take-or-pay and contract reformation costs to be billed to it by Texas Eastern Transmission Corporation (Texas Eastern) in Docket No. RP88–223 relating to costs to be incurred by Texas Eastern from its pipeline supplier, Southern Natural Gas Company.

(B) Revise section 25.1 of the General Terms and Conditions of Columbia's FERC Gas Tariff, Original Volume No. 1, pursuant to the Federal Energy Regulatory Commission's August 26, 1988 Order in Docket No. RP88–187–000. The Commission's order directed Columbia to delete from section 25.1 references to "transportation" rate schedules and "volumetric commodity surcharges" that were applicable only to a previously deleted section 25.3 relating to a "volumetric commodity surcharge recovery mechanism".

Copies of the filing were served upon Columbia's jurisdictional customers and interested state commissions and to each person designated on the official service list compiled by the Commission's Secretary in Docket No. RP88–187–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 21, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–24099 Filed 10–18–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP87–83–035]

Columbia Gas Transmission Corp.; Motion for Extension of Limited Authority to Waive Penalty Charges Applicable to Seasonal Takes

October 14, 1988.

Take notice that on October 4, 1988, Columbia Gas Transmission Corporation (Columbia) filed a motion for extension of limited authority to waive penalty charges applicable to seasonal takes. Columbia requests that the waiver previously granted by the Commission be extended through October 31, 1988, 41 FERC ¶61,282 (1987).

Columbia states that an excess supply of 585 MMDth exists on its system. Columbia points out that waiver of the penalty charges of $5.00 per Dth for purchases in excess of SE levels up to 103 percent of SE levels and $10.00 per Dth for any additional purchases would enhance its ability to increase its sales of gas, thereby enabling it to avoid exposure to take-or-pay liability associated with this excess supply and to purchase increased quantities of lower cost gas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before October 21, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–24100 Filed 10–18–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER88–549–000]

Dayton Power and Light Co.; Filing

October 13, 1988.

Take notice that on September 15, 1988, Dayton Power and Light Company (DP&L) tendered for filing amended cost support relating to Unit Participation Cost Analysis. DP&L states in this filing that it is renewing its request for a waiver of notice requirements so that the filing may become effective October 1, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 21, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–24101 Filed 10–18–88; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 3845–025]

Guadalupe-Blanco River Authority; Dismissing Request for Rehearing

October 14, 1988.

On June 2, 1988, Guadalupe-Blanco River Authority (GBRA) filed an application for amendment of its license

for the Canyon Lake Project No. 3985.[1] GBRA stated that it had entered into an interconnection agreement with New Braunfels Utilities (NBU), Pedernales Electric Cooperative, Inc. (PEC), and Lower Colorado River Authority (LRCA) which eliminated the need for a proposed 12-mile-long transmission line included as part of the licensed project works by Ordering Paragraph (B)(2)(g) of the license. On June 20, 1988, the Director, Division of Project Compliance and Administration (Director), issued an order amending the license by eliminating the transmission line in favor of an interconnection with an existing (PEC) transmission line located adjacent to the powerhouse.[2]

On July 19, 1988, Canyon Lake Area Citizens Association (CLACA), an intervenor in the license proceeding, filed an appeal of the Director's order.[3] The Commission did not act upon CLACA's appeal within 30 days of its filing, and it therefore was deemed denied by operation of law pursuant to Rule 1902(c) of the Commission's Rules of Practice and Procedure, 18 CFR 385.1902(c) (1988), on August 18, 1988.

On September 12, 1988, CLACA filed a pleading styled as a "Complaint and Subsequent Statement of Fact," repeating the arguments from its July 19, 1988 appeal and contending that the Commission erred by not responding to that appeal. CLACA's pleading is in fact a request for rehearing of the denial of its appeal by operation of law and will be treated as such.

The Commission has ruled that it will not entertain appeals, and hence requests for rehearing, of non-material post-license amendment orders.[4] GBRA's application for amendment requested that it not be required to construct a project work no longer necessary for the operation of the project, and therefore is nonmaterial. Accordingly, CLACA's request for rehearing of the Director's June 20, 1988 order is dismissed.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24105 Filed 10-18-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA88-3-15-002 and TM89-1-15-001]

Mid Louisiana Gas Co.; Proposed Changes in FERC Gas Tariff

October 14, 1988.

Take notice that Mid Louisiana Gas Company (Mid Louisiana) on October 6, 1988, tendered for filing as part of First Revised Volume No. 1 of its FERC Gas Tariff the following tariff sheets to be effective September 1, 1988;

Sheet No.	Superseding
Revised Substitute Sixty-Fourth.	Substitute Sixty-Fourth.
Revised Sheet No. 3a.	Revised Sheet No. 3a.
Substitute Sixty-Fifth Revised Sheet No. 3a.	Sixty-Fifth Revised Sheet No. 3a.

Mid Louisiana states that the purpose of the filing of the Tariff Sheets is make corrections with regard to amounts contained in Account No. 191 in compliance with the Commission's Order issued August 25, 1988.

Copies of this filing have been mailed to Mid Louisiana's jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 21, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any persons wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24102 Filed 10-18-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TC89-16-000]

North Penn Gas Co.; Tariff Filing

October 14, 1988.

Take notice that on September 30, 1988, North Penn Gas Company (Applicant), 76-86 Mill Street, Port Allegheny, Pennsylvania 16743, filed in Docket No. TC89-16-000, Sixth Revised Sheet No. 12K and Third Revised Sheet No. 12M to its FERC Gas Tariff, First Revised Volume No. 1, pursuant to § 281.204(b) of the Commission's Regulations which requires interstate pipelines to update their indices of entitlements annually to reflect changes in priority 2 entitlements (Essential Agricultural Users) Specifically, the revised tariff sheets reflect the elimination from North Penn's Index of Entitlements of all requirements for Corning Natural Gas Corporation (Corning). The sales service agreement North Penn served Corning under expired November 1, 1987, and CNG Transmission Corporation has since replaced North Penn as Corning supplier.

Any person desiring to be heard or to make any protest with reference to said tariff sheet filing should on or before October 24, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24104 Filed 10-18-88; 8:45 am]

BILLING CODE 6717-01-M

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[1] The license was issued on December 4, 1986. *See* 37 FERC ¶ 61.208 (1987), *reh'g denied*, 42 FERC ¶ 61.279 (1988).

[2] *See* 43 FERC ¶ 62.333 (1988).

[3] In its appeal, CLACA argued that the Commission lacks authority under section 202 of the Federal Power Act (FPA), 16 U.S.C. 824a (1982), to order interconnection on Project No. 3985. Section 202 gives the Commission authority to order certain interconnections in the public interest and in cases of emergency. However, GBRA's application was not filed pursuant to section 202; GBRA sought to amend a license issued pursuant to section 4(e) of the FPA, 16 U.S.C. 797(e) (1982). Therefore, section 202 has no relevance to this proceeding. The Director's June 20, 1988 order imposes no obligation on PEC to interconnect with GBRA.

CLACA also stated that PEC had not signed an agreement with GBRA as of the date of its filing. GBRA submitted as part of its application for amendment of license a copy of its agreement with PEC, NBU, and LCRA. Although the filed copy was not signed by PEC or any other party to the agreement, nothing in the record suggests that the agreement will not be executed. Should GBRA be unable to make final its proposed agreement to interconnect with PEC adjacent to the powerhouse, it will have to file an application to amend its license to add the transmission line necessary to reach the point of agreed interconnection.

[4] *See e.g.*, Northwest Power Company, Inc., 43 FERC ¶ 61.091 (1988); Goose Creek Hydro Associates, 40 FERC ¶ 61.279 (1987); Kings River Conservation District, 36 FERC ¶ 61.365 (1986). Furthermore, CLACA's status as an intervenor in the licensing proceeding for Project No. 3985 does not carry over to post-license filings. That the Public Utility Commission of Texas (PUC) has ruled that CLACA is a party to proceedings before the PUC involving GBRA as alleged by CLACA has no bearing on intervenor status before this Commission. Therefore, CLACA's request for rehearing, not preceded or accompanied by an intervenor petition, will not be entertained. *See Kings Rivers, supra.*

[Docket No. RP89-1-000]

Northwest Pipeline Corp.; Request for Extraordinary Relief

October 13, 1988.

Take notice that on October 6, 1988, Northwest Pipeline Corporation ("Northwest") filed a proposal for the one-time direct assignment and billing of (1) the portion of its December 31, 1987 deferred purchased gas cost balance which remains unrecovered at September 30, 1988, and (2) the amount of deferred commodity purchased gas costs accumulated during the period January 1 through September 30, 1988. The assignment would be based on the ratio of each customer's purchases to the total purchases by all jurisdictional sales customers during each period. Northwest also tendered Forty-Fifth Revised Sheet No. 10 to its FERC Gas Tariff, First Revised Volume No. 1, reflecting the elimination of the current surcharge adjustment effective October 1, 1988.

Northwest states that it is proposing direct assignment and billing of unrecovered purchased gas costs in order to allow it to continue sales service subsequent to its acceptance of a permanent open access certificate without being burdened by unrecovered purchased gas costs accumulated prior to open access and to assure that sales customers bear their appropriate cost responsibility for gas purchased from Northwest.

Northwest states that a copy of this filing has been served on all jurisdictional sales customers and affected state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 20, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24103 Filed 10-18-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3464-5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and is available to the public for review and comment. The ICR describes the nature of the information collection and its expected cost and burden, and includes the actual data collection instrument. Because EPA is asking for expedited review of this ICR, the data collection instrument is also published as part of this notice.

FOR FURTHER INFORMATION CONTACT: Carla Levesque at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Research and Development

Title: Integrated Air Cancer Project Survey (EPA ICR #1486).

Abstract: Households will be asked to provide information on their home heating fuel usage. The data collected will be used to examine the relationship between indoor air pollution and human cancer. Response is voluntary.

Burden Statement: The estimated public reporting burden for this collection of information is 0.4 hours per respondent, per year. This estimate includes an initial telephone interview, completing a questionnaire, and some monitoring followup.

Respondents: Households.

Estimated No. of Respondents: 632.

Frequency of Collection: 2 responses per year.

Total Estimated Annual Burden: 466.

Survey Instrument: (Published for the purpose of expedited review):

Respondents will be asked to complete the questionnaire that follows.

Residential Air Quality Questionnaire

A. The first series of questions I am going to ask are about the general construction of your home.

1. Which one of the following best describes the style of your house? (Circle One.)

01 Single-Family Detached House
02 Duplex
03 Townhouse/Rowhouse
04 Mobile Home
05 Apartment Building
06 Don't Know

2. In what year was your home built?

_____year
94 Don't Know

3. Which one of the following best describes the number of stories in your home?

01 One Story
02 One and One-Half Stories
03 Two Stories
04 Three or More Stories
05 Don't Know

4. Which of the following best describe the structural makeup of your home? (Circle All That Apply.)

01 Adobe
02 Brick
03 Wood Frame
04 Log
05 Natural Stone
06 Poured Concrete
07 Concrete Block
08 Experimental Material
09 Aluminum/Vinyl Siding
10 Other (Specify)_____
94 Don't Know

5. What percentage of your home rests on one or more of the following?

	Percent
Basement	
Crawl Space	
Slab-on-Grade	
(Must Total)	100

6. Are the following parts of the House insulated?

Floors?	___Yes	___No
Exterior Walls?	___Yes	___No
Attic or Roof?	___Yes	___No

7. Does your house qualify for the residential conservation rate from your power company?

01 Yes
02 No
03 Not Available in our Area
94 Don't Know

B. The next series of questions I am going to ask are about the interior of your home.

8. Please tell me which of the following types of floors or floor coverings are present in your home. (Circle All That Apply.)

01 Carpet or Rug
02 Linoleum or Vinyl Sheet on Tile
03 Hardwood Floor
04 Ceramic or Wood Tile
05 Other (Specify)———
94 Don't Know

9. How many feet of floor space did you heat between last November and March?

———square feet
99 Don't Know

10. Does your home have one or more central or window/wall air conditioning (AC) units that cool the home?

01 Yes—Go to Q. 11
02 No—Go to Q. 12

11. How many separate central AC or window/wall units do you have in your home?

a. ———number of central AC units
b. ———number of window/wall units

12. Does your home have a thermostatically controlled system or systems which heat the entire home?

01 Yes—Go to Q. 13
02 No—Go to Q. 14

13. Is the thermostat an energy saving or setback thermostat?

01 Energy saving
02 Setback thermostat

14. Which one of the following fuels is the primary fuel used by your heating system(s)? (Circle One.)

01 Electricity
02 Natural Gas
03 Propane
04 Kerosene
05 Fuel Oil
06 Coal or Coke
07 Wood
08 Other (Specify)———

Note: If fuel oil is used, please ask questions in Section E and F.

15. Which one of the following best describes the method of heat distribution used in your primary heating system(s)? (Circle one.)

01 Forced Air
02 Hot Water/Steam/Radiator
03 Radiant
04 Heat pump
05 Other (Specify) ———
99 Don't Know

16. Do you use any kerosene heaters to provide heat?

01 Yes—Go to Q. 17
02 No—Go to Q. 19
94 Don't Know—Go to Q. 19

17. Are the kerosene heaters vented to the outside of the home?

01 Yes
02 No
94 Don't Know

18. Do your kerosene heaters have catalytic converters?

01 Yes
02 No
94 Don't know

19. During the heating season (November through February) on average, how many hours per day do you use the kerosene heaters?

On Weekdays (Monday–Friday) ——
On Weekends (Saturday–Sunday) ——

20. Do you have a woodstove or fireplace insert?

01 Yes—Go to Q. 21
02 No—Go to Q. 24
94 Don't Know—Go to Q. 24

21. Does your wood stove or fireplace insert have a catalytic converter?

01 Yes
02 No
94 Don't know

22. Does your wood stove or fireplace insert have an optional air intake which provides air for burning the wood from outside the house?

01 Yes
02 No
94 Don't know

23. During the heating season (November through February) on average, how many hours per day do you use the wood stove or fireplace insert?

On Weekdays (Monday–Friday) ——
On Weekends (Saturday–Sunday) ——

24. Do you have wood-burning or gas-burning fireplace?

01 Yes—Go to Q. 25
02 No—Go to Q. 27
94 Don't Know—Go to Q. 27

25. Does your fireplace have an optional air intake which provides air from outside the house?

01 Yes
02 No
94 Don't know

26. During the heating season (November through February) on average, how many hours per day do you use the fireplace?

On Weekdays (Monday–Friday) ——
On Weekends (Saturday–Sunday) ——

27. Do you have a coal-burning stove?

01 Yes—Go to Q. 28
02 No—Go to Q. 30
94 Don't Know—Go to Q. 30

28. Does your coal-burning stove have a catalytic convertor?

01 Yes
02 No
94 Don't know

29. Does your coal-burning stove have an optional air intake which provides air for burning the coal from outside the house?

01 Yes
02 No
94 Don't know

30. Some homes are equipped with active or passive solar heating systems, or may use a heating method which we have not asked about. Are there any other devices, appliances, or methods which you use to heat your home?

01 Yes (Specify) ———
02 No
94 Don't know

31. Does your heating system also supply your hot water?

a. Yes
b. No
c. Don't Know

32. Do you have a gas-cooking appliance?

01 Yes—Go to Q. 33
02 No—Go to Q. 35
94 Don't Know—Go to Q. 35

33. What type of gas fuel does this appliance use?

01 Propane/bottled/liquified gas
02 Natural
03 Don't Know

34. During the heating season (November–February) on average how many hours each day do you use a gas cooking appliance?

On Weekdays (Monday–Friday) ——
On Weekends (Saturday–Sunday) ——

35. I would like to ask about particular methods you may use to prepare meals during the week. As I read each method, tell me how many hours each week you normally use that method of cooking. Please also tell me whether or not you use an exhaust hood or vent when cooking by that method, and the type of fuel used, eg., gas or electricity.

(READ EACH METHOD ALOUD AND RECORD THE NUMBER OF HOURS PER WEEK THAT EACH METHOD IS USED. IF AN EXHAUST HOOD OR VENT IS USED, PLACE A CHECK MARK IN THAT COLUMN.)

Preparation method	Hours per week	Use hood/ vent	Type of fuel
Frying			
Broiling			
Grilling			
Braising			
Toasting			
Roasting			
Baking			

C. The next few questions pertain to motor vehicles and garages.

36. Does your home have an attached garage? (Do not include carports)

01 Yes—Go to Q. 37
02 No—Go to Q. 38

37. I would like to ask how many cars, trucks, and motorcycles are owned by members of your household and about the type of fuel that each vehicle uses.

(PLACE A CHECK IN THE APPROPRIATE SPACE UNDER EACH TYPE OF VEHICLE OWNED INDICATING THE TYPE OF FUEL USED. BE SURE TO ASK ABOUT MORE THAN ONE VEHICLE OF THE SAME TYPE.)

Type of Fuel	Type of Vehicle						
	Car #1	Car #2	Car #3	Truck #1	Truck #2	Cycle #1	Cycle #2
Leaded Gasoline							
Unleaded Gasoline							
Diesel							
Other							

(Specify Other Fuel, If used:———)

D. The next section asks a few more general questions about your house, the inhabitants, and your use of household chemicals.

38. Do any children (aged 18 and under) live in the house?

01 Yes—> Go to Q. 39
02 No—> Go to Q. 40

39. How many children who live in the house are: (Record the Number of Children in each Age Range in the Indicated Space.)

01 Five years old or less?———
02 6 to 14 years old?———
03 15 to 18 years old?———

40. Do you have an indoor pet?

01 Yes—> Go to Q. 41
02 No—> Skip to Q. 42

41. Check types of pets you have?

Cats ———
Dogs ———
Other (Specify:———

42. Did anyone smoke any tobacco products in your home during the last seven days?

01 Yes—> Go to Q. 43
02 No—> Skip to Q. 44
94 Don't Know—>Skip to Q. 44

43. Which of the following types of tobacco products were smoked?

01 Cigarettes
02 Cigars
03 Pipes
94 Don't Know

Distillate Fuel Oil Heating Equipment Survey

E. The last two sections pertain to specific questions about your oil heating equipment. If necessary, I will be happy to assist you in filling out this information by locating the manufacturer's identification located on the heater.

44. Who is the furnace/boiler manufacturer and what is the model name or number?

a.———
b. Don't Know

45. What is the rating of the furnace/boiler in BTU?

a.———
b. Don't Know

46. Approximately when was the furnace/boiler purchased?

a. Year———
b. Don't Know.

47. Who is the burner manufacturer and model number or name?

a. Specify———
b. Don't Know.

48. What is the burner firing rate in gallons per hour? Circle appropriate number.

a.
0.50 0.60 0.65 0.75 0.85 0.90 1.00
1.10 1.20 1.25 1.35 1.50 1.65 1.75 2+
b. Other. Specify———
c. Don't Know.

49. The burner is:

a. Original
b. Replacement
c. Don't Know

50. If a replacement burner, approximately when was it purchased?

a. Month——— Year———
b. Don't Know.

51. What is the approximate date of the last burner tune-up?

a. Month——— Year———
b. Don't Know.

52. What is the approximate frequency of tune up?

a. Once per heating season.
b. Once every 2 years.
c. Over 5 years.
d. Never.
e. Don't Know.

F. Heating Oil Information

53. Who is the fuel oil supplier?

a. Specify———
b. Don't Know.

54. What fuel type do you use?

a. Kerosene
b. #2 Oil
c. #3 Oil
d. Don't Know.

55. What type of fuel feed do you have?

a. Gravity
b. Pump
c. Don't Know.

56. Have you had any of the following problems with the heating system?

a. Clogged nozzle
b. Fumes
c. Water in fuel tank
d. Other. Specify———
e. Don't Know.

57. What was your oil usage or cost for fuel oil last year?

Gallons or Dollars
a.☐ ☐
b. Don't Know.

58. Do you have an oil-fired hot water heater?

a. Yes
b. No
c. Don't know.

Send comments regarding the burden estimates, or any other aspect of this collection of information, including suggestions for reducing the burden, to: Carla Levesque, Environmental Protection Agency, Information Policy Branch (PM–223), 401 M St. SW Washington, DC 20460, and Nicolas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place NW, Washington, DC 20503 (Telephone (202) 395–3084).

Date: October 13, 1988.

Paul Lapsley,

Director, Information and Regulatory Systems Division.

[FR Doc. 88–24119 Filed 10–18–88; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3464–8]

Science Advisory Board; Environmental Health Committee Halogenated Organics Subcommittee Open Meeting

Under Pub. L. 92–463, notice is hereby given that a two-day meeting of the Drinking Water Subcommittee of the Environmental Health Committee of the Science Advisory Board will be held on November 9–10, 1988, at the Capitol Hill Hotel, 200 C Street, SE., Washington, DC, 20003. The meeting will be held from 9:00 a.m. to 5:00 p.m. on November 9th and 10th.

The purpose of this meeting is to review risk assessment of complex chemical mixtures in drinking water.

The meeting will be open to the public. Any member of the public wishing to make a presentation at the meeting should forward a written statement to Dr. K. Jack Kooyoomjian, Executive Secretary, Science Advisory Board (A–101F)], U.S. Environmental Protection Agency, Washington, DC, 20460, or contact him on (202) 382–2552 by November 2, 1988. The Science Advisory Board expects that the public statements presented at its meetings will not be repetitive of previously submitted written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes.

BEST COPY AVAILABLE

VOL 53 ISS 202 OCT 19 1988 UMI

Dated: October 12, 1988.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 88-24116 Filed 10-18-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3484-7]

Science Advisory Board Executive Committee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that the Executive Committee of the Science Advisory Board will meet on November 9 from 9:00 a.m. to 5:00 p.m. and on November 10 from 8:00 a.m. to 12 noon in the Administrator's Conference Room 1101, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC.

The purpose of the meeting is to enable the Executive Committee to review SAB Committee reports including the Clean Air Scientific Advisory Committee's report on acid aerosols. The Environmental Health Committee's reports on: The analytical methodology relating to the regulation of drinking water contaminants involved in Phase II draft regulations; the issues relating to the regulation of lead in drinking water; and the treatment technology relating to the regulation of drinking water contaminants involved in Phase II draft regulations. The Radiation Advisory Committee's reports on the Office of Radiation Program's plans to revise the sources and transport sections of the background information document supporting a revised multimedia NESHAP. The Environmental Engineering Committee's resolution on mathematical modelling of environmental processes, and a report from the investigative group on hazardous waste incineration will be discussed. The Executive Committee will receive briefings by Agency personnel on the vinyl chloride decision, plans for updating risk assessment guidelines and media-specific documents on environmental models. Tentative plans for SAB activities in FY 1989 will also be discussed.

The meeting is open to the public. Any member of the public wishing to attend should notify Joanna Foellmer or Dr. Donald G. Barnes, Director, Science Advisory Board, at 202-382-4126 by November 2, 1988.

Date: October 14, 1988.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 88-24117 Filed 10-18-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[DA-88-1502]

Revisions to the Average Schedules Proposed by the National Exchange Carrier Association, Inc.

Released: October 13, 1988.

1. On October 3, 1988, the National Exchange Carrier Association, Inc. ("NECA") filed revisions to the interstate average schedules that, under NECA's proposal, would become effective January 1, 1989.

2. Under NECA's proposal the following average schedule formulas would be in effect during 1989:

(A) *Common Line Basic Formula.*

(1) For access lines per exchange less than 385.55, the settlement per access line per month would be: $12.982078—($.015532 x Access Lines Per Exchange).

(2) For access line per exchange greater than or equal to 385.55, the settlement per access line per month would be $6.991457.

(B) *Traffic Sensitive Central Office.*

The settlement per minute per month would be $.030216 + ($191.497493/ Minutes Per Exchange).

(C) *Intertoll Switching (B6).*

The settlement per month per trunk would be $29.18.

(D) *Line Haul Switched Circuit Termination (Non-Distance Sensitive)*

The settlement per month would be $34.05 per termination.

(E) *Line Haul Facility (Distance Sensitive).*

The settlement per month would be ($1.165293 x Interstate Circuit Miles) + ($0.001554 x TS Minutes per month).

(F) *Special Access.*

Settlement = .33505 x Revenues.

(G) *CABS & Administrative.*

Settlement = $385.90 + ($.000486 x TS Minutes).

3. NECA has also proposed a two year transition plan that NECA states would be applicable to companies that would be expected to experience reductions in settlements in excess of specified monthly amounts as a consequence of the revisions that NECA has proposed. According to NECA,

[t]ransition payments would be determined by comparing individual company total settlements for the first nine months of 1988 [1] to individual company total settlements computed using the 1988 demand volumes reported to NECA for the same period with the proposed 1989 formulas. Beginning with implementation of the schedules, monthly transition payments will be paid to an amount equal to this difference reduced progressively each month by the greater of (i) one-twelfth of the average settlement reduction per line experienced by average schedule companies as a whole or (ii) one twenty-fourth of the individual company's per line settlement reduction. In this manner, companies that are expected to experience smaller than average settlement reductions will complete the transition in less than one year. Companies with greater than average settlement reductions would require longer than one year to complete the transition.[2] All companies, however, would complete the transition within the specified two-year period (*i.e.*, 24 months after the schedules go into effect.)[3]

In addition to a more detailed, and extended, discussion of NECA's proposed transition plan, NECA's filing contains information on the development of the proposed revisions, the data that were employed, and the adjustments that were made in response to earlier Commission directives.

4. Persons wishing to examine NECA's "1989 Modificaiton of Average Schedules" filing may do so at Commission Reference Room 544, 1919 M Street, NW., Washington, DC. Copies of NECA's "1989 Modification of Average Schedules" filing may be purchased from International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20036, (202) 857-3800.

5. Because of the length and complexity of NECA's filing, we have decided to provide additional time for the preparation of comments and replies even though the reply comment date extends beyond the January 1, 1989 effective date that NECA has proposed. As a consequence, persons wishing to comment on NECA's proposed revisions to the average schedules, NECA's proposed transition plan, or any other aspect of NECA's filing, may do so by filing comments on or before December 14, 1988 and reply comments, on or before January 13, 1989. Copies of each comment and reply comment should be filed in the following manner: (1) Five (5) copies should be filed with the Secretary, Federal Communications Commission, 1919 M St., NW., Washington, DC 20554; (2) three (3) copies should be filed with the Policy and Program Planning Division, Room 544, 1919 M St., NW., Washington, DC 20554; (3) comments and replies should be captioned "In the Matter of Revisions to the Average Schedules proposed by NECA on October 3, 1988."

(6) For further information contact Kent Nilsson, (202) 632-6363.

Donna R. Searcy,

Secretary.

[FR Doc. 88-24087 Filed 10-18-88; 8:45 am]

BILLING CODE 6712-01-M

[1] "Exclusive of Universal Service Fund (USF) settlements, AERH Transition payments and non CABS and access administration supplemental disbursements such as the reimbursement for Part 32 implementation." *See* NECA's proposed "1989 Modification of Average Schedules" at I-32, n. 15.

[2] NECA amplifies on its proposed transition by stating: "if the average per line settlement reduction is $1.50, a company expected to experience a $1.00 per line reduction would complete the transition in 8 months ($1.00 per line reduced each month by 1/12 of the average reduction of $1.50). A company expected to experience a per line reduction of $1.75 would require 14 months to complete transition. Companies expected to experience settlement reductions greater than twice the average (*i.e.*, more than $3.00 per line) would complete the transition in 24 months, with transition settlements reduced each month in equal 1/24 increments." *Id.* at n. 16.

[3] *Id.* at I-32.

Advisory Committee on Advanced Television Service; Schedule of Meetings

October 5, 1988.

The following schedule is based on information available as of noon Tuesday, October 4, 1988. Meetings of Advisory Groups and Working Parties may be changed without advanced public notice. Interested parties should contact the appropriate Chairmen and Vice Chairmen if further information is desired. (New meetings highlighted).

IS/WP2 Transition Scenarios

Wednesday, October 5/11:30 a.m., EIA Building, 1722 Eye Street, NW.—Suite 20/Washington, DC, Chairman J. Peter Bingham, (317) 287-5033.

SS/WP3 Economic Assessment

Wednesday, October 12/9:30 a.m. Note Date Change, Bellcore, 2101 L. Street, NW./Washington, DC. Suite—600/Rooms B1 & B2, Chairman Larry Thorpe, (201) 833-5261.

IS/Implementation Subcommittee

Thursday, October 13/2:30 p.m. (Please Note Time Change), FCC/1919 M Street, NW./Washington, DC/Meeting Room 856, Chairman James J. Tietjen, (609) 734-2237.

PS/WP3 ATS Spectrum Utilization

Wednesday, October 19/1:30 p.m., NBC Building/30 Rockefeller, Mezzanine Conference Room A, New York, NY, Chairman Dale Hatfield (442-5395).

SS/Systems Subcommittee

Wednesday, October 19/9:00 a.m., New York Telephone Offices/1095 Avenue of the Americas, 23rd Floor/ New York, New York, Chairman Irwin Dorros (201-740-3200).

PS/Planning Subcommittee

Monday, October 24/10:00 a.m., FCC, 1919 M Street, NW./Washington, DC/ Commission Meeting Room 856, Chairman Joseph A. Flaherty, (212) 975-2213.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 88-24086 Filed 10-18-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067-0123

Title: State and Local Emergency Operations Plans.

Abstract: This information collection is necessary to determine the eligibility of State and local governments for participation in the Federal Emergency Management Agency's (FEMA) Emergency Management Assistance program (EMA). EMA provides State and local governments with Federal matching funds designed to assist those governments with the costs associated with their emergency staffs.

Type of Respondents: State and local governments.

Estimate of Total Annual Reporting and Recordkeeping Burden: 105,000.

Number of Respondents: 950.

Estimated Average Burden Hours Per Response: 110.5 hours.

Frequency of Response: Annually.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to the FEMA Clearance Officer at the above address; and to Francine Picoult, (202) 395-7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503, within two weeks of this notice.

Date: October 12, 1988.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 88-24085 Filed 10-18-88; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL RESERVE SYSTEM

First American Bank Corp., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act 12 U.S.C. 1843(c)(8) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each aplication is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonable be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, sumarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 10, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First American Bank Corporation,* Hampshire, Illinois; to engage *de novo*

through its subsidiary, First American Courier Services, Elk Grove Village, Illinois, in the business of providing courier services pursuant to § 225.25(b)(10) of the Board's Regulation Y. These activities will be conducted in the State of Illinois.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Smith Associated Banking Corporation*, Little Rock, Arkansas; to engage *de novo* in credit life, accident and health insurance activities directly related to extensions of credits by its subsidiary bank, Stephens Security Bank, Stephens, Arkansas, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y. These activities will be conducted in the State of Arkansas.

C. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Western Commerce Bancshares of Carlsbad, Inc.*, Carlsbad, New Mexico; to engage *de novo* through its subsidiary, Bank Consultants, Inc., Carlsbad, New Mexico, in providing management consulting services to depository institutions pursuant to § 225.25(b)(11) of the Board's Regulation Y. These activities will be conducted in the State of New Mexico. Comments on this application must be received by November 4, 1988.

Board of Governors of the Federal Reserve System, October 13, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-24091 Filed 10-18-88; 8:45 am]

BILLING CODE 6210-01-M

First Fidelity Bancorp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 8, 1988.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *First Fidelity Bancorporation*, Newark, New Jersey; to acquire 100 percent of the voting shares of Montclair Saving Bank, Upper Montclair, New Jersey.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *FirstBank Holding Company of Colorado*, Lakewood, Colorado; to acquire 100 percent of the voting shares of FirstBank of Southmoor Park, N.A., in organization, Denver, Colorado; FirstBank at Buckley/Quincy, N.A., in organization, Aurora, Colorado; FirstBank of Table Mesa, N.A., in organization, Boulder, Colorado; FirstBank at 30th/Arapahoe, N.A., in organization, Boulder, Colorado; and FirstBank at Chambers/Mississippi, N.A., in organization, Aurora, Colorado.

2. *Fourth Financial Corporation*, and IV Topeka Acquisition, Inc., both located in Wichita, Kansas; to acquire 100 percent of the voting shares of Fairlawn Plaza Investments, Inc., Topeka, Kansas, and thereby indirectly acquire Fairlawn Plazabank, Topeka, Kansas.

3. *New Mexico Financial Corporation*, Belin, New Mexico; to become a bank holding company by acquiring 100 percent of the voting shares of Ranchers State Bank, Belin, New Mexico.

4. *Whiting Bankshares, Inc.*, Whiting, Kansas; to acquire 100 percent of the voting shares of State Bank of Lancaster, Lancaster, Kansas.

C. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Parker Bancshares, Inc.*, Dover, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of Weatherford National Bank, Weatherford, Texas.

D. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *1007 Western Financial Corporation*, Stockton, California; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Stockton, Stockton, California, which engages in insurance activities permissible pursuant to § 225.25(b)(8) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 13, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-24092 Filed 10-18-88; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Employee Thrift Advisory Council; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), a notice is hereby given of the following committee meeting:

Name: Employee Thrift Advisory Council.

Time and Date: 10:00 a.m., November 2, 1988.

Place: Fifth Floor Conference Room, Federal Retirement Thrift Investment Board, 805 Fifteenth Street, NW., Washington, DC.

Status: Open.

Matters to be considered: Approval of the minutes of the July 26, 1988, meeting; report of Executive Director on Thrift Savings Plan (TSP) status; major contract schedule; New Jersey legislation on TSP; legislative agenda; Government Fund investment policy; fiduciary responsibilities; audits; and new business.

Any interested person may attend, appear before, or file statements with the Council. For further information contact John J. O'Meara, Committee Management Officer, on (202) 523-5967.

Date: October 14, 1988.

Francis X. Cavanaugh,

Executive Director.

[FR Doc. 88-24205 Filed 10-18-88; 8:45 am]

BILLING CODE 6760-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88N-0368]

Drug Export; Lymph-Scan (Kit for the Preparation of Technetium TC-99m, Antimony Trisulfide Colloid)

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Cadema Medical Products, Inc., has filed an application requesting approval for the export of the product Lymph-Scan (Kit for the preparation of Technetium TC-99m, Antimony Trisulfide Colloid) to Canada.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Rudolf Apodaca, Division of Drug Labeling Compliance (HFD-310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8001.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Cadema Medical Products, Inc., P.O. Box 250, Middletown, NY 10940, has filed an application requesting approval for the export of a product Lymph-Scan (Kit for the preparation of Technetium TC-99m, Antimony Trisulfide Colloid) to Canada. This product is used as an agent for imaging lymphatic drainage in patients with breast cancer or malignant melanoma. The application was received and filed in the Center for Drug Evaluation and Research on September 27, 1988, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by October 31, 1988, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: October 11, 1988.

Sammie R. Young,

Acting Director, Office of Compliance Center for Drug Evaluation and Research.

[FR Doc. 88-24160 Filed 10-18-88; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

Division of Research Grants; Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meetings of the following study sections for November through December 1988, and the individuals from whom summaries of meetings and rosters of committee members may be obtained.

These meetings will be open to the public to discuss administrative details relating to study section business for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301-496-7534 will furnish summaries of the meetings and rosters of committee members. Substantive program information may be obtained from each executive secretary whose name, room number, and telephone number are listed below each study section. Since it is necessary to schedule study section meetings months in advance, it is suggested that anyone planning to attend a meeting contact the executive secretary to confirm the exact date, time and location. All times are a.m. unless otherwise specified.

Study section	November–December 1988 meeting	Time	Locations
Behavioral and Neurosciences-1, Dr. Anita Sostek, Rm. 303, Tel. 301-496-5352	Nov. 28-29	9:00	Omni Shoreham Hotel, Washington, DC.
Behavioral and Neurosciences-2, Dr. Anita Sostek, Rm. 303, Tel. 301-496-5352	Nov. 21	9:00	Omni Shoreham Hotel, Washington, DC.
Biomedical Sciences-3, Mr. Gene Headley, Rm. A25, Tel. 301-496-7287	Nov. 14-15	8:30	Holiday Inn, Bethesda, MD.
Biomedical Sciences-4, Dr. Charles Baker, Rm. 219, Tel. 301-496-7150	Nov. 2-4	8:30	Holiday Inn, Georgetown, DC.
Biomedical Sciences-5, Dr. Donna Dean, Rm. A27, Tel. 301-496-7600	Nov. 16-18	8:30	Holiday Inn, Bethesda, MD.
Biomedical Sciences-6, Dr. Syed M. Amir, Rm. 326, Tel. 301-496-3117	Nov. 16-18	8:30	Holiday Inn, Georgetown, DC.
Biomedical Sciences-7, Dr. Donna Dean, Rm. A22, Tel. 301-496-1067	Nov. 28-Dec. 1	8:30	St. James Hotel, Washington, DC.
Clinical Sciences-1, Dr. Lynwood Jones, Jr., Rm. A20 Tel. 301-496-7510	Nov. 16-18	8:30	Holiday Inn, Georgetown, DC.
Clinical Sciences-2, Mrs. Jo Pelham, Rm. 319C, Tel. 301-496-7477	Dec. 5-6	8:30	Crowne Plaza, Rockville, MD.
Clinical Sciences-3, Dr. Nicholas Mazarella, Rm. A27, Tel. 301-496-1069	Nov. 10-11	8:30	Crowne Plaza, Rockville, MD.
Clinical Sciences-4, Mrs. Jo Pelham, Rm. 319C, Tel. 301-496-7477	Nov. 10-11	8:30	Holiday Inn, Bethesda, MD.

(Catalog of Federal Domestic Assistance Program Nos. 13.306, 13.333, 13.337, 13.393–13.396, 13.837–13.844, 13.846–13.878, 13.892, 13.893, National Institutes of Health, HHS)

Dated: October 6, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–24074 Filed 10–18–88; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung and Blood Institute; Meeting of Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Institute Board of Scientific Counselors, December 8 and 9, 1988, National Institutes of Health, 9000 Rockville Pike, Building 10, Room 7N214, Bethesda, Maryland 20892.

This meeting will be open to the public from 9 a.m. to 4 p.m. December 8 and from 9:30 a.m. to 12 noon on December 9 for discussion of the general trends in research relating to cardiovascular, pulmonary and certain hematologic diseases. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 12 noon to adjournment December 9 for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitue a clearly unwarranted invasion of personal privacy.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496–4236, will provide a summary of the meeting and a roster of the Board members. Substantive program information may be obtained from Dr. Jack Orloff, Executive Secretary and Director, Division of Intramural Research, NHLBI, NIH, Building 10, Room 7N214, phone (301) 496–2116.

Dated: October 6, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–24084 Filed 10–18–88; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Meeting of the Board of Scientific Counselors, NICHD

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Child Health and Human Development, December 2, 1988, in Building 31, Room 2A52.

This meeting will be open to the public from 9:00 a.m. to 12 noon on December 2 for the review of the Intramural Research Program and scientific presentations. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on December 2 from 1:00 p.m. to adjournment for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Linda Hall, Committee Management Officer, NICHD, Executive Plaza North, Room 520, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496–1485, will provide a summary of the meeting and a roster of Board members, and substantive program information upon request.

Dated: October 3, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–24068 Filed 10–18–88; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Aging; Meeting of the Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute on Aging, November 29–30, 1988, to be held at the Gerontology Research Center, Baltimore, Maryland. The meeting will be open to the public from 10:00 a.m. on Tuesday, November 29, to 4:00 p.m. and will again be open to the public from 10:00 a.m. on Wednesday, November 30, until 12:00 p.m. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on November 29 from 4:00 p.m. to recess, and again on November 30 from 12:00 p.m. to adjournment for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, NIA, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June C. McCann, Committee Management Officer, NIA, Building 31, Room 5C02, National Institutes of Health, Bethesda, Maryland 20892, (telephone: 301/496–6322) will provide a summary of the meeting and a roster of committee members. Dr. Gunther L. Eichhorn, Acting Scientific Director, NIA, Gerontology Research Center, Baltimore City Hospitals, Baltimore, Maryland 21224, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research, National Institutes of Health)

Dated: October 6, 1988.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 88–24067 Filed 10–18–88; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of Heart, Lung, and Blood Research Review Committee A

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Heart, Lung, and Blood Research Review Committee A, National Heart, Lung, and Blood Institute, National Institutes of Health, on December 1–2, 1988, in Building 31, Conference Room 7, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on December 1 from 8 a.m. to approximately 10 a.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on December 1 from approximately 10 a.m. until adjournment on December 2 for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the committee members.

Dr. Peter M. Spooner, Executive Secretary, Heart, Lung, and Blood Research Review Committee A, Westwood Building, Room 554, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–7285, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; National Institute of Health)

Dated: October 6, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–24065 Filed 10–18–88; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of Heart, Lung, and Blood Research Review Committee B

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Heart, Lung, and Blood Institute, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892, on December 1, 1988, in Building 31, Conference Room 9.

This meeting will be open to the public on December 1, 1988 from 8 a.m. to approximately 10 a.m. to discuss administrative details and to hear reports concerning the current status of the national Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from approximately 10 a.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the committee members.

Dr. Louis M. Quellette, Executive Secretary, NHLBI, Westwood Building, Room 554, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–7915, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837), Heart and Vascular Diseases Research; and 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: October 6, 1988.

Betty J. Beveridge,

Committee Managment Officer, NIH.

[FR Doc. 88–24066 Filed 10–18–88; 8:45 am]

BILLING CODE 4140–01–M

National Eye Institute; Meeting of the Vision Research Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Vision Research Review Committee, National Eye Institute, November 17–18, 1988, Conference Room 8, Building 31C, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public on November 17 from 8:30 to 9:30 a.m. for opening remarks and discussion of program guidelines. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 9:30 a.m. on November 17 until recess and on November 18 from 8:30 a.m. until adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the application, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Lois DeNinno, Committee Management Officer, National Eye Institute, Building 31, Room 6A/48, National Insitutes of Health, Bethesda, Maryland 20892, (301) 496–9110, will provide summaries of the meeting, rosters of committee members, and substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 13.867, Retinal and Choroidal Diseases Research; 13.868, Anterior Segment Diseases Research; and 13.871 Strabismus, Amblyopia and Visual Processing; National Institutes of Health.)

Dated: October 6, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–24083 Filed 10–18–88; 8:45 am]

BILLING CODE 4140–01–M

Social Security Administration

Finding Regarding Foreign Social Insurance or Pension System; Venezuela

AGENCY: Social Security Administration, HHS.

ACTION: Notice of finding regarding foreign social insurance or pension system—Venezuela.

Finding: Section 202(t)(1) of the Social Security Act (42 U.S.C. 402(t)(1)) prohibits payment of monthly benefits to any individual who is not a United States citizen or national for any month after he or she has been outside the United States for 6 consecutive months. This prohibition does not apply to such an individual where one of the exceptions described in section 202(t)(2) through 202(t)(5) of the Social Security Act [42 U.S.C. 402(t)(2) through 402(t)(5)] affects his or her case.

Section 202(t)(2) of the Social Security Act provides that, subject to certain residency requirements of section 202(t)(11), the prohibition against payments of section 202(t)(11), the prohibition against payment shall not apply to any individual who is a citizen of a country which the Secretary of Health and Human Services finds has in effect a social insurance or pension system which is of general application in such country and which:

(a) Pays periodic benefits, or the actuarial equivalent thereof, on account of old age, retirement, or death; and

(b) Permits individuals who are United States citizens but not citizens of that country and who qualify for such benefits to receive those benefits, or the actuarial equivalent thereof, while outside the foreign country regardless of the duration of the absence.

The Secretary of Health and Human Services has delegated the authority to make such a finding to the Commissioner of Social Security. The Comissioner has redelegated that authority to the Director of the International Policy Staff. Under that authority the Director of the International Policy Staff has approved a finding that Venezuela, beginning January 1, 1978, has a social insurance system of general application which:

(a) Pays periodic benefits, or the actuarial equivalent thereof, on account of old age, retirement, or death; and

(b) Permits United States citizens who are not citizens of Venezuela to receive such benefits, or their actuarial equivalent, at the full rate without qualification or restriction while outside Venezuela.

Accordingly, it is hereby determined and found that Venezuela has in effect, beginning January 1, 1978, a social insurance system which meets the requirements of section 202(t)(2) of the Social Security Act (42 U.S.C. 402(t)(2)).

This revises our previous finding, published at 34 FR 7666 on May 14, 1969, that Venezuela does not have in effect a social insurance or pension system which meets the requirements of section 202(t)(2) of the Social Security Act because it did not have a system of general application.

FOR FURTHER INFORMATION CONTACT: J. Joseph Rausch, Room 1104, West High Rise Building, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965–3567.

(Catalog of Federal Domestic Assistance Program No. 13.802 Social Security—Disability Insurance; 13.803 Social Security—Retirement Insurance; 13805 Social Security Survivors Insurance)

Dated: October 12, 1988.

Elizabeth K. Singleton,

Director, International Policy Staff.

[FR Doc. 88-24133 Filed 10-18-88; 8:45 am]

BILLING CODE 4190-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-88-1680]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: October 13, 1988.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Specifications of Repairs and Draw Report.
Office: Housing.
Description of the Need for the Information and Its Proposed Use: These forms are used by homebuyers and contractors to provide a work description and cost estimate of the proposed rehabilitation, and to request construction draws for rehabilitation work that has been completed. The forms are submitted to HUD by mortgagees and also used as a certification for those parties involved in the program.
Form Number: HUD–9746 and 9746A.
Respondents: Businesses or Other For-Profit.
Frequency of Submission: On occasion.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Specifications of repairs	2,500		1		2.0		5,000
Draw request	2,500		5		1.5		18,750

Total Estimated Burden Hours: 23,750.
Status: New.
Contact: Kenneth L. Crandall, HUD, (202) 755–6720, John Allison, OMB, (202) 395–5080.

Date: October 13, 1988.

Proposal: Single Family Default Monitoring System.
Office: Housing.
Description of the Need for the Information and its Proposed Use: This data is needed to report information into HUD's Single Family Default Monitoring System which tracks and produces various reports containing information on mortgages in default and foreclosure. The forms are submitted by mortgagees and assist HUD in monitoring and evaluating mortgagees' servicing practices.
Form Number: HUD–92068–A and 92068–C.
Respondents: Individuals or Households, Business or Other For-Profit, and Small Businesses or Organizations.
Frequency of Submission: Monthly, Quarterly, and Recordkeeping.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Submission of reports	4,000		16		0.60		38,400
Recordkeeping	4,000		1		1.60		6,400

Total Estimated Burden Hours: 44,800.
Status: Revision.
Contact: Leslie Bromer, HUD, (202) 755–7330, John Allison, OMB, (202) 395–5080.

Date: October 13, 1988.

[FR Doc. 88-24191 Filed 10-18-88; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-88-1679]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: October 12, 1988.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Home Equity Conversion Mortgage Insurance Demonstration (FR–2481)

Office: Policy Development and Research.
Description of the Need for the Information and its Proposed Use: Mortgagees participating under the Home Equity Conversion Mortgage Insurance Demonstration are required to provide mortgagors with an annual statement regarding the mortgage activity for each calendar year. Mortgagors need this information for tax purposes.
Form Number: None.
Respondents: Individuals or Households and Businesses or Other For-Profit.
Frequency of Submission: Annually.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Disclosure statement	2,906		1		1		2,906

Total Estimated Burden Hours: 2,906.
Status: New.
Contact: Judith V. May, HUD (202) 755–5426, John Allison, OMB, (202) 395–5886.

Date: October 12, 1988.

Comprehensive Improvement Assistance Program (CIAP): Reporting/Monitoring

Office: Public and Indian Housing.
Description of the Need for the Information and its Proposed Use: This information will be needed for reporting/monitoring requirements. That are necessary for PHA's administration of approved CIAP programs. The information will be used to satisfy HUD's review and monitoring responsibilities.
Form Number: HUDS–52826 and 53001.
Respondents: Non-Profit Institutions.
Frequency of Submission: On Occasion and Quarterly.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Schedule/report of modernization expenditures	1,110		4		1.5		6,660
Narrative report	300		4		1.5		1,800
Request for proposal	200		1		5.0		400
Actual modernization cost	400		1		1.0		400

Total Estimated Burden Hours: 9,200.
Status: Reinstatement.
Contact: Pris P. Buckler, HUD, (202) 755–6640, John Allison, OMB, (202) 395–6880.
Date October 12, 1988.

Public Housing Comprehensive Improvement Assistance Program (CIAP) and Comprehensive Grant Program (FR–2488)
Office: Public and Indian Housing.
Description of the Need for the Information and its Proposed Use: HUD needs this information to review documentation provided by PHAs with 500 units or more, describing their physical and management needs, their annual activities planned, and their actual use of assistance under the Comprehensive Grant Program. HUD will use this information to review and monitor statutory requirements.
Form Number: None.
Respondents: Individuals or households and State or Local Governments.
Frequency of Submission: Annually.
Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Comprehensive plan	378		1		30.0		11,340
Annual statement	378		1		8.0		3,024
Fund requisitions	378		80		.5		3,780
Fiscal closeout	378		1		1.0		378
Performance and evaluation report	378		1		5.0		1,890

Total Estimated Burden Hours: 20,412.
Status: New.
Contact: Mary T. Schulhof, HUD, (202) 755–6640, John Allison, OMB, (202) 395–6880.
Date: October 12, 1988.

Certification Regarding Adjustment for Damage or Neglect Pursuant to 203.379(c)
Office: Housing.
Description of the Need for the Information and its Proposed Use: This information is needed for documentation purposes by the mortgagees to support their certification that they are entitled to convey a fire-damaged property without penalty to the claim for insurance benefits.
Form Number: None.
Respondents: Business or Other For-Profit.
Frequency of Submission: On Occasion.
Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Documentation	280		1		0.5		140

Total Estimated Burden Hours: 140.
Status: Extension.
Contact: Theodore Green, HUD (202) 755–6672, John Allison, OMB, (202) 395–6880.
Date: October 5, 1988.

Lead-Based Paint Poisoning Prevention Requirements—Proposed Rule, Section 202 Housing for Nonelderly Handicapped Families (FR–2476)
Office: Housing.
Description of the Need for the Information and its Proposed Use: This information collection requires sponsors of Section 202 projects that rehabilitate pre-1978 housing in which children reside to notify tenants of potential lead-based paint hazards. The sponsors are also required to retain records of pre-occupancy inspections and any subsequent testing of surfaces.
Form Number: None.
Respondents: Non-Profit Institutions.
Frequency of Submission: On occasion.
Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Notification	10		20		0.10		20
Recordkeeping	10		1		.10		1

Total Estimated Burden Hours: 21.
Status: New.
Contact: Margaret Milner, HUD, (202) 755–6742, John Allison, OMB, (202) 395–6880.
Date: October 5, 1988.
[FR Doc. 88–24196 Filed 10–18–88; 8:45 am]
BILLING CODE 4210-01-M

[Docket No. C–88–667]

Organization, Functions, and Authority Delegations; Sacramento

AGENCY: Department of Housing and Urban Development.
ACTION: Designation and order of succession.

SUMMARY: The Manager of the Sacramento Office in Region IX is designating Officials who may serve as Acting Manager during the absence, disability or vacancy in the position of Manager.

EFFECTIVE DATE: September 26, 1988.

FOR FURTHER INFORMATION CONTACT: Beverly G. Agee, Regional Counsel, Department of Housing and Urban Development, Region IX, 450 Golden Gate Avenue, Box 36003, San Francisco, CA 94102. Telephone (415) 556–6110. This is not a toll-free number.

Designation of Acting Manager: Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence, disability or vacancy in the position of Manager, with all the powers, functions, and duties redelegated or assigned to the Manager:

Provided, that no official is authorized to serve as Acting Manager unless all preceding listed officials in this designation are unable to act by reason of absence, disability, or vacancy in said position:

1. Deputy Manager
2. Director, Housing Development
3. Director, Housing Development
4. Chief Attorney
5. Chief, Multifamily Loan Management
6. Chief, Assisted Housing Management
7. Chief, Architecture & Engineer/Cost Branch
8. Chief, Mortgage Credit
9. Chief, Valuation
10. Chief, Single Family Loan Management and Property Disposition

This designation supersedes and cancels any previous designation, published or unpublished, that may be in effect prior to the effective date of this document.

Authority: Delegation of Authority by the Secretary of Housing and Urban Development effective October 1, 1970; 36 FR 3380, February 23, 1971.

Dated: September 26, 1988.

Anthony A. Randolph,
Manager, Sacramento Office, Department of Housing and Urban Development, Region IX.

Concur:

Robert J. De Monte,
Regional Administrator-Regional Housing Commissioner Region, Region IX.

[FR Doc. 88–24196 Filed 10–18–88; 8:45 am]
BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974; Revision and Deletion of Notices of Systems of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior is deleting two, and revising three notices describing systems of records maintained by the Office of Historically Black College and University Programs and Job Corps in the Office of the Secretary. Except as noted below, all changes being published are editorial in nature, and reflect organization changes and other administrative revisions which have occurred since the publication of the material in the Federal Register on September 26, 1986 (51 FR 34282). The three revised notices are published in their entirety below.

Two notices are being deleted from the Department's inventory of Privacy Act systems of records notices, because the records are no longer maintained by the Office of Historically Black College and University Programs and Job Corps. There are:

1. INTERIOR/OS–30; Biweekly Labor List by Organization—Interior, OS–30; previously published in the Federal Register on September 26, 1986 (51 FR 34284).

2. INTERIOR/OS–31; Job Corps Financial Records—Interior, OS–31; previously published in the Federal Register on September 26, 1986 (51 FR 34284).

Since these changes do not involve any new or intended use of the information in the systems of records, they shall be effective on or before October 19, 1988. Additional information regarding these revisions may be obtained from the Department Privacy Act Officer, Office of the Secretary (PMI), Room 2242, Main Interior Building, U.S. Department of the Interior, Washington, DC 20240.

Dated: October 6, 1988.

Oscar W. Mueller, Jr.,
Director, Office of Management Improvement.

INTERIOR/OS–25

SYSTEM NAME:

Youth Conservation Corps (YCC) Enrollee Records—Interior, Office of the Secretary—25.

SYSTEM LOCATION:

Pertinent Federal Records Center, National Archives and Records Administration.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Enrollees (YCC) of USDI Federal YCC program.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Current enrollee USDI Application Form and Employment and Training Administration Form 27; USDI Medical History Forms; Personal and Statistical Information. (2) Optional; Evaluation of enrollees performance by camp staff; Accident, injury, and treatment forms. (3) Past enrollees; List of names and addresses. (4) Current alternates (YCC) USDI Application Form and Employment and Training Administration Form 27.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 93–408.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the records are (a) the identification of current and past enrollees and current alternates or applicants; (b) for the selection of alternate upon enrollee withdrawal from program (YCC), (c) to provide enrollee participation record for school credit. Disclosures outside of the Department of the Interior may be made (1) to the U.S. Department of Agriculture in connection with joint administration of YCC program; (2) to the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (3) of information indicating a violation or potential violation of a statute, regulation, rule, order, or license, to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violation or for enforcement or implementing the statute, rule, regulation, order or license; (4) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office; (5) to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, license, contract, grant or other benefit; (6) to Federal, State, or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant or other benefit.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in personnel jackets.

SAFEGUARDS:

In accordance with National Archives and Records Administration regulations (36 CFR 1228.150, *et seq.*).

RETENTION AND DISPOSAL:

In accordance with Interior Department, Office of the Secretary Records Schedule NCs-48-82-1.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Historically Black College and University Programs and Job Corps, Department of the Interior, Office of the Secretary, Washington, DC 20240.

NOTIFICATION PROCEDURE:

Inquiries regarding the existence of records should be addressed to the System Manager. A written, signed request stating that the requester seeks information pertaining to him/her is required. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access may be addressed to the System Manager. The request must be in writing and be signed by the requester. The request must meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment should be addressed to the System Manager and must meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained, medical doctor, school or other official.

INTERIOR/OS-28

SYSTEM NAME:

Youth Conservation Corps (YCC) Enrollee Payroll Records File—Interior, Office of the Secretary—28.

SYSTEM LOCATION:

Pertinent Federal Records Center National Archives and Records Administration.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Youth accepted into the YCC program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel, pay, statistical and termination data compiled by camp officials.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 92-408.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the records are (a) the identification of current and past enrollees and corpsmembers; (b) for payroll purposes for current enrollees and corpsmember; (c) to develop demographic characteristics of enrollee and corpsmember population for statistical purposes. Disclosures outside the Department of the Interior may be made (1) to the Department of the Treasury for preparation of (a) payroll checks and (b) payroll deduction and other checks to Federal, State, and local government agencies, nongovernmental organizations and individuals; (2) to the Internal Revenue and to State, Commonwealth, Territorial and local government for tax purposes; (3) to the Civil Service Commission in connection with the Civil Service Retirement System; (4) to another Federal agency to which an employee has transferred; (5) to the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (6) of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the states, rule regulation, order or license; (7) to a Congressional office from the record of an individual in response to an inquiry the individual has made to the Congressional office; (8) to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, license, contract, grant or other benefit; (9) to Federal, State, or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant or other benefit.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Current and past personal and statistical information on magnetic tape and printouts.

RETRIEVABILITY:

Tape reels are coded by number.

SAFEGUARDS:

In accordance with National Archives and Records Administration regulations (36 CFR 1228.150, *et seq.*).

RETENTION AND DISPOSAL:

In accordance with General Records Schedule No. 2, Item 1.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Historically Black College and University Programs and Job Corps, U.S. Department of the Interior, Washington, DC 20240.

NOTIFICATION PROCEDURE:

Inquiries regarding the existence of records should be addressed to the System Manager. A written signed request stating that the requester seeks information concerning records pertaining to him is required. See 43 CFR 2.60.

RECORD ACCESS PROCEDURE:

A request for access may be addressed to the System Manager. The request must be in writing and be signed by the requester. The request must meet the content requirements of 43 CFR 2.71.

CONTESTING RECORD PROCEDURES:

A petition for amendment should be addressed to the System Manager and must meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained camp personnel.

INTERIOR/OS-27.

SYSTEM NAME:

Youth Conservation Corps (YCC) Enrollee Medical Records—Interior, Office of the Secretary—27.

SYSTEM LOCATION:

Pertinent Federal Records Center, National Archieves and Records Administration.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Enrollees of past Interior Federal YCC program.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) U.S.C.I. Medical History Forms. (2) Accident, injury and treatment forms. (3) Parental permission portion of the U.S.D.I. Application forms for YCC enrollees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 93-408

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the records are (a) for the adjudication of PERC medical claims, and (b) the adjudication of tort claims. Disclosures outside the

Department of the Interior may be made (1) to the U.S. Department of Agriculture in connection with joint administration of the YCC program; (2) to the U.S. Department of justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (3) of information indicating a violation or potential violation of a statute, regulation, rule, order or license to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violation of for enforcing or implementing the statute, rule, regulation, order or license; (4) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office; (5) to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, license, contract, grant or other benefit.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual records.

RETRIEVABILITY:

By individual name.

SAFEGUARDS:

In accordance with National Archieves and Records Administration regulations (36 CFR 1228.150, *et seq.*).

RETENTION AND DISPOSAL:

In accordance with Interior Department, Office of the Secretary Records Schedule NC1-48-82-1

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Historically Black College and University Programs and Job Corps, Department of the Interior, Office of the Secretary, Washington, DC. 20240.

NOTIFICATION PROCEDURE:

Inquires regarding the existence of records should be addressed to the System Manager. A written signed request stating that the requester seeks information concerning records pertaining to him is required. See 43 CFR 2.60.

RECORD ACCESS PROCEDURE:

A request for access may be addressed to the System Manager. The request must be in writing and be signed by the requester. The request must meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment should be addressed to the System Manager and must meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained, medical doctor, and camp official compiling accident of medical treatment information.

[FR Doc. 88-24162 Filed 10-18-88; 8:45 am]

BILLING CODE 4310-RK-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of the Final Master Plan and Environmental Assessment for Laguna Atascosa National Wildlife Refuge, Rio Hondo, TX

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the final Master Plan and Environmental Assessment for Laguna Atascosa National Wildlife Refuge (Refuge), Rio Hondo, Texas, is available for public review. Comments and suggestions are requested. The Master Plan reaffirms objectives which support the purpose for which the Refuge was established, i.e,, providing habitat for migrating and wintering waterfowl. The plan also contains objectives for the preservation of endangered species, particularly ocelots and jaguarundi. Finally, secondary objectives relating to public use of the Refuge for interpretive and recreational purposes have been developed. In addition to the proposed objectives and management strategies presented in these documents, the Environmental Assessment contains brief descriptions of alternative objectives and management strategies which were considered during the planning process, including the public participation phases. The pros and cons of these alternatives and the reasons for their exclusion from the Master Plan are presented in each description.

DATES: Written comments are requested by December 19, 1988.

ADDRESS: Comments should be addressed to: Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, NM 87103.

FOR FURTHER INFORMATION CONTACT: Ray Rauch, Refuge Manager, Laguna Atascosa National Wildlife Refuge, P.O. Box 450, Rio Hondo, TX 78583

Individuals wishing copies of the final Environmental Assessment or Master Plan should immediately contact Mr. Rauch. Copies have been sent to all agencies and individuals who participated in the public paticipation process and to all others who have already requested copies.

SUPPLEMENTARY INFORMATION: Ray Rauch is the primary author of these documents. The U.S. Fish and Wildlife Service (Service), Department of the Interior, has prepared a Master Plan and an accompanying Environmental Assessment on the proposed management of the Laguna Atascosa Refuge, a 45,074-acre area located in Cameron and Willacy Counties in the Lower Rio Grande Valley near Brownsville, Texas. The plan calls for the slight redirection of the management program at Laguna Atascosa Refuge in three areas. The first involves the restoration of aquatic habitat necessary to support food sources for wintering redhead. The second deals with the development and maintenance of habitats important to the perpetuation of endangered species, paticularly cat species, which historically have occurred naturally in the Refuge area. The third provides for additional emphasis on the development of nesting/brooding habitat to enhance the product of mottled ducks.

The principal thrust of this Master Plan is the rehabilitation of the Laguna Atascosa (Parker Lake) so that it once again produces adequate submergent aquatic vegetation and other organisms to feed wintering redhead ducks upon their arrival from the breeding grounds. This rehabilitation will involve the reshaping of the lake bottom to permit complete drawdown. Once that is accomplished, the lake will be drawn down periodically (perhaps every 2 or 3 years) to allow the lake bottom to aerate and solidify. This aeration process stimulates aquatic growth once the lake is refilled, and retards turbidity caused by wave action.

Another major thrust of this Master Plan is in the management of brush habitat for endangered cat species. The ocelot is the principal endangered cat species known to be resident on the Refuge. Sightings of jaguarundi indicate that this species is present also. In

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addition to protecting existing cat habitat, about 500 acres of cropland will be converted to brush to increase the available habitat for these species.

This Master Plan calls for a development effort in selected saline grasslands of the Refuge to expand nesting/brooding habitat for mottled ducks. The proper construction of additional open water areas in these grasslands should triple the mottled duck production on the Refuge.

Waterfowl objectives for the three species of geese and sandhill cranes, which winter at the Refuge, remain unchanged. However, with the conversion of almost half of the existing cropland to brush, it will not be possible to manage the remaining cropland under a cooperative farming arrangement. Thus, this Master Plan calls for the return to "force account" farming with its attendant increase in operating costs as the means of providing a food supply for these species.

The final thrust of this plan involves modifications to the visitor center and the entrance drive/parking area associated with this building. The entrance road to the visitor center will be relocated and parking areas rebuilt to permit a more orderly and safe traffic flow around this facility by the visiting public. A public restroom facility will be constructed adjacent to the visiting center. The present public restroom must be removed to permit rerouting of the entrance road. In addition, an auditorium will be added to the rear of the visitor center to provide a place for the presentation of interpretive programs to groups of visitors.

Consultation

Other government agencies and several members of the general public contributed to the planning and evaluation of the Master Plan and Environmental Assessment. Besides a wide variety of Service personnel, others participating in the planning process included representatives from the Texas Parks and Wildlife Department, the Texas General Land Office, the Caesar Kleberg Wildlife Research Institute, the Cooperative Fish and Wildlife Research Unit of Oklahoma State University, and the Peregrine Fund. Two public meetings were held to discuss alternatives, with a total attendance of approximately 115. During the public involvement process seven informational mailings were provided to interested agencies and the general public.

The Service has determined that these documents do not contain a major proposal requiring preparation of an economic impact analysis under Executive Order E.O. 11821, as amended by E.O. 11949, and OMB Circular A–107.

Dated: October 6, 1988.

Michael Spear,

Regional Director.

[FR Doc. 88–24114 Filed 10–18–88; 8:45 am]

BILLING CODE 4310-AN-M

Bureau of Land Management

[ID–210–08–4341–02]

Meeting; Boise District Advisory Council

AGENCY: Boise District, Bureau of Land Management, Idaho, Interior.

ACTION: Notice of meeting.

SUMMARY: The Boise District Council will conduct a daylong field tour of the Snake River Birds of Prey Area and hold a business meeting to discuss riparian management issues.

DATES: The field tour will be held on Tuesday, November 1, 1988 and the business meeting will be held Wednesday, November 2, 1988. A public comment opportunity will be held at 1:00 p.m., November 2.

ADDRESSES: The Boise District Office is located at 3948 Development Avenue, Boise, Idaho, 83705.

FOR FURTHER INFORMATION CONTACT: Barry Rose, Boise District Bureau of Land Management, (208) 334–0303.

Dated: October 3, 1988.

J. David Brunner,

District Manager.

[FR Doc. 88–24079 Filed 10–18–88; 8:45 am]

BILLING CODE 4310-GG-M

[WY–065–08–4120–12]

Meeting; Casper District Grazing Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: District Grazing Advisory Board meeting.

SUMMARY: The Casper District Advisory Board will meet at 10:00 a.m. on Tuesday November 22, 1988. The meeting will convene at the Bureau of Land Management, Casper District Office, 1701 East "E" Street, Casper, Wyoming. The agenda will include: (1) The election of a board chairman and vice-chairman; (2) new member orientation; (3) a follow-up report to the Board from the last meeting; and (4) a discussion of range improvement projects and allotment management plans.

DATE: November 22, 1988, 10:00 a.m.

ADDRESS: To request summary minutes or time on the agenda, contact: Bureau of Land Management, Casper District Office, 1701 East "E" Street, Casper, WY 82601.

FOR FURTHER INFORMATION CONTACT: Bruce Deughton at (307) 261–5575.

SUPPLEMENTARY INFORMATION: The meeting is held in accordance with section 3, Executive Order 12548 of February 14, 1986. The meeting is open to the public. Time will be available for public statements to the Board. Interested persons may testify or submit written statements for Board consideration. Anyone wishing to make an oral statement should notify the district manager by November 22, 1988. Depending on the number of persons wishing to make statements, a per person time limit may be imposed by the district manager.

Summary minutes of the Board meeting will be maintained in the district office and will be available for public inspection within 30 days following the meeting.

Kathryne Alexander,

Acting District Manager.

October 5, 1988.

[FR Doc. 88–24080 Filed 10–18–88; 8:45 am]

BILLING CODE 4310-GG-M

[UT–020–08–4120–10]

Utah and Colorado; Uinta Southwestern Utah Regional Coal Team Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of regional coal team meeting.

SUMMARY: In accordance with the responsibility outlines in the Federal Coal Management Regulations (43 CFR Part 3400), the Regional Coastal Team for the presently decertified Uinta Southwestern Utah Federal Coal Production Region will hold a meeting to discuss and make recommendations on two coal lease applications that have been filed under "Leasing by Application" procedures now in effect in the region. The applications are in the Utah portion of the region and include an application filed by Coastal States Energy in February 1988, for a 9,905 acre tract in Sevier County, Utah near their SUFCO mine; and an application filed by Cyprus Western Coal Company, in July 1988, for a 1,826 acre tract in Carbon County, Utah near their Plateau Star Point No. 2 mine.

DATE: The Regional Coal Team will meet on November 17, 1988, at 1:00 p.m.

ADDRESS: The meeting will be held in the BLM, Utah State Office Conference Room, Salt Lake City Hall Building, 324 South State, 4th Floor, Salt Lake City, Utah.

FOR FURTHER INFORMATION CONTACT: Max Nielson, Uinta Southwestern Utah Project Manager, Utah State Office, 324 South State, Suite 301, Salt Lake City, Utah 84111–2303, telephone 801–5324–3364.

SUPPLEMENTARY INFORMATION: The Regional Coal Team will make recommendations to the BLM on processing coal lease application U–63214 by Coastal States Energy and U–64263 by Cyprus Western Coal Company. The RCT will make final recommendations on the Coastal application and review the Cyprus applications for the availability of existing data to meet Regional Data Adequacy Standards and the logical delineation of a lease tract to be considered.

Date: October 11, 1988.

James M. Parker,

State Director of Utah.

[FR Doc. 88–2410 Filed 10–18–88; 8:45 am]

BILLING CODE 4310-DQ-M

[(NV–030–09–4212–22; CC–021027, Nev–062252, N–12906, N–19288)]

Order Providing for Opening of Lands, Correction; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction notice.

SUMMARY: The purpose of this notice is to correct two errors in a Federal Register Notice published on November 2, 1984.

EFFECTIVE DATE: October 19, 1988.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, Bureau of Land Management, Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, 702–784–5481.

SUPPLEMENTARY INFORMATION: In Federal Register Docket 84–28889 appearing on page 44154 in the issue of Friday, November 2, 1984, the following corrections are made:

The first paragraph in column 3 should read:

The minerals in the lands described in T. 30 N., R. 57 E., T. 34 N., R. 61 E., and section 15 of T. 35 N., R. 60 E., are in private ownership. The minerals in the lands described in T. 34 N., R. 63 E., and sections 1, 3, 11, 13, and 23 of T. 35 N., R. 60 E., were reconveyed to the United States.

The fourth paragraph in column 3 should read:

At 9:00 a.m. on December 3, 1984, the lands described in T. 34 N., R. 63 E., and sections 1, 3, 11, 13, and 23 of T. 35 N., R. 60 E., will be open to location and entry under the United States mining laws and to applications and offers under the mineral leasing laws.

Robert G. Steele,

Deputy State Director, Operations.

[FR Doc. 88–24077 Filed 10–18–88; 8:45 am]

BILLING CODE 4310-HC-M

[(NV–030–09–4212–22)]

Filing of Plats of Survey; Nevada

October 4, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the latest filing of Plats of Survey in Nevada.

EFFECTIVE DATES: Filings were effective at 10:00 a.m. on the dates shown below.

FOR FURTHER INFORMATION CONTACT: Lacel Bland, Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, 702–784–5481.

SUPPLEMENTARY INFORMATION: The Plats of Survey of lands described below were officially filed at the Nevada State Office, Reno, Nevada on the date indicated.

	Date filed
Mount Diablo Meridian, Nevada	
T. 35 N., R. 50 E.—Supplemental Plat	10/3/88
T. 32 N., R. 54 E.—Dependent Resurvey	9/28/88
T. 33 N., R. 54 E.—Dependent Resurvey	9/28/88
T. 32 N., R. 55 E.—Dependent Resurvey	9/28/88
T. 33 N., R. 55 E.—Dependent Resurvey	9/28/88
T. 31 N., R. 59 E.—Supplemental Plat	10/3/88
T. 26 S., R. 63 E.—Supplemental Plat	10/3/88

The surveys on Ts. 32 and 33 N., Rs. 54 and 55E., were accepted on September 16, 1988; the supplemental plats were accepted on October 3, 1988. All the surveys and the supplemental plats were executed to meet certain administrative needs of the BLM.

All of the above-listed plats are now the basic record for describing the lands for all authorized purposes. The plats will be placed in the open files in the BLM Nevada State Office and will be available to the public as a matter of information. Copies of the plats and related field notes may be furnished to the public upon payment of the appropriate fee.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 88–24078 Filed 10–18–88; 8:45 am]

BILLING CODE 4310-HC-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–262]

The Economic Effects of Significant U.S. Import Restraints

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation, scheduling of hearings, and request for comments.

EFFECTIVE DATE: October 1, 1988.

FOR FURTHER INFORMATION CONTACT: Walker Pollard (202) 252–1228, or Donald Rousslang (202) 252–1223, Research Division, Office of Economics, U.S. International Trade Commission, Washington, DC 20436.

Background

The Commission instituted investigation No. 332–262 following receipt of a letter dated September 9, 1988, from the Senate Committee on Finance requesting the Commission to conduct an investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) of the economic effects of existing significant U.S. import restraints.

As requested by the Committee, the study will include an assessment of the effect on U.S. consumers, on the output and profits of U.S. firms, on the income and employment of U.S. workers, and on the net economic welfare of the United States. The study will assess the direct effect on U.S. industries that are protected by the import restraints and the indirect effects on "downstream" industries that are customers of the protected industries.

The study will consider the effects of significant restraints on U.S. imports, such as voluntary restraints on steel and autos, and Multifiber Arrangement, whether they result from an Act of Congress, an action taken under the fair trade laws of the United States, such as 201 investigations, or an international agreement. The study will not include those import restraints resulting from final antidumping of countervailing duty investigations by the ITC and the Department of Commerce or sections 337 and 406 investigations by the ITC.

The Committee has requested that the results of the study be reported in three phases. The first phase will address the effects of restraints on imports of manufactured products. The second phase will address the effects of restraints on imports of agricultural products and natural resources, and the third phase will address the effects of restraints on services industries. The Committee has requested that the report for the first phase be submitted within one year after receipt of this request, the report for the second phase within two years, and the report for the third phase within three years.

Public Hearing

A public hearing in connection with the first phase of this investigation will be held in the Commission Hearing Room, 500 E Street, SW., Washington, DC 20436, beginning at 9:30 a.m. on April 5, 1989. All persons shall have the right to appear by counsel or in person, to present information, and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436, no later than noon, March 31, 1989. The deadline for filing prehearing briefs (original and 14 copies) is March 31, 1989. Dates for public hearings in connection with the second and third phases will be announced later.

Written Submissions

Interested persons are invited to submit written statements concerning the matters to be addressed in the report. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be assured of consideration by the Commission, written statements relating to the Commission's report and post-hearing briefs should be submitted at the earliest practical date and should be received no later than April 19, 1989. All submissions should be addressed to the Secretary to the Commission at the Commission's office in Washington, DC.

Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 252-1810.

By order of the Commission.

Issued: October 13, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88-24201 Filed 10-18-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-388 (Final)]

3.5 Inch Microdisks and Media Therefor From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–388 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of 3.5 inch microdisks and media therefor,[1] provided for in item 724.45 of the Tariff Schedules of the United States (and classified in subheading 8523.20.00 of the Harmonized Tariff Schedule of the United States), that have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Unless the investigation is extended, Commerce will make its final LTFV determination on or before December 7, 1988, and the Commission will make its final injury determination by January 26, 1989 (see sections 735(a) and 735(b) of the Act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201; as amended, 53 FR 33041 *et seq.* (August 29, 1988)).

EFFECTIVE DATE: September 29, 1988.

FOR FURTHER INFORMATION CONTACT: Diane J. Mazur (202–252–1184), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of 3.5 inch microdisks and media therefor from Japan are being sold in the United States at less than fair value within the meaning of section 731 of the Act (19 U.S.C. 1673). The investigation was requested in a petition filed on February 28, 1988, by Verbatim Corp., Charlotte, NC. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (53 FR 12999, April, 20, 1988).

Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) and § 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited Disclosure of Business Proprietary Information Under a Protective Order

Pursuant to § 207.7(a) of the Commission's rules (19 CFR 201.7(a)), the Secretary will make available business proprietary information gathered in this final investigation to authorized applicants under a protective order, provided that the application be made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by such parties containing business proprietary information without a certificate of service indicating that it has been served upon all the parties that are authorized to receive such information under a protective order.

Staff Report

The prehearing staff report in this investigation containing business proprietary information will be placed in the nonpublic record on December 5, 1988, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m., on December 20, 1988 at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on December 6, 1988. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on December 12, 1988, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is December 15, 1988.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonbusiness proprietary summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written Submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be incuded in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on December 27, 1988. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before December 27, 1988.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of § 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties must obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 201.7(a)) may comment on such information in their prehearing and posthearing briefs, and may also file additional written comments on such information no later than December 30, 1988. Such additional comments must be limited to comments on business proprietary information received in or after the posthearing briefs.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: October 11, 1988.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 88-24200 Filed 10-18-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-400 and 402-404 (Final)]

Thermostatically Controlled Appliance Plugs and Internal Probe Thermostats Therefor From Canada, Japan, Malaysia, and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution of final antidumping investigations and scheduling of a hearing to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731–TA–400 and 402–404 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada, Japan, Malaysia, and Taiwan of thermostatically controlled appliance plugs and internal probe thermostats therefor,[1] provided for in item 711.78 of the Tariff Schedules of the United States (TSUS), that have been found by the Department of Commerce, in preliminary determinations, to be sold in the United States at less than fair value (LTFV). Commerce will make its final determinations on or before December 6, 1988, and the Commission will make its final injury determinations by January

[1] For purposes of these investigations, the term "thermostatically controlled appliance plug" refers to any device designed to connect an electrical outlet (typically, a common wall receptacle) with a small cooking appliance of 2,000 watts or less (typically, a griddle, deep fryer, frying pan, multicooker, and/or wok) and regulate the flow of electricity, and thus the temperature, therein; consisting of (1) a probe thermostat encased in a single housing set with a temperature control knob (typically a dial calibrated with various temperature settings), and (2) a cord set. The term "internal probe thermostat" refers to any device designed to regulate automatically the flow of electricity, and thus the temperature, in a small heating apparatus of 2,000 watts or less (typically, small cooking appliances); consisting of a stainless steel tube (which connects to the heating apparatus) and other components used for thermostatic control. The products are currently provided for in items 711.7820 and 711.7840 of the *Tariff Schedules of the United States Annotated* (TSUSA) and are classifiable in subheadings 9032.10.00, 9032.20.00, 9032.89.80, 9032.90.80, and 9033.00.00 of the *Harmonized Tariff Schedule of the United States* (HTS).

[1] 3.5 inch microdisks and media therefor are defined as unrecorded flexible magnetic disk recording media, with or without protective covering, for ultimate use in recording and storing data with a 3.5 inch floppy disk drive.

25, 1989 (see sections 735(a) and 735(b) of the Act (19 U.S.C. 1673d(a) and 1673d(b))).

Pursuant to a request from petitioner under section 705(a)(1) of the Act (19 U.S.C. 1671(a)(1)), Commerce extended the date for its final determination in its countervailing duty investigation on thermostatically controlled appliance plugs and internal probe thermostats therefor from Taiwan to coincide with the date of its final determinations in these antidumping investigations. Accordingly, the Commission's schedule for the conduct of the countervailing duty investigation, Inv. No. 701–TA–282 (Final), will conform with the schedule for the conduct of these antidumping investigations as set forth in this notice.

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207 as amended, 53 FR 33039 (August 29, 1988)), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: September 28, 1988.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202–252–1200), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of thermostatically controlled appliance plugs and internal probe thermostats are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act (19 U.S.C. 1673). The investigations were requested in a petition filed on April 15, 1988, by Triplex Inter Control (USA) Inc., St. Albans, VT. In response to that petition the Commission conducted preliminary antidumping investigations and, on the basis of information developed during the course of those investigations, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (53 FR 21532, June 8, 1988).

Participation in the Investigations

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) and § 207.3 of the rules (19 CFR 201.16(c) and 207.3 as amended, 53 FR 33039 (August 29, 1988)), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited Disclosure of Business Proprietary Information Under a Protective Order

Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a) as amended, 53 FR 33039 (August 29, 1988)), the Secretary will make available business proprietary information gathered in these final investigations to authorized applicants under a protective order, provided that the application be made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been filed with all the parties that are authorized to receive such information under a protective order.

Staff Report

The prehearing staff report in these investigations will be placed in the nonpublic record on December 1, 1988, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on December 15, 1988, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on December 7, 1988. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 10:30 a.m. on December 12, 1988, at the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is December 12, 1988.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonbusiness proprietary summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any business proprietary materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(a)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written Submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on December 21, 1988. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before December 21, 1988.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of § 201.6 and § 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a) as amended, 53 FR 33039 (August 29, 1988)) may comment on such information in their prehearing and posthearing briefs, and may also file additional written comments on such information no later than December 27, 1988. Such additional comments must be limited to comments on business proprietary information received in or after the posthearing briefs.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: October 14, 1988.

[FR Doc. 88–24199 Filed 10–18–88; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–190 (Sub-No. 42X)]

Southern Railway Co. and Tennessee Railway Co.; Discontinuance of Service and Abandonment Exemption Between Devonia and Fork Mountain, TN

Applicants have filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to discontinue service over and abandon their 2.7-mile line of railroad between milepost TE–42.0, at Devonia, TN, and milepost TE–44.7, at Fork Mountain, TN. Tennessee Railway Company is a subsidiary of Southern Railway Company.

Applicants have certified that: (1) No local or overhead traffic has moved over the line for at least 2 years; and (2) no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective November 18, 1988 (unless stayed pending reconsideration). Petitions to stay regarding matters that do not involve environmental issues [1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [2] must be filed by October 31, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by November 8, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Roger A. Petersen, Norfolk Southern Corporation, One Commercial Place, Norfolk, VA 23510–2191.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicants have filed an environmental report which addresses environmental or energy impacts, if any, from this transaction.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by October 24, 1988. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316. A notice to the parties will be issued if use of the exemption is conditoned upon environmental or public use conditions.

Decided: October 12, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. Gee,

Secretary.

[FR Doc. 88–24036 Filed 10–18–88; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 400 (1988).

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440–48446).

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Water Act; City of Hurricane, WV, et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on October 12, 1988, a proposed Consent Decree in *United States v. City of Hurricane, et al.* was lodged with the United States District Court for the Southern District of West Virginia. The proposed decree requires that the city construct modifications to the plant to enable it to function in compliance with permits issued by EPA and the State of West Virginia according to an enforceable schedule. The decree also requires that interim effluent limits be met during the period of construction, and that the plant attain full compliance with the provisions of the Clean Water Act no later than October 31, 1990. The decree requires a payment of a $29,000 civil penalty as a consequence of past violations of the Act.

The Department of Justice will receive for a period of thirty (30) days from the date of publication of this notice comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. City of Hurricane*, Ref. 90–5–1–1–2869.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Federal Building, 500 Quarrier Street, Charleston, West Virginia, at the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, Pennsylvania 19107, and at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.50 for reproduction costs,

payable to the "Treasurer of the United States."

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-24019 Filed 10-18-88; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[88-89]

NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee.

DATE AND TIME: November 2, 1988, 8:30 a.m. to 5:15 p.m., November 3, 1988, 8:30 a.m. to 5 p.m., and November 4, 1988, 8:30 a.m. to 12:30 p.m.

ADDRESS: NASA Headquarters, Room 226A, 600 Independence Avenue SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph K. Alexander, Code E, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1490).

SUPPLEMENTARY INFORMATION: The Space Science and Applications Advisory Committee consults with and advises the NASA Office of Space Science and Applications (OSSA) on long range plans for, work in progress on, and accomplishments of NASA's Space Science and Applications programs. The Committee will meet to formulate plans for the Committee's future and receive reports on OSSA planning, Life Sciences, Space Station Science and Applications, and NASA Division Advisory Committees. The Committee is chaired by Dr. Berrien Moore and is composed of 24 members. The meeting will be open to the public up to the capacity of the room (approximately 45 including Committee members).

Type of Meeting: Open.

Agenda

Wednesday, November 2

8:30 a.m.—Introductions and Chairman's Remarks.
9 a.m.—Goals, Purposes and Structure of Committee.
9:30 a.m.—Office of Space Science and Applications (OSSA) Strategic Plan.
10:45 a.m.—OSSA 4-year Calendar.
1:15 p.m.—Status of Mixed Fleet.
3:15 p.m.—Small-class Explorer.
4:30 p.m.—Committee Discussion.
5:15 p.m.—Adjourn.

Thursday, November 3

8:30 a.m.—Chairman's Remarks.
8:45 a.m.—Reports from Chairs of Division Advisory Committees.
10:15 a.m.—Seminar on Life Sciences.
11:15 a.m.—Committee Discussion.
1:15 p.m.—Life Sciences: Program Management and Plans.
3:30 p.m.—Space Station Science and Applications Subcommittee Report.
4 p.m.—Committee Discussion.
5 p.m.—Adjourn.

Friday, November 4

8:30 a.m.—Chairman's Remarks.
8:45 a.m.—Writing Group Meetings.
11:45 a.m.—Committee Discussion.
12:30 p.m.—Adjourn.

Philip D. Waller,

Director, General Management Division.

October 13, 1988.

[FR Doc. 88-24070 Filed 10-18-88; 8:45 am]

BILLING CODE 7510-01-M

[Notice (88-90)]

NASA Advisory Council (NAC), History Advisory Committee (HAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, History Advisory Committee.

DATE AND TIME: November 4, 1988, 8:30 a.m. to 2 p.m.

ADDRESS: National Aeronautics and Space Administration, John F. Kennedy Space Center Headquarters Building, Room 1403, Kennedy Space Center, FL 32899.

FOR FURTHER INFORMATION CONTACT: Dr. Sylvia D. Fries, Code XH, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-8300).

SUPPLEMENTARY INFORMATION: The History Advisory Committee was established to provide advice and guidance to the NASA history program, which maintains a non-record historical reference file and publishes works in the history of aeronautics and space science and technology. The Committee, chaired by Dr. Arthur Norberg, consists of 7 members. The meeting will be open to the public up to the seating capacity of the room, which is approximately 20 persons, including Committee members and other participants. Visitors will be requested to sign a visitor's register.

Type of Meeting

Open.

Agenda

November 4, 1988

8:30 a.m.—Introductory Remarks.
8:45 a.m.—Report of the Director, NASA History Division.
1 p.m.—Prospects and Issues: History Program Future Directions.
2 p.m.—Adjourn.

October 13, 1988.

Philip D. Waller,

Director, General Management Division.

[FR Doc. 88-24094 Filed 10-18-88; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Nixon Presidential Historical Materials; Opening of Materials

AGENCY: National Archives and Records Administration.

ACTION: Notice of opening of materials.

SUMMARY: This notice announces the opening of selected subject categories and staff member files from the Nixon White House Central Files (WHCF) and selected audiovisual materials. Notice is hereby given that, in accordance with section 104 of title I of the Presidential Recordings and Materials Preservation Act (88 Stat. 1695; 44 U.S.C. 2111 note) and § 1275.42(b) of the Public Access Regulations implementing the Act (36 CFR Part 1275), the agency has identified inventoried, and prepared for public access integral file segments of materials among the Nixon Presidential materials.

DATE: The National Archives intends to make the integral file segments described in this notice available to the public beginning December 9, 1988. Any person who believes it necessary to file a claim or privilege concerning access to these materials should notify the Archivist of the United States in writing of the claimed right, privilege, or defense before December 5, 1988.

ADDRESS: The materials will be made available to the public at the National Archives' facility located at 845 South Pickett Street, Alexandria, Virginia.

Petitions concerning access must be sent to the Archivist of the United States, National Archives and Records administration, Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: James J. Hastings, Director, Nixon Presidential Materials Staff, 703-756-6400.

SUPPLEMENTARY INFORMATION: The integral file segments of textual materials to be opened consist of 221.2 cubic feet. This is the third of a series of openings of Central Files; the previous openings were on December 1, 1986, and March 22, 1988.

The White House Central Files Unit is a permanent organization within the White House complex that maintains a central filing and retrieval system for the records of the President and his staff. Some of the materials designated for opening on December 9 were selected from the Subject Files of the Central Files. The Subject Files are based on an alphanumeric file scheme of 61 primary subject categories. Listed below are the eight primary subject categories of the Subject Files that will be made available to the public on December 9.

Subject Category	Volume (cubic feet)
Federal Government (FG):	
Federal Government—Organizations (PG)	2.0
President of the United States (FG 1)	11.5
Former Presidents (FG 2)	1.8
Transition of Incoming Administration (FG 3)	.3
The Executive Branch (FG 5)	.3
Executive Office of the President (FG 6)	.3
Bureau of Budget (FG 6-1)	.8
Central Intelligence Agency (FG 6-2)	.3
Council of Economic Advisors (FG 6-3)	.6
National Council on Marine Resources (FG 6-5)	.3
National Security Council (FG 6-6)	2.0
Domestic Council (FG 6-15)	1.0
Office of Management and Budget (FG 6-16)	1.5
Cabinet (FG 10)	1.0
Department of Justice (FG 17)	1.3
Department of Agriculture (FG 20)	1.3
Department of Commerce (FG 21)	3.0
Federal Reserve System (FG 131)	.6
Insurance (IS)	1.3
Postal Service (PO)	1.3
Procurement (PQ)	2.0
Real Property (RA)	3.8
States-Territories (ST)	7.0
Trips (TR)	33.0

In addition to the subject categories, six file groups from the Staff Member and Office Files will be made available to the public. These consist of materials that were transferred to Central Files but were incorporated into the Subject Files. Listed below are the Staff Member and Office Files that will be made available to the public on December 9.

File Group	Volume (cubic feet)
Martin Anderson	17.0
Roy Ash	3.0
Council of Economic Advisors:	
Office Files	5.0
Hendrik Houthakker	22.3
Sidney Jones	.3
Ezra Solomon	9.0
Marina Whitman	7.3
Energy Policy Office	23.3
Bradley Patterson	27.3
Susan Porter	17.0

The National Archives also will open on December 9 three segments of audiovisual materials. The segments to be opened were made or received by the White House during the Nixon administration and are dated from 1948 to 1974. The materials comprising these segments were not created by the White House Communications Agency or the Navy Photographic Center. The Nixon-related audiovisual materials of these two agencies were made available to the public previously.

The segments to be opened include sound recordings, videotapes, and motion picture film pertaining to a variety of topics and events such as the Nixon compaigns of 1960, 1968, and 1972, the Nixon Presidential inaugrations, press conferences, radio and television broadcast featuring Richard Nixon, and political campaign advertising. The three audiovisual segments to be opened are listed below.

Segment:	Number
Motion Film File (titles)	413
Video Recording File (title)	180
Sound Recording File (title)	249

Public access to some of the items in the textual and audiovisual segments will be restricted as outlined in 36 CFR 1275.50 or 1275.52 (Public Access Regulations). Reproduction of many of the audiovisual materials is limited by the provisions of the Copyright Act of 1976 (17 U.S.C. 101 *et seq.*)

Dated: October 14, 1988.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 88-24175 Filed 10-18-88; 8:45 am]

BILLING CODE 7515-01-M

National Endowment for the Arts; Meeting; National Council on the Arts

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on November 4-5, 1988, from 9:00 a.m. to 5:30 p.m., in Room M-09 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on Friday, November 4, 1988, from 9:00 a.m. to 5:30 p.m., and Saturday, November 5, 1988, from 9:00 a.m. to 12:00 noon. The topics for discussion will include Program Review and Guidelines for Design Arts, Media Arts, Visual Arts, Guidelines only for Local Programs: Special Constituencies Model Projects, Music: Presenters/Festivals, Inter-Arts: Presenters/Services/Artists Colonies and Dance on Tour (formerly Dance/Inter-Arts/State Programs—DIS) and reports on the Reauthorization and arts activities in the Pacific Rim.

The remaining session on Saturday, November 5, 1988, from 1:30 p.m. to 5:30 p.m. are for the purpose of Council review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(B) of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-55232, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National

BEST COPY AVAILABLE

Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

October 14, 1988.

[FR Doc. 88-24187 Filed 10-18-88; 8:45 am]

BILLING CODE 7537-01-M

National Endowment on The Arts; National Council on the Arts; National Council on the Arts/National Assemblies of State Arts Agencies and Local Arts Agencies Subcommittee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the National Council on the Arts/National Assembly of State Arts Agencies/National Assembly of Local Arts Agencies Sub-Committee to the National Council on the Arts will be held on November 3, 1988, from 2:00 p.m.-5:00 p.m. in room M07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics for discussion will include Support for Facilities, Support for Organizations and Cultural Diversity.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88-24186 Filed 10-18-88; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL COMMUNICATIONS SYSTEM

High Frequency Radio Subcommittee; Dissemination of Meeting Information

AGENCY: Office of Technology and Standards, National Communications System.

ACTION: Dissemination of meeting information.

FOR FURTHER INFORMATION CONTACT: Mr. Robert T. Adair, U.S. Department of Commerce, NTIA/ITS Mail Drop ITS.N1, 325 Broadway, Boulder, CO 80303, (303) 497-3723.

High Frequency (HF) Radio Subcommittee, Automatic Link Establishment (ALE) Standards Development Working Group (SDWG) open meeting; dissemination of meeting information.

A meeting of the SDWG was held May 13, 1988 at the GSA Building, 18th and F Street, NW., Washington, DC to gather additional information necessary to formulate proposed Federal Standard 1045 (pFS 1045).

Agenda

1. Opening remarks by the Chairman.
2. Presentation by Mr. Bill Beamish, Harris Corp., Rochester, NY.
3. Presentation by Mr. Jim Harmon, Rockwell International, Cedar Rapids, IA.
4. Adjourn.

This meeting was held for the benefit of the working group members to better understand the technical aspects of the two technical approaches being considered for adoption as the basis for pFS 1045. The two companies most knowledgeable about the two approaches were invited to present a technical review to the SDWG.

Representatives of companies interested in the HF Radio ALE standard may be interested in the information presented at this meeting.

For further information or copies of the minutes of this meeting, please call or write: David F. Peach, U.S. Department of Commerce, NTIA/ITS Mail Drop ITS.N1, 325 Broadway, Boulder, CO 80303, (303) 495-5309.

Dennis Bodson,

Assistant Manager, NCS Office of Technology and Standards.

Janet Omdorff,

Editorial Assistant.

Jeanette LaBonte,

Secretary.

George W. White,

Consultant.

[FR Doc. 88-24111 Filed 10-18-88; 8:45 am]

BILLING CODE 6715-01-M

High Frequency Radio Automatic Link Establishment Subcommittee; Meeting

AGENCY: Office of Technology and Standards, National Communications System.

ACTION: Notice of open meeting.

FOR FURTHER INFORMATION CONTACT: Mr. Robert T. Adair, U.S. Dept of Commerce, NTIA/ITS Mail Drop ITS.N1, 325 Broadway, Boulder, CO 80303 (303) 497-3723.

High Frequency (HF) Radio Automatic Link Establishment (ALE) Subcommittee, Federal Telecommunication Standards Committee (FTSC); Open Meeting.

A meeting of the HF Radio ALE Subcommittee will be held November 16-18, 1988 from 9:30 am to 3:30 pm at the Mitre Corp., Hayes Building, 7525 Colshire Drive McLean, VA. The HF Radio Subcommittee was formed to develop proposed Federal Standard 1045 (pFS 1045) and a family of standards that will define the technical requirements of HF adaptive radio systems. This meeting will provide a briefing on pFS 1045 and other proposed standards in the family.

Agenda

1. Opening remarks by the Chairman
2. Overview of the standards development process
3. Overview of pFS 1045
4. Overview of the family of standards
5. Assessment of economic and technical impact due to pFS 1045
6. Panel discussion with opportunity for questions and discussion
7. Adjourn

The meeting will commence on November 16 at 9:30 am and will continue until all agenda items have been covered. It is anticipated that the meeting will adjourn before 3:30 pm on November 18.

This meeting will be held for the benefit of those who are interested in pFS 1045 or other standards in the family of HF radio standards. A draft of pFS 1045 will be available for review at the meeting. The meeting is a vital step in the standards preparation process and is necessary before presentation of pFS 1045 to the FTSC later in 1988.

Those wishing to attend must call the Chairman, Mr. Robert T. Adair, by November 11, 1988, for authorization to attend. Attendance will be limited to two (2) representation per organization. Those who wish to send their security clearances, may send them to: Mitre Corp., 7525 Colshire Drive, McLean, VA 22102, Attention: Frank Arndt, Security, (703) 883-6551.

For further information or minutes of the meeting call or write: Robert T. Adair, U.S. Dept. of Commerce, NTIA/ITS Mail Drop ITS.N1, 325 Broadway Boulder, CO 80303 (303) 497-3723.

Dennis Bodson,

Assistant Manager, NCS Office of Technology and Standards.

Janet Omdorff,

Editorial Asst.

Jeanette LaBonte,

Secretary.

George W. White,

Consultant.

[FR Doc. 88-24112 Filed 10-18-88; 8:45 am]

BILLING CODE 3610-05-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-259/260/296]

Tennessee Valley Authority; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC/the Commission) is considering issuance of an exemption from the requirements of Appendix R of 10 CFR Part 50 to the Tennessee Valley Authority (TVA/the licensee), for the Browns Ferry Nuclear Power Plant, Unit 2, located at the licensee's site near Decatur, Alabama.

Environmental Assessment

Identification of Proposed Action

The licensee would be exempted from the technical requirements of Section III.L.1.b of Appendix R to 10 CFR Part 50 to the extent that the reactor coolant level would be permitted to drop below the top of the core during use of alternate safe shutdown procedures following a postulated fire which renders the control room uninhabitable.

The licensee would also be exempted from the technical requirements of Section III.G.1 of Appendix R which relate to fire protection features for ensuring that systems and associated circuits used to achieve and maintain safe shutdown and free of fire damage. The exemptions are technical since the licensee must demonstrate that fire protection configurations meet the specific requirements of Section III.G or that alternate fire protection configuration can be justified by an acceptable fire hazard analysis. The licensee would be specifically exempted from the requirements of Section III.G. in the following areas:

- Exemption from fixed suppression in the main control rooms;
- Exemption from an automatic fire suppression system in the residual heat removal (RHR) system pump rooms and RHR heat exchanger rooms;
- Exemption from intervening combustibles; and
- Exemption for fixed suppression and detection.

The Need for the Prepared Action

In evaluating the limiting case fire event, the licensee assumed that the RHR system, in the low pressure coolant injection system (LPCI) mode of operation, is to be used to maintain the Reactor Coolant (RC) inventory after achieving manual depressurization of the Reactor Coolant System (RCS) utilizing the main steam relief valves (MSRVs). The above method has the potential for uncovering the upper portion of the core for a short time during the depressurization contrary to the requirements of Section III.L.1.b. The staff has evaluated the alternate shutdown method and concluded that it is acceptable because the licensee's calculated time of potential core uncovery is short enough to preclude a threat to the fuel cladding integrity.

The proposed exemptions to Section III.G are needed because features described in the licensee's request regarding the existing and proposed fire protection at Browns Ferry for these items are the most practical method for meeting the intent of Appendix R, and literal compliance would not significantly enhance the fire protection capability at Browns Ferry.

Environmental Impact of the Proposed Action

The proposed exemption to Section III.L would not impact the ability to effect safe shutdown of the plant in the event of a fire in the control room, would not pose a threat to the fuel cladding integrity, and would provide an acceptable level of safety, equivalent to that attained by compliance with Section III.L of Appendix R to 10 CFR Part 50. Therefore, the proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological impacts associated with this proposed exemption.

The proposed exemption to Section III.G will provide a degree of fire protection such that there is no increase in the risk of fires at Browns Ferry. Consequently, the probability of fires has not been increased and the post-fire radiological releases will not be greater than previously determined nor do the proposed exemptions otherwise affect plant radiological effluents.

With regard to potential nonradiological impacts, the proposed exemption involves features located entirely within the restricted areas as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternative Use of Resources

This action involves no use of resources not previously considered in the Final Environmental Statement (construction permit and operating license) for the Browns Ferry Nuclear Plant.

Since the Commission has concluded that there is no measurable environmental impact associated with the proposed exemptions, alternatives to the proposed action need not be evaluated. The principal alternative, however, to the exemptions would be to deny the exemptions requested by the licensee from the requirements of Appendix R. Such action would not enhance the protection of the environment.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated June 14, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the NRC's Local Public Document Room located at the Athens Public Library, South Street, Athens, Alabama 35611.

Dated at Rockville, Maryland this 11th day of October, 1988.

For the Nuclear Regulatory Commission.

Suzanne C. Black,

Assistant Director for Projects, TVA Projects Division, Office of Special Projects.

[FR Doc. 88-24165 Filed 10-18-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-416]

System Energy Resources, Inc., et al., Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-29 issued to Mississippi Power and Light Company, South Mississippi Electric Power Association and System Energy Resources, Inc. (the licensees) for operation of the Grand Gulf Nuclear Station, Unit 1, located in Claiborne County, Mississippi.

The proposed amendment would change the Technical Specifications (TS) in accordance with the guidance provided in Generic Letter 87-09, "Sections 3.0 and 4.0 of the Standard Technical Specifications (STS) on the Applicability of Limiting Conditions for Operation and Surveillance Requirements." The general requirements in TS 3.0.4, applicable to each Limiting Condition for Operation (LCO) within Section 3.0, would be changed to allow operational condition changes without meeting the LCO requirements provided the remedial actions in the associated action statements do not require reactor shutdown if the LCO is not met in a specified time. For those TS which presently have an exception to TS 3.0.4, the exception would be deleted because the change in TS 3.0.4 would achieve the same effect by itself. For applicable TS which do not presently have an exception to TS 3.0.4, the change in TS 3.0.4 provides increased operational flexibility. TS 4.0.3 would be changed to allow up to 24 hours additional time to run missed surveillance tests. TS 4.0.4 would be changed to clarify that it does not prevent changing operational conditions to comply with action requirements. The Bases for TS 3.0 and 4.0 would be changed to reflect the changes in the TS.

Prior to issuance of the license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By November 18, 1988, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition to leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Elinor G. Adensam: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036, attorney for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer, or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated August 19, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Dated at Rockville, Maryland, this 12th day of October, 1988.

For The Nuclear Regulatory Commission.

Lester L. Kintner,

Senior Project Manager, Project Directorate II-1, Divison of Reactor Projects I/II.

[FR Doc. 88-24166 Filed 10-18-88; 8:45 am]

BILLING CODE 7590-01-M

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from September 26, 1988 through October 6, 1988. The last biweekly notice was published on October 5, 1988 (53 FR 39165).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room P-216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 18, 1988 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no

significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendment requests: June 16, 1988 and April 14, 1988, as supplemented on April 28, 1987.

Description of amendment requests: The following proposed changes to the Technical Specifications (TS) are in partial response to the Baltimore Gas and Electric Company (BG&E, the licensee) submittals dated June 16, 1988 and April 14, 1988, as supplemented on April 28, 1987. The remaining issues will be addressed in separate correspondence. The proposed Units 1 and 2 TS changes would (1) modify TS 3/4.8.2.3, "Electrical Power Systems: D.C. Distribution - Operating," deleting the 18-month station battery service test dummy load profile from TS Surveillance Requirement (SR) 4.8.2.3.2.d.2 and maintaining the load profile in the Calvert Cliffs Nuclear Power Plant Units 1 and 2 Updated Final Safety Analysis Report (UFSAR) where it shall be controlled through the processes described in 10 CFR 50.59, "Changes, Tests and Experiments"; (2) adding the definition, "Refueling Interval - At least once per 24 months," to TS Definition 1.22, "Frequency Notation," Table 1.2; and (3) modify TS 3/4.3.6, "Instrumentation - Post-Accident Instrumentation," Table 3.3-10, "Post-Accident Monitoring Instrumentation Surveillance Requirements," by adding operability and surveillance testing requirements for the core exit thermocouple system.

Basis for proposed no significant hazards consideration determination: Change No. 1, as proposed in the BG&E letter of April 14, 1988, as supplemented on April 28, 1987, would delete the dummy load profile from the 18-month battery service test of TS SR 4.8.2.3.2.d.2. The correct battery load profile would be maintained in the UFSAR and controlled through the processes described in 10 CFR 50.59. The licensee is requesting this change to facilitate the shifting or modification of emergency loads on the four separate station batteries as necessitated by plant modifications and hardware additions.

In the June 16, 1988 submittal, BG&E proposed Change No. 2, which adds the definition "Refueling Interval-At least once per 24 months" to TS Definition 1.22, "Frequency Notation," Table 1.2, and Change No. 3 which modifies TS Tables 3.3-10 and 4.3-10 by adding operability and surveillance testing requirements for the core exit thermocouple system.

The licensee requested Change No. 2 to add the refueling interval definition to the TS in order to support the licensee's 24-month operating cycle. Recently, the Commission has approved several TS amendments in which the associated surveillance interval was changed from "R", at least once per 18 months, to the new frequency of "Refueling Interval" which was defined as at least once per 24 months. The "Refueling Interval" frequency notation is not used anywhere else in the Units 1 and 2 TS other than the amendments recently made in support of the 24-month operating cycle.

Change No. 3 requests the addition to the TS of operability and surveillance requirements for the core exit thermocouple system which was installed in response to NUREG-0737, "Clarification of TMI Action Plan Requirements," Item II.F.2, "Instrumentation for Detection of Inadequate Core Cooling."

The licensee evaluated these proposed changes against the standards of 10 CFR 50.92 and has determined that the amendments would not:

(i) Involve a significant increase in probability or consequences of an accident previously evaluated...

Change No. 1 is administrative in nature. No plant operations or equipment are affected as the station batteries will continue to be required by TS SR 4.8.2.3.2.d to successfully complete an 18-month battery service test under design basis emergency loading conditions. Furthermore, any future load profile changes will be required to be fully defined with an adequately reviewed and approved safety evaluation performed in accordance with the provisions of 10 CFR 50.59 prior to the implementation of any load changes.

Change No. 2 is administrative in nature, too. The addition of the frequency notation, "Refueling Interval," will affect only those TS requirements that were modified to support implementation of the licensee's 24-month operating cycle. Of the TS requirements affected, all were previously analyzed and approved for a 24-month surveillance interval. The addition of this definition is proposed for the sole purpose of placing these previously approved TS requirements surveillance interval changes in effect.

Change No. 3 proposes the addition of TS operability and surveillance requirements for the newly added core exit thermocouple system. These operability and surveillance requirements represent additional restrictions over the TS requirements currently in effect. Furthermore, the addition of these operability and surveillance requirements will not affect any other plant operations, equipment or accident analyses.

Consequently, these proposed changes would not result in any increase in the probability or consequences of previously evaluated accidents.

(ii) Create the possibility of a new or different type of accident from any accident previously evaluated...

These proposed changes do not alter any plant operability requirements, surveillance testing, maintenance, or system design or functions other than (1) the Change No. 2 implementation of the previously approved 24-month surveillance interval for specifically evaluated TS requirements and (2) the Change No. 3 addition of new, restrictive surveillance and operability requirements for the recently installed core exit thermocouple system.

The 24-month surveillance interval, as provided by the "Refueling Interval" frequency notation, was previously evaluated and approved for all TS requirements where this frequency notation is now in use. For each of these individual TS requirements, the NRC staff has previously determined that these changes in surveillance interval would not create the possibility of a new or different type of accident from any accident previously evaluated.

With regards to the addition of TS surveillance and operability requirements for the core exit thermocouple system, which is presently installed, these new TS requirements do not affect any other plant operations or equipment.

Thus, these changes, as proposed, would not create the possibility of any new or different type of accident.

(iii) Involve a significant reduction in a margin of safety...

These proposals do not alter any plant operational requirements or restrictions other than the Change No. 3 addition of new, restrictive core exit thermocouple system operability requirements. Therefore, these proposed changes will not involve any reduction in any margin of safety.

Finally, on March 6, 1986, the NRC published guidance in the **Federal Register** (51 FR 7751) concerning examples of amendments that are not likely to involve a significant hazards consideration.

These changes are consistent with two of the examples provided: "(i) A purely administrative change to the Technical Specifications..." and "(ii) A change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications." Consequently, the NRC staff proposes to determine that these proposed changes to TS 4.8.2.3.2.d.2; TS 1.22, Table 1.2; and TS 3/4.3.6, Tables 3.3-10 and 4.3-10 involve no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Attorney for licensee: Jay E. Silbert, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Robert A. Capra, Director

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: September 13, 1988

Description of amendment request: The proposed changes revises Table 3.22-2, "Fire Detection Instruments", by reducing the number of smoke detectors available in the containment from 23 to 22 and incorporates a new section of sprinkler protection in the turbine building into Technical Specification Section 3.22(G), "Spray and/or Sprinkler Systems".

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated 10 CFR 50.92(c). The staff has evaluated the proposed amendment and determined that it involves no significant hazards consideration. In accordance with the criteria set forth in 10 CFR 50.92(c), the proposed amendment does not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed. The increased surveillance for fires in the area below the control room structural steel, when the fire suppression system is inoperable, has the potential to reduce the consequences and probability of turbine building fires, and therefore does not increase the probability or consequences of an accident previously analyzed.

The reduction in the number of smoke detectors will not affect any design basis event. There are no cable trays or transient combustibles in the vicinity of this detector which is intended to be removed. The change will not impact the ability to detect fires in the outer annulus, therefore the change will not affect previously analyzed accidents.

2. Create the possibility of a new or different kind of accident from any previously analyzed. The reduction in the number of smoke detectors and the increased surveillance for fires in the area below the control room structural steel does not change the way the plant is operated. Since there are no changes in the way the plant is operated, the potential for an unanalyzed accident is not created. No new failure modes are introduced. The modifications do not affect safety systems or components and, therefore, do not affect any design basis accident. Since no safety systems are affected by the proposed changes, there can be no affect on the probability of failure of any safety system. Therefore, the proposed Technical Specification changes do not create the probability of an accident or malfunction of a new or different type than any evaluated previously in the safety analysis report.

3. Involve a significant reduction in a margin of safety. Since the proposed changes do not have any impact on any design basis accident, there can be no impact on any protective boundary. Since there is no impact on any protective boundary as a result of the proposed changes, there can be no impact on any safety limit. The proposed changes have no impact on the basis of any Technical Specification. The proposed changes maintain the basis of the Technical Specifications in assuring adequate smoke detection and fire suppression.

Accordingly, the staff has proposed to determine that the application for amendment does not involve a significant hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan

Date of amendment request: February 6 and November 2, 1987

Description of amendment request: The proposed amendment would formalize commitments in the Big Rock Point Plant security plan for a "call-in" program for off-duty guards from their residences.

Basis for proposed no significant hazards consideration determination: Based on the three criteria in 10 CFR 50.92, the proposed amendment for the Big Rock Point Plant does not involve significant hazards consideration as set forth below:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated since there is no change to any plant system or operating procedures. This amendment upgrades and formalizes requirements to restore the minimum

number of required armed responders due to an unexpected loss, for example due to illness, of a member of the security force. This program specifies the methods by which off-duty guards are "called-in" from their residences.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated since the plant's design and operating procedures remain unaffected. This change only addresses security measures (procedures) which do not involve any plant safety systems.

3. Does the proposed license amendment involve a significant reduction in a margin of safety?

The proposed amendment does not involve a significant reduction in a margin of safety since no change is made to the plant's design or operating procedures. The "call-in" program is considered reasonable because the probability of a security contingency event occurring during the short period of time while a guard is responding from his residence is considered very low due to the infrequent and unpredictable nature of these circumstances.

Accordingly, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: Theodore Quay, Acting

Duke Power Company, et al., Docket No. 50-414, Catawba Nuclear Station, Unit 2, York County, South Carolina

Date of amendment request: May 24, 1988

Description of amendment request: The proposed amendment would revise License Condition 2.C.(11) of Catawba Unit 2 Facility Operating License, NPF-52, to delete item 6 of Attachment 1. This item requires special inspections of Diesel Generator (DG) 2B main bearing number 7. Such inspections were the result of two failures of this bearing during preoperational testing in order to ensure that measures taken to prevent further recurrences were effective. The licensee stated that since January 17, 1988 to the present time, DG 2B main bearing number 7 has successfully sustained more than 260 starts and accumulated over 350 hours of operation. Inspection of bearing number 7 during End-of-Cycle 1 refueling outage following 333 starts and 316 hours of operation revealed no defects, abnormal appearance, or unusual readings. Thus, discontinuing future special inspections of DG 2B main bearing number 7 would not involve any adverse safety considerations.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's request for the above amendment and determined that should this request be implemented, it would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated because implementation of the proposed amendment would not change any of the assumptions used in the accident analysis. Operating experience has demonstrated the adequacy of DG 2B and of the measures taken to ensure proper alignment of main bearings. Therefore, this amendment would not affect DG 2B's capability to perform its intended safety function and would not increase the probability or consequences of an accident.

Also, it would not (2) create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed amendment would not introduce any new modes of operation and would not involve any modification to the facility. Finally, it would not (3) involve a significant reduction in a margin of safety because operating experience and inspection results have demonstrated that main bearing number 7 is as reliable as any other DG bearing.

Accordingly, the Commission has determined that the above change involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews

Duke Power Company, et. al., Docket No. 50-414, Catawba Nuclear Station, Unit, 2, York County, South Carolina

Date of amendment request: September 14, 1988

Description of amendment request: The proposed amendment would revise License Condition 2.C.(8)(b) of Catawba Unit 2 Facility Operating License, NPF-52, to allow an extension of time for the resolution of the Safety Parameter Display System (SPDS) issue. The extension of time would be for a period of approximately 10 months (from the completion of Unit second refueling outage until December 8, 1988). The modified License Condition 2.C.(8)(b) would then read "Prior to December 8, 1989, Duke Power Company shall add to the existing SPDS and have operational the following SPDS parameters: (a) residual heat removal flow, (b) containment isolation status, (c) stack radiation measurements, and (d) steam generator or steamline radiation. The actual value of test and all other SPDS variable should be displayed for operator viewing in easily and rapidly accessible display formats."

Basis for proposed no significant hazards consideration determination: Supplement 1 to NUREG-0737 required licensees to install and SPDS which provides a concise display of critical plant variables to control room operators to aid them in rapidly and reliably determining the safety status of the plant.

In February 1986, the NRC staff issued the low-power Facility Operating License, NPF-46, for Catawba Unit 2 along with Supplement 5 to the Safety Evaluation Report. Supplement 6 concluded that the Catawba SPDS does not fully meet the applicable requirements of Supplement 1 to NUREG-0737. However, since the staff did not identify any serious safety concerns with the existing system, the Catawba SPDS may be operated as an interim implementation until startup following the first refueling outage.

The SER identified five parameters and the backup display as modifications needing to be made to the Catawba SPDS. These requirements were imposed as License Condition 2.C.(9)(b) of the low-power Facility Operating License, NPF-46, and later as License Condition 2.C.(8)(b) in the full-power Facility Operating License, NPF-52.

On March 28, 1988, the licensee identified the requested changes as a plant-specific backfit and requested that the NRC staff prepare a backfit analysis. By letter dated June 13, 1988, the staff denied the licensee's backfit claim. On March 28, 1987, the licensee appealed the staff's denial of the backfit claim. By letter dated September 4, 1987, the staff concluded that 4 of the 5 parameters identified in Supplement 5 along with the backup displays should be added. One of the five parameters previously required, hot leg temperature, was already included as an input into SPDS.

By letter dated December 4, 1987, the licensee proposed that License Condition 2.C.(8)(b) of Catawba Unit 2 Facility Operating License NPF-52 be amended to (1) allow an extension of time for the resolution of the SPDS issue, and (2) make it consistent with NRC staff's conclusions contained in the September 4, 1987 letter. On February 18, 1988, the NRC approved the requested extension for one complete cycle of operation by the issuance of license amendment No. 32 for Catawba Unit 2.

By letter dated February 18, 1988, the licensee submitted a proposed final resolution of this issue. By letter dated May 13, 1988, the NRC staff accepted the licensee's proposal.

The SPDS is not a safety-grade system and is not intended to fulfill the post-accident monitoring requirements of Regulatory Guide 1.97. All parameters, including the addition the additional parameters, are already provided in the control room. It is, therefore, the licensee's conclusion that extension of the date of modification of the Catawba Unit 2 SPDS until December 8, 1989, does not involve any adverse safety considerations. The staff agrees with the licensee's evaluation for extending the implementation date by approximately 10 months.

The Commission has provided standards of determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license involves no significant hazards consideration if operation of the the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed amendment would not involve a significant increase in the probability of an accident previously evaluated because the SPD is provided as an aid to the operator, all parameters displayed on the SPDS are provided separately in the control room, and the SPDS is not used for control functions.

The proposed amendment would not create the possibility of a new or different kind of accident than previously evaluated because the design and operation of Catawba Unit 2 will not be affected.

The proposed amendment would not cause a significant reduction in a margin of safety. The extension of time in which to resolve the SPDS issue and perform required modifications would have no impact on safety margins because the SPDS is intended to aid the operators and is not relied upon as a safety system.

Based on the above consideration, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of amendment request: September 7, 1988

Description of amendment request: The Technical Specifications (TS) for Beaver Valley Unit 1 would be amended to impose requirements on the incore thermocouples, and reactor vessel level indicating system. In addition, the current reactor coolant system subcooling margins monitor specification would be modified to require at least one channel operable. These proposed changes reflect what the staff recommended in its safety evaluation dated May 12, 1987. The proposed changes also reflect the staff's technical position expressed in Generic Letter 83-37.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed changes impose new and additional requirements on the instruments installed to detect inadequate core cooling. The staff has reviewed the designs of these instruments as stated above, and has found them acceptable. These changes would not affect any accident analysis in the FSAR since the instruments do not initiate any automatic functions during an accident, but only serve to provide useful information on relevant parameters to the plant operators. The information can be used by operators to help reduce consequences of accidents. Therefore, the answers to the first two questions are negative. The use of these instruments will not result in the need to modify any system set points. There is, therefore, no change in the margins of safety of any system.

On such basis, the staff proposes to determine that the requested amendment involves no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment requests: September 7, 1988

Description of amendment requests: The licensee proposes to make administrative changes to the Technical Specifications (TS) to achieve consistency throughout the TS, remove outdated material, make minor text changes, and correct errors. The changes are grouped into three categories and cover both units.

Category 1 changes deal with achieving consistency between the Unit 1 TS and the Unit 2 TS. First, the Bases for the reactor flow-low trip function will be clarified in both unit TS Bases statements. The format of Table 3.7-3 in the Unit 1 TS, Fire Hose Stations, will be changed to reflect the format contained for the similar table in the Unit 2 TS. One per cent delta K/K will be changed in TS 3.9.1 for Unit 1 to 1,000 pcm, an equivalent value. PCM values are used throughout both Units' TS. The word

"Section" for 6.5.2.7 in TS 6.5.2.10 for Unit 1 will be replaced with the word "Specification" to achieve consistency in the TS.

Category 2 changes deal with correction of errors. TS page 3/4 3-19 for Unit 1 has two "b" subitems under the loss of power function unit. The second "b" should be a "c". The word "irradiated" is not spelled correctly in TS 3.9.3 for Unit 1; this will be corrected. The action statement in TS 3.9.5 for Unit 1 has the word "fo" instead of the word "of", which would also be corrected. The specification number on pages 3/4 12-1, 3/4 12-11, and 3/4 12-12 for the Annual Radiological Environmental Operating Report for Unit 1 and Unit 2 should read 6.9.1.8, and not 6.9.1.11. The specification number on page 3/4 12-11 for the Semiannual Radiological Effluent Release Report for Unit 1 and Unit 2 should read 6.9.1.7, and not 6.9.1.10. The words "specified" and "operational" on Bases page B 2-1 for Unit 2 are not spelled correctly; this will be corrected. Action statements "c" and "d" for Unit 2 specification 3.3.3.6 reference Table 3.3-11; the correct reference is Table 3.3-10. Fire detection instruments for Unit 2 located in Table 3.3-11 have errors. For example, the two listed flame detectors are not flame detectors but are heat detectors. In addition, similar inaccuracies will be corrected. TS 4.6.1.1 for Unit 2 references specification 3.6.4; the correct reference is specification 3.6.3. The last sentence in TS 4.7.6.1.1 for Unit 2 references specification 5.1.3, but there is no specification 5.1.3; therefore the sentence would be deleted. The first sentence under Functional Tests on page 3/4 7-22 for Unit 2 has the word "last" instead of the word "least"; this will be corrected. Fire Zone 34 should not be included in TS 3.7.11.2 for Unit 2 because Fire Zone 34 never had automatic fire suppression; this was an accepted NRC deviation. The Fire Hose Stations in Table 3.7.4 for Unit 2 would be clarified to better identify the Fire Hose Station locations. TS 4.7.11.4 for Unit 2 requires the yard fire hydrants to be visually inspected once during March, April, or May and once during September, October, or November; however, the actual months would not be specified because the climate at the St. Lucie site is characterized as subtropical marine. Lastly, TS 6.14 for Unit 2, which addresses the Offsite Dose Calculation Manual (ODCM), references the PCP (Process Control Program). The reference should be the ODCM.

Category 3 changes deal with outdated and fully satisfied conditions placed as footnotes in the TS. Footnote (e) for Table 3.3-1 in the Unit 1 TS is no longer applicable. The footnote for Unit 1 TS implementing the degraded grid voltage TS prior to Cycle 7 restart on pages 3/4 3-11, 3/4 3-15, and 3/4 3-19 are no longer necessary since the specifications were implemented as required. In regard to Unit 2 TS, certain sprinkler systems identified in TS 3.7.11.2 were to be installed and operable prior to exceeding 5% of rated thermal power. These conditions have been satisfied and the footnote specifying this would be deleted.

The licensee also proposes to delete a Unit 2 license condition. License Condition 2.C.12 required the licensee to address the issue of heavy loads in two steps: prior to startup following the first refueling outage and prior to 30 days of startup following the second refueling outage. The first step was one of the subjects of a license amendment application dated January 25, 1985, and the second step is one of the subjects of this license application. License Condition 2.C.12 was one of the subjects of a staff evaluation dated September 13, 1988 in support of Amendment No. 34. The staff found the licensee met the entire license condition and it is no longer a part of the license. Therefore, the staff considers the licensee's request of deletion of the second part of License Condition 2.C.12 a moot request and will not take further action on it.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has addressed these standards. The staff has deleted the licensee's arguments as far as License Condition 2.C.12 is concerned, since it is no longer a part of the license. In regard the first standard, the licensee provided the following information:

Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

For the changes intended to achieve consistency throughout the Technical Specifications, the intent of the Specification will not be changed nor will operating limitations of the Technical Specifications be changed. For the changes which involve correction of errors in the Technical Specifications, the changes proposed are intended to solely correct typographical errors or omissions from the Technical Specifications.

For the changes which propose to delete outdated and fully satisfied footnotes..., the NRC Staff's evaluation of the effect of the equipment or procedures required by footnote, and its completion to fully satisfy the Technical Specification requirement..., were previously evaluated and determined not to significantly affect the probability or consequences of an accident previously evaluated. This change proposes solely to remove outdated footnotes from the Technical Specifications.

The changes do not affect assumptions contained in plant safety analyses, nor do they affect Technical Specifications that preserve safety analysis assumptions. Therefore, the proposed changes do not affect the probability or consequences of accidents previously analyzed.

The licensee addressed the second standard as follows:

Use of the modified specification would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The changes being proposed by FPL will not lead to material procedure changes or to physical modifications to St. Lucie Plant. Therefore, the proposed changes do not create the possibility of a new or different kind of accident.

Lastly, the licensee provided the following rationale to address the third standard:

Use of the modified specification would not involve a significant reduction in a margin of safety.

The changes being proposed by FPL do not relate to or modify the safety margins defined in and maintained by the Technical Specifications. Therefore, the proposed changes should not involve any reduction in a margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination analysis, and agree that the standards have been met.

Based upon the above, the staff propose to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Florida Power and Light Company, et al., Docket No. 50-389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of amendment request: September 7, 1988

Description of amendment request: The amendment would change the value of Pa in Technical Specifications (TS) 3/4.6.1.1 entitled "Primary Containment Integrity," 3/4.6.1.2 entitled "Containment Leakage," and 3/4.6.1.3 entitled "Containment Air Locks." Pa is defined in Appendix J (Primary Reactor Containment Leakage Testing For Water Cooled Power Reactors) to 10 CFR Part 50 as the calculated peak containment internal pressure related to the design basis accident. The current value of Pa is 43.4 psig and represents the Main Steam Line Break Inside Containment (MSLBIC) peak containment internal pressure. The proposed value of 41.8 psig represents the Loss of Coolant Accident (LOCA) peak containment internal pressure. Pa is used to measure and calculate containment leakage rates in order to assure that radiological consequences as a result of an accident will not exceed the guidelines specified in 10 CFR Part 100.

The licensee's containment leakage rate TS (3/4.6.1.2) also permit reduced pressure testing. In this case, the allowable minimum pressure is one half of Pa. Thus, the licensee is proposing a test pressure of 20.9 psig instead of 21.7 psig when a reduced pressure test is conducted. Again, the reduced pressure testing is using the LOCA peak pressure as its basis, instead of the MSLBIC peak pressure.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above three standards in the amendment application. In regard to the first standard, the licensee provided the following analysis:

Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment change does not involve a significant increase in the probability or consequences of an accident previously evaluated because the primary reactor containment is designed to accommodate, without exceeding the design leakage rate and with sufficient margin, the calculated pressure and temperature conditions resulting from a loss of coolant accident. This meets the requirement of 10 CFR 50 Appendix A Criterion 50 for the containment to retain its integrity during a loss of coolant accident. Satisfactory leak rate testing at the value of the peak calculated containment pressure following a loss of coolant accident provides the assurance required by the design basis 3/4.6.1.1 - Containment Integrity, that any release of radioactive materials will be restricted to that assumed in the safety analysis. The probability or consequences of an accident are not significantly increased because there is no change to the containment design basis nor the ability of the containment to perform the required function of preventing the release of radioactivity to the environment.

In connection to the second standard, the licensee stated:

Use of the modified specification would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The use of this modified specification cannot create the possibility of a new or different kind of accident from any previously evaluated since the design features of the primary reactor containment as required by Criterion 16 of 10 CFR 50 Appendix A are not altered. The testing at the calculated peak accident pressure during a loss of coolant accident demonstrates that the reactor containment and associated systems provide an essentially leak-tight barrier against the uncontrolled release of radioactivity to the environment. No new failure mode is introduced due to the change of test pressure, since the assurance of integrity at the calculated accident pressure is maintained by testing at the value.

With regard to the third standard, the licensee provides the following rationale:

Use of the modified specification would not involve significant reduction in a margin of safety.

The existing test pressure using the calculated peak pressure value for the main steam line break (MSLB) tests the containment to a higher pressure than is required. This could be considered as providing a greater margin of safety since testing at approximately 104% of calculated accident peak value insures [sic] that the actual pressure stress is accommodated. However, there is no requirement for the test pressure to be higher than the calculated design basis accident peak pressure. For purposes of protection from radiological releases, the peak loss of coolant accident (LOCA) pressure is appropriate and the peak MSLB pressure is not appropriate. As shown in St. Lucie Unit 2 Tables 15.0-4a and 15.6.6-12 the radiological consequences of a LOCA produce a minimum of 675 times the site boundary dosage as the inside containment MSLB. Article NE-3112.1 - Design Pressure, of 1986 ASME Boiler and Pressure Vessel Code, states that the design internal pressure shall not be less than 100% of the maximum containment internal pressure under conditions for which the containment function is required, i.e., LOCA event. Prior to being placed in service, the containment was successfully tested by being pressurized to 50 psig which verified the design pressure of 44 psig.

Therefore, the modified specification which establishes the peak accident containment pressure corresponding to the actual accident requiring containment integrity does not reduce any margin of safety. The containment vessel structural integrity requirement of Technical Specification 3/4.6.1.6 is met in that the design pressure of 44 psig is greater than 100% of the 41.8 psig which is the condition for which the containment function is required. Furthermore, this Technical Specification considers the higher MSLB pressure (43.4 psig) in the determination of containment structural integrity.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. Based upon this review, the staff believes that the licensee has met the three standards.

The staff adds the following considerations in support of a no significant hazards consideration determination. The containment internal design pressure is 44 psig and the design leak rate is 0.50 percent by weight of the containment air per day. These design values will not be affected by the proposed change. The peak allowable (during operation) primary containment pressure of +0.40 psig (TS 3/4.6.1.4) will not change and coupled with the MSLBIC peak pressure of 43.4 psig or the LOCA peak pressure of 41.8 psig will ensure that the containment vessel will remain within its 44 psig design value, as specified in Section 5.2 of the TS entitled "Containment - Design Pressure and Temperature." The maximum allowable leak rate is a TS value (3/4.6.1.2 - Containment Leakage) and this will not change, as a result of the licensee's proposed change.

The proposed change to Pa will not change the accident analyses and resultant radiological consequences for the postulated LOCA and MSLBIC accident. In the case of a LOCA, the radiological consequences are within the guidelines of 10 CFR Part 100. The significant containment parameter for this analysis is the containment leakage rate and this will not change. Implicit with the containment leakage rate is the associated peak containment pressure associated with the LOCA. The use of the LOCA peak pressure for Pa will ensure that the leakage rate is measured and calculated appropriately.

In the case of a MSLBIC, the radiological consequences are well within the guidelines of 10 CFR Part 100. The licensee stated that (1) the LOCA typical dose is 675 times the MSLB thyroid dose and 2.6×10^5 times the

MSLB whole body dose at the site boundary for the 0 to 2 hour dose calculations, and (2) the total event comparison shows an even larger difference. The significant containment parameter for this analysis is the containment leakage rate and this will not change. Implicit with the containment leakage rate is the associated MSLBIC peak containment pressure. Although the licensee will now use the LOCA peak pressure for Pa instead of the MSLBIC peak pressure, this will not significantly affect the radiological consequences which are much smaller for the MSLBIC case versus the LOCA case.

Based upon the above discussion, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendments request: September 21, 1988

Description of amendments request: The proposed amendments would revise Section 3.1.2 of the Technical Specifications (TS) by incorporating modified pressure and temperature (P/T) limits for the Reactor Coolant System (RCS) and pressurizer. These P/T limits take the form of parametric curves which define the permissible operating envelope during reactor heatup, cooldown, criticality, and inservice leak and hydrostatic testing. Because the P/T limits are based partly on the most limiting nil-ductility temperature for the reactor vessel, it is necessary to periodically revise the limits to account for the effects of irradiation and other factors on the nil-ductility temperature. The P/T limits currently in the TS are applicable up to 10 effective full power years (EFPY). The proposed change will replace these P/T curves with revised curves applicable up to 20 EFPY. The Turkey Point reactor pressure vessel surveillance program provides updated materials data for refining the estimated effects of irradiation on the nil-ductility temperature.

In addition to the proposed modification of P/T limits, the amendments would also convert the TS to the standard format and revise the "Bases" section to be consistent with the revised P/T curves.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed change in accordance with the standards of 10 CFR 50.92 and has determined that operation of Turkey Point Units 3 and 4 in accordance with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The pressure/temperature (P/T) limit curves in the Technical Specifications are conservatively generated in accordance with the fracture toughness requirements of 10 CFR [Part] 50, Appendix G as supplemented by Appendix G of Section III of the ASME Boiler and Pressure Vessel Code. The RT_{NDT} values for the revised curves are based on Regulatory Guide 1.99, Revision 2, dated May 1988, as discussed in Westinghouse Electric Corporation Report titled "Reactor Vessel Heatup and Cooldown Limit Curves for Normal Operation." The analysis of reactor vessel material irradiation surveillance specimen revised curves in conjunction with the surveillance specimen program ensures that the reactor coolant pressure boundary will behave in a non-brittle manner and that the possibility of rapidly propagating fracture is minimized.

The revised pressure/temperature limit curves do not represent a significant change in the configuration or operation of the plant and thus do not involve an increase in either the probability or the consequences of accidents previously evaluated.

(2) Create the possibility of a new or different kind of accident.

The analysis performed has resulted in revised P/T limits based on the fracture toughness requirements of 10 CFR [Part] 50, Appendix G. Since there is no significant change in the configuration or operation of the facility due to the proposed amendment, use of the revised P/T limits will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Involve a significant reduction in a margin of safety.

The proposed change will not involve a significant reduction in a margin of safety because the requirements of 10 CFR [Part] 50, Appendix G are satisfied.

In addition, with respect to the reformatting change, the Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples [(51 FR 7751)] of amendments that are considered not likely to involve a significant hazards consideration. Example (i) relates to a purely administrative change to Technical Specifications: for example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature. The proposed change reformatting the existing requirements in TS 3.1.2 is similar to example (i) in that it is an administrative change which states the requirements in a format consistent with that of the Standard Technical Specifications and does not involve technical or plant modifications.

Therefore, operation of the facility in accordance with the proposed amendment would pose no threat to the public health and safety, and would not involve a significant hazards consideration.

The staff notes that the licensee has determined the new P/T limits using the latest staff guidance in Regulatory Guide 1.99, Revision 2, dated May 1988. It is routine for licensees to refine their P/T limit curves based on the latest information available from reactor vessel materials surveillance programs. The revisions to the curves appear to be modest and are based on more data than were available when the 10 EFPY curves were developed. The changes in format are administrative in nature and, therefore, have no affect on the public health and safety. The revised "Bases" reflect the new P/T curves and provide a better understanding for the specific TS but do not impact the plant configuration or operation. For these reasons, and those given (above) by the licensee, the staff agrees with the licensee's determination, and therefore proposes to determine that the amendments do not involve a significant hazard consideration.

Local Public Document Room location: Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzer, P.C., 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-424, Vogtle Electric Generating Plant, Unit 1, Burke County, Georgia

Date of amendment request: March 27 and November 24, 1987, and January 6, 1988

Description of amendment request: In accordance with the requirements of 10 CFR 73.55, the licensees submitted an amendment to the Physical Security Plan for the Vogtle Electric Generating Plant to reflect recent changes to that regulation. The proposed amendment would modify paragraph 2.E. of Facility Operating License No. NPF-68 to require compliance with the revised Plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised plan on March 27 and November 24, 1987, and January 6, 1988, to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the revised plan.

In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendments is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations (51 FR 7750). One of these examples of actions involving no significant hazards considerations is example (vii) "A change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Chandler Building, Suite 1400, 127 Peachtree Street, N.E., Atlanta, Georgia 30043.

NRC Project Director: David B. Matthews

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-424, Vogtle Electric Generating Plant, Unit 1, Burke County, Georgia

Date of amendment request: August 12, 1988

Description of amendment request: The proposed amendment revises Technical Specification 4.5.2, "ECCS Subsystems - Tavg Greater Than or Equal to 350° F" and its bases. The revision clarifies that Residual Heat Removal Cold Leg Injection Valves HV-8809A and HV-8809B may be temporarily closed in Mode 3 during leakage testing of reactor coolant system pressure isolation check valves.

Basis for proposed no significant hazards consideration determination: The proposed change specifies that valves HV-8809A and B may be temporarily closed in Mode 3 during leak testing of Reactor Coolant System (RCS) pressure isolation check valves. Leak testing of these check valves is required following each refueling outage, following valve realignment or maintenance, and prior to entering Mode 2 following a cold shutdown of 72 hours or more (if not tested in the previous 9 months). The optimum plant condition for leak testing of the pressure isolation check valves is Mode 3 at full RCS pressure, just prior to entering Mode 2. At this point, valve disturbances are complete and better seating of the check valves will produce more meaningful test results.

The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR Part 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

In regard to the proposed amendment, the licensee has determined the following:

1. The proposed change will not significantly increase the probability or consequences of an accident previously evaluated. Closure of valves HV-8809A and B to allow RCS pressure isolation check valve testing in Mode 3 has no impact on any mechanism that could potentially cause a loss of coolant accident (LOCA). The probability of a LOCA is therefore not increased. The consequences of a LOCA occurring with either HV-8809A or B closed are bounded by previous analyses of a LOCA in Mode 3 with portions of the emergency core cooling system (ECCS) disabled. Those previous analyses were performed assuming flow was available from one residual heat removal (RHR) pump, one intermediate head safety injection (SI) pump, and one high head charging pump. Further, the analyses assumed that automatic SI actuation on low pressurizer pressure was blocked; thus, only automatic SI actuation on containment high pressure was available. In actuality, during leak testing of the pressure isolation check valves, all ECCS pumps and accumulators (above 1000 psig) are available. In addition, automatic SI actuation on low pressurizer pressure is available above approximately 1900 psig when the operator unblocks this signal. The analyses showed that adequate ECCS flow was available to meet core cooling requirements and that the ECCS design and licensing bases were satisfied. The consequences of a LOCA are, therefore, not increased.

2. The proposed change does not create the possibility of a new or different kind of accident than any accident previously evaluated. The change does not introduce any new equipment into the plant or require any existing equipment to operate in a different manner from which it was designed to operate. The change, therefore, does not create a new failure mode, and a new or different kind of accident could not result.

3. The proposed change does not significantly reduce a margin of safety. The change has no effect on safety limits or limiting safety system settings. Probabilistic analyses have shown that RHR or low head SI unavailabilities are not significantly increased by periodic, temporary closures of valves HV-8809A and B for pressure isolation check valve leak testing. Margins of safety are, therefore, not significantly reduced.

The NRC staff has reviewed the licensee's determination and concurs with its findings.

Accordingly, the Commission proposes to determine that the proposed change involves no significant hazards considerations.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Chandler Building, Suite 1400, 127 Peachtree Street, N.E., Atlanta, Georgia 30043

NRC Project Director: David B. Matthews, Director

Illinois Power Company, Soyland Power Cooperative, Inc., Western Illinois Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: May 18, 1988

Description of amendment request: This proposed amendment would revise Technical Specification Sections 3/4.3.7.8 and 4.7.2.e.2 and Bases Section 3/4.3.7.8 in order to delete the requirement for the chlorine detection system. The proposed revision is based on the fact that the chlorine hazard is being removed from the site, i.e., all liquid chlorine is being removed from the site and there are no other significant depots of chlorine within a five mile radius of the site. Furthermore, there is negligible transportation of chlorine in the vicinity of the site.

The licensees intend to replace the existing chlorination system on site and at the site sewage treatment plant, the only other location within a five-mile radius of the control room in which chlorine is stored, with a sodium hypochlorite or equivalent system that obviates the use of liquid chlorine for water treatment. Thus, the threat to control room habitability from an accidental release of chlorine on site will be removed.

Basis for Proposed No Significant Hazards Consideration Determination: The staff has evaluated this proposed amendment and determined that it involves no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because deleting the Operability and Surveillance requirements for the chlorine detection system is contingent upon the removal of all major depots or storage tanks of chlorine that constitute a hazard as described in Regulatory Position C.1 of Regulatory Guide 1.78. This, in conjunction with the negligible risk associated with a transportation accident in the vicinity of Clinton (as determined according to the guidelines of Regulatory Position C.2 of Reg. Guide 1.78), makes the probability or consequences of a chlorine accident negligible for Clinton.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated because the associated plant modification for converting to a sodium hypochlorite or equivalent system only affects the means by which the water is chlorinated and has no direct impact on the design or operation of plant systems other than the chlorination system itself.

The proposed change does not involve a significant reduction in a margin of safety because the margin of safety with respect to a chlorine gas release has been maximized by removal of chlorine gas from the site. The only safety contribution of the chlorine detection system was in the detection of chlorine release. With no chlorine source present, deletion of the chlorine detection system can not affect the margin of safety.

For the reasons stated above, the staff believes this proposed amendment involves no significant hazards considerations.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Attorney for licensees: Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606

NRC Project Director: Daniel R. Muller

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: August 10, 1988

Description of amendment request: The proposed amendment would revise the Duane Arnold Energy Center (DAEC) Technical Specifications (TS's) to reflect new fuel loaded into the core for Cycle 10 operation. The proposed changes update the fuel thermal limits of Section 3.12 and upgrade the fuel cladding integrity Safety Limit of Section 1.1.A.

As new fuel bundle types are added to the reactor core, the design basis Loss-Of-Coolant Accident (LOCA) must be reanalyzed and the Technical Specifications updated to include the operating limits of these new bundle types. As part of the reload for Cycle 10, General Electric Company (GE) has reanalyzed the design basis event for the new bundle type being added to the core. The TS revision will add the Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) operating limits for the new bundle type.

Also as part of the reload licensing process for Cycle 10, GE has reanalyzed the most limiting abnormal operational transients as specified in Table 15.0-1 in the updated DAEC Final Safety Analysis Report. The TS change will revise the Minimum Critical Power Ratio (MCPR) operating limits, based on this analysis, for all fuel types to be used in Cycle 10 operation.

The new fuel assemblies being added to the core are the advanced GE8X8EB design. The NRC staff previously approved this fuel design and revised MCPR operating limits in amendments to the GE Standard Application for Reactor Fuel (GESTAR-II).

In addition, various administrative changes are being made, such as revising figure numbers, updating the Table of Contents, and renumbering pages.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards (10 CFR 50.92(c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

In reviewing this proposed request for Technical Specification changes, the licensee has concluded:

(1) The proposed change will not involve any significant increase in the probability or consequences of an accident previously evaluated because no changes are being made to the facility or its equipment other than the introduction of the higher enrichment GE8X8EB fuel. This fuel type is essentially the same as the fuel currently in place and has been found acceptable for use by the NRC staff in Amendment 10 to GESTAR-II.

GE analysis of the LOCA for the new fuel was performed using the NRC staff-approved SAFER/GESTR models. This analysis provided the new MAPLHGR operating limits which assure that the requirements of 10 CFR 50.46 are met during plant operation, so there is no significant increase in the probability or consequences of an accident previously evaluated.

The GEMINI transient modeling methodology was used to re-evaluate the most limiting operational transients for all bundle types used in Cycle 10. The new MCPR operating limits resulting from this analysis will assure the plant is operated with acceptable fuel cladding integrity safety limits. Therefore, there is no increase in the probability or consequences of an accident previously evaluated.

Changes in fuel design and modeling methods have enabled GE to upgrade the Minimum Critical Power Ratio Safety Limit to 1.04 while maintaining all fuel performance criteria specified in the DAEC Final Safety Analysis Report. The NRC has generically approved this upgrade (NRC SER to Amendment 14 to GESTAR-II). Therefore it will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The administrative changes will not involve significant increases in the probability or consequences of an accident previously evaluated.

(2) The proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated because the facility is not being changed except for the introduction of the higher enrichment fuel. Since this fuel is essentially the same as the fuel currently in place and has been found acceptable for use per Amendment 10 to GESTAR-II, there is no possibility that its use will create a new or different kind of accident.

The MAPLHGR curve for this new fuel and revised MCPR operating limit are specified to assure the plant does not exceed applicable safety limits and thus, do not, in and by themselves, create the possibility of a new or different accident from previously evaluated.

Upgrading the MCPR Safety Limit will not create the possibility of a new or different kind of accident from previously evaluated because the new Safety Limit value satisfies all fuel performance criteria specified in the updated DAEC Final Safety Analysis Report. This change has been generically approved for use by the NRC staff in Amendment 14 to GESTAR-II.

The administrative changes will not create the possibility of a new or different kind of accident than previously evaluated.

(3) The proposed change will not involve a significant reduction in the margin of safety because the higher enrichment fuel is designed to meet all standards of safety as the fuel previously described in GESTAR II.

The addition of the new fuel's MAPLHGR operating limit will assure the acceptance criteria of 10 CFR 50.46 will be met. Therefore, this change will not involve a reduction in the margin of safety since the margin of safety is defined by the acceptance criteria of 10 CFR 50.46.

Alteration of the MCPR operating limit curve is based on maintaining the margin of safety as specified in the FSAR during the most limiting operational transients. Therefore, this change assures the plant is operated within acceptable fuel cladding safety limits and thus, does not involve a significant reduction in the margin of safety.

The upgrade of the MCPR Safety limit to 1.04 meets all fuel performance criteria specified in the DAEC FSAR. Therefore, this change will not significantly reduce the margin of safety.

The administrative changes will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. In addition, the Commission has published examples (51 FR 7751) of proposed amendments that are likely to be found to involve no significant hazards considerations, if operation of the facility in accordance with the proposed amendment involves only one or more of the following: "...(iii) for a nuclear power reactor, a change resulting from a nuclear reactor core reloading, if no fuel assemblies significantly different from those found previously acceptable to the NRC for a previous core at the facility in question are involved. This assumes that no significant changes are made to the acceptance criteria for the technical specifications, that the analytical methods used to demonstrate conformance with the technical specifications and regulations are not significantly changed, and that NRC has previously found such methods acceptable."

The proposed amendment fits the above example, as discussed in the licensee's analysis. Therefore, the NRC staff has made a proposed determination that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036.

NRC Project Director: John N. Hannon.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: August 29, 1988.

Description of amendment request: The proposed amendment would revise Technical Specification Table 3.2-B to change the setpoints for the Uninterruptible AC and Instrument AC systems undervoltage relays from 220 VAC 275% to 110 VAC 275%. This change is necessary because the licensee intends to modify the power supplies to these systems from a 120/240 VAC split-phase system to a Class 1E, 120 VAC single-phase system, in order to meet Regulatory Guide 1.97 (Revision 2) requirements.

The licensee also proposes other administrative changes, including deletion of a surveillance requirement that was unintentionally retained in the Technical Specifications in a previous license amendment.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards (10 CFR 50.92(c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated this proposed Technical Specification change and has concluded:

(1) This proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The change will permit the installation of upgraded power supplies for the Uninterruptible AC and Instrument AC electrical systems. The function of the Uninterruptible AC and Instrument AC undervoltage relays is to provide a signal for control room annunciators when a degraded voltage condition or loss of power to these systems is sensed. This function remains unchanged. Conversion of the power supplies from a 120/240 VAC split-phase system to a 120 VAC single phase system requires changing the undervoltage relays from 240 VAC (rated voltage) relays to 120 VAC (rated voltage) relays, and therefore the undervoltage relay setpoints must be changed.

The changes will not alter the function of any equipment that is powered by the Uninterruptible AC or Instrument AC electrical systems. Both systems will continue to have the same number of alternate power sources. However, the improved technology and Class 1E (as defined by IEEE Standard 323) qualification of the new power supply systems will improve the reliability as compared to the existing power supplies. Therefore the probability of an accident previously evaluated is not increased.

The consequences of accidents previously evaluated in the Final Safety Analysis Report (FSAR) are not increased. A loss of power to the Uninterruptible AC and Instrument AC electrical systems cannot be caused by the annunciator setpoint changes. The setpoint changes will not degrade operator response and a failure of the new power supplies is no worse than failure of the existing power supplies. Failure of existing power supplies for the Uninterruptible AC and Instrument AC electrical systems was previously analyzed in the DAEC FSAR and these analyses will remain unchanged by the proposed TS changes.

(2) This proposed amendment does not create the possibility of a new or different kind of accident from any previously

evaluated. The setpoint changes for the Uninterruptible AC and Instrument AC electrical system undervoltage relays will not change the function of these relays (to initiate a control room annunciator when bus voltage is degraded or power to the bus is lost).

The undervoltage relays for the Uninterruptible AC and Instrument AC electrical systems do not provide any automatic trip, automatic transfer, or initiation signals to any equipment that mitigates an accident, nor are the relays an accident initiator. The setpoint changes will not adversely affect the performance of the new power supplies or any of the loads connected to the busses. The new setpoints were determined using a methodology similar to that used to establish the existing setpoints and are consistent with vendor recommendations.

(3) This amendment does not involve a reduction in a margin of safety because the change involves only an annunciator setpoint. The operation or reliability of the Instrument AC and Uninterruptible AC electrical systems will not be degraded and none of the system loads will be adversely affected by this setpoint change. There are no automatic functions associated with these undervoltage relays and the annunciator function remains unchanged. The new setpoints were determined using a methodology similar to that used to establish the existing setpoints and are consistent with vendor recommendations. Consequently, control room operator response is judged not to be degraded or impaired by the revised setpoints. Therefore, no margin of safety is affected by this change.

The proposed administrative changes will not increase the probability or the consequences of any previously analyzed accident, introduce any new accident, or reduce an existing margin of safety. The NRC staff has reviewed the licensee's proposed no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the proposed TS changes involve no significant hazards considerations.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036.

NRC Project Director: John N. Hannon.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: September 2, 1988

Description of amendment request: The proposed amendment would revise the Duane Arnold Energy Center (DAEC) Technical Specifications (TS's) to support the changes to Containment and Torus Water Level instrumentation. The amendment would update Tables 3.2-F, 3.2-H, 4 2-H and the Notes for Table 3.2-H to reflect the new ranges, surveillance requirements and nomenclature of the level instruments. In addition, administrative errors in Tables 3.2-F, 3.2-H and 4.2-F would be corrected to reflect actual plant conditions. The proposed amendment would implement changes that were approved by the NRC staff as part of the licensee's Detailed Control Room Design Review (DCRDR).

As part of the DCRDR program, the range for measurement of containment water level would be revised to reflect the actual height of the containment penetration at which measurements are made and read (only positive values). This would allow a direct comparison between containment and torus water level. In addition, the containment water level instrument would be relocated to Table 3.2-H to facilitate use by operators and would be added to Table 4.2-H to assure the surveillance requirements are met. Notations would be added to Table 3.2-H to clarify that torus water level is the primary indication and that containment water level is solely a backup indication.

The stated range of torus water level measurement would be altered to reflect the actual height of the level instrument and torus penetrations. The reduced range would meet all criteria specified in the Regulatory Guide 1.97 and FSAR Section 6.2.1.5 and would be more accurate and indicative of actual torus water level. In addition, descriptions in Table 4.2-F would be changed from Suppression Chamber Temperature and Water Level to Torus Water Temperature and Water Level, respectively, for nomenclature consistency.

The stated ranges of instruments for torus water temperature (Table 3.2-F) and drywell pressure (Table 3.2-H) would be revised to correct errors.

Local indicators for drywell and torus pressure in Tables 3.2-F and 4.2-F would be deleted to complete the removal of the drywell/torus differential pressure system from the Technical Specifications. This system was deleted in Amendment 137.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards (10 CFR 50.92(c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated or (3) involve a significant reduction in a margin of safety.

In reviewing this proposed request, the licensee has concluded that:

(1) The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The revisions to the tables are purely administrative in nature. Changing the torus and containment instrument ranges does not, in any way, alter the purpose or function of these instruments. The requirement for torus water level indication, as specified in Section 6.2.1.5 of the FSAR and Regulatory Guide 1.97, remains satisfied. Relocating the containment water level instrument from Table 3.2-F to Table 3.2-H improves consistency and human factors of the TS. Adding the notation that containment water level is solely a backup indication for torus water level indication merely clarifies the requirements intended in Amendment 134. Adding surveillance requirements for the containment water level instruments results in more stringent control of calibration and testing requirements than previously existed.

Correcting errors in the statements of ranges of the torus water temperature and drywell pressure instruments results only in improved Technical Specification accuracy. No physical changes to the instruments are being made, nor will their purpose or function be altered.

The local indicators for drywell and torus pressure listed in Tables 3.2-F and 4.2-F were part of the drywell/torus differential pressure system. The Mark I program made this system unnecessary. It was deleted from the Technical Specifications as part of Amendment 137 which should have included these instruments. They are being deleted now to correct omissions from Amendment 137 and to simplify the Technical Specification.

Based on the above discussion, none of these administrative changes involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) The proposed amendment does not create the possibility of a new or different kind of accident. The minor physical changes to these instruments do not alter their purpose or function. The relocation and addition of surveillance requirements for containment water level only improves human factors and provides greater assurance of satisfactory operation by clarifying existing requirements. The changes in nomenclature, deletion of unnecessary instrumentation and correction of errors improves human factors and Technical Specification accuracy.

(3) The proposed amendment does not involve a significant reduction in the margin of safety. The correction of stated instrument ranges in the tables is purely administrative in nature. In fact, the improved accuracy and ease of instrument comparison will better enable the operators to respond to accident situations. The relocation and addition of surveillance requirements for containment water level will only assure that satisfactory instrument operation is maintained by clarifying the existing requirements. The correction of errors, changes in nomenclature and deletion of unnecessary instrumentation will improve the human factors of the Technical Specifications.

The NRC staff has reviewed the licensee's proposed no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the amendment would not involve significant hazards considerations.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036.

NRC Project Director: John N. Hannon.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: September 2, 1988

Description of amendment request: The proposed amendment would delete Millstone Unit 3 Technical Specification Table 3.6-2 which lists containment isolation valves. The requirement for operable containment isolation valves would be retained in Technical Specification 3/4.6.3. The Technical Specification basis requires FSAR Table 6.2-65 to specify the listing of required containment isolation valves. Licensee changes to the FSAR listing shall be made in accordance with 10 CFR 50.59 and approved by the Plant Operations Review Committee.

In addition, certain manual valves that could be opened during operation are retained in Technical Specifications. Technical Specification Table 3.6-2 allowed periodic opening of these valves during modes 1 through 4 for various reasons, as long as they remained administratively controlled to specify rapid closure under accident conditions.

Basis for proposed no significant hazards consideration determination: The Millstone Unit 3 TSs currently contain a number of equipment lists that are the subject of Limiting Conditions for Operation (LCOs) and Surveillance Requirements (SR). In each case, these lists only contain equipment identifications and no other LCO/SR related information, (e.g., trip setpoints) are involved. The licensee has proposed that the equipment lists contained in TS Tables 3.6-2 be incorporated and maintained in the Millstone Unit 3 FSAR.

In the event that changes are needed to the information to be contained in the FSAR, the proposed changes would be evaluated in accordance with the process detailed in 10 CFR 50.59 and approved by the Plant Operations Review Committee. The licensee has also proposed removing references to the Table in the subject TS but otherwise, the LCOs and SRs would remain unchanged.

Certain manual valves are permitted to be opened during operation as long as they are administratively controlled. Operation of these valves currently allows testing, maintenance and other activities on the following systems: Fire protection, post accident sampling, hydrogen recombiner, service air, RCS loop fill, demineralized water and containment vacuum. License control of these valves when opened in Modes 1 through 4 requires rapid closure if necessary, to isolate the containment during accident conditions. This specific listing has been included in a note in Technical Specification 4.6.1.1.a. and any future changes to this list will be controlled by the license amendment process.

The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c).

We have reviewed the licensee's proposed changes to the TS and conclude that the proposed changes will not:

(1) Involve a significant increase in the probability of occurrence or consequences of an accident previously analyzed. Since there are no proposed changes to the LCO or SR, no changes in operability of the subject equipment will occur. Accordingly, there will be no effect on previously analyzed accident.

(2) Create the possibility of a new or different kind of accident from any previously analyzed. Since there are no changes in the way the plant is operated, the potential for an unanalyzed accident is not created. No new failure modes are introduced.

(3) Involve a significant reduction in a margin of safety. Since the proposed changes do not affect the consequences of any accident previously analyzed, there is no reduction in any margin of safety.

Accordingly, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, One Constitution Plaza, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: August 31, 1988

Description of amendment request: The proposed license amendment would: (1) correct an error in existing Technical Specification (TS) action statement 3.7.B.1.b to specify that the Standby Gas Treatment System is required, consistent with the existing definition of Secondary Containment Integrity in TS Section 1.0; (2) incorporate paragraph 4.7.A.2.d which was inadvertently deleted by License Amendment No. 55; and (3) to make other editorial corrections.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists [10 CFR 50.92(c)], and has also published certain examples for making such a determination (51 FR 7751). One of the examples published is (i) "A purely administrative change to the technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature."

The licensee has evaluated the proposed changes against the standards and examples provided by the Commission and has concluded that the changes are administrative in nature. The Commission's staff has reviewed the licensee's evaluation and agrees that the changes are administrative, correcting errors to achieve Technical Specification consistency. Accordingly, the Commission proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Theodore Quay, Acting.

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of amendment request: May 11, 1988

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) to add new valves and controls to the existing list of containment isolation valves which require periodic surveillance. The amendment would also delete Note 28 on page 3/4 6-43 which would no longer be applicable.

As discussed in the staff's Safety Evaluation Report (SER) related to the operation of Limerick Generating Station, Units 1 and 2, NUREG-0991, the staff concluded that the Limerick Containment Isolation System met the requirements of General Design Criterion 56 except in certain instances pertaining to the Hydrogen Recombiners, the Drywell Chilled Water System (DCW) and the Reactor Enclosure Cooling Water Systems (RECW). The staff's position was that a second containment isolation valve was required in the lines to and from the Hydrogen Recombiners penetrating containment. For the RECW and DCW, the staff's position was that the remote-manual isolation valves should be replaced with automatic isolation valves with diverse isolation signals. This applied to the RECW inboard and outboard isolation valves and the DCW outboard isolation valves in all the supply and return lines.

When Facility Operating License NPF-39 was issued, it contained Conditions (10) and (11) requiring that the above modifications be installed prior to startup following the first refueling outage. Limerick 1 was shutdown from May 15, 1987 to August 31, 1987 for the first refueling outage. The required modifications were completed during the outage. The purpose of the amendment is to add the valves which were installed as part of the modifications to the list of containment isolation valves requiring periodic surveillance.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin safety.

The licensee's analysis contained in their May 11, 1988 application states the following in response to the three NRC criteria referenced above:

(1) The proposed changes to the Technical Specifications to include the additional primary containment isolation valves do not involve a significant increase in the probability or consequences of an accident previously evaluated.

As evaluated in Section 6.2.4.2 of the Limerick Final Safety Analysis Report, (FSAR), the main objective of the containment isolation system is to prevent release to the environment of radioactive materials. This is accomplished by isolation of system lines penetrating the primary containment. Redundancy is provided so that active failure of any single valve or component does not prevent containment isolation.

The evaluation in Section 15.6.5 of the FSAR concludes that the primary containment is designed to maintain pressure integrity in the event of an instantaneous rupture of the largest single primary system piping within the structure, while also accommodating the dynamic effects of the pipe break. Therefore, any postulated LOCA would not exceed the containment design limits. The additional automatic features and valves to be installed in the primary containment isolation system will enhance the plants ability to isolate the primary containment in the event of an accident.

Based on the design which meets the requirements of SRP 6.2.4, and NRC Regulatory Guide 1.141, the valves and automatic features which are being added to the Hydrogen Recombiners; The Reactor Enclosure Cooling Water and the Drywell Chilled Water Systems, and based on the previous approval by the NRC Staff, the proposed changes to the Technical Specifications do not involve an increase in the probability or consequences of any previously evaluated accidents.

(2) The proposed changes to the Technical Specifications to include the additional primary containment isolation valves do not create the possibility of a new or different kind of accident from any previously evaluated.

The Containment Isolation System design was evaluated in the Final Safety Analysis Report (FSAR) and the SER. In the FSAR, the system design was evaluated as follows:

- Code Class and Seismic Design - Section 3.2
- Missile Protection - Section 3.5
- Protection Against Dynamic Effects Associated with the Postulated Rupture of Piping - Section 3.6
- Environmental Design - Section 3.11
- Valve Endurance/Operability - Section 3.9.3
- Leakage - Manual Valves - Section 5.2.5
- Containment Isolation - Section 6.2.4
- Leakage Testing - Section 6.2.6
- Essential/Non-Essential Classification - Table 6.2-37
- Normal/Accident Environmental Conditions - Section 3.11
- Control/Automatic Systems - Section 7.3.1.1.2

Further, the design and implementation of this modification has no effect on the ability to safely shutdown the Plant in the event of a fire, as required by Appendix R of Title 10 CFR Section 50.

Based on the previous evaluation contained in the FSAR and based upon the previous NRC acceptance of these changes in the SER, and based on the modifications meeting the provisions of NRC Regulatory Guide 1.141, the proposed changes to the Technical Specifications listing these additional valves along with the existing primary containment isolation valves, do not create the possibility of a new or different kind of accident from any previously evaluated.

(3) The proposed changes to the Technical Specifications to include the additional primary containment isolation valves do not involve a significant reduction in a margin of safety.

The Containment Isolation System is designed to prevent or limit the release of radioactive materials that may result from postulated accidents. This is accomplished by providing isolation barriers in lines that penetrate primary containment. The additional valves and controls being added allow for automatic isolation of the primary containment and their inclusion in the list of primary containment isolation valves does not involve a reduction in a margin of safety.

The staff has reviewed the licensee's analysis and agrees with it. Therefore, we conclude that the proposed amendment satisfies the three criteria listed in 10 CFR 50.92(c). Based on that conclusion, the staff proposes to make a "no significant hazards" determination.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: September 7, 1988

Description of amendment request: The proposed changes to Technical Specification pages 240 h, o, and q reflect a modification (No. 2390) to the Diesel Generator Building Carbon Dioxide Fire Suppression (Cardox) System to correct design deficiencies. There are four diesel generators at Peach Bottom common to Unit 2 and Unit 3. Each is housed in a separate room of the Diesel Generator Building. The fifth room of the Diesel Generator Building, the Cardox room, houses the Cardox system carbon dioxide storage tank, refrigeration equipment, master selector valves and batteries that provide back up power to the Cardox control components. This room also contains pumps and fans unrelated to the Cardox system.

The original Cardox system was not classified as safety related or seismic. Yet, this system provides a trip signal to diesel generators upon Cardox actuation. This trip exists because each diesel generator engine draws combustion air from within its room. Consequently, in the event of a fire and carbon dioxide discharge into a diesel generator room, the diesel engine would draw in carbon dioxide. This could result in loss of the diesel due to suffocation of the engine, and reduction of the carbon dioxide concentration in the room to the point where the fire may not be extinguished. A diesel generator is therefore tripped by the Cardox system when the system actuates in its room. There presently are four combination fixed temperature and rate-of-rise heat detectors in each diesel room. Only one of the four heat detectors in the room needs to actuate to initiate a Cardox discharge and diesel generator trip. This is not in conformance with the design. The FSAR and other design documents and drawings specify that two of the four detectors need to actuate to initiate the system; however, it was recently discovered that the installation is such that any one detector can initiate the system. A diesel generator is not affected by Cardox actuation in another diesel generator room. A diesel generator trip signal resulting from Automatic Cardox actuation is not blocked when indications of a loss of offsite power are present, but is blocked by a loss of coolant accident (LOCA) signal.

The proposed modification will eliminate the possibility of a common mode seismic-induced actuation of the Cardox system and/or diesel generator trips by replacing the current Cardox system controls and heat detectors with seismically qualified, safety related components. This will also reduce the probability of a spurious Cardox actuation and/or diesel generator trip due to Cardox component failure. The diesel generator Cardox actuation trip will be retained and the automatic actuation of Cardox will still be blocked by a LOCA signal. In each diesel generator room the four heat detectors will be replaced with sixteen seismically qualified, safety related rate compensation heat detectors at eight locations, referred to as "zones." To activate a carbon dioxide discharge and trip the diesel generator, both detectors in any one zone must actuate. This minimizes the possibility of inadvertent carbon dioxide system actuation due to a detector failure, but does not inhibit quick detection because the detectors in a zone will be located in close proximity to each other. The revised layout ensures that a fast developing fire will be quickly detected. A fast developing, high heat output fire is the most likely type to occur in a diesel room because the prominent combustibles in the rooms are oil and diesel fuel.

The licensee proposes that the Technical Specifications be revised to reflect an increased number of detectors in each diesel generator room and the revised detection logic scheme. Currently, Limiting Condition of Operation (LCO) 3.14.B.3 requires that four heat detectors in each diesel generator room be operable, but permits one of the four detectors to be inoperable for no more than seven days without compensatory measures. Licensee proposes to change LCO 3.14.B.3 such that it requires that sixteen new detectors (two in each of eight zones) to be operable when the diesel generators are required to be operable, except that one detector or both detectors in one zone of the eight zones may be inoperable for no more than seven days without compensatory measures. Also, Licensee proposes that Table 3.14.C.1 be revised to include the new detector numbers, and that the Bases on page 240q be amended to clarify the minimum number of detectors required to be operable.

The proposed LCO for the new heat detectors is at least as restrictive as the current LCO. Currently, if one of the four heat detectors in a room is inoperable for more than seven days, compensatory measures are required. The licensee is proposing that compensatory measures be required if one detector or both detectors in one zone of the eight zones in a room is inoperable. With one pair in a room inoperable, the remaining seven pairs of detectors (fourteen detectors in total) provide at least as much fire detection capability as three of the four original heat detectors.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee has provided a discussion of the proposed changes as they relate to these standards; the discussion is presented below.

Standard 1 - The proposed changes do not involve a significant increase in the probability of consequences of an accident previously evaluated.

The proposed changes will increase diesel generator availability by correcting diesel generator building Cardox System design deficiencies which created the possibility of unnecessary diesel generator trip signals and inadvertent Cardox actuations that could suffocate diesel engines. The availability of standby ac power (in the event of loss of offsite power) is critical for mitigating the consequences of an accident. Previous licensing accident analyses assumed that systems which could trip the diesel generators were classified as safety related; thus, the proposed upgrades to the Cardox System will assure that the plant configuration is as assumed in previous analyses. Because the diesel generators are intended only to mitigate the consequences of an accident and have no impact on the probability of occurrence of an accident, the probability of an accident is not increased by the proposed changes. The design deficiencies will be corrected while maintaining or enhancing the level of fire protection. The proposed upgrades replace non-safety related non-seismic components with safety related seismically qualified components functionally similar to the original components. The new components will be subject to Quality Assurance controls as specified for safety related components to maintain a high level of reliability. The intent of the proposed LCO for the new heat detectors is the same as the intent of the current LCO and is at least as conservative as the current LCO.

Standard 2 - The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes will increase the reliability of the Cardox System and consequently increase availability of the diesel generators, while satisfying applicable fire protection requirements. Modification 2390 does not affect any system other than the diesel generators and Cardox. Replacing the Cardox

System components with safety related seismically qualified components and increasing the number of detectors does not create any accident precursors. The new components perform the same function as the original components. The proposed LCO merely reflects the increased number of detectors and the two-out-of-sixteen logic without creating any new type of operating mode. Thus, the possibility of a new or different kind of accident will not be created.

Standard 3 - The proposed revisions do not involve a significant reduction in a margin of safety.

The proposed changes restore margins of safety to the margins determined from previous analyses by correcting the design deficiencies while maintaining or enhancing the level of fire protection without adversely affecting any systems important to safety. Modification 2260 corrects design deficiencies that clearly had a negative effect on safety.

The probability of an unnecessary diesel generator trip signal from the Cardox System or a spurious Cardox System discharge that could suffocate the diesel engine will be reduced by making the Cardox components safety related and seismically qualified and restoring the logic to a two detector scheme.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis.

Accordingly, the Commission has proposed to determine that the above changes do not involve a significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126

Attorney for Licensee: Troy B. Conner, Jr., 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: September 7, 1988

Description of amendment request: The proposed amendment would modify the Technical Specifications to correct deficiencies in the degraded voltage protection features. The deficiencies were identified as a result of revised voltage regulation studies. The studies were based in part on the consideration that, under certain offsite power emergency conditions, the voltage provided to the station's offsite power supply transformers could be lower than previously assumed. The study also modeled the plant's power distribution system to a greater level of detail.

The proposed changes are grouped into two categories. The Category A changes address the degraded grid protection relays, and involve increasing the time delay for the 4.16kV bus or the emergency power system to transfer to an alternate power supply and decreasing the voltage setpoint on the instantaneous undervoltage relays on the 4.16kV buses. Category B changes address the Emergency Core Cooling System (ECCS) loading sequence.

The Category A changes involve two independent offsite power sources which are referred to as the start-up sources. The 4160 volt (4.16kV) bus feeder breakers provide the interface between the two offsite power sources and the plant safety-related AC power distribution system. Each of the four 4.16kV buses in each unit can be powered by either of the two offsite power supplies. Each of the 4.16kV buses can also be powered from a safety related diesel generator.

Each startup source to each 4.16kV bus is equipped with an instantaneous undervoltage protective relay. Each relay is presently set to initiate at 90% of nominal voltage on the 4.16kV bus. The purpose of these relays is to ensure that adequate levels of voltage are provided to the motors and control components which are powered from the 480V motor control centers (MCCs) which are fed from the 4.16kV buses. The degraded grid protective relays initiate time delay relays which transfer the 4.16KV bus to an alternate supply source if the normal supply source does not recover to the instantaneous relay reset value (currently 93%) in a set period of time. The control circuit logic to the time delay relays distinguishes between an undervoltage condition without a safety injection signal and one concurrent with a safety injection signal. Without a safety injection signal, a time delay relay will initiate the transfer 60 seconds after initiation of the instantaneous relay if the voltage does not recover. With a safety injection signal, another time delay relay will initiate the transfer 6 seconds after initiation of the instantaneous relay if the voltage does not recover. The purpose of the 6 second delay is to minimize the time that safety-related equipment is exposed to the undervoltage condition, yet allow the voltage to recover from the dips caused by acceleration of the large safety-related motors. In either case, if the voltage of the normal supply has not recovered before the time delay relays initiate the transfer, the associated source breaker is tripped and the bus is loaded onto an alternate power supply. The alternate supply for any 4.16kV bus is, in order of preference, the remaining offsite power source, then the emergency diesel generator. The revised voltage regulation study identified that under the scenario of a safety injection signal on one unit while operating with only one of two offsite power sources (permitted for 7 days by Limiting Condition for Operation 3.9.B.1), the existing 6 seconds time delay setting is adequate. The existing 6 seconds would not allow sufficient acceleration time for the core spray pump motors. Therefore, even after a 6 second delay, the core spray pump motors, which are currently started simultaneously, will not be at rated speed (based on design acceleration versus voltage values) thereby not allowing voltage recovery on the 4.16kV buses, and all four 4.16kV bus feeder breakers will trip, thus loading each bus onto its associated diesel generator. This would represent a reduction in defense in depth since it is desirable, if offsite power is available, to supply these loads from the offsite power supply without reliance on the backup diesel generators. The licensee has identified two categories of changes to address this concern. The Category A changes deal with the offsite power source and include the following: (1) Revise Technical Specification Table 3.2.B on page 71a to designate the trip level setting for the instantaneous relays as "89% of rated voltage 27 0.30% of setting (3702 volts 27 11 volts)" instead of "90% (+/-2%) of rated voltage," and replace the "(ITE)" in the trip function column with "(27N)"; (2) Revise Table 3.2.B on page 71a to designate the trip level setting for the time delay relays as "9 second (+/-7%) time delay" instead of "8 second (+/-5%) time delay"; (3) Revises BASES section 3.2 on page 93a to reflect the two changes above.

The Category B changes deal with revising the scheme for the sequential loading of the residual heat removal (RHR) and the core spray (CS) pumps. The four CS pumps and the four RHR pumps of the Emergency Core Cooling System (ECCS) are powered from the 4.16kV buses. In the event of a LOCA with offsite power available, the RHR and CS pumps are loaded sequentially onto the 4.16kV buses to preclude severe voltage transients from the simultaneous starting of the pumps. The present loading sequence for the RHR and CS pumps in the event of a safety injection signal with offsite power available results in voltage dips on the 4.16kV and 480V buses which are unacceptable in consideration of the degraded grid

protective relay settings due to core spray pump motor acceleration time. Therefore, the licensee proposes a revised loading sequence for a safety injection signal with offsite power available as follows: (1) Revise Table 3.2.B on page 67 to designate the initiation setpoint for the A and C core spray pumps to be "13 sec. +/-7% of setting" and the initiation setpoint for the B and D core spray pumps to be "23 sec. +/-7% of setting"; (2) Revise Table 3.2.B on page 67 to designate the initiation setpoint for the A and B LPCI pumps to be "2 sec. +/-7% of setting" and the initiation setpoint for the C and D LPCI pumps to be "8 sec. +/-7% of setting"; (3) Revise Table 3.2.B on page 67 of the Unit 3 Technical Specifications only to delete the asterisk next to the ADS Bypass Timer and the footnote which reads "Effective when modification associated with this amendment is complete."

In addition to the proposed ECCS loading sequence, the licensee will further improve the voltage regulation of the 480V load centers during a motor starting transient by a combination of plant modifications which revise the load shedding or sequencing of the emergency service water pumps, the emergency cooling water pump, the RHR compartment coolers, the cooling towers and the diesel generator vent supply fans. The licensee plans to perform these changes pursuant to 10 CFR 50.59 since none involves an unreviewed safety question or a change to the Technical Specifications. The Appendix K (ECCS Evaluation Models) analysis was used to determine bounding allowable starting times for the RHR and CS pumps. For change Request (1), the licensee concluded that the proposed increases in the core spray timer settings are within the Appendix K analysis. Success of the core spray system requires two factors: (1) pump ready for rated flow and (2) injection valve open to permit full flow. There are two conditions required to support worst case valve opening; reactor pressure is at the low end of its low pressure permissive (400-500 psig) and power is available to the valve operator. Under the limiting scenario, the low pressure permissive occurs 47 seconds following occurrence of the LOCA. Power to the injection valves is not interrupted in this scenario and the valve stroke time is 12 seconds. The earliest that the injection valve can be opened, therefore, is 59 seconds, and the pumps must be ready for full flow prior to this time. The series of events contributing to the establishment of the pumps ready for rated flow are the sensor times for detection of the LOCA, the time for power to be available at the emergency bus, the time for power to be available to the pump motor and pump motor acceleration time. As stated previously, an assumption of the current Appendix K analysis of record is that the time available to start and accelerate the CS pumps from the offsite sources is 59 seconds. Taking into account the above equipment operational time requirements, the CS timer setting must be less than 47 seconds. Thus, the proposed 13 and 23 second timer settings are within the analyzed condition.

For Change Request (2), the licensee has similarly concluded that the proposed increases in RHR pump timer settings are in accordance with the Appendix K analysis. Success of the low pressure coolant injection (LPCI) mode of the RHR system requires three factors: (1) pump ready for rated flow, (2) injection valve open to permit full flow and (3) full closure of the recirculation discharge valve. Under the limiting scenario, 57 seconds are available for the RHR pumps to start and accelerate to rated speed. The 57 seconds are derived from the time to reach the low pressure permissive to close the reactor recirculation discharge valve plus the full stroke closure time of the recirculation discharge valve. The series of events for the RHR pumps ready for rated flow are similar to the series of events for the CS pumps. Taking into account the sensor and acceleration delays, the RHR timer setting must be less than 50.9 seconds. Thus, the proposed 2 and 8 second timer settings are within the analyzed condition. Neither Change Request involves additional loading onto the DC system. All replacement and additional relays resulting from these changes will be located in existing safety-related panels. The control relays provided will equal or exceed the ratings of the existing relays and meet the applicable design requirements for environmental and seismic qualification.

Change Request (3) is proposed to the Unit 3 Technical Specifications only to delete a footnote which is no longer required since the modification associated with the ADS bypass timer (Modification 633) was completed for Unit 3 on February 24, 1988. Removing the footnote will eliminate the need to check the status of the modification to determine the applicability of the specification. The licensee proposes this administrative change to enhance safety by reducing the effort required to interpret the specification.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has provided a discussion of the proposed changes as they relate to these standards; the discussion is presented below.

Standard 1 - The proposed Category A changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

The Category A changes are proposed to improve the protection provided by the undervoltage protective relays. Although the proposed setpoint is lower than the existing setpoint, protection to the 480V control components powered from the MCCs is improved due to improved operational tolerances of the proposed replacement relays. Increasing the setting on the time delay relay from 6 seconds to 9 seconds will ensure that the 4.16kV buses will not be spuriously transferred to the diesel generators in the event of a design basis accident with only one offsite power source available. These proposed changes do not affect the probability or consequences of any accidents previously evaluated, but ensure that the 4.16kV buses will not be spuriously transferred to the diesel generators thereby ensuring the validity of the existing accident analysis; specifically, a loss of coolant accident with offsite power available.

Standard 2 - The proposed Category A changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes to the relay settings do not involve a redistribution of loads on safety-related buses or affect the electrical separation or redundancy of any safety-related trains or components. The proposed changes improve the undervoltage protective scheme and allow the 4.16kV buses to sustain a normal motor acceleration transient without a spurious transfer to an alternate power source. The Category A changes do not alter the intent of the relays, and do not create the possibility of a new or different kind of accident from any previously evaluated.

Standard 3 - The proposed Category A changes do not result in a significant reduction in a margin of safety.

The Category A changes are proposed to enhance safety. Although the proposed 89% setting does not assure 90% voltage at the MCC contractors as suggested by

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manufacturers' design tolerances (2?10%), field tests have been performed which indicate that the actual pickup voltage is less than 75% of nominal voltage. Increasing the time delay settings allows pump motors to accelerate without an unnecessary transfer to an alternate power supply. The changes do not involve a significant reduction in any margin of safety.

Standard 1 - The proposed Category B changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

The Category B changes are proposed to ensure the validity of the existing accident analyses; specifically, a design basis LOCA with offsite power available. Revising the timer settings for the RHR and CS pumps will improve the voltage at the 480V levels during a motor acceleration transient and also prevents spurious transfer of the 4.16kV buses to the diesel generators in the event of a safety injection while operating with only one offsite power source available. Therefore, the proposed changes do not increase the probability or consequences of an accident previously evaluated.

Standard 2 - The proposed Category B changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes to the CS and RHR systems only involve changes to load sequencing when offsite power is available. The proposed changes do not involve the CS or RHR system piping configurations, pumps, valves or system redundancies. The replacement timers required for the proposed load sequencing equal or exceed the ratings for the existing timers, and do not affect the environmental or seismic qualification of the panels in which they will be installed. Failure of any timer can only affect one redundant train of equipment. Therefore, the possibility of a new or different kind of accident is not created.

Standard 3 - The proposed Category B changes do not result in a significant reduction in a margin of safety.

The proposed changes do not adversely affect the safety margin assumed in the 10 CFR Appendix K analysis for ensuring fuel integrity for the entire spectrum of postulated LOCAs. The limiting Appendix K scenario for core spray requires the CS pumps to be at rated flow 19 seconds after a LOCA to ensure the existing margin of safety. Under the proposed changes, the latest that the CS pumps will achieve rated flow is 35 seconds (3 seconds for detection of the LOCA plus 23 seconds for the longer of the CS timer delays plus a maximum of 9 seconds for motor acceleration). The limiting Appendix K scenario for the low pressure coolant injection mode of residual heat removal requires the RHR pumps to be at rated flow 37 seconds after a LOCA to ensure the existing margin of safety. Under the proposed changes, the latest that the RHR pumps will achieve rated flow is 14.1 seconds (3 seconds for detection of the LOCA plus 8 seconds for the longer of the RHR timer delays plus 3.1 seconds for motor acceleration). Therefore, although the Category B changes delay the availability of the CS and RHR pumps at rated flow, they do not result in a significant reduction in the margin of safety for core coolant delivery.

The staff has reviewed the licensees' no significant hazards consideration for Category A, items 1 and 2 and Category B, items 1 and 2 and agrees with the licensees' analysis. Accordingly, the Commission has proposed to determine that the above changes do not involve a significant hazards consideration.

The Category B, item 3, change involving deletion of a now obsolete footnote is proposed as an administrative change to improve the use of the Technical Specifications. The Commission has provided guidance for the application of the criteria for no significant hazards consideration determination by providing examples of amendments that are considered not likely to involve significant hazards considerations [51 FR 7751]. These examples include: Example (i) "A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specification, corrections of an error, or a change in nomenclature." The proposed change, to delete a footnote which refers to a now completed modification is an example of such an administrative change since, now that the modification has been completed, the specification is in effect and the footnote is extraneous. Since this proposed change is encompassed by an example for which no significant hazard exists, the staff has made a proposed determination that it involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126

Attorney for Licensee: Troy B. Conner, Jr., 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: February 11, 1982, August 24, 1983, November 1, 1985, September 30, 1986, September 8, 1987 and September 7, 1988

Description of amendment request: The amendment would change the Technical Specifications to incorporate restrictions on working hours and strict administrative controls based on seven-day work periods for all site staff who perform safety-related functions and also based on periods of up to one calendar year for shift operators (licensed Senior Operators, licensed operators and non-licensed operators). The proposed Amendment is provided to ensure control over excessive periods of continuous work or chronic overtime. Provisions are included for documentation of authorized exceedance of working hour restrictions to ensure that trends are identified and excessive working hours are controlled and limited. The controls are designed to minimize the probability of personnel error and improve personnel attentiveness to safety-related activities.

The proposed amendment would add Section 6.20 to the Technical Specifications entitled, "Site Staff Working Hour Restrictions" (adding pages 270, 271 and 272 as included in the proposed amendment). The first paragraph of this section (6.20.1) would establish the requirements for the administrative procedures to limit the work hours of staff who perform safety-related functions.

The subsequent paragraph (6.20.2) would establish the objective of the working hour restrictions by specifying those restrictions applicable to all site staff who perform safety-related functions and additional restrictions for shift operators.

The subsequent paragraph (6.20.3) would provide the approval authority for exceedance of work hour restrictions to ensure that the primary authority for approval of work hour exceedance is with the employing officer. Also included are provisions for establishing procedures for documentation of exceedence. Procedures will be provided such that overtime is monitored on a cumulative basis.

A BASES section (p. 272) is also provided which reflects the wording in the Standard Technical Specification (NUREG-0123) and NRC guidance. Additionally, "alternate" has been defined to ensure that it refers to the appropriate level of management.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has provided a discussion of the proposed changes as they relate to these standards; the discussion is presented below:

Standard 1 - The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated since the proposed working hour restrictions reduce the possibility of work-induced fatigue and consequently improve attentiveness to safety-related activities in the interest of reducing the probability or consequences of an accident as evaluated in Chapter 14 of the PBAPS Updated Final Safety Analysis Report. These changes also reflect the organizational changes recently approved by the NRC (License Amendment Nos. 132 and 135) which will ensure that the primary authority for approval of working hour exceedance is with the appropriate level of site management. Thus, management control and awareness of the overtime work status will be elevated thereby ensuring that control of working hours for personnel involved with safety-related activities is maintained.

Standard 2 - The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because they increase control over working hours and the attendant reduction in personnel fatigue. These changes thereby enhance the capability of plant personnel to maintain the status of systems and operational parameters within the envelope of acceptable conditions required by established procedures and regulations.

Standard 3 - The changes do not involve a significant reduction in the margin of safety since the addition of work hour restrictions reduces the likelihood of personnel error in activities related to nuclear safety. To the contrary, the margin of safety in mitigating the consequences of an accident as evaluated in Chapter 14 of the PBAPS Updated Final Safety Analysis Report will be increased as a result of the overtime work restrictions.

The staff has reviewed the licensees' no significant hazards consideration determination and agrees with the licensees' analysis.

In addition to the licensee's analysis provided above, the staff notes that the Commission has provided guidance concerning the application of the standards for determining whether license amendments involve no significant hazards considerations by providing certain examples (51 FR 7751). One of the examples (ii) of actions involving no significant hazards consideration is a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications. The proposed changes, specifically the addition of restrictions on working hours, requirements for administrative procedures and the approval authority for controlling working hours are additional limitations not presently included in the Technical Specifications and are therefore within the scope of the example.

Accordingly, on the basis of the staff's review of the licensee's determination and on the basis that the proposed change is encompassed by an example for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126

Attorney for Licensee: Troy B. Conner, Jr., 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Portland General Electric Company et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: August 12, 1988

Description of amendment request: The proposed amendment would revise the surveillance requirements of Table 3.4.6-1 associated with Trojan Technical Specifications (TS) Section 3/4.4.6.2 regarding leakage from reactor coolant system pressure isolation valves, to require that when leakage tests are performed using a test differential pressure lower than the function maximum differential pressure, observed leakage rates shall be adjusted to function maximum differential pressure values, using the square root of the ratio of the function maximum differential pressure and the actual test differential pressure.

Basis for proposed no significant hazards consideration determination: 10 CFR 50.92 states that a proposed amendment will not involve a significant hazards consideration if the proposed amendment does not: (i) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (ii) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (iii) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards of 10 CFR 50.92, and has determined the following:

The proposed change is a more restrictive limitation not presently included in the Trojan Technical Specifications. Applying more restrictive test criteria to the Reactor Coolant System (RCS) pressure isolation valves provides greater assurance of valve integrity, thereby reducing the probability and the consequences of an accident.

The accident of concern is referred to as an intersystem Loss-of-Coolant Accident (LOCA) which involves excessive leakage from a high pressure system (the RCS) to a lower pressure system (the Emergency Core Cooling System (ECCS)). To adequately monitor the integrity of the high/low pressure interface (i.e., two in-series check valves), the Technical Specifications provide surveillance requirements and associated leak-rate limits on these check valves. The proposed change requires that leakage data acquired at differential pressures lower than the function maximum value be adjusted upward to correspond to the function maximum differential pressure values. The proposed revision involves no physical alterations of Plant configurations or changes to setpoints or operating parameters and, therefore, does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change will improve the margin of safety by requiring that observed leakage rates are conservatively adjusted to the higher function maximum differential pressure values when testing at lower differential pressures.

The staff has reviewed the licensee's no significant hazards analysis and concurs with the licensee's conclusions. As such, the staff proposes to determine that the requested change does not involve a significant hazards consideration.

Local Public Document Room location: Portland State University Library, 731 S.W. Harrison Street, Portland, Oregon 97207.

Attorney for licensee: Leonard A. Girard, Esq., Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204

NRC Project Director: George W. Knighton

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: August 29, 1988

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) to reflect a dual-time-delay degraded voltage protection system that will be installed during the Reload 8/Cycle 9 refueling outage. This modification would provide a larger actuation time delay under normal operating conditions.

Although the existing degraded voltage protection system was designed to withstand short term voltage drops due to expected operating evolutions (such as the starting of a larger motor), the design of the system did not

consider the significant voltage transient associated with bus transfers. As a result, actuations of the protection system have occured during normal startups when plant electrical loads are transferred from the off-site power source to the main generator source.

The proposed modification would increase the time delay for emergency diesel generator (EDG) actuation from the existing 9 seconds to 45 seconds under normal operating conditions. Under loss-of-coolant accident (LOCA) conditions, the LOCA signal will independently start the EDGs.

As a result of the proposed modification, TS Section 3.2 (Bases), and Tables 3.2-2 and 4.2-2 would be revised.

Basis for proposed no significant hazards consideration determination: In accordance with the Commission's Regulations in 10 CFR 50.92, the Commission has made a determination that the proposed amendment involves no significant hazards considerations. To make this determination the staff must establish that operation in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The Final Safety Analysis Report (FSAR) analysis for the design basis loss-of-coolant-accident (LOCA) considers a simultaneous loss of off-site power. The proposed changes do not affect the circuitry which starts the EDGs under these conditions. The ability of the EDGs to supply power to the emergency busses in the time assumed in the DBA LOCA accident analysis remains unchanged. A variation of this event is a LOCA with a simultaneous degraded off-site voltage condition. This specific sequence of events was not analyzed in the FSAR, but was considered subsequently in an NRC safety evaluation report. The second level of undervoltage protection system, installed during the Reload 7/Cycle 8 refueling outage, connects the EDGs to the 4160 VAC emergency buses within the same time that is assumed in the DBA case. The proposed changes to the Technical Specifications do not change the response of the plant under these conditions. Therefore, operation of FitzPatrick in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Failure of the modified degraded voltage system to operate would place the plant in the same configuration that existed before the system was installed. FitzPatrick was previously analyzed in that configuration and therefore, the proposed modifications would not initiate or contribute to a new or different type of accident. Inadvertent actuation of the modified degraded voltage system would be identical to two actuations of the degraded voltage protection system experienced during operating Cycle 8. The result is similar to, but less severe than the loss of off-site power transient previously analyzed. It would be less severe since the non-safety related buses would still be energized from the off-site power sources and would be available to mitigate the transient. Therefore, operation of FitzPatrick in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

In addition to assuring that the undervoltage protection system satisfies its design function, the proposed changes reduce the number of challenges to safety related equipment (the EDGs) and reduce the probability of a transient initiator. The proposed changes thus result in an increase in the margin of safety for the FitzPatrick plant. Therefore, operation of FitzPatrick in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

Since the application for amendment involves proposed changes that are encompassed by the criteria for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra, Director

Tennessee Valley Authority, Docket No. 50-260 and Browns Ferry Nuclear Plant, Unit, 2, Limestone County, Alabama

Date of amendment requests: August 12, 1988 (TS 249)

Description of amendment request: The proposed amendment would modify the technical specification (TS) of the Browns Ferry Nuclear (BFN) Plant, Unit 2 by revising the limiting conditions for operation and the surveillance requirements for equipment required for 10 CFR Part 50 Appendix R safe shutdown. The existing Unit 2 TS for the main steam relief valves, residual heat removal service water pumps, and emergency equipment cooling water pumps do not provide sufficient equipment operability for all postulated Appendix R events. Unit 2 safe shutdown capability also relies upon portions of the Unit 1 and 3 auxiliary power systems, including the Unit 3 diesel generators, which are not directly included in the present Unit 2 TS. Also, the reactor water level and reactor vessel pressure instrumentation at the backup control panel as identified in the plant Appendix R evaluation do not currently have any technical specification operability requirements. The proposed TS would correct these deficiencies and define the actions and compensatory measures to be taken to ensure the safe shutdown of the plant in the event of a fire.

Basis for proposed no significant hazards consideration determination: The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

NRC has provided standards for determining whether a significant hazards considerations exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from an accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed amendment does not alter the function or the testing of any equipment or systems previously analyzed in the BFN Final Safety Analysis Report, but provides additional equipment operability requirements to support the safe shutdown of the plant for a fire event.

2. The proposed amendment does not create the possibility of a new or different kind of accident from an accident previously evaluated. This proposed change is still within the bounds of the design of the systems. Equipment previously covered by Units 1 and 3 technical specifications are incorporated into the Unit 2 technical specifications to ensure availability to support Unit 2 safe shutdown during a fire for periods when Units 1 and 3 may be shutdown.

3. The proposed amendment does not involve a significant reduction in the margin of safety. The proposed change ensures a safe shutdown capability for a fire at any location in the plant. It does not alter the safety function of the involved equipment.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for this amendment involves no significant hazards considerations.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Suzanne Black

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment requests: September 29, 1988 (TS 255)

Description of amendment requests: The proposed amendment would change the Browns Ferry Nuclear Plant (BFN) Technical Specifications (TS) for Units 1, 2 and 3 to delete all references to seismic restraints and supports from TS Sections 3.6.H and 4.6.H and to revise the bases for these two sections as appropriate.

Basis for proposed no significant hazards consideration determination: The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

NRC has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequence of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from an accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Deleting the seismic restraints and supports from these sections of the technical specifications does not invalidate nor change the calculations or design basis in which BFN was built and licensed. The current BFN Technical Specification 3.6.H does not provide any surveillance requirements in order to declare seismic restraints and supports operable. If a restraint or support is found to be damaged or there is a question about its ability to perform its function, the operations department will be informed and the operability of the affected system will be determined. If it is determined that the restraint or support will render a technical specification system inoperable, the appropriate system limiting conditions for operation (LCO) will apply.

2. This change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

This proposed changes does not add, eliminate, or modify any equipment or operational conditions. These changes still support and are bounded by the design calculations and the Final Safety Analysis Report by which BFN is currently licensed.

3. This change does not involve a significant reduction in a margin of safety.

Although the proposed changes remove the explicit technical specification requirements for seismic restraints and supports, the overall plant margin of safety will be maintained in that restraints and supports will be considered for system operability. As stated above, any restraint or support found to be damaged or otherwise incapable of performing its intended function will be evaluated for operability. If a technical specification system or component is found to be adversely affected, thus rendering it inoperable, the appropriate LCO will be followed until the restraint or support is repaired or an engineering evaluation establishes operability without the need for the damaged support or restraint. If the restraint or support cannot be repaired or operability established via an engineering evaluation, the appropriate action identified in the technical specification LCO for the associated system will be followed.

Deletion of the restraints and supports from the technical specification also eliminates the requirements to repair them within 72 hours as currently stated. This does not reduce the margin of safety since an evaluation will be performed to determine operability of the system or the system LCO and action statements will be followed. The times allowed by the Technical Specification for a system to be inoperable have been evaluated by NRC, vendors, and the utility and found to be acceptable as issued and utilized throughout the industry. The definition of operability would require the operator to evaluate and determine system operability if a problem arose with a restraint or support since it would be considered a subsystem to the Technical Specification related piece of equipment.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Suzanne Black

Tennessee Valley Authority, Docket No. 50-328, Sequoyah Nuclear Plant, Unit 2, Hamilton County, Tennessee

Date of amendment request: September 21, 1988 (TS 88-18)

Description of amendment request: The Tennessee Valley Authority (TVA) proposes to modify the Sequoyah Nuclear Plant Unit 2 Technical Specifications (TS). The proposed change is to revise surveillance requirement (SR) 4.8.5.1.b.2 to allow a one-time extension to the next refueling outage for weighing of ice. TVA proposes adding a footnote to the current requirement that SR 4.8.5.1.b.2 be performed at least once per 12 months. The footnote states that the SR will be performed no later than the Unit 2 cycle 3 refueling outage or January 22, 1989, whichever comes first.

Basis for proposed no significant hazards consideration determination: TVA stated the following in its submittal to support its proposed change to the Unit 2 TS:

TVA is requesting an extension of SR 4.6.5.1.b.2 to allow weighing of ice in the upcoming refueling outage. The ice condenser surveillance is required to be performed by December 4, 1988. This surveillance can only be performed during shutdown; therefore, to avoid an unnecessary shutdown of the plant, this surveillance needs to be extended to the upcoming refueling outage. Currently, the refueling outage is scheduled to begin january 22, 1989. Therefore, this extension is short compared with the overall time of the surveillance interval.

The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has provided the following analysis:

TVA has evaluated the proposed technical specification change and has determined that it does not represent a significant hazards consideration based on criteria established in

10 CFR 50.92(c). Operation of SQN in accordance with the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The ice condenser system is provided to absorb thermal energy release following a loss-of-coolant-accident (LOCA) or high-energy line break (HELB) and to limit the peak pressure inside containment. The ice condenser analysis shows that, with a minimum of 1,060 pounds of ice per basket, the ice condenser will perform its function. Based on surveillance history of the ice baskets, the calculations of the sublimation rates, and the relatively short extension time, this request will not result in a significant increase in the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any previously analyzed. The surveillance extension will not result in a change to the plant configuration or operation. Therefore, this change will not create the possibility of a new or different kind of accident from any previously analyzed.

(3) Involve a significant reduction in a margin of safety. The Final Safety Analysis Report analysis shows that, with the minimum amount of ice present in the ice condenser, the system will perform its function during a LOCA or HELB. Based on the improved surveillance performance of the system, the sublimation calculation, and the short time period of the extension, this change does not involve a significant reduction in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Suzanne Black

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Public Service Company of New Hampshire, Docket No. 50-443, Seabrook Station, Unit 1 Rockingham County, New Hampshire

Date of application for amendment: July 8, 1988 as supplemented on August 5, 1988

Brief description of amendment: This amendment revises the Technical Specifications to change the setpoints for the pressurizer pressure, pressurizer water level and steam generator water level channels as a result of replacing the Veritrak/Tobar transmitters with Rosemount transmitters.

Date of issuance: September 27, 1988
Effective date: September 27, 1988
Amendment No.: 1
Facility Operating License No.: NPF-56

Date of individual notice in **Federal Register:** August 26, 1988 (53 FR 32805)

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: December 1, 1986; October 5, 1987; and February 17, 1988

Brief description of amendments: The amendments modified paragraphs 2.C.(4) and 2.D of Facility Operating Licenses DPR-53 and DPR-69, respectively, to require compliance with the amended Physical Security Plan. This Plan was amended to conform to the requirements of 10 CFR 73.55. Consistent with the provisions of 10 CFR 73.55, search requirements must be implemented within 60 days and miscellaneous amendments within 180 days from the effective date of these amendments.

Date of issuance: September 23, 1988
Effective date: September 23, 1988
Amendment Nos.: 132 and 113
Facility Operating License Nos. DPR-53 and DPR-69. These amendments revised the licenses.

Date of initial notice in **Federal Register:** August 24, 1988 (53 FR 32289). The Commission's related evaluation of these amendments is contained in a letter to Baltimore Gas and Electric Company and a Safeguards Evaluation dated September 23, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: August 6, 1988

Brief Description of amendment: This amendment modifies the Technical Specifications in Section 6.5.A.2.

Date of issuance: September 26, 1988
Effective date: September 26, 1988
Amendment No.: 122
Facility Operating License No. DPR-35: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 24, 1988 (53 FR 32289). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 26, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Dates of application for amendments: March 13, 1987, as supplemented January 6, 1988, March 10, 1988, April 6, 1988, and July 12, 1988

Description of amendments: The amendments change the Technical Specifications (TS) to revised Section 4.4.1.2 regarding jet pump surveillance requirements for demonstrating jet pump operability. They also restore Bases information for TS 3/4.4.2, "Safety Relief Valves," and TS 3/4.4.3.1, "Reactor Coolant Systems Leakage, Leakage Detection Systems," that was inadvertently deleted in an earlier amendment.

Date of issuance: October 6, 1988
Effective date: October 6, 1988
Amendment Nos.: 119, 154
Facility Operating License Nos. DPR-71 and DPR-62. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** July 13, 1988 (53 FR 26519). The April 6, 1988 and July 12, 1988 letters provided clarifying informaion that did not change the initial determination of no significant hazards consideration as previously published in the **Federal Register.** The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 6, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Commonwealth Edison Company Docket Nos. STN 50-454 and STN 50-455, Byron Station Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. STN 50-456 and STN 457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: January 5, 1988

Brief description of amendments: These amendments remove two tables from the Technical Specifications which list reactor trip system instrumentation response times and engineered safety features response times. These two tables are being placed in the Byron/Braidwood Final Safety Analysis Report.

Date of issuance: September 27, 1988
Effective Date: September 27, 1988
Amendment Nos.: 23 for Byron, 12 for Braidwood
Facility Operating License Nos. NPF-37, NPF-66, NPF-72, and NPF-77: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 24, 1988 (53 FR 32290). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 27, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: For Bryon Station the Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101; for Braidwood Station the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: December 15, 1987, as supplemented April 15, 1988.

Brief description of amendments: The amendments modified the Technical Specifications related to snubbers.

Date of issuance: September 28, 1988
Effective date: September 28, 1988
Amendment Nos.: 52 and 45
Facility Operating License Nos. NPF-35 and NPF-52. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 27, 1988 (53 FR 28285). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 28, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: July 11, 1988

Brief description of amendments: The amendments modified Technical Specification Table 3.3-10 "Accident Monitoring Instrumentation" by revising the total number of channels for the auxiliary feedwater flow rate, power operated relief valve (PORV) position indicator, and PORV block valve position indicator.

Date of issuance: October 6, 1988
Effective date: October 6, 1988
Amendment Nos.: 54 and 47
Facility Operating License Nos. NPF-35 and NPF-52. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 27, 1988 (53 FR 28286). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 6, 1988

No significant hazards consideration comments received: No

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Duquesne Light Company, Docket No. 50-412, Beaver Valley Power Station, Unit No. 2, Shippingport, Pennsylvania

Date of application for amendment: June 22, 1988

Brief description of amendment: The amendment revises the allowable pressurizer and main steam safety valve setpoint tolerance from 27 1% to + 1%, - 3%.

Date of issuance: September 23, 1988
Effective date: September 23, 1988
Amendment No.: 5
Facility Operating License No. NPF-73. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 10, 1988 (53 FR 30130). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 23, 1988

No significant hazards consideration comments received: No

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Duquesne Light Company, Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of application for amendments: June 22, 1988

Brief description of amendments: The amendments clarify the surveillance frequency of the safety injection input to the reactor trip system, delete a backup initiating signal for the auxiliary feedwater system and remove the requirement to test the RHR pumps on recirculation flow.

Date of issuance: September 23, 1988
Effective date: September 23, 1988
Amendment Nos.: 130 for Unit 1, 6 for Unit 2

Facility Operating License Nos. DPR-66 and NPF-73. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 10, 1988 (53 FR 30131). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 23, 1988

No significant hazards consideration comments received: No.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: August 14, 1986, as supplemented October 8, 1986 and revised August 2, 1988 (partial).

Brief description of amendment: This amendment extended the surveillance interval for the reactor vessel internals vent valves from once per 18 months to once per 24 months. Amendments 93 and 94, issued October 21, 1986 and November 7, 1986, respectively, responded to other facets of the licensee's original request.

Date of issuance: September 26, 1988
Effective date: September 26, 1988
Amendment No.: 108

Facility Operating License No. DPR-72. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 24, 1988 (53 FR 32293). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 26, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida 32629

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-424, Vogtle Electric Generating Plant, Unit 1, Burke County, Georgia

Date of application for amendment: May 19, 1988 as supplemented August 12 and October 3, 1988

Brief description of amendment: The amendment modified the Technical Specifications to allow a slightly positive moderator temperature coefficient and revised shutdown margin requirements.

Date of issuance: October 4, 1988
Effective date: October 4, 1988
Amendment No.: 11

Facility Operating License No. NPF-68: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 29, 1988 (53 FR 24509). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 4, 1988

No significant hazards consideration comments received: No.

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-321, Edwin I. Hatch Nuclear Plant, Unit 1, Appling County, Georgia

Date of application for amendment: July 11, 1988

Brief description of amendment: The amendment modified the Technical Specifications to provide for a modified secondary containment boundary during periods of plant shutdown, provided certain conditions are met, and to make several editorial corrections.

Date of issuance: September 29, 1988
Effective date: September 29, 1988
Amendment No.: 158

Facility Operating License No. DPR-57. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 10, 1988 (53 FR 30133). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 29, 1988

No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy, Center, Linn County, Iowa

Date of application for amendment: August 31, 1987

Brief description of amendment: The amendment deleted requirements for emergency diesel generator operability, relative to operability of the Standby Gas Treatment and Standby Filters Unit Systems. It also added a requirement for availability of systems during core alterations.

Date of issuance: September 30, 1988
Effective date: September 30, 1988
Amendment No.: 153

Facility Operating License No. NPF-30. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 1, 1988 (53 FR 20042). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 30, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: May 19, 1988

Brief description of amendment: The amendment revises Technical Specification Section 4.6.1.3.a "Containment Air Locks" to allow the use of alternate methods for the leak rate testing of the containment air locks.

Date of issuance: September 23, 1988
Effective date: September 23, 1988
Amendment No.: 23

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 13, 1988 (53 FR 26529). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 23, 1988

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: June 14, 1988

Brief description of amendment: The amendment revises Technical Specification (TS) 4.8.1.1.2b, "A.C. Sources," for Millstone Unit 2. The revised TS changes the industry standard for acceptability of emergency diesel generator (EDG) fuel oil, referenced in the TS, from ASTM D975-74 to ASTM D975-78.

Date of issuance: September 26, 1988
Effective date: September 26, 1988
Amendment No.: 131

Facility Operating License No. DPR-65. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 13, 1988 (53 FR 26528). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 26, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: March 1, 1988

Brief description of amendment: This amendment involves a further revision of Section 3.4. and 4.4 of the plant Technical Specifications to that implemented by Amendment No. 56 to Facility Operating License No. DPR-22, and the exemption granted from the requirements of 10 CFR 50.62(c)(4) issued on December 11, 1987. The revision reflects a Boron-10 enrichment of 55 atom percent in the sodium pentaborate solution used for the Standby Liquid Control System (SLCS) at the Monticello Nuclear Generating Plant, which will enable the maintenance of a solution concentration as low as 10.7% (as opposed to the minimum concentration of 13.7% required in 10 CFR 50.62(c)(4), the ATWS Rule. This revision also deletes the requirement for a mid-cycle surveillance of the sodium pentaborate solution due to the availability and planned use of pre-mixed and vendor-certified solutions, which will preclude the need for the licensee to mix solution components (boric acid borax) on site thereby eliminating the need to continue to require a mid-cycle surveillance. However, this revision does not alter the original technical bases specified for the SLCS and implemented by License Amendment No. 56, nor alter the basis upon which the exemption to 10 CFR 50.62(c)(4) was granted.

Date of issuance: September 23, 1988
Effective date: September 23, 1988
Amendment No.: 57

Facility Operating License No. DPR-22. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 18, 1988 (53 FR 17791). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 23, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: August 5, 1988

Brief description of amendments: Changed the Technical Specifications to correct errors, achieve consistency, change nomenclature, and delete dated requirements which have previously been completed.

Date of issuance: August 30, 1988
Effective date: August 30, 1988
Amendment Nos.: 82 and 50

Facility Operating License Nos. NPF-14 and NPF-22. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 20, 1987 (52 FR 18883). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 30, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: April 28, 1988

Brief description of amendment: This amendment revised the Applicability of Limiting Conditions for Operation and the Applicability of Surveillance Requirements as specified by Technical Specifications 3.04, 4.03 and 4.04.

Date of issuance: September 28, 1988
Effective date: September 28, 1988
Amendment No. 19

Facility Operating License No. NPF-57. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 15, 1988 (53 FR 22406). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 28, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Rochester Gas & Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Plant Wayne County, New York

Date of application for amendment: September 24, 1987 as supplemented on May 3, 1988.

Brief description of amendment: The amendment revised the Technical Specifications to incorporate the requirements for the Reactor Vessel Level Indication System.

Date of issuance: September 23, 1988
Effective date: September 23, 1988
Amendment No.: 30

Facility Operating License No. DPR-18: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 9, 1988 (53 FR 7600). The supplemental submission of May 3, 1988 did not substantially alter the amendment request of September 24, 1987. Therefore it was unnecessary to renotice the amendment request in the **Federal Register.** The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 23, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Attorney for licensee: Harry Voigt, LeBoeuf, Lamb, Leiby and McRae, Suite 1100, 1333 New Hampshire Avenue, NW., Washington, DC 20036

NRC Project Director: Richard H. Wessman

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of application for amendment: July 1, 1988, as supplemented by letter dated September 8, 1988.

Brief description of amendment: The amendment revised the Section 6.0 of the Technical Specifications by deleting the organization charts.

Date of Issuance: September 28, 1988
Effective date: September 28, 1988
Amendment No.: 100

Facility Operating License No. DPR-54: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 12, 1988 (53 FR 30501). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 28, 1988. The letter of September 8, 1988, provided supplemental information which did not change the initial proposed determination of no significant hazards consideration.

No significant hazards consideration comments received: No.

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California 95814.

Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendments: June 13, 1988 (TS 243)

Brief description of amendments: The amendments revise Technical Specification (TS) Tables 3.2.B and 4.2.B by adding the instrumentation used to trip and isolate the High Pressure Coolant Injection and the Reactor Core Isolation Cooling Systems on either low steam supply pressure or high turbine exhaust pressure. The TS are also revised to add turbine exhaust diaphragm high pressure to the lists of conditions that cause Group 4 and 5 isolation in the notes for Table 3.7.A.

Date of issuance: September 23, 1988

Effective date: September 23, 1988, and shall be implemented within 60 days

Amendments Nos.: 155, 151, 126

Facility Operating Licenses Nos. DPR-33, DPR-52 and DPR-68: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 13, 1988 (53 FR 26533). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 23, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Suzanne Black

Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendments: August 17, 1988 (TS 253)

Brief description of amendments: The amendments modify Technical Specifications Limiting Conditions for Operation 3.7.E.1, 3.7.E.3, and 3.7.E.4 for the Control Room Emergency Ventilation System (CREVS) by defining them as being not applicable until the withdrawal of the first control rod for the purpose of making the reactor critical from the Unit 2, Cycle 5 outage.

Date of issuance: October 3, 1988

Effective date: October 3, 1988, and shall be implemented within 60 days

Amendments Nos.: 156, 152, 127

Facility Operating Licenses Nos. DPR-33, DPR-52 and DPR-68: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 1, 1988 (53 FR 33887). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 3, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Suzanne Black

Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: July 15, 1988

Brief description of amendment: The amendment deleted License Condition 2.C.(3)(t) and incorporated Item 2 of the condition into Technical Specification (TS) Surveillance Requirement 4.7.1.2. Additionally, the amendment also modified TS Section 3/4.7.1.2 to clarify Section 4.0.A and Bases 3/4.7.1.2.

Date of issuance: September 30, 1988

Effective date: September 30, 1988

Amendment No. 112

Facility Operating License No. NPF-3. The amendment revised the license and the Technical Specifications.

Date of initial notice in **Federal Register:** August 16, 1988 (53 FR 30661). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 30, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 13th day of October, 1988.

For the Nuclear Regulatory Commission

Gary M. Holahan,

Acting Director, Division of Reactor Projects - III, IV, V, and Special Projects Office of Nuclear Reactor Regulation.

[Doc. 88-23983 Filed 10-18-88; 8:45 am]

BILLING CODE 7590-01-D

OFFICE OF PERSONNEL MANAGEMENT

Performance Review Board; Membership

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of new members of the OPM Performance Review Board.

DATE: October 13, 1988.

FOR FURTHER INFORMATION CONTACT: Anne A. Andrews, Program Development and Evaluation Branch, Office of Personnel and EEO, Administration Group, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415 (202) 632-9402.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Office of Personnel Management.

Constance Horner,

Director.

The following Senior Executive Service member has been changed from an alternate member to a regular member of the Performance Review Board of the Office of Personnel Management:

Jean M. Barber, Associate Director for Retirement and Insurance.

The following Senior Executive Service members have been selected to serve as ad hoc members of the Performance Review Board of the Office of Personnel Management:

Anthony F. Ingrassia, Deputy Associate Director for Personnel Systems and Oversight.

Jerome D. Julius, Deputy Associate Director for Retirement and Insurance.

[FR Doc. 88-24115 Filed 10-18-88; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-24729]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

October 13, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 7, 1988 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Arkansas Power and Light Company (70-7453)

Arkansas Power and Light Company ("Arkansas"), 425 West Capitol Avenue, Little Rock, Arkansas 72201, an operating subsidiary of Middle South Utilities, Inc., a registered holding company, has filed a post-effective amendment to its application pursuant to sections 9(a) and 10 of the Act.

Arkansas has, pursuant to prior Commission orders entered into a fuel lease ("Fuel Lease"), dated as of November 18, 1981, with Ozark Fuel Corporation, a Delaware corporation ("Fuel Company"), under which Arkansas leases from the Fuel Company the nuclear fuel, including facilities incident to its use ("Nuclear Fuel"), required for the generation of electric energy by its Unit No. 2 of Arkansas Nuclear One Generating Station ("ANO") (HCAR Nos. 22272, 24239, and 24502 November 13, 1981, November 19, 1986, November 17, 1987, respectively).

Under the terms of the Fuel Lease, the Fuel Company makes payments to all suppliers, processors and manufacturers necessary to carry out the terms of Arkansas' contracts for Nuclear Fuel for ANO, or Arkansas makes such payments and is reimbursed by the Fuel Company. The maximum commitment of the Fuel Company to make payments for Nuclear Fuel is currently $84 million at any one time outstanding, although payments of up to $85 million may be made by the Fuel Company. The Fuel Company has financed these obligations under a Credit Agreement, dated as of November 18, 1981, as amended ("Credit Agreement"), between the Fuel Company and Swiss Bank Corporation, New York Branch. The term of the Credit Agreement is currently through December 1, 1988 ("Termination Date").

It is proposed to amend the Fuel Lease to provide for a termination date of March 1, 1989 to coincide with the proposed Termination Date of the Credit Agreement as it will be further amended by a third amendment ("Amended Credit Agreement"), both agreements containing options to extend for one-year periods. All of the other terms and conditions in both agreements will remain the same. As required by the Fuel Lease, Arkansas would enter into a letter agreement consenting to the Fuel Company entering into the Amended Credit Agreement.

Appalachian Power Company (70-7447)

Appalachian Power Company ("APCo"), 40 Franklin Road, Raonoke, Virginia 24022, a subsidiary of American Electric Power Company, Inc., a registered holding company, has filed a declaration pursuant to section 12(d) of the Act and Rule 44 thereunder.

APCo proposes to sell certain of its assets to GTE South, Inc. ("GTE"). The assets to be sold consist of electric power distribution poles which are jointly used by APCo and GTE pursuant to an Agreement Covering the Joint Use of Poles, dated June 1, 1987 ("Joint Use Agreement"). Pursuant to the Joint Agreement, pole ownership will be adjusted by APCo and GTE initially and annually thereafter to achieve and maintain a ratio of poles used jointly at 60% owned by APCo and 40% owned by GTE. It is proposed that GTE's purchase of the jointly used poles will be funded by the payment of cash to APCo in amounts equal to APCo's Embedded Pole Cost for each of the series of transactions, as defined in, and pursuant to the terms of the Joint Use Agreement. In connection with each proposed sale by APCo, the jointly used poles to be sold will be released from the lien of APCo's Mortgage and Deed of Trust.

System Energy Resources, Inc. (70-7561)

System Energy Resources, Inc. ("SERI"), 168 East Capitol Street, One Jackson Place, Jackson, Mississippi, 39201, a wholly owned subsidiary of Middle South Utilities, Inc. ("Middle South"), a registered holding company, has filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10 and 12(d) of the Act and Rules 44 and 50(a)(5) thereunder.

SERI proposes to sell and leaseback approximately 10-15% of its 90% undivided ownership interest ("Undivided Interest") in Unit 1 of the Grand Gulf Stream Electric Generating Station ("Grand Gulf 1"). SERI plans to enter into Participation Agreements providing for the sale of its Undivided Interest to a trustee ("Owner Trustee/Lessor") acting on behalf of an equity investor or investors ("Owner Participants"), and the simultaneous lease of such Undivided Interest pursuant to separate net lease agreements ("Lease") to be entered into with the Owner Trustee/Lessor which will not exceed a term of 27 years. SERI anticipates that the implicit interest rate of the lease will not be greater than approximately 12%. SERI expects that the maximum aggregate fair market value of its Undivided Interest in Grand Gulf 1 will not exceed $500 million. It is proposed that 15-25% of the aggregate cost will be provided by the Owner Participants and 75-85% of the cost will be borrowed by them. Subject to certain conditions, SERI may have the right to renew the lease for successive terms for the useful life of Gran Gulf 1 at rentals as will be specified in the Lease.

In connection with equity funding of the proposed transaction, letters of credit ("Letter of Credit") may be provided by one or more banks or other financial institutions. Upon the occurrence of certain adverse operating events with respect to Grand Gulf 1, the Owner Participants would be entitled to draw on the Letter of Credit in amounts equal to amounts owed by SERI under the Lease. SERI will become obligated, pursuant to a Reimbursement

Agreement to be entered into between SERI and the banks to repay the amount drawn under the Letter of Credit.

With respect to the portion of the cost to be borrowed, interim financing will be provided by one or more domestic or foreign financial institutions ("Interim Lenders"), who will make non-recourse loans to the Lessor secured by the Lessor's interest in Grand Gulf 1 and certain of the Lessor's rights under the Lease. Interim financing will be provided in return for non-recourse notes ("Interim Notes") of the Lessor. In order to refund the Interim Notes the Lessor will issue refunding notes ("Refunding Notes", and , collectively with the Interim Notes, "Notes") to a Funding Corporation ("Funding Corporation"), unaffiliated with SERI or any of its affiliates. Any funds required by the Funding Corporation to make its loan will be provided, pursuant to a collateral trust indenture through the issuance of debt securities publicly or privately placed.

Upon the occurrence of certain loss events (as defined in the Lease), SERI will be obligated to pay to the Lessor a Casualty Value or Special Casualty Value (as defined in the Lease) reduced by the unpaid principal amount of the Notes, and thereupon either assume full payment responsibility for the Notes, or, if such assumption is precluded, accept transfer of the Owner Participent's interest in the Owner Trust. Upon the occurrence of default events (as defined in the Lease) SERI may also assume the Notes or the Owner Participant's interest after the Owner Participant draws on the Letter of Credit.

SERI has requested an exception from the competitive bidding requirements of Rule 50 of the Act pursuant to Rule 50(a)(5) in order to negotiate and privately place the Notes. It may do so.

Georgia Power Company et al. (70–7562)

Georgia Power Company ("Georgia Power"), an electric utility subsidiary of The Southern Company ("Southern"), a registered holding company, and Georgia Power's subsidiary, Piedmont-Forrest Corporation ("Piedmont-Forrest"), both at 333 Piedmont Avenue, N.E. Atlanta, Georgia 30308, have filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10, and 12(d) of the Act, and Rule 44 thereunder.

Georgia Power proposes to sell, on an ongoing basis, a major portion of its unfinished Rocky Mountain Pumped Storage Hydroelectric Project (the "Project") to Oglethorpe Power Corporation ("Oglethorpe"), a Georgia electric membership corporation comprising thirty-nine electric membership cooperatives. Oglethorpe would complete construction of the Project, which would be jointly owned by Georgia Power and Oglethorpe. The percentage ownership interests of Georgia Power and Oglethorpe in the Project during its construction and after its completion would be proportionate to their investments in it (excluding each party's cost of funds, *ad valorem* taxes, and other minor adjustments). Georgia Power's share in the project will be based on the approximately $128.9 million it has invested in the Project, not on the $224.5 million book value, which includes the cost of those funds.

Under the proposal, Georgia Power would convey the Project (and the primary transmission line and switching station associated with it) to Piedmont-Forrest, and will obtain from its First Mortgage Bond Indenture Trustee a release from the lien on those assets. The purchase price would be approximately $224.5 million, assuming a closing date of November 1, 1988. To provide Piedmont-Forrest with funds sufficient to pay the purchase price, Georgia Power would loan Piedmont-Forrest the purchase price in exchange for a non-interest-bearing note (the "Note") from Piedmont-Forrest in the same amount.

After the Project, the primary transmission line, and the switching station have been released from the lien of Georgia Power's First Mortgage Bond Indenture, Piedmont-Forrest would then convey to Georgia Power an interest in the Project, and to Oglethorpe an interest in the Project, the primary transmission line and the switching station, and the right to complete the Project. Piedmont-Forrest would initially convey to Oglethorpe approximately 3% of the Project, with additional percentages of ownership interests vesting automatically in Oglethorpe on an ongoing basis as Oglethorpe expends funds for the Project's completion. Piedmont-Forrest would reconvey the other 97% of the Project to Georgia Power in consideration for Georgia Power's cancellation of the Note. Although it is not expected that Georgia Power's ownership interest will fall below 24.6%, Georgia Power will have an option to fix its ownership interest in the Project at up to 24%.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-24134 Filed 10-18-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26177; File No. SR-NASD-88-31]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Supervisory Procedures and Redefinition of Office of Supervisory Jurisdiction and Branch Office

The National Association of Securities Dealers, Inc. ("NASD") submitted a proposed rule change on July 22, 1988 (and an amendment thereto on August 26, 1988), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder to amend Article III, Section 27 of the NASD Rules of Fair Practice to delete certain existing text, modify other text and to add new provisions regarding the supervisory procedures of NASD members and the definitions of Office of Supervisory Jurisdiction and Branch Office. In addition, the amendments deleted the current definition of Branch Office in the NASD By-Laws and portions of the Explanation of the Board of Governors relating to the above-mentioned definitions set out in Schedule C to the By-Laws.

Notice of the proposed rule change together with the substance of the terms of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 26062, September 1, 1988) and by publication in the **Federal Register** (53 FR 34858, September 8, 1988). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, with the requirements of section 15A and the rules and regulations thereunder.

It is therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change, SR–NASD–88–31, be, and hereby is, approved. The NASD has requested that the proposed rule change not be effective until six months after the date of approval by the Commission. Therefore, this proposed rule change will be effective April 13, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: October 13, 1988.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-24130 Filed 10-18-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26170; File No. SR-NASD-88-34]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Outside Business Activities of Associated Persons of Member Firms

The National Association of Securities Dealers, Inc. ("NASD") submitted on July 27, 1988, and amended on August 15, 1988, a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder. The proposal adds Section 43 to Article III of the NASD Rules of Fair Practice to require registered persons associated with member firms to notify the firms, promptly and in writing, of outside business activities.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 26063, September 6, 1988) and by publication in the **Federal Register** (53 FR 35395, September 13, 1988). One comment letter was received, strongly supporting the proposed rule change.[1]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: October 13, 1988.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-24131 Filed 10-18-88; 8:45 am]

BILLING CODE 8010-01-M

[1] Letter from J. Stephen Putnam, President, Robert Thomas Securities, Inc., to the Commission, September 27, 1988.

[Release No. 34-26176; File No. SR-NYSE-87-27]

Self-Regulatory Organizations; New York Exchange, Inc.; Order Approving Proposed Rule Change Relating to Amendments to Rule 325(e) Financial Responsibility Requirement and Rule 134 Error Trade Procedures

I. Introduction.

On August 14, 1987, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Commission, pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder,[1] a proposed rule change that would, among other changes, increase the minimum level of financial responsibility required for members who execute orders on the floor, codify the Exchange's procedures for resolving error trades, and impose certain record keeping requirements in regard to error trades.[2]

II. Description of Proposed Rule

The proposed rule change would amend NYSE Rule 325(e) to increase the minimum level of financial responsibility required for members who execute transactions on the floor from $50,000 to $100,000.[3] The proposal would also amend Rule 325(e) by adding additional means by which members or lessees can satisfy the financial responsibility requirement. A proposed new section 325(e)(4) would permit a member to elect to comply with the increased financial responsibility requirement by depositing marketable securities, having a value of at least $100,000 (after appropriate haircuts) and which are readily available, with an organization acceptable to the Exchange.

The proposed rule change also would amend the present section 325(e)(4) that permits members to use the value of their membership to meet the financial responsibility standard. Currently, in order to satisfy the financial responsibility standard by using the value of a membership, the value must equal or exceed $75,000. Under the proposed amendment, the value of a member's seat would have to equal or exceed $150,000. In addition, this provision would renumber section 325(e)(4) as section 325(e)(5).

Similarly, a proposed new section 325(e)(6) would permit a lessor to pledge his seat to satisfy his lessee's financial responsibility requirement under Rule 325(e). Under this provision, such a pledge would only be accepted by the Exchange as satisfying the financial responsibility standard where the lease agreement expressly sets forth the pledge of the lessor's seat on the lessee's behalf, free of any lien or encumbrance, and the value of the lessor's membership equal or exceeds $150,000.

The final portion of the proposed rule change amends NYSE Rule 134 dealing with differences or omissions in clearing transactions. The NYSE's proposed rule change would add a new paragraph (g) to Rule 134. Under this provision, a member or member organization may have a trade as to which he made an error (an "error trade") cleared in an account in his own name or the account of his member organization, or in the name of another member or member organization, with the agreement of such other member or member organization (a "take in").[4]

In addition, this provision would require every member to make available to the Exchange, upon request, accurate and complete records of all error trades cleared in his own account, or in the error account of his associated member organization. Where error trades of $3,000 or more are cleared in the error account of another member or member organization on the member's behalf, the member who executed the trade will be required to maintain accurate and complete records of the error trade, which shall be available to the Exchange upon request. Under the proposed rule these records shall include: (1) Audit trail data elements prescribed under NYSE Rule 132; (2) the nature and amount to the error; (3) the member of member organization that cleared the error trade; (4) the means whereby the member resolved the amount of the error trade with the member or member organization who cleared the trade on his behalf; (5) the aggregate amount of liability incurred and outstanding, as of the time each error trade entry is recorded, as to error trades that have been cleard by other members or member organizations; and (6) such other information as the Exchange may require from time to time.

[1] 15 U.S.C 78s(b) and 17 CFR 240.19b–4.

[2] The proposed rule change was noticed in Securities Exchange Act Release No. 25015, October 9, 1987, 53 FR 39321. No comments were received from the Commission's notice of this proposal.

[3] As stated in NYSE Rule 325(e), this requirement is in addition to the net capital requirement for brokers or dealers established by the Commission in Rule 15c3–1. *See* 17 CFR 240.15c3–1 (1987).

[4] Thus, by agreement, an executing broker may place a uncompared trade that remains unresolved by the end of the clearing process in the amount of another member or member organization.

III. Discussion

The amendments to NYSE Rule 325(e) are intended to assure that financial responsibility requirements and standards for NYSE members are commensurate with today's levels of market activity, volatility, and order size. The Exchange notes that average trade size and market volatility have both increased since the last increase in the financial responsibility standard in 1980.[8] In view of this, the Exchange believes that the proposed increase in the financial responsibility standard is appropriate in light of the changes in the market since the 1980 amendment. The other proposed amendments to Rule 325(e) increase the minimum seat value as collateral provision to conform it with the increased financial responsibility standard and provide members with alternative means to comply with the Exchange's financial responsibility standard for themselves or for their [illegible].

The proposed amendment to NYSE Rule 134 is intended to codify current procedures used by members and member organizations for the resolution of error trades and to impose certain record keeping requirements on members. The Exchange states that over a period of years an informal practice has developed among members which supplements current NYSE procedures for the resolution of error trades. Under this practice, an executing broker may place an error trade in the account of another member or member organization. Where an executing broker does not have an error account in his own name in which he can place an error trade, the member must rely on the services that another member or member organization may agree to provide in "taking in" an error trade. Under circumstances where a member has an error account but the cost of recording and correcting the error may be greater than the actual amount of the error, the specialist in the security may agree to "take in" the error trade as a service to his customers. As the Exchange notes, a specialist is not required to "take in" error trades of his customers. The proposed new paragraph (g) of Rule 134 is intended to make clear that a member or member organization can agree to "take in" an error trade of another member or member organization.

The proposed error trade record keeping requirements in Rule 134(g) are intended facilitate NYSE monitoring of error trades. As discussed previously, every member or member organization would keep records of all error trades cleared in their account. This provision would also require every executing broker to maintain audit trail records of every error trade of $3,000 or more cleared in the account of another member or member organization on the member's behalf. The Exchange believes that these requirements will help it maintain proper regulatory safeguards by enabling the Exchange to review error trade activity where appropriate.

As noted previously, the Commission did not receive any written comments to the Federal Register notice of the proposed rule change.[9] The NYSE, however, did receive six written comments in response to a January 21, 1987, Information Memorandum to its members ("January 21 Memorandum") which solicited comments on possible enhancements to financial responsibility standards and procedures for handling error trades which formed the basis for the proposed rule change.[7] These comments and the Exchange's response were discussed in detail in the Commission's notice of the proposed rule change published in the Federal Register.[8] In brief, the majority of ocmment letters that addressed the proposal to increase the financial responsibility requirement supported the concept.[9] Concerning error account procedures, the Exchange's January 21 Memorandum contained a proposal to require members to have their own error accounts. In response to critical comments the Exchange received, and its own reassessment of the proposal, the NYSE decided not to require mandatory error accounts.[10] The Commission has closely reviewed the provisions of the proposed rule change and believes that they are consistent with the requirements of the Act and, accordingly, should be approved. In particular, the Commisson believes that the proposed amendments to Rule 325(e) are consistent with section 6(b)(5) of the Act in that they promote the protection of investors and the public interest by increasing the minimum level of financial responsibility that must be demonstrated by all members who execute orders on the floor of the Exhange. The Commission believes that the proposed increase in the NYSE's minimum financial responsibility standard is reasonable in view of the substantial changes that have occurred in the market in the eight years since the last change in the financial responsibility in requirement.[11] The Commission notes that the size of an average trade executed on the NYSE floor, the value of securities represented in those trades, and the amount of trading, have increased substantially since the financial responsibility standard was last amended by the Exchange in October 1980.[12]

Similarly, the proposed new paragraph (g) to Rule 134 is consistent with section 6(b)(5) in that the codification of practices by which members may place error trades in the account of another member or member orgainzation, together with the proposed error trade record keeping requirements, foster cooperation and coordination with persons engaged in regulating, clearing, settling and facilitating transactions in securities.

In addition, the Commission believes that the proposed amendments to Rule 325(e) and Rule 134(g) are consistent with section 6(c)(3) of the Act which provides that on exchange may deny or condition membership of a registered broker or dealer where a member does not meet such standards of financial responsibility or operational capability as are prescribed by the rules of the exchange.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 13, 1988.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-24132 Filed 10-18-88; 8:45 am]

BILLING CODE 8010-01-M

[8] In the NYSE's 1980 amendment to Rule 325(e), the financial responsibility standard was increased from $2,500 to the current level of $4,000 and the standard was made applicable to all members. That increase was made in response to increased trading levels on the Exchange. *See* Securities Exchange Act Release No. 17208, October 9, 1980, 45 FR 68682.

[9] *See* note 2, *supra*.

[7] *See* letters from Harry Buonocore, an independent broker-dealer; Alan Goldberg, on behalf of Einhorn and Co. ("Einhorn"); A.L. Mastronardi, on behalf of Securities Settlement Corporation ("SSC"); Lawrence O'Donnell and Co., an NYSE specialist firm; and two letters from the Organization of Two Dollar Brokers ("OTB").

[8] *See* note 2, *supra*.

[9] Buonocore, Lawrence O'Donnell and Co., and the OTB all supported some form of increase in financial responsibility requirements. Only Einhorn opposed an increase.

[10] The letters from SSC and Lawrence O'Donnell and Co. were generally critical of requiring members to have their own error account. Einhorn supported a mandatory error account.

[11] *See* note 5, *supra*.

[12] For example, for the year 1980, a total of 11.4 billion shares were traded on the NYSE with an average trade size of 872 shares and an average price per share of $33.00. *See*, NYSE *Fact Book 1981* p. 3–5. For the year 1987, a total of 47.8 billion shares were traded on the NYSE with an average trade size of 2112 shares and an average price per share of $36.30. *See* NYSE *Fact Book 1988*, p. 7–10.

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; New York County, NY

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in New York County, New York.

FOR FURTHER INFORMATION, CONTACT: Richard A. Maitino, Project Executive Director, New York State Department of Transporation, State Campus, 1220 Washington Avenue, Albany, New York 12232, Telephone: (518) 457–3690. A Community Project Office is being established at 141 5th Avenue, 10th Floor, New York, NY 10010. Contact: Robert J. Ronayne, Director of Development and Design, Telephone (212) 979–6630.

or

Harold J. Brown, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, 9th Floor, Clinton Avenue and North Pearl Street, Albany, New York 12207, Telephone: (518) 472–3616.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration, in cooperation with the New York State Department of Transportation will prepare an Environmental Impact Statement (EIS) on a proposal to reconstruct Route 9A in New York County, New York. At its southern limit, the project would begin at Battery Place and the Brooklyn Battery Tunnel. The project would extend approximately 5 miles to its northern limit in the vicinity of 59th Street where it would connect to the existing Route 9A Viaduct. The proposed improvement would involve the reconstruction of the existing roadway inclusing structures, pavement and appurtenances and construction of a continuous bikeway and walkway in order to provide needed improvements to the deteriorated infrastructure, improve traffic flow, pedestrian and traffic safety, air quality, and pedestrian access to the waterfront.

In 1986, a West Side Task Force was appointed by Governor Cuomo and Mayor Koch to evaluate the roadway needs on the West Side. The Task Force proposed an alternative which, prior to detailed evaluation, is considered the preferred alternative. The Task Force proposed a replacement roadway with the understanding that as the project is advanced, some adjustments in the recommended concept may become necessary based upon further traffic, engineering, socioeconomic and environmental analyses. The replacement roadway, as envisioned by the Task Force, would provide generally three lanes in both the northbound and southbound directions with portions either depressed or elevated to provide capacity adjustments at locations of heavy pedestrian and vehicle usage. Between the Brooklyn-Battery Tunnel and Chambers Street, an additional two-lane depressed, reversible roadway would be provided. At Canal Street, a northbound overpass would carry three lanes while there would be two lanes at-grade. Additionally, in the northbound direction there would be between 32nd Street and 44th Street, a two-lane depressed roadway and a two-lane at-grade roadway. A two lane viaduct, in each direction, would extend from the existing viaduct at 50th Street to an at-grade facility in the vicinity of 49th Street. In this section there also would be a 2-line roadway in each direction.

At this time, other alternatives under consideration include taking no action, reconstructing the roadway with similar configuration and minor improvements at intersections, and a modification to the Task Force alternative. The modifications would include an at-grade roadway south of Chambers Street instead of the depressed, reversible lanes and a two-lane northbound viaduct at Canal Street instead of a three-lane viaduct. Also studied will be other segment alternatives that may be identified as the project is advanced. The build alternatives would also provide for a pedestrian/bicycle path. In addition, consideration will be given to staged construction of the new facility.

Letters describing the proposed action and soliciting comment will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed interest in this proposal. A scoping meeting with cognization Federal, State and local agencies and private organizations and citizens is tentatively scheduled for late November 1988. The purpose of the project scoping and the Scoping Meeting is to further identify the significant issues to be analyzed in the EIS process. Public information sessions will be held to allow interested individuals and agencies to review project information prior to the scoping meeting. Public notice will be given of the time and place of the scoping meetings and information sessions and locations where supplemental information will be available. The draft EIS, when prepared, will be available for public and agency review and comment, at which time a public hearing will be held.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action should be directed to the New York State Department of Transportation or the Federal Highway Administration at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

Dated: October 6, 1988.

Harold J. Brown,

Division Administrator, Federal Highway Administration, Albany New York.

[FR Doc. 88-24078 Filed 10-18-88; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Applicable Rate of Interest on Nonqualified Withdrawals From a Capital Construction Fund

Under the authority in section 607(h)(4)(B) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1177(h)(4)(B)), we hereby determine and announce that the applicable rate of interest on the amount of additional tax attributable to any nonqualified withdrawals from a Capital Construction Fund established under section 607 of the Act shall be 8.57 percent, with respect to nonqualified withdrawals made in the taxable year beginning in 1988.

The determination of the applicable rate of interest with respect to nonqualified withdrawals was computed, according to the joint regulations issued under the Act (46 CFR 391.7(e)(2)(ii)), by multiplying 8 percent by the ratio which: (a) The average yield on 5-year Treasury securities for the calendar year immediately preceding the beginning of such taxable year bears to (b) the average yield on 5-year Treasury securities for the calendar year 1970. The applicable rate so determined

was computed to the nearest one-hundredth of one percent.

Dated: October 12, 1988.

So Ordered By: Maritime Administrator, Maritime Administration; Administrator, National Oceanic and Atmospheric Administration; Assistant Secretary for Tax Policy, Department of the Treasury.

John Gaughan,

Maritime Administrator.

William E. Evans,

Administrator, National Oceanic and Atmospheric Administration.

O. Donald Chapoton,

Assistant Secretary for Tax Policy.

[FR Doc. 88-24080 Filed 10-18-88; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Customs Service

Application For Recordation of Trade Name: "TUNE BELT," Tune Belt, Inc.

ACTION: Notice of application for recordation of trade name.

SUMMARY: Application has been filed pursuant to § 133.12, Customs Regulations (19 CFR 133.13), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "TUNE BELT," used by Tune Belt, Inc., a corporation organized under the laws of the State of Ohio, located at 2801 Arbor Place, Cincinnati, Ohio 45209.

The application states that the trade name is used in connection with clothing, manufactured by Kama Corporation, LTD. in Taipei, Taiwan.

Before final action is taken on the application, consideration will be given to any relevant data, views or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register.**

DATE: Comments must be received on or before December 19, 1988.

ADDRESS: Written comments should be addressed to the Commissioner of Customs, Attention: Value, Special Programs and Admissibility Branch, 1301 Constitution Avenue, NW., Washington, DC 20229 (Room 2104).

FOR FURTHER INFORMATION CONTACT: Bettie Coombs, Value, Special Program and Admissibility Branch, 1301 Constitution Avenue, NW., Washington, DC 20229 (202) 566-5765).

Dated: October 13, 1988.

Marvin M. Amernick,

Chief, Value, Special Programs and Admissibility Branch.

[FR Doc. 88-24072 Filed 10-18-88; 8:45 am]

BILLING CODE 4820-02-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported For Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit "The Romantic Spirit: German Drawings, 1780-1850, from the German Democratic Republic" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. I also determine that the temporary exhibition or display of the listed exhibit objects at the Pierpont Morgan Library, New York City, New York, beginning on or about November 17, 1988 to on or about January 29, 1989, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Date: October 13, 1988.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 88-24194 Filed 10-18-88; 8:45 am]

BILLING CODE 8230-01-M

[1] A copy of this list may be obtained by contacting Ms. Lorie Nierenberg of the Office of the General Counsel, USIA. The telephone number is (202) 485-8627, and the address is Room 700, U.S. Information Agency, 301-4th Street, SW., Washington, DC 20547.

Corrections

Federal Register
Vol. 53, No. 202
Wednesday, October 19, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL-3451-4]

Ocean Dumping; Site Designation for Georgetown Harbor et al.

Correction

In rule document 88-21771 beginning on page 37558 in the issue of Tuesday, September 27, 1988, make the following corrections:

§ 228.12 [Corrected]

1. On page 37562, in the second column, after amendatory instruction 3, in § 228.12(a)(3), in the land description for "Pensacola, FL", in the second line, "8.3" should read "18.3", and in the third line, "18.3" should read "18.2".

2. On the same page, in the third column, in amendatory instruction 5, in the second line, footnote reference 6 inadvertently appeared without a corresponding footnote, which should read as set forth below:

[6] Note: This removal should be made in addition to the words and coordinates already specified for removal in the August 14 Final Rule concerning the "Morehead City Harbor" ODMDS in 40 CFR 228.12(a)(3). Also, it should be noted that the last coordinate component presented on page 30361 in the text of the August 14 Final Rule should read 76°45'0" W. instead of 70°45'0" W. Furthermore, § 228.12 cited in the August 14 Final Rule as "Delegation of management authority for ocean dumping sites" should have been cited as "Delegation of management authority for interim ocean dumping sites" per the 40 CFR revised as of July 1, 1987.

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8133]

Income Tax; Credit for Clinical Testing Expenses for Certain Drugs for Rare Diseases or Conditions

Correction

In rule document 88-22375 beginning on page 38708 in the issue of Monday, October 3, 1988, make the following corrections:

§ 1.28-1 [Corrected]

1. On page 38711, in the third column, in § 1.28-1(b)(4), in the fourth line, "23" should read "28".

2. On the same page, in the third column, in § 1.28-1(c)(1)(iii), in the fifth line, "335(b)" should read "355(b)".

3. On page 38712, in the first column, in § 1.28-1(c)(2), in the last line, "health" should read "healthy".

4. On the same page, in the same column, in § 1.28-1(d)(1)(i)(B), in the ninth line, "or" should read "of".

5. On page 38713, in the first column, in the 22nd line, in § 1.28-1(d)(1)(ii)(D), insert a comma after "$500,000/$2,000,000".

6. On the same page, in the same column, in § 1.28-1(d)(1)(iii), in the 16th line, "factor" should read "factors"; in the 23rd line, insert a semicolon after "therapy"; and in the 24th line "become" was misspelled.

7. On the same page, in the second column, in § 1.28-1(d)(2)(iii)(E), in the first line, "relating" was misspelled.

8. On page 38714, in the first column, in § 1.28-1(d)(4)(i), in the sixth line, "related" should read "relating".

9. On the same page, in the second column, in § 1.28-1(d)(5)(iii), in the fifth line, "paragraphs" should read "paragraph".

10. On the same page, in the third column, in § 1.28-1(d)(5)(iv)(C), in the first line, "It" should read "If".

11. On page 38715, in the first column, in § 1.28-1(d)(6)(iii)(A), in the fifth line, "amount" should read "among".

Note: For a Department of the Treasury correction to this document see the Rules section of this issue.

BILLING CODE 1505-01-D

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Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 590

Urban Homesteading Program; Implementation of 1987 Statutory Amendments and Revision of Selected Program Procedures; Proposed Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 590

[Docket No. R-88-1412; FR-2481]

Urban Homesteading Program; Implementation of 1987 Statutory Amendments and Revision of Selected Program Procedures

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Proposed rule.

SUMMARY: This rule would implement amendments to the Urban Homesteading Program regulations made by sections 517 (c) and (d) of the Housing and Community Development Act of 1987 ("1987 Act"). In accordance with section 517(c) of the 1987 Act, the rule would eliminate the former three-pronged "special priority" test for the selection of homesteaders and substitute a single priority selection criterion—that the prospective homesteader be a "lower-income" person or family. The rule also would implement section 517(d) of the 1987 Act, which authorizes States and units of general local government participating in the program to designate a "qualified non-profit organization", or a public agency, to act as the local urban homesteading agency responsible for selecting homesteaders and properties, and for accepting title to and conveying the properties to homesteaders. Finally, the rule also would make a number of specific changes in program procedures, such as specifying certain additional documents that must be submitted with a locality's urban homesteading application, setting a guideline that a local urban homesteading agency should generally anticipate homesteading a minimum of five properties per year in order to participate effectively in the program, and raising the existing limit on the values of properties selected for homesteading from $20,000 to $25,000 for one-unit properties, and from $5,000 to $8,000 per additional unit in two- to four-unit properties. In addition, the program's fund reservation system is being changed from an annual reservation based on estimated annual needs to a system of first-come, first-served reservations for specific properties.

DATE: *Comments Due:* December 19, 1988.

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Marion F. Connell, Director, Urban Homesteading Program, Rehabilitation Loans and Homesteading Division, Office of Urban Rehabilitation, U.S. Department of Housing and Urban Development, 451 7th Street, SW., Room 7168, Washington, DC 20410. Telephone: (202) 755-5324. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2506-0042. This control number is currently being reviewed by OMB to extend its applicability for this proposed rule. Public reporting burden for each of these collections of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, *Findings and Certifications*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., Room 10276, Washington, DC 20410, and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Background

Section 517 of the Housing and Community Development Act of 1987 (Pub. L. 100-242) amended section 810 of the Housing and Community Development Act of 1974, 12 U.S.C. 1706e ("1974 Act"), which authorizes the Urban Homesteading Program, as follows:

Section 517(c) eliminates the former three-pronged "special priority" test for the selection of homesteaders and substitutes a single priority selection criterion—that the applicant should be a "lower-income" person or family.

Section 517(d) authorizes States and units of general local government to designate a "qualified non-profit organization," or a public agency, to act as the local urban homesteading agency (LUHA)—including accepting title to and conveying properties to homesteaders if they so choose.

In addition to the amendments made by sections 517 (c) and (d) of the 1987 Act, section 517(a) amends the 1974 Act to extend the authority for the local property and the multifamily property urban homesteading demonstrations. These demonstrations would be implemented by Notice, rather than by permanent regulations, if they were reinstated. However, the Department is not currently planning to implement either of these demonstrations in FY 1989.

Also, section 517(b) amends section 108(d)(3)(A) of the 1974 Act to allow State participants in the Urban Homesteading Program to use Community Development Block Grant (CDBG) funds for urban homesteading administrative expenses, consistent with the authority available to CDBG grantees other than States. This provision will be implemented by an appropriate revision to the State CDBG Regulations, rather than in this rule. However, this provision is self-executing, and, therefore, it does not require regulatory action to be effective. States participating in the Urban Homesteading Program may charge eligible administrative expenses incurred after February 5, 1988 (the effective date of the 1987 Act) in operating their urban homesteading programs to their otherwise available State CDBG administrative funds, provided such administrative expenditures would satisfy other Title I requirements.

Other changes to Part 590 in this rule are proposed at HUD's initiative. Generally, these changes stem from the need to update certain provisions in keeping with comments received from Congressional committee reports, comments from local officials, and HUD's own experience in administering the program since the last revision of the regulations (see 50 FR 25941, June 24, 1985).

The principal proposed amendments to Part 590 are discussed below in the order that they appear in the proposed rule. Other technical amendments are proposed in the following sections of Part 590: § 590.1(a) and (b); § 590.5 (definitions of "Act" and "LUHA" are amended; new definitions of "lower-income families" and "qualified community organization" are added; and definition of "locally owned property" is deleted); § 590.7; § 590.11(c) and (d); § 590.13; § 590.15; § 590.17(a) and (b)(3); § 590.19; § 590.23; § 590.29; and 590.31. These technical amendments have not been separately discussed below, since they are either editorial in nature, or they are conforming changes to make the amended provision consistent with one of the principal amendments in the proposed rule.

Amendments to Part 590

In § 590.7, "Program requirements," and § 590.13(b), "Standards for HUD review and approval of a local urban homesteading program," the proposed rule would add guidance that, in general, local agencies shall select neighborhoods so as to be able to anticipate homesteading a minimum of five properties per year, in order for their programs to be cost-effective and have discernible neighborhood impact. These provisions are proposed in view of the high demand for scarce program funds in order to establish a reasonable threshold level necessary for continued program participation. Regional economic conditions dictate not only the availability of federally-owned properties but also their price range. These factors, in turn, influence the feasibility of homesteading in the region. Over time, economic conditions shift within regions of the country, so that homesteading may become infeasible in a previously active area due to a lack of foreclosed single-family properties in the HUD, VA, and FmHA inventories, or the increased cost of such properties. Conversely, as more properties become available or their values decrease, homesteading may become very active in an area previously inactive. Without a threshold program level, communities could continue indefinitely in the program, operating ineffective, expensive, low level programs, while other areas with greater need for program resources find it difficult or impossible to obtain funding.

Under "Program requirements" at § 590.7(b)(2), the homesteader selection section would be modified to conform the regulations to section 517(c) of the 1987 Act. The three existing priority selection criteria would be deleted and one priority criterion set forth, which would give priority to eligible "lower-income families or individuals," as defined by 24 CFR Part 813. Since HUD has already advised local urban homesteading agencies that this provision is considered self-executing, local agencies should already be selecting homesteaders in accordance with the new single criterion for priority. However, homesteaders notified of their selection in accordance with the previous special priority criteria before February 5, 1988 (the effective date of the 1987 Act) remain entitled to properties, if they have not received them yet. The proposed rule would make no change in the effect of the statutory priority from existing rules, apart from the simplification of the criterion for priority selection itself. Specifically, a local urban homesteading agency (LUHA) still may not select a homesteader who is not entitled to priority if there is an available priority homesteading candidate who has applied and is qualified for the particular property involved. LUHAs should document their homesteader selection files to show that they are complying with this priority. In addition, LUHAs are required to ensure that homesteaders are matched to the bedroom size of the property so that homesteaders are not under- or over-housed.

Section 590.7(b)(2) would also be amended to describe the extent to which certain homesteader selection criteria based on residency may be imposed by participating LUHAs if they so choose. However, this description should not be construed to authorize participating LUHAs to use such criteria in a manner which would override the statutory priority for lower-income persons. That is, if there is a lower-income applicant otherwise qualified to participate in the program, who does not meet the locally imposed residency or other criteria, then that applicant would still take precedence over any non-lower income candidate meeting such local criteria.

Finally, a new provision, designated (iii), has been added to assure that membership in, or ties to, particular private organizations are not made a factor affecting homesteader selection. With the advent of non-profit community organizations as LUHAs, HUD believes it is important to specify that membership in any private organization doing business with such an organization, and any other ties to a particular private organization, are not made criteria for homesteader selection.

Also under "Program requirements" in § 590.7, amendments to subparagraphs (b)(4) and (b)(6) are proposed in order to clarify the LUHA's responsibility to assist in securing compliance with section 312 loan terms and to find a replacement homesteader where it appears that the initial applicant has defaulted on a section 312 loan during the homesteader's conditional title period. During this period, foreclosure of the section 312 loan is generally not a viable option, since it either results in undue loss to HUD, if HUD forecloses only on the homesteader's interest in the property, or it results in the property being lost to the homesteading program, if the LUHA gives up its reverter interest in the property and allows HUD to foreclose and then to sell the property on the open market. The best option both to minimize HUD's loss and to preserve the property for homesteading is for the local agency to identify a successor homesteader who will assume the section 312 loan, or as much of the loan as the property's value at the time of assumption will support. The proposed amendments are designed to give local agencies clearer regulatory notice of this policy, which is more fully described in a notice on this subject issued under HUD's Unified Issuances System. Also, the amendments to § 590.7(b)(6) would allow HUD to shorten the homesteading period required of the successor homesteader under that section, if that is necessary to attract a successor homesteader.

Under "Program requirements" in § 590.7, a new paragraph (c) would be added entitled "Designation of LUHA." As at present, the applicant State or unit of general local government may act as its own local urban homesteading agency (LUHA), conducting the program, and accepting and conveying title to federally owned properties in its own name, or it may designate a legally separate and independent public agency to do so. Similar to present practice, the designation is approved by HUD as part of the program application approval process, and it remains in effect until a new LUHA is designated by the applicant by a program amendment approved by HUD, or the local urban homesteading program is closed out. Finally, also as presently permitted (although not specified in the current regulation), the proposed rule specifies that the LUHA may carry out its program functions through a third party contractor, consultant, or agent, except for the acceptance and conveyance of title to properties. The proposed regulation makes clear that the third party agreement must be in writing, and it may not relieve the LUHA or the applicant of responsibility for the conduct of the program.

However, based on section 517(d) of the 1987 Act, HUD also proposes to allow qualified community organizations to act as LUHAs. As provided by the 1987 Act, qualified community organizations are nonprofit corporations whose directors serve without pay and which qualify as IRS section 501(c)(3) tax exempt organizations. Consistent with present

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practice, any designated LUHA (whether public or private) must have legal authority to accept and convey title to properties for homesteading purposes. The proposed regulation specifically provides that this key function may not be passed on to another entity by the LUHA, unless HUD approves a program amendment designating a new LUHA. This is necessary because up to three Federal agencies must know on a day-to-day basis what local entity they are authorized to deal with in conveying properties, and to assure that the LUHA remains properly accountable for the properties it obtains, both to HUD and to the homesteaders who deal with the LUHA.

Finally, the proposed regulation would require a written agreement between the LUHA and the applicant, and it would specify certain provisions which the agreement must, at a minimum, contain. HUD believes that a written agreement detailing the responsibility of the LUHA is essential for non-profits to act as LUHAs. HUD also believes that program responsibilities will be clarified and accountability strengthened if designated public agencies are also required to enter into such agreements with the responsible States and units of general local government.

Under "Applications" at § 590.11, the proposed rule would require local urban homesteading agencies applying for the first time to submit additional information in their application package. HUD is now requesting a description of the applicant's proposed homesteader selection procedures which complies with the 1987 Act and § 590.7(b)(2) of the regulations, copies of the applicant's proposed legal documents complying with § 590.7(b)(3), (5) and (7), an estimate of the number of properties to be acquired during the program year, and a copy of the applicant's written agreement designating any local urban homesteading agency in compliance with § 590.7(c). Receipt of these specific documents is necessary to avoid serious flaws in program design which HUD has found more difficult to correct after the fact. The Department still wishes to offer maximum latitude to local agencies administering the program, but several recent applicants have commented that they prefer more detailed information on these matters at program start up. Similarly, in § 590.11(b) HUD is requiring previously approved applicants to submit this new information for the first program year following the effective date of the final rule containing this provision.

Under "Transfer of HUD-owned property" at § 590.17(b)(4) and under "Reimbursement to FmHA and VA" at § 590.18(c)(1), the administratively imposed maximum amount that may be charged to section 810 appropriations for acquisition of federally-owned single-dwelling unit properties would be raised from $20,000 to $25,000, in keeping with suggestions from the House-Senate Conference Committee on H.J. Res. 395 (FY 1988 Appropriations Act) in House of Representatives Report No. 100-498 at page 843. This will help keep pace with inflation in real estate market values being experienced in some areas of the country. This cost cap has not been adjusted since 1985. HUD does, however, propose to amend § 590.17 and § 590.18 to delete field office authority to grant "local program-wide" exceptions to this acquisition cost cap, because of the need of further target the limited program funds to sections of the nation experiencing softer real estate markets. Under the proposed rule, the price paid for a property would be the as-is fair market value, not to exceed $25,000, or a negotiated lesser amount, unless an exception for an individual property is granted by a HUD Field Office. An additional amount up to $8,000 per unit may also be charged to section 810 funds for properties with two to four dwelling units. This is an increase from $5,000 per additional dwelling unit, a figure which had not been adjusted since the inception of the program. In addition, the 30 day time frame for which HUD/FHA has been obligated to suspend its routine property disposition activity in urban homesteading neighborhoods is shortened to 21 days to reflect actual program experience and realize economies for the Department.

At § 590.21, "Reservation and reduction of funds," the proposed rule would provide for reduction of funds when there are no affordable, federally-owned properties available due to a change in market conditions for the area and establishes a "first come, first served" policy for fund reservations. That is, funds would not be reserved for a LUHA only when actual properties have been identified for acquisition. This is necessary so that scarce resources will not be set aside for a LUHA whose housing market may have improved considerably, thereby reducing the inventory of available, affordable properties, since submission of the Annual Request for Participation. Also, this policy change will minimize the need for fund re-allocations at the end of each fiscal year. Similarly, at § 590.23, "Program close-out," the proposed rule gives HUD specific authority to terminate a homesteading program if such market conditions have existed for two fiscal years and are likely to persist for the next fiscal year. Section 590.23(c) is also revised to make the LUHA's obligation to continue to monitor, enforce, and implement existing agreements with homesteaders after close-out.

Finally, at § 590.31(e), the proposed rule would clarify the remedial standard under which HUD may direct the LUHA to repay HUD for homestead properties that the LUHA has mishandled. The former standard on its face dealt only with properties that the LUHA had "converted to its own use." This standard clearly covered properties that the LUHA had sold, rented, or used for its own purposes without HUD approval; it did not as clearly cover situations in which the LUHA's negligent failure to preserve and protect the property permitted deterioration that made it infeasible to homestead the property. The revised language of the proposed rule would correct this oversight.

Findings and Certifications

The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(b) of the Paperwork Reduction Act of 1980. Sections 590.11 (a), (b), (c) and (d); § 590.17(b); § 590.18(b); § 590.21; § 590.25; and § 590.29(c) of this proposed rule have been determined by the Department to contain collection of information requirements. Information on these requirements is provided as follows:

ANNUAL REPORTING BURDEN, PROPOSED RULE—URBAN HOMESTEADING PROGRAM

Description of information collection	Section of 24 CFR affected	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
Application (2506-0042)	590.11 (a) and (d)	20	1.50	30	24.00	480
Amendment (2506-0042)	590.11(c)	13	1.00	13	4	52
Annual Request for Program Participation (2506-0042)	590.11(b)	112	1	112	2	224
Verification of Fund Availability, HUD-40050 (2506-0042)	590.17(b), 590.18, 590.19, 590.21	132	4	528	0.25 (15 min.)	132
Homesteading Property Addition, HUD-40063 (UHPMIS) (2506-0042)	590.29(c)	172	4.00	688	0.5 (30 min.)	344
Quarterly Property [1] Report (UHPMIS) (2506-0042)	590.29(c)	132	1.34	176	0.25 (15 min.)	44
Quarterly Progress Report (UHPMIS) (2506-0042)	590.29(c)	192	4.00	768	1.00	768
Recordkeeping for Local Urban Homesteading Programs	590.25	192	1.00	192	3.00	576
Total annual burden						2,540

[1] This report replicates data submitted on the HUD-40063. LUHAs do not submit it if it is correct. Less than one-third make additional corrections.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

This rule would not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291. Analysis indicates that it would not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. The rule would implement several statutory provisions that improve the Urban Homesteading Program. These changes will have neither a significant economic impact on, nor an effect on, a substantial number of small entities.

The Catalog of Federal Domestic Assistance Program number is 14.230.

This rule was listed as item number 995 in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13854) under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 590

Urban homesteading, Administrative practice and procedure, Grant programs: housing and community development, Low and moderate income housing.

Accordingly, the Department proposes to revise 24 CFR Part 590 to read as follows:

PART 590—URBAN HOMESTEADING

Sec.

590.1 Scope and purpose of regulation.
590.3 Waiver authority.
590.5 Definitions.
590.7 Program requirements.
590.9 Listing of HUD-owned, VA-owned, and FmHA-owned properties.
590.11 Applications.
590.13 Standards for HUD review and approval of a local urban homesteading program.
590.15 Urban homesteading program participation agreement.
590.17 Transfer of HUD-owned property.
590.18 Reimbursement to FmHA and VA.
590.19 Use of section 810 funds.
590.21 Reservation and reduction of funds.
590.23 Program close-out.
590.25 Retention of records.
590.27 Audit.
590.29 HUD review of LUHA performance.
590.31 Corrective and remedial actions.

Authority: Sec. 810 of the Housing and Community Development Act of 1974 (12 U.S.C. 1706e); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 590.1 Scope and purpose of regulation.

(a) *Scope.* This part applies to the Urban Homesteading Program authorized under section 810(b) of the Housing and Community Development Act of 1974. The program is generally administered through the Department's field offices, which can provide information to the public about the localities participating, as well as technical assistance to localities about applying for and operating the program.

(b) *Purpose.* The purpose of the Urban Homesteading Program is to use existing housing stock to provide homeownership opportunities, primarily for lower income families, thereby encouraging public and private investment in selected neighborhoods and assisting in their preservation and revitalization. The program provides for the transfer without payment to a local urban homesteading agency (LUHA) of federally owned properties for use in a HUD-approved local urban homesteading program.

§ 590.3 Waiver authority.

HUD may waive any requirement of this part not required by law whenever it determines that undue hardship would result from applying the requirement, or where applying the requirement would adversely affect achievement of the purposes of the program.

§ 590.5 Definitions.

"Act" means section 810 of the Housing and Community Development Act of 1974, as amended from time to time.

"Applicant" means any State or unit of general local government that applies for HUD approval of a local urban homesteading program under these regulations.

"Federally owned property" means any real property to which the Secretary of HUD, the Secretary of Agriculture or the Administrator of Veterans Affairs holds title and which is:

(1) Improved with a one- to four-family residence;

(2) Unrepaired and not the subject of an outstanding repair or sales contract; and

(3) Not occupied by an individual or family under a lease. (Property of this nature is also referred to as "HUD-owned property," "FmHA-owned property," or "VA-owned property" when the context requires identification of the particular agency.)

"FmHA" means the Farmers Home Administration, an agency within the U.S. Department of Agriculture.

"Homesteader" means an individual or family that participates in a local urban homesteading program by agreeing to rehabilitate and occupy a property in accordance with § 590.7(b)(5).

"HUD" means the U.S. Department of Housing and Urban Development.

"Local urban homesteading agency" (LUHA) means a State, a unit of general local government, or a public agency or qualified community organization designated in accordance with § 590.7(c) by a State or a unit of general local government.

"Local urban homesteading program" means the operating procedures and requirements developed by a LUHA in accordance with this part for selecting and conveying federally owned properties to qualified homesteaders.

"Lower income families" means those families and individuals whose adjusted incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary pursuant to section 3(b)(2) of the United States Housing Act of 1937. Pursuant to 24 CFR Part 813, the Secretary's income limits for this purpose are updated annually and are available from the Housing Management Division in HUD field offices.

"Qualified community organization" has the meaning specified in § 590.7(c)(4).

"Section 810 funds" means funds available to reimburse HUD, FmHA, or VA (as applicable) for federally owned property transferred to LUHAs in accordance with this part.

"State" means any State of the United States, any instrumentality of a State approved by the Governor, and the Commonwealth of Puerto Rico.

"Unit of general local government" means any city, county, town, township, parish, village, or other general purpose political subdivision of a State, Guam, the Virgin Islands, or American Samoa, or any general purpose political subdivision thereof; the District of Columbia; the Trust Territory of the Pacific Islands; and Indian tribes, bands, groups, and nations of the United States, including Alaska Indians, Aleuts, and Eskimos.

"Urban homesteading neighborhood" means any geographic area approved by HUD for the conduct of a local urban homesteading program that meets the requirement of this part.

"VA" means the Veterans Administration.

§ 590.7 Program requirements.

(a) *Designation of urban homesteading neighborhood; coordinated approach toward neighborhood improvement.* The applicant shall designate the neighborhood or neighborhoods in which it will carry out its local urban homesteading programs, and it shall develop a plan that provides for the improvement of these neighborhoods through the homesteading program and the upgrading of community services and facilities, and through other measures needed to assure a suitable living environment, in combination with any other public or private revitalization efforts affecting the neighborhood. In general, the applicant should select neighborhoods so that it can reasonably anticipate homesteading a minimum of five (5) properties per year for the LUHA's overall program during its first full year of operation and each program year thereafter.

(b) *Development of local urban homesteading program.* The applicant shall develop, in compliance with this part, a local urban homesteading program containing the following major elements:

(1) *Selection and management of properties.* The program shall include procedures for selecting federally owned properties suitable for homesteading and for managing the properties before conditional conveyance to homesteaders. The program shall also provide that, by accepting title to a property under this part, the LUHA assumes liability for injury or damage to persons or property by reason of a defect in the dwelling, its equipment or appurtenances, or for any other reason related to ownership of the property.

(2) *Homesteader selection.* The program shall include equitable procedures for homesteader selection which:

(i) Exclude prospective homesteaders who own other residential property;

(ii) Take into account a prospective homesteader's capacity to make or cause to be made the repairs and improvements required under the homesteader agreement, including the capacity to contribute a substantial amount of labor to the rehabilitation process, or to obtain assistance from private sources; community organizations, or other sources;

(iii) Provide that membership in, or other ties to, any private organization (including a qualified community organization) may not be made a factor affecting selection as a homesteader;

(iv) Provide that, before a property is offered to other prospective homesteaders who are eligible, the property will be offered to eligible lower income families; and

(v) Include other reasonable selection criteria which are consistent with this § 590.7(b)(2) and which shall be specified in the applicant's application pursuant to § 590.11(a) and approved by HUD pursuant to § 590.13. Such other selection criteria shall include locally-adopted criteria reasonably matching family size to the number of bedrooms. Such criteria shall not permit homesteaders who are one-person households to occupy a property having more than two bedrooms. In addition, selection criteria may include preferences for the selection of neighborhood residents or other local residents, but only to the extent that they are not inconsistent with this section and with affirmative marketing objectives under § 590.11(d)(5)(ii). Such preferences based on residential location may not be based upon the length of time the prospective homesteader has resided in the jurisdiction or the neighborhood. Also, persons who are employed, or who have been notified that they have been hired, in the jurisdiction shall be extended any preference available to current residents.

(3) *Conditional conveyance.* The program shall provide for the conditional conveyance of federally owned properties to homesteaders without any substantial consideration.

(4) *Financing.* The program shall provide procedures for the LUHA to undertake, or to assist the homesteader in arranging, financing for the rehabilitation required under the homesteader agreement. Where direct Federal loans under Section 312 of the Housing Act of 1964 (42 U.S.C. 1452b) are used as a rehabilitation financing resource by the LUHA, the LUHA shall make reasonable efforts to assist HUD in monitoring and securing compliance with the terms of the loan during the homesteader's conditional title period.

(5) *Homesteader Agreement.* The program shall provide for the execution, concurrent with or as a part of the conditional conveyance, of a homesteader agreement between the LUHA and the homesteader which shall require the homesteader:

(i) To repair, within one year from the date of conditional conveyance of the property to the homesteader, any defects that pose a substantial danger to health and safety;

(ii) To make or cause to be made additional repairs and improvements necessary to meet the applicable local standards for decent, safe, and sanitary housing within three years from the date of conditional conveyance of the property to the homesteader, and to comply with any energy conservation measures designated by the LUHA as part of the repairs;

(iii) To occupy the property as his or her principal residence for not less than five consecutive years from the date of initial occupancy except as otherwise approved in writing by HUD on a case-by-case basis when emergency conditions make compliance with this requirement infeasible;

(iv) To permit reasonable inspections at reasonable times by employees or designated agents of the LUHA to determine compliance with the agreement; and

(v) To surrender possession of, and any interest in, the property upon material breach of the homesteader agreement (including default on any rehabilitation financing secured by the property), as determined by the LUHA in accordance with this part.

(6) *Monitoring and selecting successor homesteaders.* The program shall provide that the LUHA will monitor the homesteader's compliance with the homesteader agreement, will revoke the conditional conveyance and homesteader agreement upon any material breach by the homesteader, and, to the extent necessary and practicable, will select one or more successor homesteaders for the property. The LUHA shall make reasonable efforts to assure that any proposed successor homesteader assumes any Section 312 loan on the property, subject to HUD approval of the terms of the assumption. If the LUHA selects a successor homesteader, it shall execute a new homesteader agreement and conditional conveyance with the successor homesteader in compliance with this part, including the requirement for occupancy of the property by the successor homesteader for at least five consecutive years, except that HUD may approve a lesser occupancy period where necessary to facilitate assumption of a Federal rehabilitation loan under Section 312 of the Housing Act of 1964 (42 U.S.C. 1452b) or any other public or private financing if the circumstances warrant such a reduction of the residency period and the LUHA requests it. Such period will not be less than the greater of: (i) Two additional years, or (ii) the remaining amount of the original occupancy period.

(7) *Fee simple title.* The program shall provide for the conveyance of fee simple title to the property from the LUHA to the homesteader, or successor homesteader, without financial consideration upon compliance with the terms of the homesteader agreement and conditional conveyance.

(8) *Homesteading infeasible; alternative use.* If completion of homesteading proves, in the judgment of HUD, to be infeasible for any reason after a LUHA has accepted title to a federally owned property, the LUHA shall not demolish, dispose of, rent or otherwise convert the property to its own use until HUD approves an alternative use consistent with the coordinated approach to neighborhood improvement.

(c) *Designation of LUHA*—(1) *Responsibilities.* Pursuant to this § 590.7(c), the applicant shall designate a LUHA, which shall have primary responsibility for administering the local urban homesteading program for the applicant. The LUHA shall be the legal entity that accepts title in its own name to federally owned properties conveyed by the applicable federal agency with reimbursement from section 810 funds and which conveys title to such properties to homesteaders pursuant to paragraph (b) of this section 590. Although the applicant may at any time amend its local urban homesteading program to designate a new LUHA, subject to HUD approval as described in §§ 590.13–590.15 of this part, neither the applicant nor the designated LUHA may delegate or contract out to another legal entity the function of accepting and conveying in its own name title to properties for homesteading purposes pursuant to this part. To the extent permitted by the applicant, the LUHA may use third parties as contractors, consultants, or agents to assist it in carrying out other functions and responsibilities with respect to the local urban homesteading program, by entering into a written agreement between the LUHA and the third party. No such agreement shall be deemed to relieve the LUHA or the applicant of responsibility for the third party's actions in connection with the local urban homesteading program.

(2) *Identity of LUHA.* The LUHA must have legal authority to carry out a local urban homesteading program as described in this part, including the authority to accept and convey title to properties pursuant to paragraph (b) of this § 590.7. To the extent consistent therewith, the applicant State or unit of general local government may:

(i) Act as LUHA in its own name, while identifying within its administrative organization a lead department or agency to act as the primary contact point for HUD, VA and FmHA as described in § 590.11(a)(7);

(ii) Designate, and enter into a written agreement with, a legally separate public body or agency to act as LUHA in accordance with this part; or

(iii) Designate, and enter into a written agreement with, a qualified community organization (as defined in paragraph (4) of this § 590.7(c)) to act as LUHA in accordance with this part.

(3) *Content of Agreement With Designated Public Agency or Qualified Community Organization.* The applicant's written agreement with its designated public agency or qualified community organization shall contain at least the following provisions, and nothing inconsistent therewith:

(i) The agreement of the LUHA to carry out the local urban homesteading program, including the acceptance and conveyance of title to properties for homesteading purposes, in accordance with the Act, this part, and the applicant's HUD-approved urban homesteading application;

(ii) The agreement of the LUHA to hold title (and the right of reverter or other interest retained after conveyance of conditional title to a homesteader) to formerly federally owned properties conveyed to it pursuant to this part in trust, solely for the purpose of conveying such title to homesteaders (or for such alternative use as may be approved by HUD) pursuant to this part, and not to convey, encumber or otherwise deal with such property for its own benefit or account;

(iii) The agreement of the LUHA promptly to convey title and other interests in properties held pursuant to this part to the applicant, or to such new LUHA as may be designated by the applicant and approved by HUD, if the applicant terminates the LUHA's designation; and

(iv) The agreement of the applicant and the LUHA that the LUHA's designation shall not relieve the applicant of full responsibility to HUD for the conduct of the local urban homesteading program, and that HUD may take any corrective or remedial action pursuant to this part against the applicant, the LUHA, or both, solely at HUD's option.

(4) *Definition of Qualified Community Organization.* As used in this part, the term "qualified community

organization" means a private non-profit corporation which is:

(i) Incorporated under applicable State or local enabling legislation and which has the authority necessary to carry out the program;

(ii) Controlled by a board of directors whose members receive no compensation of any kind for the performance of their duties; and

(iii) Is organized exclusively for charitable, educational, or scientific purposes, or the promotion of social welfare, and qualifies as an exempt organization under paragraph (3) or (4) of section 501(c) of the Internal Revenue Code of 1986.

§ 590.9 Listing of HUD-owned, VA-owned, and FmHA-owned properties.

In order to facilitate planning for local urban homesteading programs, HUD, FmHA, and VA, upon request by a LUHA, each shall provide the LUHA with a listing of all residential one- to four-unit properties in the LUHA's jurisdiction to which they hold title and which are not subject to executed repair or sale contracts or leases. The LUHA shall give the public access to the list during ordinary business hours at the offices of LUHA.

§ 590.11 Applications.

(a) *Initial application requirements.* Applicants may submit an initial application under this part to the responsible HUD Field Office at any time during the year. Applications shall consist of:

(1) Standard Form-424;

(2) A map of each proposed urban homesteading neighborhood with geographic boundaries indicated and census tracts shown;

(3) A statement of the local goals for the homesteading program for each neighborhood selection;

(4) A description of the applicant's proposed homesteader selection procedures which complies with § 590.7(b)(2);

(5) The applicant's proposed legal documents which read together comply with § 590.7(b) (3), (5), and (7);

(6) An estimate of the amount of section 810 funds to be used during the current Federal fiscal year and a statement concerning the basis for the estimate, including the number of properties expected to be acquired during the year, prepared after consultation with HUD/FHA, FmHA or VA as appropriate;

(7) The applicant's written agreement designating its LUHA which complies with § 590.7(c), or, if the applicant proposes to act as its own LUHA, identification of the lead agency primarily responsible for administration for the program;

(8) The certifications required by paragraph (d) of this section; and

(9) Any additional documentation HUD specifically requests after review of the initial application pursuant to § 590.13.

(b) *Annual Request for Program Participation.* An applicant that has previously submitted and received approval of an initial application under paragraph (a) of this section shall notify the HUD Field Office in writing on or before August 1 of each succeeding Federal fiscal year if it wishes to continue in the program. At the same time, the applicant shall notify HUD of its estimate of the section 810 funds to be used during the upcoming Federal fiscal year, along with an explanation of the basis for the estimate, including the number of properties expected to be acquired during the year, prepared after consultation with HUD/FHA, FmHA or VA as appropriate. Previous applicants with already approved applications will be required to submit the items described in paragraphs (4), (5), (7), (8), and (9) of § 590.11(a) with their annual request for program participation for the first Federal fiscal year following the effective date of this regulation. Except for those items, HUD will deem the initial application still in effect as it was finally approved, unless the applicant concurrently submits other amendments under paragraph (c) of this section.

(c) *Amendments.* If the applicant wishes to change any element of its local urban homesteading program that is specifically described in the HUD-approved application (such as the identification of urban homesteading neighborhoods or the designation of the LUHA to carry out the program), the applicant shall submit its proposal to the HUD Field Office for approval before making any such change. The proposal shall identify specifically the elements to be changed, and shall set forth the proposed amendment. Proposed amendments may be submitted with an annual request for program participation or at any other time during the program year.

(d) *Certifications.* As part of its application, the applicant shall certify that:

(1) Except for States, the applicant's governing body had duly adopted or passed an official act, resolution, motion, or similar action authorizing the filing of the application, including all understandings and assurances contained in these certifications.

(2) The LUHA possesses the legal authority to and will carry out the local urban homesteading program described in its approved application in accordance with this part, including the specific program requirements described in § 590.7(b).

(3) The LUHA has:

(i) An adequate administrative organization capable of carrying out the program in a timely and cost effective manner;

(ii) Procedures for selecting and accepting property suitable for homesteading and rehabilitation as required by § 590.7(b)(1);

(iii) Procedures to assist in arranging, or for itself to undertake, rehabilitation financing for property conveyed to homesteaders, as required by § 590.7(b)(4).

(iv) Procedures for monitoring the homesteader agreement and for revoking a conditional conveyance upon material breach of the agreement, and for selecting a successor homesteader as required by § 590.7(b)(6); and

(v) Procedures for conveying fee simple title to the residential property received from HUD, FmHA or VA without substantial consideration to the homesteader upon his or her full compliance with the agreement required in § 590.7(b)(7).

(4) The applicant or the LUHA has, before submission of the application:

(i) Developed a plan for a coordinated approach toward neighborhood improvement as required by § 590.7(a); and

(ii) Provided citizens an adequate opportunity to express preferences about the proposed location of the urban homesteading neighborhood or neighborhoods, and to comment on the plan for a coordinated approach toward neighborhood improvement.

(5) The applicant and LUHA will:

(i) Assure non-discrimination in the selection of homesteaders and that no eligible person is denied equal opportunity for housing, or excluded from equal participation in the homestead program, on the basis of race, creed, color, national origin, age, sex or handicapping condition and that it will comply with all requirements of Title VI of the Civil Rights Act of 1964; Executive Order 11063; Title VIII of the Civil Rights Act of 1973; the Age Discrimination Act of 1975, and all applicable regulations issued under these authorities, in any activity in its local urban homestead program; and

(ii) Employ affirmative marketing procedures in the advertising of homesteading properties.

(6) The LUHA will comply with the lead-based paint procedures set forth in 24 CFR Part 35.

(7) The LUHA will submit any information HUD requests for the purpose of meeting HUD's responsibilities under the National Environmental Policy Act of 1969; Executive Order 11988 on Flood Plain Management; Executive Order 11990 on Protection of Wetlands; the Flood Disaster Protection Act of 1973; the National Historic Preservation Act of 1966; and the Preservation of Historic and Archaeological Data Act of 1974, including the procedures prescribed by the Advisory Council on Historic Preservation in 36 CFR Part 800, and Executive Order 11593 on Protection and Enhancement of the Cultural Environment.

(8) The applicant and its designated LUHA will give HUD and the Comptroller General, through their authorized representatives, access to and the right to examine all records, books, papers, or documents related to the local urban homesteading program. The applicant and its designated LUHA will maintain current and accurate data on the race and ethnicity of program participants/beneficiaries, in order to enable HUD to meet the requirements imposed upon it by "Section 562 of the Housing and Community Development Act of 1987."

(9) The LUHA will maintain in writing and on file a description of its approved local urban homesteading program for public information and review.

§ 590.13 Standards for HUD review and approval of a local urban homesteading program.

(a) *Applications.* The appropriate HUD Field Office will review an applicant's initial application and the Field Office Manager will approve the proposed local urban homesteading program, unless the Field Office Manager determines that the program does not comply with the Act, this part or other applicable laws and regulations, or that it is plainly inappropriate or plainly inconsistent with available facts and data. If the program is disapproved, HUD shall notify the applicant in writing of the specific reasons.

(b) *Annual requests for program participation and program amendments.* The HUD Field Office will review any proposed application amendments and an applicant's annual request for program participation and will approve the applicant's submission unless the Field Office Manager determines that the proposal does not comply with the Act, this part, or other applicable laws and regulations, is plainly inappropriate or plainly inconsistent with available facts and data, or that the applicant's past performance does not meet the standards of § 590.29(a). HUD will notify the LUHA in writing of the specific reasons for any disapproval. Program amendments will be considered approved as of the date of HUD's written notification of approval to the applicant. Annual requests for program participation will be considered approved as of the date of HUD's written notification to the applicant of approval, or notice of satisfaction of any approval conditions, whichever is later.

§ 590.15 Urban homesteading program participation agreement.

Upon approval of an application, HUD, the State or unit of general local government and the designated LUHA, if any, will execute an urban homesteading program participation agreement in the form prescribed by HUD. The agreement authorizes the LUHA to request HUD, VA, and FmHA to transfer properties to the LUHA pursuant to this part, to the extent that funds available are sufficient to reimburse the Federal agency for the properties. The agreement also obligates the LUHA to use the properties in accordance with the Act, this part, other applicable laws and regulations, and its approved application. However, neither a fund reservation nor the agreement obligates HUD, FmHA or VA to transfer a specific number of properties or particular properties identified in a program application, or a program amendment. The agreement shall specify procedures for its amendment or termination.

§ 590.17 Transfer of HUD-owned property.

(a) *Property disposition assistance.* HUD's property disposition activity shall support local urban homesteading programs as follows:

(1) After execution of its initial urban homesteading agreement, but before the initial selection of any HUD-owned property, a LUHA may request HUD to suspend its routine property disposition activity for up to 45 days for HUD-owned properties listed under § 590.9 and identified by the LUHA as located in a HUD-approved urban homesteading neighborhood. Based upon this request, HUD shall state in writing the starting and closing dates of the suspension of property disposition activity for all such identified HUD-owned properties.

(2) With respect to properties coming into HUD's inventory later, the HUD Field Offices shall develop and implement property disposition plans for HUD-owned properties located in HUD-approved urban homesteading neighborhoods. These plans shall include the following procedures:

(i) As soon as feasible, but in no event later than ten days after HUD receives a notice of property transfer and application for insurance benefits for a HUD-owned property located in a HUD-approved urban homesteading neighborhood, the HUD Field Office shall notify the LUHA in writing of the potential availability of the property for homesteading.

(ii) The HUD Field Office shall not approve a property disposition program for a HUD-owned property until the LUHA has informed the Field Office, in writing, whether or not it intends to use the property in the local urban homesteading program, or until 21 days from the date of HUD's notice, whichever comes first. The Field Office Manager may extend the 21-day deadline if the Field Office Manager makes a written determination that notification by the LUHA within 21 days is impracticable.

(b) *Conditions for transferring HUD-owned properties.* Except as provided in paragraph (c) of this section, HUD shall offer to transfer the title of a HUD-owned property to a LUHA, without payment, if:

(1) The property is located in a HUD-approved urban homesteading neighborhood;

(2) The LUHA has notified the HUD Field Office, within the applicable period specified in paragraph (a)(1) or (a)(2)(ii) of this section, that it intends to use the property in the local homesteading program;

(3) The LUHA's approved reservation of section 810 funds is sufficient to reimburse HUD's applicable housing loan or mortgage insurance accounts for the estimated as-is fair market value of the property, or a negotiated lesser amount, plus closing costs as approved by HUD; and

(4) The HUD Field Office determines that the requested property is suitable for the approved local urban homesteading program, as follows:

(i) The estimated as-is fair market value of the property does not exceed $25,000 (excluding closing costs) for a one-unit single family residence and an additional $8,000 for each additional unit of two- to four-family residences; or

(ii) The Field Office Manager authorizes, on a property-by-property basis, the transfer of a HUD-owned property where the estimated fair market value exceeds the preceding limitations if the benefit to the community expected from the expedited occupancy of the property, and the expected reduction of difficulties and

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delays (such as vandalism to the property) that HUD typically encounters in the disposition and sale of property, warrant the additional cost to the Federal government.

(c) *Exceptions.* (1) If a LUHA fails to accept title within 30 days of HUD's offer of a property for a specific price in accordance with paragraphs (b) (1)–(4) of this section, HUD may approve an alternative disposition plan for the property. The HUD Field Office Manager may extend, for a reasonable period of time, this 30-day deadline if the HUD Field Office Manager makes a written determination that acceptance of title by the LUHA within 30 days of property selection is impracticable.

(2) A property otherwise eligible for transfer to an LUHA may be used to meet higher priority needs if the Field Office Manager makes a determination in writing that the property is essential to meet an existing legal obligation such as:

(i) Settlement of a sales warranty claim;

(ii) Settlement of a claim under section 518 of the National Housing Act for critical structural defects in certain one- to four-family dwellings;

(iii) Emergency housing needs (disaster housing and urgent public housing needs such as providing shelter for the homeless);

(iv) Reconveyance for noncompliance with 24 CFR 203.362;

(v) Reconveyance pursuant to a Civil Frauds Act settlement;

(vi) Reconveyance where the mortgage was never insured; and

(vii) Other legal obligations as determined by HUD.

§ 590.19 Reimbursement to FmHA and VA.

The Secretary shall reimburse FmHA or VA from a LUHA's section 810 funds in an amount agreed to between the LUHA and FmHA or VA for FmHA- or VA-owned property plus approved closing costs, under the following conditions:

(a) The property is located in a HUD-approved urban homesteading neighborhood;

(b) The LUHA's approved reservation of section 810 funds is sufficient to support the agreed reimbursement, including closing costs;

(c) The reimbursement (excluding closing costs) does not exceed the lesser of the amounts specified in paragraphs (c) (1) or (2) of this section.

(1)(i) $25,000 for a one-unit single family residence, plus $8,000 for each additional unit of of a two- to four-family residence; or

(ii) An amount greater than the amount in paragraph (c)(1)(i), of this section, if authorized by the HUD Field Office Manager on a property-by-property basis, where the benefit to the community expected from the expedited occupancy of the property, and the expected reduction of difficulties and delays (such as vandalism to the property) that HUD typically encounters in the disposition and sale of similar property, warrant the additional cost to the Federal government; or

(2) The amount certified by FmHA or VA to be a fair value for the property based on the lesser of the market value or the amount of FmHA's or VA's claim plus the expenses connected with Federal ownership; and

(d) The property has been conveyed to a LUHA for use in a HUD-approved local urban homesteading program.

§ 590.21 Reservation and reduction of funds.

After execution of the applicant's urban homesteading program participation agreement during the first program year, and thereafter following approval of the applicant's annual request for program participation, HUD will reserve funds to reimburse the FHA, FmHA, and VA when specific properties are identified for transfer to the LUHA. Funds will be reserved on a first-come, first-served basis subject to available fund limitations. At any time during a fiscal year, HUD may decline making funds available when in HUD's judgment the LUHA's performance does not meet the standards set out in § 590.29(a) or when there are an insufficient number of affordable, federally owned properties available due to market conditions in the area, to warrant continuation in accordance with § 590.7(a) and § 590.13.

§ 590.23 Program close-out.

(a) *Initiation of close-out.* This section prescribes procedures for program close-out when continuing a program is no longer feasible or where the beneficial results are not commensurate with the further expenditure of section 810 funds in a locality's designated urban homesteading neighborhoods. The LUHA will institute close-out procedures, in accordance with HUD instructions, when one or more of the following occurs:

(1) The LUHA determines that it does not have the capacity to continue administering the program in a timely and cost-effective manner;

(2) HUD terminates the LUHA's program because the LUHA's performance does not meet the standards specified in § 590.29(a); or

(3) HUD terminates the LUHA's program because the LUHA did not acquire any federally owned properties in the previous two Federal fiscal years and because local market conditions demonstrate that an insufficient number of affordable, federally owned properties is likely to be available for the next Federal fiscal year.

(b) Close-out may be subject to later audit in accordance with § 590.27(b).

(c) *Close-Out Conditions.* Upon completion of HUD close-out review, HUD will send the LUHA a letter of completion, which HUD may condition. Conditions may reflect unmet obligations, deadlines to meet them, and a statement of any required interim reporting procedures. In addition to any other conditions that may be specifically set forth in the letter of completion, the LUHA remains responsible after close-out to take whatever actions may be necessary to enforce the homesteader agreement and complete final fee simple conveyance to the homesteader or a successor homesteader, or to obtain alternative use approval from HUD under § 590.7(b)(8), for properties conveyed to the LUHA for homesteading prior to close-out.

(d) *Monitoring of closed-out programs.* HUD shall monitor closed out programs to determine compliance with any conditions imposed under paragraph (c), the certifications under § 590.11(d), the Act, this part and other applicable Federal laws and regulations until the LUHA transfers fee simple title to all federally owned properties to the homesteader, or until HUD approves an alternative use and the LUHA implements it under § 590.7(c).

§ 590.25 Retention of records.

The LUHA shall maintain adequate financial records, property disposition documents, supporting documents, statistical records, and all other records pertinent to the local urban homesteading program until the period for HUD monitoring under § 590.23(d) has expired.

§ 590.27 Audit.

(a) *Access to records.* The Secretary, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to all books, accounts, records, reports, files, and other papers or property of LUHAs pertaining to funds or property transferred under this part, for the purpose of making surveys, audits, examinations, excerpts, and transcripts.

(b) *Audit.* The LUHA's financial management system shall provide for audits in accordance with 24 CFR Part 44.

§ 590.29 HUD review of LUHA performance.

(a) HUD shall review the performance of each LUHA that has a homesteading agreement and section 810 fund reservation at least once each Federal fiscal year to determine whether:

(1) The program complies with the urban homesteading program participation agreement and certifications, the Act, this part, and other applicable Federal laws and regulations;

(2) The LUHA is carrying out its program substantially as approved by HUD;

(3) The federally-owned properties the LUHA selects are suitable for homesteading and rehabilitation;

(4) The LUHA is making reasonable progress in moving properties through the stages of the homesteading process, including acquisition, homesteader selection, conditional conveyance, rehabilitation, and final conveyance, and is not making an unreasonable number of requests for extension of the time periods specified in § 590.17(a)(2)(ii) and (c)(1);

(5) The improvements in neighborhood public facilities and services provided for in the coordinated approach toward neighborhood improvement are occurring on a timely basis; and

(6) The LUHA has a continuing administrative and legal capacity to carry out the approved program in a cost-effective and timely manner.

(b) In reviewing a LUHA's performance, HUD will consider all available evidence, which may include, but need not be limited to, the following:

(1) Records maintained by the LUHA;

(2) Results of HUD's monitoring of the LUHA's performance;

(3) Audit reports, whether conducted by the LUHA or by HUD auditors;

(4) Records of comments and complaints by citizens and organizations; and

(5) Litigation history.

(c) LUHAs shall supply data and make available records necessary for HUD's annual evaluation of the LUHA's local urban homesteading program.

§ 590.31 Corrective and remedial actions.

When HUD determines on the basis of its review that the LUHA's performance does not meet the standards specified in § 590.29(a), HUD shall take one or more of the following corrective or remedial actions, as appropriate in the circumstances:

(a) Issue a letter of warning that advises the LUHA of the deficiency and puts it on notice that HUD will take more serious corrective and remedial action if the LUHA does not correct the deficiency, or if it is repeated;

(b) Advise the LUHA to suspend, discontinue or not incur costs for identified defective aspects of the local program;

(c) Condition the approval of the annual request for program participation if there is substantial evidence of a lack of progress, noncompliance, or a lack of continuing capacity. In such cases, HUD shall specify the reasons for the conditional approval and the actions necessary or remove the conditions;

(d) In cases of continued substantial noncompliance, terminate the urban homesteading program participation agreement, close out the program and advise the LUHA of the reasons for such action; or

(e) Where HUD determines that a LUHA has, contrary to its obligations under § 590.7(b), converted a property received under this part to its own use, failed to adequately preserve and protect the property, or received excessive consideration for its conveyance, HUD may direct the LUHA to repay to HUD either the amount of compensation HUD finds that the LUHA has received for the property or the amount of section 810 funds expended for the property, as HUD determines appropriate.

Dated: September 21, 1988.

Jack R. Stokvis,

Assistant Secretary for Community Planning and Development.

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Part III

Department of Housing and Urban Development

Office of the Secretary

24 CFR Parts 200, 215, 235, 236, 247, 812, 850, 880, 881, 882, 883, 884, 886, 900, 904, 905, 912, and 960

Restriction on Use of Assisted Housing by Aliens; Proposed Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 200, 215, 235, 236, 247, 812, 850, 880, 881, 882, 883, 884, 886, 960, 964, 965, 912, and 990

[Docket No. R-88-1408; FR-2383]

Restriction of Use on Assisted Housing by Aliens

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement section 214 of the Housing and Community Development Act of 1980, as amended by section 329(a) of the Housing and Community Development Amendments of 1981, by section 121(a)(2) of the Immigration Reform and Control Act of 1986 (IRCA), and by section 164 of the Housing and Community Development Act of 1987 (1987 Housing Act), Pub. L. 100-242, approved February 5, 1988. Section 214 prohibits the Secretary from making financial assistance available on behalf of persons other than United States citizens, nationals, or certain categories of eligible aliens in the public housing and Indian housing programs (including homeownership), the Section 8 housing assistance payments programs (including Housing Voucher and Housing Development Grants), the Section 236 interest reduction and rental assistance programs, the Rent Supplement program, and the Section 235 homeownership program.

DATE: Comments must be received by December 19, 1988.

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: For public housing and Indian housing—Edward Whipple Rental and Occupancy Branch, Office of Public Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-5000, telephone (202) 426-0744; for the Section 8 Existing Housing and Moderate Rehabilitation Programs—Madeline Hastings, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-8000, telephone (202) 755-6887; for the other Section 8 programs and the Section 236 programs—James J. Tahash, Program Planning Division, Office of Multifamily Management, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-8000, telephone (202) 426-3944; and for the Section 235 homeownership program—William Heyman, Office of Lender Activities and Land Sales Registration, Office of Single Family Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-8000, telephone (202) 755-6824. A telecommunications device for deaf persons (TDD) is available at (202) 472-6725. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Burden

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been assigned OMB control numbers 2502-0356 and 2577-0093. Public reporting burden for these collections of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, is estimated as stated in a chart found in the section of this preamble entitled *Findings and Certifications*. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, at the address stated above, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for HUD.

I. Background of Rule

Although the restriction against providing housing assistance to ineligible aliens has been embodied in a statute since 1980, there have been numerous statutory revisions and attempts by HUD to implement the statute by regulation. The most recently published discussion of this topic, 53 FR 842 (January 13, 1988), can be consulted for a detailed history of the alien restrictions. While a final alien rule was published on April 1, 1988 (51 FR 11198), it was never made effective. Until a final rule is published and made effective, there are no HUD restrictions against the use of assisted housing by aliens. Consequently, until this proposed rule has reached the final rule stage, managers of HUD-assisted housing are not authorized to take any action based on the citizenship or alien status of applicants and tenants.

Section 214(g) authorizes the Secretary to reimburse public housing agencies, project owners, and mortgagees (in the Section 235 FHA insurance program) for the costs incurred in implementing and operating the system of verifying immigration status. Although this topic is not specifically addressed in this rule, the Department expects to develop a method of coordinating with the United States Immigration and Naturalization Service, which operates a system for verifying immigration status called the Systematic Alien Verification for Entitlements (SAVE) system—which includes an automated system and a manual search capability. The Department anticipates that the cost of necessary verification inquiries made on the automated system will be billed directly to HUD.

II. Purpose of This Rule

The purpose of this rule is to set forth the responsibilities of assisted housing managers (and mortgagees, in the case of the Section 235 program) and applicants and tenants (and mortgagors) with respect to the requirements for submission and verification of evidence of citizenship or eligible immigration status in connection with receipt of financial assistance in the housing programs described briefly above. The previous final rule, which was published on April 1, 1988 but never made effective, was similar in its organization to this rule. However, the statute has been amended twice (by IRCA and the 1987 Housing Act) since that rule's publication, so among the differences between the two rules are the method of dealing with the subject of document verification; the requirement that evidence be provided for every member of the household (including children under the age of 18); the addition of a newly legalized alien category as a group eligible for housing assistance; and the provision of certain procedural safeguards associated with determinations of eligible immigration status.

III. Program Covered

Paragraph (b) of section 214 states that its restrictions concerning aliens apply to the provision of "financial assistance made available pursuant to the United States Housing Act of 1937, section 235 or 236 of the National Housing Act, or section 101 of the Housing and Urban Development Act of 1965." (42 U.S.C. 1436a) This list effectively includes all of HUD's assisted housing programs except for the Section 221 (d)(3) and (d)(5) program of interest subsidy for projects with mortgages insured under those sections of the National Housing Act (12 U.S.C. 1715*l*). Also excepted from the alien restrictions are those tenants who pay market rent under the Section 326, Rental Rehabilitation and Housing Development Grant programs; since they are not receiving the benefit of any Federal financial assistance. (It should be noted, however, that a market rent tenant would be required to submit evidence of citizenship or eligible immigration status if he or she subsequently applied for a tenant-based subsidy.) Mortgagors under the Section 235 mortgage insurance and assistance payments program are covered if assistance payments are provided, although the restrictions are being applied to current mortgagors only if the terms of their existing contracts are modified for some other reason. Similarly, these restrictions against financial assistance to aliens with ineligible immigration status are to be applied to current homebuyers under the Turnkey III and Mutual Help programs only to the extent that applying the restrictions would be consistent with existing contracts. All homeownership contracts or Section 235 purchases executed after the effective date of the final rule will be covered by the restrictions.

The last rule published on this subject did not cover either of the programs authorized under section 17 of the 1937 Act (Rental Rehabilitation program—Part 511, or the Housing Development Grant program—Part 850), because it was a final rule based on prior rules that predated the enactment of section 17. As a proposed rule, this rule must address the applicability of the prohibition of section 214 of the HCD Act of 1980, as amended, on providing financial assistance to aliens with ineligible immigration status to all programs now authorized under the 1937 Act. Under section 17 of the 1937 Act, financial assistance is provided for the rehabilitation of rental housing located in neighborhoods where rents are generally affordable to lower income families under the Rental Rehabilitation program, but there is no need to cover that program specifically under this rule, since any financial assistance provided to lower income families is provide via Section 8 Certificate or Housing Voucher, which are separately covered by the restrictions of section 214. However, the Housing Development Grant program does provide for financial assistance to some tenants during the first 20 years after initial occupancy of a project. Program regulations require that certain lower income units be leased only to lower income tenants and that those tenants be charged special rents, not to exceed prescribed limits. Therefore, this rule would cover those lower income tenants.

The other programs that provide financial assistance on behalf of tenants (or homebuyers) pursuant to the United States Housing Act of 1937 are the Public and Indian Housing programs, including the Mutual Help and Turnkey III Homeownership Opportunity programs; and the Section 8 Housing Assistance Payments programs, including New Construction, Substantial Rehabilitation, Certificate, Housing Voucher, State Housing Agency and Farmers Home Administered, Section 202 Housing for the Elderly or Handicapped projects (when Section 8 assistance is involved), and Loan Management and Property Disposition projects.

The program authorized under section 235 of the National Housing Act, 12 U.S.C. 1715z, provides for payments by HUD to the mortgagee on behalf of a lower income mortgagor to reduce the homebuyer's payments to an affordable level, *e.g.*, the higher of a certain percentage of income or the amount that would be payable if the interest charged on the mortgage loan were set at some figure such as four percent. This program is available to purchasers of single family homes, and units in cooperatives and condominiums. The rule will affect mainly new applicants for participation in the program. Assistance contracts of Section 235 homeowners who executed their contracts before the effective date of this rule will be honored without regard to their citizenship or immigration status. The rule will have an impact on current Section 235 homeowners themselves only if their mortgage is to be revised for some other reason, in which case the modification will include application of the restrictions on immigration status as if the mortgagor were an applicant for participation in the assistance program. Although there may be no new mortgages insured and assisted under this program, at conveyance of properties already insured and assisted under the program, purchasers will be required to demonstrate eligibility in order to be approved for assistance (and thereafter at each annual recertification, to continue to receive assistance).

The Section 236 program provides for payments to a mortgagee on behalf of the owner of a rental housing project designed for occupancy by lower income families in order to reduce the owner's payments to the amount that would be payable if the interest rate on the mortgage loan were set at a figure such as one percent. These lower mortgage payments enable the owner to charge qualified tenants lower than market rate rents ("basic rents"), although tenants who are not qualified for the benefits of the program may be charged market rate rents. In addition, rental assistance payments are available for some units in these projects to enable the rents charged to tenants who cannot afford the "basic rent" to be reduced to an amount based on a percentage of income, similar to the rents charged in the public housing and Section 8 programs. This rule applies to all the tenants of a Section 236 project who pay a less-than-market-rate rent.

The program authorized under section 101 of the Housing and Urban Development Act of 1965, 12 U.S.C. 1701s, is the Rent Supplement program. Under this program, HUD makes payments to a housing owner that is a private nonprofit entity or limited dividend entity and whose purchase of the property is financed by a mortgage loan insured under certain HUD programs, or is financed under a State or local program approved by HUD. These payments are for the benefit of lower income tenants to enable the owner to charge these tenants rents based on a percentage of their incomes, similar to the rents charged in the public housing and Section 8 programs.

Hypothetical Situations

To highlight operation of the alien restrictions under this proposed rule, a couple of hypothetical scenarios will be discussed. The steps outlined in these hypotheticals reflect actual requirements discussed later in the rule. the first hypothetical deals with an applicant, while the second addresses the slightly different procedures relating to tenants. Although applicable to any of the covered programs under this rule, the cases in point involve a Section 8 program:

1. Example for Applicant

Step 1: Documentation. An alien submits an application for assistance under the Section 8 New Construction

program (Part 880) and is notified by the project owner that the following evidence of eligible immigration status must be submitted: (1) A declaration stating that the alien is in an eligible immigration status (*i.e.*, that he or she falls within one of the six eligible categories of eligible aliens); (2) an original INS document establishing eligible immigration status; and (3) a signed verification consent form authorizing the owner to verify the alien's immigration status with the Immigration and Naturalization Service (INS). The project owner continues to process the applicant for purposes of establishing eligibility for assistance, without regard to immigration status, and places the applicant's name on the waiting list once income eligibility is established.

Step 2: Verification. Upon receiving the alien's INS document (an I–94), the project owner verifies the applicant's "A-number" with the INS through the use of an automated verification system by touch-tone telephone. The automated system is unable to locate the alien's "A-number" in its data base, and the project owner is told to "Institute secondary verification". This instruction means that the A-number needs to be manually checked by the INS. At this point, the project owner requests a secondary (manual) search of the INS alien records by forwarding photocopies of the alien's I–94 (front and back), together with Form G–845, to the designated INS field office for review. The applicant is not admitted to the Second 8 program until secondary verification establishes that the alien is in an eligible immigration status.

Step 3: Informal hearing. Secondary verification establishes that the alien is *not* in an eligible immigration status, and the owner notifies the applicant that the applicant's eligibility for financial assistance is denied, and the basis for the denial. The owner also informs the applicant that the applicant may: (1) Request an informal hearing within 14 days of the denial notice; (2) meet with a person designated by the owner; (3) be represented by an attorney (or anyone else designated by the applicant); and (4) present evidence of an INS determination of eligible immigration status. The applicant requests a hearing and meets with the owner's representative. Within five days of the hearing, the owner provides the applicant with a written final decision stating the basis for the decision.

2. Example for Tenant

Step 1: Documentation. A tenant already residing in a Section 8 project on the effective date of the final rule is notified by the project owner of the requirement to submit evidence of eligible immigration status at the same time that she is notified of the need to verify income. The tenant is neither a U.S. citizen nor 62 years of age. At the regular annual reexamination, the tenant submits the following documents: (1) A declaration stating that she is in an eligible immigration status; (2) original INS documents establishing eligible immigration status; and (3) a signed verification consent form authorizing the owner to verify the tenant's immigration status with the INS.

Step 2: Verification. The owner of the section 8 project verifies the tenant's immigration status with the INS in the same manner as discussed for applicants above.

Step 3: Informal hearing. Secondary verification establishes that the tenant (who is also the head of household) is *not* in an eligible immigration status, and the owner notifies that tenant of the determination and that assistance will be terminated unless the tenant requests an informal hearing within 14 days of the termination notice. The tenant makes a timely request and is given an opportunity to: (1) Meet with a person designated by the owner; (2) be represented by an attorney (or anyone else designated by the applicant); and (3) present evidence of an INS determination of eligible immigration status. Within five days of the hearing, the owner provides the tenant with a written final determination that the tenant does not have eligible immigration status, and the basis for the decision. Assistance is *not* terminated until the conclusion of the hearing process and after consideration is given to the tenant's eligibility for discretionary relief (as summarized in Step 4 and Part IV (I) below), since she was in occupancy receiving assistance of the effective date of the final rule.

Step 4: Preservation of families. The project owner now considers whether the tenant qualifies for discretionary relief under either the "mixed family" or "deferral of termination" provisions:

A. *Continuation of assistance.* The owner finds that: (1) The tenant was receiving HUD financial assistance on the effective date of the final rule; but that (2) the family does not qualify for indefinite continuation of assistance because neither the head of household nor the spouse has eligible immigration status. As a result, the project owner is unable to permit the family to continue receiving assistance under this section.

B. *Temporary deferral of termination.* The owner next considers whether termination of assistance must be deferred for a period of six months to permit the "orderly transition" of the ineligible individual and family members to other affordable housing. The family has demonstrated that it has been unable to find an appropriate size unit at an affordable rent, so the project owner grants the six-month deferral.

Step No. 5: Termination of assistance. Following the six-month deferral period, the owner determines that the family can afford to pay the unassisted rent for the unit. As a result, even though Federal housing assistance is terminated, the tenant may continue to reside in the Section 8 unit while paying an unassisted rent under a new or modified lease agreement.

IV. Organization of rule

A. General Provisions

In this proposed rule, as in the rule published on April 1, 1986 that never became effective, there are three main sources of the overall requirements concerning citizenship or eligible immigration status. For the Federal Housing Administration's insured housing programs covered by section 214, this source is Part 200, Subpart G. For the section 8 programs and the Housing Development Grant program, this source is Part 812. For public housing and Indian housing programs, including homeownership programs and leased housing assisted under section 10(c) or 23 of the United States Housing Act of 1937 as in effect before its amendment by the Housing and Community Development Act of 1974, this source is Part 912.

Provisions governing the selection of applicants and the procedures for denial of assistance are found both in the three primary parts (Parts 200, 812 and 912) and in the individual program parts.

The contents of Part 200, Subpart G, Part 812, and Part 912 are nearly the same. However, there are some differences in technology to reflect the differences in the parties involved. For example, Part 200 uses the term "project owner" for the entity responsible for administering the restriction on providing assistance to individuals with ineligible immigration status, while Part 812 uses the term "responsible entity", and Part 912 uses the term "PHA". "Project owner" is a defined term, used to mean both the entity that owns a housing project containing the assisted dwelling unit and—for economy of words—the mortgagee in the case of section 235 mortgage. (The overwhelming majority of entities administering the restrictions under Part 200 will in fact be project owners, as

that term is commonly understood, since no new section 235 mortgage insurance commitments are being made, and mortgagors under contracts executed before the effective date of the final rule will not be reached by most elements of the rule.) The term "responsible entity" is used in the section 8 programs because in many cases, such as in the Certificate and Housing Voucher programs, the entity is the PHA, while in many other cases, such as in the New Construction or Substantial Rehabilitation programs, the entity is the project owner. In the case of programs covered by Part 912, the entity is always the Public Housing Agency. Similarly, the terms used for the recipient of financial assistance vary. In Part 200, the term used is "tenant" although it is defined to include section 235 mortgagors. In Parts 812 and 912 the term used is "family". In each case, the term used refers to the person responsible to the owner or mortgagee for use of the property—the person who signs the lease or mortgage and assistance contract.

B. Program-Specific Provisions

1. Eligibility for Participation

Each program covered by this rule has at least one existing rule provision concerning eligibility requirements for financial assistance. These provisions deal with such subjects as the qualifying income level for applicants, the type of dwelling unit to be occupied, and the responsibility of the project owner or mortgagee to determine the eligibility of the applicant. Since section 214 of the Housing and Community Development Act of 1980 adds one more requirement to the list of eligibility standards, many of these rule sections are amended here to cross-reference the requirements of the general provisions on the subject of alien restrictions and to emphasize the project owner's role in assuring that applicants submit the necessary information and that the information be properly verified.

For the Rent Supplement program, § 215.25(a) would be amended to require an owner to follow the requirements of Part 200, Subpart G, on submission and verification of information related to citizenship and eligibility immigration status for purposes of establishing eligibility for admission. Similar provisions are contained at § 235.10(c) for the section 235 homeownership assistance program, and §§ 236.70(a)(1) and 236.715(a) for the section 236 interest reduction payments and rental assistance payments programs. In the section 8 housing assistance payments programs, the responsible entity is required to follow the alien submission and verification requirements contained at Part 812 and this reference is included at the sections dealing with the selection and admission of assisted tenants. In the case of the section 235 homeownership program, the differences from the rental programs require the addition of a section (§ 235.13) to detail the types of action to be taken by a mortgagee during the course of mortgage servicing, or at the time of conveyance of the mortgaged property.

The requirement that all family members have eligible status applies to all persons residing in a unit who are receiving the benefit of HUD financial assistance. The United States Housing Act of 1937 recognizes one type of person who may reside in an assisted dwelling unit without being considered to be receiving the benefit of the financial assistance. Section 3(b)(3) of that Act specifically authorizes the presence in an assisted household of "one or more persons determined under regulations of the Secretary to be essential to (the) care or well being" of an elderly, disabled, or handicapped individual. The regulations for most of the programs covered by the alien restriction contain a reference to this category of person, defined as a "live-in-aide." The income of such person is not included in the family's income for purposes of determining eligibility, since the live-in aide is not viewed as a program beneficiary. Similarly, in this rule the live-in aide is not identified as a program participant or family member who must satisfy the rule's requirements for citizenship or eligible immigration status, and such a person is not covered by this rule.

2. Denial of Assistance to Applicants

Under this proposed rule, the responsible entity is required to deny assistance to any applicant who is unable to establish eligible immigration status in accordance with the requirements of Part 200, 812 or 912 (as appropriate), and to provide an informal hearing following the denial of assistance.

In the Section 215 Rent Supplement program and the section 236 interest reduction payments program and related assistance programs, the owner is required to follow the provisions governing denial of financial assistance, including the informal hearing requirements established at § 200.186 (b) and (c). For the section 235 homeownership assistance program, these provisions are treated separately at § 235.13(e) (1) and (2).

In the section 8 housing assistance payments program, the general provisions governing denial of assistance to applicants (including the informal hearing requirements) are located at § 812.9 with specific cross references found in the individual section 8 programs regulations. In the Housing Development Grants program, the reference to denial of assistance is found at § 850.151(c).

For the section 8 programs administered by a PHA (i.e., Certificate, Housing Voucher and Moderate Rehabilitation), the Department will provide the informal hearing in accordance with the existing hearing procedures at § 882.216. This provision is proposed to be amended to provide that where denial of assistance is based upon a failure to establish citizenship or eligible immigration status, an applicant will have an opportunity to present evidence of citizenship (if required), or of an INS determination of eligible immigration status. In addition to the informal hearing procedure under § 882.216, the general denial of assistance provisions under § 812.9 would also apply.

General provisions relating to denial of assistance to applicants for public housing are located at § 912.9. The applicable informal hearing requirements are located at § 960.207. Although Part 960 doe snot generally apply to the Section 23 housing assistance payments program, the Turnkey III Homeownership program and the Indian housing program, administered under Parts 900, 904, and 905, respectively, the hearing requirements of Part 960 are made applicable in this rule with respect to denial of assistance based on the failure to demonstrate citizenship or eligible immigration status. (See the cross references located at § 900.202(d)(3), § 94.144(g)(2), and § 905.302(c).)

3. Termination of Assistance/Eviction

a. *Termination of Assistance.* The responsible entity is required to provide an informal hearing to any tenant who is unable to establish citizenship or eligible immigration status (as verified by the INS). If, following the informal hearing, the tenant is determined not to be in an eligible immigration status, financial assistance must be terminated in accordance with requirements of the lease or with HUD requirements.

The reference to termination of assistance based upon a failure to establish citizenship or eligible immigration status is located at § 215.55(c) for the rent supplement program, and at § 236.60(c) for the Section 236 interest reduction paymens and rental assistance payments

programs. In each of these programs, the owner is required to follow the termination of assistance provisions, including the informal hearing requirements, established at § 200.186(d). For the Section 235 homeownership program, these provisions are treated separately at § 235.13(f) of the proposed rule.

The Section 8 housing assistance payments programs treat the termination of assistance to tenants in the same manner as the denial of assistance to applicants. The general provisions relating to termination of assistance are located at § 812.9(d), with cross references contained in each of the individual program parts. These cross references are located at § 880.607(c)(4) (new construction); § 881.607(c)(4) (substantial rehabilitation); § 883.704(c)(3) and § 883.704(c)(4) (State housing agencies); § 884.216 (new construction set-aside); and §§ 886.128 and 886.328 (special allocations). In the Housing Development Grants program, termination of assistance is referenced at § 850.151(f)(3).

In the Section 8 program administered by a PHA (Certificate, Housing voucher, and Moderate Rehabilitation), the informal hearing requirements of § 882.216(b)(6) are applicable, in conjunction with the general termination of assistance provisions at § 812.9.

It should be noted that under the Housing Voucher program, the current reference to the informal hearing under § 882.216 is contained at Section (T) of the Notice of Fund Availability (NOFA) published on March 23, 1988. However, since the Department expects to codify the program requirements for the House Voucher program, the informal hearing procedures will then be contained at § 887.405 of the final rule. This section will contain the hearing procedures for both denial and termination of assistance. Necessary amendments will be made to § 887.405 to reference the ability of an applicant or family to obtain a hearing to establish citizenship or eligible immigration status.

General provisions relating to termination of assistance in public housing are located at § 912.9. The informal hearing is provided in accordance with the requirements of Part 966. Although Part 966 generally does not apply to the Section 23 housing assistance payments program (Part 900), the Turnkey III homeownership program (Part 904), or Indian housing (Part 905), the hearing requirements of Part 966 are made applicable under this rule to termination of assistance based on the failure to establish citizenship or eligible immigration status. For homebuyer agreements under Parts904 and 905, termination of assistance for failure to establish citizenship or eligible immigration status would result in termination of the homebuyer agreement and conversion to rental status.

b. *Eviction.* One method of terminating assistance under the proposed rule is by evicting the tenant. The appropriate program parts have been amended to provide that failure of a tenant to supply, and to receive necessary verification of, reqired evidence of citizenship or eligible immigration status constitutes material noncompliance with the lease agreement, and thus may serve as a basis for eviction.

The general provision on eviction under the Section 8 programs (other than Certificate, Housing Voucher, and Moderate Rehabilitation), is located at § 812.9(d)(6). Individual program part references are located at §§ 880.607(b)(3), §§ 881.607(b)(3), and §§ 883.708(b)(3). In the Section 8 program on special allocations (Part 886), § 886.328 was recently amended in a separate rulemaking to provide that the eviction procedures of Part 247 are to govern evictions under Part 886. This proposed rule would necessitate that the requirements of both Parts 247 and 812 apply to an eviction based upon a tenant's failure to supply, and receive necessary verification of, evidence of citizenship or eligible immigration status.

In the rent supplement program and the Section 236 interest reduction payments and rental assistance payments program, the provisions regarding evictin are located at §§ 200.186(d)(6) and 247.3(c). In the public housing program, eviction is the only method of terminating an assisted tenancy, and the applicable procedurs are found in 24 CFR Part 966.

4. Reexamination of Income and Family Composition

Provisins concerning regular and interim reexaminations of imcome and family composition are found in the parts governing all the programs covered by this rule: § 215.55 for the rent supplement program; § 235.350 for the Section 235 homeownership assistance program; § 236.80 for the Section 236 interest reduction payments and rental assistance payments programs; §§ 813.109, 880.603(c), 881.603(c), 882.212, 883.704(c), 884.218, 886.124, and 886.324 for the Section 8 housing assistance payments programs; § 850.151(f) for the housing development grant program; § 904.107(j) for the Turnkey III homeownership program, § 905.304(c) for Indian housing, and §§ 913.109 and 960.209 for the public housing rental program.

All of these sections are amended to clarify that reexaminations of family income and composition must include submission of information concerning eligible status in accordance with the general provisions on citizenship and alien status found in Part 200, Subpart G, Part 812, or Part 912, whichever is applicable.

5. Management Responsibilities

The Section 8 program regulations contain requirements concerning the management responsibilities of project owners and PHAs. These provisions would be amended to require that the owners of PHAs determine eligibility in accordance with Parts 812 and 813, which will mandate submission of required evidence, and necessary verfication, as well as collection and verification of income informationl.

6. Family Obligations

The Section 8 program regulations also contain requirements concerning family responsibilities, including the obligation to submit information concerning family income and composition in a timely fashion, as a condition fo the lease or as an overall program requirement (see §§ 880.607(b)(3), 881.607(b)(3), 882.118(a)(1), 883.708(b)(3), 886.124(c), and 886.328(b)(3)). A reference to information concerning citizenship or eligible immigration status is proposed to be added to these sections.

V. Basic Requirements of the Rule

A. Eligibility

Each of the three general parts dealing with the issue of alien eligibility (200, 812, and 912) states the general proposition: All United States citizens and nationals are eligible for financial assistance under the covered programs, and several categories of aliens are eligible:

—Persons admitted as permanent residents;

—Persons deemed lawfully admitted for permanent residence as an exercise of discretion by the Attorney General based on their residence since 1972;

—Refugees or asylees;

—Persons lawfully present as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons in the public interest;

—Persons lawfully present as a result of withholding of deportation by the Attorney General in recognition of a threat to life or freedom; and

—Persons lawfully admitted for temporary or permanent residence on the basis of residence since 1982.

Documents must be submitted for verification that an alien is in one of these eligible categories, and the rule lists the documents that are acceptable. Among those listed is a general category of "other documents specified by HUD in a document published in the Federal Register." This last category is included because INS forms and other types of documentation may change from time to time, and the Department may need to update the types of acceptable documents.

B. Triggering Events

1. General

Each member of a family (including children) must demonstrate eligible status at admission to any of the covered programs and periodically, at income reexaminations. When a tenant changes from one assisted program to another or from an unassisted unit in a housing project to an assisted unit, information will be requested concerning eligible status. In the rental programs, applicants will be requested to submit information concerning eligible status along with information concerning income and other matters relevant to tenant selection. When the other information concerning eligibility for the program is verified, the alien status information also will be verified, in accordance with procedures described in this rule. In the Section 235 homeownership program, when a homeowner sells the property, the purchaser must submit evidence of eligible status in order to receive the benefit of assistance payments. Similarly, in the public and Indian housing homeownership programs, new homebuyers will be required to demonstrate eligible status when they seek to buy a unit in the program.

There are existing requirements for income reexaminations at least annually in each of these programs. In addition, most of the programs provide for interim reexaminations when income or family circumstances change. This rule is not intended to affect the usual schedule for income reexaminations. At the first annual reexamination after the effective date of the final rule, each family would be required to demonstrate eligible status of all family members. Thereafter, information concerning eligible immigration status must be provided at each annual reexamination, but citizens and nationals need not resubmit information on their status. At each subsequent interim reexamination of income and family composition that involves a change in family composition, information concerning the eligible status of new family members would be required.

Although a tenant need not demonstrate at the reexamination that family income continues to remain below the limit used to determine initial eligibility, the tenant must demonstrate at each reexamination continuing eligibility with respect to immigration status, with the exception of: (1) Citizens; (2) aliens who were at least 62 years of age and receiving assistance on the "date of enactment" of the 1987 Act; and (3) individuals in occupancy on the "date of enactment" who are permitted continuous assistance as a member of a mixed family or whose termination of assistance is temporarily deferred.

The reason for requiring submission of information concerning eligible status by aliens on an ongoing basis, while not requiring it for citizens and nationals, is that status as a citizen or national is seldom lost, but the legal status of an alien may change from time to time. Examples of possible changes in alien status, other than determinations that the previous status was obtained as a result of fraud, are a favorable change in political conditions in a country from which the United States has accepted refugees, or the change in status of an alien who becomes a lawful temporary resident under the changes enacted in IRCA, but fails to qualify for permanent residency at the expiration of the 30-month period of lawful temporary residency.

Although the *final* determination of eligible status will not be required until the prospective date of admission to an assisted unit or the effective date of the income reexamination, information concerning eligible status will be requested from an applicant or tenant sufficiently in advance of the admission date or reexamination effective date to permit verification of the information and observation of the procedural requirements of this regulation.

2. Transition

The previous final rule provided for an initial implementation period during which initial steps were to be taken to notify current participants of the impending requirements and no applicants were to be admitted until they had satisfed the new documentation requirements. The documentation requirements were not to be enforced against current participants until the first regular reexamination after the expiration of the initial implementation period, which was to start running on the effective date of the rule and expire 90 days thereafter. The effective date was to be a date by which HUD would be able to develop, publish and distribute instructions and supporting materials to implement the regulation.

One of the reasons for that initial implementation period was to delay the time when current participants would be required to document their status or have their assistance terminated. The statute did not contain any provision for leniency in the termination of assistance at that time, and the initial implementatioin period served that purpose.

This proposed rule does not contain such an initial implementation period. However, it does contemplate publication of a final rule with an effective date that is sufficiently delayed from the rule's publication date to permit development and dissemination of necessary impementing materials. Thereafter, lenient treatment to current participants who are not eligible under the rule will be governed by the statutory provisions for continuation of assistance to individuals in "mixed families" and by the temporary deferral of termination of assistance to individuals where it is necessary to permit the transition to other affordable housing.

C. "Date of Enactment"

As discussed in section IV (I) of this preamble, section 214(c)(1), which was added by the 1987 Act, confers discretion to continue assistance or defer termination of assistance on behalf of an individual for whom assistance would otherwise be terminated if that person was "receiving such assistance on the date of the enactment of the Housing and Community Development Act of 1987." The term "date of enactment" is also found in section 214(d) in the description of the elderly persons who need not provide documentation of their immigration status. The statute exempts from such documentation any individual who is "62 years of age or older, and is receiving financial assistance on the date of the enactment of the Housing and Community Development Act of 1987".

Section 214 prohibits the Secretary from providing financial assistance on behalf of certain ineligible persons, but its provisions are too complex to be self-implementing as of the enactment date (February 5, 1988). Thus, its restrictions will not be felt until a final alien rule becomes effective. The general Congressional intent of section 214(c)(1) was to protect "the sanctity of the family." (See remarks of Sen. William

Armstrong, 133 Cong. Rec. S18615, December 21, 1987.) To honor this intent, the Department believes it necessary to implement the new protective provisions at the same time that section 214's restrictions will become effective. To do otherwise, would be to thwart Congress' pro-family intent by prematurely triggering the statute's protections and rendering them meaningless for families admitted after the enactment date but before a final rule effectively applies section 214's restrictions.

In other words, since the exact effect on persons applying for or participating in the covered HUD programs will not be known until publication of the final rule, the Secretary is interpreting the statutory language to permit lenient treatment to persons receiving assistance on the effective date of the *final rule*, when all parties affected will have notice of the methods HUD has chosen for implementing the statutory restrictions, rather than on the precise date of enactment of the 1987 Act. To limit lenient treatment to persons receiving assistance on the precise date of enactment would anomolously create a category of persons (admitted between February 5, 1988 and the final rule's effective date) who would be denied the new statutory protections simply because of the necessary lag time associated with promulgation of a final rule.

D. Submission of Evidence

The Immigration Reform and Control Act of 1986 (IRCA) (Pub. L. 99-603, approved November 6, 1986) amended section 214 of the Housing and Community Development Act of 1980 by providing a procedure for the submission and verification of evidence of citizenship or eligible immigration status.

The proposed rule includes a definition of the term "evidence of citizenship or eligible immigration status" at §§ 200.161, 812.2 and 912.2. The term refers to the documents that must be submitted by any individual who is, or will be, occupying an assisted dwelling unit. For U.S. citizens, the evidence consists of the signed declaration of U.S. citizenship (§§ 200.183(a), 812.6(a) or 912.6(a)), and a signed verification consent form.

Where the responsible entity has a reasonable basis for suspecting that the declaration of U.S. citizenship is fraudulent, documentation of citizenship must be submitted, such as a birth certificate or a U.S. passport. If the documentation is insufficient to establish citizenship, HUD assistance will be denied or terminated in accordance with prescribed procedures.

For aliens, the evidence that must be submitted includes a signed declaration of eligible immigration status, a signed verification consent form, and the INS documents described in §§ 200.183, 812.7 and 912.7.

Individuals who claim that they were 62 years of age or older and receiving HUD financial assistance on the effective date of the final rule must submit a declaration to that effect, together with a signed verification consent form. Such individuals would not be required under this proposed rule to allege or document citizenship or eligible immigration status.

Applicants would be notified of the requirement to submit evidence of citizenship or eligible immigration status at the time an application for financial assistance is submitted. Tenants would be notified of this requirement at the time the responsible entity notifies the tenant of the need to verify income. Applicants whose names are on a waiting list on the effective date of the final rule would be separately notified of the requirement to submit evidence of citizenship or eligible immigration status.

Evidence of citizenship or eligible immigration status also must be submitted at interim reexaminations whenever a tenant requests the responsible entity's approval of occupancy of the assisted dwelling unit by an additional person, other than a child born to the family. Failure to submit required evidence of citizenship or eligible immigration status would result in denial or termination of financial assistance, in accordance with the procedural requirements of the rule.

1. Declaration of Citizenship or Eligible Immigration Status

As a condition to the receipt of financial assistance, IRCA generally requires that every individual submit a written declaration indicating whether the individual is a U.S. citizen or otherwise is in an eligible immigration status. This declaration is submitted under penalty of perjury. In the case of a child, the written declaration must be submitted by an adult residing in the assisted dwelling unit who is responsible for the child. This requirement is set out in §§ 200.183(a), 812.6(a), and 912.6(a) of the proposed rule. Individuals who declare themselves to be in an eligible immigration status are required to submit alien registration documents, as specified in §§ 200.184, 812.7 and 912.7.

2. Verfication Consent Form

Applicants and tenants must submit a signed "verification consent form", consenting to certain uses of the information they submit. The form will also notify applicants and tenants of the possible uses of alien status information and the potential effects of disclosure.

Under the verfication consent form, applicants and tenants will authorize the responsible entity to release submitted evidence to HUD. The responsible entity does not have to examine prospective uses by HUD of evidence submitted by the applicant or tenant, or to determine whether the HUD officials to whom the information is released are directly connected to the administration of the particular assistance program.

The verification consent form also will permit the responsible entity to release information to a Federal, State, or local government agency to: (1) Verify eligible immigration status; (2) enforce restrictions on availability of financial assistance because of such status; and (3) investigate or prosecute fraud in connection with any Federal housing assistance program, as permitted under any applicable State or local laws concerning the protection of personal privacy.

Applicants and tenants will also authorize HUD under the verification consent form to release information on alien status to Federal, State or local government agencies for the purposes cited above. Where these agencies require information from HUD for the investigation or prosecution of fraud, HUD may release information in accordance with the requirements of the Privacy Act of 1974, 5 U.S.C. 552a. In signing the verification consent form, applicants and tenants should understand that information submitted to the responsible entity may be released to HUD, and may be released by HUD for legitimate purposes connected with the mission of the Department.

However, the rule does not seek to regulate the further use of the information by the entity receiving the information, or to control any further release or transmission of the information. The applicant or tenant will be notified specifically that information released by HUD to the INS in connection with verifying immigration status may be used by the INS to institute deportation proceedings.

The verification consent form will include an authorization by the applicant or tenant that authorizes other Federal, State or local agencies to release information to HUD or to the responsible entity. The form will provide that a governmental agency may release any information which HUD or the

responsible entity "determines to be necessary" for verification of eligible immigration status, or for the enforcement of the restrictions on the availability of financial assistance because of such status. The regulatory language governing the applicant's or tenant's consent to release of information bearing on enforcement of Section 214 is similar to existing regulatory language concerning a family's consent to release of information bearing on determinations of family eligibility or rent.

3. Documentation of Eligible Immigration Status

The affirmative obligation to submit documentation of eligible immigration status is contained in the IRCA and 1987 Housing Act amendments to Section 214. These amendments provide that:

> If such an individual is not a citizen or national of the United States, is not 62 years of age or older, and is receiving financial assistance on the date of the enactment of the Housing and Community Development Act of 1987, there must be presented * * * reasonable evidence indicating a satisfactory immigration status.

The Department interprets this language to require that applicants and tenants who are neither citizens nor elderly individuals already receiving assistance, but declare in writing that they are in an eligible immigration status, must provide INS documents to verify such status (as described at §§ 200.184, 812.7 and 912.7).

Individuals who declare in writing that on the effective date of the final rule they were 62 years of age or older and receiving HUD financial assistance must submit proof of age, but are neither required to declare nor to document citizenship or eligible immigration status. Proof of age must be established in accordance with existing program requirements.

Submission of evidence that an occupant is a citizen or that, as of the effective date of the final rule, the occupant was 62 years of age or older and receiving HUD financial assistance, is required only once during continuously assisted occupancy.

In general, individuals who declare in writing that they are U.S. citizens would not be required to submit documentation of citizenship. Documentation of citizenship may be requested if the responsible entity has reason to suspect that the declaration of citizenship submitted by the applicant or tenant is fraudulent.

Under this proposed rule, a responsible entity has "reason to suspect" that evidence submitted is fraudulent if, in the course of verifying the individual's eligibility for financial assistance or program participation, conflicting or inconsistent information regarding the identity or claimed citizenship of the individual is discovered. This information could include differing social security numbers or information received through credit checks (in the course of income verification) that reveal a different status from that claimed on the declaration.

Alternatively, the responsible entity would have "reason to suspect" fraudulent information if it is informed that the individual's claimed citizenship status is fraudulent. However, a responsible entity may not request documentation of citizenship unless the information received is corroborated by evidence, such as copies of INS documents or deportation orders, or records establishing foreign citizenship.

In no event may a responsible entity request documentation of citizenship based upon an applicant's or tenant's personal appearance or traits, or because of unsubstantiated allegations that the individual is not a U.S. citizen.

4. Program Rules for Documenting Eligibility; Terminology

The rule uses the existing vocabulary of the applicable programs to designate the entity for whom assistance is paid, and who must comply with program rules: "applicant" and "tenant" in Part 200 for the Section 236 and rent supplement rental programs (and for Section 235 homeownership) "applicant" and "mortgagor" in Part 235 for Section 235 assisted homebuyers, "applicant" and "Family" in Parts 812 and 912 for Section 8 and public housing programs.

In each program, the party that determines whether a family is otherwise eligible for assistance also administers the restrictions on alien eligibility. Evidence of citizenship or eligible immigration status would be submitted by the family to this party:

—For financial assistance in the form of rent supplement payments, or in the form of Section 236 interest reduction payments or rental assistance payments, the required evidence would be submitted to the owner of the assisted housing.

—Similarly, for project-based section 8 (other than Section 8 Moderate Rehab), the evidence would be submitted to the Section 8 owner.

—In the public housing program, the Section 8 Certificate and Housing Voucher programs, and the Section 8 Moderate Rehabilitation program, the PHA determines eligibility for assistance. Evidence of citizenship or eligible immigration status therefore would be submitted by the family to the PHA.

—In the Section 235 program, the evidence would be submitted by the applicant or mortgagor to the mortgagee.

The term "responsible entity" is used in this proposed rule for precision in designating the entity responsible for administering the restrictions on providing assistance to ineligible aliens in the different Section 8 programs. For ease of exposition, the term "responsible entity" is used more broadly in this Preamble to refer to the entity that administers the section 214 restrictions in any of the covered programs.

E. Verification of Documents

Section 121 of IRCA provides for the establishment and implementation of a system to verify the status of aliens applying for federally funded entitlements. One aspect of that system is the Systematic Alien Verification for Entitlements (SAVE) program designed to prevent ineligible aliens from receiving federally subsidized benefits.

1. Primary Verification

Under the SAVE system, initial verification of eligibility is established by automated access to the Alien Status Verification Index (ASVI), a data base maintained by the INS that contains information on over 22 million aliens. There are a number of different methods for accessing ASVI, which might include any of the following:

—User's computer system to ASVI data base via dedicated telecommunication line (CRT display).

—User's "personal computer" with modem to ASVI data base (CRT display).

—"Point-of-sale" equipment to ASVI data base (LED or LCD display). (Point-of-sale machines are key-pad terminals with digital response displays that use standard telephone lines and require cards with magnetic information strips to access the data base).

—Touch-tone telephone access to ASVI data base. (Computerized voice data response).

—Magnetic tape match against ASVI data base. (Magnetic tape response or paper print-out of results).

HUD is participating in the SAVE system for purposes of verifying the eligibility of applicants and tenants to receive housing assistance in accordance with the procedures established at §§ 200.185, 812.8, and 912.8. Based upon its particular needs, the responsible entity will determine the specific method for accessing the ASVI database. Subject to the availability of funds, the Department expects that the

costs associated with verifying eligible immigration status through the SAVE system will be billed to, and paid by, the Department.

All applicants and tenants who are required to submit evidence of eligible immigration status would have to submit original INS documents to the responsible entity. Until verification of immigration status is received, the responsible entity would continue the normal procedure for processing an applicant to establish eligibility for financial assistance, if the applicant otherwise qualifies for such assistance.

In most instances, the evidence submitted will contain an Alien Registration Number, commonly referred to as an "A-number". The responsible entity will use the A-number to verify the individual's eligibility through the ASVI data base. Verification is instituted by comparing the data on the original INS document to the corresponding ASVI fields. The biographical data and status information the ASVI must correspond to the data on the documentation. If the responsible entity determines that material discrepancies exist, it should initiate a secondary verification, as discussed below.

Some forms of acceptable INS documents do not contain a photograph of the individual. When such documentation is presented, the project owner or responsible entity should request another identity document, such as a driver's license or employment I.D., that has a photograph to verify the identity of the alien.

If the primary verification system indicates that the applicant or tenant has eligible status, financial assistance may not be denied or terminated on the basis of immigration status.

2. Secondary Verification

A. *Procedures.* Secondary verification constitutes an appeal of the primary verification determination and is accomplished by sending photocopies of original immigration documents, attached to Document Verification Request Form G–845, to a designated INS field office for review. This procedure should be instituted whenever:

—Primary verification is either unavailable to, or not feasible for use by, the responsible entity;

—Primary verification instructs the responsible entity to institute secondary verification;

—Primary verification is unable to verify the immigration status of the applicant or tenant;

—Documents are submitted by the applicant or tenant that indicate immigration status, but do not contain an "A-number"; or

—An INS receipt is submitted as documentation.

B. *Denial or termination of assistance.* Once secondary verification is instituted, the responsible entity would continue processing an applicant for purposes of establishing eligibility for financial assistance (if the applicant otherwise qualifies for such assistance). Once eligibility other than eligible immigration status is established, the responsible entity would place the applicant's name on any waiting list so that the applicant can work his or her way up the list while the verification determination is pending. Financial assistance may not, however, be provided to an applicant until eligible immigration status is verified through the INS.

Conversely, financial assistance to a *tenant* may not be terminated on the basis of the tenant's immigration status pending the outcome of any secondary verification. The Department's determination not to provide housing assistance to an applicant, while continuing to provide assistance to a tenant pending the outcome of the secondary verification (and, indeed, pending the fair hearing determination, if requested by the tenant) is predicated upon the language of IRCA. Section 121 of IRCA, which amended the Housing and Community Development Act of 1980, provides that:

> The Secretary shall provide a reasonable opportunity to submit to the Secretary evidence indicating a satisfactory immigration status, or to appeal to the Immigration and Naturalization Service * * * and *may not delay, deny, reduce, or terminate the individual's eligibility for financial assistance on the basis of the individual's immigration status until such a reasonable opportunity has been provided.* (Emphasis added).

The Department does not interpret this statutory language as requiring HUD to provide financial assistance to an applicant pending the "reasonable opportunity" period. Instead, IRCA appears to contemplate that the individual's "eligibility for financial assistance" not be delayed, denied, or terminated. This provision is consonant with the Department's proposed requirement that the responsible entity continue to process an applicant for purposes of establishing eligibility for financial assistance, and that the applicant's name be placed on a waiting list once eligibility (aside from eligible immigration status) has been established. In this manner, the applicant's eligibility for financial assistance would not be delayed pending the secondary verification (assuming the applicant otherwise qualifies for financial assistance), even though assistance would not actually be provided until eligible immigration status is verified. It should be pointed out, however, that an applicant who reaches the top of the waiting list would qualify for the next available unit, subject to program preferences and priorities, once verification of eligible immigration status is confirmed.

On the other hand, assistance to a tenant may not be terminated (assuming the tenant otherwise qualifies for such assistance) until secondary verification establishes that the tenant is not in an eligible immigration status. Even then, if the tenant requests a hearing following the determination of ineligibility, assistance may not be terminated on the basis of immigration status until the conclusion of the hearing. The Department believes that it would pose an extraordinary burden on tenants to require that assistance be terminated (and in the public housing program, this would automatically result in eviction of the tenant) until such time as the entire range of procedural protections has been provided and exhausted. This would include secondary verification of eligible immigration status with the INS, as well as the fair hearing process described in this proposed rule.

However, it should be noted that a tenant who applies for a different form of HUD financial assistance pending the verification outcome (i.e., a tenant currently paying a below market rent in a project that receives the benefit of section 236 interest reduction payments who applies for section 236 rental assistance payments) would be treated the same as any other applicant. Namely, the application would continue to be processed for purposes of establishing eligibility, but the new form of assistance could not be approved until eligible immigration status is verified through the INS.

Another issue raised by section 121 of IRCA relates to the statutory requirement that the Department not "delay, deny, *reduce*, or terminate the individual's eligibility for financial assistance." In this proposed rule, the Department does not provide for the "reduction" of financial assistance based upon an individual's immigration status, since neither IRCA nor any other statute provides for making reduced assistance available on the basis of ineligible immigration status. In fact, a reduction of assistance to a family based on prorating HUD assistance because of the ineligible immigration status of individual family members would undermine the purpose of the 1987 Act language which permits assistance to be continued on behalf of a family containing ineligible individuals. Moreover, as previously explained in the preamble to the never-implemented October 4, 1982 rule (47 FR 43676), proration of assistance is not a feasible alternative under these HUD programs. Rather than authorizing or directing proration of assistance for mixed families, section 214's only reference to the "reduction" of subsidies is the command *not* to "delay, deny, reduce or terminate" assistance pending verification of eligibility. The Department thus construes section 214(c) of the 1980 Act (as amended by the 1987 Housing Act), to permit full assistance to the family unit or temporary deferral of termination, as the only alternatives to immediate termination for a family containing an ineligible individual. As a result, HUD has no statutory authority to provide for the prorating of assistance based upon the status of individual family members. Until a family receiving assistance is determined to be ineligible for financial assistance because individual family members lack eligible immigration status, assistance is continued in full. Thereafter, upon a determination of ineligible status, financial assistance would be terminated unless the family qualifies under the requirements specified in this proposed rule for continued assistance or temporary deferral of termination.

C. *Procedures when fraud is suspected with respect to citizenship.* This proposed rule provides for submission of documentation of citizenship only when the responsible entity "has reason to believe" that a declaration of citizenship is fraudulent.

A responsible entity has "reason to believe" that a declaration of citizenship submitted by an applicant or tenant is fraudulent only under certain circumstances. These include the responsible entity's discovering conflicting or inconsistent information regarding the identity of the individual, including INS documents that appear counterfeit, or information discovered in the course of verifying the individual's eligibility for assistance that refutes the individual's claimed citizenship.

In addition, a responsible entity has "reason to believe" that evidence submitted by an applicant or tenant is fraudulent if the responsible entity is informed (and receives written corroboration) that the individual's claimed declaration of citizenship is fraudulent. Corroboration might be in the form of INS documents or deportation orders, or records establishing foreign citizenship. In no event should a responsible entity require additional documentation based solely on an individual's personal appearance or traits or based upon unsubstantiated allegations of ineligible status.

A responsible entity that has reason to believe, under the criteria discussed above, that evidence submitted by an applicant or tenant is fraudulent, should require submission of documentation of citizenship. This documentation may be in the form of a U.S. passport, birth certificate, or other indicia of citizenship in accordance with HUD requirements. If the individual fails to submit required evidence of citizenship when requested, or if the evidence submitted fails to substantiate citizenship status, the responsible entity should take appropriate action to deny or terminate assistance, in accordance with applicable procedural requirements.

When a responsible entity has terminated assistance because an individual intentionally misrepresented eligibility on the basis of citizenship, the amount of assistance improperly paid is substantial, and recovery of the funds cannot be achieved by administrative action, the responsible entity may refer the case to the HUD Regional Inspector General for investigation and possible criminal prosecution under the False Statements Act.

F. Fair Hearing Provisions

Section 214(d)(5) of the Housing and Community Development Act, as amended, requires the responsible entity, after providing the applicant or tenant with an opportunity to submit evidence and to establish eligible immigration status through the INS primary or secondary verification systems, to make a determination as to whether the individual is in an eligible immigration status.

If an applicant is determined *not* to be in an eligible immigration status, section 214(d)(6) requires the responsible entity to notify the applicant in writing that his or her eligibility for financial assistance is denied. The applicant must also be notified of the basis for the denial of assistance, and of the right to request an informal hearing.

The purpose of this informal hearing is to provide the applicant with a final opportunity to present documentation of citizenship (if required because the responsible entity has a reasonable belief to suspect a fraudulent declaration of citizenship), or to submit documentation of an INS determination of eligible immigration status, as specified in this rule.

Similarly, once a tenant is determined not to be in an eligible immigration status, the responsible entity must inform the tenant in writing that the tenant's eligibility for financial assistance is terminated, and must provide a statement of the grounds for termination of assistance. The tenant must also be informed of the right to request a hearing. For tenants who otherwise qualify for assistance, and who request a hearing, financial assistance *may not* be terminated until the conclusion of the informal hearing.

Under this rule, the procedures governing the fair hearing process are essentially the same for both applicants and tenants. In the public housing program, the requirements for denial of assistance are specified at 24 CFR 960.207, while termination of assistance would be governed by the Lease and Grievance procedures established under Part 966.

In the Section 8 programs administered by a PHA (i.e., Certificate, Housing Voucher, and Moderate Rehabilitation), denial and termination of assistance would be governed by the requirements of 24 CFR 882.216.

For all other covered programs, the requirements governing denial and termination of assistance would be the procedures specified at §§ 200.186 and 812.9. These provisions establish that, upon timely request for an informal hearing, the applicant or tenant must have an opportunity to meet with any persons designated by the responsible entity (other than a person who made or approved the decision under review, or a subordinate of such person; however, this individual may be an employee or officer of the PHA or owner). The petitioner also must have an opportunity to be represented by an attorney (or other designee) at his or her own expense, and to present evidence of citizenship (if required), or of an INS determination of eligible immigration status, as established in this rule. The responsible entity is required to provide the applicant or tenant with a written determination within five days of the informal hearing, stating the basis for the decision.

In addition, the responsible entity is required to retain certain materials for a period of three years, including: (i) The application for financial assistance; (ii) photocopies of any documentation submitted (front and back); (iii) the signed verification consent form; (iv) proof of INS verification; (v) the applicant's request for an informal hearing; and (vi) the responsible entity's final determination of ineligibility following the informal hearing.

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G. Denial of Assistance

Section 214 states that HUD may not "make financial assistance available for the benefit of" aliens not legally resident in the United States under the Immigration and Nationality Act, as amended. This proposed rule describes the circumstances under which a new commitment for housing subsidy must be denied if a family does not provide required evidence of citizenship or eligible immigration status. For purposes of this rule, "denial of assistance" encompasses both denial of initial admission into a housing subsidy program, and denial of a new assistance commitment on behalf of a current tenant. It also encompasses denial of assistance to a market rent tenant who applies for below-market rent assistance under the Section 236 program. In all cases, a denial of assistance must be carried out in accordance with law and applicable HUD rules and requirements—in particular the proposed procedural requirements discussed above.

1. Admission

The proposed rule provides that the entity that administers the prohibition on assistance to ineligible aliens may not "admit an applicant" for participation in the program unless required evidence of citizenship or eligible immigration status has been submitted and verified for each family member, regardless of age, who is or will be occupying the unit.

The concept of "admission" is common to all of the programs, and is widely used in existing program regulations and handbooks. As used in the context of the alien prohibition, the term is intended to denote the concrete administrative and contractual actions through which a family becomes a tenant in a covered program. HUD Handbooks more elaborately discuss the point at which an applicant becomes a tenant in the programs affected by this proposed rule.

In the Certificate and Housing Voucher programs, the proposed rule anticipates that the PHA will not issue a Certificate or Housing Voucher if the family has not submitted evidence of eligibility when required. This prohibition would apply both a family applying for participation in the program, and a tenant family that wants to move to another dwelling unit.

2. Approval of New Occupant

Before admission of a family, the responsible entity would determine who may occupy the assisted unit. After initial admission, the family must also request approval for occupancy of the assisted dwelling unit by any additional person (other than a child born to the family). Until the family submits the required evidence, the responsible entity may not approve occupancy of the assisted dwelling unit by the new person.

Assistance for the entire family is terminated if a tenant family fails to get approval by the responsible entity for occupancy of the unit by a new person and the new person does not move from the unit. However, termination of assistance may be deferred if the tenant qualifies under section 214(c)(1)'s special provisions for preservation of families (§§ 200.187; 812.10; 912.10).

3. Change in Form of Assistance

In some cases, assistance may be paid for a unit under more than one rental subsidy program under Part 200: For example, a unit may be assisted with a combination of Section 236 interest reduction payments and rent supplement payments or Section 236 rental assistance payments. The configuration of assistance for a unit may change during the term of a tenant's lease. The proposed rule prohibits the owner from starting a new form of financial assistance for the tenant family under a lease previously entered unless the family submits and receives verification of citizenship or eligible immigration status. This prohibition also would extend to market rent tenants under the Section 236 program who subsequently apply for below market rent assistance.

H. Termination of Assistance

1. Generally

Under the proposed rule, ongoing assistance for a family is terminated in four cases:

—If evidence of citizenship or eligible immigration status is not submitted at reexamination when required.

—If the INS primary or manual verification system establishes that the tenant does not have eligible immigration status.

—If the family fails to get approval by the responsible entity for occupancy of the assisted unit by a new person.

—If a family is admitted with financial assistance, but the responsible entity is subsequently informed by HUD, or otherwise determines, in accordance with HUD requirements, that the evidence of citizenship or eligible immigration status was fraudulently obtained or submitted, or is otherwise not valid or authentic evidence.

In each instance, the subsidy is terminated by the party responsible for enforcing the alien restrictions: (1) The PHA in public housing, the Section 8 Certificate and Housing Voucher programs, and the Section 8 Moderate Rehabilitation program, and (2) the owner of the housing in the FHA subsidy programs and the other Section 8 programs.

a. *When Termination of Assistance Occurs.* In the proposed rule, the time at which assistance is terminated depends upon:

(A) *The occurrence of the event that triggers termination of assistance:* I.e. the family's failure to submit evidence at reexamination; INS verification establishing that the tenant does not have eligible immigration status; the owner's discovering that documents submitted are not valid or authentic, or that a new person is living in the unit without the owner's approval.

(B) The *owner's duty to terminate assistance "promptly"* after occurrence of the termination event. As discussed, assistance could be terminated by evicting the family, by charging market rent for the unit, or by entering a new lease. The time needed to terminate assistance may differ for these different termination procedures.

(C) The rule defining *how long assistance payments may continue.* Under the proposed rule, after occurrence of a termination event, assistance would be terminated *in accordance with HUD requirements.* However, the rule would allow continuation of assistance during the time needed for eviction of the family through judicial processes. Moreover, termination of assistance of current participants would be subject to section 214(c)(1)'s discretionary protections for preserving families and ensuring an orderly transition to unsubsidized status.

b. *When Termination of Assistance Not Required.* When the family does not submit evidence for all members at annual reexamination, or doesnot get approval from the responsible entity for occupancy by a new family member, the responsible entity is required to proceed with the termination of financial assistance unless "any person for whom required evidence has not been submitted by the tenant has moved from the assisted dwelling unit", or if any person determined not to be in an eligible immigration status following verification has moved from the assisted dwelling unit.

Similarly, the Department has modified its previous alien restrictions that would have precluded continued assisted occupancy by a family after a family member is determined to have submitted fraudulent evidence of citizenship or eligible immigration status. Under this proposed rule, the family may remain in the assisted dwelling unit if the person who signed and submitted the fraudulent declaration of citizenship or eligible immigration status vacates the unit. This change was made in order to prevent the family from being penalized for the fraudulent actions of one family member.

c. *Extension of Time for Tenants to Provide Evidence.* The proposed rule would grant the responsible entity discretion to extend, for up to 90 days, the time for a tenant family to submit evidence of citizenship or eligible immigration status. The authority to grant an extension of time for submitting documents would only apply to existing tenants. Applicants could not be admitted without submision of evidence of citizenship or eligible immigration status, nor could a tenant qualify for a new form of housing assistance pending submission and verification of documents.

A tenant may not be able to secure and submit the required documents in time for submission at the annual reexamination. All members of the family may be citizens or lawful permanent residents of the United States. However, for variety of justified reasons, a family may need more time to obtain the documents.

The regulatory authority to extend time to produce required evidence is intended to accommodate enforcement of section 214 with a recognition of the practical problems that tenant families may face in obtaining the requisite proof of eligibility.

The proposed rule provides that the responsible entity may allow an extension of time for a tenant to submit required evidence only if:

(1) Tlhe family certifies that any person for whom required evidence has not yet been submitted is a citizen or eligible alien, but shows that the family is temporarily unable to obtain evidence to support a claim of eligible immigration status, and needs additional time to obtain and submit the evidence.

(2) The family promises to make prompt and diligent efforts to obtain the evidence.

The PHA or owner may not excuse any family or family member from the duty to produce the required evidence. The discretion to issue an extension only covers a situation in which the family is "temporarily unable" to produce the documents, and "needs additional time to obtain and submit the evidence."

Corresponding to the purpose of the authority for extensions, an extension granted by the responsible entity "shall be for a specific period needed to obtain the evidence." Where the family is required to submit evidence at an annual reexamination, an extension may not allow submission of the evidence beyond *ninety days after the effective date of the reexamination.* Where the family is required to request approval for occupancy of the dwelling unit by an additional person, an extension will not allow submission beyond *ninety days after occupancy by the additional person.*

All applicants would be required to submit evidence before admission. Therefore, the principal need for submissions after admission occurs if there are aliens in the family (who must be redocumented at each regular reexamination), or if another person wants to move into the unit. The demand for evidence (and consequently the need for more time to produce the evidence) would be limited to these circumstances, and to the individual family members for whom additional evidence is required.

A decision to grant an extension of time for a family to submit the required evidence, and a determination of the length of the extension, would be required to be made by the responsible entity on a case by case basis, "in accordance with HUD requirements, and after considering the facts and circumstances of the individual case." The issuance of an extension is not automatic or routine. The responsible entity could not, under the rule, avoid the responsibility of enforcing Section 214 requirements by the wholesale issuance of extensions.

If the family has not submitted the evidence by the end of the extension, the responsible entity would be required promptly to take necessary action to terminate financial assistance.

The Department recognizes that there is potential for abuse of the discretion to grant extensions. Some PHAs or owners may be unsympathetic with the objectives and requirements of section 214, or they may wish to avoid cost or administrative problems. To minimize abuse of the discretion to grant extensions, and to maximize accountability for the exercise of this discretionary authority, the rule states that a decision by the responsbile entity to grant an extension:

> Shall be in writing, and shall state the reasons for the * * * determination * * * [The responsible entity] shall provide information required by HUD concerning the [responsible entity's] policy and practice regarding extension.

The granting of an extension would suspend the duty of the responsible entity to terminate assistance for the family. However, the authority to grant an extension would not apply if the responsible entity learns that evidence of citizenship or eligible immigration status was fraudulently obtained or submitted, or otherwise is not valid or authentic evidence of eligibility. The authority to grant an extension would only apply if the responsible entity would otherwise be required to terminate assistance because the family did not obtain approval for occupancy by a new person or because the family did not submit required evidence at reexamination.

d. *Conditions For Resumption of Assistance After Termination.* The proposed rule provides that if financial assistance for a tenant is terminated, the assistance would not resume unless:

(1) All required evidence has been submitted by the tenant to the owner, and

(2) Resumption of assistance is authorized in accordance with HUD requirements.

The rule would require submission and verification of evidence at specified times, and termination of assistance if the evidence is not produced. There will be cases where a resumption of assistance is appropriate, and other cases where it is not. The rule should not mechanically and uniformly bar a resumption of assistance once required evidence has been submitted. There should be regulatory flexibility for HUD to allow resumption of assistance in appropriate circumstances, but without allowing casual disregard for the deadlines established for submission of evidence. To accommodate both of these objectives, the proposed rule only permits resumption of assistance when "authorized in accordance with HUD requirements." These requirements will be set out in greater detail by the Department in program handbooks.

The proposed rule would permit the development and evolution of HUD requirements for resumption of assistance in response to the Department's day to day experience in administration of the rule. The Department intends that these requirements be at once consistent with a vigorous enforcement of the requirements of Section 214 and its implementing regulations, and with flexible application of the statutory requirements to the circumstances of individuals who would be affected by the rule.

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2. Public Housing

In the public housing program (including Indian housing and the public housing homeownership programs), the PHA owns the unit that is rented to the family. In the Section 23 Leased Housing program, the PHA leases the unit from the owner and subleases to the tenant. Because of the structure of these programs, public housing or leased housing program participation can only be terminated by eviction of a family that has not submitted the evidence of citizenship or eligible immigration status for unit occupants.

Under the proposed rule, where termination of assistance is required, the PHA must promptly initiate and diligently pursue action to terminate the tenancy, and to evict the tenant by judicial action under State and local law. PHA action to terminate tenancy and to evict the tenant must be in accordance with Part 966, which contains both requirements for public housing leases (Subpart A) (including provisions which establish the family's duty to furnish information bearing on family eligibility, and grounds for termination of the lease); and for the PHA administrative grievance procedures (Subpart B).

HUD is amending Part 966 through a separate rulemaking in accordance with section 204 of the Housing and Urban-Rural Recovery Act of 1983 (HURRA), which states requirements for Public Housing leases and administrative grievance procedures (Pub. L. 98-181, November 30, 1983, amending section 6 of the U.S. Housing Act of 1937, 42 U.S.C. 1437d). Section 204 of the HURRA requires a PHA to implement an administrative grievance procedure for PHA adverse action, but allows a PHA to dispense with an administrative grievance hearing on an eviction or termination of tenancy if HUD has determined that State law mandates a judicial hearing that provides the basic elements of due process.

Until amendments of Part 966 become effective, implementation of the alien exclusion will be governed by the present lease and grievance procedure.

These points should be noted:

(1) Under present HUD requirements, the lease must include an agreement by the tenant to furnish information and certifications on family composition that the PHA needs in order to determine family eligibility. Under the lease, therefore, the tenant would be required to furnish the evidence of citizenship or eligible immigration status necessary for the PHA to determine eligibility for occupancy in accordance with section 214.

(2) Under present HUD requirements and section 6(1)(4) of the Act, the PHA may not terminate tenancy except for serious or repeated violation of the lease or other good cause. Failure to satisfy section 214 evidence requirements will constitute both a serious violation of the lease, and "other good cause" for termination.

The proposed rule provides that the PHA may halt action to terminate tenancy and to evict the family if all required evidence is submitted by the Family to the PHA, verification is received from the INS, and continuation of assistance is authorized in accordance with HUD requirements.

3. Section 8 Certificate, Housing Voucher and Moderate Rehabilitation Programs

In these programs, the PHA is not the landlord of the assisted unit. The PHA determines family eligibility and enters into an assistance contract (Housing Assistance Payment Contract or Housing Voucher Contract) with the owner.

Under the proposed rule, each assisted family would have the duty to submit to the PHA required evidence of citizenship or eligible immigration status for unit occupants. The regulations for the Section 8 Certificate program contain a complete list of the duties of a program family.

Principles governing operation of the Housing Voucher program are currently stated in the Notice of Funding Availability (NOFA) published on March 23, 1988 (53 FR 9572) which includes a specific statement of family obligations. While the NOFA is not being amended at this time to insert a reference to the requirement for submission of evidence under section 214, the duty to submit the evidence is included in the duty (section III.Q.(a) of the NOFA) to supply any information or documentation that the PHA or HUD determine to be necessary in administration of the Housing Voucher program at a regular or interim reexamination of family income and composition. (When a codification of the Housing Voucher program is published, it will serve as the foundation for amendments implementing the section 214 restrictions.)

Under the proposed rule, if proper evidence of citizenship or eligible immigration status has not been furnished, the PHA would be required to "promptly terminate housing assistance payments" to the Section 8 owner on behalf of the family. The termination of subsidy, however, would have to be carried out in accordance with the fair hearing procedures established at 24 CFR 882.216 (see Section (T) of the March 23, 1988 NOFA) and § 812.9.

In the Section 8 Certificate and Housing Voucher programs, the HAP Contract is for a single unit, and for assistance on behalf of a specific family. The family is named in the assistance contract. Therefore, when assistance payments for the family are terminated by the PHA, there are no further payments under the contract. However, in the Section 8 Moderate Rehabilitation program, the PHA agrees to make housing assistance payments during the contract term for units occupied by eligible families referred to the owner by the PHA. Therefore, assistance payments will continue for other contract units, and the owner could evict the ineligible family and lease the contract unit to an eligible family (which has presented and received verification by the PHA of the required evidence of citizenship or eligible immigration status).

4. Rent Supplement and Section 236 Programs and Other Section 8 Programs

In the Section 236 programs (below market rent tenants only), the other Section 8 programs, and the Rent Supplement program, the project owner would enforce the restrictions on occupancy by ineligible aliens. The proposed rule provides that when the family is not eligible to continue assisted occupancy, the owner must "promptly" terminate financial assistance for the family. Assistance is terminated either by the *commencement of an unassisted tenancy* or by *eviction* of the family from the unit. An unassisted tenancy can be created either by raising the lease rental to the unsubsidized market rent, if permitted by the lease, or by entering into a new unassisted lease with the family.

Thus, the owner has the choice of three ways of terminating assistance for the family: (1) Evict the family; (2) raise the rent to the HUD-approved market rent where permitted under terms of the lease; or (3) enter into a new unassisted lease with the family.

Under the proposed rule, the choice among these alternatives is left to the management judgment of the owner. HUD believes that the discretion of the housing owner to make this choice should not be dictated by the Federal regulation. Section 214 requires termination of financial assistance if the unit is occupied by an ineligible alien, but does not specify the mechanics of termination in each program, or dictate the choice between available techniques for terminating subsidy in each program.

The extent of federal regulatory controls over the termination of assisted tenancy should be the minimum needed to accomplish the statutory objectives of section 214, with the minimum interference in the management practices and prerogatives of project owners. Implementation of the statutory requirement for termination of subsidy to families with ineligible members is not a reason for requiring the owner to accept a tenancy when assistance is no longer being paid for the family.

Once the owner is confronted with the necessity of terminating subsidy on behalf of the family, then the owner should be free to exercise his or her ordinary business and management judgment concerning the acceptability of the tenant. The owner may have a legitimate concern not just with the tenant's ability to pay the rent with available income, but with the reliability and promptness of payment. Other business consequences may flow from the owner's choice. If the owner chooses to evict the family, instead of offering an unassisted lease or a market rate rental, the unit is available for rental to a new family that is eligible for assistance. Conversely, if the owner decides to allow the original family to remain in the unit without assistance, the owner may be unable to make available for assisted families the full number of units for which assistance is committed under the assistance contract. Thus in some cases the owner's election to evict may promote the objective of assuring, in accordance with the objectives of section 214, that scarce housing resources are preserved and used for eligible families.

The option to raise the tenant's rent to market rate rent is only available to the owner if permitted under the lease. The option to enter a new unassisted lease with the family is available to the owner only if the family is willing to sign a new lease. Therefore, the owner may not in a particular case have the practical option of choosing from the full range of alternatives to eviction allowed under the proposed rule.

Finally, if the owner desires to evict the family, the family may only be evicted after the informal hearing provided under this rule, and thereafter through the judicial process, which gives the opportunity for a judicial hearing on the grounds for termination of tenancy.

a. *Commencement of Unassisted Tenancy*—(i) *Generally.* If a tenant is not eligible for continued assisted occupancy, the owner does not have to evict the family from the dwelling unit so long as the assistance is terminated. Section 214 prohibits payment of housing subsidy for an ineligible alien but does not, as such, prohibit unassisted occupancy of the unit by the alien. In public housing, assistance is not separable from occupancy, and eviction of the family is the only way to terminate assistance. However, in the Section 8, Section 236, Rent Supplement and Section 235 programs, financial assistance can be terminated without terminating occupancy by the family, as discussed above. After termination of assistance, the "tenant" would be required to pay the HUD-approved market rent (Section 236), the contract rent (Section 8), or the full mortgage payments (Section 235).

(ii) *Requiring Tenant to pay market rent.* The owner may increase the rent to the level of the HUD-approved market rent where permitted under the lease. For programs covered by the HUD model lease (HUD Handbook 4350.3, Appendix 19a), the lease provides in section 4 that the amount of rent paid by the tenant, and the assistance HUD pays on behalf of the tenant:

May be changed during the term of this Agreement (i.e., the lease) if * * * changes in the Tenant's rent or assistance payment are required by HUD's *recertification or subsidy termination procedures* * * * *(emphasis added).*

The proposed rule requires termination of subsidy for an assisted tenant who fails to submit evidence (and necessary verification) of citizenship or eligible immigration status, including a failure to furnish the evidence at recertification. The regulatory procedures for termination require the owner to implement one of the three available options for termination of subsidy, including raising the rent to the HUD-approved market rent. The model lease also provides under Section 15.a that if the tenant does not timely submit information on family composition at the annual reexamination:

Required by HUD for the purposes of determining the Tenant's rent and assistance payment [the owner may] * * * require the Tenant to pay the higher, HUD-approved market rent for the unit. (In this case, the owner is not required to give 30 days notice of the rent increase).

The model lease permits the owner to require the tenant to pay Market Rent after termination of the subsidy.

(iii) *Entering Into an Unassisted Lease.* The owner and tenant may enter into a new lease without financial assistance. Unlike the other procedures for termination of subsidy, the creation of a new unassisted lease requires the agreement of the tenant.

(b) *Termination of Tenancy.*—(i) *Cause for Termination of Tenancy.* Under existing regulatory and lease requirements for termination of tenancy, an owner may terminate the tenancy under an assisted lease for *"material non-compliance"* with the lease, or for *"other good cause"*. There are similar provisions in other Section 8 program rules). Under the HUD model lease (HUD Handbook 4350.3, Appendix 19a), the lease automatically renews for successive periodic terms unless the lease is terminated by the owner for material non-compliance or other good cause.

This proposed rule would not change the regulatory grounds for termination of the assisted tenancy. Failure by the family to submit (or to receive verification of, as appropriate) required evidence of citizenship or eligible immigration status would be a material violation of the assisted lease, and also "other good cause" for termination of tenancy. The bases for this conclusion are discussed below.

Failure to provide evidence of citizenship or eligible immigration status would constitute a material violation of the assisted lease. The tenant is obligated to supply information to the owner bearing on family eligibility or family composition in accordance with HUD requirements. The HUD model lease provides that at the regular recertification the tenant must report "composition of the Tenant's household" and "supply any other information required by HUD" to set the amount of the assistance payment. Similar provisions are contained in other program leases.

Under the proposed rule, the tenant would be required to supply evidence of citizenship or eligible immigration status at annual reexamination. Failure to supply evidence of citizenship or eligible immigration status would constitute material noncompliance with the tenant's duty under the lease to furnish information on family composition as required by HUD. The failure is material since the information is needed for the owner to determine statutory and regulatory eligibility for further assistance under the lease. The requirement for submission of the required evidence therefore goes to the heart of the assisted tenancy, the ability to continue the flow of subsidy for the family.

To emphasize the family's duty under the lease to furnish evidence of family composition pertaining to Section 214 eligibility, the proposed rule would amend the termination of tenancy provisions to state explicitly that:

Failure of the family to timely submit all required information on family income and composition [*including required evidence of*

citizenship or eligible immigration status) will constitute a substantial violation of the lease. (Emphasis added.)

A family's failure to supply required evidence of citizenship or eligible immigration status also would be "other good cause" for termination of the tenancy under an assisted lease. As in the case of a failure to comply with the family's obligations under the lease, the inability or other failure to show eligibility for assistance constitutes non-compliance with a central requirement of the assisted tenancy, and the failure is therefore "other good cause" for termination.

(ii) *Continuation of Assistance During Eviction Process.* The rule would authorize the continuation of subsidy in the form of rent supplement payments, Section 236 rental assistance payments and Section 8 housing assistance payments during the time needed by the owner to evict a tenant occupying a unit under an assisted lease.

The owner must act in accordance with HUD regulations and other requirements for termination of tenancy. If the owner is taking the required actions to terminate tenancy and to evict the tenant, rent supplement payments, Section 236 rental assistance payments or Section 8 housing assistance payments:

> Shall continue * * * in accordance with the applicable assistance contract during occupancy of the dwelling unit by the tenant under the lease. For any jurisdiction, HUD may prescribe a maximum period during which assistance payments may be continued during eviction proceedings, or may prescribe other standards of reasonable diligence for the prosecution of eviction proceedings.

Thus, while the owner is under a broader regulatory obligation to proceed "promptly" with the termination of assistance (whether by eviction or termination of assisted occupancy), the regulation establishes a separate standard of diligence for the prosecution of eviction proceedings. As a condition for continuation of housing assistance, the owner must diligently pursue action for eviction in accordance with the regulatory standard.

The provision for continuation of assistance payments to the owner during eviction would not apply if the owner has not complied with the duty to obtain from the family, and to undertake verification of required evidence of citizenship or eligible immigration status.

c. *Occupancy of Unit After Termination of Assistance.* In the Section 236 rental programs, the project owner should attempt to lease units for which a tenant-based subsidy is available to families eligible for subsidy. However, if a tenant becomes ineligible for subsidy whether because of a lengthy period of being above the eligible income category or because of ineligible immigration status, there is no requirement that the family be evicted. After termination of subsidy, the owner and tenant are free to lease the unit without subsidy, and when that tenant vacates the unit, the usual rule concerning owner efforts to lease to a family eligible for subsidy applies.

For the Section 8 New Construction and Substantial Rehabilitation programs, there is a statutory requirement (formerly at section 8(b)(2) of the U.S. Housing Act of 1937) that during the term of the assistance contract the owner must make available for occupancy by eligible families the number of units for which assistance is committed under the contract (Pub. L. 97–35, August 13, 1981, Housing and Community Development (HCD) Amendments of 1981, section 325(1), amending section 8(b)(2) of the U.S. Housing Act of 1937). This statutory requirement ("100 percent occupancy requirement") applies to assistance contracts entered into after October 1, 1981. It was applied by regulation to all units in Section 8 New Construction, Substantial Rehabilitation, and Loan Management and Property Disposition Set-aside projects for which assistance contracts were executed after October 1, 1981, and in projects financed with Section 202 loans committed since October 1, 1981. (*See* §§ 880.504, 881.504, 886.129, and 886.329.)

That rule permits continued occupancy by a family that was *ineligible* for Section 8 assistance at the time the unit was leased only if the family was admitted before October 3, 1984, the effective date of the 100 percent occupancy rule. That rule implicitly would have required eviction of market rate tenants admitted after October 3, 1984. To clarify the status of tenants who become ineligible as a result of section 214, this rule would add a new provision to permit continued occupancy of the unit by a family that was eligible for assistance at the time of leasing, but where assistance has been terminated in compliance with the requirements of section 214. Once the Section 8 subsidy has been terminated, the proposed rule would apply the same two basis regulatory policies as are applied to the Section 236 programs:

(1) The owner may allow continued occupancy of the unit by the family without HUD assistance;

(2) When the original family that is ineligible for assistance vacates the unit, the owner must make the unit available for occupancy by an eligible family in accordance with existing rule provisions. Eligibility would entail satisfaction of section 214 requirements, as well as the requirement for income eligibility.

In its enforcement of section 214, the Department does not intend to deny an ineligible family the opportunity to stay in the unit, so long as the housing subsidy is not being paid. The regulatory policy in this context is consistent with the broader policy of the proposed rule, which would allow continued occupancy of a unit after termination of assistance.

I. Special Treatment of Families in Occupancy

The 1987 Housing Act amended section 214 to add a paragraph concerning the preservation of families that is applicable to any family with an ineligible individual who was receiving assistance on the date of enactment (which, for purposes of this rule, covers such individuals receiving the benefit of assistance on the effective date of the final HUD alien rule, as discussed above).

1. Continuation of Assistance or Deferral of Termination

a. *Continuation of Assistance.* Section 214(c)(1)(A) confers discretion on PHAs and the Secretary of HUD to continue assistance indefinitely to a family *whose head of household or spouse does have eligible status* but that also contains at least one person who lacks eligible status ("mixed family"), if continuation of assistance is necessary to "avoid the division of (the) family". For purposes of determining who qualifies as the family whose division is to be avoided, the 1987 Housing Act provides a definition of "family": A head of household, any spouse, any parents of the head of household or the spouse, and any children of the head of household or spouse. This type of determination is made just once, and thereafter, at regular reexaminations, the responsible entity need not require evidence of eligible immigration status of the individual in occupancy on the effective date of the final rule who admittedly is not in eligible immigration status.

This provision for continued assistance for these families was added to the 1987 housing bill as a compromise after the issuance of the Conference Report (H. Rep. 426, 100th Cong., 1st Sess., November 6, 1987). It was viewed as a limited exception to the overall prohibition against providing assistance to persons with ineligible immigration status, adopted in support of "the sanctity of the family." (See remarks of Sen. William Armstrong, 133 Cong. Rec. S16615 (daily ed. December 21, 1987).) Since the issue of treatment of mixed families was considered by Congress in this latest enactment, and since the statute does not provide discretion to continue assistance for the type of mixed family in which neither the head of household or spouse is eligible but a child is a citizen or eligible alien, the only type of relief available to that type of family in occupancy when the rule becomes effective is the temporary deferral of termination, discussed below, which is also specifically authorized by the 1987 Act.

b. *Temporary Deferral of Termination.* Section 214(c)(1)(B) confers similar discretion to grant temporary deferral of termination with respect to any family containing an ineligible individual "if necessary to permit the orderly transition of the individual and any famiy members involved to other affordable housing." This temporary deferral is to be for six months, with subsequent renewals permitted for six months each, for a total deferral period of not to exceed three years. (See §§ 200.187, 812.10, and 912.10 for these provisions).

2. Use of Discretion

The statute confers the discretion on PHAs for the public housing program and the Section 8 programs, and on HUD for all other programs. Consequently, in Part 912, the rule governing the public and Indian housing programs (administered solely by PHAs), the language is very general—allowing each PHA the latitude to determine in what situations it will exercise its discretion to allow an ineligible individual to remain in occupancy. However, it does require a PHA to adopt policies and guidelines for exercising its discretion.

In the case of Section 8 programs administered by PHAs—the Certificate, Housing Voucher, and Moderate Rehabilitation programs—PHAs are given similar latitude under Part 812. Section 8 programs administered by private owners have more specific directions about when to exercise discretion in favor of an ineligible individual. In order for the individual and family members to benefit from an exercise of discretion to permit continued assistance or deferral of termination, the family must demonstrate that it is unable to find other affordable housing of appropriate size. In the case of deferral of termination, the rule also provides that the project owner must make the determination of the availability of affordable housing in sufficient time before the end of each deferral period so that the tenant can be advised, at least 60 days in advance of the expiration of the deferral period, whether or not the termination will be deferred again. Recognizing that a tenant's status may change favorably, the rule provides that the tenant may establish eligible status in the future, which may result either in being determined fully eligible (if all family members are also eligible) or being determined eligible for indefinite continuation of assistance as a "mixed family."

This proposed rule also provides that when a determination is made to defer termination of financial assistance temporarily because of the lack of affordable housing, the project owner must inform the tenant of his or her ineligibility for financial assistance and offer the tenant help in finding other affordable housing. This help may include any or all of the following: Provision of a list of housing projects assisted under Federal programs not covered by section 214 of the Housing and Community Development Act of 1980 (Section 221(d)(3) Below Market Interest Rate and Section 202 direct loans for projects for elderly or handicapped—if no Section 8 assistance is involved), and any projects assisted under State or local programs; referral to a local housing counseling agency; and referral to a social welfare organization.

If an owner decides under this provision neither to continue assistance nor to defer termination of assistance to a family that has been determined to lack eligible status, this rule requires that the family be informed of the decision in writing, with reasons for the determination, and that the family be offered an opportunity to meet with a representative of the PHA or owner to discuss the decision, in accordance with HUD requirements. At this meeting a family could provide information about whether it qualifies as a "mixed family" and whether there is other affordable housing available that could serve the entire family.

3. Procedure

The statute provides that PHAs and project owners are to exercise discretion after completion of the applicable fair hearing process, when it has been determined that assistance is to be terminated. HUD has interpreted this procedural prerequisite for the exercise of discretion to mean that this decision can only be made after the PHA or project owner has afforded the participant every opportunity to demonstrate eligible status. Therefore, if the participant has conceded at an early stage that an individual residing in the unit lacks eligible status, the PHA or project owner need not conduct a hearing on that issue before determining whether to continue assistance indefinitely or to defer termination of assistance temporarily. Of course, if a hearing is conducted on the issue of whether the participant has eligible status, it also may be used to determine whether the family should be afforded relief under the family preservation provisions.

J. Prohibition Against Assistance to Nonimmigrant Student Aliens

One other provision of the new paragraph (c) of section 214 is a directive that under no circumstances are nonimmigrant student aliens to be given the benefit of financial assistance under the programs covered by section 214. Since nonimmigrants are not included in any of the categories of aliens eligible under section 214, nonimmigrant student aliens are generally ineligible for financial assistance. Therefore, the effect of this specific statutory directive is to disqualify nonimmigrant students and their families from the discretionary continuation of assistance and temporary deferral of termination provisions. See §§ 200.188, 812.11, and 912.11.

For example, if a nonimmigrant student alien came to the United States and then married a U.S. citizen, and they were residing in an assisted dwelling unit on the effective date of the final rule, financial assistance could not be continued on behalf of the nonimmigrant student alien, despite the fact that the family might otherwise qualify as a "mixed family." (Were the nonimmigrant student to vacate the unit, the spouse and any children born in the United States would be eligible to remain.) Such a family also would be ineligible for deferral of termination of assistance, because the family contained a nonimmigrant student alien.

If a nonimmigrant student who is married came to the United States as a student under the appropriate documentation, had children who were born in the United States, and was residing with his or her family in an assisted dwelling unit on the effective date of the final rule, that family would be ineligible for temporary deferral of termination of assistance. (The student and any spouse or children who accompany or follow to join the student are all considered to be nonimmigrant student aliens under the statutory definition.)

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K. Protection From Liability for Project Owners; Local/State Agencies and Officials

Under the proposed rule, the responsible entity's decision to make an individual eligible for financial assistance based on citizenship or eligible immigration status will not result in any monetary set-off or regulatory action by HUD if the responsible entity properly follows the procedures established under both the 1987 Housing Act and IRCA.

This would require that, before the responsible entity could find an individual to be in an eligible status, proper evidence must be submitted and verified with the INS. (This would encompass both primary and secondary verification, as appropriate.)

A project owner or responsible entity would also not be liable to HUD for any monetary setoff or regulatory action because: (1) It provided an opportunity to applicants and tenants to submit evidence of citizenship or eligible immigration status, or because it provided an opportunity to obtain secondary verification of eligible immigration status; (2) it was required to wait for a response from the INS following the request for secondary verification; or (3) it provided the fair hearing established under this proposed rule.

With regard to State and local agencies and officials, the 1987 Housing Act provides that these entities are immune from liability—to HUD or to outside third parties—for the design and implementation of the "Federal verification system." This verification system encompasses the document submission and verification requirements established in this proposed rule, the fair hearing procedure, as well as the authority to deny or terminate assistance based upon a failure to establish eligible immigration status through the INS system.

However, it should be noted that immunity from liability under this section attaches only if the State or local agency or official implements the verification system in accordance with prescribed Federal rules and regulations. The entity's failure to follow such requirements may result in liability, not only to HUD but also to third parties who are directly injured by the omission.

VI. Findings and Certifications

A. Impact on the Economy

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulations issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government, agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United State-based enterprises to compete with foreign-based enterprises in domestic or export markets.

B. Regulatory Agenda

This rule was listed as item number 884 in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13854, 13884), under Executive Order 12291 and the Regulatory Flexibility Act.

C. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Department is required to consider whether a rule has a significant economic impact on a substantial number of small entities, and if so, whether the method of implementing the objective avoids imposing a disproportionate impact on them. This rule will have only a minimal impact on small housing project owners, small mortgages and small public housing agencies (PHAs), since the requirement of section 214 of the Housing and Community Development Act of 1980, as amended, that the Secretary not make financial assistance available to persons who are not United States citizens or eligible aliens, is being implemented by requiring owners and PHAs to use an easily accessible (by telephone) automated system for verifying immigration status. The Department expects to be able to arrange for the cost of this verification system, established by the Immigration and Naturalization Service, to be billed directly to HUD, so that there will be no additional direct cost associated with verification of immigration status. The only other element of cost or delay in administration of HUD programs to be encountered by small entities as a result of this rule is the requirement for a fair hearing, on request, for any applicant or tenant found to be ineligible. This procedure is specifically required by section 214, so the rule must require all entities administering the affected programs to provide this hearing. Therefore, the Undersigned concludes that the economic impact on a substantial number of small entities has been minimized to the extent possible, consistent with the Secretary's responsibilities under section 214.

D. Environmental Review

Under the National Environmental Policy Act (NEPA) (42 U.S.C. 4321–4347) and implementing regulations (24 CFR Part 50), the Department is required to consider the impact of policy level actions such as development of regulations unless the subject matter is categorically excluded from coverage. Although one of the programs covered by this rule, the Section 8 Certificate program, is categorically excluded, the other programs are not. Consequently, HUD has prepared an environmental assessment of the effects of this proposed rule and has issued a Finding of No Significant Impact, which is available for public inspection and copying during regular business hours in the Office of General Counsel, Rules Docket Clerk, Room 10276, 451 Seventh Street SW., Washington, DC 20410–0500.

E. Paperwork Reduction Act

Information collection requirements contained in §§ 200.183, 200.185, 200.186, 200.187, 235.13, 812.6, 812.8, 812.9, 812.10, 912.6, 912.8, 912.9, and 912.10 have been submitted to OMB for approval under the Paperwork Reduction Act of 1980, 44 U.S.C. 3504(h), and have been assigned OMB control numbers 2502–0356 and 2577–0093. In accordance with OMB regulations codified at 5 CFR 1320.13 and 1320.15, the following chart is provided to describe the collection of information requirements.

TABULATION OF ANNUAL REPORTING BURDEN PROPOSED RULE—RESTRICTION ON USE OF ASSISTED HOUSING BY ALIENS

Description of information collection	Section of 24 CFR affected	Number of respondents	Number of responses per respondents	Total annual responses	Hours per response	Total hours
Notification to tenants and applicants in Public and Indian Housing (2577–0093)	912.6(b), 912.9, 912.10	3,300	700	2,310,000	.01	[illegible]
Denials, Terminations, Extensions Deferrals (2577–0093)	912.9, 912.10	3,300	19	62,700	.10 (6 minutes)	[illegible]
Notification and Verification, Denial, Termination in Section 8 (2502–0356)	812.6(b), 812.9, 812.10	2,470,777	1	2,470,777	.05 (3 minutes)	[illegible]
Notification and Verification, Denial, Termination in FHA subsidized (2502–0356)	200.183, 200.186 200.187, 235.13 (e) & (f).	412,315	1	412,315	.05	[illegible]
Extensions (2502–0356)	812.9(d), 200.186(d)	144,155	1	144,155	.16 (10 minutes)	[illegible]
Recordkeeping in Public and Indian Housing (2577–0093)	912.6, 912.8, 912.9(c), 912.10.	3,300	761	2,511,300	.01	25,113
Recordkeeping in Section 8 (2502–0356)	812.6, 812.8 812.9(c), 812.10.	2,470,777	1	2,470,777	.05	125,539
Recordkeeping in FHA subsidized (2502–0356)	200.183, 200.186(c) 200.185, 200.187, 235.13 (e) & (f).	412,315	1	412,315	.05	[illegible]
Total annual burden						[illegible]

List of Subjects

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Incorporation by reference, Loan programs: Housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

24 CFR Part 215

Grant Programs: Housing and community development, Rent subsidies.

24 CFR Part 235

Condominiums, Cooperatives, Grant programs: housing and community development, Homeownership, Low and moderate income housing, Mortgage insurance.

24 CFR Part 236

Low and moderate income housing mortgage insurance, projects, Rent subsidies, Taxes, Utilities.

24 CFR Part 247

Low and moderate income housing, Public housing, Tenant eviction.

24 CFR Part 812

Low and moderate income housing.

24 CFR Part 850

Grant programs: Housing and community development, Relocation assistance, Rental housing, Low and moderate income housing, Cooperatives.

24 CFR Part 880

Grant programs: Housing and community development, Low and moderate income housing, New construction, Rent subsidies.

24 CFR Part 881

Grant programs: Housing and community development, Low and moderate income housing, Rent subsidies.

24 CFR Part 882

Grant programs: Housing and community development, Housing, Low and moderate income housing, Mobile homes, Rent subsidies.

24 CFR Part 883

Grant programs: Housing and community development, Low and moderate income housing, New construction and substantial rehabilitation, Rent subsidies.

24 CFR Part 884

Grant programs: Housing and community development, Low and moderate income housing, Rent subsidies, Rural areas.

24 CFR Part 886

Grant programs: Housing and community development, Low and moderate income housing, Rent subsidies.

24 CFR Part 900

Grant programs: Housing and community development, Rent subsidies.

24 CFR Part 904

Grant programs: Housing and community development, Low and moderate income housing, Public housing, Homeownership.

24 CFR Part 905

Grant programs: Housing and community development, Grant programs: Indians, Indians, Low and moderate income housing, Public housing, Homeownership.

24 CFR Part 912

Low and moderate income housing.

24 CFR Part 960

Public housing.

Accordingly, the Department proposes to amend 24 CFR Parts 200, 215, 235, 236, 247, 812, 850, 880, 881, 882, 883, 884, 886, 900, 904, 905, 912, and 960, as follows:

PART 200—INTRODUCTION

1. The authority citation for Part 200 would be revised to read as follows:

Authority: Titles I and II, National Housing Act (12 U.S.C. 1701–1715z–18) and sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart G is also issued under sec. 214, Housing and Community Development Act of 1980, as amended (42 U.S.C. 1436a).

2. A new Subpart G would be added, to read as follows:

Subpart G—Restriction on Use of Assisted Housing by Aliens

[illegible]

200.180 Applicability.
200.181 Definitions.
200.182 Eligible status.
200.183 Submission of evidence of eligible [illegible]
200.184 Documents of eligible immigration status.
200.185 Verification of eligible immigration status.

Sec.
200.186 Denial of termination of assistance.
200.187 Special provisions for preservation of mixed families and other families in occupancy on [*effective dote of the final rule*].
200.188 Specific prohibiton of assistance to nonimmigrant student aliens.
200.189 Protection from liability for project owners, mortgagees, State and local agencies and officials.

Subpart G—Restriction on Use of Assisted Housing by Aliens

§ 200.180 Applicability.

(a) This subpart, which implements the statutory prohibition on providing financial assistance to benefit individuals who are not in eligible status with respect to citizenship or alien status, is applicable to financial assistance provided under section 235 of the National Housing Act (12 U.S.C. 1715z), section 236 of the National Housing Act (12 U.S.C. 1715z–1) (tenants paying below market rent only), or section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s).

(b) Financial assistance is considered to be paid under Section 235 program on behalf of a mortgagor when the dwelling unit is subject to a mortgage insured under section 235 of the National Housing Act (and Part 235 of this chapter), and assistance payments are made to the mortgagee on behalf of the mortgagor under a contract between the mortgagee and the Secretary in accordance with section 235(b) of the National Housing Act.

(c) Financial assistance is considered to be paid under Section 236 program on behalf of a tenant or cooperative unit purchaser when the project is subject to a mortgage insured or is assisted under section 236 of the National Housing Act (and Part 236 of this chapter) for which interest reduction payments are paid under a contract between the mortgagee and the Secretary *and* the monthly rental charge paid to the owner for the dwelling unit is less than the HUD-approved market rent, whether or not rental assistance payments are also paid under a contract in accordance with section 236(f)(2) and Part 236, Subpart D, of this chapter.

(d) Financial assistance is considered to be paid under the Rent Supplement program administered under section 101 of the Housing and Urban Development Act of 1965 when rent supplement payments are paid under a contract between the project owner and the Secretary in accordance with that section and Part 215 of this chapter.

§ 200.181 Definitions.

Assisted dwelling unit. A dwelling unit for which financial assistance is considered to be paid, as determined in accordance with § 200.180.

Citizen. A citizen or national of the United States.

Evidence of citizenship or eligible immigration status ("evidence"). This term refers to the documents which must be submitted in accordance with § 200.183 for any individual who is or will be occupying an assisted dwelling unit.

(a) For U.S. citizens, the evidence consists of:

(1) A signed declaration of U.S. citizenship (§ 200.183(a)(1)(i));

(2) A signed verification consent form (§ 200.183(a)(2)); and

(3) If the project owner suspects a fraudulent declaration, documentation of citizenship submitted in accordance with § 200.185(b).

(b) For aliens, the evidence consists of:

(1) A signed declaration of eligible immigration status (§ 200.183(a)(1)(ii));

(2) The INS documents described in § 200.184(a); and

(3) A signed verification consent form (§ 200.183(a)(2)).

Financial assistance. See discussion in § 200.180.

HUD. The U.S. Department of Housing and Urban Development.

National. A person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.

Project owner. The person or entity that owns the housing project containing the assisted dwelling unit. For purposes of this subpart, this term includes the mortgagee, in the case of a Section 235 mortgage.

Tenant. For the Rent Supplement program and the Section 236 program, an individual or a family renting an assisted dwelling unit or occupying such a dwelling unit as a cooperative member. For purposes of simplifying the language in this subpart to include the Section 235 homeownership program, the term tenant will also be used to include a homebuyer, where appropriate.

§ 200.182 Eligible status.

(a) Financial assistance under the programs covered by this subpart is restricted to individuals who are United States citizens, as defined in § 200.181, or aliens who qualify as one of the following:

(1) An alien lawfully admitted for permanent residence, as defined by section 101(a)(20) of the Immigration and Nationality Act (INA), as an immigrant, as defined by section 101(a)(15) of the INA (8 U.S.C. 1101(a)(20) and 1101(a)(15), respectively) (immigrants);

(2) An alien who entered the United States before January 1, 1972, or such later date as enacted by law, who has continuously maintained residence in the United States since then, and who is not ineligible for citizenship, but who is deemed to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General under section 249 of the INA (8 U.S.C. 1259);

(3) An alien who is lawfully present in the United States pursuant to an admission under section 207 of the INA (8 U.S.C. 1157) (refugee status); pursuant to the granting of asylum (which has not been terminated) under section 208 of the INA (8 U.S.C. 1158) (asylum status); or as a result of being granted conditional entry under section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) before April 1, 1980, because of persecution or fear of persecution on account of race, religion, or political opinion or because of being uprooted by catastrophic national calamity;

(4) An alien who is lawfully present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) (parole status);

(5) an alien who is lawfully present in the United States as a result of the Attorney General's withholding deportation under section 243(h) of the INA (8 U.S.C. 1253(h)) (threat to life or freedom); or

(6) an alien lawfully admitted for temporary or permanent residence under section 245A of the INA (8 U.S.C. 1255a) (pre-1982 legalization).

(b) for a family to be eligible for financial assistance, as described in § 200.180, every member of the family residing in the unit must be determineo to have eligible status, as described in paragraph (a) of this section.

§ 200.183 Submission of evidence of eligible status.

(a) *Evidence of citizenship or eligible immigration status.* As a condition to financial assistance being provided, an applicant or tenant must submit the following materials to the project owner with respect to any individual, regardless of age, who is or will be an occupant of the assisted dwelling unit:

(1) *Declaration.* A written declaration signed, under penalty of perjury, by the adult for whom the declaration is submitted. In the case of a child, the declaration must be signed and submitted by an adult residing in the assisted dwelling unit who is responsible for the child. The declaration must certify whether the individual:

(i) Is a citizen;

(ii) Is an alien with eligible immigration status, as described in § 200.182; or

(iii) Was 62 years of age or older and receiving HUD financial assistance on [the effective date of the final rule].

(2) *Consent form.* A verification consent form signed by the adult for whom the form is submitted. In the case of a child, the form must be signed and sumbitted by an adult residing in the assisted dwelling unit who is responsible for the child. The consent form shall provide that:

(i) Any evidence submitted by the individual may be released by the project owner to HUD.

(ii) Such evidence may be released by the project owner to a Federal, State, or local agency for the following purposes: Verification of eligible immigration status, enforcement of restrictions on the availability of assistance because of such status, or investigation or prosecution of fraud in connection with any Federal housing assistance program as permitted under applicable State or local laws concerning the protection of personal privacy.

(iii) HUD may release the evidence or other information to any Federal, State, or local government agency (including the Social Security Administration and the Immigration and Naturalization Service) for the following purposes: Verification of eligible immigration status, enforcement of restrictions on the availability of assistance because of such status, and investigation or prosecution of fraud in connection with any Federal housing assistance program, as permitted by the Privacy Act of 1974, 5 U.S.C. 552a. Information released to the Immigration and Naturalization Service may be used in deportation proceedings. Information may also be released by HUD as permitted by the Freedom of Information Act, 5 U.S.C. 552. HUD is not responsible for the further use or transmission of the information by the entity receiving it.

(3) *Documentation.* The following documentation requirements apply, based on the type of declaration submitted in accordance with paragraph (a)(1) of this section:

(i) Individuals declaring that they are in an eligible immigration status are required to submit evidence of such status as specified in § 200.184.

(ii) Individuals declaring that they were 62 years of age or older and receiving HUD financial assistance on [the effective date of the final rule] are required to submit proof of age in accordance with HUD requirements.

(iii) Individuals declaring that they are U.S. citizens are *not* required to submit documentation of citizenship, except when the project owner has reason to suspect that the individual has submitted a fraudulent declaration of citizenship, and then only in accordance with the requirements of paragraph (a)(4) of this section.

(4) *Procedures when fraud suspected with respect to citizenship.* (i) A project owner has reason to suspect that a declaration of citizenship submitted by an applicant or tenant is fraudulent if:

(A) In verifying the applicant's or tenant's eligibility for financial assistance, the project owner discovers conflicting or inconsistent information reegarding the identity or claimed citizenship or eligible immigration status of the applicant or tenant; or

(B) The project owner is informed that the applicant's or tenant's claimed citizenship or eligible immigration status is fraudulent. Such information must be corroborated by documentation such as copies of INS documents or deportation orders, or records establishing foreign citizenship.

(ii) When a project owner has reason to suspect that an applicant or tenant has submitted a fraudulent declaration of citizenship under § 200.183, the owner shall require the applicant or tenant to submit documentation of citizenship. If the documentation fails to establish citizenship, as specified under HUD requirements, the owner shall deny or terminate assistance in accordance with § 200.186 or § 235.13(e). Where an individual has received the benefit of a substantial amount of HUD financial assistance to which he or she was not entitled because the individual intentionally misrepresented eligibility on the basis of citizenship and recovery of the funds cannot be achieved by administrative action, the project owner may refer the case to the HUD Regional Inspector General's (IG's) office for further investigation. Possible criminal prosecution may follow, based on the False Statements Act, 18 U.S.C. 1001 and 1010.

(b) *Notice to applicants and tenants.*—(1) *Type of notice.* The project owner shall notify tenants and applicants (including applicants whose names are on a waiting list on [the effective date of the final rule]), that financial assistance is contingent upon the submission and verification, as appropriate, of the evidence referred to in paragraph (a) of this section.

(i) *In the Rent Supplement and Section 236 programs,* an owner shall notify all applicants of the requirement to submit evidence of citizenship or eligible immigration status at the time an application for financial assistance is submitted. Applicants whose names are on a waiting list on [the effective date of the final rule] must also be notified of these requirements. Notification to tenants of the requirement to submit evidence shall coincide with the owner's regular tenant notice concerning verification of income.

(ii) *In the Section 235 program,* a mortgagee shall give notice of the requirement to submit evidence of citizenship or eligible immigration status to each applicant for financial assistance under Section 235 at the time an application for financial assistance is submitted. Applicants whose names are on a waiting list on [the effective date of the final rule] must also be notified by the mortgagee of these requirements. A mortgagor receiving Section 235 assistance must be notified of the requirement to submit evidence upon the occurrence of any of the events described in § 235.13(a). However, mortgagors already receiving assistance under contracts executed before [the effective date of the finel rule] are not required to provide evidence of citizenship or eligible immigration status unless they seek a change in the terms of their assistance contracts.

(2) *form of notice.* A notice under this section of the requirement to submit evidence of citizenship or eligible immigration status shall describe the type of evidence that must be submitted and shall state when the evidence must be submitted. The notice shall be given in accordance with HUD requirements.

(c) *Recipient of evidence.* For financial assistance in the form of rent suppiment payments or section 236 basic rent tenancy or rental assistance payments, the evidence shall be submitted by each applicant and tenant to the owner of the assisted dwelling unit. For financial assistance in the form of section 235 assistance payments, the evidence shall be sumbitted by each applicant and mortgagor to the mortgagee. The owner or mortgagee is responsible for administering the restrictions on providing assistance to persons who are not citizens or aliens with eligible immigration status, and shall exercise this responsibility in accordance with HUD requirements.

(d) *Failure to submit evidence.* Failure to submit required evidence of citizenship or eligible immigration status (except in the case of a Section 235 mortgagor whose assistance contract

was executed before [the effective date of the final rule]) shall result in denial or termination of financial assistance in accordance with the procedures of §§ 200.185 through 200.187.

(e) *Frequency of Evidence Submission Requirements.* (1) For financial assistance in the form of rent supplement payments or Section 236 basic rent tenancy or rental assistance payments, the tenant shall submit required evidence at regular and interim reexaminations, in accordance with the provisions of § 215.55 (a) and (b) and § 236.60 (a) and (b).

(2) For financial assistance in the form of Section 235 assistance payments, each applicant or mortgagor shall submit the required evidence upon occurrence of any of the events described in § 235.13(a).

(f) *One-time evidence requirement.* Submission of evidence that an occupant of the assisted dwelling unit is a citizen, or that as of [effective date of final rule] the occupant was 62 years of age or older and receiving HUD financial assistance, is only required one time during continuous assisted occupancy under any covered program.

§ 200.184 Documents of eligible immigration status.

The original of one of the following documents is acceptable evidence of eligible immigration status, subject to verification in accordance with § 200.185:

(a) Form I–151 (issued before 1979), I–551, or AR–3a (issued during 1941–1949), Alien Registration Receipt Card (for permanent resident aliens);

(b) Form I–181B or passport, stamped "Processed for I–551, temporary evidence of lawful admission for permanent residence" (for permanent resident aliens);

(c) Form I–94, Arrival-Departure Record, annotated with one of the following:

(1) "Section 207" or "Refugee";

(2) "Section 208" or "Asylum"; or

(3) "Section 243(h)" or "Deportation stayed by Attorney General";

(d) Form I–94, Arrival-Departure Record—Parole Edition, annotated with one of the following:

(1) "Section 212(d)(5)" or "Admitted at Attorney General Discretion";

(2) "Conditional Entry" or "Section 203(a)(7)" (before April 1, 1980);

(e) Form I–688, Temporary Resident Card, or I–688A, Employment Authorization (both of which documents expire), either of which must be annotated "Section 245A";

(f) A receipt issued by the INS indicating that an application for issuance of a replacement document in one of the above-listed categories has been made and the applicant's entitlement to the document has been verified; or

(g) Any other document specified by HUD in a notice published in the Federal Register.

§ 200.185 Verification of eligible immigration status.

(a) *General procedures.* After notice of the requirement to submit evidence is provided to an applicant or tenant under § 200.183(b), the project owner shall continue to process an applicant for purposes of establishing eligibility for financial assistance without regard to immigration status, if the applicant otherwise qualifies for such assistance. In addition, the project owner shall verify the immigration status of aliens as follows:

(1) *Primary verification.* (i) Primary verification of the immigration status of applicants and tenants with the Immigration and Naturalization Service (INS) is conducted by means of an automated system that provides access to alien names, file numbers and admission numbers.

(ii) The INS document submitted by the applicant or tenant to establish eligible immigration status must contain a photograph, or the project owner shall request another document bearing a photograph to ensure the identity of the alien.

(iii) The project owner shall not deny or terminate financial assistance to an applicant or tenant on the basis of immigration status if the primary verification system indicates that the applicant or tenant has eligible immigration status.

(2) *Secondary verification* (Appeal). (i) Secondary verification provides an appeal of the primary verification determination through a manual search of INS alien files. A project owner institutes secondard verification by forwarding photographs of the original INS documents listed at § 200.184 (front and back), attached to Document Verification Request Form G–845, to a designated INS field office for review.

(ii) The project owner shall promptly institute secondary verification whenever:

(A) Primary verification is either unavailable to, or not feasible for use by, the project owner;

(B) Primary verification instructs the project owner to institute secondary verification;

(C) Primary verification is unable to verify the immigration status of the applicant or tenant;

(D) Documents are submitted by the applicant or tenant that indicate immigration status, but do not contain an "A-number"; or

(E) An INS receipt is submitted as documentation.

(iii) Pending the outcomne of secondary verification under paragraph (a)(2)(ii) of this section, the project owner is required to:

(A) Continue to process the applicant for purposes of establishing eligibility for financial assistance, if the applicant otherwise qualifies for such assistance. Financial assistance may not, however, be provided to any applicant until eligible immigration status is verified through the INS. In cases where eligibility for financial assistance is established prior to the verification of eligible immigration status, the project owner shall place the applicant's name on any waiting list and shall allow the applicant to accrue priority on the list pending the verification determination.

(B) Continue to provide financial assistance to any tenant without regard to immigration status, if the tenant otherwise qualifies for such assistance.

(b) *Liability of project owner for INS verification.* The project owner shall not be liable for any action, delay, or failure of the INS to conduct the automated or manual verification referred to in paragraphs (a) (1) and (2) of this section.

§ 200.186 Denial or termination of assistance.

(a) *Applicability.* This section is applicable to financial assistance in the form of rent supplement payments or Section 236 basic rent tenancy or rental assistance payments (tenants paying below market rent only). (See § 235.13(e) for relevant language pertaining to the Section 235 homeownership assistance program).

(b) *Denial of assistance.* The owner shall not admit an application for participation in the rent supplement or Section 236 below market rent programs, or commence any new form of financial assistance for a current tenant, unless evidence of citizenship or eligible immigration status has been submitted to the owner and verified in accordance with § 200.185.

(c) *Procedural requirements—denial of assistance.*—(1) *Notice.* If the applicant fails to submit evidence of citizenship (see § 200.183(a)) or eligible immigration status (see § 200.183(b)), or if the INS verification system under § 200.185 establishes that the applicant does not have eligible immigration status, the owner shall:

(i) Inform the applicant in writing that his or her application for financial assistance is denied, and provide a brief statement of the reasons for the denial of assistance; and

(ii) Inform the applicant that he or she has a right to request an informal hearing (under § 200.186(c)(2)) within 14 days of the date of the owner's notice of ineligibility.

(2) *Informal hearing.* (i) Upon timely request for an informal hearing, the applicant shall have an opportunity to:

(A) Meet with any person designated by the owner (including an officer or employee of the owner) other than a person who made or approved the decision under review or a subordinate of such person.

(B) Submit evidence of citizenship (if required under § 200.185(b)), or of an INS determination of eligible immigration status, as described in § 200.184. Evidence may be considered without regard to its admissibility under the rules of evidence applicable to judicial proceedings.

(C) Seek representation by an attorney, or other designee, at the applicant's own expense.

(ii) The owner shall provide the applicant with a written final decision within five days of the informal hearing, stating the basis for the decision.

(iii) The owner must keep the following materials on file for at least three years: The application for financial assistance; photocopies of any documents submitted (front and back); the signed verification consent form; INS verification results; the applicant's request for an informal hearing on the initial determination of ineligibility; and the owner's written determination following the informal hearing under paragraph (c)(2) of this section.

(d) *Termination of Financial Assistance (including Eviction).*—(1) *Termination events.* Upon the occurrence of any of the following events, financial assistance for the tenant shall terminate in accordance with the procedural requirements of paragraphs (d)(4) through (d)(6) of this section, and other HUD requirements:

(i) If, after notice under § 200.183 is provided of the duty to submit evidence of citizenship or eligible immigration status, the tenant fails to submit such evidence at annual reexamination;

(ii) If the tenant fails to obtain the owner's approval for occupancy of the assisted dwelling unit by an additional person for whom evidence of citizenship or eligible immigration status is required;

(iii) If the INS verification system described in § 200.185 establishes that the tenant does not have eligible status; or

(iv) If the owner has admitted a tenant with financial assistance, but the owner is subsequently informed by HUD, or otherwise determines, in accordance with § 200.185(b), that the evidence of citizenship or eligible immigration status was fraudulently obtained or submitted, or is otherwise not valid or authentic evidence of such status.

(2) *When termination is not required.* (i) The owner may not terminate financial assistance if any person for whom required evidence has not been submitted by the tenant has moved from the assisted dwelling unit.

(ii) The owner may not terminate financial assistance if any person determined not to be in an eligible immigration status following verification under § 200.185 has moved from the assisted dwelling unit.

(iii) The owner may not terminate financial assistance if any person who signed a fraudulent declaration of citizenship or eligible immigration status has moved from the assisted dwelling unit.

(iv) Instead of terminating assistance when evidence of citizenship or eligible immigration status has not been submitted at a regular reexamination or an interim reexamination (i.e., for a new occupant), the project owner may grant an extension of time for submission of the required evidence.

(A) The project owner may, in its own discretion, grant an extension if:

(*1*) The tenant submits the declaration required under § 200.183(a), certifying that any person for whom required evidence has not been submitted is an alien with eligible immigration status, but shows that the evidence needed to support a claim of eligible immigration status is temporarily unavailable, and that additional time is needed to obtain and submit the evidence; and

(*2*) The tenant promises to make prompt and diligent efforts to obtain the evidence.

(B) An extension under this paragraph (d)(2)(iv) shall be for a specific period needed to obtain the evidence. Where the tenant is required to submit the evidence at an annual reexamination, any extension(s) granted by the owner shall not allow submission of the evidence beyond ninety days after the effective date of the reexamination. Where the tenant is required to request the owner's approval for occupancy of the dwelling unit by an additional person, any extension(s) granted by the owner shall not allow submission of the evidence beyond ninety days after occupancy by the additional person.

(C) The owner's decision to grant an extension of time for the tenant to submit the evidence, and the owner's determination of the length of the extension, shall be made after considering the facts and circumstances of the individual case. The tenant shall not have any right to an extension, and the owner may revoke an extension if the tenant is not making diligent efforts to obtain the evidence, and if there is no reasonable likelihood that the tenant will be able to submit the evidence during the extension.

(D) If the tenant has not submitted the evidence by the end of the ninety-day extension, the owner shall promptly terminate financial assistance for the tenant by terminating the assisted tenancy in accordance with paragraphs (d)(4), (5) and (6) of this section. The owner's decision to grant an extension shall be in writing, and shall state the reasons for the owner's determination.

(v) The owner must consider permitting continued assistance or deferral of termination on behalf of an individual in occupancy on [the effective date of the final rule] under § 200.187.

(3) *Retention of financial assistance.* The owner may not receive or retain financial assistance paid for the benefit of a tenant if the owner extends assistance to an applicant or tenant in violation of the restriction specified in § 200.186(b). HUD may take other appropriate remedial action.

(4) *Notice of termination of assistance.* (i) Upon the occurrence of any of the events described in paragraph (d)(1) of this section, the owner shall:

(A) Inform the tenant in writing that the tenant's eligibility for financial assistance is terminated, and provide a brief statement of the reasons for the termination of assistance.

(B) Inform the tenant of the right to request an informal hearing within 14 days of the date of the owner's notice of ineligibility.

(ii) Financial assistance to a tenant may not be terminated until the conclusion of the informal hearing, and then only upon a determination that the alien is not in an eligible immigration status.

(5) *Informal hearing.* (i) Upon timely request for an informal hearing, the tenant shall have an opportunity to:

(A) Meet with any person(s) designated by the owner (including an officer or employee of the owner) other than a person who made or approved the decision under review or a subordinate of such person.

(B) Submit evidence of citizenship (if required under § 200.185(b)), or of an INS determination of eligible immigration status, as described in § 200.184. Evidence may be considered without regard to its admissibility under

the rules of evidence applicable to judicial proceedings.

(C) Seek representation by an attorney, or other designee, at the tenant's own expense.

(ii) The owner shall provide the tenant with a written determination within five days of the informal hearing, stating the basis for the decision.

(iii) The owner must keep the following materials on file for at least three years: The application for financial assistance; photocopies of any documents submitted (front and back); the signed verification consent form; INS verification results; the tenant's request for an informal hearing on the initial determination of ineligibility; and the owner's written determination following the informal hearing under paragraph (d)(5) of this section.

(6) *Termination of assisted occupancy.* Upon occurrence of any of the events described in paragraph (d)(1) of this section, assisted occupancy is terminated by undertaking any of the following actions:

(i) If permitted under the lease, the owner may notify the tenant that because of such occurrence the tenant is required to pay the HUD-approved market rent for the dwelling unit. The notice shall be given in accordance with HUD requirements.

(ii) The owner may enter into a new lease without financial assistance.

(iii) The owner may evict the tenant. An owner may continue to receive assistance payments if action to terminate the tenancy under an assisted lease is promptly initiated and diligently pursued in accordance with the terms of the lease, and if eviction of the tenant is undertaken by judicial action pursuant to State and local law. Action by the owner to terminate the tenancy and to evict the tenant must be in accordance with Part 247 and other HUD requirements. For any jurisdiction, HUD may prescribe a maximum period during which assistance payments may be continued during eviction proceedings and may prescribe other standards of reasonable diligence for the prosecution of eviction proceedings.

(7) *Resumption of assistance.* When financial assistance for the tenant has been terminated in accordance with § 200.188(d), financial assistance for the tenant shall not resume unless:

(i) All required evidence has been submitted by the tenant and verified by the owner; and

(ii) Resumption of assistance is authorized in accordance with HUD requirements

§ 200.187 Special provisions for preservation of mixed families and other families in occupancy on [the effective date of the final rule].

(a) When a project owner would otherwise be required to terminate assistance because of the status of an individual who was receiving financial assistance on [*the effective date of the final rule*] (following the provision of a hearing in accordance with § 200.186, if requested), the project owner must consider whether the tenant qualifies for relief under this section.

(b) If the individual lacking eligible status, as described in § 200.182, is a member of a family in which the head of household or spouse has eligible status, the project owner must consider whether continued assistance is necessary to avoid division of the family. In making this determination, the project owner must consider only what is necessary to avoid division of the "family" consisting of the head of household, any spouse, and parents or children of the head of household or spouse. The decision to continue assistance on behalf of such an individual will be made once, and need not be reconsidered thereafter.

(1) If the tenant is receiving only minimal financial assistance and the project owner determines that the tenant could afford to continue occupancy in the dwelling unit without assistance, the project owner may determine that continued provision of financial assistance is not necessary to avoid the division of the family and may terminate assistance rather than to continue it under this section.

(2) If the tenant demonstrates that reasonable efforts to find other affordable housing of appropriate size have been unsuccessful, this evidence will be sufficient for the project owner to determine that continued financial assistance is necessary to avoid division of the family. In such a case, the project owner must continue to provide financial assistance under this section so long as the tenant satisfies other requirements of continued participation.

(3) If some members of the family do not qualify as members of the "family" that is not to be divided, as described above, financial assistance may be continued to the tenant under this section only if the persons not qualifying as "family" members move out of the unit within the period stated in the final determination of ineligible status.

(c) If financial assistance is not to be continued under paragraph (b) of this section, then the project owner must determine whether temporary deferral of the termination of financial assistance is necessary to permit the orderly transition of the ineligible individual and family members involved to other affordable housing. If such a deferral is warranted, it shall be for a six-month period. A deferral period may be renewed for an additional period of six months if warranted, but the aggregate deferral period may not exceed three years.

(1) The project owner will determine whether other affordable housing of appropriate size is available based on the owner's knowledge and on evidence of the tenant's efforts to locate such housing. If the determination is that additional time is needed for the family to make the transition to other affordable housing, the project owner will grant a deferral under this paragraph (c).

(2) At the beginning of each deferral period, the project owner must inform the tenant of his or her ineligibility for financial assistance and offer the tenant information and referrals to assist in finding other affordable housing.

(3) Before the end of each deferral period, the project owner must make a determination of the availability of affordable housing (based on the owner's knowledge and on evidence of the tenant's efforts to locate such housing) in sufficient time so that the tenant can be advised, at least 60 days in advance of the expiration of the deferral period, whether termination will be deferred again.

(4) If, during a deferral period, the status of the head of household or spouse changes and he or she is able to establish eligible status, the tenant either will be determined fully eligible (if all family members are also eligible) or will be considered for eligibility for indefinite continuation of financial assistance under paragraph (b) of this section.

(d) The project owner's determination of whether the tenant qualifies for relief under this section must be conveyed to the tenant in writing, stating the reasons for the decision if it is adverse to the tenant. If the project owner decides neither to continue assistance under paragraph (b) of this section nor to defer termination of financial assistance temporarily under paragraph (c) of this section on behalf of an individual who has been determined to lack eligible status, the project owner shall offer the tenant an opportunity to meet with a representative of the owner to discuss the decision, in accordance with HUD procedures.

§ 200.188 Specific prohibition of assistance to nonimmigrant student aliens.

The provisions of § 200.187, permitting continuation of assistance or deferral of termination of financial assistance for certain tenants, do not authorize relief with respect to any tenant who is determined to be a nonimmigrant student alien. For this purpose, a nonimmigrant student alien is defined as any alien who has a residence in a foreign country that such alien has no intention of abandoning; who is a bona fide student qualified to pursue a full course of study; and who is admitted to the United States temporarily and solely for purposes of pursuing such a course of study at an established institution of learning or other recognized place of study in the United States, particularly designated by such alien and approved by the Attorney General after consultation with the Department of Education of the United States, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student (and if any such institution of learning or place of study fails to make such reports promptly the approval shall be withdrawn); and the alien spouse and minor children of any alien described above, if the spouse or children are accompanying such alien or following to join such alien.

§ 200.189 Protection from liability for project owners, mortgagees, State and local agencies and officials.

(a) *Protection from liability for project owners.* HUD shall not take any compliance, disallowance, penalty, or other regulatory action against a "project owner" (including a mortgagee) with respect to any error in its determination to make an individual eligible for financial assistance based on citizenship or immigration status:

(1) If the project owner established eligibility based upon a verification of eligible immigration status through the INS' primary or secondary verification system, as described in § 200.185;

(2) If the project owner was required to provide an opportunity for the applicant or tenant to submit evidence in accordance with § 200.183;

(3) If the project owner was required to wait for a response from the INS to the request for verification of eligible immigration status in accordance with § 200.185; or

(4) If the project owner was required to provide the informal hearing described in § 200.186.

(b) *Protection from liability for State and local government agencies and officials.* State and local government agencies and officials shall not be liable for the design or implementation of the verification system under §§ 200.185 and 200.186, so long as the implementation by the State or local government agency or official is in accordance with prescribed HUD rules and regulations.

PART 215—RENT SUPPLEMENT PAYMENTS

3. The authority citation for Part 215 would continue to read as follows:

Authority: Sec. 101(g), HUD Act of 1965 (12 U.S.C. 1701s); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

4. In § 215.20, paragraph (b)(2) would be added to read as follows:

§ 215.20 Qualified tenant.

* * * * *

(b) * * *

(2) For restrictions on financial assistance to ineligible aliens, see Part 200, Subpart G.

5. In § 215.25, paragraph (a)(1) would be revised to read as follows:

§ 215.25 Determination of eligibility.

(a)(1) In the processing of applications for admission and in the processing of applications for assistance from tenants, the housing owner shall determine eligibility following procedures prescribed by the Commissioner. The requirements of Part 200, Subpart G, shall govern the submission and verification of information related to citizenship and eligible immigration status for applicants, as well as the applicable procedures for denial of assistance based upon a failure to establish eligible immigration status.

* * * * *

6. Section 215.55 would be amended by adding two sentences at the end of paragraph (a), by adding one sentence at the end of paragraph (b), and by adding one sentence at the end of paragraph (c), to read as follows:

§ 215.55 Reexamination of family income and composition.

(a) * * * At the first regular reexamination after [*the effective date of the final rule*], the owner must follow the requirements of Part 200, Subpart G, concerning obtaining and processing information on the citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner must follow the requirements of that subpart concerning verification of the immigration status of any tenant whose family contains a person who is not a citizen, as defined in Part 200, Subpart G, except for family members who are citizens or who were at least 62 years of age and receiving HUD financial assistance on [*the effective date of the final rule.*]

(b) * * * At any interim reexamination after [*the effective date of the final rule*] that involves the addition of a new family member (except for the birth of a child), the owner must follow the requirements of Part 200, Subpart G, concerning obtaining and processing information on the citizenship or eligible immigration status of the new family member.

(c) *Termination of assistance.* * * * Where termination is based upon a determination that the tenant is not in an eligible immigration status, the procedures of Part 200, Subpart G shall apply.

7. A new § 215.80 would be added, to read as follows:

§ 215.80 Housing owner's obligation to determine eligible immigration status of applications and tenants; protection from liability.

(a) A housing owner is required to obtain and verify information regarding the citizenship or immediate status of applicants and tenants in accordance with the procedures of Part 200, Subpart G.

(b) HUD shall not take any compliance, disallowance, penalty or other regulatory action against a housing owner with respect to any error in its determination that an individual is eligible for financial assistance based upon citizenship or eligible immigration status, as provided in § 200.189.

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

8. The authority citation for Part 235 would continue to read as follows:

Authority: Secs. 211 and 235, National Housing Act (12 U.S.C. 1715b, 1715z); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

9. Section 235.2 would be amended by adding a new paragraph (f) to read as follows:

§ 235.2 Basic program outline.

* * * * *

(f) Evidence of citizenship or eligible immigration status must be submitted by the applicant or mortgagor and verified in accordance with Part 200, Subpart G, and § 235.13 of this part.

10. Section 235.10 would be amended by redesignating paragraphs (c) and (d) as paragraphs (d) and (e), adding a new paragraph (c) and (d)(2)(iii), and revising paragraph (d) introductory text, to read as follows (d)(2) introductory text is republished):

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§ 235.11 Eligible mortgagors.

* * * * *

(c) Eligibility under this subpart also requires eligible status as determined in accordance with Part 200, Subpart G, with respect to citizenship or immigration status. (See § 235.13(a).)

(d) The mortgagor shall agree to recertify, on a form prescribed by the Secretary, as to occupancy, employment, family composition, income and citizenship or eligible immigration status in accordance with Part 200, Subpart G, whenever one of the following events takes place:

* * * * *

(2) No more than 30 days after:

* * * * *

(iii) A new member is added to the family who is not born in the United States.

* * * * *

11. A new § 235.13 would be added, to read as follows:

§ 235.13 Special requirements concerning citizenship or eligible immigration status.

(a) *Events requiring submission of information concerning eligible status.* A mortgagee must obtain information concerning an applicant or mortgagor's citizenship or eligible immigration status, in accordance with Part 200, Subpart G, at the following times:

(1) Application for assistance;

(2) Purchase of a cooperative membership;

(3) Assumption of a mortgage.

(4) Application for assistance or review of payment plan under the foreclosure avoidance program in accordance with Part 203, Subpart C (except with respect to a mortgagor whose assistance contract was executed before [the effective date of the final rule] and remains unchanged after that date); and

(5) Annual or other recertification of family income and composition required under § 235.10 or § 235.350 (except with respect to mortgagors whose assistance contracts were executed before [the effective date of the final rule] and remain unchanged after that date).

(b) *Certification by mortgagee.* When the mortgagee obtains the information required by paragraph (a) of this section, the mortgagee must certify to the Secretary that the required information concerning citizenship or eligible immigration status has been submitted and verified (if applicable) for all persons for whom such evidence is required. If the mortgagee cannot make such a certification, the mortgagee shall notify the applicant or mortgagor of its ineligibility for financial assistance payments under this part.

(c) *Sanctions for invalid certification.* (1) (i) If the mortgagee has certified to the Secretary in accordance with paragraph (b) of this section that the required information concerning citizenship or eligible immigration status has been submitted and verified (if applicable), but the Secretary subsequently determines that the procedures required by Part 200, Subpart G, were not followed, the following actions will be taken:

(A) The mortgagee will be required to repay to the Secretary the full amount of assistance payments made on behalf of the mortgagor under this part; and

(B) No additional assistance payments may be made on behalf of the mortgagor.

(ii) However, the Secretary may permit the resumption of assistance payments if all members of the family whose status was not determined to be eligible have moved from the dwelling unit, or their status has been determined to be eligible, in accordance with Part 200, Subpart G.

(2) If the mortgagee has certified to the Secretary in accordance with paragraph (b) of this section that the required information concerning citizenship or eligible immigration status has been submitted and verified (if applicable), but the Secretary subsequently determines that the mortgagor's eligible status determination was based on fraudulent documents, or was otherwise defective, although the determination was made in accordance with required procedures, the following actions will be taken:

(i) The mortgagor will be required to repay to the Secretary the full amount of assistance payments made on behalf of the mortgagor under this part. The Secretary's right to repayment from the mortgagor under this paragraph shall not affect or limit the Secretary's right to refund of overpaid assistance payments from the mortgagee as provided in § 235.361(b); and

(ii) No additional assistance payments may be made on behalf of the mortgagor.

(d) *Mortgage insurance commitments.* Commitments to insure mortgages under this part will not be issued or extended unless the mortgagee has made the certification required under paragraph (b) of this section.

(e) *Denial of assistance.*—(1) *Notification procedure.* If the applicant fails to submit evidence of citizenship or eligible immigration status, as provided under § 235.13(a), or if the INS primary or secondary verification system under § 200.185 establishes that the applicant does not have eligible immigration status, the mortgagee shall:

(i) Inform the applicant in writing that his or her application for financial assistance is denied, and provide a brief statement of the reasons for the denial of assistance; and

(ii) Inform the applicant that he or she has a right to request an informal hearing (under § 235.13(e)(2)) within 14 days of the date of the mortgagee's notice of ineligibility.

(2) *Informal hearing procedures.* (i) Upon timely request for an informal hearing, the applicant shall have an opportunity to:

(A) Meet with any person(s) designated by the mortgagee, other than a person who made or approved the decision under review or a subordinate of such person (who may be an officer or employee of the mortgagee).

(B) Submit evidence of citizenship (if required under § 200.185(b)), or of an INS determination of eligible immigration status, as described in § 200.184. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

(C) Seek representation by an attorney, or other designee, at the applicant's own expense.

(ii) The mortgagee shall provide the applicant with a written final decision within five days of the informal hearing, stating the basis for the decision.

(iii) The mortgagee must keep the following materials on file for at least three years: The application for financial assistance; photocopies of any documents submitted (front and back); the signed verification consent form; INS verification results; the applicant's request for an informal hearing on the initial determination of ineligibility; and the mortgagee's written determination following the informal hearing under paragraph (e)(2) of this section.

(f) *Termination of financial assistance.* (1) Following a final determination of ineligibility at the conclusion of the informal hearing, the mortgagee must promptly terminate financial assistance for the mortgagor in accordance with the procedural requirements of paragraph (f)(3) of this section upon the occurrence of any of the following events:

(i) If evidence of citizenship or eligible immigration status is not submitted by the mortgagor when required under § 235.13(a);

(ii) If the mortgagor fails to obtain the mortgagee's approval for occupancy of the assisted dwelling unit by an additional person for whom evidence of citizenship or eligible immigration status is required;

(iii) If the INS verification system described in § 200.185 establishes that the mortgagor does not have eligible immigration status; or

(iv) If the mortgagee has approved a mortgagor for financial assistance, but the mortgagee is subsequently informed by HUD or otherwise determines, in accordance with § 200.185(b), that the evidence of citizenship or eligible immigration status under § 200.183 was fraudulently obtained or submitted, or is otherwise not valid or authentic evidence of such status.

(2) *When termination is not required.* (i) The mortgagee may not terminate financial assistance if any person form whom required evidence has not been submitted by the mortgagor has moved from the assisted dwelling unit.

(ii) The mortgagee may not terminate financial assistance if any person determined not to be in an eligible immigration status following verification under § 200.185 has moved from the assisted dwelling unit.

(iii) The mortgagee may not terminate financial assistance if any person who signed a fraudulent declaration of citizenship or eligible immigration status has moved from the assisted dwelling unit.

(iv) Instead of terminating assistance when evidence of citizenship or eligible immigration status has not been submitted at a regular reexamination or an interim reexamination, the mortgagee may grant an extension of time for submission of the required evidence.

(A) The mortgagee may, in its own discretion, grant an extension if:

(*1*) The mortgagor submits the declaration required under § 200.183(a), certifying that any person for whom required evidence has not been submitted is an alien with eligible immigration status, but shows that the evidence needed to support a claim of eligible immigration status is temporarily unavailable, and that additional time is needed to obtain and submit the evidence; and

(*2*) The mortgagor promises to make prompt and diligent efforts to obtain the evidence.

(B) An extension under this paragraph (f)(2)(iv) shall be for a specific period needed to obtain the evidence. Where the mortgagor is required to submit the evidence at an annual reexamination, any extension(s) granted by the mortgagee shall not allow submission of the evidence beyond ninety days after the effective date of the reexamination. Where the mortgagor is required to request the mortgagee's approval for occupancy of the dwelling unit by an additional person, any extension(s) granted by the mortgagee shall not allow submission of the evidence beyond ninety days after occupancy by the additional person.

(C) The mortgagee's decision to grant an extension of time for the mortgagor to submit the evidence, and the mortgagee's determination of the length of the extension, shall be made after considering the facts and circumstances of the individual case. The mortgagor shall not have any right to an extension, and the mortgagee may revoke an extension if the mortgagor is not making diligent efforts to obtain the evidence, and if there is no reasonable likelihood that the mortgagor will be able to submit the evidence during the extension.

(D) If the mortgagor has not submitted the evidence by the end of the ninety-day extension, the mortgagee shall promptly terminate financial assistance for the mortgagor. The mortgagee's decision to grant an extension shall be in writing, and shall state the reasons for the mortgagee's determination.

(3) *Notice of termination of assistance.* Upon occurrence of any of the events described in paragraph (f)(1) of this section, the mortgagee shall:

(i) Inform the mortgagor in writing that the mortgagor's eligibility for financial assistance is terminated, and provide a brief statement of the reasons for the termination of assistance.

(ii) Inform the mortgagor of the right to request an informal hearing within 14 days of the date of the mortgagee's notice of ineligibility.

(iii) Financial assistance may not terminate until the conclusion of the informal hearing under paragraph (f)(4) of this section, and then only upon a determination that the mortgagor is not in an eligible immigration status.

(4) *Informal hearing procedures.* (i) Upon timely request for an information hearing, the mortgagor shall have an opportunity to:

(A) Meet with any person(s) designated by the mortgagee (including an officer or employee of the mortgagee) other than a person who made or approved the decision under review or a subordinate of such person.

(B) Submit evidence of citizenship (if required under § 200.185(b)), or of an INS determination of eligible immigration status. Evidence may be considered without regard to its admissibility under the rules of evidence applicable to judicial proceedings.

(C) Seek representation by an attorney, or other designee, at the mortgagor's own expense.

(ii) The mortgagee shall provide the mortgagor with a written determination within five days of the informal hearing, stating the basis for the decision.

(iii) The mortgagee must keep the following materials on file for at least three years: The application for financial assistance; photocopies of any documents submitted (front and back); the signed verification consent form; INS verification results; the mortgagor's request for an informal hearing on the initial determination of ineligibility; and the mortgagee's written determination following the informal hearing under paragraph (f)(4) of this section.

(5) *Resumption of assistance.* When financial assistance for the mortgagor has been terminated in accordance with § 235.13(f), financial assistance shall not resume unless:

(i) All required evidence has been submitted by the mortgagor to the mortgagee; and

(ii) Resumption of assistance is authorized in accordance with HUD requirements.

(g) *Other related provisions.* See § 235.10 for eligibility requirements, including citizenship or eligible immigration status; § 235.350 for the mortgagor's required recertifications, including provision of information concerning eligible immigration status; and Part 200, Subpart G, for the general provisions on the subject of restrictions on providing assistance to aliens.

12. In § 235.325, a new paragraph (c) would be added, to read as follows:

§ 235.325 Qualified cooperative members.

* * * * *

(c) Eligibility as a cooperative member under this subpart also requires eligible status with respect to citizenship or eligible alien status, as determined in accordance with Part 200, Subpart G. (See § 235.13(a).)

13. In § 235.350, paragraph (a) introductory text would be revised and (a)(2)(iii) is added to read as follows ((a)(2) introductory text is republished):

§ 235.350 Mortgagor's required recertification.

(a) The mortgagee shall obtain from the homeowner (or from the cooperative association on behalf of the cooperative member), on a form prescribed by the Secretary a recertification as to occupancy, employment, family composition, and income (and citizenship or eligible immigration status in accordance with § 235.13(a) and Part 200, Subpart G), whenever one of the following events takes place:

* * * * *

(2) No more than 30 days after the mortgagee is notified by the mortgagor or learns from any identifiable source:

* * * * *

(iii) A new member is added to the family who is not born in the United States.

* * * * *

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENTS FOR RENTAL PROJECTS

14. The authority citation for Part 236 would continue to read as follows:

Authority: Secs. 211 and 236, National Housing Act (12 U.S.C. 1715b and 1715z-1); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

15. In § 236.2, the definition of Qualified Tenant would be amended by adding a paragraph (c), to read as follows:

§ 236.2 Definitions.

Qualified Tenant. * * *

(c) For restrictions on eligibility for financial assistance to ineligible aliens, see Part 200, Subpart G.

16. In § 236.70, paragraph (a)(1) would be revised to read as follows:

§ 236.70 Occupancy requirements.

(a)(1) In the processing of applications for admission, the housing owner will determine eligibility following procedures prescribed by the Commissioner. The requirements of Part 200, Subpart G shall govern the submission and verification of information related to citizenship and eligible immigration status for those applicants who seek admission at a below market rent.

* * * * *

17. Section 236.80 would be amended by adding two sentences at the end of paragraph (a), by adding one sentence at the end of paragraph (b), and by adding a sentence at the end of paragraph (c), to read as follows:

§ 236.80 Recomputation of income.

(a) * * * At the first regular reexamination after [*the effective date of the final rule*], the owner must follow the requirements of Part 200, Subpart G, concerning obtaining and processing information on the citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner must follow the requirements of that subpart concerning verification of the immigration status of any tenant whose family contains a person who is not a citizen, as defined in Part 200, Subpart G, except for family members who are citizens or who were at least 62 years of age and receiving HUD financial assistance on [*the effective date of the final rule*].

(b) * * * At any interim reexamination after [*the effective date of the final rule*] that involves the addition of a new family member (except for the birth of a child), the owner must follow the requirements of Part 200, Subpart G, concerning obtaining and processing information on the citizenship or eligible immigration status of the new family member.

(c) *Termination of assistance.* * * * Where termination is based upon the tenant's failure to establish eligible immigration status, the procedures of Part 200, Subpart G, shall apply.

18. A new sentence would be added at the end of § 236.710, to read as follows:

§ 236.710 Qualified tenant.

* * * For restrictions on financial assistance to ineligible aliens, see Part 200, Subpart G.

19. In § 236.715, paragraph (a) would be revised to read as follows:

§ 236.715 Determination of eligibility.

(a) In the processing of applications for admission and in the processing of applications for assistance from tenants, the housing owner will determine eligibility following procedures prescribed by the Commissioner. The requirements of Part 200, Subpart G, shall govern the submission and verification of information related to citizenship and eligible immigration status for applicants, as well as the applicable procedures for denial of assistance based upon a failure to establish eligible immigration status.

* * * * *

20. A new § 236.755 would be added to read as follows:

§ 236.755 Housing owner's obligation to determine eligible immigration status of applicants and tenants; protection from liability.

(a) A housing owner is required to obtain and verify information regarding the citizenship or immigration status of applicants and tenants in accordance with the procedures of Part 200, Subpart G.

(b) HUD shall not take any compliance, disallowance, penalty or other regulatory action against a housing owner with respect to any error in its determination to make an individual eligible for financial assistance based upon citizenship or eligible immigration status, as provided in § 200.189.

PART 247—EVICTIONS FROM CERTAIN SUBSIDIZED AND HUD-OWNED PROJECTS

21. The authority citation for Part 247 would be revised to read as follows:

Authority: Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

22. In § 247.3, paragraph (c) would be revised to read as follows:

§ 247.3 Entitlement of tenants to occupancy.

* * * * *

(c) *Material noncompliance.* The term "material noncompliance with the rental agreement" shall include: One or more substantial violations of the rental agreement, or repeated minor violations of the rental agreement that disrupt the livability of the project, adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related project facilities, interfere with the management of the project or have an adverse financial effect on the project. Failure of the tenant to timely supply all required information on income and composition of the tenant household (including required evidence of citizenship or eligible immigration status, in accordance with Part 200, Subpart G) shall constitute a substantial violation of the rental agreement. Nonpayment of rent or any other financial obligation due under the rental agreement (including any portion thereof) beyond any grace period permitted under state law shall constitute a substantial violation of the rental agreement. The payment of rent or any other financial obligation due under the rental agreement after the due date but within the grace period permitted under state law shall constitute a minor violation.

PART 812—DEFINITION OF FAMILY AND OTHER RELATED TERMS; OCCUPANCY BY SINGLE PERSONS

23. The authority citation for Part 812 would be revised to read as follows:

Authority: Sec. 3, United States Housing Act of 1937 (42 U.S.C. 1437a); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); sec. 214, Housing and Community Development Act of 1980 (42 U.S.C. 1436a).

24. Section 812.1 would be amended by removing the word "and" following the semicolon in paragraph (a)(1); by changing the period at the end of paragraph (a)(2) to a semicolon and adding the word "and" following the semicolon; and by adding a new paragraph (a)(3), to read as follows:

§ 812.1 Purpose and applicability.

(a) * * *

(3) Implements the statutory prohibition against making assistance under the United States Housing Act of 1937 ("Act") available for the benefit of ineligible aliens.

* * * * *

25. Section 812.2 would be amended by inserting definitions in alphabetical order for the terms Citizen, Evidence of citizenship or eligible immigration status ("evidence"), HUD, National, and Responsible entity, to read as follows:

§ 812.2 Definitions.

* * * * *

Citizen. A citizen or national of the United States.

* * * * *

Evidence of citizenship or eligible immigration status ("evidence"). This term refers to the documents which must be submitted in accordance with § 812.6 for any individual who is or will be occupying an assisted dwelling unit.

(a) For U.S. citizens, the evidence consists of:

(1) A signed declaration of U.S. citizenship (§ 812.6(a)(1)(i));

(2) A signed verification consent form (§ 812.6(a)(2)); and

(3) If the Responsible Entity suspects a fraudulent declaration, documentation of citizenship submitted in accordance with § 812.6(b).

(b) For aliens, the evidence consists of:

(1) A signed declaration of eligible immigration status (§ 812.6(a)(1)(ii));

(2) The INS documents described in § 812.7(a); and

(3) A signed verification consent form (§ 812.6(a)(2)).

HUD. The U.S. Department of Housing and Urban Development.

* * * * *

National. A person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.

Responsible entity. The person or entity responsible for administering the restrictions on providing assistance to ineligible aliens:

(a) For the Section 8 Certificate and Housing Voucher programs, it is the PHA.

(b) For the Section 8 Moderate Rehabilitation program (under Part 882), it is the PHA.

(c) For all other Section 8 programs, it is the owner.

* * * * *

26. Sections 812.5 through 812.12 would be added as follows:

§ 812.5 Eligible status.

(a) Financial assistance under the programs covered by this subpart is restricted to individuals who are United States citizens, as defined in § 812.2, or aliens who qualify as one of the following:

(1) An alien lawfully admitted for permanent residence, as defined by section 101(a)(20) of the Immigration and Nationality Act (INA), as an immigrant, as defined by section 101(a)(15) of the INA (8 U.S.C. 1101(a)(20) and 1101(a)(15), respectively) (immigrants);

(2) An alien who entered the United States before January 1, 1972, or such later date as enacted by law, who has continuously maintained residence in the United States since then, and who is not ineligible for citizenship, but who is deemed to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General under section 249 of the INA (8 U.S.C. 1259);

(3) An alien who is lawfully present in the United States pursuant to an admission under section 207 of the INA (8 U.S.C. 1157) (refugee status); pursuant to the granting of asylum (which has not been terminated) under section 208 of the INA (8 U.S.C. 1158) (asylum status); or as a result of being granted conditional entry under section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) before April 1, 1980, because of persecution or fear of persecution on account of race, religion, or political opinion or because of being uprooted by catastrophic national calamity;

(4) An alien who is lawfully present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) (parole status);

(5) An alien who is lawfully present in the United States as a result of the Attorney General's withholding deportation under section 243(h) of the INA (8 U.S.C. 1253(h)) (threat to life or freedom); or

(6) An alien lawfully admitted for temporary or permanent residence under section 245A of the INA (8 U.S.C. 1255a) (pre-1982 legalization).

(b) For a family to be eligible for financial assistance, every member of the family residing in the unit must be determined to have eligible status, as described in paragraph (a) of this section.

§ 812.6 Submission of evidence.

(a) *Evidence of citizenship or eligible immigration status.* As a condition to participation in the program, or as a condition to financial assistance being provided, the family must submit the following materials to the responsible entity with respect to each family member, regardless of age, who is or will be an occupant of the assisted dwelling unit:

(1) *Declaration.* A written declaration signed, under penalty of perjury, by the adult for whom the declaration is submitted. In the case of a child, the declaration must be signed and submitted by an adult residing in the assisted dwelling unit who is responsible for the child. The declaration must certify whether the individual:

(i) Is a citizen;

(ii) Is an alien with eligible immigration status, as described in § 812.5; or

(iii) Was 62 years of age or older and receiving HUD financial assistance on [the effective date of the final rule].

(2) *Consent form.* A verification consent form signed by the adult for whom the form is submitted. In the case of a child, the form must be signed and submitted by an adult residing in the assisted dwelling unit who is responsible for the child. The consent form shall provide that:

(i) Any evidence submitted by the individual may be released by the responsible entity to HUD.

(ii) Such evidence may be released by the responsible entity to a Federal, State, or local agency for the following purposes: verification of eligible immigration status, enforcement of restrictions on the availability of assistance because of such status, or investigation or prosecution of fraud in connection with any Federal housing assistance program as permitted under applicable State or local laws concerning the protection of personal privacy.

(iii) HUD may release the evidence or other information to any Federal, State, or local government agency (including the Social Security Administration and the Immigration and Naturalization Service) for the following purposes: Verification of eligible immigration status, enforcement of restrictions on the availability of assistance because of such status, and investigation or prosecution of fraud in connection with any Federal housing assistance program, as permitted by the Privacy Act of 1974, 5 U.S.C. 552a. Information released to the Immigration and Naturalization Service may be used in deportation proceedings. Information may also be released by HUD as permitted by the Freedom of Information Act, 5 U.S.C. 552. HUD is not responsible for the further use or transmission of the information by the entity receiving it.

(3) *Documentation.* The following documentation requirements apply, based on the type of declaration

submitted in accordance with paragraph (a)(1) of this section:

(i) Individuals declaring that they are in an eligible immigration status are required to submit evidence of such status as specified in § 812.7.

(ii) Individuals declaring that they were 62 years of age or older and receiving HUD financial assistance on [the effective date of the final rule] are required to submit proof of age in accordance with HUD requirements.

(iii) Individuals declaring that they are U.S. citizens are *not* required to submit evidence of citizenship, except when the responsible entity has reason to suspect that the individual has submitted a fraudulent declaration of citizenship, and then only in accordance with the requirements of paragraph (a)(4) of this section.

(4) *Procedures when fraud suspected with respect to citizenship.* (i) A responsible entity has reason to suspect that a declaration of citizenship submitted by an applicant or Family member is fraudulent if:

(A) In verifying the applicant's or Family's eligibility for financial assistance, the responsible entity discovers conflicting or inconsistent information regarding the identity or claimed citizenship or eligible immigration status of the applicant or Family member; or

(B) The responsible entity is informed that the individual's claimed citizenship or eligible immigration status is fraudulent. Such information must be corroborated by documentation such as copies of INS documents or deportation orders, or records establishing foreign citizenship.

(ii) When a responsible entity has reason to suspect that an applicant or Family member has submitted a fraudulent declaration of citizenship under § 812.6, the responsible entity shall require the individual to submit documentation of citizenship. If the documentation fails to establish citizenship, as specified under HUD requirements, the responsible entity shall deny or terminate assistance in accordance with § 812.9. Where an individual has received the benefit of a substantial amount of HUD financial assistance to which he or she was not entitled because the individual intentionally misrepresented eligibility on the basis of citizenship and recovery of the funds cannot be achieved by administrative action, the responsible entity may refer the case to the HUD Regional Inspector General's office for further investigation. Possible criminal prosecution may follow, based on the False Statements Act, 18 U.S.C. 1001 and 1010.

(b) *Notice to applicants and families.*—(1) *Type of notice.* (i) The responsible entity shall notify all applicants of the requirement to submit evidence of citizenship or eligible immigration status at the time an application for financial assistance is submitted. Applicants whose names are on a waiting list on [the effective date of the final rule] must also be notified of these requirements. Notification to each Family of the requirement to submit evidence shall coincide with the responsible entity's regular tenant notice concerning verification of income.

(ii) The responsible entity shall notify each applicant and Family that financial assistance is contingent upon the submission and verification, as appropriate, of the evidence referred to in paragraph (a) of this section.

(2) *Form of notice.* A notice under this section of the requirement to submit evidence of citizenship or elibible immigration status shall describe the type of evidence that must be submitted and shall state when the evidence must be submitted. The notice shall be given in accordance with HUD requirements.

(c) *Recipient of evidence.* The required evidence shall be submitted by each applicant and Family to the responsible entity. The responsible entity shall administer the restrictions on providing assistance to ineligible aliens, and shall exercise this responsibility in accordance with HUD requirements.

(d) *Failure to submit evidence.* Failure to submit required evidence of citizenship or eligible immigration status shall result in denial or termination of financial assistance. For the Section 8 Housing Certificate, Voucher and Moderate Rehabilitation programs, denial or termination of assistance shall be in accordance with §§ 812.8 and 812.9 and the informal hearing requirements of § 882.216. For all other Section 8 programs, the procedures of §§ 812.8 and 812.9 shall apply.

(e) *Frequency of Evidence Submission Requirements.* The Family shall submit the necessary evidence at regular and interim reexaminations, in accordance with the requirements of §§ 850.151, 880.603, 881.603, 882.212, 882.515, 883.704, 884.216, 886.124, and 886.324.

(f) *One-time evidence requirement.* Submission of evidence that an occupant of the assisted dwelling unit is a citizen, or that as of [the effective date of the final rule] the occupant was 62 years of age or older and receiving HUD financial assistance, is only required one time during continuously assisted occupancy under any covered program.

§ 812.7 Documents of eligible immigration status.

The original of one of the following documents is acceptable evidence of eligible immigration status, subject to verification in accordance with § 812.8:

(a) Form I–151 (issued before 1979), I–551, or AR–3a (issued during 1941–1949), Alien Registration Receipt Card (for permanent resident aliens);

(b) Form I–181B or passport, stamped "Processed for I–551, temporary evidence of lawful admission for permanent residence" (for permanent resident aliens);

(c) Form I–94, Arrival-Departure Record, annotated with one of the following:

(1) "Section 207" or "Refugee";

(2) "Section 208" or "Asylum"; or

(3) "Section 243(h)" or "Deportation stayed by Attorney General";

(d) Form I–94, Arrival-Departure Record—Parole Edition, annotated with one of the following:

(1) "Section 212(d)(5)" or "Admitted at Attorney General Discretion";

(2) "Conditional Entry" or "Section 203(a)(7)" (before April 1, 1980);

(e) Form I–688, Temporary Resident Card, or I–688A, Employment Authorization (both of which documents expire), either of which must be annotated "Section 245A";

(f) A receipt issued by the INS indicating that an application for issuance of a replacement document in one of the above-listed categories has been made and the applicant's entitlement to the document has been verified; or

(g) Any other document specified by HUD in a notice published in the Federal Register.

§ 812.8 Verification of eligible immigration status.

(a) *General procedures.* After notice of the requirement to submit evidence is provided to applicants and the family under § 812.6(c), the responsible entity shall continue to process applicants for purposes of establishing eligibility for financial assistance without regard to immigration status, if the applicant otherwise qualifies for such assistance. In addition, the responsible entity shall verify the immigration status of aliens as follows:

(1) *Primary verification.* (i) Primary verification of the immigration status of applicants and Family members with the Immigration and Naturalization Service (INS) is conducted by means of an automated system that provides access to alien names, file numbers and admission numbers.

(ii) The INS document submitted by the applicant or Family member to establish eligible immigration status must contain a photograph, or the responsibile entity shall request another document bearing a photograph to ensure the identity of the alien.

(iii) The responsible entity shall not deny or terminate financial assistance to an applicant or the Family on the basis of immigration status if the primary verification system indicates that the applicant or Family member has eligible immigration status.

(2) *Secondary verification* (Appeal). (i) Secondary verification provides an appeal of the primary verification determination through a manual search of INS alien files. Secondary verification is instituted by the responsible entity's forwarding of photocopies of the original INS documents listed at § 812.7 (front and back), attached to Document Verification Request Form G–845, to a designated INS field office for review.

(ii) The responsible entity shall promptly institute secondary verification whenever:

(A) Primary verification is either unavailable to, or not feasible for use by, the responsible entity;

(B) Primary verification instructs the responsible entity to institute secondary verification;

(C) Primary verification is unable to verify the immigration status of the applicant or Family member;

(D) Documents are submitted by the applicant or Family member that indicate immigration status, but do not contain an "A-number"; or

(E) An INS receipt is submitted as documentation.

(iii) Pending the outcome of secondary verification under paragraph (a)(2)(ii) of this section, the responsible entity is required to:

(A) Continue to process the applicant for purposes of establishing eligibility for financial assistance or program participation, if the applicant otherwise qualifies for such assistance. Financial assistance may not, however, be provided to any applicant until eligible immigration status is verified through the INS. In cases where eligibility for financial assistance is established prior to the verification of eligible immigration status, the responsible entity shall place the applicant's name on any waiting list and shall allow the applicant to accrue priority on the list pending the verification determination.

(B) Continue to provide financial assistance to, or permit program participation by, a Family without regard to a Family member's immigration status, if the Family otherwise qualifies for such assistance.

(b) *Liability of responsible entity for INS verification.* The responsible entity shall not be liable for any action, delay, or failure of the INS to conduct the automated or manual verification referred to in paragraphs (a) (1) and (2) of this section.

§ 812.9 Denial or termination of assistance.

(a) *Applicability.* The general requirements of this section are applicable to all forms of Section 8 financial assistance, including the Section 8 Housing Certificate and Housing Voucher Programs, and Section 8 Moderate Rehabilitation. The informal hearing requirements under § 882.216 shall govern the denial and termination of assistance under the Section 8 Certificate, Housing Voucher, and Moderate Rehabilitation programs. For all other Section 8 programs, the hearing requirements established under § 812.9(d) shall apply.

(b) *Denial of assistance.* The responsible entity shall not admit an applicant for participation in a Section 8 program or commence any new form of financial assistance for a Family, unless evidence of citizenship or eligible immigration status has been submitted to the responsible entity and verified, as appropriate, in accordance with §§ 812.6 and 812.8.

(c) *Retention of financial assistance.* An owner may not receive or retain financial assistance paid for the benefit of a Family if the owner admits an applicant for participation in a Section 8 program when required evidence of citizenship or eligible immigration status has not been submitted to the owner, and verified through the INS verification system. HUD may take other appropriate remedial action.

(d) *Procedural requirements*—(1) *Denial of assistance*—(i) *Notice.* If the applicant fails to submit the evidence of citizenship or eligible immigration status required under § 812.6, or if the INS verification system under § 812.8 establishes that the applicant does not have eligible immigration status, the owner shall:

(A) Inform the applicant in writing that his or her eligibility for financial assistance is denied, and provide a brief statement of the reasons for the denial of assistance; and

(B) Inform the applicant that he or she has a right to request an informal hearing under paragraph (d)(1)(ii) of this section within 14 days of the date of the notice of ineligibility.

(ii) *Informal hearing.* (A) Upon timely request for an informal hearing, the applicant shall have an opportunity to:

(*1*) Meet with any person(s) designated by the owner, other than a person who made or approved the decision under review or a subordinate of such person (who may be an officer or employee of the owner).

(*2*) Present evidence of citizenship (if required under § 812.6(b)), or of an INS determination of eligible immigration status, as described in § 812.7. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

(*3*) Seek representation by an attorney, or other designee, at the applicant's own expense.

(B) The owner shall provide the applicant with a written final decision within five days of the informal hearing, stating the basis for the decision.

(C) The owner must keep the following materials on file for at least three years: The application for financial assistance; photocopies of any documents submitted (front and back); the signed verification consent form; INS verification results; the applicant's request for an informal hearing on the initial determination of ineligibility; and the owner's written determination following the informal hearing under paragraph (d)(1)(ii) of this section.

(2) *Termination of Assistance* (including Termination of Tenancy)—(i) *Applicable actions*—(A) *Section 8 Certificate, Housing Voucher, and the Section 8 Moderate Rehabilitation Program.* Upon occurrence of any of the events listed in paragraph (d)(3), the responsible entity shall promptly terminate housing assistance payments for the Family in accordance with the requirements of §§ 882.216, 812.9(d)(5)(ii)(C) and 812.9(d)(7) and other HUD requirements, to the extent that termination is consistent with the provisions of paragraph (d)(4) of this section. (For the Section 8 Housing Voucher Program, see Section (T) of the Notice of Fund Availability published on March 23, 1988 (53 FR 9572, 9585).)

(B) *For all other programs covered under this part.* Upon the occurrence of any of the events listed in paragraph (d)(3) of this section, the owner shall terminate assistance in accordance with the requirements of paragraph (d)(5) to the extent that such action is consistent with the provisions of paragraph (d)(4) of this section. Thereafter, the owner may terminate assisted occupancy in accordance with paragraph (d)(6) of this section, if appropriate.

(ii) [Reserved]

(3) *Termination events.* Financial assistance shall terminate upon the occurrence of any of the following events:

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(i) If, after notice under § 812.6 is provided of the duty to submit evidence of citizenship or eligible immigration status, the family fails to submit such evidence for each family member at annual reexamination;

(ii) If the Family fails to obtain the responsible entity's approval for occupancy of the assisted dwelling unit by any additional person;

(iii) If the INS verification system described in § 812.8 establishes that a Family member does not have eligible immigration status; or

(iv) If the responsible entity has admitted a Family with financial assistance, but the responsible entity is subsequently informed by HUD or otherwise determines, in accordance with § 812.8(b) that the evidence of citizenship or eligible immigration status was fraudulently obtained or submitted, or is otherwise not valid or authentic evidence of such status.

(4) *When termination is not required.* (i) The responsible entity may not terminate financial assistance if any person for whom required evidence has not been submitted by the responsible entity has moved from the assisted dwelling unit;

(ii) The responsible entity may not terminate financial assistance if any Family member determined not to be in an eligible immigration status following verification under § 812.8 has moved from the assisted dwelling unit;

(iii) The responsible entity may not terminate financial assistance if any person who signed a fraudulent declaration of citizenship or eligible immigration status has moved from the assisted dwelling unit;

(iv) Instead of terminating assistance when evidence of citizenship or eligible immigration status has not been submitted at a regular reexamination or an interim reexamination (i.e., for a new occupant), the responsible entity may grant an extension of time for submission of the required evidence.

(A) The responsible entity may, in its own discretion, grant an extension if:

(*1*) The Family submits the declaration required under § 812.6(a) certifying that any Family member for whom required evidence has not been submitted is an alien with eligible immigration status, but shows that the evidence needed to support a claim of eligible immigration status is temporarily unavailable, and that additional time is needed to obtain and submit the evidence; and

(*2*) The Family promises to make prompt and diligent efforts to obtain the evidence.

(B) An extension under this paragraph (d)(4)(iv) shall be for a specific period needed to obtain the evidence. Where the Family is required to submit the evidence at an annual reexamination, any extension(s) granted by the responsible entity shall not allow submission of the evidence beyond ninety days after the effective date of the reexamination. Where the Family is required to request the responsible entity's approval for occupancy of the dwelling unit by an additional person, any extension(s) granted by the responsible entity shall not allow submission of the evidence beyond ninety days after occupancy by the additional person.

(C) The responsible entity's decision to grant an extension of time for the Family to submit the evidence, and the responsible entity's determination of the length of the extension, shall be made after considering the facts and circumstances of the individual case. The Family shall not have any right to an extension, and the responsible entity may revoke an extension if the Family is not making diligent efforts to obtain the evidence, and if there is no reasonable likelihood that the Family will be able to submit the evidence during the extension.

(D) If the Family has not submitted the evidence by the end of the ninety-day extension, the responsible entity shall promptly terminate financial assistance for the Family by terminating the assisted tenancy in accordance with the applicable requirements of paragraphs (d)(5), (d)(6) and (d)(7) of this section. The responsible entity's decision to grant an extension shall be in writing, and shall state the reasons for the responsible entity's determination.

(v) The responsible entity must consider permitting continued assistance or deferral of termination on behalf of an individual in occupancy on [the effective date of the final rule] under § 812.10.

(5) *Procedural requirements—termination of assistance.*—(i) *Termination notice.* Upon occurrence of any of the events described in paragraph (d)(3) of this section, the owner shall:

(A) Inform the Family in writing that the Family's eligibility for financial assistance is terminated, and provide a brief statement of the reasons for the termination of assistance.

(B) Inform the Family in writing of the right to request an informal hearing within 14 days of the date of the owner's notice. Financial assistance to a Family may not be terminated until the conclusion of the informal hearing under paragraph (d)(5)(ii) of this section, and then only upon a determination that the Family is not in an eligible immigration status.

(ii) *Informal hearing.* (A) Upon timely request for an informal hearing, the Family shall have an opportunity to:

(*1*) Meet with any person(s) designated by the owner (including an officer or employee of the owner) other than a person who made or approved the decision under review or a subordinate of such person.

(*2*) Submit evidence of citizenship (if required under § 812.6(b)), or of an INS determination of eligible immigration status, as described in § 812.7. Evidence may be considered without regard to its admissibility under the rules of evidence applicable to judicial proceedings.

(*3*) Seek representation by an attorney, or other designee, at the Family's own expense.

(B) The owner shall provide the Family with a written determination within five days of the informal hearing, stating the basis for the decision.

(C) The owner must keep the following materials on file for at least three years: The application for financial assistance; photocopies of any documents submitted (front and back); the signed verification consent form; INS verification results; the family's request for an informal hearing on the initial determination of ineligibility; and the owner's written determination following the informal hearing under paragraph (d)(5)(ii) of this section.

(6) *Termination of assisted occupancy.* Upon occurrence of any of the events described in paragraph (d)(3) of this section, assisted occupancy is terminated by doing any of the following:

(i) If permitted under the lease, the owner may notify the Family that because of such occurrence the Family is required to pay the HUD-approved market rent for the dwelling unit. The notice shall be given in accordance with HUD requirements.

(ii) The owner may enter into a new lease without Section 8 assistance.

(iii) The owner may evict the family. An owner may continue to receive assistance payments in accordance with the Housing Assistance Payments contract if action to terminate the tenancy under an assisted lease is promptly initiated and diligently pursued in accordance with the terms of the lease, and if eviction of the Family is undertaken by judicial action pursuant to State and local law. Action by the owner to terminate the tenancy and to evict the Family must be in accordance with HUD regulations and other HUD requirements. For any jurisdiction, HUD may prescribe a maximum period during which assistance payments may be continued during eviction proceedings and may prescribe other standards of reasonable diligence for the prosecution of eviction proceedings, the owner should evict the Family.

(7) *Resumption of assistance.* When financial assistance for the Family has been terminated in accordance with § 812.9 (d)(5) and (d)(6), financial assistance for the Family shall not resume unless:

(i) All required evidence has been submitted by the Family and verified by the owner; and

(ii) Resumption of assistance is authorized in accordance with HUD requirements.

§ 812.10 Special provisions for preservation of mixed families and other families in occupancy on [the effective date of the final rule].

(a)(1) When the responsible entity would otherwise be required to terminate assistance because of the status of an individual who was receiving financial assistance on [*the effective date of the final rule*] (following the provision of a hearing in accordance with § 812.9 or § 882.216, if requested), the responsible entity must consider (or may consider, in the case of a PHA) whether the Family qualifies for relief under this section.

(2) Since a PHA has greater discretion than a project owner, in accordance with statutory provisions, to determine in what cases to continue assistance indefinitely and what situations to defer termination of assistance, it must establish a policy and criteria to follow in making its decisions.

(b) If the individual lacking eligible status, as described in § 812.5, is a member of a family in which the head of household or spouse has eligible status, the responsible entity must consider (may consider, in the case of a PHA) whether continued assistance is necessary to avoid the division of the family. In making this determination, the responsible entity must consider only what is necessary to avoid division of the "family" consisting of the head of household, any spouse, and any parents or children of the head of household or spouse. The decision to continue assistance on behalf of such an individual will be made once, and need not be reconsidered thereafter.

(1) If the Family is receiving only minimal financial assistance and the responsible entity determines that the Family could afford to continue occupancy in the dwelling unit without assistance, the responsible entity may determine that continued provision of financial assistance is not necessary to avoid the division of the Family and may terminate assistance rather than to continue it under this section.

(2) If the Family demonstrates that reasonable efforts to find other affordable housing of appropriate size have been unsuccessful, this evidence will be sufficient for the responsible entity to determine that continued financial assistance is necessary to avoid division of the Family. In such a case, the responsible entity must continue (should continue, in the case of a PHA) to provide financial assistance under this section so long as the Family satisfies other requirements of continued participation.

(3) If some members of the family do not qualify as members of the "family" that is not to be divided, as described above, financial assistance may be continued to the Family under this section only if the persons not qualifying as "family" members move out of the unit within the period stated in the final determination of ineligible status.

(c) If financial assistance is not to be continued under paragraph (b) of this section, then the responsible entity must determine (may determine, in the case of a PHA) whether temporary deferral of the termination of financial assistance is necessary to permit the orderly transition of the ineligible individual and family members involved to other affordable housing. If such a deferral is warranted, it shall be for a six-month period. A deferral period may be renewed for an additional period of six months if warranted, but the aggregate deferral period may not exceed three years.

(1) The responsible entity will determine whether other affordable housing of appropriate size is available based on its own knowledge and on evidence of the Family's efforts to locate such housing. If the determination is that additional time is needed for the Family to make the transition to other affordable housing, the responsible entity will grant a deferral under this paragraph (c).

(2) At the beginning of each deferral period, the responsible entity must inform the Family of its ineligibility for financial assistance and offer the Family information and referrals to assist in finding other affordable housing.

(3) Before the end of each deferral period, the responsible entity must make a determination of the availability of affordable housing (based on its own knowledge and on evidence of the Family's efforts to locate such housing) in sufficient time so that the Family can be advised, at least 60 days (or some other reasonable time, in the case of a PHA) in advance of the expiration of the deferral period, whether termination will be deferred again.

(4) If, during a deferral period, the status of the head of household or spouse changes and he or she is able to establish eligible status, the Family either will be determined fully eligible (if all family members are also eligible) or will be considered (may be considered, in the case of a PHA) for eligibility for indefinite continuation of financial assistance under paragraph (b) of this section.

(d) An owner's determination of whether the family qualifies for relief under this section must be conveyed to the family in writing, stating the reasons for the decision if it is adverse to the family. If a project owner decides neither to continue assistance under paragraph (b) of this section nor to defer termination of financial assistance temporarily under paragraph (c) of this section on behalf of an individual who has been determined to lack eligible status, the project owner shall offer the family an opportunity to meet with a representative of the owner to discuss the decision, in accordance with HUD procedures.

§ 812.11 Specific prohibition of assistance to nonimmigrant student aliens.

The provisions of § 812.10, permitting continuation of assistance or deferral of termination of financial assistance for certain families, do not authorize relief with respect to any individual who is determined to be a nonimmigrant student alien. For this purpose, a nonimmigrant student alien is defined as any alien who has a residence in a foreign country that such alien has no intention of abandoning; who is a bona fide student qualified to pursue a full course of study; and who is admitted to the United States temporarily and solely for purposes of pursuing such a course of study at an established institution of learning or other recognized place of study in the United States, particularly designated by such alien and approved by the Attorney General after consultation with the Department of Education of the United States, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student (and if any such institution of learning or place of study fails to make such reports promptly the approval shall be withdrawn); and the alien spouse and minor children of any alien described above, if the spouse or children are accompanying such alien or following to join such alien.

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§ 888.42 Protection from liability for Responsible Entities, State and local government agencies and officials.

(a) *Protection from liability for Responsible Entities.* HUD shall not take any compliance, disallowance, penalty, or other regulatory action against a responsible entity with respect to any error in its determination to make an individual eligible for financial assistance based on citizenship or immigration status:

(1) If the responsible entity established eligibility based upon a verification of eligible immigration status through the INS' primary or secondary verification system, as described in § 812.8;

(2) If the responsible entity was required to provide an opportunity for the applicant or Family to submit evidence in accordance with § 812.8;

(3) If the responsible entity was required to wait for a response from the INS to the request for verification of eligible immigration status in accordance with § 812.8; or

(4) If the responsible entity was required to provide the informal hearing requirements under § 812.9(d)(5)(ii).

(b) *Protection from liability for State and local government agencies and officials.* State and local government agencies and officials shall not be liable for the design or implementation of the verification system described in §§ 812.8 and 812.9, so long as the implementation by the State or local government agency or official is in accordance with prescribed HUD rules and requirements.

PART 850—HOUSING DEVELOPMENT GRANTS

26. The authority citation for Part 850 would continue to read as follows:

Authority: Sec. 17, U.S. Housing Act of 1937 (42 U.S.C. 1437o); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

27. Section 850.151 would be amended by adding two sentences at the beginning of paragraph (c), by adding two sentences at the end of paragraph (f)(1), and by adding a new paragraph (f)(3), to read as follows:

§ 850.151 Project restrictions.

* * * * *

(c) *Tenant selection.* The owner shall determine the eligibility of applicants for lower income units in accordance with the requirements of Parts 812 and 813, including the provisions concerning citizenship or eligible immigration status and concerning income limits. (For procedures related to denial of assistance for failure to establish citizenship or eligible immigration status, see Part 812). * * *

* * * * *

(f) *Reexamination of tenant income and composition.*

(1) * * * At the first regular reexamination after [*the effective date of the final rule*], the owner must follow the requirements of Part 812 concerning obtaining and processing information on the citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner must follow the requirements of that part concerning verification of the immigration status of any family member who is not a citizen, as defined in § 812.2, except for family members who were at least 62 years of age and receiving HUD financial assistance on [the effective date of the final rule].

* * * * *

(3) For provisions related to termination of assistance for failure to establish citizenship or eligible immigration status, see § 812.9.

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

28. The authority citation for Part 880 would continue to read as follows:

Authority: Secs. 3, 5, and 6, U.S. Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

29. In § 880.504, a new paragraph (e) would be added, to read as follows:

§ 880.504 Leasing to eligible families.

* * * * *

(e) *Termination of assistance for failure to submit evidence of citizenship or eligible immigration status.* If an owner subject to paragraphs (a) and (b) of this section is required to terminate housing assistance payments for the family in accordance with § 812.9 because the owner determines that the Family lacks citizenship or eligible immigration status, the owner may allow continued occupancy of the unit by the family without Section 8 assistance following the termination of assistance. The owner must make the unit available for occupancy by an eligible family when the original family vacates the unit.

30. In § 880.601, paragraph (b) would be revised to read as follows:

§ 880.601 Responsibilities of owner.

* * * * *

(b) *Management and maintenance.* The owner is responsible for all management functions (including determining eligibility of applicants in accordance with Parts 812 and 813, provision of Federal selection preferences in accordance with § 880.613, selection of tenants, reexamination of family income, evictions and other terminations of tenancy, and collection of rents) and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All these functions must be performed in compliance with applicable Equal Opportunity requirements.

* * * * *

31. Section 880.603 would be revised by adding two sentences at the end of paragraph (c)(1), by adding one sentence at the end of paragraph (c)(2), by revising the introductory language in paragraph (b), and by adding a sentence at the end of paragraphs (b)(3) and (c)(3), to read as follows:

§ 880.603 Selection and admission of assisted tenants.

* * * * *

(b) *Determination of eligibility and selection of tenants.* The owner is responsible for obtaining and verifying information related to income in accordance with Part 813 and information related to citizenship and eligible immigration status in accordance with Part 812 of this chapter); for determining whether the applicant is eligible in accordance with Parts 812 and 813; and for selecting families (including giving a Federal selection preference in accordance with § 880.613).

* * * * *

(3) * * * For the informal hearing provisions related to denial of assistance based upon failure to establish citizenship or eligible immigration status, see Part 812.

* * * * *

(c) * * *

(1) * * * At the first regular reexamination after [*the effective date of the final rule*], the owner must follow the requirements of Part 812 concerning obtaining and processing information on the citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner must follow the requirements of that part concerning verification of the immigration status of any family member who is not a citizen, a defined in § 812.2, except for family members who were at least 62 years of age and receiving HUD financial assistance on [the effective date of the final rule].

(2) * * * At any interim reexamination after [*the effective date of the final rule*] that involves the addition of a new family member (except for the birth of a child), the owner must follow the requirements of Part 812 concerning obtaining and processing information on the citizenship or eligible immigration status of the new family members.

(3) * * * For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, see § 812.9.

* * * * *

32. In § 880.607, paragraph (b)(3) would be revised and a new paragraph (c)(4) would be added, to read as follows:

§ 880.607 Termination of tenancy and modification of lease.

* * * * *

(b) * * *

(3) *Material noncompliance.* Material noncompliance with the lease includes: One or more substantial violations of the lease, or repeated minor violations of the lease that disrupt the livability of the building, adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related facilities, interfere with the management of the building or have an adverse financial effect on the building. Failure of the family to timely submit all required information on family income and composition (including required evidence of citizenship or eligible immigration status) will constitute a substantial violation of the lease. Nonpayment of rent or any other financial obligation due under the lease (including any portion thereof) beyond any grace period permitted under State law will constitute a substantial violation of the lease. The payment of rent or any other financial obligation due under the lease after the due date but within the grace period permitted under State law will constitute a minor violation.

(c) *Termination of tenancy.* * * *

(4) For provisions related to termination of assistance because of failure to establish citizenship or eligible immigration status, including the informal hearing procedures, see Part 811.

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

33. The authority citation for Part 881 would continue to read as follows:

Authority: Secs. 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

34. In § 881.504, a new paragraph (e) would be added, to read as follows:

§ 881.504 Leasing to eligible families.

* * * * *

(e) *Termination of assistance for failure to submit evidence of citizenship or eligible immigration status.* If an owner subject to paragraphs (a) and (b) of this section is required to terminate financial assistance in accordance with § 812.9 because the owner determines that the Family lacks citizenship or eligible immigration status, the owner may allow continued occupancy of the unit by the Family without Section 8 assistance following the termination of assistance. The owner must make the unit available for occupancy by an eligible family when the original family vacates the unit.

35. In § 881.601, paragraph (b) would be revised to read as follows:

§ 881.601 Responsibilities of owner.

* * * * *

(b) *Management and maintenance.* The owner is responsible for all management functions (including determining eligibility of applicants in accordance with Parts 812 and 813, provision of Federal selection preferences in accordance with § 881.613, selection of tenants, reexamination of family income, evictions and other terminations of tenancy, and collection of rents) and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All these functions must be performed in compliance with applicable Equal Opportunity requirements.

* * * * *

36. Section 881.603 would be amended by revising the introductory language of paragraph (b), by adding a sentence at the end of paragraph (b)(3), by adding two sentences at the end of paragraph (c)(1), and by adding one sentence at the end of paragraphs (c)(2) and (c)(3), to read as follows:

§ 881.603 Selection and admission of assisted tenants.

* * * * *

(b) *Determination of eligibility and selection of tenants.* The owner is responsible for obtaining and verifying information related to income in accordance with Part 813 and information related to citizenship and eligible immigration status in accordance with Part 812 of this chapter; for determining whether the applicant is eligible in accordance with Parts 812 and 813; and for selecting families (including giving a Federal selection preference in accordance with § 881.613).

* * * * *

(3) * * * For the informal hearing provisions related to denial of assistance based upon failure to establish citizenship or eligible immigration status, see Part 812.

* * * * *

(c) * * *

(1) * * * At the first regular reexamination after [*the effective date of the final rule*], the owner must follow the requirements of Part 812 concerning obtaining and processing information on the citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner must follow the requirements of that part concerning verification of the immigration status of any family member who is not a citizen, as defined in § 812.2, except for family members who were at least 62 years of age and receiving HUD financial assistance on [the effective date of the final rule].

(2) * * * At any interim reexamination after [*the effective date of the final rule*] that involves the addition of a new family member (except by the birth of a child), the owner must follow the requirements of Part 812 concerning obtaining and processing information on the citizenship or eligible immigration status of the new family member.

(3) * * * For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, see Part 812.

* * * * *

(c) * * *

(1) * * * At the first regular reexamination after [*the effective date of the final rule*], the owner must follow the requirements of Part 812 concerning obtaining and processing information on the citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner must follow the requirements of that part concerning verification of the immigration status of any family member who is not a citizen, as defined in § 812.2, except for family members who were at least 62 years of age and receiving HUD financial assistance on [the effective date of the final rule].

(2) * * * At any interim reexamination after [*the effective date of the final rule*] that involves the addition of a new family member (except by the birth of a child), the owner must follow the requirements of Part 812 concerning obtaining and processing information on the citizenship or eligible immigration status of the new family member.

(3) * * * For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, see § 812.9.

36. In § 881.607, paragraph (b)(3) would be revised and a new paragraph (c)(4) would be added, to read as follows:

§ 881.607 Termination of tenancy and modification of lease.

* * * * *

(b) * * *

(3) *Material noncompliance.* Material noncompliance with the lease includes: one or more substantial violations of the lease, or repeated minor violations of the lease that disrupt the livability of the building, adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related facilities, interfere with the management of the building or have an adverse financial effect on the building. Failure of the family to timely submit all required information on family income and composition (including required evidence of citizenship or eligible immigration status) will constitute a substantial violation of the lease. Nonpayment of rent or any other

financial obligation due under the lease (including any portion thereof) beyond any grace period permitted under State law will constitute a substantial violation of the lease. The payment of rent or any other financial obligation due under the lease after the due date but within the grace period permitted under State law will constitute a minor violation.

(c) *Termination of tenancy.* * * *

(4) For provisions related to termination of assistance because of failure to establish citizenship or eligible immigration status, including the informal hearing procedures, see Part 812.

* * * * *

PART 885—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

37. The authority citation for Part 882 would continue to read as follows:

Authority: Secs. 3, 5, and 8, U.S. Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

38. In § 882.116, paragraph (c) would be revised to read as follows:

§ 882.116 Responsibilities of the PHA.

* * * * *

(c) Receipt and review of applications for Certificates of Family Participation and provision of a Federal preference in selecting applicants for participation in accordance with § 882.219. The PHA is also responsible for verifying the sources and amount of the Family's income and other information necessary for determining eligibility and the amount of the assistance payments (including citizenship or eligible immigration status) in accordance with Parts 812 and 813, and maintenance of a waiting list in accordance with this part.

* * * * *

39. In § 882.18, paragraph (a)(1) would be revised to read as follows:

§ 882.118 Obligations of the family.

(a) * * *

(1) Supply such certification, release, information or documentation as the PHA or HUD determine to be necessary, including submission of required evidence of citizenship or eligible immigration status in accordance with Part 812, and submissions required for an annual or interim reexamination of Family income and composition.

* * * * *

40. In § 882.209, paragraph (a)(2) would be amended by revising the first sentence to read as follows:

§ 882.209 Selection and participation.

(a) * * *

(2) The PHA shall determine whether an applicant for participation qualifies as a Family, is income eligible and is a citizen or is in eligible immigration status as determined in accordance with Part 812. * * *

* * * * *

41. In § 882.210, a new paragraph (3) would be added, to read as follows:

§ 882.210 Grounds for denial or termination of assistance.

* * * * *

(c) The Family's obligations as stated in § 882.118 include submission of required evidence of citizenship or eligible immigration status. For a statement of circumstances in which the PHA is required to deny or terminate housing assistance payments because of a Family's inability to establish citizenship or eligible immigration status, and the applicable informal hearing procedures, see Part 812 and § 882.216(b)(6)(iv).

42. Section 882.212 would be amended by adding two sentences at the end of paragraph (a), and by adding one sentence at the end of paragraphs (b) and (c), to read as follows:

§ 882.212 Reexamination of family income and composition.

(a) * * * At the first regular reexamination after [*the effective date of the final rule*], the owner must follow the requirements of Part 812 concerning obtaining and processing information on the citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the PHA must follow the requirements of that part concerning verification of the immigration status of any family member who is not a citizen, as defined in § 812.2, except for family members who were at least 62 years of age and receiving HUD financing assistance on [the effective date of the final rule].

(b) * * * At any interim reexamination after [*the effective date of the final rule*] that involves the addition of a new family member (except by the birth of a child), the PHA must follow the requirements of Part 812 concerning obtaining and processing information on the citizenship or eligible immigration status of the new family member.

(c) * * * For provisions requiring termination of housing assistance payments when the PHA determines that the Family lacks citizenship or eligible immigration status, see Part 812 and § 882.216(b)(6)(iv).

43. In § 882.216, paragraphs (a)(2) would be amended by adding one sentence at the end, and (b)(6)(iv) would be revised to read as follows:

§ 882.216 Informal review or hearing.

(a) * * *

(2) * * * Where the denial of assistance is based upon a failure to establish citizenship or eligible immigration status, the applicant may present evidence of citizenship (if required under § 812.6(b)), or of an INS determination of eligible immigration status, in accordance with § 812.7.

(b) * * *

(6) * * *

(iv) The PHA and the participant shall be given the opportunity to present evidence and may question any witnesses. Where the decision to terminate assistance is based upon a failure to establish citizenship or eligible immigration status, the participant may present evidence of citizenship (if required under § 812.6(b)), or of an INS determination of eligible immigration status, in accordance with § 812.7. Evidence may be considered without regard to admissability under the rules of evidence applicable to judicial proceedings.

* * * * *

44. Section § 882.515 is amended by adding two sentences at the end of paragraph (a) and by adding one sentence at the end of paragraphs (b) and (c), to read as follows:

§ 882.515 Reexamination and family income and composition.

(a) * * * At the first regular reexamination after [*the effective date of the final rule*], the owner must follow the requirements of Part 812 concerning obtaining and processing information on the citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the PHA must follow the requirements of that part concerning verification of the immigration status of any family member who is not a citizen, as defined in § 812.2, except for family members who were at least 62 years of age and receiving HUD financial assistance on [the effective date of the final rule].

(b) * * * At any interim reexamination after [*the effective date of the final rule*] that involves the addition of a new family member (except by the birth of a child), the PHA must follow the requirements of Part 812 concerning obtaining and processing information on the citizenship or eligible immigration status of the new family member.

(c) * * * For provisions requiring termination of assistance when the PHA determines that the Family lacks citizenship or eligible immigration status, see Part 812 and § 882.216(b)(6).

* * * * *

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

45. The authority citation for Part 883 would continue to read as follows:

Authority: Secs. 3, 5, and 8, U.S. Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

46. In § 883.101, the last sentence of paragraph (c) would be revised to read as follows:

§ 883.101 General.

* * * * *

(c) *Tenant rents and Eligible Families.* * * * Eligible families are Families, as defined in part 812, whose incomes qualify them for assistance in accordance with Part 813, and who are otherwise eligible under Parts 812 and 813.

47. In § 883.605, a new paragraph (e) would be added, to read as follows:

§ 883.605 Leasing to eligible families.

* * * * *

(e) *Termination of assistance for failure to submit evidence of citizenship or eligible immigration status.* If an owner subject to paragraphs (a) and (b) of this section is required to terminate financial assistance in accordance with § 812.9 because the owner determines that the Family lacks citizenship or eligible immigration status, the owner may allow continued occupancy of the unit by the family without Section 8 assistance following termination of assistance. The owner must make the unit available for occupancy by an eligible family when the original family vacates the unit.

48. In § 883.702, paragraph (b) would be revised to read as follows:

§ 883.702 Responsibilities of the owner.

* * * * *

(b) *Management and maintenance.* The owner is responsible for all management functions (including determination of the eligibility of applicants in accordance with Parts 812 and 813, provision of Federal selection preferences in accordance with § 883.714, selection of tenants, reexamination of family incomes, evictions and other terminations of tenancy, and collection of rents) and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All these functions must be performed in compliance with applicable Equal Opportunity requirements.

* * * * *

49. Section 883.704 would be amended by revising the introductory language of paragraph (b), by adding a sentence at the end of paragraph (b)(3), by adding two sentences at the end of paragraph (c)(1), and by adding one sentence at the end of paragraphs (c)(2) and (c)(3), to read as follows:

§ 883.704 Selection and admission of tenants.

* * * * *

(b) *Determination of eligibility and selection of tenants.* The owner is responsible for obtaining and verifying information related to income in accordance with Part 813 and information related to citizenship and eligible immigration status in accordance with Part 812 of this chapter; for determining whether the applicant is eligible in accordance with Parts 812 and 813; and for selecting families (including giving a Federal preference in accordance with § 883.714).

* * * * *

(3) * * * For the informal hearing provisions related to denial of assistance based upon failure to establish citizenship or eligible immigration status, see Part 812.

* * * * *

(c) *Reexamination of Family income and composition*—(1) *Regular reexaminations.* * * * At the first regular reexamination after [*the effective date of the final rule*], the owner must follow the requirements of Part 812 concerning obtaining and processing information on the citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner must follow the requirements of that part concerning verification of the immigration status of any family member who is not a citizen, as defined in § 812.2, except for family members who were at least 62 years of age and receiving HUD financial assistance on [the effective date of the final rule].

(2) *Interim reexaminations.* * * * At any interim reexamination after [*the effective date of the final rule*] that involves the addition of a new family member (except by the birth of a child), the owner must follow the requirements of Part 812 concerning obtaining and processing information on the citizenship or eligible immigration status of the new family member.

(3) * * * For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, see Part 812.

50. In § 883.708, paragraph (b)(3) would be revised and a new paragraph (c)(4) would be added to read as follows:

§ 883.708 Termination of tenancy and modification of lease.

* * * * *

(b) * * *

(3) *Material noncompliance.* Material noncompliance with the lease includes: (i) One or more substantial violations of the lease, or (ii) repeated minor violations of the lease that disrupt the livability of the building, adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related facilities, interfere with the management of the building or have an adverse financial effect on the building or project. Failure of the family to timely submit all required information on family income and composition (including required evidence of citizenship and eligible immigration status) will constitute a substantial violation of the lease. Nonpayment of rent or any other financial obligation due under the lease (including any portion thereof) beyond any grace period permitted under State law will constitute a substantial violation of the lease. The payment of rent or any other financial obligation due under the lease after the due date but within the grace period permitted under State law will constitute a minor violation.

* * * * *

(c) *Termination of tenancy.* * * *

(4) For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, including the applicable informal hearing requirements, see Part 812.

PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

51. The authority citation for Part 884 would continue to read as follows:

Authority: Secs. 3, 5, and 8, U.S. Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

52. In § 884.116, paragraph (a)(3) would be revised to read as follows:

§ 884.116 Responsibilities of the owner.

(a) * * *

(3) Performance of all management fuctions, including the taking of applications; determining the eligibility of applicants in accordance with Parts

812 and 813; provision of Federal selection preferences in accordance with § 884.220; selection of families in accordance with any other pertinent requirements; and determination of the amount of tenant rent in accordance with HUD established schedules and criteria.

* * * * *

53. In § 884.214, paragraph (b)(1) would be revised and a new paragraph (b)(8) would be added, to read as follows:

§ 884.214 Marketing.

* * * * *

(b) *Eligibility, selection and admission of families.* (1) The owner is responsible for determination of eligibility of applicants in accordance with the procedures of Part 812, selection of families from among those determined to be eligible (including provision of Federal selection preferences in accordance with § 884.220), and computation of the amount of housing assistance payments on behalf of each selected Family, in accordance with schedules and criteria established by HUD: *Provided*, that in establishing criteria for the selection of applicants, no local residency requirements or priority systems relating to place of residence may be applied to applicants who are working in the community.

* * * * *

(8) For the informal hearing provisions related to denial of assistance based upon failure to establish citizenship or eligible immigration status, see Part 812.

54. In § 884.216, a new sentence would be added at the end of the paragraph to read as follows:

* * * * *

§ 884.216 Termination of tenancy.

* * * For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, including the applicable informal hearing requirements, see Part 812.

55. Section 884.218 would be amended by adding two sentences at the end of paragraph (a) any be adding one sentence at the end of paragraph (b) and (c), to read as follows:

§ 884.218 Reexamination of Family income and composition.

(a) * * * At the first regular reexamination after [*the effective date of the final rule*], the owner must follow the requirements of Part 812 concerning obtaining and processing information on the citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner must follow the requirements of that part concerning verification of the immigration status of any family member who is not a citizen, as defined in § 812.2, except for family members who were at least 62 years of age and receiving HUD financial assistance on [the effective date of the final rule].

(b) * * * At any interim reexamination after [*the effective date of the final rule*] that involves the addition of a new family member (except by the birth of a child), the owner must follow the requirements of Part 812 concerning obtaining and processing information on the citizenship or eligible immigration status of the new family member.

(c) * * * For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, see § 812.9.

* * * * * *

56. In § 884.223, a new paragraph (e) would be added to read as follows:

§ 884.223 Leasing to eligible families.

* * * * *

(e) *Termination of assistance for failure to establish citizenship or eligible immigration status.* If an owner subject to pargraph (a) and (b) of this section is required to terminate housing assistance payments for the family in accordance with § 812.9 because the owner determines that the Family lacks citizenship or eligible immigration status, the owner may allow continued occupancy of the unit by the family without Section 8 assistance following the termination of assistance. The owner must make the unit available for occupancy by an eligible family when the original family vacates the unit.

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

Subpart A—Additional Assistance Program For Projects With HUD-Insured and HUD Held Mortgages

57. The authority citation for Part 886 would continue to read as follows:

Authority: Secs. 3, 5, and 8, U.S. Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

58. In § 886.119, paragraph (a)(3) would be revised to read as follows:

§ 886.119 Responsibilities of the owner.

(a) * * *

(3) Performance of all management functions, including the taking of applications, determining eligibility of applicants in accordance with Parts 812 and 813, provision of Federal selection preferences in accordance with § 886.132; selection of tenants in accordance with any other pertinent requirements; and determination of the amount of Tenant Rent in accordance with Part 813 of this chapter.

* * * * *

59. In § 886.121, paragraph (b) would be revised and a new paragraph (c) would be added, to read as follows:

§ 886.121 Marketing.

* * * * *

(b) In taking applications, selecting families, and all related determinations, the Owner must comply with the applicable provisions of the Contract, this subpart, and the procedures of Part 812.

(c) For the informal hearing provisions related to denial of assistance based upon failure to establish citizenship or eligible immigration status, see Part 812.

60. Section 886.124 would be amended by adding two sentences at the end of paragraph (a) and by adding one sentence at the end of paragraphs (b) and (c), to read as follows:

§ 886.124 Reexamination of family income and composition.

(a) * * * At the first regular reexamination after [*the effective date of the final rule*], the owner must follow the requirements of Part 812 concerning obtaining and processing information on the citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner must follow the requirements of that part concerning verification of the immigration status of any family member who is not a citizen, as defined in § 812.2, except for family members who were at least 62 years of age and receiving HUD financial assistance on [*the effective date of the final rule*].

(b) * * * At any interim reexamination after [*the effective date of the final rule*] that involves the addition of new family member (except by the birth of a child), the owner must follow the requirements of Part 812 concerning obtaining and processing information on the citizenship or eligible immigration status of the new family member.

(c) *Continuation of housing assistance payments.* * * * For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, see § 812.9.

61. Section 886.128 would be revised to read as follows:

§ 886.128 Evictions.

Part 247 of this title applies to the termination of tenancy and eviction of a family assisted under this subpart. For cases involving termination of tenancy because of a failure to establish citizenship or eligible immigration status, the procedures of Parts 247 and 812 shall apply.

62. In § 886.129, a new paragraph (e) would be added, to read as follows:

§ 886.129 Leasing to eligible families.

* * * * *

(e) *Termination of assistance for failure to establish citizenship or eligible immigration status.* If an owner subject to paragraphs (a) and (b) of this section is required to terminate housing assistance payments for the family in accordance with § 812.7 because the owner determines that the Family lacks citizenship or eligible immigration status, the owner may allow continued occupancy of the unit by the family without Section 8 assistance following the termination of assistance. The owner must make the unit available for occupancy by an eligible family when the original family vacates the unit.

63. In § 886.318, paragraph (a)(3) would be revised to read as follows:

§ 886.318 Responsibilities of the owner.

(a) *Management and maintenance.*

* * *

(3) Performance of all management functions, including the taking of applications, determination of eligibility in accordance with Parts 812 and 813, selection of families in accordance with the Federal preferences in accordance with § 886.337 and the owner's tenant selection factors approved by HUD, and determination of the amount of tenant rent in accordance with Part 813 of this chapter.

* * * * *

64. In § 886.321, paragraph (b)(1) would be revised and a new paragraph (b)(7) would be added, to read as follows:

§ 886.321 Marketing.

* * * * *

(b)(1) HUD will determine the eligibility for assistance of families in occupancy before sales closing. After the sale, the owner shall be responsible for determining the eligibility of applicants for tenancy (including compliance with the procedures of Part 812 on evidence of citizenship or eligible immigration status), selection of families from among those determined to be eligible (including provision of Federal preferences in accordance with § 886.337), and computation of the amount of housing assistance payments on behalf of each selected family, in accordance with the Gross Rent and the Total Tenant Payment computed in accordance with 24 CFR Part 813. * * *

* * * * *

(7) For the informal hearing provisions related to denial of assistance based upon failure to establish citizenship or eligible immigration status, see Part 812.

65. Section 886.328 would be amended by adding two sentences at the end of paragraph (a) and by adding one sentence at the end of paragraphs (b) and (c), to read as follows:

§ 886.324 Reexamination of family income and composition.

(a) * * * At the first regular reexamination after [*the effective date of the final rule*], the owner must follow the requirements of Part 812 concerning obtaining and processing information on the citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner must follow the requirements of that part concerning verification of the immigration status of any family member who is not a citizen, as defined in § 812.2, except for family members who were at least 62 years of age and receiving HUD financial assistance on [the effective date of the final rule].

(b) * * * At any interim reexamination after [*the effective date of the final rule*] that involves the addition of a new family member (except by the birth of a child), the owner must follow the requirements of Part 812 concerning obtaining and processing information on the citizenship or eligible immigration status of the new family member.

(c) *Continuation of housing assistance payments.* * * * For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, see § 812.9.

66. Section 886.328 would be revised to read as follows:

§ 886.328 Termination of tenancy.

Part 247 of this title applies to the termination of tenancy and eviction of a family assisted under this subpart. For cases involving termination of tenancy because of a failure to establish citizenship or eligible immigration status, the procedures of Parts 247 and 812 shall apply.

67. In § 886.329, a new paragraph (e) would be added, to read as follows:

§ 886.329 Leasing to eligible families.

* * * * *

(e) *Termination of Assistance for Failure to Establish Citizenship or Eligible Immigration Status.* If an owner subject to paragraphs (a) and (b) of this section is required to terminate housing assistance payments for the family in accordance with § 812.9 because the owner determines that the family lacks citizenship or eligible immigration status, the owner may allow continued occupancy of the unit by the family without Section 8 assistance following the termination of assistance. The owner must make the unit available for occupancy by an eligible family when the original family vacates the unit.

PART 900—SECTION 23 HOUSING ASSISTANCE PAYMENTS PROGRAM—NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION

68. The authority citation for Part 900 would continue to read as follows:

Authority: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); sec. 10(b) of the U.S. Housing Act of 1937 (42 U.S.C. 1410(b)).

69. In § 900.102, paragraph (g) would be revised to read as follows:

§ 900.102 Definitions.

* * * * *

(g) *Eligible families.* Those families determined by the LHA to meet the requirements for admission into housing assisted hereunder in accordance with Parts 912 and 913 of this chapter and other pertinent requirements. * * *

* * * * *

70. Section 900.302 would be amended by adding a new sentence to the end of the introductory language of paragraph (d)(3), and by redesignating existing paragraphs (g) and (h) as paragraphs (h) and (i) respectively, and by adding a new paragraph (g), to read as follows:

§ 900.302 Project operation.

* * * * *

(d) * * *

(3) * * * For provisions related to denial of assistance because of a failure to establish citizenship or eligible immigration status, the requirements of § 900.207 and Part 912 shall apply.

* * * * *

(g) *Termination of assistance.* For provisions related to termination of assistance for failure to establish citizenship or eligible immigration status, the requirements of Parts 912 and 966 shall apply.

* * * * *

PART 904—LOW RENT HOUSING HOMEOWNERSHIP OPPORTUNITIES

71. The authority citation for Part 904 would continue to read as follows:

Authority: U.S. Housing Act of 1937 (42 U.S.C. 1437–1437q); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

72. In § 904.104, the first sentence of paragraph (b)(1) and paragraph (g)(2) in its entirety would be revised, to read as follows:

§ 904.104 Eligibility and selection of homebuyers.

* * * * *

(b) *Eligibility and standards for admission.* (1) Homebuyers shall be lower income families that are determined to be eligible for admission in accordance with the provisions of Parts 912 and 913, which prescribe income definitions, income limits, and restrictions concerning citizenship or eligible immigration status. * * *

* * * * *

(g) *Notification to applicants.* * * *

(2) Applicants who are not selected for a specific Turnkey III development shall be so notified in accordance with HUD-approved procedure. The notice shall state the reason for the applicant's rejection (including nonrecommendation by the recommending committee unless the applicant has previously been so notified by the committee) and the notice shall state that the applicant will be given an informal hearing on such determination, regardless of the reason for the rejection, if he makes a request for such a hearing within a reasonable time (to be specified in the notice) from the date of the notice. For provisions related to denial of assistance for failure to establish citizenship or eligible immigration status, the requirements of § 960.207 and Part 912 shall apply.

73. In § 904.107, paragraphs (j)(2) and (m)(1) would be revised, to read as follows:

§ 904.107 Responsibilities of homebuyer; administrative grievance hearing.

* * * * *

(j) *Homebuyer's required monthly payment.* * * *

(2) For purposes of determining eligibility of an applicant (see Parts 912 and 913, as well as this part) and the amount of Homebuyer payments under paragraph (j)(1) of this section, the LHA shall examine the Family's income and composition and follow the procedures required by Part 912 for determining citizenship or eligible immigration status before initial occupancy. Thereafter, for the purposes stated above and to determine whether a Homebuyer is required to purchase the home under § 904.104(h)(1), the LHA shall reexamine the Homebuyer's income and composition regularly, at least once every 12 months, following the requirements of Part 912 concerning verification of the immigration status of any family member who is not a citizen, as defined in § 912.2, except for family members who were at least 62 years of age and receiving HUD financial assistance on [the effective date of the final rule]. The Homebuyer shall comply with the LHA's policy regarding required interim reporting of changes in the family's income and composition. If the IHA receives information from the family or other source concerning a change in the family income or other circumstances between regularly scheduled reexaminations, the LHA, upon consultation with the family and verification of the information (in accordance with Parts 912 and 913 of this chapter) must promptly make any adjustments determined to be appropriate in the Homebuyer payment amount or take appropriate action concerning the addition of a family member who is not a citizen or alien with eligible immigration status.

* * * * *

(m) *Termination by LHA.* (1) In the event the homebuyer should breach the Homebuyers Ownership Opportunity Agreement by failure to make the required monthly payment within ten days after its due date, by misrepresenting or withholding of information in applying for admission or in connection with any subsequent reexamination of income and family composition (including submission and verification of evidence of citizenship or eligible immigration status), or by failure to comply with any of the other homebuyer obligations under the Agreement, the LHA may terminate the Agreement 30 days after giving the homebuyer notice of its intention to do so in accordance with paragraph (m)(3) of this section. For termination of assistance for failure to establish citizenship or eligible immigration status under Part 912, the requirements of Part 912 and 966 shall apply.

* * * * *

PART 905—INDIAN HOUSING

74. The authority citation for Part 905 would continue to read as follows:

Authority: Secs. 2, 4, 5, 6, 9, 11, 12, and 16, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437b, 1437c, 1437d, 1437g, 1437l, 1437j, and 1437n); sec. 7(b), Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

75. In § 905.302, paragraph (a)(1) would be revised and a new paragraph (c) would be added to read as follows:

§ 905.302 Admission policies.

(a) *Eligibility.* (1) IHAs shall determine the eligibility of applicants in accordance with Parts 912 and 913, including the requirements concerning citizenship or eligible immigration status and on income limits.

* * * * *

(c) *Denial of assistance.* For procedures related to denial of assistance for failure to establish citizenship or eligible immigration status under Part 912, see § 960.207.

76. In § 905.303, the first sentence would be revised to read as follows:

§ 905.303 Grievance procedures.

The requirements set forth in HUD regulations relating to procedures for the resolution of tenant or Homebuyer grievances against Public Housing agencies (24 CFR Part 966) are not applicable to Projects under this part, *except* where the termination of assistance is based upon a failure to establish citizenship or eligible immigration status in accordance with the requirements of Part 912. * * *

77. In § 905.304, paragraph (c) would be revised, to read as follows:

§ 905.304 Determination of rents and homebuyer payments.

* * * * *

(c) *Initial determination and reexamination of family income.* For purposes of determining eligibility of an applicant (see Parts 912 and 913, as well as this part) and the amount of rent and Homebuyer payments under paragraphs (a) and (b) of this section, the IHA shall examine the Family's income and composition and follow the procedures required by Part 912 for determining citizenship or eligible immigration status before initial occupancy. Thereafter, for the purposes stated above and to determine whether a Homebuyer is required to purchase the home under § 905.422(e), the IHA shall reexamine the family's income and composition regularly, at least once every 12 months, following the requirements of Part 912 concerning verification of the immigration status of any family member who is not a citizen, as defined in § 912.2, except for family members who were at least 62 years of age and receiving HUD financial assistance on [the effective date of the final rule]. The family shall comply with the IHA's policy regarding required interim reporting of changes in the family's income and composition. If the IHA receives information from the family or other source concerning a change in the family income or other circumstances between regularly scheduled reexaminations, the IHA, upon consultation with the family and verification of the information (in accordance with Parts 912 and 913 of this chapter) must promptly make any adjustments determined to be appropriate in the rent or Homebuyer payment amount or take appropriate action concerning the addition of a family member who is not a citizen or alien with eligible immigration status. For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, see Part 912.

PART 912—DEFINITION OF FAMILY AND OTHER RELATED TERMS; OCCUPANCY BY SINGLE PERSONS

78. The authority citation for Part 912 would be revised to read as follows:

Authority: Sec. 3, United States Housing Act of 1937 (42 U.S.C. 1437a); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); sec. 214, Housing and Community Development Act of 1980 (42 U.S.C. 1436a).

79. Section 912.1 would be amended by changing the period at the end of the paragraph (a)(2) to a semicolon and adding the word "and" following the semicolon; and by adding a new paragraph (a)(3), to read as follows:

§ 912.1 Purpose and applicability.

(a) * * *

(3) Implements the statutory prohibition against making assistance under the United States Housing Act of 1937 ("Act") available for the benefit of ineligible aliens.

79. Section 912.2 would be amended by inserting definitions in alphabetical order for the terms Citizen, Evidence of citizenship or eligible immigration status ("evidence"), HUD, and National, to read as follows:

§ 912.2 Definitions.

* * * * *

Citizen. A citizen or national of the United States.

* * * * *

Evidence of citizenship or eligible immigration status ("evidence"). This term refers to the documents which must be submitted in accordance with § 912.7 for any individual who is or will be occupying an assisted dwelling unit.

(a) For U.S. citizens, the evidence consists of:

(1) A signed declaration of U.S. citizenship (§ 912.6(a)(1)(i));

(2) A signed verification consent form (§ 912.6(a)(2)); and

(3) If the PHA suspects a fraudulent declaration, documentation of citizenship submitted in accordance with the requirements of § 912.6(b).

(b) For aliens, the evidence consists of:

(1) A signed declaration of eligible immigration status (§ 912.6(a)(1)(ii));

(2) The INS documents described in § 912.7(a); and

(3) A signed verification consent form (§ 912.6(a)(2)).

HUD. The U.S. Department of Housing and Urban Development.

* * * * *

National. A person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.

* * * * *

81. Sections 912.5 through 912.12 would be added as follows:

§ 912.5 Eligible status.

(a) Participation in the programs covered by this part is restricted to individuals who are United States citizens, as defined in § 912.2, or aliens who qualify as one of the following:

(1) An alien lawfully admitted for permanent residence, as defined by section 101(a)(20) of the Immigration and Nationality Act (INA), as an immigrant, as defined by section 101(a)(15) of the INA (8 U.S.C. 1101(a)(20) and 1101(a)(15), respectively) (immigrants);

(2) An alien who entered the United States before January 1, 1972, or such later date as enacted by law, who has continuously maintained residence in the United States since then, and who is not ineligible for citizenship, but who is deemed to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General under section 249 of the INA (8 U.S.C. 1259);

(3) An alien who is lawfully present in the United States pursuant to an admission under section 207 of the INA (8 U.S.C. 1157) (refugee status); pursuant to the granting of asylum (which has not been terminated) under section 208 of the INA (8 U.S.C. 1158) (asylum status); or as a result of being granted conditional entry under section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) before April 1, 1980, because of persecution or fear of persecution on account of race, religion, or political opinion or because of being uprooted by catastrophic national calamity;

(4) An alien who is lawfully present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) (parole status);

(5) An alien who is lawfully present in the United States as a result of the Attorney General's withholding deportation under section 243(h) of the INA (8 U.S.C. 1253(h)) (threat to life or freedom); or

(6) An alien lawfully admitted for temporary or permanent residence under section 245A of the INA (8 U.S.C. 1255a) (pre-1982 legalization).

(b) (1) For a family to be eligible for participation, every member of the family residing in the unit must be determined to have eligible status, as described in paragraph (a) of this section.

(2) A homebuyer who executed a Homeownership Opportunity Agreement under the Turnkey III program or who executed a Mutual Help and Occupancy Agreement under the Mutal Help Homeownership program before [the effective date of the final rule] is *not* subject to this citizenship or eligible immigration status requirement for continued participation.

§ 912.6 Submission of evidence.

(a) *Evidence of citizenship or eligible immigration status.* As a condition to participation in the program, the Family must submit the following materials to the PHA on behalf of each Family member, regardless of age, who is or will be an occupant of the assisted dwelling unit.

(1) *Declaration.* A written declaration signed, under penalty of perjury, by the adult for whom the declaration is submitted. In the case of a child, the declaration must be signed and submitted by an adult residing in the assisted dwelling unit who is responsible for the child. The declaration must certify whether the individual:

(i) Is a citizen;

(ii) Is an alien with eligible immigration status, as described in § 912.5; or

(iii) Was 62 years of age or older and receiving HUD financial assistance on the effective date of the final rule.

(2) *Consent form.* A verification consent form signed by the adult for whom the form is submitted. In the case of a child, the form must be signed and submitted by an adult residing in the assisted dwelling unit who is responsible for the child. The consent form shall provide that:

(i) Any evidence submitted by the individual may be released by the PHA to HUD.

(ii) Such evidence may be released by the PHA to a Federal, State, or local agency for the following purposes: Verification of eligible immigration status, enforcement of restrictions on the availability of assistance because of such status, or investigation or prosecution of fraud in connection with

any Federal housing assistance program as permitted under applicable State or local laws concerning the protection of personal privacy.

(iii) HUD may release the evidence or other information to any Federal, State, or local government agency (including the Social Security Administration and the Immigration and Naturalization Service) for the following purposes: Verification of eligible immigration status, enforcement of restrictions on the availability of assistance because of such status, and investigation or prosecution of fraud in connection with any Federal housing assistance program, as permitted by the Privacy Act of 1974, 5 U.S.C. 552a. Information released to the Immigration and Naturalization Service may be used in deportation proceedings. Information may also be released by HUD as permitted by the Freedom of Information Act, 5 U.S.C. 552. HUD is not responsible for the further use or transmission of the information by the entity receiving it.

(3) *Documentation.* The following documentation requirements apply, based on the type of declaration submitted in accordance with paragraph (a)(1) of this section:

(i) Individuals declaring that they are in an eligible immigration status are required to submit evidence of such status as specified in § 912.7.

(ii) Individuals declaring that they were 62 years of age or older and receiving HUD financial assistance on the effective date of the final rule are required to submit proof of age in accordance with HUD requirements.

(iii) Individuals declaring that they are U.S. citizens are *not* required to submit evidence of citizenship, except when the PHA has reason to suspect that the individual has submitted a fraudulent declaration of citizenship, and then only in accordance with the requirements of paragraph (a)(4) of this section.

(4) *Procedures when fraud suspected with respect to citizenship.* (i) A PHA has reason to suspect that a declaration of citizenship submitted by an applicant or Family member is fraudulent if:

(A) In verifying the applicant's or Family's eligibility for financial assistance, the PHA discovers conflicting or inconsistent information regarding the identity or claimed citizenship or eligible immigration status of the applicant or Family member; or

(B) The PHA is informed that the applicant's or Family member's claimed citizenship or eligible immigration status is fraudulent. Such information must be corroborated by documentation such as copies of INS documents or deportation orders, or records establishing foreign citizenship.

(ii) When a PHA has reason to suspect that an applicant or Family member has submitted a fraudulent declaration of citizenship under § 912.6, the PHA shall require the individual to submit documentation of citizenship. If the documentation fails to establish citizenship, as specified under HUD requirements, the PHA shall deny or terminate assistance in accordance with § 912.9. Where an individual has received the benefit of a substantial amount of HUD financial assistance to which he or she was not entitled because the individual intentionally misrepresented eligibility on the basis of citizenship and recovery of the funds cannot be achieved by administrative action, the PHA may refer the case to the HUD Regional Inspector General's office for further investigation. Possible criminal prosecution may follow, based on the False Statements Act, 18 U.S.C. 1001 and 1010.

(b) *Notice to applicants and Family.*—(1) *Type of notice.* (i) the PHA shall notify applicants of the requirement to submit evidence of citizenship or eligible immigration status at the time an application for financial assistance is submitted. Applicants whose names are on a waiting list on the effective date of final rule must also be notified of these requirements. Notification to the Family of the requirement to submit evidence shall coincide with the PHA's regular notice to the Family concerning verification of income.

(ii) The PHA shall notify applicants and the Family that financial assistance is contingent upon the submission and verification, as appropriate, of the evidence referred to in paragraph (a) of this section.

(2) *Form of notice.* A notice under this section of the requirement to submit evidence of citizenship or eligible immigration status shall describe the type of evidence that must be submitted and shall state when the evidence must be submitted. The notice shall be given in accordance with HUD requirements.

(c) *Recipient of evidence.* The required evidence shall be submitted by the applicant or Family to the PHA. The PHA is responsible for administering the restrictions on providing assistance to ineligible aliens, and shall exercise this responsibility in accordance with HUD requirements.

(d) *Failure to submit evidence.* Failure to submit required evidence of citizenship or eligible immigration status shall result in denial or termination of financial assistance in accordance with the procedures of §§ 912.8 through 912.10.

(e) *Frequency of Evidence Submission Requirements.*—(1) *Regular reexaminotion.* A Family shall submit the required evidence at the first regular reexamination after [the effective date of the final rule], in accordance with the requirements of § 960.209(a). Thereafter, a Family (except as provided in paragraph (f) of this section concerning continuous assisted occupancy either by a citizen or an individual 62 years of age or older receiving HUD financial assistance on [the effective date of the final rule] shall submit the required evidence of eligible immigration status at each regular annual reexamination.

(2) *Interim reexamination.* A Family shall request the PHA's approval for occupancy of the assisted dwelling unit by any additional person, and the PHA shall not approve occupancy by the additional person until the written declaration required under § 912.6(a) and any required evidence of eligible immigration status together with the signed verification consent form are submitted and verified, as appropriate, in accordance with the procedures of §§ 912.8 and 960.209(b).

(f) *One-time evidence requirement.* Submission of evidence that an occupant of the assisted dwelling unit is a citizen, or that as of [the effective date of the final rule] the occupant was 62 years of age or older and receiving HUD financial assistance, is only required one time during continuously assisted occupancy under any covered program.

§ 912.7 Documents of eligible immigration status.

The original of one of the following documents is acceptable evidence of eligible immigration status, subject to verification in accordance with § 912.8:

(a) Form I–151 (issued before 1979), I–551, or AR–3a (issued during 1941–1949), Alien Registration Receipt Card (for permanent resident aliens);

(b) Form I–181B or passport, stamped "Processed for I–551, temporary evidence of lawful admission for permanent residence" (for permanent resident aliens);

(c) Form I–94, Arrival-Departure Record, annotated with one of the following:

(1) "Section 207" or "Refugee";

(2) "Section 208" or "Asylum"; or

(3) "Section 243(h)" or "Deportation stayed by Attorney General";

(d) Form I–94, Arrival-Departure Record—Parole Edition, annotated with one of the following:

(1) "Section 212(d)(5)" or "Admitted at Attorney General Discretion";

(2) "Conditional Entry" or "Section 203(a)(7)" (before April 1, 1980);

(e) Form I–688, Temporary Resident Card, or I–688A, Employment Authorization (both of which documents expire), either of which must be annotated "Section 245A";

(f) A receipt issued by the INS indicating that an application for issuance of a replacement document in one of the above-listed categories has been made and the applicant's entitlement to the document has been verified; or

(g) Any other document specified by HUD in a notice published in the Federal Register.

§ 912.8 Verification of eligible immigration status.

(a) *General procedures.* After notice of the requirement to submit evidence is provided to an applicant or tenant under § 912.6(b), the PHA shall continue to process the applicant for purposes of establishing eligibility for program participation without regard to immigration status, if the applicant otherwise qualifies for such assistance. In addition, the PHA shall verify the immigration status of aliens as follows:

(1) *Primary verification.* (i) Primary verification of the immigration status of each applicant and tenant with the Immigration and Naturalization Service (INS) is conducted by means of an automated system that provides access to alien names, file numbers and admission numbers.

(ii) The INS document submitted by the Family to establish a Family member's eligible immigration status must contain a photograph, or the PHA shall request another document bearing a photograph to ensure the identity of the alien.

(iii) The PHA shall not deny or terminate financial assistance on the basis of an applicant's or Family member's immigration status if the primary verification system indicates that the applicant or Family member has eligible immigration status.

(2) *Secondary verification* (Appeal). (i) Secondary verification provides an appeal of the primary verification determination through a manual search of INS alien files. A PHA institutes secondary verification by forwarding photocopies of the original INS documents listed at § 912.7 (front and back), attached to Document Verification Request Form G–845, to a designated INS field office for review.

(ii) The PHA shall promptly institute secondary verification whenever:

(A) Primary verification is either unavailable to, or not feasible for use by, the PHA;

(B) Primary verification instructs the PHA to institute secondary verification;

(C) Primary verification is unable to verify the immigration status of the applicant or Family member;

(D) Documents are submitted by the applicant or Family that indicate immigration status, but do not contain an "A–number"; or

(E) An INS receipt is submitted as documentation.

(iii) Pending the outcome of secondary verification under paragraph (a)(2)(ii) of this section, the PHA is required to:

(A) Continue to process the applicant for purposes of establishing eligibility for program participation, if the applicant otherwise qualifies. However, no applicant may be admitted to a program until eligible immigration status is verified through the INS. In cases where eligibility is established before verification of eligible immigration status, the PHA shall place the applicant's name on any waiting list and shall allow the applicant to accrue priority on the list pending the verification determination.

(B) Continue to permit program participation of any Family, if the Family otherwise qualifies for such assistance.

(b) *Liability for PHA for INS verification.* The PHA shall not be liable for any action, delay, or failure of the INS to conduct the automated or manual verification referred to in paragraphs (a)(1) and (2) of this section.

§ 912.9 Denial or termination of assistance.

(a) *Denial of Assistance.* The PHA shall not admit an applicant, or permit occupancy by any Family, unless evidence of citizenship or eligible immigration status has been submitted by each Family member to the PHA, and verified in accordance with § 912.8.

(b) *Procedures for denial of assistance.* (1) If the applicant fails to submit evidence of citizenship or eligible immigration status, as provided under § 912.6, or if the INS verification system under § 912.8 establishes that the applicant does not have eligible immigration status, the PHA shall deny admission to the applicant in accordance with the hearing requirements of § 960.207. At the hearing, the applicant will be provided an opportunity to present evidence of citizenship (if required under § 912.8(b)), or of an INS determination of eligible immigration status, as described in § 912.7.

(2) The PHA must keep the following materials on file for at least three years: The application for financial assistance; photocopies of any documents submitted (front and back); the signed verification consent form; INS verification results; the applicant's request for an informal hearing on the initial determination of ineligibility; and the PHA's written determination following the informal hearing under § 960.207.

(c) *Termination of tenancy.* (1) Prior to termination of tenancy or termination of the homeownership agreement, the tenant or homebuyer shall have an opportunity to present evidence of citizenship (if required under § 912.8(b)), or of an INS determination of eligible immigration status, in accordance with § 912.7.

(2) The PHA must keep the following materials on file for at least three years: The application for financial assistance; photocopies of any documents submitted (front and back); the signed verification consent form; INS verification results; the family's request for an informal hearing on the initial determination of ineligibility; and the PHA's written determination following the informal hearing under Part 966.

(3) *Termination events.* Upon the occurrence of any of the following events, the PHA shall initiate promptly, and shall diligently pursue, action in accordance with Part 966 to terminate the tenancy, and to evict the family by judicial action pursuant to State and local law (or, in the case of homeownership agreements under Part 904 or 905, to terminate the agreement and convert the homebuyer to the rental program).

(i) If, after notice under § 912.6 is provided of the duty to submit evidence of citizenship or eligible immigration status, the family fails to provide such evidence for each family member at annual re-examination;

(ii) If the family fails to obtain PHA approval for occupancy of the dwelling unit by any additional person; or

(iii) If the INS verification system described in § 912.8 establishes that a family member does not have eligible immigration status;

(iv) If the PHA has admitted a family, but the PHA is subsequently informed by HUD, or otherwise determines, in accordance with § 912.8, that the evidence of citizenship or eligible immigration status was fraudulently obtained or submitted, or is otherwise not valid or authentic evidence of such status.

(4) *When termination is not required.* (i) The PHA may not terminate participation if any person for whom required evidence has not been submitted by the family has moved from the assisted dwelling unit.

(ii) The PHA may not terminate participation if any person determined

not to be in an eligible immigration status following verification under § 912.8, has moved from the assisted dwelling unit.

(iii) The PHA may not terminate participation if any person who signed a fraudulent declaration of citizenship or eligible immigration status has moved from the unit.

(iv) Instead of terminating participation when evidence of citizenship or eligible immigration status has not been submitted at a regular reexamination or an interim reexamination (i.e., for a new occupant), the PHA may grant an extension of time for submission of the required evidence.

(A) The PHA may, in its own discretion, grant an extension if:

(1) The Family submits the declaration required under § 912.6(a), certifying that any person for whom required evidence has not been submitted is an alien with eligible immigration status, but shows that the evidence needed to support a claim of eligible immigration status is temporarily unavailable, and that additional time is needed to obtain and submit the evidence; and

(2) The Family promises to make prompt and diligent efforts to obtain the evidence.

(B) An extension under paragraph (c)(4)(iv) of this section shall be for a specific period needed to obtain the evidence. Where the Family is required (under § 912.6) to submit the evidence at an annual reexamination, any extension(s) granted by the PHA shall not allow submission of the evidence beyond ninety days after the effective date of the reexamination. Where the family is required to request the PHA's approval for occupancy of the dwelling unit by an additional person, any extension(s) granted by the PHA shall not allow submission of the evidence beyond ninety days after occupancy by the additional person.

(C) The PHA's decision to grant an extension of time for the Family to submit the evidence, and the PHA's determination of the length of the extension, shall be made after considering the facts and circumstances of the individual case. The Family shall not have any right to an extension, and the PHA may revoke an extension if the Family is not making diligent efforts to obtain the evidence, and if there is no reasonable likelihood that the Family will be able to submit the evidence during the extension.

(D) If the Family has not submitted the evidence by the end of the 90-day extension, the PHA shall promptly terminate the tenancy in accordance with Part 966. The PHA's decision to grant an extension shall be in writing, and shall state the reasons for the PHA's determination.

(5) *Resumption of participation.* The PHA may halt action to terminate tenancy or the homeownership agreement if:

(i) All required evidence has been submitted by the family to the PHA; and

(ii) Continuation of participation is authorized in accordance with HUD requirements.

§ 912.10 Special provisions for preservation of mixed families and other families in occupancy as [the effective date of the final rule].

(a) When a PHA would otherwise be required to terminate assistance to a Family because of the status of an individual who was receiving financial assistance on [*the effective date of the final rule*] (following the provision of a hearing in accordance with Part 966, if requested), the PHA may exercise its discretion to provide relief under this section. The PHA should adopt criteria appropriate to its locality for the exercise of discretion to permit continued participation of some Families as authorized by paragraph (b) of this section and to defer termination of participation of other Families as authorized by paragraph (c) of this section.

(b) If the individual lacking eligible status, as described in § 912.5, is a member of a Family in which the head of household or spouse has eligible status, the PHA may continue to permit the Family to participate in the program indefinitely if it is necessary to avoid division of the family. In making this determination, the PHA must consider only what is necessary to avoid division of the "family" consisting of the head of household, any spouse, and any parents or children of the head of household or spouse. The decision to continue assistance on behalf of such an individual will be made once and need not be reconsidered thereafter.

(1) If the Family demonstrates that reasonable efforts to find other affordable housing of appropriate size have been unsuccessful, this evidence will be sufficient for the PHA to determine that continued participation is necessary to avoid division of the Family.

(2) If some members of the Family do not qualify as members of the "family" that is not to be divided, as described above, continued participation may be permitted under this section only if the persons not qualifying as "family" members move out of the unit within the period stated in the final determination of ineligible status.

(c) The PHA may temporarily defer termination of participation where it determines that deferral is necessary to permit the orderly transition of the ineligible individual and family members involved to other affordable housing. If such a deferral is warranted, it shall be for a six-month period. A deferral period may be renewed for an additional period of six months if warranted, but the aggregate deferral period may not exceed three years.

(1) At the beginning of each deferral period, the PHA must inform the Family of its ineligibility for continued participation and offer the Family information and referrals to assist in finding other affordable housing.

(2) If, during a deferral period, the status of the head of household or spouse changes and he or she is able to establish eligible status the Family either will be determined fully eligible (if all family members are also eligible) or may be considered for discretionary continuation of participation under paragraph (b) of this section.

§ 912.11 Specific prohibition on participation of nonimmigrant student aliens.

The provisions of § 912.10, permitting continuation of participation or deferral of termination of program participation for certain Families, do not authorize relief with respect to any individual who is determined to be a nonimmigrant student alien. For this purpose, a nonimmigrant student alien is defined as any alien who has a residence in a foreign country that such alien has no intention of abandoning; who is a bona fide student qualified to pursue a full course of study; and who is admitted to the United States temporarily and solely for purposes of pursuing such a course of study at an established institution of learning or other recognized place of study in the United States, particularly designated by such alien and approved by the Attorney General after consultation with the Department of Education of the United States, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student (and if any such institution of learning or place of study fails to make such reports promptly the approval shall be withdrawn); and the alien spouse and minor children of any alien described above, if the spouse or children are accompanying such alien or following to join such alien.

§ 912.12 Protection from liability for PHAs, State and local government agencies and officials.

(a) *Protection from liability for PHAs.* HUD shall not take any compliance, disallowance, penalty, or other regulatory action against a PHA with respect to any error in its determination to make an individual eligible for program participation based on citizenship or immigration status:

(1) If the PHA established eligibility based upon a verification of eligible immigration status through the INS' primary or manual verification system, as described in § 912.8;

(2) If the PHA was required to provide an opportunity for the applicant or tenant to submit evidence in accordance with § 912.8;

(3) If the PHA was required to wait for a response from the INS to the request for verification of eligible immigration status in accordance with § 912.8; or

(4) If the PHA as required to provide the informal hearing under § 960.207 (denial of assistance) or Part 966 (termination of tenancy).

(b) *Protection from liability for State and local government agencies and officials.* State and local government agencies and officials shall not be liable for the design or implementation of the verification system under § 912.8 and the informal hearing provided under § 960.207 and Part 966, so long as the implementation by the State or local government agency or official is in accordance with prescribed HUD rules and regulations.

PART 960—ADMISSION TO AND OCCUPANCY OF PUBLIC HOUSING

82. The authority citation for Part 960 would continue to read as follows:

Authority: United States Housing Act of 1937 (42 U.S.C. 1437–1437c); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

83. In § 960.204, paragraphs (a), (c)(1), and (d)(4) would be revised, to read as follows (c) and (d) introductory texts are republished):

§ 960.204 PHA tenant selection policies.

(a) In addition to policies and regulations including preferences and priorities established by the PHA for eligibility and admission to its public housing projects pursuant to the Act, the ACC, and Parts 912 and 913 of this chapter, each PHA shall adopt and implement policies and procedures embodying standards and criteria for tenant selection which take into consideration the needs of individuals families for public housing and the statutory purpose in developing and operating socially and financially sound public housing projects that provide a decent home and a suitable living environment and foster economic and social diversity in the tenant body as a whole.

* * * * *

(c) Such policies and procedures shall: (1) Not automatically deny admission to a particular group or category of otherwise eligible applicants (e.g., unwed mothers or families with children born out of wedlock). However, applicants who are unable to establish eligible immigration status, in accordance with the requirements of Part 912, are not eligible applicants for purposes of this part.

* * * * *

(d) Such policies and procedures shall:

* * * * *

(4) Provide for verification and documentation of information relevant to acceptance or rejection of an applicant, including documentation and verification of citizenship and eligible immigration status under Part 912.

* * * * *

84. In § 960.206, paragraph (a) would be revised to read as follows:

§ 960.206 Verification procedures.

(a) *General.* Adequate procedures shall be developed to obtain and verify information with respect to each applicant (See § 913.109), including information about citizenship and eligible immigration status required under Part 912. Information relative to the acceptance or rejection of an applicant or the grant or denial of a Federal prefers under § 960.21 shall be documented and placed in the applicant's file.

* * * * *

85. Section 960.209 would be amended by adding two sentences at the end of paragraph (a), by adding one sentence at the end of paragraph (b), and by adding a new paragraph (c), to read as follows:

§ 960.209 Reexamination of family income and composition.

(a) * * * At the first regular reexamination after [*the effective date of the final rule*], the PHA must follow the requirements of Part 912 concerning obtaining and processing information on the citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the PHA must follow the requirements of that part concerning verification of the immigration status of any family member who is not a citizen, as defined in § 912.2, except for family members who were at least 62 years of age and participating in a HUD-assisted housing program on [the effective date of the final rule].

(b) * * * At any interim reexamination after [*the effective date of the final rule*] that involves the addition of a new family member (except by the birth of a child), the PHA must follow the requirements of Part 912 concerning obtaining and processing information on the citizenship or eligible immigration status of the new family member.

(c) *Termination.* For provisions requiring termination of participation for failure to establish citizenship or eligible immigration status, see Part 912.

Dated: September 6, 1988.

Samuel R. Pierce, Jr.

Secretary.

[FR Doc. 88-23619 Filed 10-18-88; 8:45 am]

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Part IV

Department of Education

34 CFR Parts 330 and 331

Captioned Films Loan Service for the Deaf Program and Educational Media Loan Service for the Handicapped Program; Final Regulations

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DEPARTMENT OF EDUCATION

34 CFR Parts 330 and 331

Captioned Films Loan Service for the Deaf Program and Educational Media Loan Service for the Handicapped Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: This Secretary amends the regulations for the Captioned Films Loan Service for the Deaf Program and the Educational Media Loan Service for the Handicapped Program. These regulations clarify that the purpose of these programs includes addressing the problems of illiteracy among persons with handicaps.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Joseph Clair, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 4622–M/S 2312), Washington, DC 20202. Telephone: (202) 732–4303.

SUPPLEMENTARY INFORMATION: On March 15, 1988, at 53 FR 8608, the Secretary published a notice of proposed rulemaking (NPRM) for the Captioned Films Loan Service for the Deaf program and the Educational Media Loan Service for the Handicapped program.

The Captioned Films Loan Service for the Deaf program and the Educational Media Loan Service for the Handicapped program are authorized by Part F of the Education of the Handicapped Act (20 U.S.C. 1451, 1452 and 1454). Section 652 of the Act was amended by section 315 of the Education of the Handicapped Act Amendments of 1986 (Pub. L. 99–457). The amendments to section 652(a) of the Act provide that the purpose of the two programs includes addressing problems of illiteracy among deaf individuals and individuals with other handicaps. The amendments also provide that public libraries may be used for the distribution of captioned films and educational media.

In addition, the regulations for these two programs at 34 CFR Parts 330 and 331 have been reviewed for the purpose of deregulation. This review has resulted in the removal of the provisions on how to obtain applications for borrowing captioned films and educational media because these provisions are informational, not regulatory. The cross references to EDGAR in the definitions and applicable regulations have been removed because they are not applicable to either of these programs. The regulations also are simplified to provide that the sum of any fees collected by borrowers of captioned film and media may not exceed reasonable overhead expenses.

Analysis of Comments and Responses

In response to the Secretary's invitation in the NPRM, five comments were submitted on the proposed regulations. An analysis of the comments and the Department's response follows:

Comment: Concerns were expressed over the perceived expansion of the Captioned Films Loan Service for the Deaf program to serve individuals with handicaps other than deafness, at the expense of the hearing-impaired.

Discussion: Confusion may have arisen due to the fact that the 1986 Amendments authorizing the Department to build a literacy component into the loan service programs necessitated changes to two separate regulations, i.e., 34 CFR Part 330 (Captioned Films Loan Service for the Deaf Program) and 34 CFR Part 331 (Educational Media Loan Service for the Handicapped Program). In expanding the purposes provisions of both §§ 330.1 and 331.1 to reflect the statutory change, the NPRM used the language "addressing the problems of illiteracy among the handicapped".

In order to avoid any possible misunderstanding regarding the scope of 34 CFR Part 330, the Department has changed the language in § 330.1(d) to read "addressing the problems of illiteracy among the deaf," while retaining the original proposed language § 331.1. This change is made to remove any possible confusion whether § 330.1(d) has been expanded beyond addressing illiteracy among the deaf, which it has not.

Changes: Language has been changed to limit § 330.1(d) to addressing illiteracy among the deaf.

Comment: Concerns were expressed over the capacity of public libraries to serve as distribution centers for captioned films. Specifically, concern was expressed that librarians are not media specialists and hence lack the training and experience to manage captioned film depositories. Questions were also raised as to the storage capacity of libraries and the wisdom of establishing a duplicative distribution system.

Discussion: As noted in the preamble to the NPRM, Congress added public libraries to the distribution system for both captioned films and educational media. However, this amendment did not necessitate a corresponding change to the regulations in either Part 330 or 331 since the regulations cover only the conditions that deaf and otherwise handicapped borrowers must meet in order to obtain films and other educational media. Therefore, comments to the effect that libraries either are not geared up to serve as film or media depositories or might unnecessarily duplicate the existing distribution network do not require any change to the proposed regulations. The Department would note, however, that the legislative history makes clear the intent of Congress that the use of libraries as distribution centers is optional.

Changes: None.

Executive Order 12291

These amendments to the regulations have been reviewed in accordance with the Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Paperwork Reduction Act of 1980

These final regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Parts 330 and 331

Education, Education of Handicapped, Motion Pictures.

(Catalog of Federal Domestic Assistance No. 84.028; Handicapped Media Services and Captioned Films)

Dated: October 13, 1988.

Lauro F. Cavazos,

Secretary of Education.

The Secretary amends Parts 330 and 331 of Title 34 of the Code of Federal Regulations as follows:

PART 330—CAPTIONED FILMS LOAN SERVICE FOR THE DEAF PROGRAM

1. The authority citation for Part 330 is revised to read as follows:

Authority: 20 U.S.C. 1451, 1452, unless otherwise noted.

2. In § 330.1, paragraph (b) is amended by removing the word "and" following the semicolon at the end of the paragraph, paragraph (c) is amended by removing the period at the end of the paragraph and adding, in its place, "; and", and a new paragraph (d) and authority citation are added to read as follows:

§ 330.1 Captioned Films Loan Service for the Deaf program.

* * * * *

(d) Addressing the problems of illiteracy among the deaf.

(Authority: 20 U.S.C. 1451, 1452)

§ 330.3 [Removed and Reserved]

3. Section 330.3 is removed and reserved.

§ 330.4 [Amended]

4. Section 330.4 is amended by removing paragraph (a), by removing "(b) *Specific program definitions:*" and adding, in its place, "The following definitions apply to terms used in this part:"; and by removing " 'Act' means the Education of the Handicapped Act (Title VI of Pub. L. 91–230 as amended)" and adding, in its place, " 'Act' means the Education of the Handicapped Act.".

§ 330.30 [Removed and Reserved]

5. Section 330.30 is removed and Subpart C is reserved.

6. Section 330.50 is amended by revising paragraph (a), removing paragraph (b), and redesignating paragraph (c) as paragraph (b) to read as follows:

§ 330.50 What are the limitations on the use of the loan service?

(a) A borrower shall use the captioned films for nonprofit purposes only. Moreover, the sum of any fees collected by the borrower for use of the films may not exceed the reasonable expense incurred by the borrower in showing the films to eligible viewers.

* * * * *

PART 331—EDUCATIONAL MEDIA LOAN SERVICE FOR THE HANDICAPPED PROGRAM

7. The authority citation for Part 331 is revised to read as follows:

Authority: 20 U.S.C. 1452, unless otherwise noted.

§ 331.1 [Amended]

8. Section 331.1 is amended by removing the period at the end of the sentence and adding, in its place, ", including for the purpose of addressing illiteracy among the handicapped."

§ 331.3 [Removed and Reserved]

9. Section 331.3 is removed and reserved.

§ 331.4 [Amended]

10. Section 331.4 is amended by removing paragraph (a), by removing "(b) *Specific program definitions:*" and adding, in its place, "The following definitions apply to the terms used in this part:"; and by removing " "Act" means the Education of the Handicapped Act (Title VI of Pub. L. 91–230 as amended)" and adding, in its place, " "Act" means the Education of the Handicapped Act.".

Subpart C—[Reserved]

§ 331.30 [Removed and Reserved]

11. Section 331.30 is removed and Subpart C is reserved.

12. Section 331.50 is revised to read as follows:

§ 331.50 What are the limitations on the use of the loan service?

A borrower shall use the educational media for nonprofit purposes only. Moreover, the sum of any fees collected by the borrower for the use of the educational media may not exceed the reasonable expenses incurred by the borrower in exhibiting the media to eligible parties.

(Authority: 20 U.S.C. 1452(a))

[FR Doc. 88–24071 Filed 10–18–88; 8:45 am]

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Part V

Department of Health and Human Services

Office of Human Development Services

45 CFR Parts 1304, 1305, and 1308
Head Start Program; Notice of Proposed Rulemaking

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

45 CFR Parts 1304, 1305, and 1308

Head Start Program

AGENCY: Administration for Children, Youth and Families (ACYF), Office of Human Development Services (OHDS), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The proposed regulations will add a new Part 1308 to the existing regulations governing Head Start grantee and delegate agency policies pertaining to services to children with handicaps enrolled in the Head Start program. The regulations set forth specific standards, including diagnostic criteria, and provide guidance to Head Start grantees and delegate agencies. Specifically, these regulations will require Head Start programs to:

—Design comprehensive services which meet program standards for locating and serving handicapped children and their parents;

—Develop an individualized education program (IEP) to provide appropriate special services for each child who is certified as having a handicap;

—Screen children within 45 days of admission to the Head Start program, rather than the 90 days currently recommended, in order that services may be provided in a timely manner;

—Use revised diagnostic criteria to determine a child's eligibility for and to assist in obtaining special education and related services;

—Designate a coordinator of services for handicapped children with specific responsibilities; and

—Operate in accordance with current guidance on the use of Program Account (PA) 28 funds for special services for children who have handicaps.

In addition, we are proposing changes in Parts 1304 and 1305 to: (1) Assure that services are provided promptly to such children; and (2) make technical and conforming changes to comport with Part 1308 and with changes in the definition of handicapped children in the Education of the Handicapped Act, as amended.

DATES: In order to be considered, comments on this prposed rule must be received on or before December 19, 1988.

ADDRESSES: Please address comments to: Elizabeth Strong Ussery, Associate Commissioner, Head Start Bureau, Administration for Children, Youth and Families, P.O. Box 1182, Washington, DC 20013. Attention: Jane DeWeerd.

It would be helpful if agencies and organizations would submit their comments in duplicate. Beginning November 2, 1988, comments will be available for public inspection in Room 5754, 400 6th Street SW., Washington, DC 20201, Monday through Friday between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Jane DeWeerd, (202) 755–7944.

SUPPLEMENTARY INFORMATION:

I. Program Description

Head Start, as authorized under the Head Start Act (the Act), is a national program providing comprehensive child development services. These services are provided primarily to low-income children, age three to five, and their families. To help enrolled children achieve their full potential, Head Start programs provide comprehensive health, nutritional, educational, social and other services. In addition, Head Start programs are required to provide for the direct participation of parents of enrolled children. Parents receive training and education that fosters their understanding of an involvement in the development of their children. They also become involved in the development, conduct, and direction of local programs. In fiscal year 1987, Head Start was funded to serve 446,523 children through a network of approximately 1,290 grantees and 620 delegate agencies. During the year, 514,981 children received some services. This includes those who dropped out. Delegate agencies have approved written agreements with grantees to operate Head Start programs.

While Head Start is intended to serve primarily low-income children and their families, Head Start's regulations permit up to 10 percent of the children in local programs to be from families that are not low-income. The Act requries that a minimum of 10 percent of enrollment opportunities in each State be made available to handicapped children. Such children are expected to participate in the full range of Head Start activities with their non-handicapped peers, and to receive needed special education and related services.

Each grantee is required to report annually on the services provided to children with handicaps as part of the Head Start Program Information Report (PIR). An annual report is provided also to Congress as required by section 640(d) of the Head Start Act. In FY 1987, Head Start served 65,275 children who were certified by professionals as handicapped. This constituted 12.7 percent of the total enrollment.

II. Head Start Services to Handicapped Children

Beginning in 1972, Head Start mounted a major initiative to provide services to handicapped children. It is now the largest provider of services for preschool children with handicapping conditions in a mainstream setting in the nation. Since that time, the number of children receiving services has nearly tripled. In 1973, when data were first reported, 22,807 children were served; in contrast, 65,275 were served in 1987.

During those early years, advances were made in providing services to preschool children with handicaps and helping Head Start programs improve their ability to meet individual special needs of handicapped children. Recent research and demonstration activities have provided new information on effective practices in working not only with handicapped children, but also with their parents. Improvements have occurred in the ability to assess how a child is functioning in the motor, communication, social and cognitive areas; in the development of technology to help young children with handicaps meet their potential; and in curriculum development and program evaluation. Also, new evidence of the importance of early assistance and of the role of parents in programs for children with handicaps has become available. We have attempted to incorporate these new developments into this proposed rule.

Head Start services to handicapped children are delivered in the context of and influenced by requirements in section 504 of the Rehabilitation Act of 1973 and the Education of the Handicapped Act, Pub. L. 94–142 and its amendments.

As a result of this legislation and other advocacy efforts, during the last decade many States have passed laws requiring that services be provided to younger children with handicaps. Special education and related services, such as physical therapy, have become more widely available for preschool age children. Given the increased availability of services, more Head Start programs provide services by a combination of Head Start staff and personnel from other agencies. Coordination with specialized community agencies has become necessary to make the best use of limited resources. Currently, 54% of enrolled handicapped children receive services from both Head Start and other agencies.

III. Provisions of the NPRM

Currently, all Head Start programs must meet the requirements of the Program Performance Standards as specified in the regulations at 45 CFR 1304.2–2, 1304.3–3(b)(10), 1304.3–4(a)(1) and 1304.3–8(a)(5). These regulations clearly define the services for non-handicapped children. Based on the definition of handicapped children, some standards for services to children with handicaps and services to meet the special needs of their parents were distributed to grantees between 1973 and 1983 through various transmittal memoranda and other policy issuances. However, no standards have ever been set forth in regulation. The new part 1308 will propose specific standards, including diagnostic criteria, and offer general guidance for the provision of services to children with handicaps and services to meet the special needs of their parents. Specifically, these regulations will require Head Start programs to:

—Design comprehensive services which meet program standards for locating and serving handicapped children and their parents;

—Develop an individualized education program (IEP) to provide appropriate special services for each child who is certified as having a handicap;

—Screen children within 45 days of admission to the Head Start program, rather than within 90 days as currently recommended, in order that services may be provided in a timely manner;

—Use revised diagnostic criteria to determine eligibility for and to assist in obtaining special education and related services;

—Designate a coordinator of services for handicapped children, with specific responsibilities; and

—Operate in accordance with standard guidance on the use of PA 28 funds for special services for children who have handicaps.

These proposed regulations also include some technical amendments to certain sections of 45 CFR Parts 1304 and 1305 which are mandated by legislative amendments. In addition, we are proposing changes in Parts 1304 and 1305 to: (1) Assure that services are provided promptly to handicapped children; and (2) make technical and conforming changes to comport with Part 1308 and with changes in the definition of handicapped children in the Education of the Handicapped Act.

When this NPRM is published as a final rule the following transmittals and policy issuances will be rescinded:

1. Head Start Services to Handicapped Children: Transmittal Notice 73.4 issued as OCD Notice N–30–333–1–00 by the Office of Child Development (the predecessor agency to ACYF), 1973.

2. Announcement of Criteria for Reporting Handicapped Children in Head Start: Transmittal Notice 75.11, 1975.

3. The Application of the Rehabilitation Act of 1973 to Head Start, Transmittal Notice 80.4, 1977.

IV. Development of the NPRM

During 1984 and 1985, extensive consultation was held with the field concerning the adequacy and usefulness of the current diagnostic criteria described in Transmittal Notice 75.11, issued September 11, 1975, and on the comprehensiveness of the guidance in Transmittal Notice 73.4, issued February 28, 1973, on services to children with handicaps. Head Start directors, coordinators, professional organizations, and technical assistance providers of Head Start services for handicapped children provided suggestions, comments, and recommendations. The comments indicated that:

—Correlating and combining the various pieces of information currently available is difficult for Head Start grantees;

—Existing diagnostic criteria are not useful for some diagnosticians or staff and are not acceptable to some parents;

—The Performance Standards now in effect which pertain to all children do not provide sufficient information on meeting the special needs of children with disabilities and their families;

—Existing information to grantees does not take into account the many advances in the state of the art in the last decade or the changes in Federal and State legislation during this same period which affect Head Start or provide sufficient assistance in the difficult area of coordination; and

—Existing information does not incorporate the results of Head Start experience in serving low income children with handicaps over the past decade or provide procedures for appropriate use of PA 28 funds for special services for children with handicaps.

These findings led us to believe that an NPRM should be developed given the recent advances in professional knowledge and research and demonstration findings and the wealth of knowledge, experience and expertise evidenced in the recommendations made. Our aim was to incorporate appropriate and still useful material from past policy issuances into regulation, update the diagnostic criteria, and spell out minimum standards all grantees must follow in providing services to handicapped children.

We had three options in developing new diagnostic criteria: (a) Continuing to use the current criteria; (b) using a general non-categorical criterion such as "in need of special education and related services;" and (c) proposing revised criteria.

We did not select the first option, for several reasons. Foremost among them were the concerns of professional and local Head Start personnel who had problems with the current criteria. For example, some diagnosticians stated that they would not use the term "learning disabled" with children younger than five and some parents found the term "seriously emotionally disturbed" unacceptable.

In addition, we reviewed the experience of State Education Agencies and some local public schools and found that a number of them have developed alternative criteria for preschool program planning purposes.

A second option was to use only a broad general category such as "in need of special education." This would have ensured that no child would be categorized as having a handicap, but it would not have provided sufficient information to assure that appropriate services were provided for each individual child. Such a broad criterion would have made it very difficult for programs to assure that children with handicaps, rather than children who may lag in development as a result of lack of opportunity or experience, would receive specialized services designed to lessen or overcome the results of handicapping conditions. Therefore, this option was not selected.

The third option of proposing revised diagnostic criteria was selected. We believe that the proposed criteria respond to the concerns expressed by grantee and delegate agencies and reflect experience and changes in the field over the past decade. We also believe they are easier to use, more specific, and timely. We are augmenting the proposed criteria with guidance to increase emphasis on the prevention of later learning problems through added attention to high-risk children.

This proposed rule provides specific standards and guidance on services for children with handicaps and their families. We welcome and solicit comments on this NPRM.

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V. How the NPRM Is Structured

The proposed performance standards are found in a new Part 1308. Under this proposed regulation, no child who would be eligible for services under the current diagnostic criteria will be denied special services. Nor should any child be classified as handicapped who would not be categorized as handicapped under the current diagnostic criteria.

At the end of the new Part, we have added an Appendix which contains programmatic guidance for certain sections of the rule. This guidance provides explanatory material and includes recommendations or suggestions for meeting the requirements. However, the guidance is not binding on Head Start grantees or delegate agencies. In instances where a permissible course of action is provided, the grantee or delegate agency may rely upon this guidance or may take another course of action that meets the applicable requirements. We have included this programmatic guidance as an aid to grantees because of the complexity of providing special services to meet the needs of children with various handicaps.

VI. Section by Section Discussion of the NPRM

We propose to issue standards for services to children with handicaps as Part 1308. The new Part 1308 contains eighteen sections, with guidelines included after all but five of the sections.

Sections 1308.1 and 1308.2 Purpose and scope.

These first two sections explain that Head Start grantees and delegate agencies must meet the requirements of Part 1308.

Section 1308.3 Definitions.

This section proposes definitions for certain key words that are used throughout Part 1308. They include such terms as "handicapped children," "diagnostic criteria," "special education" and Mainstreaming."

Section 1308.4 Handicap services plan.

This section is proposed in order to assure that each Head Start program has a plan for providing services to children with handicaps in an organized manner.

Section 1308.5 Developing individual education programs.

This section proposes to require Head Start programs to develop an IEP for each handicapped child that will provide for the child's special needs. It specifies that IEP should include, among other things, statements of the child's present level of functioning, annual goals, activities to meet the goals and dates for initiation of the activities. It also requires that a team, consisting of the Head Start coordinator of services for handicapped children, the child's teacher or home visitor, and others develop the IEP, with parental involvement.

Section 1308.6 Evaluation of children.

Experience indicates that the existing guidelines which recommend medical and dental screening within 90 days after enrollment sometimes result in long delays (several months) before services are provided. This section proposes timely screening of children (45 days from the date of enrollment) and further evaluation of a child who has been identified as possibly handicapped. Timely screening is important in order that special services may be provided as soon as possible. We believe 45 days is reasonable time to carry out the screening activities contained in this rule. However, we welcome comments on how this provision will affect the operation of your program. This section also provides that a team of professionals representing appropriate disciplines evaluate a child who is referred as possibly handicapped to ensure that every effort is made to obtain an accurate diagnosis.

Sections 1308.7–1308.14 Diagnostic Criteria.

Sections 1308.7 through 1308.14 contain, respectively, diagnostic criteria in the following areas: health impairment, behavior disorders, communication impairment, mental retardation, hearing impairment, orthopedic impairment, blindness and visual impairment, and other impairments meeting State eligibility criteria for services to preschool children with handicaps.

These criteria are based on the definition of "handicapped children" and utilize current professional recommendations and findings from Head Start experience. We believe they are clearer, and will be easier to use.

The purpose of diagnostic criteria in specific areas is to provide information on types and severity levels of handicapping conditions for eligibility and individual program planning purposes. The diagnostician can make recommendations on the basis of functional assessments in order that parents, teachers, and others can best work with the child to enhance his or her potential.

Section 1308.15 Handicap/health services coordination.

Because effective services for children with handicaps requires coordination across all Head Start components, this section clarifies the ways in which the handicap services coordinator is required to work with the health and mental health components in such areas as screening, identification of possible mental health problems and provision of special services for handicapped children.

Section 1308.16 Nutrition services.

This section provides that a Head Start program must consider the needs of children with handicaps in its nutrition program, e.g., provide consultation with a physical therapist to assist severely handicapped children who have problems chewing, swallowing and feeding themselves.

Section 1308.17 Recruitment and enrollment of handicapped children.

In this section, we propose to require that the Head Start outreach and recruitment effort include recruitment of handicapped children. This section also clarifies responsibilities of the coordinator of services for children with handicaps and the social services coordinator.

Section 1308.18 Parent participation and transition of children from Head Start to public school.

This proposed section requires the coordinator of services for children with handicaps who are enrolled in Head Start to offer information and assistance to their parents to foster the children's development and learning and to meet their special needs. The Head Start program in cooperation with the parent will have to notify the local school or other placement prior to the date of transfer to either of these after Head Start.

Technical Revisions to Part 1304 and Part 1305

We propose to make technical revisions to certain sections of Part 1304, Program Performance Standards for Operation of Head Start Programs by Grantees and Delegate Agencies, and Part 1305, Eligibility Requirements and Limitations for Enrollment in Head Start.

Section 1304.1–2 Definitions.

The definition of handicapped children is being amended to conform to the definition of handicapped children as defined in section 602 of the Education of the Handicapped Act, as amended, as required by section 640(d) of the Head Start Act. When the Education of the Handicapped Act was amended by section 602 of Pub. L. 91–230, the definition of handicapped children was revised to change the word "crippled" to "orthopedically impaired," and to include children with specific learning disabilities. In 1983, when it was amended by section 2 of Pub. L. 98–199, children with "language impairments" were added. We are taking this opportunity to make these changes. (The proposed § 1308.3 contains the definition of handicapped children from the Education of the Handicapped Act.)

Section 1304.3–3 Medical and dental history, screening and examination.

We propose to require that health screening be completed within 45 days of a child's enrollment to comport with § 130.6.

Section 1305.2 Definitions.

The definition of handicapped children in paragraph (b)(3) of this section is being amended for the reasons stated above under § 1304.1–2.

VII. Impact Analysis

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules defined in the Order as any rule that has an annual effect on the national economy of $100 million or more, or certain other specified effects. Nothing in either the statute or rule is likely to create substantial costs. The Secretary concludes that this regulation is not a major rule within the meaning of the Executive Order because it does not have an effect on the economy of $100 million or more or otherwise meet the threshold criteria.

Regulatory Flexibility Act of 1980

Consistent with the Regulatory Flexibility Act of 1980 (5 U.S.C. Chapter 6), we try to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small entities" we prepare an analysis describing the rules' impact on small entities. Small entities are defined in the Act to include small businesses, small non-profit organizations, and small governmental entities.

While this regulation would affect small entities, it is not substantial, and in many instances the small entities may already meet some of the requirements. For these reasons, the Secretary certifies that this rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, Pub. L. 96–511, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirement in a proposed and final rule. This proposed rule contains information collection requirements in §§1308.4, 1308.5, 1308.6, and 1308.15 which will be submitted to OMB for review and approval in accordance with section 3504(h) of the Act. However, many Head Start programs already prepare the plans and maintain the records required.

Organizations and individuals desiring to submit comments concerning the accuracy of the burden estimate and any suggestions for reducing the burden should direct them to the agency official designated for this purpose, whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, Room 3028, Washington, DC 20503, ATTN: Desk Officer for HDS.

List of Subjects

45 CFR Part 1304

Dental health, Education of disadvantaged, Grant program/social programs, Health care, Mental health programs, Nutrition, Parental involvement, Reporting and recordkeeping requirements.

45 CFR Part 1305

Education of disadvantaged, Education of handicapped, Grant program/social programs, Handicapped.

45 CFR Part 1308

Education of the handicapped, Grant program/social programs, Parental involvement, Health care, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program Number 13.600, Project Head Start)

Dated: July 6, 1988.

Sydney Olson,

Assistant Secretary for Human Development Services.

Approved: August 26, 1988.

Otis R. Bowen,

Secretary.

For the reasons set forth in the preamble, Title 45, Chapter XIII, Subchapter B of the Code of Federal Regulations is proposed to be amended as follows:

1. Part 1308 is added to read as follows:

PART 1308—HEAD START PERFORMANCE STANDARDS ON PROGRAM SERVICES FOR CHILDREN WITH HANDICAPS

Subpart A—General

Sec.
1308.1 Purpose.
1308.2 Scope.
1308.3 Definitions.

Subpart B—Education Services Performance Standards

1308.4 Handicap services plan.
1308.5 Developing individual education programs.

Subpart C—Health Services Performance Standards

1308.6 Evaluation of children.
1308.7 Diagnostic criteria: Health impairment.
1308.8 Diagnostic criteria: Behavior disorders.
1308.9 Diagnostic criteria: Communication impairment.
1308.10 Diagnostic criteria: Mental retardation.
1308.11 Diagnostic criteria: Hearing impairment.
1308.12 Diagnostic criteria: Orthopedic impairment.
1308.13 Diagnostic criteria: Blindness and visual impairment.
1308.14 Diagnostic criteria: Other impairments.
1308.15 Handicap/health services coordination.

Subpart D—Nutrition Performance Standards

1308.16 Nutrition services.

Subpart E—Social Services Performance Standards

1308.17 Recruitment and enrollment of handicapped children.

Subpart F—Parent Involvement Performance Standards

1308.18 Parent participation and transition of children from Head Start to public school.

Authority: 42 U.S.C. 9831 *et seq.*

Subpart A—General

Appendix to Part 1308—Head Start Performance Standards on Program Services for Children with Handicaps

§ 1308.1 Purpose.

This rule sets forth the requirements for providing special services for handicapped children enrolled in Head Start programs. These requirements are to be used in conjunction with the Head Start Program Performance Standards at 45 CFR Part 1304.

§ 1308.2 Scope.

This rule applies to all Head Start grantees and delegate agencies.

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§ 1308.3 Definitions.

As used in this part:

(a) The term "ACYF" means the Administration for Children, Youth and Families, Office of Human Development Services, U.S. Department of Health and Human Services, and includes appropriate regional office staff.

(b) The term "Commissioner" means the Commissioner of the Administration for Children, Youth and Families.

(c) The term "delegate agency" means a public or private non-profit organization or agency to which a grantee has delegated the responsibility for operating all or part of its Head Start program.

(d) The term "diagnostic criteria" means the criteria for determining that a child requires special education and related services and for planning those services.

(e) The term "grantee" means the public or private non-profit agency which has been granted financial assistance by ACYF to carry on a Head Start program.

(f) The term "handicapped children" means mentally retarded, hard of hearing, deaf, speech or language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or other health impaired children or children with specific learning disabilities who by reason thereof require special education and related services.

(g) The term "least restrictive environment" means the most appropriate placement, based on the Individual Education Program, with non-handicapped children to the maximum extent appropriate for the individual child.

(h) The term "mainstreaming" means providing appropriate educational services for children with handicaps in settings with non-handicapped peers on a full or part-time basis. It does not mean simply incorporating a child physically into the regular program with no modifications of programming to meet the child's special needs.

(i) The term "program performance standards" or "performance standards" means the Head Start program functions, activities and facilities required and necessary to meet the objectives and goals of the Head Start program as they relate directly to children and their families.

(j) The term "related services" means transportation, developmental, corrective, and other supportive services and equipment as required to assist a handicapped child to benefit from special education.

(k) The term "responsible HHS official" means the official who is authorized to make the grant of assistance in question, or his/her designee.

(l) The term "special education" means specially designed instruction to meet the unique needs of a handicapped child.

Subpart B—Education Services Performance Standards

§ 1308.4 Handicap services plan.

(a) (1) A Head Start grantee or delegate agency must develop or annually update a plan providing strategies for meeting the special needs of children with handicaps and their parents.

(2) A designated coordinator of services for children with handicaps must have the primary responsibility for preparing the plan, working with the Director, and consulting with other staff and parents.

(3) The handicap services plan must address timely screening and the further evaluation of children who may be handicapped; address accessibility and safety of facilities and appropriateness of furniture and equipment; and provide for meeting special language needs of children with handicaps.

(b) (1) The Head Start grantee or delegate agency must treat children with handicaps like other children, to the extent that their special needs allows, and include children with handicaps in the full range of activities and services normally provided to all Head Start children.

(2) The grantee or delegate agency must arrange for or provide special education and related services necessary to assist in remedying the children's handicaps and to facilitate their participation in the regular Head Start program.

(3) The Head Start agency must arrange for, provide, or procure services which may include, but are not limited to: special education; counseling of children and parents; therapeutic recreation services; and therapy such as speech, language, physical, occupational and psychological. Ideally these services would be provided by staff with special training. The provision of special services must be under the overall supervision of a professional with appropriate experience and training.

(c) The Head Start grantee or delegate agency must explore options to meet the needs of handicapped children enrolled or to be enrolled and include these options in the handicap services plan. These may include:

(1) Joint placement of children with other agencies;

(2) Shared provision of services with other agencies;

(3) Training for Head Start staff in specific procedures;

(4) Need for increased staff; and

(5) Use of volunteers.

(d) The Head Start grantee or delegate agency must use the plan for services for handicapped children as a working document which guides all aspects of the agency's effort to serve handicapped children.

(e) The handicap services coordinator must work with the program director in planning and implementing the program account (PA) 26 budget, the budget for special services for handicapped children.

(f) The budget must reflect the objectives and activities in the handicap services plan. A Head Start grantee or delegate agency may use PA 26 funds only for special costs to serve handicapped children, above the costs to provide basic service for all the children as follows:

(1) *Salaries.* These costs include salaries of additional full or part-time Head Start staff, including the coordinator of handicap services, special educators and others qualified and trained in services to handicapped children, to assure that programs have the core capability to recruit, enroll, diagnose and provide or arrange for services to handicapped children. That portion of salary costs for other component staff which is spent to provide special services specifically included in the agency handicap services plan or in a child's IEP as required by section 1308.5 over and above the services provided to all Head Start children may be paid for from PA 26 funds.

(2) *Evaluation of children.* When there is a question after the regular Head Start screening and assessment as to whether a child may be handicapped, the Head Start grantee or delegate agency may use PA 26 funds to pay for further evaluation, even if the child is found not to be handicapped.

(3) *Services.* When the services are not available as donations, PA 26 funds may be used to pay for these services including special education; other special services; and therapy, including counseling and involvement of parents of children with handicaps. Dental care for certain severe conditions may also be paid for from PA 26 funds, as can summer services necessary to prevent regression.

(4) *Making services accessible.* These costs include elimination of architectural barriers which affect the participation of handicapped children.

PA 26 funds may not be used for extensive remodeling or for modifications of facilities primarily to upgrade the quality of space in the basic program for all children, even though this may be of indirect benefit to handicapped children in the center.

(5) *Transportation.* When the agency handicap services plan or an individual education program for a specific child includes special services, transportation for the children and their parents to the site of special services and to the regular educational site may be paid for from PA 26 funds. When necessary, the Head Start grantee or delegate agency must arrange for additional adults to serve as attendants and supervisors.

(6) *Special equipment and materials.* Purchase or lease or special equipment and materials for use in the program or home is allowable from PA 26 funds.

(7) *Training and technical assistance.* Increasing the abilities of staff to meet the special needs of handicapped children is an allowable expense. However, since resources may be available from other sources, it is not expected that extensive use will be made of PA 26 funds for staff training. Appropriate expenditures may include but are not limited to:

(i) Travel and per diem expenses for Head Start staff and parents to attend handicap training and technical assistance events;

(ii) The provision of substitutes to free staff to attend handicap training and technical assistance events;

(iii) Fees for courses specifically related to requirements of the handicap services plan or a child's individual education plan; and

(iv) Fees and expenses for a training/technical assistance consultant if such help is not available from another provider at no cost.

§ 1308.5 Developing individual education programs.

(a) Head Start programs must provide procedures for the ongoing observation, recording and evaluation of each handicapped child's growth and development for the purpose of planning appropriate activities to meet the child's special needs caused by the handicap(s) and assuring that they are carried out. Therefore, programs must develop an individual education program (IEP) for each handicapped child.

(b) The IEP must take into account the child's unique needs, developmental potential and family circumstances as well as the handicap(s).

(c) The IEP must include:

(1) A statement of the child's present level of functioning in the social-emotional, motor, communication and cognitive areas of development, and the identification of needs in those areas requiring specific programming;

(2) A statement of annual goals, including short term objectives for meeting these goals;

(3) A statement of needed services to be provided by each Head Start component that are in addition to those services provided for all Head Start children;

(4) A statement of the specific special education services to be provided to the child and those related services necessary for the child to participate in a mainstream Head Start program. This includes services provided by Head Start and services provided by other agencies and non-Head Start professionals;

(5) The identification of personnel responsible for the planning and supervising of services and for the delivery of services;

(6) The projected dates for initiation of services and the anticipated duration of services; and

(7) A statement of objective criteria and evaluation procedures for determining at least annually whether the short term objectives are being achieved or need to be revised.

(d) The IEP must be developed by a team which includes:

(1) The Head Start handicap services coordinator or designee;

(2) The child's teacher or home visitor;

(3) One or both of the child's parents or guardians; and

(4) The professional diagnostician(s) who evaluated the child, or someone knowledgeable about the evaluation.

(e) The team may include, in addition:

(1) A local education agency representative;

(2) Other individuals if invited by the parents; and

(3) Other individuals at the discretion of the Head Start program, including those component staff particularly involved due to the nature of the child's handicapping condition.

(f) Programs must make vigorous efforts to involve parents in the IEP process. The Head Start program must notify the parents in writing of the purpose and date of the IEP meeting. The meeting must be scheduled at a time and place mutually agreeable to the parents and the program. If the parents cannot attend the IEP meeting, despite repeated attempts to set up a mutually agreeable meeting, the progra must arrange an opportunity to meet with the parents to review the content of the meeting and secure their input and signature.

(g) Programs must develop and initiate the implementation of the IEP within 30 calendar days of the completion of the diagnosis. If a child enters Head Start with a professional diagnosis completed within two months prior to entry, services must begin the first week of program attendance.

Subpart C—Health Services Performance Standards

§ 1308.6 Evaluation of children.

(a) Screening is the first step in a three-part evaluation process consisting of screening, on-going developmental assessment, and diagnosis.

(b) The health coordinator is responsible for the health screening of all Head Start children within 45 calendar days of their enrollment. The handicap services coordinator must cooperate with the health coordinator and staff implementing developmental screening and health screening.

(c) Staff must inform parents of the types and purposes of this screening well in advance of the screening, the results, and subsequent evaluations. They must obtain written permission from the parents for the screening.

(d) The handicap services coordinator must cooperate with the education coordinator in the systematic evaluation of each Head Start child's functioning in all developmental areas. Developmental assessment is the formal and informal collection of information on each child's functioning in these areas: gross and fine motor skills, perceptual discrimination, cognition, self-help, social and receptive skills and expressive language. The handicap services coordinator must include the developmental information in later diagnostic and program planning activities for children with handicaps.

(e) The handicap services coordinator must arrange for further evaluation of a child who has been identified as possibly handicapped by screening, assessment or referral. A team of professionals representing more than one discipline must evaluate the child, except in unusual circumstances which must be discussed with the Regional Office. Diagnostic procedures must begin within 15 days of identification or screening.

(f) A professional member of the diagnostic team who is not a Head Start employee must certify the child as handicapped and specify the appropriate diagnostic classification. The certifying professional may not be the person who will be providing special services to the child unless no one else is available and the majority of the other professional member of the diagnostic team concur.

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(g) Head Start grantees and delegate agencies must have diagnosticians recommend which of the Head Start diagnostic categories in §§ 1308.7 through 1308.14 should be used to classify each child they diagnose as handicapped.

(h) The diagnostic criteria described in §§ 1308.7 through 1308.13 are to be used only for impairments which limit learning, social, emotional or motor development and require special education or related services.

§ 1308.7 Diagnostic criteria: Health impairment.

(a) A child must be classified as health impaired who has limited strength, vitality or alertness due to a chronic health problem.

(b) The health impairment classification may include, but is not limited to, cancer; some neurological disorders; nutrition disorders (including obesity at or above the 95th percentile and malnutrition disorders below the 5th percentile of the growth curve); blood disorders, including hemophilia, sickle cell anemia, etc.; cystic fibrosis; and congenital heart disease or strokes. For purposes of the handicap services plan and the Program Information Report, each child should be recorded in the category which covers the functions most affected by the handicap for that child.

(c) The health impairment classification may also include severe dental problems when the condition of the teeth and supporting structures is such that routine eating is restricted or impossible; chronic pain is evident; growth and development are delayed or retarded; speech is impacted; and the child cannot perform daily activities and needs special schedules and services. The IEP for a child with a severe dental handicap must specify the modified education program and other services and project a date for estimated termination of the designation as handicapped.

(d) Examples of specific severe dental conditions are:

(1) Baby nursing bottle caries (four or more affected teeth); or

(2) Generalized rampant caries (four or more teeth require pulp therapy restoration or extraction); or

(3) Two or more fractured teeth; or

(4) Extra teeth requiring surgical extraction.

(e) Head Start grantees and delegate agencies must not classify a child whose condition is controlled by medication or who has been seizure free for one year or more as health impaired unless the child requires special education and related services. When the only services required are monitoring and providing medication, the child does not qualify as handicapped.

(f) A program must not classify a short-term medical problem, such as post-operative recovery, as a health impairment.

§ 1308.8 Diagnostic criteria: Behavior disorders.

(a) A child must be classified as having a behavior disorder who exhibits one or more of the following characteristics with such frequency, intensity, or duration as to require intervention:

(1) An inability to build or maintain satisfactory (age appropriate) interpersonal relationships with peers or adults (e.g., avoids playing with peers); or

(2) Inappropriate behavior (e.g., dangerously aggressive towards others, self-destructive, severely withdrawn, non-communicative); or

(3) A general pervasive mood of unhappiness or depression, or evidence of excessive anxiety or fears (e.g., frequent crying episodes, constant need for reassurance); or

(4) Chronic physical symptoms which may be associated with personal, family or school situations (e.g., vomiting, stomach aches).

(b) For Head Start reporting purposes, a child diagnosed as autistic must be classified in the Behavior Disorder Category.

(c) In addition to a psychological evaluation, the diagnostic process must include a complete physical examination to eliminate the possibility of misdiagnosis due to an underlying condition (e.g., hearing impairment, petit-mal seizures).

§ 1308.9 Diagnostic criteria: Communication impairment.

A child must be classified as having a communication impairment who has a speech disorder or a language disorder with a delay of one year or more in speaking his/her primary language.

§ 1308.10 Diagnostic criteria: Mental retardation.

(a) A child must be classified as mentally retarded who exhibits significantly sub-average intellectual functioning (2 standard deviations below the mean as measured by standardized intelligence tests), and exhibits deficits in adaptive behavior. Adaptive behavior refers to age-appropriate coping with the demands of the environment through independent skills in self-care, communication and play.

(b) Measurement of adaptive behavior must reflect objective documentation through the use of an established scale and appropriate behavioral/anecdotal records.

§ 1308.11 Diagnostic criteria: Hearing impairment.

A child must be classified as having a hearing impairment if one of the following conditions exists:

(a) Hearing loss in any of the degrees listed below (in one or both ears at one or more of the following frequencies—500 Hz, 1000 Hz, 2000 Hz and 4000 Hz):

(1) Mild hearing loss—20–40 dB HL;

(2) Moderate hearing loss—41–55 dB HL;

(3) Moderately severe hearing loss—56–70 dB HL;

(4) Severe hearing loss—71–90 dB HL;

(5) Profound hearing loss—91 or greater dB HL; or

(b) Hearing impairment (deaf or hard of hearing) that meets the legal definition for such an impairment in the State of residence; or

(c) Recurrent temporary or fluctuating hearing loss caused by Otitis Media, allergies, and/or eardrum perforations. Problems associated with temporary or fluctuating hearing loss include: Impaired listening skills; delayed language development; and articulation problems which develop as the child is learning to talk.

§ 1308.12 Diagnostic criteria: Orthopedic impairment.

(a) A child must be classified as having an orthopedic impairment if the condition involves muscles, bones, or joints and is characterized by impaired ability to maneuver in the classroom or home environment; impaired ability to perform fine or gross motor activities; or impaired ability to perform self-help skills.

(b) An orthopedic impairment includes, but is not limited to, spina bifida, cerebral palsy, loss of or deformed limbs, contractures caused by burns, arthritis, or muscular dystrophy.

§ 1308.13 Diagnostic criteria: Blindness and visual impairment.

(a) A child must be classified as blind when one of the following exists:

(1) The child is sightless or has such limited vision that she/he must rely on hearing and touch as her/his chief means of learning; or

(2) The vision loss meets the definition of legal blindness in the State of residence; or

(3) Central acuity does not exceed 20/200 in the better eye with corrective lenses, or visual acuity is greater than 20/200, but is accompanied by a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(b) A child must be classified as having a visual impairment if central acuity with corrective lenses is between 20/70 in either eye, or if visual acuity is greater than 20/70, but is accompanied by other loss of visual function that restricts the learning process, e.g., faulty muscular action, limited field of vision, cataracts.

§ 1308.14 Diagnostic criteria: Other impairments.

(a) When none of the diagnostic criteria in §§ 1308.7 through 1308.13 are applicable and the State diagnostic criteria for preschool children includes a category which is appropriate for a Head Start child, that category must be used.

(b) For Head Start reporting purposes, children receiving services under the State eligibility category must be reported as children with other impairments.

(c) The State eligibility category used and a description of the handicapping condition must be included in the children's records.

§ 1308.15 Handicap/health services coordination.

(a) The handicap services coordinator must work closely with the health coordinator in the evaluation process and follow up to assure that the special needs of each handicapped child are met.

(b) The handicap services coordinator also must work closely with the staff person responsible for the mental health component. The handicap services coordinator may be able to help teachers identify children who show signs of problems such as possible serious depression, withdrawal, anxiety or abuse.

(c) Each Head Start director or designee must supervise the administration of all medications including prescription and over the counter drugs in accordance with State requirements.

(d) The health coordinator under the supervision of the Head Start director or designee must:

(1) Before any medication is administered, obtain parental consent;

(2) Maintain an individual record of all medications dispensed and review the record regularly with the child's parents;

(3) Record changes in a child's behavior with implications for drug dosage or type and report this to the child's parents, physician(s) the handicap services coordinator, and the education coordinator; and

(4) Provide that all medications, including those required by staff and volunteers, are adequately labeled, stored under lock and key and out of reach of children, and refrigerated, if necessary.

Subpart D—Nutrition Performance Standards

§ 1308.16 Nutrition services.

(a) The handicap services coordinator must work with staff to see that special needs are incorporated into the nutrition program.

(b) Physical therapists must be consulted on ways to assist severely handicapped children with problems of chewing, swallowing and feeding themselves.

(c) The handicap services plan must include activities to help handicapped children participate in meal and snack times with classmates.

(d) The handicap services plan must address prevention of handicaps with a nutrition basis.

Subpart E—Social Services Performance Standards

§ 1308.17 Recruitment and enrollment of handicapped children.

(a) The handicap services coordinator must cooperate with the social services coordinator, who has primary responsibility for outreach and recruitment to locate children in need of Head Start services, so that handicapped children are included in those efforts. The community needs assessment must include the needs of handicapped children and their parents.

(b) The handicap services coordinator must make every effort to ensure that no child for whom Head Start is an appropriate placement is unserved because of a handicap or its severity.

(c) The handicap services coordinator must access resources and plan for placement options and training so that a handicapped child is not denied enrollment because of:

(1) Staff attitudes and/or apprehensions;

(2) Inaccessibility of facilities;

(3) Lack of resources to serve a specific child;

(4) Unfamiliarity with a handicapping condition or special equipment, such as a prosthesis; and

(5) Need for personalized special services, such as feeding; suctioning; and assistance with toileting, including catheterization, diapering, and toilet training.

(d) The same policies governing Head Start program eligibility for non-handicapped children apply to children with handicapping conditions. Staff also must take the following factors into account:

(1) The number of handicapped children in the target population including types of handicaps and their severity; and

(2) The services and resources provided by other community agencies.

(e) The recruitment effort of a Head Start program must include recruiting children who are severely handicapped, including already diagnosed children.

Subpart F—Parent Involvement Performance Standards

§ 1308.18 Parent participation and transition of children from Head Start to public school.

(a) In addition to the many references to working with parents throughout these standards, the handicap services coordinator must carry out the following tasks:

(1) Provide information to parents on how to foster their handicapped child's development and learning.

(2) Provide opportunities for parents to observe large group, small group and individual activities described in their child's IEP.

(3) Provide follow-up assistance and activities to reinforce program activities at home.

(4) Refer parents to groups of parents of children with similar handicaps who can provide helpful peer support.

(5) Identify needs (caused by the handicap) of siblings and other family members.

(6) Provide information in order to prevent handicaps among younger siblings.

(7) Build parent confidence and knowledge in accessing resources and advocating to meet the special needs of their children.

(b) The handicap services coordinator must plan to assist parents in the transition of children to public school or other placement.

(c) Head Start programs, in cooperation with the child's parents, must notify the school of the child's planned enrollment prior to the date of enrollment. The Head Start program must initiate and carry out this transition.

Appendix to Part 1308—Head Start Performance Standards on Program Services for Children with Handicaps

This appendix sets forth guidance for the implementation of the requirements in Part 1308. This guidance provides explanatory material and includes recommendations and suggestions for meeting the requirements. However, this guidance is not binding on Head Start grantees or delegate agencies. In

instances where a permissable course of action is provided, the grantee or delegate agency may rely upon this guidance or may take another course of action that meets the applicable requirement. This programmatic guidance is included as an aid to grantees because of the complexity of providing special services to meet the needs of children with various handicaps.

Section 1308.4—Handicap services plan

Guidance for paragraph (a)

In order to organize activities and resources to help children with handicaps overcome or lessen their disabilities and develop their potential, it is important to involve the education, health, social services, parent involvement, mental health and nutrition components. ACYF recommends that parents, staff and policy group members discuss various strategies for assuring that the handicapped service plan integrates needs and activities which cut across the Head Start component areas before the plan is completed.

Programs should ensure that practices they use to provide special services do not result in undue attention to a child with a handicap. For example, providing names and schedules of special services for handicapped children in the classroom is useful for staff or volunteers coming into that classroom, but posting them would publicize the handicapping condition of the individual children.

Staff should work for the handicapped children's greater independence by encouraging them to try new things and to meet appropriate goals by small steps. Programs should help handicapped children develop initiative by including them in opportunities to explore, to create, and to ask rather than to answer questions. The children need opportunities to use a wide variety of materials including science tools, art media and costumes in order to develop skills, imagination and originality. The program should include them on field trips, as their experience may have been limited, for example, by an orthopedic handicap.

Just as a program makes available pictures and books showing children and adults from representative cultural, ethnic and occupational groups it should provide pictures and books which show handicapped children and adults, including those in active roles.

Staff should plan to answer questions children and adults may have about handicaps. This promotes acceptance of a handicapped child for him or herself and leads to treating the child more normally. Effective curricula are available at low cost for helping children and adults understand handicaps and for improving attitudes and increasing knowledge about disabilities. Information on these and other materials can be obtained from Resource Access Projects (RAPs), which offer training and technical assistance to Head Start programs.

There are a number of useful guides for including handicapped children in regular group activities while providing successful experiences for children who differ widely in developmental levels and skills. Some of these describe activities around a unit theme with suggestions for activities suitable for children with different handicaps and skill levels. Staff need to help some children with handicaps move into developmentally appropriate play with other children.

If a deaf child who uses or needs sign language is enrolled, a parent, volunteer or aide who can sign should be provided to help the child benefit from the program. Sign language classes are widely available and many young non-handicapped children enjoy learning this kind of code.

In order to build the language and speech capabilities of many handicapped children who have communication problems, it has been found helpful to enlist aides, volunteers, cooks, bus drivers and parents, showing them *how* to provide extra repetition and model gradually more advanced language as children improve in their ability to understand and use language. Small group activities for children with similar language development needs should be provided regularly as well as large group language and listening games and individual help. Helping children with intellectual delays or emotional problems or those whose experience have been limited by orthopedic or other handicaps to express their own ideas and to communicate during play and throughout the daily activities is motivating and can contribute greatly to their progress.

For non-verbal children, communication boards and devices may be helpful. State Departments of Special Education or Developmental Disabilities, United Cerebral Palsy or Easter Seal centers or RAPs should be able to provide information on how communication boards could be borrowed, made or purchased.

The plan should include any renovation of space and facilities which may be necessary to ensure the safety of the children.

Section 504 of the Rehabilitation Act of 1973 requires that all Federally assisted programs, including Head Start, be accessible to persons with handicapping conditions, including staff, parents and children. This does not mean that every building or part of a building must be physically accessible, but the program services as a whole must be accessible. Structural changes to make the program services available are required if alternatives such as reassignment of classes or moving to different rooms are not possible.

Staff should ensure children with physical handicaps have chairs and other pieces of furniture of the correct size and type for their individual needs as they grow. Agencies such as United Cerebral Palsy can provide consultation on adapting or purchasing the appropriate furniture. The correct positioning of certain children is essential and requires expert advice. As the children grow, the furniture and equipment should be checked by an expert such as a physical therapist because the wrong fit can be harmful. Efforts should be made to use furniture sized and shaped to place children at the same level as their classmates whenever possible.

Guidance for paragraph (b)

The plan should specify:

—Overall goals of the handicapped effort.

—Specific objectives and activities of the handicapped effort.

—How and when specific activities will be carried out and goals attained.

—Who will be responsible for the conduct of each element of the plan.

—How individual activities will be evaluated.

The plan should address:

—Enrollment information, including numbers of children and type of handicaps, known and estimated.

—Identification and recruitment of children with handicaps.

—Screening.

—Diagnosis.

—Assessment.

—The process for developing individual education programs.

—The provision of program services and related services. It should be possible for a reader to visualize how and by whom services will be delivered. Coordination with other agencies should be described.

—Program accessibility.

—Record keeping and reporting.

—Confidentiality of information.

—Any special safety needs.

—Medications.

—Transportation.

—The process for identifying and meeting training and technical assistance needs.

—Transitioning of children to the next program.

Particular attention should be given to addressing ways to:

—Work with other agencies in serving children with handicaps.

—Involve parents throughout the handicapped effort.

—Increase the ability of staff to serve children with more severe handicaps and the number of severely handicapped children served.

Guidance for paragraph (c) (1)

Children may spend part of the program hours in Head Start for a mainstreaming experience and part in a specialized program such as Easter Seals or a local mental health center. The amount of time spent in either program should be flexible, according to the needs of the individual child. Even a few hours a week in a mainstreamed classroom may be beneficial to a severely handicapped child. Such children may share an enrollment slot. All services provided, including those provided by collaborating agencies, should be described in the handicap services plan. Staff of both programs should observe each other's work with the child who is enrolled and maintain good communication.

Guidance for paragrah (c) (2)

Individual services such as occupational, physical or speech therapy, staff training, transportation, services to families or counseling may be shared by Head Start and other agencies. For example, Head Start might provide the equipment and transportation while a developmental center might provide a facility and physical therapy for a Head Start child. Some public schools provide resource teachers.

Guidance for paragraph (c) (3)

The program should provide training for the regular teachers in how to modify large group, small group or individual activities to meet the needs of the children with handicaps. Specific training for staff should be provided when Head Start enrolls a child whose handicapping condition requires a special skill or knowledge of special techniques or equipment. Examples are structuring a language activity, intermittent nonsterile catheterization, changing collection bags, suctioning, or the operation of leg braces. Joint training with other agencies is recommended to stretch resources and exchange expertise.

Guidance for paragraph (c) (4)

Hiring additional staff may be necessary to meet the needs of children with severe handicaps. Hiring an aide may be necessary on a full-time, part-time, temporary or as needed basis to assist with increased demands of a child with a severe disability. However, aides should not be assigned the major responsibility for providing direct services. Aides and volunteers should be guided and supervised by the handicap services coordinator or someone with special training. It is desirable to have the services of a nurse, physical therapist or licensed practical nurse available for children with severe health or physical impairments.

Guidance for paragraph (c) (5)

Volunteers trained by professionals to work specifically with children with handicapping conditions can provide valuable individualized support. For example, a volunteer might be trained by a physical therapist to carry out specific recommendations for an individual child.

Guidance for paragraph (e)

An effective plan calls for careful use of PA 26 funds. Basic elements of the plan should be incorporated into the narrative portion of the PA 26 grant application for review by the awarding (regional) office. The handicap services coordinators needs to be familiar with the provisions of Part B of the Education of the Handicapped Act and the services which may be available for three through five year old children under this Act.

To assist in the development of the plan it may be helpful to establish an advisory committee for the handicapped effort or to expand the scope of the health advisory committee.

Guidance for paragraph (f) (1)

While the coordinator of handicap services need not necessarily be a professional in the area of services to the handicapped, this coordinator should have taken or be taking special training. She or he should possess a basic understanding of the scope of the Head Start effort and skills adequate to manage the agency handicap effort, including coordination with other program components and community agencies and work with parents. PA 26 funds should not be used for regular staff or simply to increase the staff-child ratio, even though there may be indirect benefits to handicapped children in the program.

Guidance for paragraph (f) (2)

Examples of evaluation costs which can be covered by PA 26 funds include professional diagnosis, adaptation of assessment, instruments, professional observation and professional consultation.

Guidance for paragraph (f) (3)

Many handicapped children enrolled in Head Start already receive services from other agencies and Head Start programs should encourage these agencies to continue to provide services. Programs should use other community agencies and resources to supplement services for handicapped children and their families. Grantees should collaborate with other public and private organizations serving children with handicaps in order to obtain needed resources and should consider sharing qualified supervisors and specialists.

Head Start funds are limited, and grantees are encouraged to seek funds from other sources and to use the program's existing resources carefully. By planning ahead grantees can pool resources to schedule periodic use of a diagnostic or consultant team and time share, reducing travel charges and assuring the availability of scarce expertise. Some public schools and other agencies have enabling legislation and funds to purchase education, health, and developmental services of the type Head Start can provide. Grantees can also help increase the amount of preschool funding available to their State under the Education of the Handicapped Act. The amount of the allocation to each State Education Agency and to the public schools is determined by the number of three through five year olds with an Individual Education Program in place by December 1 of each year. By reporting the number of such handicapped children Head Start can generate funds. RAPs can provide information on mandates to serve handicapped children in each State. They have information on agreements which have been developed between Head Start and State Education Agencies and between Head Start and local schools. Such agreements offer possibilities to share training, equipment and other resources, as well as to smooth the transition from Head Start to public or private school for children and their parents. They can be mutually beneficial and save resources. Some of these agreements specify cost sharing practices. The Education of the Handicapped Act Amendments of 1986 provide new impetus to full services for handicapped children by 1990 and underline the importance of joint planning and cooperation with local public schools and other agencies. When PA 26 funds are not adequate to cover special services for children with handicaps, Program Account 22 funds can be used for services for children with handicaps, such as children with severe dental problems affecting learning and development.

Guidance for paragraph (f)(5)

It may be helpful to explore the possibility of a cooperative agreement with the public school to provide transportation. However, when it is impossible to obtain donated services and lack of transportation prevents a handicapped child from participating in Head Start, PA 26 funds should be used to cover transportation costs before a delay occurs which will have a negative effect on the child's progress. The major emphasis is on providing the needed special help so the child can develop to the maximum during the brief time in Head Start.

Guidance for paragraph (f)(6)

Care should be taken not to purchase expensive items such as wheelchairs or audiometers if they can be provided through other resources, such as Crippled Children's Services. Cooperative arrangements can be made with public schools and other agencies to share equipment such as tympanometers. Generally, special equipment and materials, other than those in common use in programs for pre-school handicapped children, should be purchased only when required by an individual child's education plan.

Guidance for paragraph (f)(7)

Staff should have access to regular ongoing training events which keep them abreast of new materials, equipment and practices related to serving children with handicapping conditions and to preventing handicaps. On-going training and technical assistance in support of the handicapped effort should be planned to complement other training available to meet staff needs. Each Head Start program has the responsibility to identify or arrange the necessary support to carry out training for parents and staff.

It builds the core capability of the program to have speech, language and other therapy provided in the regular site whenever possible. This allows for the specialist to demonstrate to regular staff and plan for their follow through. It also reduces costs of transporting children to clinics and other settings. When university graduate students are used to provide special services, it is helpful to arrange for their supervisors to monitor their work. Programs arranging for such assistance are providing a valuable internship site and it is to the university's advantage to have their students become familiar with programs on site.

Best use of training funds has resulted when programs carry out a staff training needs assessment and relate current year training plans to previous staff training with the goal of building core capability. Staff who receive special training should share new knowledge with the rest of the staff.

Many agencies offer free training for staff and parents. An example is the Epilepsy Foundation of America with trained volunteers throughout the country. Head Start and the American Optometric Association have signed a memorandum of understanding by which member optometrists offer eye health education and screening. State-funded adult education and training programs or community college child development and parenting classes can be used at low or no cost. Programs should consider the need for training in working with parents, in developing working collaborative relationships and in networking when planning training.

The handicap services coordinator needs to work closely with the education and health coordinators to provide or arrange training

for staff and parents early in each program year on prevention of handicaps. This should include the importance of observing signs that some children may have mild or fluctuating hearing losses due to middle ear infections. Such losses are often undetected and can cause problems in learning speech and language. Many children with hearing losses benefit from amplification and auditory training in how to use their remaining hearing most efficiently. The handicap coordinator should also work with the education coordinator to provide timely staff training on recognizing signs that some children may be at high risk for later learning problems, as well as emotional problems resulting from failure and frustration. This training should address ways to help children develop the skills necessary for later academic learning, such as following directions calling for more than one action, sequencing, sustaining attention, and making auditory and visual discriminations.

The Head Start legislation calls for training and technical assistance to be offered to all Head Start programs with respect to services for handicapped children without cost through Resource Access Projects (RAPs) which serve each area of the country. The RAP contracts require that they contact each program to determine needs. Although their staff are small and their budgets limited, they are experienced and committed to meeting as many needs as they can. They welcome your inquiries. A brochure with names and addresses of the RAPs is available from ACYF/HS, P.O. Box 1182, Washington, DC 20013.

Section 1308.5. Developing individual education programs

Guidance for paragraph (a)

Following screening, diagnosis and the determination that a child is handicapped (see section 1308.4), a plan to meet the child's individual needs for special education and related services is developed. In order to facilitate communication with other agencies who may cooperate in providing services and especially with public or private schools which the children will eventually enter, it is recommended that programs become familiar with the format of the IEP used by the local schools. The format of the IEP to be developed for children in Head Start can vary according to local option. It should be written to serve as the working document for use by teachers and others providing services for a child.

In those instances in which a child is receiving services from another agency and already has an IEP, or when a child will be placed jointly in Head Start and another agency, an IEP should be developed collaboratively and adapted so that it will be appropriate to the child's participation in Head Start.

It is recommended that the staff review the IEP of each diagnosed handicapped child more frequently than the minimum once a year to keep the objectives and activities current.

Programs should provide services in the least restrictive environment, the setting as near to the regular setting with non-handicapped children as is appropriate for each child, based on the IEP.

It is ideal if a child can be mainstreamed in the full program with modifications of some of the small group, large group or individual program activities to meet his special needs. However, this is not possible or realistic in some cases on a full-time basis. The IEP team needs to consider the assessment and diagnostic information, parental information and desires, and types of settings available to plan for the best situation for each child. Periodic reviews can change the degree to which a child can be mainstreamed during the program year.

If Head Start is not an appropriate placement to meet the child's needs, referral should be made to another agency.

The IEP and the Handicap Services Plan should reflect realistic use of FA 26 funds.

Helpful specific information based on experience in Head Start is provided in manuals on serving children with handicaps developed by the RAPs. They cover such aspects of developing and implementing the IEP as:

- Gathering data needed to develop the IEP;
- Preparing parents for the IEP conference;
- Writing IEPs useful to teachers and;
- Developing appropriate curriculum activities and home follow up activities.

Guidance for paragraph (f)

Programs are encouraged to offer parents assistance in noting how their child functions at home and in the neighborhood. Parents should be encouraged to contribute this valuable information to the staff for use in on-going planning. Care should be taken to put parents at ease and eliminate or explain specialized terminology. Comfortable settings, familiar meeting rooms and ample preparation can help lessen anxiety. The main purpose is to involve them actively, not just to obtain their signature.

It is important to involve the parents of children with handicapping conditions in activities related to their child's unique needs, including the procurement and coordination of specialized services and follow-through in the child's treatment plan. In many cases these children will require specialized services throughout life. Therefore, it is especially helpful for Head Start to assist their parents in developing strategies and techniques to become effective advocates for their children.

Some parents of handicapped children are also handicapped. Staff may need to adjust procedures for assisting handicapped parents to participate in their children's programs. Materials to assist in this effort are available from RAPs.

Guidance for paragraph (g)

Timely implementation is essential so that needed services are provided as early as possible during the brief time a child is in Head Start. For those children remaining in Head Start for more than one year, the IEP will be in effect at the beginning of the second year and services will begin immediately.

Section 1308.6 Evaluation of Children

Guidance for paragraph (a)

Early screening is essential because of the time required for the subsequent steps necessary before special services can begin. Many programs already complete screening within 45 days of the first day of program operation. Some participate in spring or summer screening programs in their areas before the fall opening. Programs are encouraged to schedule well in advance with clinics and to seek agreements with such providers as Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) providers and the Indian Health Service to give priority to screening Head Start children.

Guidance for paragraph (b)

The handicap coordinator should assist the health coordinator to assure that screening requirements are selected or adapted with the specific Head Start population and goals of the screening process in mind. Instruments with age appropriate norms should be used. Any adaptation of existing instruments should be undertaken only with the consultation of an appropriate professional. Children should be screened in their native language. Universities, civic organizations or organizations to aid recent immigrants may be able to locate native speakers to assist.

It is strongly recommended that screening with impedance audiometry to determine middle ear function be used to complement pure tone audiometry. Frequent rescreening is needed for children with recurrent ear infections.

Programs should use Child Find, the preschool identification effort carried out by public schools, and identification efforts of other agencies to augment Head Start recruitment and screening. This encourages coordination not only in identification but also in other areas, such as training and transition of children. Some programs have found it strengthens the skills of their staff to have all members learn to do developmental screening. This can be a valuable in-service activity. State requirements for qualifications should be checked. Non-professional screeners should be trained. This approach saves funds for diagnosis and services. Programs should guard against contracting for expensive screening services.

Some programs have used students from schools of nursing, who must carry out screening work as part of their required experience.

Some pediatricians or other physicians include developmental screening in the regular physical examinations they provide under EPSDT.

RAPs can provide information on characteristics of screening instruments.

Guidance for paragraph (c)

Parents should be provided with assistance if necessary, so they can participate in the developmental assessment.

Programs should offer parents assistance in understanding the implications of developmental assessments as well as medical, dental or other conditions for their child's development and learning.

Guidance for paragraph (d)

Developmental assessment is an on-going process and information from observations in the Head Start center and at home should be recorded periodically and updated in each

developmental area in order to document progress and plan activities.

Handicap services coordinators need to be thoroughly familiar with the information on developmental assessment in the *Guide for Education Coordinators in Head Start* (March 1988, developed by Creative Associates, Inc. under contract from the Head Start Bureau). It discusses such informal activities as objective observation, time sampling and obtaining parent information and the use of formal assessment instruments.

Guidance for paragraph (e)

Whenever parents, Head Start staff or other agencies identify children as possible handicapped, Head Start programs must ensure that the initial identification is confirmed or denied by qualified professionals trained in assessing handicapping conditions.

Professionals in areas such as medicine, psychology, special education, speech pathology, physical therapy may each spend time evaluating a child and need to coordinate their activities so that the child's total functioning is being considered. It is good practice to include at least three professionals from different disciplines on a team. Some diagnostic resources already exist as teams with representation from the many professions. The Head Start program, however, must often take the responsibility for coordination of the professionals involved.

Guidance for paragraph (f)

Programs should select diagnosticians familiar with the specific Head Start population, taking into account the age of the children and their cultural and ethnic background as it relates to the overall diagnostic process and the use of specific tests.

Programs should explain that Head Start programs are funded to provide preschool developmental experiences for all eligible children, some of whom have additional special needs caused by a handicapping condition. The intent of the diagnostic procedures is to identify children who have handicapping conditions, so they can receive appropriate assistance. It is not the intent to provide services for children for whom basic Head Start programming is designed and who may show developmental delays which can be overcome by a comprehensive program meeting the Head Start Performance Standards.

It is important that the Head Start diagnostic criteria be explained to the diagnosticians and that they be informed as to how the results will be used. Programs should inform diagnosticians that Head Start requires a categorical diagnosis and needs information on how the child is functioning.

Programs should request specific intervention recommendations from the diagnosticians for use in developing the child's IEP and to ensure that parents, teachers and others can best work with the child. Some programs have obtained useful functional information by asking diagnosticians to complete a brief form describing the child's strengths and weaknesses and the effects of the handicap, along with suggestions for special equipment, treatment or services. The diagnosticians should be asked to write their findings in easily understood terms.

When a referral has been made to a diagnostician, Head Start should provide comprehensive information to the diagnostician. This information should include screening results, pertinent observations, as consented to in writing by the parents, and the results of any developmental screenings or assessments which have been completed. Parents and Head Start staff should be involved in conferences held by diagnostic team members. Professional diagnosticians employed as Head Start staff can participate in making professional diagnoses.

It is important that programs ensure that no individual child or family is labeled, mislabled, or stigmatized with reference to a handicapping condition. Head Start must exercise care to ensure that no child is identified as handicapped because of economic circumstances; ethnic or cultural factors; or developmental lags not caused by a handicap, bilingual or dialectical differences, or being non-English speaking.

The selection of the appropriate diagnostic category should include consideration of the way the handicap affects the child's ability to function, as well as the cause of the condition.

For example, one child diagnosed as having fetal alcohol syndrome and manifesting mental retardation as the most disabling condition would be reported in the mental retardation category, whereas another child reported as having fetal alcohol syndrome may be reported in the behavior disorders category if behavior difficulties are the major symptom.

Some children may have a recent diagnosis prior to enrolling in Head Start. In these cases, Head Start should contact the diagnostician for the categorical diagnosis and obtain a functional assessment, if one has not been done. Some already diagnosed children have severe handicaps and a serious need for services. Some of these children may already be receiving some special assistance in other agencies but lack developmental services with other children. Head Start programs may best meet their needs by serving them jointly, saving fund (which would have been used for diagnosis) for the needed services.

Section 1308.7 Diagnostic criteria: Health impairment

Guidance

Many health impairments manifest themselves in other handicapping conditions. Because of this, particular care should be taken when classifying a health impaired child.

Public Health Service regional office dental consultants (and area dental officers for Indian and Migrant programs) may be contracted to provide ongoing professional advice.

As AIDs is a health impairment, grantees will continue to enroll children with such impairments on an individual basis. Coordinators of services for children with handicaps and health coordinators need to be familiar with the Head Start information Memorandum on Enrollment in Head Start Programs of Infants and Young Children with Human Immunodeficiency (HIV), AIDS Related Complex (ARC), or Acquired Immunodeficiency Syndrome (AIDS) dated June 22, 1988. This guidance includes material from the Centers for Disease Control which stresses the need for a team, including a physician, to make informed decisions on enrollment on an individual basis. This is in accord with the nondiscrimination and IEP procedures for all children with handicaps in Head Start. It provides guidance in the event that a child with a handicap might present a problem involving biting or bodily fluids. The guidance also discusses methods for control of all infectious diseases through stringent cleanliness standards and includes lists of Federal, State and national agencies and organizations that can provide additional information as more is learned.

Suggested Primary Members of An Evaluation Team for the Health Impaired:

Physician.
Pediatrician.
Other specialists related to specific disabilities.
Dentist.

Possible Related Services:

Family counseling.
Genetic counseling.
Maintenance of apparatus which assists in breathing, feeding or toileting.
Nutrition counseling.
Recreational therapy.
Supervision of physical activities
Transportation.

Section 1308.8 Diagnostic criteria: behavior disorders

Guidance

Intervention is needed when these behaviors cause distress to the child, the child's peers, or to the child's caregivers, and when they interfere with the child's ability to function. Behavior patterns unique to particular cultures should not result in the classification of a child as having a behavior disorder.

Suggested Primary Members of an Evaluation Team for Behavior Disorders:

Psychologist, psychiatrist or other clinically trained and State-qualified mental health professionals.
Pediatrician.

Possible Related Services:

Behavior management.
Environmental adjustments.
Family counseling.
Psychotherapy.
Transportation.

Section 1308.9 Diagnostic criteria: communication impairment

A language disorder may be receptive or expressive. A language disorder may be characterized by difficulty in understanding and producing language, including word meanings (semantics), the components of words (morphology), the components of sentences (syntax), or the conventions of conversation (pragmatics).

A speech disorder occurs in the production of speech sounds (articulation), the loudness, pitch or quality of voice (voicing), or the rhythm of speech (fluency).

A child should not be classified as having a communications impairment whose speech or language differences may be attributed to:

(1) Cultural, ethnic, bilingual, or dialectical differences, or being non-English speaking; or

(2) Disorders of a temporary nature due to conditions such as a dental problem.

Suggested Primary Members of an Evaluation Team for Communication Impairment:

Speech Pathologist.
Language Pathologist.
Audiologist.
Otolaryngologist.
Psychologist.

Possible Related Services:

Environmental adjustments.
Family counseling.
Language therapy.
Speech therapy.
Transportation.

Section 1308.10 Diagnostic criteria: mental retardation

Guidance

Diagnostic instruments with age-appropriate norms should be used. These should be administered and interpreted by professionals sensitive to racial, ethnic and linguistic differences. The diagnosticians must be aware of sensory or perceptual impairments the child may have (e.g., a child who is visually impaired should *not* be tested with instruments that rely heavily on visual information as this could produce a depressed score from which erroneous diagnostic conclusions might be drawn).

A child with Down Syndrome, or other syndromes, should be included in this category when mental retardation is the primary handicapping condition.

Suggested Primary Members of an Evaluation Team for Mental Retardation:

Psychologist.
Pediatrician.

Possible Related Services:

Environmental adjustments.
Family counseling.
Genetic counseling.
Language therapy.
Occupational therapy.
Physical therapy.
Recreational therapy.
Speech therapy.
Transportation.
Nutrition counseling.

Section 1308.11 Diagnostic criteria: hearing impairment

Suggested Primary Members of an Evaluation Team for Hearing Impairment:

Audiologist.
Otolaryngologist.

Possible Related Services:

Auditory training.
Aural habilitation.
Environmental adjustments.
Family counseling.
Genetic counseling.
Language therapy.
Medical treatment.
Speech therapy.
Total communication.
Transportation.
Use of amplification.

Section 1308.12 Diagnostic criteria: orthopedic impairment

Suggested Primary Members of an Evaluation Team for Orthopedic Impairment:

Pediatrician.
Orthopedist.
Neurologist.
Occupational Therapist.
Physical Therapist.

Possible Related Services:

Environmental adjustments.
Family counseling.
Language therapy.
Medical treatment.
Occupational therapy.
Physical therapy.
Recreational therapy.
Speech therapy.
Transportation.
Nutrition counseling.

Section 1308.13 Diagnostic criteria: blindness and visual impairment

Guidance

Primary Members of an Evaluation Team for Visual Impairment:

Ophthalmologist.
Optometrist.

Possible Related Services:

Environmental adjustments.
Family counseling.
Occupational therapy.
Orientation and Mobility training.
Pre-Braille training.
Recreational therapy.
Sensory training.
Transportation.
Vision therapy.

Section 1308.14 Other impairments

Guidance

This category was included to ensure that any Head Start child with a handicap who meets the State eligibility criteria for services to preschool children with handicaps obtains needed special services either within Head Start or the State program.

Suggested Primary Members of An Evalution Team for Other Impairments Meeting State Eligibility Criteria for Services to Perschool Children with Handicaps:

Pediatrician.
Psychologist.
Other specialists with expertise in the appropropriate area(s).

Possible Related Services:

Special services based on the child's difficulties and needs which could include occupational therapy, physical therapy or speech or language therapy.
Family Counseling.
Environmental Adjustments.
Transportation.

Section 1308.15 Handicap/health services coordination

Guidance for paragraph (a)

It is important to maintain close communication concerning children with health impairments. Health and handicap services coordinators need to schedule frequent re-tests of children with recurrent middle ear infections and to see that they receive on-going medical treatment to prevent speech and language delay. They should see that audiometers are calibrated annually for accurate testing of hearing. Speech and hearing centers, the manufacturer, or public school education service districts should be able to perform this service. In addition, a daily check when an audiometer is in use and a check of the acoustics in the testing site are needed for accurate testing.

Approximately 17% of Down Syndrome children have a condition of the spine (atlanto-axial instability) and should not engage in somersaults, trampoline exercises, or other activities which could lead to spinal injury without first having a cervical spine x-ray.

Guidance for paragraph (b)

The handicap services coordinator needs to assure that best use is made of mental health consultants. When a child appears to have a problem which may be a handicap in the social/emotional area, teachers, aides and volunteers should keep anecdotal records of the child's activities, tantrums, language use, etc. These can provide valuable information to a mental health consultant, who should be paid primarily to make specific recommendations and assist the staff rather than to document the problem.

The mental health coordinator can cooperate in setting up group meetings for parents of handicapped children which provide needed support and a forum for talking over mutual concerns. Parents needing services from community mental health services may need direct assistance in accessing services, especially at first.

The handicap services coordinator needs to work closely with staff across components to help parents of non-handicapped children become more understanding and knowledgeable about handicaps and ways to lessen their effects. This can help reduce the isolation some families with handicapped children experience.

Guidance for paragraphs (c) and (d)

Arrangements should be made with the family and the physician to schedule the administration of medication during times when the child is most likely to be under parental supervision.

Special awareness of possible side effects is of particular importance when treatment for a special handicapping condition requires administration of potentially harmful drugs (e.g., anti-convulsants, amphetamines).

Section 1308.16 Nutrition services

Guidance for paragraph (a)

Vocabulary and concept building, counting, learning place settings and acceptable manners can be naturally developed at meal or snack time and socialization enhanced. Handicapped children often need planned attention to these areas.

The staff person who is responsible for nutrition and the handicap services coordinator should work with the social services coordinator to help families access nutrition resources and services for children who are not able to learn or develop normally because of malnutrition.

The staff person who is responsible for nutrition and the handicap services coordinator should alter staff to watch for practices leading to baby bottle caries, severe tooth decay caused by putting a baby or toddler to bed with a nursing bottle containing milk, juice or sugar water. The serious dental and speech problems this causes are completely preventable.

In cases of severe allergies, staff should work closely with the child's physician.

Section 1308.17 Recruitment and enrollment of handicapped children

Guidance for paragraph (a)

In cooperation with other community groups and agencies serving handicapped children, Head Start programs should incorporate in their outreach and recruitment procedures efforts to identify and enroll children with handicapping conditions who meet eligibility requirements and whose parents desire the child's participation. Section 504 of the Rehabilitation Act of 1973 (20 U.S.C. 794) states that any program receiving Federal funds may not deny admission to a child solely on the basis of the nature or extent of a handicapping condition and shall take into account the needs of the child in determining the aid, benefits, or services to be provided.

The handicap services coordinator's responsibility includes providing current names of appropriate specialized agencies serving young children with disabilities and names of public school Child Find contact people to the social services coordinator. It also includes learning what resources other agencies have available and the eligibility criteria for support from State agencies, Supplemental Security Income (SSI), Migrant Health Centers, Developmental Disabilities, Bureau of Indian Affairs, third party payers such as insurance companies and other sources.

Head Start programs are encouraged to join or help develop community efforts for identification and referral of children and families. Examples of appropriate referral sources include: hospital child life programs, SSI disabled or handicapped children's programs, EPSDT providers, infant stimulation programs, Easter Seal and United Cerebral Palsy agencies, mental health agencies, University Affiliated Programs, the local education agency Child Find and the medical community.

Head Start programs are encouraged to increase the visability of the Head Start mainstreaming effort within the community by:

—Including community child service providers on policy council health and handicap advisory boards and in other relevant Head Start activities;

—Making presentations on Head Start mainstreaming experiences at local, State and regional meetings and conferences, such as the National Association for the Education of Young Children, Council for Exceptional Children, and Association for the Care of Children's Health.

—Participating in interagency planning activities for preschool infant and toddler programs such as those supported under the Education of the Handicapped Act Amendments of 1986, Pub. L. 99-457.

Guidance for paragraph (b)

Head Start programs should maintain records of outreach, recruitment, and service activities for handicapped children and their families.

Each program should develop a policy on what types of information must be included in a comprehensive file for each handicapped child. The policy should outline the location(s) where a copy of each record will be sent. For example, while a comprehensive file will be maintained at the Head Start program's central office (where the handicap services coordinator and component coordinators may be based), a teacher must have access to a child's IEP and progress notes in order to plan effectively. Confidentiality must be maintained in a manner which allows for access to information by appropriate staff.

Programs should arrange to share information on numbers of handicapped children served with the local public schools for planning purposes.

Section 1308.18 Parent participation and transition of children from Head Start to public school

Guidance for paragraph (a)

The handicap services coordinator needs to help parents understand that their active participation is of great importance in helping their children overcome or lessen the effects of handicaps. The coordinator should work to increase the ability of parents to access resources independently. For example, after accompanying parents on difficult missions, such as applying for SSI payment eligibility, staff should phase out assistance and structure easier independent experiences.

The handicap services coordinator should help program staff deal realistically with parents of children who have unfamiliar handicaps by providing the needed information, training and contact with consultants or specialized agencies. The coordinator should ensure that staff carrying out family needs assessment or visits do not overlook possible handicaps among younger siblings who should be referred for early evaluation and preventive actions.

Guidance for paragraphs (b) and (c)

As most Head Start children will move into the public school system, handicap services coordinators need to work with the Head Start staff for early and ongoing activities designed to minimize discontinuity and stress for children and families as they move into a different system. As the ongoing advocates, parents will need to be informed and confident in communicating with school personnel and staff of social service and medical agencies. Handicap services coordinators need to ensure that the Head Start program:

—Provides information on services available from schools and sources of services parents will have to access on their own, such as dental treatment;

—Informs parents of the differences between the two systems in role, staffing patterns, schedules, and focus;

—Provides opportunities for mutual visits by staff to one another's facilities to help plan appropriate placement;

—Familiarizes parents and staff of the receiving programs' characteristics and expectations;

—Provides early and mutually planned transfer of records with parent consent at times convenient for both systems;

—Provides information on services available under the Education of the Handicapped Act and provisions for parent involvement and due process; and

—Provides opportunities for parents to confer with staff to express their ideas and needs so they have experience in participating in IEP and other conferences in an active, confident manner. Role playing has been found helpful.

It is strongly recommended that programs develop plans with local school systems for smooth transition. In order to be effective, such plans must be developed jointly. They are advantageous for the children, parents, Head Start and the public school. RAPs have gathered and developed materials useful for transition. Programs in isolated areas need to pay particular attention to transition. For example, American Indian programs whose children move into several systems, such as Bureau of Indian Affairs schools and public schools, need to prepare children and families in advance for the new situation. Plans should be used as working documents and reviewed for annual update, so that the foundation laid in Head Start is maintained and strengthened.

PART 1304—PROGRAM PERFORMANCE STANDARDS FOR OPERATION OF HEAD START PROGRAMS BY GRANTEES AND DELEGATE AGENCIES

2. The authority citation for Part 1304 is revised to read as follows:

Authority: 42 U.S.C. 9801 *et seq.*

3. In Part 1304, wherever the term "OCD" is used change to "ACYF" and wherever the term "Office of Child Development" is used change to "Administration for Children, Youth and Families."

4. Section 1304.1–2 is proposed to be amended by revising paragraphs (a), (c) and (i) to read as follows:

§ 1304.1–2 Definitions.

* * * * *

(a) The term "ACYF" means the Administration for Children, Youth and Families, Office of Human Development Services, U.S. Department of Health and

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Human Services, and includes appropriate regional office staff.

* * * * *

(c) The term "Commissioner" means the Commissioner of the Administration for Children, Youth and Families.

* * * * *

(i) The term "handicapped children" means mentally retarded, hard of hearing, deaf, speech or language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or other health impaired children or children with specific learning disabilities who by reason thereof require special education and related services.

5. Section 1304.3–3 is proposed to be amended by revising paragaph (b) introductory text to read as follows:

§ 1304.3–3 Medical and dental history, screening and examinations.

* * * * *

(b) Health screenings must be completed within 45 days after the child is enrolled or entered into the program and must include:

* * * * *

PART 1305—ELIGIBILITY REQUIREMENTS AND LIMITATIONS FOR ENROLLMENT IN HEAD START

6. The authority citation for Part 1305 is revised to read as follows:

Authority: 42 U.S.C. 9801 *et seq.*

7. Section 1305.2 is proposed to be amended by revising paragraph (b)(3) as follows:

§ 1305.2 Definitions.

* * * * *

(b) * * *

(3) The term "handicapped children" means mentally retarded, hard of hearing, deaf, speech or language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or other health impaired children or children with specific learning disabilities who by reasons thereof require special education and related services.

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Part VI

Environmental Protection Agency

Regulation of Pesticides in Food: Addressing the Delaney Paradox Policy Statement; Notice

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ENVIRONMENTAL PROTECTION AGENCY

[OPP-260052; -FRL-3384-3]

Regulation of Pesticides in Food: Addressing the Delaney Paradox Policy Statement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This Notice announces a change in the position EPA will take in rulemaking proceedings under section 409 of the Federal Food, Drug, and Cosmetic Act (FFDCA) concerning certain pesticides intended for use in food production. EPA's position will be that the section 409's so-called Delaney Clause—which, read literally, purports to bar absolutely the issuance of a food additive regulation for a food additive that has been found to induce cancer in test animals—is subject to a *de minimis* exception where the human dietary risk from residues of the pesticide is at most negligible. This change in position is intended to foster greater consistency in actions EPA will take with respect to the registrations of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and tolerances for pesticide residues on food under sections 408 and 409 of the FFDCA. Elsewhere in this issue of the Federal Register, the Agency is proposing new procedural rules for establishing, modifying, and revoking section 409 food additive regulations, as well as procedural rules governing the filing of objections, requests for hearings, and the holding of hearings under sections 408 and 409. This Notice also discusses how EPA plans to approach the issue of what risks might be considered "negligible." This Notice provides the Agency's response to the recommendations of the recent National Academy of Sciences report entitled "Regulating Pesticides in Food: The Delaney Paradox". Public comment is invited on this Notice.

ADDRESS: Comments should bear the document control number "OPP-260052", and be submitted in triplicate to: Public Docket and Freedom of Information Section, Field Operations Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: William L. Jordan, Policy and Special Projects Office, Office of Pesticide Programs (TS-766C), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Office location and telephone number: Room 1115, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-7102).

SUPPLEMENTARY INFORMATION:

I. Introduction

The Environmental Protection Agency is responsible for regulating the sale and use of pesticide products under the authority of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), (7 U.S.C. 136 *et seq*). FIFRA contains a standard for registration that allows EPA to take both the risks and the benefits of a pesticide's use into account.

The Agency also regulates pesticide residues on food under sections 408 and 409 of the Federal Food, Drug and Cosmetic Act (FFDCA) (21 U.S.C. 346a, and 348). Food is "adulterated" and subject to seizure under the FFDCA if it is found to bear pesticide residues that are not permitted by appropriate section 408 and 409 tolerances. Section 408 of the FFDCA, like the FIFRA, gives the Agency authority to balance risks and benefits in reaching regulatory decisions with respect to pesticide residues on raw agricultural commodities section 409 of the FFDCA governs the establishment of food additive regulations (often called 409 tolerances) in processed food and feed. EPA interprets section 409 to also allow EPA to consider benefits to food consumers in reaching its decisions unless the Delaney Clause applies. However, the Delaney Clause of section 409, if read literally, is a risk-only standard that bars the establishment of any food additive regulation that would authorize residues in or on processed food or feed of any pesticide that has been found to induce cancer when ingested by man or test animals, with certain limited exceptions.

The difference in the standards of these two statutes presents EPA with a major problem in regulating certain pesticide chemicals which have been found to induce cancer in test animals. Such pesticides may be ineligible for food additive regulations under the FFDCA even if they have been found to pose no unreasonable risk to humans and qualify for registration under FIFRA. This problem may arise in three situations: (1) When a food additive regulation is sought for a new pesticide chemical (or a new use of a currently registered chemical) that induces cancer in animals; (2) when new residue data indicate a need for a food additive regulation for a registered pesticide known to induce cancer in animals; or (3) when new toxicity data show that a registered pesticide for which food additive regulations have been established induces cancer in animals.

In the first situation, the issue is whether to allow the pesticide to enter the market or to be marketed initially for a particular food use. EPA's current regulations prohibit FIFRA registration until the issuance of any needed tolerances and food additive regulations associated with the pesticide's use. The second and third situations require EPA to decide whether to make unlawful the marketing of a pesticide for those previously-approved food uses subject to section 409. The number of uses in these latter two categories is increasing as EPA receives more and more toxicity and residue data. Of significant concern are the differences in the standards now applied to old and new pesticides. Under current Agency practice, as described more fully later in this Notice, a new pesticide that poses a relatively low risk of cancer may be barred from registration because of Delaney Clause constraints, while an old pesticide that poses a higher risk and that is used for the same purposes might remain on the market.

To address these issues, in February 1985 the Agency commissioned the Board on Agriculture of the National Research Council/National Academy of Sciences ("NAS") to examine the impact of the Delaney Clause on the tolerance-setting process and on EPA decision-making. The NAS committee formed to conduct this study included experts in agricultural pest control, pesticide development, agricultural economics, cancer risk assessment, public health, food science, regulatory decision making, and law.

The detailed report prepared by the NAS, entitled "Regulating Pesticides in Food: The Delaney Paradox," was issued on May 20, 1987. The report set forth four main recommendations:

1. Pesticide residues in food, whether marketed in raw or processed form or governed by old or new tolerances, should be regulated on the basis of consistent standards. Current law and regulations governing residues in raw and processed foods are inconsistent with this goal.

2. A negligible risk standard for carcinogens in food, applied consistently to all pesticides and to all forms of food, could dramatically reduce total dietary exposure to oncogenic pesticides with modest reduction of benefits.

3. EPA should focus its energies on reducing risk from the most worrisome pesticides on the most-consumed crops.

4. The EPA should develop improved tools and methods to more systematically estimate the overall impact of prospective regulatory actions on health, the environment, and food production.

The Agency has evaluated the recommendations of the NAS, and as discussed later in this document, has reached conclusions about what would be an ideal policy, one that would be based on the NAS recommendations. In summary under this ideal policy, the Agency would apply a uniform set of criteria to all FIFRA registration decisions and all FFDCA section 408 tolerance and section 409 food additive regulation decisions. If a pesticide's use would pose no risk or only a negligible risk, the pesticide's use would be approved under both Acts without any particular scrutiny of benefits. This has for some time been EPA's practice with respect to decisions on pesticides that pose only non-cancer risks, and with respect to decisions under FIFRA and under FFDCA section 408 on pesticides that may pose cancer risks. (EPA has assumed that an applicant's willingness to expend the sums required to obtain registration of a pesticide, in the expectation of recovering those sums by sales of the pesticide, indicates that the pesticide's use will yield benefits that are greater than negligible.) Under the ideal policy, registrations and the associated tolerances and food additive regulations similarly would be granted for pesticides that pose at most a negligible risk of cancer to humans (and meet the other requirements of FIFRA and the FFDCA). For those pesticides deemed to pose a greater-than-negligible risk, a risk/benefit evaluation would determine the appropriateness of FIFRA registration and FFDCA clearances under sections 408 and 409. The greater the degree of risk, the greater the benefits that would have to be shown to justify approval, and the more intensive would be the benefits evaluation required to reach a regulatory decision.

Implementation of this ideal policy, however, is subject to the constraints imposed by the Delaney Clause. In the case of a use of a pesticide that requires a section 409 clearance and that poses a cancer risk that is greater than negligible, the Delaney Clause ordinarily bars approval of the use; the Agency is unaware of any legal theory that would justify a change in its current practice of refusing to issue new food additive regulations in such situations (with certain exceptions discussed in detail later in this Notice). However, for pesticides that pose at most a negligible risk of cancer and whose use requires section 409 clearances, EPA will change its current practice to the extent that, in the future, EPA will propose to issue food additive regulations on the basis of the *de minimis* doctrine, described in Unit II of this Notice.

The Agency wishes to make it clear that the interpretations and policy changes it is announcing today have no final effect with respect to any individual pesticide. This Notice relates primarily to the regulatory treatment of some pesticides under FFDCA section 409. Any food additive regulation that EPA may issue in reliance on the *de minimis* doctrine discussed in this Notice will be preceded by issuance of a proposed rule, and also will be referred to the FIFRA Scientific Advisory Panel. Section 409(b) and 409(h) allow "any person" to petition EPA to issue, modify, or revoke a section 409 food additive regulation, and section 409(c) says that EPA must act on such a petition. Under section 409(f), any "adversely affected person" (a term that has been given a very inclusive reading by the courts) may object to an EPA action taken either in response to a section 409(b) petition or at EPA's own initiative under section 408(d). EPA must rule on the objection; if factual matters are at issue, EPA first must hold a formal evidentiary hearing to produce a record upon which the ruling must be based. Although this Notice sets forth positions that the Agency expects to take initially in relevant proceedings arising under FFDCA section 409, EPA decisional officials will be open to all arguments presented in those proceedings and will base their final decisions on the merits of the arguments presented. See *McLouth Steel Products Corp. v. Thomas*, 838 F. 2d 1317 (D.C. Cir. 1988). Judicial review of rulings on individual objections under FFDCA section 409 is available only in the manner described by section 409(g). EPA will take the position that this Notice is not itself properly the subject of judicial review because it lacks the requisite finality.

A detailed discussion of the policy changes involved is set forth in Unit III. of this Notice.

II. Legal and Regulatory Background

EPA often must apply four different and sometimes conflicting statutory standards in deciding whether a particular pesticide may be used in food production: one under the FIFRA and three under the FFDCA.

A. The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)

The sale, distribution, and use of pesticides in the United States are governed directly by the FIFRA and are also influenced heavily by the FFDCA. FIFRA requires that all pesticides which are sold or distributed in the United States be registered in accordance with the statutory standard for registration set forth in FIFRA. That standard requires, among other thing, that the pesticide perform its intended function without causing "unreasonable adverse effects on the environment." (FIFRA section 3(c)(5)). The term "unreasonable adverse effects on the environment" is defined as "any unreasonable risk to man or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide," (FIFRA section 2(bb)). Under FIFRA section 6, EPA may cancel the registration of a use of a pesticide [1] (or require modifications in the terms and conditions of registration in lieu of cancellation) if the Agency determines that the risks of use of the pesticide outweigh the benefits of the use.

EPA regulations (40 CFR 162.7(d)(2)(iii)(E)) and 162.167(a)(4), redesignated as 40 CFR 152.112, 152.113, and 152.114, see 53 FR 15952, May 4, 1988) provide that a registration may not be granted if "the intended use of the pesticide results or may reasonably be expected to result, directly or indirectly, in residues of the pesticide becoming a component of food or feed," unless the necessary sections 408 and 409 clearances have been issued.

This requirement assures that a pesticide use will not be registered for a food crop unless the Agency has determined that the resulting pesticide residues in or on the crop will not exceed a safe level. Moreover, by examining the pesticide use under the statutory scheme as a whole and assuring that the criteria of both FIFRA and FFDCA are met, the Agency avoids the potential for residues that are illegal under the FFDCA appearing in or on foods as a result of pesticide use that is legal under FIFRA. It has been EPA's belief that pesticide users and food processors should be able to safely assume that a pesticide registered under FIFRA has the appropriate clearances under the FFDCA for the food uses listed on the FIFRA label.

B. Sections 408 and 409 of the Federal Food, Drug and Cosmetic Act (FFDCA)

Under FFDCA section 402, a raw agricultural commodity is adulterated if

[1] The decision to cancel a pesticide can result from a Special Review, an intensive review of the risks and benefits of a pesticide which meets or exceeds risk criteria set forth in 40 CFR Part 154. The Agency also can take action to cancel (and, if necessary, to suspend during the cancellation proceedings) the registration of a pesticide whose risks appear to exceed its benefits, without first going through the Special Review process.

it contains a pesticide residue not authorized by a FFDCA section 408 tolerance (maximum permissible level) or an exemption from the requirement of a tolerance. An adulterated commodity sold or distributed in interstate commerce is subject to seizure by the Food and Drug Administration (FDA).[2]

To establish a tolerance or exemption regulation under section 408, the Agency must find that the regulation would "protect the public health." (FFDCA section 408(b)). In reaching this determination, the Agency is directed to consider, among "other relevant factors," the necessity for the production of an adequate, wholesome, and economical food supply, and the other ways in which the consumer may be affected by the pesticide. Thus, in the Agency's view, section 408 of the FFDCA expressly gives the Agency the authority to balance risks against benefits in determining appropriate tolerance levels.

Under FFDCA section 402, food is adulterated (and hence subject to seizure) if it contains any food additive (including any pesticide residue) not authorized by a section 409 food additive regulation. An important exception to this provision is that a processed food containing pesticide residues resulting from the "carryover" from treatment at the raw agricultural commodity stage is not regarded as adulterated if the residue level in such a food is no greater than that allowed by the section 408 tolerance established for the raw agricultural commodity.

The establishment of a food additive regulation under section 409 requires a finding under the "general safety clause" in section 409(c)(3) that the use of the pesticide "will be safe." The only direct guidance given by the Act as to the meaning of the term "safe" is that the term "has reference to the health of man or animal," (FFDCA section 201(u)). Factors to be considered in making this "general safety clause" determination are (1) the probable consumption of the pesticide or its metabolites; (2) the cumulative effect of the pesticide in the diet of man or animals, taking into account any related substances in the diet; (3) appropriate safety factors to relate the animal data to the human risk evaluation; and (4) "other relevant factors." FFDCA Section 408(c)(5)).

Appendix A contains a discussion of the procedures followed by the Agency in evaluating safe residue levels for tolerances and food additive regulations.

The general safety clause in section 409(c)(3) has been construed by the Agency to allow the weighing of benefits and risks when issuing food additive regulations. The legislative history indicates that section 409 was intended to permit the use of food additives "which may benefit our people and our economy when the proposed usages of such additives are in amounts accepted * * * as safe," and that "the test which should determine whether or not a particular additive may be used in a specific percentage of relationship of the volume of the product to which it might be added should be that of reasonable certainty in the minds of competent scientists that the additive is not harmful to man or animal." (S. Rep. No. 2422, 85th Cong. 2d Sess., August 18, 1958, at 2–3). In EPA's view, the determination of whether use of a pesticidal food additive is "not harmful" or is "safe" should take into account the net effects of use of the additive on the food supply, including the benefit (or to put it another way the avoidance of harm) to an adequate, wholesome, and economical supply of food that may result from a pesticide's use as well as any harm to the food supply that may result from the pesticide's use. At least for residues of pesticide chemicals, EPA believes that this kind of benefit should be regarded as one of the "relevant factors" EPA may consider under FFDCA section 409(c)(5), even though it is not listed specifically there as it is in section 408(b). A risk/benefit reading of the general safety clause also was adopted by the one court that has addressed the issue.[3] FDA, however, has tended to interpret the section 409 general safety clause as a criterion that focuses solely on the risks to the food supply caused by the food additive, as opposed to the risks avoided, and this view has considerable support in the legislative history of section 409 and in scholarly journals.

C. The Delaney Clause

The one clear exception to the Agency's latitude to balance risks and benefits for food additives under section 409 is the "Delaney Clause" in section 409(c)(3). The Delaney Clause states that a food additive shall not be deemed safe "if it is found to induce cancer when ingested by man or animal or if it is found, after tests which are appropriate for the evaluation of the safety of food additives, to induce cancer in man or animal." Because FFDCA section 408 contains no counterpart to the Delaney Clause, the Agency has the authority to evaluate the risk posed by the presence of residues of a carcinogenic pesticide in a raw agricultural commodity, and to establish a section 408 tolerance at a level which will protect the public health, taking benefits to the food supply into account. As long as the processed food does not contain residues above the level allowed in the raw agricultural commodity, residues of that carcinogenic pesticide may legally be present in such processed food. However, where residues of the chemical concentrate above the section 408 tolerance level during processing, or result from use of a pesticide during or after processing, a food additive regulation might not be appropriate because of the Delaney Clause bar. The Delaney Clause contains an express exception (the "DES proviso") that allows a carcinogenic ingredient of animal feed to be found "safe" if such ingredient will not adversely affect the animal and if "no residue" of the substance will be found, by an Agency-approved method, in any edible food yielded or derived from the treated animal. FDA has concluded that the provision should be implemented by a "sensitivity-of-method" approach that allows a carcinogenic ingredient to be added to animal feed if "no residues" of that ingredient are detectable by an FDA-approved analytical method that is sensitive enough to detect any level of residue representing a lifetime excess human cancer risk of more than one in a million (44 FR 17070).[4] The FDA

[2] Under Reorganization Plan No. 3 of 1978, which established EPA, the authority to set tolerances for pesticide chemicals in raw agricultural commodities and processed food under FFDCA sections 408 and 409 respectively was transferred from FDA to EPA. FDA enforces most of the pesticide tolerances and food additive regulations that EPA issues, along with the many non-pesticide food additive regulations that FDA issues. The U.S. Department of Agriculture enforces the tolerances and food additive regulations with respect to meat, poultry, and egg products.

[3] In *Continental Chemiste Corp. v. Ruckelshaus*, 461 F.2d 331, 340–341 (7th Cir. 1972), a case dealing with the relationship of FIFRA and FFDCA, the court stated that "[t]he test of safety [contained in the general safety clause of section 409] was intended to take into account the broader concept of safety under the intended conditions of use; the benefits of the additive were to be evaluated rather than merely its potential for harm. in short, in making its ultimate determination whether new additives, or food containing them, may be marketed, [the FFDCA] employs the kind of substantive standard of product safety embodied in [the pre–1972] FIFRA's 'injury to man' concept, rather than a discrete consideration of the character of the additive itself." In discussing this "injury to man" concept, the court noted that "the substantive standards, phrased in terms of protection of the public and impact on living man, require consideration of the aggregate effect of a product's use upon the environment, including not only its potential for harm, but also the benefits which would be lost by removing it from the market." *Id.* at 338.

[4] FDA has analyzed the meaning of the DES proviso in proposed regulations published in the

approach incorporates a series of conservative assumptions for calculating the allowable residue levels in individual food items and in the total diet.

EPA has used the sensitivity-of-method approach in two actions establishing food additive regulations, one concerning thiodicarb and its possibly oncogenic metabolite acetamide on the animal feeds cottonseed hulls and soybean hulls (50 FR 27452, July 3, 1985; 50 FR 41341, October 10, 1985), and another concerning cyromazine and its possibly oncogenic metabolite melamine in or on poultry feed (49 FR 18120, April 27, 1984; 50 FR 20370, May 15, 1985).

If the chemical induced cancer in animal studies in which the route of exposure was other than ingestion, the Delaney Clause by its own terms applies only if the tests in question "are appropriate for the evaluation of the safety of food additives." The Agency thus has discretion to decide whether a test showing cancer induction as a result of, e.g., dermal exposure to a chemical is "appropriate" for Delaney Clause purposes.

Two administratives doctrines, the "constituents policy" and the *de minimis* approach, also in EPA's view allow the establishment of food additive regulations in appropriate situations. The "consituents policy," developed by FDA, relies on the fact that the prohibitory language of the Delaney Clause pertains to any food additive, that has been shown to induce cancer in animals, but does not bar approval where an unwanted impurity (a "constituent") of the additive, tested by itself, is found to induce cancer. Thus, under the constituents policy, a food additive regulation may be established if the food additive as a whole does not cause cancer, even though the additive contains an undesired, nonfunctional constituent which is itself a carcinogen. In this situation, the impurity is judged under the general safety provisions of the applicable section of the FFDCA, using risk assessment as one of the decision-making tools. The Sixth Circuit Court of Appeals has upheld FDA's use of the constituents policy to interpret the color additives Delaney Clause provision in section 706(b)(5)(B) of the statute. (*Scott v. FDA*, 728 F. 2d 322 (6th Cir. 1984)). This provision contains a prohibition closely similar to that found in the section 409 Delaney Clause.

Federal Register of March 20, 1979 (44 FR 17070), and February 11, 1983 (48 FR 6361). FDA's final rule establishing procedures implementing this sensitivity-of-method approach was published on December 21, 1987 (52 FR 48577).

EPA has used the constituents policy in a rulemaking establishing a food additive regulation for dicamba in sugarcane molasses. Dicamba itself is not thought to be oncogenic; however, the pesticide formulation contains small amounts of a carcinogenic nitrosamine contaminant. EPA found the potential risk attributable to the presence of this contaminant to be very small, i.e., with an upper limit in the 10^{-8} range. Accordingly, the agency concluded that the requirements of section 409 were satisfied. (48 FR 11119, March 16, 1983; 48 FR 34024, July 27, 1983; 48 FR 50528, November 2, 1983).

In discussing its use of the "constituents policy" approach for dicamba, EPA noted that it does not regard deliberately added active or inert ingredients, or metabolites thereof, as potential candidates for clearance under the constituents policy. Rather, the Agency said it would only consider applying the rationale to unwanted impurities resulting from the manufacture of the pesticide (intermediates, residual reactants, products of side reactions, and chemical degradates). Furthermore, the Agency said that it would consider using this rationale in issuing a food additive regulation only where the potential risk from the impurity is extremely low, and that in estimating this risk, the Agency would rely on very conservative risk estimation methodology. (48 FR 34024, July 27, 1983).

Finally, the *de minimis* approach derives from case law holding that an administrative agency ordinarily has the inherent authority to avoid applying the terms of a statute literally when to do so would yield pointless results.[5] Two conditions are necessary to allow an agency to invoke the *de minimis* doctrine. First, the problem that would be addressed by regulation must be trivial in fact, such that no real benefit would result from regulation. Second, the legislative design must allow the Agency not to apply the statute literally in such a case.

In a recent case addressing the Delaney Clause contained in the color additive provisions of the FFDCA enacted in 1960 (*Public Citizen v. Young*, 831 F.2nd 1108 (D.C. Cir. 1987), cert. denied, 108 S.Ct. 1470), FDA argued that the establishment of a *de minimis* exception to the Delaney Clause is consistent with the legislative design, and that conservatively-assessed risks of one in a million (10^{-6}) or less should be regarded as trivial and thus subject to the exception. FDA relied on legislative history indicating that the Delaney Clause should be applied in a reasonable way. But the court rejected FDA's argument that the legislative history of the FFDCA color additive provisions does not preclude the use of the *de minimis* exception. The court held that "the Delaney Clause of the Color Additive Amendments does not contain an implicit *de minimis* exception for carcinogenic dyes with trivial risks to humans" because "Congress adopted an 'extraordinarily rigid' position, denying the FDA authority to list a dye once it found it to 'induce cancer in * * * animals'." (831 F.2nd at 1122). In the court's view, the proper mechanism for obtaining relief from the Delaney Clause with respect to color additives whose risk is trivial is to request that Congress make appropriate modifications to the statute. The food additive Delaney Clause in section 409, adopted in 1958, was not at issue in the case. Indeed, the court noted that the context of the section 409 provision was entirely different from that of the color additive Delaney Clause, and that "the operation of the food additive Delaney Clause raises complex issues distinct from those of this appeal" (id. at 1120, 1118 n. 13). The court suggested, moreover, that the legislative history of the section 409 Delaney Clause might lead to a different result (id. at 1120).

The Delaney Clause has long been regarded as allowing the administering agency to exercise scientific judgment and discretion in deciding whether a food additive "induces cancer" in animals.[6] EPA has generally assumed that, for purposes of the Delaney Clause, a substance "induces cancer" in animals if, in a well-conducted animal feeding study, a statistically significant increase in the incidence of histologically related tumors (benign, malignant, or combined)

[5] See *Alabama Power Co. v. Costle*, 636 F.2d 323, 360 (D.C. Cir. 1979); *District of Columbia v. Orleans*, 406 F.2d 957, 959 (D.C. Cir. 1968); *Environmental Defense Fund, Inc. v. EPA*, 489 F.2d 1247, 1254 n. 46 (D.C. Cir. 1980).

[6] See, e.g., the 1980 statement by Arthur S. Fleming, Secretary of Health, Education and Welfare, that the Delaney Clause "allows the Department and its scientific people full discretion and judgment in deciding whether a substance has been shown to produce cancer when added to the diet of test animals," cited with approval in the Report of the House Committee on Interstate and Foreign Commerce on the Color Additive Amendments of 1960 (H.R. Rep. No. 1761, 85th Cong. 2d Sess., June 7, 1960) at 14. See also the May 1980 report of the President's Science Advisory Committee, noting that "[t]he definition of a carcinogen implicit in the language of section 409(c) requires discretion in its interpretation because so may variables enter into a judgment as to whether a particular substance is or is not carcinogenic," cited with approval in the Senate floor debate on reconsideration of the Delaney Clause in the Color Additive Amendments of 1960. Congressional Record 15380 (July 1, 1960).

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is observed in treated animals compared to concurrent control animals, unless there is a reason to conclude that the observed increase is unrelated to the ingestion of the test substance. Under this approach, a pesticide may be found to "induce cancer" in animals despite the fact that increased tumor incidence occurs only at high doses, or that only benign tumors occur, and despite negative results in other animal feeding studies. FDA has taken a similar approach in assessing data for the purposes of the Delaney Clause.[7]

There is at least "limited evidence" of carcinogenicity (virtually all from animal studies) for 66 or more of the approximately 350 food-use pesticides already approved for use, under the classification scheme set forth in EPA's "Guidelines for Carcinogen Risk Assessment," (51 FR 33992, September 24, 1986), described in Appendix A. EPA expects this number to become somewhat larger as it receives and evaluates more studies on the food-use pesticides.[8] A substantial portion of these pesticides require section 409 food additive regulations for one or more of their uses. Appendix B lists those pesticides which currently have been identified by the Agency as potential carcinogens and indicates which ones have, or have recently been determined to need, section 409 food additive regulations.

D. Current Policy Has Been Constrained by the Delaney Clause

From the foregoing discussion, it is apparent that if EPA determines that a pesticide poses a cancer risk that is greater than negligible and that outweighs the pesticide's benefits, the pesticide's FIFRA registration should be cancelled and its FFDCA sections 406 and 409 clearances should be revoked. There is no conflict between the various standards in such a case, and EPA's current practice reflects this lack of conflict.

Difficulties arise in the two remaining situations. A pesticide may pose only a negligible cancer risk, or it may pose a cancer risk that is greater than negligible but nonetheless is not so great as to outweigh the pesticide's benefits to the food supply. In both of the latter situations, EPA views FIFRA, FFDCA section 408, and FFDCA section 409's general safety clause as allowing the registration or continued registration of the pesticide and the issuance or continuation of needed FFDCA clearances. But the Delaney Clause of FFDCA section 409 arguably bars the issuance of new section 409 clearances for pesticides in either of the latter two situations, and thus concomitantly calls into question the status of such pesticides under FFDCA section 408 and FIFRA. Due to the constraints dictated by the literal approach to the Delaney Clause, the Agency has not been willing to register a carcinogenic pesticide for a new food use which requires a section 409 food additive regulation, even though that pesticide meets the risk/benefit standards in the other statutory provisions. And since there is often no practical way to assure that the raw agricultural commodity at issue will not be processed, the Agency generally does not grant a section 408 tolerance for residues of the pesticide on a raw agricultural commodity in a situation where an associated section 409 food additive regulation is needed but cannot be issued. As noted earlier, EPA's regulations currently provide that before a pesticide may be registered under FIFRA for a food or feed use, there must exist appropriate clearances under FFDCA sections 408 and 409 for the pesticide residues.

However, if the pesticide is to be used on a type of raw agricultural commodity which is not processed or if concentration of the raw-commodity residues does not occur during processing, and if the pesticides is not added during or after processing, no food additive regulation is needed. If the pesticide use passes the risk/benefit test under FIFRA and FFDCA section 408, a registration can be granted. This is true even if the estimated dietary cancer risk to the public is the same as or higher than the risk posed by an analogous pesticide use for which a food additive regulation is required. Thus, very similar risk situations have been treated quite differently because of the inconsistent statutory provisions. This approach has not necessarily resulted in lower health risks for the public. In fact, there is a strong argument that in some cases the constraints of the Delaney Clause paradoxically may have led to greater risks to the public. New pesticides that pose lower cancer risks than pesticides currently on the market have been denied registration while older, more hazardous pesticides remained in use.

The Agency's treatment of established food additive regulations for registered pesticide chemicals shown by new data to induce cancer in test animals has been quite different than the just-described treatment of requests for new food additive regulations. To date, the Agency has not taken action based on the Delaney Clause to revoke established food additive regulations. In many instances, taking such action would require EPA either to revoke the associated 408 tolerances and cancel the FIFRA registration (despite the risk/benefit criteria that would govern such actions), or to abandon its long-standing policy that the lawful application of a pesticide should not result in illegal pesticide residues. Many of these pesticides appear to pose low or negligible risks and to have substantial benefits for the production of food in this country.

The Agency has deferred action in such cases, while studying the dilemma posed by the statutory scheme. Section 409(h), which authorizes EPA to issue regulations establishing procedures for amending or repealing food additive regulations, does not expressly require repeal of food additive regulations when new data indicate that the pesticide induces cancer.[9] The Agency arguably has the latitude to assess the safety of established food additive regulations under any standard it chooses to adopt that is not arbitrary and capricious within the meaning of the Administrative Procedure Act; it arguably could adopt a standard based on the general safety clause of section 409(c)(3), or on a non-FFDCA standard, such as the FIFRA risk/benefit standard.

[7] See 52 FR 49572, 49577 (December 31, 1987) for a statement of FDA's current policy. See also 51 FR 28331, 28340 (August 7, 1986), where FDA specifically noted that "any chemical shown to induce cancer even in only one strain, gender, and species, at one dose in one experiment, is an animal carcinogen." The evidence as a whole may lead FDA to conclude that a substance that only causes benign tumors should be regulated as a carcinogen under the Delaney Clause. (52 FR 49577, December 31, 1987). However, a finding of only benign tumors does not of necessity lead FDA to conclude that the chemical "induces cancer" under the Delaney Clause.

[8] In recent years, the Agency has been conducting a systematic review of currently registered pesticides under the Registration Standards process. This review determines the sufficiency of the data base for these chemicals in light of current data requirements, and evaluates the current terms of registration to see if modifications are appropriate. During the development of a Standard, data gaps are identified and data call-in notices sent to registrants pursuant to FIFRA section 3(c)(2)(B), which gives the Agency authority to require the submission of data necessary to support existing registrations. The Agency evaluates the adequacy of existing tolerances and food additive regulations for chemicals registered for food uses during the Registration Standard review. Appendix C lists those food use pesticides for which Registration Standards have been developed or are scheduled for FY 1988.

[9] Section 409(h) states: "[The Administrator] shall by regulation prescribe the procedure by which regulations under [section 409] shall be amended or repealed, and such procedure shall conform to the procedure provided in this section for the promulgation of such regulation." The interpretation that revocation is not expressly required is based on giving the term "procedure" its normal meaning, rather than reading into the term the substantive criteria of section 409.

Thus, the Agency could conclude that a previously-approved use of a pesticide is "safe" or not "unreasonable," even though the potential risk is greater than "negligible," if the benefits of the use to the food supply outweigh its risks. On the other hand, if the Agency concluded that the presence of residues in the processed food or feed posed a risk that is "unreasonable" within the meaning of FIFRA or not "safe" within the meaning of the general safety clause of FFDCA section 409, considering the balance of risks and benefits, the Agency would be under an obligation to take action to repeal the regulation (or, in appropriate situations, to amend the regulation to allow a lower residue level determined to be "safe" or "reasonable") and to cancel or modify the terms and conditions of the related FIFRA registration as necessary to assure that the use of the pesticide did not cause unreasonable adverse effects on the environment. This approach would allow EPA to reconcile the FIFRA and FFDCA standards.

The contrary argument would rest on the assumption that Congress must have intended any reevaluation of an existing food additive regulation to be based on the section 409(c) criteria for establishing new regulations, and that the Delaney Clause is an integral part of section 409(c). This view of section 409 thus would incorporate section 409(c)—including the Delaney Clause—into section 409(h) of the statute. Under this reading, a food additive regulation would have to be revoked if new information should indicate that the Delaney Clause would have barred issuance of the regulation had that information been available originally.[10]

Such an approach might result in the cancellation of pesticide registrations for uses that meet the risk/benefit standard of FIFRA, FFDCA section 408, and FFDCA section 409's general safety clause, but that cannot conform to the risk-only, zero-risk standard of the Delaney Clause. Once the food additive regulation had been repealed, the presence of residues of that pesticide in the processed food in question would be illegal under the FFDCA, and the wisdom of allowing the pesticide to be sold under the FIFRA registration for use in producing that food would be questionable. To be consistent, many related section 408 tolerances also would have to be repealed under this approach, because such tolerances arguably would be inappropriate where residues could concentrate during processing to an unapproved level higher than the tolerance for the raw agricultural commodity. This approach, carried to its logical conclusion, might end many valuable uses of pesticide chemicals and might result in significant adverse consequences to food production, while resulting in little or no risk reduction. It should be noted that a registrant of a pesticide faced with a proposed FIFRA cancellation based entirely or primarily on the fact that the pesticide's residues are not thought to be "safe" within the meaning of FFDCA section 409 might assert that a FIFRA cancellation cannot be based on criteria imported from the FFDCA, and might succeed (see *Continental Chemists Corp.* v. *Ruckelshaus*, 461 F. 2d 331 (1972)). If the approach described in this paragraph were successful, however, there again would be no dichotomy in the treatment of old and new pesticides.

The system that has been used by EPA so far has the added undesirable feature of placing new pesticides that are barred from registration because of the strict reading of the Delaney Clause at a disadvantage relative to old products that are shown by new data to pose comparable or higher risks. Given the high costs of data development, there is little incentive to develop a new food use pesticide that shows carcinogenic potential—even if the risk it would pose would be minimal, and even if it could replace an old product that poses a higher risk—if initial registration is likely to be barred by Delaney Clause considerations. Thus, the development of new, lower-risk chemicals to replace old, higher-risk pesticides may have been retarded by the Agency's past implementation of the Delaney Clause.

A reassessment of the data in support of the tolerances for a particular pesticide chemical may present another serious concern. The data review by the Agency may reveal, with respect to a chemical that induces cancer in animal studies, that not all the necessary section 409 tolerances are in place. New residue data or a new review of old data may lead the Agency to determine that residues concentrate during processing and that section 409 food additive regulations have not been promulgated to cover this situation. If the Agency cannot promulgate such regulations because of the Delaney Clause ban, these processed commodities would contain illegal residues and would be subject to seizure by FDA. To prevent the presence of these residues in the processed commodities, the Agency would have to attempt to revoke the corresponding FIFRA registrations and FFDCA section 408 tolerances (unless appropriate use restrictions on the pesticide labeling could be developed to prevent the use of the pesticide on commodities destined for processing). Such action could profoundly limit the use of many beneficial pesticide chemicals.

The Agency is facing the issues discussed here with an ever-increasing number of old pesticide chemicals. (Appendix D discusses certain examples of pesticide chemicals currently or recently under review which give an overview of the practical dimensions of the problem.) EPA's decision on whether to attempt to apply the section 409(c) criteria retrospectively under section 409(h) may depend on whether its approach to negligible-risk situations, set forth in unit III of this document, is upheld.

E. Potential for Legislative Solution

The administrative approaches discussed so far in this document would solve only some of the problems the Agency faces in this area. Moreover, implementing those approaches will be controversial and might involve the Agency in protracted litigation that could cause uncertainty and make it difficult for businesses to make plans about pesticide development and pesticide use. A legislative solution, stating clearly that the Agency has the authority to grant food additive regulations for pesticide residues posing at most a negligible risk, clearly would be desirable. Additional legislative changes would be required to allow the Agency to fully reconcile FFDCA and FIFRA. Such legislation ideally would give the EPA the latitude to establish tolerances and food additive regulations for pesticides under a risk/benefit standard compatible with FIFRA, with a definitive statement that clearances for both raw and processed foods are to be established under a risk/benefit approach.

Hearings have been held recently in the House of Representatives on two bills that would address these issues. H.R. 4739, introduced by Congressman Waxman, would provide for the regulation of pesticide residues exclusively under comprehensively rewritten FFDCA section 408; H.R. 4937, introduced by Congressmen Brown and Roberts, would also provide for regulating pesticide residues under section 408, but would make only minor changes in the substance of that section.

[10] FDA appears to interpret the Delaney Clause as applying to food additives established prior to any indication of carcinogenic effect for such chemicals. See, for example, the discussion in the proposed FDA determination not to ban the use of methylene chloride in decaffeinated coffee (50 FR 51551, 51565 December 18, 1985).

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III. Response to First and Second NAS Recommendations

A. Introduction

The Agency agrees completely with the NAS Report's most important conclusion—that a consistent approach ideally should be followed in the regulation of pesticides for food uses, regardless of whether the pesticides are new or old or whether the foods are raw or processed. As the NAS Report points out, there is no scientific reason to regulate pesticide residues in raw commodities differently from those in processed commodities. For risk assessment purposes, what is critical is not the type of food or feed commodity on which residues are present, but rather the identity and magnitude of the residues in the food and the associated consumption pattern. Likewise, EPA agrees with NAS that pesticides should be regulated consistently whether they are newly developed or have been on the market for many years.

Use of regulatory criteria that reflected those two NAS recommendations would allow the Agency to regulate high-risk pesticides more stringently than those that pose low risks, and permit the registration of new pesticides that offer substantial benefits and pose relatively insignificant risks. Riskier pesticides could then be replaced, and the total dietary risk reduced, with only minor adverse impacts on food production. This approach would be eminently sensible and desirable.

B. Policy for Achieving Greater Consistency in Evaluating Pesticides Under FIFRA and the FFDCA

The Agency believes that the most desirable way to achieve consistency in regulating potentially carcinogenic food-use pesticides would be to evaluate them under the same risk/benefit standard for both registration and tolerance purposes. However, if a section 409 regulation is required for a chemical to which the Delaney Clause applies, EPA believes that current law allows this approach to be used only to the extent that the *de minimis* doctrine allows Delaney Clause considerations to be dismissed. The following Table I outlines the regulatory outcomes that EPA would propose in response to various types of findings with respect to the cancer risk posed by new chemicals (or new uses of old chemicals). For clarity, Table I ignores non-cancer risks, and also ignores non-dietary cancer risks; in practice EPA would of course consider all risks.[11]

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[11] Discussions in this document of risks resulting from pesticide use are limited to cancer risks due to dietary exposure. It is important for the reader to keep in mind that the Agency's reviews and decisions encompass many other risks as well Table I proceeds from the assumption that all other risk criteria have been satisfied.

TABLE I—REGULATORY OUTCOMES UNDER OLD AND NEW POLICIES

CANCER RISK LEVEL	NEED 409 CLEARANCE?	ACTION UNDER FFDCA (NEW POLICY)	ACTION UNDER FIFRA (NEW POLICY)	COMPARISON TO PRIOR POLICY
No risk	No	Issue 408 tolerance	Register	Same
	Yes	Issue 408, 409 tolerances	Register	Same
Negligible cancer risk	No	Issue 408 tolerance	Register	Same
	Yes	Issue 408 409 tolerance	Register	Changed: under old policy, EPA would have refused to issue 408 issue 409 or register
Greater-than-negligible cancer risk	No	Issue 408 tolerance if benefit outweighs risk	Register if benefit outweighs risk	Same
	Yes	Refuse to issue 409 because of Delaney; refuse to issue 408 because 409 barred	Refuse to register because of lack of needed FFDCA clearances	Same

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The following sections discuss how the new approach will affect pesticides in various regulatory categories.

1. Pesticides That Have no Carcinogenic Effect or That Pose Only a Negligible Risk of Carcinogenicity

For pesticides that are the subjects of applications for intitial registration or for registration for new uses, and that either do not induce cancer in test animals or pose only a negligible human cancer risk (generally a quantitative risk of 10^{-6} or less), EPA will propose to establish section 408 tolerances and section 409 food additive regulations, where necessary, and thereafter to approve the applications for registration. Very little scrutiny will be given to the benefits of such non-carcinogenic or negligible-risk pesticides. As it has in the past, the Agency will assume the presence of benefits that outweigh the negligible risk. A list of pesticides that are potential candidates for consideration under the negligible-risk approach is provided in Appendix E.

2. Pesticides That Pose a Caracinogenic Risk That Is Greater Than Negligible

Some pesticides may pose a risk of carcinogenicity that is greater than negligible. Generally, such pesticides will be those with quantified upper-bound risks greater than 10^{-6}. (Some pesticides with quantified upper-bound risks greater than 10^{-6} may, however, fall into the negligible risk category for qualitative reasons, as discussed in Unit III.B.3.) For pesticide uses not requiring FFDCA section 409 clearances, EPA will continue its current practice of granting FIFRA registrations and the associated FFDCA section 408 tolerances for pesticides whose carcinogenic risk is greater than negligible only if the benefits are determined to outweigh the risks based on a careful scrutiny of the projected benefits compared to other available means of pest control. Benefits evaluations will be performed for such pesticides; the higher the risk, the more thorough the benefits evaluation that will be necessary. The risks of the available alternative pesticides will also be taken into account to determine if the total risk picture could be reduced by allowing the pesticide on the market. This approach accords with past practice.

But for the Delaney Clause, the Agency would propose to apply the same approach to pesticides in this category that require section 409 regulations. However, the Agency is not aware of any legal theory that would allow use of this approach under section 409 as it is currently written.

3. Treatment of Group C Chemicals

As explained in the EPA Guidelines for Carcinogen Risk Assessment, (51 FR 33992, September 24, 1986), there is great variability from one chemical to another in the amount and persuasiveness of evidence tending to show whether or not a chemical may cause cancer in humans. The EPA Guidelines represent the Agency's scheme for categorizing chemicals in terms of the weight of the evidence relating to their potential for human carcinogenicity. In general, the approach of the Guidelines is (1) to place a chemical in one of the groups (A through E) on the basis of the strength of the qualitative evidence of carcinogenicity from human epidemiology studies and animal tests and (2) for those chemicals showing some evidence of carcinogenicity, to set forth separately a quantitative upper bound on the risk that would be posed to humans if the substance in fact were a human carcinogen (see Appendix A). This information is useful to Agency officials and the public, since it provides a way to compare the risks of chemicals and to determine how consistently chemicals are regulated under the several statutory programs administered by the Agency.

The chemicals that pose the greatest difficulty in determining the proper regulatory response generally are those that fall into Group C ("possible human carcinogens") under the Guidelines. A chemical is placed in Group C if there is some evidence of potential carcinogenicity from animal studies, but that evidence is so limited that the chemical cannot be assigned to a higher category.

The Guidelines state that is some cases the Agency will not calculate a quantitative risk ceiling for a Group C chemical. Although it is always possible to calculate a quantitative risk number, the Agency believes that in some cases such quantitative estimates may suggest that the chemical definitely poses a risk to humans, even though in fact the Agency is quite unsure whether the chemical poses human risk. Appendix F lists a number of Group C pesticides and states whether quantitation of risk was deemed appropriate for each.

The Delaney Clause, of course, makes no provision for the weighing of animal-test evidence in terms of its pertience to human risk. If a chemical is found to induce cancer when ingested by animals or in other appropriate tests, the chemical is deemed "unsafe" under section 409 (unless the *de minimis* doctrine or one of the other previously-discussed exceptions applies). This absolute criterion presents special difficulties with respect to Group C pesticides.

The Agency's treatment for Delaney Clause purposes of a pesticide that falls in Group C will very. For example, many chemicals fall into Group C merely because the evidence of carcinogenicity comes from only one study. When the evidence from that study clearly indicates a carcinogenic effect in the animal tested, the Agency ordinarily treats the chemical as falling within the "high" end of the C category range and quantifies the risk. A tolerance decision for such a chemical will be based on the quantitative risk number, and the Delaney Clause will be deemed to apply unless the quantitative upper bound risk level is so low that the chemical's risk may be ignored under the *de minimis* doctrine. Conversely, a pesticide may be classified in Group C because the data on whether the chemical is an animal carcinogen are limited or uncertain, e.g., if the data are equivocal, unreliable, or subject to significant doubt, or if only benign tumors occurred. If the Agency determines that the weight of the evidence does not support treating the chemical as an animal carcinogen, the Agency will not treat the chemical as falling within the Delaney Clause bar. The Agency will, of course, in any such determination, set forth the reasons for its judgment. For example, a pesticide may be classified as belonging in Group C because the pesticide is associated with an increase in tumors in only one sex of one species with a lack of a clear dose/response relationship. Assuming that mutagenic data are negative and that structure/activity analysis shows no association with known carcinogens, the Agency generally would consider such a pesticide to be at the "low" end of the Group C range. It is doubtful that the Agency would require a quantification of the carcinogenic risk, and in such a case, the Delaney Clause would not be deemed applicable.

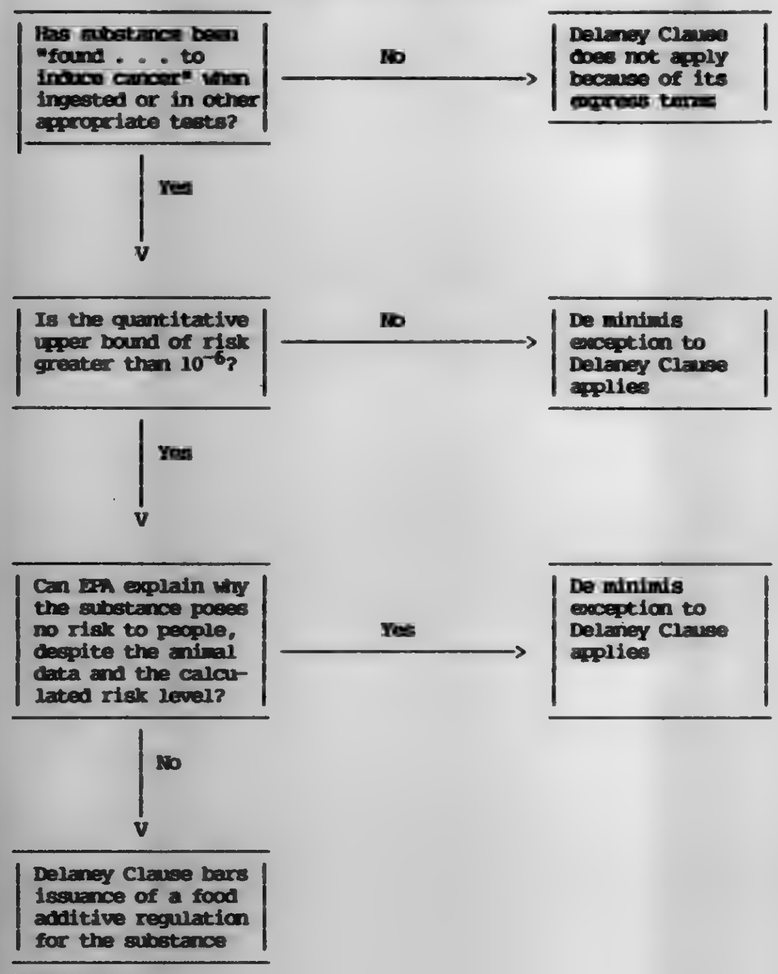
A pesticide may also fall into Group C, not because of any doubt about whether the chemical induces cancer in certain animal tests, but because of uncertainties as to the relevance of the finding to human risk. Reasons for questioning the relevance of the animal data to human risk could include, among other things, know variations in response between the test species and humans, or mechanistic considerations, e.g., a showing that cancer was induced in animals only as a secondly effect of an organic change in the animals induced by very high doses of the chemical and a showing that this effect would not occur at the low levels of human exposure. If a convincing explanation exists for why the chemical poses no risk of cancer for humans, despite the fact that it has been shown to be an animal carcinogen in a feeding study or other appropriate study and has a theoretical upper bound risk greater than 10^{-6} calculated using a no-threshold model, EPA would propose to treat the chemical as falling into the negligible risk or *de minimis* category for Delaney Clause purposes because of the qualitative reasons for discounting the animal test results as a predictor of human risk. Given the limited knowledge about interspecies response differences and mechanisms of action for cancer, EPA anticipates that very few pesticides would qualify for *de minimis* treatment on this qualitative basis in the near future.

A Group C carcinogen would be regarded as subject to the Delaney Clause if it did not fall into the quantitative or qualitative *de minimis* exception described in this Notice.

The following Table II summarizes the Agency's proposed treatment of Group C carcinogens:

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TABLE II—DECISION SCHEME FOR GROUP C CHEMICALS



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If the Agency determines that the Delaney Clause does not apply to a pesticide despite limited evidence of the pesticide's oncogenicity, the Agency will examine all toxicological effects of possible concern in determining the limit of acceptable dietary exposure. The Agency will then determine the no-observed-effect level (NOEL) for the most sensitive effect, which in turn will be used in setting the allowable daily intake (ADI) used in calculating the maximum permissible level of residues. (See Appendix A of this document.)

4. Currently Registered Pesticides

EPA's position with respect to currently registered pesticides that pose at most a negligible dietary risk of cancer will parallel that described earlier for proposed new food uses of pesticides, and the regulatory status of registered pesticides that pose such risks will not be changed as a result of this Notice. At the other end of the spectrum, EPA is not changing its policy of attempting to cancel FIFRA registrations and revoke FFDCA clearances for pesticides that pose risks of cancer (or other adverse effects) that outweigh their benefits. Finally, EPA has not determined how to proceed with respect to a pesticide that poses an upper-bound cancer risk that is greater than negligible but that is outweighed by the benefits of the pesticide.

5. Section 18 Exemptions

Section 18 of FIFRA allows EPA to exempt State and Federal agencies from the provisions of the Act if the Agency finds that emergency conditions exist that warrant the exemption. The changes in the Agency's approach to the issuance of food additive regulations already described in this document would result in conforming changes in the implementation of the emergency exemption program. The Agency will apply the negligible risk standard in evaluating emergency exemption requests in a manner similar to other regulatory decisions concerning pesticides which are carcinogens. If associated dietary risks are greater than negligible, the Agency would consider granting the exemption only if the benefits are so great that they outweigh the risks. In this connection, EPA considers, among other things, whether use of the unregistered pesticide would present a lower dietary risk than currently registered alternatives.

Generally, an emergency exemption will not be granted if adequate progress is not being made toward full registration of the pesticide use. In the recent past, the Agency has treated the need for a section 409 tolerance as an automatic bar to a request for an exemption to allow emergency use of a substance that has been found to induce cancer in appropriate animal studies, on the assumption that no section 409 clearance could be issued and accordingly there would be no possibility of registration. In the future, however, the Agency will not consider the need for a 409 tolerance, *per se*, as blocking progress toward registration of such a pesticide. Rather it would consider whether it is likely the pesticide may subsequently be registered according to the policies outlined in this document.

6. Minor Uses

FIFRA directs the Agency to make the registration process more flexible for minor use pesticides. Use of the approaches set forth in this Notice should favor minor uses because they ordinarily involve lower exposures than uses of chemicals on major crops such as wheat or corn.

As with section 18 requests, the need for a section 409 tolerance will no longer be treated as an absolute bar to further consideration of a potentially carcinogenic minor use pesticide. In fact, a number of the pesticides listed in Table V of this document as eligible for reconsideration under the negligible risk standard are intended for minor uses.

IV. Response to the Third Recommendation of the NAS

The NAS has recommended that EPA focus on one major crop at a time and evaluate the risks posed by all the major pesticides registered for that crop rather than evaluating individual pesticides according to current procedures. The Agency's historical approach to reregistration has been to divide pesticides into "clusters" according to their predominant uses. A cluster is a group of chemicals and a group of sites that are closely correlated.

This approach was described in a Federal Register notice (45 FR 75486, November 14, 1980). The clusters were then ranked so that higher priority for review was given to those clusters that have significant use on food crops or were already known to pose special problems. Each individual pesticide chemical within the cluster is then evaluated, one at a time, for all of its uses. Thus, most of the major pesticides used on the 15 "high-consumption" crops identified by the NAS Report have had a recent comprehensive review or are scheduled for one in the near future. Appendix D of this document provides a status report on the Agency's review of 10 chemicals which have been identified as posing certain theoretical risks.

The NAS committee's recommended modification of EPA's approach is designed to ensure that final Agency decisions actually reduce dietary risk, help to preserve benefits of pesticide uses that pose low risks, and help to conserve limited Agency resources. The Agency agrees that this approach has merit in certain cases where the apparent risks are high and sufficient information is available to make comparative risk/benefit assessments. It also allows greater certainty that the final result will improve public health by comparing the risks and the benefits of the major alternatives at the same time.

Given the progress already made in the reregistration process, it is likey that the Agency will have the needed data on the major pesticides at approximately the same time so that comparative assessments can be done, at least for some crop/chemical combinations. During 1988, in fact, the Agency will be able to complete risk assessments for all but one of the six major fungicides (the exception is folpet, whose food use is relatively minor) and to compare the risks and benefits for these chemicals as recommended by the NAS.

There are, however, some problems associated with this approach. Timeliness will certainly be sacrificed in many cases. There will be more data to evaluate, and decisions will be more complex. Comparison of benefits may be difficult: available efficacy data are not designed to permit sophisticated benefits comparisons, and knowledge of all practical alternatives to a given pesticide may be limited and hard for the Agency to identify. For example, a pesticide might be effective for certain uses and yet might never have been registered for those uses because of a registrant's marketing strategy. Finally, it would not be advisable or protective of the public health to delay consideration of significant risks associated with a pesticide just because other pesticides used on the same crops cannot be evaluated at the same time due to the lack of key data. Consequently, the Agency expects to continue with its basic reregistration scheme for scheduling initial Registration Standards. However, adjustments will be made to allow consideration of alternatives whenever sufficient information is available and it appears to improve our ability to focus on high risk chemical/crop combinations.

Because of the Agency's basic priority scheme for Registration Standards, complete data bases for pesticides used on similar crops should be available at

roughly the same time, as in the case with the fungicides discussed in Appendix D. The sophistication of the comparative analyses may vary significantly, however, depending on the level of risk associated with the pesticide under review. In the case of cyanazine, for example, the final decision document discusses the known effects and the regulatory status of major alternatives briefly, but does not provide an extensive analysis because the Agency had concluded that the continued use of cyanazine did not pose unreasonable risks. It is likely, nevertheless, that the Agency will find it increasingly possible to make critical comparisons of pesticides which may substitute for each other.

V. Response to the Fourth Recommendation of the NAS

EPA is taking steps to implement the NAS recommendation to develop improved tools and methods to estimate more systematically the overall impact of prospective regulatory actions on health, the environment, and food production. A major new analytical tool that allows the Agency greater sophistication in the assessment of dietary risk is the computerized Tolerance Assessment System (TAS). TAS contains information on toxicology and residue date for particular pesticides, as well as food consumption information. Consumption information for various foods is based on a 1977–1978 nationwide survey of food consumption for different subgroups conducted by the U.S. Department of Agriculture (USDA). The TAS can be used to estimate dietary levels of pesticide residues for the average individual, as well as for 22 population subgroups, including various age and ethnic groups, infants, pregnant women, and nursing mothers. The system can also be used to differentiate overall consumption patterns by season and by region.

One option offered by the TAS is the calculation of separate TMRCs (Theoretical Maximum Residue Contribution, see Appendix A) for each of the 22 subgroups, based on the assumption that residues will be present at tolerance level and that 100 percent of the crop is treated. Alternatively, the TAS may be used to calculate an "Anticipated Residue Contribution" (ARC) where verifiable data are available on the actual distribution of residues on treated crops, the dissipation or concentration of residues during the storage, transport, and processing of food commodities, and/or the percentage of the total crop actually treated with a pesticide.

Since 1988, the TAS has been used to determine if there are particular dietary concerns for pesticides undergoing reevaluation in the Registration Standard Process, for new chemicals and new uses of old chemicals, and for any other pesticide for which the Agency has a special dietary concern.

To solicit guidance on the scientific criteria that EPA should consider in developing its policy regarding the use of the TAS, the Agency presented a paper entitled "Briefing Paper on the Tolerance Assessment System (TAS) for Presentation to the FIFRA Science Advisory Panel" to that Panel in March 1987 to address a number of specific issues. A copy of that paper and the Report of SAP Recommendations is available on request from the Office of Pesticide Programs. In particular, the Agency requested advice on the scientific criteria the Agency should consider for the use of population subgroups in a dietary exposure analysis, and for the use of percentiles of exposure within a particular population in estimations of dietary risk. The Agency also asked the Panel to address the appropriate margins of safety which the Agency should use for determining acceptable exposures for subgroups or percentiles of exposure within a subgroup. Finally, the Agency requested guidance on the scientific criteria that should be used in identifying appropriate residue levels for use in dietary exposure estimations, and on data presentation.

In response, the SAP noted that the TAS will enable the Agency to predict exposure levels for population subgroups with far greater precision than the current system and thus represents an improved approach. On the issue of the appropriate use of population subgroups, the Panel, noting that the focus of the TAS is on exposure rather than on toxicity, commented that calculations based on body weight, will tend to overstate the risk to infants where there is no toxicological basis for increased susceptibility. To correct for this factor, the Panel recommended that the Agency explore the use of body surface rather than body weight as a basis for comparison. On the safety factor issue, the Panel did not recommend any changes to the traditionally-used one-hundred fold safety factor. The Panel also suggested that the use of a controlled field study would be more likely to provide useful data for the TAS than monitoring data. Finally, the Panel recommended that data should be presented in such a way as to indicate the reliance of the approach on exposure, rather than on toxicity, and the Agency should indicate how relevance, biological significance, and other issues could be introduced into the process. The Agency will work to refine the TAS, as recommended by the Panel, and will seek to develop additional tools and methods to improve its risk/benefit assessment capabilities.

VI. Related Agency Activities

The Agency is working on a number of other initiatives and program improvements which are related to the issues discussed here.

A. FFDCA Section 408/409 Procedural Rules

The Agency has made considerable progress in developing consistent procedural rules pertaining to section 408 and 409 tolerances. Elsewhere in this issue of the **Federal Register**, the Agency is proposing new procedural rules for establishing, modifying, and revoking section 409 food additive regulations, as well as procedural rules governing the filing of objections, requests for hearings, and the holding of hearings under sections 408 and 409. These proposed rules not only will modernize out-of-date hearing rules, but also will restate and update practices that have not necessarily been codified. The next step in the regulatory process will be to expand the regulations to include (1) substantive interpretations and criteria for determining when tolerances and food additive regulations are required and what data are required in support of them and (2) the criteria and assumptions to be used by EPA in determining whether a tolerance or food additive regulation should be established, modified or revoked.

B. Encouraging Safer Pesticides

The Agency plans to take steps to encourage the development of safer pesticides. The Agency expects to publish a **Federal Register** notice detailing this plan in the near future.

C. Promoting Innovation in Pest Control

Despite gaps in current data bases, there are indications that human health and/or environmental risks exist for many currently registered nematicides and fungicides. In the case of nonfumigant nematicides, product efficacy depends largely on solubility. Solubility, however, increases soil mobility, giving rise to concern regarding ground and surface water contamination. Certain of the fumigant nematicides also are currently under Agency scrutiny because of potential chronic risks which may be incurred by workers. Of the registered fungicides, 12 are currently undergoing Special Review, and additional classes of fungicides may be placed in Special Review in the near future.

The Agency is working with the Agricultural Research Service and the Cooperative State Research Service to focus USDA research efforts on development of alternative controls for nematodes and plant disease. The Agency has identified a particular need for alternative controls for nematodes on citrus and potatoes and for plant diseases on tomatoes, grapes, leafy vegetables, and pome fruits. The Agency is also considering what incentives can be introduced into the registration process to encourage development of alternative controls. These may include waivers of tolerance fees and registration fees for new pesticides that fall into specified categories for which alternative controls are desirable.

The agency has also joined with USDA, FDA, and private industry to establish a National Pest Management Task Force. The Task Force will identify those pests of economic significance for which effective chemical controls are no longer available or for which little or no research or registration effort is underway. The Task Force will develop, in conjunction with member agencies and private associations, mechanisms fostering the development of acceptable control technologies.

D. Revision of Product Performance Guidelines

To improve the efficacy data base, the Agency is in the process of revising its Product Performance Guidelines to require the development of "comparative product performance data." In the past, product performance data requirements have concentrated on efficacy data that demonstrate how well a pesticide controls the pests listed on the label. The proposed revisions will require that registrants develop and maintain data which will provide information on performance of a pesticide compared to alternative pesticides, non-chemical techniques, and untreated controls.

E. Updating Food Consumption Data and Other TAS Improvements

Resources permitting, EPA hopes to update the food consumption data as part of our overall effort to implement TAS fully. Results of the latest USDA dietary survey should start coming in later this year, and the Agency plans to begin updating the TAS data in 1989. Subsequently, EPA hopes to update TAS every 10 years as results of a new USDA survey become available. The Agency also hopes to be able to enhance the analytical capabilities of TAS and to develop statistical guidelines and computer support for the incorporation of more accurate anticipated residue data based on actual residue studies.

F. Updating Animal Feed Data

Like human food consumption estimates, animal food consumption estimates also need updating. The Agency is currently working on a project to determine whether by-products from food processing plants are significant components of animal feeds. Once these significant feed items are identified, percent of diet figures for these new feed items will be determined.

G. Guidelines and Protocol Improvements

To provide for improved data for use in risk assessments, the Agency is developing guidelines and standard evaluation procedures for the use of registrants and food producers in the generation and submission of data to show actual pesticide residues in food. The Agency will also be working with the food industry to develop protocols for processing studies designed to show what happens to pesticide residues during processing.

H. Reclassification of Raw Versus Processed Commodities

The Agency intends to develop new criteria for classification of commodities as raw or processed in order to update and eliminate inconsistent 408/409 commodity classifications.

I. Factoring in Drinking Water Exposure to Pesticides

The Agency is concerned about human intake of pesticides via routes other than food, particularly drinking water. Historically, the Agency has based its decisions on tolerances only on dietary exposure from foods treated with pesticides. More recently the Office of Pesticides Programs (OPP) and the Office of Drinking Water (ODW) have begun focusing on drinking water as a potential source of pesticide residues in the diet. The Agency has recently made significant progress in its efforts to integrate activities or OPP and ODW with respect to pesticides in groundwater. All Health Advisories for pesticides in drinking water are now developed jointly by ODW and OPP, using the same data base and the same reference dose.

As a part of EPA's implementation of its Agricultural Chemicals in Groundwater Strategy, the Agency will be considering the extent to which pesticide residues in drinking water are a significant factor in dietary exposure to pesticide residues. This may be difficult in some cases, but is necessary in order to get a more complete picture of exposure. In cases where pesticides do reach drinking water supplies, it is necessary to factor this exposure into tolerance decisions.

For example, exposure to aldicarb through drinking water as a result of its presence in groundwater is being considered in the tolerance assessment in the special review of aldicarb. This is a case in which the data are available, and it is clear that drinking water is a potential route of exposure.

VII. Conclusion

In conclusion, the Agency believes that he recommendations of the NAS offer the Agency very useful guidance in improving and refining the process of evaluating pesticides for registration and tolerance purposes. Consistency between the criteria EPA uses in registering pesticides under FIFRA and in setting tolerances for pesticide residues on food under sections 408 and 409 of the FFDCA is a clearly desirable goal. A negligible risk approach to the pesticide regulatory process would allow the Agency to move in the direction of greater consistency, and allow the registration of new pesticides that pose lower risks than certain currently registered products.

The Agency also believes it would be desirable to have the authority to review all food additive regulations, as well as tolerances and registration actions, under a risk/benefit standard. Only by using a risk/benefit standard for all pesticide decisions will the Agency be able to achieve real consistency, and have the latitude to properly exercise its judgment based on a consideration of all relevant factors. Such an approach, over the long run, will be most likely to reduce the total risk attributable to pesticide use. As discussed in this document, the Agency cannot fully implement this goal without legislative change.

Nevertheless, the Agency will propose to follow the negligible-risk approach to the extent possible in future rulemakings on individual pesticides.

With regard to the other recommendations of the NAS, the Agency is focusing its energies on reviewing chemicals under a prioritization scheme in order to reduce risks attributable to pesticide use. Finally, the Agency is engaged in developing tools such as the Tolerance Assessment System to refine its ability to make regulatory decisions.

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Victor J. Kimm,

Acting Assistant Administrator, Office of Pesticides and Toxic Substances.

Appendix A—Procedures Followed by the Agency in Determining Allowable Residue Levels for Tolerances and Food Additive Regulations

In setting tolerances, EPA reviews residue chemistry data and toxicology data. The required data are essentially the same as those necessary to support the registration of a pesticide product used on food. To be acceptable, a tolerance level must be both high enough to cover residues likely to be left when the pesticide is used in accordance with its labeling, and low enough to be safe.

The Agency estimates the level of daily exposure which is not expected to cause appreciable risks during the human lifetime. With regard to risks other than cancer, this level is called the Accpetable Daily Intake (ADI) or Reference Dose (RfD). The ADI is calculated by dividing the no-observed effect level (NOEL) (the dosage level at which any adverse effects observed at higher dose levels are absent) from the most sensitivie test showing adverse effects by an appropriate safety factor. This calculation is based on the concept that the risks of concern other than cancer are threshold effects—i.e., below the ADI there will be no adverse effect.

EPA also calculates the theoretical maximum residue contribution (TMRC), which represents the maximum amount of residue of a pesticide which a typical human could ingest by consuming food that bears the maximum level of the residue allowable under all existing and proposed tolerances. The TMRC is calculated by multiplying the tolerance level for each food by the amount of that in the typical American diet (according to available statistics on food consumption patterns) and totalling the values for all foods which may bear residues of that pesticide.

The TMRC is then compared with the ADI, and the tolerance is established (assuming no other concerns) if the TMRC is less than the ADI. A tolerance may be established in certain situations where the TMRC is higher than the ADI if residue data establish that the actual human exposure is not likely to exceed the ADI. For pesticides which may induce cancer, in addition to performing the ADI calculations discussed above for the effects of concern other than cancer, the Agency usually performs a quantitative risk assessment for the cancer risk. Cancer ordinarily is treated as a non threshold effect, because of a lack of evidence to refute the assumption that the carcinogenic response in humans to low doses is approximately proportional to the response in animals to high dose. Thus, some risk presumptively could result even at very low levels of exposure.

EPA's current carcinogencity testing scheme requires the use of several test doses (up to a level at or near the maximum tolerated dose) in at least two animal species, in order to magnify the likelihood of detection of a carcinogenic response in an economical, practically-sized animal test population (50 animals per sex per dose level) animal test population. At the present time, there is not better way to assess practically the potential carcinogenicity of a pesticide to which the entire U.S. population may be exposed. The animal data, and any available human epidemiology data, are assessed in accordance with EPA's "Cancer Assessment Guildelines, designed for use by all Agency programs in implementing a number of statutes designed to protect the public health, provide a qualititative classification scheme regarding human carcinogenicity based on a weight-of-the-eveidence analysis of the available data. Chemicals are classified into five groups, as follows:

1. Group A

Human Carcinogen: (Sufficient evidence of cancer causality from human epidemiologic studies).

2. Group B

Probable Human Carcinogen B1 limited evidence of carcinogenicity from human epidemiologic studies B2 sufficient evidence of carcinogenicity from animal studies.

3. Group C

Possible Human Carcinogen: Limited evidence of carcinogenicity in animals in the absence of human data, including malignant tumor response in a single well-conducted experiment not meeting conditions for sufficient evidence, tumor responses of marginal statistical significance in studies having inadequate design or reporting, benign tumors where short-term mutagenicity tests are negative, and responses of marginal statistical significance in a tissue with high background rate.

4. Group D

Not classifiable as to Human Carcinogenicity: Either inadequate evidence of carcinogenicity or absence of data.

5. Group E

Evidence of Non-Carcinogenicity for Humans: No evidence of carcinogenicity in at least two adequate animal tests in different species or in both adequate epidemiologic and animal studies.

A weight-of-the-evidence determination may involve consideration of, among other things, (1) the particular bioassay test system(s) used, (2) the evaluation of the histopathological and other results of the test(s), (3) the weight to be given to benign tumors, (4) mechanistic considerations, e.g., a situation where the chemical itself does not cause the tumor, but rather the effect the chemical causes at high doses of administration is the tumor-causing agent, and this effect would not occur at the lower doses of human exposure, and (5) the extent to which the overall quality and conduct of the tests accords with good laboratory practices.

Quantitative risk assessments are routinely performed for Category A and B carcinogens. In the case of pesticides classified as Category C, the Agency decides on a case-by-case basis whether the qualitative evidence is sufficient to warrrant a quantitative risk assessment, bearing in mind the possibility that publishing a risk number may create in the public mind an assumption of the reality of a risk to humans that is not supported by the qualitative data from animal studies.

To estimate the cancer risk posed by a pesticide from animal data, the Agency typically uses the linearized multistage model to extrapolate from the results seen at the high doses of the animal study to predict worst case risks at the much lower levels of estimated or actual human exposure. Using this model, a potency factor (Q_1*, called the "Q-star") is calculated from the 95 percent confidence limit of the slope of the linearized portion of the dose response curve. This potency factor represents a plausible, statistically-derived upper limit to the carcinogenic potency of the potential carcinogen at doses relevant to human exposure, and when multiplied by human exposure, yields an upper bound estimate of the risk. Such an estimate does not represent the actual risk, which may, in fact, be considerably lower or even as low as zero. Estimates of the upper limit on lifetime dietary risk from consumption of residues of a carcinogenic pesticide are calculated by multiplying the Q_1* by the average human dietary exposure, using food factors derived from USDA data on food consumption patterns. Unless data are available on the actual level of residues in particular food commodities, a worst-case risk will be calculated based on the assumption that all treated food bears residues at the tolerance level and that 100 percent of the crops are treated.

EPA's current method of deriving these worst-case risk estimates for a carcinogenic chemical from animal data is based on somewhat more conservative premises than the approach of FDA. FDA assumes that humans and animals are equally sensitive to the test chemical on an equivalent body weight basis. EPA, on the other hand, bases its assessment on the premise that different sized animals are not equally sensitive to equal concentrations of a chemical, and makes a surface area adjustment to account for this difference.[1] The effect of this adjustment is to increase the estimate of human risk by about thirteen fold where data are derived from mice, and about 4½ fold when the data source is the rat as the test animal. Accordingly, EPA's risk numbers represent about an order of magnitude of risk greater than would be calculated using FDA methodology.

Appendix B—Food Use Pesticides With Evidence of Carcinogenicity

Active Ingredient	Group [1]	408 Tolerances food	408 Tolerances feed	Needs [2] 408 tolerances
1,3-dichloropropene [3,4]	B2			
2,4-D	D	x	x	
Asephate	C	x	x	
Azifluorfam	B2			x
Alachlor [5]	III			x
Alkyldimethylbenzyl ammonium chloride	C			
Amitrole	B2			
Amitraz	C			x
Arsenic acid (orthoarsenic acid)	A			
Asulam	C			
Atrazine	C			
Azinphos-methyl	D			x
Benomyl [4]	C	x		
Bitertinol [4]	C			
Bromacil				
Calcium arsenate				
Captafol	III			
Captan [6]	B2	x	x	
Carbaryl				
Carbofuran				
Chlordane	B2			
Chlordimeform hydrochloride				
Chlorobenzilate				
Chloroneb				
Chlorothalonil	B2			
Copper acetoarsenite				
Cypermethrin				
Cyromazine [4]			x	
Diethatyl-ethyl [4]	B2	x	x	
Diallate				
Dicamba [7]		x	x	
Dichlorvos (DDVP)	B2	x		
Dicofol	B2	x		
Dimethoate (Rogor)	C			x
Dinocap	C			
EDB	B2			
Ethalfluralin			x	
Ethylene oxide [4]		x		
Folpet	B2			
Glyphosate	D	x	x	
Lactofen [8]	B2			
Lead arsenate				x
Lindane	D			x
Linuron [4]	C			
Mancozeb [4,9]	B2	x		
Magnesium arsenate				
Maneb [4,9]	B2			x
Methazole-work: acid			x	
Methidathion	C			x
Methomyl [4]				x
Metiram [4,9]	B2			
Metolachlor	C			
Oryzalin	C	x		
Oxadiazon	C			
O-phenylphenol				
Paraquat	E	x	x	
Parathion	C			
PCNB (Pentachloronitrobenzene)	D			
Permethrin				x
Phosmet	D	x		
Propamide	C			
Propazine	C			
Propionic acid [4]	C			
P-dichlorobenzene [3]	C			
Sodium arsenate				
Sodium arsenite				
Terbutryn	C			
Tetraconazole		x		
Thiabendazole [4]				x
Thiophanate methyl [4]				x
Toxaphene				x
Trichlamid (Geyser)	C			
Tridiphane	C			
Triflumizin	C	x		

[1] Theoretically, this assumption is based on the premise that smaller animals, which eliminate heat from the body (an indication of metabolism) more efficiently than larger animals, are more efficient metabolically at detoxifying a chemical than larger animals. This difference in heat elimination has been related to the ratio of the surface area to the volume of the organism. Mathematically, the correction for surface area differences is made by dividing the dose in the animal study by the ratio of human body weight to test animal body weight to the two-thirds power.

Active Ingredient	Group [1]	409 Tolerances food	409 Tolerances feed	Needs [2] 409 tolerances
Zineb [4,9]	B2			

Notes:

[1] Classification in accordance with EPA's Cancer Assessment Guidelines (see Appendix A) for those chemicals for which a weight-of-the-evidence determination has been made.

[2] Chemical has recently been determined to require a 409 tolerance.

[3] Registered uses (formerly not considered to be food uses) which have recently been defined as food uses.

[4] Included due to potentially oncogenic metabolite.

[5] Recently added to list because of newly registered food uses.

[6] Currently in Special Review for dietary concerns.

[7] Included because a contaminant is an oncogen.

Appendix C—Active Ingredients for Which Registration Standards Have Been Issued or are Scheduled for Next Year

Active ingredient	Calender year of issue
4-aminopyridine	1989
Acephate	1987
ADBAC	1988
Alachlor	1988
Aldicarb	1988
Aldrin	1986
Alkyldimethylbenzyl ammonium chloride	1988
Amitraz	1987
Amitrole	1984
Ammonium sulfamate	1981
Anilazine	1983
Arsenic acid (orthoarsenic acid)	1988
Aspon	1980
Asulam	1988
Atrazine	1983
Azinphos-methyl	1988
Bacillus thuringiensis	1988
Barium metaborate	1983
Bendiocarb	1987
Benefin	1988
Benomyl	1987
Bentazon/sodium bentazon	1985
Bifenox	1988
Bifenox (DPX)	1988
Bioallethrin	1988
BKLP-2	1981
Boron (incl. borax & boric acid)	1983
Bromacil	1982
Bromoxynil	1988
Butoxycarboxim	1981
Butylate	1983
Captafol	1984
Captan	1986
Carbaryl	1984
Carbofuran	1984
Carfentrazone	1984
Carbosin	1981
Chloramben	1981
Chlordane	1988
Chlordimeform hydrochloride	1985
Chlorobenzilate	1983

Active ingredient	Calendar year of issue
Chloroneb	1980
	[1] 1989
Chlorpicrin	1969
Chlorpropham	1982
Chlorothalonil	1987
Chlorpyrifos	1984
	[1] 1988
Chromated arsenicals	1982
Coal tar creosote	1986
Copper chloride/hydroxides	1986
Copper sulfate	1987
Coumaphos	1988
Cryolite	1981
	[1] 1989
Cyanazine	[1] 1988
Cycloate	1984
Cyclohexamide	1989
Cyhexatin	1982
2,4-D	1985
2,4-DB	1986
2,4-DP	1986
Dacthal	1988
Dalapon	1986
Daminozide	1987
DCNA	1984
Dazomet	1983
DBCP	1980
Dicamba	1985
Dichlobenil	1981
Dichlone	1987
1,3-dichloropropene	1981
Dichlorvos (DDVP)	1986
Dicrotophos	1987
Difenzoquat	1982
Diflubenzuron	1986
Dimethoate	1983
	[1] 1989
Dioxathion	1983
Diphacinone	1989
Diphenamid	1987
Dipropetryn	1985
Diquat dibromide	1988
Disulfoton	1985
Diuron	1983
Dodine	1987
Endosulfan	1982
EPN	1987
EPTC	1983
	[1] 1989
Ethephon	1988
Ethion	1982
	[1] 1989
Ethoprop	1983
	[1] 1988
Ethoxyquin	1981
Ethyl parathion	1986
2-ethyl-1,3-hexanediol	1981
Fenamiphos	1987
Fenaminosulf	1983
Fenitrothion	1987
Fensulfothion	1983
Fenthion	1986
Fluchloralin	1985
Fluometuron	1986
Folpet	1987
Fonofos	1984
Formaldehyde	1986
Formetanate hydrochloride	1983
	[1] 1989
Fumarin	1980
Glyphosate	1986

Active ingredient	Calendar year of issue
Heliothis NPV	1984
Heptachlor	1986
Hexazinone	1985
	[1] 1988
Hydramethylnon	1987
Isopropalin	1981
Lindane	1986
Linuron	1984
MCPA	1982
	[1] 1988
MCPB	1988
Magnesium & aluminum phosphide	1986
Malathion	1988
Maleic hydrazide	1986
Mancozeb	1987
Maneb	1986
Mecoprop	1986
Methiocarb	1987
Metalaxyl	1981
	[1] 1988
Metaldehyde	1986
Methamidophos	1982
Methoprene	1981
	[1] 1988
Methoxychlor	1982
	[1] 1988
Methyl bromide	1986
Methyl parathion	1986
Methylene bis thiocyanate	1988
Metiram	1986
Metolachlor	1990
	[1] 1987
Metribuzin	1985
Mevinphos	1986
Monocrotophos	1985
Monuron	1983
Monuron TCA	1983
Nabam	1987
Naled	1988
Napropamide	1986
Naphthalene	1981
Naphthalene acetic acid & salts	1981
Napropam	1985
Nitrapyrin	1985
Norflurazon	1984
	[1] 1988
OBPA	1981
O-phenylphenol	1988
Oryzalin	1987
Oxamyl	1987
Oxydemeton methyl	1987
Oxytetracycline	1988
Paraquat	1987
PCNB (pentachloronitrobenzene)	1987
Pendimethalin	1985
Perfluidone	1985
Phenmedipham	1987
Phorate	1984
Phorate (SRR)	1988
Phosalone	1981
	[1] 1987
Picloram	1986
Phosphamidon	1987
Piclorum	1985
	[1] 1988
Piperonyl butoxide	1988
Potassium bromide	1984
Potassium permanganate	1988
Promotryn	1987
Pronamide	1986
Propachlor	1985
Propanil	1987
Propargite	1988
Propazine	1980
Prosulfam	1987
Resmethrin	1988
Rotenone	1988

Active ingredient	Calendar year of issue
Simazine	1984
	[1] 1988
Sodium dichloro-s-triazinetrione & salts & sodium hypochlorite	1988
Sodium omadine	1985
Streptomycin	1988
Sulfur	1982
Sulfuryl fluoride	1985
Surfosapp	1988
Suspension	1981
Sumithrin	1987
Tebuthiuron	1987
Temephos	1981
Terbacil	1988
	[1] 1989
Terbufos	1983
Terbutryn	1984
Terrazole	1980
	[1] 1988
Tetrachlorvinphos	1988
Thiophanate ethyl	1986
Thiophanate methyl	1988
Thiram	1984
TPTH	1984
Trichlorfon	1984
Trifluralin	1987
Trimethacarb	1985
Vendex	1987
Warfarin	1981
	[1] 1988
Zinc phosphide	1982

[1] Second round of review of the earlier registration standards.

Appendix B—Examples of Pesticide Chemicals With Tolerances Issues Currently or Recently Under Review

1. Benomyl

Benomyl is a broad spectrum systemic fungicide that controls a wide variety of plant diseases in field and vegetable crops, rice, tree fruit and nut crops, greenhouse, ornamentals, and turf sites. It is also used as a postharvest dip for fruits. In the Registration Standard issued for benomyl on March 31, 1988, the Agency concluded that benomyl and its major metabolite, 4-methyl benzimidazole carbamate (MBC), were possible human carcinogens (Group C), based on a significant increase in hepatocellular carcinomas in closely related strains of mice. Based on the established tolerances and the percent of crop treated, the Agency estimated any potential oncogenic risk from dietary exposure to be in the range of 10^{-5}. The Agency noted, however, that this quantitative assessment should not be accorded much weight since the evidence for oncogenicity is limited, but could be taken to represent a worst-case upper limit for risk. The Registration Standard also reassessed the residue data base supporting the established tolerance and food additive regulations for benomyl and concluded that additional data were required to fill the identified data gaps. A conclusion was also reached that additional food additive regulations under section 409 may be required to cover residues in the processed fractions of citrus, tomatoes, grapes, and soybeans.

The additional residue data required by the Standard were received in the summer of 1987 and are under review. When general metabolism data (due July 1989) are received, EPA will be able to complete the tolerance reassessment for benomyl.

If the new data indicate that additional section 409 regulations are necessary, the Agency could establish such regulations under a de minimis approach if weight-of-the-evidence considerations lead to a conclusion that the risk to humans is negligible.

2. Captafol

Captafol, which was originally registered in 1962, is used as a fungicide on various vegetable and fruit crops. The Registration Standard for captafol, completed in September 1984, estimated a dietary risk of 10^{-6} based on tolerance levels, and required registrants to produce data on actual residues in food crops and additional oncogenicity data. A Special Review was also initiated. In early 1987, EPA classified captafol as a B2 (probable human) oncogen. The major registrant, Chevron Chemical Company, voluntarily cancelled its captafol registrations in March 1987. Formulators followed suit the next month. On August 22, 1988, the Agency terminated the Special Review because all registrations of captafol products had been cancelled. Also, the Agency plans to initiate action during 1989 to revoke the remaining tolerances for captafol.

3. Captan

Captan (N-trichloromethylthio-4-cyclohexane-1,2-dicarboximide) is a widely used agricultural fungicide, currently registered for use on a number of fruits and vegetables, small grains, cotton, grasses, flowers, and numerous household uses. The chemical has been the subject of a recent Registration Standard (issued in March 1988) and a Special Review. The Agency has found that the dietary intake of captan resulted in an increased incidence of uncommon adenomas and adenocarcinomas of the upper gastrointestinal tract in the Charles River CD–1 mouse, an increased incidence of these GI tumors in B6C3F1 mice, and a small dose-related increased incidence of kidney tumors in Charles River CD–1 rats. The Agency also noted positive mutagenic activity in gene mutation and chromosomal aberration assays, and a structural relationship to other compounds that demonstrated oncogenic effects.

In the Standard, the Agency requested residue data, including field trials to generate data for raw agricultural commodities treated at the maximum permitted rate, and studies to show the effect of washing, peeling, cooking, and processing on residue levels. Section 408 tolerances are currently established for a number of commodities which are subjected to processing, namely potatoes, soybeans, tomatoes, oranges, grapes, sweet corn, cottonseed, and pineapples. Section 409 tolerances for captan exist for washed raisins at 50 ppm (21 CFR 193.40; 21 CFR 193.40 redesignated as 40 CFR 185.500 at 53 FR 24668, June 29, 1988) and detreated corn seed at 100 ppm (21 CFR 561.65; 21 CFR 561.65 redesignated as 40 CFR 186.500 at 53 FR 24668, June 29, 1988). However, the 409 tolerance for detreated corn seed is in the process of being revoked for failure to submit supporting data. Section 409 tolerances must be set for some commodities, such as dried prunes and dry apple pomace.

In the Preliminary Determination of the Special Review, issued on June 2, 1988, the Agency determined that the dietary risk could be as high as 10^{-4} based on the assumption that residues are present at tolerance levels. The new data will allow the Agency to refine its risk assessment, and determine whether the currently established tolerances and food additive regulations should be revoked.

4. Chlordimeform

Chlordimeform was previously registered for a number of fruit and vegetable insecticide uses; however, most food uses were withdrawn by the registrants in 1976 because preliminary results of a mouse study suggested that chlordimeform caused malignant blood vessel tumors. In 1978, chlordimeform was registered for use on cotton with new restrictions to reduce applicator exposure. A Registration Standard was published for chlordimeform in January 1988, and the chemical has been referred to Special Review because of worker exposure concerns. In conducting the Registration Standard review, the Agency assessed dietary risks from the cotton use, using data on the percent of cotton crops actually treated (between 10 percent and 12 percent), and actual residue data showing chlordimeform residues ranging from 1 to 2 orders of magnitude lower than tolerance levels. Dietary risk from actual residues of chlordimeform occurring in commodities derived from treated cotton was estimated at 10^{-7}. Under the de minimis approach, the food additive regulations on commodities processed from cotton would be retained.

Very recently, the two registrants of the technical product have offered to voluntarily cancel the remaining cotton use, effective within the next year.

5. Chlorothalonil

Chlorothalonil is a fungicide used on numerous crops such as fruits, vegetables, and peanuts, as well as on ornamental turf. The chlorothalonil Registration Standard, issued in September 1984, identified significant data gaps; data have been submitted in response to the requirements set forth in the Standard. Based on such data, EPA has classified chlorothalonil as a B2 (probable human) oncogen. There are no existing 409 food additive regulations for this chemical; residue data required in the Standard will allow the Agency to determine if such regulations are necessary. A Revised Registration Standard and Tolerance Reassessment is scheduled for completion in September 1988. The Agency will assess during the Standard review whether the chemical should be referred to Special Review.

6. EBDCs

The EBDCs (ethylene bisdithiocarbamates) are a group of six fungicides (maneb, mancozeb, amobam, nabam, metiram, and zineb) with a common contaminant, metabolite, and degradation product called ethylenethiourea (ETU). In 1984, a data call-in imposed extensive data requirements on the registrants of the EBDCs to enable the Agency to perform a comprehensive risk assessment. In response, registrants of amobam cancelled their products, and registrants of nabam deleted all food uses from their labels. Based on data received in response to the data call-in, the Agency has classified ETU and the EBDCs as B2 (probable human) oncogens. As set forth in the Registration Standard issued in April 1987, the dietary risk for mancozeb is estimated to be 10^{-4} based on actual residue data. The total dietary risks resulting from the use of all the EBDCs is likely to be higher. Residue data on maneb and metiram were received in March 1988. For zineb, which represents only 5 percent of total EBDC usage, residue data will not be available until 1991.

All the EBDCs have been placed in Special Review; the Preliminary Determination is scheduled for early 1989. The Agency expects to conduct a risk assessment of the dietary risk posed by these chemicals in the summer and fall of 1988, and then to conduct a comparative risk/benefit assessment of the major fungicides (EBDCs, captan,

chlorothalonil and benomyl) before making a regulatory decision on any one of them. As part of that review, the Agency will also determine what action to take with respect to the existing tolerances and food additive regulations. There are several food additive regulations for mancozeb, and data may indicate the need for such regulations for maneb, metiram, and nabam.

7. Folpet

Folpet is a broad spectrum fungicide which, in the past, has been used on both food and nonfood crops and as an industrial fungicide in the manufacture of coatings and plastics. Non-agricultural uses and home and garden uses have accounted for approximately 86 percent of its total usage. A Registration Standard was issued for folpet in June 1987, and additional residue data (due in 1991) were requested. Currently, all food uses have been suspended for failure to provide data. Current indications are that the only food use which is likely to be supported by data is the use on avocadoes.

The chemical has been classified as a B2 (probable human) oncogen. Prior to the recent suspensions, theoretical dietary risks, based on the assumption that residues would be present at tolerance levels, were in the 10^{-6} range, but the Agency believes that, if actual residue data and percent of crop treated were factored into the risk calculation, risks would be likely to be in the 10^{-8} range. There are no existing section 409 food additive regulations for folpet. If any food uses are reinstituted, and if residue data show that there is a concentration effect during processing, such regulations would be necessary. If the data indicate that the risk is in fact in the 10^{-8} range, the *de minimis* approach could be followed in establishing such regulations.

8. Linuron

Linuron, a herbicide used for pre- and post-emergent control of annual grasses and broadleaf weeds, was initially registered in 1966, and a number of tolerances have been established since then for its use on soybeans, corn, cotton, sorghum, wheat, asparagus, carrots, celery, parsnips, and potatoes. There are no section 409 food or feed additive regulations for linuron. However, the Agency has requested processing data to demonstrate whether the chemical does concentrate in processed commodities.

In 1984, a Registration Standard was issued for linuron and additional residue and chronic effects data required. At the time of the Standard, the Agency estimated dietary oncogenic risk in the range of 10^{-4} (based on residues at tolerance levels with some adjustment for percent of crop treated). However, since the time the Special Review was initiated, the Agency has issued its oncogenicity classification guidelines and has concluded that linuron is a group C (possible human) oncogen. Because only benign tumors are formed, these tumors occur only late in life, and there is no evidence of mutagenic activity, the Agency has concluded that linuron's human carcinogenic potential is low. Therefore the Agency has recently terminated the Special Review based on oncogenicity.

9. Permethrin

Permethrin is an insecticide first registered in 1979 for use on cotton, with a wide variety of other uses, including vegetables and pears (registered in 1982). The toxicology data base for permethrin is complete. The Agency has classified permethrin as a Group C oncogen, based on the induction of lung and liver tumors in female mice. Based on the very weak evidence of oncogenicity observed, the Agency determined that a quantitative risk assessment for this chemical is inappropriate because the likelihood of oncogenic effects in humans from low levels of permethrin is non-existent or extremely low. The Agency has, however, regulated this chemical as a possible oncogen for Delaney Clause purposes, and has declined to set 409 food additive regulations.

A tolerance for tomatoes, a commodity which is usually subject to processing, was established for Florida tomatoes, subject to a restriction that the tomatoes only be used for the fresh market. This approach was believed to be feasible for permethrin because of the unique circumstances of tomato production in Florida, i.e., 98 percent of the tomatoes were for the fresh market, and the limited number of canneries in the area agreed not to process tomatoes into a form which would result in concentrated residues (such as paste, puree, or ketchup). However, the Agency subsequently was informed that a cannery in Florida was processing permethrin-treated tomatoes into puree and paste. This incident demonstrates the impracticality of expecting growers and processors to distinguish between permethrin-treated tomatoes and untreated tomatoes.

In addition, the Agency is still seeking processing data to clarify whether residues will concentrate in any of the other processed commodities produced by Florida canneries. If the Agency were to follow the *de minimis* approach, permethrin would be a potential candidate for section 409 food additive regulations for additional uses in which concentration of the residues occurs during processing.

10. Trifluralin

Trifluralin is a selective preemergent herbicide registered for use on a variety of crops for the control of annual grasses and certain broad leaf weeds. This pesticide has been classified as a Group C carcinogen based on a significant increase in the incidence of malignant tumors of the renal pelvis, of the kidney and thyroid gland of male rats, and in the incidence of combined malignant and benign urinary bladder tumors in female rats at the highest dietary concentration tested. The Agency indicated in its August 1986 Registration Standard that processing data is being required for potatoes, sugar beets, soybeans, citrus fruits, sorghum, barley, corn and wheat grain, alfalfa hay, flax seed, cottonseed, peanuts, spent peppermint and spearmint hay, sugarcane, and sunflower seed. These data could indicate that additional food additive regulations are necessary to support current use patterns. Such regulations could be established under a *de minimis* approach if risks are found to be sufficiently low. Otherwise, if the Agency takes the approach that such regulations would be barred by the Delaney Clause, the corresponding section 408 tolerances might be subject to revocation, thereby eliminating many of the beneficial uses of this pesticide.

Appendix E—Candidates for Negligible Risk Consideration

Chemical	Type	Status	Proposed Use	Group
Alliette	Fungicide	New Use	Hops	C
Amitraz	Insecticide	New Use	Apples	E
Kelthane	Insecticide	New Chemical	Apples	E
Cypermethrin corn	Insecticide	New Uses	Soybeans	C
Dicamba [1]	Herbicide	New Use	Cotton	Not classified.

Chemical	Type	Status	Proposed Use	Group
Glyphosate	Herbicide	New Use	Wheat	C/D
Harvade	Herbicide	New Use	Sunflowers	E
Methomyl [2]	Insecticide	New Use	Hops	Not classified.
Metolachlor	Herbicide	New Uses	Apples, flax, sunflowers	E
Permethrin corn	Insecticide	New Uses	Soybeans, apples, tomatoes	Treated as C
Savey	Insecticide	New Chemical	Apples	C
Verdict	Herbicide	New Chemical	Soybeans	[illegible]

[1] A nitrosoamine contaminant of dicamba is an oncogen.
[2] Acetamide is an oncogen and an animal metabolite of methomyl.

Appendix F Group C Carcinogens' Status Re Risk Quantification

The decision as to whether or not quantification of risk for Group C chemicals is appropriate is subject to change as the Agency analyzes new data or reevaluate existing data. The following lists indicate those chemicals for which, as of August 1988, the Agency has determined a quantified risk number should or should not be used. There are a few other Group C chemicals for which this decision is still pending.

Risk Quantification Deemed Inappropriate

acephate
Aliette (fosetyl al)
amitraz
asulam
benomyl
bifenthrin
cypermethrin
dimethipin (Harvade)
fomesafen
gardona
linuron
methidathion
metolachlor
oryzalin
oxadiazon
parathion
permethion
phosmet
pronamide
propiconazole
triadimenol (Baytan)
tridiphane
trifluralin

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Environmental Protection Agency

40 CFR Parts 177, 178, 179 and 180
Food Additive Regulations Concerning Pesticide Residues: Procedural Regulations: Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 177, 178, 179, and 180

[OPP-260051; FRL-3384-7]

Food Additive Regulations Concerning Pesticide Residues: Procedural Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing rules to set forth procedures for establishing, modifying, or revoking food additive regulations concerning pesticide residues in or on processed food under section 409 of the Federal Food, Drug, and Cosmetics Act (FFDCA), 21, U.S.C. 348. EPA also is proposing procedural rules governing the filing of objections, requests for hearings, and the holding of hearings under FFDCA sections 408 and 409. Accordingly, EPA is proposing to replace the current procedural rules concerning objections and hearings under FFDCA section 408 by the procedural rules proposed herein. Elsewhere in this issue of the **Federal Register**, EPA is issuing a notice addressing the Delaney Paradox.

DATE: Written comments, identified by the document control number [OPP-260051], must be received on or before December 19, 1988.

ADDRESS: By mail, submit comments, preferably in triplicate, to: Public Docket and Freedom of Information Section, Field Operations Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

In person, deliver comments to: Room 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

All written comments will be available for public inspection in Room 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Rosalind L. Gross, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Room 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA ((703)-557-7700).

SUPPLEMENTARY INFORMATION: EPA is proposing rules to set forth procedures for establishing, modifying, or revoking food additive regulations concerning pesticide residues in or on processed food under section 409 of the FFDCA, 21 U.S.C. 348. EPA also is proposing procedural rules governing the filing of objections, requests for hearings, and the holding of hearings under FFDCA sections 408 and 409. Accordingly, EPA is proposing to replace the current procedural rules concerning objections and hearings under FFDCA section 408 by the procedural rules proposed herein.

Reduction in public reporting burden for this collection of information as a result of this amendment is expected to average approximately 14 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

I. Background and Need for Regulations

EPA administers that portion of the FFDCA under which allowable levels (called "tolerances") are established for pesticide residues in or on raw agricultural commodities or on processed foods. This authority was transferred to EPA by Reorganization Plan No. 3 of 1970.

Under FFDCA section 402(a)(2)(B), a raw agricultural commodity (RAC) is "adulterated," and thus illegal to ship or sell in interstate commerce, if it bears or contains any residue of a pesticide chemical that is "unsafe" within the meaning of FFDCA section 408. Section 408, in turn, states that, with certain minor exceptions, residues of a pesticide chemical in or on a particular raw agricultural commodity are "unsafe" unless they are permitted by a regulation issued under section 408 that establishes a "tolerance" (maximum allowable level) for residues of that pesticide chemical on that commodity, or establishes an exemption from the requirement for a tolerance.

Similarly, under FFDCA section 402(a)(2)(C), food (whether a RAC or a processed food) is "adulterated" if it is, or if it bears or contains, any food additive that is "unsafe" within the meaning of FFDCA section 409. Section 409 says that a food additive is "unsafe" unless there is in effect a regulation issued under section 409 stating the conditions under which the food additive may be safely used (which may include a tolerance specifying the residue levels that may remain in the food), and the use in question conforms to the food additive regulations, including any tolerance that has been specified in the regulation.

Most food additives are not pesticides, or course. The Food and Drug Administration (FDA) administers the FFDCA with regard to food additives other than pesticides or pesticide residues. When Congress enacted FFDCA section 409 in 1958, it chose not to require tolerances under section 409 for pesticide residues authorized by tolerances under section 408, if certain conditions are met. The FFDCA thus provides in section 402(a)(2)(C) that if a pesticide chemical has been used on a raw agricultural commodity (RAC) in conformity with a section 408 tolerance (or exemption), a separate section 409 regulation is not required for a "carryover" residue of the pesticide in or on a processed food made from the RAC, if the pesticide residue level in the processed food when ready to eat does not exceed those permitted by the section 408 tolerance (or exemption) for the RAC. However, if the pesticide level in the processed food when ready to eat is higher than that allowed in the parent RAC, or if the pesticide is added to the food during or after one or more processing steps, a separate section 409 regulation is needed if the food is not to be deemed "adulterated".

The procedures prescribed by sections 408 and 409 for issuing regulations are quite similar. Under each provision, with minor variations, a regulation is initially promulgated by an informal process; the informal process may be initiated either by submission of a petition or at the Agency's own initiative. The Agency is to evaluate the data before it and set a tolerance at a level that is no higher than needed to accomplish the intended effect, and in any event at a level that is adequate to protect the public health. The regulation becomes immediately effective. Thereafter, any person who is adversely affected by the regulations may file objections to the regulation and request that the Agency hold a formal evidentiary hearing. The Agency's decision on the objection must, with respect to "questions of fact," be based only on evidence of record. The Agency's decision is judicially reviewable in the courts of appeals.

Section 408 was enacted in 1954, and in 1955 the Food and Drug Administration issued procedural regulations to implement it. (20 FR 9632, December 20, 1955; 21 CFR Part 120 (1956 ed.).) The current version of those regulations is found in 40 CFR Part 180. The procedures adopted in 1955 are

largely still in place, although some additions and changes have been made since then.

The Part 180 regulations are obsolete in several respects. Their provisions regarding the treatment of objections, requests for hearings, and holding hearings do not contain provisions like those in FDA's regulations that allow persons to file objections and receive a judicially reviewable agency ruling without first having to request and participate in a hearing. The hearing rules contain out-of-date provisions regarding the respective roles of the presiding officer and the Administrator in issuing decisions. The hearing rules also fail to provide that direct testimony ordinarily should be in the form of a written statement, rather than being given orally; written direct testimony is now routinely used in hearings under the Federal Insecticide, Fungicide, and Rondenticide Act (FIFRA), 7 U.S.C. 136-136y, and in hearings conducted by FDA under section 409.

Section 409 was enacted in 1958. FDA regulations to implement section 409 include 21 CFR Parts 170 and 570, which contain definitions, criteria, and interpretations regarding food additives; 21 CFR Parts 171 and 571, which specify how to file a food additive petition and how FDA will respond to a petition during the informal stage; and 21 CFR Parts 10 and 12, which contain provisions dealing with objections and requests for hearings and also set forth rules governing the conduct of evidentiary hearings.

EPA has never issued regulations comparable to FDA's dealing with the procedures and criteria to be used in issuing food additive regulations for pesticide residues in or on processed foods under FFDCA section 409, or in dealing with objections and hearing requests. In the past, this lack of procedural regulations has not caused many problems. Insofar as initially establishing food additive regulations is concerned, the statute itself provides fairly detailed procedures and criteria. Moreover, EPA has never held a hearing under either section 408 or section 409. However, having regulations in place will be important in the future as EPA continues to conduct its process of reregistering old pesticides and reevaluating the FFDCA tolerances associated with these pesticides. Section 409 does not spell out the procedures to be used for modification or revocation of food additive regulations. Instead, section 409(h) states that the Administrator "shall by regulation prescribe the procedure by which (food additive regulations) may be amended or repealed, and such procedure shall conform to the procedure provided in this section for promulgation of such regulations." EPA anticipates that there may be a need to modify or revoke a number of section 409 food additive regulations and that some of these actions may be contested. Moreover, within the past year EPA has received two petitions from citizens and environmental groups requesting the revocation of existing section 409 food additive regulations for particular pesticides. EPA believes it would serve the interests of all concerned if EPA published regulations describing the procedures that EPA will use in processing petitions for the issuance, modification, or revocation of section 409 food additive regulations, how EPA will treat objections and requests for hearings filed by persons who disagree with the EPA action, and how EPA will conduct hearings.

EPA wishes to develop procedural regulations for sections 408 and 409 that are similar and, if possible, integrated. Most food-use pesticides are applied to raw agricultural commodities rather than to processed foods, and most section 409 tolerances for pesticide residues are issued with reference to residues that result from treatment of RACs or other uses of pesticides that yield residues in the RAC. If a section 409 tolerance is needed for a particular processed food, a section 408 tolerance usually is needed for the parent raw agricultural commodity. Thus, EPA often receives simultaneous petitions for issuance of a tolerance under section 408 for residues of a particular pesticide chemical on a raw agricultural commodity and under section 409 for residues on processed foods made from that commodity, and must act on the related petitions in a coordinated way. The statutory procedures for filing and acting on petitions under the two sections are similar, as are the processes set forth for filing objections, requesting hearings, and holding hearings. Accordingly, EPA believes that it would be useful to have one set of regulations that govern the activities under these two sections of the statute.

In addition to the need for modern statements of the procedures to be used, EPA believes that modern regulations are needed to set forth the criteria, interpretations, and categorizations it will use in implementing sections 408 and 409. Such regulations would restate or update practices that have been developed over many years, some of which never have been codified. They might address subjects such as: Distinguishing between RACs and processed foods; use of animal study data to make predictions about toxicity in humans; use of assumptions regarding the typical human diet, the variations in the diets of various groups of people, and the pesticide residue levels to which food consumers may be exposed; data requirements for the support of tolerance petitions; crop groupings for various purposes; and a number of other substantive issues involved in setting tolerances.

In addition, the subject of differing statutory approval criteria under the two FFDCA sections and under FIFRA needs to be addressed. FIFRA and FFDCA section 408 employ criteria that entail the balancing of risks and benefits of the use of the pesticide. Section 409(c) contains various criteria. The so-called "general safety clause" requires a finding that under the conditions of use to be specified in the regulation, the proposed use of the food additive will be "safe". That clause has been read by one court as involving risk/benefit principles, see *Continental Chemiste Co. v. Ruckelshaus*, 461 F. 2d 331, 340-341 (7th Cir. 1972), and EPA has tended to interpret it that way; FDA, however, has tended to interpret it as a risk-only criterion. The "Delaney clause" says that (with an exception regarding use as an ingredient in feed for animals raised for food production) a food additive cannot be deemed to be "safe" if it is found to induce cancer when ingested by humans or aminals (or, after appropriate studies, to induce cancer in humans or animals). A number of pesticide chemicals that are food additives have been shown to induce cancer in animals in dietary studies. Since many of those chemicals have considerable benefits while posing little if any cancer risk to humans, a strict application of the Delaney clause (or even a very strict, risk-only reading of the general safety clause) could make it impossible to issue or maintain effect food additive regulations under FFDCA section 409 for pesticides that could meet the criteria of FIFRA and FFDCA section 408. This problem was the subject of a 1987 report by the Board on Agriculture of the National Academy of Sciences/National Research Council, entitled "Regulating Pesticides in Food---The Delaney Paradox." Elsewhere in this issue of the **Federal Register** EPA is issuing a notice addressing the Delaney Paradox.

In developing new regulations to govern its activities under the FFDCA, EPA has chosen to proceed in two phases. In the first phase, initiated by this proposed rule, the Agency will deal with the urgent problems: The need for

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basic procedural rules governing the filing of FFDCA section 409 petitions for establishing, modifying, or revoking food additive regulations, and the need to modernize the rules governing objections, requests for hearings, and hearing procedures under both section 409 and section 408. In the second phase, which will overlap the first, the Agency plans to develop a unified regulation that will deal with the substantive interpretations and criteria for deciding when tolerances or food additive regulations are needed, what data are needed to support a tolerance or food additive regulation, and what criteria and assumptions will be used by EPA in determining whether a tolerance or food additive regulation should be established, modified, or revoked.

II. Petitions Under FFDCA Section 409

EPA proposes to add a new Part 177 to set forth basic guidance on how persons may petition for the establishment, modification, or revocation of food additive regulations (including tolerances) for pesticide residues in or on processed foods, and how EPA will act on those petitions. Proposed Part 177 would deal only with the informal portion of the FFDCA section 409 process. Provisions governing the formal stage would be found in proposed Part 178, concerning objections and hearing requests, and proposed Part 179, concerning hearings.

To a large extent, proposed Part 177 is derived from the procedural provisions in EPA's regulations regarding FFDCA section 408 tolerances (current 40 CFR Part 180 (particularly §§ 180.7 through 180.9, 180.29, and 180.32) and FDA's regulations regarding citizen petitions in 21 CFR 10.30).

EPA wishes to draw readers' attention to the definitions of "pesticide chemical" and "pesticide residue" in proposed § 177.3. By virtue of those definitions, Part 177 would apply to any residue on processed food of any substance that is a "pesticide" used in the production, storage, or transportation of any RAC, or any substance that is a metabolite or degradation product of any such "pesticide." Thus, any residue of such a substance on a processed food would be subject to Part 177 even though the substance was applied during or after the processing of the food, so long as the substance is a "pesticide chemical" because of its use with respect to some RAC.

The proposed rule differs from 40 CFR Part 180 (and from the somewhat similar FDA rules in 21 CFR Part 171) in that it does not discuss the time EPA is allowed to take action on a petition. Section 409 requires the Agency to issue a decision on a petition within 90 days (extendable to 180 days) after it files the petition. Section 408 has a similar provision. Today it is unrealistic to expect EPA to be able to complete the review and evaluation needed to issue a food additive regulation within 180 days in all but the rarest of cases. In fact, if EPA were to try to do so on a routine basis, the likely result would be public criticism for failure to review and evaluate the petitions sufficiently. Indeed, it appears that the statutory schedule was perceived as difficult to satisfy as early as 1955, when the predecessor to 40 CFR Part 180 was issued (21 CFR Part 120, 1956 ed.), judging from the detailed provisions in the 1955 regulation (still in Part 180 today) about the events that stop the "clock" temporarily (e.g., while the agency waits for a reply to a question to the petitioner) or the events that allow the agency to restart the "clock" at zero (e.g., whenever any amendment is submitted).

The Agency proposes not to refer in Part 177 to this "clock". Under section 409, a permitted Agency response to a petition under section 409 is a denial of the petition. If any petitioner informs EPA that it wishes to assert its right to have a decision on a petition to establish a food additive regulation made within the statutory time limit despite the fact that EPA has not finished its evaluation, EPA expects to issue a denial of the petition on the grounds that the evaluation it has been able to undertake has not established that the proposed use of the pesticide chemical will be safe. Commenters are invited to indicate whether they support the inclusion of a provision to this effect in the regulation itself, or whether other references to the statutory "clock" should be included.

Another difference from the current Part 180 provisions is the proposed requirement that a petition include both a full statement of the factual and legal grounds including all relevant information of why its approval would be reasonable and a discussion of information known to be unfavorable to approval of the petition along with any response to this information. The latter provision is derived from the FDA regulations, 21 CFR 10.30(b) and 171.1(c)E. The purpose of this statement is to facilitate the Agency's assessment of the safety of the pesticide chemical. Commenters are invited to indicate whether they support the inclusion of a provision to this effect in the regulation.

The petition would also be required to include a brief summary of the petition (i.e. company name and address, section of the Code of Federal Regulations to be affected if appropriate, chemical name, American National Standards Institute common name, summary of the toxicological data submitted in support of the requested tolerance, the nature of the residue, commodity, tolerance residue value requested, and name of proposed analytical method for residue determination for enforcement purposes) suitable for publication in the Federal Register under FFDCA section 409(b)(5). In combination, these provisions should allow more informed public comment on the petition than do current procedures. Since section 409(b) does not require publication of a proposed version of a food additive regulation for notice and comment by the public, the section 409(b)(5) notice of filing may be the only opportunity for members of the public to submit any comments they wish to make. EPA believes that there is likely to be less controversy about food additive regulations if they are issued after an opportunity has been provided for persons to submit reasonably informed comment.

In some cases it is likely that the Agency will conclude that instead of approving or denying a petition, the Agency should issue a proposed rule and invite public comment. This could occur because of the complexity or controversiality of the issues raised by a petition or because of a need to gather information from members of the public. The statute allows the Administrator "at any time, upon his own initiative" to publish a proposed food additive regulation. While it could be argued that the 180-day "clock" provision for response to petitions means that EPA may not respond to a petition by issuing a proposed rule, EPA believes that the better reading, and certainly the more desirable one from a policy standpoint, is to allow such a response to a petition, and proposed § 177.125(b) so states. Comment on this proposed provision is requested.

Part 177 as proposed here does not purport to answer the questions regarding interpretations, criteria, and categorization mentioned in Unit I of this preamble. EPA expects to expand Part 177 extensively to deal with these issues in the Agency's second phase of rulemaking on the subject of FFDCA tolerances. However, EPA does not anticipate that the procedures set forth here will require extensive modification.

III. Objections and Requests for Hearings Under FFDCA Sections 408 and 409

EPA proposes to add a new 40 CFR Part 178 to inform persons how to submit objections to regulations issued informally under FFDCA section 408 (and 40 CFR Part 180) or FFDCA section 409 (and proposed 40 CFR Part 177), and how to request evidentiary hearings on those objections. Proposed Part 178 also would describe in some detail how EPA would respond to such objections and hearing requests. The new part would implement FFDCA sections 408(d)(5) and 409(f).

To a very large extent, proposed Part 178 (like proposed Part 179, dealing with rules for hearings) is based on the FDA regulations that appear in Subpart B of 21 CFR Part 12 (particularly § 12.20 and §§ 12.22 through 12.30). In issuing and amending those regulations, FDA has explained its reasoning (40 FR 22950, May 27, 1975; 40 FR 40682, September 3, 1975; 41 FR 51706, November 23, 1976; 43 FR 51986, November 7, 1978; 44 FR 22318, April 13, 1979). To the extent that the language in the regulations now proposed by EPA as Parts 178 and 179 is the same as or substantively similar to the FDA regulations, EPA relies on FDA's explanations in support of this proposal and refers readers to them. It should be noted that the FDA regulations upon which this proposed rule is based were part of a larger set of regulations prescribing administrative procedures for all the statutory provisions under which FDA operates, and that the FDA regulations thus are much broader in scope than those proposed here.

In this proposal, EPA has modified or restated a number of the provisions of the FDA regulations. For instance, EPA has reorganized the provisions in an attempt to make quite clear the distinction between objections and hearing requests, and the different actions EPA would take in response to objections alone as opposed to objections accompanied by hearing requests. EPA wishes to emphasize its view that, for purposes of both Agency action and judicial review, persons who file objections to Agency conclusions of law or policy, but who do not disagree with the Agency's characterization of the factual matters involved, need not request an evidentiary hearing in order to obtain review of the objections. Hearings are for the purpose of gathering evidence on disputed factual issues and reaching conclusions on those factual issues; ruling will be issued on objections to regulations whether or not hearing requests are received. If no hearing is requested in connection with an objection, EPA would argue before a reviewing court that its view of the facts should be sustained unless found to be arbitrary or capricious. (The arguably more stringent review standards set forth in FFDCA sections 408(i) and 409(g) are inapplicable, in EPA's opinion, where no evidentiary hearing has been held.) And the standard for review of issues of law or policy should not depend on whether or not an evidentiary hearing was held.

EPA also has attempted in this proposal to make very clear the distinct criteria it will apply in deciding whether an objection has been properly filed, whether a hearing has been properly requested, and whether a hearing request should be granted. For instance, proposed § 178.32 is devoted to criteria for rulings on hearing requests. Such a request would be granted only if the Administrator finds that the request establishes: (1) That there exists one or more genuine and substantial issues of fact; (2) that there is a reasonable possibility that available evidence identified by the requester would, if established, resolve one or more of such issues in favor of the requester, taking into account other evidence to the contrary; and (3) that such resolution of the factual issue(s) in the requestor's favor would justify the action requested in the objection. These proposed rules for deciding whether to hold a hearing are substantially similar to the FDA rules in 21 CFR 12.22 and 12.24. FDA's application of its rules has been upheld in cases such as *Pineapple Growers Ass'n* v. *FDA*, 673 F. 2d 1083 (9th Cir. 1982), and *Community Nutrition Institute* v. *Young*, 773 F. 2d 1356 (D.C. Cir. 1985).

Proposed Part 178 also contains separate sections on what an objection must contain (§ 178.25) and on what a hearing request must contain (§ 178.27).

Proposed § 178.30 gives an overview of the order and manner in which EPA would rule on objections and hearing requests. Paragraphs (c) and (d) on proposed § 178.30 state explicitly that if two or more similar objections are received and one or more of them is accompanied by a valid request for a hearing, those objections would be ruled on as a group after the hearing was held. This provision would avoid the possibility that an issue would undergo review at the same time in an administrative hearing and in a reviewing court. This approach was advanced in the FDA's preamble to the predecessor of the 21 CFR Part 12 regulations. (See 40 FR 22950, 22969 (May 27, 1975).) Proposed § 178.32 includes a provision which directs the Administrator to make preliminary rulings on any issues raised by an objection which are necessary for resolution prior to determining whether a request for an evidentiary hearing should be granted.

An EPA ruling on an objection in connection with which no evidentiary hearing was held would be issued under § 178.65. Section 178.70 of the proposed rule describes the administrative record of a proceeding that culminates in an order under § 178.65.

If EPA decided that a hearing request should be granted, a hearing would be held and the objection thereafter would be ruled on in a decision, as provided in proposed 40 CFR Part 179 (discussed in Unit IV of this preamble).

IV. Rules Governing Hearings Under FFDCA Sections 408 and 409

EPA proposes to add a new 40 CFR Part 179 to set forth rules of procedure for formal evidentiary hearings under FFDCA section 408(d)(5) or 409(f). EPA also proposes to modify current 40 CFR Part 180 to delete the rules of procedure for section 408(d)(5) hearings that appear in that regulation. Proposed Part 179 is based primarily on FDA's hearing regulations in 21 CFR Part 12, although some of the provisions are derived from 40 CFR Parts 22 and 164.

A hearing would commence with the publication in the Federal Register by the Administrator or his designee of a "Notice of Hearing." The principal purposes of such a notice would be to announce that a hearing will be held, specify its scope, and advise persons how and when they must inform the Agency of their intent to participate. The notice of hearing is described in proposed § 179.20. Any person could become a party to the hearing by filing a notice of participation in the manner described by § 179.26. EPA proposes not to make the distinction made in the FDA regulations between "parties" who have a right to cross-examine witnesses and "participants" who may cross-examine witnesses only if allowed to do so by the presiding officer on a showing of good cause. In hearings under FIFRA, EPA has a long-standing policy of freely granting leave to persons to intervene as full parties; EPA has not experienced the difficulties cited by FDA as a reason for limiting the cross-examination rights of some persons (see 41 FR 51706, 51717, November 23, 1976).

The evidence-taking portion of a hearing would be conducted before a presiding officer who would be an administrative law judge. After the evidence has been taken, the presiding

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officer would issue an initial decision that would become the Agency's final decision unless a party filed exceptions requesting review by the Administrator, or unless the Administrator undertook review on his or her own volition. The qualifications and powers of the presiding officer, and related matters, are set forth in Subpart D to Part 179.

EPA is proposing to follow the FDA practice (21 CFR 10.55) of providing for full separation of functions between the Agency employees who decide the case and the Agency employees who participate as representatives of the position of the Office of Pesticides and Toxic Substances (OPTS), even though the Administrative Procedure Act, 5 U.S.C. 554(d) and 557(d), does not require this. After the signature of the notice of hearing, therefore, the ban on *ex parte* communications with deciding officials set forth in proposed § 179.24 would apply alike to persons within and without the Agency. Before that time, however, there would be no prohibition on discussions between representatives of the Administrator and representatives of OPTS. Representatives of OPTS could (and ordinarily would) draft the notice of hearing, and the rules would allow the Administrator to decide whether the Assistant Administrator should issue the notice or should refer it to the Administrator for signature.

Proposed § 179.80 sets forth standard provisions regarding filing and service of documents submitted by parties or issued by deciding officials. All such documents would become part of the record of the hearing, in the sense that they would be available for examination by a reviewing court. The documents in the record would not, of course, be "evidence" that could support factual findings in a decision, unless the presiding officer had admitted them as evidence.

The public availability of the record would be governed by § 179.81. In essence, the documents constituting the record of a hearing would be available to the public to the same extent as other Agency documents under the Agency's regulations in 40 CFR Part 2 implementing the Freedom of Information Act. Information covered by a business confidentiality claim would be available to other parties in a hearing or to the public as determined by the presiding officer using the principles set forth in 40 CFR Part 2 for deciding such matters, especially 40 CFR 2.301(g)(3) and 2.301(g)(4). EPA may modify 40 CFR Part 2 to reflect this at the time it issues a final version of Part 179.

Proposed § 179.83 would establish a form of discovery procedure. This section is substantially similar to the FDA regulation at 21 CFR 12.85. It would require each party to submit to the hearing clerk, and thus make available to other parties, all documents in the party's principal files containing factual information, whether favorable or unfavorable to the party's position, that are relevant to the issues in the hearing, unless the documents had already been produced under § 179.83 by another party. Documents that are internal deliberative memoranda, are attorney work product, or were prepared specifically for use in connection with the hearing, would not have to be produced. A party's failure to comply with the document production requirement would allow the presiding officer or the Administrator to draw adverse inferences against the party. OPTS would be required to make its disclosure under this section within 60 days after publication of the notice of hearing (rather than at the time of such publication, as the FDA regulation provides). The OPTS disclosure would include the record of the proceedings that led to the hearing (e.g., the proceedings under Part 178 and under Part 177 or 180). Other parties would be required to make their disclosures 70 days after publication of the notice of hearing. The purpose of this disclosure requirement is to avoid the possibility that the hearing record will fail to include significant evidence known to some parties but not to others. The FFDCA does not specifically provide for the issuance of subpoenas in a hearing under section 408 or 409. Accordingly, it is not clear to EPA that failure to make disclosure as required by the regulation may be the basis for excluding a party from the hearing, although the FDA regulation has so provided for some time. However, it appears to EPA that failure to comply with the disclosure requirement clearly would provide a proper basis for drawing inferences about the nature of the withheld information that are adverse to the party who withheld it. EPA seeks comment on these issues.

EPA also seeks comments on whether the final rule should provide for more expansive, or more explicit discovery rights. The proposed discovery provision in § 179.83 provides that OPTS will provide, within 60 days of the publication of the notice of hearing, all documents in its files containing factual information or expert opinion, whether favorable or unfavorable to the position of OPTS. The other parties have an obligation to provide such information within 70 days of publication of the notice of hearing. The proposal defines files to mean "the principal files" in which documents relating to the issues in the hearing are ordinarily kept. By the use of the term principal files, the Agency does not intend to provide an arbitrary location limitation on the files which must be produced, but rather to indicate that a good faith effort must be made to locate and produce relevant information, without an unduly burdensome search for information of marginal relevance.

The Agency is considering as an alternative a discovery provision modeled after the Federal Rule of Civil Procedure, either with or without a provision for taking depositions. Another possible option is for the Agency to list in the rule the explicit types of discovery information, e.g. toxicity studies, exposure information, benefits data, etc., which must be provided. EPA seeks comment on these discovery options, as well as on whether sanctions different than those included in these procedural rules should be provided for a party's failure to produce discovery documents.

Proposed § 179.86 and § 179.87 would set forth standard provisions for preliminary conferences to be held in advance of the taking of testimony for purposes of simplifying the issues and ordering the presentation of evidence. One or more preliminary conferences may be held at the discretion of the presiding officer. The actions taken at a preliminary conference will be recited in a written order issued by the presiding officer. Sections 179.89 and 179.90 set forth rules governing motions and summary decisions.

Section 179.91 concerns the assignment of burdens in a hearing. The section is based on 40 CFR 164.80 and 21 CFR 12.87(d). The burden of going forward with evidence on an issue in the hearing on that issue. See *Environmental Defense Fund* v. *EPA*, 548 F. 2d 998, 1004, 1013–1015 (DC. Cir. 1976). Thus, for instance, if the Agency had denied a petition for establishment of a new tolerance and the party who had filed the petition objected, that party would have the burden of going forward to present evidence to support its case. Likewise, if the Agency had issued a tolerance and an environmental group objected to its issuance, the environmental group would have the burden of going forward with evidence to make a case for its claims.

The ultimate burden of persuasion that a particular tolerance regulation satisfies the statutory criteria would, however, rest on the party or parties so contending. See *Environmental Defense Fund* v. *United States Dep't of HEW*, 428 U.S. 1083, 1092 (1970); *Continental Chemiste Corp.* v. *Ruckelshaus*, 461 F. 2d 331 (7th Cir. 1972). Thus, in the first example given in the preceding paragraph (where a petitioner for a new tolerance objected to denial of the petition), the ultimate burden of persuasion would rest on the petitioner, the party who sought approval of the tolerance. In the second example (objection by a citizens' group to a tolerance), the ultimate burden of persuasion would rest on OPTS and any other parties who support the issuance or continuation of the tolerance.

Proposed § 179.93 deals with the taking of testimony. It provides that except in those unusual cases where the memory or demeanor of a witness is of importance to the issues in the proceeding, all direct testimony is to be in writing and furnished (with supporting exhibits) to the opposing counsel and the presiding officer two weeks in advance of the time for presentation of the witness. The rule also would provide that oral cross-examination would be the norm. Persons planning to cross-examine the witness by using written exhibits or documents would be obliged to give notice to the other parties 3 business days in advance of the cross-examination. The presiding officer could allow variations in the notice requirements. The purpose of the requirement for written direct testimony and advance notice is to speed the hearing and improve its quality by avoiding surprise, enhancing the ability of parties and their counsel to conduct effective yet terse cross-examination and re-direct examination, and eliminating the time needed for oral recitation of direct testimony and the potential for transcription errors that oral testimony entails. Under the Administrative Procedure Act a party has no right to present direct testimony orally in a rulemaking proceeding unless the party would be "prejudiced" by having to present the testimony in writing. It is hard to conceive of circumstances where prejudice of this sort could result to the party sponsoring the witness in a rulemaking concerning the safety or effectiveness of pesticide chemicals or pesticide residues.

The provisions of the proposed rule regarding transcripts (§ 179.94), admission of evidence, objections, and offers of proof (§ 179.95), conferences (§ 179.97), briefs and arguments (§ 179.98), and interlocutory appeals are largely derived from the 21 CFR Part 12 and 40 CFR Part 164 provisions and, in EPA's opinion, are unlikely to be controversial.

The proposed section (§ 179.105) regarding the initial decision of the presiding officer after evidence-taking has concluded is noteworthy only in that it attempts to make clear that a decision could (and usually would) involve both findings of fact, which must be supported by substantial evidence that has been found admissible, and conclusions of law and policy, which need not be supported by "evidence." Of course, conclusions of law or policy must not be arbitrary or capricious, must take into account the relevant facts and considerations, including the contentions of the parties, and must be explained. EPA also has added a provision that requires a decision to be based upon "a fair evaluation of the entire record," as required by FFDCA section 409(f)(z). FFDCA section 409(g) also specifies that standard for judicial review purposes, but only for issues of fact. While it is not obvious to EPA how the section 409 standard of review differs in substance from the section 408 "substantial evidence when considered on the record as a whole" standard, the legislative history of section 409 contains statements indicating that the "fair evaluation" standard was designed to afford a reviewing court a somewhat broader authority to reverse agency findings of fact than does the "substantial evidence" criterion. To avoid potential controversy, therefore, the "fair evaluation of the record" standard has been included in proposed § 179.105.

The initial decision would become the Agency's final decision unless a timely exception were taken or unless the Administrator decided *sua sponte* to undertake review of the initial decision. This is the practice under 21 CFR Part 12 and 40 CFR Part 164. It is different than the scheme set forth in current 40 CFR Part 180, which makes no provision for a decision or recommended decision by the presiding officer and requires the Administrator to issue all proposed and final decisions.

Finally, the provisions regarding review of the initial decision by the Administrator, issuance of a final decision, judicial review, and the administrative record for review (§§ 179.107 through 179.115, 179.125, and 179.130) again are based primarily on what the Agency believes to be uncontroversial provisions of FDA's hearing regulations in 21 CFR Part 12.

V. Proposed Amendments to Current Tolerance Regulations

In addition to proposing to add to Title 40 three new Parts (177, 178, and 179), EPA proposes to amend Part 180. The amendments would delete from Part 180 current §§ 180.13 through 180.28, which concern objections, requests for hearings, and hearings; the sections would be replaced by the new Parts 178 and 179.

Amendments also would be made to § 180.7 and to § 180.29. In § 180.7, material would be added to state that the Agency could respond to a petition by issuing a proposed rule under FFDCA section 408(e), to state that a final regulation issued in response to a petition could establish, modify, or revoke a tolerance, and to include a provision providing necessary linkage to the proposed new Part 178 regarding objections. In § 180.29, material again would be added to make the section apply to the establishment, modification, or revocation of tolerances, to link the provision to the new Part 178, and to correct certain technical omissions regarding the comment period and the finalization of proposed regulations.

Finally, § 180.30, regarding judicial review, would be rewritten. Paragraph (a) of that section would set forth the Agency's view that judicial review of a regulation issued under Part 180 cannot be obtained until objections have been filed under Part 178 and finally acted upon under Part 178 or 179. Paragraph (b) would state that a denial of a request to the Agency for the initiation of rulemaking under FFDCA section 408(e) is final agency action for which no judicial review provision is made under the FFDCA, but which may be reviewable under some other statutory provision, e.g., 28 U.S.C. 1331.

EPA expects to propose a number of other changes to Part 180 in the course of its second phase of rulemaking, which is discussed in Unit I of this preamble. EPA also may then propose to integrate the procedural provisions of Part 180 with those of Part 177, if that appears to be feasible.

VI. Regulatory Review Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and must submit its analysis supporting its findings to the Office of Management and Budget (OMB) for review. The Agency has determined that the regulations proposed in this document are not "major" regulations as defined by E.O. 12291.

As described in earlier units of this preamble, the regulations proposed by this document are largely procedural in nature and draw heavily from other procedural regulations in closely related areas that members of the regulated community can be expected to be familiar with. By providing procedural regulations in areas where none now exist, the proposal will lessen the

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likelihood of costs to the regulated community caused by uncertainty and the potential for delays in handling petitions and objections.

To the extent that the regulations contain substantive provisions, they largely repeat statutory requirements or propose to codify requirements that have been in effect for many years. The one exception is the requirement that a petitioner under section 409 state why the petition should be approved and submit a releasable summary of the petition. A summary of the petition will open the petition process to the public by increasing their understanding of the issues involved and providing the public an opportunity to comment on these issues.

This proposed rule has been reviewed by the Office of Management and Budget (OMB) under section 3 of Executive Order 12291.

B. Regulatory Flexibility Act

This proposed regulatory action has been reviewed under the provisions of section 3(a) of the Regulatory Flexibility Act and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations.

As this proposed regulatory action is intended to formalize procedures and criteria specified in the statute itself, it is anticipated that little or no economic impact will occur on any small entity.

Accordingly, I certify that this proposed regulatory action does not require a separate regulatory analysis under the Regulatory Flexibility Act.

C. Paperwork Reduction Act

The information collection requirements related to current submissions of petitions under FFDCA section 409 have been approved by OMB under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB Control No. 2070–0024. These existing information collection requirements would be reduced by this proposed rule, when promulgated, and have been submitted to OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et. seq.* Comments on the modifications to existing information collection requirements should be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked Attention: Desk Officer for EPA. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

Reduction in public reporting burden for this collection of information as a result of this amendment is expected to average approximately 14 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Parts 177, 178, 179, 180

Administrative practice and procedure, Agricultural commodities, Processed foods, Pesticides and pests, Objections, Hearings, Reporting and recordkeeping requirements.

Dated: October 7, 1988.

Lee M. Thomas,

Administrator.

For the reasons stated in the preamble, it is proposed to amend Chapter I of Title 40, Code of Federal Regulations, as follows:

1. By adding a new Part 177, to read as follows:

PART 177—ISSUANCE OF FOOD ADDITIVE REGULATIONS

Subpart A—General Provisions

Sec.

177.1 Scope and applicability.
177.3 Definitions.

Subparts B–D—[Reserved]

Subpart E—Procedures for Filing Petitions

177.81 Petition for establishment, modification, or revocation of a food additive regulation.
177.84 Deficient or incomplete petition.
177.86 Acceptance for review.
177.88 Publication of notice.
177.92 Amendments or supplements to petitions.
177.98 Withdrawal of petitions.

Subpart F—Submission of Scientific and Technical Information

177.102 Data and information required to support petition to establish a food additive regulation, to increase a tolerance, or to remove a condition on use.
177.105 Data and information required to support petition to revoke a food additive regulation, to decrease a tolerance, or to add a condition on use.
177.110 Additional data requirements; waiver of requirements.
177.116 Sample of food additive.

Subpart G—Administrative Actions

177.125 Action after review.
177.130 Issuance of proposed rule on Administrator's initiative or in response to petition, and final action on proposal.
177.135 Effective date of regulation.

Subpart H—Judicial Review

177.140 Judicial review.

Authority: 21 U.S.C. 348, 371(a); Reorg. Plan No. 3 of 1970.

Subpart A—General Provisions

§ 177.1 Scope and applicability.

(a) This part establishes procedures for the establishment, modification, or revocation by the Administrator of food additive regulations under section 409 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 348, for food additives the use of which may result in pesticide residues in or on processed food or otherwise affect the characteristics of such food.

(b) Part 178 of this chapter contains procedures for filing objections and requests for hearings under FFDCA section 409(f) on food additive regulations or petition denials issued under this part. Part 179 of this chapter contains rules governing formal evidentiary hearings under FFDCA section 409(f).

(c) Regulations establishing tolerances (or exemptions from the need for a tolerance) for pesticide residues on raw agricultural commodities under FFDCA section 408 are set forth in Part 180 of this chapter. If the use of a pesticide chemical in the production, storage, or transportation of a raw agricultural commodity (RAC) in conformity with such a tolerance or exemption results in the presence of a pesticide residue in or on processed food made from the RAC, FFDCA section 402(a)(2)(C) provides that such pesticide residue shall not be deemed unsafe for the purposes of FFDCA section 409 (despite the absence of a food additive regulation regarding such residue on the processed food) if the residue in or on the RAC has been removed to the extent possible in good manufacturing practice and the concentration of such residue in the processed food when ready to eat is not greater than the tolerance prescribed for the RAC. However, a food additive regulation would be required if the level of the pesticide residue in the processed food when ready to eat exceeded the level permitted in the "parent" RAC by the tolerance established under FFDCA section 408. In addition, if a pesticide residue in or on a processed food results from the application of a pesticide during or after processing, the food would be unsafe within the meaning of FFDCA section 409 unless a food additive regulation permitted that residue in or on the processed food.

§ 177.3 Definitions.

For the purposes of this part:

"Administrator" means the Administrator of the Agency, or an officer or employee of the Agency to whom the Administrator has delegated the authority to perform functions under this part.

"Agency" means the United States Environmental Protection Agency.

"FFDCA" means the Federal Food, Drug, and Cosmetic Act, as amended, 21 U.S.C. 301–392.

"FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136–136y.

"Food additive" means any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component of or otherwise affecting the characteristics of any food (including any such substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food), except that such term does not include:

(1) A pesticide chemical in or on raw agricultural commodity.

(2) A pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity.

(3) A color additive.

(4) Any substance used in accordance with a sanction or approval granted prior to September 6, 1958, pursuant to the FFDCA, the Poultry Products Inspection Act, or the Federal Meat Inspection Act.

(5) A new animal drug.

(6) A substance that is generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use.

"Food additive regulation" means a regulation issued pursuant to FFDCA section 409 that states the conditions under which a food additive may be safely used. A food additive regulation under this part ordinarily establishes a tolerance for pesticide residues in or on a particular processed food or a group of such foods. It may also specify: The particular food or classes of food in or on which a food additive may be used; the maximum quantity of the food additive which may be used in or on such food; the manner in which the food additive may be added to or used in or on such food; or directions or other labeling or packaging requirements for the food additive.

"Pesticide chemical" means any substance which alone, or in chemical combination with or in formulation with one or more other substances, is a "pesticide" within the meaning of FIFRA and which is used in the production, storage, or transportation of any raw agricultural commodity. The term includes any substance that is an active ingredient, intentionally-added inert ingredient, or impurity of such a "pesticide."

"Pesticide residue" means a residue of a pesticide chemical or of any metabolite or degradation product of a pesticide chemical.

"Tolerance" means:

(1) The amount of a pesticide residue that legally may be present in or on a processed food under the terms of a food additive regulation. Tolerances are usually expressed in terms of parts of the pesticide residue per million parts of the processed food (ppm), by weight.

(2) [Reserved]

Subparts B–D—[Reserved]

Subpart E—Procedures for Filing Petitions

§ 177.81 Petition for establishment, modification, or revocation of a food additive regulation.

(a) *Who may submit a petition.* Any person may submit a petition requesting the Agency to issue a regulation to establish, modify, or revoke a food additive regulation.

(b) *Where to submit petition.* A petition shall be submitted to:

Registration Division (TS–767C), Office of Pesticide Programs, U.S. Environmental Protection Agency, Washington, DC 20460.

(c) *Identification of petitioner.* A petition must be signed by the petitioner or the petitioner's authorized representative, and state the petitioner's mailing address and telephone number.

(d) *Material to be in English language.* The petition shall be written in the English language. If any part of the accompanying material is written in a language other than English, it shall be accompanied by an accurate and complete English translation.

(e) *Format for data submission.* Data and information submitted in support of a petition shall be on separate sheets or sets of sheets, suitably identified. If an item of data has already been submitted to the Agency, the petitioner may cite it rather than submitting it. The data shall be submitted in the manner specified by §158.32 of this chapter. Any claim of entitlement to confidential treatment of data shall be made in accordance with § 158.33 of this chapter.

§ 177.84 Deficient or incomplete petition.

(a) After a preliminary review of the petition, the Administrator may notify the petitioner that the Agency has found the petition to be incomplete or deficient, i.e., that it does not comply with the requirements of § 177.102 or § 177.105, and that it will not be accepted for detailed review.

(b) A petitioner who receives a notice under paragraph (a) of this section may supplement the petition, in which case the Agency shall conduct a further preliminary review of the petition as supplemented and take action under paragraph (a) of this section or under § 177.86.

§ 177.86 Acceptance for review.

Unless the Administrator notifies the petitioner under § 177.84 that the petitioner is incomplete or deficient, the Administrator shall accept the petition for detailed review.

§ 177.88 Publication of notice.

Within 30 days of acceptance of a petition for detailed review, the Administrator shall publish in the **Federal Register** a notice which includes the name of the petitioner and the summary submitted in accordance with § 177.102(i).

§ 177.92 Amendments or supplements to petitions.

After a notice of a petition has been published, the petitioner may submit additional information or data in support of the petition, or may amend the petition. Any such submission or amendment shall be accompanied by an informative summary of its contents that may be published in the **Federal Register**. The Administrator shall publish a notice in the **Federal Register** to supplement the notice published under § 177.88 if:

(a) The petitioner seeks to amend the petition by increasing a requested tolerance, by identifying any additional food additive or additional pesticide residues to which the requested food additive regulations would apply, by

identifying any additional processed food to which the requested food additive regulations would apply, or by changing the method for detecting or measuring pesticide residues to be used for enforcement purposes.

(b) The Administrator finds that publication of such a notice otherwise would be in the public interest.

§ 177.28 Withdrawal of petitions.

A petitioner may withdraw a petition. The Agency may retain a copy of a withdrawn petition and any supporting data and information.

Subpart F—Submissions of Scientific and Technical Information

§ 177.102 Data and information required to support petition to establish a food additive regulation, to increase a tolerance, or to remove a condition on use.

A petition to establish a food additive regulation, or to modify a food additive regulation by increasing a tolerance for a pesticide residue in or on a processed food or by removing any other condition of use of a food additive, shall include the following data and information.

(a)(1) The name and composition of the food additive that is a subject of the petition, and the chemical composition of each component of the food additive:

(2) The name, chemical identity, and composition of each pesticide residue that is a subject of the petition; and

(3) The identity of the processed food(s) in question.

(b) A statement of any conditions of use proposed for the food additive, including all directions, recommendations, and suggestions proposed regarding the use of the food additive, i.e., the amount, frequency, method, and time of application or other use, and a copy of its proposed labeling.

(c) Full reports of investigations made with respect to the toxicity of the food additive and of its safety for the proposed rule, including full information as to the methods and controls used in conducting such investigations.

(d) The results of tests to determine the identity and amount of pesticide residues in or on the processed food resulting from the proposed use of the food additive, including a description of the analytical methods used, and a description of practicable methods for measuring such pesticide residues.

(e) Full reports of investigations made with respect to the toxicity of such pesticide residues, including full information as to the methods and controls used in conducting such investigations.

(f) All relevant data bearing on the physical or other technical effect such food additive is intended to produce, and the quantity of such food additive required to produce such effect.

(g) The terms of each food additive regulation proposed.

(h) A statement of why, in the petitioner's opinion, it would be reasonable for the Administrator to approve the petition, taking into account the terms of the FFDCA and FIFRA, this part, the petition, the data and information submitted or cited in support of the petition, other information available to the Agency, and any information or argument reasonably likely to be advanced in opposition to approval of the petition.

(i) An informative summary of the petition and of the data, information, and arguments submitted or cited in support of the petition, and a statement that the petitioner agrees that such summary or any information it contains may be published as a part of the notice to to furnished to the public under § 177.86 or as part of a proposal under § 177.130. The summary need not refer to any method or process that is entitled to protection as a trade secret under FFDCA section 301(j).

§ 177.105 Data and information required to support petition to revoke a food additive regulation, to decrease a tolerance, or to add a condition on use.

A petition to revoke a food additive regulation, or to modify such a regulation by decreasing a tolerance for a pesticide residue in or on a processed food or by adding a condition on the use of a food additive, shall include:

(a) The data information required by § 177.102(a), (b), (g), (h), and (i).

(b) Such data and information of the types described in § 177.102(c), (d), (e), and (f) as the petitioner chooses to submit.

(c) Information showing what changes, if any, petitioner believes would have to be made in associated registrations of pesticides under FIFRA or in associated tolerance regulations issued under FFDCA section 408 if the petition were granted.

§ 177.110 Additional data requirements; waiver of requirements.

(a) The Administrator may require a petitioner to submit data or information other than that described by this part if the Administrator finds such data or information to be necessary for the evaluation of the petition.

(b) The Administrator may waive a requirement imposed by this part for the submission of data or information if the Administrator finds such data or information to be unnecessary for the evaluation of the petition.

§ 177.115 Sample of food additive.

The Agency may require the petitioner to submit a sample of the food additive or pesticide residue that is a subject of the petition. The Agency shall specify in such request the quantity which it requires.

Subpart G—Administrative Actions

§ 177.125 Action after review.

(a) After a petition has been accepted for detailed review, the Administrator shall review the petition, the accompanying data and information, and other pertinent data or information available to the Administrator.

(b) Upon completion of such review, the Administrator shall determine, in accordance with the Act, whether to issue an order that establishes, modifies, or revokes a food additive regulation (whether or not in accord with the action proposed by the petitioner), whether to issue an order denying the petition, or whether to publish a proposed food additive regulation and request public comment thereon under § 177.130.

(c) The Administrator shall publish in the **Federal Register** such order or proposed regulation. An order published under this section shall describe briefly how to submit objections and requests for a hearing under Part 178 of this chapter.

§ 177.130 Issuance of proposed rule on Administrator's initiative or in response to petition, and final action on proposal.

(a) The Administrator may publish in the **Federal Register** a proposal to establish a food additive regulation or to modify or revoke an existing food additive regulation, on his own initiative or in response to a petition.

(b) The Administrator shall provide a period of not less than 30 days for persons to comment on the proposed regulation.

(c) After reviewing any timely comments made, the Administrator may by order establish, modify, or revoke a food additive regulation, or may by order decide that no final action on the proposal is warranted. Each such order and each such regulation shall be published in the **Federal Register**. An order published under this section shall state that objections and requests for a hearing may be filed as prescribed by Part 178 of this chapter.

§ 177.135 Effective date of regulation.

Any final regulation issued under § 177.125 or § 177.130 shall be effective on the date of publication in the **Federal Register**. The Administrator, in his or her sole discretion, may stay the effective date of the regulation if an adversely affected person files an objection under Part 178 of this chapter.

Subpart H—Judicial Review

§ 177.140 Judicial review.

The FFDCA does not provide for judicial review of an order or regulation issued under this part or of a denial of a petition under this part. However, if an objection to such action is submitted to the Administrator in the manner prescribed by Part 178 of this chapter, judicial review may be obtained of the Administrator's action on the objection. (See FFDCA sections 409 (f) and (g).)

2. By adding new Part 178 to read as follows:

PART 178—OBJECTIONS AND REQUESTS FOR HEARING

Subpart A—General Provisions

Sec.
178.3 Definitions.

Subpart B—Procedures for Filing Objections and Requests for Hearing

178.20 Right to submit objections and requests for hearing.
178.25 Form and manner of submission of objections.
178.27 Form and manner of submission of request for evidentiary hearing.
178.30 Response by Administrator to objections and to requests for hearing.
178.32 Rulings on requests for hearings.
178.35 Modification or revocation of regulation.
178.37 Order responding to objections on which a hearing was not requested or was denied.

Subpart C—[Reserved]

Subpart D—Judicial Review

178.65 Judicial review.
178.70 Administrative record.

Authority: 21 U.S.C. 346a, 348, 371(e); Reorg. Plan No. 3 of 1970.

Subpart A—General Provisions

§ 178.3 Definitions.

For the purposes of this part:

"Administrator" means the Administrator of the Agency, or any officer or employee of the Agency to whom the Administrator delegates the authority to perform functions under this part.

"Agency" means the United States Environmental Protection Agency.

"Assistant Administrator" means the Agency's Assistant Administrator for Pesticides and Toxic Substances, or any officer or employee of the Agency's Office of Pesticides and Toxic Substances to whom the Assistant Administrator delegates the authority to perform functions under this part.

"FFDCA" means the Federal Food, Drug, and Cosmetic Act, as amended, 21 U.S.C. 301–392.

Subpart B—Procedures for Filing Objections and Requests for Hearing

§ 178.20 Right to submit objections and requests for hearing.

(a) On or before the 30th day after the date of publication of an order under Part 177 or Part 180 of this chapter establishing, modifying, or revoking a regulation or an order under Part 177 of this chapter denying all or any portion of a petition, a person may submit one or more written objections to the order (or to the action that is the subject of the order). Section 178.25 describes how to submit an objection.

(b) A person may include with any such objection a written request for an evidentiary hearing on such objection. Section 178.27 describes how to submit a request for a hearing.

(c) A person who submits objections need not request a hearing. For instance, if the person's objections are of a purely legal or policy nature, a hearing request would be inappropriate; the purpose of an evidentiary hearing is to resolve factual disputes. The Administrator will rule on the objections whether or not a hearing is requested.

(d) As a matter of discretion, the Administrator may order a hearing on an objection even though no person has requested a hearing.

§ 178.25 Form and manner of submission of objections.

(a) To be considered by the Administrator, an objection must:

(1) Be in writing.

(2) Specify with particularity the provision(s) of the order, regulation, or denial objected to, the basis for the objection(s), and the relief sought.

(3) Be signed by the objector.

(4) State the objector's name and mailing address.

(5) Be accompanied by the fee prescribed by § 180.33(i) of this chapter, if the objection is to an order or regulation issued under Part 180 of this chapter.

(6) Be submitted to the hearing clerk.

(7) Be received by the hearing clerk not later than the close of business of the 30th day following the date of the publication in the **Federal Register** of the order to which the objection is taken (or, if such 30th day is a Saturday, Sunday, or Federal holiday, not later than the close of business of the next government business day after such 30th day).

(b) Submissions to the hearing clerk shall be made as follows:

(1) Mailed submissions should be addressed to:

Office of the Hearing Clerk (A–110).
U.S. Environmental Protection Agency.
401 M Street, SW.,
Washington, DC 20460.

(2) For personal delivery, the Office of the Hearing Clerk is located at:

Room A&N16.
Waterside Mall.
401 M Street, SW.,
Washington, DC.

§ 178.27 Form and manner of submission of request for evidentiary hearing.

(a) To be considered by the Administrator, a request for an evidentiary hearing must:

(1) Be submitted as a part of, and specifically request an evidentiary hearing on, an objection that complies with the requirements of § 178.25.

(2) Include a statement of the federal issue(s) on which a hearing is requested and the requestor's contentions on each such issue.

(3) Include a copy of any report, article, survey, or other written document (or the pertinent pages thereof) upon which the objector relies to justify an evidentiary hearing, unless the document is an EPA document that is routinely available to any member of the public.

(4) Include a summary of any evidence not described in paragraph (a)(3) of this section upon which the objector relies to justify an evidentiary hearing.

(5) Include a discussion of the relationship between the factual issues and the relief requested by the objection.

(b) The criteria that must be met to justify an evidentiary hearing on an objection are set forth in § 178.32.

§ 178.30 Response by Administrator to objections and to requests for hearing.

The Administrator will respond to objections, and to requests for a hearing on such objections, as set forth in this section.

(a) *Denial of objections that are improperly submitted or that seek an unavailable form of relief.* The Administrator will by order issued under § 178.37 deny each objection and each request for a hearing that is included with such an objection, if:

(1) The objection is found not to conform to § 178.25.

(2) The action requested by the objection is inconsistent with any provision of FFDCA.

(3) The objection is inconsistent with any generic, e.g. non-chemical specific,

interpretation of a provision of FFDCA in any regulation in this chapter (the proper procedure in such a case is for the person to petition for an amendment of the regulation involved).

(b) *Denial of improperly submitted requests for hearing.* The Administrator will then determine whether any objection that has not been denied under paragraph (a) of this section was accompanied by a request for an evidentiary hearing that conforms to § 178.27. The Administrator will deny under § 178.37 each request that does not conform to § 178.27.

(c) *Grouping of certain related objections.* If the Administrator then finds:

(1) That two or more undenied objections are substantially similar, or are related in such a way that any judicial review of the Administrator's action on those objections should occur at the same time, and

(2) That one or more of those objections was accompanied by an undenied request for an evidentiary hearing on that objection, the Administrator will treat those objections as a group and will rule on them only after ruling under § 178.32 on the associated request for hearing.

(d) *Rulings on objections for which a request for hearing has been granted.* If the Administrator rules under § 178.32 that an evidentiary hearing should be held on an objection, the Administrator will rule on the objection (and on any other objection grouped with it under paragraph (c) of this section) under §§ 179.105 through 179.112 of this chapter after an evidentiary hearing has been held.

(e) *Rulings on objections for which no request for hearing was received, or for which each request for hearing was denied.* Except as provided in paragraphs (c) and (d) of this section, if no hearing was requested on an objection, or if each such request that was made must be denied under the criteria of paragraph (a) or (b) of this section or § 178.32(b), the Administrator will rule on the objection under § 178.37.

§ 178.32 Rulings on requests for hearing.

(a) In the case of each request for an evidentiary hearing that was not denied under § 178.30 (a) or (b), the Administrator will determine whether such a hearing on one or more of the objections is justified, and will publish the determination in an order issued under § 178.37 or a notice of hearing issued under § 179.20. If some requests for a hearing are denied and others pertaining to the same order or regulation are granted, the denial order and the hearing notice shall be issued at the same time and may be combined into a single document.

(b) A request for an evidentiary hearing will be granted if the Administrator determines that the material submitted shows the following:

(1) There is a genuine and substantial issue of fact for resolution at a hearing. An evidentiary hearing will not be granted on issues of policy or law.

(2) There is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested evidence to the contrary. An evidentiary hearing will not be granted on the basis of mere allegations, denials, or general descriptions of positions and contentions, nor if the Administrator concludes that the data and information submitted, even if accurate, would be insufficient to justify the factual determination urged.

(3) Resolution of the factual issue(s) in the manner sought by the person requesting the hearing would be adequate to justify the action requested. An evidentiary hearing will not be granted on factual issues that are not determinative with respect to the action requested. For example, a hearing will not be granted if the Administrator concludes that the action would be the same even if the factual issue were resolved in the manner sought.

(4) Where appropriate, the Administrator will make preliminary rulings on any issues raised by an objection which are necessary for resolution prior to determining whether a request for an evidentiary hearing should be granted.

§ 178.25 Modification or revocation of regulation.

(a) If the Administrator determines upon review of an objection or request for hearing that the regulation in question should be modified or revoked, the Administrator will by order publish appropriate rulemaking documents in the Federal Register.

(b) Objections to the modification or revocation of the regulation, and requests for a hearing on such objections, may be submitted under §§ 178.20 through 178.27.

(c) Objections and requests for hearing that are not affected by the modification or revocation will remain on file and be acted upon in accordance with this part.

§ 178.37 Order responding to objections on which a hearing was not requested or was denied.

(a) The Administrator will publish in the Federal Register an order under FFDCA section 408(d)(5) or 409(f)(1) setting forth the Administrator's determination on each denial of a request for a hearing, and on each objection submitted under § 178.20 on which:

(1) A hearing was not requested.

(2) A hearing was requested, but denied.

(b) Each order published under paragraph (a) of this section must state the reasons for the Administrator's determination. If the order denies a request for a hearing on the objection, the order must state the reason for that denial (e.g., why the request for a hearing did not conform to § 178.27, or why the request was denied under § 178.32).

(c) Each order published under paragraph (a) of this section must state its effective date, which must not be earlier than the 90th day after the order is published unless the order contains the Administrator's findings as to the existence of emergency conditions that necessitate an earlier effective date.

Subpart C—[Reserved]

Subpart D—Judicial Review

§ 178.44 Judicial review.

An order issued under § 178.37 is final agency action reviewable in the courts as provided by FFDCA sections 408(i) or 409(g)(1), as of the date of entry of the order, which shall be determined in accordance with §§ 23.10 and 23.11 of this chapter. The failure to file a petition for judicial review within the period ending on the 60th day after the date of the entry of the order constitutes a waiver under FFDCA section 408(i) or 409(g)(1) of the right to judicial review of the order and of any regulation promulgated by the order.

§ 178.70 Administrative record.

(a) For purposes of judicial review, the record of an administrative proceeding that culminates in an order under § 178.37 consists of:

(1) The objection ruled on (and any request for hearing that was included with the objection).

(2) Any order issued under § 177.125 of this chapter to which the objection related, and:

(i) Any regulation or petition denial that was the subject of that order.

(ii) The petition to which such order responded.

(iii) Any amendment or supplement of the petition.

(iv) The data and information submitted in support of the petition.

(v) The notice of filing of the petition.

(3) Any order issued under § 177.130 of this chapter to which the objection related, the regulation that was the subject of that order, and each related notice of proposed rulemaking.

(4) Any order issued under § 180.7(g) of this chapter to which the objection related, and:

(i) Any final regulation or petition denial that was the subject of that order.

(ii) The petition to which such order responded.

(iii) Any amendment or supplement of the petition.

(iv) The data and information submitted in support of the petition.

(v) The notice of filing of the petition.

(5) Any order issued under § 180.29(f) of this chapter to which the objection related, the final regulation that was the subject of that order, and each related notice of proposed rulemaking.

(6) Any comments submitted by members of the public in response to the notice of filing or notice of proposed rulemaking, and any data or information submitted as part of the comments.

(7) All other documents or information submitted to the docket for the rulemaking in question.

(8) The order issued under § 178.37.

(b) The record will be closed as of the date of the Administrator's decision unless another date for closing of the record is specified in the order issued under § 178.37.

3. By adding new Part 179 to read as follows:

PART 179—FORMAL EVIDENTIARY PUBLIC HEARING

Subpart A—General Provisions

Sec.
179.3 Definitions.
179.5 Other authority.

Subpart B—Initiation of Hearing

179.20 Notice of hearing.
179.24 Ex parte discussions; seperation of functions.

Subpart C—Participation and Appearance; Conduct

179.42 Notice of participation.
179.45 Appearance.
179.50 Conduct at oral hearings or conferences.

Subpart D—Presiding Officer

179.60 Designation and qualifications of presiding officer.
179.70 Authority of presiding officer.
179.75 Disqualification of deciding officials.
179.78 Unavailability of presiding officer.

Subpart E—Hearing Procedures

179.80 Filing and service.
179.81 Availability of documents.
179.83 Disclosure of data and information.
179.85 Purpose of preliminary conference.
179.86 Time and place of preliminary conference.
179.87 Procedures for preliminary conference.
179.89 Motions.
179.90 Summary decisions.
179.91 Burden of going forward; burden of persuasion.
179.93 Testimony.
179.94 Transcripts.
179.95 Admission or exclusion of evidence; objections; offers of proof.
179.97 Conferences during hearing.
179.98 Briefs and arguments.

Subpart F—Decisions and Appeals

179.101 Interlocutory appeal from ruling of presiding officer.
179.105 Initial decision.
179.107 Appeal from or review of initial decision.
179.110 Determination by Administrator to review initial decision.
179.112 Decision by Administrator on appeal or review of initial decision.
179.115 Motion to reconsider final order.
179.117 Designation and powers of judicial officer.

Subpart G—Judicial Review

179.125 Judicial review.
179.130 Administrative record.

Authority: 21 U.S.C. 346a, 348, 371(a); Reorg. Plan No. 3 of 1970.

Subpart A—General Provisions

§ 179.3 Definitions.

"Administrator" means the Administrator of the Agency, or any officer or employee of the Agency to whom the Administrator has delegated the authority to perform functions under this part.

"Agency" means the United States Environmental Protection Agency.

"Assistant Administrator" means the Agency's Assistant Administrator for Pesticides and Toxic Substances, or any officer or employee of OPTS to whom the Assistant Administrator has delegated the authority to perform functions under this part.

"FFDCA" means the Federal Food, Drug, and Cosmetic Act, as amended, 21 U.S.C. 301–392.

"FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136–136y.

"Judicial Officer" means a person who has been designated by the Administrator under § 179.115 to serve as a judicial officer.

"Office of the Administrator" means the Agency's Administrator and Deputy Administrator and their immediate staff, including the judicial officer.

"OPTS" means the Agency's Office of Pesticides and Toxic Substances.

§ 179.5 Other authority.

Questions regarding procedural matters arising under this part or Part 178 of this chapter that are not addressed by this part or Part 178 of this chapter shall be resolved by the Administrator or presiding officer, as appropriate.

Subpart B—Initiation of Hearing

§ 179.20 Notice of hearing.

(a) If the Administrator determines under § 178.32 of this chapter that a hearing is justified on any issue, the Administrator will file with the hearing clerk and publish in the Federal Register a notice of hearing. The notice of hearing will set forth:

(1) The docket number for the hearing.

(2) Each order, regulation, or petition denial that is the subject of the hearing, and a statement specifying any part of any such regulation or order that has been stayed in the Administrator's discretion.

(3) The identity of each person whose request for a hearing has been granted, and of any other person whose petition under § 177.81 or § 180.7 of this chapter occasioned the order that the hearing concerns.

(4) A statement of the issues of fact on which a hearing has been found to be justified.

(5) A statement of the objections whose resolution depends on the resolution of those issues of fact.

(6) A statement that the presiding officer will be designated by the Chief Administrative Law Judge.

(7) The time within which notices of participation should be filed under § 179.26.

(8) The date, time, and place of the preliminary conference, or a statement that the date, time, and place will be announced in a later notice.

(9) The time within which parties must submit written information and views under § 179.83.

(10) Designations with respect to separation of functions published under § 179.24(b)(2).

(b) The statement of the issues of fact on which a hearing has been justified determines the scope of the hearing and the matters on which evidence may be introduced. The issues may be revised by the presiding officer. A party may obtain interlocutory review by the Administrator of a decision by the presiding officer to revise the issues to include an issue on which the Administrator has not granted a request for a hearing or to eliminate an issue on which a request for a hearing has been granted.

(c) A hearing is deemed to begin on the date of publication of the notice of hearing.

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§ 179.24 Ex parte discussions; separation of functions.

(a) Any person may meet or correspond with any officer or employee of the Agency concerning a matter under Parts 177, 178, or 180 of this chapter prior to publication of a notice of hearing under § 179.20.

(b) Upon publication of a notice of hearing, the following separation of function rules apply:

(1) OPTS, as a party to the hearing, is responsible for presentation of its position at the hearing and in any pleading or oral argument before the Administrator. The Pesticides and Toxic Substances Division of the Office of General Counsel shall advise and represent OPTS with respect to the hearing and in any pleading or oral argument before the Administrator. An employee or other representatives of OPTS may not participate in or advise the Administrator or any of his representatives on any decision under this part, other than as witness or counsel in public proceedings, except as provided by paragraph (b)(2) of this section. There is to be no other communication between representatives of OPTS and the presiding officer or any representative of the Office of the Administrator concerning the merits of the hearing until after issuance of the decision of the Administrator.

(2) The Administrator may designate persons who otherwise would be regarded as representatives of OPTS, to serve as representatives of the Office of the Administrator on matters pertaining to the hearing, and may also designate persons who otherwise would be regarded as representatives of the Office of the Administrator to serve as representatives of OPTS. Such designations will be included in the notice of hearing published under § 179.20.

(3) The Office of the Administrator is responsible for the final decision of the matter, with the advice and participation of anyone in the Agency other than representatives of OPTS.

(c) Between the date of publication of the notice of hearing and the date of the Administrator's final decision on the matter, communication concerning the matter involved in the hearing will be restricted as follows:

(1) No person outside the Agency may have an *ex parte* communication with the presiding officer or any representative of the Office of the Administrator concerning the merits of the hearing. Neither the presiding officer nor any representative of the Office of the Administrator may have any *ex parte* communication with a person outside the Agency concerning the merits of the hearing.

(2) A written communication contrary to this section must be immediately served on all other participants and filed with the hearing clerk by the presiding officer at the hearing, or by the Administrator, depending on who received the communication. An oral communication contrary to this section must be immediately recorded in a written memorandum and similarly served on all other parties and filed with the hearing clerk. A person, including a representative of a party in the hearing, who is involved in an oral communication contrary to this section, must, if possible, be made available for cross-examination during the hearing with respect to the substance of that communication. Rebuttal testimony pertinent to a written or oral communication contrary to this section will be permitted.

(d) The prohibitions specified in paragraph (c) of this section also apply to a person who, in advance of the publication of a notice of hearing, knows that the notice has been signed. The prohibitions become applicable to such a person as of the time the knowledge is acquired.

(e) The making of a communication contrary to this section may, consistent with the interests of justice and the policies underlying the FFDCA, result in a decision adverse to the person knowingly making or causing the making of the communication.

Subpart C—Participation and Appearance; Conduct

§ 179.42 Notice of participation.

(a) OPTS shall be a party to a hearing under this part. Any other person may participate as a party in such a hearing to the extent specified by this section.

(b) A person desiring to participate in a hearing must file with the hearing clerk within 30 days after publication of the notice of hearing under § 179.20, a notice of participation in the following form:

Notice of Participation

Docket No. _____

Under 40 CFR Part 179, please enter the participation of:

(Name) _____

(Street address) _____

(City and State) _____

(Telephone number) _____

Service on the above will be accepted by:

(Name) _____

(Street address) _____

(City and State) _____

(Telephone number) _____

Signed: _____

Date: _____

(c) An amendment to a notice of participation must be filed with the hearing clerk and served on all parties.

(d) No person may participate in a hearing who has not filed a written notice of participation or whose participation has been stricken under paragraph (f) of this section.

(e) The presiding officer may permit the late filing of a notice of participation upon a showing of good cause. Arrangements and agreements previously made in the proceeding shall apply to any party admitted late.

(f) The presiding officer may strike the participation of a person for failure to comply with any requirement of this subpart. Any person whose participation is striken may obtain interlocutory review thereof by the Administrator.

§ 179.45 Appearance.

(a) A party to a hearing may appear in person or by counsel or other representative in the hearing.

(b) The presiding officer may strike a person's right to appear in the hearing for violation of the rules of conduct in § 179.50.

§ 179.50 Conduct at oral hearings or conferences.

The parties and their representatives must conduct themselves with dignity and observe the same standards of practice and ethics that would be required of parties in a judicial proceeding. Disrespectful, disorderly, or contemacious language or conduct, refusal to comply with directions, use of dilatory tactics, or refusal to adhere to reasonable standards of orderly and ethical conduct during any hearing constitute grounds for immediate exclusion from the proceeding by the presiding officer.

Subpart D—Presiding Officer

§ 179.60 Designation and qualifications of presiding officer.

The presiding officer in a hearing will be an administrative law judge qualified under 5 U.S.C. 3105 and designated by the Agency's Chief Administrative Law Judge.

§ 179.70 Authority of presiding officer.

The presiding officer shall conduct the hearing in a fair and impartial manner subject to the precepts of the Canons of Judicial Ethics of the American Bar Association. The presiding officer has all powers necessary to conduct a fair, expeditious, and orderly hearing, including the power to:

(a) Specify and change the date, time, and place for conferences and oral presentations, and issue and modify a schedule for the hearing.

(b) Establish the procedures for use in developing evidentiary facts.

(c) Prepare statements of the areas of factual disagreement among the participants.

(d) Hold conferences to settle, simplify, or determine the issues in a hearing or to consider other matters that may expedite the hearing.

(e) Administer oaths and affirmations.

(f) Control the course of the hearing and the conduct of the participants.

(g) Examine witnesses and strike their testimony if they fail to respond fully to proper questions.

(h) Rule on, admit, exclude, or limit evidence.

(i) Set the time for filing pleadings.

(j) Rule on motions and other procedural matters.

(k) Rule on motions for summary decision under § 179.90.

(l) Conduct the hearing in stages if the number of parties is large or the issues are numerous and complex.

(m) Waive, suspend, or modify any rule in this subpart if the presiding officer determines that no party will be prejudiced, the ends of justice will be served, and the action is in accordance with law.

(n) Strike the participation of any person under § 179.26(e), or exclude any person from the hearing under § 179.50, or take other reasonable disciplinary action.

(o) Take any other action for the fair, expeditious, and orderly conduct of the hearing.

§ 179.75 Disqualification of deciding officials.

(a) A deciding official in a hearing under this part (including, e.g., the Administrator, judicial officer, or presiding officer) shall not decide any matter in connection with which he or she has a financial interest in any of the parties, or a relationship that would make it otherwise inappropriate for him or her to act.

(b) A party may request that a deciding official disqualify himself/herself and withdraw from the proceeding. The party may obtain interlocutory review by the Administrator of a denial of such a request made to any deciding official other than the Administrator.

(c) A deciding official who is aware of grounds for disqualification shall withdraw from the proceeding.

§ 179.76 Unavailability of presiding officer.

If the presiding officer is unable to act for any reason, his or her powers with respect to the hearing will be assigned by the Chief Administrative Law Judge to another presiding officer. The substitution will not affect the hearing, i.e., the testimony of the witnesses will not be taken anew except as the new presiding officer may order upon the request of a party where the credibility of a witness is of particular importance.

Subpart E—Hearing Procedures

§ 179.80 Filing and service.

(a) All documents required or authorized to be filed by a party to a hearing under this part regarding any matter to be decided by the presiding officer, the judicial officer, or the Administrator shall be filed in duplicate with the hearing clerk, in the manner specified by § 178.25(b) of this chapter. Each filing shall prominently note the docket number. To determine compliance with deadlines in a hearing, a document is considered filed on the date it is actually received by the hearing clerk. When this part allows a response by a party to a submission and prescribes a period of time for the filing of the response, an additional 3 days are allowed for the filing of the response if the submission is served by mail.

(b) Each notice, order, decision, or other document issued under this part by the presiding officer, the judicial officer, or the Administrator shall be filed with the hearing clerk. The hearing clerk shall immediately serve all pareties with a copy of such order, decision, or other document.

(c) At the same time that a party files any document with the hearing clerk, the party shall serve a copy thereof on each other party, unless the presiding officer specifies otherwise. Each filing shall be accompanied by a certificate of service, or a statement that service is not required. Service on a party is accomplished by mailing a submission to the address shown in the notice of participation or by personal delivery.

(d) The presiding officer may grant an extension of time for the filing of any pleading, document, or motion

(1) Upon timely motion by a party, for good cause shown, and after consideration of prejudice to other parties, or

(2) Upon the presiding officer's own motion.

(e) A motion by a party for an extension may only be made after notice to all other parties, unless the movant can show good cause why such notice is impracticable. The motion shall be filed in advance of the date on which the pleading, document, or motion is due to be filed, unless the failure of the party to make a timely motion for an extension was the result of excusable neglect.

§ 179.81 Availability of documents.

(a) All orders, decisions, pleadings, transcripts, exhibits, and other docket entries shall become part of the official docket and shall be retained by the hearing clerk. Except as otherwise provided by paragraph (b) of this section or Part 2 of this chapter, all documents that are a part of the official docket shall be made available to the public for reasonable inspection during Agency business hours. Copies of such documents may be obtained by members of the public as provided in Part 2 of this chapter.

(b) Whenever any information or data are required to be produced or examined in a hearing and any party makes a business confidentiality claim regarding such information under Part 2 of this chapter, the availability of such information to the other parties or to the public shall be determined by the presiding officer. The presiding officer shall make such determinations in accordance with Part 2 of this chapter, including specifically the procedures and principles set forth in § 2.301(g) (3) and (4) of this chapter. The presiding officer shall take such steps as are necessary for the protection of information entitled to confidential treatment or otherwise exempt from public disclosure, including issuance of protective orders to parties or taking testimony in a closed hearing.

§ 179.83 Disclosure of data and information.

(a) Within 60 days of the publication of the notice of hearing under § 179.20, or, if no party will be prejudiced, within another period set by the presiding officer, the Assistant Administrator shall file with the hearing clerk, in accordance with § 179.80, the following documents numbered and organized in the manner prescribed by the presiding officer:

(1) The portions of the administrative record of the proceeding developed under Part 178 of this chapter, and under Part 177 or Part 180 of this chapter, that are relevant to the issues in the hearing.

(2) All documents in the files of OPTS containing factual information or expert opinion, whether favorable or unfavorable to the position of OPTS, which relate to the issues involved in the hearing. For purposes of this paragraph, "files" means the principal files in OPTS in which documents relating to the issues in the hearing are ordinarily kept. Documents that are internal memoranda reflecting the deliberative process, are attorney work product, or were prepared specifically

for use in connection with the hearing, are not required to be submitted.

(3) All other documentary data and information upon which OPTS plans to rely upon in the hearing.

(4) A narrative position statement on the factual issues in the notice of hearing and the nature of the supporting evidence that OPTS intends to introduce.

(5) A signed statement that, to the best knowledge and belief of the Assistant Administrator, the submission complies with this section.

(b) Within 70 days of the publication of the notice of hearing or, if no party will be prejudiced, within another period of time set by the presiding officer, each party other than OPTS shall submit to the hearing clerk in accordance with § 179.80 the following documents, numbered and organized in the manner prescribed by the presiding officer:

(1) Any objections that the administrative record filed under paragraph (a)(1) of this section is incomplete.

(2) All documents (other than those filed under paragraph (a) of this section) in the party's files containing factual information or expert opinion, whether favorable or unfavorable to the party's position, that relates to the issues involved in the hearing. For purposes of this paragraph, "files" means the party's principal files in which documents relating to the issues in the hearing are ordinarily kept.

(3) All other documentary data and information the party plans to rely upon in the hearing.

(4) A narrative position statement on the factual issues in the notice of hearing and the nature of the supporting evidence the party intends to introduce.

(5) A signed statement that, to the best knowledge and belief of the party, the submission complies with this section.

(c) Submissions required by paragraphs (a) and (b) of this section may be supplemented later in the proceeding, with the approval of the presiding officer, upon a showing that the material contained in the supplement was not reasonably known by or available to the party when the submission was made or that the relevance of the material contained in the supplement could not reasonably have been foreseen.

(d) If a party fails to comply substantially and in good faith with this section, the presiding officer may infer that such failure was for the purpose of withholding information that is unfavorable to the party's position, and may make such further adverse inferences and findings with respect to such failure as are warranted.

(e) Parties may reference each other's submissions. To reduce duplicative submissions, parties are encouraged to exchange and consolidate lists of documentary evidence. If a particular document is bulky or in limited supply and cannot reasonably be reproduced, and it constitutes relevant evidence, the presiding officer may authorize submission of a reduced number of copies.

(f) The presiding officer will rule on questions relating to this section.

§ 179.85 Purposes of preliminary conference.

The presiding officer will conduct one or more preliminary conferences for the following purposes:

(a) To determine the areas of factual disagreement to be considered for the following purposes:

(b) To establish any necessary procedural rules to control the course of the hearing and the schedule for the hearing.

(c) To group parties with substantially similar interests, for purposes of presenting evidence, making objections, cross-examination, and presenting oral argument.

(d) To obtain stipulations and admissions of facts.

(e) To take other action that may expedite the hearing.

§ 179.86 Time and place of preliminary conference.

A preliminary conference will commence at the date, time, and place summoned in the notice of hearing, or as otherwise specified by the Administrator or presiding officer in a subsequent notice. The preliminary conference may not commence until after expiration of the time for filing notices of participation under § 179.28. The presiding officer may specify that two or more such conferences shall be held.

§ 179.87 Procedures for preliminary conference.

Parties in a hearing must appear at the preliminary conference(s) prepared to present a position on the matters specified in § 179.85. A preliminary conference may be held by telephone, or other electronic means, if appropriate.

(a) To expedite the hearing, parties are encouraged to prepare in advance for the conference. Parties should cooperate with each other and should request information and begin preparation of testimony at the earliest possible time. Failure of a party to appear at the preliminary conference or to raise matters that could reasonably be anticipated and resolved at that time will not delay the progress of the hearing, and constitutes a waiver of the rights of the party regarding such matters as objections to the agreements reached, actions taken, or rulings issued. Such failure to appear may also be grounds for striking the party's participation under § 179.26(e).

(b) Each party shall bring to the preliminary conference the following specific information, which will be filed with the hearing clerk under § 179.80:

(1) Any additional information to supplement the submission which may have been filed under § 179.83, which may be filed if approved under § 179.83(c).

(2) A list setting forth each person who has been identified as a witness whose oral or written testimony will be offered by the party at the hearing, with a full curriculum vitae for each and a summary of the expected testimony (including a list of the principal exhibits on which the witness will rely) or a statement as to when such a summary will be furnished. A party may amend its witness and document list to add, delete, or substitute witnesses or documents.

(c) The presiding officer may hold preliminary conferences off the record in an effort to reach agreement on disputed factual or procedural questions.

(d) The presiding officer shall issue and file under § 179.80 a written order reciting the actions taken at each preliminary conference and setting forth the schedule for the hearing. The order will control the subsequent course of the hearing unless modified by the presiding officer for good cause.

§ 179.88 Motions.

A motion, unless made in the course of a preliminary conference or a transcribed oral hearing before the presiding officer, must be filed in the manner prescribed by § 179.80 and include a draft order. A response may be filed within 10 days of service of a motion. The moving party has no right to reply, except as permitted by the presiding officer. The presiding officer shall rule upon the motion.

§ 179.90 Summary decisions.

(a) After the hearing commences, a party may file a written motion, with or without supporting affidavits, for a summary decision on any issue in the hearing. Any other party may, within 10 days after service of the motion, which time may be extended for an additional 10 days for good cause shown, serve opposing affidavits or countermove for summary decision. The presiding officer may set the matter for argument and call for the submission of briefs.

(b) The presiding officer will grant the motion if the objections, requests for hearing, other pleadings, affidavits, and other material filed in connection with the hearing, or matters officially noticed, show that there is no genuine disagreement as to any material fact bearing on the issue and that a party is entitled to summary decision.

(c) Affidavits should set forth facts that would be admissible in evidence and show affirmatively that the affiant is competent to testify to the matters stated. When a properly supported motion for summary decision is made, a party opposing the motion may not rest upon mere allegations or denials or general descriptions of positions and contentions; affidavits or other responses must demonstrate specifically that there is a genuine issue of material fact for the hearing.

(d) Should it appear from the affidavits of a party opposing the motion that for sound reasons stated, facts essential to justify the opposition cannot be presented by affidavit, the presiding officer may deny the motion for summary decision, order a continuance to permit affidavits or additional evidence to be obtained, or issue other just order.

(e) If a summary decision is not rendered upon all issues or for all the relief asked, and evidentiary facts need to be developed, the presiding officer will issue an order specifying the facts that appear without substantial controversy and directing further evidentiary proceedings. The facts so specified will be deemed established.

(f) A party may obtain interlocutory review by the Administrator of a summary decision of the presiding officer.

§ 179.91 Burden of going forward; burden of persuasion.

(a) The party whose request for an evidentiary hearing was granted has the burden of going forward in the hearing with evidence as to the issues relevant to that request for a hearing.

(b) The party or parties who contend that a regulation satisfies the criteria of section 408 or 409 has the burden of persuasion in the hearing as to those connections, whether the proceeding concerns the establishment, modification, or revocation of a tolerance or food additive regulation.

§ 179.93 Testimony.

(a) The presiding officer will conduct such proceedings as are necessary for the taking of oral direct testimony and for the conduct of oral cross-examination of witnesses by the parties. The presiding officer shall limit oral cross-examination to prevent irrelevant or repetitious examination.

(b) Direct testimony shall be submitted in writing, except that the presiding officer may order direct testimony to be presented orally in those unusual cases where the memory or demeanor of the witness is of importance. Written direct testimony shall be in the form of a verified statement of fact or opinion prepared by the witness, in narrative form or in question-and-answer form. Written direct testimony may incorporate exhibits. Such a verified statement or exhibit may not be admitted into evidence sooner than 14 days (or such other reasonable period as the presiding officer may order) after the witness has delivered to the presiding officer and each party a copy of the statement or exhibit. The admissibility of the evidence contained in such a statement is subject to the same rules as if such testimony had been given orally.

(c) Oral cross-examination of witnesses will be permitted. Each exhibit that a party intends to rely upon in cross-examining a witness shall be furnished to the other parties not later than 3 days (or such other reasonable period as the presiding officer may order) before such exhibit is used in the cross-examination.

(d) Witnesses shall give testimony under oath or affirmation.

§ 179.94 Transcripts.

(a) The hearing clerk shall make arrangements to have all oral testimony stenographically reported or recorded and transcribed, with evidence that is admitted in the form of written testimony or exhibits attached or incorporated as appropriate.

(b) Unless the presiding officer orders otherwise, parties shall have 15 days from the date that the transcripts of particular oral testimony first becomes available to propose corrections in the transcript of that testimony. Corrections are permitted only for transcription errors. The presiding officer shall promptly order justified corrections.

(c) As soon as practicable after the taking of the last evidence, the presiding officer shall certify

(1) That the original transcript is a true transcript of the oral testimony offered or received at the hearing, except in such particulars as the presiding officer specifies,

(2) That the written testimony and exhibits accompanying the transcript are all the written testimony and exhibits introduced at the hearing, with such exceptions as the presiding officer specifies; and

(3) The transcript with attached or incorporated material, as so certified by the presiding officer, shall be submitted to and filed by the hearing clerk under § 179.80.

(d) Copies of the transcript shall be available to the public in accordance with § 179.81; parites may make special arrangements through the hearing clerk to obtain copies on an ongoing, expedited basis.

§ 179.95 Admission or exclusion of evidence; objections; offers of proof.

(a) Written material identified as direct testimony or as an evidentiary exhibit and offered by a party in a hearing, and oral testimony, whether or direct or on cross-examination, is admissible as evidence unless the presiding officer excludes it (on objection of a party or on the presiding officer's own initiative) because it is irrelevant, immaterial, or repetitive, or because its exclusion is necessary to enforce the requirements of this part. The presiding officer in making rulings shall be guided by the principles of the Federal Rules of Evidence.

(b) If a party objects to the admission or rejection of any evidence or to the limitation of the scope of any examination or cross-examination, the party shall state briefly the grounds for such objection. The transcript shall include any argument or debate thereon, unless the presiding officer, with the consent of all the parties, orders that such argument not be transcribed. The ruling and the reasons given therefor by the presiding officer on any objection shall be a part of the transcript. An automatic exception to that ruling will follow.

(c) Whenver evidence is deemed inadmissible, the party offering such evicence may make an offer of proof, which shall be included in the transcript. The offer of proof for excluded oral testimony shall consist of a brief statement describing the nature of the evidence excluded. If the evidence consists of a document or exhibit, it shall be inserted in the record in total. If the Administrator in reviewing the record under § 179.112 decides that the presiding officer's ruling in excluding the evidence was erroneous and prejudicial, the hearing may be reopened to permit the taking of such evidence, or, where appropriate, the Administrator may evaluate the evidence and proceed to a final decision.

(d) Official notice may be taken of Agency proceedings, any matter that

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might be judicially noticed by the courts of the United States, or any other fact within the knowledge and experience of the Agency as an expert agency. Any party shall be given adequate opportunity to show that such facts are erroneously noticed by presenting evidence to the contrary.

§ 179.97 Conferences during hearing.

The presiding officer may schedule and hold conferences as needed to monitor the progress of the hearing, narrow and simplify the issuances, and consider the rule on motions, requests, or other matters concerning the development of the evidence.

§ 179.98 Briefs and arguments.

(a) Promptly after the taking of evidence is completed, the presiding officer will announce a schedule for the filing of briefs. Briefs must include a statement of position on each issue, with specific and complete citations to the evidence and points of law relied on. Briefs must contain proposed findings of fact and conclusions of law.

(b) The presiding officer may, as a matter of discretion, permit oral argument after the briefs are filed.

Subpart F—Decisions and Appeals

§ 179.101 Interlocutory appeal from ruling of presiding officer.

(a) Except as provided in paragraph (b) of this section and in §§ 179.20(b), 179.26(e), 179.75(a), and 179.90(f), rulings of the presiding officer may not be appealed to the Administrator before the Administrator's consideration of the entire record of the hearing.

(b) A ruling of the presiding officer is subject to interlocutory appeal to the Administrator if the presiding officer certifies on the record or by document submitted under § 179.80 that immediate review is necessary to prevent exceptional delay, expense, or prejudice to any party or substantial harm to the public interest. When an order or ruling is not certified by the presiding officer, it shall be reviewed by the Administrator only upon appeal from the initial decision except when the Administrator determines upon the request of a party and in exceptional circumstances, that delaying review would be deleterious to vital public or private interests. Except in extraordinary circumstances, proceedings will not be stayed pending an interlocutory appeal. Where a stay is granted, a stay of more than 30 days must be approved by the Administrator.

(c) Ordinarily, the interlocutory appeal will be decided on the basis of the submission made to the presiding officer, but the Administraor may allow further briefs and oral arguments. Any oral argument will be transcribed and the transcript will be prepared and certified in the same manner as provided in § 179.94.

§ 179.105 Initial decision.

(a) After the filing of briefs and any oral argument, the presiding officer shall prepare and file an initial decision on the issues of fact in the hearing and the objections relating to those issues.

(b) The inital decision must be based on a fair evaluation of the entire record, and must contain:

(1)(i) A conclusion that no change is warranted in the order or regulation to which objection was taken; or

(ii) A conclusion that changes in the order or regulation are warranted, the language of the order or regulation as changed, and an effective date for the order or regulation as changed, which date must not be earlier than the 90th day after it is published unless the order contains findings as to the existence of emergency conditions that necessitate an earlier effective date.

(2) Findings of fact supported by substantial evidence that has been found admissible by the presiding officer, and citations to the record supporting those findings.

(3) Conclusions on legal and policy issues, if such conclusions are necessary to resolve the objections.

(4) A discussion of the reasons for the findings and conclusions, including a discussion of the significant contentions made by any party.

(c) Except as otherwise provided by order of the Administrator filed in accordance with § 179.80, after the initial decision is filed the presiding officer has no further jurisdiction over the matter and any motions or requests filed with the hearing clerk will be decided by the Administrator.

(d) The initial decision becomes the final decision of the Administrator by operation of law unless a party files exceptions with the hearing clerk under § 179.107 or the Administrator files a notice of review under § 179.110.

§ 179.107 Appeal from or review of initial decision.

(a) A party may appeal an initial decision to the Administrator by filing exceptions with the hearing clerk, and serving them on the other parties, within the period specified in the initial decision. The period may not exceed 30 days, unless extended by the Administrator under paragraph (d) of this section.

(b) Exceptions must specifically identify alleged errors in the findings of fact or conclusions of law or policy in the initial decision and, if errors in the findings of fact are alleged, must provide supporting citations to evidence of record. Oral argument before the Administrator may be requested in the exceptions.

(c) Any reply to the exceptions is to be filed and served within the period specified in the initial decision. The period may not exceed 30 days after the end of the period (including any extensions) for filing exceptions, unless extended by the Administrator under paragraph (d) of this section.

(d) The Administrator may extend the time for filing exceptions or replies to exceptions for good cause shown.

(e) If the Administrator decides to hear oral argument, the parties will be informed of the date, time, and place, the amount of time allotted to each party, and the issues to be addressed.

§ 179.110 Determination by Administrator to review initial decision.

Within 10 days following the expiration of the time for filing exceptions (including any extensions), the Administrator may file with the hearing clerk, and serve on the parties, a notice of the Administrator's determination to review the initial decision. The Administrator may invite the parties to file briefs or present oral argument on the matter. The time for filing briefs or presenting oral argument will be specified in that or a later notice.

§ 179.112 Decision by Administrator on appeal or review of initial decision.

(a) On appeal from or review of the initial decision, the Administrator shall have the same powers as did the presiding officer in making the initial decision. On the Administrator's own initiative or on motion, the Administrator may remand the matter to the presiding officer for any further action necessary for a proper decision.

(b) The scope of the issues on appeal to (or on review by) the Administrator is the same as the scope of the issues before the presiding officer, unless the administrator specifies otherwise.

(c) After the filing of briefs and any oral argument, the Administrator will issue a final decision on the issues of fact in the hearing and the objections related to those issues. A final decision must contain the elements required for an initial decision by § 179.105(b).

(d) The Administrator may adopt the initial decision as the final decision.

(e) The Administrator's decision, or a summary of the decision and a notice of its availability, will be published in the **Federal Register**.

§ 179.115 Motion to reconsider a final order.

A party may file a motion requesting the Administrator to reconsider a final decision under this Part. Any such motion must be filed within 10 days after service of the final decision, and must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Such a motion shall not stay the effective date of the final decision unless specifically so ordered by the Administrator.

§ 179.117 Designation and powers of judicial officer.

(a) One of the more judicial officers may be designated by the Administrator. A judicial officer shall be an attorney who is a permanent or temporary employee of the Agency or of another Federal agency. A judicial officer may perform other duties. A judicial officer who performs any duty under this part may not be employed by OPTS, by the Pesticides and Toxic Substances Division of the Office of General Counsel, or by any other person who is a representative of OPTS in the hearing. A person may not be designated as a judicial officer in a hearing if he or she performed any prosecutorial or investigative functions in connection with that hearing or any other factually related hearing.

(b) The Administrator may delegate to the judicial officer all or part of the administrator's authority to act in a given proceeding under this part. Such a delegation does not prevent the judicial officer from referring any motion or case to the Administrator when appropriate.

Subpart G—Judicial Review

§ 179.125 Judicial review.

(a) The Administrator's final decision is final agency action reviewable in the courts as provided by FFDCA section 408(i) or 409(g)(1), as of the date of entry of the order, which shall be determined in accordance with §§ 23.10 and 23.11 of this chapter. The failure of a person to file a petition for judicial review within the period ending on the 60th day after the date of the entry of the order constitutes a waiver under FFDCA section 408(i) or 409(g)(1) of the right to judicial review of the order and of any regulation promulgated by the order.

(b) The record for judicial review of a final decision under this part consists of the record described in § 179.130.

§ 179.130 Administrative record.

(a) For purposes of judicial review, the record of a hearing that culminates in a final decision of the Administrator under § 179.105(d) or § 179.112(c) ruling on an objection shall consist of:

(1) The objection ruled on (and any request for hearing that was included with the objection).

(2) Any order issued under § 177.125 of this chapter to which the objection related, and:

(i) The final regulation or petition denial that was the subject of that order.

(ii) The petition to which such order responded.

(iii) Any amendment or supplement of the petition.

(iv) The data and information submitted in support of the petition.

(v) The notice of filing of the petition.

(3) Any order issued under § 177.130 of this chapter to which the objection related, the final regulation that was the subject of that order, and each related notice of proposed rulemaking.

(4) Any order issued under § 180.7(g) of this chapter to which the objection related, and:

(i) The final regulation or petition denial that was the subject of that order.

(ii) The petition to which such order responded.

(iii) Any amendment or supplement of the petition.

(iv) The data and information submitted in support of the petition.

(v) The notice of filing of the petition.

(5) Any order issued under § 180.29(f) of this chapter to which the objection related, the final regulation that was the subject of that order, and each related notice of proposed rulemaking.

(6) The comments submitted by members of the public in response to the notice of filing or notice of proposed rulemaking, and the information submitted as part of the comments.

(7) All other documents or information submitted to the docket for rulemaking in question under Part 177 or Part 180 of this chapter.

(8) The notice of hearing published under § 179.20.

(9) All notices of participation filed under § 179.26.

(10) Any **Federal Register** notice issued under this part that pertains to the proceeding.

(11) All submissions filed under § 179.80.

(12) Any document of which official notice was taken under § 179.97.

(b) The record of the administrative proceeding is closed:

(1) With respect to the taking of evidence, when specified by the presiding officer.

(2) With respect to pleadings, at the time specified in § 179.98(a) for the filing of briefs.

(c) The presiding officer may reopen the record to receive further evidence at any time before the filing of the initial decision.

4. By amending Part 180 as follows:

PART 180—[AMENDED]

a. By revising the authority citation to read as follows:

Authority: 21 U.S.C. 346a, 371a; Reorg. Plan No. 3 of 1970.

b. In § 180.7 by revising paragraph (g) to read as follows:

§ 180.7 Petitions proposing tolerances or exemptions for pesticide residues in or on raw agricultural commodities.

* * * * *

(g) If the petition is not referred to an advisory committee, or upon receipt of the report of an advisory committee under § 180.12(c) if such a referral occurred, the Administrator shall determine, in accordance with the Act, whether to issue an order that establishes, modifies, or revokes a tolerance regulation (whether or not in accord with the action proposed by the petitioner), or whether to publish a proposed tolerance regulation and request public comment thereon under § 180.29. The Administrator shall publish in the **Federal Register** such order or proposed regulation. An order published under this section shall describe briefly how to submit objections and requests for a hearing under Part 178 of this chapter. A final regulation issued under this section shall be effective on the date of publication in the **Federal Register**.

§§ 180.13–180.28 [Removed]

c. By removing §§ 180.13 through 180.28.

d. In § 180.29(a) by removing the period at the end of the first sentence and adding in its place the words ", or a regulation modifying or revoking an existence tolerance or exemption.".

e. In § 180.29 by adding paragraphs (e), (f), and (g) to read as follows:

§ 180.29 Adoption of tolerance on initiation of Administrator or on request of an interested person.

* * * * *

(e) The Administrator shall provide a period of not less than 30 days for persons to comment on the proposed regulation.

(f) After reviewing any timely comments made, the Administrator may by order establish, modify, or revoke a tolerance regulation, which order and regulation shall be published in the **Federal Register**. An order published under this section shall state that persons may submit objections and

requests for a hearing in the manner described in Part 178 of this chapter.

(g) Any final regulation issued under this section shall be effective on the date of publication in the **Federal Register**.

f. By revising § 180.30 to read as follows:

§ 180.30 Judicial review.

(a) It is the Agency's view that the Act does not allow a person to obtain direct judicial review of a regulation issued under this part that establishes, amends, or revokes a tolerance regulation or a regulation exempting a pesticide chemical from the need for a tolerance. However, if an objection to such action is submitted to the Administrator in the manner prescribed by Part 178 of this chapter, judicial review may be obtained of the Administrator's action on the objection. See sections 408(d)(5) and 408(i) of the act.

(b) A decision under § 180.29(a) that a request does not warrant the issuance of a proposed regulation is final agency action. Although the Act makes no special provision for review of such final agency action, the action may be reviewable under other provisions of the United States Code (see, e.g., 5 U.S.C. 701–706, 28 U.S.C. 1331).

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Part VIII

Department of Transportation

Federal Aviation Administration

Petition for Exemption From the Age 60 Rule; Notice of Reopening of Comment Period for Petitions for Exemption

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 25008; Ref. 51 FR 26622, July 24, 1986; and 51 FR 34520, September 29, 1986]

Petition for Exemption From the Age 60 Rule, Reopening of Comment Period

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of reopening of comment period for petitions for exemption.

Background

In May 1986, a petition for exemption was submitted to the FAA on behalf of Melvin M. Aman and 38 other current and former airline pilots. Petitioners sought relief from the provisions of § 121.383(c) of the Federal Aviation Regulations (FAR) which state that no certificate holder may use any person, nor may any person serve, as a pilot in operations under Part 121 of the FAR if that person has reached his 60th birthday. The comment period was opened on July 24, 1986 and was closed on August 13, 1986. The period was reopened on September 29, 1986 and was closed again on October 28, 1986. On September 8, 1987, the FAA issued Denial of Exemption No. 4848 to the petitioners, Disposition Notice, 52 FR 36326 (1987).

Melvin M. Aman et al., petitioned the United States Court of Appeals for the Seventh Circuit for review of the Denial of Exemption No. 4848, Petition for Review of an Order of the Federal Aviation Administration, *Melvin M. Aman v. Federal Aviation Administration*, No. 87–2598 (7th Cir. 1988). The Court vacated the order denying the exemptions and remanded to the FAA for further consideration. The Court concluded that, while the petitioners had failed to show that their protocol, combined with existing methods of operational testing, would screen out all increased risks of incapacitation or undetected skill deterioration among pilots older than sixty, "the FAA failed to set forth a sufficient factual or legal basis for its rejection of the petitioners' claim that older pilots' edge in experience offsets any undetected physical losses" *Melvin M. Aman v. Federal Aviation Administration*, No. 87–2598, slip op. at 21 (7th Cir. Sept. 12, 1988).

The Court remanded for further proceedings to provide findings and explanations addressing the matter. Accordingly, the matter of these petitions for exemption is being reopened for the purpose of addressing the Court's concerns.

Aviation accident statistics have previously been analyzed with respect to recency of pilot experience, total pilot experience, and pilot age. A report dated June 30, 1983, prepared under Contract No. DTRS57–83–P–080750 sponsored by the U.S. DOT Transportation Systems Center is entitled "The Influence of Total Flight Time, Recent Flight Time and Age on Pilot Accident Rates." A copy of the analysis has been placed in Docket No. 25008. Public comment on the analysis is invited as are other comments on identifying any relationship between pilot experience and any decrements associated with the aging process.

In addition to the petition referenced in the "Background" paragraph above, on February 24, 1988, John H. Baker and 17 other current and former airline pilots petitioned for an exemption from § 121.383(c), (Docket No. 25524). Counsel for this group of pilots requested that the FAA expedite the processing of the petition and waived any interest the petitioners may have had in adhering to the notice and comment procedures prescribed in Part 11 of the FAR. In light of the Seventh circuit's decision in the *Aman* case, the FAA will consider Mr. Baker's petition in light of any comments received in the reconsideration of the Aman petition.

Request for Comments

DATE: Comments must be received on or before November 18, 1988. The Federal Aviation Administration intends to issue a disposition of both petitions as soon as practicable after the close of the comment period.

ADDRESS: Send comments in triplicate to Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Petition Docket No. 25008, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), Room 915G, FAA Headquarters Building (FOB–10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3132.

This notice is published pursuant to paragraph (c) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC., on October 14, [redacted].

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

[FR Doc. 88–24204 Filed 10–17–88; 9:00 am]

[redacted]

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H.R. 1695/Pub. L. 100-497

To amend title 28, United States Code, to create two divisions in the Judicial District of Maryland. (Oct. 14, 1988; 102 Stat. 2431; 1 page) Price: $1.00

H.R. 4038/Pub. L. 100-498

To authorize the Secretary of Agriculture to exchange certain National Forest System lands in the Targhee National Forest. (Oct. 14, 1988; 102 Stat. 2432; 2 pages) Price: $1.00

H.R. 4186/Pub. L. 100-499

To designate the United States courthouse located at 445 Broadway in Albany, New York, as the "James T. Foley United States Courthouse." (Oct. 14, 1988; 102 Stat. 2434; 1 page) Price: $1.00

H.R. 4267/Pub. L. 100-500

To authorize additional appropriations for the WEB Rural Water Development Project, South Dakota, authorize the use of Pick-Sloan Missouri Basin electric power by the Lower Brule Sioux Indian Tribe, and to transfer certain facilities of the Central Valley Project, California. (Oct. 14, 1988; 102 Stat. 2435; 2 pages) Price: $1.00

H.R. 4276/Pub. L. 100-501

To designate the United States Post Office Building located at 1105 Moss Street in Lafayette, Louisiana, as the "James Domengeaux Post Office Building." (Oct. 14, 1988; 102 Stat. 2437; 1 page) Price: $1.00

H.R. 4423/Pub. L. 100-502

To designate the United States Post Office Building in Jeannette, Pennsylvania, as the "John Dent Post Office Building." (Oct. 14, 1988; 102 Stat. 2438; 1 page) Price: $1.00

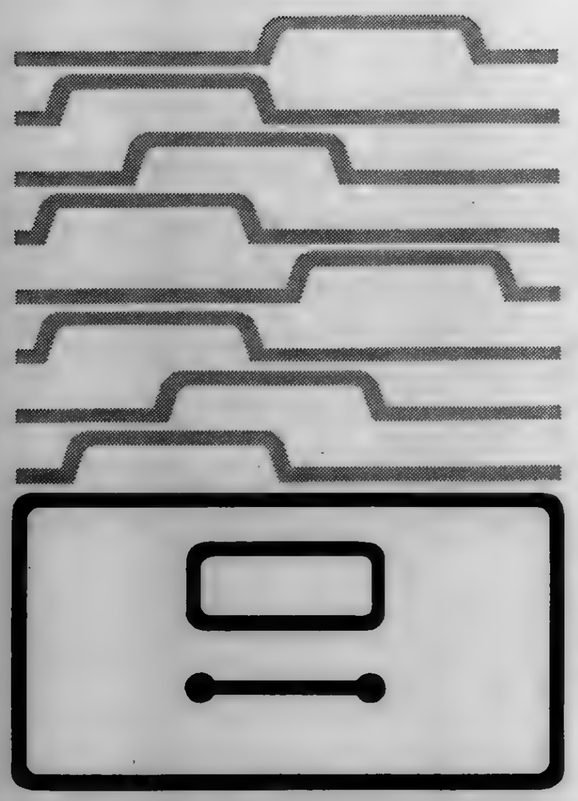
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Designating February 19 through 25, 1989, as "National Visiting Nurse Associations Week." (Oct. 14, 1988; 102 Stat. 2439; 2 pages) Price: $1.00

S. 1918/Pub. L. 100-504

Alternative Motor Fuels Act of 1988. (Oct. 14, 1988; 102 Stat. 2441; 13 pages) Price: $1.00

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WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
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2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: November 4; at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC
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Rules and Regulations

Federal Register
Vol. 53, No. 203
Thursday, October 20, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

MERIT SYSTEMS PROTECTION BOARD

5 CFR Parts 1253 and 1260

Filing of Complaints and Allegations, Filing of Freedom of Information Act Requests; Address Changes

AGENCY: Office of the Special Counsel, Merit Systems Protection Board.

ACTION: Final regulations.

SUMMARY: On August 26, 1988, the Office of the Special Counsel proposed regulations to amend 5 CFR 1253.1 and 1260.3 to reflect one address for filing complaints and allegations, for disclosing information described in 5 CFR Part 1252, and for filing Freedom of Information Act requests. 53 FR 32623. The comment period for these proposed regulations expired on September 26, 198. No comments were received. Accordingly, the regulations published today are effective upon publication.

EFFECTIVE DATE: October 20, 1988.

FOR FURTHER INFORMATION CONTACT: Henry Darnell Lewis, (202) or FTS 653–8982.

SUPPLEMENTARY INFORMATION: In its present form, 5 CFR 1253.1(a) provides that allegations of prohibited personnel practices and other violations of civil service law, rule or regulation within the investigative authority of the Special Counsel may be filed at either the Washington, DC, Atlanta, GA, Dallas, TX, Philadelphia, PA, or San Francisco, CA, offices. The Atlanta and Philadelphia offices have been abolished, and complaints for all offices are now processed initially at the Complaints Examining Unit in Washington. The revision of § 1253.1(a) reflects this change. Similarly, § 1260.3, concerning the filing of Freedom of Information Act requests, was keyed to § 1253.1. Since all FOIA requests are now processed at the Washington Office, § 1260.3 is being revised to reflect this change. Finally, § 1253.1(b) is being amended to reflect room number and zip code changes. These final regulations are identical to the proposed regulations published on August 26, 1988.

List of Subjects

5 CFR Part 1253

Filing of complaints and allegations.

5 CFR Part 1260

Public information.

Mary F. Wiseman,
Special Counsel.

Parts 1253 and 1260 are revised to read as follows:

PART 1253—[AMENDED]

1. The authority citation for Part 1253 continues to read as follows:

Authority: 5 U.S.C. 1206(k), sec. 204(g) of Reorganization Plan No. 2 of 1978.

2. Section 1253.1 is revised to read as follows:

§ 1253.1 Place of filing.

(a) Allegations of prohibited personnel practices or other violations of civil service law, rule, or regulation within the investigative authority of the Special Counsel described in Part 1251 of this chapter should be submitted to the Office of the Special Counsel, Complaints Examining Unit, 1120 Vermont Avenue, NW Suite 1100, Washington, DC 20005.

(b) Information evidencing violations of law, rule, or regulation or mismangement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, described in Part 1252 of this chapter, should be submitted to the Office of the Special Counsel, 1120 Vermont Avenue, NW Suite 1100, Washington, DC 20005.

PART 1260—[AMENDED]

3. The authority citation for Part 1260 continued to read as follows:

Authority: 5 U.S.C. 552.

4. Section 1260.3 is revised to read as follows:

§ 1260.3 Procedures for obtaining records.

Requests for records shall be made in writing. Except in unusual circumstances, a determination shall be made on a request within 10 working days. Requests should be addressed to the Office of the Special Counsel, 1120 Vermont Avenue, NW, Suite 1100, Washington, DC 20005. Requests must be clearly and prominently marked "Freedom of Information Act Request" on both the envelope and the letter.

[FR Doc. 88–24214 Filed 10–19–88; 8:45 am]
BILLING CODE 7400–01–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 115

Surety Bond Guarantee

AGENCY: Small Business Administration.

ACTION: Delay of effective date.

SUMMARY: This notice announces the delay of the effective date of the Agency's revision of the surety bond guarantee regulations (13 CFR Part 115). The final rule was published August 24, 1988 at 53 FR 32195.

DATE: The new effective date for this rule is November 28, 1988.

ADDRESS: Comments may be sent to James W. Parker, Jr., Director, Office of Surety Guarantees, Small Business Administration, 4040 N. Fairfax Drive, Suite 500, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: James W. Parker, Jr., (703) 235–2900.

SUPPLEMENTARY INFORMATION: The effective date of this rule is being delayed to accommodate delays in printing forms necessary for the implementation of this rule.

Dated: October 13, 1988.

James Abdnor,
Administrator.

[FR Doc. 88–24211 Filed 10–19–88; 8:45 am]
BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-83-AD; Amdt. 39-6098]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

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ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Airbus Industrie Model A300 series airplanes, which currently requires inspection of the shims at the flap track/beam No. 2 attachment, for damage, and replacement of the bolts. That action was prompted by reports of loose bolts found in this structure which could result in bolt failure. This amendment requires repetitive visual inspections of bolts in the aft attachment of flap track beams 2 to 6 until installation of new steel bolts, washers, and wirelocked nuts is accomplished. This amendment is prompted by reports of damaged nut and bolt threads found during routine inspection of the flap beam aft attachments. This condition, if not corrected, could lead to rupture of the bolts located at the aft attachment of the flap beams and the wings.

EFFECTIVE DATE: December 1, 1988.

ADDRESSES: The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 431-1918. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations by superseding AD 85-09-06, Amendment 39-5052 (50 FR 18856; May 3, 1985), applicable to Model A-300 series airplanes, to require repetitive visual inspection of bolts in the aft attachment of flap track beams 2 to 6 until installation of new steel bolts, washers, and wirelocked nuts, was published in the Federal Register on July 25, 1988 (53 FR 27869).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter requested that the inspection interval be increased from the proposed 1,000 landings to 1,600 landings after the effective date of the proposed rule in order to coincide with its routine inspection intervals. The FAA does not concur with this request. The FAA has determined that the interval proposed is the maximum permissible inspection time allowed without compromising air safety. However, if an individual operator can provide substantiating data and/or alternate inspection procedures to the FAA that will justify a change in the inspection times specified in the AD, and still maintain an acceptable level of safety, that request will be considered in accordance with the provisions of paragraph E. of the final rule.

The applicability statement of the AD has been revised to clarify that all aircraft listed in either of the referenced service bulletins are subject to the requirements of this AD.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed, with the change indicated above.

It is estimated that 52 airplanes of U.S. registry will be affected by this AD. It will take approximately 26 manhours per airplane to accomplish the required visual inspections, at an average labor cost of $40 per manhour. It will take approximately 52 manhours to accomplish the required modification, at an average labor cost of $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $54,080 for the visual inspections and $108,160 for the modification.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, effect on a substantial number of small entities, because few, if any, Model A300 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By superseding AD 85-09-06, Amendment 39-5052 (50 FR 18856; May 3, 1985), with the following new airworthiness directive:

Airbus Industrie: Applies to Model A300 series airplanes, as listed in Airbus Service Bulletins A300-57-152, Revision 1, dated September 18, 1987, or A300-57-145, Revision 3, dated February 10, 1988, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent loss of tension in the aft attachment of flap beams 2 to 6, accomplish the following:

A. Within the next 350 landings after the effective date of this AD, perform a detailed visual inspection of flap beams Nos. 2, 3, 4, 5, and 6 aft attachment on both wing for damage. Repeat this inspection within the next 700 landings after the effective date of this AD. If damaged parts are found, replace in accordance with Service Bulletin A300-57-150, Revision 1, dated September 18, 1987, or in accordance with Service Bulletin A300-57-145 Revision 3, dated February 10, 1988.

B. Within 700 landings after the effective date of this AD, replace bolts on flap beam No. 2 with ⅝-inch diameter bolts (Pre-mod 3553), in accordance with Service Bulletin A300-57-145, Revision 3, dated February 10, 1988.

C. Within 1,000 landings from the effective date of this AD, replace bolts on flap beams Nos. 2, 3, 4, 5, and 6 with 11/16-inch diameter bolts (Post-mod 3553), in accordance with Service Bulletin A300-57-145, revision 3, dated February 10, 1988.

D. Replacement of the flap beam bolts in accordance with Airbus Service Bulletin A300-57-145, Revision 3, dated February 10, 1988, constitutes terminating action for the inspections required by paragraph A., above.

E. alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then sent it to the Manager, Standardization Branch, ANM-113.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This Amendment supersedes AD 85-09-06, Amendment 39-5052.

This Amendment becomes effective December 1, 1988.

Issued in Seattle, Washington, on October 11, 1988.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-24243 Filed 10-19-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-83-AD; Amdt. 39-6048]

Airworthiness Directives; Boeing Model 737-300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of Boeing Model 737-300 series airplanes by individual telegrams. This AD requires a revision to the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) which will reduce the risk of engine flameout in adverse weather conditions. This action is prompted by two recent dual engine flameouts during descent through moderate to severe thunderstorm activity.

DATES: Effective November 8, 1988. This AD was effective earlier to all recipients of telegraphic AD T88-13-51, dated June 14, 1988.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington. ANM-140S; telephone (206) 431-1969. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: On May 24, 1988, a Boeing Model 737-300 series airplane experienced a dual engine flameout during descent through moderate to severe thunderstorm conditions. A previous incident occurred on August 21, 1987, during descent through 8,900 feet with similar weather and flight conditions. While the precise cause of the flameouts has not been established, the FAA has determined that certain operational measures must be taken which will reduce the potential for engine flameout under these conditions.

On June 14, 1988, the FAA issued telegraphic AD T88-13-51 (which superseded telegraphic AD T88-11-51), applicable to all Model 737-300 series airplanes, which requires a revision to the Limitations Section of the AFM to require operation with a minimum N_1 engine speed of 45 percent, engine ignition in the FLIGHT position when flying in moderate to severe precipitation, and a cautionary note advising that flight in moderate to severe thunderstorm activity is to be avoided. This is considered to be an interim action, pending a complete evaluation as to the causes of the flameouts, at which time the FAA may consider further rulemaking action.

Since a situation existed, and still exists, that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Federal Aviation Administration had determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 29, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 or Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a); 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449; January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 737-300 series airplanes equipped with CFM International CFM56-3 series engines, certificated in any category. Compliance is required within 72 hours of the effective date of this AD, unless previously accomplished.

To reduce the risk of engine flameout in adverse weather conditions, accomplish the following:

A. Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) by adding the following instructions. This may be accomplished by inserting a copy of this AD in the AFM.

Operation During Moderate to Heavy Precipitation:

When flight in moderate to heavy precipitation is encountered of anticipated, accomplish the following:

1. Engine start switches—FLIGHT.
2. Minimum Engine N_1—45%.
3. Auto-throttle—OFF in moderate to severe turbulence.

Note.—Moderate to heavy precipitation is to be assumed if indicated by any of the following sources: aircraft weather radar, reports, or observations.

Operating in Moderate to Severe Thunderstorm Activity: Cautionary Note.

Flight operation should be conducted so that moderate to severe thunderstorm activity is avoided.

B. For operations in known or forecast precipitation, notwithstanding the Minimum

Equipment List (MEL), the following items must be operable for dispatch:

1. Weather Radar.

2. Engine Ignition System—both engines, left and right ignitors.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Operations Inspector (POI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

This AD supersedes telegraphic AD T88-11-51 issued May 27, 1988.

This amendment becomes effective November 8, 1988, as to all persons, except those persons to whom it was made immediately effective by telegraphic AD T88-13-51, issued June 14, 1988.

Issued in Seattle, Wash., on October 6, 1988.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-24244 Filed 10-19-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-146-AD; Amdt. 39-6047]

Airworthiness Directives; British Aerospace Model BAe 146 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model BAe 146 series airplanes, which requires repetitive inspections of the nose wheel steering cuff ring nut for broken locking wire and security of the ring nut, and repair, if necessary. This amendment is prompted by a report of the loss of nose gear steering. This condition, if not corrected, could result in loss of control of the airplane on the ground.

EFFECTIVE DATE: November 8, 1988.

ADDRESSES: The applicable service information may be obtained from British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 431-1565. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The United Kingdom Civil Aviation Authority (CAA), in accordance with the provisions of an existing bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on British Aerospace Model BAe-146 series airplanes. There has been a report of breakage of the locking wire which secures the steering cuff ring nut. The nut dislodged and the steering cuff dropped, resulting in the loss of nose wheel steering. This condition, if not corrected, could result in loss of control of the airplane on the ground.

British Aerospace has issued Service Bulletin 32-A95, dated August 24, 1988, which describes procedures for inspection of the nose wheel steering cuff ring nut for broken locking wire and security of the nut, and repair, if necessary. The United Kingdom CAA has classified the service bulletin as mandatory.

This airplane model is manufactured in United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type registered in the United States, this AD requires inspection of the nose wheel steering cuff ring nut for broken locking wire and security of the ring nut, and repair, if necessary, in accordance with the service bulletin previously mentioned. The FAA has determined that the 48-hour initial compliance time recommended in the service bulletin places an undue burden on the operators, since the type of failure is not normally catastrophic in itself. The FAA has determined that the 100 landings initial compliance time specified in this AD provides an acceptable level of safety based on the reports of problems to date.

Since a condition exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

British Aerospace: Applies to all British Aerospace Model BAe 146 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent loss of control of the airplane on the ground, accomplish the following:

A. Within 100 landings after the effective date of this AD, inspect the nose wheel steering cuff ring nut for broken locking wire and security of the nut, in accordance with paragraph 2A of British Aerospace Service Bulletin 32-A95, dated August 24, 1988.

1. If the lock wire is found intact, repeat the inspection in accordance with paragraph 2A of the service bulletin at intervals not to exceed 100 landings from last inspection.

2. If the lock wire is damaged, broken, or missing, repair in accordance with paragraph 2A of BAe Service Bulletin 32-A95 before further flight, and reinspect in accordance with paragraph 2B of BAe Service Bulletin 32-A95, at intervals not to exceed 100 landings from last inspection.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective November 8, 1988.

Issued in Seattle, Washington, on October 6, 1988.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-24245 Filed 10-19-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-CE-21-AD; Amendment 39-6050]

Airworthiness Directives; Cessna TU206, TP206, T207, T210 and P210 Series Airplanes

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Cessna TU206, TP206, T207, T210 and P210 Series airplanes which requires installation of an acceptable fluid hose in place of certain Aeroquip Corporation, Aerospace Division fluid carrying 601 type hose assemblies located forward of the firewall. The FAA has determined that certain Aeroquip manufactured hose assemblies are developing serious leaks within 100 hours of original installation. This action will reduce the likelihood of engine power loss caused by rapid depletion of lucricating oil or fuel as a result of failure of the suspect Aeroquip 601 hose assemblies.

DATES: *Effective Date:* November 24, 1988.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Cessna Single Engine Service Bulletin SEB 88-5, dated June 24, 1988, applicable to this AD may be obtained from the Cessna Aircraft Company Piston Aircraft Marketing Division, P.O. Box 1521, Wichita, Kansas 67201. A copy of this information is also contained in the Rules Docket, FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Paul O. Pendleton, Aerospace Engineer, ACE-140W, Federal Aviation Administration, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone 316-946-4427.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring replacement of certain Aeroquip type 601 hoses on Cessna Models TU206, TP206, T207, T210 and P210 Series airplanes was published in the **Federal Register** on July 26, 1988 (53 FR 28004). The proposal resulted from incident reports on Cessna Models T210L and T210N airplanes which indicated that engine lubricating oil had been lost as a result of cracking from rapid heat aging of certain flexible hose assemblies.

The proposal identified Aeroquip Model 601 hose assemblies with Federal Supplier code for manufacturers (manufacturing code) FSCM 50556 as unacceptable for continued use in aircraft engine compartment installations. Several suspect Aeroquip Model 601 hose assemblies were reported to have developed leaks in less than 100 hours time-in-service. Unidentified hose assemblies that were thought to be manufactured from the suspect hose material have also failed (developed leaks shortly after being placed in service). The cause of the hose leakage was determined to be cracks induced by the high temperature environment in the engine compartment. Similar Aeroquip 601 hose assemblies manufactured and identified with manufacturing code FSCM 08827 have not been reported to have an aging problem.

Interested persons have been afforded an opportunity to comment on the proposal. One comment was received. The single comment (from the hose manufacturer) proposed to limit the AD to those hoses manufactured between the first quarter of 1984 (1Q84) and the third quarter of 1987 (3Q87) and installed on the aircraft from April, 1984 through May, 1988. This comment was submitted as a result of the uncertainty that all suspect hoses were correctly identified. Some suspect hoses have been replaced that could have been identified with the tag from the previously installed hose, or another tag with insufficient information. The FAA concurs and the final rule will require removal of all Aeroquip Model 601 hoses that have been installed between April, 1984 and May, 1988. This change does not increase the regulatory burden.

The FAA has determined that approximately 7,000 turbocharged single engine airplanes have been manufactured by Cessna Aircraft Company. An estimated 50% (3,500) of these airplanes are considered to be currently operational in the United States. The projected replacement cost of the Aeroquip Model 601 hoses is 1,750 (half of the 3,500) of these airplanes is $600 per airplane. The total cost is estimated to be $1,050,000 to the private sector. The cost of compliance with the AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a signficant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Cessna: Applies to all TP206, TU206, T207, T210 and P210 Series airplanes (all serial numbers) certificated in any category.

Compliance: Required within the next 75 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent power loss or fire due to failure of certian Aeroquip 601 hose assemblies, accomplish the following:

(a) Visually inspect all of the exterior metal braided flex hose assemblies, including fireSleeve hose assemblies, in the engine compartment. If the Aeroquip Part Number AE701 appears on the hose identification tag, no further action is required per this AD.

(b) If the hose identification tag displays the model/part number suffix 601, accomplish the following:

(1) Determine if the hose is identified with a cure date 1Q84 through 3Q87.

Note.—The cure date refers to the quarter and year of manufacture, for example, 1Q84 refers to a hose manufactured in the first quarter of 1984.

(2) Review the airplane/engine log books or records to determine if any engine compartment Model 601 hose was replaced between April, 1984 and May, 1988.

(3) If the hose identification tag indicates that the hose was not manufactured with a cure date of 1Q84 through 3Q87 and the above review of the log books indicates that no Model 601 hoses were replaced between April, 1984 and May, 1988, no further action is required per this AD.

(4) If any engine compartment Model 601 hose displays a manufactured code date of 1Q84 though 3Q87, if there is no manufacturing code tag, or the engine/airplane logs/records indicate that a Model 601 hose was installed between April 1984, and May, 1988, replace the suspect hoses as follows:

(i) Prior to further flight replace the waste gate supply hose assembly, Aeroquip P/N [illegible] or the hose identified as Cessna S1236-4-0310 supplied by sources other than Cessna, or as identified above with an Aeroquip P/N AE3663162E0310 hose or equivalent in accordance with Cessna Service Bulletin SEB 88-5, dated June 24, 1988, or with an Aeroquip 601000-4-0310 hose assembly displaying a manufacturing cure date of 4Q87 or subsequent.

(ii) Within the next 12 calendar months, replace all other suspect Aeroquip 601 type hose assemblies in the engine compartment with a serviceable hose displaying a manufacturing cure date of 4Q87 or subsequent.

(c) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(d) An equivalent means of compliance with this AD may be used if approved by the Manager, Wichita Aircraft Certification Office, Federal Aviation Administration, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

All persons affected by this AD may obtain copies of the documents referred to herein upon request to the Cessna Aircraft Company, Piston Aircraft Marketing Division, P.O. Box 1521, Wichita, Kansas 67201. These documents may also be examined at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on November 24, 1988.

Issued in Kansas City, Missouri, on October 11, 1988.

Don C. Jacobsen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-24248 Filed 10-19-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-123-AD; Amdt. 39-6053]

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (Embraer) Model EMB-120 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register, revises, and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of Embraer Model EMB-120 series airplanes by individual telegrams. This AD requires a revision to the FAA-approved Airplane Flight Manual (AFM) concerning certain inflight operational procedures, and the addition of emergency propeller overspeed procedures. This action is prompted by several incidents where, during flight, propellers on this model airplane developed an overspeed condition. This condition, if not corrected, could lead to the loss of the ability to feather the propeller, and resultant loss of the ability to maintain a safe altitude. This action also amends the previously issued telegraphic AD by revising the minimum airspeeds to be observed during certain required operations, reordering one sequence of procedures, and clarifying the language used in an informational note.

EFFECTIVE DATE: November 7, 1988.

ADDRESSES: The applicable service information may be obtained from Embraer, 276 SW. 34th Street, Fort Lauderdale, Florida 33315. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Mr. Gil Carter, Aerospace Engineer, Atlanta Aircraft Certification Office, Propulsion Branch, FAA, Central Region, 1669 Phoenix Parkway, Suite 210C, Atlantic, Georgia 30349; telephone (404) 991-3910.

SUPPLEMENTARY INFORMATION: On August 4, 1988, the FAA issued telegraphic AD T88-16-51, applicable to Embraer EMB-120 series airplanes, which requires a revision to certain inflight operational procedures, and the addition of emergency propeller overspeed procedures to the Airplane Flight Manual (AFM). That action was prompted by three incidents during flight where propellers on Model EMB-120 series airplanes developed an overspeed condition. Flight data recorder information for one occurrence indicated a simultaneous overspeed on both propellers, which resulted in the loss of the airplane. All of these overspeed incidents occurred at low power at the start of descent. Propeller featuring during these incidents was difficult or not possible using existing procedures.

Investigation into the probable cause of these propeller overspeed incidents has, thus far, failed to reveal any discrepancies associated with the propeller or engine system which would produce an uncommanded propeller overspeed. However, it is possible to produce such an overspeed in flight by moving the power level below the flight idle setting or stop. This action moves the propeller into the Beta range, which inhibits the response of both the main and overspeed propeller governors, and negates the overspeed protection of the pitch lock. In flight, this action allows the propeller blades to rapidly move into the low pitch and overspeed without governing protection.

The current Airplane Flight Manual (AFM) does not specifically prohibit power lever movement below the flight idle stop, and such action would enhance slowing the aircraft at the start of descent, particularly on a clean airplane such as the Embraer Model EMB-120.

This condition, if not corrected can lead to the loss of the ability to feather the propeller, and resultant loss of ability to maintain safe altitude.

Subsequent to the issuance of telegraphic AD T88-16-51, Embraer conducted further testing of the airplane under conditions which would prompt the propeller overspeed condition. These tests have revealed that a reduction is necessary in certain minimum airspeeds previously recommended by operations during emergency procedures in case of propeller overspeed. The FAA agrees that these reductions in airspeed have proven to be safe minimum airspeeds that will provide a better probability of feathering. Accordingly, the FAA has determined that this AD must be revised to require these lower airspeeds during the emergency procedures.

Additionally, paragraph A.2. of the final rule has been revised to reverse the sequence of "SYNCHROPHASING" and "CONDITION LEVER (AFFECTED ENGINE)" in the initial steps of emergency procedures in case of propeller overspeed. The FAA had determined that this change is necessary since it permits feathering procedures to be accomplished at an earlier stage.

The wording of the first *NOTE* paragraph A.2. has also been revised to clarify the description of the action occurring relevant to power reduction.

Since a situation existed, and still exists, that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federal Assessment.

The Federal Aviation Administration has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising Telegraphic AD T88-16-51, issued August 4, 1988, as follows:

Empresa Brasileira de Aeronautica S.A. (Embraer): Applies to all Model EMB-120 series airplanes, certified in any category. Compliance required within 24 hours after the effective date of this AD, unless previously accomplished.

To prevent an overspeed occurrence, accomplish the following:

A. Insert the following into the FAA-approved Airplane Flight Manual (AFM) and alert all flight crews. This may be accomplished by inserting a copy of this airworthiness directive (AD) into the appropriate section of the AFM.

1. *Limitations: Powerplant:*

—Inflight Operations at Power Settings Below FLT Idle Not Approved

2. *Emergency Procedures in Case of Propeller Overspeed:*

—Power Lever (Affected Engine)—FLT Idle
—Condition Lever (Affected Engine)—Feather
—Synchrophasing—Off
—Power Lever (Operative Engine)—FLT Idle (Altitude Permitting)
—Flaps—15° (Airspeed Permitting)
—Airspeed—125 Kias Minimum

Note.—Power reduction on the operative engine will increase decel rate to 125 Kias and will prevent adverse aircraft handling qualities associated with V_{mc}. Operative engine may be used as necessary to maintain altitude airspeed.

Note.—With Np above 120%, both mechanical and electrical auxiliary feather systems may not have sufficient authority to feather the propeller. Therefore, it is neccessary to reduce the Np Below 120% in order to obtain satisfactory feathering action.

—If Np is below 120%:

• Electric Feathering Switch—on.

—If Np is Above 120%:

• Airspeed/Flaps—Reduced airspeed. Extended flaps per table below to reduce Np below 120%:

Minimum airspeed	Flaps (degrees)
125 Kias	15
120 Kias	25
115 Kias	40

• Power Lever (Operative Engine)—as required (see Table above).

Note.—With flaps lowered past 15°, the landing gear warning will sound.

• Electrical Feather Switch—on.

Note.—The electrical auxiliary feathering pump is automatically turned off after 20 seconds. Therefore, for further pump operation, it is necessary to turn the switch off, then on. The pump is capable of six consecutive operations.

—If Propeller Does Not Feather:

Warning!

Do not shut down the affected engine unless additional failures warrant shutdown.

• Airspeed—125 Kias (Min).
• Flaps—15°.
• Land as soon as possible—Use procedures for a one engine inoperative approach and landing maintain V_{ref} + 10 until landing assessed.

—When Propeller is feathered:

• Condition Lever—Fuel cut off.
• Complete precautionary engine shutdown if propeller is feathered prior to landing.

B. An alternate means of compliance which provides an acceptable level of safety may be used when approved by the Manager, Atlanta Aircraft Certification Office, FAA, Central Region.

Note.—The request should be forwarded through an FAA Principal Operations Inspector (POI), who may add any comments and then send it to the Manager, Atlanta Aircraft Certification Office.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer, may obtain copies upon request to Embraer, 276 SW. 34th Street, Fort Lauderdale, Florida 33315. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia.

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This amendment becomes effective November 7, 1988.

Issued in Seattle, Washington, on October 12, 1988.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-24252 Filed 10-19-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-CE-33-AD; Amdt. 39-6048]

Airworthiness Directives; Fairchild Aircraft Corporation Models SA26-T, SA26-AT, SA226-T, SA226-AT, SA226-TC, SA227-TT, SA227-AT, and SA227-AC Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to the Fairchild Aircraft Corporation SA26, SA226, and SA227 series airplanes which requires inspection and replacement as necessary of cockpit and cabin outer window panes. This AD will allow for safe operation of the airplane unpressurized until cracked window panes can be replaced. Several in-flight window failures have been reported involving crewmember and passenger injuries. This inspection and replacement will preclude failure of the windows with resultant possible injury to crewmembers and passengers.

DATES: *Effective Date:* November 4, 1988.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Fairchild Aircraft Corporation Service Bulletin Nos. 26-88, dated April 28, 1988; 26-56-10-038, revised October 29, 1984; 226-56-001 and 227-56-001, both revised January 5, 1984; 226-56-002, revised July 29, 1983; 227-56-002, issued January 5, 1984; and 226-10-001 and 227-56-003, both dated September 13, 1984, applicable to this AD, may be obtained from the Fairchild Aircraft Corporation, P.O. Box 790490, San Antonio, Texas 78279-0490. This information may also be examined at the Rules Docket, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Michele M. Owsley, Airplane Certification Branch, ASW-150, DOT/FAA, Southwest Region, Fort Worth, Texas 76193-0150; Telephone (817) 624-5161.

SUPPLEMENTARY INFORMATION: On September 1, 1988, a Fairchild Model SA226-TC airplane being operated in air carrier service experienced a failure of the copilot's side window while cruising at 17,000 feet. The failure resulted in injuries to the copilot. The airplane had flown 16,345 hours and had 25,137 pressurization cycles at the time of the accident. A subsequent fleet inspection by the air carrier revealed several cracked cockpit side windows and passenger cabin windows.

The FAA's Service Difficulty Reports reveal that 19 acrylic windows and 7 non-acrylic windows on Fairchild SA226 and SA227 series airplanes have been reported cracked or failed. Fourteen of the acrylic wiadow reports included information on the service time of the airplane involved. Of these fourteen, half of the reports were at less than 1,050 hours and the remainder were at less than 10,000 hours. The hours on the non-acrylic windows vary across the current life of the fleet.

A previous cockpit side window failure in 1984 also resulted in rapid decompression and crewmember injuries. At that time the manufacturer conducted crack propagation testing in acrylic panels to determine crack growth characteristics. The results of this testing were used in the service bulletins generated at that time. The FAA has determined that operators who accomplish the service bulletins at the recommended intervals are detecting cracks before catastrophic failure. Fairchild is currently revising the Airworthiness Limitations Manual for the SA227 series airplanes to incorporate the service bulletin inspections.

Since the FAA has determined that the unsafe condition described herein is likely to exist or develop in other airplanes of the same type design, an AD is being issued requiring initial and repetitive inspections of the cockpit and cabin windows in all Fairchild SA26, SA226, and SA227 series airplanes. If cracks are found which do not exceed the limits specified in the AD, the airplane may continue to operate unpressurized provided the cracked window is reinspected periodically and the crack limits are not exceeded. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not major under section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "**ADDRESSES**" at the location identified.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Fairchild Aircraft Corporation: Applies to Models SA26-T, SA26-AT, SA226-T, SA226-T(B), SA226-AT, SA226-TC, SA227-TT, SA227-AT, and SA227-AC airplanes (all serial numbers) certificated in any category.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To prevent failure of the cockpit and cabin windows, accomplish the following:

(a) Within the next 50 hours time-in-service (TIS) unless accomplished within the previous 2500 hours TIS, and thereafter at intervals not to exceed 2500 hours TIS from the last inspection, visually inspect all cockpit windows in accordance with Fairchild Aircraft Corporation Service Bulletins 26-88, dated April 28, 1988; 26-56-10-038, revised October 29, 1984; 226-56-003 or 227-56-003, both dated September 13, 1984; as applicable, and visually inspect all cabin windows in accordance with Fairchild Aircraft Corporation Service Bulletins 226-56-001 (SA226-T and SA226-T(B)), revised January 5, 1984; 227-56-001 (SA227-TT), revised January 5, 1984; 226-56-002 (SA226-AT and SA226-TC), revised July 29, 1983; 227-56-002 (SA227-AT and SA227-AC), dated January 5, 1984, as applicable.

(1) If cracks are found in any given window which exceed 4.3 inches in combined total length, prior to further flight, replace the window with a serviceable window.

(2) If cracks are found on any given window which do not exceed 4.3 inches in combined total length and replacement parts are not available, the airplane may continue to operate provided:

(A) The cracked window is reinspected for crack growth thereafter at intervals not to exceed every 250 hours TIS. If the combined total length of the cracks exceeds 4.3 inches, prior to further flight, replace the window with a serviceable window.

(B) Fabricate and install on the instrument panel, as near as possible to the pressurization controls and in clear view of the pilot, the following placard using letters of 0.10 inch minimum height: "AIRPLANE MUST BE OPERATED UNPRESSURIZED", and operate the airplane in accordance with this limitation.

(C) Place a copy of this AD in the limitations section of the Pilots Operating Handbook or the FAA Approved Airplane Flight Manual and observe the specified limitation.

(D) The placard, the 250 hour TIS reinspections, and the limitations specified in paragraphs (a)(2)(A), (a)(2)(B), and (a)(2)(C) above, may be removed and the airplane pressurized in the normal manner when all of the cracked windows have been replaced.

(b) The intervals between the inspections required by this AD may be adjusted up to 10 percent of the specified interval to allow accomplishing these inspections concurrent with other scheduled maintenance on the airplane.

(c) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(d) An equivalent means of compliance with this AD may be used if approved by the Manager, Airplane Certification Branch, DOT/FAA, Southwest Region, Fort Worth, Texas 76193-0150; Telephone (817) 624-5150.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Fairchild Aircraft Corporation, P.O. Box 790490, San Antonio, Texas 78279-0490; or may examine these documents at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on November 4, 1988.

Issued in Kansas City, Missouri, on October 7, 1988.

Don C. Jacobsen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-24247 Filed 10-19-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-NM-157-AD; Amdt. 39-6006]

Airworthiness Directives; General Dynamics Models 340, 440, and C-131 (Military) Series Airplanes, Including Those Modified For Turbo-propeller Power

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all General Dynamics Models 340, 440, and C-131 (Military) series airplanes, including turbo-propeller conversions, which requires supplemental structural inspections and repair or replacement, as necessary, to assure continued airworthiness. Some General Dynamics Models 340, 440, and C-131 series airplanes are approaching, or in some cases, have exceeded the manufacturer's original design goal. This amendment is prompted by a structural reevaluation, which has identified certain significant structural components to inspect for fatigue cracks as these airplanes approach and exceed the manufacturer's original design life. This condition, if not corrected, could result in a compromise of the structural integrity of these airplanes.

DATES: Effective November 21, 1988. The incorporation by reference of certain publications listed in this regulation is approved by the Director of the Federal Register as of November 21, 1988.

ADDRESSES: The applicable service information may be obtained from General Dynamics, Convair Division, Lindberg Field Plant, P.O. Box 85377, San Diego, California 92138, Attention: Derek Trusk. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Transport Airplane Office, 3229 E. Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Don Dirian, Aerospace Engineer, Los Angeles Transport Airplane Office, ANM-120L, FAA, Northwest Mountain Region, 3229 E. Spring Street, Long Beach, California; telephone (213) 988-5234.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires supplemental structural inspection of General Dynamics Model 340, 440, and C-131 (Military) series airplanes, was published in the **Federal Register** on February 24, 1988 (53 FR 5428).

Interested persons have been afforded an opportunity to participate in the making of this amendment.

No comments were received in response to the proposal.

The final rule has been revised to remove all references to the use of "later FAA approved revisions of the applicable service bulletin," in order to be consistent with FAA policy in that regard. The FAA has determined that this change will not increase the economic burden on any operator, nor will it increase the scope of the AD, since later revisions of the service bulletin may be approved as an alternate means of compliance with this AD, as provided by paragraph D.

The reporting requirements contained in paragraph A. of this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB control number 2120-0056.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed, with the change previously described.

It is estimated that 350 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1,000 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the initial cost to U.S. operators to implement the SID program is estimated to be $14,000,000.

The recurring inspection cost to the affected operators is estimated to be 500 manhours per airplane per year, at an average labor cost of $40 per manhour. Based on these figures, the annual recurring cost of this AD is estimated to be $7,000,000.

Based on the above figures, the total cost impact of this AD is estimated to be $14,000,000 for the first year, and $7,000,000 for each year thereafter.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is

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determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 and significant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Model 340, 440, or C–131 (Military) series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

General Dynamics (Convair): Applies to Models 340/440 and C–131 (Military) series airplanes, all serial numbers, certificated in any category, including those modified for turbo-propeller power. Compliance required as indicated, unless previously accomplished.

To ensure the continuing structural integrity of these airplanes, accomplish the following:

A. Within one year after the effective date of this AD, incorporate a revision into the FAA-approved maintenance inspection program which provides for inspection of the Principal Structural Elements (PSE) defined in Section 3 of General Dynamics, Report No. ZS–340–1000, 340/440 Supplemental Inspection Document (SID), dated November 14, 1986, Addendum I, dated April 14, 1987, Addendum II, dated May 4, 1987, and Addendum III, dated August 4, 1987. The non-destructive inspection techniques set forth in the SID provide acceptable methods for accomplishing the inspections required by this AD. All inspection results (negative or positive) must be reported to General Dynamics, in accordance with the instructions in the SID.

B. Cracked structure detected during the inspections required by paragraph A., above, must be repaired or replaced, prior to further flight, in accordance with instructions in the SID.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Transport Airplane Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Los Angeles Transport Airplane Office, FAA, Northwest Mountain Region.

General Dynamics Report No. ZS–340–1000, 340/440 Supplemental Inspection Document (SID), dated November 14, 1986, including Addendum I, dated April 14, 1987, Addendum II, dated May 4, 1987, and Addendum III, dated August 4, 1987, identified and described in this document, are incorporated by reference and made part hereof pursuant to 5 U.S.C. 552(a)(1).

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the General Dynamic/Convair Division, Lindberg Field Plant, P.O. Box 85377, San Diego, California 92138, Attention: Derek Trusk. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 3229 E. Spring Street, Long Beach, California.

This amendment becomes effective November 21, 1988.

Issued in Washington, DC, on August 17, 1988.

Thomas E. McSweeny,

Acting Director, Office of Airworthiness.

[FR Doc. 88–24248 Filed 10–19–88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88–AGL–19]

Control Zone Alteration; Flint, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to alter the control zone area airspace near Flint, MI. The deletion of the VOR Runway 05/23 Standard Instrument Approach Procedure (SIAP) to Bishop Airport, Flint, MI, requires an alteration to the control zone. The intended effect of this action is to eliminate two extensions of the control zone and return that portion of controlled airspace back to uncontrolled status.

EFFECTIVE DATE: 0901 u.t.c., February 9, 1989.

FOR FURTHER INFORMATION CONTACT: Harold G. Hale, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7360.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, August 24, 1988, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the control zone area airspace near Flint, MI (53 FR 32250).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the control zone area airspace near Flint, MI.

The present control zone area is being modified due to the deletion of the VOR Runway 05/23 SIAP to Bishop Airport, Flint, MI. This modification will delete two extensions of the control zone—one to the northeast and one to the southwest—and return that portion of airspace to a uncontrolled status.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Flint, MI [Revised]

Within a 5-mile radius of Flint, MI, Bishop Airport (lat. 42°57'56" N., long. 83°44'37" W.), and within 2 miles each side of the Flint VORTAC 075°, 167°, 280° and 351° radials extending from the 5-mile radius zone to 8 miles E, S, W, and N of the VORTAC.

Issued in Des Plaines, Illinois on October 7, 1988.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 88–24280 Filed 10–19–88; 8:45 am]

BILLING CODE 4910-13-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Poison Prevention Packaging Requirements; Exemption of Certain Conjugated Estrogens Tablets

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission amends its regulation that allows certain conjugated estrogens tablets to be marketed in mnemonic packages [1] that are not child-resistant. Except for this regulation, child-resistant packaging would be required because these substances are oral prescription drugs. The amendment increases from 26.5 mg to 32 mg the amount of the drug allowed per non-child-resistant mnemonic package. The drug is used for the treatment of a variety of female hormonal imbalance disorders and is exempted because of its low toxicity.

EFFECTIVE DATE: This exemption is effective October 20, 1988.

ADDRESSES: All public documents that the Commission has concerning this proceeding may be inspected at, or copies obtained from, the Office of the Secretary, Consumer Product Safety Commission, Room 528, 5401 Westbard Avenue, Bethesda, Maryland, telephone (301) 492–6800.

FOR FURTHER INFORMATION CONTACT: Charles Jacobson, Division of Regulatory Management, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 492–6900.

SUPPLEMENTARY INFORMATION:

A. Background

Among other substances, oral prescription drugs intended for human use are subject to child-resistant packaging requirements issued under the Poison Prevention Packaging Act of 1970 ("the PPPA"), 15 U.S.C. 1471–1476. 16 CFR 1700.14(a)(10). Previously, there has been an exemption from these requirements for conjugated estrogens, when dispensed in mnemonic packages containing not more than 26.5 mg of the drug and containing no other substances subject to § 1700.14(a)(10). 49 FR 50368; December 28, 1984. Conjugated estrogens are hormonal drugs used for the treatment of various female hormone imbalance disorders.

By letter dated October 10, 1986, Ayerst Laboratories petitioned the Commission to extend the exemption for conjugated estrogens from 26.5 mg to 32 mg per mnemonic package.

The petitioner requested the extension because of current prescribing practices, which indicate that many physicians now prefer a 25-day monthly cyclic regimen to the previously-favored 21-day regimen.

As justification for the requested increased exemption, the petitioner cited the human experience data which supported the original exemption for conjugated estrogens. These data show the absence of acute toxicity resulting from accidental ingestion of conjugated estrogens by young children.

The petitioner states that the exemption is further warranted because conjugated estrogens are closely related biochemically and pharmacologically to several of the estrogenic compounds used as oral contraceptives, which were previously exempted from child-resistant packaging requirements by the Commission, except that conjugated estrogens are less potent in terms of estrogenic activity. The petitioner notes that the exemption for oral contraceptives does not refer to specific amounts of hormones. The petitioner believes that this provides a precedent for extension of the exemption for conjugated estrogens from 26.5 mg to 32 mg per package.

The petitioner states that because conjugated estrogens are used primarily to treat postmenopausal symptoms and osteoporosis, this product, unlike oral contraceptives, is used primarily in households without young children. The petitioner states that the many elderly users of the product are likely to experience difficulty using child-resistant packaging.

Conjugated estrogens have been available for several decades as a prescription drug for the treatment of female hormone imbalance disorders. It is estimated that between 2.9 and 3.6 million women are using these products. About 12 pharmaceutical companies manufacture oral conjugated-estrogens products. Unit volume for these products in 1980 is estimated at 564 million tablets, with sales of $80 million. Approximately 7.3 million prescriptions for these products were filled in 1980.

B. Toxicity Data

Theoretical Lethal Dose

Based upon the extrapolation of animal test data submitted by the petitioner, the theoretical lethal dose of conjugated estrogens for a 10 kilogram child would be between 1.8 and 3.3 grams, which is 58 to 100 times the amount that would be in a single package of the requested exempted amount.

Toxicity

Exposure to estrogens during pregnancy may result in damage to the fetus. Similar effects have been observed for a variety of drugs, indicating the special susceptibility of the fetus to the toxic effects of many chemicals and drugs. Long-term therapeutic administration of estrogenic compounds has been shown to lead to an increased risk, in women, of endometrial cancer and of various blood clotting disorders. There is no evidence, however, that such effects would be expected from a single acute exposure

[1] A mnemonic package is any package designed for the administration of one dosage unit at a time and incorporating any feature which serves to remind the user to take the dosage at specified intervals throughout the period during which the medication is to be administered.

in a child. No such effects have been reported over the span of more than forty years during which these drugs have been marketed.

C. Injury Data

For the period 1976 through 1984, data from the National Clearinghouse for Poison Control Centers show 189 reported ingestions of conjugated estrogens. Five of the cases reported symptoms; none resulted in a hospital visit.

For the period 1978 through January 1987, the Commission's "Children and Poisonings" data base shows 13 children treated in hospital emergency rooms following ingestion of conjugated estrogens. None of the children was hospitalized.

Literature reviews conducted by the staff and by the petitioner reveal no reports of death or serious injury following ingestions of conjugated estrogens by children under age five. There have been reports of cramping, vomiting, nausea, and diarrhea following acute ingestion of large amounts of estrogens.

It should be noted also that unit dose packaging tends to limit the amount a small child ingests, because of the time and effort necessary to open each unit.

D. FDA Comments

The Food and Drug Administration, Center for Drugs and Biologics, also reviewed the petition and concluded that the increased amount of conjugated estrogens, *i.e.*, from 28.5 mg per mnemonic package to 32 mg per mnemonic package, would pose no health risk to children under five as a result of accidental ingestion.

E. Action on the Petition

Based upon the animal data and human experience information discussed above, it appears that this drug has low toxicity and poses a minimal threat of illness or injury in children as a result of accidental ingestion.

The Commission preliminarily concluded that the degree and nature of the hazard to children presented by the availability of the conjugated estrogens tablets that are the subject of this petition are such that special packaging is not required to protect children from serious personal injury or serious illness resulting from handling, using or ingesting such substance. Accordingly, the Commission voted to grant the petition. Therefore, the Commission proposed to amend 16 CFR 1700.14(a)(10) to exempt Conjugated Estrogens Tablets, U.S.P., from requirements for child-resistant packaging, when dispensed in mnemonic packages containing not more than 32 mg of the drug. 52 FR 48450 (December 22, 1987). No comments were received on the proposal. After considering the available information, the Commission has decided to issue the requested exemption.

F. Regulatory Flexibility Certification

When an agency undertakes a rulemaking proceeding, the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*) generally requires the agency to prepare proposed and final regulatory flexibility analyses describing the impact to the rule on small businesses and other small entities. The purpose of the Regulatory Flexibility Act, as stated in section 2(b) (5 U.S.C. 602 note), is to require agencies, consistent with their objectives, to fit the requirements of regulations to the scale of the businesses, organizations, and governmental jurisdictions subject to the regulations. Section 605 of the Act provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The exemption issued below will have the effect of giving the manufacturers of the exempted products the option of packaging their product in an additional manner. The difference in cost between child-resistant packaging and packaging permitted by the exemption is not believed to be significant. Accordingly, the Commission concludes that this exemption will not have any significant economic effect on a substantial number of small entities.

G. Environmental Considerations

The Commission's regulations governing environmental review procedures state, at 16 CFR 1021.5(c)(3), that exemption of products from requirements for child-resistant packaging under the PPPA normally has little or no potential for affecting the human environment. The Commission does not foresee any special or unusual circumstances surrounding the exemption issued below. For this reason, the Commission concludes that neither an environmental assessment nor an environmental impact statement is required in this proceeding.

H. Effective Date

Since the rule issued below provides for an exemption, the provision of 5 U.S.C. 553(c) requiring a delay in the effective date is inapplicable. Accordingly, the rule shall become effective October 20, 1988.

List of Subjects in 16 CFR Part 1700

Consumer protection, Drugs, Infants and children, Packaging and containers, Poison prevention, Toxic substances.

Conclusion

For the reasons given above, the Commission amends Title 16 of the Code of Federal Regulations to read as follows:

PART 1700—[AMENDED]

1. The authority citation for Part 1700 is revised to read as follows:

Authority: Pub. L. 91-601, secs. 1-9, 84 Stat. 1670-74, 15 U.S.C. 1471-76. Secs. 1700.1 and 1700.14 also issued under Pub. L. 92-573, sec. 30(a), 86 Stat. 1231, 15 U.S.C. 2079(a).

2. Section 1700.14(a)(10)(xvii) is revised to read as follows:

§ 1700.14 Substance requiring special packaging.

(a) * * *

(10) * * *

(xvii) Conjugated Estrogens Tablets, U.S.P., when dispensed in mnemonic packages containing not more than 32.0 mg of the drug and containing no other substances subject to this § 1700.14(a)(10).

* * * * *

Dated: October 14, 1988.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 88-24237 Filed 10-19-88; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 25-88]

Exemption of Records Systems Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice, Immigration and Naturalization Service (INS), is identifying as a separate system of records its "Centralized Index," currently identified in 28 CFR 16.99 as "Subsystem (3)" of its Immigration and Naturalization Service Index System, JUSTICE/INS-001 (hereinafter referred to as the 001 system). INS is naming the new system "The Immigration and Naturalization Service Alien File (A-File) and Central Index System (CIS), JUSTICE/INS-001A" (hereinafter referred to as the 001A system), and is promulgating this rule to exempt it from certain Privacy Act provisions; conversely, it is removing certain exemptions from the 001 system.

Specifically, the 001A system is exempted from subsections (c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G) and (H), (e) (5) and (8), and (g) of the Privacy Act, 5 U.S.C. 552a. Information in the system relates to official Federal investigations and matters of law enforcement. The exemptions are needed to protect ongoing investigations, material which has been properly classified pursuant to Executive Order, the privacy of third parties, and the identities of confidential sources involved in such investigations. Exemptions from subsections (e)(4)(I), (f) and (h) for the 001 system are removed because INS complies with the requirements thereof.

EFFECTIVE DATE: October 20, 1988.

FOR FURTHER INFORMATION CONTACT: J. Michael Clark, (202) 272-6474.

SUPPLEMENTARY INFORMATION: A proposed rule with invitation to comment was published in the **Federal Register** on May 11, 1988 (53 FR 16730). The public was given 30 days to comment. No comments were received.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, it is hereby stated that the order will not have "a significant economic impact on a substantial number of small entities."

List of Subjects in 28 CFR Part 16

Administrative practice and procedure, Courts, Freedom of information, Privacy, Sunshine Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793-78, 28 CFR Part 16, § 16.99 is amended as set forth below.

Dated: September 30, 1988.

Harry H. Flickinger,

Assistant Attorney General for Administration.

PART 16—[AMENDED]

1. The authority for Part 16 continues to read as follows:

Authority: 28 U.S.C. 509, 510; 5 U.S.C. 301, 552, 552a; 31 U.S.C. 483a unless otherwise noted.

2. 28 CFR 16.99 is amended by revising paragraph (a), by removing paragraphs (b) (8), (11) and (13), by redesignating paragraphs (b) (9), (10), (12) and (14) as paragraphs (b) (8), (b)(9), (b)(10) and (b)(11) respectively, and by revising the newly redesignated paragraph (b)(11).

§ 16.99 Exemption of Immigration and Naturalization Service Systems—Limited Access.

(a) The following systems of records of the Immigration and Naturalization Service are exempt from 5 U.S.C. 552a (c) (3) and (4), (d), (e) (1), (2) and (3), (e) (4)(G) and (H), (e) (5) and (8), and (g):

(1) The Immigration and Naturalization Service Alien File (A-File) and Central Index System (CIS), JUSTICE/INS-001A.

(2) The Immigration and Naturalization Service Index System, JUSTICE/INS-001 which consists of the following subsystems:

(i) Agency Information Control Record Index.
(ii) Alien Enemy Index.
(iii) Congressional Mail Unit Index.
(iv) Air Detail Office Index.
(v) Anti-smuggling Index (general).
(vi) Anti-smuggling Information Centers Systems for Canadian and Mexican Borders.
(vii) Border Patrol Sectors General Index System.
(viii) Contact Index.
(ix) Criminal, Narcotic, Racketeer and Subversive Indexes.
(x) Enforcement Correspondence Control Index System.
(xi) Document Vendors and Alterers Index.
(xii) Informant Index.
(xiii) Suspect Third Party Index.
(xiv) Examination Correspondence Control Index.
(xv) Extension Training Enrollee Index.
(xvi) Intelligence Index.
(xvii) Naturalization and Citizenship Indexes.
(xviii) Personnel Investigations Unit Indexes.
(xix) Service Look-Out Subsystem.
(xx) White House and Attorney General Correspondence Control Index.
(xxi) Fraudulent Document Center Index.
(xxii) Emergency Reassignment Index.
(xxiii) Alien Documentation, Identification, and Telecommunication (ADIT) System.

The exemptions apply to the extent that information in these subsystems is subject to exemption pursuant to 5 U.S.C. 552a (j)(2) and (k)(2).

(b) * * *

(11) In addition, these systems of records are exempt from subsections (c)(3), (d), (e)(1), (e)(4) (G) and (H) to the extent they are subject to exemption pursuant to 5 U.S.C. 552a(k)(1). To permit access to records classified pursuant to Executive Order would violate the Executive Order protecting classified information.

* * * * *

[FR Doc. 88-24305 Filed 10-19-88; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100 and 165

[CGD 88-084]

Safety and Security Zones

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary rules issued.

SUMMARY: This document gives notice of temporary safety zones, security zones, and local regulations. Periodically the Coast Guard must issue safety zones, security zones, and special local regulations for limited periods of time in limited areas. Safety zones are established around areas where there has been a marine casualty or when a vessel carrying a particularly hazardous cargo is transiting a restricted or congested area. Special local regulations are issued to assure the safety of participants and spectators of regattas and other marine events.

DATES: The following list includes safety zones, security zones, and special local regulations that were established between July 1, 1988, and September 30, 1988, and have since been terminated. Also included are several zones established earlier but inadvertently omitted from the past published list.

ADDRESS: The complete text of any temporary regulation may be examined at, and is available on request from, Executive Secretary, Marine Safety Council (G-LRA-2), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Novak, Executive Secretary, Marine Safety Council at (202) 267-1477.

SUPPLEMENTARY INFORMATION: The local Captain of the Port must be immediately responsive to the safety needs of the waters within his jurisdiction; therefore, he has been delegated the authority to issue these regulations. Since events and emergencies usually take place without advance notice or warning, timely publication of notice in the **Federal Register** is often precluded. However, the affected public is informed through Local Notices to Mariners, press releases, and other means. Moreover,

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actual notification is frequently provided by Coast Guard patrol vessels enforcing the restrictions imposed in the zone to keep the public informed of the regulatory activity. Because mariners are notified by Coast Guard officials on scene prior to enforcement action, Federal Register notice is not required to place the special local regulation, security zone, or safety zone in effect. However, the Coast Guard, by law, must publish in the Federal Register notice of substantive rules adopted. To discharge this legal obligation without imposing undue expense on the public, the Coast Guard publishes a periodic list of these temporary special local regulations, security zones, and safety zones. Permanent safety zones are not included in this list. Permanent zones are published in their entirety in the Federal Register just as any other rulemaking. Temporary zones are also published in their entirety if sufficient time is available to do so before they are placed in effect or terminated.

Non-major safety zones, special local regulations, and security zones have been exempted from review under E.O. 12291 because of their emergency nature and temporary effectiveness.

The following regulations were placed in effect temporarily during the period July 1, 1988, through September 30, 1988, unless otherwise indicated.

Docket No.	Location	Type	Date
1-88-052	East River, NY	Safety Zone	June 15, 1988.
1-88-056	Courageous Challenge, Boston, MA	Special Local Regulation.	July 1, 1988.
1-88-020	Great Kennebec River Whitewater Race, ME	...do	July 3, 1988.
1-88-031	Upper New York Bay, Lower East River, NY	Safety Zone	Do.
1-88-031	Coney Island Channel, New York Harbor, NY	...do	Do.
1-88-043	Lake Champlain, Burlington, VT	...do	Do.
1-88-045	Barges BUCHANAN #114 and BUCHANAN #559, Tug NEWPORT, New Haven Harbor, New Haven, CT.	...do	Do.
1-88-039	East River, New York, NY	...do	July 4, 1988.
1-88-044	Liberty State Park, Jersey City, NJ	...do	Do.
1-88-047	Stony Point Bay, Hudson River, NY	...do	Do.
1-88-048	Upper New York Bay, Liberty State Park, NJ	...do	Do.
COTP Boston, MA, Reg. 88-40	Boston Harbor, Boston Inner Harbor, Boston, MA	...do	Do.
COTP Providence, RI, Reg. 88-053.	New Bedford Harbor, MA	...do	Do.
COTP Providence, RI, Reg. 88-056.	Falmouth Harbor, Falmouth, MA	...do	Do.
1-88-051	Hudson River, Watervliet, NY	...do	July 9, 1988.
1-88-023	Windjammer Days, Boothbay Harbor, ME	Special Local Regulation.	July 13, 1988.
1-88-061	New Haven Power Boat Grand Prix, New Haven, CT	...do	July 16, 1988.
COTP Providence, RI, Reg. 88-066.	Rhode Island Sound, Narragansett Bay	Safety Zone	July 27, 1988.
COTP Providence, RI, Reg. 88-067.	...do	...do	July 28, 1988.
1-88-065	Long Island Sound, New Rochelle, NY	...do	July 30, 1988.
1-88-062	Shorefast Classic Power Boat Regatta, Greenwich, CT	Special Local Regulation.	Aug. 6, 1988.
1-88-063	Coney Island Channel, New York Harbor, NY	Safety Zone	Do.
1-88-070	New York Harbor, NY	...do	Aug. 9, 1988.
1-88-073	Newark Bay, NJ	...do	Aug. 12, 1988.
COTP Providence, RI, Reg. 88-074.	Taunton River, Fall River, MA	...do	Aug. 13, 1988.
1-88-075	Hudson River, NY	...do	Aug. 14, 1988.
1-88-054	Point Pleasant Beach, Offshore Challenge, Manasquan, NJ	Special Local Regulation.	Aug. 18, 1988.
1-88-072	Gateway Powerboat Regatta, Stamford, CT	...do	Aug. 28, 1988.
1-88-076	Belmar, NJ	Security Zone	Sept. 2, 1988.
1-88-079	New York Harbor, NY	...do	Sept. 3, 1988.
1-88-077	Upper New York Bay, New York Harbor	...do	Sept. 5, 1988.
1-88-088	Hudson River, NY	Safety Zone	Sept. 11, 1988.
1-88-081	Passaic, NJ	...do	Sept. 16, 1988.
COTP Memphis, TN, Reg. 88-11	Mississippi River, Memphis Harbor, McKellar Lake	...do	June 25, 1988.
COTP St. Louis, MO, Reg. 88-05	St. Louis, MO, Upper Mississippi River, Mile 202.9 to Mile 203.4	...do	July 3, 1988.
2-88-03	Riverfront Regatta, Cumberland River, Mile 190.0 to Mile 191.0	Special Local Regulation.	July 4, 1988.
COTP Huntington, WV, Reg. 88-06.	Ohio River, Mile 322.0 to Mile 323.0	Safety Zone	July 4, 1988.
COTP Louisville, KY, Reg. 88-09	Louisville, KY	...do	Do.
COTP Louisville, KY, Reg. 88-10	...do	...do	Do.
COTP Memphis, TN, Reg. 88-12	Mississippi River, Mile 734.8 to Mile 735.7	...do	Do.
COTP Memphis, TN, Reg. 88-13	Arkansas River, Mile 118.7 to Mile 119.1	...do	Do.
COTP Pittsburgh, PA, Reg. 88-03	Ohio River, From Mile 0.0 to Mile 0.6	...do	Do.
COTP Paducah, KY, Reg. 88-07	Tennessee River, Mile 25.5 to Mile 25.7	...do	Do.
2-88-02	Riverfront Regatta, Ohio River, Mile 470.8 to Mile 469.4	Special Local Regulation.	July 16, 1988.
2-88-05	Freeport Sternwheel Regatta, Allegheny River, Mile 033.0 to Mile 025.5	...do	Do.
COTP Huntington, WV, Reg. 88-08.	Ohio River Mile 308.0 to 309.5	Safety Zone	July 23, 1988.
2-88-04	Lions Club Community Festival, Ohio River Mile 466.0 to 468.0	Special Local Regulation.	July 30, 1988.
COTP Huntington, WV, Reg. 88-09.	Ohio River Mile 308.0 to Mile 309.5	Safety Zone	Do.

Docket No.	Location	Type	Date
COTP Huntington, WV, Reg. 88-10.	Ohio River Mile 355.0 to Mile 357.0	...do	Aug. 4, 1988.
COTP Pittsburgh, PA, Reg. 88-04	Monongahela River, From Mile 31.75 to Mile 32.25	...do	Aug. 8, 1988.
5-88-47	Independence Day Celebration, Marcus Hook, PA	Special Local Regulation.	July 2, 1988.
5-88-50	Fireworks Display, Pagan River, Chalmers Point, VA	...do	July 3, 1988.
5-88-38	Marine Event: Elizabeth River, Norfolk/Portsmouth VA, Fourth of July Fireworks	...do	July 4, 1988.
5-88-46	Marine Event: Freedom Festival Fourth of July Celebration, Delaware River, vicinity of Penns Landing, Philadelphia, PA.	...do	Do.
5-88-49	Pine Hall Fireworks Display, Morris Creek, Matthews County, VA	...do	Do.
5-88-51	York/Gloucester Fourth of July Celebration, York River, VA	...do	Do.
5-88-53	Inner Harbor Fourth of July Celebration, Inner Harbor, Baltimore, MD	...do	Do.
5-88-10	Start of Races to Cook Island, Waterside Area, Elizabeth River between Norfolk & Portsmouth, VA.	...do	July 23, 1988.
COTP Philadelphia, PA, Reg. 88-XXX.	Delaware River, League Island	Safety Zone	July 24, 1988.
5-88-62	Burlington Regatta, Delaware River, NJ & PA	Special Local Regulation.	Aug. 7, 1988.
5-88-58	Insertion/Extraction Demonstration, Severn River, Annapolis, MD	...do	Aug. 12, 1988.
5-88-60	1988 Jazz Festival, Delaware River, Philadelphia, PA	...do	Aug. 19, 1988.
COTP Wilmington, NC, Reg. 88-01.	Atlantic Intracoastal Waterway, NC	Safety Zone	Sept. 2, 1988.
5-88-67	Defender's Day Fort McHenry/Baltimore Fireworks Display, Patapsco River, Baltimore, MD.	Special Local Regulation.	Sept. 11, 1988.
5-88-65	U.S. Customs Bicentennial Mock Drug Interdiction Demonstration	...do	Sept. 13, 1988.
COTP Wilmington, NC, Reg. 88-04.	Atlantic Intracoastal Waterway, NC	Safety Zone	Sept. 14, 1988.
5-88-71	End of Summer Season Fireworks Display, Little Island, Little Egg Harbor, NJ	Special Local Regulation.	Sept. 17, 1988.
COTP Wilmington, NC, Reg. 88-05.	Atlantic Intracoastal Waterway, NC	Safety Zone	Sept. 19, 1988.
COTP Wilmington, NC, Reg. 88-06.	...do	...do	Sept. 22, 1988.
COTP Savannah, GA, Reg. 88-19	Savannah River	...do	July 4, 1988.
7-88-31	Gold Cup Challenge	Special Local Regulation.	Sept. 17, 1988.
COTP Corpus Christi, TX, Reg. 88-XX.	Corpus Christi Ship Channel	Safety Zone	May 27, 1988.
COTP Corpus Christi, TX, Reg. 88-XX.	Matagorda Bay, TX	...do	June 28, 1988.
COTP New Orleans, LA, Reg. 88-02.	Lower Mississippi River Mile 337 to Mile 340	...do	July 6, 1988.
COTP Mobile, AL, Reg. 88-05	Gulf of Mexico, An Area Encompassing Approximately 1.8 Square Miles Adjacent to Pensacola Beach, Pensacola, FL.	...do	July 14, 1988.
COTP Houston, TX, Reg. 88-06	Houston Ship Channel, from Lyondell/Arco to Crown Central Petroleum	...do	July 15, 1988.
COTP Mobile, AL, Reg. 88-09	Theodore Ship Channel, Theodore, AL	Security Zone	Aug. 1, 1988.
COTP Houston, TX, Reg. 88-007	Houston Ship Channel, from City Dock 15 to City Dock 20	Safety Zone	Aug. 10, 1988.
COTP New Orleans, LA, Reg. 88-04.	Around the Steamboat Natchez in transit on the Mississippi River from Naval Support Activity Wharf Mile 93.1 to Spanish Plaza Mile (4-9 LCD).	Security Zone	Aug. 16, 1988.
COTP Mobile, AL, Reg. 88-08	Pensacola Bay, Pensacola, FL	...do	Aug. 21, 1988.
9-88-11	Toledo 4th of July Fireworks Display	Special Local Regulation.	July 3, 1988.
9-88-12	Festival USA Fireworks, Superior, WI	...do	July 4, 1988.
9-88-13	Duluth Fourth Fest Fireworks Display	...do	Do.
9-88-14	Huron Water Festival, Huron, OH	...do	July 10, 1988.
9-88-17	International Jet Ski Boating Association Championship, Lake Michigan	...do	July 21, 1988.
9-88-15	Bay Harbor Charity Classic	...do	July 23, 1988.
9-88-16	1988 Grand Prix, Niagara River, Tonawanda, NY	...do	Do.
COTP Duluth, MN, Reg. 88-01	Lake Superior—Duluth/Superior Harbor	Safety Zone	July 29, 1988.
COTP Buffalo, NY, Reg. 88-003	Rochester, NY	...do	July 30, 1988.
9-88-22	Coast Guard Festival Fireworks Display, Grand Haven, MI	Special Local Regulation.	Aug. 6, 1988.
9-88-23	1988 Spirit of America Offshore Grand Prix, Lake Michigan	...do	Aug. 13, 1988.
9-88-20	Wilhelm Offshore Classic, Presque Isle Bay—Lake Erie, Erie, PA	...do	Aug. 20, 1988.
COTP Buffalo, NY, Reg. 88-005	Erie, PA	Safety Zone	Do.
9-88-24	East River Classic, Niagara River, North Tonawanda, NY	Special Local Regulation.	Aug. 21, 1988.
9-88-25	Toledo Festival Grand Prix, Maumee River, Toledo, OH	...do	Sept. 3, 1988.
9-88-26	Grand Island Offshore Challenge, Niagara River, Tonawanda, NY	...do	Sept. 10, 1988.
9-88-29	Rochester Offshore Challenge, Lake Ontario, Rochester, NY	...do	Sept. 18, 1988.
COTP Buffalo, NY, Reg. 88-004	Lake Ontario	Safety Zone	Sept. 24, 1988.
COTP LA/LB, CA, Reg. 88-16	Port of Los Angeles/Long Beach, CA	...do	July 1, 1988.
COTP LA/LB, CA, Reg. 88-15	Ports of Los Angeles/Long Beach, CA	...do	July 4, 1988.
COTP San Francisco, CA, Reg. 88-34.	San Francisco Bay, CA	...do	Do.
COTP LA/LB, CA, Reg. 88-17	Port of Hueneme, CA	...do	July 9, 1988.
COTP San Diego, CA, Reg. 88-18	San Diego Bay, CA, Pacific Ocean	...do	July 17, 1988.
COTP San Diego, CA, Reg. 88-19	...do	...do	July 23, 1988.
COTP San Diego, CA, Reg. 88-20	...do	...do	July 28, 1988.
COTP San Diego, CA, Reg. 88-21	...do	...do	July 29, 1988.
COTP San Diego, CA, Reg. 88-22	...do	...do	Aug. 1, 1988.
COTP San Diego, CA, Reg. 88-25	...do	...do	Aug. 16, 1988.

Docket No.	Location	Type	Date
COTP San Diego, CA, Reg. 88-25	....do	....do	Aug. 20, 1988.
COTP LA/LB, CA, Reg. 88-18	Ports of Los Angeles/Long Beach, CA	Security Zone	Aug. 22, 1988.
COTP LA/LB, CA, Reg. 88-19	....do	Safety Zone	Aug. 25, 1988.
COTP LA/LB, CA, Reg. 88-20	Port of Los Angeles, CA	....do	Aug. 30, 1988.
11-88-10	Supercup World Invitational—San Diego, CA	Special Local Regulation.	Sept. 3, 1988.
11-88-[illegible]	San Diego, California 1988—1989 America's Cup Challenge Competition	....do	Sept. 7, 1988.
11-88-12	Fireworks Exhibition—San Diego, CA	....do	Sept. 9, 1988.
COTP San Diego, CA, Reg. 88-27	San Diego Bay, CA, Pacific Ocean	Safety Zone	[illegible]
COTP San Diego, CA, Reg. 88-28	....do	....do	Sept. 15, 1988.
COTP San Diego, CA, Reg. 88-21	Ports of Los Angeles/Long Beach, CA	....do	Sept. 19, 1988.
COTP San Diego, CA, Reg. 88-29	San Diego Bay, CA, Pacific Ocean	....do	[illegible]
COTP San Diego, CA, Reg. 88-30	....do	....do	Sept. 24, 1988.
COTP San Diego, CA, Reg. 88-31	....do	....do	Sept. 26, 1988.
COTP Honolulu, HI, Reg. 88-04	Molokai, HI	....do	Aug. 10, 1988.
COTP Southeast AK, Reg. 88-02	Juneau Harbor, Juneau, AK	....do	July 3, 1988.
COTP Southeast AK, Reg. 88-03	Crescent Bay, Sitka, AK	....do	July 4, 1988.

Bruce F. Novak,

Executive Secretary, Marine Safety Council.

[FR Doc. 88-24355 Filed 10-19-88; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[COTP Port Arthur, Texas, Reg. 88-24]

Security Zone Regulations; Port of Beaumont, TX, and Sabine Neches Waterway

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a Security Zone within the Port of Beaumont and around the vessels USNS ALTAIR, USNS ALGOL, AND M/V LYRA. The zone is needed to safeguard the port and the vessels from sabotage or other subversive acts, accidents, or other causes of a similar nature. Entry into this Security Zone is prohibited unless authorized by the Coast Guard Captain of the Port.

EFFECTIVE DATE: This regulation becomes effective on 20 October 1988. It terminates on 17 November 1988 or unless sooner terminated by the Coast Guard Captain of the Port.

FOR FURTHER INFORMATION CONTACT: Commander J.L. Robinson at (409) 724-4343.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to safeguard the port and attending vessels.

Drafting Information

The drafters of this regulation are LCDR R.J. Lambert, Project Officer for the Coast Guard Captain of the Port, and CDR J.A. Unzicker, Jr., Project Attorney, Eighth Coast Guard District Legal Office.

Discussion of Regulation

The evolution requiring this regulation will begin on or about 20 October 1988. Establishing this Security Zone is essential to facilitating REFORGER 88, a joint service military operation which includes a military equipment transfer through the Port of Beaumont, Texas. This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Subpart D of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. A new § 165.T846 is added to read as follows:

§ 165.T846 Security Zone: Port of Beaumont, Texas and Sabine Neches Waterway in the vicinity of the USNS vessels ALTAIR, ALGOL, and M/V LYRA.

(a) *Location.* The following area is a Security Zone: Port of Beaumont within its fenced limited access perimeter, the Neches River immediately adjacent to this area and 2 miles ahead and 1 mile behind these vessels as they transit the Sabine Neches Waterway.

(b) *Effective Date.* This regulation becomes effective on 20 October 1988. It terminates on 17 November 1988 or unless sooner terminated by the Coast Guard Captain of the Port.

(c) *Regulations.* In accordance with the general regulations in Part 165.33, entry into this Security Zone is prohibited unless authorized by the Coast Guard Captain of the Port.

Dated: September 21, 1988.

A.A. Whiting III,

Captain, USCG, Captain of the Port, Port Arthur, Texas.

[FR Doc. 88-24337 Filed 10-19-88; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-3485-3]

Kentucky; Final Authorization of State Hazardous Waste Management Program for Radioactive Mixed Waste

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Kentucky has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (hereinafter "RCRA" or the "Act"). EPA has reviewed Kentucky's application and has made a decision, subject to public review and comment, that Kentucky's hazardous waste program revision for the hazardous components of radioactive mixed waste satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Kentucky's hazardous waste program revision for the hazardous components of radioactive mixed wastes. Kentucky's application for program revision is available for public review and comment.

DATES: Final authorization for Kentucky shall be effective December 19, 1988, unless EPA publishes a prior Federal Register action withdrawing this immediate final rule. All comments on Kentucky's program revision application must be received by the close of business November 21, 1988.

ADDRESSES: Copies of Kentucky's program revision application are available during normal business hours, Monday through Friday, at the following addresses for inspection and copying: Division of Waste Management, Kentucky Department for Environmental Protection, Fort Boone Plaza, Building #2, 18 Reilly Road, Frankfort, Kentucky 40601, Phone 502/564-6716; U.S. EPA Headquarters Library, PM 211A, 401 M Street SW., Washington, DC, 20460, Phone: 202/382-5926; U.S. EPA Region IV, Library, 345 Courtland Street NE., Atlanta, Georgia 30365: Phone (404) 347-4216, Gayle Alston, Librarian. Written comments should be sent to Otis Johnson, Jr., 345 Courtland Street NE., Atlanta, Georgia 30365, Phone: 404/347-3016.

FOR FURTHER INFORMATION CONTACT: Mr. Otis Johnson, Jr., 345 Courtland Street NE., Atlanta, Georgia 30365; Phone No. 404/347-3016.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the RCRA, 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 260-265 and 124 and 270.

B. Kentucky

Kentucky initially received final authorization on January 31, 1985 (50 FR 2550). On March 25, 1988, Kentucky submitted a program revision application for additional program approval for the hazardous components of radioactive mixed waste. Today, Kentucky is seeking approval of its program revisions in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Kentucky's application, and has made an immediate final decision that Kentucky's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Kentucky. The public may submit written comments on EPA's immediate final decision until close of business November 7, 1988. Copies of Kentucky's application for program revision are available for inspection and copying at the locations indicated in the "ADDRESSES" section of this notice.

Approval of Kentucky's program revision for the hazardous components of radioactive mixed waste shall become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comments is received EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

In order to obtain final authorization for radioactive mixed waste, the State of Kentucky has demonstrated and certified that its authority to regulate the hazardous components of radioactive mixed wastes, as specified at KRS 224.867(1)(k) and 301 KAR 30:010 § 1(173)(b) is equivalent to the federal requirements of the RCRA at 40 CFR 261.4(a)(4) and section 1004(27) of RCRA. Kentucky is not seeking authorization to operate in Indian lands.

C. Decision

I conclude that Kentucky's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Kentucky is granted final authorization to operate its hazardous waste program as revised. Kentucky now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA-program, subject to the limitation of its revised program application and previously approved authorities. Kentucky also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Kentucky's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Patrick M. Tobin

Acting Regional Administrator.

Dated: September 28, 1988.

[FR Doc. 88-24346 Filed 10-19-88; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-7

[FPMR Temporary Regulation A-24, Revision 1, Supp. 1]

Use of Travel Agents and Travel Management Centers (TMC's) by Federal Executive Agencies

AGENCY: Federal Supply Service, GSA.

ACTION: Temporary Regulation.

SUMMARY: This supplement extends the expiration date of FPMR Temporary Regulation A-24, Revision 1, regarding the use of travel agents and travel management centers by Federal executive agencies to August 31, 1989.

DATES: *Effective date:* September 1, 1988.

Expiration date: August 31, 1989, unless sooner canceled or revised.

FOR FURTHER INFORMATION CONTACT: Phyllis Hickman, Travel and Transportation Management Division (FBT), FTS 557-1284 or (703) 557-1284.

SUPPLEMENTARY INFORMATION: GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the

need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101–7

Government employees, Government property management, Travel, Travel allowances, Travel and transportation expenses.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

For the reasons set out in the preamble, the following supplement is added to the appendix at the end of Subchapter A to read as follows:

Federal Property Management Regulations, Temporary Regulation A–24, Revision 1, Supplement 1

September 8, 1988.

To: Heads of Federal agencies

Subject: Use of travel agents and travel management centers (TMC's) by Federal executive agencies

1. *Purpose.* This supplement extends the expiration date of FPMR Temporary Regulation A–24, Revision 1.

2. *Effective date.* This regulation is effective September 1, 1988.

3. *Expiration date.* This regulation expires August 31, 1989, unless sooner canceled or revised.

4. *Explanation of changes.* The expiration date in paragraph 3 of FPMR Temporary Regulation A–24, Revision 1, is extended to August 31, 1989.

John Alderson,

Acting Administrator of General Services.

[FR Doc. 88–24172 Filed 10–19–88; 8:45 am]

BILLING CODE 6820–24–M

41 CFR Part 101–7

[FPMR Temporary Regulation A–25, Supp. 4]

Travel and Transportation Expense Payment System Using Contractor-Issued Charge Cards, Government Travel System (GTS) Accounts, and Travelers Checks

AGENCY: Federal Supply Service, GSA.

ACTION: Temporary regulation.

SUMMARY: The 1987–88 contract with Citicorp/Diners Club was extended 60 days. Accordingly, this supplement amends the expiration date of FPMR Temporary Regulation A–25 regarding the travel and transportation expense payment system using contractor-issued charge cards, Government travel system accounts, and travelers checks to November 29, 1988.

DATES: *Effective date:* October 1, 1988.
Expiration date: November 29, 1988.

FOR FURTHER INFORMATION CONTACT: Phyllis Hickman, Travel and Transportation Management Division (FBT), FTS 557–1284 or (703) 557–1284.

SUPPLEMENTARY INFORMATION: GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101–7

Government employees, Government property management, Travel, Travel allowances, Travel and transportation expenses.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

In 41 CFR Chapter 101, the following supplement is added to the appendix at the end of Subchapter A to read as follows:

Federal Property Management Regulations, Temporary Regulation A–25, Supplement 4

October 5, 1988.

To: Heads of Federal agencies

Subject: Travel and transportation expense payment system using contractor-issued charge cards, Government travel system (GTS) accounts, and travelers checks.

1. *Purpose.* This supplement amends the expiration date of FPMR Temporary Regulation A–25, Supplement 2.

2. *Effective date.* This regulation is effective October 1, 1988.

3. *Expiration date.* This regulation expires November 29, 1988.

4. *Explanation of changes.* The expiration date in paragraph 3 of FPMR Temporary Regulation A–25, Supplement 2, is amended to read November 29, 1988. Supplement 3 is canceled.

Richard G. Austin,

Acting Administrator of General Services.

[FR Doc. 88–24171 Filed 10–19–88; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 67

[CGD 88–091]

RIN 2115–AC99

Documentation of Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending 46 CFR Part 67 to ensure that the vessel documentation regulations are consistent with the provisions of the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987 ("the Act"). The Act makes substantive changes to the laws affecting the documentation of vessels generally and, in particular, vessels engaged in the commercial fishing industry, and has retroactive effective dates for many of its provisions. This final rule amends existing regulations which are inconsistent with the Act and conforms them to current law.

EFFECTIVE DATE: October 20, 1988.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Robert Bruce, Vessel Documentation Branch, Merchant Vessel Inspection and Documentation Division, Office of Marine Safety, Security, and Environmental Protection, (202) 267–1492. Normal Office hours are between 7 a.m. and 3:30 p.m. Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not published for this rulemaking. In accordance with 5 U.S.C. 553(b), the Coast Guard finds that notice and opportunity for comment are unnecessary and contrary to the public interest. This rulemaking simply implements new vessel documentation requirements mandated by statute. The Coast Guard has also determined that good cause exists under 5 U.S.C. 553(d), for making this rulemaking effective in less than 30 days after publication. The statutory changes are already in effect and some are effective retroactively. This rulemaking reflects the administrative practice which has been followed since enactment of the new law.

Drafting Information

The principal persons involved in drafting this regulation are Lieutenant Commander Gregory L. Oxley, Project Manager, and Lieutenant Commander Don M. Wrye, Project Counsel, Office of Chief Counsel.

Background

Documentation of vessels under federal law is a type of national registration which, among other things, serves to establish a vessel's nationality and qualification to be employed in a specified trade. The evidence of nationality is the Certificate of Documentation. One or more licenses endorsed on the Certificate of Documentation serve as evidence of the vessel's qualification to engage in a specified trade. The Coast Guard is the agency which (a) accepts applications for documentation of vessels; (b) determines whether a vessel which is the subject of an application is elibible for documentation generally and eligible for the specific license or licenses requested; and (c) issues certificates of documentation to eligible vessels.

On January 11, 1988, the President signed the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987, (Pub. L. 100–239, 101 Stat. 1778 (1988)) ("the Act") into law. The new law, among other things, amends the existing statutes pertaining to vessel documentation in several substantive ways. Many of the changes were retroactively effective and the remainder were effective immediately upon enactment. Many sections of the existing vessel documentation regulations found in 46 CFR Part 67 are in direct conflict with the amended statutes. The regulations are, therefore, in need of immediate amendment.

The only vessels which are eligible for documentation under United States law are those which are of at least five net tons and not registered under the laws of a foreign country. A vessel must also be owned by an individual United States citizen or an entity which meets prescribed citizenship criteria which vary with the nature of the entity and type of license. These criteria are listed in 46 U.S.C. 12102, as amended. A vessel which is eligible for documentation is eligible for a registry endorsement. There are additional eligibility criteria relating to both the vessel and its owner which must be met for the domestic trade entitlements evidenced by a fishery license, a coastwise license, and a Great Lakes license.

The majority of the required changes are being implemented by simply amending the existing vessel documentation regulation to track the new statutory language. These changes are unambigous and not open to interpretation, and in most cases are retroactively effective. They are, therefore, being published without notice and public comment and are being made effective upon publication.

Since January 11, 1988, the Coast Guard has been following the statutory requirements in administrative practices relating to vessel documentation transactions.

Discussion of the Rule

Vessels of five net tons and over which engage in the fisheries are required to be documented under United States law with a fishery license. Prior to the Act, the term "fisheries" was defined to include only activities in the nature of planting, cultivating or harvesting marine animal or plant life in the territorial sea or the fishery conservation zone established by the Magnuson Fishery Conservation and Management Act of 1976 (16 U.S.C. 1811). The Act expanded the term "fisheries", however, to also include processing, storing, and transportation (except in foreign commerce) of marine animal or plant life. It also changed the jurisdictional description to "navigable waters of the United States or in the exclusive economic zone." Prior to the Act, vessels which engaged in processing, storing, and many forms of transportation activities were not required to be documented. If the vessel owner elected documentation under United States law, an appropriate endorsement would have been a Registry for which the eligibility criteria are not as stringent as for a fishery license. The net result of this change is to make documentation mandatory for a larger number of vessels. Section 67.01–1 is amended to include definitions of the terms "fisheries" and "coastwise trade" and to update the proper address for correspondence with the Coast Guard and the Customs Service on vessel documentation matters. Section 67.17–9 is being amended to clarify the nature of the activities for which a vessel must have a fishery license.

Prior to the Act, vessels that were eligible for documentation and built in the United States were eligible for a fishery license. A United States-built vessel could also be extensively modified or converted overseas and still retain eligibility for a fisheries license or its existing fishery entitlement. Under the provisions of the Act, however, work accomplished outside of the United States which is extensive enough to be considered a rebuilding results in a permanent loss of fishery privileges. In determining whether the work accomplished on a given vessel rises to the level of a rebuilding, the Act applies the same standard as has been historically used in the second proviso of section 27 of the Merchant Marine Act, 1920 (46 U.S.C. App. 883). Section 67.17–9 is amended to reflect the requirement that if a vessel eligible for a fishery license is rebuilt, it forever loses fishery entitlement unless the entire rebuilding is accomplished in the United States. Section 67.27–3 is also amended to require a vessel owner to make a filing with the Coast Guard when a vessel which has not previously lost its fishery privileges is altered outside the United States in a manner which gives rise to a reasonable belief that the vessel is rebuilt or when a major component of the hull or superstructure not built in the United States is added to the vessel.

The Act also changed the United States-build requirement for coastwise and Great Lakes trade eligibility. The law previously provided for a permanent loss of coastwise and Great Lakes trading privileges where a coastwise qualified vessel of over 500 gross tons was rebuilt outside of the United States. The Act eliminated the 500 gross ton threshold for loss of coastwise and Great Lakes eligibility due to foreign rebuilding. Sections 67.17–5(c)(3) and 67.17–7(c)(3) are amended to delete the references to 500 gross tons. Section 67.27–3 is amended to remove the reference to 500 gross tons and thereby require that all vessels which have not previously lost coastwise, Great Lakes, or fishery entitlement must make a filing under circumstances where a rebuilding may have occurred. The potential loss of entitlement and, therefore, the filing requirement do not apply to certain vessels which will be rebuilt prior to July 28, 1990. Owners seeking the application of this exemption are advised in a note to § 67.27–3 of the applicable procedure.

The Act also contains a saving clause which seeks to protect those who have relied on the previous state of the law and who made certain identifiable commitments toward rebuilding fishing, fish processing, and fish tender vessels in foreign shipyards. The so-called "grandfather" provisions allow the Coast Guard to issue a fishery license in certain well-defined instances notwithstanding the fact that a vessel may have been rebuilt outside of the United States. These provisions also allow the Coast Guard to issue a restricted fishery license to certain foreign-built vessels which allows only fish processing activities. Because this savings clause is of very limited applicability, its precise interpretation is not suitable for rulemaking of general applicability. The grandfather provisions require a vessel owner to demonstrate by reliable evidence that a commitment based on the previous law was made prior to July 28, 1987. Once a

vessel is determined to qualify for exemption under the savings clause, the exemption runs with the vessel. Determinations which apply to specific vessels have traditionally and properly been made on an *ad hoc* basis. A vessel owner who believes that one of the provisions of the savings clause may be applicable should seek a letter ruling from Commandant (G–MVI–6), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593.

Prior to the Act, a vessel which was documented with either a coastwise or Great Lakes license could (subject to the laws regulating the fisheries) also be employed in the fisheries. The Act amends the statute to require that a vessel's Certificate of Documentation actually be endorsed with a fishery license in order to be employed in the fisheries. Sections 67.17–5 and 67.17–7 are amended to delete fisheries from the entitlement descriptions for coastwise and Great Lakes licenses, respectively. The Act also provides a scheme by which the endorsements on Certificates of Documentation will be brought into compliance with this new restriction. A description of this procedure is not within the scope of this rulemaking project. Affected vessel owners will be notified of this procedure directly by the Coast Guard prior to January 11, 1989.

Finally, the Act contains an American control section. The vessel documentation statute (46 U.S.C. 12102) now provides that a vessel owned by a corporation is not eligible for a fishery license unless the controlling interest (as measured by a majority of the voting shares in that corporation) is owned by individuals who are citizens of the United States. The interpretation and implementation of this provision is beyond the scope of this rulemaking. A notice of proposed rulemaking on this new American control requirement is the subject of a separate rulemaking project.

E.O. 12291 and DOT Regulatory Policies and Procedures

These regulations are considered to be non-major under Executive Order 12291 and nonsignificant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this rulemaking has been found to be so minimal that further evaluation is unnecessary. The regulations are merely changed to reflect amended statutory eligibility requirements for vessel documentation.

Federalism

These regulations have been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

Since the impact of this regulation is expected to be minimal, the agency certifies that it will not have a significant economic impact on a substantial number of small entities. It is recognized that a substantial number of small entities are involved in the commercial fishing industry and other vessel operations within the ambit of this regulation. There is no significant economic impact, however, because the regulation recognizes the savings provisions of the statute. Those provisions serve to protect those who have made verifiable financial commitments based on the laws and regulations in existence prior to enactment of the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987.

Paperwork Reduction Act

This rulemaking expands to fishing industry vessels the filing required of coastwise vessels for rebuild determinations in 46 CFR 67.27–3. The filing requirement for coastwise vessels has previously been approved by the Office of Management and Budget under Control Number 2115–0110. That control number will apply to this information collection requirement.

Environmental Assessment

The Coast Guard has considered the environmental impact of this regulation and concludes that, under the categorical exclusion provision in section 2–B–3.h. of Commandant Instruction M16475.1B, the preparation of an Environmental Assessment, an Environmental Impact Statement, or a Finding of No Significant Impact for this regulation is not required. This regulation is an administrative and procedural regulation which clearly has no environmental impact.

List of Subjects in 46 CFR Part 67

Vessels.

For the reasons set out in the preamble, 46 CFR Part 67 is amended as follows:

PART 67—DOCUMENTATION OF VESSELS

1. The authority citation for Part 67 is revised to read as follows:

Authority: 31 U.S.C. 9701; 42 U.S.C. 9118; 46 U.S.C. 12121; 46 U.S.C. App. 841a, 876, 927, 983; 49 CFR 1.46.

2. Section 67.01–1 is amended by revising the definition of "Commandant", adding the terms "coastwise trade" and "fisheries" in alphabetical order; and adding the complete address for the Customs Service in the note to read as follows:

§ 67.01–1 Definitions of terms used in this part.

* * * * *

Coastwise trade includes the transportation of passengers or merchandise between points in the United States embraced within the coastwise laws.

Commandant means the Commandant of the United States Coast Guard.

Note: Submissions and correspondence made to the Commandant pursuant to this part should be addressed to Commandant (G–MVI–6), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001.

* * * * *

Fisheries includes processing, storing, transporting (except in foreign commerce), planting, cultivating, catching, taking, or harvesting fish, shell fish, marine animals, pearls, shells, or marine vegetation in the navigable waters of the United States or in the exclusive economic zone.

* * * * *

Note.—Rulings and interpretations concerning coastwise trade and the fisheries can be obtained from the U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (Attn: Carrier Rulings Branch).

* * * * *

3. Section 67.17–5 is amended by revising paragraphs (a) and (c)(3) to read as follows:

§ 67.17–5 Coastwise license.

(a) A coastwise license endorsement entitles the vessel to employment in the coastwise trade and any other employment for which a registry, fishery, or Great Lakes license is not required.

* * * * *

(c) * * *

(3) It undergoes rebuilding outside of the United States.

* * * * *

4. Section 67.17–7 is amended by revising paragraphs (a) and (c)(3) to read as follows:

§ 67.17–7 Great Lakes license.

(a) A Great Lakes license endorsement entitles the vessel to engage in the coastwise trade on the Great Lakes and their tributary and connecting waters, in trade with Canada, and in any other employment for which a registry, fishery, or coastwise license is not required.

* * * * *

(c) * * *

(3) It undergoes rebuilding outside of the United States.

* * * * *

5. Section 67.17–9 is amended by revising paragraph (a), the introductory text of paragraph (b), and adding a new paragraph (c) to read as follows:

§ 67.17–9 Fishery license.

(a) Subject to federal and state laws regulating the fisheries, a fishery license endorsement entitles the vessel to engage in the fisheries and to land its catch, wherever caught, in the United States.

(b) The following vessels, if at least 5 net tons, if wholly owned by a United States citizen or citizens, and if not restricted from the fisheries by paragraph (c) of this section, are eligible for a fishery license endorsement:

* * * * *

(c) A vessel otherwise eligible for a fishery license endorsement under paragraph (b) of this section permanently loses that eligibility if it undergoes rebuilding outside of the United States.

6. Section 67.27–3 is amended by revising the introductory text of paragraph (b) and adding a note to read as follows:

§ 67.27–3 Required application for rebuilt determination.

* * * * *

(b) The owner of a vessel which has not previously lost coastwise or fisheries privileges must file with the Commandant the items listed in paragraph (c) of this section if:

* * * * *

Note.—The purpose of the application required by this section is to enable the Coast Guard to determine whether the vessel has lost either coastwise or fisheries entitlement due to a rebuilding outside of the United States. The foreign rebuild prohibition with resulting loss of coastwise entitlement may not apply to certain coastwise qualified vessels of less than 500 gross tons which undergo rebuilding outside of the United States before July 28, 1990. The foreign rebuilding prohibition with resultant loss of fisheries entitlement may not apply to certain vessels for which identifiable financial commitments were made prior to July 28, 1987. A more definitive description of these exemptions may be found in the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987 (Pub. L. 100–239; 101 Stat. 1778 (1988)). Vessel owners making application pursuant to this section may include with that application a request for a ruling on loss of coastwise or fisheries entitlement, as the case may be.

Dated: August 15, 1988.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 88–24356 Filed 10–19–88; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 80

[General Docket 79–144]

Radiofrequency Radiation From Ship Earth Stations; Correction

AGENCY: Federal Communications Commission (FCC).

ACTION: Final rule; correction.

SUMMARY: This item is a correction of the Commission's *Third Report and Order* in General Docket 79–144. The summary of this *Order* was previously published in the **Federal Register**. The correction concerns: (1) Words inadvertently omitted from the ordering clauses; (2) modification of the wording of an amendment to § 1.1307(b) of the FCC's Rules; and (3) addition of a statement on public reporting burden that was inadvertently left out of the original summary.

EFFECTIVE DATE: October 20, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Cleveland, Office of Engineering and Technology, FCC, (202) 653–8159.

SUPPLEMENTARY INFORMATION: The summary of the *Third Report and Order* in the above captioned proceeding (FCC No. 88–206, adopted June 20, 1988, released July 11, 1988), that was published in the **Federal Register** on July 27, 1988 (53 FR 28223), is corrected as follows:

1. The following statement was inadvertently omitted after the first paragraph of "Supplementary Information:"

Public reporting burden for this collection of information is estimated to average 10 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of the burden, to the Federal Communications Commission, Office of Managing Director, Washington, DC 20554, and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

2. The words "Parts 1 and" were inadvertently left out of the ordering clause beginning in the second column on page 28224. The correct version of that paragraph is:

Ordering clauses

Accordingly, it is ordered that, effective November 17, 1988, Parts 1 and 80 of the Commission's Rules and Regulations, Chapter I of Title 47 of the Code of Federal Regulations, are amended as set forth below and that this amendment will be applicable to applications filed on or after this effective date.

PART 1—[CORRECTED]

3. The authority citation for Part 1 continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended, 47 U.S.C. 154, 303; Implement. 5 U.S.C. 552.

4. In § 1.1307, the note in paragraph (b) is correctly revised as follows:

§ 1.1307 Actions which may have a significant environmental effect, for which environmental assessments (EAs) must be prepared.

* * * * *

(b) * * *

Note: Paragraph (b) shall apply to facilities and operations licensed or authorized under Parts 5, 25, 73, 74 (Subparts A and G only), and 80 (ship earth stations only). Facilities and operations licensed or authorized under all other parts, subparts, or sections of the Commission's rules shall be categorically excluded from consideration under paragraph (b), unless such exclusion is superseded by actions taken by the Commission under the provisions of paragraph (c) or (d) of this section.

* * * * *

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 88–24088 Filed 10–19–88; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 87–568; RM–5801]

Radio Broadcasting Services; Camden, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 283A to Camden, Arkansas, as that community's third local FM service, in response to a petition for rule making

filed on behalf of KJWH, Inc. Reference coordinates utilized for Channel 222A at Camden are 33-35-05 and 92-50-30. With this action, the proceeding is terminated.

EFFECTIVE DATES: November 18, 1988. The window period for filing applications on Channel 283A at Camden, Arkansas, will open on November 21, 1988, and close on December 21, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau (202) 634-6530. Questions related to the window application filing process should be addressed to the Audio Service Division, FM Branch, Mass Media Bureau, (202) 632-0394.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-568, adopted September 9, 1988, and released October 3, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Arkansas, is amended by adding Channel 283A to Camden.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-24283 Filed 10-19-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-565; RM-5825]

Radio Broadcasting Services; Yellville, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 249C2 for Channel 249A at Yellville, Arkansas, and modifies the Class A license of Scott Miller for Station KCTT-FM, to specify operation on the higher class channel, thereby providing that community with its first wide coverage area FM service. Reference coordinates for Channel 249C2 at Yellville are 36-14-00 and 93-00-00. With this action, the proceeding is terminated.

EFFECTIVE DATE: November 14, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-565, adopted September 9, 1988, and released September 30, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Yellville, Arkansas, is amended by removing Channel 249A and adding Channel 249C2.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-24285 Filed 10-19-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-12; RM-5951]

Radio Broadcasting Services; Pelican Rapids, MN, and Milbank, SD

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 281C2 to Pelican Rapids, Minnesota, as that community's first FM broadcast service in response to a petition filed by Heart of the Lakes Radio. Channel 281C2 can be allotted to Pelican Rapids consistent with the Commission's spacing requirements provided there is a site restriction 7.6 kilometers south of the community. The coordinates used for Channel 281C2 are 46-30-00 and 95-05-00. The *Notice* indicated it would be necessary to delete Channel 282C1 from Milbank, South Dakota, in order to accommodate Channel 281C2 at Pelican Rapids, for which Midland Communications held a construction permit that has since been cancelled. A new window was opened for Channel 282C1 at Milbank on March 28, 1988. Tobin Broadcasting Company has filed an application for the channel at Milbank at a site that does not conflict with Channel 281C2 at Pelican Rapids (880429ME). Therefore, it is no longer necessary to make a substitution of channels at Milbank. With this action, this proceeding is terminated.

DATES: Effective November 18, 1988; The window period for filing applications will open on November 21, 1988, and close on December 21, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-12, adopted September 9, 1988, and released October 3, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Minnesota is amended by adding Channel 281C2, Pelican Rapids.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-24286 Filed 10-19-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-469; RM-5499, RM-5498, RM-5631, RM-5832, RM-5833]

Radio Broadcasting Services; Canton, Elmwood, Farmington, and Pekin, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 300B1 for Channel 252A at Canton, IL, and modifies the license for Station WBYS-FM, at the request of Fulton County Broadcasting Company. Additionally, Channel 247B1 is allotted to Elmwood, IL, at the request of Centurion Broadcasting of Illinois, Channel 238B1 is substituted for Channel 237A at Perkin, IL, at the request of Petaz Communications, Inc., and the license of Station WGLO(FM) modified accordingly, and Channel 243A is substituted for Channel 239A at Farmington, IL to accommodate the Pekin modification. A proposal to allot Channel 285B1 to Canton, IL, as requested by Metrocom Communications Corporation, is denied. Reference coordinates used in our determinations are set forth in the Supplementary Information, *infra*. With this action, the proceeding is terminated.

DATES: Effective November 18, 1988. The window period for filing applications on Channel 247B1 at Elmwood, Illinois, will open on November 21, 1988, and close on December 21, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530. Questions related to the window application filing process at Elmwood, Illinois, should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-0394.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-469, adopted September 14, 1988, and released October 3, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Channel 300B1 at Canton, IL requires a site restriction 16.6 kilometers (10.3 miles) south of the community. References coordinates at that site are 40-24-24 and 90-01-04; the city reference point at 40-46-54 and 89-58-00 was used for Channel 247B1 at Elmwood, IL; Channel 243A at Farmington meets the spacing requirements to each applicant's site, *i.e.*, 40-46-46 and 89-59-11 (File No. 871104ME) and 40-42-51 and 89-59-11 (File No. 871108MC); and reference coordinates used for Channel 238B1 at Pekin are those of the licensed site for Station WGLO(FM) at 40-36-23 and 89-32-39.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Illinois is amended as follows: under Canton, remove Channel 252A and add Channel 300B1; add Channel 247B1, Elmwood; under Farmington, remove Channel 239A and add Channel 234A; under Pekin, remove Channel 237A and add Channel 238B1.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-24284 Filed 10-19-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-254; RM-5724]

Radio Broadcasting Services; Garapan, Saipan

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 250C2 to Garapan, Saipan, at coordinates North Latitude 15-10-44 and East Longitude 145-45-00, at the request of RSI Corporation. With this action, this proceeding is terminated.

DATES: Effective November 18, 1988; The window period for filing applications will open on November 21, 1988, and close on December 21, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-254, adopted September 14, 1988, and released October 3, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended by adding Garapan, Saipan, Channel 250C2.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-24143 Filed 10-19-88; 8:45 am]

BILLING CODE 6712-01-M

VOL. 53 ISS 203 OCT 20 1988 UMI

Proposed Rules

Federal Register
Vol. 53, No. 203
Thursday, October 20, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 250

Donation of Food for Use in the United States, Its Territories and Possessions and Areas Under Its Jurisdiction

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Food Distribution Program Regulations (7 CFR Part 250) by: (1) Improving the manner in which agricultural commodities acquired by the Department of Agriculture are distributed to recipient agencies; (2) establishing mandatory criteria to be used by distributing agencies in determining service fees; and (3) establishing minimum performance standards to be followed by distributing agencies responsible for intrastate distribution of donated commodities. These proposed changes will improve the distribution of commodities to recipient agencies. These proposed amendments would implement the remaining provisions of Pub. L. 100–237 not already addressed in the **Federal Register** "Notice of Implementation of Pub. L. 100–237" which was published April 19, 1988 (53 FR 12794), the first **Federal Register** interim rulemaking published on June 16, 1988 (53 FR 22466) and the second **Federal Register** interim rulemaking published on July 21, 1988 (53 FR 27469).

DATE: To be assured of consideration, comments must be received or postmarked on or before December 19, 1988.

ADDRESS: Comments should be sent to: Susan E. Proden, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302.

Comments in response to these rules may be inspected at 3101 Park Center Drive, Room 506, Alexandria, Virginia, during normal business hours (8:30 a.m. to 5:00 p.m., Mondays through Fridays).

FOR FURTHER INFORMATION CONTACT: Susan E. Proden, Chief, Program Administration Branch at Area Code (703) 756–3660.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under Executive Order 12291 and has been classified not major. We anticipate that this proposal will not have an annual impact on the economy of more than $100 million. No major increase in costs or prices for consumers, individual industries, Federal, State or local governmentagencies, or geographic regions is anticipated. This action is not expected to have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action has been reviewed with regard to requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Anna Kondratas, Administrator of the Food and Nutrition Service (FNS), has certified that this action will not have a significant economic impact on a substantial number of small entities.

This program is listed in the catalog of Federal Domestic Assistance under 10.550 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V and the final rule related notice published at 48 FR 29114, June 24, 1983).

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), the additional recordkeeping and reporting requirements contained in the rule are subject to review and approval by the Office of Management and Budget (OMB). Current reporting and recordkeeping requirements for Part 250 were approved by OMB under control number 0584–0007.

Background

On January 6, 1988, President Reagan signed Pub. L. 100–237, "The Commodity Distribution Reform Act and WIC Amendments of 1987." The legislation is the first devoted primarily to the Commodity Distribution Program administered by the U.S. Department of Agriculture. The purpose of the legislation is to improve the manner in which commodities purchased by the Department are distributed to recipient agencies, to improve the quality of commodities and to ensure that such distribution is responsive to the needs of the recipient agencies while still carrying out the Department's responsibilities to support agricultural prices and remove surpluses from the market. This proposed rule contains the amendments necessary to implement the provisions in sections 3(b)(1)(B), 3(d)(1)–(4) and 3(e)(1)(A)–(B) of Pub. L. 100–237. Public Law 100–237 requires that regulations be promulgated to implement these sections within 270 days of enactment of the law. This rule contains several of the most complex provisions contained in the law. Comments are being solicited to assist FNS in developing regulations which will provide for a more efficient, effective, and uniform operation of the Food Distribution Program. For further information concerning the Department's actions to date in implementation of Pub. L. 100–237, see the **Federal Register** "Notice of implementation of Pub. L. 100–237" which was published on April 19, 1988 (53 FR 12794), the first **Federal Register** interim rule published June 16, 1988 (53 FR 22466) and the second **Federal Register** interim rule published July 21, 1988 (53 FR 27469).

Discussion of the Proposed Rule

In an effort to improve the distribution of commodities to schools for the National School Lunch Program (NSLP), as well as improving the distribution of commodities for other nutrition programs, the Department is proposing changes to the current Food Distribution Program Regulations (7 CFR Part 250) concerning the use of commercial warehousing and delivery systems, mandatory criteria for establishing service fees and minimum performance standards for distributing agencies.

System For Warehousing And Distributing Donated Foods

Section 250.14(a) of the current regulations states that distributing agencies, subdistributing agencies and recipient agencies shall provide proper facilities for the handling, storage and distribution of donated food which meet certain standards. The actual method(s) of storage and distribution used in each State is currently determined by the distributing agency.

The purpose of the Commodity Distribution Reform Act and WIC Amendments of 1987 is to improve the manner in which agricultural commodities acquired by the Department of Agriculture are distributed to recipient agencies, the quality of the commodities that are distributed, and the degree to which such distribution responds to the needs of the recipient agencies. Among other things, section 3(d) of Pub. L. 100–237 states that "the Secretary shall by regulation require each State distributing agency to—(1) evaluate its warehousing and distribution systems for donated commodities; (2) implement the most cost effective and efficient system for providing warehousing and distribution services to recipient agencies; (3) use commercial facilities for providing warehousing and distribution services to recipient agencies unless the State applies to the Secretary to use other facilities, showing that other facilities are more cost effective and efficient; * * *"

Under the current regulations, delegation of the administrative responsibility for determining the method used to warehouse and distribute commodities to the distributing agencies has resulted in widely varying forms of organization, operating procedures and approaches. The Department has received criticism from local school food authorities (SFAs) over the past several years about the costs of transporting, storing, handling and processing donated commodities into usable products after they have been delivered to the State and the resulting excessive charges to SFAs. Some SFAs claim that the cost of donated foods may actually be higher than the cost of comparable, locally acquired products because of the manner in which the State warehouses and distributes the food.

The Food Distribution Program has been the subject of a number of studies over the past two decades. Among the objectives of the studies were evaluations of the responsiveness of the program to the needs of SFAs and other recipient agencies. One thing apparent in each study was that each distributing agency responsible for the Food Distribution Program has a unique cost profile and offers widely varying quality of service to recipient agencies.

Since 1980, FNS has sponsored reviews of the commodity distribution systems of 22 distributing agencies. The resulting reports provided participating States with a review and analysis of State operations and recommendations for improvements. Each study provided a generalized description of the State commodity distribution system, including an estimate of the overall cost of the system. As a comparison, the cost of using commercial facilities was also estimated. For the purpose of this rule, commercial facilities refers to commercial enterprises which store and deliver food. Most of the studies concluded with a recommendation to integrate the distribution of donated commodities with the distribution of commercially supplied food. In general, the reviews found that since commercial systems supply three-quarters of the food acquired by schools already, basic economies of scale can be tapped to provide donated commodities at lower cost by using the existing commercial channels for distribution. As a result of these studies, 11 distributing agencies converted their warehousing and distribution systems to commercial systems. Recipient agencies in these States are receiving better service, such as more frequent deliveries, and are paying less for the service than they paid for the previous systems.

In 1987, a study was conducted to identify the characteristics that differentiate one distributing agency's warehousing and distribution system from another. A central purpose of this study was to examine the extent of variation in the nature of the distribution systems used by the distributing agencies, the operating costs of these systems and the level of benefits provided the recipient agencies.

The findings indicate that distribution systems which rely primarily on the use of commercial facilities are superior in several respects to other systems. They tend to be less costly and result in more frequent deliveries. Per unit expenses for the commercial facilities were 24 percent below the system with the next lowest expense level. On average, commercial systems delivered to recipient agencies 32 times in 1985–86 compared to 12 times for State-contracted warehousing and delivery systems and 11 times for State-onwed and operated warehousing and delivery systems. Also, recipient agencies serviced by commercial systems needed less storage and internal distribution capability.

In an effort to achieve more uniform levels of performance in the distribution of donated food, to reduce costs and to comply with section 3(d) of Pub. L. 100–237, this proposed rule revises § 250.14 to require distributing agencies to use the most cost effective and efficient system for providing warehousing and distribution services to recipient agencies. The proposed rule further provides that if non-commercial facilities are proposed to be used that the distributing agency apply to the Secretary for approval showing that other facilities are more cost effective and efficient.

All distributing agencies will be required to (1) evaluate their existing system; (2) compare their existing system with a comparable commercial system and (3) implement the most cost effective and efficient system. The following information must be obtained as part of the evaluation of the system(s) currently in place: (1) A description of the principal warehousing/delivery techniques used by the distributing agency. The description should include (a) the frequency of delivery available; (b) the timeframes for making deliveries; the type of delivery service offered (to the loading dock or placement in the storeroom); (d) the system for recipient agencies to order specific amounts of food from available inventory; (e) the system for handling recipient agencies complaints; and (f) the system for recipient agencies to offer input regarding other services they may find desirable; and (2) an itemized list of all costs incurred in administering the Food Distribution Program. These costs include transportation, storage and handling of donated foods (if the current distributing agency system does not include delivery to recipient agencies, identification of costs incurred by recipient agencies to pick up commodities at a warehouse and deliver the food to a centralized storage facility or the individual preparation sites), salaries of persons directly connected with the administration of the program and other program related expenses. These expenses may include fringe benefits, travel expenses, rent, utilities, accounting/auditing services, computer services and the costs of providing program services to recipient agencies such as the costs for administering and monitoring the State's processing program, technical assistance workshops, etc. Guidelines for evaluating current warehousing and distribution systems and identifying recipient agency costs will be provided by FNS. The initial system evaluations must be submitted to the appropriate FNSRO by June 30, 1989 and updates must be submitted each June 30 thereafter.

The next step for any distributing agency which does not currently have a system that utilizes commercial facilities to provide a minimum level of service is to compare their current warehousing

and distribution system with comparable commercial alternatives. Section 3(d) (2) and (3) of Pub. L. 100–237 must be considered together by the distributing agency in making the decision to justify use of the State's existing system or to convert to a commercial system. In order to meet the requirements of the law, distributing agencies must obtain information on the cost of commercial warehousing and distribution or delivery of commodities in their State. Distributing agencies are required to utilize commercial facilities unless they can prove that another system is more efficient and cost effective. Price information from commercial facilities must cover a minimum level of service. This minimum level of service must consist of the transportation, storage and handling of donated food from time of delivery by the Department to the distributing agency until delivery to recipient agency's centralized storage facility or individual preparation sites. In addition, the delivery of food to recipient agencies must take place monthly at a minimum. The cost of the minimum level of service under the distributing agency's current system must then be comapred with the costs of obtaining this minimum level of service from commercial facilities. If desired, the distributing agency may base its cost comparison on a level of service in excess of the minimum (such as more frequent deliveries) and/or services not currently provided; in any case, the comparison must be made of the cost of providing a *comparable* level of service under the existing system versus a commercial system. If a distributing agency is unable to locate any commercial facilities expressing interest in providing the minimum level of warehousing and distribution services, the distributing agency shall indicate this in its cost comparison submission, together with documentation of its efforts to obtain cost estimates from commercial facilities.

The above mentioned data regarding the cost of the current warehousing and distribution system and the cost for equivalent commercial warehousing and distribution facilities must be submitted to FNS for review. Also, at that time, the distributing agency should indicate their intentions to convert to a commercial system or remain with their existing warehousing and distribution system.

Distributing agencies that can establish and document that a non-commercial warehousing and distribution system which meets the minimum level of service is more cost efficient and effective or that commercial facilities are unavailable, must apply to the appropriate FNSRO for approval to use that system. Each request will be evaluated on a case by case basis. All distributing agencies opting not to utilize commercial facilities for warehousing and delivery of food must request approval by June 30, 1988.

Approval to use an alternative system will be granted for no more than one school year. After this time, the distributing agency must implement a commercial warehousing and distribution system that is more cost efficient or effective or again apply to the FNSRO for approval to use an alternative system by June 30 of each year.

Distributing agencies will be required by § 250.15(a)(5) to implement the most cost effective and efficient system for warehousing and distribution services to recipient agencies by July 1, 1990. However, if at any time FNS determines that the warehousing and distribution system in place is not cost effective, based on the information submitted in accordance with § 250.14(a), the distribution charge information submitted in accordance with § 250.15(a)(2) or other information, the distributing agency will be required to reevaluate its system in accordance with § 250.14(a) (2) and (3) within 90 days of notification by the FNSRO.

Distribution Charges

Section 3(e)(1)(A) of Pub. L. 100–237 requires the Secretary to provide, through regulation, mandatory criteria for fees charged to recipient agencies based on national standards and industry charges (taking into account regional differences) to be used by distributing agencies for storage and deliveries of commodities.

Under § 250.15(a)(1) of the current regulations, recipient agencies may be required to pay part or all of the intrastate costs of distribution through a system of charges assessed by the distributing or subdistributing agency. Any system of fees operated by the distributing or subdistributing agency must be reviewed by FNS. The allowable uses of distribution charges are discussed in § 250.15(f)(2).

The current regulations also limit the assessment of intrastate storage and transportation charges to the distributing or subdistributing agency's direct costs for intrastate storage and transportation minus any amount that the Department provides for such purpose. This limitation is based on the statutory requirement to this effect in section 206 of the Temporary Emergency Food Assistance Act of 1983 and applies to the donation of any bonus commodity in any of the Department's nutrition programs.

Consistent with the new requirement regarding mandatory fee criteria and the Temporary Emergency Food Assistance Act fee limitation, the Department is proposing to amend § 250.15(a)(1) to clarify the types of costs for which distributing and subdistributing agencies may assess distribution charges and to require distributing and subdistributing agencies to submit to the FNSRO for approval each May 1 a description of their proposed system for assessing fees, including the data used in calculating the rate for the upcoming school year. Any proposed changes in the distribution charges during the school year must also be submitted for FNSRO approval.

Under this proposed rule, the "direct costs for intrastate storage and distribution" include but are not limited to those program costs referenced in § 250.15(f)(2) (transportation, storage and handling of donated foods, salaries of persons directly connected with the program and other program related expenses). Examples of other program-related expenses are administrative costs such as fringe benefits, travel expenses, rent, utilities, accounting/auditing service, computer services and the costs of providing program services to recipient agencies, such as the costs for administering and monitoring the State's processing program, technical assistance workshops, etc. Distribution charges may not be assessed for costs which would be unallowable under the Cost Principals in the Department's Uniform Federal Assistance Regulations, 7 CFR Part 3015, Subpart T. In no case may distribution charges be assessed for costs which are paid for by State Administrative Expense (SAE) funds, State or local appropriated funds, or any other funds available to the distributing or subdistributing agency to administer the Food Distribution Program.

Under the proposed rule, distributing and subdistributing agencies may not set distribution charges as a percentage of the value of commodities received by a particular recipient agency. The cost of warehousing and distributing donated food has no direct relationship to the value of the food. Storage and distribution fees are typically charged on a per unit or per weight basis. The Department believes that distribution charges should be distributed among recipient agencies based on the volume of food received by each recipient agency, as measured on a unit or weight basis.

Under § 250.15(a)(1) of the proposed rules, all distributing and subdistributing agencies assessing distribution charges would be required to submit a description of their proposed system with all data used in calculating the rate for the upcoming school year to the appropriate FNSRO for approval. In reviewing the submissions, the FNSRO will compare the commodity transporation, storage and handling portion of the distribution charges with average commercial fees for a comparable level of service. The administrative and service cost portion of the charges will be compared on a State by State basis. If a distributing/subdistributing agency's distribution charge is determined to be excessive or incorporates inappropriate costs, the distributing/subdistributing agency will be required to reduce the fee or submit further justification to the FNSRO that the fee is essential to cover allowable costs and services. This further justification shall include information from recipient agencies regarding their satisfaction with the services provided.

It should be noted that the current TEFAP statute and regulations (§ 204(c)(5) of the Temporary Emergency Food Assistance Act and § 251.9(d) prohibits States from assessing any fees for the distribution for donated foods to emergency feeding organizations.

Performance Standards For Distributing Agencies

Section 3(e)(1)(B) of Pub. L. 100–237 requires the Secretary to provide minimum performance standards to be followed by State agencies responsible for intrastate distribution of donated commodities and products.

Even before the passage of Pub. L. 100–237, one important area of the commodity program that the Department targeted for improvement is the failure of some distributing agencies to provide basic services to recipient agencies. In March 1987, a draft set of standards was developed at a meeting on "Operation Excellence" at which representatives of the National Association of State Agencies for Food Distribution, the American School Food Service Association and USDA agreed on proposed standards of practice. Delegates at this meeting agreed that schools do not always receive the service they feel they need from distributing agencies and that uniform standards were needed to ensure that minimum service levels are provided. Four areas of distributing agency performance were addressed at the meeting. They included (1) communication and administration, (2) ordering and allocation, (3) distribution and delivery and (4) quality and variety of food. Comments on the proposed standards of practice were collected from all interested parties and were shared with the States in the Fall of 1987. A national meeting was held in November 1987 to assist States with implementation.

During School Year 1988, these standards of practice were implemented on a voluntary basis. FNS believed this represented an important first step that would lead to major improvements in the Food Distribution Program. By using the voluntary standards, FNS believed distributing agencies would be able to measure the level of service they offer school food authorities and other recipient agencies and to make improvements where necessary.

This proposed rule amends the Part 250 regulations by establishing a new § 250.24 which establishes minimum performance standards which must be followed by distributing agencies and to be used by the FNSROs in conducting management evaluations of distributing agencies. The rule proposes establishing seven basic performance standards.

The Department has taken into account the recommendations of the American School Food Service Association and the National Frozen Food Association in establishing minimum performance standards distributing agencies must meet.

It should be understood that the entire Part 250 regulations constitute a performance standard that distributing agencies must meet. The Department is proposing these minimum performance standards which place emphasis on the basic services that must be provided to recipient agencies. Therefore many of the performance standards parallel or supplement requirements found elsewhere in Part 250. Where pertinent, cross references to these other provisions have been included.

The first, *Program Management and Evaluation*, will establish a standard ensuring proper administration of the Food Distribution Program. Under this requirement, distributing agencies will be responsible for conducting reviews in accordance with § 250.19 of this part. Also, distributing agencies will be required to assess the adequacy of the service provided to recipient agencies.

In the second area, *Information Dissemination*, the standard is established to ensure that recipient agencies have access to all information needed for informed participation in the program. Under this requirement, distributing agencies will be responsible for disseminating program information relative to (1) current program regulations, (2) summaries of commodity specifications upon request (§ 250.13(j)) and commodity fact sheets, (3) results of test evaluations and surveys, (4) advisory council membership recommendations, (5) recipes and (6) written procedures for ordering commodities, handling out-of-condition commodities or unacceptable commodities (including procedureds for replacement by the Department under § 250.13(g)), submitting complaints and other written policy which affects program operations.

The third area, *Fiscal Responsibility*, will establish a standard to ensure fiscal accountability. Under this standard, distributing agencies will be required to maintain a financial management system which ensures fiscal integrity and accountability for all funds and includes a recordkeeping system which conforms to generally accepted accounting practices and Office of Management and Budget circulars. Also, under this standard, distributing agencies will be required to submit information relative to distribution charges to FNS in accordance with § 250.15(a)(1) of this part.

The fourth area, *Ordering and Allocation*, will establish a standard ensuring that donated food is provided on an equitable basis and, to the extent practicable, in the types and forms most usable by recipient agencies. Under this standard, distributing agencies will be required to (1) obtain and utilize semi-annual commodity acceptability information in accordance with § 250.13(k) of this part; (2) provide recipient agencies with information regarding commodity availability; (3) provide recipient agencies with information on commodity assistance levels; (4) order and allocate donated food based on participation data; (5) ensure availability of commodities, to the extent possible, in quantities requested and at times specified by recipient agencies; (6) permit recipient agencies to refuse all or a portion of a commodity prior to delivery to the distributing agency when time permits; (7) permit recipient agencies to change orders for Group B and unlimited bonus commodities prior to submission of an order to the Department; (8) provide recipient agencies with ordering options and commodity values (§ 250.13(a)(5)); (9) offer schools participating in the NSLP the per-meal value of donated food in accordance with § 250.48(c) of this part and (10) consider the preparation and storage capabilities of recipient agencies when ordering donated food, including capabilities of such agencies to handle commodity

product forms, quality, packaging and quantities. The last requirement implements section 3(d)(4) of Pub. L. 100–237 which provides that "the Secretary shall by regulation require each State distribution agency to * * * consider the preparation and storage capabilities of recipient agencies when ordering donated commodities, including the capabilities of such agencies to handle comodity product forms, quality, packaging, and quantities * * *."

In the fifth area, *Warehousing and Distribution* the standard is being developed to ensure that the warehousing and distribution system utilized by the distributing agency is efficient, cost effective and responsive to the needs of recipient agencies. Distributing agencies will be required to evaluate their current warehousing and distribution systems in accordance with § 250.14(a) of this part. Current regulations require distributing agencies to use warehouses, vehicles and inventory management practices which safeguard the quality of the donated food (§ 250.14). The satndard will require distributing agencies to work with recipient agencies capable of receiving direct shipments to order donated food into their warehouses.

They must also solicit information regarding individual delivery needs of recipient agencies and, to the extent practicable, accommodate those needs. Distributing agencies must also maintain distribution schedules which are equitable and reliable, recognize hours of operation, holidays and vacations and other special needs of recipient agencies and make donated foods available at least monthly (§ 250.13(a)(6)).

In the sixth area, *Disposition of Damaged or Out-of-Condition Commodities*, will establish a standard ensuring that an effective system is in place for gathering information and responding to recipient agency complaints. Under this standard, distributing agencies will be required to establish a system for handling complaints, notifying the Department of any commodity losses in accordance with § 250.13(f) of this part and arranging for the replacement of lost commodities in accordance with § 250.13(g).

The last area, *Processing*, will establish a standard ensuring that distributing agencies administer an acceptable processing program. Under this standard, distributing agencies will be required to inform recipient agencies annually of processing options available to them and assist in facilitating participation in State or National processing contacts. Distributing agencies will also be required to test processed end products prior to entering into a processing contract and monitor the acceptability of processed end products as products as required in § 250.30(b)(1) of this part.

Corrective Action Plans

Section 3(b)(1)(B) of the Act requires the implementation of procedures to monitor the manner in which the distributing agencies carry out their responsibilities. The Department will meet this monitoring requirement through its normal management evaluation process. Management Evaluations are reviews conducted periodically by the FNSROs of a distributing agency's operations. In addition, the Department is proposing to amend § 250.19 to require submission of corrective action plans whenever a distributing agency is found to be out of compliance with any performance standard or other provision in this Part.

List of Subjects in 7 CFR Part 250

Aged, Agricultural commodities, Business and industry, Food assistance programs, Food donations, Food processing, Grant programs-social programs, Infants and children, Price support programs, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

Accordingly, 7 CFR Part 250 is proposed to be amended to read as follows:

PART 250—DONATIONS OF FOOD FOR USE IN THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS AND AREAS UNDER ITS JURISDICTION

1. The authority citation for Part 250 is revised to read as follows:

Authority: Sec. 32, Pub. L. 74–320, 49 Stat. 744 (7 U.S.C. 612c); Pub. L. 75–165, 80 Stat. 323 (15 U.S.C. 713c); secs. 6, 9, 60 Stat. 231, 233, Pub. L. 79–396 (42 U.S.C. 1755, 1758); sec. 416, Pub. L. 81–439, 63 Stat. 1058 (7 U.S.C. 1431); sec. 402, Pub. L. 91–665, 68 Stat. 843 (22 U.S.C. 1922); sec. 210, Pub. L. 84–540, 70 Stat. 202 (7 U.S.C. 1859); sec. 9, Pub. L. 885–931, 72 Stat. 1792 (7 U.S.C. 1431b); Pub. L. 88–756, 74 Stat. 899 (7 U.S.C. 1431 note); sec. 709, Pub. L. 89–321, 79 Stat. 1212 (7 U.S.C. 1446a–1); 3, Pub. L. 90–302, 82 Stat. 117 (42 U.S.C. 1761); secs. 409, 410, Pub. L. 93–288, 88 Stat. 157 (42 U.S.C. 5178, 5180); sec. 2, Pub. L. 93–328, 88 Stat. 288 (42 U.S.C. 1762a); sec. 16 Pub. L. 94–105, 89 Stat. 522 (42 U.S.C. 1766); sec. 1304a, Pub. L. 95–113, 91 Stat. 980 (7 U.S.C. 612c note); sec. 311, Pub. L. 95–478, 92 Stat. 1533 (42 U.S.C. 3030a); sec. 10, Pub. L. 95–627, 92 Stat. 3623 (42 U.S.C. 1760); Pub. L. 98–8, 97 Stat. 35 (7 U.S.C. 612c note); (5 U.S.C. 301); Pub. L. 100–237, 101 Stat. 1733 (7U.S.C. 612 note).

2. In § 250.14, the section title is revised, paragraphs (a), (b), (c), (d), (e) and are redesignated (b), (c), (d), (e) and (f), respectively, and a new paragraph (a) is added to read as follows:

§ 250.14 Warehousing and distribution of donated foods.

(a) *Duties of distributing agencies.*—(1) *Use of cost efficient and effective facilities.* Distributing agencies shall use the most cost effective and efficient system for providing warehousing and distribution services to recipient agencies. For the purpose of this part, commercial facilities are defined as commercial enterprises that provide for commercial warehousing and delivery.

(2) *Evaluation of current systems.* All distributing agencies shall evaluate their current warehousing and distribution systems. The evaluation of the system in place shall, at a minimum, include the following information:

(i) A description of the principal warehousing/delivery techniques used by the distributing agency. The description shall include:

(A) The frequency of delivery available;

(B) The timeframes for making deliveries;

(C) The type of delivery service offered (to the loading dock or placement in the storeroom);

(D) The system for recipient agencies to order specific amounts of food from available inventory;

(E) The system for handling recipient agencies compliants; and

(F) The system for recipient agencies to offer imput regarding other services they may find desirable; and

(ii) All costs incurred in administering the Food Distribution Program.

These costs include transportation, storage and handling of donated foods (if the current distributing agency system does not include delivery to recipient agencies, identification of costs incurred by recipient agencies to pick up commodities at a warehouse and deliver the food to a centralized storage facility or the individual preparation sites), salaries of persons directly connected with the administation of the program and other program related expenses. These expenses shall include fringe benefits, travel expenses, rent, utilities, accounting/auditing services, computer services and the costs of providing program services to recipient agencies such as the costs for administering and monitoring the State's processing program, technical assistance workshops, etc. Initial evaluations shall be completed by June 30, 1989 and updates shall be submitted each June 30 thereafter.

(3) *Comparison of existing system with commercial systems.* All distributing agencies which do not use commercial facilities for a minimum level of warehousing and distribution services shall compare the cost of warehousing and distributing commodities under their current system with the cost of comparable services under a commercial system. The cost comparison shall be made between the cost of providing a minimum level of service under its current system with the cost of obtaining this miminum level of service from commercial facilities. This minimum level of service shall consist of the transportation, storage and handling of donated food from the time of delivery by the Department to a distributing agency until delivery to a recipient agency's centralized storage facility or individual preparation sites and shall include monthly deliveries of donated food to all recipient agencies. A distributing agency may base its cost comparison on a level of service in excess of the minimum and/or services not currently provided; in all cases, the comparison must be made on the costs of providing a *comparable* level of service under the existing system (as identified in § 250.14(a)(2)) versus a commercial system. If a distributing agency is unable to locate any commercial facilities expressing interest in providing the minimum level of warehousing and distribution services, the distributing agency shall indicate this in its cost comparison submission, together with documentation of its efforts to obtain cost estimates from commercial facilities. All data regarding the cost of the current warehousing and distribution system and the cost for comparable commercial facilities shall be submitted to FNS for review by June 30, 1989 and each June 30 thereafter.

(4) *Approval to use other systems.* Distributing agencies who opt not to implement a commercial warehousing and distribution system shall apply to the FNSRO for approval to use other facilities providing that other facilities are more cost effective and efficient. Each request will be considered on a case by case basis. The FNSRO will inform the distributing agency whether it can continue to use the alternative system. Approval to use an alternative system will be granted for no more than one year. After one year, the distributing agency shall implement a commercial warehousing and distribution system that is more cost effective and efficient or apply to the FNSRO for approval to continue to use an alternative system. All distributing agencies opting not to utilize commercial facilities for warehousing and distribution of donated food shall request approval by June 30, 1989 and each June 30 thereafter.

(5) *System implementation.* Distributing agencies shall implement the most cost effective and efficient system for warehousing and distribution services to recipient agencies by July 1, 1990. If at any time FNS determines that the warehousing and distribution system in place is not cost effective based on the information submitted in accordance with § 250.14(a), the distribution charge information submitted in accordance with § 250.15(a)(2) or other information, the distributing agency will be required to reevaluate its system in accordance with § 250.14(a) (2) and (3) of this part within 90 days of notification by the FNSRO.

* * * * *

3. In § 250.15, paragraph (a)(1) is revised to read as follows:

§ 250.15 Financial management.

(a) *Distribution charges.* (1) Except as provided in paragraph (a)(2) of this section, recipient agencies may be required to pay part or all of the direct costs for intrastate storage and distribution of donated food through distribution charges assessed by the distributing or subdistributing agency. Distributing and subdistributing agencies assessing distribution charges shall submit a description of their system with supporting allowable cost data used in calculating the rate to be used for the upcoming school year to the FNSRO for approval. This description and data shall be submitted by May 1 of each year. Before making any changes to the distribution charges during and school year, the destributing/subdistributing agency shall submit to the FNSRO for approval a description of the change together with supporting data used to calculate the change. Allowable costs include but are not limited to those program costs referenced in § 250.15(f)(2) of this part (transportation, storage and handling of donated foods, salaries of persons directly connected with the administration of the program and other program related expenses). Examples of other program related expenses are administrative costs such as fringe benefits, travel expenses, rent, utilities, accounting/auditing services, computer services, and the costs of providing program services to recipient agencies such as the costs for administering and monitoring the State's processing program, technical assistance workshops, etc. Distribution charges may not be assessed for costs which would be unallowable under the Cost Principles in the Department's Uniform Federal Assistance Regulations, 7 CFR Part 3015, Subpart T. In no case may distribution charges be assessed for costs which are paid for by State Administrative Expense (SAE) funds, State or local appropriated funds or any other funds available to the distributing or Subdistributing agency to administer the program. Distributing changes may not be based solely on a percentage of the value of the commodities distributed. FNS shall review the information and inform the distributing agency of the appropriateness of its distribution changes. If it is determined that a distributing agency's proposed dustribution charges are excessive or imcorporate inappropriate costs, the distributing/subdistributing agency will be required to adjust the distribution charges to an appropriate level or submit further justification sufficient to satisfy the FNSRO that the proposed distribution charges are essential to cover allowable costs and services. This further justification shall include information from recipient agencies regarding their satisfaction with the services provided. Distribution chargcs, includings any excess distribution charges which may accrue (as defined in paragraph (f)(4) of this section) shall be used solely in accordance with the provisions of paragraph (f) of this section.* * *

* * * * *

4. In § 250.19, a new paragraph (d) is added to read as follows:

§ 250.19 Reviews.

* * * * *

(d) *Corrective actions plans.* Corrective action plans shall be submitted whenever a distributing agency is found by the FNSRO to be substantially out of compliance with a performance standard or any other provision of this part. The corrective action plan shall identify the corrective actions and the timeframes needed to correct the deficiencies found by the FNSRO during the review. The plan shall be written, signed by the the proper official in the State, and submitted to the FNSRO within 60 days following receipt of the management evaluation report by the distributing agency. Extensions beyond 60 days may be made, for cause, with written justification to and approved by the FNSRO.

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5. A new § 250.24 is added to Subpart B which reads as follows:

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§ 250.24 Distributing agency performance standards.

This section establishes minimum performance standards which must be followed by distributing agencies responsible for intrastate distribution of donated commodities and products. The seven standards address the level of service that shall be provided to recipient agencies. The minimum standards include the following:

(a) *Program management and evaluation.* Distributing agencies shall conduct reviews in accordance with § 250.19 of this part. Distributing agencies shall also assess the adequacy of the service provided to recipient agencies.

(b) *Information dissemination.* Distributing agencies shall provide recipient agencies with information needed for informed participation in the program. Distributing agencies shall provide program information relative to (1) current program regulations, (2) summaries of commodity specifications upon request (§ 250.13(j)) and commodity fact sheets, (3) results of any test evaluations and surveys, (4) advisory council membership recommendations, (5) recipes and (6) written procedures for ordering commodities, handling commodities which are stale, spoiled, out-of-condition or not in compliance with specifications (including procedures for replacement by the Department under § 250.13(g)), submitting complaints and other written policy which affects program operations.

(c) *Fiscal responsibility.* Distributing agencies shall maintain a financial management system which ensures fiscal integrity and accountability for all funds and includes a recordkeeping system which conforms to generally accepted accounting practice and Office of Management and Budget circulars. Distributing agencies shall submit information relative to distribution charges to FNS in accordance with § 250.15(a) of this part.

(d) *Ordering and allocation.* Distributing agencies shall ensure that donated food is provided on an equitable basis and, to the extent practicable, in the types and forms most usable by recipient agencies. Distributing agencies shall be responsible for (1) obtaining and utilizing semi-annual commodity acceptability information in accordance with § 250.13(k) of this part; (2) providing recipient agencies with information regarding commodity availability; (3) providing recipient agencies with information regarding commodity assistance levels; (4) ordering and allocating donated food based on participation data for those programs which serve meals; (5) ensuring the availability of commodities, to the extent possible, in quantities requested and at times specified by recipient agencies; (6) permitting recipient agencies to refuse all or a portion of a commodity prior to delivery to the distributing agency if time permits; (7) permitting recipient agencies to change orders for Group B (grain, dairy, peanut and oil products) and unlimited bonus commodities prior to submission of an order to the Department; (8) providing recipient agencies with ordering options and commodity values (§ 250.13(a)(5)); (9) offering schools participating in the National School Lunch Program the per meal value of donated food in accordance with § 250.48(c) of this part and (10) consider the preparation and storage capabilities of recipient agencies when ordering donated food, including capabilities of such agencies to handle commodity product forms, quality, packaging and quantities.

(e) *Warehousing and distribution.* Distributing agencies shall use a warehousing and distribution system that is efficient, cost effective and responsive to the needs of recipient agencies in accordance with § 250.14(a) of this part. In addition, distributing agencies shall work with recipient agencies capable of receiving direct shipments to order donated food into their warehouses. They shall also solicit information regarding the individual delivery needs of recipient agencies and maintain distribution schedules which are equitable and reliable, recognize hours of operation, holidays and vacations and other special needs of recipient agencies and make donated foods available at least monthly (§ 250.13(a)(6)); however, the distributing agency shall not be held liable for delays in deliveries of donated food when such delays are due to late deliveries of donated food to the distributing agency by the Department.

(f) *Disposition of Damaged or out-of-condition commodities.* Distributing agencies shall establish a system for handling recipient agency complaints, notifying the Department of any commodity losses in accordance with § 250.13(f) of this part and arranging for the replacement of lost commodities in accordance with § 250.13(g).

(g) *Processing.* Distributing agencies shall administer an acceptable processing program in accordance with § 250.30 of this part. In addition, distributing agencies shall inform recipient agencies annually of processing options available to them in facilitating participation in State or National processing contracts. Distributing agencies shall test end products prior to entering into a processing contract and shall monitor the acceptability of processed end products as required in § 250.30(b)(1) of this part.

Date: October 14, 1988.

Anna Kondratas,

Administrator.

[FR Doc. 88-24210 Filed 10-19-88; 8:45 am]

BILLING CODE 3410-30-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM-50-43]

Ohio Citizens for Responsible Energy, Inc.; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: On December 1, 1987, the Ohio Citizens for Responsible Energy (OCRE), Inc., filed pursuant to 10 CFR 2.802 a petition for rulemaking. OCRE requested that the NRC amend 10 CFR 50.12(a)(2) to remove the provision which would permit the NRC to grant a licensee an exemption from a rule in 10 CFR Part 50 on the grounds that the rule imposes on the licensee "undue * * * costs * * * significantly in excess of those contemplated when the regulation was adopted, or * * * of those incurred by others similarly situated * * *." OCRE argues that the amendment it proposes is necessary to bring 10 CFR 50.12(a) into conformance with UCS v. NRC, 824 F.2d 108 (D.C. Cir. 1987), which held, among other things, that the NRC may not take economic costs into consideration in establishing or enforcing the safety standards required for "adequate protection" of the public health and safety. The issues raised by the petition have already been fully considered and resolved in the 1985 rulemaking on § 50.12 and the 1987–88 renewed rulemaking on the backfit rule, 10 CFR 50.109. The resolutions of the issues were in accordance with principles which either appear in, or are consistent with, UCS *v.* NRC. The NRC is denying the petition for the same reasons that the NRC rejected earlier arguments against the cost provision in § 50.12(a). In particular, because § 50.12(a)(1) explicitly bars any exemption which would threaten "adequate protection," § 50.12(a) is in conformity with UCS v. NRC.

ADDRESSES: Copies of the petition for rulemaking and the NRC's letter to the petitioner are available for public inspection or copying in the NRC's Public Document Room, 2120 L Street, NW., Washington, DC, Monday through Friday, between the hours of 7:45 am and 4:15 pm.

FOR FURTHER INFORMATION CONTACT: Steven F. Crockett, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–1600.

SUPPLEMENTARY INFORMATION:

The Petition

Section 50.12 of 10 CFR states, in pertinent part,

> (a) The Commission may * * * grant exemptions from the requirements of the regulations of this part, which are—
>
> (1) Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security.
>
> (2) The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever—
>
> * * * * * *
>
> (iii) Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated; * * *

OCRE proposes that paragraph (a)(2)(iii) be deleted and the remaining subparagraphs of paragraph (a)(2) accordingly redesignated, and that a new paragraph (a)(3) be added to read as follows:

> The Commission will not consider granting an exemption which has as a motivation or consequence cost savings or other financial benefits to licensees, and the Commission shall not consider any economic costs to licensees in its evaluation of any exemption request.

OCRE argues that, without the amendments it proposes, § 50.12(a)(2) will not be in conformity with the Federal Court of Appeals for the District of Columbia Circuit's decision, UCS *v.* NRC, 824 F.2d 108 (1987), which concerned the "backfit rule", 10 CFR 50.109. There the Court held, in pertinent part, that "the [Atomic Energy] Act precludes the NRC from taking costs into account in establishing or enforcing the level of adequate protection, but allows the NRC to consider costs in devising or administering requirements that offer protection beyond that level." 824 F.2d at 114.

OCRE asserts that "[t]here can be no doubt that the regulations in 10 CFR Part 50 form the basis of the adequate protection standard." Petition at 4. OCRE cites two judicial rulings to support its assertion: It claims that the Commission's Appeal Board "declared" that "the sine qua non of adequate protection to public health and safety is compliance with all applicable safety rules and regulations promulgated by the Commission." Petition at 4–5, quoting Maine Yankee Atomic Power Company (Maine Yankee Atomic Power Station), ALAB–161, 6 AEC 1003, 1009 (1973). OCRE moreover says that it is "significant" that the Court in UCS v. NRC "placed major reliance on Maine Yankee in buttressing its interpretation of the Atomic Energy Act." Petition at 5, citing UCS v. NRC, 824 F.2d at 117.

On the basis of its assertion that compliance with the regulations is necessary for adequate protection, OCRE concludes that 10 CFR 50.12(a)(2)(iii) "stands in defiance" of the Court's ruling in UCS v. NRC because the rule "explicitly allows economic costs of compliance * * * to form a special circumstance justifying non-compliance with, by means of exemption from, the NRC's adequate protection standards." Petition at 5.

Reasons for Denial

The issues raised by OCRE in this petition were thoroughly discussed in the rulemaking leading up to the 1985 revision of § 50.12, and those issues were resolved in that rulemaking in accordance with principles which either appear in, or are consistent with, UCS v. NRC. In particular, OCRE's assumption that compliance with the regulations is necessary for adequate protection was considered and rejected by the Commission in the rulemaking in 1985 on § 50.12, and again in the renewed rulemaking in 1987–88 on the backfit rule, 10 CFR 50.109.[1]

In the **Federal Register** notice setting forth the proposed revisions to § 50.12, then-Commissioner Asselstine, who soon thereafter dissented from promulgation of the backfit rule (50 FR 38097, 38106–110; September 20, 1985), proposed that the revisions include the cost provision OCRE now petitions to have deleted (50 FR 16506, 16510, col. 1; April 26, 1985). The purpose of the provision was not, as OCRE believes, to make way for "pleas of poverty" by utilities (see petition at 5). The provision focused not on the utility's financial condition but rather on the possible failure of the pertinent regulation to foresee extraordinary costs. This part of the rule, and indeed the whole rule, simply acknowledges what is acknowledged in any reasonable jurisprudence, namely, that foresight is limited and, therefore, that any rule must make room for unforeseen exceptional situations.

In response, the Union of Concerned Scientists (UCS) argued that the Commission did not have statutory authority to consider economic factors in granting an exemption. On this ground, UCS opposed several provisions of the proposed revisions to § 50.12, not just Mr. Asselstine's cost proposal. See 50 FR 50764, 50767, cols. 2–3. Indeed, UCS went the larger step—fully consistent with the proposition that compliance with the regulations is necessary for adequate protection—and argued that the Commission had no authority to issue exemptions at all. Id. at 50766, cols. 2–3. UCS explicitly stated the assumption OCRE now relies on, namely, that "the regulations established the minimal requirements for safe operation of a nuclear power plant * * *." Id. at 50768, col. 1.

The Commission rejected UCS' assertions and in so doing enunciated propositions which have been either explicitly upheld by the Court in UCS v. NRC or are fully consistent with the Court's holdings.

First,the Commission emphasized that the rule "requires a safety finding that the exemption will not present an undue risk to the public health and safety * * *. It is only after these statutorily based findings have been made that the Commission may then consider whether the *additional* requirements for the grant of an exemption have been met, some of which include economic considerations." Id. at 50767, col. 3 (emphasis in original). In UCS v. NRC, the Court clearly held that the Atomic Energy Act permitted cost consideration once adequate protection was established. Noting that "no undue risk" and "adequate protection" were equivalent phrases, 824 F.2d at 109, the Court ruled that, "[i]f the Commission wishes to do so, it may order power plants already satisfying the standard of adequate protection to take additional safety precautions. When the Commission determines whether and to what extent to exercise *this* power, it may consider economic costs or any other factor." Id. at 118 (emphasis in original).

Second, the Commission explained the relation between adequate protection and compliance with the regulations:

[1] No purpose would have been served by soliciting public comment on issues already resolved in recent rulemakings. Thus the NRC has not sought public comment on OCRE's petition.

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[W]hile it is true that compliance with all NRC regulations provides reasonable assurance of adequate protection of the public health and safety, the converse is not correct, that failure to comply with one regulation or another is an indication of the absence of adequate protection, at least in a situation where the Commission has reviewed the noncompliance and found that it does not pose an "undue risk" to the public health and safety.

(50 FR at 50768, cols. 1–2; see also id. at 50771, col. 3.)

In the recent rulemaking to conform the backfit rule to the Court's holdings in UCS v. NRC, the Commission affirmed this account of the relation between adequate protection and compliance with the regulations. In that rulemaking, OCRE argued, as it does here, that the regulations "define" adequate protection. From this assertion, OCRE concluded that the Commission cannot apply cost-benefit considerations to a proposed rule without applying cost-benefit considerations in setting the standards of adequate protection, contrary to the Court's principal holding in UCS v. NRC. See 50 FR 20603, 20609, cols. 1–2. In response, the Commission said that

the rules do not, strictly speaking, "define" adequate protection, and they only presumptively assure it. Not only may there * * * be individual cases that require actions that go beyond what is necessary under the regulations to assure adequate protection, there will also be times when the NRC issues a rule which requires something beyond adequate protection. This follows directly from the Commission's power under section 161 of the Atomic Energy Act, affirmed by the Court, to issue rules or orders to "minimize danger to life or property." See 42 U.S.C. 2201; see also UCS v. NRC, 824 F.2d at 118. If a proposed rule requires something more than adequate protection, applying a cost standard to the proposed rule will not be introducing cost considerations into the setting of the adequate protection standard and is therefore permitted.

(Id. at 20609, col. 2.)

Similarly, if a rule requires something more than adequate protection, or if adequate protection can be secured by means other than those set forth in the rule in question, then consideration of unforeseen extraordinary costs in response to a request to a request for an exemption which would not present an undue risk to public health and safety does not introduce cost considerations into enforcing the adequate protection standard and is therefore permitted.

Neither of the two judicial decisions OCRE cites are to the contrary. In Maine Yankee, the principal issue was whether a licensing board had to look beyond compliance with the regulations to determine whether there was reasonable assurance of adequate protection. The Appeal Board did not, as OCRE claims, "declare" that compliance with the regulations is a "sine qua non" of adequate protection. The Board was a good deal more restrained. It said that, "on the face of it," certain statements in the Atomic Energy Act "would appear to suggest" that compliance was the sine qua non of adequate protection. See 6 AEC 1009. From this hypothetically stated proposition, the Board concluded that, at least in the case before the Board, where no showing was made that compliance with the regulations fell short of adequate protection, "the demonstration of compliance with the regulations entitled the Board below to find adequate protection to the health and safety of the public." Id. at 1010. The Board hypothetically assumed here that compliance with the regulations was necessary for adequate protection, but the Board could just as easily have reached the same conclusion by hypothetically assuming that compliance with the regulations would provide an even greater level of safety than adequate protection.

Neither does UCS v. NRC support OCRE's claims. OCRE sees "significance" in the extent to which the Court "relied" on Maine Yankee. However, the Court uses Maine Yankee only to show that the Commission itself had long ago held that the Atomic Energy Act prohibited the consideration of economic costs in making adequate protection determinations. See 824 F.2d at 117. To make its point, the Court draws on a different part of Maine Yankee than OCRE does. See Id. The Court nowhere says that compliance with the regulations is necessary for adequate protection, nor does the Court even quote the language OCRE quotes from Maine Yankee. Indeed, it would have been surprising if the Court had said such a thing, for the Court affirms the Commission's power to require, by rule or in specific cases, more than adequate protection. See, e.g., id. at 118. From this it follows that some rules may require more than adequate protection and thus that exemptions from these rules may be granted on the specified costs grounds if the exemptions do not present undue risks to public health and safety.

Because the issues OCRE raises in its petition were fully considered in the 1985 rulemaking on 10 CFR 50.12 and were resolved in that rulemaking in accord with principles which either were affirmed by UCS v. NRC or are fully consistent with it, OCRE's petition to have § 50.12 amended is denied. Because the petition raises no new policy issue, and because the denial of the petition relies wholly on existing Commission precedent, the denial is being issued over the signature of the Executive Director for Operations.

Dated at Rockville, MD, this 27th day of September 1988.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,
Executive Director for Operations.

[FR Doc. 88–24269 Filed 10–19–88; 8:45 am]
BILLING CODE 7590–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303 and 346

Applications, Requests, Submittals, Delegations of Authority, and Notices of Acquisition of Control; Foreign Banks

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Proposed rule.

SUMMARY: The FDIC is proposing changes to its regulations pertaining to insured branches of foreign banks. Substantial changes are proposed to the current provisions relating to exemptions from the deposit insurance requirement, the capital equivalency requirement, and the country exposure provision. Changes are also being proposed to the pledge of assets requirement and to the delegations of authority concerning it, as well as to miscellaneous provisions throughout the regulation.

DATES: Comments must be received by December 19, 1988.

ADDRESSES: Send comments to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand delivered to Room 6108 on business days between 8:30 a.m. and 5:00 p.m. Comments may also be inspected in Room 6108 between 8:30 a.m. and 5:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Charles V. Collier, Assistant Director, or Joseph Duffy, Senior Financial Analyst, Division of Bank Supervision, (202) 898–6850 or (202) 898–6821, respectively, or Katharine H. Haygood, Senior Attorney, (202) 898–3732, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice has been submitted to the Office of Management and Budget for review pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Comments on the collection of information should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Federal Deposit Insurance Corporation, with copies of such comments to be sent to John R. Keiper, Jr., Assistant Executive Secretary, Room 6108, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. The collection of information in this proposed regulation is in § 346.19(e)(6). This information is required by the Federal Deposit Insurance Corporation to determine the type and amount of assets placed for safekeeping at a depository, as pledged assets, by a foreign bank. This information will be used to ensure compliance with section 5 of the Federal Deposit Insurance Act and with FDIC's regulatory requirements. The likely respondents are foreign banks which have insured branches and depositories for the pledge of assets by insured branches.

Estimated Total Annual Reporting and/or Recordkeeping Burden: 144 hours.

Estimated Average Annual Burden per Response: 1 hour.

Estimated Number of Responses: 144.

Estimated Annual Frequency of Responses: on occasion and semiannually.

Discussion

After a thorough review, under FDIC's regulatory review program, of its regulation dealing with foreign banks, 12 CFR Part 346, the FDIC is proposing changes to that regulation. In particular, substantial changes are proposed in regard to exemptions from the deposit insurance requirement, the current capital equivalency ledger account provision, and the country exposure provision. Other changes, primarily technical, are being proposed to provisions concerning the pledge of assets. There are also a number of proposed miscellaneous changes throughout the regulation.

The capital equivalency ledger account provision would be changed substantially. The current provision would be eliminated, and the title used previously in the regulation, *i.e.*, "asset maintenance," would be reinstated, with significant substantive changes being made in the requirements of the regulation. In lieu of the current requirement at § 346.20 that head office funds equivalent to 6% of the preceding quarter's average book value of the third party liabilities of the branch be maintained, the proposal would require that an insured branch maintain eligible assets as determined by proposed § 346.20 in an amount not less than 106% of the preceding quarter's average book value of the branch's third party liabilities or, in the case of a newly established branch, the average book value of the branch's estimated liabilities for the first full quarter of operation. Assets would have to be payable in United States dollars, or in a currency freely convertible to United States dollars. Several changes would be made in regard to exclusions from the asset base. In addition to the current exclusion from eligibility of any asset classified "Loss," assets designated "Other Transfer Risk Problem," or classified "Substandard," "Doubtful," or "Value Impaired" would also be excluded, as would intangible assets.

The FDIC has decided to retain the requirement for daily maintenance. Domestic banks must maintain required levels of capital on a daily basis, and there is no compelling reason to allow for anything other than a continuous maintenance of the required asset level for insured branches. The FDIC has, in addition, decided to retain the requirement, both here and with respect to the pledge of assets, that there be a waiver of offset for certificates of deposit. After substantial internal study, the FDIC has determined that the requirement benefits the FDIC and should not be dropped.

It should be noted that the federal bank regulatory agencies are in the process of fashioning a new capital policy which is anticipated to take a risk-based approach to capital requirements. If a new capital policy is adopted the FDIC will at that time evaluate whether to apply the principles of that policy to insured branches of foreign banks.

The current restriction on country exposure at § 346.23 would be deleted and the country exposure exclusion in the current capital equivalency ledger accounts would not be reflected in the proposed asset maintenance requirement. Both in reference to the proposed asset maintenance and asset pledge provisions, however, the FDIC may require a higher ratio of eligible assets and/or an increase in pledged assets, respectively, based on the concentration of risk to any one borrower or group of related borrowers, or the concentration of transfer risk to any one country, including the country in which the branch's head office is located. The proposed changes would occur at proposed § 346.19(b)(3) and proposed § 346.20(a).

A number of additional changes are being proposed to the pledge of assets provision. Section 346.1(p) would state specifically that a depository may not be an affiliate of the foreign bank whose insured branch seeks to use that depository. Other proposed changes in § 346.19 relate specifically to the pledge of assets. Throughout the provisions concerning the pledge, either the term "pledge" or "place" would generally replace the term "deposit." Several changes would be made to § 346.19(b). The provision would expand on the current definition of value, require periodic computations only as of the last date of the second and fourth quarters, respectively, and no longer contain the statement regarding the two-day adjustment period, since that requirement in specified elsewhere in the regulation. Proposed § 346.19(c) would specify that the approval required for a depository to be used is prior written approval and, further, that the depository must be attorney in fact for the foreign bank for the purpose of transferring title to pledged assets to the FDIC. In regard to the assets which may be pledged under § 346.19(d), language would be added to indicate that any pledges are for the benefit of the FDIC or its designees and that assets must be denominated in United States dollars. Proposed § 346.19(d)(3) would allow the pledging of commercial paper rated P–2, as well as P–1. Changes would be made at § 346.19(d)(5) in regard to local government obligations. Those obligations would, under the proposal, be required to have a credit rating within the top two rating bands of a nationally-recognized rating service, with any conflict in the ratings to be resolved in favor of the lowest rating. Proposed § 346.19(d)(7) would allow notes issued by U.S. banks, bank holding companies, or insured branches to be included as assets eligible to be pledged if those notes have a credit rating within the top two rating bands of a nationally-recognized rating service (with any conflict in the ratings to be resolved in favor of the lowest rating). The notes would also have to be payable in the United States and issued by other than an affiliate of the pledging foreign bank.

Proposed § 346.19(e) would cover the original pledge, additional required pledges, substitution of assets, delivery of other documents, acceptance and safekeeping by the depository, reporting requirements, access to assets, release of assets, interest earned on assets, expenses of the agreement, substitution of the depository, and waiver of terms. The substance of the proposed

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regulation is similar to that of existing § 346.19(e), with proposed technical changes and expansion of certain requirements. For instance, at proposed § 346.19(e)(6)(i)(B), the information in a foreign bank's certification would be expanded from that in the current regulation. The quarterly reports currently required at § 346.19(e)(2) (ii) and (iii) would now be semi-annual as specified in proposed § 346.19(e)(6)(ii). (Computation of the pledge as required at § 346.19(b) would be computed after the second and fourth quarters, respectively.) Proposed § 346.19(e)(7) simply expands on the FDIC's right of access in order to evaluate pledged assets. Proposed § 346.19(e)(10) would specify that if the foreign bank is not allowed to retain interest, the FDIC will specify the disposition of that interest. Proposed § 346.19(e)(12) would deal with the substitution of a depository and would replace the provision at current § 346.19(e)(10) dealing with the termination of the agreement.

Major changes are being proposed in the provision relating to exemptions from the deposit insurance requirement at § 346.6. It should be noted that the current regulation keys a number of provisions into the concept of the acceptance of an initial deposit. Branches, especially noninsured branches of foreign banks, should be cautioned that they must maintain records which clearly establish the amount of the initial deposit, since that concept exists in the current regulation and continues to exist in the proposed regulation. A change is being proposed at § 346.6(a)(1) which would allow exemption from deposit insurance for virtually any business entity, regardless of any size limitations such as those which currently exist. Current § 346.6(a)(4) would be eliminated since it is a grandfather provision which no longer applies. The "de minimus rule" which currently exists at § 346.6(a)(5) would be eliminated, and a checklist of exempt depositors would be substituted for that section. This checklist, found at proposed § 346.6(a)(5), allows an exemption for individuals who are not U.S. citizens but are residents in the United State if they are employed by certain listed organizations. Proposed § 346.6(a)(6) is the current § 346.6(a)(7) and exempts individuals who are not citizens and not residents of the U.S. at the time of the initial deposit.

Other miscellaneous changes are being proposed throughout the regulation. The proposal clarifies the definition of "foreign bank" at § 346.1(a) to conform with the current state of statutory law on the subject. An attempt has been made in that definition to clarify the situation of those institutions which were considered to be foreign banks under the International Banking Act but are also domestic insured banks under the Federal Deposit Insurance Act; § 346.21, which currently speaks to this subject, would be eliminated. Those institutions which are "insured banks" other than because they have an insured branch in this country, and which are otherwise domestic state-chartered banks are not subject to the provisions of §§ 346.17, 346.18, 346.19 or 346.20. In other words, these institutions are not subject to the indicated provisions relating to the agreement to provide information and to be examined, to the recordkeeping requirements, to the pledge of assets, nor to the asset maintenance rules; however, these institutions are subjects to other statutory and regulatory requirements by virtue of their being domestic insured banks.

A change is proposed at § 346.4(b) to eliminate an outdated grandfather provision which allowed foreign banks establishing State branches before September 17, 1978 to operate those branches as noninsured branches until September 16, 1979 without deposit-taking restrictions. Appendix A to Part 346 is also being eliminated. The initial intent of this appendix was to provide current lists of states which require deposit insurance as a prerequisite to receiving a charter and of states which do not require such deposit insurance. The administrative difficulty of maintaining such lists accurately does not warrant retaining the appendix. State banking departments will, of course, continue to monitor their respective requirements. Section 346.17(a)(1) would specify that information provided must be in English.

Amendments to § 346.7, concerning notification to depositors, are also being proposed. It is proposed that negotiable certificates of deposit of more than $100,000 no longer be exempted from the requirement of either a statement on a form evidencing a deposit or an acknowledgement by the depositor. Experience has shown that confusion can and does exist in regard to deposits of more than $100,000. In addition, a depositor of more than $100,000 generally does expect some FDIC coverage. The provision at current § 346.7(a)(2) that any State branch exempt from the insurance requirement under § 346.6 would, within 30 days from the date of accepting an initial deposit of less than $100,000, have to notify existing depositors in writing that the branch is not insured by the FDIC is being eliminated. It is believed that although this provision was important at the time of its adoption, the requirements for display of signs indicating that deposits are not insured and for statements on negotiable certificates of deposit are sufficient to cover any likely risk of confusion to a depositor.

Other technical and stylistic changes, including some clearer statements of what party or parties at the FDIC would normally have authority to act in specific situations, would be made throughout Part 346, as well as in an amendment to § 303.8.

Regulatory Flexibility Analysis

In accordance with the Regulatory Flexibility Act, the Board of Directors hereby certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. There are presently 22 foreign banks which have insured branches, and they are world-wide institutions with assets ranging from approximately $1 to 240 billion. The requirements of 5 U.S.C. 603 and 604 that initial and final regulatory flexibility analyses be made do not apply to this proposal since this proposed rule would not add an economic burden to small entities.

In addition, pursuant to the FDIC's statement of policy on the drafting of regulations, it has been determined that a cost-benefit analysis, including a small bank impact statement, is not required.

List of Subjects

12 CFR Part 303

Administrative practice and procedure, Authority delegations, Bank deposit insurance, Banks, banking.

12 CFR Part 346

Bank deposit insurance, Foreign banks, banking, Banks, banking, Reporting and recordkeeping requirements.

In consideration of the foregoing, the FDIC hereby proposes to amend Parts 303 and 346 of title 12 of the Code of Federal Regulations as follows:

PART 303—APPLICATIONS, REQUESTS, SUBMITTALS, DELEGATIONS OF AUTHORITY, AND NOTICES OF ACQUISITION OF CONTROL

1. The authority citation for Part 303 reads as follows:

Authority: 12 U.S.C. 378, 1813, 1815, 1816, 1817(j), 1818, 1819 ["Seventh" and "Tenth"], 1828, 1829; 15 U.S.C. 1607.

2. Section 303.8(f) is revised to read as follows:

§ 303.8 Other delegations of authority.

* * * * *

(f) *Agreements for pledge of assets by foreign banks.* (1) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to enter into pledge agreements with foreign banks and depositories in connection with the pledge of asset requirements pursuant to 12 CFR 346.19. This authority shall also extend to the power to approve the use of a specific depository, as well as to the power to revoke such approval and require the dismissal of the depository.

(2) Authority is delegated to the General Counsel or designee to modify the terms of the model pledge agreement used for such pledge agreements.

PART 346—FOREIGN BANKS

3. The authority citation for Part 346 reads as follows:

Authority: 12 U.S.C. 1813, 1815, 1817, 1819, 1820, 3103, 3104, 3105.

4. Section 346.1 is amended by revising paragraphs (a) and (p) to read as follows:

§ 346.1 Definitions.

* * * * *

(a) "Foreign bank" means any company organized under the laws of a foreign country, any Territory of the United States, Puerto Rico, Guam, American Samoa, the Northern Mariana Islands or the Virgin Islands which engages in the business of banking. The term includes foreign commercial banks, foreign merchant banks, and other foreign institutions that engage in banking activities usual in connection with the business of banking in the countries where such foreign institutions are organized and operating. Except as otherwise specifically provided by the Federal Deposit Insurance Corporation, banks organized under the laws of a foreign country, any Territory of the United States, Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, or the Virgin Islands which are insured banks other than by reason of having an insured branch are not considered to be foreign banks for purposes of §§ 346.17, 346.18, 346.19, and 346.20.

* * * * *

(p) "Depository" means any insured state bank, national bank, or insured branch. A depository may not be an affiliate of the foreign bank whose insured branch is seeking to use the depository.

* * * * *

5. Section 346.4 is amended by removing the paragraph designation (a) and paragraph (b) in its entirety and redesignating "(1)" and "(2)" as "(a)" and "(b)."

6. Section 346.6 is amended by revising paragraphs (a) introductory text, (a)(1), (a)(4), (a)(5), and (a)(6) to read as follows:

§ 346.6 Exemptions from the insurance requirement.

(a) *Deposit activities not requiring insurance.* A State branch wil not be deemed to be engaged in a domestic retail deposit activity which requires the branch to be an insured branch under § 346.4 if initial deposits in an amount of less than $100,000 are derived solely from the following:

(1) Any business entity, including any corporation, partnership, sole proprietorship, association, or trust, which engages in commercial activity for profit.

* * * * *

(4) Any draft, check, or similar instrument issued by the branch for the transmission of funds.

(5) Any individual who is not a citizen of the United States but who resides in the United States, *Provided*, That the individual is an employee of:

(i) Any branch, agency, or representative office of a foreign bank;

(ii) Any business entity, including any corporation, partnership, association, or trust, which is organized pursuant to the laws of any foreign country;

(iii) Any foreign government, including any agency of a foreign government; or

(iv) An international organization comprised of members consisting of two or more sovereign nations.

(6) Any depositor who is not a citizen of the United States and who is not a resident of the United States at the time of the initial deposit.

7. Section 346.7 is revised to read as follows:

§ 346.7 Notification to depositors.

Any State branch is exempt from the insurance requirement pursuant to § 346.6 shall—

(a) Display conspicuously at each window or place where deposits are usually accepted a sign stating that deposits are not insured by the FDIC; and

(b) Include in bold face conspicuous type on each signature card, passbook, and instrument evidencing a deposit the statement "This deposit is *not* insured by the FDIC"; or require each depositor to execute a statement which acknowledges that the initial deposit and all future deposits at the branch are not insured by the FDIC. This acknowledgment shall be retained by the branch so long as the depositor maintains any deposit with the branch.

8. The second sentence of § 346.16 is revised to read as follows:

§ 346.16 Scope.

* * * These rules relate to an agreement to provide information and to be examined, recordkeeping, pledge of assets, asset maintenance, and deductions from the assessment base.

9. Section 346.17 is amended by revising the section heading and the third sentence of paragraph (a)(1) to read as follows:

§ 346.17 Agreement to provide information and to be examined.

(a) * * *

(1) * * * Information provided shall be in English and in the form requested by the FDIC and shall be made available in the United States. * * *

* * * * *

10. Section 346.19 is amended by revising paragraphs (b)(1) and the last sentence of (b)(3), (c), (d) introductory text, (d)(3), (d)(5), (d)(7), and (e) and adding paragraph (d)(8) to read as follows:

§ 346.19 Pledge of assets.

* * * * *

(b) *Amount of assets to be pledged.* (1) A foreign bank shall pledge assets equal to five percent of the average of the insured branch's liabilities for the last 30 days of the second and fourth calendar quarters, respectively. This average shall be computed by using the sum of the close of business figures for the 30 calendar days of the second and fourth calendar quarters, respectively, ending with and including the last date of the respective calendar quarter divided by 30.[6] In determining its average liabilities, the branch may exclude liabilities to other offices, agencies, branches, and wholly owned subsidiaries of the foreign bank. The value of the pledged assets shall be computed based on the lesser of the principal amount (par value) or market value of such assets at the time of the original pledge and thereafter as of the last date of the second end fourth calendar quarters, respectively.

* * * * *

[6] The close of business Saturday shall be used for Saturday and Sunday. If the branch is closed on Saturday, the closing figure for Friday shall be used for Friday, Saturday, and Sunday.

(3) * * * Among the factors to be considered in imposing these requirements are the concentration of risk to any one borrower or group of related borrowers, or the concentration of transfer risk to any one country, including the country in which the foreign bank's head office is located.

* * * * *

(c) *Depository.* A foreign bank shall place pledged assets for safekeeping at any depository which is located in any state. A foreign bank must obtain the FDIC's prior written approval of the depository selected, and such approval may be revoked and dismissal of the depository required whenever the depository does not fulfill any one of its obligations under the agreement. A foreign bank shall appoint and constitute the depository as its attorney in fact for the sole purpose of transferring title to pledged assets to the FDIC as may be required to effectuate the provisions of § 346.19(a).

(d) *Assets that may be pledged.* Subject to the right of the FDIC to require substitution, a foreign bank may pledge any of the kinds of assets listed below; such assets must be denominated in United States dollars. A foreign bank shall be deemed to have pledged any such assets for the benefit of the FDIC or its designees at such time as any such asset is placed with the depository.

* * * * *

(3) Commercial paper that is rated P-1 or P-2, or their equivalent, by a nationally recognized rating service; *Provided,* That any conflict in a rating shall be resolved in favor of the lowest rating.

* * * * *

(5) General obligations of any state of the United States, or any county or municipality of any state of the United States, or any agency, instrumentality, or political subdivision of the foregoing or any obligation guaranteed by a state of the United States or any county or municipality of any state of the United States; *Provided,* That such obligations have a credit rating within the top two rating bands of a nationally-recognized rating service (with any conflict in a rating resolved in favor of the lowest rating).

* * * * *

(7) Notes issued by bank holding companies or banks organized under the laws of the United States or any state thereof or notes issued by United States branches of foreign banks, *Provided,* That the notes have a credit rating within the top two rating bands of a nationally-recognized rating service (with any conflict in a rating resolved in favor of the lowest rating) and that they are payable in the United States, and *Provided Further,* That the issuer is not an affiliate of the foreign bank pledging the note.

(8) Any asset determined by the FDIC to be acceptable.

(e) *Pledge agreement.* A foreign bank shall not pledge any assets unless a pledge agreement in form and substance satisfactory to the FDIC has been executed by the foreign bank and the depository. The agreement, in addition to other terms not inconsistent with the paragraph (e), shall give effect to the following terms:

(1) *Original pledge.* The foreign bank shall place with the depository assets of the kind described in § 346.19(d), having an aggregate value in the amount as required pursuant to § 346.19(b).

(2) *Additional assets required to be pledged.* Whenever the foreign bank is required to pledge additional assets for the benefit of the FDIC or its designees pursuant to § 346.19(b)(1), it shall place (within two (2) business days after the last day of the immediately preceding second or fourth calendar quarter, respectively, unless otherwise ordered) additional assets of the kind described in § 346.19(d), having an aggregate value in the amount required by the FDIC.

(3) *Substitution of assets.* The foreign bank, at any time, may substitute any assets for pledged assets, and, upon such substitution, the depository shall promptly release any such assets to the foreign bank. *Provided,* That the foreign bank pledges assets of the kind described in § 346.19(d) having an aggregate value not less than the value of the pledged assets for which they are substituted and certified as such by the foreign bank and the FDIC has not by written notification to the foreign bank, a copy of which shall be provided to the depository, suspended or terminated the foreign bank's right of substitution.

(4) *Delivery of other documents.* Concurrently with the pledge of any assets, the foreign bank shall deliver to the depository all documents and instruments necessary or advisable to effectuate the transfer of title to any such assets and thereafter, from time to time, at the request of the FDIC, deliver to the depository any such additional documents or instruments.

(5) *Acceptance and safekeeping responsibilities of the depository.* (i) The depository shall accept and hold any assets pledged by the foreign bank pursuant to the pledge agreement for safekeeping free and clear of any lien, charge, right of offset, credit, or preference in connection with any claim the depository may assert against the foreign bank and shall designate any such assets as a special pledge for the benefit of the FDIC or its designees. The depository shall not accept the pledge of any such assets unless concurrently with such pledge the foreign bank delivers to the depository the documents and instruments necessary for the transfer of title thereto as provided in this part.

(ii) The depository shall hold any such assets separate from all other assets of the foreign bank or the depository. Such assets may be held in book-entry form but must at all times be segregated on the records of the depository and clearly identified as assets subject to the pledge agreement.

(6) *Reporting requirements of the branch and the depository*—(i) *Initial reports.* Upon the original pledge of assets as provided in § 346.19(e)(1), the depository shall provide to the foreign bank and to the regional director of the FDIC region in which the branch is located a written report in the form of a receipt identifying each asset pledged and specifying in reasonable detail with respect to each such asset the complete title, interest rate, series, serial number (if any), principal amount (par value), maturity date and call date; and the foreign bank shall provide to the regional director of the FDIC region in which the branch is located a written report certified as correct by the foreign bank which sets forth the value of each pledged asset and the aggregate value of all such assets, and which states that the aggregate value of all such assets is the amount required pursuant to § 346.19(b) and that all such assets are of the kind described in § 346.19(d).

(ii) *Semiannual reports.* Within ten (10) calendar days after the end of the second and fourth calendar quarters: (A) The depository shall provide to the regional director of the FDIC region in which the branch is located a written report specifying in reasonable detail with respect to each asset currently pledged (including any asset pledged to satisfy the requirements of § 346.19(b)(3) and identified as such), as of two business days after the end of each of the specified calendar quarters, the complete title, interest rate, series, serial number (if any), principal amount (par value), maturity date, and call date, *Provided,* That if no substitution of any asset has occurred during the reporting period, the report need only specify that no substitution of assets has occurred; and (B) the foreign bank shall provide as of two business days after the end of each of the specified calendar quarters to the regional director of the FDIC region in which the branch is located a written report certified as correct by the foreign bank which sets forth the value of each pledged asset and the aggregate value of all such assets, which states that the aggregate value of all such assets is the amount required pursuant to § 346.19(b) and that all such assets are of the kind described in § 346.19(d), and which states the average of the liabilities of each branch of the foreign bank computed in the manner and for the period prescribed in § 346.19(b).

(iii) *Additional reports.* The foreign bank shall, from time to time, as may be required, provide to the regional director of the FDIC region in which the branch is located a written report in the form specified containing the information requested with respect to any asset then currently pledged.

(7) *Access to assets.* With respect to any asset pledged pursuant to the pledge agreement, the depository will provide representatives of the FDIC or the foreign bank access (during regular business hours of the depository and at the location where any such asset is held, without other limitation or qualification) to all original instruments, documents, books, and records evidencing or pertaining to any such asset.

(8) *Release upon the order of the FDIC.* The depository shall release to the foreign bank any pledged assets, as specified in a written notification of the regional director of the FDIC region in which the branch is located, upon the terms and conditions provided in such notification, including without limitation the waiver of any requirement that any assets be pledged by the foreign bank in substitution of any released assets.

(9) *Release to the FDIC.* Whenever the FDIC is obligated under section 11(f) of the Federal Deposit Insurance Act (12 U.S.C. 1821f)) to pay insured deposits of an insured branch, the FDIC by written certification shall so inform the depository; and the depository, upon receipt of such certification, shall thereupon promptly release and transfer title to any pledged assets to the FDIC or release such assets to the foreign bank, as specified in the certification. Upon release and transfer of title to all pledged assets as specified in the certification, the depository shall be discharged from any further obligation under the pledge agreement.

(10) *Interest earned on assets.* The foreign bank may retain any interest earned with respect to the assets currently pledged unless the FDIC by written notice prohibits retention of interest by the foreign bank, in which case the notice shall specify the disposition of any such interest.

(11) *Expenses of agreement.* The FDIC shall not be required to pay any fees, costs, or expenses for services provided by the depository to the foreign bank pursuant to, or in connection with, the pledge agreement.

(12) *Substitution of depository.* The depository may resign, or the foreign bank may discharge the depository, from its duties and obligations under the pledge agreement by giving at least sixty (60) days' written notice thereof to the other party and to the regional director of the FDIC region in which the branch is located. The FDIC, upon thirty (30) days' written notice to the foreign bank and the depository, may require the foreign bank to dismiss the depository if the FDIC in its discretion determines that the depository is in breach of the pledge agreement. The depository shall continue to function as such until the appointment of a successor depository becomes effective, and the depository has released to the successor depository the pledged assets and documents and instruments to effectuate transfer of title in accordance with the written instructions of the foreign bank as approved by the FDIC. The appointment by the foreign bank of a successor depository shall not be effective until the FDIC has approved in writing the successor depository and a pledge agreement in form and substance satisfactory to the FDIC has been executed.

(13) *Waiver of terms.* The FDIC may by written order waive compliance by the foreign bank or the depository with any term or condition of the pledge agreement.

12. Section 346.20 is revised to read as follows:

§ 346.20 Asset maintenance.

(a) An insured branch of a foreign bank shall maintain on a daily basis eligible assets in an amount not less than 106% of the preceding quarter's average book value of the branch's liabilities or, in the case of a newly-established branch, the estimated book value of its liabilities at the end of the first full quarter of operation, exclusive of liabilities due to the foreign bank's head office, other branches, agencies, offices or wholly owned subsidiaries. The Director of the Division of Bank Supervision or his designee may impose a computation of total liabilities on a daily basis in those instances where it is found necessary for supervisory purposes. The Board of Directors may require that a higher ratio of eligible assets be maintained if the financial condition of the branch warrants such action. Among the factors which will be considered in requiring a higher ratio of eligible assets are the concentration of risk to any one borrower or group of related borrowers, or the concentration of transfer risk to any one country including the country in which the foreign bank's head office is located Eligible assets shall be payable in United States dollars or in a currency freely convertible into United States dollars.

(b) In determining eligible assets for the purposes of compliance with paragraph (a) the branch shall exclude the following:

(1) Any asset due from the foreign bank's head office, other branches, agencies, offices or affiliates;

(2) Any asset designated "Other Transfer Risk Problem" or classified "Substandard," "Doubtful," "Value Impaired," or "Loss" in the most recent state or federal examination report;

(3) Any deposit of the branch in a bank unless the bank has executed a valid waiver of offset agreement;

(4) Any asset not supported by sufficient credit information to allow a review of the asset's credit quality, as determined at the most recent state or federal examination;[6]

(5) Any asset not in the branch's actual possession unless the branch holds title to such asset and the branch maintains records sufficient to enable independent verification of the branch's ownership of the asset, as determined at the most recent state or federal examination;

(6) Any intangible asset.

(c) A foreign bank which has more than one insured branch in a state may treat all of its insured branches in the same state as one entity for purposes of compliance with paragraph (a) of this

[6] Whether an asset has sufficient credit information will be a function of the size of the borrower and the location within the foreign bank of the responsibility for authorizing and monitoring extensions of credit to the borrower. For large, well known companies, when credit responsibility is located in an office of the foreign bank outside the insured branch, the branch must have adequate documentation to show that the asset is of good quality and is being supervised adequately by the bank. In such cases, copies of periodic memoranda that include an analysis of the borrower's recent financial statements and a report on recent developments in the borrower's operations and borrowing relationships with the bank generally would constitute sufficient information. For other borrowers, periodic memoranda must be supplemented by information such as copies of recent financial statements, recent correspondence concerning the borrower's financial condition and repayment history, credit terms and collateral, data on any guarantors, and where necessary, the status of any corrective measures being employed.

Subsequent to the determination that an asset lacks sufficient credit information, an insured branch may not include the amount of that asset among eligible assets until the FDIC determines that sufficient documentation exists. Such a determination may be made either at the next federal examination, or upon request of the branch, by the regional director of the FDIC region in which the branch is located.

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section and shall designate one branch to be responsible for maintaining the records of the branches' compliance with this section.

(d) The average book value of the branch's liabilities for a quarter shall be, at the branch's option, either an average of the balances as of the close of business for each day of the quarter or an average of the balances as of the close of business on each Wednesday during the quarter. Quarters end on March 31, June 30, September 30, and December 31 of any given year. For days on which the branch is closed, balances from the previous business day are to be used. Calculations of the average book value of the branch's liabilities for a quarter shall be retained by the branch until the next federal examination.

§ 346.21 [Removed and Reserved]

13. Section 346.21 is removed and reserved.

§ 346.23 [Removed]

14. Section 346.23 is removed.

Appendix A to Part 346—[Removed]

15. Appendix A to Part 346 is removed.

By Order of the Board of Directors.

Dated at Washington, DC, this 7th day of October, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88-23087 Filed 10-19-88; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-141-AD]

Airworthiness Directives; Aerospatiale Model ATR-42 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to Aerospatiale Model ATR-42 series airplanes, which would require the installation of screws and nuts with two separate locking devices in the forward and aft quadrant cable stops in the rudder control system. This proposal is prompted by reports that the single locking device on the cable stop retention screw and nut in the rudder control system is inadequate in the event of a single failure. A dual locking system has been shown to be necessary to provide an adequate level of safety. This condition, if not corrected, could lead to loss of control of the airplane while in flight or landing.

DATE: Comments must be received no later than December 16, 1988.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-141-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Aerospatiale 216 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 431-1565. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-141-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168.

Discussion

The Direction Générale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on Aerospatiale Model ATR-42 series airplanes.

It has been determined that an existing single locking device in the cable stop retention screw and nut in the rudder control system, as installed on the Model ATR-42, is not adequate in the event of a single failure. This condition, if not corrected, could lead to loss of control of the airplane while in flight or landing.

Aerospatiale has issued Service Bulletin ATR-42-27-0027, Revision 2, dated June 27, 1988, which describes procedures for the installation of screws and nuts having two separate locking devices in the rudder control system forward and aft quadrant cable stops. DGAC France has classified this service bulletin as mandatory, and has issued French Airworthiness Directive 88-070-011(B), dated May 11, 1988, to address this subject.

This airplane model is manufactured in France and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require the installation of two separate locking devices on the rudder control cables, in accordance with the service bulletin previously mentioned.

It is estimated that 35 airplanes of U.S. registry would be affected by this AD, that it would take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $5,600.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and its is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($160). A copy of a draft regulatory evaluation perpared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation Safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Aerospatiale: Applies to Model ATR-42 series airplanes, as listed in Aerospatiale Service Bulletin ATR42-27-0027, Revision 2, dated June 27, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent loss of rudder control, accomplish the following:

A. Within 60 days after the effective date of this AD, install screws and nuts having two separate locking devices in the forward and aft quadrant cable stops in the rudder control system, in accordance with Aerospatiale Service Bulletin ATR42-27-0027, Revision 2, dated June 27, 1988.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufactuer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on October 12, 1988.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-24249 Filed 10-19-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-86-AD]

Airworthiness Directives; Boeing Model 757-200 Series Airplanes Equipped With Pratt and Whitney PW2000 Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 757-200 series airplanes equipped with Pratt and Whitney PW200 engines, which would require replacing five tube assemblies in the oil pressure indicating system of each engine with flexible hose assemblies. This proposal is prompted by reports of preload in tube assemblies causing tube or component cracking, with resulting loss of engine oil. This condition, if not corrected, could lead to inflight engine shutdowns and may result in damage to the engine.

DATE: Comments must be received no later than December 12, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-86-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Michael K. McRae, Propulsion Branch, ANM-140S; telephone (206) 431-1972. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-86-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

There have been reports that, in the engine oil pressure indicating system on certain Boeing Model 757 series airplanes equipped with Pratt and Whitney PW2000 engines, the tube, bracket, and other tolerance build-ups can result in preloading of the tube assemblies, which may cause tube or component cracking. The resulting oil loss has resulted in eleven engine inflight shudowns, with one of these engines sustaining substantial damage.

The FAA has reviewed and approved Boeing Service Bulletin 757-79-0005, dated May 26, 1988, which describes procedures to gain access to and remove

the five tube assemblies involved; replace these tube assemblies with flexible hose assemblies; and perform leak checks and functional tests of the new configuration.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require that the five tube assemblies in the engine oil pressure indicating system be replaced with flexible hose assemblies, in accordance with the service bulletin previously mentioned.

It is estimated that 59 airplanes of U.S. registry would be affected by this AD, that it would take approximately 14.5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $34,220.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Boeing Model 757 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

BOEING: Applies to Model 757-200 series airplanes through line number 164, equipped with Pratt and Whitney PW2000 series engines, certificated in any category. Compliance required within one year after the effective date of this AD, unless previously accomplished.

To prevent engine inflight shutdown and engine damage due to loss of engine oil resulting from cracked oil pressure indicator tube assemblies, accomplish the following:

A. Remove five oil pressure indication system tube assemblies and replace them with flexible hose assemblies, in accordance with Boeing Service Bulletin 757-79-0005, dated May 28, 1988.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on October 6, 1988.

Steven E. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-24250 Filed 10-19-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-116-AD]

Airworthiness Directives; CASA Model C-212 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to all CASA Model C-212 series airplanes, which would require structural inspections of the mechanical wing flap control system and repair or replacement, as necessary. This proposal is prompted by a structural reevaluation of the entire flap control system, which identified certain significant structural components which need to be inspected for damage, including corrosion and cracking, to assure the continued airworthiness of the flap system. This condition, if not detected and corrected, could lead to corrosion or cracking, which could compromise the structural integrity of the flap system.

DATE: Comments must be received no later than December 12, 1988.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-116-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Contrucciones Aeronautics S.A. Getafe, Madrid, Spain. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Art Scholes, Standardization Branch, ANM-113; telephone (206) 431-1979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-116-AD, 17900 Pacific Highway South, C-68966, Seattle, Washinton, 98168.

Discussion

The Direccion General de Aviacion Civil (DGAC), which is the airworthiness authority of Spain, has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which may exist in the flap control system on CASA Model C-212 series Airplanes.

The manufacturer, CASA, has recently conducted a structural reassessment of the flap system, using engineering evaluation techniques. In order to evaluate the impact of damage, including corrosion and cracking, with respect to maintaining the safe design of the CASA Model C-212 airplane wing flap control system, CASA developed criteria and guidelines for: (a) Selecting the principal structure elements (PSE) which are candidates for supplemental inspection by using the latest engineering analysis techniques; and (b) analyzing existing inspection programs. This is a supplement to the current normal maintenance inspection programs to detect a damaged contition, and provides detailed non-destructive inspection (NDI) procedures to supplement the operator's existing program, as necessary. Fatigue damage, if not detected and corrected, could compromise the structural integrity of the flap system.

The DGAC has approved CASA Document COM. 212-206, Revision 1, dated May 20, 1988, which describes procedures for the Supplemental Structural Inspection (SSI) of the Model C-212 mechanical flap control system. The DGAC has classified this document as mandatory. The components to be inspected are divided into five PSE's: (1) Center bellcrank, (2) intermediate bellcrank at Station 1530 Left, (3) intermediate bellcrank at Station 1530 right, (4) control rod ends, and (5) inner control rods.

In order to implement the SSI, each operator must compare its current structural maintenance program to the SSI requirements specified in CASA Document COM. 212-206, Revision 1, dated May 20, 1988. If the current inspections equal or exceed the SSI requirements, no additional supplemental inspection program would be required for that area in the wing flap control system. Otherwise, supplemental inspections in the form of more frequent inspections or more sensitive NDI methods, or both, would be necessary in addition to the operator's normal maintenance program.

In developing the SSI, the manufacturer and operators reviewed the operation and maintenance practices of existing maintenance programs with respect to the basic requirements of the SSI program. As a result, the CASA SSI allows affected operators to take credit for maintenance already being performed and gives the operators flexibility in revising their maintenance programs to incorporate this supplemental program for their airplanes.

The repetitive inspection interval proposed by this AD action would be more frequent than that called out in the CASA Document COM. 212-206. The repetitive inspection interval recommended by CASA is 20,000 landings and only a portion of the fleet is recommended to be inspected. The FAA has determined that the flap systems on all CASA C-212 series airplanes, being damage-tolerant by design, need to be inspected on a yearly basis to provide an acceptable method of detecting damage of any sort which may adversely affect the required level of safety. Based on the average number of landings per year for the U.S.-registered fleet, the FAA has determined that this inspection must be repeated at least every 4,000 landings to ensure the structural integrity of the CASA C-212 wing flap control system.

This airplane model is manufactured in Spain and Indonesia and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations, and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require supplemental structural inspections, and repair or replacement, as necessary, in accordance with the CASA document described above.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

It is estimated that 61 airplanes of U.S. registry would be affected by this AD, that it would take approximately 11 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $26,840. (This supplemental inspection would be repeated every 4,000 landings at this same cost.)

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and reponsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, CASA Model C-212 series airplane are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

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PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

CASA: Applies to all CASA Model C-212 series airplanes, certificated in any category. Compliance is required as indicated below, unless previously accomplished.

To ensure continuing structural integrity of the wing flap control system, accomplish the following:

A. Within six months after the effective date of this AD, incorporate a revision into the FAA-approved maintenance inspection program that will provide for inspection of the wing flap control system in accordance with CASA Document COM. 212-206, Revision 1, dated May 20, 1988. The non-destructive inspection techniques set forth in the CASA C-212 non-destructive procedures (27-50-01 through 27-50-05) provide acceptable methods for accomplishing the inspections required by this AD. All inspection results, positive or negative, must be reported to CASA Product Support, in accordance with instructions in the CASA Flap Control System Inspection Document. This Supplemental Structural Inspection (SSI) is to be repeated at intervals not to exceed 4,000 landings.

B. Cracked structures or damaged components detected during the inspection required by paragraph A., above, must be replaced prior to further flight, in accordance with CASA Document Com. 212-206, Revision 1, dated May 20, 1988.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Contrucciones Aeronauticas S.A., Getafe, Madrid, Spain. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on October 6, 1988.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-24231 Filed 10-19-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-144-AD]

Airworthiness Directives; Fokker Model F-27 Series Airplanes in Mark 500 Configuration

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Fokker Model F-27 series airplanes, which would require a one-time inspection of the upper fuselage cableloom for chafing and insufficient clamping, and repair, if necessary. This proposal is prompted by reports of chafing of the electrical wiring due to insufficient clamping of the cableloom and interference between the cableloom and the cable ducting. This condition, if not corrected, could lead to loss of electrical power and could create a potential fire hazard.

DATE: Comments must be received no later than December 16, 1988.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-144-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Offie, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 431-1978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing data for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-144-AD, 17900 Pacific Highway South, C-68966, Washington 98168.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority of the Netherlands, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition, which may exist on Fokker Model F-27 series airplanes in Mark 500 configuration.

There have been reports of chafing of the cableloom wiring against the cable ducting, due to insufficient clamping. This condition, if not corrected, could lead to loss of electrical power and could create a potential fire hazard.

Fokker has issued Service Bulletin F27/24-77, dated June 7, 1988, which describes procedures for a one-time inspection for chafing and insufficient clamping of the upper fuselage cableloom, and repair, if necessary. The RLD has classified this service bulletin as mandatory, and has issued Netherlands Airworthiness Directive BLA No. 88-40, dated June 7, 1988.

This airplane model is manufactured in the Netherlands and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require a one-time inspection of the upper fuselage cableloom for defective wiring, and repair, if necessary, in accordance with the service bulletin previously mentioned.

It is estimated that 14 airplanes of U.S. registry would be affected by this AD, that it would take approximately 12 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $6,720.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed legislation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($480). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Fokker: Applies to Model F-27 series airplanes, Serial Numbers 10623 through 10662, in Mark 500 configuration, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent a potential fire hazard due to loss of electrical power, accomplish the following:

A. Within 60 days after the effective date of this AD, perform a one-time inspection of the upper fuselage cableloom for chafing and insufficient clamping, and repair, if necessary, in accordance with Fokker Service Bulletin F27/24-77, dated June 7, 1988.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-133, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certificate Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on October 12, 1988.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-24254 Filed 10-19-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-137-AD]

Airworthiness Directives; Fokker Model F-28 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to Fokker Model F-28 series airplanes, which would require relocation of the instrument panel lighting ballast transformers. This proposal is prompted by reports of the transformers overheating due to inadequate ventilation. This condition, if not corrected, could lead to the transformers overheating, causing smoke in the cockpit and creating a potential fire hazard.

DATE: Comments must be received no later than December 15, 1988.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-137-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Fokker Aircraft, USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 431-1978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-137-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority of the Netherlands, has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which may exist on Fokker Model F-28 series airplanes. There have been reports of overheating of the instrument panel lighting transformers due to inadequate ventilation. This condition, if not corrected, could lead to the transformers overheating, causing smoke in the cockpit and creating a potential fire hazard.

Fokker has issued Service Bulletin No. F28/33-34, dated June 1, 1988, which describes procedures for relocation of the ballast transformers from the glareshield and the right hand cockpit sidewall to the left-hand cockpit sidewall where better ventilation will reduce the risk of overheating. The RLD has classified this service bulletin as mandatory, and has issued Netherlands Airworthiness Directive BLA No. 88-31, dated May 20, 1988.

This airplane model is manufactured in the Netherlands and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the Applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require relocation of the ballast transformers from the glareshield panel and the right hand cockpit sidewall to the left hand cockpit sidewall, in accordance with the service bulletin previously mentioned.

It is estimated that 51 airplanes of U.S. registry would be affected by this AD, that it would take approximately 24 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The estimated cost for parts is $600. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $76,500.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the critiera of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model F-28 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Fokker: Applies to Model F-28 series airplanes, Serial Numbers 11003 through 11231, 11991, and 11992, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent a potential fire hazard in the cockpit, accomplish the following:

A. Within 60 days after the effective date of this AD, relocate the instrument lighting ballast transformers from the glareshield panel and the right hand cockpit sidewall to the left-hand cockpit sidewall, in accordance with Fokker Service Bulletin No. F28/33-34, dated June 1, 1988.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Fokker Aircraft, USA, Inc., 199 N. Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on October 11, 1988.

Steven E. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-24253 Filed 10-19-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-126-AD]

Airworthiness Directives; McDonnell Douglas Model DC-9 Series, Model DC-9-80 Series, Model MD-88, and C-9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to all McDonnell Douglas Model DC-9 series, Model DC-9-80 series, Model MD-88, and C-9 (Military) series airplanes, which would require inspection of the rudder actuator for internal hydraulic fluid leakage, and replacement, if necessary, to ensure that degraded actuators are removed from service. This proposal is prompted by reports of degraded actuators. This condition, if not corrected, could lead to reduced rudder authority and uncontrollable airplane sideslip, should an engine failure occur at takeoff.

DATE: Comments must be received no later than December 12, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-126-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Stacho, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806; telephone (213) 988-5338.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-126-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168.

Discussion

Operators of McDonnell Douglas Model DC-9/MD-88 series airplanes have reported instances of yaw oscillation in flight. Investigation has revealed the presence of premature piston ring wear and/or failure of the face seals in the rudder power actuator. These conditions cause internal hydraulic fluid leakage (by-pass) and degradation of rudder authority. The problem has been reported on one airplane with as few as 617 flight hours since overhaul of the rudder actuator. Reduced rudder authority may result in an uncontrollable sideslip should an engine failure occur on takeoff.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin A27-291, Revision 3, dated August 24, 1988, which describes inspection of the rudder actuator for internal leakage at initial and repetitive intervals, based on the rudder hydraulic pressure necessary to maintain adequate flight control on takeoff considering an engine failure.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require initial and repetitive inspections of the rudder actuator for internal leakage in accordance with the service bulletin previously mentioned. The initial inspection for the DC-9-10, -20, and -87 series airplanes is proposed as 500 flight hours. The initial inspection for the DC-9-30, -40, -50, -80, and MD-88 series airplanes is proposed as 1000 flight hours. Repetitive inspections are also proposed to maintain the airplane in an airworthy condition. Rudder actuators which do not meet the internal leakage check must be replaced with ones within internal leakage limits.

The premature high internal leakage appears to be a function of the piston barrel finish/ring seal material and McDonnell Douglas is currently testing design changes to correct this situation. When these design changes are available, the FAA may consider further rulemaking to provide for terminating action for the inspection requirements of this proposed AD.

It is estimated that 870 airplanes of U.S. registry would be affected by this AD, that it would take approximately 10 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. (Replacement of the rudder actuator, if necessary, would require 13 manhours to accomplish). Based on these figures, the total cost of this AD on U.S. operators is estimated to be $348,000 for the initial required inspection.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among various levels of government. Therefore, in accordance with the Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any Model DC-9 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pu. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-9 series, Model DC-9-80 series, Model MD-88, and C-9 (Military) series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent uncontrollable airplane sideslip due to an ineffective rudder actuator, accomplish the following:

A. For Model DC-9-11, -12, -13, -14, -15, -15F, -21, and -87 series airplanes: Within 500 flight hours after the effective date of this airworthiness directive (AD), unless already accomplished within the last 1000 flight hours, inspect the rudder actuator for internal hydraulic fluid leakage in accordance with McDonnell Douglas Alert Service Bulletin A27-291, Revision 3, dated August 24, 1988.

B. For Model DC-9-31, -32, -32F, -33, -34, -34F, -41, -51, -51, -82, -83, and MD-88 series airplanes: Within 1000 flight hours after the effective date of the AD, unless already accomplished within the last 1500 flight hours, inspect the rudder actuator for internal hydraulic fluid leakage, in accordance with

McDonnell Douglas Alert Service Bulletin, A27-291, Revision 3, dated August 24, 1988.

C. If the rudder internal hydraulic fluid leakage is within the limits established in McDonnell Douglas Alert Service Bulletin A27-291, Revision 3, dated August 24, 1988, repeat the inspection specified in paragraph A. or B., above, as follows:

1. For those airplanes specified in paragraph A., at interval not to exceed 1500 flight hours.

2. For those airplanes specified in paragraph B., at intervals not to exceed 2500 flight hours.

D. Any rudder actuator which exceeds the internal hydraulic fluid leakage limit in McDonnell Douglas Alert Service Bulletin A27-291, Revision 3, dated August 24, 1988, must be replaced, prior to further flight, with a rudder actuator within those limits.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through a FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of the AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

Issued in Seattle, Washington, on October 6, 1988.

Steven E. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-24256 Filed 10-19-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-ANE-33]

Airworthiness Directives; Rolls-Royce (R-R) plc RB211-22B, -524, -524B, -524B2, -524B3, and -524C2 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend an existing Airworthiness Directive (AD) to identify additional low pressure turbine (LPT) stage 2 vane nozzle assemblies, installed on certain R-R RB211 engines, for modification in accordance with the manufacturer's published instructions. The proposal is needed to prevent an uncontained LPT stage 1 disk failure.

DATE: Comments must be received on or before November 22, 1988.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 88-ANE-33, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: "Docket No. 88-ANE-33".

Comments may be inspected at the New England Region, Office of the Assistant Chief Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service bulletin (SB) may be obtained from Rolls-Royce plc, Technical Publication Department, P.O. Box 31, Derby DE2 8BJ, England.

A copy of the SB is contained in Rules Docket No. 88-ANE-33, in the Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Chris Gavriel, Engine Certification Branch, ANE-141, Engine Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7084.

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before taking action on the proposed rule. The proposal contained in the notice may be changed in the light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 88-ANE-33". The postcard will be date/time stamped and returned to the commenter.

This notice proposes to amend AD 87-23-04, Amendment 39-5753 (52 FR 41973; November 2, 1987), by identifying additional LPT stage 2 vane nozzle assemblies requiring modification in accordance with the requirements of R-R SB RB211-72-6301, Revision 5, dated May 13, 1988. On October 7, 1987, Amendment 39-5752 was issued requiring modification of certain LPT stage 2 vane nozzle assemblies. The engine manufacturer has identified additional assemblies requiring modification as listed in Revision 5 of the SB. Therefore, a proposal to amend AD 87-23-04, Amendment 39-5753 (52 FR 41973; November 2, 1987) is being issued to include the additional assemblies.

R-R SB RB211-72-6301, Revision 5, dated May 13, 1988, adds descriptive information to identify the various standards of existing stage 2 vane nozzle assemblies in need of modification. This descriptive information now identifies stage 2 vane nozzle assemblies Part Numbers (P/N) LK58346, LK58518, LK58553, LK58518, LK58358, LK55447, LK55420, LK54276, LK55452, and LK59002, in addition to P/N's LK53382, LK53331, and LK53333, identified in AD 87-23-04. AD 87-23-04 issuance was prompted by an uncontained LPT stage 1 disk rupture in service which was precipitated by an LPT stage 2 vane nozzle assembly failure.

Since this condition is likely to exist or develop on other engines of the same type design, the proposed amendment to the AD would require modification of LPT stage 2 vane nozzle assemblies in accordance with R-R SB RB211-72-6103, Revision 5, dated May 13, 1988.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

The FAA has determined that this proposed regulation involves approximately 150 RB211-22B, -524, -524B2, -524B3, and -524C2 engines (domestic fleet) at an approximate total cost of $675,000. It has also been determined that few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected since the proposed rule affects only operators using L-1011 and Boeing 747 series aircraft in which the RB211 engines are installed, none of which are believed to be small entities. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT".

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a) 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85.

§ 39.13 [Amended]

2. By amending § 39.13, AD 87-23-04, Amendment 39-5753 (52 FR 41973; November 2, 1987), by revising it to read as follows:

Rolls-Royce plc: Applies to Rolls-Royce plc (R-R) RB211-22B, -524, -524B, -524B2, -524B3, and -524C2 turbofan engines.

Compliance is required as indicated, unless already accomplished.

To prevent low pressure turbine (LPT) stage 1 disk uncontained failure, accomplish the following:

(a) Modify LPT stage 2 vane nozzle assemblies Part Numbers (P/N) LK53382, LK53331, LK53333, LK58346, LK58518, LK58553, LK58518, LK58358, LK55447, LK55420, LK54276, LK55452, and LK59002, in accordance with the Accomplishment Instructions of R-R Service Bulletin (SB) RB.211-72-6301, Revision 5, dated May 13, 1988, at the next shop visit of the LPT module, but not later that June 30, 1989.

Note.—For the purpose of this AD, an LPT module shop visit is defined as separation of the LPT rotor assembly from the LPT case/vane nozzle assembly as necessitated by (1) its condition, or (2) a requirement for scheduled maintenance.

(b) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(c) Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

(d) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, may adjust the compliance time specified in this AD.

Should this proposed rule be adopted, the FAA will request the approval of the Office of the Federal Register to incorporate by reference the manufacturer's SB identified and described in this document.

Issued in Burlington, Massachusetts, on October 5, 1988.

Arthur J. Pidgeon,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 88-24256 Filed 10-19-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-134-AD]

Airworthiness Directives; SAAB-Scania Model SF-340A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to SAAB-Scania Model SF-340A series airplanes, which would require installation of water traps and additional insulation pads in the main and standby pilot tubes. This proposal is prompted by reports of the intrusion of rain water into the pitot system, and the subsequent formation of ice causing a blockage in the pitot line. This condition, if not corrected, could lead to erroneous airspeed readings.

DATE: Comments must be received no later than December 15, 1988.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-134-AD 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from SAAB-Scania, Product Support, S-58188, Linkoping, Sweden. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 431-1978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules

Docket No. 88-NM-134-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority of Sweden, has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which may exist on SAAB-Scania Model SF-340A series airplanes. There have been reports of the intrusion of rain water into the pitot system, and the subsequent formation of ice causing a blockage in the pitot line. This condition, if not corrected, could lead to erroneous airspeed readings.

SAAB-Scania has issued Service Bulletin SF340-34-056, dated August 1, 1988, which describes procedures for the installation of water traps and additional insulation pads in the main and standby pitot systems. The LFV has classified this service bulletin as mandatory.

This airplane model is manufactured in Sweden and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require installation of water traps and additional insulation pads in the main and standby pitot systems, in accordance with the service bulletin previously mentioned.

It is estimated that 68 airplanes of U.S. registry would be affected by this AD, that it would take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The cost of required parts is estimated to be $175 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $22,780.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($335). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation Safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

Saab-Scania: Applies to Model SF-340A series airplanes, serial numbers -003 through -128, inclusive, certificated in any category. Compliance required within 30 days after the effective date of this AD, unless previously accomplished.

To prevent erroneous airspeed readings due to ice in the pitot system, accomplish the following:

A. Install water traps and insulation pads in the main and standby pitot systems, in accordance with SAAB-Scania Service Bulletin SF340-34-056, dated August 1, 1988.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to SAAB-Scania, Produce Support, S-58188, Linkoping, Sweden. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on October 11, 1988.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-24257 Filed 10-19-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-143-AD]

Airworthiness Directives; Short Brothers SD3-30 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to Shorts Model SD3-30 series airplanes, which would require replacement of the nose landing gear pintle pins with new pins. This proposal is prompted by fatigue testing of the nose landing gear pintle pins which revealed that these pintle pins have a limited service life and must be replaced upon accumulation of 30,000 landings. This condition, if not corrected, could lead to collapse of the nose landing gear.

DATES: Comments must be received no later than December 16, 1988.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-143-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Short Brothers PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 431-1565. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-143-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which may exist on certain Shorts Model SD3-30 series airplanes. Fatigue testing of the nose landing gear has revealed that the pintle pins have a limited service life and should be replaced by new pins prior to the accumulation of 30,000 landings. This condition, if not corrected, could lead to the collapse of the nose landing gear.

Short Brothers has issued Service Bulletin SD330-32-119, dated February 1988, which describes replacement of the nose landing gear pintle pins, part numbers 18109-3 and 18110-3, with new pins, part numbers 18109-5 and 18110-5; and references Menasco Service Bulletin Number 32-69, dated August 11, 1981, for accomplishment instructions. The United Kingdom CAA has classified this service bulletin as mandatory.

This airplane mode is manufactured in United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require replacement of the nose landing gear pintle pins, in accordance with the service bulletin previously mentioned.

It is estimated that 52 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The estimated cost for parts is $780. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $43,000.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of governments. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($860). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Short Brothers, PLC: Applies to Model SD3-30 series airplanes, equipped with Menasco nose landing gear, Part No. 18001, having nose landing gear Serial Number 017 through 097, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent collapse of the nose landing gear, accomplish the following:

A. Prior to the accumulation of 30,000 landings on the nose landing gear pintle pins, or within the next 250 landings after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 30,000 landings, replace the nose landing gear pintle pins, in accordance with Shorts Service Bulletin SD330-32-119, dated February 1988.

Note.—Shorts Service Bulletin SD330-32-119 references Menasco Service Bulletin 32-69, dated August 11, 1981, for instructions for accomplishing the pintle pin replacement.

B. An alternative means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Short Brothers PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on October 12, 1988.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-24258 Filed 10-19-88; 8:45 am]

BILLING CODE 4910-13-M

VOL 53 ISS 203 OCT 20 1988 UMI

14 CFR Part 71

[Airspace Docket No. 88-AWP-17]

Proposed Revision to Lihue, HI, Control Zone and Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Lihue, HI, control zone and transition area to provide controlled airspace for aircraft executing published instrument approach procedures to the Lihue Airport.

DATE: Comments must be received on or before November 25, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace and Procedures Branch, AWP-530, Docket No. 88-AWP-17, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6W14, 15000 Aviation Boulevard, Lawndale, California.

An informal docket may also be examinted during normal business hours at the Office of the Manager, Airspace and Procedures Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Daniel K. Martin, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297-1642.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-AWP-17." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Airspace and Procedures Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace and Procedures Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to §§ 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the control zone and transition area at Lihue, HI. This proposal will provide controlled airspace for aircraft executing instrument approach procedures to the Lihue, HI, Airport. Sections 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Lihue, HI [Revised]

Within a 5-mile radius of Lihue Airport (lat. 21°58'45" N., long. 159°20'29" W.); beginning at lat. 21°54'50" N., long. 159°21'45" W; thence clockwise to 21°58'25" N., long 159°15'50" W.; to lat. 21°55'15" N., long 159°12'20" W.; to lat. 21°51'15" N., long 159°11'15" W.; to lat. 21°50'45" N., long. 159°22'00" W.; thence to point of beginning.

§ 71.181 [Amended]

3. Section 71.181 is amended as follows:

Lihue, HI [Revised]

That airspace extending upward from 700 feet above the surface beginning at lat. 21°58'25" N., long 159°15'50" W.; thence counter clockwise via the 5-mile radius circle of the Lihue Airport (lat. 21°58'45" N., long. 159°20'29" W.); to 22°03'10" N., long. 159°16'20" W.; to lat. 22°05'50" N., long 159°15'30" W.; thence clockwise via the 10-mile radius circle to lat. 21°55'15" N., long. 159°12'20" W.; to point of beginning.

Issued in Los Angeles, California, on October 3, 1988.

Jacqueline L. Smith,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 88-24259 Filed 10-19-88; 8:45 am]

BILLING CODE 4910-13-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Poison Prevention Packaging Requirements; Proposed Exemption of Certain Unflavored Aspirin Powders

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to amend its regulations to increase from 13 grains to 15.4 grains the permissible amount of aspirin per unit dose of unflavored aspirin powders allowed to be marketed in packages that are not child-resistant. Except for this exemption, child-resistant packaging would be required. This drug is proposed to be exempted because children are unlikely to ingest a toxic amount of the drug due to the unflavored powder form of the drug and due to a lack of adverse effects associated with the unflavored aspirin products that are presently exempted.

DATES: Comments on the proposal should be submitted not later than December 19, 1988.

ADDRESSES: Comments should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 528, 5401 Westbard Avenue, Bethesda, Maryland, telephone (301) 492-6800.

All public documents that the Commission has concerning this proceeding may be inspected at, or copies obtained from, the Office of the Secretary.

FOR FURTHER INFORMATION CONTACT: Virginia White, Project Manager, Office of Program Management and Budget, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 492-6554.

SUPPLEMENTARY INFORMATION:

A. Background

Among other substances, aspirin is subject to child-resistant packaging requirements issued under the Poison Prevention Packaging Act of 1970 ("the PPPA"), 15 U.S.C. 1471-1476. 16 CFR 1700.14(a)(10). Unflavored aspirin-containing drugs in powder form (other than those intended for pediatric use) are exempt from this requirement when packaged in unit doses containing not more than 13 grains of aspirin per unit dose. 16 CFR 1700.14(a)(1)(ii). This exemption was issued by the Commission in 1978 based on the low incidence of accidental ingestions of powdered aspirin by young children and on studies which indicate that young children are not likely to consume a toxic amount of the product. 43 FR 17330 (April 21, 1978). The Food and Drug Administration (FDA) has previously exempted powders containing 10 grains or less of aspirin in 1972 (37 FR 2864), based on the same findings.

By letter dated May 20, 1987, Block Drug Company, Inc., petitioned the Commission to amend the exemption for powdered aspirin to increase the permissible amount of aspirin per unit dose of the powdered product from 13 grains to 15.4 grains (15.4 grains = 1 gram). As justification for the exemption, the petitioner provided test data showing that the requested increase in aspirin content is not significant toxicologically and, therefore, does not present an increased risk to young children. The petitioner provided human experience data showing that young children are unlikely to ingest a sufficient quantity of aspirin powders to cause serious adverse effects. The petitioner also noted that its particular product is an adult-oriented product and is usually purchased for immediate consumption at the place of purchase, rather than for household storage and possible access by children.

B. Toxicity Data

While the mean lethal dose of aspirin is 20-30 grams in adults, toxic effects may occur when 10 or more grams are ingested over a period of 12-24 hours. Toxic symptoms include emesis, tinnitis (ringing in the ear), headache, hyperpnea (abnormally deep and rapid breathing), confusion or mania, and general convulsions. Death is usually due to respiratory failure or cardiovascular collapse.

The petitioner conducted acute oral toxicity tests in rats, which showed that the requested increase in aspirin content does not measurably increase the toxicity of the powder. The Commission's Directorate for Health Sciences concludes that the increase in aspirin content will not increase the likelihood of ingestion of a toxic dose. This is because the increase in aspirin is not toxicologically significant, the physical nature of the preparation still makes handling difficult, and the bitter taste will continue to deter children.

C. Injury Data

Human experience data show few cases of accidental ingestion of powdered aspirin drugs by young children and no serious symptoms associated with those ingestions. Data from the Food and Drug Administration's National Clearinghouse for Poison Control Centers for 1978 to 1984 show 20 reported ingestions of aspirin-containing analgesic powders by children under age five. There were no reported symptoms or hospital visits.

The Commission's Children and Poisoning (CAP) data base, for the period 1978 to September 1987, shows only one powdered aspirin ingestion by a child under age five treated in a hospital emergency room. The child was treated and released.

Neither the petitioner's adverse drug report files nor review of the literature by the Directorate for Health Sciences revealed any reports of toxic ingestions of powdered aspirin products by children under age five.

The petitioner believes that this safety record for unflavored aspirin powders is due to children's inability or unwillingness to consume toxic amounts of the drug, even if they gain access to it. The petitioner cited studies conducted with young children using unit-dose packets of unflavored aspirin powders. Results of the studies showed that the children were able to open one or more packets but, having done so, were unable to transport the powder to their mouths without spilling it. They were unable to pick up the powder with their fingers because of its texture; therefore, when directed to do so, the children tasted the powder by inserting their fingers in it and licking their fingers, or by licking it directly from the table. Having once experienced the unpleasant taste, however, the majority of the children refused to open more than one or two units of the products.

D. Action On The Petition

Human experience data show an absence of adverse effects associated with accidental ingestions of unflavored aspirin powders, and studies indicate that young children are not likely to consume a toxic amount of these products. The usage pattern of aspirin powders may provide an additional deterrent to accidental ingestion by young children. The petitioner reports that unit-dose packages of aspirin powders are primarily purchased for immediate consumption by adults at or near the place of purchase (*e.g.*, restaurants, gas stations, newsstands), rather than for household storage and possible access by young children.

After considering the available information, the Commission preliminarily concludes that the degree and nature of the hazard to children presented by the availability of the unflavored aspirin powders that are the subject of this petition are such that

special packaging is not required to protect children from serious personal injury or serious illness resulting from handling, or ingesting such substance. Accordingly, the Commission voted to grant the petition. Therefore, the Commission proposes below to amend 16 CFR 1700.14(a)(1) to increase the exemption from requirements for child-resistant packaging for unflavored aspirin powders (other than those intended by pediatric use) that are packaged in unit doses from 13 grains of aspirin per unit dose to 15.4 grains of aspirin per unit dose.

E. Regulatory Flexibility Certification

When an agency undertakes a rulemaking proceeding, the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*) generally requires the agency to prepare proposed and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities. The purpose of the Regulatory Flexibility Act, as stated in section 2(b) (5 U.S.C. 602 note), is to require agencies, consistent with their objectives, to fit the requirements of regulations to the scale of the businesses, organizations, and governmental jurisdictions subject to the regulations. Section 605 of the Act provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact of a substantial number of small entities.

The exemption proposed below will have the effect of giving the manufacturers of the exempted products the option of packaging their product in an additional manner. The difference in cost between child-resistant packaging and packaging permitted by the exemption is not believed to be significant. Accordingly, the Commission concludes that this exemption will not have any significant economic effect on a substantial number of small entities.

F. Environmental Considerations

The Commission's regulation's governing environmental review procedures state, at 16 CFR 1021.5(c)(3), that exemption of products from requirements for child-resistant packaging under the PPPA normally has little or no potential for affecting the human environment. The Commission does not foresee any special or unusual circumstances surrounding the exemption proposed below. For this reason, the Commission concludes that neither an environmental assessment nor an environmental impact statement is required in this proceeding.

G. Effective Date

Since the rule proposed below provides for an exemption, the provision of 5 U.S.C. 553(c) requiring a delay in the effective date is inapplicable. Accordingly, the rule shall become effective upon publication of the final rule in the **Federal Register**.

List of Subjects in 16 CFR Part 1700

Consumer protection, Drugs, Infants and children, Packaging and containers, Poison prevention, Toxic substances.

Conclusion

For the reasons given above, the Commission amends Title 16 of the Code of Federal Regulations to read as follows:

PART 1700—[AMENDED]

1. The authority citation for Part 1700 is revised to read as follows:

Authority: Pub. L. 91–601, secs. 1–9, 84 Stat. 1670–74, 15 U.S.C. 1471–76. Secs. 1700.1 and 1700.14 also issued under Pub. L. 92–573, sec. 30(a), 86 Stat. 1231.15 U.S.C. 2079(a).

2. Section 1700.14(a)(1)(ii) is revised to read as follows:

§ 1700.14 Substances requiring special packaging.

(a) * * *

(1) * * *

(ii) Unflavored aspirin-containing preparations in powder form (other than those intended for pediatric use) that are packaged in unit doses providing not more than 15.4 grains of aspirin per unit dose and that contain no other substance subject to the provisions of this section.

* * * * * *

Dated: October 14, 1988.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 88–24240 Filed 10–19–88; 8:45 am]

BILLING CODE 6355-01-M

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16 CFR Part 1700

Poison Prevention Packaging Requirements; Proposed Exemption of Certain Effervescent Acetaminophen Preparations

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to amend its regulations to increase the exemption from child-resistant packaging requirements for effervescent acetaminophen preparations from products containing 10 percent acetaminophen to products containing no more than 15 percent acetaminophen. Except for this regulation, child-resistant packaging would be required. This drug is proposed to be exempted because the effervescent property effectively deters young children from ingesting a harmful amount of the drug.

DATE: Comments on the proposal should be submitted not later than December 19, 1988.

ADDRESSES: Comments should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 528, 5401 Westbard Avenue, Bethesda, Maryland, telephone (301) 492–6800.

All public documents that the Commission has concerning this proceeding may be inspected at, or copies obtained from, the Office of the Secretary.

FOR FURTHER INFORMATION CONTACT: Virginia White, Project Manager, Office of Program Management and Budget, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 492–6504.

SUPPLEMENTARY INFORMATION:

A. Background

Among other substances, acetaminophen is subject to child-resistant packaging requirements issued under the Poison Prevention Packaging Act of 1970 ("the PPPA"), 15 U.S.C. 1471–1476. 16 CFR 1700.14(a)(16). Under the PPPA, all human oral drugs containing more than one gram of acetaminophen are required to be packaged in child-resistant packaging. 16 CFR 1700.14(a)(16). Effervescent [1] tablets or granules are exempt from this requirement if:

1. The dry tablet or granules contain less than 10 percent acetaminophen;
2. The tablet or granules have an oral LD-50 (mean lethal dose) of greater than five grams per kilogram; and
3. The measured dosage of the product, when placed in water, releases at least 85 milliliters of carbon dioxide per grain of acetaminophen in the dry form.

16 CFR 1700.14(a)(16)(i).

This exemption was issued by the Commission in 1981 based on information showing that the effervescent property of the product effectively deters young children from ingesting significant amounts and on the absence of reports of serious injury or serious illness due to ingestion of effervescent drugs by young children. 46 FR 13501 (February 23, 1981). The Commission has also exempted effervescent forms of aspirin products and potassium supplements based on these same considerations. 16 CFR 1700.14(a)(1)(i), 1700.14(a)(10)(vi).

In a letter dated April 12, 1987, Miles Laboratories, Inc. petitioned the Commission to amend the exemption for effervescent acetaminophen products to:

1. Increase the permissible amounts of acetaminophen in the dry tablet or granules from less than 10 percent to 15 percent,
2. Lower the permissible LD 50 of the product in rats from "greater than five grams per kilogram" to "five grams or greater per kilogram", and
3. Delete the requirement for specification of a minimum level of carbon dioxide release.

The petitioner submitted experimental data and human experience data to support granting the exemption. The petitioner also cited the exemption granted by the Commission in December, 1988, (51 FR 45311) for effervescent aspirin products. The petitioner stated that the requested exemption for effervescent acetaminophen products is identical to the exemption for effervescent aspirin products and is supported by similar data.

All of the exemptions for effervescent products are based on the finding that effervescent preparations have not been involved in serious injury or serious illness in young children and that they have not been involved in a large number of accidental childhood ingestions. In granting the exemptions, the Commission determined that the low incidence of ingestions and the absence of serious symptoms was due to the effervescent property of these drugs, which effectively deters young children from ingesting harmful amounts.

Effervescent products are designed to be ingested only after being dissolved in water. The chemical reaction between the product and water produces the carbon dioxide characteristic of effervescent products. Being hygroscopic (attracting water), the dry product, if placed directly in the mouth, will immediately react with saliva producing a tingling sensation and a foaming action which tends to cause gagging.

Because effervescent analgesic tablets are large, a child would have to chew the tablets in order to swallow them. The chewing action would increase the effervescent reaction and unpleasant sensation in the child's mouth. Any particles swallowed would produce carbon dioxide in the stomach causing repeated belching, and this would discourage further attempts at ingestion.

A child would be unlikely to ingest a large number of tablets dissolved in water because of the time and the large quantity of water necessary to dissolve the tablets. It would not be chemically or physically possible to dissolve a large number of tablets in a small amount of water, and ingestion of an excessive amount of a concentrated solution of effervescent tablets would result in nausea and vomiting due to the salinity of the solution. In addition, taste studies submitted in support of the 1979 exemption for effervescent postassium supplements confirmed that children under age five were unwilling to consume significant amounts of effervescent preparations.

The petitioner states that all of these factors apply to the new exemption in that the acetaminophen content is not likely to create an increased risk to young children accidentally exposed to the product.

B. Toxicity Data

Each of Miles Laboratories' tablets will contain 0.5 gram, or 13.9 percent, acetaminophen. The Commission's Directorate for Health Sciences reports that a single oral toxic dose of acetaminophen in an adult is approximately 10 grams, with fatalities rare below a single ingestion of 15 grams. Additionally, adults appear to be more susceptible than children to the toxic effects of acetaminophen. In one large study, children under age five had the mildest clinical course of intoxication of any group after known or suspected acute ingestion of 7.5 grams or more of acetaminophen. In a separate report, however, a three-and-a-half year-old child died after being administered five grams in divided doses over a 24-hour period. Additional details of this death were not reported.

Initial toxic symptoms of acetaminophen ingestion include nausea, malaise, and profuse perspiration. These symptoms usually appear shortly after ingestion and may abate 12 to 24 hours later. Two to six days may pass before clinical evidence of injury appears in severely poisoned patients. Death is usually due to liver failure. Human experience data indicate, however, that effervescent acetaminophen preparations have not been involved in serious injury or serious illness in young children.

The petitioner conducted comparative acute oral toxicity tests in rats, which indicated that effervescent acetaminophen preparations are less toxic than pure acetaminophen. Studies in dogs showed that the median emetic dose for effervescent acetaminophen products is low, indicating that emesis would occur before a toxic dose was ingested. No emesis was observed when dogs were given a toxic dose of pure acetaminophen. Taste tests have shown that young children were unwilling to ingest dangerous amounts of effervescent preparations.

C. Injury Data

Injury data from all available sources confirm the claim that effervescent products are infrequently involved in accidental childhood ingestions. Data from the National Clearinghouse for Poison Control Centers for the years 1978 through 1984 show only one reported ingestion of an effervescent acetaminophen product by a child under age five. This case was without symptoms. The Commission's Children and Poisoning data base shows two ingestions of effervescent acetaminophen products for the period of 1978 through June 5, 1987. But, in both cases, the individuals were treated and released. There have been no reported hospitalizations or deaths. Ingestions by young children involving other effervescent analgesic products have been similarly low and without serious consequences. Literature reviews also revealed no evidence of toxic effects from ingestion of effervescent products by children under age five.

D. Action On The Petition

The available information concerning the absence of significant numbers of ingestions of effervescent drugs by young children, the absence of serious adverse effects in young children who are exposed to these drugs, and the results of taste studies conducted on young children with these drugs indicate that the nature of effervescent formulations effectively deters young children from ingesting toxic amounts.

Accordingly, the Commission preliminarily concludes that the degree and nature of the hazard to children presented by the availability of the effervescent acetaminophen products that are the subject of this petition are such that special packaging is not required to protect children from serious personal injury or serious illness resulting from handling, using or ingesting such substance. Accordingly, the Commission voted to grant the petition. Therefore, the Commission proposes below to amend 16 CFR 1700.14(a)(16) to (1) increase the

[1] Effervescent preparations are characterized by the rapid release of carbon dioxide in the presence of moisture.

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exemption for effervescent acetaminophen tablets or granules from such products containing less than ten percent acetaminophen to less than 15 percent, (2) lower the permissible LD–50 of the product in rats from "greater than 5 grams per kilogram" to "five grams or greater per kilogram," and (3) delete the requirement for a particular minimum level of carbon dioxide release.

E. Regulatory Flexibility Certification

When an agency undertakes a rulemaking proceeding, the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*) generally requires the agency to prepare proposed and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities. The purposes of the Regulatory Flexibility Act, as stated in section 2(b) (5 U.S.C. 602 note), is to require agencies, consistent with their objectives, to fit the requirements of regulations to the scale of the businesses, organizations, and governmental jurisdictions subject to the regulations. Section 605 of the Act provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact of a substantial number of small entities.

The exemption proposed below will have the effect of giving the manufacturers of the exempted products the option of packaging their product in an additional manner. The difference in cost between child-resistant packaging and packaging permitted by the exemption is not believed to be significant. Accordingly, the Commission concludes that this exemption will not have any significant economic effect on a substantial number of small entities.

F. Environmental Considerations

The Commission's regulations governing environmental review procedures state, at 16 CFR 1021.5(c)(3), that exemption of products from requirements for child-resistant packaging under the PPPA normally has little or no potential for affecting the human environment. The Commission does not foresee any special or unusual circumstances surrounding the exemption proposed below. For this reason, the Commission concludes that neither an environmental assessment nor an environmental impact statement is required in this proceeding.

G. Effective Date

Since the rule proposed below provides for an exemption, the provision of 5 U.S.C. 553(c) requiring a delay in the effective date is inapplicable. Accordingly, the rule shall become effective upon publication of the final rule in the **Federal Register**.

List of Subjects in 16 CFR Part 1700

Consumer protection, Drugs, Infants and children, Packaging and containers, Poison prevention, Toxic substances.

Conclusion

For the reasons given above, the Commission amends Title 16 of the Code of Federal Regulations to read as follows:

PART 1700—[AMENDED]

1. The authority citation for Part 1700 is revised to read as follows:

Authority: Pub. L. 91–601, secs. 1–9, 84 Stat. 1670–74, 15 U.S.C. 1471–76. Secs. 1700.1 and 1700.14 also issued under Pub. L. 92–573, sec. 30(a), 86 Stat. 1231.15 U.S.C. 2079(a).

2. Section 1700.14(a)(16)(i) is revised to read as follows:

§ 1700.14 Substances requiring special packaging.

(a) * * *

(16) * * *

(i) Effervescent tablets or granules containing acetaminophen, provided the dry tablet or granules contain less than 15 percent acetaminophen, the tablet or granules have an oral LD–50 of 5 grams or greater per kilogram of body weight, and the tablet or granules contain no other substance subject to this § 1700.14(a).

* * * * *

Dated: October 14, 1988.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 88-24238 Filed 10-19-88; 8:45 am]

BILLING CODE 6355-01-M

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16 CFR Part 1700

Poison Prevention Packaging Requirements; Proposed Exemption of Certain Medroxyprogesterone Acetate Tablets

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to amend its regulations to allow medroxyprogesterone acetate (MPA) tablets to be marketed in mnemonic packages [1] that are not child-resistant, if the package contains no more than 100 milligrams of the drug. Child-resistant packaging currently is required because these substances are oral prescription drugs. This drug is proposed to be exempted because of its low toxicity. The drug is used for the treatment of female hormonal imbalance disorders.

DATE: Comments on the proposal should be submitted not later than December 19, 1988.

ADDRESSES: Comments should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 528, 5401 Westbard Avenue, Bethesda, Maryland, telephone (301) 492–6800.

All public documents that the Commission has concerning this proceeding may be inspected at, or copies obtained from, the Office of the Secretary.

FOR FURTHER INFORMATION CONTACT: Virginia White, Project Manager, Office of Program Management and Budget, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 492–6514.

SUPPLEMENTARY INFORMATION:

A. Background

Among other substances, oral prescription drugs intended for human use are subject to child-resistant packaging requirements issued under the Poison Prevention Packaging Act of 1970 ("the PPPA"), 15 U.S.C. 1471–1476. 16 CFR 1700.14(a)(10). By letter dated April 27, 1987, Ayerst Laboratories petitioned the Commission to exempt from special packaging requirements its medroxyprogesterone acetate ("MPA") tablets in mnemonic packages containing no more than 100 milligrams (mg) of the drug. MPA, a progestin, is a prescription hormonal drug used for the treatment of a variety of female hormonal imbalance disorders.

As justification for the exemption, the petitioner submitted evidence of the low oral toxicity of progestins and data showing the absence of acute toxicity from ingestion of progestins by young children. The petitioner also cited data that the Commission used as the basis for previous exemptions of other progestin compounds.

B. Human Experience and Toxicity Data

Data from the Food and Drug Administration ("FDA") National Clearinghouse for Poison Control Centers for the years 1978–1984 show a total of 78 reported ingestions of MPA by children under age five. Three of the cases reported symptoms; one case resulted in a hospital visit with no reported symptoms.

For the period of 1978 through August 1987, the Commission's CAP (Children and Poisoning) data base shows five cases of MPA ingestions by children under five treated in hospital emergency rooms. All were treated and released.

A literature review and a review of FDA Adverse Drug Reaction Reports revealed no reports of death or serious injury to children under age five following acute ingestion of MPA.

Each MPA tablet will contain 10 mg of the drug. Information on the median lethal dosage (LD–50) of MPA, as well as other progestins, is scant because of the extremely low toxicity of these compounds. Reported acute oral toxicity tests conducted in rats with MPA resulted in no deaths or toxic symptons even with doses of MPA as high as 10,000 mg/kilogram.

The petitioner states that if a child weighing 10 kilograms (kg) ingested an entire package containing 100 mg of MPA, the amount ingested would be less than the daily dose ingested during long-term therapeutic use. The petitioner states that it is highly unlikely that a one-time ingestion of 100 mg of MPA would be toxic in a child if a therapeutic dose of 800–1200 mg given daily for up to nine months is nontoxic in adults.

The Commission's Directorate for Health Sciences, based on a review of available human and animal data, concludes that progestins demonstrate a low order of acute toxicity. Accidental ingestion would, therefore, pose a minimal threat of illness or injury. This threat would be reduced further because of the type of packaging used, which requires each dose to be opened individually (see discussion below).

Long-term therapeutic administration of progestin compounds has been shown to lead to an increased risk of various blood-clotting disorders in women. These compounds can also damage the fetus. There is, however, no evidence that such effects would be expected from a single ingestion by a child.

The MPA tablets proposed to be exempted will be marketed in mnemonic, blister-type packaging. Oral progestins, including MPA, have been available for the past 40 years and are prescribed and sold predominantly in non-mnemonic packaging. A small percentage of progestins are sold in mnemonic packaging, which is popular with physicians and patients alike and is available in both child-resistant and non-child-resistant forms.

The low toxicity of hormonal drugs is well established. In 1984, the Commission exempted estrogen and progestin oral contraceptives from special packaging requirements (49 FR 44455). The Commission concluded that the extensive human experience data available at that time provided no evidence of either acute or chronic health effects associated with accidental ingestion of oral contraceptives. In spite of the high frequency of ingestion of oral contraceptives, the frequency of either acute or long-term injury was one of the lowest for any class of drugs.

The FDA concluded that estrogens and progestins could probably be classified as akin to nontoxic because it would be virtually impossible for a child to ingest an amount approaching what might be considered a lethal dose. These data suggest that the frequency of acute injury from accidental ingestion of these hormones will remain low. Based on these same considerations, the Commission granted exemptions for norethindrone acetate tablets (a progestin) and conjugated estrogens tablets in 1984. 49 FR 50386 (December 28, 1984).

Based on a review of available human and animal data, the Commission preliminarily concludes that progestins have a low order of acute toxicity. Accidental ingestion by children would, therefore, pose a minimal threat of illness or injury. This will be even further reduced because of the type of packaging used, which requires each dose to be opened individually. The Center for Drugs and Biologics of the Food and Drug Administration also has "no objection to exempting mnemonic packaging containing no more than 100 mg MPA (10–10 mg tablets) from child resistant packaging."

C. Action On The Petition

After considering the available information, the Commission preliminarily concluded that the degree and nature of the hazard to children presented by the availability of the medroxyprogesterone acetate tablets that are the subject of this petition are such that special packaging is not required to protect children from serious personal injury or serious illness resulting from handling, using or ingesting such substance. Accordingly, the Commission voted to grant the petition. Therefore, the Commission proposes below to amend 16 CFR 1700.14(a)(10) to exempt medroxyprogesterone acetate tablets from requirements for child-resistant packaging, when dispensed in mnemonic packages containing not more than 100 mg of the drug.

D. Regulatory Flexibility Certification

When an agency undertakes a rulemaking proceeding, the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*) generally requires the agency to prepare proposed and final regulatory flexibility analyses describing the impact of the rule on small business and other small entities. The purpose of the Regulatory Flexibility Act, as stated in section 2(b) (5 U.S.C. 602 note), is to require agencies, consistent with their objectives, to fit the requirements of regulations to the scale of the businesses, organizations, and governmental jurisdictions subject to the regulations. Section 605 of the Act provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact of a substantial number of small entities.

The exemption proposed below will have the effect of giving the manufacturers of the exempted products the option of packaging their product in an additional manner. The difference in cost between child-resistant packaging and packaging permitted by the exemption is not believed to be significant. Accordingly, the Commission concludes that this exemption will not have any significant economic effect on a substantial number of small entities.

E. Environmental Considerations

The Commission's regulations governing environmental review procedures state, at 16 CFR 1021.5(c)(3), that exemption of products from requirements for child-resistant packaging under the PPPA normally has little or no potential for affecting the human environment. The Commission does not foresee any special or unusual circumstances surrounding the proposed issued below. For this reason, the Commission concludes that neither an environmental assessment nor an environmental impact statement is required in this proceeding.

F. Effective Date

Since the rule issued below provides for an exemption, the provision of 5 U.S.C. 553(c) requiring a delay in the effective date is inapplicable. Accordingly, the rule shall become effective upon publication of the final rule in the **Federal Register**.

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[1] A mnemonic package is any package designed for the administration of one dosage unit at a time and incorporating any feature which serves to remind the user to take the dosage at specified intervals throughout the period during which the medication is to be administered.

List of Subjects in 16 CFR Part 1700

Consumer protection, Drugs, Infants and children, Packaging and containers, Poison prevention, Toxic substances.

Conclusion

For the reasons given above, the Commission proposes to amend Title 16 of the Code of Federal Regulations to read as follows:

PART 1700—[AMENDED]

1. The authority citation for Part 1700 is revised to read as follows:

Authority: Pub. L. 91–601, secs. 1–9, 84 Stat. 1670–74, 15 U.S.C. 1471–76. Secs. 1700.1 and 1700.14 also issued under Pub. L. 92–573, sec. 30(a), 86 Stat. 1231, 15 U.S.C 2079(a).

2. A new § 1700.14(a)(1)(xix) is added to read as follows:

§ 1700.14 Substances requiring special packaging.

(a) * * *

(10) * * * (xix) Medroxyprogesterone acetate tablets, when dispensed in mnemonic packages containing not more than 100 milligrams of the drug.

* * * * *

Dated: October 14, 1988.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 88-24239 Filed 10-19-88; 8:45 am]

BILLING CODE 6355-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-26181; File No. S7-21-88]

Proposal to Rescind Rule Under the Securities Exchange Act of 1934

AGENCY: Securities and Exchange Commission.

ACTION: Proposal to rescind rule.

SUMMARY: The Commission is proposing to rescind Rule 3a12–2 under the Securities Exchange Act of 1934 ("Act"). The Rule exempts a security from the operation of those provisions of the Act which by their terms do not apply to an "exempted security" if a state or political subdivision thereof is obliged to make good to the issuer of such security any deficiency in the income of such issuer, to the extent necessary to pay to the holders of such security interest or dividends at a specified rate, and the business of such issuer is managed by such state or political subdivision. The Commission believes that the Rule, adopted for the benefit of the Boston Elevated Railway Company ("BERC"), is no longer necessary. The Commission is, therefore, proposing to rescind the Rule and to provide a 30-day comment period to ascertain whether its assumption, that no other issuer is relying on Rule 3a12–2, is correct.

DATE: Comments should be submitted on or before November 21, 1988.

ADDRESSES: Interested persons should submit three copies of their written data, views and arguments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street NW., Stop 6–9, Washington, DC 20549, and should refer to File No. S7–21–88. All submissions will be available for public inspection at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Edward L. Pittman, Esq., Special Counsel, (202) 272–7402, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission today announced that it proposes to rescind Rule 3a12–2 (17 CFR 240.3a12–2) under the Act.[1] The Commission adopted Rule 3a12–2 on June 16, 1935.[2] The Rule exempts a security from the operation of those provisions of the Act which by their terms do not apply to an "exempted security" if a state or political subdivision thereof is obliged to make good to the issuer of such security any deficiency in the income of such issuer, to the extent necessary to pay to the holders of such security interest or dividends at a specified rate, and the business of such issuer is managed by such state or political subdivision or by a board or officers appointed by such state or political subdivision. Although the Rule was drafted in general terms, it appears that it was intended to apply to the BERC. The BERC's five dollar annual dividend was guaranteed by the Commonwealth of Massachusetts until 1959 and the company was managed by trustees appointed by the Commonwealth. Rule 3a12–2 permitted trading in the securities of the BERC to continue on the Boston Stock Exchange without registration under the Act.[3]

Under the terms of a 1947 Massachusetts statute, however,[4] the Metropolitan Transit Authority assumed the outstanding indebtedness and liabilities of the BERC and acquired all of its common stock. The BERC subsequently began a process of dissolution and paid a partial liquidating dividend to stockholders of record as of September 12, 1947. At that time, litigation was pending to determine the liability of the company for the payment of income and excess profit taxes to the federal government and it was expected that the dissolution of the corporation would require some time. For these reasons, the Commission considered it appropriate in the public interest and for the protection of investors to permit the market that had long existed on the Boston Stock Exchange for the common stock of the BERC to continue.[5] At that time, the BERC was the only company with a security that came within the exemptive provisions of Rule 3a12–2. The BERC common stock ceased trading on the Boston Stock Exchange on September 25, 1953.

In response to the Division's request for information, Joseph H. Elcock, General Counsel, Massachusetts Bay Transportation Authority, advised the Division that all bonds, notes and other evidences of indebtedness issued by the BERC had been retired, refunded or otherwise discharged.[6] Mr. Elcock also expressed the opinion that the Commission's rule providing an exemption for the BERC securities was no longer needed.

In light of the foregoing, the Commission believes that Rule 3a12–2, adopted for the benefit of the BERC, is no longer necessary. The Commission, therefore, proposes to rescind the Rule and to provide a 30-day comment period to ascertain whether its assumption, that no other issuer is relying on Rule 3a12–2, is correct.

Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—[AMENDED]

1. The authority citation for Part 240 continues to read as follows:

Authority: Sec. 23, 48 stat. 901, as amended (15 U.S.C. 78w).

§ 240.3a12–2 [Removed]

2. By removing § 240.3a12–2.

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[1] 15 U.S.C. 78 *et seq.*

[2] 17 CFR 240.3a12–2. *See* Securities Exchange Act Release No. 279 (June 16, 1935).

[3] Section 12(a) of the Act provides that it is "unlawful for any member, broker, or dealer to effect any transaction in any security (other than an exempted security) on a national securities exchange unless a registration is effective as to such security for such exchange in accordance with the provisions of this title, and the rules and regulations thereunder."

[4] See sections 5 and 6 of Chapter 544 of the Commonwealth of Massachusetts Act of 1947.

[5] Securities Exchange Act Release No. 4077 (April 8, 1948).

[6] See letter from Joseph H. Elcock to Steve Holtzman dated June 27, 1980.

By the Commission.

Dated: October 14, 1988.

Shirley E. Hollis,

Assistant Secretary.

Regulatory Flexibility Act Certification

I, David S. Ruder, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that the proposed rescission of Rule 3a12–2 set forth in Securities Exchange Act Release No. 26181, will not have a significant economic impact on a substantial number of small entities. The reason for this certification is that Rule was adopted solely for the benefit of the Boston Elevated Railway Company ("BERC") and that the BERC no longer uses the Rule to obtain an exemption from provisions of the Securities Exchange Act of 1934. The Commission does not believe that any other entities are relying on this Rule and therefore believes that the rescission of the Rule will not have a significant impact on any small entities.

David S. Ruder,

Chairman.

Dated: October 14, 1988.

[FR Doc. 88-24223 Filed 10-19-88; 8:45 am]

BILLING CODE 8010-01-M

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17 CFR Part 240

[Release No. 34-26180]

Rescission of Rules Under the Securities Exchange Act of 1934

AGENCY: Securities and Exchange Commission.

ACTION: Rescission of rules; conforming amendment.

SUMMARY: The Commission today is rescinding seven obsolete rules. The first is Rule 7c2–1 under the Securities Exchange Act of 1934 ("Act"), which provides an exemption from the provisions of section 7(c)(2) for certain securities exempt from registration under section 12(a) of the Act or traded on exchanges exempt from registration under section 5 of the Act. The second rule is Rule 15a–3 under the Act, which exempts from broker-dealer registration exchange specialists executing block trades. The third rule is Rule 15b7–1 under the Act, which provides that the Commission not name a securities salesperson as a party to an administrative proceeding without first obtaining the salesperson's consent. The fourt rule is Rule 15A12–1 under the Act, a cross-reference rule which provides for the application procedures outlined in Rule 15b7–1 to administrative proceedings concerning the suspension or expulsion of a broker-dealer from membership in a registered national securities association. The fifth rule is Rule 15c2–3, which prohibits broker-dealers from trading in certain German securities. The sixth rule is Rule 19a3–1, a cross-reference rule to Rule 15b7–1. The seventh rule is Rule 19b–3, which prohibits national securities exchanges from promulgating rules which fix commissions. These rules have become unnecessary due to action by the courts, Congress, and the passage of time. Consistent with investor protection, the Commission is rescinding the rules as part of its ongoing effort to update regulation and eliminate obsolete rules. Finally, the Commission is making a conforming amendment to Rule 12a–5 of the Act to reflect the rescission of Rule 7c2–1.

EFFECTIVE DATE: October 20, 1988.

FOR FURTHER INFORMATION CONTACT: Adrian Colachis, Esq., 202/272–2415, Division of Market Regulation, Room 5023, Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: Rule 7c2–1 under the Act is being rescinded. At the time Rule 7c2–1 was adopted,[1] and during subsequent amendments,[2] section 7(c)(2) prohibited a broker-dealer from extending credit to a customer without collateral, or on any collateral other than exempted securities or securities registered upon a national securities exchange. The rule originally was intended to provide a temporary exemption from the provisions of section 7(c)(2) of the Act so that securities traded on national securities exchanges that were exempt from registration under section 5 of the Act could be used as collateral to the same extent as those traded on registered exchanges. The rule was later modified to provide a similar exemption for securities that were either listed on national securities exchanges or had unlisted trading privileges, but were not subject to the registration requirements in section 12(a) of the Act.

In 1968, section 7(c)(2) was amended, eliminating the requirement that securities be exempted securities or registered on a national securities exchange in order to be used as collateral by broker-dealers in credit transactions.[3] As a result of the 1968 Amendments, the Commission has determined that Rule 7c2–1 has become obsolete. Accordingly, the Commission is rescinding the rule. At the same time, the Commission is also amending Rule 12a–5 of the Act to reflect the rescission of Rule 7c2–1.

The Commission is rescinding Rule 15a–3 under the Act. This rule, adopted in 1958[4] and never amended, exempts exchange specialists executing block trades off the floor of the exchange from the broker-dealer registration requirements of section 15(a) of the Act. At that time, exchange specialists trading exclusively on an exchange were not required by section 15(a) to register as broker-dealers; Rule 15a–3 extended this broker-dealer registration exemption to block trades executed off the exchange.

The Securities Act Amendments of 1975 ("1975 Amendments"), amending section 15(a), required all exchange specialists to register as broker-dealers.[5] Because exchange specialists now are registered as broker-dealers, Rule 15a–3's exemption from broker-dealer registration is no longer necessary. Therefore, the Commission is rescinding Rule 15a–3.

Rule 15b7–1, "Proceedings under section 15(b), 15A(*l*)(2) and 19(a)(3) of the Act," Rule 15A/2–1, "Proceedings Under section 15A(*l*)(2) of the Act" and Rule 19a3–1, "Proceedings under section 19(a)(3) of the Act," were adopted [6] to codify the procedures implemented by the Commission following the decision of the U.S. court of appeals in *Wallach v. SEC.* [7] In *Wallach*, the court held that the Commission could not name a securities salesperson as a party to an administrative proceeding against a broker-dealer under section 15(b) of the Act without the salesperson's consent. Rule 15b7–1 [8] established the procedures to be followed by the Commission in such cases, and delineated the Commission's statutory authority pursuant to sections 15(b), 15A(*l*)(2), 19(a)(3) and 15A(b)(4) regarding administrative proceedings. Rule 15A/2–1 was adopted as a cross-reference rule to Rule 15b7–1 and was intended to apply to administrative proceedings where a broker-dealer was

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[1] *See* Securities Exchange Act Release No. 11 (September 28, 1934).

[2] *See* Securities Exchange Act Release Nos. 432 (December 1935); 808 (September 28, 1936); and 1867 (September 10, 1938).

[3] Pub. L. No. 90–437, 82 Stat. 452 (1968).

[4] Securities Exchange Act Release No. 5780 (October 10, 1958), 23 FR 8007.

[5] *See* S. Rep. No. 75, 94th Cong., 1st Sess. 109 (1975).

[6] Securities Exchange Act Release No. 5225 (September 8, 1955), 20 FR 7036.

[7] 202 F.2d 462 (D.C. Cir. 1955).

[8] Rule 15b7–1 originally was designated Rule X–15B–9. Rule 15A/2–1 originally was designated Rule X–15a/2–1. Securities Exchange Act Release No. 7700 (September 10, 1965), 30 FR 11851.

suspended or expelled from membership in a national securities association under section 15A(*l*)(2). Rule 19a3–1 also was adopted as a cross-reference rule to Rule 15b7–1, and was intended to apply to proceedings under section 19(a)(3), which were governed by the provisions of Rule 15b7–1.

Congress amended the Act in 1964 ("1964 Amendments"). Section 15A(*l*) was amended at that time to enable the Commission to bar, censure or suspend (for a period not exceeding 12 months) a person from being associated with a member of a registered securities association on the same grounds that a member of the association could have been suspended or expelled by the Commission. The 1964 Amendments also limited the application of the *Wallach* case. Accordingly, the Commission amended Rule 15b7–1 to limit its application to proceedings commenced before the enactment of the 1964 Amendments. No further proceedings have been instituted under Rule 15b7–1. Rule 15b7–1 has been rendered obsolete by its reference to section 15A(*l*)(2), which was repealed by the 1975 Amendments.[9]

The companion Rules, 15A*l*2–1 and 19a3–1 were not rescinded at that time. Proceedings are no longer conducted pursuant to section 15A(*l*)(2). Proceedings under Rule 19a3–1 are governed by the obsolete provisions of Rule 15b7–1.

Accordingly, the Commission has decided to rescind Rules 15b7–1, 15A*l*2–1, and 19a3–1 because it finds that the rules are no longer necessary.[10]

In addition, the Commission has decided to rescind Rule 19b–3 of the Act. Rule 19b–3 prohibits any national securities exchange from adopting or retaining any rule that requires its members or any of their associated persons to charge a fixed commission for transactions effected on or by use of the facilities of the exchange. The Commission has determined that the activities proscribed by Rule 19b–3 are prohibited to the same extent by section 6 of the Act. Accordingly, the Commission is rescinding Rule 19b–3 as [illegible].

The Commission also is rescinding Rule 15c2–3. Rule 15c2–3 was adopted in 1954 in response to concerns that certain German bearer bonds, looted by the Soviet Army at the conclusion of World War II, might be sold or purchased through broker-dealers.[11] Under the provisions of a Treaty between the Federal Republic of Germany and the United States, no German dollar bonds subject to the validation laws of the Federal Republic of Germany are enforceable against the issuer unless they have been validated. The rule prohibits broker-dealers from inducing the purchase or sale of these securities unless they have been validated under any applicable validation law of the Federal Republic of Germany.

Since the rule was adopted in 1954, the Validation Board for German Dollar Bonds established in this country to review requests for validation has ceased operating. Moreover, most, if not all of the bonds have long since matured. Although the bonds occasionally may be traded or produced for redemption, the Commission has concluded that the market for these instruments has diminished substantially since the rule was adopted. Accordingly, the Commission no longer believes that Rule 15c2–3 is necessary to guard against the sale of unvalidated German dollar bonds by broker-dealers. Any broker-dealers that induce the sale or purchase of these instruments in the future, however, are reminded that they continue to be subject to the general antifraud provisions of the federal securities laws.[12]

In accordance with section 4(b)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), the Commission finds that notice and opportunity for public comment are unnecessary because the rules being rescinded are obsolete. Consequently, the rescission of the rules and the conforming amendment to Rule 12a–5, will not impair the protection of investors. Pursuant to section 4(c) of the Administrative Procedure Act, 5 U.S.C. 553(9), the Commission may make the rescission and the conforming amendment effective immediately because the rescission affects unnecessary rules.

List of Subjects in 17 CFR Part 240

Brokers, confidential business information, Fraud, Reporting and recordkeeping requirements, Securities.

Statutory Authority

Pursuant to the Securities Exchange Act of 1934 and particularly sections 7(c), 12(a), 15(a), 15(b), 15(c), 15A, 19(a), 19(b) and 23 thereof, 15 U.S.C. 78*l*, 78*o*(a), 78*o*(b), 78*o*(c), 78*o*–3, 78*s*, and 78*w*, the Commission is amending Chapter II of Title 17 by removing § 240.7c2–1, § 340.15a–3, § 240.15b7.1, § 240.15c2–3, § 240.15A*l*2–1, § 240.19a3–1 and § 240.19b–3; and amending § 240.12a–5 in the manner set forth below.

Text of Final Amendments

In accordance with the foregoing, 17 CFR Part 240 is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read as follows:

Authority: Sec. 23, 48 Stat. 901, as amended (15 U.S.C. 78w).

§§ 240.7c2–1, 240.15a–3, 240.15b7–1, 240.15c2–3, 240.15A*l*2–1, 240.19a3–1, and 240.19b–3 [Removed]

2. By removing §§ 240.7c2–1, 240.15a–3, 240.15b7–1, 240.15c2–3, 240.15A*l*2–1, 240.19a3–1 and 240.19b–3.

§ 240.12a–5 [Amended]

3. By amending § 240.12a–5 by removing the reference to § 240.7c2–1 in paragraph (a).

By the Commission.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88–24230 Filed 10–19–88; 8:45 am]

[illegible]

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17 CFR Part 240

[Release No. 34–26182, File Nos. S7–325, S7–510, and S7–865]

Withdrawal of Proposed Rules Under the Securities Exchange Act of 1934

AGENCY: Securities and Exchange Commission.

ACTION: Withdrawal of proposed rules.

SUMMARY: The Commission today is withdrawing three proposed rules under the Securities Exchange Act of 1934. Proposed Rule 10b–11 would prohibit any person from effecting a short sale of any equity security for his own account or the account of another unless he has borrowed the security, or has a reasonable belief he will be capable of delivering the security on the date delivery is due. Proposed Rule 10b–12 would preclude an issuer from misrepresenting the results of its operations by distributing stock dividends or their equivalent to shareholders unless the issuer has earned surplus sufficient to cover the fair value of the shares distributed. Proposed Rule 10b–20 would prohibit certain "tie-in" arrangements in connection with an offering of securities. The Commission is withdrawing these rules because a substantial period of time has elapsed since their proposal by the Commission, and because subsequent developments suggest that the formulation of the rules as proposed may no longer be appropriate. The withdrawal of these proposed rules, however, does not imply that the Commission is no longer concerned with the conduct addressed by the proposals.

FOR FURTHER INFORMATION CONTACT: Jodie Kelley at (202) 272–2878, Office of Trading Practices, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

Proposed Rule 10b–11

Rule 10b–11, proposed in 1976,[1] would prohibit any person from effecting a short sale of any equity security for his own account or the account of any other person unless he, or the person for whose account the short sale is effected, (1) has borrowed the security, or has entered into an arrangement for the borrowing of the security, or (2) has reasonable grounds to believe that he, or the person for whose account the short sale is effected, can borrow the security, so that, in either event, he or the person for whose account the short sale is effected, will be capable of delivering the security on the date delivery is due.

Proposed Rule 10b–11 was part of a comprehensive public fact-finding and rulemaking proceeding on short sales to determine whether short sale regulation continued to be necessary.[2] The Commission recognized that the proposed rule in all likelihood reflected industry practice, but believed that an express obligation with respect to a short seller's ability to meet delivery requirements was appropriate should short sale rules be rescinded.[3] Three commentators on proposed Rule 10b–11 indicated support for the proposed rule and two commentators opposed the proposed rule.[4]

Since the time that the rule was proposed, the New York Stock Exchange ("NYSE") and the National Association of Securities Dealers ("NASD") have adopted interpretations specifying that members should not accept or enter a short sale order unless prior arrangements to borrow the stock have been made, or other acceptable assurances that delivery can be made on settlement date have been obtained.[5] As noted above, Rule 10b–11 was proposed as a component of a contemplated program of short sale deregulation.[6] To date, the Commission has not determined to implement such a program. Finally, the Commission believes that the general antifraud provisions of the federal securities laws are applicable to activity addressed by Rule 10b–11.[7]

In light of the foregoing considerations and the passage of twelve years since the Commission proposed Rule 10b–11, the Commission has determined to withdraw proposed Rule 10b–11.

Proposed Rule 10b–12

Rule 10b–12, proposed in 1968,[8] would preclude an issuer whose stock is publicly offered or traded from misrepresenting the results of its operations by distributing stock dividends or their equivalent to shareholders unless the issuer has earned surplus sufficient to cover the fair value of the shares distributed. The rule would not affect traditional stock splits involving the distribution of at least an additional share for each share outstanding. A large proportion of the more than one hundred comment letters received regarding proposed Rule 10b–12 requested that banks and stock insurance companies be exempted from the rule because both are highly regulated entities. Of the remaining comments, a majority expressed opposition to the rule. A small minority of those commenting supported the proposed rule.[9]

In light of: (1) The Commission's subsequent issuance of an interpretative release advising that an issuer's pro rata distribution of stock dividends without sufficient retained earnings or current income may raise questions under the antifraud and anti-manipulation provisions of the Exchange Act; [10] (2) the treatment of pro rata distributions of stock dividends under generally accepted accounting principles; [11] and (3) the significant passage of time since Rule 10b–12 was proposed, the Commission is withdrawing proposed Rule 10b–12.

Proposed Rule 10b–20

Rule 10b–20, proposed by the Commission in 1974 [12] and reproposed with revisions in 1975,[13] would prohibit certain "tie-in" arrangements in connection with an offering of securities. The proposed rule would prohibit broker-dealers and others from explicitly or implicitly demanding from their customers any payment or consideration in addition to the announced offering price of any securities. The proposal was intended to prohibit the practice whereby underwriters induced persons to purchase "sticky" issues with the opportunity to purchase more attractive "hot" issues. Of those who responded to the Commission's request for comments on the rule as proposed and reproposed, three commentators indicated support for the proposal and two opposed it.[14]

In view of the substantial period of time that has elapsed since Rule 10b–20 was proposed and the fact that "tie-in" arrangements may be reached under existing antifraud and anti-manipulation provisions of the federal securities laws,[15] the Commission has determined to withdraw proposed Rule 10b–20.

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[9] Public Law No. 94–29, 89 Stat. 97 (1975).

[10] The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* is not applicable because the proposed actions are not subject to public notice and comment.

[11] *See* Securities Exchange Act Release Nos. 4063 (January 12, 1954), 5011 (March 9, 1954), and 5370 (September 24, 1956).

[12] *See, e.g., In the Matter of Merill Lynch, Pierce, Fenner & Smith, Inc., et al.*, Securities Exchange Act Release No. 14149 (November 9, 1977) (stating that "[w]hen a broker-dealer recommends a security to its customer it represents that it has conducted a reasonable investigation of that security and that there exists a reasonable basis for the recommendation.")

[1] *See* Securities Exchange Act Release No. 13091 (December 21, 1976), 41 FR 56530 ("Release 34–13091").

[2] *Id.*

[3] While the Commission in 1980 withdrew certain of the short sale deregulation proposals, the Commission did not withdraw proposed Rule 10b–11 at that time. Securities Exchange Act Release No. 17347 (November 28, 1980), 45 FR 80634, 80634 note 6.

[4] The comment letters are contained in File No. S7–865.

[5] *See* NYSE Rule 440C, "Deliveries Against Short Sales." *NYSE Guide* (CCH) ¶ 2440C, and NYSE Interpretation 10/01 to Rule 440C, "Short Sales"; NASD Rules of Fair Practice, Article III, Section 1, *NASD Manual* (CCH) ¶ 2151.04, Interpretation of the Board of Governors on Prompt Receipt and Delivery of Securities.

[6] Release 34–13091, 42 FR 56530.

[7] *See, e.g.*, Securities Exchange Act Release No. 6778 (April 18, 1962).

[8] Securities Exchange Act Release No. 8268 (March 7, 1968), 33 FR 4632.

[9] The comment letters are contained in File No. S7–325.

[10] Securities Exchange Act Release No. 9618 (June 1, 1972), 37 FR 11559.

[11] American Institute of Certified Public Accountants (AICPA), Accounting Research Bulletin No. 43, Chapter 7B, ¶10 and ¶13 (1953).

[12] Securities Exchange Act Release No. 10636 (February 11, 1974), 39 FR 7808 (also proposing Rule 10b–21).

[13] Securities Exchange Act Release No. 11328 (April 2, 1975), 40 FR 18090 (also reproposing Rule 10b–21).

[14] The comment letters are contained in File No. S7–510.

[15] *See* Report of the Securities and Exchange Commission Concerning the Hot Issues Markets (August 1984), at Section IV.C.3., "Tie-in and Reciprocal Arrangements."

By the Commission.
Shirley E. Hollis,
Assistant Secretary.
October 14, 1988.
[FR Doc. 88-24231 Filed 10-19-88; 8:45 am]
BILLING CODE 6816-2-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Ohio Abandoned Mine Land Reclamation Plan; Public Comment Period and Opportunity for Public Hearing on Amendments

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing the receipt of proposed amendments to the Ohio Abandoned Mine Land Reclamation (AMLR) Plan (hereinafter referred to as the Ohio Plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments concern the proposed policies and procedures with which Ohio would conduct the AMLR emergency program on behalf of the OSMRE.

This notice sets forth the times and locations that the Ohio Plan and proposed amendments to that Plan will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. on November 21, 1988. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m. on November 14, 1988. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on November 4, 1988.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand delivered to Ms. Nina Rose Hatfield, Director, Columbus Field Office, at the address listed below. Copies of the Ohio Plan, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSMRE's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, Room 202, Columbus, Ohio 43232, Telephone: (614) 866-0578.

Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street, NW., Room 5131, Washington, DC 20240, Telephone: (202) 343-5492.

Ohio Department of Natural Resources, Division of Reclamation, Fountain Square, Building B-3, Columbus, Ohio 43224, Telephone: (614) 265-6675.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background

Title IV of SMCRA establishes an abandoned mined land reclamation (AMLR) program for the purpose of reclaiming and restoring lands and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the mining of coal. Lands and water eligible for reclamation are those that were mined or affected by mining and abandoned or left in an inadequate state of reclamation prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State of Federal law. Title IV provides that a State with an approved AMLR Plan has the responsibility and primary authority to implement an abandoned mine land reclamation program in that State.

Under the provisions of 30 CFR 884.15, any State may submit proposed amendments to its approved AMLR Plan. If the proposed amendments change the scope or major policies followed by the State in the conduct of its AMLR Plan, the Director must follow the procedures set out in 30 CFR 884.14 in reviewing and approving or disapproving the proposed amendments.

The Ohio Plan was approved by the Secretary on August 10, 1982 (47 FR 34728). On July 14, 1988, Ohio submitted proposed amendments to that Plan. This notice of proposed rulemaking begins the review process on the proposed amendments to the Ohio Plan.

II. Discussion of the Proposed Amendments

Section 410 of SMCRA authorizes the Secretary to use funds under the AMLR program to abate or control emergency situations in which adverse effects of past coal mining pose an immediate danger to the public health, safety, or general welfare. On September 29, 1982 (47 FR 42729), OSMRE invited States to amend their AMLR Plans for the purpose of undertaking emergency reclamation programs on behalf of OSMRE. States would have to demonstrate that they have the statutory authority to undertake emergencies, the technical capability to design and supervise the emergency work, and the administrative mechanisms to quickly respond to emergencies either directly or through contractors.

By letter dated July 14, 1988 (Administrative Record No. OH-1071), the Ohio Department of Natural Resources, Division of Reclamation (Ohio), submitted proposed amendments to the Ohio Plan intended to demonstrate Ohio's capability of effectively performing the AMLR emergency program for OSMRE. The proposed revisions to the Ohio Plan are briefly summarized below:

(1) Section 1: Summary

The proposed amendments would substitute references to Ohio staff in places where OSMRE actions on emergencies are described in Section 1.9 and 1.10. The investigation of emergency situations would also be added to Ohio's AMLR field evaluation responsibilities listed in Section 1.9.

(2) Section 2: Legal Authority

The proposed amendments would include budgets and accounts for emergency work in the items listed in Section 2.3 which make up AMLR grant applications submitted by Ohio to OSMRE.

(3) Section 3: Description of the Proposed AMLR Program

The proposed amendments would specify in Section 3.4.1 that OSMRE-administered emergency projects occur in States not authorized to conduct the emergency program. References to Ohio staff would also be substituted for OSMRE actions on Ohio emergencies discussed in Sections 3.4.1 and 3.4.3. Also, the time period for action on emergencies would be reduced from "3 to 6 months" to "1 to 6 months" in Table 3.4.3.1.

(4) Section 4: Abandoned Mined Land Evaluation Program

The proposed amendments would delete reference to OSMRE action on emergencies in Figure 4.1.1.2. In Section 4.2, OSMRE involvement in emergency investigations would be revised to include joint site reviews with Ohio staff. OSMRE concurrence and approval of Ohio emergency determinations would be specified in Figure 4.2.1. References to Ohio staff and actions would be substituted for equivalent OSMRE actions in Sections 4.2. Emergency project work would be included in Section 4.5 under the work to be submitted by Ohio to OSMRE for approval in annual AMLR construction grants.

(5) Section 5: Administration and Management

In Section 5.1.3.1, responsibilities and job titles of specific Ohio staff positions would be revised and updated. One supervisor and one environmental scientist position would be assigned coordination of the Ohio emergency program. Identification and documentation of emergencies would be made a responsibility of the Field Operations Subsection of the Ohio Abandoned Mined Lands Section. In Section 5.1.3.2, emergency program responsibilities for consultant selection and design preparation would be added for the Ohio Engineering Section.

In Section 5.3, the allowance for open-ended contracts for emergency project work would be made. Added text would also specify that normal State bidding procedures are to be waived for emergency work in favor of using preapproved contractors. The added text and table 5.3.6 would specify the procedures for selection of emergency project design and construction contractors. Reference would also be made to the Ohio AMLR procedures manual on file at the Ohio Department of Natural Resources, Division of Reclamation, which describes the emergency procurement procedures in greater detail.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 884.15, OSMRE is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 884.14. If the amendments are deemed adequate, they will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4:00 p.m. on November 4, 1988. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under "ADDRESSES." A written summary of each public meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: October 14, 1988.
Jeffrey D. Jarrett,
Acting Assistant Director, Eastern Field Operations.
[FR Doc. 88-24264 Filed 10-19-88; 8:45 am]
BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP8E3620/P468; FRL-3465-6]

Pesticide Tolerances for 3-(3,5-Dichlorophenyl)-5-Ethenyl-5-Methyl-2,4-Oxazolidinedione

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establish a tolerance for the combined residues of the fungicide 3-(3,5-dichlorophenyl)-5ethenyl-5methyl-2,4-oxazolidinedione (hereafter referred to in the preamble as "vinclozolin") and its metabolites containing the 3,5-dichloroaniline moiety in or on Belgian endive tops (chicory tops) at 5 parts per million (ppm). This regulation, to establish a maximum permissible level for residues of vinclozolin on Belgian endive tops, was requested by BASF Wyandotte Corp.

DATE: Comments, identified by the document control number [PP8E3620/P468], should be received on or before November 21, 1988.

ADDRESS: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA [illegible].

Information submitted as comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Lois A. Rossi, Product Manager (PM) 21, Registration Division (TS-767C), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1900.

SUPPLEMENTARY INFORMATION: BASF Wyandotte Corp., Agricultural Chemical Division, 110 Cherry Hill Rd., Parsippany, NJ 07054, submitted pesticide petition (PP) 8E3620 proposing the establishment of a tolerance for the combined residues of the fungicide vinclozolin and its metabolites in or on the raw agricultural commodity Belgian endive tops (chicory tops) at 5.0 parts per million (ppm).

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The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the tolerance include:

1. A 90-day rat feeding study with a no-observed-effect level (NOEL) of 450 ppm (22.5 mg/kg/day), the highest dose tested (HDT).

2. A 90-day dog feeding study with a NOEL of 300 ppm (7.5 mg/kg/day).

3. A 6-month dog feeding study with a NOEL of 100 ppm (2.5 mg/kg/day).

4. A mouse teratology study with a NOEL for maternal toxicity of 6,000 ppm (900 mg/kg/day) and a NOEL for developmental toxicity of 600 ppm (90 mg/kg/day).

5. A rabbit teratology study with a NOEL for maternal toxicity of >300 mg/kg/day (9,900 ppm) and a NOEL for developmental toxicity of 80 mg/kg/day (2,640 ppm).

6. A chronic feeding/oncogencity study in rats for 103 weeks, with a NOEL of 486 ppm (24 mg/kg) for chronic effects, and no compound-related oncogenic effects under the conditions of the study at doses up to 4,374 ppm (219 mg/kg/ body weight [bwt]/day), the HDT.

7. A chronic feeding/oncogenicity study in mice for 26 months, with a NOEL of 486 ppm (73 mg/kg) for chronic effects and no compound-related oncogenic effects under the conditions of the study at doses of up to 4,374 ppm (503 mg/kg/bwt/day), the HDT.

8. A dominant lethal assay in mice was negative at 2,000 mg/kg (only level tested).

9. Sister chromatid exchange study in the bone marrow of the Chinese hamster was negative.

10. Reverse mutation test in *Salmonella typhimurin* with and without a metabolic activation system which was negative for mutagenic effects.

11. An *in vivo* reverse mutation assay using *Salmonella typhimurium* was negative.

12. A primary rate hepatocyte unscheduled DNA synthesis assay which showed negative mutagenic activity and a mouse lymphoma forward mutation assay which showed weak positive mutagenic activity only at concentrations exceeding solubility in the test medium.

13. A forward mutation assay (the CHO/HGPRT assay) was negative with and without metabolic activation. The studies satisfy requirements for a DNA damage/repair assay in mammalian cells and gene mutation cells in culture.

Based on the NOEL of 2.5 mg/kg bwt/day in the 6-month dog feeding study, and using a hundredfold uncertainty factor, the acceptable daily intake (ADI) for vinclozolin is calculated to be 0.025 mg/kg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances is calculated to be 0.014375 mg/kg bwt/day. The proposed action would increase the TMRC to 0.14378 (0.5 percent of the ADI). The total percent of the ADI utilized is 57.51.

The nature of the residues is adequately understood, and an adequate analytical method, gas chromatography using an electron capture detector, is published in Vol. II of the Food and Drug Administration (FDA) *Pesticide Analytical Manual* for enforcement purposes. There is no reasonable expectation of residues in eggs, milk, meat, or poultry from the use on Belgian endive tops.

The pesticide is considered useful for the purpose for which the tolerance is sought, and it is concluded that the establishment of the tolerance will protect the public health. Therefore, the tolerance is proposed as set forth below.

Interested persons are invited to submit written comments on the proposed tolerances. Comments must bear a notation indicating the document control number (PP8E3020/P468). All written comments filed in response to this document will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 through 612), the Administrator has determined that regulations establishing tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice, and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 11, 1988.

Edwin F. Tinsworth,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.380(a) is amended by adding and alphabetically inserting the entry for the commodity Belgian endive tops, to read as follows:

§ 180.380 3-(3,5-Dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinediones; tolerances for residues.

(a) * * *

Commodity	Parts per million
Belgian endive, tops	5.0
* * * * *	

[FR Doc. 88-24345 Filed 10-19-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 257 and 258

[FRL-3485-5]

Solid Waste Disposal Facility Criteria

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: On August 30, 1988, EPA published a proposed rule and request for comment (53 FR 33313). That notice proposed revisions to the Criteria for Classification of Solid Waste Disposal Facilities and Practices as set forth in 40 CFR Part 257. In addition, the notice proposed to add a new Part 258 specifying requirements for municipal solid waste landfills (MSWLFs) only. The Agency has received requests to extend the comment period in order to allow additional time to review and comment on the proposal. Specifically, extensions have been requested to allow States to perform an in-depth assessment of how the proposed regulation will affect their programs, and to allow owners and operators of disposal facilities time to assess the impacts of the proposed regulation, especially the financial assurance, ground-water monitoring, and corrective action requirements. We find the request for a 30-day extension appropriate and, therefore, grant the extension.

DATE: The Agency will accept comments submitted on or before November 30, 1988.

ADDRESSES: Commentors must send an original and two copies of their comments to: RCRA Docket Information Center, (OS-305), U.S. Environmental Protection Agency Headquarters, 401 M Street SW., Washington, DC 20460. Comments should include the docket number F-88-CMLP-FFFFF. The public docket is located at EPA Headquarters (sub-basement) and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Appointments may be made by calling (202) 475-9327. Copies cost $0.15/page.

FOR FURTHER INFORMATION CONTACT: Either Allen Geswein or Paul Cassidy, Office of Solid Waste, at (202) 382-4659 or 382-3340.

Dated: October 13, 1988.

Joseph Cannon,

Acting Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 88-24342 Filed 10-19-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 67

[CGD 88-031]
RIN 2115-AD86

Documentation of Vessels; Controlling Interest

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to revise the vessel documentation regulations in 46 CFR Part 67 to implement the American control provision of the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987 ("the Act"). The Act makes a substantive change to the laws affecting the documentation of vessels by making a vessel owned by a corporation ineligible for a fishery license unless the controlling interest in the corporation is owned by United States citizens, and has a retroactive effective date for applicability of the new American control provision. The proposed regulations would establish standards for determining the permissible foreign participation in the ownership of vessels seeking a fishery license endorsement.

DATE: Comments must be received on or before November 21, 1988.

ADDRESSES: Comments may be mailed to Commandant (G-LRA-1/21)(CGD 88-031), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001.

Comments will be available for examination or copying at, and may be delivered to, Room 2110, at the above address, between 8 a.m. and 3 p.m., Monday through Friday, except holidays. The telephone number is (202) 267-1477.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Robert Bruce Vessel Documentation Branch, Merchant Vessel Inspection and Documentation Division, Office of Marine Safety, Security, and Environmental Protection, (202) 267-1492. Normal office hours are between 7 a.m. and 3:30 p.m. Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: The public is invited to participate in this proposed rulemaking by submitting written views, data or arguments. Comments should include the name and address of the person making them, identify this notice (CGD 88-031) and the specific section of the proposal to which each comment applies, and give the reason for each comment. If an acknowledgment is desired, a stamped, self-addressed post card or envelope should be enclosed.

The rules as proposed may be changed in light of the comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal.

No public hearing is planned. However, one may be held if written requests for a public hearing are received and it is determined that the opportunity to make oral presentations will be beneficial to the rulemaking process.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Uniform Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

Drafting Information

The prinicipal persons involved in drafting this regulation are Lieutenant Commander Gregory L. Oxley, Project Manager, and Lieutenant Commander Don M. Wrye, Project Counsel, Office of Chief Counsel.

Background

Documentation of vessels under federal law is a type of national registration which, among other things, serves of establish a vessel's nationality and qualification to be employed in a specified trade. The evidence of nationality is the Certificate of Documentation. One or more licenses endorsed on the Certificate of Documentation serve as evidence of the vessel's qualification to engage in a specified trade. The Coast Guard is the agency which (a) accepts applications for documentation of vessels; (b) determines whether a vessel which is the subject of an application is eligible for documentation generally and eligible for the specific license or licenses requested; and (c) issues Certificates of Documentation to eligible vessels.

On January 11, 1988, the President signed the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987 (Pub. L. 100-239, 101 Stat. 1778 (1988)) ("the Act") into law. The new law, among other things, amends the existing statute pertaining to vessel documentation by imposing a controlling interest test on vessels owned by corporations. The change is retroactively effective to July 28, 1987. Several sections of the existing vessel documentation regulations found in 46 CFR Part 67 are now in direct conflict with the statute. The Coast Guard has been applying the vessel statutory requirements pending revision of the regulations.

The only vessels which are eligible for documentation under United States law are those which are of at least five net tons and not registered under the laws of a foreign country. A vessel must also be owned by an individual United States citizen or an entity which meets prescribed citizenship criteria which vary with the nature of the entity and type of license. These criteria are listed in 46 U.S.C. 12102, as amended. A vessel which is eligible for documentation is eligible for a registry endorsement. There are additional eligibility criteria relating to both the vessel and its owner which must be met for the domestic trade entitlements evidenced by a fishery license, a coastwise license, and a Great Lakes license.

With the exception of the American control provision of the Act, the changes to the regulations mandated by the Act are being publish as a final rule in today's issue of the **Federal Register**.

The precise applicability of the American control provision of the Act is open to interpretation. The Coast Guard is, therefore, publishing its interpretation

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of this new provision and soliciting comments.

Discussion of the Proposed Rule

The basic citizenship requirements for a vessel owner are prescribed by 46 U.S.C. 12102. Prior to the Act, an owner who was eligible to document vessels, generally, was also eligible to document vessels with a fishery license endorsement without further citizenship requirements. The only time a vessel owner was required to pass a more strigent citizenship test was if applying for a coastwise of Great Lakes license. In the case of a coastwise license, if the owner was other than a natural person, the strictures of 46 U.S.C. App. 802 apply and 75% of the interest in the entity must have been held by United States citizens. Ownership of a vessel seeking a Great Lakes license was subject to the same restrictions. These requirements are reflected in the vessel documentation regulations in Part 67 and were not changed by the Act. The Act did, however, introduce a new controlling interest test for the owners of vessels seeking a fishery license.

Sction 7 of the Act amends 46 U.S.C. 12102 by adding the following:

A vessel owned by a corporation is not eligible for a fishery license under section 12108 of this title unless the controlling interest (as measured by a majority of voting shares in that corporation) is owned by individuals who are citizens of the United States. However, if the corporation is owned whole or in part by other United States corporations, the controlling interest in those corporations, in the aggregate, must be owned by individuals who are citizens of the United States.

At first, this provision would seem to indicate that only where a fishery license is sought for a vessel whose title is held directly by a corporation, would the corporation be subject to the new American control test. It would seem to indicate that where, for example, title was held by a partnership comprised of corporate partners, those partners would not be subjected to the new test.

The new provision, however, must be looked at in light of existing practice by the Coast Guard in determining eligibility for documentation. As previously mentioned, the Coast Guard has been applying a 75% controlling interest test in regard to coastwise licenses. In applying that test to entities such as partnerships which are comprised of corporations, the Coast Guard has traditionally held that any subordinate entity which contributes to the citizenship of the title holder must be qualified to document a vessel with the requested license in its own right. To do otherwise, would mean implementing the law in a way which would allow a corporation to do what it could not be directly by simply forming a partnership or a subsidiary.

In implementing section 7 of the Act, the Coast Guard proposes to continue this administrative practice in regard to fishery licenses; substituting, however, a greater than 50% controlling interest test for the coastwise 75% test. To do otherwise would be inconsistent with existing practice. To not subject corporate participants contributing to the legal title holder's citizenship to the controlling interest test would allow such corporations to do indirectly what they could not do directly, through the formation of a subsidiary or partnership. Such an approach would make the American control provision virtually meaningless. The Coast Guard and its predecessors in administration of the vessel documentation laws have never followed such an approach.

Where the owner of a vessel seeking a fishery license is a corporation, clearly, the control of that corporation must be held by United States citizens. Where one or more other corporations own the majority of the stock of the corporation which holds title to the vessel, such as in a parent/subsidiary arrangement, each of those corporations must have their controlling interest held by United States citizens.

Where the owner of a vessel seeking a fishery license is an entity other than a corporation, but is comprised in whole or in part, of corporations, if those corporations are contributing to the citizenship requirement of the entity holding the title, the requirement is that they must be qualified to document a vessel with a fishery license in their own right.

The proposed reulemaking would amend § 67.03–1 by adding provisions applicable to complex ownership arrangements and structures. It would also amend § 67.03–9 to indicate that a corporation is a citizen for the purpose of obtaining a fishery license if the controlling interest in the corporation is held by individual United States citizens. Proposed § 67.17–9 would provide for a temporary loss of fisheries entitlement whenever title to a vessel is not held by a fisheries entitled owner.

E.O. 12291 and DOT Regulatory Policies and Procedures

These regulations are considered to be non-major under Executive Order 12291 and nonsignificant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this regulation has been found to be so minimal that further evaluation is unnecesary. The regulation merely makes changes in eligibility requirements for vessel documentation mandated by statute.

Federalism

These regulations have been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

Since the impact of this regulation is expected to be minimal, the agency certifies that it will not have a significant economic impact on a substantial number of small entities. It is recognized that a substantial number of small entities are involved in the commercial fishing industry and other vessel operations within the ambit of this regulation. There is no significant economic impact, however, because the regulation recognizes the saving's provisions of the statute. Those provisions serve to protect those who have made verifiable financial commitments based on the laws and regulations in existence prior to enactment.

Paperwork Reduction Act

This rulemaking imposes no new paperwork burden on the public.

Environmental Assessment

The Coast Guard has considered the environmental impact of this regulation and concludes that under the categorical exclusion provision in section 2–B–3.h. of Commandant Instruction M16475.1B, the preparation of an Environmental Assessment, an Environmental Impact Statement, or a Finding of No Significant Impact for this regulation is not required. This regulation is an administrative and procedural regulation which clearly has no environmental impact.

List of Subjects in 46 CFR Part 67

Vessels.

For the reasons set out in the preamble, 46 CFR Part 67 is proposed to be amended as follows:

PART 67—DOCUMENTATION OF VESSELS

1. The authority citation for Part 67 continues to read as follows:

Authority: 31 U.S.C. 9701; 42 U.S.C. 9116; 46 U.S.C. 12121; 46 U.S.C. App. 841a, 876, 927, 983; 49 CFR 1.46.

2. Section 67.03–1 is amended by designating the existing text paragraph (a) and adding paragraph (b) to read as follows:

§ 67.03–1 Requirement for citizen owner.

* * * * *

(b) Where title to a vessel is held by an entity other than an individual person, and that entity is comprised, in whole or in part, of other entities, which are not individuals, the subordinate entities contributing to the citizenship qualifications of the entity holding title must be citizens eligible to document vessels in their own right with the license sought.

3. Section 67.03–9 is amended by revising the introductory text of paragraph (a), redesignating existing paragraph (d) as (e), and adding a new paragraph (d) to read as follows:

§ 67.03–9 Corporation.

(a) A corporation is a citizen for the purposes of obtaining a registry or a pleasure license if:

* * * * *

(d) A corporation is a citizen for the purposes of obtaining a fishery license endorsement if:

(1) It meets all the requirements of paragraph (a) of this section; and

(2) The controlling interest (as measured by a majority of voting shares in the corporation) is owned by individuals or entities who meet the citizenship requirements of this subpart.

* * * * *

4. Section 67.17–9 is amended by adding a new paragraph (c) to read as follows:

§ 67.17–9 Fishery license.

* * * * *

(c) A vessel otherwise eligible for a fishery license endorsement under paragraph (b) of this section loses that eligibility during any period in which it is owned by any entity which does not meet the citizenship requirements of Subpart 67.03.

Dated: August 18, 1988.

J. D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office fo Marine Safety, Security and Environmental Protection.

[FR Doc. 88–24358 Filed 10–19–88; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 80

[Gen. Docket No. 88–372]

Amendment of Parts 2 and 80 of the Commission's Rules Applicable to Automated Maritime Telecommunications Systems (AMTS)

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of reply comment period.

SUMMARY: The Private Radio Bureau has adopted an Order granting the Motion for Extension of Time to file reply comments filed by Waterway Communications Systems, Inc. in this proceeding concerning Automated Maritime Telecommunications Systems (AMTS). The Notice of Proposed Rule Making was published on August 10, 1988 at 53 FR 30075 and requested comments by September 26, 1988 and replies by October 11, 1988. Watercom stated that additional time is needed to prepare a complete analysis of the comments so that it can contribute to a more complete and accurate record.

DATE: Reply comments are now due by October 31, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Carol Fox Foelak, Private Radio Bureau, (202) 632–7197.

SUPPLEMENTARY INFORMATION:

Order

Adopted: October 5, 1988.

1. Under consideration is a request for extension of time filed by Waterway Communications System, Inc. (Watercom) on October 3, 1988, in the above captioned matter. The *Notice of Proposed Rule Making* in this matter provided that comments could be filed on or before September 26, 1988, and reply comments, on or before October 11, 1988. Watercom requests an additional 20 days, until October 31, 1988, to file reply comments.

2. Watercom states that the additional time is needed to prepare a complete analysis of the comments, which include highly technical matters so that it can contribute to a more complete and accurate record in this rule making. Additionally, Watercom is the party which petitioned for the rule changes proposed in this proceeding, and no other party is likely to be prejudiced by the requested extension.

3. In view of the above and pursuant to the authority contained in § 0.331 of the Commission's Rules, 47 CFR 0.331, Watercom's request for extension of time is granted. Reply comments are due October 31, 1988.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 88–24153 Filed 10–19–88; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 88–472, RM–6395]

Radio Broadcasting Services; Ackerman and Cleveland, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed jointly by French Camp Radio, Inc. and Carol B. Ingram, proposing the substitution of FM Channel 300C for Channel 300C1 at Ackerman, Mississippi, and modification of the license for FM Station WFCA to specify operation on Channel 300C. Channel 300C can be allotted to Ackerman at the current site of Station WFCA. The coordinates for Channel 300C are 33–25–25 and 89–24–13. To accommodate the proposed upgrade at Ackerman, Channel 295A must be substituted for Channel 299A at Cleveland, Mississippi. The channel was allotted to Cleveland in MM Docket 84–231 and made available in Window No. 51. The applicant for Channel 299A, Carol B. Ingram, has indicated her willingness to substitute Channel 295A for Channel 299A at Cleveland with a site restriction 3.1 kilometers northwest of the community. The coordinates for Channel 295A are 33–46–04 and 90–44–37.

DATES: Comments must be filed on or before November 15, 1988, and reply comments on or before December 12, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: William E. Kennard, Susan F. Heck, Verner, Liipfert, Bernhard, McPherson & Hand, 1660 L Street NW., Suite 1000, Washington, DC 20036 (Counsel for French Camp Radio, Inc. and Carol B. Ingram).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–472, adopted September 1, 1988, and released October 3, 1988. The full text of this Commission decision is available

for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-24282 Filed 10-19-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 661 and 663

[Docket No. 80750-8190]

Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California and Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues this rule to propose modifications to the regulations implementing the fishery management plans (FMPs) for the ocean salmon and Pacific coast groundfish fisheries in the exclusive economic zone (3–200 nautical miles) off the coasts of Washington, Oregon, and California. Comments are invited. This action is necessary to clarify certain provisions of the trip limit restrictions for Pacific coast groundfish and to provide consistency between the Pacific coast groundfish and ocean salmon regulations. It is intended to simplify enforcement of regional fisheries regulations.

DATE: Comments on this proposed rule are invited until November 18, 1988.

ADDRESSES: Comments on this proposed rule may be submitted to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115; or E. Charles Fullerton, Director, Southwest Region, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: William L. Robinson, 206–526–6140; or Rodney R. McInnis, 213–514–6199.

SUPPLEMENTARY INFORMATION: Under the Magnuson Fishery Conservation and Management Act (Magnuson Act), the FMPs for the commercial and recreational salmon fisheries and the Pacific coast groundfish fishery off the coasts of Washington, Oregon, and California were prepared by the Pacific Fishery Management Council (Council) and approved by the Secretary of Commerce (Secretary). Implementing regulations governing the ocean salmon and Pacific coast groundfish domestic fisheries are codified at 50 CFR Parts 661 and 663, respectively.

Several species and species categories regulated under the groundfish FMP are subject to weekly, biweekly, and/or twice-weekly trip limits. A "trip limit" is defined as "the total allowable amount of a groundfish species or species complex by weight, or by percentage of weight of fish on board, which may be landed from a single fishing trip." "Fishing trip" is defined as "a period of time during which fishing is conducted, beginning when the vessel leaves port and ending when the vessel lands fish." "Land or landing" means "to begin offloading any fish, to arrive in port with the intention of offloading any fish, or to cause any fish to be offloaded." These definitions are found in the current regulations at § 663.2.

Due to the wording of the definition of "land or landing," a question has arisen as to whether it is permissible for a fisherman to land a weekly (or biweekly or twice-weekly) trip limit and then continue to fish on the next week's limit and return to port during the same week so long as he does not offload until the second week. Although the regulations have not been construed to prohibit this practice, the wording of the definitions has occasionally raised questions among law enforcement personnel and the fishing industry as to whether it is or should be allowed.

Following discussion at its March 8–11, 1988 meeting in Seattle, Washington, and its April 5–8, 1988 meeting in Millbrae, California, the Council recommended to NOAA that the groundfish regulations be revised to clarify that a vessel operator arriving in port prior to the end of a fishing period would not be in violation of trip limits even if even if he had already landed the legal maximum for that period, unless he began to offload fish again before the next legal period. For consistency in definitions, the Council recommended that the salmon regulations also be revised.

NOAA agrees with these recommendations and proposes revisions to the definitions of "land or landing" in both the groundfish and salmon regulations. NOAA also proposes to change the definition of "fishing trip" in the groundfish regulations to eliminate the reference to leaving port. This change is necessary to clarify that trip limits apply to fishermen delivering to processing vessels at sea, whether or not they return to port between deliveries.

This proposed rule would clarify landing restrictions in the groundfish and ocean salmon fisheries, provide consistency between regional fisheries regulations, and facilitate enforcement. This action is necessary to ensure that authorized officers and fishermen have a clear understanding of the trip limit regulations in the groundfish fishery and to avoid any confusion which may result from using inconsistent definitions in the groundfish and ocean salmon fisheries.

Classification

This proposed rule is published under the authority of section 305(g) of the Magnuson Act. The Under Secretary for Oceans and Atmosphere (Under Secretary), before publishing a final rule, will take into account the data and comments received during the comment period.

This action is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02–10. This is because this action proposes only minor technical changes to the existing implementing regulations and, if adopted as proposed, would not result in a significant effect on the human environment. This action is not expected to alter the nature or intensity of environmental impacts which were addressed in: (1) The environmental assessment for the 1988 management measures implemented under the FMP for Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California, or (2) the supplemental environmental impact statements (SEIS) prepared by the Council for the Pacific Coast Groundfish FMP and the

environmental assessments for the three amendments to the FMP.

The Under Secretary determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. Because the proposed changes to the regulatory text only clarify but do not change the current application of landing restrictions, this action will not impose any direct costs on industry and will not affect competition, employment, investment, productivity, or innovation. While no costs are expected from the action, enforcement benefits will occur from more clear and consistent regulations.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This is because the measures to be implemented are technical in nature and serve to clarify the intent and scope of existing legal authorities. As a result, these measures are not expected to alter fishing practices or impose costs on the industry, and a regulatory flexibility analysis was not prepared.

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

The Council determined that this rule does not directly affect the coastal zone of any state with an approved coastal zone management program.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Exeuctive Order 12612.

List of Subjects in 50 CFR Parts 661 and 663

Fisheries, Fishing.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 14, 1988.

William Matuszeski,

Executive Director, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR Parts 661 and 663 are proposed to be amended as follows:

PARTS 661 AND 663—[AMENDED]

1. The authority citation for 50 CFR Parts 661 and 663 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 661.3, the definition of *land* or *landing* is revised to read as follows:

§ 661.3 Definitions.

* * * * *

Land or *landing* means to begin transfer of fish from a fishing vessel. Once transfer begins, all fish aboard the vessel are counted as part of the landing.

* * * * *

3. In § 663.2, the definitions of *fishing trip* and *land* or *landing* are revised to read as follows:

§ 663.2 Definitions.

* * * * *

Fishing trip means a period of time between landings when fishing is conducted.

* * * * *

Land or *landing* means to begin transfer of fish from a fishing vessel. Once transfer begins, all fish aboard the vessel are counted as part of the landing.

* * * * *

[FR Doc. 88-24336 Filed 10-19-88; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 53, No. 203
Thursday, October 20, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

October 14, 1988.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Revision

- Food and Nutrition Service, Food Stamp Program, Benefits Redemption Division

Food Stamp Application to Accept and Redeem Food Stamps
FNS-252, FNS-252-2, FNS-350
On Occasion
Businesses or other for-profit; 111,670 responses; 18,679 hours; not applicable under section 3504(h)
Suzanne Fecteau (703) 756-3419

- Food and Nutrition Service

Monthly Report of Commodity Supplemental Food and Quarterly Administrative
Financial Status Report.
FNS-153
Monthly, Quarterly
State or local governments; 240 responses; 1,512 hours; not applicable under section 3504(h)
Linda Gray-Jeffries or Jackie Williams (703) 756-3710

Extension

- Forest Service

Free Use Permit—Timber
FS-2400-5
On Occasion, Annually
Individuals or households; Federal agencies or employees; 210,000 responses; 42,000 hours; not applicable under section 3504(h)
Rena Gary (202) 475-3761

- Soil Conservation Service

Conservation Plan of Operations
SCS-CPA-11, SCS-CPA-11A, SCS-CPA-12, SCS-CPA-11
Recordkeeping, On Occasion, Annually
Individuals or households; Farms; 300,000 responses; 53,750 hours; not applicable under section 3504(h)
Bobby E. Rakestraw (202) 382-1866

- Departmental Administration—Office of Operations

Solicitation/Award/Administration of Contracts for Procuring Goods and Services
None
On occasion
Individuals or households; State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 638,800 responses; 129,000 hours; not applicable under section 3504(h)
Larry Schreier (202) 447-8924

Emergency

- Animal and Plant Health Inspection Service

National Poultry Improvement Plan
(NPIP)
None
One-time only
State or local governments; Federal agencies or employees; Non-profit institutions; 3,000 responses; 750 hours; not applicable under section 3504(h)
Irvin L. Peterson (301) 436-5140

Larry K. Roberson,
Acting Departmental Clearance Officer.
[FR Doc. 88-24224 Filed 10-19-88; 8:45 am]
BILLING CODE 3410-01-M

Forest Service

Mountain Meadow Guest Ranch; Medicine Bow National Forest, Albany County, WY; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service will prepare an environmental impact statement for a proposal to permit the expansion of the Mountain Meadow Guest Ranch on the Laramie Ranger District located in the Snowy Range Area of the Medicine Bow National Forest.

The Land and Resource Management Plan (Forest Plan) was approved on November 20, 1985. One of the issues addressed in the Plan was the "Desirable variety, amount and quality of developed recreation opportunity" to provide on the Forest (Planning Problem Statement 2, page II-35). In response to comments received on the proposed Plan, the schedule for construction and expansion of developed recreation sites was increased (Forest Plan, Appendix I) in order to meet projected demand. The Mountain Meadow facility is not on the schedule; however, because it is under permit by a private developer.

The Mountain Meadow Guest Ranch is located near the Snowy Range Highway (State Highway 130) approximately five miles west of Centennial, Wyoming. The highway was designated a National Scenic Byway during September 1988 and is a highly traveled route during the summer months. The area is managed with emphasis on rural and roaded-natural recreation opportunities as Management Area 2B. Conventional use of highway-type vehicles is provided for in design and construction of facilities (Forest Plan, page III-105).

A range of alternatives for the site will be considered. One of these will be no expansion. Other alternatives will consider a range of developments including additional cabins, a new lodge facility, and a full service recreation vehicle campground. This proposal is unique in that no full service recreation vehicle camping facility currently exists on the Medicine Bow National Forest. Selection of an expansion alternative may require an amendment to the Forest Plan to be entirely consistent with the Forest Plan.

Federal, State, and local agencies, potential developers; and other individuals or organizations who may be interested in or affected by the decision will be invited to participate in the scoping process. This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a previous environmental review.
4. Determination of potential cooperating agencies and assignment of responsibilities.

Gerald G. Heath, Forest Supervisor, Medicine Bow National Forest, is the responsible official.

The analysis is expected to take about six months. The draft environmental impact statement should be available for public review by January 1, 1989. The final environmental impact statement is scheduled to be completed by May 1989.

Written comments and suggestions concerning the analysis should be sent to Gerald G. Heath, Forest Supervisor, Medicine Bow National Forest, 605 Skyline Drive, Laramie, Wyoming 82070, by November 30, 1988.

Questions about the proposed action and environmental impact statement should be directed to Ron Wilcox, Laramie District Ranger, 605 Skyline Drive, Laramie, Wyoming 82070, 307-745-8971.

Ron Olsen,
Acting Forest Supervisor.
October 11, 1988.
[FR Doc. 88-24310 Filed 10-19-88; 8:45 am]
BILLING CODE 3410-11-M

Environmental Impact Statement; Heritage Mountain Recreational Development; Utah County, UT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Heritage Mountain, Inc. will prepare an environmental impact statement for a proposed recreational development in the Provo Peak Basin Area within the Uinta National Forest, to be approved by the USDA Forest Service, Uinta National Forest. This proposal is in keeping with direction established in the Uinta National Forest Land and Resource Management Plan.

An Environmental Impact Statement for the development of a Heritage Mountain Recreation Area was completed in October 1976. The decision at that time was to allow ski development on 4,500 acres of National Forest system land east of Provo, Utah. The proposed action was never implemented.

A new application for developing a Heritage Mountain Recreation Area has been received by the Uinta National Forest. Evolving issues and changed conditions since the completion of the 1970's EIS, require the Forest Service to reevaluate this new proposal through the NEPA process.

A range of alternatives for this proposal will be considered. One of these will be nondevelopment. Other alternatives will consider levels of development that enhanced economic opportunities for area communities, and protect existing resource values. All development alternatives will place maximum emphasis on administration to ensure that established procedures included in the special-use permit, master plan, environmental impact statement, etc., are strictly followed.

Federal, State, and local agencies, potential developers, organizations, landowners, and individuals who may be interested in or affected by this proposal will be invited to participate in the scoping process. This process will include:

1. Identification of potential public issues, management concerns, and resource development opportunities.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by previous environmental analyses and reviews.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determination of potential cooperating agencies, organizations, groups, and individuals, and the assignment of responsibilities.

The Fish and Wildlife Service, and the Department of the Interior will be consulted in identifying and evaluating potential impacts on threatened and endangered species habitat if any are found to exist within the proposal area.

DATE: An open house will be held between the hours of 10:00 a.m. to 8:00 p.m. on Wednesday, November 9, 1988, at the Excelsior Hotel, 101 West 100 North, Provo, Utah, to explain preliminary alternatives, and to identify any additional alternatives to be studied and receive comments. Comments will be received until December 9, 1988.

The analysis is expected to be concluded in February 1989. The draft environmental impact statement should be available for public review by March 17, 1989.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the Federal Register. It is very important that those interested in the management of the proposed area participate at that time. To be the most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed. (See the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3.) In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' positions and contentions, *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 533 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

The final environmental impact statement is scheduled to be completed by July 5, 1989.

Responsible Official: The responsible official is Forest Supervisor Don T. Nebeker, Uinta National Forest, 88 West 100 North, Provo, UT 84601 (Phone: 801-377-5780).

Comments: By December 9, 1988, written comments and suggestions concerning the analysis should be sent to Gary M. Coleman, Planning Consultant for Heritage Mountain, Inc., P.O. Box 106, Midway, Utah, 84049, (801-

654–3024), or Heritage Mountain, Inc., Provo, UT 84601, (801–375–5155).

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and environmental impact statement should be directed to Gary M. Coleman, Planning Consultant, P.O. Box 106, Midway, Utah, 84049, phone (801) 654–3024, or Heritage Mountain Inc., Provo, Utah, 84601, phone (801) 375–5155.

SUPPLEMENTARY INFORMATION: The Uinta National Forest Land and Resource Management Plan was approved in 1985. Standards and guidelines for the Plan direct the use of existing and future developed base areas and jumping-off points for dispersed recreation activities, and continued management of areas to the highest density possible to meet Forest objectives and to supply the Unita's portion of recreation opportunities consistent with the coordinated State-wide Program.

Date: October 12, 1988.

Dan T. Nebeker,

Forest Supervisor.

[FR Doc. 88–24300 Filed 10–19–88; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Alaska Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Alaska Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m. on November 17, 1988, at the Federal Building, 701 C Street, (Room C–122), Anchorage, Alaska 99513. The purpose of the meeting is to develop future program plans and to discuss follow-up activities to its project on minority and women's business enterprise programs.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Daniel Alex or Philip Montez, Director of the Western Regional Division (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the schedule date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Committee.

Dated at Washington, DC, October 14, 1988.

Melvin Jenkins,

Acting Staff Director.

[FR Doc. 88–24306 Filed 10–19–88; 8:45 am]

BILLING CODE 6335–01–M

Montana Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Montana Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 2:00 p.m., on November 12, 1988, at the Sheraton Hotel, 400 10th Avenue South, Great Falls, Montana 59405. The purpose of the meeting is to plan activities and programming for the coming year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Betty Babcock or Philip Montez, Director of the Western Regional Division (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the schedule date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Committee.

Dated at Washington, DC, October 14, 1988.

Melvin Jenkins,

Acting Staff Director.

[FR Doc. 88–24307 Filed 10–19–88; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–009]

Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On June 24, 1987, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Taiwan. The review covers four manufacturers/exporters of this merchandise to the United States and the period May 1, 1985 through April 30, 1986.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received and the correction of clerical errors, we have changed the margin for one company, An Mau Steel Co. Ltd., from that presented in the preliminary results of review.

EFFECTIVE DATE: October 20, 1988.

FOR FURTHER INFORMATION CONTACT: Maura Kim or Maureen Flannery, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–1130.

SUPPLEMENTARY INFORMATION:

Background

On June 24, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 23708) the preliminary results of its administrative review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Taiwan (49 FR 19369, May 7, 1984). The Department has now completed the administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of certain circular welded carbon steel pipes and tubes. The Department defines such merchandise as welded carbon steel pipes and tubes of circular cross section, with walls not thinner than 0.065 inches, and 0.375 inches or more but not over 4.5 inches in outside diameter, currently classifiable under items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243 and 610.3252 of the Tariff Schedules of the United States Annotated ("TSUSA") and item 7306.30.50 under the Harmonized System ("HS").

The review covers four manufacturers and/or exporters of Taiwanese circular welded carbon steel pipes and tubes to the United States and the period May 1, 1985 through April 30, 1986.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. The petitioner, the Standard Pipe Subcommittee of the Committee on Pipe and Tube Imports, and one respondent, An Mau, submitted comments.

Comment 1: The petitioner argues that An Mau's physical inventory loss was not included in selling, general, and administrative expenses ("SG&A") or profit and, therefore, must be a part of the cost of manufacture; in calculating constructed value, then, the Department should include physical inventory loss as part of the cost of manufacture rather than as a separate item.

An Mau argues that physical inventory loss has actually been included in the constructed value computation as part of "other operating expenses" in SG&A. Since this expense has been accounted for in SG&A, it should not appear as a separate figure in the calculation of constructed value, as it did for the preliminary results.

Department's Position: Upon review of An Mau's original questionnaire response and the cost verification exhibit which details the reconciliation of SG&A expenses, we have determined that An Mau included a loss on physical inventory in its SG&A expenses. We have eliminated the separate addition of this item to total constructed value.

However, physical inventory loss is considered a cost of manufacture because it is directly related to production. Therefore, for the final results, the Department has included the physical inventory loss in the cost of manufacture, not in SG&A expenses.

Comment 2: Petitioner argues that An Mau underreported its cost of manufacture ("COM"). Petitioner subtracts An Mau's SG&A and profit, calculated at the actual rates for 1985, as reported in An Mau's submission, from a hypothetical sales price, to arrive at a cost of manufacture. Petitioner then uses this derived cost of manufacture to calculate constructed value, adding SG&A and profit at the statutory minimum rates of 10 percent and 8 percent, respectively. Petitioner notes that the resulting constructed value must exceed the hypothetical sales price, because the statutory minimums for SG&A and profit are greater than An Mau's actual SG&A and profit. Therefore, An Mau must have underreported its cost of manufacture.

Department's Position: By subtracting SG&A and profit for all pipe and tube from the hypothetical sales price, the petitioner arrived at an average COM for all pipe and tube, not, as its argument erroneously assumes, an average COM for the product under review. Additionally, petitioner's derived COM included significant movement expenses. Since petitioner's calculated COM is overstated, its calculated constructed value is also overstated. The Department has verified An Mau's cost of manufacture and is satisfied that it was accurately reported.

Comment 3: Petitioner maintains that An Mau's calculation of forming costs as a component of An Mau's total factory overhead should include depreciation on forming machines not yet put into production, since An Mau took depreciation on those machines. An Mau argues that its exclusion of depreciation on the machines from its total factory overhead was based on the Department's practice of not including the depreciation on non-operational machines in its constructed value calculations.

Department's Position: We agree with the petitioner. The Department includes depreciation on non-operational machines in its constructed value calculations when such machines are related to the product under review. Only by doing so can we capture all costs related to the product. Furthermore, in this case the respondent depreciated the machines, indicating its recognition that a cost was being incurred during the period the machines were non-operational. Therefore, for these final results we included the depreciation expense in the fixed overhead component of cost of manufacture in our constructed value calculations.

Comment 4: Petitioner argues that the Department should not grant the duty drawback adjustment for respondents Yieh Hsing Enterprise Co., Ltd. (Yieh Hsing), Kao Hsing Chang Iron & Steel Corp. (KHC), and Far East Machinery Company, Ltd. (FEMCO) because the respondents failed to provide a reasonable link between the amount of duties paid and the amount rebated. As support for its argument, petitioner cites *Huffy Corp. v. United States*, 632 F. Supp. 50, 7 ITRD 2272 (CIT 1986), which requires a showing that: (1) "import duties are actually paid and rebated," and (2) there is a "sufficient link between cost to the manufacturer (import duties paid) and the claimed adjustment (rebate granted)."

The petitioner argues that there is an insufficient link between import duties paid and rebate received because the Taiwanese rebate program does not take into account: (1) Whether the imported coil can be used to make the exported product; or (2) the actual amount of duties per ton paid on the coil. The rebate is granted regardless of whether the size and grade of imported coil could have been used to produce the exported pipe. There is a great disparity in prices for various sizes, grades, and types of hot-rolled coil. Given the coil prices and drawback reported, the price of the coil used to produce the exported product must have been lower than the price for coil used in Taiwan's duty paying formula, or its scrap rate must have been unrealistic.

Department's Position: The Department extensively examined Taiwan's duty drawback system, as well as the duty drawback documentation for Yieh Hsing and FEMCO (KHC's records were not verified by the Department in this administrative review) in order to determine if import duties were paid and rebated, as well as whether a sufficient link between duties paid and rebated exists. Pertinent aspects of the Taiwanese duty drawback system were verified by the Department. On the basis of our examination of the Taiwanese duty drawback system, questionnaire responses, and verification, we conclude that respondents Yieh Hsing, KHC, and FEMCO have met the requirement that there is a sufficient link between duties paid and rebate granted.

The Department finds that the Taiwanese authorities' use of an average coil price (base prices obtained and average from coil usage patterns for the domestic industry as a whole) does not prevent the establishment of a link between import duties paid and drawback amounts received. By matching the duty drawback payments to the import licenses on which the claims are based, the Taiwanese authorities limit the amount of export rebates credited to a manufacturer by the amount of import duties actually paid by the same manufacturer. When the duty drawback paid to the manufacturer against a specific import license equals the duties shown on the license, no further drawback claim can be made against that import license. In this manner, the Taiwanese authorities ensure that the total amount of rebates received can never exceed the amount of actual import duties paid.

For the Department to grant a drawback claim, respondents must be able to demonstrate that they imported and paid duties on enough coil of the appropriate size, grade, and type to cover exports to the U.S. during the period of review. We verified that these conditions were met for Yieh Hsing and FEMCO.

Comment 5: Petitioner argues that if the duty drawback adjustment is granted it should be limited to the amount of duties paid for coil that has been matched by size, grade and type with the exported product. Respondents should have provided the Department with total tonnage of imports of coil that could have been used in standard pipe production, and the duties paid on that coil, so that the average duties paid per ton could have been calculated.

Department's Position: We agree that the duty drawback adjustment must be limited to the amount of duties paid on

coil appropriate for incorporation into the exported merchandise. Using documentation submitted by respondents, for the final results we calculated the duty drawback adjustment for each respondent based on actual duties paid on appropriate coil imports. The margins remain unchanged.

Comment 6: Petitioner argues that if the duty drawback adjustment is granted, then duty drawback received by the manufacturer should be allocated over all exports to the U.S. and third country markets. Otherwise, the petitioner argues, it would be possible for a foreign producer to eliminate its dumping margin on U.S. sales by targeting its total duty drawback to those sales.

Department's Position: It is not the Department's practice to require exporters to account for a sufficient amount of imported coil to cover all products under the review sold to third countries, as well as to the United States. In *Certain Carbon Steel Butt-Weld Pipe Fittings From Taiwan, Final Determination of Sales at Less Than Fair Value* (51 FR 37773, October 24, 1986), the Department deliberately limited the extent to which it investigated imports for duty drawback purposes. It excluded "products shipped to other countries" from its calculation of a total duty drawback amount to use for allocating duty drawback adjustments and stated that "we have limited the drawback used in our calculation to that applicable on shipments to the United States of the product under investigation."

Petitioner's argument is based on the premise that an adjustment for duty drawback should not be granted to the extent that imported inputs were not incorporated into the merchandise exported to the United States, even though imported inputs were sufficient to have accounted for all such exports. However, in *Steel Wire Rope From Korea, Final Determination of Sales at Not Less Than Fair Value* (48 FR 41616, September 16, 1983), the Department stated:

> • • • even if the Korean firms used domestic wire rod in the production of rope for export, there is evidence on the record of sufficient imports of high-carbon rod to more than account for all exports of wire rope. Under the principle of drawback substitution, this is sufficient to warrant an adjustment for the drawback of duties by the Korean government on exports of wire rope.

Also, see Department's response to Comment 4.

Comment 7: An Mau argues that it reported different packing costs for the period May–December 1985, and the period January–April 1986. An Mau claims that, as a result of a clerical error, the Department used the same packing costs regardless of the date of shipment.

Department's Position: We have checked our computer program and found that the appropriate packing cost was used for each period.

Final Results of the Review

Based on our analysis of the data and the comments received, we determine that the following margins exist:

Manufacturer/exporter	Time period	Margin (percent)
An Mau Steel Co., Ltd	05/01/85-04/30/86	0.09
Far East Machinery Co., Ltd	05/01/85-04/30/86	8
Kao Hsing Chang Iron & Steel Corp	05/01/85-04/30/86	0
Yieh Hsing Enterprise Co., Ltd	05/01/85-04/30/86	0

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Because there was either no margin, or a *de minimis* margin, for the reviewed manufacturers/exporters, the Department shall not require a cash deposit of estimated antidumping duties for those manufacturers/exporters.

For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after April 30, 1986, and who is unrelated to any reviewed firm, or any previously reviewed firm, no cash deposit shall be required.

These deposit requirements and waiver are effective for all shipments of certain Taiwan circular welded carbon steel pipes and tubes entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.53a.

Jan W. Mares,

Assistant Secretary for Import Administration.

Date: October 12, 1988.

[FR Doc. 88-24291 Filed 10-19-88; 8:45 am]

BILLING CODE 3510-DS-M

University of California et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 88-139. *Applicant:* University of California, Lawrence Livermore National Laboratory, Livermore, CA 94550. *Instrument:* Flashlamp System, Model 108-400. *Manufacturer:* Vertek Industries, Canada. *Intended Use:* See notice at 53 FR 15100, April 27, 1988. *Reasons for this decision:* The foreign articles provide a lamphead capable of operating at 150 kW with a nominal arc length of 150mm and a vortex-stabilized arc.

Docket Number: 88-180. *Applicant:* State University of New York at Buffalo, Buffalo, NY 14214. *Instrument:* Stainless Steel Chambers. *Manufacturer:* Technoscience, France. *Intended Use:* See 53 FR 20153, June 2, 1988. *Reasons For This Decision:* The foreign instrument provides a Comparque type supersonic nozzle yielding molecular beam intensities to 10^{21} molecules/steradian.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes. We know of no insturment or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-24292 Filed 10-19-88; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology

[Docket No. 80517-8117]

Redesignation of Fourteen Federal Telecommunications Standards (FED-STD) as Federal Information Processing Standards (FIPS); Withdrawal of One Federal Telecommunications Standard

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: The purpose of this notice is to announce that the Secretary of Commerce has approved the redesignation of fourteen computer-related telecommunications standards, which originally had been issued by the General Services Administration, as Federal Information Processing Standards (FIPS). Not included in this action are the Federal Telecommunications Standrds (FED-STD) that have been issued for systems excepted under the provisions of section 111(a)(3) of the Federal Property and Administrative Services Act of 1949 as amended.

Responsibility for the issuance of a group of computer-related telecommunications standards was transferred from the Administrator of General Services to the Secretary of Commerce by the Paperwork Reduction Reauthorization Act (Pub. L. 99-500) and was reaffirmed by the Computer Security Act of 1987 (Pub. L. 100-235).

This notice provides the new Federal Information Processing Standards Publication numbers for Federal Telecommunications Standards 1005A, 1006, 1007, 1008, 1015, 1020A, 1028, 1027, 1028, 1030A, 1031, 1033, 1062, and 1063. These standards have been redesignated as FIPS 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 147, and 148 respectively. FED-STD 1001/FIPS 37 has been withdrawn.

These actions are effective immediately upon publication of this **Federal Register** notice. The GSA-issued standards are considered withdrawn. GAS will make appropriate changes in the Federal Information Resources Management Regulations to reflect the redesignation of the Federal Telecommunications Standards as FIPS.

Federal Telecommunications Standard 1010, 1011, 1012, 1013, 1003A, and 1041 had already been issued as FIPS 16-1, 17-1, 18-1, 22-1, 71, and 100 respectively. These standards will keep their FIPS designations.

FOR FURTHER INFORMATION CONTACT: Shirley M. Radack, National Computer and Telecommunications Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975-2833.

SUPPLEMENTARY INFORMATION: An amendment to section 111(d) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(d)) authorizes the Secretary of Commerce to promulgate standards and guidelines developed by the National Institute of Standards and Technology for computer systems which have been defined to "mean any equipment or interconnected system or subsystems of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception, of data or information • • •."

Redesignation of Federal Telecommunications Standards As Federal Information Processing Standards

The Administrator of General Services previously was responsible for the development and promulgation of Federal Telecommunications Standards. To implement the transfer in responsibility for a group of computer-related telecommunications standards, fourteen Federal Telecommunications Standards, originally issued by GSA, have been reissued as Federal Information Processing Standards (FIPS).

The following Federal Telecommunications Standards which were issued under GSA's authority have been redesignated as Federal Information Processing Standards:

FIPS PUB 133, *Coding and Modulation Requirements for 2,400 Bit-Second Modems*, dated June 2, 1988. (Federal Standard 1005A)

FIPS PUB 134, *Coding and Modulation Requirements for 4800 Bit/Second Modems*, dated December 22, 1977. (Federal Standard 1006)

FIPS PUB 135, *Coding and Modulation Requirements for Duplex 9600 Bit/Second Modems*, dated March 1981. (Federal Standard 1007)

FIPS PUB 136, *Coding and Modulation Requirements for Duplex 600 and 1200 Bit/Second Modems*, dated June 16, 1980. (Federal Standard 1008)

FIPS PUB 137, *Analog to Digital Conversion of Voice by 2,400 Bit/Second Linear Predictive Coding*, dated November 28, 1984. (Federal Standard 1015)

FIPS PUB 138, *Electrical Characteristics of Balanced Voltage Digital Interface Circuits*, dated September 24, 1975. (Federal Standard 1020A)

FIPS PUB 139, *Interoperability and Security Requirements for Use of the Data Encryption Standard in the Physical Layer of Data Commuications*, dated August 3, 1983. (Federal Standard 1026)

FIPS PUB 140, *General Security Requirements for Equipment Using the Data Encryption Standard*, dated April 14, 1982. (Federal Standard 1027)

FIPS PUB 141, *Interoperability and Security Requirements for Use of the Data Encryption Standard with CCITT Group 3 Facsimile Equipment*, dated April 4, 1985. (Federal Standard 1028)

FIPS PUB 142, *Electrical Characteristics of Unbalanced Votoge Digital interface Circuits*, dated January 31, 1980. (Federal Standard 1030A)

FIPS PUB 143, *General Purpose 37-Position and 9-Position Interface Between Data Terminal Equipment and Data Circuit-Terminating Equipment*, dated June 10, 1985, (Federal Standard 1031)

FIPS PUB 144, *Data Communication Systems and Services and Service User-Oriented Performance Parameters*, dated May 28, 1985. (Federal Standard 1033). This standard adopts American National Standard (ANSI) X3.102-1983.

FIPS PUB 147, *Group 3 Facsimile Apparatus for Document Transmission*, dated August 19, 1981. (Federal Standard 1062)

FIPS PUB 148, *Procedures for Document Facsimile Transmission*, dated April 14, 1982. (Federal Standard 1063). This standard adopts Electronic Industries Association Standard RS-466.

The following Federal Information Processing Standrds which were also issued as Federal Telecommunications Standards will keep their FIPS designations:

FIPS PUB 16-1, *Bit Sequencing of the Code for Information Interchange in Serial-By-Bit Transmission*, dated September 1, 1977. (Federal Standard 1010)

FIPS PUB 17-1, *Character Structure and Character Parity Sense for Serial-By-Bit Data Communication in the Code for Information Interchange*, dated September 1, 1977. (Federal Standard 1011)

FIPS PUB 18-1, *Character Structure and Character Parity Sense for Parallel-By-Bit Data Communication in the Code for Information Interchange*, dated September 1, 1977. (Federal Standard 1012)

FIPS PUB 22-1, *Synchronous Signaling rates Between Data Terminal and Data Communication Equipment*, dated September 1, 1977. (Federal Standard 1013)

BEST COPY AVAILABLE

FIPS PUB 71, *Advanced Data Communication Control Procedures (ADCCP)*, dated May 14, 1980. (Federal Standard 1003A)

FIPS PUB 100, *Interface Between Data Terminal Equipment (DTE) and Data Circuit-Terminating Equipment (DCE) for Operation with Packet-Switched Data Communications Networks*, dated July 6, 1983. (Joint FIPS/Federal Standard 1041)

Waiver Requirements

The following waiver procedures will apply to these standards. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, United States Code.

Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Government-wide savings.

Agency heads may act only upon written waiver requests containing the information detailed above. Agency heads may approve waivers only by a written decision which explains the basis upon which the agency head made the required findings(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: Director, National Computer and Telecommunications Laboratory, ATTN: FIPS Waiver Decisions, Technology Building, Room B–154, National Institute of Standards and Technology, Gaithersburg, MD 20899. In addition notive of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the **Federal Register**.

When the determination on a waiver applies to the procurement of equipment and/or servies, a notice of the waiver determination must be published in the *Commerce Business Daily* as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. Sec. 552(b), shall be part of the procurement documentation and retained by the agency.

Withdrawal of Standard

FIPS PUB 37, *Synchronous High Speed Data Signaling Rates Between Data Terminal Equipment and Data Communications Equipment*, dated June 15, 1975, (Federal Standard 1001) has been withdrawn. This standrd adopted American National Standard (ANSI) X3.36–1975 which has been withdrawn.

Where To Obtain Copies

Copies of these publications are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute.) When ordering, refer to the Federal Information Processing Standards Publication number (FIPS PUB), and title. Payment may be made by check, money order, purchase order, credit card, or deposit account.

[redacted]
Director.

Date: October 12, 1988.

[FR Doc. 88–24215 Filed 10–19–88; 8:45 am]
BILLING CODE [redacted]

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Commercial and Recreational Salmon Fisheries Amendment 9; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings and request for comments.

SUMMARY: The Pacific Fishery Management Council (Council) will hold hearings to receive public comments on draft Amendment 9 to the "Fishery Management Plan for Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California Commencing in 1978." A draft environmental assessment, regulatory impact review/initial regulatory flexibility analysis, statement of consistency with coastal zone management programs, and review of other applicable law are incorporated in the document.

DATES: The hearings will be held November 2 and November 3, 1988. All hearings will begin at 7:00 p.m. Written comments must be received by November 11, 1988, to assure Council consideration before adoption of the final amendment.

Persons unable to attend the hearings or meet the written comment deadline may present their testimony to the Council directly on November 18 in Portland, Oregon. At that time, the Council is expected to adopt the final amendment for implementation in time for the 1989 ocean salmon season.

ADDRESSES: See "SUPPLEMENTARY INFORMATION" for the locations of the hearings. Written comments should be sent to Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW. First Avenue, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, 503–221–6352.

SUPPLEMENTARY INFORMATION: Draft Amendment 9 consists of the following issues: (1) Examines 3 alternatives to the current framework amendment escapement goal for Klamath River fall chinook; (2) examines 2 alternatives to the current framework amendment harvest allocation for commercial and recreational fisheries in the area north of Cape Falcon, Oregon; (3) examines the need to allow for more timely implementation of inseason Federal regulatory actions to increase management efficiency, eliminate regulatory confusion, and match identical state actions; (4) examines the need to conform Federal and State fishery management regulations with regard to the landing of steelhead in the ocean fishery; (5) examines the need to require inseason radio reports from commercial fishermen to the U.S. Coast Guard to provide timely accounting of catches and information on the movement of commercial fishing vessels; and (6) examines the need to correct, modify, or delete certain specific prohibitions on season opening and closing dates.

The hearings are scheduled as follows:

Wednesday, November 2, 1988

Redwood Acres Fairground, 3750 Harris Street, Eureka, California.

Astoria Middle School, Cafeteria, 1100 Klaskanine Avenue, Astoria, Oregon.

Thursday, November 3, 1988

Sawmill Restaurant, 3491 Broadway, North Bend, Oregon.

Seattle Airport Hilton, Alpine Room, 17620 Pacific Highway S., Seattle, Washington.

Holiday Inn-Airport, 245 S. Airport Boulevard, S. San Francisco, California.

For further information or copies of the draft amendment, contact the Council office at the address and telephone number provided above.

Dated: October 17, 1988.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–24335 Filed 10–19–88; 8:45 am]
BILLING CODE 3510–22–M

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will convene a public meeting on November 1, 1988, at 1 p.m., of the Mississippi/Louisiana Habitat Advisory Panel at the Holiday Inn—French Quarter, 124 Royal Street, New Orleans, LA, to discuss marsh management, the Mississippi River freshwater diversion structures, Louisiana's coastal hypoxis zone, Louisiana's Comprehensive Coastal Plan, Louisiana brine discharge, Louisiana offshore oil port anchoring zone violations, Barataria Bay, dredge material disposal problems in the Mississippi Sound, and butterfish fishing methods. The public meeting will recess at 5 p.m., reconvene on November 2 at 8:30 a.m., and will adjourn at 3 p.m.

For further information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL 33609; telephone: (813) 228–2815.

Date: October 14, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–24334 Filed 10–19–88; 8:45 am]
BILLING CODE 3510–22–M

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council will convene a public meeting on October 25, 1988, at 9 a.m., at the Sheraton Falmouth, 291 Jones Road, Falmouth, MA, to discuss fisheries enforcement issues and reports of the Groundfish and Swordfish Committees. The Lobster Committee will make a recommendation concerning adoption of Amendment #3 to the American Lobster Fishery Management Plan, and the Council will vote on the matter at the meeting. There also will be an update on scallops, including progress on Amendment #3 to the Scallop Fishery Mangement Plan and recent developments in the fishery. The Council will hear reports by the Ad Hoc Committee on Council Work Priorities and from the Technical Monitoring Group. The public meeting will adjourn at approximately 5 p.m.

For further information, contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, (Route One), Saugus, MA 01908; telephone: (617) 231–0422.

Date: October 14, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–24331 Filed 10–19–88; 8:45 am]
BILLING CODE [redacted]

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Groundfish Fishery Management Plan (FMP) Rewrite Oversight Group and the Council's Groundfish Select Group (GSG) will convene public meetings as follows:

Groundfish FMP Rewrite Oversight Group—will convene on November 1, 1988, at 8 a.m., at the Pacific Marine Fisheries Commision Conference Room, 2075 SW. First Avenue, Suite 1C, Portland, Or, to review progress on FMP Amendment 4 and to prepare a document for review by the Pacific Council at this November 16–18, 1988, meeting in Portland, OR. *Groundfish Select Group (GSG)*—will convene on November 2, 1988, at 8 a.m., at the Red Lion Inn-Portland Center, Pyramid Lake Room, 310, SW. Lincoln, Portland, OR, to continue development of alternative management and allocation strategies for the 1989 sablefish fisheries. Dr. Ellen Pikitch of the University of Washington will present the preliminary results of the fishing vessel observer program conducted off the Oregon coast during 1986–1987. Information from this study may aid the GSC in determining the incidental sablefish bycatch needs of the trawl fishing operations for other species. The GSG may also discuss managmeent strategies for the 1989 yellowtail rockfish and widow rockfish fisheries.

For further information contact Lawrence D. Six, Executive Director, Pacific Fishery Managmeent Council, Metro Center, 2000 SW. First Avenue, Suite 420, Portland, OR 97201; telephone: (503) 221–6352.

Date: October 14, 1988.

[redacted]
Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–24332 Filed 10–19–88; 8:45 am]
BILLING CODE 3510–22–M

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council will convene a public meeting on November 1, 1988, at 1 p.m., at the Council's Headquarters (addressed below), of the Scientific and Statistical Committee to review the swordfish assessment and options for Amendment #1 to the Swordfish Fishery Management Plan (FMP). The Committee also will review Mackerel Amendments 3, 4, and 5, review the proposed Bluefish FMP, and also write a definition for overfishing. The public meeting will adjourn on November 3 at noon; a detailed agenda will be available to the public on or about October 18, 1988.

For further information contact Carrie R.F. Knight, Public Information Specialist, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407; telephone: (803) 571–4366.

Date: October 14, 1988.

[redacted]
Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–24333 Filed 10–19–88; 8:45 am]
BILLING CODE [redacted]

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

Action: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: DoD FAR Supplements, Part 25, Foreign Acquisition, and Related Clauses in Part 52.225; and OMB Control Number 0704–[redacted].

Type of Request: Extension.

Average Burden Hours/Minutes Per Response: 3246 hours.

Frequency of Response: On occasion.

Number of Respondents: 32,463.

Annual Burden Hours: 18,927.

Annual Responses: 58,317.

Needs and Uses: Part 25 of the DoD FAR Supplement contains collection requirements related to Foreign Acquisition methods, including identification of expenditures in the U.S. by foreign contractors and submission of duty free entry certificates and source of petroleum products.

Affected Public: Businesses or other for-profit; Non-profit institutions; and Small businesses or organizations.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Ms. Eyvette R. Flynn.

Written comments and recommendations on the proposed information collection should be sent to Ms. Eyvette R. Flynn at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 14, 1988.

[FR Doc. 88-24227 Filed 10-19-88; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

Action: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: DoD FAR Supplements, Part 37, Service Contracting, and Related Clauses in Part 52.237; DD Form 428; and OMB Control Number 0704-0211.

Type of Request: Extension.

Average Burden Hours/Minutes Per Response: 2 hours and 15 minutes.

Frequency of Response: On occasion.

Number of Respondents: 29,071.

Annual Burden Hours: 72,677.

Annual Responses: 29,071.

Needs and Uses: The information is required to support the acquisition of various service contracts.

Affected Public: Businesses or other for-profit; Non-profit institutions; and Small businesses or organizations.

Respondents Obligation: Mandatory.

OMB Desk Officer: Ms. Eyvette R. Flynn.

Written comments and recommendations on the proposed information collection should be sent to Ms. Eyvette R. Flynn at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 14, 1988.

FR Doc. 88-24228 Filed 10-19-88; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Defense Science Board Task Force on Defense Industrial Cooperation With Pacific Rim Nations; Advisory Committee Meeting

ACTION: Change in date of advisory committee meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Defense Industrial Cooperation With Pacific Rim Nations scheduled for October 14, 1988 as published in the **Federal Register** (Vol. 53, No. 185, Page 37027, Friday, September 23, 1988, FR Doc. 88-21798) will be held on October 21, 1988.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 14, 1988.

[FR Doc. 88-24226 Filed 10-19-88; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Privacy Act of 1974; Altered Record System

AGENCY: Department of the Navy, DOD.

ACTION: Notice of an altered system of records subject to the Privacy Act.

SUMMARY: The Department of the Navy is altering a system of records subject to the Privacy Act, as amended (5 U.S.C. 552a).

DATE: This proposed action will be effective without further notice November 21, 1988, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to Mrs. Gwen Aitken, Head, PA/FOIA Branch, Office of the Chief of Naval Operations (OP-09B30), The Pentagon, Room 5E521, Department of the Navy, Washington, DC 20350-2000, telephone 202-697-1459, autovon: 227-1459.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notices inventory subject to the Privacy Act of 1974 have been published in the **Federal Register** as follows.

FR Doc 88-8485 (51 FR 12908) April 16, 1986
FR Doc 88-10783 (51 FR 18088) May 16, 1986 (Compilation)
FR Doc 88-12448 (51 FR 19884) June 3, 1986
FR Doc 88-19207 (51 FR 30377) August 26, 1986
FR Doc 88-19208 (51 FR 30393) August 26, 1986
FR Doc 88-28835 (51 FR 45831) December 23, 1986
FR Doc 87-1144 (52 FR 2147) January 20, 1987
FR Doc 87-1145 (52 FR 2149) January 20, 1987
FR Doc 87-5783 (52 FR 8500) March 18, 1987
FR Doc 87-9688 (52 FR 15530) April 29, 1987
FR Doc 87-10428 (52 FR 17294) May 7, 1987
FR Doc 87-13560 (52 FR 22871) June 15, 1987
FR Doc 87-27707 (52 FR 45848) December 2, 1987
FR Doc 88-10871 (53 FR 17240) May 16, 1988
FR Doc 88-12862 (53 FR 21512) June 8, 1988
FR Doc 88-13202 (53 FR 22028) June 13, 1988
FR Doc 88-15101 (53 FR 25363) July 6, 1988
FR Doc 88-23229 (53 FR 39499) October 7, 1988

An altered system report, as required 5 U.S.C. 552a (o) of the Privacy Act was submitted on October 3, 1988, to the Administrator, Office of Information and Regulatory Affairs, OMB; the President of the Senate; and the Speaker of the House of Representatives, pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52730, December 12, 1985).

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer,

Department of Defense

October 14, 1988.

NO1754-1

System name:

Navy Family Support Program (51 FR 18121, May 16, 1986).

Changes:

System location:

In line 2, change "* * * Naval * * *" to "* * * Navy * * *"

Categories of individuals covered by the system:

Delete the entire entry and substitute with the following: "Military service members and their dependents, retirees and their dependents, and spouses of POW's and MIA's and their eligible dependents. In certain oversea locations and certain remote CONUS locations, civilian DOD employees may be eligible for services."

Categories of records in the system:

In line 2, after the word "* * * name, * * *"add "* * *SSN,* * *"

Authority for maintenance of the system:

Delete the entire entry and substitute with: "10 U.S.C. 5031 and Executive Order 9397."

Purpose:

Delete lines 6 and 7 and substitute with: "* * * intervention to those eligible."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Delete the entire entry and substitute with the following: "Paper records are stored in file folders and automated records are stored on magnetic tapes and discs."

Retrievability:

Delete the entire entry and substitute with the following: "Records may be retrieved by the SSN or name of eligible person being served by the Family Service Center (FSC)."

Safeguards:

Delete the entire entry and substitute with the following: "Access is limited to professional FSC staff and as delegated by the FSC Director at each location on a need-to-know basis. Paper records are stored in locked file cabinets. Automated records may be controlled by limiting physical access to data entry terminals or use of passwords. Access to computer information, and tape and disc storage, is strictly controlled. Work areas are site-controlled during normal working hours. Building access is controlled and doors are locked during non-duty hours."

Retention and disposal:

Delete the entire entry and substitute with the following: "Paper records are retained for two years and then destroyed. Automated records are maintained for five years, then tapes/discs are erased."

System Manager (s) and address:

Delete the entire entry and substitute with the following: "For Navy activities, the Head, Family Services, Navy Family Support Program (NMPC-66), Naval Military Personnel Command, Washington, DC 20370.

For Marine Corps activities, the Head, Family Programs Branch (MHF), Headquarters, U.S. Marine, Corps, Washington, DC 20380."

Notification Procedures:

In line 2, delete the word "* * * Naval* * * and substitute with "* * * Navy * * *"

Record Source Categories:

Delete the entire entry and substitute with the following: "Information is normally obtained directly from the individual applying for counseling/assistance, however, there may be instances when the FSC counselor obtains informaiton from mental health officials."

N01754-1

SYSTEM NAME:

Navy Family Support Program.

SYSTEM LOCATION:

Navy Family Service Centers (FSC's) located at various Navy and Marine Corps activities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military service members and their dependents, retirees and their dependents, and spouses of POW's and MIA's and their eligible dependents. In certain oversea locations and certain remote CONUS locations, civilian DOD employees may be eligible for services.

CATEGORIES OF RECORDS IN THE SYSTEM:

File could contain personal information such as name, SSN, case number, home address, telephone number, marriage counseling information, parent-child relationship information, family relations, financial data, and developmental disability information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5031 and Executive Order 9397.

PURPOSE(S):

The Family Service Centers (FSC's) offer information, conduct referral services, and directly deliver services for a wide array of personal and family matters, counseling, assistance and crisis intervention to those eligible.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in file folders and automated records are stored on magnetic tapes and discs.

RETRIEVABILITY:

Records may be retrieved by the SSN or name of eligible person being served by the FSC.

SAFEGUARDS:

Access is limited to professional FSC staff and as delegated by the FSC Director at each location on a need-to-know basis. Paper records are stored in locked file cabinets. Automated records may be controlled by limiting physical access to data entry terminals or use of passwords. Access to computer information, and tape and disc storage, is strictly controlled. Work areas are sought-controlled during normal working hours. Building access is controlled and doors are locked during non-duty hours.

RETENTION AND DISPOSAL:

Paper records are retained for two years and then destroyed. Automated records are maintained for five years, then tapes/discs are erased.

SYSTEM MANAGER(S) AND ADDRESS:

For Navy activities, the Head, Family Services, Navy Family Support Program (NMPC-66), Naval Military Personnel Command, Washington, DC 20370. For Marine Corps activities, the Head, Family Programs Branch (MHF), Headquarters, U.S. Marine Corps, Washington, DC 20380.

NOTIFICATION PROCEDURE:

Written requests may be addressed to the appropriate Navy/Marine Corps activity concerned (mailing addresses are listed in the Navy directory in the component systems notice). Individuals should provide proof of identity, full name, rank, dates of counseling, etc.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the systems manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the systems manager.

RECORD SOURCE CATEGORIES:

Information is normally obtained directly from the individual applying for counseling/assistance, however, there may be instances when the FSC counselor obtains information from mental health officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 88-24229 Filed 10-19-88; 8:45 am]

BILLING CODE 3915-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. QF88-537-000 et al.]

J-W Operating Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. J-W Operating Company

[QF88-537-000]

October 4, 1988.

On September 23, 1988, J-W Operating Company (Applicant), of 15508 Wright Brothers Dr., Addison, Texas 75224 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Selma, California. The facility will consist of three gas-fired engine generators. The electric power production capacity will be 693 kilowatts. The primary energy source will be biomass in the form of landfill gas. Construction of the facility is expected to begin in October 1988.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

2. Leathers, L.P.

[Docket No. QF88-543-000]

October 14, 1988.

On September 30, 1988, Leathers, L.P. (Applicant), of 342 West Sinclair Road, Calipatria, California 92233 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in the Niland Area of Imperial County, California. The facility consists of a dual-entry condensing steam turbine generator, steam separation vessels, switchyard, and related equipment. The estimated net electric power production capacity will be 34 megawatts. The primary energy source will be geothermal fluids. Fossil fuels will be used for startup and shutdown. The facility will be owned as a limited partnership, under the laws of California. Red Hill Geothermal, Inc. will be a general partner and have a 40 percent interest in Leathers, L.P. The Magma Power Company will be a limited partner and have a 10 percent interest in Leathers, L.P. The San Felipe Energy Company will be a general partner with a 40 percent interest and a limited partner with a 10 percent interest in Leathers, L.P. The San Felipe Energy Company is a subsidiary of the SCEcorp, an electric utility holding company.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

3. City of Piqua, Ohio v. Dayton Power and Light Co.

[Docket No. EL88-3-000]

October 14, 1988.

Take notice that on October 5, 1988, City of Piqua, Ohio (Piqua) tendered for filing, pursuant to section 202(b), 210, and 306 of the Federal Power Act, 16 U.S.C. 824a(b), 824i, and 825e, and Rules 204 and 206 of the Commission's Rules of Practice and Procedure, a Complaint against Dayton Power and Light Company (DP&L) and an order directing DP&L to permit Piqua, at its own expense, to establish a physical connection of DP&L's Sidney-Miami 138 KV line with Piqua's substation No. 5.

Comment date: November 14, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. South Carolina Public Service Authority, Central Electric Power Cooperative, Inc. and Mid-Carolina Electric Cooperative, Inc. (Petitioners) v. South Carolina Electric & Gas Co.

[Docket No. EL88-3-000]

October 14, 1988.

Take notice that on October 5, 1988, South Carolina Public Service Authority (Santee Cooper), Central Electric Power Cooperative, Inc. (Central) and Mid-Carolina Electric Cooperative, Inc. (Mid-Carolina) (collectively referred to as Petitioners) tendered for filing, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure and section 206 of the Federal Power Act, 16 U.S.C. 824e(a) (1982), a Petition for a Declaratory Order by the Commission finding that the collection of approximately $4.2 million in late payments and interest from Santee Cooper by South Carolina Electric & Gas Company (SCE&G) is unjust and unreasonable under the applicable Tariff and Service Agreement.

Comment date: October 31, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Pacific Power & Light Company an Assumed business name of PacifiCorp

[Docket No. ER89-8-000]

October 17, 1988.

Take notice that on October 7, 1988, Pacific Power & Light Company (Pacific), an assumed business name of PacifiCorp, tendered for filing, in accordance with section 35 of the Commission's Regulations, Notices of Cancellation of Service Agreement Nos. 6 and 7 under Pacific's FERC Electric Tariff Original Volume No. 4 (Tariff), a new binder page to the Tariff and Revised Sheet Nos. 5,6,8,9,10,11,13 and 14 to the Tariff.

Pacific states that these Service Agreements have been terminated by mutual agreement or appropriate notice in accordance with the terms of the Service Agreements. The FERC Rate Schedule Designations are as follows:

FERC rate schedule number	Party
Service Agreement No. 6 under FERC Electric Tariff Original Volume No. 4 (Redesignation of Rate Schedule FERC No. [illegible]).	Town of Basin, Wyoming.
Service Agreement No. 7 under FERC Electric Tariff Original Volume No. 4 (Supersedes Rate Schedule FPC No. 131).	Montana Light & Power Company.

Pacific requests waiver of Commission's notice requirements to permit the Basin Service Agreement to terminate on April 5, 1988 and the Montana Service Agreement to terminate on February 1, 1988 which are the dates of termination of service.

Copies of the filing were served upon all parties hereto, the Wyoming Public Service Commission and the Montana Public Service Commission.

Comment date: October 31, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Pacific Gas and Electric Co.

[Docket No. ER89-6-000]

October 17, 1988.

Take notice that on October 4, 1988, Pacific Gas and Electric Company (PG&E) tendered for filing, changes in rates for Rate Schedule FERC No. 77 for existing transmission services (firm transmission service and special facilities charges) by PG&E to the Department of Water Resources of the State of California (DWR). In addition, PG&E proposes to change Rate Schedule FERC No. 77, to include special facilities charges associated with a Facilities Agreement for the Installation and Operation of the Tie Lines for the North Bay Pumping Plants (Facilities Agreement) between PG&E and DWR, dated December 8, 1966.

The proposed changes in firm transmission and special facility charges are pursuant to sections II.4.2 and II.4.4 of Supplement No. 8 of Rate Schedule FERC No. 77. The Facilities Agreement provides for DWR to pay PG&E an annual special facilities charge for owning, operating, and maintaining the transmission lines that PG&E is designing and building in order to provide service to two new DWR pumping plants.

Copies of this filing were served upon DWR and the California Public Utilities Commission.

Comment date: October 31, 1988, in accordance with Standard Paragraph E at the end of this notice.

7. Pacific Power & Light Co., an assumed business name of PacifiCorp

[Docket No. ER88-7-000]

October 17, 1988.

Take notice that on October 4, 1988, Pacific Gas and Electric Company (Pacific), and assumed business name of PacifiCorp, tendered for filing, in accordance with section 35 of the Commission's Regulations, an August 11, 1988, Letter Agreement amending the Wholesale Power Purchase Agreement dated June 16, 1966, between Pacific and Montana-Dakota Utilities Company (MDU) designated as Service Agreement No. 9 under Pacific's FERC Electric Tariff, Original Volume No. 4 (Tariff) and an August 16, 1988, Letter Agreement amending the Wholesale Power Purchase Agreement dated November 4, 1975, between Pacific and the Town of Deaver, Wyoming (Town) designated as Service Agreement No. 5 under the Tariff.

Pacific requests waiver of the Commission's notice requirements to permit the MDU Letter Agreement to become effective August 11, 1988 and the Town Letter Agreement to become effective August 16, 1988, these dates being consistent with the dates of execution.

Copies of the filing were served upon all parites hereto and the Wyoming Public Service Commission.

Comment date: October 31, 1988, in accordance with Standard Paragraph E at the end of this document.

8. Columbus Southern Power Co.

[Docket No. ER89-5-000]

October 17, 1988.

Take notice that on October 5, 1988, American Electric Power Service Corporation (AEP) tendered for filing on behalf of its affiliate Columbus Southern Power Company (CSP) (a) an Interconnection Agreement, dated January 1, 1989, between City of Columbus, Ohio (City) and CSP (1988 Agreement) and (b) Modification No. 1, dated September 1, 1988, between City and CSP. The 1988 Agreement replaces the present Agreement, dated June 1, 1983, as modified (1983 Agreement) between City and CSP. The modification No. 1 revises Service Schedule B—Emergency Service to the 1988 Agreement. The Commission has previously designated the 1983 Agreement as CSP's Rate Schedule FERC No. 33.

The 1988 Agreement incorporates the Firm Power, Transmission Service, Dump Energy, and Transfer Service Schedules provided in the 1983 Agreement and modified thereafter, which was accepted for filing by the Commission. The 1988 Agreement also provides for Emergency Service, Short Term Power, Limited Term Power, and Interchange Power Service Schedules which are reciprocal services. These reciprocal service are similar to those that other AEP affiliated system members have with other neighboring electric utility systems and have been accepted for filing by the Commission.

It is requested that the Commission permit this 1988 Agreement and Modification No. 1 to become effective October 1, 1988.

Comment date: October 31, 1988, in accordance with Standard Paragraph E at the end of this notice.

9. Canal Electric Co.

[Docket No. ER88-704-003]

October 17, 1988.

Take notice that on September 29, 1988, Canal Electric Company (Canal) tendered for filing its compliance refund report pursuant to the Commission's order issued August 2, 1988.

Copies of the tendered filing have been served by Canal upon the Massachusetts Attorney General, the Commission's Staff, the Town of Belmont and the Massachusetts Department of Public Utilities.

Comment date: October 31, 1988, in accordance with Standard Paragraph E at the end of this notice.

10. Pacific Power & Light Co., an assumed business name of PacifiCorp

[Docket No. ER88-583-000]

October 17, 1988.

Take notice that on October 5, 1988, Pacific Power & Light Company (Pacific), an assumed business name of PacifiCorp, tendered for filing, in accordance with section 35 of the Commission's Regulations, a Certificate of Concurrence in the Exchange Agreement dated June 24, 1988 tendered for filing by the Colockum Transmission Company, Inc.

Copies of this filing have been supplied to the Colockum Transmission Company, Inc., Public Utility District No. 1 of Chelan County and the Washington Utilities and Transportation Commission.

Comment date: October 31, 1988, in accordance with Standard Paragraph E at the end of this notice.

11. Arizona Public Service Co.

[Docket No. ER89-6-000]

October 17, 1988.

Take notice that on October 6, 1988, Arizona Public Service Company (APS or Company) tendered for filing a Letter Agreement (Agreement) supplementing the Contract for Interconnections and Transmission Service (APS–FPC Rate Schedule 33) between the United States of America—Department of Energy—Western Area Power Administration (WAPA) and APS. The Agreement provides for the short term coordination type sale of Supplemental Nuclear Coal fired energy between the hours of 11:00 pm and 7:00 am m.s.t. for the period October 1, 1988 through March 31, 1989. The tendered Agreement provides for varying energy amounts to be delivered over the aforementioned term of the Agreement.

No new facilities nor modifications to existing facilities are required to provide this aforementioned service.

A copy of this filing has been served upon WAPA and the Arizona Corporation Commission.

Comment date: October 31, 1988, in accordance with Standard Paragraph E at the end of this notice.

12. Fulton Cogeneration Associates

[Docket No. QF89-5-000]

October 14, 1988.

On October 7, 1988, Fulton Cogeneration Associates (Applicant) of Three City Square, Albany, New York 12207 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping-cycle cogeneration facility will be located at the Nestle Foods Corporation plant in the City of Fulton, Oswego County, New York. The facility will consist of a combustion turbine generator, and a supplementary fired heat recovery steam generator (HRSG). Steam from the HRSG will be used in processing of chocolate products and for space heating at the production facility. The net electric power production capacity of the facility will be 45.769 MW. The primary source of energy will be natural gas #2 fuel oil as standby. Installation of the facility is scheduled to begin in February 1989.

Comment date: Thirty days from publication in the **Federal Register** in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24340 Filed 10-19-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-31-000 et al.]

Texas Gas Transmission Co. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Texas Gas Transmission Company

[Docket No. CP89-31-000]

October 12, 1988.

Take notice that on October 7, 1988, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-31-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing it to render standby service for those sales customers which elect to execute new sales service agreements under proposed Rate Schedules CDN or GN, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Texas Gas would permit sales customers served under Rate Schedules CDN or GN to obtain standby transportation service for up to 50 percent of their sales contract demand on any day and up to 50 percent of their seasonal D-2 entitlements during any season. The service is proposed to commence November 1, 1988, in order to replace the standby service rendered under Texas Gas Rate Schedule TSC which is said to expire October 31, 1988. The transportation rendered pursuant to this service would be conducted under Rate Schedule FT, it is stated.

Texas Gas states that the proposed Rate Schedules CDN and GN are, with two exceptions, similar to its existing sales rate schedules. The principal changes are said to be that standby service would be available solely to those customers executing new service agreements and that such service agreements would expressly waive all contract demand conversion and/or reduction rights other than those specifically enumerated therein.

It is stated that Texas Gas and any customer electing service under Rate Schedule CDN or GN would negotiate reductions in presently effective contract demand D-1 and D-2 levels on a mutually acceptable basis, and that once those initial contract demand D-1 and D-2 levels were established, the service agreements under both Rate Schedules CDN and GN would provide for specific conversion rights.

The rates for the sales service to be rendered under Rate Schedules CDN and GN would be the same as for the sales service rendered under existing Rate Schedules CD, CDL, and G, it is stated.

Texas Gas is also proposing certain changes in Rate Schedule FT in order to give its customers flexibility under the standby service. Texas Gas claims that any transportation rendered under Rate Schedule FT within the SD-1 and SD-2 quantities nominated would be firm at the delivery point to the customer and that transportation service at receipt points would also be firm, subject to the customer's right to elect service under a receipt point reduction option.

Comment date: October 19, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. CNG Transmission Corporation

[Docket No. CP89-22-000]

October 13, 1988.

Take notice that on October 6, 1988, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26302 filed in Docket No. CP89-22-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorizations to transport natural gas for the shippers in the following transactions, under its blanket authorization issued in Docket No. CP86-311-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CNG proposes to transport gas for the following shippers on an interruptible basis from the various receipt points on its system to various interconnections between CNG and certain local distribution companies (LDCs) and pipelines. The receipt and delivery points, along with maximum daily, average daily and annual volumes are shown as follows.

CNG states that it report these transactions, with commencement dates, to the Commission, as shown by the ST docket numbers which follow. CNG proposes to continue these services beyond the 120-day limit in accordance with §§ 284.221 and 284.223(b) of the Commission's Regulations.

CNG indicates that it commenced the transportation of natural gas for the indicated skippers on August 1, 1988, at the listed ST docket numbers, for a one hundred and twenty (120) day period ending November 29, 1988, pursuant to § 284.223(a)(1) of the Commission's Regulations (18 CFR 284.223(a)(1) and the blanket certificate issued to CNG in Docket No. CP86-311-000.

Comment date: November 28, 1988, in accordance with Standard Paragraph G at the end of this notice.

PART 284, SUBPART G, TRANSPORTATION TRANSACTIONS FOR THE PERIOD, 8-01-88 THROUGH 8-31-88

Docket No.	Shipper Customer	Commencement Date	Max. Daily DT Avg. Daily DT Est. Annual DTR	Receipt Point	LDC
ST88-5788	1. CNG Trading Company	8/04/88	15,000 1,200 5,475,000	D	[illegible]
[illegible]	2. Kogas, Inc.	8/27/88	100,000 2,769 36,500,000	B	H & B.
ST88-5791	3. Bishop Pipeline Corporation	8/12/88	10,000 1,286 3,650,000	D	NFG.
ST88-5790	4. Finch Pruyn & Company	8/13/88	3,500 1,053 3,284,500	B	NIMO.
ST88-5789	5. Brandywine, Industrial Gas, Inc.	8/31/88	3,000 95 1,095,000	D	NIMO.
ST88-5787	6. Clinton Gas Marketing, Inc.	8/01/88	8,700 1,606 2,540,500	B	PNG.
ST88-5786	7. The Resource Group	8/10/88	50,000 1,765 10,950,000	B	PNG.
ST88-5784	8. Owens-Illinois, Inc.	8/10/88	5,000 705 1,825,000	B	NIMO.
ST88-5782	9. Owens-Illinois, Inc.	8/10/88	10,000 282 1,650,000	B	NIMO.
ST88-5785	10. Hadson Retail Services, Inc.	8/03/88	1,000 122 365,000	D	NIMO.

Legend of local distribution companies (LDC) or delivery points
HGI—Hope Gas, Inc.
NYSEG—New York State Electric & Gas Corporation.
RGE—Rochester Gas & Electric Corporation.
EOG—East Ohio Gas Company.
PNG—Peoples Natural Gas Company.
NIMO—Niagara Mohawk Power Corporation.
NFG—National Fuel Gas Supply Corporation.
Transco—Transcontinental Gas Pipeline Corporation.
Corges—Corges Pipeline Company (Intrastate).
North Penn—North Penn Gas Company.
H & B—Hanley & Bird.

Legend of receipt points
A—Various interconnects between Tennessee Gas Pipeline Company and CNG.
B—Various receipt points in WV/PA/NY.
C—Various interconnections between Texas Gas Transmission Corporation and CNG.
D—Various interconnections between Texas Eastern Transmission Corporation and CNG.

3. CNG Transmission Corporation

[Docket No. CP88-871-000]

October 13, 1988.

Take notice that on September 29, 1988, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP88-871-000, an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of 78 miles of 20 inch pipeline from Benezette, Pennsylvania to Perulack, Pennsylvania to be known as TL-472, and 8,400 horsepower compressor station and related facilities at Ardell Station located near Benezette, Pennsylvania and 8.8 miles of 30 inch pipeline loop to be known as TL-474, Extension in Westmoreland and Armstrong, Counties Pennsylvania and 12 miles of 30 inch pipeline loop to be known as TL-475 in Armstrong County, Pennsylvania, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CNG states that the proposed facilities are necessary and integral in order for services to be performed in addition to the facilities proposed in its filing of August 23, 1988, in Docket No. CP88-712-000. CNG states that the application in Docket No. CP88-712-000 proposed construction and operation of 27 miles of 24 inch pipeline from Leesburg, Virginia to Virginia Natural Gas, Inc.'s (VNG) proposed 120 pipeline facilities near Prince William/Fauquier County Line, Virginia to be known as TL-465, two compressor stations and related facilities, in order to make sales, transportation and interruptible storage of natural gas available to certain customers in Virginia, VNG; the City of Richmond, Virginia (Richmond); Hanover Energy Associates (NEA); and Virginia Electric and Power Company (VEPCO). CNG believes that the proposed facilities and services would provide significant benefits to VNG, Richmond, HEA, VEPCO, CNG, and their respective customers. It is alleged that the gas sales to VNG and Richmond detailed in Docket No. CP88-712-000 would provide an alternate supply source for both customers, as well as incremental supplies for potential growth in the Virginia market.

It is stated that the rates for the proposed gas sales services are cost-

based, FERC approved tariff rates, subject to the FERC's determination in CNG's settlement proceeding in Docket No. RP85–169–000, *et al.* It is further stated that as proposed, in the third full year of operations, volumes sold are more than those for which CNG currently has firm markets. However, CNG is currently negotiating contracts with customers to complete utilization of the pipeline. It is alleged that in the event interruptible transportation volumes are not enough to fully cover the remaining costs associated with the proposed facilities in the application, CNG would not allocate such costs to any existing customer or group of customers. It is asserted that the rates to be charged by CNG for rendering the proposed services are not unduly discriminatory and fully compensatory. CNG contends that it's existing customer would not be required to subsidize the proposed service.

It is stated that the estimated total cost of the proposed facilities is $76,157,850, inclusive of filing fees. The proposed facilities would be financed from funds to be obtained from CNG Transmission's parent, Consolidated Natural Gas Company, or from funds on hand.

Comment date: November 3, 1988, in accordance with Standard Paragraph F at the end of this notice.

4. CNG Transmission Corporation

[Docket No. CP88–712–001]

October 13, 1988.

Take notice that on September 29, 1988, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP88–712–001 an amendment to the application filed August 23, 1988, in Docket No. CP88–712–000, pursuant to section 7(c) of the Natural Gas Act, to replace the proposed 8,000 horsepower compressor station proposed for Doylesburg, Pennsylvania with two 4,390 horsepower compressor stations and related facilities in Doylesburg and Leesburg, Virginia, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

It is stated that in the application filed on August 23, 1988, CNG proposed to construct and operate facilities and render long-term firm sales to Virginia Gas Company and the City of Richmond, Virginia and transportation and interruptible storage service to Hanover Energy Associates and Virginia Electric and Power Company. It is alleged that as a result of certain settlements in the Northeast "Open Season" dockets, CNG is submitting facilities changes to implement the proposed sales in the August 23, 1988, application. CNG proposes to construct and operate a 4,390 horsepower compressor station and related facilities near Doylesburg and a 4,390 horsepower compressor station and related facilities near Leesburg. It is asserted that these two compressors would replace the proposed 8,000 horsepower compressor proposed for Doylesburg in the original application. It is alleged that the estimated cost of the two compressor stations is $8,194,000 as compared with $11,183,300 as originally filed.

Comment date: November 3, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

5. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP88–867–000]

October 13, 1988.

Take notice that on September 30, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP88–867–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Oxy USA Inc. (Oxy), a producer of natural gas, under Northern's blanket certificate issued in Docket No. CP86–435–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to transport on an interruptible basis up to 60,000 MMBtu of natural gas on a peak day and 21,900,000 MMBtu on an annual basis for Oxy. It is asserted that Northern would receive and deliver the gas at specified receipt and delivery points in Texas, Oklahoma, Iowa and Kansas. It is stated that the transportation service would be effected using existing facilities and would not require any construction of additional facilities. It is explained that the service has commenced under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST88–5551.

Comment date: November 28, 1988, in accordance with Standard Paragraph G at the end of this notice.

6. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89–12–000]

October 13, 1988.

Take notice that on October 4, 1988, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP89–12–000 a prior notice request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport up to 25,000 dt of natural gas per day for Chevron, USA, Inc., under its blanket certificate issued in Docket No. CP86–328–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transco states that it proposes to transport on an interruptible basis, pursuant to a transportation agreement dated June 15, 1988, a maximum daily quantity of 25,000 dt. Transco further states the average day and annual quantities would be 18,000 dt and 7,000,000 dt, respectively. Transco proposes to receive the gas at Ship Shoal Block 107/108, offshore Louisiana and deliver the gas at Beauregard Parish, Louisiana. Further, Transco states that service commenced August 22, 1988, as reported in Docket No. ST88–5755, pursuant to § 284.223(a) of the Commission's Regulations.

Comment date: November 28, 1988, in accordance with Standard Paragraph G at the end of this notice.

7. Williams Natural Gas Company

[Docket No. CP89–11–000]

October 13, 1988.

Take notice that on October 4, 1988, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–11–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon by sale to Union Gas System, Inc. (Union) approximately 2.4 miles of 4-inch lateral pipeline and appurtenant facilities in Leavenworth County, Kansas, and the transportation of gas through said facilities under the blanket authorization issued in Docket No. CP82–479–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

WNG states that WNG and Union have agreed the pipeline is more appropriately a part of Union's distribution system since there are currently fifteen of Union's domestic customers connected to the line. The reclaim cost is estimated to be $1,100, the salvage value $12,622 and the sales price $11,740.

Comment date: November 28, 1988, in accordance with Standard Paragraph G at the end of this notice.

8. Iberville Parish Police Jury, Applicant, Southern Natural Gas Company, Respondent

[Docket No. CP88–884–000]

October 13, 1988.

Take notice that on August 16, 1988, Iberville Parish Police Jury (Iberville), P.O. Box 389, Plaquemine, Louisiana 70764, filed in Docket No. CP88–884–000 an application as supplemented on September 16, 1988 and October 5, 1988, pursuant to section 7(a) of the Natural Gas Act for an order directing Respondent Southern Natural Gas Company (Southern) to establish a physical connection of its transportation facilities with Iberville's facilities and directing Southern to make sales of natural gas to Iberville for resale in the Bayou Sorrel to Pigeon area in Iberville Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Iberville states that it presently purchases gas from two intrastate pipeline companies, Monterey Pipeline Company and Acadian Gas Corporation which Iberville distributes to approximately 2,800 customers. Iberville states that it will construct new distribution facilities in order to serve approximately 500 households in the Bayou Sorrel to Pigeon area, Iberville Parish, Louisiana and requests that the Commission direct Southern to sell and deliver up to 200 Mcf per day (the estimated maximum day requirement in 1991) and to establish the necessary interconnection with Iberville in order for Southern to deliver such gas. It is stated that the estimated cost of the meter station to be constructed by Southern is $103,000 which would be reimbursed by Iberville.

Iberville states the estimated total cost of the project is $828,280 for which financing is yet to be determined; however, Iberville states that, if necessary, it could finance the project from cash reserves which are in excess of $1,000,000. Further, Iberville proposes to commence construction in the first quarter of 1989 and to commence service in the second quarter of 1989.

Comment date: November 14, 1988, in accordance with Standard Paragraph F at the end of this notice.

9. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP88–884–000]

October 14, 1988.

Take notice that on September 30, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP88–884–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Fina Oil and Chenical Company (Fina), a marketer of natural gas, under Northern's blanket certificate issued in Docket No. CP86–435–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to transport on an interruptible basis up to 30,000 MMBtu of natural gas on a peak day and 10,950,000 MMBtu on an annual basis for Fina. It is asserted that Northern would receive the gas at specified receipt points offshore Louisiana and offshore Texas, and deliver the gas at specified delivery points in Texas, offshore Texas, and offshore Louisiana. It is stated that the transportation service would be effected using existing facilities and would not require any construction of additional facilities. It is explained that the service has commenced under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST88–5553.

Comment date: November 28, 1988, in accordance with Standard Paragraph G at the end of this notice.

10. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP88–886–000]

October 14, 1988.

Take notice that on September 30, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP88–886–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Excalibur Energy Corporation (Excalibur), a marketer of natural gas, under Northern's blanket certificate issued in Docket No. CP86–435–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to transport on an interruptible basis up to 50,000 MMBtu of natural gas on a peak day and 18,250,000 MMBtu on an annual basis for Excalibur. It is asserted that Northern would receive and deliver the gas at specified receipt and delivery points in Texas, Oklahoma, Kansas and New Mexico. It is stated that the transportation service would be effected using existing facilities and would not require any construction of additional facilities. It is explained that the service has commenced under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST88–5554.

Comment date: November 28, 1988, in accordance with Standard Paragraph G at the end of this notice.

11. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP88–889–000]

October 14, 1988.

Take notice that on September 30, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP88–889–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Panda Resources, Inc. (Panda), a marketer of natural gas, under Northern's blanket certificate issued in Docket No. CP86–435–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to transport on an interruptible basis up to 500,000 MMBtu of natural gas on a peak day and 182,500,000 MMBtu on an annual basis for Panda. It is asserted that Northern would receive and deliver the gas at specified receipt and delivery points in Texas, Oklahoma, Nebraska, Iowa, Wisconsin, Minnesota, Michigan, South Dakota and New Mexico. It is stated that the transportation service would be effected using existing facilities and would not require any construction of additional facilities. It is explained that the service has commenced under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST88–5558.

Comment date: November 28, 1988, in accordance with Standard Paragraph G at the end of this notice.

12. Southern Natural Gas Company

[Docket No. CP89-21-000]

October 14, 1988.

Take notice that on October 6, 1988, Southern Natural Gas Company, (Southern), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP89-21-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Rangeline Corporation (Rangeline), a marketer, under the blanket certificate issued in Docket No. CP88-316-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the application that is on file with the Commission and open to public inspection.

Southern states that pursuant to a transportation agreement dated July 22, 1988, under Southern's Rate Schedule IT, it proposes to transport up to 500 MMBtu per day equivalent of natural gas on an interruptible basis for Rangeline from points of receipt listed in Exhibit "A" of the agreement to delivery points listed in Exhibit "B", which transportation service may involve interconnections between Southern and various transporters. Southern states that it would recieve the gas at various existing points on its system offshore Louisiana, and in Louisiana, and that it would transport and redeliver the gas to an unspecified end user in South Caroline for Rangeline's account.

Southern advises that service under § 284.223(a) commenced August 1, 1988, as reported in Docket No. ST88-5516. Southern further advises that it would transport 150 MMBtu on an average day and 54,750 MMBtu annually.

Comment date: November 28, 1988, in accordance with Standard Paragraph G at the end of this notice.

13. Southern Natural Gas Company

[Docket No. CP89-19-000]

October 14, 1988.

Take notice that on October 6, 1988, Southern Natural Gas Company, (Southern), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP89-19-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Sonat Marketing Company (SMC), an affiliated marketer, under the blanket certificate issued in Docket No. CP88-316-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the application that is on file with the Commission and open to public inspection.

Southern states that pursuant to a transportation agreement dated July 12, 1988, under Southern's Rate Schedule IT, it proposes to transport up to 755,650 MMBtu per day equivalent of natural gas on an interruptible basis for SMC from points of receipt listed in Exhibit "A" of the agreement to delivery points listed in Exhibit "B", which transportation service may involve interconnections between Southern and various transporters. Southern states that it would receive the gas at various existing points on its system offshore Louisiana, offshore Texas, Alabama, Mississippi, and Texas, and that it would transport and redeliver the gas to SMC at various points in Georgia.

Southern advises that service under § 284.223(a) commenced August 1, 1988, as reported in Docket No. ST88-6512. Southern further advises that it would transport 562,500 MMBtu on an average day and 205,312,500 MMBtu annually.

Comment date: November 28, 1988, in accordance with Standard Paragraph G at the end of this notice.

14. Mojave Pipeline Company

[Docket Nos. CP89-1-000, CP89-2-000]

October 14, 1988.

Take notice that on October 3, 1988, Mojave Pipeline Company (Mojave), 1400 Smith, Houston, Texas 77002, filed in Docket Nos. CP89-1-000 and CP89-2-000 applications pursuant to sections 7(b) and 7(c) of the Natural Gas Act, 15 U.S.C. 717f, and subparts E, F, and § 284.221 of the Federal Energy Regulatory Commission's Regulations thereunder for (A) an optional certificate of public convenience and necessity under Subpart E of Part 157 authorizing: (i) The constructions and operation of facilities, (ii) the transportation of natural gas in interstate commerce, and (iii) conditional pregranted abandonment authority; and (B) a blanket certificate authorizing the construction and operation of facilities, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Mojave states that it is a General Partnership whose partners are Enron Mojave, Inc. and El Paso Mojave Pipeline Company.

It is further stated that Mojave does not have any present operations but would, upon the Commission's issuance of the optional expedited certificate of public convenience and necessity requested herein, be a natural gas company engaged in the transportation of natural gas in interstate commerce and would be subject to the Commission's jurisdiction under the NGA.

Mojave proposes alternative authorization to construct one of three designs; Base Case, Alternative I, or Alternative II.

I. The Base Case would have a design capacity of 600 MMcf/d (expandable to 1,000 MMcf/d) and would consist of three segments. (i) The first segment would consist of an approximately 17 mile 24-inch diameter pipeline extending from a tap point on an existing pipeline owned by Transwestern Pipeline Company in Mojave County, Arizona, to a proposed compressor station located near Topock, Arizona, (Topock compressor station) and an interconnection facility from a tap point on an existing pipeline owned by El Paso Natural Gas Company immediately south of the proposed Topock compressor station. (ii) The second segment would consist of approximately 260.5 miles of 36-inch diameter pipeline and 65.0 miles of 30-inch diameter pipeline beginning at the proposed Topock compressor station and extending to the Bakersfield area in Kern County, California. (iii) The third segment would consist of approximately 45 miles of 28-inch diameter pipeline in Kern County, California. The proposed Topock compressor station would have 22,500 horsepower of installed compression.

II. Alternative I would have a design capacity of 400 MMcf/d expandable to 600 MMcf/d (and ultimately 1,000 MMcf/d). This alternative would have the same three segments as the Base Case but would have 11,500 horsepower of installed compression that could, in time, be increased to 22,500 horsepower to raise the design capacity to 600 MMcf/d.

III. Alternative II would have a design capacity of 400 MMcf/d, and would serve a marke. ⁻hose requirements would appear not to exceed 400 MMcf/d over the life of the project. This alternative would have the same three segments as the Base Case but would substitute a 30-inch pipeline for the 36-inch pipeline in the second segment, and would have 18,750 horsepower of installed compression at the Topock compressor station.

Mojave contends that the facilities proposed in this application(s) are identical to those which were the subject matter of a Final Environmental Impact Statement (FEIS), issued December 18, 1987, and supplemented on October 3, 1988. Therefore no further environmental analysis is required for the instant application(s). The FEIS as supplemented is herein adopted as Staff's FEIS for Docket Nos. CP89-1-000 and CP89-2-000.

Mojave states that it seeks to make its rates competitive and has been willing to accept risks greater than those traditionally associated with interstate natural gas pipelines. Mojave states that its application provides for individual negotiations with the Enhanced Oil Recovery (EOR) shippers. Further, Mojave states that it puts both its return on and of equity at risk by allocating costs associated with return on and of equity to its commodity charge. Mojave states that it will "project finance" the pipeline thus reducing its rates to its shippers and ensuring that existing ratepayers of the affiliates of the Mojave partners will be insulated from any of the risks associated with the project.

Mojave emphasizes that its optional certificate application has been filed in the belief and on the condition that it will not prejudice or delay the proceedings in Mojave's conventional application in Docket No. CP85-437-000.

The subject filing includes the following:

(1) Mojave proposed financing which incorporates an initial capitalization ratio of approximately forty percent (40%) equity and sixty percent (60%) debt. This differs from Mojave's proposed financing in Docket No. CP85-437-000 in which Mojave proposes thirty percent (30%) equity and seventy percent (70%) debt. The equity portion will be contributed in equal shares by the two Mojave partners. Mojave anticipates that the debt component would be "project financed," i.e., secured by the revenues generated by the project under service agreements with the shippers.

(2) Mojave states that it would not buy or sell any gas. Mojave proposes transportation to be provided on a firm basis pursuant to proposed Rate Schedule FT-1 and on an interruptible basis pursuant to its proposed Rate Schedule IT-1 for contract shippers who have acquired title to the gas at or upstream of Topock. Mojave expects its service to be provided primarily to the heavy oil fields in Kern County, California; however, it proposes to provide transportation on an open access basis.

(3) Mojave proposes that priority of service within each class of service of its tariff would be determined on a "first come first served" basis. Mojave proposes an "open season" which commences upon publication in the Federal Register of notice of filing of this application and concludes thirty (30) days prior to the date of closing of financial arrangements for the construction of the pipeline. Mojave states it will publish a notice in industry publications of general circulation at least 45 days prior to the close of the request period.

(4) Mojave states it proposes a one part volumetric rate; however, Mojave also states its proposed tariff enables Mojave and its shippers to negotiate a two part rate for firm service consisting of a reservation fee and a transportation charge to be paid per unit of gas transported. Mojave states that these rates shall not be greater than the maximum rates or less than the minimum rates set forth in Mojave's tariff which are presented on a MMBtu basis as follows:

Case	Volumetric rate		Maximum reservation fee
	Max	Min	
Base Case	36.91¢	1.00¢	17.71¢
Alternative I	49.25¢	1.00¢	22.11¢
Alternative II	49.25¢	1.00¢	22.72¢

Mojave states that it has derived its proposed rates based upon a 95% load factor. Further Mojave states it has excluded both return on and return of equity from the calculation of its maximum reservation fee. Mojave also states it has complied with *WyCal* order in which the Commission limited recovery of costs through the demand charge to the debt-equity ratios of the 10 largest interstate pipelines. Mojave calculates its rates based on a 20-year straight line depreciation live, rather than the 25 years set by the Commission in the *WyCal* order. However, Mojave's proposal also seeks authority for flexibility to negotiate other forms of rates, including levelized rates, with any shipper desiring such rate. Mojave states its rates are not mileage-based nor differentiated between peaks and off-peak period.

(5) Mojave states its application proposes an 18% ceiling rate of return on equity (ROE) which would permit Mojave to negotiate contracts with shippers that might yield a maximum ROE of 18%. Mojave does not ask the Commission to guarantee any level of return; instead, Mojave urges the Commission to establish a ceiling ROE that will not impede Mojave's ability to negotiate with and serve the EOR shippers while ensuring that Mojave is adequately compensated for its risk.

(6) Mojave states that its application set its maximum rate for interruptible service using the maximum total 100% load factor rate for firm service to be charged on a volumetric basis.

Comment date: October 28, 1988, in accordance with Standard Paragraph F at the end of this notice.

15. Natural Gas Pipeline Company of America

[Docket No. CP89-51-000]

October 14, 1988.

Take notice that on October 13, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP89-51-000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for Arco Oil and Gas Company, a Division of Atlantic Richfield Company (Arco), a producer of natural gas, under Natural's blanket certificate issued in Docket No. CP86-582-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural proposes to transport on an interruptible basis up to 80,000 MMBtu of natural gas equivalent per day, plus additional quantities of overrun gas, on behalf of Arco pursuant to a transportation agreement dated June 28, 1988, between Natural and Arco. Natural would receive gas at various existing points of receipt on its system in Iowa, Louisiana, offshore Louisiana, Texas, offshore Texas, New Mexico and Oklahoma and redeliver eqivalent volumes, less fuel and lost and unaccounted for volumes, at an existing point of delivery in Texas.

Natural further states that the estimated average daily and annual quantities would be 80,000 MMBtu and 29,200,000 MMBtu, respectively. Service under § 284.223(a) commenced on August 1, 1988, as reported in Docket No. ST89-148, it is stated.

Comment date: November 28, 1988, in accordance with Standard Paragraph G at the end of this notice.

16. Natural Gas Pipeline Company of America

[Docket No. CP89-37-000]

October 14, 1988.

Take notice that on October 11, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP89-37-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for Williams Gas Marketing Company (Williams), a marketer of natural gas, under Natural's blanket

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certificate issued in Docket No. CP86–582–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural proposes to transport on an interruptible basis up to 100,000 MMBtu of natural gas equivalent per day, plus additional quantities of overrun gas, on behalf of Williams pursuant to a transportation agreement dated June 8, 1988, as amended on July 18, 1988, and August 2, 1988, between Natural and Williams. Natural would receive gas at various existing points of receipt on its system in Louisiana, offshore Louisiana, Texas, offshore Texas, Illinois, Oklahoma, Missouri, New Mexico, Kansas, Nebraska, Iowa and Arkansas and redeliver equivalent volumes, less fuel and lost and unaccounted for volumes, at various existing points of delivery in Louisiana, Colorado, Illinois, New Mexico and Oklahoma.

Natural further states that the estimated average daily and annual quantities would be 50,000 MMBtu and 18,250,000 MMBtu, respectively. Service under § 284.223(a) commenced on August 5, 1988, as reported in Docket No. ST88–131, it is stated.

Comment date: November 28, 1988, in accordance with Standard Paragraph G at the end of this notice.

17. Tennessee Gas Pipeline Company

[Docket No. CP88–858–000]

October 14, 1988.

Take notice that on September 27, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88–856–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations, for authorization to provide a transportation service for Diamond Shamrock Natural Gas Marketing Company (Diamond Shamrock), a marketer, under Teanessee's blanket certificate issued in Docket No. CP87–115–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee proposes to transport natural gas for Diamond Shamrock from various receipt points located offshore Louisiana, offshore Texas, Louisiana, Texas, Alabama, New York and Mississippi to specified delivery points in multiple States.

Tennessee indicates that the transportation service for Diamond Shamrock initially started August 19, 1988, pursuant to the self-implementing provision of § 284.223, as reported in Docket No. ST88–5678. Further, Tennessee states that the peak day quantities would be 220,000 dekatherms, the average daily quantities would be 100 dekatherms, and the annual quantities would be 36,500 dekatherms.

Comment date: November 28, 1988, in accordance with Standard Paragraph G at the end of this notice.

18. Natural Gas Pipeline Company of America

[Docket No. CP88–862–000]

October 14, 1988.

Take notice that on September 30, 1988, Natural Gas Pipeline Company of America (Natural) 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP88–862–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Apache Marketing, Inc. (Apache), a marketer of natural gas, under Natural's blanket certificate issued in Docket No. CP86–582–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural proposes to transport on an interruptible basis up to 50,000 MMBtu of natural gas on a peak day plus excess volumes pursuant to the overrun provisions of its Rate Schedule ITS, 20,000 MMBtu on an average day, and 7,305,000 MMBtu on an annual basis for Apache. It is stated that Natural would receive the gas for Apache's account at various existing receipt points in Oklahoma, Texas, offshore Texas, Louisiana, offshore Louisiana and Illinois. Natural proposes to redeliver equivalent volumes of gas in Illinois, Iowa and Texas. It is asserted that the transportation service would be effected using existing facilities and would not require any construction of additional facilities. It is explained that the service commenced August 1, 1988, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST88–5678.

Comment date: November 28, 1988, in accordance with Standard Paragraph G at the end of this notice.

19. Tennessee Gas Pipeline Company

[Docket No. CP88–870–000]

October 17, 1988.

Take notice that on September 29, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252–2511, filed in Docket No. CP88–870–000 a request under section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing firm sales service to Piedmont Natural Gas Company, Inc., Nashville Gas Division (Nashville), under Tennessee's Rate Schedule CD–1, and permitting and approving abandonment of service, effective February 1, 1988, to Nashville under Tennessee's Rate Schedules G–1 and GS–1, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee states that under a March 30, 1988 letter-agreement Tennessee and Nashville have agreed to combine G and GS sales service under a single contract and to revise Tennessee's services to Nashville to more accurately reflect Nashville's current requirements. Tennessee specifically proposes to (1) provide firm sales service to Nashville under Rate Schedule CD–1 and a gas sales contract dated February 1, 1988 for a contracted demand quantity of 130,000 dt equivalent of natural gas and an annual quantity of 27,046,500 dt equivalent of natural gas, (2) abandon its Rate Schedule G–1 and GS–1 service to Nashville and (3) provide a firm transportation service for Nashville under Rate Schedule FT–A up to a maximum daily quantity of 10,000 dt equivalent of natural gas.

Tennessee states that the new CD sales service to be rendered by Tennessee for Nashville would not be an "eligible firm sales agreement" within the meaning of Section 284.10 of the Commission's Regulations. However, Tennessee proposes to provide limited opportunities for Nashville to convert its firm sales entitlement to firm sales service or reduce its sales entitlement.

Comment date: November 7, 1988, in accordance with Standard Paragraph F at the end of this notice.

20. Pacific Atlantic Marketing, Inc.

[Docket No. CP88–7–000]

October 17, 1988.

Take notice that on October 6, 1988, Pacific Atlantic Marketing, Inc. (PAMI) of P.O. Box 1188, Houston, Texas 77251–1188, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for a blanket certificate with pregranted abandonment authorization for an unlimited term, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Comment date: November 2, 1988, in accordance with Standard Paragraph J at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervent is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 88–24341 Filed 10–19–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GP88–31–000]

BASF Corp. and Samson Resources Co.; Complaint

October 17, 1988.

On September 21, 1988, BASF Corporation, Complaint (BASF) filed a complaint under Rule 206 of the Commission's rules of practice and procedure [1] against Samson Resources Company, respondent (Samson) for knowingly and willfully violating the Natural Gas Policy Act of 1978 (NGPA) by collecting amounts in excess of the maximum lawful price for gas from the Leggett Field in Polk County, Texas.

BASF states that Samson was the seller of natural gas to it pursuant to an August 26, 1974 gas purchase agreement between Samson and its predecessors. BASF further states that between June 1, 1981, and December 31, 1984, it bought processed gas from Samson at or near the wellhead and paid the NGPA section 102 price based on Samson's representations that the gas was subject to pricing under section 102. BASF asserts that the existing contract price on the date of the enactment of the NGPA was the maximum lawful price under section 105(b)(1) since it was lower than the section 102 price and that such contract price is the proper regulated price.

[1] 18 CFR 385.206 (1988).

BASF alleges that the gas purchased was not flowing from a qualified section 102 well and, therefore, the compensation received by Samson for the gas exceeded the maximum lawful price under the NGPA. BASF further alleges that Samson has overcollected approximately $2,047,677.00 and that when interest through August 31, 1988, is computed in accordance with 18 CFR section 154.102(c) and added to that figure, the total refund owed exceeds $3,543,381.00.

BASF requests that the Commission initiate a show cause proceeding, find that Samson has violated section 504 of the NGPA and the Commission's regulations issued thereunder, order Samson to refund to BASF all revenues collected in violation of the NGPA, together with interest, and order such penalties as provided in NGPA section 504.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's rules of practice and procedure. All such motions or protests should be filed within 30 days following publication of this notice in the Federal Register. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Respondent's answer to the complaint is also due within 30 days following Federal Register publication.

Lois D. Cashell,

Secretary.

[FR Doc. 88–24337 Filed 10–19–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER88–625–000]

Iowa Public Service Co.; Filing

October 14, 1988.

Take notice that on September 19, 1988, Iowa Public Service Company (IPS) tendered for filing its First Amendment containing additional documentation for an executed Letter Agreement dated June 23, 1988, whereby IPS will supply Kansas City Power & Light Company (KCP&L) with 10 MW of short-term power commencing June 20, 1988 and continuing through September 3, 1988. This First Amendment contains

energy price and cost data requested by the FERC Staff.

IPS requests an effective date of June 20, 1988, and therefore requests a waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 24, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24338 Filed 10-19-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER88-535-000]

Wisconsin Electric Power Co.; Filing

October 14, 1988.

Take notice that on September 15, 1988, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing a letter agreement between itself and Shawano Municipal Utilities (Shawano). The agreement provides for an interim sale by Wisconsin Electric of 3.5 MW of non-firm power at Shawano's Lincoln Substation until planned transmission improvements are effected. The service provided will allow an industrial customer of Shawano to economically operate during on-peak hours. The non-firm rate will be equivalent to Wisconsin Electric's wholesale interruptible rate.

Wisconsin Electric requests that the Commission waive the sixty-day notice requirements of its Regulations in order to allow the effective date of September 1, 1988. Wisconsin Electric states that Shawano joins in the requested effective date.

Copies of the filing have been served on Shawano and the Public Service Commission of Wisconsin.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 24, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24339 Filed 10-19-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3485-1]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and is available to the public for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Carla Levesque at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: 1987 Sewage Sludge Use and Disposal Survey. (EPA ICR # 1393).

Abstract: EPA is surveying municipal sewage treatment plants on sludge generation and treatment processes; existing sludge use, disposal practices and costs; and alternative use and disposal practices. The information will be used to develope sludge use and disposal regulations.

Burden Statement: The estimated average burden is 16 hours for a small plant and 32 hours for a large plant. This includes time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the questionnaire.

Respondents: Municipal sewage treatment plants.

Estimated No. of Respondents: 479.

Estimated Total Annual Burden on Respondents: 9,824 hours.

Frequency of Collection: One-time only.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Carla Levesque, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M St., SW, Washington, DC 20460

and

Timothy Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW, Washington, DC 20503, (Telephone (202) 395-3084)

OMB Responses To Agency PRA Clearance Requests

EPA ICR #1056; Information Collection Requirements For NSPS Subpart G Citric Acid Plants; was approved 9/16/88; OMB # 2060-0019; expires: 9/30/91.

EPA ICR #0583; Records of PCB Use, Storage and Disposal; was approved 9/21/88; OMB #2070-0061; expires: 9/30/91.

EPA ICR #1391; State Revolving Funds Programs; was approved 9/22/88; OMB # 2040-0116; expires: 9/30/91.

EPA ICR #1438; Worker Protection Standards For Agricultural Pesticides; was disapproved on 9/19/88.

EPA ICR #1060.04; NESHAP For Benzene Emissions—Reporting And Recordkeeping Requirements; was disapproved on 9/16/88.

Date: October 4, 1988.

Paul Lapsley,

Director Information and Regulatory Systems Division.

[FR Doc. 88-24350 Filed 10-19-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3486-2]

California State Motor Vehicle Pollution Control Standards; Amendments Within the Scope of Previous Waivers of Federal Preemption; Summary of Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of scope of waiver of Federal preemption.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has amended the California emissions standards and test procedures for heavy-duty gasoline engines and vehicles to establish a nonconformance penalty (NCP) program for the 1988 model year. EPA finds that these amendments are within the scope of previous waivers of Federal preemption granted to California for its heavy-duty emission standards and set procedures.

DATE: Any objection to the findings in this notice must be filed by November 21, 1988. Upon the receipt of any timely objection, EPA will consider scheduling a public hearing to reconsider these findings in a subsequent **Federal Register** notice.

ADDRESSES: Any objection to the findings in this notice should be filed with Mr. Charles N. Freed, Director, Manufacturers Operations Division (EN-340F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Copies of the California amendment at issue in this notice, a decision document containing an explanation of EPA's determination, and documents used in arriving at this determination, are available for public inspection during normal working hours (8:00 a.m. to 3:00 p.m.) at the Environmental Protection Agency, Central Docket Section (Docket EN-88-04), South Conference Center, 401 M Street, SW., Washington, DC 20460. Copies of the decision document can be obtained from EPA's Manufacturers Operations Division by contacting Ms. Joan S. Baxter as noted below.

FOR FURTHER INFORMATION CONTACT: Joan S. Baxter, Attorney/Advisor, Manufacturers Operations Division (EN-340F), U.S. Environmental Protection Agency, Washington, DC 20460, (202) 382-2514.

SUPPLEMENTARY INFORMATION: EPA has determined that CARB's amendments are within the scope of waivers of Federal preemption previously granted pursuant to section 209(b) of the Clean Air Act, as amended (Act).[1] CARB's changes incorporate into the California heavy-duty gasoline engine and vehicle regulations provisions which are essentially the same as the Federal NCP provisions which were promulgated by EPA and which are contained in Subpart L of 40 CFR Part 86.[2]

The California NCP program will be available for the 1988 model year heavy-duty gasoline engines and vehicles only. The program will not apply to heavy-duty diesel engines and vehicles or to 1989 and later model year heavy-duty gasoline engiens and vehicles. The amendments make NCPs available in California for the 1.1 gram per brake horse-power-hour (g/bhp-hr) hydrocarbon and the 14.4 g/bhp-hr carbon monoxide standards applicable to 1988 model year heavy-duty gasoline engines intended for use in vehicles rated up to 14,000 pounds [Gross Vehicle Weight Rating (GVWR)]. The amendments incorporate provisions essentially identical to the Federal penalty rates and the Federal Production Compliance Audit (PCA) sampling plan and test procedures.

California Assembly Bill 3683 (July 24, 1986) authorized CARB to adopt a schedule of nonconformance fees designed to substitute for the payment of nonconformance fees to the Federal government applicable to manufacturers of new heavy-duty vehicles and engines. Bill 3683 required that CARB establish nonconformance fees only for those heavy-duty vehicles or engines for which it has adopted emission standards and test procedres which are identical to the corresponding Federal emission standards and test procedures. Bill 3683 required that EPA agree to waive collection of the NCP based on California's collection of an identical amount. Bill 3683 also required that it be established that this agreement had been reached prior to the implementation of the California NCP program.

On December 8, 1986, the Executive Director of CARB requested that EPA assist California by promulgating a rule waiving Federal collection of a portion of the NCP equal to the amount that California would collect under the California NCP program.

On May 26, 1988, EPA promulgated a final rule revising the regulations to include a provision which would waive payment of penalties to EPA for those heavy-duty vehicles and engines which are certified under the Federal NCP process and are titled, registered or principally used in the State of California under a California NCP program.[3]

In comments to the proposed rulemaking to permit EPA to waive a portion of its Federal NCP payment,[4] Cummins Motor Company (Cummins) claimed that EPA should not grant a waiver of Federal preemption under section 209(b) of the Clean Air Act for CARB's NCP program unless EPA and California standards and procedures are identical in every respect.[5] Cummins' reasoning was based, in part, upon its interpretation of the proposed language of the regulations which stated that: "a waiver of preemption would be applicable only if the Administrator finds that: (A) California has adopted emission standards and test procedures * * * which are identical to the corresponding Federal emission standards and test procedures for which NCPs are available." Cummins interprets this language to require that all California and Federal standards for a heavy-duty vehicle or engine eligible for NCPs must be aligned for the Administrator to approve a 209(b) waiver. This interpretation is incorrect. The intent of this section of the proposed rule is to limit those pollutants for which California can offer NCPs to the pollutants for which the Federal and California emission standards and test procedures are identical.

In any event, EPA believes that Cummins is incorrect in its interpretation for the criteria of granting a 209(b) waiver. As discussed in EPA's decision document, EPA believes that CARB's waiver request falls within the scope of waivers previously granted to CARB under the criteria established by EPA pursuant to section 209(b). The issue raised by Cummins is irrelevant to the criteria which EPA may consider in making such a determination.

EPA has determined that these changes do not undermine California's determination that its standards are, in the aggregate, at least as protective as Federal standards. Further, EPA has found that the amendements do not cause any inconsistency with section 202(a) of the Act and raise no new issues regarding previous waivers. A full explanation of EPA's determination is contained in a decision document, which may be obtained from EPA as noted above.

Since these amendments are within the scope of previous waivers, a public hearing to consider them is not necessary. However, if any party asserts an objection to these findings within 30 days of the date of publication of this notice, EPA will consider holding a public hearing to provide an opportunity to present testimony and evidence to show that there are issues to be addressed through a section 209(b) waiver determination and that EPA should reconsider its findings.

[1] 42 FR 31639 (June 22, 1977); 43 FR 20649 (May 12, 1978) 43 FR 36679 (August 18, 1978); 46 FR 36742 (July 15, 1981); and 49 FR 39731 (October 10, 1984).

[2] 50 FR 35374 (August 30, 1985) and 50 FR 53454 (December 31, 1985).

[3] 53 FR 19130 (May 26, 1988).

[4] 53 FR 1716 (January 21, 1988).

[5] For the 1988 and 1989 model years, the only difference between the Federal and California standards for heavy-duty vehicles engines is for oxides of nitrogen (NOx). The Federal NOx standard is 10.7 grams per brake horsepower hour (g/BHP-hr) and the California NOx standard is 6.0 g/BHP-hr for these years. Beginning in 1990 and for later model years the Federal and California NOx standard will be the same.

EPA's decision will affect not only persons in California but also the manufacturers located outside the State who must comply with California's requirements in order to produce motor vehicles for sale in California. For this reason, EPA hereby determines and finds that this decision is of nationwide scope and effect.

This action is not a rule as defined by section 1(a) of Executive Order 12291, 46 FR 13193 (February 19, 1981). Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12291. Additionally, a Regulatory Impact Analysis is not being prepared under Executive Order 12291, for this "within the scope" determination since it is not a rule.

This action also is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2) *et seq.* because the action is not required to undergo prior "notice and comment" under section 553(b) of the Administrative Procedure Act, or any other law. Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Date: October 12, 1988.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 88-24340 Filed 10-19-88; 8:45 am]

BILLING CODE 6560-50-M

[PF-536; FRL-3485-7]

Pesticide Tolerance Petitions; Mobay Corp. et al.

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice.

SUMMARY: This notice announces the filing of pesticide petitions proposing the establishment of tolerances and/or regulations for residues of certain pesticide chemicals in or on certain agricultural commodities.

ADDRESS: By mail, submit written comments to:

Public Docket and Freedom of Information Section, Field Operations Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (TS-767C), Attention: Product Manager (PM) named in the petition, Environmental Protection Agency, Office of Pesticide Programs, 401 M Street SW., Washington, DC 20460.

In person, contact the PM named in each petition at the following office location/telephone number:

Product manager	Office location/ telephone number	Address
Dennis Edwards (PM 12), Lois Rossi (PM 21)..	Rm. 202, CM #2, 703-557-2386. Rm. 227, CM #2, 703-557-1900.	-Do- -Do-
Robert Taylor (PM 25).	Rm. 245, CM #2, 703-557-1800.	-Do-

SUPPLEMENTARY INFORMATION: EPA has received pesticide (PP) and/or food and feed additive (FAP) petitions as follows proposing the establishment and/or amendment of tolerances or regulations for residues of certain pesticide chemicals in or on certain agricultural commodities.

Initial Filings

1. *PP 8F3683.* Mobay Corp., Agricultural Chemicals Division, P.O. Box 4913, Hawthorn Rd., Kansas City, MO 64120, proposes to amend 40 CFR 180.332 by establishing a regulation to permit the residues of the herbicide 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-1,2,4-triazin-5(4H)-one and its triazinone metabolites in or on alfalfa, seed at 0.1 part per million (ppm), alfalfa chaff at 1.0 ppm, asparagus at 0.1 ppm, barley, forage at 2.0 ppm, barley, hay at 7.0 ppm, corn, silage at 0.1 ppm, corn, fresh, cannery waste at 0.1 ppm, pea, straw at 4.0 ppm, and wheat, hay at 7.0 ppm. The proposed analytical method for determining residues is gas chromatography. (PM 25).

2. *PP 8F3684.* Uniroyal Chemical Co., Inc., 74 Amity Rd., Bethany, CT 06525, proposes to amend 40 CFR 180.246 by establishing a regulation to permit the residues of the plant growth regulator daminozide (butanedioic acid mono 2,2-dimethylhydrazide) in or on apples at 20 ppm. The proposed analytical method for determining residues is gas chromatography-mass spectrometry. (PM-25).

3. *PP 8F3689.* Rhone-Poulenc Ag Co., P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, proposes to amend 40 CFR 180.415 by establishing a regulation to permit the residues of the fungicide aluminum tris (O-ethyl phosphonate) in or on pome fruit at 10.0 ppm. The proposed analytical method for determining residues is gas chromatography. (PM 21).

4. *FAP 8H5563.* Mobay Corp., Agricultural Chemicals Div., P.O. Box 4913, Hawthorn Rd., Kansas City, MO 64120-0013, proposes to amend 40 CFR 180.250 and 186.250 by establishing a regulation to permit the residues of the herbicide 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-1,2,4-triazin-5(4H)-one and its triazinone metabolites in or on tomato, processed products at 0.2 ppm and sugarcane, molasses at 2.0 ppm. (PM 25).

5. *FAP 8H5565.* Nor-Am Chemical Co., 3509 Silverside Rd., P.O. Box 7495, Wilmington, DE 19803, proposes to amend 40 CFR Part 185 and 40 CFR 186.425 by establishing a regulation to permit the residues of the insecticide clofentezine, 3,5-bis(2-chlorophenyl)1,2,4,5-tetrazine in or on raisin waste at 3.0 ppm, grape pomace (dry) at 1.5 ppm, milk at 0.01 ppm, and meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.05 ppm. (PM 12).

6. *FAP 8H5566.* BASF Corp., Chemicals Division, 100 Cherry Hill Rd., Parsippany, NJ 07054, proposes to amend 40 CFR Part 185 by establishing a regulation to permit the residues of the fungicide 3-(3,5-dichloro-phenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione and its metabolites containing the 3,5-dichloroaniline moiety in or on tomato paste at 6.0 ppm. (PM 21).

7. *FAP 8H5567.* Rhone Poulenc Ag Co., P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27790, proposes to amend 40 CFR Parts 185 and 186 by establishing a regulation to permit the residues of the fungicide aluminum tris (O-ethyl phosphonate) in or on pome fruit juice at 12 ppm and pome fruit pomace (wet and dry) at 12 ppm. (PM 21).

Authority: 7 U.S.C. 136a.

Dated: October 12, 1988.

Edwin F. Tinsworth,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-24343 Filed 10-19-88; 8:45 am]

BILLING CODE 6560-50-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SES Performance Review Board Members

AGENCY: Equal Employment Opportunity Commission (EEOC).

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the members of the SES Performance Review Board of EEOC.

FOR FURTHER INFORMATION CONTACT: Jo-Ann Henry, Director, Personnel Management Services, Equal Employment Opportunity Commission, 2401 E Street, NW., Washington, DC 20507 202/634-7001.

SUPPLEMENTARY INFORMATION: Pursuant to the requirement of section 4314(c)(1), Chapter 43 Title 5, U.S.C., membership of the SES Performance Review Board is as follows: Thomasina Rogers, Deputy Legal Counsel, Equal Employment Opportunity Commission (Chairperson); Joseph Vasquez, Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation; Ernest Russell, Director of Administration, National Labor Relations Board; Lois Hartman (Alternate), Deputy Director of Personnel, Agency for International Development. Signed at Washington, DC on this 12th day of October, 1988.

For the Commission.

Clarence Thomas,

Chairman.

[FR Doc. 88-24352 Filed 10-19-88; 8:45 am]

BILLING CODE 6570-06-M

FEDERAL HOME LOAN BANK BOARD

Financial Security Savings and Loan Association, Delray Beach, FL; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Financial Security Savings and Loan Association, Delray Beach, Florida, on October 6, 1988.

Dated: October 7, 1988.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-24274 Filed 10-19-88; 8:45 am]

BILLING CODE 6720-01-M

Liberty Federal Savings Bank, Raton, NM; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Liberty Federal Savings, Bank, Raton, New Mexico on October 7, 1988.

Dated: October 7, 1988.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-24276 Filed 10-19-88; 8:45 am]

BILLING CODE 6720-01-M

Peoples Savings and Loan Association, La Grande, OR; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B) (1982), the Federal Savings and Loan Insurance Corporation as sole receiver for Peoples Savings and Loan Association, La Grande, Oregon, on September 23, 1988.

Dated: September 28, 1988.

By the Federal Home Loan Bank Board.

John M. Buckley, Jr.,

Secretary.

[FR Doc. 88-24275 Filed 10-19-88; 8:45 am]

BILLING CODE 6720-01-M

Regency Savings Bank, FSB, Ann Arbor, MI; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in Section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Regency Savings Bank, FSB, Ann Arbor, Michigan on October 13, 1988.

Dated: October 17, 1988.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-24277 Filed 10-19-88; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-743; FHLBB No. 5284]

Wisconsin Savings Association, Tomah, WI; Final Action; Approval of Conversion Application

Dated: October 12, 1988.

Notice is hereby given that on October 6, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Wisconsin Savings Association, Tomah, Wisconsin for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552 and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Chicago, 111 East Wacker Drive, Suite 800, Chicago, Illinois.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-24278 Filed 10-19-88; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200060-004.

Title: Port of New Orleans Terminal Agreement.

Parties: Board of Commissioners of the Port of New Orleans Coastal Cargo Company.

Synopsis: The agreement cancels sections of the leased premises and proportionally reduces rent payable in accordance with an option provided in the basic agreement.

Agreement No.: 224–200161.

Title: New York and New Jersey Terminal Agreement.

Parties: Port Authority of New York and New Jersey (PA) Atlantic Container Line (ACL).

Synopsis: The proposed agreement provides for PA to make payments to ACL of $25 per import and $50 per export container loaded to or unloaded from ACL vessels at a marine terminal in the Port of New York and New Jersey.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: October 14, 1988.

[FR Doc. 88–24208 Filed 10–19–88; 8:45 am]

BILLING CODE 6730–01–M

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Activities Under OMB Review

The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090–0112, State Agency Donation Report of Surplus Personal Property. This report complies with Pub. L. 94–519 which requires annual reports of donations of personal property to public agencies for use in carrying out such purposes as conservation, economic development, education, parks and recreation, public health, and public safety.

AGENCY: Property Management Division (FBP), GSA.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), F Street at 18th NW., Washington, DC 20405.

Annual Reporting Burden: Firms responding, 55; responses, 4 per year; average hours per response, 1; burden hours, 220.

FOR FURTHER INFORMATION CONTACT: Audrey L. Harris, 703–557–1234.

Copy of Proposal: A copy of the proposal may be obtained from the Information Collection Management Branch (CAIR), Room 3014, GS Bldg., Washington, DC 20405, or by telephoning 202–535–7691.

Dated: October 13, 1988.

Mary L. Cunningham,

Acting Director, Information Management Division (CAI).

[FR Doc. 88–24308 Filed 10–19–88; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Senior Executive Service; Performance Review Board Membership

Title 5, U.S. Code, section 4314(c)(4) of the Civil Service Reform Act of 1978, Pub. L. 95–454, required that the appointment of Performance Review Board members be published in the **Federal Register.**

The following persons will serve on the Performance Review Boards or Panels which oversee the evaluation of performance appraisals of Senior Executive Service members of the Department of Health and Human Services:

Richard H. Adamson, Ph.D.
Duane F. Alexander, M.D.
Joseph R. Antos, Ph.D.
Michele W. Applegate
William H. Aspden, Jr.
Joseph H. Autry, III, M.D.
Gerald L. Barkdoll
Paul D. Barnes
James S. Benson
Joyce T. Berry, Ph.D.
Katherine L. Bick, Ph.D.
Lyle W. Bivens, Ph.D.
Annette H. Blum
Windell R. Bradford
Eileen Bradley
Kathleen A. Buto
Hugh C. Cannon
Ronald H. Carlson
Bruce A. Chabner, M.D.
Vivian Chang, M.D.
Philip S. Chen, Jr., Ph.D.
Winston M. Cobb
Glenda S. Cowart
Don J. Davis
John L. Decker, M.D.
Frank L. Dell'Acqua
Vincent T. DeVita, Jr., M.D.
Walter R. Dowdle, Ph.D.
John C. Eberhart, Ph.D.
Gunther Eichhorn, Ph.D.
Jo Eleanor Elliott
William L. Engles
Anthony S. Fauci, M.D.
Dennis J. Fischer
William T. Friedewald, M.D.
Florence B. Fiori, Ph.D.
Barbara J. Gagel
George J. Galasso, Ph.D.
John T. Gallin, M.D.
Donald E. Goldstone, M.D.
Murray Goldstein, M.D.
Phillip Gorden, M.D.
Carolyn Doppelt Gray
Jerome G. Green, M.D.
Joseph A. Gribbin
Gerald B. Guest, D.V.M.
George E. Hardy, Jr.
Louis B. Hays
Ada Sue Hinshaw, Ph.D.
George R. Holland
Robert A. Israel
Barry L. Johnson, Ph.D.
Lewis L. Judd, M.D.
John H. Kelso
Eugene Kinlow
Jin H. Kinoshita, Ph.D.
Ruth L. Kirschstein, M.D.
Irwin J. Kopin, Ph.D.
Jeffrey P. Koplan, M.D.
Carl Kupfer, M.D.
Richard P. Kusserow
James D. Lawrence
Claude J. Lenfant, M.D.
Joseph R. Leone
Arthur S. Levine, M.D.
Hrdlah Lieberman
Donald A.B. Lindberg, M.D.
Harald A. Loe, D.D.S.
John D. Mahoney
Jaime L. Manzano
Jack N. Markowitz
Naomi E. Marr
Jack W. Martin
Larry G. Massanari
S. Anthony McCann
Thomas S. McFee
Henry Metzger
J. Donald Millar, M.D.
Larry D. Morey
Joseph A. Mottola
Jay Moskowitz, Ph.D.
Abner L. Notkins, M.D.
Jack Orloff, M.D.
Aletha R. Owens
Steve Paul, M.D.
Carl C. Peck, M.D.
Betty H. Pickett, Ph.D.
Arnold W. Pratt, M.D.
Alan S. Rabson, M.D.
David P. Rall, M.D.
Joseph E. Rall, M.D.
William F. Raub, Ph.D.
Luana L. Reyes
William A. Robinson, M.D.
Martin Rodbell, Ph.D.
Jesse Roth, M.D.
George H. Rudy
David A. Rust
Thomas Scarlett
Philip E. Schambra, Ph.D.
Matthew G. Schwienteck
Ellen Schillinglaw
Lawrence E. Shulman, M.D.
Robert Singyke
Barbara S. Sledge
Vivian L. Smith
Marvin Snyder, Ph.D.
Dale W. Sopper
Malcolm M.B. Sterrett
Robert E. Stovenour
Robert A. Streimer
Boris Tabakoff, Ph.D.
John M. Taylor
Robert L. Trachtenberg
Margaret A. VanAmringe
Kenneth R. Warren, Ph.D.
Storm H. Whaley
Daniel F. Whiteside, D.D.S.
Robert A. Whitney, Jr., D.V.M.
Paul J. Wiesner, M.D.
T. Franklin Williams, M.D.

Dated: October 12, 1988.

Thomas S. McFee,

Assistant Secretary for Personnel Administration.

Summary Statement

Department of Health and Human Services

ACTION: Listing of members of this Department's Senior Executive Service Performance Review Boards.

DATE: Performance Review Boards effective October 12, 1988.

FOR FURTHER INFORMATION CONTACT: Brenda J. Clinton, 202:426–2753.

[FR Doc. 88–24279 Filed 10–19–88; 8:45 am]

BILLING CODE 4110–85–M

Centers for Disease Control

Change in the Interagency Committee on Smoking and Health

"Federal Register" Citation of Previous Announcement: 53 FR 30871.

Previously Announced Time and Date of the Meeting: 9:00 a.m.–4:00 p.m., October 27, 1988.

Change in the Meeting. The Committee will meet at 8:30 a.m.–4:00 p.m.

Dated: October 17, 1988.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 88–24367 Filed 10–19–88; 8:45 am]

BILLING CODE 4160–18–M

FOOD AND DRUG ADMINISTRATION

[Docket No. 88F–0315]

BYK Chemie GmbH; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that BYK Chemie GmbH has filed a petition proposing that the food additive regulations be amended to provide for the safe use of *alpha, omega*-bis(3-hydroxypropyl)dimethylpolysiloxane reaction product with *epsilon*-caprolactone,acetylated as components of articles for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Richard H. White, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5740.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 8B4103) has been filed by BYK Chemie GmbH, Abelstrasse 14, D–4230 Wesel, Federal Republic of Germany, proposing that § 175.300 *Resinous and polymeric coatings* (21 CFR 175.300) be amended to provide for the safe use of *alpha, omega*-bis(3-hydroxypropyl)dimethylpolysiloxane reactions product with *epsilon*-caprolactone,acetylated as components of articles for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: October 7, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88–24290 Filed 10–19–88; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 88G–0315]

Gattefosse, S.A.; Filing of Petition for Affirmation of Gras Status

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a petition (GRASP 8G0344) has been filed on behalf of Gattefosse, S.A., proposing to affirm that glyceryl palmitostearate be affirmed as generally recognized as safe (GRAS) as a direct human food ingredient.

DATE: Comments by December 19, 1988.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: JoAnn Ziyad, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–9463.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))) and the regulations for affirmation of GRAS status in § 170.35 (231 CFR 170.35), notice is given that a petition (GRASP 8G0344) has been filed on behalf of Gattefosse, S.A., Saint-Priest, France, proposing that glyceryl palmitostearate be affirmed as GRAS for use as a direct human food ingredient.

The petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the requirements outlined in 21 CFR 170.30 and 170.35 is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for GRAS affirmation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Interested persons may, on or before December 19, 1988, review the petition and/or file comments (two copies, identified with the docket number found in brackets in the heading of this document) with the Dockets Management Branch (address above). Comments should include any available information that would be helpful in determining whether the substance is, or is not, GRAS for the proposed use. A copy of the petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 7, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88–24289 Filed 10–19–88; 8:45 am]

BILLING CODE 4160–01–M

BEST COPY AVAILABLE

VOL 53 ISS 203 OCT 20 1988 UMI

Health Care Financing Administration

[OACT-026-N]

Medicare Program; SNF Coinsurance Amount for 1989

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces that the skilled nursing facility coinsurance amount for calendar year 1989 for the 1st through 8th days of extended care services in a skilled nursing facility under Medicare's hospital insurance program (Part A) is $25.50. The Medicare statute specifies the method to be used to determine this amount.

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Barbara S. Klees, (301) 966-6388.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1813(a)(3) of the Act requires, until January 1, 1989, that the amount payable for extended care services in a skilled nursing facility during a spell of illness is to reduced by an amount equal to one-eighth of the hospital deductible, per day, for the 21st through 100th day of covered extended care services.

Section 102 of Pub. L. 100-360 amended section 1813(a) and repealed section 1813(b)(3) of the Act to change the method of determining coinsurance for skilled nursing facility (SNF) care and to change the days subject to coinsurance. Beginning January 1, 1989, beneficiaries are liable for coinsurance for days one through eight of covered days spent in a SNF in a calendar year rather than days 21 through 100 in a spell of illness. Notice of the coinsurance amount applicable to extended care services in the succeeding year must be published in September.

II. Skilled Nursing Facility Coinsurance Amount for 1989

The coinsurance is 20 percent of the national average per diem cost estimated for a year by HCFA before September 1 of the previous year. The amount is rounded to the nearest multiple of $.50. (If it is a multiple of $.25 but not of $.50, the amount is rounded to the next highest multiple of $.50.)

The SNF coinsurance amount for calendar year 1989 is $25.50.

III. Statement of Actuarial Assumptions and Bases Employed in Determining the SNF Coinsurance Rate

As discussed in Section II of this notice, the SNF coinsurance rate for 1989 is equal to 20 percent of the national average per diem cost for Medicare extended care services for 1989. The national average per diem cost is determined on a reasonable cost basis and includes any cost sharing costs paid by the beneficiary.

The principal steps involved in projecting the future cost per day of skilled nursing care are: (a) Determining the present cost per day to serve as a projection base, using 100 percent sample of SNF bills, actual beneficiary billing experience (to identify coinsurance), and a review of SNF cost reports; and (b) projecting increases in cost per day amounts.

We have completed the above steps, basing our projections for 1989 on (a) current historical data from 1987 and (b) projection assumptions from the 1988 Annual Report of the Board of Trustees Alternative II-B (intermediate) assumptions. It is estimated that in calendar year 1989 the national average per diem cost for Medicare extended care services is $127.43. Thus, 20 percent of this cost is $25.49, and the coinsurance rate is $25.50.

IV. Costs to Beneficiaries

The coinsurance amount for 1989 represents a $42 decrease from coinsurance for 1988. In addition, the coinsurance amount applies to the first eight days only in 1989. That is, we estimate that in 1989 there will be 2.3 million days subject to coinsurance at $25.50 per day versus 3.7 million days subject to coninsurance at $67.50 per day in 1988. The total savings to beneficiaries is about $190 million.

V. Regulatory Impact Statement

This notice merely announces an amount required by legislation. This notice is not a proposed rule or a final rule issued after a proposal, and does not alter any regulation or policy. Therefore, we have determined, and the Secretary certifies, that no analyses are required under Executive Order 12291, the Regulatory Flexibility Act (5 U.S.C. 601 through 612) or section 1102(b) of the Act.

(Section 1813(a)(3)(C) of the Social Security Act (42 U.S.C. 1395e(a)(3)(C)).

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance)

Dated: September 30, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: October 5, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88-24451 Filed 10-18-88; 4:13 pm]

BILLING CODE 4120-01-M

National Institutes of Health

Establishment; National Diabetes Advisory Board et al.

Pursuant to the Federal Advisory Committee Act of October 6, 1972, (Pub. L. 92-463, 86 Stat. 770-776) and section 222 of the Public Health Service Act, as amended (42 U.S. Code 217a), the Director, National Institutes of Health, announces the establishment by the Secretary, Department of Health and Human Services, of the following committees:

National Diabetes Advisory Board

The Board shall review and evaluate the implementation of the current Diabetes Plan; periodically update the Plan to ensure its continuing relevance; and for the purpose of assuring the most effective use and organization of resources respecting diabetes mellitus.

National Digestive Diseases Advisory Board

The Board shall review and evaluate the implementation of the current long-range plan; periodically update the Plan to ensure its continuing relevance; and for the purpose of assuring the most effective use and organization of resources respecting digestive and related diseases.

National Kidney and Urologic Diseases Advisory Board

Subsequent to the development of a long-range plan, the Board shall review and evaluate the implementation of the current Kidney and Urologic Diseases Plan.

These Boards shall advise and make recommendations to the Congress and the Secretary, the Director of the National Institutes of Health, the Director of the National Institute of Diabetes and Digestive and Kidney diseases, and the heads of other appropriate Federal agencies regarding the implementation and revision of the Plans.

Unless renewed by appropriate action prior to expiration, the Boards shall terminate on September 30, 1990.

Dated: October 14, 1988.

James B. Wyngaarden,

Director, National Institutes of Health.

[FR doc. 88-24287; Filed 10-19-88; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Privacy Act of 1974; Alteration of System of Records

AGENCY: Public Health Service, HHS.

ACTION: Notification of altered system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing a notice of a major alteration to system of records 09-15-0045, "Health Resources and Services Administration Loan Repayment/Debt Management Records Systems, HHS/HRSA/OA." System of records 09-15-0045 is being altered to include debt management data from the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) system of records 09-30-0027, "Grants and Cooperative Agreements: Research, Research Training, Research Scientist Development, Education, Demonstration, Prevention, Fellowship Clinical Training, Community Programs, HHS/ADAMHA/OA;" the National Institutes of Health (NIH) system of records 09-25-0112, "Extramural Awards: Research, Research Training, Fellowship and Construction Applications and Awards, HHS/NIH/OD;" and the Indian Health Service (IHS) system of records 09-17-0002, "Indian Health Service Scholarship Program, HHS/HRSA/IHS."

DATE: PHS invites interested parties to submit comments on the proposed alteration on or before November 21, 1988. PHS has sent a report of the Altered System to Congress and to the Office of Management and Budget (OMB) on October 12, 1988. The alteration of this system of records will be effective 60 days from the date of its submission to OMB, and the proposed routine uses will be effective 30 days from this publication, unless PHS receives comments which would result in a contrary determination.

ADDRESS: Please address comments to the HRSA Privacy Act Coordinator, Department of Health and Human Services, Room 14A-20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443-3780. This is not a toll-free number. We will make comments received available for public inspection at the above address during normal business hours, 8:30 a.m.-5 p.m.

FOR FURTHER INFORMATION CONTACT: James C. Hargrave, Chief, Debt Management Branch, Health Resources and Services Administration, Department of Health and Human Services, Room 16A-09, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443-6344. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: HRSA maintains System of Records 09-15-0045 to reduce the amount of outstanding debts owed to the Federal Government. The system of records covers individuals who have received student loans, scholarships, traineeships, or grant funds under Titles III, VII, and VIII of the Public Health Service Act as amended and who are delinquent in repaying either loans or funds owed in lieu of a service obligation under such programs.

To improve and expand the PHS debt collection effort, HRSA is altering this system of records to include delinquent debtor records from ADAMHA system of records 09-30-0027, NIH system of records 09-25-0112, and IHS system of records 09-17-0002 of individuals receiving Federal salaries or other benefit payments and who are indebted to the U.S. Government. The inclusion of this data in this system of records will allow PHS agencies to locate and initiate prompt collection action by contacting the debtors for voluntary repayment or by pursuing involuntary offset procedures against the debtors' wages.

The 09-15-0045 system notice was last published in the **Federal Register** on November 24, 1986 (51 FR 42519-42521) and routine uses were added on December 28, 1987 (52 FR 48880) and March 3, 1988 (53 FR 6874-6875). This proposed notice is written in the present, rather than future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the changes have become effective.

Dated: October 13, 1988.

Wilford J. Forbush,

Deputy Assistant Secretary for Health Operations and Director, Office of Management.

09-15-0045

SYSTEM NAME:

Health Resources and Services Administration Loan Repayment/Debt Management Records Systems, HHS/HRSA/OA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Fiscal Services, Office of the Administrator, HRSA, Parklawn Building, Room 16-05, 5600 Fishers Lane, Rockville, MD 20857.

Bureau of Health Professions, HRSA, Parklawn Building, Room 8-05, 5600 Fishers Lane, Rockville, MD 20857.

Indian Health Service, HRSA, Parklawn Building, Room 5A-55, 5600 Fishers Lane, Rockville, MD 20857.

Bureau of Health Care Delivery and Assistance, HRSA, Parklawn Building, Room 7-05, 5600 Fishers Lane, Rockville, MD 20857.

National Institute on Drug Abuse, Grants Management Branch, Room 10-25, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

National Institute on Alcohol Abuse and Alcoholism, Grants Management Branch, Room 16-86, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

National Institute of Mental Health, Grants Management Branch, OPS, Room 7C-23, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

National Institutes of Health, Division of Financial Management, Federal Assistance, Accounting Branch, Building 31, Room B1B04, 9000 Rockville Pike, Bethesda, MD 20892.

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have received student loans, scholarships, traineeships, or grant funds under Titles III, VII, and VIII of the Public Health Service Act, as amended, and who are delinquent in repaying either loans or funds owed in lieu of a service obligation under such programs. The individuals covered by this system include students in various health professions and health professionals such as physicians, dentists, pharmacists, optometricts, podiatrists, veterinarians, public health personnel, nurses, audiologists, speech pathologists, health care administration personnel, medical technologists, chiropractors, clinical psychologists, and other health personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains loan repayment status, amounts of student indebtedness, schools of attendance of borrowers, lending institutions of borrowers, tax identification numbers (Social Security numbers), billing notices, and demographic information pertaining to borrowers funded by the Health Resources and Services Administration (HRSA), the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), the National Institutes of Health (NIH), or the Indian Health Service (IHS).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Debt Collection Act of 1982, 5 U.S.C. 5514 note.

PURPOSE(S):

The purpose of the system is to protect the programmatic and financial integrity of Federal funds awarded to individuals through student loans, scholarships, traineeships, and educational grants administered by HRSA, ADAMHA, NIH, and IHS. The records may also be used by other components within the Department of Health and Human Services to failitate loan or debt management activities. This system is maintained to reduce the amount of outstanding debts owed to the Federal Government.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

1. Records may be disclosed to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

2. Records may be disclosed to authorized persons employed at educational institutions where the recipient received a loan, scholarship, or grant. The purpose of this disclosure is to assist institutions in identifying delinquent borrowers and to enforce the conditions and terms of such loans, scholarships and grants.

3. HRSA will disclose from this system of records a delinquent debtor's name, address, Social Security number, and other information necessary to identify him/her; the amount, status, and history of the claim; and the agency or program under which the claim arose, as follows:

a. To another Federal agency so that agency can effect a salary offset for debts owed by Federal employees; if the claim arose under the Social Security Act, the employee must have agreed in writing to the salary offset.

b. To another Federal agency so that agency can effect an authorized administrative offset; i.e., withhold money payable to or held on behalf of debtors other than Federal employees.

c. To the Department of Treasury, Internal Revenue Service (IRS), to request a debtor's current mailing address to locate him/her for purposes of either collecting or compromising a debt, or to have a commercial credit report prepared.

4. In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred to the appropriate agency, whether Federal, State or local, charged with enforcing or implementing the statute, rule, regulation, or order.

5. The Department may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party of litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevent and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determine that such disclosure is compatible with the purpose for which the records were collected.

6. Records may be disclosed to the General Accountig Office and to the Office of Management and Budget for auditing financial obligations to determine compliance with programmatic, statutory, and regulatory provisions.

7. HRSA may disclose information from this system of records to another agency that has asked the Department to effect an administrative or salary offset to help collect a debt owed to the United States. Disclosure is limited to the individual's name, address, Social Security number, and other information necessary to identify the individual; information about the money payable to or held for the individual, and other information concerning the administrative or salary offset.

8. HRSA may disclose information from this system of records to be consumer reporting agency (credit bureau) to obtain a commercial credit report for the following purposes:

a. To establish creditworthiness of a loan/grant/scholarship/traineeship applicant; and

b. To assess and verify the ability of a debtor to repay debts owned to the Federal Government.

Disclosures are limited to the individual's name, address, Social Security number and other information necessary to identify him/her; the funding being sought or amount and status of the debt; and the program under which the application or claim is being processed.

9. HRSA may disclose to the Department of the Treasury, Internal Revenue Service (IRS), information about an individual applying for a loan under any loan program authorized by the Public Health Service Act to find out whether the loan applicant has a delinquent tax account. This disclosure is for the sole purpose of determining the applicant's creditworthiness and is limited to the the individual's name, address, Social Security number, other information necessary to identify him/her, and the program for which the information is bing obtained.

10. HRSA will report to the Department of the Treasury, Internal Revenue Service (IRS), as taxable income, the written-off amount of a debt owned by an individual to the Federal Government when a debt becomes partly or wholly uncollectable—either because the time period for collection under the statute of limitations has expired, or because the Government agrees with the individuals to forgive or compromise the debt.

11. HRSA will disclose to debt collection agents, other Federal agencies, and other third parties who are authorized to collect a Federal debt, information necessary to identify a delinquent debtor. Disclosure will be limited to the debtor's name, address, Social Security number, and other information necessary to identify him/her; the amount, status, and history of the claim; and the agency or program under which the claim arose.

12. HRSA will disclose information from this system of records to any third party that may have information about a delinquent debtor's current address, such as a U.S. post office, a State motor vehicle administration, a professional organization, an alumni association, etc., for the purpose of obtaining the debtor's current address. This disclosure will be limited to information necessary to identify the individual.

13. HRSA will disclose information concerning a delinquent debtor from this system of records to the Department of Justice for litigation or further administrative action.

14. HRSA may disclose records of delinquent debtors to the Defense Manpower Data Center, Department of Defense, to conduct matching programs for the purpose of identifying and locating individuals who are receiving Federal salaries or certain benefit payments resulting from Federal employment and are delinquent in their repayment of debts owed to the U.S. Government and which arose under programs administered by the Public Health Service. HRSA will disclose this information in an effort to collect the debts by administrative or salary offset, under the provisions of the Debt Collection Act of 1982.

15. HRSA may disclose records of delinquent debtors to the United States Postal Service to conduct matching programs for the purpose of identifying and locating individuals who are receiving Federal salaries or certain benefit payments resulting from Federal employment and are delinquent in their repayment of debts owed to the U.S. Government and which arose under programs administered by the Public Health Service. HRSA will disclose this information in an effort to colect the debts by administrative or salary offset, under the provisions of the Debt Collection Act of 1982.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 158a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purposes of these disclosures are: (1) To provide an incentive for debtors to repay delinquent Federal Government debts by making these debts part of their credit records, and (2) to enable PHS agencies to improve the quality of loan and scholarship decisions by taking into account the financial reliability of applicants. Disclosure of records will be limited to the individual's name, Social Security number, and other information necessary to establish the identity of the individual, the amount, status, and history of the claim, and the agency or program under which the claim arose.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, ledgers, magnetic tapes, and electronic word processing diskettes.

RETRIEVABILITY:

Records are retrievable by name, Social Security number, award number, and school of attendance.

SAFEGUARDS:

1. Authorized User: Employees and officials directly responsible for programmatic or fiscal activity, including administrative and staff personnel, financial management personnel, computer personnel, and managers who have responsibilities for implementing programs funded by HRSA, ADAMHA, NIH, or IHS.

2. Physical Safeguards: Twenty-four hour building security guard. File folders, reports and other forms of personnel data, and electronic diskettes are stored in areas where fire and life safety codes are strictly enforced. All documents and diskettes are protected during lunch hours and non-duty hours in locked file cabinets or locked storage areas. Magnetic tapes and computer matching tapes are locked in a computer room and tape vault.

3. Procedural Safeguards: Password protection of automated records is provided. All authorized users protect information from public view and from unauthorized personnel entering an office.

Contractors who maintain records in this system are instructed to make no further disclosure of the records except as authorized by the System Manager and permitted by the Privacy Act. Privacy Act requirements are specifically included in contracts. The HRSA project directors, project officers, and the System Manager oversee compliance with these requirements.

4. Implementing Guidelines: The safeguards described above were established in accordance with the DHHS Chapter 45–13 and supplementary Chapter PHS.hf: 45–13 of the General Administrative Manual; and the DHHS Information Resources Management Manual, Part 8, "ADP Systems Security."

RETENTION AND DISPOSAL:

Records are retained by the responsible organizations listed under "System Location" for two years after completion of the repayment of the loan. The records are then sent to the Federal Records Center for a four-year retention period, and are subsequently disposed of in accordance with HRSA, ADAMHA, NIH, or IHS Records Control Schedule, whichever is applicable. The records control schedule and disposal standards for these records may be obtained by writing to the System Manager at the address below.

SYSTEM MANAGER(S) AND ADDRESS:

Policy-Coordinating Official: Associate Administrator for Operations and Management, HRSA, Room 14A–03, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Office of the Administrator: Chief, Debt Management Branch, Division of Fiscal Services, HRSA, Room 16A–09, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Indian Health Service: Chief, Financial Management Branch, IHS, Room 5A–36, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Bureau of Health Care Delivery and Assistance: Director, Office of Financing Services, BHCDA, Room 7–38, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Bureau of Health Professions: Director, Office of Debt Management, BHP, Room 8A–43, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

National Institute on Drug Abuse: Chief, Grants Management Branch, OA, Room 10–25, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

National Institute on Alcohol Abuse and Alcoholism: Chief, Grants Management Branch, Room 16–86, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

National Institute of Mental Health: Chief, Grants Management Branch, Room 7C–23, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

National Institutes of Health: Chief, Federal Assistance Accounting Branch, Division of Financial Management, NIH, Room 1B105, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To find out if the system contains records about you, contact the System Manager.

Requests in person: A subject individual who appears in person at a specific location seeking access to or disclosure of records relating to him/her shall provide his/her name, current address, and at least one piece of tangible identification such as driver's license, passport, voter registration card, or union card. Identification papers with current photographs are preferred but not required. If a subject individual has no identification but is personally known to an agency employee, such employee shall make a written record verifying the subject individual's identity. Where the subject individual has no identification papers, the responsible agency official shall require that the subject individual certify in writing that he/she is the individual who he/she claims to be and that he/she understand that the knowing and willful request or acquisition of a record concerning an individual under false pretenses is a criminal offense subject to a $5,000 fine. In addition, the following information is needed: (1) The name of the assistance program that he/she participated in, (2) dates of enrollment in the program, and (3) school(s) of attendance.

Requests by mail: Written requests must contain the name and address of the requester, his/her date of birth, and

either his/her notarized signature to verify his/her identity, or a written certification that the requester is who he/she claims to be and understands that the knowng and willful request or acquisition of records concerning an individual under false pretenses is a criminal offense subject to a $5,000 fine. In addition, the following information is needed: The name of the assistance program that he/she participated in, and for student assistance programs dates of enrollment in the program, and school(s) of attendance.

In addition, be informed that provision of the Social Security number may assist in the verification of your identity as well as the identification of your record. Providing your Social Security number is voluntary and you will not be refused access to your record for failure to disclose your Social Security number.

Requests by telephone: Since positive identification of the caller cannot be established, telephone requests are not honored.

RECORD PROCEDURES:

Same as notification procedures. Requesters should also provide a reasonable description of the record being sought.

Requesters may also request an accounting of disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURES:

Contact the appropriate System Manager, provide a reasonable description of the record, specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Individuals whose records are contained in the system: Federal organizations, including but not limited to the Office of Inspector General/DHHS, the Office of the Administrator, the Bureau of Health Professions, and the Bureau of Health Care Delivery and Assistance—all of which administer HRSA-funded programs; ADAMHA system of records 09-03-0027 "Grants and Cooperative Agreements: Research, Research Training, Research Scientist Development, Education, Demonstration, Prevention, Fellowships Clinicial Training, Community Programs, HHS/ADAMHA/OA"; NIH system of records 09-25-0112 "Extramual Awards Rearch, Research Training, Fellowship and Construction Applications and Awards, HHS/NIH/OD"; IHS system of records 09-17-0002 "Indian Health "Indian Health Service Scholarship Program, HHS/HRSA/IHS;" participating schools; lending institutions; consumer reporting agencies (credit bureaus); and other Federal agencies, including but not limited to the Department of the Treasury, Internal Revenue Service (IRS), and the U.S. Post Office.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 88-24294 Filed 10-19-88; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT-060-09-4132-12]

Environmental Assessment; Comment Period; Mt. Hillers Wilderness Study Area, UT

AGENCY: Bureau of Land Management, Richfield, Interior.

ACTION: Notice of comment period.

SUMMARY: The Environmental Assessment (EA) is available for the proposed mining and exploration in the Mt. Hillers Wilderness Study Area. The comment period will end 15 days from publication in the **Federal Register**. For further information contact Roy Edmonds at (801) 896-8221. Copies of the EA are available at the Richfield District Office, 150 East 900 North, Richfield, Utah 84701.

Dated: October 12, 1988.

Jerry W. Goodman,

District Manager.

[FR Doc. 88-24318 Filed 10-19-88; 8:45 am]

BILLING CODE 4310-DQ-M

[WY-030-09-4320-12]

Rawlins District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice is hereby given in accordance with Pub. L. 92-463 and 94-579 that a meeting of the Rawlins District Grazing Advisory Board will be held. This notice sets forth the schedule and proposed agenda for the meeting.

DATE: November 18, 1988, 10:00 a.m. to 3:00 p.m.

ADDRESS: Bureau of Land Management, Rawlins District Office, 1300 N. Third Street, P.O. Box 670, Rawlins, Wyoming 82301.

FOR FURTHER INFORMATION CONTACT: John Spehar, District Range Conservationist, Rawlins District Office, Bureau of Land Management, P.O. Box 670, Rawlins, Wyoming 82301, (307) 324-7171.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

1. Introduction and opening remarks.
2. Election of a Chairman and Vice Chairman.
3. Improvements proposed for completion in FY89 with range betterment (8100) funds.
4. Update on wild horse gathering.
5. Update on status of monitoring and Rangeland Program Summary.
6. Opportunity for the public to present information or make comments.

The meeting is open to the public. Anyone interested in attending this meeting or making an oral presentation, must notify the District Manager by November 14, 1988. Written statements may also be filed for the Board's consideration.

Summary minutes of this meeting will be on file in the Rawlins District Office and available for public inspection (during regular business hours) within 30 days of the meeting.

Richard Swain,

Rawlins District Manager.

[FR Doc. 88-24317 Filed 10-19-88; 8:45 am]

BILLING CODE 4310-22-M

[NM-010-4212-13; NM NM 63213/GP8-0125]

Issuance of Exchange Conveyance Document and Order Providing for Opening of Public Land in Taos County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States issued an exchange conveyance document to Rio Grande Land Partnership, a New Mexico General Partnership, and Abeyta Grazing Association, a New Mexico Non-Profit Corporation on November 13, 1987, for the surface estate in the following described land in Santa Fe County, New Mexico, pursuant to section 206 of the Act of October 21, 1976 (43 U.S.C. 1716):

New Mexico Principal Meridian

T. 17 N., R. 9 E.,
Sec. 16, lot 10.
Containing 31.73 acres.

In exchange for the land described above, Rio Grande Land Partnership conveyed to the United States the surface estate in 3,882.06 acres, more or less, in Taos County, New Mexico as described in the Warranty Deed to the United States dated November 13, 1987, and recorded on November 17, 1987, in book A-185, pages 623-625 in the records of Taos County, New Mexico.

The purpose of the exchange was to eliminate the need for continued management of a small, isolated parcel of public land and improve management of larger parcels of public land near the Rio Grande Gorge. The lands reconveyed to the United States have high values for wildlife habitat, livestock grazing, and public recreation in the form of hunting and hiking. The public interest was served through completion of this exchange.

The values of Federal public land and the non-Federal land in the exchange were appraised at $317,300.00 and $317,154.50, respectively. An equalization payment in the amount of $146.00 was paid to the United States.

At 9:00 a.m. on November 28, 1988, the non-Federal lands reconveyed to the United States shall be open to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All applications received at or prior to 9:00 a.m. on November 28, 1988, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: October 13, 1988.

Monte G. Jordan,

Acting Director, Associate.

[FR Doc. 88-24383 Filed 10-19-88; 8:45 am]

BILLING CODE 4310-FB-M

[AZ-020-09-4212-11; A 25533]

Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Arizona

AGENCY: Bureau of Land Management (BLM), Interior.

Maricopa County Board of Supervisors proposes to develop a regional park in the San Tan Mountains on public lands legally described as:

Gila and Salt River Meridian, Arizona

T. 3 S., R. 7 E.,
Sec. 4, S½SW¼, W½SW¼SE¼;
Sec. 8, E½, E½SW¼;
Sec. 9, S½NE¼, W½, SE¼;
Sec. 10, W½NE¼, W½;
Sec. 16, N½;
Sec. 17, E½, E½NW¼;
Sec. 18, SE¼SE¼;
Sec. 19, lots 2, 3, 4, E½, SE¼NW¼, E½SW¼;
Sec. 20, E½E½, S½SW¼;
Sec. 21, all;
Sec. 22, SW¼, W½SE¼;
Sec. 27, W½NW¼;
Sec. 28, all;
Sec. 29, all;
Sec. 30, all;
Sec. 31, all;
Sec. 32, all.

Aggregating 7178.61 acres, more or less.

The land has been examined and found suitable for classification for recreation and public purposes under the provisions of the R&PP Act of June 14, 1926, as amended (44 Stat. 741; 43 U.S.C. 869, 869-4) and the regulations contained in 43 CFR 2740 and 43 CFR 2912.

In addition, the land is determined to meet general classification criteria of 43 CFR 2410.1(a-d) and specific public purposes classification criteria of 43 CFR 2430.4 (a and c).

Classification of this land under the provisions of the above cited R&PP Act segregates them from appropriation under the public lands laws and the mining laws, but not from applications under the mineral leasing laws or the R&PP Act for a period of eighteen months from the date this notice is published in the **Federal Register** (43 CFR 2741.5(2)).

Detailed information concerning this classification is available from the Phoenix District Office, Bureau of Land Management, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

For a period of 45 days from the date of publication of this notice in the **Federal Register** interested parties may submit comments to the Phoenix District Manager.

Dated: October 13, 1988.

Henri E. Bisson,

District Manager.

[FR Doc. 88-24311 Filed 10-19-88; 8:45 am]

BILLING CODE 4310-32-M

[AZ-020-09-4212-12; A 25546-B]

Realty Action, Exchange of Public Lands, Navajo and Apache Counties, AZ

AGENCY: Bureau of Land Management (BLM), Interior.

BLM proposes to exchange public land in order to achieve more efficient management of the public land through consolidation of ownership.

The following described public lands are being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Gila and Salt River Meridian, Arizona

T. 12 N., R. 29 E.,
Sec. 6, lots 1-3.
T. 13 N., R. 18 E.,
Sec. 12, E½E½.
T. 13 N., R. 23 E.,
Sec. 22, NW¼SE¼, SE¼SE¼.
T. 14 N., R. 17 E.,
Sec. 8, SE¼;
Sec. 22, NE¼, N½NW¼, SW¼NW¼, NW¼SW¼, S½S½;
Sec. 24, NE¼.
T. 14 N., R. 19 E.,
Sec. 4, lots 1-4, S½N½, S½;
Sec. 10, SW¼, NW¼SE¼, E½SE¼;
Sec. 12, N½;
Sec. 28, SE¼SE¼.
T. 15 N., R. 16 E.,
Sec. 6, lots 1-4, 6.
T. 15 N., R. 19 E.,
Sec. 12, lots 1-3, N½, SW¼;
Sec. 14, all.
T. 16 N., R. 16 E.,
Sec. 26, all.
T. 16 N., R. 17 E.,
Sec. 6, lots 4 and 5.
T. 17 N., R. 15 E.,
Sec. 22, W½NW¼, NW¼SW¼.
T. 17 N., R. 18 E.,
Sec. 24, lots 1-4, W½E½, W½.
T. 17 N., R. 17 E.,
Sec. 28, W½E½, W½.
T. 17 N., R. 18 E.,
Sec. 4, lots 1-4, S½N½, S½.
T. 18 N., R. 16 E.,
Sec. 4, lot 1, S½NE¼, E½SE¼.
T. 18 N., R. 24 E.,
Sec. 18, E½;
Sec. 12, N½, S½SW¼;
Sec. 31, lots 3 and 4, E½SW¼.

Containing 7,251.23 acres, more or less.

Final determination on disposal will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice will segregate the public lands, as described in this Notice, from appropriation under the public land laws and the mining laws, but not the mineral leasing laws or Geothermal Steam Act.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the Federal Register of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Dated: October 14, 1988.

Henri E. Bisson,

District Manager.

[FR Doc. 88-24382 Filed 10-19-88; 8:45 am]

BILLING CODE 4310-32-M

[NM-410-3PS-816]

Availability of Taos Record of Decision and Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: On July 28, 1988, Larry L. Woodard, New Mexico State Director, BLM, signed the Record of Decision (ROD) for the Taos Resource Management Plan (RMP). This ROD documents the approval of the plan described in the Taos Proposed RMP/Final Environmental Impact Statement (EIS) of October, 1987, as the land use plan for the Taos Resource Area.

This RMP will provide the framework to guide management decisions during the next 10 to 20 years on the Resource Area's 564,000 surface acres of public land and 1,800,000 subsurface acres. The goal of this RMP is to provide for a combination of resource uses that will protect important environmental values and sensitive resources and at the same time allow development of resources which produce commercial goods and services. The RMP also describes how the five key resource issues that were identified with public involvement early in the planning process will be resolved. These issues are: (1) Special Management Areas; (2) transportation; (3) vegetative uses; (4) land ownership adjustments; and (5) right-of-way exclusion areas.

In addition to the analysis performed for the EIS portion of the RMP and in compliance with the requirements of the National Environmental Policy Act of 1969, further environmental analysis will be conducted for site-specific plans and actions resulting from implementation of the RMP. The Resource Area will also prepare an RMP summary update each year to inform the public of the site-specific plans, activities, and environmental analyses to be developed in the forthcoming year. This will allow interested members of the public to request information on these plans, activities and environmental analyses, and to comment upon them. The RMP summary updates will also inform the public of the progress being made in implementing the RMP.

Availability: The ROD has been sent to all recipients of the Proposed RMP/Final EIS. The approved RMP will be extracted from the Proposed RMP and printed. Copies of the ROD, and the forthcoming RMP and yearly RMP summary updates are available upon request from the Taos Area Manager at the address below:

FOR FURTHER INFORMATION CONTACT: Area Manager, Taos Resource Area, Bureau of Land Management, P.O. Box 6166, Taos, New Mexico 87571, telephone (505) 758-8851.

SUPPLEMENTARY INFORMATION: Implementation of the RMP decisions will continue over a period of years. Priorities will be developed to guide the order of implementation for those decisions that cannot be immediately implemented. The implementation priorities may be revised based upon new administrative policies, new Departmental directions or new Bureau goals.

Approval of the RMP placed into immediate effect the decisions described in the proposed RMP to protect important resource values in nine Areas of Critical Environmental Concern (ACECs), which were designated upon approval of the RMP. ACEC designated and the acreages of each are as follows:

Guadalupe Mountain (1220)
Racecourse (1120)
San Antonio Gorge (547)
Winter Range (6688)
Aqua Caliente (580)
Embudo Canyon (1060)
Black Mesa (5380)
Ojo Caliente (17,708)
Sombrillo (8885)

Dated: October 13, 1988.

Larry L. Woodard,
State Director.

[FR Doc. 88-24309 Filed 10-19-88; 8:45 am]
BILLING CODE 4310-FB-M

[CA-940-08-4520-12; Group 675]

Filing of Plat of Survey; California

October 13, 1988.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Lake County

T. 15 N., R. 10 W.,
T. 15 N., R. 11 W.

2. These plat(s), representing the (1) dependent resurvey of a portion of the south boundary, the west boundary, and a portion of the subdivisional lines, and the survey of the subdivision of sections 19, 30, and 31, Township 15 North, Range 10 West, Mount Diablo Meridian, California.

(2) dependent resurvey of a portion of the south boundary and a portion of the subdivisional lines, the survey of a portion of the subdivision of section 25, Township 15 North, Range 11 West, Mount Diablo Meridian, California, under Group No. 676 California, was accepted September 21, 1988.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,
Chief, Public Information Section.

[FR Doc. 88-24312 Filed 10-19-88; 8:45 am]
BILLING CODE 4310-40-M

[CA-940-08-4520-12; Group 980]

Filing of Plat of Survey; California

October 13, 1988.

1. This plat of the following described land will be officially filed in the California State Offices, Sacramento, California immediately:

Mount Diablo Meridian, Madera County

T. 9 S., R. 21 E.,
T. 8 S., R. 21 E

2. This plat(s) representing the dependent resurvey of the Second Standard Parallel South along a portion of the north boundary of T. 9 S., R. 21 E., a portion of the west boundary, and a portion of the subdivisional lines of T. 8 S., R. 21 E., and the survey of the subdivision of section 31, T. 8 S., R. 21 E., Mount Diablo Meridian, California under Group No. 980 California, was accepted September 14, 1988.

3. This plat will immediately become the basic record of describing the land for all auhtorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Indian Affairs.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,
Chief, Public Information Section.

[FR Doc. 88-24313 Filed 10-19-88; 8:45 am]
BILLING CODE 4310-40-M

[CA-940-08-4520-121; Group 965]

Filing of Plat of Survey; California

October 13, 1988.

1. This plat of the following described land will be officially filed in the California Staff Office, Sacramento, California immediately:

Mount Diablo Meridian, Trinity County

T. 26 N., R. 12 W.

Humboldt Meridian, Trinity County

T. 4 S., R. 8 E.
T. 5 S., R. 8 E.

2. This plat representing the dependent resurvey of a portion of the Fifth Standard Parallel North along a portion of the south boundary, and a portion of the west boundary of T. 26 N., R. 12 W., Mount Diablo Meridian, and a portion of the First Standard Parallel South along a portion of the south boundary T. 4 S., R. 8 E., and a portion of the subdivisional lines of T. 5 S., R. 8 E., Humboldt Meridian, and the survey to complete sections 4 and 5 and the survey of the subdivision of sections 3, 4, and 5, T. 5 S., R. 8 E., Humboldt Meridian, California, under Group No. 965 California, was accepted September 14, 1988.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Six Rivers National Forest.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,
Chief, Public Information Section.

[FR Doc. 88-24314 Filed 10-19-88; 8:45 am]
BILLING CODE 4310-40-M

[CA-940-08-4520-12;Group 747]

Filing of Plat of Survey; California

October 11, 1988.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

San Bernardino Meridian, Imperial County

T. 10 S., R. 21 E.

2. This plat(s)/8 sheets representing the dependent resurvey of a portion of the east boundary and a portion of the subdivisional lines, the retacement of a portion of the United States, Mexico International Boundary, and the survey of the extension of certain subdivisional lines, the subdivision of sections 25 and 35, the public reserve line in the E½ and the SW¼ of section 35, the meanders of the present right bank of the Colorado River, a control line along the All American Canal, a portion of the centerline of the All American Canal, and certain United States fee rights-of-way, Township 16 South, Range 21 East, San Bernardino Meridian, California under Group No. 747 California, was accepted September 9, 1988.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Indian Affairs.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,
Chief, Public Information Section.

[FR Doc. 88-24315 Filed 10-19-88; 8:45 am]
BILLING CODE 4310-40-M

[WY-925-09-4214-10; WYW 101818]

Amendment of Proposed Withdrawal; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw an additional 80 acres of Federal mineral estate in Big Horn County, to protect the Spanish Point Caves and associated subsurface karstic waterways. This notice closes the land for up to 2 years from mining. The land will remain open to mineral leasing.

DATE: Comments must be received by January 18, 1988.

ADDRESS: Comments should be sent to the Wyoming State Director, BLM, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82003.

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, BLM Wyoming State Office, 307-772-2072.

SUPPLEMENTARY INFORMATION: On September 20, 1988, a petition was approved allowing the Bureau of Land Management to file an application to add 80 acres of public mineral estate to a proposed withdrawal request which was approved on March 24, 1988, and published in the Federal Register on April 14, 1988. The following described public mineral estate will be withdrawn from settlement, sale, location, or entry under the mining laws, subject to valid existing rights:

Sixth Principal Meridian

T. 52 N., R. 88 W.,
Sec. 21, W½NW¼.

The area described aggregates 80 acres in Big Horn County

The purpose of the proposed withdrawal is to protect the Spanish Point Caves and associated subsurface karstic waterways.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the Federal Register, the land will be segregated as specified above unless the application is denied or canceled, or the withdawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are only those uses that are specifically permitted by an authorized officer of the Bureau of Land Management.

Dated: October 6, 1988.

F. William Eikenberry,
Associate State Director.

[FR Doc. 88-24316 Filed 10-19-88; 8:45 am]
BILLING CODE 4310-22-M

Minerals Management Service

Outer Continental Shelf Oil and Gas Lease Sales; List of Restricted Joint Bidders

Pursuant to the authority vested in the Director of the Minerals Management Service by the joint bidding provisions of 30 CFR 256.41, each entity within one of the following groups shall be restricted from bidding with any entity in any other of the following groups at Outer Continental Shelf oil and gas lease sales to be held during the bidding period from November 1, 1988, through April 30, 1989. The List of Restricted Joint Bidders published in the Federal Register on April 1, 1988, at 53 FR 10570 covered the bidding period of May 1, 1988, through October 31, 1988.

Group I. Chevron Corp.; Chevron U.S.A. Inc.
Group II. Exxon Corp.
Group III. Texaco Inc.; Texaco Producing Inc.; Getty Oil Co.
Group IV. Shell Oil Co.; Shell Offshore Inc.; Shell Western E&P Inc.
Group V. Mobil Oil Corp.; Mobil Oil Exploration and Producing Southeast Inc.; Mobil Producing Texas and New Mexico Inc.; Mobil Exploration and Producing North America Inc.
Group VI. Standard Oil Co.; Sohio Petroleum Co.; Standard Oil Production Co.; Standard Alaska Production Co.

William D. Bettenberg,
Director, Minerals Management Service.
Date: October 13, 1988.

[FR Doc. 88-24207 Filed 10-19-88; 8:45 am]
BILLING CODE 4310-MR-M

National Park Service

National Registry of Natural Landmarks

AGENCY: National Park Service, Interior.
ACTION: Public notice and request for comment.

The areas listed below appear to qualify for designation as National Natural Landmarks, in accordance with the provisions of 36 CFR Part 62. Pursuant to § 62.4(d)(1) of 36 CFR Part 62, written comments concerning the potential designation of these areas as National Natural Landmarks by the Secretary of the Interior may be forwarded to the Director, National Park Service (413), U.S. Department of the Interior, 18th and C Streets NW., Washington, DC 20240. Written comments should be received no later than December 19, 1988.

FOR FURTHER INFORMATION CONTACT: Charles M. McKinney III, Natural Landmarks Branch, Wildlife and Vegetation Division, (202) 343-9525.

Robert Stanton,
Associate Director for Operations.
Date: October 11, 1988.

California

Sutter County

Oso Plumas—This 3,756-acre site is located along the lower Feather River approximately 25 miles north of Sacramento. It is the largest and highest quality example of Great Valley Mixed Riparian Forest known to be remaining in the South Pacific Border Natural Region. This heterogeneous forest is dominated by Fremont cottonwood and sycamore with an understory of boxelder, Oregon ash, Hind's walnut, and tree willows. Extensive thickets, saplings, shrubs, and vines characterize the area offering roosting and breeding habitats for several rare riparian-dependent faunal species, including the Valley elderberry longhorn beetle, the California yellow-billed cockoo, and the Swainson's hawk. A variety of other rare fauna inhabitat the area. The area varies from 0.8–1.2 miles wide and runs for 8 miles along the Feather River. This site is in multiple private and State ownership.

Idaho

Clearwater County

Aquarius Natural Area—This 3,900-acre site is located 40 miles northeast of Orofino along the North Fork of the Clearwater River. This site, administered by the U.S. Forest Service, is the most diverse example of a type of cedar-hemlock forest known as montane coastal refugium. It is restricted in its distribution to the Clearwater River Basin of northern Idaho. Deeply incised into the mountainous terrain, characteristic of the Clearwater River Basin, the Aquarius Natural Area displays dramatic relief averaging 2,500 feet in a horizontal distance of less than one mile. The site lies along the border zone of the Idaho batholith, where quartz monzonite intrudes Pre-Cambrian metamorphic rocks including gneiss, quartzite, and schists. Colluvial and alluvial fans occur in the canyon basin. Three plant taxa nearly endemic to the Clearwater Basin are known to occur within the site including Case's corydalis, Constance's bittercress, and the Idaho strawberry.

New Mexico

Grant County

Gila River Sycamore Riparian Area—This 1,336-acre site extends more than 7 miles along the Gila River, 4.5 miles north-northwest of Gila. It is the best known example of Arizona Sycamore-Fremont poplar riparian woodland remaining in the Southwestern United States. It supports nine listed threatened and endangered species and harbors one of the richest known bird habitats in New Mexico. At least six major plant associations are represented. Flora includes Arizona sycamores, Fremont cottonwoods, netleaf hackberry, Arizona walnut, boxelder, Goodings willow, Arizona white oak and Emory oak—all with some old-growth specimens. This natural area is administered or owned by the U.S. Forest Service, The Nature Conservancy and several other private land owners.

Oklahoma

Greer County

Jester Cave—This 320-acre site contains the largest known gypsum cave in the United States, with 32,949 feet of surveyed passages. Most caves are dissolved in limestone, not gypsum. Approximately 200 gypsum caves are known from western Oklahoma, southwestern Kansas, eastern New Mexico, and the Texas Panhandle. The site is in private ownership and grazing is the dominant land use.

Oregon

Jackson County

Round Top Butte—This 1,250-acre site is located 8 miles west of Butte Falls and 6 miles northeast of Eagle Point. The site, administered by the Bureau of Land Management with other lands owned by several private individuals, contains the best remaining example of native valley upland grasslands in the valleys of southwestern Oregon and northwestern California in the North Pacific Border Natural Region; as well as the best remnant of Oregon white oak savanna and of ponderosa pine savanna. It is the only site with examples of all of the community types which occurred throughout the valleys of southern Oregon and northern California prior to European settlement. The site provides a haven for wildlife and a variety of rare plants. The site is a nesting area for owls, hawks and the Lewis woodpecker (known only from seven sites and a candidate for listing under the Endangered Species Act). Two additional plant species found here are listed as rare, threatened and endangered by the Oregon Heritage Data Base.

Jefferson County

The Island—This 178-acre site is located 10 miles southeast of Madras. The site is the largest and most pristine example of Western juniper/big sagebrush/bluebunch wheatgrass community in the Columbia Plateau. It also contains the best example of the pumice Western juniper steppe community. This site is administered jointly by the Bureau of Land Management and the U.S. Forest Service.

Morrow County

Boardman Natural Area—This 6,656-acre site (consisting of three contiguous parcels) is located 5 miles southeast of Boardman. It is the best example of lowland grassland and shrubland in the Columbia Plateau Natural Region. This mosaic of shrublands and palouse grasslands is dominated by one species of shrub—big sagebrush, and three species of grasses—needle-and-thread, bluebunch wheatgrass, and Sandberg bluegrass. The site is controlled by the Bureau of Land Management under lease to the Department of the Navy. The Research Natural Area within the site is managed by The Nature Conservancy.

Pennsylvania

Lackawanna County

Nay Aug Park Gorge and Waterfall—This 35-acre site is located in the Northern Anthracite Basin of the Appalachian Ranges Natural Region, within the city of Scranton. The site is an excellent example of a waterfall and gorge resulting from erosion of differentially resistant rocks. These prominent geological features were created by Roaring Brook, a tributary of the Lackawanna River. The entire park exhibits several geological themes vividly illustrating active landscape-forming processes. The sedimentary rocks existing at this site demonstrate sedimentary processes, environments, and epochs of earth history. The waterfall is an excellent example of a fluvial nickpoint due to glaciation during the Illinoian and Wisconsinan glacial stages. This natural area is considered among the best available within the natural region for public interpretation of earth history. The site is owned and managed by the city of Scranton.

Texas

Kenedy, Kleberg, & Willacy Counties

Big Shell/Little Shell Beaches—This 2,200-acre site is located within Padre Island National Seashore, southeast of Corpus Christi. It contains the only extensive shell beaches on the predominantly terrigenous barrier islands of the Gulf Coastal Plain Natural Region. The shell beaches are an excellent example of shoreline deposition in a zone of converging surface currents and littoral drifting of sediment. These beaches are also among the least disturbed in the region. This site is administered by the National Park Service.

Kenedy and Kleberg Counties

Upper Laguna Madre—This 237,253-acre site is also located within Padre Island National Seashore. It is the only hypersaline lagoon in the United States. Upper Laguna Madre extends from adjacent Corpus Christi Bay southward to an area of wind-tidal flats known as the Middle Ground or Land Cut. This site is also administered by the National Park Service.

[FR Doc. 88-24235 Filed 10-19-88; 8:45 am]
BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31253]

Southern Alabama Railroad Co., Inc.; Acquisition and Operation Exemption; Central of Georgia Railroad Co.

Southern Alabama Railroad Company, Inc. (SARC) has filed a notice of exemption to acquire and operate approximately 15.04 miles of rail line of Central of Georgia Railroad Company (Central), a common carrier operated as part of Southern Railway System, extending from milepost 374.96 at Troy, AL, to milepost 390.00 at Goshen, AL. The transaction is expected to be consummated on approximately October 15, 1988. Additionally, SARC, which will be a Class III carrier, will issue securities, which will be an exempt transaction under 49 U.S.C. 1175.1.

Any comments must be filed with the Commission and served on R. Lawrence McCaffrey, Jr., Weiner, McCaffrey, Brodsky & Kaplan, P.C., Suite 800, 1350 New York Avenue, NW., Washington, DC 20005-4797, and Richard W. Parker, Norfolk Southern Corporation, One Commercial Place, Norfolk, VA 23510-2191.

SARC must preserve intact all sites and structures more than 50 years old until compliance with the requirements of section 106 of the National Historic Preservation Act, 16 U.S.C. 470, is achieved. *See Class Exemption—Acq. & Oper. of R. Lines Under 49 U.S.C. 10901*, 4 I.C.C.2d 305 (1988).[1]

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: September 30, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Kathleen M. King,
Acting Secretary.

[FR Doc. 88-24037 Filed 10-19-88; 8:45 am]
BILLING CODE 7035-01-M

[1] SARC certified that it has identified such sites and structures to the appropriate State historic preservation officer.

[Docket No. AB-290 (Sub-14X)]

Norfolk and Western Railway Co.; Abandonment Exemption Between Helena and Durham, NC

Applicant has filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments* to abandon its 19.62-mile line of railroad, between milepost 91.70 at Helena, NC, and milepost 111.52 at Durham, NC.

Applicant has certified that: (1) No local or overhead traffic has moved over the line for at least 2 years; and (2) no formal complaint filed by a user of rails service on the line (or by State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State Agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10905(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on November 19, 1988 (unless stayed pending reconsideration). Petitions to stay regarding matters that do not involve environmental issues [1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [2] must be filed by October 31, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by November 9, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Roger A.

[1] A stay will be routinely issued by the Commission in these proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 400 (1988).

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the FEDERAL REGISTER on December 13, 1987, [52 FR 48440-48446].

Petersen, Solicitor, Norfolk Southern Corporation, One Commercial Place, Norfolk, VA 23510-2191.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by October 25, 1988. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: October 7, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-24220 Filed 10-19-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Civil Rights Division, Individuals of Japanese Ancestry Who Were Interned During World War II

The Assistant Attorney General of the Civil Rights Division, pursuant to the Civil Liberties Act of 1988, Pub. L. No. 100-383, 50 U.S.C. App. 1989b, hereby notifies the public that the Civil Rights Division, is preparing to implement section 105 of this Act, which authorizes the Attorney General to identify, locate and make payment to each eligible individual of Japanese ancestry who was interned during World War II.

Any individual or organization wishing to do so may comment on the following questions at this time:

1. Are Peruvian Japanese who were brought to the United States during World War II eligible?

2. Are minors who were repatriated to Japan during World War II eligible?

3. How can voluntary evacuees who may be eligible, but did not complete "Change of Residence" cards, be verified?

Comments may be mailed to Valerie O'Brian, Office of Reparations Administration, Civil Rights Division, U.S. Department of Justice, 10th and Constitution Avenue, Washington, DC 20530.

Dated: October 17, 1988.

William Bradford Reynolds,

Assistant Attorney General, Civil Rights Division.

[DR Doc. 88-24213 Filed 10-19-88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree; Outboard Marine Corp.

In accordance with the Policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Outboard Marine Corporation*, Civil Action No. 88-C-8571 was lodged with the United States District Court for the Northern District of Illinois. The action was filed pursuant to section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9607. The compliant asserted a claim for recovery of costs incurred and to be incurred by the United States in responding to releases and threatened releases of polychlorinated biphenyls ("PCBs") from a facility owned by Outboard Marine Corporation ("OMC") in Waukegan, Illinois, as well as a claim for recovery of damages for injuries to natural resources caused by such releases.

The proposed decree provides for OMC to establish and fund a trust that will undertake remedial action to address PCB contamination found at the company's Waukegan facility and in adjacent areas, including portions of Waukegan Harbor. The proposed remedial action includes dredging of PCB contaminated sediments from areas of Waukegan Harbor where average PCB concentrations exceed 50 ppm. The proposed decree also addresses contaminated soils and sediments in onshore areas where PCB concentrations exceed 50 ppm. Under the proposed decree, contaminated soils and sediments would be placed in three PCB containment cells to be constructed at the Waukegan Harbor Site. In order to permanently reduce the volume, toxicity and mobility of PCBs at the Waukegan Harbor Site, the proposed decree would require treatment of the most highly contaminated soils and sediments at the Site, by means of a thermal PCB extraction process that would remove at least 97 percent of the mass of PCB from such sediments and soils. Extracted PCBs would then be destroyed at an offsite facility. The proposed Consent Decree requires OMC to pay the United States Environmental Protection Agency's costs of overseeing the implementation of the Consent Decree.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this poublication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, U.S. Departmenmt of Justice, Washington, DC 20530. All comments should refer to *United States v. Outboard Marine Corporation*, DOJ Reference No. 90-5-1-1-979B.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Northern District of Illinois, 219 South Dearborn Street, Chicago, Illinois, and at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 111 West Jackson Street, Third Floor, Chicago, Illinois 60604. Copies of the proposed Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, U.S. Department of Justice, Room 6317, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the U.S. Department of Justice. The proposed Consent Decree package consists of a 73-page Consent Decree and 477 pages of Exhibits. You may request a copy of the Consent Decree with or without exhibits. Please specify in the letter of request whether or not exhibits are requested. A request for a copy of the proposed Consent Decree with exhibits should be accompanied by a check in the amount of $55.00 (ten cents (10¢) per page copying costs) payable to the "United States Treasurer." A request for a copy of the proposed Consent Decree without exhibits should be accompanied by a check in the amount of $7.30 payable to the "United States Treasurer."

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-24304 Filed 10-19-88; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Quotas for Controlled Substances in Schedules I and II; 1988 Aggregate

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of established 1988 aggregate production quotas.

SUMMARY: This notice establishes revised 1988 aggregate production quotas for controlled substances in Schedules I and II, as required under the Controlled Substances Act of 1970.

DATE: This order is effective October 20, 1988.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, 1405 Eye Street, NW., Washington, DC 20537, Telephone: (202) 633-1366.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (21 U.S. Code 826) requires the Attorney General to establish aggregate production quotas for all controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration pursuant to § 0.100 of Title 28 of the Code of Federal Regulations.

On July 28, 1988, a notice of the proposed revised 1988 aggregate production quotas for certain controlled substances in Schedules I and II was published in the **Federal Register** (53 FR 28459). All interested parties were invited to comment on or object to these proposed aggregate production quotas on or before August 29, 1988.

As to methylphenidate, MD Pharmaceutical, through counsel, filed comments on the proposed revised 1988 aggregate production quota. MD Pharmaceutical wished to advise DEA of its concern over DEA's apparent intention to continuously reduce the aggregate production quota for methylphenidate even though the public's need for generic methylphenidate is continuing to increase. Also, MD Pharmaceutical urged DEA to consider the increasing need for generic methylphenidate in its establishment of the 1988 quota. MD Pharmaceutical requested that DEA consider if a reduction in the aggregate production quota for methylphenidate is necessary, and whether DEA will permit adequate amounts to be made available to meet patient needs and provide for adequate inventories. DEA has received and taken into consideration the 1987 production and distribution data submitted by both manufacturers of methylphenidate and believes that the revised aggregate production quota of 2,172,000 grams will be sufficient to provide for the estimated medical, scientific, research and industrial needs of the United States, and for the maintenance of reserve stocks. No other comments and no request for a hearing were received.

Pursuant to sections 3(c)(3) and 3(e)(2)(C) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning and intent of the Regulatory Flexibility Act. 5 U.S. Code 601 *et seq.* The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by the international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Therefore, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S. Code 826) and delegated to the Administrator of the Drug Enforcement Administration by § 0.100 of Title 28 of the Code of Federal Regulations, the Administrator of the Drug Enforcement Administration hereby orders that the 1988 revised aggregate production quotas be established as follows:

(Expressed as grams of anhydrous acid or base)

Basic Class	Established revised 1988 aggregate production quotas
Schedule I	
Lysergic acid diethylamide	11
Schedule II	
Alfentanil	0
Amphetamine	264,000
Cocaine	793,000
Codeine (for sale)	54,243,000
Desoxyephedrine	1,423,000
Levodesoxyephedrine	1,490,000
Methamphetamine	23,000
Dextropropoxyphene	96,966,000
Dihydrocodeine	276,000
Fentanyl	5,000
Hydrocodone	2,791,000
Hydromorphone	163,000
Levorphanol	18,700
Meperidine	1,845,000
Methadone Intermediate (4-cyano 2-dimethylamino-4,4-diphenylbutane)	2,057,000
Methylphenidate	2,172,000
Mixed Alkaloids of Opium	8,000
Morphine (for sale)	3,268,000
Morphine (for conversion)	58,807,000
Oxycodone (for sale)	2,426,000
Pentobarbital	14,407,000
Phencyclidine	36
Phenylacetone	413,000

(Expressed as grams of anhydrous acid or base)

Basic Class	Established revised 1988 aggregate production quotas
Secobarbital	971,000
Sufentanil	500

Dated: September 28, 1988.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 88-24287 Filed 10-19-88; 8:45 am]

BILLING CODE 4410-09-M

Quotas for Controlled Substances in Schedules I and II; 1989 Aggregate

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of established 1989 aggregate production quotas.

SUMMARY: This notice establishes 1989 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act.

DATE: This order is effective October 20, 1988.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, 1405 Eye Street, NW., Washington, DC 20537, Telephone: (202) 633-1366.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (21 U.S. Code 826) requires that the Attorney General establish aggregate production quotas for all controlled substances listed in Schedules I and II each year. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration (DEA) by § 0.100 of Title 28 of the Code of Federal Regulations.

On Friday July 29, 1988, a notice of the proposed 1989 aggregate production quotas for certain controlled substances in Schedules I and II was published in the **Federal Register** (53 FR 28710). All interested parties were invited to comment on or object to those proposed aggregate production quotas on or before August 29, 1988.

As to methylphenidate, MD Pharmaceutical, through counsel, filed comments on the proposed 1989 aggregate production quota of methylphenidate. MD Pharmaceutical wished to advise DEA of its concern over DEA's apparent intention to continuously reduce the aggregate production quota for methylphenidate

even though the public's need for generic methylphenidate is continuing to increase. Also, MD Pharmaceutical urged DEA to consider the increasing need for generic methylphenidate in its establishment of the 1989 production quota. MD Pharmaceutical requested DEA to consider if a reduction in the aggregate production quota for methylphenidate is necessary and whether DEA will permit adequate amounts to be made available to meet patient needs and provide for adequate inventories. Relative to alfentanil, Janssen, Inc. of Puerto Rico commented that based on their marketing forecast and inventory requirements, the 1989 aggregate production quota for alfentanil should be increased.

At this time, DEA has determined that no increases are necessary for the 1989 aggregate production quotas for methylphenidate and alfentanil; however, DEA will reconsider these comments when the established quotas are revised in early 1989. No other comments and no request for a hearing were received.

Pursuant to sections 3(c)(3) and 3(e)(2)(C) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

This action has been analyzed in accordance with the principles and criteria contained in Executive order 12612, and it has been determined that this matter does not have sufficient federalism, implications to warrant the preparation of a Federalism Assessment.

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Therefore, under the authority vested in the Attorney General by Section 306 of the Controlled Substances Act of 1970 (21 U.S. Code 826) and delegated to the Administrator of the Drug Enforcement Administration by § 0.100 of Title 28 of the Code of Federal Regulations, the Administrator of the Drug Enforcement Administration hereby orders that the 1989 aggregate production quotas for Schedules I and II controlled substances, expressed as grams of anhydrous acid or base, be established as follows:

Basic Class and Established 1989 Quotas	
Schedule I:	
2,5-Dimethoxyamphetamine	15,500,000
Lysergic Acid diethylamide	11
3,4- Methylenedioxyamphetamine	5
3,4- Methylenedioxymethamphetamine	10
Tetrahydrocannabinols	20,000
Psilocyn	2
Psilocybin	2
Normorphine	5
4-Methylaminorex	5
Schedule II:	
Alfentanil	0
Amobarbital	213,000
Amphetamine	328,000
Cocaine	700,000
Codeine (for sale)	54,135,000
Codeine (for conversion)	4,528,000
Desoxyephedrine	1,318,000
Levodesoxyephedrine	1,281,000
Methamphetamine	37,000
Dextropropoxyphene	78,338,000
Dihydrocodeine	535,000
Diphenoxylate	810,000
Ecgonine (for conversion)	650,000
Fentanyl	40,000
Hydrocodone	2,507,000
Hydromorphone	197,000
Levorphanol	13,800
Meperidine	9,851,000
Methadone	1,441,000
Methadone Intermediate (4-Cyano-2-dimethyl-amino-4,4-diphenylbutane)	1,802,000
Methamphetamine (for conversion)	1,500,000
Methylphenidate	2,061,000
Mixed Alkaloids of Opium	9,200
Morphine (for sale)	3,206,000
Morhpine (for conversion)	61,532,000
Opium (tinctures, extracts, etc. expressed in terms of USP powdered opium)	1,452,000
Oxycodone (for sale)	2,329,000
Oxycodone (for conversion)	5,200
Oxymorphone	2,500
Pentobarbital	11,777,000
Phencyclidine	31
Phenmetrazine	0
Phenylacetone (for conversion)	617,000
1-Piperidinocyclohexanecarbonitrile (for conversion)	64
Secobarbital	1,288,000
Sufentanil	400
Thebaine	4,782,000

DEA will review the above established quotas early in 1989 to take into consideration actual 1988 sales and actual December 31, 1988 inventories as well as other information which might be available to DEA. At that time, DEA will again consider those comments received in response to the proposal of July 29, 1988.

Dated: September 28, 1988

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 88-24288 Filed 10-19-88; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Carbon Monoxide Monitoring Systems for Underground Mines; Public Meeting

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of public meeting.

SUMMARY: The Mine Safety and Health Administration will hold a public meeting to discuss carbon monoxide monitoring systems used in mining.

DATE: The public meeting will be held on October 25, 1988 in Triadelphia, West Virginia at 10:00 a.m.

ADDRESS: The public meeting will be held at the Mine Safety and Health Administration's Approval and Certification Center, Building #2, Room 113, Triadelphia, West Virginia.

FOR FURTHER INFORMATION CONTACT: Robert Dalzell, Chief, Approval and Certification Center, MSHA, phone (304) 547-0400.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to gather and exchange information concerning experience in the field with monitoring systems using carbon monoxide detectors and other early fire warning devices. Since this is an informational meeting concerning the field use of monitoring systems, issues related to ongoing rulemaking projects will not be discussed, nor will questions related to such projects be entertained.

Dated: October 14, 1988.

Patricia W. Silvey

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-24225 Filed 10-19-88; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Humanities; Meeting

October 11, 1988.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended) notice is hereby given that a meeting of the National Council on the Humanities will be held in Washington, DC on November 17-18, 1988.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out her functions, and to review applications for financial support and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue NW., Washington, DC. A portion of the morning and afternoon sessions on November 17-18, 1988, will not be open to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which will constitute a clearly unwarranted invasion of personal privacy; and information the disclosure of which would significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated January 15, 1978.

The agenda for the sessions on November 17, 1988, will be as follows:

Committee Meetings

8:30-9:30 a.m.
- Coffee for Council Members—Room 527 (Open to the public)

9:30-10:30 a.m.
- Committee Meetings—Policy Discussion
- Education Programs—Room M-14
- Fellowship Programs—Room 316-2
- General Programs—Room 415
- Research Programs/Preservation Grants—Room 315
- State Programs/Challenge Grants—Room M-07

10:30 a.m. until Adjourned
- (Closed to the Public for the reasons stated above)—Consideration of specific applications

The morning session on November 18, 1988, will convene at 9:00 a.m., in the 1st Floor Council Room M-09, and will be open to the public. The agenda for the morning session will be as follows:

(Coffee for Staff and Council members attending the meeting will be served from 8:30-9:00 a.m.)

Minutes of the Previous Meeting Reports
- A. Introductory Remarks
- B. Introduction of New Staff
- C. Contracts Awarded in the Previous Quarter
- D. Final Fiscal Year Reports: Applications; Matching; and Obligations
- E. Fiscal year 1989 Appropriations
- F. Committee Reports on Policy and General Matters
  1. Education Programs
  2. Fellowship Programs
  3. General Programs
  4. Research Programs
  5. Preservation Grants
  6. State Programs
  7. Challenge Grants
  8. Jefferson Lecture

The remainder of the proposed meeting will be given to the consideration of future budget requests and specific applications (closed to the public for the reasons stated above).

Further information about this meeting can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, Washington, DC 20506, or call area code (202) 786-0322.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 88-24222 Filed 10-19-88; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit issued under the Antarctic Conservation Act of 1978, Pub. L. 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice of permits issued.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On June 21, August 15, and August 25, 1988, the National Science Foundation published notices in the Federal Register of permit applications received. Permits were issued to the following individuals on October 11, 1988:

Albert F. Bennett and Zoe A. Eppley
Gerald L. Kooyman
John L. Bengtson (3 permits)
David F. and Jean M. Parmelee
David G. Ainley (2 permits).

The permit application submitted by Albert F. Bennett and Zoe A. Eppley was approved by NSF, in part. The permit application was modified by NSF before approval in order to reduce the conservation impact on bird populations in the vicinity of Palmer Station, Antarctica.

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 88-24301 Filed 10-19-88; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Advanced Scientific Computing; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Advanced Scientific Computing

Date and Time:
- November 17—8:00 a.m.-5:00 p.m.
- November 18—8:00 a.m.-3:00 p.m.

Place: Room 540, National Science Foundation, 1800 G Street NW.
- November 17—8:00 a.m.-5:00 p.m.

Type of Meeting:

Open
- November 17—8:00 a.m.-3:15 p.m.
- November 18—8:00 a.m.-3:00 p.m.

Closed
- November 17—3:15-5:00 p.m.

Contact Person: Dr. Thomas Weber, Director, Division of Advanced Scientific Computing, Room 417, National Science Foundation, Washington, DC, Telephone: 202/357-7558

Summary Minutes: May be obtained from Contact Person

Purpose of Meeting: To provide advice and recommendations concerning NSF support of advanced scientific computing

Agenda:

Closed

To review and evaluate proposals—as part of the selection process for awards

Open

Discussion of Centers supercomputer usage, infrastructure issues, renewal plan and 1988 achievements, service units from other sources, allocations policy, Division issues/future directions and general discussion.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Office.

October 17, 1988.

[FR Doc. 88-24330 Filed 10-19-88; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Archaeology; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Archaeology.
Date and Time: November 21 and 22, 1988, 9:00 a.m.–5:00 p.m. each day.
Place: National Science Foundation, 1800 G Street, NW., Room 643, Washington, DC 20550
Type of Meeting: Closed.
Contact Person: Dr. John E. Yellen, Program Director, Anthropology Program, Room 320, National Science Foundation, Washington, DC 20550 Telephone (202) 357–7804.
Minutes: May be obtained from contact person listed above.
Purpose of Meeting: To provide advice and recommendations concerning support for research in archaeology.
Agenda: To review and evaluate research proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

M. Rebecca Winkler,
Committee Management Officer.
October 17, 1988.

[FR Doc. 88–24329 Filed 10–19–88; 8:45 am]
BILLING CODE 7555–01–M

Advisory Panel for Decision, Risk, and Management Science Program; Meeting

The National Science Foundation announces the following meetings:

Name: Advisory Panel for Decision, Risk, and Management Science Program.
Date/Time: November 17–18, 1988—8:30 a.m. to 5:00 p.m.
Place: National Science Foundation, Conference Room 540.
Type of Meeting: Closed.
Contact Person: Dr. Howard Kunreuther (202) 357–7569 or Dr. Robin S. Gregory (202) 357–7417, Program Directors for Decision, Risk, and Management Science, Room 336, National Science Foundation, Washington, DC 20550.
Summary Minutes: May be obtained from the Contact Person at the above address.
Purpose of Advisory Panel: To provide advice and recommendations concerning support for research in the Decision, Risk, and Management Science Program.
Agenda: To review and evaluate research proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,
Committee Management Officer.
October 17, 1988.

[FR Doc. 88–24330 Filed 10–19–88; 8:45 am]
BILLING CODE 7555–01–M

Advisory Panel for EXPRES and Related Multimedia Electronic Communication Collaboration Technologies; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for EXPRES and Related Multimedia Electronic Communication and Collaboration Technologies
Dates and Times:
November 14, 1988—9:00 a.m.–5:00 p.m.
November 15, 1988—8:30 a.m.–5:00 p.m.
Place: University of Michigan, CSMIL Conference Room, 701 Tappan, Ann Arbor, Michigan 48109
Type of Meeting:

Open

November 14—9:00 a.m.–5:00 p.m.
November 15—8:30 a.m.–3:00 p.m.

Closed

November 15—3:30–4:00
Contact Person: Mr. Donald R. Mitchell, National Science Foundation, Phone: 202/357–9717
Summary of Minutes: May be obtained from Donald R. Mitchell
Purpose of Meeting: To review progress and provide advice and recommendations concerning NSF support and oversight of EXPRES and related technologies
Agenda:

Open

The open session will be focused on the progress to date and planned future milestones of the EXPRES program

Closed

To review and evaluate proposals—as a part of the selection process for awards
Reason for Closing: The pending funding actions being discussed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the projects. These matters are within exemptions (4) and (6) of U.S.C. 552b(c), the Government in Sunshine Act.

M. Rebecca Winkler,
Committee Management Officer.
October 17, 1988.

[FR Doc. 88–24328 Filed 10–19–88; 8:45 am]
BILLING CODE 7555–01–M

Advisory Panel for Genetics; Meeting

The National Science Foundation announces the following meeting.

Name: Advisory Panel for Genetics.
Date and Time: Tuesday, Wednesday, and Thursday, November 8, 9, and 10, 1988 8:30 to 5:00 p.m.
Place: The National Science Foundation, 1800 G. St., NW., Room 1241.
Type Meeting: Closed
Contact Person: DeLill Nasser, Program Director, Eukaryotic Genetics, Room 321L, Telephone: (202) 357–0112
Summary Minutes: May be obtained from the Contact Person at the above address.
Purpose of Advisory Panel: To provide advice and recommendations concerning support for research.
Agenda: To review and evaluate research proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of proposals U.S.C. 552b(c), Government in the Sunshine Act.

Rebecca Winkler,
Committee Management Officer.
October 17, 1988.

[FR Doc. 88–24326 Filed 10–19–88; 8:45 am]
BILLING CODE 7555–01–M

Advisory Panel for History and Philosophy of Science; Meeting

The National Science Foundation announces the following:

Name: Advisory Panel for History and Philosophy of Science
Date/Time:
November 14, 1988, 9:00 a.m. to 5:00 p.m.
November 15, 1988, 9:00 a.m. to 4:00 p.m.
Place: National Science Foundation, 1800 "G" Street NW., Room 536, November 14th, Room 1243, November 15th
Type of Meeting: Closed
Contact: Ronald J. Overmann, Program Director, Studies in Science, Technology & Society, National Science Foundation, Washington, DC 20550, Telephone (202) 357–9577, Room 312.
Summary: May be obtained from the contact person at the above address.
Purpose of Advisory Meeting: To provide advice and recommendations concerning research in the Studies in Science, Technology & Society Program.

Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,
Committee Management Officer.
October 17, 1988.

[FR Doc. 88–24327 Filed 10–19–88; 8:45 am]
BILLING CODE 7555–01–M

Advisory Committee for Information, Robotics, and Intelligent Systems; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463 as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Informatioon, Robotics, and Intelligent Systems.
Date and Time: November 21 and 22, 1988, 9:00 to 5:00 daily.
Place: Room 543, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.
Type of Meeting: All Open.
Contact Person: Dr. Y.T. Chien, Division Director, Division of Information, Robotics, and Intelligent Systems, Room 310, National Science Foundation, 1800 G Street, NW., Washington, DC 20550. Telephone: (202) 357–9572. Anyone planning to attend this meeting should notify Dr. Chien no later than Nov. 14, 1988.
Minutes: May be obtained from contact person listed above.
Purpose of Committee: To provide advice and recommendations concerning support of research in Information, Robotics, and Intelligent Systems.
Agenda:
Nov. 21—Overview of Programs, Discussions Focusing on Specific Program Aspects.
Nov. 22—Discuss Future Strategy for Programs and Divisional Initiatives, Committee Business Discussion.

M. Rebecca Winkler,
Committee Management Officer.
October 17, 1988.

[FR Doc. 88–24324 Filed 10–19–88; 8:45 am]
BILLING CODE 7555–01–M

Advisory Panel for Instrumentation and Instrument Development Program; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Instrumentation, and Instrument Development Program.
Date and Time: November 17 & 18, 1988, 8:30 a.m. to 5:00 a.m.
Place: Washington Plaza Hotel, Massachusetts & Vermont Avenue, NW., Washington, DC 20005. Telephone: 202/842–1300.
Type of Meeting: Closed.
Contact Person: Dr. Sidney Pierce, Program Director, Instrumentation and Instrument Development, National Science Foundation, Room 325, Washington, DC, Telephone: 202–357–7652
Summary Minutes: May be obtained from Contact Person at the above address.
Purpose of Advisory Panel Meeting: To provide advice and recommendations concerning support for research instrumentation.
Agenda: Closed—To review and evaluate research proposals as part of the selection process for awards.
Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Rebecca Winkler,
Committee Management Officer.
October 17, 1988.

[FR Doc. 88–24325 Filed 10–19–88; 8:45 am]
BILLING CODE 7555–01–M

Division Advisory Committee for Networking and Communications Research and Infrastructure; Meeting

The National Science Foundation announces the following meeting:

Name: Division Advisory Panel for Networking and Communications Research and Infrastructure.
Dates and Times:
November 29th—9:00 a.m.–5:00 p.m.
November 30th—9:00 a.m.–3:00 p.m.
Place: November 29th and 30th, Room 536, National Science Foundation, 1800 G Street NW.
Type of Meeting:

Open

November 29th—9:00 a.m.–5:00 p.m.
November 30th—12:00 p.m.–3:00 p.m.

Closed

November 30th—9:00 a.m.–12:00 p.m.
Contract Person: Dr. Stephen S. Wolff, National Science Foundation, Phone: (202) 357–9717
Purpose of Meeting: To provide advice and recommendations concerning NSF support of networking and communications research and infrastructure.
Agenda:
Open
November 29, 1988
The sessions will focus on technical, management, research, planning and policy issues. These will include a review of recent actions and budget priorities.
Closed
November 30, 1988, 9–Noon
To review and evaluate research proposals, as part of the selection process for awards.
Open
November 30, 1988, Noon–3
To discuss trends and opportunities in research, and to help provide advice and recommendations concerning support for research in Networking and Communications Research and Infrastructure.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions *four* and *six* of the Government in the Sunshine Act.

M. Rebecca Winkler,
Committee Management Officer.
October 17, 1988.

[FR Doc. 24328 Filed 10–19–88; 8:45 am]
BILLING CODE 7555–01–M

Advisory Panel for Physical Anthropology; Meeting

The National Science Foundation announces the followig meeting:

Name: Advisory Panel for Physical Anthropology.
Date and Time: November 14 and 15, 1988, 9:00 a.m.–5:00 p.m. each day.
Place: Arizona State University, Tempe, Arizona.
Type of Meeting: Closed.
Contact Person: Dr. Warren G. Kinzey, Program Director, Anthropology Program, Room 320, National Science Foundation, Washington, DC 20550 Telephone (202) 357–7804.
Minutes: May be obtained from contact person listed above.
Purpose of Meeting: To provide advice and recommendations concerning support for research in physical antrophology.
Agenda: To review and evaluate research proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals.

These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

Dated October 17, 1988.

[FR Doc. 88-24322 Filed 10-19-88; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Political Science; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Political Science.

Date/Time: November 17 and 18, 1988—9:00 a.m. to 4:00 p.m. each day.

Place: National Science Foundation, Room 643, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Frank P. Scioli, Program Director for Political Science, (202) 357-9868, National Science Foundation, Washington, DC 20550, Room 336.

Summary Minutes: May be obtained from the Contact Person at the above address.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research in Political Science.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

October 17, 1988.

[FR Doc. 88-24319 Filed 10-19-88; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Sociology; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Sociology.

Date/Time: November 14 and November 15, 1988, from 8:00 a.m. to 5:00 p.m. each day.

Place: National Science Foundation, Room 540-S, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Phyllis Moen, Program Director or Dr. Robert Althauser, Associate Program Director for Sociology, Room 336, National Science Foundation, Washington, DC 20550, Telephone (202) 357-7802.

Summary Minutes: May be obtained from the Contact Persons at the above address.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research in the Sociology Program.

Agenda: Closed: to review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

October 17, 1988.

[FR Doc. 88-24321 Filed 10-19-88; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-295 and 50-304]

Commonwealth Edison Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR-39 and DPR-48, issued to the Commonwealth Edison Company (CECo, the licensee) for Zion Nuclear Power Station, Units 1 and 2, located in Lake County, Illinois.

Environmental Assessment

Identification of Proposed Action

The proposed amendments to Facility Operating License Nos. DPR-39 and DPR-48, Appendix A, sections 3.2, 3.4, 3.8, and 3.9 would authorized Zion Station to remove Boron Injection Tank (BIT) and the associated piping, valves and heat trace for recirculation between the BIT and the Boric Acid Tanks (BAT).

These revisions to the licenses of Zion Nuclear Power Station, Units 1 and 2 would be made in response to the licensee's application for amendment dated June 9, 1988.

Needs for the Proposed Action

Improvements in the analytical techniques used for the Final Safety Analysis Report (FSAR) accident analyses have shown that the BIT concentration can be reduced or the entire BIT can be removed in Westinghouse nuclear steam supply system plants. The high boric acid concentrations currently required in the BIT pose operational and maintenance problems such as maintaining of minimum volumes and concentrations in boric acid system tanks, heat tracing malfunctions, BIT valve testing, recovery from inadvertent safety injection and entering into technical Specification Limiting Conditions of Operation to accomplish these repairs. The detrimental consequences of high boric acid concentrations are also factors that contribute to the emergency core cooling system's inoperability.

Environmental Impact of the Proposed Action

The licensee contracted Westinghouse to reanalyze the FSAR accident sequences involving postulated steamline break accidents, the consequences of which are mitigated by BIT. Westinghouse performed the reanalysis using improved analytical techniques and prepared the "Report For The Boron Concentration Reduction/ Boron Injection Tank Elimination For Zion Units 1 and 2" (Report). The Report concluded that Zion Units 1 and 2 may reduce the boron concentration in the BIT to O ppm or remove the BIT entirely.

The Commission has reviewed these analyses and finds that potential radiological releases during normal operations, transients, and for accidents would not be increased over those considered in the Final Environmental Statement related to Operation of Zion Nuclear Power Station, Units 1 and 2, dated December 1972.

With regard to potential non-radiological impacts, the proposed amendments involve systems located entirely within the restricted area as defined in 10 CFR Part 20. They do not affect non-radiological plant effluents and have no other environmental impact. Therefore, the Commission also concludes that there are no significant non-radiological environmental impacts associated with the proposed amendments.

Accordingly, the Commission findings in the Final Environmental Statement related to Operation of Zion Nuclear Power Station Units 1 and 2 dated December 1972, regarding radiological and non-radiological environmental impacts from the plant during normal operation or after accident are not adversely altered by this action.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the Federal Register on September 8, 1988 (53 FR 34949). No request for hearing or petition for leave to intervene was filed following this notice.

Alternate to the Proposed Actions

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Since the Commission has concluded that no significant environmental effects are associated with this proposed action, any alternatives with equal or greater environmental impact need not be evaluated.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement for the Zion Nuclear Power Station, Units 1 and 2 dated December 1972.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request of June 9, 1988 and did not consult other agencies or persons.

Finding of no Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon this environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for amendments dated June 9, 1988 and the Final Environmental Statement for Zion Nuclear Power Station, Units 1 and 2 dated December 1972, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the Waukeegan Public Library, 128 N. County Street, Waukeegan, Illinois 60085.

Dated at Rockville, Maryland, this 13th day of October 1988.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, Project Directorate III-2, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88-24272 Filed 10-19-88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW); Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the ACRS full Committee, and of the ACNW, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published September 21, 1988 (53 FR 36664). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the Federal Register approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS full Committee and ACNW meetings designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee and ACNW meetings begin at 8:30 a.m. and ACRS Subcommittee meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS full Committee and ACNW meetings and when ACRS Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the October and November 1988 ACNW and the November 1988 ACRS full Committee meetings can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone: 301/492-7288, ATTN: Barbara Jo White) between 7:30 a.m. and 4:15 p.m., Eastern Time.

ACRS Subcommittee Meetings

Mechanical Components, October 26-27, 1988, Bethesda, MD. The Subcommittee will continue to discuss the NRC staff's generic letter on expanded testing and inspection of all safety-related, motor-operated valves. Other valve reliability matters will also be discussed.

Advanced Boiling Water Reactors, November 15-16, 1988, Bethesda, MD. The Subcommittee will continue its FDA review of this standard plant. Detailed ACRS questions will be covered on review module 1. An overview of the second review module is planned.

Reliability Assurance, November 22, 1988, Bethesda, MD. The Subcommittee will continue the discussion of the Equipment Qualification-Risk Scoping Study with special emphasis on peer review comments.

Auxiliary and Secondary Systems, November 22, 1988, Bethesda, MD. The Subcommittee will review the adequacy of the proposed staff's plans to implement the recommendations resulting from the Fire Risk Scoping Study.

Containment Systems, December 6, 1988, Bethesda, MD. The Subcommittee will review the NRC staff's document on final recommendations for containment performance and improvements (BWR Mark I only).

Thermal Hydraulic Phenomena, December 7, 1988, Bethesda, MD. The Subcommittee will review: (1) The final report of the NRC-RES Technical Program Group on the Code Scaling, Applicability and Uncertainty (CSAU) Evaluation Methodology and (2) the report of the joint NRC/B&W Technical Advisory Group on the need for follow-on research concerning thermal hydraulic phenomena of the B&W OTSG.

Regional Programs, January 6, 1989 (January 5 p.m. as needed), Region IV Offices, Arlington, TX. The Subcommittee will review the activities under the control of the Regional IV Office.

Improved Light Water Reactors, January 10, 1988, Bethesda, MD. The Subcommittee will review: (1) The proposed final rule, 10 CFR Part 52, Early Site Permits, Standard Design Certification, and Combined Licenses for Nuclear Power Reactors, and (2) the SER for Chapter 5, EPRI Requirements Document.

Auxiliary and Secondary Systems, January 11, 1988, Bethesda, MD. The Subcommittee will discuss Control Air System Design and Operating Experience, and the proposed resolution of Generic Issue 43, "Air Systems Reliability."

Babcok & Wilcox Reactor Plants, February 1 and 2, 1989, Sacramento, CA. The Subcommittee will meet to discuss the lessons learned from the approximately 2-year shutdown of Rancho Seco that occurred following the December 16, 1985, overcooling event. Topics include monitoring extended start-up program, as well as, plant and organization changes as a result of the restart effort.

Occupational and Environmental Protection Systems, March 2, 1989, Bethesda, MD. The Subcommittee will discuss the general status of emergency planning for nuclear power plants.

AC/DC Power Systems Reliability, Date to be determined (November), Bethesda, MD. The Subcommittee will review the proposed resolution of Generic Issue 128, "Electrical Power Reliability."

General Electric Reactor Plants (Peach Bottom Restart), Date to be determined (November/December), Bethesda, MD. The Subcommittee will review the proposed restart plan for the Peach Bottom Plant.

Advanced Reactor Designs, Date to be determined (November/December), Bethesda, MD. The Subcommittee will review the draft SER for the Sodium Advanced Fast Reactor (SAFR) design.

Advanced Pressurized Water Reactors, Date to be determined (December), Bethesda, MD. The Subcommittee will discuss the

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comparison of WAPWR (RESAR SP/90) design with other modern plants (in U.S. and abroad).

Advanced Pressurized Water Reactors, Date to be determined (December), Bethesda, MD. The Subcommittee will review the licensing review bases document being developed for Combustion Engineering's Standard Safety Analysis Report-Design Certification (CESSAR–DC).

Instrumentation and Control Systems, Date to be determined (December), Bethesda, MD. The Subcommittee will review the proposed resolution of Generic Issue 101, "Break Plus Single Failure in BWR Water Level Instrumentation."

Joint Core Performance/Thermal Hydraulic Phenomena, Date to be determined (December/January), Bethesda, MD. The Subcommittee will review the implications of the core power oscillation event at LaSalle, Unit 2.

Decay Heat Removal Systems, Date to be determined (January), Bethesda, MD. The Subcommittee will review the proposed resolution of Generic Issue 23, "RCP Seal Failures."

Decay Heat Removal Systems, Date to be determined, Bethesda, MD. The Subcommittee will explore the issue of the use of feed and bleed for decay heat removal in PWRs.

Thermal Hydraulic Phenomena, Date to be determined, Bethesda, MD. The Subcommittee will discuss the status of Industry Best-Estimate ECCS Model submittals for use with the revised ECCS Rule.

Auxiliary and Secondary Systems, Date to be determined, Bethesda, MD. The Subcommittee will discuss the: (1) Criteria being used by utilities to design Chilled Water Systems, (2) regulatory requirements for Chilled Water Systems design, and (3) criteria being used by the NRC staff to review the Chilled Water Systems design.

ACRS Full Committee Meetings

November 17–19, 1988—Items are tentatively scheduled.

A. Peach Bottom Nuclear Plant (Open)—Discuss proposed restart of this plant.

B. Operator Requalification (Open)—Briefing regarding lessons learned from implementation of revised operator requalification methodology (Draft Revision Standard 3OT).

C. Westinghouse Advanced PWR (RESAR SP/90) (Open/Closed)—Review the proposed design features of this standardized nuclear steam supply system.

D. Generic Issue 128, Electrical Power Reliability (tentative) (Open)—Review and comment regarding proposed resolution of this generic issue.

E. Regulatory Guide EE 006–5, Qualification of Safety-Related Lead Storage Batteries (Open)—Review and comment on this proposed regulatory guide.

F. *Report of ACRS Nominating Committee (Closed)*—Discuss qualifications of candidates proposed for election as ACRS Officers for CY–1989.

*G. *Liquid Metal Cooled Reactor (Open)*—ACRS review and comment regarding proposed design features of the liquid metal cooled Power Reactor Inherently Safe Module (PRISM).

*H. *Quantitative Safety Goals (Open)*—Review and comment on the proposed NRC staff plan for implementation of the NRC Safety Goal Policy.

*I. *Nuclear Reactor Operating Experience (Open/Closed)*—Briefing regarding systematic assessment of nuclear power plant operating experience and abnormal events.

*J. *Nuclear Power Plant Valve Testing (Open/Closed)*—Review and comment regarding proposed changes in NRC requirements for in-situ testing of motor-operated valves in nuclear power plants.

*K. *Hierarchical Structure for Safety-Related Issues (Open)*—Discuss proposed hierarchical structure for certain issues identified by the ACRS members in the areas of ACRS procedures and practices and NRC Regulatory practices.

*L. *Misrepresented Equipment in Nuclear Power Plants (Open)*—Briefing regarding NRC staff activities related to the supply and use of misrepresented equipment in nuclear power plants.

*M. *Anticipated ACRS Activities (Open)*—Discuss anticipated ACRS subcommittee activity and topics proposed for consideration by the full Committee.

*N. *ACRS Subcommittee Activities (Open)*—Hear and discuss reports of designated ACRS Subcommittee Chairmen and members regarding the status of assigned safety-related activities.

December 15–17, 1988—Agenda to be announced.

January 12–14, 1989—Agenda to be announced.

ACNW Meetings

October 27, 1988—2nd ACNW Meeting with the Commissioners. The Committee will review topics scheduled for discussion with the Commission later in the day. Following the meeting with the Commissioners the Committee may reconvene to discuss the outcome of the Commission meeting, and ACNW plans, schedules, and procedures in general.

November 3–4, 1988—Postponed.

Date: October 14, 1988.

Andrew L. Bates,

Acting Advisory Committee Management Officer.

[FR Doc. 88-24268 Filed 10-19-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-312]

Sacramento Municipal Utility District, Rancho Seco Nuclear Generating Station; Temporary Relocation of Local Public Document Room

Notice is hereby given that the Nuclear Regulatory Commission's (NRC) local public document room (LPDR) for Sacramento Municipal Utility District's Rancho Seco Nuclear Generating Station has been temporarily moved from the Sacramento Public Library to the Martin Luther King Regional Library, Sacramento, California.

The relocation will be in effect for approximately two years while extensive renovations are made to the Sacramento Public Library. Members of the public may now inspect and copy documents and correspondence related to the licensing and operation of the Rancho Seco Nuclear Generating Station at the Martin Luther King Regional Library, 7340 24th Street Bypass, Sacramento, California 95822. The Library is open on the following schedule: Monday noon to 9 p.m.; Tuesday and Thursday 10 a.m. to 9 p.m.; Wednesday 10 a.m. to 6 p.m.; Friday 1 p.m. to 5 p.m.; and Saturday 10 a.m. to 5 p.m.

For further information, interested parties in the Sacramento area may contact the LPDR directly through Ms. Bess Chen, telephone number (916) 421–3151. Parties outside the service area of the LPDR may address their requests for records to the NRC's Public Document Room, 2120 L Street, NW., Washington, DC 20555, telephone number (202) 634–3273.

Questions concerning the NRC's local public document room program or the availability of documents at the Rancho Seco LPDR should be addressed to Mr. Jona L. Souder, LPDR Program Director, Freedom of Information Act/Local Public Document Room Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone number (800) 638–8081 toll-free.

Dated at Bethesda, Maryland, this 13th day of October 1988.

For the Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management.

[FR Doc. 88-24270 Filed 10-19-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-293]

Boston Edison Co., (Pilgrim Nuclear Power Station); Exemption

I

The Boston Edison Company (BECo), the licensee, is the holder of Operating License No. DPR-35 which authorizes operation of Pilgrim Nuclear Power Station. The licensee provides, among other things, that the Pilgrim Nuclear Power Station is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

The plant is a boiling water reactor at the licensee's site located in Plymouth County, Massachusetts.

II

On November 19, 1980, the Commission published a revised § 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised § 50.48 and Appendix R became effective on February 17, 1981. Section III of Appendix R contains 15 subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. One of these subsections, III.G.2.a, is the subject of the licensee's exemption request.

Subsection III.G.2.a of Appendix R to 10 CFR Part 50, requires that separation of cables and equipment and associated non-safety trains by a fire barrier having a three hour rating. Structural steel forming a part of or supporting such fire barriers shall be protected to provide fire resistance equivalent to that required of the barrier.

III

By letter dated August 8, 1988, BECo requested an amendment to revise the license to allow some fire barriers to have a rating of less than three hours as referenced in License Condition 3.F and supported by Fire Protection Engineering Evaluations (FPEE) performed by BECo. The NRC staff has determined that these barriers do not fully satisfy the requirements of section III.G.2.a of Appendix R to 10 CFR Part 50 in relation to three hour fire barriers and an exemption is required in addition to the requested amendment.

The Safety Evaluation Report (SER) that accompanied Pilgrim Nuclear Power Station (PNPS) Technical Specification Amendment No. 35 documented PNPS compliance with Appendix A of Branch Technical Position (BTP) APCSB 9.5–1. Section 4.13 of the SER identified the fire barriers that provide three hour separation between redundant safety related systems, or separation of areas with significant fire hazards.

During refueling outage number seven, a reevaluation was conducted of fire barriers, including fire doors, fire dampers and penetration seals. This review determined that existing documentation would not support verification of a three hour rating for some of the barriers referenced in the SER. As a result, FPEEs were performed to determine the adequacy of these fire barriers. The FPEEs consist of the following elements: Area configuration and occupancy; combustible loading; safe shutdown systems potentially affected; consequences of a fire in an affected area; other considerations (i.e., detection, suppression purpose of barrier, etc.) and; the review and approval of a fire protection engineer.

The staff has previously reviewed and approved the concept of FPEEs to document the adequacy of fire protection measures at PNPS when the existing configuration was otherwise not in strict compliance of Appendix R requirements. For all but two of the 17 fire barriers that are the subject of this exemption, the licensee's analysis by FPEEs find that they have a rating that exceeds the fire hazard to which the barriers are exposed. That is, the combustible loading, extent and nature of combustibles, and their continuity (all expressed in British Thermal Units) do not exceed the fire rating of the barrier being analyzed and the existing fire barriers provide adequate protection. The remaining two fire barriers separate a fuel oil day tank, and the turbine lube oil reservoir and storage areas from surrounding equipment. The fire hazard for each of these locations exceeds even a three hour fire barrier because of their high combustible loading. However, these two areas are provided with automatic fire suppression and fire detection which provide adequate protection for the areas.

Based on the above evaluation, the staff concludes that application of the regulation in these particular circumstances is not necessary to achieve the underlying purpose of Appendix R to 10 CFR Part 50. The licensee's existing fire protection configuration provides an equivalent level of protection to that achieved by compliance with section III.G.2.a of Appendix R.

Therefore, an exemption to the requirements of section III.G.2.a of Appendix R in relation to the need for three hour fire rated barriers should be granted.

IV

Accordingly, the Committee has determined, pursuant to 10 CFR 50.12(a), that: (1) The exemption as described in Section III is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security, and (2) in this case, special circumstances are present in that application of the regulation is not necessary to achieve the underlying purpose of Appendix R to 10 CFR Part 50. Therefore, the Commission hereby grants the exemption from the requirements of section III.G.2.a of Appendix R to 10 CFR Part 50 regarding the separation of cables and equipment and associated non-safety trains by a fire barrier having a three hour rating.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact (53 FR 40148). A copy of the licensee's submittal dated August 8, 1988, is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360. Copies may be obtained upon written request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 13th day of October 1988.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-24271 Filed 10-19-88; 8:45 am]

BILLING CODE 7590-01-M

BEST COPY AVAILABLE

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26152; File No. SR-DTC-88-16]

Self Regulatory Organizations; Depository Trust Co.; Order Granting Temporary Approval of Proposed Rule Change Concerning Memo Segregation

On August 1, 1988, the Depository Trust Company ("DTC") filed a proposed rule change (File No. SR-DTC-88-16), with the Commission pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("the Act"), 15 U.S.C. 78s(b)(1).[1] On August 22, 1988, the Commission published notice to solicit comments from interested persons and granted accelerated temporary approval of this proposed rule change.[2] No comments were received. This Order temporarily approves the proposal for 21 days.

The proposal would authorize DTC to establish a new method for participants, particularly broker-dealer participants, to segregate fully-paid-for customer securities against unintended delivery by creating a "memo" position within a participant's free account. This "memo" position allows participants to protect from unintended delivery a designated quantity of customer fully-paid-for securities that are in the participant's free account or that may be received during the daily processing cycle. Securities would remain in the memo position until the participant provides DTC with new instructions to remove them from the memo position or until the participant reduces the position by executing eligible transactions that are normally customer transactions. Withdrawals-by-transfer, certificate-on-demand withdrawals, and free deliver orders that are not identified as stock loan or stock loan returns would be considered eligible transactions which would be used to reduce the securities in both the memo position and the free account position.[3]

DTC believes that the proposed rule change is consistent with the requirements of section 17A(b)(3)(F) of the Act in that it is designated to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency. DTC believes that implementing this service will assist broker-dealers in complying with Commission Rule 15c3-3. In addition, DTC stated that the participants which have used this service during the pilot period believe that it improved their ability to comply with Commission Rule 15c 3-3 by increasing the number of automated deliveries which can be made without violating the Rule 15c 3-3 requirements.

In its August 22, 1988, notice and temporary approval order, the Commission stated it preliminarily believes that the proposal is consistent with the Act, and in particular, section 17A. The Commission also stated that it agrees with DTC that the memo segregation service, as proposed, potentially could improve broker-dealers' ability to safeguard customer securities and thus comply with Rule 15c3-3. Before granting final approval, however, the Commission believes it needs more time to evaluate the memo segregation pilot program. In order to evaluate this pilot, the Commission is extending approval of memo segregation for 21 days.

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the Act and, in particular, section 17A.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-DTC-88-16) be, and hereby is, temporarily approved until November 4, 1988.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: October 14, 1988.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-24298 Filed 10-19-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26155; File No. SR-NASD-88-22]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Offering of Non-Cash Sales Incentives as Inducement To Sell Interests in Direct Participation Programs

The National Association of Securities Dealers, Inc. ("NASD") submitted on August 5, 1988, copies of a proposed rule change ("proposed rule change" or "proposal") pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to amend sections 5(e) and 5(f) of Appendix F to Article III, section 34 of the NASD's Rules of Fair Practice. Section 34(b) of the NASD's Rules of Fair Practice requires that compensation paid to members and associated persons in connection with their participation in the public offering of a direct participation program ("DPP") [1] be "fair and reasonable." Section 5 of Appendix F sets forth the types of compensation which will be deemed fair and reasonable pursuant to section 34(b). The amendment to section 5(e) generally prohibits members and associated persons from directly or indirectly accepting non-cash sales incentive items offered as an inducement to sell interests in DPPs, from DPPs, sponsors of DPPs, or affiliates of those sponsors (collectively, "sponsors").[2] The amendment, however, permits the member, itself, to provide non-cash sales incentive items to its associated persons in connection with an in-house sales incentive program, provided that no sponsor "directly or indirectly participates in or contributes to providing such non-cash sales incentive item." In this connection, the NASD interprets the word "sponsor" to apply both to sponsors who are affiliated with members and to those who are not affiliated with members.

The amendment to section 5(f) clarifies that subpart (f) applies to *cash* compensation of any kind (whereas subpart (e) applies to *non-cash* sales incentive items). It specifies that a member may receive cash compensation from sponsors under certain conditions, "subject to the limitations on direct and indirect non-cash sales incentives" set forth in amended section 5(e). The amendment adds, as a condition to the member's acceptance of cash compensation, that the compensation must not be "directly or indirectly related to any non-cash sales incentive item provided by the member to its associated persons" (section 5(f)(5)).[3]

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[1] 15 U.S.C. 78s(b)(1).

[2] *See* Securities Exchange Act Release No. 26000 (August 19, 1988), 53 FR 31947

[3] DTC presumes that these activities are customer transactions and, therefore, once excluded from a participant's free account position, are no longer anticipated customer securities that need protection.

[1] Article III, section 34(d)(2) of the NASD's Rules of Fair Practice defines "direct participation program" as a program which provides for flow-through tax consequences regardless of the structure of the legal entity or vehicle for distribution including, but not limited to, oil and gas programs, real estate programs, agricultural programs, cattle programs, condominium securities, Subchapter S corporate offerings and all other programs of a similar nature, regardless of the industry represented by the program, or any combination thereof. Excluded from this definition are, *inter alia*, real estate investment trusts and investment companies registered pursuant to the Investment Company Act of 1940. *NASD Manual* ¶ 2192, at 2180.

[2] The one exception to this general prohibition permits an associated person to accept, from each sponsor, non-cash sales incentives with an aggregate value of $50.00 or less per year (section 5(e)(3)).

[3] The Commission also is approving at this time proposed rule change SR-NASD-88-13, which prohibits members and associated persons from accepting non-cash sales incentives in excess of $50 per person per issuer annually, in connection with

Continued

distributions of public offerings of securities. *See* Securities Exchange Act Release No. _____ (September _____, 1988).

Sponsors of DPPs are of two general types: Those who are affiliated with a broker-dealer and those who are not. Both categories of sponsors typically offer their DPPs through a network of broker-dealers; in the case of an affiliated sponsor, that network includes the broker-dealer with which the sponsor is affiliated. The NASD asserts that both categories of sponsors offer non-cash sales incentives to NASD member broker-dealers, to be distributed to the members' associated persons as bonuses for the sale of particular DPP products. These non-cash sales incentive programs may be particularly important for non-affiliated sponsors because these sponsors often lack any formal relationship with a particular member. Instead, they rely on sales incentive programs to encourage associated persons of broker-dealers to sell their products. In this manner, the unaffiliated sponsors can avoid the costs connected with employment of a sales force.

Non-cash sales incentives offered by DPP sponsors (both affiliated and non-affiliated) customarily take the form of luxury merchandise or exotic trips. An associated person becomes eligible to receive the sales incentive item by exceeding designated dollar amounts of sales for the product offered by the sponsor. The dollar amount of sales required to trigger eligibility for a particular sales incentive item increases proportionately with the perceived value of that item.

The proposed rule change would prohibit a practice in which sponsors provide sales incentives and bonuses indirectly to associated persons. Current sections 5 (e) and (f) prohibit the offering of non-cash sales incentive items *directly* to associated persons of members, but permit non-cash sales incentives and bonuses to be offered indirectly to those associates, through cash payments made by the sponsor of the DPP to the member, which the member then applies to satisfy the requirements for the non-cash award offered by the sponsor. When an associated person meets the requirement for a particular award, the award is provided by the sponsor to the qualified associated person. The proposal would eliminate this indirect form of providing non-cash sales incentives to associated persons, on the ground that such non-cash sales incentive programs offered by sponsors undermine the members' ability to supervise and control their sales forces.

As noted above, the proposal permits members to continue offering in-house, non-cash sales incentive programs to their associated persons, provided that sponsors are prohibited from participating in or contributing to, those programs. Thus, under amended section 5(e), sponsors may not dictate the products the associated person must sell to qualify for the member-sponsored sales incentive, nor may sponsors participate in the selection of and arrangements for, any sales incentive provided by members to their associated persons. Further, sponsors may not contribute monetarily to any sales incentives offered by members to their associates. These prohibitions against the participation of sponsors in members' in-house sales incentive programs apply both to sponsors who are affiliated with members and to sponsors who are not affiliated with members.[4]

The Commission has twice sought comment on the proposal. First, on August 13, 1986, it published notice of the original proposal together with the terms of substance of the proposal in Securities Exchange Act Release No. 23527 (August 13, 1986) and in the **Federal Register** (51 FR 29729, August 20, 1986). Second, in response to an amendment filed by the NASD on August 10, 1987,[5] the Commission published notice of the amended proposal in Securities Exchange Act Release No. 24995 (October 5, 1987) and in the **Federal Register** 52 FR 38160, October 14, 1987).[6]

The Commission received 24 letters of comment on the proposal.[7] Four commentators supported the proposal,[8] and the remaining commentators opposed the proposal. Commentators favoring the proposal agreed with the NASD that non-cash sales incentive programs other than in-house programs operated by the members themselves deprive members of supervisory control over their own sales forces to the detriment of public investors, and should be prohibited. Commentators opposing the proposal generally argued that: (1) Members should not be

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[4] The proposal, however, does permit payment by sponsors for travel expenses incurred by members and their associated persons when attending training or educational meetings held in the city or place where the main office of a sponsor is located, or when making "due diligence" trips to inspect the sponsor itself or the properties owned and/or managed by the sponsor. *See* SR-NASD-88-22, at 26-27.

[5] The NASD filed three amendments to its original proposal with the Commission, on the following dates: (1) May 15, 1987, (2) August 10, 1987, and (3) March 22, 1988. These amendments, respectively: (a) Amend section 5(e) to provide that members' in-house sales incentive programs are permissible subject to the condition that sponsors neither participate in nor contribute to, those programs; (b) amend section 5(f) to clarify that that section applies to cash compensation only and to clarify that members may not require sponsors to reimburse the expenses of managing and funding in-house sales incentive programs; and (c) amend section 5(e) to specify that the prohibition encompassed in that section is intended to apply to non-cash sales incentive items, and is not intended to prohibit a member or associated person from receiving non-cash compensation in the form of securities for its participation in the public offering.

[6] The Commission's notice of October 5, 1987 solicited comment on the revisions made to the May and August amendments. The Commission did not solicit comment on the March 22, 1988, amendment because that amendment merely conformed the language of section 5(e) to the original intent of the NASD drafting committee.

[7] *See* letters from: (1) Alexander J. Jordan, Jr., Gaston Snow & Ely Bardett, to Secretary, Securities and Exchange Commission ("Secretary") (November 2, 1987); (2) John R. Schmeh, Skadden, Arps, Slate, Meagher & Flom, to Securities and Exchange Commission ("Commission") (November 3, 1987, September 11, 1988); (3) Edward I. O'Brien, President, Securities Industry Association, to Secretary (December 21, 1987); (4) William C. Roney, III, Director, Tax Advantaged Investments, Roney & Co., to Secretary (February 4, 1988); (5) Henry I. Montgomery, C.F.P., President, Planners Financial Services, Inc., to Secretary (February 5, 1988); (6) Gary Nickels, Senior Vice President and General Counsel, JMB Realty Corporation, to Commission (November 3, 1987, September 11, 1988); (7) Michael P. Neuilich, Senior Vice President, Oberweis Securities, to Secretary (November 17, 1987); (8) Monique E. Yingling, Zuckert, Scoutt & Rasenberger, to Secretary (January 22, 1988); (9) Hewitt H. Covington, General Counsel, International Association for Financial Planning, to Secretary (January 5, 1988); (10) J. Benson Coulter, Jr., C.P.A., C.F.P., Chairman, Institute Regulatory Committee, Institute of Certified Financial Planners, to Kathryn V. Natale, Assistant Director, Division of Market Regulation, Securities and Exchange Commission (January 15, 1988); (11) Thomas W. Hutchins, Senior Vice President, Fist Securities Corporation, to Secretary (February 1, 1988); (12) Stephen Z. Monheim, Executive Vice President, Butcher & Singer, Inc., to Secretary (February 1, 1988); (13) Thomas J. Mulvaney, C.F.P., Chief Operating Officer, John C. Kinnard & Co., to Secretary (January 28, 1988); (14) Miles Z. Gordon, President and CEO, Financial Network Investment Corporation, to Secretary (November 2, 1987); (15) Walter H. May, Marketing Director, Piper, Jaffray & Hopwood, to Secretary (November 25, 1987); (16) Thomas A. James, Chairman, RJ Financial Corporation, to Secretary (September 8, 1988, April 18, 1988); (17) David W. Dalton, President, Real Estate Securities and Syndication Institute ("RESSI"), to Kathy England, Branch Chief, Division of Market Regulation, Securities and Exchange Commission (October 17, 1988); (18) Harry Greenfeldder III, Senior Vice President, the Nomura Company, to Kathy England, (October 22, 1988); (19) Phillips Montrose, President, Private Ledger Financial Services, Inc., to Secretary (April 6, 1988); (20) Richard W. Rinecoll, Senior Vice President, First of Michigan Corp., to Secretary (March 8, 1988); and (21) Christopher J. Sutherland, Executive Director, Promotion Marketing Association of America, Inc., to Secretary (March 11, 1988).

[8] *See* letters from: (1) Henry I. Montgomery, Planners Financial Services Inc., to Secretary (February 5, 1988); (2) Hewitt H. Covington, International Association for Financial Planning, to Secretary (January 5, 1988); (3) Thomas A. James, RJ Financial Corporation, to Secretary (September 8, 1988); and (4) Harry Greenfelder III, the Nomura Company, to Kathy England, Securities and Exchange Commission (October 17, 1988).

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prohibited from accepting non-cash sales incentives offered by DPP sponsors because to do so would deprive members of the discretion, which they currently exercise, to approve or disapprove sales incentive programs as they see fit; and (2) the proposed amendment discriminates against sponsors not affiliated with members.[9]

The primary objection of the commentators was that, rather than prohibit non-cash sales incentives, the NASD should simply require further disclosure. For example, the SIA argued that a member should remain free to accept non-cash sales incentives from DPP sponsors subject to the conditions that: (1) The member fully disclose its participation in the program; and (2) a management designee of the member formally approve the program for participation by associates of the members.[10]

The NASD, however, contends that the prohibition against the acceptance of non-cash sales incentives encompassed in the proposal is necessary and appropriate because the current regulations, adopted in April 1984,[11] have proven insufficient to arrest the direct solicitation of associated persons by sponsors of DPPs. Specifically, the NASD has found that:

[D]espite the April, 1984 amendments to Appendix F, supervisory control of associated persons by members remained a serious problem because, among other things, sponsors generally utilize direct appeals to registered representatives, making it difficult for members to adequately control the participation of their registered representatives in non-cash sales incentive programs.[12]

Indeed, the NASD has concluded that the very structure of the sales incentive programs offered by sponsors deprives the member of control over its associates' participation in those programs. The member has no control over the nature of the sales incentives offered to its associates. It plays no part in selecting the DPP products whose sales will trigger eligibility for the sales incentive bonus. Finally, it has no control over the sales literature that sponsors distribute to associated persons in an effort to advertise certain bonuses.

Moreover, the NASD has concluded that sales incentives in the public market for DPPs have become so prevalent that many members are not in a position to refuse to pass on non-cash sales incentives to their associated persons. The NASD has found that associates attracted by a particular sales incentive program often seek to induce their employer to participate in the sales incentive program; [13] further, there is sometimes an implicit or explicit threat that those associated persons will seek employment elsewhere should the employer decline to participate.[14] In light of this threat of defections by associated persons should the member not adopt a particular program, the NASD believes that its members do *not* in fact have discretion to refuse to permit associated persons to participate in non-cash incentive programs offered by sponsors.[15]

The Commission recognizes the serious questions raised by an absolute ban on non-cash sales incentives. Nevertheless, in weighing whether such a ban is necessary and appropriate under the Act the Commission believes that the NASD has appropriately considered alternative approaches. The Commission does not disagree with the NASD's conclusion that, based on the NASD's experience in the last four years, a disclosure approach would not prove effective. Accordingly, the Commission believes it is appropriate to defer to the NASD's judgment that the proposed prohibition is necessary to restore to its members supervisory control over the participation of their associated persons in non-cash sales incentive programs.

The second objection voiced by the commentators was that the proposed amendment discriminates against independent sponsors and in favor of sponsors affiliated with members.[16] The commentators' concern is premised on the view that: (1) The NASD will be unable to detect instances in which an affiliated sponsor contributes monetarily to, or otherwise influences, a member's in-house sales incentive program; and (2) members will structure their sales incentive programs to reward associates for sales of proprietary products only, even if the affiliated sponsor is effectively prohibited from participating in the member's sales incentive program.[17]

The essence of this objection is not that the proposed amendment, if enforced, would have a discriminatory impact; rather, the objection is that the proposed amendment is unenforceable. In this regard, the NASD has assured Commission staff that it intends to monitor member compliance with the proposal by policing the separation between the operations of its members and their affiliates to ensure that a sponsoring affiliate does not influence an in-house sales incentive program adopted by a member.[18] Indeed, the NASD has developed procedures to test the effectiveness of the procedures adopted by member firms to divorce the operations of the firms from those of the firms' affiliates.[19]

Further, the NASD notes that the compensation structures of its members are not susceptible to the kind of abuse that could afford a competitive advantage to DPP products sponsored by affiliates of members. The NASD has found that the in-house sales incentive programs sponsored by its members are generally structured to reward associates for sales of a variety of products, not just for sales of the proprietary product sponsored by the member's affiliate.[20] The NASD has stated that:

[I]t is general industry practice among large general securities firms to provide non-cash compensation based on *total sales of all securities products* sold through the member rather than having compensation directly related to one type of security or product (emphasis added).[21]

Within such a compensation structure, performance awards are:

based on the annual amount of gross commissions earned or sales generated by each account executive for *any* security. [T]he non-cash compensation is intended to recognize those account executives within the member that contribute the most to the member's success, *without consideration of the particular security sold* (emphasis added).[22]

Hence, as long as affiliated sponsors are prohibited from influencing the member's compensation structure, there is little opportunity for discrimination.

Accordingly, the Commission has determined that, in view of the NASD's commitment to enforce the terms of the proposal, and in light of the nature of the compensation structures in place at its member firms, the proposal is not susceptible to being administered in a fashion that would produce a discriminatory effect.[23]

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19 (b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated October 14, 1988.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-24296 Filed 10-19-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26186; File No. SR-NASD-88-12]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Non-cash Sales Incentives

On April 7, 1988, the National Association of Securities Dealers, Inc. ("NASD") submitted a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder, to add a provision to the NASD's Interpretation of the Board of Governors-Review of Corporate Financing, Article III, Section 1 of the Rules of Fair Practice ("Interpretation"), to prohibit members and associated persons from accepting non-cash sales incentives in excess of $50 per person per issuer annually in connection with distributions of public offerings of securities.[2] The proposed rule change also includes a provision that provides an exception to the foregoing prohibition for members' in-house sales incentive programs. The proposed rule change states that, notwithstanding the proposed restrictions on non-cash sales incentives, a member may provide non-cash sales incentive items to associated persons provided that no issuer, affiliate of the issuer, including specifically an affiliate of the member, directly or indirectly, participates in or contributes to providing such non-cash sales incentive.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was provided by the issuance of a Commission release (Securities Exchange Act Release No. 25636, May 2, 1988) and by publication in the **Federal Register** (53 FR 16466, May 9, 1988). No comment letters were received with respect to the proposed rule change.[3]

Background

The NASD developed the proposed rule change as part of a series of proposals respecting the use of non-cash sales incentives in connection with the sale of securities.[4] Both the Direct Participation Programs and Real Estate committees of the NASD had expressed concern that the emphasis given to non-cash sales incentives undermines a member's ability to supervise its sales persons; therefore, they recommended that Appendix F be amended to prohibit the practice. In addition, the two committees believed that the proposed prohibition on the use of non-cash sales incentives in connection with the sale of DPPs, should be extended to other product areas and the issue was referred to the Investment Companies, Variable Contracts, and Corporate Financing committees.

The present proposal would prohibit the use of non-cash sales incentives in connection with the sale of real estate investment trusts ("REITs"), and, debt or equity corporate offerings, which are not covered by the provisions of Appendix F, which governs the sale of DPPs.

The NASD believes that certain changes in the tax laws embodied in the Tax Reform Act of 1986 and other factors in the real estate market have led to a marked increase in the number of publicly offered REITs in late 1986 and in 1987 in comparison to DPPs. Further, sales of REITs are considered to be in competition with sales of DPPs. In many cases, REITs are sponsored by members or affiliates of members that previously confined their activities to the sale of DPPs. The sales incentives that have been utilized with respect to the distribution of REITs and DPPs are similar, although sales incentives are not used as frequently in connection with the sale of REITs. In comparison, sales incentives have not traditionally been employed in connection with the distribution of corporate debt and equity offerings. Although sales incentives do not currently appear to be a significant problem in connection with the sale of corporate offerings, the NASD has determined to adopt the proposed rule

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[9] In addition, some of the commentators expressed the view that any prohibition on members' acceptance of non-cash sales incentive items provided as bonuses for the sale of DPPs should be extended to prohibit the acceptance of sales incentives given as bonuses for the sale of investment company and variable contract products as well. As discussed *infra*, the NASD has sought member comment on such a prohibition (*see Notice to Members* 88–17, March 1, 1988). As yet, however, the NASD has not filed with the Commission a proposed rule change that would implement that prohibition.

[10] SIA letter, at 3. *See* letters from: (1) Oberweis Securities; (2) Zuckert, Scoutt & Rasenberger; (3) FSC Securities Corporation; (4) Butcher & Singer, Inc.; (5) John G. Kinnard & Co.; (6) Piper, Jaffray & Hopwood; (7) International Association for Financial Planning; and (8) Gaston Snow & Ely Bartlett.

[11] Current sections 5(e) and (f) of Appendix F were approved by the Commission on April 11, 1984. Securities Exchange Act Release No. 20944 (April 11, 1984), 49 FR 15061.

[12] SR–NASD–88–22, at 9.

[13] Letter from Frank J. Formica, Vice President, Corporate Financing Department, National Association of Securities Dealers, Inc., to Michael J. Simon, Assistant Director, Division of Market Regulation, Securities and Exchange Commission, at 2.

[14] Letter from Planners Financial Services, Inc., at 5–7.

[15] SR–NASD–88–22, at 9.

[16] *See* letters from : (1) JMB Realty Corporation, at 1–4; (2) Gaston Snow & Ely Bartlett, at 1–3; and (3) Skadden, Arps, Slate, Meagher & Flom, at 1–3.

[17] *See:* (1) JMB letter, at 2; (2) Gaston, Snow letter, at 2; and (3) Skadden, Arps letter, at 2.

[18] Telephone conversation between Suzanne E. Rothwell, Associate General Counsel, NASD, and Gordon K. Fuller, Special Counsel, Division of Market Regulation, SEC, on April 8, 1988.

[19] *See* NASD, *Final Report of the Regulatory Review Task Force*, at 9 (March 1988).

[20] As far as the NASD is aware, the only sales incentive programs designed to reward associates solely for the sales of proprietary DPPs, are those managed by members who sell only that proprietary DPP. These members necessarily award sales incentives only for the sale of that product. Telephone conversation between Suzanne Rothwell and Gordon Fuller, April 8, 1988.

[21] SR–NASD–88–22, at 20.

[22] Letter from Suzanne E. Rothwell to Gordon K. Fuller, dated April 20, 1988.

[23] Finally, to provide consistency of regulation with respect to non-cash sales incentives, the NASD has disseminated for member comment a proposed amendment to Article III, sections 25 and 29 of its Rules of Fair Practice that would prohibit members and their associates from accepting non-cash sales incentives offered by underwriters, investment companies, advisers to investment companies, or their affiliates in connection with sales of investment company and variable contract products. [Notice to Members 88–17 (March 1, 1988)]. Further, as noted above, the NASD has filed with the Commission a proposed amendment to the Corporate Financing Interpretation of Article III, section 1 of the Rules of Fair Practice, that would similary prohibit the acceptance of non-cash compensation in connection with the distribution of any public offering of securities. The Commission is approving that proposed rule change concurrently with this one. *See* Securities Exchange Act Release No. 26186 (October 14, 1988).

[1] 15 U.S.C. 78s(b)(1).

[2] The NASD previously submitted SR–NASD–88–22 which the Commission also is approving at this time. The proposed rule change generally prohibits members and associated persons from accepting non-cash sales incentives from sponsors of direct participation programs ("DPPs") as an inducement to sell interests in those DPPs. *See* Securities Exchange Act Release No. 26185 (October 14, 1988).

[3] On the other hand, with respect to the NASD's proposal prohibiting the acceptance of non-cash sales incentives in connection with the sale of DPPs (SR–NASD–88–22), the commission received 24 comment letters. The substance of these comment letters is discussed in the parallel order approving that proposal.

[4] The first proposal, SR–NASD–88–22, governs the use of non-cash sales incentives in connection with the sale of DPPs. *See supra* note 2. The NASD's Board of Governors also issued a Notice to Members (Notice to Members 88–17 (March 1, 1988)) proposing to amend Article III, sections 25 and 29 of the NASD Rules of Fair Practice, to prohibit the receipt of non-cash compensation in connection with sales of investment company and variable contract securities. The NASD is reviewing the comments received in connection with the Notice to Members.

change to avoid problems in the future with respect to corporate offerings and in light of several complaints that have been received from members with respect to sales incentive programs for REITs.

Moreover, the NASD believes that, as with its proposal regarding DPPs, the proposed rule change will strengthen the ability of members to supervise their associated persons by prohibiting the payment of non-cash sales incentives, thereby providing greater protection to the public. In addition, the NASD believes that it is appropriate to establish a uniform policy regarding non-cash sales incentives across product lines to avoid such incentive programs being created for different products.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, and in particular the requirements of section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned rule change be, and hereby is, approved.

For the Commissioned, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: October 14, 1988.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-24297 Filed 10-19-88; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

October 14, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Elsinore Corporation
Common Stock, No Par Value (File No. 7-3940)
Huffy Corporation
Common Stock, $1 Par Value (File No. 7-3941)
International Telecharge, Inc.
Common Stock, $0.01 Par Value (File No. 7-3942)
Zweig Total Return Fund, Inc.
Common Stock, $.001 Par Value (File No. 7-3943)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 4, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-24299 Filed 10-19-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16597; File No. 812-7041]

Financial Horizons Life Insurance Co., et al.; Application

October 14, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: Financial Horizons Life Insurance Company ("Financial Horizons"), Financial Horizons VA Separate Account-I ("Separate Account-I") and Nationwide Financial Services, Inc.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from sections 26(a)(2)(C) and 27(c)(2).

Summary of Application: Applicants seek an order to the extent necessary to permit the deduction from the assets of Separate Account-I of a mortality and expense risk charge imposed under certain variable annuity contracts.

Filing date: The application was filed on July 8, 1988 and amended on September 1, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m., on November 8, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send a copy to the Secretary of the SEC along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549; Financial Horizons, Separate Account-I and Nationwide Financial Services, Inc., One Nationwide Plaza, Columbus, Ohio 43216.

FOR FURTHER INFORMATION CONTACT: Wendell M. Faria, Staff Attorney, at (202) 272-3450, or Clifford E. Kirsch, Special Counsel, at (202) 272-2061 (Division of Investment Management, Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. Financial Horizons is a stock life insurance company incorporated under the laws of Ohio. Separate Account-I, registered as a unit investment trust under the 1940 Act, was established to fund certain individual Deferred Variable Annuity Contracts (the "Contracts") issued by Financial Horizons. Nationwide Financial Services, Inc., will serve as the general distributor for the Contracts.

2. No sales charge is deducted from purchase payments made under the Contracts. A contingent deferred sales charge (CDSC) may be assessed against contract values upon surrender. The time from receipt of each purchase payment to the time of surrender determines the amount of the CDSC. The declining CDSC is in the maximum amount of 7% of a purchase payment, declining to 0% after the 7th year.

3. An annual Contractor Maintenance Charge of $30 is deducted from the contract value, as well as an administration Charge equal on an annual basis to .05% of the daily net asset value of the Variable Account. The 0.5% Administration Charge is deducted during both the "pay-in" accumulation phase and the "pay-out" annuity phase. Financial Horizons relies upon Rule 26a-1 to assess both the Contract Maintenance Charge and the Administration Charge. In this regard, Financial Horizons will monitor the proceeds of the Administration Charge to ensure that they do not exceed expenses without profit.

4. Financial Horizons will assess a mortality and expense risk charge at an annual rate of 1.25% of the value of Separate Account-I. Of this amount, .80% represents mortality risks and .45% represents expense risks.

5. The expense risk Financial Horizons assumes is the guarantee that the annual Contract Maintenance Charge and the Administration Charge will never be increased regardless of actual expense it incurs. The mortality risk Financial Horizons assumes is twofold: (1) The annuity risk of guaranteeing to make monthly payments for the lifetime of the annuitant regardless of how long the annuitant may live; and (2) the guaranteed minimum death benefit risk assumed by Financial Horizons in connection with its promise to return, at a minimum, the contract owner's purchase payments upon death even if the investment experience in Separate Account-I has eroded the contract owner's principal investment. The annuity risk is present in the form of annuity purchase rates that are guaranteed at issue for the life of the contract. The mortality is estimated using average mortality rates determined by the 1971 Individual Annuity Table with ages set back one year. There is also the risk that the average life expectancy of the entire population may grow longer.

6. If the mortality and expense risk charge is insufficient to cover the actual cost of the mortality and expense risk, the loss will be borne by Financial Horizons; conversely, if the mortality and expense risk charge proves more than sufficient, the excess will be a profit to Financial Horizons. Should the charge result in a profit to Financial Horizons, it will become part of its General Account surplus.

7. Applicants represent that the mortality and expense risk charge is within the range of industry practice for comparable annuity products and is reasonable in relation to the risks assumed under the Contracts. This representation is based upon Financial Horizons' analysis of publicly available information of other insurance companies of similar size and risk ratings offering similar products. Financial Horizons will maintain, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey. Nationwide also maintains a supporting actuarial memorandum demonstrating the reasonableness of the mortality and expense risk charge, given the risks assumed under the Contracts. This memorandum will be made available to the Commission upon request.

8. The application states that the proceeds from the imposition of the CDSC may not be sufficient to cover all explicit sales expenses. Financial Horizons represents that there is a reasonable likelihood that Separate Account-I's proposed distribution financing arrangement will benefit Separate Account-I and the owners of the Contracts. The basis for this conclusion is set forth in a memorandum which will be made available to the Commission upon its request.

9. The application states that the investments of Separate Account-I will be made in investment companies which, if they should adopt any distribution financing plan under Rule 12b-1 under the 1940 Act, will be made up of a Board of Trustees and Directors, the majority of which will be "disinterested" as defined by the Act. Such Board of Directors of Trustees must formulate and approve any such distribution plan.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-24233 Filed 10-19-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16598; File No. 812-7112]

Nationwide Life Insurance Co., et al.; Application

October 14, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: Nationwide Life Insurance Company ("Nationwide"), Nationwide Multi-Flex Variable Account ("Variable Account"), and Nationwide Financial Services, Inc.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from sections 26(a)(2)(C) and 27(c)(2).

Summary of Application: Applicants seek an order to the extent necessary to permit the deduction from the assets of the Variable Account of a mortality and expense risk charge imposed under certain variable annuity contracts.

Filing date: The application was filed on September 1, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m., on November 8, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send a copy to the Secretary of the SEC along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549; Nationwide, the Variable Account, and Nationwide Financial Services, Inc., One Nationwide Plaza, Columbus, Ohio 43216.

FOR FURTHER INFORMATION CONTACT: Wendell M. Faria, Staff Attorney, at (202) 272-3450, or Clifford E. Kirsch, Special Counsel, at (202) 272-2061 (Division of Investment Management, Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. Nationwide is a stock life insurance company incorporated under the laws of Ohio and admitted to do business in all states and the District of Columbia. The Variable Account, registered as a unit investment trust under the 1940 Act, was established to fund certain Individual Deferred Variable Annuity Contracts (the "Contracts") issued by Nationwide. Nationwide Financial Services, Inc. is the general distributor for the Contracts.

2. No sales charge is deducted from purchase payments made under the Contracts. A contingent deferred sales charge (CDSC) may be assessed against contract values upon surrender. The time from receipt of each purchase payment to the time of surrender determines the amount of the CDSC. The declining CDSC is in the maximum amount of 7% of a purchase payment, declining to 0% after the 7th year.

3. An annual Contract Maintenance Charge of $30 is deducted from the contract value, as well as an Administration Charge equal on an annual basis to .05% of the daily net asset value of the Variable Account. The .05% Administration Charge is deducted during both the "pay-in" accumulation phase and the "pay-out" annuity phase. Nationwide relies upon Rule 26e–1 to invest the Contract Maintenance Charge and the Administration Charge. In this regard, Nationwide will monitor the proceeds of the Administration Charge to ensure that they do not exceed expenses without profit.

4. Nationwide will assess a mortality and expense risk charge at an annual rate of 1.25% of the value of the Variable Account. Of this amount, .60% represents mortality risks and .65% represents expense risks.

5. The expense risk Nationwide assumes is the guarantee that the annual Contract Maintenance Charge and the Administration Charge will never be increased regardless of actual expense incurred by Nationwide. The mortality risk Nationwide assumes is twofold: (1) The annuity risk of guaranteeing to make monthly payments for the lifetime of the annuitant regardless of how long the annuitant may live; and (2) the guaranteed minimum death benefit risk it assumes in connection with its promise to return, at a minimum, the contract owner's purchase payments upon death even if the investment experience in the Variable Account has eroded the contractowner's principal investment. The annuity risk is present in the form of annuity purchase rates that are guaranteed at issue for the life of the contract. The mortality is estimated using average mortality rates determined by the 1971 Individual Annuity Table with ages set back one year. There is also the risk that the average life expectancy of the entire population may grow longer.

6. If the mortality and expense risk charge is insufficient to cover the actual cost of the mortality and expense risk, the loss will be borne by Nationwide; conversely, if the mortality and expense risk charge proves more than sufficient, the excess will be a profit to Nationwide. Should the charge result in a profit to Nationwide, it will become part of its General Account surplus.

7. Applicants represent that the mortality and expense risk charge is within the range of industry practice for comparable annuity products and is reasonable in relation to the risks assumed under the Contracts. This representation is based upon Nationwide's analysis of publicly available information of other insurance companies of similar size and risk ratings offering similar products. Nationwide will maintain, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey. Nationwide also maintains a supporting actuarial memorandum demonstrating the reasonableness of the mortality and expense risk charge, given the risks assumed under the Contracts. This memorandum will be made available to the Commission upon request.

8. The application states that the proceeds from the imposition of the CDSC may not be sufficient to cover all explicit sales expenses. Nationwide represents that there is a reasonable likelihood that the Variable Account's proposed distribution financing arrangement will benefit the Variable Account and the owners of the Contracts. The basis for this conclusion is set forth in a memorandum which will be made available to the Commission upon its request.

9. The application states that the investments of the Variable Account will be made in investment companies which, if they should adopt any distribution financing plan under Rule 12b–1 under the 1940 Act, will be made up of a Board of Trustees and Directors, the majority of which will be "disinterested" as defined by the Act. Such Board of Directors or Trustees must formulate and approve any such distribution plan.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-24234 Filed 10-19-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16596; 812-6942]

Technology Funding Partners IV, an Aggressive Growth Fund, L.P., et al.; Application for Exemption

October 14, 1988.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: Technology Funding Partners IV, An Aggressive Growth Fund, L.P. (formerly Technology Funding Partners IV, L.P.) (the "Partnership"), Technology Funding Inc. and Technology Funding Ltd. (the "Managing General Partners").

Relevant 1940 Act Sections: Exemption requested under section 6(c) of the 1940 Act from certain provisions of sections 2(a)(19) and 2(a)(3) of the 1940 Act.

Summary of Application: Applicants seek an order determining that: (1) Under section 2(a)(19) of the 1940 Act, the Independent General Partners of the Partnership (as hereinafter defined) are not "interested persons" of the Partnership, the other General Partners (as hereinafter defined) or the principal underwriter of the Partnership solely by reason of their status as General Partners of the Partnership and co-partners of the other General Partners; and (2) under section 2(a)(3) of the 1940 Act, no limited partner owning less than 5% of the units of limited partnership interest in the Partnership is an "affiliated person" of the Partnership or any of its partners solely by reason of being a limited partner of the Partnership and a co-partner of the other limited partners and the General Partners.

Filing Date: The application was filed on December 22, 1987, and amended and restated on September 26, 1988, and October 14, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on November 7, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. The Partnership and the Managing General Partners, 2000 Alameda de las Pulgas, Suite 250, San Mateo, California 94403.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Regina Hamilton, (202) 272–3024, or Special Counsel H.R. Hallock, Jr., (202) 272–3030, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. The Partnership is a Delaware limited partnership that has elected status as a business development company pursuant to section 54 of the 1940 Act. It will be governed by an Amended and Restated Limited Partnership Agreement (the "Partnership Agreement"). The investment objective of the Partnership is to seek long-term capital appreciation by making venture capital investments.

2. The Partnership has filed a registration statement under the Securities Act of 1933, as amended, on Form N–2 with respect to a proposed public offering of units of limited partnership interest ("Units"). The maximum proceeds from the offering will be $40,000,000, which will be invested in 20 to 30 venture capital investments over a period of up to four years.

3. The General Partners of the Partnership initially will consist of three individual general partners (the "Individual General Partners") and the Managing General Partners. Following the commencement of the offering of the Units, the number of Individual General Partners may not be less than three and no more than nine. The initial Individual General Partners will not be "interested persons" of the Partnership within the meaning of that term under section 2(a)(19) of the 1940 Act ("Independent General Partners"), although successor Individual General Partners may be individuals who are affiliated persons of the Managing General Partners. The Managing General Partners are a California corporation (Technology Funding Inc.) and a California limited partnership (Technology Funding Ltd.). The Managing General Partners are in the business of organizing and managing limited partnerships. Both Managing General Partners have registered as investment advisers under the Investment Advisers Act of 1940 ("Advisers Act"). Technology Funding Securities Corporation ("TFSC"), a registered broker-dealer, will serve as principal underwriter with respect to the sale of Units.

4. The Individual General Partners (initially three in number) and one representative from each Managing General Partner will serve on a management committee ("Committee") of the Partnership. The Committee has complete and exclusive authority to manage and control the Partnership except for those specific activities of the Partnership for which, under the supervision of the Committee, the Managing General Partners will be responsible. Such activities are summarized below and are specifically set forth in the Partnership Agreement. The Committee will provide overall guidance and supervision with respect to the operations of the Partnership, will perform all duties of a board of directors of a business development company pursuant to the 1940 Act, and will monitor the activities of companies in which the Partnership invests.

5. The Partnership Agreement provides that the general partners are elected at the annual meetings of the limited partners and serve for annual terms. The Committee is impowered from time to time to determine the number of persons to be elected as Individual General Partners. If at any time the number of Independent General Partners is reduced to less than a majority of the general partners, the remaining members of the Committee must, within ninety days, designate one or more successor Independent General Partners so as to restore the number of Independent General Partners to such a majority.

6. The Managing General Partners will be responsible and have authority, subject to the supervision of the Committee, to determine and manage the Partnership's venture capital investments and manage day-to-day Partnership operations. The Independent General Partners will assume the responsibilities and obligations under the 1940 Act required of non-interested directors of a business development company in corporate form. The Managing General Partners undertake that they will not resign or withdraw from the Partnership unless successor Managing General Partners have been appointed and consented to by the limited partners in compliance with the Partnership Agreement.

7. Applicants state that the Independent General Partners will have full-time employment with entities unrelated to the Partnership and will have substantial experience that they will bring to their positions as Independent General Partners. Applicants state that the Independent General Partners are in a position to act capably and independently on behalf of the Partnership and the limited partners. The Partnership Agreement requires the Independent General Partners to act, in their good faith judgment, in the best interest of the Partnership. In addition, the actions of the Independent General Partners will be subject to the fiduciary responsibilities imposed on general partners to limited partners of partnerships by applicable partnership laws.

8. The limited partners, in general, have the right to vote only on certain major Partnership events specifically contemplated by Delaware law (such as dissolution of all or substantially all of the Partnership assets and dissolution of the Partnership) and on certain occasions required by the 1940 Act. The limited partners have no right to participate in the control of the Partnership's business. The rights of limited partners to vote on certain matters are either equivalent to or more limited than those of corporate shareholders. Prior to the issuance of the order for exemption that is the subject of this notice, the Partnership will have obtained an opinion of Delaware counsel that the possession or exercise of the voting rights granted to limited partners will not subject the limited partners to liability as general partners under the Delaware Revised Uniform Limited Partnership Act.

9. The Partnership Agreement empowers the general partners to take all actions that may be necessary or appropriate to protect the limited liability of the limited partners. The Partnership does not presently have an insurance policy that would provide coverage to persons who become limited partners, but the general partners expressly represent and undertake that they will take all such actions necessary or appropriate to protect the limited liability of the limited partners. Moreover, the Partnership will consider the possibility of obtaining an errors and omissions insurance policy, and the Individual General Partners will periodically review the appropriateness of obtaining such an insurance policy for the Partnership.

10. The Partnership Agreement provides generally that the net profits of the Partnership will be allocated first to those partners with deficit capital account balances until such deficits have been eliminated, then to the partners as necessary to offset net losses previously allocated to such partners and sales commissions charged to their capital accounts, and then 75% to be limited partners (generally in proportion to the number of units held by each), 5% to the limited partners (to be allocated pursuant to "unit months" as defined in the Partnership Agreement) and 20% to the Managing General Partners.

11. The Partnership Agreement generally provides that the cash and securities available for distribution will be distributed 99% to the limited partners and 1% to the general partners until "conversion", *i.e.*, when the amount previously distributed equals the aggregate capital contributions of all

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limited partners, less any excess capital contributions returned to the limited partners. Thereafter, the Partnership will make distributions, subject to the representations and express conditions agreed to below, in proportion to the partners' capital account balances. The Partnership Agreement also provides for a special allocation to the Managing General Partners of Net Loss (as defined in the Partnership Agreement) otherwise allocated to a Limited Partner, that exceeds the positive balance in the capital account of such Limited Partner and a subsequent special allocation of Net Profit (as defined in the Partnership Agreement) in the same amount. In addition, the Partnership Agreement provides that securities distributed in kind to the partners will be treated as if sold at the time of distribution. The various allocation provisions in the Partnership Agreement have not been reviewed or approved by the Commission and the Commission expresses no opinion with regard to whether Section 2(b) of the Advisers Act permits such allocations.

Applicants' Legal Conclusions

1. By virtue of their status as partners of the Partnership, the Independent General Partners could be deemed "interested persons" of the Partnership. The Independent General Partners also could be construed to be "interested persons" of the Partnership by virtue of being "interested persons" of an investment adviser and principal underwriter to the Partnership given their status as "co-partners," and consequently, "affiliated persons" with the Managing General Partners. The Managing General Partners could be construed to be investment advisers of the Partnership. Furthermore, one Managing General Partner "controls," and the other Managing General Partner is "under common control with" the principal underwriter, which would make the Managing General Partners "affiliated persons" of the principal underwriter, TFSC.

2. Applicants request that the Partnership and its Independent General Partners be exempted from the provisions of section 2(a)(19) to the extent that each Independent General Partner would be deemed to be an "interested person" of the Partnership, the other General Partners, or TFSC, solely because such Independant General Partner is a general partner of the Partnership and a co-partner of the other General Partners. The Partnership has been structured so that the Independent General Partners are the functional equivalents of the non-interested directors of an incorporated business development company. Section 2(a)(19) excludes from the definition of "interested persons" of an investment company those individuals who would be "interested persons" solely because they are directors of an investment company, but there is no equivalent exception for partners of an investment company.

3. Each person who becomes a limited partner will be a partner of the Partnership and thus a co-partner thereof with each other limited partner and with each General Partner. Thus, each limited partner will be deemed to be an "affiliated person" of the Partnership as well as of each other limited partner and each General Partner merely by virtue of having purchased a Unit and becoming a limited partner. Section 2(a)(3) of the 1940 Act specifically excludes from the definition of "affiliated persons" shareholders with less than a 5% ownership in a corporation. Applicants state that limited partner investors may be deemed affiliates of the Partnership because section 2(a)(3) of the 1940 Act contains no comparable exclusion for limited partners of partnerships. Applicants therefore seek exemption from the provisions of section 2(a)(3) of the 1940 Act to the extend that limited partners with less than 5% of the Units would be deemed "affiliated persons" of the Partnership, any of the other limited partners and the General Partners of the Partnership. Such relief will place investments in the Partnership on a footing more equal with investments in business development companies organized as corporations.

4. Applicants submit that it is consistent with the purposes fairly intended by the policy and provisions of the 1940 Act to grant the requested exemption from the provisions of sections 2(a)(19) and 2(a)(3).

Applicants' Conditions

Applicants agree that the following may be made express conditions to the requested order:

1. The Partnership will be structured so that the Independent General Partners are the functional equivalents of the non-interested directors of an investment company registered under the 1940 Act.

2. The Partnership will not make any in-kind distributions of portfolio securities to its partners until it has obtained either a no-action letter from the staff of the Commission confirming the Partnership's interpretation of section 205 of the Advisers Act (*i.e.*, that unrealized gains or losses attributable to securities distributed in-kind to partners are properly deemed realized upon such distribution) or, in the alternative, the Partnership has obtained an order of exemption from section 205 of the Advisers Act pursuant to section 206A of the Advisers Act, permitting the Partnership to deem such gains or losses to be realized upon any in-kind distribution.

3. Under the Partnership Agreement, upon the removal of the Managing General Partners, all unrealized gains and losses are deemed realized for purposes of making a final allocation to the Managing General Partners. However, the Partnership agrees not to deem such unrealized gains or losses realized until it has obtained either a "no-action letter" from the staff of the Commission confirming the Partnership's interpretation of section 205 of the Advisers Act (*i.e.*, that such treatment of unrealized gains and losses is appropriate) or, in the alternative, the Partnership has obtained an exemption from section 205 by Commission order issued pursuant to section 206A of the Investment Advisers Act of 1940, permitting the Partnership to deem such gains or losses to be realized upon in-kind distribution.

4. Applicants will obtain an opinion of counsel or other authority satisfactory to the Independent General Partners that payment of the Managing General Partners' fees and allocation of the profits and losses as set forth in the Partnership Agreement is in accordance with section 205 of the Advisers Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-24232 Filed 10-19-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Delegation of Authority No. 12-D]

Disaster Assistance; Amendment 2; Correction

Delegation of Authority No. 12-D (48FR9981, March 9, 1983) is hereby amended to Correct the Delegated Authority in Paragraph 1.A.4.

Delegation of Authority No. 12-D is amended to read as follows:

* * * * *

1.

A.

4. To determine eligibility and make size determinations of disaster loan applicants.

* * * * *

Effective Date: October 20, 1988.

Dated: October 13, 1988.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 88-24212 Filed 10-19-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

Office of Foreign Missions

[Public Notice 1083]

Determination Under the Foreign Missions Act Concerning the Acquisition of Real Estate Properties Suitable to Serve as Offices and Residences for the Embassy of the People's Republic of Bulgaria in Washington, DC

AGENCY: Office of Foreign Missions, State.

ACTION: Notice.

SUMMARY:

Authorities

Pursuant to the Foreign Missions Act of 1982, as amended (22 U.S.C. 4301 *et seq.*) ("the Act"), the Secretary of State, or his delegate, is authorized to require a foreign mission: (A) To obtain benefits from or through the Director of the Office of Foreign Missions on such terms and conditions as the Secretary may approve; or (B) to forego the acceptance, use of relation of any benefit or to comply with such terms and conditions as the Secretary may determine as condition to the execution or performance in the United States of any contract or other agreement, the acquisition, retention or use of real property, or application for or acceptance of any benefit (including any benefit from or authorized by any Federal, State or municipal governmental authority, or any entity providing public services). 22 U.S.C. 4304(b). Among the terms and conditions that the Secretary may impose are the requirement to pay the Director of the Office of Foreign Missions a surcharge or fee. 22 U.S.C. 4304(C).

Department of State Delegation of Authority No. 147, dated September 13, 1982, delegates to the Under Secretary of State for Management certain authorities under the Act, including authority to make the above-described determinations and designations of benefits.

Delegation of Authority No. 147, by express terms, authorized the successive redelegation of the authorities contained therein to other officers of the Department of State. Redelegation of authority to the Director of the Office of Foreign Missions was accomplished by Foreign Affairs Manual Circular No. 82-27, dated October 15, 1982, subsequently modified in Volume 1 FAM (Foreign Affairs Manual) 157.1, which specifically provides that the "Director of the Office of Foreign Missions exercises authority for the Under Secretary for Management to perform functions vested in the Secretary of State by * * * the Foreign Missions Act."

The Act makes it unlawful for any person to make available any benefits to a foreign mission contrary to the provisions of the Act. 22 U.S.C. 4311(a). Foreign mission includes the personnel of such mission. 22 U.S.C. 4302(a)(4).

Pursuant to the above authorities, I hereby make the following determination applicable to the Embassy of the People's Republic of Bulgaria in Washington, DC and to the personnel assigned to the Embassy of the People's Republic of Bulgaria in Washington, DC. For purpose of this Determination, personnel assigned to the Embassy of the People's Republic of Bulgaria in Washington, DC, includes members of the Embassy and members of the family forming part of the household of such members.

Determination

I hereby determine it to be reasonably necessary to accomplish the purposes set forth in section 4304(b) of the Act to require the Government of the People's Republic of Bulgaria and its official representatives in the United States to acquire all real property intended to serve as office space for the Embassy of the People's Republic of Bulgari in Washington, DC, or as residential properties for personnel assigned to the Embassy of the People's Republic of Bulgaria in Washington, DC, from or through the Office of Foreign Missions under such terms and conditions as may be established by the Director of the Office of Foreign Missions.

DATE: A determination issued by the Director of the Office of Foreign Missions shall be effective at such time as the Director may prescribe.

FOR FURTHER INFORMATION CONTACT: Persons wishing clarification as to the applicability of this Determination or Information on subsequent Determinations may contact the Office of Foreign Missions, U.S. Deaprtment of State, 3005 Massachusetts Avenue, NW., Washington, DC 20008; or by telephone (202) 673-6358.

SUPPLEMENTARY INFORMATION: It is unlawful for any person subject to the jurisdiction of the United States to provide, or contact to provide, real estate brokerage serves to the aforementioned foreign mission, or any member thereof, other than in accordance with section 4311(a) of the Act, this Determination and any determination issued hereunder.

Henry W. Porter III,

Acting Director, Office of Foreign Mission.

September 29, 1988.

[FR Doc. 88-24303 Filed 10-19-88; 8:45 am]

BILLING CODE 4710-06-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Intergovernmental Policy Advisory Committee and Advisory Committee for Trade Policy and Negotiations; Meetings and Determination of Closing of Meetings

The meetings of the Intergovernmental Policy Advisory Committee to be held October 26, 1988 from 9:30 a.m. to 12:00 Noon, in Washington, DC, and the Advisory Committee for Trade Policy and Negotiations to be held October 27, 1988 from 1:30 p.m. to 5:00 p.m., in Washington, DC will include the development, review and discussion of current issues which influence the trade policy of the United States. Pursuant to section 2155(f)(2) of Title 19 of the United States Code, I have determined that these meetings will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

More detailed information can be obtained by contacting Barbara W. North, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President, Washington, DC 20506.

[FR Doc. 88-24205 Filed 10-19-88; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program; Indianapolis International Airport, Indianapolis, IN

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Indianapolis Airport Authority under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L.

96–193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On June 24, 1988, the FAA determined that the noise exposure maps submitted by the Indianapolis Airport Authority under Part 150 were in compliance with applicable requirements. On September 14, 1988, the Administrator approved the Indianapolis International Airport noise compatibility program. All of the recommendations of the program were approved except for one measure.

EFFECTIVE DATE: The effective date of the FAA's approval of the Indianapolis International Airport noise compatibility program is September 14, 1988.

FOR FURTHER INFORMATION CONTACT: Prescott C. Snyder, Federal Aviation Administration, Great Lakes Region, Airports Division, AGL–611, 2300 East Devon Avenue, Des Plaines, Illinois 60018, (312) 694–7538. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Indianapolis International Airport, effective September 14, 1988.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act, and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Chicago Airports District Office in Des Plaines, Illinois.

The Indianapolis Airport Authority submitted to the FAA on May 22, 1987 the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from May 1986 through May 1987. The Indianapolis International Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on June 24, 1988. Notice of this determination was published in the **Federal Register** on July 14, 1988.

The Indianapolis International Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 2000. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on June 24, 1988 and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period would have been deemed to be an approval of such program.

The submitted program contained thirty one proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective September 14, 1988.

Outright approval was granted for thirty of the thirty-one specific program measures. Eleven of the thirty-one measures submitted were noise abatement measures. These included retaining select existing noise abatement measures, instituting preferential runway use programs and specific departure procedures, and establishing engine noise suppression policies. The next seventeen of the thirty-one measures submitted were land use measures, of which one was not approved. The rest included planning, zoning and subdivision recommendations/policies, instituting noise impact disclosure (formal and informal) and acquiring land, easements and development rights. The last three measures of the thirty-one submitted, identified as "Other Implementing Measures," included administrative-type measures such as responding to noise complaints and on-going review of the noise program.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on September 14, 1988.

The record of Approval, as well as other evaluation materials and documents which comprised the submittal to FAA are available for review at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591

Federal Aviation Administration, Great Lakes Region, 2300 East Devon Avenue, Room 261, Des Plaines, Illinois 60018

Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Room 200, Des Plaines, Illinois 60018

Indianapolis Airport Authority, Indianapolis International Airport, Indianapolis, Indiana 46251

Questions may be directed to the individual named above under the heading, **"FOR FURTHER INFORMATION CONTACT."**

Issued in Des Plaines, Illinois, September 23, 1988.

Stanley Rivers,

Manager, Airports Division, Great Lakes Region.

[FR Doc. 88–24262 Filed 10–19–88; 8:45 am]

BILLING CODE 4910–13–M

Approval of Noise Compatibility Program and Determination on Revised Noise Exposure Maps; Dayton International Airport, Dayton, OH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the city of Dayton under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On June 22, 1988 the FAA determined that the noise exposure maps submitted by the city of Dayton under Part 150 were in compliance with applicable requirements. On September 14, 1988, the Administrator approved the Dayton International Airport noise compatibility program. All of the recommendations of the program were approved. The city of Dayton has also requested under FAR Part 150, § 150.35(f), that FAA determine that revised noise exposure maps submitted with the noise compatibility program and showing noise contours as a result of the implementation of the noise compatibility program are in compliance with applicable requirements of FAR Part 150. The FAA announces its determination that the revised noise exposure maps for Dayton International Airport for the years 1987 and 1992 submitted with the noise compatibility program, are in compliance with applicable requirements of FAR Part 150 effective September 14, 1988.

EFFECTIVE DATE: The effective date of the FAA's approval of the Dayton International Airport noise compatibility program is September 14, 1988. The effective date of the FAA's determination on the revised noise exposure maps is September 23, 1988.

FOR FURTHER INFORMATION CONTACT: Prescott C. Snyder, Federal Aviation Administration, Great Lakes Region, Airports Division, AGL–611, 2300 East Devon Avenue, Des Plaines, Illinois 60018, (312) 694–7538. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Dayton International Airport, effective September 14, 1988, and that revised noise exposure maps for 1987 and 1992 for this same airport are determined to be in compliance with applicable requirements of FAA Part 150.

A. Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatability program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that if the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

1. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

2. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

3. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

4. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program delineated in FAR Part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Detroit Airports District Office in Belleville, Michigan.

The city of Dayton submitted to the FAA on November, 1985 the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from May 1984 through June 1988. The NEM's were subsequently revised in October 1988 and again in June 1988. The Dayton International Airport noise exposure maps were initially determined by FAA to be in compliance with applicable requirements on June 22, 1988. Notice of this determination was published in the **Federal Register** on July 15, 1988.

The Dayton International Airport study contains a proposed noise compatitibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 1995. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on June 22, 1988 and was required by a provision of the Act to approve or disapprove the program within 180 days. Failure to approve or disapprove such program

within the 180-day period would have been deemed to be an approval of such program.

The submitted program contained eighteen proposed measures for noise mitigation. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective September 14, 1988.

Outright approval was granted for all the specific program measures. Seven of the eighteen measures were actions on and off the airport within the airport operator's control. They included on-airport extension of runways 6L, 18 and 24R, and the construction of a noise barrier. Off airport measures included purchase of homes, soundproofing of homes and/or purchases of aviation easements, and establishing a continuing planning effort for noise mitigation. Another four measures were submitted that were actions under local control, three were zoning related while the fourth was related to revising existing building codes. The final seven measures submitted were actions which are under Federal control. They related to flight tracks and runway utilization. These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on September 14, 1988.

B. The FAA also has completed its review of the revised noise exposure maps and related descriptions submitted by city of Dayton. The specific maps under consideration are the 1987 and the 1992 NEMs found in the 1988 Addendum of the submission. The FAA has determined that these maps for Dayton International Airport are in compliance with applicable requirements. This determination is effective on September 21, 1988. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps, and copies of the record of approval and other evaluation materials and documents which comprised the submittal to the FAA are available for examination at the following locations:

Federal Aviation Administration
800 Independence Avenue, SW., Room 617
Washington, DC 20591

Federal Aviation Administration
Great Lakes Region
2300 East Devon Avenue, Room 291
Des Plaines, Illinois 60018

Federal Aviation Administration
Detroit Airports District Office
East Willow Run Airport
8820 Beck Road
Belleville, Michigan 48111

City of Dayton
Department of Aviation
Terminal Building
Dayton International Airport
Vandalia, Ohio 45377

Questions may be directed to the individual named above under the heading, for further information contact.

Issued in Des Plaines, Illinois, September 23, 1988.

Stanley Rivers,
Manager, Airports Division, Great Lakes Region.

[FR Doc. 88-24288 Filed 10-19-88; 8:45 am]
BILLING CODE 4910-13-M

Flight Standards District Office at Oakland, CA; Relocation

Notice is hereby given that on or about October 21, 1988, the Flight Standards District Office at 8630 Earhart Road, Building L-105, Oakland California 94614 will be relocating to 8617 Earhart Road, Oakland, California 94616. The mailing address remains unchanged: P.O. Box 2397, Airport Station, Oakland, California 94614. Services to the general public will continue to be provided by this office without interruption. This information will be reflected in the FAA Organization Statement the next time it is published.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354.)

Issued in Hawthorne, CA, on October 6, 1988.

Joe A.P. Alvarez,
Acting Regional Administrator, Western-Pacific Region.

[FR Doc. 88-24261 Filed 10-19-88; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: October 14, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515-0063.
Form Number: CF 3299.
Type of Review: Extension.
Title: Declaration for Free Entry of Unaccompanied Articles.
Description: This form serves as a declaration for residents, non-residents, and military personnel who are attempting to enter their personal and household goods free of duty. This form is also applicable for tools of trade and professional books.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated number of Respondents: 10,000.
Estimated Burden Hours Per Response/Recordkeeping: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping/Reporting Burden: 25,799 hours.
Clearance Officer: B. J. Simpson, (202) 566-7530, U.S. Customs Service, Room 6426, 1301 Constitution Avenue NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports, Management Officer.

[FR Doc. 88-24217 Filed 10-19-88; 8:45 am]
BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: October 14, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Departmental Offices.

OMB Number: 1505-0107.
Form Number: None.
Type of Review: Extension.
Title: Regulation on Agency Protests.
Description: Information is requested of contractors so that the Government will be able to evaluate protests effectively and provide prompt resolution of issues in dispute when contractors file agency-level protests.
Respondents: Businesses and other for-profit, non-profit institutions, Small businesses or organizations.
Estimated Number of Respondents: 10.
Estimated Burden Hours Per Respondent: 2 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 20 hours.
Clearance Officer: Dale A. Morgan, (202) 343-0263, Departmental Offices, Room 224, Main Treasury Building, 15th & Pennsylvania Avenue NW., Washington, DC 20220.
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports Management Officer.

[FR Doc. 88-24218 Filed 10-19-88; 8:45 am]
BILLING CODE 4810-25-M

Office of the Secretary

[Supplement to Department Circular; Public Debt Series No. 26-88]

Treasury Notes; Series H-1995

October 13, 1988.

The Secretary announced on October 12, 1988, that the interest rate on the notes designated Series H-1995, described in Department Circular—Public Debt Series—No. 26-88 dated October 6, 1988, will be 8¾ percent. Interest on the notes will be payable at the rate of 8¾ percent per annum.

Gerald Murphy,
Fiscal Assistant Secretary.

[FR Doc. 88-24209 Filed 10-19-88; 8:45 am]
BILLING CODE 4810-40-M

Senior Executive Service; Departmental Performance Review Board

Action: This notice lists the membership of the Departmental Performance Review Board (PRB), superseding the list published in 52 FR 37038, October 2, 1987, in accordance with 5 U.S.C. 4314(c)(4).

Scope: This notice applies to all components within the Department of the Treasury.

Purpose: The purpose of the Board is to review proposed performance appraisals, ratings, bonuses and other appropriate personnel actions for incumbents of non-delegated SES positions. These positions include SES bureau heads, deputy bureau heads, bureau chief inspectors, and certain other positions. The Board makes recommendations to the Secretary or his designee as appointing authority. The Board will perform PRB functions for other top bureau positions if requested. In addition, the Board will review Presidential Rank nominations upon request.

Composition of PRB: The Board shall consist of at least three members. In the case of an appraisal of a career appointee, more than half the members of the PRB shall consist of career appointees. The names and titles of the PRB members are as follows:

Chairperson, Jill E. Kent, Assistant Secretary of the Treasury (Management)
Jeanne S. Archibald, Deputy General Counsel
Thomas J. Berger, Deputy Assistant Secretary (International Monetary Affairs)
William J. Bremner, Deputy Assistant Secretary (Federal Finance)
O. Donaldson Chapoton, Assistant Secretary (Tax Policy)
Roger M. Cooper, Deputy Assistant Secretary (Information Systems)
William E. Douglas, Commissioner, Financial Management Service
Eugene H. Essner, Deputy Director, U.S. Mint
Wayne E. Grant, Deputy Assistant Secretary (Departmental Finance and Management)
Richard L. Gregg, Commissioner, Bureau of Public Debt
Stephen E. Higgins, Director, Bureau of Alcohol, Tobacco and Firearms
Michael F. Hill, Associate Director (Policy and Management), U.S. Mint
Michael R. Hill, Inspector General
Susanne H. Howard, Deputy Treasurer of the United States
Michael H. Lane, Deputy Commissioner, U.S. Customs Service
Gerald Murphy, Fiscal Assistant Secretary
Michael J. Murphy, Senior Deputy Commissioner, Internal Revenue Service
Howard W. Nester, Director (Revenue Estimating)
Thomas P. O'Malley, Director, Management Programs Directorate
Katherine D. Ortega, Treasurer of the United States
Marcus W. Page, Deputy Fiscal Assistant Secretary
Charles B. Respass, Director, Facilities Management Division
Charlene J. Robinson, Director, Human Resources Directorate
Kenneth R. Schmalzbach, Assistant General Counsel (Administrative and General Law)
Charles Schotta, Deputy Assistant Secretary (Arabian Peninsula Affairs)
John P. Simpson, Deputy Assistant Secretary (Regulatory, Tariff, and Trade Enforcement)
C. Eugene Steuerle, Deputy Assistant Secretary (Tax Analysis)
Edward T. Stevenson, Special Assistant

to the Assistant Secretary (Legislative Affairs)
Edwin A Verburg, Director, Financial Services Directorate
Gregory P. Wilson, Deputy Assistant Secretary (Financial Institutions Policy)

For Further Information Contact: Charlene J. Robinson, Director, Human Resources Directorate, Room 7115, IOC Building, 1201 Constitution Avenue NW., Washington, DC 20220, Telephone: (202) 501-3324.

This notice does not meet the Department's criteria for significant regulations.

Dated: October 6, 1988.

Jill E. Kent,

Assistant Secretary of the Treasury (Management).

[FR Doc. 88-24354 Filed 10-19-88; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 203
Thursday, October 20, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY CREDIT CORPORATION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 40105, Thursday, October 13, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:30 p.m., October 14, 1988.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Minutes of Special Meeting of June 6, 1988.
2. *Memorandum re:* Update of Commodity Credit Corporation (CCC)-Owned Inventory.
3. *Resolution re:* Ratification of Financing for Peanut Quality Improvement Research.
4. *Resolution re:* Ratification of Commodities Available for Public Law 480 During Fiscal Year 1988, CZ-288, Resolution No. 25, Amendment 3 and Amendment 4.
5. *Resolution re:* Ratification of Commodities Available for Public Law 480 During Fiscal Year 1988, CZ-288, Resolution No. 28.

CONTACT PERSON FOR MORE INFORMATION: James V. Hansen, Secretary, Commodity Credit Corporation, Room 3003 South Building, U.S. Department of Agriculture, Post Office Box 2415, Washington, DC 20013; telephone (202) 475-5490.

Date: October 17, 1988.

James V. Hansen,

Secretary, Commodity Credit Corporation.

[FR Doc. 88-24372 Filed 10-18-88; 11:55 am]

BILLING CODE 3410-05-M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, October 25, 1988, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * * *

DATE AND TIME: Thursday, October 27, 1988, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC. (Ninth Floor)

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Corrective and Approval of Minutes.
Eligibility Report for Candidates to Receive Presidential Primary Matching Funds.
Draft AO 1988-44: Bart E. Ecker on behalf of the Bonner for Congress Committee.
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,

Secretary of the Commission.

FR Doc. 88-24395 Filed 10-18-88; 11:24 am]

BILLING CODE 6715-01-M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m.—October 26, 1988.

PLACE: Hearing Room One—1100 L Street, NW., Washington, DC 20573-0001.

STATUS: Open.

MATTER TO BE CONSIDERED: 1. Rules Implementing the Foreign Shipping Practices Act of 1988—Consideration of Issuance of Proposed Rules.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523-5725.

Joseph C. Polking,

Secretary

[FR Doc. 88-24400 Filed 10-18-88; 3:17 pm]

BILLING CODE 6730-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Agenda

TIME AND DATE: 9:30 a.m. Tuesday, October 25, 1988.

PLACE: The Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: The first two items will be open to the public. The last two items will be closed under Exemption 10 of the Government in Sunshine Act.

MATTERS TO BE CONSIDERED:

1. *Aircraft Accident Report:* AVAir, Inc., Flight 3378, Fairchild Metro III, Cary, North Carolina, February 19, 1988.
2. *Pipeline Accident Report:* Natural Gas Pipeline Explosion, Sheraton Motor Inn, Winston-Salem, North Carolina, January 19, 1988.
3. *Opinion and Order:* Administrator v. Walton, Docket SE-7940; disposition of respondent's petition for reconsideration.
4. *Opinion and Order:* Administrator v. Cronin, Docket SE-7749; disposition of respondent's appeal.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382-6525.

Bea Hardesty,

Federal Register Liaison Officer.

October 14, 1988.

[FR Doc. 88-24354 Filed 10-19-88; 8:45 am]

BILLING CODE 7533-01-M

RAILROAD RETIREMENT BOARD

Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on October 25, 1988, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844, North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

Portion Open to the Public

(1) Proposed Changes in the RUIA Regulations.

Portion Closed to the Public

(A) Appeal from Referee's Denial of Disability Annuity, James F. Gettings.
(B) Appeal from Referee's Denial of Disability Annuity, Dale L. Hoyle.

The person to contact for more information is Beatrice Ezerski, Secretary to the Board COM No. 312-751-4920, FTS No. 386-4920.

Dated: October 14, 1988.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 88-24414 Filed 10-18-88; 3:18 pm]

BILLING CODE 7905-01-M

VOL 53 ISS 203 OC 20 1988 UMI

Corrections

Federal Register
Vol. 53, No. 203
Thursday, October 20, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

Lamont-Doherty Geological Observatory, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

Correction

In notice document 88-22826 appearing on page 38972 in the issue of Tuesday, October 4, 1988, make the following corrections:

1. On page 38972, in the third column, in the first line, "Material" should read "Materials"; and in the second line, "987" should read "897".

2. On the same page, in the same column, in the fourth complete paragraph, in the 12th line, after the word "is" insert "of".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 10

[Docket No. 80349-8168]

Practice Before the Patent and Trademark Office; Government Employees

Correction

In rule document 88-22766 beginning on page 38948 in the issue of Tuesday, October 4, 1988, make the following corrections:

1. On page 38948, in the third column, under **SUMMARY**, in the second line, "it" should read "its".

2. On page 38949, in the third column, in the second complete paragraph, in the second line, "and" should read "that".

3. On the same page, in the same column, in the fifth complete paragraph, in the third line, "opinion" was misspelled.

§ 10.10 [Corrected]

4. On page 38950, in the second column, in § 10.10(b)(1), in the second line, after the word "patent" insert "application pending in any patent".

5. On the same page, in the same column, in § 10.10(b)(2), in the fourth line, remove the words, "pending in any patent application".

6. On the same page, in the same column, in amendatory instruction 4, in the third line, "paragraph" should read "paragraphs".

§ 10.23 [Corrected]

7. On the same page, in § 10.23(c)(13), in the third column, in the second line, "understanding" should read "undertaking".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 80957-8157]

Continuation of the Precision Measurement Grants Program

Correction

In notice document 88-23156 beginning on page 39495 in the issue of Friday, October 7, 1988, make the following correction:

On page 39495, in the second column, in the **SUMMARY**, beginning in the 12th line, the second sentence should read "Applications are now being accepted for two new NIST Precision Measurement Grants to be awarded beginning October 1, 1989 (fiscal year 1990).

BILLING CODE 1505-01-D

federal register

Thursday
October 20, 1988

Part II

Department of Health and Human Services

Agency for Toxic Substances and Disease Registry

Environmental Protection Agency

Hazardous Substances Priority List, Toxicological Profiles; Notice

VOL 53 ISS 203 OCT 20 1988 UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

ENVIRONMENTAL PROTECTION AGENCY

[ATSDR-6]

Hazardous Substances Priority List, Toxicological Profiles; Second List

AGENCIES: Department of Health and Human Services (DHHS), Agency for Toxic Substances and Disease Registry (ATSDR); and Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund), as amended by the Superfund Amendments and Reauthorization Act (SARA), establishes certain requirements for EPA and ATSDR of DHHS with regard to hazardous substances which are most commonly found at facilities on the CERCLA National Priorities List (NPL). Section 104(i)(2) (42 U.S.C. 9604(i)(2) of CERCLA requires that the two agencies prepare a list of at least 100 hazardous substances, in order of priority, which are most commonly found at NPL facilities and which the agencies determine are posing the most significant potential threat to human health. The agencies complied with that requirement with the publication of the priority list of 100 substances (52 FR 12866, April 17, 1987). Section 104(i)(2) of CERCLA also requires the agencies to revise the priority list no later than October 17, 1988. Such revision shall include, in order of priority, the addition of 100 or more such hazardous substances. This notice contains the revised priority list containing an additional 100 substances, and provides a brief summary of the procedure used to assemble the list.

ADDRESS: Comments on this notice should bear the docket control number ATSDR-6, and should be submitted to: Director, Office of External Affairs, Agency for Toxic Substances and Disease Registry, Chamblee 28S, F-36, 1600 Clifton Road, NE., Atlanta, Georgia, 30333.

Comments which contain confidential business information (CBI) should clearly note that they contain CBI and should be sent in triplicate to the address given above. For further information regarding the submission of comments containing CBI, see unit V of this notice. Non-confidential versions of comments on this notice will be available for public inspection at the Agency for Toxic Substances and Disease Registry, Building 28S, Room 1103, 4770 Buford Highway, NE., Chamblee, Georgia from 8 a.m. until 4:30 p.m., Monday through Friday, except for legal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Georgi Jones, Director, Office of External Affairs, Agency for Toxic Substances and Disease Registry, Building 28S, F-36, 1600 Clifton Road, NE., Atlanta, Georgia 30333, Telephone: 404-488-4320.

SUPPLEMENTARY INFORMATION:

I. Background

On October 17, 1986, the President signed the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499), which extends and amends the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 *et seq.*).

As added by SARA, section 104(i)(2) of CERCLA requires the preparation of: (1) A list of hazardous substances found at NPL sites (in order of priority), (2) toxicological profiles of those substances, and (3) a research program to fill data gaps associated with the substances.

A priority list of the first 100 substances was published (52 FR 12866, April 17, 1987) (See Appendix), with a short summary of the procedure used by ATSDR and EPA to compile that list. In that notice, the agencies solicited public comment on the approach adopted for evaluating and ranking hazardous substances found at NPL sites, and announced the intention to refine the listing process in response to these comments and ongoing efforts by the agencies to improve the listing process.

The changes in the procedure used to prepare the second priority list are summarized below. The agencies solicit public comment on this approach; such comments should be submitted in accordance with the instructions given in this notice. The agencies will continue to seek improvements in the listing process as future revisions of the list are prepared. All nonconfidential comments will be placed in the public file for this notice. A more detailed description of the revised listing methodology is contained in support documents which have been placed in the public file and are available for public review (see unit V of this notice).

II. Review of Methodology for Selecting Substances on the First Priority List

A. General Approach for the First Priority List

To obtain the first list of 100 hazardous substances, ATSDR and EPA defined a subset of the 717 hazardous substances which formed the CERCLA list (under section 102 of CERCLA). The subset was defined as those chemicals which EPA has identified at National Priority List (NPL) sites. To rank the chemicals within this subset, three criteria were considered: (1) Chemical toxicity, (2) frequency-of-occurrence of subset substances at NPL sites or facilities, and (3) potential for human exposure to the substances. These criteria reflect the requirements of section 104(i)(2) of CERCLA, as well as the general practice of defining human exposure potential of a chemical substance. To develop a detailed ranking system employing these criteria, ATSDR and EPA first reviewed a number of hazard scoring systems for their applicability to the ranking criterion of toxicity. From all the approaches considered, the Reportable Quantity (RQ) scoring scheme was selected for ranking toxicity of the 100 priority substances. The RQ scoring scheme is described in several Federal Register documents (50 FR 13456, April 4, 1985; 51 FR 34534, September 29, 1986; and 52 FR 8140, March 16, 1987).

The second criterion used by ATSDR and EPA to prepare the first priority list of hazardous substances was the frequency-of-occurrence at NPL sites. Data from the Contract Laboratory Program (CLP) was used for determining frequency-of-occurrence. The CLP is an EPA program which supports that Agency's hazardous waste activities by providing a range of contract chemical analysis services. A statistically-designed survey of a subset of the CLP data (CLP survey) was developed in 1984. The CLP survey represents a random, stratified sample of sites and waste samples from those sites that were analyzed under the CLP from 1980 to 1984. The survey provides data on the percentage of sites at which a substance was detected at least once in any medium (i.e., frequency-of-occurrence) and the average and range of concentrations across media or matrices (e.g., soil, ground water, drums).

The third criterion used to prepare the first priority list of hazardous substances was the potential for human exposure. ATSDR and EPA evaluated various sources of data associated with this criterion, and selected the CLP survey data to derive a rough estimate

of potential for human exposure to hazardous substances at NPL sites. Three types of exposure-related data from the CLP survey were used: the average concentration of the candidate substances detected in ground water and surface water across the 358 NPL sites included in the CLP survey; the frequency of detection of those substances in ground water and surface water across the 358 sites; and whether the substances had been selected for detailed exposure and risk assessment at Superfund Remedial sites.

B. Generation of the First Priority List

Using the ranking factors described above, as well as some minor criteria, ATSDR and EPA developed an algorithm incorporating these criteria to calculate a hazard index value for each candidate substance. This algorithm served as the basis for generating the ranked order of the first 100 priority list substances.

The starting point for the hazard index calculation was the subset of hazardous substances which EPA had identified at NPL sites based on the site percent data from the CLP survey. The agencies divided the site percent data value for each substance (representing frequency-of-occurrence) by the lowest RQ value for the substance (based on acute toxicity, chronic toxicity, or potential carcinogenicity) to generate a site index for each substance. ATSDR and EPA ranked the candidate substances based on their site indices. The agencies then calculated an exposure index for each substance by ranking them based on the three exposure-related factors (with each factor receiving equal weight). The final step in the algorithm was to combine the site index rank and the exposure index value to obtain a hazard index for each substance. The substances were prioritized based on their hazard indices.

For purposes of assessing hazardous substances in toxicity profiles, ATSDR and EPA combined some of the candidate substances into groups. If substances are stereoisomers of one another, are readily metabolized to other substances on the list, or generally are characterized as mixtures with respect to toxicity and/or frequency-of-occurrence, they were grouped together and occupy only one position of the priority list. Examples of these types of substances include: heptachlor and heptachlor epoxide; endrin and endrin aldehyde; PCB's.

III. Methodology for Selecting Substances on the Second Priority List

A. Bases for Improvements in Methodology for Selecting Substances

Since publication of the first priority list of hazardous substances, ATSDR and EPA have continued to seek improvements in the listing process to incorporate into future revisions of the list. The agencies have solicited public comment and conducted critical reviews of the above-described prioritizing method in order to identify potential improvements. The resulting suggestions for improving the method center primarily on improving the estimation of the potential for human exposure to substances at NPL sites. The supporting document for the first priority list of 100 substances identified optimal site-specific data for an exposure assessment that include identification of human exposure pathways, characterization of potentially exposed populations, and determination of exposure concentrations and durations. Lacking such data, rough estimates of potential human exposure were made which relied primarily on surface water and ground water concentrations as measures of potential human exposure. Consequently, no consideration was given to exposure by air or soil, which may be more relevant for some substances than exposure by ground water or surface water. Considering this limitation in the exposure estimate, ATSDR and EPA sought to expand the ranking system to include a better estimate of potential for human exposure than was used for the first priority list of 100 substances.

Further suggestions for changes in methodology stem from differences in the type and quality of information available for substances of lower priority. It is noted, for example, that toxicity information on those substances that are more frequently encountered (and therefore, more likely to rank higher on the hazard index than less frequently-encountered substances) tends to be of a higher quality and more readily available. In addition, using the CLP statistical data base alone, the frequency-of-occurrence tends to vary significantly only for the most frequently detected substances, which makes the frequency of occurrence term relatively nonselective for prioritizing the second list of 100 hazardous substances.

Based on the foregoing considerations, ATSDR and EPA have considered suggestions for utilizing alternative methods to estimate (1) the frequency of occurrence of substances and (2) the relative toxicity of substances. The changes adopted are described in the following description of the procedure used to generate the second priority list of 100 hazardous substances under SARA Section 110.

B. Determination of the Frequency-of-Occurrence Criterion of the Ranking Methodology

In the procedure for selection of the first 100 priority substances, the number of NPL sites at which a substance is known to occur was estimated from the information on the substance drawn from the CLP statistical data base as it existed at the time of development of the first list (e.g., April, 1987). For selection of the second 100 priority substances, an updated CLP statistical data base, containing additional data entered through August 10, 1988, formed one of the bases for selection of frequency-of-occurrence data on candidate chemicals. Two additional estimates of frequency-of-occurrence were employed.

The first source of additional information for frequency-of-occurrence was the Hazard Ranking System (HRS) data base. The HRS was developed to evaluate hazardous waste sites for listing on the NPL, and assigns a score to a site based upon a uniform scheme incorporating information on toxicity, persistence, and quantity at the site. During evaluation through the HRS method, up to 15 chemicals of concern can be listed at each site. The number of times that a given substance was listed as a chemical of concern in a HRS evaluation was used to estimate the frequency-of-occurrence at NPL sites, by dividing the number of times listed as a chemical of concern by the total number of NPL sites in the current data base (1,177).

The second source of additional information used to estimate frequency-of-occurrence was the Special Analytical Service (SAS) data base. This data base contains information on the occurrence of substances which do not appear in the CLP statistical database for methodological reasons. Most of the information in the CLP statistical data base is obtained under the Routine Analytical Services (RAS) program, in which samples submitted for analysis are screened for certain target chemicals; additional substances are then determined by matching their mass spectra to known standards. A request for determination of a substance under SAS may occur when there is reason to believe that a specific hazardous compound is present in a sample at a concentration below the detection limit of the RAS, or when there is reason to believe that a specific hazardous

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substance which is not a target substance may be present in a sample.

The SAS data files were examined to identify substances with five or more requests for SAS which are not present in the CLP statistical database. Those substances were then examined further to determine the number of NPL sites at which the substance had actually been detected. This number was then divided by the total number of NPL sites to obtain a site percent frequency.

The overall site percent value used for a particular substance was the higher of the CLP statistical data base site percent (as determined by either RAS or SAS data) and the NPL Technical data base site percent when both were available.

C. Determination of the Exposure Component of the Ranking Methodology

ATSDR and EPA expanded the bases for evaluating the potential for human exposure to the priority substances in two ways: (1) By considering the air and soil as additional routes of potential exposure, and (2) by considering additional databases reflecting the potential for human exposure to the substances.

The potential for exposure to candidate substances through soil was considered by incorporating data on soil concentrations from the CLP statistical data base in the calculation of an exposure index for each substance. To estimate the potential for air exposure, ATSDR and EPA used an indirect method, since no data are readily available on actual air concentrations of the candidate substances at NPL sites. ATSDR and EPA considered the retention time on a gas chromatography column to be a useful indicator of potential for air exposure, since these values can be determined from the SAS and RAS databases, and since these values correlate positively with boiling point, which in turn correlates negatively with volatility. The potential for air exposure was included in the calculation of an overall exposure index.

Exposure potential also was represented in the second 100 ranking procedure through the incorporation of eight separate data sources. The data sources used were:

CLP statistical data base (CLPs)
NPL Technical data base (NPLt)
National Human Adipose Tissue Survey (NHATS)
Department of Transportation Hazardous Materials Information System (DOT/HMIS)
Acute Hazardous Events data base (AHE)
National Response Center data base (NRC)
Removal Tracking system data base (RTS)
NEXIS

Information from these sources was incorporated in one of three ways: (1) As part of the water, soil and air exposure potential rank (CLP soil and water concentration data, and gas chromatography retention time); (2) as an alternate to the exposure potential rank in determining the overall exposure rank (NPL chemical of concern rank); and (3) as a weighting function applied to the overall exposure rank (NHATS, DOT/HMIS, AHE, NRC, NEXIS, RTS).

The CLP Statistical Data Base (CLPs)

The Contract Laboratory Program (CLP) statistical data base contains data on the occurrence and concentration of chemicals found at NPL and other hazardous waste sites. The data base was derived from CLP Routine Analytical Service (RAS) analyses and contains concentrations of specific chemicals found in soil, ground water, and surface water from a subset of the total NPL sites.

NPL Technical Data Base (NPLt)

The Hazard Ranking System (HRS) was developed to evaluate hazardous waste sites for listing on the NPL, and assigns a score to a site. Data from the HRS evaluation are stored in the NPL technical data base (NPLt). The HRS scores chemicals based upon toxicity, persistence, and quantity at the site. During evaluation through the HRS method, up to 15 chemicals of concern may be listed at each site. The number of times that a given substance was listed as a chemical of concern in the NPLt data case was used to estimate the frequency-of-occurrence at all NPL sites and as a correlate of exposure potential.

Special Analytical Services Data Base (SAS)

Under the Routine Analytical Service (RAS) contracts, samples from CERCLA sites are analyzed for a limited set of "target chemicals." When there is reason to believe that a specific hazardous compound is present at concentrations below the detection limits of the RAS, or when the substance is not a target chemical, a request may be processed through the Special Analytical Services (SAS) contract, in which the contractor makes an analytical determination of the presence and concentration of the specified substance. Frequency of detection of a substance at NPL sites through the SAS was determined by direct analysis of SAS data files.

National Human Adipose Tissue Survey (NHATS)

The National Human Adipose Tissue Survey (NHATS) data base contains chemical analysis data of human adipose tissue collected from individuals in hospitals across the United States. Information is available for 372 substances, derived from 800 individual adipose tissue samples that were pooled into 46 composite samples (approximately 17 individual samples per composite). This data base gives some indication of the degree to which the population of the United States has been exposed to the substances detected. The ATSDR and EPA considered occurrence of a substance in human tissue, as reported in the NHATS, to be an indication of potential for significant human exposure, and therefore ATSDR and EPA assigned greater weight to the exposure index for such candidate substances.

Department of Transportation Hazardous Materials Information System (DOT/HMIS)

The Department of Transportation's Hazardous Materials Information System (DOT/HMIS) data base contains information concerning accidental release of hazardous substances during transportation. A written report must be submitted to HMIS within 15 days of the accidental release. The reports contain an identification of the substance released and an accounting of any injuries or fatalities resulting from the release. The ATSDR and EPA considered occurrence of a substance in the HMIS data base to be an indication of potential for significant human exposure, and therefore ATSDR and EPA assigned greater weight to the exposure index for such candidate substances.

Acute Hazardous Events Data Base (AHE)

The Acute Hazardous Events (AHE) data base was developed by the EPA, following the tragic release of a toxic substance in Bhopal, India, to provide information concerning sudden, accidental releases of toxic chemicals in the United States. The main purpose of the data base is to characterize the kinds of events releasing acutely toxic substances, the substances involved, and the causative factors leading to their release. The ATSDR and EPA considered occurrence of a substance in the AHE data base to be an indication of potential for significant human exposure, and therefore ATSDR and EPA assigned greater weight to the exposure index for such candidate substances.

National Response Center Data Base (NRC)

The National Response Center (NRC) data base contains information concerning hazardous substance releases exceeding the RQ, pipeline failures and certain transportation incidents involving hazardous substances, and certain releases of toxic or flammable gases. ATSDR and EPA considered the occurrence of a candidate substance in this data base for any release that resulted in death, injury, or evacuation, to be an indication of potential for significant human exposure. Consequently the agencies increased the weight of the exposure index for any candidate substances listed in the NRC.

Removal Tracking System Data Base (RTS)

The Removal Tracking System (RTS) data base describes activities undertaken to clean up a site under the Superfund removal program. It lists the materials of concern that triggered a removal action and frequently lists other major contaminants being addressed at a site. ATSDR and EPA considered that the occurrence of a candidate substance in this data base indicates potential for significant human exposure. Consequently the agencies increased the weight of the exposure index for any candidate substances listed in the RTS.

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The NEXIS information system contains full-text articles reporting the release of toxic substances in over 125 newspapers, newsletters, and wire services. ATSDR and EPA considered the reporting in this data base of release of a candidate substance which led to human death, injury, or evacuation, to be a significant indicator of potential for significant human exposure. Consequently, the agencies increased the weight of the exposure index for any such substance.

D. Determination of the Toxicity Component of the Ranking Methodology

ATSDR and EPA decided to continue to use the reportable quantity (RQ) approach as a hazard scoring system, for the same reasons that guided its choice for the first priority list of hazardous substances. This approach provides the most complete characterization of toxicity of all hazard scoring systems reviewed by the agencies, and all other schemes reviewed were more limited in some aspect of toxicity evaluation.

The reportable quantity ranking scheme was developed by EPA to set RQ's for hazardous substances as required by CERCLA. Each RQ category corresponds to a weight, in pounds, for which releases must be reported. Section 103 of CERCLA requires immediate notification from any person in charge of a vessel or an offshore or onshore facility that releases an amount of a hazardous substance equal to or greater than its RQ. RQ's are developed for individual chemicals and waste streams that have already been designated under CERCLA as hazardous substances.

Each CERCLA hazardous substance is assigned to one of five RQ categories based on chronic toxicity, acute toxicity, carcinogenicity, aquatic toxicity, and ignitability and reactivity. RQ's are determined for each criterion separately, and the lowest of these is selected to represent the RQ adopted for the substance. Only values for acute and chronic mammalian toxicity or carcinogenicity were considered for ranking the second 100 hazardous substances.

Some of the candidate hazardous substances have not yet been assigned RQ values. In these cases, the ATSDR and EPA adopted a technique used by EPA's Office of Toxic Substances (OTS) to evaluate the potential health hazards associated with new chemicals submitted to the Premanufacture Notice Program. Generally, there are few experimental data available for these chemicals. In these cases, OTS employs a panel of expert toxicologists to assign a level of concern for the potential for toxicity, based upon the limited available experimental data, and other information, including physical-chemical properties, known toxicities of analogous substances, and known toxicities of possible metabolites of the substance, or of substances analogous to possible metabolites. Based on this expert opinion, a consensus level of concern for potential toxicity was adjusted to a five-point scale to coincide with the five-point RQ scale. This value was then used to represent the RQ value in the ranking algorithm.

As was done for the first priority list of hazardous substances, ATSDR and EPA used secondary criteria to adjust the RQ's (or RQ-equivalents assigned by the panel of experts) where appropriate. One set of secondary criteria includes biodegradation, hydrolysis, and photolysis. The use of these criteria is based on the fact that substances which have a tendency to be transformed to innocuous products pose a less serious health concern than equally toxic substances that have less tendency to be so transformed. ATSDR and EPA also used other secondary criteria such as bioaccumulation, high reactivity, and hazardous reaction products to determine if an adjustment of RQ values was appropriate for a given substance.

IV. Second Priority List of 100 Hazardous Substances

A. Generation of the Priority List

ATSDR and EPA generated an algorithm to calculate the hazard index value for each candidate substance, for the purpose of placing the substance on the second priority list of hazardous substances. The starting point for the hazard index calculation was the subset of hazardous substances which EPA had identified at NPL sites by means of site percent data from the CLP survey, or from the NPL or the SAS data bases, for those substances not in the CLP. The agencies divided the site percent data value for each substance (representing frequency-of-occurrence) by the lowest RQ value for the substance (based on acute toxicity, chronic toxicity, or potential carcinogenicity) to generate a site index for each substance. ATSDR and EPA ranked the candidate substances based on their indices, then calculated an exposure potential index for each substance. This index was based upon water concentration, soil concentration, and gas column retention time of each substance. The final step in the algorithm was to combine the site index rank and the exposure index value to obtain a hazard index for each substance. The substances were prioritized based on their hazard indices.

The algorithm for calculating the hazard index is described in greater detail in the support document for this notice, which is contained in the public file notice.

B. List of Substances

ATSDR and EPA have continued the practice initiated with the first list of prioritized substances, of grouping the substances in the second list of 100 into 4 priority groups of 25 substances each. Within each group, the agencies have listed the substances in order of their Chemical Abstracts Services (CAS) Registry numbers, to reflect the somewhat inexact nature of the ranking algorithm and the uncertainties of the underlying databases.

The following 100 hazardous substances comprise the second set of 100 priority substances that will be the subject of toxicological profiles prepared by ATSDR. This set, and the first set of 100 priority substances

previously published by ATSDR and EPA, constitute the revised list of at least 200 hazardous substances required under SARA, section 110.

CAS No.	Substance name
Priority Group 1	
51752	Mechlorethamine.
77474	[illegible]
100425	Styrene.
108054	Vinyl acetate.
115297	Endosulfan (alpha, beta, sulfate).
118967	2,4,6-Trinitrotoluene.
120127	Anthracene.
129000	Pyrene.
302012	Hydrazine.
591786	2-Hexanone.
1332214	Asbestos.
1517483	Plutonium.
[illegible]	Manganese.
7440144	Radium and compounds.
7440291	Thorium and compounds.
7440315	Tin.
[illegible]	Antimony.
[illegible]	Barium and compounds.
7440428	Boron and compounds.
7440484	Cobalt and compounds.
[illegible]	Uranium and compounds.
[illegible]	Creosote.
10043922	Radon and compounds.
10061026	trans-1,3-Dichloropropene.
16984488	Fluorides/fluorine/hydrogen fluoride.
Priority Group 2	
None	[illegible]
50000	Formaldehyde.
56382	Parathion (DHTP).
67641	Acetone.
75445	Phosgene.
83329	Acenaphthene.
86737	Fluorene.
91578	[illegible]
96184	1,2,3-Trichloropropane.
100027	4-Nitrophenol.
106478	4-Chloroaniline.
106934	1,2-Dibromoethane.
110758	2-Chloroethyl vinyl ether.
117840	Di-n-octyl phthalate.
132649	Dibenzofuran.
156592	cis-1,2-Dichloroethylene.
191242	Benzo[g,h,i] perylene.
207089	Benzo[k] fluoranthene.
208968	Acenaphthylene.
298044	Disulfoton.
505602	Mustard gas.
1912249	Atrazine.
7440622	Vanadium.
7446095	Sulfur Dioxide.
14797558	Nitrates/nitrites.
Priority Group 3	
None	Polybrominatedbiphenyls.
None	Chlorodibenzofurans.
53252	Sevin (Carbaryl).
68122	Dimethyl formamide (DMF).
[illegible]	Methoxychlor.
74975	Bromochloromethane.
75456	Chlorodifluoromethane.
85687	Butylbenzyl phthalate.
88744	o-Nitroaniline.
88755	2-Nitrophenol.
93721	2,4,5-TP acid (silvex).
93765	2,4,5-T.
94757	2,4-D, salts and esters.
95578	2-Chlorophenol.
95954	2,4,5-Trichlorophenol.
96128	Dibromochloropropane.
100516	Benzyl alcohol.
101144	4,4'-Methylene-bis-(2-chloroaniline).
108883	m-Pentane.
110543	Hexane.
121824	RDX (Cyclonite).
540590	1,2-Dichloroethylene.
2385855	Mirex.
7783064	Hydrogen sulfide.
26471625	Toluene diisocyanate.
Priority Group	
67561	Methanol.
76131	1,1,2-Trichloro-1,2,2-trifluoroethane.
80626	Methyl methacrylate.
98082	m-Nitroaniline.
99354	1,3,5-Trimethylbenzene.
101553	1-Bromo-4-phenoxy benzene.
106445	4-Methylphenol.
107211	Ethylene glycol.
108941	Cyclohexanone.
[illegible]	Tetrahydrofuran.
111656	Octane.
111911	bis(2-Chloroethoxy)methane.
121755	Malathion.
140578	Aramite.
142825	Heptane.
479458	Trinitrophenylmethylnitramine.
608935	Pentachlorobenzene.
1319773	Cresols.
7005723	4-Chlorophenyl phenyl ether.
7439987	Molybdenum.
7440246	Strontium.
[illegible]	Sulfuric acid.
10028178	Trillium.
[illegible]	cis-1,3-Dichloropropene.
[illegible]	Fluorophenol.

V. Administrative Record

ATSDR and EPA are establishing a single administrative record for this notice. ATSDR has established a public version of this record with non-confidential materials pertaining to this notice (ATSDR docket control number —6). The public file is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays, at the Agency for Toxic Substances and Disease Registry, Building 28–South, Room 1103, 4770 Buford Highway NE., Chamblee, Georgia. At this time there are no confidential materials in the record. The record includes support documents for the first and second priority lists. Any non-confidential public comments on the listing methodology or other non-confidential data or studies will be available for public inspection.

For the Agency for Toxic Substances and Disease Registry.

Dated: October 7, 1988.

James O. Mason,

Administrator, Agency for Toxic Substances and Disease Registry.

For the Environmental Protection Agency.

Dated: October 14, 1988.

Lee M. Thomas,

Administrator, Environmental Protection Agency.

Appendix—List of First 100 Hazardous Substances

CAS No.	Substance name
Priority Group 1	
50-32-8	Benzo(a)pyrene.
53-70-3	Dibenzo(a,h)anthracene.
56-55-3	Benzo(a)anthracene.
57-12-5	Cyanide.
60-57-1, 309-00-2	Dieldrin/aldrin.
67-66-3	Chloroform.
71-43-2	Benzene.
75-01-4	Vinyl chloride.
75-09-2	Methylene chloride.
76-44-8, 1024-57-3	Heptachlor/heptachlor epoxide.
79-01-6	Trichloroethylene.
86-30-6	N-Nitrosodiphenylamine.
106-46-7	1,4-Dichlorobenzene.
117-81-7	Bis(2-ethylhexyl)phthalate.
127-18-4	Tetrachloroethylene.
205-99-2	Benzo(b)fluoranthene.
218-01-9	Chrysene.
1746-01-6	2,3,7,8-Tetrachlorodibenzo-p-dioxin
7439-92-1	Lead.
7440-02-0	Nickel.
7440-38-2	Arsenic.
7440-41-7	Beryllium.
7440-43-9	Cadmium.
7440-47-3	Chromium.
11096-82-5, 11097-69-1, 12672-29-6, 53469-21-9, 11141-16-5, 11104-28-2, 12674-11-2	PCBs-Aroclor 1260, 1254, 1248, 1242, 1232, 1221, 1016.
Priority Group 2	
56-23-5	Carbon tetrachloride.
57-74-9	Chlordane.
62-75-9	N-Nitrosodimethylamine.
72-55-9, 50-29-3, 72-54-8	4,4'-DDE,DDT,DDD.
75-00-3	Chloroethane.
75-27-4	Bromodichloromethane.
75-35-4	1,1-Dichloroethene.
78-59-1	Isophorone.
78-87-5	1,2-Dichloropropane.
79-00-5	1,1,2-Trichloroethane.
79-43-5	1,1,2,2-Tetrachloroethane.
87-86-5	Pentachlorophenol.
91-94-1	3,3'-Dichlorobenzidine.
92-87-5	Benzidine.
107-06-2	1,2-Dichloroethane.
108-88-3	Toluene.
108-95-2	Phenol.
111-44-4	Bis(2-chloroethyl) ether.
121-14-2	2,4-Dinitrotoluene.
319-84-6, 58-89-9, 319-85-7, 319-86-8	BHC-alpha, gamma, beta, delta.
542-88-1	Bis(Chloromethyl) ether.
621-64-7	N-Nitrosodi-n-propylamine.
7439-97-6	Mercury.
7440-66-6	Zinc.
7782-49-2	Selenium.
Priority Group 3	
71-55-6	1,1,1-Trichloroethane.
74-87-3	Chloromethane.
75-21-8	Oxirane.
75-25-2	Bromoform.

Appendix—List of First 100 Hazardous Substances—Continued

CAS No.	Substance name
75-34-3	1,1-Dichloroethane.
84-74-2	Di-n-butyl phthalate.
88-06-2	2,4,6-Trichlorophenol.
91-20-3	Naphthalene.
100-41-4	Ethylbenzene.
107-02-8	Acrolein.
107-13-1	Acrylonitrile.
108-90-7	Chlorobenzene.
118-74-1	Hexachlorobenzene.
122-66-7	1,2-Diphenylhydrazine.
124-48-1	Chlorodibromomethane.
156-60-5	1,2-Trans-dichloroethene.
193-39-5	Indeno(1,2,3-cd)pyrene.
606-20-2	2,6-Dinitrotoluene.
1330-2-07	Total xylenes.
7421-93-4-72-20-8	Endrin aldehyde/endrin.
7440-22-4	Silver.
7440-50-8	Copper.
7664-41-7	Ammonia.
8001-35-2	Toxaphene.
Priority Group 4	
51-28-5	2,4-Dinitrophenol.
59-50-7	p-Chloro-m-cresol.
62-53-3	Aniline.
65-85-0	Benzoic acid.
67-72-1	Hexachloroethane.
74-83-9	Bromoethane.
75-15-0	Carbon disulfide.
75-69-4	Fluorotrichloromethane.
75-71-8	Dichlorodifluoromethane.
78-93-3	2-Butanone.
84-66-2	Diethyl phthalate.
85-01-8	Phenanthrene.
87-68-3	Hexachlorobutadiene.

Appendix—List of First 100 Hazardous Substances—Continued

CAS No.	Substance name
95-48-7	Phenol,2-methyl.
95-50-1	1,2-Dichlorobenzene.
105-67-9	2,4-Dimethylphenol.
108-10-1	2-Pentanone, 4-Methyl.
120-82-1	1,2,4-Trichlorobenzene.
120-83-2	2,4-Dichlorophenol.
123-91-1	1,4-Dioxane.
131-11-3	Dimethyl phthalate.
206-44-0	Fluoranthene.
534-52-1	4,6-Dinitro-2-methylphenol.
541-73-1	1,3-Dichlorobenzene.
7440-28-0	Thallium.

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40 CFR Part 261
Mining Waste Exclusion; Notice of Proposed Rulemaking

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SWH-FRL 3455-1]

Mining Waste Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 3001(b)(3)(A)(ii) of the Resource Conservation and Recovery Act (RCRA) excludes "solid waste from the extraction, beneficiation, and processing of ores and minerals" from regulation as hazardous waste under Subtitle C of RCRA, pending completion of certain studies by EPA. The Agency interpreted this exclusion (on a *temporary* basis) to encompass "solid waste from the exploration, mining, milling, smelting, and refining of ores and minerals" (45 FR 79619, November 19, 1980). The purpose of this notice is to further define the scope of the Bevill exclusion with respect to mineral processing wastes.

Today's proposed rulemaking would eliminate from the mining waste exclusion most wastes from the processing of ores and minerals. However, 15 specific high volume processing wastes that the Agency is defining herein as "special wastes," would remain within the Bevill exclusion, and hence, be studied in a Report to Congress and be subject to a subsequent regulatory determination pursuant to section 3001 of RCRA. In addition, today's proposal includes the criteria used by the Agency to identify these "special" processing wastes.

Based upon the criteria articulated below and EPA data on the mineral processing industry, the Agency proposes to retain the following mineral processing wastes within the Bevill exclusion:

1. Slag from primary copper smelting
2. Process wastewater from primary copper smelting/refining
3. Blowdown from acid plants at primary copper smelters
4. Bleed electrolyte from primary copper refining
5. Slag from primary lead smelting
6. Blowdown from acid plants at primary zinc smelters
7. Process wastewater from primary zinc smelting/refining
8. Red and brown muds from bauxite refining
9. Phosphogypsum from phosphoric acid production
10. Slag from elemental phosphorous production
11. Iron blast furnace slag
12. Air pollution control dust/sludge from iron blast furnaces
13. Waste acids from titanium dioxide production
14. Air pollution control dust from lime kilns
15. Slag from roasting/leaching of chromite ore

If this proposal is promulgated, *all* other mineral processing wastes will be *permanently* removed from the Bevill exclusion. In other words, this reinterpretation and the subsequent Report to Congress and regulatory determination represent the *final* stages of EPA's response to the provisions of RCRA section 8002(p); there will be no further studies or regulatory determinations related to ore and mineral processing wastes as a group. Operators of facilities that generate non-excluded wastes will have to determine whether their processing wastes exhibit one or more of the hazardous characteristics and, if the wastes exhibit such characteristics, will have to comply with the technical and administrative requirements of Subtitle C of RCRA. These requirements shall become effective, at the latest, six months after promulgation of the final rule in these states that do not have authorization to administer an EPA-approved hazardous waste program, and somewhat later in authorized states.

In response to a Court-ordered deadline, EPA intends to finalize this proposed rule by February 15, 1989. The Agency therefore solicits public comment on its choice of wastes to be retained within the Bevill exclusion, and in particular seeks information, including chemical characterization or other relevant hazard data, regarding any other mineral processing wastes that may meet the criteria for "special wastes" described in the preamble to today's proposed rule.

DATES: EPA will accept public comments on this proposal until November 21, 1988. The Agency will hold a public hearing on November 17, 1988 from 10 a.m. to noon; see the section title "Public Participation" for details.

ADDRESS: Comments should be sent to the RCRA/CERCLA Docket Clerk, Docket No. F–88–MWEP–FFFFF, Office of Solid Waste (WH–565A), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 475–9327. Additional information pertinent to this proposal can be found in the docket supporting the recent relisting of six smelter wastes as hazardous wastes (No. F–88–SWRF–FFFFF). The public docket is available in the Sub-basement at the above address for viewing from 9:00 a.m. to 5:30 p.m., Monday through Friday, except for Federal holidays. The public hearing is at the U.S. Environmental Protection Agency, Conference Room 13, 401 M Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: RCRA/Superfund Hotline at (800) 424–9346 or (202) 382–3000 or Dan Derkics, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382–3601.

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I. Court Decision on the Applicability of the Mining Waste Exclusion to Processing Wastes

A. History of the Mining Waste Exclusion

In section 8002(f) of the Resource Conservation and Recovery Act (RCRA), enacted on October 21, 1976, Congress instructed the Administrator of EPA to conduct, in consultation with the Secretary of the Interior, "a detailed and comprehensive study on the adverse effects of solid wastes from active and abandoned surface and underground mines on the environment, including, but not limited to, the effects of such wastes on humans, water, air, health, welfare, and natural resources."

On December 18, 1978 (43 FR 58946), EPA proposed regulations for hazardous waste management under Subtitle C of RCRA. These proposed regulations, among other things, had fewer requirements for a universe of so-called "special wastes" that were generated in large volumes, were thought to pose less of a hazard than other hazardous wastes, and were not thought to be amenable to the control techniques proposed for hazardous waste treatment, storage, and disposal facilities. EPA identified waste materials from the "extraction, beneficiation, and processing of ores and minerals" as one group of such "special wastes" under the proposed regulations.

On May 19, 1980, when it promulgated the final hazardous waste management regulations, EPA did not include a "special waste" category, stating that such a distinction was unnecessary because: (1) The EP toxicity and corrosivity characteristics of hazardous wastes had been narrowed, thus excluding most "special wastes" from regulatory control, and (2) the Agency intended to promulgate tailored standards for land disposal that could incorporate site- and waste-specific factors, as needed, in future regulations.

On October 21, 1980, Congress enacted Pub. L. 96–482, which included various amendments to RCRA. Section 8002 was amended to include subsection (p), which required the Administrator to study the adverse effects on human health and the environment, if any, of waste from the disposal and utilization of "solid waste from the extraction, beneficiation, and *processing* of ores and minerals, including phosphate rock and overburden from the mining of uranium ore," and submit a *Report to Congress* on its findings by October 21, 1983. (emphasis added). Section 7 of these amendments (the "Bevill Amendment") amended section 3001 of RCRA to exclude these wastes from regulation under Subtitle C of RCRA, pending completion of the studies called for in sections 8002 (f) and (p).

On November 19, 1980, EPA published an interim final amendment to its hazardous waste regulations to reflect this mining waste exclusion. The regulatory language incorporating the exclusion is identical to the statutory language (except the phrase "including coal" was added). In the preamble to the amended regulation, however, EPA tentatively interpreted the exclusion to include "solid waste from the exploration, mining, milling, smelting, and refining of ores and minerals" (45 FR 76618). The Agency also indicated that this provisional interpretation of the exclusion was temporary and was to be reconsidered following receipt of public comment.

On September 28, 1984, Concerned Citizens of Adamstown, Carroll Manor Civic Association, and the Environmental Defense Fund sued EPA for failure to complete the mining waste studies and Report to Congress required by RCRA sections 8002 (f) and (p). *Concerned Citizens of Adamstown* v. *EPA*, No. 84–3041, (D.C.C., August 21, 1985). EPA explained to the court that it planned to propose to "reinterpret" the scope of the mining waste exclusion so that it encompassed fewer wastes. Therefore, EPA suggested two schedules to the court: One for completing the section 8002 mining waste studies and submitting the Report to Congress, and one for proposing and taking final action on the reinterpretation. On August 21, 1985, the District Court ordered EPA to meet these two schedules. *Id.*[1]

Under the court order, EPA proposed to narrow the scope of the mining waste exclusion. See 50 FR 40292 (October 2, 1985). In preparing the proposed mining waste exclusion reinterpretation, EPA adopted the "high volume, low hazard" "special waste" concept from EPA's 1978 proposed hazardous waste regulations (43 FR 58946).

In response to the proposal, many commenters "nominated" wastes that they believed fit the "special waste" (i.e., high volume low hazard) criteria, and therefore should remain excluded from Subtitle C regulation as "processing wastes." Because EPA had not explicitly defined the terms "high volume" or "low hazard" in the proposal, the Agency was unable to determine the status of these additional wastes. When EPA tried to infer definitions for these terms based upon the four wastes listed in the proposal as meeting the "special waste" criteria, it became clear that several significant issues had not been resolved (see 51 FR 36233). Because the proposed mining waste reinterpretation did not define the criteria by which wastes were excluded nor did it discuss any of the associated issues, the public could not discern whether a given waste might qualify for continued exclusion as a "high volume, low hazard" waste, or comment on the validity of those criteria.

The public's comments and the Agency's own analyses convinced it that the proposed reinterpretation could not be finalized because it did not set out "practically applicable" criteria for distinguishing "processing" (i.e., high volume, low hazard ore and mineral processing residuals) from non-processing (i.e., non-excluded) wastes. Moreover, the Agency was unsure whether such criteria could be developed, given the complexity of these issues. Therefore, faced with the court-ordered deadline in *Adamstown*, the Agency withdrew the proposal on October 9, 1986 (51 FR 36233). As a consequence, the interpretation of the mining waste exclusion established in the November 19, 1980, rulemaking notice remained in effect.

B. Court Decision on the Mining Waste Exclusion

The Agency's decision to withdraw its proposed reinterpretation of the mining waste exclusion was subsequently challenged in court (*Environmental Defense Fund* v. *EPA*, 825 F.2d 1316, DC Cir., 1988 (*EDF* v. *EPA*). In these cases, the petitioners contended, and the Court of Appeals agreed, that EPA's withdrawal of its proposed reinterpretation of the Bevill Amendment was arbitrary and capricious because it reaffirmed an "impermissibly overbroad interpretation" of the Bevill Amendment. *EDF* v. *EPA*, 852 F.2d at 1326.

In reaching this decision, the Court found that the words "waste from * * * processing of ores and minerals" do not convey a self-evident, accepted meaning. *Id.* at 1327. Therefore, the Court reviewed the structure and the legislative history of the Bevill Amendment to ascertain the intent of Congress. The Court found that "[t]he structure of the Bevill Amendment suggests that the term 'solid waste from the * * * processing of ores and minerals' should be interpreted in a manner consistent with the concept of large volume wastes." *Id.* The Court also decided that "[t]he legislative history of the Bevill Amendment establishes that the key to understanding Congress' intent is the concept of 'special waste' articulated in the regulations proposed by EPA on December 18, 1978 following the enactment of RCRA." *Id.* See 43 FR 58911 (1978) and 50 FR 40293 (1985).

In explaining this decision, the Court cited statements made by Members of Congress during the legislative consideration of the exclusion and the description of the provision in the Conference Report accompanying the legislation. Based on these indications of congressional intent, the Court concluded that

> it is clear that Congress did not intend the mining waste exclusion to encompass all wastes from primary smelting and refining. On the contrary, Congress intended the term "processing" in the Bevill Amendment to include only those wastes from processing ores or minerals that meet the "special waste" criteria, that is, "high volume, low hazard" wastes. 852 F.2d at 1328–29.

[1] EPA submitted its Report to Congress on wastes from the extraction and beneficiation of ores and minerals on December 31, 1985. On July 3, 1986, EPA issued a regulatory determination that it would not regulate these wastes under Subtitle C of RCRA. 51 FR 24496. The U.S. Court of Appeals has upheld this decision. *Environmental Defense Fund* v. *EPA*, 852 F.2d 1309 (DC Cir., 1988). EPA is currently in the process of developing regulations under Subtitle D that will address the management of extraction and beneficiation wastes.

Thus, when the Agency withdrew its October 2, 1985, proposed reinterpretation of the mining waste exclusion, which was based on implicit "special waste" criteria, EPA by default reverted to its November 19, 1980, interpretation of the exclusion, which did not distinguish between high volume, low hazard processing wastes and other processing wastes. As a consequence, the number of temporarily excluded processing wastes remained very large. The Court ruled that this result was inconsistent with congressional intent. Therefore, the Court ordered EPA to propose, by October 15, 1988, a specific list of mineral processing wastes that meet the criteria of high volume and low hazard, and thus remain temporarily excluded from Subtitle C regulation. 852 F.2d at 1331. Today's proposal has been developed pursuant to the Court's mandate.

In addition to requiring that EPA use a high volume, low hazard paradigm in defining the scope of the term "solid wastes from the * * * processing of ores or minerals," the Court also mandated the relisting (as hazardous wastes) of six individual metallic ore processing waste streams that the Agency had proposed on October 2, 1985. The Court concluded that, regardless of how EPA might subsequently define the high volume and low hazard parameters of the mining waste exclusion, these six wastes would clearly fall outside of the exclusion "[s]ince EPA found that those six smelter wastes are low volume and high hazard wastes * * *." 852 F.2d at 1330. EPA, in a separate rulemaking, has taken action to comply with the Court's directive with regard to listing these six wastes. See 53 FR 35412. These newly relisted wastes are presented in Table 1, below.

TABLE 1.—LISTED HAZARDOUS WASTES GENERATED IN MINERAL PROCESSING OPERATIONS [1]

RCRA waste No.	Description
K064	Acid plant blowdown slurry/sludge resulting from thickening of blowdown slurry from primary copper production.
K065	Surface impoundment solids contained in and dredged from surface impoundments at primary lead smelting facilities.
K066	Sludge from treatment of process wastewater and/or acid plant blowdown from primary zinc production.
K068	Spent potliners from primary aluminum reduction.
K090	Emission control dust or sludge from ferrochromiumsilicon production.

[1] Several of these newly relisted wastes appear to be similar to wastes that are being proposed for retention within the Bevill exclusion in today's proposal, particularly K064 and K066. It is important to understand, however, that these hazardous materials are waste management residuals, rather than raw mineral processing waste streams. The waste streams proposed for temporary exclusion (blowdown from acid plants at primary copper smelters, blowdown from acid plants at primary zinc smelters, and wastewater from primary zinc smelting) differ significantly in volume and in chemical composition from these listed hazardous wastes.

In order to comply with the Court's other directives in this case, EPA will publish a final rule based upon today's proposal in the **Federal Register** by February 15, 1989, and will submit the required Report to Congress by July 31, 1989. 852 F.2d at 1331. This report will address the following eight study factors pertaining to ore and mineral processing wastes that are listed at section 8002(p) of RCRA:

1. The source and volumes of such materials generated per year;
2. Present disposal and utilization practices;
3. Potential danger, if any, to human health and the environment from the disposal and reuse of such materials;
4. Documented cases in which danger to human health or the environment has been proved;
5. Alternatives to current disposal methods;
6. The costs of such alternatives;
7. The impact of those alternatives on the use of phosphate rock and uranium ore, and other natural resources; and
8. The current and potential utilization of such materials.

Moreover, in keeping with statutory requirements (RCRA sections 3001(b)(3)(A)(ii) and 3001(b)(3)(C)), EPA will, six months after submission of the Report to Congress, issue a regulatory determination for each studied waste stating either that the waste is to be regulated under Subtitle C of RCRA or that such regulation is unwarranted.

II. Processing Wastes Remaining Within the Bevill Exclusion

To complete its response to the directives of the U.S. Court of Appeals for the DC Circuit in *NDF* v. *EPA*, EPA is today proposing a list of specific solid wastes from ore and mineral processing that will remain within the Bevill exclusion as special wastes.

In 1986, when EPA withdrew the 1985 proposal to eliminate from the mining waste exclusion many solid wastes from processing ores and minerals, the Agency did so in part because it had not proposed "practically-applicable criteria for distinguishing processing from non-processing wastes" (see 51 FR 36235). Today's proposal, in addition to proposing specific solid wastes from ore and mineral processing that remain within the Bevill exclusion, presents the criteria used by the Agency to identify these as "Bevill excluded" processing wastes.

The Agency examined three types of criteria in selecting the specific wastes to be retained within the Bevill exclusion: (1) Criteria for identifying wastes from ore and mineral processing; (2) criteria for identifying "high volume" wastes from ore and mineral processing; and (3) criteria for identifying "low hazard" wastes from ore and mineral processing. In practice, as discussed below, only the first two criteria were applied to mineral industry operations to produce a tentative list of the wastes that will remain within the exclusion; others may be added pending receipt and evaluation of additional information.

A. Criteria for Identifying Wastes From Ore and Mineral Processing

To determine the proper scope of operations that generate ore and mineral processing wastes, the Agency consulted various sources (e.g., mining dictionaries, various U.S. Bureau of Mines publications, mining handbooks), and was unable to find any standard, accepted definitions, or "plain meanings" for the term "processing." Since EPA concluded that there is no plain meaning of the Bevill Amendment term "solid waste from the * * * processing of ores and minerals",[2] the Agency turned to the legislative history and the record of administrative decisions made by EPA in response to exclusion requests from various mineral industry facilities to determine the scope of ore and mineral processing operations (see the docket).

Based on a review of the information available in these sources, the Agency has interpreted the term "solid waste from the * * * processing of ores and minerals" as referring to solid wastes, including pollution control residuals, that are *uniquely* associated with

[2] The Court of Appeals agreed that "the words 'waste from * * * processing of ores and minerals' do not convey a self-evident, accepted meaning." 852 F.2d at 1327.

mineral industry operations [4] and that possess the following attributes:

(1) Follow beneficiation of an ore or mineral (if applicable);

(2) Serve to remove the desired product from an ore or mineral, or beneficiated ore or mineral;

(3) Use feedstock that is comprised of less than 50 percent scrap materials (i.e., at least 50 percent of the feedstock is an ore or mineral, or beneficiated ore or mineral);

(4) Produce either a final mineral product or an intermediate to the final mineral product; *and*

(5) Do not include operations that combine the product with another material that is not an ore or mineral, or beneficiated ore or mineral (e.g., alloying); fabrication (any sort of shaping that does not cause a change in chemical composition), except for casting or metal anodes and cathodes;[5] or other manufacturing activities.

EPA has chosen this definition of processing because it provides maximal flexibility in evaluating candidate waste streams, while at the same time eliminating prospective study of types of wastes that were clearly not envisioned by the Congress as being "special wastes."

Beneficiation operations, which often precede ore or mineral processing operations, include primarily, but not exclusively, physical operations (e.g., crushing, grinding, sorting, sizing, washing, flotation) that concentrate the valuable constituents from an ore or mineral in preparation for further refinement (e.g., smelting) [6], and so differ from processing operations. The solid wastes generated by these beneficiation operations are normally crushed or pulverized rock, or other earthen materials such as clays or sands.

The Agency considered several alternative definitions of ore and mineral processing that would result in a narrower interpretation of the term. For example, ore and mineral processing could be considered to end when metal is poured or the identity of the mineral is destroyed. Under such a construction, smelting would be considered a processing operation while refining would not. The Agency has not adopted this approach to defining processing because while such a definition is relatively easy to understand for metallic ores, in practice, it may be difficult to apply in many situations, such as in examining operations that use certain non-metallic ore and mineral feedstocks.

Alternatively, processing could be considered to refer only to operations that generate waste earthen materials, e.g., rock, sand, or clay. Under this definition, processing and beneficiation would be nearly synonymous terms, and no wastes from smelting and/or refining operations would be temporarily excluded from RCRA Subtitle C regulation. EPA chose not to employ this approach to defining the scope of ore and mineral processing operations because it would remove all smelter slags from the excluded waste category. The Agency believes that Congress, in adopting the Bevill Amendment, intended to include at least certain smelting slags within the excluded waste category, since many smelting slags tend to be generated in high volumes.[7]

Solid wastes that satisfy the above criteria, and therefore are excluded from Subtitle C regulation if they also satisfy the proposed "high volume" criteria described below, retain their temporary exclusion when treated prior to disposal if they continue to satisfy the criteria. Likewise, the residuals arising from treatment may also retain excluded status, but *only* as long as they continue to meet these criteria. For example, low volume sludges produced from treating temporarily excluded high volume aqueous wastes are *not* excluded from Subtitle C regulation by the Bevill Amendment.

EPA does not consider mixtures of excluded and other, non-excluded hazardous wastes to be excluded by the Bevill Amendment from regulation under Subtitle C of RCRA. If, for example, a listed hazardous waste is combined with an excluded solid waste from ore and mineral processing, the resulting mixture is a hazardous waste subject to the requirements of Subtitle C, unless and until the Agency "delists" it.[8] Similarly, if a "characteristic" hazardous waste is mixed with an excluded solid waste, the mixture is subject to the requirements of Subtitle C if it exhibits a hazardous characteristic (i.e., EP-toxicity, corrosivity, ignitability, or reactivity) (40 CFR 261.3(b)(3)).

B. Criteria for Identifying "High Volume" Wastes From Ore and Mineral Processing

In *EDF* v. *EPA*, the Court states that:

> Congress intended the term "processing" in the Bevill Amendment to include only those wastes from processing ores or minerals that meet the "special waste" criteria, that is, "*high volume*, low hazard" wastes. 852 F.2d at 1331–32 (emphasis added).

Given this directive, the requirements of the Bevill Amendment, and the legislative and regulatory history of the "special waste" issue, it is clear that EPA must unambiguously define criteria by which to distinguish "high volume" processing wastes. Accordingly, today's proposal describes the criteria that the Agency used to distinguish between high and low volume processing wastes, and provides a list of the wastes that, to the best of the Agency's current knowledge, meet the "high volume" criteria. In this way, EPA hopes to not only communicate to industry and the public which wastes it considers to be temporarily exempt from Subtitle C regulation, but also to allow members of the mineral processing industry to evaluate whether or not they may generate additional solid wastes that should be studied under RCRA section 8002(p) prior to a determination as to their regulatory status. Clearly, the application of the "high volume" criteria to specific wastes will depend not only on the specific elements of the criteria themselves but on the definition of "mineral processing" presented above.

Due to the extremely diverse nature of domestic mineral processing operations and their associated wastes, EPA has experienced considerable difficulty in the past in defining criteria that addressed all of the wastes envisioned by the Congress and by the Agency's original concept of "special wastes," while not concurrently including wastes that are not truly high volume and/or low hazard. When the Agency withdrew its proposed reinterpretation in 1986, it

[4] As EPA has previously explained, the mining and mineral processing waste exclusion does not apply to solid wastes such as "spent solvents, pesticide wastes, and discarded commercial chemical products that are not uniquely associated with * * * mining and allied processing operations." 45 FR 76619 (1980).

[5] In certain metallic ore processing operations, intermediate metal products must be poured, or cast, prior to further processing or shipping; the casting operation is both integral and necessary to the metal refining process, and generally precedes other processing (i.e., concentrating) operations.

[6] U.S. EPA. 1985. *Report to Congress on Wastes from the Extraction and Beneficiation of Metallic Ores, Phosphate Rock, Asbestos, Overburden from Uranium Mining, and Oil Shale*. Office of Solid Waste and Emergency Response. EPA/530-SW-033. Thrush, P.W. 1968. *A Dictionary of Mining, Minerals, and Related Terms*. Washington, DC U.S. Bureau of Mines, U.S. Dept. of the Interior.

[7] *See, e.g.*, 126 *Cong. Rec.* 3364 (1980) (remarks of Rep. Williams) (referring to the need to study copper smelting slags prior to regulation); S. Rep. No. 284, 98th Cong., 1st Sess. 28 (1983) (defining the scope of the 1980 amendment to include smelting slag).

[8] Unless the hazardous waste is listed only because it exhibits a hazardous characteristic, in that instance, the waste is not considered hazardous when and if it no longer exhibits any of the four characteristics of hazardous waste (40 CFR 261.3(a)(2)(ii)).

annul several issues that needed to be addressed in the development of a "high volume" criterion (51 FR 36233). These and other attendant issues are discussed below along with the "high volume" criteria that EPA has adopted for use in this rulemaking.

Because "high volume" has been so difficult to define, EPA developed an explicit analytical framework to evaluate candidate high volume wastes. In so doing, the Agency had to resolve a number of methodological issues. The following discussion of the high volume criteria addresses the following four primary methodological issues in sequence: (1) The appropriate degree of aggregation of waste streams, (2) the basis for quantitative analysis (plant-specific vs. industry-wide), (3) the units of measure, and (4) the types of other wastes to be used as the basis for comparison.

1. Degree of Aggregation of Waste Streams

EPA has evaluated three options for establishing the degree of aggregation to be used in analyzing the volumes of waste generated:

(1) Consider each waste stream individually;

(2) Aggregate waste streams within facility, i.e., conduct the analysis on a facility-wide basis; or

(3) Combine specific waste streams across mineral commodity sectors, according to similarities in feedstocks, production processes, physical/chemical characteristics, management practices, or other characteristics.

EPA has adopted the first option, deciding to evaluate waste streams individually, rather than in aggregate. For example, waste furnace brick from copper smelting/refining has been evaluated separately from other copper processing wastes such as slag and air pollution control dusts. Given the current level of available information, the Agency believes that this is the most clear and feasible approach.

Aggregating all wastes within a facility for purposes of analysis would ignore the obvious and significant differences in volume and potential hazard that exist between the diverse groups of waste streams produced at mineral processing facilities. Moreover, the discussion of "high volume" or "special" wastes in the RCRA statute, amendments, and in particular the legislative history tends to identify specific waste streams rather than generic or aggregated wastes generated by facilities or industries. In addition, where practical, EPA listings of hazardous wastes under Subtitle C tend to identify specific waste streams generated at particular types of facilities.

On the other hand, inter-industry similarities in production processes, waste characteristics, and waste management practices suggest that certain waste types might reasonably be combined across mineral commodity sectors (e.g., non-ferrous slags from copper, lead, and zinc smelting). Statutory directive and Congressional intent are not available for guidance in evaluating the appropriateness of this approach, though in its 1986 proposed reinterpretation of the Bevill exclusion, EPA explicitly placed "primary metal smelting slags" inside the narrowed Bevill boundaries (i.e., as a *group* rather than individually) (50 FR 40292). Although the Agency believes that combining wastes for purposes of analysis may in some cases be appropriate, it has not been able to develop a simple and non-arbitrary system for implementing this approach. Therefore, EPA has not combined waste streams to determine which should continue to receive the temporary Bevill exclusion.

2. Basis for Quantitative Analysis

In deciding upon the proper focal point for conducting its quantitative analysis to support a definition of "high volume" processing wastes, EPA considered three basic options:

(1) Develop and analyze a plant-specific measure of waste generation;

(2) Examine waste stream generation on an industry-wide basis; and

(3) Develop and utilize a combination of the first two alternatives.

EPA has chosen option 3, and has evaluated waste streams using both industry-wide and plant-specific perspectives. In making this decision, the Agency put primary emphasis on developing criteria that were unambiguous, could be easily interpreted by industry and the public, and yielded results that were consistent with previously published discussions concerning which mineral processing wastes are high volume and which are not. *See e.g.*, 43 FR 58946, 50 FR 40292.

The high-volume concept, as originally proposed by EPA in 1978, reflected the Agency's concern that certain wastes that were generated in very large quantities could not feasibly be managed in accordance with all of the technical standards of RCRA Subtitle C, especially because many of these wastes are managed on-site. When Congress incorporated the high-volume concept into the RCRA statute with the adoption of the Bevill Amendment, it echoed these concerns. *See, e.g.*, 128 *Cong. Rec.* 3364 (1980) (remarks of Rep. Williams). In particular, Congress directed EPA to study, under section 8002(p) of RCRA, these high volume wastes in depth in order to determine whether Subtitle C regulation would be appropriate.

In the 1985 proposed Bevill reinterpretation, the Agency relied primarily on total annual industry waste generation data to determine which waste streams would remain within the temporary exclusion. Use of this measure alone, however, fails to capture certain ore and mineral processing wastes that are not generated widely but are generated in large volumes at each plant. The operators of facilities that produce these wastes may face the same problems with respect to developing and implementing feasible waste management methods as operators in other industry sectors that generate (in aggregate) many millions of tons of waste annually. EPA believes that these facility operators should not be penalized solely because there are fewer plants in their particular ore and mineral processing industry sector than in others that may also generate one or more high volume wastes.

Therefore, EPA believes that it is appropriate to include a measure of typical waste generation at an individual plant (e.g., the mean or median level of waste generated per facility), in evaluating whether a particular waste stream is "high volume."

3. Units of Measure

An important issue related to the previous two involves the units of measure that are applied to mineral processing wastes and that serve as the basis of evaluation and comparison with other "high volume" wastes. Here EPA considered two basic approaches, one of which gives rise to several different potential options:

(1) Use total (absolute) quantity of waste generated annually (metric tons); and

(2) Develop and utilize ratios of *relative* waste volume generated to one or more measures of material handled, such as the ratio of waste quantity to the quantity of ore/mineral feedstock, or the ratio of waste quantity to the quantity of final product. One or some combination of these ratios could be used to compare each mineral processing waste with the others and with wastes generated in other industries.

EPA has chosen option 1, which is the simplest, and allows direct comparison with other waste streams, industry sectors, etc., and also facilitates subsequent examination of the technical feasibility of Subtitle C regulation (e.g., waste volume compared to available disposal capacity). In addition, this simple measure of waste quantity is easy to calculate and existing data allow it to be computed for potential "high volume" processing wastes.

Production levels, and hence, waste generation volumes, in the mineral processing industry, however, fluctuate considerably over time, due primarily to market conditions. Relying upon data from a single year or even several years in succession may therefore present an inaccurate view of likely waste generation rates in the future.

The second alternative, expressing waste generation as a ratio, provides a measure of the degree of concentration that occurs in the process that generates each waste, potentially providing EPA with an additional variable by which to compare and contrast candidate "high volume"processing wastes with the extraction and beneficiation wastes that are clearly within the Bevill exclusion, as well as other "special wastes." Existing data, however, are not adequate to compile candidate ratios for certain prominent large volume mineral processing waste streams.

Nonetheless, the Agency believes that the ratio concept has merit and would consider incorporating some form of ratio into the final rule. For example, EPA has examined several ratios, and has found that a ratio of waste to product of greater than 0.5 effectively distinguishes high volume from low volume processing wastes, based upon the limited data that are available, i.e., the same list of excluded processing wastes is obtained using this criterion as is obtained using the total volume and average volume criteria described below. Although EPA did not utilize this ratio in selecting wastes to be retained within the exclusion for today's proposal, the Agency seeks public comment on this approach and on an appropriate ratio.

4. Wastes To Be Utilized as the Basis for Comparison

EPA also considered several bases of comparison with which to evaluate potential high volume wastes. This issue is important because "high volume" is a relative term, having essentially no meaning when applied to anything in isolation. Again, several options are available for comparing different types of high volume and/or hazardous wastes with mineral processing wastes:

(1) Extraction and beneficiation wastes;

(2) Other special study wastes, e.g., oil and gas wastes;

(3) RCRA Subtitle C wastes; and

(4) Some combination of the previous three.

EPA selected option 4 to analyze and quantify the notion of "high volume." Specifically, EPA has compared and contrasted the wastes generated by mineral processing with those generated by the extraction and beneficiation of ores and minerals, and those from oil and gas production (i.e., other section 8002 wastes). See RCRA section 8002(m). In addition, the Agency has examined specific wastes currently regulated under Subtitle C to highlight the similarities and differences between those wastes and those addressed in this proposed rule. EPA believes that each of these three categories of wastes is relevant for purposes of comparison with mineral processing wastes, and that each comparison offers insight into the proper definition of the term "high volume."

Option 1 would compare each processing waste to the wastes that are (or were until studied) clearly and unambiguously within the Bevill exclusion, those from extraction and beneficiation of ores and minerals. EPA believes that this is a logical basis of comparison, and, accordingly, has examined the quantities of wastes generated by ore and mineral extraction and beneficiation and related them to the quantities of mineral processing wastes (see the docket for additional information).

The second option is to compare processing wastes with other special study wastes, such as those generated by oil and gas production. This is also a reasonable approach, given the special status of these wastes under RCRA, as amended. Moreover, oil and gas production is an *extractive* operation, in which a valuable natural resource is removed from its surroundings and collected for further refinement. As such, it has a number of obvious similarities with the extraction (mining) and subsequent beneficiation and processing of ores and minerals.

The third alternative would compare processing wastes with the existing universe of Subtitle C wastes. Although such a comparison is not directly related to the question at hand (because of the different regulatory environment afforded to "special" wastes under the Bevill Amendment), it could yield an interesting comparison between the wastes to which Subtitle C is applied and those for which Subtitle C is an option. Comparisons of this type, however, are problematic, both in theoretical and practical terms. One important question is how to define the universe of Subtitle C wastes to be used for comparative purposes. Alternatives include examining all Subtitle C wastes, those that closely resemble mineral processing wastes with respect to physical form and chemical composition, those that are managed in ways similar to the common practices employed in the mineral processing industry, and doubtless, others. In practical terms, EPA is limited by data availability, and can only examine waste generation and management at Subtitle C facilities in fairly broad terms. Therefore, EPA has conducted only limited quantitative comparisons of listed Subtitle C wastes with the special wastes. These comparisons are not exhaustive, but demonstrate clearly that typical Subtitle C waste volumes are very different than those of many mineral processing wastes.

For example, EPA has assembled data on the generation of the top nine listed Subtitle C wastes on an aggregate national basis. These data are presented in Table 2. The largest-volume waste is spent pickle liquor from steel finishing, at just over four million metric tons per year. None of the other listed wastes (of which there are *several hundred*) is generated in volumes exceeding one million metric tons per year. As discussed below, this latter generation rate is *one-half* the quantitative total volume criterion used by EPA to designate high-volume processing wastes. Indeed, ten distinct mineral processing waste streams are generated in quantities exceeding one million metric tons per year, and some are generated at rates many times that. This indicates that at least some ore and mineral processing wastes are generated on a very different scale than are typical listed Subtitle C wastes.

TABLE 2.—TOP NINE LISTED HAZARDOUS WASTES (1985 DATA) [a]

Hazardous Waste		Quantity of hazardous waste generated (1,000 MT/yr)
Code	Description	
K062	Spent pickle liquor from steel finishing.	4,070
K061	Emission control dust/sludge from primary steel production in electric furnaces.	914
K104	Combined wastewater streams from nitrobenzene/aniline production.	601
K013	Bottom stream from the acetonitrile column in acrylonitrile production.	197
K048	Dissolved air flotation (DAF) from the petroleum refining industry.	177

TABLE 2.—TOP NINE LISTED HAZARDOUS WASTES (1985 DATA)[9]—Continued

Hazardous Waste		Quantity of hazardous waste generated (1,000 MT/yr)
Code	Description	
K051	API separator sludge from the petroleum refining industry.	[10] 700
K011	Bottom stream from the wastewater stripper in acrylonitrile production.	[illegible]
K087	Decanter tank tar sludge from coking operations.	576
[illegible]	Heavy ends or distillation residues from carbon tetrachloride production.	414
Total U.S.		245,129

[9] Source: Development Planning and Research Associates, Inc. 1988. *1985 National Biennial Report of Hazardous Waste Generators and Treatment, Storage, and Disposal Facilities Regulated under RCRA (Draft).* Prepared for Office of Solid Waste, U.S. EPA.

[10] Source: *Petroleum Refining Database*, 1987. Prepared from RCRA section 3007 questionnaires by Office of Solid Waste, U.S. EPA.

Moreover, when EPA examined the latest available data on the quantities of hazardous waste managed on-site at RCRA-regulated facilities, it found that only 180 facilities managing hazardous wastes on-site (well under ten percent of the total) handled more than 50,000 metric tons during this same period (as described below, 50,000 metric tons per year per facility is the other high volume cut-off that EPA has employed to identify high-volume processing wastes). These quantities refer to *combined* volumes of all hazardous wastes generated and managed on-site at the facilities (most of which are in the chemical and oil refining industries), and are probably dominated by relatively dilute aqueous waste streams. Most of the mineral processing waste streams proposed for retention within the Bevill exclusion today, however, are solid materials (e.g., slags), and in any case are evaluated individually rather than in aggregate at the facility level. Despite these factors, which tend to draw further distinctions between typical Subtitle C wastes and mineral processing wastes, any ore or mineral processing facility that generates and manages a waste on-site at a rate of greater than 50,000 metric tons per year would still be within the top ten percent of hazardous waste treatment, storage, or disposal (TSD) facilities nationwide in terms of volume of waste managed if the waste was to be regulated under Subtitle C.

5. Definition of High Volume Processing Waste

Based on a consideration of the factors outlined above, EPA decided that any waste generated from the processing of ores or minerals, as defined in Section II.A, above, that met either criterion 1 or criterion 2, below, would be designated a "high volume" processing waste:

(1) For a *specific* waste stream arising from mineral processing in any given mineral commodity sector (e.g., primary copper processing), the total quantity of the specific waste generated by all facilities in the United States in any one calendar year from 1982 through 1987 equals more than 2 million metric tons; or

(2) For a *specific* waste stream arising from mineral processing in any given mineral commodity sector, the specific waste stream is generated at an *average rate* (i.e., total quantity of the specific waste generated by all facilities in the United States in any one calendar year from 1982 through 1987 divided by the number of facilities generating the waste) of more than 50,000 metric tons per facility per year.

These criteria effectively and unambiguously distinguish the truly high volume ore and mineral processing wastes from those that are generated at lower rates, at least in those industry sectors for which EPA has adequate data to apply the criteria. As discussed below, the distribution of waste volumes within and across these sectors is essentially bimodal, with many sectors having one or a few high volume waste streams along with several other low volume waste streams. As a result, the criteria serve mainly to highlight these existing differences in volume rather than to draw arbitrary lines; changing either of the specific numeric criteria has little effect on which wastes are identified as being high volume. For example, lowering the total volume criterion from 2 million to 500,000 metric tons per year or raising it to 3 million metric tons per year would have *no* effect on the list of wastes proposed to be retained within the exclusion, while raising or lowering the average volume criterion by 10,000 metric tons per year per facility (a change of 20 percent) would affect the designation of, at most, *one* of approximately sixty waste streams examined in depth for today's proposal.

Further justification for setting a lower limit of 2 million metric tons per year on total waste generation volumes can be found in the lists of wastes that the Agency has considered to be "high volume" ever since the "special waste" concept was officially articulated in 1978. See 43 FR 58946. In addition, the wates from ore and mineral extraction and beneficiation, which are clearly within the exclusion, are generated by most commodity sectors at a rate of at least two million metric tons per year, as are the drilling wastes and produced waters from oil and gas production identified in section 8002(m) of RCRA.[11]

Therefore, under today's proposal, individual mineral processing waste streams that are generated in the aggregate in quantities exceeding 2 million metric tons per year shall be retained within the Bevill exclusion. These wastes will be studied by EPA to determine whether regulation under Subtitle C is warranted.

At the same time, as discussed above, EPA recognizes that some mineral commodity sectors may comprise very few facilities, and hence, generate lower total waste quantities than others whose wastes and waste management problems at the individual facility level are otherwise very similar. Therefore, the Agency has explicitly incorporated a consideration of typical (average) waste quantities generated at the plant level into its definition of "high volume." The limit used (50,000 metric tons per facility per year) does *not* retain within the exclusion the vast majority of mineral processing wastes, and in fact retains only those that are generated on a different and considerably larger scale than both the other processing wastes and typical Subtitle C wastes, as discussed above. Here again, the limit that EPA uses approximates the lower end of the range of average waste quantities generated in mineral extraction and beneficiation [12] (oil and gas waste data are available only on a per-well basis and hence are not useful in establishing a quantitative limit for this criterion).

C. Criteria for Identifying "Low Hazard" Wastes from Ore and Mineral Processing

Based on the court's findings in *EDF* v. *EPA*, an ore or mineral processing waste must be a "special waste", that is, a "high volume, low hazard" waste, in order for it to be temporarily excluded from RCRA Subtitle C regulation by the Bevill Amendment. To determine whether a processing waste is of "low hazard", EPA began with three principles:

[11] U.S. EPA. 1986. *Op. cit.*

U.S. EPA. 1987. *Report to Congress on Management of Wastes from the Exploration, Development, and Production of Crude Oil, Natural Gas, and Geothermal Energy; vol 1: Oil and Gas.* Washington: Office of Solid Waste and Emergency Response. EPA/530-SW-88-003.

[12] U.S. EPA. 1986. *Op. cit.*

(1) The purpose of a "low hazard" criterion is to assist in identifying the wastes that EPA is required by the Bevill Amendment to study so that actual hazard can be assessed;

(2) The "low hazard" criterion must be consistent with Congressional intent; and

(3) The "low hazard" criterion must be easily applied to the universe of high volume processing wastes using existing or easily obtainable information.

EPA considered two approaches to identifying "high volume" ore and mineral processing wastes that are "low hazard," and thus, should be temporarily excluded from Subtitle C regulation by the Bevill Amendment, as follows:

(1) Define excluded waste as any "high volume" processing waste that does not exhibit any of the characteristics of hazardous waste as defined in RCRA Subtitle C (EP-toxicity, corrosivity, reactivity, or ignitability);

[illegible]

(2) Eliminate this criterion, and consider all "high volume" processing wastes to be temporarily excluded from Subtitle C regulation.

Today's proposal is based on the second approach listed above, i.e., EPA considers all wastes that meet the proposed "high volume" and "processing" waste criteria to be "special wastes" and thus, *temporarily* excluded from RCRA Subtitle C regulation by the Bevill Amendment. EPA takes this position because the Agency believes that the alternative approach is inappropriate as a basis for *screening* high volume wastes to determine the need for study in a Report to Congress. Moreover, option 1 is impractical because the data needed to implement it would not be available until detailed studies, such as those that would support the Report to Congress, have been conducted.

EPA believes that it would be inappropriate to use the existing hazardous waste characteristics as a basis for determining which high-volume processing wastes are "low hazard." When EPA promulgated hazardous waste regulations on May 19, 1980, that deleted the "special waste" category proposed in 1978, the Agency indicated that a "special waste" category was no longer necessary because the originally proposed EP-toxicity and corrosivity characteristics for defining hazardous waste had been more narrowly defined, thus eliminating prospective Subtitle C regulation of most previously identified "special wastes." See 45 FR 33175.

When Congress adopted the Bevill Amendment, it instructed EPA to study wastes from the extraction, beneficiation, and processing of ores and minerals, prior to subjecting them to Subtitle C regulation; some of these wastes exhibit hazardous characteristics and would therefore fall under Subtitle C in the absence of the Bevill exclusion. Indeed, several of the extraction and beneficiation wastes already studied by EPA under sections 8002 (f) and (p) of RCRA fail one or more of the RCRA hazardous characteristics. Yet, EPA determined to not regulate any of these studied wastes under Subtitle C. On the same day that the Court of Appeals ordered EPA to propose today's rule, it upheld the Agency's regulatory determination for extraction and beneficiation wastes, explicitly rejecting the argument that if a waste fails a characteristic then it must be regulated under Subtitle C, and accepting EPA's contention that other factors can be considered in determining whether a high-volume mining waste should be permanently excluded from Subtitle C regulation. *Environmental Defense Fund* v. *EPA*, 852 F.2d 1309 (D.C. Cir. 1988). EPA believes that the Court would also recognize that the characteristic tests should not be the primary factors in determining whether a mineral processing waste is to be afforded the temporary exclusion provided by the Bevill Amendment.

In addition to examining Congressional intent and recent Court decisions, the Agency also considered the practicality of using the hazardous waste "characteristics" for identifying "high volume" wastes that are not "low hazard." Specifically, EPA examined the data available on mineral processing wastes, and concluded that the necessary data on waste characteristics are only rarely available, and, where available, are highly variable. Extensive study by EPA would therefore be necessary before the Agency could apply these criteria to the high-volume processing wastes. Accordingly, the Agency also concluded that the implementation of a "low hazard" criterion based on RCRA Subtitle C hazardous waste "characteristics" would not be feasible.

EPA also briefly considered developing a substitute test for determining whether large-volume processing wastes are low hazard. However, EPA does not have an appropriate alternative test currently in place. Further, EPA has even fewer data to characterize the hazards of large-volume processing wastes using alternate tests. In light of the very short time granted by the Court of Appeals to propose this reinterpretation, EPA found it infeasible to develop an alternate test and collect the necessary data.

For the reasons stated above, EPA believes that it is both necessary and appropriate that the emphasis in defining mineral processing wastes that are temporarily excluded from Subtitle C regulation by the Bevill Amendment be on the volume of waste generated. This is the same conclusion that EPA reached in 1985 when the Agency proposed to reinterpret the scope of the Bevill Amendment and stated that:

> Based on the various indications of Congressional intent described in the text, EPA believes it is reasonable to rely primarily on volumes of waste generated to determine which wastes should have been excluded by the Bevill Amendment (50 FR 49229).

D. Proposed Bevill-Excluded Processing Wastes

Based upon available data, EPA proposes to retain the wastes presented in Table 3, below, within the Bevill exclusion, because they meet the criteria for "special" mineral processing wastes articulated in this proposal. The Agency encourages members of industry and the public to submit, in public comment, descriptions of and quantitative data regarding any *additional* specific waste streams that they believe meet these criteria for study by EPA prior to the final resolution of their regulatory status.

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TABLE 3.—SPECIAL WASTES GENERATED FROM MINERAL PROCESSING THAT ARE PROPOSED FOR RETENTION WITHIN THE BEVILL EXCLUSION

Commodity sector and waste type	Number of facilities	Total estimated industry-wide waste generation (MT/yr) [a]	Average waste generation per facility (MT/yr) [b]
Copper: [c]			
[illegible] Slag	8	3,662,080	456,510
Process Wastewater	10	530,500	53,050
Acid Plant [illegible]	7	4,398,710	628,530
[illegible] Electrolyte	7	444,600	63,514
Lead: [c] Smelting Slag	5	328,620	65,725
Zinc: [c]			
Process Wastewater	2	1,451,000	725,500
Acid Plant [illegible]	4	306,800	76,450
[illegible]: [c] Retort and Brown Muds	4	2,697,000	674,250
Titanium: [c]			
[illegible]	27	47,000,000	1,740,741
Elemental Phosphorous Slag	5	[illegible]	[illegible]
Iron Blast Furnace Slag	24	[illegible]	[illegible]
Iron Blast Furnace APC Dust/Sludge	24	[illegible]	[illegible]
Lime Kiln APC Dust	117	[illegible]	[illegible]
Waste Acids from Titanium Dioxide Production [d]	8	1,375,000	171,825
Chromite Ore Roasting/Leaching Slag [e]	2	[illegible]	>50,000

[a] Total Estimated Industry-Wide Waste Generation=(Facility Capacity) * (Projected Average Long-term Utilization) * (Generation Rate). Source: EPA estimates based on data provided by the U.S. Bureau of Mines, PEDCo Environmental Incorporated, Radian Incorporated, and individual facility operators.

[b] Average Waste Generation per Facility=(Total Estimated Industry-Wide Waste Generation)/(Number of Facilities).

[c] Detailed data are available on wastes in these commodity sectors because EPA was about to complete and submit a required Report to Congress addressing their management when today's proposed rule was mandated by the Court. Data on the other wastes remaining within the exclusion are far more [illegible].

[d] Industry-wide waste totals were obtained from a prior proposed rulemaking (50 FR 40282). Number of facilities generating each waste were obtained from the Bureau of Mines (personal communication, 1988).

[e] Data on waste generation rates were obtained from PEI Associates, Inc., 1984. *Overview of Solid Waste Generation, Management, and Chemical Characteristics: Primary Antimony, Magnesium, Tin, and Titanium Smelting and Refining Industries.* Prepared for Industrial Environmental Research Laboratory, Office of Research and Development, U.S. EPA.

[f] Total waste generation data are unavailable. Average waste generation is believed to be greater than 50,000 MT/yr. based upon production volumes and quantities of feedstocks consumed.

Most mineral processing wastes on which the Agency has information do not conform to the "high volume" criteria used to compile the list presented in Table 3. This includes most that has been proposed for study under the Bevill Amendment in public comment on the 1985 proposed reinterpretation. In addition, none of the six smelting wastes that were recently relisted as hazardous wastes satisfy the high volume criteria described here. Within the five metallic ore processing sectors that have been most extensively studied by EPA (aluminum, bauxite, copper, lead, and zinc), the range of total sector-wide volumes of waste streams that are not retained within the proposed exclusion is very broad, from 100 to 228,000 metric tons per year, though the upper end of this range is a full order of magnitude lower than the cutoff for meeting the high volume criterion. Average generation rates at individual plants range from 20 to 38,000 metric tons per year. Only one waste stream (wastewater treatment plant sludge in the copper sector) is generated in volumes that approach the limit necessary to remain within the exclusion (average of 50,000 MT/Yr).

All other waste streams arising from these five metal processing sectors are generated at an average of less than 10,000 metric tons per year, and most are generated in the *hundreds* of tons per facility per year.

Therefore, EPA believes that it has correctly and unambiguously identified the wastes that were of concern to Congress when it enacted the Bevill amendment, and has, at the same time, presented explicit criteria that will enable members of the regulated community and the public to evaluate whether any additional wastes should be added to the list in Table 3 for the continued regulatory exclusion and study provided by the Bevill amendment. The Agency has identified and proposed for temporary exclusion *all* of the wastes from ore and mineral processing that, according to available data, meet these criteria. In the absence of new information submitted during the public comment period, EPA does *not* anticipate that additional wastes will be proposed for exclusion under the Bevill Amendment when this proposed rule is *finalized* on February 15, 1989. Accordingly, EPA hereby solicits public comment (and supporting data) on the approach described in this proposal, on the specific numerical criteria, on the specific waste streams proposed for continued exclusion from Subtitle C under Bevill, and on any *additional* candidate Bevill wastes. EPA will address all major comments received during the 30-day comment period prior to finalizing the rule.

III. Regulatory Impacts on This Proposal

When this rule is promulgated in final form, mineral processing wastes that have been temporarily excluded from regulation under Subtitle C of RCRA since 1980 and that do not meet the criteria for "special wastes," as described above, may now be subject to Subtitle C requirements beginning, at the latest, six months after publication of the final rule in those states that do not have authorization to administer their own hazardous waste program in lieu of EPA (see RCRA section 3010). These requirements include determining whether the solid waste(s) exhibit hazardous characteristics (40 CFR 262.11), and, if so would require the operator to obtain an EPA identification number (40 CFR 262.34), comply with recordkeeping and reporting requirements (40 CFR 262.40–262.43), and submit an application for a treatment, storage, or disposal permit (RCRA section 3005 "Part A" permit) for interim status if the waste is managed onsite.

Subsequently, these treatment, storage, or disposal (TSD) facilities would have to apply for a final permit under RCRA Part B provisions. Completion of Part B applications would require individual facilities to develop and compile information on their on-site waste management operations including, but not limited to the following activities: Ground-water monitoring (if waste management on land is involved); manifest systems, recordkeeping, and reporting; closure, and possibly, post-closure requirements; and financial responsibility requirements. The Part B applications may also require development of engineering plans to upgrade existing facilities.

In addition, many of these facilities will, in the future, be subject to land disposal restriction (LDR) standards. EPA will promulgate LDR standards for all characteristic hazardous wastes by May 8, 1990. Under EPA regulations, these standards must require treatment of the affected wastes to a level or by a method that reflects the use of Best Demonstrated Available Technology (BDAT) before the wastes can be disposed on the land. Thus, one future implication of today's proposal (when finalized) will be the ban on land disposal of these wastes unless they are appropriately treated prior to such disposal. Also, facilities with existing permits and permit applications that are currently treating, storing, or disposing of wastes that will be subject to Subtitle C regulation when this rule is promulgated, will have to amend or modify their permits or applications to include provisions applicable to managing these newly non-excluded wastes.

IV. Public Participation

Requests to speak at the public hearing should be submitted in writing to the Public Hearing Officer, Office of Solid Waste, (WH–562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The public hearing is at the U.S. Environmental Protection Agency, Conference Room 13, 401 M Street SW., Washington, DC. The hearing will begin at 10:00 a.m. with registration beginning at 9:30 a.m. The hearing will end at noon unless concluded earlier. Oral and written statements may be submitted at the public hearing. Persons who wish to make oral presentations must restrict these to 15 minutes, and are requested to provide written comments for inclusion in the official record.

V. Effect on State Authorizations

This proposal, if promulgated, will not be automatically effective in authorized States, since the requirements will not be imposed pursuant to the Hazardous and Solid Waste Amendments of 1984. Thus, this reinterpretation will be immediately applicable only in those few States that do *not* have interim or final authorization to operate their own hazardous waste programs in lieu of the Federal program. In authorized States, the reinterpretation and the regulation of non-excluded processing wastes will not be applicable until the State revises its program to adopt equivalent requirements under State law.

40 CFR 271.21(e) requires States that have final authorization to revise their programs to adopt equivalent standards by July 1, 1990 if only regulatory changes are necessary, or by July 1, 1991 if statutory changes are necessary. These deadlines can be extended in exceptional cases (40 CFR 271.21(e)(3)). Once EPA approves the revision, the State requirements become Subtitle C RCRA requirements in that State.

States that submit an official application for final authorization less than 12 months after the effective date of the reinterpretation may be approved without including an equivalent provision (i.e., to address "special" mineral processing wastes) in the application. However, once authorized, a State must revise its program to include an equivalent provision within the time period discussed above. The process and schedule for revisions to State programs are described in the amendment to 40 CFR 271.21 published on May 22, 1984. See 49 FR 21768. (See also 51 FR 33722, Sept. 22, 1986.)

VI. Compliance With Executive Order 12291

Sections 2 and 3 of Executive Order 12291 (46 FR 13193) require that a regulatory agency determine whether a new regulation will be "major" and, if so, that a Regulatory Impact Analysis be conducted. A major rule is defined as a regulation which is likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individuals, industries, Federal, State, and local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Section 8 of Executive Order 12291 exempts an agency from the requirements of the order when compliance would conflict with deadlines imposed by statute or judicial order. Accumulating the information and conducting the analyses required to fully comply with the requirements of sections 2 and 3 takes many months. Therefore, compliance with these requirements is not possible within the schedule specified by the Court for this rulemaking.

Although the Agency cannot conduct a complete economic impact analysis within the period of time allowed by the Court, several economic impact analyses conducted in support of previous Agency rulemaking activity suggest that today's proposal does not meet the criteria for a "major" rule.

In 1985, EPA conducted cost and economic impact studies to analyze the potential cost and market impacts of the proposed reinterpretation of the Bevill Amendment on metal processing sectors and to evaluate possible impacts on small businesses. These studies involved detailed compliance cost and economic impact analyses for ten major primary metal smelting and refining sectors, and less detailed impact screening analyses for 21 other metals sectors,[13] containing a total of 110 operating facilities that produced 97 percent of total U.S. nonferrous and ferroalloy product tonnage in 1983. The ten major sectors were aluminum, copper, lead, zinc, ferroalloys, magnesium, titanium metal, titanium dioxide, zinc oxide, and zirconium/hafnium. EPA determined that the 1985 proposed reinterpretation would impose annual compliance costs of approximately $20 million on these ten sectors, and therefore would not constitute a "major" rule. The 1985 studies did not address risk to human health and the environment posed by the wastes generated and the waste management practices employed in these commodity sectors.

In the preamble to the 1985 reinterpretation, EPA also discussed

[13] Policy Planning & Evaluation, Inc. 1985. *Economic Impact Analysis of Proposed Reinterpretation of Solid Waste Exemption for the Primary Smelting and Refining Industry.* Office of Solid Waste, U.S. EPA.

Policy Planning & Evaluation, Inc. 1985. *Economic Impact Analysis of Proposed Reinterpretation of Solid Waste Exemption for the Primary Smelting and Refining Industry (Supplemental Analysis of 21 Minor Metals Industries).* Office of Solid Waste, U.S. EPA.

ICF Incorporated. 1985. *Hazardous Waste Management Costs in Selected Primary Smelting and Refining Industries.* Office of Solid Waste, U.S. EPA.

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economic impacts on the ten major nonferrous metal- and ferroalloy-producing sectors, including effects on production costs, prices, international trade, total investment requirements, return on investment, and potential for plant closures and job losses. See 50 FR 40299. The analysis indicated that the average increases in production costs or prices would be small to moderate (less than two percent) for nine of the ten sectors. On average across all ten sectors, the annualized costs of the 1985 proposed reinterpretation amounted to less than 0.4 percent of production costs or prices. Because of these very limited effects on prices, the study did not explore the possible effects of the proposed rule on international trade.

To examine effects on investment, EPA estimated average capital investment costs of compliance as a percent of normal capital expenditures, and found that this ratio ranged from one-percent (in aluminum and copper sectors) to 75 percent (in the zinc sector). The effect of today's rule would be significantly lower for the zinc sector than that of the 1985 proposed reinterpretation because acid plant blowdown and process wastewater (which were not proposed for continued exclusion in 1985) accounted for a large part of the estimated Subtitle C compliance costs of the 1985 proposal.

The results for return on investment showed a majority of sectors with maximum impacts on profit of about two percent. Firms in the zinc, ferroalloys, and titanium dioxide sectors, however, would have experienced larger changes in return on investment had the 1985 proposed reinterpretation been promulgated. Both the zinc and titanium dioxide sectors generate high volume waste streams (accounting for a significant fraction of any incremental RCRA waste management costs) that would be temporarily exempted from Subtitle C regulation as a result of today's proposed rule. Finally, EPA's plant closure and employment loss analysis indicated that the 1985 proposed reinterpretation might result in the closure of one plant (in the ferroalloys sector) and the concomitant loss of approximately 80 jobs.

In 1988, in response to comments regarding the 1985 impact studies, EPA made extensive revisions to its 1985 cost and impact estimates for the major primary metals sectors. Although the revisions resulted in increases in the estimated costs for most sectors, total after tax compliance costs for the facilities in aggregate were around $25 million, still well below the $100 million annual cost threshold. Accordingly, the Agency considered its initial judgment, that the 1985 proposed reinterpretation was not a major rule, validated.

There are a number of differences between the 1985 proposed reinterpretation and today's proposed rule. In 1985, the only processing wastes that would have been temporarily excluded from Subtitle C regulation under the provisions of the Bevill Amendment were phosphogypsum, bauxite refining muds, primary metal smelting slags, and slag from elemental phosphorous reduction. Today's notice establishes an expanded list of the wastes that would remain within the exclusion as special wastes. Waste streams that were included in the 1985 cost and impact estimates in 1985 but that would be excluded under today's proposal include process wastewater from primary copper smelting/refining, bleed electrolyte from primary copper refining, blowdown from acid plants at primary copper smelters, blowdown from acid plants at primary zinc smelters, wastewater from primary zinc smelting, and waste acids from titanium dioxide production. These additional proposed exclusions from immediate Subtitle C regulation imply substantial reductions in costs and economic impacts from those estimated for the 1985 reinterpretation.

In 1988, EPA analyzed in depth the five major smelting and refining sectors that accounted for approximately 80 percent of total 1985 nonferrous metal production. These sectors comprise the aluminum, bauxite, copper, lead, and zinc processing industries. The 1988 estimates represent the most recent and reliable assessment of the costs and economic impacts of Subtitle C compliance for these sectors, after factoring out the effects of the listing of the six hazardous smelter wastes and of the high volume wastes identified above, which will be subject to further study and regulatory consideration.

Based on this 1988 analysis, EPA estimates that the five major metal commodity sectors would incur before-tax incremental annual costs for Subtitle C compliance of about $11 million under today's proposal. The annual revenue requirements by sector and the number of affected facilities are displayed in Table 4. In total, the Agency estimates that the incremental compliance cost is a less than 10 percent increase over the current costs of waste management, and only 33 of 57 operating facilities would experience increased waste management costs of any kind.

TABLE 4.—COST IMPACTS OF TODAY'S PROPOSAL ON FIVE MAJOR METALLIC ORE PROCESSING SECTORS

Sector	Number of facilities	Number of affected facilities	Quantities of potentially hazardous wastes (MT/yr.)	Incremental annual revenue requirement ($1,000/yr.)	Percent of total incremental management costs
Copper					
Electrowinning	15	0	0	0	0
Smelting and/or Refining	12	4	157,460	2,003	11
Zinc	5	4	94,712	5,645	16
Lead	5	4	12,760	1,119	11
Aluminum	24	21	110,246	2,574	9
Bauxite	4	0	0	0	0
Total	57	33	375,218	11,142	10

Although EPA has not updated its analyses for the remaining sectors of the metals industry, the Agency believes that the impacts in these sectors will be roughly proportional to those predicted for the five major sectors.

In terms of economic impact, in 1988 the Agency calculated two financial ratios for the five major nonferrous metal-producing industry sectors. These ratios are: Annual revenue requirement (incremental compliance cost) as a percentage of value of shipments, and new capital investment needed for regulatory compliance as a percentage of average annual investment.

The first ratio measures the maximum potential price rise if the industry is able to pass all increased costs through to consumers or the maximum amount by which before-tax profits will decline if no costs can be recovered by increasing prices. The second ratio allows a comparison between new capital required and the amount of new investment that the industry historically undertakes.

The results are presented in Table 5 and indicate that for the five industry sectors the incremental annual revenue requirements would average 0.1 percent of the value of shipments. The only industry with a ratio greater than one percent is the zinc sector with a ratio of 1.7 percent. The average compliance capital cost would average 0.1 percent of historical capital investment across all five sectors, indicating a negligible effect on the firms' capital investment decisions. The potential impacts on several of the remaining 21 metals sectors, however, is unclear because EPA does not have sufficient data to undertake a detailed analysis.

TABLE 5.—ECONOMIC IMPACTS OF TODAY'S PROPOSAL ON FIVE MAJOR METALLIC ORE PROCESSING SECTORS

Sector	Incremental Annual Cost ($1,000/yr.)	Total Incremental Capital Cost ($1,000)	Ratio of Incremental ATR to Value of Shipments	Ratio of Incremental Capital Cost to new Investment
Copper	[illegible]	[illegible]	[illegible]	0.02
Zinc	5,645	22,212	1.72	[illegible]
Lead	219	1,105	[illegible]	[illegible]
Aluminum	2,574	6,881	0.05	0.05
Bauxite	[illegible]	[illegible]	[illegible]	[illegible]
Total	11,142	38,151	[illegible]	[illegible]

The costs and impacts that EPA has estimated to date have not included considerations of the possible effects of the land disposal restrictions and corrective action requirements contained in the provisions of the Hazardous and Solid Waste Amendments (HSWA) of 1984.

In addition, EPA has little or no data on the non-metallic ore and mineral processing sectors, such as elemental phosphorous production, some of which generate wastes that would be temporarily excluded from Subtitle C under today's proposed rule. At the same time, many of these facilities also generate small volume wastes that would be affected by the proposal. Therefore, the Agency is unable to assess the impact of today's proposal on facilities and firms in the non-metallic ore and mineral processing industry sectors, and hereby requests public comment on any such sectors that might be affected by this proposal because they generate low volume, characteristic hazardous wastes.

This proposal was submitted to the Office of Management and Budget (OMB) for review as required by section 6 of Executive Order 12291. Any comments for OMB to EPA and any response to those comments are available for viewing at the RCRA Docket.

VII. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) of 1980 (Pub. L. 96-354), which amends the Administrative Procedures Act, requires Federal regulatory agencies to consider "small entities" throughout the regulatory process. The RFA requires, in Section 603, an initial screening analysis to be performed to determine whether a substantial number of small entities will be significantly affected by a regulation. If so, regulatory alternatives that eliminate or mitigate the impacts must be considered.

Section 608 of the Act allows an Agency head to waive or delay completion of the screening analysis in response to an emergency that makes compliance with the requirements of section 603 on a timely basis impracticable. In this instance, the court-imposed deadline for publication of this proposed rule prevents EPA from conducting a complete analysis of potential impacts of the rule on small entities in time to support this proposed rule. The Agency did, however, conduct a detailed screening analysis for all nonferrous smelting and refining and ferroalloy-producing facilities as part of the 1985 proposal to reinterpret the mining waste exclusion. Based on that analysis, the Agency determined that small business ownership (as defined by the Small Business Administration) was rare in metals processing, and further, that in those few sectors (ferroalloys, gold and silver refining) in which facilities were not all owned by large businesses or conglomerates, the small enterprises were generally of a type that would be either unaffected or not significantly affected by the proposed reinterpretation (50 FR 40300).

EPA has not studied enterprise ownership patterns or the potential cost impacts of today's rule for the non-metallic ore and mineral processing sectors. Nevertheless, based on general knowledge of the raw material processing industries, the Agency believes that the general conclusions reached for the metals sectors should apply also to the non-metals sectors and that there would not be impacts on a substantial number of small business enterprises sufficient to warrant additional application of the Regulatory Flexibility Act. The Agency solicits comment and further information relating to this conclusion.

List of Subjects in 40 CFR Part 261

Hazardous waste, Waste treatment and disposal, Recyling, Reporting and recordkeeping requirements.

Dated: October 14, 1988.

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, it is proposed to amend Title 40 of the Code of Federal Regulations as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTES

1. The authority citation for Part 261 continues to read as follows:

Authority: Sections 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. Section 261.4, paragraph (b)(7), is revised to read as follows:

§ 261.4 Exclusions.

* * * * *

(b) * * *

(7) Solid waste from the extraction, beneficiation, and processing of ores and minerals (including coal), including

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phosphate rock and overburden from the mining of uranium ore. For purposes of this paragraph, solid waste from the processing of ores and minerals includes only the following materials:

(i) Slag from primary copper smelting;

(ii) Process wastewater from primary copper smelting/refining;

(iii) Blowdown from acid plants at primary copper smelters;

(iv) Bleed electrolyte from primary copper refining;

(v) Slag from primary lead smelting;

(vi) Blowdown from acid plants at primary zinc smelters;

(vii) Process wastewater from primary zinc smelting/refining;

(viii) Red and brown muds from bauxite refining;

(ix) Phosphogypsum from phosphoric acid production;

(x) Slag from elemental phosphorous production;

(xi) Iron blast furnace slag;

(xii) Air pollution control dust/sludge from iron blast furnaces;

(xiii) Waste acids from titanium dioxide production;

(xiv) Air pollution control dust from lime kilns; and

(xv) Slag from roasting/leaching of chromite ore.

* * * * *

[FR Doc. 88-24346 Filed 10-19-88; 8:51 am]
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federal register

Thursday
October 20, 1988

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 156

State Block Grant Pilot Program; Final Rule; Request for Comments

BEST COPY AVAILABLE

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 156

[Docket No. 25723; Amdt. No. 156-1]

State Block Grant Pilot Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This final rule sets forth regulations to implement the State block grant pilot program included in recent Congressional legislation. The regulations are intended to provide guidance to the States regarding the application process for, and administration of, the 2-year State block grant pilot program. The final rule is necessary in order to comply with the statutory provision that requires the Secretary of Transportation to promulgate regulations to implement the State block grant pilot program.

DATES: The final rule is effective on November 21, 1988. Comments must be received on or before November 21, 1988.

ADDRESS: Comments on this final rule may be delivered or mailed, in duplicate, to the Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 25723, 800 Independence Avenue SW., Room 915G, Washington, DC 20591. Comments submitted on these rules must be marked: Docket No. 25723. Comments may be inspected in Room 915G between 8:30 a.m. and 5:00 p.m. on weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mark Beisse, Office of Airport Planning and Programming, Grants-in-Aid Division, Program Guidance Branch (APP-510), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8828.

SUPPLEMENTARY INFORMATION:

Comments Invited

The regulations contained in this final rule implement the State block grant pilot program provided by Congress in the Airport and Airway Safety and Capacity Expansion Act of 1987. The regulations simply state the application requirements for the State block grant pilot program mandated by Congress that will result in block grants being awarded to three States. Therefore, the final rule is being adopted without notice and an opportunity for prior public comment. However, the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979) provide that, to the maximum extent possible, Department of Transportation (DOT) operating administrations should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, interested persons are invited to participate in the rulemaking by submitting any written data, views, or comments as they may desire. Comments must include the regulatory docket or amendment number identified in this final rule and be submitted in duplicate to the address above. All comments received will be available in the Rules Docket for examination by interested persons. The regulations may be changed in light of the comments received on this final rule.

Commenters who want the Federal Aviation Administration (FAA) to acknowledge receipt of comments submitted on this final rule must submit a preaddressed, stamped postcard with those comments on which the following statement is made: "Comments to Docket No. 25723." The postcard will be date stamped by the FAA and returned to the commenter. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Final Rule

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attn: Public Inquiry Center (APA-230), 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Requests must include the amendment number identified in this final rule. Persons interested in being placed on a mailing list for future rulemaking actions should request a copy of Advisory Circular 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

On December 30, 1987, Congress passed the Airport and Airway Safety and Capacity Expansion Act of 1987. Section 116 of that Act amended the Airport and Airway Improvement Act of 1982, by adding new section 534 entitled "State Block Grant Pilot Program" (49 U.S.C. App. 2227). That section states:

(a) Promulgation of Regulations; Effective Period.—Not later than 180 days after the date of the enactment of this section, the Secretary shall promulgate regulations to implement a State block grant pilot program to become effective on October 1, 1988. Such program shall not be effective after September 30, 1991.

(b) Assumption of Certain Responsibilities.—Such regulations shall provide that the Secretary may designate not more than 3 qualified States to assume administrative responsibility for all airport grant funding available under this title, other than funding which has been designated for use at primary airports.

(c) Selection of State Participants.—The Secretary shall select States for participation in such program on the basis of applications submitted to the Secretary. The Secretary shall select a State only if the Secretary determines that the State—

(1) has an agency or organization capable of administering effectively any block grant made under this section;

(2) uses a satisfactory airport system planning process;

(3) uses a programming process acceptable to the Secretary;

(4) has agreed to comply with Federal procedural and other standard requirements for administering any such block grant; and

(5) has agreed to provide the Secretary with such program information as the Secretary may require.

Before determining that any planning process is satisfactory or any programming process is acceptable, the Secretary shall ensure that such process provides for meeting critical safety and security needs and that the programming process ensures that the needs of the national airport system will be addressed in deciding to which project funds will be provided.

(d) Review and Report.—The Secretary shall conduct an on-going review of the program established under this section, and shall, not later than 90 days before its scheduled termination, report to Congress the results of such review, together with recommendations for further action relating to the program.

Pursuant to the Congressional legislation and applicable delegations of authority, three States selected by the Administrator will administer the Fiscal Year 1990 and 1991 airport grant programs, for nonprimary airports in those States. The three States will be responsible for project selection, administration, and compliance consistent with applicable Federal law. Due to the legislative requirement that the three States agree to comply with Federal procedural and other standard grant administrative requirements, the block grant agreement for the pilot program will contain appropriate grant assurances similar to those contained in the current grant agreements signed by airport sponsors who are awarded grants by the Administrator. The FAA will provide an application form and program guidance material to any State that submits a letter expressing interest in participating in the State block grant pilot program.

States that are selected by the Administrator to participate in the block grant pilot program must comply with the statutory and regulatory requirements that currently govern airport grant programs. These requirements will be specified in the block grant agreements. Pursuant to Congressional mandate contained in the legislation, the three States selected by the Administrator will assume administrative responsibility, currently exercised by the FAA, for all grant funding available under the legislative amendment and annual appropriation Acts at nonprimary airports within the State. Nonprimary are those airports enplaning 10,000 or fewer passengers annually. Similarly, the legislative amendment requires that the three States agree to comply with Federal procedural and other standard requirements in administering block grants. For example, States will be required to have an accounting system that accurately reflects expenditures of the State block grant. Likewise, the States must comply with the requirements of the National Environmental Policy Act.

Reason for No Notice

The regulations contained in this final rule are needed to implement the State block grant pilot program mandated by Congress in an amendment to the 1982 Act contained in the Airport and Airway Safety and Capacity Expansion Act of 1987. The regulations contained in this final rule merely implement a voluntary portion of the existing airport improvement grant program. In addition, the rules contained in this amendment are purely procedural regulations that govern the application process. For these reasons, notice and public comment procedures are unnecessary. In addition, publication of a notice for prior public comment on the final rule would not reasonably be anticipated to result in the receipt of useful information regarding the regulations because Congress dictated the method by which the Administrator shall determine which States are selected for the State block grant pilot program. In accordance with DOT Regulatory Policies and Procedures, an opportunity for public comment after publication of the final rule is being provided.

Economic Assessment

This final rule sets forth the application procedures that apply to the 2-year State block grant pilot program that is a part of the existing airport improvement grant program. Because of the procedural nature of the regulations, no economic impact is expected to result from the promulgation of the final rule. Accordingly, a full Regulatory Evaluation is not warranted and a regulatory evaluation has not been prepared prior to publication of this final rule. Because the final rule contains purely procedural regulations that only apply to the application process, the cost, if any, of complying with the final rule is minimal. Therefore, I certify that the final rule will not have a significant economic impact, positive or negative, on a substantial number of small entities as defined in the Regulatory Flexibility Act of 1980.

Reporting and Recordkeeping

The FAA anticipates that there will be no discernible reporting or recordkeeping impact resulting from implementation of the State block grant pilot program. It is difficult to estimate any impact on paperwork burdens because the three States will implement and administer the grant program and the disbursement of grant funds for certain airport projects. It is possible that overall paperwork burdens may be reduced in comparison to the paperwork burden associated with airport development projects administered by the FAA. However, any reduction in paperwork burden is wholly dependent on the efficiency of the method by which the States implement and administer the block grant program. Certainly, the FAA expects no increase in paperwork burdens since the FAA and the States will be using a similar mechanism to that which is currently used for airport development projects. In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), the FAA received approval of the reporting and recordkeeping requirements for the airport grants program on April 15, 1988 [Control No. 2120-0065]. The State block grant pilot program will not require amendment of Control No. 2120-0065.

Federalism Implications

The final rule contained herein would directly affect the States, would affect the relationship between the national government and the States, and would affect the distribution of power and responsibilities among the various levels of government. Pursuant to Congressional legislation, the three States selected by the Administrator would assume administrative responsibility for all airport funding for nonprimary airports awarded under the Airport and Airway Improvement Act of 1982. Traditionally, Congress has vested administrative responsibility for Federally-funded airport development in the Administrator, as delegated by the Secretary of Transportation. The three States selected for participation in the State block grant pilot program will have maximum administrative discretion to use monies awarded under this program, consistent with the legislative requirement to comply with applicable Federal procedural and other standard requirements for administering eligible projects at eligible airports. The Congressional legislation that creates the State block grant program specifies a termination date of September 30, 1991 and specifies criteria to be used by the Administrator in the selection of the three participating States. For these reasons, and the fact that participation by any State is not mandatory, the FAA believes that the participating States will have the ability to fulfill the purposes of the program without adverse effects on other State governmental functions. Thus, in accordance with Executive Order 12612, I certify that the regulations contained in this final rule have been assessed in light of, and are consistent with, the principles, criteria, and requirements of that Executive Order. However, the FAA does not believe that further analysis of the Federalism implications, and preparation of a Federalism Assessment, is warranted because the regulations implement an express Congressional mandate to initiate the limited State block grant pilot program.

Conclusion

Because the revisions contained in this final rule are expected to have minimal economic impact, the FAA has determined that the final rule is not a major regulation under Executive Order 12291. Also, this regulation is not considered to be significant under the DOT Regulatory Policies and Procedures. Since the cost of complying with these rules is minimal, I certify, under the criteria of the Regulatory Flexibility Act of 1980, that these rules will not have a significant economic impact, positive or negative, on a substantial number of small entities.

List of Subjects in 14 CFR Part 156

Airports, Airport funding, Airport improvement, Airport development, Block grants, Grant programs transportation.

The Amendment

Accordingly, the Federal Aviation Administration amends the Federal Aviation Regulations by adding a new Part 156 (14 CFR Part 156), effective November 21, 1988, to read as follows:

PART 156—STATE BLOCK GRANT PILOT PROGRAM

Sec.

156.1 Applicability.

156.2 Letters of interest.

Sec.
156.3 Application and grant process.
156.4 Airport and project eligibility.
156.5 Project cost allowability.
156.6 State program responsibilities.
156.7 Enforcement of State block grant agreements and other related grant assurances.

Authority: 49 U.S.C. App. 2201 (as amended, 49 U.S.C. App. 2227, Airport and Airway Safety and Capacity Expansion Act of 1987); 49 CFR 1.47 (f) and (k) (Regulations of the Office of the Secretary of Transportation).

PART 156—STATE BLOCK GRANT PILOT PROGRAM

§ 156.1 Applicability.

(a) This part applies to grant applicants for the State block grant pilot program and to those States receiving block grants available under the Airport and Airway Improvement Act of 1982, as amended.

(b) This part sets forth—

(1) The procedures by which a State may apply to participate in the State block grant pilot program;

(2) The program administration requirements for a participating State;

(3) The program responsibilities for a participating State; and

(4) The enforcement responsibilities of a participating State.

§ 156.2 Letters of interest.

(a) Any state that desires to participate in the State block grant pilot program shall submit a letter of interest, by November 30, 1988, to the Associate Administrator for Airports, Federal Aviation Administration, 800 Independence Avenue SW., Room 1000E, Washington, DC 20591.

(b) A State's letter of interest shall contain the name, title, address, and telephone number of the individual who will serve as the liaison with the Administrator regarding the State block grant pilot program.

(c) The FAA will provide an application form and program guidance material to each State that submits a letter of interest to the Associate Administrator for Airports.

§ 156.3 Application and grant process.

(a) A State desiring to participate shall submit a completed application to the Associate Administrator for Airports.

(b) After review of the applications submitted by the States, the Administrator shall select three States for participation in the State block grant pilot program.

(c) The Administrator shall issue a written grant offer that sets forth the terms and conditions of the State block grant agreement to each selected State.

(d) A State's participation in the State block grant pilot program begins when a State accepts the Administrator's written grant offer in writing and within any time limit specified by the Administrator. The State shall certify, in its written acceptance, that the acceptance complies with all applicable Federal and State law, that the acceptance constitutes a legal and binding obligation of the State, and that the State has the authority to carry out all the terms and conditions of the written grant offer.

§ 156.4 Airport and project eligibility.

(a) A participating State shall use monies distributed pursuant to a State block grant agreement for airport development and airport planning, for airport noise compatibility planning, or to carry out airport noise compatibility programs, in accordance with the Airport and Airway Improvement Act of 1982, as amended.

(b) A participating State shall administer the airport development and airport planning projects for airports within the State.

(c) A participating State shall not use any monies distributed pursuant to a State block grant agreement for integrated airport system planning, projects related to any primary airport, or any airports—

(1) Outside the State's boundaries; or

(2) Inside the State's boundaries that are not included in the National Plan of Integrated Airport Systems.

§ 156.5 Project cost allowability.

(a) A participating State shall not use State block grant funds for reimbursement of project costs that would not be eligible for reimbursement under a project grant administered by the FAA.

(b) A participating State shall not use State block grant funds for reimbursement or funding of administrative costs incurred by the State pursuant to the State block grant program.

§ 156.6 State program responsibilities.

(a) A participating State shall comply with the terms of the State block grant agreement.

(b) A participating State shall ensure that each person or entity, to which the State distributes funds received pursuant to the State block grant pilot program, complies with any terms that the State block grant agreement requires to be imposed on a recipient for airport projects funded pursuant to the State block grant pilot program.

(c) Unless otherwise agreed by a participating State and the Administrator in writing, a participating State shall not delegate or relinquish, either expressly or by implication, any State authority, rights, or power that would interfere with the State's ability to comply with the terms of a State block grant agreement.

§ 156.7 Enforcement of State block grant agreements and other related grant assurances.

The Administrator may take any action, pursuant to the authority of the Airport and Airway Improvement Act of 1982, as amended, to enforce the terms of a State block grant agreement including any terms imposed upon subsequent recipients of State block agreement funds.

Issued in Washington, DC on October 17, 1988.

T. Allan McArtor,

Administrator.

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H.R. 4637/Pub. L. 100-485

To amend the Job Training Partnership Act to make a technical change. (Oct. 17, 1988; 102 Stat. 2454; 1 page) Price: $1.00

S. 226/Pub. L. 100-496

Prompt Payment Act Amendments of 1988. (Oct. 17, 1988; 102 Stat. 2455; 12 pages) Price: $1.00

S. 555/Pub. L. 100-497

Indian Gaming Regulatory Act. (Oct. 17, 1988; 102 Stat. 2467; 22 pages) Price: $1.00

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Federal Register
Vol. 53, No. 204
Friday, October 21, 1988

Presidential Documents

Title 3—

The President

Proclamation 5883 of October 19, 1988

Drug-Free America Week, 1988

By the President of the United States of America

A Proclamation

The very concept of Drug-Free America Week, 1988, reminds us of how far we have advanced in our thinking and actions in the fight to stop illegal drugs. Most people now understand that illegal drug use brings illness, disability, and death. The illegal drug user costs our Nation billions of dollars in lost productivity each year, while undermining our economy and threatening our national security. Drugs ruin lives and destroy families and prey on our young people. Americans everywhere recognize the real and present danger of illegal drug use.

Most people also understand that illegal drug use is preventable—if we have the will and the moral courage to stand and be counted. Drug-Free America Week is an opportunity to do just that.

During Drug-Free America Week, we will continue to spread the messages that there is no safe use of illegal drugs; that illegal drug use is simply unacceptable anywhere in America; and that we will pursue the fight against illegal drugs, in our homes and schools and in our communities and factories. We will seek and take every opportunity to oppose the presence and use of illegal drugs. We will hold drug dealers and users responsible and accountable for the plague of illegal drugs.

Each American has a right to live in a drug-free family, to dwell in a drug-free community, to learn in a drug-free school, to earn a living in a drug-free workplace, and to travel on drug-free roads, waterways, railways, and airways. Concerned parents, youth, community groups, businesses, churches, and educators are accepting the challenge to stop drugs and build a better future for our children and for our Nation.

We should be pleased with the progress we have made together as Americans—in strong law enforcement against drug criminals, in international cooperation to reduce drug production and smuggling, in research to learn more about drugs and what works in treatment, and in education and prevention. Each of these important gains is a battle won in the war against drugs. We have started a crusade for a Drug-Free America. We must maintain awareness of the drug threat and continue the fight until illegal drugs are only a bad memory.

Many individuals, civic groups, businesses, and government at all levels are demonstrating leadership, creativity, and determination in the fight for a drug-free America. For example, the National Federation of Parents for Drug-Free Youth is observing the week of October 24 through October 30, 1988, as National "Red Ribbon Week," asking all Americans to join in wearing a red ribbon to symbolize a personal commitment to a healthful, drug-free life.

To encourage all Americans to join together to stop illegal drugs, the Congress, by Senate Joint Resolution 329, has designated the week of October 24 through October 30, 1988, as "Drug Free America Week."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week of October 24 through October 30,

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1988, as Drug-Free America Week, and I call upon the people of the United States to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of October, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-24534
Filed 10-20-88; 10:24 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5884 of October 19, 1988

United Nations Day, 1988

By the President of the United States of America

A Proclamation

In 1945, the United Nations was founded to provide a framework for international cooperation. The U.N. Charter expressed the ideal that all member states would work together to maintain international peace and security, foster respect for human rights, and promote economic and social progress. Three years later, the U.N. adopted the Universal Charter of Human Rights; and it is most fitting that on United Nations Day, 1988, we should commemorate the 40th anniversary of that document, whose preamble reminds us so eloquently that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world."

As we examine the international situation today, we find a world with greater prospects for freedom, justice, and peace than even a year ago. Share in the credit surely goes to the United Nations for its work as a facilitator in resolving regional conflicts.

We can all be grateful for the progress being made on U.N. reform. A more efficient and streamlined organization can better focus on the real problems that shatter the peace and cause human suffering in too many regions. We can be grateful as well for the service and sacrifices of the members of the U.N. Peacekeeping Forces, and we join in saluting them on their new and well-deserved honor, the Nobel Peace Prize.

Tribute is also in order to the life-saving mission of the World Health Organization (WHO), which celebrates its 40th anniversary this year. In the past 4 decades, the WHO has led the fight to eradicate smallpox, fostered vital work toward a vaccine against malaria, and worked to reduce the tragedy of preventable childhood deaths through universal immunization, oral rehydration therapy, and other activities. The WHO is now battling the Human Immunodeficiency Virus (HIV) around the globe. In these ways, the WHO exemplifies the finest traditions of United Nations specialized agencies. Despite differences in language, training, cultural background, and politics, people from many nations are cooperating to bring the blessings of health and safety to everyone—proof of the difference the U.N. can make for all.

The many other technical and specialized agencies of the United Nations achieve much as well. The International Labor Organization, the U.N. Industrial Development Organization, the International Civil Aviation Organization, the International Atomic Energy Agency, and the Food and Agriculture Organization are some of the agencies that seek to serve humanity's needs.

These accomplishments remind us on United Nations Day and throughout the year to reflect with appreciation on the purpose and promise of the ideals upon which the U.N. was founded.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Monday, October 24, 1988, as United Nations Day. I urge all Americans to acquaint themselves with the activities and accomplishments of the United Nations. I have appointed Stanley C. Pace

to serve as United States National Chairman for the 1988 United Nations Day, and I welcome the role of the United Nations Association of the United States of America in working with him to celebrate this special day.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of October, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-24535
Filed 10-20-88; 10:35 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 53, No. 204
Friday, October 21, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1479

Forage Assistance Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule sets forth the terms and conditions for the conduct of the emergency Forage Assistance Program ("FAP") provided for in section 103 of the Disaster Assistance Act of 1988 (Pub. L. 100-387). The Commodity Credit Corporation (CCC) is authorized to provide for cost-share assistance in an amount not to exceed 50 percent of the cost of reseeding incurred by owners and operators of established pasture damaged in 1988 by drought or a related condition resulting from the 1988 drought. Assistance may be provided for only the reseeding of nonannual crops planted for pasture purposes. Not more than $50,000,000 of CCC funds may be expended to carry out FAP. These regulations set forth standards for determining losses, effective cost-share rates, payment limitations and other program provisions.

DATES: The effective date of this interim rule is October 20, 1988. Comments must be received by November 21, 1988, to be assured of consideration.

ADDRESS: Comments should be forwarded to James R. McMullen, Director, Conservation and Environmental Protection Division, ASCS, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: James R. McMullen, Director, Conservation and Environmental Protection Division, ASCS, P.O. Box 2415, Washington, DC 20013; telephone: 202-447-6221.

SUPPLEMENTAL INFORMATION: This interim rule has been reviewed for compliance with Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as "nonmajor". It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments, or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this rule applies are: Title—Forage Assistance Program; Number—10.FAP; as found in the catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rule-making with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant adverse impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed. Copies of the environmental evaluation are available upon written request.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

The regulations implement the Forage Assistance Program (FAP) provided for in section 103 of the Disaster Assistance Act of 1988 (Pub. L. 100-387) ("the 1988 Act"). That section provides that the Secretary of Agriculture shall implement an emergency forage program for established pasture damaged by the drought or related condition in 1988, under which the Secretary shall enter into cost-share agreements with owners or operators of such damaged land to provide for reseeding of nonannual forage crops on such land to facilitate late fall 1988 and early spring 1989 grazing and haying. Assistance may be provided to such owners and operators only when: (1) The forage crop will not regenerate naturally; (2) reseeding is the most cost-effective method to reestablish the forage crop; and (3) reseeding is not undertaken simply to improve the forage crop damaged by the drought.

Under the FAP, payment may only be made to cover half the reseeding costs, including the costs of seed, fertilizer, and other related costs incurred in reseeding pasture to a nonannual forage crop. FAP payments will be made under agreements entered into between the CCC and eligible owners or eligible operators of the land to be reseeded. FAP payments will be made only for eligible costs for reseeding which are undertaken in compliance with the FAP agreement. The total FAP payments that a person, as determined in accordance with 7 CFR Part 795, may receive may not exceed $3,500.

Not more than $50,000,000 of CCC funds may be expended for FAP. Within that limit, CCC may prorate the funds among eligible persons to ensure the equitable award of funds.

The FAP regulations are implemented as an interim rule without prior comment in order that FAP assistance may be made timely to eligible owners or operators of pastureland.

List of Subjects in 7 CFR Part 1479

Administrative practices and procedures, Agreements, Forage, Reseeding established pasture, Cost-share assistance, and Drought damage.

Interim Rule

Accordingly, Subchapter B, Chapter XIV of Title 7 of the Code of Federal Regulations is amended by adding the following new Part 1479—

PART 1479—FORAGE ASSISTANCE PROGRAM

Sec.

1479.1 General statement.
1479.2 Administration.
1479.3 Definitions.
1479.4 Funding.
1479.5 Eligible established pasture.
1479.6 Eligible costs.
1479.7 Eligible person.
1479.8 Application for FAP Agreement.
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1479.10 Obligations of person entering into FAP Agreement.
1479.11 Payment limitation.
1479.12 Liens and claims of creditors; setoffs.
1479.13 Appeals.
1479.14 Misrepresentation and scheme or device.
1479.15 Estates, trusts, and minors.
1479.16 Death, incompetency, or disappearance.
1479.17 Other regulations.
1479.18 Paperwork Reduction Act assigned numbers.

Authority: Secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, as amended, 1072 (15 U.S.C. 714b and 714c); sec. 103 of the Disaster Assistance Act of 1988, 102 Stat. 932 (7 U.S.C. 1471d *note*).

§ 1479.1 General statement.

The regulations in this part set forth the terms and conditions of the Forage Assistance Program (FAP) authorized by section 105 of the Disaster Assistance Act of 1988. Within specified limits, CCC is authorized to pay eligible persons 50 percent of the cost of reseeding established pasture damaged in 1988 due to 1988 drought or related conditions.

§ 1479.2 Administration.

(a) This part shall be administered by CCC under the general direction and supervision of the Executive Vice President, CCC. The program shall be carried out in the field by State and County Agricultural Stabilization and Conservation (ASC) committees (State and county committees).

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations in this part, as amended or supplemented.

(c) The State committee shall take any action required by this part which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with this part; or

(2) Require a county committee to withhold taking any action which is not in accordance with this part.

(d) No delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

§ 1479.3 Definitions.

(a) In determining the meaning of the provisions of this part, unless the context indicates otherwise, words importing the singular include and apply to several persons and things, words importing the plural include the singular, words importing the masculine gender include the feminine, and words used in the present tense include the future as well as the present.

(b) The following terms contained in this part shall have the following meanings:

"*Approving Official*" means a representative of CCC who is authorized by the Executive Vice President, CCC, to approve an application for assistance made in accordance with this part.

"*ASCS*" means the Agricultural Stabilization and Conservation Service.

"*CCC*" means the Commodity Credit Corporation.

"*County*" means a county or similar geographic area as determined by CCC.

"*DASCO*" means Deputy Administrator or Acting Deputy Administrator, State and County Operations, ASCS, U.S. Department of Agriculture.

"*Established pasture*" means land in permanent vegetative cover used exclusively for grazing by livestock.

"*Executive Vice President*" means the Executive Vice President of the Commodity Credit Corporation.

"*FAP Agreement*" means the cost-share agreement entered into by an eligible person and CCC pursuant to the provisions of this part.

"*Forage crop*" means a nonannual crop which is used for livestock for grazing.

"*Local ASCS Office*" means with respect to:

(1) Individual pastures on a farm which has been assigned an ASCS farm serial number, the county ASCS office which serves such farm; or

(2) All other pastures, the county ASCS office which serves the county in which the pasture is located.

"*Operator*" means a person who is in general control of the farming operations on the farm as determined by CCC.

"*Secretary*" means the Secretary of Agriculture.

"*State*" means any State of the United States, the Commonwealth of Puerto Rico, the Virgin Islands, or Guam.

"*State committee*", "*State office*", "*county committee*", or "*county office*" means the respective ASC committee or ASCS office.

(c) In the regulations in this part and in all instructions, terms, and documents in connection therewith, all other words and phrases specifically relating to ASCS operations shall, unless the context of the subject matter otherwise requires, have the meanings assigned to them in the regulations governing reconstitution of farms, allotments, and bases in 7 CFR Part 719.

§ 1479.4 Funding.

No more than $50 million of CCC funds may be expended for the program FAP assistance for which persons are otherwise eligible under this part may be adjusted, prorated, or reduced as the Executive Vice President deems appropriate to facilitate the equitable proration of funds for this purpose.

§ 1479.5 Eligible established pasture.

FAP cost-share assistance shall be available only for reseeding eligible established pasture. Such pasture shall be only established pasture which has been damaged in 1988 due to the 1988 drought or related 1988 conditions.

§ 1479.6 Eligible costs.

(a) FAP payments shall only be made with respect to 50 percent of costs incurred by an eligible person only for the cost of replanting a forage crop on the eligible established pasture. Such costs shall include only the cost of the seeds, planting, seedbed preparation, and nutrients needed to ensure successful plant survival, and labor as based on standard labor rates as determined by the county committee used to physically plant such seeds. Eligible costs specifically exclude items such as fencing, pesticides, irrigation, irrigation equipment, measures to protect seedings from wildlife, and general land and pasture improvements.

(b) Eligible costs shall not include costs incurred for replanting a forage crop differing significantly from the forage crop constituting the qualifying loss, except as determined by CCC. If such substitution is approved, eligible costs shall, unless approved in written instructions issued by DASCO, be the lessor of:

(1) The actual costs incurred for the substituted forage crop; or

(2) The estimated costs which would have been incurred for the original forage crop.

(c) Eligible costs shall include costs which have been incurred for which the eligible owner has presented adequate documentation, including evidence such costs were incurred and paid. Costs which have been incurred but not yet paid by the eligible owner are not eligible costs.

(d) The amount of payments which shall be made by CCC, subject to the availability of funds, shall not exceed 50 percent of the eligible costs as determined by CCC.

(e)(1) Notwithstanding the provisions of paragraph (b) of this section, an application for payment shall not be approved by the county committee without the written approval of the State committee if such payment would exceed $100.00 per acre for the reseeded acres constituting the qualifying loss.

(2) The State committee may not, without the written approval of DASCO approve an application for payment if such payment would exceed $150.00 per acre.

(f) FAP assistance may only be provided to eligible persons when:

(i) The forage crop will not regenerate naturally;

(2) Reseeding in the most cost-effective method to reestablish such crop; and

(3) Reseeding is not undertaken simply to improve the forage crop damaged by the drought.

(g) FAP cost-share assistance shall be available only if the request by an eligible person for assistance under this part is filed by May 15, 1989.

(h) All activities for which FAP assistance is requested shall be completed by the date specified in the FAP agreement.

§ 1479.7 Eligible person.

(a) A person shall be eligible for FAP assistance only if the person is an owner or operator of eligible established pasture.

(b) A person is an eligible person for FAP assistance only to the extent of eligible costs incurred by such person. A person shall be considered an eligible person only for a FAP payment up to the net costs incurred by that person exclusive of any payment or reimbursement to that person or that person's account for such costs; provided further that if the applicant is the operator of the property such operator shall not be deemed to have incurred costs for reseeding to the extent that such operator has been, or is, reimbursed or paid by the owner of the land, directly or indirectly, for such costs.

(c) An eligible person may be an individual, partnership, corporation, association, estate, trust, or other business enterprise or legal entity, including:

(1) Any Indian tribe under the Indian Self-Determination and Education Assistance Act;

(2) Any Indian organization or entity chartered under the Indian Reorganization Act;

(3) Any tribal organization under the Indian Self-Determination and Education Assistance Act; and,

(4) Any economic enterprise under the Indian Financing Act of 1974 that meets the requirements of this part. Federal, State and local governments and agencies and political subdivisions thereof are specifically excluded.

§ 1479.8 Application for FAP Agreement.

(a) Application for FAP agreement shall be filed by the eligible owner or operator on a form approved by CCC with the local ASCS office.

(b)(1) The county committee or designee shall review each application. The county committee and, if designated by the county committee, the county executive director, is authorized to approve or disapprove all applications provided the applicant is not a county committee member or an ASCS employee.

(2) The State committee, or a designee, is authorized to approve or disapprove applications of the county committee members and all ASCS employees except an application which may be submitted by the State Executive Director.

(3) DASCO, or a designee shall approve or disapprove applications of State committee members and the State Executive Director.

(4) All applications forwarded to a higher authority for consideration shall be accompanied by committee recommendations. No application shall be approved unless the applicant meets all eligibility requirements. Information furnished by the applicant and any other information, including knowledge of the county and State committee members concerning the applicant's normal operations, shall be taken into consideration in making recommendations and approvals. If information furnished by the applicant is incomplete or ambiguous and sufficient information is not otherwise available with respect to the applicant's farming operations in order to make a determination as to the applicant's eligibility, the application shall not be approved until sufficient additional information is provided by the applicant.

(5) An applicant shall be notified in writing of the action taken by the approving official with respect to the application.

§ 1479.9 FAP Agreement.

The FAP agreement shall set forth the reseeding requirements, incuding the period for which the reseeded forage crop must be maintained, seeding rates, eligible seed, fertilizer, and the amount of the eligible established pasture to be reseeded. The requirements for reseeding in the FAP agreement shall be in accord with county FAP reseeding standards developed by the county committee.

§ 1479.10 Obligations of person entering into FAP Agreement.

(a) A person entering into a FAP agreement must:

(1) Submit all documentation requested by the approving official which is necessary to make all determinations specified in this part;

(2) Comply with all terms and conditions of such agreement and of this part;

(3) Execute all required documents; and

(4) Comply with all applicable noxious weed laws.

(b) In the event of a determination by CCC that a person was erroneously determined to be eligible or has become ineligible for all or part of a payment made under this part for any reason, including a failure to comply with the terms and conditions of this part, such person shall refund any payment paid under this part together with interest. Such interest shall be charged at the rate determined for late payment charges under 7 CFR Part 1403 and computed from the date of disbursement by CCC of the payment to be refunded to the date of the refund.

§ 1479.11 Payment limitation.

No person, as determined under Part 795 of this title, shall receive more than $3,500 of payments under this part.

§ 1479.12 Liens and claims of creditors; setoffs.

Any payment or portion thereof due any person under this part shall be allowed without regard to questions of title under State law, and without regard to any claim or lien in favor of any person except agencies of the U.S. Government. The regulations governing set-offs and withholdings found at Part 13 of this title shall be applicable to this part.

§ 1479.13 Appeals.

Any person who is dissatisfied with a determination made with respect to this part may make a request for reconsideration or appeal of such determination in accordance with the appeal regulations set forth at Part 780 of this chapter.

§ 1479.14 Misrepresentation and Scheme or Device.

A person who is determined by the State committee or the county committee to have:

(a) Adopted any scheme or other device which tends to defeat the purpose of this program;

(b) Made any fraudulent representation; or

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(c) Misrepresented any fact affecting a program determination shall be ineligible to receive assistance under this program.

§ 1478.15 Estates, trusts, and minors.

(a) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such person furnishes evidence of their authority to execute such documents.

(b) A minor who is an eligible person shall be eligible for assistance under this subpart only if such person meets one of the following requirements:

(1) The right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable program documents are executed by the guardian; or

(3) A bond is furnished under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

§ 1478.16 Death, incompetency, or disappearance.

In the case of death, incompetency or disappearance, of any owner who is eligible to receive assistance in accordance with this part, such person or persons specified in Part 707 of this title may receive such assistance.

§ 1478.17 Other regulations.

The following regulations shall also apply to this part unless otherwise specified in those regulations:

(a) Part 12, Highly Erodible Land and Wetland Conservation;

(b) Part 790, Incomplete Performance Based Upon Action or Advice of an Authorized Representative of the Secretary;

(c) Part 791, Authority to Make Payments When There Has Been a Failure To Comply With the Program;

(d) Part 796, Denial of Program Eligibility for Controlled Substance Violations;

(e) Part 1403, Interest on Delinquent Debt; and

(f) All other parts of the Code of Federal Regulations which are applicable to 7 CFR Part 1479.

§ 1478.18 Paperwork Reduction Act assigned numbers.

The information collection requirements of this part shall be submitted to the Office of Management and Budget (OMB) for purposes of the Paperwork Reduction Act and it is anticipated that an OMB Number will be assigned.

Signed at Washington, DC, on October 17, 1988.

Milton Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 88-24439 Filed 10-20-88; 8:45 am]

BILLING CODE 3410-05-M

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 88-181]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Virginia from a split status of Class Free/Class A to all Class Free. We have determined that Virginia now meets the standards for Class Free status. This action relieves certain restrictions on the interstate movement of cattle from Virginia.

EFFECTIVE DATE: November 21, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. Jan Huber, Senior Staff Veterinarian, Domestic Programs Support Staff, VS, APHIS, USDA, Room 812, Federal Building, 6505 Belcrest road, Hyattsville, MD 20782, 301-436-5805.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective July 20, 1988, and published in the Federal Register on July 25, 1988 (53 FR 27844-27846, Docket Number 88-119) we amended the brucellosis regulations contained in 9 CFR Part 78 by removing an area of Virginia (Clarke County) from the list of Class A states in § 78.41(b) and adding it to the list of Class Free states in § 78.41(a). This action changed the status of Virginia from Class Free and Class A to all Class Free, and relieved certain restrictions on moving cattle interstate from Virginia.

Comments on the interim rule were required to be postmarked or received on or before September 23, 1988. We received no comments. The facts presented in the interim rule still provide a basis for this rule.

Executive Order 12291 and Regulatory Flexibility Act.

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of Virginia from Class Free/Class A to all Class Free reduces certain testing and other requirements governing the interstate movement of cattle from Virginia. Testing requirements for cattle moved interstate for immediate slaughter or to quarantined feedlots are not affected by this change. Cattle from certified brucellosis free herds moving interstate are not affected by this change.

The groups affected by this action will be certain herd owners in Virginia, as well as buyers and importers of Virginia cattle. Approximately 8,454 cattle are tested for brucellosis in Virginia each year, at an average cost to the seller of $7 per test. We estimate that approximately 105 of these tests are conducted on cattle in Clarke County, Virginia. Therefore, Class Free status could result in a potential savings of approximately $735 for Clarke County's livestock industry. Since Clarke County, Virginia, has approximately 251 cattle herds, the annual savings to each herd owner will be approximately $2.93 per herd. We have therefore determined that changing Virginia's brucellosis status will not significantly affect market patterns, and will not have a significant economic impact on the small entities affected by this interim rule.

Under these circumstances; the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR Part 78 and that was published at 53 FR 27844-27846 on July 25, 1988.

(Authority: 21 U.S.C. 111-114a-1, 114g, 115, 117, 120, 121, 123-126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 18th day of the October, 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-24429 Filed 10-20-88; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-133-AD; Amdt. 39-6054]

Airworthiness Directives; Boeing Models 727 and 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Boeing Models 727 and 737 series airplanes, which requires repetitive testing of the takeoff warning system, and repair or replacement of any inoperative component, if necessary. This amendment is prompted by reports of a significant number of inoperative warning systems discovered during a one-time inspection of all Boeing Model 727 series airplanes takeoff warning systems, as requested by a recent FAA Action Notice. This condition, if not corrected, could result in an attempted takeoff with the airplane in the improper configuration and with the takeoff warning system inoperative.

EFFECTIVE DATE: November 10, 1988.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

FOR FURTHER INFORMATION CONTACT: Mr. Alvin R. Habbestad, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1942. Mailing address: Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: On September 16, 1988, the FAA issued Action Notice A8000.30, which called for a one-time check of the takeoff warning system of Boeing Model 727 series airplanes. Results of the checks have revealed that approximately 3% of the takeoff warning systems checked were out of tolerance or were inoperative. The takeoff warning system designs on the Boeing Model 737 series airplanes are similar to those of the Model 727 designs, and are subject to similar failures. This condition, if not corrected, could result in an attempted takeoff when the airplane is not in the proper takeoff configuration, and with the takeoff warning system inoperative.

Since this condition may exist or develop on other airplanes of the same type design, this AD requires a repetitive operational and functional check of the takeoff warning system at 200 flight hour intervals, and repair or replacement or any inoperative component, if necessary, prior to further flight.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing: Applies to Models 727 and 737 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent attempted takeoff with the airplane in the improper configuration and the takeoff warning system inoperative, accomplish the following:

A. Prior to the accumulation of 200 flight hours after the effective date of this AD and thereafter at intervals not to exceed 200 flight hours, perform an operational and functional check of the takeoff configuration warning system in accordance with the established and approved procedures in Section 31-26-0 of the FAA-approved Boeing Model 727 or Model 737 Maintenance Manual, as appropriate. Repair or replace any inoperative component before further flight.

Note: The following items are to be included in the required checks:

1. Throttle Switch(es)—assure proper contact
2. Flap position switches
3. Elevator out of green band switches
4. Speed brake switch
5. APU door switch (if installed)
6. Leading edge slat switches
7. Air/Ground Relay

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager,

Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request for alternate means of compliance should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective November 10, 1988.

Issued in Seattle, Washington, on October 14, 1988.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 88-24424 Filed 10-20-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-86-AD; Amdt. 39-6066]

Airworthiness Directives: Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, which requires modification of the wing and body duct leak detection system. This amendment is prompted by reports that operators have experienced duct leak detection from the right pneumatic air duct leak detection system when a significant leak had actually developed in the left pneumatic duct. This condition, if not corrected, could result in the flight crew switching off the inappropriate bleed system, causing loss of all air inflow and airplane depressurization.

EFFECTIVE DATE: December 7, 1988.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Weston B. Slifer, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1945. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires modification of the wing and body duct leak detection system on Boeing Model 757 series airplanes, was published in the Federal Register on August 8, 1988 [53 FR 29920].

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters requested that the proposed compliance time of 15 months be extended to 18 months or to 21 months so that the modification could be accomplished during various normally scheduled maintenance cycles. The FAA does not concur. The proposed compliance time was established based on risk assessment, parts availability, and known maintenance intervals. Neither commenter has provided any new data that would justify a longer compliance time. The FAA has determined that the proposed 15 months is the maximum allowable timeframe for accomplishing the modification without compromising safety.

One commenter also suggested that the compliance time be extended since the manufacturer has quoted a 300-day lead time for obtaining the kits necessary to accomplish the required modification. The FAA does not concur. The manufacturer has advised FAA that adequate required parts will be available to affected operators within the proposed compliance time.

After careful review of the available data, including the comments noted above, the FAA had determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 168 Boeing Model 757 series airplanes in the worldwide fleet. It is estimated that 101 airplanes of U.S. registry will be affected by this AD, that it will take approximately 18 manhours per airplane to accomplish the required initial inspection and test, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $65,271.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significantly under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Model 757 airplanes are operated by small entities. A final evaluation has been parpared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Section 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 757 series airplanes, as listed in Boeing Service Bulletin 757-28-0016, dated May 5, 1988, certificated in any category. Compliance required within the next 15 months after the effective date of this AD, unless previously accomplished.

To prevent depressurization due to loss of all bleed air inflow following crew action based on an erroneous duct leak indication, accomplish the following:

A. Modify the wing and body duct leak detection system in accordance with Boeing Service Bulletin 757-28-0016, dated May 5, 1988.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager,

Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the inspections required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective December 7, 1988.

Issued in Seattle, Washington, on October 17, 1988.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 88-24425 Filed 10-20-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 95

[Docket No. 25712; Amdt. No. 344]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rule) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. These regulatory actions are needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: October 20, 1988.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS-230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 95 of the Federal Aviation Regulations (14 CFR Part 95) prescribes new, amended, suspended, or revoked IFR altitudes governing the operation of all aircraft in IFR flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in Part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances which create the need for this amendment involve matters of flight safety, operational efficiency in the National Airspace System, and are related to published aeronautical charts that are essential to the user and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment is unnecessary, impracticable, and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Aircraft, Airspace.

Robert L. Crawford,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly and pursuant to the authority delegated to me by the Administrator, Part 95 of the Federal Aviation Regulations (14 CFR Part 95) is amended as follows effective at 0901 GMT:

PART 95—[AMENDED]

1. The authority citation for Part 95 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354 and 1510; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 95 is amended to read as follows:

BILLING CODE 4910-13-M

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS

AMENDMENT 346 EFFECTIVE DATE, OCTOBER 20, 1988

FROM	TO	MEA
§95.1001 DIRECT ROUTES-U.S.		
IS AMENDED TO DELETE		
SANTA MONICA, CA VOR/DME	PASO ROBLES, CA VORTAC	5000
§95.1001 DIRECT ROUTES-U.S.		
BAHAMA ROUTES		
2 DMA IS AMENDED BY ADDING		
NETTA, BF FIX	NAVISH HARBOUR, BF NDB	*2000
*1200 - MOCA		MAA-45000
IS AMENDED TO READ IN PART		
NASSAU, BF NDB	NETTA, BF FIX	*2000
*1500 - MOCA		MAA-45000
AFF IS AMENDED BY ADDING		
*WALIK, FL FIX	PALM BEACH, FL VORTAC	**2000
*6000 - MRA		MAA-45000
**1600 - MOCA		
IS AMENDED TO READ IN PART		
BENZI, BF FIX	*WALIK, FL FIX	**4000
*6000 - MRA		MAA-45000
**1200 - MOCA		
§95.6003 VOR FEDERAL AIRWAY 3		
IS AMENDED TO READ IN PART		
BOSTON, MA VORTAC	PEASE, NH VOR	3000
§95.6004 VOR FEDERAL AIRWAY 4		
IS AMENDED TO READ IN PART		
ITALY, WV FIX	FILES, WV FIX	5000
SHAWNEE, VA VORTAC	ARMEL, VA VORTAC	5000
§95.6007 VOR FEDERAL AIRWAY 7		
IS AMENDED TO READ IN PART		
TALOR, WI FIX	*PETTY, WI FIX	4000
*7000 - MCA PETTY FIX, S BND		
§95.6010 VOR FEDERAL AIRWAY 10		
IS AMENDED TO READ IN PART		
BRADFORD, IL VORTAC	PLANO, IL FIX	2700
IS AMENDED TO DELETE		
PLANO, IL FIX	VAINS, IL FIX	*4000
*2100 - MOCA		
§95.6034 VOR FEDERAL AIRWAY 34		
IS AMENDED TO READ IN PART		
JANESVILLE, WI VORTAC	FARMM, IL FIX	2900
§95.6097 VOR FEDERAL AIRWAY 97		
IS AMENDED TO READ IN PART		
FARMM, IL FIX	JANESVILLE, WI VORTAC	2900
§95.6100 VOR FEDERAL AIRWAY 100		
IS AMENDED TO READ IN PART		
ROCKFORD, IL VORTAC	BELLA, IL FIX	2800
BELLA, IL FIX	FARMM, IL FIX	2900
§95.6138 VOR FEDERAL AIRWAY 138		
IS AMENDED TO READ IN PART		
OMAHA, NE VORTAC	HARLN, IA FIX	3500
§95.6173 VOR FEDERAL AIRWAY 173		
IS AMENDED TO READ		
CAPITAL, IL VORTAC	PEOTONE, IL VORTAC	4500
§95.6227 VOR FEDERAL AIRWAY 227		
IS AMENDED TO READ IN PART		
PONTIAC, IL VORTAC	PLANO, IL FIX	3000
IS AMENDED TO DELETE		
PLANO, IL FIX	VAINS, IL FIX	*4000
*2100 - MOCA		

FROM	TO	MEA
§95.6233 VOR FEDERAL AIRWAY 233		
IS AMENDED TO READ IN PART		
CAPITAL, IL VORTAC	EWITT, IL FIX	2600
EWITT, IL FIX	ROBERTS, IL VORTAC	2600
§95.6239 VOR FEDERAL AIRWAY 239		
IS AMENDED TO READ IN PART		
FORDY, MO VOR	EATON, MO FIX	2900
§95.6267 VOR FEDERAL AIRWAY 267		
IS AMENDED TO READ IN PART		
BISCAYNE BAY, FL VORTAC	DOUGS, FL FIX	*5000
*2000 - MOCA		
§95.6379 VOR FEDERAL AIRWAY 379		
IS AMENDED TO READ IN PART		
NOTTINGHAM, MD VORTAC	JETTA, MD FIX	1900
JETTA, MD FIX	GRACO, MD FIX	3000
GRACO, MD FIX	KENTON, DE VORTAC	1800
§95.6419 VOR FEDERAL AIRWAY 419		
IS AMENDED TO READ IN PART		
WESTMINSTER, MD VOR/DME	MODENA, PA VORTAC	*3000
*2400 - MOCA		
§95.6429 VOR FEDERAL AIRWAY 429		
IS AMENDED TO DELETE		
JOLIET, IL VORTAC	VAINS, IL FIX	2500
§95.6437 VOR FEDERAL AIRWAY 437		
IS AMENDED BY ADDING		
BISCAYNE BAY, FL VORTAC	DOUGS, FL FIX	*5000
*2000 - MOCA		
DOUGS, FL FIX	PAHOKEE, FL VORTAC	1500
IS AMENDED TO READ IN PART		
PAHOKEE, FL VORTAC	MELBOURNE, FL VOR/DME	[illegible]
§95.6505 VOR FEDERAL AIRWAY 505		
IS AMENDED TO READ IN PART		
ALMAY, MN FIX	PRAGS, MN FIX	*6000
*2500 - MOCA		

FROM	TO	MEA	MAA
§95.7042 JET ROUTE NO. 42			
IS AMENDED TO READ IN PART			
ROBBINSVILLE, NJ VORTAC	LAURN, NY FIX	18000	45000
LAURN, NY FIX	LA GUARDIA, NY VOR/DME	18000	30000
LA GUARDIA, NY VOR/DME	MARIO, NY FIX	18000	33000
MARIO, NY FIX	HARTFORD, CT VORTAC	18000	45000

[FR Doc. 88-24428 Filed 10-20-88; 8:45 am]

BILLING CODE 4910-13-M

BEST COPY AVAILABLE

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1203

Information Security Program

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA is amending 14 CFR Part 1203 by revising § 1203.202 (f) and (g) to reflect the current organizational position titles. Word changes are made to § 1203.604(c)(2)(ii) for clarity.

EFFECTIVE DATE: October 21, 1988.

ADDRESS: Director, NASA Security Office, National Aeronautics and Space Administration, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Erwin V. Minter, 202–453–2953.

SUPPLEMENTARY INFORMATION: Since this action is internal and administrative in nature and does not affect the existing regulations, notice and public comments are not required.

The National Aeronautics and Space Administration has determined that:

1. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, since it will not exert a significant economic impact on a substantial number of small entities.

2. This rule is not a major as defined in Executive Order 12291.

List of Subjects in 14 CFR Part 1203

Classified information, Foreign relations.

For reasons set out in the Preamble, 14 CFR Part 1203 is amended as follows:

PART 1203—INFORMATION SECURITY PROGRAM

1. The authority citation for Part 1203 continues to read as follows:

Authority: 42 U.S.C. 2451 et seq. and E.O. 12356.

2. Section 1203.202 is amended by revising paragraphs (f) and (g) to read as follows:

§ 1203.202 Responsibilities.

* * * * *

(f) The Senior Security Specialist, NASA Security Office, NASA Headquarters, who serves as a member and Executive Secretary of the NASA Information Security Program Committee, is responsible for the NASA-wide coordination of security classification matters.

(g) The Chief, Information and Physical Security Branch, NASA Security Office, is responsible for establishing procedures for the safeguarding of classified information of material (e.g., accountability, control, access, storage, transmission, and marking) and for ensuring that such procedures are systematically reviewed; and those which are duplicative or unnecessary are eliminated.

3. Section 1203.604 is amended by revising paragraph (c)(2)(ii) to read as follows:

§ 1203.604 Mandatory review for declassification.

* * * * *

(c) * * *

(2) * * *

(ii) The office designated to receive requests for records specifically citing the Freedom of Information Act pursuant to Part 1206 of this chapter.

* * * * *

October 14, 1988.

James C. Fletcher,

Administrator.

[FR Doc. 88-24388 Filed 10-20-88; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Parts 15 and 15a

[Docket No. 81015-8213]

Service of Process and Testimony of Employees of the Department of Commerce and Production of Documents in Legal Proceedings

AGENCY: Department of Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce is amending 15 CFR Parts 15 and 15a which prescribe policies and procedures to be followed with respect to service of process on the Department and its employees, the testimony of Department employees regarding official matters, and the production of offical documents in legal proceedings. These regulations serve as a statement of policy and the amendments broaden the scope of the existing regulations and provide for more comprehensive guidelines for Department components and employees, outside agencies and other persons regarding the appropriate procedures for service of process, testimony and the production of documents.

EFFECTIVE DATE: October 21, 1988.

FOR FURTHER INFORMATION CONTACT: M. Timothy Conner, (202) 377–1067.

SUPPLEMENTARY INFORMATION: Because this rule concerns agency management and personnel, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final regulatory impact analysis has to be or will be prepared.

This rule, relating to agency management and personnel, is exempt from all requirements of section 553 of the Administrative Procedures Act (5 U.S.C. 553) including a delayed effective date and therefore will be effective immediately upon publication in the **Federal Register.**

Because a notice of proposed rulemaking and an opportunity for public comments are not required to be given for this rule by section 553 of the APA, or by any other law, no regulatory flexibility analysis has to be or will be prepared for purposes of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)).

This final rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

This rule does not contain collections of information for purposes of the Paperwork Reduction Act.

List of Subjects in 15 CFR Parts 15 and 15a

Administrative practice and procedure, Courts, Government employees.

For the reasons set forth in the preamble, 15 CFR Subtitle A is amended as follows:

1. Part 15 is revised to read as follows:

PART 15—SERVICE OF PROCESS

Sec.

15.1 Scope and purpose.
15.2 Definitions.
15.3 Acceptance of service of process.

Authority: 5 U.S.C. 301; 15 U.S.C. 1501, 1512, 1513, 1515, and 1516; Reorganization Plan No. 5 of 1950; 44 U.S.C. 3101.

§ 15.1 Scope and purpose.

(a) This part sets forth the procedures to be followed when a summons or complaint is served on the Department, a component, or the Secretary or a Department employee in his or her official capacity.

(b) This part is intended to ensure the orderly execution of the affairs of the Department and not to impede any legal proceeding.

(c) This part does not apply to subpoenas. The procedures to be followed with respect to subpoenas are set out in Part 15a.

(d) This part does not apply to service of process made on a Department employee personally on matters not related to official business of the Department or to the official responsibilities of the Department employee.

§ 15.2 Definitions.

For the purpose of this part:

(a) "General Counsel" means the General Counsel of the United States Department of Commerce or other Department employee to whom the General Counsel has delegated authority to act under this part, or the chief legal officer (or designee) of the Department of Commerce component concerned.

(b) "Component" means Office of the Secretary or an operating unit of the Department as defined in Department Organization Order 1–1.

(c) "Department" means the Department of Commerce.

(d) "Department employee" means any officer or employee of the Department, including commissioned officers of the National Oceanic and Atmospheric Administration.

(e) "Legal proceeding" means a proceeding before a tribunal constituted by law, including a court, an administrative body or commission, or an administrative law judge or hearing officer.

(f) "Official business" means the authorized business of the Department.

(g) "Secretary" means Secretary of Commerce.

§ 15.3 Acceptance of service of process.

(a) Except as otherwise provided in this part, any summons or complaint to be served in person or by registered or certified mail or as otherwise authorized by law on the Department, a component or the Secretary or a Department employee in their official capacity, shall be served on the General Counsel of the United States Department of Commerce, Washington, DC 20230.

(b) Any summons or complaint to be served in person or by registered or certified mail or as otherwise authorized by law on the Patent and Trademark Office or the Commissioner of Patents and Trademarks or an employee of the Patent and Trademark Office in his or her official capacity, shall be served on the Solicitor for the Patent and Trademark Office or a Department employee designated by the Solicitor.

(c) Except as otherwise provided in this part, any component or Department employee served with a summons or complaint shall immediately notify and deliver the summons or complaint to the office of the General Counsel. Any employee of the Patent and Trademark Office served with a summons or complaint shall immediately notify and deliver the summons or complaint to the office of the Solicitor.

(d) Any Department employee receiving a summons or complaint shall note on the summons or complaint the date, hour, and place of service and whether service was by personal delivery or by mail.

(e) When a legal proceeding is brought to hold a Department employee personally liable in connection with an action taken in the conduct of official business, rather than liable in an official capacity, the Department employee by law is to be served personally with process. Service of process in this case is inadequate when made upon the General Counsel or the Solicitor or their designees. Except as otherwise provided in this part, a Department employee sued personally for an action taken in the conduct of official business shall immediately notify and deliver a copy of the summons or complaint to the office of the General Counsel. Any employee of the Patent and Trademark Office sued personally for an action taken in the conduct of official business shall immediately notify and deliver a copy of the summons or complaint to the Office of the Solicitor.

(f) A Department employee sued personally in connection with official business may be represented by the Department of Justice at its discretion. See 28 CFR 50.15 and 50.16 (1987).

(g) The General Counsel or Solicitor or Department employee designated by either, when accepting service of process for a Department employee in an official capacity, shall endorse on the Marshal's or server's return of service form or receipt for registered or certified mail the following statement: "Service accepted in official capacity only." The statement may be placed on the form or receipt with a rubber stamp.

(h) Upon acceptance of service or receiving notification of service, as provided in this section, the General Counsel and Solicitor shall take appropriate steps to protect the rights of the Department, component, the Secretary or Department employee involved.

2. Part 15a is revised to read as follows:

PART 15a—TESTIMONY BY EMPLOYEES AND THE PRODUCTION OF DOCUMENTS IN LEGAL PROCEEDINGS

Sec.

15a.1 Scope.
15a.2 Definitions.
15a.3 Department policy.
15a.4 Testimony or production of documents; General rule.
15a.5 Testimony of Department employees in proceedings involving the United States.
15a.6 Legal proceedings between private litigants.
15a.7 Procedures when a Department employee receives a subpoena.

Authority: 5 U.S.C. 301; 15 U.S.C. 1501, 1512, 1513, 1515, and 1516; Reorganization Plan No. 5 of 1950; 44 U.S.C. 3101.

§ 15a.1 Scope.

(a) This part prescribes the policies and procedures of the Department with respect to the testimony of Department employees as witnesses in legal proceedings and the production of documents of the Department for use in legal proceedings pursuant to a request, order, or subpoena.

(b) The Secretary is by law responsible for the custody, use, and preservation of all documents and other property of the Department and for the official conduct of Department employees, including the appearance of any Department employee in a legal proceeding.

(c) This part does not apply to any legal proceeding in which a Department employee is to testify, while on leave status, as to facts or events that are in no way related to the official business of the Department.

(d) This part is intended to ensure the orderly execution of the affairs of the Department and not to impede any legal proceeding and in no way affects the rights and procedures governing public access to records pursuant to the Freedom of Information Act or the Privacy Act. See 15 CFR 15a.4.

(e) Components of the Department may prescribe or retain supplementary regulations not inconsistent with this Part.

§ 15a.2 Definitions.

For the purpose of this part:

(a) "Component" means Office of the Secretary or an operating unit of the Department as defined in Department Organization Order 1–1.

(b) "Demand" means a request, order, or subpoena for testimony or documents for use in a legal proceeding.

(c) "Department" means the United States Department of Commerce.

(d) "Department employee" means any officer or employee of the Department, including commissioned officers of the National Oceanic and Atmospheric Administration.

(e) "Document" means any record, paper, and other property held by the Department, including without limitation official letters, telegrams, memoranda, reports, studies, calendar and diary entries, maps, graphs, pamphlets, notes, charts, tabulations, analyses, statistical or informational accumulations, any kind of summaries of meetings and conversations, film impressions, magnetic tapes, and sound or mechanical reproductions.

(f) "General Counsel" means the General Counsel of the Department or other Department employee to whom the General Counsel has delegated authority to act under this part, or the chief legal officer (or designee) of the Department of Commerce component concerned.

(g) "Legal proceeding" means a proceeding before a tribunal constituted by law, including a court, an administrative body or commission, an administrative law judge or hearing officer or any discovery proceeding in support thereof.

(h) "Official business" means the authorized business of the Department.

(i) "Secretary" means Secretary of Commerce.

(j) "Testimony" means a statement given in person before a tribunal or by deposition for use before the tribunal or any other statement given for use before a tribunal in a legal proceeding.

(k) "United States" means the Federal Government, its departments and agencies, and individuals acting on behalf of the Federal Government.

§ 15a.3 Department policy.

The Department's policy is that its documents will not be voluntarily produced and Department employees will not voluntarily appear as witnesses in a legal proceeding. The reasons for this policy include:

(a) To conserve the time of Department employees for conducting official business;

(b) To minimize the possibility of involving the Department in controversial or other issues that are not related to its mission;

(c) To prevent the possibility that the public will misconstrue variances between personal opinions of Department employees and Department policy;

(d) To avoid spending the time and money of the United States for private purposes; and

(e) To preserve the integrity of the administrative process.

§ 15a.4 Testimony or production of documents; general rule.

(a) No Department employee shall give testimony concerning the official business of the Department or produce any document in any legal proceeding without the prior authorization of the General Counsel. Where appropriate, a Department employee may be instructed in writing not to give testimony or produce a document. Without the approval of the General Counsel, no Department employee shall answer inquiries from a person not employed by the Department regarding testimony or documents subject to a demand or a potential demand under the provisions of this Part. All inquiries, unless they involve a demand or potential demand on an employee of the Patent and Trademark Office, shall be referred to the General Counsel. Inquiries involving a demand or potential demand on an employee of the Patent and Trademark Office shall be referred to the Solicitor.

(b) A certified copy of a document for use in a legal proceeding will be provided upon written request and payment of applicable fees. Written requests for certification shall be addressed to the chief legal counsel for the component having possession, custody, or control of the document. Unless governed by another applicable provision of law or component regulation, the applicable fees include charges for certification and reproduction as set out in 15 CFR 4.8. Other reproduction costs and postage fees, as appropriate, must also be borne by the requester.

(c)(1) *Request for testimony or document.* A request for testimony of a Department employee, other than an employee of the Patent and Trademark Office, shall be addressed to the General Counsel, Room 5870, Department of Commerce, Washington, DC 20230. A request for testimony of an employee of the Patent and Trademark Office shall be made to the Solicitor for the Patent and Trademark Office. The mailing address of the Solicitor is Box 8, Patent and Trademark Office, Washington, DC 20231. A request for a document, other than a document within the possession, custody, and control of the Patent and Trademark Office, shall be made to the General Counsel. A request for a document within the possession, custody, and control of the Patent and Trademark Office shall be made to the Solicitor.

(2) *Subpoenas.* A subpoena for testimony by a Department employee or a document, other than testimony of an employee of the Patent and Trademark Office or a document within the possession, custody, and control of the Patent and Trademark Office, shall be served in accordance with the Federal Rules of Civil or Criminal Procedure as appropriate, or applicable state procedure, and a copy of the subpoena shall be sent to the General Counsel. A subpoena for testimony by an employee of the Patent and Trademark Office or a document within the possession, custody, and control of the Patent and Trademark Office shall be served in accordance with the Federal Rules of Civil or Criminal Procedure as appropriate, or applicable state procedure, and a copy of the subpoena shall be sent to the Solicitor.

(3) *Affidavit.* Every request and subpoena shall be accompanied by an affidavit or declaration under 28 U.S.C. 1746 or, if an affidavit or declaration is not feasible, a statement setting forth the title of the legal proceeding, the forum, the requesting party's interest in the legal proceeding, the reasons for the request or subpoena, a showing that the desired testimony or document is not reasonably available from any other source, and if testimony is requested, the intended use of the testimony, a general summary of the testimony desired, and a showing that no document could be provided and used in lieu of testimony. The purpose of this requirement is to permit the General Counsel to make an informed decision as to whether testimony or production of a document should be authorized.

(d) Any Department employee, other than an employee of the Patent and Trademark Office, who is served with a demand shall immediately notify the General Counsel. An employee of the Patent and Trademark Office served with a demand shall immediately notify the Solicitor.

(e) The General Counsel may authorize and direct a Department employee to testify concerning official business or to produce a document in a legal proceeding when: the Department has a significant interest in the legal proceeding, in the opinion of the General Counsel, production of a document or presenting factual or expert testimony by a Department employee would be in the best interest of the Department or in the public interest, or in such other circumstances as the General Counsel may determine are appropriate. When production of a document is authorized by the General Counsel, fees will be assessed in accordance with paragraph (b) of this section.

(f) The Secretary retains the authority to authorize and direct testimony in accordance with paragraph (e) of this section in those cases where a statute or Presidential order mandates a personal decision by the Secretary.

(g) The General Counsel may consult or negotiate with an attorney for a party or the party, if not represented by an attorney, to refine or limit a demand so that compliance is less burdensome or obtain information necessary to make the determination required by paragraph (e) of this section. Failure of the attorney or party to cooperate in good faith to enable the General Counsel or Secretary to make an informed determination under this part may serve as the basis for a determination not to comply with the demand.

(h) A determination under this part to comply or not to comply with a demand is not an assertion or waiver of privilege, lack of relevance, technical deficiencies or any other ground for noncompliance. The Department reserves the right to oppose any demand on any legal ground independent of any determination under this part.

§ 15a.5 Testimony of Department employees in proceedings involving the United States.

(a) A Department employee may not testify as an expert or opinion witness for any party other than the United States.

(b) When appropriate, the General Counsel may authorize a Department employee to give testimony as an expert or opinion witness on behalf of the United States.

(c) Whenever, in any legal proceeding involving the United States, a request is made by an attorney representing or acting under the authority of the United States, the General Counsel will make all necessary arrangements for the Department employee to give testimony on behalf of the United States. Where appropriate, the General Counsel may require reimbursement to the Department of the expenses associated with a Department employee giving testimony on behalf of the United States.

§ 15a.6 Legal proceedings between private litigants.

(a) Testimony by a Department employee and production of documents in a legal proceeding not involving the United States shall be governed by § 15a.4.

(b) If a Department employee is authorized to give testimony in a legal proceeding not involving the United States, the testimony, if otherwise proper, shall be limited to facts within the personal knowledge of the Department employee. A Department employee is prohibited from giving expert or opinion testimony, answering hypothetical or speculative questions, or giving testimony with respect to subject matter which is privileged. If a Department employee is authorized to testify in connection with the employee's involvement or assistance in a quasi-judicial proceeding which is taking place or took place before the Department, that employee is further prohibited from giving testimony on the manner and extent to which the record of the quasi-judicial proceeding was considered or studied or as to the bases, reasons, mental processes, analyses, or conclusions for the decision rendered in the quasi-judicial proceeding.

§ 15a.7 Procedures when a Department employee receives a subpoena.

(a) Except in the case of an employee of the Patent and Trademark Office, any Department employee who receives a subpoena shall immediately forward the subpoena to the General Counsel. In the case of an employee of the Patent and Trademark Office, the subpoena shall immediately be forwarded to the Solicitor. The General Counsel will determine the extent to which a Department employee will comply with the subpoena in accordance with the provisions of § 15a.4(e).

(b) If the Department employee is not authorized by the General Counsel to comply with the subpoena, the Department employee shall appear at the time and place stated in the subpoena, produce a copy of this Part, and respectfully refuse to provide any testimony or produce any document. *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

(c) Where the Department employee is an employee of the Office of the Inspector General, the Inspector General, in consultation with the General Counsel, will make any necessary determinations under paragraphs (a) and (b) of this section.

(d) When necessary or appropriate, the General Counsel will request assistance from the Department of Justice or a U.S. Attorney or otherwise assure the presence of an attorney to represent the interests of the Department, a component of the Department, or a Department employee.

Date: October 13, 1988.

Robert H. Brumley,

General Counsel.

[FR Doc. 88-24361 Filed 10-20-88; 8:45 am]

BILLING CODE 3510-22-M

Bureau of Export Administration

15 CFR Part 773

[Docket No. 80693-8093]

Foreign Consignees Removed or Suspended from Distribution Licenses

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Distribution License (DL) is a special license authorizing license holders to export eligible commodities to approved consignees in specified countries, without dollar value or quantity limits. Under the DL procedure, foreign consignees are authorized to ship between themselves and their customers without requesting permission from the DL holder. A requirement that DL holders notify all their consignees on the license when the Office of Export Licensing has prohibited the sale or transfer of commodities to specified firms or individuals currently appears in the Export Administration Regulations (15 CFR 773.3(f)(3)(v)). This rule amends § 773.3(1)(4)(ii) to clarify the notification procedures to be followed by the DL holder when consignees are deleted, suspended or revoked from a Distribution License. Clarification of these procedures will ensure that currently approved consignees do not continue to reexport commodities to newly deleted consignees under a Distribution License.

EFFECTIVE DATE: October 21, 1988.

FOR FURTHER INFORMATION CONTACT: Michael Hoffman, Office of Export Licensing, Bureau of Export Administration, Department of Commerce, Telephone: (202) 377-3287.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective

date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that notice of proposed rulemaking and an opportunity for public comment be given for this rule.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule contains a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0015. Public reporting burden for notifying all foreign consignees whenever a foreign consignee is suspended, removed or revoked from a Distribution License is estimated to average 20 minutes per response. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Office of Administration, Bureau of Export Administration, Room 3889, Department of Commerce, Washington, DC 20230 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

5. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Accordingly, this rule is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Written comments (six copies) should be submitted to: Joan Maguire, Regulations Branch, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 773

Exports, Reporting and recordkeeping requirements.

Accordingly, 15 CFR Part 773 of the Export Administration Regulations is amended as follows:

PART 773—[AMENDED]

1. The authority citation for Part 773 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, by Pub. L. 99–64 of July 12, 1985, and Pub. L. 100–418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571, October 27, 1986 (51 FR 39505, October 29, 1986).

2. In § 773.3, paragraph (f)(3)(v) is amended by adding a parenthetical clause after the fourth sentence to read as set forth below and paragraph (l)(4)(ii) is amended by revising the paragraph heading and by adding three sentences to the end of the paragraph to read as follows:

§ 773.3 Distribution License.

* * * * *

(f) *Action on license applications.*

* * *

(3) * * *

(v) * * * (See § 773.3(l)(4)(ii) regarding specific notification procedures.) * * *

* * * * *

(l) *Amendments of Distribution Licenses.* * * *

(4) * * *

(ii) *Deletion, suspension or revocation of consignees.* * * * Whenever a license holder submits a Form ITA-895P deleting a consignee or whenever the licensee learns that the Office of Export Licensing has suspended or revoked the Distribution License consignee status of any of his Distribution License consignees, he must immediately notify all other consignees of the deletion, suspension or revocation. The notice must state that the deleted, suspended or revoked party is no longer eligible to receive goods or technical data under the licensee's Distribution License. It need not specify the reason for the suspension unless the consignee has been denied export privileges by the U.S. Department of Commerce.

* * * * *

Dated: October 14, 1988.

Michael E. Zacharia,

Assistant Secretary for Export Administration.

[FR Doc. 88-24408 Filed 10-20-88; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 87C-0378]

Listing of Color Additives for Coloring Contact Lenses; Carbazole Violet

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the color additive regulations to provide for the safe use of carbazole violet for coloring contact lenses. This action is in response to a petition filed by Wesley-Jessen.

DATES: Effective November 22, 1988, except as to any provisions that may be stayed by the filing of proper objections; written objections and requests for a hearing by November 21, 1988.

ADDRESS: Written objections to the Docket Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mary W. Lipien, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5560.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a notice published in the **Federal Register** of January 28, 1988 (53 FR 2063), FDA announced that a color additive petition (CAP 7C0210) had been filed by Wesley-Jessen, 400 West Superior St., Chicago, IL 60610, proposing that 21 CFR Part 73 of the color additive regulations be amended to provide for the safe use of carbazole violet (CAS Reg. No. 6358–30–1, Colour Index No. 51319) to color contact lenses. The petition was filed under section 706 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 376).

II. Applicability of the Act

With the passage of the Medical Device Amendments of 1976 to the act (Pub. L. 94–295), Congress mandated the listing of color additives for use in medical devices when the color additive comes in direct contact with the body for a significant period of time (21 U.S.C. 376(a)). The use of carbazole violet as a color additive in contact lenses is subject to this listing requirement. The color additive is added to contact lenses in such a way that at least some of the color additive will come in contact with the eye when the lenses are worn. In addition, the lenses are intended to be placed on the eye for several hours a day, each day, for 1 year or more. Thus, the color additive will be in direct contact with the body for a significant period of time. Consequently, the use of the color additive currently before the agency is subject to the statutory listing requirement.

III. The Color Additive

The color additive carbazole violet (CAS Reg. No. 6358–30–1, Colour Index No. 51319) is prepared by reacting aminoethyl carbazole with chloranil in a high-boiling solvent (trichlorobenzene), followed by ring closure using benzene sulfonyl chloride. The product, which is composed of large particles, is filtered, washed, and dried. Particle size is reduced by mixing the crude product with an inorganic salt and a wetting agent which are then washed out during processing.

IV. Safety Evaluation

FDA concludes from the data submitted in the petition and from other relevant information that the upper limit of exposure to carbazole violet from its use in contact lenses is 280 nanograms per day. The agency-calculated upper limit was based on two factors. First, FDA has established a maximum practical use level of 50 micrograms per lens for color additives in contact lenses (Ref. 1). Second, the agency made two worst-case assumptions: (1) That a user will replace lenses tinted with carbazole violet once each year with a new pair of lenses tinted with the color additive at the maximum use level; and (2) that 100 percent of the color additive will migrate from the lenses into the eyes over the 1-year period. Because these assumptions are worst-case estimates, exposure to carbazole violet from its use for coloring contact lenses is likely to be far less than 280 nanograms per day.

To establish that the color additive carbazole violet is safe for use in coloring contact lenses, the petitioner conducted an in vitro cytotoxicity study on the color additive using L929 mouse fibroblast cells. The mouse cell cultures were exposed to 50,000 micrograms per milliliter of neat color additive. In this study, there were no changes in the morphology of cells that were in contact with the color additive. Thus, the study demonstrated that this concentration of the color additive is noncytotoxic by direct contact, and that the non-effect level for this color additive is greater than 50,000 micrograms per milliliter.

To relate this no-effect concentration for carbazole violet to the maximum concentration level in the eye that would result from the use of this color additive in contact lenses, the agency estimated that the daily exposure of the color additive in each eye (140 nanograms) will be diluted by the average daily volume of tears produced in each eye (1.66 milliliters). This concentration is equal to a maximum daily concentration of 83 nanograms of color additive per milliliter in the tear flow and eye area. This concentration is more than 600,000 times less than the dose of carbazole violet that was shown to have no adverse effect in the cytotoxicity study.

Based upon the available toxicity data, the small amount of the color additive added to the contact lens, and the agency's exposure calculation, FDA finds that the color additive carbazole violet is safe for use in contact lenses. FDA further concludes that the safety margin is sufficiently large that a limitation on the amount of the color additive that may be present in the lens is not required beyond the limitation that only the amount necessary to accomplish the intended technical effect may be used. Batch certification is not required to ensure safety.

V. Conclusions

Based on data contained in the petition and other relevant material, FDA concludes that there is a reasonable certainty that no harm will result from the petitioned use of carbazole violet for coloring contact lenses, and that this color additive is safe for its intended use. In addition, based upon the data it considered, the agency finds that carbazole violet is suitable for use in coloring contact lenses.

VI. Inspection of Documents

In accordance with § 71.15 (21 CFR 71.15), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 71.15, the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

VII. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence suporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

VIII. Reference

The following reference has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum of February 19, 1985, from the Food Additive Chemistry Evaluation Branch to the Petitions Control Branch, Re: "Color Additives in Contact Lenses."

IX. Objections

Any person who will be adversely affected by this regulation may at any time on or before November 21, 1988 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 73 is amended as follows:

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PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

1. The authority citation for 21 CFR Part 73 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); 21 CFR 5.10.

2. New § 73.3107 is added to Subpart D to read as follows:

§ 73.3107 Carbazole violet.

(a) *Identity.* The color additive is carbazole violet (Pigment Violet 23) (CAS Reg. No. 6358–30–1, Colour Index No. 51319).

(b) *Uses and restrictions.* (1) The substance listed in paragraph (a) of this section may be used as a color additive in contact lenses in amounts not to exceed the minimum reasonably required to accomplish the intended coloring effect.

(2) Authorization for this use shall not be construed as waiving any of the requirements of sections 510(k), 515, and 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) with respect to the contact lens in which the color additive is used.

(c) *Labeling.* The label of the color additive shall conform to the requirements of § 70.25 of this chapter.

(d) *Exemption from certification.* Certification of this color additive is not necessary for the protection of the public health, and therefore the color additive is exempt from the certification requirements of section 706(c) of the act.

Dated: October 18, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–24459 Filed 10–20–88; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 73

[Docket No. 87C–0253]

Listing of Color Additives for Coloring Contact Lenses; Chromium-Cobalt-Aluminum Oxide

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the color additive regulations to provide for the safe use of chromium-cobalt-aluminum oxide for coloring contact lenses. This action is in response to a petition filed by CooperVision, Inc.

DATES: Effective November 22, 1988, except for any provisions that may be stayed by the filing of proper objections; written objections and requests for a hearing by November 21, 1988.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mary W. Lipien, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a notice published in the **Federal Register** of September 1, 1987 (52 FR 32985), FDA announced that a color additive petition (CAP 7C0208) had been filed by CooperVision, Inc., 2610 Orchard Parkway, San Jose, CA 95134, proposing that 21 CFR Part 73 of the color additive regulations be amended to provide for the safe use of chromium-cobalt-aluminum oxide to color contact lenses. The petition was filed under section 706 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 376).

II. Applicability of the Act

With the passage of the Medical Device Amendments of 1976 to the act (Pub. L. 94–295), Congress mandated the listing of color additives for use in medical devices when the color additive comes in direct contact with the body for a significant period of time (21 U.S.C. 376(a)). The use of chromium-cobalt-aluminum oxide as a color additive in contact lenses is subject to this listing requirement. The color additive is added to contact lenses in such a way that at least some of the color additive will come in contact with the eye when the lenses are worn. In addition, the lenses are intended to be placed on the eye for several hours a day, each day for 1 year or more. Thus, the color additive will be in direct contact with the body for a significant period of time. Consequently, the use of the color additive currently before the agency is subject to the statutory listing requirement.

III. The Color Additive

The chemical identity of the color additive chromium-cobalt-aluminum oxide (CAS Reg. No. 68187–11–1, Colour Index No. 77343) is the same as that described in 21 CFR 73.1015(a), which authorizes the use of the additive for coloring linear polyethylene sutures. The composition of the additive is identical to that described in 21 CFR 73.1015(b). The range of metal concentrations in the specifications under § 73.1015 occurs because the additive is an inorganic pigment of varying chromium, cobalt, and aluminum composition, rather than a compound of precisely defined chemical composition.

IV. Safety Evaluation

FDA concludes from the data submitted in the petition and from other relevant information that the upper limit of exposure to chromium-cobalt-aluminum oxide from its use in contact lenses is 760 nanograms per day. The agency-calculated upper limit was based on two factors. First, from information submitted by the petitioner, FDA estimated that the maximum use level of the color additive is 138 micrograms per lens. Second, the agency made two worst-case assumptions: (1) That a user will replace lenses tinted with chromium-cobalt-aluminum oxide once each year with a new pair of lenses tinted with the color additive at the maximum use level; and (2) that 100 percent of the color additive will migrate from the lenses into the eyes over the 1-year period. Because these assumptions are worst-case estimates, exposure to chromium-cobalt-aluminum oxide from its use for coloring contact lenses is likely to be far less than 760 nanograms per day.

To establish that the color additive chromium-cobalt-aluminum oxide is safe for use in coloring contact lenses, the petitioner conducted an in vitro cytotoxicity study on the color additive using L929 mouse fibroblast cells. The cell cultures were exposed to the color additive at various levels. The study demonstrated that the maximum concentration of pigment tested, 300 micrograms per milliliter, and that the no-effect level is greater than 300 micrograms per milliliter.

To relate this no-effect concentration for chromium-cobalt-aluminum oxide to the maximum concentration level in the eye that would result from the use of this color additive in contact lenses, the agency estimated that the daily exposure of the color additive in each eye (380 nanograms) will be diluted by the average daily volume of tears produced in each eye (1.68 milliliters). This concentration is equal to a maximum daily concentration of 0.226 micrograms of color additive per milliliter in the tear flow and eye area. This concentration is more than 1,000 times less than the no-effect dose for chromium-cobalt-aluminum oxide found in the cytotoxicity study. Data from 5-day and 21-day ocular irritation studies in rabbits tested with the colored contact lenses showed no irritation or toxicity to the ocular environment.

Therefore, based upon the available toxicity data, the small amount of the color additive added to the contact lens, and the agency's exposure calculation, FDA finds that the color additive chromium-cobalt-aluminum oxide is safe for use in contact lenses. FDA further concludes that the safety margin is sufficiently large that a limitation on the amount of the color additive that may be present in the lens is not required beyond the limitation that only the amount necessary to accomplish the intended technical effect may be used. Batch certification is not required to ensure safety.

V. Conclusion

Based on data contained in the petition and other relevant material, FDA concludes that there is a reasonable certainty that no harm will result from the petitioned use of chromium-cobalt-aluminum oxide for coloring contact lenses, and that this color additive is safe for its intended use. In addition, based upon the data it considered, the agency finds that chromium-cobalt-aluminum oxide is suitable for use in coloring contact lenses and is adding new § 73.3110a to Subpart D of the color additive regulations.

VI. Inspection of Documents

In accordance with § 71.15 (21 CFR 71.15), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 71.15, the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

VII. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's Final rule implementing the National Environmental Policy Act (21 CFR Part 25).

VIII. Objections

Any person who will be adversely affected by this regulation may at any time on or before November 21, 1988 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA will publish a notice of the objections that the agency has received or lack thereof in the **Federal Register**.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 73 is amended as follows:

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

1. The authority citation for 21 CFR Part 73 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1058 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); 21 CFR 5.10.

2. New § 73.3110a is added to Subpart D to read as follows:

§ 73.3110a Chromium-cobalt-aluminum oxide.

(a) *Identity.* The color additive chromium-cobalt-aluminum oxide (Pigment Blue 36) (CAS Reg. No. 68187–11–1, Colour Index No. 77343) shall conform in identity and specifications to the requirements of § 73.1015 (a) and (b).

(b) *Uses and restrictions.* (1) The substance listed in paragraph (a) of this section may be used as a color additive in contact lenses in amounts not to exceed the minimum reasonably required to accomplish the intended coloring effect.

(2) Authorization for this use shall not be construed as waiving any of the requirements of sections 510(k), 515, and 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) with respect to the contact lens in which the color additive is used.

(c) *Labeling.* The label of the color additive shall conform to the requirements of § 70.25 of this chapter.

(d) *Exemption from certification.* Certification of this color additive is not necessary for the protection of the public health, and therefore the color additive is exempt from the certification requirements of section 706(c) of the act.

Dated: October 18, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–24458 Filed 10–20–88; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 172

[Docket No. 87F–0185]

Direct Food Additives; Food Additives Permitted for Direct Addition to Food for Human Consumption; Dimethyl Dicarbonate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of dimethyl dicarbonate as a yeast inhibitor in wines. This action responds to a petition filed by Mobay Chemical Corp.

DATES: Effective October 21, 1988; written objections and requests for a hearing by November 21, 1988. The Director of the Office of the Federal Register approves the incorporation by reference of certain publications at 21 CFR 172.133(a)(2), effective October 21, 1988.

ADDRESSES: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: JoAnn Ziyad, Center for Food Safety and Applied Nutrition (HFF–334), Food

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and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-418-3453.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of July 13, 1982 (47 FR 30291), FDA announced that a petition (FAP 2A3636) has been filed by Mobay Chemical Corp., Penn Lincoln Parkway West, Pittsburgh, PA 15205, proposing that the food additive regulations be amended to provide for the safe use of dimethyl dicarbonate as a cold sterilant in beverages and fruit juices. Subsequently, the petition was amended to request the use of dimethyl dicarbonate to prevent the growth of yeasts in wines only.

Dimethyl dicarbonate is unstable in aqueous solution and breaks down almost immediately after addition to beverages. In wine and aqueous liquids, the principal breakdown products are methanol and carbon dioxide. Dimethyl carbonate and methylethl carbonate, as well as carbomethoxy amino and hydroxy adducts of amines, sugars, and fruit acids, are also formed in minor amounts. Dimethyl dicarbonate also may react with traces of ammonia or ammonium ions in wines to form trace quantities of methyl carbamate. Methyl carbamate has been shown to cause cancer in laboratory animals.

In accordance with 21 CFR 171.1, FDA has reviewed the safety of the food additive dimethyl dicarbonate, as well as that of the by-products formed during hydrolysis and reaction of the food additive with other constituents found in wines. The results of that review are discussed below.

I. Determination of Safety

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), the so-called "general safety clause" of the statute, a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. Under section 409(c)(5)(A) of the act (21 U.S.C. 348(c)(5)(A)), in determining whether a proposed use of a food additive is safe, among the relevant factors to be considered is the probable consumption of the additive and of any substance formed in or on food because of the use of the additive. The concept of safety embodied in the Food Additives Amendment of 1958 is explained in the legislative history of the provision: "Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstance." (H. Rept. 2284, 85th Cong., 2nd Sess. 4 (1958)). This concept of safety has been incorporated into FDA's food additive regulations (21 CFR 170.3(i)). The anticancer or Delaney clause of the Food Additives Amendment (section 409(c)(3)(A) of the act (21 U.S.C. 348(c)(3)(A))) provides further that no food additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal.

In the past, FDA often refused to approve a use of an additive that contained even minor amounts of a carcinogenic chemical, even though the additive as a whole had not been shown to cause cancer. The agency now believes that the Delaney or anticancer clause is applicable only when the food additive as a whole is found to cause cancer. An additive that has not been shown to cause cancer but that contains a carcinogenic constituent, or whose use will lead to the formation of trace amounts of a carcinogenic substance in or on food, may be properly evaluated under the general safety clause of the statute.[1] Risk assessment procedures are used to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive. Developments in scientific technology and experience with risk assessment procedures make it possible for FDA to establish the safety of such additives.

The agency's position on additives that contain a carcinogenic constituent but that have themselves not been shown to cause cancer is supported by *Scott* v. *FDA*, 728 F. 2d 322 (6th Cir. 1984). That case involved a challenge to FDA's decision to approve the use of D&C Green No. 5, which contains a carcinogenic chemical but has itself not been shown to cause cancer. Relying heavily on the reasoning in the agency's decision to list the above color additive, the United States Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulation. The agency believes that it is consistent with the *Scott* decision to interpret the constituents policy to include the current situation, which relates to the possible formation of trace amounts of a carcinogenic substance from the use of a food additive in food but in which the additive itself has not been shown to cause cancer.

II. Safety of Petitioned Use of Dimethyl Dicarbonate

FDA finds that the petitioned use level of 100 to 200 parts per million (ppm) of dimethyl dicarbonate will result in virtually no exposure of consumers to the additive itself. Dimethyl dicarbonate is unstable in aqueous solution and breaks down almost immediately after addition to the food (beverages) to form primarily carbon dioxide and methanol. The instability of dimethyl dicarbonate is confirmed by data submitted by the petitioner showing that dimethyl dicarbonate cannot be detected by analysis of food to which it has been added.

To establish that dimethyl dicarbonate is safe for use as an inhibitor of yeast in wine, the petitioner submitted data from acute, subchronic, and chronic toxicity studies. In the subchronic and chronic toxicity studies, rats received either water, orange juice, or wine treated with 4,000 (ppm) of dimethyl dicarbonate (20 times the proposed use level in wine) as the drinking fluid while the controls received water, orange juice, or wine. These studies revealed no adverse effects from water, orange juice, or wine treated with dimethyl dicarbonate.

In other chronic toxicity studies, dogs received either water or orange juice treated with 4,000 ppm of dimethyl dicarbonate as the drinking fluid. These studies also revealed no adverse effects from the water or orange juice treated with dimethyl dicarbonate.

The petitioner also submitted a 2-generation rat study in which rats received drinking fluids that were treated with dimethyl dicarbonate (4,000 ppm). This study revealed no adverse effects. These chronic and multigeneration studies of dimethyl dicarbonate did not produce any evidence that it is a carcinogen.

III. Safety of Substances That May be Present in Wine Due to Use of the Additive

Because dimethyl dicarbonate decomposes into other chemical species when added to aqueous solutions such as wine, FDA has also evaluated the safety of the chemicals formed as a result of the addition of dimethyl dicarbonate to wine.

A. Minor Reaction Products

The minor reaction products formed in wine from the use of dimethyl dicarbonate include methylethyl carbonate and carbomethoxy amino- and hydroxy-adducts of amines, sugars, and naturally occurring fruit acids such as lactic acid, citric acid, and ascorbic acid (vitamin C). Dimethyl carbonate, an impurity in dimethyl dicarbonate, is also found in wine in minor amounts as a result of the use of the additive.

The petitioner presented data to show that the addition of 100 to 200 ppm of dimethyl dicarbonate to wine is effective in inhibiting the growth of most species of yeast found in wine. Based on this level of addition, for a wine intake of 232 grams per person per day (the 90th percentile consumption level for "drinkers only"—Most recent USDA Food Consumption Survey, 1977–78), and based on data submitted by the petitioner, the agency estimates that the maximum daily consumption of the minor reaction products resulting from the addition of dimethyl dicarbonate to wine is from 2 to 5 milligrams per person per day. Because these reaction products were formed in the dimethyl dicarbonate-treated fluids (water and wine) used in the subchronic and chronic rat and dog studies submitted by the petitioner, the safety of the reaction products is evidenced by the findings of no-adverse effects in these studies.

The safety of methylethyl carbonate was further evaluated in a subchronic toxicity study in rats in which this substance was added to the drinking water at levels of 0, 1,000, 3,000 and 10,000 ppm for 3 months. The average daily consumption of methylethyl carbonate ranged from approximately 0.1 milligram per kilogram to 1 gram per kilogram body weight per day. No adverse effects in rats from drinking the water treated with methylethyl carbonate were seen in this study.

A teratogenicity study was conducted with pregnant female rats of the Long-Evans FB30 strain. The animals were fed diets containing methylethyl carbonate at levels of 0, 100, 1,000 and 10,000 ppm. No signs of toxicity were noted in the study report. However, there was a dose-related reduction in fluid intake and a slight decrease in body weight gain in pregnant females receiving methylethyl carbonate throughout the gestational period. The reduced fluid intake appears to be attributable to the bad taste and smell of the water containing the methylethyl carbonate. All test and control females were sacrificed at day 20 (Cesarean sections were performed), and the fetuses were examined. No embryotoxic or teratogenic effects were found in this examination.

To establish the safety of dimethyl carbonate the petitioner submitted a subchronic study in which dimethyl carbonate was incorporated into the drinking water at levels of 0, 1,000, 3,000 and 10,000 ppm. An increase in body weight gain was observed in male rats at all treated levels. No adverse effects were found in this study at 10,000 ppm or at lower levels.

B. Carbon Dioxide

Carbon dioxide, one of the principal hydrolysis products of dimethyl dicarbonate, is a natural product of animal metabolism. Prolonged exposure to concentrations of carbon dioxide (in inhaled air) at levels higher than 5 volume per cent may lead to unconsciousness and death (Ref. 7). Carbon dioxide is present in solution as the carbonate and bicarbonate anions, however, and is routinely used to carbonate beverages (Ref. 8). The levels of carbon dioxide present in wine as a result of the use of dimethyl dicarbonate are well below the levels found in carbonated beverages. Thus, the agency has no evidence that carbon dioxide would be harmful under the intended conditions of use.

C. Methanol

Methanol is the principal reaction product of concern resulting from addition of dimethyl dicarbonate to wine. Theoretically, complete hydrolysis of dimethyl dicarbonate would yield 2 moles of methanol and 2 moles of carbon dioxide from each mole of dimethyl dicarbonate added to wine. On a weight basis, this yield corresponds to approximately 48 milligrams of methanol for each 100 milligrams of the additive added to a liter of wine. In aqueous/alcoholic solutions such as wine, the theoretical level of methanol is not achieved because dimethyl dicarbonate may also react with naturally occurring minor constituents of the solution to form other chemicals in trace amounts. However, to estimate a worst case exposure of consumers to methanol from the proposed use of the additive, the agency assumed complete hydrolysis of dimethyl dicarbonate to methanol and carbon dioxide. Based on the addition of 100 to 200 mg dimethyl dicarbonate to one liter of wine and on a wine intake of 232 grams per person per day (90th percentile consumption level), the agency estimates that the daily intake of methanol from this use of dimethyl dicarbonate would range from 11 to 22 milligrams per person per day (0.18 to 0.36 milligram per kilogram body weight for a 60 kilogram person) (Ref. 1).

The agency considers the daily intake of methanol from the addition of dimethyl dicarbonate to wine, even when added to the amount of methanol naturally present in other foods such as fresh fruits and vegetables and grain alcohol, to be safe. An adult human can metabolize up to 1500 milligrams of methanol per hour with no adverse symptoms or effects (Ref. 2). The levels of methanol that occur in wine and fruit juices average up to 140 milligrams per liter and an additional 50 to 100 milligrams per liter may result from the use of dimethyl dicarbonate, assuming a wine intake of 232 grams per person per day (Ref. 1). The total methanol exposure from these sources would be up to 50 to 60 milligrams per person per day. There is, therefore, a large margin of safety between the methanol intake and the amount which can be safely ingested.

D. Methyl Carbamate

1. Carcinogenicity. Reaction of dimethyl dicarbonate with naturally occurring ammonia or ammonium ions in wine may result in the formation of trace amounts of methyl carbamate which has been shown to be carcinogenic in rats (Ref. 3). FDA has evaluated the safety of this reaction by-product using risk assessment procedures to estimate the upper-bound limit of risk presented by the presence of this chemical as an impurity in wine treated with dimethyl dicarbonate. Based on this evaluation, the agency has concluded that under the proposed conditions of use, dimethyl dicarbonate is safe.

2. Basis for evaluation. The risk assessment procedures that FDA used in this evaluation are similar to the methods that it has used to examine the risk associated with the presence of minor carcinogenic impurities in various food and color additives (see, e.g., 49 FR 13018; April 2, 1984). This evaluation of the risk from the use of dimethyl dicarbonate has two aspects: (1) Assessment of the probable exposure to methyl carbamate produced in food from the use of dimethyl dicarbonate; and (2) extrapolation of the risk observed in the animal bioassay to the conditions of probable exposure to humans.

Based on the level of methyl carbamate produced from the addition of dimethyl dicarbonate to wine as a yeast inhibitor, as well as the estimated lifetime consumption of wine, FDA estimated the worst case exposure to methyl carbamate to be 2.4 micrograms per person per day (Refs. 1, 4, and 5). The agency used data in a carcinogenesis bioassay report on methyl carbamate conducted by the National Toxicology Program (NTP)

[1] However, the statute calls for a different treatment from compounds whose use as a food additive, color additive, or new animal drug administered to food-producing animals results in the formation of carcinogenic metabolites in the animal. Such compounds and their metabolites are subject to the relevant Delaney Clause and DES proviso (21 U.S.C. 348(c)(3)(A) (food additives); 376(b)(5)(B) (color additives); 360b(d)(1)(H)(ii) (new animal drugs)); as well as the general safety clause. See the Commissioner's decision on the withdrawal of approval of new animal drug applications for diethylstilbestrol (44 FR 54852 at 54868–54886; September 21, 1979).

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(Ref. 4) to estimate the upper-bound level of lifetime human risk from exposure to this chemical stemming from the proposed use of dimethyl dicarbonate.

The bioassay report consisted of results from studies of methyl carbamate in both rats and mice. The bioassay in B6C3F1 mice was reported by NTP to be negative. The bioassay of methyl carbamate in F344/N rats consisted of a 2-year chronic study and a parallel study with sacrifices at 6, 12, and 18 months. The 2-year study employed a high dosage level of 200 milligrams per kilogram body weight. The parallel study employed one dosage level of 400 milligrams per kilogram body weight. An increase in hepatocellular neoplasms was found at the high dose in female F344/N rats of the 2-year study. In the parallel study, hepatocellular neoplasms were found at 6 months in both sexes, and the sacrifices at the later times revealed a classic picture of progression from benign to highly malignant neoplasms dependent upon the length of time of exposure. The NTP concluded that "there was clear evidence of carcinogenic activity for male and female F344/N rats given methyl carbamate as indicated by incidences of hepatocellular neoplastic nodules and hepatocellular carcinoma" (Ref. 3).

3. Results of evaluation. Using the NTP bioassay report, the Center for Food Safety and Applied Nutrition's Quantitative Risk Assessment Committee (QRAC) estimated the human cancer risk from the potential exposure to methyl carbamate stemming from the proposed use of dimethyl dicarbonate as a yeast inhibitor in wine (Refs. 4 and 5).

The QRAC used a quantitative risk assessment procedure (linear proportional model) to extrapolate from the dose used in the animal experiment through zero to cover the very low doses expected to be encountered under the proposed conditions of use of the additive. This procedure is not likely to underestimate the actual risk from the very low doses and may, in fact, exaggerate it because the extrapolation models used are designed to estimate the maximum risk consistent with the data. For this reason, the estimate can be used with confidence to determine to a reasonable certainty whether any harm will result from the proposed conditions and a level of use of 200 ppm of the food additive.

Based on a worst case exposure to methyl carbamate (2.4 micrograms per person per day), FDA estimated, using a simple linear model, that the upper-bound limit of individual lifetime risk from potential exposure to methyl carbamate is 2.4×10^{-8} or less than 1 in 42 million. Because of numerous conservatisms in the exposure estimate, lifetime averaged individual exposure to methyl carbamate is expected to be substantially less than the estimated daily intake, and, therefore, the calculated upper-bound risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from the exposure to methyl carbamate that results from the use of up to 200 ppm of dimethyl dicarbonate in wine.

4. Need for specifications. The agency has also considered whether a specification is necessary to control the amount of methyl carbamate that may be formed in wine treated with the additive. The agency finds that the amount of methyl carbamate formed in wine may be controlled by limiting the amount of dimethyl dicarbonate that can be added to the wine to 200 ppm or less rather than by setting a specification for the level of methyl carbamate impurity in wine. The petitioner submitted data to show that the maximum level of methyl carbamate impurity formed in commercial wine is less than 10 parts per billion (ppb) for each 100 ppm of dimethyl dicarbonate added to wine. A 200 ppm level of dimethyl dicarbonate is sufficient to control the growth of all significant genera and species of yeast in wine that has been adequately pasteurized or ultra/filtered according to current good manufacturing practices to reduce the microbial count to 500 per milliliter (ml) or less.

E. Ethyl Carbamate

The petitioner submitted studies in which gas chromatography/mass spectroscopy was used to measure the formation of ethyl carbamate (urethane) in dimethyl dicarbonate-treated wine and model wine solutions, in the presence of high concentrations of ammonium ions. These studies, conducted over a 12-month period, failed to show the formation of ethyl carbamate in excess of endogenous levels found in wine. These studies also did not show evidence of formation of ethyl carbamate by transesterification of methyl carbamate. Thus there is no indication that the use of dimethyl dicarbonate affects the level of ethyl carbamate in wine.

The agency is aware that ethyl carbamate, an animal carcinogen, occurs as a contaminant in wine. The agency is in the process of obtaining as much information as possible about the levels of such ethyl carbamate contamination. In addition, in cooperation with the wine industry, a program has been instituted to find and control the formation of ethyl carbamate so as to reduce it to the extent possible. (Agreement Between the Association of American Vintners, the Wine Institute, and FDA, "Ethyl Carbamate Voluntary Program," Jan. 7, 1988) (Ref. 6).

IV. Conclusion on Safety

FDA has evaluated all of the data in the petition pertaining to the use of dimethyl dicarbonate in wine and has determined that the additive is safe for its proposed use.

To ensure the safe to the additive, FDA, under 21 U.S.C. 348(c)(1)(A), finds that it is necessary to require that the label of the package containing the additive contain, in addition to other information required by the Federal Food, Drug, and Cosmetic Act, (1) the name of the additive, "dimethyl dicarbonate," and (2) directions to provide that not more than 200 ppm of dimethyl dicarbonate will be added to the wine.

In accordance with 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. Under FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25), an environmental assessment is required for an action of this type under 21 CFR 25.31a(a).

V. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday:

1. Memorandum dated January 14, 1987, Regulatory Food Chemistry Branch to GRAS Review Branch, "Dimethyl Dicarbonate (DMDC) in Wine. Submission of September 5, 1986; Exposure Estimate for Methyl Carbamate (MC) and Methanol in Wine."

2. Letter of A.J. Lehman, February 12, 1963, in Food Additive Petition No. 0A0043 (FAP 0A0043).

3. NTP Technical Report on the Toxicology and Carcinogenic Studies of Methyl Carbamate in F344/N Rats and B6C3F1 Mice, National Toxicology Program U.S. Department of Health and Human Service, Reprt No. 328, 1986.

4. Memorandum dated October 28, 1986, Quantitative Risk Assessment Committee to Office of Toxicological Sciences, "Methyl Carbamate in Wine."

5. Memorandum dated November 20, 1987, Quantitative Risk Assessment Committee to Office of Toxicological Sciences, "Methyl Carbamate in Wine."

6. "Ethyl Carbamate Voluntary Program," Final Agreement Between the Wine Institute, the Association of American Vintners and the Food and Drug Administration, January 7, 1988.

7. Ballou, W. Robert, "Carbon Dioxide," *Encyclopedia of Chemical Technology*, 4:725–742, 1978.

8. Mones, Martha, "Carbonated Beverages," *Encyclopedia of Chemical Technology*, 4:710–725, 1978.

Any person who will be adversely affected by this regulation may at any time on or before November 21, 1988 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives, Reporting and recordkeeping requirements, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs, Part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR Part 172 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 172.133 is added to Subpart B to read as follows:

§ 172.133 Dimethyl dicarbonate.

Dimethyl dicarbonate (CAS Reg. No. 4525–33–1) may be safely used in wine in accordance with the following prescribed conditions:

(a) The additive meets the following specifications:

(1) The additive has a purity of not less than 99.8 percent as determined by the following titration method:

Principles of Method

Dimethyl dicarbonate (DMDC) is mixed with excess diisobutylamine with which it reacts quantitatively. The excess amine is backtitrated with acid.

Apparatus

250-milliliter (mL) Beaker
100-mL Graduate cylinder
25-mL Pipette
10-mL Burette (automatic, eg., Metrohm burette)
Stirrer
Device for potentiometric titration
Reference electrode
Glass electrode

Reagents

Acetone, analytical-grade
Solution of 1 *N* diisobutylamine in chlorobenzene, distilled
1 *N* Acetic Acid

Procedure

Accurately weigh in about 2 grams of the sample (W) and dissolve in 100 mL acetone. Add accurately 25 mL of the 1 *N* diisobutylamine solution by pipette and allow to stand for 5 minutes. Subsequently, titrate the reaction mixture potentiometrically with 1 *N* hydrochloric acid (consumption = *a* mL) while stirring. For determining the blank consumption, carry out the analysis without a sample (consumption = *b* mL).

Calculation

$$\frac{(b-a)\times 13.4}{W} = \% \text{ DMDC}$$

Note.—For adding the diisobutylamine solution, always use the same pipette and wait for a further three drops to fall when the flow has stopped.

(2) The additive contains not more than 2,000 ppm (0.2 percent) dimethyl carbonate as determined by a method entitled "Gas Chromatography Method for Dimethyl Carbonate Impurity in Dimethyl Dicarbonate," which is incorporated by reference in accordance with 5 U.S.C. 552(a). Copies are available from the Division of Food and Color Additives, Center for Food Safety and Applied Nutrition (HFF–334), 200 C Street SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L Street NW., Washington, DC 20408.

(b) The additive is used or intended for use as an inhibitor of yeast in wine under normal circumstances of bottling where the viable yeast count has been reduced to 500 per milliliter or less by current good manufacturing practices such as flash pasteurization or filtration. The additive may be added to wine in an amount not to exceed 200 parts per million (ppm).

(c) To ensure the safe use of the food additive, the label of the package containing the additive shall bear, in addition to other information required by the Federal Food, Drug, and Cosmetic Act:

(1) The name of the additive "dimethyl dicarbonate."

(2) Directions to provide that not more than 200 ppm of dimethyl dicarbonate will be added to the wine.

Dated: October 17, 1988.

John M. Taylor,
Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–24417 Filed 10–20–88; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R–88–1294; FR–1958]

Community Development Block Grants; Final Rule; Corrections

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule; corrections.

SUMMARY: The purpose of this document is to make editorial corrections to a final rule published September 6, 1988 (53 FR 34416), that amended substantial portions of its Community Development

Block Grants (CDBG) regulation at 24 CFR Part 570.

FOR FURTHER INFORMATION CONTACT: James R. Broughman, Director, Entitlement Cities Division, Office of Block Grant Assistance, Room 7250, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–5000, telephone (202) 755–5977. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On September 8, 1988 (53 FR 34418), the Department amended substantial portions of its Community Development Block Grant (CDBG) regulation at 24 CFR Part 570 in order to update and make more efficient the CDBG program. The rule also incorporated legislative changes to Title I of the Housing and Community Development Act of 1974 contained in the Housing and Urban-Rural Recovery Act of 1983 and the Housing and Community Development Act of 1987.

Accordingly, the following corrections are made in FR Doc. 88–20101 published in the Federal Register on September 8, 1988 at 53 FR 34418:

§ 570.3 [Corrected]

1. In § 570.3(j), on page 34437, third column, correct "1970" to read "1980".

2. In § 570.3(v)(3)(i), on page 34438, second column, line 8, correct the word "act" to read "Act".

3. In § 570.3(w), on page 34438, third column, in lines 6 and 7, correct "section" to read "Section", and in line 8, correct "program" to read "Program".

4. In § 570.3(x), on page 34438, third column, in lines 5 and 10, correct the word "section" to read "Section", and in line 11, correct "program" to read "Program".

5. On page 34438, third column, in the table of contents, in § 570.204, correct the word "subrecipients".

§ 570.206 [Corrected]

6. In § 570.206(j)(2) concluding text, on page 34442, first column, line 11, correct "(j)(3)x" to read "(j)(3)".

§ 570.207 [Corrected]

7. § 570.207(b)(6), on page 34443, third column, line 2, correct "of" to read "or".

8. In § 570.282(d), on page 34444, first column, top of page, line 6, correct "of" to read "or".

§ 570.208 [Corrected]

9. In § 570.208(c), on page 34445, third column, line 14, correct "high proposition of lower income" to read "high proportion of low and moderate income".

10. In § 570.208(g) introductory text, on page 34445, third column, line 15, correct "by lower income households," to read "by low and moderate income households," and in line 19, correct "affordable rents/costs by lower income" to read "affordable rents/costs by low and moderate income".

11. In § 570.208(g)(3), on page 34445, column one, line 7, correct "program" to read "Program".

12. In § 570.208(g)(6), on page 34446, column one, line 5, correct "lower income persons" to read "low and moderate income persons".

§ 570.207 [Corrected]

13. In § 570.207(b)(2)(ii), on page 34445, third column, correct "work" to read "works".

§ 570.208 [Corrected]

14. In § 570.208(a)(3)(i)(A), on page 34448, first column, correct "non-elderly housing project;" to read "non-elderly rental housing project;".

15. In § 570.208(d)(1), on page 34449, first column, in last sentence, correct "§ 570.505" to read "§ 570.505".

§ 570.301 [Corrected]

16. In § 570.301(b)(1)(i), on page 34449, second column, correct "recieved" to read "received", and omit close parenthetical after the word "use", and insert close parenthetical after the word "activities" and before the semi-colon.

§ 570.303 [Corrected]

17. § 570.303(h), on page 34450, second column, last line, correct "105(1)(11)" to read "105(a)(11)".

§ 570.304 [Corrected]

18. In § 570.308(b), on page 34454, second column, line 10, correct "used in the definition of "low and moderate income person" at § 570.3;" to read "used in the definitions of "low and moderate income person" and low and moderate income household" (as applicable) at § 570.3;".

19. Section 570.506(b)(2)(ii), on page 34454, second column, is correctly revised to read "The income characteristics of families and unrelated individuals in the service area; and".

20. In § 570.506(g)(5), on page 34458, first column, correct "the hiring and training of lower income residents and the use of local businesses." to read "the hiring and training of low and moderate income persons and the use of local businesses."

§ 570.606 [Corrected]

21. In § 570.606(b)(1)(iii)(B), on page 34469, third column, line 8, correct by removing "a" at end of line.

22. In § 570.606(d), on page 34461, second column, line 18 is corrected by removing the citation reference, "(see 24 CFR 570.201(i))".

§ 570.608 [Corrected]

23. In § 570.608(c), on page 34462, second column, in the introductory paragraph, correct by removing the last sentence, "These requirements shall be implemented not later than September 21, 1987."

24. In § 570.608(c)(2), on page 34462, third column, the definition for "Elevated blood lead level or EBL." is corrected to read, "Excessive absorption of lead, that is, a confirmed concentration of lead in whole blood of 25 μg/dl (micrograms of lead per deciliter of whole blood) or greater."

§ 570.609 [Corrected]

25. In § 570.609, on page 34463, second column, line 4, correct the word, "service" to read "services".

§ 570.610 [Corrected]

26. In § 570.610, on page 34463, second column, correct section heading to read, "Uniform administrative requirements and cost principles".

§ 570.611 [Corrected]

27. In § 570.611(a)(2), on page 34463, third column, in the parenthetical phrase on line 12, correct the word "of" to read "or".

§ 570.904 [Corrected]

28. In § 570.904(c)(2)(iv), on page 34469, first column, line 8, correct "(C)(1)" to read "(c)(1)".

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301–20); and sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: October 17, 1988.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 88–24383 Filed 10–20–88; 8:45 am]

BILLING CODE 4210–29–M

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24 CFR Part 570

[Docket No. R–88–1336; FR–2178]

Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; Technical Amendment

AGENCY: Department of Housing and Urban Development.

ACTION: Technical Amendment.

SUMMARY: This document amends certain sections in the HUD portion of a common final rule that established consistency and uniformity among Federal agencies in the administration of grants and cooperative agreements to State, local and federally recognized Indian tribal governments.

EFFECTIVE DATE: October 1, 1988.

FOR FURTHER INFORMATION CONTACT: Edward L. Girovasi, Jr., Director, Policy and Evaluation Division, Office of Procurement and Contracts, Department of Housing and Urban Development, Room 5260, 451 Seventh Street SW., Washington, DC 20410. Telephone (202) 755–5294. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On March 11, 1988 (53 FR 8034), a common final rule was published in the Federal Register to implement OMB Circular A–102 "Uniform Administrative Requirements for Grants to State and Local Governments". The rule established consistency and uniformity among the Federal agencies in the administration of grants and cooperative agreements to State, local and federally recognized Indian tribal governments.

The Department's portion of the rule contained erroneous references to a citation that is being revised in this document.

Accordingly, 24 CFR Part 570 is amended as follows:

PART 570—[AMENDED]

1. The authority citation for Part 570 continues to read as follows:

Authority: Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301–5320); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 570.500 [Amended]

2. Section 570.500(a)(2) is amended by revising the reference to "§ 570.503(b)(7)" to read "§ 570.503(b)(8)".

§ 570.503 [Amended]

3. Section 570.503(b)(6)(i) is amended by revising the reference to "§ 570.901" to read "§ 570.208 (formerly § 570.901)".

§ 570.505 [Amended]

4. Section 570.505(a)(1) is amended by revising the reference to "570.901" to read "§ 570.208 (formerly § 570.901)".

Dated: October 17, 1988.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 88–24382 Filed 10–20–88; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD Regulation 6010.8–R, Amdt. No. 15]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Minor Revisions to the CHAMPUS DRG-BASED Payment System and Fiscal Year 1989 Rates

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule makes minor revisions to the final rule which was published on August 31, 1988 (53 FR 33461). It revises the comprehensive CHAMPUS regulation, DoD 6010.8–R (32 CFR Part 199), pertaining to payment for inpatient hospital services under the CHAMPUS DRG-based payment system which was implemented on October 1, 1987. These changes are necessary to conform to changes affecting the Medicare Prospective Payment System (PPS) upon which the CHAMPUS DRG-based payment system is modeled.

EFFECTIVE DATE: This amendment is effective for inpatient hospital admission occurring on or after October 1, 1988.

ADDRESS: Office of the Civilian Health and Medical Program of the Uniformed Services, (OCHAMPUS), Office of Program Development, Aurora, CO 80045–6900.

For copies of the Federal Register containing this notice, contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC. 20402, (202) 783–3238.

The charge for the Federal Register is $1.50 for each issue payable by check or money order to the Superintendent of Documents.

FOR FURTHER INFORMATION CONTACT: Stephen E. Isaacson, Office of Program Development, OCHAMPUS, telephone (303) 361–4005.

To obtain copies of this document, see the "ADDRESS" section above. Questions regarding payment of specific claims under the CHAMPUS DRG-based payment system should be addressed to the appropriate CHAMPUS contractor.

SUPPLEMENTARY INFORMATION: On June 3, 1988, we published a proposed amendment of rule to modify the CHAMPUS DRG-based payment system which was implemented on October 1, 1987. We provided a 30-day comment period on the proposed amendment of rule and published the final rule on August 31. This final rule includes a number of changes to conform to statutory or regulatory changes to the Medicare PPS as well as changes to expand the CHAMPUS DRG-based payment system to alcohol/drug abuse services and psychiatric services in general hospital settings. We refer the reader to the proposed and final rule for more detailed explanations of the changes to the CHAMPUS DRG-based payment system and the implementing regulations in 32 CFR Part 199.

I. Minor Revision to the CHAMPUS Regulation Relating to the DRG-Based Payment System

Several of the provisions of our final rule were designed to conform to the Medicare PPS and the final Medicare rule which was expected to be published about the same time as our final rule. However, publication of the Medicare final rule was delayed, and subsequently certain changes were made to areas in which CHAMPUS has duplicated the Medicare procedures. This minor revision to the rule is promulgated to make the CHAMPUS DRG-based payment system conform to the Medicare PPS in connection with the payment formula for cost outlier cases.

In our proposed rule we stated that "for the most part, our outlier policy follows the outlier procedures used in the Medicare PPS" and that CHAMPUS would make changes similar to the outlier changes proposed for the Medicare PPS (53 FR 20580). This was reiterated in our final rule which stated that "we think that * * * the policies would continue to be the same for both the Medicare PPS and for the CHAMPUS DRG-based payment system" (53 FR 33466).

In our final rule we established the marginal cost factor for cost outliers at 80 percent in order to conform to the expected Medicare PPS formula. In addition, the threshold for cost outliers was set at $27,000, also to conform to the anticipated final amount for the Medicare PPS. In their final rule, however, the Health Care Financing Administration (HCFA) changed the marginal cost factor to 75 percent and the threshold amount to $28,000 for the Medicare PPS, effective November 1, 1988. This minor revision makes corresponding changes under the CHAMPUS DRG-based payment system. All other outlier policies as contained in our final rule remain unchanged.

Mindful of the usual practice under the Administrative Procedure Act of providing at least 30 days advance notice before implementing new regulatory requirements, our adoption of the new Medicare threshold and

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marginal cost factor amounts will not apply to cases involving admissions prior to November 21, 1988. For outlier cases arising from admissions prior to November 21, 1988, we are preserving the prior status quo in effect during fiscal year 1988. In other words, in effect, the cost outlier formula change adopted in our August 31 rule (designed to take effect October 1) based on what we thought the Medicare PPS would implement is being vacated. In its place we are adopting, effective some 30 days before, the formula the Medicare PPS actually established. In the meantime we are restoring the formula that was in place prior to the August 31 rule.

Although not completely in line with our normal procedure, the approach reflected here seems most reasonable to avoid regulatory confusion. No new round of notice and public comment for this minor regulatory revisions is necessary because it follows so directly from the comment period just provided in connection with our August 31, 1988 final rule. In addition, the action of, in effect, vacating the cost outlier revision adopted in the August 31 rule need not be preceded by 30 days advance notice because it merely restores the prior status quo for a brief period and is necessary to avoid the regulatory confusion that would result if the August 31 change were allowed to go into effect pending the effective date of the new revision.

One final twist is that the marginal payment percentage set out in our June 3 proposed rule and August 31 final rule, which is being vacated for the most part by this final rule, is being preserved for neonatal services and services in children's hospitals. This is because of a requirement contained in the Department of Defense Appropriations Act of Fiscal Year 1989, which permits DOD to begin DRG system coverage for these services if a number of "special measures" are adopted, one of which is "a special outlier policy for children's hospitals and neonatal services that combines the thresholds in effect under CHAMPUS DRG regulations for fiscal year 1988 with the higher marginal cost factors proposed by 53 FR 20580 (June 3, 1988)." *See* House Conference Report No. 100–1002, 100th Congress, 2d Session, pp. 104–5.

II. Note Regarding Slight Change to Rates and Weights

Attachments to our final rule provided the rates and weights to be used under the CHAMPUS DRG-based payment system during FY 1989. Under the CHAMPUS DRG-based payment system, our Adjusted Standardized Amounts (ASAs), weights, and cost-share amounts are calculated using the same update factors used for the Medicare PPS (§ 199.14(a)(1)(iii)(E)(*2*)) and using the area wage indexes used in the Medicare PPS (§ 199.14(a)(1)(iii)(F)).

Subsequent to publication of our final rule, HCFA revised the Medicare PPS update factors for FY 1989 and the area wage index to be used. We had based our update factors on a market basket of 5.0 percent which HCFA intended to use at the time, but HCFA has recalculated the market basket to be 5.4 percent. In addition, HCFA has changed the wage indexes that will be used during FY 1989 under the Medicare PPS. We have recalculated our ASAs, weights and cost-share amounts using these new wage indexes.

The revised CHAMPUS weights and rates are now being calculated to reflect these revisions and will be published in the **Federal Register** for the information of interested parties within approximately 10 days. The revised numbers do not involve changes in the CHAMPUS regulation, but rather a slightly different result of applying the regulation.

III. Regulatory Procedures

Executive Order 12291 requires that a regulatory impact analysis be performed on any major rule. A "major rule" is defined as one which would result in annual effect on the national economy of $100 million or more or have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues regulations which would have a significant impact on a substantial number of small entities. For purposes of the Regulatory Flexibility Act, we consider small entities to include many nonprofit and for-profit hospitals.

This final rule is not a major rule under Executive Order 12291. The change set forth in this final rule, is a minor revision to a previously published final rule. Moreover this final rule will have a very minor impact and will not significantly affect a substantial number of small entities. In light of the above, no regulatory impact analysis is required.

IV. Other Required Information

A. Effective Date

This final rule is effective for inpatient hospital admissions occurring on or after October 1, 1988. However, as noted above, the rule contains provisions restoring the previously used cost outlier formula for outlier cases arising from admissions between October 1, 1988, and November 21, 1988, and adopting the new formula for admissions thereafter.

B. Paperwork Reduction Act

This notice does not impose information collection requirements. Therefore, it does not need to be reviewed by the Executive Officer of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511).

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health Insurance, and Military personnel.

PART 199—[AMENDED]

Accordingly, 32 CFR Part 199 is amended as follows:

1. The authority citation for Part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301.

2. Section 199.14 is amended by revising paragraph (a)(1)(iii)(E)(*1*)(*ii*) to read as follows:

§ 199.14 Basic program benefits.

* * * * *

(a) * * *
(1) * * *
(iii) * * *
(E) * * *
(*1*) * * *

(*ii*) *Cost outliers.* Any discharge which has standardized costs that exceed a threshold of the greater of two times the DRG-based amount or $28,000 ($13,500 for neonatal services and for services in children's hospitals) shall qualify as a cost outlier. The standardized costs shall be calculated by multiplying the total charges by the factor described in § 199.14(a)(1)(iii)(D)(*4*) and adjusting this amount for indirect medical education costs. Cost outliers shall be reimbursed the DRG-based amount plus 75 percent (90 percent for DRGs related to burn cases and 80 percent for neonatal services and for services in children's hospitals) of all costs exceeding the threshold. Additional payment for cost outliers shall be made only upon request by the hospital. Notwithstanding the threshold amount stated in the first sentence of this paragraph and the marginal payment percentage stated in the third sentence of this paragraph, for all discharges to patients admitted prior to November 21, 1988, a threshold amount of $13,500 (rather than $28,000) shall apply and (except for burn cases, neonatal services and services in children's hospitals) a marginal payment percentage of 60 percent (rather than 75 percent) shall apply.

* * * * *

Linda Bynum,
Alternate OSD Federal Register Liaison, Department of Defense.
October 13, 1988.

[FR Doc. 88-24380 Filed 10-20-88; 8:45 am]
BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD–FRL–3404–7]

Standards of Performance for New Stationary Sources; Determination of Carbon Monoxide Emissions From Stationary Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action: (1) Amends Method 10 and adds Method 10B to Appendix A, both of which concern the determination of carbon monoxide emissions from stationary sources, (2) revises Performance Specification 4 (PS 4) of Appendix B concerning carbon monoxide continuous emission monitoring systems (CEM's) in stationary sources, and (3) amends § 60.106 regarding test methods and procedures. Method 10 is being amended by adding an alternative interference scrubber so that the method can be used to evaluate nondispersive infrared CEMS's. Conforming changes are being made to PS 4 and § 60.106. These amendments were proposed in the **Federal Register** on August 25, 1987 (52 FR 32028).

EFFECTIVE DATE: October 21, 1988.

Under section 307(b)(1) of the Clean Air Act, judicial review of the actions taken by this notice is available *only* by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: *Docket.* Docket No. A–87–07, containing materials relevant to this rulemaking, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, South Conference Center, Room 4, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Foston Curtis or Roger Shigehara, Emission Measurement Branch (MD–19), Technical Support Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–1063.

SUPPLEMENTARY INFORMATION:

I. The Rulemaking

This rulemaking does not impose emission measurement requirements beyond those specified in the current regulations, nor does it change any emission standard. Rather, the rulemaking would simply amend an existing test method and add an alternative test method associated with emission measurement requirements that would apply irrespective of this rulemaking.

II. Public Participation

The opportunity to hold a public hearing on October 9, 1987, at 10:00 a.m., was presented in the proposal notice, but no one desired to make an oral presentation. The public comment period was from August 25, 1987, to November 9, 1987.

III. Significant Comments and Changes to the Proposed Rulemaking

One comment letter was received from the proposal of the rulemaking. The commenter supported the proposal and made general comments regarding the maintenance requirements of Method 10B. No method changes were recommended and, consequently, none have been made to the proposed rule.

IV. Administrative

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to identify readily and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated test method and EPA responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review (section 307(d)(7)(A)).

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule" and, therefore, subject to the requirements of a regulatory impact analysis. The Agency has determined that this regulation would result in none of the adverse economic effects set forth in Section 1 of the Order as grounds for finding a regulation to be a "major rule." The Agency has, therefore, concluded that this regulation is not a "major rule" under Executive Order 12291.

The Regulatory Flexibility Act (RFA) of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a RFA analysis in those instances where small business impacts are possible. Because this rulemaking imposes no adverse economic impacts, an analysis has not been conducted.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the promulgated rule will not have an impact on small entities because no additional costs will be incurred.

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 60

Air pollution control, Intergovernmental relations, Petroleum refineries, Reporting and recordkeeping requirements, and Incorporation by reference.

Date: October 7, 1988.

Lee M. Thomas,
Administrator.

40 CFR Part 60 is amended as follows:

PART 60—[AMENDED]

1. The authority for 40 CFR Part 60 continues to read:

Authority: Sections 101, 111, 114, 116, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

§ 60.106 [Amended]

2. In § 60.106(b), by adding, after the first sentence, the following sentence: "Method 10A or 10B may be used as an alternative method to Method 10."

Appendix A—[Amended]

3. In Appendix A, by amending Method 10 as follows:

a. In sections 5.3.3 and 7.2, by removing the word "paragraph" and adding, in its place, the word "section".

b. In section 7.1.1, by removing the symbol "¶" and adding, in its place, the word "section".

c. In sections 7.1.1 and 7.1.2, by deleting the reference "(36 FR 24886)".

d. By redesignating section 10 as section 11, and redesignating the

citation numbers 10.1 through 10.6 as 11.1 through 11.6, and by adding a new section 10 to read as follows:

10. Alternative Procedures

10.1 Interference Trap. The sample conditioning system described in Method 10A, sections 2.1.2 and 4.2, may be used as an alternative to the silica gel and ascarite traps.

4. By adding Method 10B to Appendix A as follows:

* * * * *

METHOD 10B—DETERMINATION OF CARBON MONOXIDE EMISSIONS FROM STATIONARY SOURCES

1. Applicability and Principle

1.1 Applicability. This method applies to the measurement of carbon monoxide (CO) emissions at petroleum refineries and from other sources when specified in an applicable subpart of the regulations.

1.2 Principle. An integrated gas sample is extracted from the sampling point and analyzed for CO. The sample is passed through a conditioning system to remove interferences and collected in a Tedlar bag. The CO is separated from the sample by gas chromatography (GC) and catalytically reduced to methane (CH_4) prior to analysis by flame ionization detection FID. The analytical portion of this method is identical to applicable sections in Method 25 detailing CO measurement. The oxidation catalyst required in Method 25 is not needed for sample analysis. Complete Method 25 analytical systems are acceptable alternatives when calibrated for CO and operated by the Method 25 analytical procedures.

Note: Mention of trade names or commercial products in this method does not constitute the endorsement or recommendation for use by the Environmental Protection Agency.

1.3 Interferences. Carbon dioxide (CO_2) and organics potentially can interfere with the analysis. Carbon dioxide is primarily removed from the sample by the alkaline permanganate conditioning system; any residual CO_2 and organics are separated from the CO by GC.

2. Apparatus

2.1 Sampling. Same as in Method 10A, section 2.1.

2.2 Analysis.

2.2.1 Gas Chromatographic (GC) Analyzer. A semicontinuous GC/FID analyzer capable of quantifying CO in the sample and containing at least the following major components.

2.2.1.1 Separation Column. A column that separates CO from CO_2 and organic compounds that may be present. A ⅛-in. OD stainless-steel column packed with 5.5 ft of 60/80 mesh Carbosieve S–II (available from Supelco) has been used successfully for this purpose. The column listed in Addendum 1 of Method 25 is also acceptable.

2.2.1.2 Reduction Catalyst. Same as in Method 25, section 2.3.2.

2.2.1.3 Sample Injection System. Same as in Method 25, section 2.3.4, equipped to accept a sample line from the Tedlar bag.

2.2.1.4 Flame Ionization Detector. Linearity meeting the specifications in section 2.3.5.1 of Method 25 where the linearity check is carried out using standard gases containing 20–, 200–, and 1,000–ppm CO. The minimal instrument range shall span 10 to 1,000 ppm CO.

2.2.1.5 Data Recording System. Same as in Method 25, section 2.3.6.

3. Reagents

3.1 Sampling. Same as in Method 10A, section 3.1.

3.2 Analysis.

3.2.1 Carrier, Fuel, and Combustion Gases. Same as in Method 25, sections 3.2.1, 3.2.2, and 3.2.3.

3.2.2 Linearity and Calibration Gases. Three standard gases with nominal CO concentrations of 20–, 200–, and 1,000–ppm CO in nitrogen.

3.2.3 Reduction Catalyst Efficiency Check Calibration Gas. Standard CH_4 gas with a concentration of 1,000 ppm in air.

4. Procedure

4.1 Sample Bag Leak-checks, Sampling, and CO_2 Measurement. Same as in Method 10A, sections 4.1, 4.2, and 4.3.

4.2 Preparation for Analysis. Before putting the GC analyzer into routine operation, conduct the calibration procedures listed in section 5. Establish an appropriate carrier flow rate and detector temperature for the specific instrument used.

4.3 Sample Analysis. Purge the sample loop with sample, and then inject the sample. Analyze each sample in triplicate, and calculate the average sample area (A). Determine the bag CO concentration according to section 6.2.

5. Calibration

5.1 Carrier Gas Blank Check. Analyze each new tank of carrier gas with the GC analyzer according to section 4.3 to check for contamination. The corresponding concentration must be less than 5 ppm for the tank to be acceptable for use.

5.2 Reduction Catalyst Efficiency Check. Prior to initial use, the reduction catalyst shall be tested for reduction efficiency. With the heated reduction catalyst bypassed, make triplicate injections of the 1,000-ppm CH_4 gas (section 3.2.3) to calibrate the analyzer. Repeat the procedure using 1,000-ppm CO (section 3.2.2) with the catalyst in operation. The reduction catalyst operation is acceptable if the CO response is within 5 percent of the certified gas value.

5.3 Analyzer Linearity Check and Calibration. Perform this test before the system is first placed into operation. With the reduction catalyst in operation, conduct a linearity check of the analyzer using the standards specified in section 3.2.2. Make triplicate injections of each calibration gas, and then calculate the average response factor (area/ppm) for each gas, as well as the overall mean of the response factor values. The instrument linearity is acceptable if the average response factor of each calibration gas is within 2.5 percent of the overall mean value and if the relative standard deviation (calculated in section 6.9 of Method 25) for each set of triplicate injections is less than 2 percent. Record the overall mean of the response factor values as the calibration response factor (R).

6. Calculations

Carry out calculations retaining at least one extra decimal figure beyond that of the acquired data. Round off results only after the final calculation.

6.1 Nomenclature.

A = Average sample area.

B_w = Moisture content in the bag sample, fraction.

C = CO concentration in the stack gas, dry basis, ppm.

C_b = CO concentration in the bag sample, dry basis, ppm.

F = Volume fraction of CO_2 in the stack, fraction.

P_{bar} = Barometric pressure, mm Hg.

P_w = Vapor pressure H_2O in the bag (from Table 10–2, Method 10A), mm Hg.

R = Mean calibration response factor, area/ppm.

6.2 CO Concentration in the Bag. Calculate C_b using Equations 10B–1 and 10B–2. If condensate is visible in the Tedlar bag, calculate B_w using Table 10A–1 of Method 10A and the temperature and barometric pressure in the analysis room. If condensate is not visible, calculate B_w using the temperature and barometric pressure at the sampling site.

$$B_w = \frac{P_w}{P_{bar}} \qquad \text{Eq. 10B–1}$$

$$C_b = \frac{A}{R(1-B_w)} \qquad \text{Eq. 10B–2}$$

6.3 CO Concentration in the Stack.

$$C = C_b(1-F) \qquad \text{Eq. 10B–3}$$

7. Bibliography

1. Butler, F.E., J.E. Knoll, and M.R. Midgett. Development and Evaluation of Methods for Determining Carbon Monoxide Emissions. Quality Assurance Division, Environmental Monitoring Systems Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711. June 1985. 33p.

2. Salo, A.E., S. Witz, and R.D. MacPhee. Determination of Solvent Vapor Concentrations by Total Combustion Analysis: A Comparison of Infrared with Flame Ionization Detectors. Paper No. 75–33.2. (Presented at the 68th Annual Meeting of the Air Pollution Control Association, Boston, Massachusetts. June 15, 1975.) 14 p.

3. Salo, A.E., W.L. Oaks, and R.D. MacPhee. Measuring the Organic Carbon Content of Source Emissions for Air Pollution Control. Paper No. 74–190. (Presented at the 67th Annual Meeting of the Air Pollution Control Association. Denver, Colorado. June 9, 1974.) 25 p.

* * * * *

Appendix B—[Amended]

5. In Appendix B, by revising section 3.2 of Performance Specification 4 to read as follows:

3.2. Reference Methods. Unless otherwise specified in an applicable subpart of the regulation, Method 10 is the RM for this PS. When evaluating nondispersive infrared continuous emission analyzers, Method 10 shall use the alternative interference trap specified in section 10.1 of the method. Method 10A or 10B is an acceptable alternative to method 10.

[FR Doc. 88–23900 Filed 10–20–88; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 704

[OPTS–82032A; FRL–3465–5]

EDTMPA and its Salts; Submission of Notice of Manufacture or Import

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is requiring manufacturers and importers of the chemical substances phosphonic acid, (1,2-ethanediylbis(nitrilo-bis(methylene))) tetrakis- (EDTMPA) (CAS No. 1429-50-1) and its salts to notify EPA of current and prospective manufacture or import of EDTMPA and its salts. This reporting rule will allow EPA to track the manufacture, import, and end uses of EDTMPA and its salts, and to investigate the health and environmental impacts of such activities. Small businesses that manufacture or import these substances are exempt from this rule.

DATES: In accordance with 40 CFR 23.5 (50 FR 7271), this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern time on November 4, 1988. This rule shall become effective on December 5, 1988.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB–44, 401 M St., SW., Washington, DC 20460, Telephone: (202–554–1404), TDD: (202–554–0551).

SUPPLEMENTARY INFORMATION: This rule allows EPA to track the manufacture, import, and end uses of EDTMPA and its salts, and to investigate the health and environmental impacts of such activities.

Public reporting burden for this collection of information is estimated to vary from 4 to 20.5 hours per response, with an average of 12.25 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

I. Authority

EPA is promulgating this rule pursuant to section 8(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2607(a). Section 8(a) authorizes the Administrator to promulgate rules which require each person, (other than a small manufacturer or processor) who manufactures, imports, or processes or who proposes to manufacture, import, or process a chemical substance, to submit such reports as the Administrator may reasonably require.

II. Background

This rule was proposed on April 29, 1988 (53 FR 15428). EPA's Office of Toxic Substances (OTS) initiated assessment of the health risks from EDTMPA exposure in response to a TSCA section 8(e) notice reporting osteosarcomas in male rats orally dosed with the substance. A Chemical Hazard Information Profile on EDTMPA was prepared that identified the substance's use to prevent precipitation of calcium salts as the major potential source of exposure. Subsequent evaluation in the OTS Existing Chemicals Program confirmed the hazard concern.

EPA requires the information to be submitted in response to this rule because EDTMPA has potentially serious hazards to human health. Overall, the available information on EDTMPA suggests that humans exposed to the substance may be at risk of developing bone cancer, non-neoplastic bone disease, metabolic disturbances, or blood dyscrasias. Although EDTMPA appears to be used in limited quantities in cooling water treatment and electroplating and available exposure information indicates that current potential exposure is low, EPA's analysis indicates that quantities and uses do have risk associated with them. Also, EPA is not satisfied that this information on current uses is complete. EPA needs the requested information to confirm the actual current uses of EDTMPA and its salts to assess exposures and potential risks. In addition, EPA needs to know if expanded or new uses with higher exposure replace old uses so that EPA can take appropriate action.

III. Comments

A commenter suggested that EPA exclude from reporting the manufacture or import of EDTMPA and its salts for research and development (R&D) purposes, as a by-product, as an impurity, and as a non-isolated intermediate. Exemptions from TSCA section 8(a) reporting for the manufacture or import for R&D purposes, as a by-product, and as an impurity are already codified at 40 CFR 704.5. Thus, those persons who manufacture or import EDTMPA strictly for R&D purposes, as a by-product, or as in impurity, are exempt from the reporting requirements of this rule. EPA recognizes the commenter's concern with regard to the non-isolated intermediate exemption. Although EPA is not promulgating a non-isolated intermediate exemption in this rulemaking, such an exemption is actively being considered as part of the Comprehensive Assessment Information Rule (CAIR).

The commenter also suggested a small quantity exemption of 50,000 pounds for both initial and follow-up reporting. EPA does not believe that such an exemption should be established. A purpose of this rule is to give EPA the information it needs to anticipate changes in production and use before they lead to significant changes in exposure, and assess potential risks before they are significant. The assessment may take considerable time (1 or 2 years), and EPA believes that a change in production or a plant increasing its production to over 50,000 pounds per year may in 1 or 2 years time lead to significant exposure. This is especially true because in this time production may increase to well over 50,000 pounds per year, or multiple companies will produce up to the 50,000 pound limit. The purpose of this rule is not to find major changes in exposure as suggested by the commenter, but rather to help EPA anticipate major changes in exposure. The reporting burden/costs for this rule are relatively low, and the number of affected companies small. Only 1 company is expected to report. In light of this and the fact that EPA is interested in anticipating changes in exposure, a small quantity exemption is not established for this rule.

IV. Summary of This Rule

This rule applies to the following chemical substances identified on the TSCA Chemical Substance Inventory as:

CAS No.	Chemical name
1429-50-1	Phosphonic acid, [1,2-ethanediylbis[nitrilobis (methylene)]]tetrakis- (EDTMPA)
15142-96-8	Phosphonic acid, [1,2-ethanediylbis[nitrilobis (methylene)]] [illegible], hexasodium salt
34274-90-1	Phosphonic acid, [1,2-ethanediylbis[nitrilobis (methylene)]]tetrakis-, [illegible] salt
57011-27-5	Phosphonic acid, [1,2-ethanediylbis[nitrilobis (methylene)]] tetrakis-, ammonium salt
87924-23-6	Cobaltate (6-), [[[1,2-ethanediylbis[nitrilobis [illegible]]]tetrakis[phosphonato]](8-)]-, pentapotassium hydrogen, (OC-6-21)-
67969-67-9	Cobaltate (6-), [[[1,2-ethanediylbis [nitrilobis (methylene)]] tetrakis[phosphonato]](8-)]- N,N',O,O'',O''',O''''',O'''''']-, pentasodium hydrogen, (OC-6-21)-
67969-69-3	Cuprate (6-), [[[1,2-ethanediylbis [nitrilobis (methylene)]] tetrakis[phosphonato]](8-)]-, pentapotassium hydrogen, (OC-6-21)-
68025-39-8	CobaltateRate (6-), [[[1,2-ethanediylbis[nitrilobis (methylene)]]tetrakis[phosphonato]](8-)]- N,N',O,O'',O''',O''''',O'''''']-, pentaammonium hydrogen, (OC-6-21)-
[illegible]-95-1	Phosphonic acid, [1,2-ethanediylbis[nitrilobis (methylene)]]tetrakis-, tetrapotassium salt
[illegible]-17-7	Cadmate (6-), [[[1,2-ethanediylbis[nitrilobis (methylene)]]tetrakis[phosphonato]](8-)]-, pentapotassium hydrogen, (OC-6-21)-
[illegible]-68-1	Phosphonic acid, [1,2-ethanediylbis[nitrilobis (methylene)]] tetrakis-, octaammonium salt
[illegible]-97-2	Nickelate (6-), [[[1,2-ethanediylbis[nitrilobis (methylene)]]tetrakis[phosphonato]](8-)]-, pentapotassium hydrogen, (OC-6-21)-
[illegible]-52-3	Nickelate (6-), [[[1,2-ethanediylbis[nitrilobis (methylene)]]tetrakis[phosphonato]](8-)]-, pentasodium hydrogen, (OC-6-21)-

This rule requires each manufacturer and importer initially to report the quantity of each substance manufactured or imported for the person's most recently completed corporate fiscal year, a description of the commercial uses of the substance during the most recently completed corporate fiscal year, the estimated quantity proposed to be manufactured or imported in the current corporate fiscal year, and a description of the intended commercial uses of the substance during the current corporate fiscal year. Follow-up reporting is required when a person manufactures or imports a substance in a quantity 50 percent greater than the quantity reported in the most recently submitted report, and/or when the person manufactures or imports a substance for a use not previously reported. Because of the potentially large number of substances analogous to the EDTMPA anion, EPA is announcing its intent to add such analogous substances to this rule through notice and comment rulemaking. However, the data received from this rule may allow EPA to make a class judgement as to hazard potential of the analogous substances and obviate the need to gather additional data by amending the rule to add substances.

EPA is aware that duplicative reporting with the Inventory Update Rule (40 CFR Part 710, Subpart B) is a possibility. However, if a report for this section 8(a) rule is submitted within the year preceding the start of a reporting period under the Inventory Update Rule (IUR), the submitter will not be required by the IUR to report the same information again for that reporting period. The details of this exemption are set forth in 40 CFR 710.35. For example, the next recurring reporting period under the IUR is from August 25, 1990 to December 23, 1990 for any person who manufactured for commercial purposes 10,000 pounds (4,540 kilograms) or more of a chemical substance at any site owned or controlled by that person at any time during the person's latest complete corporate fiscal year before August 25, 1990. Thus, if a person has reported for this section 8(a) rule within the year preceding the start of the IUR reporting period just described, such person is exempt from reporting under the IUR.

There are separate reports for each listed substance. Initial reports required under this rule include the following information:

1. Name and Chemical Abstracts Service Registry Number of the substance for which the report is submitted.
2. Company name and headquarters address.
3. Name, address, and telephone number of the principal technical contact.
4. The total quantity (by weight in pounds) of the substance manufactured or imported for the most recently completed corporate fiscal year.
5. A description of the commercial uses of the substance during the most recently corporate fiscal year, including the production volume for each use.
6. The estimated quantity (by weight in pounds) of the substance proposed to be manufactured or imported in the current corporate fiscal year.
7. A description of the intended commercial uses of the substance during the current corporate fiscal year, including the production volume for each use.

Follow-up reports required under this rule include the following information:

1. Name and Chemical Abstracts Service Registry Number of the substance for which the report is submitted.
2. Company name and headquarters address.
3. Name, address, and telephone number of the principal technical contact.
4. The estimated quantity (by weight in pounds) of the substance proposed to be manufactured or imported in the current corporate fiscal year.
5. A description of the intended commercial uses of the substance during the current corporate fiscal year, including the production volume for each use.

Reports must be submitted by January 3, 1989 to the following address: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, ATTN: EDTMPA Reporting.

V. Confidentiality

The procedures for submitting a notice with a confidentiality claim are set forth in 40 CFR 704.7. A person submitting a claim of confidentiality attests, among other things, that: my company has taken measures to protect the confidentiality of the information, and we intend to continue to take such measures; the information is not, and has not been, reasonably obtainable by other persons (other than government bodies) without our consent; the information is not publicly available elsewhere; and the disclosure would cause substantial harm to the company's competitive position.

VI. Economic Impact

EPA estimates that compliance costs will range from $170 to $740 for each report. The cost estimate for data acquisition assumes that the data are known to or reasonably ascertainable by the person submitting the report. Costs include:

Data acquisition	$80 to $480
Notice preparation (typing)	$14 to $59
Managerial and legal review	$65 to $185
Total	$169 to $731

VII. Rulemaking Record

The following documents constitute the record for this rule (docket control number OPTS–82032A). All documents, including the index to this record, are available to the public in the TSCA Public Docket Office from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA Public Docket Office is located at EPA Headquarters, Rm. NE–G004, 401 M St., SW., Washington, DC. The docket includes the following information considered by the Agency in developing this rule:

1. The proposed rule (53 FR 15428, April 29, 1988).
2. Written comment received in response to the proposed rule.
3. A chemical hazard information profile for EDTMPA.
4. The TSCA section 8(e) notice (8EHQ–0683–0483S) on EDTMPA (submitted July 15, 1983).
5. Reporting and recordkeeping requirements (40 CFR Part 704).
6. Economic analysis of this final rule.

VIII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a regulatory impact analysis. EPA has determined that this rule is not "major" because it does not have an effect of $100 million or more on the economy. EPA also anticipates that this rule will not have a significant effect on competition, costs, or prices.

This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities. EPA expects only one company to report under this rule, well within Regulatory Flexibility Act guidelines. In addition, the rule exempts "small manufacturers" (as defined in 40 CFR 704.3) from reporting on these substances. Therefore, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number (2070–0067).

Public reporting burden for this collection of information is estimated to vary from 4 to 20.5 hours per response, with an average of 12.25 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention Desk Officer for EPA."

List of Subjects in 40 CFR Part 704

Chemicals, Environmental protection, Hazardous materials, Imports, Recordkeeping and reporting requirements.

Dated: October 7, 1988.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR Part 704 is amended as follows:

PART 704—[AMENDED]

1. The authority citation for Part 704 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

2. By adding § 704.95 to Subpart B to read as follows:

§ 704.95 Phosphonic acid, [1,2-ethanediylbis[nitrilobis-(methylene)]]tetrakis- (EDTMPA) and its salts.

(a) *Substances for which reporting is required.* The chemical substances for which reporting is required under this section are:

CAS No.	Chemical name
1429-50-1	Phosphonic acid, [1,2-ethanediylbis[nitrilobis (methylene)]] tetrakis- (EDTMPA)
15142-96-8	Phosphonic acid, [1,2-ethanediylbis[nitrilobis (methylene)]] [illegible], hexasodium salt
34274-90-1	Phosphonic acid, [1,2-ethanediylbis[nitrilobis(methylene)]] tetrakis-, [illegible] salt
57011-27-5	Phosphonic acid, [1,2-ethanediylbis[nitrilobis (methylene)]] tetrakis-, ammonium salt
87924-23-6	Cobaltate (6-), [[[1,2-ethanediylbis [nitrilobis (methylene)]] tetrakis-[phosphonato]] (8-)]-, pentapotassium hydrogen, (OC-6-21)-
67969-67-9	Cobaltate (6-), [[[1,2-ethanediylbis [nitrilobis (methylene)]] tetrakis-[phosphonato]] (8-)]- N,N',O,O'',O''',O''''',O'''''']-, pentasodium hydrogen, (OC-6-21)-
67969-69-3	Cuprate (6-), [[[1,2-ethanediylbis [nitrilobis (methylene)]] tetrakis-[phosphonato]] (8-)]-, pentapotassium hydrogen, (OC-6-21)-
68025-39-8	Cobaltate (6-), [[[1,2-ethanediylbis [nitrilobis (methylene)]] tetrakis-[phosphonato]] (8-)]- N,N',O,O'',O''',O''''',O'''''']-, pentaammonium hydrogen, (OC-6-21)-
68188-96-5	Phosphonic acid, [1,2-ethanediylbis [nitrilobis (methylene)]] tetrakis-, [illegible] salt
68309-98-8	Cadmate (6-), [[[1,2-ethanediylbis [nitrilobis (methylene)]] tetrakis-[phosphonato]] (8-)]-, pentapotassium hydrogen, (OC-6-21)-
68901-17-7	Phosphonic acid, [1,2-ethanediylbis [nitrilobis (methylene)]] tetrakis-, octaammonium salt
[illegible]-95-1	Nickelate (6-), [[[1,2-ethanediylbis [nitrilobis (methylene)]] tetrakis-[phosphonato]] (8-)]-, pentaammonium hydrogen, (OC-6-21)-
[illegible]-97-2	Nickelate (6-), [[[1,2-ethanediylbis [nitrilobis (methylene)]] tetrakis-[phosphonato]] (8-)]-, pentapotassium hydrogen, (OC-6-21)-
68958-68-3	Nickelate (6-), [[[1,2-ethanediylbis [nitrilobis (methylene)]] tetrakis-[phosphonato]] (8-)]-, pentasodium hydrogen, (OC-6-21)-

(b) *Persons who must report.* Unless exempt as provided in § 704.5, reports must be submitted by:

(1) Persons who manufacture or import any of the substances identified in paragraph (a) of this section.

(2) Persons who propose to manufacture or propose to import any of the substances identified in paragraph (a) of this section. For the purposes of importer reporting under this section, an import site is the operating unit within the person's organization which is directly responsible for importing the substance and which controls the import transaction; the import site may in some cases be the organization's headquarters office in the United States.

(c) *What information to report.* Persons identified in paragraph (b) of this section must report to EPA, for each of the substances identified in paragraph (a) of this section, the following information to the extent known to or reasonably ascertainable by them.

(1) Initial Report:

(i) Name and Chemical Abstracts Service Registry Number of the substance for which the report is submitted.

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(ii) Company name and headquarters address.

(iii) Name, address, and telephone number of the principal technical contact.

(iv) The total quantity (by weight in pounds) of the substance manufactured or imported for the person's most recently completed corporate fiscal year.

(v) A description of the commercial uses of the substance during the person's most recently completed corporate fiscal year, including the production volume for each use.

(vi) The estimated quantity (by weight in pounds) of the substance proposed to be manufactured or imported in the person's current corporate fiscal year.

(vii) A description of the intended commercial uses of the substance during the person's current corporate fiscal year, including the estimated production volume for each use.

(2) Follow-up Report:

(i) Name and Chemical Abstracts Service Registry Number of the substance for which the report is submitted.

(ii) Company name and headquarters address.

(iii) Name, address, and telephone number of the principal technical contact.

(iv) The estimated quantity (by weight in pounds) of the substance proposed to be manufactured or imported in the person's current corporate fiscal year.

(v) A description of the intended commercial uses of the substance during the person's current corporate fiscal year, including the estimated production volume for each use.

(d) *When to report.* (1) Persons specified in paragraph (b)(1) of this section who are manufacturing or importing the substance as of December 5, 1988 must submit an initial report described in paragraph (c)(1) of this section by January 3, 1989.

(2) Persons specified in paragraph (b)(2) of this section must submit an initial report within 30 days after making the management decision described in § 704.3 or by January 3, 1989, whichever is later.

(3) Persons specified in paragraph (b) of this section, who submitted a report described in paragraph (c)(1) of this section, must submit a follow-up report described in paragraph (c)(2) of this section within 30 days of making the management decision, described at § 704.3, to do either of the following events:

(i) Manufacture or import the substance in a quantity 50 percent greater than the quantity reported in the most recently submitted report.

(ii) Manufacture or import the substance for a use not reported for that substance in any previous report.

(e) *Certification.* Persons subject to this section must attach the following statement to any information submitted to EPA in response to this section: "I hereby certify that, to the best of my knowledge and belief, all of the attached information is complete and accurate." This statement must be signed and dated by the company's principal technical contact.

(f) *Recordkeeping.* Persons subject to the reporting requirements of this section must retain documentation of information contained in their reports for a period of 5 years from the date of the submission of the report.

(Approved by the Office of Management and Budget under Control Number 2070-0067)

[FR Doc. 88-24396 Filed 10-20-88; 8:45 am]

BILLING CODE 6560-50-M

Proposed Rules

Federal Register
Vol. 53, No. 204
Friday, October 21, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1d

Rural Labor; Immigration Reform and Control Act of 1986

AGENCY: Office of the Secretary, USDA.

ACTION: Proposed rule.

SUMMARY: Section 302 of the Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359 (hereinafter referred to as "the Act"), established the Special Agricultural Worker (SAW) program. This program provides for the adjustment in status of certain aliens who have resided in the United States and performed seasonal agricultural services for at least 90 man-days during the 12-month period ending on May 1, 1986, to that of an alien lawfully admitted for temporary residence. Section 302(a) of the Act states that "seasonal agricultural services" means "the performance of field work relating to planting, cultural practices, cultivating, growing and harvesting of fruits and vegetables of every kind and other perishable commodities, as defined in regulations by the Secretary of Agriculture." 8 U.S.C. 1160(h). This subsection requires the Secretary to publish regulations defining the fruits, the vegetables, and the other perishable commodities in which the field work related to planting, cultural practices, cultivating, growing, and harvesting will be considered "seasonal agricultural services" for purposes of the Act. The regulations were published in the Federal Register on June 1, 1987, at 52 FR 20372-76 (codified at 7 CFR Part 1d). This proposed rule reexamines whether the commodity "sod" meets the definition of "other perishable commodities" promulgated at 7 CFR Part 1d.7 in light of the decision and remand of this issue to the Secretary of Agriculture by the United States District Court for the Northern District of Illinois in *Heriberto Morales, et al.* v. *Richard E. Lyng, et al.*, Civil Action No. 87-C-20522. The proposed rule also reexamines whether field work in the production of sod is "seasonal" as that term is defined at 7 CFR 1d.8.

DATE: Comments must be received no later than November 7, 1988.

ADDRESS: Send comments to Room 227-E, Administration Building, United States Department of Agriculture, 14th and Independence Avenue SW., Washington, DC. 20250-1400. Written comments received may be inspected in Room 227-E of the Administration Building, 8:00 a.m. to 4:00 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Al French, Special Assistant for Agricultural Labor to the Assistant Secretary for Economics, Room 227-E, Administration Building, United States Department of Agriculture, 14th and Independence Avenue SW., Washington, DC 20250-1400; telephone (202 447-4737.

SUPPLEMENTARY INFORMATION:

Background

Section 302(a) of the Act states that "seasonal agricultural services" means "the performance of field work relating to planting, cultural practices, cultivating, growing and harvesting of fruits and vegetables of every kind and other perishable commodities, as defined in regulations by the Secretary of Agriculture." 8 U.S.C. 1160(h). This subsection requires the Secretary of Agriculture to publish regulations defining the fruits, the vegetables, and the other perishable commodities in which the field work related to planting, cultural practices, cultivating, growing, and harvesting will be considered "seasonal agricultural services" for purposes of the Act.

On June 1, 1987, the United States Department of Agriculture (USDA) published its final rule defining the terms "fruits," "vegetables," and "other perishable commodities," as well as several other terms that were necessary to an understanding of the definition of "fruits," "vegetables," and "other perishable commodities."

In the final rule, USDA defined the term "fruits" as "the human edible parts of plants which consist of the mature ovaries and fused other parts or structures, which develop from flowers or inflorescence." 7 CFR ld.5. On August 19, 1988, the term "vegetables" was redefined as "the human edible herbaceous leaves, stems, roots, or tubers of plants, which are eaten, either cooked or raw, chiefly as the principal part of a meal, rather than as dessert." 53 FR 31630-39 (Aug. 19, 1988) (to be codified at 7 CFR ld.10). The term "other perishable commodites" is defined as "those commodities which do not meet the definition of fruits or vegetables, that are produced as a result of seasonal field work, and have critical and unpredictable labor demands." 7 CFR ld.7. "Critical and unpredictable labor demands" is defined to mean "that the period during which field work is to be initiated cannot be predicted with any certainty 60 days in advance of need." 7 CFR ld.3.

USDA stated, in the explanation of the proposed rule, that "critical and unpredictable labor demands" was defined to make it clear that the use of alien workers is predicated upon circumstances that create the critical, yet unpredictable demand for a labor force on short notice. 52 FR 13247 (April 22, 1987). Thus, USDA made it clear that labor demands must be both "critical" and "unpredictable." An exclusive list of those commodities that were determined to be subject to critical and unpredictable labor demands was provided within the definition of "other perishable commodities," as well as a list of examples of commodities that were determined to be not subject to critical and unpredictable labor demands. 7 CFR 1d.7. Sod was listed as an example of a commodity that was not a fruit or vegetable and was determined to be not subject to critical and unpredictable labor demands. *Id.*

USDA considered "horticultural specialties" to be a category of "other perishable commodities." USDA defined "horticultural specialties" to mean:

> [F]ield grown, containerized, and greenhouse produced nursery crops which include juvenile trees, shrubs, seedlings, budding, grafting and understock, fruit and nut trees, fruit plants, vines, ground covers, foliage and potted plants, cut flowers, herbaceous annuals, biennials and perennials, bulbs, corms, and tubers.

7 CFR 1d.6. In the statement of basis and purpose to the final rule, USDA explained:

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Horticultural specialties, frequently called nursery products, involves seasonal and labor intensive field work including seed preparation and sowing, making of cuttings, pruning, staking, tying trees and vines, potting of rooted cuttings, and grafting and budding. These activities are highly subject to unpredictable weather influences. Thus, we have determined that they are other perishable commodities.

52 FR 20374 (June 1, 1987).

USDA defined the term "field work" to mean:

[A]ny employment performed on agricultural lands for the purpose of planting, cultural practices, cultivating, growing, harvesting, drying, processing, or packing any fruits, vegetables, or other perishable commodities. These activities have to be performed on agricultural land in order to produce fruits, vegetables, and other perishable commodities, as opposed to those activities that occur in a processing plant or packinghouse not on agricultural lands. Thus, the drying, processing, or packing of fruits, vegetables, and other perishable commodities in the field and the "on the field" loading of transportation vehicles are included. Operations using a machine, such as a picker or tractor, to perform these activities on agricultural land are included. Supervising any of these activities shall be considered performing the activities.

7 CFR 1d.4.

The definition of "field work" incorporates several other terms that were defined in the final rule, such as "agricultural lands," "critical and unpredictable labor demands," and "seasonal." "Agricultural lands" was defined as:

[A]ny land, cave, or structure, except packinghouses or canneries, used for the purpose of performing field work.

7 CFR 1d.2. "Seasonal" was defined to mean that:

[T]he employment pertains to or is of the kind performed *exclusively* at certain seasons or periods of the year. A worker who moves from one seasonal activity to another, while employed in agriculture or performing agricultural labor, is employed on a seasonal basis even though he or she may continue to be employed during the year.

7 CFR 1d.8 (emphasis added).

In the statement of basis and purpose to the final rule, USDA stated that:

About 150 commenters urged the inclusion of sod and turfgrass as an "other perishable commodity" or as a "horticultural specialty". Many of these commenters stated that sod required "Multi years to reach maturity" and "it is not always mature within a single growing season", which indicates that the commodity is not "seasonal". Many other commenters wrote: "Within reasonable limits, the seasonal nature of labor requirements are quite predictable. Based upon past experience, we can forecast our labor requirements both in terms of dates and number of workers". This statement, by sod producers from various regions, indicates that sod fails to meet the criteria for critical and unpredictable labor demands.

Accordingly, we have not included sod and turfgrass as an "other perishable commodity" or as a "horticultural specialty".

52 FR 20375 (June 1, 1987). Thus, USDA excluded sod from "seasonal agricultural services" because USDA determined that sod is not "seasonal," nor is it an "other perishable commodity." Sod was excluded from "horticultural specialties" because sod is not subject to "critical and unpredictable labor demands." Although "sod" and "turfgrass" were mentioned separately in the statement of basis and purpose to the final rule, this proposed rule will refer to "sod" as the commodity in issue. Turfgrass is comprised of the upper stratum of soil bound by several species of mostly perennial grasses and is maintained as a mowed turf. Sod consists of pieces or strips of live turfgrass and adhering soil.

The United States District Court for the District of Columbia in *Northwest Forest Workers Association* v. *Richard E. Lyng*, 688 F. Supp. 1 (D.D.C. 1988), upheld as reasonable and supported by the legislative history of the Act, the USDA definition of "other perishable commodities" in terms of "critical and unpredictable labor demands." 688 F. Supp. at 6–7. The court held also that the USDA definitions of "field work" and "agricultural lands" were reasonable and were not arbitrary and capricious. *Id.* at 12–13.

In *Morales* v. *Lyng*, the court's magistrate recognized specifically that " '[h]orticultural specialties' is separately defined but is still a category of 'other perishable commodities.' " Magistrate's Report and Recommendations at 7 n.3. With this perspective, the court did not separately consider the exclusion of sod from "horticultural specialties." Indeed, the court focused on whether sod is subject to "critical and unpredictable labor demands," and whether sod is "seasonal." These criteria are the prerequisites to determining whether sod is to be included as a category of "other perishable commodities;" this is particularly so since it is apparent that relevant activities regarding sod constitute "field work."

The court in *Morales* v. *Lyng* noted that the term "seasonal" is defined in terms of employment, rather than in terms of the maturation of the crop. Magistrate's Report and Recommendations at 3. In finding arbitrary and capricious the rationale given by USDA to conclude that sod was not "seasonal," *i.e.*, that sod took "[m]ulti-years to reach maturity," 52 FR 20375 (June 1, 1987), the court stated:

The fact that a commodity's growth cycle is multi-annual does not directly lead to the conclusion that certain activities occur year round. Second, even if certain activities do occur year round like "growing", there is no reason to believe that certain employment practices such as harvesting and planting occur continuously and not during certain times of the year requiring extra help.

Slip op. at 3.

The court in *Morales* v. *Lyng* found also that the Secretary was arbitrary and capricious in failing to respond to comments that asserted that sod is subject to weather influences and consumer demands. Slip op. at 5–7. The court rejected as a *post hoc* rationalization the Secretary's explanation that consumer demands were irrelevant to the determination of "critical and unpredictable labor demands." Slip op. at 6. In light of the court findings, the court remanded to USDA the issue of whether sod meets the definition of "other perishable commodities," and whether sod is "seasonal," within the meaning of the USDA definition of that term.

One authority on sod production has described sod operations as follows:

The shorter the period between planting and harvesting, the greater the potential profit. However, harvesting cannot occur until the sod is strong enough to hold together well when handled. Species and cultivars that produce aggressive rhizomes or stolons are used because they develop sod strength more quickly * * *.

Sod production generally takes 18 to 24 months * * *. High levels of maintenance are necessary to produce sod in the most profitable length of time. Adequate fertilization, constant irrigation, and correct mowing practices are essential. Pesticides must be used to keep the sod totally free of weeds and insect or disease injury.

The sod is cut with large harvesting machines * * *. Some of the machines are quite sophisticated and cut, roll, and stack the sod on pallets in one operation. Typically, sod pieces are 12 to 18 inches wide and 4 to 8 feet long. Strips 4 feet by 45 feet are harvested when the sod will be installed by unrolling it from a bar on the back of a tractor. Sod should be cut as thin as possible to minimize soil loss, make the sod lighter and easier to handle, and to encourage rapid rooting.

R. Emmons, *Turfgrass Science and Management* (1984), pp. 384–85.

USDA recognizes that the fact that a commodity takes multi-years to reach maturity does not necessarily mean that the activities with respect to that commodity in all instances occur year round. However, it appears that the necessary production activities of planting, cultural practices (such as fertilizing, irrigation, and pesticide application), cultivation (such as mowing), growing, and harvesting are performed generally on a year round basis, rather than performed exclusively at certain periods of the year. Thus, USDA proposes to determined that sod production does not fall within the definition of "seasonal."

USDA previously determined that sod did not meet the definition of "other perishable commodities" because the production of sod does not involve critical and unpredictable labor demands. USDA has explained that the critical and unpredictable labor demands criterion:

[I]s predicated upon unpredictable circumstances and the more immediate needs for labor which result from these circumstances. Typical of the circumstances which creates the critical yet unpredictable demand for labor is weather or other climatic conditions. As a result, a labor force would be needed upon short notice.

52 FR 13247 (April 22, 1987).

The mere fact that a commodity is affected by weather is not determinative as to a critical and unpredictable demand for labor. Since all crops grown in open fields are affected by weather, such a criterion would be overinclusive.

The USDA definition of "critical and unpredictable labor demands" refers to "the period during which field work is to be initiated cannot be predicted with any certainty 60 days in advance of need." 7 CFR 1d.3. Although this definition is phrased in terms of predictability, the term *"critical"* is a necessary component of the definition. This definition was upheld in *National Forest Workers Association* v. *Lyng*, 688 F. Supp. 1, 3–7, and *Texas Farm Bureau, et al.* v. *Richard E. Lyng*, Civil Action No. M88–095–CA (E.D. Tex. Sept. 28, 1988). The issue of whether or not a commodity is subject to "critical and unpredictable labor demands," therefore, is determined by the 60 day predictability rule and the criticality of the field work in question. Thus, USDA must consider a number of factors in determining whether a commodity has a critical labor demand, in addition to whether the field work is unpredictable. These factors include the nature and extent to which the field work activities utilize labor, the importance of the timing of these activities, and the amount of labor needed. *Texas Farm Bureau* v. *Lyng*, Slip op. at 15.

The legislative history of the Act provides guidance in evaluating whether a commodity is to be considered a category of "other perishable commodites":

The perishable crop industry differs from the rest of the agricultural industry in two important ways * * *. First, it is impossible for growers of perishable crops to predict more than a few days in advance when their need for workers will occur. Second, their need for workers is short and it is very intense.

131 Cong. Rec. S11328 (Sept. 12, 1985) (statement of Sen. DeConcini).

Weather, which is a most unpredictable characteristic, can make crops such as peaches ripen much more quickly than anticipated. These factors are critical when considering the unique needs of this industry.

131 Cong. Rec. S11344 (Sept. 12, 1985) (statement of Sen. Evans).

When we say perishable crops we are not talking about those that can ripen on a tree and remain there for perhaps a month without injury. We are talking about those that must be harvested immediately when ripe as a function of wheather * * *.

131 Cong. Rec. S11666 (Sept. 17, 1985) (statement of Sen. Wilson).

Thus, Congress considered perishable commodities to include commodities in which labor requirements are critical and unpredictable as a result of factors which affected the readiness and the immediacy of the need to perform the field work activity, whether that activity is planting, cultural practices, cultivating, growing, harvesting, etc.

During the comment period, USDA received a number of comments stating:

Within reasonable limits, the seasonal nature of labor requirements are [sic] quite predictable. Based on past experience, we can forecast our labor requirements both in terms of dates and number of workers. These figures are predicated on sod harvesting requirements, nurturing of immature sod and preparation of new fields for future years' sod growth.

and

Based on past experiences, we have peak season demands for seasonal agricultural workers. We can forecast these seasonal periods through past records of dates and number of workers. However, due to weather conditions and consumer demand, our labor requirements are critical and unpredictable. Labor is often needed on short notice during seasonal activities.

USDA concluded from these statements that sod production fails to meet the criteria for "critical and unpredictable labor demands." 52 FR 20375 (June 1, 1987).

In *Morales* v. *Lyng*, the court noted:

In short, all of the comments could be reconciled in a plausible fashion and interpreted to mean that: general seasonal demands of extra laborers are predictable, but often within seasonal parameters, the demand for extra field workers is unpredictable.

Slip op. at 6. The observation of the court suggests that while labor needs may be forecast, they are nevertheless unpredictable due to weather and consumer demand.

Even assuming that weather and consumer demand create a demand for extra field workers, the question remains as to whether that demand is "critical and unpredictable" within the USDA definition that has been accepted by the courts," * * * the period during which field work is to be initiated cannot be predicted with any certainty 60 days in advance of need." 7 CFR 1d.3.

Sod, unlike perishable commodities, does not have a demand for labor that is critical and unpredictable as a result of factors which affect the readiness and immediacy of the need to perform field work activities. None of the field work activities creates a "critical" need for a labor force on short notice. On a national basis, land preparation and planting, mowing, fertilizing, and harvesting activities that generally are mechanized and are done throughout the year. Moreover, with respect to the harvesting of sod, sod may be harvested at any time after it is "strong enough to hold together well when handled." R. Emmons, *Turfgrass Science and Management* (1984), at 384. Unharvested sod may be "stored" in the field in marketable condition by continuing its normal maintenance. Thus, while consumer demand for the commodity may be subject at times to short-term uncertainty, this occurs within generally predictable periods of demand. Such demand does not create a *"critical"* need for a large labor force on short notice.

Sod producers monitor consumer demand and may anticipate demand months in advance by observing development and construction in their market area. USDA recognizes that an individual producer might receive an unanticipated order for immediate delivery that would create for him an unpredictable labor demand. However, such a demand would not be critical since it is not necessary to harvest the sod immediately. Even if the producer were unable to fill that particular order, the sod, unlike perishable commodities which must be harvested when ready, remains marketable.

The criterion of "critical and unpredictable labor demands" can be judged to a large extent by the degree of mechanization used in field work. There is a clear expression of congressional intent that the SAW program is to include as "other perishable commodities" crops which "must be harvested by hand, thereby requiring a

large number of workers on short notice," and not "where mechanical harvesters can be used * * *." 131 Cong. Rec. S11322 (Sept. 12, 1985) (statement of Sen. Wilson); *see also* 131 Cong. Rec. S11325 (Sept. 12, 1985) (statement of Sen. Hatch); 131 Cong. Rec. S11335 (Sept. 12, 1985) (statement of Sen. Gorton); 131 Cong. Rec. S11608 (Sept. 17, 1985) (statement of Sen. Wilson); 131 Cong. Rec. S11607 (Sept. 7, 1985) (statement of Sen. Gorton); H.R. Rep. No. 99–682, 99th Cong., 2d Sess., Part 1, July 18, 1986, at p. 85. Mechanization affects labor demands in that the more mechanized the production of a particular crop is, the less critical and the more predictable the labor demands are. Highly mechanized crops do not generally experience a critical need for a number of workers on short notice. 53 FR 31638 (Aug. 19, 1988).

In *Texas Farm Bureau* v. *Lyng*, the United States District Court for the Eastern District of Texas found reasonable the USDA explanation that highly mechanized operations are not subject to critical and unpredictable labor demands. The court noted:

> Since the purpose of the SAW program was to provide a force of largely unskilled manual labor, the need for a large crew was deemed to be more critical than a few equipment operators. The U.S.D.A. believed this factor comported with congressional intent that the SAW program include crops which at harvest were labor intensive, but exclude those which were mechanically harvested.

Mem. Op. at 16. Thus, the court found reasonable the USDA exclusion of hay from "other perishable commodities" because the labor needs of hay production have been met largely by mechanization.

In *Morales* v. *Lyng*, the court's magistrate noted that: "With few exceptions, all the comments explain that sod farming is a labor intensive activity that requires seasonal laborers and is subject to critical and unpredictable labor demands." Magistrate's Report and Recommendations at 11. However, most of these same comments note that sod production is highly mechanized. In addition, USDA notes that authorities on sod are consistent in their description of the sod industry as being highly mechanized, rather than labor intensive. *See, e.g.*, R. Emmons, *Turfgrass Science and Management* (1984), at pp. 11, 385, 513, 525–28; C. Buchanan, *Commercial Turfgrass—Sod Production in Alabama*, Bulletin 529, Agricultural Experiment Station, Auburn University (1981), at pp. 15, 19, 21, 27. Preparation of land, planting, mowing, fertilizing, pesticide application, irrigation, and harvesting are the principal activities of sod farming and all of these are mechanized activities. Some activities, such as the application of pesticides and fertilizer, and irrigation, may become critical in a relatively short period of time. However, these are not labor intensive operations that would require a labor force on short notice, but are mechanized activities performed by the normal work complement. If delayed, the farmer may utilize the same workers that he intended to employ prior to the delay.

USDA recognizes that once harvested, sod must be installed in a short time, but such activity is beyond the scope of field work on agricultural lands and, thus, is beyond the scope of "seasonal agricultural services."

Accordingly, it appears that weather or consumer demands do not create a need for a labor force on short notice for sod producers which would be critical and unpredictable. After thorough review of labor demands with respect to sod field activities from planting through harvesting and reconsideration of the comments received during the original rulemaking, USDA proposes to continue its determination that sod field work is not subject to critical and unpredictable labor demands. Thus, USDA proposes to continue its determination that sod does not qualify for inclusion a category of "other perishable commodities."

Regulatory Impact

The Assistant Secretary for Economics has reviewed this rule in accordance with Executive Order No. 12291 and has determined that it is not a major rule. Under the framework of the Act, the Immigration and Naturalization Service (INS) will use this proposed rule to assist it in determining which special agricultural workers will be admitted to the United States for temporary residence. Thus, the primary benefits of this proposed rule are internal to the operation of the United States government.

This section, in and of itself, will not have a significant effect on the economy and will not result in a major increase in costs or prices for consumers, individuals, Federal, state, or local government agencies, or geographic regions; or have significant effect on competition, employment, investment, productivity, innovation, or the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

This proposed rule reexamines whether the commodity sod meets the definition of the term "other perishable commodities" as that term is defined in USDA regulations codified at 7 CFR 1d.7, and whether field work in the production of sod is "seasonal" as that term is defined in USDA regulations codified at 7 CFR 1d.8. The proposed rule does not contain any compliance or reporting requirements, or any timetables. The proposed rule will assist the INS in determining the special agricultural workers to be admitted for temporary residence. Thus, the proposed rule, in and of itself, will have no significant effect upon small entities.

Paperwork Reduction Act

This proposed rule does not require additional procedures or paperwork not already required by law. Therefore, the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3502 *et seq.*) are inapplicable.

National Environmental Policy Act

This proposed rule will not have an impact upon the environment.

List of Subjects in 7 CFR Part 1d

Immigration, Rural labor.

Accordingly, it is proposed to retain Part 1d—RURAL LABOR—IMMIGRATION REFORM AND CONTROL ACT OF 1986—DEFINITIONS as promulgated.

Done at Washington DC, this 19 day of October 1988.

Richard E. Lyng,

Secretary of Agriculture.

[FR Doc. 88–24470 Filed 10–20–88; 8:45 am]

BILLING CODE 3410–01–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

[Docket No. PRM–20–17]

The Rockefeller University; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; Notice of receipt.

SUMMARY: The Commission is publishing for public comment a notice of receipt of a petition for rulemaking dated July 22, 1988, which was filed with the Commission by The Rockefeller University. The petition was docketed by the Commission on August 15, 1988, and has been assigned Docket No. PRM–20–17. The petitioner requests that the Commission amend its regulations under which a licensee may dispose of animal tissue containing small amounts of radioactivity without regard to its radioactivity by expanding the list of radioactive isotopes for which unregulated disposal is permitted. The petitioner also requests that the Commission make the unregulated disposal of these wastes a matter with which all jurisdictions must comply.

DATE: Submit comments by December 20, 1988.

Comments received after this date will be considered if it is practical to do so but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit written comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

For a copy of the petition, write the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The petition and copies of comments received may be inspected and copied for a fee at the NRC Public Document Room, 2120 L Street NW., Lower Level, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Acting Chief, Rules Review Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Information and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–8926 or Toll Free: 800–368–5642.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission (NRC) has established regulations that permit a licensee to dispose of animal tissue contaminated with small amounts of certain radioactive isotopes without regard to its radioactivity (10 CFR 20.306(b)). Under this provision a licensee may dispose of animal tissue containing 0.05 microcurie or less or Hydrogen-3 or Carbon-14 per gram, averaged over the weight of the entire animal, as long as the tissue is not disposed of in a manner that would permit its use as food for humans or in animal feed.

In addition to disposing of animal tissues containing Hydrogen-3 or Carbon-14, the petitioner disposes of animal tissue containing small amounts of Sulfur-35, Calcium-45, Chromium-51, Iodine-125, and Iodine-131. In 1987, the petitioner disposed of nine 30 gallon drums in 55 gallon overpacks that contained animal tissue contaminated with small amounts of radioactive isotopes. The total content of radioactive isotopes in this material was 1.35 millicuries of Hydrogen-3, 4.35 millicuries of Carbon-14, 0.1 millicurie of Sulfur-35, 1.1 millicuries of Chromium-51, 1.0 millicurie of Calcium-45, and 0.01 millicurie each of Iodine-125 and Iodine-131. The petitioner states that each individual animal contained less than microcurie amounts of any radioactive isotope and that, averaged over the year, the overall amount of radioactive isotopes in animal tissue was 0.0078 microcurie per gram. The costs incurred by the petitioner in disposing of the material under the current regulations was $450 per drum. The petitioner believes that the costs involved are unnecessary expenditures in view of the low levels of radioactivity involved.

The petitioner requests that the NRC add Sulfur-35, Calcium-45, Chromium-51, Iodine-125, and Idoine-131 in concentrations not exceeding 0.001 microcurie per gram to the list of radioactive isotopes set out in 10 CFR 20.306(b). This would allow the petitioner to incinerate or otherwise dispose of animal tissue containing small quantities of these radioactive isotopes without regard to its radioactivity. The petitioner is currently incinerating 100 pounds of non-radioactive animal tissue per day in a permitted, controlled air incenerator.

The petitioner also requests that the NRC make the unregulated disposal of animal tissue containing radioactive isotopes under 10 CFR 20.306(b) a practice with which all jurisdictions must comply. According to the petitioner, the New York City Health Department does not recognize *de minimis* levels of radioactivity so that this provision must be made a matter of compatibility with "agreement agencies" in order to benefit the petitioner.

This petition has been reviewed in relation to the Commission's policy statement on petitions for disposal of radioactive waste streams below regulatory concern, Appendix B to 10 CFR Part 2 (51 FR 30839; August 29, 1986). It has been found that the petition does not contain sufficient information to qualify for expedited handling in accordance with this policy statement and its staff implementation plan (51 FR 30840; August 29, 1986).

Dated At Rockville, Maryland, this 18th day of October 1988.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 88–24401 Filed 10–20–88; 8:45 am]

BILLING CODE 7590–01–M

FEDERAL HOME LOAN BANK BOARD

12 CFR Ch. V

Mutual Savings and Loan Holding Companies

Dated: October 12, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Federal Home Loan Bank Board (the "Board") is reviewing a number of issues that must be addressed in order to implement the mutual holding company provisions of the National Housing Act (the "NHA"), 12 U.S.C. 1730a(s), as added to the NHA by the Competitive Equality Banking Act of 1987 ("CEBA"), Pub. L. No. 100–86, 101 Stat. 552, 577–579 (1987). As part of its review, the Board is requesting public comment on the most significant of these issues, which are described below.

DATE: Comments must be received on or before November 21, 1988.

ADDRESS: Send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552. Comments will be available for public inspection at the Board's Information Services Office at 801 17th Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Jeff Miner, Assistant Deputy Director, Corporate and Securities Division, (202) 377–7546; V. Gerard Comizio, Director, Corporate and Securities Division, (202) 377–6411; or Julie L. Williams, Deputy General Counsel for Securities and Corporate Structure, (202) 377–6459; Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Background

CEBA section 107(a) amends NHA section 408, 12 U.S.C. 1730a, by adding a new subsection (s) thereto, which provides for the establishment of mutual savings and loan holding companies.[1]

[1] CEBA section 107(b) provides for the establishment of mutual bank holding companies for savings banks and cooperative banks insured by the federal Deposit Insurance Corporation (the "FDIC"). *See section 3(g) of the bank Holding Company Act of 1956, 12 U.S.C. 1842. A number of state statutes also provide for state chartered mutual holding companies. Unless the context clearly indicates otherwise, all references herein to "mutual holding companies" are intended to refere only to mutual savings and loan* holding companies established pursuant to NHA section 408(s).

Pursuant to NHA section 408(a), any insured institution in the mutual form may reorganize to form a mutual holding company by "(A) chartering an interim savings institution, the stock of which is to be wholly owned by the mutual institution; and (B) transferring the substantial past of [the mutual institution's] assets and liabilities, including all of its insured liabilities, to the interim savings institution," NHA section 408(a)(1), *provided* (i) the plan of reorganization provides that "[p]ersons having ownership rights in the mutual institution * * * shall have the same ownership rights with respect to the mutual holding company," NHA section 408(a)(4), (ii) the plan is approved by the institution's board of directors and voting members, NHA section 408(a)(2), and (iii) the institution provides sixty days advance notice to the Federal Savings and Loan Insurance Corporation (The "FSLIC") and the FSLIC does not, within that time, disapprove the reorganization. NHA section 408(a)(3). (the FSLIC may, at its option, extend the time frame for disapproval by an additional thirty days. *Id.*)

The FSLIC is authorized to disapprove a proposed mutual holding company reorganization if (i) the FSLIC finds that the financial or managerial resources of the insured institution are inadequate or that the reorganization would otherwise threaten the safety and soundness of the institution; (ii) the insured institution fails to provide the FSLIC with information required by regulation or by specific request; or (iii) the institution fails to obtain approval of the reorganization from its board of directors and voting members. NHA section 408(a)(3)(C). In addition, and as a separate matter, the FSLIC is authorized to review and approve the proposed capitalization of mutual holding companies. NHA section 408(a)(3)(D). In no event may a mutual holding company be capitalized at a level that would deprive the newly formed subsidiary insured institution of sufficient capital to comply with the Board's minimum capital requirements, as set forth at 12 CFR 563.13. NHA section 408(a)(3)(D).

Mutual holding companies are permitted to "acquire * * * through merger" additional mutual insured institutions or mutual FDIC insured savings banks, to "acquire" or "merge with" other savings and loan holding companies, to "invest" in the stock of insured institutions, and to "invest" in any other corporation "the capital stock of which is available for purchase by an insured institution under Federal law or under the law of any State where the subsidiary insured institution or institutions [of the mutual holding company] have their home offices." NHA section 408(a)(5). If the term "invest" is interpreted in a manner that includes acquisitions of controlling blocks of stock in any corporation whose stock may be purchased by insured institutions under Federal law or the relevant State law (*see* discussion below under Item 5), then it appears that mutual holding companies would be able to engage, indirectly via subsidiaries, in a broad range of business activities. If instead the term is interpreted in a manner that includes only passive, non-controlling investments, then the permissible business activities of subsidiaries of mutual holding companies will be coextensive with the business activities that mutual holding companies are permitted to engage in directly, *i.e.*, those specified in NHA section 408(c)(2), exclusive of subclause (B) thereof (conducting an insurance agency or escrow business). NHA section 408(a)(5)(E). A mutual holding company that "acquires" or "merges with" a savings and loan holding company that engages in activities or holds assets that are impermissible for mutual holding companies must cause those nonconforming activities and/or assets to be disposed of or terminated within two years of such acquisition or merger. NHA section 408(a)(5).

Except as noted above, mutual holding companies are subject to the same statutory and regulatory provisions as are applicable to savings and loan holding companies generally, including (without limitation) provisions regarding transactions with affiliates, NHA section 408(d), (p), and (t), acquisitions of insured institutions, NHA section 408(e), declaration of dividends, NHA section 408(f), holding company indebtedness, NHA section 408(g), management interlocks, NHA section 408(i), and Board regulations implementing the foregoing statutory provisions, 12 CFR Parts 574, 583, and 584. NHA section 408(a)(7).

Discussion

The Board, as operating head of the FSLIC, is authorized to promulgate such regulations "as it deems necessary or appropriate to enable it to administer and carry out the purposes of" NHA section 408(a), as described above. NHA section 408(h)(1). In reviewing section 408(a), the Board has noted that a number of important issues that will have to be addressed in its implementing regulations are either not addressed or not definitively resolved by the statutory language. Accordingly, the Board has decided to seek public comment on certain key issues before promulgating a detailed set of proposed regulations. The issues are as follows:

1. What is the essential juridical nature of a mutual holding company?

NHA section 408(a) specifies that a mutual insured institution "may recognize so as to become a mutual holding company" by chartering an interim subsidiary stock insured institution and transferring a substantial part of the mutual insured institutions assets and all of its insured deposits to the subsidiary institution. NHA section 408(a)(1). In other words, unlike traditional holding company reorganization where an insured institution in the stock form incorporates a new general business corporation to serve as the new holding company, under NHA section 408(a) the mutual insured institution itself becomes the holding company.

Thus, at the end of a reorganization under section 408(a), the basic legal document authenticating and defining the corporate existence of a mutual holding company will be the charter of a mutual insured institution, either state or federal. *Cf.* 12 CFR 544.1 (model charter for federal mutual associations). Although the Board could promulgate regulations requiring any mutual insured institution that wishes to reorganize under section 408(a) to amend its charter to change its name from "_____ Savings and Loan Association" or "_____ Savings Bank" to something reflecting its status as a mutual holding company and to specify that unless and until the mutual holding company lawfully ceases to operate as a mutual holding company (*see* Item 10 below) it may exercise only such powers as are set forth in NHA section 408(a)(5), these amendments seemingly would not alter the fundamental fact that the mutual holding company will still be an entity chartered under the relevant federal or state statute providing for the formation of thrift institutions. *See* Home Owners Loan Act, section 5(a), 12 U.S.C. 1464(a).

This raises the question whether mutual insured institutions that become mutual holding companies should be deemed to retain their fundamental identity as "insured institutions" for the purpose of determining the applicability of various statutory and regulatory provisions such as (i) NHA section 407(d) and section 21(f)(4) of the Federal Home Loan Bank Act ("FHLBank Act"), 12 U.S.C. 1441(f)(4), both of which provide for exit fees upon termination of FSLIC insurance, and (ii) NHA section 408(t), which provides an exception from the requirement of prior FSLIC approval for transactions between insured institutions in same holding company structure. The answer to this question is also relevant to how securities issued by mutual holding companies will be regulated under the federal securities laws. *See* Item 2 below.

In recognition of the hybrid nature of a mutual holding company, the Board is of the preliminary view that it should take a flexible approach to the question of whether a mutual holding company is an "insured institution." There are some statutory or regulatory provisions under which it would make sense to treat mutual holding companies as insured institutions, and there are others under which it would not. Thus, for example, for purposes of NHA section 407(a) and FHLBank Act section 21(f)(4), the Board is not inclined to view the transformation of a mutual insured institution into a mutual holding company as a termination of insurance requiring the payment of exit fees. The purposes of the exit fee provisions is to impose a final premium on deposits that are leaving the FSLIC system. In the context of mutual holding companies, deposits are merely being relocated within the FSLIC system, indeed within the same corporate structure.

In the context of NHA section 408(t), however, the Board is inclined to view mutual holding companies as traditional holding companies, rather than insured institutions. The exemption from prior approval provided by section 408(t) appears to be based upon the assumption that transactions between two affiliated entities within the same structure that are engaged in the same general business (*i.e.*, that of an insured institution) and both have FSLIC-insured deposits do not present the same level of risk to the FSLIC fund or insured institutions as do transactions between insured institutions and their other corporate affiliates. Since the powers and activities of a mutual holding company differ significantly from those of an insured institution, more closely approximating those of a traditional savings and loan holding company, NHA section 408(a)(5), and since transactions between mutual holding companies and their insured institution subsidiaries would present the possibility of a transfer of assets away from the FSLIC fund, it would seem more appropriate to treat mutual holding companies like typical savings and loan holding companies for purposes of transactions with their subsidiary insured institutions. *See* NHA sections 408 (d) and (p).

2. Should membership interests and/or debt securities issued by mutual holding companies be deemed subject to the Board's securities offering regulations set forth at 12 CFR Part 563g?

a. Issuance of Membership Interests

Persons who open savings or demand deposit accounts at federally-chartered mutual savings and loan associations and savings banks automatically become members of such institutions and, as such, are entitled, *inter alia*, to vote on certain corporate matters, to receive distributions on net earnings on the basis of accounts, and to receive certain distributions upon liquidation. *See* 12 CFR 544.1 (sections 6 and 8 of Model Charter). Persons who open accounts at most state-chartered, FSLIC-insured mutual savings and loan associations also receive similar rights. As noted above, NHA section 408(a)(4) prescribes that persons who possess ownership rights in mutual insured institutions that reorganize into the mutual holding company format must receive the same type of ownership rights in the mutual holding companies.

This raises the question of whether the issuance of such rights by mutual holding companies should be deemed to constitute the issuance of securities subject to the Board's securities offering regulations at 12 CFR Part 563g. Part 563g provides that "no insured institution shall offer or sell, directly or indirectly, any security issued by it unless the offer or sale is accompanied * * * by an offering circular which includes the information required by this Part * * * or * * * an exemption is available under this Part." 12 CFR 563g.2(a). For purposes of Part 563g, the term "security" is defined as set forth below. (For convenience of reference in the discussion that follows, the definition is divided into two parts.)

Part I: "Security" means any nonwithdrawable account * * *, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate * * *, investment contract, voting trust certificate or, in general, any interest or instrument commonly known as a "security" * * *.

Part II: except that a "security" shall not include an account insured, in whole or in part, by the Federal Savings and Loan Insurance Corporation or the Federal Deposit Insurance Corporation. 12 CFR 563g.1(a)(13).

In light of the foregoing, any determination that Part 563g is applicable to the interests to be issued by mutual holding companies would be dependent upon four findings: (i) That such interests fit into one or more of the specific categories of instruments named above or othewise qualify as "securities" under general principles of securities law, *see* Part I of the foregoing definition; (ii) that these interests are, in some meaningful sense, being issued by an insured institution, *see* 12 CFR 563g.2(a); (iii) that these interests do not qualify for the exemption for interests issued in connection with accounts insured by the FSLIC or the FDIC, *see*, Part II of the foregoing definition; and (iv) that these interests are being "offered for sale" and "sold." *See* 12 CFR 563g.2(a).

With respect to the first issue, *i.e.*, whether interests issued by mutual holding companies constitute "securities" within the meaning of Part I of the foregoing definition, the Board notes that Part I of the definition is virtually identical to the definition of "security" set forth in section 2(1) of the Securities Act of 1933 (the '"33 Act"), 17 U.S.C. 77a *et seq.*, and section 3(a)(10) of the Securities Exchange Act of 1934 (the '"34 Act"), 17 U.S.C. 78a *et seq.* Unfortunately, the existing case law discussing whether mutual ownership rights of the type described above constitute "securities" within the meaning of section 2(1) of the '33 Act and section 3(a)(10) of the '34 Act is sparse and inconclusive. Since the issuance of such rights by mutual insured institutions would be exempt from the registration requirements of the '33 Act and the '34 Act even if such accounts did constitute "securities," *see* section 3(a)(5) of '33 Act and section 12(g)(2)(C) of '34 Act, the only context in which the question could arise in the past was in fraud actions brought pursuant to section 17 of the '33 Act and section 10 of the '34 Act. Only a few such actions have actually been brought, and, arguably, each such action has involved membership interests that differ in some significant respect from the membership interests described above. *E.g., Tcherepnin v. Knight* 389 U.S. 332 (1967) (a withdrawable capital share in an Illinois building and loan association is a "security" within the meaning of the '34 Act primarily because the holders of such shares are entitled to dividends, rather than a fixed rate of interest, and because the legislative history of the '33 Act suggests that interests in building and loan associations were assumed to be "securities" requiring the section 3(a)(5) exemption); *Burrus, Coates & Burrus v. MacKethan*, 537 F. 2d 1262 (4th Cir. 1976) (a certificate of investment in an

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S&L is not a security within the meaning of the '34 Act since the certificate is merely an account that pays a fixed rate of interest and confers no voting rights); *Hamblett v. Board of Savings and Loan Associations of Mississippi*, 742 F. Supp. 158, 164–167 (N.D. Miss. 1979) (same as *Burrus*, except conclusion applies to both '33 Act and '34 Act); *cf. also Marine Bank v. Weaver*, 455 U.S. 551, 556 (1982) (a certificate of deposit differs from the instrument considered in *Tcherepnin*, *supra*, in that it confers no voting rights and pays a fixed rate of interest; such CDs, especially when issued by a regulated bank, are not "securities" within the meaning of the '34 Act).

If the Board were to conclude that the issuance of mutual membership rights of the type described above by mutual holding companies constitutes the issuance of "securities" within the meaning of Part I of the definition set forth above, the Board would, as a second matter, have to consider whether such "securities" should be deemed to be issued by insured institutions. This, of course, is linked to the analysis set forth under Item 1 above. In this regard, we also note that section 3(a)(5) of the '33 Act and section 12(g)(2)(C) of the '34 Act each provide exemptions for securities issued by "savings and loan associations" or "similar institutions" supervised and examined by state or federal authorities. Thus, from time to time the Securities and Exchange Commission ("SEC") has been called upon to consider whether a particular entity that is closely associated with a savings and loan association or an integral part of the operations of a savings and loan association should be deemed to be a "savings and loan association" or "similar institution" within the meaning of the '33 Act and '34 Act. As a general rule, the SEC has not responded favorably to such arguments. *E.g., Central West End Savings & Loan Association*, '84–85 Fed. Sec. L. Rep. (CCH), Para. 77,802 (1984) (securities issued by a pooled fund of tax exempt state and municipal bonds organized and operated by an S&L as a service to the S&L's customers do not constitute securities issued by an S&L or "similar institution"); *Commercial Credit Co.*, '71–72 Fed. Sec. L. Rep. (CCH), Para. 78,544 (1971) (an industrial loan subsidiary of a thrift institution is not a "similar institution" and, hence, passbook accounts issued by the subsidiary are not exempt securities); *Equitable Savings & Loan Association*, '71–72 Fed. Sec. L. Rep. (CCH), Para. 78,721 (1972) (an entity will be deemed to be a savings and loan association or "similar institution" only if it is deemed to be a thrift institution under applicable financial institutions laws). There is, however, an obvious difference between mutual holding companies and the entities that were scrutinized in the aforementioned cases: mutual holding companies are chartered under the laws providing for the establishment of thrift institutions. *See* Item 1 above. Under the principles articulated in *Equitable*, this could be a decisive difference.

If the Board were to conclude that the membership interests to be issued by mutual holding companies are securities under Part I of the definition set forth above and that such securities should be deemed to be securities issued by insured institutions, the Board would, as a third matter, have to consider whether such membership interests nevertheless qualify for the exemption set forth in Part II of the above definition for interests issued in connection with insured deposit accounts. On the one hand, it could be argued that the rights being received by persons who place deposits in an insured institution subsidiary of a mutual holding company go beyond the rights received by depositors in a typical insured institution in that the rights of the former include, at least in theory, the right to benefit from income generated at the holding company level. Thus, it could be argued that the normal exemption from Part 563g for rights issued in connection with insured deposit accounts should not apply to the interests issued by mutual holding companies. On the other hand, there would be a certain tension between a conclusion that the rights being issued by mutual holding companies constitute securities issued by an "insured institution" (pursuant to the arguments set forth above and in Item 1) and a conclusion that those rights nevertheless differ in some fundamental respect from the rights issued to depositors in typical insured institutions, particularly when, as here, the rights issued by the mutual holding company are derived from, and intended to replicate, the interests of accountholders in a mutual insured institution.

Finally, if the Board were to conclude that the membership interests to be issued by mutual holding companies constitute securities under Part I of the definition set forth above, that such securities should be deemed to be securities issued by insured institutions, and that such securities do not qualify for the exemption set forth in Part II of the above definition, then the Board would, as a fourth matter, have to consider whether such securities are being offered or sold "for value." 12 CFR 563g.1(a)(9) and 563g.2(a). The Board's securities offering regulations, like the '33 Act, do not apply to transactions which lack the element of an offer or sale of securities "for value." *See generally*, L. Loss, Fundamentals of Securities Regulation, at 247–248 (2nd ed. 1988). In the context of mutual holding companies, the "for value" standard can be argued both ways. On the one hand, it could be contended that a mutual accountholder gives value when he or she, in effect, exchanges his or her interest in a mutual insured institution, with the potential to undertake a "standard" conversion, for an interest in a mutual holding company. On the other hand, it could be argued that the interest in the mutual holding company received by the mutual accountholder differs in no significant respect from the interest he or she formerly had in the mutual insured institution, that the accountholder's former interest in the mutual insured institution was not received "for value," and that, therefore, no offer or sale "for value" could have occurred at the time the accountholder's former interest was exchanged for an interest in the mutual holding company. Further complications and arguments on both sides, would appear to be presented in analyzing the interests of persons that become accountholders *after* a mutual holding company reorganization.

Although none of the cases cited above where courts have considered whether interests issued in connection with the establishment of deposit accounts constitute securities expressly discusses the question of whether such issuances also constitute offers and sales "for value," the Supreme Court in *Tcherepnin* appears to have assumed the occurrence of an offer and sale "for value" under the circumstances of that case. *Tcherepnin*, *supra*, at 340–341 and 340.

b. Issuance of Debt Securities

The analysis of the applicability of 12 CFR Part 563g to the issuance of debt securities by mutual holding companies is much simpler than the analysis required in connection with membership interests. When a mutual holding company undertakes a traditional debt offering (*i.e.*, notes offered to members of the public at a specified price per note), there will be no question: (i) That "securities" are being offered; (ii) that the "securities" are not being offered in connection with insured deposit accounts; and (iii) that offers and sales "for value" are taking place. The only significant issue that will be presented by this type of offering is whether the securities are being offered by an "insured institution." The arguments for and against viewing a mutual holding company as an "insured institution" for securities law purposes are already set forth above in the discussion of membership interests. If, pursuant to these arguments, a mutual holding company is deemed to be an "insured institution," then the offer and sale of debt securities by mutual holding companies will be subject to 12 CFR Part 563g.[8]

3. Should third parties be permitted to acquire minority blocks of stock of insured institution subsidiaries of mutual holding companies?

NHA section 408(s) does not specify whether third parties, *i.e.*, persons or entities other than mutual holding companies, may acquire minority blocks of stock of insured institution subsidiaries of mutual holding companies. In the absence of express guidance from the statute, arguments can be made on both sides of the issue.

On the one hand, it can be argued that the ability to raise capital from outside sources is one of the chief benefits that could flow from mutual holding company reorganizations and that, therefore, in the absence of any express statutory prohibition, the Board should exercise its regulatory discretion to permit the practice. This argument is reinforced by the fact that most states that have considered the issue in the context of state-chartered mutual holding companies have opted in favor of permitting third parties to acquire minority blocks of stock of thrift subsidiaries of mutual holding companies. *E.g.*, Connecticut Public Act No. 85–330, sections 4(e) and 5(d); and New Jersey Act No. 2042 (1987), sections 11(b), 20(f), and 31(a).

On the other hand, it can be argued that although NHA section 408(s) does not expressly prohibit the acquisition of minority blocks of stock by third parties, such a prohibition may be inferred from various provisions in the Section. *See, e.g.*, NHA section 408(s)(1)(A) (providing that the stock of the interim insured institution that is formed as a part of the reorganization process to become the operating thrift subsidiary of the mutual holding company must be "wholly owned" by the mutual holding company); and NHA section 408(s)(4) (providing that members of a reorganizing mutual insured institution must possess the same ownership rights at the end of the reorganization process as they possessed at the outset). In addition, it can be noted that although some states do permit third parties to acquire minority blocks of stock of thrifts owned by state-chartered mutual holding companies, the statutes of those states, unlike NHA section 408(s), contain provisions expressly authorizing such acquisitions. *See* state statutory provisions cited above. The absence of any similar explicit authorization in section 408(s) could be taken as an indication that Congress did not envision that third parties would be permitted to acquire minority blocks of stock of insured institution subsidiaries of federally-chartered mutual holding companies.[9] [10]

If the Board were to conclude that third parties may acquire minority blocks of stock of insured institution subsidiaries of mutual holding companies, it would also have to consider whether such stock may be in the form of preferred stock and/or nonvoting common stock, in addition to ordinary common stock. The Board would also have to decide whether acquisitions of the stock of the insured institution subsidiaries would be limited to purchases of newly-issued stock from the subsidiaries or could also include purchases of already outstanding stock from the mutual holding companies.[9] The Board notes that the latter form of acquisition could conceivably be utilized by mutual holding companies as a way of avoiding rules the Board might adopt limiting the amount of capital that mutual holding companies may derive from their insured institution subsidiaries. *See* Item 6 below. Such acquisitions would also raise difficult questions regarding the types of procedural safeguards that might be necessary to protect the rights and interests of the members of the mutual holding company. *See* Item 4 below.

4. Should the Board apply comparable procedures to the process of establishing mutual holding companies as now apply to mutual-to-stock conversions?

Because the formation of a mutual holding company would constitute a major corporate reorganization, an argument can be made that insured institutions proposing to form mutual holding companies should be subject to a full range of corporate and regulatory procedural safeguards. The Board's regulations governing mutual-to-stock conversions may provide an apt example of the type of procedures that would be appropriate. Institutions proposing to convert to the stock form are required, *inter alia*, (i) to submit a conversion application to the FSLIC providing information regarding the proposed plan of conversion; (ii) to submit the conversion proposal to shareholders pursuant to a proxy statement that has been reviewed and approved by the FSLIC and conforms to Form PS, as set forth at 12 CFR 563b.101; and (iii) to comply with other regulatory provisions designed to insure that the issuance of stock by the institution is done in a fair and lawful manner. 12 CFR Part 563b.

Of course, the amount and type of safeguards that will be required will vary significantly depending upon whether third parties are permitted to acquire minority blocks of stock of insured institution subsidiaries of mutual holding companies. *See* Item 3 above. If the Board were eventually to

[8] It should be noted that the focus of the above discussion is on whether membership interests and debt securities issued by mutual holding companies should be deemed to be subject to the Board's securities offering regulations. If it is ultimately concluded that mutual holding companies should not be viewed as "insured institutions" for securities law purposes, then any debt securities issued by mutual holding companies will, in the absence of an applicable exemption, be subject to the registration requirements of the '33 Act. Moreover, if mutual holding companies are not properly viewed as "insured institutions," consideration will also have to be given to whether membership interests issued by mutual holding companies will be subject to the '33 Act. Any such conclusion would appear to require the following findings: (i) Mutual holding companies are not properly viewed as "savings and loan associations" or "similar institutions," (ii) the membership rights issued by mutual holding companies constitute "securities," and (iii) such "securities" are being offered or sold "for value."

[9] To date, the Federal Reserve Board has processed one mutual bank holding company application pursuant to CEBA section 107(b) and, in connection with that application, authorized the subsidiary savings bank of Peoples Mutual Holdings, Bridgeport, Connecticut, to offer minority blocks of stock to accountholders and the general public. *See* Order of Board of Governors of Federal Reserve Board, Sept. 21, 1987. Since the mutual bank holding company provisions applicable to FDIC insured savings banks differ substantially from those applicable to FSLIC insured institutions, the Board does not consider the Federal Reserve Board's approval of People's application to be precedential for the decision the Board must make. *Compare* CEBA section 107(a) *with* CEBA section 107(b).

[10] Legislation has recently been introduced in Congress that would amend NHA section 408(s) to specify that third parties may acquire minority blocks of stock of insured institution subsidiaries of mutual holding companies. S. 2072, 101st Cong., 1st Sess., 134 Cong. Rec. 956–961 (1988).

[9] Some state mutual holding company statutes appear to limit third parties to the purchase of newly-issued stock from subsidiary thrifts (*e.g.*, New Jersey, see above citations), whereas others do not (*e.g.*, Connecticut, see above citations). The legislation referred to in Footnote 4, which would amend NHA section 408(s), would authorize third parties to purchase newly-issued stock from subsidiary insured institutions, but not to purchase already outstanding subsidiary stock from mutual holding companies.

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conclude that minority blocks of stock may be acquired by third parties, that could argue in favor of mutual holding company reorganizations being treated in a manner similar to mutual-to-stock conversions (*e.g.*, subscription offerings, liquidation accounts, dividend limitations, restrictions on the purchase of stock by directors and officers, and so forth). *See* 12 CFR 563b.3(c). Consideration would also have to be given to the tax consequences of such acquisitions. *See* sections 368(a)(1)(B) and (c), 382, and 1504(a)(2) of the Internal Revenue Code; and 12 CFR 563b.3(b)(3). The Board would also have to decide whether to require subsidiary insured institutions of mutual holding companies that sell their stock to third parties (i) to register their stock pursuant to the Securities Exchange Act of 1934, 12 U.S.C. 78s *et seq.*, regardless of their number of shareholders; (ii) to assist a market maker in establishing and maintaining a market in their stock; and (iii) to attempt to list their stock on a national or regional securities exchange or on the NASDAQ quotation system. *See* 12 CFR 563b.3(c)(19) (which imposes these requirements in connection with ordinary mutual-to-stock conversions).

5. Should mutual holding companies be permitted to acquire control of insured institutions that are already in the stock form and "other corporations," as defined below?

As noted above, NHA section 408(a)(5), which specifies the authorized activities of mutual holding companies, uses different terminology to describe the authority of mutual holding companies to engage in transactions with respect to mutual insured institutions and savings and loan holding companies, on the one hand, and stock insured institutions and other corporations the capital stock of which is available for purchase by an insured institution under federal law or under the law of any state where the subsidiary insured institution or institutions of the mutual holding company have their home offices (hereafter, "Other Corporations"), on the other hand. Clauses (B) and (C) of section 408(a)(5) permit mutual holding companies to "acquire * * * through merger" additional mutual insured institutions, and, subject to certain limitations, to "merge with" or "acquire" other savings and loan holding companies. Clauses (A) and (D) thereof permit mutual holding companies to "invest" in the stock of insured institutions and other Corporations.

The Board must determine whether Congess intended any significance to be attributed to this difference in terminology. One way to interpret the difference would be to conclude that Congress intended to limit mutual holding companies to passive, non-controlling investments in stock insured institutions and Other Corporations. Such an interpretation would be consistent with the familiar maxim of statutory interpretation that "where different language is used in the same connection in different parts of a statute, it is presumed that the legislature intended a different meaning." 82 C.J.S. "Statutes", section 316b (1953). The problem with the foregoing interpretation is that it would directly contradict NHA section 408(e)(1)(A)(iii), which prohibits non-controlling investments in insured institutions by savings and loan holding companies. In order to reconcile section 408(s)(5) with section 408(e)(1)(A)(iii), it may, therefore, be necessary to interpret the term "invest" as used in section 408(s)(5), or at least as used in clause (A) thereof, as being synonymous with "acquire," *i.e.*, as referring to controlling investments.

If the Board concludes that mutual holding companies may acquire control of insured institutions in the stock form and/or Other Corporations, two additional issues will have to be confronted. First, the Board will have to consider whether stock purchases are the sole form of transaction pursuant to which insured institutions in the stock form and Other Corporations may be acquired by mutual holding companies. Although it might be presumed that mutual holding companies would prefer to structure their acquisitions of stock institutions and Other Corporations as cash-out mergers, it is not clear that such mergers would fall within the language of section 408(s)(5) (A) and (D). Second, the Board will have to consider whether the accountholders of stock institutions acquired by mutual holding companies will be entitled to receive membership rights in the mutual holding company. On the one hand, it could be argued that the issuance of such rights would amount to a windfall for such accountholders at the expense of the existing members of the mutual holding company since all membership rights that such accountholders may have once had in their insured institution as a result of their deposits would already have been exchanged by those accountholders for subscription rights and rights inthe institution's liquidation account at the time the institution converted to the stock form. On the other hand, it could be argued that attempting to maintain a distinction between accountholders within the same mutual holding company structure would be futile and burdensome and would be inconsistent with the result that would occur in an acquisition of a stock insured institution by a mutual insured institution in a more typical transaction. *See, e.g.*, 12 CFR 552.13(c)(1).

6. What standards should guide the Board in reviewing the proposed capitalization of mutual holding companies?

As noted above, NHA section 408(s)(3)(D) provides that an insured institution that reorganizes into a mutual holding company "may, *subject to the approval of the [FSLIC]*, retain capital assets at the holding company level to the extent * * * such capital exceeds" the requirements of 12 CFR 563.13. The highlighted language indicates that Congress did not intend for section 408(s)(3)(D) to be read as an automatic entitlement for each organizing mutual holding company to retain all assets in excess of those required for its insured institution subsidiary to meet its regulatory capital requirement, but rather as a statutory floor or irreducible minimum past which the capital of insured institutions may not fall in the course of a mutual holding company reorganization. The fact that the statutory language authorizes the FSLIC to review and approve or disapprove capitalization proposals even in those cases where the subsidiary insured institution would meet its minimum regulatory capital requirement indicates that Congress intended for the FSLIC to play an active role in assessing the appropriateness of the proposed division of capital in each mutual holding company reorganization. This conclusion is reinforced by the fact that the FSLIC is also required to review the specific facts of each mutual holding company reorganization proposal and to disapprove any such reorganization if the FSLIC concludes that the insured institution presenting the proposal does not have adequate financial or managerial resources to support the reorganization or that the reorganization would otherwise negatively affect the safety and soundness of the insured institution. NHA section 408(s)(3)(C).

Accordingly, the Board is considering what standards should govern its review of mutual holding company capitalization proposals. The Board intends to examine the capitalization issue from both a supervisory perspective (*i.e.*, what amount or percentage of capital in excess of the minimum capital required by regulation may be safely retained at the holding company level and what impact will that have on the insured institution's ability to provide economical home financing?) and from a fairness perspective (*i.e.*, should insured institutions that are reorganizing into a mutual holding company be able to transfer more capital to their holding companies than insured institutions that are converting to the stock form and simultaneously forming a stock holding company or institutions that are already in the stock form and elect to form a stock holding company?). With respect to the supervisory point, it should be noted that the Board recognizes that well-conceived, prudent attempts to diversify the business activities of insured institutions via transfers of capital to their affiliates can enhance the financial soundness of those institutions and their ability to compete, but the Board has also found, as a matter of experience, that insured institutions with broad diversification authority (*e.g.*, state-chartered institutions located in states that provide broad service corporation investment authority) tend to experience a disproportionately high rate of insolvencies and such insolvencies are frequently due to overly ambitious attempts at diversification.[6] With respect to the fairness point, it should be noted that traditionally the Board has restricted the amount of capital that may be transferred to a holding company during the course of a mutual-to-stock conversion. The amount of capital that may be transferred to a holding company formed by an institution already in the stock form has also traditionally been limited by various measures tied to the amount of post-conversion net income that could have, but has not, been paid out as dividends by the insured institution under Board regulations and policies.

7. Should mutual holding companies be required to enter into "net worth maintenance" or "pre-nuptial" type agreements with respect to their subsidiary insured institutions?

The Board generally conditions any approval of an application to acquire an insured institution upon the acquiror's execution of a "net worth maintenance" or "prenuptial" agreement. *See* 53 FR 31,761 (August 19, 1988). In a "net worth maintenance" agreement, the acquiror agrees that, at the Board's request, it will infuse additional equity capital (up to a specified maximum) into the institution being acquired if at any time during the term of the agreement the institution fails to meet its regulatory capital requirement or the institution's regulatory capital declines below a predetermined amount. In a "prenuptial" agreement, the acquiror agrees that if at any time during the term of the agreement the acquired institution's regulatory capital declines below a specified percentage of the institution's liabilities or assets, an officer of the FSLIC shall have the right to vote the stock of the institution with respect to certain shareholder matters, including removal and replacement of the board of directors and sale of the institution.

These agreements are required so as to ensure that acquirors will have "sufficient incentive to prudently manage" acquired institutions and to "provide the FSLIC with a reasonable amount of protection against adverse events and uncertainty and time lags inherent in a regulatory capital and accounting system based on historical costs." *Id.* The Board is considering whether, for similar reasons, mutual holding companies should be required to execute "net worth maintenance" or "prenuptial" agreements with respect to their subsidiary insured institutions.

8. Should an insured institution that is acquired by an existing mutual holding company be permitted to make a capital contribution to the holding company at the time of the acquisition?

Although, as noted above, NHA section 408(s) specifically authorizes an organizing mutual holding company to retain such capital assets as may be approved by the Board (within certain limits), there is no indication whether Congress intended to permit capital contributions to the holding company by subsequently acquired insured institutions. Such contributions are rarely, if ever, proposed in connection with acquisitions of insured institutions by stock savings and loan holding companies.

Moreover, the Board has traditionally conditioned approvals of acquisitions of insured institutions by stock holding companies upon agreement by the holding companies that any post-acquisition capital contributions to the holding companies by the acquired institutions (in the form of dividends) will not exceed certain specified levels of the institutions' post-acquisition net income. The Board is considering whether this approach should be used in connection with acquisitions of insured institutions by mutual holding companies.

In addition, if the Board concludes that minority blocks of stock of insured institution subsidiaries of mutual holding companies may be acquired by third parties and if, as would likely be the case, the pool of permissible third party acquirors includes directors and officers of the mutual holding companies and their subsidiary insured institutions, the Board will have to consider whether special rules will be needed to prevent insider abuse of dividends. Because of the absence of shareholders at the holding company level to scrutinize the activities of the directors and officers of the holding company, it is conceivable that dividends of the insured institution subsidiary could be channeled to insiders of the institution who have become the minority shareholders of the institution. This could be accomplished, for example, by (i) causing the insured institution subsidiary to declare large dividends; and (ii) causing the holding company to waive its right to receive such dividends.

9. Should mutual holding companies be permitted to pledge the stock of their subsidiary insured institutions as collateral to secure notes or other debt instruments of the mutual holding company?

The Board is aware that bank holding companies and savings and loan holding companies occassionally raise capital by pledging the stock of their subsidiary financial institutions as collateral to secure borrowings. The Board is considering whether mutual holding companies should also be permitted to use this financing technique. Use of this technique by mutual holding companies would raise novel questions. It is uncertain, for example, what the status of a mutual holding company would be if the stock of its subsidiary insured institution(s) were seized by a lender upon default on an obligation by the mutual holding company. Once a mutual holding company is divorced from its subsidiary insured institution(s), it is unclear whether the mutual holding company would have authority to continue to operate (and, if so, how its membership would be determined) or would be required to liquidate and distribute its remaining assets to its members.

One possible solution to the above difficulties would be to prohibit unitary mutual holding companies from pledging the stock of their subsidiary insured institutions, while allowing multiple mutual holding companies to pledge the stock of all but one of their insured

[6] The Board also notes that a substantial percentage of some insured institutions' regulatory capital consists of goodwill. In reviewing mutual holding company capitalization proposals, the Board may take account of the extent to which the capital proposed to be placed in subsidiary insured institutions will be composed of goodwill.

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subsidiaries. Alternatively, if the Board concludes that minority blocks of stock of insured institution subsidiaries of mutual holding companies can be acquired by third parties, then the above difficulties could also be avoided by providing that each mutual holding company must, at all times, hold at least 51% of the stock of at least one of its insured institution subsidiaries free of any pledges or other encumbrances.

10. Should mutual holding companies be permitted to terminate their affiliation with their subsidiary insured institutions and how do mutual holding companies convert to stock form?

A holding company in the stock form is, of course, able to divest itself of one or more of its institutions by selling the institution's stock. The Board is considering whether, and under what circumstances, a mutual holding company should be permitted to terminate its affiliation with one or more of its insured institution subsidiaries. One approach would be to provide that a mutual holding company may terminate its affiliation with a subsidiary insured institution pursuant to either of two forms of transaction described below, *provided that* any such transaction is first approved by the holding company's directors and members and by the FSLIC, and *provided that* the holding company, subsequent to the transaction, would still control at least one insured institution. The two forms of transaction are as follows:

a. Transfer from One Mutual Holding Company to Another.

In this form of transaction, one mutual holding company would transfer all the stock of a subsidiary insured institution to another mutual holding company, with the accountholders of that insured institution receiving ownership rights in the acquiring mutual holding company in exchange for their former rights in the selling mutual holding company.

b. Spin Off of a Free Standing Mutual Insured Institution

In this form of transaction, a mutual holding company would be permitted to spin off a subsidiary insured institution in a transaction in which the subsidiary insured institution converts back into a free-standing mutual owned by its accountholders.

If the Board were to authorize mutual holding companies to engage in the above types of transactions, it is anticipated that from time to time the Board might find it necessary to condition its approval of such transactions upon a pre-transaction capital contribution from the holding company to the insured institution being disposed of, so as to ensure the capital adequacy of the institution being disposed of and, perhaps, to ensure that the accountholders of that institution would not be stripped of capital previously contributed to the mutual holding company.

It is contemplated that a unitary mutual holding company would not be permitted to dispose of its subsidiary insured institution. It appears that the only feasible way for such a company to terminate its mutual holding company status would be to convert the mutual holding company to the stock form in a transaction similar to that described in 12 CFR 563b.9, or, in the alternative, to merge the subsidiary insured institution with and into the mutual holding company in a transaction that would reestablish the mutual holding company as a traditional mutual insured institution.

If the Board concludes that minority blocks of stock of insured institution subsidiaries of mutual holding companies can be acquired by third parties, it will also have to consider how these minority blocks of stock are to be handled when a mutual holding company elects to convert to the stock form or to merge back into a subsidiary insured institution. *See* previous paragraph. In the context of a conversion, there would appear to be three options. One option would be to permit the outstanding minority shares of the subsidiary insured institution to be exchanged for shares in the holding company. A second option would be to permit the insured institution to redeem the minority shares as a part of the conversion. Of course, a third option would be to allow the minority shares to remain outstanding, unaffected by the conversion.

11. Do NHA Section 402(j) and 408(s) preempt state laws providing for, or prohibiting the formation of, mutual holding companies by state-chartered insured institutions?

NHA section 402(j) specifies that "* * * no insured institution may convert to the stock form except in accordance with the rules and regulations of the [FSLIC]." This language is notable both for what it does and does not say. On the one hand, section 402(j) constitutes an affirmative statement that mutual-to-stock conversions of all insured institutions, including state chartered institutions, must comply in all respects with the Board's conversion regulations. On the other hand, section 402(j) does not say that conversions of state-chartered insured institutions need comply only with the Board's conversion regulations. As crafted, the language seems to contemplate a dual regulatory scheme in which the conversions of state-chartered insured institutions must comply with both federal and state law—the practical result being that the more restrictive rules govern. This is the position that the Board has traditionally taken in its conversion program.

The Board is considering how section 402(j) should be read when overlaid against state mutual holding company statutes that purport to authorize insured institutions, as part of the holding company reorganization process, to issue blocks of stock to persons other than their mutual holding companies. *See* Item 3 above. Such transactions could be characterized as partial conversions. Since the Board's conversion regulations, 12 CFR 563b, currently do not allow partial conversions, it could be argued that section 402(j) prohibits the issuance of minority blocks of stock to third parties, even where state statutes would otherwise permit such issuances, until such time as the Board's regulations may be amended to permit this practice. *See Item* 3 above. On the other hand, it could be said that no conversion occurs unless and until the mutual holding company itself converts to stock form.

Section 408(s) presents an even broader preemption question: Should NHA section 408(s) be deemed to preclude state chartered insured institutions from reorganizing into the mutual holding company form pursuant to state mutual holding company statutes, and, conversely, should NHA section 408(s) be deemed to authorize state-chartered insured institutions to form mutual holding companies under section 408(s) notwithstanding the absence of state law authorizing such transactions? The relevant statutory language is as follows:
"Notwithstanding any provisions of federal law other than this subchapter, an insured institution operating in mutual form may reorganize so as to become a holding company by * * * *" NHA section 408(s)(1). This language seems to suggest an approach similar to that taken in the Board's conversion program, *i.e.*, state-chartered insured institutions wishing to form mutual holding companies must comply with both state and federal law. Pursuant to this approach, state-chartered insured institutions would have to satisfy all the provisions and restrictions of section 408(s) and the Board's implementing regulations in addition to the relevant laws and regulations promulgated by their respective states. Under this approach, it would also follow that section 408(s) would be insufficient alone to authorize mutual holding company reorganizations by state chartered insured institutions in the absence of some form of state approval for such transactions.

By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 88-24279 Filed 10-20-88; 8:45 am]
BILLING CODE 6720-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 108

Loans to State and Local Development Companies

AGENCY: Small Business Administration.
ACTION: Notice of Proposed Rulemaking.

SUMMARY: The rule proposed here would: (1) Clarify that the board of directors of a 503 company may vote on a loan approval or servicing action in the absence of a person with commercial lending experience if such person has made a positive or negative recommendation concerning such action; (2) limit the small concern's participation in its own financing to an amount not to exceed either the amount of the 504 debenture or the total amount of third-party financing; (3) make clear that the 503 company may inject, apart from cash, only real property into a project; (4) make clear that the borrower under a Section 503 loan may inject only land without improvements into a project; and (5) permit SBA to shift a debenture financing from a 503 company subject to disciplinary action, to another 503 company which is in good standing.

DATE: Comments must be received on or before November 21, 1988.

ADDRESS: Written comments, in duplicate, may be sent to the Office of Economic Development, Small Business Administration, Room 720, 1441 L Street NW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: LeAnn M. Oliver, Financial Analysis, Office of Economic Development, (202) 653-6958.

SUPPLEMENTARY INFORMATION: Section 108.503–1(b)(2) would be revised to make clear that the board of directors of a 503 company may vote on a proposed loan approval or servicing action even if no person with commercial lending experience is present at the meeting, if such a person has made a recommendation concerning such proposed action. At present there is doubt whether the board can proceed if the absentee vote is negative.

Section 108.503–10 would be revised to limit a 503 company's injection into a 503 project to cash or real property (as distinguished from real and personal property, as is now the case), and to limit the valuation of such real estate to the lower of cost or market, unless held more than two years, in which event the valuation may be determined by appraisal, subject to certain conditions (see §108.503–5(d)(2)).

Similarly, the borrower's contribution to the 503 company's injection would be limited in two ways. First, the value of the contribution could not exceed either the amount of the 503 debenture or the value of the third-party contribution. Second, the borrower could contribute only land, valued in the manner described above. SBA has not heretofore permitted the small concern's contribution to exceed either of the two other elements of a 503 project financing. However, this policy was not published as a regulation, but only as part of SBA's relevant Standard Operating Procedure, SOP 50 22 1, ¶103. While this SOP is widely known within the development company industry, it does not have the force and effect of law, as does a regulation. The policy underlying the proposed regulation addresses the question of need for SBA-guaranteed financing if the small concern itself furnishes a major portion of the total financing package (compare section 503(b)(2) of the Small Business Investment Act of 1958, as amended, 15 U.S.C. 697(b)(2)).

Finally, another section of this proposed rule would authorize SBA to transfer an existing or a pending 503 financing from a development company under temporary or other sanction, to a 503 company in good standing. The purpose of this proposal is to insulate a small business applicant from the effect of sanctions imposed on the related 503 company, since such sanctions may include a refusal to guarantee such company's debentures. SBA would arrange a division of the fees between the two 503 companies according to the services performed by each.

Compliance With Executive Order 12291, the Regulatory Flexibility Act and the Paperwork Reduction Act

SBA has determined that this proposal, taken as a whole, would not constitute a major rule for the purposes of Executive Order 12291. The annual effect of this rule on the national economy would not attain $100 million, since the regulatory proposals have no financial impact on the economy. Also, these proposed rules, if promulgated as final, would not result in a major increase in costs or price to consumers, individual industries, Federal, state and local government agencies or geographic regions, and will not have significant adverse effects on competition, employment, investment, productivity or innovation.

For the purpose of compliance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., the provisions of this proposal, if promulgated in final form, would not have a significant economic impact on a substantial number of small entities. The following analysis of the provisions is provided within the context of the review prescribed in the Regulatory Flexibility Act (5 U.S.C. 603).

The reason why we propose to revise § 108.503–1(b)(2) is that the present wording would seem to permit an absentee ballot by the person whose vote is required for a loan approval or servicing action only if the vote is negative. This would result in permitting one person to control board action, a result which SBA does not intend. Accordingly, the proposal would permit the board to proceed, whether the absentee vote is positive or negative.

The reasons for proposing the changes in § 108.503–10 are: (1) That if the contribution by the small concern to the development company is to be used as the 503 company's injection and its exceeds either the amount of the 503 debenture or the amount of the third-party financing, then the need for federal assistance appears to be negated, and (2) that it was never SBA's intention that the 503 company's contribution to the project (injection) could be personal property other than cash. The valuation of personal property would create difficulties. Accordingly, the present word "property" would be qualified by the word "real" and such real property would be subjected to the valuation rule, § 108.503–5(d), which applies to land. (3) The contribution by the small concern may include, or consist of, land without improvements, valued pursuant to § 108.503–5(d). SBA proposed to limit the small concern's contribution to land only because the valuation of existing buildings owned by the borrower would give rise to controversy.

The purpose of the proposal permitting the shift of an economic development project from a development company facing sanction to another in good standing is to insulate a small business application from the consequences of such sanction (*e.g.*, SBA's refusal to guarantee the resulting debenture).

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The legal basis of these proposed rule changes is § 503(a)(2) of the Small Business Investment Act, 15 U.S.C. 697(a)(2).

There are no additional reporting, recordkeeping and other compliance requirements inherent in these proposed rules. There are no Federal rules which duplicate, overlap or conflict with these proposed rules. There are no significant alternate means to accomplish the objectives of these proposals.

List of Subjects in 13 CFR Part 108

Loan programs/business, Small Business Administration, Small businesses.

For the reasons set out in the preamble, Part 108 of the Code of Federal Regulations is proposed to be amended as follows:

PART 108—[AMENDED]

1. The authority citation for Part 108 continues to read as follows:

Authority: 15 U.S.C. 687(c), 683, 686, 687, 687c, 687h.

2. Section 108.503–1(b)(2) would be amended by revising the last sentence thereof to read as follows:

§ 108.503–1 [Amended]

* * * * *

(b) * * *

(2) * * * If loan approval or servicing actions are put to a vote, the quorum shall include at least one director with commercial lending experience, unless the 503 Company can document that such director or another person approved by SBA as possessing commercial lending experience has made a recommendation on such loan or servicing actions.

* * * * *

3. Section 108.503–10 would be revised to read as follows:

§ 108.503–10 503 Company injection.

(a) *Contributions to 503 Company injection.* The 503 Company shall be required to inject into each project an amount equal to at least ten percent (10%) of the project cost exclusive of administrative cost (see § 108.503–5 (a) and (b)). Subject to § 108.503–4(c)(4) and paragraph (b) below, such injection may come from any source and may consist of cash, or real property if the project requires such real estate. Any such contribution or loan to the 503 Company may not be conditioned on the granting of voting rights, stock options or any other actual or potential voting interest in the 503 Company or the Small Concern, but the 503 Company may issue shares of nonvoting stock in exchange therefor. The interest on such injection shall not exceed a rate which is legal and reasonable. Such injection shall be subordinate to the 503 Debenture and shall not be repaid at a faster rate than the 504 Loan.

(b) *Contribution by borrower.* The Small Concern may contribute part or all of such injection, but the value of such contribution may not exceed either the amount of the related 503 Debenture or the aggregate amount of third-party financing pursuant to § 108.503–4 of this part. If the project involves new construction, the Small Concern may contribute land without improvements, valued pursuant to § 108.503–5(d)(2) of this part.

(c) *Contributions by others.* The injection into a project involving new construction may include, or consist of, real property if not contributed pursuant to subsection (b) of this section. Such real property shall be valued pursuant to the same methods and requirements, and subject to the same limitations as apply to land under § 108.503–5(d)(2).

4. Section 108.503–15 *Oversight and evaluation, suspension and revocation* is proposed to be amended by revising paragraph (e)(1) to read as follows:

§ 108.503–15 [Amended]

* * * * *

(e) *Revocation, suspension and other corrective actions.—(1) Corrective Actions.* SBA reserves the right to revoke the certification of any 503 Company, to suspend temporarily the eligibility of any 503 Company, or to require any other corrective action (including, but not limited to, the transfer of existing or pending financings to a 503 Company in good standing) for a violation of law or SBA regulation, of the terms of a debenture or any agreement with SBA, or any inability to meet the operational requirements set forth in this Part; but such action shall not invalidate any guarantee previously issued by SBA. Where a pending financing is completed pursuant to transfer, any deposit pursuant to § 108.503–6(b) of this part shall also be transferred. Other charges and fees shall be apportioned by SBA among the two 503 Companies in proportion to services performed.

* * * * *

(Catalog of Federal Domestic Assistance 59.036 Certified Development Company Loans (503 Loans); 59.041 Certified Development Company Loans (504 loans))

Dated: September 29, 1988.

James Abdnor,

Administrator.

[FR Doc. 88-24266 Filed 10-20-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-ASW-38]

Proposed Revision of Transition Area: McAllen, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the transition area located at McAllen, TX. The development of a new RNAV RWY 13 standard instrument approach procedure (SIAP) to the Mid Valley Airport, Weslaco, TX, has made this proposed revision necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing this new SIAP to the Mid Valley Airport. Coincident with this action will be the changing of the status of the Mid Valley Airport from visual flight rules (VFR) to instrument flight rules (IFR).

DATE: Comments must be received on or before November 28, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Management, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 88-ASW-38, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: (817) 624–5561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88–ASW–38." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of the Federal Aviation Regulations (14 CFR Part 71) by revising the transition area located at McAllen, TX. The development of a new RNAV RWY 13 SIAP to the Mid Valley Airport, Weslaco, TX, has necessitated this proposed revision. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing this new SIAP. Coincident with this action will be the changing of the status of the Mid Valley Airport from VFR to IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 1, 1988.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

McAllen, TX [Amended]

By adding to the end of the legal description: "and within a 6.5-mile radius of the Mid Valley Airport (latitude 26°10'37" N., longitude 97°58'20" W.)."

Issued in Fort Worth, TX on October 10, 1988.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 88-24427 Filed 10-20-88; 8:45 am]

BILLING CODE 4910-13-M

Office of the Secretary

14 CFR Part 399

[OST Docket No. 45264; Notice 88-13]

RIN: 2105-AB29

Statement of Enforcement Policy on Rebating

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice of proposed rulemaking.

SUMMARY: In response to concerns raised by travel agents, the Department is proposing to adopt its current enforcement policy concerning the rebating of international airline prices as a Policy Statement in the regulations on Aviation Proceedings. No change in the substance of that policy is intended. The Department also proposes to revoke an existing Policy Statement on the advertising of rebates that is contrary to the Department's enforcement policy.

DATE: Comments should be received by December 20, 1988.

ADDRESSES: Comments should be sent to Docket Clerk, C–55, Docket 45264, Department of Transportation, Room 4107, 400 7th Street SW., Washington, DC 20590. Comments will be available for review by the public at this address from 9:00 a.m. through 5:00 p.m., Monday through Friday. Persons wishing acknowledgement of their comments should include a stamped, self-addressed postcard with their comments. The docket clerk will time and date-stamp the card and return it to the commenter.

FOR FURTHER INFORMATION CONTACT: Samuel Podberesky, Assistant General Counsel for Aviation Enforcement and Proceedings, C–70, Department of Transportation, 400 7th Street, SW., Room 4116, Washington, DC 20590, (202) 366–9342, or Betsy Wolf, a Senior Trial Attorney in his office.

SUPPLEMENTARY INFORMATION: Airlines are required by section 403(a) of the Federal Aviation Act to file tariffs with the Department that state their passenger fares, cargo rates, and associated charges in foreign air transportation. Under section 403(b), it is unlawful for a carrier or ticket agent to charge a purchaser of foreign air transportation any amount other than that stated in the applicable tariff. The section also prohibits cargo shippers from paying any other amount. Ticket agents as defined in the Act include travel agents and cargo agents, as well as any other intermediaries providing for the carriage of passengers or cargo. The prohibition applies not only to overcharges, but also to undercharges, including what are commonly known as rebates. Thus, for example, the statute has been construed to prohibit a travel agent from sharing its commission on international tickets with the purchaser.

After the passage of the Airline Deregulation Act of 1978 and the International Air Transportation Competition Act of 1979, many of the traditional tariff-adherence rules were recast or repealed to accommodate the procompetitive policies of these statutes. Tariffs were eliminated altogether for domestic transportation. Many of the rules have been altered by exemption, some by legal interpretation. As a consequence, many payments and services provided to consumers in foreign air transportation are no longer

considered to be proscribed rebates. Moreover, those arrangements that still technically constitute rebates are subject to a restricted enforcement policy. Since 1978, both the Department and its predecessor, the Civil Aeronautics Board, have declined to prosecute alleged instances of rebating unless there is clear evidence of: (1) A pattern of direct consumer fraud or deception, (2) invidious discrimination, or (3) violations of the antitrust laws. Technical rebating, without more, will not trigger enforcement action, as the Board emphasized in 1980 (Order 80-5-215) and thereafter in orders, testimony, speeches and informal responses to enforcement requests. The Department has continued the CAB's policy, which is based on prosecutorial discretion, noting consistently in its correspondence with travel agents that neither the Department nor the Board has brought an enforcement case based solely on the discounting of published tariffs since 1978.

In the last few years, this enforcement policy has been criticized by the American Society of Travel Agents (ASTA) and some of its individual members. A number of travel agents have complained that they are in a dilemma, not knowing whether to disregard the broad language of the statute and thereby risk prosecution, or to follow traditional rules and thereby be unable to match the prices or services of their more aggressive competitors. They assert that the Department's insistence on a case-by-case evaluation of complaints fosters uncertainty as to the scope of permitted conduct.

On November 30, 1987, ASTA's President, Mr. Francis Goranin, sent the Department an informal proposal for regulatory action. A copy of this proposal has been placed in Docket 45884. First, he noted that an existing policy statement (14 CFR 399.80(h), adopted by the CAB in 1985) considers rebating and the advertisement thereof to be an unfair or deceptive practice in violation of section 411 of the Act. He suggested that it is confusing to have such a statement on the books while current enforcement policy stated elsewhere is quite different. Second, he proposed rulemaking language that would "set out the Department's position on enforcement of the rebating law as an official policy" in Part 399. According to Mr. Goranin,

> [T]he Department's approach to enforcement has been set out only in speeches and letters. While these announcements have received some attention in the trade press, many members of the travel agent community and the public remain concerned that no official policy exists that will bind the Department until the policy is changed following proper notice and procedures. Part 399 of the Department's regulations contains explicit policy statements on other aspects of the Department's jurisdiction that enable the industry to rely upon policies with reasonable confidence that they will not be abruptly changed without sufficient notice and opportunity to adjust.

We have decided to amend our regulations to include a new policy statement along the lines suggested by ASTA. While there are difficulties in attempting to codify an enforcement policy, particularly in an area as complex as tariff-adherence, we agree with ASTA that the general scope of acceptable conduct in this area should be stated formally. We have already taken similar action in Part 399 for certain enforcement policies regarding unfair and deceptive practices under section 411 of the Act. Moreover, we are persuaded that it is possible to cast the substance of our enforcement policy on rebating in a format that gives essential guidance to those who sell air transportation, while at the same time maintaining both necessary flexibility and a regulatory climate conducive to the many forms of competitive marketing behavior which we have found to be of substantial direct and indirect benefit to airline consumers. We emphasize that changes in the substance of our enforcement policy are not at issue in this proceeding.

Both the format and the language we propose are similar to ASTA's proposal. In particular, we agree with ASTA that it is important to emphasize at the outset that the statement is one of enforcement policy, and that allegations of illegal rebating in foreign air transportation will therefore continue to be reviewed by the Department on a case-by-case basis.

The second paragraph, which outlines the scope of acceptable conduct, is the heart of the proposed policy statement, and here again we accept ASTA's suggested language with one important change. ASTA's formulation that enforcement action "will ordinarily be undertaken" under the circumstances it has defined implies that other rebating activities could also be subject to enforcement action. Such a formulation would be unnecessarily vague and lacking in guidance for the industry. More importantly, it would be inconsistent with our policy, which is that technical rebating by itself, without competitive or consumer abuses amounting to violations of other provisions or legal standards, will not result in enforcement action. A clearer and more accurate statement of the policy is that enforcement action may be undertaken only when the stated conditions are met. All other conduct may be presumed to be acceptable under the policy.

As for the conditions themselves, ASTA's language properly notes that, in all cases, there must first be clear evidence of illegal rebating, as defined under U.S. law, and such rebating must be adversely affecting a substantial number of persons. Normally, such conduct must be part of a pattern or practice for enforcement action to be warranted. The reference to conduct in violation of section 403(b) of course excludes conduct which, by regulation, order or interpretation, has been exempted from the tariff requirements or deemed not be a proscribed rebate under those requirements.

As noted, the statutory changes in 1978 and 1979 have prompted a number of changes in what is considered to be a proscribed rebate.

Exemptions from or under section 403 which have eliminated categories of potential rebates include those set forth in 14 CFR 221.3(d), Part 286 (contracts for military transportation), Parts 296 and 297 (indirect cargo carriers), Part 223 (free and reduced-rate transportation), Orders 80-11-24 and 81-7-109 (bulk contractors), and Orders 78-12-49 and 79-2-23 (resolution of consumer disputes and claims). Incentives and opportunities for technical rebating were reduced in the case of passengers and minimized in the case of cargo by a series of exemptions and rulings establishing the principle that carriers should be free to charge customers in relation to the costs of the individual transaction, and hence can compensate customers for cost-saving services performed by them, including commissions, whether or not the transportation is for the customer's own purposes. See, *e.g.*, ER-1335/1336, 48 FR 22703, May 20, 1983 (Parts 296 and 297); Orders 79-2-92 and 80-6-40; Order 82-12-65 (*Competitive Marketing Investigation*) at 80, 91. Other determinations have recognized the right of carriers and agents to engage in joint ventures with others providing benefits to transportation users, and the right of agents to provide customer services in their role as independent businesses. See, *e.g.*, Order 81-8-31; ER-1371, 48 FR 57115, December 28, 1983. These and other changes in the definition of a proscribed rebate have been so substantial that it would be difficult and unwieldy to define which forms of pricing conduct are not now subject to enforcement action. It is far more feasible to identify those that still may be subject to such action.

We also agree with ASTA's statement of the substantive areas in which enforcement action regarding rebating may be considered: fraudulent or deceptive practices, invidious discrimination, and anticompetitive conduct. Fraudulent or deceptive practices generally encompass conduct which violates section 411 of the Act, the subject of substantial CAB and Department precedent. We have added the term "rates" to ASTA's language to make it clear that the enforcement policy also covers cargo rebating. The nature of invidious discrimination is illustrated to make it clear that economic discrimination is not encompassed. Finally, the statement specifies that anticompetitive conduct is tied to the more specific and predictable standard of conduct amounting to violation of the antitrust laws, which are defined in section 414 of the Act as those set forth in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12). ASTA's further suggestion that specific reference be made to section 2 of the Sherman Act appears to be unduly restrictive and potentially confusing.

ASTA has suggested that, for purposes of this Policy Statement, "fraudulent and deceptive practices" should be illustrated with two examples. The first, where a rebate is offered in connection with a "bait-and-switch" scheme, is a good example of the intended function of the policy and is a situation in which the Department and the CAB have taken action in the past. ASTA's language, however, suggests possible enforcement action whenever an "attempt" is made to sell a higher-priced ticket to a customer attracted by a rebate offer. That could have a chilling effect on legitimate discussions of fare options as well as on price advertising generally, a result contrary to our purpose. We therefore propose to limit this example to situations where the customer is "pressured" to purchase a higher-fare ticket. In evaluating such situations, evidence that the offered rebate is in fact unavailable or is too restricted to be of value to most customers may be considered, as in any case when allegations of unfair or deceptive practices are received.

ASTA's second example, citing a rebate offered in conjunction with land accommodations or other services at "artificially inflated prices," would be inappropriate. We have long declined to police the level of prices for non-transportation services even when offered as part of a transportation package. Our regulatory interest in this area has focussed on insuring that the prices and other material terms of air/non-air packages are fairly disclosed, so that consumers can make their own determination of value. Thus, it has been an explicit policy for nearly a decade to disregard the cost of hotels, car rentals and other travel package components in evaluating allegations of "indirect" rebating. We do not consider a rebate to have occurred if the package price at least covers the tariff air fare. Any other approach would inhibit competition by frustrating the ability of carriers and agents to match competitors' prices.

Finally, we agree with ASTA that the policy statement should make very clear that a rebate offer will not be found to affect competition adversely when the only effect of the offer is to divert passengers from one airline or ticket agent to another. In the past, individual travel agents have exhibited confusion on this point. As the Board emphasized in the *Competitive Marketing Investigation*, the Act protects competition but not individual competitors.

While numerous other examples of what the policy does or does not cover could no doubt be devised, we are reluctant to make the policy statement more detailed. We believe that ASTA's suggestions, with our modifications, convey the substance of our policy clearly without encouraging conduct or complaints that are inconsistent with our overall policy objectives.

ASTA has correctly pointed out that at least one statement of policy regarding the application of section 411 of the Act to ticket agents is inconsistent with our enforcement policy on rebating. Adopted in 1985, § 399.80(h) of the Policy Statements lists the following as a violation of section 411:

> Advertising or otherwise offering for sale or selling air transportation or services in connection therewith at less than the rates, fares, and charges specified in the currently effective tariffs of the air carrier or air carriers who are engaged to perform such air transportation or services, or offering or giving rebates or other concessions thereon, or assisting, suffering or permitting persons to obtain such air transportation or services at less than such lawful rates, fares and charges.

The statement in effect makes a technical violation of section 403 a *per se* violation of section 411, whereas our policy since 1978 has been to undertake enforcement action only if the offering or advertising of rebates is accompanied by independent violations of section 411, such as fraud, discrimination, or violation of the antitrust laws. Section 399.80(h) should have been revoked by the CAB as part of its general overhaul of the regulations following the statutory changes in 1978 and 1979, but it was apparently overlooked. We therefore propose to revoke it now.

We also propose to revoke § 399.80(g) for the same reason. That section considers "misrepresentation that special discounts or reductions are available, when such discounts or reductions are not specific in the lawful tariffs of the air carrier which is to perform the transportation" to be a violation of section 411. The section is at least misleading in that it appears to presume that rebate offers are themselves a "misrepresentation." On its face the statement appears to have no other significance, since misrepresentations of fares generally by ticket agents are covered by § 399.80(f).

This proposed action has been reviewed under Executive Order 12291, and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of $100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies, or geographic regions. Furthermore, this proposed rule would not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed regulation is significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979, because it involves important Departmental policies and substantial industry interest.

We have determined that the economic effects of the proposal would be so minimal that preparation of a full regulatory evaluation is unnecessary. The proposal merely reiterates an existing enforcement policy known throughout the industry and revokes obsolete policy statements. The proposed rule does not contain any information collection requirements that require approval under the Paperwork Reduction Act of 1980.

I certify that this rule will not have a significant economic impact on a substantial number of small entities. Since the proposal simply states an existing enforcement policy, the ability of such entities to engage in operations essentially will be unaffected by the proposed regulation.

This rulemaking action has been analyzed in accordance with the principles and criteria contained in

Executive Order 12612, and it has been determined not to have any federalism implication that warrants the preparation of a federalism assessment.

List of Subjects in 14 CFR Part 399

Applicability and effects, Operating authority, Rates and tariffs; Accounts and reports, Hearing matters, Rulemaking prosecutions, Enforcement, Other policies, Disclosure of information, Federal preemption.

Accordingly, the Department of Transportation (DOT) proposes to amend 14 CFR Part 399 as follows:

PART 399—STATEMENT OF GENERAL POLICY

1. The authority citation for Part 399 would continue to read as follows:

Authority: 101, 102, 105, 204, 401, 402, 403, 404, 405, 408, 407, 408, 411, 412, 414, 416, 801, 1001, 1002, 1102, 1104, Pub. L. 85–726, as amended, 72 Stat. 737, 740, 92 Stat. 1708, 72 Stat. 743, 754, 757, 758, 7670, 763, 768, 767, 768, 769, 770, 771, 782, 788, 7979, 49 U.S.C. 1301, 1302, 1305, 1324, 1371, 1372, 1373, 1374, 1375, 1376, 1377, 1378, 1379, 1381, 1382, 1384, 1386, 1461, 1481, 1482, 1502, 1504; Pub. L. 96–354, 5 U.S.C. 601, unless otherwise noted.

2. Add a new § 399.85 to Subpart G to read as follows:

§ 399.85 Enforcement policy regarding illegal rebating in foreign air transportation.

(a) It is the policy of the Department to review complaints alleging illegal rebating in foreign air transportation on a case-by-case basis to determine whether it is in the public interest and consistent with the Department's transportation policy goals to initiate an investigation or to bring enforcement action on the Department's behalf.

(b) An investigation or other enforcement action may be undertaken only when clear evidence is presented that rebating in violation of section 403(b) of the Act has occurred and that such rebating is adversely affecting a substantial number of persons and is:

(1) Occurring in connection with fraudulent or deceptive practices associated with the holding out or sale of fares or rates involving a rebate, or

(2) Offered on an invidiously discriminatory basis such as rebates limited on the basis of race, creed, color, sex, religious or political affiliation, or national origin, or

(3) Adversely affecting competition because the rebates are associated with activities that violate the antitrust laws.

(c) For purposes of this policy, a rebate may be found to be connected with fraudulent or deceptive practices where, for example, a rebate is offered in connection with a "bait-and-switch" scheme whereby the seller uses the rebate offer to attract a client and then pressures the customer to purchase a higher-fare ticket.

(d) For purposes of this policy a rebate offer will not be found to affect competition adversely when the only effect of the offer is to divert passengers from one airline or ticket seller to another.

§ 399.80 [Amended]

3. Remove and reserve paragraph 399.80(g) in its entirety.

4. Remove and reserve paragraph 399.80(h) in its entirety.

Issued in Washington, DC, on October 17, 1988.

Jim Burnley,

Secretary of Transportation.

[FR Doc. 88–24241 Filed 10–20–88; 8:45 am]

BILLING CODE 4910–62–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 435

[FRL–3462–7]

Oil and Gas Extraction Point Source Category, Offshore Subcategory; Effluent Limitations Guidelines and New Source Performance Standards; New Information and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability and request for comments.

SUMMARY: EPA is announcing today the availability for public comment of new technical, economic and environmental assessment information relating to the development of BAT and NSPS regulations under the Clean Water Act governing the discharge of drilling fluids and drill cuttings in the oil and gas extraction point source category, offshore subcategory. EPA requests comment on this new information. This notice is part of a rulemaking process that commenced formally on August 28, 1985 with EPA's proposal of effluent limitations guidelines and new source performance standards for the offshore subcategory (50 FR 34592). The comment period for the original proposal closed on March 15, 1986.

DATE: Comments on this new information must be submitted by December 5, 1988.

ADDRESSES: Comments should be sent to Mr. Dennis Ruddy, Industrial Technology Division (WH–552), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The supporting information and data described in this notice will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2402 (Rear of EPA Library) PM–231, 401 M Street SW., Washington, DC 20460. The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Technical information may be obtained from Mr. Dennis Ruddy at the above address, or call (202) 382–7131. Economic information may be obtained from Ms. Ann Watkins, Economic Analysis Branch (WH–586), at the above address or call (202) 382–5387. Environmental assessment information may be obtained from Ms. Alexandra Tarnay, Monitoring and Data Support Division (WH–553), at the above address or call (202) 382–7036.

SUPPLEMENTARY INFORMATION: On August 28, 1985, EPA proposed effluent limitations guidelines and new source performance standards for the oil and gas extraction point source category, offshore subcategory, 50 FR 34592. The proposal included BAT, BCT, and NSPS regulations covering produced water, drilling fluids, drill cuttings, produced sand, deck drainage, well treatment fluids and sanitary and domestic waste discharges from offshore oil and gas facilities. Since issuing the August 28, 1985 proposal, the Agency has received comments and collected additional data on numerous aspects of this rulemaking.

Today's notice relates to the development of BAT and NSPS regulations governing the discharge of drilling fluids and drill cuttings. EPA is announcing today the availability for public comment of new technical, economic and environmental assessment information relating to the regulation of those waste streams. This notice presents a variation on the originally proposed BAT and NSPS limitations on the mercury and cadmium content of discharged drilling fluids. It also describes EPA's initial investigation of an oil content limitation that could be applied to drilling waste streams at the BAT and NSPS levels of control.

The Agency has determined that it will promulgate the final regulations for the offshore subcategory in phases. Discharge regulations for drilling fluids and drill cuttings are scheduled for promulgation first. Regulations governing the other waste streams that were included in the August 28, 1985 proposal will be addressed in separate **Federal Register** notices. The Agency intends, in the next several months, to issue an additional **Federal Register** notice reproposing BCT effluent limitations guidelines for drilling fluids and drill cuttings.

Today's notice is organized as follows:

Summary of Part 1

Summary of Part 2

Part 1

I. Summary of Proposed Regulations
A. Drilling Fluids
B. Drill Cuttings
II. New Technical Information Related to the Proposed BAT/NSPS Regualtions
A. Drilling Fluid Toxicity Test
B. Discharge of Oil in Water-Based Drilling Fluids
C. Analytical Method for Diesel Oil Detection
D. Metals Limitations
III. Changes to Costing Data and Assumptions for Estimates of Economic Impacts
A. Toxicity Failure Rate for Water-Based Drilling Fluids
B. Annual Rate of Development
C. Model Well Characteristics
D. Transportation and Disposal
E. Use of Oil-Based and Water-Based Drilling Fluids
F. Cost Differential Between Diesel and Mineral Oils
G. Pollutant Reduction Estimates
H. Failure Rate for "No Discharge of Free Oil" Limitation
I. Monitoring Costs
IV. Revised Industry Profile and Economic Analyses
A. Industry Profile
B. Economic Impacts
C. Cost-Effectiveness
V. Environmental Assessment Information
A. Mercury and Cadmium in Barite and Environmental Consequences on Aquatic Life
B. Analysis of Shallow Water Dispersion Models

Part 2

I. Summary
II. Background
III. Description of Technologies for Controlling Oil Content of Drilling Wastes
IV. Applicability of Thermal and Solvent Extraction Technologies for Treating Drilling Wastes
A. Drill Cuttings
B. Drilling Fluids
V. Pollutant Reduction and Cost Estimates
A. Pollutant Reduction
B. Operating Costs
C. Drill Cuttings from Oil- and Water-Based Drilling Fluids
D. Water-Based Drilling Fluids
E. Comparison of Onsite Treatment Costs with Onshore Disposal Costs for Drilling Wastes
VI. Performance Data
A. Field Sampling
B. Observations and Sampling Results
VII. Oil Content of Untreated Drilling Wastes
A. Drill Cuttings
B. Water-Based Drilling Fluids
VIII. Analytical Method for Total Oil Content
IX. Request for Comments
Appendix A—Proposed Method 1651, Oil Content and Diesel Oil in Drilling Muds and Drill Cuttings by Retort Gravimetry and GC/FID

Summary of Part 1

Part 1 of today's notice announces the availability of additional information and presents discussion and preliminary conclusions on new data concerning BAT and NSPS controls on the drilling fluids and drill cuttings waste streams. It also discusses the potential applicability of several computer models to analyze the dispersion of drilling fluids and produced water waste streams.

Part 1 begins, in Section I, with a summary of the portions of the August 28, 1985 proposal that are pertinent to material presented in today's notice. The discussion that follows in Sections II, III, IV and V deals first with technical issues, then with economic and cost issues, and finally with environmental assessment issues relating to BAT and NSPS controls on drilling fluids and drill cuttings.

Subpart A of Section III ("Drilling Fluid Toxicity Test") discusses the proposed analytical method for determining the toxicity of drilling fluids. The discussion summarizes major industry comments on reliability and variability of the proposed toxicity test method and presents the Agency's plans for further evaluation of the test method.

In Subpart B of Section II ("Discharge of Oil in Water-Based Fluids"), the Agency presents new information relating to its proposal to prohibit the discharge of detectable amounts of diesel oil in drilling fluids and drill cuttings. Industry commenters have argued that the discharge of diesel oil should not be prohibited because diesel oil is the most effective agent for use in freeing stuck drill pipe. The discussion summarizes three studies of the relative effectiveness of diesel oil and mineral oil for freeing stuck pipe (the 1983–1984 API Survey, the 1986 Offshore Operators Committee Survey and the 1986–1987 EPA/API Diesel Pill Monitoring Program). It also presents and explains the Agency's renewed determination, in light of this new data, that the proposed prohibition on the discharge of diesel oil in detectable amounts continues to be appropriate for the BAT and NSPS levels of control. Subpart C of Section II ("Analytical Method for Oil Detection") and Appendix A of this notice present a proposed modification to the originally proposed analytical method for the detection of diesel oil in drilling fluids and drill cuttings.

In Subpart D of Section II ("Metals Limitations"), the Agency is presenting two sets of mercury and cadmium effluent limitations that may be applicable to discharged drilling fluids. The Agency formulated a second set of effluent limitations for mercury and cadmium based upon information submitted by commenters in response to the set of effluent limitations presented and discussed in the proposed regulations.

Economic and costing issues are presented in Sections III and IV of Part 1. The Agency has recosted compliance with the proposed BAT and NSPS regulations governing the discharge of drilling fluids and drill cuttings based upon new technical and cost information. Section III summarizes the changes to the costing information and assumptions. Section IV presents a summary of the economic impact analysis revised according to the new information and assumptions.

Under the subpart of Section III titled "Toxicity Failure Rate for Drilling Fluids," the Agency presents new data and preliminary conclusions concerning industry's expected rate of failure of the proposed toxicity limitation (30,000 ppm suspended particulate phase basis) by drilling fluids that contain no added oil. This discussion also includes the Agency's revised estimate of the annual industry cost of compliance with the toxicity limitation for drilling fluids.

The remaining subparts of Section III present updated or refined information that affects various factors used in estimating annual compliance costs. The affected factors are the estimate of the number of wells to be drilled offshore per year, model well characteristics, transportation and disposal on shore of drilling wastes that do not comply with the proposed limitations and standards, the frequency of use of oil based muds as opposed to water based muds, the cost differential between diesel oil and mineral oil, pollutant reduction estimates, expected failure rates for the static sheen test and monitoring costs.

Utilizing the new information and assumptions presented in Section III, Section IV summarizes the revised industry profile, economic impacts and other economic information concerning the proposed BAT and NSPS controls on drilling fluids and drill cuttings. Section IV also explains the Agency's preliminary conclusion that despite overall higher costs since proposal, the revised estimates of cost are economically achievable.

Finally, Section V summarizes a literature search concerning mercury

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and cadmium in barite, a constituent of drilling fluids, and the environmental consequences of the discharge of drilling fluids containing barite. Section V concludes with the Agency's evaluation of several computer models that have potential application in the prediction of dispersion of discharged drilling wastes and produced water.

Summary of Part 2

Part 2 of today's notice presents new information on the performance, costs and applicability of certain thermal technologies and solvent extraction technologies for treating drilling fluids and drill cuttings to reduce their oil content. Based on this information, the agency has begun to consider an oil content limitation of up to 1% by weight, whole sample basis, governing the discharge of drill cuttings wastes at the BAT and NSPS levels of control.

Sections I through III of Part 2 summarize the Agency's preliminary determinations regarding the applicability of an oil content limitation to drilling waste streams, discuss the regulatory background giving rise to EPA's investigation of this regulatory option, and present an overview of the thermal distillation, thermal oxidation and solvent extraction treatment technologies that are under review by the Agency.

Section IV of Part 2 describes these technologies in greater detail. Section V discusses in greater detail the potential applicability of these technologies to drill cuttings and drilling fluids, concluding that the technologies appear suitable as the basis for regulation of drill cuttings but not drilling fluids. Section VI presents preliminary estimates of pollutant reductions and the costs associated with treatment of drill cuttings and drilling fluids using these technologies. Section VII presents performance data for one variety of the thermal distillation technology. Section VIII estimates the quantities of drill cuttings and water-based drilling fluids that would not meet an oil content limitation of 1% or less. Section IX presents EPA's preliminary conclusion that the revised analytical method presented in Appendix A is appropriate for quantification of oil content of drill cuttings and drilling fluids. Section X requests comment on issues pertaining to development of BAT and NSPS oil content controls for drill cuttings.

The Agency is inviting comment only on the information presented today and regulatory approaches relevant to BAT and NSPS effluent limitations for the drilling fluids and drill cuttings waste streams, and not on other aspects of the August 26, 1985 proposed rule.

The Agency intends, in the next several months to issue an additional **Federal Register** notice related to this rulemaking for the drilling fluids and drill cuttings waste streams. The topics of the future notice are expected to include: Reproposal of BCT effluent limitations guidelines, results and conclusions from the drilling fluids toxicity test variability study (mentioned in Section II of Part I of today's notice), and other data or options that have not been addressed in **Federal Register** notices prior to that time.

Part 1

I. Summary of Proposed Regulations

On August 26, 1985, EPA proposed regulations to control the discharge of wastewater pollutants from the offshore oil and gas extraction industry, a subcategory of the oil and gas extraction category (50 FR 34592) (the "1985 proposal"). the proposed regulations included NSPS and effluent limitations guidelines based upon BAT and BCT. The proposed regulations also included an amendment to the BPT definition of "no discharge of free oil." The waste streams covered by the proposed regulations were produced water, drilling fluids, drill cuttings, deck drainage, well treatment fluids, produced sand and sanitary and domestic wastes.

The notice of proposed rulemaking and the supporting rulemaking record fully explain the proposal for all of the waste streams. For the purposes of this part of today's notice, a summary of the proposed regulations regarding only drilling fluids and drill cuttings is contained below.

A. Drilling Fluids

1. BAT. The proposed BAT regulations for drilling fluids would prohibit the discharge of free oil as measured by the static sheen test. The static sheen test would provide for a determination of the presence of free oil *prior* to discharge. The static sheen test method was included in the proposed regulations as an appendix (50 FR 34627). The pollutant parameter free oil was proposed to be regulated as a BAT "indicator" pollutant for control of the discharge of priority pollutants based upon information gathered on the concentration of priority pollutants in both drilling fluids and the specific additives used in the drilling fluid formulations. The parameter free oil is proposed to be used as an indicator pollutant for priority pollutants because it would be technologically infeasible to develop effluent limitations for all of the individual priority pollutants. The priority pollutants that would be controlled include benzene, toluene, ethylbenzene and naphthalene. The Agency has determined that the prohibition on the discharge of free oil as measured by the proposed static sheen test method would result in BAT-level control for the toxics of concern in drilling wastes.

The proposed "no discharge of free oil" limitation differs from the current 40 CFR Part 435 requirement (BPT) that is based upon the application of best practicable control technology currently available (BPT). The current BPT requirement prohibits the discharge of free oil that would "cause a film or sheen upon or a discoloration on the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines". 40 CFR 435.11(d). The compliance monitoring procedure is a visual inspection of the receiving water *after* discharge.

The BPT limitation of "no discharge of free oil" was originally intended to prohibit the discharge of drilling wastes that, when discharged, would cause a sheen on the receiving water. This limitation and the current definition were established to be consistent with the oil discharge provisions of section 311 of the Clean Water Act. The Agency did not intend that discharged drilling fluids be considered "sludge". For this reason, the Agency proposed in the August 26, 1985, notice to amend the current definition for the purposes of BPT, BAT, BCT and NSPS by excluding language that prohibits the deposition of sludge beneath the surface of the receiving water. This would allow the discharge of drilling fluids, provided that other effluent limitations are met.

The proposed regulations would also prohibit the discharge of diesel oil in detectable amounts. The analytical method for detection of diesel oil was included in the proposed regulations as an appendix (50 FR 34628). The pollutant parameter diesel oil was also proposed to be regulated as a BAT "indicator" pollutant for control of the discharge of priority pollutants contained in diesel oil.

In the preamble to the 1985 proposed regulations, the Agency recognized that diesel oil should be regulated at the BAT level because it contains toxic organic pollutants. Diesel oil was proposed to be designated an indicator pollutant for the BAT and NSPS levels to control the amounts of the individual toxic organic pollutants that it contains. The listed priority pollutants found in various diesel oils can include, benzene, toluene, ethylbenzene, naphthalene, phenanthrene, fluorene, and phenol. Diesel oil may contain from 20 to 60 percent by volume aromatic hydrocarbons. The aromatic hydrocarbons, such as benzenes, naphthalenes, and phenanthrenes, constitute the more toxic components of petroleum products such as diesel oil. Diesel oil also contains a number of nonconventional pollutants, including polynuclear aromatic hydrocarbons such as methylnaphthalene, dimethylnaphthalene, methylphenanthrene, and other alkylated forms of each of the listed toxic pollutants.

Because "diesel oil" is neither a listed toxic pollutant nor a listed conventional pollutant it is non-conventional pollutant. The parameter diesel oil is used as an indicator for the toxic organic pollutants that it is composed of because it would be technologically infeasible to develop effluent limitations for all of the individual toxic organic pollutants. The Agency has determined that control of these toxic organic pollutants by the regulation of "diesel oil" as proposed represents BAT-level of control of the toxics of concern.

The proposed regulations would also limit the toxicity of discharged drilling fluids with a 96-hour LC50 toxicity limitation. The LC50 limitation proposed is 3.0 percent by volume of the diluted suspended particulate phase, as a minimum (no single analysis to exceed). The analytical method for determining the 96-hour LC50 toxicity is a bioassay method that was also included in the proposed regulations as an appendix (50 FR 34631). The purpose of the LC50 limitation is to reduce the levels of toxic constituents in drilling fluid discharges, including additives such as oil or lubricity agents and some of the numerous specialty additives that may contribute significantly to the toxicity of the drilling fluids.

The proposed regulations would also prohibit the discharge of oil-based drilling fluids. This limitation continues the effective prohibition on the discharge of oil-based drilling fluids that results from the BPT requirement of "no discharge of free oil". The oil present in such fluids would serve as an "indicator" pollutant to control the discharge of priority pollutants contained in the oils added to or present in oil-based drilling fluids at the BAT level of control. The priority pollutants that would be controlled include benzene, toluene, ethylbenzene and naphthalene. The Agency has determined that the prohibition on the discharge of oil-based drilling fluids would result in BAT-level control for the toxics of concern in these drilling wastes.

The proposed regulations would also limit the amounts of mercury and cadmium that are in discharged drilling fluids. The proposed effluent limitations for mercury and cadmium are 1 mg/kg each, dry weight basis in the whole drilling fluid, as a maximum limitation (*i.e.*, no single analysis to exceed). These limitations would apply to the discharged drilling fluid. Compliance with these limitations would likely be accomplished by control of these priority pollutants in the barite component of the drilling fluid.

2. BCT. As stated previously, today's notice presents information for the purpose of promulating BAT and NSPS regulations from drilling fluids and drill cuttings. The August 26, 1985, proposal did include a BCT limitation which would prohibit the discharge of free oil in these wastes as measured by the static sheen test. The static sheen test method was included in the proposed regulations as an appendix (50 FR 34627). The pollutant parameter free oil was proposed to be regulated at the BCT level of control. However, with the exception of free oil, BCT requirements for drilling fluids were reserved for future rulemaking until after the promulgation of the general BCT methodology. The general BCT methodology was subsequently promulgated by EPA on July 9, 1986 (51 FR 24974). The Agency intends to issue a separate **Federal Register** notice to propose BCT for drilling fluids (and drill cuttings). Subsequently, the Agency will issue final BAT, BCT and NSPS regulations for drilling fluids and drill cuttings.

3. NSPS. The proposed regulations would establish NSPS limitations for free oil, oil-based drilling fluids, diesel oil, toxicity, mercury and cadmium as described above for the BAT level of control.

The proposed regulations included definitions for certain terms used to classify a "new source" for the offshore subcategory. These definitions would facilitate the application of the term "new source" to activities covered in this subcategory, including mobile and fixed exploratory and development drilling operations as well as production operations. Refer to the 1985 proposal notice for a detailed discussion of the Agency's intent in applying the new source designation. Comments were received regarding the proposed new source definition, but the Agency is not presenting any changes to the proposed definition at this time.

B. Drill Cuttings

1. BAT. The proposed BAT regulations for drill cuttings would prohibit the discharge of free oil as measured by the static sheen test. The pollutant parameter free oil was proposed to be regulated as an "indicator" pollutant at the BAT level for control of the discharge of priority pollutants in the oil contained in drill cutttings. Free oil is proposed to be used as an indicator pollutant for the priority pollutants contained in the oil because it would be technologically infeasible to develop effluent limitations for each of the individual priority pollutants contained in free oil. The priority pollutants that would be controlled include benzene, toluene, ethylbenzene and naphthalene. The Agency has determined that the prohibition on the discharge of free oil would result in BAT-level control for the toxics of concern in drilling wastes.

In addition, the proposed regulations would prohibit the discharge of diesel oil in detectable amounts. The pollutant parameter diesel oil was also proposed to be regulated as an "indicator" pollutant at the BAT level for control of the discharge of priority pollutants in diesel oil contained in drill cuttings. Diesel oil is proposed to be used as an indicator pollutant for the priority pollutants contained in diesel oil because it would be technologically infeasible to develop effluent limitations for all of the individual priority pollutants. The priority and non-conventional pollutants to be controlled by the use of diesel oil as an indicator pollutant are the same as that discussed above for the BAT-level of control for drilling fluids.

The proposed regulations would also prohibit the discharge of drill cuttings containing oil-based drilling fluids. As noted previously, such fluids would serve as "indicator" pollutants to control, at the BAT level, the discharge of priority pollutants contained in the oils added to or present in oil-based drilling fluids and transferred to drill cuttings.

2. BCT. The August 26, 1985 proposed BCT regulations for drill cuttings would prohibit the discharge of free oil as measured by the static sheen test. The pollutant parameter free oil was proposed to be regulated at the BCT level for control of the discharge of oil contained in drill cuttings.

With the exception of free oil, BCT requirements for drill cuttings were reserved for future rulemaking until after the promulgation of the general BCT methodology. The general BCT methodology was subsequently

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promulgated by EPA on July 8, 1988 (51 FR 24974). The Agency intends to propose BCT in a separate Federal Register notice for drill cuttings (and drilling fluids).

3. NSPS. The proposed regulations would establish NSPS limitations for the discharge of drill cuttings containing free oil, drill cuttings associated with oil-based drilling fluids, and drill cuttings that contain diesel oil as described above.

II. New Technical Information Related To the Proposed BAT/NSPS regulations

A. Drilling Fluid Toxicity Test

The proposed BAT and NSPS regulations would regulate drilling fluids by specifying a limit on the toxicity of the discharged fluid as determined through laboratory testing of samples of the fluids. The testing would consist of exposing test organisms to solutions containing different concentrations of the fluids. The test results would be used to determine concentration values lethal to 50% of the test organisms, *i.e.*, LC50 values. These LC50 values would be used to determine compliance with the toxicity limitation. The proposed BAT and NSPS regulations contain a limitation on the LC50 of discharged drilling fluids of 3.0 percent by volume of the diluted suspended particulate phase ("SPP basis") of the drilling fluids wastestream.

EPA accounted for variation in drilling fluid toxicity testing during the process of establishing the proposed toxicity limitation. The Agency proposed a limitation equal to the measured toxicity of the most toxic of the eight generic water-based drilling fluids. (The eight generic drilling fluids are identified in Appendix B of the August 28, 1985 proposal; 40 FR 34632.) Test method variability and analytical variability were accounted for in the proposed limitation because they were inherent components of the procedures used by the Agency in performing the toxicity testing and subsequent calculations. No explicit additional allowances for variation in the test method (intra- or inter-laboratory variability) or variation in "batches" of discharged waste material were used in establishing the proposed toxicity limitation. Moreover, the Agency has not historically provided for such additional allowances in the development of effluent limitations.

EPA has received numerous comments on the proposed toxicity limitation. In particular, industry commented that the toxicity limits may be failed as a result of intra- and inter-laboratory variability in test results.

One existing source of data for use in evaluating inter-laboratory variability is the study that was performed to aid the Agency in the selection of laboratories to conduct toxicity tests for EPA under contract. This data collection effort was part of an Agency "invitation for bid" (IFB) contracting process to provide acute toxicity test method performance information by laboratories attempting to qualify for contract analytical services to the Agency.

A detailed description of the statistical analysis on the IFB data is described in a paper titled "Toxicity Testing of Drilling Fluids: Assessing Laboratory Performance and Variability" (R.C. Bailey, B.P. Eynon), which is available in the record for this rulemaking. The Bailey-Eynon assessment also evaluates intra-laboratory variability using additional data from the EPA Gulf Breeze Laboratory. The American Petroleum Institute (API) has criticized the Bailey-Eynon assessment in a paper titled "Variability in Drilling Fluid Toxicity Tests" (J.E. O'Reilly, L.R. LaMotte). This paper also is included in the rulemaking record.

In order to draw final conclusions concerning variability of toxicity test results, the Agency is currently conducting a further evaluation of the drilling fluid toxicity test. This study will estimate intra- and inter-laboratory variability in the test results. It will also assess differences in intra- and inter-laboratory variation of estimated toxicity between a drilling mud and that same batch of drilling mud with oil added. The study will require each laboratory to conduct individual range-finding tests and to calculate LC50's. An intra-laboratory variability analysis will be based upon data from laboratories with levels of experience ranging from some experience to highly experienced. The study will not include estimates of variability resulting from repeated measurements on different "batches" of the same mud since this information is not needed to evaluate the drilling fluid toxicity test.

B. Discharge of Oil in Water-Based Drilling Fluids

Water-based drilling fluids used in offshore drilling operations sometimes have oil, either diesel oil or mineral oil, added to them. Drilling fluids may also contain entrained formation hydrocarbons. (The discharge of oil-based drilling fluids would be prohibited under the proposed regulation).

Oil can be used to improve the lubricating properties of a water-based mud system and as an aid in freeing drill pipe that has become stuck downhole during the drilling operation. Although diesel oil is often the most readily available oil at a drilling site, mineral oils have had a great deal of use recently for these purposes. When oil is used as an aid in freeing stuck drill pipe, a standard technique is to pump a slug or "pill" of oil or oil-based fluid down the drill string and "spot" it in the annulus area where the pipe is stuck. After use, the pill may be removed from the bulk mud system and disposed of separately. Even if the pill is recovered, residual oil from the pill can mix with the remainder of the mud system.

In recent years, research sponsored by both industry and government has shown that the presence of petroleum hydrocarbons in drilling fluid contributes significantly to its toxicity. Diesel oil is a complex mixture of petroleum hydrocarbons. It is known to be highly toxic to marine organisms and to contain toxic and nonconventional pollutants. There is evidence that diesel oil contributes significantly to the toxicity of drilling fluids that contain it. Toxicity data collected to date have shown that water-based muds containing diesel oil are substantially more toxic than muds without diesel. Mineral oil, which is available to serve the same operational requirements as diesel oil, has been shown to be a less toxic alternative to diesel oil. As a result, EPA has proposed a prohibition on the discharge of water-based drilling muds containing diesel oil and has encouraged the substitution of mineral oil for diesel oil.

The use of mineral oil instead of diesel oil as an additive in water-based drilling fluids will reduce the quantity of toxic and nonconventional organic pollutants that are present in a drilling fluid, as compared to the quantity of these pollutants present when using diesel oil as an additive. Mineral oils, with their lower aromatic hydrocarbon content and lower toxicity, contain lower concentrations of toxic pollutants than do diesel oils.

The proposed regulations would prohibit the discharge of diesel oil in detectable amounts in drilling fluid waste streams. The Agency selected the pollutant "diesel oil" as an "indicator" of the listed toxic pollutants present in diesel oil that are controlled through compliance with the effluent limitation, *i.e.*, no discharge. The technology basis for this limitation is product substitution of less toxic mineral oil for diesel oil.

As discussed in the preamble to the proposed regulations, the reason for prohibiting diesel discharges is to reduce the discharge of priority toxic and nonconventional organic pollutants

known to be present in diesel oils. The types and levels of these pollutants present in diesel oils have recently been documented in a study sponsored by the Offshore Operators Committee OOC). The laboratory study was conducted to examine the chemical characteristics of selected diesel and mineral oils. The findings are presented in two comprehensive reports prepared by Battelle New England Marine Research Laboratory. These studies were made available to the Agency by the industry and are available in the rulemaking record.

Some typical methods for compliance with the diesel oil limitation are: (1) Use of product substitutes such as low toxicity mineral oils for spotting and lubricity purposes; and (2) use of diesel oil for spotting and/or lubricity purposes and transporting the used mud system to shore for proper treatment, disposal or reuse.

The industry commenters on the proposed regulations argued that diesel oil is the most effective agent for use in spotting fluids and that the use and discharge of diesel oil for this purpose should be allowed by the regulations. The industry attempted to demonstrate this preference for diesel oil in spotting fluids by providing EPA with the results of the industry-sponsored surveys discussed below. The industry also proposed to EPA that a program of limited duration be undertaken to determine the efficiency of recovering a diesel pill so that the discharge of diesel oil would be minimized, if not eliminated, when the used mud system is discharged to the ocean.

1. American Petroleum Institute Drilling Fluids Survey. In 1984 the American Petroleum Institute (API) conducted a survey among sixteen offshore oil operators in the Guld of Mexico to obtain information on the use of diesel and mineral oils in water-based drilling fluids for the year 1983. Because the number of mineral oil applications in 1983 was small, API conducted a limited additional survey to obtain more data on experience with mineral oil pills in 1984.

These survey data presented by API indicate that mineral oil is more commonly used as a lubricant, while diesel oil is more commonly used for spotting purposes. Hydrocarbons (diesel or mineral oil) were added for lubricity to 12% of the 548 wells included in the survey. For 8% of the wells (44 wells), mineral oil was added, while for 4% of the wells (21 wells), diesel oil was added. For those drilling muds to which lubricity hydorcarbon was added, typically 3 percent (by volume) of the mud formulation was composed of hydrocarbon additive.

2. Offshore Operators Committee Spotting Fluid Survey. Most industry representatives consider mineral oil to be adequate for use as a lubricity agent but believe diesel oil to be a superior materials for freeing stuck pipe. In support of this position, industry has provided the Agency with the results of a retrospective survey comparing the success rates of diesel oil and mineral oil in freeing stuck pipe. This project was conducted in 1986 by the Offshore Operator's Committee (OOC) and covered the years 1983 to 1986.

The study examined information from 2,287 wells drilled in the Gulf of Mexico during that time period. Survey forms were distributed to operators who were asked to specify the number of wells drilled with water-based mud for each year covered by the survey and to supply certain information on each stuck pipe event where an oil-based spotting fluid was used. The API survey form asked for the data the event took place, the time interval between sticking and spotting activities, the depth at which the stuck pipe incident occurred, the based oil used in the spotting fluid, whether the hole was straight or directional, and whether the pill was successful in freeing the pipe.

Participants included twelve major oil companies and accounted for more than half of the offshore wells drilled during this period. Since some of these companies have more than one operating division, a total of sixteen survey response were received.

Of 2,287 wells surveyed that were drilled with water-based mud, 506 stuck pipe incidents were identified in which the operator chose to use an oil additive to attempt to free stuck pipe. Diesel oil pills were reportedly successful 52.7% of the time and mineral oil pills were successful 32.7% of the time in freeing stuck pipe, as shown in the following table:

OOC SPOTTING FLUID SURVEY RESULTS

Spotting fluid	Number incidents fluid used	Fluid/pipe incidents pipe freed	Success rate (percent)
Diesel	298	157	52.7
Mineral	208	68	32.7

Numerous other factors could impact the success of a pill in addition to the base oil. For example, Love (1983) determined that the chance of freeing stuck pipe in 113 documented cases and the potential success of such operations were related to specific conditions at each well. Success decreased with increasing well angle, mud weight, amount of open hole, API fluid loss of the mud, and bottom-hole-assembly length. The chances of success dropped off substantially when a numeric index calculated from the above factors exceeded a certain level.

In addition to the above factors, Love found that pill additive packages (*e.g.*, surfactants, emulsifiers, etc.), rheological properties of the mud, time until spotting, site-specific geological characteristics, and operator experience were likely to affect the success of a spotting operation.

The OOC examined four of these factors in their study: base oil, time until spotting, depth of spot, and type of well (straight or deviated). Results indicated that reducing the length of time until the spot was applied improved the chance of success dramatically for diesel pills. A similar but apparently less dramatic trend was observed for mineral oil pills. The diesel oil success rate was 61% if the pill was spotted in less than 5 hours. The rate dropped of 41% if the spotting time until spot exceeded 10 hours. The mineral oil success rate was 35% if the pill was spotting in less than 5 hours; the rate dropped to 31% if the time until the spot exceeded 10 hours.

Other factors examined by OOC appeared to have less impact on success for freeing stuck drill pipe. Both diesel and mineral oil showed higher success rates in straight rather than in directional or deviated wells, with diesel oil maintaining its reported edge over mineral oil by about the same percentage in each type of well. No trend was observed between depth of spot and success rates for diesel or mineral oil pills.

The OOC survey data showed that success rate with mineral oil pills varied considerably among operators. The data seemed to indicate that greater experience with mineral oil usage leads to considerably higher success rates than the reported average. The five operators that reported using mineral oil pills for more than 90% of their stuck pipe incidents experienced an average 42% success rate with such pills.

Some of the operators with greater mineral pill usage rates achieved extremely high success rates, which were comparable to the highest diesel pill success rates. The three highest success rates among operators using mineral pills were 58%, 60%, 75%. The three highest success rates among operators using diesel pills were 60%, 60%, and 64%.

Despite the industry's claim that diesel pills are more effective than

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mineral pills, the study did show that mineral oil was used by operators in 41% of the stuck pipe incidents. Of the 506 incidents in the OOC study, 298 (or 59%) were treated with a diesel pill, while 208 (41%) were treated with a mineral pill. For some operators, mineral oil was the material of choice. Three operators (out of 18) used mineral pills exclusively. The Agency concludes that during the period of this study: (1) Mineral oil was in common use by operators in the Gulf of Mexico; (2) mineral oil is an available alternative to the use of diesel oil; and (3) success rates comparable to those with diesel oil can be achieved with mineral oil.

3. EPA/API Diesel Pill Monitoring Program (DPMP). In response to the proposed prohibition on the discharge of diesel oil, the industry requested that the discharge of diesel oil be allowed when diesel oil is the residual oil left in the bulk mud system following the use of a diesel pill and subsequent pill recovery techniques. Since neither the industry nor the Agency had sufficient information on the effectiveness of pill recovery, the Agency decided to participate with the industry in a test program to determine whether diesel oil can be effectively removed from a mud system after use of diesel-based pills.

In an effort to evaluate the effectiveness of diesel pill recovery techniques and to gather information on the extent to which any residual diesel oil contaminates the bulk mud system, EPA's Industrial Technology Division, EPA Regions IV and VI, and EPA's Environmental Research Laboratory in Gulf Breeze, FL conducted the Diesel Pill Monitoring Program (DPMP) in cooperation with the API. The program involved the collection and analysis of samples from active mud systems prior to use and after recovery of a diesel oil based pill.

a. DPMP Objectives. The objectives of the DPMP were to evaluate the efficiency of diesel pill recovery and to determine the effectiveness of the recovery practice by measuring the toxicity and diesel content of the mud system before and after pill recovery.

The major parameters used to establish the efficiency of diesel oil recovery included the toxicity and diesel content of muds both before and after a pill is spotted, the volume of material added and removed from the mud system (recovered pill and buffer material), the location and type of well being drilled, and the type and rheological properties of the mud and pill being used. This information was to be analyzed and used to determine the efficiency of diesel recovery and the acceptability of the remainder of the mud system for discharge.

b. Program Description. The DPMP required an operator who used a diesel pill and intended to discharge the drilling muds to recover the diesel pill plus at least 50 barrels of mud that surfaced from downhole both before and after the pill, or as much as necessary until no visible oil was detected. The recovered pill and buffer material could not be discharged and had to be transported to shore for either disposal or reuse.

The federal waters of the Gulf of Mexico were chosen for this study because of the large number and diversity of drilling operations. The DPMP was implemented as part of the Agency's general NPDES permit for oil and gas operations in the Gulf of Mexico (Permit No. GMG 280000). The permit, which was published by EPA Regions IV and VI in the **Federal Register** on July 9, 1986 (51 FR 24897), prohibited the discharge of water-based drilling muds containing diesel oil unless: (1) The diesel oil was added only for the purpose of attempting to free stuck pipe, (2) the diesel pill and contaminated mud (buffer) were recovered and not discharged, and (3) the permittee participated in and complied with the written instructions of the DPMP. The program officially started in July 1986 with the issuance of the general permit, but some operators began participating in November 1985. The program ended as part of the permit requirement on September 30, 1987.

Some permittees elected not to participate in the DPMP on a well-by-well basis. If a permittee used a diesel pill and did not participate in the program, then all waste mud and cuttings generated after introduction of the pill were to be transported to shore for disposal, as required by the general permit. If permittees used a mineral oil or non-hydrocarbon based pill instead of diesel oil to free stuck pipe, then they were allowed to discharge waste mud and cuttings without participating in the DPMP, provided that all other permit conditions (*e.g.*, toxicity limitation, no discharge of free oil) were met.

For those operators that did participate in the program, the DPMP established conditions for pill recovery, toxicity and chemical testing, and monitoring to generate data on the effectiveness of current recovery techniques. DPMP participants were required to meet all permit limitations with the exception of the prohibition on the discharge of diesel oil. Discharge of mud containing diesel oil was allowed if used only for freeing stuck pipe and if provisions of the DPMP were followed. Also, for permit purposes, compliance with the toxicity limitation was demonstrated by sampling the mud just prior to the introduction of the pill. The end-of-well toxicity test was also conducted, but was used by EPA for information only, and not to determine compliance with the permit.

The procedures for conducting the sampling and analysis program are documented in a program manual that contains detailed instructions for all participants. The program manual is included in the record for this rulemaking.

The DPMP was managed by an Oversight Committee with members representing EPA's Industrial Technology Division and Regional Offices, EPA's Environmental Research Laboratory, the Natural Resources Defense Council, and API's Committee on Environmental Conservation. The Oversight Committee carried out the planning and development of the DPMP, met periodically to review laboratory activities and the information being gathered and analyses being performed, monitor the progress of the investigations, amend certain pill recovery techniques and sampling/analytical procedures, and issue a final report on the findings and conclusion of the DPMP.

EPA's Environmental Research Laboratory, Office of Research and Development, in Gulf Breeze, FL acted as the quality review laboratory for the toxicity testing part of this program. The Gulf Breeze Lab has been conducting research activities since 1976 to evaluate the potential impact of drilling fluids on the marine environment. The lab is experienced in handling and testing drilling fluid samples, and was involved in developing the protocol for the proposed Drilling Fluids Toxicity Test method (50 FR 34631). Thus, the Gulf Breeze Lab reviewed toxicity analyses generated during the DPMP, advised on data quality, and conducted analyses on duplicate samples.

The participating drilling operators were required to conduct sampling activities with prepackaged sampling kits whenever a diesel pill was used to free stuck pipe. Samples were taken of the pill, the diesel oil used to formulate the pill, and the active mud system before spotting and after the pill was recovered. Samples were shipped to a designated Central Control Laboratory (CCL) which was responsible for managing the flow of samples, analyses, and information. The CCL monitored the performance of contract laboratories and transmitted results to permittees and to EPA's Sample Control Center (SCC).

The SCC is an Agency contractor that assists the Industrial Technology Division with the tracking of samples, assignment and performance evaluation of analytical laboratories, and the compilation of analytical results for Division projects. Thus, the SCC was assigned the task of monitoring the status of the DPMP for the Agency. The SCC was also responsible for maintaining a computerized data management system for all analytical information gathered during this program for Agency access and recordkeeping purposes, and for preparing quarterly data compilations to the Oversight Committee.

c. Diesel Pill Monitoring Program Findings. The Agency has performed analyses of the diesel pill program information received to date. This encompasses information on 119 stuck pipe incidents that occurred from November 1985 through September 1987. The Agency focused on analyses that would indicate the amount of diesel oil recovered (*i.e.*, removed from the bulk drilling fluid system) based upon known amounts introduced with the diesel pill formulation.

The Agency first examined the amount of diesel oil remaining in the bulk mud system after pill recovery and its relationship to the size of the buffer that was removed with the pill. According to the design of the pill recovery technique, it was expected that an increase in buffer size would result in higher diesel recover (*i.e.*, lower amounts of diesel oil remaining in the bulk mud system).

Diesel oil recovery was determined as the difference between the amount of diesel oil reportedly added to the mud system and the amount measured in the active system after two complete revolutions of the mud system following pill recovery. The results of the analyses indicate that, for the time period after the general NPDES permit for the Gulf of Mexico became effective in July 1986, the median diesel oil recovery level was about 80 percent. The amount of diesel oil remaining in the bulk mud systems ranged from less than one percent to more than 95 percent of the volume added, with a median level of almost 20 percent.

The amount of diesel oil remaining in the system did not appear to correlate with buffer size. Increasing the amount of buffer material collected had little effect on the median recovery level.

Next, the Agency evaluated DPMP data to determine if there were correlations between measured diesel oil content and the acute toxicity (LC50) of drilling fluids. The Agency found that a distinct and rather dramatic relationship does exist. At low diesel concentrations, acute toxicity was found to increase rapidly with increasing diesel content. The data clearly support previous findings that diesel oil is a major contributor to mud toxicity. The finding that the acute toxicity of drilling fluids is heavily influenced by the amount of diesel oil present supports the Agency's original proposal to prohibit the discharge of diesel oil in drilling wastes.

The success rates for freeing stuck pipe for the DPMP and the OOC Spotting Fluid Survey (see previous discussion) were compared. The diesel pill success rate from the DPMP was found to be 38 percent. This value was derived by considering all stuck pipe incidents that occurred during the DPMP, which included multiple pills for some sticking incidents and multiple sticking incidents for some wells. The industry analysis of the OOC survey data included consideration of multiple stuck pipe incidents per well but success rates were calculated by considering only the first pill per sticking incident.

The Agency recalcuated the diesel pill success rate from the DPMP on the same basis used by OOC in its survey. The resultant value is only a 40 percent diesel oil success rate, compared to the reported 52.7 percent diesel oil success rate from the OOC survey. It is not clear why the reported diesel pill success rates differ between these two studies. The DPMP data cast doubt upon the industry position regarding superiority of diesel oil over mineral oil in freeing stuck pipe.

It should be noted that during the course of the DPMP the use of mineral oil pills for freeing stuck pipe in the Gulf of Mexico reportedly declined. Industry has stated that the DPMP became a distincentive for the use and further development of mineral oil pills. However, industry representatives have noted that onsite recovery techniques would be essentially the same for pills formulated with either diesel or mineral oil.

Total costs for operators participating in the DPMP and transporting and disposing of the pill and buffer material onshore were reported to average about $11,000 per spotting episode. Of that total, the costs of transporting the recovered pill and buffer from the rig to the disposal site, cleaning tanks, and landfilling the waste material averaged approximately $8,000 per episode.

d. Conclusions on the Diesel Pill Monitoring Program. Based on analyses to date of information generated during the DPMP, the Agency believes that use of the pill recovery techniques implemented during the program does not result in recovery of sufficient amounts of the diesel pill and reduction of mud toxicity to acceptable levels for discharge of bulk mud systems. Mud systems for approximately one-half of all wells in the DPMP contained residual diesel levels between one and five percent by weight after introduction of a diesel pill and subsequent pill recovery efforts. In addition, mud systems for approximately 80 percent of the DPMP wells failed the proposed 30,000 ppm LC50 limitation after pill recovery. Almost half that number (40 percent of the total) of the DPMP wells had water-based mud systems that contained residual diesel following pill recovery and showed LC50 values of less than (more toxic than) 5,000 ppm.

4. Conclusion on the Discharge of Diesel Oil. For the reasons discussed above, the Agency believes that its proposed prohibition on the discharge of diesel oil in detectable amounts is appropriate for the BAT and NSPS levels of control. The technology basis for the prohibition on the discharge of detectable amounts of diesel oil in drilling fluids and drill cuttings is substitution of mineral oil for diesel oil and lubricity and spotting purposes. Alternatively, where offshore operators choose to use diesel oil in a mud system, many opeators have the option to transport used mud systems and associated cuttings to shore for proper treatment or disposal.

In comments submitted to the Agency on the August 26, 1985 proposed regulations, the American Petroleum Institute stated its agreement with EPA that satisfactory mineral oil substitutes are available for general mud lubricity applications, and that use of diesel oil for this purpose should be discontinued. API also maintained that, for use as a spotting fluid to free stuck drill pipe, mineral oil substitutes are not as effective as diesel in all cases. However, results of the surveys presented in this notice indicate that mineral oil additives are available, are being used by offshore operators, and are capable of being as effective as diesel in spotting fluid applications.

The Agency solicits comments on all aspects of this discussion and the studies used by the Agency to reconsider the proposed diesel discharge prohibition. The Agency also solicits any additional relevant data on this issue. The Agency will consider these data in the formulation of the final effluent limitations and standards for drilling fluids and drill cuttings.

C. Analytical Method for Diesel Oil Detection

The August 26, 1985 Federal Register notice proposed a method for detecting the presence of diesel oil in drilling fluids and drill cuttings waste streams. The method, based on retort distillation and gas chromatography, has subsequently been modified based on experience gained during the conduct of the Diesel Pill Monitoring Program. The current version of Proposed Method 1651, "Oil Content and Diesel Oil in Drilling Muds and Drill Cuttings by Retort Gravimetry and GCFID" is presented in Appendix A of this notice for review and comment.

This method for determining the identity and concentration of diesel oil in drilling wastes has an estimated detection limit of 100 mg/kg. Data on the precision and accuracy of the method have been generated and are included in the record for this rulemaking.

Today's modified version of the diesel analytical method also includes a proposed method for determining the oil content of drilling wastes. Discussion on the Agency's intended use of oil content determinations is presented in Part 2 of today's notice.

II. Metals Limitations

The proposed BAT and NSPS regulations would limit the levels of mercury and cadmium that could be present in discharged drilling fluids. The primary source of these toxic metals is the barite component of drilling fluids. The August 26, 1985 proposal included proposed effluent limitations of 1 mg/kg each of mercury and cadmium in the whole drilling fluid on a dry weight basis. The proposed effluent limitations would be maximum values (no single analysis to exceed).

Upon review and consideration of the comments and additional information received on this aspect of the proposed regulations, the Agency is considering different BAT and NSPS effluent limitations for control of mercury and cadmium levels in drilling fluids. The limitations being considered are 1.5 mg/kg of mercury and 2.5 mg/kg of cadmium in the whole drilling fluid on a dry weight basis. These effluent limitations also would be maximum (no single sample to exceed) values.

At proposal, the Agency estimated that mercury and cadmium limitations of 1 mg/kg each would result in a price increase of about 15% for barite. Industry commenters argued that the proposed mercury and cadmium limitations would result in a 65% increase in the price of barite that contains mercury and cadmium at sufficiently low levels to allow for compliance with the effluent limitations. The price increase would be due to increased demand for such "clean" barite and additional costs in segregating and transporting supplies of clean barite for offshore use. It was suggested that there also may be a question about adequate sources and stocks of such "clean" barite for use in offshore drilling. Industry commenters indicated that sufficient supplies of barite containing no more than 3 mg/kg mercury and 5 mg/kg cadmium are available for offshore use. The Agency's analysis of industry-supplied data indicates that there should be no price increase for barite if barite containing mercury and cadmium at levels no higher than 3 mg/kg and 5 mg/kg, respectively, could be used to formulate drilling fluids.

The 1.5 mg/kg mercury and 2.5 mg/kg cadmium effluent limitations being considered by the Agency are end of pipe limitations based upon the use in drilling fluids of: (1) Barite containing no more than 3 mg/kg mercury and 5 mg/kg cadmium and (2) a typical barite content in drilling fluid of 50% barite by weight. If the barite content in the whole drilling fluid is 50%, the concentration of each metal in the whole drilling fluid would be about one-half of its concentration in the stock barite.

The Agency may establish the final BAT and NSPS effluent limitations equal to 1 mg/kg each of mercury and cadmium in the whole drilling fluid or equal to 1.5 mg/kg of mercury and 2.5 mg/kg of cadmium in the whole drilling fluid. The Agency may also establish the limitations at levels in the whole drilling fluid that the Agency determines more accurately reflect the use of barite containing no more than 3 mg/kg of mercury and 5 mg/kg of cadmium. The Agency believes that either set of effluent limitations under consideration for mercury and cadmium in whole drilling fluid is potentially appropriate for the BAT and NSPS levels of control and that either set of limitations is economically achievable.

The Agency solicits comment on all aspects of the mercury and cadmium limitations discussed here. In particular, the Agency solicits: (1) Data relating to the availability of adequate supplies of barite which will provide for compliance with particular metals limitations in discharged drilling fluids; (2) information about the appropriateness of its tentative conclusion that the use in drilling fluids of barite containing no more than 3 mg/kg mercury of 5 mg/kg cadmium correlates properly with end of pipe limitations of 1.5 mg/kg for mercury and 2.5 mg/kg for cadmium at the BAT and NSPS levels of control (this includes data on the amounts and proportions of the barite component used in actual drilling fluid formulations, the proportion of drilling fluid systems and volumes of actual drilling fluids that contain barite in greater or lesser proportions than the estimate of 50% by weight that was used for the Agency's analysis, and data that would aid in the assessment of the changing proportion of the barite component of drilling fluid systems as the drilling fluid composition is modified during the drilling of a well); and (3) data that would aid in discerning differences in environmental effects between the effluent limitations under consideration.

III. Changes to Costing Data and Assumptions for Estimates of Economic Impacts

The Agency has re-costed compliance with the proposed regulatory option for drilling fluids and drill cuttings based upon additional technical and cost information provided in comments on the proposed regulation and additional information collected by the Agency since proposal. The Agency selected the year 1986 as the basis for presentation of the regulatory costs and economic analysis discussed in this notice because 1986 is the latest year for which sufficient actual costs and economic data are available.

The following discussion summarizes the major and most of the minor changes to costing items and assumptions used in developing aggregate industry compliance costs. The revised compliance costs were then used to perform a revised economic impact analysis of the amended regulatory approach presented in this section. The revised economic impact analysis is included in the rulemaking record. A summary of the economic impact analysis is presented in Section IV of this part of today's notice. The Agency solicits comment on these changes to the costing data and assumptions and on the revised economic impact analysis.

A. Toxicity Failure Rate for Water-Based Drilling Fluids

The Agency has undertaken an analysis of data on water-based drilling fluids collected by both EPA and the industry over the past two years to estimate failure rates of the proposed toxicity limitation (30,000 ppm, suspended particulate phase basis) in order to better estimate the aggregate industry compliance costs of the proposed regulatory option. These data include measured oil content and acute toxicity of field (used) muds.

The Agency has categorized the information by "data set". The data sets are identified as follows: The first data set is field mud data collected by API and presented to EPA in comments on the August 26, 1985 proposed regulations ("API 1"). The second data set is an extension of data collection by API subsequent to API 1 and submitted to the Agency in October 1986 ("API 2"). The third data set includes mud properties data, well identification information, and analytical results for field muds collected during the Diesel Pill Monitoring Program ("DPMP") from November 1985 through September 1987. The fourth data set is field mud information generated by the industry and submitted to EPA Region VI for the alternative toxicity request ("ATR") program under the NPDES permit for oil and gas operations in federal waters of the Gulf of Mexico (Permit No. GMG 280000). The fifth set of data is discharge monitoring report ("DMR") data that are being provided to EPA Region VI by the industry under the terms of the NPDES general permit for oil and gas operations in federal waters of the Gulf of Mexico.

Mud data were grouped to represent three segments of the total population of wells employing water-based mud systems. The segments included mud systems with no added oil, oil added for lubricity, and oil added for spotting purposes. Expected failure rates at the proposed LC50 limitation of 30,000 ppm were estimated for each of the three segments and thus for the total well population. Compliance costs were then estimated based on product substitution and transport of muds to shore for disposal.

Depending upon the individual data sets or combinations of data sets used to estimate toxicity failure rates based upon measured oil content, the toxicity failure rate for water-based drilling fluids which contain no added oil (original formulation, no reported lubricity or spotting fluids) range from approximately 2% to 15%. That is, between 2% and 15% of those water-based drilling fluid systems that do not contain added oil may be expected to fail the proposed toxicity limitation of 30,000 ppm SPP. If the toxicity failure rate were closer to 15% than to 2%, the industry would incur considerably higher costs for compliance with the toxicity limitation than the Agency had originally estimated. This factor, in conjunction with certain other costing elements discussed below, can add significantly to the aggregate industry compliance cost for the proposed effluent limitations.

The majority of water-based drilling fluid systems used in the Gulf of Mexico do not contain added oil. Results of the API Drilling Fluid Survey and the OOC Spotting Fluid Survey discussed previously support this conclusion. Reportedly, 88% of wells using water-based muds do not use oil for lubricity (API, 1983 data). Similarly, 78% of such wells do not use oil for spotting purposes (API, 1983–86 data). Therefore, assuming that the number of new wells that will not use oil for lubricity or spotting purposes will be uniformly distributed, a minimum of 69% (88% × 78%) of all water-based drilling fluid systems will contain no added oil. Assuming 978 new offshore wells are drilled each year (see "Annual Rate of Development", below), between 13 wells (2% × 69% × 978) and 101 wells (15% × 69% × 978) drilled each year using water-based muds with no added oil may fail the proposed 30,000 ppm SPP toxicity limitation. Thus, as shown on Table 2 in Section IV of this part, the estimated annual industry cost of complying with only the proposed toxicity limitation of 30,000 ppm SPP varies from $22 million to $48 million (1986 dollars) depending on the estimated toxicity failure rate of water-based muds to which no oil has been added.

B. Annual Rate of Development

The costing and economic analyses for the proposed regulation were based upon an annual average of 1166 offshore wells drilled per year through the year 2000. The revised costing and economics are based upon an annual average of 978 wells drilled per year through the year 2000. The revised estimate is based upon updated projections of offshore oil and gas activity developed by the Department of Interior's Minerals Management Service (MMS). MMS has published 30-year forecasts of Outer Continental Shelf oil and gas production for major regions: the Atlantic, Gulf of Mexico, Pacific, and Alaska. These projections improve upon the Department of Energy/Energy Administration forecasts used by EPA at proposal for reasons outlined in Section IV of this part of today's notice.

C. Model Well Characteristics

Model well characteristics were established for the purpose of estimating compliance costs for the regulatory approaches under consideration. The assumed characteristics of a model 10,000 foot well in the Gulf of Mexico are discussed in Part 2 of this notice and are summarized below.

Drilling a typical 10,000 foot well is assumed to take 35 calendar days with 20 days of actual drilling time. The volumes of drilling fluid and drill cuttings discharges from a 10,000 foot model well are estimated to be 6,749 and 1,430 barrels, respectively. Water-based drilling fluids with oil added for lubricity plus spotting purposes are assumed to contain 5% oil by volume. Untreated drill cuttings associated with oil-based drilling fluids are assumed to contain 20% oil by weight. Drill cuttings associated with water-based drilling fluids to which oil has been added are assumed to contain 1% oil by weight.

There are two major refinements to the model well characteristics used for evaluating the proposed regulation and those used for the revised estimates presented in today's notice. They are: (1) An additional bulk mud discharge of 1,400 barrels to account for the active mud system at the end of a drilling campaign; and (2) an assumption of 1% instead of 10% oil content (weight basis) in cuttings associated with the use of water-based muds to which oil has been added.

D. Transportation and Disposal

For drilling wastes that do not comply with the proposed effluent limitations, the method of disposal at proposal and now is assumed to be transport of the wastes to shore by vessel for reconditioning and reuse (oil muds) or land disposal (cuttings and water-based muds). Model cost scenarios for transport and disposal were based on information provided by industry sources, as presented in Part 2 of this notice. These costs include rental of supply boats at $3,000 per day, and revised costs for material containers, labor for loading, and unloading, transport, and landfill disposal at $6.50 per barrel of mud and $6.00 per barrel of cuttings.

The number or proportion of all water-based drilling fluid systems and associated cuttings that would have to be disposed of in this manner was reestimated. The estimate used for the proposed regulation was that 10% of all muds and cuttings would have to be transported to shore for disposal due to failure of one or more of the proposed effluent limitations. Revised estimates range up to 23% of all water-based muds and about 3% of all associated cuttings being transported to shore for disposal. (For oil-based muds and associated cuttings, there is no change from the 1985 proposed requirement that all such wastes would have to be transported to shore for disposal.)

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E. Use of Oil-Based and Water-Based Drilling Fluids

The original and revised costing approaches assume the use of a water-based mud system in all wells down to the 10,000 foot model well depth. Oil-based muds may be used for the more difficult drilling situations (*e.g.*, deviated holes at greater depths) to improve lubricity, thereby reducing torque and increasing the rate of penetration, to improve temperature stability of the mud system, and to reduce the chances of stuck drill pipe. Oil-based muds are also used in specific geologies like shale to preclude distortion of the formation strata that could occur through the absorption of water from water-based muds. API data for 1984 indicate that the average depth of all wells drilled deeper than the model well was 14,000 feet. It was assumed for recosting purposes that oil-based muds would be used below 10,000 feet. Of all the wells accounted for in the 1984 API data base, 30.8% were deeper than 10,000 feet and were assumed to have used oil-based muds at the depth interval 10,000 to 14,000 feet.

F. Cost Differential Between Diesel and Mineral Oils

The cost of substituting mineral oil for diesel oil was established at the time of the proposed regulation at $2.10 per gallon. This differential cost included the increase in delivered purchase price of the mineral oil over diesel oil and the costs to provide and maintain separate onsite storage facilities for the mineral oil. Revised estimates presented in today's notice include a differential cost of $2.00 per gallon for calculations involving mineral oil substitution.

G. Pollutant Reduction Estimates

The issue of pollutant reduction does not directly affect the aggregate costing of the amended regulatory approach. However, pollutant reduction estimates are used in determining benefits and are used in evaluating the cost-effectiveness of the various regulatory options. The revised analysis presented in this part incorporates estimates of the reductions of specific pollutants (identified below) that would be achieved for each of the candidate regulatory approaches presented in this part of today's notice.

Determinations of the priority pollutant organics and nonconventional organics content of diesel oil and mineral oil mud additives were made in laboratory research sponsored by the industry. These data were used by the Agency to estimate potential reductions in the direct discharge of benzene, naphthalene, fluorene, phenanthrene, phenol and their alkylated homologues. Discharge reduction estimates were also made for mercury, cadmium, and several other metallic priority pollutants found in drilling fluids and associated drill cuttings.

H. Failure Rate for "No Discharge of Free Oil" Limitation (Static Sheen Test)

The approach followed by the Agency to re-cost compliance with the proposed regulation included consideration of expected failure rates for the static sheen test. As previously noted, the total population of wells employing water-based mud systems were grouped into three classes: muds with no added oil, muds with oil added for lubricity, and muds with oil added for spotting purposes. The percentage of wells with discharges that would be likely to comply with the "no discharge of free oil" limitation based on the static sheen test were estimated for each of the three classes considered. Compliance costs were then determined based on transporting the wastes to shore for land disposal.

I. Monitoring Costs

The cost of monitoring for compliance with effluent limitations is considered to be an element of the total costs of compliance with the regulation. The preamble to the proposed regulations contained a "suggested" or "typical" monitoring frequency and analytical cost for each pollutant and waste stream subject to the regulation for a facility where both development and production operations are being performed. As such, the total monitoring costs presented were considered to be conservatively high.

Changes were made to the monitoring frequencies and analytical costs presented in the August 28, 1985 proposal for the muds and cuttings waste streams. These changes involved the monitoring frequency of the static sheen test and the addition of the diesel detection analysis. A summary of suggested sampling frequencies and estimated self-monitoring costs for muds and cuttings on a per well basis follows:

SUGGESTED SELF-MONITORING FREQUENCIES AND ESTIMATED ANALYTICAL COSTS

Waste stream (per well(s))	Analysis	Cost per analysis for analysis and labor (dollars)	Suggested minimum sampling frequency	Cost per well (dollars)
Drill Fluids (water-based)	Biomass (LC50)	1,000	1/mo.(b)	1,000
	Mercury, total	50	1/mo.(b)	100
	Cadmium, total	50	1/mo.(b)	100
	Diesel Detection	75	(b)	150
	Static Sheen	25	(c)	250
Drill Cuttings (from water-based drilling fluids)	Static Sheen	25	(d)	500
Total cost per well				$3,100

(a) Assumed drilling campaign of 35 calendar days with 20 days of actual drilling time.

(b) Twice per well.

(c) Each day of discharge (assumed every 2nd day of drilling).

(d) Each day of drilling.

IV. Revised Industry Profile and Economic Analysis

A. Industry Profile

Since the proposal of August 28, 1985 (50 FR 34592), the Agency has updated the forecast of offshore oil and gas activity. This updated forecast replaces the projections developed for the proposal and presented in EPA's report titled "Economic Impact Analysis of Proposed Effluent Limitations and Standards for the Offshore Oil and Gas Industry", EPA 440/2–85–003, July 1985. Those projections were based upon a 1984 Department of Energy/Energy Information Administration (DOE/EIA) production forecast.

The Agency's revised projections are presented in the Economic Impact Analysis for this notice which is available in the record for this rulemaking. The revised projections are in response to recent changes in world oil prices and to the comments on the proposed regulations made by the Offshore Operators Committee (OOC) in February of 1986. The new Outer Continental Shelf (OCS) forecast has been developed using Department of Interior/Minerals Management Service (DOI/MMS) sophisticated production projections. Three alternative oil price scenarios have been analyzed: one at $32, one at $21, and one at $15 per barrel of oil.

EPA's updated projections of OCS offshore oil and gas activity rely on the 30-year forecasts of oil and gas production developed by the Minerals Management Service. MMS developed its forecast based upon the data used in MMS' Environmental Impact Statement for the Proposed 5-year Outer Continental Shelf Oil and Gas Leasing Program (1987–1992), MMS 86–0127. In that report, MMS estimated "conditional resources" for 21 OCS regions, assuming a market value of $32 per barrel of oil (1986 dollars). These conditional resources represent the mean amount of oil and gas reserves that are economically recoverable from the leased areas, given that exploration confirms the presence of hydrocarbon reserves. The probability of finding reserves varies from region to region. An estimate of the expected resources to be developed in each leased area can be obtained by multiplying the probability of finding reserves (estimated by MMS) by the conditional resource estimates. Using this resource estimate, and rules-of-thumb regarding the amount of time it takes to develop the resources in each area, MMS has developed a schedule of resource production for the 1987–1992 lease sales.

To develop the full 30-year projections, MMS used its estimates of the percentage of undeveloped resources to be leased during each of its subsequent leasing periods. For example, if 25 percent of Alaska's resources are expected to be leased in 1987–1992, and 25 percent of Alaska's resources are expected to be leased in 1992–1996, then the resource projections for the 1992–1996 lease would replicate the resource projections for the 1987–1992 lease, with a 5-year lag. If 50 percent of Alaska's resources were to be leased in 1992–1996, then the projections would be double those for the 1987–1992 lease, with a 5-year lag.

Based on this methodology, MMS has published 30-year projections of OCS oil and gas production for four major regions: the Atlantic, Gulf of Mexico, Pacific, and Alaska. These projections improve upon the DOE/EIA forecast used by EPA at proposal for the following reasons. First, the MMS forecast is based on a disaggregated analysis of resource potential and lease activity in each of the four regions. Second, the DOE/EIA forecast did not extend beyond 1995 while the MMS forecast extends to 2015; thus the MMS forecast increases the accuracy of the Agency's projections to 2000. Finally, the MMS forecast is easily amenable to different price scenarios. In its "Secretarial Issue Document" (1987), MMS developed alternative leasable resource estimates for various prices. Based on these resource estimates, the ratio of resources at $21 per barrel to $32 per barrel, and $15 to $32 per barrel are as follows:

Region	Ratio of $21/bbl to $32/bbl	Ratio of $15/bbl to $32/bbl
Gulf	0.856	0.556
Pacific	0.790	0.541
Atlantic	0.514	0.327
Alaska	0.096	0.0

These ratios mean, for example, that using the MMS resource estimates for the Pacific OCS at $32 per barrel as the basis (*i.e.*, MMS projections at $32 per barrel equal 100 percent), the Agency estimates that 79 percent of these Pacific resources would be developed if the price of oil fell to $21 per barrel. Similarly, if the price fell from $32 to $15 per barrel, the Agency projects that it would make economic sense for the oil and gas industry to develop 54.1 percent of those Pacific resources. These ratios were used to develop the two alternative forecasts from the $32 per barrel forecast.

The Agency has aslo developed new projections for the number of wells drilled in state offshore waters and the number and configuration of offshore platforms. The revised estimates reflect the declining role of state waters in oil and gas drilling in the Gulf of Mexico. (Between 1967 and 1985 the state-to-federal ratio dropped about 30 percent every seven years.) Drilling in the state waters of the Gulf of Mexico is projected to be 11 percent of federal production for the period 1988–1992 and 8 percent for the period 1993–2000. No state water activity is projected in the Atlantic. Based upon drilling activity in state waters between 1980 and 1985, drilling in state waters is projected to be 50 percent of the activity in federal waters in the Pacific and 300 percent of federal activity in Alaska.

In the following discussion of the economic impacts of the regulation, only the results of the Agency's analysis based on an average oil price for the years 1988–2000 of $21 per barrel are presented. At this price, an average of 978 wells are projected to be drilled each year. (If the average price of oil is $15 per barrel between now and the year 2000, 807 wells are projected to be drilled each year; if the oil price is $32 per barrel, 1,178 wells would be drilled.)

B. Economic Impacts

At proposal, the Agency estimated the total annual cost of the selected drilling fluids and cuttings option at $36.7 million (in 1986 dollars). Table 1 presents the Agency's revised estimate of the cost of the proposed regulations for drilling fluids and cuttings which now totals $76.6 million annually. The annual estimated cost of controlling drilling fluids has increased from $27.7 million at proposal to $71.1 million. The annual cost of controlling drill cuttings has decreased from $9.1 million to $5.5 million. The revised estimates for the proposed regulations have increased despite some declines in components of the estimate (*e.g.*, the number of wells drilled per year and the monitoring costs per well). The increase in the revised cost estimates for the proposed regulations is due primarily to increases in: (1) The percentage of the drilling fluids that would have to be transported to shore for disposal ("barged") and (2) the per-well cost of barging drilling fluids. Barging costs are incurred when these drilling fluids fail the limitation on toxicity or the prohibition on the discharge of free oil. As indicated in Table 1, the estimated percentage of drilling fluids that would fail effluent limitations and thus be barged has increased from 10 percent to 23 percent based upon revised estimates of effluent limitation failure rates discussed earlier in today's notice. The per-well cost of barging drilling fluids has increased primarily because the volume of the model well drilling fluid system was increased from about 5300 to about 6700 barrels as discussed earlier in Section III.

The Agency has identified four alternative approaches for controlling offshore drilling fluids and drill cuttings discharges. The term "approach" is used to refer to any one of four particular scenarios for costing purposes which are differentiated by:

(1) The differing toxicity failure rates for water-based drilling fluids to which no oil has been added, as presented in Section III.A. of this part of today's notice, and

(2) The differing sets of effluent limitations for mercury and cadmium in drilling fluids as presented in Section II.D. of this part of today's notice. The first approach, identified here as "Approach A" is the one that is most similar to the regulatory option proposed in 1985, but as explained above, that option has been recosted to incorporate comments the Agency has received and updated information the Agency has gathered since proposal in 1985. Approaches B, C, and D are variations on Approach A, reflecting the differences as explained in Section III above.

The four approaches are summarized below:

Approach	Basis for water-based fluids assessment	Limitations[2] for Hg & Cd	Total annual cost ($00, 1986 dollars)
	Assumptions: Failure / Toxicity		
A[1]	15	1, 1	$76,617
B	II	1, 1	50,662
C	15	1.5, 2.5	66,113
D	2	1.5, 2.5	43,158

[1] Of the four approaches, Approach A is most similar to the 1985 proposed regulatory option.

[2] 1, 1 means 1 mg/kg each mercury and cadmium in discharged drilling fluids; 1.5, 2.5 means 1.5 mg/kg mercury and 2.5 mg/kg cadmium in discharged drilling fluids.

As shown in the last column of the above table, the total annual costs for the four approaches range between $40.2 million and $76.6 million. Costs are given in 1986 dollars here and on Tables 1, 2, and 3 below because 1986 is the most recent year for which a consistent and complete set of data is available for use in the economic impact analysis model. (For reference, these total costs are estimated to range between $42.0 million and $80.1 million in 1988 dollars, if they are adjusted for inflation using the *Engineering News Record's* construction index for the first six months of 1988.)

The technology basis and the limitations of Approach A are similar to those of the proposed regulation. As shown on Table 2, the costs of controlling fluids are more for A than for B is based on the assumption that more drilling fluids pass the toxicity test, and thus, under Approach B, fewer wells incur the cost of barging.

Table 2 also shows that the costs of Approach C are less than the costs of Approach A (and the costs of D are less than the costs of B). Approaches A and B cost more because they include limitations on the mercury and cadmium content of discharged drilling fluids at a maximum (no single sample to exceed) concentration of 1 mg/kg each on a dry weight basis in whole drilling fluid. This limitation is estimated to increase the cost of barite by 15 percent, due to increased costs for transporting and segregating "clean" barite for use in offshore drilling. The annual cost of this barite limitation is $10.5 million (in 1986 dollars). Approaches C and D cost less because they contain less stringent limitations for mercury and cadmium. The 1.5 mg/kg mercury and 2.5 mg/kg cadmium limitations are estimated to be achievable at no additional cost, because they are based on the use of barite containing no more than 3 mg/kg of mercury and 5 mg/kg of cadmium. Thus, current supplies of barite for offshore drilling can meet these alternative limitations.

The estimated costs for approaches A, B, C, and D are all higher than the estimated cost of the proposal option. However, all four approaches presented in this notice are economically achievable. The Agency's economic impact notice are economically achievable. The Agency's economic impact analysis compares the cost of oil and gas drilling in the absence of any BAT/NSPS regulations (*i.e.*, the base case) to the cost of drilling with each of the regulatory approaches—A, B, C, and D. The results of this analysis are summarized in Table 3 for a 12-well, oil-only model platform in the Gulf of Mexico. Comparing compliance costs to the base case, drilling costs for a typical well would increase between 1.03 percent (for Approach D) to 1.95 percent (for Approach A). With the regulation, the net present value of a typical drilling project in the Gulf of Mexico would decline between 1.5 and 3.0 percent, and the cost of producing a barrel of oil would increase between four and eight cents. For a major oil company (which is the typical participant in offshore oil drilling projects), the debt incurred due to any of the four regulatory approaches represents only 0.01 percent of the company's net worth. As shown on Table 3, the cost of the regulation also has no appreciable impact on any of the financial ratios examined for these oil companies, including: the current ratio, the long term debt-to-equity ratio and the debt-to-capital ratio. The Agency's analysis shows that the economic impacts of the regulation are not substantial, and thus any of the approaches presented in this notice are economically achievable.

C. Cost-Effectiveness

In addition to the foregoing analyses, the Agency has performed a cost-effectiveness analysis of the two levels of cadmium and mercury limitations presented in today's notice. Table 4A presents the cost-effectiveness of these two levels (Approaches A and C) based on the assumption of a toxicity failure rate of 15 percent for those water-based drilling fluids to which no oil has been added. Table 4B presents the cost-effectiveness of the same levels of limitations for cadmium and mercury but with a toxicity failure rate of 2 percent for those water-based drilling fluids to which no oil has been added (Approaches B and D).

According to the Agency's standard procedures for calculating cost-effectiveness, on each of the tables the approaches have been ranked in order of increasing pound-equivalents (PE) removed. The pound equivalents removed for each approach were calculated as the number of pounds of pollutants removed by implementing each approach weighted by the relative toxicity of those pollutants. The results of these calculations are shown in the second columns of Tables 4A and 4B. (The "Cost-Effectiveness Report," which is available in the record of this rulemaking, supports this presentation, describes the cost-effectiveness procedures in detail, and presents the toxic weights used for each approach.) Cost-effectiveness is calculated as the ratio of the incremental annual cost to the incremental pound equivalents removed by the levels of control shown in the tables. So that comparisons of the cost-effectiveness among industries may be made, the annual costs are converted to 1981 dollars.

The cost-effectiveness of the regulatory approaches is shown in the last column of Tables 4A and 4B below. All approaches are cost-effective:

Assuming a failure rate of 15 percent as shown on Table 4A, Approach C is $89 and Approach A is $19 per pound equivalent removed.

Assuming a failure rate of 2 percent as shown on Table 4B, Approach D is $54 and Approach B is $16 per pound equivalent removed.

These costs are well within the range of the cost-effectiveness of new source performance standards for other industries.

TABLE 1.—COSTS AND OTHER SIGNIFICANT PARAMETERS OF PROPOSAL OPTION AND OF COMPARABLE APPROACH A, DRILLING FLUIDS AND CUTTINGS

[1985 dollars]

Parameter	At proposal 1985 for selected option	Revised estimate for comparable approach A
Number of wells drilled annually	1,166	978
Average price of oil per barrel 1985/6 to 2000	$32	$21
Percent barged:		
Drilling fluids	10%	23%
Drilling cuttings	10%	[1] 7%

TABLE 1.—COSTS AND OTHER SIGNIFICANT PARAMETERS OF PROPOSAL OPTION AND OF COMPARABLE APPROACH A, DRILLING FLUIDS AND CUTTINGS—Continued

[1985 dollars]

Parameter	At proposal 1985 for selected option	Revised estimate for comparable approach A
Average cost of barging per well where barging is required:		
Fluids	$113,000	$251,000
Cuttings	$66,000	$73,000
Total barite costs	$11,200,000	$10,504,000
Monitoring costs per well	$3,734	$3,100

TABLE 1.—COSTS AND OTHER SIGNIFICANT PARAMETERS OF PROPOSAL OPTION AND OF COMPARABLE APPROACH A, DRILLING FLUIDS AND CUTTINGS—Continued

[1985 dollars]

Parameter	At proposal 1985 for selected option	Revised estimate for comparable approach A
Total annual costs:		
Fluids	$27,664,000	$71,140,000
Cuttings	$9,072,000	$5,477,000
Total	$36,736,000	$76,617,000

[1] Includes both cuttings associated with water-based fluids (about 3%) and cuttings associated with mineral-oil based fluids.

TABLE 2.—REGULATORY COST OF ALTERNATIVE POLLUTION CONTROL APPROACHES

[$000, 1986 dollars]

Parameter	Alternative pollution control approaches			
	Approach A	Approach B	Approach C	Approach D
Drilling fluid costs	$71,140	$43,168	$60,636	$34,681
Clean barite	12,594	10,524	0	0
Mineral oil substituted for diesel oil	1,706	1,706	1,706	1,706
Static sheen test failure	8,288	8,288	0	0
Toxicity test failure	48,058	32,144	48,058	32,144
Monitoring costs	2,543	2,543	2,543	2,543
Drill cuttings costs	5,477	5,477	5,477	5,477
Static sheen test failure	1,735	1,735	1,735	1,735
No discharge with use of oil-based muds	2,250	2,250	2,250	2,250
Monitoring costs	466	466	466	466
Total annual costs [1]	76,617	50,662	66,113	40,158
Average costs per well drilled	TE	52	68	41
Percent of drilling fluids barged	23.3%	12.5%	23.2%	12.5%
Percent of drill cuttings barged [2]	6.7%	6.7%	6.7%	6.7%

[1] For 978 wells per year, based upon average oil price of $21/bbl.

[2] Includes both cuttings associated with water-based fluids and cuttings associated with mineral oil-based fluids.

Source: EPA estimates.

TABLE 3.—ECONOMIC IMPACTS OF THE OFFSHORE OIL AND GAS REGULATION ON MUDS AND CUTTINGS, 1986–2000 [a]

[Selected Parameters]

Approach [b]	Total annual cost of regulation	Change in drilling costs per well		Project impacts; 12-well, oil-only platform in the Gulf of Mexico			Impacts for a typical major oil company [c]					
				Change in NPV w/Reg. vs. NPV w/o Reg.	Cost per barrel of oil [d]		Change in annual debt	Reg. debt compared to:		Current ratio [e]	Long term debt to equity [f]	Debt to capital [g]
								Total Assets	Net worth			
	Dollar millions	Dollar thousand	Percent	Percent	Dollar	Percent change	Dollar millions	Percent	Percent		Percent	Percent
A	76.6	$6	1.95	−3.25	$21.44	0.37	2.12	0.006	0.014	1.11	35.5	23.8
B	50.7	52	1.30	−2.15	21.41	0.23	1.406	0.004	0.009	1.11	35.5	23.8
C	66.1	66	1.70	−2.81	21.43	0.33	1.83	0.005	0.012	1.11	35.5	23.8
D	40.2	41	1.03	−1.71	21.40	0.19	1.11	0.003	0.007	1.11	35.5	23.8
Industry Average		$4,000		$16,229	$21.36			$35,893	$15,314	1.11	35.5	23.8
Baseline		($000)		[$000]				$ billions	$ billions			

NPV = net present value.
Reg. = regulation.

[a] 1986 dollars. Based on projected average oil price of $21 per barrel and 978 wells drilled per year for the years 1986–2000.

[b] Approach A is the proposed approach. It is costed assuming a 15% increase in barite costs to meet mercury and cadmium limitations in the discharged muds and a toxicity test failure rate of 15% for water-based muds with no oil added. Approach B is the same as A but assumes a toxicity test failure rate of 2%. Approach C is based on an alternative metals limitation in the stock barite and an assumed toxicity test failure rate of 15%. Approach D is the same as approach C except the toxicity failure rate is 2%. (See Section II and IV of the notice for details.)

[c] Includes transfer payments such as lease payments, royalties, oil and gas taxes, corporate income taxes.

[d] Current Asset/Current liabilities. Assume working capital financing.

[e] Assumes debt financing.

TABLE – A—COST-EFFECTIVENESS FOR OFFSHORE OIL AND GAS, DRILLING FLUIDS AND CUTTINGS—RANKED BY ANNUAL POUND EQUIVALENTS (PE) REMOVED

[Assuming 15% failure rate] [1]

[1981 dollars] [2]

Approach [3]	Total annual		Incremental		Incremental cost effectiveness 3/ PE (1981 $)
	PE Removed	Cost (1981 $) ($000)	PE removed	Cost (1981 $) ($000)	
Current	0	0			
C	787,665	54,636	787,665	54,636	$69
A	1,237,607	63,320	449,942	8,691	$19

[1] As explained in the text above and in the cost-effectiveness analysis report which supports this notice, Approaches A and C assume a 15 percent toxicity failure rate for water-based drilling fluids to which no oil is added.

[2] Factor for converting costs in 1981 dollars to 1986 dollars is: 1.21 The cost-effectiveness is standardized in 1981 dollars to facilitate comparison among numerous regulated industries.

[3] Approach A limits Hg and Cd to 1 mg/kg each in discharged drilling fluids. Approach C limits Hg to 1.5 mg/kg and Cd to 2.5 mg/kg in discharged drilling fluids.

TABLE 4 B—COST-EFFECTIVENESS FOR OFFSHORE OIL AND GAS, DRILLING FLUIDS AND CUTTINGS—RANKED BY ANNUAL POUND EQUIVALENTS (PE) REMOVED

[Assuming 2% failure rate] [1]

[1981 dollars] [2]

Approach [3]	Total annual		Incremental		Incremental cost effectiveness 3/ PE (1981 $)
	PE removed	Cost (1981 $) ($000)	PE removed	Cost (1981 $) ($000)	
Current	0	0			
D	$10,828	33,168	810,828	33,168	$54
B	1,167,850	41,859	356,911	8,691	$18

[1] As explained in the text above and in the cost-effectiveness analysis report which supports this notice, Approaches B and D assume a 2 percent toxicity failure rate for water-based drilling fluids to which no oil is added.

[2] Factor for converting costs in 1981 dollars to 1986 dollars is: 1.21 The cost-effectiveness is standardized in 1981 dollars to facilitate comparison among numerous regulated industries.

[3] Approach B limits Hg and Cd to 1 mg/kg each in discharged drilling fluids. Approach D limits Hg to 1.5 mg/kg and Cd to 2.5 mg/kg in discharged drilling fluids

V. Environmental Assessment Information

A. Mercury and Cadmium in Barite and Environmental Consequences on Aquatic Life

Mercury and cadmium are two potentially toxic constituents of barite-containing drilling fluids. The potential environmental impacts of the discharges of these metals in drilling fluids have been investigated by the Agency (1).

Sediment mercury and cadmium concentrations resulting from barite-containing drilling fluid discharges were estimated and evaluated to determine environmentally significant sediment alterations. Specifically, the Agency's study:

- Assesses the degree to which sediment levels of mercury and cadmium may be altered at the local level (*e.g.*, within a 500 m radius of the drilling facility);
- Assesses the degree to which sediment levels of mercury and cadmium may be altered at the regional level for three cumulative discharge scenarios;
- Evaluates environmental consequences of sediment enrichment by mercury and cadmium with regard to what is known concerning the biological availability of these metals.

All modeled levels of mercury (1 and 3 ppm) and cadmium (1 and 5 ppm) in barite showed some increase in sediments within 500 meters of the model 58-well Gulf of Mexico platform (the model size facility selected for the environmental assessment). At low background sediment levels (0.01 ppm for mercury and 0.04 ppm for cadmium) and higher assumed levels of 3 ppm for mercury and 5 ppm for cadmium in barite, the average increase were in excess of 2000% (an increase of 20 times) for mercury over 800% (an increase of 8 times for cadmium. The average increases at the lower assumed levels of 1 ppm for mercury and cadmium in barite were over 600% and over 100%, respectively at low background sediment levels. At high background sediment levels (0.04 ppm for mercury and 0.2 ppm for cadmium), the average increases in sediment were approximately 500% for mercury and 160% for cadmium at higher specified levels, and approximately 160% for mercury and 25% for cadmium at lower assumed levels (1 ppm each).

Because a large fraction of the drilling muds is expected to be transferred beyond the immediate vicinity of the platform, the cumulative impacts of multiple drilling were analyzed for three regional scenarios: the Santa Barbara Channel, a Louisiana continental shelf area, and the entire Louisiana Gulf of Mexico lease area.

The estimated increase in added barite concentrations at the sediment surface after 24 years would be 1524 ppm for the Santa Barbara Channel, 933 ppm for the Louisiana shelf area, and 272 ppm for the entire Louisiana lease area. Ther analysis assumes typical sediment mixing conditions, and that all solids stay within the regional areas modeled. At low background mercury and cadmium sediment levels (0.01 ppm for mercury and 0.04 ppm for cadmium) and barite containing 3 ppm of mercury and 5 ppm of cadmium, the increases of mercury and cadmium in the Santa Barbara Channel sediments were estimated at 48% and 19% respectively. At high background sediment levels (0.04 ppm mercury and 0.2 ppm cadimum), the increases would be 11% and 4%, respectively. If barite controls 1 ppm of mercury and cadimum the projected regional increases are 15% and 4% respectively for low background sediment levels, and 3% for mercury and <1% for cadimum for high background sediment levels.

For the Louisiana shelf and the entire Louisiana offshore lease area the resulting projected regional increases for the same mercury and cadimum barite and background sediment levels were approximately ⅗ and ⅛ of the levels estimated for the Santa Barbara Channel due to lower estimated well density.

This analysis shows that barite could be a measurable source of mercury and cadmium near drilling platforms in sediments if present at the discharge levels used in this analysis, even if the sediment transport processes eventually remove some fraction of the barite from the shelf sediments and redeposit it in deeper offshore areas where the environmental impacts are expected to be less signifiant.

The comments received from the industry on the proposed regulation stated that the cadimum and mercury associated with drilling fluids are present as insoluble sulfides in barite and have a very low bioavailability to marine organisms.

The Agency recognizes that an incremental increase in sediment metals does not necessarily translate into a comparable increase of impacts on marine life. However, these data show that mercury and cadmium discharged with the barite containing drilling fluids have a potential to cause environmental problems in the marine environment and a potential for transport to humans through consumption of contaminated seafood, especially shellfish.

The environmental consequences of elevated local and regional concentrations of mercury and cadmium due to barite-containing drilling fluids are difficult to judge, because many aspects related to the environmental fate of these metals in marine environment are not well understood. An extensive literature review was carried out as part of this study on fate and effects of these metals on marine environments, especially with respect to bioavailability, bioaccumulation, and biomagnification in the food chain.

Based on the U.S. Congress, Office of Technology Assessment (OTA) Report (2), the ability of a metal to affect marine organisms depends primarily on its form (e.g., dissolved or particulate, bound to other substances or free), and this is greatly affected by site-specific conditions. In their particulate form, most metals tend to adsorb onto other particles that eventually settle from the water and are deposited as sediment. Once deposited in oxygen-poor sediments, the chemical form of these metals is generally stable. However, if the sediments are subsequently oxygenated, some metals, including cadmium, may dissolve and be slowly released into the water column, and may be taken up by non-benthic organisms. Sediments can be oxygenated (and also resuspended) by bioturbation, storms, and other disturbances. Metals also can be released as a result of other changes such as salinity fluctuation in estuaries. Microorganisms in sediments can modify the slightly toxic inorganic mercury and convert it to highly toxic and volatile methyl mercury.

OTA's report (2) identified a significant potential for transport of both mercury and cadmium to humans through consumption of contaminated seafood. Marine organisms can ingest metals that are dissolved in the water or they can ingest particulate matter onto which metals are adsorbed. Once ingested, some metals can pass through the gut and be excreted, while others cross the gut membrane and accumulate in organismal tissue. Both cadmium and mercury tend to bioaccumulate in marine organisms. Mercury in its methylated form is the only metal known to biomagnify in successive levels of the aquatic food chain. Even when bioaccumulation is not a factor, significant quantities of metals can concentrate in the gut and gills of marine organisms without actual absorption into the tissues. This is especially true for shellfish that filter large quantities of seawater and ingest solid matter during feeding (*e.g.*, oysters, clams, mussels).

Because people generally eat these organisms in their entirety, toxic substances can be passed to humans even in the absence of bioaccumulation. This mechanism probably accounts for most instances of shellfish contamination involving metals that do not bioaccumulate.

Results of investigation of sources, fates, and effects of metals near municipal wastewater outfalls in southern California coastal waters indicate that: (1) The largest portion of metals entering the system is in particulate form, but a large portion may be released into the dissolved phase upon mixing with seawater and may be carried out of the region by prevailing currents; (2) despite these losses of the solubilized fraction, the particulate and sediment concentrations of metals in the vicinity of municipal wastewater outfalls are highly elevated; (3) filter feeders (*e.g.*, scallops, mussels) have exhibited higher metal levels near sources of contamination as compared to "control" areas; (4) there is evidence of bioaccumulation of metals in filter-feeding bivalves in the vicinity of marine outfalls; (5) concentrations of cadmium in muscle tissue of dimersal fish tend to be less than in sediments, but the concentrations in the liver or hepatopancreas of animals could exceed that of the sediments.

Analysis conducted by Trefrey et al. (3), investigating trace metals in barite indicates that mercury is tightly bound in barite and not easily released. Cadmium, however, is more easily leached from the barite than many other metals.

None of the above data, however, provide conclusive evidence relative to the stability or bioavailability of mercury and cadmium in barite-containing drilling fluids. Work is currently underway within EPA and NOAA to define the equilibrium partitioning of metals in sediments, pore water, and organisms. Results of these efforts are expected to aid in the evaluation of potential impacts of mercury and cadmium and other metals in barite-containing drilling fluids on aquatic organisms. However, the partitioning of these metals from barite may be quite different from the partitioning from other discharges (*e.g.*, sewage particles) or from ambient sediments.

As discussed in previous sections of this notice, the Agency has found that as the levels of mercury and cadmium in barite are decreased, the other toxic metals in barite are also found to generally decrease. Arsenic, lead, zinc and other toxic metals may also be released into the marine environment as a result of barite discharges. In addition, the levels of cadmium and mercury that can be expected to occur in sediments as a result of potential offshore drilling activities will be dependent on the level of drilling activity that will occur, the energenics of the region, and the background levels of these metals in the sediment. All of these factors will vary from one region of the country to another.

The Agency is continuing to evaluate the environmental fate of mercury, cadmium and other toxic metals

associated with barite to determine the impacts of these discharges in the marine environment. The Agency is, therefore, soliciting new information related to the occurrence, bioavailability, release, bioaccumulation, and other related data on mercury, cadmium and other toxic metals in barite and in drilling fluids.

B. Analysis of Shallow Water Dispersion Models

As part of the ongoing evaluation of potential impacts from offshore oil and gas discharges, discharge dispersion models were being examined as a component in an assessment of the fate and transport of drilling muds and produced water in the marine environment. For the most part, models have been applied to discharge situations in relatively deep waters (greater than 40 meters in depth); their appropriateness and reliability in more shallow waters (40 meters to mean high tide) is much less well known.

In addition to discharges occurring in the deeper waters of the Outer Continental Shelf (OCS), produced waters, drilling fluids, and other oil and gas discharges are released in a geographic zone that extends from the high tide line out to the OCS. In the Gulf of Mexico, where over 90% of all offshore production takes place, this geographic zone includes the offshore area extending 9 miles off the coast of Texas and 3 miles off the coast of Louisiana. Of all offshore wells drilled in State waters off the coasts of Texas and Louisiana, approximately 11% are in water depths of greater than 20 meters, some 43% are in water depths of 10 to 20 meters, and about 46% are in water depths of less than 10 meters.

Appropriate dispersion models for discharges occurring in these shallow waters need to be identified. In response to this need, the Agency has analyzed existing dispersion models to identify the limitations of their shallow water utility (4). Several potentially relevant dispersion models were identified and reviewed by the Agency to determine their applicability to shallow water, offshore oil and gas discharges (Table A). Of the models reviewed, some were rejected as not being appropriate for the type and/or methods of discharge or receiving waters. Although under other circumstances these models have utility, they were judged to have limited, general application with regard to shallow water marine discharges, oil and gas discharges, or the type of data presently available either for these areas or types of discharges.

The remaining models were divided into three categories and analyzed in more detail. The first category includes models concentrating primarily on the fate of discharged solids. These models may also predict the fate of the liquid phase. However, in these models the liquid phase was considered as a secondary objective. The second category includes models that deal primarily with the liquid phase of discharges; often, these models address thermal effects. The third category includes models designed primarily to address discharges of toxics.

Table A. Models Reviewed for Shallow Water Dispersion Applicability

I. Models that were reviewed, but were not found relevant for these receiving water areas, discharge types, or available data:

DIPHD (Army Corps of Engineers, 1987)
UPLUME and ULINE (EPA, 1985)
DYNTOX (EPA, 1983)
HSPF (EPA, 1985)
MINTEQ (EPA, 1984)
PRZM (EPA, 1984)
QUAL2E and QUAL2E–UNCAS (EPA, 1987)
SWMM (EPA, 1987).

II. Models that were reviewed and considered for further study:

Category 1: Primarily Solid Phase Models
OFFSHARE OPERATORS COMMITTEE (OOC) MUD DISCHARGE MODEL (M.G. Brandsma et al., 1983)
A TIME-DEPENDENT, TWO-DIMENSIONAL MODEL FOR PREDICTING THE DISTRIBUTION OF DRILLING MUDS DISCHARGED TO SHALLOW WATER (EPA–2D) (Yearsley, 1984)
DIFID and DIFCD (Army Corps of Engineers, 1987)
DRIFT MODEL (Runchal, 1983).

Category 2: Primarily Liquid Phase Models
PDS MODEL (Pritch, Davis, and Shirazi, 1974)
UOUTPLM, UMERGE, and UDKHDEN (EPA, 1985)
(MOBEN) Motts-Benedict.

Category 3: Primarily Toxic Discharge Models
EXAM 2 (EPA, 1985)
WASP 3, EUTRWASP, and TOXIWASP (EPA, 1986).

1. Evaluation of Potentially Appropriate Models

These models considered to be potentially appropriate for dispersion of drilling fluids and produced water were evaluated. Below, the major characteristics and limitations of each model are summarized and a recommendation as to the potential applicability of each for modeling shallow water dispersion of drilling fluids and produced water is provided.

1.1 Primarily Solid Phase Models (Mud Discharge Models)

1.1.1 Mud Discharge (OOC) Model

Characterization:
—Time-dependent three-dimensional model.
—Calculates nearfield initial development of dynamic plume.
—LaGrangian treatment of diffusion phase; tracks individual clouds.
—Material settling out of dynamic plume acts as source of Gaussian distributed clouds.
—Concentrations in water column found by superposition of contributions from nearby clouds.
—Concentration throughout water column and on the bottom are provided at any time.
—Developed specifically for drilling muds.
—Allows for variable topography, time-variant density and velocity profiles, and wide range of discharge conditions.
—Diffusion coefficient calculation is dependent on surface and bottom conditions.

Limitations:
—Highly dependent on diffusion coefficient.
—The model does not account for the effects of flocculation of mud in water column.
—The algorithm used in the model to cause the early separation of fine material near the discharge source (during the jet phase) has no theoretical basis.
—The model cannot simulate the situation where the plume descends exactly vertically in shallow water or combined with a much higher vertical to horizontal velocity ratio.
—Probably not appropriate when surface waves induce significant variations in water depth (10–20%).
—Current version does not cover produced water; a revised model, not yet released, covers produced water.

Recommendation:
—Applicable at depths greater than 5 meters.
—Not applicable at depths less than 2 meters.
—Uncertain applicability from 2 to 5 meters.

1.1.2 EPA2–D model

Characterization:
—Time-dependent, two-dimensional model.
—Assumes plume is vertically mixed.
—Conservative in the nearfield in shallow water (assumes complete mixing); may not be conservative in deeper water (*i.e.*, where complete vertical mixing is progressively less valid).
—More applicable to the farfield.

Limitations:
—Does not include initial mixing.
—Highly dependent on turbulent diffusion.
—Not conservative for extremely short time scales or deeper water (see above).

Recommendation:
—Appropriate, especially for very shallow water (2 meters or less), but needs to be qualified.

1.1.3 DIFID and DIFCD models

Characterization:
—Cover instantaneous and continuous discharge. Modified to include concentration profiles with depth. Developed for dredge muds.

Limitations:
—Only consider bottom deposition and horizontal distribution.
—Need to know how deep the plume is.

Recommendation:
—Not appropriate because superseded by other models (OOC model for example).

1.1.4 DRIFT model

Characterization:
—Joint probabilistic trajectory model for current speed and direction.
—Focuses on bottom deposition.

Limitations:
—Calculation does not depend on diffusion coefficients.
—Covers only low rate of cuttings discharge.

Recommendation:
—May be appropriate, but has limited utility.

1.2 Primarily Liquid Phase Models

1.2.1 PDS model

Characterization:
—The only model that considers surface plumes.
—Covers surface discharge and assumes plume floats on surface and there is no interaction with bottom.
—Perhaps useful with low salinity and high temperature.

Limitations:
—Does not apply if drilling material is negatively buoyant.
—Model does not include sediment or boundary effects.

Recommendation:
—Appropriate for surface plumes.

1.2.2 OUTPLM and UMERGE models

Characterization:
—UMERGE is a revised version of OUTPLM model.
—Two-dimensional, multiple port version of OUTPLM model.
—Discharges from several ports merge together in a "top-hat" profile.
—Current speed and direction are constant with time.

Limitations:
—Does not include development zone.
—Current must be normal to line of diffuser.
—Assumes no interaction with surface or bottom boundaries.
—Does not account for settling of solids or ambient stratification.

1.2.3 UDKHDEN model

Characterization:
—Three-dimensional model.
—No restrictions on discharge direction with respect to ambient current.
—Diffuser, single or multiple port.
—Allows for variable density stratification and variable current.

Limitations:
—Assumes currents and ambient density are constant with time.

Recommendation:
—Appropriate for negatively buoyant liquid phase discharges until plume reaches to within one-half to one plume width of the bottom.

1.2.4 MOBEN model

Characterization:
—Two-dimensional model.
—Liquid phase, vertically integrated discharge over shallow depth.
—Assumes constant depth.
—Discharge from rectangular trough.

Recommendation:
—May be useful in shallow water.

1.3 Primarily Toxic Discharge Models

1.3.1 EXAM 2 model
—May have some applicability because of eutrophication and dissolved oxygen components.
—Probably is concentration-dependent.
—Need to convert measured effluent BOD to theoretical values.
—Input data availability is questionable.

1.3.2 WASP 3, EUTRWASP, and TOXIWASP

Characterization:
—Includes hydrodynamics, conservative mass transport, eutrophication-dissolved oxygen kinetics, and toxic chemical-sediment dynamics.
—Multidimensional and time variable capabilities.
—Simulates conventional and toxic pollution.

Limitations:
—User must write applicable kinetic equations for a given problem.
—Simulates transport and transformation of a single chemical.
—Chemical concentration must be near trace levels.
—Requires user to specify flow fields.

Recommendation:
—Limited utility for a multi-constituent effluent, such as drilling fluids.

2. Recommended Modeling Approach

The OOC model, which was developed principally for drilling muds, appears to be potentially applicable for shallow water dispersion of drilling fluids at depths greater than 5 meters, and possibly to 2 meters. At any depth below the fixed depth to which the OOC model is found to be inappropriate, the EPA Time-Dependent, Two-Dimensional Model for Predicting Distribution of Drilling Muds Discharged to Shallow Water (EPA2–D) should be used. While this model is appropriate at a depth of 2 meters, it may require additional field verification for shallower water.

The EPA liquid phase models, particularly UMERGE and UDKHDEN, are potentially applicable for modeling nonsurface or vertically downward discharge of produced water. For surface discharge, the PDS model may be appropriate; it is the only model that considers surface plumes. When the plume reaches to within one-half to one plume width from the surface or bottom, (the point at which UMERGE and UDKHDEN are no longer appropriate), a two-dimensional model such as the Motts-Benedict (MOBEN) model or the EPA2–D model should be used.

As a part of this notice, the Agency is requesting comments on the list of models reviewed, the models selected as being appropriate for shallow water discharges of drilling fluids and produced water, and the model scenarios used to assess both models behavior and effluent behavior. The discharge, operational, and ambient conditions that were used as input to the selected models and the results of model runs are presented in the draft report titled "Analysis of Effluent Dispersion Models Potentially Applicable to Shallow Water Discharges from Oil and Gas Activities" (4), which is available in the record of this rulemaking.

References for Section V

(1) U.S. EPA, 1987. Estimates of Degree of Sediment Alteration Associated with Various Levels of Mercury and Cadmium in Barite.

(2) U.S. Congress, Office of Technology Assessment, Wastes in Marine Environments, OTA–O–334 (Washington, DC.: U.S. Government Printing Office, April 1987).

(3) Trefrey, J.H., et al., 1988, "Draft and Final Report to the Offshore Operators Committee: Forms, Reactivity, and Availability of Trace Metals in Barite."

(4) U.S. EPA, 1988, "Analysis of Effluent Dispersion Models Potentially Applicable to

Shallow Water Discharges from Oil and Gas Activities."

Part 2

I. Summary

EPA is currently reconsidering the prohibition on the discharge of drill cuttings that contain oil-based drilling fluid, as proposed in the August 28, 1985 proposal and is considering as an alternative the development of an oil content limitation for drilling waste streams. "Oil content" would be used as a non-conventional indicator pollutant for the BAT and NSPS levels to control the discharge of priority and non-conventional organic pollutants present in the hydrocarbons that are added to drilling fluids, both as a lubricity agent and for spotting purposes, and in the hydrocarbons from formation fluids that are entrained in the drilling fluid. These same priority and non-conventional pollutants are present in the associated drill cuttings waste stream and may be similarly controlled by an oil content limitation. An oil content limitation would apply to the discharged drilling waste and would not differentiate between diesel oil or mineral oil. The oil content measurement would be performed according to the "retort-gravimetric" procedure discussed in section IX of this part and is presented in Appendix A of this notice.

Specifically, the Agency is now considering the establishment of an oil content limitation of up to 1.0% by weight (whole sample basis) for drill cuttings based upon application of thermal distillation, thermal oxidation, or solvent extraction technologies. An oil content limitation would apply to drill cuttings associated with both water-based and oil-based drilling fluids and would apply as a maximum value (no single sample to exceed). The Agency believes that the technologies discussed below are technologically feasible to implement for the treatment of drill cuttings to reduce oil content.

The Agency also has considered the establishment of an oil content limitation for oil-based drilling fluids. The Agency has tentatively rejected this approach because existing regulations (BPT) effectively prohibit the discharge of oil-based drilling fluids.

Finally, the Agency has considered the establishment of an oil content limitation for waste-based drilling fluids that contain added or entrained oil. The Agency believes that processing rate and storage limitations may make it impracticable to implement an oil content limitation for water-based drilling fluids based on using any of these technologies to treat water-based drilling fluids at offshore drilling sites. These factors are discussed in Section V of this part of today's notice.

The technologies discussed in this part of the notice would achieve a residual oil content in the processed cuttings which would be lower than those achieved using cutting washer (*i.e.*, BPT) technology. The current regulation prohibits the discharge of "free oil" as evidenced by the presence of a visible sheen upon the receiving water after discharge of the drilling waste.

The BAT and NSPS regulations for drill cuttings proposed on August 28, 1985 would prohibit the discharge of drill cuttings associated with the use of an oil-based drilling fluid. Several commenters on the proposed regulations argued that the discharge of cuttings associated with oil-based fluids should be allowed if the oil content were controlled to acceptable levels, *i.e.*, the discharged cutting did not violate the sheen test used to detect free oil. The Agency proposed to prohibit unconditionally the discharge of such cuttings because of substantial historical experience with the seepage of oil from such cuttings after they were discharged. Though such cuttings may comply with the BPT "free oil" limitation upon discharge, they could release substantial amounts of oil from their location on the ocean floor long after the original discharge occurred.

Allowing the discharge of treated drill cuttings associated with oil-based drilling fluids, as opposed to a prohibition on their discharge, could lead to the continued development of control/treatment technologies, reduced regulatory compliance costs for the offshore segment of the industry, and alleviation of potential problems with land disposal of drilling wastes in coastal areas.

The remainder of this part of today's notice presents more detailed information and discussion on oil content limitations for drilling wastes. After consideration of the comments and any additional data received during the comment period on this notice in addition to information in the existing rulemaking record, the Agency may decide to propose effluent limitations guidelines and standards for the control of oil content in drilling wastes.

II. Background

As stated elsewhere in this notice, on July 2, 1986 EPA Regions IV and VI issued a general National Pollutant Discharge Elimination System permit (the General Permit) regulating oil and gas exploration, development, and production activities in federal waters of the Gulf of Mexico. One of the requirements of the general permit is a prohibition on the discharge of drill cuttings associated with the use of oil-based or inverse emulsion fluids.

During the comment period on the draft general permit, SEDSCO, Inc. (now Thermal Dynamics, Inc.) commented that it had developed a treatment technology which would be more effective in removing residual oil from drill cuttings than the previously available treatment methods. However, at that time, EPA decided that sufficient data were not available on the new technology to justify an alternative effluent limitation. The general permit implemented the "no discharge of free oil" requirement by prohibiting the discharge of any drill cuttings associated with oil-based muds. The final general permit for the federal waters of the Gulf of Mexico was issued on July 9, 1986.

On August 15, 1986, Thermal Dynamics, Inc. (TDI) sought to stay the general permit limitation for the drill cuttings waste stream. TDI argued that, in view of its newly developed technology, prohibiting the discharge of drill cuttings associated with an oil-based drilling fluid was unnecessarily stringent as an implementation of the "no discharge of free oil" limitation. TDI stated that sufficient data were available to EPA to demonstrate that substantial reductions in the oil content of cuttings could be achieved by termal distillation. TDI stated that this new technology could reduce the oil content of drill cuttings to a level equivalent to the "no discharge of free oil" limitation.

At the time Thermal Dynamics sought to stay the general permit limitation, only limited information was available on the efficiency of those technologies in actual use. EPA Region VI issued a "demonstration" permit to an oil company to allow for field data to be generated on the operation of a thermal distillation treatment system. A vendor-supplied thermal distillation unit was used to treat drill cuttings produced during actual drilling operations with oil-based drilling fluid. The cutting waste stream, processed cuttings, and associated by-product waste streams were characterized for oil content, solids content, priority pollutant organics and metals, RCRA (Resource Conseration and Recovery Act) ICR characteristics (ingnitability, corrosivity, reactivity) and acute toxicity (LC50).

In view of the additional information obtained on this and other technologies for treating drilling wastes, EPA is reconsidering the proposed prohibition on the discharge of drill cuttings that

contain oil-based drilling fluid. EPA is now considering alternatives to the proposed discharge prohibition.

One alternative being considered would allow the discharge of treated drill cuttings that meet a specified oil content limitation. Drill cuttings discharges would still have to achieve the BPT limitation of 'no discharge of free oil'.

III. Description of Technologies for Controlling Oil Content of Drilling Wastes

The preamble to the 1985 proposed regulations include a discussion of cuttings washer technology and its effectiveness for reducing the oil content of drill cuttings. The Agency found that cuttings washer systems that were studied were reported to reduce the oil content of drill cuttings to approximately 10% by weight. However, the Agency rejected the use of cuttings washer technology as a basis for an oil content limitation because it believed that the cuttings washer technology did not achieve a reduction in oil content of the drill cuttings sufficient to meet the BPT requirement of 'no discharge of oil'. Since 1985 the development and use of cuttings washer technology appears to have diminished, possibly due to the relatively high residual oil content of the processed cuttings and problems with proper disposal of by-product water/oil/detergent wastes.

After the proposed regulations were published, the Agency investigated other technologies for reducing the oil content of drilling wastes. These technologies fall into two general classes. In one class are thermal processes (thermal distillation or thermal oxidation). In the other class are solvent extration processes. All of the technical and cost information provided by the vendors of these technologies and additional information collected by the Agency is available in the public record for this rulemaking.

The Agency has evaluated vendor technical information and collected performance data on the treatment of drilling wastes, specifically drill cuttings associated with the use of oil-based drilling fluids, by thermal distillation. This technology appears to be technologically feasible to implement for the reduction of oil contained in drilling wastes. Based on data obtained on these technologies, the costs on a per well basis of onsite treatment using thermal distillation or solvent extration appear to be in line with the cost estimates for transport to shore and land disposal of drilling wastes.

The basic thermal distillation process has been adapted in variations by several vendors. The process removes hydrocarbons and water from drilling fluids and drill cuttings. There are three types of thermal systems known to the Agency that are available for the treatment of drill cuttings.

T–1 Process

One type of system to treat drilling wastes consists of electrically heated chambers in which the drilling wastes are exposed to controlled heat sufficient to volatilize the residual oil and water in the wastes. (This will be referred to as the "T–1" process). The electrical energy required by the process is provided by generators at the treatment site.

The processed wastes in the form of a granular material are cooled and slurried by mixing with seawater and are then discharged to the ocean. The water and hydrocarbon vapors of driven from the wastes are condensed and then separated in an oil/water separator. The hydrocarbons recovered can potentially be recycled and reused in active mud system, subject to meeting the specifications for oil additives to the mud. Alternatives to recycling the recovered hydrocarbons would be to dispose of them separately or to market them for other purposes (*e.g.*, heating fuel). If the revovered water meets effluent limitations for produced water, if could be suitable for discharge. It the recovered water does not meet these effluent limitations if may be appropriate to introduce it to the produced water treatment system. If there are no production facilities at the site the recovered water may need to be transported to another facility for adequate treatment or handling. Exhaust gases from the heating chambers in the thermal distillation unit and from the condenser would be treated to achieve appropriate air emissions standards.

These units are mobile and can be installed and operated on a rig to process wastes onsite. Full-size units have been field tested to treat drill cuttings. The T–1 process has been used to treat drill cuttings at an offshore facility in the Gulf of Mexco, in the North Sea, onshore in Alaska, and at onshore drilling sites in the Netherlands. At these locations, full-size units were used to treat drill cuttings for oil content reduction. The results of sampling performed by the vendor and by EPA indicate that the process can achieve significant reduction in the oil content of drill cuttings. Observations to date indicate that this technology is capable of reducing oil content levels to 1% or less by weight in processed cuttings (associated with oil-based muds) and that geographic location is not a factor or restriction in locating and operating this technology. (Source: Vendor and EPA sampling data).

A thermal distillation unit of this type was tested under the demonstration permit issued by EPA. Performance data on this unit is presented and discussed in Section VII of this part of the notice.

T–2 Process

Another variation of the thermal distillation process has been developed for the reduction of hydrocarbons in drilling fluids and drill cuttings. (This will be referred to as the "T–2" process). The drilling wastes are routed to the drying section of the process where hydrocarbons and water are driven from the wastes. The water and hydrocarbons driven off the cuttings are passed through condensers and the resultant liquid is processed to separate the oil from the water. The oil is placed in storage for further purification and the water is processed to effect additional separation of oil from the water. If the recovered water meets effluent limitations for produced water, it could be suitable for discharge. The unit has been used for offshore operations on mobile drill units, platforms or barges.

A prototype "demonstrator" unit has been used to process drill cuttings. An oil content of less than 0.5% by weight was reportedly achieved in test with this unit. (Source: Vendor-supplied information). A full-scale unit has not yet been tested under actual filed conditions.

T–3 Process

A third variation on the thermal distillation technology has been developed. This process uses indirect heating to vaporize water and hydrocarbons adhering to drilling wastes. (This will be referred to as the "T–3" process). In this process, drilling wates are fed to a blender which maintains a homogeneous slurry feed to the process unit. A closed heat transfer system around the processing unit provides the heat required to vaporize the water and hydrocarbons from the drilling waste. The proposed source of heat is exhaust gases from the rig electricity generator. The processed wastes are dry and granular in nature. The vaporized water and hydrocarbons are condensed for their recovery. The condensed hydrocarbons and water can be separated with potential for the hydrocarbons to be reused in the active mud system subject to meeting the specifications for oil additives to the mud. If the recovered water from the separator meets effluent limitations for

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produced water, if could be suitable for discharge.

The process is implemented using a skid-mounted mobile unit which is reportedly suitable for use either offshore or onshore. This version of distillation technology has been tested on a pilot scale basis but not on a full-scale basis. Pilot-scale tests on drilling wastes are reported to have produced cuttings consistently with an oil content of 6% or less by weight. (Source: Vendor-supplied information).

T–4 Process

A thermal oxidation process has also been developed which can be used to treat drilling wastes. (This will be referred to as the "T–4" process). The process consists of a direct fired, countercurrent rotary kiln where the wastes are thermally oxidized at temperatures typically in the range of 1400 F to 2500 F. The kilns can be over 200 feet in length. The dried solids produced in this process are reportedly suitable for use as aggregates or fill materials. The hydrocarbons driven from the wastes are partially oxidized in the kiln, while virtually complete combustion is achieved in an oxidation chamber and afterburner. At least two of these facilities are known to be currently operating on the Gulf of Mexico coast. However, due to the scale of the equipment as currently demonstrated, this process can not be implemented offshore or moved from site-to-site. However, drilling wastes could be transported to such land-based facilities for processing.

SE Process

In addition to the thermal technologies described above, a process based on solvent extraction technology has been developed to treat drilling wastes for the reduction of oil content. (This will be referred to as the "SE" process). In this process, the drilling wastes are directed to an extraction column and contacted with solvent to extract the oil. The oil-laden solvent flows from the extractor column to an evaporator, a separation column and a separator where the oil and solvent are separated. The oil phase flows to the fluidizing oil holding tank and the solvent is recycled to the process. Oil levels as low as 0.3% by weight in the processed wastes are reportedly achieved using this process. (Source: Vendor-supplied information). When used to process used drilling fluids, one vendor reports that the resultant mud solids can be recovered for reuse.

The types of solvents have been used in the solvent extraction processes investigated by the Agency—chlorofluorocarbons and carbon dioxide. Either type of solvent reportedly will serve the operational needs of the process. Although the solvents are used and recovered in a closed-type system, there is potential for some solvent loss to the atmosphere. The Agency does not have quantitative information on the amount of such solvent losses from these processes. The Agency is particularly concerned about the potential for losses of chlorofluorocarbon-type solvents from these processes to the atmosphere because they contribute to depletion of the stratospheric ozone layer, and the Agency has recently limited their production. (53 FR 30566) The Agency is therefore soliciting comment and additional information to assess this potential, to quantify the rate and amounts of such losses, and to determine whether there are acceptable alternatives to use of chlorofluorocarbon-type solvents in these processes.

IV. Applicability of Thermal and Solvent Extraction Technologies for Treating Drilling Wastes

A. Drill Cutting

Hydrocarbons can be present in the drill cuttings as a result of the introduction of oil additives to the drilling fluid system for lubricity and spotting purposes and the entrainment of formation hydrocarbons in the drilling fluid system. When the drill cuttings are separated from the drilling fluid system, they contain some of the drilling fluids and drilling fluid system additives (*e.g.*, oil). The drilling fluids and oil additives that are carried into the drill cuttings wastes after their removal from the bulk mud system by rig shale shakers and other separation equipment are considered to be part of the drill cuttings waste stream.

Based upon performance and cost information provided by several vendors of thermal and solvent extraction technologies, it appears to be technologically feasible to implement one or more of these technologies at offshore drilling sites for the reduction of oil content in drill cuttings. The costs (on a per well basis) of onsite treatment using thermal distillation or solvent extraction appear to be in line with the cost estimates for transport to shore and land disposal of the same wastes. This applies to drill cuttings associated with the use of either water- or oil-based drilling fluids. These technologies appear to be well-suited and efficient for the reduction of oil content of such wastes over a broad range of hydrocarbon content.

There appear to be no insurmountable technical difficulties associated with the placement of such equipment at offshore drilling sites, operation of the equipment, intermediate handling of raw cuttings wastes to be processed, and handling of processed cuttings wastes and by-product streams. These technologies are effective in achieving substantial reduction in the amount of hydrocarbons adhering to the drill cuttings. Specific levels of oil content in drill cuttings wastes processed by these technologies are presented in later sections of this notice.

B. Drilling Fluids

Oil-Based Drilling Fluids. Thermal distillation/oxidation and solvent extraction technologies appear to be suitable for processing materials with variable hydrocarbon content. Oil-based drilling fluids (*i.e.*, invert emulsion) can typically contain 30% or more oil by volume (approx. 15% oil by weight). The high oil content (and low water content) of oil-based fluids should result in highly efficient removal and recovery of the oil by these technologies.

However, the existing BPT requirement of "no discharge of free oil" effectively prohibits the discharge of oil-based drilling fluids to surface waters of the U.S. An oil content limitation for oil-based drilling fluids that is based upon these technologies would be less stringent than the effective prohibition on the discharge of any of these wastes based upon the BPT requirement of no discharge of free oil. Because the Agency's interpretation of the Clean Water Act precludes the establishment of BAT, BCT, or NSPS limitations that are less stringent than BPT, it is not appropriate to consider such a limitation or standard that would allow a discharge of oil-based drilling fluids to surface waters.

Water-Based Drilling Fluids. Water-based drilling fluids to which oil has been added for lubricity or spotting purposes or such drilling fluids that contain entrained formation hydrocarbons are subject to the existing BPT requirement of "no discharge of free oil". However, the amount or concentration of oil contained in water-based drilling fluids for any of these reasons is at considerably lower levels that that in oil-based drilling fluids. Oil levels in such water-based drilling fluids typically range from nil to about 5% by volume (2.5% by weight). In many cases, water-based drilling fluids containing oil at levels in this range would not exhibit a visible sheen (BPT "no discharge of free oil") upon their discharge. This following discussion applies to the use of thermal and solvent extraction technologies for treating such drilling fluids for the reduction of oil content.

Three major factors make the use of the technologies under consideration less practicable for treating water-based drilling fluids at an offshore drilling facility than for treating drill cuttings.

First, for a given well, the volume of drilling fluids to be handled is much greater than the volume of drill cuttings. Depending upon the capacity and processing rate capability of the treatment unit, the time to process waste drilling fluid generated during the drilling of a well could make it impractical to conduct the treatment operation at the offshore facility due to space restrictions for storing the material and extended time requirements for treatment if temporary storage of the raw wastes was available.

Second, even assuming that the waste drilling fluid generated during the drilling of the well can be processed effectively, there remains a substanial volume of drilling fluid to be disposed at the end of drilling. At the end of the drilling period, when the bulk drilling fluid system is ready to be disposed of, there is suddenly a large volume of drilling fluid that needs to be temporarily stored for subsequent processing (1400 bbl in the model case). Space for storing drilling fluids on an offshore oil facility is limited. Again, the length of time required to process the large volume of drilling fluids at the end of drilling may make it infeasible to store the drilling fluids on an offshore drilling facility prior to processing.

Third, in the case of the thermal technologies, the much higher relative water content of water-based drilling fluids requires a considerably higher input of thermal energy to the process in order to vaporize the water present. (The water must be vaporized in order to remove the oil). This directly increases the costs for treating the drilling fluid. In cases where the thermal process is operating at or near its maximum capacity, the high energy requirement (per unit of waste treated) may mean that the rate at which the drilling fluids can be processed will be substantially reduced. This in turn would require increased storage capacity for temporary onsite storage of the raw waste prior to treatment. (This factor would be of negligible consideration for the land-based thermal oxidation technology.)

One alternative might be to transport the bulk drilling fluid system to shore for subsequent treatment by one of the technologies under discussion. However, the cost for transportation to shore for processing would add considerably to the total cost of treatment. It may also require either the expense of duplicate equipment on shore to process the bulk mud system or else the cost and disruption associated with relocation of the processing equipment from the offshore facility to shore. This additional expense could make the use of these technologies for treating the drilling fluid less attractive to industry than, for example, land disposal.

V. Pollutant Reduction and Cost Estimates

The Agency has evaluated the technological feasibility and costs of applying thermal technologies and solvent extraction technologies to: (1) Drill cuttings associated with oil-based drilling fluids; (2) drill cuttings associated with water-based drilling fluids which contain oil that has been added for lubricity purposes, spotting purposes, or which contain entrained formation hydrocarbons; and (3) water-based drilling fluids to which oil has been added for lubricity purposes, spotting purposes, or which contain formation hydrocarbons.

This third scenario was evaluted to obtain estimates of increased energy requirements and processing time for treating water-based drilling fluids with a high water content. As discussed earlier, the Agency concluded from this analysis that the thermal distillation and solvent extraction technologies under consideration may not be appropriate as a basis for an oil content limitation for water-based drilling fluids at an offshore drilling site.

A. Pollutant Reduction Estimates

This subsection presents a summary of the model drilling scenario which is then used to establish estimates of oil content reduction in drill cuttings and water-based drilling fluids wastes by the technologies described earlier in this part of today's notice. Then the resultant oil content reduction estimates are presented for drill cuttings and water based-drilling fluids. Although the Agency has tentatively concluded that the reduction of oil content in water-based drilling fluids may be impractical to implement at offshore drilling sites by these technologies, oil content reduction estimates are presented below to provide the reader with an indication of the potential of the technologies for treating such wastes.

The Agency's analyses of applying thermal processes and solvent extraction processes are based on a model 10,000 foot well in the Gulf of Mexico, as presented in Section II of Part 1 of today's notice.

Drilling a "typical" 10,000 foot well is estimated to take 35 calendar days with 20 days of actual drilling time. The volume of drilling fluid to be handled from a 10,000 foot model well is 5349 barrels plus an additional 1400 barrel active mud system. The volume of drill cuttings to be handled from the 10,000 foot model well is 1430 barrels. These model well characteristics used in these analyses are based on the Agency's evaluation of recent industry surveys. (Sources: 10,000 ft. model well—"1984 Joint Association Survey on Drilling Costs", Dec 1985. API; Drilling waste volumes and drilling times—"Alternate Disposal Methods for Mud and Cuttings, Gulf of Mexico and Georges Bank:, Dec. 1981, Offshore Operators Committee).

The untreated drill cuttings associated with oil-based drilling fluids are estimated to contain 20% oil by weight (approx. 55% oil by volume). Untreated drill cuttings associated with water-based drilling fluid to which oil has been added, as a spot, as a lubricity agent or from entrained formation hydrocarbon, are estimated to contain 1% oil by weight (approx. 2.8% oil by volume). Water-based drilling fluids with oil added for lubricity and spotting purposes are estimated to typically contain 5% oil by volume (approx. 2.5% oil by weight) and 58% water by volume (approx. 30% water by weight). This 5% oil content by volume (approx. 2.5% oil by weight) is for a model situation where oil is added to the mud system for lubricity and spotting purposes, or is present due to entrained formation hydrocarbons. (Sources: EPA estimates; industry estimates)

After treatment, the oil content of the drill cuttings from oil-based muds was estimated to be reduced to 1% by weight (approx. 2.8% by volume) when using thermal distillation and to 0.3% by weight (approx. 0.8% by volume) when using solvent extraction. (Sources: EPA and T–1, T–2 and SE vendor sampling data.)

Since the oil content of untreated drill cuttings from water-based muds in the model case is 1% (weight), there would be little or no expected reduction of oil content in such wastes when subject to thermal distillation. The oil content of drill cuttings from water-based muds is estimated to be reduced to 0.3% by weight (approx. 0.8% by volume) when using solvent extraction technology. (Sources: EPA and T–1, T–2, and SE vendor sampling data).

After treatment, the oil content of the water-based drilling fluids was estimated to be reduced to 1% by weight

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(approx. 2% by volume) when using thermal distillation and to 0.3% by weight (approx. 0.8% by volume) when using solvent extraction (Sources: EPA estimates).

The volumes and weights of oil present in the drilling wastes before and after treatment are shown on Table 5.

TABLE 5.—OIL CONTENT REDUCTION OF DRILLING WASTES BY VARIOUS TREATMENT PROCESSES

Waste type	Total quantity of drilling waste [1]		Oil present before treatment [2]		Oil removed	
	bbls.	lbs.	bbls.	lbs.	bbls.	lbs.
OIL-BASED Drill Cuttings (20% oil by weight) TD–1 & 2 Process Removal to 1% by wgt	1,430	1,230,800	792	286,000	732	252,080
OIL-BASED Drill Cuttings (20% oil by weight) SE Process Removal to .3% by wgt	1,430	1,230,800	792	286,00	790	281,900
WATER-BASED Drill Cuttings (1% oil by weight) TD–1 & 2 Process Removal to 1% by wgt	1,430	1,230,800	40	12,300	0	0
WATER-BASED Drill Cuttings (1% oil by weight) SE Process Removal to .3% by wgt	1,430	1,230,000	40	12,300	28	700
WATER-BASED Drilling Fluid (5% oil by volume) TD–1 & 2 Process Removal to 1% wgt	5,349	3,584,600	267	113,400	181	54,500
WATER-BASED Drilling Fluid (5% oil by volume) SE Process Removal to .3% wgt	5,349	3,584,800	278	113,400	235	75,188

Sources:
[1] "Alternate Disposal Methods for Mud and Cuttings Gulf of Mexico and Georges Bank", Dec. 1981, Offshore Operators Committee.
[2] EPA Estimates.

b. Operating Costs

The Agency prepared treatment cost estimates based of information provided by vendors and by using standing engineering estimating procedures. These estimates have been prepared for two types of distillation processes (T–1 Process and T–2 Process) and for one solvent extraction (SE–Process) process applied to drill cuttings and water-based drilling fluids.

The costs for leasing and operating these treatment processes differ from vendor to vendor. Two vendors had one lease rate for actual drilling days and a lower rate for standby days. The other vendor had a fixed lease rate for both drilling and standby days.

A monetary value was assigned to the oil recovered by the treatment process. The model scenario assumes that all of the oil removed from the drilling wastes by a given treatment process will be recovered. However, in practice the amount of recovered oil will be less than 100% of that removed from the wastes, due to losses by fugitive emissions, vapor condensation losses and oil/water separation efficiency for distillation processes and due to solvent recovery efficiencies for the extraction process. This loss is assumed to be small and not to significantly affect the cost of using a particular technology. The value of the recovered hydrocarbon is estimated to be $28.50 per barrel (source: vendor-supplied information). This full value of the recovered oil would be realized only if the oil is suitable for reuse in drilling fluid. While it is reported that the recovered oil can be reused in mud systems, the Agency is not aware that this practice has been tested yet on a full-scale basis.

The cost estimates include equipment rental costs, personnel costs, energy costs, and transportation costs. The equipment rental and energy costs are based upon whether the unit is in operating mode or standby mode. As an example, a breakdown of the cost estimate for treatment of drill cuttings by one of the thermal distillation processes (T–1) operating for 20 days and on standby for 15 days is shown in Table 6. In this example, the estimated energy cost is the cost of fuel for the generator used to provide electrical energy to operate the treatment equipment and to provide thermal energy for processing the waste. (source: cost information from vendors, EPA estimates).

The cost presented in Table 6 were developed with the conservative assumption that four wells are drilled consecutively. Mobilization and demobilization costs for drilling multiple wells at a given site are allocated among the number of wells (in this case four) assumed to be drilled during a given campaign. Thus, each well is allocated only a part of the total mobilization and demobilization costs for the treatment unit.

TABLE 6.—COMPONENT TREATMENT UNIT LEASE AND OPERATING COSTS, THERMAL DISTILLATION (T–1 PROCESS)

(Drill cuttings from oil-based or water-based drilling fluids)

Rental for 20 day actual operating period ($4,000 per day)	=$80,000
Rental for 15 day standby period ($1,500 per day)	=22,500
Energy costs for unit during operation ($180 per day, 20 days)	=3,600
Personnel living on rig (2 men×35 days× $35 per day)	=2,450
Transportation to rig (one boat for one day)*	=750
Set-up on rig (including use of crane)*	=2,500
Tear down (including crane use)*	=1,250
Transportation to shore (one boat for one day)*	=750
Shore support	=3,000
Transporting personnel to and from rig weekly (5×150)	=3,000
Total	=119,800

Note.—(1) Costs treating for drill cuttings assume the unit will be operating for 20 days and on standby for 15 days.
(2) Costs marked * are based on mobilization and demobilization costs being apportioned between 4 wells drilled consecutively at the same facility.
(3) Cost of deck space usage is not included.
Source: Vendor-supplied information; EPA estimates.

The operating costs in Table 7 were estimated in a similar manner for the other two processes being considered.

C. Drill Cuttings from Oil- and Water-Based Drilling Fluids

Cost estimates were developed for the treatment of drill cuttings. The costs for leasing and operating two types of thermal distillation units (T–1 and T–2) and the solvent extraction unit (SE) over a 35 day drilling period, including auxiliary costs, were estimated. In this scenario where the systems are used to treat only drill cuttings, it is assumed that the unit will be operating only during the 20 days of actual drilling. The equipment lease and energy costs are calculated accordingly. The costs for operating these processes are essentially the same whether they are used to treat drill cuttings associated with oil-based drilling fluids or water-based drilling fluids. These costs are summarized in Table 7.

As described previously, a value of $26.50 per barrel is assigned to the oil recovered by the treatment process assuming recovered oil is suitable for reuse in the drilling fluid system. These costing examples include the assumption that all of the oil removed from the drilling wastes is recovered for reuse.

Oil-Based Cuttings.

The drill cuttings from an oil-based mud are estimated to have a 20% oil content by weight (approx. 55% by volume); the volume of oil on the cuttings would therefore be 792 barrels. The volume of oil remaining on the cuttings after treatment by thermal distillation to reduce the oil content to 1% by weight (approx. 2.8% by volume) would be 40 barrels. The value of the recovered oil would therefore be $19,900 (752 bblx$26.50). The volume of oil remaining on the cuttings after treatment by solvent extraction when reducing the oil content to 0.3% by weight (approx. 0.8% by volume) would be 12 barrels. The value of the recovered oil would therefore be $20,700 (780 bblx$26.50). Water-based Cuttings.

The cuttings from a water-based mud are extimated to have a 1% oil content by weight (approx. 2.8% by volume) and the volume of oil on the cuttings would therefore be 40 barrels. There would be little, if any, expected reduction in oil content where these wastes are subjected to treatment by thermal distillation. The volume of oil remaining on the cuttings after treatment by solvent extraction when reducing the oil content to 0.3% by weight (approx. 0.8% by volume) would be 12 barrels. The value of the recovered oil would therefore be $740 (28 bblx$26.50).

TABLE 7.—COSTS OF TREATMENT FOR DRILL CUTTINGS [1]

Procedure	Thermal distillation TD–1 process			Thermal distillation TD–2 Process			Solvent extraction SE process		
	Cost/unit	Unit No.	Total cost	Cost/unit	Unit No.	Total cost	Cost/unit	Unit No.	Total cost
Cuttings From Oil-Based Drilling Fluids									
Rental-drilling	4,000	Day 20	=$80,000	1,550	Day 20	=$31,000	4,200	Day 20	=$84,000
Rental-no drill	1,500	Day 15	=22,500	1,500	Day 15	=22,500	2,000	Day 15	=30,000
Energy cost	180	Day 20	=3,600	180	Day 20	=3,600	Included	Day 20	=0
Living cost	70	Day 35	=2,450	70	Day 35	=2,450	70	Day 35	=2,450
Trans. to rig	750	Each 1	=750	750	Each 1	=750	750	Each 1	=750
Rig set-up	2,500	Each 1	=2,500	2,500	Each 1	=2,500	2,500	Each 1	=2,500
Rig tear-down	1,250	Each 1	=1,250	1,250	Each 1	=1,250	1,250	Each 1	=1,250
Shore support	3,000	Each 1	=3,000	3,000	Each 1	=3,000	3,000	Each 1	=3,000
Trans. to shore	750	Each 1	=750	750	Each 1	=750	750	Each 1	=750
Weekly Trans	600	Each 5	=3,000	600	Each 5	=3,000	600	Each 5	=3,000
Total			118,600			71,550			127,700
For Oil Based Drilling Fluid									
1,435 bbls drill cuttings treated:									
Cost of treatment			=119,800			71,550			127,700
Cost of treatment per barrel			=84			50			89
Value of recovered oil			=19,900			19,900			20,600
Net cost of treatment			=99,900			51,650			107,100
Net cost of treatment per barrel			=70			36			75
Cost of onshore disposal			=66,400			66,400			66,400
Onshore disposal cost [2] per barrel			=46			46			46

[1] All three treatment units are assumed to take 20 days to process 1,430 barrels of drill cuttings.
[2] Onshore disposal costs assume rigs are retrofitted for cuttings storage.

D. Water-Based Drilling Fluids

Cost estimates were prepared for the treatment of water-based drilling fluids in order to assess increased energy costs and processing times for the treatment of drilling fluids as compared to drill cuttings. (The factors which may make the use of this technology to treat water-based fluids at an offshore oil facility less practicable than for treating drill cuttings are described in Section V of this part of today's notice.)

The costs of renting and operating the thermal distillation unit and the solvent extraction unit over a 35 day drilling period, including auxiliary costs, were estimated. It was assumed that in order to treat the larger volume of drilling fluids the unit will be required to process drilling fluids every day during the entire 35 day drilling period. The equipment rental and energy costs were calculated accordingly.

The average oil content of water-based drilling fluid is estimated to be 5% oil by volume (approx. 2.5% by weight), when oil is added to the mud either as a spotting fluid, a lubricity agent, and/or contains entrained formation oil. The volume of oil in the 5349 barrels of drilling fluid (not including the active mud system) to be treated would therefore be 267 barrels. The volume of oil remaining on the drilling fluids, after treatment by thermal distillation when reducing the oil content to 1% by weight (approx. 2% by volume), is 107 barrels. The value of the recovered oil would therefore be $4300 (160 bbl×$26.50). The volume of oil remaining on the drilling fluids after treatment by solvent extraction when reducing the oil content to 0.3% by weight (approx. 0.8% by volume) is 32 barrels. The value of the recovered oil would therefore be $6,200 (235 bbl×$26.50).

E. Comparison of Onsite Treatment Costs with Onshore Disposal Costs for Drilling Wastes

The detailed costs are presented in the EPA report titled "Costs, Energy Requirements and Processing Rates for Treating Drilling Fluids and Drill Cuttings using Thermal Distillation and Solvent and Solvent Extraction

Processes" which is available in the record of this rulemaking. These costs are summarized on a "per barrel of raw waste" basis in Table 8 below and are compared with transport to shore and land disposal costs of the wastes. The thermal distillation and solvent extraction technology costs in Table 8 include a credit for recovered oil at an estimated economic value of $26.50 per barrel of oil.

The transport/land disposal option costs are presented for three scenarios. These three scenarios are presented on the basis of the ability to store the wastes during high seas or offload these wastes for transport to shore as follows:

1. For rigs with no storage space for drilling wastes, but designed for loading boats in seas with wave heights of up to 6 feet. If wave heights exceeded 6 feet, drilling would have to cease for the period that the wave heights were in excess of 6 feet and supply boats were unable to tie up at the facility.

2. For rigs with no storage space for drilling wastes, but designed for loading boats in seas with wave heights of up to 10 feet. If wave heights exceeded 10 feet, drilling would have to cease for the period that the wave heights were in excess of 10 feet and supply boats were unable to tie up at the facility.

3. For rigs retrofitted for drilling wastes storage. These rigs could continue to drill even when supply boats were unable to tie-up at the facility.

The costs for land disposal in Table 8 include onshore disposal costs, handling costs, container rental costs, transportation costs, and downtime costs for rigs with no storage space or retrofit costs for rigs fitted with storage space. Capital costs associated with retrofitting an offshore rig with sufficient storage capacity and deck space to accommodate storage of drilling wastes were estimated. These retrofit costs were apportioned among the estimated number of wells drilled from a rig during a 5-year estimated life of the rig equipment. These scenarios are based upon prior industry-sponsored work submitted during the proposed comment period. The Agency has reviewed the industry study documentation and found the information to be reasonable for the purpose of establishing these scenarios. (Source: "Water-Based Drilling Fluids and Cuttings Disposal Options Survey", Feb. 1986, Walk Haydel and Associates).

The transportation costs were based upon daily rental costs for supply boats. These costs were not sensitive to the distance between the offshore facility and the onshore transfer facility and disposal site. The rigs with no storage capacity were assumed to require two dedicated supply boats throughout the entire 35 day drilling period. The rigs retrofitted with storage capacity were assumed to require two dedicated supply boats for the first 16 days of the drilling period and one dedicated supply boat for the remaining 17 days of the drilling period. (source: "Water-Based Drilling Fluids and Cuttings Disposal Option Survey", Feb. 1986, Walk Haydel and Associates).

The majority of operators would, in all probability, decide to retrofit rigs for drilling fluid storage since this would result in an overall lower cost for the disposal of drilling fluids. (source: "Water-Based Drilling Fluids and Cuttings Disposal Option Survey", Feb. 1986, Walk Haydel and Associates). The costs are lowered because supply boats would not be dedicated solely to drilling waste disposal. It was therefore estimated that 80% of the rigs would be retrofitted, 10% would operate using a maximum permissible wave height of 10 feet and 10% would operate using a maximum permissible wave height of 6 feet. (EPA estimate).

TABLE 8.—COST OF ONSITE TREATMENT V. ONSHORE DISPOSAL DRILL CUTTINGS AND WATER-BASED DRILLING FLUIDS—THERMAL DISTILLATION, SOLVENT EXTRACTION, ONSHORE DISPOSAL—MODEL 10,000-FOOT WELL

[Dollar per barrel]

	Drill cuttings associated with oil-based drilling fluids	Drill cuttings associated with water-based drilling fluids	Water-based drilling fluids
Onsite treatment using thermal distillation T-1 process	70	(*)	32
Onsite treatment using thermal distillation T-2 process	36	(*)	16
Onsite treatment using solvent extraction SE process	70	68	30
Transport to shore for disposal—no storage, max. 6 ft. waves	78	78	58
Transport to shore for disposal—no storage, max. 10 ft. waves	61	61	45
Transport to shore for disposal—rig retrofitted for storage	46	46	33

* No expected reduction in oil content.

Notes to Table 8:

(1) Costs are in dollars per barrel of raw waste rounded to the nearest whole dollar.

(2) Costs for drill cuttings are based upon handling 1430 bbl of drill cuttings from the model size well. (1)

(3) Costs for drilling fluids treatment by thermal and solvent extraction are based upon handling 5349 bbl of water-based drilling fluids. This excludes the active mud system volume of 1400 bbl. It is uncertain whether onsite treatment is feasible for the active mud system (1400 bbl). (1/2)

(4) Costs for onsite treatment consist of equipment rental costs, energy costs, personnel costs and mobilization and demobilization costs. (3)

(5) Costs for onshore disposal consist of land disposal costs, handling costs, container rental costs, transportation costs and retrofit costs for rigs fitted with storage space for drilling wastes or downtime costs for rigs with no storage space. (4)

Sources:

(1) "Alternate Disposal Methods for Mud and Cuttings, Gulf of Mexico and Georges Bank:, Dec. 1981, Offshore Operators Committee".

(2) EPA estimate.

(3) Vendor-supplied information; EPA estimates.

(4) "Water-Based Drilling Fluids and Cuttings Disposal Option Survey"; Feb. 1986, Walk Haydel and Assoc.

VI. Performance Data

A. Field Sampling

During the period September 14 to 17, 1987, the Agency performed sampling of feed, waste and by-product streams associated with a thermal distillation unit (T-1 process) that was operating in the South Pass Block of the Gulf of Mexico. The thermal distillation unit was used to process cuttings generated from a well drilled at an offshore facility in the Gulf of Mexico. Oil-based muds were utilized at the well from a depth of 4,900 feet to the bottom of the well at 13,944 feet. The diameter of the hole was 12.25 inches and the well was being drilled at a rate of 140 feet per hour. Only a portion of the drill cuttings generated at this well were processed by the thermal distillation unit. Due to the existing configuration of the rig cuttings collection system, the raw cuttings feed was composed only of the cuttings from the primary shale shaker.

The following waste and by-product streams were generated by the particular thermal distillation unit that was tested: processed cuttings, condensed hydrocarbon, condensed water, air emissions. The processed cuttings were mixed with seawater and sluiced to discharge from the facility. The condensed vapors (oil/water) were directed to an oil/water separator which had two discharge streams—a condensed hydrocarbon stream and a condensed water stream. The treatment system also had a stack for air emissions.

Samples were collected by EPS from the test unit over a four day sampling period. Samples were taken of the raw cuttings, the processed cuttings and the combined processed cuttings/seawater stream. The oil content of both the raw cuttings feed and the processed cuttings was analyzed using retort-gravimetric and soxhlet exrtaction methods. The oil content of the combined seawater/cuttings stream was analyzed prior to discharge, using the gravimetric extraction method. The raw cuttings feed and the processed cuttings were analyzed for metals, priority organics, percentage solids and for ICR/RCRA components (ICR tests are for ingnitability, corrosivity and reactivity; RCRA is the Resource Conservation and Recovery Act). The combined treated cuttings/seawater stream to be discharged was analyzed for total suspended solids. Bioassay tests were performed on samples of the raw cuttings and the processed cuttings. Samples were also taken of the condensed hydrocarbon and water streams. These samples were analyzed for oil content using the gravimetric extraction method, and for priority organics. Samples of the condensed water discharge stream were also analyzed for total suspended solids.

Temperature measurements and pH readings were taken of the selected raw waste, treated waste and by-product streams. Tests for settleable solids in the raw cuttings, the condensed water stream, the combined treated cuttings/seawater stream and in background seawater were conducted at the facility. Air sampling of the thermal unit emissions was not possible due to the unavailability of air sampling personnel during the sampling effort.

B. Observations and Sampling Results

During the sampling program, the vendor demonstrated the ability to set up and run a thermal distillation unit on an offshore development facility to treat drill cuttings associated with oil-based muds.

The average oil content of the raw cuttings was found to be 7.11% by weight using soxhlet extraction analysis and 5.82% by weight using the retort-gravimetric method. The raw cuttings were considerably lower in oil content than expected for the type of mud being used. This was probably because the only source of cuttings used as feed to the test unit was the primary shale shaker. The cuttings from the primary shale shaker are physically the largest cuttings in the entire cuttings recovery system. The smaller, finer cuttings from the secondary shaker, the desilter and the contrifuge sections of the cuttings recovery system would have the higher oil content due to their higher surface area. A composite sample of all of the cuttings generated at the well would be expected to have an oil content of 15% to 20% by weight (source: EPA estimate; Conoco, Inc. estimate).

The thermal distillation unit was shown, when operating properly, to be able to consistently reduce the oil content of drill cuttings, separated from an oil-based mud at the primary shale shaker, to less than 1% by weight (less than 2.8% by volume). The processed cuttings were dry and granular in appearance. The results from the sampling episode therefore indicate that the thermal distillation unit tested could achieve a significant reduction in the oil content of drill cuttings.

The results of oil analyses of samples of raw and treated wastes and by-product streams are presented in Table 9.

TABLE 9.—THERMAL DISTILLATION OF DRILL CUTTINGS (OIL-BASED MUD), AVERAGE OIL CONTENT, PERCENT BY WEIGHT

	Soxhlet method [1]	Retort-gravimetric method [2]	Gravimetric method [3]
Raw cuttings	7.11	5.82	Not appr.
Proc. cuttings	0.06	0.53	Not appr.
Combined seawater/cuttings	Not appr.	Not appr.	0.06.
Condensed hydrocarbons	Not appr.	Not appr.	97.4.
Condensed water	Not appr.	Not appr.	0.06.
Sea water	Not appr.	Not appr.	0.002.

Notes:

"Not Appr." indicates that a particular analytical method was not an appropriate analytical method for type of waste stream sampled.

[1] Method 5030, Oil & Grease, Extraction Method for Sludge Samples. Standard Method for the Examination of Water and Wastewaters; APHA, AWWA, WPCF; 16th Edition, 1985.

[2] Proposed Method 1651, Total Oil and Diesel Oil in Drilling Fluids and Drill Cuttings by Retort Gravimetry and GCFID. Appendix A of this notice. This is the Agency's preferred method for oil content determinations for drilling wastes with relatively high solids content.

[3] Method 413.1, Oil & Grease, Gravimetric (extraction). Methods for Chemical Analysis of Water and Waste, EPA-600/4-79-020, U.S. EPA, March 1979.

Acute toxicity was measured by conducting static, 96-hour toxicity tests with mysids on the suspended particulate phase (SPP) of raw and processed drill cuttings. The SPP was prepared by mixing the drill cuttings with seawater (1:9 by volume), allowing the mixture to settle for 1 hour, and decanting the SPP. Three subsamples of one sample of raw cuttings were tested. The 96-hour LC50s were 3.2%, 8.5% and 1.5% SPP. Two samples of processed cuttings were tested; the 96-hour LC50s were 28.7% and 27.9% SPP.

Samples of the raw cuttings, processed cuttings, condensed hydrocarbons and condensed water were analyzed for organics. A total of ten (10) samples—one raw cuttings, four processed cuttings, one condensed hydrocarbon and four condensed water—were each analyzed for two hundred and thirty-four (234) organics.

Twenty-eight organic compounds were detected at concentrations above their detection limits in some or all of the samples. The remaining two hundred six organics compounds were either not detected or were quantified at a level below the method detection limit.

Detailed discussion and results of this sampling program are presented in the

EPA document titled "Report on the Results of Field Sampling or Thermal Dynamics Inc. Treatment of Drill Cuttings on Conoco South Pass 75 Platform September 14–17th, 1987". This report is part of the record of this rulemaking and is available for inspection as described in the "addresses" section of this notice.

VII. Oil Content or Untreated Drilling Wastes

This section presents a summary of the Agency's estimates of the quantities of untreated drill cuttings and water-based drilling fluids that would not meet an oil content effluent limitation of 1% or less (weight basis). These estimated quantities of drilling wastes would either require treatment to comply with an oil content limitation or, alternatively, the wastes could be disposed of in another manner such as by transport to shore for land disposal at an acceptable waste disposal site.

A. Drill Cuttings

Oil-Based Cuttings. All drill cuttings associated with oil-based drilling fluids would require treatment or land disposal to comply with an oil content limitation of 1% or less (weight basis).

Water-based Cuttings.

Based upon the waste characteristics described above for the model situation, little if any of drill cuttings associated with water-based drilling fluids which contain oil added either as a lubricity agent or as a spotting fluid would likely require treatment to comply with an oil content limitation.

Some portion of drill cuttings associated with water-based drilling fluids to which no oil has been added (lubricity, spotting) may require treatment or land disposal to comply with an oil content limitation. This would be due to entrained formation oils in the drilling fluid system which in turn could adhere to the drill cuttings wastes. The Agency has no estimate of drilling waste volumes that would fall into this scenario (drilling wastes or drill cuttings). For the purposes of this analysis, the Agency assumed a zero quantity of drilling wastes in this scenario. The Agency solicits specific information which would allow for a reasonable estimate to be made of these drilling waste volumes.

The results of an industry survey indicate that approximately 12% of all wells drilled with water-based muds have oil added to the mud system for lubricity purposes. (source: Shell Oil, Burgbacher, 1985). As discussed previously, the drill cuttings generated under these circumstances are estimated to contain 1% oil by weight. (EPA estimate). For this analysis then, most if not all drill cuttings from wells drilled with water-based muds are estimated to have a oil content of 1% by weight and thus would not require treatment or land disposal to meet an oil content limitation of 1% by weight.

In summary, drill cuttings from water-based muds to which (mineral) oil has been added for lubricity and/or spotting purposes would likely not require treatment or land disposal to comply with an oil content limitation of 1% by weight.

B. Water-Based Drilling Fluids

Water-based drilling fluids which contain oil added either as a lubricity agent or as a spotting fluid, or containing formation hydrocarbons in appreciable amounts would likely require treatment to comply with an oil content limitation in the range of 1% or less (weight basis).

Historical information supplied by the industry indicates that approximately 12% of all wells drilled with water-based muds can be expected to use oil as a lubricity agent (source: API). The amount of lubricity oil used varies from about 1% to 12% (volume basis), with an estimated average of 3%. This, all drillings fluids generated from such wells would require either treatment to reduce the oil content prior to discharge or transport to shore for land disposal to comply with an oil content limitation. (Source: 1986 API Drilling Fluids Survey.)

The results of a recent survey conducted by the Offshore Operators Committee indicate that approximately 22% of wells drilled with water-based muds can be expected to use oil as a spotting fluid (1986 Offshore Operators Committee Spotting Fluid Survey). Water-based drilling fluid to which oil is added as a spotting fluid at depths below 8,000 feet would likely contain oil in excess of 1% by weight, and thus would either have to be processed for removal of oil and then discharged or transported to shore for disposal. (The EPA model case use of oil added as a spotting fluid below a depth of 8,000 feet was estimated for model well characteristics.)

The total volume of drilling fluid to be handled from a 10,000 foot well is estimated to be 6749 barrels (including the active mud system), of which approximately 2076 barrels (including the active mud system) are generated between 8,000 feet and 10,000 feet (source: "Alternate Disposal Methods for Mud and Cutting for the Gulf of Mexico and Georges Bank", Dec. 1981, Offshore Operators Committee). Thus, the percentage of all water-based drilling fluids used which would contain oil as a spotting fluid is estimated to be 6.8% (22% x 2076 bbl/6749 bbl).

Assuming, conservatively for aggregate costing purposes, that there is no overlap in the population of wells using oil as a lubricity agent and those using oil as a spotting fluid, an estimated total of 18.8% by volume of all water-based drilling fluids would require onsite treatment of onshore disposal to comply with an oil content limitation as discussed above.

VIII. Analytical Method for Total Oil Content

A method for retort distillation and gravimetry for determining the total oil content of drilling fluid and drill cuttings waste streams is published as part of today's notice for review and comment. The Agency has determined that existing approved analytical methods for measuring oil are not appropriate for drilling wastes and that the oil content method appearing in Appendix A of this notice is the appropriate test procedure.

This same method (Proposed Method 1651, "Total Oil and Diesel Oil in Drilling Muds and Drill Cuttings by Retort Gravimetry and GCFID") includes additional steps for determining the identity and concentration of diesel oil, and is presented in its entirety in Appendix A of this notice.

The retort distillation method has been widely used by the industry for testing drilling muds and is simple to perform on offshore facilities in remote conditions. The version of the method presented in Appendix A has an estimated detection limit of 200 mg/kg (0.02% by weight). Documentation on precision and accuracy measurements of the test method is included in the record for this rulemaking.

IX. Request for Comments

As previously stated, the Agency is considering a BAT and NSPS oil content limitation of up to 1.0% by weight for drill cuttings associated with either oil-based or water-based drilling fluids. Such a limitation may be based upon attainable performance of the control and treatment technologies discussed in this notice and prior notices pertaining to this rulemaking. The Agency solicits comment on all aspects of such a BAT and NSPs oil content limitation for control of priority and toxic non-conventional pollutants in the hydrocarbons present in drill cuttings. This limitation would apply to all drill cuttings discharges to surface waters, whether or not oil is added to the associated drilling fluid system.

Moreover, for cuttings associated with oil-based muds, this oil content limitation would replace the prohibition on the discharge of such cuttings. The Agency particularly solicits comment on: (1) Whether such an oil content limitation is appropriate for drill cuttings; (2) the appropriate technology basis for an oil content limitation; and (3) whether an oil content limitation should apply in addition to or instead of one or more of the other limitations and standards for drill cuttings presented in Part 1 of this notice.

The Agency also invites comment on all aspects of establishing BAT and NSPS oil content limitations for water-based drilling fluids. The Agency particularly solicits comment on the practicality and technical achievability of processing water-based drilling fluids by these technologies at offshore drilling sites and on the issue of space constraints with regard to installing these systems at offshore facilities.

The Agency solicits comment on the model drilling scenarios selected for analysis, the costs to implement the treatment technologies and treatment methods discussed in this part, and on any actual and foreseeable problems regarding adequate onshore disposal sites for drilling wastes. The Agency also invites comment on the extent to which the oil content and the toxicity of drill cuttings and drilling fluids is due to downhole contamination. The Agency also invites comment on the applicability of these technologies to drilling wastes from Alaskan coastal and offshore facilities.

Some of the technologies discussed in this part of today's notice have air emissions associated with the operation of the processes. The Agency has obtained some air emissions characterization data on these technologies, but does not have sufficient information to properly consider the non-water quality aspects of these technologies. The Agency solicits additional emissions characterization data from the operation of these technologies.

As indicated by the analytical method for oil content determinations presented in Appendix A of today's notice, the Agency's preferred method for oil content determinations for wastes containing high solids content (*i.e.*, drill cuttings, drilling fluids) is the "retort-gravimetric" method. The Agency requests that any commenters that intend to supply the Agency with performance data on drilling fluid or drill cuttings treatment technologies provide oil content determinations based upon the retort-gravimetric method presented in Appendix A below.

Appendix A—Proposed Method 1651—Oil Content and Diesel Oil in Drilling Muds and Drill Cuttings by Retort Gravimetry and GCFID

1 Scope and Application

1.1 This method is used to determine the oil content and the identity and concentration of diesel oil in drilling fluid (mud) samples. It is applicable to all mud types and may also be used to determine the oil content and diesel oil in drill cuttings.

1.2 This method may be used for compliance monitoring purposes as part of the "Effluent Limitations Guidelines and New Source Performance Standards for the Offshore Subcategory of the Oil and Gas Extraction Point Source Category".

1.3 When this method is used to analyze samples for which there is no reference diesel oil, diesel oil identification should be supported by at least one additional qualitative technique. Methods 625 and 1625 provide gas chromatograph/mass spectrometer (GC-MS) conditions appropriate for the qualitative and quantitative confirmation of the presence of the components of diesel oil (references 1–2).

1.4 The detection limit of this method is usually dependent upon the presence of other oils in the sample. Excluding interferences, estimated detection limits of 200 mg/kg of oil content and 100 mg/kg of diesel oil can be obtained.

1.5 Any modification of this method beyond those expressly permitted shall be considered as a major modification subject to application and approval of alternate test procedures under 40 CFR 136.4 and 136.5.

1.6 The gas chromatography portions of this method are restricted to use by or under the supervision of analysts experienced in the use of gas chromatograms. Each laboratory that uses this method must generate acceptable results using the procedures described in sections 8.2 and 12 of this method.

2 Summary of Method

2.1 A weighed amount of drilling mud is distilled using a retort apparatus. The distillate is extracted with methylene chloride and the extract is dried by passage through sodium sulfate. The extract is evaporated to dryness, and the total amount of oil is redissolved in methylene chloride, an internal standard is added, and an aliquot is injected into a gas chromatograph (GC). The components of the oil are separated by the GC and detected using a flame ionization detector (FID).

2.2 Identification of diesel oil (qualitative analysis) is performed by comparing the pattern of GC peaks (retention times and intensities) from the sample extract with the pattern of GC peaks from a reference diesel oil sample. Identification of diesel oil is established when the reference diesel and sample patterns agree per the criteria in this method.

2.3 Quantitative analysis of diesel oil is performed using an internal standard technique.

3 Contamination and Interferences

3.1 Solvents, reagents, glassware and other sample processing hardware may yield artifacts and/or elevated baselines causing misinterpretation of chromatograms. All material shall be demonstrated to be free from interferences under the conditions of the analysis by running method blanks initially and with set of samples. Specific selection of reagents and purification of solvents by distillation in all-glass systems may be required. Glassware and, where possible, reagents are cleaned by solvent rinse or baking at 450 degree C for one hour minimum.

3.2 There is no standard diesel oil. Oil components, as seen by GC–FID, will differ depending upon the oil source, the production date, production process, and the producer. In addition, there are three basic types of diesel oils: ASTM Designations No. 1–D, No. 2–D, and No. 4–D. The No. 2–D is most common "diesel oil"; however, No. 2–D is sometimes blended with No. 1–D which has a lower boiling range. For rigorous identification and quantification of diesel oil in a drilling fluid sample by GC–FID, the chromatographic pattern from the diesel oil should be matched with the chromatographic pattern from a reference standard of the same diesel oil suspected to be in the sample.

3.3 To aid in the identification of interferences, the chromatographic pattern from a reference sample of drilling fluid prior to use is compared to the chromatographic pattern of the drilling fluid after use. An interference is present when the pattern of the background oil does not match, but contributes substantially to, the pattern of the diesel oil in the sample.

3.4 Mineral oils are often added to drilling fluids for lubricity. These oils when examined by GC–FID, contain some components common to diesel oil but have chromatographic patterns that are distinctly different from diesel oil. The analyst must first determine if the sample chromatogram shows the presence of diesel, mineral, or a combination of both before reliable quantification can be performed. This method permits selection of GC peaks unique to diesel oil for determination of diesel oil in the presence of mineral oil.

4 Safety

4.1 The toxicity or carcinogenicity of each reagent used in this method has not been defined. Therefore, each chemical compound should be treated as a potential health hazard. From this viewpoint, exposure to these chemicals must be reduced to the lowest possible level by whatever means available. The laboratory is responsible for maintaining a current awareness file of OSHA regulations regarding the safe handling of the chemical specified in this method. A reference file of material handling data sheets should also be made available to all personnel involved in the chemical analysis. Additional references to laboratory safety are available and have been identified (references 3–5) for the information of the analyst.

4.2 Methylene chloride has been classified as a known health hazard. All steps in this method which involve exposure to this compound shall be performed in an OSHA approved fume hood.

5 Apparatus and Materials

5.1 Sample bottles for discrete sampling

5.1.1 Bottle—4 oz Boaxton round wide mouth jar with Teflon lined screw cap (Sargent Welsh S–9184–72CA, or equivalent). New bottles are used as received with no further cleaning required.

5.1.2 Bottle mailer—to fit bottles above (Sargent-Welsh 2306, or equivalent).

5.2 Distillation Apparatus

5.2.1 Retort—20 mL retort apparatus (IMCO Services Model No. R2100 or equivalent).

5.2.2 Glass wool—Pyrex (Corning 3950, or equivalent). Solvent extracted or baked at 450 degrees C for one hour minimum.

5.3 Extraction/drying apparatus

5.3.1 Separatory funnel—60 mL with Teflon stopcock

5.3.2 Drying column—400 mm x 15 to 20 mm I.d. Pyrex chromatographic column equipped with coarse glass frit or glass wool plug.

5.3.3 Glass filtering funnel—crucible holder (Corning No. 9480, or equivalent).

5.3.4 Spatulas—stainless steel or Teflon

5.4 Evaporation/concentration apparatus

5.4.1 Kuderna-Daniah (K–D) apparatus

5.4.1.1 Evaporation flask—500 mL (Kontes K–570001–0500, or equivalent), attached to concentrator tube with springs (Kontes K–662750–0012).

5.4.1.2 Concentrator tube—10 mL, graduated (Kontes K–570060–1025, or equivalent) with calibration verified. Ground glass stopper (size 19/22 joint) is used to prevent evaporation of extracts.

5.4.1.3 Snyder column—three ball macro (Kontes K–503000–0232, or equivalent).

5.4.1.4 Snyder column—two ball micro (Kontes K–469002–0219, or equivalent).

5.4.1.5 Boiling chips

5.4.1.5.1 Glass or silicon carbide—approx 10/40 mesh, extracted with methylene chloride and baked at 450 degrees C for one hr minimum.

5.4.1.5.2 Teflon (optional)—extracted with methylene chloride.

5.4.2 Water bath—heated, with concentric ring cover, capable of temperature control (+/− 2 degrees C), installed in a fume hood.

5.4.2 Sample vials—amber glass, 1 — 5 mL with Teflon-lined screw or crimp cap, to fit GC autosampler.

5.5 Balances

5.5.1 Analytical—capable of weighing 0.1 mg. Calibration must be verified with class S weights each day of use.

5.5.2 Top loading—capable of weighing 10 mg.

5.6 Gas Chromatograph (GC)—analytical system with split injection, capillary column, temperature program with initial and final isothermal holds, and all required accessories including syringes, analytical columns, gases, detector, and recorder. The analytical system shall meet the performance specifications in section 12.

5.6.1 Column—30 +/−5 m × 0.25 +/− 0.02 mm I.d., 98% methyl, 1% vinyl, 1.0 um film thickness, bonded phase fused silica capillary (Supelco SPB–1, or equivalent).

5.6.2 Detector—flame ionization. This detector has proven effective in the analyses of drilling fluids for diesel oil, and was used to develop the method performance statements in section 16. Guidelines for using alternate detectors are provided in section 11.1.

5.7 GC Data system—shall collect and record GC data, store GC runs in magnetic memory or on magnetic disk or tape, process GC data, compute peak areas, store calibration data including retention times and response factors, identify GC peaks through retention times, and compute concentrations

5.7.1 Data acquisition—GC data shall be collected continuously throughout the analysis and stored on a mass storage device.

5.7.2 Response factors and calibration curves—the data system shall be used to record and maintain lists of response factors, and multi-point calibration curves (section 7). Computations of relative standard deviation (coefficient of variation; CV) are used for testing calibration linearity. Statistics on initial (section 8.2) and on-going (section 12.5) performance shall be computed and maintained.

5.7.3 Data processing—the data system shall be used to search, locate, identify, and quantify the compounds of interest in each GC analysis. Software routines shall be employed to compute and record retention times and peak areas. Displays of chromatograms and library comparisons are required to verify results.

6 Reagents

6.1 Sodium sulfate—anhydrous, (ACS) granular.

6.2 Methylene chloride—Nanograde or equivalent.

6.3 Reagent water—water in which the compounds of interest and interfering compounds are not detected by this method.

6.4 Internal standard—dissolve 1.0 g of 1,3,5-Trichlorobenzene (Kodak No. 1801 or equivalent) in 100 mL methylene chloride. Store in glass and tightly cap with Teflon lined lid to prevent loss of solvent by evaporation. Label with the concentration and date. Mark the level of the meniscus on the bottle to detect solvent loss.

6.5 Calibration standards—calibration standards are prepared from the same diesel oil expected to be in the sample; otherwise, No. 2 diesel oil is used. Calibration standards are prepared at the concentrations shown in table 1.

6.5.1 Weigh the appropriate amount of oil into a tared 10 mL volumetric flask and dilute to volume with methylene chloride. Calibration standards are made fresh daily to avoid solvent loss by evaporation.

6.5.2 Using a micropipet or microsyringe, transfer 100 uL of each reference standard solution (Section 6.5.1) to a GC injection vial. Add 100 uL of the TCB internal standard (6.4) to each vial and mix thoroughly.

6.6 QC standard—used for tests of initial (section 8.2) and ongoing (section 12.5) performance. A reference drilling fluid known to contain 10,000–50,000 mg/kg of diesel oil is used, if available. If a reference drilling fluid is not available, a solution containing 600 mg/mL of No. 2 diesel oil in methylene chloride is used.

7 Calibration

7.1 Establish gas chromatographic operating conditions given in Table 2. Verify that the GC meets the performance criteria in section 12 and that the EDL given in section 1.4 can be achieved. The gas chromatographic system is calibrated using the internal standard technique.

7.2 Internal standard calibration procedure—1,3,5-Trichlorobenzene (TCB) has been shown to be free of interferences from the diesel oils tested in the development of this method. However, if an interference is known or suspected, the analyst must choose an alternate internal standard that is free from interferences.

7.2.1 Inject 1 uL of each reference oil standard containing the internal standard (table 1 and section 6.5.2) into the GC–FID. The TCB will elute approx. 8.5 minutes after injection. For the CG–FID used in the development of this method, the TCB internal standard peak was 30–50 percent of full scale at an attenuator setting of 8E–11 amp.

7.2.2 Individual response factors

7.2.2.1 Tabulate the peak area responses against concentration for each n-alkane peak listed in table 3 and for the internal standard. Calculate response factors (RF) for each n-alkane peak using the following equation:

Equation 1:

$$RF = \frac{(As)\ (Cis)}{(Ais)\ (Cs)}$$

where:

As=Area of the peak to be measured.

Ais=Area of the internal standard peak.

Cs=Concentration of the peak to be measured (mg/kg).

Cis=Concentration of the internal standard (mg/kg).

7.2.2.2 If the RF is constant (<10% CV) over the calibration range (table 1), the RF can be assumed to be invariant and the average RF can be used for calculations. Alternatively, the results can be used to plot a calibration curve of response ratios, As/Ais, vs RF.

7.2.2.3 Calibration verification—the average RF or a point on the calibration curve shall be verified on each working day by the measurement of one or more calibration standards. If the RF for any peak varies from the RF obtained in the calibration by more than +/− 15 percent, the test shall be repeated using a fresh calibration standard. Alternatively, a new calibration curve shall be prepared.

7.2.3 Combined response factor—to reduce the error associated with the measurement of a single n-alkane peak, a combined response factor is used for computation of the diesel oil concentration. This combined response factor is the sum of individual response factors as given in equations 2 or 3:

Equation 2:

$$RF_{combined} = \frac{[RF(1)+RF(2)\ .\ .\ .+RF(n)]\ (Cis)}{(Cs)}$$

Equation 3:

$$RF_{combined} = \frac{[As(1)+As(2)\ ^{\circ}\ ^{\circ}\ ^{\circ}+As(n)]\ (Cis)}{(Ais)\ (Cs)}$$

where:

As(1) ° ° °A(n) are the areas of the individual peaks.

8. Quality assurance/quality control.

8.1 Each laboratory that uses this method is required to operate a formal quality assurance program (reference 6). The minimum requirements of this program consist of an initial demonstration of laboratory capability, an ongoing analysis of standards and blanks as a test of continued performance, analyses of spiked samples to assess accuracy, and analysis of duplicates to assess precision. Laboratory performance is compared to established performance criteria to determine if the results of analyses meet the performance characteristics of the method.

8.1.1 The analyst shall make an initial demonstration of the ability to generate acceptable accuracy and precision with this method. This ability is established as described in section 8.2.

8.1.2 The analyst is permitted to modify this method to improve separations or lower the costs of measurements, provided all performance requirements are met. Each time a modification is made to the method, the analyst is required to achieve the EDL (section 1.4) and to repeat the procedure in section 8.2 to demonstrate method performance.

8.1.3 Analyses of blanks are required to demonstrate freedom from contamination. The procedures and criteria for analysis of a blank are described in section 8.5.

8.1.4 The laboratory shall, on an on-going basis, demonstrate through calibration verification and the analysis of the QC standard (section 6.6) that the analysis system is in control. These procedures are described in section 12.

8.1.5 The laboratory shall maintain records to define the quality of data that is generated. Development of

accuracy statements is described in sections 8.3.4 and 12.5.

8.2 Initial precision and accuracy—to establish the ability to generate acceptable precision and accuracy, the analyst shall perform the following operations:

8.2.1 Retort, extract, concentrate, and analyze four samples of the QC standard (section 6.6 and 10.1.3) according to the procedure beginning in section 10.

8.2.2 Using results of the set of four analyses, compute the average recovery (X) in mg/kg and the standard deviation of the recovery (s) in mg/kg for each sample by the internal standard method (sections 7.2 and 14.2).

8.2.3 For each compound, compare s and X with the corresponding limits for initial precision and accuracy in table 4. If s and X meet the acceptance criteria, system performance is acceptable and analysis of samples may begin. If however, s exceeds the precision limit or X falls outside the range for accuracy, system performance is unacceptable. In this event, correct the problem, and repeat the test.

8.3 Method accuracy—the laboratory shall spike a minimum of 20 percent (one sample in each set of five samples) of all drilling fluid samples. This sample shall be spiked with the diesel oil that was added to the drilling fluid. If a reference standard of diesel oil that was added to the drilling fluid is not available, No. 2 diesel oil shall be used for this spike. If doubt of the identity and concentration of diesel oil in any of the remaining 80 percent of the samples exists, that sample shall be spiked to confirm the identity and establish the diesel oil concentration.

8.3.1 The concentration of the spike in the sample shall be determined as follows:

8.3.1.1 If, as in compliance monitoring, the concentration of the oil in the sample is being checked against a regulatory concentration limit, the spike shall be at that limit or at one to five times higher than the background concentration determined in section 8.3.2, whichever concentration is larger.

8.3.1.2 If the concentration of the oil in a sample is not being checked against a limit, the spike shall be at the concentration of the QC standard (section 6.6) or at one to five times higher than the background concentration, whichever concentration is larger.

8.3.2 Analyze one sample aliquot to determine the background concentration (B) of oil content and of diesel oil. If necessary, prepare a standard solution appropriate to produce a level in the sample at the regulatory concentration limit or at one to five times the background concentration (per section 8.3.1). Spike a second sample aliquot with the standard solution and analyze it to determine the concentration after spiking (A) of each analyte. Calculate the percent recovery (P) of oil content and of diesel oil:

$P = 100\,(A - B)/T$

where T is the true value of the spike.

8.3.3 Compare the percent recovery for oil content and for diesel oil with the corresponding QC acceptance criteria in table 4. If the results of the spike fail the acceptance criteria, and the recovery of QC standard in the on-going precision and recovery test (sections 10.1.3 and 12.5) is within the acceptance criteria in table 4, an interference may be present (see sections 3 and 15 for identification of interferences). If, however, the results of both the spike and the on-going precision and recovery test fail the acceptance criteria, the analytical system is judged to be out of control and the problem must be immediately identified and corrected, and the sample reanalyzed.

8.3.4 As part of the QA program for the laboratory, method accuracy for samples shall be assessed and records shall be maintained. After the analysis of five spike samples in which the recovery passes the test in section 8.3, compute the average percent recovery (P) and the standard deviation of the percent recovery (sp). Express the accuracy assessment as a percent recovery interval from P—2sp to P + 2sp. For example, if P = 90% and sp = 10% for five analyses of diesel oil, the accuracy interval is expressed as 70—110%. Update the accuracy assessment on a regular basis (e.g. after each 5—10 new accuracy measurements).

8.4 The laboratory shall analyze duplicate samples for each drilling fluid type at a minimum of 20 percent (one sample for each five sample set). A duplicate sample shall consist of a well-mixed, representative aliquot of the sample.

8.4.1 Analyze one sample in the set in duplicate per the procedure beinning in section 10.

8.4.2 Compute the relative percent difference (RPD) between the two results per the following equation:

Equation 4:

$$RPD = \frac{(D1 - D2)}{(D1 + D2)/2} \times 100$$

where:

D1 = concentration of diesel in the sample

D2 = concentration of diesel oil in the second (duplicate) sample

8.4.3 The relative percent difference for duplicates shall meet the acceptance criteria in table 5. If the criteria are not met, the analytical system shall be judged to be out of control, and the problem must be immediately identified and corrected, and the sample set reanalyzed.

8.5 Blanks—reagent water blanks are analyzed to demonstrate freedom from contamination.

8.5.1 Extract and concentrate a reagent water blank initially and with each sample set (samples started through the analysis on the same day, to a maximum of 5 samples). Analyze the blank immediately after analysis of the QC standard (section 6.6) to demonstrate freedom from contamination.

8.5.2 If any of the components of diesel oil or any potentially interfering compound is detected in a blank, analysis of samples is halted until the source of contamination is eliminated and a blank shows no evidence of contamination.

8.6 Comparison of gravimetric and diesel oil measurements.

8.6.1 Compare the concentration of the oil content (14.1.2) determined gravimetrically with the diesel oil concentration determined by GCFID (14.2.2). If the diesel oil concentration exceeds the gravimetric oil concentration, the analysis has been performed improperly. Correct the error or repeat the sample analysis beginning with section 10.

8.7 The specifications contained in this method can be met if the apparatus used is calibrated properly, then maintained in a calibrated state. The standards used for calibration (section 6.4), calibration verification (section 7.3), and for initial (section 8.2) and on-going (section 12.5) precision and recovery should be identical, so that the most precise results will be obtained. The GC instrument will provide the most reproducible results if dedicated to the settings and conditions required for the analyses of the analyte given in this method.

8.8 Depending on specific program requirements, field replicates and field spikes of diesel oil into samples may be required to assess the precision and accuracy of the sampling and sample transporting techniques.

9 Sample Collection, Preservation, and Handling

9.2 Collect samples in glass containers following conventional sampling practices (reference 7). Drilling fluid samples are collected in wide-mouth jars.

9.2 Samples must be representative of the entire bulk drilling fluid. In some instances, composite samples may be required.

9.3 Maintain samples at 0—4 degrees C from the time of collection until extraction.

9.4 Sample and extract holding times for this method have not yet been established. However, based on tests of wastewater for the analytes determined in this method, samples shall be extracted within seven days of collection and extracts shall be analyzed within 40 days of extraction.

9.5 As a precaution against analyte and solvent loss or degradation, sample extracts are stored in glass bottles with Teflon lined caps, in the dark, at −20 to −10 degrees C.

10 Sample extraction and concentration

10.1 Retort

10.1.1 Tare the retort sample cup and cap to the nearest 0.1 gm. Transfer a well homogenized and representative portion of the drilling fluid to be tested into the sample cup. Do not fill the retort cup to the top so that excess sample must be wiped off. Place the cap on the cup and reweigh. Record the weight of the sample to the nearest 0.1 g.

Note: on agitation, most drilling fluids entrain air as small bubbles. The extent of air entrainment is uncertain and is difficult to detect when the mud is poured into the retort cup. By weighing the drilling fluid, the quantitative detection of diesel oil is improved. In addition, by using a gravimetric measurement of the amount of sample, the retort cup does not need to be completely filled. This procedure avoids the error that occurs when the cup is filled and the oil rises to the surface of the sample and must be wiped off (as occurs if the manufacturer's instructions are followed), thus resulting in a loss of oil.

10.1.2 Follow the manufacturer's instructions for retort of the drilling fluid. Substitute 6 g of loosely packed glass wool for the steel wool in the manufacturer's instructions and distill the sample into a glass receiver. The presence of solids in the distillate require that the distillation be rerun starting with a new portion of sample. Placing more glass wool in the retort expansion chamber, per the manufacturer's instructions, will help prevent the solids from being carried over in the distillation.

10.1.3 QC standard—used for tests of initial (section 8.2) and on-going (section 12.5) precision and accuracy. For the initial set of four samples (section 8.2) and for each set of samples started through the retort process on the same working day (to a maximum of five), prepare a QC sample as follows:

10.1.3.1 Place the reference drilling fluid containing 10,000—50,000 mg/kg of diesel oil (section 6.6) in the retort cup beginning in section 10.1.

10.1.3.2 Alternatively, pipet 1.00 mL of the solution containing 800 mg/mL of diesel oil in methylene chloride into a clean retort cup and weigh to the nearest mg. Record the weight of the oil to the nearest mg. Add approximately 10 mL of reagent water to the cup and place the cap on the cup.

10.1.3.3 Analyze the QC standard beginning with section 10.1.2 then proceeding to section 10.2

10.1.4 Blank—For the initial set of four samples (section 8.2) and for each set for samples started through the retort process on the same working day (to a maximum of five), prepare a blank as follows:

10.1.4.1 Place 10 mL of reagent water in a clean, tared, retort cup and weigh to the nearest mg. Record the weight of the reagent water.

10.1.4.2 Analkyze the blank beginning with section 10.1.2 then proceeding to section 10.2.

10.2 Extraction and drying

10.2.1 After the distillation is complete, pour the retort distillate into a 60 mL separatory funnel. Quantitatively rinse the inner surfaces of the retort stem and condenser with methylene chloride into the separatory funnel. Rinse the receiver with two full receiver volumes of methylene chloride and add to the separatory funnel.

10.2.2 Stopper and shake the funnel for one minute, with periodic venting to prevent a build up of gas pressure. Allow the layers to separate.

10.2.2 Prepare a glass filtering funnel by plugging the bottom with a piece of glass wool and pouring in 1—2 inches of anhydrous sodium sulfate. Wet the funnel with a small portion of methylene chloride and allow the methylene chloride to drain to a waste container. Alternatively, a drying column may be used.

10.2.3 Place the glass filtering funnel or drying column into the top of a Kuderna-Danish (K–D) flask equipped with a preweighed 10 mL receiving flask. Add a preweighed boiling chip to the receiving flask. Drain the methylene chloride (lower) layer into the glass filtering funnel or drying column, and collect the extract in the K–D flask.

10.2.4 Repeat the methylene chloride extraction twice more, rinsing the retort with two thorough washings each time and draining each methylene chloride extract through the funnel or drying column into the K–D flask.

10.3 Concentration

10.3.1 Place a Snyder column on the K–D flask. Prewet the Snyder column by adding about one mL methylene chloride to the top. Place the K–D apparatus on a hot water bath (60—65 degrees C) so that the concentrator tube is partially immersed in the hot water, and the entire lower rounded surface of the flask is bathed with hot vapor. Adjust the vertical position and the water temperature as required to complete the concentration in 15—20 minutes. At the proper rate of distillation, the balls of the column will actively chatter but the chambers will not flood with condensed solvent. Concentrate the sample until it is free of methylene chloride. Remove the K–D apparatus from the hot water bath and allow to cool.

10.3.2 Weigh and record the final weight of the receiving flask.

10.3.3 Dissolve the oil in methylene chloride and adjust the final volume to 1.0 mL. If the extract did not concentrate to a final volume of 1.0 mL or less, adjust the final volume to 10.0 mL.

11 Gas chromatography

11.1 Table 3 lists the retention times that can be achieved under the conditions in table 2 for the n-alkanes of interest. Examples of separations that can be achieved

are shown in figure 1.[1] Other retort devices, columns, chromatographic conditions, or detectors may be used if the EDL stated in this method and the requirements of section 8.2 are met.

11.2 Using a micropipet or microsyringe, transfer equal 100 µL volumes of the sample extract or QC standard extract (section 10.3.3) and the TCB internal standard solution (section 6.4) into a GC injection vial. Cap tightly and mix thoroughly.

11.3 Inject 1 µL of the sample extract or reference standard into the GC using the conditions in table 2.

11.4 Begin data collection and the temperature program at the time of injection.

11.5 If the area of any peak exceeds the calibration range of the system, make a 10-fold dilution of the extract (section 10.3.3), mix a 100 µL aliquot of this dilute extract with 100 µL of the internal standard solution (section 6.4), and reanalyze.

12 System and laboratory performance

12.1 At the beginning of each working day during which analyses are performed, GC calibration is verified. For these tests, analysis of the 300 mg/mL calibration standard (table 1) shall be used to verify all performance criteria. Adjustment and/or recalibration (per section 7) shall be performed until all performance criteria are met. Only after all performance criteria are met may the QC standard and samples be analyzed.

12.2 Retention times

12.2.1 Retention time of the internal standard—the absolute retention time of the TCB internal standard shall be within the range of 7.90–8.05 minutes.

12.2.2 Relative retention times of the n-alkanes—the retention times of the n-alkanes relative to the TCB internal standard shall be within the limits given in table 4.

12.3 Calibration verification

12.3.1 Compute the response factor for each n-alkane by the internal standard technique (section 7.2).

12.3.2 For each n-alkane, compare the response factor with the response factor from the initial calibration (section 7.2.2). If all response factors are within +/− 15 percent of their respective values in the calibration data, system calibration has been verified. If not, prepare a fresh calibration standard and repeat the test (section 12.1), or recalibrate (section 7).

12.4 Multiple GC peaks—each n-alkane shall give a single, distinct GC peak.

12.5 On-going precision and accuracy

12.5.1 Compute the oil content concentration and the concentration of diesel oil in the QC standard in each sample set (section 10.1.3) prior to analysis of any sample in the set.

12.5.2 Compare the concentration with the QC limit in table 4. If the concentrations of oil content and of diesel oil in the QC standard meet the acceptance criteria, system performance is acceptable and analysis of samples may proceed. If, however, the concentrations do not meet the acceptance criteria, system performance is unacceptable. In this event, correct the problem, reprocess the sample set (section 10), and repeat the on-going precision adn accuracy test (sections 10.1.3 and 12.5).

12.5.3 Add results that pass the specifications in section 12.5.2 to initial and previous on-going data. Update QC charts to form a graphic representation of continued laboratory performance. Develop statements of laboratory accuracy for oil content and diesel oil in drilling fluids by accuracy for oil content and diesel oil in drilling fluids by calculating the average percent recovery (R) and the standard deviation of percent recovery (sr). Express the accuracy statement as a recovery interval from R−2 sr to R+2 sr. For example, if R=95 percent and sr=5 percent, the accuracy is 85–105 percent.

13 Qualitative determination

13.1 Compare the sample chromatogram to the chromatogram of the standard. If the sample contains diesel oil, the major peaks present in the standard (n-alkanes) will also be present in the sample and have the same relative intensity and pattern (see figure 1).

13.2 Relative retention times—the major n-alkane peaks (table 3) shall be present and shall be within the limits in table 3.

13.3 Some mineral oil lubricity additives have similar chromatographic patterns to that of diesel oil. The presence of early, smaller peaks with retention times in the range of one to four minutes will differentiate between distillates containing only mineral oil and those with diesel oil.

14 Quantitative determination

14.1 Oil content by gravimetry

14.1.1 Subtract the weight of the preweighed receiving flask and boiling chip (10.2.3) from the final weight of the receiving flask (10.3.2).

14.1.2 Calculate the concentration of oil in the sample using the following equation:

Equation 7:

$$C\ (mg/kg) = \frac{Wf}{Ws} \times 100$$

where:
Wf = final weight of oil in mg (from 14.1.1)
Ws = wet weight of sample in grams (from 10.1.1)

14.2 Diesel oil by gas chromatography

14.2.1 Compute the concentration of diesel oil in the sample extract using the combined response factor given in section 7.3.3 and either of the following equations:

Equation 8:

$$Cex\ (mg/mL) = (Cis)\ \frac{[RF(1) + RF(2) \ldots + RF(n)]}{(RF\ combined)}$$

where:
Cex is the concentration of the oil in the extract

14.2.2 Calculate the concentration of diesel oil (in mg/kg) in the sample as follows:

Equation 9:

$$C\ (mg/kg) = \frac{(Cex)\ (Vex)}{(Ws)} \times 100$$

where:
Vex = final extract volume in mL (from 10.3.3 or 14.2.3)
Ws = wet weight of samle in grams (from 10.1.1)

14.2.3 If area of any peak in the chromatographic pattern exceeds the calibration range of the GC, the extract is diluted by a factor of 10 with methylene chloride, 100 µL is withdrawn and mixed with 100 µL of the internal standard solution (section 6.4) and the diluted extract is reanalyzed.

14.3 Results of analyses of drilling fluids are reported in units of mg/kg (wet weight) to three significant figures. Results for samples that have been diluted are reported at the least dilute level at which the peak areas are within the calibration range (section 14.2.3).

15 Complex samples

15.1 The most common interference in the determination of diesel oil is from mineral oil in the drilling fluid (see sections 3 and 13). Drilling fluids may also contain proprietary lubricity additives that can interfere with the identification and quantification of diesel oil.

15.2 The presence of mineral oil or other interfering oils and additives can often be determined by comparing the pattern of chromatographic peaks in the sample with the patterns of chromatographic peaks in the reference standard (sections 6.5 and 10.1.3) and in the spiked sample (section 8.3).

15.3 In cases where there is a mixture of diesel and mineral oil, the analyst may have to choose some of the smaller early or late eluting peaks present in the chromatographic pattern of the diesel oil, and not present in the chromatographic pattern of the mineral oil, to determine the diesel content. Quantification using these peaks is performed by using these peaks for calibration (section 7) and for determination of the final concentration (section 14).

15.4 In extreme cases, the method of standard additions may be required to reliably quantitate the diesel content of a sample containing interferences.

16 Method performance

16.1 This method was developed by two laboratoreis that tested for diesel oil in drilling fluids (mainly drilling muds) over a two-year period. The performance data for this method is based on the performance of the method in these two laboratories (reference 8).

16.2 The most commonly occurring drilling fluid in the tests of this method was a seawater lignosulfonate mud (EPA Generic Mud No. 8). The estimated detection limit for diesel oil in this mud is 100 µg/kg.

[1] Figure 1—Sample Chromatograms, is not published in the Federal Register but is available in the public docket. See "Addresses" section.

References

1. Brown, John S, "Organic Chemical Characterization of Diesel and Mineral Oils Used as Drilling Mud Additives", Proceedings of Tenth Annual Analytical Symposium, USEPA, Industrial Technology Division (WH-552), 401 M St, Washington DC 20460, March 19–20 1985.

2. Brown, John S, "Final Report for Research Program on: Organic Chemical Characterization of Diesel and Mineral Oils used as Drilling Mud Additives", Phase II, Contract Reference Agreement No. 501–P–5476R, to Offshore Operators Committee, Environmental Subcommittee, Houston, TX. Prepared by Battelle Ocean Science and Technology Department, 397 Washington St, Duxbury MA 02332.

3. "Carcinogens—Working With Carcinogens", Department of Health, Education, and Welfare, Public Health Service, Center for Disease Control, National Institute for Occupational Safety and Health, Publication No. 77–206, August 1977.

4. "OSHA Safety and Health Standards, General Industry", [29 CFR 1910]. Occupational Safety and Health Administration, OSHA 2206 (Revised, January 1976).

5. "Safety in Academic Chemistry Laboratories", American Chemical Society Publication, Committee Chemical Safety, 3rd Edition, 1979.

6. "Handbook of Analytical Quality Control in Water and Wastewater Laboratories", USEPA, EMSL, Cincinnati, OH 45268, EPA–600/4–79–019 (March 1979).

7. "Standard Practice for Sampling Water", ASTM Annual Book of Standards, ASTM, Philadelphia, PA 79 (1980).

8. Rushneck, D R, and Eynon B P, "Precision and Recovery Analysis of DPMP Diesel Measurements", Memorandum to Dennis Ruddy, USEPA, Industrial Technology Division (WH–552), 401 M St SW, Washington DC 20460 (23 August 1987, draft).

TABLE 1—CONCENTRATION OF CALIBRATION STANDARDS

Equivalent concentration in sample	Wt of Diesel oil in 10 mL volumetric [1] (g)	Concentration in standard
50,000 mg/kg	Use undiluted ml	
30,000 mg/kg	7.6	760 mg/mL
10,000 mg/kg	3.0	300 mg/mL
5,000 mg/kg	1.5	150 mg/mL
2,000 mg/kg	0.6	60 mg/mL

[1] Weigh oil to the nearest mg.

TABLE 2—GAS CHROMATOGRAPHIC OPERATING CONDITIONS—METHOD 1651[1]

Injection port, transfer line, and detector temperatures = 275 C
Column temperature program:
Initial temperature: 80 C
Initial time: 0 minutes
Ramp: 80 – 250 C @ 5 C per min
Final temperature: 250 C
Final hold: 10 minutes or until all peaks have eluted.
Carrier gas and flow rates:
Carrier: nitrogen or helium
Velocity: 20 – 40 cm/sec @ 80 C
Split ratio: 80:1 – 120:1
Makeup gas: as required by manufacturer
Hydrogen and air flow rates: as specified by manufacturer
Detector amplifier settings: 10–11 amp full scale. Attenuation is adjusted so that the highest peaks are on scale in the most concentrated standard.
Recorder: Chart speed of 1 – 2 cm/min (fixed).
[1] Conditions are approximate and can be adjusted to meet the performance criteria in section 12.

TABLE 3.—RETENTION TIMES AND RELATIVE RETENTION TIME LIMITS FOR MAJOR COMPONENTS OF DIESEL OIL—METHOD 1651

Compound	Retention time	
	Absolute	Relative
TCB	8.0	1.00–1.00
n-C12	9.8	1.22–1.24
n-C14	12.5	1.55–1.57
n-C16	15.1	1.88–1.90
n-C18	17.9	2.23–2.26
n-C20	20.4	2.52–2.56
n-C22	22.9	2.82–2.86
n-C24	25.2	3.12–3.15

TABLE 4—QC ACCEPTANCE CRITERIA FOR PRECISION AND RECOVERY—METHOD 1651 [1]

Analyte	Test concentration (mg/kg)	Limit for s (mg/kg)	Range for X (mg/kg)	Range for P (mg/kg)
Oil Content by grav	20,000	3,800	16,700–23,700	16,700–24,900
	[1] n	0.17n	0.83n–1.18n	0.83n–1.22n
Diesel oil by GC	20,000	3,800	17,300–20,300	13,900–21,400
	[2] n	0.19n	0.82n–1.09n	0.73n–1.14n

[1] Preliminary specifications; final specifications to be developed at a later date.
[2] For other test concentrations in the range of 1,000–50,000 mg/kg, assuming a spike to background ratio of 5:1.

Table 5—QC ACCEPTANCE CRITERIA FOR DUPLICATES—METHOD 1651

Concentration (mean) (mg/kg)	Relative (percent of) current	Difference (Diesel oil
500	36	84
750	[illegible]	66
1,000	36	54
2,000	24	34
5,000	23	32
10,000	23	16
20,000	20	16
50,000	[illegible]	16

Dated: October 3, 1988.
William A. Whittington,
Acting Assistant Administrator for Water.
[FR Doc. 88-23893 Filed 10-20-88; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF DEFENSE

48 CFR Parts 214 and 215

Department of Defense Federal Acquisition Regulation Supplement; Sealed Bidding

AGENCY: Department of Defense (DoD).
ACTION: Proposed rule and request for public comments.

SUMMARY: The Defense Acquisition Regulatory (DAR) Council is considering changes to the Defense Federal Acquisition Regulation Supplement (DFARS), Subpart 214.2 and 215.4 to delete this coverage as a result of recent recommendations to add similar coverage to the Federal Acquisition Regulation. The proposed additions to the Federal Acquisition Regulation are also published in this issue of the Federal Register.

DATE: Comments on this proposed revisions should be submitted in writing to the Executive Secretary, DAR Council, at the address shown below, on or before December 20, 1988, to be considered in the formulation of the final rule. Please cite DAR Case 88–50 in all correspondence relating to this issue.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD (P)/DARS, c/o OASD(P&L) (MRS), Room 3D139, The Pentagon, Washington, DC 20301–3062.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

The Defense Acquisition Regulatory Council has reviewed the DoD FAR Supplement and determined that the coverage at 214.270 and 215.470 is appropriate for inclusion in the Federal Acquisition Regulation.

B. Regulatory Flexibility Act

The proposed rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Pub. L. 98–577 and publication for public comment is not required. Master solicitations, in and of themselves are nothing more than a package of solicitations and clauses sent to contractors who are on bidders mailing lists and the package is referred to when an actual solicitation is issued. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected DFARS Subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 88–610D in correspondence.

C. Paperwork Reduction Act

The ruel does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501.

List of Subjects in 48 CFR Parts 214 and 215

Government procurement.

October 13, 1988.
Charles W. Lloyd,
Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, it is proposed to amend 48 CFR Parts 214 and 215 as follows:

The authority citation for 48 CFR Parts 214 and 215 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 214—SEALED BIDDING

214.270 [Removed]

2. Section 214.270 is removed.

PART 215—CONTRACTING BY NEGOTIATION

215.470 [Removed]

3. Section 215.470 is removed.

[FR Doc. 88–24411 Filed 10–20–88; 8:45 am]
BILLING CODE 3810-01-M

Notices

Federal Register
Vol. 53, No. 204
Friday, October 21, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Meetings: Rulemaking Committee

ACTION: Committee on rulemaking; notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given a meeting of the Committee on Rulemaking of the Administrative Conference of the United States. The committee has scheduled the meeting to discuss a draft committee recommendation on presidential review of federal agency rules. A copy of the draft recommendation may be obtained from Office of the Chairman at the address and telephone number given below.

DATE: Tuesday, November 8, 1988 at 2:00 p.m.

Location: Library of the Administrative Conference, 2120 L Street NW., Suite 500, Washington, DC.

Public Participation: The committee is open to the interested public, but limited to the space available. Persons wishing to attend notify the contact person at least two days prior to the meeting. The committee chairman may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

FOR FURTHER INFORMATION CONTACT: Michael W. Bowers, Office of the Chairman, Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, DC 20037. Telephone: (202) 254–7065.

Dated: October 18, 1988.
Jeffrey S. Lubbers,
Research Director.
[FR Doc. 88–24419 Filed 10–20–88; 8:45 am]
BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Food and Agricultural Sciences National Needs Graduate Fellowships Grants Program; Solicitation of Graduate Fellowships Grants Proposals

Purpose: Notice is hereby given that under the authority contained in section 1417(a)(3)(B) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3152 (a)(3)(B)), the Cooperative State Research Service (CSRS) through its Higher Education Programs (HEP) will award competitive grants to colleges and universities for doctoral fellowships to meet national needs for the development of professional and scientific expertise in the food and agricultural sciences.

Available Funds: The total amount for this purpose in Fiscal Year 1989 is approximately $2,800,000.

Targeted areas: Food and agricultural sciences areas appropriate for fellowship applications are those in which developing shortages of expertise have been determined and targeted by CSRS–HEP for national needs doctoral fellowship support. The five targeted national needs areas for FY 1989 are: Water science; biotechnology; food, forest products, or agribusiness marketing; food science or human nutrition; and engineering in agriculture production, processing, and distribution systems. Approximately twenty percent of the available funds will be allocated to each national need area.

Proposal limitations: For fiscal year 1989 program, a proposal may request funding in only one (1) national need area. A proposal may request a minimum of two (2) fellowships and a maximum of four (4) fellowships in the national need area for which funding is requested. While no limitation is placed on the number of proposals an institution may submit, not more than two (2) proposals may be submitted by the same college or equivalent administrative unit within an institution. Additionally, total funds awarded to an institution under the program in Fiscal Year 1989 shall not exceed $288,000.

Financial and other limitations: Each institution funded will receive $48,00 for each doctoral fellowship awarded. However, total program fund available are not evenly divisible by $48,000. Therefore, one fellowship will be supported on a partial basis with a lesser amount of funds. Except in the case of the partially funded fellowship, fellowship monies must be used to: (1) Support the same doctoral fellow for three (3) years at $15,000 per year; and (2) provide for an institution annual cost-of-education allowance of $1.00, not to exceed a total of $3,000 over the three year duration of the fellowship.

While proposals must document institution willingness to recruit and train at least 2–4 fellows in a National Need Area, the Department may, based on reviewers comments, fund fewer fellows than requested in a proposal.

Application information: An Application Kit has been developed which provides the forms, instructions, and other relevant information needed by institutions to apply for the Food and Agricultural Sciences National Needs Graduate Fellowships Grants Program described herein. Applicants should be alert to the instruction that proposals must be typed, double-spaced, and paginated. Additionally, applicants are cautioned to comply with the 20-page limitation for Part 3 (National Need Narrative) of the proposal and the inclusion only of *summary* faculty vitae, as specified, in Part 5 of the proposal. To obtain a copy of the Application Kit, write or call the Grants Administrative Management office (address and telephone number below):

USDA–CSRS, Office of Grants and Program Systems, Grants Administrative Management, Room 303 Aerospace Building, 901 D Street, SW., Washington, DC 20250–2200, Telephone (202) 475–5049.

Six (6) copies of a proposal and one (1) copy of the institution's latest graduate catalog must be received by the Grants Administrative Management office at the preceding address no later than the close of business February 13, 1989. The grants will be awarded and administered in accordance with the regulations set forth in Title 7, Chapter XXXIV, Part 3402, published in the "Federal Register" February 13, 1987, 52 FR 4712. Additional regulations regarding this assistance program may be found in the Department of Agriculture Uniform Federal Assistance Regulations (7 CFR Part 3015).

Supplementary information: This program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.210. For the reasons set forth in the Final Rule related notice to 7 CFR Part 2015, Subpart V, 48 FR 29115, June 25, 1983, when the authority to administer this program resided in the Agricultural Research Service, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524–0024.

Done at Washington, DC, this 13th day of October 1988.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 88–24373 Filed 10–20–88; 8:45 am]

BILLING CODE 3410–22–M

Federal Grain Inspection Service

Request for Designation Applicants To Provide Official Services in the Peoria, IL, Geographic Area

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice announces that the Peoria Grain Inspection Service, Inc. (Peoria) has withdrawn its application for designation renewal, and that its designation will terminate on October 31, 1988. The Service is again requesting applications for designation to provide official services under the U.S. Grain Standards Act, as Amended (Act) in the area serviced by Peoria. Official inspection service will be provided in this geographic area by Eastern Iowa Grain Inspection and Weighing Service, Inc., beginning November 1, 1988, on an interim basis until such time as an applicant is designated to perform official services.

DATE: Applications to be postmarked on or before November 21, 1988.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. All applications received will be made available for public inspection at this address located at 1400 Independence Avenue SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that Peoria's designation terminates on October 31, 1988, and requested applications for official agency designation to provide official services within a specified geographic area in the May 3, 1988, **Federal Register** (53 FR 15721). Applications were to be postmarked by June 6, 1988. Peoria was the only applicant for designation in its area and applied for designation renewal in the entire area currently assigned to that agency.

The Service announced the applicant name in the June 30, 1988, **Federal Register** (53 FR 24752) and requested comments on the applicant for designation. Comments were to be postmarked by August 15, 1988; none were received.

Subsequent to the request for comments, Peoria withdrew its application for designation renewal. In accordance with the Act and regulations, Peoria's designation will terminate on October 31, 1988. The Service is again requesting applications for designation to provide official services in the specified geographic area.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

The geographic area presently assigned to Peoria, in the State of Illinois, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Bounded on the North by the northern Stark County line to Marshall County; the northern Marshall County line to Putnam County; the western Putnam County line north to State Route 29; State Route 29 north to Interstate 180; Interstate 180 east to State Route 26;

Bounded on the East by State Route 26 south to State Route 116; State Route 116 south to Interstate 74; Interstate 74 southeast to State Route 121; State Route 121 south to State Route 10;

Bounded on the South by State Route 10 west to Mason County; the eastern and southern Mason County lines west to the Illinois River; the Illinois River northeast to Fulton County; the southern Fulton County line; and

Bounded on the West by the western and northern Fulton County lines to Peoria County; the western Peoria and Stark County lines.

Interested parties are hereby given opportunity to apply for official agency designation to provide the official services in the geographic area, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. Accordingly, designation in the specified geographic area is for a period not to exceed 3 years. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

Persons or firms located in this geographic area requiring official inspection service should contact Eastern Iowa Grain Inspection and Weighing Service, Inc., at (319) 322–7149 to obtain such service beginning November 1, 1988, on an interim basis until such time as an applicant is designated to perform official services.

Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Date: October 17, 1988.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 88–24371 Filed 10–20–88; 8:45 am]

BILLING CODE 3410–EN–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–814]

Initiation of Antidumping Duty Investigation: New Steel Rail, Except Light Rail, From Canada

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of new steel rail, except light rail, from Canada are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before November 10, 1988. If that determination is affirmative, we will make a preliminary determination on or before March 6, 1989.

EFFECTIVE DATE: October 21, 1988.

FOR FURTHER INFORMATION CONTACT: Loc Nguyen or Charles Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377–3530 or (202) 377–5288.

SUPPLEMENTARY INFORMATION:

The Petition

On September 26, 1988, we received a petition filed in proper form by Bethlehem Steel Corporation on behalf of the domestic industry engaged in the production of rail. In compliance with the filing requirements of 19 CFR 353.36, petitioner alleges that imports of new steel rail, except light rail, from Canada are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

If any interested party as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act wishes to register support of or opposition to this petition, please file written notification with the Commerce official cited in the "For Further Information Contact" section of this notice.

United States Price and Foreign Market Value

Petitioner calculated U.S. price using various methodologies. U.S. price was based on Department of Commerce statistics on imports of the subject merchandise, Canadian export statistics, U.S. import statistics on a monthly basis, port by port, as well as specific prices from known import transactions obtained by petitioner from customers in the United States.

Petitioner also estimated Canadian foreign market value using several methodologies. Petitioner's calculations were based on list prices from the *American Metal Market*, various issues, as well as discounted list prices, adjusted according to the Eastern and Western spot market quotations recorded in *World Steel Intelligence, Pricetrack*. Furthermore, petitioner used the cost of production in Canada, based on its own production costs, U.S. exports to Canada (using Department of Commerce statistics), and petitioner's own prices for export to Canada as bases for calculating foreign market value.

Base on a comparison of United States price and foreign market value, petitioner alleges dumping margins ranging from 39.7% to 241.8%.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on new steel rail, except light rail, from Canada and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of new steel rail, except light rail, from Canada are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by March 6, 1989.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules will be fully converted to the *Harmonized Tariff Schedule* (HTS) and all merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS item numbers(s). Until that time, however, the Department will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item number(s) and the appropriate HTS item number(s) with its product descriptions. As with the TSUSA, the HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive as to the scope of the product coverage.

We are requesting petitioners to include the appropriate HTS item number(s) as well as the TSUSA item number(s) in all petitions filed with the Department through the end of this year. A reference copy of the HTS is available for consultation in the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington DC 20230. Additionally, all U.S. Customs officers have reference copies, and petitioners may contact the Import Specialist at their local customs office to consult the schedule.

The product covered by this investigation is new steel rail, except light rail, currently provided for under TSUSA item numbers 610.2010, 610.2025, 610.2100, 688.4280 and currently classificable under HTS item numbers 7302.10.1030, 7302.10.1040, 7302.10.3000, and 8548.00.0000.

Steel rail, whether of carbon, high carbon, alloy or other quality steel, includes, but is not limited to, standard rails, all main line sections (over 60 pounds per yard), heat-treated or head-hardened (premium) rails, transit rails, contact rail (or "third rail") and crane rails. Rails are used by the railroad industry, by rapid transit lines, by subways, in mines and in industrial applications.

Specifically excluded from this investigation are light rails which are 60 pounds or less per yard. Also excluded are relay rails which are used rails taken up from a primary railroad track and relaid in a railroad yard or on a secondary track.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by November 10, 1988, whether there is a reasonable indication that imports of new steel rail, except light rail, from Canada materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, it will proceed

according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

Jan W. Mares,

Assistant Secretary for Import Administration.

October 17, 1988.

[FR Doc. 88-24421 Filed 10-20-88; 8:45 am]

BILLING CODE 3510-DS-M

[C-122-605]

Initiation of Countervailing Duty Investigation: New Steel Rail, Except Light Rail, From Canada

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Canada of new steel rail, except light rail (steel rails), as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this action, so that it may determine whether imports from Canada materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, we will make our preliminary determination on or before December 20, 1988.

EFFECTIVE DATE: October 21, 1988.

FOR FURTHER INFORMATION CONTACT: Roy Malmrose or Barbara Tillman, Office of Countervailing Duty Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-2815 and (202) 377-2438.

SUPPLEMENTARY INFORMATION:

The Petition

On September 26, 1988, we received a petition in proper form from Bethlehem Steel Corporation, filed on behalf of the U.S. industry producing steel rails. In addition to the petitioner, the only remaining producer of steel rails in the United States is CF&I Steel Corporation. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters of steel rails in Canada receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act).

Since Canada is a "country under the Agreement" within the meaning of section 701(b) of the Act, Title VII of the Act applies to this investigation, and the ITC is required to determine whether imports of the subject merchandise from Canada materially injure, or threaten material injury to, the U.S. industry.

Petitioner has alleged that it has standing to file the petition. Specifically, petitioner has alleged that it is an interested party as defined under section 771(9)(C) of the Act and that it has filed the petition on behalf of the U.S. industry manufacturing the products that are subject to this investigation. If any interested party as described under paragraphs (C), (D), (E) or (F) of section 771(9) of the Act wishes to register support of or opposition to this petition, please file written notification with the Commerce official cited in the "For Further Information Contact" section of this notice.

Initiation of Investigation

Under section 702(c) of the Act, we must make the determination on whether to intiate a countervailing duty proceeding within 20 days after a petition is filed. Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition, on behalf of an industry, that (1) alleges the elements necessary for the imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to the petitioner supporting the allegations. We have examined the petition on steel rails from Canada and have found that for most of the programs alleged the petition meets these requirements. Therefore, we are initiating a countervailing duty investigation to determine whether Canadian manufacturers, producers, or exporters of steel rails, as described in the "Scope of Investigation" section of this notice, receive subsidies. However, we are not initiating an investigation for certain programs because the petition failed to allege the elements necessary for the imposition of a duty or in some instances failed to provide the necessary supporting information. If our investigation proceeds normally, we will make our preliminary determination on or before December 20, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules will be fully converted to this Harmonized Tariff Schedule (HTS) and all merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS item number(s). Until that time, however, the Department will be providing both the appropriate Tariff Schedules of the United States Annotated (TSUSA) item number(s) and the appropriate HTS item number(s) with its product descriptions. As with the TSUSA, the HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive as to the scope of the product coverage.

We are requesting petitioners to include the appropriate HTS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department through the end of this year. A reference copy of the HTS schedule is available for consultation in the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs Offices have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The product covered by this investigation is new steel rail, except light rail, currently provided for under TSUSA item numbers 610.2010, 601.2025, 610.2100, 688.4280 and currently classifiable under HTS item numbers 7302.10.1020, 7302.10.1040, 7302.10.5000, and 8548.00.0000.

Steel rail, whether of carbon, high carbon, alloy or other quality steel, includes but is not limited to, standard rails, all main line sections (over 60 pounds per yard), heat-treated or head-hardened (premium) rails, transit rails, contact rail (or "third rail") and crane rails. Rails are used by the railroad industry, by rapdi transit lines, by subways, in mines and in industrial applications.

Specifically excluded from this investigation are light rails which are 60 pounds or less per yard. Also excluded are relay rails which are used rails taken up from a primary railroad track and relaid in a railroad yard or on a secondary track.

Allegations of Bounties or Grants

Petitioner lists a number of practices by the Government of Canada, and the provincial governments of Ontario and Nova Scotia which allegedly confer subsidies on manufacturers, producers, or exporters of steel rails in Canada. We are initiating an investigation of the following programs:

A. Federal Programs

1. Income Tax Exemption for Sysco.
2. Certain Investment Tax Credits.
3. Regional Development Incentive Program and Industrial and Regional Development Program.
4. Loans Under the Enterprise Development Program.
5. Defense Industry Productivity Program.
6. Promotional Projects Program.
7. Program for Export Market Development.
8. Federal Expansion and Development/Northern Ontario.

B. Joint Federal-Provincial Programs

1. Equity Infusions, Grants, Loans and Loan Guarantees Provided to Sysco.
2. Iron Ore Freight Subsidy to Algoma.
3. Mineral Development Agreement Benefits to Algoma.
4. General Development Agreements.
5. Economic and Regional Development Agreements.

C. Provincial Programs

1. Ontario Development Corporation Export Support Loans, Other Loans and Loan Guarantees.
2. Provision of Subsidized Electricity by Ontario Hydro to Algoma Steel.

Although not specifically alleged by petitioner, we are also investigating whether the manufacturers, producers or exporters of steel rails in Canada receive countervailable benefits under the following programs:

1. Community-Based Industrial Adjustment Program Grants.
2. Export Credit Financing.

We are not initiating an investigation of the programs listed below. Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition, on behalf of an industry, that (1) alleges the elements necessary for the imposition of a duty under section 701(a), and (2) is accompanied by information reasoanbly available to the petitioner supporting the allegations. All the programs listed below were alleged to confer domestic subsidies. The elements which must be alleged for a domestic subsidy program are: (1) Specificity, (i.e., the program is limited to a specific enterprise or industry or group of enterprises or industries, and (2) provision of a benefit (i.e., a subsidy paid or bestowed directly or indirectly on the manufacturer, producer, or exporter of any class or kind of merchandise). For upstream subsidies, the initiation threshold is higher. Under section 701(e) of the Act, the Department must have reasonable grounds to believe or suspect that an upstream subsidy, as defined in section 771A of the Act, is being paid or bestowed upon the merchandise under investigation. For the programs listed below, the requirements of section 702(b) or 701(e) of the Act were not fulfilled in the petition.

1. Provision of Subsidized Electric Energy by Hydro-Quebec

Petitioner alleges that an upstream subsidy is conferred upon Algoma in the form of low-cost electric energy. Specifically, petitioner alleges that Hydro-Quebec, a provincially-owned power company, is being subsidized and that the subsidy passes through Algoma's supplier of electricity, Ontario Hydro, to Algoma.

The provisions of section 771A(a) of the Act define an upstream subsidy as:

> Any subsidy described in section 771(5)(B)(i), (ii), (iii), or (iv) by the government of a country that—
>
> (1) Is paid or bestowed by that government with respect to a product (hereinafter referred to as an "input product") that is used in the manufacture or production in that country of merchandise which is the subject of a countervailing duty proceeding;
>
> (2) In the judgment of the administering authority bestows a competitive benefit on the merchandise; and
>
> (3) Has a significant effect on the cost of manufacturing or producing the merchandise.

Petitioner maintains that Hydro-Quebec is primarily subsidized by reason of a contract it has for the purchase of electricity from the provincial power authority in Newfoundland. Assuming *arguendo* that electricity is an input as defined by the Act, petitioner has not provided any evidence which indicates that the contract between Hydro-Quebec and the Newfoundland power authority was not an arms-length contract made in the ordinary course of business. On the contrary, the information submitted tends to show that although the provisions of the contract may now favor Hydro-Quebec, at the time the contract was negotiated it was considered a mutually beneficial contract negotiated and agreed to at arms-length. Thus, petitioner's primary allegation regarding the subsidization of the input appears unsubstantiated.

Moreover, with respect to the competitive benefit to Algoma of the subsidized input, the petitioner alleges it can be measured by the incentive rates provided to large volume users by Ontario Hydro. We are initiating an investigation on the alleged provision of subsidized electricity by Ontario Hydro. Consequently, the alleged subsidy provided by this program will be examined separately. Petitioner has not alleged or demonstrated any competitive benefit separate from the incentive rate structure.

Finally, we note that the Department has previously determined that the government of one political jurisdiction cannot subsidize production in another political jurisdiction [*See Initiation of Countervailing Duty Investigation of Carbon Steel Wire Rod From Saudi Arabia*, (50 FR 28231, 28232, July 11, 1985).] Although this determination was based on the language in section 303 of the Act, which defines a "bounty or grant," section 771(5) of the Act states that the term "bounty or grant" has the same meaning as the term "subsidy".

Based on the foregoing, we are not initiating on this upstream subsidy allegation because the petitioner has not provided reasonable grounds for the Department to believe or suspect that an upstream subsidy has in fact been paid or bestowed upon the production of steel rails in Canada.

2. *Income Tax Exemption for Government-Owned Companies other than Sysco*

Petitioner alleges that the tax exemption for Crown Corporations is "an important benefit in connection with the provision of subsidized electricity or coal to Canadian steel companies, because the Canadian provincial power companies are state-owned Crown Corporations". This statement raises the issue of whether an upstream subsidy is being provided to the producers of steel rail in Canada. However, petitioner has not made an upstream allegation regarding this program. Therefore, we are not initiating an investigation on the tax-exempt status of state-owned provincial power companies.

With respect to the Cape Breton Development Corporation (Devco), a supplier of coal to Sysco, we note that despite its status as a Crown Corporation, the supporting information provided by the petitioner states that Devco is not tax-exempt. Therefore, we are not initiating an investigation of the alleged tax-exempt status of Devco.

3. Special Tax Subsidy to Algoma

Petitioner alleges that a tax ruling with respect to a joint venture between Algoma Steel and its parent company, Canadian Pacific Railroad, was exceptional and not usually available under Canadian tax laws and constitutes *prima facie* preferential treatment countervailable under section 701 of the Act. Information in the petition indicates that the tax ruling

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permitted the financing of a seamless tube mill. Petitioner alleges that, although earmarked for the tube mill, the money generated from the tax ruling in fact benefitted all of Algoma's investment programs, and in particular, permitted the modernization of its rail facilities.

Petitioner, however, has not alleged how this tax ruling confers a domestic subsidy. A specific allegation that this benefit is limited to a specific enterprise or industry or group of enterprises or industries was not made. Furthermore, petitioner has not provided any information to indicate that the tax ruling was mandated by the government rather than a neutral interpretation of Canadian tax law. Therefore, we have no basis on which to initiate an investigation on this program.

4. Other Investment Tax Credits

Petitioner alleges that a variety of investment tax credits provide a benefit to producers or exporters of steel rails in Canada. We are not initiating an investigation on the following types of investment tax credits.

• Tax credits for investment in "qualified property"—we are initiating an investigation on the tax credits given for investments in "qualified property" made in certain regions of Canada. Petitioner also argues, however, that we must make a determination of whether the basic tax credit rate of seven percent for investments in "qualified property" is limited to specific industries on a *de facto* basis. We have previously determined that the seven percent credit is not countervailable because it is not limited to a specific enterprise or industry or group of enterprises or industries. [*See Final Affirmative Countervailing Duty Determination: Certain Fresh Atlantic Groundfish from Canada* (51 FR 10041, March 24, 1986) (*Groundfish*) and *Final Affirmative Countervailing Duty Determination: Oil Country Tubular Goods from Canada* (51 FR 15037, April 22, 1986) (OCTG).] Absent the provision of new evidence, or an allegation of changed circumstances, we have no basis upon which to re-initiate an investigation of this type of investment tax credit.

• Tax credits for research and development expenses—In *OCTG*, we determined that investment tax credits of 10 percent of research and development expenses (20 percent for small businesses) were not countervailable because they are not limited to a specific enterprise or industry or group of enterprises or industries. Absent the provision of new evidence, or an allegation of changed circumstances, we have no basis upon which to re-initiate an investigation of this type of investment tax credit.

5. Enterprise Development Program: Loan Guarantees and Grants

Availability of loan guarantees and grants through the Enterprise Development Program was investigated in *Groundfish*. We determined that the provision of loan guarantees and grants under this program was not limited to a specific enterprise or industry or group of enterprises or industries. Absent the provision of new evidence, or an allegation of changed circumstances, we have no basis upon which to re-initiate an investigation of the provision of loan guarantees and grants under this program.

6. Indirect Government Intervention

Petitioner alleges that, in 1982/1983, the federal and Nova Scotia governments agreed to share the cost of stockpiling rails produced by Sysco until the time they were needed by the purchaser, Canadian National Railroad (CNR), which is a Crown Corporation. However, petitioner has not made an allegation that this alleged benefit is limited to a specific enterprise or industry or group of enterprises or industries.

Petitioner also alleges that a recent agreement between Sysco and CNR, whereby CNR agreed to purchase 60 percent of its needs from Sysco, constitutes a countervailable subsidy benefiting a specific company. However, petitioner has not provided any evidence to indicate that this was a government provided or mandated benefit. Nothing in the petition indicates that this contract was not strictly commercial in nature and was not made at arms-length in the normal course of business.

7. Government Assistance to Algoma's Reduction in Force Program

Petitioner alleges that the government has assisted Algoma in directing laid-off workers towards retraining, relocation, alternate employment and other available programs and that this constitutes an assumption of cost by the government. However, petitioner has not provided any evidence that the government has assumed a pre-existing or contractual obligation of the company. Therefore, the elements of an assumption of cost subsidy do not appear to be present.

8. Cape Breton Development Corporation (Devco)

Petitioner alleges that Devco, a Crown Corporation sells subsidized coal to Sysco. Petitioner alleges that the sale of subsidized coal to Sysco constitutes, either the provision of a good at a preferential rate, an assumption of cost by the federal government or an upstream subsidy. Petitioner provides evidence which indicates that Devco has incurred operating losses, and that it sells coal at below its cost. However, petitioner has not made any allegation that the subsidy is limited to a specific enterprise or industry or group of enterprises or industries. Furthermore, a sufficient upstream allegation has not been made by the petitioner in accordance with section 771A of the Act.

9. Other Mineral Development Agreements

As discussed above, the purpose of these agreements is to provide geoscience data, mining and mineral processing technology, and market and economic studies to the mining sector. This raises the issue of whether an upstream subsidy is being provided to producers or exporters of steel rail in Canada. However, a sufficient upstream allegation in this regard has not been made by the petitioner in accordance with section 771A of the Act. Petitioner also alleges that benefits under MDAs constitute an assumption of cost by the governments involved and the provision of goods at preferential rates. However, petitioner has not provided any evidence that the government assumed a pre-existing or contractual obligation, or that the government is providing goods or services to some industries at a lower price than to others. Therefore, we are not initiating an investigation of the MDAs except with respect to assistance under the MDAs provided to Algoma.

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action, and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information in our files, provided it confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by November 10, 1988, whether there is a reasonable indication that imports of steel rails from Canada materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, this investigation will continue according to the statutory procedures. This notice is published pursuant to section 702(c)(2) of the Act.

Jan W. Mares,

Assistant Secretary for Import Administration.

October 17, 1988.

[FR Doc. 88-24420 Filed 10-20-88; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1988; Additions and Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to and deletion from Procurement List.

SUMMARY: This action adds to and deletes from Procurement List 1988 commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: November 21, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On July 15, August 5, Augst 19, and August 26, 1988, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (53 FR 26847, 29511, 31735 and 32642) of proposed additions to and deletion from Procurement List 1988, December 10, 1987 (52 FR 46926).

Additions

After consideration of the relevant matter presented, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the services procured by the Government.

Accordingly, the following commodities and services are hereby added to Procurement List 1988:

Commodities

Folder, File,
7530-00-990-8884, (Requirements for Chicago, Illinois Supply Distribution Facility only).

Cloth, Wiping,
7930-00-NSH-0003 (w/o Lanyard),
7930-00-NSH-0004 (w/Lanyard),
(Requirements for Charleston Naval Supply Center, Charleston, South Caroline only).

Services

Commissary Shelf Stocking and Custodial Service,
Langley Air Force Base, Virginia.

Commissary Warehouse Service,
Langley Air Force Base, Virginia.

Deletion

After consideration of the relevant matter presented, the Committee has determined that the service listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6. Accordingly, the following service is hereby deleted from Procurement List 1988:

Commissary Shelf Stocking and Custodial Service,
Columbus Air Force Base, Mississippi.

Beverly L. Milkman,

Executive Director.

[FR Doc. 88-24406 Filed 10-20-88; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1988; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1988 a commodity to be produced and a service to be provided by workshops for the blind and other severely handicapped.

DATE: Comments must be received on or before November 21, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodity and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodity and service to Procurement List 1988, December 10, 1987 (52 FR 46925):

Commodity

Bag, Cargo,
1670-01-025S746.

Service

Janitorial/Custodial,
FAA Facility, Williamsport Lycoming Airport, Montoursville, Pennsylvania.

Beverly L. Milkman,

Executive Director.

[FR Doc. 88-24407 Filed 10-20-88; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the Paperwork Reduction Act (44 U.S.C. Chapter 35).

SUMMARY: The previous notice published in Vol. 53, No. 163 dated Tuesday, August 23, 1988, is withdrawn.

Title, Applicable Form, and Applicable OMB Control Number: DoD FAR Supplement, Part 27, Patents, Data and Copyrights; No Form; and OMB Control Number 0704-0250.

Type of Request: Emergency Submission.

Average Burden Hours/Minutes Per Response: 79 hours and 28 minutes

Frequency of Response: Monthly.

Number of Respondents: 16,560.

Annual Burden Hours: 2,307,240.

Annual Responses: 16,560.

Need and Uses: This request concerns information collection and recordkeeping requirements related to technical data, software copyrights, patents, and contracts.

Affected Public: Businesses or other for-profit.

BEST COPY AVAILABLE

Respondent's Obligation: Mandatory.
OMB Desk Officer: Ms. Eyvette R. Flynn.

Written comments and recommendations on the proposed information collection should be sent to Ms. Eyvette R. Flynn at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
October 18, 1988.

[FR Doc. 88-24443 Filed 10-20-88; 8:45 am]
BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Verification of Professional Educator Employment for Salary Rating Purposes; DD Form 802 and OMB Control Number 0704-0330.

Type of Request: Reinstatement.
Average Burden Hours/Minutes Per Response: 5 minutes.
Frequency of Response: On Occasion.
Number of Respondents: 11,000.
Annual Burden Hours: 917.
Annual Responses: 11,000.
Needs and Uses: Information collected is used to verify an applicant's previous experience which is used to establish rate of pay.
Affected Public: Individuals or households.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Dr. J. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
October 18, 1988.

[FR Doc. 88-24444 Filed 10-20-88; 8:45 am]
BILLING CODE 3810-01-M

Office of the Secretary of Defense

Meetings; DIA Advisory Board

AGENCY: Defense Intelligence Agency Advisory Board, DOD.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92-463, as amended by section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of a panel of the DIA Advisory Board (formerly DIA Scientific Advisory Committee) has been changed as follows: The October 20, 1988 meeting previously published at 53 FR 37334, Sept. 25, 1988 has been rescheduled to the date listed below.

DATE: October 27, 1988, 8:30 a.m. to 3:30 p.m.

ADDRESS: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John E. Hatlelid, USAF, Executive Secretary, DIA Advisory Board, Washington, DC 20340-1328 (202/373-4930).

SUPPLEMENTARY INFORMATION: The entire meeting will be devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on HUMINT/Scientific and Technical Intelligence Interface.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
October 18, 1988.

[FR Doc. 88-24370 Filed 10-20-88; 8:45 am]
BILLING CODE 3810-01-M

Meetings: DIA Advisory Board

AGENCY: Defense Intelligence Agency Advisory Board, DOD.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to provisions of subsection (d) of section 10 of Pub. L. 92-463, as amended by section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of a panel of the DIA Advisory Board (formerly DIA Scientific Advisory Committee) has been changed as follows: The October 17, 1988 meeting previously published at 53 FR 36878, Sept. 22, 1988 has been rescheduled to the date listed below.

DATE: November 15, 1988 (8:30 a.m. to 5:00 p.m.)

ADDRESS: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John E. Hatlelid, USAF, Executive Secretary, DIA Advisory Board, Washington, DC 20340-1328 (202/373-4930).

SUPPLEMENTARY INFORMATION: The entire meeting will be devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on tactical intelligence information handling systems.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
October 18, 1988.

[FR Doc. 88-24379 Filed 10-20-88; 8:45 am]
BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before November 21, 1988.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: October 18, 1988.

Carlos U. Rice,
Director for Office of Information Resources Management.

Office of Educational Research and Improvement

Type of Review: Revision.
Title: Common Core of Data (CCD), 1988-89.
Frequency: Annually.
Affected Public: State or Local Governments.
Reporting Burden:
Responses: 57
Burden Hours: 4,592.5
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0
Abstract: These surveys provide information about student enrollment, graduates, teachers, and related finances and are used in the allocation of Federal funds under Chapter 1, Education Consolidation and Improvement Act, as amended. Data are also provided to the general public as requested.

Office of Elementary and Secondary Education

Type of Review: Reinstatement.
Title: Application for grants under Indian Fellowship Program (New and Continuation) Financial Report.
Frequency: Annually.
Affected Public: Higher Education Institutions.
Reporting Burden:
Responses: 1,070
Burden Hours: 1,733
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0
Abstract: This application will be used by institutions of higher education to determine eligibility for funds under the Indian Fellowship Program. The Department will use the information to make grant awards.

Office of Planning, Budget and Evaluation, Planning and Evaluation Service

Type of Review: New.
Title: Survey of School Dropout Demonstration Assistance Programs.
Frequency: One time per grantee.
Affected Public: State or Local Governments.
Reporting Burden:
Responses: 90
Burden Hours: 135
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0
Astracts: This survey will be completed by Federally-funded agencies under the School Dropout Demonstration Assistance Act of 1988. The Department will use the information collected to assess the accomplishments of program goals and objectives and to aid in effective program management.

Office of Postsecondary Education

Type of Review: Revision.
Title: Application-Program Announcement for the Minority Science Improvement Program.
Frequency: Annually.
Affected Public: Businesses or other for-profit; Non-profit institutions.
Reporting Burden:
Responses: 150
Burden Hours: 6,300
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0
Abstract: These forms are used by minority institutions, eligible nonprofit science oriented organizations, professional scientific societies, and colleges and universities to apply for funding under the Higher Education Amendments Act of 1986, as amended. The Department uses the information to conduct a competitive evaluation process and to make grant awards.

[FR Doc. 88-24442 Filed 10-20-88; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement; Atomic Energy

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Australia concerning Peaceful Uses of Nuclear Energy, and the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/EU(AU)-6, for the transfer of 0.016 grams of plutonium-239 contained in Synroc samples from Australia to Karlsruhe, the Federal Republic of Germany for analysis.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than November 7, 1988.

For the Department of Energy.

Date: October 18, 1988.

David E. Wells,
Assistant Secretary of Energy International Affairs and Energy Emergencies.

[FR Doc. 88-24445 Filed 10-20-88; 8:45 am]
BILLING CODE 6450-01-M

Proposed Subsequent Arrangement; Atomic Energy

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community

[EURATOM] concerning Peaceful Uses of Atomic Energy, as amended and the Agreement for Cooperation between the Government of the United States of America and the Government of the Republic of Indonesia concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves the retransfer of 33.000 grams of U308-powder enriched to 19.95 percent of the isotope uranium-235 from the Federal Republic to the JANUS–30 type MPR research reactor, Serpong, Java/Indonesia. Retransfer document RTD/IE (EU)–5 has been assigned to this retransfer.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than November 7, 1988.

For the Department of Energy.

Date: October 14, 1988.

David B. Waller,

Assistant Secretary of Energy, International Affairs and Energy Emergencies.

[FR Doc. 88-24446 Filed 10-20-88; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangement; Atomic Energy

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves the approval for the shipment of 40 kilograms of spent fuel from the HFR reactor in the Netherlands for storage and reprocessing at the Department of Energy facilities. The return of highly enriched uranium (HEU) is consistent with U.S. nonproliferation policy in that it serves to reduce the amount of HEU abroad.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than November 7, 1988.

For the Department of Energy.

Date: October 14, 1988.

David B. Waller,

Assistant Secretary of Energy, International Affairs and Energy Emergencies.

[FR Doc. 88-24447 Filed 10-20-88; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangement; Atomic Energy

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the International Atomic Energy Agency (IAEA) concerning Peaceful Application of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves the supply of 1.07 grams of plutonium for use as standard reference material at the Nuclear Research Institute, Central Control Laboratory, Prague, Czechoslovakia. Contract Number S–IAEA–150 has been assigned to this transactions.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than November 7, 1988.

For the Department of Energy.

Date: October 18, 1988.

David B. Waller,

Assistant Secretary of Energy, International Affairs and Energy Emergencies.

[FR Doc. 88-24448 Filed 10-20-88; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

High Energy Physics Advisory Panel; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: High Energy Physics Advisory Panel (HEPAP).

Date and Time: Monday, November 14, 1988, 8:30 am–6:00 pm. Tuesday, November 15, 1988, 8:30 am–4:00 pm.

Place: National Science Foundation, 1800 G Street, NW., Room 540, Washington, DC 20550.

Contact: Dr. Enloe T. Ritter, Executive Secretary, High Energy Physics Advisory Panel, U.S. Department of Energy, ER–221, GTN, Washington, DC 20545, Telephone: (301) 353–4529.

Purpose of Panel: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda:

Monday, November 14, 1988

—Discussion of Budgets and Programs for National Science Foundation Elementary Particle Physics.
—Discussion of Budgets and Programs for Department of Energy, High Energy Physics.
—Status Reports from High Energy Physics Laboratories and Superconducting Super Collider.
—Discussion of High Energy Physics Detectors.
—Discussions of Special Topics in High Energy Physics.
—Discussion by HEPAP of Foregoing Items.
—Public Comment.

Tuesday, November 15, 1988

—Further Discussion of Foregoing Items and Presentation of Information Reports as Needed.
—Report on the Meeting of the Joint Coordinating Committee for United States/Peoples Republic of China Cooperation in High Energy Physics.
—Discussion on Transmittal of the Report of the Subpanel on High Energy Gamma Ray and Neutrino Astronomy.
—Public Comment.

Public Participation: The meeting is open to the public. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact the Executive Secretary at the address of telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Minutes: Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on October 17, 1988.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 88-24449 Filed 10-20-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP88-437-000]

J-W Operating Co.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

October 6, 1988.

On September 23, 1988, J-W Operating Company (Applicant), of 15808 Wright Brothers Dr., Addison, Texas 75224 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Selma, California. The facility will consist of three gas-fired engine generators. The electric power production capacity will be 693 kilowatts. The primary energy source will be biomass in the form of landfill gas. Construction of the facility is expected to begin in October 1988.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24387 Filed 10-20-88; 8:45 am]

BILLING CODE 6717-01-M

Application Filed With the Commission

October 14, 1988.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

a. Type of Application: Amendment to Transfer of License.

b. Project No.: 2725–018.

c. Date filed: October 13, 1988.

d. Applicant: Georgia Power Company, Oglethorpe Power Corporation, and Piedmont-Forrest Corporation.

e. Name of Project: Rocky Mountain Project.

f. Location: On Heath Creek in Big Texas Valley, in Floyd County, Georgia.

g. Filed Pursuant to: Section 9 of the Federal Power Act 16 U.S.C. 791(a) 825(r).

h. Applicant Contact: For Georgia Power (GP) and Piedmont-Forrest Corporation (PFC).

William H. Watson, General Manager, Fossil and Hydro Projects, Georgia Power Company, 333 Piedmont Avenue NE., Atlanta, GA 30308

John R. Molen, Esq., Troutman, Sanders, Lockerman & Ashmore, 127 Peachtree Street NE., Atlanta, GA 30043

For Oglethorpe Power (OP): Tom D. Kilgore, Senior Vice President, Power Supply Division, Oglethorpe Power Corporation, 2100 East Exchange Place, P.O. Box 1349, Tucker, GA 30085–1349.

i. FERC Contact: Ed Lee (202) 376–5766.

j. Comment Date: October 28, 1988.

k. Description of Application: On January 21, 1977, a license was issued to GP for the 760-MW Rocky Mountain Project No. 2725. On January 28, 1988, an order Approving Transfer of License and Extension of Competion date was issued to GP and OP. As joint applicants, GP, PFC, and OP, request that the Commission approve the application for amendment to the transfer of license by modifying its order of January 28, 1988, witht he addition of PFC as a transferee and transferor of the license for the Rocky Mountain Project. GP and OP assert that the substance of this arrangement will be the same as that contemplated in its original transfer application. The only difference will be that PFC will become a transitory licensee.

l. This notice also consists of the following standard paragraphs: B and C.

Standard Paragraphs

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATIONS," "PROTEST" or "MOTION TO INTERVENE," as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to: the Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 204–RB, at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the applicant specified in the particular application.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24450 Filed 10-20-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-868-000 et al.]

K N Energy, Inc., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. K N Energy, Inc.

[Docket No. CP88-868-000]

October 7, 1988.

Take notice that on September 28, 1988, K N Energy, Inc. (K N) filed in Docket No. CP88-868-000 a request pursuant to sections 7(b) and 7(c) of the Natural Gas Act and Part 157 of the Commission's Regulations thereunder for a certificate of public convenience and necessity authorizing K N to

(a) Replace, relocate and abandon certain facilities as follows:

(i) Replace 30.8 miles of pipeline between Cozad and Elm Creek, Nebraska with smaller pipe;

(ii) Replace 6.8 miles of pipeline near Sargent, Nebraska with smaller pipe;

(iii) Replace 2.0 miles of pipeline near North Loup, Nebraska with smaller pipe;

(iv) Abandon 37.3 miles of pipeline in the Lightning Creek Field in eastern Wyoming;

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(v) Abandon two compressor units and relocated facilities from the Lightning Creek Field; and

(vi) Relocate one compressor unit from the Pelco, Kansas Compressor Station to the Big Springs, Nebraska Compressor Station.

(b) Make a one-time accounting balance with respect to imbalances accrued under two Wyoming field exchanges known as the "Fremont County Exchange" and the "Madden Field Exchange" between K N and Williston Basin Interstate Pipeline Company (hereinafter referred to as Williston) [1]

All as more fully set forth in the Application on file with the Commission and open to public inspection.

Comment date: October 28, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. Natural Gas Pipeline Company

[Docket No. CP89-4-000]

October 14, 1988.

Take notice that on October 3, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89-4-000 a request pursuant to the notice procedure in § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport, on an interruptible basis, up to a maximum of 80,000 MMBtu (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS) for Anadarko Trading Company (Anadarko), a marketeer of natural gas, under Natural's blanket certificate issued in Docket No. CP86-582 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural states that, pursuant to an interruptible transportation agreement dated June 27, 1988, as amended September 7, 1988, it proposes to transport, on an interruptible basis, up to a maximum of 80,000 MMBtu of natural gas per day on behalf of Anadarko. It is stated that the gas would be transported from points of receipt located in Louisiana, offshore Louisiana, New Mexico, Oklahoma, Texas, offshore Texas, Kansas, Iowa, and Illinois to points of delivery located in Illinois, Missouri, Texas, offshore Texas, Louisiana, and offshore Louisiana. Peak day and average day transportation volumes are expected to be 80,000 MMBtu and 50,000 MMBtu, respectively. Based on the estimate for the average day transportation volume, the annual transportation volume is expected to be 18,250,000 MMBtu. Finally, Natural advises that the transportation service commenced on August 1, 1988, under § 284.223(a) as reported in Docket No. ST89-18-000.

Comment date: November 28, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. Natural Gas Pipeline Company of America

[Docket No. CP89-17-000]

October 14, 1988

Take notice that on October 6, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89-17-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of V.H.C. Gas Systems, L.P. (V.H.C.), a marketer of natural gas, under Natural's blanket certificate issued in Docket No. CP86-582-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural proposes to transport on an interruptible basis up to 200,000 MMBtu of natural gas per day for V.H.C. on a peak day plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS, 50,000 MMBtu on an average day and 18,250,000 MMBtu on an annual basis for V.H.C. It is stated that Natural would receive the gas at specified receipt points in Louisiana, Texas, Illinois, Oklahoma, New Mexico, Kansas, Colorado, Iowa, Arkansas and Nebraska, and would deliver equivalent volumes of gas at specified delivery points in Texas and New Mexico. It is asserted that the transportation service would be effected using existing facilities and would not require any construction of additional facilities. It is explained that the service commenced August 1, 1988, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-94.

Comment date: November 28, 1988, in accordance with Standard Paragraph G at the end of this notice.

Natural Gas Pipeline Company of America

[Docket No. CP89-13-000]

October 14, 1988.

Take notice that on October 5, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89-13-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Amoco Production Company (Amoco), a producer of natural gas, under Natural's blanket certificate issued in Docket No. CP86-582-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural proposes to transport on an interruptible basis up to 400,000 MMBtu of natural gas per day for Amoco on a peak day plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS, 60,000 MMBtu on an average day and 21,900,000 MMBtu on an annual basis for Amoco. It is stated that Natural would receive the gas at specified receipt points in Louisiana, offshore Louisiana, Texas, offshore Texas, Illinois, Oklahoma, New Mexico, Kansas, Arkansas, Nebraska, Wyoming, Missouri and Montana and would deliver equivalent volumes of gas at specified delivery points in Illinois, Iowa and Kansas. It is asserted that the transportation service would be effected using existing facilities and would not require any construction of additional facilities. It is explained that the service commenced August 1, 1988, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-95.

Comment date: November 28, 1988, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 24385 Filed 10-20-88; 8:45am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-828-000 et al.]

Questar Pipeline Company et al.; Natural Gas Certificate Filings

October 18, 1988.

Take notice that the following filings have been made with the Commission:

1. Questar Pipeline Company

[Docket No. CP88-828-000]

Take notice that on September 23, 1988, Questar Pipeline Company (Questar), 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP88-828-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon part of the maximum daily volume (MDV) applicable to transportation service provided to Mountain Fuel Supply Company (MFS), all as more fully set forth in the application which is an file with the Commission and open to public inspection.

Questar indicates that MFS has requested a reduction in its MDV under Rate Schedule X-33 from 160 MMcf per day to 110 MMcf per day because of MFS's decline in the deliverability of natural gas due to current and projected market conditions and requirements.

Comment date: November 8, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. Panhandle Eastern Pipe Line Company

[Docket No. CP89-26-000]

Take notice that on October 7, 1988, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-26-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for EnTrade Corporation (EnTrade), an end-user of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Panhandle proposes to transport up to 50,000 dt of natural gas per day, on an interruptible basis, on behalf of EnTrade pursuant to a transportation agreement dated August 2, 1988, between Panhandle and EnTrade. It is stated that the transportation agreement provides for Panhandle to receive gas from various existing points of receipt on its system in Texas, Oklahoma, Kansas, Colorado, Wyoming, and Illinois. It is further stated that Panhandle would then transport and redeliver subject gas, less fuel and unaccounted for line loss to Natural Gas Pipeline Company of America (NGPL) in Clark County, Kansas.

Panhandle states that the estimated daily and estimated annual quantities would be 15,000 dt and 5,475,000 dt, respectively. Service under § 284.223(a) commenced on August 3, 1988, as reported in Docket No. ST88-5643, it is stated. The transportation service, as described herein, is proposed to commence immediately upon expiration of the 120-day automatic authorization period. Pursuant to the transportation agreement, service would continue in effect until terminated by either party upon 30-days prior written notice, which would be the expiration of the contractual term for the purpose of § 284.221(d), it is stated. Panhandle states that no new facilities nor expansion of existing facilities are required to provide the service requested hereunder.

Comment date: December 2, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP89-873-000]

Take notice that on September 29, 1988, Northern Natural Gas Company, Division of Enron Corp., (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP88-873-000, an application pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of Arco Oil & Gas Company (Arco), a producer of natural gas, under Northern's blanket certificate issued in Docket No. CP86-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes the interruptible transportation of up to 100 billion Btu equivalent of natural gas per day for Arco pursuant to Rate Schedule IT-1. Northern indicates that it would transport the gas between various specified receipt and delivery points. Northern indicates that service under § 284.223(a) has commenced as filed in Docket No. ST88-4131.

Comment date: December 2, 1988, in accordance with Standard Paragraph G at the end of this notice.

4. CNG Transmission Corporation

[Docket No. CP89-5-000]

Take notice that on October 3, 1988, CNG Transmission Corporation (Transmission) 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP89-5-000 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing a new interruptible sales service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transmission proposes a new interruptible sales service under Rate Schedule USA to on-system and off-system buyers. Specifically, Transmission requests blanket authorization with pregranted abandonment to make interruptible sales to any local distribution company,

[1] See Williston Basin Interstate Pipeline Company, Docket No. CP87-222-000, filed on March 19, 1987.

interstate pipeline, intrastate pipeline, or Hinshaw pipeline. Transmission also requests blanket authorization, with pregranted abandonment, to use its facilities to effectuate the direct delivery of gas under this rate schedule to end-users and marketers. Transmission states that Rate Schedule USA would be used to market system supply gas that it has determined to be in excess of its needs.

Transmission requests authorization to charge Rate Schedule USA customers a rate ranging between a minimum of Transmission's weighted average cost of gas, on a unit of purchase basis for the month in which gas is delivered, plus fuel, variable costs of delivering gas, ACA and GRI charges, where applicable, and a maximum of Transmission's 100 percent load factor RQ rate.

Transmission proposes to retain all non-gas revenues generated by sales under this rate schedule and to flow the gas cost revenues through Account No. 191. Transmission states it would discount its rate as necessary to meet competition, but would not discriminate between transportation and sales customers in the discount of the non-gas rate being offered.

Comment date: November 8, 1988, in accordance with Standard Paragraph F at the end of his notice.

5. Transcontinental Gas Pipe Line Corporation

[Docket No. CP88-609-000]

Take notice that on October 3, 1988, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP88-609-000 an application pursuant to the Order issued September 16, 1988 in *Northeast U.S. Pipeline Projects*, Docket No. CP87-451-000, *et al.*, for authorization, pursuant to Section 7(c) of the Natural Gas Act, to transport up to the dekatherm equivalent of 170,000 Mcf per day on long term, firm basis for the Associated PennEast Customer Group (APEC). Transco further seeks authorization to construct, install, and operate certain pipeline loop and compression facilities on its Leidy Line and in the market area of its system, all as more fully set forth in the application on file with the Commission and open for public inspection.

Transco states that it seeks authorization for seasonal firm transportation service for the APEC customers in order to effectuate the delivery of winter season volumes purchased from CNG Transmission Corporation or other suppliers. The APEC customer group consists of Public Service Electric & Gas Company, Brooklyn Union Gas Company, Long Island Lighting Company, New Jersey Natural Gas Company, Elizabeth Gas Company, and South Jersey Gas Company.

To provide additional capacity to render the proposed winter season transportation service, Transco states that it would construct 3.81 miles of 20-inch diameter pipeline loop, 5.15 miles of 30 inch diameter pipeline loop, 17.47 miles of 36-inch diameter compression, 12,900 HP of additional compression, a 30,000 Mcf/d MAR Station and a 170,000 Mcf/d MAR Station expansion. Transco states that the proposed facilities, which were initially proposed in Docket No. CP88-177-000, would cost approximately $44.9 million. Transco proposes that these costs would be financed initially through short-term loans and funds on hand, with permanent financing proposed to be arranged as part of Transco's overall long-term financing program.

Transco states that it has derived an initial monthly demand rate of $6.28 per dekatherm of contract demand and a commodity rate of $.0023, which would be based upon the proposed incremental cost of service in the first full year of operation of the proposed facilities. The methodology used to design the proposed rates is more fully set forth in the application.

Comment date: November 8, 1988, in accordance with Standard Paragraph F at the end of this notice.

6. Southern Natural Gas Company

[Docket No. CP88-605-000]

Take notice that on September 30, 1988, Southern Natural Gas Company (Southern) P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP88-605-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on an interruptible basis for Sonat Marketing Company (SMC) under Southern's blanket certificate issued in Docket No. CP88-316-000 under section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern states it would perform the proposed transportation service for SMC, a marketer, under Southern's Rate Schedule IT. Southern proposes to transport 30 billion Btu equivalent of natural gas on a peak day; 10 billion Btu equivalent on an average day; and 3,650 billion Btu equivalent on an annual basis for SMC. Southern proposes to receive the gas at various receipt points in Texas, Louisiana, offshore Louisiana and Mississippi for delivery to an end user in Georgia.

Southern states that it commenced transportation of natural gas for SMC on July 28, 1988, as reported in Docket No. ST88-5219 pursuant to § 284.223(a) of the Commission's Regulations.

Comment date: December 2, 1988, in accordance with Standard Paragraph G at the end of this notice.

7. Washington Natural Gas Company

[Docket No. CP88-633-000]

Take notice that on September 29, 1988, Washington Natural Gas Company, as project operator of the Jackson Prairie Storage Project (Applicant), 815 Mercer Street, Seattle, Washington 98109, filed in Docket No. CP88-633-000, an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities to increase the firm daily delivery capability and seasonal storage capacity of the Jackson Prairie Storage Project located in Lewis County, Washington, and for authority to operate the storage project at expanded levels of service, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant states that the Jackson Prairie Storage Project is an aquifer type storage facility which provides the storage capacity under existing authorizations to enable Northwest Pipeline Corporation (Northwest) to provide a winter season peaking service for its customers under Rate Schedule SGS-1 in its FERC Gas Tariff, First Revised Volume No. 1. Applicant further states that the Storage Project is connected to Northwest's mainline in Lewis County, Washington. Applicant receives gas from Northwest at the interconnection, transports the gas through the project facilities, stores the gas in the Project, withdraws the gas on instruction from Northwest, transports the gas and returns it to Northwest at the interconnection.

It is further stated that the Storage Project is also utilized by Northwest for load balancing and for storage system supply. Under a pending application in Docket No. CP86-661-000, the project will be utilized to enable Northwest to provide a new storage service under its proposed Rate Schedule SGS-2 in connection with Northwest's open access transportation services as authorized in the blanket certificate of public convenience and necessity issued in Docket No. CP86-578-000.

Applicant further states that the Storage Project is owned in joint and equal interests by the Applicant, Washington Water Power Company and Northwest. It is said that, pursuant to agreement among the owners, Applicant acts as project operator, and that the Storage Project is operated pursuant to a Gas Storage Project Agreement on file with the Commission as Applicant's Rate Schedule S-1 in its FERC Gas Tariff, Original Volume No. 1.

Applicant states that, under existing authorizations and the requested authorization pending in Docket No. CP87-516-000,[1] the Storage Project can be operated at the following levels of storage service:

Seasonal working gas: 12,800,000 Mcf
Cushion gas—Zone 2: 19,300,000 Mcf
Cushion gas—Zone 9: 2,000,000 Mcf
Total Storage gas: 34,400,000 Mcf
Firm daily delivery rate: 375,000 Mcf
Daily "best efforts" gas: 71,800 Mcf

In its application in this proceeding, Applicant proposes to expand the capability of the Storage Project for storage gas and service to the following levels:

Seasonal working gas: 15,100,000 Mcf
Cushion gas—Zone 2: 16,800,000 Mcf
Cushion gas—Zone 9: 2,000,000 Mcf
Total storage gas: 34,400,000 Mcf
Firm daily delivery rate: 450,000 Mcf
Daily "best efforts" rate: 71,800 Mcf

Applicant further states that the expanded capability of the Storage Project will cost approximately $3,200,000 to recomplete six existing wells, to add two dehydration towers and two cooling towers with associated piping, to loop the 9,000-foot mainline with a 20-inch pipeline and to rebuild the meter station at the interconnection between the Project's mainline and Northwest's pipeline. It is stated that the construction costs will be financed by the Project owners.

Applicant states that the new meter station that will be required in connection with the expanded capabilities of the Storage Project will be constructed, owned and operated by Northwest and Northwest will file a concurrent application to construct and operate the meter station and for authority to render increased Rate Schedule SGS-1 and Rate Schedule SGS-2 storage services for customers contracting for such services.

Comment date: November 8, 1988, in accordance with Standard Paragraph F at the end of this notice.

[1] Authorization is pending in Docket No. CP87-516-000 to increase the firm daily delivery rate from 375,000 Mcf to 375,000. The increase does not require any additional facilities and is available because of a reevaluation of the capability of the Project with existing facilities.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the commet date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214), a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,
Secretary.

FR Doc. 88-24440 Filed 10-20-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. G-4151-002 et al.]

ARCO Oil & Gas Co., Division of Atlantic Richfield Company, et al.; Applications for Certificates, Abandonment of Service and Amendment of Certificates [1]

October 17, 1988.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce, to abandon service or to amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before October 31, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,
Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Description
G-4559-002, D, Sept. 22, 1988	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, TX 75221.	Tennessee Gas Pipeline Company, San Salvador Field, Hidalgo County, Texas.	(1)
G-5786-003, D, Sept. 12, 1988	Conoco Inc., P.O. Box 2197, Houston, TX 77252.	El Paso Natural Gas Company, Jalmat-Langlie-Mattix Field, Lea County, New Mexico.	(2)
G-5786-004, D, Sept. 19, 1988	Conoco Inc.	do	(3)
G-5786-005, D, Sept. 19, 1988	do	do	(3)
G-6342-015, D, Sept. 12, 1988	do	El Paso Natural Gas Company Monument Area, Lea County, New Mexico.	(3)
G-6342-016, D, Sept. 13, 1988	do	do	(3)
G-6342-017, D, Sept. 15, 1988	do	do	(3)
G-6884-001, D, Sept. 19, 1988	Anadarko Petroleum Corporation, P.O. Box 1330, Houston, TX 77251-1330.	Panhandle Eastern Pipe Line Company, Sec. 19-33S-40W, Morton County, Kansas.	(4)
G-14125-25A, CI85-140-001, D, Sept. 20, 1988.	Conoco Inc.	Tennessee Gas Pipeline Company, West Delta Block 84, Offshore Louisiana.	(5)
G-16134-003, D, Sept. 28, 1988	Sun Exploration and Production Company, P.O. Box 2880, Dallas, TX 75221-2880.	Natural Gas Pipeline Company of America, Carrick Field, Texas County, Oklahoma.	(6)
G-20178-001, D, Sept. 19, 1988	Anadarko Petroleum Corporation	Colorado Interstate Gas Company, Sec. 25-34S-41W, Morton County, Kansas.	(7)
CI81-604-001, D, Sept. 19, 1988	do	Panhandle Eastern Pipe Line Company, Sec. 9, 16, 17, 21, T34S-R40W, Morton County, Kansas.	(7)
CI81-1618-001, D, Sept. 19, 1988	do	Panhandle Eastern Pipe Line Company, Morton County, Kansas.	(7)
CI84-1432-000, D, Sept. 14, 1988	Texaco Oil Company, P.O. Box 2511, Houston, TX 77252.	Ringwood Gathering Company, Ringwood Field, Major County, Oklahoma.	(8)
CI88-991-000, D, Sept. 26, 1988	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	Natural Gas Pipeline Company of America, Lockridge and Worsham Bayer Fields, Ward and Reeves Counties, Texas.	(9)
CI71-714-005, D, Sept. 19, 1988	APX Corporation, P.O. Box 1330, Houston, TX 77251-1330.	Panhandle Eastern Pipe Line Company, Morton County, Kansas.	(10)
CI72-407-001, D, Sept. 19, 1988	Anadarko Petroleum Corporation	Panhandle Eastern Pipe Line Company, Sec. 30-34S-39W, Morton County, Kansas.	(7)
CI75-229-002, D, Sept. 19, 1988	do	Panhandle Eastern Pipe Line Company, Sec. 8-33S-40W, Morton County, Kansas.	(7)
CI84-294-001, D, Sept. 19, 1988	Mesa Operating Limited Partnership, P.O. Box 2009, Amarillo, TX 79189-2009.	Colorado Interstate Gas Company, Laverne Field, Beaver County, Oklahoma.	(11)
CI85-450-000 (G-13175), D, Sept. 14, 1988.	Sohio Petroleum Company, P.O. Box 4587, Houston, TX 77210.	Southern Natural Gas Company, St. Martin and Iberville Parishes, Louisiana.	(12)
CI85-551-000,AS, (G-1677), C, Sept. 12, 1988.	Sohio-Petroleum Company	Natural Gas Pipeline Company of America, Beaver County, Oklahoma.	(13)
CI85-626-000, E, Sept. 16, 1988	Conoco Inc.	Florida Gas Transmission Company, Vermilion Blocks 21 and 22, Offshore Louisiana.	(14)
CI85-627-000 (G-2321), D, Sept. 19, 1988.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	Tennessee Gas Pipeline Company, Edinburgh Field Unit, Hidalgo County, Texas.	(15)
CI85-628-000 (CI67-1758), D, Sept. 20, 1988.	Texaco Oil Company	El Paso Natural Gas Company, Red Hills Field, Lea County, New Mexico.	(16)
CI85-629-000 (CI77-854), D, Sept. 20, 1988.	do	Transwestern Pipeline Company, South Empire Deep Field, Eddy County, New Mexico.	(17)
CI85-630-000 (CI80-134), D, Sept. 20, 1988.	Texaco Oil Company, operator for G. L. M. Oil and Gas Company.	El Paso Natural Gas Company, Santa Rosa Field, Pecos County, Texas.	(17)
CI85-631-000 (CI77-353), D, Sept. 20, 1988.	Texaco Oil Company	Transwestern Pipeline Company, South Empire Deep Field, Eddy County, New Mexico.	(17)
CI85-632-000 (CI81-349), D, Sept. 21, 1988.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	Lone Star Gas Company, a Division of ENSERCH Corporation, East Durant Field, Bryan County, Oklahoma.	(18)
CI85-634-000 (CI78-1278), D, Sept. 22, 1988.	do	Pioneer Gas Products Company, Godfrey #1-22, Bryan County, Oklahoma.	(19)
CI85-635-000 (CI84-1191), B, Sept. 22, 1988.	Texaco Oil Company	El Paso Natural Gas Company, Roberts and Sonora Fields, Sutton County, Texas.	(20)
CI88-636-000, F, Sept. 23, 1988	Sun Exploration and Production Company	El Paso Natural Gas Company, Jalmat Field, Lea County, New Mexico.	(21)
CI88-637-000, F, Sept. 26, 1988	Mobil Producing Texas & New Mexico Inc., Nine Greenway Plaza, Suite 3700, Houston, TX 77046.	Transcontinental Gas Pipe Line Corporation, La Gloria Field, Brooks County, Texas.	(22)
CI88-638-000, F, Sept. 26, 1988	Amoco Production Company, 1670 Broadway, Room 1754, Denver, CO 80202.	Northwest Pipeline Corporation, Basin Dakota Field, San Juan County, New Mexico.	(23)
CI88-639-000, F, Sept. 26, 1988	Amoco Production Company	Northern Natural Gas Company, Division of Enron Corp., Mocane Laverne Gas Area & Cassidy NE Field, Ellis County, Oklahoma.	(24)
CI88-642-000 (CI76-511), B, Sept. 23, 1988.	Northern Michigan Exploration Company, P.O. Box 1159, Jackson, MI 49204.	United Gas Pipe Line Company, West Deer Island Field, Terrebonne Parish, Louisiana.	(25)
CI88-643-000 (CI76-925), B, Sept. 23, 1988.	Northern Michigan Exploration Company	United Gas Pipe Line Company, West Deer Island Field, Terrebonne Parish, Louisiana.	(26)
CI88-646-000, F, Sept. 27, 1988	Texaco Oil Company	ANR Pipeline Company, Laverne Field, Beaver County, Oklahoma.	(27)
CI89-1-000, A, Oct. 3, 1988	Union Exploration Partners, Ltd., P.O. Box 7600, Los Angeles, CA 90051.	Natural Gas Pipeline Company of America, Block 43, Vermilion Area, Offshore Louisiana.	(28)

(1) Effective February 15, 1988, and March 1, 1988, Applicant assigned certain interests to Vernon E. Faulkner, Inc.
(2) By assignment executed August 15, 1988, and effective August 1, 1988, Applicant assigned certain acreage to Lewis B. Burleson, small producer certificate holder in Docket No. CS89-36.
(3) Effective August 1, 1988, Applicant assigned certain interests to Earl R. Bruno.
(4) Effective August 1, 1988, Applicant assigned certain acreage subject to Applicant's FERC Gas Rate Schedule No. 85 to Earl R. Bruno.

(5) Certain leases reverted to the lessor and the acreage was subsequently leased to new producer-owner(s).
(6) Effective September 8, 1988, Applicant assigned certain acreage subject to Applicant's FERC Gas Rate Schedule No. 503 to S. Parish Oil Company.
(7) Effective August 1, 1988, Applicant assigned certain interests to Alan R. Staab.
(8) By respective assignments dated April 17, 1986, March 30, 1987, and May 2, 1988, Applicant assigned its interests in certain acreage to Beck Pump and Supply, Vanguard Oil & Gas Inc. and Maple Properties Corporation. Effective May 15, 1981, the Bierig #2 well was plugged and abandoned.
(9) By assignment executed February 27, 1987, and effective January 1, 1987, Applicant assigned certain acreage to Hondo Oil & Gas Company, small producer certificate holder in Docket No. CS87-79-000.
(10) Certain leases reverted and the acreage was subsequently leased to new producer-owner(s). Applicant states that certain wells are subject to the Order No. 451 good faith negotiation process and abandonment authorization for those wells was effective August 12, 1987, pursuant to Order No. 451.
(11) By letter agreement dated February 2, 1987, Applicant assigned its interest in certain acreage in Laverne Field, Beaver County, Oklahoma, to Prentice, Napier & Green, Inc.
(12) By assignment executed August 17, 1988, and effective August 1, 1988, Applicant assigned certain acreage to LGS Exploration, Inc., small producer certificate holder in Docket No. CS79-617.
(13) By assignment executed October 24, 1988, Applicant assigned certain acreage to Sher-Alan Oil Company. By letter dated May 1, 1988, Natural advised Sohio that the contract was being terminated and that Natural was abandoning purchases pursuant to Order No. 490. Sohio states that the contract has expired on its own terms.
(14) Effective January 1, 1988, Applicant acquired certain interests from Shell Offshore Inc. (SOI) previously covered under SOI's Rate Schedule Nos. 38 and 78 and certain interests which SOI acquired from West Timbers Limited Partnership, *et al.*, which acquired their interests from Crown Central Petroleum Corporation.
(15) Effective January 31, 1987, Applicant assigned certain interests to Mobil Producing Texas & New Mexico Inc.
(16) Effective January 1, 1987, Applicant assigned certain interests to Petrus Oil Company, L.P.
(17) Effective December 1, 1987, Applicant assigned certain interests to Prudential-Bache Energy Income Partnership IIIP-12, *et al.*
(18) Effective February 14, 1984, Applicant assigned certain interests to Energy Methods Corporation.
(19) Effective January 1, 1987, Applicant assigned certain interests to Hondo Oil & Gas Company.
(20) Effective December 1, 1987, Applicant assigned certain interests to Prudential-Bache Energy Income Production Partnership IIIP-12, *et al.* The remaining leases expired or were released.
(21) Effective September 1, 1987, Applicant acquired certain interests from Cities Service Oil and Gas Corporation.
(22) Effective August 1, 1987, Applicant acquired certain interests from Conoco Inc.
(23) Effective October 1, 1987, Applicant acquired certain interests from Bata Development Co.
(24) Effective January 1, 1987, Applicant acquired certain interests from Atlantic Richfield Company.
(25) Effective June 1, 1988, Applicant assigned its interest in the leases included in the CL&F #21-1 Unit (the only producing unit and well subject to the December 31, 1975, contract) to LLOG Exploration Company.
(26) Effective June 1, 1988, Applicant assigned its interest in the leases included in the CL&F #21-1 Unit (the only producing unit and well subject to the December 11, 1957, contract) to LLOG Exploration Company.
(27) Effective February 1, 1988, Applicant acquired certain interests from ONEOK Exploration Company.
(28) Applicant seeks authorization to initiate sales under a contract dated September 1, 1988.
Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 88-24386 Filed 10-20-88; 8:45 am]
BILLING CODE 6717-01-M

[Project Nos. 2404 & 2419]

Alpena Power Co.; Intent To File an Application for a New License

October 18, 1988.

Take notice that on August 19, 1988, Alpena Power Company, the existing licensee for the Thunder Bay River Basin Project No. 2404 and the Hillman Project No. 2419, filed a notice of intent to file an application for a new consolidated license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The licenses for both projects expire on December 31, 1993.

The projects are both located on the Thunder Bay River in Alpena and Montmorency Counties, Michigan. The principal works of Project No. 2404 include five dams and reservoirs; three powerhouses with a combined installed capacity of 6,850 kW; and appurtenant facilities. The principal works of Project No. 2419 include a single dam and reservoir; a powerhouse with an installed capacity of 250 kW; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 310 North Second Avenue, Alpena, Michigan 49707.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for these projects, separate or consolidated, must be filed by December 30, 1991.

Lois D. Cashell,
Secretary.

[FR Doc. 88-24433 Filed 10-20-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP88-127-000]

Carnegie Natural Gas Co.; Revised Compliance Filing

October 18, 1988.

Take notice that Carnegie Natural Gas Company ("Carnegie"), on October 11, 1988, tendered for filing proposed changes in its FERC Gas Tariff, Volume No. 1. Specifically, Carnegie filed the following tariff sheets.

Substitute Second Revised Sheet No. 91
Substitute First Revised Sheet No. 92e

Carnegie states that these tariff sheets which contain portions of its purchased gas cost adjustment ("PGA") clause, are being filed to correct tariff sheets submitted with a filing dated July 14, 1988. That filing was submitted in compliance with a Letter Order issued June 14, 1988. The Letter Order indicated that certain enumerated changes in Carnegie's April 29, 1988, tariff filing in this Docket No. RP88-127-000 were necessary to bring that filing into compliance with Order Nos. 483 and 483-A.

Carnegie states that copies of the filing were served upon parties to this Docket No. RP88-127-000, and upon Carnegie's jurisdictional customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 25, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 88-24434 Filed 10-20-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TM88-1-26-000]

Equitrans, Inc.; Proposed Changes in FERC Gas Tariff

October 13, 1988.

Take notice that Equitrans, Inc. on October 11, 1988 tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, six copies of each of the following tariff sheets:

Original Volume No. 1

Fourth Revised Sheet No. 10
Fourth Revised Sheet No. 14
First Revised Sheet No. 23

Original Volume No. 3

First Revised Sheet No. 4
First Revised Sheet No. 8

Equitrans states that pursuant to Order No. 472, the Commission authorized pipeline companies to track and pass-through to its customers its annual charges under an Annual Charge Adjustment (ACA) clause. The 1988 ACA unit surcharge approved by the Commission is $0.0018 Mcf. Equitrans has converted this Mcf rate to a dekatherm rate of $0.0061 per Dth.

Equitrans asks that these revised sheets be made effective October 1, 1988. Equitrans respectfully requests that the Commission accept the above-mentioned tariff sheets and grant any waiver of the regulations as may be necessary to permit such accepted tariff sheets to become effective as proposed.

Copies of the filing were served on all authorized purchasers of natural gas and services from Equitrans and interested state commissions. Copies have also been mailed to all current Rate Schedule PLS, CS-1, ST3-1, ITS, and FTS customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. all such motions or protests should be filed on or before October 25, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 88-24435 Filed 10-20-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP88-3-000]

Lawrenceburg Gas, Transmission Corporation; Tariff Filing

October 13, 1988.

Take notice that on October 13, 1988, Lawrenceburg Gas Transmission Corporation ("LGT") tendered for filing the following revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1:

Fourth Revised Sheet No. 20A
Fourth Revised Sheet No. 20B

LGT states that this filing is made to reflect the allocation and one-time lump sum billings of Texas Gas Transmission Corporation's fixed take-or-pay charges to LGT's downstream customers. This filing is consistent with the Commission's proposed Interim Rule and Statement of Policy pursuant to Order No. 500 issued August 7, 1987, which allows "downstream pipelines * * * to allocate the fixed take-or-pay charges of upstream pipelines on the same basis as that upon which they are incurred, namely, cumulative purchase deficiencies." LGT's wholesale customers have agreed to one-time lump sum billings of such allocated amounts as a prelude to LGT's abandonment of operations effective November 2, 1988 pursuant to authority granted by Commission Order issued September 28, 1988 in Docket No. CP88-308-000. LGT reserves the right to revise the filing as necessary to reflect any modifications made by the Commission, or as required by any appellate court. The proposed effective date of the tariff sheets listed above is October 17, 1988.

Copies of this filing were served upon LGT's affected jurisdictional sales customers and interested state commissions.

Any person desiring to be heard or to protest said filing, should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 2.11 and 2.14 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. All motions or protests should be filed on or before October 25, 1988.

Lois D. Cashell,
Secretary.

[FR Doc. 88-24436 Filed 10-20-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP85-206-34 f]

Northern Natural Gas Co., Division of Enron Corp; Proposed Changes in FERC Gas Tariff

October 14, 1988.

Take Notice that on Oct. 11, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), tendered for filing to become a part of Northern Natural Gas Company's (Northern) F.E.R.C. Gas Tariff, Third Revised Volume No. 1.

Thirty-Sixth Revised Sheet No. 57
Thirtieth Revised Sheet No. 60
Seventeenth Revised Sheet No. 66
Fifteenth Revised Sheet No. 87
Eighteenth Revised Sheet No. 98
Seventh Revised Sheet No. 125

Northern states these sheets contain changes to the List of Purchasers and Directory of Communities Served to correspond to the revised Service Agreements filed by Northern on this date. Service Agreements were filed for Iowa Electric Light and Power Company to convert CD-1 firm entitlement to FT-1 firm entitlement effective October 15, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC, 20426, in accordance with the Commission's Rules of Practice & Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 25, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 88-24437 Filed 10-20-88; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 2239]

Tomahawk Power & Pulp Co.; Intent To File an Application for a New License

October 11, 1988.

Take notice that on August 8, 1988, Tomahawk Power and Pulp Company, the existing licensee for the Kings Dam Hydroelectric Project No. 2239, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2239 was issued July 1, 1959, and expires July 31, 1993.

The project is located on the Wisconsin River in Lincoln County, Wisconsin. The principal works of the Kings Dam Project include a concrete dam and spillway with earth dikes on either side of the dam; a reservoir of 1,400 acres; a powerhouse with an installed capacity of 2,611 kW; a connection to a Wisconsin Public Service Corporation substation; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street NE, Washington, DC 20426. The above information as described in the rule is now available from the licensee at N10099 Kings Road, Tomahawk, WI 54487.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by July 30, 1991.

Lois D. Cashell,
Secretary.

[FR Doc. 88-24438 Filed 10-21-88; 8:45 am]
BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3465-8]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and is available to the public for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Carla Levesque at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Asbestos School Hazard Abatement Act, Grant and Loan Program Application Form. (EPA ICR #1233).

Abstract: ASHAA requires EPA to provide assistance to schools for asbestos abatement projects. Applications must contain information describing the nature of the asbestos problem and information describing the financial resources of the school district. The appropriation requires that EPA solicit applications no later than January 1, 1989, and that awards be made by May 15, 1989.

Burden Statement: Public reporting burden for this collection of information is estimated to average 31 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Respondents: Local Education Agencies.
Estimated No. of Respondents: 1,000.
Frequency of collection: Annually.
Total Estimated Annual Burden: 33,000.
Period of review: 30 days.

Send comments regarding this collection of information, to:

Carla Levesque, Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street SW., Washington, DC 20460

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 728 Jackson Place NW., Washington, DC 20503, (Telephone (202) 395-3084).

Date: October 13, 1988.

Paul Lapsley,
Director, Information and Regulatory Systems Division.

[FR Doc. 88-24397 Filed 10-20-88; 8:45 am]
BILLING CODE 6560-50-M

[ER-FRL-3466-2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared October 3, 1988 through October 7, 1988 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5074. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the Federal Register dated April 22, 1988 (53 FR 13318).

Draft EISs

ERP No. D-FHW-C40122-NY, Rating E02, NY-290 Relocation, Butternut Interchange (I-481/I-690) to Manlius Center, Funding and 404 Permit, Towns of DeWitt and Manlius, Onondaga County, NY. **SUMMARY:** EPA has environmental objections to the proposed project because of the selection of alternatives with significant adverse impacts to wetlands and floodplains, and the possibility for secondary impacts in these areas. Accordingly, EPA has requested additional information to assess the alternatives analysis and the impacts resulting from the project.

ERP No. D-FHW-D40236-PA, Rating EC2, Airport Parkway-Southern Expressway Construction, US 22/30 and PA-60 Interchange to PA-60/Beaver Valley Expressway, Funding, Allegheny County, PA. **SUMMARY:** EPA is concerned about potential impacts to wetlands and water quality resulting from the proposed project. Clarification of some of the figures, as well as several points regarding level of service, air quality and terrestrial habitat, is also needed in the final EIS.

ERP No. D-UMT-K54017-CA, Rating LO, Munt Metro System Turnaround Project, Facilities Construction, Embarcadero, Clay Street to Brannon, Funding, City and County of San Francisco, CA. **SUMMARY:** EPA

expressed a lack of objections but asked to be kept apprised if any hazardous substances are discovered in the project area and of any remedial actions that are taken.

Final EISs

ERP No. F-AFS-K61011-CA, Shasta and Trinity Units, Revised Operation and Development Plan, Whiskeytown-Shasta-Trinity National Recreation Area, Implementation, Shasta and Trinity National Forests, Shasta and Trinity Counties, CA. SUMMARY: EPA's review of this document was not deemed necessary. No formal comments were sent to the agency.

ERP No. F-[illegible]-A00224-00, 1988 Central and Western Planning Areas Gulf of Mexico Outer Continental Shelf (OCS) Oil and Gas Sales No. 118 and 122, Lease Offerings offshore the coast of Alabama, Mississippi, Louisiana and Texas. SUMMARY: EPA has significant objections with this document as it does not commit to (1) inclusion of protective environmental stipulations and (2) a comprehensive ozone (03) modeling effort.

EPA No. F-NOA-A91054-00, Atlantic, Gulf and Caribbean Exclusive Economic Zones (EEZ) Billfish Fishery Management Plan, White and Blue Marlin, Sailfish, and the Longbill Spearfish, Implementation. SUMMARY: EPA's review of the final EIS has been completed and the project found to be satisfactory.

ERP No. F-USA-F11013-MN, Camp Ripley Army National Guard Training Site, Mission Expansion and Multiple Construction, Implementation, Morrison County, MN. SUMMARY: EPA has no objections to the proposed project as long as the Record of Decision commits to minimizing wetland impacts and complying with the Federal regulation on new source performance standards and asbestos removal.

Regulations

ERP No. R-FCC-A86229-00, 47 CFR Part 1; Amendment of the Commission's Environmental Rules (Gen. Docket No. 86-387; FCC 86-284) (53 FR 24558). SUMMARY: EPA supports the proposed rule requiring completion of environmental processing prior to construction of any facilities that might have a significant environmental impact.

Dated: October 12, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88-24481 Filed 10-20-88; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3466-1]

Environmental Impact Statements; Availability

Responsible Agency

Office of Federal Activities, General Information (202) 382-5074 or (202) 382-5075. Availability of Environmental Impact Statements Filed October 10, 1988 Through October 14, 1988, Pursuant to 40 CFR 1506.9.

EIS No. 880345, Draft, SCS, KY, South Fork of Little River Watershed Multiple Purpose Floodwater Protection and Municipal and Industrial Water Supply Project, Funding and Implementation, Christian and Todd Counties, KY. Due: December 5, 1988. Contact: Randall W. Giesaler (606) 233-2747.

EIS No. 880347, Draft, COE, CA, Los Angeles Raiders Football Stadium, Parking and Associated Facilities Development, Land Use Change and Implementation, Santa Fe Dam Flood Control Basin and Recreation Area, City of Irwindale, Los Angeles County, CA. Due: December 5, 1988. Contact: Rick Grover (213) 894-7982.

EIS No. 880348, Draft, AFS, OR, WA, Pacific Northwest Region Western Spruce Budworm Management Plan, Implementation, WA and OR. Due: December 22, 1988, Contact: Roger M. Odgen (503) 221-2727.

EIS No. 880349, Final, OR, I-5/Pacific Highway Improvements, Hayesville Interchange to Battle Creek Interchange, Funding and 404 Permit Marion County, OR. Due: November 21, 1988, Contact: Dale Wilkes (503) 399-5749.

Dated: October 18, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88-24480 Filed 10-20-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-[illegible]; FRL-3466-3]

Toxic and Hazardous Substances; Test Market Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substance Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt are discussed in EPA's final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of one application for exemption, provides a summary, and requests comments on the appropriateness of granting this exemption. Written comments by:

T 89-1—November 10, 1988.

ADDRESS: Written comments, identified by the document control number "[OPTS-[illegible]]" and the specific TME number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Room L-100, 401 M Street SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Lawrence Culleen, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-611, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the TMII received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

T 89-1

Close of Review Period. November 24, 1988.

Manufacturer. AM International, Inc.

Chemical. (G) Polymer of a fat and heterocyclic substituted olefin.

Use/Production. (S) Surfactant for electrophotographic toner. Prod. range: Confidential.

Date: October 14, 1988.

Steven Newburg-Rinn,

Chief, Public Data Branch, Information Management Division, Office of Toxic Substances.

[FR Doc. 88-24398 Filed 10-20-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-[illegible]; FRL-3466-4]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). In the Federal Register of November 11, 1984, (49 FR 48066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of eighteen such PMNs and provides a summary of each.

DATES: Close of review Periods:

Y 88-261—October 3, 1988

Y 88-264—October 18, 1988

Y 88-265, 88-358, 88-357, 88-358, 88-359, 88-360—October 23, 1988

Y 89-1—October 23, 1988

Y 89-2, 89-3—October 24, 1988

Y 89-4, 89-5, 89-6, 89-7, 89-8, 89-9, 89-10—October 25, 1988.

FOR FURTHER INFORMATION CONTACT: Lawrence Culleen, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-611, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 88-261

Manufacturer. Confidential.

Chemical. (G) Functional polymer of mixed acrylate and methacrylate based monomers.

Use/Production. (G). Prod. range: 277,500–555,000 kg/yr.

Y 88-264

Importer. Nachem, Inc.

Chemical. (G) Sulfonated phenol-formaldehyde condensation product.

Use/import. (G) Stain resister for synthetic fibers. Import range: Confidential.

Y 88-265

Manufacturer. Confidential.

Chemical. (G) Polyester polyol.

Use/Production. (S) Resin component for an adhesive. Prod. range: 23,000–70,000 kg/yr.

Y 88-358

Manufacturer. Confidential.

Chemical. (G) Short oil alkyd resin.

Use/Production. (S) Resin component of a flexible primer coating. Prod. range: 12,000–22,700 kg/yr.

Y 88-357

Manufacturer. Confidential.

Chemical. (G) Coconut oil alkyd resin.

Use/Production. (S) Resin for industrial finishes. Prod. range: 16,000–24,000 kg/yr.

Y 88-359

Manufacturer. Confidential.

Chemical. (G) Acrylic alkyd copolymer.

Use/Production. (S) Resin component for implement finish. Prod. range: 85,000–102,000 kg/yr.

Y 88-360

Manufacturer. Freemna Chemical Corporation.

Chemical. (G) Chain stopped alkyd resin.

Use/Production. (S) Air dry implement finish. Prod. range: 511,000–680,000 kg/yr.

Y 88-366

Manufacturer. Confidential.

Chemical. (G) Polyester polyol.

Use/Production. (S) Water reducible ink resin. Prod. range: 66,800–127,000 kg/yr.

Y 89-1

Manufacturer. Confidential.

Chemical. (G) Urethane modified linseed alkyd resin.

Use/Production. (S) Resin component of a mirror back coating. Prod. range: 11,400–23,000 kg/yr.

Y 89-2

Importer. Confidential.

Chemical. (G) Polyethylene terephthalalate (modified).

Use/Import. (G) Open, nondispersive use. Import range: Confidential.

Y 89-3

Manufacturer. Confidential.

Chemical. (G) Ethene olefin terpolymer.

Use/Production. (S) Raw material for polyolefin film. Prod. range: Confidential

Y 89-4

Importer. Confidential.

Chemical. (G) Polyester resin.

Use/Import. (G) Polyester component for specialty industrial coatings. Import range: Confidential.

Y 89-5

Manufacturer. Confidential.

Chemical. (G) Polyester resin carboxylated.

Use/Production. (G) Electrostatic powder coatings. Prod. range: Confidential.

Y 89-6

Manufacturer. Confidential.

Chemical. (G) Polyester resin carboxylated.

Use/Production. (G) Electrostatic powder coatings. Prod. range: Confidential.

Y 89-7

Manufacturer. Confidential.

Chemical. (G) Polyester resin carboxylated.

Use/Production. (G) Electrostatic powder coatings. Prod. range: Confidential.

Y 89-8

Manufacturer. Confidential.

Chemical. (G) Polyester resin carboxylated.

Use/Production. (G) Electrostatic powder coatings. Prod. range: Confidential.

Y 89-9

Manufacturer. Confidential.

Chemical. (G) Polyester resin carboxylated.

Use/Production. (G) Electrostatic powder coatings. Prod. range: Confidential.

Y 89-10

Importer. Confidential.

Chemical. (G) Polyester resin carboxylated.

Use/Import. (G) Electrostatic powder coatings. Import range: Confidential.

Date: October 14, 1988.

Steven Newburg-Rinn,

Chief, Public Data Branch, Information Management Division, Office of Toxic Substances.

[FR Doc. 88-24399 Filed 10-20-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-007680-008.
Title: American West African Freight Conference ("Conference").
Parties:
America-Africa-Europe Line GMBH,
Barber West Africa Line,
Farrell Lines, Inc.,
Maersk Line,
Societe Inviorienne De Tranport Maritime, SITRAM,
Torm West Africa Line,
Westwind Africa Line.
Synopsis: The proposed modification would prescribe procedures for allocating each member's share in the Conference's assets and/or liabilities in the event a party either withdraws, or is expelled from the Agreement.

Agreement No.: 202-008493-019.
Title: Trans Pacific American Flag Berth Operators Agreement.
Parties:
American President Lines, Ltd., Sea-Land Service, Inc.
Synopsis: The proposed modification would conform the agreement to the Commission's requirements concerning Docket No. 86-16, service contract provisions.

Agreement No.: 206-010707-001.
Title: Japan Eastbound Bridging Agreement.
Parties:
Barber Blue Sea,
Kawasaki Kisen Kaisha, Ltd.,
Mitsui O.S.K. Lines, Ltd.,
A.P Moller-Maersk Line,
Neptune Orient Lines Limited,
Nippon Liner System, Ltd.,
Nippon Yusen Kaisha,
Orient Overseas Container Line, Inc.
Synopsis: The proposed modification would conform the agreement to the Commission's requirements concerning Docket No. 86-16, service contract provisions. It would also expand the agreement's scope to include intermodal movements via U.S. Atlantic and Gulf Coasts, and to make other non-substantive changes.

Agreement No.: 232-011184-001.
Title: Evergreen Marine Corporation (Taiwan) Ltd. and Costa Container Lines SPA. Space Charter and Sailing Agreement in the Mediterranean—U.S. Trades Agreement.
Parties:
Evergreen Marine Corporation (Taiwan) Ltd. Costa Container Lines SPA.
Synopsis: The proposed modification would add Italia di Navigazione, S.p.A. as a party to the agreement. It would also reduce the agreement's geographic scope to but not including Jacksonville, Florida.; increase the maximum TEU capacity to 18,000; extend the agreement to five years; change the name of the agreement to Evergreen Marine Corporation (Taiwan) Ltd., Italia di Navigazione SpA. And Contship Containerlines Ltd./Costa Container Lines SpA. Space Charter and Sailing Agreement in the Mediterranean—U.S. Trade ("EMC/Italia/Costa"); and make other non-substantive changes.

By Order of the Federal Maritime Commission.
Joseph C. Polking,
Secretary.
Dated: October 18, 1988.

[FR Doc. 88-24408 Filed 10-20-88; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Southeast Banking Corp., Miami, FL; Proposed Acquisition of Federal Savings and Loan Associations

Southeast Banking Corporation, Miami, Florida ("Southeast"), has applied under § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("BHC Act") and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire all of the to-be-issued voting shares of First Federal Savings and Loan Association of Jacksonville, Jacksonville, Florida ("First Federal"), after its conversion from a mutual to stock form of organization on a voluntary supervisory basis pursuant to regulations of the Federal Home Loan Bank Board; and to subsequently cause First Federal to acquire by supervisory merger (with Federal Savings and Loan Insurance Corporation assistance) South Florida Savings, a Federal Savings and Loan Association, Miami, Florida ("South Florida").

In connection with this application, Southeast also proposes to acquire five service corporation subsidiaries of First Federal, which engage in real estate investment and development; mortgage banking activities; general insurance brokerage and agency activities; and advertising, marketing, promotional, and public relations services solely on behalf of First Federal. Additionally, Southeast proposes to acquire three service corporation subsidiaries of South Florida, all of which engage in real estate investment and development. Southeast has committed to terminate impermissible real estate development and insurance activities within two years of consummation.

The Board previously has determined by order that the operation of a thrift institution is closely related to banking, but not, as a general matter, a proper incident to banking under section 4(c)(8) of the BHC Act. *See, e.g., Citicorp*, 72 Federal Reserve Bulletin 724 (1986). The Board, however, has approved several proposals involving the acquisition of failing thrift institutions on the basis that any adverse effects would be overcome by the public benefits of preserving the institutions. *Citicorp; supra; The Chase Manhattan Corporation*, 71 Federal Reserve Bulletin 402 (1985).

Interested persons may express their views in writing on the question whether consummation of the proposed acquisitions can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comments must conform with the requirements of the Board's Rules of Procedure (12 CFR 262.3(e)).

The Board has been requested to act expeditiously upon these applications in order to recapitalize and revitalize the thrift institutions. Comments regarding each of these applications must be submitted in writing and must be received at the offices of the Board of Governors not later than 5:00 p.m. on November 11, 1988. Each application is available for immediate inspection at the offices of the Board of Governors and at the Federal Reserve Bank of Atlanta.

Board of Governors of the Federal Reserve System, October 18, 1988.
James McAfee,
Associate Secretary of the Board.
[FR Doc. 88-24522 Filed 10-20-88; 8:45 am]
BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following is submitted to OMB since the last list was published on October 21, 1988.

Social Security Administration

(Call Report Clearance Officer on 301-965-4149 for copy of package)

Action: The Social Security Administration submitted the following public information clearance request to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Note: The Social Security Administration requested expedited review (less than 60 days) of this survey/evaluation by OMB in order for SSA to quickly determine how well the new service is working.

Summary: The information collected will be used to evaluate the effectiveness of SSA's new 800 service. The affected public will be comprised for a sample of individuals who recently used the 800 number. The following summarizes the information collection proposal submitted to OMB.

Type of Request: New Collection.
Originating Office: Social Security Administration.
Title of information collection: 800 Number Service Evaluation.
Form number: SSA-4305.
Frequency: One Time Only.
Respondents: Individual or Households.
Estimated Number of responses: 2,000.
Average hours per response: 10 minutes.
Total estimated burden hours: 240.
Additional Information or Comments: A copy of the proposed survey is attached herewith. Comments and questions should be directed immediately to (OMB) Justin Kopca (202) 395-7316 or for program information call Ron Compston at (301) 965-4149.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Date: October 14, 1988.
James V. Oberthaler,
Deputy Assistant Secretary for Information Resources Management.

Paper Work/Privacy Act Notice

The Social Security Administration is authorized to collect the information on this questionnaire under section 702 of Title VII of the Social Security Act. Your response to those questions is strictly voluntary. The information you provide will be used to help us improve the service that we give to you.
BILLING CODE 4110-09-M

OMB NO. 0960

800 SERVICE EVALUATION
CALLER RECONTACT SURVEY

I. GENERAL INFORMATION

DATE OF CONTACT _____

DS |-|-|-|-|-|-| 0
M M D D Y Y

TELEPHONE NUMBER (___)_____

SAMPLE NUMBER _____
(Enter first nine digits of telephone number.)

SN |-|-|-|-|-|-|-|-|-|
Sample Number

II. INTRODUCTION

Hello, may I speak with _____? My name is _____. I am with the Social Security Administration and we are calling a sample of people all over the country who have recently used our new 800 number. You have been selected at random and we would like your opinions on such areas as how satisfied you were with the service, how easy or difficult you found it to get through to us, and how courteous you found our representative. This survey should only take a few minutes and is strictly voluntary. All information will be kept confidential and will be used to help us evaluate this new service.

NOTE : IF SAMPLED INDIVIDUAL IS NOT HOME, UNAVAILABLE, OR THE TIME IS NOT CONVENIENT FOR THEM, ARRANGE FOR A CALLBACK.

FORM SSA-4305

800 SERVICE EVALUATION
CALLER RECONTACT SURVEY

III. SURVEY QUESTIONS

1. How did you learn about the new 800 phone number?

   (Circle all applicable codes. Enter code corresponding to lowest entry.)

ST |-|
- 01 - Television
- 02 - Radio
- 03 - Newspaper
- 04 - Mail
- 05 - District Office
- 06 - Friend / Family
- 07 - Don't remember
- 08 - Other (Explain in space at left.)

2. On this new 800 service line, how many times did you try before you got through?

CD |-|
- 01 - One Time (Got Through on First Call)
- 02 - Two Times
- 03 - Three Times
- 04 - More Than Three Times
- 05 - Do Not Remember

3. When you got through, were you placed on hold?

DA |-|
- 01 - Yes
- 02 - No
- 03 - Don't Remember

800 SERVICE EVALUATION
CALLER RECONTACT SURVEY

III. SURVEY QUESTIONS

IF THE PERSON CALLED BEFORE 7:00 AM, AFTER 7:00 PM, OR ON A WEEKEND, ASK QUESTIONS 4 - 8 BELOW. OTHERWISE, GO TO QUESTION 9.

4. Our normal business hours are from 7:00 am to 7:00 pm on weekdays. Why did you call after hours?

DB

01 - Working
02 - More Convenient
03 - Line Busy
04 - Other (Explain in space at left.)

5. When you called, you heard a recording that gave you instructions on how to complete your call. Were those instructions easy to understand?

DB

01 - Don't remember
02 - Easy to understand
03 - Not easy to understand (Explain in space at left.)

6. Did you mind conducting business with a recording as opposed to speaking with someone in person?

DB

01 - Didn't mind
02 - Did mind (Ask why and explain in space at left.)

7. If you left a message for us to call you back, when did we return your call?

DC

01 - Same Day
02 - Next Day
03 - Two or More Days Later
04 - Call Not Returned
05 - Don't Remember

8. Would you call again after-hours to conduct business with SSA?

DE

01 - Yes
02 - Not Sure
03 - Would Not Call After Hours Again (Explain in space at left.)

800 SERVICE EVALUATION
CALLER RECONTACT SURVEY

III. SURVEY QUESTIONS

9. (Ask this question only if questions 4 - 8 do not apply.)

Do you feel the SSA employee with whom you recently spoke was courteous or discourteous?

DF

01 - Courteous
02 - Neither Courteous Nor Discourteous
03 - Discourteous (Explain in space at left.)

10. What was the reason for your recent contact with SSA? (Describe in space below and categorize answer.)

DG

01 - File a Claim
02 - General Inquiry
03 - Report a Post-adjudicative Event
04 - Complaint / Protest
05 - I & R Referral
06 - Other

11. Would you say you were satisfied or dissatisfied with the way the matter was or is being handled for you?

DH

IF "DISSATISFIED", PROCEED TO NEXT QUESTION. OTHERWISE, GO TO QUESTION 13.

01 - Satisfied
02 - Neither Satisfied Nor Dissatisfied
03 - Dissatisfied

12. Why were you dissatisfied with the response you received?

(Circle all applicable codes. Enter code corresponding to lowest entry.)

DI

01 - Failed to Take Action
02 - Representative Was Not Knowledgeable
03 - Representative Was Discourteous
04 - Representative Was Slow to Respond
05 - Telephone Lines Were Busy / Placed on Hold
06 - Other (Explain in space at left.)

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800 SERVICE EVALUATION
CALLER RECONTACT SURVEY

III. SURVEY QUESTIONS

13. If you have had prior contacts with SSA, were they usually by telephone, in person, or by mail?

(Circle all applicable codes. Enter code corresponding to lowest entry.)

DJ | | | | |

01 - Telephone
02 - In Person
03 - Mail
04 - No Prior Contacts

14. Based on your recent experience with the 800 service, would you say your overall opinion of SSA has improved, worsened, or stayed the same?

NOTE : IF RESPONDENT SAYS "STAYED THE SAME", ASK IF PRIOR OPINION WAS GOOD OR BAD AND SELECT CODE '03' OR '04'.

DK | | | | |

01 - Improved
02 - Worsened
03 - Was Good and Stayed That Way
04 - Was Bad and Stayed That Way
05 - No Opinion
06 - No Prior Contacts

15. Are you aware that almost all Social Security business can be handled over the telephone?

MP | |

01 - Yes
02 - No

16. When you contact SSA the next time, would your first preference be to telephone, visit, or write?

NOTE : IF THE RESPONDENT ANSWERS "02 - Visit" OR "03 - WRITE", ASK WHY AND SPECIFY BELOW.

MI | |

01 - Telephone
02 - Visit
03 - Write

17. Would you say your overall opinion of SSA is favorable or unfavorable?

NR | |

01 - Favorable
02 - Unfavorable
03 - No Opinion

800 SERVICE EVALUATION
CALLER RECONTACT SURVEY

IV. CONCLUDING STATEMENT

That was the last of our survey questions. I want to thank you for participating in this survey and for taking the time to help us evaluate our new telephone service.

THIS BLOCK MUST BE TRANSMITTED ON EVERY STUDY CASE.

EH | 8 0 0 8 0 0 | | | | |

[FR Doc. 88-24288 Filed 10-20-88; 8:45 am]
BILLING CODE 4190-29-C

Centers for Disease Control

HIV Prevention Projects; Meeting

ACTION: Notice of meeting.

Time and Date: 8 a.m.–1:30 p.m., October 28, 1988.

Place: Center for Prevention Services Conference Room, Centers for Disease Control, Freeway Office Park, 1600 Tullie Circle N.E., Atlanta, GA 30329.

Status: Open to the public, limited only by the space available.

Matters to be considered: CDC is convening this meeting to discuss the Fiscal Year 1989 draft program announcement for HIV Prevention Projects with Community Based Organizations.

CONTACT PERSON FOR MORE INFORMATION: John Lehnherr, Office of the Director, Center for Prevention Services, Centers for Disease Control, Altanta, GA 30333; telephone—commercial: (404) 639–1823; FTS: 236–1823.

Dated: October 17, 1988.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 88-24488 Filed 10-20-88; 8:45 am]

BILLING CODE 4160-18-M

Health Resources and Services Administration

Health Education Assistance Loan Program; "Maximum Interest Rates for Quarter Ending December 31, 1988"

Section 727 of the Public Health Service Act (42 U.S.C. 294) authorizes the Secretary of Health and Human Services to establish a Federal program of student loan insurance for graduate students in health professions schools.

A. Section 60.13(a)(4) of the program's implementing regulations (42 CFR Part 60, previously 45 CFR Part 126) provides that the Secretary will announce the interest rate in effect on a quarterly basis.

The Secretary announces that for the period ending December 31, 1988, three interest rates are in effect for loans executed through the Health Education Assistance Loan (HEAL) program.

1. For loans made before January 27, 1981, the variable interest rate is 10¾ percent. Using the regulatory formula (45 CFR 126.13(a)(2) and (3)) in effect prior to January 27, 1981, the Secretary would normally compute the variable rate for this quarter by finding the sum of the fixed annual rate (7 percent) and a variable component calculated by subtracting 3.50 percent from the average bond equivalent rate of 91-day U.S. Treasury bills for the preceding calendar quarter (7.24 percent); and rounding the result (10.74 percent) upward to the nearest ⅛ percent (10¾ percent). However, the regulatory formula also provides that the annual rate of the variable interest rate for a 3-month period shall be reduced to the highest one-eighth of 1 percent which would result in an average annual rate not in excess of 12 percent for the 12-month period concluded by those 3 months. Because the average rate of the 4 quarters ending December 31, 1988, is not in excess of 12 percent, there is no necessity for reducing the interest rate. For the previous 3 quarters the variable interest at the annual rate was as follows: 9¾ percent for the quarter ending March 31, 1988; 9⅛ percent for the quarter ending June 30, 1988, and 10 percent for the quarter ending September 30, 1988.

2. For variable rate loans executed during the period of January 27, 1981 through October 21, 1985, the interest rate is 10¾ percent. Using the regulatory formula (42 CFR 60.13 (a)(3)) in effect for that time period, the Secretary computes the maximum interest rate at the beginning of each calendar quarter by determining the average bond equivalent rate for the 91-day U.S. Treasury bills during the preceding quarter (7.24 percent); adding 3.50 percent (10.74 percent); and rounding that figure to the next higher one-eighth of 1 percent (10¾ percent).

3. For fixed rate loans executed during the period of October 1, 1988 through December 31, 1988, and for variable rate loans executed on or after October 22, 1985, the interest rate is 10¼ percent. The Health Professions Training Assistance Act of 1985 (Pub. L. 99–129), enacted October 22, 1985, amended the formula for calculating the interest rate by changing 3.5 percent to 3 percent. Using the regulatory formula (42 CFR 60.13(a)(2) and (3)) with the statutory change of 3 percent (42 CFR 60.13(a)(1)), the Secretary computes the maximum interest rate at the beginning of each calendar quarter by determining the average bond equivalent rate for the 91-day U.S. Treasury bills during the preceding quarter (7.24 percent); adding 3.0 percent (10.24 percent) and rounding that figure to the next higher one-eighth of 1 percent (10¼ percent).

Dated: October 17, 1988.

John H. Kelso,

Acting Administrator.

(Catalog of Federal Domestic Assistance No. 13.108, Health Education Assistance Loans)

[FR Doc. 88-24418 Filed 10-20-88; 8:45 am]

BILLING CODE 4160-15-M

Office of Human Development Services

[Program Announcement No. ACYF-HS 13.600-88-2]

Administration for Children, Youth and Families; Head Start Bureau

AGENCY: Administration for Children, Youth, and Families (ACYF), Office of Human Development Services (OHDS), Department of Health and Human Services (HHS).

ACTION: Extension of due date for receipt of applications for Head Start expansion funds.

SUMMARY: This notice amends Program Announcement No. ACYF-HS 13.600–88–2, published in the **Federal Register** on September 1, 1988, by extending the due date for submission of applications to January 6, 1989. It also extends the time period for State review of such applications under Executive Order 12372.

FOR FURTHER INFORMATION CONTACT: Doug Klafehn (202) 755–0590.

SUPPLEMENTARY INFORMATION: On September 1, 1988, the Head Start Bureau published an announcement in the **Federal Register** (53 FR 33801) soliciting applications from Head Start grantees that wish to compete for $10,000,000 in grant funds that are available to expand enrollment in current Head Start projects.

In order to allow prospective applicants more time to prepare and submit their applications, we are extending the due date for submission of applications from November 15, 1988 to January 6, 1989.

This action also extends the due date for comments from State Single Points of Contact under Executive Order 12372 from January 17, 1989 to March 7, 1989.

(Catalog of Federal Domestic Assistance Program Number 13.600, Project Head Start)

Dated: September 30, 1988.

Dodie Truman Borup,

Commissioner, Administration for Children, Youth and Families.

Approved: October 17, 1988.

W. Douglas Badger,

Acting Assistant Secretary for Human Development Services.

[FR Doc. 88-24428 Filed 10-20-88; 8:45 am]

BILLING CODE 4130-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Permits Issued for the Months of July, August, and September 1988

Notice is hereby given that the U.S. Fish and Wildlife Service has taken the following action with regard to permit applications duly received according to section 10 of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1539. Each permit listed as issued was granted only after it was determined that it was applied for in good faith, that by granting the permit it will not be to the disadvantage of the endangered species; and that it will be consistent with the purposes and policy set forth in the Endangered species Act of 1973, as amended.

Additional information on these permit actions may be requested by contacting the Office of Management Authority, P.O. Box 27329, Washington, DC, 20038–7329, telephone (202/343–4955) between the hours of 7:45 a.m. to 4:15 p.m. weekdays.

July		
Paulos, Peter Brasel	727508	07/07/88
San Diego Zoological Society	724304	07/07/88
J.C. Schulz, Inc.	727502	07/12/88
Baker, Ken	728186	07/13/88
Gordon, F. "Cotton" M.	727645	07/13/88
Ohio State University	728536	07/17/88
Oklahoma City Zoo	723140	07/17/88
Cactus by Dodie	723980	07/20/88
Serratt, Ron	725440	07/29/88
August		
Gruber, Steven C.	727824	08/01/88
The Peregrine Fund, Inc.	728855	08/03/88
Cleveland Metroparks Zoo	728804	08/05/88
Cleveland Metroparks Zoo	728805	08/05/88
San Diego Wild Animal Park	728452	08/05/88
Spencer, James W.	728884	08/08/88
Klauss, John G.	728746	08/10/88
Cincinnati Zoo	728935	08/11/88
E.G. & G. Energy Measurements	669011	08/11/88
Regional Director, Region #2	729031	08/11/88
San Antonio Zoological Gardens & Aquarium	727797	08/16/88
Martin, Merrill D.	729258	08/17/88
San Diego Zoological Society	727165	08/18/88
Trunks & Humps Inc.	729359	08/18/88
National Zoological Park	728624	08/21/88
Bogosian, Gregg	728222	08/22/88
Carter, Lee	729099	08/23/88
Niehaus, Leslie P.	729302	08/26/88
National Museum of Natural History	726397	08/31/88
September		
National Museum of Natural History	728400	09/02/88
National Zoological Park	729018	09/09/88
National Zoological Park	729017	09/09/88
National Zoological Park	729019	09/09/88
Patrick, Deanne L.	730091	09/09/88
Sanders, Clifford E.	728285	09/09/88
Carey, Neil	730325	09/14/88
Cincinnati Zoo	730153	09/14/88
Cito, Alfred	730473	09/14/88
Gilden & Gallimore's Bird Center	730930	09/14/88
National Wildlife Health Research Center	730152	09/14/88
Philadelphia Zoological Garden	730332	09/14/88
Martin, Steve E.	728734	09/15/88
International Wildlife Veterinary Svcs.	726525	09/18/88
Van Hulzen, Al & Jean	729172	09/10/88
New York Zoological Society	730161	09/20/88
Wildman, John M.	727512	09/20/88
Busch Gardens	731618	09/23/88
U.S. Fish & Wildlife (Maryland)	730447	09/28/88
Rigoletti, Martin J.	731681	09/30/88
Eberle, Richard W.	730256	09/30/88

Date: October 12, 1988.

R. K. Robinson,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 88-24453 Filed 10-20-88; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Jack Oberly, Phillipsburg, NJ, PRT–727187.

The applicant requests a permit to import one sport-hunted trophy of a bontebok (*Damaliscus dorcas dorcas*) taken from the captive-herd of Phil van der Merwe, Skietkuil, Cape Province, Republic of South Africa for enhancement of propagation and survival of the herd.

Applicant: Cincinnati Zoo, Cincinnati, OH, PRT–732159.

The applicant requests a permit to sell one female snow leopard (*Panthera uncia*) in foreign commerce for the purpose of enhancement of propagation and survival of the species. The leopard will be transferred from Howletts and Port Lympne Estates, Port Lympne, Hythe, Kent, England, to Clubb-Chipperfield Ltd., Oxon, England.

Applicant: Cincinnati Zoo, Cincinnati, OH, PRT–732162.

The applicant requests a permit to purchase one female captive born ocelot (*Felis pardalis*) from Ms. Jean C. Hatfield, The Exotic Feline Farm, Davie, Florida, for purposes of educational display and captive propagation.

Applicant: Dr. Don W. Doty, Rogersville, TN, PRT–732181.

The applicant requests a permit to purchase one pair of captive-hatched Nile crocodiles (*Crocodylus niloticus*) from Busch Gardens, Tampa, Florida, for scientific research.

Applicant: James. A. Boulton, Mundelein, IL, PRT–732179.

The applicant requests a permit to import the personal sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from the captive-herd maintained by Mr. Phil Van Der Merwe, Hutchinson, Republic of South Africa, for the purpose of enhancement of survival of the species.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm), Room 403, 1375 K Street NW., Washington DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Washington, DC 20038–7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate applicant and PRT number when submitting comments.

Date: October 18, 1988.

R.K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 88-24452 Filed 10-20-88; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[(WY-920-08-4121-11); WYW-112148]

Coal Leases, Exploration Licenses, etc.; Cheyenne, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Invitation for coal exploration licenses.

SUMMARY: Kerr-McGee Coal Corporation hereby invites all interested parties to participate on a pro rata cost sharing basis in its coal exploration program concerning federally owned coal underlying the following described land in Campbell County, Wyoming:

T. 42 N., R. 70 W., 6th P.M., WY.
Sec. 33: Lots 1 thru 16 inclusive;
Sec. 34: Lots 1 thru 16 inclusive;
Sec. 35: Lots 1 thru 15 inclusive,
NW¼NE¼.
Containing 1,950.17 acres.

All of the coal in the above land consists of unleased Federal coal, within the Powder River Basin known coal leasing area. The purpose of the exploration is to evaluate the coal tonnage and quality.

ADDRESSES: A detailed description of the proposed drilling program is available for review during normal business hours in the following offices (under serial number W–112149): Bureau of Land Management, 2515 Warren Avenue, Cheyenne, Wyoming 82003; and Bureau of Land Management, 1701 East 'E' Street, Casper, Wyoming 82601.

SUPPLEMENTARY INFORMATION: This notice of invitation will be published in a newspaper once each week for two consecutive weeks beginning the week of October 24, 1988, and in the **Federal Register**. Any party electing to participate in this exploration program must send written notice to both the Bureau of Land Management and to Kerr-McGee Coal Corporation no later than 30 days after publication of this invitation in the **Federal Register**. The written notice should be sent to the following addresses: Mr. Richard Turpin, Kerr-McGee Coal Corporation, P.O. Box 25861, Oklahoma City, Oklahoma 73125 or Mr. Greg Todd, Jacobs Ranch Mine, Caller Box 3013, Gillette, Wyoming 82716 and the Bureau of Land Management, Wyoming State Office, Branch of Mining Law and Solid Minerals, P.O. Box 1828, Cheyenne, Wyoming 82003–1828.

The foregoing is published in the **Federal Register** pursuant to Title 43 Code of Federal Regulations, § 3410.2–1(c)(1).

F. William Eikenberry,
Associate State Director.
[FR Doc. 88-24370 Filed 10-20-88; 8:45 am]
BILLING CODE 4310-22-M

[WY-920-08-411-12; W-105840]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

October 13, 1988.

Pursuant to the provisions of Public Law 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W–105840 for lands in Weston County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–105840 effective February 1, 1988, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

David A. Pamerleau,
Acting Chief, Leasing Section.
[FR Doc. 88-24369 Filed 10-20-88; 8:45 am]
BILLING CODE 4310-22-M

Utah; Proposed Reinstatement of Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease U–50031 for lands in Grand County, Utah, was timely filed and required rentals and royalties accurring from April 1, 1988, the date of termination, have been paid.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5.00 per acre and 16–⅔ percent, respectively. The $500 administrative fee has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of lease U–50031 as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective April 1, 1988, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

J. Darwin Snell,
Acting Chief, Branch of Lands and Minerals Operations.
[FR Doc. 88-24368 Filed 10-20-88; 8:45 am]
BILLING CODE 4310-DQ-M

[ES-030-09-5101-YIRA; ES-30157-301]

Right-of-Way Grant; Hoosier National Forest and Camp Atterbury Military Reservation; Perry, Crawford, Orange, Jackson, Brown, Bartholomew, and Johnson Counties, Indiana; INES–37986

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Issuance of Right-of-Way Grant.

SUMMARY: As the lead agency for the National Environmental Policy Act (NEPA) compliance, the Federal Energy Regulatory Commission (FERC), Department of Energy, in cooperation with Bureau of Land Managment (BLM), Forest Service (FS), and U.S. Army Corps of Engineers (ACOE), has prepared an environmental assessment (EA) Of a proposed 16- and 20-inch diameter natural gas pipeline and related facilities in northern Kentucky and southern Indiana. The EA, which was issued on August 29, 1988, served as the basis for BLM's right-of-way grant issuance decision relative to Federal lands.

FOR FURTHER INFORMATION CONTACT: Duane Marti, Archeologist/Realty Specialist, Milwaukee District (BLM), P.O. Box 631, Milwaukee, Wisconsin 53201–0631, or telephone (414) 291–4429.

SUPPLEMENTAL INFORMATION: On February 29, 1988, Texas Gas Transmission Corporation (Texas Gas) applied for a right-of-way grant to cross 6.29 miles of Hoosier National Forest and 11.3 miles of Camp Atterbury Military Reservation. The former area is located in Perry, Crawford, Orange, Jackson, and Brown Counties; while the latter area is located in Bartholomew and Johnson Counties. BLM published a notice of that application in the **Federal Register** on March 11, 1988 at pages 7984 and 7985.

When a proposed oil or natural gas pipeline crosses Federal lands administered by two or more Federal agencies, it becomes the responsibility of BLM to issue a right-of-way grant across the Federal lands pursuant to 43 CFR 2882.2–2. In this case, the right-of-way will cross portions of the Hoosier National Forest and Camp Atterbury Military Reservation.

FERC is the lead agency for NEPA compliance on the proposed natural gas pipeline, including the proposed right-of-way. As the lead agency, FERC prepared an EA of the proposed pipeline. BLM, FS, and ACOE (for Camp Atterbury) participated in the preparation of the EA. The EA, which was issued by FERC on August 29, 1988, was adopted by BLM on October 17, 1988.

The EA served as the basis for BLM's decisions. Those decisions include: (1) That a Finding of No Significant Impacts is appropriate for the right-of-way grant, (2) that, with the concurrence of both the FS and ACOE, BLM should issue a right-of-way grant to Texas Gas, (3) that the grant will contain special terms and conditions identified by both the FS and ACOE, and (4) that the grant will not become effective until FERC has issued a certificate of Public Convenience and Necessity to Texas Gas for the pipeline *and* the completion of a 30 days public comment period on this decision. The public comment period will commence on the date of publication of this decision in the **Federal Register**.

Comments

Until November 23, 1988, interested parties may submit written comments on the proposed right-of-way grant to: District Manager, Milwaukee District, BLM, P.O. Box 631, Milwaukee, Wisconsin 53201–0631.

Bert Rodgers,
District Manager.
[FR Doc. 88-24369 Filed 10-20-88; 8:45 am]
BILLING CODE 4310-GJ-M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative Notice to the Commission of Intent To Perform Interstate Transportation for Certain Nonmembers

Date: October 18, 1988.

The following Notices were filed in accordance with section 10526 (a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperative intending to perform nonmember, non-exempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

(1) Riceland Foods, Inc.
(2) P.O. Box 927, Stuttgart, AR 72160.
(3) 22nd & Park Avenue, Stuttgart, AR 72160.
(4) Terry L. Richardson, P.O. Box 927, Stuttgart, AR 72160.

Noreta R. McGee,
Secretary.
[FR Doc. 88-24376 Filed 10-20-88; 8:45 am]
BILLING CODE 7035-01-M

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. Parent corporation and address of principal office: NCH Corporation, 2727 Chemsearch Blvd., Irving, Texas 75062.

2. Wholly-owned subsidiaries which will participate in the operations, and state of incorporation:

Subsidiary name	Primary business	State of incorporation
ACTRA Manufacturing, Inc.	Plumbing supplies	Texas
American Allsafe Co	Safety products	Del.
American Display Products, Inc.	Novelty merchandise	Del.
Aquaterra Biochemical Corp. of America	Chemicals	Del.
The Bramton Co	do	Del.
Certified Laboratories International, Inc.	do	Del.
Cornerstone Direct Corp.	Hardware	Del.
DM Resources, Inc.	ICC property broker	Del.
Esschem Corp. Caribbean Ltd.	Chemicals	Del.
Grease Catch Corp	Industrial equipment	Del.
Hardware Junction, Inc.	Hardware	Del.
The Heat Company	Chemicals	Del.
Lambs Systems, Inc.	Safety products	Minnesota
LSP Specialty Products Co	Plumbing products	Texas
Membership Services, Inc.	Computers	Del.
NCH Corp. Korea	Chemicals	Del.
NCH Corp. Pacific	do	Del.
NCH Corp. Paraguay	do	Del.
NCH Corp. Puerto Rico	do	Del.
OUTI International, Inc.	do	Del.
Plumbmaster, Inc.	Plumbing supplies	Del.
Plumbmaster International, Inc.	do	Del.
P–T Templet Co.	Signs	Del.
Pure Solve, Inc.	Chemicals	Del.
Spot Selling Aids, Inc.	Novelty merchandise	Del.
Systems General Inc.	Chemicals	Del.
Texas Westmont Products, Inc.	do	Del.
U.S. Contract Trucking, Inc.	Trucking	Del.
X-Chem, Inc	Chemicals	Louisiana

B. 1. Parent corporation and address of principal office: La Farge Corporation, 1130 Sunrise Valley Drive, Suite 300, Reston, VA 22091, A Maryland Corporation.

2. Wholly-owned subsidiaries which will participate in the operations, their cities of domicile, and their state of incorporation:

(i) Transit-Mix Concrete Supply, Tyler, TX, A Texas Corporation.

(ii) La Farge Corporation Southern Region, Dallas, TX, A Texas Corporation.

(iii) Gen-Tex Trucking, Inc., Dallas, TX, A Texas Corporation.

(iiii) Trinity Construction Materials, Dallas, TX, A Texas Corporation.

(iiiii) Bryco, Bryan, TX, A Texas Corporation.

Noreta R. McGee,

Secretary.

[FR Doc. 88-24374 Filed 10-20-88; 8:45 am]

BILLING CODE 7035-01-M

Release of Waybill Data for Use By The Intermodal Policy Division (IPD) Association of American Railroads

The Commission has received a request from the Intermodal Policy Division (IPD) of the Association of American Railroads (AAR) for permission to use certain data from the Commission's 1987 ICC Waybill Sample. The data will be used exclusively as input data for the AAR Intermodal Competition Model. The model is the chief means by which the AAR and the rail industry predict the impact on rail traffic and revenue of changes in rail or truck costs. The data requested are the Public Use File augmented to include the six digit Standard Point Location Code (SPLC), the seven digit Standard Transportation Commodity Code (STCC), car types, and complete route.

The Commission requires rail carriers to file waybill sample information if in any of the past three years they terminated on their lines: (1) 4,500 revenue carloads or (2) 5 percent of revenue carloads in any one State (49 CFR Part 1244). From the waybill information, the Commission has developed a Public Use Waybill File that has satisfied the majority of all our waybill data request while protecting the confidentiality of proprietary data submitted by the railroads. However, if confidential waybill data are requested, as in this case, we will consider releasing the data only after certain protective conditions are met and public notice is given. More specifically, under the Commission's current policy for handling waybill requests, we will not release any confidential waybill data until after: (1) Public notice is provided so affected parties have an opportunity to object and (2) certain requirements designed to protect the data's confidentiality are agreed to by the requesting party [Ex Parte No. 385 (Sub-No. 2), 52 FR 12415, April 16, 1987].

Accordingly, if any parties object to this request, they should file their objections (an orginal and 2 copies) with the Director of the Commission's Office of Transportation Analysis (OTA) within 14 calendar days of the date of this notice. They should also include all grounds for objections to the full or partial disclosure of the requested data. The Director of OTA will consider these objections in determining whether to release the requested waybill data. Any parties who objected will be timely notified of the Director's decision.

Contact: James A. Nash (202) 275-6864.

Noreta R. McGee,

Secretary.

[FR Doc. 88-24441 Filed 10-20-88; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31322]

Tarantula Corp. et al.; Control Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Interstate Commerce Commission exempts Tarantula Corporation (Tarantula) from the requirements of 49 U.S.C. 11343 to acquire control of the Fort Worth & Western Railroad Company (FWWR) and the Fort Worth & Dallas Railroad Company (FWDR). Tarantula, a non-carrier holding company, currently owns all of the outstanding shares of stock of FWWR and FWDR, both of which at the time of the petition were non-carriers. FWWR has filed a notice of exemption pursuant to 49 CFR 1150.31 in Finance Docket No. 31314, *Fort Worth & Western Railroad Company—Acquisition and Operation Exemption—Rail Line in Fort Worth, TX* (not printed), served September 23, 1988, to acquire a rail line in Fort Worth, TX from the Burlington Northern Railroad Company and incidental trackage rights to operate over a line owned by the St. Louis Southwestern Railway Company. FWDR plans to file a similar exemption petition to acquire a connecting rail line comprised of two non-contiguous segments in Fort Worth from the Missouri Pacific Railroad Company. Upon consummation of those transactions, Tarantula will control FWWR and FWDR, two connected rail carriers. The exemption is subject to employee protective conditions.

DATES: This exemption is effective on October 24, 1988. Petitions for reconsideration must be filed by November 10, 1988.

ADDRESSES: Send pleadings referring to Finance Docket No. 31322 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Kevin M. Sheys, Weiner, McCaffrey, Brodsky and Kaplan, P.C., 1350 New York Avenue NW., Suite 800, Washington, DC 20005-4797.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245, [TDD for hearing impaired (202) 275-1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275-1721.].

Decided: October 14, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 88-24375 Filed 10-20-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Partial Consent Decree; Thomas Solvent Co. et al.

Notice is hereby given that a proposed Partial Consent Decree in *United States v. Thomas Solvent Company, et al.*, Civil Action No. K-88-167 (W.D. Mich.), between the United States, on behalf of the Environmental Protection Agency ("EPA"), and Grand Trunk Western Railroad Company ("Grand Trunk") has been lodged with the United States District Court for the Western District of Michigan. The Partial Consent Decree resolves the claims of the United States (as well as related claims of the State of Michigan which is also a party to the Decree) against Grand Trunk under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et seq., for certain response costs incurred by the EPA in responding to the contamination of the Verona Well Field, the public drinking water supply for Battle Creek, Michigan. Under the settlement reflected in the Partial Consent Decree, Grand Trunk will pay $4,705,877 in reimbursement of certain response costs incurred prior to July 1, 1988. The Partial Consent Decree also contains certain findings of fact and declarations of liability as to Grand Trunk's liability with respect to the continuing Verona Well Field response actions.

The Department of Justice will receive comments relating to the proposed Partial Consent Decree for 30 days following the publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Thomas Solvent Company*, D.J. Ref. No. 90-11-2-140. The proposed Partial Consent Decree may be examined at the Office of the United States Attorney for the Western District of Michigan, 399 Federal Building, Grand Rapids, Michigan 49503, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 6317, Tenth and Pennsylvania Avenue NW., Washington DC 20530. A copy of the proposed Partial Consent Decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check payable in the amount of $2.70 (10 cents per page for reproduction costs), payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-24360 Filed 10-20-88; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

National Cooperative Research Notifications; Bus Emissions Technology Cooperative Industry Project

Notice is hereby given that, on September 27, 1988, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), Southwest Research Institute ("SwRI") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission of a project entitled "Bus Emissions Technology Cooperative Industry Project." The notification discloses (1) the identities of the parties to the project and (2) the nature and objective of the project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the project and its general areas of planned activities are given below.

The parties to the project are:

1. Southeastern Pennsylvania Transportation Authority;

2. Los Angeles County Transportation Commission;

3. Southern California Rapid Transit District.

The purpose of the project is to help make the transit bus system an environmentally acceptable transportation system. The three main areas which will be addressed are (1) the effects of fuel modifications, (2) the use of alternate fuels or supplemental fuels and/or additives, and (3) the use of exhaust aftertreatment to eliminate visible smoke and/or other components of bus exhaust.

Membership in this group research project remains open, and the parties intend to file additional written notification disclosing all changes in membership of this project.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 88-24364 Filed 10-20-88; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Joseph J. Godorov, D.O.; Denial of Application for Registration

On August 23, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued to Joseph J. Godorov, D.O., of 9055 SW. 87th Avenue, Suite 307, Miami, Florida, an Order to Show Cause proposing to deny his application, executed on December 15, 1986, for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Dr. Godorov's registration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

The Order to Show Cause was sent to Dr. Godorov by registered mail, return-receipt requested. The returned receipt indicates that the Order to Show Cause was received on August 29, 1988. Dr. Godorov has not responded to the Order to Show Cause. Thus, the Administrator concludes that Dr. Godorov has waived his opportunity for a hearing on the issues raised in the Order to Show Cause and, pursuant to 21 CFR 1301.54(d) and 1301.54(e), he enters this final order without a hearing and based upon the information contained in the investigative file. 21 CFR 1301.57.

The Administrator finds that on March 1, 1978, in the Circuit Court for the Sixth Judicial Circuit of Florida, in and for Pinellas County, Dr. Godorov, following a jury trial, was convicted of nineteen felony counts of prescribing controlled substances not in good faith and not in the usual course of his professional practice, in violation of § 893.13 of the Florida Comprehensive Drug Abuse Prevention and Control Act. Dr. Godorov appealed the verdict. On December 13, 1978, the District Court of Appeal for the Second Appellate District of Florida vacated the conviction and remanded the case for a new trial.

On January 9, 1980, in the Circuit Court for the Sixth Judicial Circuit of Florida, in and for Pinellas County, Dr. Godorov was convicted, following a new jury trial, of nineteen felony counts of prescribing controlled substances not in good faith and not in the usual course of his professional practice. He was sentenced to a three-year period of incarceration, but was released from the Florida Department of Corrections on August 27, 1981, after serving twenty months of his sentence.

On August 14, 1978, the Administrator of the Drug Enforcement Administration ordered the revocation of Dr. Godorov's previously held DEA Certificate of Registration following an administrative hearing. The revocation, which was based upon Dr. Godorov's felony convictions relating to controlled substances, was to take effect on September 18, 1978. See *Joseph J. Godorov, D.O.*, Docket No. 78-8, 43 FR 36702 [1978].

On September 19, 1978, the Administrator granted Dr. Godorov's application for a stay of the revocation pending appellate review by the United States Court of Appeals for the Fifth Circuit. The appeal was not heard by the court. In the interim, Dr. Godorov's registration expired.

The Administrator also finds that on April 18, 1979, the Florida Department of Professional and Occupational Regulation, State Board of Osteopathic Examiners, issued a final order suspending Dr. Godorov's osteopathic license in that state for a period of three years based upon evidence that he improperly handled controlled substances. The Board found that during a period from April to August 1977, Dr. Godorov issued controlled substance prescriptions to an undercover St. Petersburg police officer for other than legitimate medical purposes. After issuing the officer unlawful prescriptions on one occasion, Dr. Godorov told her to "* * * stay happy and not to get too high." The evidence presented at the Board hearing demonstrated Dr. Godorov's disregard of controlled

substance laws and regulations and an absolute lack of concern for the abuse potential for the drugs he handled. Dr. Godorov appealed the Board's decision to the District Court of Appeal for the Second Appellate District of Florida. That court upheld the Board's suspension of Dr. Godorov's state osteopathic license.

On April 13, 1988, the Florida Department of Professional and Occupational Regulation, Board of Osteopathic Examiners, revoked Dr. Godorov's osteopathic license in that state, based upon his conviction of felony offenses relating to controlled substances. His license was reinstated on August 18, 1983.

In evaluating whether Dr. Godorov's pending application for registration should be granted, the Administrator must consider whether his registration would be consistent with the public interest. In making that determination, the Administrator must consider the following factors enumerated in 21 U.S.C. 823(f):

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority;

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances;

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances;

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances;

(5) Such other conduct which may threaten the public health and safety.

The Administrator is not required to make findings with respect to all of the factors listed above. Instead, the Administrator has the discretion to give each factor the weight he deems appropriate, depending upon the facts and circumstances of each case. See *David E. Trawick, D.D.S.*, Docket No. 86-69, 53 FR 5326 (1988).

Dr. Godorov has not presented any evidence to demonstrate that he is now prepared and willing to handle controlled substances responsibly and in compliance with Federal, State, and local laws relating to controlled substances. Thus, the only evidence before the Administrator, on which he can base this final order, is that concerning Dr. Godorov's previous convictions and past experience in handling controlled substances.

The evidence in this case relates primarily to the second, third, fourth and fifth factors listed under 21 U.S.C. 823(f). Dr. Godorov has been convicted of felony offenses relating to controlled substances. By issuing controlled substance prescriptions for other than legitimate medical purposes, he has demonstrated a lack of compliance with applicable state laws relating to controlled substances. His actions and disregard for the dangerous consequences of his prescribing practices also constitute conduct which may threaten the public health and safety.

Although the Florida Department of Professional and Occupational Regulation, Board of Osteopathic Examiners, reinstated Dr. Godorov's osteopathic license, there is no evidence that the Board recommended that he be given a DEA registration and no evidence to support the granting of a registration in this case.

Based upon the totality of the evidence, the Administrator concludes that the grant of Dr. Godorov's application for registration would be contrary to the public interest, and must, therefore, be denied.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), orders that the pending application for registration, executed on December 15, 1986, by Joseph J. Godorov, D.O., be, and it hereby is, denied.

This order is effective October 21, 1988.

Dated: October 14, 1988.

John C. Lawn,

Administrator.

[FR Doc. 88-24415 Filed 10-20-88; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S-3504, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions being added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page number(s).

Volume II

Nebraska:
NE88-10 ..... pp. 892a-892b.
NE88-11 ..... pp. 892c-892d.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

District of Columbia:
DC88-1 (JAN. 8, 1988) ..... pp. 78-79, 81-82, 84.
New Jersey:
NJ88-2 (JAN. 8, 1988) ..... pp. 614-620, 623-631.
NJ88-3 (JAN. 8, 1988) ..... pp. 634-656.
NJ88-4 (JAN. 8, 1988) ..... pp. 658-660.
New York: NY88-4 (JAN. 8, 1988). p. 712.
West Virginia: WV88-3 (JAN. 8, 1988). pp. 1207-1208.

Volume II

Kansas: KS88-6 (JAN. 8, 1988). p. 347.
Missouri: MO88-1 (JAN. 8, 1988). p. 886.
Nebraska:
NE88-1 (JAN. 8, 1988) ..... p. 670.
NE88-3 (JAN. 8, 1988) ..... p. 677.
Listing by location (index) ..... pp. xxxix-xl.
Listing by decision (index) ..... pp. lvii-lviii.

Volume III

Alaska: AK88-1 (JAN. 8, 1988). pp. 2, 5, 7.
Hawaii: HI88-1 (JAN. 8, 1988). pp. 132-133.
Oregon: OR88-1 (JAN. 8, 1988). p. 307.
Washington: WA88-1 (JAN. 8, 1988). p. 365.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and Related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from:

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 14th Day of October 1988.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 88-24107 Filed 10-20-88; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 31, 1988.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 31, 1988.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC, this 3rd day of October 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles produced
Abex (Workers)	Mahwah, NJ	10/3/88	9/22/88	21,154	Research & Experimental Foundry Castings.
Adorence Co., Inc., (Workers)	Secaucus, NJ	10/3/88	9/21/88	21,155	Men's & Ladie's Sportswear.
Airlanta (Company)	Gloucester City, NJ	10/3/88	9/22/88	21,156	Sheet Metal Items.
Al's Oilfield Service (Workers)	Williston, ND	10/3/88	9/17/88	21,157	Oil & Gas.
Amarillo Roustabout Serv. (Company)	Abilene, TX	10/3/88	9/23/88	21,158	Oil & Gas.
BHP Engineering (Workers)	Corpus Christi, TX	10/3/88	9/17/88	21,159	Oil & Gas.

APPENDIX—Continued

Petitioner (union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles produced
B.J. Titan Service (Workers)	Roosevelt, UT	10/3/88	9/20/88	21,150	Oil & Gas.
Baggett Drilling Co. (Workers)	Eagle Pass, TX	10/3/88	9/19/88	21,151	Oil & Gas.
BethEnergy Mines, Inc. Marianna Mine No. 58 (UMWA)	Marianna, PA	10/3/88	9/16/88	21,152	Coal.
Caren Lynn (Workers)	New York, NY	10/3/88	9/14/88	21,153	Ladies' Apparel & Children's Apparel.
Celeron Oil & Gas, Co. (Workers)	Englewood, CO	10/3/88	9/21/88	21,154	Oil & Gas.
CENEX (Workers)	Billings, MT	10/3/88	9/21/88	21,155	Oil & Gas.
Charles E. Mayfield (Company)	Princeton, LA	10/3/88	9/20/88	21,156	Oil & Gas.
Chevron USA, Inc. (Workers)	Houston, TX	10/3/88	9/21/88	21,157	Oil & Gas.
Colonial Corp. (Workers)	Woodbury, TN	10/3/88	9/19/88	21,158	Ladie's Blouses & Men's Shirts.
Comet Drilling Co. (Workers)	Eunice, LA	10/3/88	9/15/88	21,159	Oilfield Services.
Control & Valve Equip. Co. (Company)	Tulsa, OK	10/3/88	9/19/88	21,170	Oil & Gas.
Courtland Mfg. (Workers)	New York, NY	10/3/88	9/14/88	21,171	Ladie's & Children's Apparel.
DeKalb Industries (Workers)	Smithville, TN	10/3/88	9/19/88	21,172	Ladie's Blouses & Men's Shirts.
Diamond Tool & Horseshoe Co.	Duluth, MN	10/3/88	9/20/88	21,173	Hand Tools.
Discovery, Inc. (Company)	Great Bend, KS	10/3/88	9/21/88	21,174	Oil & Gas.
Discovery Mud Co. (Company)	Midland, TX	10/3/88	9/20/88	21,175	Oil & Gas.
Dowell Schlumberger (Workers)	Simms, TX	10/3/88	9/12/88	21,176	Oil & Gas.
Dreiling Oil, Inc. (Workers)	Victoria, KS	10/3/88	9/21/88	21,177	Oil & Gas.
Dynamic Exploration (Company)	Lafayette, LA	10/3/88	9/20/88	21,178	Oil & Gas.
Exploration Employment Services, Inc. (Workers)	Livingston, TX	10/3/88	9/20/88	21,179	Oil & Gas.
Florsheim Shoe Co. (UFCW)	Jackson, MO	10/3/88	9/15/88	21,180	Women's Shoes.
Ford Motor Co. (Workers)	Troy, MI	10/3/88	9/20/88	21,181	Tractors.
G&A Contract Services, Inc. (Company)	Houston, TX	10/3/88	9/20/88	21,182	Oil & Gas.
Garden State Knitting Mills, Inc. (ILGWU)	Linden, NJ	10/3/88	9/21/88	21,183	Men's & Women's Sweaters.
Geosource Inc. (Company)	Houston, TX	10/3/88	9/21/88	21,184	Oil & Gas.
Gibson Association, Inc. (UAW)	Cranford, NJ	10/3/88	9/22/88	21,185	Plastic Bottle Caps.
Gib-Son Cementing Co., Inc. (Workers)	Kilgore, TX	10/3/88	9/19/88	21,186	Oil & Gas.
Gibson Drilling Co. (Workers)	Kilgore, TX	10/3/88	9/20/88	21,187	Oil & Gas.
Griffin Alexander Drilling Co. (Company)	Fresno, TX	10/3/88	9/20/88	21,188	Oil & Gas.
Hembree Well Service, Inc. (Workers)	Ness City, KS	10/3/88	9/23/88	21,189	Oil & Gas.
Hembree Well Service, Inc. (Workers)	Garden City, KS	10/3/88	9/23/88	21,190	Oil & Gas.
Hembree Well Service, Inc. (Workers)	Ellis, KS	10/3/88	9/23/88	21,191	Oil & Gas.
Hembree Well Service, Inc. (Workers)	Great Bend, KS	10/3/88	9/23/88	21,192	Oil & Gas.
High Sky Drilling, Inc. (Workers)	Midland, TX	10/3/88	9/12/88	21,193	Oil & Gas.
Hinkle Oil Co. (Company)	Wichita, KS	10/3/88	9/21/88	21,194	Oil & Gas.
Hondo Drilling Co. (Workers)	Midland, TX	10/3/88	9/16/88	21,195	Oil & Gas.
Hydrocarb Logging, Inc. (Company)	Florence, MS	10/3/88	9/22/88	21,196	Oil & Gas.
J&C Mfg. (Workers)	New York, NY	10/3/88	9/14/88	21,197	Ladie's & Children's Apparel.
L&H Shirt Co. (Workers)	Cochran, GA	9/26/88	9/12/88	21,198	Men's & Boys Shirts.
Lambert Construction (Workers)	Odessa, TX	10/3/88	9/19/88	21,199	Oil & Gas.
Lon O. Willer, Inc. (Company)	Grafton, ND	10/3/88	9/19/88	21,200	Oil & Gas.
Magnetex (Workers)	Midland, TX	10/3/88	9/14/88	21,201	Oil & Gas.
Pennzoil Exploration & Production Co. (Workers)	Corpus Christi, TX	10/3/88	9/9/88	21,214	Oil & Gas.
R.K. McLeroy, Inc. (Workers)	Abilene, TX	10/3/88	9/10/88	21,215	Oil & Gas.
Rankin Oil Co. (Company)	Midland, TX	10/3/88	9/12/88	21,216	Oil & Gas.
Ravanna Oil Co. (Workers)	Bellaire, KY	10/3/88	9/20/88	21,217	Oil & Gas.
Reed Transportation (Workers)	Casper, WY	10/3/88	9/15/88	21,218	Oil & Gas.
Reed Transportation (Workers)	Evanston, WY	10/3/88	9/15/88	21,219	Oil & Gas.
Reed Transportation (Workers)	Gillette, WY	10/3/88	9/13/88	21,220	Oil & Gas.
Rock Island Drilling Corp. (Workers)	Midland, TX	10/3/88	9/12/88	21,221	Oil & Gas.
Rogers Exploration (Workers)	Midland, TX	10/3/88	9/19/88	21,222	Oil & Gas.
Roughrider Drilling Fluids, Inc. (Workers)	Denver, CO	10/3/88	9/12/88	21,223	Oil & Gas.
Santa Energy (Company)	Austin, TX	10/3/88	9/16/88	21,224	Oil & Gas.
Saw Drilling, Inc. (Company)	Victoria, TX	10/3/88	9/20/88	21,225	Oil & Gas.
Manhattan Plaza (Workers)	New York, NY	10/3/88	9/14/88	21,226	Ladies' Apparel & Children's Apparel.
McNeese Logging Service, Inc. (Company)	Midland, TX	10/3/88	9/13/88	21,230	Oil & Gas.
Merritt Trucking Co., Inc. (Workers)	Tye, TX	10/3/88	9/20/88	21,204	Oil & Gas.
Mesa Drilling Co. (Workers)	Abilene, TX	10/3/88	9/20/88	21,205	Oil & Gas.
Mid-Coast Drilling, Inc. (Workers)	Victoria, TX	10/3/88	9/20/88	21,206	Oil & Gas.
Midwest Equipment Co., Inc. (Workers)	Odessa, TX	10/3/88	9/19/88	21,207	Oil & Gas.
Midwest Drilling Fluids (Workers)	Houston, TX	10/3/88	9/11/88	21,208	Oil & Gas.
Missouri Valley Perforating, Inc. (Workers)	Williston, ND	10/3/88	9/17/88	21,209	Oil & Gas.
North American Oil & Gas. Inc. (Company)	Austin, TX	10/3/88	9/16/88	21,210	Oil & Gas.
Ontario Forge Corp. (IAM)	Muncie, IN	10/3/88	9/20/88	21,211	Forgings for Jet Engine Parts.
Oxford Drapery Co. (Workers)	S. Boston, MA	10/3/88	9/14/88	21,212	Drapery's, Panels, Shams & Bedspreads.
Peerless Footwear, Inc. (Company)	New York, NY	10/3/88	9/29/88	21,213	Shoes.
Signal Oilfield Service, Inc. (Workers)	Sidney, MT	10/3/88	9/21/88	21,226	Oil & Gas.
Sigri Carbon Corp. (Workers)	Hickman, KY	10/3/88	9/20/88	21,227	Graphite Electrodes Used to Melt Steel.
Smith Energy Services (Company)	Golden, CO	10/3/88	9/20/88	21,228	Oil & Gas.
Smith Energy Services (Company)	Brighton, CO	10/3/88	9/20/88	21,229	Oil & Gas.
Smith Energy Services (Company)	Rangely, CO	10/3/88	9/20/88	21,230	Oil & Gas.
Smith Energy Services (Company)	Williston, ND	10/3/88	9/23/88	21,231	Oil & Gas.
Smith Energy Services (Company)	Fruita, CO	10/3/88	9/20/88	21,232	Oil & Gas.
Smith Energy Services (Company)	Casper, WY	10/3/88	9/20/88	21,233	Oil & Gas.
Smith Energy Services (Company)	Farmington, NM	10/3/88	9/20/88	21,234	Oil & Gas.
Smith Energy Services (Company)	Ireland, TX	10/3/88	9/20/88	21,235	Oil & Gas.

APPENDIX—Continued

Petitioner (union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles produced
Sun Exploration & Production Co. (Workers)	Dallas, TX	10/3/88	9/14/88	21,236	Oil & Gas.
Sundown Well Service (Workers)	Andrews, TX	10/3/88	9/19/88	21,237	Oil & Gas.
TXO Production Corp. (Workers)	Beaumont, TX	10/3/88	9/20/88	21,239	Oil & Gas.
Texas Pipe and Coupling (Workers)	Haughes Springs, TX	10/3/88	9/16/88	21,240	Oil & Gas.
Transamerican Natural Gas Corp. (Workers)	Laredo, TX	10/3/88	9/19/88	21,241	Oil & Gas.
Transwestern Mining Co. (Workers)	Claremore, OK	10/3/88	9/14/88	21,242	Coal.
Toland & Johnston (Workers)	Oklahoma City, OK	10/3/88	9/13/88	21,243	Oil & Gas.
Tubescope, Inc. (Workers)	Houston, TX	10/3/88	9/13/88	21,244	Oil & Gas.
United Technologies (Workers)	Dearborn, MI	10/3/88	9/20/88	21,245	Wire Harnesses.
V&B Drilling Co. (Workers)	Adessa, TX	10/3/88	9/22/88	21,246	Oil & Gas.
Vandrill, Inc. (Workers)	Edmond, OK	10/3/88	9/19/88	21,247	Oil & Gas.
Vans Well Service (Workers)	Forsan, TX	10/3/88	9/22/88	21,248	Oil & Gas.
Wolverine World Wide, Inc. (Workers)	Big Rapids, MI	10/3/88	9/22/88	21,249	Shoes.
Wills Enterprises Inc. (Workers)	Abilene, TX	10/3/88	9/10/88	21,250	Oil & Gas.

[FR Doc. 88-24383 Filed 10-20-88; 8:45 am]
BILLING CODE 4510-30-M

Bureau of Labor Statistics

Business Research Advisory Committee; Meeting and Agenda

The regular Fall meeting of the Committee on Occupational Safety and Health Statistics of the Business Research Advisory Council will be held on November 17, 1988. The Business Research Advisory Council advises the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of technical officers from American business and industry.

The schedule and agenda for the meeting is as follows:

Thursday, November 17, 1988

1 p.m.—Committee on Occupational Safety and Health Statistics, Room S-4215 A and B, Frances Perkins Building, 200 Constitution Avenue NW., Washington, DC.

1. Annual Survey, results for 1987.
2. SDS status, budget and state participation.
3. Keystone Report.
4. Statistical System Revision.
   a. Data System.
   b. Recordkeeping concepts and timetable for new guidelines.
5. Results of Revision Feasibility Tests (FY 1988).
6. FY 1989 Revision Pilot Tests.
7. Fatality Reporting Project.
8. Recordkeeping Assessment Projects.
9. Industry Fact Sheet Project.
10. Inhalation Report.
11. Other business.

The meeting is open to the public. It is suggested that persons planning to attend the meeting as observers contact Janice D. Murphey, Liasion, Business Research Advisory Council on Area Code (202) 523-1347.

Signed at Washington, DC, the 14th day of October 1988.

Janet L. Norwood,

Commissioner of Labor Statistics.

[FR Doc. 88-24384 Filed 10-20-88; 8:45 am]
BILLING CODE 4510-24-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Advisory Committee on International Exhibitions; Establishment

In accordance with provisions of the Federal Advisory Committee Act (Pub. L. 92-463) and General Services Administration regulations issued pursuant thereto (41 CFR Paragraph 101-6), and under the authority of section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended [20 U.S.C. 959(a)(4)], notice is hereby given that establishment of the Federal Advisory Committee on International Exhibitions has been approved by the Chairman of the National Endowment for the Arts for a period of two years from the date this Charter is filed. This committee will make recommendations on the selection of significant, contemporary American visual art, for presentation internationally in the context of major exhibitions, including multinational festivals, periodic exhibitions, and other major cultural events. The committee will also advise on the significance of participation by the United States Government in both existing and new exhibition opportunities and venues outside the United States.

The committee will report its recommendations to the Chairman of the Arts Endowment, for transmittal by the Chairman or the Chairman's designee to the Director of the United States Information Agency (USIA) or the Director's designee.

The function of this advisory committee cannot be performed by the USIA, the Arts Endowment, an existing advisory committee or other means, such as public hearing. Neither agency nor any existing advisory committee possesses sufficient expertise regarding major international art exhibition venues or breadth of representation to offer such advice. Other means, such as public hearings, are not suitable for obtaining the necessary advice. Therefore, the establishment and use of this advisory committee is in the public interest.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and over the USIA and with the Library of Congress.

Yvonne Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88-24389 Filed 10-20-88; 8:45 am]
BILLING CODE 7537-01-M

International Exhibitions Federal Advisory Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Federal Advisory Committee on International Exhibitions will be held on November 7, 1988, from 10:00 a.m.–4:00 p.m. at the Carnegie Museum of Art, 4400 Forbes Avenue, Pittsburgh, PA 15213.

A portion of this meeting will be open to the public on November 7, from 2:00–4:00 p.m. The topics for discussion will include future role of the committee and guidelines.

The remaining session of this meeting on November 7, from 10:00 a.m.–2:00 p.m., is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the

Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88-24390 Filed 10-20-88; 8:45 am]

BILLING CODE 7537-01-M

Visual Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Visual Artists Organizations Section) to the National Council on the Arts will be held on November 7-10, 1988, from 9:00 a.m.-9:00 p.m.; and on November 11, from 9:15 a.m.-4:45 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

October 17, 1988.

[FR Doc. 88-24391 Filed 10-20-88; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Issuance and Availability NUREG-0844, "NRC Integrated Program for the Resolution of Unresolved Safety Issues A-3, A-4, and A-5 Regarding Steam Generator Tube Integrity"

The U.S. Nuclear Regulatory Commission is issuing NUREG-0844, "NRC Integrated Program for the Resolution of Unresolved Safety Issues A-3, A-4, and A-5 Regarding Steam Generator Tube Integrity." This report documents resolution of the subject unresolved safety issues (USIs).

Steam generator tube integrity was designated an unresolved safety issue in 1978 after it became apparent that steam generator tubes were subject to widespread degradation, frequent leaks, and occasional ruptures (i.e., gross failures). Task Action Plans A-3, A-4, and A-5 were established to evaluate the safety significance of these problems in Westinghouse, Combustion Engineering, and Babcock & Wilcox steam generators, respectively. These studies were later combined into one effort because many problems being experienced by the different pressurized-water reactor (PWR) vendors were similar.

NUREG-0844 provides a generic risk assessment which indicates that risk from steam generator tube rupture (SGTR) events is not a significant contributor to the total risk at a given site, nor to the total risk to which the general public is routinely exposed. This finding is considered indicative of the effectiveness of licensee programs and regulatory requirements for ensuring steam generator tube integrity in accordance with 10 CFR Part 50, Appendices A and B.

NUREG-0844 also identifies a number of staff-recommended actions that can further improve the effectiveness of licensee programs in ensuring the integrity of steam generator tubes and in mitigating the consequences of a steam generator tube rupture. As part of the integrated program, the staff issued Generic Letter 85-02 encouraging licensees of PWRs to upgrade their programs, as necessary, to meet the intent of the staff-recommended actions; however, such actions do not constitute NRC requirements. In addition, this report describes a number of ongoing staff actions and studies involving steam generator issues that are being pursued to provide added assurance that risk from SGTR events will continue to be small.

The staff will continue to monitor steam generator operating experiences as an indicator of the effectiveness of licensee programs for ensuring steam generator tube integrity. As has been true in the past, the staff may impose additional requirements (pursuant to applicable regulations) to continue to assure that licensees are implementing adequately effective programs where and if such action is determined to be necessary on the basis of operating experience or as a result of ongoing staff actions and studies.

Copies of these documents will be available after October 13, 1988. Copies will be sent directly to utilities, utility industry groups and associations and environmental and public interest groups. Other copies will be available for review and copying for a fee at the NRC Public Document Room, 2120 L Street NW., Washington, DC 20555. Copies of NUREG-0844 may be requested from the U.S. Government Printing Office (GPO) by calling (202) 275-2060 or (202) 782-3238; or by writing to the Superintendant of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082; or by writing to the National Technical Information Service, Springfield, Virginia, 22111.

Dated at Rockville, Maryland, this 11th day of October 1988.

For the Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-24402 Filed 10-20-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-354]

Public Service Electric & Gas Co. et al.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-57 issued to Public Service Electric & Gas Company and Atlantic City Electric Company (the licensees) for operation of the Hope Creek Generating Station, located in Salem County, New Jersey.

The proposed amendment would revise Technical Specification Table 3.3.3-3 to change the maximum allowed response time for the high pressure coolant injection system. The subject response time is the time allowed for the system to achieve rated flow following receipt of an initiation signal. The proposed change would increase the currently allowed maximum response time of 27 seconds to a new value of 35 seconds.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By November 21, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which much include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the oppportunity to participate fully in the conduct of the hearing, including the oppportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Att: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri) 1-(800) 342-6700. The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Walter R. Butler: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Conner and Wetterhahn, 1747 Pennsylvania Avenue NW., Washington, DC 20006, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated August 13, 1987 as supplemented August 12, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070.

Dated at Rockville, Maryland, this 13th day of October 1988.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I-2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-24403 Filed 10-20-88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26182; File No. SR-NASD-88-19]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Amendment of Proposed Rule Change Relating to Subsection 5(b)(5) of Appendix F to Article III, Section 34 of the NASD's Rules of Fair Practice To Permit Indeterminate Compensation

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 10, 1987, the National Association of Securities Dealers, Inc. ("NASD"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change [2] as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] Notice of the original filing was given by Securities Exchange Act Release No. 21468, November 11, 1984, and by publication in the Federal Register, 49 FR 44988, November 13, 1984.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The following is the amended text of the proposed rule change to subsection 5(b)(5) of Appendix F to Article III, section 34 of the NASD's Rules of Fair Practice ("Appendix F"). Additions are underlined; deletions are in brackets. Attached as Exhibit 2 is a copy of the proposed rule change originally filed, marked to show the amendments filed herein to the proposed rule change.

Section 5—Organization and Offering Expenses

(b) In determining the fairness and reasonableness of organization and offering expenses for purposes of subsection (a) hereof,[8] the arrangements shall be presumed to be unfair and unreasonable if:

(5) The program provides for compensation of an indeterminate nature to be paid to members or persons associated with members for sales or program units, or for services of any kind rendered in connection with or related to the distribution thereof, including but not necessarily limited to, the following: A percentage of the management fee, a profit sharing arrangement, brokerage commissions, an overriding royalty interest, a net profits interest, a percentage of revenues, a reversionary interest, a working interest, a security or right to acquire a security having an indeterminate value, or other similar incentive items; *provided however, that an arrangement which provides for continuing compensation to a member or person associated with a member in connection with a public offering shall not be presumed to be unfair and unreasonable if all of the following conditions are satisfied:*

(i) The continuing compensation is to be received only after each investor in the program has received cash distributions from the program aggregating an amount equal to his cash investment plus a six percent cumulative annual return on his adjusted investment;

(ii) The continuing compensation is to be calculated as a percentage of program cash distributions;

(iii) The amount of continuing compensation does not exceed three percent for each one percentage point that the total of all compensation pursuant to subsection (b)(1) of this section [4] received at the time of the offering and at the time any installment payment is made fall below nine percent; provided, however, that in no event shall the amount of continuing compensation exceed 12 percent of program cash distributions; and

(iv) If any of the continuing compensation is to be derived from the limited partners' interest in the program cash distributions, the percentage of the continuing compensation shall be no greater than the percentage of program cash distributions to which limited partners are entitled at the time of the payment.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and statutory basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On October 15, 1984, the NASD filed with the Commission SR–NASD–84–10 pursuant to Rule 19b–4 (the "original rule change"). This filing proposed to amend subsection 5(b)(5) of Appendix F to permit a member to receive a back-end indeterminate interest in program distributions as compensation for distribution of a direct participation program ("DPP") if four conditions are satisfied.[5] Subsection 5(b)(5) of Appendix F currently prohibits any NASD member or person associated with a member from receiving indeterminate compensation in connection with the public offering of a DPP.[6]

Appendix F only applies to public offerings of DPPs. Accordingly, private program offerings reportedly frequently are sold with an underwriting compensation arrangement that includes a percentage interest in program distributions. The original rule change was developed because NASD members believed that the prohibition with respect to public programs was of questionable value in protecting investors in those instances where the member was willing to forego front-end compensation in a program in exchange for a possible participation in future cash distributions and dissolution proceeds of the DPP.

Original Rule Change

The original rule change to Appendix F permits indeterminate compensation to be paid to a member or person associated with a member in connection with a public offering of a DPP if four conditions are satisfied. The first condition, Item (i) of subsection 5(b)(5), is that the member's continuing compensation may be received only after all investors have received cash distributions from the program equal to 100 percent of their cash investment [7] plus a six percent cumulative annual return on their adjusted investment.[8] The six percent cumulative annual return, chosen as a prerequisite to the receipt by broker/dealers of continuing compensation, was adopted in response to concerns raised by the North American Securities Administrators Association ("NASAA"). NASAA argued that some recognition of present value should be made in computing investor's return of capital. The particular amount of six percent was chosen to coincide with a similar provision in NASAA guidelines.

Item (ii) of the proposed amendment requires that the member's continuing compensation be calculated as a percentage of cash distributions from the operation or dissolution of the program. Thus, a member may receive continuing compensation from operations, from the sale of program assets, and from dissolution of the program.

Item (iii) restricts the amount of back-end compensation that a member may receive to three percent of the partnership's annual distributions from operations or liquidation for each one percent that front-end retail and wholesale cash commissions fall below nine percent. Members normally are permitted maximum front-end compensation of ten percent pursuant to Appendix F.[9] Where a program is providing continuing compensation to a member, the amendment requires that the reduction in front-end compensation be calculated from a nine percent base. This decision was based on the NASD's experience that a majority of DPPs provide for underwriting compensation of at least nine to ten percent. Therefore, the NASD believed that by establishing a nine percent base from which the member must reduce front-end compensation in order to receive continuing compensation in the program, the NASD would be able to assure an actual reduction in front-end compensation.

The trade-off ration of three-to-one was based on an analysis which indicates that broker/dealers will realize a meaningful benefit by deferring compensation only if the program provides an attractive return to investors. It was determined that such a ratio was necessary to assure that members have the necessary incentive to give up front-end compensation and that a three-to-one ratio would focus the sales efforts of broker/dealers on quality programs to the benefit of investors.

Item (iii) also restricts the total amount of continuing compensation that a member may receive to twelve percent of the cash distributions from the operation or dissolution of the program. The limit on continuing compensation was intended to assure some consistency in the structure of public programs in order to prevent widely differing compensation levels from outweighing relevant suitabilty standards. It was also intended to prevent undue discrimination against smaller member firms that might not be able to absorb all the cost of the distribution of a program in exchange for deferred compensation.

Item (iv) provides that the percentage of broker/dealers' continuing compensation from the limited partners' interest in program distributions cannot exceed the percentage that limited partners are entitled to receive. The purpose of this provision is to ensure that if any of the distributions from operation or dissolution of a program payable to limited partners is to be used to pay the member's continuing compensation, the percentage of the compensation paid from the limited partners' distributions cannot exceed the percentage of program distributions payable to the limited partners.

Interim NASD Action

The Commission published the original rule change for public comment on November 5, 1984.[10] On November 15, 1984, the Commission submitted a letter to the NASD requesting further explanation of certain aspects of the original rule change. At the same time, Commission staff requested the NASD to meet with representatives of NASAA to resolve concerns expressed by the state administrators with regard to the original rule change. The staff of the NASD held several discussions with NASAA representatives and submitted letters in response to NASAA's request with respect to the original rule change on March 27, 1985, and January 27, 1986. The NASD submitted a response to the Commission's letter on July 27, 1987, requesting that the Commission go forward with its consideration of the proposed rule change and attached its prior correspondence with NASAA.[11]

Proposed Amendments

In its November 15, 1984, letter, the Commission raised a number of issues. With respect to three of the issues raised by the Commission, the NASD is proposing to amend the original rule change. The NASD is also proposing to amend the original rule change with respect to a fourth issue.

Cash commissions: Item (iii) provides that continuing compensation may not "exceed three percent for each one percentage point that the retail and wholesale cash commissions received at the time of the offering fall below nine percent." The terms "retail" and "wholesale" commissions are not defined in Appendix F, as expressed by the Commission in its letter of November 15, 1984, at Question 4(a). Retail and wholesale commissions represent only a portion of all underwriting compensation that could be paid in connection with the distribution of a DPP and do not include due diligence expense reimbursements, expense reimbursements to the underwriter, sales incentive compensation and other items of compensation that are enumerated in section 5(c) of Appendix F.[12] Thus, underwriting compensation may be structured for members to receive eight percent retail and wholesale commissions, which would permit members to receive back-end compensation of three percent of program cash distributions, as well as to receive front-end expense reimbursement of two percent of offering proceeds. This results in total front-end compensation of ten percent and back-end compensation of three percent.

The NASD's intention in proposing this provision was to permit continuing compensation only when the aggregate of *all* categories of front-end compensation was below nine percent. Therefore, the NASD proposes to amend Item (iii) to provide that the amount of continuing compensation cannot "exceed three percent for each one percentage point that the [retail and wholesale] *total of all compensation pursuant to subsection (b)(1) of this section* received at the time of the offering [ ] fall below nine percent."[13]

Installment payments: At Question 4(c) of the Commission's letter of November 15, 1984, the Commission requested details as to how continuing compensation would be treated for programs providing for installment payments for the purchase of units. In particular, the Commission noted that Item (iii) prohibits continuing compensation from exceeding three percent for each one percentage point that front-end commissions "received at the time of the offering" fall below nine percent. If a program is sold on an installment basis, which is permitted under Rule 3a12–9 of the Act,[14] the commission portion of underwriter's compensation would be structured to only be payable proportionally with respect to each installment paid. Thus,

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[5] Subsection 5(a) provides: No member or person associated with a member shall underwrite or participate in a public offering of a direct participation program if the organization and offering expenses are not fair and reasonable, taking into consideration all relevant factors.

[6] Subsection 5(b)(1) provides that an arrangement is unfair and unreasonable if the total amount of compensation in connection with the distribution of a public offering exceeds current effective compensation guidelines [10% of proceeds received, plus a maximum of .5% for reimbursement of bona fide due diligence expenses, published in NASD Notice to Members 82–51 (October 13, 1982)].

[7] Section 5 of Appendix F requires that compensation received by members and associated persons in connection with the public offering of DPPs be fair and reasonable and specifies certain arrangements which are presumed to be unreasonable. *See* NASD Rules of Fair Practice, Article III, Appendix F, § 5.

[8] "Indeterminate compensation" refers to any item of compensation which is on-going in nature and for which a value cannot be determined at the time of the offering, including a percentage of the general partner's management fee, a profit sharing arrangement, an overriding royalty interest, a net profits interest, a percentage of revenues and similar on-going compensation with an indeterminate dollar value.

[9] "Cash investment" includes the amount paid by the investor for the security in cash, payments of assessments, and reinvestments of limited partners' income in the same program. Cash investment does not include any amounts represented by an outstanding promissory note on unpaid installments.

[10] "Adjusted investment" is the investor's cash investment less cash distributions from the program.

[11] *See supra* note 4.

[12] *See* Securities Exchange Act Release No. 21488 (December 5, 1984, 49 FR 44986 (November 13, 1984).

[13] The discussions with NASAA have not led to a resolution of all of NASAA's concerns. A copy of the Commission's November 15, 1984, letter and the NASD's response of July 27, 1987, with attached NASD correspondence to NASAA, are available in File No. SR–NASD–84–10.

[14] Items of compensation include, but are not limited to: sales commissions, wholesaling fees, due diligence expenses, other underwriter's expenses, underwriter's counsel's fees, securities or rights to acquire securities, rights of first refusal, consulting fees, finder's fees and investor relations fees. *See* Appendix F. § 5(c).

[15] Deletions are in brackets; additions are underlined.

[16] 17 CFR 240.3a12–9(a).

because Rule 3a12-8 requires not less than 50 percent of the purchase price of a program interest to be paid initially,[15] 50 percent of the commission on the full purchase price of the program interests sold would be paid at the time of the offering. The remainder of the underwriter's commission would be paid if and when each installment is paid by the participating member's customers. It is anticipated that any non-commission compensation in the form of expense reimbursements and due diligence fees would be paid at the time of the offering and would not be prorated over the installments.

Therefore, the NASD proposes that Item (iii) be amended to include language that would relate the amount of continuing compensation to underwriting compensation received by participating members "at the time of the offering *and at the time any installment payment is made* * * *"

Cash distributions: At Questions 4(d) and 5(b) of the Commission's letter of November 15, 1984, the Commission requested clarification of certain language in Items (i), (iii) and (iv) of the amendment. Item (i) references "cash distributions from the program," in comparison to Items (iii) and (iv) which refer only to "distributions" from the program. The word "cash" was not intended to be omitted from these provisions. Therefore, the NASD proposes that Item (iii) be amended to read "exceeds 12 percent of program *cash* distributions" and that Item (iv) be amended to read "program *cash* distributions," in order to provide consistency in the text.[16]

Program cash distributions: In addition, Items (ii), (iii) and (iv) reference investors' cash distributions "from the operation or dissolution of the program." The NASD is concerned that this language may be unintentionally restrictive, as cash distributions may also be made from program investments and financing. Therefore, the NASD proposes that the language of the three provisions be amended to reference "program cash distributions" with no reference to the particular program activity generating these distributions.

The NASD believes that the amended proposed rule change is consistent with the provisions of section 15A(b)(2) of the Act, which require the NASD to adopt rules that promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and generally protect investors, on the basis that the proposed rule change establishes objective criteria for limiting underwriting compensation, while helping to focus the selling efforts of members on the qualitative nature of the public programs.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the amended proposed rule change does not result in any impact on competition that is not necessary in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on the Proposed Rule Change Received from Members, Participants, or Others

No comments were requested or received with respect to the proposed amendments to the original rule change. The original rule change was proposed for comment in NASD Notice to Members 82-14 (March 8, 1982).[17]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-88-10 and should be submitted by November 14, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz,
Secretary.

Dated: October 18, 1988.

Shirley E. Hollis,
Assistant Secretary.

[FR Doc. 88-24432 Filed 10-20-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26196; File No. SR-NASD-88-19]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Extension of Public Comment Period of Proposed Rule Change To Create an OTC Bulletin Board Display

On June 9, 1988, the National Association of Securities Dealers, Inc. ("NASD") submitted a proposed change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1) and Rule 19b-4 thereunder, to establish a quotation service, the OTC Bulletin Board Display Service, for OTC securities that are not included in the NASDAQ System nor listed on a national securities exchange. Notice of the proposed rule change was provided by the issuance of a Commission release (Securities Exchange Act Release No. 25948, July 28 1988) and by publication in the Federal Register (53 FR 29098, August 2, 1988).

The NASD originally consented to an extension of the period for public comment on the proposed rule change for forty-five days, until October 7, 1988,[1] and, on October 14, 1988, consented to an additional fourteen day extension on the comment period, until October 28, 1988.[2]

The Commission hereby extends the period for public comment on the proposed rule change for a period of fourteen days, until October 28, 1988.

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[15] *See* Rule 3a12-8(a)(3).

[16] The NASD also proposes that Item (ii) be amended to read "*program* cash distributions," in order to provide consistency in the text.

[17] *See* SR-NASD-84-19, at 11-12.

[1] *See* letter to Jonathan G. Katz, Secretary, Securities and Exchange Commission, from Frank J. Wilson, Executive Vice President and General Counsel, NASD, dated August 23, 1988.

[2] *See* letter to Jonathan G. Katz, Secretary, Securities and Exchange Commission, from Robert E. Aber, Vice President and Deputy General Counsel, Corporate Subsidiaries, dated October 14, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 17, 1988.

Shirley E. Hollis,
Assistant Secretary.

[FR Doc. 88-24382 Filed 10-20-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26198; File No. SR-PSE-88-22]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Pacific Stock Exchange, Inc. Relating to a Charge for Drop Phones on the Options Floor

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 28, 1988, the Pacific Stock Exchange Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, pursuant to Rule 19b-4 of the Act, submits this rule filing relating to an options member's use of another options member's booth space for phone or drop lines. The Exchange proposes to charge a member using the phone or drop line installed in another member's booth space $100 per month for each phone or drop line.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections 2 (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Within the PSE's policy for allocating booth space on the options floor among member firms, clearing firms, and retail stock execution firms, provision is made for a member to install either a single phone or a drop line in another member firm's booth. The PSE prohibits subleasing or exchanging of booths among members. The drop phones or lines are being used by members either in lieu of renting booth space, or in addition to phones in their own booth space. In either instance, the member utilizing the phone or line pays no charge to the PSE, even though it is utilizing a service provided by the PSE. The purpose of this rule filing is to establish a charge of $100 per month for each single phone or drop line that a member uses in another member's booth space.

The charge was proposed by the Options Committee. The Options Committee was established to examine revenues and costs on the options floor. The Options Committee is composed of three members of the Exchange's Board of Governors who are also options members, the President, and the Chief Financial Officer of the PSE.

The proposed rule filing is consistent with section 6(b)(4) of the Act in that it provides an equitable allocation of reasonable dues, fees, and other charges among the members using the facilities of the PSE. In addition, the proposed rule change is consistent with section 6(b)(5) of the Act in that it will enable the PSE to enhance its ability to facilitate transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

PSE does not believe that the proposed rule changes impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The charge was proposed by the Options Committee which is composed of three options members who are also Governors of the PSE, the President, and the Chief Financial Officer of the PSE.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective on filing pursuant to section 19(b)(3)(A) of the Act and Rule 19b-4(e) thereunder because it establishes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC, 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC, 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR-PSE-88-22 and should be submitted by November 14, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 14, 1988.

Shirley E. Hollis,
Assistant Secretary.

[FR Doc. 88-24381 Filed 10-20-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended October 14, 1988

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

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Docket No. 45676

Date Filed: October 11, 1988.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 8, 1988.
Description: Application of Executive Air Charter pursuant to section 401 of the Act and Subpart Q of the Regulations, requests that its certificate of public convenience and necessity for scheduled and charter foreign air transportation of persons, property and mail be amended to include the points Castries and Beaufort, St. Lucia, West Indies.

Docket No. 45676

Date Filed: October 13, 1988.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 27, 1988.
Description: Conforming Application of American Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations, and with respect to Docket 45629, applies for a certificate of public convenience and necessity authorizing service between Dallas/Ft. Worth, Texas, and Sydney, Australia, via Honolulu, Hawaii.

Docket No. 45678

Date Filed: October 13, 1988.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 10, 1988.
Description: Application of Delta Air Lines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations applies for a new or amended certificate of public convenience and necessity to permit Delta to provide nonstop air transportation between the U.S. and Australia.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 88-24454 Filed 10-20-88; 8:45 am]
BILLING CODE 4910-62-M

Office of the Secretary

Privacy Act of 1974

The Department of Transportation (DOT) herewith publishes a proposal to establish one system of records and delete six systems of records.

Any person or agency may submit written comments on the proposed establishment of the system of records to the U.S. Coast Guard, Office of Personnel and Training (G-PIM), ATTN: Mr. David M. Swatloski, 2100 2nd Street SW., Washington, DC 20593. Comments must be received within 30 days to be considered.

If no comments are received, the proposed changes will become effective on November 10, 1988. If comments are received, the comments will be considered and where adopted, the document will be republished with the changes.

Issued in Washington, DC, October 17, 1988.

Jon H. Seymour,
Assistant Secretary for Administration.

Narrative Statement, Department of Transportation, Office of the Secretary, On Behalf of the United States Coast Guard, For the Establishment and Deletion of Systems of Records

The Office of the Secretary, on behalf of the Coast Guard, proposes to establish the Military Pay and Personnel System—DOT/CG 623, by combining six existing systems (Personnel Management Information System—DOT/CG 624, Active Duty Military Payroll System—DOT/CG 525, Allotment System—DOT/CG 527, Closed Out Military Pay Record System—DOT/CG 530, FICA Wage and Tax System for Military Pay—DOT/CG 532, and Reserve Personnel Management Information System—DOT/CG 678) into one system of records covering all automated and some manual pay and personnel records maintained on regular and reserve Coast Guard military personnel and commissioned officers of the National Oceanic and Atmospheric Administration.

The purpose of this notice is to more accurately reflect current agency organization and practices and to include new categories of records in the system of records.

Since this proposal will combine existing record systems, the probable effects of this proposal on the privacy interests of the general public are minimal.

Routine use of system information is compatible under Subsection (a)(7) of the Privacy Act of 1974, 5 U.S.C. 522a, for the following reasons:

Routine Uses A, B, F, J, L, M, N & P are for payment of Coast Guard members' salaries, and collection and recording of government and private obligations.

Routine Uses C, D, H, & J are for administration of Federal Entitlement programs.

Routine Uses E & O are for Defense and Readiness Planning of the United States.

Routine Use I & K are to provide information for the operation of other legislatively mandated government agency operations.

Routine Use G is necessary to allow maintenance and operation of the system of records.

A description of the steps taken to safeguard these records is given under the appropriate heading of the attached **Federal Register** system of records notice.

Statutory authorities for maintaining this system of records are Title 37 U.S.C. as implemented in GAO Manual for Guidance of Federal Agencies, Title 2 GAO, & Title 6 GAO, and Title 14 U.S.C. 92 (i).

The purpose of this report is to comply with the Office of Management and Budget Circular, A-130, Appendix I, dated December 12, 1985.

SYSTEM NAME:

Military Pay and Personnel System.

SYSTEM LOCATION:

Department of Transportation (DOT),
a. U.S. Coast Guard (CG), Department of Transportation Computer Center, 400 7th Street SW., Washington, DC 20590.
b. U.S. Coast Guard Pay and Personnel Center, 444 S.E. Quincy Street, Topeka, KS 66683.
c. U.S. Coast Guard, 2100 2nd Street SW., Washington, DC 20593.
d. Decentralized data segments are located at the unit maintaining the individual's pay and personnel record.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. All Coast Guard military personnel, active duty and reserve.
b. Retired reserve Coast Guard military personnel waiting for pay at age 60.
c. Active Duty National Oceanic and Atmospheric Administration (NOAA) Officers.
d. Personnel separated from service in all the preceding categories.

CATEGORIES OF RECORDS IN THE SYSTEM:

All categories of records may include identifying information, such as name(s), date of birth, home residence, mailing address, social security number, payroll information, and home telephone.
Record reflect.
a. Work experience, education level achieved, and specialized education or training obtained in and outside of military service,
b. Military duty assignments, ranks held, pay and allowance, personnel actions such as promotions, demotions, or separations,
c. Enrollment or declination of enrollment in insurance programs,
d. Performance evaluation,
e. The individual's desire for future assignments, training requested, and notation by assignment officers,

f. Information for determinations of waivers and remissions of indebtedness to the U.S. Government, and
g. Information for the purpose of validating legal requirements for garnishment of wages.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. To the Department of Treasury for the purpose of disbursement of salary, U.S. Savings Bonds, and allotments,
b. To government agencies to disclose earnings and tax information,
c. To the Department of Defense and Veterans Administration for determinations of benefit eligibility for military members and their dependents,
d. To contractors to manage payment and collection of benefit claims,
e. To the Department of Defense for manpower and readiness planning,
f. To the Comptroller General for the purpose of processing waivers and remissions,
g. To contractors for the purpose of system enhancement, maintenance, and operations,
h. To Federal, state, and local agencies for determination of eligibility for benefits connected with the Federal Housing Administration program,
i. To provide an official of another Federal agency information needed in the performance of official duties to reconcile or reconstruct data files in support of functions for which the records were collected and maintained,
j. To an individual's spouse, or person responsible for the care of the individual concerned when the individual to whom the record pertains is mentally incompetent, critically ill, or under other legal disability for the purpose of assuring the individual is receiving benefits or compensation they are entitled to receive,
k. To a requesting government agency, organization, or individual the home address and other relevant information on those individuals who, it is reasonably believed, might have contracted an illness, been exposed to, or suffered from a health hazard while a member of government service,
l. To businesses for the purpose of electronic fund transfers or allotted pay transactions authorized by the individual concerned,
m. To credit agencies and financial institutions for the purpose of processing credit arrangements authorized by the individual concerned,
n. To other government agencies for the purpose of earning garnishment,
o. To prepare the Officer Register and Reserve Officer Register which is provided to all Coast Guard officers and the Department of Defense,
p. To other federal agencies and collections agencies for the collection of indebtedness to the Federal Government.

See Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The storage is on computer disks, magnetic tape, microfilm, and paper forms in file folders.

RETRIEVABILITY:

Retrieval from the system is by name or social security number and can be accessed by employees in pay and personnel offices and other pay and personnel employees located elsewhere who have a need for the record in the performance of their duties.

SAFEGUARDS:

Computers provide privacy and access limitation by requring a user name and password match. Access to decentralized segments are similarly controlled. Only those personnel with a need to have access to the system are given user names and passwords. The magnetic tape backups have limited access in that users must justify the need and obtain tape numbers and volume identifers from a central source before they are provided data tapes. Paper record and microfilm records are in limited access areas in locking storage cabinets.

RETENTION AND DISPOSAL:

Leave and Earnings Statements, pay records, are microfilmed and retained on site four years, then archived at the Federal Records Center, and destroyed when 50 years old. The official copy of the personnel record is maintained in the Official Service Records, DOT/CG 626 for active duty officers, the Enlisted Personnel Record System, DOT/CG 629 for active duty enlisted personnel or the Official Coast Guard Reserve Service Record, OST/CG 576 for inactive duty reservists. Duplicate magnetic copies of the pay and personnel record are retained at an off site facility for a useful life of seven years. Paper records for waivers and remissions are retained on site six years three months after the determination and then destroyed. Paper records to determine legal sufficiency for garnishment are retained on site six years three months after the member separates from the service or the garnishment is terminated and then destroyed.

SYSTEM MANAGERS AND ADDRESS:

a. All information on Coast Guard members and other than b., c., and d. below:
(1) For active duty members of the Coast Guard:
Chief, Office of Personnel, Department of Transportation, U.S. Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593
(2) For Coast Guard inactive duty reserve members and retired Coast Guard reservists awaiting pay at age 60:
Chief, Office of Readiness and Reserve, Department of Transporation, U.S. Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593.
b. For Coast Guard Waivers and Remissions:
Chief, Personnel Services Division (G-PS), Office of Personnel, U.S. Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593.
c. For records used to determine legal sufficiency for garnishment of wages and pay records:
Commanding Officer (LGL), U.S. Coast Guard Pay and Personnel Center, 444 SE. Quincy Street, Topeka, KS 66683.
d. For data added to the decentralized data segment the commanding officer, officer-in-charge of the unit handling the individual's pay and personnel record, or Chief, Administrative Services Division, for individuals whose records are handled by Coast Guard Headquarters.
e. For NOAA members:
National Oceanic and Atmospheric Administration, Commissioned Personnel Division, 11400 Rockville Pike, Rockville, MD 20852.

NOTIFICATION PROCEDURE:

Inquiries should be directed to:
a. For all information on Coast Guard members other than b., c., and d. below:
Department of Transportation, U.S. Coast Guard Headquarters (G-TIS), 2100 2nd Street, SW., Washington, DC 20593.
b. For records used to determine legal sufficiency for garnishment of wages and pay records.
Commanding Officer, U.S. Coast Guard Pay and Personnel Center, 444 SE. Quincy Street, Topeka, KS 66683.
c. For data added to the decentralized data segment the commanding officer, officer-in-charge of the unit handling the individual's pay and personnel record, or Chief, Administrative Services Division, for individuals whose records are handled by Coast Guard Headquarters. Addresses for the units handling the individual's pay and personnel record are available from the individual's commanding officer.

BEST COPY AVAILABLE

d. For all information on NOAA members:

National Oceanic and Atmospheric Administration, Commissioned Personnel Division, 11400 Rockville Pike, Rockville, MD 20852.

RECORD ACCESS PROCEDURES:

Contact the addressee under notification procedures and specify the exact information you desire. Requests must include the full name and social security number of the individual concerned. Prior written notification of personal visits is required to insure that the records will be available at the time of visit. Photographic proof of identity will be required prior to release of records. A military identification card, driver's license or similar document will be considered suitable indentification.

CONTESTING RECORD PROCEDURES:

Contact the addressee under notification procedures and specify the exact information or items you are contesting and provide any documentation that justifies your claim. Correspondence contesting records must include the full name and social security number of the individual concerned.

RECORD SOURCE CATEGORIES:

a. The individual's record from the following systems of records:

(1) Official Officer Service Records, DOT/CG 626.

(2) Enlisted Personnel Record System, DOT/CG 629.

(3) Official Coast Guard Reserve Service Record, OST/CG 676.

b. Information is obtained from the individual, Coast Guard personnel officials, National Oceanic and Atmospheric Administration personnel officials, and the Department of Defense.

[FR Doc. 88-24455 Filed 10-20-88; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

[Docket No. 25724; Summary Notice No. PE-88-41]

Summary of Petition for Exemption Received From Jet Express, Inc.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of a petition by Jet Express, Inc., for an exemption from the Federal Aviation Regulations in order to conduct two additional commuter operations in two of the five high density hours at John F. Kennedy International Airport. The additional slots would be used only by short takeoff and landing (STOL) aircraft using separate access procedures. the purpose of this notice is to improve the public's awareness of this aspect of FAA's regulatory activities. Neither the publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and be received on or before November 14, 1988.

ADDRESSES: Send comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Docket No. 25724, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: David L. Bennett, Office of the Chief Counsel, AGC-230, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, (202) 267-3491.

SUPPLEMENTARY INFORMATION: The Petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915, FAA Headquarters Building (FOB-10A), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; Telephone (202) 267-3132.

Petitioner has requested a limited exemption from the requirements of the High Density Traffic Airport Rule, Part 93, Subparts K and S of the Federal Aviation Regulations (14 CFR Part 93, Subparts K and S) which restrict the number of daily operations which can take place at 4 airports—O'Hare International, Washington National, Kennedy International, and La Guardia Airports. Specifically, petitioner has requested an exemption to conduct two operations per day, requireing two slots, at Kennedy Airport using STOL aircraft under separate access landing procedures on stub end runways. Petitioner seeks to begin the requested operation on November 15, 1988.

Issued in Washington, DC, on October 18, 1988.

Donald P. Byrne,

Acting Assistant Chief Counsel, Regulations and Enforcement Divison.

[FR Doc. 88-24423 Filed 10-20-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: October 17, 1988.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0121
Form Number: 1116
Type of Review: Resubmission
Title: Computation of Foreign Tax Credit—Individual, Fiduciary, or Nonresident Alien Individual
Description: Form 1116 is used by individuals (including nonresident aliens) and fiduciaries who paid foreign income taxes on U.S. taxable income, to compute the foreign tax credit. This information is used by IRS to verify the foreign tax credit
Respondents: Individuals or households
Estimated Number of Respondents: 880,318
Estimated Burden Hours Per Response:
Recordkeeping: 2 hours 37 minutes
Learning about the law or the form: 25 minutes
Preparing the form: 1 hour 10 minutes
Copying, assembling, and sending the form to IRS: 35 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 5,122,012 hours
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 88-24362 Filed 10-20-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: October 17, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, P.L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0940
Form Number: None
Type of Review: Extension
Title: Election of $10 Million Limitation on Exempt Small Issues of Industrial Development Bonds; Supplemental Capital Expenditure Statements
Description: The regulations liberalize the procedure by which the state or local government issuer of an exempt small issue of tax-exempt bonds elects the $10 million limitation upon the size of such issue and delete the requirement to file certain supplemental capital expenditure statements.
Respondents: State or local governments, Small businesses or organizations
Estimated Number of Recordkeepers: 10,000
Estimated Burden Hours Per Recordkeeper: 6 minutes
Frequency of Response: Annually
Estimated Total Recordkeeper Burden: 1,000 hours
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-24363 Filed 10-20-88; 8:45 am]

BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

Meeting of the Veterans' Advisory Committee on Environmental Hazards; Change of Time

The meeting of the Advisory Committee on Environmental Hazards which is scheduled for November 3 and 4, 1988, as set forth in the Federal Register of September 30, 1988 (53 FR 38407-08) will convene at 9:00 a.m. instead of 10:30 a.m. on November 3, 1988.

Date: October 18, 1988.

By direction of the Administrator.

Enna Maria Fontanez,

Committee Management Officer.

[FR Doc. 88-24404 Filed 10-20-88; 8:45 am]

BILLING CODE 8320-01-M

Scientific Advisory Committee to the National Vietnam Veterans Readjustment Study; Meeting

In accordance with Pub. L. 92-463, the Veterans Administration gives notice that a meeting of the Scientific Advisory Committee to the National Vietnam Veterans Readjustment Study will be held at the Stouffer Concourse in Crystal City, Virginia, on November 9, 1988, beginning at 9 a.m. The purpose of this meeting is to review the progress, to date, of the National Vietnam Veterans Readjustment Study, mandated by Pub. L. 98-160, and provide recommendations as the Committee deems appropriate.

The meeting will be open to the public (to the seating capacity of the room) at the beginning of the meeting for approximately one hour to cover administrative matters and to discuss the general status of the study. During the closed session, the Committee will be reviewing preliminary research findings and survey research procedures. Disclosure of these findings and specific survey techniques could serve as a source of sample contamination that could invalidate the total research effort. In addition, the qualifications and performance of involved staff will be open to review. Disclosure of such information would be a clearly unwarranted invasion of personal privacy.

Thus, the closing is in accordance with Section 552b, subsections (c)(6) and (c)(9)(B), 5 U.S.C., and the determination of the Administrator of Veterans Affairs under section 10(d) of Pub. L. 92-463 as amended by section 5(c) of Pub. L. 94-409.

Due to the limited seating capacity of the room, those who plan to attend the open session should contact Dr. Thomas L. Murtaugh, Project Officer, National Vietnam Veterans Readjustment Study, 1521 A South Edgewood St., Baltimore, MD 21227 (Phone—301/646-5804) at least 5 days before the meeting.

Dated: October 18, 1988.

By direction of the Administrator.

Enna Maria Fontanez,

Committee Management Officer.

[FR Doc. 88-24405 Filed 10-20-88; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 204
Friday, October 21, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, October 26, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed 1989 Private Sector Adjustment Factor for priced services.

Discussion Agenda

2. Proposed 1989 fee schedules for Federal Reserve check payor bank, automated clearinghouse, wire transfer of funds and net settlement, definitive safekeeping, noncash collection, and book-entry services.

3. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Date: October 19, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-24468 Filed 10-19-88; 3:49 pm]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 10:30 a.m., Wednesday October 26, 1988, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: October 19, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-24467 Filed 10-20-88; 3:48 pm]

BILLING CODE 6210-01-M

Corrections

Federal Register
Vol. 53, No. 204
Friday, October 21, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Nixon Presidential Historical Materials; Opening of Materials

Correction

In notice document 88-24175 beginning on page 40976 in the issue of Wednesday, October 19, 1988, make the following correction:

On page 40976, in the third column, the heading should read as set forth above.

BILLING CODE 1505-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Meeting; National Council on the Arts

Correction

In notice document 88-24197 beginning on page 40977 in the issue of Wednesday, October 19, 1988, make the following correction:

On page 40977, in the third column, the heading should read as set forth above.

BILLING CODE 7536-01-M

VOL
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federal register

Friday
October 21, 1988

Part II

State Justice Institute

Grant Guideline; Proposed Grant Guideline

STATE JUSTICE INSTITUTE

Grant Guideline

AGENCY: State Justice Institute.

ACTION: Proposed grant guideline.

SUMMARY: This guideline sets forth the proposed administrative, programmatic, and financial requirements attendant to Fiscal Year 1989 State justice Institute grants, cooperative agreements, and contracts.

DATE: The Institute invites public comment on the guideline until November 21, 1988.

ADDRESS: Comments should be sent to: State Justice Institute, 120 S. Fairfax St., Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: David I. Tevelin, Executive Director, or Richard Van Duizend, Deputy Director, at the above address, or at (703) 684-6100.

SUPPLEMENTARY INFORMATION: Pursuant to the State Justice Institute Act of 1984, Pub. L. 98-620, 42 U.S.C. 10701 *et seq.*, as amended, the Institute is authorized to award grants, cooperative agreements, and contracts to State and local courts, nonprofit organizations, and others for the purpose of improving the administration of justice in the State courts of the United States. Approximately $10 million will be available for award in FY 1989.

The guideline published for comment below establishes the Institute's funding schedule, procedures, and priorities for FY 1989. As in previous years, the guideline sets forth "special interest" categories of Institute funding. A number of administrative changes are also proposed and summarized below.

FY 1989 Funding Schedule

The FY 1989 concept paper deadline is February 2, 1989. In a departure from previous practice, papers must be postmarked, rather than received by SJI, by that date. The Board of Directors will meet in late March to invite formal applications based on the most promising concept papers. Applications will be due in late May, and awards approved by the Board in July. This will be the only round of funding in FY 1989; the FY 1990 funding cycle is expected to begin with the submission of concept papers in November, 1989.

Special Interest Categories

A number of the FY 1988 special interest categories have been retained without change for FY 1989. Several others have been amended, and six new categories have been added. See section II.B for the complete list of special interest categories.

The amended special interest categories are: Judicial career enhancement; judicial education; alternative dispute resolution; the future and the courts; litigation expense and delay; enforcement of fines and orders to pay; victim/witness procedures; courthouse security; State/Federal relations; and the special needs of the largest urban courts. (A description of the proposed changes in the judicial education category is set forth below.)

The six new special interest categories are: The impact of user fees; improved enforcement and management of probation; review and enforcement of continuing court orders; substance abuse; the court-related needs of elderly and disabled persons; and public education about the courts.

In addition, the general description of "special interest" projects has been modified to clarify the meaning of the terms "replicability" and "transferability."

Judicial education. The proposed changes in the "judicial education" special interest category are specifically noted for public comment.

In May, 1988, the Board of Directors selected a panel of six individuals to examine judicial education from different perspectives in order to give the Board a clearer direction about how the Institute should use its funds in the area. The panelists were: Thomas Hodson, an attorney in private practice and former judge who facilitated the panel's work; Justice Christine Durham of the Utah Supreme Court; Dennis Catlin, Executive Director of the Michigan Judicial Institute; David Schultz, Associate Dean and Professor of Law at the University of Wisconsin Law School; Professor Charles Claxton of the Memphis State University College of Education; and Professor Frederick Lawrence of the Boston College Department of Theology and School of Law.

The panelists have prepared independent, preliminary draft papers that were circulated to State and national judicial education providers for comment. In early October, 1988, representatives of those organizations were invited to comment on the papers at a public forum before the Board. Based on the panel's observations, the educators' response to their papers, and the discussions of the Board, the Institute invites comment on a number of issues.

First, comment is specifically invited on the following types of possible SJI funding in the judicial education area in FY 1989:

(1) *Technical assistance.* The Board will consider awarding a contract for the provision of technical assistance to State judicial educators and national judicial education organizations for the purpose of State-to-State, State-to-national, and national-to-State transfer of educational curricula, delivery techniques, services and resource materials. The project could also assist State judicial educators and other State court officials in the preparation of grant applications.

(2) *Money for States lacking well developed judicial education programs.* Due to the disparity which exists in State judicial education programs, the Board is considering whether the Institute should provide seed money to assist interested States in developing minimum standards for judicial education and training; creating an on-going entity responsible for planning and implementing judicial education programs; and developing basic in-State judicial education programs for judges and other court personnel.

(3) *Formula grants to each State for judicial education.* The Institute requests comment on whether it should award formula grants to States for certain educational purposes, e.g., developing and improving in-State judicial education programs, or supporting "scholarships" for judges and other court personnel to attend out-of-State training? Commenters should identify the bases on which such funds might be distributed among the States, e.g., population, number of judges, size of the States' judicial education budgets, as well as the criteria States might be required to meet to receive such funding, e.g., the demonstration of the State's commitment to providing judicial education.

The second broad issue on which SJI seeks comment is the specific criteria on which education and training proposals should be evaluated. The Institute is considering evaluating the following elements in order to determine whether a project is likely to result in effective training for judges and other court personnel: The description of how the need for the program has been determined; the methods by which faculty will be recruited, selected, and trained; the objectives of the training; the adult education practices and teaching methods to be employed; and the methods by which the program will be evaluated to determine the impact of the training as well as the reaction of the participants.

Third, SJI asks for comment on whether it should give priority to certain types of judicial education projects.

Which, if any, of the following types of education and training should be given priority by SJI: Training programs developed for an individual when he or she first becomes a judge; continuing judicial education projects which inform judges of new developments in the law or enhance judicial skills; or personal development projects which focus on human enrichment?

Finally, the Board is interested in continuing to develop a long-range strategic plan for SJI support of judicial education programs at the State and national level. Specific comment on issues and ideas that the plan should address is also invited.

Administrative Changes

The proposed FY 1989 SJI grant procedures will be substantially similar to the FY 1988 program. The Board considered changing the two-tiered (concept paper/application) funding process in order to reduce the burdens the process may impose on applicants, particularly those applicants who are invited to apply formal applications that are disapproved by the Board. However, after reviewing the Institute's FY 1988 experience, when approximately 65% of the formal applications were approved (in contrast to FY 1987, when only about half of the applications were approved), the Board concluded that the present procedures were not unduly burdensome. Comment is specifically invited, however, on possible changes in the application process, including ways to relieve organizations submitting multiple concept papers or applications from the burden of submitting repetitive information in each paper or application.

Some changes in the funding process have been made on the basis of the experience of the Institute, applicants, and grantees, and several technical amendments to the SJI enabling legislation that were recently passed by Congress. The most significant of these changes are:

Renewal funding. The guideline establishes two types of renewal funding: Continuation grants and on-going support grants. A "continuation" grant is one that extends an existing project for an additional period of time in order to enhance its benefits; an "on-going support" grant would support a program or service for which there is a continuing, important national need.

With respect to continuation grants, the guideline seeks to clarify and reduce the information that applicants for continuation funding must provide about their projects and organizations. In addition, applicants for continuation grants would be permitted to apply for funding outside of the normal funding cycle for FY 1989 awards. See section IX. A.

"On-going support" grants would be reserved for SJI-supported projects that the Board determines are especially unique and valuable to the State courts. Funding for the second and third years of such projects would be contingent on satisfactory performance and the availability of appropriations. An evaluation report regarding the effectiveness and operation of the project will be required during the final year of an "on-going support" project. See section IX.B.

Match. Pursuant to a statutory amendment, all units of State or local government (not just courts) must provide a match equal to 50% of the amount of funding requested from SJI. See section X.B.

Interim funding. The previous statutory requirement that funding to an applicant seeking continuation funding be continued until such time as a formal hearing has been held terminating its funds has been eliminated by an amendment to the SJI statute.

Confidentiality of information/human subjects protection. The confidentiality provision in the FY 1988 guideline has been incorporated into the Institute's enabling legislation, and a new clause protecting human research subjects has been added to the guideline. See section VII.C.

Budget information. Applicants will be asked to provide more information in support of some budget items. See section VII.D.

The Institute also invites comment on the following specific issue: Should "maintenance" funding be provided to certain *organizations* that provide important services to the State courts, without requiring those organizations to submit proposals seeking funds for specific projects? Commenters should also indicate which organizations they believe should receive such funding, and the criteria on which such funds should be awarded.

Recommendations to Grantwriters

Over the past two years, Institute staff have reviewed approximately 550 concept papers and 200 applications. On the basis of those reviews, inquiries from applicants, and the views of the Board, the Institute offers the following recommendations to help potential applicants present workable, understandable proposals that can meet the funding criteria set forth in this guideline. The Institute suggests that applicants make certain that they answer the following questions when preparing a concept paper or application:

1. *What is the subject or problem you wish to address?*

Describe the subject or problem and how it affects the courts and the public. Discuss how your approach will improve the situation or advance the state of the art or knowledge, and explain why it is the most appropriate approach to take. When statistics or research findings are cited to support a statement or position, the source of the citation should be referenced in a footnote.

2. *What do you want to do?*

Explain the goal(s) of the project in simple, straightforward terms. To the greatest extent possible, an applicant should avoid a specialized vocabulary that is not readily understood by the general public. Technical jargon does not enhance a paper.

3. *How will you do it?*

All proposed tasks should be set forth so that a reviewer can see a logical progression of tasks and relate those tasks directly to the accomplishment of the project's goal(s). When in doubt about whether to provide a more detailed explanation or to assume a particular level of knowledge or expertise on the part of the reviewers, err on the side of caution and provide the additional information. A description of project tasks will also help identify necessary budget items. All staff positions and project costs should relate directly to the tasks described. The Institute encourages concept paper applicants to attach letters of cooperation and support from the courts and related agencies that will be involved in or directly affected by the proposed project.

4. *How will you know it works?*

Every project design must include an evaluation component to determine whether the proposed training, procedure, service, or technology accomplished the objectives it was designed to meet. Concept papers and applications should describe the criteria that will be used to evaluate the project's effectiveness and identify program elements which will require further modification. The description in the application should include how the evaluation will be conducted, when it will occur during the project period, who will conduct it, and what specific measures will be used. In most instances, the evaluation should be conducted by persons not connected with the implementation of the procedure, training, service, or technique, or the administration of the project.

5. How will others find out about it?

Every project design must include a plan to disseminate the results of the training, research, or demonstration beyond the jurisdictions and individuals directly affected by the project. The plan should identify the specific methods which will be used to inform the field about the project, such as the publication of law review or journal articles, presentations at appropriate conferences, or the distribution of key materials. A statement that a report or research findings "will be made available to" the field is not sufficient. The specific means of distribution or dissemination should be identified. Reproduction and dissemination costs are allowable budget items.

6. What are the specific costs involved?

The budget in both concept papers and applications should be clearly presented. Major budget categories such as personnel, benefits, travel, supplies, equipment, and indirect costs should be clearly identified. In applications, the budgeted figures should relate directly to the specific project tasks included in the workplan. If match is offered, the nature of the match (cash or in-kind) should be explained and, at the application stage, the tasks and line items for which the costs will be covered wholly or in part by the match should be specified.

7. What, if any, match is being offered?

All units of State and local government, including courts, are required by the State Justice Institute Act, as amended, to contribute a match (cash, non-cash, or both) of not less than 50 percent of the grant funds requested from the Institute; all other applicants are also encouraged to provide a matching contribution to assist in meeting the costs of a project. The match requirement works as follows in practice: If the total cost of a project is anticipated to be $150,000, a State court or executive branch agency may request up to $100,000 from the Institute to implement the project. The remaining $50,000 (50% of the $100,000 requested from SJI) must be provided as match.

Cash match includes funds directly contributed to the project by the applicant, or by other public or private sources. Non-cash match refers to in-kind contributions by the applicant, or other public private sources. When match is offered, the nature of the match (cash or in-kind) should be explained and, at the application stage, the tasks and line items for which costs will be covered wholly or in part by match should be specified.

Contact Persons for State Agencies Administering Institute Grants to State and Local Courts

The Institute would appreciate receiving updated information regarding the name, title, address, and telephone number of the person designated by the State Supreme Court to be responsible for overseeing the administration of Institute grants awarded to the courts of the State. A list of the persons currently so designated is appended to the guideline.

Proposed State Justice Institute Grant Guideline

The following FY 1989 Grant Guideline is proposed for public comment:

State Justice Institute Grant Guideline Table of Contents

Summary
I. Background
II. Scope of the Program
III. Definitions
IV. Eligibility for Award
V. Types of Projects and Amounts of Awards
VI. Concept Paper Submission Requirements for New Projects
VII. Application Requirements for New Projects
VIII. Application Review Procedures
IX. Renewal Funding Procedures and Requirements
X. Compliance Requirements
XI. Financial Requirements
XII. Grant Adjustments
Appendix—Contact Persons for State Agencies Administering Institute Grants to State and Local Courts

Summary

This guideline sets forth the programmatic, financial, and administrative requirements of grants, cooperative agreements, and contracts awarded by the State Justice Institute. The Institute, a private nonprofit corporation established by an Act of Congress, is authorized to award grants, cooperative agreements and contracts to State and local courts and their agencies; national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branch of State governments; and national nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments.

The Institute may also award funds to other nonprofit organizations with expertise in judicial administration; institutions of higher education; individuals, partnerships, firms, or corporations; and private agencies with expertise in judicial administration if the objectives of the funded program can be better served by such an entity. Funds may also be awarded to Federal, State or local agencies and institutions other than courts for services that cannot be provided for adequately through nongovernmental arrangements.

Approximately $10 million is available for grants, contracts, and cooperative agreements from FY 1989 appropriations. The Institute may also provide financial assistance in the form of interagency agreements with other grantors. The Institute will consider applications for funding support that address any of the areas specified in its enabling legislation; however, the Board of Directors of the Institute has designated certain program categories as being of special interest.

The Institute has established one round of competition for FY 1989 funds, with a concept paper submission deadline of February 2, 1989. This guideline applies to concept papers and formal applications submitted for FY 1989 funding.

The awards made by the State Justice Institute are governed by the requirements of this guideline and the authority conferred by Pub. L. 98-620, Title II, 42 U.S.C. 10701, *et seq.*

I. Background

The State Justice Institute ("Institute") was established by Pub. L. 98-620 to improve the administration of justice in the State courts in the United States. Incorporated in the State of Virginia as a private, nonprofit corporation, the Institute is charged, by statute, with the responsibility to:

A. Direct a national program of financial assistance designed to assure that each citizen of the United States is provided ready access to a fair and effective system of justice;

B. Foster coordination and cooperation with the Federal judiciary;

C. Promote recognition of the importance of the separation of powers doctrine to an independent judiciary; and

D. Encourage education for judges and support personnel of State court systems through national and State organizations, including universities.

To accomplish these broad objectives, the Institute is authorized to provide funds to State courts, national organizations which support and are supported by State courts, national judicial education organizations, and other organizations that can assist in improving the quality of justice in the State courts.

The Institute is supervised by an eleven-member Board of Directors appointed by the President, by and with the consent of the Senate. The Board is statutorily composed of six judges, a state court administrator and four members of the public, no more than two of whom can be of the same political party.

The Institute's program budget for Fiscal Year 1989 is approximately $10 million. Through the award of grants, contracts and cooperative agreements, the Institute is authorized to perform the following activities:

1. Support research, demonstrations, special projects, technical assistance, and training to improve the administration of justice in the State courts;

2. Provide for the preparation, publication, and dissemination of information regarding State judicial systems;

3. Participate in joint projects with Federal agencies and other private grantors;

4. Evaluate or provide for the evaluation of programs and projects funded by the Institute to determine their impact upon the quality of criminal, civil, and juvenile justice and the extent to which they have contributed to improving the quality of justice in the State courts;

5. Encourage and assist in furthering judicial education;

6. Encourage, assist, and serve in a consulting capacity to State and local justice system agencies in the development, maintenance, and coordination of criminal, civil, and juvenile justice programs and services; and

7. Be responsible for the certification of national programs that are intended to aid and improve State judicial systems.

II. Scope of the Program

During FY 1989, the Institute will consider applications for funding support that address any of the areas specified in its enabling legislation. The Board, however, has designated certain program categories as being of "special interest." See section II.B.

A. Authorized Program Areas

The State Justice Institute Act authorizes the Institute to fund projects addressing one or more of the following program areas:

1. Assistance to State and local court systems in establishing appropriate procedures for the selection and removal of judges and other court personnel and in determining appropriate levels of compensation;

2. Education and training programs for judges and other court personnel for the performance of their general duties and for specialized functions, and national and regional conferences and seminars for the dissemination of information on new developments and innovative techniques;

3. Research on alternative means for using judicial and nonjudicial personnel in court decisionmaking activities, implementation of demonstration programs to test such innovative approaches, and evaluations of their effectiveness;

4. Studies of the appropriateness and efficacy of court organizations and financing structures in particular States, and support to States to implement plans for improved court organization and financing;

5. Support for State court planning and budgeting staffs and the provision of technical assistance in resource allocation and service forecasting techniques;

6. Studies of the adequacy of court management systems in State and local courts, and implementation and evaluation of innovative responses to records management, data processing, court personnel management, reporting and transcription of court proceedings, and juror utilization and management;

7. Collection and compilation of statistical data and other information on the work of the courts and on the work of other agencies which relate to and affect the work of courts;

8. Studies of the causes of trial and appellate court delay in resolving cases, and establishing and evaluating experimental programs for reducing case processing time;

9. Development and testing of methods for measuring the performance of judges and courts and experiments in the use of such measures to improve the functioning of judges and the courts;

10. Studies of court rules and procedures, discovery devices, and evidentiary standards to identify problems with the operation of such rules, procedures, devices, and standards; and the development of alternative approaches to better reconcile the requirements of due process with the need for swift and certain justice, and testing of the utility of those alternative approaches;

11. Studies of the outcomes of cases in selected areas to identify instances in which the substance of justice meted out by the courts diverges from public expectations of fairness, consistency, or equity; and the development, testing and evaluation of alternative approaches to resolving cases in such problem areas;

12. Support for programs to increase court responsiveness to the needs of citizens through citizen education, improvement of court treatment of witnesses, victims, and jurors, and development of procedures for obtaining and using measures of public satisfaction with court processes to improve court performance;

13. Testing and evaluating experimental approaches to provide increased citizen access to justice, including processes which reduce the cost of litigating common grievances and alternative techniques and mechanisms for resolving disputes between citizens; and

14. Other programs, consistent with the purposes of the Act, as may be deemed appropriate by the Institute, including projects dealing with the relationship between Federal and State court systems in areas where there is concurrent State-Federal jurisdiction and where Federal courts, directly or indirectly, review State court proceedings.

Funds will not be made available for the ordinary, routine operation of court systems in any of these areas.

B. Special Interest Program Categories

1. General Description

The Institute is interested in funding both innovative programs and programs of proven merit that can be replicated in other jurisdictions. Although applications in any of the statutory program areas are eligible for funding in FY 1989, the Institute is especially interested in funding those projects that:

a. Formulate new procedures and techniques, or creatively enhance existing arrangements to improve the courts;

b. Address aspects of the State judicial systems that are in special need of certain attention;

c. Have national significance in terms of their impact or replicability in that they develop products, services and techniques that may be used in other States;

d. Create and disseminate products that effectively transfer the information and ideas developed to relevant audiences in State and local judicial systems or provide technical assistance to facilitate the adaptation of effective programs and procedures in other State and local jurisdictions.

A project will be identified as a "Special Interest" project if it meets the four criteria set forth above and (1) it falls within the scope of the "special interest" program areas designated below or (2) information coming to the attention of the Institute from the State courts, their affiliated organizations, the research literature, or other sources demonstrates that the project responds

to another special need or interest of the State courts.

Concept papers and applications which address a "Special Interest" category will be accorded a preference in the rating process. (See the selection criteria listed in sections VI. B, "Concept Paper Submission Requirements for New Projects" and VIII. B, "Application Review Procedures.")

2. Specific Categories

The Board has designated the areas set forth below as "Special Interest" program categories. The order of listing does not imply any ordering of priorities among the categories.

a. *Judicial and court personnel career enhancement.* This category includes the development and testing of innovative measures to encourage and enhance judicial and court personnel careers, other than direct increases in salary. These methods could include approaches that emphasize the intrinsic rewards of the profession such as job enrichment and participative management strategies, use of "quality circles", judicial and nonjudicial personnel exchange programs, innovative programs or techniques for reducing judicial stress or "burnout", judicial sabbatical programs, or mentoring programs. This category also includes efforts to prepare lawyers for judicial careers and to encourage qualified persons to seek and accept positions as judges and court professionals.

b. *Education and training for judges and other key court personnel.* This category includes:

i. The development of minimum standards for judicial education at the State level;

ii. The preparation of State plans to ensure a comprehensive training program and the effective allocation of limited court education resources;

iii. For those States with a limited court education capacity, the development of an organization to plan and implement education programs for judges and court personnel;

iv. The establishment of in-State pre-bench orientation programs and new judge training programs; and

v. The development of innovative continuing education and career development programs for all court personnel, including but not limited to programs that emphasize "team" training.

Court education programs should assure that faculty understand and apply adult education techniques and teaching methods; provide opportunities for structured interaction among participants; develop tangible products and materials for use by the faculty and participants; employ a process for the recruitment of qualified and effective faculty; and develop sound methods for evaluating the impact of the training.

Court education programs also should develop new or revised curricula on key topics of concern to the judiciary, such as those identified in the SJI Special Interest categories and other topics that judges and court personnel have identified as important.

The Board also is interested in awarding a contract for the provision of technical assistance to State judicial educators and national judicial education organizations for the purpose of State-to-State, State-to-national, and national-to-State transfer of educational curricula, delivery techniques, services and resources. This project could also assist State judicial educators and other State court officials in preparation of grant applications.

c. *Alternative Dispute Resolution (ADR).* This category includes the evaluation of new and existing dispute resolution procedures and programs that have a substantial likelihood of resolving civil, criminal, domestic relations, juvenile and other types of disputes more fairly, more expeditiously and less expensively than the traditional court process, with particular emphasis on the impact of those procedures and programs on the quality of justice provided, litigant and court costs, and court workload. Among the possible issues that may be addressed are the effects that ADR programs that focus on domestic relations cases have on case processing; the effectiveness of ADR techniques in complex civil litigation; and the judicial role in settling cases, including the effectiveness of various settlement techniques, the most appropriate point(s) in the litigation process to convene a settlement conference, and the ethical questions that may confront a judge seeking to settle a case.

d. *The future and the courts.* This category includes research on the changing demands and circumstances that will face the courts in the 21st century, and the planning and implementation of modifications that may be needed in court organization, financing, procedures, services, personnel, and facilities to respond to those demands and circumstances. A proposed project could focus on such issues as:

—The impact that demographic changes in the American population over the next generation will have on the State courts;

—How developments in chemistry, disease and disease control, engineering, computer design, and other sciences are likely to affect the courts; or

—The possible changes in court structure, court administration, or legal authority that might help the State courts more effectively administer justice.

e. *The impact of user fees on court revenues and the access to justice.* This category includes research examining the various forms of user fees that are imposed on parties in civil, criminal, domestic relations, juvenile and other types of cases in order to assess their impact on court use, policies, services, revenues, and costs.

f. *Application of technology.* This category includes the testing of innovative applications of technology to improve the operation of court management systems and judicial practices at both the trial and appellate court levels, including, e.g., the publication of a court technology bulletin to assist judges and court managers in selecting technology appropriate to a court's needs; assessment of the usefulness of on-bench computer terminals; and local experiments with promising but untested applications of technology in the courts. (See paragraph XI.H.2.b. regarding the limits on the use of grant funds to purchase equipment and software.)

g. *Jury system management.* This category includes the development, implementation and evaluation of legal and administrative procedures relating to jurors to ensure the representativeness of the juror pool, clarify jury instructions, expedite the jury selection and empanelment process without affecting fairness, and otherwise reduce the cost and enhance the fairness of the jury process.

h. *Reduction of litigation expense and delay.* This category includes the implementation and evaluation of innovative programs and procedures designed to reduce substantially the expense and delay in civil, criminal, domestic relations, juvenile, or other types of litigation at the trial or appellate level (or both), and the examination of effective methods of limiting the expense and delay arising from the use of discovery procedures.

i. *Enforcement of fines and orders to pay.* This category includes the implementation and evaluation of procedures for effectively imposing, collecting, and enforcing orders to pay fines, restitution, and other obligations.

j. *Improved enforcement and management of probation.* This category includes the implementation and evaluation of innovative procedures for enforcing compliance with conditions of probation, and methods through which courts responsible for managing the probation function can carry out this responsibility more effectively and efficiently.

k. *Review and enforcement of continuing court orders.* This category includes the development, implementation and evaluation of effective and efficient procedures for monitoring and enforcing on-going court orders such as those issued in civil commitment, guardianship, neglect and abuse, child support, and institutional reform cases. Examples of these procedures include but are not limited to periodic review hearings; the required submission and review of periodic reports and financial accountings; the use of citizen review panels; and the appointment of special masters. Proposed projects should seek to provide fair, current, and thorough review of continuing court orders within realistic financial constraints and without overburdening the agencies, organizations, or individuals responsible for implementing the continuing order.

l. *Substance abuse.* The Board is interested in sponsoring (or co-sponsoring) conferences, seminars, or other forums for judges, probation officers, caseworkers and other court personnel to examine court-related issues concerning drug and alcohol abuse and to discuss the appropriate role of the courts in addressing the problem of substance abuse.

m. *Implications of AIDS for the courts.* This category includes research regarding the implications of Acquired Immune Deficiency Syndrome for court decisions, procedures, and policies, including but not limited to such matters as pretrial release, sentencing, child custody, termination of parental rights, and the right to and termination of medical treatment.

n. *Programs and procedures for victims and witnesses.* This category includes the implementation and evaluation of innovative court-based programs and procedures for providing fair treatment for victims of crimes and witnesses. "Court-based" programs include those programs that are administered directly by the courts or through contracts negotiated between service providers and the courts. Programs and services operating in prosecutors' offices are ordinarily outside the scope of Institute funding.

Eligible projects may involve civil, criminal, domestic relations, juvenile and other types of cases, including but not limited to demonstrations and evaluations of innovative court-ordered treatment programs for victims or offenders; court procedures for notifying victims of key events pertaining to their cases; the use of child victim impact statements; procedures for the fair, effective and efficient handling of domestic violence and child sexual abuse cases; the issuance and enforcement of protective orders; and the obtaining of testimony from children.

o. *Responding to the court-related needs of elderly and disabled persons.* This category includes research and demonstration projects on issues related to access to the courts by elderly persons and physically or mentally disabled persons, and the fair and effective handling of cases affecting those persons; and the presentation of a national conference for judges, court personnel and others on the court-related needs of elderly or disabled persons. The issues that may be addressed include, but are not limited to:

—The fair and effective disposition of cases concerning the provision of medical, mental health, social and support services to elderly or disabled persons;

—The fair and effective disposition of cases concerning the imposition of plenary or limited surrogate decision-makers;

—The impact on court caseloads of the increasing proportion of elderly persons in the population; and

—The improvement of access to courthouses and court proceedings for litigants, jurors, witnesses, and victims of crime who have mobility or communication impairments.

p. *Public education about the courts.* This category includes projects designed to improve the public's understanding of the courts, such as the development of video tapes and other informational materials to be shown to citizens' groups or in schools; the development of survey instruments by which the courts could determine areas of public dissatisfaction or misunderstanding; and other innovative approaches to enhancing the public's understanding of the purpose of the courts, the operations of the judicial system, and the system's responsiveness to its citizens.

q. *Courthouse security and operation.* This category includes the implementation and evaluation of innovative techniques for improving courthouse security, and the development of policies, practices and procedures which emphasize the prevention of incidents that endanger the lives of judges, court personnel, and others in the courtroom. Funds will not be made available solely to hire additional security personnel or to purchase alarm or other security systems.

r. *The relationship between State and Federal courts.* This category includes research to develop creative ideas and procedures that could improve the administration of justice in the State courts and at the same time reduce the work burdens of the Federal courts. Such research projects might address innovative State court procedures for:

—Reducing the burdens attendant to Federal habeas corpus cases involving State convictions;

—Handling civil, criminal, domestic relations or other types of cases in which a party also is subject to a Federal bankruptcy proceeding;

—Processing complex multistate litigation in the State courts;

—Facilitating the adjudication of Federal law questions by State courts with appropriate opportunities for review; and

—Otherwise allocating judicial burdens between and among Federal and State courts.

Other possible areas of research include studies examining the impact of the enforcement of selected Federal statutes on the State courts, the likely effect of the elimination or restriction of Federal diversity jurisdiction on the State courts, and the factors that motivate litigants to select the Federal or State courts in cases in which there is concurrent jurisdiction.

s. *Special needs of the largest urban courts.* This category is limited to projects submitted by State or local court systems regarding the implementation and evaluation of innovative programs and procedures to address the critical needs of a trial court serving a city or county with a population of at least 1,000,000 persons. Such projects might include the development and testing of improved methods to assist those courts in selecting, retaining and removing judges, or projects to relieve acute problems in the court's ability to handle civil, criminal, domestic relations, juvenile and other types of cases in a fair and timely manner. The Board will consider awarding grants of up to $500,000 each to support projects in this category. Up to $1,000,000 of available grant funds have been set aside to support such projects.

C. Programs Addressing a Critical Need of a Single State or Local Jurisdiction

1. The Board will consider supporting a limited number of projects submitted by State or local courts that relate only to that State or local jurisdiction. Up to $600,000 of available grant funds has been set aside for such projects.

2. Concept papers and applications requesting funds for projects under this section must meet the requirements of sections VI ("Concept Paper Submission Requirements for New Projects") and VII ("Application Requirements") respectively, and must demonstrate that:

a. The proposed project is essential to meeting a critical need of the jurisdiction; and

b. The need cannot be met solely with State and local resources within the foreseeable future.

3. All awards under this category are subject to the matching requirements set forth in section X.B.

III. Definitions

The following definitions apply for the purposes of this guideline:

A. Institute

The State Justice Institute.

B. State Supreme Court

The highest appellate court in a State, unless, for the purposes of the Institute program, a constitutionally or legislatively established judicial council acts in place of that court. In States having more than one court with final appellate authority, *State Supreme Court* shall mean that court which also has administrative responsibility for the State's judicial system. *State Supreme Court* also includes the office of the court or council, if any, it designates to perform the functions described in this guideline.

C. Designated Agency or Council

The office or judicial body which is authorized under State law or by delegation from the State Supreme Court to approve applications for funds and to receive, administer, and be accountable for those funds.

D. Grantor Agency

The State Justice Institute.

E. Grantee

The organization, entity, or individual to which an award of Institute funds is made. For a grant based on an application from a State or local court, *grantee* refers to the State Supreme Court.

F. Subgrantee

A State or local court which receives Institute funds through the State Supreme Court.

G. Match

The portion of project costs not borne by the Institute. *Match* includes both cash and in-kind contributions.

H. Renewal Funding

A grant to support an existing project for an additional period of time. Renewal funding may take the form of a continuation grant or an on-going support grant.

I. Continuation Grant

A grant of no more than 24 months to permit completion of activities initiated under an existing Institute grant or enhancement of the knowledge, programs or services produced or established during the prior grant period.

J. On-going Support Grant

A grant of up to 36 months to support a project that is national in scope and that provides the State courts with services, programs or products for which there is a continuing important need.

K. Human Subjects

Individuals who are participants in an experimental procedure or who are asked to provide information about themselves, their attitudes, feelings, opinions and/or experiences through an interview, questionnaire, or other data collection technique(s).

IV. Eligibility for Award

In awarding funds to accomplish these objectives and purposes, the Institute has been directed by Congress to give priority to State and local courts and their agencies (42 U.S.C. 10705(b)(1)(A)); national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branches of State governments (42 U.S.C. 10705(b)(1)(B)); and national nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments (42 U.S.C. 10705(b)(1)(C)).

An applicant will be considered a "priority" education and training applicant under section 10705(b)(1)(C) if: (1) The principal purpose or activity of the applicant is to provide education and training to State and local judges and court personnel; and (2) the applicant demonstrates a record of substantial experience in the field of judicial education and training.

The Institute also is authorized to make awards to other nonprofit organizations with expertise in judicial administration, institutions of higher education, individuals, partnerships, firms, corporations, and private agencies with expertise in judicial administration, provided that the objectives of the relevant program area(s) can be served better. In making this judgment, the Institute will consider the likely replicability of the projects' methodology and results in other jurisdictions. For-profit organizations are also eligible for grants and cooperative agreements; however, they must waive their fees.

Finally, the Institute is authorized to make awards to Federal, State or local agencies and institutions other than courts for services that cannot be adequately provided through nongovernmental arrangements.

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court or its designated agency or council. The latter shall receive all Institute funds awarded to such courts and be responsible for assuring proper administration of Institute funds, in accordance with section XI.B.1 of this guideline. A list of persons to contact in each State regarding approval of applications from State and local courts and administration of Institute grants to those courts is contained in the Appendix.

V. Types of Projects and Amounts of Awards

A. Types of Projects

Except as expressly provided in sections II.B.2.a. and II.C.1. above, the Institute has placed no limitation on the overall number of awards or the number of awards in each special interest category. The general types of projects are:

1. Education and training;
2. Research and evaluation;
3. Demonstration; and
4. Technical Assistance.

B. Size of Awards

1. Concept papers and applications for new projects and applications for continuation grants may request funding in amounts up to $300,000; a project addressing the needs of the largest urban courts under Special Interest category a. may, however, receive support of up to $500,000. For other new and continuation projects, awards in excess of $200,000 are likely to be rare and to be made, if at all, only for highly promising proposals that will have a significant impact nationally.

2. Applications for on-going support grants may request funding in amounts up to $600,000. The funds to support the first year of the project will be drawn from the Institute's appropriations for the Fiscal Year of the award. Funds to support each subsequent year will be made available subject to the availability of appropriations for that Fiscal Year, the satisfactory performance of the project as reflected in the quarterly Progress Reports required to be filed and routine grant monitoring, and the submission for Institute approval of a detailed annual task schedule within 30 days of the end of each project year.

C. Length of Grant Periods

1. Grant periods for all new and continuation projects ordinarily will not exceed 24 months.

2. Grant periods for on-going support grants ordinarily will not exceed 36 months.

VI. Concept Paper Submission Requirements for New Projects

Concept papers are an extremely important part of the application process because they enable the Institute to learn the program areas of primary interest to the courts and to explore innovative ideas, without imposing heavy burdens on prospective applicants. The use of concept papers also permits the Institute to better project the nature and amount of grant awards. Because of their importance, the Institute requires all parties requesting financial assistance from the Institute (except those seeking renewal funding pursuant to section IX.) to submit concept papers prior to submitting a formal grant application. This requirement may be waived by the Board only if it determines that extraordinary circumstances exist to justify the waiver.

A. Format and Content

Concept papers must include a cover sheet and a narrative.

1. The cover sheet must contain:

a. A title describing the proposed project;

b. The name and address of the court, organization or individual submitting the paper; and

c. The name, title, address (if different from that in b.), and telephone number of a contact person who can provide further information about the paper.

2. The narrative must be no more than 10 doublespaced pages on 8½ by 11 inch paper. Margins should not be less than 1 inch. The narrative should contain:

a. A statement listing the statutory program area(s), and "special interest" category(ies), if any, addressed by the paper;

b. An explanation of the need for the project;

c. A summary description of the approach to be taken;

d. A summary description of how the project will be evaluated, including the evaluation criteria;

e. A description of the products that will result, the degree to which they will be applicable to courts across the nation, and the manner in which the products and results of the project will be disseminated;

f. An explanation of the expected benefits to be derived from the project;

g. The identity of the key staff (if known) and a summary description of their qualifications;

h. A preliminary budget estimate including the anticipated costs for personnel, fringe benefits, travel, equipment, supplies, contracts, indirect costs, and other anticipated major expenditure categories;

i. The amount, nature (cash or non-cash), and source of match to be provided (see section X.B.); and

j. A statement of whether financial assistance for the project has been or will be sought from other sources.

The Institute encourages concept paper applicants to attach letters of cooperation and support from the courts and related agencies that will be involved in or directly affected by the proposed project.

The Institute will not accept concept papers exceeding 10 pages. The page limit does not include letters of cooperation or endorsements. Additional material should not be attached unless it is essential to impart a clear understanding of the project.

B. Selection Criteria

1. All concept papers will be evaluated by the staff on the basis of the following criteria:

a. The demonstration of need for the project;

b. The soundness and innovativeness of the approach described;

c. The benefits to be derived from the project; and

d. The reasonableness of the proposed budget.

2. "Special Interest" category concept papers submitted pursuant to section II.B will also be rated on the proposed project's relationship to one of the "Special Interest" categories set forth in that section, and the degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions.

3. "Single jurisdiction" concept papers submitted pursuant to section II.C will be rated on the proposed project's relation to one of the "Special Interest" categories set forth in section II.B, and on the special requirements listed in section II.C.2.

4. In determining which concept papers will be selected for development into full applications, the Institute will also consider the availability of financial assistance from other sources for the project; the amount and nature (cash or in-kind) of the submitter's anticipated match; whether the submitter is a "priority applicant" under the Institute's enabling legislation (see 42 U.S.C. 10705(b)(1) and section IV above); and the extent to which the proposed project would also benefit the Federal courts or help the State courts enforce Federal constitutional and legislative requirements.

C. Review Process

Concept papers will be reviewed competitively by the Board of Directors. Institute staff will prepare a narrative summary of each paper, and a rating sheet assigning points for each relevant selection criterion. Committees of the Board will review concept papers within assigned program areas and prepare recommendations for the full Board. The full Board of Directors will then decide which concept paper applicants should be invited to submit formal applications for funding. The decision to invite an application is solely that of the Board of Directors.

D. Submission Requirements

An original and three copies of all concept papers submitted for consideration in Fiscal Year 1989 must be sent by first class or overnight mail, or by courier no later than February 2, 1989. A postmark or courier receipt will constitute evidence that the concept paper was sent on or before the deadline date. All envelopes containing concept papers should be marked CONCEPT PAPER and should be sent to State Justice Institute, 120 S. Fairfax Street, Alexandria, Virginia 22314.

Receipt of each concept paper will be acknowledged in writing. Extensions of the deadline for receipt of concept papers will not be granted.

The Board expects to meet in late March 1989 to review the concept papers and invite applications. The Institute will send written notice to all persons submitting concept papers of the Board's decisions regarding their papers and of the key issues and questions that arose during the review process. A decision by the Board not to

invite an application may not be appealed, but does not prohibit resubmission of the concept paper or a revision thereof in a subsequent round of funding. The State Chief Justice and State Court Administrator will be notified when the Board invites applications that are based on concept papers submitted by courts within their State or which include a participating site within their State.

VII. Application Requirements for New Projects

Except as specified in section VI, a formal application for a new project is to be submitted only upon invitation of the Board following review of a concept paper. An application for Institute funding support must include an application form, budget forms (with appropriate documentation), a project abstract and program narrative, and certain certifications and assurances. These documents are described below.

A. Forms

1. Application Form (FORM A)

The application form requests basic information regarding the proposed project, the applicant, and the amount of funding support requested. It also requires the signature of an individual authorized to certify on behalf of the applicant that the information contained in the application is true and complete, that submission of the application has been authorized by the applicant, and that if funding for the proposed project is approved, the applicant will comply with the requirements and conditions of the award, including the assurances set forth in Form D.

2. Certificate of State Approval (FORM B)

An application from a State or local court must include a copy of FORM B signed by the State's Chief Judge or Chief Justice, the director of the designated agency, or the head of the designated council. The signature denotes that the proposed project has been approved by the State's highest court or the agency or council it has designated. It denotes further that if funding for the project is approved by the Institute, the court or designated agency or council will receive, administer, and be accountable for the awarded funds.

3. Budget Forms (FORM C or C1)

Applicants may submit the proposed project budget either in the tabular format of FORM C or in the spreadsheet format of FORM C1. Applicants requesting more than $100,000 are encouraged to use the spreadsheet format. If the proposed project period is for more than 12 months, a separate form should be submitted for the portion of the project extending beyond month 12.

In addition to FORM C or C1, applicants must provide a detailed budget narrative providing an explanation of the basis for the estimates in each budget category.

If funds from other sources are required to conduct the project, either as match or to support other aspects of the project, the source, current status of the request, and anticipated decision date must be provided.

4. Assurances (FORM D)

This form lists the statutory, regulatory, and policy requirements and conditions with which recipients of Institute funds must comply.

B. Project Abstract

The abstract should highlight the purposes, goals, methods and anticipated benefits of the proposed project. It should not exceed one single-spaced page on 8½ by 11 inch paper.

C. Program Narrative

The program narrative should not exceed 25 double-spaced pages on 8½ by 11 inch paper. Margins should not be less than 1 inch. The page limit does not include appendices containing resumes and letters of cooperation or endorsement. Additional background material may be attached only if it is essential to obtaining a clear understanding of the proposed project. Numerous and lengthy appendices are strongly discouraged.

The program narrative should address the following topics:

1. Project Objectives

A clear, concise statement of what the proposed project is intended to accomplish.

2. Program Areas To Be Covered

A statement which lists the program areas set forth in the State Justice Institute Act, and, if appropriate, the Institute's Special Interest program categories that are addressed by the proposed projects. A discussion should be included only if the relationship between the proposed project and the program areas and special interest categories is not obvious.

3. Need for the Project

If the project is to be conducted in a specific location(s), a discussion of the particular needs of the project site(s) to be addressed by the project and why those needs are not being met through the use of existing materials, programs, procedures, services or other resources.

If the project is not site specific, a discussion of the problems that the proposed project will address, and why existing materials, programs, procedures, services or other resources do not adequately resolve those problems. The discussion should include specific references to the relevant literature and to the experience in the field.

4. Tasks and Methods

A delineation of the tasks to be performed and the methods to be used for accomplishing each task. For example:

For research and evaluation projects, the data sources, data collection strategies, variables to be examined, and analytic procedures to be used for conducting the research or evaluation and ensuring the validity and general applicability of the results. For projects involving human subjects, the discussion of methods should address the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and the protection of others who are not the subjects of research but would be affected by the research. If the potential exists for risk or harm to the human subjects, a discussion should be included of the value of the proposed research and the methods to be used to minimize or eliminate such risk.

For education and training projects, the adult education techniques to be used in designing and presenting the training, including the teaching methods to be used and the opportunities for structured interaction among the participants; how faculty will be recruited, selected, and trained; the proposed number and length of the conferences, courses, seminars or workshops to be conducted; the materials to be provided and how they will be developed; the cost to participants; and the methods to be used for evaluating the reaction of the participants and the impact and effectiveness of the training.

For demonstration projects, how the sites will be identified and their cooperation obtained; how the program or procedures will be implemented and monitored; and how the results of the demonstration will be determined and assessed.

For technical assistance projects, the types of assistance that will be provided; the particular program area(s) for which assistance will be provided; how requests will be obtained and the type of assistance determined; how suitable providers will be selected and briefed; how reports will be reviewed; the cost to recipients; and how the usefulness and impact of the technical assistance will be determined and assessed.

Every project design must include an evaluation plan to determine whether the project met its objectives. The plan should present the evaluator's qualifications; describe the criteria that will be used to evaluate the project's effectiveness; explain how the evaluation will be conducted, including the specific data collection and analysis techniques to be used; discuss why this approach is appropriate; and present a schedule for completion of the evaluation.

5. Project Management

A detailed management plan including the starting and completion date for each task; the time commitments to the project of key staff and their responsibilities regarding each project task; and the procedures that will be used to ensure that all tasks are performed on time, within budget, and at the highest level of quality. The management plan must also provide for the submission of Quarterly Progress and Financial Reports within 30 days of the close of each calendar quarter (i.e., no later than January 30, April 30, July 30, and October 30).

6. Products

A description of the products to be developed by the project (e.g., monographs, training curricula and materials, videotapes, articles, or handbooks), including when they will be submitted to the Institute. The application must explain how and to whom the products will be disseminated; identify development, production, and dissemination costs covered by the project budget; and present the basis on which products and services developed or provided under the grant will be offered to the courts community and the public at large. Ordinarily, the products of a research, evaluation, or demonstration project should include an article summarizing the project findings that is publishable in a journal serving the courts community nationally, an executive summary that will be disseminated to the project's primary audience, or both. The products developed by education and training projects should be designed for use outside the classroom so that they may be used again by original participants and others in the course of their duties. Fourteen copies of all project products must be submitted to the Institute.

7. Applicant Status

A statement demonstrating whether the applicant (if the applicant is not a State or local court) qualifies as either a national non-profit organization controlled by, operating in conjunction with, and serving the judicial branches of State governments; or a national non-profit organization for the education and training of State court judges and support personnel. See section IV. An applicant other than a State or local court that may qualify as a priority recipient pursuant to 42 U.S.C. 10705 (b)(1)(B) or (1)(C) must set forth the basis for designation as a priority recipient in its application. If the applicant is neither such an organization nor a State court, this section must demonstrate how it will serve the objectives of the relevant program area(s) in terms of replicability and other appropriate factors. Non-judicial units of Federal, State, or local government must demonstrate that the proposed services are not available from non-governmental sources.

8. Staff Capability

A summary of the training and experience of the key staff members that qualify them for conducting and managing the proposed project. Resumes of identified staff should be attached to the application. If one or more key staff members are not known at the time of the application, a description of the criteria that will be used to select persons for these positions should be included.

9. Organizational Capacity

Applicants that have not received a grant from the Institute within the past two years should submit a statement describing the capacity of the applicant to administer grant funds including the financial systems used to monitor project expenditures (and income, if any), and a summary of the applicant's past experience in administering grants, as well as any resources or capabilities that the applicant has that will particularly assist in the successful completion of the project.

If the applicant is a non-profit organization (other than a university), it must also provide documentation of its section 501(c) tax exempt status as determined by the Internal Revenue Service and a copy of a current certified audit report. For purposes of this requirement, "current" means no earlier than two years prior to the current calendar year. If a current audit report is not available, the Institute will require the organization to complete a financial capability questionnaire which must be certified by a Certified Public Accountant. Other applicants may be required to provide a current audit report, a financial capability questionnaire, or both, if specifically requested to do so by the Institute.

Unless requested otherwise, an applicant that has received a grant from the Institute within the past two years should describe only the changes in its organizational capacity, tax status, or financial capability that may affect its capacity to administer a grant.

10. Letters of Support for the Project

If the cooperation of courts, organizations, agencies, or individuals other than the applicant is required to conduct the project, written assurances of cooperation and availability should be attached as an appendix to the application.

D. Budget Narrative

The budget narrative should provide the basis for the computation of all project-related costs. Additional background or schedules may be attached only if they are essential to obtaining a clear understanding of the proposed budget. Numerous and lengthy appendices are strongly discouraged. The budget narrative should address the following items:

1. Justification of Personnel Compensation

The applicant should set forth the percentages of time to be devoted by, and salaries to be paid to, individuals directly involved with the project. The applicant should address the basis for personnel compensation and explain any deviations from current rates or established written organization policies.

2. Fringe Benefit Computation

The applicant should provide a description of the fringe benefits provided to employees. If percentages are used, the authority for such use should be presented as well as a description of the elements included in the determination of the percentage rate.

3. Consultant/Contractual Services

The applicant should describe each type of service to be provided. The basis for compensation rates and the method for selection should also be included. Rates for consultant services must be set in accordance with Section XI.H.2.c.

4. Travel

Transportation costs and per diem rates must comply with the policies of

the applicant organization. If the applicant does not have an established travel policy, then travel rates shall be consistent with those established by the Institute or the Federal Government. (A copy of the Institute's travel policy is available upon request.) The budget narrative should include a description of the rate method used and address the per diem rates separate from transportation expenses. The purpose for travel should also be included in the narrative.

5. Equipment

Grant funds may be used to purchase or lease only that equipment which is essential to accomplishing the objectives of the project. The applicant should describe the equipment to be purchased or leased and explain why the acquisition of that equipment is essential to accomplish the project's goals and objectives. The narrative should clearly identify which equipment is to be leased and which is to be purchased. The method of procurement should also be described. Purchases for automatic data processing equipment must comply with section XI.H.2.b.

6. Supplies

The applicant should provide a general description of the supplies necessary to accomplish the goals and objectives of the grant. In addition, the applicant should provide the details supporting the total requested for this expenditure category.

7. Construction

Construction expenses are prohibited except for the limited purposes set forth in section XI.G.2. Any allowable construction or renovation expense should be described in detail in the budget narrative.

8. Telephone

Applicants should include anticipated telephone charges, distinguishing between monthly charges and long distance charges in the budget narrative. Also, applicants should provide the basis used in developing the monthly and long distance estimates.

9. Postage

Anticipated postage costs for project related mailings should be described in the budget narrative. The cost of special mailings such as for a survey or for announcing a workshop should be distinguished from routine operational mailing costs. The bases for all postage estimates should be included in the justification material.

10. Printing/Photocopying

Anticipated costs for printing or photocopying should be included in the budget narrative. Applicants should provide the details underlying these estimates in support of the request.

11. Indirect Costs

Applicants should describe the indirect cost rates applicable to the grant in detail. These rates must be established in accordance with section XI.H.3.

12. Match

The applicant should describe the source of any matching contribution and the nature of the match provided. Any additional contributions to the project should be described in this section of the budget narrative as well.

E. Submission Requirements

An application package containing the application, an original signature on FORM A (and on FORM B, if the application is from a State or local court), and four photocopies of the application package must be sent by first class or overnight mail, or by courier no later than May 23, 1989. A postmark or courier receipt will constitute evidence that the application was sent on or before the deadline date. Please mark APPLICATION on all application package envelopes and send to: State Justice Institute, 120 S. Fairfax Street, Alexandria, Virginia 22314.

Receipt of each proposal will be acknowledged in writing. Extensions of the deadline for receipt of applications will not be granted.

VIII. Application Review Procedures

A. Preliminary Inquiries

The Institute staff will answer inquiries concerning application procedures. The staff contact will be named in the Institute's letter inviting submission of a formal application.

B. Selection Criteria

1. All applications will be rated on the basis of the criteria set forth below. The Institute will accord the greatest weight to the following criteria:

a. The soundness of the methodology, including the evaluation design;

b. The qualifications of the project's staff;

c. The applicant's management plan and organizational capabilities;

d. The reasonableness of the proposed budget;

e. The demonstration of need for the project;

f. The products and benefits resulting from the project; and

g. The demonstration of cooperation and support of other agencies that may be affected by the project.

2. "Special Interest" applications submitted pursuant to section II.B. will also be rated on the proposed project's relationship to one of the "Special Interest" categories set forth in that section, and the degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions.

3. "Single jurisdiction" applications submitted pursuant to section II.C. will also be rated on the proposed project's relation to one of the "Special Interest" categories set forth in section II.B. and on the special requirements listed in section II.C.2.

4. In determining which applicants to fund, the Institute will also consider the applicant's standing in relation to the statutory priorities discussed in section IV; the availability of financial assistance from other sources for the project; the amount and nature (cash or in-kind) of the applicant's match; and the extent to which the proposed project would also benefit the Federal courts or help the State courts enforce Federal constitutional and legislative requirements.

C. Review and Approval Process

Applications will be reviewed competitively by the Board of Directors. The Institute staff will prepare a narrative summary of each application, and a rating sheet assigning points for each relevant selection criterion. When necessary, applications may also be reviewed by outside experts. Committees of the Board will review applications within assigned program categories and prepare recommendations to the full Board. The full Board of Directors will then decide which applications to approve for a grant. The decision to award a grant is solely that of the Board of Directors.

Awards approved by the Board will be signed by the Chairman of the Board on behalf of the Institute.

D. Return Policy

Unless a specific request is made, unsuccessful applications will not be returned. Applicants are advised that Institute records are subject to the provisions of the Federal Freedom of Information Act, 5 U.S.C. 552.

E. Notification of Board Decision

The Institute will send written notice to applicants concerning all Board decisions to approve or deny their respective applications and the key issues and questions that arose during the review process. A decision by the Board to deny an application may not be appealed, but does not prohibit resubmission of a concept paper based on that application in a subsequent round of funding. The State Chief Justice and State Court Administrator will be notified when grants are approved by the Board to support projects that will be conducted by or involve courts in their State.

IX. Renewal Funding Procedures and Requirements

The Institute recognizes two types of renewal funding. The first, a "continuation grant," is to permit completion of activities initiated under an existing Institute grant or to enhance the knowledge, programs or services produced or established during the prior grant period. Continuation grants are intended to support projects with a limited duration. They may be used, for example, when a project is divided into two or more sequential phases, for secondary analysis of data obtained in an Institute-supported research project, or for more extensive testing of an innovative technology, procedure, or program developed with SJI grant support. Continuation grants are subject to the limits on size and duration set forth in sections V.B.1 and V.C.1.

The second, an on-going support grant, is to support a project that is national in scope and that provides the State courts with services, programs or products for which there is a continuing important need. On-going support grants are subject to the limits on size and duration set forth in sections V.B.2. and V.C.2.

A. Continuation Grants

1. In lieu of a concept paper, a grantee seeking a continuation grant must inform the Institute, by letter, of its intent to submit an application for such funding as soon as the need for renewal funding becomes apparent but no less than 120 days before the end of the current grant period.

a. A letter of intent must be no more than 3 single-spaced pages on 8½ by 11 inch paper and must contain an estimate of the funds to be requested and a brief description of anticipated changes in scope, focus or audience of the project.

b. Letters of intent will not be reviewed competitively. Within 30 days of receiving a letter of intent, the Institute will inform the grantee filing of the date by which an application for a continuation grant must be submitted.

2. An application for a continuation grant must include an application form, budget forms (with appropriate documentation), a project abstract conforming to the format set forth in section VII.B., a program narrative, a budget narrative, and certain certifications and assurances.

The program narrative should conform to the length and format requirements set forth in section VII.C. However, rather than the topics listed in section VII.C., the program narrative of an application for a continuation grant should:

a. Explain why continuation of the project is necessary to achieve the goals of the project, and how the continuation will benefit the participating courts or the courts community generally. That is, to what extent will the goals and objectives of the project be unfulfilled if the project is not continued, and conversely, how will the findings or results of the project be enhanced by continuing the project?

b. Discuss the status of all activities conducted during the previous project period, identify any activities that were not completed, and explain why;

c. Present a detailed task schedule for the next project period;

d. Specify the key findings or recommendations resulting from the evaluation of the project, if they are available, and explain how they will be addressed during the proposed continuation;

e. Describe fully any other changes to the tasks to be performed, the methods to be used, the products of the project, the assigned staff, or the grantee's organizational capacity;

f. Indicate why other sources of support are inadequate, inappropriate or unavailable; and

g. Provide a complete budget and budget narrative conforming to the requirements set forth in paragraph VII.D. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered.

3. An application for a continuation grant should not repeat information contained in a previously approved application.

4. The submission requirements set forth in section VII.E., other than the deadline for mailing, apply to applications for a continuation grant. Such applications will be rated on the selection criteria set forth in section VIII.B. The key findings and recommendations resulting from an evaluation of the project and the proposed response to those findings and recommendations will also be considered. The review and approval process, return policy, and notification procedures are the same as those for new projects set forth in sections VIII.C.–VIII.E.

B. On-going Support Grants

1. A project is eligible for consideration for an on-going support grant if:

a. The project is supported by and has been evaluated under a grant from the Institute;

b. The project is national in scope and provides a significant benefit to the State courts;

c. There is a continuing important need for the services, programs or products provided by the project as indicated by the level of use and support by members of the court community;

d. The project is accomplishing its objectives in an effective and efficient manner; and

e. It is likely that the service or program provided by the project would be curtailed or significantly reduced without Institute support.

2. The Board will consider awarding an on-going support grant for a period of up to 36 months. The total amount of the grant will be fixed at the time of the initial award. Funds will be made available in annual increments as specified in section V.B.2.

Each project supported by an on-going support grant must include an evaluation component assessing its effectiveness and operation throughout the grant period. A comprehensive evaluation report must be completed not less than 90 days before the end of the grant period.

3. In lieu of a concept paper, a grantee seeking an on-going support grant must inform the Institute by letter of its intent to submit an application for such funding no less than 120 days before the end of the current grant period. The letter of intent should be in the same format as that prescribed for continuation grants in section IX. A.1.a.

4. An application for an on-going support grant must include an application form, budget forms (with appropriate documentation), a project abstract conforming to the format set forth in section VII.B, a program narrative, a budget narrative, and certain certifications and assurances.

The program narrative should conform to the length and format requirements set forth in section VII.C. However, rather than the topics listed in section VII.C, the program narrative of applications for an on-going support grant should:

a. Provide a detailed discussion of the benefits provided by the project to the State courts around the country, including the degree to which State

courts, State court judges, or State court managers and personnel are using the services or programs provided by the project;

b. Demonstrate support for the continuation of the project from the courts community;

c. Discuss the extent to which the project has met its goals and objectives, identify any activities that have not been completed, and explain why;

d. Present a general schedule for the full proposed project period and a detailed task schedule for the first year of the proposed new project period;

e. Attach a copy of the final evaluation report regarding the effectiveness and operation of the project, specify the key findings or recommendations resulting from the evaluation, and explain how they will be addressed during the proposed renewal period;

f. Describe fully any other changes to the tasks to be performed, the methods to be used, the products of the project, the assigned staff, or the grantee's organizational capacity;

g. Indicate why other sources of support are inadequate, inappropriate or unavailable; and

h. Provide a complete budget and budget narrative conforming to the requirements set forth in paragraph VII.D. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered.

5. An application for an on-going support grant should not repeat information contained in a previously approved application.

6. The submission requirements set forth in section VII.E other than the deadline for mailing apply to applications for an on-going support grant. Such applications will be rated on the selection criteria set forth in section VIII.B. The extent to which the project has met its goals and objectives, the key findings and recommendations resulting from an evaluation of the project, and the proposed response to those findings and recommendations will also be considered. The review and approval process, return policy, and notification procedures are the same as those for new applications set forth in sections VII.C–VII.E.

X. Compliance Requirements

The State Justice Institute Act (Pub. L. 98–620) contains limitations and conditions on grants, contracts and cooperative agreements of which applicants and recipients should be aware. In addition to eligibility requirements which must be met to be considered for an award from the Institute, all applicants should be aware of and all recipients will be responsible for ensuring compliance with the following:

A. State and Local Court Systems

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council. The latter shall receive, administer, and be accountable for all funds awarded to such courts. 42 U.S.C. 10705(b)(4). The Appendix to this guideline lists the agencies, councils and contact persons designated to administer Institute awards to the State and local courts.

B. Matching Requirements

1. All awards to courts or other units of State or local government require a match from private or public sources of not less than 50 percent of the total amount of the Institute's award. A cash match, non-cash match, or both may be provided, but the Institute will give preference to those applicants who provide a cash match to the Institute's award. The requirement to provide match may be waived in exceptionally rare circumstances upon approval of the Chief Justice of the highest court in the State and a majority of the Board of Directors. 42 U.S.C. 10705(d) (as amended).

2. Other eligible recipients of Institute funds are not required to provide a match, but are encouraged to contribute to meeting the costs of the project (see section VIII.B above).

C. Conflict of Interest

Personnel and other officials connected with Institute-funded programs shall adhere to the following requirements:

1. No official or employee of a recipient court or organization shall participate personally through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in any proceeding, application, request for a ruling or other determination, contract, grant, cooperative agreement, claim, controversy, or other particular matter in which Institute funds are used, where to his/her knowledge he/she or his/her immediate family, partners, organization other than a public agency in which he/she is serving as officer, director, trustee, partner, or employee or any person or organization with whom he/she is negotiating or has any arrangement concerning prospective employment, has a financial interest.

2. In the use of Institute project funds, an official or employee of a recipient court or organization shall avoid any action which might result in or create the appearance of:

a. Using an official position for private gain; or

b. Affecting adversely the confidence of the public in the integrity of the Institute program.

3. Requests for proposals or invitations for bids issued by a recipient of Institute funds or a subgrantee or subcontractor will provide notice to prospective bidders that the contractors who develop or draft specifications, requirements, statements of work and/or requests for proposals for a proposed procurement will be excluded from bidding on or submitting a proposal to compete for the award of such procurement.

D. Lobbying

Funds awarded to recipients by the Institute shall not be used, indirectly or directly, to influence Executive orders or similar promulgations by Federal, State or local agencies, or to influence the passage or defeat of any legislation by Federal, State or local legislative bodies. 42 U.S.C. 10706(a).

E. Political Activities

No recipient shall contribute or make available Institute funds, program personnel or equipment to any political party or association, or the campaign of any candidate for public or party office. Recipients are also prohibited from using funds in advocating or opposing any ballot measure, initiative, or referendum. Finally, officers and employees of recipients shall not intentionally identify the Institute or recipients with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office. 42 U.S.C. 10706(a).

F. Advocacy

No funds made available by the Institute may be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities. 42 U.S.C. 10706(b).

G. Supplantation and Construction

To ensure that funds are used to supplement and improve the operation of State courts, rather than to support basic court services, funds shall not be used for the following purposes:

1. To supplant State or local funds supporting a program or activity;

2. To construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or

3. To solely purchase equipment for a court system.

H. Confidentiality of Information

Except as provided by Federal law other than the State Justice Institute Act, no recipient of financial assistance from SJI may use or reveal any research or statistical information furnished under the Act by any person and identifiable to any specific private person for any purpose other than the purpose for which the information was obtained. Such information and copies thereof shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceedings.

I. Reporting Requirements

Recipients of Institute funds shall submit Quarterly Progress and Financial Reports within 30 days of the close of each calendar quarter (that is, no later than *January 30, April 30, July 30, and October 30*). These reports shall include a narrative description of project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period.

The quarterly financial status report shall be submitted in accordance with section XI.C.2 of this guideline.

J. Audit

Each recipient must provide for an annual fiscal audit. (See section XI.J of this guideline for the requirements of such audits.)

Accounting principles employed in recording transactions and preparing financial statements must be based upon generally accepted accounting principles (GAAP).

K. Suspension of Funding

After providing a recipient reasonable notice and opportunity to submit written documentation demonstrating why fund termination or suspension should not occur, the Institute may terminate or suspend funding of a project that fails to comply substantially with the Act, Institute guidelines, or that terms and conditions of the award. 42 U.S.C. 10708(1).

L. Title to Property

At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the recipient court, organization, or individual that purchased the property if certification is made to the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act, as approved by the Institute. If such certification is not made or the Institute disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in the Institute, which will direct the disposition of the property.

M. Disclaimer

Recipients of Institute funds shall prominently display the following disclaimer on all project-related products developed with Institute funds:

"This [document, film, videotape, etc.] was developed under a [grant, cooperative agreement, contract] from the State Justice Institute. Points of view expressed herein are those of the [author(s), filmmaker(s), etc.] and do not necessarily represent the official position or policies of the State Justice Institute."

N. Copyrights

Except as otherwise provided in the terms and conditions of an Institute award, a recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of an Institute-supported project, but the Institute shall reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

O. Inventions and Patents

If any patentable items, patent rights, processes, or inventions are produced in the course of Institute-sponsored work, such fact shall be promptly and fully reported to the Institute. Unless there is a prior agreement between the grantee and the Institute on disposition of such items, the Institute shall determine whether protection of the invention or discovery shall be sought. The Institute will also determine how the rights in the invention or discovery, including rights under any patent issued thereon, shall be allocated and administered in order to protect the public interest consistent with "Government Patent Policy" (President's Memorandum for Heads of Executive Departments and Agencies, August 23, 1971, and statement of Government Patent Policy as printed in 36 FR 16887).

P. Charges for Grant-Related Products

When Institute funds fully cover the cost of developing, producing, and disseminating a product, e.g., a document or software, the product should be distributed to the field without charge. When Institute funds only partially cover the development, production, and dissemination costs, the grantee may recover its costs for reproducing and disseminating the material to those requesting it.

Q. Approval of Key Staff

If the qualifications of a person assigned to a key project staff position are not described in the application or if there is a change of a person assigned to such a position, a recipient shall submit a description of the qualifications of the newly assigned person to the Institute. Prior written approval of the qualifications of the new person assigned to a key staff position must be received from the Institute before the salary of that person and associated costs may be paid or reimbursed from grant funds.

XI. Financial Requirements

A. Accounting Systems and Financial Records

All grantees, subgrantees, contractors and other organizations directly or indirectly receiving Institute funds are required to establish and maintain accounting systems and financial records to accurately account for funds they receive. These records shall include total program costs, including Institute funds, State and local matching shares, and any other fund sources included in the approved project budget.

1. Purpose

The purpose to this section is to establish accounting system requirements and to offer guidance on procedures which will assist all grantees/subgrantees in:

a. Complying with the statutory requirements for the awarding, disbursement, and accounting of funds;

b. Complying with regulatory requirements of the Institute for the financial management and disposition of funds;

c. Generating financial data which can be used in the planning,

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management and control of programs; and

d. Facilitating an effective audit of funded programs and projects.

2. References

Except where inconsistent with specific provisions of this guideline, the following regulations, directives and reports are applicable to Institute grants and cooperative agreements. These materials supplement the requirements of this section for accounting systems and financial recordkeeping and provide additional guidance on how these requirements may be satisfied.

a. *Office of Management and Budget (OMB) Circular A–21,* Cost Principles for Educational Institutions.

b. *Office of Management and Budget (OMB) Circular A–87,* Cost Principles for State and Local Governments.

c. *Office of Management and Budget (OMB) Circular A–88 (revised),* Indirect Cost Rates, Audit and Audit Followup at Educational Institutions.

d. *Office of Management and Budget (OMB) Circular A–102,* Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

e. *Office of Management and Budget (OMB) Circular A–110,* Grants and Agreements with Institutions of Higher Education, Hospitals and other Non-Profit Organizations.

f. *Office of Management and Budget (OMB) Circular A–128,* Audits of State and Local Governments.

g. *Office of Management and Budget (OMB) Circular A–122,* Cost Principles for Non-profit Organizations.

B. Supervision and Monitoring Responsibilities

1. Grantee Responsibilities

All grantees receiving direct awards from the Institute are responsible for the management and fiscal control of all funds. Responsibilities include the accounting of receipts and expenditures, the maintaining of adequate financial records and the refunding of expenditures disallowed by audits.

2. Responsibilities of State Supreme Court

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council.

The State Supreme Court shall receive all Institute funds awarded to such courts and shall be responsible for assuring proper administration of Institute funds. The State Supreme Court is responsible for all aspects of the project including proper accounting and financial recordkeeping by the subgrantee. The responsibilities include:

a. *Reviewing financial operations.* The State Supreme Court should be familiar with, and periodically monitor, its subgrantees' financial operations, records system and procedures. Particular attention should be directed to the maintenance of current financial data.

b. *Recording financial activities.* The subgrantee's grant award or contract obligation, as well as cash advances and other financial activities, should be recorded on the books of the State Supreme Court in summary form. Subgrantee expenditures should be recorded on the books of the State Supreme Court *OR* evidenced by report forms duly filed by the subgrantee. Non-Institute contributions applied to projects by subgrantees should likewise be recorded, as should any project income resulting from program operations.

c. *Budgeting and budget review.* The State Supreme Court should ensure that each subgrantee prepares an adequate budget on which its award commitment will be based. The detail of each project budget should be maintained on file by the State Supreme Court.

d. *Accounting for non-institute contributions.* The State Supreme Court will ensure, in those instances where subgrantees are required to furnish non-Institute matching funds, that the requirements and limitations of this guideline are applied to such funds.

e. *Audit requirement.* The State Supreme Court is required to ensure that subgrantees have met the necessary audit requirements as set forth by the Institute (see section X.J and XI.J).

f. *Reporting irregularities.* The State Supreme Court and its subgrantees are responsible for promptly reporting to the Institute the nature and circumstances surrounding any financial irregularities discovered.

C. Accounting System

The grantee is responsible for establishing and maintaining an adequate system of accounting and internal controls for itself and for ensuring that an adequate system exists for each of its subgrantees and contractors. An acceptable and adequate accounting system is considered to be one which:

1. Properly accounts for receipt of funds under each grant awarded and the expenditure of funds for each grant by category of expenditure (including matching contributions and project income);

2. Assures that expended funds are applied to the appropriate budget category included within the approved grant;

3. Presents and classifies historical costs of the grant as required for budgetary and evaluation purposes;

4. Provides cost and property controls to assure optimal use of grant funds;

5. Is integrated with a system of internal controls adequate to safeguard the funds and assets covered, check the accuracy and reliability of the accounting data, promote operational efficiency, and assure conformance with any general or special conditions of the grant;

6. Meets the prescribed requirements for periodic financial reporting of operations; and

7. Provides financial data for planning, control, measurement, and evaluation of direct and indirect costs.

D. Total Cost Budgeting and Accounting

Accounting for all funds awarded by the Institute shall be structured and executed on a "total project cost" basis. That is, total project costs, including Institute funds, State and local matching shares, and any other fund sources included in the approved project budget shall be the foundation for fiscal administration and accounting. Grant applications and financial reports require budget and cost estimates on the basis of total costs.

1. Timing of Matching Contributions

Matching contributions need not be applied at the exact time of the obligation of Institute funds. However, the full matching share must be obligated by the end of the period for which the Institute funds have been made available for obligation under an approved project.

2. Records for Match

All grantees must maintain records which clearly show the source, amount, and timing of all matching contributions. In addition, if a project has included, within its approved budget, contributions which exceed the required matching portion, the grantee must maintain records of those contributions in the same manner as it does the Institute funds and required matching shares. For all grants made to State and local courts, the State Supreme Court has primary responsibility for grantee/subgrantee compliance with the requirements of this section. (See XI.B.2.)

E. Maintenance and Retention of Records

All financial records, supporting documents, statistical records and all other records pertinent to grants, subgrants, cooperative agreements or contracts under grants shall be retained by each organization participating in a project for at least three years for purposes of examination and audit. State Supreme Courts may impose record retention and maintenance requirements in addition to those prescribed in this chapter.

1. Coverage

The retention requirement extends to books of original entry, source documents supporting accounting transactions, the general ledger, subsidiary ledgers, personnel and payroll records, cancelled checks, and related documents and records. Source documents include copies of all grant and subgrant awards, applications, and required grantee/subgrantee financial and narrative reports. Personnel and payroll records shall include the time and attendance reports for all individuals reimbursed under a grant, subgrant or contract, whether they are employed full-time or part-time. Time and effort reports will be required for consultants.

2. Retention Period

The three-year retention period starts from the date of the submission of the final expenditure report or, for grants which are renewed annually, from the date of submission of the annual expenditure report.

3. Maintenance

Grantees and subgrantees are expected to see that records of different fiscal years are separately identified and maintained so that requested information can be readily located. Grantees and subgrantees are also obligated to protect records adequately against fire or other damage. When records are stored away from the grantee's/subgrantee's principal office, a written index of the location of stored records should be on hand, and ready access should be assured.

F. Project-Related Income

Records of the receipt and disposition of project-related income must be maintained by the grantee in the same manner as required for the project funds that gave rise to the income. The policies governing the disposition of the various types of project-related income are listed below.

1. Interest

A State and any agency or instrumentality of a State including State institutions of higher education and State hospitals, shall not be held accountable for interest earned on advances of project funds. When funds are awarded to subgrantees through a State, the subgrantees are not held accountable for interest earned on advances of project funds. Local units of government that are direct grantees and nonprofit organizations must refund any interest earned. Grantees shall so order their affairs to ensure minimum balances in their respective grant cash accounts.

2. Other Project Income

a. *Royalties.* The grantee/subgrantee may retain all royalties received from copyrights or other works developed under projects or from patents and inventions, unless the terms and conditions of the project provide otherwise.

b. *Registration/tuition fees and other.* These types of project income shall be treated in accordance with disposition instructions set forth in the project's terms and conditions.

G. Payments and Financial Reporting Requirements

1. Payment of Grant Funds

The procedures and regulations set forth below are applicable to all Institute grant funds and grantees.

a. *Request for advance or reimbursement of funds.* Grantees will receive funds on a "Check-Issued" basis. Upon receipt, review, and approval of a Request for Advance or Reimbursement by the Institute, a check will be issued directly to the grantee or its designated fiscal agent. A request must be limited to the grantee's immediate cash needs. The Request for Advance or Reimbursement, along with the instructions for its preparation, will be included in the official Institute award package.

b. *Termination of advance funding.* When a grantee organization receiving cash advances from the Institute—

i. Demonstrates an unwillingness or inability to attain program or project goals, or to establish procedures that will minimize the time elapsing between cash advances and disbursements, or cannot adhere to guideline requirements or special conditions;

ii. Engages in the improper award and administration of subgrants or contracts; or

iii. Is unable to submit reliable and/or timely reports,

The Institute may terminate advance financing and require the grantee organization to finance its operations with its own working capital. Payments to the grantee shall then be made by the use of the Institute check method to reimburse the grantee for actual cash disbursements. In the event the grantee continues to be deficient, the Institute reserves the right to suspend payments until the deficiencies are corrected.

c. *Principle of minimum cash on hand.* Recipient organizations should request funds based upon immediate disbursement requirements. Grantees should time their requests to ensure that cash on hand is the minimum needed for disbursements to be made immediately or within a few days. Idle funds in the hands of subgrantees will impair the goals of good cash management.

2. Financial Reporting

In order to obtain financial information concerning the use of funds, the Institute requires that grantees/subgrantees of these funds submit timely reports for review.

The Financial Status Report is required from all grantees for each active quarter on a calendar-quarter basis. This report is due within 30 days after the close of the calendar quarter. It is designed to provide financial information relating to Institute funds, State and local matching shares, and any other fund sources included in the approved project budget. The report contains information on obligations as well as outlays. A copy of the Financial Status Report, along with instructions for its preparation, will be included in the official Institute Award package. In circumstances where an organization requests substantial payments for a project prior to the completion of a given quarter, the Institute may request a brief summary of the amount requested, by object class, in support of the Request for Advance or Reimbursement.

3. Consequences of Non-Compliance with Submission Requirements

Failure of the grantee organization to submit required financial and program reports may result in a suspension of grant payments.

H. Allowability of Costs

1. General

Except as may be otherwise provided in the conditions of a particular grant, cost allowability shall be determined in accordance with the principles set forth in *OMB Circulars A–87,* Cost Principles for State and Local Governments; *A–21,* Cost Principles Applicable to Grants and Contracts with Educational

Institutions; and *A–122*, Cost Principles for Non-Profit Organizations.

2. Costs Requiring Prior Approval

a. *Preagreement costs.* The written prior approval of the Institute is required for costs which are considered necessary to the project but occur prior to the starting date of the grant period.

b. *Equipment.* Grant funds may be used to purchase or lease only that equipment which is essential to accomplishing the goals and objectives of the project. The written prior approval of the Institute is required when the amount of automated data processing (ADP) equipment to be purchased or leased exceeds $10,000 or the software to be purchased exceeds $3,000.

c. *Consultants.* The written prior approval of the Institute is required when the rate of compensation to be paid a consultant exceeds $200 a day.

3. Indirect Costs

These are costs of an organization that are not readily assignable to a particular project, but are necessary to the operation of the organization and the performance of the project. The cost of operating and maintaining facilities, depreciation, and administrative salaries are examples of the types of costs that are usually treated as indirect costs. It is the policy of the Institute that all costs should be budgeted directly; however, if a recipient has an indirect cost rate approved by a Federal agency as set forth below, the Institute will accept that rate.

a. *Approved Plan Available.* (1) The Institute will accept an indirect cost rate or allocation plan approved for a grantee during the preceding two years by any Federal granting agency on the basis of allocation methods substantially in accord with those set forth in the applicable cost circulars. A copy of the approved rate agreement must be submitted to the Institute.

(2) Where flat rates are accepted in lieu of actual indirect costs, grantees may not also charge expenses normally included in overhead pools, e.g., accounting services, legal services, building occupancy and maintenance, etc., as direct costs.

(3) Organizations with an approved indirect cost rate, utilizing total direct costs as the base, usually exclude contracts under grants from any overhead recovery. The negotiation agreement will stipulate that contracts are excluded from the base for overhead recovery.

b. *Establishment of indirect cost rates.* In order to be reimbursed for indirect costs, a grantee or organization must first establish an appropriate indirect cost rate. To do this, the grantee must prepare an indirect cost rate proposal and submit it to the Institute. The proposal must be submitted in a timely manner (within three months after the start of the grant period) to assure recovery of the full amount of allowable indirect costs, and it must be developed in accordance with principles and procedures appropriate to the type of grantee institution involved.

c. *No approved plan.* If an indirect cost proposal for recovery of actual indirect costs is not submitted to the Institute within three months after the start of the grant period, indirect costs will be irrevocably disallowed for all months prior to the month that the indirect cost proposal is received. This policy is effective for all grant awards.

I. Procurement and Property Management Standards

1. Procurement Standards

For State and local governments, the Institute is adopting the standards set forth in Attachment O of *OMB Circular A–102.* Institutions of higher education, hospitals, and other non-profit organizations will be governed by the standards set forth in Attachment O of *OMB Circular A–110.*

2. Property Management Standards

The property management standards as prescribed in Attachment N of OMB Circulars A–102 and A–110 shall be applicable to all grantees and subgrantees of Institute funds except as provided in subsection b. below.

a. *Acquisition.* All grantees/subgrantees are required to be prudent in the acquisition and management of property with grant funds. If suitable property required for the successful execution of projects is already available within the grantee or subgrantee organization, expenditures of grant funds for the acquisition of new property will be considered unnecessary.

b. *Title to property.* At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the court, organization, or individual that purchased the property if certification is made to the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act, as approved by the Institute. If such certification is not received, or the Institute disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in the Institute, which will direct the disposition of the property.

J. Audit Requirements

1. Audit Objectives

Grants and other agreements are awarded subject to conditions of fiscal, program and general administration to which the recipient expressly agrees. Accordingly, the audit objective is to review the grantee's or subgrantee's administration of grant funds and required non-Institute contributions for the purpose of determining whether the recipient has:

a. Established an accounting system integrated with adequate internal fiscal and management controls to provide full accountability for revenues, expenditures, assets, and liabilities;

b. Prepared financial statements which are presented fairly, in accordance with generally accepted accounting principles;

c. Prepared Institute financial reports (including Financial Status Reports, Cash Reports, and Requests for Advances and Reimbursements) which contain accurate and reliable financial data, and are presented in accordance with prescribed procedures; and

d. Expended Institute funds in accordance with the terms of applicable agreements and those provisions of Federal law or Institute regulations that could have a material effect on the financial statements or on the awards tested.

2. Implementation

Each grantee (including a State or local court receiving a subgrant from the State Supreme Court) shall provide for an annual fiscal audit. The audit may be of the entire grantee organization (e.g., a university) or of the specific project funded by the Institute. The audit shall be conducted by an independent Certified Public Accountant, or a State or local agency authorized to audit government agencies. The audit shall be conducted in compliance with generally accepted auditing standards established by the American Institute of Certified Public Accountants. A written report shall be prepared upon completion of the audit. Grantees are responsible for submitting copies of the reports to the Institute within thirty days after the acceptance of the report by the grantee, for each year that there is financial activity involving Institute funds.

3. Resolution and Clearance of Audit Reports

Timely action on recommendations by responsible management officials is an integral part of the effectiveness of an audit. Each grant recipient shall have policies and procedures for acting on audit recommendations by designating officials responsible for: Follow-up, maintaining a record of the actions taken on recommendations and time schedules, responding to and acting on audit recommendations, and submitting periodic reports to the Institute on recommendations and actions taken.

4. Consequences of Non-Resolution of Audit Issues

It is the general policy of the State Justice Institute not to make new grant awards to an applicant having an unresolved audit report involving Institute awards. Failure of the grantee organization to resolve audit questions may also result in the suspension of payments for active Institute grants to that organization.

K. Close-Out of Grants

1. Definition

Close-out is a process by which the Institute determines that all applicable administrative and financial actions and all required work of the grant have been completed by both the grantee and the Institute.

2. Grantee Close-Out Requirements

Within 90 days after the end date of the grant or any approved extension thereof (revised end date), the following documents must be submitted by the grantee to the Institute.

a. *Financial status report.* The FINAL report of expenditures must have no unliquidated obligations and must indicate the exact balance of unobligated funds. Any unobligated/unexpended funds will be deobligated from the award amount by the Institute. Grantees on a check-issued basis, who have drawn down funds in excess of their obligations/expenditures, must return any unused funds to the Institute at the same time they submit a final report.

b. *Final progress report.* This report should be prepared in accordance with instructions provided by the Institute.

XII. Grant Adjustments

All requests for program or budget adjustments requiring Institute approval must be submitted in a timely manner by the project director. All requests for changes from the approved application will be carefully reviewed for both consistency with this guideline and the enhancement of grant goals and objectives.

A. Grant Adjustments Requiring Prior Written Approval

There are several types of grant adjustments which require the prior written approval of the Institute. Examples of these adjustments include:

1. Budget revisions among direct cost categories which exceed or are expected to exceed 5 percent of the approved budget.

2. A change in the scope of work to be performed or the objectives of the project (see section XII.D).

3. A change in the project site.

4. A change in the project period, such as an extension of the grant period and/or extension of the expenditure deadline (see section XII.E).

5. Satisfaction of special conditions, if required.

6. A change in or temporary absence of the project director (see sections XII.F and G).

7. The assignment of a person to a key staff position whose qualifications were not described in the application, or a change of a person assigned to a key project staff position (see section X.Q).

8. A successor in interest or name change agreements.

9. A transfer or contracting out of grant-supported activities (see section XII.H).

10. Preagreement costs, the purchase of automated data processing equipment and software, and consultant rates, as specified in section XI.H.2.

B. Request for Grant Adjustments

All grantees and subgrantees must promptly notify the SJI program managers, in writing, of events or proposed changes which may require an adjustment from the approved application. In requesting an adjustment, the grantee must set forth the reasons and basis for the proposed adjustment and any other information the SJI program managers determine would help the Institute's review.

C. Notification of Approval / Disapproval

If the request is approved, the grantee will be sent a Grant Adjustment Notice signed by the Executive Director or his/her designee. If the request is denied, the grantee will be sent a written explanation of the reasons for the denial.

D. Changes in the Scope of the Grant

A grantee/subgrantee may make minor changes in methodology, approach, or other aspects of the grant to expedite achievement of the grant's objectives with subsequent notification of the SJI program manager. Major changes in scope, duration, training methodology, or other significant areas must be approved in advance by the Institute.

E. Date Changes

Requests for changes or extensions of the grant period are to be made 90 days in advance of the end date of the grant whenever possible. In no instance may the request be made less than 30 days before the end date of the grant.

F. Temporary Absence of the Project Director

Whenever absence of the project director is expected to exceed a continuous period of one month, the plans for the conduct of the project director's duties during such absence must be approved in advance by the Institute. This information must be provided in a letter signed by an authorized representative of the grantee/subgrantee at least 30 days before the departure of the project director, or as soon as it is known that the project director will be absent. The grant may be terminated if arrangements are not approved in advance by the Institute.

G. Withdrawal of / Change in Project Director

If the project director relinquishes or expects to relinquish active direction of the project, the Institute must be notified immediately. In such cases, if the grantee/subgrantee wishes to terminate the project, the Institute will forward procedural instructions upon notification of such intent. If the grantee wishes to continue the project under the direction of another individual, a statement of the candidate's qualifications should be sent to the Institute for review and approval. The grant may be terminated if the qualifications of the proposed individual are not approved in advance by the Institute.

H. Transferring or Contracting Out of Grant-Supported Activities

A principal activity of the grant-supported project shall not be transferred or contracted out to another organization without specific prior approval by the Institute. All such arrangements should be formalized in a contract or other written agreement between the parties involved. Copies of the proposed contract or agreement must be submitted for prior approval at the earliest possible time. The contract or agreement must state, at a minimum, the activities to be performed, the time schedule, the policies and procedures to

be followed, the dollar limitation of the agreement, and the cost principles to be followed in determining what costs, both direct and indirect, are to be allowed. The contract or other written agreement must not affect the grantee's overall responsibility for the direction of the project and accountability to the [illegible].

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David I. Tevelin,
Executive Director.

Appendix—List of State Contacts Regarding Administration of Emiliata Courts to State and Local Courts

Mr. Allen L. Tapley, Administrative Director of the Courts, Administrative Office of the Courts, 817 South Court Street, Montgomery, Alabama 36130, (205) 834–7990
Mr. Arthur H. Snowden II, Administrative Director the Court, Supreme Court, State of Alaska, 303 K Street, Anchorage, Alaska [illegible], (907) 264–0547
Mr. William L. McDonald, Administrative Director, Supreme Court of Arizona, 209 West Wing, State Capitol, Phoenix, Arizona 85007, (602) 255–4138
Mr. Christopher Thomas, Executive Secretary, Arkansas Judicial Department, Supreme Court of Arkansas, Justice Building, Little Rock, Arkansas 72201, (501) 371–[illegible]
Mr. William E. Davis, Director, Administrative Office of the Courts, State Building, 350 McAllister Street, Room 3154, San Francisco, California 94102, (415) 557–1381
Mr. James D. Thomas, State Court Administrator, Colorado Judicial Department, State Judicial Building, 2 East 14th Avenue Room 215, Denver, Colorado 80203, (303) 861–1111, ext. 125
Mr. Bruce Beers, Director, Research and Planning, Office of the Chief Court Administrator, Drawer N, Station A, Hartford, Connecticut 06106, (203) 722–5636
Mr. Ted Philyaw, Director, Administrative Office of the Courts, Carvel State Office Building, 820 N. French Street, Wilmington, Delaware 19801, (302) 571–2480
Mr. James Lynch, Deputy Executive Officer, Courts of the District of Columbia, 500 Indiana Avenue, NW., Washington, DC 20001, (202) 879–1700
Mr. Kenneth Palmer, State Court Administrator, Office of the State Courts Administrator, Supreme Court Building, Tallahassee, Florida 32399–1900, (904) 488–8621
Mr. Robert L. Doss, Jr., Director, Administrative Office of the Courts, The Judicial Council of Georgia, 244 Washington Street SW., Suite 500, Atlanta, Georgia 30334, (404) 656–5171
Mr. Robert E. Leon Guerrero, Administrative Director, Superior Court of Guam, Judiciary Building, 110 West O'Brien Drive, Agana, Guam 96910, 011 (671) 472–8961 through 8968
Ms. Janice Wolfe, Administrative Director of Courts, The Judiciary, Post Office Box 2560, Honolulu, Hawaii 96804, (808) 548–4605
Mr. Carl F. Bianchi, Administrative Director of the Courts, Supreme Court Building, 451 West State Street, Boise, Idaho 83720, (208) 334–2246
Mr. William J. O'Brien, State Court Administrator, Supreme Court of Iowa, State House, Des Moines, Iowa 50319, (515) 281–4241
Dr. Howard P. SChwartz, Judicial Administrator, Kansas Judicial Center, 301 West 10th Street, Topeka, Kansas 66612, [913] 296–4873
Ms. Laura Stammel, Comptroller, Administrative Office of the Courts, 403 Wapping Street, Frankfort, Kentucky 40601, [502] 564–2350
Dr. Hugh M. Collins, Chief Deputy Judicial Administrator, Supreme Court of Louisiana, 301 Loyola Avenue, Room 109, New Orleans, Louisiana 70112–1887, (504) 568–5747
Mr. Dana R. Baggett, State Court Administrator, Administrative Office of the Courts, P.O. Box 4820, Downtown Station, Portland, Maine 04112, (207) 879–4792
Mr. Peter J. Lally, Assistant State Court Administrator, Courts of Appeal Building, 361 Rowe Boulevard, Annapolis, Maryland 21401, (301) 974–2141
Honorable Arthur M. Mason, Chief Administrative Justice of the Trial Court, 317 New Courthouse, Boston, Massachusetts 02108, (617) 725–8787
Honorable Dorothy Comstock Riley, Chief Justice, Supreme Court of Michigan, Law Building, Post Office Box 30052, Lansing, Michigan 48909, (517) 373–0128
Ms. Sue K. Dosal, State Court Administrator, Supreme Court of Minnesota, 230 State Capitol, St. Paul, Minnesota 55155, (617) 296–2474
Mr. Charles Clark, Director, Center for Court Education and Continuing Studies, Box 879, Oxford, Mississippi 38677, (601) 232–5955
Mr. Jim Oppedahl, Court Administrator, Montana Supreme Court, Justice Building, 215 North Sanders, Helena, Montana [illegible], (406) 444–3521
Mr. Joseph C. Steele, State Court Administrator, 1220 State Capitol Building, Lincoln, Nebraska 68509, (404) 471–2643
Mr. Donald J. Mello, Director, Administrative Office of the Courts, Capitol Complex, Carson City, Nevada 89710, (702) 885–5076
Mr. Jeffrey Leidinger, Director, Administrative Office of the Courts, Supreme Court of New Hampshire, Noble Drive, Concord, New Hampshire 03301, (603) 271–2521
Mr. Robert Lipscher, Administrative Director, Administrative Office of the Courts, CN–037, RJH Justice Complex, Trenton, New Jersey 08625, [609] 984–0275
Honorable Albert M. Rosenblatt, Chief Administrative Judge, New York State Office of Court Administrator, Empire State Plaza, Agency Building 4, 20th Floor, Albany, New York 12207, (913) 431–1930
Mr. Franklin E. Freeman, Jr., Administrative Director, Administrative Office of the Courts, Post Office Box 2448, Raleigh, North Carolina 27602, (919) 733–7106/7107
Mr. William G. Bohn, State Court Administrator, Supreme Court of North Dakota, State Capitol Building, Bismarck, North Dakota 58505, (701) 224–4216
Mr. Stephan W. Stover, Administrative Director of the Courts, Supreme Court of Ohio, State Office Tower, 30 East Broad Street, Columbus, Ohio 43266–0419, (614) 466–2653
Mr. Charles E. Ferrell, Jr., Administrative Director, Administrative Office of the Courts, 1915 N. Stiles, Suite 305, Oklahoma City, Oklahoma 73105, (405) 521–2450
Mr. R. William Linden, Jr., State Court Administrator, Supreme Court of Oregon, Supreme Court Building, Salem, Oregon 97310, (503) 378–6046
Mr. Ralph Hunsicker, Administrative Office of Pennsylvania Courts, 407 City Towers, 301 Chestnut Street, Harrisburg, Pennsylvania 17101, (717) 783–7322
Mr. Walter Kane, State Court Administrator, Supreme Court of Rhode Island, 250 Benefit Street, Providence, Rhode Island 02903, (401) 277–3263 or 277–3272
Mr. Louis L. Rosen, Director, South Carolina Court Administration, Post Office Box 50447, Columbia, South Carolina 29250, [803] 758–2501
Honorable George W. Wuest, Chief Justice, Supreme Court of South Dakota, 500 East Capitol Avenue, Pierre, South Dakota 57501, (605) 773–4885
Mr. Cletus W. McWilliams, Executive Secretary, Supreme Court of Tennessee, Supreme Court Building, Room 422, Nashville, Tennessee 37219, (615) 741–2687
Mr. C. Raymond Judice, Executive Director, Texas Judicial Council, Post Office Box 12066, Austin, Texas 78711, (512) 463–1625
Honorable Gordon R. Hall, Chief Justice, Supreme Court of Utah, State Capitol Building, Room 332, Salt Lake City, Utah 84114, (801) 533–5285
Mr. Thomas J. Lehner, Court Administrator, Supreme Court of Vermont, 111 State Street, Montpelier, Vermont 05602, (802) 828–3281
Ms. Viola E. Smith, Clerk of the Court/Administrator, Territorial Court of the Virgin Islands, Post Office Box 70, Charlotte Amalie, St. Thomas, Virgin Islands 00801, (809) 774–6680, ext. 248

Mr. Robert N. Baldwin, Executive Secretary, Supreme Court of Virginia, Administrative Offices, 100 North Ninth Street, 3rd Floor, Richmond, Virginia 23219, (804) 786–6455
Ms. Mary McQueen, Administrator for the Courts, Supreme Court of Washington, Temple of Justice, Olympia, Washington 98504, (206) 753–5780
Mr. Paul Crabtree, Administrative Director of the Courts, Administrative Office, 402–E State Capitol, Charleston, West Virginia 25305, (304) 348–0145
Mr. J. Denis Moran, Director of State Courts, P.O. Box 1688, Madison, Wisconsin 53701–1688, [608] 266–6426
Justice Walter Urbigkit, Supreme Court of Wyoming, Supreme Court Building, Cheyenne, Wyoming 82002, (307) 777–7571

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Part III

Department of Education

34 CFR Parts 75, 76, 78, 200, and 204
Chapter 1 Program in Local Educational Agencies; Notice of Proposed Rulemaking

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DEPARTMENT OF EDUCATION

34 CFR Parts 75, 76, 78, 200, and 204

Chapter 1 Program in Local Educational Agencies

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Secretary of Education (Secretary) proposes to issue regulations implementing Part A of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended, which provides financial assistance through State educational agencies (SEAs) to local educational agencies (LEAs) to meet the special educational needs of educationally deprived children in school attendance areas with high concentrations of children from low-income families and of children in local institutions for neglected or delinquent children. Part A also provides assistance of the U.S. Secretary of the Interior for Indian children. In implementing Part A of Chapter 1, the Secretary proposes to make applicable appropriate portions of the Education Department General Administrative Regulations (EDGAR). Accordingly, the Secretary proposes conforming changes to 34 CFR Part 76 (State-Administered Programs) and Part 78 (Education Appeal Board). The Secretary also proposes several other amendments to Part 76 and 34 CFR Part 75 (Direct Grant Programs). Finally, the Secretary proposes to remove 34 CFR Part 204 because it is no longer needed.

DATE: Comments must be received on or before December 20, 1988.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Mrs. Mary Jean LeTendre, Director, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 2043), Washington, DC 20202-6132.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Mr. James R. Ogura, Chief, Program Policy Branch, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 2043), Washington, DC 20202-6132. Telephone: (202) 732-4701.

SUPPLEMENTARY INFORMATION:

Overview of the Reauthorization

On April 28, 1988, the President signed into law the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, Pub. L. 100-297. Principal themes of this new legislation are to promote access to quality education for educationally deprived students and excellence in education for the Nation as a whole. In framing the legislation, Congress noted that Americans are becoming increasingly aware that enhancing educational opportunities is an investment in the future of the Nation. A less than quality education for elementary and secondary students would have severe and far-reaching economic consequences, such as much expensive programs for remediating older students' deficiencies, retraining unskilled workers, foregone tax revenues, and lost productivity.

In keeping with these themes, Title I of the Hawkins-Stafford Act amends the Elementary and Secondary Education Act of 1965 (ESEA) (the Act) to include a number of new and reauthorized Federal education programs. One of these programs is Chapter 1 of Title I of the ESEA, which reauthorizes programs previously contained in Chapter 1 of the Education Consolidation and Improvement Act of 1981 (ECIA). Part A of Chapter 1, which would be implemented by these proposed regulations, provides financial assistance through SEAs to LEAs to meet the special educational needs of educationally deprived children in school attendance areas with high concentrations of children from low-income families and of children in local institutions for neglected or delinquent children. This assistance is to improve the educational opportunities of educationally deprived children by helping these children succeed in the regular program, attain grade-level proficiency, and improve achievement in basic and more advanced skills. Part A of Chapter 1 also provides financial assistance to the U.S. Secretary of the Interior for Indian children.

In reauthorizing the Chapter 1 LEA Program, Congress retained the basic goals and structure of the program. Within the basic framework, however, Congress sought to strengthen and improve the program in a number of important respects. First, the reauthorization attempts to ensure that funds under the Chapter 1 LEA Program are targeted in areas and on children whose needs are the greatest. For example, section 1006 of the Act authorizes concentration grants for areas with particularly high concentrations of children from low-income families. Likewise, section 1013 refines the selection of eligible areas and schools by, for example, explicitly requiring ranking in order of poverty and restricting the "grandfathering" of ineligible areas to one year. Section 1014 also improves targeting by directing funds to those children determined, through an annual assessment of need, to be in greatest need of special assistance.

Second, the reauthorization emphasizes accountability and program effectiveness. Sections 1020 and 1021 are the centerpiece of efforts to improve the quality of Chapter 1 LEA projects. These sections require an LEA to identify unsuccessful projects and modify those projects, with the assistance of the SEA if necessary, to effect needed improvements. Section 1021(f) requires a similar identification and assessment of the program for participating children whose academic performance is not improving as it should. In addition, section 1435 requires the Secretary, in consultation with State and local agencies, to develop national standards for local evaluation of programs.

Third, the reauthorization encourages program improvement in other ways. For example, section 1011(b) authorizes an LEA to reserve up to and including five percent of its allocation under Part A of Chapter 1 for innovation projects. The Act also emphasizes in several places the requirement for an LEA to consider achievement not only in basic skills but also in more advanced skills to create an expectation that all students can master those necessary skills. In addition, an LEA must assure in its application that it will allocate time and resources for frequent and regular coordination of the curriculum of projects under Part A of Chapter 1 with the LEA's regular instructional program.

Fourth, the reauthorization contains a number of provisions to provide greater flexibility in the use of funds received under Part A of Chapter 1. The primary new provision that affords greater flexibility is section 1015 concerning schoolwide projects, which permits an LEA to use those funds in schools with high concentrations of children from low-income families to upgrade the entire educational program in the school. Section 1015 eliminates the provision requiring a matching contribution of State and local funds for every child in the schoolwide project who is not eligible for Chapter 1.

Fifth, the reauthorization includes strong new parental involvement requirements in section 1016. Like the Department's existing regulations on

parental involvement under Chapter 1 of the ECIA, section 1016 does not mandate the particular forms that parental involvement should take. However, it incorporates a number of specific requirements that an LEA must implement to ensure significant parent involvement. Significantly, section 1016 adopts many of the parent involvement provisions set forth in the existing Chapter 1 LEA regulations, including strong emphasis on training parents to work with their children at home.

Finally, the reauthorization contains several new provisions concerning services for private school children under Part A of Chapter 1. For example, section 1017(d) authorizes payments to cover capital expenses incurred by an LEA in providing equitable services to private school children since the Supreme Court's decision in *Aguilar v. Felton*. Section 1017(b)(3)(A) also requires the Secretary to investigate and resolve a complaint that equitable services are not being provided to eligible private school children within 120 days after receiving the complaint.

Negotiated Rulemaking Demonstration

Section 1431(b) of the Act contains procedural requirements that the Department is to follow in developing and issuing regulations to govern the Chapter 1 LEA Program. Section 1431(b)(1) requires the Secretary to convene regional meetings to gain input on the content of proposed regulations. Participants at these meetings are to include representatives of Federal, State, and local administrators, parents, teachers, and local school board members. Subsequent to these meetings, section 1431(b)(2) requires the Secretary to draft and submit regulations on a minimum of four key issues to a modified negotiated rulemaking process as a demonstration of the process. Participants in the demonstration are to be selected from among those attending the regional meetings.

In accordance with these requirements, the Department convened five regional meetings to discuss primarily six issues: Targeting of school attendance areas and students, schoolwide projects, parental involvement, program improvement, State administration, and national evaluation standards. Meetings were held in Atlanta, Georgia, May 23-24; Philadelphia (Langhorne), Pennsylvania, May 26-27; Indianapolis, Indiana, June 1-2; Denver, Colorado, June 6-7; and San Francisco, California, June 9-10. Organizations representing the interest groups named in the Act were invited to nominate persons to be invited to the meetings. The Department announced these meetings in the Federal Register (53 FR 16292-93, May 6, 1988). Upon conclusion of the meetings the Department invited eighteen representatives to participate in a modified negotiation rulemaking process on July 19-20, 1988. The Department announced this meeting in the Federal Register (53 FR 26214-15, July 11, 1988). Taking into account views expressed at the regional meetings, the Department prepared draft regulations on the six main issues discussed, which served as the basis for the negotiated rulemaking process.

Following is a brief synopsis by topic area for the major issues and outcomes of the two-day negotiations. For each topic, the Department's draft proposed regulation is described, followed by the result of the negotiated rulemaking.

Targeting

The draft proposed regulations included four provisions not contained in the Act and therefore strictly regulatory:

1. Section 200.6(c) defined "educationally deprived child" as a child whose educational attainment is below what is expected for the child's age.

While the group supported retention of the defintion of "educationally deprived child," consensus on the language was not obtained. The definition in the proposed regulations contains the Department's proposed language, which is the same as that contained in the regulations for Chapter 1 of the ECIA and prior regulations under Title I of the ESEA.

2. Section 200.30(a)(1)(ii) set rules for determining attendance areas having high concentrations of low-income children, which the Department proposed to be areas in which the precentage or number of low-income children was at least as high as the percentage or average number per school of low-income children in the district as a whole.

The Department's proposal concerning attendance areas with high concentrations of low-income children has been modified to clarify that the identification may be made on a districtwide or grade span basis. While no specific language was proposed to the negotiation group, the group agreed that the change should be made.

3. Section 200.30(b)(3)(ii) made applicable other attendance area provisions to schools selected to participate in the Chapter 1 LEA Program. The group agreed to the Department's language.

4. Section 200.31(c)(5)(ii) clarified the selection of limited English proficient children to particiate in the Chapter 1 LEA Program. The group agreed to the Department's proposal.

The group also requested that the Department provide guidance on several items in the Policy Manual required by section 1436 of the Act. The items include the following:

1. Section 1013(b)(1) of the Act, allowing LEAs to serve all attendance areas when the percentage of low-income children in each attendance area is within five percentage points of the districtwide average of low-income children. The Department interprets this provision to mean five percentage points above the five percentage points below the average.

2. The effect on the selection of private school children if, in accordance with section 1013(b)(4) of the Act, an LEA selects a school rather than an attendance area to participate in the program.

3. Provisions in sections 1013(b)(5) and 1014(c)(3) related to continuation of services to schools and children no longer eligible to receive services under standard selection procedures.

4. Section 1013(b)(6) related to skipping schools that are receiving comparable services supported with non-Federal funds.

5. Under section 1014(d)(1), what constitutes valid assessment of limited English proficient children for selection to participate in the Chapter 1 LEA Program.

Parental Involvement

The draft proposed regulations contained three provisions not in the Act and therefore strictly regulatory:

1. Section 200.6(c) defined "in loco parentis" as a person with whom a child lives who acts in place of a parent, such as a grandparent, stepparent, aunt, uncle, or older sibling.

While the group agrees that the terms "in loco parentis" should be defined, it did not reach consensus on specific language. The proposed regulations modify the Department's original proposal to make clear that persons other than relatives may also act in place of a parent. In addition, the proposed regulations permit a parent or legal guardian to designate a person with whom a child does not live to act in place of the parent or guardian.

2. Section 200.34(a)(2)(ii) specified that consultation with parents be organized, systematic, ongoing, informed, and timely.

The group agreed to the Department's proposal, with a modification to make the provision apply to all consultation, not just the consultation required under

§ 200.34. The proposed regulations reflect this modification.

3. Section 200.34(e) clarified that allowable parental involvement activities may be paid for with funds received under this part.

The group agreed to the provisions in § 200.34(e), adding language to make clear that only Chapter 1 parental activities may be supported with funds under this part.

Several additional items were raised by group members. Consensus was reached to include language in § 200.34(c)(1)(i) that written policies must provide for timely responses to recommendations by parents. The group also agreed to clarify in § 200.34(a) that parental involvement must occur in the planning, design, and implementation of Chapter 1 LEA programs. No agreement was reached on a proposal that the regulations specify that consultation take place on both a districtwide and on a school-by-school basis, and the proposed regulations do not contain that provision. The Department thinks that this decision is best made at State or local levels.

Schoolwide Projects

Draft regulations proposed by the Department included four regulatory provisions for schoolwide projects not specified in section 1015 of the Act:

1. Section 200.36(c)(1) described how an LEA shall determine the number of educationally deprived children in a schoolwide project and clarified an LEA's responsibility to provide additional funds if the amount allocated to a project is not sufficient to meet the size, scope, and quality requirement.

The negotiated rulemaking group agreed with the two methods outlined in the draft proposed regulations for determining the number of educationally deprived children in a schoolwide project. This provision is contained in § 200.36(c)(1)(i) of the proposed regulations. The group also agreed to retain the regulatory requirement that LEA's provide sufficient funds for a schoolwide project to ensure that the project is of sufficient size, scope, and quality to give reasonable promise of success. This is included in § 200.36(c)(1)(ii) of the proposed regulations. However, as agreed by the group, the language was modified to shorten the provision and make clear the LEA's responsibility to ensure that sufficient funds are allocated for a schoolwide project while removing the specific requirement that an LEA allocate funds received under this part in excess of the per pupil average in other Chapter 1 schools.

2. Section 200.36(d)(2)(iii) clarified that an LEA is not required to demonstrate that particular services paid for with funds under this part supplement the services regularly provided in a school operating a schoolwide project. Group members accepted this regulatory provision without discussion.

3. Section 200.36(f)(1) clarified that, in meeting accountability requirements, comparisons of achievement levels must be made between children of comparable standing.

Group members agreed to this clarification as contained in § 200.36(f)(1) of the proposed regulations. Furthermore, the group requested the Department to add language clarifying that the accountability requirements pertain specifically to the continuation of a schoolwide project and would not result in an audit exception for past use of funds. This change also is reflected in § 200.36(f)(1) of the proposed regulations.

4. Section 200.36(g) clarified that eligible private school children residing in a schoolwide project attendance area must be determined on the same basis as the number of educationally deprived children in a schoolwide project is determined under § 200.36(c)(1)(i).

The group accepted this provision as drafted, and the proposed regulations reflect this consensus.

In addition to areas the Department proposed to regulate, participants raised a concern about the absence of a transition provisions in the three-year timeframe established for a schoolwide project during which an informed decision could be made whether to extend the project for an additional three years. Because the statute does not provide for a transition period, the group decided that this issue could not be addressed appropriately through regulations. In addition, group members questioned whether the program improvement provisions in sections 1020 and 1021 of the Act should apply, given the specific accountability requirements for schoolwide projects. The proposed regulations address this issue in § 200.36(f)(5), making clear that program improvement requirements apply to schoolwide projects. A final issue involved representation and participation of private school children. A proposal to include private school officials in the list of individuals to be involved in planning a schoolwide project under § 200.36(b)(6) did not receive consensus and is not included in the proposed regulations. Because it would be incompatible with attending a private school for private school children to participate fully in a public schoolwide project, the Department believes that inclusion of private school officials in planning a schoolwide project would be inappropriate. The group agreed that schoolwide projects cannot be conducted in private schools.

Program Improvement

The Department's draft proposed regulations included ten items not specified in the Act and therefore strictly regulatory:

1. Section 200.37(a)(2)(i) made clear that program improvement plans for SEAs must include standards for both aggregate performance and substantial progress toward meeting desired outcomes. Similar changes were made throughout §§ 200.37 and 200.38 to clarify that both methods of determining the success of Chapter 1 LEA projects apply.

The group did not reach consensus on the inclusion of both aggregate performance and desired outcomes throughout §§ 200.37 and 200.38. The Department believes, however, that this is the most consistent and meaningful reading of the Act, and the proposed regulations reflect this interpretation.

2. Section 200.37(a)(2)(i) provided that SEAs may establish minimum standards for program improvement.

No consensus was obtained on whether the SEA should be explicitly authorized to set minimum standards for program improvement. However, the Department believes this authority is implicit in both section 1020(a)(1) concerning program improvement and section 1451 concerning State rulemaking authority. In addition, in response to concerns raised by some group members, the proposed regulations clarify that any minimum standards should address the proposes of the Chapter 1 LEA Program stated in section 1001(b) of the Act.

3. Section 200.37(b)(1)(ii)(A) required SEAs to follow the progress of schools under local school improvement plans.

At the request of some group members, the Department's proposal has been modified to reflect the concern that the requirement to follow the progress of any school identified under § 200.38(b)(1) be done with the least possible paperwork and burden. While no consensus was reached on inclusion of this provision, the Department wishes to emphasize that the provision is not meant to require excessive reporting by LEAs.

4, 5, and 6. Section 200.36(b)(5)(i) required LEAs to develop a timeline for school improvement. Section 200.38(b)(5)(ii) set an outside time limit for implementation of local school improvement plans. Section 200.38(b)(6)(i) set the time for implementation of joint LEA and SEA plans. Consensus was reached on the draft timelines.

7. Section 200.38(c)(2) clarified that local conditions may be considered during all program improvement activities. Some group members expressed concern that the provision, as drafted, could lead to setting low expected outcomes for certain students or be used to justify poor school or student performance. The proposed regulations clarify when LEAs may consider local conditions.

8. Section 200.38(d)(4) stated that student needs assessment data should be used to modify the program. Consensus was reached to add "if appropriate" to this provision.

9. Section 200.38(e) made clear that private school children are included in program improvement. The group agreed to this provision.

10. Section 200.38(f) set the effective date for initial data gathering as the 1988–89 school year. The group agreed to this provision.

In addition to these departmental proposals, the group agreed that a school that shows improvement in aggregate performance and substantial progress toward meeting desired outcomes during the time it is planning modification of its program need not implement that modification. This provision is included in § 200.38(b)(4)(ii).

Some group members suggested inclusion of information contained in the Conference Report accompanying the Hawkins-Stafford Act clarifying the meaning of "improvement." Although other members did not agree, the information has been included in § 200.38(b)(1)(ii). The Department believes the inclusion of this language clarifies the provision.

Several other issues were raised by group members, most particularly the role of parents and teachers in program improvement. No consensus was reached on this issue, and the proposed regulations do not address it. The Department believes that the general parental involvement provisions contained in § 200.34 apply to all phases to the Chapter 1 LEA Program, including program improvement, and considers § 200.34, together with § 200.38(a)(1)(ii), which reiterates a portion of section 1021(a)(1) of the Act, to be sufficient. Further, the Department believes that teacher involvement is implicit in the requirements to identify schools and students in need of improvement, and in designing plans to bring about the improvement.

State Administration

The Department's draft proposed regulations governing State administration of the Chapter 1 LEA Program contained regulatory provisions not included in the Act to clarify two aspects of the reauthorization:

1. Regarding the assignment of personnel to supervisory duties under section 1453(a) of the Act:

a. Section § 200.39(a)(2)(iii) set sixty minutes per day as the maximum time permitted for supervisory duties;

b. Section 200.39(b) allowed the amount of time spent on supervisory duties to be calculated on a daily, weekly, monthly, or annual basis; and

c. Section 200.39(c) highlighted allowable supervisory duties to include activities such as supervision of halls, playgrounds, lunchrooms, study halls, bus loading and unloading, and homerooms; participation as a member of a school or district curriculum committee; and participation in the selection of regular curriculum materials and supplies.

The negotiation group agreed to these provisions without modification. The proposed regulations reflect this consensus.

2. Regarding State regulations under section 1451 of the Act:

a. Section 200.70(c)(2) clarified an SEA's authority to review and approve LEA applications and to ensure that LEAs use funds received under this part in accordance with all applicable requirements.

b. Section 200.70(e) made clear that States are to convene a committee of practitioners before publication of a proposed or final rule or regulation, not just obtain views of each committee member on an individual basis.

Members of the negotiation group accepted the provision under § 200.70(c)(2) as proposed, but the group requested changes to § 200.70(e). Specifically, praticipants agreed to add representatives of private school children as a category of individuals to be included on the committee as required in section 1451(b) of the Act. The group also agreed to add language from the statute providing that a majority of the committee members be LEA representatives. A proposal to include a regulatory requirement that States select members of the committee of practitioners from nominations submitted by appropriate organizations and groups was not resolved. Section 200.70(e)(2) of the proposed regulations includes the two changes agreed to by the group and encourages States to seek recommendations from organizations and groups.

Section 200.70(e) of the draft proposed regulations required that the State convene a committee of practitioners before publication of a major proposed or final rule or regulation. Although the statute only appears to require that the committee actually convene to review emergency regulations prior to issuance in final form, the Department believed that it would facilitate development of State rules and regulations if the committee were also convened before publication of *major* rules and regulations. Although the Department only recommended convening the committee of practitioners before publishing major rules or regulations, the negotiation group agreed that the committee should be convened before publication of any proposed or final rule or regulation. Upon further reflection concerning the possible burden on States to convene the committee for any proposed or final State rules or regulations, the Secretary has decided to return to the statutory language that requires that the committee of practitioners convene only to review emergency regulations prior to issuance in final form. However, as indicated in § 200.70(e)(1)(ii), States are encouraged to convene the committee to review other State rules and regulations. The Secretary specifically invites comments on the appropriateness of convening the committee to review only emergency rules or regulations.

National Evaluation Standards

The draft proposed regulations contained a detailed description of the methods to be used by LEAs and SEAs to provide information to the Department in a form that would allow aggregation of the data to national totals. These proposed regulations meet the requirements in section 1435 that the Department establish national standards for local evaluations to be used in this aggregation, and that the Secretary provide SEAs and LEAs with advance notification of the standards.

The draft proposed regulations included some explanations of the technical standards that are applicable to LEA and SEA evaluations. During the negotiation group's discussion of the length of the evaluation section of the draft proposed regulations, members discussed the need for additional explanatory material and whether the information could be included in the Policy Manual rather than in the regulations. In reponse to concerns with the length of the evaluation section, the group agreed to remove all the explanatory information on the technical standards from the regulations

and recommended that both the removed information as well as additional explanations be included in the Policy Manual.

While full consensus on the provisions in these sections was not obtained, the majority of the members did agree to the draft proposed regulations with some revisions. Basically, the proposed regulations would:

1. Require the use of norm-referenced tests to provide aggregate data on the achievement of children participating in the Chapter 1 LEA Program or, if other tests are used, would require SEAs or LEAs to conduct equating studies so that the results of the other tests can be converted to the aggregatable measure. Norm-referenced tests are those for which measures of attainment have been established through a process that determines the distribution of scores to be expected among the population to be tested.

2. Allow funds received under this part to be used to pay for the equating of other than norm-referenced tests to the aggregatable measure.

3. Require the evaluation results be reported for aggregation on a fall-fall or spring-spring cycle. This would not preclude LEAs from testing on a fall-spring cycle as long as the data are reported on a fall-fall or spring-spring basis.

4. Use the Title I Evaluation and Reporting System (TIERS) as the basic method to gather aggregatable data, but would allow other methods, with approval of the SEA and the Secretary, to be used.

5. Require collection of achievement data in reading, mathematics, and language arts in grades 2–12.

6. Allow SEAs and LEAs to use sampling in gathering data.

7. Require SEAs to submit the following information for all LEAs, or a sample of LEAs if a sampling plan is approved by the Secretary, as part of the evaluation requirement contained in section 1019(b)(1) of the Act: (1) A statewide average of achievement gains resulting from participation in the Chapter 1 LEA Program for grades 2 through 12 in reading, mathematics, and language arts; (2) a statewide average of progress students are making in more advanced skills in reading and in mathematics; and (3) the number of students LEA projects excluded from the report because of missing or erroneous data and reasons for the exclusion.

8. State allowable and unallowable costs related to the evaluation of programs under this part.

The Secretary invites comments on these proposed national evaluation standards. Section 200.35 of the proposed regulations requires that an LEA evaluate student performance by testing achievement in the basic skill areas, including language arts. The Secretary specifically seeks comments on whether language arts testing should be required and, if so, at what grade level language arts becomes a basic skill area to be tested, and the appropriateness of such testing at the secondary level.

In addition, the Department's draft proposal also listed items to be included in the annual collection of information by SEAs required by section 1019(b)(3) of the Act, along with additional items the Secretary believed are necessary and helpful in constructing a picture of the impact of the Chapter 1 LEA Program. The Department has since decided not to include this list in the regulations, but includes it here to inform SEAs and LEAs of the information the Department intends to collect in an annual performance report under § 200.35(c). The items are: (1) The number of children participating in the program, by grade, who attend public schools; (2) the number of children participating in the program, by grade, who attend private schools; (3) the number of children in local institutions for neglected or delinquent children; (4) characteristics of participants, including age, gender, and ethnicity; (5) the number of participants—in public schools, in private schools, and in local institutions for neglected or delinquent children—each by type of instructional and supporting service provided; (6) the number of participants with handicapping conditions; (7) the number of schoolwide projects; (8) the number of LEAs with schools undergoing program improvement under § 200.38 and the total number of LEAs with Chapter 1 programs under this part; (9) the number of schools undergoing program improvement under § 200.38 and the total number of schools operating Chapter 1 programs under this part in the State; (10) achievement data collected from LEAs; and (11) the number of children receiving Chapter 1 services under this part and the number of children declared eligible to receive Chapter 1 services under this part in public and in private schools. This last data item was added by agreement of most members of the negotiated rulemaking group. The other items received strong support, although not full consensus.

The group requested that the Department include in the Policy Manual, required by section 1436 of the Act, the following:

(1) A discussion of the use of appropriate norming periods for testing to ensure accurate evaluation.

(2) An explanation of the need for schools to have spring test results on first grade children to use as a base for evaluating second grade projects, and that these results would not be used for evaluating first grade projects.

(3) Details on the technical standards referenced in §§ 200.51 and 200.55.

The use of national evaluation standards does not satisfy the full evaluation requirements for an LEA or SEA. Rather, as § 200.35(a)(1)(ii) indicates, an LEA must use the national evaluation standards to assess student achievement. The LEA is also required in § 200.35(a)(1)(i), however, to evaluate the effectiveness of its projects under this part, in terms of basic and more advanced skills, on the basis of the desired outcomes described in the LEA's application. Evaluation of desired outcomes, for example, may include the use of criterion-referenced tests or may measure reduction in dropout rates, improved attendance, or other indicators of program effectiveness. These requirements reflect the fact that use of national evaluation standards alone may not provide a complete picture of the results of the Chapter 1 LEA Program, particularly in the assessment of advanced skills. Further, SEAs may provide for evaluations that go beyond the minimum requirements that would be set by the proposed regulations in § 200.80(a). Section 200.35(b)(4) explicitly recognizes the SEA's authority to require LEAs to evaluate the effect of Chapter 1 projects under this part on achievement of Chapter 1 students in the regular program.

Other Significant Changes Resulting From Reauthorization

Innovation projects. Section 200.4(d) of these proposed regulations implements the new authority under section 1011(b) of the Act for an LEA to use up to and including five percent of its allocation for seven types of innovation projects. The provision is intended to provide more flexibility for LEAs in operating projects under this part and to promote program improvement. As indicated in § 200.4(d)(3), with two exceptions, the requirements of this part apply to innovation projects.

LEA applications. Section 200.20(a) of the proposed regulations lists the information that an LEA must include in its application for assistance. In addition to the assurances that were previously required, the application must include,

for example, a description of the procedures used to conduct an annual assessment of educational needs and a description of desired outcomes for project participants. These additions, required by section 1012(b) by the Act, are necessary to implement the program improvement requirements under sections 1020 and 1021 of the Act.

Concentration grants. Sections 200.3(c) and 200.25(a) of the proposed regulations implement new criteria for counties and LEAs to be eligible for concentration grants. In addition, § 200.25 of the proposed regulations provides procedures to allocate concentration grants to eligible LEAs in eligible counties, to LEAs in eligible counties with no eligible LEAs, and to LEAs in a State that receives a minimum concentration grant. That section also authorizes an SEA to reserve not more than two percent of the concentration grant funds it receives to make direct payments to eligible LEAs located in ineligible counties.

Reallocation. Section 200.26 of the proposed regulations provides revised procedures for determining whether an LEA is eligible to receive reallocated funds and for determining among all eligible LEAs those with the greatest need for additional funds.

Comparability. Section 1018(c) of the Act requires that an LEA develop procedures to comply with the comparability requirements and maintain records documenting its compliance. Section 200.43(c) of the proposed regulations implements the new statutory requirements. In addition, § 200.43(d) of the proposed regulations requires that either the SEA or LEA establish standards to determine that the LEA's policies result in the provision of equivalent staffing, materials, and supplies among Chapter 1 and non-Chapter 1 schools in the LEA.

Exclusions from the supplement-not-supplant and comparability requirements. Section 200.45 of the proposed regulations continues the current provision that allows an LEA to exclude (1) State and local funds spent for compensatory education from determinations of compliance with the supplement-not-supplant and comparability requirements; and (2) State and local funds spent for bilingual education, special education, and State "phase-in" programs from determinations of compliance with the comparability requirement. Section 1018(d) of the Act requires that the Secretary determine in advance that State programs meet certain requirements to be excluded and that the SEA make similar determinations for local programs. Section 200.45 (b) and (c) of the proposed regulations implements these new statutory requirements.

Participation of children in private schools. The proposed regulations implement three changes made in section 1017 of the Act concerning the participation of children in private schools. In enacting these changes, Congress sought to ameliorate the adverse effects of the Supreme Court's decision in *Aguilar* v. *Felton* on the quality and level of educational services provided to private school children. First, § 200.50(b) implements the provision in section 1017(b)(3)(A) that authorizes parents, teachers, and other concerned individuals or organizations to file complaints with the Secretary alleging that an LEA has failed to meet its obligation to provide equitable services to children enrolled in private schools. As § 200.50(b)(3) indicates, the Secretary investigates a complaint and issues a letter of finding within 120 days. Second, § 200.51 implements the requirement—made explicit in section 1017(a) of the Act—that an LEA must engage in "timely and meaningful consultation" with appropriate private school officials. Third, §§ 200.56–200.59 implement section 1017(d) regarding capital expenses. Congress specifically authorized payments for capital expenses to reduce the financial strain on LEAs that must pay for alternative delivery systems for private school children as a result of the *Felton* decision. As § 200.56 indicates, from funds appropriated for capital expenses, the Secretary pays each State an amount based on the number of private school children in the State served under Chapter 1 of the ECIA during the period July 1, 1984 through June 30, 1985. An LEA may apply to the SEA for these payments to cover capital expenses the LEA has paid from funds under this part and Chapter 1 of the ECIA funds since July 1, 1985, is currently paying, or would incur in order to provide services to additional private school children. Capital expenses are defined in § 200.57(a)(2) as only expenditures for noninstructional goods and services incurred as a result of the *Felton* decision. They do not include the purchase of instructional equipment such as computers. The SEA must distribute funds it receives for capital expenses on the basis of need, using criteria such as those in § 200.57(c).

In addition to these changes, the proposed regulations also include two provisions to clarify certain requirements following the *Felton* decision. First, in § 200.52 concerning equal expenditures, paragraph (a)(2) makes clear that an LEA must pay for reasonable and necessary administrative costs of providing services to public and private school children from the LEA's whole allocation received under this part. Second, § 200.52(b)(2) describes factors to be used to determine whether the services being provided to private school children are equitable. Finally, also in response to *Felton*, the proposed regulations delete the provision currently in § 200.73 concerning use of public school personnel in other than public facilities.

State complaint procedures. Section 200.72 of the proposed regulations has been added to require States to develop and implement procedures for resolving complaints at the State and local levels. The Secretary has added this section in response to language in the conference report accompanying the Hawkins-Stafford Act recommending that the Secretary "issue amended regulations making 34 CFR 76.780–783 applicable to Chapter 1." H.R. Rept. 567, 100th Cong., 2d Sess. 341 (1988). The Secretary has proposed, in a previously published notice of proposed rulemaking, to remove the complaint procedures from Part 76 and to retain those procedures only in regulations for the specific programs to which they apply. Rather than repeating the complaint provisions currently in Part 76, however, the Secretary has attempted in § 200.72 to implement the conferees' intent that States develop and implement procedures to resolve complaints while affording States maximum flexibility in tailoring those procedures to fit State and local needs.

Applicability of EDGAR

As indicated in § 200.5(a), the Secretary proposes to make the relevant parts of EDGAR applicable to programs under this part. In making this proposal, the Secretary is responding to a need for additional guidance. During the six years that EDGAR has not been applicable under Chapter 1 of the ECIA, SEAs and LEAs have asked the Department numerous questions that are answered by the provisions in EDGAR. Moreover, without the benefit of the guidance in EDGAR, a number of States have incurred audit exceptions concerning fiscal control and fund accountability. The Secretary believes that making the relevant parts of EDGAR applicable to programs under this part will address the need for better guidance and accountability. Moreover, the Secretary does not believe this action will create additional burden for SEAs and LEAs because EDGAR is applicable to other State-administered

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Federal education programs and has recently been reviewed with respect to Federalism issues and burden reduction, and unduly burdensome requirements have been revised or removed.

Specifically, the Secretary proposes to apply Part 76 (State-Administered Programs), with certain exceptions; Part 77 (Definitions that Apply to Department Regulations); and Part 78 (Education Appeal Board). In addition, regulations implementing the new enforcement provisions in Part E of the General Education Provisions Act would apply when those regulations are promulgated. Further, the Secretary proposes in § 200.5(a)(4) to apply Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), unless a State formally adopts its own written fiscal and administrative requirements for expending and accounting for funds received by the SEA and its LEAs under this part. If a State does not have its own written requirements implemented by July 1, 1989, but wishes to develop them, the requirements in Part 80 would apply until such time as written requirements are formally adopted. If a State chooses to apply its own written requirements, those requirements must be available for Federal inspection. In a case where departmental officials determine that a State's requirements are not sufficient, the enforcement provisions in Part E of GEPA would apply, including the due process provisions in that part. During the transition period provided for in section 1491(c) of the Act (July 1, 1988–June 30, 1989), a State may continue to comply with the requirements under Chapter 1 of the ECIA. The Secretary specifically invites comments on § 200.5(a)(4).

Enforcement Procedures

Section 3501 of the Hawkins-Stafford Act amended Part E of GEPA to provide for new enforcement procedures. The amended Part E requires the Secretary to establish an Office of Administrative Law Judges (OALJ) to replace the existing Education Appeal Board and sets out new hearing procedures. 20 U.S.C. 1234–1234i. With the exception of provisions regarding withholding actions and judicial review of those actions, which are superseded by sections 1433 and 1434 of the Act, Part E applies to the Chapter 1 LEA Program. As a result, appeals from cost disallowance decisions, received by an SEA on or after October 23, 1988, as well as most other enforcement proceedings under the Chapter 1 LEA Program, will be heard by the OALJ. Proposed regulations implementing Part E will address whether withholding actions under the Chapter 1 LEA Program will also be heard by the OALJ. The Education Appeal Board will continue to hear appeals from determinations under the Chapter 1 LEA Program received by an SEA before October 23.

Procedures for Bypass

Under a number of elementary and secondary education programs reauthorized by the Hawkins-Stafford Act—namely, Chapters 1 and 2 of Title I of the Elementary and Secondary Education Act of 1965, as amended, the Dwight D. Eisenhower Mathematics and Science Education Act, and Part B of the Drug-Free Schools and Communities Act of 1986—the Secretary is authorized to waive the requirements for providing services to private school children and to implement a bypass. The procedures that the Secretary would use in implementing a bypass under these programs are virtually identical. Rather than repeating the same procedures in a number of sets of regulations, therefore, the Secretary proposes to add procedures for bypass in §§ 76.671–76.677 of EDGAR that would apply to each program listed in § 76.670.

Cooperation with Audits

The proposed regulations include two new sections concerning cooperation with audits that would be added to Parts 75 and 76 of EDGAR, respectively. These sections make clear that grantees and subgrantees must cooperate with the Secretary and the Comptroller General of the United States or their authorized representatives in the conduct of audits. This cooperation includes access to records and personnel of the grantee and subgrantee for the purpose of obtaining relevant information, a requirement formerly contained in 34 CFR 204.11(a) (Chapter 1 of the ECIA) and 34 CFR 298.16(a) (Chapter 2 of the ECIA). Because access to records and personnel is essential in all Department programs, the Secretary proposes to clarify that the access to records and personnel must be without unreasonable restrictions. Examples that may constitute unreasonable restrictions that would not result in access include limiting written or oral information to be supplied, requiring the presence of a third person at an audit interview, or requiring that an audit interview be tape recorded.

The Secretary proposes these provisions because of concern about attempts by some grantees to impose unreasonable restrictions on auditors' access to the grantee's records or personnel. For example, some grantees have maintained that restrictions on access to personnel are necessary to ensure an accurate record of communications between their personnel and the auditors. The Secretary considers these restrictions to be incompatible with sound audit practice because they could discourage the complete and accurate disclosure of relevant information by a grantee's personnel. The Department's established audit procedures are designed to promote accuracy. Safeguards for grantees include ongoing access to the auditors in the course of the audit, an exit conference at the end of the field work, inviting the auditee to comment on and correct a draft audit report, and including the auditee's comments on the draft audit report in the final audit report. All interviews with personnel are summarized in the audit workpapers and the summaries can be made available to the auditee and to the interviewed person reasonably soon after the interview. Whistle-blowing disclosures by the interviewed person are not included in written summaries in order to protect the person from employer reprisal. It is important to note, however, that unattributed statements by personnel are not used as the basis for audit findings, but only as a source enabling the auditors to obtain objective information that would be available to the auditee. The proposed language in Parts 75 and 76 makes it clear that the grantee's or subgrantee's obligation to cooperate with audits means not imposing unreasonable restrictions on access to records and personnel. Comments concerning these provisions will be referred to the Office of Inspector General for consideration.

Removal of Part 204

The Secretary proposes in these regulations to remove Part 204, which contains general definitions and administrative, project, fiscal, and due process requirements for all Chapter 1 programs. Part 204 was originally promulgated to consolidate provisions that applied to all of the Chapter 1 programs to avoid repeating identical requirements in each set of regulations. Under the reauthorization, however, there are far fewer requirements that apply in the same way to each Chapter 1 program. Moreover, because the Secretary is proposing to make relevant provisions of EDGAR applicable, a number of common provisions currently contained in Part 204 would be governed by EDGAR. The Secretary believes, therefore, that a separate Part 204 is no longer necessary. Instead, all common requirements not contained in EDGAR will be included in the regulations implementing each specific Chaper 1

program, thereby reducing the number of documents with which the SEA or LEA must deal.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Executive Order 12606

The Secretary certifies that these proposed regulations have been reviewed in accordance with Executive Order 12606 and that they do not have a significant negative impact on family formation, maintenance, and general well-being. To the contrary, the Chapter 1 LEA program supports and strengthens the family by containing strong parental involvement requirements. Specifically, an LEA develop, in coordination with parents of participating children, programs, activities, and procedures to: inform parents about the Chapter 1 LEA program; support the efforts of parents, including training parents to work with their children at home; train teachers and other staff to work effectively with parents; consult with parents on an ongoing basis; and provide opportunities for the full participation of parents who lack literacy skills or whose native language is not English. Funds received under this part may be used to support these activities.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities that would be affected by these proposed regulations are small LEAs receiving Federal funds under this part. However, the regulations would not have a significant economic impact on the small LEAs affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

Sections 200.10, 200.20, 200.35, 200.36, 200.37, 200.38, 200.43, 200.57, 200.80, 200.84, and 200.87 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget for its review. (44 U.S.C. 3504(h))

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, Washington, DC 20503, Attention: James D. Houser.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 2043, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

List of Subjects in 34 CFR Part 200

Administrative practice and procedure, Education of disadvantaged, Elementary and secondary education, Grant programs—education, Juvenile delinquency, Neglected, Private schools, Reporting and recordkeeping requirements, State-administered programs.

Dated: October 17, 1988.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: 84.010, Chapter 1 Program in Local Educational Agencies; 84.012, Chaper 1 Program—State Administration)

The Secretary proposes to amend Parts 75, 76, 78 and 204 and revise Part 200 of Title 34 of the Code of Federal Regulations as follows:

1. Part 200 is revised to read as follows:

PART 200—CHAPTER 1 PROGRAM IN LOCAL EDUCATIONAL AGENCIES

Subpart A—General

Sec.

200.1 What is the Chapter 1 Program in Local Educational Agencies?
200.2 Who is eligible for a grant?
200.3 Who is eligible for a subgrant?
200.4 What kind of activities may an LEA conduct?
200.5 What regulations apply to the Chapter 1 LEA Program?
200.6 What definitions apply to the Chapter 1 LEA Program?
200.7 through 200.9 [Reserved]

Subpart B—How Does a State Apply for and Receive a Grant?

200.10 What assurances must a State submit to receive a grant?
200.11 through 200.19 [Reserved]

Subpart C—How Does an LEA Apply for and Receive a Subgrant?

200.20 How does an LEA apply for a subgrant?
200.21 Under what conditions does an SEA approve an LEA's application?

Allocation of Basic Grants

200.22 How does an SEA allocate funds for basic grants to an LEA?
200.23 How does an SEA allocate county aggregate amounts?
200.24 Are there exceptions to how an SEA allocates county aggregate amounts?

Allocation of Concentration Grants

200.25 How does an SEA allocate concentration grants to an LEA?

Reallocation

200.26 How does an SEA reallocate funds?
200.27 through 200.29 [Reserved]

Subpart D—What Project Requirements Apply to the Chapter 1 LEA Program?

200.30 How does an LEA select school attendance areas to be project areas?
200.31 How does an LEA identify and select children to participate?
200.32 What are the size, scope, and quality requirements of a project?
200.33 How does an LEA allocate resources to project areas and schools?
200.34 How does an LEA involve parents?
200.35 What are the requirements for evaluating and reporting project results?
200.36 What are the requirements for schoolwide projects?
200.37 What are an SEA's responsibilities for program improvement?
200.38 What are an LEA's responsibilities for program improvement?
200.39 How may personnel be assigned supervisory duties?

Subpart E—What Fiscal Requirements Apply to the Chapter 1 LEA Program?

200.40 What is the prohibition against using funds under this part to provide general aid?
200.41 What maintenance of effort requirements apply to this program?
200.42 Under what circumstances may an SEA waive the maintenance of effort requirement?
200.43 What comparability of services requirements apply to this program?
200.44 What supplement-not-supplant requirement applies to this program?
200.45 How may an LEA exclude special State and local funds from comparability and supplement-not-supplant determinations?
200.46 What is the maximum amount of funds an LEA may carry over?
200.47 What is the prohibition against considering payments under this part in determining State aid?

Sec.
200.48 through 200.49 [Reserved]

Subpart F—What Requirements Govern Participation in the Chapter 1 LEA Program of Educationally Deprived Children in Private Schools?

General

200.50 What are an LEA's responsibilities for providing Chapter 1 services to children in private schools?
200.51 What are the requirements for consultation with private school officials?
200.52 What factors does an LEA use in determining equitable participation?
200.53 What are the requirements to ensure that funds do not benefit a private school?
200.54 What are the requirements concerning equipment and supplies for the benefit of private school children?
200.55 May funds be used for construction of private school facilities?

Capital Expenses

200.56 How does a State receive a payment for capital expenses?
200.57 How does an LEA receive a payment for capital expenses?
200.58 How does an LEA use payments for capital expenses?
200.59 [Reserved]

Bypass

200.60 What general requirements govern the implementation of a bypass?
200.61 through 200.69 [Reserved]

Subpart G—What Are Other State Responsibilities for the Chapter 1 LEA Program?

200.70 Does a State have authority to issue State regulations for the Chapter 1 LEA Program?
200.71 How may State personnel paid with funds available under this part be assigned to State programs?
200.72 What complaint procedures must an SEA adopt?
200.73 What funds are available for an SEA to carry out its responsibilities?
200.74 through 200.79 [Reserved]

Subpart H—What Are the National Evaluation Standards?

Evaluation by an LEA

200.80 How does an LEA evaluate student achievement?
200.81 What technical standards does an LEA apply in evaluating student achievement?
200.82 What procedures does an LEA use in evaluating student achievement?
200.83 What alternative procedures may an LEA use?
200.84 How does an LEA report the results of student achievement to the SEA?

Evaluation by an SEA

200.85 What technical standards does an SEA use in conducting its evaluation?
200.86 What requirements govern an SEA sampling plan?
200.87 How does an SEA aggregate LEA student achievement data for inclusion in its evaluation?

Allowable and Unallowable Costs

200.88 For what evaluation activities may an LEA or SEA use funds available under this part?
200.89 For what evaluation activities may an LEA or SEA not use funds available under this part?

Authority: 20 U.S.C. 2701–2731, 2821–2838, 2861–2964, 2981–2991, unless otherwise noted.

Subpart A—General

§ 200.1 What is the Chapter 1 Program in Local Educational Agencies?

(a) Under the Chapter 1 Program in Local Educational Agencies (LEAs)—referred to in this part as the Chapter 1 LEA Program—the Secretary provides Federal financial assistance for projects designed to meet the special educational needs of—

(1) Educationally deprived children in LEAs;

(2) Children in local institutions for neglected or delinquent children; and

(3) Indian children under section 1005(d) of the Act.

(b) The purpose of assistance under this part is to improve the educational opportunities of educationally deprived children by helping these children—

(1) Succeed in the regular program of the LEA;

(2) Attain grade level proficiency; and

(3) Improve achievement in basic and more advanced skills.

(Authority: 20 U.S.C. 2701)

§ 200.2 Who is eligible for a grant?

The Secretary provides funds under the Chapter 1 LEA Program to—

(a) States, through their respective State educational agencies (SEAs); and

(b) The Secretary of the Interior for Indian children referred to in § 200.1(a)(3).

(Authority: 20 U.S.C. 2711–2712)

§ 200.3 Who is eligible for a subgrant?

(a) *General rule.* (1) Except as provided in paragraph (d) of this section, an LEA that qualifies under paragraph (b) or (c) of this section is eligible for a subgrant under the Chapter 1 LEA Program.

(2) An SEA provides two types of subgrants—basic grants and concentration grants—to qualifying LEAs.

(b) *Basic grants.* An LEA is eligible for a basic grant if—

(1) There are at least 10 children counted under section 1005(c) of the Act in the school district of the LEA; or

(2) Satisfactory data on a school district basis are not available but the school district served by the LEA is located, in whole or in part, in a county in which there are at least 10 children counted under section 1005(c) of the Act.

(c) *Concentration grants.* (1) From funds available under section 1006(c) of the Act, an LEA is eligible for a concentration grant if—

(i) The LEA is eligible for a basic grant under paragraph (b) of this section;

(ii) The school district of the LEA is located, in whole or in part, in a county in which the number of children counted under section 1005(c) of the Act in the school districts of LEAs in the county in the preceding fiscal year exceeds—

(A) 6,500; or

(B) 15 percent of the total number of children aged 5 to 17, inclusive, in the school districts of LEAs in the county in the preceding fiscal year; and

(iii) The number of children counted under section 1005(c) of the Act in the preceding fiscal year in the school district of the LEA exceeds—

(A) 6,500; or

(B) 15 percent of the total number of children aged 5 to 17, inclusive, in the school district of the LEA in the preceding fiscal year.

(2) An LEA that does not qualify for a concentration grant under paragraph (c)(1) of this section may receive a concentration grant under § 200.25(b).

(d) *Exception.* This section does not apply to Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

(Authority: 20 U.S.C. 2711–2712)

§ 200.4 What kind of activities may an LEA conduct?

(a) Under the Chapter 1 LEA Program, an LEA may only conduct projects that are designed to provide supplemental services to meet the special educational needs of educationally deprived children at the preschool, elementary, and secondary school levels.

(b) An LEA is encouraged to—

(1) Develop programs to assist participating children to improve achievement in basic and more advanced skills; and

(2) Consider year-round services and activities, including intensive summer school programs.

(c) Authorized activities include—

(1) Acquisition of equipment and instructional materials;

(2) Acquisition of books and school library resources;

(3) Employment of special instructional personnel, school counselors, and other pupil services personnel;

(4) Employment and training of education aides;

(5) Payments to teachers of amounts in excess of regular salary schedules as a bonus for service in schools serving project areas;

(6) Training of teachers, librarians, other instructional and pupil services personnel, and, as appropriate, early childhood education professionals;

(7) Construction, if necessary, of school facilities;

(8) Parental involvement activities;

(9) Planning for and evaluation of Chapter 1 projects; and

(10) Other allowable activities.

(d)(1) With the approval of the SEA, an LEA may use up to and including 5 percent of the funds the LEA receives under §§ 200.22–200.26 for innovation projects to promote quality in the Chapter 1 LEA Program.

(2) Innovation projects may include only the following:

(i) Notwithstanding § 200.31(a), the continuation of services to children who received Chapter 1 services in any preceding year for a period sufficient to maintain progress made during the period of their participation in the program.

(ii) Notwithstanding § 200.31(c)(1), the provision of continued services, for a period not to exceed two years, to children participating in a Chapter 1 program who are transferred to ineligible areas or schools as part of a desegregation plan.

(iii) Incentive payments to schools that have demonstrated significant progress and success in attaining the goals of this part.

(iv) Training of teachers paid with funds under this part and teachers and librarians paid with other funds with respect to the special educational needs of eligible children and integration of activities under this part into regular classroom programs.

(v) Programs to encourage innovative approaches to parental involvement or rewards to or expansion of exemplary parental involvement programs.

(vi) Encouraging the involvement of community and private sector resources (including fiscal resources) in meeting the needs of eligible children.

(vii) Assistance by LEAs of schools identified under § 200.38(b).

(3) Except as provided in paragraph (d)(2) (i) through (ii) of this section, the requirements of this part apply to innovation projects conducted under this section.

(Authority: 20 U.S.C. 2721)

§ 200.5 What regulations apply to the Chapter 1 LEA Program?

The following regulations apply to the Chapter 1 LEA Program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 76 (State-Administered Programs) as follows:

(i) Subpart A (General).

(ii) Sections 76.125 through 76.137 (Consolidated Grant Applications for Insular Areas).

(iii) Section 76.401 (Disapproval of an application—opportunity for a hearing).

(iv) Subpart F (What Conditions Must Be Met by the State and Its Subgrantees?), except for §§ 76.650 through 76.662 (Participation of Students Enrolled in Private Schools).

(v) Subpart G (What are the Administrative Responsibilities of the State and Its Subgrantees?), except for § 76.772 (Other responsibilities of the State).

(vi) Subpart H (What Procedures Does the Secretary Use to Get Compliance?).

(2) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(3) 34 CFR Part 78 (Education Appeal Board).

(4) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), unless a State formally adopts its own written fiscal and administrative requirements for expending and accounting for all funds received by SEAs and LEAs under this part. These requirements must be available for Federal inspection and must—

(i) Be sufficiently specific to ensure that funds received under this part are used in compliance with all applicable statutory and regulatory provisions;

(ii) Result in the efficient and effective administration or programs under this part;

(iii) Ensure that funds received under this part are only spent for reasonable and necessary costs of operating programs under this part; and

(iv) Ensure that funds received under this part are not used for general expenses required to carry out other responsibilities of State or local governments.

(b) The regulations in this Part 200.

(Authority: 20 U.S.C. 2831(a))

§ 200.6 What definitions apply to the Chapter 1 LEA Program?

(a) *Definitions in the Elementary and Secondary Education Act.* The following terms used in this part are defined in section 1471 of the Act:

Average daily attendance
Construction
County
Effective schools programs
Elementary school
Equipment
Free public education
Local educational agency (LEA)
More advanced skills
Parent advisory council
Project area
Pupil services
Pupil services personnel
School facilities
Secondary school
Secretary
State
State educational agency (SEA)

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Acquisition
Application
Department
EDGAR
CFR
Grant
Minor remodeling
Personal property
Private
Project
Public
Real property
Subgrant
Supplies

(c) *Other definitions.* The following definitions also apply to this part:

"Act" means the Elementary and Secondary Education Act of 1965, as amended (ESEA).

"Chapter 1" means Chapter 1 of Title I of the Act.

"Children" means persons—

(1) Up to age 21 who are entitled to a free public education through grade 12; or

(2) Who are of preschool age.

"ECIA" means the Education Consolidation and Improvement Act of 1981.

"Educationally deprived children" means children whose educational attainment is below the level that is appropriate for children of their age.

"Fiscal year" means the Federal fiscal year—a period beginning on October 1 and ending on the following September 30—or another twelve-month period normally used by the SEA for recordkeeping.

"Institution for delinquent children" means, as determined by the SEA, a public or private residential facility that is operated primarily for the care of children who have been determined to be delinquent or in need of supervision.

"Institution for neglected children" means, as determined by the SEA, a

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public or private residential facility—other than a foster home—that is operated primarily for the care of children who have been committed to the institution—or voluntarily placed in the institution under applicable State law—because of the abandonment by, neglect by, or death of parents.

"Parent." (1) The term includes a legal guardian or other person standing in loco parentis.

(2) "In loco parentis" means a person acting in place of a parent or legal guardian, and may include a person such as a grandparent, stepparent, aunt, uncle, older sibling, or other person—

(i) With whom a child lives; or

(ii) Who has been designated by a parent or legal guardian to act in place of the parent or legal guardian.

"Preschool children" means children who are—

(1) Below the age or grade level at which the LEA provides a free public education; and

(2) Of the age or grade level at which they can benefit from an organized instructional program provided in a school or other educational setting.

"School attendance area." (1) This term means, in relation to a particular public school, the geographic area in which the children who are normally served by that school reside.

(2) If a child's school attendance area cannot be determined on a geographic basis, the child is considered to be in the school attendance area of the school to which the child is assigned or would be assigned if the child were not attending a private school or another public school on a voluntary basis.

(Authority: 20 U.S.C. 2831(a), 2891)

§§ 200.7 through 200.9 [Reserved]

Subpart B—How Does a State Apply for and Receive a Grant?

§ 200.10 What assurances must a State submit to receive a grant?

(a) A State that wishes to receive funds under this part for projects designed to meet the special educational needs of educationally deprived children shall submit to the Secretary, through its SEA, assurances that the SEA—

(1) Will meet the requirements in section 435(b)(2) and (5) of the General Education Provisions Act (GEPA) relating to fiscal control and fund accounting procedures;

(2) Will carry out the activities in §§ 200.35 (evaluation) and 200.37 through 200.38 (school program improvement);

(3) Has on file a program improvement plan that meets the requirements of § 200.37(a); and

(4) Will ensure that its LEAs comply with all applicable statutory and regulatory requirements.

(b) The assurances submitted under paragraphs (a) of this section remain in effect for the duration of the SEA's participation in the Chapter 1 LEA Program.

(Authority: 20 U.S.C. 2722(a))

§§ 200.11 through 200.19 [Reserved]

Subpart C—How Does an LEA Apply for and Receive a Subgrant?

§ 200.20 How does an LEA apply for a subgrant?

(a) *Contents of an application.* An LEA may receive a subgrant under this part for any fiscal year if the LEA has on file with the SEA an application that contains the following information:

(1) A description of the procedures to be used to conduct an annual assessment of educational needs that meets the requirements of § 200.31(b).

(2) A rank ordering of eligible school attendance areas, including the identification of project areas and the basis for the selection of each project area.

(3) A description of the Chapter 1 project to be conducted, including a budget for the initial project year.

(4) A description of—

(i) The desired outcomes for children participating in the Chapter 1 project, in terms of basic and more advanced skills that all children are expected to master, that will be a basis for evaluating the project under § 200.35; and

(ii) How the LEA will measure substantial progress toward meeting the outcomes.

(5) A description of the services to be provided to eligible children enrolled in private elementary and secondary schools and children in local institutions for neglected or delinquent children.

(6) A description of any innovation projects the LEA proposes to conduct.

(7) Data showing that the LEA has maintained fiscal effort in accordance with § 200.41.

(8) For an LEA that is required to meet the comparability requirements in § 200.43—

(i) An assurance that the LEA is in compliance with the requirements in § 200.43(c)(1)(i); and

(ii) A copy of the LEA's salary schedule and policies required by § 200.43(c)(1)(i).

(9) The assurances required under section 436(b) (2) and (3) of GEPA relating to fiscal control and fund accounting procedures.

(10) Assurances that the LEA's Chapter 1 projects—

(i) Are of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational needs of the children being served;

(ii) Are designed and implemented in consultation with teachers (including early childhood professionals and librarians, if appropriate);

(iii) Provide for parental involvement in accordance with § 200.34;

(iv) Provide for the allocation of time and resources for frequent and regular coordination of the Chapter 1 curriculum with the regular instructional program; and

(v) Provide maximum coordination between Chapter 1 services and services provided to address children's handicapping conditions or limited English proficiency.

(11) Additional information an SEA finds necessary to ensure compliance with the assurances under paragraph (a)(10) of this section.

(b) *Development and approval of application.* An application must be—

(1) Developed in consultation with parents and teachers; and

(2) Approved by the SEA under § 200.21.

(c) *Frequency of submission.* (1) An LEA shall submit to the SEA an application prior to each project period.

(2) A project period may cover a period of not more than three years.

(d) *Annual updating of information in the application.* An LEA shall annually update its application by submitting to the SEA—

(1) Information on eligible school attendance areas and the selection of project areas required in paragraph (a)(2) of this section;

(2) Data showing that the LEA has maintained fiscal effort in accordance with §200.41; and

(3) A budget for the expenditure of funds available under this part during the proposed project year.

(e) *Further updating of information in the application.* If there are substantial changes in the number or needs of the children to be served or the services to be provided, an LEA shall submit a description of the changes to the SEA.

(Authority: 20 U.S.C. 2721(b), 2722 (b)–(c), 2723, 2728 (a), (c), 2838(c))

§ 200.21 Under what conditions does an SEA approve an LEA's application?

(a) *Standards for approval.* An SEA shall approve an LEA's application for a subgrant if—

(1) The application meets the requirements in § 200.20;

(2) The SEA determines that the LEA maintained fiscal effort in accordance with § 200.41; and

(3) The SEA determines that the LEA's salary schedule and policies under § 200.43(c)(1)(i), if implemented, would result in compliance with the comparability requirements in § 200.43(a).

(b) *Effect of SEA approval.* SEA approval of an application under paragraph (a) of this section does not relieve the LEA of its responsibility to comply with all applicable requirements.

(Authority: 20 U.S.C. 2722, 2728 (a), (c))

Allocation of Basic Grants

§ 200.22 How does an SEA allocate funds for basic grants to an LEA?

(a) If the Secretary determines the amount of funds that each LEA in a State is eligible to receive under section 1005(a)(2)(A) of the Act, an SEA shall allocate that amount to each LEA within the State.

(b) If the Secretary determines county aggregate amounts under section 1005(a)(2)(B) of the Act, the SEA shall allocate those county aggregate amounts to LEAs in accordance with §§ 200.23–200.24.

(Authority: 20 U.S.C. 2711(a))

§ 200.23 How does an SEA allocate county aggregate amounts?

Except as provided in § 200.24, an SEA shall allocate county aggregate amounts to LEAs as follows:

(a) *Allocations based on children in local institutions for neglected or delinquent children.* (1)(i) Except as provided in paragraphs (a)(2), (a)(3), and (a)(4) of this section, the SEA shall first allocate to a particular LEA that portion, if any, of the county aggregate amount that is based on the total number of children, aged 5 through 17, in the LEA's school district who resided in a local institution for neglected or delinquent children—and were not counted under subpart 3 of part D of Chapter 1 (programs for neglected or delinquent children operated by State agencies)—for at least 30 consecutive days, at least one day of which was in the month of October of the preceding fiscal year.

(ii) For the purpose of this section, the SEA shall consider children who are in correctional institutions to be residing in institutions for delinquent children.

(2) If the SEA determines that the LEA is unable or unwilling to provide for the special educational needs of the children referred to in paragraph (a)(1) of this section, the SEA shall—

(i) Reduce the LEA's allocation by the amount that is based on those children; and

(ii) Assign that portion of the LEA's allocation to—

(A) The SEA if the SEA assumes educational responsibility for those children; or

(B) Another State agency or LEA that agrees to assume educational responsibility for those children.

(3) If no public agency is willing to assume educational responsibility for the children referred to in paragraph (a)(1) of this section, the SEA may not reallocate to any other LEA that portion of the LEA's allocation that is based on those children.

(4) If a local institution for neglected or delinquent children closes and the children are transferred to an institution in the school district of another LEA, the SEA shall adjust the allocations of the two LEAs to reflect the transfer.

(b) *Allocations based on the distribution of children from low-income families.*—(1) *General rule.* (i) After following the procedures in paragraph (a) of this section, the SEA shall allocate the remaining county aggregate amount to LEAs in the county on the basis of the best available data on the number of children from low-income families in the school districts of those LEAs.

(ii) In accordance with section 1403(a) of the Act, an LEA's allocation under paragraphs (a) and (b)(1)(i) of this section may not be less than 85 percent of the allocation it received for the previous fiscal year.

(2) *Special circumstances.* The SEA shall adjust the allocations it makes under paragraph (b)(1) of this section to reflect the following special circumstances:

(i) *LEAs in more than one county.* If a school district of an LEA overlaps a county boundary, the SEA shall make, on a proportionate basis, a separate allocation to the LEA from the county aggregate amount for each county in which the school district of the LEA is located provided the aggregate number of children from low-income families in the LEA is 10 or more.

(ii) *LEAs serving children from another LEA.* If an LEA serves a substantial number of children within the same geographic area as another LEA, the SEA may adjust the allocations between the LEAs in a manner the SEA determines will best carry out the purposes of Chapter 1.

(iii) *Changes in LEAs.* If an LEA's school district is merged or consolidated, or a portion of the district is transferred to another LEA, the SEA may—

(A) Adjust the allocations of the affected LEAs to reflect the number of children from low-income families for whom each LEA is providing a free public education; or

(B) Permit an LEA that has submitted an approved application to carry out the project, by itself or in cooperation with another LEA, during the remainder of the fiscal year.

(3) *Minimum allocation.* The SEA is not required to allocate to an LEA a basic grant of funds under this part generated by fewer than 10 children.

(Authority: 20 U.S.C. 2711, 2823–2823)

§ 200.24 Are there exceptions to how an SEA allocates county aggregate amounts?

(a) In any State in which a large number of LEAs overlap county boundaries, the SEA may apply to the Secretary for authority to make allocations directly to LEAs without regard to counties.

(b) If an SEA allocates directly to LEAs under paragraph (a) of this section, the SEA shall use the same factors to determine the LEAs' allocations as the Secretary used to compute county aggregate amounts under section 1005(a)(2)(B) of the Act.

(c) An LEA dissatisfied with the determination by the SEA under this section may appeal directly to the Secretary for a final determination.

(Authority: 20 U.S.C. 2711)

Allocation of Concentration Grants

§ 200.25 How does an SEA allocate concentration grants to an LEA?

(a) *General rule.* (1) Except as provided in paragraph (b) of this section, an SEA shall allocate a county's concentration grant funds only to LEAs—

(i) Whose school districts lie, in whole or in part, within the county; and

(ii) That meet the eligibility criteria in § 200.3(c)(1).

(2) In allocating concentration grant funds to an LEA under paragraph (a) of this section, the SEA shall distribute the funds to each eligible LEA in proportion to the number of children from low-income families in the school district of each LEA compared to the number of those children in the school districts of all eligible LEAs in the county.

(b) *Exceptions.* (1)(i) An SEA may reserve not more than two percent of the amount of concentration grant funds it receives to make direct payments to LEAs that meet the criteria in § 200.3(c)(1)(i) and (iii)(B) but are located in counties that are not eligible under § 200.3(c)(1)(ii).

(ii) If an SEA plans to reserve concentration grant funds under paragraph (b)(1)(i) of this section, the SEA, before allocating any

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concentration grant funds under paragraph (a) or (b)(2) through (3) of this section, shall—

(A) Determine the number of eligible LEAs located in ineligible counties;

(B) Determine the appropriate amount to be reserved;

(C) Proportionately reduce the amount available for concentration grants for eligible counties or LEAs to provide the reserved amount; and

(D) Distribute the reserved funds among all eligible LEAs located in ineligible counties in proportion to the number of children from low-income families in the school district of each LEA compared to the number of those children in all the school districts of those LEAs.

(2) In a county in which no LEA meets the eligibility criteria in § 200.3(c)(1)(iii), an SEA shall—

(i) Rank order the LEAs in the county according to the number of children from low-income families in each LEA;

(ii) Identify those LEAs in which either the number or percentage of children from low-income families exceeds the average number or percentage of those children in the county; and

(iii) Allocate concentration grant funds for the county among the LEAs identified in paragraph (b)(1)(ii) of this section in proportion to the number of children from low-income families in the school district of each LEA compared to the number of those children in all the school districts of those LEAs.

(3) In a State that receives a minimum concentration grant under section 1006(a)(1)(B) of the Act, the SEA shall—

(i) Allocate concentration grant funds among LEAs in the State in accordance with the provisions in paragraphs (a) and (b)(1) of this section; or

(ii) Without regard to the counties in which the LEAs are located—

(A) Rank order the LEAs in the State according to the number or percentage of children from low-income families in each LEA;

(B) Identify those LEAs in which either the number or percentage of children from low-income families exceeds the average number or percentage of those children in the State; and

(C) Allocate concentration grant funds among the LEAs identified in paragraph (b)(2)(ii)(B) of this section in proportion to the number of children from low-income families in the school district of each LEA compared to the number of those children in all the school districts of all LEAs so identified.

(Authority: 20 U.S.C. 2712)

Reallocation

§ 200.26 How does an SEA reallocate funds?

(a) An SEA shall reallocate, on a timely basis, excess Chapter 1 funds provided under §§ 200.22 through 200.25—

(1) From an LEA that—

(i) Is not participating in the Chapter 1 LEA Program;

(ii) Has failed to meet the maintenance of effort requirements in § 200.41; or

(iii) Has carryover funds that exceed the percentage limitation in § 200.46; or

(2) That the SEA has recovered after determining that an LEA has failed to spend funds received under this part in accordance with applicable law.

(b)(1) An SEA may reallocate excess Chapter 1 funds referred to in paragraph (a) of this section only to LEAs with the greatest need for those funds because of inequities in, or mitigating hardships caused by, application of the allocation formula in section 1005 of the Act.

(2) Factors that may cause inequities in the formula include—

(i) An increase since the most recent decennial census, caused by population shifts or changing economic conditions, in the number of children from low-income families.

(ii) Caseload data used in the allocation that are not representative of the number of neglected or delinquent children in local institutions; and

(iii) Other circumstances in which the statutory formula fails to reflect accurately the number or percentage of low-income children.

(c) The SEA shall develop procedures for reallocating excess Chapter 1 funds provided under §§ 200.22 through 200.25 that include the following three steps:

(1) A determination of which LEAs are eligible to receive additional funds as indicated by the presence of factors such as those in paragraph (b)(2) of this section. An LEA's eligibility must be based on inequity caused by the allocation formula.

(2) From among the eligible LEAs, a determination of which LEAs have the greatest need for funds. The SEA may consider such factors as—

(i) The degree of increase in the number or percentage of children from low-income families; and

(ii) An LEA's need for additional funds to provide Chapter 1 services to address the unmet needs of eligible Chapter 1 children.

(3) An establishment of timelines for reallocation.

(d)(1) An SEA may reallocate excess funds only during the Federal fiscal year for which the funds were appropriated or during the succeeding Federal fiscal year.

(2) Reallocation does not extend the period during which the excess funds are available for obligation.

(Authority: 20 U.S.C. 1225(b), 2823(b), 2832(b))

§§ 200.27 through 200.29 [Reserved]

Subpart D—What Project Requirements Apply to the Chapter 1 LEA Program?

§ 200.30 How does an LEA select school attendance areas to be project areas?

(a) *General rule.* (1)(i) Except as provided in paragraphs (b) and (d) of this section, an LEA that receives Chapter 1 funds under this part shall conduct Chapter 1 projects in school attendance areas that have high concentrations of children from low-income families.

(ii) A school attendance area has a high concentration of children from low-income families if—

(A) The percentage of children from low-income families in that school attendance area is at least as high as the percentage of children from low-income families in the LEA as a whole; or

(B) The number of children from low-income families in that school attendance area is at least equal to the average number of children from low-income families per school attendance area in the LEA as a whole.

(iii) If an LEA ranks its school attendance areas by grade span groupings under paragraph (a)(2)(ii)(A) of this section, the LEA shall determine the percentage or average number of children from low-income families in the LEA as a whole for each grade span grouping.

(2)(i) If funds available under this part are insufficient to provide programs and projects for all educationally deprived children in eligible school attendance areas, an LEA shall annually rank its eligible school attendance areas from highest to lowest according to relative degrees of concentrations of children from low-income families.

(ii) An LEA may rank its school attendance areas—

(A) By grade span groupings; or

(B) For the entire LEA.

(3) An LEA may carry out a Chapter 1 program or project in an eligible school attendance area only if it carries out a Chapter 1 program or project in all other eligible school attendance areas that are ranked higher under paragraph (a)(2) of this section.

(b) *Special rules.* Notwithstanding paragraph (a) of this section, an LEA may identify and rank eligible school attendance areas as follows:

(1) An LEA may designate as eligible and serve all school attendance areas within a grade span grouping or in the entire LEA if the percentage of children from low-income families in each school attendance area is within five percentage points of the average percentage of children from low-income families within a grade span grouping or within the entire LEA.

(2)(i) If the expenditure requirements in paragraph (b)(2)(ii) of this section are met, an LEA may designate as eligible any school attendance areas in which at least 25 percent of the children are from low-income families.

(ii) An LEA may use the provision in paragraph (b)(2)(i) of this section only if, in each school attendance area of the LEA in which Chapter 1 projects were carried out during the preceding year, the aggregate per pupil expenditures of funds available under this part and funds from a State program that meets the requirements of section 1018(d)(1)(B) of the Act in the current fiscal year equal or exceed the aggregate per pupil expenditures from those sources in the preceding fiscal year.

(3)(i) An LEA may designate a school that serves an ineligible school attendance area as an eligible school if the proportion of children from low-income families in average daily attendance in that school is substantially equal to the proportion of children from low-income families in an eligible school attendance area.

(ii) If an LEA designates a school serving an ineligible attendance area as an eligible school under paragraph (b)(3)(i) of this section, the LEA shall—

(A) Determine that the school complies with the school attendance area requirements in paragraph (a) of this section; and

(B) At its discretion, apply the special rules for identifying and ranking eligible school attendance areas in paragraph (b) of this section to the school.

(4) With the approval of the SEA, an LEA may designate as eligible and serve a school attendance area with a substantially higher number or percentage of educationally deprived children before school attendance areas with higher concentrations of children from low-income families if—

(i) The LEA does not serve more school attendance areas than could otherwise be served; and

(ii) The SEA determines that the selection of school attendance areas under paragraph (b)(4) of this section will not substantially impair the delivery of services to educationally deprived children from low-income families in project areas served by the LEA.

(5) An LEA may continue to provide for one year Chapter 1 services in a school attendance area that does not qualify under paragraph (a) of this section of that school attendance area was eligible and selected under the standards in paragraph (a) of this section in the immediately preceding year.

(6) With the approval of the SEA, an LEA may skip eligible school attendance areas that have higher proportions or numbers of children from low-income families if the children in those attendance areas are receiving, from non-Federal funds, services of the same nature and scope as would otherwise be provided under Chapter 1, except that the LEA shall—

(i) Determine the number of children in private elementary and secondary schools to receive Chapter 1 services without regard to non-Federal compensatory education funds used to serve eligible children in public elementary and secondary schools; and

(ii) Identify children in private schools to receive Chapter 1 services in accordance with the requirements in paragraphs (a) and (b) (1) through (5) of this section.

(c) For purposes of paragraphs (a) and (b) of this section, an LEA, on the basis of the best available data on children from low-income families, shall annually select and use the same measure of low income—which may be a composite of several indicators—to identify and rank eligible school attendance areas.

(d) *Exemption.* An LEA with a total enrollment of fewer than 1,000 children does not have to comply with the requirements in this section but shall comply with the requirements in § 200.31.

(Authority: 20 U.S.C. 2723(a)–(b); H.R. Rept. 95, 100th Cong., 1st Sess. 21 (1987))

§ 200.31 How does an LEA identify and select children to participate?

(a) *General rule.* Except as provided in paragraph (c) of this section and § 200.36, an LEA shall use funds available under this part only for educationally deprived children, identified under paragraph (b) of this section as having the greatest need for special assistance, in school attendance areas or schools selected under § 200.30.

(b) *Annual assessment of educational needs.* On the basis of an annual assessment of educational needs, an LEA that receives funds under this part shall—

(1) Identify educationally deprived children, as defined in § 200.6(c), in all eligible school attendance areas, including educationally deprived children in private schools;

(2) Identify the general instructional areas on which the program will focus;

(3) Establish educationally related objective criteria, which include written or oral testing instruments, for each grade level and instructional area to select educationally deprived children for participation in the Chapter 1 project;

(4) Uniformly apply the criteria required in paragraph (b)(3) of this section to particular grade levels throughout the LEA;

(5) Select those educationally deprived children who have the greatest need for special assistance; and

(6) Determine the special educational needs, and library resource needs, of participating children with sufficient specificity to ensure concentration on those needs.

(c) *Special rules.* In selecting children to participate in Chapter 1, an LEA may implement the following provisions:

(1) An LEA may use funds available under this part during the current school year to continue to serve educationally deprived children who begin participation in a Chapter 1 project but who, in the same school year, are transferred to a school attendance area or a school not receiving funds under this part.

(2) An LEA may skip educationally deprived children in greatest need for special assistance if those children are receiving, from non-Federal sources, services of the same nature and scope as would otherwise be provided under Chapter 1.

(3) An LEA may use funds available under this part to serve, for a maximum of two additional years, children who were identified in the previous year as being in greatest need for special assistance and who continue to be educationally deprived but are no longer in greatest need for special assistance.

(4) An LEA shall consider as eligible and may serve children who, at any time in the previous two years, received Chapter 1 services under the Chapter 1 Program for Neglected or Delinquent Children.

(5)(i) An LEA may identify as eligible and serve under Chapter 1 children receiving services to overcome handicapping conditions or limited English proficiency if these children—

(A) Have needs stemming from educational deprivation and not needs related solely to their handicapping conditions or limited English proficiency; and

(B) Are selected on the same basis as other children identified as eligible for

and selected to receive services under paragraph (b) of this section.

(ii) In identifying and selecting limited English proficient children for participation in Chapter 1, an LEA shall—

(A) For children with sufficient English language proficiency, use tests written in the English language, with or without bilingual assistance; or

(B) For children whose lack of English language proficiency precludes testing in the English language, use factors such as teacher evaluation of student performance, language dominance tests, or other indicators that may be used separately, as a composite score, or as a composite with weighting, to select children on a basis other than English language deficiency.

(iii) An LEA may not use funds available under this part to provide services that are required by Federal, State, or local laws to overcome children's handicapping conditions or limited English proficiency.

(Authority: 20 U.S.C. 2724; H.R. Rept. 567, 100th Cong., 2d Sess. 322 (1988) (Conf. Rept.))

§ 200.32 What are the size, scope, and quality requirements of a project?

An LEA shall use funds available under this part for a project that is of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational needs of the children being served.

(Authority: 20 U.S.C. 2722(c)(1))

§ 200.33 How does an LEA allocate resources to project areas and schools?

(a) Except as provided in paragraph (b) of this section, an LEA shall allocate funds available under this part among project areas and schools on the basis of—

(1) The number and needs of children selected for participation under § 200.31;

(2) The degree of educational deprivation of these children; and

(3) The services to be provided.

(b) For the sole purpose of allocating funds available under this part among project areas and schools under paragraph (a) of this section, an LEA may continue to count, for two additional years, children in those areas and schools who—

(1) Received Chapter 1 services in the preceeding school year; but

(2) Are no longer eligible for services because of improved academic achievement attributable to the Chapter 1 services.

(Authority: 20 U.S.C. 2723(c))

§ 200.34 How does an LEA involve parents?

(a) *General rule.* (1) An LEA may receive funds under this part only if it implements programs, activities, and procedures for the involvement of parents in programs assisted under this part. This involvement must include, but is not limited to, parent input into the planning, design, and implementation of these programs.

(2)(i) The activities and procedures required under paragraph (a)(1) of this section must be planned and implemented with the meaningful consultation of parents of participating children.

(ii) The consultation required in paragraph (a)(2)(i) of this section and in other sections in this part must be organized, systematic, ongoing, informed, and timely in relation to decisions about the program.

(3) The activities and procedures for the involvement of parents must be of sufficient size, scope, and quality to give reasonable promise of substantial progress toward achieving the goals under paragraph (b) of this section.

(b) *Goals of parental involvement.* To meet the requirements in paragraph (a) of this section, an LEA shall, in coordination with parents of participating children, develop programs, activities, and procedures that have the following goals:

(1) To inform parents of participating children of the—

(i) Reasons their children are participating in the programs; and

(ii) Specific instructional objectives and methods of the program.

(2) To support the efforts of parents, including training parents, to the maximum extent practicable, to—

(i) Work with their children in the home to attain the instructional objectives of the program; and

(ii) Understand the program requirements.

(iii) To train parents and teachers to build a partnership between home and school.

(4) To train teachers and other staff members involved in the Chapter 1 LEA Program to work effectively with the parents of participating children.

(5) To consult with parents, on an ongoing basis, concerning the manner in which the school and parents can work better together to achieve the program's objectives.

(6) To provide a comprehensive range of opportunities for parents to become informed, in a timely way, about how the program will be designed, operated, and evaluated, allowing opportunities for parental participation, so that parents and educators can work together to achieve the program's objectives.

(7) To ensure opportunities, to the extent practicable, for the full participation of parents who lack literacy skills or whose native language is not English.

(c) *Specific requirements.* An LEA shall implement the following activities:

(1)(i) Develop written policies, after consultation with and review by parents, to ensure that parents are involved in the planning, design, and implementation of the Chapter 1 LEA Program. The written policies must provide for timely response to recommendations by parents.

(ii) Make the policies available to parents of participating children.

(2) Convene an annual meeting, to which all parents of participating children must be invited, to explain the programs and activities provided with funds available under this part. The annual meeting may be districtwide or at the building level so long as all parents of participating children are provided the opportunity to attend.

(3)(i) Provide parents of participating children with reports on their children's progress.

(ii) To the extent practical, conduct a parent-teacher conference with the parents of each participating child to discuss the child's progress, placement, and methods the parent can use to complement the child's instruction.

(iii) Make education personnel under the Chapter 1 LEA Program readily accessible to parents.

(iv) Permit parents of participating children to observe Chapter 1 LEA Program activities.

(4) Provide opportunities for regular meetings of parents to formulate parental input into the program, if parents of participating children so desire.

(5) Provide parents of participating children with timely information about the program.

(6) Make parents aware of parental involvement requirements and other relevant provisions of the program.

(7) Provide reasonable support for parental involvement activities as parents may request.

(8) Coordinate, to the extent possible, parental involvement activities with programs funded under the Adult Education Act.

(9) To the extent practicable, provide information, programs, and activities for parents under this section in a language and form that the parents understand.

(d) *Assessment of the parental involvement program.* An LEA shall annually assess, through consultation with parents, the effectiveness of the parental involvement program and determine what action needs to be taken, if any, to increase parental participation.

(e) *Allowable activities and costs.* Chapter 1 activities that an LEA may support with funds available under this part to meet the requirements of this section include the following:

(1) Regular parent conferences.

(2) Parent resource centers.

(3) Parent training programs, including reasonable and necessary expenditures associated with parents' attendance at training sessions.

(4) Hiring, training, and utilization of parent involvement liaison workers.

(5) Reporting to parents on children's progress.

(6) Training and support of personnel to work with parents, coordinate parent activities, and make home contacts.

(7) Use of parents as classroom volunteers, tutors, and aides.

(8) Provision of school-to-home complementary curriculum and materials.

(9) Provision of assistance in implementing home-based education activities that reinforce classroom instruction and student motivation.

(10) Provision of timely information on the Chapter 1 LEA Program, including program plans and evaluations.

(11) Solicitation of parents' suggestions in the planning, development, and operation of the program.

(12) Provision of timely responses to parent recommendations.

(13) Parent advisory councils.

(14) Other activities designed to enlist the support and participation of parents in the instruction of their children.

(Authority: 20 U.S.C. 2728, 2731(a)(4); H.R. Rept. 86, 100th Cong., 1st Sess. 27–29 (1987); S. Rept. 222, 100th Cong., 1st Sess. 14–16 (1987))

§ 200.35 What are the requirements for evaluating and reporting project results?

(a) *LEA evaluations.* (1) An LEA shall evaluate, at least once every three years, the effectiveness of its Chapter 1 projects, in terms of basic and more advanced skills that all children are expected to master, on the basis of—

(i) The desired outcomes described in the LEA's application; and

(ii) Except for Chapter 1 children in preschool, kindergarten, and first grade, student achievement, aggregated for the LEA as a whole, in accordance with the national standards in Subpart H.

(2)(i) The LEA shall determine whether improved performance of Chapter 1 participating children is sustained over a period of more than 12 months.

(ii) To make this determination, an LEA shall assess performance of the same children for at least two consecutive 12 month periods, provided these children continue to be enrolled in schools of the LEA.

Example: An LEA provides Chapter 1 services during the 1989–90 school year. The LEA measures the gains made by participating children on a spring-spring testing cycle (spring of 1989, 1990). To determine whether improved performance is sustained over a period of more than 12 months, the LEA measures performance again in the spring of 1991.

(3) The LEA shall report its evaluation results to the SEA at least once during each three-year application cycle.

(b) *SEA evaluations.* (1) An SEA shall evaluate, at least every two years, the Chapter 1 programs in the State on the basis of the local evaluations conducted under paragraph (a) of this section and sections 1107(b), 1202(a)(6), and 1242(d) of the Act.

(2) The SEA shall inform its LEAs, in advance, of the specific data that will be needed and how the data may be collected.

(3) The SEA shall—

(i) By a date established by the Secretary, submit its evaluation to the Secretary; and

(ii) Make public the results of the evaluation.

(4) The SEA may require LEAs, in addition to meeting the requirements in § 200.80(a), to evaluate the effect of Chapter 1 projects on Chapter 1 children's achievement in basic and more advanced skills within the regular program, including, but not limited to, writing, science, history, or other subjects.

(c) *Annual performance report.* (1) An SEA shall annually—

(i) Collect data specified in section 1019 of the Act and by the Secretary in the SEA's annual performance report; and

(ii) Submit those data to the Secretary.

(2) An LEA shall provide to the SEA any data needed by the SEA to complete its annual performance report.

(Authority: 20 U.S.C. 2722(b), 2729, 2835, 2852)

§ 200.36 What are the requirements for schoolwide projects?

(a) *Eligibility for a schoolwide project.* An LEA may conduct a Chapter 1 project to upgrade the entire educational program in a school if the following requirements are met:

(1) The school serves an eligible attendance area or is an eligible school in accordance with § 200.30.

(2) For the first year of the three-year period provided under paragraph (d) of this section, at least 75 percent of the children residing in the school attendance area or enrolled in the school are from low-income families.

(3) The LEA develops a plan for the school that—

(i) Meets the requirements in paragraph (b) of this section; and

(ii) Has been approved by the SEA.

(4) The LEA meets the fiscal requirements in paragraph (c) of this section.

(b) *Required plan.* The plan required under paragraph (a)(3) of this section must—

(1) Provide for a comprehensive assessment of the educational needs of all students in the school, particularly the special needs of educationally deprived children;

(2) Establish goals to—

(i) Meet the special needs of all students; and

(ii) Ensure that educationally deprived children are—

(A) Served effectively; and

(B) Demonstrate performance gains that are comparable to the performance gains of other students;

(3) Describe the instructional program, pupil services, and procedures to be used to implement the goals of the schoolwide project;

(4) Describe the specific uses of funds available under this part in the schoolwide project;

(5) If appropriate, describe how the school will move to implement an effective schools program as defined in section 1471 of the Act;

(6) Be developed with the involvement of individuals who will be engaged in carrying out the plan, including—

(i) Parents;

(ii) Teachers;

(iii) Librarians;

(iv) Education aides;

(v) Pupil services personnel;

(vi) Administrators; and

(vii) If the plan relates to a secondary school, students;

(7) Provide for consultation among the individuals listed in paragraph (b)(6) of this section concerning the—

(i) Educational progress of all students in the school; and

(ii) Development and implementation of the accountability measures required in paragraph (f) of this section;

(8) Provide for appropriate training of parents of children to be served, teachers, librarians, and other instructional, administrative, and pupil services personnel to enable these individuals to carry out the plan; and

(9) Include procedures for measuring progress under paragraph (f) of this

section and a description of the measures to be used.

(c) *Fiscal requirements.* An LEA that uses funds available under this part to conduct a schoolwide project shall meet the following fiscal requirements:

(1)(i) In an LEA with one or more schoolwide projects and one or more other schools serving project areas, the LEA shall provide for each schoolwide project an amount of funds made available under this part that, for each educationally deprived child, equals or exceeds the amount of funds made available under this part that the LEA provides for each educationally deprived child served in other project schools. In determining the number of educationally deprived children in a schoolwide project, the LEA shall use either of the following:

(A) The number of children in the schoolwide project below the highest ranked child served in other project schools in the LEA.

(B) All children meeting the definition of "educationally deprived children" in § 200.6(c).

(ii) The LEA shall allocate to a schoolwide project an amount of funds made available under this part that is sufficient to ensure that the project is of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational needs of the educationally deprived children served.

(2)(i) Except as provided in paragraph (c)(2)(ii) of this section, during each fiscal year in which a schoolwide project is carried out, the LEA shall, in each schoolwide project, spend per child an amount of State and local funds—excluding amounts spent under a State compensatory program as defined in § 200.45(a)(1)(i) and special supplementary State and local funds required under Chapter 1 of the ECIA for each child in a schoolwide project who was not educationally deprived—that is at least equal to the amount of State and local funds the LEA spent per child in that school during the preceding fiscal year.

(ii) The LEA shall include for each fiscal year the cost of services for State and local programs under § 200.45(a)(2) only in proportion to the number of children served by these programs in the school in the year for which the determinations are made.

(3) The LEA shall ensure that funds made available under this part for a schoolwide project only supplement, and to the extent practical, increase the level of funds that would, in the absence of funds under this part, be made available from non-Federal sources for the school.

(4) The LEA shall comply with the comparability requirements in § 200.43.

(d) *Effect of selection for a schoolwide project.* (1) The SEA shall approve the plan of the LEA for a schoolwide project for a period of three years if the plan meets the requirements in paragraphs (b) and (c) of this section.

(2) For each school that has a schoolwide project plan approved by the SEA, the LEA is not required to—

(i) Comply with any Chapter 1 requirements prohibiting the commingling of funds available under this part with State and local funds;

(ii) Identify particular children as eligible to participate in the schoolwide project, but shall identify educationally deprived children for the purpose of paragraphs (b), (c), and (f) of this section; and

(iii) Demonstrate that the particular services paid for with Chapter 1 funds supplement the services regularly provided in that school.

(e) *Use of funds.* In addition to the activities included in § 200.A, the LEA may use funds made available under this part in schoolwide projects for—

(1) Planning and implementing effective schools programs; and

(2) Other activities to improve the instructional program and pupil services in the school such as—

(i) Reducing class size;

(ii) Training staff and parents; and

(iii) Implementing extended-day programs.

(f) *Accountability requirements.* (1) Except as provided in paragraph (f)(2) of this section, in order to continue a schoolwide project, an LEA must be able to demonstrate after three years for each school participating in a schoolwide project that—

(i) The achievement level of educationally deprived children in the school exceeds the average achievement of comparable participating Chapter 1 children in the LEA as a whole; or

(ii) The achievement of educationally deprived children in the school exceeds the average achievement of comparable educationally deprived children in that school in the three fiscal years prior to the start of the schoolwide project.

(2) For a secondary school, if achievement levels over the three-year schoolwide project period as compared with the three-year period immediately preceding the schoolwide project do not decline, demonstration of lower dropout rates, increased retention rates, or increased graduation rates are acceptable in lieu of increased achievement.

(3) If the SEA determines that a schoolwide project meets the requirements in paragraph (f) (1) or (2) of this section at the end of the three-year period provided in paragraph (d)(1) of this section, the SEA shall allow the LEA to continue the schoolwide project for an additional three years.

(4)(i) For the purpose of paragraph (f) (1) and (2) of this section, the LEA shall annually collect achievement and other assessment data for each school participating in a schoolwide project.

(ii) The LEA shall make the results of the annual collection of achievement and other assessment data available to parents, the public, and the SEA.

(5) The program improvement requirements in §§ 200.37–200.38 apply to schoolwide projects under this section.

(g) *Participation of children enrolled in private schools.* In determining which private school children residing in the school attendance area of a schoolwide project are eligible for Chapter 1 services, the LEA shall apply whichever method it selected under paragraph (c)(1)(i) (A) or (B) of this section.

(Authority: 20 U.S.C. 2723, 2723(c), 2730–2731)

§ 200.37 What are an SEA's responsibilities for program improvement?

(a) *SEA program improvement plan.* (1) An SEA shall develop, in consultation with a committee of practitioners under § 200.70(e), a plan to ensure implementation of the provisions of paragraph (b) of this section and § 200.38.

(2) The SEA's plan must contain, but is not limited to, the following:

(i) The objective measures and standards the SEA and LEAs will use to assess aggregate performance and substantial progress toward meeting desired outcomes, and may include implementation of section 1019 of the Act. The SEA may establish minimum standards to be included in the plan to improve the educational opportunities of educationally deprived children by helping those children succeed in the regular program, attain grade-level proficiency, and improve achievement in basic and more advanced skills.

(ii) The means the SEA will use to develop a joint plan with an LEA that has identified, under § 200.38(b), a school in need of program improvement to attain satisfactory student progress.

(iii) In accordance with § 200.38(b)(6), the timetable for developing and implementing a joint plan with an LEA.

(iv) The program improvement assistance the SEA will provide to a school identified under § 200.38(b)(6), which may include, but is not limited to—

(A) Training and retraining personnel;

(B) Developing curricula that have shown promise in similar schools;

(C) Replicating promising practices in effective school models;

(D) Improving coordination between programs assisted under Chapter 1 and the regular school program; and

(E) Developing innovative strategies to enhance parental involvement.

(3) The SEA shall—

(i) Disseminate its plan to all LEAs and other State agencies that receive funds under Chapter 1; and

(ii) Make the plan available at the SEA for inspection by the Secretary.

(4) The SEA may amend its plan, if necessary, after consultation with the committee of practitioners.

(b) *SEA assistance to LEAs.* (1)(i) If funds are appropriated for the implementation of school improvement programs under section 1406 of the Act, an SEA shall fully implement the program improvement activities described in this section and § 200.38.

(ii) If funds are not appropriate under section 1406 of the Act, the SEA shall at a minimum—

(A) With the least possible paperwork and burden, follow the progress of any school identified by an LEA under § 200.38(b)(1);

(B) Develop and implement with LEAs joint plans for program improvement under § 200.38(b)(6);

(C) Ensure that program improvement assistance is provided to each school identified under § 200.38(b)(6); and

(D) Conduct other program improvement activities to the extent practicable.

(2) An LEA may apply to the SEA for program improvement assistance funds appropriated under section 1406 of the Act.

(Authority: 20 U.S.C. 2730, 2731(d), 2833, 2851(b); H.R. Rept. 98, 100th Cong., 1st Sess. 23 (1987); H.R. Rept. 567, 100th Cong., 2d Sess. 325–28 (1988) (Conf. Rept.))

§ 200.38 What are an LEA's responsibilities for program improvement?

(a) *Local review.* For each project school, an LEA shall—

(1)(i) Conduct an annual review of the effectiveness of its Chapter 1 project in improving student performance as measured by aggregate performance and the desired outcomes described in the LEA's application; and

(ii) Make the results of the review available to teachers, parents of participating children, and other appropriate parties;

(2) Determine whether improved performance is sustained over a period of more than 12 months (see § 200.35(a)(2)); and

(3) Use the results of the review and the LEA's evaluation under section 1019 of the Act in program improvement efforts required by paragraph (b) of this section.

(b) *School program improvement.* (1) Except as provided in paragraph (b)(4) of this section, an LEA shall implement the requirements in paragraph (b)(2) of this section with respect to each school that—

(i) Does not show substantial progress toward meeting the desired outcomes described in the LEA's application; or

(ii) Shows no improvement or a decline in aggregate performance of participating children for a 12-month period as assessed by measures developed under section 1019(a) of the Act or paragraph (a) of this section. No improvement or a decline in aggregate performance occurs if participating children, in the aggregate, in the school fail to make gains beyond that which they would be expected to make in the absence of the additional help the program provided.

(2) For each school identified under paragraph (b)(1) of this section, the LEA shall develop and implement, in coordination with the school, a plan for program improvement that—

(i) Describes how the LEA will identify and modify Chapter 1 programs for schools and children under this section;

(ii) Incorporates those program changes that have the greatest likelihood of improving the performance of educationally deprived children, including—

(A) A description of educational strategies designed to achieve the LEA's desired outcomes or otherwise to improve the performance and meet the needs of participating children;

(B) A description of the resources, and how those resources will be applied, to carry out the strategies selected, including, as appropriate—

(*1*) Qualified personnel;

(*2*) Inservice training;

(*3*) Curriculum materials;

(*4*) Equipment;

(*5*) Physical facilities;

(*6*) Technical assistance;

(*7*) Alternative curriculum that has shown promise in similar schools;

(*8*) Improving coordination between the Chapter 1 LEA Program and the regular school program;

(*9*) Evaluation of parental involvement;

(*10*) Appropriate inservice training for Chapter 1 staff and other staff who teach participating children; and

(*11*) Other measures selected by the LEA.

(3) The LEA shall—

(i) Submit the plan to the local school board and the SEA; and

(ii) Make the plan available to parents of participating children in the school.

(4) The LEA is not required to—

(i) Develop a school improvement plan for a school that served 10 or fewer children for the entire school year; or

(ii) Complete and implement a school improvement plan under development if data become available during plan development or prior to plan implementation that demonstrate that there has been a gain in aggregate performance and that substantial progress has been made toward meeting the desired outcomes.

(5)(i) The LEA shall develop a timeline for implementation of each school's plan, taking into consideration the degree of change needed, the nature of the changes, and other relevant factors.

(ii) The plan must be fully implemented as soon as possible but no later than the beginning of the second school year after the school year during which the school did not show substantial progress toward meeting the LEA's desired outcomes or showed no improvement or a decline in aggregate performance of participating children.

Example: An LEA determines that a school, during the 1988–89 school year, has shown a decline in aggregate performance. The LEA must develop and fully implement a school improvement plan in that school as soon as possible but not later than September 1990. For example, if the necessary changes can be accomplished quickly, such as purchasing readily available materials or equipment, the LEA would be able to implement its plan by September 1989. On the other hand, if the needed changes require a complete redesign of the LEA's project, the LEA might not be able to implement the plan fully before September 1990.

(6)(i) If, after the LEA's plan has been in effect for one full school year, the school is still identified as needing improvement under paragraph (b)(1) of this section, the LEA shall, with the SEA, develop and implement by the beginning of the next school year a joint plan for program improvement in the school.

(ii) The joint plan must—

(A) Be developed and implemented in consultation with school staff and parents of participating children; and

(B) Be approved by both the SEA and LEA before the plan may be implemented.

(iii) If the SEA finds that, after the joint plan has been in effect for one full school year, a school continues to need improvement under paragraph (b)(1) of this section, the SEA, with the LEA, shall—

(A) Review the plan;

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(B) Make revisions that are designed to improve performance; and

(C) Continue to review and revise the joint plan each consecutive year until improved performance is sustained over a period of more than 12 months.

(iv) Nothing in this section or § 200.37 shall be construed to give the SEA any authority concerning the educational program of an LEA that does not otherwise exist under State law.

Example: Both the LEA and SEA should follow the progress of the LEA's school improvement plan during the first full school year of implementation. In the example following paragraph (b)(5) of this section, if a plan is implemented by September 1989, then school year 1989–90 would be the first full school year. Similarly, if a plan is implemented by September 1990, the first full school year would be 1990–91. After one full year of implementation, if the LEA determines that the school still has not improved, the LEA must develop and implement a joint program improvement plan with the SEA before the beginning of the next school year. Thus, under the example above, the joint plan would have to be developed and implemented by the beginning of the 1990–91 or 1991–92 school year, depending on which year the LEA implemented its plan.

(c) *Local conditions.* (1) The LEA and the SEA, in performing their responsibilities under this section, shall take into consideration—

(i) The mobility of the student population;

(ii) The extent of educational deprivation among participating children that may negatively affect improvement efforts;

(iii) The difficulties involved in dealing with older children in Chapter 1 programs in secondary schools;

(iv) Whether indicators other than improved achievement demonstrate the positive effects on participating children of Chapter 1 activities; and

(v) Whether a change in the review cycle under section 1019 of the Act or paragraph (a)(1) of this section or in the measurement instrument used or other measure-related phenomena has rendered results invalid or unreliable for a particular year.

(2) The local conditions in paragraph (c)(1) of this section may be considered, as appropriate, at any point in the program improvement process, including the following:

(i) Determining the extent of services needed to meet desired outcomes in the LEA's application.

(ii) Allocating resources to schools.

(iii) Determining how substantial progress toward meeting desired outcomes will be measured.

(iv) Identifying a school in need of program improvement under paragraph (b)(1) of this section.

(v) Identifying a school that continues to need program improvement under paragraph (b)(6) of this section.

(d) *Student program improvement.* On the basis of the evaluation under section 1019 of the Act and local reviews under paragraph (a) of this section, an LEA shall—

(1) Identify all students who have been served for a school year and—

(i) Have not shown substantial progress toward meeting the desired outcomes established for participating children under § 200.20(a)(4); or

(ii) Whose achievement shows no improvement or a decline;

(2) Consider modifications in the LEA's Chapter 1 project to serve those students better;

(3) Conduct a thorough assessment of the educational needs of children who remain in the LEA's Chapter 1 project after two consecutive years of participation and—

(i) Have not shown substantial progress toward meeting the desired outcomes established for participating children under § 200.20(a)(4); or

(ii) Whose achievement shows no improvement or a decline; and

(4) If appropriate, use the results of the needs assessment to modify the project to meet the children's needs.

(e) *Private school children.* Program improvement and student improvement activities under this section must include children in private schools in accordance with section 1017 of the Act.

(f) *Effective date.* An LEA shall begin identifying schools and students in need of program improvement based on information gathered before or during the 1988–89 school year.

(g) *Technical assistance centers.* In carrying out the program improvement and student improvement activities under this section, an LEA and SEA shall utilize the resources of the regional technical assistance centers and appropriate regional rural assistance programs established under section 1456 of the Act to the full extent those resources are available.

(Authority: 20 U.S.C. 2727, 2731; H.R. Rept. 98, 100th Cong., 1st Sess. 23 (1987); H.R. Rept. 567, 100th Cong., 2d Sess. 325–28 (1988) (Conf. Rept.))

§ 200.39 How may personnel be assigned supervisory duties?

(a) An LEA may assign public school personnel paid entirely with funds available under this part to limited supervisory duties that may provide some benefit to children not participating in the Chapter 1 project if—

(1) Similarly situated personnel at the same school site, who are not paid with funds available under this part, are assigned these duties; and

(2) The time spent by Chapter 1 personnel on these duties does not exceed the least of the following:

(i) The proportion of total work time that similarly situated non-Chapter 1 personnel at the same school site spend performing these duties.

(ii) One period per day.

(iii) Sixty minutes per day.

(b) The amount of time referred to in paragraph (a)(2) of this section may be calculated on a daily, weekly, monthly, or annual basis.

(c) The limited supervisory duties in paragraph (a) of this section need not be limited to classroom instruction and may include, but are not limited to, the following:

(1) Supervision of halls, playgrounds, lunchrooms, study halls, bus loading and unloading, and homerooms.

(2) Participation as a member of a school or district curriculum committee.

(3) Participation in the selection of regular curriculum materials and supplies.

(Authority: 20 U.S.C. 2853; H.R. Rept. 98, 100th Cong., 1st Sess. 34–35 (1987))

Subpart E—What Fiscal Requirements Apply to the Chapter 1 LEA Program?

§ 200.40 What is the prohibition against using funds under this part to provide general aid?

An LEA may use funds available under this part only for projects that are designed and implemented to meet the special educational needs of educationally deprived children who are—

(a) Identified and selected in accordance with § 200.31; and

(b) Included in the LEA's application that has been approved by the SEA.

(Authority: 20 U.S.C. 2721(a), 2722(b), 2724)

§ 200.41 What maintenance of effort requirements apply to this program?

(a)(1) *Basic standard.* Except as provided in § 200.42, an SEA shall pay an LEA its allocation of funds under this part if the SEA finds that either the combined fiscal effort per student or the aggregate expenditures of State and local funds with respect to the provision of free public education in the LEA for the preceding fiscal year was not less than 90 percent of the combined fiscal effort per student or the aggregate expenditures for the second preceding fiscal year.

(2) *Meaning of "preceding fiscal year."* For purposes of determining maintenance of effort, the "preceding fiscal year" is the Federal fiscal year or the twelve-month fiscal period most commonly used in a State for official reporting purposes prior to the beginning of the Federal fiscal year in which funds are available.

Example: For funds first made available only July 1, 1988, if a State is using the Federal fiscal year, the "preceding fiscal year" is Federal fiscal year 1988 (which began on October 1, 1987) and the "second preceding fiscal year" is fiscal year 1987 (which began on October 1, 1986). If a State is using a fiscal year that begins on July 1, 1988, the "preceding fiscal year" is the twelve-month period ending on June 30, 1988 and the "second preceding fiscal year" is the period ending on June 30, 1987.

(3) *Expenditures*—(i) *To be considered.* In determining an LEA's compliance with the maintenance of effort requirement, the SEA shall consider the LEA's expenditures from State and local funds for free public education. These include expenditures for administration, instruction, attendance, health services, pupil transportation, plant operation and maintenance, fixed charges, and net expenditures to cover deficits for food services and student body activities.

(ii) *Not to be considered.* The SEA shall not consider the following expenditures in determining an LEA's compliance with the maintenance of effort requirement:

(A) Any expenditures for community services, capital outlay, or debt service.

(B) Any expenditures made from funds provided under Chapter 1 and Chapter 2 of Title I of the Act or Chapter 1 and Chapter 2 of the ECIA.

(b) *Failure to maintain effort.* (1) If an LEA fails to maintain effort and a waiver under § 200.42 is not granted, the SEA shall reduce the LEA's allocation of funds under this part in the exact proportion by which the LEA fails to meet 90 percent of both the combined fiscal effort per student and aggregate expenditures (using the measure most favorable to the LEA) for the second preceding fiscal year.

(2) In determining maintenance of effort for the fiscal year immediately following the fiscal year in which the LEA failed to maintain effort, the SEA shall consider the LEA's fiscal effort for the second preceding fiscal year to be no less than 90 percent of the combined fiscal effort per student or aggregate expenditures (using the measure most favorable to the LEA) for the third preceding fiscal year.

Example: In Federal fiscal year 1990, an LEA fails to maintain effort because its fiscal effort in the preceding fiscal year (1988) is less than 90 percent of its fiscal effort in the second preceding fiscal year (1987). In assessing whether the State maintained effort during the next fiscal year (1991), the SEA may consider the LEA's expenditures for the second preceding fiscal year (1988) (the year that caused the LEA's failure to maintain effort) to be no less than 90 percent of the LEA's expenditures in the prior fiscal year (1987).

(Authority: 20 U.S.C. 2728(a) (1), (2))

§ 200.42 Under what circumstances may an SEA waive the maintenance of effort requirement?

(a)(1) An SEA may waive, for one fiscal year only, the maintenance of effort requirement in § 200.41 if the SEA determines that a waiver would be equitable due to exceptional or uncontrollable circumstances. These circumstances include but are not limited to the following:

(i) A natural disaster.

(ii) A precipitous and unforeseen decline in the financial resources of the LEA.

(2) An SEA may not consider tax initiatives or referenda to be exceptional or uncontrollable circumstances.

(b)(1) If the SEA grants a waiver under paragraph (a) of this section, the SEA shall not reduce the amount of funds available under this part the LEA is otherwise entitled to receive.

(2) In determining maintenance of effort for the fiscal year immediately following the fiscal year for which the waiver was granted, the SEA shall consider the LEA's fiscal effort for the second preceding fiscal year to be no less than 90 percent of the combined fiscal effort per student or aggregate expenditures (using the measure most favorable to the LEA) for the third preceding fiscal year.

Example: In Federal fiscal year 1990, an LEA secures a waiver because its fiscal effort in the preceding year (1988) is less than 90 percent of its fiscal effort in the second preceding fiscal year (1987) due to exceptional or uncontrollable circumstances. In assessing whether the LEA maintained effort during the next fiscal year (1991), the SEA may consider the LEA's expenditures for the second preceding fiscal year (1988) (the year for which the LEA needed a waiver) to be no less than 90 percent of the LEA's expenditures in the prior fiscal year (1987).

(Authority: 20 U.S.C. 2728(a)(3))

§ 200.43 What comparability of services requirements apply to this program?

(a) Except as provided in paragraph (b) of this section and § 200.45, an LEA may receive funds under this part only if, on a districtwide or grade span basis,—

(1) The LEA uses State and local funds to provide services in project areas that, taken as a whole, are at least comparable to services being provided in school attendance areas that are not receiving funds under this part; or

(2) In the event the LEA selects all its school attendance areas as project areas, the LEA uses State and local funds to provide services that, taken as a whole, are substantially comparable in each project area.

(b) An LEA with not more than one school building for each grade span is not required to meet the comparability requirements in paragraph (a) of this section.

(c)(1) To meet the comparability requirements in paragraph (a) of this section, an LEA shall—

(i) Establish and implement—

(A) A districtwide salary schedule;

(B) A policy to ensure equivalence among schools in teachers, administrators, and auxiliary personnel; and

(C) A policy to ensure equivalence among schools in the provision of curriculum materials and instructional supplies;

(ii) Develop written procedures to ensure compliance with paragraph (a) of this section; and

(iii) Maintain annual records documenting compliance with paragraph (a) of this section.

(2) In determining compliance with paragraph (a) of this section, an LEA does not need to consider unpredictable changes in student enrollment or personnel assignments that occur after the beginning of a school year.

(d)(1) In accordance with the rulemaking requirements in § 200.70, an SEA may establish standards to ensure that an LEA's policies under paragraph (c)(1)(i) (B) through (C) of this section result in the provision of equivalent staffing, materials, and supplies among the schools of the LEA.

(2) In the absence of standards established by the SEA, an LEA shall establish standards, approved by the SEA under § 200.21(a)(3), to ensure that the policies required under paragraph (c)(1)(i) (B) through (C) of this section result in the provision of equivalent staffing, materials, and supplies among the schools of the LEA.

(e)(1) The SEA shall monitor each LEA's compliance with the comparability requirements.

(2) If an LEA is found not to be in compliance with the comparability requirements, the amount to be withheld or repaid is the amount or percentage by which the LEA failed to comply with the standards established under paragraph (d) of this section.

(Authority: 20 U.S.C. 2728(c), (d))

§ 200.44 What supplement-not-supplant requirement applies to this program?

(a) Except as provided in § 200.45(a)(1), an LEA may use funds available under this part only to supplement and, to the extent practicable, increase the level of non-Federal funds that would, in the absence of funds under this part, be made available for the education of pupils participating in Chapter 1 projects, and in no case may funds available under this part be used to supplant those non-Federal funds.

(b) To meet the requirement in paragraph (a) of this section, an LEA is not required to provide services under this part through use of a particular instructional method or in a particular instructional setting.

(Authority: 20 U.S.C. 2728(b), (d))

§ 200.45 How may an LEA exclude special State and local funds from comparability and supplement-not-supplant determinations?

(a) *General rule.* (1) For the purpose of determining compliance with the comparability requirements in § 200.43 and the supplement-not-supplant requirement in § 200.44, an LEA may exclude State and local funds spent in carrying out the following types of programs:

(i) Special State programs designed to meet the educational needs of educationally deprived children, including compensatory education for educationally deprived children, that the Secretary has determined in advance under paragraph (b) of this section meet the requirements in section 1018(d)(1)(B) of the Act.

(ii) Special local programs designed to meet the educational needs of educationally deprived children, including compensatory education for educationally deprived children, that the SEA has determined in advance under paragraph (c) of this section meet the requirements in section 1018(d)(1)(B) of the Act.

(2) For the purpose of determining compliance with the comparability requirements in § 200.43 only, an LEA may also exclude State and local funds spent in carrying out the following types of programs:

(i) Bilingual education for children of limited English proficiency.

(ii) Special education for handicapped children.

(iii) State phase-in programs that the Secretary has determined in advance under paragraph (b) of this section meet the requirements in section 1018(d)(2)(B) of the Act.

(b) *Secretarial determination regarding State programs.* (1) In order for an LEA to exclude State and local funds spent on State programs under paragraph (a) (1)(i) and (2)(iii) of this section, an SEA shall request the Secretary to make an advance determination of whether—

(i) A special State program under paragraph (a)(1)(i) of this section meets the requirements in section 1018(d)(1)(B) of the Act; or

(ii) A State phase-in program under paragraph (a)(2)(iii) of this section meets the requirements in section 1018(d)(2)(B) of the Act.

(2) Before making a determination, the Secretary requires the SEA to submit copies of the State law and implementing rules, regulations, orders guidelines, and interpretations that the Secretary may need to make the determination.

(3) The Secretary makes the determination in writing and includes the reasons for the determination.

(4) If there is any material change in the pertinent State law affecting the program, the SEA shall submit those changes to the Secretary.

(c) *SEA determination regarding local programs.* (1) In order for an LEA exclude State and local funds spent on a special local program under paragraph (a)(1)(ii) of this section, the LEA shall request the SEA to make an advance determination of whether that program meets the requirements in section 1018(d)(1)(B) of the Act.

(2) Before making a determination, the SEA shall require the LEA to submit copies of the local law and implementing rules, regulations, guidelines, and interpretations that the SEA may need to make the determination.

(3) The SEA shall make the determination in writing and include the reasons for its determination.

(4) If there is any material change in the pertinent local requirements affecting the program, the LEA shall submit those changes to the SEA.

(Authority: 20 U.S.C. 2728(b), (c), (d))

§ 200.46 What is the maximum amount of funds an LEA may carry over?

(a) *Limitation on carryover.* The amount of funds allocated to an LEA under §§ 200.22 through 200.25 that remain available for obligation for one additional year under section 412(b) of GEPA is limited to—

(1) No more than 25 percent of the funds allocated to the LEA from the Federal fiscal year 1989 appropriation (allocated to the LEA for the period July 1, 1989–September 30, 1990); and

(2) No more than 15 percent of the funds allocated to the LEA from the Federal fiscal year 1990 appropriation (allocated to the LEA for the period July 1, 1990–September 30, 1991) and each subsequent year's appropriation.

(b) *Exceptions.* (1) The percentage limitations in paragraph (a) of this section do not apply to an LEA that receives less than $50,000 under §§ 200.22 through 200.25 for any fiscal year.

(2) An SEA may grant an LEA a waiver of the percentage limitations in paragraph (a) of this section if—

(i) The SEA determines, on a one-time basis, that the LEA's request for the waiver is reasonable and necessary; or

(ii) A supplemental Chapter 1 appropriation becomes available for obligation in any fiscal year.

(Authority: 20 U.S.C. 2832(b), 1225(b); H.R. Rept. 567, 100th Cong., 2d Sess. 341 (1988) (Conf. Rept.))

§ 200.47 What is the prohibition against considering payments under this part in determining State aid?

A State may not take into consideration payments under this part in determining—

(a) The eligibility of an LEA for State aid; or

(b) The amount of State aid to be paid to an LEA for free public education.

(Authority: 20 U.S.C. 2854)

§§ 200.48 through 200.49 [Reserved]

Subpart F—What Requirements Govern Participation in the Chapter 1 LEA Program of Educationally Deprived Children in Private Schools?

General

§ 200.50 What are an LEA's responsibilities for providing Chapter 1 services to children in private schools?

(a)(1) An LEA shall provide to educationally deprived children, who reside in a project area of the LEA and who are enrolled in private elementary and secondary schools, special educational services and arrangements as will ensure those children's participation on an equitable basis in accordance with the requirements in §§ 200.50 through 200.55 and section 1017 of the Act.

(2) The LEA shall provide the opportunity to participate in a manner that is consistent with the number and special educational needs of the educationally deprived children in private schools.

(3) The LEA shall exercise administrative direction and control over funds and property made available under this part that benefit educationally deprived children in private schools.

(4)(i) Services to children enrolled in private schools must be provided by employees of a public agency or through contract by the public agency with a person, an association, agency, or corporation who or which, in the provision of those services, is independent of the private school and of any religious organization.

(ii) This employment or contract must be under the control and supervision of the public agency.

(b)(1) If an LEA allegedly fails to provide for the equitable participation of children in private schools, a parent, teacher, or other concerned individual or organization may file a complaint with the Secretary.

(2) For the purpose of this section, a complaint is a signed, written statement, including documentary evidence, alleging that an LEA has failed to meet its obligation under section 1017(a) of the Act to provide equitable services to children enrolled in private schools.

(3) The Secretary investigates a complaint and issues a letter of finding within 120 days after receipt of the complaint.

(Authority: 20 U.S.C. 2727 (a), (b); H.R. Rept. 95, 100th Cong., 1st Sess. 30 (1987))

§ 200.51 What are the requirements for consultation with private school officials?

(a) An LEA shall consult with appropriate private school officials—

(1) During all phases of the design and development of the LEA's Chapter 1 project, including consideration of—

(i) Which children will receive services;

(ii) How the children's needs will be identified;

(iii) What services will be offered;

(iv) How and where the services will be provided; and

(v) How the project will be evaluated; and

(2) Before the LEA makes any decision that affects the opportunities of eligible private school children to participate in the LEA's Chapter 1 project.

(b) The LEA shall give private school officials a genuine opportunity to express their views regarding each matter subject to the consultation requirement in paragraph (a) of this section.

(Authority: 20 U.S.C. 2727(a), 2722(c); H.R. Rept. 95, 100th Cong., 1st Sess. 30 (1987))

§ 200.52 What factors does an LEA use in determining equitable participation?

(a) *Equal expenditures.* (1) Expenditures of funds made available under this part for educational services and arrangements for educationally deprived children in private schools must be equal (taking into account the number of children to be served and the special educational needs of such children) to expenditures of funds made available under this part for children enrolled in the public schools of the LEA.

(2) Before determining equal expenditures under paragraph (a)(1) of this section, an LEA shall pay for reasonable and necessary administrative costs of providing services to public and private school children, including special capital expenses defined in § 200.57(a)(2), from the LEA's whole allocation of funds under this part.

(b) *Services on an equitable basis.* (1) The Chapter 1 services that an LEA provides for educationally deprived children in private schools must be equitable (in relation to the services provided to public school children) and must be of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational needs of the private school children to be served.

(2) Services are equitable if the LEA—

(i) Assesses, addresses, and evaluates the specific needs and educational progress of eligible private school children on the same basis as public school children;

(ii) Provides, in the aggregate, approximately the same amount of instructional time and materials for each private school child as it provides for each public school child;

(iii) Expends equal amounts on services for public and private school children in accordance with paragraph (a) of this section; and

(iv) Provides private school children with an opportunity to participate that is equitable to the opportunity provided to public school children.

(Authority: 20 U.S.C. 2727(a))

§ 200.53 What are the requirements to ensure that funds do not benefit a private school?

(a) An LEA shall use funds under this part to provide services that supplement the level of services that would, in the absence of Chapter 1 services, be available to children in private schools.

(b) An LEA shall use funds under this part to meet the special educational needs of children in a private school, but not for—

(1) The needs of the private school; or

(2) The general needs of children in the private school.

(Authority: 20 U.S.C. 2727(a), 2728(b))

§ 200.54 What are the requirements concerning equipment and supplies for the benefit of private school children?

(a) To meet the requirements of section 1017 of the Act, a public agency must keep title to and exercise continuing administrative control of all equipment and supplies that the LEA acquires with funds under this part for the benefit of educationally deprived children in private schools.

(b) The public agency may place equipment and supplies in a private school for the period of time needed for the program.

(c) The public agency shall ensure that the equipment or supplies placed in a private school—

(1) Are used only for Chapter 1 purposes; and

(2) Can be removed from the private school without remodeling the private school facility.

(d) The public agency shall remove equipment or supplies from a private school if—

(1) The equipment or supplies are no longer needed for Chapter 1 purposes; or

(2) Removal is necessary to avoid unauthorized use of the equipment or supplies for other than Chapter 1 purposes.

(e) For the purpose of this section, the term "public agency" includes the LEA.

(Authority: 20 U.S.C. 2727(a))

§ 200.55 May funds be used for construction of private school facilities?

No funds under this part may be used for repairs, minor remodeling, or construction of private school facilities.

(Authority: 20 U.S.C. 2727(a))

Capital Expenses

§ 200.56 How does a State receive a payment for capital expenses?

(a) From the amount appropriated for capital expenses under section 1017(d) of the Act, the Secretary pays a State an amount that bears the same ratio to the amount appropriated as the number of private school children in the State who were served under Chapter 1 of the ECIA during the period July 1, 1984 through June 30, 1985 bears to the total number of private school children served during that period in all States.

(b) The Secretary reallocates funds not used by a State for purposes of § 200.57 among other States on the basis of need.

(Authority: 20 U.S.C. 2727(d); H.R. Rept. 95, 100th Cong., 1st Sess. 30 (1987); H.R. Rept. 567, 100th Cong., 2d Sess. 323 (1988) (Conf. Rept.))

§ 200.57 How does an LEA receive a payment for capital expenses?

(a) (1) An LEA may apply to the SEA for a payment to cover capital expenses that the LEA, in providing equitable Chapter 1 services to eligible children in private schools,—

(i) Has paid from funds provided under Chapter 1 of the ECIA since July 1, 1985;

(ii) Is currently paying from funds provided under this part; or

(iii) Would incur because of an expected increase in the number or percentage of private school children to be served.

(2) "Capital expenses" means only expenditures for noninstrumental goods and services that are incurred as a result of implementation of alternative delivery systems to comply with the requirements of *Aguilar v. Felton.* These expenditures—

(i) Include—

(A) The purchase, lease, and renovation of real and personal property (including but not limited to mobile educational units and leasing of rental sites or space);

(B) Insurance and maintenance costs;

(C) Transportation; and

(D) Other comparable goods and services; and

(ii) Do not include the purchase of instrumental equipment such as computers.

(b) The LEA's application for payments under this section must contain—

(1) The amount, by fiscal year, of capital expenses paid from funds under this part and Chapter 1 of the ECIA since July 1, 1985;

(2) The nature of the capital expenses;

(3) An assurance that the LEA will use payments received under this section in accordance with § 200.58;

(4) An assurance that the LEA has consulted with appropriate private school officials in preparation of its application; and

(5) Any other information the SEA may need to make a determination of need under paragraph (c) of this section.

(c) An SEA shall distribute funds it receives under § 200.56 to LEAs that apply on the basis of need. In determining need, the SEA shall establish criteria such as the following:

(1) (i) The extent to which an LEA is providing Chapter 1 services to at least the same number or percentage of private school children the LEA served during the period July 1, 1984 through June 30, 1985; or

(ii) The extent to which payments under this section would be used by an LEA to increase the number or percentage of private school children served.

(2) The degree to which the quality of services an LEA is providing or would provide to private school children equals or exceeds the quality of services provided during the period July 1, 1984 through June 30, 1985.

(3) The percentage of funs the LEA has paid for capital expenses in relation to its basic Chapter 1 grant.

(Authority: 20 U.S.C. 2727(d))

§ 200.58 How does an LEA use payments for capital expenses?

(a) An LEA shall use payments received under § 200.57 for the following:

(1) To provide Chapter 1 services to benefit, to the extent possible, the children who were or are adversely affected by the LEA's expenditures for capital expenses.

(2) To cover capital expenses the LEA is incurring or will incur to increase the number or percentage of private school children being served.

(b) The LEA may not take the payment received under § 200.57 into account in meeting the requirements in § 200.52.

(Authority: 20 U.S.C. 2727 (a), (d))

§ 200.59 [Reserved]

Bypass

§ 200.60 What general requirements govern the implementation of a bypass?

(a) The Secretary implements a bypass in accordance with the procedures in 34 CFR 76.670 though 76.677 if—

(1) An LEA is prohibited by law from providing Chapter 1 services for private school children on an equitable basis; or

(2) The Secretary determines, following a complaint or an investigation, that an LEA has substantially failed to provide for the participation on an equitable basis of private school children.

(b) If the Secretary implements a bypass, the Secretary—

(1) Waives the LEA's responsibility for providing Chapter 1 services for private school children and arranges to provide the required services;

(2) Consults with appropriate public and private school officials; and

(3) Deducts the costs of the services, including any addministrative costs, from the appropriate allocations of funds provided under this part to the affected LEA and SEA.

(c) Pending the final resolution of an investigation or a complaint that could result in a bypass action, the Secretary may withhold from the allocation of the affected LEA or SEA the amount the Secretary estimates is necessary to pay the cost of the services referred to in paragraph (b) of this section.

(Authority: 20 U.S.C. 2727(b))

§§ 200.61 through 200.69 [Reserved]

Subpart G—What are Other State Responsibilities for the Chapter 1 LEA program?

§ 200.70 Does a State have authority to issue State regulations for the Chapter 1 LEA Program?

(a)(1) Except as provided in paragraph (b) of this section, Chapter 1 does not preempt, prohibit, or encourage State rules, regulations, or policies issued pursuant to State law.

(2) If a State issues rules, regulations, or policies, they may not be inconsistent with the provisions of the following:

(1) The Chapter 1 statute.

(2) The regulations in this part.

(3) Other applicable Federal statutes and regulations.

(b) A State may not issue rules, regulations, or policies that limit LEAs' decisions affecting funds received under this part regarding—

(1) Grade levels to be served;

(2) Basic skill areas to be addressed;

(3) Instructional settings, materials, or teaching techniques to be used;

(4) Instructional staff to be employed, so long as the staff meets State certification and licensing requirements for education personnel; or

(5) Other essential support services.

(c) Nothing in paragraph (b) of this section limits an SEA's—

(1) Responsibility to work jointly with LEAs, in suggesting various activities and approaches for program improvement under §§ 200.37 through 200.38; or

(2) Authority to review and approve LEAs' applications or to ensure that LEAs use Chapter 1 funds in accordance with all applicable requirements.

(d) The State shall identify any State rule, regulation, or policy relating to the administration and operation of Chapter 1 programs funded under this part, including those based on State interpretation of any Federal law, regulation, or guideline, as a State-imposed requirement.

(e)(1)(i) Except as provided in paragraph (e)(2) of this section, if a State issues rules or regulations relating to the administration and operation of Chapter 1 programs funded under this part, a State committee of practitioners shall review before publication—

(A) Any proposed rule or regulation if one is required by State law; or

(B) Any final rule or regulation if a proposed rule or regulation is not required by State law.

(ii) The State is encouraged to convene the committee of practitioners for the purpose of the review required under paragraph (e)(1)(i) of this section.

(2) In an emergency situation in which a rule or regulation must be issued within a limited time, the State—

(i) May issue a regulation without the prior consultation required in paragraph (e)(1) of this section; and

(ii) Shall immediately convene a committee of practitioners to review the emergency regulation prior to issuance in final form.

(3)(i) The committee of practitioners must include—

(A) Administrators;

(B) Teachers;

(C) Parents;

(D) Members of local boards of education; and

(E) Representatives of private school children.

(ii) A majority of the committee must be representatives of LEAs.

(4) SEAs are encouraged to request from appropriate organizations recommendations for membership on the committee.

(Authority: 20 U.S.C. 2851; H.R. Rept. 96, 100th Cong., 1st Sess. 34 (1987))

§ 200.71 How may State personnel paid with funds available under this part be assigned to State programs?

(a) As provided in paragraph (b) of this section, an SEA may use funds received under § 200.73(a) to pay the salary costs for any employee assigned to programs funded under this part and special State programs that meet the requirements of § 200.45 (a)(1)(i) and (a)(2).

(b) Salary costs are allowable charges to funds received under § 200.73(a)(1) if the following conditions are met:

(1) An employee's assignments are related to the SEA's administrative, training, and technical assistance responsibilities under the programs.

(2) The SEA maintains contemporaneous time distribution records reflecting the actual amount of time the employee spends on the programs.

(3) The time distribution records are signed by the employee's supervisor.

(4) Actual costs are charged to the programs on the basis of the employee's time distribution records.

(Authority: 20 U.S.C. 2728(d), 2853; H.R. Rept. 95, 100th Cong., 1st Sess. 34 (1987))

§ 200.72 What complaint procedures must an SEA adopt?

(a) *Definition of a complaint.* For the purpose of this section, a complaint is a signed, written statement that includes—

(1) An allegation that a requirement applicable to the Chapter 1 LEA Program has been violated; and

(2) Information that supports the allegation.

(b) *Who may complain.* Any parent, teacher, or other concerned individual or organization may file a complaint.

(c) *Where to file.* (1) Unless a complaint meets the standards for a direct complaint to the SEA under paragraph (d)(2)(iii) of this section, a complaint must be filed initially with the appropriate LEA.

(2) A complainant who is dissatisfied with the initial decision of the LEA may file an appeal with the SEA.

(d) *Procedures for complaint resolution.* (1) An SEA shall develop and implement written procedures to govern—

(i) Investigation and resolution of complaints by an LEA;

(ii) Review by the SEA of appeals of complaints resolved by an LEA; and

(iii) Investigation and resolution of direct complaints filed with the SEA.

(2) The procedures required under paragraph (d)(1) of this section must include—

(i) Specific time limits for investigation and resolution of complaints by an LEA;

(ii) Specific time limits for resolution of direct complaints and appeals by the SEA; and

(iii) Standards for—

(A) Accepting direct complaints under paragraph (d)(1)(iii) of this section; or

(B) Referring a direct complaint to the appropriate LEA for resolution.

(Authority: 20 U.S.C. 2831(a); H.R. Rept. 567, 100th Cong., 2d Sess. 341 (1988) (Conf. Rept.))

§ 200.73 What funds are available for an SEA to carry out its responsibilities?

(a) *Funds for State administration.* (1) Except for programs under Part C of Chapter 1 and as provided in paragraph (a)(2) of this section, an SEA shall use funds received under section 1404(a) of the Act for the proper and efficient performance of its duties under Chapter 1.

(2) The SEA may not use more than 15 percent of the funds referred to in paragraph (a)(1) of this section for indirect costs.

(b) *Funds for implementing school improvement programs.* (1) An SEA shall use funds made available under section 1405 of the Act for direct educational services in schools implementing program improvement plans under § 200.38(b).

(2) Parents of participating children, school staff, the LEA, and the SEA shall jointly agree to the selection of providers of technical assistance and the best use of funds available under paragraph (b)(1) of this section, which may include assistance from—

(i) An institution of higher education;

(ii) A federally supported educational laboratory or center;

(iii) State personnel with expertise in educational improvement;

(iv) Locally, State, or nationally based consultants; and

(v) Other providers of the specific services required by a school's program improvement plan.

(3) The SEA may not use the funds referred to in paragraph (b)(1) of this section for State administration.

(Authority: 20 U.S.C. 2824, 2825)

§§ 200.74 through 200.79 [Reserved]

Subpart H—What Are the National Evaluation Standards?

Evaluation by an LEA

§ 200.80 How does an LEA evaluate student achievement?

(a) An LEA shall evaluate student achievement under § 200.35(a)(1)(ii) by—

(1) Assessing (i) the Chapter 1 children's achievement in reading, mathematics, and language arts, not including projects designed to teach English to limited English speaking children, in grades 2 through 12, as appropriate, after receiving Chapter 1 services, compared to (ii) an estimate of what their achievement would have been in the absence of Chapter 1 services; and

(2) With regard to more advanced skills, assessing the progress of Chapter 1 children as measured by—

(i)(A) The "comprehension" score of a nationally normed reading test; and

(B) The "problems and applications" score of a nationally normed mathematics test; or

(ii) A test without national norms if—

(A) It is the instrument used for other required achievement reporting under this part;

(B) It provides an appropriate "comprehension" and "problems and applications" score; and

(C) The LEA meets the conditions in § 200.82(b)(ii).

(b)(1) The LEA shall measure student achievement under paragraph (a) of this section over a period of approximately 12 months.

(2) The LEA shall report on either a spring-to-spring testing interval or a fall-to-fall testing interval.

(c)(1) At least once during the three-year evaluation period required under § 200.35(a), the LEA shall collect

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additional information to determine whether student achievement gains are sustained over a period of more than 12 months (see § 200.35(a)(2)).

(2) The LEA shall report this information on either a spring-spring-spring testing interval or a fall-fall-fall testing interval.

(d) In estimating expected performance under paragraph (a)(1)(ii) of this section and elsewhere in this subpart, the LEA shall use the performance of children in a norm sample developed locally, by the SEA, or by a test publisher.

(e) Any test instrument used by the LEA under this subpart must be the current edition or the immediately previous edition.

(Authority: 20 U.S.C. 2729 (a), (c), 2835; H.R. Rept. 567, 100th Cong., 2d Sess. 324 (1988) (Conf. Rept.))

§ 200.81 What technical standards does an LEA apply in evaluating student achievement?

An LEA shall ensure that its procedures for evaluating the achievement of children in programs under this part are consistent with the following technical standards:

(a) Representativeness of evaluation findings.

(b) Reliability and validity of evaluation instruments and procedures.

(c) Valid assessment of achievement gains.

(d) Quality control mechanisms to minimize error in evaluation procedures.

(Authority: 20 U.S.C. 2729(a), 2835)

§ 200.82 What procedures does an LEA use in evaluating student achievement?

Unless it is using approved alternative procedures under § 200.83, an LEA shall use the following procedures to evaluate student achievement in each Chapter 1 project funded under this part that provides instructional services in reading, language arts, or mathematics in grades 2 through 12 during the regular school year:

(a) The LEA shall administer a pretest and a posttest separated by approximately 12 months.

(b) The LEA may use a test with or without national norms as follows:

(1) If the LEA uses a test with national norms, the LEA shall administer the test within the appropriate range of the test publisher's norming dates.

(2) If the LEA uses a test without national norms, the LEA shall adhere to technical requirements for equating this test with a nationally normed test as specified by the Title I Evaluation and Reporting System or other valid methods accepted by the Secretary.

(Authority: 20 U.S.C. 2729(a), 2835)

§ 200.83 What alternative procedures may an LEA use?

(a) An LEA may use alternative procedures to those in § 200.82 for evaluating student achievement if, before using the alternative procedures, the LEA obtains the approval of, first, the SEA and, then, the Secretary.

(b) In order for the SEA and the Secretary to approve alternative procedures, the LEA shall demonstrate that the procedures—

(1) Yield a valid and reliable measure of—

(i) The Chapter 1 children's performance in reading, language arts, or mathematics; and

(ii) The children's expected performance; and

(2) Produce results that can be expressed in the common reporting scale established by the Secretary for SEA reporting.

(Authority: 20 U.S.C. 2729(a), 2835)

§ 200.84 How does an LEA report the results of student achievement to the SEA?

(a)(1) In reporting the results of student achievement evaluated under §§ 200.80 through 200.83, an LEA shall use—

(i) The common reporting scale established by the Secretary for SEA reporting; or

(ii) Another form of local reporting approved by the SEA.

(2) If the SEA approves another form of reporting, the LEA shall include sufficient information to enable the SEA to convert the achievement results to the common reporting scale.

(b) Unless requested by the SEA, the LEA is not required to include in its evaluation report the results of the long-term evaluation required under § 200.80(c).

(Authority: 20 U.S.C. 2729(a), 2835)

Evaluation by an SEA

§ 200.85 What technical standards does an SEA use in conducting its evaluation?

In conducting its evaluation under § 200.35(b), an SEA shall use technical standards that are commensurate with and appropriately reinforce those required of LEAs in § 200.81.

(Authority: 20 U.S.C. 2729(b), 2835)

§ 200.86 What requirements govern an SEA sampling plan?

(a) If the SEA wishes to use sampling in its evaluation of programs conducted under this part, the SEA shall submit, for prior approval by the Secretary, a proposed sampling plan designed to ensure that evaluations will be conducted in a representative sample of its LEAs in any school year.

(b) The Secretary approves a sampling plan that will provide reliable and representative data under this subpart.

(c)(1) The SEA shall review its sampling plan at least once every three years.

(2) If, based on this review or other circumstances, the sampling plan requires changes, the SEA shall request reapproval of the plan by the Secretary.

(Authority: 20 U.S.C. 2835; H.R. Rept. 567, 100th Cong., 2d Sess. 324 (1988) (Conf. Rept.))

§ 200.87 How does an SEA aggregate LEA student achievement data for inclusion in its evaluation?

(a) An SEA shall include, for all LEAs, or a sample of LEAs if a sampling plan has been approved by the Secretary, the following information in its evaluation:

(1) A statewide average of student achievement gains resulting from participation in Chapter 1 projects under this part reported for—

(i) Each participating grade level from 2 through 12; and

(ii) Each of the following subjects: reading, mathematics, and language arts.

(2) A statewide average of progress students are making in more advanced skills, separately for reading and mathematics.

(3) Additional data specified by the Secretary.

(4) If applicable—

(i) The number of students excluded from the evaluation because of erroneous or missing data; and

(ii) The reasons for the exclusion.

(b) The SEA shall—

(1) Report student achievement gains on either a spring-to-spring or fall-to-fall basis; and

(2) Express each statewide average achievement gain in the common reporting scale established by the Secretary.

(Authority: 20 U.S.C. 2729(b), 2835)

Allowable and Nonallowable Costs

§ 200.88 For what evaluation activities may an LEA or SEA use funds available under this part?

(a) An LEA or SEA may use funds made available under this part for any of the following evaluation activities:

(1) Identifying specific strengths and weaknesses of a project.

(2) Determining the results of a project.

(3) Disseminating the results of Chapter 1 evaluations.

(b) In addition to the requirement concerning the supplementary nature of funds available under this part in § 200.44 and other rules governing the allowability of Chapter 1 expenditures, the provisions of paragraph (c) of this section apply to the use of funds available under this part to support the purchase, administration, scoring, and analysis of evaluation instruments.

(c) Except for cases in which data meeting these needs are already available, the LEA or SEA may use funds available under this part for any of the following:

(1) Testing Chapter 1 participants for evaluation purposes only.

(2) In order to permit the LEA or SEA to convert its evaluation results to the common scale, administering a nationally normed test to all, or a representative sample of, the Chapter 1 participants if the LEA or SEA has used a test without national norms for evaluation purposes.

(3) Testing an appropriate number of children no longer receiving Chapter 1 services to determine whether achievement gains are sustained over a period of more than 12 months (see § 200.35(a)(2)).

(Authority: 20 U.S.C. 2721(a), 2728(b), 2729(a), 2835)

§ 200.89 For what evaluation activities may an LEA or SEA not use funds available under this part?

An LEA or SEA may not use funds available under this part for any of the following evaluation activities:

(a) General districtwide or statewide testing programs.

(b) Establishing local or State norms.

(c) Test development activities.

(Authority: 20 U.S.C. 2721(a), 2728(b))

PART 75—DIRECT GRANT PROGRAMS

2. The authority citation for Part 75 continues to read as follows:

Authority: 20 U.S.C. 1221e-3(a)(1), unless otherwise noted.

3. A new § 75.910 is added to read as follows:

§ 75.910 Cooperation with audits.

A grantee shall cooperate with the Secretary and the Comptroller General of the United States or any of their authorized representatives in the conduct of audits authorized by Federal law. This cooperation includes access without unreasonable restrictions to records and personnel of the grantee for the purpose of obtaining relevant information.

(Authority: 5 U.S.C. App. 4(a)(1); 20 U.S.C. 1221e-3(a)(1), 1232f)

PART 76—STATE-ADMINISTERED PROGRAMS

4. The authority citation for Part 76 continues to read as follows:

Authority: 20 U.S.C. 1221e-3(a)(1), unless otherwise noted.

5. Section 76.401 is amended by adding, as the first item in the chart in paragraph (a), an entry to read as follows:

§ 76.401 Disapproval of an application—opportunity for a hearing.

(a) * * *

Chapter 1 Program in Local Educational Agencies.	Chapter 1, Title I, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2701 et seq.)	200

6. A new subheading "Procedures for Bypass" containing §§ 76.670 through 76.677 is added to Subpart F to read as follows:

Procedures for Bypass

§ 76.670 Applicability.

The regulations in §§ 76.671 through 76.677 apply to the following programs under which the Secretary is authorized to waive the requirements for providing services to private school children and to implement a bypass:

CFDA No. and name of program	Authorizing statute	Implementing regulations Title 34 CFR Part
84.010 Chapter 1 Program in Local Educational Agencies.	Chapter 1, Title I, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2701 et seq.)	200
84.151 Federal, State, and Local Partnership for Educational Improvement.	Chapter 2, Title I, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2911–2952, 2971–2976)	298
84.184 Mathematics and Science Education.	Title II, Part A, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 3191–3197)	208
84.186 State and Local Programs.	Part B, Drug Free Schools and Communities Act of 1986 (20 U.S.C. 3191–3197)	

(Authority: 20 U.S.C. 2727(b), 2972(d)–(e), 2990(c), 3223(c))

§ 76.671 Notice by the Secretary.

(a) Before taking any final action to implement a bypass under a program listed in § 76.670, the Secretary provides the affected grantee and subgrantee, if appropriate, with written notice.

(b) In the written notice, the Secretary—

(1) States the reasons for the proposed bypass in sufficient detail to allow the grantee and subgrantee to respond;

(2) Cites the requirement that is the basis for the alleged failure to comply; and

(3) Advises the grantee and subgrantee that they—

(i) Have at least 45 days after receiving the written notice to submit written objections to the proposed bypass; and

(ii) May request in writing the opportunity for a hearing to show cause why the bypass should not be implemented.

(c) The Secretary sends the notice to the grantee and subgrantee by certified mail with return receipt requested.

(Authority: 20 U.S.C. 2727(b)(4)(A), 2972(h)(1), 2990(c), 3223(c))

§ 76.672 Bypass procedures.

Sections 76.673 through 76.675 contain the procedures that the Secretary uses in conducting a show cause hearing. The hearing officer may modify the procedures for a particular case if all parties agree the modification is appropriate.

(Authority: 20 U.S.C. 2727(b)(4)(A), 2972(h)(1), 2990(c), 3223(c))

§ 76.673 Appointment and functions of a hearing officer.

(a) If a grantee or subgrantee requests a hearing to show cause why the Secretary should not implement a bypass, the Secretary appoints a hearing officer and notifies appropriate representatives of the affected private school children that they may participate in the hearing.

(b) The hearing officer has no authority to require or conduct discovery or to rule on the validity of any statute or regulation.

(c) The hearing officer notifies the grantee, subgrantee, and representatives of the private school children of the time and place of the hearing.

(Authority: 20 U.S.C. 2727(b)(4)(A), 2972(h)(1), 2990(c), 3223(c))

§ 76.674 Hearing procedures.

(a) The following procedures apply to a show cause hearing regarding implementation of a bypass:

(1) The hearing officer arranges for a transcript to be taken.

(2) The grantee, subgrantee, and representatives of the private school children each may—

(i) Be represented by legal counsel;

(ii) Submit oral or written evidence and arguments at the hearing.

(b) Within 10 days after the hearing, the hearing officer—

(1) Indicates that a decision will be issued on the basis of the existing record; or

(2) Requests further information from the grantee, subgrantee, representatives of the private school children, or Department officials.

(Authority: 20 U.S.C. 2727(b)(4)(A), 2972(h)(1), 2990(c), 3223(c))

§ 76.675 Posthearing procedures.

(a)(1) Within 120 days after the record of a show cause hearing is closed, the hearing officer issues a written decision on whether a bypass should be implemented.

(2) The hearing officer sends copies of the decision to the grantee, subgrantee, representatives of the private school children, and the Secretary.

(b) Within 30 days after receiving the hearing officer's decision, the grantee, subgrantee, and representatives of the private school children may each submit to the Secretary written comments on the decision.

(c) The Secretary may adopt, reverse, modify, or remand the hearing officer's decision.

(Authority: 20 U.S.C. 2727(b)(4)(A), 2972(h)(1), 2990(c), 3223(c))

§ 76.676 Judicial review of a bypass action.

If a grantee or subgrantee is dissatisfied with the Secretary's final action after a proceeding under §§ 76.672 through 76.675, it may, within 60 days after receiving notice of that action, file a petition for review with the United States Court of Appeals for the circuit in which the State is located.

(Authority: 20 U.S.C. 2727(b)(4)(B)–(D), 2972(h)(2)–(4), 2990(c), 3223(c))

§ 76.677 Continuation of a bypass.

The Secretary continues a bypass until the Secretary determines that the grantee or subgrantee will meet the requirements for providing services to private school children.

(Authority: 20 U.S.C. 2727(b)(3)(D), 2972(f), 1221e–3(a)(1)) 7. A new § 76.910 is added to read as follows:

§ 76.910 Cooperation with audits.

A grantee or subgrantee shall cooperate with the Secretary and the Comptroller General of the United States or any of their authorized representatives in the conduct of audits authorized by Federal law. This cooperation includes access without unreasonable restrictions to records and personnel of the grantee or subgrantee for the purpose of obtaining relevant information.

(Authority: 5 U.S.C. App. 4(a)(1); 20 U.S.C. 1221e–3(a)(1), 1232f)

PART 78—EDUCATION APPEAL BOARD

8. The authority citation for Part 78 is revised to read as follows:

Authority: 20 U.S.C. 1234–1234c (Supp. IV 1986), unless otherwise noted.

§ 78.2 [Amended]

9. Section 78.2 is amended by removing the paragraph designation for paragraph (a), removing paragraph (b), and redesignating paragraphs (a)(1), (a)(2), (a)(3), (a)(4), (a)(4)(i), (a)(4)(ii), (a)(4)(iii), and (a)(5) as paragraphs (a), (b), (c), (d), (d)(1), (d)(2), (d)(3), and (e), respectively.

§ 78.3 [Amended]

10. Section 78.3 is amended by removing "§ 78.2(a)(4)" in paragraph (c) of the definition of "Appellant" and adding, in its place, "§ 78.2(d)", and by removing "§ 78.2(a)(4)" in paragraph (b)(2) of the definition of "Party" and adding, in its place, "§ 78.2(d)".

§ 78.6 [Amended]

11. Section 78.6 is amended by removing the paragraph designation for paragraph (a), removing paragraph (b), and redesignating paragraphs (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), and (a)(7), as paragraphs (a), (b), (c), (d), (e), (f), and (g), respectively.

§ 78.21 [Amended]

12. Section 78.21 is amended by removing "(a)(4) through (a)(6)" in paragraph (a)(2) and adding, in its place, "(d) through (f)".

§ 78.22 [Amended]

13. Section 78.22 is amended by removing "(a)(4) through (a)(6)" in paragraph (a) and adding, in its place, "(d) through (f)".

§ 78.42 [Amended]

14. Section 78.42 is amended by removing paragraph (c).

PART 204—[REMOVED]

15. Part 204 is removed.

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October 21, 1988

Part IV

Department of Labor

Employment Standards Administration, Wage and Hour Division

29 CFR Part 801

Application of the Employee Polygraph Protection Act of 1988; Final Rule

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DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

29 CFR Part 801

Application of the Employee Polygraph Protection Act of 1988

AGENCY: Wage and Hour Division, ESA, Labor.

ACTION: Interim final rule; request for comments.

SUMMARY: This document provides interim final regulations for the implementation of the Employee Polygraph Protection Act of 1988, which was signed into law June 27, 1988, and is effective December 27, 1988.

The purpose of the regulations is to provide protection for most private-sector employees from lie detector testing, either pre-employment or during the course of employment, with certain limited exceptions.

DATES: *Effective Date:* The interim final rule is effective December 27, 1988. Any covered employer, not otherwise exempt, who wishes to use a lie detector test after that date will be subject to this interim final rule.

Comments: Comments are due on or before February 27, 1989.

ADDRESSES: Submit written comments (preferably in triplicate) to Paula V. Smith, Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue NW., Washington, DC 20210. Commenters who wish to receive notification of receipt of comments are requested to include a self-addressed stamped post card.

FOR FURTHER INFORMATION CONTACT: Paula V. Smith, Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523-8305. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Background

On June 27, 1988, the Employee Polygraph Protection Act of 1988 (EPPA or the Act) was enacted into law. EPPA prohibits most private employers (Federal, State and local government employers are exempted from the Act) from using any lie detector tests either for pre-employment screening or during the course of employment. In addition, testing by the Federal Government of experts, consultants, or employees of Federal contractors engaged in national security intelligence or counterintelligence functions is permitted. The law contains several limited exemptions which authorize polygraph tests under certain conditions, including: (1) The testing of employees who are reasonably suspected of involvement in a workplace incident that results in economic loss or injury to the employer's business; (2) the testing of some prospective employees of private armored car, security alarm, and security guard firms; and (3) the testing of some current and prospective employees in firms authorized to manufacture, distribute, or dispense controlled substances. Employers who violate any of the Act's provisions may be assessed civil money penalties up to $10,000.

While the law provides for an effective date six months from the date of enactment, it also provides that the Secretary of Labor issue appropriate regulations "not later than 90 days after the date of enactment." Given the constraints of time and the statutory mandate to issue final regulations within 90 days of enactment, the Department of Labor is publishing this final rule on an interim basis, simultaneously inviting comments from interested parties. After review of the comments, the Department will either issue a proposal or a final regulation, based on the comments received.

II. Paperwork Reduction Act

Recordkeeping requirements contained in the regulation (§ 801.30) are being submitted to the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) for review.

Public reporting burden for this collection of information is estimated to average as follows: 1. (A) Written Notice to Examinee of Polygraph Testing—5 minutes per response; (B) Additional Information in Notice to Examinee of Polygraph Testing for Ongoing Investigations—½ hour per response; 2. Written Notice to Polygraph Examiner Identifying Persons to be Examined—5 minutes per response; 3. Written Notice of Test Results to Examinee Prior to Adverse Action—1 minute per response; 4. Record of number of tests conducted daily and length of each test—½ minute per response; 5. Maintenance of test record—1 minute per response; (see 29 CFR 801.30), including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Information Management, U.S. Department of Labor, Room N-1301, 200 Constitution Avenue NW., Washington, DC 20210; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

III. Summary of Rule

The regulations in this Part are divided into six subparts. Subpart A contains the provisions generally applicable to covered employers, including the requirements relating to the prohibitions on lie detector use and the posting of notices. Subpart A also sets forth interpretations regarding the effect of section 10 of the Act on other laws or collective bargaining agreements. Subpart B sets forth rules regarding the statutory exemptions from application of the Act. Subpart C sets forth the restrictions on polygraph usage under such exemptions. Subpart D sets forth the recordkeeping requirements and the rules on disclosure of polygraph test information. Subpart E deals with the authority of the Secretary of Labor and the enforcement provisions under the Act. Subpart F contains the procedures and rules of practice necessary for the administrative enforcement of the Act.

The Department met informally with outside parties who provided background information with respect to the preparation of this rule. Included in such meetings were representatives of security service companies and related trade associations; representatives of retail trade associations; representatives of the polygraph industry; and representatives of trade associations involved with controlled substances. Meetings were also held with officials of the Drug Enforcement Administration and the Department of Defense.

In developing this rule, a number of issues have been identified and explored. The Department has tentatively resolved these issues as described below, and it particularly invites comments on the following issues:

(1) The legislative intent as to the scope of the security service industry exemption is not entirely clear on the treatment of employees hired to install alarms in or guard commercial or retail establishments and residences. We have tentatively concluded that the section 7(e)(1)(B) exemption does not apply to security guard or security alarm firms protecting private homes or businesses not primarily engaged in the handling,

trading, transferring, or storing of the assets enumerated in the statute. There is an argument, however, that the exemption should be interpreted more broadly, so as to include such employees. If the exemption were so interpreted, it appears that virtually all employees in this industry would be subject to pre-employment polygraph tests. Such an interpretation is not easily reconciled with the language of the statute itself, which identifies specific types of security work as included within the exemption. Comment is specifically invited on the scope of the exemption as provided in § 801.14.

(2) The Congress specifically directed the Department to develop regulations which would list the types of "facilities, materials, or operations" having a significant impact on the health or safety of any State or political subdivision or the national security. It is evident the legislative intent was to protect the safety and health of the general public. The Department has listed a number of such "facilities, materials, or operations" in § 801.14(i). Comments are specifically requested on the scope of this list.

(3) The rule broadly interprets the term "prospective employee" for purposes of the security service and controlled substance exemptions. In particular, current employees of the employer, who were initially hired to perform duties which do not fall within the scope of the exemptions (and who, therefore, are not subject to pre-employment polygraph tests), could be tested as "prospective employees" the first time (only) they are re-assigned or promoted to a position with duties that do fall within the scope of the exemptions. We have found no pertinent legislative history on this issue. We believe, however, that some latitude is necessary in the definition of "prospective employee" for purposes of the exemption, so that current employees of an employer will not be unfairly disadvantaged, with respect to non-employees, in competition for positions which may be subject to the exemption. We believe that this construction, contained in §§ 801.13(d) and 801.14(b), is reasonable, given the realities of the workplace.

(4) Except as noted above, the rule makes no allowances for pre-employment testing to be conducted after an applicant is initially hired by an employer. It has been suggested that there are situations in which it is not feasible or practical to conduct the test prior to the actual hiring date and that it would be consistent with the purposes of the Act to permit testing subsequent to hiring in some circumstances. Comment is invited on the question whether it would be consistent with the Act to permit such testing. If so, under what circumstances, and what would be a reasonable period (e.g., one day, one week, one month) subsequent to hiring in which such testing should be permitted?

(5) The rule interprets the terms "direct access" and "access" differently for purposes of the controlled substance exemption (§ 801.13). This, "direct access", which is one of the elements necessary for pre-employment testing, is more narrowly defined than "access", an element required for testing of current employees during an ongoing investigation. In the latter case, however, the "access" must be to the specific person or property that is the subject of the investigation. The Department believes this interpretation is consistent with the statute and legislative history.

(6) The legislative history of the Act indicates Congress' intention that the controlled substance exemption not be applicable to truck drivers and that the exemption extend only to persons or entities registered with the Drug Enforcement Administration. The Controlled Substances Act exempts from registration requirements comon or contract carriers and warehouses whose possession of a controlled substance is in the usual course of their business. Accordingly, § 801.13(b)(2) excludes employees of common or contract carriers or public warehouses from this exemption.

(7) Inventory shortages are common throughout many industries. Section 801.12 is intended to preclude the mere existence of an inventory shortage, in and of itself, from being a basis for testing of current employees since it does not meet the specific incident requirement of the exemption. Are the safeguards in the rule sufficient to prevent the random testing of employees, or classes of employees, on a routine or regular basis?

(8) The Act provides several examples of events which would constitute an economic loss or injury for purposes of the ongoing investigation exemption, including theft, embezzlement, and sabotage. Section 801.12 adds other examples, including check-kiting and money-laundering, which were contained in the legislative history. Comment is invited on the question whether there are other examples, or other classes of activity, which should be included in the scope of "economic loss" for purposes of this exemption.

(9) Section 801.14 defines the statutory term "primary business purpose" to mean the activity from which 50 percent or more of the employer's business income is derived. Thus, at least 50 percent of an employer's annual dollar volume of business must be derived from the types of security activities within the scope of the exemption in order for the exemption to apply. Would some alternative definition of "primary business purpose" better effectuate the statutory scheme, or be more workable?

(10) The Act requires that individuals must be given "reasonable written notice" of the date, time, location and other information about a polygraph test. Sections 801.12(g)(2) and 801(c)(1)(A) define "reasonable" as at least 48 hours prior to the examination. Should some other minimum time frame be used to define "reasonable", and if so, why?

Executive Order 12291

This rule is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign enterprises in domesic or export markets. Therefore no regulatory impact analysis is required.

The Department's determination that the regulation is not subject to a regulatory impact analysis is based on the following:

(a) The Congressional Budget Office estimated the cost for EPPA to be $1 million to the Federal Government and that EPPA will have no impact on State and local governments.

(b) Further, the legislative history on EPPA shows a lack of any evidence that internal theft rates are higher in States which prohibit the use of polygraph tests. Also, there are no conclusive studies which show that polygraph testing reduces employee crime.

(c) Section 7 of EPPA permits certain employers to continue to conduct polygraph testing and permits all employers to request an employee to take a test, under certain conditions, when it is administered as part of an ongoing investigation. Consequently, any economic costs due to increased theft attributable to the absence of polygraph testing will be minimized.

(d) The net employment effect of EPPA will not be significant. As

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employers turn to different hiring procedures and screening techniques, employment gains in the occupations associated with these alternative hiring procedures will offset any employment loss in the polygraph testing field.

Preliminary Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 requires agencies to prepare regulatory flexibility analyses, and to develop alternatives whenever possible, in drafting regulations that will have "a significant economic impact on a substantial number of small entities." The following analysis assesses the impact of these regulations on small entities required by the Act.

(1) Reasons Why Action by Agency Is Being Considered

On June 27, 1988 the Employee Polygraph Protection Act of 1988 was enacted into law. This Act, which is effective December 27, 1988, generally prevents employers engaged in interstate commerce from using any lie detector tests, with certain exemptions, either for pre-employment screening or during the course of employment. Section 5 of the Act requires the Secretary of Labor to promulgate such rules and regulations as may be necessary to carry out the Act. This interim final rule is being issued to implement the Act.

(2) Objectives of and Legal Basis for Rule

This interim final rule is issued pursuant to section 5 of the Employee Polygraph Protection Act of 1988. Its objective is to enable employers and polygraph examiners to comply with the requirements of the Act, and to advise employees and job applicants of the protections afforded by the Act.

(3) Number of Small Entities Covered Under Rule

This interim final rule is applicable to all private sector employers engaged in or affecting "commerce" or in the production of goods for "commerce". The scope of the term "commerce" is accorded the same meaning as provided by section 3(b) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(b)). Approximately 6.5 million employers are covered by these regulations, and the majority of such employers would be classified as small entities. In addition, these regulations contain provisions applying to over 3,500 polygraph examiners and an undetermined number of others who administer lie detector-type tests, most of which are prohibited by the Act. It is estimated that nearly all of these examiners are either individual practitioners or associated with firms that would be classified as small entities.

(4) Reporting, Recordkeeping and Other Compliance Requirements of the Rule

The interim final rule establishes recordkeeping requirements for employers with respect to the maintenance and preservation of records for each polygraph test administered, as well as for each polygraph examiner who administers such tests on behalf of employers.

(5) Relevant Federal Rules Duplicating, Overlapping or Conflicting With the Rule

There is no duplication of existing Wage-Hour requirements, nor is similar information required by any other Federal agency or statute.

(6) Differing Compliance and Recordkeeping Requirements

The language sets forth in this interim final regulation closely adheres to the requirements imposed by the language of the Act and accompanying legislative history. The burdens imposed by these requirements on employers, and the polygraph examiners used by employers, are those imposed by statute, and those necessary to enforce the statute.

However, in developing this interim final rule, consideration was given to requiring a standard form for written statements which employers must provide to examinees, in certain instances, as a condition for administering polygraph tests under the several exemptions to the Act's general prohibition of such tests. For example, an employer is required to furnish an employee with a written statement setting the employee's rights under the law, prior to administering a polygraph test. It was concluded that employers, especially small entities, should have the flexibility to formulate and maintain such required written statements in any order or form deemed most appropriate to their needs, and that standard formats would not be required. However, to assist such employers, a sample format is set forth in the Appendix to this Part.

(7) Clarification, Consolidation and Simplification of Compliance and Reporting Requirements

As noted above, the recordkeeping requirements in this interim final rule are those imposed by statute, and those necessary to determine compliance with the Act. Employers are permitted to use any format that meets enforcement and compliance needs.

(8) Use of Other Standards

Appropriate alternative standards that would impose fewer regulatory burdens on covered employers, especially small entities, are not available.

(9) Exemptions of Small Entities from Coverage of the Rule

An exemption from the requirements of the interim final rule for small entities is not permitted by the provisions of the Act.

Publication as an Interim Final Rule

Request for Comments

The Secretary has determined that the public interest requires the immediate issuance of these interim final regulations in order to comply with the statutory requirement that regulations be issued well in advance of the effective date of the Act. Insufficient time existed since the enactment of the EPPA for the Department to issue an in-depth proposal for comments, review the comments, and promulgate a final rule in the time provided by the Act.

The failure to have this rule in place substantially in advance of the effective date of the Act (December 27, 1988) would lead to unnecessary, unwarranted and potentially costly uncertainty on the part of affected employers, employees, job applicants, and polygraph examiners, concerning the scope of the statutory coverage and of the exemptions thereunder and concerning their rights and obligations under the Act.

Accordingly, the Secretary finds good cause, pursuant to 5 U.S.C. 553(b)(3)(B), that prior notice and public comment are impracticable and contrary to the public interest. However, interested persons are invited to submit comments on this regulation by February 27, 1989. Following evaluation of the comments received, a proposed rule or a final regulation, modified as necessary, will be published.

This document was prepared under the direction and control of Paula V. Smith, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 801

Employment, Investigations, Labor, Law enforcement.

Signed at Washington, DC, on this 18th day of October 1988.

Ann McLaughlin,

Secretary of Labor.

Fred W. Alvarez,

Assistant Secretary for Employment Standards.

Paula V. Smith,

Administrator, Wage and Hour Division.

Accordingly, Title 29, Chapter V, of the Code of Federal Regulations is amended by adding a new Subchapter C consisting of Part 801 to read as follows.

SUBCHAPTER C—OTHER LAWS

PART 801—APPLICATION OF THE EMPLOYEE POLYGRAPH PROTECTION ACT OF 1988

Subpart A—General

Sec.
801.1 Purpose and scope.
801.2 Definitions.
801.3 Coverage.
801.4 Prohibitions on lie detector use.
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801.7 Authority of the Secretary.

Subpart B—Exemptions

801.10 Exclusion for public sector employers.
801.11 Exemption for national defense and security.
801.12 Exemption for employers conducting investigations of economic loss or injury.
801.13 Exemption for employers authorized to manufacture, distribute, or dispense controlled substances.
801.14 Exemption for employers providing security services.

Subpart C—Restrictions on Polygraph Usage Under Exemptions

801.20 Adverse employment action under ongoing investigation exemption.
801.21 Adverse employment action under security service and controlled substance exemptions.
801.22 Rights of examinee.
801.23 Qualifications of and requirements for examiners.

Subpart D—Recordkeeping and Disclosure Requirements

801.30 Records to be preserved for 3 years.
801.35 Disclosure of test information.

Subpart E—Enforcement

801.40 General.
801.41 Representation of the Secretary.
801.42 Civil money penalties—assessment.
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Subpart F—Administrative Proceedings

Coverage

801.50 Applicability of procedures and rules.

Procedures Relating to Hearing

801.51 Written notice of determination required.
801.52 Contents of notice.
801.53 Request for hearing.

Rules of Practice

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801.60 Commencement of proceeding.
801.61 Designation of record.
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Referral for Hearing

801.63 Referral to Administrative Law Judge.
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Procedures Before Administrative Law Judge

801.65 Appearances; representation of the Department of Labor.
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Modification or Vacation of Decision and Order of Administrative Law Judge

801.68 Authority of the Secretary.
801.69 Procedures for initiating review.
801.70 Implementation by the Secretary.
801.71 Filing and service.
801.72 Responsibility of the Office of Administrative Law Judges.
801.73 Final decision of the Secretary.

Record

801.74 Retention of official record.
801.75 Certification of official record.

Appendix A—Notice to examinee

Authority: Pub. L. 100-347, 102 Stat. 646, 29 U.S.C. 2001-2009.

Subpart A—General

§ 801.1 Purpose and scope.

(a) Effective December 27, 1988, the Employee Polygraph Protection Act of 1988 (EPPA or the Act) prohibits most private employers (Federal, State, and local government employers are exempted from the Act) from using any lie detector tests either for pre-employment screening or during the course of employment. Polygraph tests, but no other types of lie detector tests, are permitted under limited circumstances subject to certain restrictions. The purpose of this part is to set forth the regulations to carry out the provisions of EPPA.

(b) The regulations in this part are divided into six subparts. Subpart A contains the provisions generally applicable to covered employers, including the requirements relating to the prohibitions on lie detector use and the posting of notices. Subpart A also sets forth interpretations regarding the effect of section 10 of the Act on other laws or collective bargaining agreements. Subpart B sets forth rules regarding the statutory exemptions from application of the Act. Subpart C sets forth the restrictions on polygraph usage under such exemptions. Subpart D sets forth the recordkeeping requirements and the rules on the disclosure of polygraph test information. Subpart E deals with the authority of the Secretary of Labor and the enforcement provisions under the Act. Subpart F contains the procedures and rules of practice necessary for the administrative enforcement of the Act.

§ 801.2 Definitions.

For purposes of this part:

(a) "Act" or "EPPA" means the Employee Polygraph Protection Act of 1988 (Pub. L. 100-347, 102 Stat. 646, 29 U.S.C. 2001-2009).

(b) (1) The term "commerce" has the meaning provided in section 3(b) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(b)). As so defined, "commerce" means trade, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.

(2) The term "State" means any of the fifty States and the District of Columbia and any Territory or possession of the United States.

(c) The term "employer" means any person acting directly or indirectly in the interest of an employer in relation to an employee or prospective employee. A polygraph examiner either employed for or whose services are retained for the sole purpose of administering polygraph tests ordinarily would not be deemed an "employer" with respect to the examinees.

(d) (1) The term "lie detector" means a polygraph, deceptograph, voice stress analyzer, psychological stress evaluator, or any other similar device (whether mechanical or electrical) that is used, or the results of which are used, for the purpose of rendering a diagnostic opinion regarding the honesty or dishonesty of an individual.

(2) The term "lie detector" does not include medical tests used to determine the presence or absence of controlled substances or alcohol in bodily fluids. Also not included in the definition of "lie detector" are written or oral tests commonly referred to as "honesty" or "paper and pencil" tests, machine-scored or otherwise.

(e) The term "polygraph" means an instrument that—

(1) Records continuously, visually, permanently, and simultaneously changes in cardiovascular, respiratory, and electrodermal patterns as minimum instrumentation standards; and

(2) Is used, or the results of which are used, for the purpose of rendering a diagnostic opinion regarding the honesty or dishonesty of an individual.

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(f) The terms "manufacture", "dispense", "distribute", and "deliver" have the meanings set forth in the Controlled Substances Act, 21 U.S.C. [illegible].

(g) The term "Secretary" means the Secretary of Labor or authorized representative.

(h) "Employment Standards Administration" means the agency within the Department of Labor, which includes the Wage and Hour Division.

(i) "Wage and Hour Division" means the organizational unit in the Employment Standards Administration of the Department of Labor to which is assigned primary responsibility for enforcement and administration of the Act.

(j) "Administrator" means the Administrator of the Wage and Hour Division, or authorized representative.

§ 801.3 Coverage.

Any employer engaged in or affecting commerce or in the production of goods for commerce is subject to the provisions of the Act, unless otherwise exempt pursuant to section 7 of the Act and §§ 801.10 through 801.14 of this part.

§ 801.4 Prohibitions on lie detector use.

Section 3 of EPPA provides that, unless otherwise exempt pursuant to section 7 of the Act and §§ 801.10 through 801.14 of this part, covered employers are prohibited from:

(a) Requiring, requesting, suggesting or causing, directly or indirectly, any employee or prospective employee to take or submit to a lie detector test;

(b) Using, accepting, or inquiring about the results of a lie detector test of any employee or prospective employee; and

(c) Discharging, disciplining, discriminating against, denying employment or promotion, or threatening any employee or prospective employee to take such action for refusal or failure to take or submit to such test, on the basis of the results of a test, for filing a complaint, for testifying in any proceeding, or for exercising any rights afforded by the Act.

§ 801.5 Effect on other laws or agreements.

(a) Section 10 of EPPA provides that the Act, except for subsections (a), (b), and (c) of section 7, does not preempt any provision of a State or local law, or any provision of a collective bargaining agreement, that prohibits lie detector tests or is more restrictive with respect to the use of lie detector tests.

(b) (1) This provision applies to all aspects of the use of lie detector tests, including procedural safeguards, the use of test results, the rights and remedies provided examinees, and the rights, remedies, and responsibilities of examiners and employers.

(2) For example, if the State prohibits the use of polygraphs in all private employment, polygraph examinations could not be conducted pursuant to the limited exemptions provided in the Act; a collective bargaining agreement that provides greater protection to an examinee would apply in addition to the protection provided in the Act; or more stringent licensing or bonding requirements in a State law would apply in addition to the Federal bonding requirement.

(3) On the other hand, industry exemptions and applicable restrictions thereon, provided in EPPA, would preempt less restrictive exemptions established by State law for the same industry, e.g., random testing of current employees in the drug industry not prohibited by State law but limited by this Act to tests administered in connection with ongoing investigations.

(c) EPPA does not impede the ability of State and local governments to enforce existing statutes or to enact subsequent legislation restricting the use of lie detectors with respect to public employees.

(d) Nothing in section 10 of the Act restricts or prohibits the Federal Government from administering polygraph tests to its own employees or to experts, consultants, or employees of contractors, as provided in subsections 7(b) and 7(c) of the Act, and § 801.11 of this part.

§ 801.6 Notice of protections.

Every employer subject to EPPA shall post and keep posted on its premises a notice explaining the Act, as prescribed by the Secretary. Such notice must be posted in a prominent and conspicuous place in every establishment of the employer where it can readily be observed by employees and applicants for employment. Copies of such notice may be obtained from local offices of the Wage and Hour Division.

§ 801.7 Authority of the Secretary.

(a) Pursuant to section 5 of the Act, the Secretary is authorized to:

(1) Issue such rules and regulations as may be necessary or appropriate to carry out the Act;

(2) Cooperate with regional, State, local, and other agencies, and cooperate with and furnish technical assistance to employers, labor organizations, and employment agencies to aid in effectuating the purposes of the Act; and

(3) Make investigations and inspections as necessary or appropriate, through complaint or otherwise, including inspection of such records (and copying or transcription thereof), questioning of such persons, and gathering such information as deemed necessary to determine compliance with the Act or these regulations; and

(4) Require the keeping of records necessary or appropriate for the administration of the Act.

(b) Section 5 of the Act also grants the Secretary authority to issue subpoenas requiring the attendance and testimony of witnesses or the production of any evidence in connection with any investigation or hearing under the Act. The Secretary may administer oaths, examine witnesses, and receive evidence. For the purpose of any investigation or hearing provided for in the Act, the authority contained in sections 9 and 10 of the Federal Trade Commission Act (15 U.S.C. 49, 50), relating to the attendance of witnesses and the production of books, papers, and documents, shall be available to the Secretary.

(c) In case of disobedience to a subpoena, the Secretary may invoke the aid of a United States District Court which is authorized to issue an order requiring the person to obey such subpoena.

(d) Any person may report a violation of the Act or these regulations to the Secretary by advising any local office of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, or any authorized representative of the Administrator. The office or person receiving such a report shall refer it to the appropriate office of the Wage and Hour Division, Employment Standards Administration, for the region or area in which the reported violation is alleged to have occurred.

(e) The Secretary shall conduct investigations in a manner which, to the extent practicable, protects the confidentiality of any complainant or other party who provides information to the Secretary in good faith.

(f) It is a violation of these regulations for any person to resist, oppose, impede, intimidate, or interfere with any official of the Department of Labor assigned to perform an investigation, inspection, or law enforcement function pursuant to the Act during the performance of such duties.

Subpart B—Exemptions

§ 801.10 Exclusion for public sector employers.

(a) Section 7(a) provides an exclusion from the Act's coverage for the United States Government, any State or local government, or any political subdivision of a State or local government, acting in the capacity of an employer. This exclusion from the Act also extends to any interstate governmental agency.

(b) The term "United States Government" means any agency or instrumentality, civilian or military, of the executive, legislative, or judicial branches of the Federal Government, and includes independent agencies, wholly-owned government corporations, and nonapprporiated fund instrumentalities.

(c) This exclusion from the Act applies only to the Federal, State, and local government entity. It does not extend to contractors or nongovernmental agents of a government entity.

§ 801.11 Exemption for national defense and security.

(a) The Exemptions allowing for the administration of polygraph tests in the following paragraphs (b) through (e) of this section apply only to the Federal Government; they do not allow private employers/contractors to administer such test.

(b) Section 7(b)(1) provides that nothing in the Act shall be construed to prohibit the administration of any lie detector test by the Federal Government, in the performance of any counterintelligence function, to any expert, consultant or employee of any contractor to the Department of Defense; or the Department of Energy, in connection with the atomic energy defense activities of such Department.

(c) Section 7(b)(2)(A) provides that nothing in the Act shall be construed to prohibit the administration of any lie detector test by the Federal Government, in the performance of any intelligence or counterintelligence function of the National Security Agency, the Defense Intelligence Agency, or the Central Intelligence Agency, to any individual employed by, assigned to, or detailed to any such agency; or any expert or consultant under contract to any such agency; or any individual applying for a position in any such agency; or any individual assigned to a space where sensitive cryptologic information is produced, processed, or stored for any such agency.

(d) Section 7(b)(2)(B) provides that nothing in the Act shall be construed to prohibit the administration of any lie detector test by the Federal Government, in the performance of any intelligence or counterintelligence function, to any expert, or consultant (or employee of such expert or consultant) under contract with any Federal Government department, agency, or program whose duties involve access to information that has been classified at the level of top secret or designated as being within a special access program under section 4.2 (a) of Executive Order 12356 (or a successor Executive Order).

(e) Section 7(c) provides that nothing in the Act shall be construed to prohibit the administration of any lie detector test by the Federal Government, in the performance of any counterintelligence function, to any employee of a contractor of the Federal Bureau of Investigation of the Department of Justice who is engaged in the performance of any work under a contract with the Bureau.

(f) "Counterintelligence" for purposes of the above paragraphs means information gathered and activities conducted to protect against espionage and other clandestine intelligence activities, sabotage, terrorist activities, or assassinations conducted for or on behalf of foreign governments, or foreign or domestic organizations or persons.

(g) Lie detector tests of persons described in the above paragraphs shall be administered in accordance with applicable Deparment of Defense directives and regulations, or other regulations and directives governing the use of such tests by the United States Government, as applicable.

§ 801.12 Exemption for employers conducting investigations of economic loss or injury.

(a) Section 7(d) of the Act provides a limited exemption from the general prohibition on lie detector use in private employment settings for employers conducting ongoing investigations of economic loss or injury to the employer's business. An employer may request an employee, subject to the conditions set forth in sections 8 and 10 of the Act and §§ 801.20, 801.22, 801.23, and 801.35 of this part, to submit to a polygraph test, but no other type of lie detector test, only if—

(1) The test is administered in connection with an ongoing investigation involving economic loss or injury to the employer's business, such as theft, embezzlement, misappropriation or an act of industrial espionage or sabotage;

(2) The employee has access to the property that is the subject of the investigation;

(3) The employer has a reasonable suspicion that the employee was involved in the incident or activity under investigation;

(4) The employer provides the examinee with a statement, in a language understood by the examinee, prior to the test which fully explains with particularity the specific incident or activity being investigated and the basis for testing particular employees and which contains, at a minimum:

(i) An identification with particularity of the specific economic loss or injury to the business of the employer;

(ii) A statement specifically describing the employee's access to the property that is the subject of the investigation;

(iii) A statement describing in detail the basis of the employer's reasonable suspicion that the employee was involved in the incident or activity under investigation; and

(iv) Signature of a person (other than a polygraph examiner) authorized to legally bind the employer; and

(5) The employer retains a copy of the statement described in paragraph (a)(4) of this section for at least 3 years and makes it available for inspection by the Wage and Hour Division on request. (See § 801.30(a).)

(b) For the exemption to apply, the condition of an "ongoing investigation" must be met. As used in section 7(d) of the Act, the ongoing investigation must be of a specific incident or activity. Thus, for example, an employer may not request that an employee or employees submit to a polygraph test in an effort to determine whether or not any thefts have occurred. Such random testing by an employer is specifically precluded by the Act. Further, by limiting the exemption to a specific incident or activity, an employer is precluded from using the exemption in situations where the so-called "ongoing investigation" is continuous. For example, the fact that items in inventory are frequently missing from a warehouse would not be a sufficient basis for administering a polygraph test. Even if the employer can establish that unusually high amounts of inventory are missing from the warehouse in a given month, this, in and of itself, would not be sufficient basis to meet the specific incident requirement without evidence of intentional wrongdoing. Administering a polygraph test in such circumstances, without identification of a specific incident or activity and a "reasonable suspicion that the employee was involved" would amount to little more than a fishing expedition.

(c) (1) The term "economic loss or injury to the employer's business" includes losses or injuries resulting from theft, embezzlement, misappropriation, industrial espionage or sabotage. These examples, cited in the Act, are intended to be illustrative and not exhaustive. Other specific incidents which would

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meet the economic loss or injury requirement include check-kiting, money laundering, or the misappropriation of confidential or trade secret information. Similarly, instances such as theft from property managed by an employer, or property held by an employer as a fiduciary or custodian, would meet the required injury standard.

(2) The economic loss must result from intentional wrongdoing. Thus, losses which would not serve as a basis for the administration of a polygraph test include those apparently unintentional losses stemming from a truck, car, workplace or other similar type accidents. Any economic loss incident to lawful union or employee activity also would not satisfy this requirement.

(3) It is the business of the employer which must suffer the economic loss or injury. Thus, a theft committed by one employee against another employee of the same employer would not satisfy the requirement.

(d) While nothing in the Act prohibits the use of medical tests to determine the presence of controlled substances or alcohol in bodily fluids, the section 7(d) exemption does not permit the use of a polygraph test to learn whether an employee has used drugs or alcohol, even where such possible use may have contributed to an economic loss to the employer (e.g., an accident involving a company vehicle).

(e) Section 7(d)(2) provides that, as a condition for the use of the exemption, the employee must have had access to the property that is the subject of the investigation.

(1) The word "access", as used in section 7(d)(2), refers to the opportunity which an employee had to cause, or to aid or abet in causing, the specific economic loss or injury under investigation.

The term "access", thus, includes more than direct or physical contact during the course of employment. For example, all employees working in or with authority to enter a warehouse storage area have "access" to the property in the warehouse. All employees with the combination to a safe have "access" to the property in a locked safe. Employees also have "access" who have the ability to divert possession or otherwise affect the disposition of the property that is the subject of investigation. For example, a bookkeeper in a jewelry store with access to inventory records may aid or abet a clerk who steals an expensive watch by removing the watch from the employer's inventory records. In such a situation, it is clear that the bookkeeper effectively has "access" to the property that is the subject of the investigation.

(2) As used in section 7(d)(2), "property" refers to specifically identifiable property, but also includes such things of value as security codes and computer data, and proprietary financial or technical information which by its availability to competitors or others would cause economic harm to the employer.

(f)(1) As used in section 7(d)(3), the term "reasonable suspicion" refers to an observable, articulable basis in fact which indicates that a particular employee was involved in, or responsible for, an economic loss. Thus, for example, access in the sense of possible or potential opportunity, standing alone, does not constitute a basis for "reasonable suspicion". Information from a co-worker, or an employee's behavior, demeanor, or conduct may be factors in the basis for reasonable suspicion. Likewise, inconsistencies between facts, claims, or statements that surface during an investigation can serve as a sufficient basis for reasonable suspicion. While access or opportunity, standing alone, does not constitute a basis for reasonable suspicion, the totality of circumstances surrounding the access or opportunity (such as its unauthorized or unusual nature) may constitute a factor in determining whether there is a reasonable suspicion.

(2) For example, in an investigation of a theft of an expensive piece of jewelry, an employee authorized to open the establishment's safe no earlier than 9:00 a.m., in order to place the jewelry in a window display case, is observed opening the safe at 7:30 a.m. In such a situation, the opening of the safe by the employee one and one-half hours prior to the specified time may serve as the basis for reasonable suspicion. On the other hand, in the example given, if the employer asked the employee to bring the piece of jewelry to his or her office at 7:30, and the employee then opened the safe and reported the jewelry missing, such access, standing alone, would not constitute a basis for reasonable suspicion that the employee was involved in the incident.

(3) The employer has the burden of establishing that the specific individual or individuals to be tested are "reasonably suspected" of involvement in the specific economic loss or injury for the requirement in section 7(d)(3) to be met.

(g)(1) As discussed in paragraph (a)(4) of this section, section 7(d)(4) of the Act sets forth what information, at a minimum, must be provided to an employee if the employer wishes to claim the exemption.

(2) The statement required under paragraph (a)(4) of this section must be received by the employee at least 48 hours prior to the time of the examination. This will provide the employee with adequate pre-test notice of the specific incident or activity being investigated and afford the employee sufficient time prior to the test to obtain and consult with legal counsel or an employee representative.

(3) The statement to be provided to the employee must set forth with particularity the specific incident or activity being investigated and the basis for testing particular employees. However, section 7(d)(4)(A) requires specificity beyond the mere assertion of general statements regarding economic loss, employee access, and reasonable suspicion. For example, an employer's assertion that an expensive watch was stolen, and that the employee had access to the watch and is therefore a suspect, would not meet the "with particularity" criterion. If the basis for an employer's requesting an employee (or employees) to take a polygraph test cannot be articulated, and reduced to writing, then the standard would not be met. The identity of a co-worker or other individual providing information used to establish reasonable suspicion need not be revealed in the statement.

(4) It is further required that the statement provided to the examinee be signed by a person authorized to legally bind the employer. The standard would not be met if the person signing the statement is not authorized to legally bind the employer, and accordingly the exemption would not apply in such a case.

(h) Polygraph tests administered pursuant to this exemption are subject to the limitations set forth in sections 8 and 10 of the Act, as discussed in §§ 801.20, 801.22, 801.23, and 801.35 of this part. As provided in these sections, the exemption will apply only if certain requirements are met. Failure to satisfy any of the specified requirements nullifies the statutory authority for polygraph test administration and may subject the employer to the assessment of civil money penalties and other remedial actions, as provided for in section 6 of the Act (see Subpart E, § 801.42 of this part). The administration of such tests is also subject to State or local laws, or collective bargaining agreements, which may either prohibit lie detector tests, or contain more restrictive provisions with respect to polygraph testing.

§ 801.13 Exemption for employers authorized to manufacture, distribute, or dispense controlled substances.

(a) Section 7(f) provides an exemption from the Act's general prohibition regarding the use of polygraph tests for employers authorized to manufacture, distribute, or dispense a controlled substance listed in schedule I, II, III, or IV of section 202 of the Controlled Substances Act (21 U.S.C. 812). This exemption permits the administration of polygraph tests, subject to the conditions set forth in sections 8 and 10 of the Act and §§ 801.21, 801.22, 801.23, and 801.35 of this part, to:

(1) A prospective employee who would have direct access to the manufacture, storage, distribution, or sale of any such controlled substance; or

(2) A current employee if the following conditions are met:

(i) The test is administered in connection with an ongoing investigation of criminal or other misconduct involving, or potentially involving, loss or injury to the manufacture, distribution, or dispensing of any such controlled substance by such employer; and

(ii) The employee had access to the person or property that is the subject of the investigation.

(b)(1) The terms "manufacture", "distribute", "distribution", "dispense", "storage", and "sale", for the purposes of this exemption, are construed within the meaning of the Controlled Substances Act (21 U.S.C. 801 *et seq.*), as administered by the Drug Enforcement Administration (DEA), U.S. Department of Justice.

(2) The exemption in section 7(f) of the Act applies only to employers who are authorized by DEA to manufacture, distribute, or dispense a controlled substance. Section 302 of the Controlled Substances Act (21 U.S.C. 822) requires every person who manufactures, distributes, or dispenses any controlled substance to register with the Attorney General (i.e., with DEA). Common or contract carriers and warehouses whose possession of the controlled substance is in the usual course of their business or employment are not required to register. Since this exemption is intended to apply only to employees and prospective employees of persons or entities registered with DEA, and is not intended to apply to truck drivers employed by persons or entities who are not so registered, it has no application to employees of common or contract carriers or public warehouses. Truck drivers and warehouse employees of the persons or entities registered with DEA and authorized to manufacture, distribute, or dispense controlled substances, are within the scope of the exemption where they have direct access or access to the controlled substances, as discussed below.

(c) In order for a polygraph examination to be performed, section 7(f) of the Act requires that a prospective employee have "direct access" to the controlled substance(s) manufactured, dispensed, or distributed by the employer. Where a current employee is to be tested as a part of an ongoing investigation, section 7(f) requires that the employee have "access" to the person or property that is the subject of the investigation.

(1) A prospective employee would have "direct access" if the position being applied for has responsibilities which include contact with or which affect the disposition of a controlled substance, including participation in the process of obtaining, dispensing, or otherwise distributing a controlled substance. This includes contact or direct involvement in the manufacture, storage, testing, distribution, sale or dispensing of a controlled substance and may include, for example, packaging, repackaging, ordering, licensing, shipping, receiving, taking inventory, providing security, prescribing, and handling of a controlled substance. A prospective employee would have "direct access" if the described job duties would give such person access to the products in question, whether such employee would be in physical proximity to controlled substances or engaged in activity which would permit the employee to divert such substances to his or her possession.

(2) A current employee would have "access" within the meaning of section 7(f) if the employee had access to the specific person or property which is the subject of the on-going investigation, as discussed in § 801.12(e) of this part. Thus, to test a current employee, the employee need not have had "direct" access to the controlled substance, but may have had only infrequent, random, or opportunistic access. Such access would be sufficient to test the employee if the employee could have caused, or could have aided or abetted in causing, the loss of the specific property which is the subject of the investigation. In addition, a maintenance worker in a drug warehouse, whose job duties include the cleaning of areas where the controlled substances which are the subject of the investigation were present, but whose job duties do not include the handling of controlled substances, would be deemed to have "access", but normally not "direct access", to the controlled substances. On the other hand, a drug warehouse truck loader, whose job duties include the handling of outgoing shipment orders which contain controlled substances, would have "direct access" to such controlled substances. A pharmacy department in a supermarket is another common situtation which is useful in illustrating the distinction between "direct access" and "access". Store personnel receiving pharmaceutical orders, i.e., the pharmacist, pharmacy intern, and other such employees working in the pharmacy department, would ordinarily have "direct access" to controlled substances. Other store personnel whose job duties and responsibilities do not include the handling of controlled substances but who had occasion to enter the pharmacy department where the controlled substances which are the subject of the investigation were stored, such as maintenance personnel or pharmacy cashiers, would have "access". Certain other store personnel whose job duties do not permit or require entrance into the pharmacy department for any reason, such as produce or meat clerks, checkout cashiers, or baggers, would not ordinarily have "access" of any type. In the case of "direct access", the prospective employee's access to controlled substances would be as a part of the manufacturing, dispensing or distribution process, while a current employee's "access" to the controlled substances which are the subject of the investigation need only be opportunistic.

(d) The term "prospective employee", for the purposes of this section, includes a current employee who presently holds a position which does not entail direct access to controlled substances, and therefore is outside the scope of the exemption's provisions for preemployment polygraph testing, provided the employee has applied for and is being considered for transfer or promotion to another position which entails such direct access. For example, an office secretary may apply for promotion to a position in the vault or cage areas of a drug warehouse, where controlled substances are kept. In such a situation, the current employee would be deemed a "prospective employee" for the purposes of this exemption, and thus would be subject to preemployment polygraph screening, at the time of such a change in position. However, any adverse action which is based in part on a polygraph test against a current employee who is treated as a "prospective employee" may be taken only with respect to the prospective position and may not affect the

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employee's employment in the current position.

(e) Section 7(f) of the Act makes no specific reference to a requirement that employers provide current employees with a written statement prior to polygraph testing. Thus, employers to whom this exemption is available are not required to furnish a written statement such as that specified in section 7(d) of the Act and § 801.12(a)(4) of this part.

(f) For the section 7(f) exemption to apply, the polygraph testing of current employees must be administered "in connection with an ongoing investigation of criminal or other misconduct involving, or potentially involving, loss or injury to the manufacture, distribution, or dispensing of any such controlled substance by such employer * * *".

(1) Current employees may only be administered polygraph tests in connection with an ongoing investigation, relating to a specific incident or activity, or potential incident or activity, as discussed in § 801.12(b) of this part. Thus an employer is precluded from using the exemption in connection with continuing investigations or on a random basis to determine if thefts are occurring.

(2) In addition, the test must be administered in connection with loss or injury, or potential loss or injury, to the manufacture, distribution, or dispensing of a controlled substance.

(i) Retail drugstores and wholesale drug warehouses typically carry inventory of so-called health and beauty aids, cosmetics, over-the-counter drugs, and a variety of other similar products, in addition to their product lines of controlled drugs. The noncontrolled products usually constitute the majority of such firms' sales volumes. An economic loss or injury related to such noncontrolled substances would not constitute a basis of applicability of the section 7(f) exemption. For example, an investigation into the theft of a gross of cosmetic products could not be a basis for polygraph testing under section 7(f), but the theft of a container of valium could be.

(ii) Polygraph testing, with respect to an ongoing investigation concerning products other than controlled substances might be initiated under section 7(d) of the Act and § 801.12 of this part. However, the exemption in section 7(f) of the Act and this section is limited solely to losses or injury associated with controlled substances.

(g) Polygraph tests administered pursuant to this exemption are subject to the limitations set forth in sections 8 and 10 of the Act, as discussed in §§ 801.21, 801.22, 801.23, and 801.35 of this part. As provided in these sections, the exemption will apply only if certain requirements are met. Failure to satisfy any of the specified requirements nullifies the statutory authority for polygraph test administration and may subject the employer to the assessment of civil money penalties and other remedial actions, as provided for in section 6 of the Act (see Subpart E, § 801.42 of this part). The administration of such tests is also subject to State or local laws, or collective bargaining agreements, which may either prohibit lie detector tests, or contain more restrictive provisions with respect to polygraph testing.

§ 801.14 Exemption for employers providing security services.

(a) Section 7(e) of the Act provides an exemption from the general prohibition against polygraph tests for certain armored car, security alarm, and security guard employers. Subject to the conditions set forth in sections 8 and 10 of the Act and §§ 801.21, 801.22, 801.23, and 801.35 of this part, section 7(e) permits the use of polygraph tests on prospective employees provided that such employers have as their primary business purpose the providing of armored car personnel, personnel engaged in the design, installation, and maintenance of security alarm systems, or other uniformed or plainclothes security personnel; and provided the prospective employees are being hired to protect:

(1) Facilities, materials, or operations having a significant impact on the health or safety of any State or political subdivision thereof, or the national security of the United States, such as—

(i) Facilities engaged in the production, transmission, or distribution of electric or nuclear power,

(ii) Public water supply facilities,

(iii) Shipments or storage of radioactive or other toxic waste materials, and

(iv) Public transportation; or

(2) Currency, negotiable securities, precious commodities or instruments, or proprietary information.

(b)(1) Section 7(e) permits the administration of polygraph tests only to prospective employees. However, security service employers may administer polygraph tests to current employees in connection with an ongoing investigation, subject to the conditions of section 7(d) of the Act and § 801.12 of this part.

(2) The term "prospective employee" generally refers to an individual who is being considered for employment, for the first time, by an employer. However, the term "prospective employee" also includes current employees under circumstances similar to those discussed in paragraph (d) of § 801.13 of this part. Thus, for example, a security guard may be hired for a job outside the scope of the exemption's provisions for pre-employment polygraph testing, such as a position at a supermarket. If subsequently this guard is transferred or promoted to a job at a nuclear power plant, this currently-employed individual would be considered to be a "prospective employee" for purposes of this exemption, at the time of such proposed transfer or promotion. However, any adverse action which is based in part on a polygraph test against a current employee who is treated as a "prospective employee" may be taken only with respect to the prospective position and may not affect the employee's employment in the current position.

(c) Section 7(e) applies to any private employer whose "primary business purpose" consists of providing armored car personnel, personnel engaged in the design, installation, and maintenance of security alarm systems, or other uniformed or plainclothes security personnel. Thus, the exemption is limited to firms primarily in the business of *providing* such security services to others. (For example, a utility company which employs its own security personnel could not qualify.) In the case of diversified firms, the term "primary business purpose" shall mean that at least 50% of the employer's annual dollar volume of business is derived from the provision of the types of security services specifically identified in section 7(e).

(d)(1) As used in section 7(e)(1)(A), the terms "facilities, materials, or operations having a significant impact on the health or safety of any State or political subdivision thereof, or the national security of the United States" include protection of electric or nuclear power plants, public water supply facilities, radioactive or other toxic waste shipments or storage, and public transportation. These examples are intended to be illustrative, and not exhaustive. However, the types of "facilities, materials, or operations" within the scope of the exemption are not to be construed so broadly as to include low priority or minor security interests. The "facilities, materials, or operations" in question only consist of those having a "significant impact" on public health or safety, or national security. However, the "facilities, materials, or operations" may be either privately or publicly owned.

(2) The specific "facilities, materials, or operations" contemplated by this exemption would include those against which acts of sabotage, espionage, terrorism, or other hostile, destructive, or illegal acts could have a serious effect on the general public's safety or health, or national security. In addition to the specific examples set forth in the Act, the terms would include:

(i) Facilities, materials, and operations owned or leased by Federal, State, or local governments, including instrumentalities or interstate agencies thereof, for which an authorized public official has determined that a need for security exists, utilizing private armored car, security alarm system, or uniformed or plainclothes security personnel, or a combination thereof, such as:

(A) Government office buildings;

(B) Prisons and correction facilities;

(C) Public schools;

(D) Public libraries;

(E) Water supply;

(F) Military reservations, installations, posts, camps, arsenals, laboratories, and other similar facilities vital to defense and security;

(ii) Commercial and industrial assets and operations which—

(A) Are designated in writing by an appropriate Federal agency to be vital to national security interests (such as those of defense contractors and researchers), including factories, plants, buildings, or structures used for researching, designing, testing, manufacturing, producing, processing, repairing, assembling, storing, or distributing products or components related to the national defense; or

(B) Would pose a serious threat to public health or safety in the event of a breach of security (such as a plant engaged in the manufacture or processing of hazardous materials or chemicals);

(iii) Public and private energy and precious mineral facilities, supplies, and reserves, including—

(A) Public or private power plants and utilities;

(B) Oil or gas refineries and storage facilities;

(C) Strategic petroleum reserves; and

(D) Major dams, such as those which provide hydroelectric power; or

(iv) Major public or private transportation and communication facilities and operations, including—

(A) Airports;

(B) Train terminals, depots, and switching and control facilities;

(C) Major bridges and tunnels;

(D) Communications centers, such as receiving and transmission centers, and control centers; and

(E) Transmission and receiving operations for radio, television, and satellite signals; or

(v) The Federal Reserve System and stock and commodity exchanges;

(vi) Hospitals and health research facilities; and

(vii) Large public events, such as political conventions and major parades, concerts, and sporting events.

(3) Whether given "facilities, materials, or operations" fall within the contemplated purview of this exemption will be determined by the Administrator on request prior to the administration of the polygraph test, based on all the facts and circumstances. It is not possible to exhaustively account for all "facilities, materials, or operations" which fall within the purview of section 7(e)(1)(A). While it is likely that additional entities may fall within the exemption's scope, any such "facilities, materials, or operations" must meet the "significant impact" test. Thus, "facilities, materials, or operations" which would be of vital importance during periods of war or civil emergency, or whose sabotage would greatly affect the public health or safety, could fall within the scope of the term "significant impact".

(e) Section 7(e)(1)(B) of the Act extends the exemption to firms whose function includes protection of "currency, negotiable securities, precious commodities or instruments, or proprietary information". These terms collectively are construed to be assets handled by financial institutions such as banks, credit unions, savings and loan institutions, stock and commodity exchanges, brokers, or security dealers. These terms also refer to assets which are typically handled by, protected for and transported between and among commercial and financial institutions. Services provided by the armored car industry are thus clearly within the scope of the exemption, as are security alarm and security guard services provided to financial institutions of the type referred to above. However, security alarm or guard services provided to private homes, or to businesses not primarily engaged in handling, trading, transferring, or storing currency, negotiable securities, precious commodities or instruments, or proprietary information, are outside the scope of the exemption. This is true even though such places may physically house some such assets.

(f) An employer who falls within the scope of the exemption is one "whose function includes" protection of "facilities, materials, or operations", discussed in paragraph (e) of this section or of "currency, negotiable securities, precious commodities or instruments, or proprietary information" discussed in paragraph (f) of this section. Thus, assuming that the employer has met the "primary business purpose" test, as set forth in paragraph (d) of this section, the employer's operations then must simply "include" protection of at least one of the facilities within the scope of the exemption.

(g)(1) Section 7(e)(2) provides that the exemption shall not apply if a polygraph test is administered to a prospective employee who would not be employed to protect the "facilities, materials, operations, or assets" referred to in section 7(e)(1) of the Act, and discussed in paragraphs (e) and (f) of this section. Thus, while the exemption applies to employers whose function "includes" protection of certain facilities, employers would be permitted to administer polygraph tests only to prospective employees who are being hired to perform such functions.

(2) The phrase "employed to protect" in section 7(e)(2) has reference to a wide spectrum of prospective employees in the security industry, and includes all employees whose job duties affect the security of any qualifying "facilities, materials, operations, or assets," either directly or indirectly.

(3) In many cases, it will be readily apparent that certain positions within security companies would, by virtue of the individual's official job duties, entail "protection". For example, armored car drivers and guards, security guards, and alarm system installers and maintenance personnel all would be employed to protect in the most direct and literal sense of the term.

(4) The scope of the exemption is not limited, however, to those security personnel having direct, physical access to the facilities being protected. Various support personnel may also have "access" to the process of providing security services due to the position's exposure to knowledge of security plans and operations, employee schedules, delivery schedules, and other such activities. Where a position entails the opportunity to cause or participate in a breach of security, an employee to be hired for the position would also be deemed to be "employed to protect" the facility within the exemption's scope.

(5) For example, in the armored car industry, the duties of personnel other than guards and drivers may include taking customer orders for currency and commodity transfers, issuing security badges to guards, coordinating routes of travel and times for pick-up and delivery, issuing access codes to customers, route planning and other sensitive responsibilities. Similarly, in

the security alarm industry, several types of employees would have access to the process of providing security services, such as designers of security systems, system monitors, service technicians, and billing clerks (who may review the system design drawings to ensure proper customer billing). In the security industry, generally, administrative employees may have access to customer accounts, schedules, information relating to alarm system failures, and other security information, such as security employee absences due to illness that create "holes" in a security plan. Employees of this type are a part of the overall security services provided by the employer. Such employees possess the ability to affect, on an opportunistic basis, the security of protected operations, by virtue of the knowledge gained through their job duties.

(6) On the other hand, there are certainly some types of employees in the security industry who "would not be employed to protect" the functions within the purview of the exemption, and who would not have "access" to the process of providing security services. For example, custodial and maintenance employees typically would not have access, either directly or indirectly, to the operations or clients of the employer. Any employee whose "access" to secured areas or to sensitive information is occasional, or on a controlled basis, such as by escort, would also be outside the scope of the exemption. In cases where security service companies also provide janitorial, food and beverage, or other services unrelated to security, the exemption would clearly not extend to any employee considered for employment in such activity.

(h) Polygraph tests administered pursuant to this exemption are subject to the limitations set forth in sections 8 and 10 of the Act, as discussed in §§ 801.21, 801.22, 801.23, and 801.35 of this part. As provided in these sections, the exemption will apply only if certain requirements are met. Failure to satisfy any of the specified requirements nullifies the statutory authority for polygraph test administration and may subject the employer to the assessment of civil money penalties and other remedial actions, as provided for in section 6 of the Act (see Subpart E, § 801.42 of this part). The administration of such tests is also subject to State or local laws, or collective bargaining agreements, which may either prohibit the detection test, or contain more restrictive provisions with respect to polygraph testing.

Subpart C—Restrictions on Polygraph Usage Under Exemptions

§ 801.23 Adverse employment action under ongoing investigation exemption.

(a) Section 8(a)(1) of the Act provides that the limited exemption in section 7(d) of the Act and § 801.12 of this part for ongoing investigations shall not apply if an employer discharges, disciplines, denies employment or promotion or otherwise discriminates in any manner against a current employee based upon the analysis of a polygraph test chart or the refusal to take a polygraph test, without additional supporting evidence.

(b) "Additional supporting evidence", for purposes of section 8(a) of the Act, includes, but is not limited to, the following:

(1)(i) Evidence indicating that the employee had access to the missing or damaged property that is the subject of an ongoing investigation; and

(ii) Evidence leading to the employer's reasonable suspicion that the employee was involved in the incident or activity under investigation; or

(2) Admissions or statements made by an employee before, during or following a polygraph examination.

(c) Analysis of a polygraph test chart or refusal to take a polygraph test may not serve as a basis for adverse employment action, even with additional supporting evidence, unless the employer observes all the requirements of sections 7(d) and 8(b) of the Act, as described in §§ 801.12 and 801.22 of this part.

§ 801.31 Adverse employment action under security service and controlled substance exemptions.

(a) Section 8(a)(2) of the Act provides that the security service exemption in section 7(e) of the Act and § 801.14 of this part and the controlled substance exemption in section 7(f) of the Act and § 801.13 of this part shall not apply if an employer discharges, disciplines, denies employment or promotion, or otherwise discriminates in any manner against a current employee or prospective employee based solely on the analysis of a polygraph test chart or the refusal to take a polygraph test.

(b) Analysis of a polygraph test chart or refusal to take a polygraph test may serve as one basis for adverse employment actions of the type described in paragraph (a) of this section, *provided* that the adverse action was also based on another *bona fide* reason. For example, traditional factors such as prior employment experience, education, job performance, etc. may be used as a basis for employment decisions. Employment decisions based on admissions or statements made by an employee or prospective employee before, during or following a polygraph examination may, likewise, serve as a basis for such decisions.

(c) Analysis of a polygraph test chart or the refusal to take a polygraph test may not serve as a basis for adverse employment action, even with another legitimate basis for such action, unless the employer observes all the requirements of section 7 (e) or (f) of the Act, as appropriate, and section 8(b) of the Act, as described in §§ 801.13, 801.14 and 801.22 of this part.

§ 801.33 Rights of examinee.

(a) Pursuant to section 8(b) of the Act, the limited exemption in section 7(d) of the Act for ongoing investigations, and the security service and controlled substance exemptions in 7 (e) and (f) of the Act (described in §§ 801.12, 801.13, and 801.14 of this part) shall not apply unless all of the requirements set forth in this section are met.

(b)(1) During all phases of the polygraph testing the person being examined has the following rights:

(i) The examinee may terminate the test at any time;

(ii) The examinee may not be asked any questions in a degrading or unnecessarily intrusive manner;

(iii) The examinee may not be asked any questions dealing with:

(A) Religious beliefs or affiliations;

(B) Beliefs or opinions regarding racial matters;

(C) Political beliefs or affiliations;

(D) Sexual preferences or behavior; or

(E) Beliefs, affiliations, opinions, or lawful activities concerning unions or labor organizations;

(iv) The examinee may not be subjected to a test when there is sufficient written evidence by a physician that the examinee is suffering from any medical or psychological condition or undergoing any treatment that might cause abnormal responses during the actual testing phase. "Sufficient written evidence" shall constitute, at a minimum, a statement by a physician specifically describing the examinee's medical or psychological condition or treatment and the basis for the physician's opinion that the condition or treatment might result in such abnormal responses.

(2) An employee or prospective employee who exercises the right to terminate the test, or to decline the test for medical reasons with sufficient supporting evidence, shall be subject to adverse employment action only on the same basis as one who refuses to take a

polygraph test, as described in §§ 801.20 and 801.21 of this part.

(c) Any polygraph examination shall consist of one or more pretest phases, actual testing phases, and post-test phases.

(1) *Pretest phase.* The pretest phase consists of the questioning and other preparation of the prospective examinee before the actual use of the polygraph instrument.

(i) During the initial pretest phase, the examinee must be:

(A) Provided with written notice, in a language understood by the examinee, as to when and where the examination will take place and that the examinee has the right to consult with counsel or an employee representative before each phase of the test. Such notice shall be furnished to the examinee at least forty-eight hours, excluding weekend days and holidays, before the time of the examination. The purpose of this requirement is to provide a sufficient opportunity prior to the examination for the examinee to consult with counsel or an employee representative. While an employee has the right to obtain and consult with legal counsel before each phase of the test, the attorney or representative may be excluded from the room where the examination is administered during the actual testing phase.

(B) Informed orally and in writing of the nature and characteristics of the polygraph instrument and examination, including an explanation of the physical operation of the polygraph instrument and the procedure used during the examination.

(C) Provided with a written notice, in a language understood by the examinee, which shall be read to and signed by the examinee. The notice may be in any format (a suggested format is set forth in Appendix A to this part), but must contain at least the following information:

(*1*)(*i*) Whether or not the polygraph examination area contains a two-way mirror, a camera, or other device through which the examinee may be observed;

(*ii*) Whether or not any other device, such as those used in conversation or recording will be used during the examination;

(*iii*) That both the examinee and the employer have the right, with the other's knowledge, to record electronically the entire examination;

(*2*)(*i*) That the examinee has the right to terminate the test at any time;

(*ii*) That the examinee has the right, and will be given the opportunity, to review all questions to be asked during the test;

(*iii*) That the examinee may not be asked questions in a manner which degrades, or needlessly intrudes;

(*iv*) That the examinee may not be asked any questions concerning religious beliefs or opinions; beliefs regarding racial matters; political beliefs or affiliations; matters relating to sexual behavior; beliefs, affiliations, opinions, or lawful activities regarding unions or labor organizations;

(*v*) That the test may not be conducted if there is sufficient written evidence by a physician that the examinee is suffering from a medical or psychological condition or undergoing treatment that might cause abnormal responses during the examination;

(*3*)(*i*) That the test is not and cannot be required as a condition of employment;

(*ii*) That the employer may not discharge, dismiss, discipline, deny employment or promotion, or otherwise discriminate against the examinee based on the analysis of a polygraph test, or based on the examinee's refusal to take such a test, without additional evidence which would support such action;

(*iii*)(*A*) In connection with an ongoing investigation, that the additional evidence required for the employer to take adverse action against the examinee, including termination, may be evidence that the examinee had access to the property that is the subject of the investigation, together with evidence supporting the employer's reasonable suspicion that the examinee was involved in the incident or activity under investigation;

(*B*) That any statement made by the examinee before or during the test may serve as additional supporting evidence for an adverse employment action, as described in paragraph (c)(1)(i)(C)(*3*)(*ii*) of this section, and that any admission of criminal conduct by the examinee may be transmitted to an appropriate government law enforcement agency;

(*4*) That information acquired from a polygraph test may be disclosed by the examiner or by the employer only:

(*i*) To the examinee or any other person specifically designated in writing by the examinee to receive such information;

(*ii*) To the employer that requested the test;

(*iii*) To a court, governmental agency, arbitrator, or mediator that obtains a court order;

(*iv*) To a U.S. Department of Labor official when specifically designated in writing by the examinee to receive such information;

(*v*) By the employer, to an appropriate governmental agency without a court order where, and only insofar as, the information disclosed is an admission of criminal conduct;

(*5*) That if any of the examinee's rights or protections under the law are violated, the examinee has the right to file a complaint with the Wage and Hour Division of the U.S. Department of Labor, or to take action in court against the employer. Employers who violate this law are liable to the affected examinee, who may recover such legal or equitable relief as may be appropriate, including employment, reinstatement, and promotion, payment of lost wages and benefits, and reasonable costs, including attorney's fees. The Secretary of Labor may also bring action to restrain violations of the Act, or may assess civil money penalties against the employer.

(*6*) That the employee's rights under the Act may not be waived, either voluntarily or involuntarily, by contract or otherwise, except as part of a written settlement to a pending action or complaint under the Act, agreed to and signed by the parties.

(ii) During the initial or any subsequent pretest phases, the examinee must be given the opportunity, prior to the actual testing phase, to review all questions in writing that the examiner will ask during each testing phase.

(2) *Actual testing phase.* The actual testing phase refers to that time during which the examiner administers the examination by using a polygraph instrument with respect to the examinee and then analyzes the charts derived from the test. Throughout the actual testing phase, the examiner shall not ask any question that was not presented in writing for review prior to the test. In the case of an ongoing investigation, the examiner shall ensure that all relevant questions pertain to the investigation.

(3) *Post-test phase.* The post-test phase refers to any questioning or other communication with the examinee following the use of the polygraph instrument, including review of the results of the test with the examinee. Before any adverse employment action, the employer must:

(i) Further interview the examinee on the basis of the test results; and

(ii) Give to the examinee a written copy of any opinions or conclusions rendered in response to the test, as well as the questions asked during the test, with the corresponding charted responses.

(4) No testing period shall be less than ninety minutes in length. Such "test period" begins at the time that the examiner begins informing the examinee

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of the nature and characteristics of the examinations and the instruments involved, as prescribed in section (b)(2)(B) of the Act and § 801.22(e)(1)(i)(B) of this part, and ends when the examiner completes the review of the test results with the examinee. The ninety-minute minimum duration shall not apply if the examinee voluntarily acts to terminate the test.

§ 801.23 Qualifications of and requirements for examiners.

(a) Section 6 (b) and (c) of the Act provides that the limited exemption in section 7(d) of the Act for ongoing investigations, and the security service and controlled substances exemptions in section 7 (e) and (f) of the Act, shall not apply unless the person conducting the polygraph examination meets specified qualifications and requirements.

(b) An examiner must meet the following qualifications:

(1) Have a valid current license, if required by the State in which the test is to be conducted; and

(2) Carry a minimum bond of $50,000 provided by a surety incorporated under the laws of the United States or of any State, which may under those laws guarantee the fidelity of persons holding positions of trust, or carry an equivalent amount of professional liability coverage.

(c) An examiner must also, with respect to examinees identified by the employer pursuant to § 801.30(c) of this part:

(1) Observe all rights of examinees, as set out in § 801.22 of this part.

(2) Administer no more than five polygraph examinations in any one calendar day, not counting those instances where an examinee voluntarily terminates an examination prior to the actual testing phase, as decribed in § 801.22(c)(2) of this part.

(3) Administer no polygraph examination which is less than ninety minutes in duration, as described in § 801.22(c)(4) of this part.

(4) Render any opinion or conclusion regarding truthfulness or deception in writing. Such opinion or conclusion must be based solely on the polygraph test results. The written report shall not contain any information other than admissions, information, case facts, and interpretation of the charts relevant to the stated purpose of the polygraph test and shall not include any recommendation concerning the employment of the examinee.

(5) Maintain all opinions, reports, charts, written questions, lists, and other records relating to the test, including statements signed by examinees advising them of rights under the Act (as described in § 801.22(c)(1)(i)(C) of this part) and any electronic recordings of examinations, for at least three years from the date of the administration of the test. (See § 801.30 of this part for recordkeeping requirements.)

Subpart D—Recordkeeping and Disclosure Requirements

§ 801.30 Records to be preserved for 3 years.

(a) The following records shall be kept for a minimum period of three years from the date of the polygraph examination is conducted (or from the date the examination is requested if no examination is conducted):

(1) Each employer who requests an employee to submit to a polygraph examination in connection with an ongoing investigation involving economic loss or injury shall retain a copy of the statement that sets forth the specific incident or activity under investigation and the basis for testing that particular employee, as required by section 7(d)(4) of the Act and described in § 801.12(a)(4) of this part.

(2) Each employer who administers a polygraph examination under the exemption provided by section 7(f) of the Act (described in § 801.13 of this part) in connection with an ongoing investigation of criminal or other misconduct involving, or potentially involving, loss or injury to the manufacture, distribution or dispensing of a controlled substance, shall retain records specifically identifying the loss or injury in question and the nature of the employee's access to the person or property that is the subject of the investigation.

(3) Each employer shall identify in writing to the examiner persons to be examined pursuant to any of the exemptions under section 7(d), (e) or (f) of the Act (described in § 801.12, 801.13, and 801.14 of this part), and shall retain a copy of such notice.

(4) Each examiner retained to administer examinations to persons identified by employers under paragraph (d) shall maintain all opinions, reports, charts, written questions, lists, and other records relating to polygraph tests of such persons. In addition, the examiner shall maintain records of the number of examinations conducted each day (whether or not conducted pursuant to the Act), and, with regard to tests administered to persons identified by their employer under paragraph (d), the duration of each test period, as defined in § 801.22(c)(4) of this part.

(5) Each employer who retains an examiner to administer examinations pursuant to any of the exemptions under section 7 (d), (e) or (f) of the Act (described in § 801.12, 801.13, and 801.14 of this part) shall maintain copies of all opinions, reports or other records furnished to the employer by the examiner relating to such examinations.

(b) Each employer shall keep the records required by this Part safe and accessible at the place or places of employment or at one or more established central recordkeeping offices where employment records are customarily maintained. Where the records are maintained at a central recordkeeping office, other than in the place or places of employment, such records shall be made available within 72 hours following notice from the Secretary or an authorized representative.

(c) Each examiner shall keep the records required by this Part safe and accessible at the place or places of business or at one or more established central recordkeeping offices where examination records are customarily maintained. Where the records are maintained at a central recordkeeping office, other than in the place of places of business, such records shall be made available within 72 hours following notice from the Secretary or an authorized representative.

(d) All records shall be available for inspection and copying by the Secretary or an authorized representative. Information whose disclosure is restricted under section 9 of the Act and § 801.35 of this part shall be made available to the Secretary or the Secretary's representative where the examinee has designated the Secretary, in writing, to receive such information, or by order of a court of competent jurisdiction.

§ 801.35 Disclosure of test information.

Section 9 of the Act prohibits the unauthorized disclosure of any information obtained during a polygraph test by any person, other than the examinee, directly or indirectly, except as follows:

(a) A polygraph examiner or an employer (other than an employer exempt under section 7 (a), (b) or (c) of the Act (described in §§ 800.10 and 801.11 of this part)) may disclose information acquired from a polygraph test only to:

(1) The examinee or an individual specifically designated in writing by the examinee to receive such information;

(2) The employer that requested the polygraph test pursuant to the provisions of this Act;

(3) Any court, governmental agency, arbitrator, or mediator that obtains an order from a court of competent jurisdiction requiring the production of such information;

(4) The Secretary of Labor, or the Secretary's representative, when specifically designated in writing by the examinee to receive such information.

(b) An employer may disclose information from the polygraph test at any time to an appropriate governmental agency without the need of a court order where, and only insofar as, the information disclosed is an admission of criminal conduct.

(c) A polygraph examiner may disclose test charts, without identifying information (but not other examination materials and records) to another examiner(s) for examination and analysis, *provided* that such disclosure is for the sole purpose of consultation and review of the initial examiner's opinion concerning the indications of truthfulness or deception. Such action would not constitute disclosure under this Part provided that the other examiner has no direct or indirect interest in the matter.

Subpart E—Enforcement

§ 801.40 General.

(a) Whenever the Secretary believes that the provisions of the Act or these regulations have been violated, such action shall be taken and such proceedings instituted as deemed appropriate, including the following:

(1) Petitioning any appropriate District Court of the United States for temporary or permanent injunctive relief to restrain violation of the provisions of the Act or this part by any person, and to require compliance with the Act and this part, including such legal or equitable relief incident thereto as may be appropriate, including, but not limited to, employment, reinstatement, promotion, and the payment of lost wages and benefits;

(2) Assessing a civil penalty against any employer who violates any provision of the Act or this part in an amount of not more than $10,000 for each violation, in accordance with regulations set forth in this part; or

(3) Referring any unpaid civil money penalty which has become a final and unappealable order of the Secretary or a final judgment of a court in favor of the Secretary to the Attorney General for recovery.

(b)(1) Any employer who violates this Act shall be liable to the employee or prospective employee affected by such violation for such legal or equitable relief as may be appropriate, including, but not limited to, employment, reinstatement, promotion, and the payment of lost wages and benefits.

(2) An action under this subsection may be maintained against the employer in any Federal or State court of competent jurisdiction by an employee or prospective employee for or on behalf of such employee, prospective employee and others similarly situated. Such action must be commenced within a period not to exceed 3 years after the date of the alleged violation. The court, in its discretion, may allow reasonable costs (including attorney's fees) to the prevailing party.

(c) The taking of any one of the actions referred to in paragraph (a) of this section shall not be a bar to the concurrent taking of any other appropriate action.

§ 801.41 Representation of the Secretary.

(a) Except as provided in section 518(a) of Title 28, U.S. Code, relating to litigation before the Supreme Court, the Solicitor of Labor may appear for and represent the Secretary in any civil litigation brought under section 6 of the Act, as described in § 801.40 of this part.

(b) The Solicitor of Labor, through authorized representatives, shall represent the Administrator in all administrative hearings under the provisions of section 6 of the Act and this part.

§ 801.42 Civil money penalties—assessment.

(a) A civil money penalty in an amount not to exceed $10,000 for any violation may be assessed against any employer for:

(1) Requiring, requesting, suggesting or causing an employee or prospective employee to take a lie detector test or using, accepting, referring to or inquiring about the results of any lie detector test or any employee or prospective employee, other than as provided in the Act of this part;

(2) Taking an adverse action or discriminating in any manner against any employee or prospective employee on the basis of the employee's or prospective employee's refusal to take a lie detector test, other than as provided in the Act or this part;

(3) Discriminating or retaliating against an employee or prospective employee for the exercise of any rights under the Act;

(4) Disclosing information obtained during a polygraph test, except as authorized by the act or this part;

(5) Failing to maintain the records required by the Act or this part;

(6) Resisting, opposing, impeding, intimidating, or interfering with an official of the Department of Labor during the performance of an investigation, inspection, or other law enforcement function under the Act or this part; or

(7) Violating any other provision of the Act or this part.

(b) In determining the amount of penalty to be assessed for any violation of the Act or this part, the Administrator shall consider the previous record of the employer in terms of compliance with the Act and regulations, the gravity of the violations, and other pertinent factors. The matters which may be considered include, but are not limited to, the following:

(1) Previous history of investigation(s) or violation(s) of the Act or this part;

(2) The number of employees or prospective employees affected by the violation or violations;

(3) The seriousness of the violation or violations;

(4) Efforts made in good faith to comply with the provisions of the Act and this part;

(5) If the violations resulted from the actions or inactions of an examiner, the steps taken by the employer to ensure the examiner complied with the Act and the regulations in this part, and the extent to which the employer could reasonably have foreseen the examiner's actions or inactions;

(6) The explanation of the employer, including whether the violations were the result of a bona fide dispute of doubtful legal certainty;

(7) The extent to which the worker(s) suffered loss or damage;

(8) Commitment to future compliance, taking into account the public interest and whether the person has previously violated the provisions of the Act or this part.

§ 801.43 Civil money penalties—payment and collection.

Where the assessment is directed in a final order of the Department, the amount of the penalty is immediately due and payable to the United States Department of Labor. The person assessed such penalty shall remit promptly the amount thereof as finally determined, to the Administrator by certified check or by money order, made payable to the order of "Wage and Hour Division, Labor". The remittance shall be delivered or mailed to the Wage and Hour Division Regional Office for the area in which the violations occurred.

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Subpart F—Administrative Proceedings

General

§ 801.50 Applicability of procedures and rules.

The procedures and rules contained in this subpart prescribe the administrative process for assessment of civil money penalties for violations of the Act or of these regulations.

Procedures Relating to Hearing

§ 801.51 Written notice of determination required.

Whenever the Administrator determines to assess a civil money penalty for a violation of the Act or this part, the person against whom such penalty is assessed shall be notified in writing of such determination. Such notice shall be served in person or by certified mail.

§ 801.52 Contents of notice.

The notice required by § 801.51 of this part shall:

(a) Set forth the determination of the Administrator and the reason or reasons therefore;

(b) Set forth a description of each violation and the amount assessed for each violation;

(c) Set forth the right to request a hearing on such determination;

(d) Inform any affected person or persons that in the absence of a timely request for a hearing, the determination of the Administrator shall become final and unappealable; and

(e) Set forth the time and method for requesting a hearing, and the procedures relating thereto, as set forth in § 801.53 of this part.

§ 801.53 Request for hearing.

(a) Any person desiring to request an administrative hearing on a civil money penalty assessment pursuant to this part shall make such request in writing to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, no later than thirty (30) days after the service of the notice referred to in §801.59 of this part.

(b) No particular form is prescribed for any request for hearing permitted by this subpart. However, any such request shall:

(1) Be typewritten or legibly written;

(2) Specify the issue or issues stated in the notice of determination giving rise to such request;

(3) State the specific reason or reasons why the person requesting the hearing believes such determination is in error;

(4) Be signed by the person making the request or by an authorized representative of such person; and

(5) Include the address at which such person or authorized representative desires to receive further communications relating thereto.

(c) The request for hearing must be received by the Administrator at the address set forth in paragraph (a) of this section, within the time set forth in that paragraph. For the affected person's protection, if the request is by mail, it should be by certified mail, return receipt requested.

Rules of Practice

§ 801.58 General.

Except as specifically provided in this subpart, and to the extent they do not conflict with the provisions of this subpart, the "Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges" established by the Secretary at 29 CFR Part 18 shall apply to administrative proceedings under this subpart.

§ 801.59 Service and computation of time.

(a) Service of documents under this subpart shall be made by personal service to the individual, officer of a corporation, or attorney of record or by mailing the determination to the last known address of the individual, officer, or attorney. If done by certified mail, service is complete upon mailing. If done by regular mail, service is complete upon receipt by addressee.

(b) Two (2) copies of all pleadings and other documents required for any administrative proceeding provided by this part shall be served on the attorneys for the Department of Labor. One copy shall be served on the Associate Solicitor, Division of Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, and one copy on the Attorney representing the Department in the proceeding.

(c) Time will be computed beginning with the day following the action and includes the last day of the period unless it is a Saturday, Sunday, or federally-observed holiday, in which case the time period includes the next business day.

§ 801.60 Commencement of proceeding.

Each administrative proceeding permitted under the Act and these regulations shall be commenced upon receipt of a timely request for hearing filed in accordance with § 810.53 of this part.

§ 801.61 Designation of record.

(a) Each administrative proceeding instituted under the Act and this Part shall be identified of record by a number preceded by the year and the letters "EPPA".

(b) The number, letter, and designation assigned to each such proceeding shall be clearly displayed on each pleading, motion, brief, or other formal document filed and docketed of record.

§ 801.62 Caption of proceeding.

(a) Each administrative proceeding instituted under the Act and this part shall be captioned in the name of the person requesting such hearing, and shall be styled as follows:

In Matter of————————,
Respondent.

(b) For the purposes of administrative proceedings under the Act and this part the "Secretary of Labor" shall be identified as plaintiff and the person requesting such hearing shall be named as respondent.

Referral for Hearing

§ 801.63 Referral to Administrative Law Judge.

(a) Upon receipt of a timely request for a hearing filed pursuant to and in accordance with § 801.53 of this part, the Administrator, by the Associate Solicitor for the Division of Fair Labor Standards or by the Regional Solicitor for the Region in which the action arose, shall by Order of Reference, promptly refer a copy of the notice of administrative determination complained of, and the original or a duplicate copy of the request for hearing signed by the person requesting such hearing or the authorized representative of such person, to the Chief Administrative Law Judge, for a determination in an administrative proceeding as provided herein. The notice of administrative determination and request for hearing shall be filed of record in the Office of the Chief Administrative Law Judge and shall, respectively, be given the effect of a complaint and answer thereto for purposes of the administrative proceeding, subject to any amendment that may be permitted under this part.

(b) A copy of the Order of Reference, together with a copy of this part, shall be served by counsel for the Secretary upon the person requesting the hearing, in the manner provided in 29 CFR 18.3.

§ 801.64 Notice of docketing.

The Chief Administrative Law Judge shall promptly notify the parties of the docketing of each matter.

Procedures Before Administrative Law Judge

§ 801.65 Appearances; representation of the Department of Labor.

The Associate Solicitor, Division of Fair Labor Standards, or Regional Solicitor shall represent the Department in any proceeding under this part.

§ 801.66 Consent findings and order.

(a) *General.* At any time after the commencement of a proceeding under this part, but prior to the reception of evidence in any such proceeding, a party may move to defer the receipt of any evidence for a reasonable time to permit negotiation of an agreement containing consent findings and an order disposing of the whole or any part of the proceeding. The allowance of such deferment and the duration thereof shall be at the discretion of the Administrative Law Judge, after consideration of the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of an agreement being reached which will result in a just disposition of the issues involved.

(b) *Content.* Any agreement containing consent findings and an order disposing of a proceeding or any part thereof shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the notice of administrative determination (or amended notice, if one is filed), and the agreement;

(3) A waiver of any further procedural steps before the Administrative Law Judge; and

(4)A waiver of any right to challenge or contest the validity of the findings and order entered into, in accordance with the agreement.

(c) *Submission.* On or before the expiration of the time granted for negotiations, the parties or their authorized representatives or their counsel may:

(1) Submit the proposed agreement for consideration by the Administrative Law Judge; or

(2) Inform the Administrative Law Judge that agreement cannot be reached.

(d) *Disposition.* In the event an agreement containing consent findings and an order is submitted within the time allowed therefor, the Administrative Law Judge, within thirty (30) days thereafter, shall, if satisfied with its form and substance, accept such agreement by issuing a decision based upon the agreed findings.

§ 801.67 Decision and Order of Administrative Law Judge.

(a) The Administrative Law Judge shall prepare, as promptly as practicable after the expiration of the time set for filing proposed findings and related papers, a decision on the issues referred by the Secretary.

(b) The decision of the Administrative Law Judge shall be limited to a determination whether the respondent has violated the Act or these regulations and the appropriateness of the remedy or remedies imposed by the Secretary. The Administrative Law Judge shall not render determinations on the legality of a regulatory provision or the constitutionality of a statutory provision.

(c) The decision of the Administrative Law Judge, for purposes of the Equal Access to Justice Act (5 U.S.C. 504), shall be limited to determinations of attorney fees and/or other litigation expenses in adversary proceedings requested pursuant to § 801.53 of this part which involve the imposition of a civil money penalty assessed for a violation of the Act or this Part.

(d) The decision of the Administrative Law Judge shall include a statement of findings and conclusions, with reasons and basis therefor, upon each material issue presented on the record. The decision shall also include an appropriate order which may be to affirm, deny, reverse, or modify, in whole or in part, the determination of the Secretary. The reason or reasons for such order shall be stated in the decision.

(e) The Administrative Law Judge shall serve copies of the decision on each of the parties.

(f) If any party desires review of the decision of the Administrative Law Judge, a petition for issuance of a Notice of Intent shall be filed in accordance with § 801.69 of this subpart.

(g) The decision of the Administrative Law Judge shall constitute the final order of the Secretary unless the Secretary, pursuant to § 801.70 of this subpart issues a Notice of Intent to Modify or Vacate the Decision and Order.

Modification or Vacation of Decision and Order of Administrative Law Judge

§ 801.68 Authority of the Secretary.

The Secretary may modify or vacate the Decision and Order of the Administrative Law Judge whenever the Secretary concludes that the Decision and Order:

(a) Is inconsistent with a policy or precedent established by the Department of Labor;

(b) Encompasses determinations not within the scope of the authority of the Administrative Law Judge;

(c) Awards attorney fees and/or other litigation expenses pursuant to the Equal Access to Justice Act which are unjustified or excessive; or

(d) Otherwise warrants modifying or vacating.

§ 801.69 Procedures for initiating review.

(a) Within twenty (20) days after the date of the decision of the Administrative Law Judge, the respondent, the Administrator, or any other party desiring review thereof, may file with the Secretary an original and two copies of a petition for issuance of a Notice of Intent as described under § 801.70. The petition shall be in writing and shall contain a concise and plain statement specifying the grounds on which review is sought. A copy of the Decision and Order of the Administrative Law Judge shall be attached to the petition.

(b) Copies of the petition shall be served upon all parties to the proceeding and on the Chief Administrative Law Judge.

§ 801.70 Implementation by the Secretary.

(a) Whenever, on the Secretary's own motion or upon acceptance of a party's petition, the Secretary believes that a Decision and Order may warrant modifying or vacating, the Secretary shall issue a Notice of Intent to modify or vacate the Decision and Order in question.

(b) The Notice of Intent to Modify or Vacate a Decision and Order shall specify the issue or issues to be considered, the form in which submission shall be made (i.e., briefs, oral argument, etc.), and the time within which such presentation shall be submitted. The Secretary shall closely limit the time within which the briefs must be filed or oral presentations made, so as to avoid unreasonable delay.

(c) The Notice of Intent shall be issued within thirty (30) days after the date of the Decision and Order in question.

(d) Service of the Notice of Intent shall be made upon each party to the proceeding, and upon the Chief Administrative Law Judge, in person or by certified mail.

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§ 801.71 Filing and service.

(a) *Filing.* All documents submitted to the Secretary shall be filed with the Secretary of Labor, U.S. Department of Labor, Washington, DC 20210.

(b) *Number of copies.* An original and two copies of all documents shall be filed.

(c) *Computation of time for delivery by mail.* Documents are not deemed filed with the Secretary until actually received by the Secretary. All documents, including documents filed by mail, must be received by the Secretary either on or before the due date. No additional time shall be added where service of a document requiring action within a prescribed time thereafter, was made by mail.

(d) *Manner and proof of service.* A copy of all documents filed with the Secretary shall be served upon all other parties involved in the proceeding. Service under this section shall be by personal delivery or by mail. Service by mail is deemed effected at the time of mailing to the last known address.

§ 801.72 Responsibility of the Office of Administrative Law Judges.

Upon receipt of the Secretary's Notice of Intent to Modify or Vacate the Decision and Order of an Administrative Law Judge, the Chief Administrative Law Judge shall, within (15) days, fifteen forward a copy of the complete hearing record to the Secretary.

§ 801.73 Final decision of the Secretary.

The Secretary's final Decision and Order shall be served upon all parties and the Chief Administrative Law Judge, in person or by certified mail.

Record

§ 801.74 Retention of offical record.

The official record of every completed administrative hearing provided by this part shall be maintained and filed under the custody and control of the Chief Administrative Law Judge.

§ 801.75 Certification of official record.

Upon receipt of timely notice of appeal to a United States District Court of a Decision and Order issued under this part, the Chief Administrative Law Judge shall promptly certify and file with the appropriate United States District Court, a full, true, and correct copy of the entire record, including the transcript of proceedings.

Appendix A—Notice to Examinee

Section 8(b) of the Employee Polygraph Protection Act, and Department of Labor regulations (29 CFR 801.22) require that you be given the following information before taking a polygraph examination:

1. (a) The polygraph examination area [does] [does not] contain a two-way mirror, a camera, or other device through which you may be observed.

(b) Another device, such as those used in conversation or recording, [will] [will not] be used during the examination.

(c) Both you and the employer have the right, with the other's knowledge, to record electronically the entire examination.

2. (a) You have the right to terminate the test at any time.

(b) You have the right, and will be given the opportunity, to review all questions to be asked during the test.

(c) You may not be asked questions in a manner which degrades, or needlessly intrudes.

(d) You may not be asked any questions concerning: Religious beliefs or opinions; beliefs regarding racial matters; political beliefs or affiliations; matters relating to sexual behavior; beliefs, affiliations, opinions, or lawful activities regarding unions or labor organizations.

(e) The test may not be conducted if there is sufficient written evidence by a physician that you are suffering from a medical or psychological condition or undergoing treatment that might cause abnormal responses during the examination.

3. (a) The test is not and cannot be required as a condition of employment.

(b) The employer may not discharge, dismiss discipline, deny employment or promotion, or otherwise discriminate against you based on the analysis of a polygraph test, or based on your refusal to take such a test without additional evidence which would support such action.

(c)(1) In connection with an ongoing investigation, the additional evidence required for an employer to take adverse action against you, including termination, may be (A) evidence that you had access to the property that is the subject of the investigation, together with (B) the evidence supporting the employer's reasonable suspicion that you were involved in the incident or activity under investigation.

(2) Any statement made by you before or during the test may serve as additional supporting evidence for an adverse employment action, as described in 3(b) above, and any admission of criminal conduct by you may be transmitted to an appropriate government law enforcement agency.

4. (a) Information acquired from a polygraph test may be disclosed by the examiner or by the employer only:

(1) To you or any other person specifically designated in writing by you to receive such information;

(2) To the employer that requested the test;

(3) To a court, governmental agency, arbitrator, or mediator that obtains a court order;

(4) To a U.S. Department of Labor official when specifically designated in writing by you to receive such information.

(b) Information acquired from a polygraph test may be disclosed by the employer to an appropriate governmental agency without a court order where, and only insofar as, the information disclosed is an admission of criminal conduct.

5. If any of your rights or protections under the law are violated, you have the right to file a complaint with the Wage and Hour Division of the U.S. Department of Labor, or to take action in court against the employer. Employers who violate this law are liable to the affected examinee, who may recover such legal or equitable relief as may be appropriate, including employment, reinstatement, and promotion, payment of lost wages and benefits, and reasonable costs, including attorney's fees. The Secretary of Labor may also bring action to restrain violations of the Act, or may assess civil money penalties against the employer.

6. Your rights under the Act may not be waived, either voluntarily or involuntarily, by contract or otherwise, except as part of a written settlement to a pending action or complaint under the Act, and agreed to and signed by the parties.

I acknowledge that I have received a copy of the above notice, and that it has been read to me.

(Date)

(Signature)

[FR Doc. 88-24377 Filed 10-20-88; 8:45 am]

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federal register

Friday
October 21, 1988

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Proposed Alteration of Airport Radar Service Area; Metropolitan Oakland International, CA; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-AWA-54]

Proposed Alteration of Airport Radar Service Area; Metropolitan Oakland International, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Metropolitan Oakland International Airport, CA, Airport Radar Service Area (ARSA). This proposal would adjust the lateral limits of the ARSA to remove the airspace that is within the outer core of the ARSA, north of Interstate 580, from regulatory status.

DATES: Comments must be received on or before December 23, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Western-Pacific Region, Attention: Manager, Air Traffic Division, Docket No. 87-AWA-54, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Betty Harrison, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC. 20591; telephone: (202) 267-9254.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above.

Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-AWA-54." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to modify the Metropolitan Oakland International ARSA as follows:

Eliminate the area within the outer core, north of Interstate 580. Interstate 580 is a well-known, easily recognizable landmark for visual flight rules (VFR) aircraft. During user forums and feedback sessions following the original implementation of this ARSA, substantial comments were received supporting the exclusion of this area so that the heavily used VFR route, north of Interstate 580, would not be compressed below 2,100 feet MSL. Interstate 580 is located north of the final approach courses of the standard instrument approach procedures for Oakland Airport's Runway 27; thus, the final approach courses would still be protected by the remainder of the outer core. More airspace outside the ARSA would be available in the Lake Chabot area, which would reduce aircraft congestion and provide users more freedom without adversely affecting the Oakland ARSA. Environmentally, aircraft noise could be reduced by allowing nonparticipating aircraft to cross Castro Valley at higher altitudes.

For the reasons discussed under "Regulatory Evaluation," the FAA has determined that this proposed regulation is not a "major rule" under Executive Order 12291 and is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Regulatory Evaluation Summary

The following is a summary of the cost impact and benefit assessment of an NPRM to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71). A more detailed regulatory evaluation has been placed in the docket (87-AWA-54).

Summary of Costs

The FAA estimates the costs associated with the NPRM to be very minimal. The rationale for this determination is based upon two factors:

1. Cost evaluation for the final rule (ASD 85-AW-4, 51 FR 8284, March 10, 1986, "Establishment of Airport Radar Service Areas") determined potential costs would not materialize to any appreciable degree, and if they did occur, such costs would be transitional, relatively low in magnitude, or attributable to specific implementation problems that have been experienced at a very small minority of ARSA sites.

2. Since the NPRM seeks to restore airport radar service area airspace to airport traffic area airspace, there should be little or no cost to the aviation public. Furthermore, since the rule would reduce congestion in the affected airspace and allow the final approach course to Metropolitan Oakland International's Runway 27 to remain protected, sectional charts would be updated during the regular chart cycle.

Summary of Benefits

Many of the benefits of the modification are not quantifiable. The FAA expects the benefits of this proposal will accrue in terms of efficiency and environmental factors. First, controllers would have less airspace to monitor thereby enabling them to concentrate more fully on targets in and around the Metropolitan Oakland International traffic patterns. Second, increased airspace in the Lake Chabot area outside the ARSA would reduce congestion and provide users with more freedom without adversely affecting the Oakland ARSA or posing a safety threat. Finally, aircraft noise would be reduced considerably by allowing nonparticipating pilots to cross Castro Valley at a higher altitude.

Conclusion

On balance, the FAA believes that the restoration of the airspace would benefit various users at a near zero cost and expects that the establishment of this proposal would produce long term, ongoing benefits far in excess of any costs which may be incurred.

Regulatory Flexibility Determination

The proposal to eliminate the ARSA area north of Interstate 580 would release ARSA controlled airspace not required for safety reasons. The establishment of this proposed rule would, in effect, lessen government regulation in the affected areas; thus, it would not pose an economic burden upon independently owned and operated small businesses and small not-for-profit organization.

Trade Impact Statement

The proposed regulation would only impact the Metropolitan Oakland International ARSA. As such, it would have no effect on the sale of foreign aviation products or services in the United States, nor would it affect the sale of American products or services in foreign countries.

Federalism Implications

The regulation proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612 it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed under "Regulatory Evaluation Summary," the FAA certifies that the proposed regulation, if adopted, will not result in a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.50 [Amended]

2. § 71.501 is amended as follows:

Metropolitan Oakland International Airport, CA [Revised]

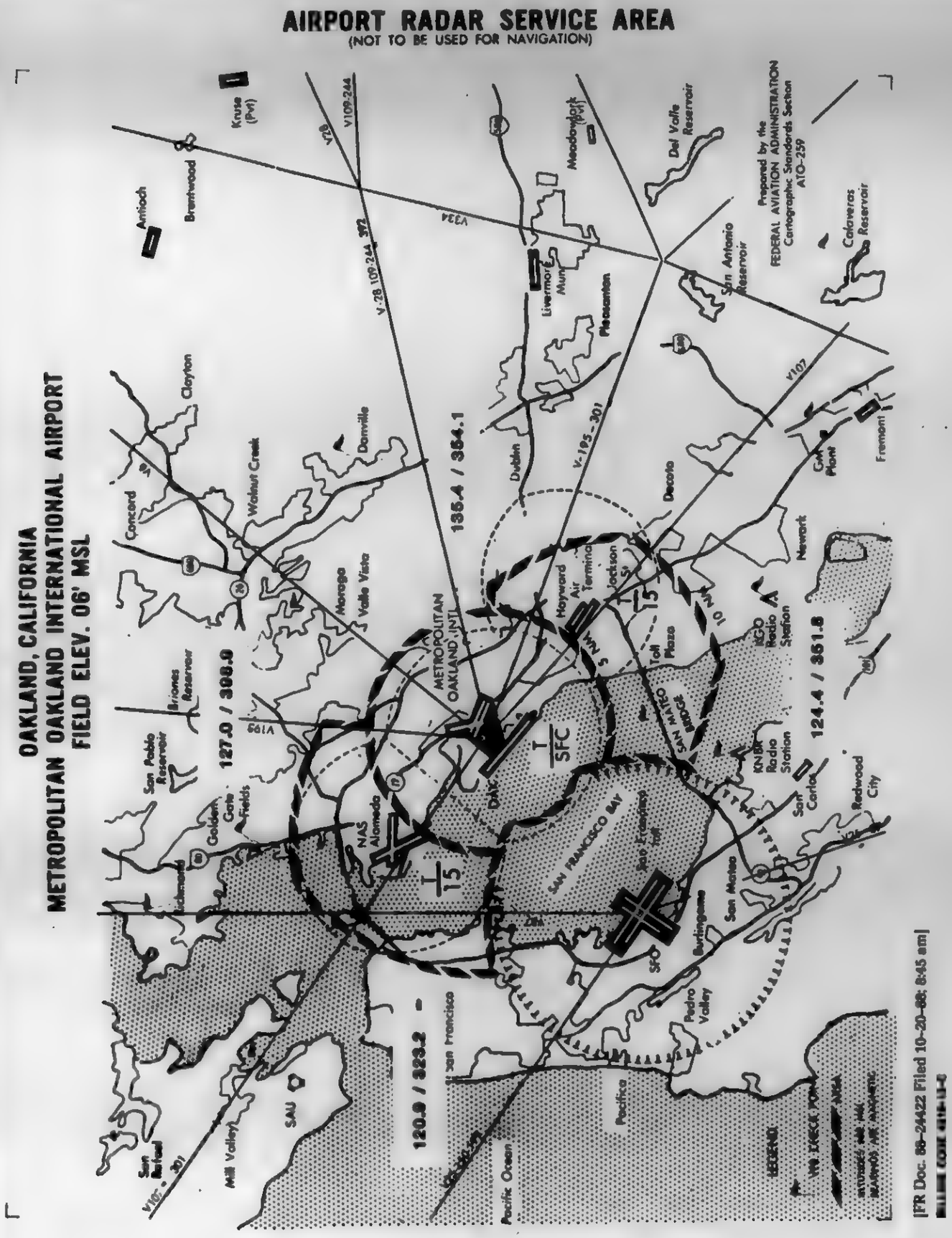
That airspace extending upward from the surface to and including 4,000 feet MSL within a 5-mile radius of the Metropolitan Oakland International Airport (lat. 37°43'17"N., long. 122°13'11"W.), excluding that airspace contained within the San Francisco, CA, Terminal Control Area (TCA); and that airspace extending upward from 1,500 feet MSL to and including 4,000 feet MSL within a 10-mile radius of the Metropolitan Oakland International Airport, excluding that airspace contained within the San Francisco TCA, and that airspace beyond a 5-mile radius from the Metropolitan Oakland International Airport from the Oakland VORTAC 004° radial clockwise to the northern edge of U.S. Interstate 580, and that airspace beyond the 15-mile radius of the San Francisco TCA.

Issued in Washington, DC, on October 17, 1988.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

BILLING CODE 4910-13-M



[FR Doc. 88-24422 Filed 10-20-88; 8:45 am]

federal register

Friday
October 21, 1988

Part VI

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 312 and 314

Investigational New Drug, Antibiotic and Biological Drug Product Regulations; Procedures for Drugs Intended To Treat Life-Threatening and Severely Debilitating Illnesses; Interim Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 312 and 314

[Docket No. 88N-0288]

Investigational New Drug, Antibiotic, and Biological Drug Product Regulations; Procedures for Drugs Intended To Treat Life-Threatening and Severely Debilitating Illnesses

AGENCY: Food and Drug Administration.

ACTION: Interim rule; opportunity for public comment.

SUMMARY: The Food and Drug Administration (FDA) is issuing interim regulatory procedures designed to speed the availability of new therapies to desperately ill patients, while preserving appropriate guarantees for safety and effectiveness. These procedures are intended to facilitate the development, evaluation, and marketing of such products, especially where no satisfactory alternative therapies exist. These procedures reflect the recognition that physicians and patients are generally willing to accept greater risks or side effects from products that treat life-threatening and severely-debilitating illnesses, than they would accept from products that treat less serious illnesses. These procedures also reflect the recognition that the benefits of the drug need to be evaluated in light of the severity of the disease being treated. The procedures apply to products intended to treat acquired immunodeficiency syndrome (AIDS), some cancers, and other life-threatening or severely-debilitating illnesses. FDA is issuing these procedures as an interim rule with opportunity for public comment.

DATES: Interim rule effective October 21, 1988; comments by December 20, 1988.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305) Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Steven H. Unger, Center for Drug Evaluation and Research (HFD–362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8049,

or

Steven F. Falter, Center for Biologics Evaluation and Research (HFB–130), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301–295–8046.

SUPPLEMENTARY INFORMATION: Expediting the availability of promising new therapies has been a major priority of FDA over the past several years. In the Federal Register of May 22, 1987 (52 FR 19466), FDA issued new regulations designed to increase the availability to desperately ill patients of promising investigational new drug (IND) and biological products before general marketing begins. This rulemaking initiative, known as the treatment IND program, was endorsed by the President's Task Force on Regulatory Relief, chaired by Vice President George Bush. The final rule has received broad support from the medical and patient communities. The significance and utility of the treatment IND program has also been recognized and endorsed by the President's Commission on the Human Immunodeficiency Virus (HIV) Epidemic.

The treatment IND regulations became effective on June 22, 1987. Since that time, seven promising experimental therapies have been made available to patients stricken with AIDS, cancer, Parkinson's disease, and other serious conditions. In February 1988, the American Medical Association and FDA cosponsored a major national conference intended to educate physicians and health care organizations about the treatment IND program. FDA has also publicized specific treatment IND approval actions in both medical and lay journals (Refs. 1 through 8).

The treatment IND program is part of FDA's comprehensive efforts to facilitate the development and availability of significant new therapies. For example, through its implementation of the Orphan Drug Act, enacted in 1983, FDA has given special emphasis to potential new therapies for rare diseases or conditions. Since 1983, FDA has granted orphan drug designation to over 200 products, many of which are for life-threatening illnesses. (Orphan drug designation provides the commercial sponsor with certain economic incentives to encourage drug development, including tax credits for the cost of clinical development and exclusive marketing rights for the designated indication upon marketing approval.) FDA has approved for marketing 27 such orphan products, including therapies to treat such life-threatening illnesses as leukemia and AIDS.

FDA has also instituted a number of management improvements designed to expedite the evaluation of AIDS-related products in particular. These include establishment of a top "1–AA" priority for the review of all AIDS products, and the creation of two new divisions—one for drugs and one for biologicals—to give special focus to the review of such products. FDA's actions have led to the approval in record time of the first drug, zidovudine (formerly called AZT), to treat the AIDS virus, as well as approval for human testing of the first potential AIDS vaccines.

Building on these achievements, on August 3, 1988, Vice President Bush, in his capacity as chairman of the Presidential Task Force on Regulatory Relief, requested FDA to develop procedures for expediting the marketing of new therapies intended to treat AIDS and other life-threatening illnesses. This charge recognized the urgency felt by desperately ill patients and their families. The charge was directed to FDA as the Federal agency that regulates the transfer of the fruits of biomedical research to the marketplace.

The procedures contained in this notice respond to the Vice President's charge. In developing these procedures, FDA met informally with representatives of AIDS interest groups as well as with representatives of consumer, health professional, academic, orphan drug, and industry organizations. FDA also met informally with leadership of the National Institutes of Health.

As described further below, FDA is issuing these new procedures as an interim rule, effective immediately, with an opportunity for public comment. Highlights of the interim rule are summarized below, followed by a section-by-section description of the new procedures.

I. Highlights of the Regulations

New procedures are being codified as part of FDA's IND regulations, by adding a new Subpart E consisting of §§ 312.80 through 312.86, and by adding a conforming amendment to FDA's new drug application (NDA) regulations, new paragraph (c) of § 314.25. The purpose of these new procedures (§ 312.80) is to expedite the development, evaluation, and marketing of new therapies intended to treat persons with life-threatening or severely-debilitating illnesses, especially where no satisfactory alternative therapies exist. The procedures themselves focus on the entire drug development and evaluation process—from early preclinical and clinical testing, through FDA evaluation of controlled clinical trials and marketing applications, to postmarketing surveillance—in order to treat the entire process as a coherent whole and thereby significantly increase its overall efficiency.

The scope of the new procedures (§ 312.81) will apply to new drugs, antibiotics, and biological products that are being studied for their safety and effectiveness in treating life-threatening or severely-debilitating illnesses. Within the context of these procedures, the term "life-threatening" is defined to include diseases where the likelihood of death is high unless the course of the disease is interrupted (e.g., AIDS and cancer), as well as diseases or conditions with potentially fatal outcomes where the end point of clinical trial analysis is survival (e.g., increased survival in persons who have had a stroke or heart attack). The term "severely-debilitating" refers to diseases or conditions that cause major irreversible morbidity (e.g., blindness or neurological degeneration).

A key component of the procedures is early consultation between FDA and drug sponsors (§ 312.82) to seek agreement on the design of necessary preclinical and clinical studies needed to gain marketing approval. Such consultation is intended to improve the efficiency of the process by preventing false starts and wasted effort that could otherwise result from studies that are flawed in design. Most important, at the end of early (phase 1) clinical testing, FDA and the sponsor will seek to reach agreement on the proper design of phase 2 controlled clinical trials, with the goal that such research will be adequate to provide sufficient data on the product's safety and effectiveness to support a decision on its approvability for marketing. Where appropriate, FDA will invite to such meetings one or more outside expert scientific consultants or advisory committee members.

If the preliminary analysis of test results appears promising, FDA may ask the sponsor (§ 312.83) to submit a treatment protocol to be reviewed under the treatment IND regulations. Such a treatment protocol, if submitted and granted, would serve as a bridge between the completion of early stages of clinical trials and final marketing approval.

Once phase 2 testing and analysis is completed by the sponsor and a marketing application is submitted, FDA will evaluate the data utilizing a medical risk-benefit analysis (§ 312.84). As part of this evaluation, FDA will consider whether the benefits of the drug outweigh the known and potential risks of the drug and the need to answer remaining questions about risks and benefits of the drug, taking into consideration the severity of the disease and the absence of satisfactory alternative therapy. In making decisions on whether to grant marketing approval for products that have been the subject of an end-of-phase 1 meeting under this rule, FDA will usually seek the advice of outside expert scientific consultants or advisory committees.

As a conforming amendment, a new paragraph (c) is being added to § 314.125 of FDA's NDA regulations. This paragraph is designed to make clear that FDA's evaluation of marketing applications for drugs to treat life-threatening and severely-debilitating diseases will incorporate the criteria being added to § 312.84. These criteria include the adoption of a medical risk-benefit analysis when assessing the safety and effectiveness of these drugs.

Finally, when approval or licensing of a product is being granted, FDA may seek agreement from the sponsor (§ 312.85) to conduct certain postmarketing (phase 4) studies to delineate additional information about the drug's risks, benefits, and optimal use. These studies could include, but would not be limited to, studying different doses or schedules of administration than were used in phase 2 studies, use of the drug in other patient populations or other stages of the disease, and use of the drug over a longer period of time.

These procedures are modeled after the highly successful development, evaluation, and approval of zidovudine, the first drug approved to treat the AIDS virus. Close consultation between FDA, the sponsor, and the National Institutes of Health resulted in efficient preclinical animal testing (2 to 4 weeks in duration), focused phase 1 clinical testing, and a well-designed and conducted multi-center phase 2 clinical trial that provided dramatic evidence of increased survival in patients with advanced cases of AIDS. Given such evidence, FDA approved a treatment protocol in 5 days, and marketing approval in 107 days. Concurrent with approval, the sponsor agreed to conduct phase 4 research studying the effects of zidovudine in patients at an earlier stage of the disease. In total, the drug development and evaluation process, which takes an average of 8 years from initial human testing under an IND to final marketing approval, took only 2 years for zidovudine. Although the total development time will vary with different drugs, FDA believes that the approach contained in these new procedures has great potential for increasing significantly the efficiency of the drug development and evaluation process for the drugs affected.

Moreover, to the extent that the Commissioner determines that clinical trials to treat life-threatening or severely-debilitating diseases are already underway and are consistent with the requirements of these rules, upon his own initiative and in cooperation with the drug sponsor, he may recommend that a marketing application be submitted under the new procedures.

In conjunction with these procedures, FDA may, in certain circumstances, undertake focused regulatory research (§ 312.86) addressing critical rate-limiting aspects of the preclinical, chemical/manufacturing, and clinical phases of drug development and evaluation. The FDA Commissioner and other agency officials will also actively monitor (§ 312.87) the progress of the conduct and evaluation of clinical trials for products covered by these procedures, and will be involved in facilitating their appropriate progress.

The final provision of these procedures (§ 312.88) references applicable safeguards inherent in existing FDA regulations to ensure patient safety during clinical testing and the safety of products following marketing approval. These safeguards include FDA requirements regarding informed consent and institutional review boards. These safeguards further include the review of animal studies prior to initial human testing, and the monitoring of adverse drug experiences during the IND, marketing application, and postmarketing phases.

FDA believes that this program, taken as a whole, establishes a new and innovative approach to stimulating the development of particularly important drugs, while at the same time building on past practices that have proven to be successful.

II. Effective Date and Opportunity for Public Comment

For the reasons described below, FDA is issuing these procedures as an interim rule, with an opportunity for public comment. Because of the urgency associated with life-threatening illnesses, the agency intends to begin implementation of these procedures immediately, but will consider modifications to them based on issues raised during the comment period and experience gained under the interim rule.

The program established in this interim rule is intended to bring about a significant improvement in the efficiency of the development, evaluation, and marketing of new therapies for life-threatening and severely-debilitating illnesses, while preserving appropriate guarantees for safety and effectiveness. Although the program is important, it

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builds upon managerial and regulatory options available under existing practices and procedures. The opportunity for early consultation with sponsors on the design of clinical trials, for example, is permissible under the existing investigational new drug review provisions of FDA's regulations. Because the new program represents a fundamental commitment to expediting the development of innovative products, it is appropriate to identify and describe the components of that program and to codify them for ready reference by affected persons. Moreover, the amendment to Part 314, requiring consideration of risk-benefit criteria in decisions to approve or disapprove these drugs, is consistent with the flexibility granted to the Agency under the statute in determining whether substantial evidence of safety and effectiveness has been demonstrated.

To the extent that the elements of the program announced today are regarded as new rules, they are within the exception to the Administrative Procedure Act notice-and-comment requirement for general statements of policy and rules of agency organization, procedure, and practice (5 U.S.C. 553(b)(A)). Moreover, if the new program is regarded as substantive rulemaking, the Commissioner hereby finds good cause for not providing notice and an opportunity to comment prior to its effectiveness. The importance of developing new therapies for life-threatening diseases has been highlighted in recent years by the AIDS crisis. In addition, the sustained search by drug researchers for treatments for many other diseases, including Alzheimer's disease and cancer, merits immediate attention. FDA believes that, as promising new therapies for these diseases are identified, they must be developed by sponsors and evaluated by the agency as expeditiously as possible. It would therefore be contrary to the public interest to delay the implementation of this program pending the time necessary to engage in the APA's notice-and-comment procedures, and such delay would also be unnecessary because the program derives from existing regulations that have already been the subject of notice and an opportunity for comment (5 U.S.C. 553(b)(B); 21 CFR 10.40(e)).

FDA believes, however, that it should invite and consider public comment on its practices and procedures for reviewing investigational new drug, new drug approval, and biologics license applications, including those described in this notice.

III. Contents of the Program

A. Purpose

The drug development process is generally thought of, in simplified terms, as consisting of three phases of human testing to determine if a drug is safe and effective: Phase 1 with 10 to 50 patients to study how the drug is tolerated, metabolized, and excreted; phase 2 with 50 to 200 patients in which the safety and efficacy of the drug are first evaluated in controlled trials; and phase 3 with 200 to 1,000 or more patients to confirm and expand upon the safety and efficacy data obtained from the first two phases. (For purposes of this discussion, the word "drug" is meant to include new drugs, antibiotic drugs, and biological products.)

A recent study of new drug development has documented the percentage of drugs whose development is discontinued after each of these phases. Of the 174 new chemical entities that entered phase 1 testing under U.S. IND's between 1976 and 1978, 70 percent successfully completed phase 1 and moved on to phase 2, while 33 percent successfully completed phase 2 and moved on to phase 3. At this point the dropout rate slowed considerably, as 27 percent successfully completed phase 3 and were submitted to FDA in the form of a marketing application, and 20 percent actually received marketing approval from the agency (Ref. 9).

The three phases describe the usual process of drug development, but they are not statutory requirements. The basis for marketing approval is the adequacy of the data available; progression through the particular phases is simply the usual means the sponsor uses to collect the data needed for approval. The statute itself focuses on the standard of evidence needed for approval, as derived from adequate and well-controlled clinical investigations, with no mention of phases 1, 2, and 3. FDA believes that if sufficient attention is paid to the quality and amount of data obtained in phase 2, it should be possible to identify early those drugs that represent safe and effective treatments for life-threatening and severely-debilitating diseases—and to develop the evidence needed for their marketing—in the course of carrying out the first controlled trials.

This program is based on that premise. For drugs intended to treat life-threatening and severely debilitating illnesses, it should be possible to reduce the total premarket drug development time by designing and conducting phase 2 controlled trails that are capable of providing necessary data on the drug's safety and effectiveness. FDA would analyze data from such studies utilizing medical risk-benefit considerations appropriate for drugs intended to treat life-threatening or severely-debilitating illnesses. The treatment IND, as appropriate, could continue to serve as a bridge between phase 2 trials and the point of marketing approval. Drug sponsors might also conduct postmarketing (phase 4) studies to delineate additional information about the drug's risks, benefits, and optimal use. The FDA Commissioner and other agency officials would actively monitor the process to ensure that such products are developed by the sponsor and analyzed by the agency as expeditiously as possible.

Section 312.80 of the rule summarizes the program's purpose: to expedite the development, evaluation, and marketing of new therapies intended to treat persons with life-threatening or severely-debilitating illnesses, especially where no satisfactory alternative therapy exists. As stated in FDA's new drug application regulations (§ 314.105(c)), while the statutory standards of safety and effectiveness apply to all drugs, the many kinds of drugs that are subject to them, and the wide range of uses for those drugs, demand flexibility in applying the standards. In promulgating this interim rule, FDA has determined that it is appropriate to exercise the broadest flexibility in applying the statutory standards, while preserving appropriate guarantees for safety and effectiveness. The procedures contained in this rule reflect the recognition that physicians and patients are generally willing to accept greater risks or side effects from products that treat life-threatening and severely-debilitating illnesses, than they would accept from products that treat less serious illnesses. These procedures also reflect the recognition that the benefits of the drug need to be evaluated in light of the severity of the disease being treated. The procedures outlined in this notice should be interpreted consistent with this statement of purpose.

B. Scope

Section 312.81 of the rule outlines the scope of this rule. The rule applies to new drug, antibiotic, and biological products being studied for their safety and effectiveness in treating life-threatening or severely-debilitating diseases.

A "life-threatening" disease is defined as one in which the likelihood of death is high unless the course of the disease is interrupted (e.g., progression from asymptomatic HIV infection to symptomatic HIV infection, or further progression to a later stage of AIDS; metastatic cancer; amyotrophic lateral sclerosis). This use of the term "life-threatening" plainly includes any disease whose progression is likely to lead to death, especially in a short period of time (e.g., 6 months to 1 year). This section also applies to any condition in which a study is to be carried out to determine whether the treatment has a beneficial effect on survival (e.g., increased survival after a stroke or heart attack).

The term "severely-debilitating" is defined as a disease or condition that leads to major irreversible morbidity (e.g., severe functional deficits in multiple sclerosis, Alzheimer's disease or progressive ankylosing spondylitis; prevention of blindness due to cytomegalovirus infection in AIDS patients).

With respect to "severely-debilitating" illnesses, the procedures contained in this rule are applicable to those instances where the studies proposed will examine the treatment's capacity to prevent or reverse what would otherwise be irreversible damage, such as putting ankylosing spondylitis into remission and stopping joint damage and deformity, or preventing blindness. It is in such studies that excellence in study design and an early answer to key questions on safety and effectiveness are especially critical. The agency notes that there are many other studies that examine symptomatic relief (e.g., pain of ankylosing spondylitis) rather than irreversible morbidity. While products being studied for symptomatic relief of a serious disease would likely qualify for treatment IND consideration under § 312.34(b)(2), they would not be covered by the procedures contained in this interim rule.

In all of the cases covered by these new procedures, when the end points of clinical study relate to survival or prevention of major disability, they are of such great importance that it is imperative that the first controlled clinical trials be designed and conducted as well as possible. If this is not done, preliminary reports of success from poorly designed studies might make it difficult ever to carry out the proper trials. FDA believes it is clearly in the public interest to assure in such situations, to the extent possible, that the first clinical trials be designed so that the true merit of the drug or biologic can be evaluated as promptly as possible. FDA will also expedite the designation of eligible orphan products to provide additional incentive for their development.

The agency recognizes that the scope of these procedures is subject to interpretation, and the examples given above are illustrative only. FDA intends to be flexible in its implementation of this program and, subject to available resources, provide early advice when it is sought. The agency encourages sponsors to consult with FDA on the program's applicability to particular products.

C. Elements of the Program

1. Early consultation. A key component to be addressed is early consultation, which is covered in § 312.82 of the rule. In 1987, FDA codified the practice that, upon request of a drug's sponsor, FDA medical staff will hold a conference with the sponsor at the end of phase 2 testing. (See § 312.47(b)(1).) The goal of this conference is to reach agreement on a plan of phase 3 testing that will provide the needed remaining evidence of the drug's safety and efficacy to gain marketing approval. If, however, the evidence obtained from well-planned and well-executed phase 2 research is sufficient under the statute for marketing approval, there may be no need for additional phase 3 premarket testing, and the drug can become available much more rapidly than usual.

This is most likely to occur for drugs to treat life-threatening illnesses where the relatively small amount of data available at this stage may nevertheless be sufficient for approval. For example, phase 2 research was sufficient for approval of zidovudine the only drug approved thus far to treat the AIDS virus. Zidovudine was developed and approved in record time, largely because further premarketing (phase 3) studies were not needed to support safety and effectiveness following completion of a highly successful well-controlled multicenter phase 2 study that demonstrated dramatic effects on survival.

There have been other circumstances, particularly in the oncology area, where early (phase 2) results were such that additional studies were not needed to conclude that the drug was effective and that its benefits outweighed its risks. For example, the licensing of alpha interferons to treat hairy cell leukemia was based on phase 2 trials that showed partial or complete remission of the disease in 75 to 90 percent of patients.

To build upon these successes, FDA is instituting a process for conferences to be held at the end of phase 1 (rather than waiting until the end of phase 2) with the sponsors of drugs and biologics intended to treat life-threatening and severely-debilitating illnesses, especially where there are no satisfactory alternative therapies. The purpose of these conferences will be to review the product's phase 1 test results and phase 2 plans for clinical testing. If enough is known about the drug at that time, agreement would be reached on a phase 2 testing program (e.g., the design of the studies, the number of patients to be tested, the end points to be used, and the proposed mode of replication), that would be sufficient to establish the drug's safety and effectiveness. Where the data resulting from these phase 2 studies prove sufficient to allow a determination that, on the basis of risk-benefit considerations detailed further below, the drug is safe and effective, FDA will approve the drug without further preapproval studies. In this case, phase 2 thus obviates the need for further research in phase 3, if the phase 2 trials prove successful. Of course, when the results of phase 2 research do not provide evidence that fulfills the statutory criteria for approval, further preapproval studies will be necessary.

Because the end-of-phase 1 conference server the same function (except earlier in the process) as an end-of-phase 2 conference would otherwise serve, FDA will apply the same procedures to both meetings, as codified in § 312.47(b)(1). This includes provision for documenting the agreements reached at the meeting. In order to provide the broadest possible expertise available, FDA may invite to the meeting one or more of its advisory committee members or other scientific consultants. The sponsor may, of course, also bring scientific consultants to the meeting.

With respect to study design, the agency recognizes that there has been some confusion about the role of placebo-controlled studies in patients with a life-threatening disease. FDA believes that a requirement for placebo-controlled studies is *not* appropriate in those situations where there is known to be an effective therapy, for the stage of disease or condition under investigation, that can improve survival or prevent irreversible morbidity. For example, in the case of symptomatic AIDS or advanced AIDS-related complex (ARC), where zidovudine is known to improve survival, it would not be appropriate to compare a new drug with placebo. Rather, the new drug should be compared with zidovudine. It would also be possible to compare the new drug plus zidovudine with zidovudine alone, but in neither case would it be necessary to deny patients therapy with zidovudine which is known to improve survival. In contrast, where no therapy has been shown to be effective, it is scientifically and ethically appropriate

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to randomize patients to test drug and placebo. This was done with zidovudine and, by providing early and clear evidence of benefit in terms of improved survival, enabled FDA to confer the rapid approval that made the drug widely available to AIDS patients.

The Institute of Medicine, in its recent report entitled, "Confronting AIDS: Update 1988," emphasized the importance of controlled clinical trials as the "fastest, most efficient way to determine what treatments work" (Executive Summary at page 19; Report at page 139) (Ref. 10). As the report continues, "Conducting well-designed trials from the beginning will benefit more patients, sooner, than any other approach. Poorly designed trials, or administering drugs without controls and 'observing' the course of the disease, risk being inconclusive or drawing incorrect conclusions." (Report at page 139) (Ref. 10). FDA fully supports the early initiation of well-designed phase 2 controlled clinical trials as the most efficient mechanism of evaluating treatments for the desperately ill.

When planning phase 2 studies, it will be particularly important to make optimal use of pharmacokinetic/pharmacodynamic studies carried out in phase 1. Such phase 1 data are particularly useful in selecting the best dose(s) and dosing intervals for phase 2 testing. Therefore, FDA input should be helpful in the design of phase 1 studies also.

FDA can also make the drug development process more efficient by interacting with the drug sponsor, even before phase 1 testing begins, to help identify the animal studies necessary to assess the toxicity of the new drug and ensure that clinical studies can be initiated with reasonable assurance of safety. In consulting with sponsors on animal studies, FDA takes into account the seriousness of the disease to be treated and the nature of the clinical studies planned. In this way, FDA involvement can facilitate the initiation of trials in human patients as early as the safety studies in animals permit, thereby reducing potential barriers to innovation at this early but important stage of new pharmaceutical development.

For example, using this process, some new AIDS drugs have been able to enter clinical testing after animal studies that were 4 weeks long or less in duration, and the preclinical animal studies completed before initial human use of zidovudine were 2 to 4 weeks long. By working closely with the sponsor, FDA can suggest the minimum amount of preclinical testing needed to go forward without compromising the safety of clinical study participants. Unnecessary animal studies can be avoided, animal lives can be spared, and the sponsor can move the drug into clinical testing in the shortest possible time. Moreover, early FDA involvement can also shorten the time it takes the agency to review and IND submission and lessen the likelihood of FDA placing the application on clinical hold.

2. Treatment IND's. Section 312.83 of the rule outlines the role of the treatment IND in the context of this overall program. As codified in §§ 312.34 and 312.35, treatment IND's are intended to permit the wider use of promising experimental drugs for serious and immediately life-threatening illnesses in patients who lack satisfactory alternative therapy. Within the drug development process, treatment IND's can provide a bridge between the completion and initial analysis of promising phase 2 studies and the point of marketing approval. Thus, when early evidence from phase 2 indicates that a drug for a life-threatening or severely-debilitating illness is promising, FDA will actively work with the sponsor to evaluate the appropriateness of a treatment protocol. This approach was used during the development of zidovudine, and allowed wide availability of the drug to over 4,000 patients while the marketing application was being assembled by the sponsor and reviewed by FDA. In addition, FDA will continue to work actively to educate physicians and drug sponsors on how to utilize the treatment IND process most effectively.

3. Risk-benefit analysis. Section 312.84(a) of the rule provides that FDA's application of the statutory standards for marketing approval shall recognize the need for a medical risk-benefit judgment in making the final decision on approvability. As part of this evaluation, consistent with the statement of purpose in § 312.80, FDA will consider whether the benefits of the drug outweigh the known and potential risks of the drug and the need to answer remaining questions about risks and benefits of the drug, taking into consideration the severity of the disease and the absence of satisfactory alternative therapy.

While the statute uses the terms safety and effectiveness, rather than risks and benefits, the decision on whether to approve a drug inherently represents a medical risk-benefit judgment. The agency recognizes that safety and effectiveness are not absolute (i.e., not all drugs are free of risk or have unequivocal benefits), but must be assessed in light of what condition the drug treats. This is particularly true in the case of drugs to treat life-threatening diseases, where drugs that are quite toxic may nevertheless be considered safe under the circumstances.

In carrying out the statutory mandate, FDA will consider the seriousness of the disease being treated in balancing risks and benefits. For example, as a class, oncologic drugs are highly toxic, but this is acceptable when they are used to treat illnesses for which they represent the only available method of treatment and when they can have a favorable influence on survival or on intractable symptoms. Moreover, dramatic responses (i.e., great benefit), especially on significant end points like survival or progression to an inevitably fatal stage of illness, make it easier to conclude that the benefits of treatment outweigh its risks, even if not all important questions about the drug are answered. Clearly, for a life-threatening illness, a relatively high level of known risk and some uncertainty about potential risk from the drug can be acceptable in exchange for the improved survival provided by effective drug treatment for a condition that, left untreated, would result in death. Similarly, for the same life-threatening illnesses, evidence of effectiveness must be weighed against risks of the drug and the knowledge that death would result in the absence of treatment.

Section 312.84(b) of the rule provides that the agency will usually seek the advice of outside expert consultants or advisory committees in reaching its conclusions. That section also provides that FDA will notify the members of the relevant standing advisory committee of the filing of a marketing application covered by this rule, and its availability for review.

In seeking to utilize phase 2 data for final decisionmaking, FDA would be trying to increase the likelihood that a safe and effective drug, especially one that affects mortality or major irreversible morbidity, would be shown safe and effective in the shortest possible time by assuring that the initial studies are adequate to do this—i.e., to provide evidence, even though derived from a limited data base, that would be sufficient to reach a benefit-risk judgment. FDA's goal is to be able to reach a scientifically defensible decision based on the results of well-designed phase 2 controlled clinical trials. If, on the basis of phase 2 testing, a therapy is found to effectively treat a life-threatening disease for which no other therapy exists, it would not be appropriate to continue premarketing research into phase 3. However, poorly designed phase 2 studies serve to retard the drug development process.

If FDA concludes that the data presented are not sufficient for marketing approval, § 312.84(b) of the rule provides that FDA will issue a letter to the sponsor describing the deficiencies in that application, including why the results of the research design agreed to under § 312.82 of this rule, or in subsequent meetings, did not provide sufficient evidence for marketing approval. Such letter will also describe any recommendations made by the advisory committee regarding the application.

To increase the likelihood that phase 2 testing can provide sufficient results, sponsors could need to plan phase 2 studies that are somewhat larger and more extensive than is currently the norm, including a mode for replication of key findings. Moreover, to avoid missing an effect by using too little drug, or to avoid studying a dose that proves toxic, it may be necessary to study several doses in the first formal trials, an approach that may require a larger study but can plainly save time, thereby enabling physicians to treat patients with life-threatening illnesses more rapidly. However, it should be appreciated that is a drug has only minor or inconsistent therapeutic benefits, its positive effects may be missed in this stage of clinical testing, even if the drug ultimately proves to be beneficial following more extensive phase 3 trials.

The issue of replication requires careful consideration. The requirement in the statute for adequate and well-controlled "clinical investigations" (21 U.S.C. 355(d) (emphasis added)) has long been interpreted to mean that the effectiveness of a drug should be supported by more than one well-controlled clinical trial and carried out by independent investigators. This interpretation is also consistent with the general scientific demand for replicability to ensure reliability of study results. Therefore, as a general requirement, the clinical trials submitted in a marketing application—including trials on products covered by this rule—must include studies by more than one independent investigator, each of whom has studied a number of patients adequate to generate statistically reliable results.

When applying the statutory requirement of "adequate and well-controlled investigations" to a drug for a life-threatening or severely-debilitating disease, FDA will consider the quality of the data submitted, including the assurance of the data's consistency, reliability, and reproducibility. There have been a few unusual instances in which a particularly persuasive multi-center study has been accepted in support of a claim of increased survival because the study was, due to its design and dramatic and reliable results, considered highly persuasive; therefore, replication was not required for ethical reasons. One such example was the approval of zidovudine to treat AIDS patients (discussed earlier in this preamble). A second example involved the approval of timolol for reduction of post-infarction mortality, where a major effect on mortality was demonstrated in a large multi-center study. The timolol study was very persuasive because of excellent design, minimal or no problems during execution of the study, and a high degree of statistical significance associated with the critical finding.

In both these instances, the sufficiency of a multi-center study for marketing approval was based on the research being well-designed and well-conducted, and a dramatic increase in survival of the patients using the drug. Under these circumstances, FDA believed it would be unethical to repeat the trial. FDA would consider applying the same principle to other such cases in which the outcome of a multi-center study demonstrated a consistently dramatic increase in survival among independently evaluable study sites and where repetition of the study would be unethical. However, the agency cautions that persuasively dramatic results are rare and that two entirely independent studies will generally be required. Sponsors should therefore plan in advance a strategy for replication of key findings through a second well-controlled study. Such replication need not delay approval where a sponsor carries out all necessary clinical studies concurrently.

Finally, § 312.84(d) of the rule provides that marketing applications submitted under the procedures contained in this section will be subject to the requirements and procedures contained in 21 CFR Part 314 or Part 600, as well as those in this interim rule. FDA has also added a conforming amendment to § 314.125 of the new drug application regulations, noting that for drugs intended to treat life-threatening or severely-debilitating illnesses that are developed in accordance with §§ 312.80 through 312.88, the criteria contained in paragraphs (b)(3), (4), and (5) of § 314.125 shall be applied according to the considerations contained in § 312.84.

While FDA can contribute to the design of the controlled clinical trials, and actively urge that such trials be pursued, the agency has no direct control over the pace at which trials are initiated and completed. Success of drug development depends on the willingness of the sponsor and clinical investigators to devote the necessary time and resources to complete the studies expeditiously.

4. Phase 4 studies. Section 312.85 of the rule describes the role of phase 4 studies in this program. If FDA approval is gained on the basis of limited, but sufficient, clinical trials, it will usually be important to conduct postmarketing (phase 4) clinical studies that will extend the knowledge about the drug's safety and efficacy and allow physicians to optimize its use. For example, in the case of zidovudine, early appearance of a dramatic improvement in survival of the treated patients was taken as clear evidence that, for the relatively advanced HIV-infected patients treated, the benefits clearly outweighed the risks. Although significant side effects of zidovudine were found, the clinically demonstrated benefit of prolonged survival clearly outweighed those risks.

This does not mean that all important questions were answered at the time of approval of zidovudine and that research into its use could end. It was critical to examine—after marketing—its use in earlier stages of the disease, where its toxicity might outweigh its benefit (i.e., in earlier stages of the disease, survival is much greater without treatment so that there is less improvement possible, but toxicity might be just as severe). It was also important to explore dosing regimens that might be less toxic and equally effective. In addition, as with any drug, it is important to consider whether there are long-term adverse effects that might "take away" the early gain. As with zidovudine, FDA has generally been able to obtain a voluntary agreement with drug sponsors about the need to do such followup studies and the nature of their design, because sponsors also recognize important gaps in the data base and believe they need to be filled. Section 312.85 of the rule codifies this practice.

5. Focused FDA regulatory research. The responsibility for conducting the preclinical and clinical testing needed to gain marketing approval clearly rests with the drug's sponsor. This rule does not alter that responsibility. Recognizing the lack of available therapy for certain life-threatening and severely-debilitating illnesses, § 312.88 of the rule provides that in certain circumstances FDA may, in its discretion, undertake research on critical rate-limiting aspects of the preclinical, chemical/manufacturing,

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and clinical phases of drug development and evaluation. For example, FDA often needs specific information upon which critical regulatory decisions are made—e.g., manufacturing standards and assays for vaccine or biotechnology products. Recent examples include FDA potency testing of vaccines and development of assay methods for drug bioavailability. FDA is prepared to intensify this practice on a limited basis as a means of meeting a public health need in facilitating the development of therapies to treat life-threatening illnesses, rather than merely waiting passively.

6. Active monitoring of conduct and evaluation of clinical trials. Section 312.87 of the rule provides that the Commissioner and other agency officials will actively monitor the progress of the conduct and evaluation of clinical trials and be involved in stimulating their appropriate progress. Recognizing that people with life-threatening diseases face a catastrophic condition that requires special attention, it is imperative that the conduct of clinical trials and FDA's evaluation of them proceed as expeditiously as possible. FDA actions would include, for example, contacting the sponsor directly when clinical trials are not proceeding on schedule. FDA may also convene special meetings of its advisory committees, as necessary, rather than waiting for the next scheduled periodic meeting.

Finally, FDA, in conjunction with other Public Health Service agencies, will utilize, to the extent possible, clearinghouse mechanisms for informing physicians and patients of investigational therapies for life-threatening illnesses. Existing mechanisms of this type will be augmented, as appropriate.

7. Safeguards for patient safety. If successfully implemented, this program will expedite the availability and approval of new therapies for life-threatening and severely-debilitating illnesses while assuring that the products are shown safe and effective under the law. Section 312.88 of the rule references safeguards inherent in FDA regulations that ensure the safety of clinical testing and the safety of products following marketing approval. These include the requirements for informed consent (21 CFR Part 50) and institutional review boards (21 CFR Part 56). These safeguards further include the review of animal studies prior to initial human testing (§ 312.23); IND safety reports during the conduct of clinical trials and treatment IND protocols (§ 312.32); safety update reports during the review of marketing applications (§ 314.50); and adverse drug reaction reports after products are approved for marketing (§ 314.80).

In addition to these regulatory safeguards designed to assure patient safety, FDA's practices and procedures provide additional safeguards to assure the quality and integrity of the drug development and review process. These include conducting on-site audits of key studies and/or clinical investigators to assure authenticity of the data submitted to FDA, and inspections of manufacturing facilities before marketing approval is granted to assure that manufacturers are able to produce properly formulated compounds.

D. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

E. Economic Impact

FDA has considered the economic impacts of this interim rule and concludes that additional costs resulting from this rule will be negligible, and to the limited extent that they may occur, they will likely be more than off-set by the societal benefits of this rule.

The compression of the drug development process set forth in this rule for life-threatening and severely-debilitating illnesses presents a trade-off for affected sponsors. They would be relieved of conducting the customary phase 2/phase 3 clinical studies if they participate in early study design consultation with FDA, conduct a sufficiently comprehensive phase 2 study, and stand ready to conduct any necessary phase 4 studies. Considering the probable time savings of this process, it is expected that the net cost of clinical development and regulatory review for a sponsor will remain constant or possibly decrease. Even if costs were to increase slightly, the societal benefits would more than likely compensate for any added costs since a considerable patient population would be receiving the life-saving benefits of the expedited therapy over an extended period of time that would not otherwise be realized.

Accordingly, FDA concludes that this interim rule is not a major rule as defined by Executive Order 12291, which would require a regulatory flexibility analysis. Furthermore, this rule is not expected to impose substantial impacts on a significant number of small entities which would require a regulatory flexibility analysis under the requirements of the Regulatory Flexibility Act of 1980.

F. Paperwork Reduction Act of 1980

This interim rule does not contain new collection of information requirements. Section 312.86 does refer to regulations that contain collection of information requirements that were previously submitted for review to the Director of the Office of Management and Budget (OMB) under section 3504 of the Paperwork Reduction Act of 1980. Sections 312.23 and 312.32 were approved under OMB control number 0910–0014. Section 314.50 was approved under OMB control number 0910–0001. Section 314.80 was approved under OMB control number 0910–0230.

References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Young, Frank E., and Stuart L. Nightingale, "FDA's Newly Designated Treatment IND's," "Information on Treatment IND's as They Become Available to the Practitioner," *Journal of the American Medical Association*, 260:224–225, 247, 1988.
2. Young, Frank E., John A. Norris, Joseph A. Levitt, and Stuart L. Nightingale, "The FDA's New Procedures for the Use of Investigational Drugs in Treatment," *Journal of the American Medical Association*, [illegible], 1988.
3. "Drugs Hold Hope for Parkinson's Obsessive-Compulsive Patients," *FDA Consumer*, September 1988:31.
4. Young, Frank E., "Experimental Drugs for the Desperately Ill: A Progress Report," *FDA Consumer*, May 1988:2–3.
5. "Updates," *FDA Consumer*, February 1988:5–6.
6. Young, Frank E., "New Drug Development in the United States," *FDA Consumer*, November 1987:4–5.
7. "Updates," *FDA Consumer*, September 1987:5–6.
8. Young, Frank E., "Experimental Drugs for the Desperately Ill," *FDA Consumer*, June 1987:2–3.
9. Office of Planning and Evaluation Study 77, "The Outcome of Research on New Molecular Entities Commencing Clinical Research in the Years 1976–78," FDA, May 1988.
10. "Confronting AIDS: Update 1988," Institute of Medicine, 1988.

List of Subjects

21 CFR Part 312

Drugs, Exports, Imports, Investigations, Labeling, Medical research, Reporting and recordkeeping requirements, Safety.

21 CFR Part 314

Administrative practice and procedure, Drugs, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, Parts 312 and 314 are amended as follows:

PART 312—INVESTIGATIONAL NEW DRUG APPLICATION

1. Subparts E and F are redesignated as Subparts F and G, respectively, and new Subpart E is added consisting of §§ 312.80 through 312.88 to read as follows:

Subpart E—Drugs Intended To Treat Life-Threatening and Severely-debilitating Illnesses

Sec.
312.80 Purpose.
312.81 Scope.
312.82 Early consultation.
312.83 Treatment protocols.
312.84 Risk-benefit analysis in review of marketing applications for drugs to treat life-threatening and severely-debilitating illnesses.
312.85 Phase 4 studies.
312.86 Focused FDA regulatory research.
312.87 Active monitoring of conduct and evaluation of clinical trials.
312.88 Safeguards for patient safety.

Authority: Secs. 501, 502, 503, 505, 506, 507, 701, 52 Stat. 1049–1053 as amended, 1053–1058 as amended, 55 Stat. 851, 59 Stat. 463 as amended (21 U.S.C. 351, 352, 353, 355, 356, 357, 371); sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262); 21 CFR 5.10, 5.11.

Subpart E—Drugs Intended To Treat Life Threatening and Severely-debilitating Illnesses

§ 312.80 Purpose.

The purpose of this section is to establish procedures designed to expedite the development, evaluation, and marketing of new therapies intended to treat persons with life-threatening and severely-debilitating illnesses, especially where no satisfactory alternative therapy exists. As stated § 314.105(c) of this chapter, while the statutory standards of safety and effectiveness apply to all drugs, the many kinds of drugs that are subject to them, and the wide range of uses for those drugs, demand flexibility in applying the standards. The Food and Drug Administration (FDA) has determined that it is appropriate to exercise the broadest flexibility in applying the statutory standards, while preserving appropriate guarantees for safety and effectiveness. These procedures reflect the recognition that physicians and patients are generally willing to accept greater risks or side effects from products that treat life-threatening and severely-debilitating illnesses, than they would accept from products that treat less serious illnesses. These procedures also reflect the recognition that the benefits of the drug need to be evaluated in light of the severity of the disease being treated. The procedure outlined in this section should be interpreted consistent with that purpose.

§ 312.81 Scope.

This section applies to new drug, antibiotic, and biological products that are being studied for their safety and effectiveness in treating life-threatening or severely-debilitating diseases.

(a) For purposes of this section, the term "life-threatening" means:

(1) Diseases or conditions where the likelihood of death is high unless the course of the disease is interrupted; and

(2) Diseases or conditions with potentially fatal outcomes, where the end point of clinical trial analysis is survival.

(b) For purposes of this section, the term "severely debilitating" means diseases or conditions that cause major irreversible morbidity.

(c) Sponsors are encouraged to consult with FDA on the applicability of these procedures to specific products.

§ 312.82 Early consultation.

For products intended to treat life-threatening or severely-debilitating illnesses, sponsors may request to meet with FDA-reviewing officials early in the drug development process to review and reach agreement on the design of necessary preclinical and clinical studies. Where appropriate, FDA will invite to such meetings one or more outside expert scientific consultants or advisory committee members. To the extent FDA resources permit, agency reviewing officials will honor requests for such meetings

(a) *Pre-investigational new drug (IND) meetings.* Prior to the submission of the initial IND, the sponsor may request a meeting with FDA-reviewing officials. The primary purpose of this meeting is to review and reach agreement on the design of animal studies needed to initiate human testing. The meeting may also provide an opportunity for discussing the scope and design of phase 1 testing, and the best approach for presentation and formatting of data in the IND.

(b) *End-of-phase 1 meetings.* When data from phase 1 clinical testing are available, the sponsor may again request a meeting with FDA-reviewing officials. The primary purpose of this meeting is to review and reach agreement on the design of phase 2 controlled clinical trials, with the goal that such testing will be adequate to provide sufficient data on the drug's safety and effectiveness to support a decision on its approvability for marketing. The procedures outlined in § 312.47(b)(1) with respect to end-of-phase 2 conferences, including documentation of agreements reached, would also be used for end-of-phase 1 meetings.

§ 312.83 Treatment protocols.

If the preliminary analysis of phase 2 test results appears promising, FDA may ask the sponsor to submit a treatment protocol to be reviewed under the procedures and criteria listed in §§ 312.34 and 312.35. Such a treatment protocol, if requested and granted, would normally remain in effect while the complete data necessary for a marketing application are being assembled by the sponsor and reviewed by FDA (unless grounds exist for clinical hold of ongoing protocols, as provided in § 312.42(b)(3)(ii)).

§ 312.84 Risk-benefit analysis in review of marketing applications for drugs to treat life-threatening and severely-debilitating illnesses.

(a) FDA's application of the statutory standards for marketing approval shall recognize the need for a medical risk-benefit judgment in making the final decision on approvability. As part of this evaluation, consistent with the statement of purpose in § 312.80, FDA will consider whether the benefits of the drug outweigh the known and potential risks of the drug and the need to answer remaining questions about risks and benefits of the drug, taking into consideration the severity of the disease and the absence of satisfactory alternative therapy.

(b) In making decisions on whether to grant marketing approval for products that have been the subject of an end-of-phase 1 meeting under § 312.82, FDA will usually seek the advice of outside expert scientific consultants or advisory committees. Upon the filing of such a marketing application under § 314.101 or Part 601 of this chapter, FDA will notify the members of the relevant standing advisory committee of the application's filing and its availability for review.

(c) If FDA concludes that the data presented are not sufficient for marketing approval, FDA will issue (for a drug) a not approvable letter pursuant to § 314.120 of this chapter, or (for a biologic) a deficiencies letter consistent with the biological product licensing procedures. Such letter, in describing the

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deficiencies in the application, will address why the results of the research design agreed to under § 312.82, or in subsequent meetings, have not provided sufficient evidence for marketing approval. Such letter will also describe any recommendations made by the advisory committee regarding the application.

(d) Marketing applications submitted under the procedures contained in this section will be subject to the requirements and procedures contained in Part 314 or Part 600 of this chapter, as well as those in this subpart.

§ 312.85 Phase 4 studies.

Concurrent with marketing approval, FDA may seek agreement from the sponsor to conduct certain postmarketing (phase 4) studies to delineate additional information about the drug's risks, benefits, and optimal use. These studies could include, but would not be limited to, studying different doses or schedules of administration than were used in phase 2 studies, use of the drug in other patient populations or other stages of the disease, or use of the drug over a longer period of time.

§ 312.86 Focused FDA regulatory research.

At the discretion of the agency, FDA may undertake focused regulatory research on critical rate-limiting aspects of the preclinical, chemical/manufacturing, and clinical phases of drug development and evaluation. When initiated, FDA will undertake such research efforts as a means for meeting a public health need in facilitating the development of therapies to treat life-threatening or severely debilitating illnesses.

§ 312.87 Active monitoring of conduct and evaluation of clinical trials.

For drugs covered under this section, the Commissioner and other agency officials will monitor the progress of the conduct and evaluation of clinical trials and be involved in facilitating their appropriate progress.

§ 312.88 Safeguards for patient safety.

All of the safeguards incorporated within Parts 50, 56, 312, 314, and 600 of this chapter designed to ensure the safety of clinical testing and the safety of products following marketing approval apply to drugs covered by this section. This includes the requirements for informed consent (Part 50 of this chapter) and institutional review boards (Part 56 of this chapter). These safeguards further include the review of animal studies prior to initial human testing (§ 312.23), and the monitoring of adverse drug experiences through the requirements of IND safety reports (§ 312.32), safety update reports during agency review of a marketing application (§ 314.50 of this chapter), and postmarketing adverse reaction reporting (§ 314.80 of this chapter).

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG OR AN ANTIBIOTIC DRUG

2. The authority citation for 21 CFR Part 314 continues to read as follows:

Authority: Secs. 501, 502, 503, 505, 506, 507, 701, 52 Stat. 1049–1053 as amended, 1055–1059 as amended, 58 Stat. 691, 59 Stat. 463 as amended (21 U.S.C. 351, 352, 353, 355, 356, 357, 371); 21 CFR 5.10, 5.11.

3. Section 314.125 is amended by adding paragraph (c) to read as follows:

§ 314.125 Refusal to approve an application.

* * * * * *

(c) For drugs intended to treat life-threatening or severely-debilitating illnesses that are developed in accordance with §§ 312.80 through 312.88 of this chapter, the criteria contained in paragraphs (b) (3), (4), and (5) of this section shall be applied according to the considerations contained in § 312.84 of this chapter.

Otis R. Bowen,

Secretary of Health and Human Services.

Dated: October 18, 1988.

[FR Doc. 88-24457 Filed 10-19-88; 10:18 am]

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federal register

Friday
October 21, 1988

Part VII

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 31
Federal Acquisition Regulation (FAR); Public Relations Costs; Proposed Rule

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

Federal Acquisition Regulation (FAR); Public Relations Costs

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to FAR 31.205–1 to delete paragraph (h) which deals with the relationship between the cost principle entitled "Public Relations and Advertising Costs" and the other cost principles.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before December 20, 1988 to be considered in the formulation of a final rule.

ADDRESS: Interest parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Street NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 88–33 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Background

Federal Acquisition Circular (FAC) 84–37 revised FAR 31.204 to provide guidelines on determining the allowability of costs to which more than one cost principle is relevant. The Councils are now proposing to delete the current coverage at FAR 31.205–1(h) as inconsistent with the new coverage at FAR 31.204.

B. Regulatory Flexibility Act

The proposed change to FAR 31.205–1 is not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C., 601, et seq.) because most contract awarded to small entities are awarded on a competitive fixed-price basis and the cost principles do not apply.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed change does not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: October 13, 1988.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Part 31 be amended as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2453(c)

31.205–1 [Amended]

2. Section 31.205–1 is amended by removing paragraph (h).

[FR Doc. 88–24413 Filed 10–20–88; 8:45 am]

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Part VIII

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 31
Federal Acquisition Regulation (FAR); Professional and Consulting Service Costs; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

Federal Acquisition Regulation (FAR); Professional and Consulting Service Costs

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering revision to FAR 31.205–33 to clarify and strengthen the current cost principle to provide a sufficient basis to adequately question consultant costs.

Comments: Comments should be submitted to the FAR Secretariat at the address shown below on or before December 5, 1988 to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th and F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 88–54 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Background

Recent allegations of improprieties involving numerous defense contractors and their outside consultants have caused the Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council to evaluate the adequacy of the current cost principle on professional and consultant service costs (FAR 31.205–33). The Councils have concluded that the current cost principle needs to be clarified and strengthened because the lack of specificity of the current cost principle does not provide a sufficient basis to adequately question consultant costs. Therefore, the Councils are proposing the following changes to (a) include examples of the types of services covered by the cost principle, (b) strengthen and clarify the unallowability of costs for certain activities described by FAR 31.205–33, and (c) require a contractor to provide specific documentation supporting consultant costs.

B. Regulatory Flexibility Act

The proposed rule will not have a substantial cost or administrative effect on a significant number of small businesses. Small businesses generally do not have cost or incentive contracts where allowability of costs is a major concern. Therefore, the Regulatory Flexibility Act does not apply and an Initial Regulatory Flexibility Analysis has not been prepared. However, comments from small entities concerning the affected FAR 31.205–33 will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite FAR Case 88–610 in correspondence.

C. Paperwork Reduction

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the proposed rules do not require or impose any change in reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq. Under the current rules of the FAR, particularly the clauses at 52.215–2, Audit-Negotiation, and 52.216–7, Allowable Cost and Payment, offerors and contractors are required to maintain, and provide access to, records sufficient to permit the Government to determine the allowability and reasonableness of costs.

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: October 12, 1988.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Part 31 be amended as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

2. Section 31.205–33 is revised to read as follows:

31.205–33 Professional and consultant service costs.

(a) Definition. "Professional and consultant services", as used in this subpart, are those services rendered by persons who are members of a particular profession or possess a special skill and who are not officers or employees of the contractor. Examples include those services acquired by contractors or subcontractors in order to enhance their legal, economic, financial, or technical positions. Professional and consultant services are generally acquired to obtain information, advice, opinions, alternatives, conclusions, recommendations, training, or direct assistance, such as studies, analyses, evaluations, liaison with Government officials, or other forms of representation.

(b) Costs of professional and consultant services are allowable subject to this paragraph (b) and paragraphs (c) through (h) of this subsection when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Government (but see 31.205–80).

(c) Costs of professional and consultant services performed under any of the following circumstances are expressly unallowable:

(1) Services to obtain, distribute, or use information or data protected by law or agency regulation (e.g., see FAR 52.215–12, Restriction on Disclosure and Use of Data) unless the data or information was commonly available (e.g., news article or public testimony).

(2) Service that are intended to improperly influence the contents of solicitations, the evaluation of proposals or quotations, the selection of sources for contract award, whether award is by the Government, or by a prime contractor or subcontrator.

(3) Any other services obtained, performed, or otherwise resulting in violation of any statute or regulation prohibiting improper business practices or conflicts of interest, or similar misconduct.

(4) Services performed which are not consistent with the purpose and scope of the services contracted for or otherwise agreed to.

(d) Costs of legal, accounting, and consultant services and directly associated costs incurred in connection with organization and reorganization (also see 31.205–27), defense of antitrust suits, defense against Government claims or appeals, or the prosecution of claims or appeals against the Government (see 33.201) are unallowable (but see 31.205–47). Such costs incurred in connection with patent infringement litigation are unallowable unless otherwise provided for in the contract.

(e) Cost of legal, accounting, and consultant services and directly associated costs incurred in connection with the defense or prosecution of lawsuits or appeals between contractors arising from either (1) an agreement or contract concerning a teaming arrangement, a joint venture, or similar arrangement of shared interest; or (2) dual sourcing, co-production, or similar programs, are unallowable, except when (i) incurred as a result of compliance with specific terms and conditions of the contract or written instructions from the contracting officer, or (ii) when agreed to in writing by the contracting officer.

(f) In determining the allowability of costs (including retainer fees) in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the contracting officer shall consider the following factors, among others.

(1) The nature and scope of the service rendered in relation to the service required.

(2) The necessity of contracting for the service, considering the contractor's capability in the particular area.

(3) The past pattern of such costs, particularly in the years prior to the award of Government contracts.

(4) The impact of Government contracts on the contractor's business.

(5) Whether the proportion of Government work to the contractor's total business is such as to influence the contractor in favor of incurring the cost, particularly when the services rendered are not of a continuing nature and have little relationship to work under Government contracts.

(6) Whether the service can be performed more economically by employment rather than by contracting.

(7) The qualifications of the individual of concern rendering the service and the customary fee charged, especially on nongovernment contracts.

(8) Adequacy of the contractual agreement for the service (e.g., description of the service, estimate of time required, rate of compensation, termination provisions).

(g) Retainer fees to be allowable must be supported by evidence that—

(1) The services covered by the retainer agreement are necessary and customary;

(2) The level of past services justifies the amount of the retainer fees; (if no services were rendered, fees are not automatically unallowable); and

(3) The retainer fee is reasonable in comparison with maintaining an in-house capability to perform the covered services, when factors such as cost and level of expertise are considered.

(h) Fees for services rendered shall be allowable only when supported by evidence of the nature and scope of the service furnished. (Also see 31.205–38(g)). Such evidence may include, to the extent necessary to ensure that the work performed is proper and does not violate law or regulation:

(1) Details of all agreements (e.g., work requirements, rate of compensation, and nature and amount of other expenses, if any) with the individuals or organizations providing the services and details of actual services performed.

(2) Invoices or billings subitted by consultants, including sufficient detail as to the time expended and nature of the actual services provided.

(3) Consultants' work products and related documents such as trip reports indicating persons visited and subjects discussed, minutes of meetings, and collateral memoranda and reports.

[FR Doc. 88–24412 Filed 10–20–88; 8:45 am]

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Part IX

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 14 and 15
Federal Acquisition Regulation (FAR): Master Solicitation; Proposed Rule

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 14 and 15

Federal Acquisition Regulation (FAR); Master Solicitation

AGENCIES: Department of Defense (DoD) General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to FAR 14.203 and 15.406 to add coverage on the use of master solicitations.

Comments: Comments should be submitted to the FAR Secretariat at the address shown below on or before December 20, 1988, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW, Room 4041, Washington, DC 20405.

Please cite FAR Case 88-49 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523-4755.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

The proposed rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Pub. L. 98-577 and publication for public comment is not required. Master solicitations, in and of themselves, are nothing more than a package of provisions and clauses sent to contractors who are on bidders mailing lists and the package is referred to when an actual solicitation is issued. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected FAR sections will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite FAR Case 88-610 in correspondence.

B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes do not impose any recordkeeping or information collection requirements from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 14 and 15

Government procurement.

Dated: October 12, 1988.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Parts 14 and 15 be amended as set forth below:

1. The authority citation for Parts 14 and 15 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 14—SEALED BIDDING

2. Section 14.203 is amended by adding a subsection to read as follows:

14.203-3 Master solicitation.

(a) *Definition.* "Master solicitation," as used in this subsection, means a document containing special clauses and provisions that have been identified as essential for the acquisition of a specific type of supply or service that is acquired repetitively.

(b) *Use.* The master solicitation is provided to potential sources who are requested to retain it for continued and repetitive use. Individual solicitations shall reference the date of the current master solicitation and any changes thereto. Copies of the master solicitation shall be made available on request. Cognizant contract administration activities shall be provided a current copy of the master solicitation.

PART 15—CONTRACTING BY NEGOTIATION

3. Section 15.406 is amended by adding paragraph (d) to read as follows:

15.406 Issuing solicitations.

* * * * *

(d) A master solicitation may be used for negotiated acquisitions, subject to the criteria and procedures in 14.203-3.

[FR Doc. 88-24410 Filed 10-20-88; 8:45 am]

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Part X

Department of Agriculture

Animal and Plant Health Inspection Service

7 CFR Part 301

Interstate Movement of Citrus Fruit and Calamondin and Kumquat Plants From Florida; Proposed Rule

BEST COPY AVAILABLE

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 88-105]

Interstate Movement of Citrus Fruit and Calamondin and Kumquat Plants From Florida

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We propose to revise the "Citrus Canker" regulations as follows:

(1) By relieving some restrictions on the interstate movement of regulated fruit produced in groves outside the area of Florida where there have been primary infestations of citrus canker caused by the Asiatic strains. This proposal is based on observations made in the field and on scientific data indicating that the Florida nursery strains are extremely unlikely to infect mature citrus trees and fruit in groves or to damage fruit. This action would remove requirements that appear to exceed what is needed to prevent the interstate spread of the form of citrus canker caused by the Florida nursery strains;

(2) By allowing calamondin and kumquat plants grown from seeds or rooted cuttings in nurseries or groves outside the area of Florida where there have been primary infestations of citrus canker caused by the Asiatic strains to be moved interstate under less stringent conditions than at present and to all areas of the United States except commercial citrus-producing areas. This proposal would relieve what appear to be unnecessary restrictions on the interstate movement of plants that are highly resistant to citrus canker;

(3) By prohibiting the interstate movement from Florida of budded or grafted calamondin and kumquat plants, which may have been grown from rootstocks of plants susceptible to and capable of transmitting citrus canker. This proposal appears necessary to prevent the interstate spread of this disease;

(4) By adding the species *Clausena lansium* (Lour.) Skeels (common name, wampi) to the list of articles regulated because of citrus canker, thereby prohibiting the interstate movement of these plants from Florida. This proposal appears necessary to prevent the interstate spread of citrus canker because wampi plants in Florida have been found infected with the form of citrus canker caused by the Florida nursery strains;

(5) By reducing the area of Florida that is under special restriction because of citrus canker caused by the Asiatic strains.

DATE: Consideration will be given only to written comments postmarked or received on or before November 21, 1988.

ADDRESSES: Send an original and three copies of written comments to Regulatory Coordination, APHIS, USDA, Room 728 Federal Building, 6505 Belcrest Rd., Hyattsville, MD 20782. Please state that your comments refer to Docket 88-105. Comments received may be inspected at USDA, 14th and Independence Ave., SW, Room 1141 South Bldg., between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Eddie W. Elder, Chief Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, Room 661, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6365.

SUPPLEMENTARY INFORMATION:

Background

Citrus canker is a plant disease caused by strains of the bacterium *Xanthomonas campestris* pv. *citri* (Hasse) Dye. The disease is known to affect plants and plant parts, including fruit, of citrus and citrus relatives (Family Rutaceae). It can cause defoliation and other serious damage to the leaves and twigs of susceptible plants. It may also make the fruit of infected plants unmarketable by causing lesions on the fruit. Infected fruit may also drop from trees before reaching maturity. Aggressive strains of *Xanthomonas campestris* pv. *citri* can infect susceptible plants rapidly and lead to extensive economic losses in commercial citrus-producing areas.

The Animal and Plant Health Inspection Service (APHIS) established the citrus canker regulations (contained in 7 CFR 301.75 and referred to below as the regulations) in 1984 after plants at several central Florida citrus nurseries were found to be infected with previously undescribed strains of *Xanthomonas campestris* pv. *citri*. These strains have come to be known as the Florida nursery strains. Because little was known about these strains at that time, and because some strains of *Xanthomonas campestris* pv. *citri* are known to cause a very serious plant disease, the regulations placed severe constraints on the interstate movement of potential host material from Florida. Later, when trees infected with the Asiatic strains of *Xanthomonas campestris* pv. *citri* were detected on citrus trees on residential properties and in a commercial grove near Bradenton, in Manatee County, Florida, the same regulations applied.

Over time, both research and observations made in the field yielded data suggesting that there were important differences between the Florida nursery strains and the Asiatic strains of *Xanthomonas campestris* pv. *citri* and the diseases caused by these strains.These differences were summarized as follows in a final rule published in the Federal Register on February 11, 1988 (53 FR 3999-4006, Docket No. 88-001):

> The Florida nursery strains of the bacterium *Xanthomonas Campestris* pv. *citri* are associated primarily with outbreaks of citrus canker in plant nurseries. They have been found only in Florida. Current information suggests that this form of citrus canker is pathogenetically and genetically different from the disease caused by Asiatic strains of citrus canker, and never has been found on fruit in a commercial grove.

Because of these differences, we amended the regulations, by the final rule cited above, to reduce restrictions on the interstate movement of fruit from all areas of Florida except the area where there have been primary infestations of citrus canker caused by the Asiatic strains.

At the same time, recognizing that many questions about the Florida nursery strains remained unanswered, APHIS invited a blue-ribbon panel of plant pathologists to review all of the research pertaining to the Florida nursery strains and to consider specific questions concerning the taxonomy and biology of these strains. The panel met last March in Gainesville, Florida, and delivered its report to APHIS in April. The report was published in the Federal Register on June 28, 1988 (53 FR 24236-24298, Docket No. 88-100) as part of an advance notice of proposed rulemaking that solicited public comment on whether and how, as a result of the panel's report, we should revise the regulations. Following are the options we asked the public to consider:

1. Reduce the quarantined area in Florida to include only that area where within the past 2 years, there have been infestations of citrus canker caused by the Asiatic strains.

2. Reduce the restrictions on the interstate movement of regulated articles from all areas of Florida except that area where, within the past 2 years, there have been infestations of citrus canker caused by the Asiatic strains.

3. Maintain the current regulations.

We received 34 comments concerning these options from individual growers, nursery owners, grower and packing associations, other representatives of the citrus industry, and state government officials in Arizona, California, Florida, Louisiana, and Texas. Nine commenters supported Option 1; 14 supported Option 2; and 11 supported Option 3.

Based on the report by the blue-ribbon panel and a review of the current citrus canker eradication program, and after considering all the comments we received concerning the advance notice of proposed rulemaking, we are proposing to revise the regulations in line with Option 2. We do not support Option 1 because we know that the Florida nursery strains can, in some cases, seriously damage nursery plants, and because we believe that further research may be necessary to finally resolve the question of whether the Florida nursery strains can infect and damage mature trees and fruit in commercial groves. Nonetheless, we believe the current regulations, designed to prevent the spread of virulent forms of citrus canker such as that caused by the Asiatic strains, go beyond what is necessary to prevent the spread of the form of citrus canker caused by the Florida nursery strains. Four years after the form of citrus canker caused by the Florida nursery strains was first detected in Florida, we still have not found it in commercial groves, except in three instances where infected transplants had been moved to groves from infested nurseries. (In two of these instances, there was no evidence that the disease had spread from these plants to other plants in the grove. In the third case, the grove was not well maintained, and inspection revealed some local spread to sprouts from Swingle rootstock. In none of these instances was infected fruit found, and, after the infected plants were removed, no additional infections were observed.) Research and observations made in the field over the last four years suggest that the Florida nursery strains cause a form of citrus canker disease that is different from and less serious than the form of citrus canker disease caused by the Asiatic strains. Option 2 would continue to provide protection against the interstate spread of the form of citrus canker caused by the Florida nursery strains while relieving what appear to be unnecessary burdens on those involved in the interstate movement of regulated articles.

Specific proposed changes to the regulations are discussed below.

Certificates for Interstate Movement of Regulated Fruit

Current Requirements

Regulated fruit from any area of Florida where a primary infestation caused by Asiatic strains has occurred is not eligible for interstate movement with a certificate until 2 years after the last infested plant in the area has been destroyed. Regulated fruit produced in other areas of Florida may be moved interstate with a certificate to any area of the United States, including commercial citrus-producing areas, if the following conditions are met:

(1) The fruit is harvested from a grove of 10 or more regulated trees;

(2) The grove producing the fruit has not contained any infested or exposed plants or plant parts within the past 2 years;

(3) The grove producing the fruit has been found free of citrus canker on two surveys, which must be conducted as follows:

(i) Between one year and 90 days before harvest begins, an inspector must: examine all trees on the perimeter of the grove while driving by the trees at a speed of not more than 2 m.p.h.; examine, while on foot, at least 12 trees in high-risk areas of the grove (such as the grove entrance, the perimeter of the grove, and areas where the movement of people and equipment is concentrated); and examine, while on foot, a minimum of four mature trees or eight young trees in one randomly selected location in every 10 acres of the grove, or, if the grove is less than 10 acres, examine, while on foot, a minimum of four mature trees or eight young trees in one randomly selected location; and

(ii) No more than 90 days before harvest begins, an inspector must walk through the grove and examine: all trees on either side of the first middle (between the first two rows) and every fourth middle thereafter throughout the grove; and at least 12 trees in high-risk areas of the grove (such as the grove entrance, the perimeter of the grove, and areas where the movement of people and equipment is concentrated); and

(iii) At least one of the two surveys must be conducted between 4 to 12 weeks after a period of high temperatures and frequent rainfall likely to cause a flush of growth on the trees to be inspected;

(4) The grove producing the fruit is at least one-half mile from any property that has contained infested or exposed plants or plant parts during the past 2 years;

(5) Within one-half to 5 miles of the grove producing the fruit, the following plants have been destroyed:

(i) All infested plants; and

(ii) Any exposed plants at high risk for developing citrus canker. Identification of plants at high risk for developing citrus canker will be based on an evaluation all of the circumstances related to their exposure, including, but not limited to, the following:

(A) The stage of maturity of the exposed plants at the time of exposure;

(B) The size and degree of infestation to which the plants were exposed;

(C) The proximity of the exposed plants to the infested plants at the time of exposures;

(D) The length of time the plants were exposed to the infestation; and

(E) The strain of the bacterium to which the plants were exposed;

(6) During the past 2 years, any shipments of regulated plants received by the grove producing the fruit have come only from nurseries found free of citrus canker on three surveys conducted by an inspector approximately 30 days apart and not more than 90 days before each shipment, and every regulated plant in the nursery must be examined on each survey. In addition, all regulated plants at all nurseries in Florida that contain regulated plants must be examined by an inspector approximately every 30 days;

(7) Properties within 5 miles of the grove producing the fruit were surveyed and found free of citrus canker by an inspector at least one time during the past year as follows:

(i) All properties that contain 10 or more regulated plants and that are within 5 miles of the grove;

(ii) All properties that contain one to nine regulated plants and that are within one-half mile of the grove; and

(iii) Twenty percent of the properties that contain one to nine regulated plants and that are within one-half to 5 miles of the grove. The 20-percent sample must be distributed as evenly as possible over the area, with different samples inspected each year in a 5-year inspection cycle;

(8) All personnel, vehicles, and equipment are treated in accordance with § 301.75-12 (c) and (d) of this subpart upon entering the grove producing the fruit;

(9) The identity of the fruit is maintained during picking, hauling to the packing house, and packing;

(10) The fruit is treated in accordance with § 301.75-12(a) of this subpart and then washed;

(11) The fruit is free of leaves, twigs, and other plant litter, except stems less than one-inch long that are attached to the fruit;

(12) The fruit is packed in containers marked with a United States Department of Agriculture stamp that says "Certified under all applicable Federal or State cooperative domestic plant quarantines";

(13) The fruit is to be moved under any additional emergency conditions that may be imposed by the Administrator under the Federal Plant Pest Act to prevent the spread of citrus canker; and

(14) The fruit is eligible for movement under all other federal domestic plant quarantines and regulations applicable to the fruit.

Proposed Changes

We propose to continue to require that properties surrounding a producing grove be free from the form of citrus canker caused by the Asiatic strains, but not necessarily from the form of citrus canker caused by the Florida nursery strains. Thus, the grove producing the fruit must be at least one-half mile from any property that has contained plants

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or plant parts during the past 2 years that were infested with or exposed to the Asiatic strains; and, within one-half to 5 miles of the grove producing the fruit, all plants infested with the Asiatic strains and all exposed plants at high risk for developing the form of citrus canker caused by the Asiatic strains must have been destroyed. These requirements provide additional assurance that fruit moved interstate with a certificate have not been exposed to the Asiatic strains, which can infect mature trees and fruit and lead to extensive economic losses in commercial citrus-producing areas.

However, because we have never found a primary infestation caused by the Florida nursery strains in any commercial grove, similar requirements do not appear necessary to prevent the interstate spread of the form of citrus canker caused by the Florida nursery strains. If the grove producing fruit for interstate movement with a certificate has not contained any plants or plant parts during the past 2 years that were infested with or exposed to the Florida nursery strains, and if the grove has been adequately surveyed and found free of this disease, it is highly unlikely that fruit produced in the grove would be infested with the Florida nursery strains. The presence on surrounding properties of plants or plant parts infested with or exposed to the Florida nursery strains could result, at most, in possible surface contamination of the fruit. Treating and waxing of the fruit would render these surface bacteria incapable of infecting susceptible plants. Therefore, we propose to remove the requirement that properties surrounding a producing grove be free from the form of citrus canker caused by the Florida nursery strains.

To clarify that groves producing fruit for interstate movement with a certificate must continue to be free of all strains of the bacterium that causes citrus canker, we propose to specify "citrus canker (caused by any strain)" in applicable provisions. Thus, the grove producing the fruit must not have contained any plants or plant parts, during the past 2 years, that were infested with or exposed to citrus canker (caused by any strain); the grove producing the fruit must have been found free of citrus canker (caused by any strain) on two surveys; and during the past 2 years, any shipments of regulated plants received by the grove producing the fruit must have come only from nurseries found free of citrus canker (caused by any strain) on the specified surveys.

We also propose to discontinue requiring surveys of properties within 5 miles of a producing grove. Records kept by grove owners and nursery owners have provided satisfactory information on the location of exposed and potentially infested plants. These records would allow inspectors to determine whether properties within 5 miles of a producing grove meet our requirements.

In addition, we propose to change the procedure for the first grove survey by requiring that it be conducted between May 1 and December 31, inclusive, during the year before harvest and not less than 90 days before harvest begins. The period between May 1 and December 31, inclusive, is the most likely time of year for outdoor plants to express symptoms of citrus canker. Furthermore, because weather conditions by this time of year would have produced at least one flush of growth on the trees to be inspected, it does not appear necessary to retain the separate requirement that either the first or second grove survey must be conducted 4–12 weeks after weather likely to cause a flush of growth on the trees. Therefore, we propose to remove this requirement.

The prescribed surveys are the minimum level of inspection that must be done; more intensive surveys would be acceptable.

Finally, we propose to discontinue requiring the treatment of personnel, vehicles, and equipment entering the grove. This requirement does not appear to be necessary outside the area of Florida where primary infestations caused by the Asiatic strains have occurred within the past 2 years. Although we know that the Asiatic strains are capable of being spread by personnel, vehicles, and equipment entering a grove after being on a property infested with this form of citrus canker, there is no evidence that bacteria of the Florida nursery strains are spread in this manner. Moreover, there are no groves or residential properties known to be infested with bacteria of the Florida nursery strains.

Other requirements pertaining to the interstate movement of regulated fruit with a certificate would remain the same.

Limited Permits for the Interstate Movement of Regulated Fruit

Current Requirements

At present, regulated fruit may be moved interstate with a limited permit, from any area of Florida, to any area of the United States, *except* commercial citrus-producing areas, if the following conditions are met:

(1) The grove producing the fruit has not contained any infested plants or plant parts within the past year;

(2) In the grove producing the fruit, any exposed plants at high risk for developing citrus canker have been destroyed. Identification of plants at high risk for developing citrus canker will be based on an evaluation of all the circumstances related to their exposure, including, but not limited to, the following:

(i) The stage of maturity of the exposed plants at the time of exposure;

(ii) The size and degree of infestation to which the plants were exposed;

(iii) The proximity of the exposed plants to the infested plants at the time of exposure;

(iv) The length of time the plants were exposed to the infestation; and

(v) The strain of the bacterium to which the plants were exposed;

(3) The grove producing the fruit has been found free of citrus canker on surveys, which must be conducted as follows:

(i) For groves of 10 or more regulated trees, an inspector must:

(*A*) Between one year and 90 days before harvest begins: examine all trees on the perimeter of the grove while driving by the trees at a speed of not more than 2 m.p.h.; examine, while on foot, at least 12 trees in high-risk areas of the grove (such as the grove entrance, the perimeter of the grove, and areas where the movement of people and equipment is concentrated); and examine, while on foot, a minimum of four mature trees or eight young trees in one randomly selected location in every 10 acres of the grove, or, if the grove is less than 10 acres, examine, while on foot, a minimum of four mature trees or eight young trees in one randomly selected location; and

(*B*) No more than 90 days before harvest begins: Examine all trees in the outer two rows of the grove while driving by the trees at a speed of not more than 2 m.p.h.; examine, while on foot, at least 12 trees in high-risk areas of the grove (such as the grove entrance, the perimeter of the grove, and areas where the movement of people and equipment is concentrated); and examine, while on foot, a minimum of four mature trees or eight young trees in each of two randomly selected locations in every 10 acres of the grove, or, if the grove is less than 10 acres, examine, while on foot, a minimum of four mature trees or eight young trees in each of two randomly selected locations;

(*C*) At least one of the two surveys must be conducted 4 to 12 weeks after a period of high temperatures and frequent rainfall likely to cause a flush of growth on the trees to be inspected;

(ii) For groves of fewer than 10 regulated trees, an inspector must walk through the grove and examine every tree no more than 30 days before the beginning of harvest;

(4) The fruit is treated in accordance with § 301.75–12(a) of this subpart;

(5) The fruit is free of leaves, twigs, and other plant litter, except stems less than one-inch long that are attached to the fruit;

(6) The fruit is to be moved under any additional emergency conditions that may be imposed by the Administrator under the Federal Plant Pest Act to prevent the spread of citrus canker; and

(7) The fruit is eligible for movement under all other federal domestic plant quarantines and regulations applicable to the fruit.

(8) Determines that fruit harvested from a grove of fewer than 10 trees is to be moved interstate directly to a household, with the intent that the fruit be consumed at, or by members of, that household.

Proposed Changes

To clarify that groves producing fruit for interstate movement with a limited permit must continue to be free of all strains of the bacterium that causes citrus canker, we propose to specify "citrus canker (caused by any strain)" in applicable provisions. Thus, during the past 1 year, the grove producing the fruit must not have contained any plants or plant parts that were infested with citrus canker (caused by any strain); all exposed plants in the grove that are at high risk for development citrus canker (caused by any strain) must have been destroyed; and the grove producing the fruit must have been surveyed and found free of citrus canker (caused by any strain).

For groves of 10 or more regulated trees, we propose to add a requirement that, during the past 1 year, any shipments of regulated plants received by the grove producing the fruit must have come only from nurseries found free of citrus canker (caused by any strain). The nurseries would have to be found free of citrus canker on three surveys conducted by an inspector approximately 30 days apart and not more than 90 days before each shipment. Every regulated plant in the nursery would have to be examined on each survey. This requirement, which already applies to groves producing fruit for interstate movement with a certificate, would help ensure that groves producing fruit for interstate movement with a limited permit are kept free of plants that may be infested with or exposed to citrus canker.

We propose to require only one survey of a grove of 10 or more regulated trees if the grove is outside the area of Florida where primary infestations caused by the Asiatic strains have occurred. The survey would have to be conducted in the manner now prescribed for the initial grove survey and between May 1 and December 1, inclusive, during the year before harvest. This period is the most likely time of year for outdoor plants to express symptoms of citrus canker. Furthermore, because weather conditions by this time of year would have produced at least one flush of growth on the trees to be inspected, it does not appear necessary to retain the separate requirement that the grove must be surveyed at least once within 4–12 weeks after weather likely to cause a flush of growth on the trees. Therefore, we propose to remove this requirement. If a grove is outside the area of Florida where primary infestations caused by the Asiatic strains have occurred, is found free of citrus canker on the single survey proposed, and meets the other requirements pertaining to groves, it is very unlikely to yield fruit that would present a risk of spreading citrus canker interstate.

We propose to continue to require two surveys of a grove of 10 or more trees if the grove is located within the area of Florida where a primary infestation caused by the Asiatic strains has occurred. However, we propose to require that the first survey be conducted between May 1 and December 31, inclusive, during the year before harvest and not less than 90 days before harvest begins. We would continue to require that the second survey be conducted no more than 90 days before harvest begins. Survey procedures in each case would remain unchanged. As explained above, the proposal to conduct the first survey between May 1 and December 31, inclusive, rather than between 1 year and 90 days before harvest begins, is based on this time of year being most favorable for detection of citrus canker. Again, and for the reasons given above, we propose to remove the requirement that at least one of the two surveys be conducted within 4–12 weeks after weather likely to cause a flush of growth on the trees.

The prescribed surveys are the minimum level of inspection that must be done; more intensive surveys would be acceptable.

In addition, we propose to prohibit the interstate movement of regulated fruit produced in groves that are within one-half mile of any property where a primary infestation caused by the Asiatic strains has occurred within the past 2 years. This prohibition would apply to any size grove. Practically, however, it would affect only those groves within the area of Florida where there have been primary infestations caused by the Asiatic strains, since groves outside this area are more than one-half mile from any property where a primary infestation caused by the Asiatic strains has occurred. This prohibition appears necessary to prevent the interstate spread of citrus canker.

We propose to allow fruit produced in a grove of 10 or more regulated trees to be treated with soap and water rather than with chlorine or sodium o-phenyl phenate (SOPP) if the grove is outside the area of Florida where primary infestations caused by the Asiatic strains have occurred. Specifically, this fruit would have to be thoroughly washed and brush scrubbed for one minute in a solution of water and soap, or water and detergent, sufficient to cause a visible foaming action. This treatment would be effective in reducing surface bacteria, if any were present on the fruit, to the extent that the fruit would present a negligible risk of spreading citrus canker if moved interstate to parts of the United States that are not commercial citrus-producing areas. Fruit produced in the area of Florida where there has been a primary infestation caused by the Asiatic strains would not be eligible for interstate movement unless treated with chlorine or SOPP.

We propose to stop requiring treatment of fruit produced in groves of fewer than 10 trees if the grove is outside the area of Florida where a primary infestation caused by the Asiatic strains has occurred. These groves must be inspected, tree by tree, within 30 days of harvest. With only a few trees being individually examined, inspectors are able to look at the fruit itself, the actual commodity to be shipped. Fruit found free of citrus canker on this survey could, at most, have only very low levels of bacteria on its surface. Most growers with groves of fewer than 10 trees wash fruit before shipping it, which would make the bacteria count even lower. Even without the washing, however, any surface bacteria present would not be likely to survive long. Given that this fruit may not be sold in commercial channels, but must be moved interstate directly to a household, there would be almost no risk of the fruit spreading citrus canker interstate.

Treatment with chlorine or SOPP would continue to be required for fruit produced in groves within the area of Florida where a primary infestation caused by the Asiatic strains has occurred.

Also, we propose to require all personnel, vehicles, and equipment to be treated upon entering any grove of 10 or more regulated trees within the area of Florida where there has been a primary infestation caused by the Asiatic strains. Several infestations caused by the Asiatic strains have been traced to contaminated vehicles and equipment, and the form of citrus canker caused by

these strains can be spread by people who have handled contaminated material. Therefore, we believe this requirement is necessary to prevent new infestations of citrus canker caused by Asiatic strains.

Other requirements pertaining to the interstate movement of fruit with a limited permit would remain the same.

Fruit Treatments

We have already discussed our proposal to allow an alternative treatment for certain fruit. (See the discussion under "Limited Permits for the Interstate Movement of Regulated Fruit".)

We also propose to specify that the 200 ppm chlorine solution prescribed as a treatment for fruit, seed, and vehicles and equipment is a 200 ppm solution of sodium hypochlorite. Sodium hypochlorite is the active ingredient in the chlorine solution labeled for this use.

In addition, we propose to require that fruit treatments be applied either at a facility owned by a person operating under a compliance agreement with Plant Protection and Quarantine or in the presence of an inspector. This requirement is necessary to ensure that fruit is treated as required before being moved interstate.

Limited Permits for Interstate Movement of Calamondin and Kumquat Plants

We propose to relieve some restrictions on the interstate movement of certain calamondin and kumquat plants from Florida and to impose other restrictions.

When the regulations were established in 1984, they did not allow the interstate movement of plants from Florida, except with a permit for scientific or experimental purposes.

In March 1987, however, based on research and field observations showing calamondin and kumquat plants to be highly resistant to citrus canker, we amended the regulations (52 FR 7562–7564, Docket No. 86–361) to allow the interstate movement of these plants, under certain conditions, to areas of the United States that are not commercial citrus-producing areas.

The regulations distinguish between calamondin and kumquat plants that are "greenhouse-grown" and those that are "container-grown." Under § 301.75–7(f), "greenhouse-grown" calamondin nursery plants that are individually sealed in plastic bags before leaving the nursery may be moved interstate with a limited permit to all areas of the United States except American Samoa, Arizona, California, Hawaii, Louisiana, Puerto Rico, Texas, and the Virgin Islands of the United States. Under § 301.75–7(g), "container-grown" calamondin and kumquat nursery plants may be moved interstate with a limited permit only to that area of the United States east of the Mississippi River and north of an imaginary line formed by the southernmost borders of Illinois, Indiana, Ohio, Pennsylvania, and New Jersey.

Proposed Changes

(1) We propose to eliminate the distinction between "greenhouse-grown" and "container-grown" plants and to allow all calamondin and kumquat plants that have been grown entirely from seeds or cuttings to be moved interstate to all areas of the United States except commercial citrus-producing areas. These calamondin and kumquat plants would be referred to as "own-root-only" plants.

In the current regulations, "greenhouse-grown" calamondin plants refer to calamondin plants that are grown in sterile medium on raised benches in greenhouses. These are own-root-only plants. "Container-grown" calamondin and kumquat plants are plants that are grown outdoors and that may be own-root-only or budded or grafted to other varieties of rootstock. The different rules for greenhouse-grown and container-grown plants were established as an added precaution against the spread of citrus canker, based on the premise that measures to control and monitor citrus canker are less effective in open fields than in greenhouses. However, research and observations made in the field since these rules were established have confirmed that all own-root-only calamondin and kumquat plants, including field-grown plants, are highly resistant to citrus canker. (For further information, contact Domestic and Emergency Operations, PPQ, APHIS, USDA, Room 661, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.)

(2) As noted above, calamondin and kumquat plants may be budded or grafted onto other varieties of rootstock. Because the rootstock may be a variety susceptible to citrus canker, and because it is impossible to determine visually what type of rootstock has been used, we propose to prohibit the interstate movement from quarantined areas of calamondin or kumquat plants that have been budded or grafted, regardless of the variety of rootstock.

(3) We propose to clarify our requirements concerning attached fruit by specifying that calamondin and kumquat plants may be moved interstate with or without fruit attached.

Calamondin and kumquat plants with attached fruit are no more susceptible to citrus canker than calamondin and kumquat plants without fruit. Therefore, any calamondin or kumquat plants that otherwise qualify for interstate movement under our regulations would present an extremely remote chance of spreading citrus canker through infected fruit. The current provision stating that "greenhouse-grown" calamondin plants "will have no fruit attached" is intended to ensure that plants moved interstate as "individually packaged calamondin nursery plants" are the small, immature plants that current § 301.75–7(f) is intended to cover. There is no similar restriction for container-grown calamondin or kumquat nursery plants, which are valued as ornamentals because of their fruit. Under our proposal, plants with or without attached fruit would be handled in the same manner, and attached fruit would require no special handling or treatment beyond that required for the plants.

(4) We propose to remove the requirement that calamondin and kumquat plants must come from a nursery that has had no citrumelo or *Poncirus trifoliata* plants since May 1, 1985. This requirement was established in March 1987 as a safeguard against the spread of the form of citrus canker caused by the Florida nursery strains. At that time, we thought that citrumelo and *Poncirus trifoliata* were much more susceptible than other plants to infection by the Florida nursery strains, and that keeping citrumelo and *Poncirus trifoliata* out of nurseries was essential to preventing the spread of citrus canker. Since then, we have determined through research and observations made in the field that many other plants are as susceptible. However, we have found that, in nurseries where susceptible plants are grown, we have been able to detect citrus canker, when it was present, within 90 days and at very low levels—only a few plants out of tens of thousands, sometimes millions. Thus, it does not appear that allowing citrumelo and *Poncirus trifoliata* to be grown in nurseries with calamondin and kumquat plants would present any additional risk of spreading citrus canker interstate.

(5) We propose to allow cuttings for propagation to be taken from plants located either: (a) On the same premises; or (b) on another premises under the same ownership; or (c) at a nursery owned by another person operating under a compliance agreement in accordance with the regulations.

The regulations currently require that cuttings be taken only from plants located on the same premises. This requirement ensures that we can locate potential sources of infection if citrus canker is detected either on the cutting or on the plant from which it was taken. However, we have determined that tracing could also be accomplished if cuttings are taken from plants located on another property under the same ownership.

In order to qualify for interstate movement with a limited permit, calamondin and kumquat plants must come from nurseries that have not received material from properties infested with or exposed to citrus canker. One of the primary ways we determine whether a nursery meets this condition is by reviewing records that the State of Florida requires nurseries to keep on the movement of plants and plant material to and from nurseries and on the location of plants within nurseries. When adequately maintained, these records would allow us to trace potential sources of infection, if necessary, even if cuttings were moved to a nursery from another property owned by the same person. We believe, therefore, that in nurseries where calamondin and kumquat plants otherwise qualify for interstate movement with a limited permit, we would have adequate means of tracing potential sources of infection, if necessary, even if cuttings were moved to the nursery from another property owned by the same person.

Nursery owners sometimes wish to move cuttings to their nursery from a nursery owned by someone else. If the nursery from which the cuttings were taken also met our requirements for moving calamondin and kumquat plants interstate with a limited permit, the cuttings would present an extremely remote risk of causing the interstate spread of citrus canker. Nurseries owned by persons operating under a compliance agreement with us in accordance with § 301.75–8 have agreed to comply with our regulations. Noncompliance would result in cancellation of the compliance agreement. Therefore, we believe that nurseries producing calamondin and kumquat plants for interstate movement may receive cuttings from another nursery owned by a person operating under a compliance agreement with us without increasing the risk of the calamondin and kumquat plants causing the interstate spread of citrus canker.

(6) We propose to require that, within the past 2 years, nurseries where the plants are grown must not have contained any plants or plant parts infested with or exposed to citrus canker (caused by any strain).

Currently, the regulations state that nurseries must not have received any exposed material from any infested or exposed property. Because no time period is specified, this restriction applies to nurseries that may have received exposed material at any time in the past. In light of the comprehensive and successful nursery inspection program in Florida, we believe this restriction can be eased.

The regulations already require nurseries where regulated plants, including calamondin or kumquat plants, are grown to have three negative inspections for citrus canker. The inspections must be conducted at approximately 30-day intervals and not more than 90 days before the plants may be shipped interstate. These surveys have been conducted since 1984 at all nurseries in Florida that contain regulated plants. Our experience has been that, when citrus canker has been present in a nursery, inspectors have found the disease by the third survey, that is, within 90 days. We have found this to be an adequate inspection safeguard in connection with our requirements concerning the interstate movement of regulated fruit. Nursery plants, however, may present somewhat more risk than fruit of spreading citrus canker. Therefore, to remove even the slightest chance that exposed or infested calamondin or kumquat plants could be moved interstate, we propose to require nurseries where these plants are grown to be free of plants or plant parts infested with or exposed to citrus canker (caused by any strain) for at least 2 years before the plants may be moved interstate. We chose 2 years because this is generally considered to be the time during which citrus canker may remain dormant.

In addition to specifying 2 years, our proposal changes the word "received" to "contained" to cover any infestations that originate in a nursery. Also, the proposal requires that the nursery must not have contained any "infested," as well as "exposed" plants or plant parts. The term "infested" was inadvertently omitted from the current regulations.

(7) The regulations require calamondin and kumquat plants moved interstate to display a waterproof, boldface-type statement that the plants are not for distribution in certain areas of the United States, which are commercial citrus-producing areas.

We propose to require that the list of commercial citrus-producing areas shown on the statement include Guam and the Northern Mariana Islands, as well as American Samoa, Arizona, California, Hawaii, Louisiana, Puerto Rico, Texas, and the Virgin Islands of the United States. In accordance with the restrictions on moving regulated articles interstate with a limited permit, calamondin and kumquat plants are prohibited in all commercial citrus-producing areas of the United States. These areas are listed in § 301.75–4 of the regulations, and include Guam and the Northern Mariana Islands. These two areas were inadvertently omitted from the current list of areas required on the waterproof, boldface-type statement.

Also, we propose to require that the waterproof, boldface-type statement required on each individual package or plant also appear on shipping containers. When individual packages or plants are enclosed in shipping containers, the statement on the packages or plants is not visible. Requiring the statement to be displayed on shipping containers would help ensure that distribution restrictions are observed and enforced.

(8) We propose to prohibit the interstate movement of calamondin and kumquat plants from any area of Florida where a primary infestation caused by the Asiatic strains has occurred until 3 years after the last infested plant in that area has been destroyed. These areas are listed in current § 301.75–7(b)(2) (paragraph (b)(3) in our proposal). This prohibition is necessary because of the aggressiveness of the Asiatic strains.

(9) We propose to require that calamondin and kumquat plants, other than those sealed hermetically in plastic bags at the nursery where they were produced, be completely enclosed in containers or in compartments of vehicles during movement through Florida. This would prevent accidental surface contamination of the plants after they have left the nursery.

(10) We propose to add a definition for the term "own-root-only."

The Area of Florida Affected by the Asiatic Strains

Currently, the area of Florida where a primary infestation caused by the Asiatic strains has occurred within the past 3 years is identified as: All of Manatee, Pinellas, and Sarasota counties, and Hillsborough County south of State Road 60. Hillsborough County has never had an infestation caused by the Asiatic strains, and neither have most of Manatee, Pinellas, and Sarasota counties. When this area was originally identified, intensive walking surveys had not been completed, and the boundaries were drawn to include a fairly large buffer area around the infestations. This was necessary, until the infested area could be accurately

defined and the infestations brought under control, to ensure that fruit moved interstate in commercial citrus-producing areas of the country did not present a risk of spreading citrus canker.

Since 1986, when the Asiatic strains were first detected in this area, the number of new infestations has dropped from 283 residential properties and one grove in 1986, to 13 residential properties in 1987, to only 2 residential properties as of August 1988, and these have been confined to Anna Maria Island and a grove near the city of Palmetto (both in Manatee County). It is clear that the eradication program for the Asiatic strains is succeeding and that the affected area is relatively small. Therefore, we propose to reduce the area under special restriction because of the Asiatic strains. The proposed area would be comprised of:

(a) *Pinellas County:* South of a line formed by State Highway 694, from Redington Shores to the intersection of State Highway 694 and Interstate 92, then along Interstate 92 to the eastern shore of Old Tampa Bay;

(b) *Manatee County:* West of a line formed by Interstate 301 and Interstate 75, then along Interstate 75 to the Sarasota county line; and

(c) *Sarasota County:* The area south of the Manatee County line, west of Interstate 75, and north of State Highway 72 and County Road 780 to the beach.

This area is proposed based on the following considerations: the size and nature of the infestations; the distance that bacteria might naturally move from the site of the infestations; and the proximity of citrus groves and contiguous, residential properties on which citrus is grown and through which citrus canker could be spread by people, vehicles, and equipment (such as lawn services) moving from one property to another.

Addition of Wampi to the List of Regulated Articles.

We propose to add the species *Clausena lansium* (Lour.) Skeels (common name, wampi) to the list of regulated articles. Wampi plants in Florida have been found infected with the form of citrus canker caused by the Florida nursery strains, and, because wampi is a member of the *Rutaceae* family, which includes many known hosts of the Asiatic strains, there is good reason to believe that wampi may also be susceptible to infection by these strains as well. Adding this species to the list of regulated articles appears necessary to prevent the interstate spread of citrus canker.

Certificates for the Interstate Movement of Seed

Currently, the regulations state that seeds may be moved interstate with a certificate only if, among other things, no infestation has been found in the grove or nursery from which the seed originates.

We propose to require that the grove or nursery be free of plants or plant parts infested with or exposed to citrus canker (caused by any strain) for at least 2 years. Seed produced in a nursery or grove that has been free of plants or plant parts infested with or exposed to citrus canker for at least 2 years would present an extremely small risk of spreading this disease interstate.

Miscellaneous

Under the current regulations pertaining to interstate movement of fruit with a certificate is a provision stipulating that all regulated plants at all nurseries in the State of Florida that contain regulated plants must be examined by an inspector approximately every 30 days. These nursery inspections are important because nurseries are where we have found plants infested with the Florida nursery strains. The surveys have proven to be extremely effective in detecting citrus canker, and we have then been able to trace transplants to groves and take immediate action to protect the groves. These inspections also provide information necessary for us to determine whether regulated fruit, seed, and calamondin and kumquat plants meet requirements for interstate movement with a limited permit. Therefore, we propose to make issuance of any certificate or limited permit contingent on these inspections being conducted.

We propose to define "United States" as "all of the states of the United States, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States, and all other territories and possessions of the United States."

We also propose to make a number of editorial changes to improve the clarity of the regulations.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulated Fruit

We have proposed several changes that would increase the amount of regulated fruit that could be eligible for interstate movement in commercial citrus-producing areas of the United States: (1) Groves producing fruit for interstate movement with a certificate would no longer have to be at least one-half mile from properties that have contained, during the past 2 years, plants or plant parts infested with or exposed to the Florida nursery strains; (2) within one-half to 5 miles of these groves, the presence of plants infested with or at high risk of developing the form of citrus canker caused by the Florida nursery strains would no longer disqualify fruit for interstate movement with a certificate; and (3) the area of Florida designated as having had primary infestations caused by the Asiatic strains would be reduced. As a result, we estimate that all but about 10,000 of Florida's 600,000 acres of fruit-bearing citrus trees could produce fruit eligible for interstate movement with a certificate, an increase of about 6 percent over the 1987–1988 shipping season. Only a relatively small amount of the regulated fruit produced on these acres would be moved interstate to commercial citrus-producing areas, however. Most regulated fruit grown in Florida is used to make juice at processing plants in the state. Less than 20 percent is consumed as fresh fruit, and much of this is consumed in the state or is exported to foreign countries. Figures from the State of Florida Department of Citrus show that in 1983–1984, the last complete season before Florida was quarantined for citrus canker, the amount of fresh fruit shipped to commercial citrus-producing areas of the United States was 4.3 percent of the fresh citrus fruit shipped to all states combined, or about 3 million ⅘ bushel cartons. Furthermore, most of the regulated fruit that could become eligible for interstate movement with a certificate if our proposed rule is adopted is now eligible for interstate movement with a limited permit.

We also have proposed several changes in survey requirements. As a result, some groves would need only one survey rather than two, and surveys of properties within 5 miles of groves producing fruit for interstate movement with a certificate would be eliminated. In addition, the timing of some grove surveys would be changed from between 1 year and 90 days before harvest to between May 1 and December 31, inclusive, during the year before harvest. The reduction in the number of surveys would decrease the regulatory burden on state and federal offices responsible for conducting surveys of residential properties and commercial groves. Although the May through December timing proposed for some surveys would reduce the amount of time inspectors have to complete the surveys, this should not present a problem since the overall number of surveys would be greatly reduced. The proposed changes in survey requirements would have very little, if any, economic impact on persons involved in growing, handling, or shipping regulated fruit interstate, or on the amount of regulated fruit moved interstate.

We have proposed to remove the requirement that personnel, vehicles, and equipment be treated upon entering a grove producing fruit for interstate movement with a certificate. However, we have proposed to add a requirement that personnel, vehicles, and equipment be treated upon entering any grove of 10 or more regulated trees located within the area of Florida where there have been primary infestations caused by the Asiatic strains. These actions affect production expenses for those grove owners. However, the cost of disinfecting personnel, vehicles, and equipment is minor when compared to overall production expenses, and adding or removing this requirements should have little economic impact on persons producing fruit for interstate movement.

We have proposed to require that groves of 10 or more regulated trees producing fruit for interstate movement with a limited permit obtain regulated plants during the year before the interstate movement only from nurseries inspected and found free of citrus canker. This change would have little economic impact on persons moving regulated fruit interstate with a limited permit since all nurseries in the State of Florida are already being surveyed as proposed, and Florida law restricts the movement of plants from nurseries found to be infested.

We have proposed to prohibit the interstate movement of regulated fruit from any grove that is within one-half mile of any property where a primary infestation caused by the Asiatic strains has occurred within the past 2 years. This provision would apply to one commercial grove (the site of a primary infestation in Manatee County) and 24,000 residential properties. However, no fruit is being moved from these properties now because Florida law already prohibits the intrastate movement of fruit from these properties. Therefore, our proposal would have no economic impact on persons moving regulated fruit interstate.

We have proposed to allow a soap (or detergent) and water treatment for fruit produced in groves of 10 or more regulated trees located outside the area of Florida where primary infestations caused by the Asiatic strains have occurred if the fruit is to be moved interstate with a limited permit. Washing citrus fruit with soap (or detergent) and water is standard practice in packing houses. Eliminating the need for chemical treatment with chlorine or SOPP would reduce the cost of processing this fruit. However, expenses associated with fruit treatment are not a significant deterrent to the interstate movement of regulated fruit produced in commercial groves. Therefore, we do not anticipate that the change in this requirement woud have any significant economic impact on persons moving regulated fruit interstate with a limited permit.

When fruit must be treated as a condition of interstate movement, we have proposed to require that treatments be applied either in the presence of an inspector or at a facility owned by a person operating under a compliance agreement. This action would not pose any additional economic burden on persons moving regulated fruit interstate since all fruit treatments now are applied at packing houses operating under compliance agreements.

We have proposed to allow certain regulated fruit to be moved interstate without treatment to parts of the United States that are not commercial citrus-producing areas. This provision would apply only to regulated fruit produced in groves of fewer than 10 trees located outside the area of Florida where there have been primary infestations caused by the Asiatic strains. This action would reduce the cost to many small entities of moving regulated fruit interstate with a limited permit. At present, these entities take their fruit to a packing house for treatment. Often, the cost of treatment makes it too expensive for them to send the fruit to friends or relatives in other states. We anticipate that more small entities will move regulated fruit interstate as gifts to friends or relatives if treatement is not required. Other individuals and businesses would be affected, however, since regulated fruit from groves of fewer than 10 trees may be moved interstate only if it is sent directly to a household for consumption. Also, the amount of regulated fruit that would be shipped interstate in this manner would continue to be extremely small when compared to the amount of regulated fruit shipped interstate in commercial channels.

We have proposed to allow the interstate movement of regulated seed from nurseries or groves that have not contained plants or plant parts exposed to or infested with citrus canker for at least 2 years. This action would have very little economic impact on persons moving regulated seed interstate since an insignificant amount of this seed is produced in Florida for interstate movement. Furthermore, most of that is obtained from groves, which have, with few exceptions, been free of citrus canker.

Wampi

We have proposed to add the species Clausena lansium (Lour.) Skeels (common name, wampi) to the list of regulated articles. This action should have little or no economic impact on persons who move regulated articles interstate since very little wampi is grown in Florida, and at this time, we are not aware of any wampi being moved interstate.

Calamondin and Kumquat Plants

We have proposed to reduce restrictions on the interstate movement of own-root-only calamondin and kumquat plants grown outside the area of Florida where there has been a primary infestation caused by the Asiatic strains. We also have proposed to prohibit the interstate movement of grafted or budded calamondin and kumquat plants and all calamondin and kumquat plants grown in areas of Florida where a primary infestation caused by the Asiatic strains has occurred.

We are not aware of any nurseries that grow calamondin and kumquat plants in the area of Florida where a primary infestation caused by the Asiatic strains has occurred.

Approximately six nurseries produce container-grown calamondin or kumquat plants, nearly all of which are own-root-only. These plants are seasonal, specialty commodities sold as decorative house plants and for use as indoor landscaping at shopping malls, office buildings, and other establishments. Although we expect sales of the container-grown plants to

increase if this proposal is adopted, we do not expect the increased sales to have a significant economic impact on nurseries or other businesses involved in the sale of these plants. This is because calamondin and kumquat plants account for only a small percentage of these businesses' activities.

Individually packaged calamondin plants are own-root-only plants. They are sold at many gift shops and roadside fruit stands as decorative indoor house plants. Primary purchasers are tourists buying souvenirs before returning home from the quarantined area. The overwhelming majority of gift shops and roadside stands selling individually packaged calamondin plants are small entities. Sales may increase if this proposal is adopted, but the economic impact would be minor as calamondin plants are a very small part of the inventory of these small entities.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determine that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Citrus canker, Plants (Agriculture), Plant diseases, Plant pests, Quarantine, Transportation.

Accordingly, 7 CFR Part 301 would be amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for Part 301 would continue to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 301.75–1 would be amended by revising the definitions of "Citrus canker" and "Nursery"; by adding, in alphabetical order, definitions for "Own-root-only" and "United States"; and by removing the definition for "Container plant," as follows:

§ 301.75–1 Definitions.

* * * * *

Citrus canker. A plant disease caused by all strains of the bacterium *Xanthomonas campestris* pv. *citri* (Hasse) Dye, including the Asiatic strains and the Florida nursery strains.

* * * * *

Nursery. Any premises, including greenhouses, at which plants are grown or maintained for propagation or for replanting for ornamental purposes, but not including any grove on the premises.

* * * * *

Own-root-only. Plants grown entirely from seeds or cuttings.

* * * * *

United States. All of the states of the United States, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States, and all other territories and possessions of the United States.

3. In § 301.75–2, paragraph (a) would be revised to read as follows:

§ 301.75–2 Regulated articles.

(a) Plants or plant parts, including fruit and seeds, of any of the following:

All species, clones, cultivars, strains, varieties, and hybrids of the genera *Citrus* and *Fortunella*, and all clones, cultivars, strains, varieties, and hybrids of the species *Clausena lansium* and *Poncirus trifoliata*. The most common of these are: lemon, pummelo, grapefruit, key lime, persian lime, tangerine, satsuma, tangor, citron, sweet orange, sour orange, mandarin, tangelo, ethrog, kumquat, limequat, calamondin, trifoliate orange, and wampi.

* * * * *

§ 301.75–2 [Amended]

4. In § 301.75–2, paragraph (b), "conveyance" would be revised to read "conveyance".

§ 301.75–6 [Amended]

5. In § 301.75–6, paragraph (e) would be amended by revising "§ 301.75–7(e) or § 301.75–7(f)" to read "§ 301.75–7 of this subpart".

6. Section 301.75–7 would be revised to read as follows:

§ 301.75–7 Certificates and limited permits.

(a) *Issuance and withdrawal.* (1) The issuance of certificates and limited permits for the interstate movement of regulated articles from Florida is contingent upon every nursery in Florida that contains regulated plants being inspected for citrus canker approximately every 30 days. The inspections must be conducted by an inspector, and every regulated plant in the nurseries must be examined.

(2) Certificates and limited permits may be issued for the interstate movement of regulated articles only by an inspector or by persons operating under a compliance agreement.

(3) Any certificate or limited permit that has been issued may be withdrawn by an inspector if the inspector determines that any of the applicable requirements of this subpart are not being met. The decision of the inspector and the reasons for the withdrawal must be confirmed in writing as promptly as circumstances allow. Any person whose certificate or limited permit is withdrawn may appeal the decision in writing to the Administrator within 10 days after receiving the written notification. The appeal must state all of the facts and reasons upon which the person relies to show that the certificate or limited permit was wrongfully withdrawn. The Administrator must grant or deny the appeal, in writing, stating the reasons for the decision, as promptly as circumstances allow. If there is a conflict to any material fact, a hearing will be held to resolve the conflict. Rules of practice concerning the hearing will be adopted by the Administrator.

(b) *Restrictions on interstate movement of regulated articles produced in an area of Florida where a primary infestation caused by the Asiatic strains has occurred.* (1) Regulated fruit produced in any area of Florida where a primary infestation of citrus canker caused by the Asiatic strains has occurred will not be eligible for interstate movement with a certificate until 2 years after the destruction in that area of the last plant infested with citrus canker caused by the Asiatic strains.

(2) Calamondin and kumquat plants grown in any area of Florida where a primary infestation of citrus canker caused by the Asiatic strains has occurred will not be eligible for interstate movement with a limited permit until 2 years after the destruction in that area of the last plant infested with citrus canker caused by the Asiatic strains.

(3) The area of Florida where a primary infestation of citrus canker caused by the Asiatic strains has occurred is comprised of:

(i) *Pinellas County*: South of a line formed by State Highway 694, from Redington Shores to the intersection of State Highway 694 and Interstate 92, then along Interstate 92 to the eastern shore of Old Tampa Bay;

(ii) *Manatee County*: West of a line formed by Interstate 301 and Interstate 75, then along Interstate 75 to the Sarasota County line; and

(iii) *Sarasota County*: The area south of the Manatee County line, west of Interstate 75, and north of State Highway 72 and County Road 789 to the beach.

(c) *Certificates for interstate movement of seed.* A certificate will be issued for the interstate movement of regulated seed to any area of the United States, including commercial citrus-producing areas, only if all of the following conditions are met:

(1) In the grove or nursery producing the fruit from which the seed is extracted, there have been no plants or plant parts infested with or exposed to citrus canker (caused by any strain) for at least 2 years; and

(2) The seed has been treated in accordance with § 301.75–12(b) of this subpart.

(d) *Certificates for interstate movement of fruit.* A certificate will be issued for the interstate movement of regulated fruit to any area of the United States, including commercial citrus-producing areas, only if the fruit is eligible for a certificate in accordance with paragraph (b) of this section and all of the following conditions are met:

(1) The fruit is harvested from a grove of 10 or more regulated trees;

(2) The grove producing the fruit has not, within the past 2 years, contained any plants or plant parts infested with or exposed to citrus canker (caused by any strain);

(3) The grove producing the fruit has been found free of citrus canker (caused by any strain) on two surveys, conducted as follows:

(i) The first survey must have been conducted by an inspector between May 1 and December 31, inclusive, during the year before harvest, and not less than 90 days before the beginning of harvest. The inspector must have: Examined all trees on the perimeter of the grove while driving by the trees at no more than 2 m.p.h.; examined, while on foot, at least 12 trees in high-risk areas of the grove (such as the grove entrance, the perimeter of the grove, and areas where the movement of people and equipment is concentrated); and examined, while on foot, a minimum of four nature trees or eight young trees in one randomly selected location in every 10 acres of the grove, or, for groves less than 10 acres, examined, while on foot, a minimum of four mature trees or eight young trees in one randomly selected location;

(ii) The second survey must have been conducted by an inspector not more than 90 days before the beginning of harvest. The inspector must have walked through the grove and examined all trees on either side of the first middle (between the first two rows) and every fourth middle thereafter, and at least 12 trees in high-risk areas of the grove (such as the grove entrance, the perimeter of the grove, and areas where the movement of people and equipment is concentrated);

(4) The grove producing the fruit is at least one-half mile from any property that, within the past 2 years, has contained plants or plant parts infested with or exposed to citrus canker caused by the Asiatic strains;

(5) In the area between one-half and 5 miles from the grove producing the fruit, the following plants have been destroyed:

(i) All plants infested with citrus canker caused by the Asiatic strains; and

(ii) All exposed plants at high risk for developing the form of citrus canker caused by the Asiatic strains. Identification of expose plants at high risk for developing the form of citrus canker caused by the Asiatic strains will be based on an evaluation of all of the circumstances related to their exposure, including, but not limited to, the following:

(A) The stage of maturity of the exposed plants at the time of exposure;

(B) The size and degree of infestation to which the plants were exposed;

(C) The proximity of the exposed plants to the infested plants at the time of exposure; and

(D) The length of time the plants were exposed to the infestation;

(6) During the past 2 years, all shipments of regulated plants received by the grove producing the fruit have come only from nurseries found free of citrus canker (caused by any strain) on three surveys conducted by an inspector approximately 30 days apart and not more than 90 days before each shipment. Every regulated plant in the nursery must be examined on each survey.

(7) The identity of the fruit is maintained during picking, hauling to the packing house, and package;

(8) The fruit is treated in accordance with § 301.75–12(a) of this subpart and then waxed;

(9) The fruit is free of leaves, twigs, and other plant litter, except stems less than one-inch long that are attached to the fruit;

(10) The fruit is packed in containers marked with a United States Department of Agriculture stamp that says "Certified under all applicable Federal or State cooperative domestic plant quarantines".

(e) *Limited permits for interstate movement of fruit.* A limited permit will be issued for the interstate movement of regulated fruit to any area of the United States, except commercial citrus-producing areas, only if the following conditions are met:

(1) The grove producing the fruit has not, within the past 1 year, contained any plants or plant parts infested with citrus canker (caused by any strain);

(2) In the grove producing the fruit, any exposed plants at high risk for developing citrus canker (caused by any strain) have been destroyed. Identification of exposed plants at high risk for developing citrus canker will be based on an evaluation of all of the circumstances related to their exposure, including, but not limited to, the following:

(i) The stage of maturity of the exposed plants at the time of exposure;

(ii) The size and degree of infestation to which the plants were exposed;

(iii) The proximity of the exposed plants to the infested plants at the time of exposure;

(iv) The length of time the plants were exposed to the infestation; and

(v) The strain of the bacterium to which the plants were exposed;

(3) The grove producing the fruit is at least one-half mile from any property where a primary infestation of citrus canker caused by the Asiatic strains has occurred within the past 2 years;

(4) The grove producing the fruit has been surveyed and found free of citrus canker (caused by any strain) as follows:

(i) Groves of 10 or more trees located outside the area designated in paragraph (b) of this section as having had a primary infestation of citrus canker caused by the Asiatic strains have been surveyed one time. The survey must have been conducted by an inspector between May 1 and December 31, inclusive, during the year before the beginning of harvest. The inspector must have examined all trees on the perimeter of the grove while driving at no more than 2 m.p.h.; examined, while on foot, at least 12 trees in high-risk areas of the grove (such as the grove entrance, the perimeter of the grove, and areas where the movement of people and equipment is concentrated); and examined, while on foot, a minimum of four mature trees or eight young trees in one randomly selected location in every 10 acres of the grove, or, for groves less than 10 acres, examined, while on foot, a minimum of four mature trees or eight young trees in one randomly selected location;

(ii) Groves of 10 or more trees located within the area designated in paragraph (b) of this section as having had a primary infestation of citrus canker caused by the Asiatic strains must have been surveyed two times, as follows:

(A) The first survey must have been conducted by an inspector between May 1 and December 31, inclusive, during the year before harvest, and not less than 90 days before the beginning of harvest. The inspector must have: examined all trees on the perimeter of the grove while driving by the trees at no more than 2 m.p.h.; examined, while on foot, at least 12 trees in high-risk areas of the grove (such as the grove entrance, the perimeter of the grove, and areas where the movement of people and equipment is concentrated); and examined, while on foot, a minimum of four mature trees or eight young trees in one randomly selecteed location in every 10 acres of the grove, or, for groves of less than 10 acres, examined, while on foot, a minimum of four mature trees or eight young trees in one randomly selected location; and

(B) The second survey must have been conducted by an inspector not more than 90 days before the beginning of harvest. The inspector must have examined all trees in the outer two rows of the grove while driving by the trees at no more than 2 m.p.h.; examined, while on foot, at least 12 trees in high-risk areas of the grove (such as the grove entrance, the perimeter of the grove, and areas where the movement of people and equipment is concentrated); and examined, while on foot, a minimum of four mature trees or eight young trees in each of two randomly selected locations in every 10 acres of the grove, or, for groves less than 10 acres, examined, while on foot, a minimum of four mature trees or eight young trees in each of two randomly selected locations:

(iii) Groves of fewer than 10 regulated trees, whether located within or outside the area designated in paragraph (b) of this section as having had a primary infestation of citrus canker caused by the Asiatic strains, must have been surveyed one time. An inspector must walk through the grove and examine every tree no more than 30 days before the beginning of harvest;

(5) If the grove producing the fruit has 10 or more regulated trees, all shipments of regulated plants received by the grove during the past 1 year have come only from nurseries found free of citrus canker (caused by any strain) on three surveys conducted by an inspector approximately 30 days apart and not more than 90 days before each shipment. Every regulated plant in the nursery must have been examined on each survey;

(6) If the grove producing the fruit has 10 or more regulated trees, and is located within the area designated in paragraph (b) of this section as having a primary infestation of citrus canker caused by Asiatic strains, all personnel, vehicles, and equipment are treated in accordance with § 301.75–12 (c) and (d) of this subpart upon entering the grove;

(7) If the grove producing the fruit has 10 or more regulated trees, or if the grove, regardless of size, is located within the area designated in paragraph (b) of this section as having had a primary infestation of critrus canker caused by the Asiatic strains, the fruit is treated in accordance with § 301.75–12(a) of this subpart. No treatment is required for fruit produced in groves of fewer than 10 regulated trees located outside the area designated in paragraph (b) of this section as having had a primary infestation of citrus canker caused by the Asiatic strains;

(8) The fruit is free of leaves, twigs, and other plant litter, except stems less than one-inch long that are attached to the fruit; and

(9) Fruit produced in a grove of fewer than 10 regulated trees is to be moved interstate directly to a household, with the intent that the fruit be consumed at, or by members of, that household.

(f) *Limited permits for interstate movement of own-root-only calamondin and kumquat plants.* A limited permit will be issued for the interstate movement of own-root-only calamondin and kumquat plants, with or without fruit attached, to any area of the United States except commercial citrus-producing areas, only if the plants are eligible for a limited permit in accordance with paragraph (b) of this section and all of the following conditions are met:

(1) The plants have always been located on the premises from which they will be moved interstate;

(2) Cuttings used to propagate the plants were taken only from plants located on the same premises; or on other premises under the same ownership; or at a nursery owned by another person operating under a compliance agreement;

(3) The nursery where the plants were grown has not, within the past 2 years, contained any plants or plant parts infested with or exposed to citrus canker (caused by any strain);

(4) In the nursery where the plants were grown, all regulated plants were examined by an inspector and found free of citrus canker (caused by any strain) on three surveys conducted approximately 30 days apart and within the past 90 days;

(5) Except for plants hermetically sealed in plastic bags before leaving the nursery, the plants are completely enclosed in containers or in compartments of vehicles during movement through Florida; and

(6) A statement that the plants are not for distribution within American Samoa, Arizona, California, Guam, Hawaii, Louisiana, the Northern Mariana Islands, Puerto Rico, Texas, or the Virgin Islands of the United States is displayed in waterproof, boldface type on the package of each plant hermetically sealed in plastic, or on durable, waterproof tags attached to all other plants, and on the outside of all shipping containers used for these plants.

7. In § 301.75–12, paragraph (a) would be revised to read as follows:

§ 301.75–12 Treatments.

(a) *Fruit.* Fruit for which treatment is required by this subpart must be treated in accordance with this paragraph in the presence of an inspector or at a facility whose owner operates under a compliance agreement.

(1) Fruit produced in groves located within the area of Florida designated in § 301.75–7(b) of this subpart as having had primary infestations of citrus canker caused by the Asiatic strains: Thorough wetting with a solution containing 200 parts per million sodium hypochlorite for at least 2 minutes; or thorough wetting with a solution containing sodium o-phenyl phenate (SOPP) at a concentration of 1.86 to 2 percent of the total solution for 45 seconds if the solution has sufficient soap or detergent to cause a visible foaming action or for 1 minute if the solution does not contain sufficient soap or detergent to cause a visible foaming action.

Note: Sodium hypochlorite and SOPP must be applied in accordance with label directions.

(2) Fruit produced in groves of 10 or more regulated trees located outside the area of Florida designated in § 301.75–7(b) of this subpart as having had primary infestations caused by the Asiatic strains: Treatment as prescribed in paragraph (a)(1) of this section; or thorough wetting and brush scrubbing for one minute with a solution of water and soap (or water and detergent) sufficient to cause a visable foaming action.

* * * * *

§ 301.75–12—[Amended]

8. In § 301.75–12, paragraph (b) would be amended by revising "active chlorine" to read "sodium hypochlorite".

9. In § 301.75–12, paragraph (d) (1) would be amended by revising "chlorine solution" to read "solution of sodium hypochlorite".

Done at Washington, DC, this 19th day of October 1988.

W.F. Helms,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–24488 Filed 10–20–88; 8:45 am]

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federal register

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Briefing on How To Use the Federal Register—
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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WASHINGTON, DC

WHEN: November 4; at 9:00 a.m.
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Presidential Documents

Title 3—

The President

Proclamation 5885 of October 20, 1988

Increase in the Rates of Duty for Certain Articles From Brazil

By the President of the United States of America

A Proclamation

1. On July 21, 1988, prior to the date of enactment of section 1301 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418), I determined pursuant to section 301 of the Trade Act of 1974, as amended (19 U.S.C. 2411), that the Government of Brazil has failed to provide process and product patent protection for pharmaceutical products and fine chemicals, and that this failure is unreasonable and constitutes a burden or restriction on U.S. commerce (53 Fed. Reg. 28177). This failure permits the unauthorized copying of pharmaceutical products and processes that were invented by U.S. firms. I directed the United States Trade Representative to hold public hearings on products of Brazil that were appropriate candidates for increased duties or other import restrictions, and those hearings were held September 8 and 9, 1988. I have further determined, pursuant to section 301 of the Trade Act of 1974, as amended by the Omnibus Trade and Competitiveness Act of 1988, that appropriate and feasible action in response to Brazil's unreasonable policies and practices is to impose increased duties of 100 percent *ad valorem* on certain imported articles that are the products of Brazil.

2. Section 301 of the Act as amended authorizes appropriate and feasible action within the power of the President to obtain the elimination of an act, policy, or practice of a foreign government that is inconsistent with the provisions of, or otherwise denies benefits to the United States under, a trade agreement; or is unjustifiable, unreasonable, or discriminatory and burdens or restricts U.S. commerce. Section 301 authorizes the suspension, withdrawal, or prevention of the application of benefits of trade agreement concessions with respect to, and the imposition of duties or other import restrictions on the products of, such foreign country for such time as is appropriate. Pursuant to section 301, such actions may be taken on a nondiscriminatory basis or solely against the products of the foreign country involved.

3. I have decided, pursuant to section 301, to increase U.S. import duties on the articles provided for in the annexes to this Proclamation that are the products of Brazil.

4. Section 604 of the Trade Act of 1974 (19 U.S.C. 2483) authorizes the President to embody in the Tariff Schedules of the United States (TSUS) the substance of the provisions of that Act, of other Acts affecting import treatment, and of actions taken thereunder. Section 1204(b) of the Omnibus Trade and Competitiveness Act of 1988 requires that I proclaim such modifications to the Harmonized Tariff Schedule of the United States (HTS), as enacted in section 1204 of that Act, as are necessary or appropriate to implement the applicable provisions of statutes enacted, executive actions taken, and final judicial decisions rendered, after January 1, 1988, and before the effective date of the HTS.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, acting under the authority vested in me by the Constitution and statutes of the United States, including but not limited to sections 301 and 604 of the Trade Act of 1974, as amended, and section 1204 of the Omnibus Trade and Competitiveness Act of 1988, do proclaim that:

(1) Subpart B of part 2 of the Appendix to the TSUS is modified as provided in Annex I to this Proclamation.

(2) Chapter 99 of the HTS is modified as provided in Annex II to this Proclamation.

(3) The United States Trade Representative is authorized to suspend, modify, or terminate the increased duties imposed by this Proclamation upon publication in the **Federal Register** of his determination that such action is in the interest of the United States.

(4)(a) The modifications to the TSUS made by Annex I to this Proclamation are effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the 10th day after the date of signature of this Proclamation.

(b) The modifications to the HTS made by Annex II to this Proclamation are effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 1989.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of October, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

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ANNEX I

Subpart B of part 2 of the Appendix to the Tariff Schedules of the United States is modified by inserting in numerical sequence the following new items and superior heading, set forth herein in columnar form, in the columns designated "Item", "Articles", "Rates of Duty 1", and "Rates of duty 2", respectively.

	"Articles the product of Brazil:		
946.60	Writing paper weighing over 18 pounds per ream (provided for in item 252.75, part 4B of schedule 2).....	100% ad val.	No change
946.61	Other papers not specially provided for, not impregnated, not coated, not surface-colored, not embossed, not ruled, not lined, not printed, and not decorated, weighing not over 18 pounds per ream (provided for in items 252.77 and 252.79, part 4B of schedule 2).....	100% ad val.	No change
946.62	Writing paper weighing over 18 pounds per ream, not lithographically printed (provided for in item 254.56, part 4B of schedule 2).....	100% ad val.	No change
946.63	Other paper and paperboard (except basic paper to be sensitized for use in photography and except filtering paper), cut to size or shape (provided for in items 256.20, 256.25, and 256.30, part 4C of schedule 2).....	100% ad val.	No change
946.64	Blank books, bound (provided for in items 256.56 and 256.58, part 4C of schedule 2).....	100% ad val.	No change
946.65	Synthetic alkaloids and their compounds (provided for in item 437.20, part 3B of schedule 4).....	100% ad val.	No change
946.66	Antibiotics, except natural and not artificially mixed (provided for in item 437.32, part 3B of schedule 4)...	100% ad val.	No change
946.67	Menthol (provided for in item 437.64, part 3B of schedule 4).....	100% ad val.	No change
946.68	Microwave ovens (provided for in item 684.25, part 5 of schedule 6).....	100% ad val.	No change
946.70	Television cameras, and parts thereof (provided for in item 684.90, part 5 of schedule 6).....	100% ad val.	No change

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946.71	Complete television receivers (provided for in item 684.92, part 5 of schedule 6).....	100% ad val.	No change
946.72	Television receiver assemblies having a picture tube (including kits containing all parts necessary for assembly into complete monochrome or color receivers) (provided for in items 684.94 and 684.96, part 5 of schedule 6).....	100% ad val.	No change
946.73	Record players, phonographs, record changers, turntables, and parts of the foregoing (except tone arms and parts thereof) (provided for in item 685.38, part 5 of schedule 6).....	100% ad val.	No change
946.74	Telephone answering machines, and parts thereof (provided for in item 685.39, part 5 of schedule 6).....	100% ad val.	No change
946.75	Tape recorders and dictation recording and transcribing machines (other than telephone answering machines), and parts thereof (provided for in item 685.40, part 5 of schedule 6).....	100% ad val.	No change
946.76	Radio-television-phonograph combinations (provided for in item 685.42, part 5 of schedule 6).....	100% ad val.	No change
946.77	Other radiotelegraphic and radiotelephonic transmission and reception apparatus, and parts thereof, not specially provided for (provided for in item 685.49, part 5 of schedule 6).....	100% ad val.	No change"

ANNEX II

MODIFICATIONS TO THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTS) (section 1204 of Pub. L. 100-418) is modified by inserting the following new subheadings and superior description, with the material inserted in the columns entitled "Heading/Subheading", "Article Description", "Rates of Duty 1 General", and "Rates of Duty 2", respectively.

	"Articles the product of Brazil:		
9903.42.01	Menthol (provided for in subheading 2906.11.00); medicaments containing menthol, put up in measured doses or in forms or packings for retail sale (provided for in subheading 3004.90.60).....	100% ad val.	No change
9903.42.05	Theophylline and aminophylline (Theophylline-ethylenediamine) and their derivatives, ephedrines (except pseudoephedrine), alkaloids of rye ergot and their derivatives, and salts of any of the foregoing (provided for in subheadings 2939.40.50, 2939.50.00 and 2939.60.00); vegetable alkaloids reproduced by synthesis and their salts, ethers, esters and other derivatives, the foregoing not specially provided for (provided for in subheading 2939.90.50); and medicaments containing any of the foregoing alkaloids or derivatives but not containing hormones or other products of heading 2937 or antibiotics, whether or not put up in measured doses or in forms or packings for retail sale (provided for in subheadings 3003.40.00 and 3004.40.00).....	100% ad val.	No change
9903.42.10	Streptomycins, tetracyclines and erythromycin and their derivatives; salts of any of the foregoing (provided for in subheadings 2941.20.00, 2941.30.00 and 2941.50.00); other antibiotics not specially provided for, except natural and except aromatic or modified aromatic (provided for in subheading 2941.90.50); medicaments containing antibiotics other than penicillins or derivatives thereof, with a penicillanic acid structure, or streptomycins or their derivatives, the foregoing not put up in measured doses or in forms or packings for retail sale (provided for in subheading 3003.20.00); medicaments containing penicillins or derivatives thereof (except penicillin G salts), streptomycins or their derivatives or other antibiotics (provided for in subheadings 3004.10.50 and 3004.20.00).....	100% ad val.	No change

ANNEX II (con.)

9903.42.15	Writing paper (provided for in subheadings 4802.51.10, 4802.52.10, and 4802.53.10); other writing paper and cover paper, of which more than 10 per cent by weight of the total fiber content consists of fibers obtained by a mechanical process (provided for in subheading 4802.60.10).....	100% ad val.	No change
9903.42.20	Other uncoated paper and paperboard not specially provided for, in rolls or sheets, weighing not over 30 g/m² (provided for in subheadings 4805.60.50 and 4805.60.70).....	100% ad val.	No change
9903.42.25	Self-copy writing paper whether or not printed, in rolls of a width exceeding 36 cm or in rectangular (including square) sheets with at least one side exceeding 36 cm in unfolded state (provided for in subheading 4809.20.20).....	100% ad val.	No change
9903.42.28	Other paper and paperboard (other than light-weight coated paper) of a kind used for writing, printing or other graphic purposes, coated on one or both sides with kaolin or other inorganic substances, with or without a binder, and with no other coating, whether or not surface-colored, surface-decorated or printed, in rolls or sheets (provided for in subheading 4810.29.00).....	100% ad val.	No change
9903.42.30	Carbon or similar copying papers and self-copy paper (provided for in subheadings 4816.10.00 and 4816.20.00).....	100% ad val.	No change
9903.42.33	Letter cards, plain postcards and correspondence cards (provided for in subheading 4817.20.40).....	100% ad val.	No change
9903.42.35	Toilet paper, handkerchiefs, cleansing or facial tissues and towels, and tablecloths and table napkins (provided for in subheadings 4818.10.00, 4818.20.00 and 4818.30.00).....	100% ad val.	No change
9903.42.38	Sanitary food and beverage containers (provided for in subheading 4819.50.20); trays, dishes, plates, cups and the like, of paper or paperboard (provided for in subheading 4823.60.00).....	100% ad val.	No change
9903.42.40	Registers, account books, note-books, order books, receipt books, letter pads, memorandum pads, diaries and similar articles (provided for in subheadings 4820.10.20 and 4820.10.40).....	100% ad val.	No change

ANNEX II (con.)

9903.42.45	Paper and paperboard labels of all kinds, not printed, not pressure-sensitive (provided for in subheading 4821.90.40); gummed or adhesive paper, in strips or rolls, not pressure-sensitive (provided for in subheading 4823.19.00); cards, not punched, for punchcard machines, whether or not in strips (provided for in subheading 4823.30.00).....	100% ad val.	No change
9903.42.50	Other paper and paperboard (except basic paper to be sensitized for use in photography), of a kind used for writing, printing or other graphic purposes (provided for in subheadings 4823.51.00 and 4823.59.40); other coated paper or paperboard or articles thereof (provided for in subheading 4823.90.65); other goods of paper pulp, paper, paperboard, cellulose wadding or webs of cellulose fibers (provided for in subheading 4823.90.85).....	100% ad val.	No change
9903.42.55	Microwave ovens (provided for in subheadings 8419.81.10 and 8516.50.00).....	100% ad val.	No change
9903.42.60	Turntables, record players, and other sound recording apparatus (except cassette type of subheading 8519.91.00), not incorporating a sound recording device (provided for in heading 8519); parts of the foregoing (provided for in subheading 8522.90.90).....	100% ad val.	No change
9903.42.65	Magnetic tape recorders and other sound recording apparatus, whether or not incorporating a sound reproducing device (provided for in heading 8520); parts of the foregoing (provided for in subheadings 8522.90.60 and 8522.90.90).....	100% ad val.	No change
9903.42.70	Magnetic tape-type video recording or reproducing apparatus (provided for in subheading 8521.10.00).....	100% ad val.	No change
9903.42.75	Parts and accessories of apparatus of headings 8519 to 8521 (provided for in subheadings 8522.90.60 and 8522.90.90).....	100% ad val.	No change
9903.42.80	Television cameras (provided for in subheading 8525.30.00).....	100% ad val.	No change

ANNEX II (con.)

9903.42.85	Radio-tape recorder combinations (provided for in subheading 8527.11.20); radiobroadcast receivers not capable of operating without an external source of power, of a kind used in motor vehicles, combined with sound recording or reproducing apparatus, other than radio-tape player combinations (provided for in subheading 8527.21.40); other combination radiobroadcast receivers incorporating tape recorders (provided for in subheading 8527.31.50).....	100% ad val.	No change
9903.42.90	Television receivers (including video monitors and video projection television receivers), whether or not combined, in the same housing, with radiobroadcast receivers or sound or video recording or reproducing apparatus (provided for in heading 8528)....	100% ad val.	No change
9903.42.95	Parts suitable for use solely or principally with the apparatus of headings 8525 to 8528 (provided for in subheadings 8529.90.30 and 8529.90.50).....	100% ad val.	No change"

[FR Doc. 88-24711
Filed 10-21-88; 11:14 am]
Billing code 3190-01-C

Rules and Regulations

Federal Register
Vol. 53, No. 205
Monday, October 24, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 906

Expenses and Assessment Rate for Marketing Order Covering Oranges and Grapefruit Grown in Lower Rio Grande Valley in Texas

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order 906 for the 1988–89 fiscal period established for that order. The rule is needed for the Texas Valley Citrus Committee to incur operating expenses during the 1988–89 fiscal period and to collect funds during that period to pay those expenses. This will facilitate program operations. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: August 1, 1988, through July 31, 1989 (§ 906.228).

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–475–3918.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 906 (7 CFR Part 906) regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 22 handlers of oranges and grapefruit under this marketing order, and approximately 3,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may classify as small entities.

Each marketing order administered by the Department of Agriculture requires that the assessment rate for a particular fiscal period shall apply to all assessable commodities handled from the beginning of such period. An annual budget of expenses is prepared by each administrative committee and submitted to the Department for approval. The members of the administrative committees are handlers and producers of the regulated commodities. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local areas, and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by expected shipments of the commodity (e.g., pounds, tons, boxes, cartons, etc.). Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committee before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The Texas Valley Citrus Committee met September 6, 1988, and unanimously recommended 1988–89 fiscal period expenditures of $1,376,634 and an assessment rate of $0.12 per 7/10 bushel carton of assessable oranges and grapefruit shipped under M.O. 906. In comparison, 1987–88 budgeted expenditures were $857,400 with an assessment rate of $0.10 per 7/10 bushel carton shipped. Major expenditure items bugeted this year in comparison to 1987–88 actual expenditures (in parentheses) are $1,080,000 ($462,000) for advertising and promotion, $143,634 ($96,801) for the mex-fly program, and $153,000 ($96,920) for program administration. The increase in advertising expenses is needed to market the 1988–89 production expected to be 15 percent higher than last season. The increase in program administration expenses is needed to cover salary and rent increases and the anticipated cost of participating in a possible citrus conference in California.

An estimated assessment income of $918,528 based on the shipment of 7,654,400 cartons of oranges and grapefruit, along with $35,000 in interest income, $54,000 in prepaid advertising and $369,106 to be taken from the operating reserve will be utilized to cover 1988–89 fiscal period expenditures.

Unexpended funds from the 1987–88 fiscal period will be placed in the committee's operating reserves. The reserves are well within the maximum authorized under the order.

A proposed rule inviting comments on the Texas Valley Citrus committee's 1988–89 expenses and assessment rate was published in the **Federal Register** on September 27, 1988 (53 FR 37585). The comment period ended October 7, 1988. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits

derived from the operation of the marketing order. Therefore, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found that the budget of expenses, assessment rate, and carryover of unexpended funds are reasonable and will tend to effectuate the declared policy of the Act.

This budget of expenses and assessment rate should be expedited because the committee needs to have sufficient funds to pay their expenses, which are incurred on a continuous basis. Therefore, the Secretary also finds that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register (5 U.S.C. 553).

List of Subjects in 7 CFR Part 906

Marketing agreements and orders, oranges and grapefruit, Texas.

For the reasons set forth in the preamble, 7 CFR Part 906 is amended as follows:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR Part 906 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New § 906.228 is added to read as follows:

Note.—This section will not appear in the Code of Federal Regulations.

§ 906.228 Expenses and assessment rate.

Expenses of $1,376,634 by the Texas Valley Citrus Committee are authorized, and an assessment rate of $0.12 per 7/10 bushel carton of assessable oranges and grapefruit is established for the fiscal period ending July 31, 1989. Unexpended funds from the 1987–88 fiscal year may be carried over as a reserve.

Dated: October 18, 1988.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88-24478 Filed 10-21-88; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 910

[Lemon Reg. 635, Amdt. 1]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action increases the quantity of fresh California-Arizona lemons that may be shipped to market during the period October 16 through October 22, 1988, from 229,000 cartons to 254,000 cartons. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 635, Amendment 1 (§ 910.935) is effective for the period October 16 through October 22, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended [7 CFR Part 910] regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601–674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (committee) and upon their available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1988–89. The committee conducted a telephone poll on October 17, 1988, and, upon considering the current and prospective conditions of supply and demand, unanimously recommended that the quantity of lemons deemed advisable to be handled during the specified week be increased from 229,000 cartons to 254,000 cartons. The committee reports that the demand for lemons has improved beyond what was anticipated by the committee on October 12, 1988, when the 229,000 carton recommendation was made.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.935 is revised to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.935 Lemon Regulation 635, Amendment 1.

The quantity of lemons grown in California and Arizona which may be handled during the period October 16, 1988, through October 22, 1988, is established at 254,000 cartons.

Dated: October 18, 1988.

Robert C. Keeney,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88-24479 Filed 10-21-88; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 910

[Lemon Reg. 636]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 636 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 284,000 cartons during the period October 23 through October 29, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 636 (§ 910.936) is effective for the period October 23 through October 29, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, D.C. 20090–6456; telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject ot such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended [7 CFR Part 910] regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601–674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1988–89. The Committee met publicly on October 19, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by an 11 to 1 vote, a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that the demand for lemons has improved.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.936 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.936 Lemon Regulation 636.

The quantity of lemons grown in California and Arizona which may be handled during the period October 23, 1988, through October 29, 1988, is established at 284,000 cartons.

Dated: October 20, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88-24617 Filed 10-21-88; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 11

[Docket No. 88-160]

Horse Protection Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Horse Protection Regulations to remove language that would have terminated after October 31, 1988, provisions that prohibit heel buildup in excess of 1 inch on yearling horses. This amendment is necessary to better protect horses under the Horse Protection Act.

DATES: This interim rule is effective October 24, 1988. Consideration will be given only to comments postmarked or received on or before November 23, 1988.

ADDRESSES: Send an original and three copies of written comments to Regulatory Analysis and Development, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 88–160. Comments received may be inspected at USDA, Room 1141, South Building, 14th and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. R.L. Crawford, Director, Animal Care Staff, Regulatory Enforcement and Animal Care, APHIS, USDA, Room 756, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7833.

SUPPLEMENTARY INFORMATION:

Background

In this interim rule we are removing language, inadvertently retained in the Horse Protection Regulations in 9 CFR Part II (referred to below as the regulations), that would have terminated after October 31, 1988, a prohibition of heel buildup in excess of 1 inch on yearling horses.

On April 26, 1988, we published an interim rule in the Federal Register (53 FR 14778–14782, Docket No. 88–052) that amended the regulations to establish a schedule for phasing down the maximum allowable height of pads used on horses. The schedule would have limited the total height of pads to 1 inch as of November 1, 1988.

Prior to the April 26 interim rule, § 11.2(b)(8) of the regulations prohibited

indefinitely the use of pads or other devices on yearling horses that elevate or change the angle of the yearlings' hooves more than 1 inch at the heel. This limit is necessary because the immature development of yearlings' limbs makes higher pads potentially harmful to these horses. However, our limiting the total height of pads on all horses to 1 inch as of November 1, 1988, made the provisions of § 11.2(b)(8) superfluous after October 31, 1988. Therefore, we added language to the regulations that would have terminated the provisions of § 11.2(b)(8) after October 31, 1988.

In a subsequent interim rule published July 28, 1988 (53 FR 28366–28373, Docket No. 88–125), we eliminated the regulations that phased down maximum pad height to 1 inch, and established in their place restrictions on pad height based on the length of a horse's natural foot. Under these new provisions, currently in effect, the pad height on some horses may exceed 1 inch, which would be injurious to yearling horses. However, in the July 28 interim rule, we inadvertently retained the language that terminates the provisions of § 11.2(b)(8) after October 31. Because it continues to be necessary for the well-being of yearing horses to limit any change in the elevation or angle of their hooves to 1 inch, we are removing the language in the regulations that would have terminated the provisions of § 11.2(b)(8) after October 31, 1988.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency situation exists, which warrants publication of this interim rule without prior notice and opportunity for public comment.

It is important for the well-being of yearling horses that we retain the 1-inch limit on any change in the elevation or angle of those horses' hooves at the heel. To ensure that this restriction remains effective after October 31, 1988, we are publishing this interim rule.

Since prior notice and other public procedures with respect to this rule are impracticable and contrary to the public interst under these emergency conditions, there is good cause under 5 U.S.C. 553 for making it effective upon publication in the **Federal Register**. We will consider comments postmarked or received within 30 days of the publication of this rule in the **Federal Register**. Any amendments we make to this rule as a result of these comments will be published in the **Federal Register** as soon as possible following the close of the comment period.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this interim rule in conformance with Executive Order 12291 and Departmental Regulation 1512–1, and have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The change to the regulations made by this interim rule will cause no change in current industry practices.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paper Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 11

Animal welfare, Horses, Humane animal handling, Soring of horses.

PART 11—HORSE PROTECTION REGULATIONS

Accordingly, 9 CFR Part 11 is amended as follows:

1. The authority citation for Part 11 continues to read as follows:

Authority: 15 U.S.C. 1823, 1824, 1825, and 1828; 44 U.S.C. 3506.

2. Section 11.2 is amended by revising paragraph (b)(8) to read as follows:

§ 11.2 Prohibitions concerning exhibitors.

* * * * *

(b) * * *

(8) Pads or other devices on yearling horses that elevate or change the angle of such horses' hooves in excess of 1 inch at the heel.

* * * * *

Done in Washington, D.C., this 19th day of October, 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–24471 Filed 10–21–88; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 80475–8204]

U.S. Trade in Services; Revisions in Requirements for Exemption From Reporting in the BE–29 Survey of Foreign Ocean Carriers' Expenses in the United States

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: This notice sets forth the final rule to revise the exemption requirements for the annual BE–29 survey of foreign ocean carriers' expenses in the United States. The survey is mandatory and is conducted pursuant to the International Investment and Trade in Services Survey Act.

This final rule amends 15 CFR Part 801, as amended. It implements changes in exemption criteria requested by U.S. agents that represent foreign ocean carriers in the United States.

EFFECTIVE DATE: The rules will be effective November 23, 1988, beginning with reports covering 1988. Reporting forms will be mailed to respondents in early January and will be due March 31, 1989.

FOR FURTHER INFORMATION CONTACT: Anthony J. Di Lullo, Assistant Chief, Balance of Payments Division (BE–58), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; Phone (202) 523–0621.

SUPPLEMENTARY INFORMATION:

Background

In the July 14, 1988 **Federal Register**, Volume 53, No. 135 (53 FR 26803), BEA published a notice of proposed rulemaking to change the exemption criteria for reporting in the BE–29 survey of foreign ocean carriers' expenses in the United States. Two sets of comments were received which resulted in a change in wording to clarify the exemption criteria, as noted below. With the exception of this change, the final rule is the same as the proposed rule.

The changes in the exemption criteria were prompted by requests from four regional associations of steamship agents and ship owners and brokers. The associations said that agents were expending excessive amounts of time in searching records to determine whether they were exempt from reporting.

The revision in the "Exemption" section will reduce the amount of time expended by agents to determine eligibility for exemption from reporting by introducing alternative criteria. Some association members suggested that small agents (agents that were not major representatives of foreign ocean carriers) would probably handle less than forty port calls per year by foreign ocean carriers, and it is simpler to count the number of port calls by foreign ocean carriers that the agent handled than to tabulate the expenses of foreign carriers it handled to determine exemption eligibility. Thus, the revised criteria exempt an agent from reporting if the agent handled less than forty port calls by foreign ocean carriers or total covered expenses were less than $250,000 in a given year. If an agent handled forty or more port calls by foreign ocean carriers, then the agent must report unless total expenses were less than $250,000. Also, agents are no longer required to conduct a manual search of records. The determination of whether an agent handled more than $250,000 in port call expenses of foreign ocean carriers may be based on the judgment of knowledgeable persons in the agent's firm who can identify such transactions without conducting a manual search of records. Previously, the sole criterion for exemption was that covered expenses must be less than $500,000.

During the public comment period on the proposed rule, the New Orleans Steamship Association and the West Gulf Maritime Association requested clarification of the exemption criteria. In addition, the West Gulf Maritime Association requested raising of the dollar-level exemption to $500,000. In response to the request for clarification, the reporting instructions were changed to "is exempted * * * if the total number of port calls * * * is less than 40 or covered expenses are less than $250,000" from "is exempted * * * if the total number of port calls * * * is less than 40 and covered expenses are less than $250,000." The exemption level was not raised to $500,000, as requested, because coverage would be inadequate.

The public reporting burden for this collection of information is estimated to average 5 hours per response, including the time for reviewing instructions, search existing sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding this burden estimate, including suggestions for reducing the burden, may be sent to: Director, Bureau of Economic Analysis (BE–1), U.S. Department of commerce, Washington, DC 20230; and to the Office of Information and Regulatory Affairs, Office of Management and budget, Washington, DC 20506.

Executive Order 12291

BEA has determined that this final rule is not "major" as defined in E.O. 12291 because it is not likely to result in:

(1) An annual effect on the economy of $100.0 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12612

This final rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612.

Paperwork Reduction Act

The collection of information requirements in this final rule has been approved by OMB through September 30, 1991 (OMB No. 0608–0012).

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to preparation of an initial regulatory flexibility analysis are not applicable to this rulemaking because it will not have a significant economic impact on a substantial number of small entities. The exemption levels were revised to ensure that small businesses are excluded from reporting.

Accordingly, the General Counsel, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that these rules will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 15 CFR Part 801

Economic statistics, Foreign trade, Reporting and recordkeeping requirements, Services.

Dated: September 29, 1988.

Allan H. Young,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, 15 CFR Part 801 is amended as follows:

PART 801—[REVISED]

1. The authority citation for 15 CFR Part 801 continues to read as follows:

Authority: 5 U.S.C. 301, 22 U.S.C. 3101–3108, and E.O. 11961, as amended.

2. Section 801.9(b)(1)(ii) is revised to read as follows:

§ 801.9 Reports required.

(b) * * *

(1) * * *

(i) * * *

(ii) *Exemption.* Any U.S. person otherwise required to report is exempted from reporting if the total number of port calls by foreign vessels handled in the reporting period is less than forty or total covered expenses are less than $250,000. For example, if an agent handled less than 40 port calls in a calendar year, the agent is exempted from reporting. If the agent handled 40 or more calls, the agent must report unless covered expenses for all foreign carriers handled by the agent were less than $250,000. The determination of whether a U.S. person is exempt may be based on the judgment of knowledgeable persons who can identify reportable transactions without conducting a detailed manual records search.

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 150

Exemptions from Speculative Position Limits for Positions Which Have a Common Owner But Which are Independently Controlled and for Certain Spread Positions

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission") the Commission has determined to adopt as final the proposed rules (53 FR 13290, April 22, 1988) regarding the exemption from speculative position limits for positions which have a common owner but which are

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independently controlled, with several modifications. The rules have been modified somewhat, however, to permit certain affiliated persons the opportunity to demonstrate that they are in fact independent and should be treated as though they were non-affiliated for the purpose of this exemption and to permit the exemption to be available in the context of exchange-set speculative position limits during the spot month in those contracts which do not have an individual month speculative position limit. In this regard, the Commission will consider broadening the scope of who may apply for the exemption and whether the exemption should be available in the spot month for additional contracts by the end of calendar year 1989. The Commission will revisit these issues with a view towards granting further relief based on its experience in administering the exemptive program, any relevant experiences of the exchanges in administering their exemptive programs, and any other factors the Commission finds to be relevant to these issues.

The Commission also is adopting as final the proposed rules (53 FR 23411, June 22, 1988), regarding certain spread positions. As adopted, these rules specify that spread or arbitrage positions between futures and option contracts may be exempt pursuant to exchange rules provided that such positions are outside of the spot month. The rules also provide a new exemption for spread or arbitrage positions between single months of a futures contract traded on the same board of trade outside of the spot month and in the same crop year. The latter exemption is available only to the extent that such positions, when combined with any outright positions, do not exceed twice the single-month speculative position limit for the applicable futures contract.

EFFECTIVE DATE: November 23, 1988.

FOR FURTHER INFORMATION CONTACT: Blake Imel, Deputy Director, or Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, 20581, (202) 254–3201 or 254–8990, respectively.

SUPPLEMENTARY INFORMATION:

I. Background

A. Paperwork Reduction Act Notice

The public reporting burden for this collection of information is estimated to average 1.03 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Joseph G. Salazar, CFTC Clearance Officer, 2033 K Street NW., Washington, DC 20581; and to Bob Neal, Office of Management and Budget, Room 3228, NEOB, Washington, DC 20503.

B. Statutory Framework

Speculative position limits have been a tool for the regulation of futures markets for over half a century. During this time, the Congress consistently has expressed confidence in the use of speculative position limits as an effective protection against unreasonable or unwarranted price fluctuations. *See,* H.R. Rep. No. 421, 74th Cong., 1st Sess. 1 (1935). *See also,* H.R. Rep. No. 624, 99th Cong., 2d Sess. 44 (1986).

In this regard, section 4a(1) of the Commodity Exchange Act ("Act"), 7 U.S.C. 6a(1), states that:

> [e]xcessive speculation in any commodity under contracts of sale of such commodity for future delivery made on or subject to the rules of contract markets causing sudden or unreasonable fluctuations or unwarranted changes in the price of such commodity, is an undue and unnecessary burden on interstate commerce in such commodity.

Accordingly, the Congress provided the Commission with the authority to

> fix such limits on the amount of trading which may be done or positions which may be held by any person under contracts of sale of such commodity for future delivery on or subject to the rules of any contract market as the Commission finds are necessary to diminish, eliminate, or prevent such burden.[1]

As the Commission has stated previously, and various of the commenters agreed, effective enforcement of speculative position limits is dependent, in part, on a clear understanding of what positions are to be included in determining whether the applicable limit has been breached. The Congress recognized this requirement by including within section 4a of the Act a standard for the aggregation of futures positions. In particular, section 4a(1) provides that

> [i]n determining whether any person has exceeded such limits, the positions held and trading done by any persons directly or indirectly controlled by such person shall be included with the positions held and trading done by such person; and further, such limits upon positions and trading shall apply to positions held by, and trading done by, two or more persons acting pursuant to an expressed or implied agreement or understanding, the same as if the positions were held by or the trading were done by, a single person.

In 1968, the Congress amended the language of the aggregation standard to include positions "held by" one trader for another. Pub. L. 90–258, Sec. 2, 82 Stat. 26 (1968). The Senate Report accompanying the 1968 amendment stated that:

> [a]ll of the changes made by this section incorporate longstanding administrative interpretations reflected in orders of the [Commodity Exchange] Commission.

S. Rep. No. 947, 90th Cong., 2 Sess. 5 (1968).[2]

C. Regulatory Framework

As detailed in the Notice of Proposed Rulemaking relating to positions having a common owner, the Commission periodically has reviewed its policies pertaining to speculative position limits. 53 FR at 13291. Most recently, the Commission revised Federal speculative position limits, adding Federal limits for soybean meal and soybean oil and amending the structure and levels of speculative position limits.[3] 52 FR 38914 (October 20, 1987). As part of that restructuring, the Commission deleted an exemption from the speculative position limit for certain spread positions in cotton futures. Moreover, the Commission noted that it was studying issues related to its aggregation policy, the remaining area to be addressed during its ongoing reevaluation of speculative position limit policy.

D. Existing Commission Policy on Aggregation

In 1979, the Commission issued its Statement of Policy on Aggregation of Accounts and Adoption of Related Reporting Rules ("1979 Aggregation Policy"), 44 FR 33839 (June 13, 1979). In that interpretation, the Commission provided guidance to futures commission merchants ("FCMs") and others regarding the aggregation of positions for participants in controlled and guided account programs.

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[1] 7 U.S.C. 6a(1). See also, 17 CFR Part 150, for the Commission rules fixing such limits.

[2] Prior to the creation of the Commission, section 4a(1) had long been the subject of interpretative statements issued by the Administrator of the Commodity Exchange Authority. *See* 44 FR 33843 (June 13, 1979) for a discussion of these interpretative statements.

[3] In addition to Federal speculative position limits which apply to futures contracts in many domestic agricultural commodities, speculative position limits for all other futures and for all option contracts are set by the exchanges under Commission Rule 1.61.

Specifically, the 1979 Aggregation Policy provided guidance with respect to the meaning of the "control" criterion of the aggregation standard contained in section 4a of the Act, assuming that FCMs control all discretionary customer accounts and accounts which are part of a customer trading program "unless specified conditions indicative of the absence of control exist." [4]

E. History of Spread Exemptions

1. Futures/Option Spreads

In establishing a pilot program for exchange-trade options of futures contracts on domestic agricultural commodities, the Commission adopted an exemption for Federal speculative position limits for futures/option spreads.[5] Such an exemption was necessary because the Federal speculative position limits were adopted during a period in which no options on these contracts were permitted due to a statutory bar. When the statutory bar was lifted and such option contracts were designated, exchanges were required to set the speculative position limits on such option contracts under Commission Rule 1.61, 17 CFR 1.61 (1988). In order to permit spread positions between the Federal and exchange-set speculative position limits regarding these contracts, the Commission provided an exemption from Federal speculative position limits, pursuant to Commission-approved exchange rules. 49 FR 36825 (September 20, 1984).

As the Commission explained in adopting these rules, it intended to review carefully exchange rules subsequently submitted for Commission approval. 49 FR 36827. The Commission further indicted that such exchange rules must provide that the exempt spread or arbitrage positions be limited to futures/option positions on the same board of trade in the same commodity which, as a totality, would be offsetting. As the Commission then explained, a delta-equivalent system of evaluating futures/option spread positions is an appropriate means of fulfilling this criterion where there is a "specific, readily enforceable system for identifying and monitoring those positions which are delta-neutral." *Id.* Further, the Commission advised that such exchange rules must provide for a limitation on the size of futures positions which can be acquired in connection with a futures/option spread or arbitrage exemption. 49 FR 36828.

The Commission also advised that such spreads be confined to cases where both legs pertain to the same delivery month in the underlying futures contract. 49 FR 36827. Subsequently, however, the Commission approved exchange rules which required the legs of such spread positions only to be in the same crop year, rather than in the same delivery month. Although the Commission was persuaded that such rules provided an appropriate level of market protection while offering traders greater trading flexibility, this relaxation inadvertently created the possibility that spread positions might be used to enter into futures positions in the spot month that are in excess of spot-month speculative position limits. This could occur if the option leg of the spread were in a more distant month.[6] Such an unintended outcome is contrary to the fundamental policies and objectives of Federal speculative position limits which specifically provide for spot-month limits.

2. Futures/Futures Spreads

As noted above, the Commission recently adopted final rules that extensively revised Federal speculative position limits. 52 FR 38914. Among these revisions, the Commission made several technical amendments, including deleting a straddle or spread exemption unique to the rules for the cotton futures market. That rule provided that the

> speculative position limits in cotton futures
>
> shall not be construed to apply " " ", except during the delivery month, [to] the net positions in any one future to the extent that they are shown to represent straddles between cotton futures or markets.

17 CFR 150.2(b) (1988).

In deleting the cotton spread exemption, the Commission noted that this particular exemption appeared to have been added in response to the statutory definition of hedging which pre-dated the 1974 amendments to the Act. 52 FR 38919. The Commission further noted that in light of its determination to amend Commission Rule 1.3(z)(2) to enumerate specifically as a bona fide hedging sales and purchases of futures which offset unfixed cash sales and purchases and in light of the increase in cotton speculative position limits, deletion of the spread exemption would have little impact on traders. The Commission received few comments concerning this proposed action. Accordingly, the Commission determined to delete the spread exemption, noting that it had

> carefully considered the potential benefits of inter-month spread positions versus the potential for disruption of the market if such positions become unusually large, especially where such positions are across different crop years, and the fact that the majority of existing spread positions would be accommodated by the proposed increases in the speculative position limits. On the basis of these considerations, the Commission has determined to adopt these proposed amendments as final.

53 FR at 23412, citing 52 FR 38919–20.

F. Requests for Commission Reassessment of Current Policies

1. Aggregation Policy

Representatives of certain segments of the futures industry, such as commodity pool operators and commodity trading advisors, have brought to the Commission's attention issues concerning the application of the aggregation standard to managed trading accounts. In this regard, it should be noted that such issues were also raised before the Congress during the Commission's 1986 reauthorization.[7]

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[4] These conditions include, among others: Account opening agreements which vest authority in a trader other than the FCM to direct trading on behalf of the customer; advertising which indicates that a trader other than the FCM directs trading in a specified trading program; agreements between the FCM and other traders which demonstrate the nature of the relationship between the two; the degree of supervision by the FCM of independent traders; confidentiality of trading decisions of a customer trading program from others; lack of access to general research information of the FCM; minimal financial interests by the FCM in the independent accounts; and lack of common trading patterns. 44 FR 33843–44.

[5] Exchange-traded commodity options on other than domestic agricultural commodities were initially permitted under a three-year pilot program. 46 FR 54500 (November 3, 1981). Subsequently, a separate pilot program was established for options on futures contracts on domestic agricultural commodities, those commodities enumerated in section 2(a)(1)(A) of the Act, 7 U.S.C. 2 (1982). This second pilot program followed the repeal of the statutory bar to such option trading found in section 4c of the Act, 7 U.S.C. 6c (1976). This statutory bar was repealed during the Commission's 1982 reauthorization. See section 22 of the Futures Trading Act of 1982, Pub. L. No. 97–444, 96 Stat. 2294, 2311 (1982).

[6] Options on the domestic agricultural futures subject to Federal speculative futures limits expire prior to the first notice day of the underlying future. Accordingly, when spread exemptions for options and futures are confined to the same month, it would not be possible to use the exemption to exceed the spot-month limits. However, where such spreads are confined only to the same crop year, it is possible that such spreads could result in spot-month positions in excess of the spot-month limit.

[7] During the Commission's 1986 reauthorization, the House of Representatives reported that: [d]uring the Subcommittee hearings on reauthorization, several witnesses expressed dissatisfaction with the manner in which certain market positions are aggregated for purposes of determining compliance with speculative limits fixed under section 4a of the Act. The witnesses suggested that, in some instances, aggregation of positions based on ownership without actual control unnecessarily [illegible]

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These concerns focus on the "ownership" criterion of the aggregation standard.

H.R. Rep. No. 624, 99th Cong. 2d Sess. (1986) at page 43.

In addition, the Commission received from the Managed Futures Trade Association and the Chicago Board of Trade petitions for rulemaking to modify the existing aggregation standard. After carefully considering these Petitions, the Commission determined that

[b]oth ownership and control have long been included as the appropriate aggregation criteria in the Act and Commission regulations. Generally, inclusion of both criteria has resulted in a bright-line test for aggregating positions. And as noted above, although the factual circumstances surrounding the control of accounts and positions may vary, ownership generally is clear.

The present aggregation standard aids futures traders in classifying positions which must be aggregated by establishing a clear standard for enforcement of the speculative position limits. In the absence of an ownership criterion in the aggregation standard, each potential speculative position limit violation would have to be analyzed with regard to the individual circumstances surrounding the degree of trading control of the positions in question. This would greatly increase uncertainty.

53 FR at 11282.

However, the Commission further determined that some relief in this area was appropriate. Although the Commission determined not to alter its long-standing interpretation of the Act's aggregation standard, it proposed an exemption from Federal speculative position limits for certain independently controlled positions of commodity pools or similar entities. This exemption was proposed to be available upon application to the Commission and subject to a case-by-case determination. 53 FR 11290.

2. Spread Exemptions

As with the Commission's aggregation policy, the Commission received a petition to rulemaking with respect to futures/futures spreads. Specifically, the New York Cotton Exchange, ("NYCE"), by letter dated March 16, 1988, petitioned the Commission to restore an exemption from the Commission's speculative position limit rules for cotton for positions spread between two futures months of that contract. The NYCE supported its petition on the grounds that the spread exemption it was proposing was limited to futures months in the same crop year and outside of the spot month, thereby addressing the concerns raised by the Commission in connection with the deletion of the prior exemption. 53 FR 23412. Moreover, similar exemptions exist for exchange speculative position limit rules with no apparent adverse effects. Subsequently, the Commission proposed to adopt the substance of this exemption as a general rule applicable to all Federal speculative position limits.

II. The Proposed Rulemakings

A. Provisions of the Proposed Rules

1. Exemption for Independently Controlled Positions

The Commission proposed to provide an exemption from speculative position limits for positions held in the separate accounts of independent account controllers of a commodity pool operator or the operator of a trading vehicle which is excluded, or which has itself qualified for exclusion, from the definition of "pool" or "commodity pool operator," respectively, under Commission Rule 4.5, 17 CFR 4.5 (1988) ("Rule 4.5 entity"). The Commission proposed that the exemption be made available upon a case-by-case determination prior to the time when an applicant exceeds speculative position limits. As proposed, the exemption would apply only to positions outside of the spot-month. The Commission would approve applications for exemption conditioned upon the levels appropriate for each particular contract market, consistent with the Act's objectives of maintaining fair and orderly markets. In no event, however, could the position held or controlled by each independent account controller exceed the applicable speculative position limit.

The Commission proposed that independent account controllers be required to be Commission registrants and to be unaffiliated with any other trading entity. Thus, under the proposed rules, for example, an independent account controller could not be an employee of the commodity pool operator applying for the exemption nor could the account controller have an employment or other contractual relationship with any other commodity trading advisor trading for the commodity pool. The Commission specifically requested comment on this aspect of the rule.

The Commission proposed that to obtain the exemption, the applicant commodity pool operator or Rule 4.5 entity must file with the Commission certain supporting documents, including notarized affidavits of the applicant and the independent account controller detailing the delegation of trading control to the independent account controller and the relationship of the account controller to other independent account controllers. In addition, supporting documents such as powers of attorney, account opening documents, and updated CFTC Form 40s were proposed to be required.

Finally, the Commission proposed that it have the authority, in its discretion, to approve, deny, approve upon conditions, or rescind approval of applications previously approved by the Commission. The Commission noted that such authority permitted it to "condition its approval to specific contract markets or to a specified overall level." 53 FR 13294. The Commission further proposed that subject to the requirement that applications be updated to reflect material changes, or upon special call from the Commission, exemptions which have been granted will remain in force as long as the conditions noted on the applications continue to exist. Finally, the Commission proposed to delegate to the Director of the Division of Economic Analysis or the Director's delegee the authority to act upon applications for exemptions and to issue related special calls.

2. Exemptions for Certain Spread Positions

With respect to futures/futures spreads, the Commission proposed to provide an exemption from speculative position limits for positions between individual futures months within the same crop year outside of the spot month. The higher spread limit proposed by the Commission would be for spread positions up to twice the current speculative position limit level for outright positions in each single month, with the single month's speculative position limit applicable to any outright positions in that future. As proposed, any outright positions would have to be combined with the spread positions in that month in calculating whether the overall position exceeds twice the single-month level. The Commission, however, proposed that this exemption generally be available for all futures contracts having Federal speculative position limits and not merely to cotton futures.

With respect to futures/option spreads, the Commission proposed to clarify that such positions must be outside of the spot month of the future to be eligible for exemption from Federal position limits pursuant to exchange rules. As explained in the Notice of Proposed Rulemaking, the Commission determined, when approving exchange speculative position limits on options on futures which are subject to Federal speculative position limits, to permit such spreads when the legs of each spread position were confined to the same crop year, rather than the same delivery month. The greater flexibility subsequently demonstrated by the commission in approving exchange rules created the anomalous situation that the spread exemption could possibly be viewed as a means of evading spot-month futures limits. As the Commission noted, at 53 FR 23413,

while no instances of such spot-month futures/option spread positions in excess of the spot month futures level have occurred, the Commission nevertheless believes that exchange rules should specifically prohibit the use of such spread exemptions for spot month futures positions.

B. Comments Received

1. Exemption for Independently Controlled Positions

The Commission received thirty-nine comments in response to its proposed rulemaking for an exemption from speculative position limits for independently controlled positions. Two comments were received from trade associations representing commodity pool operators and other commodity professionals. Thirty comments were filed in support of the comments of one of these trade associations. Three exchanges, two attorneys with commodity futures-related practices and a commercial market participant also filed comments. Commenters overwhelmingly supported the proposed rules; several noted that they welcomed the Commission's initiative in addressing these issues. Many of the commenters specifically supported the Commission's determination to make the exemption available on a case-by-case determination.

Certain of the commenters, however, took exception with the Commission's definition of independent account controller and with the entities eligible for the exemption. In general, commenters objected to particular aspects of the rules as proposed. These objections are discussed in greater detail below. In addition, in response to the Commission's request for comments in the Notice of Proposed Rulemaking, several commenters suggested that sufficient procedures could be implemented to provide affiliates, including employees with the same degree of independence as non-affiliated persons. In addition, several commenters opined that the exemption should be available to additional entities and for positions in the spot month as well as the more distant months. Several also suggested that the exemption be self-executing, so that filing of the application would be sufficient to invoke the exemption without specific individual approval of each application by the Commission. Finally, one commenter suggested that the Commission use the Disclosure Document filed by commodity pool operators under Commission Rule 4.21 rather than require a separate application for purposes of this exemption.

2. Spread Exemptions

The Commission received three comments on the proposed rules for spread positions. The three consisted of a trade association of commercial users, a commercial user of the cotton futures market and an exchange. The three commenters generally supported the proposed rules, with the exception of the exchange which voiced several concerns as discussed below.

III. The Final Rules

A. Exemption for Independently Controlled Positions

1. Eligibility for Exemption

The Commission proposed to define those entities eligible for the exemption as commodity pool operators or the operator of a trading vehicle which is excluded, or which has qualified for exclusion, from the definition of "pool" or "commodity pool operator," respectively, under Commission Rule 4.5. Several commenters maintained that the exemption should be available to any entity which has "sophisticated institutional structures." Others would exempt any entity which has "multiple affiliates, subsidiaries and/or separate departments" or which has independent "profit centers." One commenter stressed the "growing participation in the futures and options markets of institutions such as commercial banks, investment banks, insurance companies, pension funds, futures commission merchants and broker/dealers" and opined that the exemption should be applicable to those entities as well as others.

The Commission is aware of the growing use of the futures markets by institutional users. Although the initial calls for reconsideration of the aggregation standard came from the commodity pool operator community, including, specifically, the petition for rulemaking discussed above, the Commission's proposal expanded the coverage to those entities included under Commission Rule 4.5. Commission Rule 4.5 covers certain pooled offerings of many of the entities referred to by commenters as entities which should be covered by an expanded exemption. The entities specifically enumerated in § 4.5 are investment companies registered under the Investment Company Act of 1940, insurance companies subject to the regulation of any state, bank trust companies or any other such financial depository institution subject to regulation by any state or the United States, and trustees or named fiduciaries of pension plans, with certain exceptions. *See* 17 CFR 4.5(a)(1988).[6]

The Commission has carefully considered the request of commenters that the entities eligible for this exemption be broadened. However, the Commission has determined that a more cautious approach is warranted at this time. First, the exemption appears already to cover many of the classes of institutions specifically mentioned by commenters as needing relief. In this regard, the Commission received no comments directly from such institutions suggesting that they should be included within a broadened exemptive category. Second, commenters differed sharply with respect to their expectations of how many trading entities may avail themselves of this exemption. Accordingly, some initial period for study and reflection of the effect and operation of the rule is appropriate. Therefore, the Commission will determine whether the scope of the eligibility for the exemption should be broadened by the end of calendar year 1989. This will provide the Commission with a reasonable opportunity to ascertain how the exemptive procedure is operating, to study further the trading of commodity pools and others and to determine, based upon actual experience with the rules, what, if any, additional information may be required for a broadened exemption.

2. Definition of Independent Account Controller

Several commenters objected that the definition of independent account controller was overly restrictive. In particular, commenters suggested that

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restricts a trader's use of the futures and options markets. In this connection, concern was expressed about the application of speculative limits to the market positions of certain commodity pools and pension funds using multiple trading managers who trade independently of each other.

[6] Although such entities generally hold positions of a hedging nature, and therefore should have no need for this exemption from speculative position limits, certain of these entities may prefer to avail themselves of this exemption for administrative or other reasons. Moreover, as the Commission noted in the Notice of Proposed Rulemaking, in proposing this exemption from speculative position limits for the operators of Rule 4.5 trading vehicles, the Commission has not sought to expand upon the criteria of the rule nor to disturb any existing relief from position limits that may be available to these persons.

the requirement that independent account controllers be unaffiliated with the commodity pool operator or other entity requesting the exemption and with other independent account controllers should be modified. These commenters stated that the proposed regulations are sufficient to safeguard the independence of account controllers, even where they are affiliated with the applicant or with other account controllers. One commenter opined that "the combined positions of such a pool [using employees considered as independent account controllers] have no more coordinated influence on market prices and are no more likely to cause unwarranted price movements or other adverse market effects than positions established by other, independent 'unaffiliated' account controllers." Commenters also suggested that affiliates for purposes of this exemption are analogous to associated persons of an FCM who, under Rule 1.46(d), may be deemed to be unaffiliated where specified criteria have been met.[9] Similarly, under Commission Rule 18.01, FCMs are not required to aggregate positions controlled by their employees who operate independent guided account programs. That rationale, several commenters maintained, should be extended to this exemption.

One commenter, in response to the Commission's request for specific comments in the Notice of Proposed Rulemaking, suggested that employees of commodity pool operators and commodity trading advisors could be deemed to be unaffiliated where the employee or affiliate is independently registered, has separate trading authority, trades pursuant to a system which is demonstrably independent both on an initial showing and over time, and where sufficient screening procedures exist which insulate an affiliated controller from receiving information about the trades of others.

The Commission has considered carefully the comments received with regard to this requirement. In general, the Commission continues to believe that independent account controllers in order to be exempt should be unaffiliated with the commodity pool operator or other trading entity, and all other account controllers including other employees of the same futures commission merchant. Such a requirement provides a bright-line test which can be applied clearly both by the Commission and by those seeking exemptions. However, in connection with its existing aggregation policy discussed above and with Commission Rule 1.46, the Commission has recognized that in certain instances employees of FCMs meeting specified criteria can be deemed to be unaffiliated. In light of this experience, and the individualized nature of the determination to grant applications for this exemption, the Commission, in adopting the final rules, has added a provision permitting an applicant to demonstrate that where an account controller is affiliated, either with a second account controller or as an employee of a commodity pool operator, sufficient indicia of independence nevertheless exist to deem such an account controller to be "unaffiliated" for purposes of this exemption.

The indicia of independence which the staff will evaluate include the following, as well as all other relevant factors:

(1) Screening procedures. Written procedures must be in place which are designed to preclude the affiliated account controller from gaining access to, or receiving data about, the trades of others. These must include document-routing procedures and other factors intended to maintain the independence of the controller's activities. The applicant should include a description of the physical location of the affiliated account controller as well as other security arrangements and procedures for screening the controller from information regarding both the trading strategies and individual positions of others;

(2) Registration and marketing. As with unaffiliated independent account controllers, an affiliate must be registered separately from the employer, must use a separate Disclosure Document and must market his or her trading program separately; and

(3) Trading system. Finally, if requested by the Commission, the affiliated independent account controller must be able to demonstrate, through a history of simulated or actual trading, that the affiliate's trading system is independent from that of the applicant or any other of the applicant's account controllers.

It must be emphasized that nothing in this approach affects the liability of registrants under section 2(a)(1) of the Act. Clearly, employees or agents trading pursuant to this relief are acting withing the scope of their employment or agency relationship. It also must be emphasized that nothing in this approach affects a registrant's responsibility under Commission Rule 166.3, 17 CFR 166.3 (1988), diligently to supervise the "handling by its partners, officers, employees and agents * * * of all commodity interest accounts carried * * * and all other activities * * * relating to its business as a Commission registrant." Thus, any procedures adopted to meet the above criteria to be deemed to be "non-affiliated" must be consistent with the applicant's duty diligently to supervise. Moreover, any determination to treat such entities as unaffiliated is based on the representations of the applicant and is limited in application to this exemption. Such a finding in no way affects the entities' responsibilities and obligations under the Act and Commission rules.

By adding this provision the Commission has broadened the approach of the proposed rule by permitting evidence to counter the presumption that affiliated account controllers *per se* lack independence. However, the Commission remains convinced that the lack of affiliation is an important criterion in establishing independence and that affiliates bear a heavy burden in otherwise demonstrating their independence. Moreover, applicants must demonstrate that they remain able to discharge their duty under Commission Rule 166.3 to supervise their employees in light of the arrangements and procedures they have adopted to provide affiliated controllers with the independence necessary to qualify for this exemption. Accordingly, the rule, as adopted, permits applicants to rebut the presumption that their affiliates are not independent and therefore do not qualify for this exemption. It should be clear, however, that the burden is a rigorous one and is borne by the applicant.

3. Applicability of Exemption to the Spot Month

Several of the commenters objected to the exemption's inapplicability to positions held during the spot month. These commenters opined that unless the exemption applied to positions in the spot month, many exempt entities would be required to maintain costly internal administrative procedures. This, they maintained, would lessen the benefit of the rule, or possibly compromise the independence of traders by requiring a third party to direct traders to reduce spot-month positions. Others contended that the provision would result in independent account controllers not being able to trade efficiently. One commenter suggested that the Commission's position should be modified at least with respect to contracts which are cash settled.

[9] *See* 53 FR 808, 811 (January 11, 1988).

The Commission has traditionally taken a cautious approach with regard to spot-month speculative position limits. In proposing that the exemption apply to positions outside of the spot month, the Commission was mindful that specific spot-month limits are provided in order to alleviate concerns regarding congestion and other problems attendant to the shortages of deliverable supplies at the expiration of the contract. However, the Commission notes that the absence of position limits for individual trading months indicates the absence of these regulatory concerns in some cases such as certain financial futures which are cash settled or physical delivery contracts with very broad deliverable supplies (e.g., foreign currencies). Accordingly, the Commission has determined to modify this requirement. The rule, as adopted, provides that the exemption shall apply in the spot month for those contracts which do not have individual month speculative position limits.[10] By permitting the exemption to apply in the spot month for those contracts, the Commission will have an opportunity to study this issue further based upon actual trading experience. Accordingly, the Commission has determined to revisit this issue by the end of calendar year 1989 in conjunction with its review of the potential broadened scope of eligibility for the exemption.

4. Partial Exemptions

Several commenters suggested that the Commission clarify whether the exemption would be available to a commodity pool operator or other entity which had both independent account controllers and affiliated employees controlling trading for the pool. Under these rules, applicants must provide documentation for each independent account controller for which an exemption is claimed and must specify the particular contract markets for which the exemption is sought. The intent of the rules as proposed was to permit the applicant to obtain exemptions beyond the speculative position limits for the additional positions of independent account controllers. Thus, nothing in the rules would bar the pool operator from itself controlling positions up to the applicable speculative position limits through the use of a variety of affiliated traders while filing for exemption for its independent account controllers.

As the Commission noted in the Notice of Proposed Rulemaking, it may condition its approval to specific contract markets or to a specified overall level. Accordingly, the Commission may deny an application for exemption for a particular contract market where the Commission determines that the contract market is too illiquid or otherwise constrained to grant the application. Moreover, were a commodity pool operator or other eligible entity to seek approval for multiple independent account controllers which caused the Commission concerns because of the potential size of the overall positions, the Commission could grant the applicant commodity pool operator exemption for some fraction of the amount of contracts for which the exemption was being sought.

5. Application Process

Several commenters suggested that the application should be self-executing and that the Commission should not review and approve each application. They contended that such an approval process is unnecessary and administratively burdensome. Other commenters, however, suggested that the number of such applications should not be voluminous and supported the Commission's determination to review applications on a case-by-case basis. More importantly, the issues concerning control of trading are dependent upon the circumstances of each individual case. This is especially true in light of the Commission's determination to permit employees or other affiliates to demonstrate that specific conditions and procedures exist to rebut the presumption that affiliated account controllers do not possess the requisite independence to qualify for this exemption. That is not to say, however, that a self-executing application procedure could never be instituted; however, the Commission believes that a more cautious approach is warranted at this time. Accordingly, the Commission is adopting the final rules as proposed and will review all applications, making an individual determination with regard to each application filed.[11]

One commenter suggested that the Disclosure Documents required of registered commodity pool operators under Commission Rule 4.21 be substituted for the application required under the proposed rules. However, not all entities who are eligible for the exemption are required to file such Disclosure Documents. For example, entities eligible for the exemption include those which are exempt from commodity pool operator registration by virtue of an exclusion from the commodity pool operator definition under Commission Rule 4.5. Moreover, in order to aid the processing of these exemptions on a timely basis, the Commission believes that a uniform format for the application is desirable. Accordingly, the Commission is requiring that the application be in the form proposed. Nevertheless, commodity pool operators filing Disclosure Documents under Commission Rule 4.22 may include such Disclosure Documents as part of the application, making reference to the appropriate pages in the Disclosure Documents which fulfill any of the documentation requirements of these rules.[12]

One commenter pointed out that the proposed rules did not provide specific procedures to be followed in applying for this exemption. For example, the Commission did not specify when such applications should be filed. Several commenters suggested that since the initial Disclosure Document required of commodity pool operators must be filed twenty-one days before its use, applications for this exemption should be required to be filed at the same time.

The suggestion that the application for exemption for independent account controllers be filed at the same time as the pool's initial disclosure document has merit. However, although the Commission would expect many commodity pools to follow this practice, it has determined not to adopt it as a procedural requirement. First, as noted above, entities exempt from commodity pool registration by virtue of a definitional exclusion also may apply for this exemption. Second, some applicants may wish to file an application for exemption at a time slightly in advance of, or following, the

[10] This modification of the exemption has no immediate impact on its application in those commodities with Federal speculative position limits since Commission rules specify individual trading month limits for all such contracts. However, exchange-set speculative position limits for some contract markets do not specify limits for individual trading months during contract expiration and in those cases exchanges would be permitted, in adopting exemptions similar to the Commission's, to apply the exemption in this manner.

[11] One commenter noted that with respect to the requirement that affidavits be used, 28 U.S.C. 1746 permits the filing of declarations whenever an affidavit is required. Clearly, applicants are free to make use of declarations when filing their applications with the Commission.

[12] In this regard, a commenter suggested that documents equivalent to certain of the requirements of the application are generally included as exhibits to registration statements filed with the Securities and Exchange Commission for publicly-offered pools. Of course, these also can be submitted to fulfill these requirements.

filing of the Disclosure Document. In this regard, a commenter suggested that if the Commission fails to act upon an application within the twenty-one day period discussed above the exemption should become effective automatically. The Commission disagrees. In those cases where particular aspects of an application for exemption raise questions needing further clarification, so that the approval process is delayed, an automatic exemption would be inappropriate. Accordingly, the Commission believes that until it gains experience with the processing of these applications, it is not advisable to provide for such applications to become effective automatically.[18]

Finally, one commenter suggested that the standard of review for applications was unclear. In this commenter's view, a determination on the application should be limited to whether or not the application was complete. As the Commission noted above, it may approve applications with conditions as well as disapprove such applications. Accordingly, the Commission, in reviewing applications, will be guided by the overall policies and purposes of the Act and of section 4a of the Act in particular. The Commission will review applications to determine whether, on their face, the applicant has carried the burden of demonstrating the independence of its account controllers. The Commission will then take into consideration whether there is any other reason why the application should not be granted or approved upon conditions. As noted in the proposed rules, a denial or approval upon conditions of applications for exemption will be accompanied by a brief statement of the grounds of denial or conditions.

6. Guideline to the Exchanges

The Commission in its Notice of Proposed Rulemaking requested comment regarding whether there should be any modifications to this exemption when applied by the exchanges in the context of their speculative position limits. The Commission received no specific responses to this request. Moreover, two exchanges submitted for approval under section 5a(12) of the Act rules providing for exemptions from their speculative position limit rules similar to the one being adopted herein. These exchange exemptions were submitted pursuant to Commission Rule 1.61(e), 17 CFR 1.61(e). The Commission, after reviewing these proposed exchange rules, approved them under section 5a(12) of the Act on August 17, 1988. Accordingly, with the exception of the applicability of the exemption during the spot month for those contracts without individual month speculative position limits, there appears no need for exchange deviation from these final rules nor for any additional guidance to the exchanges beyond the template provided herein.

B. Spread Exemptions

The Commission received three comments with regard to the proposed rules for spread exemptions. Two were supportive. One commenter, a futures exchange, while supporting the concept of the futures/futures spread exemption argued that the limitation on the exemption, twice the current outright position limit, is not large enough. That commenter suggested that "a level larger than two times the outright position limit would enhance the ability of individuals to supply speculative capital in times of demand."

In proposing this limitation on the exemption, the Commission stated that

> in arriving at this configuration of the proposed spread exemption, the Commission has taken into consideration the number of such spread positions which are potentially constrained by the current limits. Further, the Commission believes that this level of exemptions in individual months will assure that such positions will not become unusually large and thereby pose a potential for disruption of the market. Of course, it should be noted that in proposing this level the Commission has taken into consideration recent revisions to individual speculative position limit levels.
>
> 53 FR at 23413–23415.

The Commission remains convinced of the appropriateness of this level for the exemption and is adopting the final rule as proposed.

With regard to the futures/option exemption, the commenter questioned the need for the rule. The commenter noted that "no traders have seen fit to avail themselves of this exemption * * *." Nevertheless, the commenter further contended that the effect of the adoption of this rule would be disruptive to the markets due to its "telescoping feature."

The Commission disagrees that adoption of this rule will be disruptive. As the Commission noted in its Notice of Proposed Rulemaking, the use of a futures/option spread to evade spot-month speculative position limits was made possible by the liberalization of the futures/option exemption. This rule simply clarifies the common understanding that the spot-month speculative position limits for these commodities is absolute. As the commenter has noted, no trader has yet attempted to make use of this apparent loophole. Accordingly, the Commission believes that adopting this rule should have no impact on trading in the market.

IV. Related Matters

A. The Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.* requires that agencies, in proposing rules, consider the impact of these rules on small businesses. The Commission has previously determined that contract markets and "large traders" are not "small entities" for purposes of the RFA. 47 FR 18618 (April 30, 1982). These rules are exemptions from limits on the size of speculative positions which typically may be held by the largest traders in these markets. Accordingly, as promulgated, these rules would not have a significant economic impact on a substantial number of small entities. Moreover, the Commission invited comments from any firms or other persons which believed that the promulgation of these rules might have a significant impact upon their activities. No such comments were received. For the above reasons, and pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman, on behalf of the Commission, hereby certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

B. The Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* ("PRA"), imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission previously submitted this rule in proposed form and its associated information collection requirements to the Office of Management and Budget ("OMB"). OMB approved the collection of information associated with the rule on June 3, 1988 and assigned OMB control No. 3038–0013 to the rule.

Copies of the OMB approved information collection package associated with this rule may be obtained from Bob Neal, Office of Management and Budget, Room 3220, NEOB, Washington, DC 20503 (202) 395–7340.

[18] Although the Commission has determined not to adopt the suggestion that it require that its decision on an application be made within a twenty-one day notice period, the Commission nevertheless will instruct its staff, for those applications identified as being filed in conjunction with the filing of an initial disclosure document under Commission Rule 4.21, to endeavor to make the necessary determinations within the twenty-one day period. However, more complex applications for exemption may take a longer period for a determination, and those applying for an exemption may consult with staff on issues which may be raised by their application in advance of the filing of such an application.

List of Subjects in 17 CFR Part 150

Aggregation of accounts, Agricultural commodities, Exemption from speculative position limits, Position limits.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act, and in particular sections 2(a)(11), 4a and 8a(5) of the Commodity Exchange Act, 7 U.S.C. 4a(j), 6a, 12a(5), the Commodity Futures Trading Commission hereby proposes to amend Part 150 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 150—LIMITS ON POSITIONS

1. The authority citation for Part 150 continues to read as follows:

Authority: 7 U.S.C. 6a and 12a(5)(1982).

2. Section 150.1 is amended by adding a paragraph (d) to read as follows:

§ 150.1 Definitions.

As used in this part—

* * * * *

(d) An "independent account controller" means a person—

(1) Who specifically is authorized by a commodity pool operator, or the operator of a trading vehicle which is excluded, or which has qualified for exclusion from the definition of the term "pool" or "commodity pool operator," respectively, under § 4.5 of this chapter, independently to control trading decisions on behalf of, but without the day-to-day direction of, such commodity pool operator or excluded person;

(2) Over whose trading the commodity pool operator or excluded person maintains only such minimum control as is consistent with its fiduciary responsibilities and necessary to fulfill its duty to supervise diligently the trading done on its behalf;

(3) Who is unaffiliated with, and trades independently of, the commodity pool operator or excluded person on whose behalf the trading is done and of any other independent controller trading for that commodity pool operator or excluded person; and

(4) Who is registered as a futures commission merchant, introducing broker, commodity trading advisor, or as an associated person of any such registrant.

3. Section 150.3 is revised to read as follows:

§ 150.3 Exemptions.

(a) Positions which may exceed limits. The position limits set forth in § 150.2 of this part may be exceeded to the extent such position are:

(1) *Bona fide* hedging transactions as defined in § 1.3(z) of this chapter;

(2) Spread or arbitrage positions between futures and option contracts traded on the same board of trade in any one commodity, for positions outside of the spot month, which are as a totality offsetting, and upon such conditions as specified by the board of trade in rules adopted pursuant to §§ 1.61 and 1.41 of this chapter;

(3) Spread or arbitrage positions between single months of a futures contract traded on the same board of trade outside of the spot month, in the same crop year; *provided however,* that such spread or arbitrage positions, when combined with any outright positions in the single month, do not exceed twice the single-month position limit for the futures contract set forth in § 150.2 of this part; or

(4) Carried for a commodity pool operator, or the operator of a trading vehicle which is excluded, or which has qualified for exclusion from, the definition of the term "pool" or "commodity pool operator," respectively, under § 4.5 of this Chapter, in the separate account or accounts of an independent account controller which has been approved by the Commission under paragraph (b) of this section, and are not in the spot month if there is a position limit which applies to individual trading months during their expiration; *Provided however,* that the overall positions held or controlled by each such independent account controller may not exceed the limits specified in § 150.2 of this part.

(b) Application for Exemption of Independent Account Controllers. Any commodity pool operator or the operator of a trading vehicle which is excluded, or which has qualified for exclusion, from the definition of the term "pool" or "commodity pool operator," respectively, under § 4.5 of this chapter, who directly or indirectly holds but does not control positions in contract markets having speculative position limits set forth in § 150.2 of this part, may file with the Commission an application for exemption from those limits for the positions controlled by an independent account controller.

(1) *Filing the application.* Such applications shall be made to the Commission's Washington Office, Attention: Division of Economic Analysis, unless otherwise directed by the Commission or its delegee, and must include the following:

(i) An affidavit, duly notarized, of the applicant identifying each independent account controller and stating that each named independent account controller has been delegated authority to trade the account without further, specific day-to-day direction of trading decisions and that the applicant maintains only such minimum control as is necessary to fulfill its fiduciary responsibilities and its duty to supervise diligently the trading by the independent account controllers. If the applicant is an organization, the affidavit must be that of a partner, officer or trustee authorized by the organization to bind the organization;

(ii) An affidavit, duly notarized, of each independent account controller certifying that the controller in fact exercises authority with respect to directing the trading of the account, is unaffiliated with the applicant or any other independent account controller of the applicant, and does not have knowledge of trading decisions by any other account controller; or

(A) If affiliated, the circumstances of the affiliation that demonstrate why the account controller nevertheless is, in fact, sufficiently independent to be treated as unaffiliated for purposes of this section. In the case of such account controllers which are affiliated, the affidavits shall contain a description of the written procedures in place to preclude such account controllers from gaining access to, or receiving data about, trades of other account controllers, including a description of document routing procedures, the physical location of such account controllers and other procedures or security arrangements which would maintain the independence of their activities. In addition, the affidavits concerning such account controllers which are affiliated shall certify that such trading has been solicited by a separate Disclosure Document that meets the standards of § 4.21 of this chapter and has been separately marketed from that of the applicant; and

(iii) Documents supporting the above affidavits including:

(A) A list of the contract markets having speculative position limits in § 150.2 of this part for which the exemption is requested;

(B) A binding power of attorney or other such binding grant of authority memorializing the relationship between the applicant and each independent account controller;

(C) Proof of registration with the Commission of each independent account controller or a list of each such person's category of registration,

registration identification number, effective date of registration and name of the registrant if different from that on the application;

(D) Account opening documents verifying that the independent account controller maintains a separate account for such trading;

(E) Updated Form 40s of the independent account controller and owner, as required by § 18.04 of this Chapter, unless such forms have been filed with the Commission under separate cover; and

(F) Any additional information required by the Commission which, in light of the circumstances of the application, appears necessary to demonstrate the nature of the relationship between the owner and independent account controller.

(2) *Approval of Application for Exemption for Independent Account Controllers.* The Commission may result and not accept for filing incomplete applications. In its discretion, based upon the application and any other relevant factors, the Commission may approve, deny or approve upon conditions applications for exemptions from the speculative position limits set forth in § 150.2 of this part. Commission denial or approval upon conditions of such an application for exemption shall be accompanied by a brief statement of the grounds for denial or imposition of conditions. Commission approval of such an application may be withdrawn or modified at any time. Withdrawal or modification of a previously granted approval of such an exemption shall be accompanied by a brief statement of the grounds for withdrawal or modification.

(3) *Supplementation and updating of applications.* To remain valid, applications must be supplemented or updated:

(i) Ten days prior to changes in independent account controllers, the ownership or control of the accounts, or the registration status of the account owners or independent account controllers;

(ii) Within ten days of any other material change in the application; or

(iii) Within such time as may be specified by the Commission upon special call by the Commission to the applicant.

(4) *Delegation of Authority.* (i) The Commodity Futures Trading Commission hereby delegates, until the Commission orders otherwise, to the Director of the Division of Economic Analysis or the Director's delegee the authority to remit and not accept for filing incomplete applications, to approve, deny, approve upon conditions, withdraw approval or modify applications for exemption filed under § 150.3 of this part, and to issue special calls to supplement and update such applications.

(ii) The Director of the Division of Economic Analysis may submit any matter which has been delegated to the Director under paragraph (b)(4)(i) of this section to the Commission for its consideration.

(iii) Nothing in this section prohibits the Commission, at its election, from exercising the authority delegated to the Director of the Division of Economic Analysis under paragraph (b)(4)(i) of this section.

Issued in Washington, DC, this 19th day of October 1988, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88-24472 Filed 10-21-88; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 626, 627, 628, 629, 630, and 631

Job Training Partnership Act; Economic Dislocation and Worker Adjustment Assistance Act; Employment Training Services to Dislocated Workers

AGENCY: Employment and Training Administration, Labor.

ACTION: Interim final rule; request for comments.

SUMMARY: The Department of Labor is issuing interim final regulations with a request for comments to implement provisions of the Economic Dislocation and Worker Adjustment Assistance Act (EDWAA), which amends portions of the Job Training Partnership Act (JTPA) and substitutes a completely new Title III. EDWAA was enacted as Subtitle D of Title VI of the Omnibus Trade and Competitiveness Act of 1988. JTPA Title III establishes programs of employment and training assistance for dislocated workers. These interim final regulations comply with the statutory requirement that regulations be published by November 1, 1988. At the same time, they provide the opportunity for comment. All implementation actions which must be completed prior to the publication of final regulations should be consistent with these regulations. Modification of the JTPA regulations is necessary to incorporate the revisions contained in the amended legislation.

DATES: *Effective Date:* November 1, 1988.

Comments: Written comments on the interim final rule are invited. Comments will only be accepted on those portions of the regulations which are affected by these changes. Comments must be received on or before November 23, 1988.

ADDRESS: Written comments shall be mailed to the Assistant Secretary for Employment and Training, Department of Labor, Room N4703, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Mr. Robert N. Colombo, Director, Office of Employment and Training Programs. Commenters wishing acknowledgement of receipt of their comments must submit them by certified mail, return receipt requested.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Colombo, Director, Office of Employment and Training Programs. Telephone: (202) 535-0577 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On August 23, 1988, the Omnibus Trade and Competitiveness Act, including Title VI, Subtitle D, the Economic Dislocation and Worker Adjustment Assistance Act (EDWAA), was enacted. (Pub. L. 100-418, 102 Stat. 1107.) Existing provisions of Title III of the Job Training Partnership Act were replaced by EDWAA.

Rulemaking History

On October 13, 1982, the President signed the Job Training Partnership Act, Pub. L. 97-300 (JTPA or the Act).

It is the purpose of the Act to establish programs to prepare youth and unskilled adults for entry into the labor force; and to afford job training to those economically disadvantaged individuals and others facing serious barriers to employment who are in special need of such training to obtain productive employment.

Title I of the Act sets forth general requirements for programs under the Act, as well as some requirements for State operation of programs under the Act. Title II of the Act provides requirements for State operation of adult and youth programs under the Act. Title III of the Act provides for operation of State programs of employment and training assistance for dislocated workers. Title IV provides requirements for special programs for targeted groups, such as Native Americans and migrant farmworkers, as well as for the Job Corps, veterans and other specialized programs.

Amendments to JTPA were enacted in the Job Training Partnership Act Amendments, Pub. L. 97-404 (December 31, 1982); the Carl D. Perkins Vocational Education Act, Pub. L. 98-524 (October 19, 1984); the Job Training Partnership Act Amendments of 1986, Pub. L. 99-496 (October 16, 1986); and the Homeless Eligibility Clarification Act, Title XI of the Anti-Drug Abuse Act of 1988, Pub. L. 99-570 (October 27, 1986). See also Section 713(b) of Pub. L. 99-159, National Science, Engineering, and Mathematics Authorization Act of 1986, which contains technical amendments to the Carl D. Perkins Vocational Education Act which, in turn, amend JTPA.

Final regulations promulgated by the Department of Labor (the Department or DOL) to implement the provisions of the Act were published in the **Federal Register** at 48 FR 11078 (March 15, 1983); 48 FR 48753 (October 20, 1983); 48 FR 49198 (October 24, 1983); and 48 FR 52438 (November 18, 1983). See 20 CFR Parts 626-638 and 684 (1988).

These regulations have been amended by **Federal Register** publication on three additional occasions: on April 26, 1985, at 50 FR 16473, as corrected on June 13, 1985, at 50 FR 24764; on August 29, 1986, at 51 FR 30856; and on February 12, 1988 at 53 FR 4282.

Discussion of Interim Final Rule

The Department of Labor is issuing interim final regulations with a request for comments to implement provisions of the Economic Dislocation and Worker Adjustment Assistance Act (EDWAA), which amends portions of the Job Training Partnership Act (JTPA) and substitutes a completely new Title III. EDWAA was enacted as Subtitle D of Title VI of the Omnibus Trade and Competitiveness Act (OTCA) of 1988. JTPA Title III establishes programs of employment and training assistance for dislocated workers. These interim final regulations comply with the statutory requirement that regulations be published by November 1, 1988. At the same time, they provide the opportunity for comment. All implementation actions which must be completed prior to the publication of final regulations should be consistent with these regulations. Modification of the JTPA regulations is necessary to incorporate the revisions contained in the amended legislation.

It is important to note that the provisions of EDWAA related to employment and training assistance for dislocated workers and other changes were enacted as amendments to the Job Training Partnership Act. Thus, as is the case with existing regulations, provisions of the JTPA regulations in Parts 626, 627, 628, and 629 which apply generally to JTPA programs including Title III, or which apply specifically to Title III are applicable to the amended Title III program unless revised herein. In numerous cases, as reflected in the following interim final regulations, it has been necessary to revise sections of the existing regulations particularly in Parts 626, 627, 628, and 629 to reflect provisions of the new legislation.

It is the Department's intent in developing these regulations to provide substantial responsibility and discretion to States in developing policy and implementing procedures for this new legislation. Thus, in many instances in these regulations, responsibility for certain decisions is vested in the State or in substate areas.

It is the Department's plan to separately issue reporting instructions and instructions for establishing and adjusting Title III performance standards. Both sets of instructions will be published as notices for comment in the **Federal Register**. Copies will be made available to States by issuance of Training and Employment Information Notices (TEINs).

In publishing the interim final rule, certain JTPA general regulatory provisions of Parts 626 and 629 have been revised to reflect their applicability or non-applicability to EDWAA programs, including additions where necessary to correspond to the provisions of the new Part 631. These changes are summarized below. Statutory citations to JTPA also have been incorporated throughout the various sections of these parts.

Section 626.4 includes an expanded definition of "substate grantee" to indicate that the substate grantee is the entity that receives Title III funds for a substate area directly from the Governor.

Section 627.4, which deals with the establishment and responsibilities of the State Job Training Coordinating Council (SJTCC), has been revised by adding a reference to section 317 of the Act. This section of the Act contains the new responsibilities of the SJTCC for Title III programs.

In addition, EDWAA amends section 122(a)(3) of the Act to establish a new membership composition for the SJTCC. The membership is to be composed of 30 percent business and industry representatives, 30 percent State and local government and local education representatives, 30 percent organized labor and community-based organization representatives, and 10 percent representation from the general public. In a case in which the substate area is a State, Governors are expected to consider the new composition and responsibilities of the SJTCC where such council, or portion thereof, is being reconstituted to form the private industry council.

Section 628.2 has been revised to add two new paragraphs (d) and (e) which reflect the private industry councils' participation in the designation of substate grantees and their role in reviewing substate plans under Title III.

Section 629.1(e) has been changed to incorporate a new reference to 29 CFR Part 97 which supercedes 41 CFR Part 29-70.

Section 629.3 has been revised to indicate that the nondiscrimination provisions in section 167 of the Act and the prohibition regarding sectarian activities in section 167(a) of the Act apply to Title III substate grantees.

A new § 629.4 has been added to set forth in the regulations certain labor standards of particular significance to Title III programs and which reflect concerns raised in the enactment of EDWAA. These provisions prohibit assistance in the relocation of establishments when such relocation will result in an increase in unemployment in the original location or any other area, and the displacement of employees by participants.

Section 629.21(a) has been revised to indicate that the needs-based payment provisions apply only to Title II. Similar provisions that apply to Title III are contained at § 631.20.

Section 629.33 has been revised to indicate that the insurance provisions apply to Title III substate grantees.

Section 629.35(e) has been amended to indicate that the period of records retention for all JTPA records is three years from the last date authorized for expenditure of funds allotted to a State for a given program year, as set forth at section 161(b) of JTPA. This amendment is necessary to ensure that such records exist and are available for the purposes of JTPA audits.

Section 629.36 has been revised to indicate that the semiannual reporting provisions of this section apply only to Titles I and II. The reporting provisions that apply to Title III are set forth at § 631.15.

Section 629.37(b) has been changed to incorporate a new reference to 29 CFR Part 97 which supercedes 41 CFR Part 29-70.

Section 629.38 has been changed to indicate that the classification of costs provisions of this section no longer apply to Title III except for the provisions of § 629.38(e)(2). The provisions that apply to Title III in this regard are set forth at § 631.13.

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Section 629.39 has been changed to indicate that the provisions of this section on limitations on certain costs no longer apply to Title III programs. The provisions that apply to Title III in this regard are set forth in § 631.14.

Section 629.40 has been changed to reflect that there is no matching requirement for Title III, as amended by EDWAA.

Section 629.42 has been changed to indicate that the audit provisions of this section also apply to Title III substate grantees.

Section 629.44 has been changed to indicate that the sanctions for violations of the Act provisions of this section also apply to Title III substate grantees.

Section 629.46 has been changed to indicate that the performance standards provisions of this section apply to Title III, except that the provisions of paragraph (c)(2) of this section pertaining to the imposition of a reorganization plan for failure to meet performance standards for two consecutive years does not apply to Title III. The Department will issue, in advance of each program year, guidance on specific values for required standards.

In addition, the provisions of Part 629, Subpart D, "Grievances, Investigations, and Hearings," apply to Title III of JTPA. The provisions of various sections of this subpart have been changed to indicate that where provisions apply to SDA grant recipients, they also apply to Title III substate grantees.

In addition to revisions and additions to administrative provisions, these regulations contain a revised Part 631, which will replace all of existing Part 631 for programs beginning July 1, 1988. Following is a brief discussion of revised Part 631.

Scope and Purpose

Section 631.1 reflects the mandate of EDWAA to establish a new worker readjustment program serving dislocated workers as part of the overall effort to increase American workers' skills, thereby improving American competitiveness into the 21st Century.

The new program seeks to establish an early readjustment capacity for workers and firms in each State; to provide comprehensive coverage to workers regardless of the cause of dislocation; to provide early referral from the unemployment insurance system to adjustment services as an integral part of the adjustment process; to foster labor, management and community partnerships with government in addressing worker dislocation; to emphasize retraining and reemployment services rather than income support; to create an ongoing substate capacity to deliver adjustment services; to tailor services to meet the needs of individuals; to improve accountability by establishing a system of mandated performance standards; to improve financial management by monitoring expenditures and reallotting available funds; and to provide the flexibility to target funds to the most critical dislocation problems.

Definitions

In addition to definitions contained in sections 4, 301, and 303(a) of the Act, as amended, and § 628.4 of the JTPA regulations, an additional definition is added at § 631.2 for "substantial layoff." This new definition is based upon the definition of "mass layoff" as contained in the recently enacted Worker Adjustment and Retraining Notification Act, Pub. L. 100-379, 102 Stat. 890 (August 4, 1988).

Participant Eligibility

Section 631.3 sets forth participant eligibility criteria for Title III, including regulations required by section 301(a)(1)(D) of the Act, regarding economic conditions and natural disasters under which self-employed individuals are eligible for employment and training assistance. Certain sections which provided guidance on the eligibility of self-employed individuals have been eliminated in order to shorten and simplify these regulations.

This section also indicates that services will be provided to displaced homemakers under Title III only if the Governor determines that the services may be provided without adversely affecting the delivery of services to eligible dislocated workers. Services provided to displaced homemakers should be part of ongoing programs and activities authorized under Title III and not separate and discrete programs.

Section 631.3 also sets forth the eligibility criteria for workers issued a certificate of continuing eligibility and the conditions of eligibility for dislocated workers not issued such certificates.

Approved Training Rule

Section 631.4 provides that participation by an eligible individual in a program authorized under Title III of the Act or Part 631 is deemed to be acceptance of training with the approval of the State for the purposes of other Federal law relating to unemployment benefits.

Allotment and Reallotment of Funds by the Secretary

Section 631.11 provides for allotment of funds to States and to the Commonwealth of the Northern Mariana Islands and other territories and possessions of the United States.

Section 631.12 provides for reallotment of unexpended funds. The revised Title III provides that the limitation on carryover of funds shall apply to the program year beginning July 1, 1988, but for that year only the amount available for reallotment is the amount equal to the amount by which the unexpended balance of the State formula allotment at the end of the program year exceeds 30 percent of the formula allotment. Thereafter, the amount will be the amount which exceeds 20 percent.

Classification of Costs at State and Substate Levels

Section 631.13 provides that for the new Title III program, all costs shall be charged against one of the allowable cost categories. These categories apply only to the Title III program which becomes effective on July 1, 1988. In the rapid response category, staff-related costs are chargeable only to the extent that staff are engaged in rapid response activities; all other costs charged to this category must be solely for rapid response activities. This section also describes activities chargeable to administration.

Limitations on Certain Costs

Section 631.14 describes cost limitations applicable to Title III. The Governor is required to prescribe criteria under which substate grantees may apply for a waiver to expend less than 50 percent (but not less than 30 percent) of substate funds for training.

Note that provisions of § 629.38 have been revised to delete all references to Title III.

Federal Reporting Requirements

Section 631.15 describes reporting requirements applicable to Title III. In order to comply with new statutory requirements regarding federal oversight and mandatory reallotment, quarterly financial reporting will be required for the first two program years. More frequent data collection will result in a reduced need for actual reallotment in the initial years of the program.

Complaints, Investigations and Penalties

Section 631.16 provides, in accordance with the amended Title III, for investigation of complaints and for

remedies in instances in which it is determined that the State plan is not followed.

Federal by-pass Authority

Section 631.18 describes the authority and the responsibilities of the Secretary in the exercise of Federal by-pass authority.

Appeals

Section 631.19 describes the appeal provisions for activities under Title III. Decisions on the designation of Title III substate grantees are not appealable to the Secretary.

Needs-related Payments

Section 631.20 both provides eligibility criteria for and establishes maximum weekly amounts for needs-related payments. Eligibility criteria address both workers who qualify for unemployment insurance and workers who do not qualify. Needs-related payments will be made only in accordance with the State or substate plan and within cost limitations established at § 631.14.

State Dislocated Worker Unit

Section 631.30 provides for the designation or creation and functions of the State dislocated worker unit or office. While the regulations outline the activities of the State unit, the effective functioning of such an office is seen by the Department as the key element in a successful State employment and training program for dislocated workers. Provision of rapid response is a major element in the overall responsibilities of this office, but key to the overall functioning of a successful program will be the authority and responsibility to effectively coordinate services to affected workers, arranging for immediate services and providing technical assistance to substate grantees.

An important responsibility of the office will be the development and maintenance of contacts with employee groups and the employer community, particularly employers in industries or locations which may be vulnerable to employment loss. Close liaison with employee groups, employer organizations, chambers of commerce, State and local economic development agencies, private industry councils, veterans' service organizations and related organizations is essential.

In instances in which a dislocation event occurs, the office must have the capability to quickly approach the affected employer and workers and offer initial services, including assistance in the establishment of labor-management committees.

It is essential that among the staff of such an office, there be individuals with experience and credibility in the employer and employee communities who can effectively work with employers and employees in difficult situations.

Monitoring and Oversight

Section 631.31 provides that the Governor is responsible for oversight of substate grantee activities. This is viewed as an important function to assure that substate programs are operated in accordance with the Act, regulations, State plans and State guidance.

Allocation of Funds by the Governor

Section 631.32 provides for allocation of funds to substate areas by the Governor. As provided in the amended legislation, the Governor shall prescribe the formula for substate planning allocations. Not less than 80 percent of the State allotment must be allocated by formula. The formula must use information on all six areas specified in § 631.32(b)(1) and may add other elements as the State deems necessary and appropriate. The weight to be assigned to each element, be it a mandatory element or an element developed by the State, is to be determined by the Governor. If data already exist that reflect the formula needs, new data need not be collected to meet the requirements of this provision.

This section also provides that the Governor may reserve up to 40 percent of the State allotment for State activities and for discretionary allocation to substate grantees. An additional 10 percent of the State allotment may be reserved, to be allocated among substate grantees on the basis of need during the first nine months of the program year.

State Procedures for Identifying Funds Subject to Mandatory Federal Reallotment

Section 631.33 provides that the Governor must establish procedures identifying funds subject to mandatory reallotment. Such procedures may not exempt either State or substate funds from such consideration.

Designation of Substate Areas

Section 631.34 provides for designation of substate areas. The Act provides that the Governor must designate as a substate area any JTPA service delivery area (SDA) with a population of 200,000 or more and any concentrated employment program grantee. The Governor must also designate any two or more contiguous SDAs that in aggregate have a population of 200,000 or more and that request designation unless the Governor determines that such a designation would be consistent with the effective delivery of services or would be otherwise inappropriate.

Designation of Substate Grantees

Section 631.35 provides for designation of substate grantees. Substate grantees will be selected through negotiations among the Governor, the Private Industry Council, and the local elected official. The regulations provide that when a substate area is represented by more than one elected official or PIC, they shall designate representatives who shall negotiate together with the Governor an agreement on designation of substate grantees. If, and only if, an agreement cannot be reached, the Governor will select the substate grantee. Decisions made on the designation of substate grantees are not matters appealable to the Secretary, in the same way that decisions on the designation of SDA grant recipients and administrative entities are not appealable to the Secretary.

Biennial State Plan

Section 631.36 provides for a biennial State plan which shall be developed in accordance with instructions issued by the Secretary. In accordance with § 631.70(c) the initial plan shall be for a period of one year. The initial plan shall then be modified to incorporate sections applicable for the subsequent biennial period.

Coordination Activities

Section 631.37 describes the types of agencies and organizations with which the dislocated worker unit or office is to exchange information and coordinate programs, activities and services. Coordination and effective use of information and services between programs is essential to effective and successful program administration.

State By-pass Authority

Section 631.38 describes the authority and responsibility of the Governor in the exercise of State by-pass authority.

State Program Operational Plan

Section 631.40 provides for submission biennially of a State program operational plan which describes the activities, programs and projects to be accomplished with funds reserved by the Governor. It is envisioned that this

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will be a detailed operational plan and will contain specific activities and projects.

Allowable State Activities

Section 631.41 describes activities and services upon which funds reserved by the Governor may be expended.

Substate Plan

Section 631.50 describes procedures for development and submission of substate plans, for review and comment on such plans by the SJTCC, review and approval by the Governor, and for appeals in the event of disapproval. Substate plans are submitted to the Governor and appeals are submitted to the Secretary, except in the case where the substate area is the State. In this instance, such plans are submitted to the Secretary and appeals of disapproval in whole or in part are submitted to DOL's Office of Administrative Law Judges.

Allowable Substate Program Activities

Section 631.51 describes activities and services upon which funds allocated to a substate area may be expended.

Selection of Service Providers

Section 631.52 indicates that the substate grantee has the responsibility for providing authorized Title III services within the substate area, pursuant to the approved plan. The substate grantee may provide such services directly or may select service providers to do so.

Certificates of Continuing Eligibility

Section 631.53 provides for alternative methods by which substate grantees may provide retraining services through issuance of certificates of continuing eligibility. Such certificates are effective for the period specified in the certificate, not to exceed 104 weeks. It is envisioned that certificates of continuing eligibility may be used in two distinct ways. First, workers may receive a certificate and defer the beginning of retraining services. This will be particularly useful where dislocated workers opt for immediate employment and defer a decision on retraining. Second, workers may use a certificate to obtain their own retaining services through alternative service providers approved by the substate grantee.

Eligibility for dislocated workers not issued such certificates is covered in § 631.3.

Implementation of the Regulations

In accord with section 6305(f) of the OTCA, these regulations are effective on November 1, 1988, and are applicable to Fiscal Year 1989 appropriations and to programs beginning July 1, 1989 and to actions, plans, and procedures required at the Federal, State and substate levels to plan for and implement programs beginning July 1, 1989.

EDWAA specifically provides that funds appropriated for Fiscal Year 1989 or any preceding year may be used for planning and implementation of the EDWAA amendments.

Statutory requirements and regulations previously in effect for Title III continue to apply to pre-Fiscal Year 1989 funds and activities for Program Year 1988 and prior years except to the extent that the Secretary specifically provides for the use of such funds for implementation activities.

Publication as an Interim Rule

This document is published as an interim final rule, with a 30-day comment period. EDWAA was enacted on August 23, 1988. Congress mandated in section 6305(f) of EDWAA that the Secretary of Labor prescribe regulations implementing the statute no later than November 1, 1988. Section 6305(c) EDWAA makes the law's mandated membership changes for the State Job Training Coordinating Councils effective on January 1, 1989; and section 6305(a) of EDWAA makes the law's revision of JTPA Title III effective on July 1, 1989.

Due to the complexity of the task of revising the JTPA Title III regulations, the requirements of the rulemaking review process, the short statutory timeframe for prescription of regulations, and the need to provide JTPA recipients with sufficient advance notice of the new regulations to prepare for implementation in 1989, the Department of Labor for good cause has found, pursuant to 5 U.S.C. 553(a)(B), that publication of a notice of proposed rulemaking for these regulations is impracticable, unnecessary, and contrary to the public interest. On the same bases, the Department has determined, pursuant to 5. U.S.C. 553(d)(3), that there is good cause to publish the interim final rule less than thirty days before its effective date.

Nevertheless, the Department is requesting comments on the interim final rule for thirty days after its publication, and plans to respond to those comments and publish a final rule prior to EDWAA's general effective date of July 1, 1989.

Regulatory Impact

The interim final rule implements certain provisions of the Economic Dislocation and Worker Adjustment Assistance Act. As it would not have the financial or other impact to make it a major rule, preparation of a regulatory impact analysis is unnecessary. See Executive Order No. 12291, 5 U.S.C. 601 note.

The Department of Labor has certified to the Chief Counsel for Advocacy, Small Business Administration, that pursuant to 5 U.S.C. 605(b), the rule would not have a significant economic impact on a substantial number of small entities. No significant economic impact would be imposed by the rule.

Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act, all new information collection requirements imposed by these regulations will be submitted to the Office of Management and Budget for approval.

Catalog of Federal Domestic Assistance Numbers

These programs are listed in the Catalog of Federal Domestic Assistance at No. 17–246, "Employment and Training Assistance-Dislocated Workers" (JTPA Title III, Programs); and No. 17–250, "Job Training Partnership Act (JTPA)" (JTPA Titles I and II, Programs).

List of Subjects in 20 CFR Parts 626, 627, 628, 629, and 631

Grant programs, Labor, Manpower training programs, Dislocated worker programs.

Interim Final rule

Accordingly, Chapter V of Title 20, Code of Federal Regulations is amended, as follows:

1. Part 626 is revised to read as follows:

PART 626—INTRODUCTION TO THE REGULATIONS UNDER THE JOB TRAINING PARTNERSHIP ACT

Sec.

626.1 Scope and purpose of the Act.
626.2 Format of these regulations.
626.3 Table of contents for the regulations under the Job Training Partnership Act.
626.4 Definitions.

Authority: 29 U.S.C. 1579(a); Sec. 6305(f), Pub. L. 100–418, 102 Stat. 1107

§ 626.1 Scope and purpose of the Act.

It is the purpose of the Act to:

(a) Establish programs to prepare youth and unskilled adults for entry into the labor force; and

(b) Afford job training to those economically disadvantaged individuals and others facing serious barriers to employment who are in special need of such training to obtain productive employment (section 2).

§ 626.2 Format of these regulations.

(a) Regulations promulgated by the Department of Labor to implement the provisions of the Act are set forth in Parts 626 through 638 of Title 20 of the Code of Federal Regulations, with the exception of Jobs Corps regulations, which are set forth in Part 684 of Title 20.

(b) Nondiscrimination and equal opportunity requirements and procedures, including complaint processing and compliance reviews, will be governed by the provisions of 29 CFR Parts 31 and 32 and will be administered by the DOL Directorate of Civil Rights.

(c) General authority for the regulations is found at section 169 of the Act. Specific statutory authorities other than section 169 are noted throughout the regulations.

§ 626.3 Table of contents for the regulations under the Job Training Partnership Act.

The table of contents for the regulations under the Job Training Partnership Act, Parts 626–638 and 684, is as follows:

PART 626—INTRODUCTION TO THE REGULATIONS UNDER THE JOB TRAINING PARTNERSHIP ACT

Sec.

626.1 Scope and purpose of the Act.
626.2 Format of these regulations
626.3 Table of contents for the regulations under the Job Training Partnership Act.
626.4 Definitions.

PART 627—STATE RESPONSIBILITIES UNDER THE JOB TRAINING PARTNERSHIP ACT

Subpart A—State Planning Procedures

627.1 Eligible grant recipients.
627.2 Governor's coordination and special services plan.
627.3 Funding.
627.4 State job training coordinating council.
627.5 Interstate agreements.

Subpart B—Statewide Programs

627.21 Distribution of State funds.
627.22 State education coordination and grants.
627.23 Training programs for older individuals.
627.24 State incentive grants.

PART 628—SERVICE DELIVERY AREAS DESIGNATED UNDER THE JOB TRAINING PARTNERSHIP ACT

628.1 Service delivery areas.
628.2 Private industry council.
628.3 Selection of SDA grant recipient, administrative entity and service providers.
628.4 Job training plan.
628.5 Review and approval.
628.6 State SDA submission.

PART 629—GENERAL PROVISIONS GOVERNING PROGRAMS UNDER TITLES I, II, AND III OF THE JOB TRAINING PARTNERSHIP ACT

Subpart A—Program Design Requirements

629.1 General program requirements.
629.2 Public service employment prohibition.
629.3 Nondiscrimination and nonsectarian activities.
629.4 Labor standards.

Subpart B—Payments, Benefits and Working Conditions

629.21 Needs-based payments.
629.22 Benefits and working conditions.

Subpart C—Administrative Standards and Procedures

629.31 Grant payments.
629.32 Program income.
629.33 Insurance.
629.34 Procurement.
629.35 Management systems, reporting and recordkeeping.
629.36 Reports required.
629.37 Allowable costs.
629.38 Classification of costs.
629.39 Limitations on certain costs.
629.40 Matching funds.
629.41 Property management standards.
629.42 Audits.
629.43 Oversight and monitoring.
629.44 Sanctions for violation of the Act.
629.45 Closeout. [Reserved]
629.46 Performance standards.

Subpart D—Grievances, Investigations and Hearings

629.51 Scope and purpose.
629.52 State grievance and hearing procedures for non-criminal complaints at the Governor and subrecipient level.
629.53 Non-criminal grievance procedure at employer level.
629.54 Federal handling of administration and civil complaints.
629.55 Federal handling of criminal complaints and reports of fraud, abuse and other criminal activity.
629.56 Opportunity for informal review.
629.57 Hearings before the Office of Administrative Law Judges.
629.58 Other authority.

PART 630—PROGRAMS UNDER TITLE II OF THE JOB TRAINING PARTNERSHIP ACT

630.1 Adult and youth programs under Part A of Title II.
630.2 Summer youth employment and training programs under Part B of Title II.

PART 631—PROGRAMS UNDER TITLE III OF THE JOB TRAINING PARTNERSHIP ACT

Subpart A—General Provisions

631.1 Scope and purpose.
631.2 Definitions.
631.3 Participant eligibility.
631.4 Approved training rule.

Subpart B—Additional Title III Administrative Standards and Procedures

631.11 Allotment and obligation of funds by the Secretary.
631.12 Reallotment of funds by the Secretary.
631.13 Classification of costs at State and substate levels.
631.14 Limitations on certain costs.
631.15 Federal reporting requirements.
631.16 Complaints, investigations, and penalties.
631.17 Federal monitoring and oversight.
631.18 Federal by-pass authority.
631.19 Appeals.

Subpart C—Needs-Related Payments

631.20 Needs-related payments.

Subpart D—State Administration

631.30 Designation or creation and functions of a State dislocated worker unit or office and rapid response assistance.
631.31 Monitoring and oversight.
631.32 Allocation of funds by the Governor.
631.33 State procedures for identifying funds subject to mandatory federal reallotment.
631.34 Designation of substate areas.
631.35 Designation of substate grantees.
631.36 Biennial State plan.
631.37 Coordination activities.
631.38 State by-pass authority.

Subpart E—State Programs

631.40 State program operational plan.
631.41 Allowable State activities.

Subpart F—Substate Programs

631.50 Substate plan.
631.51 Allowable substate program activities.
631.52 Selection of service providers.
631.53 Certificate of continuing eligibility.

Subpart G—Federal Delivery of Dislocated Worker Services

631.60 General.
631.61 Application for funding and selection criteria.

Subpart H—Transition Provisions

631.70 Special provisions for program startup.

PART 632—INDIAN AND NATIVE AMERICAN EMPLOYMENT AND TRAINING PROGRAMS

Subpart A—Introduction

632.1 [Reserved]
632.2 Scope and purpose.
632.3 Format for these regulations.
632.4 Definitions.

Subpart B—Designation Procedures for the Native American Grantees

632.10 Eligibility requirements for designation as a Native American grantee.
632.11 Designation of Native American grantees.
632.12 Alternative arrangements for the provision of services, nondesignation.
632.13 Review of denial of designation as a Native American grantee, or rejection of a comprehensive annual plan.

Subpart C—Program Planning, Application and Modification Procedures

632.17 Planning process.
632.18 Regional and national planning meetings.

632.19 Grant application content.
632.20 Submission of grant applications.
632.21 Application disapproval.
632.22 Modification of a Comprehensive Annual Plan (CAP) and/or Master Plan.
632.23 Termination and corrective action of a CAP and/or Master Plan.

Subpart D—Administrative Standards and Procedures

632.31 General.
632.32 Financial management systems.
632.33 Audits.
632.34 Program income.
632.35 Native American grantee contracts and subgrants.
632.36 Procurement standards.
632.37 Allowable costs.
632.38 Classification of costs.
632.39 Administrative cost plan.
632.40 Administrative staff and personnel standards.
632.41 Reporting requirements.
632.42 Grant closeout procedures.
632.43 Reallocation of funds.
632.44 Sanctions for violation of the Act.

Subpart E—Program Design and Management

632.75 General responsibilities of Native American grantees.
632.76 Program management systems.
632.77 Participant eligibility determination.
632.78 Training activities.
632.79 Employment activities.
632.80 Other activities.
632.81 Payments to participants.
632.82 Benefits and working conditions for participants.
632.83 FICA.
632.84 Non-Federal status of participants.
632.86 Participant limitations.
632.86 Nondiscrimination and nonsectarian activities.
632.87 Equitable provision of services to the eligible population and significant segments.
632.88 General responsibilities of the Department.
632.89 Performance standards.

Subpart F—Prevention of Fraud and Program Abuse

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632.116 Conflict of interest.
632.117 Kickbacks.
632.118 Nepotism.
632.119 Political patronage.
632.120 Political activities.
632.121 Lobbying activities.
632.122 Unionization and antiunionization activities; work stoppages.
632.123 Maintenance of effort.
632.124 Theft or embezzlement from employment and training funds; improper inducement; obstruction of investigations and other criminal provisions.
632.125 Responsibilities of Native American grantees, subgrantees and contractors for preventing fraud and program abuse and for general program management.

Subpart G—[Reserved]

Subpart H—Job Training Partnership Act Programs Under Title IV, Section 401

632.170 Eligibility for funds.
632.171 Allocation of funds.
632.172 Eligibility for participation in Title IV, Section 401.
632.173 Allowable program activities.
632.174 Administrative costs.

Subpart I—Summer Youth Employment and Training Programs

632.250 General.
632.251 Eligibility for funds.
632.252 Allocation of funds.
632.253 Special operating provision.
632.254 Program startup.
632.255 Program planning.
632.256 Submission of applications.
632.257 Eligibility for participation.
632.258 Allowable activities.
632.259 Vocational exploration program.
632.260 Worksite standards.
632.261 Reporting requirements.
632.262 Termination date for the summer program.
632.263 Administrative costs.

PART 633—MIGRANT AND SEASONAL FARMWORKER PROGRAMS

Subpart A—Introductory Provisions

633.102 Scope and purpose of Title IV, Section 402 programs
633.103 Format for these regulations.
633.104 Definitions.
633.105 Allocation of funds.
633.106 Eligibility for allocable funds.
633.107 Eligibility for participation in Section 402 programs.

Subpart B—Grant Planning and Application Procedures

633.201 Grant planning and application procedures in general.
633.202 Announcement of State planning estimates and invitation to submit a grant application.
633.203 Review of funding request.
633.204 Responsibility review.
633.205 Notification of selection.

Subpart C—Program Design and Administrative Procedures

633.301 General responsibilities.
633.302 Training activities and services.
633.303 Allowable costs.
633.304 Section 402 cost allocation.
633.306 General benefits and working conditions for program participants.
633.306 Retirement benefits.
633.307 Packages of benefits.
633.308 Non-Federal status of participants.
633.309 Recordkeeping requirements.
633.310 Bonding.
633.311 Management information systems.
633.312 Grantee contracts and subgrants.
633.313 Administrative staff and personnel standards.
633.314 Reports required.
633.315 Replacement, corrective action, termination.
633.316 Closeout procedures.
633.317 Reallocation of funds.
633.318 Nondiscrimination and nonsectarian activities.
633.319 Lobbying, political activities and intimidation.
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633.321 Performance standards for Section 402 programs.
633.322 Sanctions for violation of the Act.

PART 634—LABOR MARKET INFORMATION PROGRAMS UNDER TITLE IV, PART E OF THE JOB TRAINING PARTNERSHIP ACT

Comprehensive Labor Market Information System

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634.2 Availability of funds.
634.3 Eligible recipients.
634.4 Statistical standards.
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PART 635—VETERANS' EMPLOYMENT PROGRAMS UNDER THE TITLE IV, PART C OF THE JOB TRAINING PARTNERSHIP ACT

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635.1 Scope and purpose.
635.2 Program administration.
635.3 Participant eligibility.

Subpart B—Program Funding

635.11 Availability of funds.
635.12 Eligibility for funds.
635.13 Application for funding.
635.14 Review of application for funding.
635.15 Approval of funding requests.

Subpart C—Program Design and Management

635.21 General.
635.22 Allowable activities.
635.23 Program management and performance standards.
635.24 Recordkeeping and reporting requirements.
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635.26 Grievance procedures.

PART 636—COMPLAINTS, INVESTIGATIONS AND HEARINGS

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636.2 Protection of informants.
636.3 Complaint and hearing procedures at the grantee level.
636.4 Grievance procedures at the employer level.
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636.6 Complaints and investigations at the Federal level.
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636.8 Initial and final determination; request for hearing at the Federal level.
636.9 Opportunity for informal review.
636.10 Hearings before the Office of Administrative Law Judges.
636.11 Final action.

PARTS 637-638—[RESERVED]

PART 684—JOB CORPS PROGRAM UNDER TITLE IV-B OF THE JOB TRAINING PARTNERSHIP ACT

Subpart A—Purpose and Scope

684.1 General.

Subpart B—Definitions

684.10 Definitions.

Subpart C—Funding, Site Selection and Facilities Management

684.20 Available funds.
684.21 Eligibility for funds and eligible deliverers.

684.22 Funding procedures.
684.23 Center performance measurement.
684.24 Site selection and facilities management.
684.24a Historical preservation.
684.25 Capital improvements.
684.26 Protection and maintenance of contract center facilities owned or leased by Job corps.
684.27 Facilities surveys.

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684.30 Recruitment and screening of corpsmembers.
684.31 Selection, assignment, and enrollment of corpsmembers.
684.32 Enrollment by readmission.
684.33 Transfers.
684.34 Extensions of enrollment.
684.35 Federal status of corpsmembers.
684.36 Terminations.
684.37 Exit procedures.
684.38 Certificate of attainment.
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684.40 Placement and job development.

Subpart E—Center Operations

684.50 Reception and orientation.
684.51 Corpsmembers Handbook.
684.52 Job Corps basic education program.
684.53 Vocational training.
684.54 Occupational exploration program.
684.55 Scheduling of training.
684.56 Certification and/or licensing; academic credit.
684.57 Purchase of vocational supplies and equipment.
684.58 Work experience.
684.59 Leisure time employment.
684.60 Health care and services.
684.61 Physical standards and medical evaluation.
684.62 Ocular care.
684.63 Immunization.
684.64 Communicable disease control.
684.65 Dental care.
684.66 Pregnancy.
684.67 Mental health.
684.68 Drug use and abuse.
684.69 Sex-related issues.
684.70 Death.
684.71 Reporting critical medical situations.
684.72 Residential support services.
684.73 Recreation/avocational program.
684.74 Laundry, mail, and telephone service.
684.75 Counseling.
684.76 Intergroup relations program.
684.77 Incentives system.
684.78 Corpsmember government and leadership program.
684.79 Corpsmember welfare associations.
684.80 Evaluation of corpsmember progress (Maximum Benefits System).
684.81 Food service.
684.82 Allowances and allotments.
684.83 Clothing.
684.84 Tort and other claims.
684.85 Federal employees' compensation.
684.86 Social Security.
684.87 Income taxes.
684.88 Emergency use of personnel, equipment, and facilities.
684.89 Limitations on the use of corpsmembers in emergency projects.
684.90 Corpsmember absences.
684.91 Legal services to corpsmembers.
684.92 Voting rights.
684.93 Rights relative to religion.
684.94 Right to privacy.
684.95 Disclosure of information.
684.96 Disciplinary procedures and appeals.
684.97 [Reserved]
684.98 Cooperation with agencies and institutions.
684.99 Job Corps training opportunities for CETA grantees.

Subpart F—Applied Vocational Skills Training (VST) Through Work Projects at Civilian Conservation Centers (CCC's)

684.100 Applied vocational skills training (VST) projects.
684.101 Annual VST plans.
684.102 VST project proposals.
684.103 VST project review and approval.
684.104 Modification of approved VST projects.
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684.106 VST budgeting.
684.107 Monitoring VST project progress.
684.108 Public identification of VST projects.
684.109 Supplementation of VST project funds.

Subpart G—Experimental Projects

684.110 Experimental projects.

Subpart H—Administrative Provisions

684.120 Program management.
684.121 [Reserved]
684.122 Staff training.
684.123 Corpsmember records management.
684.124 Safety.
684.125 Environmental health.
684.126 Security and law enforcement.
684.127 Job Corps forms and documents.
684.128 Property management and procurement.
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684.130 Contract center financial management and reporting.
684.131 CCC's financial management and reports.
684.132 Audit.
684.133 General reporting requirements.
684.134 Review and evaluation.
684.135 State taxation of Job Corps contractors.

Subpart I—[Reserved]

Subpart J—A-95 Procedures

684.140 Notification of intent.
684.141 Content and description of notification of intent.
684.142 Review and comment.

§ 626.4 Definitions.

In addition to the definitions contained in section 4 of the Act, the following definitions apply as appropriate to programs under Titles I, II, and III of the Act.

"Family" shall be defined by the Governor. An adult handicapped individual shall be considered a family of one when applying for programs under the Act (section 4(8)).

"Family income" shall be defined by the Governor, consistent with the definition of family income for other State administered needs-based programs.

"Participant" means any individual who has (a) been determined eligible for participation upon intake; and(b) started receiving employment, training, or services (except post-termination services) funded under the Act following intake. Individuals who receive only outreach and/or intake and initial assessment services or post-program followup are excluded from this definition.

"Recipient" means the Governor.

"SDA grant recipient" means the entity that receives JTPA funds for a service delivery area (SDA) directly from the Governor.

"Substate grantee" means that agency or organization selected to administer programs pursuant to section 312(b) of the Act. The substate grantee is the entity that receives Title III funds for a substate area directly from the Governor.

"Secretary" means the Secretary of Labor or the Secretary's designated representative(s).

"Subrecipient" means any person, organization or other entity which receives JTPA funds either directly or indirectly from the Governor. Depending on local circumstances, the Private Industry Council (PIC), local elected official, or administrative entity may be a subrecipient. SDA grant recipients and Title III substate grantees are particular types of subrecipients.

2. Part 627 is revised to read as follows:

PART 627—STATE RESPONSIBILITIES UNDER THE JOB TRAINING PARTNERSHIP ACT

Subpart A—State Planning Procedures

627.1 Eligible grant recipients.
627.2 Governor's coordination and special services plan.
627.3 Funding.
627.4 State job training coordinating council.
627.5 Interstate agreements.

Subpart B—Statewide Programs

627.21 Distribution of State funds.
627.22 State education coordination and grants.
627.23 Training programs for older individuals.
627.24 State incentive grants.

Authority: 29 U.S.C. 1579(a); Section 6305(f), Pub. L. 100-418, 102 Stat. 1107.

Subpart A—State Planning Procedures

§ 627.1 Eligible grant recipients.

To establish a continuing relationship under the Act, the Governor and the Secretary shall sign a Governor/Secretary Agreement. The agreement shall consist of a statement assuring that the State shall comply with (a) the Job Training Partnership Act, as amended, and the applicable rules and regulations and (b) the Wagner-Peyser Act, as amended, and all applicable rules and regulations. The agreement shall specify that guidelines, interpretations and definitions adopted by the Governor shall, to the extent that they are consistent with the Act and applicable rules and regulations, be accepted by the Secretary.

§ 627.2 Governor's coordination and special services plan.

(a) *Submittal.* By a date established by the Secretary, any State seeking financial assistance under the Act shall submit to the Secretary a Governor's coordination and special services plan (section 121(a)(2)).

(b) *Plan review.* The Secretary shall review the plan for overall compliance with the provisions of the Act. If the plan is disapproved, the Secretary shall notify the Governor in writing within 30 days of submission of the reasons for disapproval so that the Governor may modify the plan to bring it into compliance with the Act (section 121(d)).

§ 627.3 Funding.

The Secretary will allot funds to the States in accordance with sections 162 and 302 of the Act. The Secretary will obligate such allotments through a Notice of Obligation.

§ 627.4 State job training coordinating council.

(a) The Governor shall appoint a State job training coordinating council (SJTCC) pursuant to section 122 of the Act.

(b) Consistent with section 122(a)(3) of the Act, the SJTCC shall be composed of 30 percent business and industry representatives, 30 percent State and local government and local education agency representatives, 30 percent organized labor and community-based organization representatives, and 10 percent representation from the general public. The SJTCC shall have specific functions and responsibilities outlined in sections 122, 317, and 501 of the Act.

§ 627.5 Interstate agreements.

The Secretary hereby grants authority to the several States to enter into interstate agreements and compacts in accordance with section 127 of the Act.

Subpart B—Statewide Programs

§ 627.21 Distribution of State funds.

(a) The funds made available to the Governor under section 202(b) of the Act shall be used to carry out activities and services in this subpart.

(b) Funds provided to the Governor under section 202(b)(4) of the Act may be used to conduct auditing activities, administrative activities, and other activities described in sections 121 and 122 of the Act (section 202(b)(4)).

§ 627.22 State education coordination and grants.

(a) Expenditures for programs pursuant to section 123(c)(2)(B) of the Act shall be subject to § 629.39(a) of this chapter.

(b) Not less than 75 percent of the funds shall be expended for activities for economically disadvantaged individuals (section 123(c)(3)).

§ 627.23 Training programs for older individuals.

(a) Expenditures for administration and participant support services for programs pursuant to section 124 of the Act shall be subject to § 629.39 of this chapter.

(b) Recipients should coordinate development and delivery of services under section 124 with community service employment programs for older Americans under Title V of the Older Americans Act of 1965, as amended.

§ 627.24 State incentive grants.

(a) Funds available under section 202(b)(3) shall be used by the Governor to provide incentive grants for programs exceeding Title II performance standards established pursuant to section 106 of the Act, including incentives for serving hard-to-serve individuals. Incentive grant funds shall be distributed among SDAs within the State exceeding their performance in an equitable proportion based on the degree by which the SDAs exceed their Title II performance standards. Incentive grant funds made available to an SDA may be used for post-program data collection activities, subject to the provisions of § 629.39(f) of this chapter [section 202(b)(3)(B)].

(b) Funds available under section 202(b)(3) that are not needed for incentive grants shall be used by the Governor to provide technical assistance to SDAs within the State (or to subrecipients in single statewide SDAs). For the purposes of this section, technical assistance means activities directly related to program performance, including preventative technical assistance to enable the State to anticipate program deficiencies and take corrective action. Subject to the provisions of § 629.39(f) of this chapter, funds available for technical assistance may be retained by the Governor and used for post-program data collection activities. Technical assistance funds shall not be expended to support ongoing maintenance of management information systems or other ongoing operational support activities that should be charged to the overall administration of JTPA Title II–A programs (section 108(h)(1)).

3. Part 628 is revised to read as follows:

PART 628—SERVICE DELIVERY AREAS DESIGNATED UNDER THE JOB TRAINING PARTNERSHIP ACT

Sec.

628.1 Service delivery areas.
628.2 Private industry council.
628.3 Selection of SDA grant recipient, administrative entity and service providers.
628.4 Job training plan.
628.5 Review and approval.
628.6 State SDA submission.

Authority: 29 U.S.C. 1579(a), Section 6305(f), Pub. L. 100-418, 102 Stat. 1107.

§ 628.1 Service delivery areas.

(a) The SJTCC shall make recommendations to the Governor on proposed SDA designations in a form and by a date established by the Governor (section 101(a) (1) and (2)).

(b) Pursuant to section 101 of the Act, the Governor shall designate service delivery areas (SDAs) for the State. All areas within the State must be covered by designated SDAs. Requests for designation shall be submitted in a form and by a date established by the Governor.

(c) Pursuant to section 101(a)(4)(C) of the Act, an entity described in section 101(a)(4)(A) may appeal the Governor's denial of service delivery area designation to the Secretary of Labor.

(1) Appeals shall be submitted to the Secretary, U.S. Department of Labor, Washington, DC 20210, ATTENTION: ASET. A copy of the appeal shall simultaneously be provided to the Governor.

(2) The Secretary shall not accept an appeal dated later than 30 days after receipt of written notification of the denial from the Governor.

(3) The appealing party shall explain why it believes the denial is contrary to the provisions of section 101 of the Act.

(4) The Secretary shall accept the appeal and make a decision only with regard to determining whether or not the denial is inconsistent with section 101 of the Act. The Secretary may consider any comments submitted by the Governor. The Secretary shall make a final decision within 30 days after this appeal is received (section 101(a)(4)(C)).

§ 628.2 Private industry council.

(a) The chief elected official(s) of the SDA shall establish and the Governor shall certify the private industry council (PIC) pursuant to section 102 of the Act.

(b) Pursuant to section 103 of the Act, the PIC shall provide policy and program guidance for all activities under the job training plan for the SDA. In accordance with agreements negotiated with the appropriate chief elected official(s), the PIC shall determine the procedures for development of the job training plan and select the grant recipient and administrative entity for the SDA. The PIC may exercise independent oversight over activities under the job training plan, and oversight shall not be circumscribed by agreements with the appropriate chief elected official(s) of the SDA.

(c) The employment service shall develop jointly with each appropriate PIC and chief elected official(s) for the SDA those components of the plans required under the Wagner-Peyser Act, as amended, applicable to the SDA (Wagner-Peyser Act section 8(b)(1)).

(d) The PIC shall be a party to the designation of substate grantees under Title III, as set forth at § 631.35 of this chapter (section 312(b)).

(e) The PIC shall be provided the opportunity to review and comment on a substate grantee plan under Title III of the Act prior to the submission of such plan to the Governor (section 313(a)).

§ 628.3 Selection of SDA grant recipient, administrative entity and service providers.

(a) Pursuant to section 103(b)(1) of the Act, a selection shall be made of the SDA grant recipient and the entity to administer the job training plan for Title II developed pursuant to section 104 of the Act. These may be the same or different entities. The specific functions and responsibilities of these entities shall be spelled out in accordance with the agreement(s) between the PIC and the chief elected official(s), which should specifically address the provisions of section 141(i) of the Act.

(b) Service providers shall be selected in accordance with—

(1) The agreement negotiated pursuant to section 103(b)(1) of the Act, and

(2) The provisions of sections 107 and 205(b)(4) of the Act.

§ 628.4 Job training plan.

The Governor may issue instructions and schedules that will assure that job training plans and plan modifications for SDAs within the State conform to all requirements of the Act.

§ 628.5 Review and approval.

(a)(1) If the Governor disapproves the SDA job training plan or plan modification, the Governor shall notify the PIC and the appropriate chief elected official(s) for the SDA in writing as provided in section 105(b)(2) of the Act.

(2) The Governor shall provide the PIC and the appropriate chief elected official(s) for the SDA 20 days to correct the deficiencies and resubmit the plan or plan modification. The Governor shall make a final decision and shall notify the PIC and the appropriate chief elected official(s) for the SDA of the final disapproval or approval within 15 days after the plan or plan modification was resubmitted.

(b) Pursuant to section 105(b)(2) of the Act, any final disapproval of the job training plan or plan modification may be appealed to the Secretary.

(1) Appeals to the Secretary shall be submitted jointly by the PIC and the appropriate chief elected official(s) for the SDA to the Secretary, U.S. Department of Labor, Washington, DC 20210 ATTENTION: ASET. A copy of the appeal shall be simultaneously provided to the Governor.

(2) The Secretary shall not accept an appeal dated later than 30 days after receipt of the final disapproval from the Governor.

(3) The Secretary shall accept the appeal and make a decision only with regard to determining whether or not the disapproval is clearly erroneous within the context of section 105(b)(1) of the Act. The Secretary may consider any comments submitted by the Governor. In accordance with section 105(b)(2) of the Act, the Secretary shall make a final decision within 45 days after the appeal is received.

(c) Pursuant to section 164(b)(1) of the Act, a notice of intent to revoke approval of all or part of a plan may be appealed to the Secretary. Such appeals shall be subject to the terms and conditions of paragraph (b) of this section, except that the revocation shall not become effective until—

(1) The time for appeal has expired, or

(2) The Secretary has issued a decision.

§ 628.6 State SDA submission.

(a) Pursuant to section 105(d) of the Act, when the SDA is the State, the Governor shall, not less that 60 days before the beginning of the first of the two program years covered by the job training plan and in accordance with instructions issued by the Secretary, submit to the Secretary a two-program-year job training plan. When the SDA is the State, modifications to the plan shall be submitted to the Secretary for approval.

(b) The Secretary shall review the plan or plan modification for overall compliance with the provisions of the Act. The State's plan shall be considered approved unless, within 30 days of receipt of the submission described in paragraph (a) of this section, the Secretary notifies the Governor in writing of discrepancies between the submission and specific provisions of the Act. If the plan or plan modification is disapproved, the Governor may appeal the decision by requesting a hearing before an administrative law judge pursuant to § 629.57(c) of this chapter.

4. Part 629 is revised to read as follows:

PART 629—GENERAL PROVISIONS GOVERNING PROGRAMS UNDER TITLES I, II, AND III OF THE JOB TRAINING PARTNERSHIP ACT

Subpart A—Program Design Requirements

Sec.

629.1 General program requirements.
629.2 Public service employment prohibition.
629.3 Nondiscrimination and nonsectarian activities.
629.4 Labor standards.

Subpart B—Payments, Benefits and Working Conditions

629.21 Needs-based payments.
629.22 Benefits and working conditions.

Subpart C—Administrative Standards and Procedures

629.31 Grant payments.
629.32 Program income.
629.33 Insurance.
629.34 Procurement.
629.35 Management systems, reporting and recordkeeping.
629.36 Reports required.
629.37 Allowable costs.
629.38 Classification of costs.
629.39 Limitations on certain costs.
629.40 Matching funds.
629.41 Property management standards.
629.42 Audits.
629.43 Oversight and monitoring.
629.44 Sanctions for violation of the Act.
629.45 Closeout. [Reserved]
629.46 Performance standards.

Subpart D—Grievances, Investigations and Hearings

629.51 Scope and purpose.

629.52 State grievance and hearing procedures for non-criminal complaints at the Governor and subrecipient level.
629.53 Non-criminal grievance procedure at employer level.
629.54 Federal handling of administrative and civil complaints.
629.56 Federal handling of criminal complaints and reports of fraud, abuse and other criminal activity.
629.56 Opportunity for informal review.
629.57 Hearings before the Office of Administrative Law Judges.
629.58 Other authority.

Authority: 29 U.S.C. 1579(a); Section 6305(f); Pub. L. 100-418, 102 Stat. 1107.

Subpart A—Program Design Requirements

§ 629.1 General program requirements.

(a) The conditions prescribed in sections 141, 142 and 143 of the Act apply to all programs under Titles I, II, and III of the Act, except as provided elsewhere in the Act or this chapter.

(b) Programs operated under Titles I, II, and III of the Act are subject to the provisions of 29 CFR Part 96, which implement the Single Audit Act of 1984, except as provided elsewhere in this chapter.

(c) Recipients shall ensure that an individual enrolled in a JTPA program meets the requirements of section 167(a)(5) of the Act, section 3 of the Military Selective Service Act (50 U.S.C. App. 453) and other requirements applicable to programs funded under the specific section or title of the Act under which the participant is enrolling (section 504).

(d) Recipients shall ensure that individuals are enrolled within 45 days of the date of application or a new application must be taken, except that eligible summer program applicants under Title II-B may be enrolled within 45 days into a summer youth enrollee pool, and no subsequent application need be taken prior to participation.

(e) Programs operated under Titles I, II, and III of the Act are not subject to the provisions of 29 CFR Part 97, except as otherwise explicitly provided in this chapter.

§ 629.2 Public service employment prohibition.

No funds available under Titles I, II-A, or III of the Act may be used for public service employment (sections 141(p) and 314(d)(2)).

§ 629.3 Nondiscrimination and nonsectarian activities.

(a) Recipients, SDA grant recipients, Title III substate grantees and other subrecipients shall comply with the nondiscrimination provisions of section 167 of the Act.

(b) Pursuant to section 167(a) of the Act, the employment or training of participants in sectarian activities is prohibited.

§ 629.4 Labor standards.

(a) No funds may be used to assist in relocating establishments, or parts thereof, from one area to another unless a determination is made that such relocation will not result in an increase in unemployment in the area of original location or in any other area (section 141(c)).

(b) No currently employed worker shall be displaced (including partial displacement) by any participant.

(c) No participant shall be employed or job opening filled—

(1) When any other individual is on layoff from the same or any substantially equivalent job, or

(2) When an employer has terminated any regular employee or otherwise reduced its workforce with the intention of filling the vacancy so created by hiring a participant whose wages are subsidized by this Act (section 143(b)).

(d) The Secretary will promptly review and take appropriate action with regard to alleged violations of the provisions of paragraphs (a), (b) and (c) of this section, by either direct investigation or referral to the State for action as provided for at § 629.54(b) of this part.

Subpart B—Payments, Benefits and Working Conditions

§ 629.21 Needs-based payments.

(a) Subject to the provisions of sections 108 and 142(a)(1) of the Act and in accordance with a locally developed formula or procedure, payments based on need may be provided to individual participants under Title II in cases where such payments are necessary to enable individuals to participate in a training program funded under the Act (section 204(27)).

(b) Documentation supporting the locally developed formula or procedure for needs-based payments shall be maintained in accordance with instructions from the Governor (section 204(27)).

(c) The formula or procedure shall provide for the maintenance of an individual record of the determination of the need for, and the amount of, any participant's needs-based payment.

§ 629.22 Benefits and working conditions.

(a) Where participants are not covered under a State's workers' compensation law, they shall be provided with adequate on-site medical and accident insurance. Income maintenance coverage is not required for these participants (section 143(a)(3)).

(b) Where participants are engaged in activities not covered under the Occupational Safety and Health Act of 1970, they shall not be required or permitted to work, be trained, or receive services in buildings or surroundings or under working conditions which are unsanitary, hazardous or dangerous to the participants' health or safety. Participants employed or trained for inherently dangerous occupations, e.g., fire or police jobs, shall be assigned to work in accordance with reasonable safety practices (section 143(a)(2)).

Subpart C—Administrative Standards and Procedures

§ 629.31 Grant payments.

(a) JTPA grant payments will be made to the Governor in accordance with section 203 of the Intergovernmental Cooperation Act (42 U.S.C. 4213) and Treasury Circular No. 1075 (31 CFR Part 205).

(b) The Governor shall establish procedures that will minimize the time elapsing between the receipt of advanced funds and disbursement. Failure to establish such procedures or to take action to correct deficiencies in—

(1) Financial management systems, or

(2) Fund drawdown and advance payment procedures may result in the Governor being funded through reimbursement by Treasury check payment.

§ 629.32 Program income.

Income generated under any program shall be used to further program objectives and may be retained by that program, unless the Governor requires that such income be turned over to the State. Program income generated under Title II may be used to satisfy the matching requirement of section 123(b) of the Act.

§ 629.33 Insurance.

(a) *General.* Each Governor, SDA grant recipient, Title III substate grantee and subrecipient shall follow its normal insurance procedures except as otherwise indicated in this section.

(b) The DOL assumes no liability with respect to bodily injury, illness or any other damages or losses, or with respect to any claims arising out of any activity under a JTPA grant or agreement whether concerning persons or property in the Governor's, SDA grant recipient's Title III substate grantee's or other subrecipient's organization or any third party.

(c) Governors, SDA grant recipients, Title III substate grantees and subrecipients shall secure insurance coverage for injuries suffered by participants who are not covered by existing workers' compensation. Contributions to a reserve for a self-insurance program, to the extent that the type and extent of coverage and the rates and premiums would have been allowed had insurance been purchased to cover the risks, are allowable and are chargeable to participant support or training for Title II, and to basic readjustment services, retraining services, or needs-related payments and supportive services for Title III, as appropriate (section 143(a)(3)).

§ 629.34 Procurement.

Subject to the provisions of section 107 of the Act, recipients and subrecipients shall administer procurement systems that reflect applicable State and local law, rules and regulations as determined by the Governor.

§ 629.35 Management systems, reporting and recordkeeping.

(a) The Governor shall ensure that financial systems within the State provide fiscal control and accounting procedures sufficient to—

(1) Permit preparation of required reports;

(2) Permit the tracing of funds to a level of expenditure adequate to establish that funds have not been used in violation of the restrictions on the use of such funds; and

(3) Demonstrate compliance with the matching requirement (sections 104(b)(9), 164(a)(1), 165(a)(1), 165(c)(2), and 182).

(b) The financial management system and the participant data system shall provide federally required records and reports that are uniform in definition, accessible to authorized Federal and State staff, and verifiable for monitoring, reporting, audit and evaluation purposes (sections 165(a)(1), 165(a)(2), and 182).

(c) Pursuant to section 165(a) of the Act, the Governor shall ensure that records shall be maintained of each participant's enrollment in a JTPA program in sufficient detail to demonstrate compliance with the relevant eligibility criteria attending a particular activity and with the restrictions on the provision and duration of services and specific activities authorized by the Act.

(d) The Governor shall ensure that records shall be maintained of such participant information as may be necessary to develop and measure the achievement of performance standards established by the Secretary.

(e) The Governor shall insure that procedures are developed for retention of all records pertinent to all grants and agreements, including financial, statistical, property and participant records and supporting documentation. The period of records retention shall be three years from the last date authorized for the expenditure of funds allotted to a State for a given program year, as set forth at section 161(b) of the Act. Records for nonexpendable property shall be retained for a period of three years after final disposition of the property.

(f) The aforementioned records will be retained beyond the prescribed period, if any litigation or audit is begun or if a claim is instituted involving the grant or agreement covered by the records. In these instances, the records will be retained until the litigation, audit or claim has been finally resolved.

(g) In the event of the termination of the relationship with a subrecipient, the Governor or SDA grant recipient or Title III substate grantee shall be responsible for the maintenance and retention of the records of any subrecipient unable to retain them.

§ 629.36 Reports required.

The Governor shall report to the Secretary pursuant to instructions issued by the Secretary. Reports for programs under Titles I and II shall be required by the Secretary no more frequently than semiannually. Reports shall be submitted to the Secretary within 45 calendar days after the end of the report period (section 165(a)(2)). Reporting requirements for Title III are set forth at § 631.15 of this chapter.

§ 629.37 Allowable costs.

(a) *General.* To be allowable, a cost must be necessary and reasonable for proper and efficient administration of the program, be allocable thereto under these principles, and, except as provided herein, not be a general expense required to carry out the overall responsibilities of the Governor or subrecipient. Costs charged to the program shall be consistent with those normally allowed in like circumstances in nonfederally sponsored activities and with applicable State and local law, rules or regulations, as determined by the Governor.

(b) Direct and indirect costs shall be charged in accordance with the OMB Circulars identified at 29 CFR 97.22(b).

(c) The Governor shall issue guidelines on allowable costs for SDA, Title III substate area and statewide programs that shall include provisions that:

(1) Costs resulting from violations of, or failure to comply with, Federal, State or local laws and regulations are not allowable;

(2) Entertainment costs are not allowable;

(3) Insurance policies offering protection against debts established by the Federal Government are not allowable JTPA costs; and

(4) Personal liability insurance for PIC members is allowable.

(d) The cost of legal expenses required in the administration of grant programs is allowable. Legal services furnished by the chief legal officer of a State or local government or staff solely for the purpose of discharging general responsibilities as a legal officer are unallowable. Legal expenses for the prosecution of claims against the Federal Government are unallowable.

§ 629.38 Classification of costs.

(a) To comply with the limitations on certain costs contained in section 108 of the Act, allowable costs for programs under Title II shall be charged against the following cost categories: training; administration; and participant support. Only the provisions of paragraph (e)(2)(i), (ii) and (iii)(A) of this section apply to programs under Title III of the Act; the classification of costs for programs under Title III of the Act are set forth at § 631.13 of this chapter.

(b) Costs are allocable to a particular cost category to the extent that benefits are received by such category.

(c) For State-administered programs, the Governor is required to plan, control and charge expenditures against the aforementioned cost categories.

(d) The Governor is responsible for ensuring that SDA grant recipients and other subrecipients plan, control and charge expenditures against the aforementioned cost categories.

(e) In assigning costs to the training category pursuant to paragraph (a) of this section, the Governor shall ensure that:

(1) Training costs include: the costs associated with on-the-job training services; employer outreach necessary to obtain job listings or job training opportunities; salaries, fringe benefits, equipment and supplies of personnel directly engaged in providing training (including remedial education; job related counseling for participants; employability assessment and job development; job search assistance; including preparation for work and labor market orientation); books and other teaching aids; equipment and

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materials used in providing training to participants; classroom space and utility costs; and tuition and entrance fees that represent instructional costs which have a direct and immediate impact on participants. In addition, 50 percent of the costs of a limited work experience program, and 250 hours of youth tryout employment, are considered allowable training costs. A limited work experience program is one that meets the requirements of section 108(b)(3) of the Act. Youth tryout employment is that which meets the requirements of section 205(d)(3)(B) of the Act.

(2) Costs which are billed as a single unit charge do not have to be allocated or prorated among the several cost categories but may be charged entirely to training or retraining services when the agreement:

(i) Is for training;

(ii) Is fixed unit price; and

(iii)(A) Stipulates that full payment for the full unit price will be made only upon completion of training by a participant and placement of the participant into unsubsidized employment in the occupation trained for and at not less than the wage specified in the agreement; or

(B) In the case of youth, payment for training packages purchased competitively pursuant to section 141(d)(3) of the Act shall include payment for the full unit price if the training results in either placement in unsubsidized employment or the attainment of an outcome specified in section 108(b)(2) of the Act.

(3) Training costs shall not include the direct or indirect costs associated with the supervision and management of the program.

(4) Training costs do not include supportive services costs as defined in section 4 of the Act or other participant support costs which are determined to be necessary at the local level.

(5) All costs of employment generating activities to increase job opportunities for eligible individuals in the area and the remaining 50 percent of the costs of a limited work experience program, as well as 100 percent of the costs of other work experience programs, are not allowable training costs (section 108(b)(2)(A)).

(6) The salaries and fringe benefits of project directors, program analysts, labor market analysts, supervisors and other administrative positions shall not be charged to training. The compensation of individuals who both instruct and supervise other instructors shall be prorated among the training and administration cost categories based on time records or other verifiable means.

(7) Construction costs may be allowable training or participant support costs only when funds are used to:

(i) Purchase equipment, materials and supplies for use by participants while on the job and for use in the training of such participants. Examples of such equipment, materials and suppliers are handtools, workclothes and other low cost items; and

(ii) Cover costs of a training program in a construction occupation, including costs such as instructors' salaries, training tools, books, and needs-based payments and compensation to participants.

(8) The cost of incorporating a PIC or consortium administrative entity for the purpose of carrying out programs under the Act shall not be charged to training but may be charged to other cost categories as appropriate.

(9) Any single cost which is properly chargeable to training and to one or more other cost categories shall be prorated among training and the other appropriate cost categories.

§ 629.39 Limitations on certain costs.

(a)(1) Not less than 65 percent of the funds for programs under Titles I and II of the Act may be expended for the cost of training and participant support, except as provided in paragraph (b) of this section.

(2) Administrative costs are limited to 15 percent of funds available. The 15 percent limitation on administrative costs may not be waived.

(b) Funds allotted under the following sections of the Act are excluded from the requirements of paragraph (a) of this section:

(1) Section 202(b)(4);

(2) Section 202(b)(1), to carry out activities pursuant to section 123(c)(2)(A); and

(3) Section 202(b)(3).

(c)(1) Not less than 70 percent of the funds for programs under Titles I and II–A of the Act may be expended for the costs of training, except as provided in paragraphs (d) and (e) of this section.

(2) There is an established 30 percent limitation on combined administrative and participant support costs. This limitation may be waived by the Governor only in accordance with paragraph (e) of this section.

(d) Funds allotted under the following sections of the Act are excluded from the requirements of paragraph (c) of this section:

(1) Section 202(b)(4);

(2) Section 202(b)(1), to carry out activities pursuant to section 123(c)(2);

(3) Section 202(b)(3), to provide technical assistance to SDAs within the State; and

(4) Section 251.

(e) Expenditures may not be in excess of the limitation contained in paragraph (c) of this section except as provided for in section 108(c).

(f) Notwithstanding the limitations on certain costs contained in section 108 of the Act and paragraphs (a) through (e) of this section, funds available under section 202(b)(3) of the Act may be used by the Governor or SDA during not more than 2 program years, ending June 30, 1988, to develop and implement a data collection system to track the post-program experience of participants. Thereafter, the provisions of paragraphs (a) through (e) of this section shall apply to incentive and technical assistance funds under section 202(b)(3) of the Act, as appropriate.

(g) The provisions of this section do not apply to any designated SDA which served as a concentrated employment program grantee for a rural area under the Comprehensive Employment and Training Act (section 108(d)).

(h) The provisions of this section do not apply to Title III programs under Part 631 of this chapter.

(i) Administrative funds within a SDA may, at the discretion of and pursuant to requirements established by the Governor, be pooled and used for all administrative costs of programs within the SDA assisted with funds under the Act.

§ 629.40 Matching funds.

The Governor shall define and assure the provision of adequate resources to meet the matching requirement of section 123(b) of the Act.

§ 629.41 Property management standards.

(a) Personal or real property procured with JTPA funds or transferred from programs under the Comprehensive Employment and Training Act must be used for purposes authorized by the Act. Subject to the Secretary's rights to such property, the Governor shall maintain accountability for property in accordance with State procedures and the records retention requirements of § 629.35 of this part.

(b) The JTPA program must be reimbursed the fair market value of any unneeded property retained by the Governor for use in a non-JTPA program. The proceeds from the sale of any property or transfer of property to a non-JTPA program must be used for purposes authorized under the Act.

§ 629.42 Audits.

(a) The requirements of 20 CFR Part 96, which implement Office of Management and Budget Circular A–128, "Audits of State and Local Governments," apply to JTPA programs administered by recipients and subrecipients, and shall be followed for audits of all program years beginning after July 1, 1985.

(b) Within a timely period after the State submits the audit report to the appropriate Federal official, the Governor shall submit an audit resolution report documenting the Governor's disposition of the reported questioned costs, *i.e.*, whether allowed or disallowed, the basis for allowing questioned costs, and corrective actions taken.

(c) If the Governor intends to request waivers of liability under section 164(e)(2) of the Act, such requests must accompany the audit resolution report along with supporting documentation.

(d) After receiving the audit resolution report(s), the Secretary shall review the report(s), the Governor's disposition, and any liability waiver request. If the Secretary is in agreement with all aspects of the Governor's disposition of the audit(s), the Secretary shall so notify the Governor, constituting final agency action on the audit(s). If the Secretary is in disagreement with the Governor's conclusion on specific points in the audit(s), the Secretary shall resolve the audit(s) through the initial and final determination process described in Subpart D of this part.

(e) Audits conducted or arranged by the Inspector General will generally supplement rather than duplicate audits of recipients, PICs, SDAs, Title III substate grantees, or other subrecipients.

§ 629.43 Oversight and monitoring.

(a) The Secretary is authorized to monitor and investigate pursuant to section 163 of the Act.

(b) The Governor is responsible for oversight of all SDA grant recipient and Title III substate grantee activities and State supported programs.

(c) The PIC and local elected official(s) may conduct such oversight as they, individually or jointly, deem necessary or delegate oversight responsibilities to an appropriate entity pursuant to their mutual agreement.

§ 629.44 Sanctions for violations of the Act.

(a) Pursuant to sections 164 (b), (d), (e), (f), (g), and (h) of the Act, the Secretary may impose appropriate sanctions and corrective actions for violations of the Act, regulations, or grant terms and conditions. Additionally, sanctions may include the following:

(1) Offsetting debts, arising from misexpenditure of grant funds, against amounts in which the Governor is or may be entitled under the Act, except as provided in section 164(e)(1) of the Act. The debt shall be fully satisfied when the Secretary reduces amounts allotted to the Governor by the amount of the misexpenditure; and

(2) Determining the amount of Federal cash maintained by the Governor or subrecipient in excess of reasonable grant needs, establishing a debt for the amount of such excessive cash, and charging interest on that debt.

(b) Except for actions under sections 164(f) and 167 of the Act, to impose a sanction or corrective action, the Secretary shall utilize initial and final determination procedures outlined in Subpart D of this part.

(c) To impose a sanction or corrective action regarding a violation of section 167 of the Act, the Secretary shall utilize the procedures of 29 CFR Part 31.

(d)(1) The Secretary shall hold the Governor responsible for all funds under the grant. The Governor shall hold subrecipients, including SDA grant recipients and Title III substate grantees, responsible for JTPA funds received through the grant.

(2) The Secretary shall determine the liability of the Governor for misexpenditures of grant funds in accordance with section 164(e) of the Act, including the requirement that the Governor shall have taken prompt and appropriate corrective actions for misexpenditures by a subrecipient.

(3) Prompt, appropriate, and aggressive debt collection action to recover any funds misspent by subrecipients ordinarily shall be considered a part of the corrective action required by section 164(e)(2)(D) of the Act. In this regard, the Governor may request advance approval from the Secretary for contemplated corrective actions. Such requests may address debt collection or options which the Governor plans to initiate or to forego. The Governor's request shall include a description and assessment of all actions taken by the subrecipient to collect the misspent funds.

(4) In making the determination required by section 164(e)(2) of the Act, the Secretary may determine, based on a request from the Governor, that the Governor may forego certain collection actions against a subrecipient where that subrecipient was not at fault with respect to the liability criteria set forth in section 164(e)(2)(A) through section 164(e)(2)(D) of the Act. The Secretary shall consider such requests in assessing whether the Governor's corrective action was appropriate in light of section 164(e)(2)(D) of the Act. At that time, the Secretary shall also consider advance approvals (previously granted pursuant to paragraph (d)(3) of this section) in light of the Governor's demonstrated efforts to undertake the approved course of action.

(5) The Governor shall not be released from liability for misspent funds under the determination required by section 164(e) of the Act until the Secretary determines that further collection action, either by the Governor or subrecipient, would be inappropriate or would prove futile.

(e) The Governor shall have the authority to reduce allocations to a service delivery area or Title III substate area if—

(1) The Secretary offsets a debt against funds allotted to the Governor; and

(2) The debt resulted from a misexpenditure by the SDA grant recipient or Title III substate grantee or their subrecipients.

(f) Nothing in this section shall preclude the Secretary from imposing a sanction directly against a subrecipient as authorized in section 164(e)(3) of the Act. In such a case, the Secretary shall inform the Governor of the Secretary's action.

§ 629.45 Closeout. [Reserved]

§ 629.46 Performance standards.

(a) The Secretary shall prescribe performance standards for adults and youth under Title II–A and dislocated workers under Title III in accordance with section 106 of the Act. Standards for youth employment competencies shall prescribe the framework for competency development.

(b) Pursuant to initial and annual instructions issued by the Secretary, the Governor shall:

(1) Collect the data necessary to set standards pursuant to section 165 of the Act; and

(2) Submit reports according to sections 108 and 121(b)(3) of the Act.

(c) *Title II Performance Standards.* (1) The Governor shall establish SDA standards for Title II within the parameters set annually by the Secretary pursuant to section 106(e) of the Act and apply the standards in accordance with section 202(b)(3) of the Act.

(2) Pursuant to section 106(h)(1) of the Act, the Governor shall, after exhaustion of remedies below, impose a reorganization plan if an SDA fails to meet its Title II performance standards for 2 consecutive years.

(i) Prior to imposition of a reorganization plan, the Governor must offer the subrecipient opportunity for a hearing.

(ii) Should the hearing determination uphold the Governor's imposition of a reorganization plan, the subrecipient may appeal to the Secretary.

(iii) Appeals shall be submitted to the Secretary, U.S. Department of Labor, Washington, DC 20210, ATTENTION: ASET. A copy of the appeal shall simultaneously be provided to the Governor.

(iv) The Secretary shall not accept an appeal dated later than 30 days after receipt of written notification from the Governor.

(v) The appealing party shall explain why it believes the Governor's decision is contrary to the provisions of section 106 of the Act.

(vi) The Secretary shall accept the appeal and make a decision only with regard to determining whether or not the Governor's decision is inconsistent with section 106 of the Act. The Secretary may consider any comments submitted by the Governor. The Secretary shall make a final decision within 60 days after this appeal is received (section 106(h)).

(d) *Title III Performance Standards.* (1) The Governor shall establish substate grantee performance standards for programs under Title III within the parameters set annually by the Secretary pursuant to section 106(e) of the Act and apply the standards in accordance with section 311(a) with regard to incentives.

(2) Any performance cost standard for programs under Title III shall make appropriate allowance for the difference in cost resulting from serving workers receiving needs-related payments authorized under § 631.20 of this chapter (section 106(g)).

(3) The Secretary annually will certify compliance, if the program is in compliance, with the Title III performance standards established pursuant to paragraph (a) of this section (section 322(a)(4)).

(4) The Governor shall ensure that, within the parameters established by the Secretary pursuant to section 106(e) of the Act, standards for the operation of programs under Title III are not inconsistent with the standards established by the Secretary under the provisions of section 106(g) of the Act (section 311(b)(8)).

(5) Where a substate grantee fails to meet performance standards for 2 consecutive years, the Governor may institute procedures pursuant to the Governor's by-pass authority in accordance with § 631.38(b) of this chapter or require redesignation of the substate grantee in accordance with § 631.35 of this chapter, as appropriate.

Subpart D—Grievances, Investigations, and Hearings

§ 629.51 Scope and purpose.

(a) *General.* This subpart establishes the procedures to receive, investigate and resolve grievances, and conduct hearings to adjudicate disputes under the Act. Complaints of discrimination pursuant to section 167(a) of the Act will be handled under 29 CFR Parts 31 and 32.

(b) *Non-JTPA remedies.* Whenever any person, organization or agency believes that a Governor, SDA grant recipient, Title III substate grantee or other subrecipient has engaged in conduct that violates the Act and that such conduct also violates a Federal statute other than JTPA, or a State or local law, that person, organization or agency may, with respect to the non-JTPA cause of action, institute a civil action or pursue other remedies authorized under other Federal, State, or local law against the Governor, SDA grant recipient, Title III substate grantee or other subrecipient without first exhausting the remedies in this subpart. Nothing in the Act or this chapter shall:

(1) Allow any person or organization to join or sue the Secretary with respect to the Secretary's responsibilities under JTPA except after exhausting the remedies in this subpart;

(2) Allow any person or organization to file a suit which alleges a violation of JTPA or these regulations without first exhausting the administrative remedies described in this subpart; or

(3) Be construed to create a private right of action with respect to alleged violations of JTPA or the JTPA regulations.

§ 629.52 State grievance and hearing procedures for non-criminal complaints at the Governor and subrecipient level.

(a) *Policy.* This section deals with the handling of non-criminal complaints. Criminal complaints are to be handled as specified in § 629.55 of this part.

(b) *Procedures at Governor, SDA, and substate grantee levels.* (1) Pursuant to section 144(a) of the Act, each Governor shall maintain a State level grievance procedure and shall ensure the establishment of procedures at the SDA grant recipient level and the Title III substate grantee level for resolving any complaint alleging a violation of the Act, regulations, grant or other agreements under the Act. The procedures must include the handling of complaints and grievances arising in connection with JTPA programs operated by each SDA grant recipient, Title III substate grantee and subrecipient under the Act. These procedures must also provide for resolution of complaints arising from actions, such as audit disallowances or the imposition of sanctions, taken by the Governor with respect to audit findings, investigations, or monitoring reports (section 144(a)).

(2) The grievance hearing procedure shall include written notice of the date, time and place of the hearing, an opportunity to present evidence, and a written decision.

(c) *State review.* (1) If a complainant does not receive a decision at the SDA grant recipient or Title III substate grantee level within 60 days of filing the complaint or receives a decision unsatisfactory to the complainant, the complainant then has a right to request a review of the complaint by the Governor. The request for review shall be filed within 10 days of receipt of the adverse decision or 10 days from the date on which the complainant should have received a decision. The Governor shall issue a decision within 30 days. The Governor's decision is final.

(2) The Governor shall also provide for an independent State review of a complaint initially filed at the State level on which a decision was not issued within 60 days or on which the complainant has received an adverse decision. A decision shall be made within 30 days. The Governor's decision is final.

(d) *Federal review of local level complaints without decision.* (1) Should the Governor fail to provide a decision as required in paragraph (c) of this section, the complainant may then request from the Secretary a determination whether reasonable cause exists to believe that the Act or its regulations have been violated.

(2) The Secretary shall act within 90 days of receipt of the request and where there is reasonable cause to believe the Act or regulations have been violated shall direct the Governor to issue a decision adjudicating the dispute pursuant to State and local procedures. The Secretary's action does not constitute final agency action and is not appealable under the Act (sections 166(a) and 144(c)). If the Governor does not comply with the Secretary's order within 60 days, the Secretary may impose a sanction upon the Governor for failing to issue a decision.

(3) The request shall be filed no later than 10 days from the date on which the complainant should have received a decision as required in paragraph (c) of this section. The complaint should contain the following:

(i) The full name, telephone number (if any), and address of the person making the complaint;

(ii) The full name and address of the respondent against whom the complaint is made;

(iii) A clear and concise statement of the facts, including pertinent dates, constituting the alleged violation;

(iv) The provisions of the Act, regulations, grant or other agreements under the Act believed to have been violated;

(v) A statement disclosing whether proceedings involving the subject of the request have been commenced or concluded before any Federal, State or local authority, and, if so, the date of such commencement or conclusion, the name and address of the authority and the style of the case; and

(vi) A statement of the date the complaint was filed with the Governor, the date on which the Governor should have issued a decision, and an attestation that no decision was issued.

(4) A request will be considered to have been filed when the Secretary receives from the complainant a written statement sufficiently precise to evaluate the complaint and the grievance procedure used by the State, SDA grant recipient or Title III substate grantee.

§ 629.53 Non-criminal grievance procedure at employer level.

(a) Governors, SDA grant recipients, Title III substate grantees and other subrecipients shall assure that other employers, including private-for-profit employers of participants under the Act, also have a grievance procedure relating to the terms and conditions of employment available to their participants (section 144(b)).

(b) Employers under paragraph (a) of this section may operate their own grievance system or may utilize the grievance system established by the Governor, SDA grant recipient or Title III substate grantee under § 629.52 of this part. Employers shall inform participants of the grievance procedure they are to follow.

(c) An employer system shall provide for, upon request by the complainant, a review of an employer's decision by the SDA grant recipient or Title III substate grantee and the Governor, if necessary, in accordance with § 629.52(b) of this part.

§ 629.54 Federal handling of administrative and civil complaints.

(a) (1) The Comptroller General's and Inspector General's authority to conduct audits, evaluations and investigations is as specified in § 629.42 of this part.

(2) The Secretary is authorized to monitor States (section 163(a)).

(3) The Secretary shall each fiscal year investigate several States to evaluate whether the use of funds received under the Act is in compliance with the provisions of the Act (section 165(b)(1)(A)).

(4) The Secretary may receive complaints alleging violations of the Act or regulations through the Department's incident reporting system.

(b) As a result of the findings or content of any of the activities listed in paragraph (a) of this section, the Secretary may:

(1) Direct the Governor to handle a complaint through local grievance procedures established under § 629.52 of this part; or

(2) Investigate and determine whether the Governor or subrecipient(s) are in compliance with the Act and regulations (section 163 (b) and (c)).

(c) (1) The Secretary shall notify the Governor of the findings of the Secretary's investigation and shall give the Governor a period of time, not to exceed 60 days, depending on the nature of the findings, to comment and to take appropriate corrective actions.

(2) The Governor shall offer an opportunity for a hearing at the State level to those subrecipients adversely affected by the results of an investigation, audit or monitoring activity as specified in § 629.52(b) of this part. The Governor shall inform the Secretary of actions undertaken, including any disposition of an audit conducted by the State to deal with the Secretary's findings if one was undertaken within the time frame specified by the Secretary.

(3) The Secretary shall review the complete file of the investigation and the Governor's actions. The Secretary's review shall take into account the provisions of § 629.44 of this part. If the Secretary is in agreement with the Governor's handling of the situation, the Secretary shall so notify the Governor. This notification shall constitute final agency action.

(d) *Initial and final determination.*— (1) *Initial determination.* If the Secretary is dissatisfied with the Governor's disposition of an audit as specified in § 629.42 or other resolution of costs, with the Governor's response to findings pursuant to paragraph (c) of this section, or if the Governor failed to comply with the Secretary's decision pursuant to § 629.52(d)(2) of this part, the Secretary shall make an initial determination of the matter in controversy including the allowability of questioned costs or activities. Such determination shall be based upon the requirements of the Act, regulations, grants, contracts or other agreements, under the Act.

(2) *Informal resolution.* The Secretary shall not revoke a Governor's grant in whole or in part, nor institute corrective actions or sanctions, without first providing the Governor with an opportunity to present documentation or arguments to resolve informally those matters in controversy contained in the Secretary's initial determination. In the case of an initial determination pursuant to an audit, the informal resolution period shall be at least 60 days from issuance of the initial determination and no more than 170 days from the receipt by the Secretary of the final approved audit report. If the matters are resolved informally, the Secretary shall issue a final determination pursuant to paragraph (d)(3) of this section which notifies the parties in writing of the nature of the resolution and may close the file.

(3) *Final determination.* (i) If the Governor and the Secretary do not resolve any matter informally, the Secretary shall provide each party with a written final determination by certified mail, return receipt requested. In the case of audits, the final determination shall be issued not later than 180 days after the receipt by the Secretary of the final approved audit report.

(ii) The final determination shall:

(A) Indicate that efforts to informally resolve matters contained in the initial determination have been unsuccessful;

(B) List those matters upon which the parties continue to disagree;

(C) List any modifications to the factual findings and conclusions set forth in the initial determination;

(D) Establish a debt if appropriate;

(E) Determine liability, method of restitution of funds and sanctions; and

(F) In the case of a final determination imposing a sanction or corrective action, offer an opportunity for a hearing in accordance with § 629.57 of this part.

(iii) The final determination constitutes the final agency action unless a hearing is requested.

(e) Nothing in this section shall preclude the Secretary from issuing an initial and final determination directly to a subrecipient in accordance with the authority of section 164(e)(3) of the Act. In such a case, the Secretary shall inform the Governor of the Secretary's action.

§ 629.55 Federal handling of criminal complaints and reports of fraud, abuse and other criminal activity.

All information and complaints involving fraud, abuse or other criminal activity shall be reported directly and immediately to the Secretary of Labor.

§ 629.56 Opportunity for informal review.

(a) Parties to a complaint under § 629.57 of this part may choose to waive their rights to an administrative hearing before the Office of Administrative Law Judges (OALJ) by choosing to transfer the settlement of their dispute to an individual acceptable to all parties for the purpose of conducting an informal review of the stipulated facts and rendering a decision in accordance with applicable law. A written decision will be issued within 60 days after the matter is submitted for informal review.

(b) The waiver of the right to request a hearing before the OALJ will automatically be revoked if a settlement has not been reached within the 60 days provided in paragraph (a) of this section.

(c) The decision rendered under this informal review process shall be treated as a final decision of an Administrative Law Judge pursuant to section 166(b) of the Act.

§ 629.57 Hearings before the Office of Administrative Law Judges.

(a) *Jurisdiction.* The jurisdiction of the OALJ extends only to those complainants identified in sections 164(f) and 166(a) of the Act. All other disputes arising under the Act shall be adjudicated under the appropriate recipient or subrecipient grievance procedures or other applicable law.

(b) *Sanctions.* For the purpose of this section, "sanctions" will not include actions required by authority other than this Act. For example, the imposition of interest charges where required by the Debt Collection Act of 1982 is not a sanction for the purpose of this section.

(c) *Procedures for filing request for hearing.* (1) Within 21 days of receipt of the determination imposing the sanction or corrective action, or denying financial assistance, the applicant, Governor, SDA grant recipient, Title III substate grantee or other subrecipient of funds may transmit by certified mail, return receipt requested, a request for hearing to the Chief Administrative Law Judge, United States Department of Labor, Room 700, Vanguard Building, 1111 20th Street NW., Washington, DC 20036, with one copy to the departmental official who issued the determination and one copy to the Administrator, Office of Financial and Administrative Management, Employment and Training Administration, Washington, DC 20210.

(2) The 21-day filing requirement is jurisdictional; failure to timely request a hearing acts as a waiver of the right to hearing.

(3) The request shall specifically state those issues of the determination upon which review is requested. Those provisions of the determination not specified for review, or the entire determination when no hearing has been requested within the 21 days, shall be considered resolved and not subject to further review. Only alleged violations of the Act, regulations, grant or other agreements under the Act fairly raised in the determination and the request for hearing are subject to review.

(4) The same procedure set forth in paragraphs (c) (1) through (3) of this section applies in the case of a complainant who has not had a dispute adjudicated by the informal review process of § 629.56 of this part within the 60 days, except that the request for hearing before the OALJ must be filed within 15 days of the conclusion of the 60-day period. In addition to including the determination upon which review is requested, the complainant must include a copy of any Stipulation of Facts and a brief summary of proceedings.

(d) *Service and filing.* Copies of all papers required to be served on a party or filed with the OALJ shall be filed simultaneously with the OALJ and served upon the parties of record or their representatives, and shall contain proof of such service.

(e) *Rules of Procedure.* The rules of practice and procedure promulgated by the OALJ (29 CFR Part 18) shall govern the conduct of hearings under this section, except that a request for hearing under this section shall not be considered a complaint to which the filing of an answer by DOL or a DOL agency or official is required.

(f) *Prehearing procedures.* In all cases, the OALJ should encourage the use of prehearing procedures to simplify and clarify facts and issues.

(g) *Subpoenas.* Subpoenas necessary to secure the attendance of witnesses and the production of documents or things at hearings shall be obtained from the OALJ and shall be issued pursuant to the authority contained in section 183(b) of the Act, incorporating 15 U.S.C. 49.

(h) *Timely submission of evidence.* The OALJ shall not permit the introduction at the hearing of documentation relating to the allowability of costs if such documentation has not been made available for review either at the time ordered for any prehearing conference, or, in the absence of such an order, at least 3 weeks prior to the hearing date.

(i) *Burden of production.* The Department shall have the burden of production to support the Secretary's decision. To this end, the Secretary shall prepare and file an administrative file in support of the decision. Thereafter, the party or parties seeking to overturn the Secretary's decision shall have the burden of persuasion.

(j) *Relief.* In ordering relief, the OALJ shall have the full authority of the Secretary under section 164 of the Act, except with respect to the provisions of section 164(e) of the Act.

(k) *Timing of decisions.* The OALJ should render a written decision not later than 90 days after the closing of the record.

§ 629.58 Other Authority.

Nothing contained in this subpart shall be deemed to prejudice the separate exercise of other authorities in pursuit of remedies and sanctions available outside the Act.

5. Part 630 is revised to read as follows:

PART 630—PROGRAMS UNDER TITLE II OF THE JOB TRAINING PARTNERSHIP ACT

Sec.

630.1 Adult and youth programs under Part A of Title II.
630.2 Summer youth employment and training programs under Part B of Title II.

Authority: 29 U.S.C. 1579(a).

§ 630.1 Adult and youth programs under Part A of Title II.

(a) Funding for programs under this section shall be provided in accordance with sections 162, 201, and 202 of the Act. Funds may be used to provide services specified in section 204 of the Act to persons meeting eligibility criteria specified in sections 141(e) and 203 of the Act.

(b)(1) Pursuant to section 203(b) of the Act, not less than 40 percent of funds shall be expended for services to eligible youth. For the purposes of this paragraph (b)(1), the term "eligible youth" includes individuals who are 14 and 15 years of age and enrolled pursuant to section 205(c)(1) of the Act.

(2) To the extent that the ratio of economically disadvantaged youth to economically disadvantaged adults in the SDA differs from the ratio of such individuals nationally as published by the Secretary, the percentage specified in paragraph (b)(1) of this section shall be reduced or increased by a local adjustment factor. This factor, which may be obtained by dividing the SDA ratio of economically disadvantaged youth to economically disadvantaged adults by the national ratio as published by the Secretary, may be multiplied by 40 percent to derive the youth service level for the SDA. The Governor may provide for an alternative methodology to develop the local adjustment factor depending on the availability of data (section 203(b)(2)).

(c) Funds may be used to conduct exemplary youth programs under section 205 of the Act, as follows:

(1) Except for tryout employment authorized under section 205(d)(3)(B) of the Act, exemplary youth programs may be modified to accommodate local conditions as specified in the job training plan (section 205(a)); and

(2) Tryout employment in private-for-profit worksites may be conducted only in accordance with section 205(d) of the Act (section 141(k)).

§ 630.2 Summer youth employment and training programs under Part B of Title II.

(a) The purposes of Title II–B summer programs are to:

(1) Enhance the basic educational skills of eligible youth;

(2) Encourage school competition, or enrollment in supplementary or alternative school programs; and

(3) Provide eligible youth with exposure to the world of work.

(b) Funding for programs under this section shall be provided in accordance with sections 162 and 252 of the Act to provide services specified in section 253 of the Act to economically disadvantaged youth meeting the eligibility criteria set forth in sections 141(e) and 254 of the Act.

(c) The Governor shall issue instructions and schedules to assure that each SDA describes its planned summer youth employment and training program (SYETP) activities in an SYETP plan. The SYETP plan shall include a description of assessment plans and arrangements, a description of program activities and services to be provided, and written program goals and objectives which shall be used to evaluate the effectiveness of programs, and a description of evaluation criteria and process used to evaluate the effectiveness of programs conducted under this section. The Governor may specify other elements that are to be contained in the SYETP plan. The SYETP plan shall:

(1) Describe how the reading and mathematics skills levels of eligible participants will be assessed;

(2) Include the provision of basic and remedial education (other allowable activities specified at section 253 of the Act may also be provided) and based on the results of the assessment conducted under paragraph (c)(1) of this section describe SDA basic and remedial education programs which enhance the basic education skills of youth; and

(3) Describe the written goals and objectives established by the SDA to evaluate the effectiveness of its SYETP as specified at section 255 of the Act, and the evaluation methods which measure the effectiveness of its summer program.

(d) Pursuant to seciton 254 of the Act, an SDA may offer SYETP activities and services with funds under this section to participants during a vacation period designated as the equivalent of a summer vacation if the local educational agency operates its schools on a year-round full-time basis.

(e) Not more than 15 percent of the funds available for programs under this section may be used for the costs of administration.

6. Part 631 is revised to read as follows:

PART 631—PROGRAMS UNDER TITLE III OF THE JOB TRAINING PARTNERSHIP ACT

Subpart A—General Provisions

Sec.

631.1 Scope and purpose.
631.2 Definitions.
631.3 Participent eligibility.
631.4 Approved training rule.

Subpart B—Additional Title III Administrative Standards and Procedures

631.11 Allotment and obligation of funds by the Secretary.
631.12 Reallotment of funds by the Secretary.
631.13 Classification of costs at State and substate levels.
631.14 Limitations on certain costs.
631.15 Federal reporting requirements.
631.16 Complaints, investigations, and penalties.
631.17 Federal monitoring and oversight.
631.18 Federal by-pass authority.
631.19 Appeals.

Subpart C—Needs-Related Payments

631.20 Needs-Related payments.

Subpart D—State Administration

631.30 Designation or creation and functions of a State dislocated worker unit or office and rapid response assistance.
631.31 Monitoring and oversight.
631.32 Allocation of funds by the Governor.
631.33 State procedures for identifying funds subject to mandatory federal reallotment.
631.34 Designation of substate areas.
631.35 Designation of substate grantees.
631.36 Biennial State plan.
631.37 Coordination activities.
631.38 State by-pass authority.

Subpart E—State Programs

631.40 State program operational plan.
631.41 Allowable State activities.

Subpart F—Substate Programs

631.50 Substate plan.
631.51 Allowable substate program activities.
631.52 Selection of service providers.
631.53 Certificate of continuing eligibility.

Subpart G—Federal Delivery of Dislocated Worker Services

631.60 General.
631.61 Application for funding and selection criteria.

Subpart H—Transition Provisions

631.70 Special provisions for program startup.

Authority: 29 U.S.C. 1579(a); Sec. 6305(f), Pub. L. 100–418, 102 Stat. 1107; § 631.30(a)(7)(viii) also issued under Sec. 8, Pub. L. 100–379, 102 Stat. 890.

Subpart A—General Provisions

§ 631.1 Scope and purpose.

(a) This part implements Title III of the Act. Title III programs seeks to establish an early readjustment capacity for workers and firms in each State; to provide comprehensive coverage to workers regardless of the cause of dislocation; to provide early referral from the unemployment insurance system to adjustment services as an integral part of the adjustment process; to foster labor, management and community partnerships with government in addressing worker dislocation; to emphasize retraining and reemployment services rather than income support; to create an on-going substate capacity to deliver adjustment services; to tailor services to meet the needs of individuals; to improve accountability by establishing a system of mandated performance standards; to improve financial management by monitoring expenditures and realloting available funds; and to provide the flexibility to target funds to the most critical dislocation problems.

(b) These regulations apply to JTPA programs funded by Fiscal Year 1989 and later appropriations for use in programs in Program Year 1989 and later. For JTPA Title III programs operated with funds appropriated for fiscal years before Fiscal Year 1989, the regulations which had been published in 20 CFR Part 631 (1988 ed.) continue to apply.

§ 631.2 Definitions.

In addition to the definitions contained in sections 4, 301, and 303(e) of the Act and in § 626.4 of this chapter, the following definition applies to

programs under Title III of the Act and this part:

"Substantial layoff" means any reduction-in-force which is not the result of a plant closing and which results in an employment loss at a single site of employment during any 30-day period for:

(a) (1) At least 33 percent of the employees (excluding employees regularly working less than 20 hours per week); and

(2) At least 50 employees (excluding employees regularly working less than 20 hours per week); or

(b) At least 500 employees (excluding employees regularly working less than 20 hours per week).

§ 631.3 Participant eligibility.

(a) Eligible dislocated workers, as defined in section 301 of the Act, are eligible to participate in programs under this part.

(b) Eligible dislocated workers include individuals who were self-employed (including farmers and ranchers) and are unemployed:

(1) Because of natural disasters, subject to the provisions of paragraph (e) of this section; or

(2) As a result of general economic conditions in the community in which they reside.

(c) For the purposes of paragraph (b) of this section, categories of economic conditions resulting in the dislocation of a self-employed individual may include, but are not limited to:

(1) Failure of one or more businesses to which the self-employed individual supplied a substantial proportion of products or services;

(2) Failure of one or more businesses from which the self-employed individual obtained a substantial proportion of products or services;

(3) Substantial layoff(s) from, or permanent closure(s) of, one or more plants or facilities that support a significant portion of the State or local economy; and/or

(4) Depressed price(s) or market(s) for the article(s) produced by the self-employed individual.

(d) The Governor is authorized to establish procedures to determine the following categories of individuals to be eligible to participate in programs under this part:

(1) Self-employed farmers, ranchers, professionals independent tradespeople and other businesspersons formerly self-employed but presently unemployed.

(2) Self-employed individuals designated in paragraph (d)(1) of this section who are in the process of going out of business, if the Governor determines that the farm, ranch, or business operations are likely to terminate.

(3) Family members of individuals identified under paragraph (d) (1) and (2) of this section, to the extent that their contribution to the farm, ranch, or business meets minimum requirements as established by the Governor.

(e) The Governor is authorized to establish procedures to identify individuals permanently dislocated from their occupations or fields of work, including self-employment, because of natural disasters. For the purposes of this paragraph (e), categories of natural disasters include, but are not limited to, any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snow storm, drought, fire, explosion, or other catastrophe.

(f) The State may provide services to displaced homemakers (as defined in section 4 of the Act) under this part only if the Governor determines that such services may be provided without adversely affecting the delivery of such services to eligible dislocated workers (section 311(b)(4)).

(g) An eligible dislocated worker issued a certificate of continuing eligibility as provided in § 631.53 of this part shall remain eligible for assistance under this part for the period specified in the certificate not to exceed 104 weeks.

(h) An eligible dislocated worker who has not been issued such a certificate shall remain eligible if such individuals:

(1) Remains unemployed, or

(2) Accepts temporary employment for the purpose of income maintenance prior to, and/or during participation in a training program under this part with the intention of ending such temporary employment at the completion of the training and entry into permanent unsubsidized employment as a result of the training. Such temporary employment must be with an employer other than that from which the individual was dislocated. This provision applies to eligible individuals both prior to and subsequent to enrollment.

§ 631.4 Approved training rule.

Participation by an eligible individual in any of the programs authorized under Title III of the Act or this part shall be deemed to be acceptance of training with the approval of the State within the meaning of any other provisions of Federal law relating to unemployment benefits.

Subpart B—Additional Title III Administrative Standards and Procedures

§ 631.11 Allotment and obligation of funds by the Secretary.

(a) Funds shall be allotted among the various States in accordance with section 302(b)(1) of the Act, subject to paragraph (b) of this section.

(b) Funds shall be allotted among the various States in accordance with section 302(b)(2) (A) and (B) as soon as satisfactory data are available under section 462(e) of the Act.

(c) Allotments for the Commonwealth of the Northern Mariana Islands and other territories and possessions of the United States shall be made by the Secretary in accordance with the provisions of section 302(e) of the Act.

§ 631.12 Reallotment of funds by the Secretary.

(a) Based upon reports submitted by States pursuant to § 631.15 of this part, the Secretary shall make determinations regarding total expenditures of funds within the State with reference to the amount required to be reallotted pursuant to section 303(b) of the Act. For purposes of this paragraph—

(1) The funds to be reallotted with be an amount equal to the sum of:

(i) unexpended funds on excess of 20 percent of the prior year's formula allotments, and

(ii) all unexpended previous program year funds made available by formula.

(2) (i) The current program year is the year in which the determination is made:

(ii) The prior program year is the year immediately preceding the current program year; and

(iii) the previous program year is the year immediately preceding the prior program year.

(3) Unexpended funds shall mean the remainder of the total funds made available by formula that were available to the State for the prior program year minus total accrued expenditures at the end of the prior program year.

(4) Reallotted funds will be made available from current year allotments made available by formula.

(b) Based upon the most current and satisfactory data available, the Secretary shall identify both States with high expenditures and eligible high unemployment States, pursuant to the definitions of those terms in section 303(e) of the Act.

(c) The Secretary shall recapture funds from States identified in paragraph (a) of this section and reallot and reobligate such funds to eligible States as identified in paragraph (b) of this section, as set forth in section 303 (a), (b), and (c) of the Act.

(d) Reallotted funds shall be subject to allocation pursuant to § 631.32, and to the cost limitations at § 631.14 of this part.

(e) The provisions of this section and section 303 of the Act shall apply to Program Year 1988, except as provided in section 6305(e) of the Economic Dislocation and Worker Adjustment Assistance Act.

§ 631.13 Classification of costs at State and substate levels.

(a) (1) To comply with the limitations on certain costs contained in section 315 of the Act, allowable costs under Title III shall be charged by either the State or the substate grantee against the following cost categories: rapid response services, basic readjustment services, retraining services, needs-related payments, supportive services, and administration. Costs shall be reported to the Secretary of Labor in accordance with the reporting requirements established pursuant to § 631.15 of this part.

(2) All costs shall be allocable to a particular cost category to the extent that benefits are received by such category. No costs shall be chargeable to a cost category except to the extent that such benefits are received by such category.

(b) Rapid response services shall be those identified at section 314(b) of the Act.

(1) Staff salary and benefit costs are chargeable to the rapid response services cost category only for that portion of staff time actually spent on rapid response activities.

(2) All other costs are chargeable to the rapid response services cost category only to the extent that they are solely for rapid response purposes.

(c) Basic readjustment services shall be those identified at section 314(c) of the Act, except as provided in paragraph (f) below.

(d) Retraining services shall be those identified at section 314(d) of the Act.

(e) Needs-related payments shall be those identified at section 314(e) of the Act.

(f) Supportive services shall be those identified at section 4(24) of the Act and provided for under Title III at section 314(c)(15) of the Act.

(g) Administration shall be that portion of necessary and allowable costs which is not directly related to the provision of services and otherwise allocable to the cost categories in paragraphs (b) through (f) of this section. All activities conducted to coordinate and exchange information with other programs to assist eligible individuals, including coordination with the Federal-State unemployment compensation system and with Title II of the Trade Act, shall be classified as administration (sections 311(b)(10) and 314(f)).

§ 631.14 Limitations on certain costs.

(a) Of the funds expended from program year's allotment:

(1) Not more than 15 percent of the amount expended from the amount reserved by the Governor under section 302(c)(1) of the Act shall be expended for administrative costs. Administrative costs do not include the cost of State rapid response assistance required under section 314(b) of the Act (section 315(c)).

(2) Not more than 25 percent of the amount expended from the amount reserved by the Governor under section 302(c)(1) of the Act shall be expended for needs-related payments and supportive services.

(3) Not more than 15 percent of the amount expended from the amount provided under section 302 (c)(1), (c)(2), and (d) of the Act to a substate grantee shall be expended for administration.

(4) Not more than 25 percent of the amount expended from the amount provided under section 302 (c)(1), (c)(2), and (d) of the Act shall be expended for needs-related payments and supportive services by a substate grantee.

(5) Not less than 50 percent of the funds expended by a substate grantee for activities under this title from the amount provided under section 302 (c)(1), (c)(2), and (d) of the Act shall be expended for retraining services specified in section 314(d) of the Act unless a waiver to this requirement is granted by the Governor. The Governor shall prescribe criteria that will allow substate grantees to apply in advance for a waiver of this requirement, pursuant to section 315(a)(2) of the Act. The Governor shall prescribe the time and form for the submission of an application for such a waiver, as provided for at section 315(a)(3) of the Act. The Governor shall not grant a waiver that allows less than 30 percent of the funds expended by a substate grantee to be expended for retraining activities.

(b) Reallotted funds are subject to the limitations on certain costs contained in paragraph (a) of this section.

§ 631.15 Federal reporting requirements.

Notwithstanding the provisions of § 629.36 of this chapter, the Governor shall report to the Secretary pursuant to instructions issued by the Secretary for programs and activities funded under this part. Reports shall be required quarterly, semi-annually, and annually for the first two program years. Reports shall be provided to the Secretary within 45 calendar days after the end of the report period (section 165(a)(2)).

§ 631.16 Complaints, investigations, and penalties.

The provisions of this section apply in addition to the sanctions provisions in § 629.44 of this chapter.

(a) The Secretary shall investigate a complaint or report received from an aggrieved party or a public official which alleges that a State is not complying with the provisions of the State plan required under section 311(a) of the Act (section 311(e)(1)).

(b) Where the Secretary determines that a State has failed to comply with its State plan, and that other remedies under the Act and Part 629 of this chapter are not available or are not adequate to achieve compliance, the Secretary may withhold an amount not to exceed 10 percent of the allotment of the State for the program year in which the determination is made for each such violation (section 311(e)(2)(A)).

(c) The Secretary will not impose the penalty provided for under paragraph (b) of this section until all other remedies under the Act and Part 629 of this chapter for achieving compliance have been exhausted or are determined to be unavailable or inadequate to achieve State compliance with the terms of the State plan.

(d) The Secretary will make no determination under this section until the affected State has been afforded adequate written notice and an opportunity to request and to receive a hearing before an administrative law judge pursuant to the provisions of § 629.57 of this chapter (section 311(e)(2)(B)).

§ 631.17 Federal monitoring and oversight.

The Secretary shall conduct oversight of State administration of programs under this part and of rapid response activities conducted in accordance with § 631.30 of this part.

§ 631.18 Federal by-pass authority.

(a) In the event that a State fails to submit a biennial State plan that is approved under § 631.36 of this part, the Secretary shall make arrangements to use the amount that would be allotted to that State for the delivery in that State of the programs, activities, and services authorized under Title III of the Act and this part.

(b) No determination may be made by the Secretary under this section until the

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affected State is afforded written notification of the Secretary's intent to exercise by-pass authority and an opportunity to request and to receive a hearing before an administrative law judge pursuant to the provisions of § 629.57 of this chapter.

(c) The Secretary will exercise by-pass authority only until such time as the affected State has an approved plan under the provisions of § 631.36 of this part (section 321(b)).

§ 631.19 Appeals.

Except as provided in this part, disputes arising in programs under this part shall be adjudicated under the appropriate State or local grievance procedures required by § 629.52 of this chapter or other applicable law. Complaints alleging violations of the Act or this part may be filed with the Secretary, pursuant to § 629.54 of this chapter. The following paragraphs refer to appeal provisions set forth in this part.

(a) Section 628.1(c) of this chapter (appeals of denial of SDA designation) shall apply to denial of substate area designations under § 631.34(c) (1) and (3) of this part.

(b) Section 628.5(b) of this chapter (appeals of final disapproval of SDA job training plans or modifications) shall apply to final disapproval of substate plans under § 631.50(f) of this part.

(c) Section 628.5(c) of this chapter (appeals of a Governor's notice of intent to revoke approval of all or part of a plan) shall apply to a Governor's notice of intent to exercise by-pass authority under § 631.36 of this part.

(d) Section 628.6(d) of this chapter (appeals of the Secretary's disapproval of a plan when the SDA is the State) shall apply to plan disapproval when the substate area is the State, as set forth in § 631.50 (g) and (h) of this part.

(e) Decisions pertaining to designations of substate grantees under § 631.35 of this part are not appealable to the Secretary.

Subpart C—Needs-related payments

§ 631.20 Needs-related payments.

(a) In accordance with the approved substate plan, needs-related payments shall be provided to an eligible dislocated worker only in order to enable such worker to participate in training or education programs under this part. To be eligible for needs-related payments:

(1) An eligible worker who has ceased to qualify for unemployment compensation must have been enrolled in a training or education program by the end of the thirteenth week of the worker's initial unemployment compensation benefit period, or, if later, by the end of the eighth week after an employee is informed that a short-term layoff will in fact exceed 6 months.

(2) For purposes of paragraph (a)(1) of this section, the term "enrolled in a training or education program" means that the worker's application for training has been approved and the training institution has furnished written notice that the worker has been accepted in the approved training program beginning within 30 calendar days.

(3) An eligible worker who does not qualify for unemployment compensation must be participating in a training or education program. (section 314(e)(1)).

(b) Needs-related payments shall not be provided to any participant for the period that such individual is employed more than 20 hours per week, enrolled in or receiving on-the-job training, out-of-area job search, or basic readjustment services in programs under the Act, nor to any participant receiving trade readjustment allowances, on-the-job training, out-of-area job search allowances, or relocation allowances under Chapter 2 of Title II of the Trade Act of 1974 or Part 617 of this chapter.

(c) The level of needs-related payments to an eligible dislocated worker in programs under this part shall not exceed the higher of:

(1) The applicable level of unemployment compensation; or

(2) The poverty level as published by the Secretary of Health and Human Services (section 314(e)(2)).

Subpart D—State Administration

§ 631.30 Designation or creation and functions of a State dislocated worker unit or office and rapid response assistance.

(a) *Designation or creation of State dislocated worker unit or office.* The State shall designate or create an identifiable State dislocated worker unit or office with the capabilities and functions identified below. Such unit or office may be an existing organization or new organization formed for this purpose (section 311(b)(2)). The State dislocated worker unit or office shall:

(1) Make appropriate retraining and basic adjustment services available to eligible dislocated workers through substate grantees, and in statewide, regional or industrywide projects;

(2) Work with empoyers and labor organizations in promoting labor-management cooperation to achieve the goals of this part;

(3) Operate a monitoring, reporting, and management system to provide adequate information for effective program management, review, and evaluation;

(4) Provide technical assistance and advice to substate grantees;

(5) Exchange information and coordinate programs with the appropriate economic development agency, State education and training and social services programs;

(6) Coordinate with the unemployment insurance system, the Federal-State Employment Service system, the Trade Adjustment Assistance program and other programs under this chapter;

(7) Receive advance notice of plant closings and mass layoffs as provided at section 3(a)(2) of the Worker Adjustment and Retraining Notification Act, Pub. L. 100-379, 102 Stat. 890;

(8) Notify the appropriate substate grantees as soon as possible (preferably within 48 hours) following receipt of employer notice of layoff or plant closing;

(9) Consult with labor organizations where substantial numbers of their members are to be served; and

(10) Disseminate throughout the State information on the availability of services and activities under Title III of the Act and this part.

(b) *Rapid response capability.* The dislocated worker unit shall have the capability, including appropriate staff, to provide rapid response assistance, on-site, for dislocation events such as permanent closures and substantial layoffs throughout the State.

(1) Such appropriate staff shall include individuals knowledgeable about the resources available through programs under this part and all other appropriate resources available through public and private sources to assist dislocated workers. The expertise required under this part includes knowledge of the Federal, State and local training and employment systems; labor-management relations; private industry and labor market trends; and other fields necessary to carry out the rapid response requirements of the Act.

(2) The rapid response specialists shall have:

(i) The ability to organize a broad-based response to a dislocation event, including the ability to coordinate services provided under this part with other State-administered programs available to assist dislocated workers, and the ability to involve the substate grantee and local service providers in the assistance effort;

(ii) The authority to provide limited amounts of immediate financial assistance for rapid response activities, including, where appropriate, financial assistance to labor-management committees formed under paragraph (c)(2) of this section; and

(iii) Credibility among employee groups and in the employer community in order to effectively work with employers and employees in difficult situations.

(3) The dissemination of information on the State dislocated worker unit's services and activities shall include efforts to ensure that major employers and employee groups, including groups of employees not represented by organized labor, are aware of the availability of rapid response assistance. The State dislocated worker unit shall make equal effort in responding to dislocation events without regard to whether the affected workers are represented by a union.

(4) In a situation involving an impending permanent closure or substantial layoff, a State may provide funds, where other public or private resources are not expeditiously available, for a preliminary assessment of the advisability of conducting a comprehensive study exploring the feasibility of having a company or group, including the workers, purchase the plant and continue it in operation.

(5) Rapid response specialists may use funds available under this part:

(i) To establish on-site contact with employer and employee representatives within a short period of time (preferably 48 hours or less) after becoming aware of a current or projected permanent closure or substantial layoff in order to—

(A) Provide information on and facilitate access to available public programs and services; and

(B) Provide emergency assistance adapted to the particular closure or layoff. Such emergency assistance may include financial assistance for appropriate rapid response activities, such as arranging for the provision of early intervention services and other appropriate forms of immediate assistance in response to the dislocation event.

(ii) To promote the formation of labor-management committees as provided for in paragraph (c) of this section, by providing—

(A) Immediate assistance in the establishment of the labor-management committee, including providing immediate financial assistance to cover the start-up costs of the committee;

(B) A list of individuals from which the chairperson of the committee may be selected;

(C) Technical advice as well as information on sources of assistance, and liaison with other public and private services and programs; and

(D) Assistance in the selection of worker representatives in the event no union is present;

(iii) To provide ongoing assistance to labor-management committees described in paragraph (c) of this section by—

(A) Maintaining ongoing contact with such committees, either directly or through the committee chairperson;

(B) Attending meetings of such committees on and *ex officio* basis; and

(C) Ensuring ongoing liaison between the committee and locally available resources for addressing the dislocation, including the establishment of linkages with the substate grantee or with the service provider designated by the substate grantee to act in such capacity;

(iv) To collect information related to—

(A) Economic dislocation (including potential closings of layoffs); and

(B) All available resources within the State for displaced workers, which information shall be made available on a regular basis to the Governor and the SJTCC to assist in providing an adequate information base for effective program management, review, and evaluation;

(v) To provide or obtain appropriate financial and technical advice and liaison with economic development agencies and other organizations to assist in efforts to avert worker dislocations;

(vi) To disseminate information throughout the State on the availability of services and activities carried out by the dislocated worker unit or office; and

(vii) To assist the local community in developing its own coordinated response and in obtaining access to State economic development assistance.

(c) *Labor-management committees.* As provided for in sections 301(b)(1) and 314(b)(1)(B) of the Act, labor-management committees are a form of rapid response assistance which may be voluntarily established to respond to actual or prospective worker dislocation.

(1) Labor management committees ordinarily include (but are not limited to) the following—

(i) Shared and equal participation by workers and management, with members often selected in an informal fashion;

(ii) Shared financial participation between the company and the state, using funds provided under this title, in paying for the operating expenses of the committee. In some instances, labor union funds may help to pay committee expenses;

(iii) A chairperson, to oversee and guide the activities of the committee who—

(A) Shall be jointly selected by the labor and management members of the committee;

(B) Is not employed by or under contract with labor or management at the site; and

(C) Shall provide advice and leadership to the committee and prepare a report on its activities;

(iv) The ability to respond flexibly to the needs of affected workers by devising and implementing a strategy for assessing the employment and training needs of each dislocated worker and for obtaining the services and assistance necessary to meet those needs;

(v) A formal agreement, terminable at will by the workers or the company management, and terminable for cause by the Governor; and

(vi) Local job identification activitites by the chairperson and members of the committee on behalf of the affected workers.

(2) Because they include employee representatives, labor-management committees typically provide a channel whereby the needs of eligible dislocated workers can be assessed, and programs of assistance developed and implemented, in an atmosphere supportive to each affected worker. As such, committees must be perceived to be representative and fair in order to be most effective.

§ 631.31. Monitoring and oversight.

The Governor is responsible for monitoring and oversight of all State and substate grantee activities under this part. In such monitoring and oversight of substate grantees, the Governor shall ensure that expenditures and activities are in accordance with the substate plan or modification thereof.

§ 631.32 Allocation of funds by the Governor.

Of the funds allotted to the Governor by the Secretary under § 631.11 and § 631.12 of this part:

(a) The Governor shall issue allocations to substate grantees, the sum of which shall be no less than 50 percent of the State's allotment (section 302(d)).

(b)(1) The Governor shall prescribe the formula to be used in issuing substate allocations to substate grantees.

(2) The formula shall utilize the most appropriate information available to the Governor. In prescribing the formula, the Governor shall include (but need not be limited to) the following information:

(i) Insured unemployment data;

(ii) Unemployment concentrations;

(iii) Plant closing and mass layoff data;

(iv) Declining industries data;
(v) Farmer-rancher economic hardship data; and
(vi) Long-term unemployment data.
(3) The Governor may allow for an appropriate weight for each of the formula factors in paragraph (b)(2) of this section. The formula may be amended no more frequently than once each program year. The formula shall be used for substate allocations of "fifty-percent" funds under section 302(d) of the Act.
(c) The Governor may reserve an amount equal to not more than 40 percent of the funds allotted to the State under § 631.11 and § 631.12 of this part for State activities and for discretionary allocations to substate grantees (section 302(c)(1)).
(d) The Governor may reserve an additional amount equal to not more than 10 percent of the funds allotted to the State under § 631.11 of this part. The Governor shall allocate such funds subject to SJTCC review and comment, during the first three quarters of the program year among substate grantees on the basis of need. Such funds shall be allocated to substate grantees and shall not be used for statewide activities (sections 302(c)(2) and 317(1)(B)).

§ 631.23 State procedures for identifying funds subject to mandatory Federal reallotment.

The Governor shall establish procedures to assure the equitable identification of funds required to be reallocated pursuant to section 303(b) of the Act. Funds so identified may be funds provided to the State pursuant to section 302(c)(1) of the Act and/or to substate grantees pursuant to section 302 (c)(2) and/or (d) of the Act (section 303(d)). Such procedures may not exempt either State or substate funds from such consideration.

§ 631.24 Designation of substate areas.

(a) The Governor, after receiving recommendations from the SJTCC, shall designate substate areas for the State (section 312(a)).
(b) In designating substate areas, the Governor shall:
(1) Ensure that each service delivery area (SDA) within the State is included within a substate area and that no SDA is divided among two or more substate areas; and
(2) Consider the availability of services throughout the State, the capability to coordinate the delivery of services with other human services and economic development programs, and the geographic boundaries of labor market areas within the State.
(c) Subject to paragraph (b) of this section, the Governor shall designate as a substate area:
(1) Any single SDA that has a population of 200,000 or more;
(2) Any two or more contiguous SDAs that:
(i) In the aggregate have a population of 200,000 or more; and
(ii) Request such designation; and
(3) Any concentrated employment program grantee for a rural area described in section 101(a)(4)(A)(iii) of the Act.
(d) In addition to the entities identified in paragraph (c) of this section, the Governor may, without regard to the 200,000 population requirement, designate SDAs with smaller populations as substate areas.
(e) The Governor may deny a request for substate area designation from a consortium of two or more SDAs that meets the requirements of paragraph (9c)(2) of this section only upon a determination that the request is not consistent with the effective delivery of services to eligible dislocated workers in the relevant labor market area, or would otherwise be inappropriate. The Governor will give good faith consideration to all such requests by a consortium of SDAs to be a substate area. In denying a consortium's request for substate area designation, the Governor shall set forth the basis and rationale for the denial (section 312(a)(5)).
(f) In the case where the service delivery area is the State, the entire State will be designated as a single substate area.
(g)(1) Entities described in paragraphs (c) (1) and (3) of this section may appeal the Governor's denial of substate area designation to the Secretary of Labor. The procedures that apply to such appeals shall be those set forth at § 628.1 for appeals of the Governor's denial of SDA designation, except that in applying that section to this paragraph the words "service delivery area" and "SDA" shall read "substate area", and "section 101(a)(4)(A)" shall read "section 312(a)(4)", and "section 101" shall read "section 312".
(2) An entity described in paragraph (c)(2) of this section that has been denied substate area designation may utilize the State-level grievance procedures required by section 144(a) of the Act and § 629.52 of this chapter for the resolution of disputes arising from such a denial.
(h) Designation of substate areas shall not be revised more than once each two years. All such designations must be completed no later than four months prior to the beginning of any program year (section 312(a)(6)).

§ 631.25 Designation of substate grantees.

The Governor may establish procedures for the designation of substate grantees.
(a) Designation of the substate grantee for each substate area shall be made on a biennial basis.
(b) Entities eligible for designation as substate grantees include:
(1) Private industry councils in the substate area;
(2) Service delivery area grant recipients or administrative entities;
(3) Private non-profit organizations;
(4) Units of general local government in the substate area, or agencies thereof;
(5) Local offices of State agencies; and
(6) Other public agencies, such as community colleges and area vocational schools.
(c) Substate grantees shall be designated in accordance with an agreement among the Governor, the local elected official or officials of such area, and the private industry council or councils of such area. Whenever a substate area is represented by more than one such official or council, the respective officials and councils shall each designate representatives, in accordance with procedures established by the Governor (after consultation with the SJTCC), to negotiate such agreement.
(d) The agreement specified in paragraph (c) of this section shall set forth the conditions, considerations, and procedures that apply to the selection of substate grantees in accordance with section 312(b) of the Act.
(e) The Governor will negotiate in good faith with the parties identified in paragraph (c) of this section and shall make a good faith effort to reach agreement. In the event agreement cannot be reached on the selection of a substate grantee, the Governor shall select the substate grantee.
(f) Decisions under paragraphs (c), (d) and (e) of this section are not appealable to the Secretary (section 312(b) and (c)).

§ 631.26 Biennial State plan.

(a) In order to receive an allotment of funds under § 631.11 and § 631.12 of this part, the State shall submit to the Secretary, in accordance with instructions issued by the Secretary, on a biennial basis, a biennial State plan (section 311). Such plan shall include:
(1) Assurances that—(i) The State will comply with the requirements of Title III and this part;
(ii) Services will be provided only to eligible displaced workers, except as provided in paragraph (a)(2) of this section;
(iii) Services will not be denied on the basis of State of residence to eligible dislocated workers displaced by a permanent closure or substantial layoff within the State; and may be provided to other eligible dislocated workers regardless of the State of residence of such workers;
(2) Provision that the State will provide services under this part to displaced homemakers only if the Governor determines that the services may be provided to such workers without adversely affecting the delivery of services to eligible dislocated workers;
(3) A description of the substate allotment and reallotment procedures and assurance that they meet the requirements of the Act and this part;
(4) A description of the State procurement system and procedures to be used under Title III and this part; and
(5) Assurance that the State will not prescribe any performance standard which is inconsistent with § 629.46(d) of this chapter.
(b) The State biennial plan shall be submitted to the Secretary on or before the May 1 immediately preceding the first of the two program years for which the funds are to be made available.
(c) Any plan submitted under paragraph (a) of this section may be modified to describe changes in or additions to the programs and activities set forth in the plan. No plan modification shall be effective unless reviewed pursuant to paragraph (d) of this section and approved pursuant to paragraph (e) of this section.
(d) The Secretary shall review plans and plan modifications, including any comments thereon submitted by the SJTCC, for overall compliance with the provisions of the Act, this part, and the instructions issued by the Secretary.
(e) A plan or plan modification is submitted on the date of its receipt by the Secretary. The Secretary shall approve a plan or plan modification within 45 days of submission unless, within 30 days of submission, the Secretary notifies the Governor in writing of any deficiencies in such plan or plan modification.
(f) The Secretary shall not finally disapprove the plan or plan modification of any State except after written notice and an opportunity to request and to receive a hearing before an administrative law judge pursuant to the provisions of § 629.57(c) of this chapter.

§ 631.27 Coordination activities.

(a) Services under this part shall be integrated or coordinated with services and payments made available under Chapter 2 of Title II of the Trade Act of 1974 (and Part 617 of this chapter) and programs provided by any State or local agencies designated under section 239 of the Trade Act of 1974 or Part 617 of this chapter (section 311(b)(10)). Such coordination should be effected under provisions of an interagency agreement when the State agency responsible for administering programs under this part is different from the State agency administering Trade Act programs.
(b) States may use funds allotted under 631.11 and § 631.12 for coordination of worker readjustment programs, (*i.e.*, programs under this part and trade adjustment assistance under Part 617 of this chapter) and the unemployment compensation system consistent with the limitation on administrative expenses (see § 631.14(a)(1) of this part). Each State shall be responsible for coordinating the unemployment compensation system and worker readjustment programs (section 314(f)).
(c) Services under this part will be coordinated with dislocated worker services under Title III of the Carl D. Perkins Vocational Education Act.
(d) In promoting labor management cooperation, including the formation of labor-management committees under this part, the dislocated worker unit shall consider cooperation and coordination with labor management committees established under other authorities.

§ 631.28 State by-pass authority.

(a)(1) In the event that a substate grantee fails to submit a plan, or submits a plan which is not approved by the Governor (see § 631.50(f) of this part), the Governor may direct the expenditure of funds allocated to the substate area.
(2) The Governor's authority to expend funds remains in effect only until such time as a plan is submitted and approved, or a new substate grantee is designated. (section 313(c)).
(3) No determination may be made by the Governor under this paragraph (a) except after the affected substate grantee has been afforded advance written notice of the Governor's intent to exercise such authority and an opportunity to appeal to the Secretary pursuant to the provisions of § 628.5(b) of this chapter.
(b)(1) If a substate grantee fails to expend funds allocated to it in accordance with its plan, the Governor, subject to appropriate notice and opportunity for comment in the manner required by section 105(b) (1), (2), and (3) of the Act, may direct the expenditure of funds only in accordance with the substate plan.
(2) The Governor's authority to expend shall remain in effect only until:
(i) The substate grantee corrects the failure;
(ii) The substate grantee submits an acceptable modification; or
(iii) A new substate grantee is designated. (Sections 303(a) and 313(d)).
(3) No determination may be made by the Governor under this paragraph (b) except after the affected substate grantee has been afforded advance written notice of the Governor's intent to exercise such authority, and an opportunity to appeal to the Secretary pursuant to the provisions of § 628.5(c) of this chapter.
(c) When the substate area is the State, the Secretary shall have the same authority as the Governor under paragraphs (a) and (b) of this section.

Subpart E—Basic Programs

§ 631.40 State program operational plan.

(a) The Governor shall submit to the Secretary biennially, in accordance with instructions issued by the Secretary, a State program operational plan describing the specific activities, programs and projects to be undertaken with the "forty-percent" funds reserved by the Governor under § 631.32(c) of this part.
(b) The State program operational plan shall include a description of the mechanisms established between the Federal-State Unemployment Compensation System, the Trade Adjustment Assistance Program, and programs authorized under Title III of the Act and this part to coordinate the identification and referral of dislocated workers and the exchange of information.

§ 631.41 Allowable state activities.

(a) States may use "forty-percent" funds reserved under § 631.32(c) of this part, subject to the provisions of the State biennial and program operational plans, for:
(1) Rapid response assistance;
(2) Basic readjustment services when undertaken in Statewide, regional or industrywide projects, or initially, as part of rapid response assistance;
(3) Retraining services, including (but not limited to) those in section 314(d) of the Act when undertaken in Statewide, industrywide and regional programs;
(4) Coordination with the unemployment compensation system, in accordance with § 631.37(b) of this part;
(5) Discretionary allocation for basic readjustment and retraining services to

provide additional assistance to areas that experience substantial increases in the number of dislocated workers, to be expanded in accordance with the substate plan or modification thereof;

(6) Incentives to provide training of greater duration for those who require it; and

(7) Needs-related payments in accordance with section 315(b) of the Act.

(b) Activities should be coordinated with other programs serving dislocated workers, including training under Chapter 2 of Title II of the Trade Act of 1974 and Part 617 of this chapter.

(c) Where appropriate, State-level activities should be coordinated with activities and services provided by substate grantees.

(d) Retraining services provided to individuals with funds available to a State should be limited to those individuals who can most benefit from and are in need of such services.

(e) Other than basic and remedial education, literacy and English for non-English speakers training, retraining services provided with funds available to a substate area should be limited to those for occupations in demand in the area or another area to which the participant is willing to relocate, or in sectors of the economy with a high potential for sustained demand or growth.

(f) Services provided to displaced homemakers should be part of ongoing programs and activities under Title III and this part and not separate and discrete programs.

(g) The provisions of section 107 of the Act and § 629.34 of this chapter apply to State selection of service providers for "forty-percent" funds activities authorized in § 631.32(c) of this part.

Subpart F—Substate Programs

§ 631.20 Substate plan.

(a) In order to receive an allocation of funds under § 631.32 of this part, the substate grantee shall submit to the Governor a substate plan, in accordance with instructions issued by the Governor. Such plan shall meet the requirements of this section and must be approved by the Governor prior to funds being allocated to a substate grantee.

(b) The Governor shall issue instructions and schedules that assure that substate plans and plan modifications conform to all requirements of the Act and this part, and contain the statement required by section 313(b) of the Act.

(c) Substate plans shall provide for compliance with the cost limitation provisions of § 631.14 of this part.

(d) the SJTCC shall review and submit to the Governor written comments on substate plans.

(e) Prior to the submission of the substate plan to the Governor, the substate grantee shall submit the plan to the parties to the agreement described in § 631.35(c) of this part for review and comment (section 313(a)).

(f) The Governor's review and approval (or disapproval) of a substate plan or plan modification, and appeals to the Secretary from disapprovals thereof, shall be conducted according to the provisions of section 105 of the Act and § 628.5 of this chapter, except that in applying that section to this paragraph the words "SDA" and "PIC" shall read "substate grantee" and the phrase "job training plan" shall read "plan" (section 313(c)).

(g) If a substate grantee fails to meet the provisions for plan submission and approval found in this section, the Governor may exercise the by-pass authority set forth at § 631.38 of this part.

(h) When the substate area is the State, the substate plan (and any plan modification(s)) shall be submitted by the Governor to the Secretary. The dates for submission and consideration and the Secretary's review and approval (or disapproval) of the plan or plan modification, and appeals to administrative law judges from disapproval thereof, shall be conducted according to the provisions of § 628.8 of this chapter, except that in applying that section to this paragraph the word "SDA" shall read "substate grantee" and the phrase "job training plan" shall read "plan".

§ 631.21 Allowable substate program activities.

(a) The substate grantee may use seciton 302 (c)(1), (c)(2), and (d) funds allocated by the Governor under § 631.32 of this part for basic readjustment services, retraining services, supportive services and needs-related payments.

(b) The provisions of Part 629 of this chapter apply to funds allocated to substate grantees, as appropriate.

(c) Other than basic and remedial education, literacy and English for non-English speakers training, retraining services provided with funds available to a substate area should be limited to those for occupations in demand in the area or another area in which the participant is willing to relocate, or in sectors of the economy with a high potential for sustained demand or growth.

(d) Retraining services provided to individuals with funds available to a State should be limited to those individuals who can most benefit from and are in need of such services.

§ 631.22 Selection of service providers.

(a) The substate grantee shall provide authorized Title III services within the substate area, pursuant to an agreement with the Governor and in accordance with the approved State plan and substate plan, including the selection of service providers.

(b) The substate grantee may provide authorized Title III services directly or through contract, grant, or agreement with service providers (section 312(d)).

(c) Services provided to displaced homemakers should be part of ongoing programs and activities under Title III and this part and not separate and discrete programs.

(d) The provisions of section 107 of the Act and § 629.34 of this chapter apply to substate grantee selection of service providers as specified in this section.

§ 631.23 Certificates of continuing eligibility.

(a) A substate grantee may issue to any eligible dislocated worker who has applied for the program authorized in this part a certificate of continuing eligibility. Such a certificate of continuing eligibility:

(1) May be effective for periods not to exceed 104 weeks,

(2) Shall not include any reference to any specific amount of funds,

(3) Shall state that it is subject to the availability of funds at the time any such training services are to be provided, and

(4) Shall be non-transferable.

(b) Acceptance of a certificate of continuing eligibility shall not be deemed to be enrollment in training.

(c) Certificates of continuing eligibility may be used, subject to the conditions included on the face of the certificate, in two distinct ways:

(1) To defer the beginning of retraining. Any individual to whom a certificate of continuing eligibility has been issued under paragraph (a) of this section shall remain eligible for retraining and education services authorized under this part for the period specified in the certificate, notwithstanding the definition of "eligible dislocated worker" in section 301(a) of the Act or the participant eligibility provisions in § 631.3 of this part, any may use the certificate in order to receive retraining services, subject to the limitations contained in the certificate.

(2) To permit eligible dislocated workers to seek out and arrange their own retraining with service providers approved by the substate grantee. Retraining provided pursuant to the certificate shall be in accord with requirements and procedures established by the substate grantee and shall be conducted under a grant, contract, or other arrangement between the substate grantee and the service provider.

(d) Substate grantees shall ensure that records are maintained showing to whom such certificates have been issued, the dates of issuance, and the ultimate disposition of such certificates.

Subpart G—Federal Delivery of Dislocated Worker Services

§ 631.30 General.

Of the funds appropriated for Title III, 20 percent (less those amounts allotted in accordance with section 302(e) of the Act) shall be used for Federal responsibilities as described in Part B of Title III. Subject to the provisions of section 324 of the Act, the Secretary may reserve funds under this part for awards to entities submitting applications for such funds based upon selection criteria published by the Secretary. The Secretary may utilize reserve funds to provide additional assistance to states to assist the states in carrying out programs under this part.

§ 631.31 Application for funding and selection criteria.

To qualify for consideration for funds reserved by the Secretary for activities under section 323 of the Act, applications shall be submitted to the Secretary pursuant to instructions issued by the Secretary on an annual basis specifying application procedures, selection criteria, and approval process. Separate instructions will be issued for each category of grant awards, as determined be the Secretary.

Subpart H—Transition Provisions

§ 631.70 Special provisions for program startup.

(a) In order to provide for the transition from Title III activities as administered through PY 1988, the Governor may use a limited amount of funds allotted for PY 1988 to assist in implementing the new provisions through June 30, 1989, under the following conditions:

(1) Funds are expended to cover only the one-time costs associated with the transition such as: Reconstitution of the SJTCC; establishment of substate areas and substate grantees; establishment of the State dislocated worker unit; establishment of management systems; development of the State plan; and development of substate plans;

(2) Funds so expended will not be taken into account when computing compliance with the cost limitations at 20 CFR 631.13, 53 FR 4277 (February 12, 1988) or the matching requirements at 20 CFR 631.14, 53 FR 4277 (February 12, 1988); and

(3) Allowable costs are limited to salaries and benefits of staff for the time spent on implementing new systems and linkage arrangements and other direct costs associated with the transition.

(4) No funds included under paragraph (a)(2) of this section may be used for the purchase of equipment or computer hardware. (Section 6305 (b)).

(b) The Governor shall certify to the Secretary that the changes in the SJTCC's membership required by section 122, as amended by section 6304(b), have been accomplished no later than January 1, 1989.

(c) The initial Governor's "biennial" and "program operational" State plans developed pursuant to § 631.36 and § 631.40, respectively, of this part shall be for only one program year (PY 1989). These plans shall be modified to incorporate sections applicable for the subsequent biennial period (Program Years 1990–91).

Signed at Washington, DC, this 18th day of October, 1988.

Ann McLaughlin,

Secretary of Labor.

[FR Doc. 88-24456 Filed 10-21-88; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 904 and 941

[Docket No. R-88-1389; FR-2191]

Public Housing Development; Cost Containment

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: Section 6(b) of the United States Housing Act of 1937, which required the Secretary to establish prototype costs for the development of Public and Indian Housing, was repealed November 25, 1985. This final rule announces the Public Housing development cost containment policies to be applied by the Department in lieu of the repealed prototype costs.

DATES: *Effective:* Under section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)), this final rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the rule's publication. HUD will publish a notice of the effective date of this rule following expiration of the 30-session-day waiting period. Whether or not the statutory waiting period has expired, this rule will *not* become effective until HUD's separate notice is published announcing a specific effective date.

FOR FURTHER INFORMATION CONTACT: Raymond W. Hamilton, Director, Project Development Division, Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 426–0938. (This is not a toll-free number.).

SUPPLEMENTARY INFORMATION: The Department of Housing and Urban Development-Independent Agencies Appropriations Act, 1986 (Pub. L. 99–160, approved November 25, 1985) repealed section 6(b) of the United States Housing Act of 1937. Section 6(b) required the Secretary to establish prototype costs based on dwelling construction and equipment costs for the development of Public and Indian Housing. These prototype costs were used to limit costs associated with Public and Indian Housing development.

On September 24, 1986 (51 FR 33898), HUD published a statement announcing the Public Housing development cost containment policies to be applied as a replacement for the statutory prototype cost requirements. The policy statement announced that HUD would develop cost guidelines and would use these guidelines to limit total development cost (TDC) for Public Housing projects. The policy statement also described procedures under which a Public Housing Agency (PHA) may request revisions to the cost guidelines in a market area (or the establishment of a separate market area within an existing market area) and circumstances under which the Department will permit a specific project to exceed the total development cost limitation computed under the cost guidelines. Simultaneously with the publication of the policy statement, HUD published a notice of proposed rulemaking (NPR)(51 FR 33904). the NPR stated that HUD intended to use the policy statement as the basis for a final rule amending the cost containment provisions contained

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in 24 CFR Parts 904 and 941. The NPR invited public comment on the cost containment policies.

HUD received two public comments in response to the notice of proposed rulemaking. One, the Public Housing Agency of the City of Saint Paul, Minnesota, stated that the proposal will not encourage greater use of Public Housing development funds because it does not significantly differ from existing cost containment procedures based on prototype cost determinations. The commenter provided an item-by-item comparison of prototype costs and cost guidelines procedures and identified common elements of the two procedures.

We note that the item-by-item comparison ignored one of the most significant differences between the two procedures—*i.e.*, prototype costs were used to compute limitations on total development costs *and* limitations on dwelling construction and equipment (DC&E) costs. (DC&E costs are total development costs, excluding the cost of land, planning, PHA administrative expenses, demolition, site improvement and nondwelling facilities). The cost guidelines, on the other hand, impose no separate limitation on DC&E costs. Additionally, unlike the prototype costs, the cost guidelines can be waived when justified.

The second comment was submitted by the Norwalk, Connecticut Housing Authority. This commenter stated that HUD's costs containment policy will not permit the construction of quality units that will fit into existing neighborhoods and that do not stand out for lack of amenities. HUD disagrees. While HUD's cost containment policies are designed to promote economy, they also specifically permit the approval of costs at a level reasonable and necessary to develop modest, but well-designed, durable, safe and secure dwellings that can be economically maintained, that provide sufficient amenities to guarantee a healthy family life in a neighborhood environment and that provide for energy conservation. HUD does not believe that any revisions of the proposal are necessary in response to this comment.

The final rule includes two revisions to the proposed procedures. First, cost guidelines under the proposed procedures were based on dwelling construction and equipment cost. To impute the total development cost limitation, the guidelines were multiplied by a factor (160 percent for nonelevator projects or 145 percent for elevator projects). This final rule provides that guidelines will reflect total development cost (including the cost of land, demolition, site improvement, construction of nondwelling facilities, *etc.*). This change will eliminate the need to adjust the guidelines to impute total development cost and should increase the accuracy and utility of the total development cost limitation.

Second, under the proposed rule HUD could approve costs for specific projects in excess of the cost guidelines, or revise guidelines for a market area (or establish cost guidelines for a separate market area within an existing market area) if such actions were necessary to develop a project which provides for efficient design, durability, energy conservation, safety, security, economical maintenance and healthy family life in a neighborhood environment. While this standard will continue to be used when HUD determines whether costs in excess of the cost guidelines may be approved for a specific project, the procedures under the final rule have been revised to permit the interim revision of guidelines where "the actual cost of development within the market area (within the separate market area or within the separate market area) is higher than the most recently issued guidelines for the market area."

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10276, at the address listed above.

This proposal does not constitute a "major rule," as that term is defined in section 1(b) of Executive Order 12291 issued by the President on February 17, 1981. Analysis of the proposal indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under the Regulatory Flexibility Act (5 U.S.C. 601), the Undersigned hereby certifies that this final rules does not have a significant economic impact on a substantial number of small entities. Since the final rule will limit development costs for Public Housing projects, it may have an economic impact on builders or developers of Public Housing, some of whom may constitute small entities. However, HUD does not believe that a substantial number of small entities will be affected.

The information collection requirements contained in this final rule have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The OMB control number is 2577–0033.

This rule was listed as item 1934 in the Department's Semiannual Agenda of Regulations published April 25, 1988 (53 FR 13854, 13883) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance Program numbers and titles are 14.850—Public and Indian Housing (for Part 941) and 14.851—Low-Income Housing Homeownership Opportunities for Low Income Families (for Part 904).

List of subjects

24 CFR Part 904

Grant programs: housing and community development, Loan programs: housing and community development, Low and moderate income housing, Public housing, Homeownership.

24 CFR Part 941

Loan programs: Housing and community development, Public housing, Prototype costs, Cooperative agreements, Turnkey.

For the reasons set forth in the preamble, Title 24 of the Code of Federal Regulations is amended as follows:

PART 904—LOW RENT HOUSING HOMEOWNERSHIP OPPORTUNITIES

1. The authority citation for Part 904 continues to read as follows:

Authority: Secs. 3–7, 9–16, and 23, United States Housing Act of 1937 (42 U.S.C. 1437–1437e, 1437g–1437n, and 1437q); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Section 904.103(b) is revised to read as follows:

§ 904.103 Development.

* * * * *

(b) *Maximum total development cost.* The maximum total development cost stated in the ACC is the maximum amount authorized for development of a project and shall not exceed the amount approved in accordance with § 941.406(a) of this chapter.

* * * * *

PART 941—PUBLIC HOUSING DEVELOPMENT

3. The authority citation for Part 941 continues to read as follows:

Authority: Secs. 4, 5, and 9 of the United States Housing Act of 1937 (42 U.S.C. 1437b, 1437c, and 1437g), sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 941.203 [Amended]

4. In § 941.203, paragraph (c) is removed and paragraphs (d), (e), (f) and (g) are redesignated as paragraphs (c), (d), (e) and (f), respectively.

5. Section 941.204 is revised to read as follows:

§ 941.204 Cost guidelines.

(a) *General.* (1) HUD will establish cost guidelines to ensure that the cost of developing modest non-luxury Public Housing is reasonable. The guidelines will be used for the purpose of reserving funds for new Public Housing projects and, except as provided in § 941.406(a), will represent the maximum total development cost (TDC) that may be approved for a project.

(2) Cost guidelines represent HUD's determination of the current total development costs within a market area for modest, non-luxury Public Housing that is developed in conformity with the minimum property standards, local building codes and requirements, and the housing design and construction standards contained in this part. The cost guidelines are issued for specific unit sizes (*i.e.*, number of bedrooms) and structure types (*i.e.*, detached, semidetached, row, walkup, or elevator) in each market area. For the purposes of this part, market areas are those areas within which trade conditions and economic influences tend to make development costs substantially the same. Each cost guideline is developed with consideration being given to, among other things, the current cost of dwelling and non-dwelling construction and equipment, land, demolition, site improvements and PHA administrative costs.

(b) *Issuance of cost guidelines.* HUD will issue cost guidelines periodically (usually on an annual basis) by notice sent to Public Housing Agencies.

(c) *Interim revisions.* (1) A PHA or HUD field office may request revisions to cost guidelines established for a market area (or the establishment of a separate market area within an existing market area) before the issuance of the next regularly scheduled cost guidelines as described in paragraph (b) of this section. The request must be in the manner and form prescribed by HUD and must be based upon the actual costs to develop modest non-luxury Public Housing. The Assistant Secretary may issue revised guidelines for a market area (or establish a separate market area within an existing market area) if HUD determines that the evidence submitted clearly demonstrates that the actual cost of development within the market area (or within a separate market area within the existing market area) is higher than the most recently issued guidelines for the market area.

(2) HUD will issue with its cost guidelines, a description of the methodology used to compute the cost guidelines and a description of the documentation that must be submitted in support of a request for interim revisions.

6. Section 941.406(a) is revised to read as follows:

§ 941.406 Maximum development cost and advances.

(a) *Maximum total development cost (TDC).* The maximum total development cost (TDC) is calculated by multiplying the number of units for each bedroom size and structure type in the project times the applicable cost guidelines for the bedroom size and structure type and adding the resulting amounts for all units in the project.

(1) The total project cost that may be approved and reserved for a proposed project at the time of the initial reservation of funds may not exceed 100 percent of the maximum TDC based on the most recently issued cost guidelines.

(2)(i) After initial fund reservation and subject to the availability of funds:

(A) A Field Office may approve costs (which include any local donations) and reserve funds for a project up to 100 percent of the maximum TDC based on the most recently issued cost guidelines;

(B) The Regional Administrator may authorize the Field Office to approve costs (which include any local donations) and reserve funds for a project up to 105 percent of the maximum TDC based on the most recently issued cost guidelines; and

(C) The Assistant Secretary may authorize the Field Office to approve costs and reserve funds for a project above 105 percent of the maximum TDC based on the most recently issued cost guidelines.

(ii) The Reginal Administrator or Assistant Secretary, as appropriate, may approve increases under paragraph (a)(2)(i) of this section, if the costs are reasonable and necessary to develop a modest non-luxury project that provides for efficient design, durability, energy conservation, safety, security, economical maintenance, and healthy family life in a neighborhood environment.

(3) If project costs can not be brought within the approvable maximum TDC, the project must be submitted in the form and manner prescribed by HUD to the Headquarters Technical Review Panel. The panel will consider the extent to which cost reduction alternatives are possible to bring the project within the approvable TDC. If the project can not be brought within the approvable maximum TDC, the panel may recommend that the Assistant Secretary approve a higher TDC or terminate the project.

* * * * *

7. Section 941.502(b)(3) and (c)(4) is revised to read as follows:

§ 941.502 Project design and execution of contracts.

* * * * *

(b) * * *

(3) After the Field Office has approved the construction documents and construction cost estimates, the PHA shall advertise for bids. In order to approve execution of the construction contract, the Field Office shall determine that the low bid is responsive to the PHA invitation and will result in a total development cost that does not exceed the Field Office estimate of replacement cost or the maximum total development cost approvable by the Field Office under § 941.406(a).

* * * * *

(c) * * *

(4) In order to approve execution of the contract of sale, the Field Office shall determine that the developer's price does not exceed the Field Office estimate of replacement cost, or result in a maximum total devleopment cost in excess of that approvable by the Field Office under § 941.406(a).

* * * * *

Date: July 25, 1988.

Jacqueline Azmot,

Associate General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 88-24494 Filed 10-21-88; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56 and 57

Safety Standards for Loading, Hauling, and Dumping and Machinery and Equipment at Metal and Nonmetal Mines

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Stay of final rule provision.

SUMMARY: MSHA published a final rule for Safety Standards for Loading, Hauling, and Dumping and Machinery and Equipment at Metal and Nonmetal Mines on August 25, 1988 (53 FR 32496) to take effect October 24, 1988. After further Agency analysis and review of public comments MSHA has determined that the effective date of a portion of the berms or guardrails standard should be stayed.

DATES: The final rule takes effect October 24, 1988, except that the effective date of §§ 56.9300(d) and 57.9300(d) is stayed until further notice.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, Room 631, Ballston Towers No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203; phone (703) 235–1910.

SUPPLEMENTARY INFORMATION:

I. Introduction and Rulemaking Background

The final rule for Safety Standards for Loading, Hauling, and Dumping and Machinery and Equipment at Metal and Nonmetal Mines was published on August 25, 1988 (53 FR 32496) as a revised Subpart H—Loading, Hauling and Dumping and a revised Subpart M—Machinery and Equipment, of Parts 56 and 57 of Title 30 of the Code of Federal Regulations. The final rule, which is to be effective on October 24, 1988, represents an updating, revision and reorganization of the existing standards in these areas.

After reviewing the final rule in preparation for implementation, and analyzing comments received at public meetings held for the purpose of describing the application of the rule, the Agency has determined that paragraph (d) of §§ 56.9300 and 57.9300 does not appear to appropriately address MSHA goals and should be reconsidered by the Agency.

II. Stay of §§ 56.9300(d) and 57.9300(d)

Sections 56.9300 and 57.9300 of the final rule address the use of berms or guardrails on elevated roadways. A new paragraph (d) permits an alternative to berms or guardrails for elevated portions of infrequently traveled roadways used only by service or maintenance vehicles. It is the Agency's position that under these limited conditions, berms or guardrails should not be required if other safety precautions can provide at least the same degree of protection. Paragraph (d) of §§ 56.9300 and 57.9300 lists mandatory criteria that would assure the safety of miners using these roadways when berms or guardrails are not present. However, in light of its review and public comments received, MSHA is now reevaluating the appropriateness of the criteria. For example, paragraph (d)(3) of this section requires that reflectors be installed at 25-foot intervals along the perimeter of the elevated roadway. The Agency may reconsider the need to install reflectors along roadways at operations that do not use the roadways at night. The Agency is also reexamining the spacing of the reflectors along the roadways. Other aspects of paragraph (d) may also be reconsidered.

Therefore, the effective date of §§ 56.9300(d) and 57.9300(d) of the final rule is stayed until the Agency has completed its review of alternative provisions. The Agency anticipates completion of its review within one month and publication of a proposed rule as soon as possible thereafter. Petitions for modification granted under the prior standards, §§ 56.9022 and 57.9022, will remain in effect until the conclusion of the rulemaking.

Dated: October 19, 1988.

Roy L. Bernard,

Acting Deputy Assistant Secretary for Mine Safety and Health.

Accordingly, Subpart H, Part 56 and Subpart H, Part 57, Subchapter N, Chapter I, Title 30 of the Code of Federal Regulations is amended as follows:

PART 56—[AMENDED]

1. The authority citation for Part 56 continues to read as follows:

Authority: 30 U.S.C. 811.

§ 56.9300 [Stayed]

2. Section 56.9300(d) is stayed until further notice.

PART 57—[AMENDED]

3. The authority citation for Part 57 continues to read as follows:

Authority: 30 U.S.C. 811.

§ 57.9300 [Stayed]

4. Section 57.9300(d) is stayed until further notice.

[FR Doc. 88–24497 Filed 10–21–88; 8:45 am]

BILLING CODE 4510–43–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3465-8]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: EPA is approving the amended Iowa Chapters 22 and 23 which address EPA's revised stack height requirements. Revision of these regulations satisfies the requirements of Section 110 of the Clean Air Act, as amended. This action cures a deficiency in the Iowa State Implementation Plan (SIP).

DATE: This rulemaking is effective November 23, 1988.

ADDRESSES: Copies of the submittal are available for public inspection during normal business hours at:

Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101;
Public Information Reference Unit, Environmental Protection Agency, Library, 401 M Street SW., Washington, DC 20460
Iowa Department of Natural Resources, 900 East Grand, Des Moines, Iowa 50319

FOR FURTHER INFORMATION CONTACT: Robert J. Chanslor at (913) 236–2893; FTS 757–2893.

SUPPLEMENTARY INFORMATION: On September 3, 1987 (52 FR 33437), EPA published a proposed rulemaking pertaining to revised Iowa regulations affecting stack height credit for dispersion modeling purposes. The state's regulations are contained in its revised Chapters 22 and 23 regulations. The state's revised stack height regulations were adopted after EPA's stack height regulation promulgation of July 8, 1985 (50 FR 27892) to satisfy the requirements of Section 110 of the Clean Air Act, as amended.

Included in EPA's September 3, 1987 (52 FR 33437), proposed rulemaking was a proposal to approve the state's negative declaration with regard to a need to revise its sulfur dioxide emissions limit except for sources in the Muscatine, Iowa, area. The state also committed to an analysis of sources in the Muscatine area to determine what SO_2 emissions limits are appropriate for that area to assure attainment and maintenance of the SO_2 air quality standard. EPA is assisting the state in this endeavor.

The EPA's stack height regulations were challenged in *NRDC v. Thomas*, 838 F. 2d 1224 (DC Cir. 1988). On January 22, 1988, the U.S. Court of Appeals for the DC Circuit issued its decision affirming the regulations in large part, but remanding three provisions to the EPA for reconsideration. These are:

1. Grandfathering pre-October 11, 1983, within-formula stack height increases from demonstration requirements (40 CFR 51.100(kk)(2));
2. Dispersion credit for sources originally designated and constructed with merged or multiflue stacks (40 CFR 51.100(hh)(2)(ii)(A)); and
3. Grandfathering pre-1979 use of the refined H+1.5L formula (40 CFR 51.100(ii)(2)).

Although the EPA generally approves Iowa's stack height rules on the grounds that they satisfy 40 CFR Part 51, EPA also provides notice that this action may be subject to modification when EPA completes rulemaking to respond to the decision in *NRDC v. Thomas*, 838 F. 2d 1224 (DC Cir. 1988). If the EPA's response to the *NRDC* remand modifies the July 8, 1985, regulations, the EPA will notify the state of Iowa that its rules must be changed to comport with the EPA's modified requirements. This may result in revised emission limitations or may affect other actions taken by Iowa and source owners or operators.

On September 3, 1987 (52 FR 33437), EPA proposed approval of Iowa's negative declaration concerning a need to revise its SO_2 emission limit outside the Muscatine area. That proposed rule stated that Iowa and EPA are working together to develop an SO_2 emission limit for the Muscatine area. However, pursuant to the January 22, 1988, *NRDC* remand, EPA is deferring action on all Iowa sources because it appears that they may receive credit under one of the provisions remanded to EPA in *NRDC v. Thomas*, 838 F. 2d 1224 (DC Cir. 1988). Iowa and EPA will review these sources when the EPA completes rulemaking to respond to the *NRDC* remand.

The September 3, 1987, proposed rulemaking identified a deficiency in the Iowa stack height regulations concerning the definition of emission limitation or emission standard. That proposed rule cited a letter from the state which committed to revise the state's definition of emission standard before the end of September 1987. On October 21, 1987, the Iowa Department of Natural Resources submitted a revision of its definitions at 567–20.2(455B). The revision deletes "emission standard" and inserts "emission limitation and emission standard mean a requirement established by a state, local government, or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction." This definition is consistent with EPA's definition at 40 CFR 51.100(z). The Iowa Environmental Protection Commission adopted this defmition on September 22, 1987. The revision was published in the Iowa Administrative Bulletin on October 21, 1987. Today's action approves this revised definition.

EPA received no public comments on the September 3, 1987, proposed rulemaking.

Action: EPA approves the amended Iowa Chapters 22 and 23 pertaining to stack heights as published in the Iowa Administrative Bulletin on May 21, 1986. EPA approves the Iowa definition of "emission limitation or emission standard" included in Iowa regulation 567–20.2(455B).

The Office of Management and Budget has exempted this rulemaking from the requirements of Section 3 of Executive Order 12291.

Under Section 307(b)(1) of the Clean Air Act, as amended, judicial review of this action is available only by filing a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Particulate matter, and Sulfur oxides.

Note: Incorporation by reference of the SIP for the state of Iowa was approved by the Director of the Federal Register on July 1, 1982.

Dated: October 7, 1988.

Lee M. Thomas,

Administrator.

40 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

Subpart Q—Iowa

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642

2. Section 52.820 is amended by adding paragraph (c)(47) to read as follows:

§ 52.820 Identification of plan.

* * * * * *

(c) * * *

(47) Revised Chapters 22 and 23 regulations pertaining to stack height credits for modeling purposes were submitted on May 20, 1986, by the Iowa Department of Natural Resources. Revised definition of "emission limitation" and "emission standard" at Iowa regulation 567.20.2(455B), Definitions.

(i) Incorporation by reference

(A) Iowa Administrative Bulletin (ARC 6566), amendments to Chapter 22, "Controlling Pollution" and Chapter 23, "Emission Standards for Contaminants" adopted by the Iowa Environmental Protection Commission on April 22, 1986, effective June 25, 1986.

(B) Iowa Administrative Bulletin (ARC 8023) amendment to 567–20.2(455B). Effective September 22, 1987.

[FR Doc. 88–24304 Filed 10–21–88; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 148

[FRL-3425-4]

Underground Injection Control Program: Hazardous Waste Disposal Injection Restrictions; Phase Two; California List and Certain "First Third" Wastes; Correction

AGENCY: Environmental Protection Agency.

ACTION: Final rule; correction.

SUMMARY: EPA is correcting an error in the final rule establishing effective dates prohibiting the injection of California list wastes (as defined by section 3004(d) of the Resource Conservation and Recovery Act or RCRA), as well as certain wastes prohibited under section 3004(g) of RCRA. These rules were published in the Federal Register on August 16, 1988 (53 FR 30908 *et seq.*).

FOR FURTHER INFORMATION CONTACT: John Atcheson, Office of Drinking Water (WH–550), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–5508.

EFFECTIVE DATE: August 8, 1988.

SUPPLEMENTARY INFORMATION: On August 16, 1988, the Agency promulgated rules establishing effective dates prohibiting the land disposal by injection of California list wastes and certain "First Third" wastes (i.e., wastes covered by section 3004(g) of RCRA and prohibited from land disposal on August 8, 1988—the first of three deadlines prohibiting land disposal established under that section of the law).

In the preamble and regulatory language of the proposal to the rule (see 53 FR 14882 *et seq.*) and the preamble to the final rule, the Agency clearly stated that pursuant to section 3004(h) of RCRA, metals, cyanides, and chromium would receive a two-year capacity variance based on lack of alternative capacity. In both the proposal and final rule, the EPA presented extensive data demonstrating that such capacity was not available.

When promulgating the effective date for these and other California list wastes in § 148.12(b) the Agency cross-referenced § 268.32. Section 268.32 does not, however, address metals, chromium, or cyanides and as a result the regulatory language in § 148.12(b) is incomplete. EPA is, therefore, issuing a technical amendment to § 148.12(b) which would clarify that a two-year capacity variance has been granted to all injected wastes covered under section 3004(d) of RCRA, except liquid hazardous waste containing polychlorinated biphenyls at concentrations equal to or exceeding 50 ppm and hazardous waste containing halogenated organic compounds (HOCs) at concentrations equal to or greater than 10,000 mg/kg. These latter wastes were prohibited from disposal in injection wells on August 8, 1988, while the remaining California list wastes will be prohibited on August 8, 1990.

List of Subjects in 40 CFR Part 148

Administrative practice and procedure, Confidential business information, Environmental protection, Hazardous materials, Hazardous materials transportation, Hazardous waste, Intergovermental relations, Reporting and recordkeeping requirements, Waste treatment and disposal, Water supply, Water pollution control.

Dated: October 11, 1988.

Rebecca W. Hanmer,

Acting Assistant Administrator for Water.

The following correction is made in FRL–3420–7, Underground Injection Control Program; Hazardous Waste Disposal Injection Restrictions, Phase Two; California List and Certain "First Third" Wastes, published in the **Federal Register** on August 10, 1988 (53 FR 30303).

PART 148—[AMENDED]

1. The authority citation for Part 148 continues to read as follows:

Authority: Section 3004, Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*

2. § 148.12(b) is revised to read as follows:

§ 148.12 Waste specific prohibitions—California list wastes.

* * * * *

(b) Effective August 8, 1990, the following hazardous wastes are prohibited from underground injection:

(1) Liquid hazardous wastes, including free liquids associated with any solid or sludge, containing free cyanides at concentrations greater than or equal to 1,000 mg/l;

(2) Liquid hazardous wastes, including free liquids associated with any solid or sludge, containing the following metals (or elements) or compounds of these metals (or elements) at concentrations greater than or equal to those specified below:

(i) Arsenic and/or compounds (as As) 500 mg/l;

(ii) Cadmium and/or compounds (as Cd) 100 mg/l;

(iii) Chromium (VI) and/or compounds (as Cr VI) 500 mg/l;

(iv) Lead and/or compounds (as Pb) 500 mg/l;

(v) Mercury and/or compounds (as Hg) 20 mg/l;

(vi) Nickel and/or compounds (as Ni) 134 mg/l;

(vii) Selenium and/or compounds (as Se) 100 mg/l; and

(viii) Thallium and/or compounds (as Tl) 130 mg/l;

(3) Liquid hazardous waste having a pH less than or equal to two (2.0); and

(4) Hazardous wastes containing halogenated organic compounds in total concentration less than 10,000 mg/kg but greater than or equal to 1,000 mg/kg.

* * * * *

[FR Doc. 88–24347 Filed 10–21–88; 8:45 am]

BILLING CODE 6560–50–M

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1d

Rural Labor; Immigration Reform and Control Act of 1986

AGENCY: Office of the Secretary, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend 7 CFR Part 1d, which defines fruits, vegetables, and other perishable commodities as prescribed by section 302(a) of the Immigration Reform and Control Act of 1986, Pub. L. No. 99–603, 100 Stat. 3359 (hereinafter referred to as "the Act"). This proposed rule will assist the Immigration and Naturalization Service in determining the special agricultural workers to be admitted into the United States for temporary residence.

DATE: To be considered, comments must be received no later than November 23, 1988.

ADDRESS: Send comments to Al French, Special Assistant for Agricultural Labor to the Assistant Secretary for Economics, Room 227–E, Administration Building, United States Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC 20250. Written comments received may be inspected in Room 227–E of the Administration Building, 8:00 a.m. to 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Al French, Special Assistant for Agricultural Labor to the Assistant Secretary for Economics, Room 227–E, Administration Building, United States Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC 20250, telephone (202) 447–4737.

SUPPLEMENTARY INFORMATION:

Background

Section 302(a) of the Act directed the Secretary of Agriculture to publish regulations defining the fruits, the vegetables, and the other perishable commodities in which field work related to planting, cultural practices, cultivating, growing, and harvesting will be considered "seasonal agricultural services." On June 1, 1987, the United States Department of Agriculture (USDA) published its final rule (52 FR 20372), including the determination that seed for propagation was not a fruit, vegetable, or other perishable commodity within the meaning of the Act. This proposed rule redefines seed as it applies to lettuce seed.

Lettuce Seed

Section 1d.5 of the rule defined "fruits" to mean "the human edible parts of plants which consist of the mature ovaries and fused other parts or structures, which develop from flowers or inflorescence." 52 FR 20372 (June 1, 1987). Section 1d.10 defined vegetables to mean "the human edible herbaceous leaves, stems, roots or tubers of plants, which are eaten, either cooked or raw, chiefly as the principal part of a meal, rather than a dessert." 53 FR 31630 (August 19, 1988). Section 1d.7 of the rule defined "other perishable commodities" to mean "those commodities which do not meet the definition of fruits or vegetables, that are produced as a result of seasonal field work, and have critical and unpredictable labor demands." Section 1d.3 of the rule defined "critical and unpredictable labor demands" to mean "that the period during which field work is to be initiated cannot be predicted with any certainty 60 days in advance of need." In the Supplementary Information portion of the proposed rule, USDA explained that "critical and unpredictable labor demands" was defined to make it clear that the use of alien workers is predicated upon circumstances which create the critical, yet unpredictable demand for a labor force on short notice. 52 FR 13247 (April 22, 1987).

Since seed for propagation is not a human edible commodity, it does not fit within the meaning of either "fruits" or "vegetables." However, human edible seeds, such as sunflower seed, do fit within the definition of "fruits." The rule did not recognize seed for propagation as a commodity that was either included or excluded as an "other perishable commodity." In the Supplementary Information portion of the final rule, it was stated that several comments had been received as to various seed crops but that "[n]one of the comments was so specific or informative as to present a convincing case that any of these seed crops meet the standards for criticality or unpredictability which we have deemed necessary to measure the inclusion or exclusion of any commodity as perishable." 52 FR 20375 (June 1, 1987). However, upon request and the submission of appropriate information and explanation, we have considered the labor requirements of lettuce seed production and determined that it meets the requisite standard of critical and unpredictable labor demands necessary for inclusion as an "other perishable commodity."

The production of lettuce seed requires all of the activities necessary for the production of human edible lettuce plus additional critical and unpredictable labor demands regarding field work with respect to the harvesting and drying of the seed. Lettuce for seed is planted as seed or small transplants. Irrigation is required for germination and growth. The plants must be thinned and weeded. The heads of the lettuce are removed so that the plants will branch out and ultimately produce seed. All of these activities require field work performed by manual laborers. The timing of the deheading is very critical and unpredictable as the farmer must determine when the heads are at proper maturity and this cannot be forecast with any degree of certainty 60 days in advance. If the deheading is done too early, it must be done again; if several days too late, the plants will not produce seeds that will germinate. At the proper time, the plants are cut from their roots and laid upon canvas to dry. During the drying operation, they must be turned two to three times a day. After drying, the plants are beaten to release the seed, which is then collected on the canvas. Alternatively, some lettuce seed is harvested by shaking the seed into buckets and then putting the seed out to dry. In either case, field work by manual laborers must be performed to harvest the seed within a few days of proper maturity. If harvested too late, the germination of the seed is substantially reduced; if harvested too early, the seed is too immature. The timing of the harvest is unpredictable due to changing climatic conditions and cannot be

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forecast with any degree of certainty 60 days in advance.

After consideration of the field work required in the planting, cultural practices, cultivation, growing, and harvesting of lettuce seed, USDA has determined that the production of lettuce seed entails critical and unpredictable labor demands and that it should be included as another perishable commodity.

Regulatory Impact

The Assistant Secretary for Economics has reviewed this proposed rule in accordance with Executive Order No. 12291 and has determined that it is not a major rule. Under the framework of the Act, the Immigration and Naturalization Service (INS) will use this proposed rule to assist it in determining which special agricultural workers will be admitted into the United States for temporary residence. Thus, the primary benefits of this proposed rule are internal to the operation of the United States government.

This action, in and of itself, will not have a significant effect on the economy and will not result in a major increase in costs or prices for consumers, individuals, Federal, state, or local government agencies, or geographic regions; or have a significant effect on competition, employment, investment, productivity, innovation, or the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

This proposed rule determines whether lettuce seed meets the definition of "other perishable commodities" for purposes of clarifying the term "seasonal agricultural services" as it relates to lettuce seed. The proposed rule does not contain any compliance or reporting requirements, or any timetables. The proposed rule will assist the INS in determining the special agricultural workers to be admitted for temporary residence. Thus, the proposed rule, in and of itself, will have no significant effect upon small entities.

Paperwork Reduction Act

This proposed rule does not require additional procedures or paperwork not already required by law. Therefore, the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3502, et seq.) are inapplicable.

National Environmental Policy Act

This proposed rule will not have an impact upon the environment.

List of Subjects in 7 CFR Part 1d

Immigration, Rural labor.

Accordingly, it is proposed to amend Part 1d—Rural Labor—Immigration Reform and Control Act of 1986—Definitions, as follows:

PART 1d—[AMENDED]

1. The authority citation for Part 1d continues to read as follows:

Authority: 8 U.S.C. 1160

2. Section 1d.7 is revised to read as follows:

§ 1d.7 Other perishable commodities.

"Other perishable commodities" means those commodities which do not meet the definition of fruits or vegetables, that are produced as a result of field work, and have critical and unpredictable labor demands. This is limited to Christmas trees, cut flowers, herbs, hops, horticultural specialties, lettuce seed, spanish reeds (arundo donax), spices, sugar beets, and tobacco. This is an exclusive list, and anything not listed is excluded. Examples of commodities that are not included as perishable commodities are animal aquacultural products, birds, dairy products, earthworms, fish including oysters and shellfish, forest products, fur bearing animals and rabbits, hay and other forage and silage, honey, horses and other equines, livestock of all kinds including animal specialties, poultry and poultry products, sod, sugar cane, wildlife, and wool.

Done at Washington DC, this 18th day of October 1988.

Richard E. Lyng,

Secretary of Agriculture.

[FR Doc. 88-24477 Filed 10-21-88; 8:45 am]

BILLING CODE 3410-01-M

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 87-168]

Importation of Okra From the Dominican Republic

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to allow okra produced in the Dominican Republic to be entered into the United States without treatment for the pink bollworm, with certain restrictions on the areas into which it may be moved. Under this proposal, the untreated okra could be moved into any area of the United States except: (1) California, during March 16 through December 31, inclusive; and (2) Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Nevada, North Carolina, South Carolina, Tennessee, or any part of Illinois, Kentucky, Missouri, or Virginia south of the 38th parallel, during May 16 through November 30, inclusive. Under these conditions, the okra would not present a pest risk because the areas into which the okra could be moved are either already generally infested with the pink bollworm or would not have the host material to sustain an infestation. This action would relieve unnecessary restrictions on the importation of okra produced in the Dominican Republic.

DATE: Consideration will be given only to comments postmarked or received on or before December 23, 1988.

ADDRESSES: Send an original and three copies of written comments to Regulatory Analysis and Development, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Rd., Hyattsville, MD 20782. Please state that your comments refer to Docket No. 87-168. Comments received may be inspected a USDA, 14th and Independence Avenue SW., Room 1141 South Bldg., between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Frank Cooper, Senior Operations Officer, Import Unit, PPQ, APHIS, USDA, Room 667, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; 301-436-8248.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 319.56 prohibit or restrict the importation of certain fruits and vegetables, as well as plants and portions of plants used as packing materials, into the United States because of the risk that they could introduce injurious insects.

Okra produced in the Dominican Republic presents a risk of introducing the pink bollworm (*Pectinophora gossypiella* (Saunders)). The pink bollworm is one of the most serious pests of cotton. Pink bollworms can cause extensive damage to cotton by feeding inside the squares and bolls. Okra is probably the preferred host after cotton.

Under § 319.56-2p (referred to below as the regulations), okra from the Dominican Republic may be imported into the United States without restriction as to destination only if it is treated for the pink bollworm. Treatment consists of fumigation with methyl bromide. Okra produced in the Dominican Republic may be entered into the United States without treatment for the pink bollworm only if the okra is entered into the United States through a North Atlantic port with approved treatment facilities and is destined to Alaska, Colorado, Connecticut, Delaware, Hawaii, Idaho, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Washington, West Virginia, Wisconsin, Wyoming, or the District of Columbia, or any part of Illinois, Kentucky, Missouri, or Virginia that is north of the 38th parallel.

We are proposing to allow okra produced in the Dominican Republic to be moved into additional areas of the United States without treatment for the pink bollworm under certain geographic and seasonal restrictions, which are discussed below. Under these conditions, the untreated okra would not present a risk of introducing the pink bollworm into the United States because the areas into which it could be moved are either already generally infested with the pink bollworm or would not have the host material to sustain an infestation.

This proposal would allow okra produced in the Domincan Republic to be entered into the United States under the same conditions as okra produced in Mexico. It is based not only on an assessment of the risk associated with pink bollworm, but also on a determination that the untreated okra would not present a significant risk introducing other injurious insects if allowed to move into the United States as specified. This determination is based on an assessment of the overall pest risk associated with okra produced in the Dominican Republic. The current regulations concerning okra from Mexico also are based on an assessment of the pest risk associated with okra produced in that country. These assessments consisted of a survey of scientific literature and a review of pest interception reports related to okra produced in those countries.

We are not prepared at this time to propose similar revisions in the regulations for importing okra from other countries because we do not have adequate information on the pest risk associated with okra produced in these countries. Pest risk assessments are conducted for specific fruits and vegetables from specific countries as necessary to satisfy requests from importers. Broader studies are not possible because of manpower and budgetary constraints. However, pest risk assessments concerning okra produced in other countries could be initiated if warranted by requests to import the okra under conditions such as we are now proposing for okra produced in the Dominican Republic. If it appeared that okra produced in other countries could be safely imported under these conditions, we would consider amending the regulations to allow the requested importations.

Arizona, New Mexico, Oklahoma, and Texas

In the continental United States, the pink bollworm is firmly established in the southwestern states of Arizona, New Mexico, Oklahoma, and Texas, which are part of the Cotton Belt. These states are under fedeal quarantine (7 CFR 301.52) to prevent the spread of the pink bollworm into noninfested areas of the United States. However, the extent of the pink bollworm infestation in these states makes an eradication program there impracticable. Under these circumstances, the pink bollworm would present no new pest risk, during any time of the year, if it were carried into these states in okra from the Dominican Republic. Therefore, we are proposing to allow okra produced in the Dominican Republic to be moved into Arizona, New Mexico, Oklahoma, and Texas, without treatment for the pink bollworm during and time of the year.

Nevada, California, and the Southeastern United States

Host plants of the pink bollworm are grown in Nevada, California and the southeastern states of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and parts of Illinois, Kentucky, Missouri, and Virginia south of the 38th parallel. The regulations require that okra from the Dominican Republic be treated for the pink bollworm if destined for these areas to prevent the introduction of the pink bollworm. However, host plants of the pink bollworm are grown in Nevada, California, and the southeastern United States only during certain times of the year. Moreover, during the growing season, the suitability of host plants as a food source for pink bollworm depends, in part, on the stage of development of the plant. If pink bollworm were introduced into these areas when host plants were unavailable or unsuitable as a food source, the pest would not survive.

Based on the growing season of pink bollworm host plants in the southeastern states and Nevada, we have determined that the host material necessary to sustain an infestation of the pink bollworm is present only during May 16 throughout November 30, inclusive. Based on the somewhat longer growing season of host plants in California, we have determined that the host material necessary to sustain an infestation of the pink bollworm is present in that state only during March 16 through December 31, inclusive.

Therefore, we are proposing to allow okra produced in the Dominican Republic to be moved into California, without treatment for the pink bollworm, except during March 16 through December 31, inclusive. Also, we are proposing to allow okra produced in the Dominican Republic to be moved into Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Nevada, North Carolina, South Carolina, Tennessee, or any part of Illinois, Kentucky, Missouri, or Virginia south of the 38th parallel, without treatment for the pink bollworm, except during May 16 through November 30, inclusive.

Miscellaneous

We propose to add five definitions as follows:

"Enter into the United States": To introduce into the commerce of the United States after release from government detention.

"Import into the United States": To bring within the territorial limits of the United States.

"Port of arrival": The first place at which a carrier containing okra stops to unload cargo after coming within the territorial limits of the United States.

"Permit": A document issued for an article by Plant Protection and Quarantine, Animal and Plant Health Inspection Service, United States Department of Agriculture, stating that the article is eligible for importation into the United States.

"United States": The several states of the United States, the District of Columbia, the Northern Mariana Islands, Puerto Rico, and all territories and possessions of the United States."

Where now the regulations allow the "entry" of okra into the United States if it is "destined to" certain areas of the United States, we propose to allow the "entry" of okra into the United States if, among other things, it is not moved into certain areas of the United States. We also propose to replace the term "port of entry" with "port of arrival." These changes appear necessary to clarify geographical restrictions on the movement of okra into and within the United States. Allowing "entry" of okra if it is "destined to" certain areas, and

prescribing certain "ports of entry" may give the impression that okra subject to the regulations may arrive in the United States at any point and transit any area of the country as long as it is entered into the commerce of the United States at certain ports or in certain geographical areas and is destined for particular areas of the United States. This is not the case because the okra would present a risk of introducing pink bollworm if moved without treatment into certain areas of the United States at certain times of the year. Moreover, to reduce the risk of okra introducing pink bollworm or other injurious insects, we propose to specify that the okra must be presented for inspection at the port of arrival (defined as proposed above).

We propose to revise the provision concerning treatment of okra for pests other than the pink bollworm. This provision is contained in § 319.56–2p(c)(6), (d)(2), and (e), but wording differences in the three paragraphs may cause confusion. Paragraph (d)(2) provides that okra is "subject to fumigation requirements if any plant pests of quarantine significance, in the judgment of the inspector, other than pink bollworm are found upon port of entry inspection * * *" In paragraphs (c)(6) and (e), however, the phrase, "other than pink bollworm" does not appear. Because of this omission, paragraphs (c)(6) and (e) could be construed to mean that the okra would be subject to fumigation for pink bollworm if that pest were found upon inspection at the port of entry. For reasons explained earlier, okra that qualifies for entry without treatment for the pink bollworm does not have to be fumigated for pink bollworm, even if pink bollworm is found upon inspection of the okra. Our proposed revision would clarify that we are concerned with pests of quarantine significance other than the pink bollworm, and that by "pests of quarantine significance" we mean injurious insects that do not exist in the United States or are not widespread in the United States. Our proposed revision also would clarify that if any of these injurious insects are found, the okra would remain eligible for entry into the United States only if treated for the insects in accordance with the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference into the Code of Federal Regulations.

We are also making nonsubstantive, editorial changes to make the regulations easier to understand.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule would allow okra produced in the Dominican Republic to be moved into Arizona, New Mexico, Oklahoma, and Texas at any time of the year without treatment for the pink bollworm. It also would allow okra produced in the Dominican Republic to be moved into California, Nevada, and the Southeastern United States without treatment for the pink bollworm at certain times of the year. Identical provisions are in effect for okra from Mexico, making Mexico the only current source of untreated, imported okra for these states. Importers prefer untreated okra since treatment delays entry of the okra, shortens shelf life, and adds to the costs of importation.

If this proposed rule is adopted, the proximity of the Dominican Republic to the Southeastern United States could give importers in these states a convenient second source of untreated okra during the late fall, winter, and early spring. However, we know of only one entity interested in importing okra produced in the Dominican Republic into the United States without treatment for the pink bollworm. Importers in Arizona, New Mexico, Oklahoma, Texas, California, and Nevada would probably continue to buy most of their okra from Mexico. We do not expect that adoption of the proposed rule would affect the total amount of okra imported into the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR 3015, Subpart V.)

List of Subjects in 7 CFR Part 319

Agricultural commodities, Imports, Incorporation by reference, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

PART 319—FOREIGN QUARANTINE NOTICES

Accordingly, we propose to amend 7 CFR Part 319 as follows:

1. The authority citation for Part 319 would continue to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 319.56–2p, paragraph (a)(3) would be revised by removing "and" before "(ii)", removing the period after "Agriculture" and adding in its place a semicolon; and adding five definitions to read as follows:

§ 319.56–p [Amended]

(a) * * *

(3) * * * Agriculture; (iii) "Enter into the United States" means to introduce into the commerce of the United States after release from government detention; (iv) "Import into the United States" means to bring within the territorial limits of the United States; (v) "Port of arrival" means the first place at which a carrier containing okra stops to unload cargo after coming within the territorial limits of the United States; (vi) "Permit" means a document issued for an article by Plant Protection and Quarantine, Animal and Plant Health Inspection Service, United States Department of Agriculture, stating that the article is eligible for importation into the United States; and (vii) "United States" means the several states of the United States, the District of Columbia, the Northern Mariana Islands, Puerto Rico, and all other territories and possessions of the United States."

* * * * *

3. In § 319.56–2p, paragraph (b)(1), the phrase "(Pectinophoragossypiella (Saund.)" would be revised to read "(*Pectinophora gossypiella* (Saunders)".

4. In § 319.56–2p, paragraph (b)(6), "as a condition of importation will be limited to entry" would be revised to read "for the pink bollworm may be imported into the United States only"; and "as a condition of importation will be enterable" would be revised to read "for the pink bollworm may be imported into the United States".

5. In § 319.56–2p, paragraph (c) would be revised to read as follows:

* * * * *

(c) *Importations of okra without treatment from Mexico and the Dominican Republic.* Okra produced in Mexico or the Dominican Republic may be entered into the United States without treatment for the pink bollworm only if:

(1) The okra is imported from the Dominican Republic or Mexico under permit;

(2) The okra is made available for examination by an inspector at the port of arival and remains at the port of arrival until released by an inspector;

(3) During March 16 through December 31, inclusive, the okra is not moved into California; and

(4) During May 16 through November 30, inclusive, the okra is not moved into Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Nevada, North Carolina, South Carolina, Tennessee, or any part of Illinois, Kentucky, Missouri, or Virginia south of the 38th parallel.

* * * * *

6. In § 319.56–2p, paragraph (d), the paragraph designation "(1)" would be removed; "may enter" would be revised to read "may be imported into"; "port of entry" would be revised to read "port arrival; "fumigation" would be revised to read "treatment"; "except as provided in paragraph (d)(2) of this section" would be revised to read "for the pink bollworm"; and paragraph (d)(2) would be removed.

7. In § 319.56–2p, paragraph (e), "may enter" would be revised to read "may be imported into"; "fumigation" would be revised to read "treatment"; "port of entry" would be revised to read "port of arrival"; and the last sentence would be removed.

8. In § 319.56–2p, a new paragraph (f) would be added to read as follows:

* * * * *

(f) *Treatment of okra for pests other than pink bollworm.* If, upon examination of okra imported in accordance with paragraphs (c), (d), or (e) of this section, an inspector at the port of arrival finds injurious insects, other than the pink bollworm, that do not exist in the United States or are not widespread in the United States, the okra will remain eligible for entry into the United States only if it is treated for the injurious insects in the physical presence of an inspector in accordance with the Plant Protection and Quarantine Treatment Manual. The Plant Protection and Quarantine Treatment Manual is incorporated by reference. See § 300.1 of this chapter, "Materials incorporated by reference." If the treatment authorized by the Plant Protection and Quarantine Treatment Manual is not available, or if no authorized treatment exists, the okra may not be entered into the United States.

Done in Washington, DC this 19th day of October, 1988.

Lary B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–24480 Filed 10–21–88; 8:45 am]

BILLING CODE 3410–34–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Flow Control Conditions for the Standby Liquid Control System in Boiling Water Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The NRC is proposing to amend its regulations concerning the flow control conditions for the standby liquid control system in a boiling water reactor. The proposed rule would set forth conditions and considerations for determining the reactivity control capacity of a BWR standby liquid control system. The proposed changes are necessary to clarify the existing regulation.

DATE: Comment period expires December 23, 1988. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to those comments received on or before this date.

ADDRESSES: Mail written comments to the Secretary: U.S. Nuclear Regulatory Commission, Washington, DC 20555; ATTN: Docketing and Service Branch. Deliver comments to 11555 Rockville Pike, Rockville, MD between 7:30 a.m. and 4:15 p.m. weekdays. Copies of comment received may be examined at the NRC Public Document Room (PDR) at 2120 L Street NW., Washington, DC, lower level.

FOR FURTHER INFORMATION CONTACT: William R. Pearson, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492–3764.

SUPPLEMENTARY INFORMATION: On June 26, 1984, the Commission published in the **Federal Register** (49 FR 26036) a final rule entitled "Reduction of Risk from Anticipated Transients Without Scram (ATWS) Events for Light-Water-Cooled Nuclear Power Plants," which revised the regulations in 10 CFR Part 50. The final rule required, at § 50.62(c)(4), that boiling water reactors have a standby liquid control system (SLCS) with a minimum flow rate and boron content equivalent in [reactivity] control capacity to 86 gallons per minute (gpm) of 13 weight percent of sodium pentaborate solution. The rule did not specify the size of the reactor pressure vessel (RPV) into which this solution should be injected. Questions have been raised, especially from licensees with a smaller RPV, concerning the interpretation of the phrase, "equivalent in control capacity." On January 28, 1985, a generic letter that provided clarification of this phrase was issued to appropriate licensees (PDR accession number 8501290633). This letter provided the basis for the flow rate and weight percent of sodium pentaborate decahydrate and described how equivalency could be achieved for a smaller RPV. The staff considers the contents of this letter, which were derived from the underlying materials considered when the rule was developed, to be technically correct. The letter is applicable to BWRs with (1) volume of water in the suppression pool per megawatt of core power ratios, (2) reactivity control systems, and (3) core designs similar to currently licensed BWR/1–6 designs. The language used in the existing rule is unclear and subject to differing interpretations. The staff proposes to clarify the language to more precisely reflect the underlying technical bases.

The standby liquid control system (SLCS) is designed to meet the requirements of general design criterion (GDC) number 26 of Appendix A to Part 50. GDC 26 states, "Two independent reactivity control systems of different design principles shall be provided. One of the systems shall use control rods, preferably including a positive means for inserting the rods, and shall be capable of reliably controlling reactivity changes to assure that under conditions of normal operation, including anticipated operational occurrences, and with appropriate margins for malfunctions such as stuck rods, specified acceptable fuel design limits are not exceeded. The second reactivity control system shall be capable of reliably controlling the rate of reactivity changes resulting from planned, normal

power changes (including xenon burnout) to assure acceptable fuel design limits are not exceeded. One of the systems shall be capable of holding the reactor core subcritical under cold conditions." In the case of a boiling water reactor, the second reactivity control system is the SLCS. In addition, the SLCS is used to reduce risk from ATWS.

The SLCS consists of a tank containing the sodium pentaborate decahydrate solution, two pumps, control instrumentation, appropriate piping, and means for testing the system without injecting the borate solution into the RPV. Sodium pentaborate decahydrate ($Na_2B_{10}O_{16}10H_2O$) solution is prepared from a mixture of borax and boric acid dissolved in water. The solution nominally is a 13 weight percent solution of sodium pentaborate decahydrate in which the boron-10 isotope is at natural abundance (about 19.78%). A description of the SLCS and its functions is given in the General Electric Co. document NEDO–24222 (80 NEDO 21, Class I, February 1981), entitled "Assessment of BWR Mitigation of ATWS, Volume I (NUREG–0406, Alternate No. 3)," sections 3.2, 6.1.3, and 7.2.10.

The important parameters for reactivity control are the concentration of the boron-10 isotope (which has a large thermal neutron capture cross-section) in the RPV cooling water and the time required to achieve this concentration. These parameters are in turn dependent upon the RPV volume (and therefore RPV inside diameter), boron injection flow rate, boron solution concentrtion, and boron-10 isotopic enrichment level. The standard that is specified in § 50.62(c)(4), (86 gpm of 13 weight percent sodium pentaborate solution) assumes a boron-10 isotopic enrichment at the naturally occurring level and was intended to represent the reactivity control achieved for a BWR core design in a RPV with an inside diameter of 251 inches. Safety analyses show however, that equivalent reactivity control is achieved for a given core design in a different size RPV when the same boron-10 isotope concentration is provided within that RPV. Hence for a given core design, any combination of injection rate, boron solution concentration level, boron-10 isotopic enrichment level, and RPV volume that results in the same boron-10 concentration level within that RPV will provide reactivity control equivalent to the standard. For example, 16.5 gpm of 26 weight percent sodium pentaborate solution enriched to twice the natural level of boron-10 content injected into a 218 inch inside diameter RPV provides reactivity control equivalent to the standard.

If sodium pentaborate decahydrate solution enriched in the boron-10 isotope is used, procedures should be established to assure proper disposal of the non-enriched solution and ensure that the boron-10 isotope concentration in the new solution is sufficient to shut down the reactor.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(2). Thus, neither an environmental impact statement nor an environmental assessment has been prepared.

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget under control number 3150–0011.

Regulatory Analysis

Since this proposed rule is of a clarifying nature and does not substantially change existing regulatory requirements, the regulatory analysis prepared for the final rule entitled "Reduction of Risk from Anticipated Transients Without Scram (ATWS) Events for Light-Water-Cooled Nuclear Power Plants," published June 26, 1984 (49 FR 26036) is still valid and will be used for this rule. The analysis is available for inspection in the Public Document Room, 2120 L Street NW., Washington, DC, Lower Level. Single Copies of the analysis may be obtained from William R. Pearson, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3781.

Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities and that therefore a regulatory flexibility analysis need not be prepared. This rulemaking action would affect only licensees that own and operate nuclear utilization facilities licensed under sections 103 and 104 of the Atomic Energy Act of 1954, as amended. These licensees do not fall within the definition of small businesses set forth in Section 3 of the Small Business Act (15 U.S.C. 632) or within the Small Business Size Standards set forth in the regulations issued for the Small Business Administration at 13 CFR Part 121.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule, and therefore, that a backfit analysis is not required, because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is proposing to adopt the following amendment to 10 CFR Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.23, 50.35, 50.55, and 50.56, also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a, and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 5092 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958 as amended (42 U.S.C. 2273); §§ 50.10(a), (b), and (c), 50.44, 50.46, 50.48, 50.54 and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10 (b) and (c) and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.9, 50.55(e), 50.59(b), 50.70, 50.71, 50.72, 50.73, and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 50.62, paragraph (c)(4) is revised to read as follows:

§ 50.62 Requirements for reduction of risk from anticipated transients without scram (ATWS) events for light-water-cooled nuclear power plants

* * * * *

(c) * * *

(4) Each boiling water reactor must have a standby liquid control system (SLCS) with the capability of injecting into the reactor pressure vessel a borated water solution at such a flow rate, level of boron concentration and boron-10 isotope enrichment, and accounting for reactor pressure vessel volume, that the resulting reactivity control is at least equivalent to that resulting from injection of 86 gallons per minute of 13 weight percent sodium pentaborate decahydrate solution at the natural boron-10 isotope abundance into a 251 inch inside diameter reactor pressure vessel for a given core design. The SLCS and its injection location must be designed to perform its function in a reliable manner. The SLCS initiation must be automatic and must be designed to perform its function in a reliable manner for plants granted a construction permit after July 26, 1984, and for plants granted a construction permit prior to July 26, 1984, that have already been designed and built to include this feature.

* * * * *

Dated at Rockville, Maryland, this 12th day of October 1988.

Victor Stello, Jr.

Executive Director for Operations.

[FR Doc. 88–24490 Filed 10–21–88; 8:45 am]

BILLING CODE 7590–01–M

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10 CFR Part 52

Early Site Permits; Standard Design Certifications; and Combined Licenses for Nuclear Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule: Extension of comment period.

SUMMARY: On August 23, 1988 (53 FR 32080), the NRC published for public comment a proposed rule which would provide for issuance of early site permits, standard design certifications, and combined construction permits and conditional operating licenses for nuclear power plants. The comment period for this proposed rule was to have expired on October 24, 1988. However, several organizations and individuals have requested, or have otherwise expressed an interest in, an extension of the comment period. Moreover, the agency faces certain exigencies of scheduling which did not arise until recently. Therefore, balancing the desirability of developing a final rule as soon as practicable against the needs of commenters and the constraints of scheduling, the NRC has decided to extend the comment period for an additional fourteen days. The extended comment period now expires on November 7, 1988.

DATES: The comment period has been extended and now expires on November 7, 1988. Comments received after this date will be considered if practical to do so, but only those comments received on or before this date can be assured of consideration.

ADDRESSES: Comments may be sent to the Secretary of the Commission, Attention: Docketing and Service Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or may be hand-delivered to One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, between 7:30 am and 4:15 pm weekdays. Copies of the comments received may be examined at the Commission's Public Document Room at 2120 L Street NW., Washington, DC, between the hours of 7:45 am and 4:15 pm weekdays.

FOR FURTHER INFORMATION CONTACT: Steven Crockett, Attorney, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 492–1600.

Dated at Rockville, MD, this 18th day of October 1988.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 88–24488 Filed 10–21–88; 8:45 am]

BILLING CODE 7590–01–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Nondiscrimination Requirements

AGENCY: National Credit Union Administration ("NCUA").

ACTION: Request for comments.

SUMMARY: Section 701.31 of the NCUA Rules and Regulations ("Nondiscrimination Requirements") (12 CFR 701.31) seems not to need major revision. Nevertheless, the NCUA Board, as part of its regulatory review policy, requests suggestions on possible improvements to this section, particularly ways to update or simplify the regulation, or make it more easily comprehensible for Federal credit unions ("FCU's").

DATE: Comments must be received on or before January 23, 1989.

ADDRESS: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1776 G Street, NW; Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Hattie M. Ulan, Staff Attorney, Office of General Counsel, NCUA, at the above address, or telephone; (202) 357–1030.

SUPPLEMENTARY INFORMATION: Section 701.31 of the NCUA Rules and Regulations (12 CFR 701.31) was originally designed to summarize for FCU's in one place the prohibitions on discrimination in real estate lending activities contained: in the Federal Fair Housing Act (41 U.S.C. 3601 *et seq.*) and Department of Housing and Urban Development regulations issued thereunder; in the Equal Credit Opportunity Act (15 U.S.C. 1691) and the Federal Reserve Board's Regulation B (12 CFR 202.1–.14) issued thereunder; and in certain major court cases interpreting these provisions.

The NCUA Board invites comments on all aspects of the regulation, particularly:

1. Whether the regulation has been a helpful resource for FCU's;

2. Whether, if so, any parts of the regulation should be updated, simplified, or made more easily comprehensible.

Regulatory Procedures

The request for comments makes no substantive changes to the current rule. Hence, neither a Regulatory Flexibility Analysis nor analysis under the Paperwork Reduction Act is required.

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Executive Order 12612

Section 701.31 does not have significant federalism implications. Both federally and state chartered lenders are subject to Federal statutes affecting non-discrimination in real estate lending. This regulation explains the law and sets forth previously established guidelines for federally-chartered credit unions; it adds no new obligations.

List of Subjects in 12 CFR Part 701

Credit unions, Discrimination in real estate lending.

By the National Credit Union Administration Board on October 13, 1988.

Becky Baker,

Secretary of the Board.

[FR Doc. 88-24503 Filed 10-21-88; 8:45 am]

BILLING CODE 7535-01-M

12 CFR Part 701

Organization and Operations of Federal Credit Unions

AGENCY: National Credit Union Administration ("NCUA").

ACTION: Proposed amendment.

SUMMARY: This is a proposed rule to amend the existing §701.20—Surety Bond and Insurance Coverage for Federal Credit Unions ("FCU's"). Section 701.20 sets forth the requirements for surety bond coverage for losses caused by credit union employees and officials and for general insurance coverage for losses caused by persons outside of the credit union (e.g., losses due to theft, vandalism). The proposed change would require a provision in FCU bonds assuring that surety notifies NCUA whenever bond coverage of a credit union is terminated in its entirety, or when it is terminated on an individual employee or official.

DATE: Comments must be received on or before January 23, 1989.

ADDRESS: Send comments to Becky Baker, Secretary, NCUA Board, 1776 G Street NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Robert Fenner, General Counsel, or Allan Meltzer, Assistant General Counsel, at the above address, or telephone (202) 357–1030.

SUPPLEMENTARY INFORMATION: Approved bond forms currently in use include a provision requiring that the surety notify NCUA when the bond of a Federal Credit Union is terminated in its entirety. However, there is no regulatory requirement for such notification, nor is there a requirement that the NCUA be notified in the event the bond is cancelled only as to one or more officials or employees.

When the surety bond coverage of a credit union or an individual employee or official of a credit union is terminated, NCUA, from a supervisory and regulatory perspective, clearly has an interest in the fact that coverage has been terminated and in the facts underlying the termination.

Moreover, experience has shown that in a small but significant number of cases involving termination as to an individual, the employee or official has been allowed to continue serving as before either because the officials were unaware that this continued service was contrary to the FCU Act and NCUA regulations, or because they believed such termination was wrongful. In addition, the circumstances surrounding a termination of coverage may well be of significance to NCUA in its insuring capacity by disclosing a loss or potential loss to the National Credit Union Share Insurance Fund ("NCUSIF").

The Board therefore believes that NCUA-insured credit unions will benefit if the Agency receives notification whenever coverage on an employee or official is terminated, and that the appropriate method of assuring this is to require such notification in the bond. This would allow the Board to monitor situations in which unbonded individuals might continue to serve, as well as to assure that situations which might lead to potential losses for the NCUSIF are brought to the Board's attention at the earliest possible time.

In addition, the Board proposes requiring notification by surety when the bond of a credit union as a whole is terminated. While this is presently required by the provisions of approved bond forms, a regulatory requirement will emphasize the importance the Board attaches to such notification and assure that future bond forms include such a provision.

The Board requests comments on this proposal from federally-insured credit unions, bonding companies, and other interested parties. In addition, the Board requests comments on the following specific questions:

a. Should the information received by the Board pursuant to the proposed regulation be made available to its sister Federal financial regulatory agencies? To interested federally-insured credit unions? To others?

b. Would dissemination of this information be a "routine use of such information" pursuant to the Privacy Act (12 U.S.C. 552a)?

c. Should the requirement of notification be limited only to federally-chartered credit unions? The provision in currently approved bond forms only requires that the surety notify the supervisory authority of the credit union whose bond is terminated in its entirety. Because § 741.1 of the NCUA Rules and Regulations established the requirements of § 701.20 as minimum standards for all federally-insured credit unions, the proposed rule may increase the paperwork burden on surety companies, requiring them to determine in every instance of a termination whether a state-chartered credit union is federally insured. Would application of this proposal to all federally-insured credit unions, including state-chartered institutions, impose an undue burden on surety companies by requiring them to determine which state-chartered credit unions are federally insured? Should regulation of such notification in the case of state-chartered, federally-insured credit unions be left to the discretion of the states?

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board has determined and certified that the proposed amendment, if adopted, will not have a significant economic impact on a substantial number of small credit unions (primarily those under $1 million in assets). The proposed rule will not impose an additional burden upon credit unions. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

This proposed rule would impose two paperwork requirements. Bonding companies would need to add an additional provision in their bond forms, and, pursuant to this provision, each bonding company would need to report terminations to the NCUA Board. It seems likely that these requirements will affect less than ten surety bond companies; therefore, the requirements of the Paperwork Reduction Act do not apply.

Executive Order 12812

While §701.20 applies only to Federal credit unions, §741.1 establishes the requirements of §701.20 as minimum standards for all federally-insured credit unions. Thus, this proposed change may affect state-chartered, federally-insured credit unions. The NCUA Board, pursuant to Executive Order 12612, has determined, however, that the proposed amendment will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Further, while the proposed amendment may affect state-chartered, federally-insured credit unions, it will not preempt provisions of state law or regulation.

List of Subjects in 12 CFR Part 701

Credit unions, Fidelity bond, Insurance coverage, Bond forms.

By the National Credit Union Administration Board on October 13, 1988.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA proposes to amend its regulations as follows:

PART 701—[AMENDED]

1. The authority citation for Part 701 continues to read as follows:

Authority: 12 U.S.C. 1755, 1756, 1757, 1759, 1761a, 1761b, 1767, 1782, 1784, 1787, 1789, and 1795.

2. It is proposed that §701.20(c) of the NCUA Rules and Regulations be revised to read as follows:

(c) Minimum Coverage; Approved Forms. Every Federal credit union will maintain bond and insurance coverage with a company holding a certificate of authority from the Secretary of the Treasury. Credit Union Blanket Bond Standard Form No. 23 of the Surety Association of America (revised to May, 1950) is considered the minimum coverage required and is approved. Credit Union Blanket Bond Forms 581 and 582 are also approved. Any other basic bond forms, and all riders and endorsements which limit the coverage provided by approved bond forms, must receive the prior written approval of the NCUA Board. Fidelity bonds must provide coverage for the fraud or dishonesty of all employees, directors, officers, and supervisory and credit committee members. Notwithstanding the foregoing, effective July 1, 1989, all bonds must include a provision, in a form approved by the NCUA Board, requiring written notification by surety to the Board: (1) When the bond of a credit union is terminated in its entirety; or (2) when bond coverage is terminated, by issuance of a written notice, on an employee, director, officer, supervisory or credit committee member. Said notification shall be sent to the Secretary of the Board or designee and shall include a brief statement of cause for termination.

[FR Doc. 88-24505 Filed 10-21-88; 8:45 am]

BILLING CODE 7535-01-M

12 CFR Part 701

Treasury Tax and Loan Accounts; Federal Credit Unions Acting as Depositaries and Financial Agents of the Government

AGENCY: National Credit Union Administration ("NCUA").

ACTION: Proposed amendments.

SUMMARY: The NCUA Board, under its policy to review its regulations periodically, is proposing to revise §§ 701.37–1 ("Treasury Tax and Loan Accounts") and 701.37–2 (Federal Credit Unions Acting as Depositaries and Financial Agents of the Government"). The proposal is intended to clarify and simplify these regulations.

DATES: Comments must be received on or before January 23, 1989.

ADDRESS: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1776 G Street NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Timothy P. McCollum, Assistant General Counsel, or Julie Tamulevix, Staff Attorney, Office of General Counsel, NCUA, at the above address, or telephone: (202) 357–1030.

SUPPLEMENTARY INFORMATION:

Background

Sections 121 and 210 of the Federal Credit Union ("FCU") Act [12 U.S.C. 1767 and 1789a], authorize federally-insured credit unions to serve as depositaries and financial agents of the United States subject to regulation by the United States Treasury Department. In Parts 202, 203, and 214 of 31 CFR, the Treasury Department has set forth the current eligibility requirements for a financial institution to be designated as a depositary and financial agent, a Treasury tax and loan depositary, and a depositary for Federal taxes.

Section 202.2(b) of CFR Title 31 provides:

In order to be eligible for designation [as a depositary and financial agent of the U.S. Government], a financial institution [including a Federal credit union] is required to possess, under its charter and the regulations issued by its chartering authority, either general or specific authority to perform the services outlined in § 202.3(b). A financial institution is required also to possess the authority to pledge collateral to secure public funds.

Section 202.3(b)(1) of CFR Title 31 provides:

(1) Upon the request of a Government agency, the Secretary of the Treasury may authorize a depositary to perform other services specifically requested by the agency, including:

(i) The maintenance of official accounts in which balances will be in excess of the applicable Federal or State insurance coverage;

(ii) The maintenance of accounts in the name of the United States Treasury;

(iii) The acceptance of deposits for credit of the United States Treasury;

(iv) The furnishing of bank drafts in exchange for collections.

Section 203.3(b)(1)(ii) of CFR Title 31 states:

In order to meet Treasury requirements for designation [as a tax and loan depositary], each financial institution [including a Federal credit union] is required to possess under its charter and regulations issued by its chartering authority either general or specific authority permitting the maintenance of the tax and loan account as an account, the balance in which is payable on demand without previous notice of intended withdrawal. Each financial institution is required also to possess the authority to pledge collateral to secure Treasury tax and loan funds.

Section 214.3(b) of CFR Title 31 states:

Each financial institution designated as a Treasury tax and loan depositary under the provisions of Part 203 of this chapter is eligible for designation as a depositary for Federal taxes.

Sections 701.37–1 ("Treasury Tax and Loan Accounts") and 701.37–2 ("Federal Credit Unions Acting as Depositaries and Financial Agents of the Government") of NCUA's Rules and Regulations implement Sections 121 and 210 of the Federal Credit Union Act with respect to Federal credit unions. The regulations also provide FCU's with the authority to satisfy the eligibility requirements contained in 31 CFR Parts 202, 203 and 214.

The NCUA Board proposes to consolidate and simplify these regulations. The following section-by-section analysis describes the proposed changes to the regulations. The NCUA Board requests comment on the proposed changes and any other suggested modifications to the regulations.

Section-By-Section Analysis

Proposed Section 701.37(a)

This section sets forth the definitions of a Treasury Tax and Loan (TT&L) Remittance Account, a TT&L Note Account, a Treasury General Account, and a U.S. Treasury Time Deposit-Open Account. These definitions are currently contained in §§ 701.37–1(b)(1) and (b)(2) §§ 701.37–2(b)(2)(i) and (b)(2)(ii). The Board is proposing to amend the definition of U.S. Treasury Time Deposit-Open Account to clarify that this is a non-dividend paying account

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and to reflect that Treasury may withdraw funds held in this account fourteen days after providing an FCU with notice of its intent to withdraw. The Board also proposes to amend the definition of TT&L Remittance Account to state that funds in this account are also not eligible for dividends. This information is currently contained in § 701.37–1(c).

Proposed Section 701.37(b)

This section implements the FCU authority to serve as a depositary of public money and as financial agent, depositary of Federal taxes, and a Treasury tax and loan depository. It further provides that in connection with these duties, an FCU may maintain the accounts defined in proposed § 701.37(a), pledge collateral to secure public funds, and perform the services listed in 31 CFR 202.3(b) and 203.3(b)(1)(ii).

This paragraph replaces current §§ 701.37–1 (a) and (f) and 701.37–2(a) and (b), which simply reiterate Treasury's regulations. FCU's engaging in activities under §§ 701.37–1 and 701.37–2 should, in any event, consult Treasury's regulations for a full explanation of their responsibilities.

Proposed Section 701–37(c)

This paragraph restates and clarifies the provisions found in §§ 701.37–1(e) and 701.37–2(c) regarding insurance coverage. The Board is proposing to delete the information contained in the current regulations regarding the payment of insurance premiums since this information is contained in § 741.5(d) of NCUA's Rules and Regulations.

Proposed Section 701.37(d)

This section incorporates and clarifies the provisions of §§ 701.37–1(c), 701.37–1(d), and 701.37–2(d) regarding Article III, Section 5(a) of the FCU Bylaws. The proposal provides that the TT&L Remittance Account, the TT&L Note Account, the Treasury General Account, and the U.S. Treasury Time Deposit-Open Account are not subject to the 60-day notice requirement for withdrawals that FCU boards may invoke under Article III, Section 5(a) of the Federal Credit Union Bylaws. The proposal would also clarify that the Treasury General Account is not subject to the bylaw either.

Proposed Deletions

The proposal would delete the provisions of §§ 701.37–1(d) and 701.37–2(d) stating that funds held in a TT&L Note Account or a U.S. Treasury Time Deposit-Open Account are not considered borrowings for purposes of Section 107(9) of the Federal Credit Union Act. This is implicit in proposed § 701.37(c) which would require these funds to be treated as "deposits of public funds."

The Board is also proposing to delete § 701.37–1(d).

Credit unions selecting the Note Option under 31 CFR Part 203.9 may hold funds in a TT&L Note Account in accordance with Department of Treasury Regulations. Funds held in the credit union's TT&L Note Account shall bear interest at the rate specified in the Department of Treasury Regulations.

Since proposed § 701.37(b) authorizes an FCU to maintain a TT&L Note Account subject to Treasury Department regulation, the Board believe it unnecessary to retain this information in the regulation.

Finally, the proposed amendments would eliminate § 701.37–2(e), which provides that the sum of the accounts held in the Treasury General Account and U.S. Treasury Time Deposit-Open Account shall not exceed 10 per centum of the total assets of the credit union. In 1983, the NCUA Board eliminated a similar restriction on the amounts that may be held in an FCU's tax and loan account, concluding that the amounts held in this account should be left to the discretion of an FCU's board of directors. 48 FR 55423 (December 13, 1983). The Board believes similar reasoning suggests lifting the restriction on the amounts that can be held by an FCU acting as a depositary of public money or a financial agent of the United States.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board certifies that the proposed amendments, if made final, would not have a significant impact on a substantial number of small credit unions. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

The proposed amendments would not impose any paperwork requirements.

Executive Order 12612

The proposed amendments would not affect state regulation of credit unions. They would apply only to Federal credit unions.

List of Subjects in 12 CFR Part 701

Credit unions; Treasury tax and loan accounts; Depositaries of public money and fiscal agents.

By the National Credit Union Administration Board on October 13, 1988.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA proposes to amend its regulations as follows:

PART 701—[AMENDED]

1. That the authority citation for Part 701 continues to read as follows:

Authority: 12 U.S.C. §§ 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789, and 1798.

Section 701.31 is also authorized by 15 U.S.C. 1601 et seq., 42 U.S.C. § 1981 and 42 U.S.C. §§ 3601–3610.

§§ 701.37–1 and 701.37–2 [Removed]

2. That §§ 701.37–1 and 701.37–2 be removed.

3. That new § 701.37 provide as follows:

§ 701.37 Treasury Tax and Loan Depositaries; Depositaries and Financial Agents of the Government.

(a) *Definitions.*

(1) "Treasury Tax and Loan ("TT&L") Remittance Account" means a non-dividend paying account, the balance of which is subject to the right of immediate withdrawal, established for receipt of payments of Federal taxes and certain United States obligations under United States Treasury Department regulations.

(2) "TT&L Note Account" means an account subject to the right of immediate call, evidencing funds held by depositaries electing the note option under United States Treasury Department regulations.

(3) "Treasury General Account" means an account, established under United States Treasury Department regulations, in which a zero balance may be maintained and from which the entire balance may be withdrawn by the depositor immediately under all circumstances except closure of the credit union;

(4) "U.S. Treasury Time Deposit-Open Account" means a non-dividend bearing account, established under United States Treasury Department regulations, which generally may not be withdrawn until the expiration of 14 days after the date of the United States Treasury Department's written notice of intent to withdraw.

(b) Subject to regulation of the United States Treasury Department, a Federal credit union may serve as a Treasury tax and loan depositary, a depositary of Federal taxes, a depositary of public money, and a financial agent of the United States Government. In serving in these capacities, a Federal credit union may maintain the accounts defined in Subsection (a), pledge collateral, and perform the services described under United States Treasury Department regulations for insititutions acting in these capacities.

(c) Funds held in a TT&L Remittance Account, a TT&L Note Account, a Treasury General Account, and a U.S. Treasury Time Deposit-Open Account shall be considered deposits of public funds. Funds held in a TT&L Remittance Account and a TT&L Note Account shall be insured up to a maximum of $100,000 in the aggregate. Funds held in a Treasury General Account and a U.S. Treasury Time Deposit-Open Account shall be insured up to a maximum of $100,000 in the aggregate.

(d) Funds held in a TT&L Remittance Account, a TT&L Note Account, a Treasury General Account, and a U.S. Treasury Time Deposit-Open Account are not subject to the 60-day notice requirement of Article III, section 5(a) of the Federal Credit Union Bylaws.

[FR Doc. 88–24504 Filed 10–21–88; 8:45 am]

BILLING CODE 7535–01–M

12 CFR Part 701

Loan Participation; Purchase, Sale, and Pledge of Eligible Obligations

AGENCY: National Credit Union Administration ("NCUA").

ACTION: Request for comments.

SUMMARY: The NCUA Board, as part of its ongoing program of regulatory review, is considering updating its credit union loan disposition and risk sharing policy, particularly §§ 701.22 [12 CFR 701.22] ("Loan Participation") and 701.23 [12 CFR 701.23] ("Purchase, Sale, and Pledge of Eligible Obligations") of its regulations. The Board requests suggestions on what changes are needed to give Federal credit unions ("FCU's") the flexibility needed to prosper under current market conditions. For example, NCUA is asking for comment on these matters:

1. Is the current working definition of "participation loan" in § 701.22(a)(1) satisfactory?

2. Should the term "credit union organization" in § 701.22(a)(4) be redefined as "an organization satisfying the requirements of § 701.27?"

3. Are the regulatory restrictions on loan participation and purchase, sale and pledge of eligible obligations: (a) unclear, (b) too complex? If so, how should they be changed?

4. Do the current differences in regulation between participation loans and purchase, sale and pledge of loans continue to make sense in today's economic environment?

5. Does NCUA's current regulatory structure on participation loans and purchase, sale, and pledge of eligible obligations: (a) Limit FCU ability to make good loans to members; (b) create unnecessary liquidity problems for some FCU's; (c) force too much of an FCU's assets into lower yielding investments?

6. What safety-and-soundness limits should be placed on an FCU's purchase of or risk-sharing in loans made by other credit unions?

7. Should different standards apply to natural person FCU's and to corporate FCU's?

The Board will consider all other suggestions to improve its current regulatory guidance in this area.

DATE: Comments must be received on or before January 23, 1989.

ADDRESS: Send comments to Becky Baker, Secretary, NCUA Board, National Credit Union Administration, 1776 G Stret NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Timothy P. McCollum, Assistant General Counsel, or Julie Tamuleviz, Staff Attorney, at the above address or telephone: (202) 357–1030.

SUPPLEMENTARY INFORMATION

Statutory Background

FCU power to acquire, dispose of, or assign a portion of the risk on member loans primarily comes from three provisions in the FCU Act. Section 107(5)(E) of the Act [12 U.S.C. 1757(5)(E)] states:

[An FCU shall have power] * * * to participate with other credit unions, credit union organizations, or financial organizations in making loans to credit union members in accordance with the following: * * * (E) Participation loans with other credit unions, credit union organizations, or financial organizations shall be in accordance with written policies of the board of directors. *Provided*, That a credit union which originates a loan for which participation arrangements are made in accordance with this subsection shall retain an interest of at least 10 per centum of the face amount of the loan.

Section 107(13) of the FCU Act [12 U.S.C. § 1757(13)] authorizes an FCU:

in accordance with rules and regulations prescribed by the [NCUA] Board, to purchase, sell, pledge, or discount or otherwise receive or dispose of, in whole or in part, any eligible obligations (as defined by the [NCUA] Board) of its members . . . but no purchase may be made under authority of this paragraph if, upon the making of that purchase, the aggregate of the unpaid balances of notes purchased under authority of this paragraph would exceed 5 per centum of the unimpaired capital and surplus of the credit union.

Section 107(14) [12 U.S.C. § 1757(14)] gives an FCU power:

to sell all or a part of its assets to another credit union, to purchase all or part of the assets of another credit union and to assume the liabilities of the selling credit union and those of its members subject to regulations of the [NCUA] Board.

This provision was adopted primarily "to provide additional latitude to a credit union suffering a bona fide liquidity crisis." 43 FR 51610 (Novemer 6, 1978).

Regulatory Interpretation of the Term "Participation."

When § 701.22 was first issued [43 FR 51610 (Novemer 6, 1978)], the NCUA Board discussed the term "participation":

The term "participation" is not a precise term in commercial law and practice. It is used at different times to refer to arrangements made prior to or at the time of orgination, to refer to arrangements made subsequent to origination, and to refer to arrangements made without regard to the time of origination. In granting Federal credit unions the power to participate in making loans to members, Congress was using the term "participation" to mean arrangements made prior to or at the time of orgination and carried out within a reasonable time thereafter. Thus, 107(13) was adopted to allow Federal credit unions to sell certain loans subsequent to origination . . .

In 1981, the Board modified its view slightly [46 FR 31660 (June 17, 1981)]:

The participation regulation applies where a third party funnels funds into the credit union with the intent of actually participating in making the loan, for example, where the participant will assist in preparing the loan documentation and the participant's funds will actually be disbursed at origination. The participation regulation does not apply when an organization merely arranges to purchase loans subsequently originated by the credit union.

The Board invites comments which may lead: To a more comprehensive and up-to-date definition of the term; to regulation which reflects not simply when the agreement was entered into but the risks assigned and undertaken, and to a regulation of participation loans which fits better into NCUA's general guidance on asset acquisition and disposition.

Regulatory Interpretation of the Term "Credit Union Organization"

Section 701.22(a)(4) defines "credit union organization" as:

any organization as determined by the Board, established primarily to serve the daily operational needs of its member credit

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unions. The term does not include trade associations, membership organizations principally composed of credit unions, or corporations or other businesses which principally provide services to credit union members as opposed to corporations or businesses whose business relates to the daily in-house operation of credit unions.

The Board requests comments on whether the term "credit union organization" should be redefined as "an organization satisfying the requirements of § 701.27 of NCUA's Rules and Regulations [12 CFR 701.27] regarding FCU investment in and loans to credit union service organizations." This is in accord with NCUA's interpretation of the term "credit union organization" contained in section 107(5)(D) of the FCU Act [12 U.S.C. 1757(5)(D)], which authorizes FCU loans to credit union organizations. Loans to credit union organizations pursuant to section 107(5)(D) of the FCU Act are subject to § 701.27 of NCUA's regulations. Such a change would also broaden FCU authority to engage in loan participations with credit union organizations by removing the prohibition against loan participations with credit union organizations whose principal function is to provide services to FCU members (e.g. consumer mortgage loan origination) rather than to provide services directly to FCU's.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board has determined and certifies that the action being considered will not have a significant economic impact on a substantial number of small credit unions. The action being considered is directed at clarification and reduction of regulatory confusion and interpretive burdens, rather than creation of new regulatory restrictions. Therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The action being considered does not impose any paperwork requirements.

Executive Order 12612

The action being considered does not affect state regulation of state-chartered credit unions.

List of Subjects in 12 CFR Part 701

Loan participation; Participation; Eligible obligations; Purchase, sale and pledge of eligible obligations.

By the National Credit Union Administration Board on October 13, 1988.

Becky Baker,

Secretary, NCUA Board.

[FR Doc. 88-24502 Filed 10-21-88; 8:45 am]

BILLING CODE 7535-01-M

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12 CFR Part 711

Management Official Interlocks

AGENCY: National Credit Union Administration ("NCUA").

ACTION: Request for comments.

SUMMARY: Pursuant to NCUA's regulatory review program, public comment is requested concerning amendments to NCUA's Management Official Interlocks regulation. The intent of the review is to simplify and reduce the regulatory burden on Federal credit unions. The NCUA Board requests suggestions on what changes, if any, are needed to give credit unions greater management flexibility to meet present market conditions. Although the effect of this regulation on FCU's is already fairly limited, the Board requests comments, for example, on the following:

1. Can the regulation's definitions be amended to increase clarity and simplicity?

2. Should the permitted interlocking relationships be expanded to include situations not presently addressed? The Depository Institution Management Interlocks Act currently permits interlocks between credit unions. 12 CFR 711.4(a)(4); Moreover, the Board has by regulation exempted interlocks in the following situations [12 CFR § 711.4(b)(1)–(5)]: (a) Organizations in low income areas; (b) minority or women's organizations; (c) newly chartered organizations; (d) organizations faced with conditions endangering safety and soundness; (e) a credit union sponsored by another depository organization; and, (f) organizations facing a loss of management officials due to changes in circumstances.

(3) Should corporate FCU's be treated differently from natural person credit unions?

DATE: Comments must be received on or before January 23, 1989.

ADDRESS: Send comments to Becky Baker, Secretary, NCUA Board, National Credit Union Administration, 1776 G Street NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Roy DeLoach, NCUA, Office of General Counsel, 1776 G Street NW., Washington, DC 20456, telephone: (202) 357-1030.

SUPPLEMENTARY INFORMATION:

Statutory Background

The Depository Institution Management Interlocks Act ("Interlocks Act") was enacted as title II of the Financial Institutions Regulatory and Interest Rate Control Act of 1978 (Pub. L. No. 95-630, 12 U.S.C. 3201 *et seq.*) The general purpose of the Interlocks Act and NCUA's Regulation issued thereunder (12 CFR Part 711) is to foster competition among depository institutions, depository holding companies, and their affiliates by limiting management official interlocks between unaffiliated organizations. Basically, the Interlocks Act prohibits financial institutional management interlocks within the same relevant metropolitan statistical area ("RMSA") or, in areas outside a RMSA, in the same community. The Interlocks Act also has a prohibition based on financial institution asset size regardless of geographic area. NCUA administers the Interlocks Act with respect to federally-insured credit unions.

The Interlocks Act was enacted by Congress when there was a perceived need to infuse more competition in the financial market. *see* [1978] U.S. Code Cong. & Ad. News, 9286. With automobile manufacturer financing and an emerging national market for home loans, competition in the financial markets is increasing greatly. Congress undoubtedly foresaw this possibility when it granted NCUA and the other Federal financial institution regulators some flexibility in the Interlock Act.

Flexibility Granted NCUA in the Interlocks Act

Section 209 of the Interlocks Act [12 U.S.C. 3207] provides:

> Rules and regulations to carry out this chapter, including rules or regulations which permit service by a management official which would otherwise be prohibited by section 3202 or section 3203 if this title, may be prescribed by—
>
> * * * * *
>
> (5) The National Credit Union Administration with respect to credit unions the account of which are insured by the National Credit Union Administration.

The legislative history concerning this section provides that ([1978] U.S. Code Cong. & Ad. News, 9286):

> [r]ules and regulations, including rules and regulations to permit interlocks otherwise prohibited, may be prescribed by the five depository institution regulatory agencies for the institutions they regulate. Thus, the agencies will have authority to exempt interlocks from the prohibitions of the title if the agency establishes that such an exemption has a pro-competitive effect.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board has determined and certifies that amendments resulting from this Request for Comments will not have a significant economic impact on a substantial number of small credit unions because any resulting changes are directed at clarification of present regulations rather than creation of new regulatory restrictions. Therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

Any amendment resulting from this Request for Comments will not contain any paperwork requirements.

Executive Order 12612

Any amendment resulting from this Request for Comments will not affect state regulation of credit unions.

List of Subjects in 12 CFR Part 711

Credit Union, Management Official Interlocks Act.

By the National Credit Union Administration on October 13, 1988.

Becky Baker,

Secretary, NCUA Board.

[FR Doc. 88-24501 Filed 10-21-88; 8:45 am]

BILLING CODE 7535-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 257 and 258

Solid Waste Disposal; Report to Congress: Solid Waste Disposal in the United States

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of Report to Congress on Solid Waste Disposal in the United States.

SUMMARY: The EPA is today announcing the availability of the Report to Congress on Solid Waste Disposal in the United States. EPA prepared this report in response to the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act. The report includes information on characteristics and management practices of Subtitle D (nonhazardous) wastes, characteristics of Subtitle D land disposal facilities, and Federal and State Subtitle D regulatory programs. Conclusions regarding the adequacy of the current Federal Subtitle D criteria (CFR Part 257) as well as recommendations for Federal, State, and local action are presented. This report to Congress is one of the support documents for the recently proposed criteria for municipal solid waste landfills (53 FR 33313, August 30, 1988) and therefore, has been added to the record supporting the proposed criteria.

ADDRESSES: This report is available for viewing at all EPA libraries and in the EPA RCRA docket room, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, from 9:30 am to 3:30 pm, Monday thru Friday, except legal holidays; telephone: (202) 475-9327. The public may copy a maximum of 50 pages of material from any regulatory docket at no cost. Additional copies cost 20 cents per page. The document may be purchased from the National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, Virginia 22161, at (703) 487-4600: "Report to Congress: Solid Waste Disposal in the United States", Volume I [EPA/530-SW-88-011, NTIS No: PB89-110381) and Volume II (EPA/530-SW-88-011B, NTIS No: PB89-110399).

FOR FURTHER INFORMATION CONTACT: For general information and/or a copy of the Executive Summary (EPA/530-SW-88-011A), call the RCRA Hotline at (800) 424-9346 or (202) 382-3000. For technical information on the report, contact Susan Mooney, Office of Solid Waste (OS-323), U.S. Environmental Protection Agency, 401 M Street SW, Washington DC 20460, (202) 382-5849.

SUPPLEMENTARY INFORMATION: In 1972, under authority of sections 1008(a)(3) and 4004(a) of Subtitle D of the Resource Conservation and Recovery Act (RCRA), EPA promulgated "Criteria for Classification of Solid Waste Disposal Facilities and Practices" (40 CFR Part 257). The Criteria include environmental performance standards for determining which solid waste disposal facilities and practices pose a reasonable probability of adverse effects on human health or the environment. Facilities that violate the Criteria are considered "open dumps". The Criteria are enforced by States or through citizen suits.

In 1984, Congress passed the Hazardous and Solid Waste Amendments (HSWA), including provisions regarding the Subtitle D regulatory program. Sections 4010(a) and (b) of RCRA, which were added by HSWA, require EPA to conduct a study and submit a report to Congress addressing whether the current Criteria (40 CFR Part 257) are adequate to protect human health and the environment from ground-water contamination, and whether additional authorities are needed to enforce the Criteria. Further, section 4010(c) requires EPA to revise the Criteria for facilities that may receive hazardous household waste or small quantity generator hazardous waste. In response to these statutory mandates, EPA has recently proposed revised criteria for municipal solid waste landills (53 FR 33313, August 30, 1988) and is today issuing the Report to Congress on Solid Waste Disposal in the United States.

Some of the major research efforts undertaken for this report to Congress include a mail survey of municipal solid waste landfill owners and operators, a telephone survey of industrial facility owners and operators, and an analysis of risks posed by municipal solid waste landfills. Other major efforts, including a census of the State Subtitle D programs, an examination of municipal solid waste, household hazardous waste, and small quantity generator hazardous waste characteristics, and a review of Subtitle D facilities on the National Priorities List were previously summarized in the "Subtitle D Study Phase I Report" (EPA/530-SW-86-054, NTIS No: PB-87-116-610) that was completed in October 1986. These data are also included in the report to Congress.

The report to Congress is organized in two volumes. Volume I contains the conclusions and recommendations of the report as well as the Executive Summary. Volume II contains all of the descriptive data on which the conclusions and recommendations are based. Within Volume II, Chapter 1 provides the statutory background for the report. Chapter 2 summarizes the data collection efforts conducted for the report. Chapter 3 presents information on those waste types defined as Subtitle D wastes under the Resource Conservation and Recovery Act. Chapter 4 includes the data collected on the four types of Subtitle D land disposal facilities (landfills, surface impoundments, land application units, and waste piles). Finally, Chapter 5 characterizes State Subtitle D regulatory programs.

Date: October 7, 1988.

Lee M. Thomas,

Administrator.

[FR Doc. 88-24507 Filed 10-21-88; 8:45 am]

BILLING CODE 6560-50-M

Notices

Federal Register
Vol. 53, No. 205
Monday, October 24, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board (ATBCB).

ACTION: Notice of ATBCB Meeting.

SUMMARY: Architectural and Transportation Barriers Compliance Board (ATBCB) has scheduled a meeting to be held from 10:00 a.m. to 12:00 noon, on Wednesday, November 2, 1988, in the Omar Bradley Conference Room, located on the 10th floor of the Veterans Administration Building, 810 Vermont Avenue, NW., Washington, DC 20420.

Items on the Agenda: Compliance and enforcement update; Air Carrier Access Act comments; public affairs plan; priorities for FY 1989 research and technical assistance; FY 1989 budget reprogramming; 1989 Board meeting schedule—dates and locations; FY 1988 annual report; and, an Environmental Sensitivities presentation.

DATE: Wednesday, November 2, 1988—10:00 a.m.–12:00 noon.

ADDRESS: Veterans Administration Building, 810 Vermont Avenue NW., Omar Bradley Conference Room, 10th floor, Washington, DC 20420.

The Technical Programs, Planning and Budget, and Executive Committees of the ATBCB will meet on Tuesday, November 1, 1988, from 9:30 a.m. to 5:00 p.m. at the ATBCB staff offices, Suite 501, located at 1111 18th Street, NW., Washington, DC 20036–3894.

FOR FURTHER INFORMATION CONTACT: Larry Allison, Special Assistant for External Affairs, (202) 653–7848 (voice or TDD), or Barbara A. Gilley, Administrative Officer, (202) 653–7834 (voice or TDD).

Thomas G. Dunlavey,
Acting Executive Director.

[FR Doc. 88–24601 Filed 10–21–88; 8:45 am]

BILLING CODE 8820-BP-M

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Southern States Community College RC&D Measure, Ohio

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Southern States Community College RC&D Measure, Highland County, Ohio.

FOR FURTHER INFORMATION CONTACT: Joseph C. Branco, State Conservationist, Soil Conservation Service, Federal Building, 200 North High Street, Room 522, Columbus, Ohio 43215, telephone: (614)–469–6962.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impact on the environment. As a result of these findings, Joseph C. Branco, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

This measure concerns a plan for critical area treatment on the Southern States Community College campus involving two gullies and two acres of eroding open area. Planned works of improvement include the installation of 1,000 feet of grassed waterway, three grade stabilization structures, and two acres of critical area seeding.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Joseph C. Branco.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development Program—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.)

Joseph C. Branco,
State Conservationist.

October 17, 1988.

[FR Doc. 88–24475 Filed 10–21–88; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 394]

Resolution and Order Approving the Application of the City of San Diego, CA, for a Foreign-Trade Zone in San Diego

Proceedings of the Foreign-Trade Zones Board, Washington, DC

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the City of San Diego, California, filed with the Foreign-Trade Zones Board (the Board) on May 12, 1987, and amended on October 14, 1987, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone at five sites in the Otay Mesa planning areas of San Diego, within the San Diego Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

subject to a 500-acre activation limit at the Brown Field site.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant To Establish, Operate, and Maintain a Foreign-Trade Zone in San Diego, California

Whereas, by an Act of Congress approved June 16, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the City of San Diego, California (the Grantee) has made application (filed May 12, 1987, FTZ Docket 5–87, 52 FR 20634, and amended on October 14, 1987, 52 FR 39673) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone in San Diego, California, within the San Diego Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, Therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 153, at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from federal, state, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone site in the performance of their official duties.

The grant does not include authority for manufacturing, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 14th day of October, 1988, pursuant to Order of the Board.

Foreign-Trade Zones Board.

C. William Verity,
Chairman and Executive Officer.

[FR Doc. 88–24513 Filed 10–21–88; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Antidumping and Countervailing Duty Proceedings; Procedures for Review of Calculations and Correction of Ministerial Errors

ACTION: Notice of renewal of procedures for review of calculations and correction of ministerial errors.

SUMMARY: The Department of Commerce is renewing its current procedures for correcting clerical errors in final determinations in antidumping and countervailing duty investigations and in the final results of administrative reviews, after disclosure of all relevant information to parties to the proceeding that request disclosure.

DATE: This procedure will be effective October 24, 1988.

COMMENTS: Comments on these procedures should be submitted in writing as early as is practicable, but no later than 60 days from October 24, 1988.

ADDRESS: Address written comments (10 copies) to Jan W. Mares, Assistant Secretary, Import Administration, Room B–099, U.S. Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Jan W. Mares, Assistant Secretary, Import Administration, Room B–099, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 377–1780.

SUPPLEMENTARY INFORMATION: By notice published February 26, 1988, the Department announced temporary procedures for the review of calculations and correction of clerical errors in antidumping and countervailing duty proceedings (53 FR 5813). These procedures were given a six-month expiration date of August 26, 1988. The notice of these procedures stated that the Department would "at the end of the six month period * * * review the implementation of these procedures based on its experience and on comments received." (53 FR 5814).

The Department now renews these procedures with the following clarification. (See 53 FR 5813 for a complete description of procedures). Ministerial errors, as provided by section 1333 of the Omnibus Trade and Competitiveness Act of 1988 ("1988 Act"), Pub. L. No. 100–418, 102 Stat. 1107 (1988), mean errors in addition, subtraction, or other arithmetic functions, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the Department considers ministerial. These procedures will remain in effect until regulations under the 1988 Act are promulgated. The public is invited to submit written comments on the procedures described in the above-refereneed notice.

Jan W. Mares,
Assistant Secretary for Import Administration.

[FR Doc. 88–24514 Filed 10–21–88; 8:45 am]

BILLING CODE 3510-DS-M

Office of Trade Adjustment Assistance; Petitions by Producing Firms for Determinations of Eligibility; Sanford Miller Corp et al.

Petitions have been accepted for filing on the dates indicated from the following firms: (1) Sanford Miller Corporation, 8 John Street, Lynbrooks, New York 11563, produces rectifiers and power supplies (April 1, 1988); (2) Schafer Brothers, Inc., 12300 Edison Way, Garden Grove, California 92641, producer of sofas and chairs (April 4, 1988); (3) Reppenhagen Roller Corporation, 817 Sycamore Street, Buffalo, New York 14212, producer of rollers for printing presses (April 5, 1988); (4) Webb Manufacturing Corporation, 74 Dickinson Street, Philadelphia, Pennsylvania 19147, produces canvas and nylon bags, painters hats, aprons and stuffed toys (April 5, 1988); (5) Gemini Corporation, 33 Morris Street, Springfield, Massachusetts 01105, produces children's playsuits and shirts (April 6, 1988); (6) Pride Cast Metals, Inc., 2737 Colerain Avenue, Cincinnati, Ohio 45225, producer of pump parts for liquids, hose fittings and other miscellaneous metal parts (April 6, 1988); (7) R.E. Dietz Company, P.O. Box 4833, Syracuse, New York 13221, produces automobile lighting equipment, rear and sideview mirrors and barricade safety lights (April 6, 1988); (8) Bastian Company, 1600 North Clinton Avenue, Rochester, New York 14621, produces jewelry pins, name tags, insignias and trophies (April 7, 1988); (9) Gateway Systems Corporation, 2801 Clark Avenue, St. Louis, Missouri 63103, produces electronic scales (April 7, 1988); (10) Gallmeyer & Livingston Company, 336 Straight Avenue SW., Grand Rapids, Michigan 49504, produces tool, cutter, flat surface reciprocating grinding machines and parts (April 8, 1988); (11) Moen Manufacturing Corporation, 1085 Grant, Fenton, Michigan 48430, produces automobile balance weights for wheel drums (April 18, 1988); (12) Popular Lighting Corporation, 115 MacQuesten Parkway, Mt. Vernon, New York 10550, produces lighting fixtures and lighting fixture kits for ceiling fans (April 18, 1988); (13) Alco Spring Industries, Inc., P.O. Box 188, Chicago Heights, Illinois 60411, produces hot wound springs (April 20, 1988); (14) LDG Capital Corporation, 2345 Pembrooke Avenue, Hoffman Estates, Illinois 60195, produces computerized patient monitoring, diagnostic analysis and reporting equipment (April 27, 1988); (15) Grizzly Boot Company, Inc., 229 East Commercial Street, Anaconda, Montana 59711, produces leather and rubber work boots (April 29, 1988); (16) Woodcutters Manufacturing, Inc., 3301 East Issacs, Walla Walla, Washington 99362, produces solid fuel burning stoves and inserts (April 29, 1988); (17) Calnap Tanning Company, P.O. Box 2190, Napa, California 94558, produces leather fabric (May 3, 1988); (18) Thunder Bay Manufacturing Corporation, 666 McKinely Avenue, Alpena, Michigan 49707, produces metal stamping dies for cutting and forming for automotive and machine tool industries (May 5, 1988); (19) Crumrine Manufacturing Jewelers, Inc., 145 Catron Drive, Reno, Nevada 89512, produces belt buckles (May 6, 1988); (20) Brilliant Glass, Inc., 6140 S. Eastern Avenue, Commerce, California 90040, produces ashtrays, mugs, glassware and stemware (May 6, 1988); (21) Deansgate, Inc., 950 Polyfarre Street, New Orleans, Louisiana 70130, producer of men's coats, jackets, and slacks (May 6, 1988); (22) Control Gaging, Inc., 5200 Venture Drive, Ann Arbor, Michigan 48106, produces gauges and parts (May 9, 1988); (23) Sterling Technologies, Inc., 3232 North Mingo Road, Tulsa, Oklahoma 74116, produces computer chassis (May 10, 1988); (24) Buerk Tool & Machine Corporation, 315 Grote Street, Buffalo, New York 14207, produces work and tool holders and other parts (May 10, 1988); (25) The Benstock Co., Inc., 86 West Chippewa Street, Buffalo, New York 14203, produces men's and women's rings of precious, semiprecious synthetic stones (May 11, 1988); (26) Almco Steel Products Corporation, 59 North Oak Street Extended, Bluffton, Indiana 46714, produces motor vehicle engine brackets, differential housing covers, brake shoes, brake rotor parts and other miscellaneous motor vehicle metal parts (May 13, 1988); (27) OMI International Building, 21439 Hoover Road, Warren, Michigan 48089, produces metal automotive parts (May 13, 1988); (28) Buxton's Meat Company, 37101 Southeast Dunn Road, Sandy, Oregon 97055, processes, cuts and wraps and sell fresh and cured pork and fresh sausage, beef and beef by-products (May 13, 1988); (29) Leisure Hobby Products, Inc., 22971 "B" Triton Way, Laguna Hills, California 92653, produces battery chargers, electric motors, airplane remote control kits and 3.2 battery amp packs (May 18, 1988); (30) Seymour Electronics and Automation, Inc., Remex Division, 1335 S. Acacia, P.O. Box 34034, Fullerton, California 92634, produces punched taping products (May 18, 1988); (31) Aquanetics, Inc., 111 Milbar Boulevard, Farmingdale, New York 11735, produces oil reclamation equipment (May 24, 1988); (32) Sundancer Indian Jewelry, Inc., 5021 Office Boulevard, NE., Albuquerque, New Mexico 87109, produces watches, necklaces, earrings and bracelets (May 24, 1988); (33) Santa Fe Natives, Inc., 3215 Central NE., Albuquerque, New Mexico 87106, produces women's skirts, pants, tops, dresses and jackets (May 24, 1988); (34) Bowen Machine Products, Inc., 42 Harrison Street, Bedford, Ohio 44146, produces parts for military tanks, components for non-armed land vehicles and turbine engine parts; (35) Davis-Lynch Glass Company, P.O. Box 4268, Star City, West Virginia 26505, produces glass shades and lamp parts (May 31, 1988); (36) American Prefinish Corporation, 11615 NE. 116th Street, Kirkland, Washington 98034, produces softwood moldings for door jambs, stops, casings and bases (June 1, 1988); (37) Orange County Arrow Precision Co., Inc., 1151 East Ash Avenue, Fullerton, California 92621, produces machine parts, gears, pistons, shafts and cylindars (June 1, 1988); (38) Tech-Mark, Inc., 15452 SE. For-Mor Court, Clackamas, Oregon 97015, produces food processing ovens (June 1, 1988); (39) Rosbro Sprotswear Co., Inc., 55 Washington Street, Brooklyn, New York 11201, produces women's and girls' coats and jackets (June 3, 1988); (40) Gandy Company, 528 Gandrud Road, Owatonna, Minnesota 55060, produces pneumatic applicator equipment for automatic metering of dry materials for farm crops (June 8, 1988); (41) Haskell of Pittsburgh, Inc., 231 Haskell Lane, Verona, Pennsylvania 15147, produces metal office desks and other metal office furniture (June 8, 1988); (42) Circuline Fabrics, Inc., 1065 Willoughby Avenue, Brooklyn, New York 11221, produces women's cotton sweaters and slacks and cotton shirts and men's cotton sweaters (June 7, 1988); (43) Russell Aives Mills, Ltd., 13 Lucon Drive, Deer Park, New York 11729, produces sweaters for men, women and boys (June 7, 1988); (44) Anchor Needle Corporation, 4468 Culver Road, Rochester, New York 14622, produces parts for textile machinery (June 7, 1988); (45) M.U. Industries, Inc., 110 North Fifth Street, Minneapolis, Minnesota 66503, produces men's caps and hats (June 7, 1988); (46) Reach Elecronics, Inc., P.O. Box 308, Lexington, Nebraska 68850-0308, produces paging equipment (June 7, 1988); (47) Bordeaux, Inc., 102 East Washington, Clarinda, Iowa 51632, produces women's and girl's jogging suits, sweat shirts and culottes (June 8, 1988); (48) Customs Optics, Inc., 495 West John Street, Hicksville, New York 11801, produces eyeglass lens (June 8, 1988); (49) Richard E. Meyer & Sons, Inc., P.O. Box 307, Montgomery, New York 12549, produces leather (June 10, 1988); (50) Valleau, Inc., 3534 63rd Street, Saugatuck, Michigan 49453, produces metal figurines and metal parts (June 13, 1988); (51) Ricke Knitting Mills, Inc., 60–41 Flushing Avenue, Maspeth, New York 11378, produces men's and women's sweaters (June 13, 1988); (52) Leighton Machine Company, 60 Rogers Street, Manchester, New Hampshire 03103, produces cylinder and dials (June 13, 1988); (53) A&Z, Inc., 15043 Califa Street, Van Nuys, California 91411, produces wood furniture (June 13, 1988); (54) Aluminum and Zinc Die Cast Co., Inc. 1152 Expressway Drive South, Toledo, Ohio 43680, produces metal parts for automobile transmissions and doors (June 24, 1988); (55) Sewtech Engineering, Inc., 10770 Rockville Street B, Santee, California 92071, produces rooftop balloons and underwater parachutes for boat anchors (June 24, 1988); (56) IR&A Corporation, 7713 Haskell Avenue, Van Nuys, California 91406, produces precious metal jewelry (June 24, 1988); (57) King Concept Corporation, 5190 W. 76th Street, Minneapolis, Minnesota 55435, produces photographic film processing equipment (June 27, 1988); (58) Davis & Sanford Company, Inc., 24 Pleasant Street, New Rochelle, New York 10802, produces tripods (June 29, 1988); (59) LMS Metal Products Ltd., 6122 Hudson Avenue, West New York, New Jersey 07093, produces belt buckles and suspender hardware (June 29, 1988); (60) Marico Enterprises, Inc., 111 Demarest Mill Road, Nanuet, New York 10954, produces waterbed sheets, conforters and mattresses (June 30, 1988); (61) Diversified Control Systems, Inc., 645 Persons Street, East Aurora, New York 14052, produces process controls for ovens and kilns (July 1, 1988); (62) Prem Industries, Inc., 15 Ensminger Road, Tonawanda, New York 14150, produces gears, gear boxes, camshafts, valves and value housings, and valve components (July 5, 1988); (63) Straus Knitting Mills, Inc., 350 Sibley Street, St. Paul, Minnesota 55101, knit trim for collars, cuffs and waist bands for outerwear and medical garment apparel (July 5, 1988); (64) ARF Products, Inc., Gardner Road, Raton, New Mexico 87740, produces radio communication and navigation eqipment (July 5, 1988); (65) Creations by Virgil, Inc., 536 Cherry Lane, Floral Park, New York 11001, produces jewelry (July 5, 1988); (66) CEC Industries Corporation, 350 West 300 South, Salt Lake City, Utah 84110, produces mineral processing equipment (July 7, 1988); (67) Stucki Embroidery Works, Inc., Route 28, Boiceville, New York 12412, produces embroidered trim and eyelet for garmets and embroidered uniforms (July 11, 1988); (68) Fulford Manufacturing Co., 65 Tripps Lane, East Providence, Rhode Island 02914, produces automotive parts and accessories, pewter miniatures and handbags parts (clasps, corness and trim) (July 11, 1988); (69) Buerk Tool & Machine Corporation, 315 Grote Street, Buffalo, New York 14207, produces metal hanger units, bushings, gear box housing, printing machine cylinders and bearings, chassis, jigs and fixtures (July 12, 1988); (70) Dynaflare Industries, Inc., cutting tools including bushings, horns dies, drills, and wheels (July 15, 1988); (71) Case Stationery Co., Inc., 179 Saw Mill River Road, Yonkers, New York 10701, produces writing paper, stationery envelops, plastic holders, clip boards, pencil sharpeners, spice racks, canisters sets, serving trays and plastic wicker baskets (July 15, 1988); (72) Trident Products, Inc., 2353 Industrial Parkway West, Hayward, California 94545, produces toilet bowel cleaners (July 18, 1988); (73) Temple-Stuart Company, Holman Street, Baldwinville, Massachusetts 01436, produces wood dining room furniture (July 18, 1988); (74) Dexta Corporation, 962 Kaiser Road, Napa, California 94558, produces surgical chairs, tables, stools, and elastic bands (July 18, 1988); (75) Al&R Knitting Mill Corp., 9 Wyckoff Avenue, Brooklyn, New York 11237, produces children's sweaters, skirts and pants (July 20, 1988); (76) Cadet Manufacturing Co., Inc., 2500 West Fourth Plain Boulevard, Vancouver, Washington 98660, produces zonal electric heaters, fan heaters and baseboard heaters (July 20, 1988); (77) Nytone, Inc., 2424 South 900 West, Salt Lake City, Utah 84119, produces photographic equipment and enuretic alarms (July 22, 1988); (78) Pennsylvania Crusher Corporation, P.O. Box 100, Broomall, Pennsylvania 19008, produces mineral and earth cleaning equipment (July 22, 1988); (79) RAG Tooling Company, P.O. Box 88, Salem, Ohio 44460, produces tool holders (fixtures for drilling, welding, bonding, etc.), multiple drill head machines, machine tools for cutting and trimming dies (July 25, 1988); (80) Tech-Mark, Inc., 15452 SE. For-Mor Court, Clackamas, Oregon 97015, produces food processing ovens (July 25, 1988); (81) Service Circuits, Inc., 607 Virginia Street SE., Albuquerque, New Mexico 87102, produces printed circuit boards, silk screening on electronic panels, and custom milling on thin metals (August 3, 1988); (82) Twoson E.S.P., Inc. 718 Massachusetts Avenue, Matthews, Indiana 46957, produces wire harnesses for the automotive and appliance industries (August 4, 1988); (83) Riteway Machine & Specialty Co., Inc., P.O. Box 948, Barnwell, South Carolina 29812, produces nuclear waste liners (August 5, 1988); (84) Graham Field Health Products, Inc., 400 Rabro Drive, Hauppauge, New York 11788, produces medical supplies (August 11, 1988); (85) Secon Metals Corporation, 7 Intervale Street, White Plains, New York 10606, produces metal wire (August 11, 1988); (86) Eagle Telephonics, Inc., 375 Oser Avenue, Hauppauge, New York 11788, produces telephone keyset system (August 11, 1988); (87) Louis Pokorny Co., Inc., 950 Johnson Avenue, Ronkonkoma, New York 11779, bed frames (August 11, 1988); (88) Shuron, Inc., P.O. Box 331, Rochester, New York 14601, produces single vision and bifocal glass lenses (August 15, 1988); (89) Combined Technologies, Inc., 1240 NE. 175th, Seattle, Washington 98155, produces electronic fish findings, marine engine test equipment, boats, and parts for trucks (August 16, 1988); (90) Marontate-Jones, Inc., 320 Terry Avenue North, Seattle, Washington 98109, produces women's coats and jackets (August 16, 1988); (Tensar Structures, Inc., 13550 Bloomingdale Road, Akron, New York 14001, produces air and tension strucures (August 16, 1988); (91) Quincy Candle Corporation, P.O. Box 4880, Syracuse, New York 13221, produces wax candles and tapers (August 17, 1988); (92) Arbeka Webbing Company, 1135 Roosevelt Avenue, Pawtucket, Rhode Island 02860, produces stretch bandages, webbing and knitted fabric for hospital use (August 17, 1988); (93) MAJ of Honolulu, Inc., 875 Waimanu Street-Suite 107, Honolulu, Hawaii 96813, produces ladies dresses (August 18, 1988); (94) Bright Light Electric Mfg. Co., Inc., 836 Logan Street, Brooklyn, New York 11208, produces Christmas tree lights and electric cords (August 19, 1988); (95) NETCO Automation, 77 Washington Street, Haverhill, Massachusetts 01832, produces automotive printed circuit board assembly equipment (August 19, 1988); (96) U.S. Tap, Inc., 800 West Clinton Street, Frankfort, Indiana 46041, produces brass sink and bath faucets and accessories, and toilet and plumbing fixtures (August 22, 1988); (97) Industrial Plastic, Inc., 680 South 28th Street, Washougal, Washington 98671, produces fish pens and other fabricated plastic products (August 25, 1988); (98) Woodcraft Industries, Inc., 6303 Rich Road SE., Olympia, Washington 98501, produces kitchen and bathroom cabinets (August 25, 1988); (99) Boulder Products, Inc. 310 Paterson Plank Road, Carlstadt, New Jersey 07072, produces vinyl film

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and sheeting converter (August 25, 1988); (100) Layton Home Fashions, 1420 NW. Lovejoy Street, Portland, Oregon 97209, produces bedspreads, comforters and pillows (August 30, 1988); (101) Empire Manufacturing Co., P.O. Box 488, Winder, Georgia 30680, produces men's and women's slacks (August 31, 1988); (102) Superior Handle Finishers, Inc., P.O. Box 664, Abbeville, South Carolina 29620, produces round dowel handles (September 1, 1988); (103) Paris Manufacturing Corporation, P.O. Box 250, South Paris, Maine 04281, produces wooden sleds, wooden toboggans, plastic sleds, wooden portable cribs (September 8, 1988); (104) Dynaforce Corporation, 195 Sweet Hollow Road, Old Bethpage, New York 11804, produces strip doors (September 6, 1988); (105) U.S. Macaroni Manufacturing Co., Inc., East 801 Pacific Avenue, Spokane, Washington 99202, produces pasta and noodles (September 7, 1988); (106) Danwood Design Company, 21616 87th Avenue Southeast, Woodinville, Washington 98072, produces panels, desktops, case goods, and other office furniture (September 7, 1988); (107) L Sommer Narrow Tape Corporation, 434 King Street, E. Stroudsburg, Pennsylvania 18301, produces woven narrow fabric textile tape and webbing of cotton or man-made fabric (September 8, 1988); (108) Minnesota Specialty Company, Inc., 119 North 4th Street, Minneapolis, Minnesota 55401, produces caps, visors, aprons and tote bags (September 8, 1988); (109) C-B Manufacturing Company, Inc., 155 West 2950 South, Salt Lake City, Utah 84115, produces toupees and wigs (September 9, 1988); (110) Continental Diversified Sales, Inc., 900 Sixth Avenue Southeast, Minneapolis, Minnesota 55414, produces backhoes, tractor loaders, for lifts and parts (September 9, 1988); (111) Gotham Plastics Company, Inc., 220 East 138th Street, Bronx, New York 20451, produces plastic mugs, trays, baskets, medical devices and picture frames (September 13, 1988); (112) R.V. Dow Enterprises, 466 Central Avenue, Rochester, New York 14605, produces pipe cleaners (September 13, 1988); (113) Kalglo Electronics Company, Inc., 6584 Ruch Road, Bethlehem, Pennsylvania 18017, produces voltage surge suppressors for computers and agricultural brooder heaters for fowl and swine . (September 16, 1988); (114) U.S. Carbide Company, Inc., 5625 Brecksville Road, Cleveland, Ohio 44131, produces machine tools, including punches, dies, reamers, counterbores, drills, abrasion test blades and other cutting tools (September 16, 1988); (115) Wind Rider, Inc., 15825 Stagg Street, Van Nuys, California 91406, produces jewelry (September 19, 1988); (116) Hawaiian Motor Company, 20710 S. Alameda, Long Beach, California 90810, produces motorized yard tools (September 19, 1988); (117) Ann Arbor Circuits, Inc., 424 West Washington Street, Ann Arbor, Michigan 48103, produces printed circuit boards (September 23, 1988); (118) Action Tool & Die Engineering, Inc., P.O. Box 301, Miamitown, Ohio 45041, produces metal-cutting extrusion and stamping dies, work holders, labeling machines, elevator and safe parts and other metal stamped parts including parts for hospital equipment and paper bag manufacturing machines (September 21, 1988); (119) Pyro Media, Inc., 7911 10th Avenue South, Seattle, Washington 98108, produces planters and pots (September 29, 1988).

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (Pub. L. 93–618), as amended. Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Certification Division, Office of Trade Adjustment Assistance, Room 4015A, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.300, Trade Adjustment Assistance. Insofar as this notice involved petitions for the determination of eligibility under the Trade Act of 1974, the requirements of Office of Management and Budget Circular No. A–95 regarding review by clearinghouses do not apply.

E.T. Baker,

Supervisory Eligibility Examiner, Certification Division, Office of Trade Adjustment Assistance.

[FR Doc. 88-24509 Filed 10-21-88; 8:45 am]

BILLING CODE 3510-DR-M

National Telecommunications and Information Administration

Frequency Management Advisory Council; Open Meeting

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Notice of Open Meeting, Frequency Management Advisory Council.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2, notice is hereby given that the Frequency Management Advisory Council (FMAC) will meet from 9:30 a.m. to 4:00 p.m. on November 14, 1988, in Room 1605 at the United States Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC (Public entrance to the building is on 14th Street between Pennsylvania Avenue and Constitution Avenue.)

The Council was established on July 19, 1965. The objective of the Council is to advise the Secretary of Commerce on radio frequency spectrum allocation matters and means by which the effectiveness of Federal Government frequency management may be enhanced. The Council consists of 15 members whose knowledge of telecommunications is balanced in the functional areas of manufacturing, analysis and planning, operations, research, academia and international negotiations.

The principal agenda items for the meeting will be:

(1) Conference Report for the ITU Conference on the Geostationary-Satellite Orbit and Planning for Space Services (ORB–88).

(2) NTIA Report—TELECOM 2000.

(3) NTIA Report—A new Measure of Spectrum Use.

(4) Policy Implications for Spectrum Use in the 1990's.

(5) Radio Frequency Radiation Exposure Issues.

The meeting will be open to public observations. A period will be set aside for oral comments or questions by the public which do not exceed 10 minutes each per member of the public. More extensive questions or comments should be submitted in writing before November 10, 1988. Other public statements regarding Council affairs may be submitted at any time before or after the meeting. Approximately 20 seats will be available for the public on a first-come, first-served basis.

Copies of the minutes will be available on request 30 days after the meeting.

FOR FURTHER INFORMATION CONTACT: Inquires may be addressed to the Executive Secretary, FMAC, Mr. Michael W. Allen, National Telecommunications and Information Administration, Room 4099, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230, telephone 202–377–1850.

Date: October 19, 1988.

Michael W. Allen,

Executive Secretary, FMAC, National Telecommunications and Information Administration.

[FR Doc. 88-24473 Filed 10-21-88; 8:45 am]

BILLING CODE 3510-60-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will convene public meetings of its advisory entities as follows:

Coastal Migratory Pelagic (Mackerel) Advisory Panel—On November 14, 1988, at 1 p.m., will convene at the Howard Johnson Plaza Hotel, 700 North Westshore Boulevard, Tampa, FL, to review Amendment #3, which would prohibit the use of purse seines and run-around gillnets on Atlantic king mackerel and prohibit drift gillnets on all coastal pelagics, review Amendment #4 which would reallocate Atlantic Spanish mackerel between commercial and recreational fishermen from a ratio of 76/24 to 50/50, and review the options paper for Amendment #5 which are various measures, most of which are allocative. The public meeting will recess at 5 p.m., reconvene on November 15 at 8 a.m., and will adjourn at 3 p.m. *Texas Habitat Advisory Panel*—On November 15, 1988, at 1 p.m., will convene at the Sheraton Crest, 111 East First Street, Austin, TX, to discuss the Clean Water Act (Section 404), North American Water Fowl Plan, Gulf Intracoastal Waterway, MARPOL Treaty, and hear updates on Plaza Del Rio, Galveston Bay Navigational Study, and the Mouth of the Colorado River Diversion. The public meeting will recess at 5 p.m., reconvene on November 16 at 8:30 a.m., and will adjourn at 3 p.m.

For further information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL 33609; telephone: (813) 228–2815.

Date: October 18, 1988.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-24526 Filed 10-21-88; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council has scheduled two public meetings of its interim Halibut Select Group (HSG) and four halibut workshops to develop recommendations to the Pacific Council regarding non-Indian halibut allocation measures for the 1989 fishing season, as follows:

Oregon and California HSG Members—will convene October 18, 1988, at 1 p.m., at the Oregon Department of Fish and Wildlife Office, Newport, OR. *Washington HSG Members*—will convene October 20 at 7 p.m., in the Commissioners Meeting Room, Clallam County Courthouse, 4th and Lincoln, Port Angeles, WA.

Oregon Workshops—One workshop will convene October 31 at 7 p.m., at the La Sells Stewart Center, Agriculture Leader Room, 875 S.W. 26th, Corvallis, OR; a second workshop will convene on November 1, at 7 p.m., at the Marine Science Center Auditorium, Newport, OR. *Washington Workshops*—One workshop will convene October 25 at 7 p.m., at the Little Theater, Peninsula Community College, Port Angeles, WA; a second workshop will convene October 27 at 7 p.m., in the auditorium of State Office Building #2, 12th and Franklin, Olympia, WA.

For further information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 221–6352.

Date: October 18, 1988.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-24527 Filed 10-21-88; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's Pelagics Plan Monitoring Team will convene a public meeting on October 31, 1988, at 9:30 a.m., at the Honolulu Laboratory, National Marine Fisheries Service, 2570 Dole Street, Honolulu, HI, to discuss the fishery management plan for pelagics in the Western Pacific region. The Team will review the annual report fo the Western Pacific pelagics fishery for 1987, discuss research, data and industry needs, the Saltonstall-Kennedy tuna longline project around Hawaii, and discuss any other Team business.

For further information contact Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813; telephone: (808) 523–1368.

Date: October 19, 1988.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-24528 Filed 10-21-88; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Request for Bilateral Textile Consultations With the Government of the People's Republic of China To Review Trade in Categories 330/630

October 19, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: October 26, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extened on July 31, 1986; Bilateral Textile Agreement of February 2, 1988.

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the

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Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–6828. For information on embargoes and quota re-openings, call (202) 377–3715. For information on categories on which consultations have been requested, call (202) 377–3740.

SUPPLEMENTARY INFORMATION: On September 29, 1988, the Government of the United States requested consultations with the Government of the People's Republic of China regarding cotton and man-made fiber handkerchiefs in Categories 330/630, produced or manufactured in the People's Republic of China.

A summary market statement concerning these categories follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 330/630, under the agreement with the People's Republic of China, or to comment on domestic production or availability of products included in the categories, is invited to submit 10 copies of such comments or information to James H. Babb, Chariman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textile and Apparel, Room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements consider appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States.

The United States remains committed to finding a solution concerning Categories 330/630. Should such a solution be reached in consultations with the Government of the People's Republic of China, further notice will be published in the Federal Register.

A description of the textile and apparel categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see Federal Register notice 52 FR 47745, published on December 16, 1987).

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Market Statement

Cotton and Man-Made Fiber Handkerchiefs; China; September 1988.

Summary and Conclusions

U.S. imports of cotton and man-made fiber handkerchiefs (Category 330/630) from China reached 4,083,834 dozen during the year ending July 1988, 29 percent above the 3,175,248 dozen imported a year earlier. Cotton and man-made fiber handkerchief imports from China were 3,375,124 dozen in 1987 and 2,333,003 dozen in 1986. During the first seven months of 1988, imports of cotton and man-made fiber handkerchiefs (Category 330/630) from China reached 2,779,031 dozen, 34 percent above the 2,070,321 dozen imported during the same period of 1987.

China is the major supplier of cotton and man-made fiber handkerchiefs accounting for 72 percent of total imports in the first seven months of 1988. During the January–July 1987 period China accounted for 61 percent of total imports.

The sharp and substantial increase in imports of handerchiefs (Category 330/630) remained relatively flat, fluctuating within a very narrow range declining in one year and increasing in the next. U.S. production in 1987 was flat, remaining at the 1986 level, but was two percent below the 1984 level. The share of this market held by domestic manufacturers fell from 70 percent in 1984 to 64 percent in 1987.

U.S. Imports and Import Penetration

U.S. imports of cotton and man-made fiber handkerchiefs (Category 330/360) grew 34 percent between 1984 and 1987, increasing from 4,024 thousand dozen in 1984 to 5,377 thousand dozen in 1987. During the first seven months of 1988, imports of cotton and man-made fiber handkerchiefs (Category 330/630) reached 3,705 thousand dozen, 9 percent above the level imported during the same period of 1987. The ratio of imports to domestic production increased 15 percentage points, rising from 42 percent in 1984 to 57 percent in 1987.

Duty-Paid Value and U.S. Producers' Price

The majority of China's cotton and man-made fiber handkerchiefs imports during the first seven months of 1988 entered under the following TSUSA numbers: 370.4800—cotton hemmed handkerchiefs, not fancy or figured, not colored, not over 50's average yarn number, and not ornamented; 370.6040—cotton hemmed handkerchiefs, fancy or figured, not colored, not over 50's average yarn number, and not ornamented; 370.6020—cotton hemmed handkerchiefs, fancy or figured, colored, not over 50's average yarn number, and not ornamented; and 370.6820—man-made fiber hemmed handkerchiefs, not ornamented. These handkerchiefs entered the U.S. at duty-paid landed values below U.S. producers' prices for comparable handkerchiefs.

Committee for the Implementation of Textile Agreements

October 19, 1988.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further amended on July 31, 1986; pursuant to the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 2, 1988, as amended, between the Governments of the United States and the People's Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on October 28, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 330/630, produced or manufactured in China and exported during the period which began on September 29, 1988 and extends through December 31, 1988, in excess of 1,200,850 dozen.

Categories 330/630 shall remain subject to the Group II limit established in the directive of December 30, 1987.

Textile products in Categories 330/630 which have been exported to the United States prior to September 29, 1988 shall not be subject to the limits established in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–24465 Filed 10–21–88; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Defense Acquisition Regulatory Council; Meetings

AGENCY: Department of Defense (DoD) National Aeronautics and Space Administration (NASA).

ACTION: Notice of Meetings.

SUMMARY: The Defense Acquisition Regulatory (DAR) Council will travel to Cherry Hill, New Jersey, and Orlando, Florida, during the week of October 31, 1988. The Council will conduct joint Government/Industry meetings at both locations and will discuss acquisition topics of mutual interest. The Council tentatively plans presentations on the following topics: Small disadvantaged Business; Finance/Pricing; Technical Data Rights; Bid Protests; and Commercial Products and Practices. The Council will be available for questions on these and any other DAR cases or issues.

DATES: November 1, 1988 and November 3, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary DAR Council (202) 697–7266.

SUPPLEMENTARY INFORMATION: The Defense Contract Administration Services Region, Philadelphia will host the DAR Council's meeting on Tuesday, November 1st, from 7:00 am to 4:30 pm, at the cherry Hill Inn in Cherry Hill, New Jersey ((609) 662–7200). The contact point is Mary Schiavo, (215) 952–3548, (AV 444–3548). Registration is $25. Telephonic registration deadline is October 26, 1988.

The Defense Contract Administration Services Region, Atlanta will host the DAR Council's meeting on Thursday, November 3, from 8:00 am until 4:30 pm., at the the Orange County Convention Center in Orlando, Florida. The point of contact is Ms. Karen Drake (404) 429–6150, ((AV 697–6150)). Registration fee is $25. Telephonic registration deadline is October 26, 1988.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

[FR Doc. 88–24645 Filed 10–21–88; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 9 and 10 November 1988.

Time: 0600–1700 hours each day.

Place: U.S. Naval Safety Center, Norfolk, VA, November 9, 1988, HQ TRADOC, Hampton, VA, November 10, 1988.

Agenda: The Army Science Board Ad Hoc Subgroup on Human Dimensions in Army Safety will conduct its second meeting at two sites; namely, U.S. Naval Safety Center, Norfolk, VA (NAVSAFCEN) and HQ TRADOC, Hampton, VA. Briefings will be conducted by various members of the NAVSAFCEN staff as well as HQ TRADOC. Past, current and planned actions will be discussed in accordance with the Terms of Reference. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88–24523 Filed 10–21–88; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

[CFDA NO: 84.047]

Upward Bound Program

ACTION: Notice to extend the deadline for receipt of applications.

SUMMARY: On September 30, 1988 the Secretary of Education published in the Federal Register (53 FR 38321) a notice inviting applications for new awards for the Upward Bound Program. This document extends the date for receipt of applications from November 18, 1988 until December 2, 1988. The Secretary takes this action to allow the public additional time to prepare the applications.

For applications or information contact: Mrs. Goldia Hodgdon, Chief, Education Outreach Branch, Division of Student Services, U.S. Department of Education (Room 3060, ROB–3), 400 Maryland Avenue SW., Washington, DC 20202–5331. Telephone: (202) 732–48

Program Authority: 20 U.S.C. 1070d, 1070d–1a.

Dated: October 18, 1988.

Kenneth D. Whitehead,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 88–24516 Filed 10–21–88; 8:45 am]

BILLING CODE 4000–01–M

Office of Elementary and Secondary Education

Intent To Repay to the California State Department of Education Funds Recovered as a Result of a Final Audit Determination

AGENCY: Department of Education.

ACTION: Intent to award grantback funds.

SUMMARY: Under section 456 of the General Education Provisions Act (GEPA), the U.S. Secretary of Education (Secretary) intends to repay to the California State Department of Education, the State educational agency (SEA), an amoung equal to 75 percent of the funds recovered by the U.S. Department of Education (Department) as a result of a final audit determination. This notice describes the SEA's plan, submitted on behalf of Richmond Unified School District, the local educational agency (LEA), for the use of the repaid funds and the terms and conditions under which the Secretary intends to make those funds available. The notice invites comments on the proposed grantback.

DATE: All written comments must be received on or before November 23, 1988.

ADDRESS: All written comments should be submitted to Dr. James Spillane, Director, Division of Program Support, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue SW. (Room 2043), Washington, DC 20202–6132.

FOR FURTHER INFORMATION CONTACT: Dr. James Spillane. Telephone: (202) 732–4692.

SUPPLEMENTARY INFORMATION:

A. Background

In July 1986, the Department recovered $12,150 from the California SEA for claims arising from an audit of the Richmond Unified School District covering the period July 1, 1980 through June 30, 1982. The claims involved the SEA's administration of Title I of the Elementary and Secondary Education Act of 1965 (Title I), a program that addressed the special educational needs of educationally deprived children in areas with high concentrations of children from low-income families. Specifically, the LEA charged to its Title I project costs for training and conference expenses that were not properly related to the Title I program. This was in violation of § 116.36 of 45 CFR Part 116 and Appendix B, Part II.B.19. and Part I.C.1.a. of 45 CFR Part 100, which required that training costs

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must be directly related to Title I services provided during the year and necessary to meet the needs of participating students.

B. Authority for Awarding a Grantback

Section 456(a) of GEPA, 20 U.S.C. 1234e(a), provides that whenever the Secretary has recovered funds following a final audit determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay to the SEA or LEA affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this "grantback" arrangement if the Secretary determines that the—

(1) Practices and procedures of the SEA or LEA that resulted in the audit determination have been corrected, and the SEA or LEA is, in all other respects, in compliance with the requirements of the applicable program;

(2) SEA has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement that meets the requirements of the program, and, to the extent possible, benefits the population that was affected by the failure to comply or by the misexpenditures that resulted in the audit exception; and

(3) Use of funds to be awarded under the grantback arrangement in accordance with the SEA's plan would serve to achieve the purposes of the program under which the funds were originally granted.

C. Plan for Use of Funds Awarded Under a Grantback Arrangement

Pursuant to section 456(a)(2) of GEPA, the SEA has applied for a grantback of $9,112 and has submitted a plan on behalf of the LEA for use of the grantback funds to meet the special educational needs of educationally deprived children in programs administered under Chapter 1 of the Education Consolidation and Improvement Act of 1981. 20 U.S.C. 3801 *et seq.* The final audit determination against the SEA resulted from improper expenditures of Title I funds. However, since Chapter 1 superseded Title I, the SEA's proposal reflects the requirements in Chapter 1—a program, similar to Title I, that is designed to serve educationally deprived children in low-income areas.

The SEA's plan proposes that the LEA will use the grantback funds to augment the Chapter 1 reading, mathematics, and communications programs funded from the regular Chapter 1 entitlement for school year 1988–89. Under the SEA's plan, extra assistance would be provided by the LEA for approximately 30 eligible Chapter 1 children at a cost of $9,112. With the grantback funds, the LEA will hire two teacher aides, who will work two hours a day at an elementary school with individuals and small groups of Chapter 1 project participants. The aides will provide follow-up assistance in reading vocabulary and comprehension, basic mathematics facts, and oral and written communication skills. The assistance provided by the aides will focus on the development of basic skills and concepts necessary to increase the Chapter 1 students' effective participation and achievement levels in the core curriculum.

The regular Chapter 1 program provides for resource teacher support and supplementary materials in basic skills. However, the needs assessment indicates that more consistent follow through support is needed for these project participants to reach grade level status. The day-to-day reinforcement activities offered by these aides will provide additional individual and small group assistance, with the current Chapter 1 program does not afford.

Equitable services will be provided to eligible nonpublic school students.

D. The Secretary's Determinations

The Secretary has carefully reviewed the plan submitted by the SEA. Based upon the review, the Secretary has determined that the conditions under section 456 of GEPA have been met.

These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action. In finding that the conditions of section 456 of GEPA have been met, the Secretary makes no determination concerning any pending audit recommendations or final audit determinations.

E. Notice of the Secretary's Intent to Enter Into a Grantback Arrangement

Section 456(d) of GEPA requires that, at least 30 days before entering into an arrangement to award funds under a grantback, the Secretary must publish in the **Federal Register** a notice of intent to do so, and the terms and conditions under which the payment will be made.

In accordance with section 456(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the California SEA under a grantback arrangement. The grantback award would be in the amount of $9,112, which is 75 percent—the maximum percentage authorized by the statute—of the funds recovered by the Department as a result of the audit.

F. Terms and Conditions Under Which Payments Under a Grantback Arrangement Would Be Made

The SEA and LEA agree to comply with the following terms and conditions under which payment under a grantbank arrangement would be made:

(1) The funds awarded under the grantback must be spent in accordance with—

(a) All applicable statutory and regulatory requirements;

(b) The plan that the SEA submitted and any amendments to that plan that are approved in advance by the Secretary; and

(c) The budget that was submitted with the plan and any amendments to the budget that are approved in advance by the Secretary.

(2) All funds received under the grantback arrangement must be obligated by September 30, 1989, in accordance with section 456(c) of GEPA and the SEA's plan.

(3) The SEA, on behalf of the LEA, will, not later than January 1, 1990, submit a report to the Secretary which—

(a) Indicates that the funds awarded under the grantback have been spent in accordance with the proposed plan and approved budget, and

(b) Describes the results and effectiveness of the project for which the funds were spent.

(4) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

Dated: October 18, 1988.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.010, Educationally Deprived Children—Local Educational Agencies)

[FR Doc. 88-24515 Filed 10-21-88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP88-895-000]

Colorado Interstate Gas Co.; Request Under Blanket Authorization

October 7, 1988.

Take notice that on September 30, 1988, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP88-895-000 a request pursuant to § 157.205(b) and 157.216(b) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) to abandon by sale to Peoples Natural Gas Company (Peoples) approximately 6.06 miles of 4-inch sales lateral pipeline located in El Paso County, Colorado, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CIG states that pusuant to a Sale Agreement dated July 27, 1988, CIG has agreed to sell and Peoples has agreed to purchase the subject pipeline facilities. CIG states that the subject facilities were constructed and operated pursuant to the certificate authorization issued in Docket No. CP70-113. CIG notes that the proposed abandonment involves only the sale of facilities and that no service obligation to Peoples is either reduced or terminated as a result of the proposed abandonment.

CIG states that under the July 27, 1988, agreement, it will sell the facilities to Peoples, for Peoples' use in delivering gas purchased from CIG for resale to the towns of Monument and Palmer Lake, located in El Paso County, Colorado. According to CIG, the facilities are located in Section 28, 29, and 30, T11S-R65W, and Section 21, 25, 26, and 27, T11S-R66W, El Paso County, Colorado.

CIG states that it holds a blanket certificate in Docket No. CP83-21-000 authorizing it to perform activities under Subpart F of Part 157 of the Commission's Regulations.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24516 Filed 10-21-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-154-004]

Northwest Pipeline Corp.; Compliance Filing

October 19, 1988.

Take notice that on October 11, 1988, Northwest Pipeline Corporation (Northwest) filed Substitute Ninth Revised Sheet No. 125 to its FERC Gas Tariff, First Revised Volume No. 125, to be effective June 1, 1988.

Northwest states that this tariff sheet reflects the addition of the word "scheduled" between "previous" and "purchased" in § 16.6(b).

Northwest states that a copy of this filing has been mailed to all of its jurisdictional sales customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such motions or protests should be filed on or before October 26, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24519 Filed 10-21-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-227-003 and CP87-309-005]

Paiute Pipeline Co.; Filing

October 19, 1988.

Take notice that on October 12, 1988, Paiute Pipeline Company (Paiute) filed Second Substitute Original Sheet No. 27 to its FERC Gas Tariff, Original Volume No. 1-A.

Paiute states that this filing reflects correction of the administrative errors and requests that the tendered tariff sheet be accepted in substitution for its counterpart contained in its filing of September 30, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211) (1988)). All such motions or protests should be filed on or before October 26, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24520 Filed 10-21-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT89-1-001]

Williston Basin Interstate Pipeline Co.; Proposed Changes in FERC Gas Tariff Pursuant to Order No. 497

October 19, 1988.

Take notice that on October 17, 1988, Williston Basin Interstate Pipeline Company tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Original Volume No. 1-B:

Substitute First Revised Sheet No. 169
Original Sheet No. 169A
Substitute First Revised Sheet No. 170
Substitute First Revised Sheet No. 172
Substitute First Revised Sheet No. 173
Substitute First Revised Sheet No. 174
Substitute First Revised Sheet No. 176
Substitute First Revised Sheet No. 177
Substitute First Revised Sheet No. 178
Substitute First Revised Sheet No. 179
Substitute First Revised Sheet No. 180
Substitute First Revised Sheet No. 181
Substitute First Revised Sheet No. 182
Substitute First Revised Sheet No. 183
Substitute First Revised Sheet No. 184

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211. All such motions or protests must be filed by October 27, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24521 Filed 10-21-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200162.

Title: North Carolina State Ports Authority Terminal Agreement.

Parties:

North Carolina State Ports Authority
Solar International Shipping Agency, Inc., Agent for Yangming Marine Transport Corporation (Yangming)

Synopsis: The agreement provides Yangming volume incentive rates for wharfage for an annual volume over 50,000 tons of cargo. The agreement provides for dockage and crane rental at tarrif rates provided that those rates will not increase more than 4% during any contract year. The agreement also provides Yangming special container handling rates. The agreement is for one year with an option to renew for an additional year.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: October 19, 1988.

[FR Doc. 88-24511 Filed 10-21-88; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Service's claims collection regulations (45 CFR Part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of Maturities." This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register.**

The Secretary of the Treasury has certified a rate of 14.75% for the quarter ended September 30, 1988. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: October 13, 1988

Dennis J. Fischer,

Deputy Assistant Secretary, Finance.

[FR Doc. 88-24474 Filed 10-21-88; 8:45 am]

BILLING CODE 4150-04-M

Centers for Disease Control

National Institute for Occupational Safety and Health; Mine Health Research Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control (CDC) announces the following National Institute for Occupational Safety and Health (NIOSH) committee meeting:

Name: Mine Health Research Advisory Committee (MHRAC).

Date: November 3-4, 1988.

Place: Auditorium B, Centers for Disease Control, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Time and Type of Meeting: Open 8:45 a.m.-10:30 a.m., November 3. Closed 10:30 a.m.-12:30 p.m., November 3. Open 1:30 p.m.-4:30 p.m., November 3. Open 9:00 a.m.-12 noon, November 4.

Contact Person: Melvin L. Myers, Executive Secretary, MHRAC, NIOSH, CDC, BLDG. 1, Room 3120, D-37, 1600 Clifton Road, NE., Atlanta, Georgia 30333, Telephone: Commercial: (404) 639-3901, FTS: 236-3901.

Purpose: The Committee is charged with advising the Secretary of Health and Human Services on matters involving or relating to mine health research, including grants and contracts for such research.

Agenda: Agenda items for the meeting will include announcements; consideration of minutes of the previous meeting and future meeting dates; an orientation for new members; discussion of the recent International Pneumoconioses Conference; and a review of the NIOSH surveillance program. From 10:30 a.m. until 12:30 p.m., November 3, the Commmittee will discuss certain matters covered by the Government in the Sunshine Act, sections 552b(c)(6) and/or 552b(c)(9)(B) of title 5 U.S. Code. Therefore, pursuant to said provisions and the determination of the Director, Centers for Disease Control, this portion of the meeting will not be open to the public.

Agenda items are subject to change as priorities dictate.

The portion of the meeting so indicated is open to the public for observation and participation. Anyone wishing to make an oral presentation should notify the contact person listed above as soon as possible before the meeting. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the presentation. Oral presentations will be scheduled at the discretion of the Chairperson and as time permits. Anyone wishing to have a question answered by a scheduled speaker during the meeting should submit the question in writing, along with his or her name and affiliation, through the Executive Secretary to the Chairperson. At the discretion of the Chairperson and as time permits, appropriate questions will be asked of the speakers.

A roster of members and other relevant information regarding the meeting may be obtained form the contact person listed above.

Due to difficulties in scheduling, the agenda could not be finalized in time to meet the 15-day publication requirement.

Dated: October 19, 1988.

Elvin Hilyer,

Associate Director for Policy Coordination Centers for Disease Control.

[FR Doc. 88-24569 Filed 10-21-88; 8:45 am]

BILLING CODE 4160-18-M

Family Support Administration

Statement of Organization, Functions and Delegations of Authority

Part M, Family Support Administration, Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (51 FR 1164, April 4, 1986 as amended most recently at 51 FR 35958, September 24, 1987) is amended to reflect organization and function changes to Chapter ML, Office of Community Services. Specifically, to: (1) remove The Federal Task Force on the Homeless and (2) consolidate the audit functions of the Community Services Program and the Low-Income Home Energy Assistance Program (LIHEAP).

The changes are as follows:

1. Amend Chapter ML, Section ML.00 Mission to delete the last sentence.

2. Amend Chapter ML, Section ML.10 Organization to: (1) delete line 3 "The Federal Task Force on the Homeless (ML1)" and line 12 "Division of Audit Resolution (MLB4)" and (2) insert after Division of Energy Program Operations (MLC2) "Office of Audit Resolution (MLE)."

3. Amend Chapter ML, Section ML.20 Functions to delete paragraph C. "The Federal Task Force on the Homeless" in its entirety.

4. Amend Chapter ML, Section ML.20 Functions to delete paragraph D.4 "Division of Audit Resolution" in its entirety.

5. Amend Chapter ML, Section ML.20 Functions to delete paragraph E.2 and replace with the following:

2. The Division of Energy Program Operations provides leadership in interpretation and application of federal program policy as it relates to compliance activities in the LIHEAP program. The Division reviews grantee applications and amendments; provides the Office of Financial Management, FSA, with grantee information necessary to issue grants; and investigates complaints. The Division provides assistance to states, tribes and territories in developing energy program policies and operational procedures; evaluates compliance of state and tribal policies and operations with statutory and regulatory requirements; and provides support in developing and implementing program improvements. The Division also assists states and other public and private organizations by providing training and technical assistance in areas related to home energy.

6. Amend Chapter ML, Section ML.20 to add the following:

F. The Office of Audit Resolution is responsible for administering the entire Audit responsibilities under Pub. L. 98-502, the Single Audit Act and meeting the requirements of OMB Circular A-128. These audit responsibilities pertaining to block grant audits and discretionary grant audits in both the Community Services Programs and the Low-Income Home Energy Assistance Programs (LIHEAP).

This Office is responsible for the review and resolution of audit issues or questioned costs with recipients of OCS transition, discretionary and Community Services and LIHEAP block grant funds in accordance with the appropriate audit policy as established by HHS.

This Office is also responsible for the monitoring of agreements relating to the expenditures of carry-over Community Services Administration (CSA) funds; the disposition of assets of former CSA grantees, and for addressing any remaining issues arising from the responsibilities of the former CSA and for performing all claims (debts) collection activities.

The Office consists of two Audit Resolution Teams, one for Discretionary Grants, and one for the Community Services and LIHEAP block grants.

Wayne A. Stanton,

Administrator, Family Support Administration.

Date: October 14, 1988.

[FR Doc. 88-24512 Filed 10-21-88; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 88V-0517]

Approved Variance for a Laser Product; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a variance from the performance standard for laser products has been approved by FDA's Center for Devices and Radiological Health (CDRH) for the Clinac radiation therapy linear accelerator systems and Ximatron radiation therapy simulator systems which incorporte an optional backpointer laser. These systems are manufactured by Varian, Palo Alto, CA.

DATES: The variance became effective on April 8, 1988, and ends on April 8, 1991.

ADDRESS: The application and all correspondence on the application have been placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Sally Friedman, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: Under 21 CFR 1010.4 of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), FDA has granted Varian, 611 Hansen Way, Palo Alto, CA 94303, a variance from the performance standard for laser products (21 CFR 1040.10 and 1040.11) for the Varian Clinac radiation therapy linear accelerator systems and Ximatron radiation therapy simulator systems. Specifically, the requirement of the laser products standard for which the variance was granted is 21 CFR 1040.10(f)(5)(iii), that a laser system incorporate an emission indicator at the laser control if the laser and its operation control are housed separately and can be operated at a separation distance greater than 2 meters.

Under the terms of the variance, (1) the laser radiation emitted in the backpointer beam must not exceed Class II levels; (2) the instructions for operation under 21 CFR 1040.10(h)(1) must include a description of appropriate eye protection for use by the patient during those procedures that would result in the eyes of the patient being exposed to laser radiation; and (3) an additional indication of emission must be provided by either (a) connecting the laser to the system so that it comes on when the field defining light is turned on, or by (b) connecting the laser so that it is activated by a change in the setting of the room light control. The choice of form of the additional indicator will be made by the purchaser. If the purchaser declines both forms of additional indication, the control on the pendant for the laser will be disabled.

FDA has determined that: (1) The laser products utilize alternate means for providing radiation safety or protection equal to that provided by products of similar design meeting all of the requirements of the standard; and (2) although it is possible to direct the backpointer laser light toward the face of the patient on the treatment couch, that would rarely happen. Further, the laser output system is a fan beam at Class II levels.

Therefore, on April 8, 1988, the requested variance was approved by a

letter to the manufacturer from the Deputy Director of CDRH.

So that the product may show evidence of the variance approved for the manufacturer, the product shall bear on the certification label required by 21 CFR 1010.2(a) a variance number, which is the FDA docket number appearing in the heading of this notice, and the effective date of the variance.

In accordance with § 1010.4, the application and all correspondence on the application have been placed on public display under the designated docket number in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177–1179 (42 U.S.C. 263f)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.86).

Dated: October 14, 1988.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 88-24493 Filed 10-21-88; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

Cardiovascular and Renal Drugs Advisory Committee

Date, time, and place. November 3 and 4, 1988, 9 a.m., National Institutes of Health, Clinical Center, Bldg. 10, Jack Masur Auditorium, 9000 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, November 3, 1988, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5:30 p.m.; open committee discussion, November 4, 1988, 9 a.m. to 5:30 p.m.; Joan C. Standaert, Center for Drug Evaluation and Research (HFD–110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4750 or 419–256–0111.

General function of the committee. The Committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of cardiovascular disorders and diseases and makes recommendations regarding the appropriate clinical development of such products.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 26, 1988, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss Cardizem (diltiazem), Marion Laboratories, new drug application (NDA) 18–602; NDA 19–471, for hypertension; Cardene (nicardipine), Syntex, NDA 19–488, for hypertension; Lopressor (metoprolol), Ciba-Geigy, NDA 17–963, for arrhythmia; Decabid (indecainide), Eli Lilly and Co., NDA 19–663, for arrhythmias.

Pulmonary-Allergy Drugs Advisory Committee

Date, time, and place. November 17 and 18, 1988, 8:30 a.m., Conference Rm. 10, Bldg. 31, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, November 17, 1988, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; open committee discussion, November 18, 1988, 8:30 a.m. to 2:30 p.m.; Isaac F., Roubein, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of pulmonary disease and diseases with allergenic and/or immunologic mechanisms.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 8, 1988, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On November 17, 1988, the committee will discuss the guidelines for the evaluation of bronchodilator drugs. On November 18, 1988, the committee will discuss NDA 19–475 (Pentigetide, Immunotech Pharmaceuticals).

Radiopharmaceutical Drugs Advisory Committee

Date, time, and place. November 21, 1988, 8:30 a.m., Conference Rms. G and H, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; David F. Hersey, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in diagnostic and therapeutic procedures using radioactive pharmaceuticals and contrast media used in diagnostic radiology.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 7, 1988, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss: (1) NDA 19–629, Cerotec (technetium, Tc 99m HMPAO), Amersham Corp., for use in cerebral imaging; (2) safety considerations related to the use of nonionic contrast media; (3) a pending gastric emptying petition; (4) an update of progress in the development of the agency's regulatory position for Positron Emission Tomography (PET); and (5) brief reports by groups in and outside the Food and Drug Administration, which are of interest to the committee.

Hematology and Pathology Devices Panel

Date, time, and place. November 21 and 22, 1988, 9 a.m., Auditorium, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, November 21, 1988, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 5 p.m.; open public hearing, November 22, 1988, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 5 p.m.; Joseph L. Hackett, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7550.

General function of the committee. The committee reviews and evaluates available data concerning the safety and effectiveness of medical devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 1, 1988, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss premarket approval applications for: (1) The detection of the Philadelphia translocations present in leukemia cells of patients with chronic myelogenous leukemia; (2) the T and B lymphocyte gene rearrangement utilizing deoxyribonucleic acid (DNA) probes; and (3) the soluble Interleukin-2 receptor as a measurement of tumor burden in patients with hairy cell leukemia.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions of the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participations does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, Rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20557, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Fredom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: October 19, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-24619 Filed 10-20-88; 3:23 pm]

BILLING CODE 4160-01-M

Public Health Service

National Toxicology Program, Board of Scientific Counselors Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting on November 17 and 18, 1988, of the National Toxicology Program (NTP) Board of Scientific Counselors, Reproductive and Developmental Toxicology Program Review Subcommittee. The meeting will be held at the Omni Netherlands Plaza Hotel, 35 West 5th Street, Cincinnati, Ohio, on November 17, and at NIOSH, 4676 Columbia Parkway, Cincinnati, on November 18.

The meeting is from 1:00—6:00 p.m. on November 17 and 8:30 a.m.—noon on November 18, and will be open to the public. The primary agenda topics are reviews of the research efforts of the staffs at the National Institute of Environmental Health Sciences (NIEHS) and National Institute of Occupational Safety and Health (NIOSH).

The Executive Secretary, Dr. Larry Hart, Office of the Director, National Toxicology Program, P.O. Box 12233, Research Triangle Park, North Carolina 27709, Telephone (919) 541–3971, FTS 629–3971, will furnsih the final agenda.

Dated: October 17, 1988.

David P. Rall,

Director, National Toxicology Program.

[FR Doc. 88-24460 Filed 10-21-88; 8:45 am]

BILLING CODE 4140-01-M

National Toxicology Program, Board of Scientific Counselors' Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the National Toxicology Program (NTP) Board of Scientific Counselors, U.S. Public Health Service, in the Conference Center, Building 101, South Campus,

National Institute of Environmental Health Sciences (NIEHS), Research Triangle Park, North Carolina on November 14 and 15, 1988.

The meeting will be open to the public from 8:30 a.m. until adjournment on November 14. The preliminary agenda with *approximate* times are as follows:

Review of Cellular and Genetic Toxicology Branch (CGTB), Division of Toxicology Research and Testing, NIEHS

8:30 a.m.–9:00 a.m.—Introduction
9:00 a.m.–12:15 p.m.—Current CGTB Programmatic Activities

Activities

1:00 p.m.–3:15 p.m.—Initiatives on Non-Mutagenic Carcinogens
3:30 p.m.–4:15 p.m.—Germ Cell Mutation Projects including Concepts Review
4:15 p.m.–Adjournment—Intramural Research Projects

The meeting on November 15 will be open to the public from 8:30 a.m. to 12:00 noon. The preliminary agenda with *approximate* times are as follows:

8:30 a.m.–8:45 a.m.—Report of the Director, NTP
8:45 a.m.–9:00 a.m.—Update on Activities of the Technical Reports Review Subcommittee
9:00 a.m.–9:30 a.m.—Status of NIEHS Oncogene Studies
9:30 a.m.–10:30 a.m.—CGTB Poster Session
10:30 a.m.–12:00 noon—Review of Chemicals Nominated for NTP Studies.

Thirteen chemicals will be reviewed. Seven of the chemicals were evaluated by the NTP Chemical Evaluation Committee (CEC) on May 10, 1988, and are (with CAS Nos. in parenthesis): (1) b-Cadinene (528–67–7); (2) Diphenylamine (122–39–4); (3) Firemaster 880 (37853–59–1); (4) Isobutene (115–11–7); (5) Methacrylonitrile (126–98–7); (6) Phenylpropanolamine Hydrochloride (154–41–6); (7) Trichloromelamine (7673–09–8, 12379–98–3). Six of the chemicals were evaluated by the CEC on July 27, 1988, and are: (1) Acrolein (107–02–8); (2) Acrylic Acid (79–10–7); (3) Aldicarb Oxime (1646–75–9); (4) Butanal Oxime (110–69–0); (5) Cyclohexanone Oxime (100–64–1); and (6) 1,1,2,2-Tetrabromoethane (79–27–6).

In accordance with the provisions set forth in section 552b(c)(6) Title 5 U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on November 14 from 7:45 a.m. to 8:30 a.m. and November 15 from 12 noon to 3:00 p.m. for further evaluation of research activities in the NIEHS Cellular and Genetic Toxicology Branch, including the consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Executive Secretary, Dr. Larry G. Hart, National Toxicology Program, P.O. Box 12233, Research Triangle Park, North Carolina 27709, telephone (919) 541–3971; FTS 629–3571, will have available a roster of Board members and expert consultants and other program information prior to the meeting, and summary minutes subsequent to the meeting.

Dated: October 3, 1988.

David P. Rall,

Director, National Toxicology Program.

[FR Doc. 88–24461 Filed 10–21–88; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N–88–1870; FR–2581]

Recognition of Substantially Equivalent Laws

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Final notice.

SUMMARY: Title 24, Part 115 of the Code of Federal Regulations describes the procedure for recognizing State and local fair housing laws that provide rights and remedies for alleged discriminatory housing practices that are substantially equivalent to those provided by Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–19. This notice: A. Announces the Department's decision to recognize two additional jurisdictions in accordance with § 115.9(c); and B. Announces the entry into an agreement for interim referrals with six jurisdictions in accordance with § 115.11.

EFFECTIVE DATE: October 24, 1988.

FOR FURTHER INFORMATION CONTACT: Wagner D. Jackson, Acting Director for Fair Housing Enforcement and Section 3 Compliance, Department of Housing and Urban Development, Room 5226, 451 Seventh Street, SW., Washington, DC 20410; telephone, (202) 755–6836. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: A. On March 3, 1988 (53 FR 6984), the Department published a notice seeking public comment on the Department's determination that the fair housing law of Hammond, IN and Cambridge, MA each, "on its face", provides rights and remedies for alleged discriminatory housing practices that are substantially equivalent to those provided by Title VIII of the Civil Rights Act of 1968. Comment was also invited on the present and past performance of the agencies administering and enforcing the laws of those localities. No public comments were received concerning the recognition of these jurisdictions.

This publication gives notice of the recognition of Hammond, IN and Cambridge, MA, in accordance with § 115.9(c).

B. The Assistant Secretary has determined, after application of the criteria set forth in § 115.3, that the fair housing laws for the State of Georgia; the State of Ohio; Albany, New York; Durham, North Carolina; Greensboro, North Carolina; and Lee County, Florida, on their face, provide rights and remedies for alleged discriminatory housing practices which are substantially equivalent to those provided in Title VIII of the Civil Rights Act of 1968. However, the statutes and ordinances of these jurisdictions have not been in effect for a sufficient time to permit the enforcement agencies to demonstrate that they meet the performance standards described in § 115.4.

This publication gives notice of HUD's entry into an agreement for interim referrals with the State of Georgia; the State of Ohio; Albany, New York; Durham, North Carolina; Greensboro, North Carolina; and Lee County, Florida, in accordance with § 115.11.

The Fair Housing Amendments Act of 1988 (Pub. L. 100–430) (1988 Act), enacted on September 13, 1988, amended Title VIII of the Civil Rights Act of 1968. The 1988 Act provides that agencies certified as having substantially equivalent fair housing laws or agencies certified for interim referrals before the date of enactment may continue to receive referrals after that date. The agencies to which this Notice refers were certified before September 13, 1988. Hammond, IN was certified on September 12, 1988, and Cambridge, MA on August 8, 1988. The dates of the agreements for interim referrals were: State of Georgia, August 1, 1988; State of Ohio, August 2, 1988; Albany, New York, July 22, 1988; Durham, North Carolina, August 8, 1988; Greensboro, North Carolina, August 18, 1988; and Lee County, Florida, August 10, 1988.

In accordance with 24 CFR 50.20(k), this notice is not subject to the

environmental assessment requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4332.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this notice would not have a significant economic impact on a substantial number of small entities. The rule only carries out the Department's statutory responsibility as set out in section 810(c) of the Fair Housing Act, 42 U.S.C. 3610(c).

Date: October 7, 1988.

William E. Wynn,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 88–24525 Filed 10–21–88; 8:45 am]

BILLING CODE 4210–28–M

Office of Administration

[Docket No. N–88–1831]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Report Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 17, 1988.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Requisition for Development or Modernization Funds.

Office: Public and Indian Housing.

Description of the Need for the Information and Its Proposed Use: The U.S. Housing Act of 1937, as amended, authorizes HUD to assist Public Housing Agencies (PHAs) and Indian Housing Authorities (IHAs) in the development and rehabilitation of lower income housing. The financial assistance is obtained by the PHSs/IHAs submitting to HUD an approved form, Requisition for Development and Modernization Funds.

Form Number: HUD–5402.

Respondents: State or Local Governments.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	X	Frequency of response	X	Hours per response	=	Burden hours
Requisition Form	2,300		25		.5		28,750

Total Estimated Burden Hours: 28,750.

Status: Extension.

Contact: Stephanie Avery-Boyd, HUD, (202) 755–7920; John Allison, OMB, (202) 395–6880.

Date: October 13, 1988.

Proposal: Litigation Reporting and Related Requirements for Certain Recipients of HUD Assistance (FR–2134).

Office: General Counsel.

Description of the Need for the Information and its Proposed Use. This proposed rule would specify litigation reporting and related requirements for certain recipients of HUD assistance, including the circumstances under which these recipients must report their litigation activity to HUD, and prohibits recipients from using HUD assistance to pay the costs of litigation against the United States.

Form Number: None.

Respondents: Individuals or Households, State or Local Governments, Businesses or Other For-Profit, and Small Businesses or Organizations.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	X	Frequency of response	X	Hours per response	=	Burden hours
Reporting Requisition	450		11.3		2.2		11,385

Total Estimated Burden Hours: 11,383.

Status: New.

Contact: Sharmeen Dosky, HUD, (202) 755–7055; John Allison, OMB, (202) 395–6880.

Date: October 12, 1988.

[FR Doc. 88–24483 Filed 10–21–88; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

August 31, 1988.

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance office and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202–395–7340.

Title: Direct Loan and Guaranty Loan Program, Applications and Requirements (25 CFR Parts 101 and 103).

OMB Approval Number: 1076–0020.

Abstract: To provide financial assistance to tribes, tribal organizations, and individuals through the Direct Loan and Loan Guaranty Programs to promote economic development on or near reservations. The forms require certain financial data, background information, and project feasibility to determine the eligibility and potential success of the business.

Bureau Form Numbers: BIA Forms 4729, 4737, 4738, 3739, 3740, 4741, 4706, 4745, 4753, 4755, 4759, 4760, and 4749.

Frequency: On occasion.

Description of Respondents: Indian tribes, Indian organizations, and Indian individuals.

Estimated Completion Time:

Form	Time
4729	2 hours, 25 minutes.
4737	8.5 hours.
4738	15 minutes.
4739	20 minutes.
4740	1 hour.
4741	1 hour.
4706	30 minutes.
4745	5 minutes.
4753	30 minutes.
4755	30 minutes.
4759	60 minutes.
4760	30 minutes.
4749	30 minutes.

Annual Responses: 1,657.

Annual Burden Hours: 985.

Bureau Clearance Officer: Cathie Martin (202) 343–3577.

Jim C. Christie,

Acting Deputy to the Assistant Secretary—Indian Affairs (Trust and Economic Development).

[FR Doc. 88–24530 Filed 10–21–88; 8:45 am]

BILLING CODE [illegible]

Bureau of Land Management

[AK–966–4213–15; AA–8961–B; AA–8961–G]

Alaska Native Claims Selections; Eklutna, Inc.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Eklutna, Inc. for approximately 28,258 acres. The lands involved are in the vicinity of Eklutna, Alaska, within the following townships:

Seward Meridian, Alaska

T. 15 N., R. 1 E.
T. 14 N., R. 2 E.
T. 15 N., R. 2 E.
T. 14 N., R. 3 E.
T. 15 N., R. 3 E.
T. 16 N., R. 3 E.
T. 15 N., R. 1 W.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in THE ANCHORAGE TIMES. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until November 23, 1988 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Raymond Chisa,

Chief, Branch of Cook Inlet and Ahtna Adjudication.

[FR Doc. 88–24469 Filed 10–21–88; 8:45 am]

BILLING CODE 4310–JA–M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collections of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the telephone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone (202) 395–7340, with copies to Gerald D. Rhodes, Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Mail Stop 646, Room 6A110; Minerals Management Service; 12203 Sunrise Valley Drive; Reston, Virginia 22091.

Title: Alaska Outer Continental Shelf (OCS) Social Indicators Survey.

OMB Approval Number: 1010–0069.

Abstract: Respondents supply information and data to establish measures of well-being of rural population potentially affected by OCS activity. This information will allow the Agency to establish a basis to describe, project, and monitor the effects of major Federal actions on the Alaskan OCS.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: Residents in rural Alaska potentially affected by OCS leasing.

Estimated Completion Time: 1 hour.

Annual Responses: 375.

Annual Burden Hours: 290.

Bureau clearance officer: Dorothy Christopher (703) 435–6213.

Date: September 8, 1988.

Bruce G. Weetman,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. 88–24481 Filed 10–21–88; 8:45 am]

BILLING CODE [illegible]

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–250 (Sub-No. 1X); (Sub-No. 252X)]

Cadiz Railroad Co.; Abandonment and Discontinuance Exemption in Caldwell, Christian, and Trigg Counties, KY and CSX Transportation, Inc.; Abandonment Exemption in Caldwell and Christian Counties, KY

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by Cadiz Railroad Company (Cadiz Rail) of 8.15 miles of its own track from the terminus near Cadiz, KY to Gracey, KY and discontinuance of operations by Cadiz Rail over 20.7 miles of track leased from CSX Transportation, Inc. (CSXT), which extends from Princeton, Caldwell County, KY to Gracey, Christian County, KY. It also exempts the abandonment by CSXT of the same 20.7 miles of track between Princeton and Gracey, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, the exemptions will be effective on November 23, 1988. Formal expressions of intent to file and offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by November 3, 1988, petitions to stay must be filed by November 8, 1988, and petitions for reconsideration must be filed by November 18, 1988. Requests for a public use condition must be filed by November 3, 1988.

ADDRESSES: Send pleadings referring to Docket No. AB–55 (Sub-No. 252X) and Docket No. AB–250 (Sub-No. 1X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioners' representatives: R. Lyle Key, Jr. (J150), Senior Counsel, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202

and

Donnie Holland, President, Cadiz Railroad Company, Cadiz, KY 42211

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275–7245, [TDD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 275–1721.]

Decided: October 18, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 88–24462 Filed 10–21–88; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–3 (Sub-No. 80X)]

Missouri Pacific Railroad Co.—Abandonment Exemption—Zavala County, TX

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 17.1-mile line of railroad between milepost 147.4 near Crystal City and milepost 164.5 near La Pryor, in Zavala County, TX.

Applicant has certified that: (1) No local or overhead traffic has moved over the line for at least 2 years; and (2) no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective November 23, 1988 (unles stayed pending reconsideration). Petitions to stay regarding matters that do not involve environmental issues [1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [2] must be filed by November 3, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by November 14, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representatives: Joseph D. Anthofer and Jeanna L. Regier, Room 830, 1416 Dodge Street, Omaha, NE 68179.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by October 27, 1988. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: October 13, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–24219 Filed 10–21–88; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB); Correction

AGENCY: Office of the Secretary.

ACTION: Notice of correction.

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the Federal Register on December 22, 1987 (52 FR 49440–49446).

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C. 2d 400 (1988).

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the Federal Register on December 22, 1987 (52 FR 49440–49446).

SUMMARY: This notice corrects the recordkeeping/reporting requirements reported for the Office of Federal Contract Compliance Programs (OFCCP) to include the frequency of response and the total number of respondents which were inadvertently omitted from the notice published in the Federal Register Friday, October 14, 1988 (53 FR 40283).

FOR FURTHER INFORMATION CONTACT: Mrs. Theresa O'Malley at (202) 523-6423.

To add as follows:

1. Frequency of response: One-time, nonrecurring.

2. Number of respondents: 7,442 contractors.

Signed at Washington, DC this 19th day of October, 1988.

Theresa O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 88-24484 Filed 10-21-88; 8:45 am]

BILLING CODE 4510-23-M

Mine Safety and Health Administration

[Docket No. M-88-172-C]

Shanne Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Shanne Coal Corporation, P.O. Box 609, Big Rock, Virginia 24603 has filed a petition to modify the application of 30 CFR 75.329-1 (sealing or ventilation of pillared or abandoned area) to its Shanne Mine No. 1 (I.D. No. 44-06422) located in Buchanan County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that pillared or abandoned areas be sealed or ventilated.

2. Petitioner states that due to adverse roof conditions and an unmeasurable quantity of water, the old mine adjacent to Shanne Mine No. 1 should not be cut into as required by present plans.

3. As an alternate method, petitioner proposes to bleed air into the old works from the belt entry and establish monitoring stations where quality and quantity of air passing over old works can be monitored.

4. In support of this request, petitioner states that—

(a) The monitoring stations would be evaluated at least once a shift by certified personnel, and

(b) The mine is located above drainage and methane has never been detected. Also, the mine fan operates continuously.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 23, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: October 11, 1988.

[FR Doc. 88-24483 Filed 10-21-88; 8:45 am]

BILLING CODE 4510-43-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Meeting Postponed

The Advisory Committee on Nuclear Waste (ACNW) meeting scheduled for November 2-4, 1988, Room P-114, 7920 Norfolk Avenue, Bethesda, MD has been postponed and will be rescheduled. This meeting notice was previously published on Thursday, October 13, 1988 (53 FR 40147).

Date: October 19, 1988.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 88-24499 Filed 10-21-88; 8:45 am]

BILLING CODE 4590-01-M

Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing; Correction

On August 25, 1988, the **Federal Register** published the Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing. The following correction needs to be made to that notice:

On page 32485, paragraph 4, last sentence should read, "A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, and to Troy B. Conner, Jr., Esq., Conner and Wetterhahn, 1747 Pennsylvania Avenue NW., Washington, DC 20006." On page 32485, paragraph 7 should read, "For further details with respect to this action, see the application for amendment dated August 12, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC and at the Local Public Document Room, Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803."

Dated at Rockville, Maryland, this 14th day of October 1988.

For the Nuclear Regulatory Commission.

Jose A. Calvo,

Director, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Project, Office of Nuclear Reactor Regulation.

[FR Doc. 88-24487 Filed 10-21-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-458]

Gulf States Utilities Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-47, issued to Gulf States Utilities Company (the licensee), for operation of the River Bend Station, Unit 1 located in West Feliciana Parish, Louisiana.

The amendment would revise the Technical Specifications to (1) revise the primary containment integrity requirements during fuel handling to permit performance of a limited number of Type C local leak rate tests of liquid filled lines while handling irradiated fuel; and (2) revise the decay time required for the irradiated fuel before the vent and drain line pathways can be opened for the purpose of performing the local leak rate tests in accordance with the licensee's application for amendment dated September 28, 1988.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By November 23, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceedings, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to interevene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram identification Number 3737 and the following message addressed to Jose A. Calvo: petitioner's name and number; date Petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Troy B. Conner, Jr., Esq., Conner and Wetterhahn, 1747 Pennsylvania Avenue NW., Washington, DC 20006, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated September 28, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC and at the Local Public Document Room, Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Dated at Rockville, Maryland, this 14th day of October 1988.

For the Nuclear Regulatory Commission.

Jose A. Calvo,

Director, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-24488 Filed 10-21-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-324; License No. DPR-62; EA 88-131]

Carolina Power & Light Co., Brunswick Unit; Order Imposing Civil Monetary Penalty

I

Carolina Power and Light Company, Raleigh, North Carolina (licensee), is the holder of Operating License No. DPR-62 (license) issued by the Nuclear Regulatory Commission (Commission/NRC) on December 27, 1974. The license authorizes the licensee to operate Unit 2 of the Brunswick facility in accordance with the conditions specified therein.

II

NRC inspections of the licensee's activities under the license were conducted on April 1-30 and May 1-June 3, 1988, respectively. The result of these inspections indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the licensee by letter dated July 25, 1988. The Notice stated that the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed for the violations. The licensee reponded to the Notice by letters dated August 24 and September 26, 1988. In its response, the licensee admitted the violations but stated that escalation of the civil penalty under 10 CFR Part 2, Appendix C, is inappropriate. The licensee submitted a check for $50,000 and took exception to the $25,000 escalation.

III

After consideration of the licensee's reponse and the statements of fact, explanations, and argument for reduction contained therein, the Deputy Executive Director for Regional Operations has determined, as set forth in the Appendix to this Order, that the violations occurred as stated and that the penalty proposed for the violations designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (ACT) 42 U.S.C. 2282, and 10 CFR 2.206, it is hereby ordered that:

The licensee pay the remainder of the civil penalty in the amount of Twenty Five Thousand Dollars ($25,000) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Attn: Document Control Desk, Washington, DC 20555.

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing shall be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Attn: Document Control Desk, Washington, D.C. 20555, with copies to the Assistant General Counsel for Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, the Regional Administrator, Region II, 101 Marietta Street NW., Atlanta, Georgia 30323, and the NRC Resident Inspector, Brunswick Steam Electric Plant.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions to this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issue to be considered at such hearing shall be whether the unpaid remainder of the civil penalty should be imposed.

For the Nuclear Regulatory Commission.

James M. Taylor,
Deputy Executive Director for Regional Operations.

Dated at Rockville, Maryland this 14th day of October 1988.

Appendix—Evaluation and Conclusion

On July 25, 1988, a Notice of Violation and Proposed Imposition of Civil Penalty was issued for violations identified during routine NRC inspections. CP&L responded to the Notice on August 24, 1988 and September 26, 1988. In its response, the licensee admitted the violations, paid $50,000 of the proposed $75,000 civil penalty, but took exception to the $25,000 escalation as inappropriate and not justified. The NRC staff's evaluation and conclusion regarding CP&L's response is as follows:

I. Restatement of Violations

A. Technical Specification (TS) 3.0.4 states that entry into an OPERATIONAL CONDITION or other specified applicability state shall not be made unless the conditions of the Limiting Condition for Operation are met without reliance on provisions contained in the ACTION statements unless otherwise excepted.

TS 3.5.3.2 requires in Operational Conditions 1, 2, and 3 that two independent low pressure coolant injection (LPCI) subsystems of the residual heat removal (RHR) system be OPERABLE with each subsystem comprised of two pumps and an OPERABLE flow path capable of taking suction from the suppression pool and transferring the water to the reactor pressure vessel.

TS 3.6.1.1 requires in Operational Conditions 1, 2, and 3 that primary containment integrity be maintained.

TS 3.6.1.3 requires in Operational Conditions 1, 2, and 3 that the primary containment air lock be OPERABLE with: (1) both doors closed except when the air lock is being used for normal transit entry and exit through the containment, then at least one air lock door shall be closed; and (2) an overall air lock leakage rate of less than or equal to $0.05L_a$ at P_a, 49 psig.

Contrary to the above, at 4:35 a.m. on April 28, 1988, Unit 2 entered Operational Condition 2 when the unit's mode switch was placed in the "startup/hot standby" without RHR Division II being aligned for automatic LPCI initiation, without primary containment integrity being established, and with the primary containment air lock doors open.

B. Technical Specification 6.8.1.a requires that written procedures shall be implemented for applicable procedures recommended in Appendix A of Regulatory Guide 1.33, November 1972. Appendix A requires operating procedures for the RHR system. Operating Procedure, OP-17, RHR System Operating Procedure, Revision 76, implements this requirement and requires that the RHR heat exchanger outlet valve (E11–F003A) be either in the fully open or closed position during the shutdown cooling mode.

Contrary to the above, OP-17 was not fully implemented on May 11, 1988, in that valve E11–F003A was used in the throttled position during the shutdown cooling mode on Unit 2.

C. TS 3.3.1 requires, as a minimum, that the reactor protection system (RPS) instrumentation channels shown in TS Table 3.3.1–1 be operable. Accordingly, notation "b" of TS Table 3.3.1–1 requires that while in Operational Condition 5, "shorting links" be removed from the RPS circuitry prior to and during the time any control rod is withdrawn.

Contrary to the above, from 3:50 a.m. until 7:48 p.m., on March 8, 1988, with the reactor in Operational Condition 5, Unit 2 control rod 10-39 was in the fully withdrawn position and the shorting links were not removed from the RPS circuitry.

II. Summary of Licensee Response

The licensee, in its response, admits the violations and agrees that the violations, when viewed together, identify an issue of critical importance to the safe operation of the Brunswick Plant and meet the criteria for imposition of a civil penalty.

The licensee makes the following arguments relative to the 50% escalation of the base civil penalty:

a. Escalation of the civil penalty for an event lacking serious safety significance is not justified, simply because the event has been collectively incorporated with two other events.

b. The three events were collectively categorized as Severity Level III. Combination of such events allows the overall safety significance of similar issues to be put into proper perspective. However, once these events have been combined to represent a more significant concern, they lose their unique identity. Thus, considerations for escalation of the penalty must be evaluated against the violation as a whole (i.e., the combination of the three violations) since that is what provides the justification for the base civil penalty.

c. The three violations cited individually do not have serious safety significance and, therefore, if cited individually, would not warrant a civil penalty. Considerations for escalation were based solely on Violation B; not on the violation as a whole. Thus, the escalation of the civil penalty based on past performance is inappropriate.

III. NRC Staff's Evaluation of Licensee Response

In asserting that the NRC staff is escalating the civil penalty based on one of the events cited in the Notice, the licensee demonstrates that basis for escalation was misunderstood. The civil penalty was escalated for past poor performance in the area of control of operations. This past poor performance was specifically illustrated by a January 1988 heatup event which was not cited in this Notice but was similar to the May 11, 1988 event which was cited.

The NRC staff agrees with the licensee that escalation of a civil penalty must be considered in the context of the overall problem. However, the NRC staff does not agree that such an overall evaluation was not made in this case.

Based on an event from the recent past the NRC staff concluded that escalation for past poor performance was appropriate given that the licensee had not implemented earlier broad corrective actions to prevent future problems similar to those cited in the Notice. Further, though only one example of past poor performance was specifically noted, other events such as the mispositioning of an RHR minimum flow valve in February 1987 were considered when the NRC staff decided to escalate the civil penalty for past poor performance.

The licensee's argument that the considerations for escalation were based solely on Violation B and not on the problem as a whole is incorrect. While Violation B is most similar to the previous event, each of the three violations were symptomatic of lack of awareness and attitude to detail for control room activities. The safety significance of the Severity Level III problem was derived from indications that lack of awareness and attention to detail for control room activities was not an isolated problem in the operations staff. The escalation for poor past performance was based on a prior example of this problem, e.g., lack of attention to detail on the part of the operations staff, and NRC staff's conclusion that CP&L did not learn from the first event and aggressively pursue the underlying cause.

IV. NRC Staff's Conclusion

The licensee did not provide a sufficient basis for reduction of the proposed $75,000 civil penalty. Therefore, the NRC staff concludes that the unpaid balance ($25,000) of the civil penalty should be imposed.

[FR Doc. 88-24469 Filed 10-21-88; 8:45 am]
BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

[Docket No. C88-1]

Complaint of Third Class Mail Association; Order on Filing of Complaint of Third Class Mail Association

Issued October 18, 1988.

Before Commissioners: Janet D. Steiger, Chairman; Patti Birge Tyson, Vice-Chairman; John W. Crutcher; Henry R. Folsom; W.H. "Trey" LeBlanc III.

On October 17, 1988, the Third Class Mail Association (TCMA) filed a complaint with the Commission pursuant to 39 U.S.C. 3662. TCMA requests that the Commission investigate whether the continued application of the Private Express Statutes (39 U.S.C. 601 *et seq.*) to addressed advertising mail is in the public interest and consistent with the policies of the Postal Reorganization Act, and to issue a public report recommending to the Board of Governors of the Postal Service that it suspend the Postal Service's monopoly with respect to addressed third class mail.

In its complaint, TCMA indicates that the Postal Service has already refused a request to initiate a notice and comment rulemaking to consider this issue. Therefore, it appears that rule 85 informal procedures will not be useful at this time.

Under provisions of Subpart E of our rules the Postal Service is to provide an answer to this complaint by November 16, 1988. Interested persons wishing to participate in any proceedings concerning this complaint may file a notice of intervention. We shall appoint Stephen A. Gold, Director of the Office of Consumer Advocate, to represent the interest of the general public in this proceeding.

It is ordered:

1. Notice is given that the Third Class Mail Association has filed a complaint concerning the continued application of the Private Express Statutes to addressed third class mail.

2. Stephen A. Gold, Director of the Office of the Consumer Advocate, is appointed to represent the interest of the general public in this proceeding.

By the Commission.

Charles L. Clapp,
Secretary.

[FR Doc. 88-24462 Filed 10-21-88; 8:45 am]
BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34- 26198; File Nos. SR-CBOE-88-14; SR-NASD-88-46; SR-NYSE-88-22; SR-NYSE-88-23; SR-NYSE-88-24; and SR-AMEX-88-24]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; National Association of Securities Dealers, Inc.; New York Stock Exchange, Inc.; American Stock Exchange, Inc.; Order Approving Proposed Rule Changes and Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Changes Relating to Market Circuit Breaker Proposals

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] the New York Stock Exchange, Inc. ("NYSE"), the Chicago Board Options Exchange, Inc. ("CBOE"), the American Stock Exchange, Inc. ("AMEX"), and the National Association of Securities Dealers Inc. ("NASD") [collectively, the self-regulatory organizations ("SROs")] have filed with the Securities and Exchange Commission ("Commission") proposed rule changes to implement certain procedures that will be activated during volatile market conditions.

The NYSE proposals were published for comment in the Federal Register.[3] No comments were received on the NYSE proposed rule changes. The CBOE, NASD, and AMEX proposal were filed on September 20, 1988, October 7, 1988, and October 14, 1988, respectively, and have not previously been published for comment in the Federal Register.

I. Description of the Proposals

A. The Circuit Breaker Proposals

(1) File No. SR–NYSE–88–23 contains the NYSE's proposed Rule 80B and corresponding amendments to NYSE Rules 717 and 750 that provide for a temporary halt in the trading of all stocks, stock options, and stock index options on the NYSE if the Dow Jones Industrial Average ("DJIA") reaches certain trigger values. Trading would halt for one hour if the DJIA declines 250 or more points from its previous day's

[1] 15 U.S.C. § 78s(b) (1982).
[2] 17 CFR 240.19b–4 (1988).
[3] File No. SR–NYSE–88–22 was noticed in Securities Exchange Act Release No. 26061 (September 6, 1988), 53 FR 35368; File No. SR–NYSE–88–23 was noticed in Securities Exchange Act Release No. 26062 (September 6, 1988), 53 FR 35368; and File No. SR–NYSE–88–24 was noticed in Securities Exchange Act Release No. 26115 (September 28, 1988), 53 FR 38393. The releases contain the full text of the NYSE's proposed rules.

closing level; once trading has been reopened, trading would halt for an additional two hours if the DJIA declines 400 points from the previous day's close.[6] Under the NYSE's proposal, trading would resume following a halt pursuant to procedures similar to those used by the NYSE to open trading on "Expiration Fridays," the days that stock options, stock index options, and stock index futures expire simultaneously.[5]

The NYSE proposes to implement Rule 80B for a one year pilot period. The NYSE originally stated that the rule would not become effective until all other U.S. stock and options exchanges, the NASD, and U.S. futures markets that trade futures on stock index groups (and options on such futures), adopt corresponding rules, and such rules received all necessary regulatory approvals and become effective.[6] The NYSE subsequently amended its filing to make its rule effective upon approval by the Commission.[7]

In support of its proposal, the NYSE argues that Rule 80B's trading halts would help promote stability in the stock market by providing market participants with time to reestablish an equilibrium between buying and selling interest and by helping to ensure that all market participants have a reasonable opportunity to become aware of and to respond to significant market price movements. The NYSE's proposal also responds to a recommendation contained in the Interim Report of the Working Group on Financial Markets ("Working Group") issued in May, 1988 by the Under Secretary for Finance of the Department of the Treasury and the Chairmen of the Commission, the CFTC, and the Board of Governors of the Federal Reserve System. In its report, the Working Group recommended "coordinated trading halts and reopenings for large, rapid market declines that threaten to create panic conditions." The Working Group specifically recommended that all U.S. markets for equity and equity-related products—stocks, individual stock options, stock index options, and stock index futures—halt trading for one hour if the DJIA declines 250 or more points from its previous day's closing level and for two additional hours if the DJIA declines 400 points from the previous day's close.

(2) File No. SR–CBOE–88–14 contains the CBOE's proposal for responding to the activation of circuit breakers in the underlying primary securities markets or to the activation of futures market circuit breakers. Proposed CBOE Rule 6.3A provides that the CBOE would halt trading in all stock options and stock index options when trading in all stocks in the NYSE has been halted as a result of activation of circuit breakers pursuant to NYSE Rule 80B. Proposed CBOE Rule 6.3A also provides procedures for reopening options after such a halt. Reopening rotations for stock options would be held as soon as practicable after the CBOE determined that a halt was no longer in effect in the primary market for each underlying security. Reopening rotations for stock index options would be held as soon as practicable after the CBOE determined that a halt was no longer in effect in the primary market of the securities constituting 50% or more of the index value.[8] Such reopening procedures would be held only when two CBOE floor officials, in consultation with a designated senior executive officer of the CBOE, concluded that the interests of a fair and orderly market would be served by a resumption of trading.

The COBE's proposed amendment to Rule 24.7 [9] provides that the CBOE will halt trading in stock index options ten minutes after two floor officials, in consultation with a designated senior executive officer of the CBOE, have determined that specified circuit breakers have been activated to halt the trading of futures on the same or a related index and that there is no indication that active trading in the futures contract is about to commence.[10] The proposed amendment provides that index option trading may resume two minutes after active trading has resumed in the futures contract, provided that the CBOE has determined that a trading halt is not in effect in the primary market for underlying securities constituting 50% or more of the index value and two CBOE floor officials, in consultation with a designated senior executive officer of the CBOE, conclude that the interests of a fair and orderly market would be served by a resumption of trading. In support of its proposed rule change, the CBOE states that the various studies of the October market break have noted the interdependence of the stock, options, and futures markets, and states that its proposal represents a derivative market response to the circuit breaker policies of the stock exchanges and futures markets.

(3) File No. SR–AMEX–88–24 contains the AMEX's circuit breaker proposal. The AMEX's proposal is substantially identical to the NYSE's proposed Rule 80B. Under the AMEX's proposal, trading in all stocks and options will halt for one hour if the DJIA declines 250 or more points from its previous day's closing level; once trading has been reopened, trading will halt for an additional two hours if the DJIA declines 400 points from the previous day's close. The AMEX proposal contains provisions for halting trading for the remainder of the day and using abbreviated reopening procedures that are substantially identical to the NYSE proposed procedures described in note 4, *supra*. The AMEX proposes to implement its rule change for a one-year pilot period.[11]

The AMEX's proposal also provides that the AMEX will halt trading in stock index options ten minutes after the AMEX has determined that specified circuit breakers have been activated to halt the trading of futures on the same or a related index and that there is no indication that active trading in the futures contract is about to commence. As with the CBOE proposal, the AMEX's proposed rule change provides that index option trading may resume two minutes after active trading has resumed in the futures contract, as long as the AMEX has determined that underlying securities constituting 50% or more of the index value are not subject to a trading halt in the primary market for such securities, and two Floor Governors in consultation with a senior executive officer of the AMEX conclude in their best judgment that the interests of a fair and orderly market are served by a resumption of trading.

(4) The NASD has filed with the Commission a Policy Statement on Market Closings ("Policy Statement"), File No. SR–NASD–88–46, that states that, at times when other major securities markets initiate market-wide trading halts in response to extraordinary market conditions, the NASD will, upon request from the Commission, act to halt domestic trading in all securities quoted on the National Association of Securities Dealers Automatic Quotation ("NASDAQ") system and domestic trading in equity or equity-related securities in the over-the-counter ("OTC") market. The NASD's Policy Statement will be effective until December 31, 1989 unless modified or extended prior to that date.

B. The "Sidecar" File Proposal

File No. SR–NYSE–88–22 contains proposed New Rule 80A. New Rule 80A deletes current Rule 80A, which imposed certain restrictions on the use of automated NYSE order routing systems during times of market volatility and was approved by the Commission on April 19, 1988 for a six month pilot period.[12]

The NYSE's proposed New Rule 80A will apply certain trading limitations during significant market declines. The restrictions of New Rule 80A will apply when the price of the primary S&P 500 futures contract ("S&P 500 futures") traded on the CME[13] falls 12 points below the previous trading day's closing value (the approximate equivalent of a 96 point fall in the DJIA). Under New Rule 80A, the public will be notified that the S&P 500 futures contract has declined 12 points and that the following action is being taken. For the next five minutes after the 12 point trigger value is reached, market orders involving program trading in each of the stocks underlying the S&P 500 futures entered into the NYSE's automated order-routing system, the Designated Order Turnaround ("DOT") System,[14] will be routed into a separate file for each of the stocks (the sidecar file). Buy and sell orders for each stock will be paired in the sidecar files to determine the extent of the order imbalance.

Five minutes after the price of the S&P futures reaches the trigger value, the orders in the file for each stock, and the order imbalance, if any, will be reported to the public and to the specialists for the stocks. At that point, the orders will be eligible for execution.[15] If there is not sufficient trading interest to allow for an orderly execution of a transaction in a stock, trading in that stock will halt. As with the circuit breaker proposal discussed above, trading would resume following such a halt pursuant to procedures to be adopted that will be similar to those used by the NYSE to open trading on Expiration Fridays. The sidecar file provisions would apply only once per day,[16] and would not apply during the last 35 minutes of a trading day.

"Program trading" will be defined in New Rule 80A to include "index arbitrage," as defined in current Rule 80A, as well as any coordinated trading strategy involving the related purchase or sale of a "basket" of 15 or more stocks with a market value of $1 million or more, even if the orders are not related to a future or an option on a stock market index and are not entered or executed contemporaneously.[17] "Index arbitrage" is defined as the trading of "baskets" or groups of stocks in conjunction with the trading of one or more cash-settled options or futures contracts on stock index groups, or options on such futures contracts (collectively referred to as "derivative index products") in an attempt to profit from price discrepancies between the stocks and derivative index products. The index arbitrage definition would require only that the purchase or sale of the derivative index products be related. Those trades would not have to be executed simultaneously, as some index arbitrage strategies allow for time lags between the executions of the two legs of a transaction.

The NYSE's proposed New Rule 80A also will restrict the entry of new stop orders or stop limit orders (collectively, "stop orders") for the remainder of the trading day when the 12 point trigger value has been reached. The only allowable stop orders would be individual investor orders of 2,099 shares or fewer where the individual investor has made the investment decision.[18] The rule would not allow such orders if they are entered by and pursuant to the instructions of professional managers, including investment advisors and account executives having discretion over an individual's account.

New Rule 80A, as well as the proposed amendments to Rule 80B, are

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[5] See Securities Exchange Act Release No. 25856 (June 13, 1988), 53 FR 22420.

[6] The futures exchanges have proposed analogous trading halts. For example, the Chicago Mercantile Exchange ("CME") proposed a 30-point price limit for its Standard and Poor's 500 Stock Index ("S&P 500") futures contract ("SPZ") that would be transformed into a one-hour NYSE-CME coordinated trading halt if the DJIA declines 250 points and the NYSE suspends trading. Upon reopening, CME trading would halt for two hours if the SPZ were to fall another 30 points, the DJIA declined 400 points, and the NYSE suspended trading for two hours. Letter from Todd E. Petzel, Vice President, Financial Research, CME, to Jean A. Webb, Secretary, Commodity Futures Trading Commission ("CFTC"), dated September 1, 1988. See letters to Jean A. Webb, Secretary, CFTC, from Paul J. Draths, Vice President and Secretary, Chicago Board of Trade ("CBT"), dated July 29, 1988; Michael Braude, President, Kansas City Board of Trade ("KCBT"), dated August 10, 1988; and Milton M. Stein, Vice President, Regulation and Surveillance, New York Futures Exchange ("NYFE"), dated September 2, 1988.

[7] Letter from Richard A. Grasso, President and Chief Operating Officer, NYSE, to Richard Ketchum, Director, Division of Market Regulation, Commission, dated October 17, 1988. The AMEX also imposed such a contingency in its proposed rule change, described *infra*. The AMEX subsequently amended its filing to make its rule effective upon the adoption of substantively identical rules by the NYSE, CBOE, and NASD.

[8] If the 250-point trigger is reached within one hour of the scheduled close of trading for a day, or if the 400-point trigger is reached within two hours of the scheduled close of the trading day, trading will halt for the remainder of the day. If, however, the 250-point trigger is reached between one hour and one-half hour before the scheduled closing, or if the 400-point trigger is reached between two hours and one hour before the scheduled closing, the NYSE would retain the power to use abbreviated reopening procedures either to permit trading to reopen before the scheduled closing or to establish closing prices. The NYSE has stated that it will file these reopening procedures with the Commission for approval and will circulate them to members and member organizations before these procedures are implemented.

[9] The futures exchanges have proposed analogous trading halts. For example, the Chicago Mercantile Exchange ("CME") proposed a 30-point price limit for its Standard and Poor's 500 Stock Index ("S&P 500") futures contract ("SPZ") that would be transformed into a one-hour NYSE-CME coordinated trading halt if the DJIA declines 250 points and the NYSE suspends trading. Upon reopening, CME trading would halt for two hours if the SPZ were to fall another 30 points, the DJIA declined 400 points, and the NYSE suspended trading for two hours. Letter from Todd E. Petzel, Vice President, Financial Research, CME, to Jean A. Webb, Secretary, Commodity Futures Trading Commission ("CFTC"), dated September 1, 1988. See letters to Jean A. Webb, Secretary, CFTC, from Paul J. Draths, Vice President and Secretary, Chicago Board of Trade ("CBT"), dated July 29, 1988; Michael Braude, President, Kansas City Board of Trade ("KCBT"), dated August 10, 1988; and Milton M. Stein, Vice President, Regulation and Surveillance, New York Futures Exchange ("NYFE"), dated September 2, 1988.

[10] Letter from Claire P. McGrath, Staff Attorney, AMEX, to Howard Kramer, Assistant Director, Division of Market Regulation, Commission, dated October 17, 1988.

[11] For example, the NYSE is the primary market of the securities constituting 50% or more of the value of every index option traded on the CBOE, including the Standard and Poor's 100 Stock Index ("OEX") option. The CBOE would hold a reopening rotation for OEX options as soon as practicable after a determination is made that a halt was no longer in effect at the NYSE.

[12] Rule 24.7 also will be amended to remove the provision that trading in stock index options would be halted whenever trading in stocks representing 20% or more of the value of a market index (10% or more for an industry index) was halted. The CBOE would retain discretion to halt trading whenever two floor officials, in consultation with a designated senior executive officer of the CBOE, conclude in their judgment that such action is appropriate in the interest of a fair and orderly market and to protect investors. A trading halt in the underlying stocks whose weighted value represents 20% or more of the index value now will be one of three facts that may be considered by the CBOE in determining whether to halt trading in an index option.

[13] For example, trading would halt in the CBOE's S&P 500 Stock Index option ("SPX") ten minutes after circuit breakers have been activated to halt trading in the CME's S&P 500 futures contract.

[14] The AMEX also proposes to amend Rule 918C to remove the provision that trading in stock index options shall be halted whenever trading in stocks representing 20% or more of the value of the index has been halted. The AMEX will retain discretion to halt trading in stock index options whenever such a halt is deemed appropriate in the interests of a fair and orderly market or to protect investors. A trading halt in the primary market for underlying stocks accounting for 20% or more of the index value now will be one of four factors that may be considered by the AMEX in determining whether to halt trading in an index option.

[15] Securities Exchange Act Release No. 25609 (April 19, 1988), 53 FR 13371.

[16] The primary futures contract is the one with the largest trading volume, usually the lead month contract. The CME will inform the NYSE when the primary futures contract changes.

[17] The DOT system, also known as SuperDOT, was developed by the NYSE to facilitate routing of orders from NYSE members' offices to the specialist in a particular stock on the floor of the NYSE.

[18] Orders in the sidecar file will have execution priority under NYSE Rule 72 as of the time the orders are reported to the specialist.

[19] The NYSE's circuit breaker proposal, described above, would apply to halt all trading if there were significantly greater market declines during a trading day.

[20] The NYSE stated that index arbitrage is included separately as a form of program trading because the NYSE seeks to capture within New Rule 80A certain forms of index arbitrage that may involve fewer than 15 securities or less than $1 million in market value.

[21] In its filing, the NYSE stated that the term "individual investor" is defined to parallel the concept of "natural person" contained in section 11(a)(1)(E) of the Act, including the Commission's interpretations pursuant to that section. Section 11(a)(1)(E) applies to "any transaction for the account of a natural person, or a trust (other than an investment company) created by a natural person for himself or another natural person."

the result of a cooperative effort between the NYSE and the CME, who have agreed to implement coordinated procedures to address market volatility. The CME also has proposed a new rule that will apply when the trigger value is reached. When the S&P futures falls 12 points, the CME will not permit the price of any futures contract on the S&P 500 to fall further for one-half hour. The CME will, in effect, impose a 30 minute price limit.[19]

The NYFE also has proposed a rule that will operate in conjunction with NYSE Rule 80A.[20] The NYFE will implement a price limit that will halt trading for thirty minutes when the NYSE Composite index futures contract falls seven points (approximately 96 DJIA points). Similar provisions have been adopted by the NYFE for futures contracts on the Russell 3000, Russell 1000, and Russell 2500 stock indexes.

In support of proposed New Rule 80A, the NYSE argues that New Rule 80A responds to concerns expressed in the Commission staff's Market Break Report [21] on the interaction between the equities and futures markets, and the effect of such interaction on market volatility and investor confidence and participation in the stock market. In particular, the NYSE argues that channelling program trades into a sidecar file at times of market volatility is an attempt to isolate one potential cause of market volatility, program trading, from other market activity and to enhance the ability to offset order imbalances created by such program trading. Proposed New Rule 80A also will help reduce volatility by adopting special procedures when there are large order imbalances. The NYSE also believes that restricting professional use of stop orders will help to decrease market volatility during periods of market stress.

C. The "Investor Express" Proposal

In File No. SR–NYSE–88–24 the NYSE submitted a proposed rule change that will add a new feature to the NYSE's SuperDOT system, called the Individual Investor Express Delivery Service ("IIEDS"). Under IIEDS, simple market orders of individual investors [22] of up to 2,099 shares entered on the SuperDOT system will be given priority in delivery to the specialist's post for execution, ahead of any other orders being routed over the SuperDOT System. Under the proposal, IIEDS will be activated on any trading day when the DJIA rises or falls 25 points from the average as of the previous trading day's close, and will remain in effect for the remainder of the trading day that it is activated.

Only buy or sell round-lot market orders and good until canceled ("GTC") market orders are eligible for priority delivery, via SuperDOT, to the specialist under IIEDS.[23] Orders that are not eligible for IIEDS include market orders to buy minus, sell plus, sell short, or buy or sell stop, all or none orders, and all limit orders.[24] In addition, IIEDS will not be available for orders entered by and pursuant to instructions of professional managers, including investment advisors and account executives having discretion over an individual's account.

It should be noted that the proposed IIEDS service will only provide priority delivery to the specialist's post for eligible orders of individual investors entered on the SuperDot system. Once an IIEDS order has been delivered to the specialist's post, the order will be executed by the specialist in accordance with normal auction market procedures.[25]

In support of its proposal, the NYSE states that IIEDS is a reasonable means of enhancing the confidence of individual investors that their orders will be efficiently and effectively processed in the NYSE marketplace, particularly during volatile market conditions.

In addition, File No. SR–NYSE–88–24 contains a proposal to adopt new order identification codes that will provide more precise identification of customer and trading strategies. The new identification codes will facilitate the implementation of IIEDS and also will facilitate implementation of the limitations on trading during significant market declines contained in the NYSE's proposed New Rule 80A.[26]

The proposal will add new indicator code symbols to the principal/agency ("P/A") field for audit trail information member firms are required to provide for orders entered on the SuperDot system.[27] The new indicator code symbols will enable the NYSE to distinguish between orders for individuals and all other agency trading.[28]

In addition, the new indicator code symbols, supplementing those indicator code symbols already in use, will enable the NYSE to identify more precisely the trading strategies being utilized by the customer. For example, the proposed indicator code symbols will permit the NYSE to identify orders that are entered as program trading, and will enable the NYSE to determine whether the order is a part of an index arbitrage strategy and whether the order is for a member firm's proprietary account or for a customer's account. The new indicator code symbols identifying program trading will give the NYSE the capability to implement the proposed limitations on trading during periods of severe market declines contained in the NYSE's proposed New Rule 80A.[29]

II. Commission Analysis

The Commission continues to believe that the primary focus in responding to the events of October 1987 "should be on expanding the capacity of the markets through operational reforms and coordination measures," [30]

[19] *See* letter from Todd E. Petzel, Vice President, Financial Research, CME, to Jean A. Webb, Secretary, CFTC, dated September 1, 1988.

[20] *See* letter from Milton M. Stein, Vice President, Regulation and Surveillance, NYFE, to Jean A. Webb, Secretary, CFTC, dated September 2, 1988.

[21] *The October 1987 Market Break* (February 1988) ("Staff Report").

[22] In its filing, the NYSE stated that the term "account of an individual investor" means an account under section 11(a)(1)(E) of the Act. *See* discussion at note 18, *supra*.

[23] IIEDS will provide odd-lot market orders priority delivery to the NYSE's limit order system for execution.

[24] The NYSE stated in its filing that a limit order which is canceled and replaced with a market order when it is entered as a single cancel/replacement order will not be eligible for IIEDS.

[25] The delivery priority granted IIEDS orders under the proposed rule change does not represent a change in priority or precedence rules for the execution of a bid or offer once it has been delivered to the specialist for execution. *See* NYSE Rules 71 and 72.

[26] *See* discussion at pp. 10–14, *supra*.

[27] For orders that are not entered on SuperDot, this audit trail information would be submitted after the order was executed for trade comparison purposes during the clearance and settlement [illegible].

[28] For example, the NYSE indicator code symbols will distinguish individual trading from trading by a member firm on behalf of any other non-member or non-member organization.

[29] The NYSE has stated that it has reviewed the systems impact of the additional order identification code indicator symbol choices that will be used by SuperDot in connection with IIEDS. The Exchange has determined that the use of the new indicator code symbols for orders entered into SuperDot, which will be used by the system to determine whether an order is eligible for the IIEDS priority, will not degrade the capacity of the system because, although the proposal will add a number of choices for indicator code symbols identifying the type of customer and trading strategy, only a single indicator code symbol will be used for any given order. Thus, the system will still only need to read a single indicator code symbol in order to identify individual orders eligible for IIEDS. Telephone conversation between Brian McNamara, Managing Director, Market Surveillance, NYSE, and Robert Sevigny, Attorney, Division of Market Regulation, on October 14, 1988.

[30] Testimony of David S. Ruder, Chairman, Commission, "Securities and Exchange Commission Recommendations Regarding the October 1987 Market Break," before the U.S. Senate Committee on Banking, Housing, and Urban Affairs, at 7 (February 3, 1988) ("February 3rd Testimony").

including efforts to enhance liquidity and improve information availability. Indeed, the Commission notes that the markets have undertaken a variety of steps to increase their capacities since the October 1987 market break.

Nevertheless, the Commission is concerned about the potential impact of periods of extreme volatility such as those that characterized the U.S. securites markets in October 1977. Accordingly, the Commission recognizes that it is desirable to design coordinated mechanisms to deal with potential strains that may develop during periods of extreme downward volatility.

The Commission also agrees with recommendations contained in both the *Report of the Presidential Task Force on Market Mechanisms* ("Brady Report") and in the Working Group's Interim Report that coordinated trading halt and reopening procedures be developed that would be implemented in all U.S. markets for equity and equity-related products during large, rapid market declines. In particular, the Working Group recommended a one-hour trading halt if the DJIA declined 250 points from its previous day's closing level, and a subsequent two-hour trading halt if the DJIA declined 400 points below its previous day's closing leval. The Working Group also recommended that the NYSE use reopening procedures, similar to those used on Expiration Fridays, that are designed to enhance the information made public about market conditions. The Working Group's proposal is designed to substitute planned trading halts for unplanned and destabilizing market closings and to implement predictable procedures that enhance information flows.

The Commission believes that the rule proposals it is approving today represent efforts by the securities and futures markets to arrive at coordinated means to address potentially destabilizing market volatility as well as to help prevent another decline of the severity of the October 1987 market break.[31] The proposals do not constitute an attempt to prevent markets from adjusting to new price levels; instead, they represent reasonable means to retard extremely rapid market declines that can have a destabilizing effect on the nation's financial markets and participants.

In regard to the specific proposals presented by the NYSE, AMEX, CBOE, and NASD, the Commission finds that the circuit breaker proposals, in conjunction with the related proposals filed by the futures exchanges, will help promote stability in the equity and equity-related markets by providing for increased information flows and enhanced opportunity to assess information during times of extreme market movements. The circuit breaker proposals thus will provide market participants with an opportunity to re-establish an equilibrium between buying and selling interest and will ensure that market participants have a reasonable opportunity to become aware of and respond to significant price movements.[32] The Commission notes that the NASD stated in its Policy Statement that the NASD will halt trading in securities quoted on the NASDAQ system and trading in the OTC market only upon request from the Commission. The Commission hereby requests that the NASD implement its Policy Statement by imposing a trading halt as quickly as practicable whenever the NYSE and other equity markets have suspended tading (*i.e.*, whenever the DJIA declines 250 or 400 points).

In addition, the Commission finds that the NYSE's sidecar file proposal may enhance the orderliness of the markets during periods of substantial volatility. Routing orders designated as program trades onto a sidecar file and publicly disseminating any order imbalances will enhance the ability to attract contra side orders to offset such imbalances. The sidecar file proposal also may help reduce volatility by adopting special procedures for halting trading in stocks when there are large order imbalances and for resuming trading after such a halt. The Commission also finds that allowing individual investors to enter new stop orders as part of their trading strategies, while restricting the professional use of such orders when certain trigger values are reached, represents a reasonable response to the problem presented by smaller, individual investors who may not be able to monitor market conditions on a continuous basis and who desire a measure of downside protection in a rapidly moving market. In contrast, market professionals are able to monitor the market on a continuous basis and have less of a need to enter such orders in a rapidly moving market.

The Commission finds that the NYSE's investor express proposal may help restore confidence of individual investors that their orders will be efficiently and effectively handled in the NYSE marketplace during periods of volatility. More specifically, the IIEDS proposal will ensure that individual investors will not be in a position where their orders experience a delay in being routed to the specialist's post because they were waiting in queue behind larger institutional orders. At the same time, the existing priority rules for order execution will remain intact.

Accordingly, the Commission finds that the proposed rule changes filed by the NYSE, CBOE, AMEX, and NASD are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and/or to a national securities association, and, in particular, the requirements of section 6 [33] and/or section 15A [34] and the rules and regulations thereunder.

The Commission finds good cause for approving the COBE, AMEX, and NASD proposed rule changes prior to the thirtieth day after the date of publication of the proposals in the **Federal Register** because they are similar in content to the published NYSE filing. In light of the absence of any comments on the NYSE filing and the Commission's view of the benefit that may accrue from adoption of coordinated circuit breakers that respond to stock market volatility and that may increase investor confidence in the markets, the Commission believes a good cause finding is fully justified. The Commission also finds good cause to accelerate the NYSE investor express proposal because we believe that the rule change can substantially increase investor confidence in the fairness of the securities markets.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the

[31] The Brady Report recommended, among other things, that circuit breaker mechanisms, in order to be effective, need to be coordinated across stock, stock index futures, and options markets in order to prevent intermarket failure of the kind experienced in October, 1987. *See* Brady Report, 66.

[32] The Commission notes that CBOE proposes to amend Rule 24.7 to remove the provision that states that trading in stock index options shall be halted whenever trading in stocks representing 20% or more of the value of a market index (10% or more for an industry index) has been halted. The Commission believes the proposed amendment does not reflect a change in CBOE's trading halt policy because a trading halt in underlying stocks whose weighted value represents 20% or more of the index value now will be one of three facts that may be considered by the CBOE in determining whether to halt trading in an index option. The Commission also believes that the fact that the concurrence of two CBOE floor officials and a designated senior executive officer of the CBOE is required before trading may resume should provide protection that the interests of a fair and orderly market are served by the resumption of trading after such a trading halt. Likewise, the Commission believes that the AMEX's similar proposal, described in note 11, *supra*, does not reflect a change in the AMEX's trading halt policy.

[33] 15 U.S.C. 78f (1982).

[34] 15 U.S.C. 78o–3 (1982).

Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change because the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE, CBOE, NASD, or AMEX. All submissions should refer to file number SR–NYSE–88–24, SR–CBOE–88–14, SR–NASD–88–45, or SR–AMEX–88–24, and should be submitted by November 14, 1988.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[50] that the proposed rule changes are approved.

By the Commission.

Jonathan G. Katz,

Secretary.

Dated: October 18, 1988.

[FR Doc. 88-24517 Filed 10-21-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Action Subject to Intergovernmental Review

AGENCY: Small Business Administration.

ACTION: Notice of action subject to intergovernmental review under Executive Order 12372.

SUMMARY: This notice provides for public awareness of SBA's intention to fund two additional Small Business Development Centers (SBDCs) during fiscal year 1989, subject to availability of funds. Currently, there are 52 SBDCs operating in the SBDC program. The two new SBDCs intended to be funded are California and Hawaii. This notice also provides a description of the SBDC program by setting forth a condensed version of the program announcement which has been furnished to each of the proposed developers for the SBDCs expected to be funded. This publication is being made to provide the State single points of contact, designated pursuant to Executive Order 12372, and other interested State and local entities, the opportunity to comment on the proposed funding in accord with the Executive Order and SBA's regulations found at 13 CFR Part 135.

DATE: Comments will be accepted through January 23, 1989.

ADDRESS: Comments should be addressed to Ms. Janice E. Wolfe, Deputy Associate Administrator for Business Development for SBDC Program, U.S. Small Business Administration, 1441 L Street NW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Same as above

SBA is bound by the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." SBA has promulgated regulations spelling out its obligations under that Executive Order. See 13 CFR Part 135, effective September 30, 1983.

In accord with these regulations, specifically 135.4, SBA is publishing this notice to provide public awareness of the pending applications for funding of two proposed Small Business Development Centers (SBDCs). Also, published herewith is an annotated program announcement describing the SBDC program in detail.

The proposed SBDCs will be funded at the earliest practicable date following the 90-day comment period. However, no funding will occur unless all comments have been considered. Relevant information identifying the two proposed SBDCs and providing the mailing address of the proposal developers is provided below. In addition to this publication, a copy of this notice is being simultaneously furnished to each of the affected State single points of contact which have been established under the Executive Order.

The State single points of contact and other interested State and local entities are expected to advise the relevant SBDC of their comments regarding the proposed refunding in writing as soon as possible. The SBDC proposal cannot be inconsistent with any area-wide plan providing assistance to small business, if there is one, which has been adopted by an agency recognized by the State government as authorized to do so. Copies of such written comments should also be furnished to Ms. Janice E. Wolfe, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street NW., Washington, D.C. 20416. Comments will be accepted by the relevant SBDC and SBA for a period of 90 days from the date of publication of this notice. The relevant SBDC will make every effort to accommodate these comments during the 90-day period. If the comments cannot be accommodated by the relevant SBDC, SBA will, prior to refunding the SBDC, either attain accommodation of any comments or furnish an explanation of why accommodation cannot be attained to the commentor prior to refunding the SBDC.

Description of the SBDC Program

The Small Business Development Center (SBDC) Program is a Business Development program of the U.S. Small Business Administration (SBA). The SBDC operates under the general management and oversight of SBA, but with recognition that a partnership exists between the Agency and the SBDC for the delivery of assistance to the small business community. SBDC services shall be provided pursuant to a negotiated Cooperative Agreement with full participation of both parties. SBDCs operate on the basis of a state plan to provide assistance within a state or designated geographical area. The initial plan must have the written approval of the Governor. As a condition to any financial award made to an applicant, non-Federal funds must be provided from sources other than the Federal Government. SBDCs operate under the provisions of Pub. L. 96–302, as amended by P.L. 98–395, a Notice of Award (Cooperative Agreement) issued by SBA, and the provisions of this Program Announcement.

Purpose and Scope

The SBDC Program is designed to provide quality assistance to small businesses in order to promote growth, expansion, innovation, increased productivity and management improvement. To accomplish these objectives, SBDCs link resources of the Federal, State, and local governments with the resources of the educational system and the private sector to meet the specialized and complex needs of the small business community. SBDCs also coordinate with other SBA programs of business development and utilize the expertise of these affiliated resources to expand services and avoid duplication of effort.

Program Objectives

The overall objective of the SBDC Program is to leverage Federal dollars and resources with those of the state, academic community and private sector to:

(a) Strengthen the small business community;

(b) Contribute to the economic growth of the communities served;

(c) Make assistance available to more small businesses than is now possible with present Federal resources;

(d) Create a broader based delivery system to the small business community.

SBDC Program Organization

SBDCs are organized to provide maximum services to the local small business community. The lead SBDC receives financial assistance from the SBA to operate a statewide SBDC Program. In states where more than one organization receives SBA financial assistance to operate an SBDC, each lead SBDC is responsible for Program operations throughout a specific regional area to be served by the SBDC. The lead SBDC is responsible for establishing a network of SBDC subcenters to offer service coverage to the small business community. The SBDC network is managed and directed by a full-time Director. SBDCs must ensure that at least 60 percent of Federal funds provided are used to provide services to small businesses. To the extent possible, SBDCs provide services by enlisting volunteer and other low cost resources on a statewide basis.

SBDC Services

The specific types of services to be offered are developed in coordination with the SBA district office which has jurisdiction over a given SBDC. SBDCs emphasize the provision of indepth, high-quality assistance to small business owners or prospective small business owners in complex areas that require specialized expertise.

These areas may include, but are not limited to: management, marketing, financing, accounting, strategic planning, regulation and taxation, capital formation, procurement assistance, human resource management, production, operations, economic and business data analysis, engineering, technology transfer, innovation and research, new product development, product analysis, plant layout and design, agri-business, computer application, business law information, and referral (any legal services beyond basic legal information and referral require the endorsement of the State Bar Association), exporting, office automation, site selection, or any other areas of assistance required to promote small business growth, expansion, and productivity within the State. The SBDC shall also ensure that a full range of business development and technical assistance services are made available to small businesses located in rural areas.

The degree to which SBDC resources are directed towards specific areas of assistance is determined by local community needs, SBA priorities and SBDC Program objectives and agreed upon by the SBA district office and the SBDC.

The SBDC must offer quality training to improve the skills and knowledge of existing and prospective small business owners. As a general guideline, SBDCs should emphasize the provision of training in specialized areas other than basic small business management subjects. SBDCs should also emphasize training designed to reach particular audiences such as members of SBA priority and special emphasis groups.

SBDC Program Requirements

The SBDC is responsible to the SBA for ensuring that all programmatic and financial requirements imposed upon them by statute or agreement are met. The SBDC must assure that quality assistance and training in management and technical areas are provided to the State small business community through the State SBDC network. As a condition of this agreement, the SBDC must perform, but not be limited to, the following activities:

(a) The SBDC ensures that services are provided as close as possible to small business population centers. This is accomplished through the establishment of SBDC subcenters.

(b) The SBDC ensures that lists of local and regional private consultants are maintained at the lead SBDC and each SBDC subcenter. The SBDC utilizes and provides compensation to qualified small business vendors such as private management consultants, private consulting engineers, and private testing laboratories.

(c) The SBDC is responsible for the development and expansion of resources within the State, particularly the development of new resources to assist small business that are not presently associated with the SBA district office.

(d) The SBDC ensures that working relationships and open communications exist within the financial and investment communities, and with legal associations, private consultants, as well as small business groups and associations to help address the needs of the small business community.

(e) The SBDC ensures that assistance is provided to SBA special emphasis groups throughout the SBDC network. This assistance shall be provided to veterans, women, exporters, the handicapped, and minorities as well as any other groups designated a priority by SBA. Services provided to special emphasis groups shall be performed as part of the Cooperative Agreement.

Adverse Understandings

The Lead SBDC and all SBDC subcenters shall operate on a forty (40) hour week basis, or during the normal business hours of the State or Host Organization, throughout the calendar year. The amount of time allowed the Lead SBDC and subcenters for staff vacations and holidays shall conform to the policy of the Host organization.

Date: October 18, 1988.

James Abdnor,

Administrator.

Address of Proposed SBDCs and Proposal Developers

Dr. Edward Kormandy, Chancellor, University of Hawaii at Hilo, Hilo, Hawaii 96720, (808) 961–9444.

Mr. Richard B. Nelson, Executive Director, State of California, Department of Commerce, Office of Small Business, 1121 L Street, Suite 600, Sacramento, California 95814, (916) 445–6545.

[FR Doc. 88–24494 Filed 10–21–88; 8:45 am]

BILLING CODE 8025–01–M

Region IX Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of Honolulu, Hawaii, will hold a public meeting at 9:30 a.m. on Thursday, November 10, 1988 at the Prince Kuhio Federal Building, 300 Ala Moana Boulevard, Conference Room 5302, Honolulu, Hawaii 96850, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or other present.

For further information, write or call Charles T.C. Lum, District Director, U.S. Small Business Administration, 300 Ala Moana Boulevard, Room 2213, Honolulu, Hawaii 96850 (808) 541–2990.

Jean M. Nowak,

Director, Office of Advisory Councils.

October 18, 1988.

[FR Doc. 88–24495 Filed 10–21–88; 8:45 am]

BILLING CODE 8025–01–M

[License No. 02/02–0517]

Sterling Commercial Capital, Inc.; Issuance of a Small Business Investment Company License

On July 15, 1988, a notice was published in the Federal Register (53 FR 26826) stating that an application has been filed by Sterling Commercial Capital, Inc., 175 Great Neck Road,

[50] 15 U.S.C. 78s(b)(2) (1988).

BEST COPY AVAILABLE

Great Neck, New York 11021, with the Small Business Administration (SBA) pursuant to §107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1988)) for a license as a small business investment company.

Interested parties were given until close of business August 15, 1988, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/02-0617 on October 3, 1988, to Sterling Commercial Capital, Inc., to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: October 17, 1988.

[FR Doc. 88-24468 Filed 10-21-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice CM-8-1230]

Shipping Coordinating Committee; Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 1:30 p.m. on Nov. 16, 1988, in room 6103, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593.

The purpose of the meeting is to finalize preparations for the 30th Session of the Council of the International Maritime Organization (IMO) which is scheduled for 21–25 November 1988 in London. In particular, the SHC will discuss the development of U.S. positions dealing with, inter alia, the following topics.

—Reports of the Major Committees
—Financial Matters
—Personnel Matters

Members of the public may attend these meetings up to the seating capacity of the room. Interested persons may seek information by writing: Mr. U.P. Yost, U.S. Coast Guard Headquarters (G-CPI), 2100 Second Street, SW., Washington, DC 20593 or by calling: 202–267–2280.

October 13, 1988.

Thomas J. Wojda,

Chairman, Shipping Coordinating Committee.

[FR Doc. 88-24470 Filed 10-21-88; 8:45 am]

BILLING CODE 4710-07-M

UNITED STATES SENTENCING COMMISSION

Public Hearing on Organizational Sanctions

AGENCY: United States Sentencing Commission.

ACTION: Notice of public hearing. Request for public comment on discussion materials.

SUMMARY: This notice announces a public hearing scheduled by the U.S. Sentencing Commission for Pasadena, California, on December 2, 1988, to consider the development of guidelines and policy statements for sentencing organizations found guilty of Federal criminal offenses. In addition, this notice invites public analysis and comment regarding discussion materials on organizational sanctions published by the Commission.

DATE: A public hearing on the topic of organizational sanctions is scheduled for: December 2, 1988, 9:30 a.m. to 4 p.m., Courtroom Three, United States Court of Appeals, 125 S. Grand Avenue, Pasadena, CA.

The Commission encourages interested persons to submit written comments regarding its Discussion Materials on Organizational Sanctions (available from the Commission upon request) or other written statements on the subject of organizational sanctions.

ADDRESS: Written statements, comments on the Commission's Discussion Materials, requests to testify, and other written communications may be mailed to: United States Sentencing Commission, 1331 Pennsylvania Avenue NW., Suite 1400, Washington, DC 20004, Attention: Organizational Sanctions Comment.

FOR FURTHER INFORMATION CONTACT: Paul K. Martin, Communications Director for the Commission, telephone (202) 662–5800.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent commission in the judicial branch of the United States Government that is charged with the responsibility of establishing sentencing policies and practices for the Federal criminal justice system. The Commission has promulgated sentencing guidelines and policy statements applicable to most Federal offenses committed by individuals.

The preliminary draft guidelines previously published by the Commission in the October 1, 1986, Federal Register (52 FR 35079) also included discussions of general approaches to organizational sentencing. However, the Commission's initial set of sentencing guidelines and policy statements, published in the May 13, 1987, Federal Register (52 FR 18046), deferred promulgation of guidelines for organizational defendants except with respect to fines for antitrust offenses.

After further review and research, the Commission now is considering the development of more comprehensive guidelines and policy statements for sentencing organizations. The Commission invites public comment on all aspects of organization sanctions and public participation in the hearing. As a vehicle for stimulating the broadest possible range of public input, the Commission is distributing a volume entitled "Discussion Materials on Organizational Sanctions," that contains (i) A discussion draft of sentencing guidelines and policy statements covering all types of organizational sentences (restitution, forfeitures, fines, notice to victims, and probation), (ii) a partial alternative to the discussion draft, consisting of a draft proposal on standards for organizational probation, (iii) an empirical report on sentencing of organizations in the Federal courts during the period of 1984 through 1987, and (iv) a staff working paper on criminal sentencing policy for organizations. In addition, the Discussion Materials include a general statement of the subjects and issues regarding organizational sanctions on which the Commission particularly invites public analysis and comment and a reprint of Standard 18–2.6 (Organizational Sanctions) of the American Bar Association's Standards for Criminal Justice (1980 and Supp. 1986).

Copies of the Discussion Materials may be obtained from the Commission upon request. The Commission encourages interested persons to obtain and comment upon the Discussion Materials; however, the Commission emphasizes that it has not adopted any of the approaches suggested in the Discussion Materials and welcomes comments suggesting alternative approaches.

Authority: Section 217(a) of the Comprehensive Crime Control Act of 1984 (28 U.S.C. 994, 995).

William W. Wilkins, Jr.,

Chairman.

[FR Doc. 88-24524 Filed 10-21-88; 8:45 am]

BILLING CODE 2210-40-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 206
Monday, October 24, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Commission Meeting, Wednesday, October 26, 1988. See times below.

LOCATION: Room 556, Westwood Towers, 5401 Westland Avenue, Bethesda, Maryland.

STATUS:

MATTERS TO BE CONSIDERED:

10:00 a.m. *Open to the Public*

1. ATV Voluntary Standard

The Commission will consider the proposed voluntary standard for all-terrain vehicles developed under the provision of the Consent Decrees in *United States v. American Honda Motor Co., Inc., et al.*, Civil Action No. 87–3525.

2. Lawn Darts Final Rule

The Commission will consider a draft **Federal Register** notice banning lawn darts capable of causing skull puncture injury. The rule was proposed in the **Federal Register** on July 29, 1988 (53 FR 28657).

3. Tremolite in Limestone Products, HP 87–1

The staff will brief the Commission on Petition HP 87–1 from Mark Germine concerning tremolite in limestone products.

2:00 p.m. Closed to the Public

4. Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–415–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westland Ave., Bethesda, Md. 20207 301–492–6800.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 88-24614 Filed 10-20-88; 2:48 pm]

BILLING CODE 6355-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2:00 p.m. (eastern time) Monday, October 31, 1988.

PLACE: Clarence M. Mitchell, Jr., Conference Room, No. 200–C the Second Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington DC 20507.

STATUS: Part of the Meeting will be Open to the Public and Part will be Closed to the Public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Vote(s).
2. Regulations Implementing section 504 of the Rehabilitation Act in the Commission's Federally Conducted Programs: FINAL RULE: Response to Public Comments on Notice of Proposed Rulemaking.
3. Proposed Changes to Title VII and the ADEA Recordkeeping Regulations.

Closed Session

Litigation Authorization: General Counsel Recommendations.

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the Federal Register, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at any time for information on these meeting.)

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 634–6748.

Date: October 18, 1988.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 88-24553 10-20-88; 2:17 pm]

BILLING CODE 6750-06-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:07 p.m. on Tuesday, October 18, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following matters:

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those banks:

Case No. 47,260 (Amendment)
Houston Consolidated Office, Houston, Texas.

Matters relating to the possible closing of certain insured banks.

An administrative enforcement proceeding against an insured bank.

Memorandum regarding the Corporation's corporate activities.

Matters relating to an assistance agreement pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Mr. Robert J. Herrmann, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: October 18, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Deputy Executive Secretary.

[FR Doc. 88-24529 Filed 10-20-88; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL ENERGY REGULATORY COMMISSION

October 18, 1988

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

TIME AND PLACE: October 26, 1988, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary. Telephone (202) 357–8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda;

however, all public documents may be examined in the Public Reference Room.

Consent Power Agenda, 885th Meeting—October 26, 1988, Regular Meeting (10:00 a.m.)

CAP–1.
Project Nos. 10406–001 and 10405–003, Craig W. Scott

CAP–2.
Project No. 5146–005, The City of Allentown, Pennsylvania

CAP–3.
Project No. 9999–001, WV Hydro, Inc. and the City of St. Marys, West Virginia

CAP–4.
Project No. 3490–004, Potter Township, Pennsylvania

CAP–5.
Project No. 9884–001, St. Joe River Rafters
Project No. 9886–002, Marble Creek Associates
Project No. 9856–004, Marble Creek Hydro, Inc.
Project No. 10673–000, Marble Creek Hydro Associates

CAP–6.
Project No. 10081–001, County of Tuolumne and Turlock Irrigation District
Project No. 9990–001, Clavey River Hydroelectric Company

CAP–7.
Project No. 7267–004, Joseph Martin Keating

CAP–8.
Project Nos. 2756–000, –003 and –006, City of Burlington Electric Department
Project Nos. 3101–001 and –002, City of Winooski
Project Nos. 9413–001 and –002, Winooski One Partnership

CAP–9.
Docket No. EL84–37–000, Aquenergy Systems, Inc.

CAP–10.
Docket No. QF88–138–002, GWF Power Systems Company, Inc.

CAP–11.
Docket Nos. ER88–479–000, ER88–598–000, ER85–328–001, ER85–327–002, ER85–621–000, ER85–624–000, ER85–448–000, ER85–761–000, ER86–252–000, ER86–341–000, ER87–923–000, ER88–465–001, ER88–554–000 and ER88–556–000, Niagara Mohawk Power Corporation

CAP–12.
Docket No. ER88–582–000, New England Power Pool

CAP–13.
Docket No. ER88–528–000, Columbus Southern Power Company
Docket No. ER88–589–000, Kentucky Power Company
Docket No. ER88–583–000, Appalachian Power Company
Docket No. ER88–587–000, Ohio Power Company
Docket No. ER88–588–000, Indiana Michigan Power Company

CAP–14.
Docket No. ER88–480–000, Central Vermont Public Service Corporation

CAP–15.
Docket No. ER88–527–001, Union Electric Company

CAP–16.
Docket Nos. ER88–364–002 and ER88–365–001, Niagara Mohawk Power Corporation

CAP–17.
Docket Nos. ER87–72–003 and ER87–73–002, Orange & Rockland Utilities, Inc.

CAP–18.
Docket Nos. ER85–691–007 and ER85–273–001, New England Power Pool

CAP–19.
Docket No. QF88–262–001, Everett Energy Corporation

CAP–20.
Docket No. ER81–177–008, Southern California Edison Company

CAP–21.
Docket No. ER88–77–000, Duke Power Company

CAP–22.
Docket No. ER88–75–001, Northern States Power Company (Minnesota)

CAP–23.
Docket No. ER87–478–000, Minnesota Power & Light Company

Consent Miscellaneous Agenda

CAM–1.
Docket No. RM88–29–000, Annual Charges Under the Omnibus Budget Reconciliation Act of 1986

CAM–2.
Docket No. RM86–28–000, Revision of Filing Fees for Natural Gas Rate and Tariff Filings

CAM–3.
Docket No. RM82–23–000, Revision of Report by Natural Gas Pipeline Companies on Service Interruptions Occurring on the Pipeline System

CAM–4.
Docket No. CP84–23–029 (Phase 2), Stowers Oil & Gas Company, Panhandle Energy Corp., Prairie Oil Co., Sharon Oil Co., Almac Oil Co., Judy Oil Co., Kim Petroleum Co., Inc., Komanche Oil & Gas Co., Omega Energy, Tumbleweed Production, Panstar Oil & Gas, Inc., Dennis Mills Enterprises, Wy-Vel Corp., Walker Operating Corp., and 3W Oil, Inc.

CAM–5.
Docket No. GP88–51–001, Northern Natural Gas Company, Division of Enron Corp. v. Cabot Pipeline Corporation and Texaco Producing Inc.

Consent Gas Agenda

CAG–1.
Docket Nos. RP88–256–000 and 001, West Texas Gas, Inc.

CAG–2.
Docket Nos. RP88–257–000, RP88–161–000, RP86–94–005 and 006, Sea Robin Pipe Line Company

CAG–3.
Docket No. RP88–259–000, Northern Natural Gas Company, Division of Enron Corp.

CAG–4.
Docket Nos. RP88–260–000 and 001, CNG Transmission Corporation

CAG–5.
Docket No. RP88–251–002, Black Marlin Pipeline Company

CAG–6.
Docket No. RP88–263–000, Panhandle Eastern Pipe Line Company

CAG–7.
Docket No. RP88–263–000, United Gas Pipe Line Company

CAG–8.
Docket Nos. RP86–205–000 and RP86–82–000, United Gas Pipe Line Company

CAG–9.
Docket Nos. RP86–200–000, RP86–101–000, RP86–94–005 and 006, Sea Robin Pipeline Company

CAG–10.
Docket No. RP88–94–000, Natural Gas Pipeline Company of America

CAG–11.
Docket No. RP88–253–000, Florida Gas Transmission Company

CAG–12.
Docket No. RP88–264–000, United Gas Pipe Line Company

CAG–13.
Docket Nos. RP88–267–000 and 001, South Georgia Natural Gas Company

CAG–14.
Docket No. TA89–1–41–000, Paiute Pipeline Company

CAG–15.
Docket No. TQ89–1–46–000, Kentucky West Virginia Gas Company

CAG–16.
Docket No. TA89–1–58–000, Texas Gas Pipe Line Corporation

CAG–17.
Docket No. TA89–1–23–000, Eastern Shore Natural Gas Company

CAG–18.
Docket Nos. TA89–1–51–000 and TM89–1–51–000, Great Lakes Gas Transmission Company

CAG–19.
Docket No. TA89–45–000, Inter-City Minnesota Pipelines, Ltd., Inc.

CAG–20.
Docket Nos. TA89–1–5–000, –001 and RP88–140–003, Midwestern Gas Transmission Company

CAG–21.
Docket No. TQ89–2–21–000, Columbia Gas Transmission Corporation

CAG–22.
Docket No. TQ89–1–49–000, Williston Basin Interstate Pipeline Company

CAG–23.
Docket No. TQ88–2–37–000, Northwest Pipeline Corporation

CAG–24.
Docket No. TQ89–1–29–000, Transcontinental Gas Pipe Line Corporation

CAG–25.
Docket No. TF89–1–7–000, Southern Natural Gas Company

CAG–26.
Docket No. RP87–61–003, Eastern Shore Natural Gas Company

CAG–27.
Docket Nos. RP88–17–015 and –017, Southern Natural Gas Company

CAG–28.
Docket No. RP88–211–002, CNG Transmission Corporation

CAG–29.
Docket Nos. RP88–164–000 and 002, West Texas Gas, Inc.

CAG–30.
Docket Nos. RP76–137–094 and 095, Columbia Gas Transmission Corporation

CAG–31.
Docket Nos. TA88–4–42–000 and TQ88–1–42–000, Transwestern Pipeline Company

CAG–32.
Docket No. TA88–2–23–000, Eastern Shore Natural Gas Company

CAG–33.
Docket No. RP88–230–001, Texas Gas Transmission Corporation

CAG–34.
Docket No. RP88–80–009, Texas Eastern Transmission Corporation

CAG–35.
Docket No. RP88–241–001, Panhandle Eastern Pipe Line Company

CAG–36.
Docket No. RP88–240–001, Panhandle Eastern Pipe Line Company

CAG–37.
Docket Nos. RP88–221–001, RP88–87–009 and RP88–81–004, Texas Eastern Transmission Corporation

CAG–38.
Docket No. RP88–229–002, Southern Natural Gas Company

CAG–39.
Docket No. RP88–228–002, Tennessee Gas Pipeline Company

CAG–40.
Docket No. RP88–223–002, Texas Eastern Transmission Corporation

CAG–41.
Docket Nos. RP88–187–002 and 006, Columbia Gas Transmission Corporation

CAG–42.
Docket Nos. RP88–217–002, TA88–1–22–002 and 003, CNG Transmission Company

CAG–43.
Docket Nos. TQ88–2–9–001, TM88–1–9–001 and TA88–1–9–004, Tennessee Gas Pipeline Company

CAG–44.
Docket No. RP82–114–012, Williams Natural Gas Company

CAG–45.
Docket Nos. RP88–68–003 and RP87–7–033, Transcontinental Gas Pipe Line Corporation

CAG–46.
Docket No. RP88–207–003, Columbia Gas Transmission Corporation

CAG–47.
Docket No. RP88–182–000, Gas Research Institute

CAG–48.
Docket No. RP84–34–000, Midwestern Gas Transmission Company

CAG–49.
Omitted

CAG–50.
Docket No. RP87–39–000, Williams Natural Gas Company

CAG–51.
Docket No. RP85–148–007, Transcontinental Gas Pipe Line Corporation
Docket No. RP85–170–004, Texas Eastern Transmission Corporation
Docket No. RP85–181–002, Texas Gas Transmission Corporation
Docket No. RP85–202–002, Trunkline Gas Company
Docket No. RP85–203–003, Panhandle Eastern Pipe Line Company

CAG–52.
Docket Nos. RP88–227–002 and CP88–87–004, Paiute Pipeline Company

CAG–53.
Docket No. RP88–180–000, Jupiter Energy Corporation

CAG–54.
Docket No. IS85–15–000, Southern Pacific Pipe Lines, Inc.

CAG–55.
Docket No. IS88–24–000, Texas Eastern Products Pipeline Company

CAG–56.
Docket No. ST88–4014–000, Taft Pipeline Company

CAG–57.
Docket Nos. ST88–4223–000 and ST88–4224–000, Transco-Louisiana Intrastate Pipeline Company

CAG–58.
Docket No. ST88–4246–000, Mississippi Valley Gas Company

CAG–59.
Docket No. ST88–4279–000, Cranberry Pipeline Corporation

CAG–60.
Docket No. ST88–5350–000, Monterey Pipeline Company

CAG–61.
Docket No. G–4579–056, *et al.*, Cities Service Oil and Gas Corporation (Operator), *et al.*

CAG–62.
Docket No. CI88–59–001, Conoco, Inc., Cities Service Oil and Gas Corporation, Texaco Producing, Inc. and AGIP Petroleum Company, Inc.

CAG–63.
Docket No. CI71–187–001, Phillips 66 Natural Gas Company

CAG–64.
Docket Nos. CI88–255–000 and CI88–280–000, Exxon Corporation

CAG–65.
Docket Nos. CI86–440–000, CI86–441–000, CI86–446–000 and CI86–507–000, United Gas Pipe Line Company

CAG–66.
Docket No. CI85–513–009, Tenngasco Gas Supply Company, *et al.* v. Southland Royalty Company, *et al.*

CAG–67.
Omitted.

CAG–68.
Docket No. CP88–280–001, Northwest Pipeline Corporation

CAG–69.
Docket No. CP87–519–001, Colorado Interstate Gas Company

CAG–70.
Docket No. CP87–165–001, Overthrust Pipeline Company

CAG–71.
Docket No. CP84–336–004, Transcontinental Gas Pipe Line Corporation

CAG–72.
Docket Nos. CP88–269–002, CP88–346–002 and CP88–459–001, Alabama-Tennessee Natural Gas Company

CAG–73.
Docket No. CP88–101–001, Arkansas Western Gas Company

CAG–74.
Docket Nos. TC88–8–000 and 001, Kentucky West Virginia Gas Company

CAG–75.
Docket No. CP88–2–008, Northern Natural Gas Company, Division of Enron Corp.

CAG–76.
Docket No. CP88–681–000, Panhandle Eastern Pipe Line Company

CAG–77.
(A) Docket No. CP87–451–013, Northeast U.S. Pipeline Products
(B) Docket No. CP87–451–014, Northeast U.S. Pipeline Products

CAG–78.
Docket Nos. CP88–79–000 and 001, National Steel Corporation

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CAG–80.
Docket No. CP88–13–000, Columbia Gas Transmission Corporation

CAG–81.
Docket No. CP88–433–000, El Paso Natural Gas Company

CAG–82.
Docket No. CP87–123–025, Northwest Alaskan Pipeline Company

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Docket Nos. CP87–467–003, CP79–462–009 and CP88–110–035, Great Lakes Gas Transmission Company

CAG–84.
Docket No. CP88–440–000, Southern Natural Gas Company

CAG–85.
Docket Nos. CP88–102–000 and 001, Williams Natural Gas Company

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CAG–87.
Docket No. CP87–206–000, Natural Gas Pipeline Company of America

CAG–88.
Docket No. CP88–362–000, ANR Pipeline Company

CAG–89.
Docket Nos. CP87–365–000, CP87–471–000, CP87–472–000, CP87–481–000, CP87–488–000 and CP88–66–000, United Gas Pipe Line Company

CAG–90.
Docket No. CP88–255–000, Transcontinental Gas Pipe Line Corporation

CAG–91.
Omitted.

CAG–92.
Docket No. RP88–174–000, Dynasty Gas Marketing, Inc., v. Northern Border Pipeline Company
Docket No. RP88–195–001, Northern Border Pipeline Companies

CAG–93.
Docket No. CP88–665–000, National Fuel Gas Supply Corporation
Docket No. CP88–746–000, Mercer Gas Company and North East Heat and Light Company v. National Fuel Gas Supply Corporation

CAG–94.
Docket No. CP88–387–000, Ken-Gas of Tennessee, Inc.

CAG–95.
Docket Nos. CP87–103–000 and 001, Tennessee Gas Pipeline Company

CAG–96.
Docket Nos. CP88–589–000, RP88–104–007 and RP87–30–015, Colorado Interstate Gas Company

CAG–97.
Docket No. CP87–339–001, Columbia Gas Transmission Corporation

CAC-86.
Docket No. CP88-325-001, Alabama-Tennessee Natural Gas Company
CAC-89.
Docket No. CP87-86-001, Tennessee Gas Pipeline Company
CAC-100.
Docket No. RP88-79-002, Transwestern Pipeline Company

I. Licensed Project Matters

P-1.
Reserved

II. Electric Rate Matters

ER-1.
Reserved.

Miscellaneous Agenda

M-1.
Reserved
M-2.
Reserved

I. Pipeline Rate Matters

RP-1.
(A) Docket No. RP88-184-001, El Paso Natural Gas Company. Rehearing order concerning Order No. 500 prudence and El Paso's appeal.
(B) Docket Nos. RP88-196-001, 002 and 003. Transwestern Pipeline Company. Rehearing order concerning Order No. 500, take-or-pay and direct billing.
RP-2.
Omitted.

II. Producer Matters

CI-1.
Reserved

III. Pipeline Certificate Matters

CP-1.
Docket Nos. CP87-479-001 and CP87-480-001, Wyoming-California Pipeline Company. Order on request for rehearing of declaratory order issued July 1, 1988.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24644 Filed 10-20-88; 3:51 pm]

BILLING CODE 6717-01

MARINE MAMMAL COMMISSION

TIME AND DATE: The Marine Mammal Commission and its Committee of Scientific Advisors on Marine Mammals will meet in executive session on Thursday, February 23, 1989, from 8:30 a.m. to 10:00 a.m. They will meet in public on Thursday, February 23 from 10:00 a.m. to 5:30 p.m., on Friday, February 24, from 9:00 to 5:30 p.m., and on Saturday, February 25, from 9:00 a.m. to 1:00 p.m.

PLACE: Doubletree Hotel, 2 Portola Plaza, Monterey, California 93940.

STATUS: The executive session will be closed to the public. All other portions of the meeting will be open to public observation. Public participation will be allowed if time permits and such participation is determined to be desirable by the Chairman.

MATTERS TO BE CONSIDERED: While the Commission and Committee will meet in public session to discuss a broad range of marine mammal issues, key topics for discussion will be: Actions to be taken as a result of amendments to the Marine Mammal Protection Act; marine mammal/fishery interactions; the tuna/porpoise issue; the Southern sea otter; and international whaling.

CONTACT PERSON FOR MORE INFORMATION: John R. Twiss, Jr., Executive Director, Marine Mammal Commission, 1625 I Street, NW., Washington, DC 20006 (202) 653-6237.

Date: October 20, 1988.

John R. Twiss, Jr.,

Executive Director.

[FR Doc. 88-24599 Filed 10-20-88; 2:18 pm]

BILLING CODE 6820-31-M

SECURITIES AND EXCHANGE COMMISSION

AGENCY MEETING

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of October 24, 1988.

A open meeting will be held on Tuesday, October 25, 1988, at 10:00 a.m., in Room 1C30, followed by a closed meeting.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Grundfest, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting scheduled for Tuesday, October 25, 1988, at 10:00 a.m., will be:

Consideration of whether to issue a concept release on timely review of interim financial information. The concept release invites comments on whether the Commission should propose a requirement that (1) interim financial data of registrants be reviewed by independent accountants before such information is filed with the commission and (2) a report issued by the independent accountant upon completion of his review be included by the registrant in its Form 10-Q and in any registration statements that include interim information. For further information, please contact Jack Parsons at (202) 272-2130.

The subject matter of the closed meeting scheduled for Tuesday, October 25, 1988, following the 10:00 a.m. open meeting, will be:

Settlement of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Formal orders of investigation.
Motion to dismiss injunctive action.
Institution of injunctive action.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Kevin Fogarty at (202) 272-3195.

Jonathan G. Katz,

Secretary.

October 19, 1988.

[FR Doc. 88-24597 Filed 10-20-88; 2:18 pm]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [To be published].

STATUS: Opening meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Wednesday, October 19, 1988.

CHANGE IN THE MEETING: Additional item.

The following item will be considered at an open meeting on Tuesday, October 25, 1988, at 10:00 a.m.:

Consideration of whether to publish for comment a release proposing alternative versions of new Rule 144A that would provide a safe harbor from the registration requirements of the Securities Act of 1933 for resale of securities to institutional investors. Additionally, consideration of whether to publish for comment a proposal to amend Rules 144 and 145 under the Securities Act, under which the holding period for restricted securities would commence at the time the securities are sold by the issuer or its affiliate. For further information, please contact Sara Hanks or Samuel Wolff at (202) 272-3246, or as to changes to Rules 144 and 145, Catherine Dixon at (202) 272-2573.

Commissioner Grundfest, as duty officer, determined that Commission business required the above change.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Kevin Fogarty at (202) 272-3195.

Jonathan G. Katz,

Secretary.

October 20, 1988.

[FR Doc. 88-24646 Filed 10-20-88; 4:01 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 53, No. 205
Monday, October 24, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3367-6]

Standards of Performance for New Stationary Sources; Methods 5F Amendment; Addition of Barium-Thorin Titration Procedure for Sulfates

Correction

In rule document 88-17600 beginning on page 29681, in the issue of Monday, August 8, 1988, make the following corrections:

1. On page 29683, in the first column, in 7.1.3.3, in the eighth line, "method" should read "Method".
2. On the same page, in the third column, in 7.1.5.1, in the 10th line, "ba(ClO_4)$_2$" should read "Ba(ClO_4)$_2$".
3. On the same page, in the same column, in 7.1.5.1, in the 20th line, "Ba(ClO_4)$_2$" should read "Ba(ClO_4)$_2$".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 223

[FRL-3214-1]

Clean Water Act Section 404 Program Definitions and Permit Exemptions; Section 404 State Program Regulations

Correction

In rule document 88-12632 beginning on page 20764 in the issue of Monday, June 6, 1988, make the following correction:

§ 233.50 [Corrected]

On page 20783, in the third column, in § 233.50(b), in the ninth line, "45 days" should read "15 days".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 270

[FRL 3388-3]

Permit Modifications for Hazardous Waste Management Facilities

Correction

In rule document 88-21903 beginning on page 37912 in the issue of Wednesday, September 28, 1988, make the following correction:

Appendix I to § 270.42 [Corrected]

On page 37941, in Appendix I to § 270.42, in the last entry, in the bottom line, in the right hand column, insert "2".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 74, 81, and 82

[Docket No. 87N-0160]

D&C Red No. 33

Correction

In rule document 88-19541 beginning on page 33110 in the issue of Tuesday, August 30, 1988, make the following corrections:

1. On page 33110, in the third column, in the **SUMMARY**, in the second line, "FDS" should read "FDA".
2. On page 33111, in the second column, in the first complete paragraph, in the ninth line, "naphtol" should read "naphthol".
3. On the same page, in the same column, in the last line, "latest" was misspelled.
4. On page 33112, in the third column, in the seventh line, "data" should read "date".
5. On page 33113, in the third column, in the last complete paragraph, in the third line, "0.25" should read "0.025".
6. On page 33116, in the first column, in the fourth complete paragraph, in the seventh and eighth lines, "Θg" should read "μg".
7. On the same page, in the second column, Table II was inaccurate and is republished in its entirety as follows:

TABLE II—ESTIMATED IMPURITY EXPOSURE AT THE SPECIFICATION LIMITS

Impurity	Structural formula	High User Exposure (mg/day) [1]	
		Systemic	Dermal
4-Aminoazobenzene	[redacted]	0.02	0.08
4-Aminobiphenyl	[redacted]	275	.....
Aniline	[redacted]	4.0	.....
Azobenzene	[redacted]	0.9	.....
Benzidine	[redacted]	20	.....
1,3-Diphenyltriazene	[redacted]	[redacted]	0.1

[1] ng = Nanograms (1 billionth of a gram).

8. On the same page, in the same column, in the first paragraph, in the eighth line, "Θg" should read "μg". In the second paragraph, in the eleventh line, after "user" insert "external". In the twelfth line, "Θg" should read "μg".
9. On page 33117, in the third column, in the first complete paragraph, in the first line, "1,-Diphenyltriazene" should read "1,3-Diphenyltriazene".
10. On page 33118, in the second column, Table III was inaccurate and is republished in its entirety as follows:

TABLE III—UPPER BOUND RISK ESTIMATES BASED ON SPECIFICATIONS FOR CARCINOGENIC IMPURITIES IN D&C RED NO. 33

Impurity	[redacted]
4-Aminoazo-benzene [1]	[redacted] (2X10 $^{-4}$)
4-Aminobiphenyl	[redacted] (2X10 $^{-4}$)
Aniline	0.00000000004 (4X10 $^{-11}$)
Azobenzene	0.00000000002 (2X10 $^{-11}$)
Benzidine	[redacted] (2X10 $^{-4}$)
1,3-Diphenyltriazene [1]	0.00000000001 (1X10 $^{-11}$)
Sum [2]	0.00000004 (4X10 $^{-8}$)

[1] The risk for skin cancer is used here because it is higher than the risk estimated for systemic cancer
[2] In summing risk estimates, numbers have been rounded off to the nearest significant figure.

11. On page 33118, in the first column, in the heading, "References" was misspelled.

BILLING CODE 1505-01-D

LEGAL SERVICES CORPORATION

45 CFR Part 1626

Restrictions on Legal Assistance to Aliens

Correction

In proposed rule document 88-24154 beginning on page 40914 in the issue of Wednesday, October 19, 1988, make the following corrections:

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1. On page 40915, in the first column, under SUPPLEMENTARY INFORMATION, in the third line, "Pub. L. 98-377" should read "Pub. L. 97-377".

§ 1624.2 [Corrected]

2. On page 40915, in the second column, "§ 162.2 Definitions" should read "§ 1626.2 Definitions".

§ 1626.3 [Corrected]

3. On the same page, in the third column, in § 1626.3(a)(2), in the sixth line, "and" should read "an".

4. On the same page, in the same column, in § 1626.3(c)(2), beginning in the 10th line, the last sentence was incomplete and should read as follows: "Consequently, the prohibition of assistance on behalf of an ineligible alien extends to all legal assistance wherein the admission of a person into the United States is sought and to any other immigration matter wherein an eligible alien is assisted to aid or facilitate the adjustment of the status of an ineligible alien."

BILLING CODE 1505-01-D

federal register

Monday
October 24, 1988

Part II

Regulatory Information Service Center

Introduction to the Unified Agenda of Federal Regulations

VOL 53 ISS 205 OCT 24 1988 UMI

REGULATORY INFORMATION SERVICE CENTER

Unified Agenda of Federal Regulations

AGENCY: Regulatory Information Service Center.

ACTION: Introduction to the Unified Agenda of Federal Regulations.

SUMMARY: The Regulatory Flexibility Act (5 USC 602) requires that agencies publish semiannual regulatory agendas describing regulatory actions they are developing. Executive Order 12291 and OMB Bulletins implementing section 5 of the Executive order establish minimum standards for executive agencies' agendas, including specific types of information for each entry, and publication in a uniform format. All Federal regulatory agencies have chosen to publish their regulatory agendas as part of this Unified Agenda of Federal Regulations.

The following separate parts in this issue of the Federal Register are the agency agendas, which together comprise the October 1988 edition of the semiannual Unified Agenda of Federal Regulations.

ADDRESS: Regulatory Information Service Center, Room 5216, New Executive Office Building, 725 Seventeenth Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For further information about specific regulatory actions, please refer to the Agency Contact listed for each entry. To provide comment on or to obtain further information about the Unified Agenda of Federal Regulations, contact: Mark G. Schoenberg, Executive Director, Regulatory Information Service Center, Room 5216, New Executive Office Building, 725 Seventeenth Street, NW., Washington, DC 20503, (202) 395-6993.

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INTRODUCTION TO THE UNIFIED AGENDA OF FEDERAL REGULATIONS

About the Unified Agenda

The Regulatory Information Service Center compiles the Unified Agenda of Federal Regulations for the Office of Information and Regulatory Affairs, Office of Management and Budget. The Center provides information about Federal regulatory activity to the President and his Executive Office, the Congress, agency managers, and the public.

The Office of Information and Regulatory Affairs is responsible for overseeing the Federal Government's regulatory, paperwork, and information-management activities and for implementing President Reagan's Executive Orders 12291 (Federal Regulation) (46 FR 13193; 3 CFR 1981 Comp., p. 127) and 12498 (Regulatory Planning Process) (50 FR 1036; 3 CFR 1985 Comp., p. 323). Under EO 12498, OMB publishes the Regulatory Program of the United States Government each year.

The Regulatory Program is a policy document and a management tool that sets forth the priorities of the agency head and of the President regarding the Significant Regulatory Actions (SRAs) that will be conducted during the program year to which it pertains.

The Regulatory Program and the Unified Agenda differ in several ways.

The Unified Agenda includes more regulatory actions because it covers all Federal agencies that issue regulations and includes almost all the rulemakings they have under development. This year's Regulatory Program covers only 26 of the major Federal regulatory agencies, and includes only the most significant of all the regulatory actions that each agency plans to undertake. The Regulatory Program, however, describes each entry more thoroughly than the Unified Agenda.

Most of the regulatory actions described in the Regulatory Program of the United States Government are included in this Agenda. In general, the Regulation Identifier Number (RIN) for the action is the same for both publications; however, occasionally, several Agenda entries are combined into one Program entry, and a new RIN is assigned to that entry in the Program.

The Unified Agenda provides uniform reporting of data on regulatory activities under development throughout the Federal Government. This edition of the Unified Agenda includes 55 regulatory agendas from all Federal departments, agencies, and commissions that publish agendas. The Council on Environmental Quality and the National Capital Planning Commission usually publish a regulatory agenda, but have nothing to report for this edition of the Unified Agenda. Agencies of the United States Congress are not included.

The Unified Agenda is produced through a computer system designed and maintained by the Center with the advice and assistance of the Government Printing Office. The system was designed to save agencies time and money by automating the preparation and printing of their agendas in a uniform format and to make the Agenda easier to use. In order to further facilitate producing the Agenda, many agencies currently use computer terminals at their offices to enter agenda information into the Center's computer system.

The Agenda contains a Subject Index to help readers locate entries from various agencies that may affect a particular area of interest. The numbers in the index refer to the sequence numbers that appear before the title of each entry in the Agenda. All entries are numbered sequentially from the beginning to the end of the Agenda.

For those agencies that requested it, we provided a computer-produced Table of Contents that appears after the preamble of the agency's agenda. The agency Tables of Contents help readers locate quickly those entries within an agency that may be of most interest to them.

All agendas contain uniform data elements -- regulation title, significance, legal authority, CFR citation, abstract, legal deadline, timetable, effects on small entities and levels of government, and agency contact. Agencies also include any additional information they consider important. If any of the data elements is not included, the agency either did not report the information or may provide an explanation in its preamble. For further information, please contact the individual agency.

The Unified Agenda of Federal Regulations is published in April and October of each year. We welcome comments on this edition and suggestions for improving future ones.

Dated: October 1, 1988.

Mark G. Schoenberg,

Executive Director.

How to Use the Unified Agenda

Each agency agenda appears as a separate part in this edition of the Federal Register. The parts are organized alphabetically in four groups: Cabinet departments, other executive agencies, joint authorities, and independent agencies. Departments are divided into agencies, which may in turn be divided into subagencies.

Each agency begins its agenda with a preamble providing information specific to its agenda. Each agency was asked to list its rules in four groups:

1. Prerule Stage -- actions agencies will undertake in the next 12 months to determine whether or how to initiate rulemaking. Such actions occur prior to a Notice of Proposed Rulemaking and may include Advance Notices of Proposed Rulemaking and reviews of existing regulations.

2. Proposed Rule Stage -- actions for which agencies plan to publish a Notice of Proposed Rulemaking (NPRM) as the next step in their rulemaking process, or for which the closing date of the NPRM Comment Period is the next step.

3. Final Rule Stage -- actions for which agencies plan to publish a final rule or an interim final rule, or to take other final action as the next step in their rulemaking process.

4. Completed Actions -- actions or reviews the agency completed or withdrew since publishing its last agenda. This section also includes items that were begun and completed between issues of the Unified Agenda.

An agency may use a subheading to identify regulations that it has grouped according to a particular topic. When these subheadings are used, they appear above the title of the first regulation in the group.

A bullet (●) preceding an entry indicates that the entry appears in the Agenda for the first time.

The Agenda Sequence Number preceding the title of each entry identifies the location of the entry in this edition of the Agenda. The same number is used in the index to enable readers to find entries on specific subjects. Those agencies that chose to provide a Table of Contents at the beginning of their agendas also use the sequence number in their Table of Contents. Sequence numbers should help readers easily locate items of most interest to them, either by agency or by subject.

The regulatory activities included in the agency agendas are those currently planned for the next 12 months. The agendas do not include regulations excluded from review under EO 12291 such as military regulations and regulations related to internal agency management.

Entries describing regulations in the Agenda should contain, at a minimum, the following information:

- Title of the Regulation.
- Significance -- an indication of the significance of the entry that appears when:
  a. The action was included in the Regulatory Program of the United States Government for the 1988 program year, or
  b. The agency otherwise considers the action a priority.

The Significance heading appears only if the entry is a significant action.

- Legal Authority -- the section(s) of the United States Code (USC) or Public Law (PL) or the Executive order (EO) that authorize(s) the regulatory action (agencies may provide common name references to laws in addition to USC or PL references).
- CFR Citation -- the section(s) of the Code of Federal Regulations that affects or will be affected by the action.
- Abstract -- a description of the problem the regulation will address; the need for a Federal solution; and, to

the extent available, the alternatives that the agency is considering to address the problem and the potential costs and benefits of the action.

- Legal Deadline -- an indication of whether the rule is subject to a statutory or judicial deadline, the date of that deadline, and whether the deadline pertains to an NPRM, a Final Action, or some "Other" action.
- Timetable -- the dates and citations (if available) for all past stages and at least the next future stage of rulemaking. If a date appears in this section as 00/00/00, it means the date of the action is presently undetermined. Similarly, 10/00/88 means the agency can predict the month and year the action will take place, but not the day it will occur.
- Effects on Small Entities -- indicates whether the rule is expected to have a significant economic impact on a substantial number of "small entities" as defined by the Regulatory Flexibility Act (5 U.S.C. 601) and, if so, whether the small entities are businesses, governmental jurisdictions, and/or organizations.
- Effects on Levels of Government -- indicates whether the rule is expected to affect levels of government and, if so, whether the governments are local, State, and/or Federal.
- Agency Contact -- the name, title, address, and phone number of a person in the agency who is knowledgeable about the regulation.

Some agencies have provided other optional information at their discretion.

Data Limitations

Agencies prepared entries for this edition of the Unified Agenda to give the public notice of their plans to review, propose, and issue regulations. They have tried to predict their activities over the next 12 months as accurately as possible, but dates and schedules are subject to change. Agencies may withdraw some of the regulations now under development, and they may issue or propose other regulations not included in their agendas. Agency actions in the rulemaking process may occur before or after the dates they have listed. The Agenda does not create a legal obligation on agencies to adhere to schedules within it or to confine their regulatory activities to those regulations that appear in it. The information in this edition is accurate as of August 26, 1988, in the judgment of the submitting agencies, except as otherwise noted in individual agency preambles.

List of Abbreviations

The following abbreviations appear throughout this edition of the Agenda:

ANPRM -- An Advance Notice of Proposed Rulemaking is a preliminary notice that an agency is considering a regulatory action. The agency issues an ANPRM before it develops a detailed proposed rule. The ANPRM describes the general area that may be subject to regulation and usually asks for public comment on the issues and options being discussed. An ANPRM is issued only when an agency believes it needs to gather more information before proceeding to a notice of proposed rulemaking.

CFR -- The Code of Federal Regulations is an annual codification of the general and permanent regulations published in the **Federal Register** by the departments and agencies of the Federal Government. The Code is divided into 50 titles and each title covers a broad area subject to Federal regulation. The CFR is keyed to and kept up-to-date by the daily issues of the **Federal Register**.

EO -- An Executive order is a directive from the President to an executive agency, issued under constitutional or statutory authority. Executive orders are published in the **Federal Register** and in Title 3 of the Code of Federal Regulations.

FR -- The **Federal Register** is a daily Federal Government publication that provides a uniform system for publishing Presidential documents, all proposed and final regulations, notices of meetings, and other official documents issued by Federal departments and agencies.

FY -- The Federal fiscal year runs from October 1 to September 30.

NPRM -- A Notice of Proposed Rulemaking is the document an agency issues and publishes in the **Federal Register** that describes and solicits public comments on a proposed regulatory action. Under the Administrative Procedure Act, an NPRM must include, at a minimum:

- A statement of the time, place, and nature of the public rulemaking proceeding;
- A reference to the legal authority under which the rule is proposed; and
- Either the terms or substance of the proposed rule or a description of the subjects and issues involved.

PL -- A Public Law is a law passed by Congress and signed by the President or enacted over his veto. It has general applicability, as opposed to a private law that applies only to those persons or entities specifically designated. Public laws are numbered in sequence throughout the two-year life of each Congress; for example, PL 97-17 would be the 17th public law of the 97th Congress.

RFA -- A Regulatory Flexibility Analysis (RFA) describes the impact of a proposed rule on small entities, as required by the Regulatory Flexibility Act (5 U.S.C. 601). An RFA describes why the agency is considering the action; the objectives of and legal basis for the proposed rule; an estimate of the number of small entities that could be affected and the compliance requirements they would have to fulfill; any other duplicative, overlapping, or conflicting Federal rules; and alternatives to the proposed action. When required, an initial RFA accompanies an NPRM and a final RFA accompanies a final rule.

RIA -- A Regulatory Impact Analysis is required by EO 12291 for all major rules and other regulations designated by the Office of Management and Budget. An RIA is prepared to determine whether a proposed regulatory action meets the requirements of section 2 of EO 12291, namely that it:

- Be based on adequate information concerning the need for and consequences of the action;
- Not be undertaken unless the potential benefits outweigh the potential costs to society;
- Maximize net benefits to society;
- Entail the least net cost to society of the alternatives considered; and
- Take into account the condition of particular affected industries, the national economy, and contemplated future regulatory actions.

RIN -- The Regulation Identifier Number is assigned by the Regulatory Information Service Center to identify each regulatory action listed in the Agenda.

USC -- The United States Code is a consolidation and codification of all general and permanent laws of the United States. The USC is divided into 50 titles and each title covers a broad area of Federal law.

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Part III

Department of Agriculture

Semiannual Regulatory Agenda

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DEPARTMENT OF AGRICULTURE (USDA)

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Subtitle A, Chs. I-VII, IX-XII, XIV-XVIII, XX, XXIV-XXIX

9 CFR Chs. I-IV

36 CFR Ch. II

41 CFR Ch. 4

Semiannual Regulatory Agenda; Fall 1988

AGENCY: Office of the Secretary, USDA.

ACTION: Semiannual regulatory agenda.

SUMMARY: This agenda provides summary descriptions of major and non-major regulations being developed in agencies of the U.S. Department of Agriculture in conformance with Executive Order 12291, Federal Regulation. The agenda also describes regulations affecting small entities as required by section 602 of the Regulatory Flexibility Act, Pub. L. 96-354.

USDA has attempted to list all regulations and regulatory reviews pending at the time of publication except for minor and routine or repetitive actions; but some may have been inadvertently missed. There is no legal significance to the omission of an item from this listing. Also, the dates shown for the steps of each action are estimated and are not commitments to act on or by the date shown.

FOR FURTHER INFORMATION CONTACT: For further information on any specific entry shown in this agenda, please contact the person listed for that action.

ADDRESSES: Requests for copies of the Agenda should include a self-addressed, stamped envelope and be directed to: Regulatory Agenda, OBPA, Office of the Secretary, Room 147-E Administration Building, U.S. Department of Agriculture, Washington, DC 20250, (202) 382-1272.

Dated: August 26, 1988.

Jacquelyn C. Patterson,

Chief, Regulatory & Legislative Staff.

Agricultural Marketing Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1	Fees for Service for Voluntary and Mandatory Programs	0581-AA16

Agricultural Stabilization and Conservation Service—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
2	CCC Cotton Loan Program Regulations–Settlement, Fraud, and Conversion Provisions	0560-AB22
3	Burley Tobacco Price Support Restrictions for Nonbaled Tobacco and Nonstandard Containers	0560-AB42
4	1990 Extra Long Staple (ELS) Cotton Program	0560-AB43
5	1990 Rice Program	0560-AB45
6	1989 Soybean Program	0560-AB48
7	1989-Crop Marketing Quotas and Acreage Allotments for Six Kinds of Tobacco	0560-AB51
8	1990-Crop Peanuts National Poundage Quota	0560-AB54
9	1990 Upland Cotton Program	0560-AB55
10	1990 Feed Grain Program	0560-AB56

Agricultural Stabilization and Conservation Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
11	1989-Crop Peanuts National Poundage Quota	0560-AB10
12	1989 Extra Long Staple (ELS) Cotton Program	0560-AB25
13	1989 Price Support Levels for Six Kinds of Tobacco	0560-AB32
14	1989-Crop National Average Price Support Level for Quota Peanuts	0560-AB36
15	1989-Crop Honey Price Support Program	0560-AB37
16	Common Program Provisions for the 1990 Wheat, Feed Grain, Cotton and Rice Programs	0560-AB38
17	1989 Rice Program	0560-AB39
18	1990 Wheat Program	0560-AB41
19	Formula for Determination of Adjusted World Price for Upland Cotton	0560-AB57

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Agricultural Stabilization and Conservation Service—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
20	Commodity Credit Corporation (CCC) Claims Regulations	0560-AA36
21	Price Support Loan Program for 1986 Through 1990-Crops Sugar Beets and Sugarcane	0560-AA74
22	1988-Crop Peanut Price Support Program Differentials	0560-AB09
23	1989 Wheat Program	0560-AB14
24	1989 Feed Grain Program	0560-AB15
25	1989 Upland Cotton Program	0560-AB16
26	Common Program Provisions for the 1989 Wheat, Feed Grain, Cotton and Rice Programs	0560-AB17
27	1988 Soybean Loan Program	0560-AB18
28	1988-Crop Sugar Beet and Sugarcane Price Support Loan Rates	0560-AB19
29	1989 Wool and Mohair Program	0560-AB20
30	Dairy Indemnity Payment Program–January 1, 1988 - September 30, 1990	0560-AB30
31	1989-Crop Peanut Price Support Program Differentials	0560-AB31
32	1989-Crop National Average Loan Rate and Minimum CCC Export Edible Sales Price for Additional Peanuts	0560-AB33
33	1989-Crop Burley Tobacco Marketing Quotas and Price Support Level	0560-AB34
34	1989-Crop Flue-cured Tobacco Marketing Quota and Price Support Level	0560-AB35
35	Milk Price Support Level, Calendar Year 1989	0560-AB40
36	1989 CCC Cotton Loan Program Regulations – Bale Packaging Materials	0560-AB44
37	Peanut Warehouse Storage Loans and Handler Operations for the 1986 Through 1990 Crops (Amendment 3)	0560-AB46
38	Peanut Warehouse Storage Loans and Handler Operations for the 1986 Through 1990 Crops (Amendment 1)	0560-AB47
39	1990 Wool and Mohair program	0560-AB49
40	Foreign Persons Ineligible for Tobacco Price Support Program Benefits	0560-AB50
41	1989-90 Marketing Year Penalty Rates for All Kinds of Tobacco Subject to Quotas	0560-AB52
42	1989 - Crop Sugar Beet and Sugarcane Price Support Loan Rates	0560-AB53

Agricultural Stabilization and Conservation Service—Completed Actions

Sequence Number	Title	Regulation Identifier Number
43	National Average Loan Rates for 1987-Crop Quota and Additional Peanuts	0560-AA61
44	1987-Crop Peanuts National Poundage Quota	0560-AA79
45	Common Program Provisions for the 1988 Wheat, Feed Grains, Cotton and Rice Programs	0560-AA80
46	1988 Rice Program	0560-AA90
47	1988 Wheat Program	0560-AA91
48	1988 Feed Grain Program	0560-AA92
49	1988 Upland Cotton Program	0560-AA93
50	1988-Crop Flue-Cured Tobacco Marketing Quotas	0560-AA96
51	1988 Extra Long Staple (ELS) Cotton Program	0560-AA99
52	1988-Crop Honey Price Support Program	0560-AB04
53	1988 Wool and Mohair Program	0560-AB05
54	1988-Crop Burley Tobacco Marketing Quotas and Price Support Level	0560-AB06
55	1988-Crop Marketing Quotas and Acreage Allotments for Five Kinds of Tobacco	0560-AB07
56	1988 Price Support Levels for Six Kinds of Tobacco	0560-AB12
57	1988 CCC Cotton Loan Program Regulations–Bale Packaging Materials	0560-AB21
58	General Regulations Governing Price Support of 1986 and Subsequent Crops of Grain	0560-AB23
59	Waiver of Standards for Approved Warehouses	0560-AB24

Animal and Plant Health Inspection Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
60	Animal Welfare Regulations; Standards	0579-AA20
61	Importation of Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products	0579-AA21

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Animal and Plant Health Inspection Service—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
62	Animal Welfare; Definition of Terms and Regulations	0579-AA18
63	Swine Identification	0579-AA19

Animal and Plant Health Inspection Service—Completed Actions

Sequence Number	Title	Regulation Identifier Number
64	Importation of Fruits and Vegetables Under Assured Certification Agreements	0579-AA17

Cooperative State Research Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
65	Agricultural Research Involving Outdoor Field Testing of Biotechnology - Modified Organisms	0524-AA00

Farmers Home Administration—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
66	Recapture of Section 502 Rural Housing Subsidy	0575-AA29
67	Security Servicing for Multiple Housing Loans	0575-AA38
68	Management and Collection of Nonprogram (NP) Loans	0575-AA39
69	Complaints and Compensation for Construction Defects	0575-AA41
70	Borrower Supervision Servicing and Collection of Single Family Housing Loan Accounts	0575-AA42

Farmers Home Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
71	Suspension and Debarment Regulations	0575-AA02
72	Property Management	0575-AA03
73	Housing Preservation Grants	0575-AA16
74	Self-Help Technical Assistance Grants	0575-AA34
75	Section 502 Rural Housing Loan Policies, Procedures, and Authorizations	0575-AA35
76	Rural Housing Program Loans	0575-AA48
77	Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients	0575-AA49
78	Real Property Insurance	0575-AA53
79	Security Servicing for Single Family Rural Housing Loans	0575-AA54
80	Borrower Supervision Servicing and Collection of Single Family Housing Loan Accounts	0575-AA55
81	Rural Rental Housing Loan Policies, Procedures and Authorities -- Letters of Credit	0575-AA57
82	Rural Rental Housing Loan Policies, Procedures and Authorizations -- Congregate Housing and Group Homes	0575-AA58
83	Secondary Market for Farmer Program Loans	0575-AA59
84	Farm Labor Housing Loan and Grant Policies, Procedures, and Authorizations	0575-AA60
85	Farm Labor Loan and Grant Policies, Procedures, and Authorization	0575-AA62
86	Rural Rental Housing Loan Policies, Procedures, and Authorizations -- Cooperative Housing Loans	0575-AA63

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Farmers Home Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
87	Management and Supervision of Multiple Family Housing Borrowers	0575-AA30
88	Changes to the FmHA Farmer Program Loan Making, Supervision and Servicing Regulations to implement the Applicable Provisions of the "Food Security Act of 1985"	0575-AA23
89	Planning and Performing Construction and Other Development	0575-AA36
90	Section 504 Rural Housing Loans and Grants	0575-AA37
91	Analyzing Credit Needs and Graduation of Borrowers	0575-AA40
92	Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients	0575-AA50
93	Security Servicing for Multiple Housing Loans	0575-AA51
94	Predetermined Amortization Schedule System (PASS) Account Servicing	0575-AA52
95	Changes to the Farmers Home Administration (FmHA) Farmer Program Loan Making, Supervision and Servicing Regulations to Implement Applicable Provisions of "The Agricultural Credit Act of 1987"	0575-AA58
96	Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received – Single Family Housing	0575-AA61

Farmers Home Administration—Completed Actions

Sequence Number	Title	Regulation Identifier Number
97	Rural Rental Housing Policies, Procedures and Authorizations	0575-AA00
98	Intermediary Relending Program	0575-AA43
99	Debt Settlement - Community and Business Programs	0575-AA44
100	Supplemental Requirements for Making Section 502 RH Loans for Manufactured Homes	0575-AA46

Food and Nutrition Service—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
101	Issuance Loss Liability: Food Stamp Program	0584-AA76
102	Food Distribution Program - Part 250	0584-AA07
103	Food Distribution Program on Indian Reservations	0584-AA09
104	Emergency Food Assistance for Victims of Disasters	0584-AA24
105	Conformance with Aid to Families with Dependent Children (AFDC) Rules: Food Stamp Program	0584-AA52
106	Administration/ Management: Food Stamp Program	0584-AA53
107	Employment and Training Requirements Technical Corrections Proposed Rule	0584-AA72
108	Systematic Alien Verification for Entitlements	0584-AA73

Food and Nutrition Service—Completed Actions

Sequence Number	Title	Regulation Identifier Number
109	Waiver Simplification: Food Stamp Program	0584-AA60
110	Simplified Application and Standardized Benefits: Food Stamp Program	0584-AA62

Food Safety and Inspection Service—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
111	Administrative Regulations	0583-AA07
112	Transportation	0583-AA10
113	Eligibility of Foreign Countries for Importation of Products into the United States	0583-AA55

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Food Safety and Inspection Service—Prerule Stage—Continued

Sequence Number	Title	Regulation Identifier Number
114	Labeling of Frankfurters and Similar Products Containing Binders	0583-AA92

Food Safety and Inspection Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
115	Various Amendments to Accommodate Inspection of Meat Food Products Under Title IV of the Futures Trading Act of 1986	0583-AA26
116	Requirements for Partially Defatted Products	0583-AA27
117	Control of Salmonella and Other Enteric Bacteria in Meat and Poultry Processing	[illegible]
118	Verified Production Control Program	0583-AA29
119	Determination of Added Water in Cooked Sausages	0583-AA30
120	Sulfonamides in Swine	[illegible]
121	Cattle Post-Mortem Inspection Procedures and Staffing Procedures	0583-AA32
122	Use of Lactic Acid and Acetic Acid as Anti-Microbial Agents on Meat and Poultry Carcasses	0583-AA43
123	Trichina Control Requirements for Dry-Cured Ham	[illegible]
124	Use and Protection of Approved Water Systems	[illegible]
125	Sulfonamide and Antibiotic Residues in Young Veal Calves; Certification Requirements	0583-AA58
126	Certain Products with Meat Ingredients – Exemptions From Definition of a "Meat Food Product"	0583-AA62
127	Use of Certain Binders in Meat and Poultry Products and Transfer of Binders in Text to the Tables of Approved Substances	0583-AA64
128	Immersion Cured and Dry Cured Bacon	0583-AA65
129	Control of Added Substances and Labeling Requirements for Turkey Ham Products	[illegible]
130	Additional Trichina Detection Methods	0583-AA67
131	Net Weight	0583-AA69
132	Labeling of Meat Food Products That Contain Mechanically Separated (Species) Under Certain Circumstances	[illegible]
133	Processing Inspection Under Discretionary Authority	0583-AA72
134	Use of Sodium Lactate and Potassium Lactate as Flavor Enhancers in Meat and Poultry Products	0583-AA75
135	Requirements for the Production of Fermented Sausage	[illegible]
136	Processing Procedures and Labeling	[illegible]
137	Turkey-Bacon Products	[illegible]
138	Sodium/Potassium Lactate as Antimicrobial Agents in Specific Meat and Poultry Products	[illegible]
139	PFF for Turkey Ham	[illegible]
140	Import of Livestock Carcasses with Tissues Removed	0583-AA85
141	Lactic Acid Starters	[illegible]
142	Automatic Expiration System for Approved Labels	[illegible]
143	Substances Approved for Use in Meat Products – Revision of Listings	[illegible]

Food Safety and Inspection Service—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
144	Binder Consisting of Sodium Alginate, Calcium Carbonate, Lactic Acid, and Calcium Lactate	[illegible]
145	Streamlined Inspection System for Broilers and Cornish Game Hens	[illegible]
146	Ascorbic Acid, Erythorbic Acid, Citric Acid, Sodium Ascorbate, and Sodium Citrate in Fresh Pork Cuts	[illegible]
147	Ingredients that may be Identified as Flavors or Natural Flavors when used in Meat and Poultry Products	[illegible]
148	Safety and Sanitation Requirements for Electrical Stimulating Equipment	[illegible]
149	Requirements for Foreign Country Import Certification and Live Animal Importation	[illegible]
150	Use of Air for Carcass Hide Removal	[illegible]
151	Movement of Imported Product Prior to Reinspection	[illegible]
152	Voluntary Inspection of Exotic Animals	0583-AA60
153	Sulfonamide and Antibiotic Residues in Young Veal Calves; Reduced Testing	[illegible]
154	Use of Binding Mixture in Various Poultry Products	0583-AA73
155	Disposition of Livestock Thyroid Glands and Larynxes	[illegible]
156	Increase in Use Levels of Sodium Citrate as an Anticoagulant	0583-AA76
157	Use of Various Binders in Cured Pork Products	[illegible]
158	Use of Sorbitol as a Flavoring Agent in Specific Meat Products	[illegible]

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Food Safety and Inspection Service—Final Rule Stage—Continued

Sequence Number	Title	Regulation Identifier Number
159	Restoration of Mexico to List of Countries Eligible to Import to U.S	[illegible]
160	Cross-Contamination Prevention for All Heat Processed Meat and Poultry Products	0583-AA88
161	Use of Tocopherols, Ascorbyl Palmitate and Citric Acid as Antioxidants in Additional Products	[illegible]
162	Importation of Meat and Poultry Products; Refused Entry Product	[illegible]
163	Definition of Terms – "Importation" and "Entry"	[illegible]

Food Safety and Inspection Service—Completed Actions

Sequence Number	Title	Regulation Identifier Number
164	Standard for Frankfurters and Similar Cooked Sausages	[illegible]
165	Swine Identification at Official Slaughtering Establishments	[illegible]
166	Disposal of Livestock Carcasses and Parts Condemned for Biological Residues	[illegible]
167	Elimination of Sealing Requirement for Rendered Edible Animal Fat	[illegible]
168	Random Weight Packages; Statement of Net Weight Decimal Places	0583-AA87
169	Determination of "Added Water" in Cooked Sausages	0583-AA41
170	Use and Labeling of Blood Components as Ingredients in Meat Food Products	[illegible]
171	Glucono Delta Lactone as an Acidifier in Meat and Poultry Products	[illegible]
172	Antioxidants in Fabricated Steaks	[illegible]
173	Notice of Proceedings	[illegible]
174	Requirements for Imported Poultry Products	[illegible]
175	Requirements for Foreign Country Certification and Live Animal Importation	[illegible]
176	Implementation of Pork Irradiation	0583-AA61
177	Total Quality Control for Labeling	[illegible]
178	Additional Trichina Detection Methods	0583-AA70

Foreign Agricultural Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
179	Determination of the Market Stabilization Price for Sugar for FY 1989	[illegible]
180	Determination of Import Quotas on Sugar for Fiscal Year 1989	0551-AA21
181	Types and Quantities of Agricultural Commodities Available for Donation Overseas Under Section 416(b) of the Agricultural Act of 1949 for Each Fiscal Year	0551-AA23

Forest Service—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
182	Part 219 Planning	[illegible]
183	Official Forest Service Insignia	[illegible]
184	36 CFR 271 - Use of "Smokey Bear" Symbol	[illegible]
185	Whiskeytown-Shasta-Trinity National Recreation Area	[illegible]
186	Use of "Woodsy Owl" Symbol	[illegible]
187	36 CFR 241 Wildlife: Cooperation in Wildlife Protection, Wildlife Management and Federal Refuge Regulations	[illegible]
188	Isolated Cabin Authorizations	0596-AA85
189	36 CFR 223 Sale and Disposal of National Forest Timber, Subpart A - General Provisions	[illegible]
190	36 CFR 223 Sale and Disposal of National Forest Timber, Subpart B - Timber Sale Contracts	[illegible]
191	Special Areas	[illegible]

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Forest Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
192	Suspension and Debarment of Timber Purchasers, 36 CFR 233, Subpart C	0596-AA09
193	Land Status and Title Records	0596-AA24
194	Access to Non-Federal Lands	0596-AA31
195	Down Payments/Periodic Payments on National Forests Timber Sales	0596-AA32
196	Grazing and Livestock Use and Management of Wild, Free-Roaming Horses and Burros	0596-AA35
197	Collection of Reimbursable Costs for Processing Special-Use Applications and Administration of Special-Use Authorizations	0596-AA36
198	Modify the General Prohibition Against Use of Vehicles in Excess of 40 Inches in Width on Trails	0596-AA38
199	Revise the Definition of "Mechanical Transport" at 36 CFR 293.6(a)	0596-AA39
200	Conservation of Fish, Wildlife, and their Habitats on the Copper River Addition and Copper River-Bering River Portion, Chugach National Forest, Alaska	0596-AA41
201	Land Exchanges	0596-AA42
202	Revision of Timber Sale Contract Forms FS-2400-6 and FS-2400-6T	0596-AA45
203	Leasable Mineral Regulations	0596-AA46
204	Application Procedures and Fees for Hydroelectric Uses on National Forest System Lands	0596-AA47
205	Locatable Minerals	0596-AA49
206	Grazing Fees; Eastern and Southern Regions	0596-AA55
207	Ski Area Term Permits	0596-AA57
208	36 CFR Law Enforcement Support Activities	0596-AA65
209	Increase in Minimum Rates Charged for Timber	0596-AA73
210	Sale of Timber Where Total Public Benefits May not Meet or May Exceed Total Costs	0596-AA74
211	36 CFR 261 Prohibitions	0596-AA75
212	Revise Small Tracts Act Regulations	0596-AA79
213	Revise Rules Governing Special Uses of National Forest System Lands and Resources at 36 CFR 251, Subpart B to Remove Ambiguities Regarding First Amendment Rights	0596-AA80
214	Oil and Gas Resources Regulations	0596-AA82
215	Modification of Timber Sale Downpayment Requirements	0596-AA83
216	Timber Sale Financial Security	0596-AA87
217	Hell's Canyon National Recreation Area - Private Lands	0596-AA88
218	Proposed Solid Waste Disposal Policy	0596-AA92
219	Irrevocable Letter of Credit	0596-AA93
220	Surety Bond Form Revision	0596-AA94
221	Settlement of Defaulted Timber Sale Contracts	0596-AA95

Forest Service—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
222	Small Business Timber Sale Set Aside Program	0596-AA43
223	Definition of Common Variety Mineral Materials	0596-AA44
224	Appeal of Decisions of Forest Officers	0596-AA51
225	Indian Allotments on National Forest System Lands	0596-AA52
226	Prohibitions; Fossil Collecting	0596-AA56
227	Noncompetitive Disposal of Mineral Materials	0596-AA86
228	Surety Revocation Procedures	0596-AA96
229	Deferral of Payments on High-Priced Timber Sales	0596-AA97
230	Market-Related Contract Term Additions	0596-AA98

Forest Service—Completed Actions

Sequence Number	Title	Regulation Identifier Number
231	Entrance into Petersburg Watershed	0596-AA23
232	Use Restrictions of National Forest Lands for the Protection of Municipal Water Supplies	0596-AA34
233	Control of Skewed Bidding on National Forest Timber Sales	0596-AA37
234	36 CFR 262 Law Enforcement Support Activities	0596-AA65
235	Free Use to Alaskan Settlers, Miners, Residents and Prospectors	0596-AA89

USDA

Forest Service—Completed Actions—Continued

Sequence Number	Title	Regulation Identifier Number
236	Increased Downpayments From Timber Sale Purchasers with a History of Defaults; and Determination of Purchaser Responsibility	0596-AA70
237	Revise 36 CFR 223.178 Regarding Release of Claims Against the Government on Sales Offered for Government Buyout	0596-AA71
238	Review of Decisions to Terminate Recreation Residence Permits	0596-AA72
239	36 CFR 261 Prohibitions	0596-AA76
240	Administration of Easements for Water Conveyance Systems	0596-AA78
241	Appeal of Decisions to Reoffer Returned or Defaulted Timber Sales on National Forests	0596-AA81
242	Lumber Price Index Trends	0596-AA90

Packers and Stockyards Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
243	Annual Reports	0590-AA04

Packers and Stockyards Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
244	Scales; Accurate Weights, Repairs, Adjustments or Replacements after Inspection	0590-AA05

Soil Conservation Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
245	Snow Surveys and Water Supply Forecasts	0578-AA01
246	Relocation Assistance	0578-AA12

Soil Conservation Service—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
247	Soil Surveys	0578-AA08
248	Farmland Protection Policy Act	0578-AA14

Soil Conservation Service—Completed Actions

Sequence Number	Title	Regulation Identifier Number
249	Prime and Unique Farmlands	0578-AA10
250	Procedures for the Protection of Archeological and Historical Properties Encountered in SCS-Assisted Programs	0578-AA13

DEPARTMENT OF AGRICULTURE (USDA)
Agricultural Marketing Service (AMS)

Proposed Rule Stage

1. FEES FOR SERVICE FOR VOLUNTARY AND MANDATORY PROGRAMS

Legal Authority: 7 USC 1621 to 1627; Agricultural Marketing Act of 1946; 21 USC 1031 to 1056; Egg Products Inspection Act; 7 USC 51 et seq Cotton Standards Act; 7 USC 511-511q; Tobacco Inspection Act; 7 USC 499a-499s; Perishable Agricultural Commodities Act

CFR Citation: 7 CFR 27 to 300

Legal Deadline: None

Abstract: Fees for the voluntary inspection, grading and classing of agricultural commodities and certain mandatory inspection rates are reviewed periodically and changes are made to reflect cost of providing the service. (AMS 84-008)

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: John Wyatt, Regulatory Review Officer, Department of Agriculture, Agricultural Marketing Service, Room 3516-S, Washington, DC [illegible], 202 447-2785

RIN: 0581-AA19

DEPARTMENT OF AGRICULTURE (USDA)
Agricultural Stabilization and Conservation Service (ASCS)

Prerule Stage

2. CCC COTTON LOAN PROGRAM REGULATIONS--SETTLEMENT, FRAUD, AND CONVERSION PROVISIONS

Legal Authority: 15 USC 714b to c; Commodity Credit Corporation Charter Act, Sec 4 and 5

CFR Citation: 7 CFR 1427

Legal Deadline: None

Abstract: This action will update regulations to (1) clarify settlement provisions and (2) incorporate fraud or conversion language in order to make the regulations for cotton consistent with those for grain. No cost to Government is expected. (ASCS 87-015)

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Chief, Regulatory Impact and Program Analysis Branch, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3726-S, PO Box 2415, Washington, DC 20013, [illegible]

RIN: 0560-AB22

3. BURLEY TOBACCO PRICE SUPPORT RESTRICTIONS FOR NONBALED TOBACCO AND NONSTANDARD CONTAINERS

Legal Authority: 7 USC 1445; Agricultural Act of 1949, as amended

CFR Citation: 7 CFR 1446

Legal Deadline: None

Abstract: This action would encourage the marketing of burley tobacco in baled form by providing a reduced price support level of 5 to 15 cents per pound for nonbaled tobacco effective for the 1988 crop. Approximately 85 percent of all burley tobacco sold at auction is in baled form. The industry preference for baled tobacco could result in all nonbaled tobacco being placed under loan.

This action would also require that effective for the 1989 crop, all loan tobacco be delivered on a standard container (slip sheet), in order to establish a uniform tare for all lots of tobacco and eliminate errors resulting from the separate weighing of nonstandard containers (pallets).

No cost to Government is expected. Cost to producers would be equal to the reduction in price support for nonbaled tobacco. Cost to warehousemen due to a shift to standard containers would be minimal.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Chief, Regulatory Impact & Program Analysis Branch, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3726-S, PO Box 2415, Washington, DC 20013, 202 475-4636

RIN: 0560-AB42

4. ● 1990 EXTRA LONG STAPLE (ELS) COTTON PROGRAM

Legal Authority: 7 USC 1444(h); Agricultural Act of 1949, as amended, Sec 103(h)

CFR Citation: 7 CFR 1427

Legal Deadline: Final, Statutory, December 1, 1989.

Abstract: To assure sufficient supplies of cotton for domestic and export use, maintain adequate carryover stocks, support farm income, combat inflation, conserve natural resources, hold down Federal costs, and comply with statutory requirements. Primary determinations to be made are (1) loan rate--not less than 85% of average market price over previous 5 years excluding the high and low prices, (2) target price--120% of the loan level, and (3) acreage reduction--to be set at such a level as to assure that total supplies will not be excessive. Decisions also to be made on whether or not to implement paid land diversion or advance deficiency payments. The cost to USDA will likely range from $0 to $1.0 million.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

USDA—ASCS

Prerule Stage

Agency Contact: Tom Witzig, Chief, Regulatory Impact and Program Analysis Branch, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3726-S, P.O. Box 2415, Washington, DC 20013, 202 475-4636

RIN: 0560-AB43

5. ● 1990 RICE PROGRAM

Significance: Regulatory Program

Legal Authority: 7 USC 1441; The Agricultural Act of 1949, as amended, Sec 101

CFR Citation: 7 CFR 707; 7 CFR 709; 7 CFR 713; 7 CFR 719 to 720; 7 CFR 794 to 796; 7 CFR 1421

Legal Deadline: Final, Statutory, January 31, 1990.

Abstract: To assure sufficient supplies of rice for domestic and export use, support farm income, combat inflation, hold down Government costs, conserve natural resources, and comply with statutory requirements. Primary determinations to be made are (1) loan and purchase rates--85 percent of the previous 5-year average, excluding the high and low years, but cannot be reduced more than 5 percent from previous year's level nor be lower than $6.50/cwt., (2) target price--no lower than $10.71/cwt., (3) acreage limitation--no more than 35 percent, with a target carryover level of 40 million cwt. Determinations are also to be made on (1) a land diversion program, (2) advance deficiency/diversion payments, (3) purchase of marketing certificates under marketing loan, (4) loan deficiency payments, (5) inventory reduction program (half-ARP), and (6) loan rate adjustments (loan differentials). The expected cost to USDA is $1.1 billion.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Chief, Regulatory Impact and Program Analysis Branch, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3726-S, P.O. Box 2415, Washington, DC 20013, 202 475-4636

RIN: 0560-AB45

6. ● 1990 SOYBEAN PROGRAM

Significance: Regulatory Program

Legal Authority: 7 USC 1446; The Agricultural Act of 1949, as amended, Sec 201

CFR Citation: 7 CFR 1421.365 to 1421.374

Legal Deadline: Final, Statutory, October 1, 1989.

Abstract: To assure sufficient supplies of soybeans for domestic and export use, support farm income, combat inflation, hold down Federal costs, and comply with statutory requirements. Determinations to be made are (1) loan and purchase rates--with a probable range of $4.50-$4.53/bu., and (2) whether to implement a marketing loan program. The cost to USDA will likely range from $0.1 to $0.2 billion.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Chief, Regulatory Impact and Program Analysis Branch, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3726-S, P.O. Box 2415, Washington, DC 20013, 202 475-4636

RIN: 0560-AB48

7. ● 1989-CROP MARKETING QUOTAS AND ACREAGE ALLOTMENTS FOR SIX KINDS OF TOBACCO

Legal Authority: 7 USC 1312(a) et seq; The Agricultural Adjustment Act of 1938, as amended

CFR Citation: None

Legal Deadline: Final, Statutory, March 1, 1989.

Abstract: Marketing quotas and acreage allotments are required by legislation. Their objective is to balance supply with demand at levels that assure stable supplies for domestic and export use. A net receipt of $14 million is expected.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Chief, Regulatory Impact and Program Analysis Branch, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3726-S, P.O. Box 2415, Washington, DC 20013, 202 475-4636

RIN: 0560-AB51

8. ● 1990-CROP PEANUTS NATIONAL POUNDAGE QUOTA

Significance: Agency Priority

Legal Authority: 7 USC 1358; The Agricultural Adjustment Act of 1938, Sec 358, as amended

CFR Citation: None

Legal Deadline: Final, Statutory, December 15, 1989.

Abstract: The objective of this action is to balance supply with demand at levels that assure stable supplies for domestic use and assure producers a stable income. This action is required by legislation, which provides a formula for computing the national quota. The quota must equal the amount estimated to be devoted to domestic edible, seed, and related uses, and may not be less than 1.1 million tons. A net cost of $1 million is expected.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Chief, Regulatory Impact and Program Analysis Branch, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3726-S, P.O. Box 2415, Washington, DC 20013, 202 475-4636

RIN: 0560-AB54

9. ● 1990 UPLAND COTTON PROGRAM

Significance: Regulatory Program

USDA—ASCS — Prerule Stage

Legal Authority: 7 USC 1444-1; The Agricultural Act of 1949, as amended, Sec 101A

CFR Citation: 7 CFR 707; 7 CFR 708; 7 CFR 713; 7 CFR 718; 7 CFR 770; 7 CFR 792; 7 CFR 794 to 796; 7 CFR 1427

Legal Deadline: Final, Statutory, November 1, 1989.

Abstract: To assure sufficient supplies of cotton for domestic and export use, maintain adequate carryover stocks, support farm income, combat inflation, hold down Federal costs and comply with statutory requirements. Determinations to be made are (1) loan rate--not less than 50.00 cents/lb., (2) target price--not less than 72.90 cents/lb., (3) loan repayment rate--if world price is below loan rate, repayment rate may be set by 1 of 2 options: (Plan A or Plan B, Sec. 103A(a(5))), (4) acreage reduction--no greater than 25%, and (5) other provisions: whether or not to implement voluntary paid land diversion, half-compliance program, advance deficiency or diversion payments and PIK payments. The cost to USDA will likely range from $1.0 to $3.0 billion.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Chief, Regulatory Impact and Program Analysis Branch, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3726-S, P.O. Box 2415, Washington, DC 20013, 202 475-4636

RIN: 0560-AB55

12. ● 1990 FEED GRAIN PROGRAM

Significance: Regulatory Program

Legal Authority: 7 USC 1444e; 7 USC 1421; The Agricultural Act of 1949, as amended, Sec 105c and 110

CFR Citation: 7 CFR 707; 7 CFR 708; 7 CFR 713; 7 CFR 718; 7 CFR 719; 7 CFR 792; 7 CFR 794; 7 CFR 795; 7 CFR 796; 7 CFR 1411.734

Legal Deadline: Final, Statutory, September 30, 1989.

Abstract: To provide an adequate feed grain supply for domestic and foreign utilization, support farm income, combat inflation, hold down Federal costs, conserve natural resources, and comply with statutory requirements. Primary determinations to be made are (1) loan and purchase rates--probable range of $1.57-$1.96/bu. for corn, with rates for other feed grains set in relation to that for corn, (2) target prices--not less than $2.75/bu. for corn, with rates for other feed grains set in relation to that for corn, and (3) acreage adjustment--not less than 12.5% nor more than 20%, if corn carryin is projected to exceed 2 billion bu. Decisions also to be made on whether to implement (1) a paid land diversion, (2) a marketing loan, (3) a half-compliance program, (4) incentives for farmers to participate in the FOR, and (5) price support for corn silage. The cost to USDA will likely range from $6.0-$8.0 billion.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Chief, Regulatory Impact and Program Analysis Branch, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3726-S, P.O. Box 2415, Washington, DC 20013, 202 475-4636

RIN: 0560-AB56

DEPARTMENT OF AGRICULTURE (USDA)
Agricultural Stabilization and Conservation Service (ASCS)

Proposed Rule Stage

11. 1989-CROP PEANUTS NATIONAL POUNDAGE QUOTA

Significance: Agency Priority

Legal Authority: 7 USC 1358; The Agricultural Act of 1938, as amended, Sec 358

CFR Citation: None

Legal Deadline: Final, Statutory, December 15, 1988.
(For announcement of national poundage quota only)

Abstract: To balance supply with demand at levels that assure stable supplies for domestic use and assure producers a reasonable income.

This action is required by legislation, which provides a formula for computing the national poundage quota. The quota must equal the amount estimated to be devoted to domestic edible, seed, and related uses and may not be less than 1.1 million tons. The expected cost is $1 million. (ASCS 87-020)

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Chief, Regulatory Impact and Program Analysis Branch, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3726-S, PO Box 2415, Washington, DC 20013, 202 475-4636

RIN: 0560-AH13

12. 1989 EXTRA LONG STAPLE (ELS) COTTON PROGRAM

Legal Authority: 7 USC 1444(h); The Agricultural Adjustment Act of 1949, as amended, Sec 103h

CFR Citation: 7 CFR 1427

Legal Deadline: Final, Statutory, December 1, 1988.
(12/1/88 for announcement of loan rate only)

Abstract: To assure sufficient supplies of ELS cotton for domestic and export use, maintain adequate carryover stocks, support farm income, combat inflation, conserve natural resources, hold down Federal costs, and comply with statutory requirements.

Determinations are to be made on (1) the loan rate -- not less than 85% of the average market price over the previous

USDA—ASCS — Proposed Rule Stage

5 years, excluding the highest and lowest years, (2) the target price -- 120% of the loan level, (3) acreage limitation -- to be set at such level as to assure that total supplies will not be excessive, (4) the national program acreage -- not less than 60 thousand acres, (5) other provisions -- whether or not to make land diversion payments, and the loan level for seed cotton. The expected cost is $0.5 - $1.0 million. (ASCS 87-018)

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Chief, Regulatory Impact and Program Analysis Branch, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3726-S, P.O. Box 2415, Washington, DC 20013, 202 475-4636

RIN: 0560-AB25

13. 1989 PRICE SUPPORT LEVELS FOR SIX KINDS OF TOBACCO

Significance: Agency Priority

Legal Authority: 7 USC 1445; The Agricultural Act of 1949, as amended, Sec 106

CFR Citation: None

Legal Deadline: None

Abstract: To stabilize tobacco prices and comply with statutory requirements, price support levels are set by statutory formula, based on a prices paid index. The Secretary may lower price support at the request of producer associations. Increases may be limited to 65% of the increase otherwise established. A net receipt of $9 million is expected.

Timetable:

Action	Date	FR Cite
NPRM	05/01/89	
Final Action	09/01/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Chief, Regulatory Impact & Program Analysis Branch, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3726-S, PO Box 2415, Washington, DC 20013, 202 475-4636

RIN: 0560-AB32

14. 1989-CROP NATIONAL AVERAGE PRICE SUPPORT LEVEL FOR QUOTA PEANUTS

Significance: Agency Priority

Legal Authority: 7 USC 1445c-2; Agricultural Act of 1949, Sec 108B

CFR Citation: None

Legal Deadline: Final, Statutory, February 15, 1989.

Abstract: This action is required by legislation, which provides a formula for computing the quota support level. The objective is to support farm income and stabilize prices.

Timetable:

Action	Date	FR Cite
NPRM	12/01/88	
Final Action	02/15/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Chief, Regulatory Impact & Program Analysis Branch, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3726-S, PO Box 2415, Washington, DC 20013, 202 475-4636

RIN: 0560-AB34

15. 1989-CROP HONEY PRICE SUPPORT PROGRAM

Significance: Agency Priority

Legal Authority: 7 USC 1446(b); Agricultural Act of 1949, as amended, Sec 201(b)

CFR Citation: 7 CFR 1434.26; 7 CFR 1434.27

Legal Deadline: None

Abstract: Legislation requires that 1989-crop honey be supported at 95 percent of the 1988 level, or $0.5636 per pound. It also provides the Secretary the discretion to allow loan repayment at a lower rate. The objective of a lower repayment rate is to (1) minimize loan forfeitures, (2) avoid excessive stocks, (3) reduce Federal storage costs, and (4) maintain the competitiveness of honey in domestic and export markets. Alternatives to be considered are: the type of support to offer, whether loans, purchases, or loans and purchases, and whether to implement the lower repayment provision. Government costs under the lower repayment provision would be expected to be under $60 million.

Timetable:

Action	Date	FR Cite
NPRM	01/15/89	
Final Action	04/01/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Chief, Regulatory Impact & Program Analysis Branch, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3726-S, PO Box 2415, Washington, DC 20013, 202 475-4636

RIN: 0560-AB37

16. COMMON PROGRAM PROVISIONS FOR THE 1990 WHEAT, FEED GRAIN, COTTON AND RICE PROGRAMS

Significance: Regulatory Program

Legal Authority: 7 USC 1421 et seq; The Agricultural Act of 1949, as amended, Sec 107d

CFR Citation: 7 CFR 713; 7 CFR 1421; 7 CFR 1427

Legal Deadline: None

Abstract: To make and implement determinations that are common to each of the 1989 Wheat, Feed Grain, Cotton and Rice Programs. Determinations are to be made on (1) production of approved non-program crops on underplanted program crop permitted acreage, (2) production of alternative crops on reduced acreage, (3) haying and grazing of underplanted program crop permitted acreage and ACR conservation use acreage, (4) offsetting and cross compliance, (5) an advance recourse loan program, (6) multi-year set-asides, (7) the shift of 10 percent of a farm's acreage base between program commodity acreage bases, (8) consideration of actual 1990-crop yields in establishing a subsequent year's program payment yield, (9) advance deficiency and diversion payments, (10) interest certificate payments, (11) provisions for commodity payment certificates, and (12) the enrollment period.

USDA—AGCS — Proposed Rule Stage

Timetable:

Action	Date	FR Cite
NPRM	03/08/89	
NPRM Comment Period End	05/07/89	
Final Action	06/01/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Chief, Regulatory Impact & Program Analysis Branch, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3720-S, PO Box 2415, Washington, DC 20013, 202 475-4699

RIN: 0560-AE08

17. 1989 RICE PROGRAM

Significance: Regulatory Program

Legal Authority: 7 USC 1441; Agricultural Act of 1949, Sec 101, as amended

CFR Citation: 7 CFR 707; 7 CFR 709; 7 CFR 713; 7 CFR 719; 7 CFR 720; 7 CFR 794 to 796; 7 CFR 1421

Legal Deadline: Final, Statutory, January 31, 1989.
(For announcing loan, target, and acreage limitation levels.)

Abstract: To provide an adequate supply of rice for domestic and foreign utilization, support farm income, combat inflation, hold down Federal costs, conserve resources, and comply with statutory requirements.

Primary determinations to be made are (1) loan and purchase rates -- 85% of the previous 5-year average, excluding the high and low years, but cannot be reduced more than 5% from the previous year's level nor be lower than $6.50/cwt., (2) target price -- no lower than $10.60 cwt., (3) acreage limitation -- no more than 35%, with a target carryover level of 30 million cwt. Determinations are also to be made on (1) a land diversion program, (2) advance deficiency/diversion payments, (3) purchase of marketing certificates under the marketing loan, (4) loan deficiency payments, (5) inventory reduction program (half-ARP), and (6) loan rate adjustments (loan differentials). The expected cost to Government is $600 million.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Chief, Regulatory Impact & Program Analysis Branch, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3720-S, PO Box 2415, Washington, DC 20013, 202 475-4636

RIN: 0560-AE40

18. 1989 WHEAT PROGRAM

Significance: Regulatory Program

Legal Authority: 7 USC 1445b-3; 7 USC 1710; The Agricultural Adjustment Act of 1949, Sec 107D and 110

CFR Citation: 7 CFR 707; 7 CFR 709; 7 CFR 713; 7 CFR 719; 7 CFR 770; 7 CFR 792; 7 CFR 794 to 796

Legal Deadline: Final, Statutory, June 1, 1989.
(For announcement of acreage adjustment levels).

Abstract: To provide an adequate wheat supply for domestic and foreign utilization, increase the competitiveness of U.S. exports, support farm income, combat inflation, hold down Federal costs, conserve natural resources, and comply with statutory requirements.

Primary determinations to be made are (1) loan and purchase rate -- minimum probable range of $1.95 to $2.44 per bushel, (2) target price -- at least $4.00 per bushel, and (3) acreage adjustment -- not less than 20% nor more than 30%, if carryin exceeds 1 billion bushels; no more than 20% if carryin is below 1 billion bushels. Decisions also to be made on whether to implement (1) a marketing loan program and related programs, (2) a paid land diversion, (3) advance deficiency/diversion payments, (4) generic certificate program, and (5) incentives for farmers to participate in the FOR. The expected cost is $2.0-$4.0 billion.

Timetable:

Action	Date	FR Cite
NPRM	03/08/89	
NPRM Comment Period End	05/08/89	
Final Action	06/01/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Chief, Regulatory Impact & Program Analysis Branch, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3720-S, PO Box 2415, Washington, DC 20013, 202 475-4636

RIN: 0560-AE41

19. ⊕ FORMULA FOR DETERMINATION OF ADJUSTED WORLD PRICE FOR UPLAND COTTON

Significance: Agency Priority

Legal Authority: 7 USC 1444-1; The Agricultural Act of 1949, as amended, Sec 103A(a)(5)(3)

CFR Citation: 7 CFR 28

Legal Deadline: None

Abstract: This action would clarify (1) the procedure for selecting the Europe price quotations used to calculate the Northern Europe price and the Northern Europe coarse count price during the period (approximately April through July) in which both current crop and forward crop quotations are available, and (2) which quotations for Memphis territory and California/Arizona territory, c.i.f. Northern Europe, would be used to calculate the adjustment in the Northern Europe price to designated spot market locations when both current and forward quotes are available. No cost to Government, industry, or consumers is expected.

Timetable:

Action	Date	FR Cite
NPRM	11/14/88	
Final Action	02/03/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Chief, Regulatory Impact and Program Analysis Branch, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3720-S, P.O. Box 2415, Washington, DC 20013, 202 475-4636

RIN: 0560-AE57

DEPARTMENT OF AGRICULTURE (USDA) — Final Rule Stage

Agricultural Stabilization and Conservation Service (ASCS)

20. COMMODITY CREDIT CORPORATION (CCC) CLAIMS REGULATIONS

Legal Authority: 15 USC 714(k) Commodity Credit Corporation Charter Act

CFR Citation: 7 CFR 1403

Legal Deadline: None

Abstract: Regulations will revise policy, authorities, procedures, and responsibilities for settling claims by and against CCC. (ASCS 84-034)

Timetable:

Action	Date	FR Cite
NPRM	07/11/88	53 FR 26081

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3726-S, P.O. Box 2415, Washington, DC 20013, 202 475-4636

RIN: 0560-AA38

21. PRICE SUPPORT LOAN PROGRAM FOR 1986 THROUGH 1990-CROPS SUGAR BEETS AND SUGARCANE

Significance: Regulatory Program

Legal Authority: 7 USC 1446; Ag Act of 1949, as amended, Sec 201

CFR Citation: 7 CFR 1435

Legal Deadline: Final, Statutory, October 1, 1988.

Abstract: The 1949 Act, as amended by the Food Security Act of 1985, requires the Secretary to support the price of domestically grown sugarcane and sugar beets through a nonrecourse loan program effective for the 1986 through 1990 crops. The object of this action is to develop program and operation provisions for administering a sugar price support program. (ASCS 88-048)

Timetable:

Action	Date	FR Cite
Announcement	10/01/86	
Interim Final Rule	10/29/86	51 FR 39307

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3726-S, P.O. Box 2415, Washington, DC 20013, 202 475-4636

RIN: 0560-AA74

22. 1988-CROP PEANUT PRICE SUPPORT PROGRAM DIFFERENTIALS

Legal Authority: 7 USC 1423; Agricultural Act of 1949, Sec 403; 15 USC 714c; Commodity Credit Corporation Charter Act, Sec 5

CFR Citation: Not applicable

Legal Deadline: None

Abstract: The Secretary of Agriculture is authorized to make appropriate adjustments in the support price for peanuts for differences in grade, type, quality, location, and other factors to ensure that price support levels are representative of the market values of the various types. The average of the price support levels must, as far as is practicable, equal the national average price support level as determined by legislation. No alternatives are considered and the cost to Government will be negligible.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Chief, Regulatory Impact and Program Analysis Branch, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3726-S, P.O. Box 2415, Washington, DC 20013, 202 475-4636

RIN: 0560-AB06

23. 1989 WHEAT PROGRAM

Significance: Agency Priority

Legal Authority: 7 USC 1445b-3; 7 USC 1710; The Agricultural Adjustment Act of 1949, Sec 107D and 110

CFR Citation: 7 CFR 707; 7 CFR 709; 7 CFR 713; 7 CFR 719; 7 CFR 770; 7 CFR 792; 7 CFR 794 to 796

Legal Deadline: Final, Statutory, June 1, 1989.
(For announcement of acreage adjustment levels)

Abstract: To provide an adequate wheat supply for domestic and foreign utilization, increase the competitiveness of U.S. exports, support farm income, combat inflation, hold down Federal costs, conserve natural resources, and comply with statutory requirements.

Determinations are to be made on (1) loan and purchase rate--minimum probable range of $2.06 to $2.57 per bushel, (2) target price--at least $4.16 per bushel, and (3) acreage adjustment--not less than 20% nor more than 30%, if carryin exceeds 1 billion bushels; no more than 20% if carryin is below 1 billion bushels. Decisions also to be made on whether to implement (1) a marketing loan program and related programs, (2) a paid land diversion, and (3) incentives for farmers to participate in the FOR. The expected cost is $2.0-$5.0 billion. (ASCS 87-021)

Timetable:

Action	Date	FR Cite
NPRM	04/19/88	53 FR 12690
Announcement	05/20/88	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Chief, Regulatory Impact and Program Analysis Branch, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3726-S, PO Box 2415, Washington, DC 20013, 202 475-4636

RIN: 0560-AB14

24. 1989 FEED GRAIN PROGRAM

Significance: Regulatory Program

Legal Authority: 7 USC 1444e; 7 USC 1421; The Agricultural Act of 1949, as amended, Sec 105c; 7 USC 1710; The Agricultural Adjustment Act of 1949, as amended, Sec 110

CFR Citation: 7 CFR 707; 7 CFR 709; 7 CFR 713; 7 CFR 718 to 719; 7 CFR 792; 7 CFR 794 to 796; 7 CFR 1421.720 to 1421.734

Legal Deadline: Final, Statutory, September 30, 1988.
(For announcement of acreage adjustment levels)

Abstract: To provide an adequate feed grain supply for domestic and foreign utilization, support farm income, combat inflation, hold down Federal costs, conserve natural resources, and comply with statutory requirements.

Primary determinations to be made are (1) loan and purchase rates--probable range of $1.65 - $2.06/bu. for corn, with rates for other feed grains set in relation to that for corn, (2) target prices--not less than $2.88 per bushel for corn, with rates for other feed grains set in relation to that for corn, and (3) acreage adjustment--not less than 12.5% nor more than 20%, if corn carryin exceeds 2 billion bushels; no more than 12.5% if corn carryin is less than 2 billion bushels. Decisions also to be made on whether to implement (1) a paid land diversion, (2) a marketing loan, (3) a half-compliance program, (4) incentives for farmers to participate in the FOR, and (5) price support for corn silage. The expected cost is $8.0 to $12.0 billion. (ASCS 87-022)

Timetable:

Action	Date	FR Cite
NPRM	08/05/88	53 FR 29503

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Chief, Regulatory Impact and Program Analysis Branch, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3726-S, PO Box 2415, Washington, DC 20013, 202 475-4536

RIN: 0560-AB15

25. 1989 UPLAND COTTON PROGRAM

Significance: Regulatory Program

Legal Authority: 7 USC 1444-1; The Agricultural Adjustment Act of 1949, as amended, Sec 103A

CFR Citation: 7 CFR 707; 7 CFR 709; 7 CFR 713; 7 CFR 719; 7 CFR 770; 7 CFR 792; 7 CFR 794 to 798; 7 CFR 1427

Legal Deadline: Final, Statutory, November 1, 1988.
(For announcement of loan rate, acreage adjustment level, and national program acreage)

Abstract: To assure sufficient supplies of upland cotton for domestic and export use, maintain adequate carryover stocks, support farm income, combat inflation, hold down Federal costs, and comply with statutory requirements.

Determinations must be made on (1) the loan rate--not less than 50.00 cents/lb, (2) the target price--not less than 74.5 cents/lb, (3) the loan repayment rate--if the world price is below the loan rate, repayment rate may be set by 1 of 2 options: (Plan A or Plan B, Sec. 103A (a(5))), (4) acreage limitation--no greater than 25%, (5) the national program acreage--not less than 10 million acres, (6) other provisions: whether or not to implement voluntary paid land diversion, loan deficiency payment, inventory reduction, or seed cotton loan programs. The expected cost is $250-$500 million. (ASCS 87-023)

Timetable:

Action	Date	FR Cite
NPRM	07/14/88	53 FR 26619
Final Action	10/31/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Chief, Regulatory Impact and Program Analysis Branch, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3726-S, PO Box 2415, Washington, DC 20013, 202 475-4536

RIN: 0560-AB16

26. COMMON PROGRAM PROVISIONS FOR THE 1989 WHEAT, FEED GRAIN, COTTON AND RICE PROGRAMS

Significance: Regulatory Program

Legal Authority: 7 USC 1421 et seq; The Agricultural Act of 1949, as amended, Sec 107d

CFR Citation: 7 CFR 713; 7 CFR 1421; 7 CFR 1427

Legal Deadline: None

Abstract: To make and implement determinations that are common to each of the 1989 Wheat, Feed Grain, Cotton and Rice Programs. Determinations are to be made on (1) production of approved non-program crops on underplanted program crop permitted acreage (50/92 provision), (2) production of alternative crops on reduced acreage, (3) haying and grazing of 50/92 and ACR conservation use acreage, (4) offsetting and cross compliance, (5) an advance recourse loan program, (6) multi-year set-asides, (7) the shift of 10 percent of a farm's acreage base between program commodity acreage bases, (8) consideration of actual 1989-crop yields in establishing a subsequent year's program payment yield, (9) advance deficiency and diversion payments, (10) interest certificate payments, and (11) provisions for commodity payment certificates. (ASCS 87-024)

Timetable:

Action	Date	FR Cite
NPRM	04/19/88	53 FR 12890

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Chief, Regulatory Impact and Program Analysis Branch, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3726-S, PO Box 2415, Washington, DC 20013, 202 475-4536

RIN: 0560-AB17

27. 1988 SOYBEAN LOAN PROGRAM

Significance: Regulatory Program

Legal Authority: 7 USC 1446; The Agricultural Act of 1949, as amended, Sec 201

CFR Citation: 7 CFR 1421

Legal Deadline: Final, Statutory, October 1, 1988.
(For announcement of loan rate)

Abstract: To assure sufficient supplies for domestic and export use, support farm income, combat inflation, hold down Federal costs, and comply with statutory requirements.

Determinations are to be made on the loan and purchase rate, with a probable range of $4.53 to $4.77/bu., and on whether to implement a marketing loan program. The expected cost is $0.1 - $0.6 billion. (ASCS 87-025)

Timetable:

Action	Date	FR Cite
Announcement	06/12/88	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Chief, Regulatory Impact and Program Analysis Branch, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3726-S, PO Box 2415, Washington, DC 20013, 202 475-4536

RIN: 0560-AB18

28. 1988-CROP SUGAR BEET AND SUGARCANE PRICE SUPPORT LOAN RATES

Significance: Regulatory Program

Legal Authority: 7 USC 1421; 7 USC 1446; The Agricultural Adjustment Act of 1949, as amended, Sec 201; and 401

CFR Citation: 7 CFR 1435

Legal Deadline: None

Abstract: To set forth (1) loan rates applicable to 1988-crop sugar beets and sugarcane, and (2) the 1988-crop minimum price support levels processors are required to pay their growers. The minimum national average loan rate is set by statute at $0.18/lb. for sugarcane, with the rate for sugar beets set at such level as the Secretary determines is fair and reasonable in relation to that for sugarcane. No impact on Government outlays is expected. However, the cost to consumers and other users of sugar will likely exceed $2 billion. (ASCS 87-026)

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Chief, Regulatory Impact and Program Analysis Branch, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3726-S, PO Box 2415, Washington, DC 20013, 202 475-4536

RIN: 0560-AB19

29. 1989 WOOL AND MOHAIR PROGRAM

Significance: Regulatory Program

Legal Authority: 7 USC 1782 et seq; National Wool Act of 1954, as amended, Sec 703

CFR Citation: 7 CFR 1468; 7 CFR 1472

Legal Deadline: None

Abstract: To encourage the continued domestic production of wool at prices fair to both producers and consumers, in a manner which will assure a viable domestic wool industry in the future, by supporting the prices of wool and mohair by means of loans, purchases, payments, or other operations. The support level for wool is set by statutory formula. The support price for mohair must be set at a level not more than 15 percent above or below the comparable percentage of parity at which shorn wool is supported. The expected cost is $100 to $200 million. (ASCS 87-027)

Timetable:

Action	Date	FR Cite
Final Action	12/30/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Chief, Regulatory Impact and Program Analysis Branch, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3726-S, PO Box 2415, Washington, DC 20013, 202 475-4536

RIN: 0560-AB20

30. DAIRY DISCRETIONARY PAYMENT PROGRAM--JANUARY 1, 1988--SEPTEMBER 30, 1990

Legal Authority: PL 80-896, Sec 1 to 3, as amended; PL 98-534, Sec 204, as amended; PL 99-88, Sec 5; PL 99-211, Sec 205; 7 USC 450 j, k, and l

CFR Citation: 7 CFR 760.1 to 760.34

Legal Deadline: None

Abstract: This action will extend the program through September 30, 1990. The purpose of the program is to indemnify dairy farmers for milk dumped because of contamination that is not the fault of the producer and dairy manufacturers for dairy products removed from the market through no fault of the manufacturers. The alternative is to discontinue the program. The cost to the Government for FY 1988 through FY 1990 is estimated to be about $500,000.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Chief, Regulatory Impact & Program Analysis Branch, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3726-S, PO Box 2415, Washington, DC 20013, 202 475-4536

RIN: 0560-AB30

31. 1989-CROP PEANUT PRICE SUPPORT PROGRAM DIFFERENTIALS

Legal Authority: 7 USC 1423; Agricultural Act of 1949, Sec 403; 15 USC 714c; Commodity Credit Corporation Charter Act, Sec 5

CFR Citation: Not applicable

Legal Deadline: None

Abstract: The Secretary of Agriculture is authorized to make appropriate adjustments in the support price for peanuts for differences in grade, type, quality, location, and other factors to ensure that price support levels are representative of the market values of the various types. The average of the price support levels must, as far as is practicable, equal the national average price support level as determined by legislation. No alternatives are considered and the cost to Government will be negligible.

Timetable:

Action	Date	FR Cite
Final Action	03/31/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Chief, Regulatory Impact & Program Analysis Branch, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3726-S, PO Box 2415, Washington, DC 20013, 202 475-4536

RIN: 0560-AB31

32. 1989-CROP NATIONAL AVERAGE LOAN RATE AND MINIMUM CCC EXPORT EDIBLE SALES PRICE FOR ADDITIONAL PEANUTS

Significance: Agency Priority

Legal Authority: 7 USC 1445C-2; Agricultural Act of 1949, Sec 108B

CFR Citation: None

Legal Deadline: Final, Statutory, February 15, 1989.

Abstract: This action is required by legislation, which provides guidelines for the establishment of the additional support level. The objective is to support farm income and stabilize prices.

USDA—ASCS

Final Rule Stage

Timetable:

Action	Date	FR Cite
Final Action	02/15/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Chief, Regulatory Impact & Program Analysis Branch, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3726-S, PO Box 2415, Washington, DC 20013, 202 475-4836

RIN: 0560-AB33

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33. 1988-CROP BURLEY TOBACCO MARKETING QUOTAS AND PRICE SUPPORT LEVEL

Significance: Agency Priority

Legal Authority: 7 USC 1312; The Agricultural Act of 1938, as amended, Sec 312 to 313; 7 USC 1445; The Agricultural Adjustment Act of 1949, as amended, Sec 106

CFR Citation: 7 CFR 724

Legal Deadline: Final, Statutory, February 1, 1989.

Abstract: Marketing quotas and price support are required by legislation. Their objectives are to balance supply with demand at levels assuring stable supplies for domestic and export use at prices fair to producers. Quota is based on manufacturers' intentions, 3-year average exports, an adjustment to maintain loan stocks, and a discretionary adjustment of plus or minus 3 percent. Price support is based on a formula that is 2/3 weight average market prices and 1/3 weight cost index, plus discretion to limit any increase to 65 percent. A net receipt of $131 million is expected.

Timetable:

Action	Date	FR Cite
Final Action	02/01/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Chief, Regulatory Impact & Program Analysis Branch, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3726-S, PO Box 2415, Washington, DC 20013, 202 475-4836

RIN: 0560-AB34

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34. 1988-CROP FLUE-CURED TOBACCO MARKETING QUOTA AND PRICE SUPPORT LEVEL

Significance: Agency Priority

Legal Authority: 7 USC 1311 to 1313; Agricultural Adjustment Act of 1938, Sec 311 to 313, as amended; 7 USC 1445; Agricultural Act of 1949, Sec 106, as amended

CFR Citation: None

Legal Deadline: Final, Statutory, December 15, 1988.
(For announcement of price support level)

Abstract: Marketing quotas and price support are required by legislation. Their objectives are to balance supply with demand at levels assuring stable supplies for domestic and export use at prices fair to producers. The quota is based on manufacturers' intentions, 3-year average exports, an adjustment to maintain loan stocks and a discretionary adjustment of plus or minus 3 percent. The price support level is based on a formula that is 2/3 weight average market prices and 1/3 weight cost index, with discretion to limit any increase to 65 percent. A net receipt of $153 million is expected.

Timetable:

Action	Date	FR Cite
Final Action	12/15/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Chief, Regulatory Impact & Program Analysis Branch, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3726-S, PO Box 2415, Washington, DC 20013, 202 475-4836

RIN: 0560-AB35

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35. MILK PRICE SUPPORT LEVEL, CALENDAR YEAR 1989

Significance: Regulatory Program

Legal Authority: 7 USC 1446(d); The Agricultural Act of 1949, as amended, Sec 201(d)(1)(E)

CFR Citation: 7 CFR 1430

Legal Deadline: Final, Statutory, January 1, 1989.

Abstract: Legislation requires that if estimated price support purchases for 1989 exceed 5 billion pounds (milk equivalent, fat basis), the Secretary shall reduce the support price by $0.50 per hundredweight (cwt), and if estimated purchases do not exceed 2.5 billion pounds, shall increase the support price by $0.50/cwt. The cost to Government is expected to be approximately $1 billion.

Timetable:

Action	Date	FR Cite
Final Action	12/31/88	
Final Action Effective	01/01/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Chief, Regulatory Impact & Program Analysis Branch, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3726-S, PO Box 2415, Washington, DC 20013, 202 475-4836

RIN: 0560-AB40

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36. ◆ 1989 CCC COTTON LOAN PROGRAM REGULATIONS — BALE PACKAGING MATERIALS

Legal Authority: 15 USC 714b and 714c; Commodity Credit Corporation Charter Act, Sec 4 and 5

CFR Citation: 7 CFR 1427

Legal Deadline: None

Abstract: To incorporate by reference the specifications for bale packaging materials used in wrapping cotton for 1989 that were approved by the Joint Cotton Industry Bale Packaging Committee and that are acceptable to CCC. No cost to Government is expected.

Timetable:

Action	Date	FR Cite
Final Action	07/01/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Chief, Regulatory Impact and Program Analysis Branch, Department of Agriculture, Agricultural Stabilization and Conservation Service, 3726-S, P.O Box 2415, Washington, DC 20013, 202 475-4836

RIN: 0560-AB44

USDA—ASCS

Final Rule Stage

37. ◆ PEANUT WAREHOUSE STORAGE LOANS AND HANDLER OPERATIONS FOR THE 1984 THROUGH 1990 CROPS (AMENDMENT 3)

Legal Authority: 7 USC 714b and 714c; 7 USC 1441; 7 USC 1421 et seq; 7 USC 1359; 7 USC 1375

CFR Citation: 7 CFR 1446

Legal Deadline: None

Abstract: This action would amend the regulations to (1) incorporate the Peanut Administrative Committee's changes in definition of Segregation 1 and 2 peanuts with regard to loose-shelled kernels in excess of 14.49 percent, and the change in moisture limit to 10.49 percent, (2) change the priority for making marketing pool distributions so that pool offsets are made in the same priority within each area and cross-area when needed, (3) change the date for submitting letters of credit to 10 days following the final date for submitting contracts, and adding peanuts for processing to the amount of peanuts for which a letter of credit is due, and (4) change shrink allowance to 2 percent. No cost to Government is expected.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/31/87	
Final Action	11/18/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Chief, Regulatory Impact and Program Analysis Branch, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3726-S, P.O. Box 2415, Washington, DC 20013, 202 475-4836

RIN: 0560-AB47

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38. ◆ PEANUT WAREHOUSE STORAGE LOANS AND HANDLER OPERATIONS FOR THE 1985 THROUGH 1990 CROPS (AMENDMENT 1)

Legal Authority: 15 USC 714b and 714c; 7 USC 1441 et seq; 7 USC 1359; 7 USC 1375

CFR Citation: 7 CFR 1446

Legal Deadline: None

Abstract: This action would amend the regulations to allow export credits for crushing sound mature kernels (SMK) and sound split (SS) kernels. This action is needed because current regulations do not provide non-physically supervised handlers and alternative market for SMK and SS kernels other than the export market. An alternative market is needed when the export market is lost or when the peanuts become ineligible for export due to aflatoxin contamination.

Alternatives considered are: (1) Permit a one-time switch to physically supervised crushing of SMK and SS peanuts, regardless of quality, (2) permit prorated credit (based on ratio of contract additional peanuts purchased to total peanuts purchased) for peanuts crushed due to aflatoxin contamination, (3) permit a one-time switch to physically supervised crushing of peanuts that meet edible export standards. No cost to Government is expected.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/31/87	
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Chief, Regulatory Impact and Program Analysis Branch, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3726-S, P.O. Box 2415, Washington, DC 20013, 202 475-4836

RIN: 0560-AB46

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39. ◆ 1990 WOOL AND MOHAIR PROGRAM

Significance: Regulatory Program

Legal Authority: 7 USC 1782 et seq; National Wool Act of 1954, as amended, Sec 201

CFR Citation: 7 CFR 1468; 7 CFR 1472

Legal Deadline: None

Abstract: To encourage the continued domestic production of wool at prices fair to both producers and consumers, in a manner which will ensure a viable domestic wool industry in the future, by supporting the price of wool and mohair by means of loans, purchases, payments, or other operations. The support level for wool is set by statutory formula. Determination is to be made on the support level for mohair, which may not be more than 15 percent above or below the comparable percentage of parity at which shorn wool is supported. The cost to USDA will likely range from $0.1 to $0.2 billion.

Timetable:

Action	Date	FR Cite
Final Action	12/31/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Chief, Regulatory Impact and Program Analysis Branch, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3726-S, P.O. Box 2415, Washington, DC 20013, 202 475-4836

RIN: 0560-AB49

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40. ◆ FOREIGN PERSONS INELIGIBLE FOR TOBACCO PRICE SUPPORT PROGRAM BENEFITS

Legal Authority: 7 USC 1308 et seq; The Food Security Act of 1985, as amended, Sec 1001c

CFR Citation: 7 CFR 1464.7

Legal Deadline: None

Abstract: This action would amend the Tobacco Loan Program regulations to make them compatible with 7 CFR 1498, providing that foreign persons be ineligible for program benefits, as provided by legislation. This action will be effective for the 1989 and 1990 crops. No alternatives are considered and no cost to Government is expected.

Timetable:

Action	Date	FR Cite
Final Action	12/01/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Chief, Regulatory Impact and Program Analysis Branch, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3726-S, P.O. Box 2415, Washington, DC 20013, 202 475-4836

RIN: 0560-AB50

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USDA—ASCS

Final Rule Stage

41. ◆ 1989-90 MARKETING YEAR PENALTY RATES FOR ALL KINDS OF TOBACCO SUBJECT TO QUOTAS

Legal Authority: 7 USC 1314; The Agricultural Adjustment Act of 1938, as amended, Sec 314

CFR Citation: None

Legal Deadline: None

Abstract: This action announces the penalty rates for all kinds of tobacco for the 1989-90 marketing year. Legislation provides that the penalty shall be 75 percent of the previous year's average market price. Tobacco producers, warehousemen, and dealers need to be advised of the penalty rates prior to the beginning of the marketing year.

Timetable:

Action	Date	FR Cite
Final Action	08/29/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Chief, Regulatory Impact and Program Analysis Branch, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3726-S, P.O. Box 2415, Washington, DC 20013, 202 475-4636

RIN: 0560-AB82

42. ◆ 1989 - CROP SUGAR BEET AND SUGARCANE PRICE SUPPORT LOAN RATES

Significance: Regulatory Program

Legal Authority: 7 USC 1421; 7 USC 1446; The Agricultural Act of 1949, as amended, Secs 201 and 401

CFR Citation: 7 CFR 1435

Legal Deadline: None

Abstract: To set forth (1) loan rates applicable to 1989-crop sugar beets and sugarcane, and (2) the 1989-crop minimum price support levels processors are required to pay their growers. The minimum national average loan rate is set by statute at $0.18/lb. for sugarcane with the rate for sugar beets set at such level as the Secretary determines is fair and reasonable in relation to that for sugarcane. No impact on Government outlays is expected. However, the cost to consumers and other users of sugar will likely exceed $2 billion.

Timetable:

Action	Date	FR Cite
Final Action	09/15/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Chief, Regulatory Impact and Program Analysis Branch, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3726-S, P.O. Box 2415, Washington, DC 20013, 202 475-4636

RIN: 0560-AB83

DEPARTMENT OF AGRICULTURE (USDA)

Completed Actions

Agricultural Stabilization and Conservation Service (ASCS)

43. NATIONAL AVERAGE LOAN RATES FOR 1987-CROP QUOTA AND ADDITIONAL PEANUTS

Significance: Agency Priority

CFR Citation: Not applicable

Completed:

Reason	Date	FR Cite
Final Action	02/19/88	53 FR 5023

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig 202 475-4636

RIN: 0560-AA61

44. 1987-CROP PEANUTS NATIONAL POUNDAGE QUOTA

Significance: Agency Priority

CFR Citation: Not applicable

Completed:

Reason	Date	FR Cite
Final Action	02/19/88	53 FR 5023

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig 202 475-4636

RIN: 0560-AA70

45. COMMON PROGRAM PROVISIONS FOR THE 1988 WHEAT, FEED GRAINS, COTTON AND RICE PROGRAMS

Significance: Regulatory Program

CFR Citation: 7 CFR 713; 7 CFR 1421; 7 CFR 1427

Completed:

Reason	Date	FR Cite
Final Action	05/17/88	53 FR 17462

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig 202 475-4636

RIN: 0560-AA69

46. 1988 RICE PROGRAM

Significance: Regulatory Program

CFR Citation: 7 CFR 707; 7 CFR 709; 7 CFR 713; 7 CFR 719; 7 CFR 770; 7 CFR 794 to 796; 7 CFR 1421

Completed:

Reason	Date	FR Cite
Final Action	05/17/88	53 FR 17462

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig 202 475-4636

RIN: 0560-AA68

47. 1988 WHEAT PROGRAM

Significance: Regulatory Program

CFR Citation: 7 CFR 707; 7 CFR 709; 7 CFR 713; 7 CFR 719; 7 CFR 770; 7 CFR 794 to 796; 7 CFR 1421.1 to 1421.29; 7 CFR 1421.460 to 1421.471; 7 CFR 1421.700 to 1421.714

Completed:

Reason	Date	FR Cite
Final Action	05/17/88	53 FR 17462

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig 202 475-4636

RIN: 0560-AA66

USDA—ASCS

Completed Actions

48. 1988 FEED GRAIN PROGRAM

Significance: Regulatory Program

CFR Citation: 7 CFR 707; 7 CFR 709; 7 CFR 713; 7 CFR 716; 7 CFR 719; 7 CFR 792; 7 CFR 794 to 796; 7 CFR 1421.1 to 1421.29; 7 CFR 1421.90 to 1421.100; 7 CFR 1421.720 to 1421.734

Completed:

Reason	Date	FR Cite
Final Action	05/17/88	53 FR 17482

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig 202 475-4636

RIN: 0560-AA92

49. 1988 UPLAND COTTON PROGRAM

Significance: Regulatory Program

CFR Citation: 7 CFR 707; 7 CFR 709; 7 CFR 713; 7 CFR 719; 7 CFR 770; 7 CFR 792; 7 CFR 794 to 796; 7 CFR 1427

Completed:

Reason	Date	FR Cite
Final Action	05/17/88	53 FR 17482

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig 202 475-4636

RIN: 0560-AA93

50. 1988-CROP FLUE-CURED TOBACCO MARKETING QUOTAS

Significance: Agency Priority

CFR Citation: 7 CFR 725

Completed:

Reason	Date	FR Cite
Final Action	05/05/88	53 FR 16175

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig 202 475-4636

RIN: 0560-AA88

51. 1988 EXTRA LONG STAPLE (ELS) COTTON PROGRAM

Significance: Agency Priority

CFR Citation: 7 CFR 1427

Completed:

Reason	Date	FR Cite
Final Action	05/17/88	53 FR 17482

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig 202 475-4636

RIN: 0560-AA69

52. 1988-CROP HONEY PRICE SUPPORT PROGRAM

Significance: Agency Priority

CFR Citation: 7 CFR 1434.26; 7 CFR 1434.27

Completed:

Reason	Date	FR Cite
Final Action	06/01/88	53 FR 19974

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig 202 475-4636

RIN: 0560-AB04

53. 1988 WOOL AND MOHAIR PROGRAM

Significance: Agency Priority

CFR Citation: 7 CFR 1468; 7 CFR 1472

Completed:

Reason	Date	FR Cite
Final Action	07/27/88	53 FR 28241

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig 202 475-4636

RIN: 0560-AB05

54. 1988-CROP BURLEY TOBACCO MARKETING QUOTAS AND PRICE SUPPORT LEVEL

Significance: Agency Priority

CFR Citation: 7 CFR 724

Completed:

Reason	Date	FR Cite
Final Action	06/20/88	53 FR 18113
Final Action Effective	02/01/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig 202 475-4636

RIN: 0560-AB06

55. 1988-CROP MARKETING QUOTAS AND ACREAGE ALLOTMENTS FOR FIVE KINDS OF TOBACCO

Significance: Agency Priority

CFR Citation: 7 CFR 724

Completed:

Reason	Date	FR Cite
Final Action	05/20/88	53 FR 18109

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig 202 475-4636

RIN: 0560-AB07

56. 1988 PRICE SUPPORT LEVELS FOR SIX KINDS OF TOBACCO

CFR Citation: None

Completed:

Reason	Date	FR Cite
Final Action	05/12/88	53 FR 16888

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig 202 475-4636

RIN: 0560-AB12

57. 1988 CCC COTTON LOAN PROGRAM REGULATIONS—BALE PACKAGING MATERIALS

CFR Citation: 7 CFR 1427

Completed:

Reason	Date	FR Cite
Final Action	07/15/88	53 FR 26761

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig 202 475-4636

RIN: 0560-AB21

58. GENERAL REGULATIONS GOVERNING PRICE SUPPORT OF 1988 AND SUBSEQUENT CROPS OF GRAIN

CFR Citation: 7 CFR 1421

USDA—ASCS — Completed Actions

Completed:

Reason	Date	FR Cite
Final Action	03/01/88	53 FR 6131

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig 202 475-4536

RIN: 0560-AB23

59. WAIVER OF STANDARDS FOR APPROVED WAREHOUSES

CFR Citation: 7 CFR 1421

Completed:

Reason	Date	FR Cite
Final Action	03/17/88	53 FR 8745
Final Action Effective	04/18/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig 202 475-4536

RIN: 0560-AB24

DEPARTMENT OF AGRICULTURE (USDA) — Proposed Rule Stage
Animal and Plant Health Inspection Service (APHIS)

60. ANIMAL WELFARE REGULATIONS; STANDARDS

Significance: Regulatory Program

Legal Authority: 7 USC 2142; 7 USC 2143

CFR Citation: 9 CFR 3.1 to 3.17, (Revision); 9 CFR 3.25 to 3.41, (Revision); 9 CFR 3.75 to 3.91, (Revision)

Legal Deadline: None

Abstract: In 1985 Congress amended the Animal Welfare Act, 7 USC 2131 et seq., and required the Secretary of Agriculture to promulgate regulations and standards governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers, research facilities, operators of auction sales, carriers, and intermediate handlers. The standards and regulations will provide minimum requirements with respect to handling, housing, feeding, sanitation, veterinary care, and other related matters. APHIS is proposing to amend, revise, and expand the "Standards" relating to dogs and cats, guinea pigs and hamsters, and nonhuman primates, and will include provisions for exercise of dogs and for promoting the psychological well-being of primates.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
NPRM Comment Period End	00/00/00	
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Local, State, Federal

Agency Contact: Dr. R. L. Crawford, Senior Staff Veterinarian, Animal Care Staff, Department of Agriculture, Animal and Plant Health Inspection Service, Federal Building, Room 756, 6505 Belcrest Road, Hyattsville, MD 20782, 301 436-7833

RIN: 0579-AA20

61. ◆ IMPORTATION OF NURSERY STOCK, PLANTS, ROOTS, BULBS, SEEDS, AND OTHER PLANT PRODUCTS

Significance: Agency Priority

Legal Authority: 7 USC 150dd to 150ff; 7 USC 151 to 167

CFR Citation: 7 CFR 319.37

Legal Deadline: None

Abstract: To prevent the introduction of plant pests and diseases, Plant Protection and Quarantine (PPQ) prohibits or restricts the importation of living plants, roots, bulbs, seeds, and related articles. PPQ is updating the lists of prohibited and restricted articles and is revising the regulatory requirements for importation of various articles. These revisions will allow the importation of certain living plants and related articles under appropriate regulatory controls, and will prohibit the importation of other living plants and related articles.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	
Public Hearing	01/00/89	
NPRM Comment Period End	02/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Frank Cooper, Senior Operations Officer, Port Operations Staff, PPQ, Department of Agriculture, Animal and Plant Health Inspection Service, Federal Building, Room 637, 6505 Belcrest Road, Hyattsville, Maryland 20782, 301 436-8248

RIN: 0579-AA21

DEPARTMENT OF AGRICULTURE (USDA) — Final Rule Stage
Animal and Plant Health Inspection Service (APHIS)

62. ANIMAL WELFARE; DEFINITION OF TERMS AND REGULATIONS

Significance: Regulatory Program

Legal Authority: 7 USC 2133; 7 USC 2135; 7 USC 2136; 7 USC 2140; 7 USC 2141; 7 USC 2142; 7 USC 2143; 7 USC 2144; 7 USC 2148; 7 USC 2147; 7 USC 2151

CFR Citation: 9 CFR 1, (Revision); 9 CFR 2, (Revision)

Legal Deadline: None

Abstract: In 1985 Congress amended the Animal Welfare Act, 7 USC 2131, et seq., and required the Secretary of Agriculture to promulgate regulations and standards governing the humane handling, housing, care, treatment, and transportation of certain animals by

USDA—APHIS — Final Rule Stage

dealers, research facilities, operators of auction sales, carriers, and intermediate handlers. The standards and regulations will provide minimum requirements with respect to handling, housing, feeding, sanitation, veterinary care, and other related matters. The Agency has proposed definitions to provide proper guidance to the public, licensees, and registrants in their responsibilities under the Act. The Agency has also proposed to amend, revise, and expand the "Regulations" contained in 9 CFR 2.1 through 2.132, pertaining to licensing and registration of facilities, recordkeeping and identification of animal holding periods and facilities, inspections, Institutional Animal Care and Use Committees, adequate veterinary care, and other areas relating to humane animal care matters.

Timetable:

Action	Date	FR Cite
NPRM	03/31/87	52 FR 10298
Notice of Extension of Comment Period	05/22/87	52 FR 19359
Extension and Reopening of Comment Period	08/12/87	52 FR 29665
NPRM Comment Period End	08/27/87	52 FR 29665
Final Action	12/00/89	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Dr. R. L. Crawford, Senior Staff Veterinarian, Animal Care Staff, VS, Department of Agriculture, Animal and Plant Health Inspection Service, Room 756, 6505 Belcrest Road, Hyattsville, MD 20782, 301 436-7833

RIN: 0579-AA18

63. SWINE IDENTIFICATION

Significance: Regulatory Program

Legal Authority: 21 USC 111 to 113; 21 USC 601 et seq; 21 USC 114a; 21 USC 1149-1; 21 USC 115 to 117; 21 USC 120 to 126; 21 USC 134b; 21 USC 134f

CFR Citation: 9 CFR 71; 9 CFR 78; 9 CFR 85; 9 CFR 309; 9 CFR 310; 9 CFR 320

Legal Deadline: None

Abstract: Swine in interstate commerce may be adulterated with drug and other chemical residue levels higher than the allowed tolerance and may be spreading diseases. The Department is proposing to require that all swine in interstate commerce be individually identified and records of identification be maintained. Mandatory identification of swine in interstate commerce would allow APHIS to more easily locate sources of infection in order to eradicate and contain disease and would allow the Food Safety Inspection Service (FSIS) to more easily determine the source of adulterated meat and prevent its consumption.

Timetable:

Action	Date	FR Cite
NPRM	02/03/88	53 FR 3146
NPRM Comment Period End	04/04/88	
Final Action	12/00/88	
Final Action Effective	01/00/89	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Steven B. Farbman, Assistant Director, Regulatory Coordination, Department of Agriculture, Animal and Plant Health Inspection Service, Room 728, 6505 Belcrest Road, Hyattsville, MD 20782, 301 436-5333

RIN: 0579-AA19

DEPARTMENT OF AGRICULTURE (USDA) — Completed Actions
Animal and Plant Health Inspection Service (APHIS)

64. IMPORTATION OF FRUITS AND VEGETABLES UNDER ASSURED CERTIFICATION AGREEMENTS

Significance: Regulatory Program

CFR Citation: 7 CFR 319.56

Completed:

Reason	Date	FR Cite
Withdrawn	06/01/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Frank Cooper 301 436-8248

RIN: 0579-AA17

DEPARTMENT OF AGRICULTURE (USDA) — Proposed Rule Stage
Cooperative State Research Service (CSRS)

65. AGRICULTURAL RESEARCH INVOLVING OUTDOOR FIELD TESTING OF BIOTECHNOLOGY - MODIFIED ORGANISMS

Significance: Regulatory Program

Legal Authority: PL 99-198 Food Security Act of 1985; 7 USC 450(h); 7 USC 3121(12); National Agr. Research Ext. and Teaching Policy Act of 1977; Sec 1405(12) as amended

CFR Citation: 7 CFR 3015.205; 7 CFR 3200.4(d)(7); 7 CFR 3400.4(c)(12)

Legal Deadline: None

Abstract: USDA/CSRS plans to publish advisory guidance for the safe performance of USDA-funded research involving outdoor field testing of biotechnology modified organisms.

Timetable:

Action	Date	FR Cite
ANPRM	06/26/86	51 FR 23367
ANPRM Comment Period End	08/25/86	
NPRM	10/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: ADDITIONAL ABSTRACT: The research guidance will be published as a notice in the Federal Register rather than as a proposed rule. The notice will contain research guidance consisting of general guideline

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principles and a handbook of recommended procedures for field testing biotechnology-modified organisms.

USDA plans to promote adherence to the biotechnology research guidelines and handbook by requesting researchers to agree to adhere to the guidelines and handbook as a condition for accepting USDA research funds. This will be implemented by amending the USDA regulations on general provisions for grants and cooperative agreements (7 CFR 3015.205), competitive research grants (7 CFR 3200.4) and special research grants (7 CFR 3400.4) as needed. The timetable for amending these regulations has not yet been set.

Agency Contact: William S. Smith, Regulatory Coordinator, Department of Agriculture, Cooperative State Research Service, Room 310-C, Aerospace Building, 901 D St, SW, Washington, DC 20250, 202 475-3904

RIN: 0524-AA09

DEPARTMENT OF AGRICULTURE (USDA)
Farmers Home Administration (FmHA)

Prerule Stage

66. RECAPTURE OF SECTION 502 RURAL HOUSING SUBSIDY

Significance: Agency Priority

Legal Authority: 42 USC 1480; 5 USC 301; 7 CFR 2.23; 7 CFR 2.70

CFR Citation: 7 CFR 1951

Legal Deadline: None

Abstract: The Farmers Home Administration (FmHA) proposes to revise the regulation for the recapture of subsidy granted on Section 502 Rural Housing Loans. This action is necessary because of an accounting system change resulting from the September 1987 Congressionally mandated rural housing asset sale. The intended effect of this action is to adjust the formula to coincide with the revised method of applying monthly subsidy to interest credit accounts. In addition, this action will also shorten and simplify the recapture process.

Timetable:

Action	Date	FR Cite
ANPRM	11/01/88	
ANPRM Comment Period End	01/01/89	
Final Action	06/01/89	
Final Action Effective	06/01/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Chris Goettelmann, Regulatory Coordinator, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 382-9744

RIN: 0575-AA29

67. SECURITY SERVICING FOR MULTIPLE HOUSING LOANS

Legal Authority: 42 USC 1480

CFR Citation: 7 CFR 1930; 7 CFR 1944; 7 CFR 1955

Legal Deadline: None

Abstract: This regulation is being revised to provide clarification on the processing differences between membership changes and transfers, to broaden the ability to consolidate and reamortize loans, to clarify actions to be taken during a bankruptcy, and to clarify and discuss the classification of problem loans and their resolution, along with other minor revisions. These revisions are needed so as to provide more complete guidance to field staff and borrowers on the topics discussed above. Potential costs consist of administrative time involved with Agency personnel drafting and completing regulation. No alternatives were identified as being appropriate to address the several problems being corrected with this regulation.

Timetable:

Action	Date	FR Cite
ANPRM	12/30/88	
Final Action	06/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Chris Goettelmann, Regulatory Coordinator, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 382-9744

RIN: 0575-AA38

68. MANAGEMENT AND COLLECTION OF NONPROGRAM (NP) LOANS

Significance: Agency Priority

Legal Authority: 42 USC 1480; 5 USC 301

CFR Citation: 7 CFR 1951, Subpart J

Legal Deadline: None

Abstract: A new instruction to provide policy and guidance for FmHA field office personnel to make, manage, collect and liquidate nonprogram (NP) loans.

Timetable:

Action	Date	FR Cite
ANPRM	11/01/88	
ANPRM Comment Period End	01/01/89	
Final Action	04/01/89	
Final Action Effective	05/01/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Chris Goettelmann, Regulatory Coordinator, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 382-9744

RIN: 0575-AA39

69. COMPLAINTS AND COMPENSATION FOR CONSTRUCTION DEFECTS

Legal Authority: 42 USC 1479

CFR Citation: 7 CFR 1924 F

Legal Deadline: None

Abstract: Provide for handling construction defects on manufactured homes.

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Timetable:

Action	Date	FR Cite
ANPRM	01/30/89	
ANPRM Comment Period End	03/30/89	
Final Action	08/30/89	
Final Action Effective	09/30/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Chris Goettelmann, Regulatory Coordinator, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 382-9744

RIN: 0575-AA41

70. BORROWER SUPERVISION SERVICING AND COLLECTION OF SINGLE FAMILY HOUSING LOAN ACCOUNTS

Legal Authority: PL 100-71

CFR Citation: 7 CFR 1951-G

Legal Deadline: None

Abstract: Provide for change in definition of delinquent account and certain other changes.

Timetable:

Action	Date	FR Cite
ANPRM	11/30/88	
ANPRM Comment Period End	01/30/89	
Final Action	04/30/89	
Final Action Effective	05/30/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Chris Goettelmann, Regulatory Coordinator, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 382-9744

RIN: 0575-AA42

DEPARTMENT OF AGRICULTURE (USDA)
Farmers Home Administration (FmHA)

Proposed Rule Stage

71. SUSPENSION AND DEBARMENT REGULATIONS

Legal Authority: 7 USC 1989; 42 USC 1480(k)

CFR Citation: 7 CFR 1924, Subpart E

Legal Deadline: None

Abstract: This regulatory activity will improve FmHA's suspension and debarment system by establishing regulations that are compatible with other Federal agency regulations. (FmHA 82-004)

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: Agency action deferred until we review the USDA draft of the new regulation which could well become FmHA's as OMB would like to see a common regulation for all agencies.

Agency Contact: Chris Goettelmann, Regulatory Coordinator, Department of Agriculture, Farmers Home Administration, Room 6348-S, Washington, DC 20250, 202 382-9744

RIN: 0575-AA02

72. ● PROPERTY MANAGEMENT

Legal Authority: 7 USC 1989; 42 USC 1480; 5 USC 301; 7 CFR 2.23; 7 CFR 2.70

CFR Citation: 7 CFR 1955

Legal Deadline: None

Abstract: Division of existing 7 CFR Part 1955 Subparts A, B, and C by major program area. Alternative would be to not divide regulation. Costs to divide would be minimal and would provide major program areas with the ability to revise and/or amend the regulations with reduced clearances and will provide field personnel with clearer and simpler regulations to follow and implement.

Timetable:

Action	Date	FR Cite
NPRM	01/15/89	
NPRM Comment Period End	03/15/89	
Final Action	10/15/89	
Final Action Effective	11/15/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Chris Goettelmann, Regulatory Coordinator, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 382-9744

RIN: 0575-AA03

73. ● HOUSING PRESERVATION GRANTS

Legal Authority: 42 USC 1490 (m)

CFR Citation: 7 CFR 1944, Subpart N; 7 CFR 1930, Subpart C

Legal Deadline: None

Abstract: Expansion of HPG program to include residential rental properties (single and multi-unit) and cooperative housing. Maintain availability of adequate and decent, safe, and sanitary rental housing for very low and low income individuals and families in the rural areas. Compliance with the Housing and Urban Recovery Act of 1983 and Community Development Act of 1987.

Timetable:

Action	Date	FR Cite
NPRM	11/01/88	
NPRM Comment Period End	01/01/89	
Final Action	07/01/89	
Final Action Effective	08/01/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Chris Goettelmann, Regulatory Coordinator, Department of

USDA—FmHA

Proposed Rule Stage

Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 382-8744

RIN: 0575-AA18

74. SELF-HELP TECHNICAL ASSISTANCE GRANTS

Legal Authority: 7 USC 1988; 42 USC 1480; 7 CFR 2.23; 7 CFR 2.70

CFR Citation: 7 CFR 1933-I

Legal Deadline: None

Abstract: Complete revision to improve grantee's accounting responsibilities. No costs associated with action. Benefits reduce possibility of program fraud and abuse. Increase borrower's labor contribution.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Chris Goettelmann, Regulatory Coordinator, Department of Agriculture, Farmers Home Administration, Room 6348, South Building, Washington, DC 20250, 202 382-8744

RIN: 0575-AA34

75. SECTION 502 RURAL HOUSING LOAN POLICIES, PROCEDURES, AND AUTHORIZATIONS

Significance: Agency Priority

Legal Authority: 42 USC 1480; 7 CFR 2.23; 7 CFR 2.70

CFR Citation: 7 CFR 1944-A

Legal Deadline: None

Abstract: Application processing priority system. No costs associated with action. Benefits should be faster processing times and quicker response to requests for assistance.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
Final Action	00/00/00	
Final Action Effective	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Chris Goettelmann, Regulatory Coordinator, Department of Agriculture, Farmers Home Administration, Room 6348, South Building, Washington, DC 20250, 202 382-8744

RIN: 0575-AA35

76. RURAL HOUSING PROGRAM LOANS

Legal Authority: 42 USC 1480

CFR Citation: 7 CFR 1980, Subpart A; 7 CFR 1980, Subpart D

Legal Deadline: None

Abstract: Update and revise existing Guaranteed Loan Regulations to incorporate revisions made to existing Rural Housing 502 Insured Loan Regulations and to remove obstacles in loan making for lenders. This action is being done to carry out the objectives of the Housing Act of 1987.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Chris Goettelmann, Regulatory Coordinator, Department of Agriculture, Farmers Home Administration, Room 6348, South Building, Washington, DC 20250, 202 382-8744

RIN: 0575-AA48

77. MANAGEMENT AND SUPERVISION OF MULTIPLE FAMILY HOUSING BORROWERS AND GRANT RECIPIENTS

Legal Authority: 42 USC 1480

CFR Citation: 7 CFR 1930, Subpart C; 7 CFR 1944, Subpart E

Legal Deadline: None

Abstract: General revision to keep the regulations current with policy clarification and incorporate changes to comply with recent legislative changes. Alternatives were to not revise or only incorporate some changes.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Chris Goettelmann, Regulatory Coordinator, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 382-8744

RIN: 0575-AA40

78. REAL PROPERTY INSURANCE

Significance: Agency Priority

Legal Authority: 42 USC 1471

CFR Citation: 7 CFR 1806, Subpart A

Legal Deadline: None

Abstract: Provide for the continuation of insurance for borrowers on escrow.

Timetable:

Action	Date	FR Cite
NPRM	06/01/88	
NPRM Comment Period End	10/01/88	
Final Action	02/01/89	
Final Action Effective	03/01/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Chris Goettelmann, Regulatory Coordinator, Department of Agriculture, Farmers Home Administration, Room 6348, South Building, Washington, DC 20250, 202 382-8744

RIN: 0575-AA53

79. SECURITY SERVICING FOR SINGLE FAMILY RURAL HOUSING LOANS

Significance: Agency Priority

Legal Authority: 42 USC 1480

CFR Citation: 7 CFR 1965, Subpart C

Legal Deadline: None

Abstract: Provide for the disposition of escrow funds in servicing loan accounts.

Timetable:

Action	Date	FR Cite
NPRM	10/01/88	
NPRM Comment Period End	12/01/88	
Final Action	04/01/89	
Final Action Effective	05/01/89	

USDA—FmHA

Proposed Rule Stage

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Chris Goettelmann, Regulatory Coordinator, Department of Agriculture, Farmers Home Administration, Room 6348, South Building, Washington, DC 20250, 202 382-8744

RIN: 0575-AA54

80. BORROWER SUPERVISION SERVICING AND COLLECTION OF SINGLE FAMILY HOUSING LOAN ACCOUNTS

Significance: Agency Priority

Legal Authority: PL 100-71

CFR Citation: 7 CFR 1951, Subpart G

Legal Deadline: None

Abstract: Provide for escrowing and the application of payments.

Timetable:

Action	Date	FR Cite
NPRM	10/01/88	
NPRM Comment Period End	12/01/88	
Final Action	04/01/89	
Final Action Effective	05/01/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Chris Goettelmann, Regulatory Coordinator, Department of Agriculture, Farmers Home Administration, Room 6348, South Building, Washington, DC 20250, 202 382-8744

RIN: 0575-AA55

81. ● RURAL RENTAL HOUSING LOAN POLICIES, PROCEDURES AND AUTHORITIES -- LETTERS OF CREDIT

Legal Authority: 42 USC 1485

CFR Citation: 7 CFR 1944 Subpart E; 7 CFR 1930 Subpart C

Legal Deadline: None

Abstract: Implementing statutory change allowing letters of credit to be used for initial operating capital and allowing packaging fees to be an eligible development cost for nonprofit borrowers

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
NPRM Comment Period End	12/00/88	
Final Action	03/00/89	
Final Action Effective	04/00/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Chris Goettelmann, Regulatory Coordinator, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 382-8744

RIN: 0575-AA57

82. ● RURAL RENTAL HOUSING LOAN POLICIES, PROCEDURES AND AUTHORIZATIONS -- CONGREGATE HOUSING AND GROUP HOMES

Legal Authority: 42 USC 1485

CFR Citation: 7 CFR 1944 Subpart E; 7 CFR 1930 Subpart C

Legal Deadline: None

Abstract: To expand the existing authority for congregate housing and group homes in FmHA Instruction 1944-E.

Timetable:

Action	Date	FR Cite
NPRM	05/00/89	
NPRM Comment Period End	07/00/89	
Final Action	11/00/89	
Final Action Effective	12/00/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Chris Goettelmann, Regulatory Coordinator, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 382-8744

RIN: 0575-AA56

83. ● SECONDARY MARKET FOR FARMER PROGRAM LOANS

Significance: Agency Priority

Legal Authority: 7 USC 1988 Consolidated Farm and Rural Devel. Act (amendment); PL 100-233, Sec 711 Agricultural Credit Act of 1987

CFR Citation: 7 CFR 1980

Legal Deadline: Final, Statutory, July 6, 1988.
PL 100-233, Sec 711, states: "Within 180 days after the date of the enactment of this Act, the Secretary shall develop and promulgate final regulations to implement this section (cont)

Abstract: Legislation mandates that the Secretary develop procedures to facilitate, administrate and promote secondary market operations for FmHA guaranteed farm loans. It is suggested that the Secretary, directly or through a market maker, provide for the pooling of guaranteed loans and the issuance and sale of certificates backed by those loan pools. Through this procedure secondary market activities could be promoted and expanded, thereby increasing the supply of loan money in rural areas -- allowing rural banks to increase their lending activity to farmers, rural businessmen and residents. Obtaining the services of a private agent to act as a central registry and fiscal agent -- coordinating fund flows from lenders to pool investors; handling pool formations and executions, issuance and ownership of pool shares, and monitoring of loan payments -- is the favored alternative expected to successfully meet the legislative mandate. This agent would be a private firm compensated by banks, private financial institutions and investors. FmHA would act as the facilitator, arranging for the creation of this private market activity, but not (cont)

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
NPRM Comment Period End	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Impact Analysis

Additional Information: ABSTRACT CONT: funding the agent. Another alternative considered is establishing an in-house capability to track the sale of guaranteed loans and transfer payments as required, but this option would require substantial personnel and other Agency resources and would prove extremely expensive.

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LEGAL DEADLINE CONT: and the Amendment may by this section."

Agency Contact: Chris Goettelmann, Regulatory Coordinator, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 382-9744

RIN: 0575-AA89

84. ● FARM LABOR HOUSING LOAN AND GRANT POLICIES, PROCEDURES, AND AUTHORIZATIONS

Legal Authority: 42 USC 1484; 42 USC 1486

CFR Citation: 7 CFR 1944 Subpart D

Legal Deadline: None

Abstract: The Farmers Home Administration (FmHA) proposes to amend its Farm Labor Housing regulations. This action is in response to the general public and FmHA staff requests for clarification of the Farm Labor Housing regulations. The intended effect is to provide more comprehensive guidance to applicants when applying for farm labor housing loans and grants: (1) make certain paragraphs consistent with other related parts and other housing regulations; (2) redefine terminology to ensure appropriate implementation of program eligibility standards; (3) incorporate provision of the Housing and Urban Recovery Act of 1983; housing amendments of 1984, 85 and 86; and (4) provide direction to FmHA State and District Office personnel through separate processing instructions.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	
NPRM Comment Period End	02/00/89	
Final Action	08/00/89	
Final Action Effective	09/00/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Chris Goettelmann, Regulatory Coordinator, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 382-9744

RIN: 0575-AA00

85. ● FARM LABOR LOAN AND GRANT POLICIES, PROCEDURES, AND AUTHORIZATION

Legal Authority: 42 USC 1484; 42 USC 1486

CFR Citation: 7 CFR 1944 Subpart D

Legal Deadline: None

Abstract: Revision to incorporate provisions of Housing and Community Development Act of 1987 (PL 100-242) regarding the definition of "Domestic Farmworker," that determine the eligibility of such farmworkers to occupy housing financed under the Farm Labor Housing Program.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
NPRM Comment Period End	12/00/88	
Final Action	02/00/89	
Final Action Effective	03/00/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Chris Goettelmann, Regulatory Coordinator, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 382-9744

RIN: 0575-AA63

86. ● RURAL RENTAL HOUSING LOAN POLICIES, PROCEDURES, AND AUTHORIZATIONS – COOPERATIVE HOUSING LOANS

Legal Authority: 42 USC 1485

CFR Citation: 7 CFR 1944 Subpart E; 7 CFR 1930 Subpart C; 7 CFR 1965 Subpart B; 7 CFR 1924 Subpart A

Legal Deadline: None

Abstract: To include provisions for Cooperative Housing Loans in the Rental Housing Regulation.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
NPRM Comment Period End	01/00/89	
Final Action	05/00/89	
Final Action Effective	06/00/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Chris Goettelmann, Regulatory Coordinator, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 382-9744

RIN: 0575-AA62

DEPARTMENT OF AGRICULTURE (USDA)

Farmers Home Administration (FmHA)

Final Rule Stage

87. ● MANAGEMENT AND SUPERVISION OF MULTIPLE FAMILY HOUSING BORROWERS

Legal Authority: 42 USC 1480

CFR Citation: 7 CFR 1930, Subpart C

Legal Deadline: None

Abstract: Revision required by the Office of Inspector General (OIG) to change standards for multiple housing project audits to Generally Accepted Government Auditing Standards (GAGAS) in order to minimize potential for fraud, waste and abuse of Government lending. OIG used State audits of the multiple family housing program to document their concerns so alternatives to regulation change were limited.

Timetable:

Action	Date	FR Cite
Final Action	12/31/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Chris Goettelmann, Regulatory Coordinator, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 382-9744

RIN: 0575-AA20

88. CHANGES TO THE FMHA FARMER PROGRAM LOAN MAKING, SUPERVISION AND SERVICING REGULATIONS TO IMPLEMENT THE APPLICABLE PROVISIONS OF THE "FOOD SECURITY ACT OF 1985"

Legal Authority: 7 USC 1989

CFR Citation: 7 CFR 1900; 7 CFR 1910; 7 CFR 1924; 7 CFR 1941; 7 CFR 1943; 7 CFR 1945; 7 CFR 1955; 7 CFR 1980

Legal Deadline: Other, Statutory, March 31, 1988.
For Interim Final Rule published 4/21/88.

Abstract: Most of the provisions of the Food Security Act of 1985 are mandated by the Act. The major effects will be to insure that the agency provides prompt service to applicants and borrowers, reduce the need and size of the emergency loan program, provide for additional ways that borrowers may continue farming, provide a home during the transition from farming to other employment, preserve the family farm, protect the national food supply, and provide for conservation of less productive land. (FmHA 86-001)

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/18/88	51 FR 9174
Interim Final Rule	04/21/88	51 FR 13437
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Chris Goettelmann, Regulatory Coordinator, Department of Agriculture, Farmers Home Administration, Room 6348-S, Washington, DC 20250, 202 382-9744

RIN: 0575-AA23

89. PLANNING AND PERFORMING CONSTRUCTION AND OTHER DEVELOPMENT

Significance: Agency Priority

Legal Authority: 7 USC 1989; 42 USC 1480; 5 USC 301; 7 CFR 2.23; 7 CFR 2.70

CFR Citation: 7 CFR 1924, Subpart A

Legal Deadline: None

Abstract: Revision to the Certification requirement for drawings and specifications. No costs associated. Benefits will be reduced costs to obtain certifications.

Timetable:

Action	Date	FR Cite
NPRM	03/09/88	53 FR 7532
NPRM Comment Period End	05/09/88	
Final Action	10/01/88	
Final Action Effective	11/01/88	

Small Entities Affected: Undetermined

Government Levels Affected: Local, State

Agency Contact: Chris Goettelmann, Regulatory Coordinator, Department of Agriculture, Farmers Home Administration, Room 6348, South Building, Washington, DC 20250, 202 382-9744

RIN: 0575-AA35

90. SECTION 504 RURAL HOUSING LOANS AND GRANTS

Legal Authority: 42 USC 1480; 7 CFR 2.23; 7 CFR 2.70

CFR Citation: 7 CFR 1944, Subpart J (Revision)

Legal Deadline: None

Abstract: Incorporates revisions to Agency's authorizing statutes made by the 1983 Housing amendments. Expands loan purposes, increases the total amount of assistance available. No cost increase. Will benefit more homeowners.

Timetable:

Action	Date	FR Cite
NPRM	06/01/88	53 FR 19924
NPRM Comment Period End	08/01/88	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Chris Goettelmann, Regulatory Coordinator, Department of Agriculture, Farmers Home Administration, Room 6348, South Building, Washington, DC 20250, 202 382-9744

RIN: 0575-AA37

91. ANALYZING CREDIT NEEDS AND GRADUATION OF BORROWERS

Significance: Agency Priority

Legal Authority: 42 USC 1472

CFR Citation: 7 CFR 1951-F

Legal Deadline: None

Abstract: Provide for Contracting for Borrower Graduation by a private contractor and certain other changes.

Timetable:

Action	Date	FR Cite
NPRM	03/29/88	53 FR 10098
NPRM Comment Period End	05/31/88	
Final Action	09/00/88	
Final Action Effective	10/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Chris Goettelmann, Regulatory Coordinator, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 382-9744

RIN: 0575-AA40

92. MANAGEMENT AND SUPERVISION OF MULTIPLE FAMILY HOUSING BORROWERS AND GRANT RECIPIENTS

Significance: Agency Priority

Legal Authority: 42 USC 1480

CFR Citation: 7 CFR 1930, Subpart C

Legal Deadline: None

Abstract: Revision, responding to provision of the Housing and Community Development Act of 1987, allows tenant selection to correspond to tax credit eligibility criteria for affected multiple family housing borrowers. Since this revision is mandated by legislation, alternatives were limited.

Timetable:

Action	Date	FR Cite
Final Action	12/31/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Chris Goettelmann, Regulatory Coordinator, Department of Agriculture, Farmers Home Administration, Room 6348 South

USDA—FmHA — Final Rule Stage

Building, Washington, DC 20250, 202 382-9744

RIN: 0575-AA50

93. SECURITY SERVICING FOR MULTIPLE HOUSING LOANS

Significance: Agency Priority

Legal Authority: 42 USC 1480

CFR Citation: 7 CFR 1965, Subpart B

Legal Deadline: None

Abstract: This revision implements Subtitle C, "Rural Rental Housing Displacement Prevention," of the Housing and Community Development Act of 1987. Since this revision is mandated by legislation, alternatives were limited.

Timetable:

Action	Date	FR Cite
Final Action	12/31/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Chris Goettelmann, Regulatory Coordinator, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 382-9744

RIN: 0575-AA51

94. PREDETERMINED AMORTIZATION SCHEDULE SYSTEM (PASS) ACCOUNT SERVICING

Legal Authority: 42 USC 1480

CFR Citation: 7 CFR 1951, Subpart K; 7 CFR 1951, Subpart A; 7 CFR 1930, Subpart C; 7 CFR 1944, Subpart E

Legal Deadline: None

Abstract: Revision reincorporates automated billing provisions removed from an April 18, 1984, prior rule pending the development of computer capacity and combines multiple family housing account servicing under one regulation. Alternative is to remain under current burdensome process.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/01/88	
Final Action	11/01/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Chris Goettelmann, Regulatory Coordinator, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 382-9744

RIN: 0575-AA52

95. CHANGES TO THE FARMERS HOME ADMINISTRATION (FMHA) FARMER PROGRAM LOAN MAKING, SUPERVISION AND SERVICING REGULATIONS TO IMPLEMENT APPLICABLE PROVISIONS OF "THE AGRICULTURAL CREDIT ACT OF 1987"

Significance: Regulatory Program

Legal Authority: PL 100-233, Sec 601

CFR Citation: 7 CFR 1910, Subpart A; 7 CFR 1924, Subpart A; 7 CFR 1924, Subpart B; 7 CFR 1941, Subpart A; 7 CFR 1941, Subpart B; 7 CFR 1943, Subpart A; 7 CFR 1943, Subpart B; 7 CFR 1943, Subpart C; 7 CFR 1945, Subpart A; 7 CFR 1945, Subpart C; 7 CFR 1945, Subpart D; 7 CFR 1946, Subpart A (New); 7 CFR 1951, Subpart A; 7 CFR 1951, Subpart L; 7 CFR 1951, Subpart S (New); ...

Legal Deadline: Final, Statutory, June 3, 1988.

Abstract: To implement the provisions of Public Law 100-233, The Agricultural Credit Act of 1987, to reduce losses to the Secretary, help rural communities and help financially distressed farmers to continue farming.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/14/88	53 FR 35636
Interim final rule public comment period end	11/14/88	
Final Action	02/01/89	
Final Action Effective	02/01/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Chris Goettelmann, Regulatory Coordinator, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, 14th & Independence Avenue, Washington, DC 20250, 202 382-9744

RIN: 0575-AA58

96. # SERVICING CASES WHERE UNAUTHORIZED LOAN OR OTHER FINANCIAL ASSISTANCE WAS RECEIVED -- SINGLE FAMILY HOUSING

Legal Authority: 42 USC 1480

CFR Citation: 7 CFR 2.23; 7 CFR 2.70

Legal Deadline: None

Abstract: The borrower's repayment ability will be used to determine if an unauthorized Section 504 Grant should be repaid as a loan. This action will alleviate the undue financial hardship for elderly borrowers with a very low income.

Timetable:

Action	Date	FR Cite
ANPRM	12/01/87	
ANPRM Comment Period End	02/01/88	
Final Action	11/01/88	
Final Action Effective	12/01/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Chris Goettelmann, Regulatory Coordinator, Department of Agriculture, Farmers Home Administration, Room 6348, South Building, Washington, DC 20250, 202 382-9744

RIN: 0575-AA61

DEPARTMENT OF AGRICULTURE (USDA) — Completed Actions

Farmers Home Administration (FmHA)

97. RURAL RENTAL HOUSING POLICIES, PROCEDURES AND AUTHORIZATIONS

CFR Citation: 7 CFR 1944

Completed:

Reason	Date	FR Cite
Withdrawn	06/01/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Chris Goettelmann 202 382-9744

RIN: 0575-AA39

98. INTERMEDIARY RELENDING PROGRAM

Significance: Agency Priority

CFR Citation: 7 CFR 1940-C

Completed:

Reason	Date	FR Cite
Final Action	06/15/88	53 FR 20943
Final Action Effective	06/15/88	

Small Entities Affected: Undetermined

Government Levels Affected: State, Federal

Agency Contact: Chris Goettelmann 202 382-9744

RIN: 0575-AA43

99. DEBT SETTLEMENT - COMMUNITY AND BUSINESS PROGRAMS

Significance: Agency Priority

CFR Citation: 7 CFR 1956-C, (New)

Completed:

Reason	Date	FR Cite
Final Action	04/21/88	53 FR 13066
Final Action Effective	04/21/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Chris Goettelmann 202 382-9744

RIN: 0575-AA46

100. SUPPLEMENTAL REQUIREMENTS FOR MAKING SECTION 502 RH LOANS FOR MANUFACTURED HOMES

CFR Citation: 7 CFR 1944-A, Exhibit F

Completed:

Reason	Date	FR Cite
Withdrawn	07/18/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Chris Goettelmann 202 382-9744

RIN: 0575-AA45

DEPARTMENT OF AGRICULTURE (USDA) — Final Rule Stage

Food and Nutrition Service (FNS)

101. ISSUANCE LOSS LIABILITY: FOOD STAMP PROGRAM

Legal Authority: 7 USC 2016; 7 USC 2012(e)(2)(I)

CFR Citation: 7 CFR 274; 7 CFR 276

Legal Deadline: None

Abstract: These rules govern the issuance of food stamps to Food Stamp Program participants. They also establish the system for accounting for the food stamps and establish liabilities for losses during the issuance process. (FNS 84-003)

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/29/82	47 FR 49010
NPRM	04/09/86	51 FR 12268
Final Action	10/00/88	

Small Entities Affected: Governmental Jurisdictions, Organizations

Government Levels Affected: State

Agency Contact: Irene Lankford, Department of Agriculture, Food and Nutrition Service, Room 1107, Park Office Center, 3101 Park Center Dr., Alexandria, VA 22302, 703 756-3064

RIN: 0584-AA05

102. FOOD DISTRIBUTION PROGRAM - PART 250

Significance: Agency Priority

Legal Authority: 7 USC 612c; 15 USC 713c; 42 USC 1755; 42 USC 1758; 7 USC 1431; 22 USC 1922; 7 USC 1859; 7 USC 1431b; 7 USC 1431 Note; 7 USC 1446a-1; 42 USC 1761; 42 USC 5179; 42 USC 5180; 42 USC 1762a; 42 USC 1766; ...

CFR Citation: 7 CFR 250

Legal Deadline: None

Abstract: The rule reorganizes existing regulatory provisions for clarity and ease of reference. This rule outlines the responsibilities of the Food and Nutrition Service and State agencies concerning the distribution of USDA-donated foods acquired under various legislative authorities. The rule prescribes the terms and conditions under which donated foods may be obtained through distributing agencies for use in schools, child care institutions, nonprofit summer camps for children, charitable institutions, nutrition programs for the elderly, and otherwise in the assistance of needy persons. A number of provisions to strengthen and improve the State Processing Program were separated and published in a final rule July 1, 1988. (51 FR 23719) (FNS 84-513)

Timetable:

Action	Date	FR Cite
NPRM	06/19/85	50 FR 33470
Interim Final Rule	06/03/88	53 FR 20416
Final Action	06/30/89	

Small Entities Affected: Governmental Jurisdictions, Organizations

Government Levels Affected: State

Additional Information: ADDITIONAL LEGAL AUTHORITIES: 7 USC 612c Note; 42 USC 3030a; 42 USC 1760; 5 USC 301; 7 USC 1431e; 42 USC 1779

Agency Contact: Irene Lankford, Department of Agriculture, Food and Nutrition Service, Room 1107, Park Office Center, 3101 Park Center Dr., Alexandria, VA 22302, 703 756-3064

RIN: 0584-AA07

103. FOOD DISTRIBUTION PROGRAM ON INDIAN RESERVATIONS

Significance: Agency Priority

Legal Authority: 7 USC 2013(b)

CFR Citation: 7 CFR 253

Legal Deadline: None

Abstract: The rule reorganizes existing regulatory provisions for clarity and ease of reference. This rule describes the terms and conditions under which (1) USDA-donated foods (available under 7 CFR 250) may be distributed to households on or near Indian reservations; (2) the program may be administered by capable Indian tribal organizations; and (3) funds may be obtained from USDA for the costs incurred in administering the program. The rule also provides for the concurrent operation of the Food Distribution Program and the Food Stamp Program on Indian reservations when such concurrent operation is requested by an Indian tribal organization. (FNS 84-514)

Timetable:

Action	Date	FR Cite
NPRM	10/20/87	
Final Action	06/30/89	

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: State

Agency Contact: Irene Lankford, Department of Agriculture, Food and Nutrition Service, Room 1107, Park Office Center, 3101 Park Center Dr., Alexandria, VA 22302, 703 756-3064

RIN: 0584-AA00

104. EMERGENCY FOOD ASSISTANCE FOR VICTIMS OF DISASTERS

Legal Authority: 7 USC 2013(b); 7 USC 2014(h)

CFR Citation: 7 CFR 273; 7 CFR 280

Legal Deadline: None

Abstract: This rule would define special eligibility and issuance procedures during declared disasters. (FNS 84-001)

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/31/88	
Final Action	06/31/89	

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: State, Federal

Agency Contact: Irene Lankford, Department of Agriculture, Food and Nutrition Service, Room 1107, Park Office Center, 3101 Park Center Dr., Alexandria, VA 22302, 703 756-3064

RIN: 0584-AA24

105. CONFORMANCE WITH AID TO FAMILIES WITH DEPENDENT CHILDREN (AFDC) RULES: FOOD STAMP PROGRAM

Significance: Regulatory Program

Legal Authority: 7 USC 2014(f)

CFR Citation: 7 CFR 273

Legal Deadline: None

Abstract: This rule reviews Food Stamp and Aid to Families with Dependent Children regulations for inconsistencies and proposes conformance by altering either or both program's rules. (FNS 85-002)

Timetable:

Action	Date	FR Cite
ANPRM	02/19/85	50 FR 6970
NPRM	09/29/87	52 FR 36546
NPRM Comment Period End	11/30/87	
Final Action	11/30/88	

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: State

Agency Contact: Irene Lankford, Department of Agriculture, Food and Nutrition Service, Room 1107, Park Office Center, 3101 Park Center Dr., Alexandria, VA 22302, 703 756-3064

RIN: 0584-AA52

106. ADMINISTRATION/ MANAGEMENT: FOOD STAMP PROGRAM

Legal Authority: PL 99-198, Secs 1524, 1530, 1526, 1535, 1539

CFR Citation: 7 CFR 272.4; 7 CFR 272.3; 7 CFR 273.18; 7 CFR 275.15

Legal Deadline: NPRM, Statutory, April 1, 1987.

Abstract: This regulation implements the following five provisions of the Food Security Act of 1985: (1) sets standards for the periodic review of food stamp offices' hours of operation; (2) requires State agencies to encourage participation in the Expanded Food and Nutrition Education Program (EFNEP); (3) requires project areas with 5,000 or more households to establish units to detect fraud; (4) allows State agencies to enter into agreements with State agencies administering Unemployment Compensation laws so that food stamp State agencies can collect outstanding claims by withholding unemployment benefits and/or other methods of collecting claims when recoupment is not an available method; (5) requires the Department to require State agencies to change the certification procedures used in project areas where it is determined that payment error rates are impairing the integrity of the program. (FNS 86-011)

Timetable:

Action	Date	FR Cite
NPRM	03/09/87	52 FR 7158
Final Action	12/31/88	

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: State

Agency Contact: Irene Lankford, Department of Agriculture, Food and Nutrition Service, Room 1107, Park Office Center, 3101 Park Center Dr., Alexandria, VA 22302, 703 756-3064

RIN: 0584-AA63

107. ◆ EMPLOYMENT AND TRAINING REQUIREMENTS TECHNICAL CORRECTIONS PROPOSED RULE

Significance: Regulatory Program

Legal Authority: The Food Stamp Act of 1977, as amended; 7 USC 2011 to 2029

CFR Citation: 7 CFR 273.1; 7 CFR 273.7

Legal Deadline: None

Abstract: The proposed rule will clarify several aspects of the Food Stamp Program Employment and Training Rule published December 31, 1986, and will accomplish minor corrections in other portions of this rule. The clarifications and corrections are the result of program experience gained through the initial operations of a program component entirely new to the Food Stamp Program as a whole.

The Department is concerned that current regulations may be inequitable to States by mandating that they use the full October 1986 count of mandatory E&T participants in computing the base on which the Fiscal Year 1989 first reporting period 35 percent E&T placement standard will be applied. This procedure inflates State placement obligations for this period and makes it difficult for them to meet these obligations. The Department is also concerned that current regulations permit States agencies some latitude in counting individuals as "placed" in E&T programs for performance measurement purposes. This results in individuals being counted as "placed" in E&T programs more than once and inflates State placement success rates. This proposed rule implements (cont)

Timetable:

Action	Date	FR Cite
NPRM	06/23/88	53 FR 23630
Final Action Effective	11/29/88	

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State

Additional Information: ABSTRACT CONT: Departmental action to correct these inequities together with other minor alterations and clarifications.

Agency Contact: Irene Lankford, Assistant to the Associate Administrator, Food and Nutrition Service, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 1107, Park Office Center, Alexandria, VA 22302, 703 756-3064

RIN: 0584-AA72

108. ◆ SYSTEMATIC ALIEN VERIFICATION FOR ENTITLEMENTS

Significance: Regulatory Program

Legal Authority: PL 99-603; Immigration Reform and Control Act (IRCA) of 1986 (Section 121)

CFR Citation: 7 CFR 271; 7 CFR 272; 7 CFR 273; 7 CFR 275; 7 CFR 277

Legal Deadline: Other, Statutory, October 1, 1988.
Deadline for interim final rule

Abstract: This rule establishes procedures for State agencies to use to participate in the Systematic Alien Verification for Entitlements (SAVE) system. As required by IRCA, the Immigration and Naturalization Service (INS) implemented this system. IRCA requires the Food Stamp Program (FSP) and certain other entitlement programs to use SAVE to verify the immigration status of aliens applying for benefits. Such use is mandatory by October 1, 1988, and this addresses use during that period. The rule also provides guidelines for Federal reimbursement of administrative costs. In addition the rule implements nondiscretionary provisions of IRCA requiring all household members to attest to their citizenship or alien status and certain requirements relating to documentation of alien status.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/01/88	
Final Action	05/01/89	
Final Action Effective	05/01/89	

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: State, Federal

Agency Contact: Irene Lankford, Assistant to the Associate Administrator, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 1107, Alexandria, Virginia 22302, 703 756-3064

RIN: 0584-AA73

DEPARTMENT OF AGRICULTURE (USDA)
Food and Nutrition Service (FNS)

Completed Actions

109. WAIVER SIMPLIFICATION: FOOD STAMP PROGRAM

CFR Citation: 7 CFR 273; 7 CFR 273.21

Completed:

Reason	Date	FR Cite
Withdrawn	08/03/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Irene Lankford 703 756-3064

RIN: 0584-AA01

110. SIMPLIFIED APPLICATION AND STANDARDIZED BENEFITS: FOOD STAMP PROGRAM

CFR Citation: 7 CFR 282.10

Completed:

Reason	Date	FR Cite
Final Action	07/12/88	53 FR 26219
Final Action Effective	09/11/88	53 FR 26219

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: State

Agency Contact: Irene Lankford 703 756-3064

RIN: 0584-AA52

DEPARTMENT OF AGRICULTURE (USDA)
Food Safety and Inspection Service (FSIS)

Prerule Stage

111. ADMINISTRATIVE REGULATIONS

Legal Authority: 21 USC 601 et seq; 21 USC 451 et seq; 44 USC 3501 et seq; 5 USC 601 et seq; 7 CFR 1; EO 12291

CFR Citation: 9 CFR 304; 9 CFR 305; 9 CFR 306; 9 CFR 307; 9 CFR 329; 9 CFR 331; 9 CFR 335; 9 CFR 381

Legal Deadline: None

Abstract: The Agency will review administrative requirements for applying for, granting, refusing, inaugurating, and withdrawing inspection; detaining, seizing, and condemning meat and poultry products;

USDA—FSIS — Prerule Stage

assigning program employees; designating States and territories and providing reimbursable services; scheduling of operations, and for overtime and holiday services.

Would also determine adequacy of current regulations as they relate to petitioning the Agency for regulatory change and informing interested persons of Agency procedures for appeal in the event of adverse determinations. (FSIS 83-009)

Timetable:

Action	Date	FR Cite
Begin Review	01/00/89	
End Review	12/31/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: G. E. McEvoy, Director, Planning Office, Department of Agriculture, Food Safety and Inspection Service, Room 105, Annex Bldg., Washington, DC 20250, 202 447-3317

RIN: 0583-AA12

112. TRANSPORTATION

Legal Authority: 21 USC 451 et seq; 21 USC 601 et seq; 5 USC 601 et seq; EO 12291

CFR Citation: 9 CFR 325; 9 CFR 381, Subpart S

Legal Deadline: None

Abstract: The Agency will review Parts 325 and 381 Subpart S, of Title 9 of the Code of Federal Regulations relating to requirements on the movement of products between inspected facilities to determine if they reflect current Agency practice and whether they impose unnecessary burdens on industry. (FSIS 85-003)

Timetable:

Action	Date	FR Cite
Begin Review	10/01/87	
End Review	10/31/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: G. E. McEvoy, Director, Planning Office, PP, Department of Agriculture, Food Safety and Inspection Service, Room 105-Annex Bldg., Washington, DC 20250, 202 447-3317

RIN: 0583-AA55

113. ELIGIBILITY OF FOREIGN COUNTRIES FOR IMPORTATION OF PRODUCTS INTO THE UNITED STATES

Legal Authority: 21 USC 601 et seq; 21 USC 451 et seq

CFR Citation: 9 CFR 327; 9 CFR 381

Legal Deadline: None

Abstract: FSIS will review the import eligibility provisions of regulations promulgated under the Federal Meat Inspection Act and Poultry Products Inspection Act.

Timetable:

Action	Date	FR Cite
Begin Review	10/01/87	
End Review	12/31/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: G. E. McEvoy, Director, Planning Office, PP, Department of Agriculture, Food Safety and Inspection Service, Room 105, Annex Bldg., Washington, DC 20250, 202 447-3317

RIN: 0583-AA19

114. ◆ LABELING OF FRANKFURTERS AND SIMILAR PRODUCTS CONTAINING BINDERS

Legal Authority: 21 USC 451 et seq; 21 USC 601 et seq

CFR Citation: 9 CFR 317; 9 CFR 319; 9 CFR 381

Legal Deadline: None

Abstract: This advance notice of a proposed rule announces FSIS's intention to amend the Federal meat and poultry products inspection regulations to remove labeling requirements and use limitations required for certain binders in sausage, breakfast sausage, frankfurters, cheesefurters, bockwurst, similar products, and poultry rolls. This advance notice also requests information from interested persons as to whether granting the petition would result in false or misleading labeling or permit the use of binders in excess of what is needed to "bind" the products.

Timetable:

Action	Date	FR Cite
ANPRM	10/30/88	
ANPRM Comment Period End	12/30/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Ashland Clemons, Acting Director, Standards and Labeling Division, TS, Department of Agriculture, Food Safety and Inspection Service, 14th & Independence Ave., SW, Washington, DC 20250, 202 447-4293

RIN: 0583-AA32

DEPARTMENT OF AGRICULTURE (USDA)
Food Safety and Inspection Service (FSIS)

Proposed Rule Stage

115. VARIOUS AMENDMENTS TO ACCOMMODATE INSPECTION OF MEAT FOOD PRODUCTS UNDER TITLE IV OF THE FUTURES TRADING ACT OF 1986

Significance: Regulatory Program

Legal Authority: PL 99-641, Title IV

CFR Citation: 9 CFR 301 to 335

Legal Deadline: None

Abstract: In November, 1986, PL 99-641 amended the Federal Meat Inspection Act to permit the Department to vary the manner and frequency by which it conducts inspection in establishments producing meat food products. All existing inspection regulations are based upon and reflect the previous statutory requirement that Federal inspectors be continuously present in such establishments. FSIS must develop new inspection procedures to allocate inspection resources among such establishments based on a variety of factors, including (1) the nature and frequency of the processing operations, (2) the adequacy and reliability of the processing control and sanitary procedures, and (3) the establishment's history of compliance with inspection requirements. The meat inspection procedures will touch upon virtually all existing meat regulations concerning inspection of meat food products. Details of these new procedures and the specific proposed regulatory amendments will be developed upon the conduct in 1987 of a pilot program to test alternative procedures in selected plants.

Timetable:

Action	Date	FR Cite
NPRM	08/31/88	
NPRM Comment Period End	10/01/88	
Final Action	12/01/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Judith Segal, Director, Policy and Planning Staff, Department of Agriculture, Food Safety and Inspection Service, 14th & Independence Ave., SW, Room 327-E, Administration Building, Washington, DC 20250, 202 447-8353

RIN: 0583-AA25

116. REQUIREMENTS FOR PARTIALLY DEFATTED PRODUCTS

Significance: Regulatory Program

Legal Authority: 21 USC 601 et seq

CFR Citation: 9 CFR 318; 9 CFR 319

Legal Deadline: None

Abstract: Would establish a standard of identity and composition, and would provide temperature and handling requirements for partially defatted meat products. Would also allow for use of these products in a greater number of meat food products at higher use levels.

Current regulation is not adequate to assure accurate labeling or to prevent commercial misrepresentation of such products.

Timetable:

Action	Date	FR Cite
ANPRM	08/23/85	50 FR 34157
ANPRM Comment Period End	01/21/86	
NPRM	02/19/89	
NPRM Comment Period End	04/12/89	
Final Action	08/19/89	

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Action	Date	FR Cite
Final Action Effective	09/19/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Ashland Clemons, Acting Director, Standards and Labeling Division, Department of Agriculture, Food Safety and Inspection Service, Room 311-Cotton Annex, Washington, DC 20250, 202 447-8043

RIN: 0583-AA27

117. CONTROL OF SALMONELLA AND OTHER ENTERIC BACTERIA IN MEAT AND POULTRY PROCESSING

Significance: Regulatory Program

Legal Authority: 21 USC 601 et seq; 21 USC 451 et seq

CFR Citation: 9 CFR 318; 9 CFR 381

Legal Deadline: None

Abstract: Would permit an official meat or poultry establishment that has voluntarily developed effective microbiological controls for fresh packaged meat or poultry products to submit plans and records of such control systems to FSIS for approval. If the Administrator determines a control system to be adequate for the purpose of minimizing naturally occurring microbiological contaminations, he will approve the system, and the establishment will be permitted to use special labeling that acknowledges the use of an approved control system.

Timetable:

Action	Date	FR Cite
NPRM	02/03/89	
NPRM Comment Period End	04/03/89	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: W. H. Dubbert, Assistant Deputy Administrator, Science Program, FSIS, Department of Agriculture, Food Safety and Inspection Service, Room 401-Cotton Annex, Washington, DC 20250, 202 447-2336

RIN: 0583-AA28

118. VERIFIED PRODUCTION CONTROL PROGRAM

Significance: Regulatory Program

Legal Authority: 21 USC 451 et seq; 21 USC 601 et seq

CFR Citation: 9 CFR 317; 9 CFR 323; 9 CFR 381

Legal Deadline: None

Abstract: This proposed rule would amend the Federal meat and poultry products inspection regulations to aid in the control and reduction of residues of drugs, pesticides and other chemicals in meat and poultry products, and permit label claims concerning how an animal was raised to appear on meat and poultry products subject to USDA's ability to verify such claims.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Dr. W. R. Miller, Director, Residue Evaluation and Planning Division, Science Divisior., Department of Agriculture, Food Safety and Inspection Service, Room 603-Cotton Annex, Washington, DC 20250, 202 447-2328

RIN: 0583-AA29

119. DETERMINATION OF ADDED WATER IN COOKED SAUSAGES

Significance: Regulatory Program

Legal Authority: 21 USC 601 et seq

CFR Citation: 9 CFR 317; 9 CFR 318

Legal Deadline: None

Abstract: Would publish protocols for determining compliance of meat food products with current added water standards. Would differentiate in such products protein derived from meat and meat byproducts from protein derived from other sources. Would ensure that similar, competing ingredients for cooked sausages are treated consistently.

Timetable:

Action	Date	FR Cite
NPRM	06/18/87	52 FR 39659
NPRM Comment Period End	12/22/89	
Final Action	10/01/89	

Small Entities Affected: None

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Government Levels Affected: Undetermined

Agency Contact: Ashland Clemons, Acting Director, Standards and Labeling Division, Department of Agriculture, Food Safety and Inspection Service, Room 311-Cotton Annex, Washington, DC 20250, 202 447-9042

RIN: 0583-AA30

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120. SULFONAMIDES IN SWINE

Significance: Regulatory Program

Legal Authority: 21 USC 601 et seq

CFR Citation: 9 CFR 300; 9 CFR 310

Legal Deadline: None

Abstract: Would establish an in-plant testing program to monitor violative levels of sulfonamide residues in swine. Such program would be designed to encourage producers to market and packers to purchase only healthy animals that will produce safe and wholesome meat.

Timetable:

Action	Date	FR Cite
ANPRM	05/30/85	50 FR 25706
ANPRM Comment Period End	08/30/85	
NPRM	10/01/88	
NPRM Comment Period End	12/01/88	
Final Action	04/01/89	
Final Action Effective	05/01/89	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: W. R. Miller, Director, Residue Evaluation and Planning Division, Department of Agriculture, Food Safety and Inspection Service, Washington, DC 20250, 202 447-3007

RIN: 0583-AA31

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121. CATTLE POST-MORTEM INSPECTION PROCEDURES AND STAFFING PROCEDURES

Significance: Regulatory Program

Legal Authority: 21 USC 601 et seq

CFR Citation: 9 CFR 307; 9 CFR 310

Legal Deadline: None

Abstract: This proposed rule would improve post-mortem inspection procedures for cattle which will result in maximum inspection efficiency and increased productivity. By modernizing cattle inspection procedures, FSIS would increase its inspection productivity while assuring that only wholesome meat enters domestic commerce.

It is anticipated that the meat industry will experience a net gain if this system of inspection is implemented in spite of the initial costs of facility modifications which may be necessary in some establishments. Savings to the industry as a whole should occur because of increased productivity and reduced overtime.

Timetable:

Action	Date	FR Cite
NPRM	10/01/88	
NPRM Comment Period End	12/01/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Douglas Berndt, Director, Slaughter Inspection Standards & Procedures, Department of Agriculture, Food Safety and Inspection Service, Room 4444 South Bldg., Washington, DC 20250, 202 447-3219

RIN: 0583-AA32

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122. USE OF LACTIC ACID AND ACETIC ACID AS ANTI-MICROBIAL AGENTS ON MEAT AND POULTRY CARCASSES

Legal Authority: 21 USC 601 et seq; 21 USC 451 et seq

CFR Citation: 9 CFR 318; 9 CFR 381

Legal Deadline: None

Abstract: This proposed rule would amend Federal meat and poultry products inspection regulations by allowing lactic acid and acetic acid to be applied to meat and poultry carcasses for the purpose of reducing microbial contamination.

Timetable:

Action	Date	FR Cite
NPRM	02/05/89	
NPRM Comment Period End	04/05/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Ashland Clemons, Acting Director, Standards and Labeling Division, TS, Department of Agriculture, Food Safety and Inspection Service, Rm 311-Annex Bldg., Washington, DC 20250, 202 447-4293

RIN: 0583-AA43

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123. TRICHINA CONTROL REQUIREMENTS FOR DRY-CURED HAM

Legal Authority: 21 USC 601 et seq

CFR Citation: 9 CFR 318

Legal Deadline: None

Abstract: This proposed rule would amend the Federal meat inspection regulations by incorporating the dry-cured ham research study findings. This study evaluated the efficiency of present procedures in the commercial production of dry-cured hams and determined the combinations of curing time, temperature, salt concentration, and water activity necessary to inactivate t. spiralis.

Timetable:

Action	Date	FR Cite
NPRM	12/30/88	
NPRM Comment Period End	02/28/89	
Final Action	08/30/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Bill F. Dennis, Director, Processed Products Inspection Division, MPITS, Department of Agriculture, Food Safety and Inspection Service, Rm 2158-South Bldg., Washington, DC 20250, 202 447-3840

RIN: 0583-AA48

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124. USE AND PROTECTION OF APPROVED WATER SYSTEMS

Legal Authority: 21 USC 601 et seq; 21 USC 451 et seq; 42 USC 3007 et seq

CFR Citation: 9 CFR 318; 9 CFR 381

Legal Deadline: None

Abstract: This proposed rule would prescribe acceptable conditions for the reuse of water in official establishments. This rule would outline methods protecting the potable water supply and describe conditions of use of fresh water. In addition, the rule would also consolidate and make uniform pre-existing policies for the use and reuse of water and brine.

USDA—FSIS — Proposed Rule Stage

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Karen Wesson, Director, Facilities, Equipment, and Sanitation Div., Department of Agriculture, Food Safety and Inspection Service, Room 1140 South Bldg., Washington, DC 20250, 202 447-3885

RIN: 0583-AA54

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125. SULFONAMIDE AND ANTIBIOTIC RESIDUES IN YOUNG VEAL CALVES; CERTIFICATION REQUIREMENTS

Legal Authority: 21 USC 601 et seq

CFR Citation: 9 CFR 309; 9 CFR 310

Legal Deadline: None

Abstract: This proposed rule would be amended to require specific certification language, advise certifying parties of the consequences of false statements, and include custodians as well as producers as parties to certification. These changes will improve the effectiveness of the voluntary certifications by providing uniformity to certifications and warnings about false statements. Because of increasing high levels of antibiotic and sulfonamide residues found in young veal calves, the Food Safety and Inspection Service in 1984 initiated intensified inplant testing procedures to prevent adulterated meat from entering consumer channels. These procedures provide for a voluntary written certification program that allows for less intense testing of calves certified as not having been treated with drugs, or if so, that prescribed label directions were followed. More recently the Office of the Inspector General recommended that the Agency develop a standard form for the certified calf program.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: W. R. Miller, Director, Residue Evaluation and Planning Division, Department of Agriculture, Food Safety and Inspection Service, Washington, DC 20250, 202 447-2907

RIN: 0583-AA58

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126. CERTAIN PRODUCTS WITH MEAT INGREDIENTS — EXEMPTIONS FROM DEFINITION OF A "MEAT FOOD PRODUCT"

Legal Authority: 21 USC 601 et seq

CFR Citation: 9 CFR 301; 9 CFR 303

Legal Deadline: None

Abstract: This proposed rule would amend the Federal meat inspection regulations to exclude specific products and classes of products containing meat, meat byproducts, and/or meat food products from the definition "meat food product" and thereby would exempt these products from Federal inspection. The proposal identifies two broad conditions for exemption: (1) products containing 3 percent or less of raw meat or other portion of any carcass, or less than 2 percent of cooked meat or other portion of any carcass, and (2) products that historically have not been considered by consumers as products of the meat food industry. This proposal would replace current informal standards for exemptions with formal, codified exemptions.

Timetable:

Action	Date	FR Cite
NPRM	10/01/88	
NPRM Comment Period End	12/01/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Ashland Clemons, Acting Director, Standards and Labeling Division, TS, Department of Agriculture, Food Safety and Inspection Service, Washington, DC 20250, 202 447-4293

RIN: 0583-AA62

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127. USE OF CERTAIN BINDERS IN MEAT AND POULTRY PRODUCTS AND TRANSFER OF BINDERS IN TEXT TO THE TABLES OF APPROVED SUBSTANCES

Legal Authority: 21 USC 601 et seq; 21 USC 451 et seq

CFR Citation: 9 CFR 318; 9 CFR 319; 9 CFR 381

Legal Deadline: None

Abstract: This proposed rule would permit the use of wheat gluten, tapioca dextrin, when protein concentrate, and sodium caseinate as binders in various meat and poultry products. This action responds to petitions submitted by several companies requesting that the Food Safety and Inspection Service permit these substances in various meat and poultry products to improve the texture of the products.

Timetable:

Action	Date	FR Cite
NPRM	10/14/88	
Final Action	04/14/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Ashland Clemons, Acting Director, Standards and Labeling Division, TS, Department of Agriculture, Food Safety and Inspection Service, Washington, DC 20250, 202 447-4293

RIN: 0583-AA64

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128. IMMERSION CURED AND DRY CURED BACON

Legal Authority: 21 USC 601 et seq

CFR Citation: 9 CFR 318

Legal Deadline: None

Abstract: This proposed rule would limit nitrate to 120 parts per million (ppm) going into immersion cured bacon bellies and to 200 ppm going into dry cured bacon bellies. The principal effect of this proposed rule would be to reduce the formation of nitrosamines in bacon by prohibiting the use of nitrate in the production of immersion cured and dry cured bacon.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Bill F. Dennis, Director, Processed Products Inspection Division, Department of Agriculture, Food Safety and Inspection Service,

Rm. 2156 South Bldg., Washington, DC [illegible]

RIN: 0583-AA86

129. CONTROL OF ADDED SUBSTANCES AND LABELING REQUIREMENTS FOR TURKEY HAM PRODUCTS

Legal Authority: 21 USC 451 et seq

CFR Citation: 9 CFR 381

Legal Deadline: None

Abstract: This proposed rule would amend the definition and standard and labeling requirements for turkey ham products. The current provision limits the amount of added water and other substances contained in turkey ham products by requiring the weight of the finished product to be no more than the original weight of the turkey thigh meat used prior to curing. This provision would be replaced by provisions specifying a minimum meat protein content on a fat free basis (PFF) in various turkey ham products. Compliance procedures to assure conformance with the proposed standards would be based on contemporary statistical science applied to current processing.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Ashland Clemons, Acting Director, Standards and Labeling Division, TS, Department of Agriculture, Food Safety and Inspection Service, Room 311 Annex Building, Washington, DC 20250, [illegible]

RIN: 0583-AA86

130. ADDITIONAL TRICHINA DETECTION METHODS

Legal Authority: 21 USC 601 et seq

CFR Citation: 9 CFR 318

Legal Deadline: None

Abstract: This proposed rule would amend the regulations to permit use of an approved method for examining swine for evidence of trichinosis. The Food Safety and Inspection Service (FSIS) has been petitioned by a manufacturer of serological tests to amend the Federal meat inspection regulations to approve the use of immunoassays for the examination of swine for evidence of trichinosis infection. FSIS has reviewed the performance of the petitioner's assay in a laboratory where sera prepared by the Agency were tested by a precisely defined procedure and has concluded that immunoassays can effectively detect evidence of trichinosis in swine.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Ashland Clemons, Acting Director, Standards and Labeling Division, TS, Department of Agriculture, Food Safety and Inspection Service, Rm. 2159 South Bldg., Washington, DC [illegible]

RIN: 0583-AA87

131. NET WEIGHT

Significance: Regulatory Program

Legal Authority: 21 USC 601 et seq; 21 USC 451 et seq

CFR Citation: 9 CFR 317; 9 CFR 381

Legal Deadline: None

Abstract: This proposed rule would make Federal and State weights and measures procedures and techniques more consistent, objective and equitable. Under the proposed rule, USDA would adopt the National Bureau of Standards Handbooks 133 and 44 as its standards. The proposed amendment would recognize a fixed amount of acceptable moisture loss by product. This will replace the term "reasonable variation." Moreover the amendment will grant concurrent jurisdiction to State and local authorities to enforce net weight labeling of federally inspected meat and poultry products within their geographic area. The amendment will promote uniform treatment of moisture loss and weights and measures standards as well as encourage and enable greater State and local participation.

Timetable:

Action	Date	FR Cite
NPRM	10/30/88	
NPRM Comment Period End	12/30/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: John McCutcheon, Deputy Administrator, Meat & Poultry Inspection Technical Services, Department of Agriculture, Food Safety and Inspection Service, Rm. 350-E, Administration Bldg., Washington, DC [illegible]

RIN: 0583-AA88

132. LABELING OF MEAT FOOD PRODUCTS THAT CONTAIN MECHANICALLY SEPARATED (SPECIES) UNDER CERTAIN CIRCUMSTANCES

Significance: Agency Priority

Legal Authority: 21 USC 601 et seq

CFR Citation: 9 CFR 317

Legal Deadline: None

Abstract: This proposed rule would add a new exception to the requirement that the list of ingredients on the labels of meat food products shall show the common or usual names of the ingredients. The exception would apply to the use of Mechanically Separated (Species) (MS(S)), at levels no greater than ten percent of the livestock and poultry product portion of a meat food product, providing that the labeling of such product bear a calcium content declaration in accordance with section 317.2(j)(13)(ii) of the Federal meat inspection regulations (9 CFR 317.2(j)(13) (ii)). This action is the result of a petition submitted to the Food Safety and Inspection Service by several members of the meat industry to amend the labeling requirements for meat food products containing MS(S).

Timetable:

Action	Date	FR Cite
NPRM	10/01/88	
NPRM Comment Period End	12/01/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Ashland Clemons, Acting Director, Standards and Labeling Division, TS, Department of Agriculture, Food Safety and Inspection Service, Washington, DC 20250, [illegible]

RIN: 0583-AA71

133. ● PROCESSING INSPECTION UNDER DISCRETIONARY AUTHORITY

Significance: Agency Priority

Legal Authority: 21 USC 601 et seq; PL 96-511; 44 USC 3501 et seq; PL 99-641, Title IV; 7 USC 1901 et seq; 7 USC 450 et seq

CFR Citation: 9 CFR 301; 9 CFR 302; 9 CFR 303; 9 CFR 305; 9 CFR 306; 9 CFR 307; 9 CFR 308; 9 CFR 312; 9 CFR 314; 9 CFR 316; 9 CFR 317; 9 CFR 318; 9 CFR 320; 9 CFR 322; 9 CFR 325

Legal Deadline: None

Abstract: This proposed rule would amend the Federal meat inspection regulations and the poultry products inspection regulations to reflect a variety of changes in how Federal inspection coverage would be provided by FSIS in establishments that prepare meat food products and/or process poultry products beyond slaughter and evisceration under a 1986 amendment to the Federal Meat Inspection Act which authorizes increased Agency discretion in determining the frequency and manner of such inspections. The proposed regulations would provide for modifications primarily to rules governing agency organization, procedure and practice, revision of incompatible terminology in existing regulations, and the addition of rules describing the essential criteria to be used by FSIS in determining the conditions and methods of inspection coverage in such processing establishments.

Timetable:

Action	Date	FR Cite
NPRM	10/30/88	
NPRM Comment Period End	01/30/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Judith A. Segal, Director, Policy and Planning Staff, Department of Agriculture, Food Safety and Inspection Service, 14th & Independence Ave., SW, Washington, DC 20250, [illegible]

RIN: 0583-AA72

134. ● USE OF SODIUM LACTATE AND POTASSIUM LACTATE AS FLAVOR ENHANCERS IN MEAT AND POULTRY PRODUCTS

Legal Authority: 21 USC 451 et seq; 21 USC 601 et seq

CFR Citation: 9 CFR 318; 9 CFR 381

Legal Deadline: None

Abstract: This proposed rule would amend the Federal meat and poultry products inspection regulations to permit the use of sodium lactate and potassium lactate as flavoring agents and flavor enhancers in various meat and poultry products. FSIS has been petitioned by Oscar Mayer Foods Corporation, Madison, Wisconsin, and Shenandoah Products, Inc., Bridgewater, Virginia, to allow the use of these substances at a 2.0 percent level for use in preparation of meat and poultry products.

Timetable:

Action	Date	FR Cite
NPRM	10/14/88	
Final Action	04/14/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Ashland Clemons, Acting Director, Standards and Labeling Division, TS, Department of Agriculture, Food Safety and Inspection Service, 14th & Independence Ave., SW, Washington, DC 20250, [illegible]

RIN: 0583-AA75

135. ● REQUIREMENTS FOR THE PRODUCTION OF FERMENTED SAUSAGE

Legal Authority: 21 USC 601 et seq

CFR Citation: 9 CFR 318; 9 CFR 320

Legal Deadline: None

Abstract: This proposed rule would amend the Federal meat inspection regulations to establish specific requirements concerning processing procedures used in the production of semi-dry and dry fermented sausages. Currently, the Agency has only general requirements concerning the processing procedures for these products. This proposal will provide that a manufacturer of semi-dry and/or dry fermented sausages use either a model good manufacturing practice (GMP) procedure with specified or described critical control points, process control limits, and monitoring activities; or an approved processing procedure from a processing authority who would define the critical control points, process control limits, and monitoring activities for each processing procedure. In addition, the proposal requires that all processes for semi-dry and/or dry fermented sausages comply with a set of validation criteria to assure the product is not adulterated. The proposed rule provides the necessary processing requirements to assure that the production of fermented meat food products does not result in adulterated products.

Timetable:

Action	Date	FR Cite
NPRM	10/30/88	
NPRM Comment Period End	12/30/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Bill Dennis, Director, Processed Products Inspection Division, TS, Department of Agriculture, Food Safety and Inspection Service, 14th & Independence Ave., SW, Washington, DC [illegible]

RIN: 0583-AA77

136. ● PROCESSING PROCEDURES AND LABELING

Legal Authority: 21 USC 451 et seq; 21 USC 601 et seq

CFR Citation: 9 CFR 318; 9 CFR 381

Legal Deadline: None

Abstract: This proposed rule would amend the Federal meat and poultry products inspection regulations to establish specific requirements concerning processing procedures and cooking instructions used in the production of heated, uncured and comminuted meat food products and heated, uncured, comminuted, and breaded poultry food products. The proposed regulations would guide producers in manufacturing and labeling of heated products to reduce the potential for incidence of food-borne pathogen illnesses from consumption of commercially heated products.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Bill F. Dennis, Director, Processed Products Inspection Division, TS, Department of Agriculture, Food Safety and Inspection Service, 14th & Independence Ave., SW, Washington, DC 20250, 202 447-3860

RIN: 0583–AA81

137. ● TURKEY-BACON PRODUCTS

Legal Authority: 21 USC 451 et seq

CFR Citation: 9 CFR 381

Legal Deadline: None

Abstract: This proposed rule would amend the poultry products inspection regulations to permit preparation of partially cooked, cured and smoked poultry breakfast strip products which are intended to be cooked further before consumption. This action is in response to a petition submitted by Swift Eckrich, Inc., Oak Brook, Illinois, for a change in the requirements for cooked poultry products. FSIS would amend the regulations to require that the products be labeled with cooking instructions which will inform the consumer that the products are not suitable for consumption until thoroughly cooked.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Ashland Clemons, Acting Director, Standards and Labeling Division, TS, Department of Agriculture, Food Safety and Inspection Service, 14th & Independence Ave., SW, Washington, DC 20250, 202 447-6293

RIN: 0583–AA82

138. ● SODIUM/POTASSIUM LACTATE AS ANTIMICROBIAL AGENTS IN SPECIFIC MEAT AND POULTRY PRODUCTS

Legal Authority: 21 USC 451 et seq; 21 USC 601 et seq

CFR Citation: 9 CFR 318; 9 CFR 381

Legal Deadline: None

Abstract: This proposed rule would amend the Federal meat and poultry products inspection regulations to permit the use of sodium lactate and potassium lactate as antimicrobial agents in cooked meat and poultry products, and would provide for additional protection against the growth and toxin development of Clostridia botulinum in these products. FSIS has received a petition from Oscar Mayer Foods Corporation, Madison, Wisconsin, to use these substances in various cooked meat and poultry products at levels not to exceed 4.8 percent of the formulation.

Timetable:

Action	Date	FR Cite
NPRM	02/00/89	
NPRM Comment Period End	04/10/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Ashland Clemons, Acting Director, Standards and Labeling Divison, TS, Department of Agriculture, Food Safety and Inspection Service, 14th & Independence Ave., SW, Washington, DC 20250, 202 447-6293

RIN: 0583–AA83

139. ● PFF FOR TURKEY HAM

Legal Authority: 21 USC 451 et seq

CFR Citation: 9 CFR 381

Legal Deadline: None

Abstract: This proposed rule would amend the poultry products inspection regulations to permit the use of added water in turkey ham. The new standard provides for several categories of products that are delineated according to the protein content on a fat-free basis. FSIS was petitioned by the National Turkey Federation, Reston, Virginia, to establish protein fat-free values for turkey ham to promote product standardization and permit producers of turkey ham to compete more equitably with pork producers. This proposed rule would replace the current provision which limits the amount of added water and other substances contained in turkey ham products by requiring the weight of the finished product to be no more than the original weight of the turkey thigh meat used prior to curing.

Timetable:

Action	Date	FR Cite
NPRM	02/00/89	
NPRM Comment Period End	04/00/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Ashland Clemons, Acting Director, Standards and Labeling Division, TS, Department of Agriculture, Food Safety and Inspection Service, 14th & Independence Ave., SW, Washington, DC 20250, 202 447-6293

RIN: 0583–AA84

140. ● IMPORT OF LIVESTOCK CARCASSES WITH TISSUES REMOVED

Legal Authority: 21 USC 601 et seq

CFR Citation: 9 CFR 327

Legal Deadline: None

Abstract: This proposed rule would amend the Federal meat inspection regulations to remove the requirements prohibiting the importation into the United States of carcasses or parts of carcasses of livestock from which the pleura, peritoneum, body or portal lymph nodes are removed. These carcasses or parts would be imported based on the eligibility of the exporting countries, and whether they are wholesome, not adulterated and properly marked and/or labeled. This action is in response to a petition submitted by Cloverdale Foods Company, Minot, North Dakota.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Douglas L. Berndt, Director, Slaughter Inspection Standard and Procedures Division, TS, Department of Agriculture, Food Safety and Inspection Service, 14th & Independence Ave., SW, Washington, DC 20250, 202 447-3219

RIN: 0583–AA85

141. ● LACTIC ACID STARTERS

Legal Authority: 21 USC 451 et seq; 21 USC 601 et seq

CFR Citation: 9 CFR 318; 9 CFR 320

Legal Deadline: None

Abstract: This proposed rule would amend the Federal meat and poultry products inspection regulations to permit the use of lactic acid producing bacteria as a temperature abuse indicator in hermetically sealed meat food and poultry products that are sold refrigerated or frozen. The use of lactic acid producing bacteria in these products would inhibit the growth and toxin production by Clostridia botulinum, as well as impart flavors to the product in the event of temperature abuse during distribution and storage of the product.

Timetable:

Action	Date	FR Cite
NPRM	01/06/89	
NPRM Comment Period End	03/06/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Ashland Clemons, Acting Director, Standards and Labeling Division, TS, Department of Agriculture, Food Safety and Inspection Service, 14th & Independence Ave., SW, Washington, DC 20250, 202 447-6293

RIN: 0583–AA86

142. ● AUTOMATIC EXPIRATION SYSTEM FOR APPROVED LABELS

Legal Authority: 21 USC 451 et seq; 21 USC 601 et seq

CFR Citation: 9 CFR 317; 9 CFR 381

Legal Deadline: None

Abstract: This proposed rule would amend the Federal meat and poultry products inspection regulations to define a system whereby industry labels will have an automatic expiration date upon approval. The purpose of this action will be to prevent approved labels that are no longer in use from remaining in the data base unnecessarily. This will benefit both the public and the agency by improving our responsiveness to label inquiries and enforcement of changes in labeling regulations.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Ashland Clemons, Acting Director, Standards and Labeling Division, TS, Department of Agriculture, Food Safety and Inspection Service, 14th & Independence Ave., SW, Washington, DC 20250, 202 447-6293

RIN: 0583–AA87

143. ● SUBSTANCES APPROVED FOR USE IN MEAT PRODUCTS – REVISION OF LISTINGS

Legal Authority: 21 USC 601 et seq

CFR Citation: 9 CFR 318

Legal Deadline: None

Abstract: This proposed rule would amend the Federal meat inspection regulations to reorganize the table of approved substances in an alphabetical order by the substance name rather than by class of substance, to include substance approvals not listed as well as amend individual product standards, and separate those substances approved for use as processing aids into a second chart. This proposed rule will assist the user in locating a substance more quickly and provide more consistency in using the table, update the regulations to reflect existing policies and current industry practices, and provide clarity to the chart of substances.

Timetable:

Action	Date	FR Cite
NPRM	02/00/89	
NPRM Comment Period End	04/00/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Ashland Clemons, Acting Director, Standards and Labeling Division, TS, Department of Agriculture, Food Safety and Inspection Service, 14th & Independence Ave., SW, Washington, DC 20250, 202 447-6293

RIN: 0583–AA93

DEPARTMENT OF AGRICULTURE (USDA)

Food Safety and Inspection Service (FSIS)

Final Rule Stage

144. BINDER CONSISTING OF SODIUM ALGINATE, CALCIUM CARBONATE, LACTIC ACID, AND CALCIUM LACTATE

Legal Authority: 21 USC 601 et seq

CFR Citation: 9 CFR 318

Legal Deadline: None

Abstract: This final rule will permit the use of a binder complex approved for use in restructured meat products to be used in restructured poultry products in which binders are permitted, and will result in superior binding of chopped/ground/sectioned and formed poultry products.

Timetable:

Action	Date	FR Cite
Final Action	10/01/88	
Final Action Effective	11/01/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Ashland Clemons, Acting Director, Standards and Labeling Division, MPITS, Department of Agriculture, Food Safety and Inspection Service, Rm 311-Annex Bldg., Washington, DC 20250, 202 447-6293

RIN: 0583–AA34

145. STREAMLINED INSPECTION SYSTEM FOR BROILERS AND CORNISH GAME HENS

Significance: Agency Priority

Legal Authority: 21 USC 451 et seq

CFR Citation: 9 CFR 381

Legal Deadline: None

Abstract: This final rule will establish a new inspection system for broilers and cornish game hens in response to increased demands on Agency resources. The "streamlined inspection system" allows increased efficiency in the use of FSIS resources and those of the poultry industry while still providing consumers with wholesome, unadulterated products.

Certain changes in plant facilities are required but should result only in minor expenditures. The industry will realize gains through reduced charges for overtime, reduced workspace requirements, and increased productivity.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/29/86	51 FR 3569
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Douglas L. Berndt, Director, Slaughter Inspection Standards and Procedures, Department of Agriculture, Food Safety and Inspection Service, Room 4444 South Bldg., Washington, DC 20250, 202 447-3219

RIN: 0583-AA36

146. ASCORBIC ACID, ERYTHORBIC ACID, CITRIC ACID, SODIUM ASCORBATE, AND SODIUM CITRATE IN FRESH PORK CUTS

Legal Authority: 21 USC 601 et seq

CFR Citation: 9 CFR 317; 9 CFR 318

Legal Deadline: None

Abstract: This final rule will permit the use of ascorbic acid, citric acid, erythorbic acid, sodium ascorbate, and sodium citrate, singly or in combination to maintain the color of fresh pork cuts. Fresh pork cuts which have been treated to maintain color by the addition of these substances will be required to be labeled with a qualifying phrase, contiguous to the product name, which indicates that they have been treated to maintain color. Use of these substances will result in maintenance of color for a period of time equivalent to the microbiological shelf life of fresh pork cuts. This will permit extended distribution of pork cuts prepared and packaged in federally inspected establishments. The petitioner has supplied FSIS with sufficient information to satisfy the requirements of 9 CFR 318.7(a)(2) which provide for the issuance of a final rule. However, due to the potential significance of color maintenance through the use of added substances, this rule was published as an interim final rule with request for comments so that commercial and public comment can be obtained and considered prior to confirmation of the rule as final.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/22/86	51 FR 30052
ANPRM Comment Period End	12/22/86	
Final Action	10/15/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Ashland Clemons, Acting Director, Standards and Labeling Division, MPITS, Department of Agriculture, Food Safety and Inspection Service, Room 311-Annex Bldg., Washington, DC 20250, 202 447-6042

RIN: 0583-AA40

147. INGREDIENTS THAT MAY BE IDENTIFIED AS FLAVORS OR NATURAL FLAVORS WHEN USED IN MEAT AND POULTRY PRODUCTS

Legal Authority: 21 USC 601 et seq; 21 USC 451 et seq

CFR Citation: 9 CFR 317; 9 CFR 381

Legal Deadline: None

Abstract: This proposed rule would amend the Federal meat and poultry products inspection regulations to better define which substances should be permitted to be labeled as "flavors," "natural flavors," or "spices" on packages of meat and poultry products. The proposed rule addresses the use of substances which are often added to products for the purpose of serving as flavor enhancers, emulsifiers, stabilizers, binders, extenders, and as nutrients. Most of the substances that would be affected by the proposed rule are proteinaceous materials, having nutritional value, and which may be considered foods, in their own right. The proposed rule would require that these substances be identified by their common or usual names, thereby informing consumers of the origin of these materials including the species and specific animal tissues from which they are derived, if animal in origin. The proposed rule is designed in part to address the personal, cultural, and religious concerns of consumers, as well as the allergies or sensitivities some consumers may have to some of the substances.

Timetable:

Action	Date	FR Cite
NPRM	08/18/87	52 FR 30922
Final Action	10/01/88	
Final Action Effective	11/01/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Ashland Clemons, Acting Director, Standards and Labeling Division, TS, Department of Agriculture, Food Safety and Inspection Service, Rm 311-Annex Bldg., Washington, DC 20250, 202 447-6042

RIN: 0583-AA44

148. SAFETY AND SANITATION REQUIREMENTS FOR ELECTRICAL STIMULATING EQUIPMENT

Legal Authority: 21 USC 601 et seq

CFR Citation: 9 CFR 307; 9 CFR 308

Legal Deadline: None

Abstract: This final rule will amend the Federal meat inspection regulations to specify safety and sanitation requirements for electrical stimulating (EST) equipment. Federally inspected establishments may use EST equipment to accelerate rigor mortis in slaughtered meat animals (cattle, sheep, swine, goats, horses, mules, or other equines). The safety requirements would protect inspection personnel working near that equipment from the hazard of potentially lethal electric shock or other injury. The sanitation requirements would prevent adulteration of the carcasses.

Timetable:

Action	Date	FR Cite
NPRM	04/16/87	52 FR 12422
NPRM Comment Period End	06/12/87	
Final Action	10/01/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Karen Wesson, Director, Facilities, Equipment and Sanitation Div., Department of Agriculture, Food Safety and Inspection Service, Rm 1140-South Bldg., Washington, DC 20250, 202 447-3885

RIN: 0583-AA45

149. REQUIREMENTS FOR FOREIGN COUNTRY IMPORT CERTIFICATION AND LIVE ANIMAL IMPORTATION

Legal Authority: PL 99-198

CFR Citation: 9 CFR 327; 9 CFR 381

Legal Deadline: None

Abstract: This proposed rule would respond to amendments made to the Federal Meat Inspection Act by the Food Security Act of 1985. The amendments require that FSIS periodically certify residue control programs submitted by foreign countries desiring to export meat products to the United States. The amendments also provide the Secretary with the authority to issue an order prohibiting the importation of livestock for immediate slaughter that have been administered a drug or antibiotic banned for use in the United States.

Timetable:

Action	Date	FR Cite
NPRM	07/26/88	53 FR 27998
NPRM Comment Period End	09/20/88	
Final Action	02/01/89	
Final Action Effective	03/01/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: William Havlik, Assistant Deputy Administrator, International Programs, Department of Agriculture, Food Safety and Inspection Service, Room 341-E, Administration Bldg., 14th & Independence Ave., SW, Washington, DC 20250, 202 447-2644

RIN: 0583-AA47

150. USE OF AIR FOR CARCASS HIDE REMOVAL

Legal Authority: 21 USC 601 et seq

CFR Citation: 9 CFR 310

Legal Deadline: None

Abstract: This proposed rule would amend the Federal meat inspection regulations to allow several acceptable procedures for the inflation of carcasses and parts of carcasses with air injected during dressing operations. Any establishment interested in using air for other purposes than those mentioned in the proposed rule would be required to submit those procedures to FSIS for approval prior to its use.

Timetable:

Action	Date	FR Cite
NPRM	11/01/87	
NPRM Comment Period End	01/01/88	
Final Action	10/01/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Douglas L. Berndt, Director, Slaughter Inspection Standards and Procedures, TS, Department of Agriculture, Food Safety and Inspection Service, Rm 4444-South Bldg., Washington, DC 20250, 202 447-3219

RIN: 0583-AA10

151. MOVEMENT OF IMPORTED PRODUCT PRIOR TO REINSPECTION

Legal Authority: 21 USC 601 et seq; 21 USC 451 et seq

CFR Citation: 9 CFR 327; 9 CFR 381

Legal Deadline: None

Abstract: This proposed rule would prohibit any transportation of imported meat and poultry products from the port of first arrival until reinspected by FSIS. Responds to 1987 Office of Inspector General (OIG) report that noted physical and administrative control problems over product shipped to other locations after entering the United States before it had received reinspection. Based on the above, OIG recommended that FSIS take action to require that all imported products be reinspected at the port of first arrival rather than at their final destination.

Timetable:

Action	Date	FR Cite
NPRM	05/13/88	53 FR 17059
NPRM Comment Period End	07/12/88	
Final Action	01/01/89	
Final Action Effective	02/01/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Mark Manis, Director, Import Inspection Division, International Programs, FSIS, Department of Agriculture, Food Safety and Inspection Service, Rm. 4332-South Bldg., 14th & Independence Ave., SW, Washington, DC 20250, 202 447-2952

RIN: 0583-AA53

152. VOLUNTARY INSPECTION OF EXOTIC ANIMALS

Legal Authority: 7 USC 1622; 21 USC 601 et seq

CFR Citation: 9 CFR 350; 9 CFR 352

Legal Deadline: None

Abstract: This proposed rule would provide for the voluntary inspection of certain exotic animals under Food Safety and Inspection Service's voluntary inspection program and would provide for ante-mortem and post-mortem inspection on a fee-for-service basis of elk, deer, antelope, reindeer and water buffalo in the manner as is presently performed for American bison.

Timetable:

Action	Date	FR Cite
NPRM	02/24/89	53 FR 5387
NPRM Comment Period End	04/25/89	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Douglas L. Berndt, Director, Slaughter Inspection Stds. and Proc. Branch, Department of Agriculture, Food Safety and Inspection Service, Room 4444 South Bldg., Washington, DC 20250, 202 447-3219

RIN: 0583-AA00

USDA—FSIS

Final Rule Stage

153. SULFONAMIDE AND ANTIBIOTIC RESIDUES IN YOUNG VEAL CALVES; REDUCED TESTING

Significance: Agency Priority

Legal Authority: 21 USC 601 et seq

CFR Citation: 9 CFR 309; 9 CFR 310

Legal Deadline: None

Abstract: This rule would amend the Federal meat inspection regulations to modify the testing frequency of young veal calves under certain conditions for residues of sulfonamides and antibiotics.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/20/87	52 FR 2101
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: W. R. Miller, Director, Residue Evaluation and Planning Division, Department of Agriculture, Food Safety and Inspection Service, 14th & Independence Ave., SW, Washington, DC 20250, 202 447-2907

RIN: 0583-AA68

154. ● USE OF BINDING MIXTURE IN VARIOUS POULTRY PRODUCTS

Legal Authority: 21 USC 451 et seq

CFR Citation: 9 CFR 381

Legal Deadline: None

Abstract: This final rule would amend the poultry products inspection regulations to permit the use of a binder matrix in ground and formed poultry products. The matrix consists of a dry mixture of sodium alginate, calcium carbonate, calcium lactate and lactic acid and has been previously approved for use in meat products. FSIS has been petitioned by the Colorado State University Research Foundation, Fort Collins, Colorado, to approve these substances as ingredients which, in combination at specific ratios, have the technical effect of binding ground poultry pieces together to produce formed poultry products. FSIS is amending the regulations to add these substances to the table of approved substances as requested by the petitioner.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Ashland Clemons, Acting Director, Standards and Labeling Division, TS, Department of Agriculture, Food Safety and Inspection Service, 14th & Independence Ave., SW, Washington, DC 20250, 202 447-4293

RIN: 0583-AA73

155. ● DISPOSITION OF LIVESTOCK THYROID GLANDS AND LARYNXES

Legal Authority: 21 USC 601 et seq

CFR Citation: 9 CFR 310

Legal Deadline: None

Abstract: This final rule would amend the Federal meat inspection regulations to provide that livestock thyroid glands and the adjacent laryngeal muscle tissue be classified as unfit for human consumption and handled as inedible product. This action is being taken as a result of the health hazard of thyrotoxicosis associated with the consumption of meat trimmings containing cattle thyroid glands. It will also assure that thyroid glands and larynxes are not included in meat trimmings used in the preparation of meat products.

Timetable:

Action	Date	FR Cite
Final Action	10/31/88	
Final Action Effective	11/30/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Mark T. Mina, Acting Asst. Deputy Admin., Regional Operations, MPIO, Department of Agriculture, Food Safety and Inspection Service, 14th & Independence Ave., SW, Washington, DC 20250, 202 447-4565

RIN: 0583-AA74

155. ● INCREASE IN USE LEVELS OF SODIUM CITRATE AS AN ANTICOAGULANT

Legal Authority: 21 USC 601 et seq

CFR Citation: 9 CFR 318

Legal Deadline: None

Abstract: This final rule would amend the Federal meat inspection regulations to increase the level of sodium citrate allowed to be used as an anticoagulant in blood from 0.2 percent to 0.5 percent. FSIS has been petitioned by American Meat Protein Corporation, Ames, Iowa, to approve an increased use level of this substance as an anticoagulant in blood to 0.5 percent to facilitate the cleaning of equipment and the separation of red blood cells from plasma, as well as to improve sanitation.

Timetable:

Action	Date	FR Cite
Final Action	01/00/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Ashland Clemons, Acting Director, Standards and Labeling Division, TS, Department of Agriculture, Food Safety and Inspection Service, 14th & Independence Ave., SW, Washington, DC 20250, 202 447-4293

RIN: 0583-AA75

157. ● USE OF VARIOUS BINDERS IN CURED PORK PRODUCTS

Legal Authority: 21 USC 601 et seq

CFR Citation: 9 CFR 318; 9 CFR 319

Legal Deadline: None

Abstract: This final rule would amend the Federal meat inspection regulations to permit the use of food starch modified and other binders as water retention agents in cured pork products. FSIS has been petitioned by the Corn Refiners Association, Inc., Washington, DC, for the approval of food starch modified at a rate not to exceed 2 percent to enable ham processors to formulate products which will better meet the needs of consumers and food service operators. FSIS is amending the regulations to add this binder to the table of approved substances as requested by the petitioner. FSIS is also amending the regulations to add several other binders for use as water retention agents in cured pork products.

USDA—FSIS

Final Rule Stage

Timetable:

Action	Date	FR Cite
Final Action	02/00/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Ashland Clemons, Acting Director, Standards and Labeling Division, TS, Department of Agriculture, Food Safety and Inspection Service, 14th & Independence Avenue, SW, Washington, DC 20250, 202 447-4293

RIN: 0583-AA78

160. ● USE OF SORBITOL AS A FLAVORING AGENT IN SPECIFIC MEAT PRODUCTS

Legal Authority: 21 USC 601 et seq

CFR Citation: 9 CFR 318

Legal Deadline: None

Abstract: This final rule would amend the Federal meat inspection regulations to permit the use of sorbitol to reduce charring in pizza toppings and other cured meat products subject to severe heat treatment. FSIS has been petitioned by Quality Sausage Company, Inc., Dallas, Texas, to approve the use of sorbitol at a level of 2.0 percent of the product formula.

Timetable:

Action	Date	FR Cite
Final Action	01/30/89	
Final Action Effective	03/03/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Ashland Clemons, Acting Director, Standards and Labeling Division, TS, Department of Agriculture, Food Safety and Inspection Service, 14th & Independence Ave., SW, Washington, DC 20250, 202 447-4293

RIN: 0583-AA79

159. ● RESTORATION OF MEXICO TO LIST OF COUNTRIES ELIGIBLE TO IMPORT TO U.S

Significance: Agency Priority

Legal Authority: 21 USC 601 et seq

CFR Citation: 9 CFR 327

Legal Deadline: None

Abstract: This proposed rule would amend the Federal meat inspection regulations to restore the country of Mexico to the list of countries from which meat products may be eligible for importation into the United States. FSIS published a "confirmation of interim rules" on February 6, 1986, to remove Mexico from the list of countries eligible to import meat products into the U.S. This action was necessary because Mexico had failed to implement satisfactory residue testing and species verification programs resulting in its no longer meeting the provisions of the Federal Meat Inspection Act. Mexico has now corrected the deficiencies in its inspection system, and FSIS is proposing to relist Mexico as eligible to import cattle, sheep, swine and goat products into the U.S.

Timetable:

Action	Date	FR Cite
NPRM	07/25/88	53 FR 27866
NPRM Comment Period End	09/20/88	
Final Action	03/00/89	
Effective		

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Lawrence Skinner, Director, Foreign Programs Division, IP, Department of Agriculture, Food Safety and Inspection Service, 14th & Independence Ave., SW, Washington, DC 20250, 202 447-7618

RIN: 0583-AA80

163. ● CROSS-CONTAMINATION PREVENTION FOR ALL MEAT PROCESSED MEAT AND POULTRY PRODUCTS

Legal Authority: 21 USC 451 et seq; 21 USC 601 et seq

CFR Citation: 9 CFR 308; 9 CFR 318; 9 CFR 381

Legal Deadline: None

Abstract: This proposed rule would amend the Federal meat and poultry products inspection regulations to extend the current cross-contamination preventive requirements for cooked beef, roast beef and cooked corned beef, to all types of heat processed meat and poultry products.

Timetable:

Action	Date	FR Cite
Final Action	12/30/88	
Final Action Effective	01/30/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Mark T. Mina, Acting Asst. Deputy Admin., Regional Operations, MPIO, Department of Agriculture, Food Safety and Inspection Service, 14th & Independence Ave., SW, Washington, DC 20250, 202 447-4565

RIN: 0583-AA66

161. ● USE OF TOCOPHEROLS, ASCORBYL PALMITATE AND CITRIC ACID AS ANTIOXIDANTS IN ADDITIONAL PRODUCTS

Legal Authority: 21 USC 451 et seq; 21 USC 601 et seq

CFR Citation: 9 CFR 318; 9 CFR 381

Legal Deadline: None

Abstract: This final rule would amend the Federal meat and poultry products inspection regulations to permit the use of tocopherols, ascorbyl palmitate and citric acid as antioxidants in various products. FSIS has been petitioned by the Diamond Crystal Salt Company, Inc., St. Clair, Michigan, to approve the use of these substances in meat and poultry products at higher levels than 0.02 percent.

Timetable:

Action	Date	FR Cite
Final Action	01/00/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Ashland Clemons, Acting Director, Standards and Labeling Division, TS, Department of Agriculture, Food Safety and Inspection Service, 14th & Indepence Ave., SW, Washington, DC 20250, 202 447-4293

RIN: 0583-AA89

162. ● IMPORTATION OF MEAT AND POULTRY PRODUCTS; REFUSED ENTRY PRODUCT

Legal Authority: 21 USC 451 et seq; 21 USC 601 et seq

CFR Citation: 9 CFR 327; 9 CFR 381

USDA—FSIS — Final Rule Stage

Legal Deadline: None

Abstract: This proposed rule would amend the Federal meat and poultry products inspection regulations to clarify what actions the agency will take when refused entry product exported to another country is returned to the U.S. The proposal would add a proviso that any such products exported to another country and returned to the U.S. would be subject to seizure and condemnation in accordance with the Federal Meat Inspection Act or the Poultry Products Inspection Act.

Timetable:

Action	Date	FR Cite
Final Action	12/30/88	
Final Action Effective	01/30/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Patrick Clerkin, Director, Field Operations Division, CD, Department of Agriculture, Food Safety and Inspection Service, 14th & Independence Ave., SW, Washington, DC 20250, 202 447-3884

RIN: 0583-AA06

163. ◉ DEFINITION OF TERMS -- "IMPORTATION" AND "ENTRY"

Legal Authority: 21 USC 451 et seq; 21 USC 601 et seq

CFR Citation: 9 CFR 327; 9 CFR 381

Legal Deadline: None

Abstract: This interim rule would amend the Federal meat and poultry products inspection regulations to define the terms "importation" and "entry" to clarify when imported product becomes subject to U.S. requirements. Once product offered for importation has been reinspected by FSIS inspectors and the official mark of inspection has been applied, FSIS considers that such product has been entered into the U.S. and is the regulatory equivalent of domestic product. This action is a result of recent litigation which indicated the need for clarification of terms with respect to USDA's interpretation of provisions of the Federal Meat Inspection Act and the regulations thereunder concerning at what point FSIS considers imported products to be domestic products.

Timetable:

Action	Date	FR Cite
Final Action	12/31/88	
Final Action Effective	01/30/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Patricia Stolfa, Deputy Administrator, International Programs, Department of Agriculture, Food Safety and Inspection Service, 14th & Independence Ave., SW, Washington, DC 20250, 202 447-3473

RIN: 0583-AA91

DEPARTMENT OF AGRICULTURE (USDA)
Food Safety and Inspection Service (FSIS)

Completed Actions

164. STANDARD FOR FRANKFURTERS AND SIMILAR COOKED SAUSAGES

Significance: Regulatory Program

CFR Citation: 9 CFR 319

Completed:

Reason	Date	FR Cite
Final Action	03/15/88	53 FR 8425
Final Action Effective	04/14/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Ashland Clemons 202 447-6042

RIN: 0583-AA21

165. SWINE IDENTIFICATION AT OFFICIAL SLAUGHTERING ESTABLISHMENTS

Significance: Regulatory Program

CFR Citation: 9 CFR 309; 9 CFR 310; 9 CFR 320

Completed:

Reason	Date	FR Cite
Duplicate of RIN: 0583-AA39 Which was completed in the last Agenda	07/28/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Douglas Berndt 202 447-3213

RIN: 0583-AA25

166. DISPOSAL OF LIVESTOCK CARCASSES AND PARTS CONDEMNED FOR BIOLOGICAL RESIDUES

CFR Citation: 9 CFR 309; 9 CFR 310; 9 CFR 314

Completed:

Reason	Date	FR Cite
No further action at this time	07/28/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Douglas L. Berndt 202 447-3213

RIN: 0583-AA31

167. ELIMINATION OF SEALING REQUIREMENT FOR RENDERED EDIBLE ANIMAL FAT

CFR Citation: 9 CFR 316; 9 CFR 317; 9 CFR 330

Completed:

Reason	Date	FR Cite
Final Action	07/29/88	53 FR 28632
Final Action Effective	08/29/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Bill F. Dennis 202 447-3840

RIN: 0583-AA36

168. RANDOM WEIGHT PACKAGES; STATEMENT OF NET WEIGHT DECIMAL PLACES

CFR Citation: 9 CFR 317; 9 CFR 381

USDA—FSIS — Completed Actions

Completed:

Reason	Date	FR Cite
Final Action	07/29/88	53 FR 28634
Final Action Effective	08/29/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Bill F. Dennis 202 447-3840

RIN: 0583-AA37

169. DETERMINATION OF "ADDED WATER" IN COOKED SAUSAGES

Significance: Agency Priority

CFR Citation: 9 CFR 318

Completed:

Reason	Date	FR Cite
Duplicate of RIN: 0583-AA30	07/28/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret O'K. Glavin 202 447-9042

RIN: 0583-AA41

170. USE AND LABELING OF BLOOD COMPONENTS AS INGREDIENTS IN MEAT FOOD PRODUCTS

CFR Citation: 9 CFR 318; 9 CFR 317

Completed:

Reason	Date	FR Cite
No further action at this time	07/28/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Ashland Clemons 202 447-4293

RIN: 0583-AA42

171. GLUCONO DELTA LACTONE AS AN ACIDIFIER IN MEAT AND POULTRY PRODUCTS

CFR Citation: 9 CFR 318; 9 CFR 381

Completed:

Reason	Date	FR Cite
Final Action	03/09/88	53 FR 7493
Final Action Effective	04/08/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Ashland Clemons 202 447-4293

RIN: 0583-AA46

172. ANTIOXIDANTS IN FABRICATED STEAKS

CFR Citation: 9 CFR 319

Completed:

Reason	Date	FR Cite
No further action at this time	07/28/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Ashland Clemons 202 447-4293

RIN: 0583-AA50

173. NOTICE OF PROCEEDINGS

Significance: Agency Priority

CFR Citation: 9 CFR 335

Completed:

Reason	Date	FR Cite
Final Action	05/13/88	53 FR 17015
Final Action Effective	06/13/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Robert W. Gemler 202 447-7715

RIN: 0583-AA51

174. REQUIREMENTS FOR IMPORTED POULTRY PRODUCTS

Significance: Agency Priority

CFR Citation: 9 CFR 381

Completed:

Reason	Date	FR Cite
Duplicate of RIN: 0583-AA47	07/28/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: William Havlik 202 447-3944

RIN: 0583-AA52

175. REQUIREMENTS FOR FOREIGN COUNTRY CERTIFICATION AND LIVE ANIMAL IMPORTATION

Significance: Agency Priority

CFR Citation: 9 CFR 327

Completed:

Reason	Date	FR Cite
Duplicate of RIN: 0583-AA47	07/28/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Patricia Stolfa 202 447-3473

RIN: 0583-AA59

176. IMPLEMENTATION OF PORK IRRADIATION

Significance: Regulatory Program

CFR Citation: 9 CFR 317; 9 CFR 318; 9 CFR 319; 9 CFR 327; 9 CFR 331; 9 CFR 381

Completed:

Reason	Date	FR Cite
No further action at this time	07/28/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret O'K. Glavin 202 447-7617

RIN: 0583-AA61

177. TOTAL QUALITY CONTROL FOR LABELING

CFR Citation: 9 CFR 317; 9 CFR 381

Completed:

Reason	Date	FR Cite
No further action at this time	07/28/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Ashland Clemons 202 447-4293

RIN: 0583-AA63

178. ADDITIONAL TRICHINA DETECTION METHODS

CFR Citation: 9 CFR 318

Completed:

Reason	Date	FR Cite
Duplicate of RIN: 0583-AA07	07/28/88	

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USDA—FSIS — Completed Actions

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Ashland Clemons 202 447-4293

RIN: 0583-AA70

DEPARTMENT OF AGRICULTURE (USDA)
Foreign Agricultural Service (FAS)

Proposed Rule Stage

178. DETERMINATION OF THE MARKET STABILIZATION PRICE FOR SUGAR FOR FY 1989

Legal Authority: Presidential Proclamation 5002; dated November 30, 1982

CFR Citation: 7 CFR 6.300 to 6.302

Legal Deadline: None

Abstract: This notice sets forth the market stabilization price for sugar for the period October 1, 1987 - September 30, 1988. The Market Stabilization Price is used to determine bond requirements and maximum liabilities under certain programs authorized by Presidential Proclamation No. 5002 of November 30, 1982 (47 FR 54289). The calculation of the Market Stabilization Price is provided for in 7 CFR 6.300-6.302 (50 FR 30040). [FAS 88-003]

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Richard J. Finkbeiner, Regulatory Coordinator, Department of Agriculture, Foreign Agricultural Service, Room 4961-South Bldg., Washington, DC 20250, 202 447-6713

RIN: 0551-AA20

180. DETERMINATION OF IMPORT QUOTAS ON SUGAR FOR FISCAL YEAR 1988

Legal Authority: Presidential Proclamation 4941; dated May 5, 1982

CFR Citation: Not applicable

Legal Deadline: Other, Statutory. Import quotas on sugar for FY 1987 must be announced (filed in FR) no later than 15th day of month immediately preceding calendar quarter during which such determination shall be (cont)

Abstract: Presidential Proclamation 4941 dated May 5, 1982 amended headnote 3 of the Subpart A, Part 10, Schedule 1 of the Tariff Schedules of the United States (TSUS) (Headnote 3) to establish a system of quotas for U.S. sugar imports. (FAS 86-094)

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LEGAL DEADLINE CONT: in effect.

Agency Contact: Richard J. Finkbeiner, Regulatory Coordinator, Department of Agriculture, Foreign Agricultural Service, Room 4961-South Bldg., Washington, DC 20250, 202 447-6713

RIN: 0551-AA21

181. TYPES AND QUANTITIES OF AGRICULTURAL COMMODITIES AVAILABLE FOR DONATION OVERSEAS UNDER SECTION 416(B) OF THE AGRICULTURAL ACT OF 1949 FOR EACH FISCAL YEAR

Legal Authority: for future FY's: Food Security Act of 1985

CFR Citation: Not applicable

Legal Deadline: None

Abstract: For FY 1988: The "Food Security Improvements Act of 1986" amends the Food Security Act of 1985, as amended, to require an estimate of Commodity Credit Corporation stocks to be made available under Section 416(b) in FY 1988 by kind of commodity and quantity of each kind of commodity. The Food Security Act, as amended requires that this estimate be published in the Federal Register.

For future FY's: The Food Security Act of 1985, as amended, requires the above estimate be made and published in the Federal Register before the beginning of each fiscal year. (FAS 86-009)

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Richard Finkbeiner, Regulatory Coordinator, Department of Agriculture, Foreign Agricultural Service, Room 4961-South Bldg., Washington, DC 20250, 202 447-6713

RIN: 0551-AA23

DEPARTMENT OF AGRICULTURE (USDA)
Forest Service (FS)

Prerule Stage

182. PART 219 PLANNING

Significance: Agency Priority

Legal Authority: 10 USC 1604; 16 USC 1612; 5 USC 301

CFR Citation: 36 CFR 219

Legal Deadline: None

Abstract: The rules at 36 CFR 219 set forth the procedures and resource standards that guide development and approval of National Forest land and resource management plans as required by the National Forest Management Act of 1976.

Timetable:

Action	Date	FR Cite
Begin Review	04/00/90	
End Review	04/00/90	

Small Entities Affected: None

Government Levels Affected: None

USDA—FS — Prerule Stage

Additional Information: Review of these planning regulations is being rescheduled to allow completion of all forest plans. It is essential to orderly planning for National Forest System lands and resources that the planning process remain stable until all plans are completed. Review of 36 CFR 219 is therefore rescheduled to begin April 1990.

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1496

RIN: 0596-AA50

183. OFFICIAL FOREST SERVICE INSIGNIA

Legal Authority: 5 USC 301; 18 USC 701

CFR Citation: 36 CFR 284; 36 CFR 284.1; 36 CFR 284.2; 36 CFR 284.3; 36 CFR 284.4; 36 CFR 284.5

Legal Deadline: None

Abstract: Since 1905 the Forest Service emblem, a fir-like tree in the center of a shield, has served to identify the Federal Agency responsible for protecting, managing, and developing the National Forests. Forest users and the public recognize it as a symbol of the organization. The Chief may authorize other uses of the insignia, i.e., public service, educational, and commercial purposes through the issuance of licenses. Rules governing the external use of the official insignia are set forth at 36 CFR Part 284. The rule authorizes commercial use for which a royalty is paid and for public use for which no royalty is paid. Review of the existing regulation will determine the need for licensed royalty payment and the need for changing reporting requirements from quarterly to annually. Current licensees will participate in the review process.

Timetable:

Action	Date	FR Cite
Begin Review	04/15/87	
End Review	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1496

RIN: 0596-AA52

184. 36 CFR 271 - USE OF "SMOKEY BEAR" SYMBOL

Legal Authority: 16 USC 711

CFR Citation: 36 CFR 271

Legal Deadline: None

Abstract: The regulations govern how the name or image of "Smokey Bear" may be used, who may authorize the use of "Smokey Bear," and the use of official campaign materials, commercial licensing, and the association with the State Foresters and the Advertising Council. This review will focus on licensing and especially exclusive licenses and will consider counterpart regulations in Part 272-Use of "Woodsy Owl" Symbol as a possible approach.

Timetable:

Action	Date	FR Cite
Begin Review	10/01/88	
End Review	09/30/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1496

RIN: 0596-AA66

185. WHISKEYTOWN-SHASTA-TRINITY NATIONAL RECREATION AREA

Legal Authority: 16 USC 472; 16 USC 551

CFR Citation: 36 CFR 292, Subpart B

Legal Deadline: None

Abstract: The rules at 36 CFR 292, Subpart B govern joint administration of the Shasta and Clair Engle-Lewiston units of the National Recreation Area by the Forest Service and the Bureau of Reclamation. The rules also set forth standards for defining compatible private land uses within the National Recreation Area to govern decisions by local zoning authorities, or in the absence of such authorities, decisions on land uses by the Secretary of Agriculture. The review will focus on experience under the rules and whether they still serve the public interest in ensuring that development and management of the NRA meet Congressional intent.

Timetable:

Action	Date	FR Cite
Begin Review	03/00/89	
End Review	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1496

RIN: 0596-AA68

186. USE OF "WOODSY OWL" SYMBOL

Legal Authority: 7 USC 2201; 16 USC 528; 16 USC 529; 16 USC 530; 16 USC 531

CFR Citation: 36 CFR 272; 36 CFR 272.1; 36 CFR 272.2; 36 CFR 272.3; 36 CFR 272.4; 36 CFR 272.5; 36 CFR 272.6

Legal Deadline: None

Abstract: Woodsy Owl was originated in the early 1970s by the Forest Service, the Federal Agency responsible for protecting, managing, and developing the National Forest. The symbol represents a fanciful owl who wears forest green colored slacks, a brown colored belt, a Robin Hood style forest green colored hat with a red colored feather and furthers the slogan "Give a Hoot, Don't Pollute." The Chief of the Forest Service may authorize the use of Woodsy Owl through the issuance of licenses for commercial use, under certain specified conditions, and for non-commercial educational purposes, at no charge, when use is public service and will contribute to public information and education concerning wise use of the environment and programs which foster maintenance and improvement of environmental quality. Rules concerning the external use of the Woodsy Owl symbol are set forth at 36 CFR Part 272. The rule authorizes commercial use for which a royalty is paid and public use for which no royalty is paid. Review of the existing regulation will determine the need for licensed royalty payment and the need for changing reporting requirements from quarterly to annually. (cont)

USDA—FS

Prerule Stage

Timetable:

Action	Date	FR Cite
Begin Review	04/15/88	
End Review	10/31/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ABSTRACT CONT: Current licensees will participate in the review process.

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596-AA76

157. 36 CFR 241 WILDLIFE: COOPERATION IN WILDLIFE PROTECTION, WILDLIFE MANAGEMENT AND FEDERAL REFUGE REGULATIONS

Legal Authority: Sec 1, 30 Stat 35; Sec 1, 33 Stat 628; Sec 1, 39 Stat 476; 16 USC 472, 551, 683

CFR Citation: 36 CFR 241

Legal Deadline: None

Abstract: This rule is being reviewed as required by USDA Departmental Regulation 1512-1, which requires the review of existing rules on a five year cycle. The Forest Service does not anticipate substantial public comment to 36 CFR 241 as it has been successfully applied.

36 CFR 241.1 describes Forest Service cooperation with State, County and Federal officials in the enforcement of all laws and regulations for the protection of wildlife. Forest Service employees may be appointed as deputy game wardens with full power to enforce State laws and regulations.

36 CFR 241.2 describes how Forest Service cooperates with States in developing plans for securing and maintaining desirable populations of wildlife species including entry into cooperative agreements for such purposes.

36 CFR 241.3 regulates hunting of game or non-game animals on Forest Service lands not managed cooperatively with States. Persons desiring to hunt on this land must procure a permit. Forest Service will cooperate with persons, firms, corporations and county and State officials in the management of (cont)

Timetable:

Action	Date	FR Cite
Begin Review	02/01/88	
End Review	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ABSTRACT CONT: animals on national forest lands not having cooperative agreements for wildlife management with States. The Forest Service may sell or exchange or accept donations of animals in promoting conservation of wildlife.

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596-AA81

186. ISOLATED CABIN AUTHORIZATIONS

Significance: Agency Priority

Legal Authority: 16 USC 551; 16 USC 497

CFR Citation: 36 CFR 251

Legal Deadline: None

Abstract: Agency policy is to terminate isolated cabin authorizations on National Forest System land that were constructed without advance authorization and subsequently authorized by special use permit. These cabins are used for part- or full-time occupancy. These cabins differ from recreation residences which were established in tracts specific for this purpose and built with Agency approval and supervision. Isolated cabins originated in several ways, including encroachment and mining claims. They restrict management of the surrounding National Forest land and deprive the public from the use and enjoyment of the land actually occupied and the surrounding area. The action proposed is to seek input from the public as to whether the present policy should be continued, or whether it should be revised so as to examine each isolated occupancy and determine whether, in the interests of fairness and equity, the cabin should be converted to a recreation residence. (cont)

Timetable:

Action	Date	FR Cite
ANPRM	01/00/89	
ANPRM Comment Period End	03/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ABSTRACT CONT: This proposal to revise current policy, originally included in proposed policy on recreation residences (52 FR 206-208). Public comments and continuing discussions with recreation residence permittees on that policy revealed widely divergent views on the Agency's policy, strongly suggesting that isolated cabins be treated separately from recreation residences. Therefore, so as to not further delay implementation of final policy on recreation residences, a decision has been made to seek additional public comment on the isolated cabin policy before a decision is made to revise the policy.

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596-AA85

188. ◆ 36 CFR 223 SALE AND DISPOSAL OF NATIONAL FOREST TIMBER, SUBPART A - GENERAL PROVISIONS

Legal Authority: 16 USC 472a; 16 USC 618

CFR Citation: 36 CFR 223, Subpart A

Legal Deadline: None

Abstract: This is a five year review of 36 CFR 223, Subpart A. Subpart A primarily authorizes the conditions for free use of National Forest timber.

Timetable:

Action	Date	FR Cite
Begin Review	01/01/89	
End Review	05/01/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box

USDA—FS

Prerule Stage

96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596-AA89

190. ◆ 36 CFR 223 SALE AND DISPOSAL OF NATIONAL FOREST TIMBER, SUBPART B - TIMBER SALE CONTRACTS

Legal Authority: 16 USC 472a; 16 USC 618

CFR Citation: 36 CFR 223, Subpart B

Legal Deadline: None

Abstract: This is a five year review of 36 CFR 223, Subpart B. Subpart B provides for the sale and disposal of National Forest timber, including contract conditions and provisions, advertisement and bids, award of contracts, and contract administration.

Timetable:

Action	Date	FR Cite
Begin Review	06/01/89	
End Review	10/01/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596-AA90

191. ◆ SPECIAL AREAS

Legal Authority: Sec. 1, 30 Stat 35, as amended; 62 Stat 100; Sec. 1, 33 Stat 628; 16 USC 551; 16 USC 472

CFR Citation: 36 CFR 294.1

Legal Deadline: None

Abstract: The agency will undertake a review of its existing regulations, at 36 CFR 294.1 that provide for the setting aside of areas of National Forests, other than Wilderness or wild areas, which should be managed principally for recreation. The rule establishes size classes for areas that may or may not be designated by the Chief of the Forest Service and the Secretary of Agriculture; describes examples of the types of areas that might be set aside, and provides for clearly marking these areas on the ground. Areas classified under this section are set apart and reserved for public recreation use and such classification constitutes a formal closing of the area to any use or occupancy inconsistent with the classification.

Timetable:

Action	Date	FR Cite
Begin Review	12/00/88	
End Review	07/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596-AA91

DEPARTMENT OF AGRICULTURE (USDA)

Proposed Rule Stage

Forest Service (FS)

192. ◆ SUSPENSION AND DEBARMENT OF TIMBER PURCHASERS, 36 CFR 223, SUBPART C

Significance: Agency Priority

Legal Authority: PL 94-588, Sec 14; 16 USC 472a

CFR Citation: 36 CFR 223, Subpart C

Legal Deadline: None

Abstract: Currently, suspension and debarment of timber purchasers means the debarred entity is prevented from bidding or being awarded Forest Service timber sale contracts. Recently, suspended and/or debarred purchasers have been serving as subcontractors on Forest Service timber sale contracts, or acting as purchaser's representatives to receive notices and to take action on contracts. This has the effect of negating the suspension/debarment action, which is to protect the Government. The rule will be revised to prevent suspended and/or debarred purchasers from serving as subcontractors or purchaser representatives.

Timetable:

Action	Date	FR Cite
NPRM	02/01/89	
NPRM Comment Period End	03/30/89	
Final Action	05/01/89	
Final Action Effective	06/01/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596-AA09

193. LAND STATUS AND TITLE RECORDS

Legal Authority: 16 USC 472; 16 USC 551; 16 USC 1603

CFR Citation: 36 CFR 200.12, (New)

Legal Deadline: None

Abstract: Objective is to establish the Land Status Record as the official record of title for National Forest System lands and to set forth the authorities, policies, and procedures for recording, custody, maintenance, and use of title documents and title status reports. (FS 85-012)

Timetable:

Action	Date	FR Cite
NPRM	11/01/88	
NPRM Comment Period End	01/00/89	
Final Action	04/00/89	
Final Action Effective	05/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, PO Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596-AA24

194. ACCESS TO NON-FEDERAL LANDS

Legal Authority: PL 96-487, Sec 1323(a); 16 USC 3210(a)

CFR Citation: 36 CFR 251.53; 36 CFR 251.80

USDA—FS

Proposed Rule Stage

Legal Deadline: None

Abstract: The proposed regulation will tie the granting of special-use authorizations for ingress and egress under the Alaska National Interest Lands and Conservation Act (ANILCA) to the existing authorities for granting authorizations to use or occupy National Forest lands and remove the discretionary aspects of those laws and regulations when applied to parties qualifying for access under ANILCA. (FS 85-001)

Timetable:

Action	Date	FR Cite
NPRM	[illegible]	53 FR 37795
NPRM Comment Period End	11/28/88	
Final Action	04/15/89	
Final Action Effective	05/15/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, PO Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596-AA31

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195. DOWN PAYMENTS/PERIODIC PAYMENTS ON NATIONAL FOREST TIMBER SALES

Legal Authority: 16 USC 472a; 16 USC 618

CFR Citation: 36 CFR 223.52; 36 CFR 223.50

Legal Deadline: None

Abstract: The Federal Timber Sale Contract Payment Modification Act directs the Forest Service to require purchasers to make down payments and periodic payments on timber sales. The objective of these requirements is to discourage speculative bidding on National Forest System timber sales. A rule published 10/11/85 at 50 FR 41496 requires cash down payments and a midpoint payment. However, to fully comply with the Act, additional rules are required. This rule will identify the requirements for periodic payments. (FS 85-014).

Timetable:

Action	Date	FR Cite
NPRM	01/17/85	50 FR 2591
NPRM	11/06/87	52 FR 43020
NPRM Comment Period End	02/19/88	53 FR 544
NPRM	11/01/88	
NPRM Public Comment Period End	01/31/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: As listed in prior agendas, this action included additional rules relating to providing adjustments in terms of timber sale contracts in response to market conditions. The agency has decided to issue a new proposal that addresses only down payments/periodic payments and to issue a separate rule on market related contract term adjustments. See RIN 0596-AA04.

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, PO Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596-AA33

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196. GRAZING AND LIVESTOCK USE AND MANAGEMENT OF WILD, FREE-ROAMING HORSES AND BURROS

Legal Authority: 43 USC 1901; 16 USC 1331 to 1340; 16 USC 551; 7 USC 1011; 31 USC 9701

CFR Citation: 36 CFR 222, Subpart A; 36 CFR 222, Subpart B

Legal Deadline: None

Abstract: Minor amendments to 36 CFR 222, Subparts A and B are under consideration to (1) delete the portion pertaining to Grazing Advisory Boards since the authority for these Boards under FLMA expired 12/31/85, (2) refine the procedures for placing wild horses and burros in private maintenance and care, (3) clarify the notification allowed before cancelling a permit when lands grazed are to be devoted to another public purpose including disposal, and (4) delete the reference to the Granger-Thye Act concerning range improvements, and (5) authorize the Chief of the Forest Service to assess a service charge to recover the cost of processing grazing permit applications and permit waivers, and issuing grazing permits. (FS 86-004)

Timetable:

Action	Date	FR Cite
Review of Subpart B - notice of completion of review; no change in rules required	[illegible]/87	52 FR 30359
NPRM	08/16/88	53 FR 30954
NPRM Comment Period End	10/17/88	53 FR 30954
Final Action	02/00/89	
Final Action Effective	03/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: The dates projected are for proposed and final rules revising 36 CFR 222, Subpart A-grazing and livestock use. No further rulemaking activity is planned on Subpart B. The review of Subpart B pursuant to EO 12291 concluded that there is no need to revise these rules (See Timetable).

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, PO Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596-AA35

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197. COLLECTION OF REIMBURSABLE COSTS FOR PROCESSING SPECIAL-USE APPLICATIONS AND ADMINISTRATION OF SPECIAL-USE AUTHORIZATIONS

Significance: Regulatory Program

Legal Authority: 43 USC 1764; 31 USC 483a; 30 USC 181 (Mineral Leasing Act)

CFR Citation: 36 CFR 251.58

Legal Deadline: None

Abstract: The objective of this rulemaking is to establish the policy, procedures, and guidelines for recovering costs incurred by the Forest Service in the administration of special uses on National Forest System Lands. In addition, the rulemaking will propose minor clarifying amendments resulting from conclusion of review of the existing regulation. (RIN 0596-AA20) (FS 86-005)

USDA—FS

Proposed Rule Stage

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
Final Action	05/00/89	
Final Action Effective	06/00/89	
NPRM Comment Period End	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: This rulemaking will incorporate actions under 0596-AA20.

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, PO Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596-AA36

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198. MODIFY THE GENERAL PROHIBITION AGAINST USE OF VEHICLES IN EXCESS OF 40 INCHES IN WIDTH ON TRAILS

Legal Authority: 16 USC 551

CFR Citation: 36 CFR 261.12(e)

Legal Deadline: None

Abstract: The objective of this action is to permit forest officers more discretion for controlling off-road vehicle use. Three factors have created the need to modify this regulation: (1) the general prohibition at 36 CFR 261.12(e) controls trail use by width of vehicle. Originally developed to control four-wheel-drive vehicles on trails, this method uses a fairly arbitrary device (width) to control use; (2) off-road vehicle plans (36 CFR 295) use vehicle types to prescribe the vehicles that are permitted to use forest trails; (3) some recent models of trail vehicles (all terrain vehicles and snowmobiles) exceed the forty inch rule by one to five inches. The combination of the two methods of control with the larger model sizes has created confusion among users about ORV plan direction and created law enforcement difficulties. The proposed action would clarify the regulations and still maintain the tools necessary to control off-road vehicle use. (FS 86-007)

Timetable:

Action	Date	FR Cite
NPRM	09/14/88	53 FR 35526
NPRM Comment Period End	11/14/88	
Final Action	03/00/89	
Final Action Effective	04/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, PO Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596-AA38

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199. REVISE THE DEFINITION OF "MECHANICAL TRANSPORT" AT 36 CFR 293.6(A)

Legal Authority: 16 USC 113 to 136; 16 USC 528 to 531; 16 USC 577 to 577c; 16 USC 1133

CFR Citation: 36 CFR 293.6(a)

Legal Deadline: None

Abstract: The objective of this action is to clarify the definition of mechanical transport in 36 CFR 293.6(a). Except where specifically provided for, the Wilderness Act (16 USC 1133) prohibits both motorized equipment and mechanical transport. Mechanical transport includes devices such as bicycles, hang gliders, wheeled carts, and other items designed to carry people or supplies and powered by either "non living" or "living" power sources. (FS 86-009)

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	
NPRM Comment Period End	02/00/89	
Final Action	04/00/89	
Final Action Effective	05/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596-AA39

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200. CONSERVATION OF FISH, WILDLIFE, AND THEIR HABITATS ON THE COPPER RIVER ADDITION AND COPPER RIVER-BERING RIVER PORTION, CHUGACH NATIONAL FOREST, ALASKA

Legal Authority: PL 96-487, Title V

CFR Citation: Not yet determined

Legal Deadline: None

Abstract: December 2, 1980, the Alaska National Interest Lands Conservation Act was signed into law. Section 501 (b) of the law requires that the Secretary of Agriculture promulgate regulations for the conservation of fish and wildlife and their habitats on the Chugach National Forest. The general National Forest System regulations and other existing laws governing management of National Forest System lands are applicable except as supplemented by these regulations or amended by the ANILCA, August 17, 1984. The new Chugach National Forest land management plan was appealed by 17 appellants. The settlement agreement specifies that subject to valid existing rights, the Forest Service will not allow timber harvest, road construction, surface occupancy for mineral leasing prior to publication of final regulations or completion of management area analysis for the Copper River Management Area. There are no alternatives to development of these regulations.

Timetable:

Action	Date	FR Cite
NPRM	01/00/89	
NPRM Comment Period End	02/00/89	
Final Action	04/00/89	
Final Action Effective	05/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596-AA41

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201. LAND EXCHANGES

Significance: Agency Priority

Legal Authority: 16 USC 485; 16 USC 486; 16 USC 516; 7 USC 1011; 16 USC 555a; 43 USC 1715; 43 USC 1716

CFR Citation: 36 CFR 254.1, (Revision); 36 CFR 254.15, (Revision)

Legal Deadline: None

Abstract: Changes in existing regulations are needed to correct errors, delete obsolete portions, update to reflect current authorities, clarify ambiguities, and supplement by incorporating new requirements on negotiation and resolution of disputes.

Timetable:

Action	Date	FR Cite
NPRM	01/00/89	
NPRM Comment Period End	03/00/89	
Final Action	07/00/89	
Final Action Effective	08/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596-AA42

202. REVISION OF TIMBER SALE CONTRACT FORMS FS-2400-6 AND FS-2400-6T

Significance: Regulatory Program

Legal Authority: 16 USC 535; 16 USC 551; 16 USC 472a; 16 USC 607A; 16 USC 618; 42 USC 4461

CFR Citation: None

Legal Deadline: None

Abstract: The present timber sale contract Form FS-2400-6 was developed in September 1973, and the Form FS-2400-6T was developed in October 1973. Since these dates several Acts, Laws, and policy changes have necessitated deletion of existing provisions and inserting supplemental provisions. The need to revise these documents has been recognized since the late 1970's. The revision will provide for clarification of provisions to reduce the potential for disputes between purchasers and the Forest Service. There will be no changes in the basic contract concepts except those dictated by law, regulation, and related policy. Comments from interested individuals and organizations will be utilized, as appropriate, in the formulation of the provision language.

Timetable:

Action	Date	FR Cite
Notice of availability; request for comment	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596-AA45

203. LEASABLE MINERAL REGULATIONS

Significance: Regulatory Program

Legal Authority: 16 USC 473 to 475; 16 USC 477 to 482; 16 USC 551; 16 USC 528 to 531; 90 Stat. 2949 as amended

CFR Citation: 36 CFR 228, Subpart F to H

Legal Deadline: None

Abstract: These subparts will set forth the rules by which the Forest Service will process and respond to proposals received from the Department of the Interior (DOI) for the issuance of mineral licenses, prospecting permits and leases, and for the approval of operating plans. The Forest Service has no regulations at this time which has resulted in inconsistent and untimely responses to the DOI. The only other alternative considered is not to promulgate regulations. Public costs are insignificant but public benefits could be substantial in that proposals should be processed more efficiently.

Timetable:

Action	Date	FR Cite
NPRM	03/00/89	
NPRM Comment Period End	05/00/89	
Final Action	08/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: This proposal has been rescheduled because of the need to give priority to issuance of oil and gas leasing regulations (entry no. 184).

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596-AA46

204. APPLICATION PROCEDURES AND FEES FOR HYDROELECTRIC USES ON NATIONAL FOREST SYSTEM LANDS

Legal Authority: 16 USC 551; 43 USC 1761

CFR Citation: 36 CFR 251.54; 36 CFR 251.57

Legal Deadline: None

Abstract: Regulations are needed to reduce confusion regarding the role of the Forest Service and its special-use authorization in permitting hydroelectric uses on National Forest System lands. The regulations' objective will be to establish procedures, compatible with the procedures of the Federal Energy Regulatory Commission (FERC) for obtaining various approvals and involvement of the Forest Service in a timely manner.

Title V, Section 501 of the Federal Land Policy and Management Act of 1976 (FLPMA) requires that fees be paid for the use of NFS land; regulations have not yet been established to put these fees in effect. The objective is to establish a fee system for hydroelectric uses. A Notice of Proposed Policy was published 6/8/84 and comments were received. The proposed rule would take those comments into account.

Timetable:

Action	Date	FR Cite
NPRM	11/01/88	
NPRM Comment Period End	12/15/88	
Final Action	02/00/89	
Final Action Effective	03/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: None

Public Compliance Cost: Initial Cost: $0; Yearly Recurring Cost: $2,033,000; Base Year for Dollar Estimates: 1986

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596-AA47

205. LOCATABLE MINERALS

Significance: Agency Priority

Legal Authority: 16 USC 478; 16 USC 551

CFR Citation: 36 CFR 228, Subpart A

Legal Deadline: None

Abstract: To facilitate the orderly development of locatable minerals on the National Forest System public domain in an environmentally sound manner. Since the regulations were promulgated in 1974, certain legal requirements have changed due to the provisions of the Wilderness Act and recent court decisions; some sections of the regulations no longer apply and revisions and updating are necessary. Major changes proposed will specifically address the requirements for wilderness operations and, secondly, will clarify the mechanism for administering locatable mineral activities not conducted on mining claims but which are nevertheless authorized by the 1872 mining law.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
NPRM Comment Period End	12/00/88	
Final Action	04/00/89	
Final Action Effective	05/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596-AA48

206. GRAZING FEES; EASTERN AND SOUTHERN REGIONS

Significance: Regulatory Program

Legal Authority: 16 USC 551; 31 USC 483a; 43 USC 1901

CFR Citation: 36 CFR 222.53

Legal Deadline: None

Abstract: Different grazing fee systems are used in the Eastern and Southern Regions of the Forest Service. The current system in the Eastern Region is market driven. The system in the Southern Region is based on a cost of livestock production/ability to pay methodology which currently results in below market fees. Two alternatives are being considered. The first would continue the two different fee systems in the eastern U.S. The second alternative would implement a uniform market driven fee system in both Regions. The advantages of this alternative over the first are:

(1) Competitive bidding with a minimum bid price would be fair and equitable to all parties, the livestock owners and the government.

(2) The fee system would be cost effective and economic to administer.

(3) The fee system would provide for investments in cost effective range improvements on National Forest System lands in the eastern states.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	
NPRM Comment Period End	02/00/89	
Final Action	06/00/89	
Final Action Effective	07/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596-AA55

207. SKI AREA TERM PERMITS

Significance: Agency Priority

Legal Authority: PL 99-522, Sec 3(c)

CFR Citation: 36 CFR 251.50, (Revision)

Legal Deadline: Final, Statutory, October 22, 1987.
A one-year deadline is specified in the law.

Abstract: PL 99-522 provides new authority and direction for granting permits authorizing ski development and operation. It requires promulgation of rules within one year of enactment. Current direction for issuing special use permits including ski areas is contained in 36 CFR 251.50 through 251.64. While most of the current direction will continue to apply, revisions will be necessary to respond to the special provisions of the law relating to permit duration and acreage to be authorized. The law has the effect of eliminating the current need and practice to issue two permits to authorize a single resort to use more than 80 acres. Further, it authorizes the issuance of 40 year permits instead of 30 which has been the maximum in the past.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
NPRM Comment Period End	11/00/88	
Final Action	02/00/89	
Final Action Effective	03/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596-AA57

208. 36 CFR LAW ENFORCEMENT SUPPORT ACTIVITIES

Legal Authority: 16 USC 472; 16 USC 551; 16 USC 683; 7 USC 1011(f); 16 USC 1246(e); 16 USC 1133(c) to (d)(1); 16 USC 559(a)

CFR Citation: 36 CFR 262

Legal Deadline: None

Abstract: These rules describe awards the Forest Service is authorized to make for information leading to arrest and convictions of persons who start fires or otherwise destroy property on National Forests. Subpart B sets forth rules governing impoundment or removal of unauthorized personal property from National Forest System lands.

Review has focused on the adequacy of the rules for administration of the National Forests and has revealed the need for minor revisions. The agency is now developing a proposed rule in response to the review.

Timetable:

Action	Date	FR Cite
Begin Review	10/01/87	
End Review	08/01/88	
NPRM	02/00/89	
NPRM Comment Period End	05/00/89	

Small Entities Affected: None

Government Levels Affected: None

USDA—FS

Proposed Rule Stage

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596-AA68

209. INCREASE IN MINIMUM RATES CHARGED FOR TIMBER

Legal Authority: 16 USC 472a

CFR Citation: None

Legal Deadline: None

Abstract: Minimum rates charged for timber have not been changed since 1979. The increased costs of preparing timber sales and the general increases in costs of logging and the price of timber have resulted in minimum rates that are disproportionately low. The action being considered is to increase minimum rates to account for inflationary increases since the rates were last changed. The agency is currently conducting statistical analysis of various rate increases and their impacts as a basis for developing this proposal.

Timetable:

Action	Date	FR Cite
NPRM	07/00/89	
NPRM Comment Period End	08/00/89	
Final Action	10/00/89	
Final Action Effective	11/00/89	

Small Entities Affected: None

Government Levels Affected: None

Public Compliance Cost: Initial Cost: $0; Yearly Recurring Cost: $0; Base Year for Dollar Estimates: 1987

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P. O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596-AA75

210. SALE OF TIMBER WHERE TOTAL PUBLIC BENEFITS MAY NOT MEET OR MAY EXCEED TOTAL COSTS

Legal Authority: 16 USC 472a; 16 USC 475; 16 USC 616; 16 USC 1604; 16 USC 1613

CFR Citation: None

Legal Deadline: None

Abstract: The Forest Service has been developing an accounting system to accurately track the total public benefits and total cost of the timber sale program on each National Forest. The data generated by this new accounting system will provide a basis for monitoring the implementation of Forest Plans. This proposal would establish additional procedures for evaluation of the accounting data collected under the new Timber Sale Program Information Reporting System when projected costs appear to exceed the total public benefits of the program. Under the proposal, unless there are other overriding public values, the timber sale program would be adjusted to a point where the total public benefits equal the total cost of the sales program.

Timetable:

Action	Date	FR Cite
NPRM	01/15/89	
NPRM Comment Period End	02/15/89	
Final Action	05/00/89	
Final Action Effective	06/00/89	

Small Entities Affected: None

Government Levels Affected: None

Public Compliance Cost: Initial Cost: $0; Yearly Recurring Cost: $0; Base Year for Dollar Estimates: 1987

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P. O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596-AA74

211. @ 36 CFR 261 PROHIBITIONS

Legal Authority: 16 USC 472; 16 USC 551; 16 USC 683; 7 USC 1011(f); 16 USC 1246(e); 16 USC 1133(c) to (d)(1); 16 USC 559(a)

CFR Citation: 36 CFR 261

Legal Deadline: None

Abstract: These rules declare the range of unacceptable public behavior when visiting or using National Forest System lands. Among topics covered are prohibitions on setting campfires in certain areas, unlawful cutting of trees, and other unlawful uses of resources and property of the National Forest System. Violations of these prohibitions carry legal penalties.

Review has examined the adequacy of the rules for administration of the National Forest System and whether changes in conditions, laws, or other factors require revision. The agency has completed its review and is now preparing a proposed rule to revise the prohibitions.

Timetable:

Action	Date	FR Cite
Begin Review	10/01/87	
End Review	08/01/88	
NPRM	03/00/89	
NPRM Comment Period End	04/00/89	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596-AA73

212. REVISE SMALL TRACTS ACT REGULATIONS

Significance: Agency Priority

Legal Authority: 16 USC 521c-i

CFR Citation: 36 CFR 254.35 (Revision); 36 CFR 254.41 (Revision)

Legal Deadline: None

Abstract: Application of the Act of January 12, 1983 (Small Tracts Act) has revealed an inadvertent inconsistency between the regulations at 36 CFR 254.35(f) and 254.41(a) and the legislative history of the Act. The regulations imply that the disposal of mineral fractions by sale can only be made in response to an application from an abutting landowner, thus discouraging the conveyance by sale to the public. The Act clearly authorizes sale of mineral fractions to the public through public sale, as well as individual applications, provided that certain conditions are met. The revisions will clarify the application of the Act to ensure that both individual applications and public sale are permissible means of disposing of qualifying tracts.

USDA—FS

Proposed Rule Stage

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
NPRM Comment Period End	01/00/89	
Final Action	05/00/89	
Final Action Effective	06/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596-AA79

213. REVISE RULES GOVERNING SPECIAL USES OF NATIONAL FOREST SYSTEM LANDS AND RESOURCES AT 36 CFR 251, SUBPART B TO REMOVE AMBIGUITIES REGARDING FIRST AMENDMENT RIGHTS

Significance: Agency Priority

Legal Authority: 16 USC 472, 551, 1134, 3210; 30 USC 185; 43 USC 1740, 1761 to 1771

CFR Citation: 36 CFR 251.50; 36 CFR 251.51; 36 CFR 251.53; 36 CFR 251.54

Legal Deadline: None

Abstract: A Federal District Court recently ruled that existing regulations discriminate against groups who wish to gather on National Forests to exercise their first amendment rights to free speech. The proposed rule will remove ambiguities regarding first amendment rights of assembly and free speech on National Forests.

Alternatives considered were: (1) no changes; (2) termination of all regulations concerning special use authorizations for large groups on the National Forests.

There will be no additional costs as a result of the proposed rule change. The benefit will be that the Forest Service will be able to regulate large group use on the National Forests, which in turn will protect the public health and safety, and protect National Forest resources.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/10/88	53 FR 16548
Interim Rule Effective	05/10/88	53 FR 16548
NPRM	04/00/89	
NPRM Comment Period End	05/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596-AA80

214. OIL AND GAS RESOURCES REGULATIONS

Legal Authority: 16 USC 473 to 475; 16 USC 477 to 482; 16 USC 551; 16 USC 528 to 531; 90 Stat. 2949 as amended

CFR Citation: 36 CFR 228 Subpart E

Legal Deadline: None

Abstract: This subpart will set forth the rules by which the Forest Service will process and respond to the proposals received from the Department of the Interior for the issuance of mineral leases and approval of operations. These rules will describe how the Forest Service will consent to or not object to lease issuance, administer oil and gas operations, determine if a lessee or assignee may obtain future leases or assignments, and establish standards for reclamation and bonding, as required in the Federal Onshore Oil and Gas Leasing Reform Act of 1987. The Forest Service has no regulations at this time which could result in inconsistent administration. The only other alternative considered is not to promulgate regulations. Public costs are insignificant but public benefits could be substantial in that proposals should be processed more efficiently.

Timetable:

Action	Date	FR Cite
NPRM	09/00/88	
NPRM Comment Period End	10/00/88	
Final Action	12/00/88	
Final Action Effective	01/15/89	
Interim Final Rule	09/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596-AA82

215. MODIFICATION OF TIMBER SALE DOWNPAYMENT REQUIREMENTS

Legal Authority: 16 USC 472a; 16 USC 618

CFR Citation: 36 CFR 223

Legal Deadline: None

Abstract: There is a need to provide stronger incentives for purchasers of National Forest timber to complete their contracts on time. To help provide this incentive, the Department of Agriculture is proposing that the amount a purchaser deposits as downpayment on a timber sale not be available for credit to other uses until the last timber in the contract is harvested.

Timetable:

Action	Date	FR Cite
NPRM	02/01/89	
NPRM Comment Period End	03/01/89	
Final Action	06/01/89	
Final Action Effective	06/01/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596-AA83

216. TIMBER SALE FINANCIAL SECURITY

Significance: Regulatory Program

Legal Authority: 16 USC 472a; 16 USC 618

CFR Citation: 36 CFR 223.80

Legal Deadline: None

Abstract: Recent analysis of agency policies and procedures for ensuring the financial security of timber sale contracts has convinced the Forest Service that additional measures are needed. To assure more effective resource management and to better protect the public's financial interests in the sale of National Forest timber, the

agency is proposing to revise its policies and procedures as set forth in Chapter 2430 and 2450 of the Forest Service Manual. Specifically, the agency proposes to (1) eliminate the current ceiling on the required performance bond guarantee; (2) strengthen performance bond requirements by identifying (a) which actions are covered by the bond, (b) the extent of suretie's liabilities, (c) when surety is liable; (3) increase the bid guarantee to 10% of the advertised value; (4) assess damages in the amount of the bid guarantee or the difference between bid value and resale value; (5) establish the guidelines for determining purchaser's financial ability to operate the sale; (6) specify shorter contract periods; and (7) modify the basis for determination of default damages (cont)

Timetable:

Action	Date	FR Cite
NPRM	02/01/89	
NPRM Comment Period End	03/01/89	
Final Action	06/01/89	
Final Action Effective	07/01/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ABSTRACT CONT: by using timber sale appraisal procedures.

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596–AA87

217. ● HELL'S CANYON NATIONAL RECREATION AREA - PRIVATE LANDS

Legal Authority: PL 94-199, sec 10a

CFR Citation: 36 CFR 292 E. (New)

Legal Deadline: None

Abstract: The USDA - Forest Service proposes to issue regulations concerning the use of private lands in the Hell's Canyon National Recreation Area (HCNRA) on the Oregon - Idaho border, as required in PL 94-199. The intended effect of this action is to establish standards for use and development of privately owned lands within the HCNRA. The standards are intended to achieve the following management objectives for the Recreation Area: (1) The conservation and continuance of forest land for forest uses and farm land for farm uses; (2) The maintenance and protection of the free flowing nature of rivers within the HCNRA; (3) Conservation of scenic, wilderness, cultural, scientific, and other values contributing to the public benefit; (4) Preservation, especially in the area generally known as Hell's Canyon, of all features and peculiarities believed to be biologically unique; (5) Protection and maintenance of fish and wildlife habitat; (6) Protection of archaeological and paleontological sites; (7) Preservation of historic sites associated with and typifying the economic and social history of the region (cont)

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	
NPRM Comment Period End	02/00/89	
Interim Final Rule	04/00/89	
Final Action	05/00/89	
Final Action Effective	05/00/89	

Small Entities Affected: Governmental jurisdictions

Government Levels Affected: Local

Additional Information: ABSTRACT CONT: and the American West; and (8) Continuation of traditional uses.

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596–AA89

218. ● PROPOSED SOLID WASTE DISPOSAL POLICY

Significance: Agency Priority

Legal Authority: 16 USC 497; 43 USC 931c

CFR Citation: None

Legal Deadline: None

Abstract: Solid waste disposal sites (sanitary landfills) on National Forest System lands present the potential for resource degradation, hazardous waste dumping, and future liability. A proposal for solid waste disposal is being developed to reflect changes which have occurred as a result of the Resource and Conservation Recovery Act, the Comprehensive Environmental Response, Compensation, and Liability Act, and an increased knowledge of solid waste disposal. The proposal would prohibit the authorization of new sites and provide for the phase out of existing sites. During the phase out period, authorizations would be amended to provide resource protection and limit the Government's potential liability. In situations where National Forest System lands provide the best location for solid waste disposal, land exchange and/or purchase will be considered. Adoption of this policy would reduce administrative costs associated with administration of solid waste disposal sites, limit future liability, and protect the resources on National Forest System lands. The proposal would impact 110 sites currently authorized.

Timetable:

Action	Date	FR Cite
NPRM	10/15/88	
NPRM Comment Period End	12/15/88	
Final Action	02/15/89	
Final Action Effective	03/20/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596–AA92

219. ● IRREVOCABLE LETTER OF CREDIT

Significance: Agency Priority

Legal Authority: 16 USC 472a; 16 USC 528 to 531; 16 USC 1600 et seq; 12 USC 1 et seq

CFR Citation: None

Legal Deadline: None

Abstract: In a 1987 court decision, a letter of credit issued in lieu of surety bond was found to be unenforceable because the person who signed the letter of credit did not have authority to do so and because the bank had violated State law in regard to limits of liability. Others were invalid because they exceeded the expiration date. To remedy this problem, the Forest Service is proposing to issue Handbook direction that will require the bank president to certify as to the authority of the person signing the letter of credit and the conformance with State and Federal statutes. An automatic extension of the expiration date would also be required.

Timetable:

Action	Date	FR Cite
NPRM	03/00/89	
NPRM Comment Period End	04/00/89	
Final Action	06/00/89	
Final Action Effective	06/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P. O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596–AA93

220. ● SURETY BOND FORM REVISION

Significance: Agency Priority

Legal Authority: 31 USC 9301 to 9309; 31 USC 223 to 225

CFR Citation: None

Legal Deadline: None

Abstract: Following a period of high-priced timber sales bid prior to 1982, the Forest Service experienced a number of contract defaults on these sales. Subsequently, the Forest Service has had difficulty collecting from some sureties on the bonds guaranteeing performance on these sales. As part of a financial security initiative affecting future sales, the Forest Service is proposing to revise the payment and performance bonds to clarify surety's obligation in regard to what is being guaranteed, when payment is due in case of default, what additional charges will be assessed if payment is not made when due and when collection action may be suspended. Other alternatives include eliminating surety bonds as a form of security, reducing surety guarantee to mid-point and periodic payment and retention of current bond forms. Upon adoption the final revised bond forms will be issued for use by Forest Service Contracting and Fiscal Officers for future timber sale contracts.

Timetable:

Action	Date	FR Cite
NPRM	01/00/89	
NPRM Comment Period End	02/00/89	
Final Action	04/00/89	
Final Action Effective	06/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Proposed Bond Form changes have been reviewed by surety industry in 1987. Another review is scheduled in August 1988. The Agency anticipates publishing a notice proposing bond form changes in January 1989.

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P. O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596–AA94

221. ● SETTLEMENT OF DEFAULTED TIMBER SALE CONTRACTS

Significance: Agency Priority

Legal Authority: 41 USC 601 to 613

CFR Citation: None

Legal Deadline: None

Abstract: The Forest Service has a tremendous backlog of defaulted timber sale contract cases as a result of nearly 2,000 defaults valued at close to $250 million in damages since 1982. In addition, there is the potential for another $200 million in damages as a result of contract defaults.

The Forest Service proposes to delegate authority to contracting officers to settle damage claims on defaulted contracts not in excess of $200,000 prior to litigation and to issue procedures to guide contracting officers in settling such claims. This direction will be issued as a directive to agency personnel in the Forest Service Manual, Chapter 6570.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
NPRM Comment Period End	12/00/88	
Final Action	02/00/89	
Final Action Effective	04/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596–AA96

DEPARTMENT OF AGRICULTURE (USDA)

Final Rule Stage

Forest Service (FS)

222. SMALL BUSINESS TIMBER SALE SET ASIDE PROGRAM

Significance: Regulatory Program

Legal Authority: 15 USC 631

CFR Citation: Not applicable

Legal Deadline: None

Abstract: The policy is designed to ensure that small business purchasers have the opportunity to purchase a fair proportion of National Forest Timber. The proposed policy is consistent with the current standards and establishes procedures for determining what share of timber volume small business will have the opportunity to bid on without competition from large business.

Timetable:

Action	Date	FR Cite
NPRM	11/21/84	49 FR 45889
NPRM Comment Period End	11/21/84	49 FR 45889
Final Policy	06/13/85	50 FR 24788
Request Comments on Final Policy	02/03/86	51 FR 4264
Revised Proposed Policy	09/25/87	52 FR 36075
Proposed Policy Public Comment Period End	11/00/87	

USDA—FS

Final Rule Stage

Action	Date	FR Cite
Final Action	03/01/89	
Final Action Effective	04/01/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1496

RIN: 0596-AA43

223. DEFINITION OF COMMON VARIETY MINERAL MATERIALS

Legal Authority: 30 USC 601 et seq; 30 USC 603 to 604; 30 USC 602; 16 USC 477; 16 USC 520; 7 USC 1010; 30 USC 192c, Section 3; 16 USC 506b; Section 3, 66 Stat. 285; 16 USC 521a; 75 Stat. 205; 23 USC 101 et seq; 16 USC 539a, Section 502

CFR Citation: 36 CFR 228, Subpart C

Legal Deadline: None

Abstract: Whether a mineral deposit is a "common variety" determines whether or not it can be disposed of or sold by the Government under the 1947 Mineral Materials Act. Judicial and administrative interpretations defining common variety characterization determinations can only be made in court. Rulings in common variety cases are generally unpredictable, and the costs to both the Government and miner are high.

After a review of the legislative history of the 1955 Surface Resources Act, which defined common varieties, we believe that Congress did not intend for certain minerals to be locatable under the Mining Laws; however, a failure to explicitly define the "common variety" term has led to misinterpretation and actions contrary to the original intent of the law. It is proposed that 36 CFR 228 Subpart C be amended to clarify this confusing classification situation. We believe PL 167 expressly provides for this action as it allows the Secretary of Agriculture to dispose of mineral materials "under such rules and regulations as he may prescribe."

Timetable:

Action	Date	FR Cite
NPRM	04/26/88	53 FR 15236
NPRM Comment Period End	06/27/88	53 FR 15236
Final Action	12/00/88	
Final Action Effective	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1496

RIN: 0596-AA44

224. APPEAL OF DECISIONS OF FOREST OFFICERS

Significance: Agency Priority

Legal Authority: 30 Stat 35 as amended, sec 1; 16 USC 551cc, 472, 33 Stat. 628

CFR Citation: 36 CFR 211.18

Legal Deadline: None

Abstract: Forest Service rules at 36 CFR 211.18 establish the process and procedures by which the public may appeal a National Forest System management decision. The regulation is being reviewed as required by EO 12291. The Forest Service recognizes the administrative appeal process as useful and worthwhile, and considers it to be a valuable tool in conducting business. However, there are opportunities to make the process more efficient and less burdensome on the public while maintaining a useful forum within which to administratively resolve conflict.

Timetable:

Action	Date	FR Cite
Begin Review	03/10/87	
ANPRM	06/11/87	52 FR 22348
ANPRM Comment Period End	07/13/87	
End Review	09/00/87	
NPRM	05/16/88	53 FR 17310
NPRM Comment Period End	07/15/88	
Final Action	01/15/89	
Final Action Effective	02/14/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1496

RIN: 0596-AA51

225. INDIAN ALLOTMENTS ON NATIONAL FOREST SYSTEM LANDS

Significance: Agency Priority

Legal Authority: 16 USC 472; 16 USC 551; 16 USC 1603; 43 USC 1740; 25 USC 337

CFR Citation: 36 CFR 254, Subpart D (New)

Legal Deadline: None

Abstract: Objectives are to set forth Forest Service procedures and role in the regulation of Indian allotments on National Forest System land. The Indian Allotment Act of 2/8/87, as amended by Section 31, Act of 6/25/10 authorizes the Secretary of the Interior to make allotments of National Forest System Lands to Indians for homesteading and agricultural and grazing purposes. The Forest Service has relied upon USDI rules and procedures at 43 CFR 2533 to govern its involvement in Indian allotment cases. Recent litigation and a decision by the Interior Board of Land Appeals indicate the need for the Forest Service to set forth its own regulations when the Forest Service determines that lands are not chiefly valuable for agricultural and grazing purposes. The only alternative is not to issue regulations. This is unacceptable since it leaves the Agency vulnerable to future IBLA appeals cases as well as future litigation.

Timetable:

Action	Date	FR Cite
NPRM	06/22/87	52 FR 23473
NPRM Comment Period End	07/22/87	52 FR 23473
Final Action	11/00/88	
Final Action Effective	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Sectors Affected: None

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P. O. Box 96090, Washington, DC 20090-6090, 703 235-1496

RIN: 0596-AA52

USDA—FS

Final Rule Stage

226. PROHIBITIONS; FOSSIL COLLECTING

Legal Authority: 16 USC 551

CFR Citation: 36 CFR 261

Legal Deadline: None

Abstract: In response to comments from the scientific and academic communities and in keeping with the recommendations of the National Academy of Sciences "Report on Guidelines for Paleontological Collecting," the Forest Service is clarifying its regulations concerning fossil collecting on National Forest System lands. The language on "paleontological resources" is being moved to a separate paragraph and the requirement for permits is being limited specifically to quarrying for fossils and for commercial activities. The no-action alternative would be to leave the regulation of paleontological resources the same as for archeological resources, with permits needed for all activities. Since there is no evidence of widespread problems, the permit process imposes unnecessary burdens on the casual collector and creates added paperwork for the Forest officer to manage.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/26/86	51 FR 30355
Final Action	01/00/89	
Final Action Effective	02/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: The change in dates for final rule is necessitated by decision to await final report from National Academy of Sciences on "Guidelines for Paleontological Collecting." Report now received.

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1496

RIN: 0596-AA56

227. NONCOMPETITIVE DISPOSAL OF MINERAL MATERIALS

Legal Authority: 30 USC 601 et seq; 30 USC 603 to 604; 30 USC 602; 16 USC 477; 16 USC 520; 7 USC 1010; 30 USC 192c, Sec 3; 16 USC 506b; Section 3, 66 Stat. 285; 16 USC 521a; 75 Stat. 205; 23 USC 101 et seq; 16 USC 539a, Sec 502

CFR Citation: 36 CFR 228, Subpart C

Legal Deadline: None

Abstract: Existing regulations allow noncompetitive sale of mineral materials not in excess of 100,000 cubic yards in any individual sale or 200,000 cubic yards in any one State for the benefit of any entity in any period of twelve consecutive calendar months. The proposal would give the Forest Service flexibility in meeting requests for noncompetitive sales of large amounts of mineral materials when public property, health, and safety are threatened or when competition is impractical. The proposal is similar to rules governing mineral material sales by the Bureau of Land Management. Interim rulemaking is sought to resolve a situation in California where the volume restriction for noncompetitive sales may interfere with a mining claimant's statutory rights regarding locatable minerals.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/02/87	52 FR 10564
Final Action	12/00/88	
Final Action Effective	01/00/89	
Begin Review	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1496

RIN: 0596-AA60

228. ● SURETY REVOCATION PROCEDURES

Significance: Agency Priority

Legal Authority: 31 USC 9305

CFR Citation: None

Legal Deadline: None

Abstract: Since 1982 the Forest Service has experienced nearly 2,000 defaulted timber sale contracts which were overbid. Even though most of these defaulted contracts were secured with surety performance bonds, the Forest Service has had extreme difficulty collecting from some sureties on these defaulted contracts. The Forest Service issued an Interim Directive in 1987 revising and clarifying surety revocation procedures. The Forest Service now proposes to incorporate this interim directive, with minor changes, into its handbook on bonding, in the hopes of improving sureties' response to collection efforts.

Timetable:

Action	Date	FR Cite
Interim Final Rule (Interim Policy)	12/01/88	
Final Action	06/01/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P. O. Box 96090, Washington, DC 20090-6090, 703 235-1496

RIN: 0596-AA95

229. ● DEFERRAL OF PAYMENTS ON HIGH-PRICED TIMBER SALES

Significance: Agency Priority

Legal Authority: 16 USC 476

CFR Citation: None

Legal Deadline: None

Abstract: This policy will provide guidance to Contracting Officers in the exercise of their existing authorities to administer Forest Service timber sale contracts. Current law provides that Contracting Officers may make modifications on unexecuted portions of a contract that will not be injurious to the United States, and in the public interest. Under this policy, the terms of payment of high-priced sale bid after January 1, 1982 could be modified allowing the Government to defer an amount equal to the difference between the current average bid value for the Forest at time or modification, plus $50 and the average current contract value per thousand board feet. The difference between the average bid value and the current contract value will be paid with interest, over a 5-year period under the terms of a fully secured promissory note. This policy has been developed in concert with the Bureau of Land Management.

USDA—FS — Final Rule Stage

Timetable:

Action	Date	FR Cite
Interim Policy	[illegible]	52 FR 31962
Interim Policy Effective	05/01/88	
Interim Policy Public Comment Period End	10/21/88	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596-AA57

230. ● MARKET-RELATED CONTRACT TERM ADDITIONS

Significance: Agency Priority

Legal Authority: 16 USC 472a, 90 Stat. 2958; 16 USC 618, 98 Stat. 2213

CFR Citation: 36 CFR 223, Subpart B

Legal Deadline: None

Abstract: This rule permits additions to National Forest timber sale contract terms when there is a drastic reduction in wood product prices. A drastic reduction in wood product prices occurs when, for two consecutive calendar quarters after contract award, the applicable adjusted producer price index is less than 80 percent of the average of such index for the 4 highest of the 8 calendar quarters immediately prior to the qualifying quarter. No more than twice the original contract length or 3 years, whichever is less, shall be added to a contract's term by market-related contract term additions. In no event will the revised contract term exceed 10 years.

Timetable:

Action	Date	FR Cite
NPRM	11/06/87	52 FR 43020
NPRM Comment Period End	02/19/88	53 FR 00544
Final Action	11/01/88	
Final Action Effective	12/01/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596-AA66

DEPARTMENT OF AGRICULTURE (USDA) — Completed Actions
Forest Service (FS)

231. ENTRANCE INTO PETERSBURG WATERSHED

CFR Citation: 36 CFR 251.55

Completed:

Reason	Date	FR Cite
Final Action	07/04/88	53 FR 25594
Final Action Effective	08/15/88	53 FR 25594

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly 703 235-1488

RIN: 0596-AA23

232. USE RESTRICTIONS OF NATIONAL FOREST LANDS FOR THE PROTECTION OF MUNICIPAL WATER SUPPLIES

CFR Citation: 36 CFR 251.9

Completed:

Reason	Date	FR Cite
Final Action	07/22/88	53 FR 27682
Final Action Effective	07/22/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly 703 235-1488

RIN: 0596-AA34

233. CONTROL OF SKEWED BIDDING ON NATIONAL FOREST TIMBER SALES

CFR Citation: 36 CFR 223.89

Completed:

Reason	Date	FR Cite
Final Action	07/01/88	53 FR 25522
Final Action Effective	08/01/88	53 FR 25522

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly 703 235-1488

RIN: 0596-AA37

234. 36 CFR 262 LAW ENFORCEMENT SUPPORT ACTIVITIES

CFR Citation: 36 CFR 262

Completed:

Reason	Date	FR Cite
End Review	08/01/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly 703 235-1488

RIN: 0596-AA65

235. FREE USE TO ALASKAN SETTLERS, MINERS, RESIDENTS AND PROSPECTORS

CFR Citation: 36 CFR 223.10

Completed:

Reason	Date	FR Cite
Withdrawn	08/26/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly 703 235-1488

RIN: 0596-AA69

236. INCREASED DOWNPAYMENTS FROM TIMBER SALE PURCHASERS WITH A HISTORY OF DEFAULTS; AND DETERMINATION OF PURCHASER RESPONSIBILITY

CFR Citation: 36 CFR 223.48, (Revised)

Completed:

Reason	Date	FR Cite
Final Action	09/30/88	53 FR 38126
Final Action Effective	09/20/88	

Small Entities Affected: None

USDA—FS — Completed Actions

Government Levels Affected: None

Agency Contact: Marian P. Connolly 703 235-1488

RIN: 0596-AA70

237. REVISE 36 CFR 223.178 REGARDING RELEASE OF CLAIMS AGAINST THE GOVERNMENT ON SALES OFFERED FOR GOVERNMENT BUYOUT

CFR Citation: 36 CFR 223.178

Completed:

Reason	Date	FR Cite
Final Action	04/27/88	53 FR 15035
Final Action Effective	04/27/88	53 FR 15035

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly 703 235-1488

RIN: 0596-AA71

238. REVIEW OF DECISIONS TO TERMINATE RECREATION RESIDENCE PERMITS

CFR Citation: 36 CFR 211.18(b)

Completed:

Reason	Date	FR Cite
Final Action	06/16/88	53 FR 30924
Final Action Effective	08/31/88	53 FR 30924

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly 703 235-1488

RIN: 0596-AA72

239. 36 CFR 261 PROHIBITIONS

CFR Citation: 36 CFR 261

Completed:

Reason	Date	FR Cite
End Review	08/01/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly 703 235-1488

RIN: 0596-AA75

240. ADMINISTRATION OF EASEMENTS FOR WATER CONVEYANCE SYSTEMS

Significance: Agency Priority

CFR Citation: None

Completed:

Reason	Date	FR Cite
Withdrawn - was incorrectly listed in April 1988 agenda	08/26/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly 703 235-1488

RIN: 0596-AA76

241. APPEAL OF DECISIONS TO REOFFER RETURNED OR DEFAULTED TIMBER SALES ON NATIONAL FORESTS

CFR Citation: 36 CFR 211.17

Completed:

Reason	Date	FR Cite
This RIN is being incorporated in RIN 0596-AA51	08/26/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly 703 235-1488

RIN: 0596-AA84

242. LUMBER PRICE INDEX TRENDS

Significance: Agency Priority

CFR Citation: 36 CFR 223.64

Completed:

Reason	Date	FR Cite
Final Action	08/11/88	53 FR 30324
Final Action Effective	[illegible]	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly 703 235-1488

RIN: 0596-AA86

DEPARTMENT OF AGRICULTURE (USDA) — Proposed Rule Stage
Packers and Stockyards Administration (P&SA)

243. ANNUAL REPORTS

Significance: Agency Priority

Legal Authority: PL 100-173; 7 USC 228

CFR Citation: 9 CFR 201.97

Legal Deadline: None

Abstract: The law provides for a live poultry dealer trust for the benefit of all unpaid cash sellers or poultry growers and requires prompt payment for the sale or delivery of poultry. Administrative enforcement authority is provided for the poultry trust and prompt payment provisions. Amendment to present regulations will be required to implement the new provisions of the law.

Timetable:

Action	Date	FR Cite
NPRM	07/11/88	53 FR 26082
NPRM Comment Period End	09/09/88	
NPRM Public Comment Period Extended	11/08/88	53 FR 32624

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Calvin W. Watkins, Deputy Administrator, Department of Agriculture, Packers and Stockyards Administration, Room 3039, South Building, Washington, DC 20250-2800, 202 447-7063

RIN: 0580-AA04

DEPARTMENT OF AGRICULTURE (USDA)
Packers and Stockyards Administration (P&SA)

Final Rule Stage

244. SCALES; ACCURATE WEIGHTS, REPAIRS, ADJUSTMENTS OR REPLACEMENTS AFTER INSPECTION

Significance: Agency Priority

Legal Authority: 7 USC 228

CFR Citation: 9 CFR 201.71(a)

Legal Deadline: None

Abstract: This action is necessary to incorporate the 1988 edition of National Bureau of Standards (NBS) Handbook 44, "Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices," which contains a new scale code adopted by the National Conference on Weights and Measures. This change will make the requirements of the Packers and Stockyards Administration uniform with those applied by State and local weights and measures jurisdictions. The current regulation incorporates the 1983 edition of Handbook 44.

Timetable:

Action	Date	FR Cite
NPRM	07/22/88	53 FR 27700
NPRM Comment Period End	09/20/88	
Final Action	10/20/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Calvin W. Watkins, Deputy Administrator, Department of Agriculture, Packers and Stockyards Administration, Room 3039, South Building, Washington, DC 20250-2800, 202 447-7063

RIN: 0580-AA05

DEPARTMENT OF AGRICULTURE (USDA)
Soil Conservation Service (SCS)

Proposed Rule Stage

245. SNOW SURVEYS AND WATER SUPPLY FORECASTS

Legal Authority: 28 Stat. 653, Sec 8; Reorg. No. IV of 1940

CFR Citation: 7 CFR 612.1 to 612.7

Legal Deadline: None

Abstract: Sets forth policy and procedures for the administration of a cooperative snow survey and water supply forecast program, including the steps involved in carrying out the program. Sets out data collected and forecasts made, and eligible users of the data. (SCS 83-006)

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Wayne Maresch, Regulatory Coordinator, Department of Agriculture, Soil Conservation Service, Room 6004-South Bldg., Washington, DC 20013, 202 447-4811

RIN: 0578-AA01

246. RELOCATION ASSISTANCE

Legal Authority: 42 USC 4601 et seq; PL 91-646

CFR Citation: 7 CFR 612

Legal Deadline: None

Abstract: Prescribes the policies and procedures for the implementation of the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 USC 4601 et seq.) pertaining to the treatment of persons displaced from their homes, businesses, or farms because of Federal financially assisted projects. (SCS 85-001)

Timetable:

Action	Date	FR Cite
End Review	01/31/86	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Wayne Maresch, Regulatory Coordinator, Department of Agriculture, Soil Conservation Service, Room 6004-South Bldg., Washington, DC 20013, 202 447-4811

RIN: 0578-AA12

DEPARTMENT OF AGRICULTURE (USDA)
Soil Conservation Service (SCS)

Final Rule Stage

247. SOIL SURVEYS

Legal Authority: Part of Agriculture Appropriation Act of 1966; PL 74-46 The Soil Conservation and Domestic Allotment Act; PL 89-560 Soil Surveys for Resource Planning and Development; 42 USC 3271; 42 USC 3274

CFR Citation: 7 CFR 611

Legal Deadline: None

Abstract: Prescribes the policy on soil survey operations including cooperative relationships with State agencies, standards, guidelines and plans on survey operations, distribution of soil survey information, and cartographic operations services furnished. (SCS 83-008)

Timetable:

Action	Date	FR Cite
End Review	12/31/86	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Wayne Maresch, Regulatory Coordinator, Department of Agriculture, Soil Conservation Service, Room 6004-South Bldg., Washington, DC 20013, 202 447-4811

RIN: 0578-AA00

248. FARMLAND PROTECTION POLICY ACT

Significance: Agency Priority

USDA—SCS

Final Rule Stage

Legal Authority: 7 USC 4201

CFR Citation: 7 CFR 658

Legal Deadline: None

Abstract: The United States Department of Agriculture amends its rule for implementing the Farmland Protection Policy Act to require progress reports, enable governors to bring action to enforce the requirements of the Act, include a section omitted by clerical error, revise how Federal agencies apply the Act, and revise the definition of farmland. These amendments are necessary in order to comply with amendments to the Farmland Protection Policy Act (FPPA) made by Title XII of the Food Security Act of 1985, PL 99-198, December 23, 1985, and to clarify several provisions of the existing rule. This rule will revise Part 658 of Title 7 of the Code of Federal Regulations.

Timetable:

Action	Date	FR Cite
Final Action	12/31/88	
Final Action Effective	12/31/88	

Small Entities Affected: None

Government Levels Affected: Federal

Public Compliance Cost: Initial Cost: $0; Yearly Recurring Cost: $0; Base Year for Dollar Estimates: 1987

Sectors Affected: None

Agency Contact: Wayne F. Maresch, Director, Administrative Services Division, Department of Agriculture, Soil Conservation Service, PO Box 2890, Washington, DC 20013, 202 447-4811

RIN: 0578-AA14

DEPARTMENT OF AGRICULTURE (USDA)
Soil Conservation Service (SCS)

Completed Actions

249. PRIME AND UNIQUE FARMLANDS

CFR Citation: 7 CFR 657.1 to 657.5

Completed:

Reason	Date	FR Cite
Final Action	01/31/78	43 FR 4031

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Wayne Maresch 202 447-4811

RIN: 0578-AA10

250. PROCEDURES FOR THE PROTECTION OF ARCHEOLOGICAL AND HISTORICAL PROPERTIES ENCOUNTERED IN SCS-ASSISTED PROGRAMS

Significance: Agency Priority

CFR Citation: 7 CFR 656, (Revision)

Completed:

Reason	Date	FR Cite
Final Action	02/11/88	53 FR 4006
Final Action Effective	02/11/88	53 FR 4006

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Wayne F. Maresch 202 447-4811

RIN: 0578-AA13

[FR Doc. 88-20659 Filed 10-21-88; 8:45 am]

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Part IV

Department of Commerce

Semiannual Regulatory Agenda

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DEPARTMENT OF COMMERCE (DOC)

DEPARTMENT OF COMMERCE

Office of the Secretary

13 CFR Ch. III

15 CFR Subtitle A; Subtitle B, Chs. I, III, IV, VIII, IX

19 CFR Ch. III

37 CFR Ch. I, IV

48 CFR Ch. 13

50 CFR Chs. II, III, VI, VII

Semiannual Agenda of Regulations

AGENCY: Office of the Secretary, Commerce.

ACTION: October 1988 regulatory agenda.

SUMMARY: In compliance with Executive Order (E.O.) 12291, entitled "Federal Regulation," and the Regulatory Flexibility Act (Pub. L. 96-354), the Department of Commerce in April and October of each year publishes in the **Federal Register** an agenda of the rulemaking actions covered by section 1 of E.O. 12291 that the Department plans to conduct or review over the next twelve months. Rulemaking actions are grouped according to prerulemaking, proposed rules, final rules, and rulemaking actions completed since the April 1988 agenda. The purpose of the agenda is to provide information to the public on regulations currently under review, being proposed, or issued by the Department. The agenda is intended to facilitate comments and views by interested members of the public.

The Department's October 1988 regulatory agenda includes regulatory activities that are expected to be conducted during the period October 1, 1988 through September 30, 1989.

FOR FURTHER INFORMATION CONTACT:

Specific: For additional information about a specific regulatory action listed in the agenda, contact the individual identified as the contact person.

General: Comments or inquiries of a general nature about the agenda should be directed to Michael A. Levitt, Assistant General Counsel for Legislation and Regulation, U.S. Department of Commerce, Washington, DC 20230, Telephone: (202) 377-8843.

SUPPLEMENTARY INFORMATION: On February 17, 1981, President Reagan signed E.O. 12291. The E.O. requires all executive agencies to publish semiannually an agenda of those regulations that are under consideration pursuant to this Order. Office of Management and Budget (OMB) Bulletin No. 88-15, issued June 24, 1988 establishes guidelines and procedures for the preparation and publication of the October 1988 Unified Agenda of Federal Regulations for all Federal departments and agencies. E.O. 12291 and the OMB Bulletin require that each agenda report the following information on non-exempt regulatory activities being conducted or planned to be conducted by the agency during the twelve-month period succeeding publication: The title of the regulation; the name, title, address and phone number of an agency person who is knowledgeable about the regulation; whether the action is expected to have a significant economic impact on a substantial number of small entities and whether it will affect levels of government; the section(s) of the Code of Federal Regulations which will affect or be affected by the action; the section of the United States Code, Public Law or Executive Order that authorizes the action; an indication of whether or not the entry is a significant regulatory action included in the Administration's Regulatory Program and if the agency considers it a priority action; an abstract describing the problem the regulation addresses, alternatives to the regulation being considered, and potential costs and benefits of the action; legal deadline, if any; and a timetable of dates and, if available, **Federal Register** citations for past stages of the action.

The Regulatory Flexibility Act requires agencies to prepare a regulatory flexibility analysis where there is a positive finding that a rule will have a significant economic impact on a substantial number of small entities. E.O. 12291 requires agencies to prepare a regulatory impact analysis for any regulation considered to be a "major rule" as defined in the Order.

Explanation of Information Contained in the Agenda

Within the Department, the Office of the Secretary and various operating units may issue regulations. Operating units such as the National Oceanic and Atmospheric Administration (NOAA), the Economic Development Administration, the International Trade Administration, the National Bureau of Standards, and the Patent and Trademark Office issue the greatest share of the Department's regulations.

A large number of regulatory actions reported in the agenda are proposed or final Federal Information Processing Standards (FIPS), issued by the National Bureau of Standards (NBS) under Pub. L. 100-235. FIPS consist of standards and guidelines to improve Federal Government use and management of computers and information technology. The standards, while often of great use to industry and the public, apply only to the Federal Government. In developing the standards and guidelines, and in providing technical guidance and coordination to Federal agencies, NBS works closely with private industry standard-setting organizations.

Another large number of regulatory actions reported in the agenda deal with fishery management programs of NOAA's National Marine Fisheries Service (NMFS). To avoid repetition of programs and definitions, as well as to provide some understanding of the technical and institutional elements of the NMFS programs, a section on "Explanation of Information Contained in NMFS Regulatory Entries" is provided below.

Explanation of Information Contained in NMFS Regulatory Entries

The Magnuson Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801 *et seq.*) (Act) governs the management of fisheries within the Exclusive Economic Zone (EEZ). The EEZ refers to those waters from the outer edge of the United States territorial sea to a distance of 200 miles. Fishery Management Plans (FMPs) are to be prepared for fisheries which require conservation and management measures. These FMPs regulate domestic and foreign fishing where permitted. Foreign fishing can be conducted in a fishery for which there is no FMP only if a preliminary fishing management plan has been issued to govern that foreign fishing. Under the Act, eight Regional Fishery Management Councils (Councils) prepare FMPs, or amendments to FMPs, for fisheries within their respective areas. In the development of such plans or amendments and their implementing regulations, the Councils are required by law to conduct public hearings on the draft plans and to consider the use of alternative means of regulating.

The Council process for developing FMPs and amendments makes it difficult for NMFS to determine the significance of some regulatory actions under consideration at the time the semiannual regulatory agenda is published. Frequently NMFS does not have specific plan objectives or alternatives for management since the Councils may not have approved or submitted plans to the Secretary of Commerce for review, adoption, and implementation.

The DOC October 1988 regulatory agenda follows.

Dated: August 12, 1988.

Robert H. Brumley,

General Counsel.

DOC

Office of the Secretary—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
251	Contract Clauses and Solicitation Provisions for the Commerce Automated Solicitation System	[illegible]
252	Source Evaluation Procedures and Miscellaneous Revisions to the Commerce Acquisition Regulation	[illegible]
253	Program Fraud Civil Remedies	[illegible]

Office of the Secretary—Completed Actions

Sequence Number	Title	Regulation Identifier Number
254	Enforcement of Nondiscrimination on the Basis of Handicap in Department of Commerce Programs	[illegible]
255	Public Information	[illegible]
256	Privacy Act	[illegible]

Bureau of Economic Analysis—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
257	Increase in Exemption Level of Annual Survey of Foreign Direct Investment in the United States (Form BE-15) Conducted by BEA	[illegible]

Bureau of Economic Analysis—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
258	Implementation of Annual Survey of Selected Services Transactions with Unaffiliated Foreign Persons	0691-AA10
259	Change in Exemption for Foreign Ocean Carriers' Expenses Survey Conducted by BEA -- Annual Report Form BE-29	0691-AA13

Bureau of Economic Analysis—Completed Actions

Sequence Number	Title	Regulation Identifier Number
260	Increase in Exemption Levels for Quarterly Foreign Direct Investment Surveys Conducted by BEA -- Forms BE-605 and 606B	0691-AA12

DOC

Bureau of the Census—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
261	Foreign Trade Statistics Regulations	0607-AA10

Economic Development Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
262	General Requirements for Financial Assistance -- Design, Construction of Buildings to Accommodate the Physically Handicapped	0610-AA05
263	Economic Development Administration: Property Management Standards	0610-AA07
264	Property Management Standards -- Mortgages	0610-AA12
265	General Requirements for Financial Assistance: Employment of Expediters or Administrative Employees; Compensation of Persons Engaged by or on Behalf of Applicants	0610-AA16
266	Overall Economic Development Program Public Works and Development Facilities Program	0610-AA19
267	Designation of Areas; Designation of PWIP Areas	0610-AA21
268	General Requirements for Financial Assistance; Unfair Competition	0610-AA22
269	Sale of Loans and Loan Guarantees to the Private Sector	0610-AA31
270	General Requirements for Financial Assistance -- Nonrelocation	0610-AA32
271	General Requirements for Financial Assistance - Project Modification	0610-AA33
272	Protection of EDA's Interest in Facilities Acquired, Built, or Improved with EDA Grant Funds	0610-AA35
273	Liability for Hazardous Substances Associated with EDA Loans and Loan Guarantees	0610-AA36
274	Adjustment Grants - Revolving Loan Funds	0610-AA37
275	Economic Development Districts, District Organization; Civil Rights Requirements	0610-AA38
276	Area Designation - Special Impact Areas	0610-AA39
277	Public Works - Industrial Parks and Sites	0610-AA40

Economic Development Administration—Completed Actions

Sequence Number	Title	Regulation Identifier Number
278	General Requirements for Financial Assistance -- Flood Insurance Program; and Environmental Requirements	0610-AA16

General Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
279	Uniform Administrative Requirements for Grants to Governments and Nongovernmental Entities	0605-AA04

General Administration—Completed Actions

Sequence Number	Title	Regulation Identifier Number
280	Nonprocurement Debarment and Suspension	0605-AA02

DOC

International Trade Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
281	General Regulations Governing Foreign Trade Zones in the United States, with Rules of Procedures	0625-AA24
282	Annual Watch Quota Allocations	0625-AA25
283	Antidumping and Countervailing Duties; Modifications	0625-AA26
284	Defense Priorities and Allocations System (DPAS)	0625-AA28

International Trade Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
285	Adjustment Assistance for Firms and Industries	0625-AA05
286	Antidumping Duties; Countervailing Duties	0625-AA06
287	Sanctions for Violation of Antidumping and Countervailing Duty Protective Orders	0625-AA21

International Trade Administration—Completed Actions

Sequence Number	Title	Regulation Identifier Number
288	Export Trade Certificates of Review	0625-AA27

Export Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
289	Revisions to Short Supply Regulations	0694-AA01

National Institute of Standards & Technology—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
290	FIPS for Information Resource Dictionary System (IRDS)	0693-AA38
291	FIPS for C Programming Language	0693-AA49
292	FIPS for Recorded Magnetic Tape Cartridge for Information Interchange; 4-Track, Serial, 0.250 in (6.30 mm), 6400 bpi (252 bpmm) Inverted Modified Frequency Modulation Encoded	0693-AA51
293	FIPS for Serial Recorded Magnetic Tape Cartridge for Information Interchange; Four and Five Track, 0.250 in (6.30 mm) 8000 bpi (315 bpmm) Streaming Mode Group Code Recording	0693-AA52
294	FIPS for One-Half Inch Magnetic Tape Interchange Using a Self Loading Cartridge	0693-AA53
295	FIPS for Recorded Formats for One and Two-Sided 5.25 Inch (130 mm) and 3.5 Inch (90 mm) Flexible Disk Cartridges	0693-AA54
296	FIPS for Recorded Magnetic Tape and Cartridge for Information Interchange; 18 track, Parallel, 12.65 mm (1/2 in), 1491 cpmm (37871 cpi) Group-Coded Recording	0693-AA55
297	FIPS for Device Level Interface for Streaming Cartridge and Cassette Tape Drives	0693-AA57
298	FIPS for Electronic Business Data Exchange	0693-AA60
299	Extensions to FIPS 127, Database Language SQL	0693-AA63
300	FIPS for Applications Portability Profile	0693-AA65
301	FIPS for Conformance Testing Policy and Procedures	0693-AA66
302	FIPS for Document Application Profile	0693-AA67
303	Revision of FIPS 140, General Security Requirements for Equipment Using the Data Encryption Standard	0693-AA68

DOC

National Institute of Standards & Technology—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
304	Revision to FIPS 100, Interface Between Data Terminal Equipment (DTE) and Data Circuit-Terminating Equipment (DCE) for Operation with Packet-Switched Data Communications Networks	0693-AA39
[illegible]	FIPS for Standard Generalized Markup Language (SGML)	0693-AA50
306	Revisions to FIPS 60, 61, 62, 63, 97, and 111, Computer System Input/Output (I/O) Interface Standards	0693-AA59
[illegible]	FIPS for Programmer's Hierarchical Interactive Graphics System (PHIGS)	0693-AA64

National Institute of Standards & Technology—Completed Actions

Sequence Number	Title	Regulation Identifier Number
[illegible]	FIPS for Codes for the Identification of Aquifer Names and Geologic Units	0693-AA44
[illegible]	FIPS for Portable Operating System Environments (POSIX*)	0693-AA49
310	FIPS for Government Open Systems Interconnection Profile	0693-AA61

National Oceanic and Atmospheric Administration—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
311	Marine Fishery User Fees	0648-AD03
312	Amendment 1 Gulf of Mexico Reef Fish Fishery Management Plan	0648-AC16
313	Amendment 6 to the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries	0648-AC19
[illegible]	Amendment 4 to the Pacific Coast Groundfish Fishery Management Plan	0648-AC43
[illegible]	Bluefish Fishery Management Plan	0648-AC51
[illegible]	Regulatory Amendment To Institute a Certification Program for the Importation of Whole Undersized Atlantic Groundfish	0648-AC80
317	Licensing of Private Remote Sensing Space Systems	0648-AC84

National Oceanic and Atmospheric Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
318	Processed Fishery Products, Processed Products Thereof & Certain Other Processed Food Products: U.S. Standards for Grades of Frozen Fish Blocks & Products Made Therefrom etc	0648-AA45
319	Endangered Fish or Wildlife; Permits for the Incidental Taking of Endangered Marine Species	0648-AB47
320	Groundfish of the Gulf of Alaska and High Seas Salmon Fishery off Alaska; Regulatory Amendment	0648-AB51
321	Resubmitted Portion of Amendment 1 to the American Lobster Fishery Management Plan	0648-AB89
322	Amendment 1 to the Swordfish FMP	0648-AB92
323	Amendment 3 to the High Seas Salmon Fishery Off the Coast of Alaska East of 175 E. Longitude	0648-AC00
324	Amendment 3 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources	0648-AC15
325	Amendment 4 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico	0648-AC17
326	Implementation of Conditionally Approved Measures Under Amendment 1 to the Spiny and Slipper Lobster FMP in the Gulf of Mexico and South Atlantic - Permits and Bag Limits	0648-AC25
327	Amendment 2 to the Northeast Multispecies Fishery Management Plan	0648-AC26
328	Fish and Seafood Promotion Act of 1986	0648-AC27
329	Amendment 3 to the American Lobster Fishery Management Plan	0648-AC28
330	Amendment 2 to the Spiny Lobster Fishery Management Plan of the Gulf of Mexico and South Atlantic	0648-AC29
331	Foreign Fishing Poundage and Permit Fees, 1989	0648-AC30
332	Amendment 12 to the FMP for Groundfish of the Bering Sea and Aleutian Islands area	0648-AC32
333	Fishery Management Plan for King and Tanner Crab in the Bering Sea and Aleutian Islands	0648-AC34
334	Reporting Requirements Governing Salmon Taken Off Alaska and Delivered or Landed Outside Alaska	0648-AC39
335	Atlantic Tuna Fisheries - Regulatory Amendment	0648-AC40
336	Regulatory Amendment to the Fishery Management Plan for the Atlantic Swordfish Fishery	0648-AC41
337	Amendment 17 to the FMP for Groundfish of the Gulf of Alaska	0648-AC42

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National Oceanic and Atmospheric Administration—Proposed Rule Stage—Continued

Sequence Number	Title	Regulation Identifier Number
338	Amendment 3 to the Fishery Management Plan for Atlantic Sea Scallops	0648-AC44
339	Regulatory Amendment to Designate Special Fishing Areas in the Snapper-Grouper Fishery of the South Atlantic	0648-AC48
340	Amendment 9 to the Fishery Management Plan for Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California	0648-AC49
341	Amendment 1 to the Fishery Management Plan for the Snapper- Grouper Fishery of the South Atlantic	0648-AC50
342	Amendment 4 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources	0648-AC55
343	Regulatory Amendment to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico - The Tortugas Sanctuary	0648-AC56
344	Fishery Management Plan for the High Seas Salmon Fishery Off the Coast of Alaska East of 175 East Longitude - Regulatory Amendment	0648-AC57
345	Amendment 3 to the Fishery Management Plan for the Red Drum Fishery of the Gulf of Mexico	0648-AC58
346	Regulatory Amendment To Clarify Trip Limit Regulations for the Pacific Coast Groundfish and Salmon Fisheries	0648-AC59
347	Scientific Research - Domestic and Foreign Fishing	0648-AC61
348	Implementation of PL 99-659 and Other Recommendations To Improve the Fishery Management System - The Conservation Standard	0648-AC62
349	Proposed Regulations for the Key Largo National Marine Sanctuary	0648-AA32
350	Federal Consistency with Approved Coastal Zone Management Programs	0648-AA34
351	Draft Regulations for the Proposed Flower Garden Banks National Marine Sanctuary	0648-AB49
352	Proposed Regulations for the Looe Key National Marine Sanctuary	0648-AB64
353	Proposed Regulations for the National Estuarine Reserve Research Program	0648-AB68
354	Rulemaking to Implement 1985 Reauthorization of the Coastal Zone Management Act (CZMA)	0648-AC02
355	Proposed Regulations for the Channel Islands National Marine Sanctuary	0648-AC03
356	Proposed Regulations for the Point Reyes-Farallon Islands National Marine Sanctuary	0648-AC05
357	Proposed Regulations for the National Marine Sanctuary Program	0648-AC23
358	Proposed Regulations for the Monterey Bay National Marine Sanctuary	0648-AC63
[illegible]	National Sea Grant Program Funding Regulations	0648-AC24

National Oceanic and Atmospheric Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
360	Fishery Conservation and Management: Confidentiality of Statistics	0648-AA30
361	U.S. General Standards for Grades of Shrimp	0648-AA47
362	Implementation of PL 59-659 and Other Recommendations To Improve the Fishery Management System - Council Operations	0648-AB09
363	Foreign Fishing - Scientific Research	0648-AB23
364	Development of a Fishery Management Plan for Summer Flounder	0648-AB30
365	Regulations Governing the Taking and Importing of Marine Mammals; Importation of Yellowfin Tuna	0648-AB46
366	Endangered Fish and Wildlife; Approaching Humpback Whales in Hawaiian Waters	0648-AB70
367	Safety of United States Observers Aboard Foreign Fishing Vessels	0648-AB94
368	U.S. Standards for Grades of Fish Fillets	0648-AC12
369	Fishery Management Plan for Atlantic Billfishes	0648-AC24
370	Regulatory Amendment to Require Reporting of Pacific Coast Groundfish Landing to States	0648-AC31
371	Policy to Require Observers to be Carried on Domestic Fishing Vessels	0648-AC45
372	Proposed Regulations for the National Marine Sanctuary Program	0648-AA31
373	Draft Regulations for the Proposed Cordell Bank National Marine Sanctuary	0648-AB50
374	Deep Seabed Mining Regulations for Commercial Recovery	0648-AA95

National Oceanic and Atmospheric Administration—Completed Actions

Sequence Number	Title	Regulation Identifier Number
375	Amendment 2 to the Fishery Management Plan for Atlantic Sea Scallops	0648-AB83
376	Groundfish of the Gulf of Alaska - Amendment 16 and Groundfish of the Bering Sea and Aleutian Islands Area - Amendment 11a	0648-AC06
377	Taking of Marine Mammals Incidental to Underwater Tests by the Department of the Navy	0648-AC08

DOC

National Oceanic and Atmospheric Administration—Completed Actions—Continued

Sequence Number	Title	Regulation Identifier Number
378	Amendment 2 to the Fishery Management Plan for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region	0648-AC10
[illegible]	Amendment to Regulation Providing for Allocation of Pacific Halibut Among Domestic Fishermen	0648-AC20
380	Amendment 1 to the Fishery Management Plan for the Precious Coral Fishery of the Western Pacific Region	0648-AC33
381	Regulatory Amendment to Prohibit Landings of Undersize Red Snapper in the Reef Fish Fishery of the Gulf of Mexico	0648-AC36
382	Implementation of Conditionally Approved Measures Under Amendment to the Spiny and Slipper Lobster FMP in the Gulf of Mexico and South Atlantic - Trap Removal	0648-AC37
[illegible]	Amendment 2 to the Fishery Management Plan for the Red Drum Fishery of the Gulf of Mexico	0648-AC38
384	Regulatory Amendment Modifying the Boundary of the Texas Seasonal Closure of the Shrimp Fishery of the Gulf of Mexico for 1988	0648-AC46
[illegible]	Regulatory Amendment Revising the Final Regulations Implementing the Fishery Management Plan for the Coastal Migratory Pelagic Resources	0648-AC47
386*	Interjurisdictional Fisheries	0648-AC52

Office of Productivity, Technology and Innovation—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
[illegible]7	Administration of a Uniform Patent Policy with Respect to Domestic Rights in Inventions Made by Government Employees	0692-AA05

Office of Productivity, Technology and Innovation—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
[illegible]	Licensing of Government-Owned Inventions	0692-AA04

Patent and Trademark Office—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
[illegible]	Deposit of Biological Materials for Patent Purposes	0651-AA13
390	Trademark Automated Search System Fees	0651-AA18
391	Trademark Applications Pursuant to 15 USC 1126	0651-AA23
392	Duty of Disclosure - Information Disclosure Statement	0651-AA27
[illegible]	Revision of Patent Fees	0651-AA30
394	Requests for Reconsideration in Patent and Trademark Office Disciplinary Proceedings	0651-AA33
[illegible]	Miscellaneous Changes in Patent Practice	0651-AA34
396	Amendments of Patent and Trademark Rules Concerning Judicial Review of Decisions	0651-AA35
[illegible]7	Amendments of Trademark Rules Governing Inter Partes Proceedings; Miscellaneous Amendments of Other Trademark Rules	0651-AA36
398	Requirements for Patent Applications Containing DNA/RNA and Protein Sequence Disclosures	0651-AA37

DOC

Patent and Trademark Office—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
399	Requests for Identifiable Records	0651-AA04
400	Variety Denomination Requirements for Plant Patent Applications	0651-AA12
401	Practice Before the Patent and Trademark Office	0651-AA31
402	Miscellaneous Changes in Patent Practice	0651-AA32

Patent and Trademark Office—Completed Actions

Sequence Number	Title	Regulation Identifier Number
403	Miscellaneous Amendments of Patent Rules	0651-AA25
404	Requests for Presidential Proclamations under the Semiconductor Chip Protection Act	0651-AA29

United States Travel and Tourism Administration—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
405	Travel Promotion Fee	0644-AA00

DEPARTMENT OF COMMERCE (DOC) — Proposed Rule Stage

Office of the Secretary (OS)

251. CONTRACT CLAUSES AND SOLICITATION PROVISIONS FOR THE COMMERCE AUTOMATED SOLICITATION SYSTEM

Legal Authority: 41 USC 251 et seq; PL 98-369; PL 98-577

CFR Citation: 48 CFR 1 to 53

Legal Deadline: None

Abstract: The Department of Commerce is currently reviewing standardized contract clauses and solicitation provisions for inclusion in a planned Departmentwide automated solicitation system. A proposed amendment to the Commerce Acquisition Regulation (CAR) would illustrate and incorporate these standardized clauses and provisions. This should ultimately be less burdensome to Department contractors and potential contractors, since the clauses and provisions would be used uniformly throughout the Department.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Joyce A. Cavallini, Director of Procurement Management, Department of Commerce, Office of the Secretary, Office of Procurement and Administrative Ser, 14th Street & Constitution Avenue, NW, Washington, DC 20230, 202 377-0758

RIN: 0690-AA06

252. SOURCE EVALUATION PROCEDURES AND MISCELLANEOUS REVISIONS TO THE COMMERCE ACQUISITION REGULATION

Legal Authority: 41 USC 251 et seq

CFR Citation: 48 CFR 1 to 53

Legal Deadline: None

Abstract: The Department of Commerce has no formal uniform source evaluation procedures applicable to its procurement activities. Standardization of source evaluation procedures will alleviate potential inconsistencies among procurement professionals as well as potential Department contractors relative to evaluation of proposals.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Joyce A. Cavallini, Director of Procurement Management, Department of Commerce, Office of the Secretary, Office of Procurement and Administrative Ser, 14th Street and

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DOC—OS — Proposed Rule Stage

Constitution Ave., NW, Washington, DC 20230, 202 377-5758

RIN: 0690-AA13

253. PROGRAM FRAUD CIVIL REMEDIES

Legal Authority: 31 USC 3809

CFR Citation: 15 CFR 25

Legal Deadline: None

Abstract: This rule, if promulgated, would implement the Program Fraud Civil Remedies Act of 1986 which authorizes the Department of Commerce (and certain other Federal agencies) to impose through administrative adjudication civil penalties and assessments against persons making false claims or statements to it.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Jerry Walz, Chief, Contract Law Division, Room 5893, Department of Commerce, Office of the Secretary, Washington, DC 20230, 202 377-1123

RIN: 0690-AA14

DEPARTMENT OF COMMERCE (DOC)
Office of the Secretary (OS)

Completed Actions

254. ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN DEPARTMENT OF COMMERCE PROGRAMS

Legal Authority: 29 USC 794; EO 12250

CFR Citation: 15 CFR 8c

Legal Deadline: None

Abstract: Regulations will be proposed providing for the enforcement of Section 504 of the Rehabilitation Act of 1973, as amended. These regulations will ensure programmatic and physical accessibility for handicapped individuals in Department of Commerce activities.

Timetable:

Action	Date	FR Cite
NPRM	11/24/84	49 FR 45861
NPRM Comment Period End	03/21/85	49 FR 45861
Final Action	05/27/88	53 FR 19270
Final Action Effective	07/26/88	53 FR 19270

Small Entities Affected: None

Government Levels Affected: None

Sectors Affected: None

Agency Contact: Richard Stearns, Chief, EEO Division, Department of Commerce, Office of the Secretary, Office of Civil Rights, 14th and Constitution Avenue, NW, Washington, DC 20230, 202 377-5812

RIN: 0690-AA00

255. PUBLIC INFORMATION

Legal Authority: 5 USC 552

CFR Citation: 15 CFR 4

Legal Deadline: None

Abstract: The existing regulations implementing the Freedom of Information Act are being revised to incorporate changes in the Department's policies and procedures affecting FOIA administration. Additionally, the revision adopts the provisions of EO 12600, Predisclosure Notification Procedures for Confidential Information, dated June 23, 1987. Section 4.9 of the regulations was completed on July 17, 1987, 52 FR 26981, to comply with the Freedom of Information Reform Act of 1986.

Timetable:

Action	Date	FR Cite
NPRM	04/28/87	52 FR 15327
NPRM Comment Period End	06/12/87	52 FR 15327
Final Action	03/04/88	53 FR 6972
Final Action Effective	04/04/88	53 FR 6972

Small Entities Affected: None

Government Levels Affected: None

Sectors Affected: All

Agency Contact: Geraldine P. LeBoo, Management Analyst, Department of Commerce, Office of the Secretary, Washington, DC 20230, 202 377-3030

RIN: 0605-AA15

256. PRIVACY ACT

Legal Authority: 5 USC 552a

CFR Citation: 15 CFR 4b

Legal Deadline: None

Abstract: The existing regulations implementing the Privacy Act are being revised to reflect the centralization of the administrative appeals process. Current regulations assign final decisionmaking authority within the same component making the initial decision. Centralization within the Office of General Counsel would promote enhanced objectivity in the Department's final administrative decisions on Privacy Act requests.

Timetable:

Action	Date	FR Cite
NPRM	03/20/88	53 FR 10256
Final Action	07/12/88	53 FR 26235
Final Action Effective	08/11/88	53 FR 26235

Small Entities Affected: None

Government Levels Affected: None

Sectors Affected: Multiple

Agency Contact: Geraldine P. LeBoo, Management Analyst, Department of Commerce, Office of the Secretary, Washington, DC 20230, 202 377-3030

RIN: 0605-AA16

DEPARTMENT OF COMMERCE (DOC)
Bureau of Economic Analysis (BEA)

Proposed Rule Stage

257. INCREASE IN EXEMPTION LEVEL OF ANNUAL SURVEY OF FOREIGN DIRECT INVESTMENT IN THE UNITED STATES (FORM BE-15) CONDUCTED BY BEA

Legal Authority: 22 USC 3101 to 3108 Int'l Investment & Trade in Svcs Survey Act

CFR Citation: 15 CFR 806

Legal Deadline: None

Abstract: This action will raise the exemption level for Form BE-15 (Annual Survey of Foreign Direct Investment in the United States) from $10 million to $20 million. The purpose of the action is to bring the exemption level into conformance with that for Form BE-12 (LF) of the Benchmark Survey of Foreign Direct Investment in the United States-1987. As a result of the action, the number of reports filed by U.S. companies will be significantly reduced, thereby reducing both reporting and processing burden.

Timetable:

Action	Date	FR Cite
NPRM	09/00/88	
NPRM Comment Period End	11/00/88	
Final Action	02/00/89	
Final Action Effective	03/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Betty L. Barker, Chief, International Investment Division, Department of Commerce, Bureau of Economic Analysis, 1401 K Street, NW, Room 607, Tower Building, Washington, DC 20230, 202 523-0659

RIN: 0691-AA14

DEPARTMENT OF COMMERCE (DOC)
Bureau of Economic Analysis (BEA)

Final Rule Stage

258. IMPLEMENTATION OF ANNUAL SURVEY OF SELECTED SERVICES TRANSACTIONS WITH UNAFFILIATED FOREIGN PERSONS

Significance: Agency Priority

Legal Authority: 22 USC 3101 to 3108 Int'l Investment & Trade in Svcs Survey Act

CFR Citation: 15 CFR 801

Legal Deadline: None

Abstract: This action will amend 15 CFR 801 by adding rules to implement a new annual follow-on survey to the BE-20 Benchmark Survey of Selected Services Transactions with Unaffiliated Foreign Persons—1986. The criteria for determining who must report are the same on the proposed BE-22 as on the BE-20. The BE-22 will cover the same type of services as the BE-20, but will collect significantly less detail for several types, namely sales of advertising, computer and data processing, and data base and other information services, and both sales and purchases of telecommunications services. Data from the annual survey will be used to derive universe estimates of covered services transactions in nonbenchmark years, thus updating the data collected in the benchmark survey. The first year of coverage will be 1987; the survey will not be taken for a year covered by the benchmark survey.

Timetable:

Action	Date	FR Cite
NPRM	06/20/88	53 FR 23124
NPRM Comment Period End	08/04/88	53 FR 23124
Final Action	09/00/88	
Final Action Effective	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Public Compliance Cost: Initial Cost: $330,000; Yearly Recurring Cost: $330,000; Base Year for Dollar Estimates: 1958

Agency Contact: Betty L. Barker, Chief, International Investment Div., Department of Commerce, Bureau of Economic Analysis, 1401 K Street, NW, Room 607, Tower Building, Washington, DC 20230, 202 523-0659

RIN: 0691-AA10

259. CHANGE IN EXEMPTION FOR FOREIGN OCEAN CARRIERS' EXPENSES SURVEY CONDUCTED BY BEA -- ANNUAL REPORT FORM BE-29

Legal Authority: 22 USC 3101 to 3108 Int'l Investment & Trade in Svcs Survey Act

CFR Citation: 15 CFR 806

Legal Deadline: None

Abstract: This action will change the exemption for annual report Form BE-29 (Foreign Ocean Carriers' Expenses in the United States). An exemption based on number of calls by foreign carriers will be added and the exemption level based on the value of reportable transactions will be lowered. The change will more accurately identify persons with significant reportable transactions. This action will also place a limit on the number of reports required for certain kinds of carriers. As a result of this action, the number of reporters and number of reports filed by respondents will be reduced, thereby reducing both reporting and processing burdens.

Timetable:

Action	Date	FR Cite
NPRM	07/14/88	53 FR 26603
NPRM Comment Period End	08/29/88	53 FR 26603
Final Action	09/00/88	
Final Action Effective	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Anthony J. DiLullo, Assistant Chief, Department of Commerce, Bureau of Economic Analysis, Balance of Payments Division, Washington, DC 20230, 202 523-0621

RIN: 0691-AA13

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DEPARTMENT OF COMMERCE (DOC) — **Completed Actions**

Bureau of Economic Analysis (BEA)

260. INCREASE IN EXEMPTION LEVELS FOR QUARTERLY FOREIGN DIRECT INVESTMENT SURVEYS CONDUCTED BY BEA -- FORMS BE-605 AND 606B

Legal Authority: 22 USC 3101 to 3108 Int'l Investment & Trade in Svcs Survey Act

CFR Citation: 15 CFR 806

Legal Deadline: None

Abstract: This action will raise the exemption levels for quarterly report Forms BE-605 (Transactions of U.S. Affiliates, Except an Unincorporated Bank, with Foreign Parent) and BE-606B (Transactions of U.S. Banking Branch or Agency with Foreign Parent) from $15 million to $20 million. The purpose of the action is to bring the exemption levels into conformance with those for Form BE-12 (LF) of the Benchmark Survey of Foreign Direct Investment in the United States -- 1987. As a result of the action, the number of reports filed by U.S. companies will be significantly reduced, thereby reducing both reporting and processing burden.

Timetable:

Action	Date	FR Cite
NPRM	02/16/88	53 FR 04420
NPRM Comment Period End	04/01/88	
Final Action	04/28/88	53 FR 15197
Final Action Effective	05/31/88	53 FR 15198

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Betty L. Barker, Chief, International Investment Division, Department of Commerce, Bureau of Economic Analysis, 1401 K Street, NW, Room 607, Tower Building, Washington, DC 20230, 202 523-0659

RIN: 0691-AA12

DEPARTMENT OF COMMERCE (DOC) — **Proposed Rule Stage**

Bureau of the Census (CENSUS)

261. FOREIGN TRADE STATISTICS REGULATIONS

Significance: Regulatory Program

Legal Authority: 13 USC 301 to 307

CFR Citation: 15 CFR 30.1 to 30.92

Legal Deadline: None
Deadline is contingent upon legislation not yet passed.

Abstract: Review of CFR 30 for changes to conform with the new statistical classification (harmonized) system for imports and exports. This review will combine elements of housekeeping changes, updating obsolete information, clarification, bringing the system into line with harmonization (including metric measurements) and conformance of reporting with current practices. There should be no added burden or cost placed on the public because no additional information is required, nor new reporting requirements.

The benefits of these changes will be: allowing direct comparisons between U.S. imports and exports, enabling comparisons between the trade balances of the U.S. and of our major trading partners.

Once the legislation is passed, there is no alternative to making these changes in order to implement the legislation. Additionally, Section 30.24 will be revised to be consistent with Customs Regulations by eliminating the "four day rule" regarding submission of "Shipper's Export Declarations."

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	
NPRM Comment Period End	02/00/89	
Interim Final Rule	06/00/89	

Small Entities Affected: None

Government Levels Affected: None

Sectors Affected: All

Agency Contact: Don L. Adams, Chief, Foreign Trade Division, Department of Commerce, Bureau of the Census, Washington, DC 20233, 301 763-5342

RIN: 0607-AA10

DEPARTMENT OF COMMERCE (DOC) — **Final Rule Stage**

Economic Development Administration (EDA)

262. GENERAL REQUIREMENTS FOR FINANCIAL ASSISTANCE -- DESIGN, CONSTRUCTION OF BUILDINGS TO ACCOMMODATE THE PHYSICALLY HANDICAPPED

Legal Authority: 42 USC 4151 to 4156; 42 USC 3211; DOC Organization Order 10-4, as amended

CFR Citation: 13 CFR 309.14

Legal Deadline: None

Abstract: Existing regulations will be amended if necessary to reflect the most recent (1980) standards of the American National Standards Institute (ANSI) for handicap accessibility as well as the "Minimum Guidelines and Requirements for Accessible Design" published by the Architectural and Transportation Barriers Compliance Board (47 FR 33862, August 14, 1982) and the proposed "Uniform Federal Accessibility Standards" published by GSA (comments due by August 22, 1983).

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: Local, State

Sectors Affected: Multiple

Agency Contact: James F. Marten, Deputy Chief Counsel, Department of Commerce, Economic Development

Administration, Operations and Administration, 14th & Constitution Ave., NW, Room 7001, Washington, DC 20230, 202 377-5441

RIN: 0610-AA09

263. ECONOMIC DEVELOPMENT ADMINISTRATION: PROPERTY MANAGEMENT STANDARDS

Legal Authority: 40 USC 3211; DOC Organization Order 10-4, as amended

CFR Citation: 13 CFR 314

Legal Deadline: None

Abstract: EDA's regulations regarding the use and disposition of real property acquired or improved with Federal funds are being revised to clarify EDA policy regarding the authorized use and disposition of grant property (real property) and in particular requirements regarding the lease and/or sale of such property. As revised the change will clarify present requirements for property determining the appropriate amount of compensation due the Federal Government upon the sale of real property acquired or improved with grant funds.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: Local, State

Sectors Affected: Multiple

Agency Contact: James F. Marten, Deputy Chief Counsel, Department of Commerce, Economic Development Administration, Operations and Administration, 14th & Constitution Ave., NW, Room 7001, Washington, DC 20230, 202 377-5441

RIN: 0610-AA07

264. PROPERTY MANAGEMENT STANDARDS -- MORTGAGES

Legal Authority: 42 USC 3211; DOC Organization Order 10-4, as amended

CFR Citation: 13 CFR 314.5

Legal Deadline: None

Abstract: These amendments allow the Assistant Secretary to waive the prohibition against placing mortgages on property which has been financed by an EDA public works grant, if an additional condition is met. This additional condition for waiver is that all proceeds from a loan which is secured by a mortgage or lien on property which has been financed by an EDA public works grant shall be available only to the grantee and such proceeds shall be used on the project which secures such loans, or for working capital purposes relating to that project.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/30/84	49 FR 22463
Final Action	10/00/88	
Final Action Effective	10/00/88	

Small Entities Affected: None

Government Levels Affected: Local, State

Sectors Affected: Multiple

Agency Contact: James F. Marten, Deputy Chief Counsel, Department of Commerce, Economic Development Administration, Operations and Administration, 14th & Constitution Ave., NW, Room 7001, Washington, DC 20230, 202 377-5441

RIN: 0610-AA12

265. GENERAL REQUIREMENTS FOR FINANCIAL ASSISTANCE: EMPLOYMENT OF EXPEDITERS OR ADMINISTRATIVE EMPLOYEES; COMPENSATION OF PERSONS ENGAGED BY OR ON BEHALF OF APPLICANTS

Legal Authority: 42 USC 3211; DOC Organization Order 10-4, as amended

CFR Citation: 13 CFR 309

Legal Deadline: None

Abstract: This rule amends EDA's general requirements regulation -- employment of expediters or administrative employees -- concerning EDA positions involving discretion, to conform to the reorganization of EDA pursuant to Department of Commerce Organization Order 45-1. Old positions which are no longer in existence are deleted. New comparable positions are listed in the amended regulations.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/20/85	50 FR 97
Final Action	11/00/88	
Final Action Effective	11/00/88	

Small Entities Affected: None

Government Levels Affected: Local, State

Sectors Affected: Multiple

Agency Contact: James F. Marten, Deputy Chief Counsel, Department of Commerce, Economic Development Administration, Herbert C. Hoover Bldg., 14th St. between Penn. & Const. Ave., NW, Washington, DC 20230, 202 377-5441

RIN: 0610-AA15

266. OVERALL ECONOMIC DEVELOPMENT PROGRAM PUBLIC WORKS AND DEVELOPMENT FACILITIES PROGRAM

Legal Authority: 42 USC 3211; DOC Organization Order 10-4, as amended

CFR Citation: 13 CFR 302; 13 CFR 304; 13 CFR 315

Legal Deadline: None

Abstract: This rule amends EDA's rules by updating provisions concerning Public Works Impact Areas and Special Impact Areas, specifically as to Designation Requirements; Overall Economic Development Program Requirements; and Supplementary Grant Rates.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/07/86	51 FR 24512
Final Action	03/00/89	
Final Action Effective	03/00/89	

Small Entities Affected: None

Government Levels Affected: Local, State

Sectors Affected: Multiple

Agency Contact: Walter Archibald, Director, Office of Compliance Review, Department of Commerce, Economic Development Administration, Herbert C. Hoover Bldg., 14th & Constitution Avenue NW, Room 7215, Washington, DC 20230, 202 377-2718

RIN: 0610-AA10

257. DESIGNATION OF AREAS; DESIGNATION OF PWIP AREAS

Legal Authority: 42 USC 3211; Department of Commerce Organization Order 10-4, as amended

CFR Citation: 13 CFR 302

Legal Deadline: None

Abstract: 13 CFR 302 at Section 302.7 entitled "Designation of Public Works Impact Program Areas" is amended at paragraph (a)(4) to delete reference to submission of an Overall Economic Development Program (OEDP) since under EDA's authorizing legislation, Public Works Impact Program (PWIP) projects need not meet OEDP requirements; and to add that although there are no boundary constraints for PWIPs under the Act, program considerations dictate that for an area to be given PWIP designation, it must be capable of analysis in light of available data establishing eligibility for designation.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/03/86	51 FR 24302
Final Action	01/00/89	
Final Action Effective	01/00/89	

Small Entities Affected: None

Government Levels Affected: Local, State

Sectors Affected: Multiple

Agency Contact: Walter Archibald, Director, Office of Compliance Review, Department of Commerce, Economic Development Administration, Herbert C. Hoover Bldg., 14th St. between Penn. and Const. Ave., NW, Room 7215, Washington, DC 20230, 202 377-2718

RIN: 0610-AA21

258. GENERAL REQUIREMENTS FOR FINANCIAL ASSISTANCE; UNFAIR COMPETITION

Legal Authority: 42 USC 3211; Dept. of Commerce Organization Order 10-4, as amended

CFR Citation: 13 CFR 300

Legal Deadline: None

Abstract: 13 CFR 300 at Sec 300.2 entitled "Unfair Competition" has been amended to change conditions under which EDA will conduct a study (verification and evaluation) called a "702 Study" of the capacity and demand for particular goods, materials, commodities, services or facilities. The amendment will narrow the unfair competition requirements for a "702 Study" by raising the threshold amount of projects from $10,000 to $25,000. Also, the unfair competition exceptions have been expanded to apply to all EDA financial assistance programs. Certain projects are exempt from "702 Study" requirements and the definition of retention of capacity and employment has been changed by deleting the word "existing."

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/02/86	51 FR 16292
Final Action	01/00/89	
Final Action Effective	03/00/89	

Small Entities Affected: None

Government Levels Affected: Local, State

Sectors Affected: Multiple

Agency Contact: Walter Archibald, Director, Office of Compliance Review, Department of Commerce, Economic Development Administration, Herbert C. Hoover Bldg., 14th St. between Penn. and Const. Ave., NW, Room 7215, Washington, DC 20230, 202 377-2710

RIN: 0610-AA22

259. SALE OF LOANS AND LOAN GUARANTEES TO THE PRIVATE SECTOR

Significance: Regulatory Program

Legal Authority: 42 USC 3211; Department of Commerce Organization Order 10-4, as amended

CFR Citation: 13 CFR Chapter III

Legal Deadline: None

Abstract: EDA seeks to repeal the limitation in the Commerce Appropriation Act ("McDade Amendment") whereby funds cannot be used to sell any loan to private interests, except with the consent of the borrower.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Local, State

Sectors Affected: Multiple

Agency Contact: Joseph Levine, Chief Counsel, Department of Commerce, Economic Development Administration, 14th Street between Pennsylvania & Constitution Avenues, NW, Washington, DC 20230, 202 377-4687

RIN: 0610-AA31

270. GENERAL REQUIREMENTS FOR FINANCIAL ASSISTANCE — NONRELOCATION

Legal Authority: 42 USC 3211; Department of Commerce Organization Order 10-4, as amended

CFR Citation: 13 CFR 300.3

Legal Deadline: None

Abstract: This rule will amend EDA's nonrelocation rule by changing the rate of interest to be charged when failure to abide by the nonrelocation rule results in termination of financial assistance provided by EDA. Interest will be at the rate used in Federal debt collection and discount evaluation under the Debt Collection Act. The rule will also state that the 48 month period for compliance by covered grantees is retroactive if the violation occurs after September 15, 1986.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/10/87	52 FR 21932
Final Action	11/00/88	
Final Action Effective	11/00/88	

Small Entities Affected: None

Government Levels Affected: Local, State

Sectors Affected: Multiple

Agency Contact: Joseph Levine, Chief Counsel, Department of Commerce, Economic Development Administration, 14th Street between Pennsylvania & Constitution Avenues, NW, Washington, DC 20230, 202 377-4687

RIN: 0610-AA32

271. GENERAL REQUIREMENTS FOR FINANCIAL ASSISTANCE – PROJECT MODIFICATION

Legal Authority: 42 USC 3211; Department of Commerce Organization Order 10-4, as amended

CFR Citation: 13 CFR 301.26

Legal Deadline: None

Abstract: The purpose of this amendment is to conform the statement of EDA's policy on project modification to guidelines established by the General Accounting Office on change of scope, by putting into regulatory language, that which has been actual EDA practice. The rule change provides standards and states that EDA will not allow project modification which would constitute a change of scope.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/20/87	51 FR 37175
Final Action	12/00/88	
Final Action Effective	12/00/88	

Small Entities Affected: None

Government Levels Affected: Local, State

Sectors Affected: Multiple

Agency Contact: Joseph Levine, Chief Counsel, Department of Commerce, Economic Development Administration, 14th Street between Pennsylvania & Constitution Avenues, NW, Washington, DC 20230, 202 377-4687

RIN: 0610-AA33

272. PROTECTION OF EDA'S INTEREST IN FACILITIES ACQUIRED, BUILT, OR IMPROVED WITH EDA GRANT FUNDS

Significance: Regulatory Program

Legal Authority: 42 USC 3211; Department of Commerce Organization Order 10-4, as amended

CFR Citation: 13 CFR 314

Legal Deadline: None

Abstract: EDA intends to initiate regulatory action to protect its interests by: (1) enabling EDA to acquire liens in property purchased or improved with EDA grant funds; and (2) once EDA has such ownership rights in property, by enabling EDA to expend funds to protect and care for such property, including liquidation, litigation or any other necessary action. The latter regulatory action is contingent upon legislation being enacted which authorizes EDA to expend funds and take other actions to protect its ownership rights in property purchased or improved with EDA grant funds. The Department of Commerce Legislative Program for the Second Session of the 100th Congress includes the submission of appropriate legislation to the Congress.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/88	
Final Action	02/00/89	
Final Action Effective	02/00/89	
Proposed Legislation	00/00/00	

Small Entities Affected: None

Government Levels Affected: Local, State

Sectors Affected: Multiple

Agency Contact: Joseph Levine, Chief Counsel, Department of Commerce, Economic Development Administration, 14th Street between Pennsylvania & Constitution Avenues, NW, Washington, DC 20230, 202 377-4687

RIN: 0610-AA35

273. LIABILITY FOR HAZARDOUS SUBSTANCES ASSOCIATED WITH EDA LOANS AND LOAN GUARANTEES

Significance: Regulatory Program

Legal Authority: 42 USC 3211; Department of Commerce Organization Order 10-4, as amended

CFR Citation: 13 CFR Chapter III

Legal Deadline: None

Abstract: EDA will undertake some action to enable it to minimize financial losses resulting from hazardous substances on property it has acquired as a result of defaulted business loans and loan guarantees.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/00/88	
Final Action	11/00/88	
Final Action Effective	11/00/88	

Small Entities Affected: None

Government Levels Affected: Local, State

Sectors Affected: Multiple

Agency Contact: Joseph Levine, Chief Counsel, Department of Commerce, Economic Development Administration, 14th Street between Pennsylvania & Constitution Avenues, NW, Washington, DC 20230, 202 377-4687

RIN: 0610-AA36

274. ADJUSTMENT GRANTS - REVOLVING LOAN FUNDS

Legal Authority: 42 USC 3211; DOC Organization Order 10-4, as amended

CFR Citation: 13 CFR 308

Legal Deadline: None

Abstract: This would amend EDA's rule on adjustment grants to provide that revolving loan fund (RLF) grants are held in trust by the grantee as trustee for the benefit of borrowers and potential borrowers.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/15/88	53 FR 12510
Final Action	11/00/88	
Final Action Effective	11/00/88	

Small Entities Affected: None

Government Levels Affected: Local, State

Sectors Affected: Multiple

Agency Contact: James F. Marten, Acting Chief Counsel, Department of Commerce, Economic Development Administration, Herbert C. Hoover Bldg., Room 7001, 14th St. & Constitution Ave., NW, Washington, DC 20230, 202 377-4687

RIN: 0610-AA37

275. ® ECONOMIC DEVELOPMENT DISTRICTS, DISTRICT ORGANIZATION; CIVIL RIGHTS REQUIREMENTS

Legal Authority: 42 USC 3211; Department of Commerce Organization Order 10-4, as amended

CFR Citation: 13 CFR 303; 13 CFR 311

Legal Deadline: None

Abstract: At the request of the Department of Justice, the Economic Development Administration (EDA) is revising our Civil Rights Regulations at 13 CFR 303 and 311. The specific changes involve minority representation on District Boards funded by EDA and Affirmative Action requirements, as well as a few minor changes in terminology.

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DOC—EDA — Final Rule Stage

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/00/89	
Final Action	04/00/89	
Final Action Effective	04/00/89	

Small Entities Affected: None

Government Levels Affected: Local, State

Sectors Affected: Multiple

Agency Contact: Joseph M. Levine, Chief Counsel, Department of Commerce, Economic Development Administration, Herbert Hoover Bldg., 14th St. Between Penn. and Const. Aves., NW, Washington, DC 20230, 202 377-4687

RIN: 0610-AA36

276. ◆ AREA DESIGNATION - SPECIAL IMPACT AREAS

Legal Authority: 42 USC 3211; Department of Commerce Organization Order 10-4, as amended

CFR Citation: 15 CFR 301

Legal Deadline: None

Abstract: EDA is deleting its 12-month annual average unemployment rate based upon the calendar year, for Special Impact Area (SIA) designation. Under the current calendar year qualifier, it would be possible that an area's qualifying calendar 1987 average rate could be used in support of its SIA designation as late as February 1989 regardless of a subsequently available, non-qualifying 12-month (non-calendar) rate. This could happen since 1988 calendar year average rates for areas will not be computed by state employment security agencies until February 1989, and EDA will not receive such data until March 1989.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/00/88	
Final Action	02/00/89	
Final Action Effective	02/00/89	

Small Entities Affected: None

Government Levels Affected: Local, State

Sectors Affected: Multiple

Agency Contact: Joseph M. Levine, Chief Counsel, Department of Commerce, Economic Development Administration, Herbert C. Hoover Bldg., 14th St. between Penn. and Const. Aves., NW, Washington, DC 20230, 202 377-4687

RIN: 0610-AA39

277. ◆ PUBLIC WORKS - INDUSTRIAL PARKS AND SITES

Legal Authority: 42 USC 3211; Department of Commerce - Organization Order 10-4, as amended

CFR Citation: 13 CFR 305

Legal Deadline: None

Abstract: The requirement for a property value agreement from the owner of a private industrial park or site will be less restrictive, so that such an agreement will only be required where there is an apparent or actual incidence of the private owner's failure to deal at arm's length, or if the Assistant Secretary chooses for any other reason to impose the requirements for such an Agreement.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/88	
Final Action	02/00/89	
Final Action Effective	02/00/89	

Small Entities Affected: None

Government Levels Affected: Local, State

Sectors Affected: Multiple

Agency Contact: Joseph M. Levine, Chief Counsel, Department of Commerce, Economic Development Administration, Herbert C. Hoover Bldg., 14th St. between Penn. and Const. Aves., NW, Washington, DC 20230, 202 377-4687

RIN: 0610-AA40

DEPARTMENT OF COMMERCE (DOC) — Completed Actions

Economic Development Administration (EDA)

270. GENERAL REQUIREMENTS FOR FINANCIAL ASSISTANCE – FLOOD INSURANCE PROGRAM; AND ENVIRONMENTAL REQUIREMENTS

Legal Authority: 42 USC 3211; DOC Organization Order 10-4, as amended

CFR Citation: 13 CFR 309.15; 13 CFR 309.18

Legal Deadline: None

Abstract: This rule amends EDA's regulation at 13 CFR 309.15 on Flood Hazard to reflect a shift in the administration of the Flood Insurance Program from the Department of Housing and Urban Development (HUD) to the Federal Emergency Management Agency (FEMA). It also updates environmental regulations at 13 CFR 309.18.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/25/86	51 FR 23042
Final Action	04/22/88	53 FR 13252
Final Action Effective	06/25/86	53 FR 13252

Small Entities Affected: None

Government Levels Affected: Local, State

Sectors Affected: Multiple

Agency Contact: Walter Archibald, Director, Office of Compliance Review, Department of Commerce, Economic Development Administration, Herbert C. Hoover Bldg., 14th & Constitution Avenue, NW, Room 7215, Washington, DC 20230, 202 377-2718

RIN: 0610-AA18

DEPARTMENT OF COMMERCE (DOC) — Proposed Rule Stage

General Administration (ADMIN)

279. ◆ UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS TO GOVERNMENTS AND NONGOVERNMENTAL ENTITIES

Legal Authority: 5 USC 301

CFR Citation: 15 CFR 24

Legal Deadline: None

Abstract: This action states the administrative requirements governing grants to governments and nongovernmental entities. It is intended to simplify and standardize the Federal grant process and eliminate redundant and inconsistent administrative requirements.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: Local, State

Agency Contact: Robert M. McNamara, Grants/Cooperative Agreement Specialist, Department of Commerce, General Administration, Office of Administration, 14th & Constitution Avenue, NW, Washington, DC 20230, [redacted] 377-5817

RIN: 0605-AA04

DEPARTMENT OF COMMERCE (DOC) — Completed Actions

General Administration (ADMIN)

280. NONPROCUREMENT DEBARMENT AND SUSPENSION

Legal Authority: EO 12549, Debarment and Suspension

CFR Citation: 15 CFR 26

Legal Deadline: None

Abstract: To eliminate duplicative and inconsistent debarment and suspension actions across the government. Private actions or actions by other levels of government would lack broad enough jurisdiction. This regulation will benefit the U.S. by eliminating duplicative and costly actions. Benefits have not been quantified at this time.

Timetable:

Action	Date	FR Cite
NPRM Comment Period End	12/21/87	52 FR 39021
Final Action	05/26/88	53 FR 19161
Final Action Effective	10/01/88	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Robert McNamara, Grants/Cooperative Agreement Specialist, Department of Commerce, General Administration, 14th & Constitution Avenue, NW, Washington, DC 20230, 202 377-5817

RIN: 0605-AA02

DEPARTMENT OF COMMERCE (DOC) — Proposed Rule Stage

International Trade Administration (ITA)

281. GENERAL REGULATIONS GOVERNING FOREIGN TRADE ZONES IN THE UNITED STATES, WITH RULES OF PROCEDURES

Legal Authority: 19 USC 81a et seq Foreign-Trade Zones Act of 1934

CFR Citation: 15 CFR 400

Legal Deadline: None

Abstract: Revision of the regulation is needed to administer the Foreign-Trade Zones Act of 1934, as amended, to provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States. At the time the ANPRM was published the emphasis was on changing the rules to provide improved guidance to the public on procedures and criteria followed in making decisions concerning special-purpose subzones and operations detrimental to the public interest. Since that time, it has been decided to propose revisions to the entire 15 CFR 400 in order to update the language and conform it to current CFR format.

Timetable:

Action	Date	FR Cite
ANPRM	10/14/80	45 FR 67681
ANPRM Comment Period End	12/15/80	
NPRM	02/18/83	48 FR 7151
NPRM Comment Period End	04/19/83	48 FR 7188

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Sectors Affected: Multiple

Agency Contact: William D. Hunter, Acting Deputy Chief Counsel for Import Administration, Department of Commerce, International Trade Administration, Room 3622, Pennsylvania Ave. and 14th St., NW, Washington, DC 20230, 202 377-1411

RIN: 0625-AA04

282. ANNUAL WATCH QUOTA ALLOCATIONS

Legal Authority: PL 97-466, Sec 110 (1983); 19 USC 1202 general headnote 3(a)

CFR Citation: 15 CFR 303

Legal Deadline: None

Abstract: The regulation allocates watch quotas on an annual basis, in compliance with the requirements of the statute and regulations. Program issues allocations no later than March 1 of each year, under section 303.6(b) of the regulations.

Timetable:

Action	Date	FR Cite
Proposed allocation of watches	10/00/88	

DOC—ITA — Proposed Rule Stage

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Frank Creel, Director, Statutory Import Programs Staff, Department of Commerce, International Trade Administration, 14th and Pennsylvania Ave., NW, Rm. 1523, Washington, DC 20230, 202 377-1660

RIN: 0625–AA25

283. ANTIDUMPING AND COUNTERVAILING DUTIES; MODIFICATIONS

Legal Authority: 19 USC 1303; 19 USC 1516a; 19 USC 1671 et seq

CFR Citation: 19 CFR 353; 19 CFR 355

Legal Deadline: None

Abstract: As appropriate, the ITA will amend the current regulations in effect at the time of enactment of modifications in the statutory authority for imposing antidumping and countervailing duties, if such legislation is enacted in 1988 or 1989.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: William D. Hunter, Acting Deputy Chief Counsel for Import Administration, Department of Commerce, International Trade Administration, 14th and Pennsylvania Ave., NW, Washington, DC 20230, 202 377-1411

RIN: 0625–AA26

284. DEFENSE PRIORITIES AND ALLOCATIONS SYSTEM (DPAS)

Legal Authority: 50 USC 2061 et seq; EO 10480

CFR Citation: 15 CFR 350

Legal Deadline: None

Abstract: The Defense Priorities and Allocations System (DPAS) implements the priorities and allocations authority of Title I of the Defense Production Act of 1950, as amended. The DPAS was published as a final rule on July 30, 1984. Based on the findings and recommendations of an interagency sponsored study concerning the controlled materials program, and comments from both defense agency and industry users, this proposed rule would amend the DPAS to remove the controlled materials provisions and make certain revisions to its procedural requirements. These amendments will have no costs associated with them, would reduce the regulatory and information reporting burden on industry and make the DPAS more effective and efficient, and would result in cost savings for defense contractors.

Timetable:

Action	Date	FR Cite
NPRM	11/01/88	

Small Entities Affected: None

Government Levels Affected: None

Sectors Affected: Multiple

Agency Contact: Richard V. Meyers, DPAS Program Manager, Department of Commerce, International Trade Administration, Office of Industrial Resources Admin., National Security Preparedness Div., Room 3878, Washington, DC 20230, 202 377-3634

RIN: 0625–AA28

DEPARTMENT OF COMMERCE (DOC)
International Trade Administration (ITA)

Final Rule Stage

285. ADJUSTMENT ASSISTANCE FOR FIRMS AND INDUSTRIES

Legal Authority: 19 USC 2341 et seq

CFR Citation: 15 CFR 329

Legal Deadline: None

Abstract: This regulation will implement the responsibilities transferred from EDA to ITA concerning the provision of adjustment assistance to firms and industries adversely affected by imports. The proposed rule will reflect amendments to the authorizing legislation and make procedural changes required because of the transfer of the program to ITA. Proposed rules were published in the Federal Register (November 1984).

Timetable:

Action	Date	FR Cite
NPRM	11/13/84	49 FR 44803
NPRM Comment Period End	12/13/84	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Undetermined

Sectors Affected: Multiple

Additional Information: Further action on this regulation is under study by the Department.

Agency Contact: John F. Mizroch, Deputy Assistant Secretary, Department of Commerce, International Trade Administration, Office of Trade Adjustment Assistance, Washington, DC 20230, 202 377-4159

RIN: 0625–AA05

286. ANTIDUMPING DUTIES; COUNTERVAILING DUTIES

Significance: Regulatory Program

Legal Authority: 19 USC 1303; 19 USC 1671 et seq

CFR Citation: 19 CFR 353; 19 CFR 355

Legal Deadline: None

Abstract: Current antidumping and countervailing duty regulations will be revised to reflect recent statutory changes and current administrative practices and to improve the clarity of the regulations. The revisions will improve administrative efficiency in enforcement of the antidumping and countervailing duty laws. The revisions will replace the entire text of 19 CFR 353 and 355.

Timetable:

Action	Date	FR Cite
NPRM CVD Regulations	08/10/85	50 FR 29258
NPRM Comment Period End CVD Regulations	09/09/85	50 FR 32046
NPRM AD Regulations	08/13/86	51 FR 29048

DOC—ITA — Final Rule Stage

Action	Date	FR Cite
NPRM Comment Period End AD Regulations	09/30/88	
Final Action CVD Regulations	09/30/88	
Final Action AD Regulations	11/30/88	

Small Entities Affected: None

Government Levels Affected: None

Sectors Affected: Multiple

Agency Contact: William D. Hunter, Acting Deputy Chief Counsel for Import Administration, Department of Commerce, International Trade Administration, Room 3622, Pennsylvania Ave. & 14th St., NW, Washington, DC 20230, 202 377-1411

RIN: 0625–AA06

287. SANCTIONS FOR VIOLATION OF ANTIDUMPING AND COUNTERVAILING DUTY PROTECTIVE ORDERS

Significance: Regulatory Program

Legal Authority: 19 USC 1677

CFR Citation: 19 CFR 353; 19 CFR 354; 19 CFR 355

Legal Deadline: None

Abstract: The ITA will add a new part 354 to the antidumping (part 353) and countervailing duty (part 355) regulations that establishes procedures for imposing sanctions against an individual, firm or other entity that violates the terms of an administrative protective order issued under 19 USC 1677. We will make conforming changes in Parts 353 and 355.

Timetable:

Action	Date	FR Cite
NPRM	07/06/87	52 FR 25246
NPRM Comment Period End	09/08/87	
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: William D. Hunter, Acting Deputy Chief Counsel for Import Administration, Department of Commerce, International Trade Administration, 14th and Pennsylvania Ave., NW, Room 3622, Washington, DC 20230, 202 377-1411

RIN: 0625–AA24

DEPARTMENT OF COMMERCE (DOC)
International Trade Administration (ITA)

Completed Actions

288. EXPORT TRADE CERTIFICATES OF REVIEW

Significance: Agency Priority

Legal Authority: 15 USC 4020

CFR Citation: 15 CFR 325

Legal Deadline: None

Abstract: No changes are required in the regulations at this time.

Timetable:

Action	Date	FR Cite
NPRM	12/21/82	47 FR 56972
Interim Final Rule	03/11/83	48 FR 10596
Final Action	01/08/85	50 FR 1604

Small Entities Affected: Undetermined

Government Levels Affected: Local, State

Public Compliance Cost: Initial Cost: $0; Yearly Recurring Cost: $0

Agency Contact: George Muller, Deputy Director, Office of Export Trading Company Affairs, Department of Commerce, International Trade Administration, 14th and Pennsylvania Ave., NW, Washington, DC 20230, 202 377-5131

RIN: 0625–AA27

DEPARTMENT OF COMMERCE (DOC)
Export Administration (EA)

Final Rule Stage

289. REVISIONS TO SHORT SUPPLY REGULATIONS

Legal Authority: 50 USC app 2401 et seq; PL 99-64; 42 USC app 2401 et seq; 10 USC 7420 et seq; 43 USC 1354; 30 USC 185; EO 11912; EO 12214; EO 12002

CFR Citation: 15 CFR 371; 15 CFR 377; 15 CFR 399

Legal Deadline: None

Abstract: On July 12, 1985, the Export Administration Amendments Act of 1985 (PL 99-64) extended and amended the Export Administration Act of 1979 (50 USC app 2401, et seq.)(EAA). Certain changes were made to the Short Supply provisions of Section 7 of the EAA. Accordingly, revision of the Short Supply provisions (15 CFR 377) and related licensing requirements (15 CFR 371 and 399) of the Export Administration Regulations (15 CFR 368-399) is necessary. An interim final rule was issued which included (1) elimination of the validated licensing requirement for exports of refined petroleum products so as to permit their export with certain restrictions under a general license; (2) a new definition of "crude oil" for purposes of the regulation; and (3) certain technical and housekeeping changes. There are no costs associated with this action which would promote the export of decontrolled products.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/09/85	50 FR 41131
Final Action	06/00/89	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Rodney A. Joseph, Short Supply Program Manager, Department of Commerce, Export Administration, Office of Technology and Policy Analysis, Room 1604, Washington, DC 20230, 202 377-4531

RIN: 0694–AA01

DEPARTMENT OF COMMERCE (DOC)

Proposed Rule Stage

National Institute of Standards & Technology (NIST)

290. FIPS FOR INFORMATION RESOURCE DICTIONARY SYSTEM (IRDS)

Legal Authority: 40 USC 759(f); EO 11717

CFR Citation: None

Legal Deadline: None

Abstract: This standard will adopt an American National Standard (now draft proposed) which will promote portability of information resources. The Information Resource Dictionary System is a software system for recording, storing, and processing descriptions of an organization's significant data. Use of the standard will improve identification of data that can be shared within an organization, reduce unnecessary development of computer programs, and increase portability of staff skills and training.

Timetable:

Action	Date	FR Cite
NPRM	08/13/85	50 FR 32610
NPRM Comment Period End	11/12/85	50 FR 32610

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 357 Computer and Office Equipment

Agency Contact: Shirley Radack, Program Analyst, Department of Commerce, National Institute of Standards & Technology, B151 Technology, Gaithersburg, MD 20899, 301 975-2833

RIN: 0693–AA38

291. FIPS FOR C PROGRAMMING LANGUAGE

Legal Authority: 40 USC 759(f); EO 11717

CFR Citation: None

Legal Deadline: None

Abstract: This standard will adopt an American National Standard (currently draft proposed standard) which defines the syntax of the C programming language and the semantics for its interpretation. The standard will be used by implementors as the reference authority in developing compilers, interpreters or forms of high level language processors and by other computer professionals who need to know the precise syntactic and semantic rules of the standard. Use of this standard will promote the portability of programs between different systems, and will enable organizations to more fully utilize staff training and skills.

Timetable:

Action	Date	FR Cite
NPRM	01/09/87	52 FR 851
NPRM Comment Period End	04/09/87	52 FR 851

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 357 Computer and Office Equipment

Agency Contact: Shirley Radack, Program Analyst, Department of Commerce, National Institute of Standards & Technology, B151 Technology, Gaithersburg, MD 20899, 301 975-2833

RIN: 0693–AA48

292. FIPS FOR RECORDED MAGNETIC TAPE CARTRIDGE FOR INFORMATION INTERCHANGE; 4-TRACK, SERIAL, 0.250 IN (6.30 MM), 6400 BPI (252 BPMM) INVERTED MODIFIED FREQUENCY MODULATION ENCODED

Legal Authority: 40 USC 759(f); EO 11717

CFR Citation: None

Legal Deadline: None

Abstract: This standard will adopt an American National Standard (currently draft proposed) that provides the format and recording requirements for magnetic tape cartridges. The standard defines the requirements and supporting test methods needed to ensure data interchange between information systems, communications systems, and associated equipment.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 357 Computer and Office Equipment

Agency Contact: Shirley Radack, Program Analyst, Department of Commerce, National Institute of Standards & Technology, B151 Technology, Gaithersburg, MD 20899, 301 975-2833

RIN: 0693–AA51

293. FIPS FOR SERIAL RECORDED MAGNETIC TAPE CARTRIDGE FOR INFORMATION INTERCHANGE; FOUR AND FIVE TRACK, 0.250 IN (6.30 MM) 8000 BPI (315 BPMM) STREAMING MODE GROUP CODE RECORDING

Legal Authority: 40 USC 759(f); EO 11717

CFR Citation: None

Legal Deadline: None

Abstract: This standard will adopt an American National Standard (currently draft proposed) that provides the format and recording requirements for magnetic tape cartridges. The standard defines the requirements and supporting test methods needed to ensure data interchange between information systems, communications systems, and associated equipment.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 357 Computer and Office Equipment

Agency Contact: Shirley Radack, Program Analyst, Department of Commerce, National Institute of Standards & Technology, B151 Technology, Gaithersburg, MD 20899, 301 975-2833

RIN: 0693–AA52

294. FIPS FOR ONE-HALF INCH MAGNETIC TAPE INTERCHANGE USING A SELF LOADING CARTRIDGE

Legal Authority: 40 USC 759(f); EO 11717

CFR Citation: None

Legal Deadline: None

Abstract: This standard will adopt an American National Standard (ANSI X3.85-1981) which provides the requirements and test methods necessary to ensure physical interchange of a self loading cartridge to be used with 1/2 inch wide magnetic tape.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 357 Computer and Office Equipment

Agency Contact: Shirley Radack, Program Analyst, Department of Commerce, National Institute of Standards & Technology, B151 Technology, Gaithersburg, MD 20899, 301 975-2833

RIN: 0693–AA53

295. FIPS FOR RECORDED FORMATS FOR ONE AND TWO-SIDED 5.25 INCH (130 MM) AND 3.5 INCH (90 MM) FLEXIBLE DISK CARTRIDGES

Legal Authority: 40 USC 759(f); EO 11717

CFR Citation: None

Legal Deadline: None

Abstract: This standard will adopt an American National Standard (currently draft proposed) that specifies the track layout, track format, and other characteristics of the recorded signal. This is one part of a set of functional specifications needed to ensure interchangeability of data between information processing systems by use of a physically removable medium.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 357 Computer and Office Equipment

Agency Contact: Shirley Radack, Program Analyst, Department of Commerce, National Institute of Standards & Technology, B151 Technology, Gaithersburg, MD 20899, 301 975-2833

RIN: 0693–AA54

296. FIPS FOR RECORDED MAGNETIC TAPE AND CARTRIDGE FOR INFORMATION INTERCHANGE; 18 TRACK, PARALLEL, 12.65 MM (1/2 IN), 1491 CPMM (37871 CPI) GROUP-CODED RECORDING

Legal Authority: 40 USC 759(f); EO 11717

CFR Citation: None

Legal Deadline: None

Abstract: This standard will adopt an American National Standard (currently draft proposed) that provides requirements for a tape cartridge to be used for information interchange among information processing systems, communications systems, and associated equipment. Used with associated standards for unrecorded media, tape labels and file structures, this standard will support data interchange between different systems.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 357 Computer and Office Equipment

Agency Contact: Shirley Radack, Program Analyst, Department of Commerce, National Institute of Standards & Technology, B151 Technology, Gaithersburg, MD 20899, 301 975-2833

RIN: 0693–AA55

297. FIPS FOR DEVICE LEVEL INTERFACE FOR STREAMING CARTRIDGE AND CASSETTE TAPE DRIVES

Legal Authority: 40 USC 759(f); EO 11717

CFR Citation: None

Legal Deadline: None

Abstract: This standard will adopt an American National Standard (ANSI X3.148-1988) that specifies the interface between streaming cartridge and cassette tape drives, and small computer systems. This standard will facilitate the acquisition of cartridge and cassette tape drives made by different manufacturers, expand the Federal Government's sources of supply, and reduce costs of acquisition.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 357 Computer and Office Equipment

Agency Contact: Shirley Radack, Program Analyst, Department of Commerce, National Institute of Standards & Technology, B151 Technology, Gaithersburg, MD 20899, 301 975-2833

RIN: 0693–AA57

298. FIPS FOR ELECTRONIC BUSINESS DATA EXCHANGE

Legal Authority: 40 USC 759(f); EO 11717

CFR Citation: None

Legal Deadline: None

Abstract: A group of voluntary industry standards that will facilitate computer-to-computer interchange of procurement data will be adopted as FIPS. Developed by Accredited Standards Committee X12, the standards will provide standard data elements, formats, and contents of electronic messages containing procurement-related information. These standards will reduce paperwork, improve productivity, and enable more effective information and inventory management.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 357 Computer and Office Equipment

Agency Contact: Shirley Radack, Program Analyst, Department of Commerce, National Institute of Standards & Technology, B151 Technology, Gaithersburg, MD 20899, 301 975-2833

RIN: 0693–AA62

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DOC—NIST

Proposed Rule Stage

299. EXTENSIONS TO FIPS 127, DATABASE LANGUAGE SQL

Legal Authority: 40 USC 759(f); EO 11717

CFR Citation: None

Legal Deadline: None

Abstract: The proposed extensions will adopt American National Standards (both currently draft standards) to the SQL language for relational databases. One proposal (Draft Addendum ISO 9075/DAD 1) provides features for assuring the correctness of data that is organized in SQL databases. The other proposal specifies interfaces between SQL and other programming languages including Ada, C, COBOL, FORTRAN, PASCAL, and PL/I. Use of these extensions will promote the portability of programs between different systems, and will enable organizations to more fully utilize staff skills and training.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 357 Computer and Office Equipment

Agency Contact: Shirley Radack, Program Analyst, Department of Commerce, National Institute of Standards & Technology, B151 Technology, Gaithersburg, MD 20899, 301 975-2833

RIN: 0693–AA03

300. ◆ FIPS FOR APPLICATIONS PORTABILITY PROFILE

Legal Authority: PL 100-235

CFR Citation: None

Legal Deadline: None

Abstract: This FIPS will provide an architectural approach to applications portability, and will include standard elements that can be used to develop and maintain portable applications. Components of the profile will include database management, data interchange, network services, user interfaces, and programming languages.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 357 Computer and Office Equipment

Agency Contact: Shirley Radack, Program Analyst, Department of Commerce, National Institute of Standards & Technology, B151 Technology, Gaithersburg, MD 20899, 301 975-2833

RIN: 0693–AA05

301. ◆ FIPS FOR CONFORMANCE TESTING POLICY AND PROCEDURES

Legal Authority: PL 100-235

CFR Citation: None

Legal Deadline: None

Abstract: This FIPS will specify the policy and procedures for conformance test methods, for conformance testing of implementations of FIPS, and for certifying those implementations that comply with the FIPS requirements.

Timetable:

Action	Date	FR Cite
NPRM	06/03/88	53 FR 29249
NPRM Comment Period End	11/01/88	

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 357 Computer and Office Equipment

Agency Contact: Shirley Radack, Program Analyst, Department of Commerce, National Institute of Standards & Technology, B151 Technology, Gaithersburg, MD 20899, 301 975-2833

RIN: 0693–AA04

302. ◆ FIPS FOR DOCUMENT APPLICATION PROFILE

Legal Authority: PL 100-235

CFR Citation: None

Legal Deadline: None

Abstract: This FIPS will be based on international standards for office document architecture and office document interchange formats. The profile will provide necessary functionality to enable documents developed on different manufacturers' equipment to be interchanged between systems.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 357 Computer and Office Equipment

Agency Contact: Shirley Radack, Program Analyst, Department of Commerce, National Institute of Standards & Technology, B151 Technology, Gaithersburg, MD 20899, 301 975-2833

RIN: 0693–AA07

303. ◆ REVISION OF FIPS 140, GENERAL SECURITY REQUIREMENTS FOR EQUIPMENT USING THE DATA ENCRYPTION STANDARD

Legal Authority: PL 100-235

CFR Citation: None

Legal Deadline: None

Abstract: This revision will bring the standard up to date to cover new encryption applications, and new policies for testing for conformance to the standard.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 357 Computer and Office Equipment

Agency Contact: Shirley Radack, Program Analyst, Department of Commerce, National Institute of Standards & Technology, B151 Technology, Gaithersburg, MD 20899, 301 975-2833

RIN: 0693–AA08

DEPARTMENT OF COMMERCE (DOC)
National Institute of Standards & Technology (NIST)

Final Rule Stage

304. REVISION TO FIPS 100, INTERFACE BETWEEN DATA TERMINAL EQUIPMENT (DTE) AND DATA CIRCUIT-TERMINATING EQUIPMENT (DCE) FOR OPERATION WITH PACKET-SWITCHED DATA COMMUNICATIONS NETWORKS

Legal Authority: 40 USC 759(f); EO 11717

CFR Citation: None

Legal Deadline: None

Abstract: This revision will make the standard consistent with minor changes that were made to Recommendation X.25 by the Consultative Committee for International Telegraph and Telephone in 1984. This is an international standard for data processing equipment, services and telecommunications equipment using public packet switched data communications networks.

Timetable:

Action	Date	FR Cite
NPRM	07/10/86	51 FR 25068
NPRM Comment Period End	10/08/86	51 FR 25068
Final Action	01/00/89	

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 357 Computer and Office Equipment

Agency Contact: Shirley Radack, Program Analyst, Department of Commerce, National Institute of Standards & Technology, B151 Technology, Gaithersburg, MD 20899, 301 975-2833

RIN: 0693–AA39

305. FIPS FOR STANDARD GENERALIZED MARKUP LANGUAGE (SGML)

Legal Authority: 40 USC 759(f); EO 11717

CFR Citation: None

Legal Deadline: None

Abstract: This standard will adopt an International Standard ISO/DIS 8879 (currently a draft standard) which standardizes the application of generic coding and generalized markup concepts for documents that are processed by text processing and word processing systems. It provides a coherent and unambiguous syntax for describing what a user chooses to identify within a document. Use of this standard will facilitate the interchange of documents among systems with differing text processing languages and the processing of documents by more than one application, when applications use the same text processing language.

Timetable:

Action	Date	FR Cite
NPRM	10/29/87	52 FR 41609
NPRM Comment Period End	01/27/88	52 FR 41609
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 357 Computer and Office Equipment

Agency Contact: Shirley Radack, Program Analyst, Department of Commerce, National Institute of Standards & Technology, B151 Technology, Gaithersburg, MD 20899, 301 975-2833

RIN: 0693–AA50

306. REVISIONS TO FIPS 60, 61, 62, 63, 97, AND 111, COMPUTER SYSTEM INPUT/OUTPUT (I/O) INTERFACE STANDARDS

Legal Authority: 40 USC 759(f); EO 11717

CFR Citation: None

Legal Deadline: None

Abstract: Revisions to the family of input/output (I/O) interface standards will be proposed to reflect changes in computer technology and to facilitate the interconnection of peripherals to personal and minicomputers. New applicability, implementation and waiver provisions will be proposed to existing interface standards to be effective after January 1, 1990. A transition plan to cover the period from January 1988 to January 1990 will also be proposed.

Timetable:

Action	Date	FR Cite
NPRM	11/19/87	52 FR 44462
NPRM Comment Period End	02/17/88	52 FR 44462
Final Action	12/00/88	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 357 Computer and Office Equipment

Agency Contact: Shirley Radack, Program Analyst, Department of Commerce, National Institute of Standards & Technology, B151 Technology, Gaithersburg, MD 20899, 301 975-2833

RIN: 0693–AA50

307. FIPS FOR PROGRAMMER'S HIERARCHICAL INTERACTIVE GRAPHICS SYSTEM (PHIGS)

Legal Authority: 40 USC 759(f); EO 11717

CFR Citation: None

Legal Deadline: None

Abstract: This FIPS will adopt the American National Standard Programmer's Hierarchical Interactive Graphics System (ANSI X3.144-198X). This standard will improve the portability of graphics application programs among different manufacturers' computer systems and will help agencies make more effective use of staff skills and training.

Timetable:

Action	Date	FR Cite
NPRM	03/11/88	53 FR 7957
NPRM Comment Period End	06/09/88	53 FR 7957
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 357 Computer and Office Equipment

Agency Contact: Shirley Radack, Program Analyst, Department of Commerce, National Institute of Standards & Technology, B151 Technology, Gaithersburg, MD 20899, 301 975-2833

RIN: 0693–AA54

DEPARTMENT OF COMMERCE (DOC) — **Completed Actions**

National Institute of Standards & Technology (NIST)

308. FIPS FOR CODES FOR THE IDENTIFICATION OF AQUIFER NAMES AND GEOLOGIC UNITS

Legal Authority: 40 USC 759(f); EO 11717

CFR Citation: 15 CFR 6

Legal Deadline: None

Abstract: This standard will adopt for Federal government use codes for aquifer names and geologic units developed by the Department of the Interior under its Memorandum of Understanding with NBS to develop and maintain earth science data element and representation standards. The standard will facilitate the interchange of information among Federal departments and agencies.

Timetable:

Action	Date	FR Cite
Withdrawn - not needed to meet government requirements	08/24/88	

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 357 Computer and Office Equipment

Agency Contact: Shirley Radack, Program Analyst, Department of Commerce, National Institute of Standards & Technology, B151 Technology, Gaithersburg, MD 20899, 301 975-2833

RIN: 0693-AA44

309. FIPS FOR PORTABLE OPERATING SYSTEM ENVIRONMENTS (POSIX*)

Legal Authority: 40 USC 759(f); EO 11717

CFR Citation: None

Legal Deadline: None

Abstract: This standard will adopt a draft Institute of Electrical and Electronics Engineers (IEEE) Standard for Portable Operating System for Computer Environments (IEEE 1003.1/POSIX*). This standard, on an interim basis, will facilitate the interchange of computer programs between UNIX operating system derived environments and make it possible to increase the productivity of staff members who develop and document computer programs for these systems. When final specifications have been completed by the IEEE Standards Committee, a revision to this standard will be proposed to adopt the completed specifications.

POSIX is a trademark of IEEE

Timetable:

Action	Date	FR Cite
NPRM	04/28/88	53 FR 15268
NPRM Comment Period End	05/31/88	53 FR 15268
Final Action	09/12/88	53 FR 35224

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 357 Computer and Office Equipment

Agency Contact: Shirley Radack, Program Analyst, Department of Commerce, National Institute of Standards & Technology, B151 Technology, Gaithersburg, MD 20899, 301 975-2833

RIN: 0693-AA40

310. FIPS FOR GOVERNMENT OPEN SYSTEMS INTERCONNECTION PROFILE

Legal Authority: 40 USC 759(f); EO 11717

CFR Citation: None

Legal Deadline: None

Abstract: This standard will adopt a procurement specification developed by the Government Open Systems Interconnection Users Group. The specification will enable the Federal Government to acquire computer network systems that conform to national and international standards for OSI. The specification addresses needs to acquire multivendor systems using available or soon-to-be-available standard products.

Timetable:

Action	Date	FR Cite
NPRM	10/28/87	52 FR 41488
NPRM Comment Period End	01/26/88	52 FR 41488
Final Action	08/24/88	53 FR 32270
Final Action Effective	02/15/89	

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 357 Computer and Office Equipment

Agency Contact: Shirley Radack, Program Analyst, Department of Commerce, National Institute of Standards & Technology, B151 Technology, Gaithersburg, MD 20899, 301 975-2833

RIN: 0693-AA61

DEPARTMENT OF COMMERCE (DOC) — **Prerule Stage**

National Oceanic and Atmospheric Administration (NOAA)

NATIONAL MARINE FISHERIES SERVICE

311. MARINE FISHERY USER FEES

Significance: Regulatory Program

Legal Authority: Not Yet Determined

CFR Citation: Not yet determined

Legal Deadline: None

Abstract: A marine fishery user fee system will provide a substantial and stable source of revenue to partially offset Federal fishery expenditures and information needed for effective fishery management. Fees would be collected from the sale of marine fish conservation permits and stamps, and from an assessment on landing or delivery of fish for commercial purposes. Administration costs are estimated to be $7,500,000 annually, with net Federal revenues of approximately $40 million.

Timetable:

Action	Date	FR Cite
Next steps depend on Congressional action	00/00/00	

Small Entities Affected: Undetermined

DOC—NOAA — **Prerule Stage**

Government Levels Affected: None

Public Compliance Cost: Initial Cost: $7,500,000; Yearly Recurring Cost: $7,500,000; Base Year for Dollar Estimates: 1985

Sectors Affected: 203 Canned, Frozen, and Preserved Fruits, Vegetables, and Food Specialties

Agency Contact: John T. Everett, Chief, Program Evaluation and Coordination Division, Department of Commerce, National Oceanic and Atmospheric Administration, Management and Budget Staff, NMFS, Washington, DC 20235, 202 673-5404

RIN: 0648-AB93

312. AMENDMENT 1 GULF OF MEXICO REEF FISH FISHERY MANAGEMENT PLAN

Legal Authority: 16 USC 1801 et seq Magnuson Fishery Conservation & Mgmt. Act

CFR Citation: 50 CFR 641

Legal Deadline: Final, Statutory. 110 days after receipt from the fishery management council.

Abstract: Amendment 1 will attempt to rebuild declining reef fish stocks, especially red snapper. A primary objective of the amendment will be to reduce red snapper harvest by 60 percent through the use of a commercial quota of 2.1 million pounds, by the establishment of a 12 inch minimum fish size for commercial and recreational fisheries taking red snapper, and by the establishment of a 3 fish red snapper bag limit per person in the recreational sector. The amendment will also protect other species or reef fish, as well as red snapper, by proposing to (1) prohibit use of fish traps, roller trawls, and powerheads, (2) prohibit the use of bottom long lines shoreward of the 50 fathom curve, and (3) prohibit any entanglement nets, including gillnets, drift, drum, and trammell nets. Several additional species will be included in the management unit, and additional conservation measures will be forthcoming.

Timetable:

Action	Date	FR Cite
ANPRM	02/01/89	
NPRM	02/15/89	
NPRM Comment Period End	04/01/89	
Final Action	05/20/89	
Final Action Effective	06/20/89	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Sectors Affected: 091 Commercial Fishing

Agency Contact: Joseph W. Angelovic, Acting Director, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 9450 Koger Blvd., St. Petersburg, FL 33702, 813 893-3141

RIN: 0648-AC15

313. AMENDMENT 8 TO THE FISHERY MANAGEMENT PLAN FOR THE ATLANTIC SURF CLAM AND OCEAN QUAHOG FISHERIES

Significance: Regulatory Program

Legal Authority: 16 USC 1801 et seq Magnuson Fishery Conservation & Mgmt. Act

CFR Citation: 50 CFR 652 .

Legal Deadline: Final, Statutory. 110 days after receipt from the Mid-Atlantic Fishery Management Council.

Abstract: Amendment 8 would address current regulatory restraints on industry designed to conserve the resource. The FMP objectives would be modified to promote economic stability, simplify regulations, and to allow more operational flexibility for the industry. Long-term management alternatives to be considered include an Individual Transferable Quota System and other limited effort vessel allocation schemes.

Timetable:

Action	Date	FR Cite
ANPRM	11/15/88	
NPRM	12/01/88	
NPRM Comment Period End	01/15/89	
Final Action	03/20/89	
Final Action Effective	04/20/89	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Sectors Affected: 091 Commercial Fishing

Agency Contact: Richard B. Roe, Director, Northeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 14 Elm Street, Gloucester, MA 01930-3799, 508 281-3600

RIN: 0648-AC19

314. AMENDMENT 4 TO THE PACIFIC COAST GROUNDFISH FISHERY MANAGEMENT PLAN

Legal Authority: 16 USC 1801 et seq Magnuson Fishery Conservation & Mgmt. Act

CFR Citation: 50 CFR 660; 50 CFR 611.70

Legal Deadline: Final, Statutory. 110 days after receipts from the Pacific Fishery Management Council.

Abstract: Amendment 4 will make many technical and format changes to the FMP to make it a more useful and up-to-date document. Amendment 4 may consider the following: broader framework authority to take timely inseason actions for social-economic reasons; including possible allocation to user groups; procedures for establishing allowable incidental catch levels in other fisheries; a framework for reviewing and conforming Federal management measures to changes in State management; the recreational bag limit for lingcod; the definitions and application of ABC and OY; and revision of procedures regarding experimental fishing permits. The Amendment may not include all these issues, or may add others.

Timetable:

Action	Date	FR Cite
ANPRM	08/01/89	
NPRM	08/15/89	
NPRM Comment Period End	09/29/89	
Final Action	11/18/89	
Final Action Effective	12/17/89	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Sectors Affected: 091 Commercial Fishing

Agency Contact: Rolland A. Schmitten, Director, Northwest Region, Department of Commerce, National Oceanic and Atmospheric Administration, 7600 Sand Point Way NE, Bldg. 1, Seattle, WA 98115, 206 526-6150

RIN: 0648-AC49

DOC—NOAA

Prerule Stage

315. BLUEFISH FISHERY MANAGEMENT PLAN

Legal Authority: 16 USC 1801 et seq Magnuson Fishery Conservation & Mgmt. Act

CFR Citation: Not yet determined

Legal Deadline: Final, Statutory.

110 days after receipt from the fishery management council.

Abstract: The FMP would control the growth of the recreational and commercial fisheries in the EEZ. The Atlantic States Marine Fisheries Commission is developing a plan simultaneously with the Council and will coordinate State management with Federal management of bluefish throughout its range.

Timetable:

Action	Date	FR Cite
ANPRM	03/01/89	
NPRM	03/16/89	
NPRM Comment Period End	05/01/89	
Final Action	06/22/89	
Final Action Effective	07/22/89	

Small Entities Affected: Undetermined

Government Levels Affected: State, Federal

Sectors Affected: 091 Commercial Fishing

Agency Contact: Richard Roe, Director, Northeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 14 Elm Street, Gloucester, MA 01930-3799, 508 281-9000

RIN: 0648–AC31

314. ● REGULATORY AMENDMENT TO INSTITUTE A CERTIFICATION PROGRAM FOR THE IMPORTATION OF WHOLE UNDERSIZED ATLANTIC GROUNDFISH

Significance: Regulatory Program

Legal Authority: 16 USC 1801 et seq Magnuson Fishery Conservation & Mgmt. Act

CFR Citation: 50 CFR 651

Legal Deadline: None

Abstract: The regulatory amendment to the Northeast Multispecies FMP would institute a certification program to allow for the importation of whole Atlantic groundfish smaller than the minimum size for U.S. harvested groundfish. The program would track the imported fish from its foreign supplier to its U.S. processor-purchaser in order to ensure enforcement of minimum size limits on domestic harvests of regulated groundfish species.

Timetable:

Action	Date	FR Cite
ANPRM	09/01/88	
ANPRM Comment Period End	10/15/88	
NPRM	12/15/88	
NPRM Comment Period End	02/01/89	
Final Action	03/15/89	
Final Action Effective	04/15/89	

Small Entities Affected: Businesses

Government Levels Affected: Federal

Sectors Affected: 091 Commercial Fishing

Agency Contact: Richard B. Roe, Director, Northeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 14 Elm Street, Gloucester, MA 01930-3799, 508 281-9000

RIN: 0648–AC09

OFFICE OF THE ADMINISTRATOR

317. ● LICENSING OF PRIVATE REMOTE SENSING SPACE SYSTEMS

Legal Authority: 15 USC 4241

CFR Citation: 15 CFR 960

Legal Deadline: None

Abstract: NOAA is considering amending its regulations for licensing private remote sensing space systems in response to a Petition by news organizations. Petitioners seek clearer definition of when a license might be restricted because of national security. NOAA will consider ways to provide clarity to reassure potential applicants but will not consider the specific standard proposed by the media which was rejected during the original rulemaking.

Timetable:

Action	Date	FR Cite
Begin Review	12/01/88	
NPRM	12/10/88	
NPRM Comment Period End	01/30/89	
End Review	01/30/89	

Small Entities Affected: None

Government Levels Affected: Federal

Public Compliance Cost: Initial Cost: $0; Yearly Recurring Cost: $0

Agency Contact: John A. Milholland, Senior Counsellor/Satellite, Department of Commerce, National Oceanic and Atmospheric Administration, Room 603, 1825 Connecticut Avenue, NW, Washington, DC 20235, 202 673-5300

RIN: 0648–AC04

DEPARTMENT OF COMMERCE (DOC)
National Oceanic and Atmospheric Administration (NOAA)

Proposed Rule Stage

NATIONAL MARINE FISHERIES SERVICE

318. PROCESSED FISHERY PRODUCTS, PROCESSED PRODUCTS THEREOF & CERTAIN OTHER PROCESSED FOOD PRODUCTS: U.S. STANDARDS FOR GRADES OF FROZEN FISH BLOCKS & PRODUCTS MADE THEREFROM ETC

Legal Authority: 7 USC 1621 to 1630 Agricultural Marketing Act of 1946

CFR Citation: 50 CFR 264A; 50 CFR 264B; 50 CFR 264C; 50 CFR 264D; 50 CFR 264E; 50 CFR 264F; 50 CFR 264G

Legal Deadline: None

Abstract: The revised rule will expand the coverage of established voluntary standards for grades of fishery products to include new products made from fish blocks. The standards will take into account new technology and equipment. These standards will be used in a voluntary program of fishery products inspection and certification by the NMFS. Industry has shown a high level of interest and support for the revisions. The timetable for this action is very tentative. Further research will be needed before the rule is published.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: None

Sectors Affected: 091 Commercial Fishing; 209 Miscellaneous Food Preparations and Kindred Products

Analysis: See Additional Information

Additional Information: Neither an RIA nor an RFA is required or will be prepared.

Agency Contact: Tom Moreau, Director, Technical Services Unit, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, P.O. Box 1188, Emerson Ave., Gloucester, MA 01930, 617 281-3600

RIN: 0648–AA48

319. ENDANGERED FISH OR WILDLIFE; PERMITS FOR THE INCIDENTAL TAKING OF ENDANGERED MARINE SPECIES

Legal Authority: 16 USC 1531 et seq Endangered Species Act of 1973

CFR Citation: 50 CFR 222

Legal Deadline: None

Abstract: The proposed regulations implement Section 10(a)(1)(B) of the Endangered Species Act, as amended (ESA). The proposal provides, under limited circumstances, for issuance of permits allowing the incidental taking of endangered species. The proposal applies to certain Federal permit or license holders and to private entities or State or local governments whose actions are not otherwise subject to Federal involvement or control. Prior to the 1982 amendments to the ESA, the taking of endangered species was prohibited except for scientific research or to enhance the propagation or survival of the species. Permits issued under the proposed regulations would allow permit holders to conduct their activities without risk of prosecution for the incidental take of species authorized by such permits.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
NPRM Comment Period End	01/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Local, State, Federal

Sectors Affected: 091 Commercial Fishing

Additional Information: Potential cost to applicants is estimated at $420. Cost per applicant is estimated at $210. Each applicant will be required to submit a conservation plan as part of the permit process. NEPA, EO 12291 and RFA determinations have not been undertaken.

Agency Contact: Patricia A. Carter, Fishery Biologist, Department of Commerce, National Oceanic and Atmospheric Administration, Office of Protected Resources and Habitat Programs, NMFS, Washington, DC 20235, 202 673-5351

RIN: 0648–AD47

320. GROUNDFISH OF THE GULF OF ALASKA AND HIGH SEAS SALMON FISHERY OFF ALASKA; REGULATORY AMENDMENT

Legal Authority: 16 USC 1801 et seq Magnuson Fishery Conservation & Mgmt. Act

CFR Citation: 50 CFR 672; 50 CFR 674; 50 CFR 611.92

Legal Deadline: None

Abstract: As required under PL 98-623, NOAA issues a regulatory amendment to codify the fishery management boundaries of southeastern Alaska established by that law.

Timetable:

Action	Date	FR Cite
NPRM	04/00/89	
NPRM Comment Period End	05/00/89	
Final Action	07/00/89	
Final Action Effective	08/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: State, Federal

Sectors Affected: 091 Commercial Fishing

Agency Contact: Jonathan Pollard, Attorney-Advisor, Department of Commerce, National Oceanic and Atmospheric Administration, NOAA Office of General Counsel-GCAK, P.O. Box 21668, Juneau, AK 99801, 907 568-7414

RIN: 0648–AB51

321. RESUBMITTED PORTION OF AMENDMENT 1 TO THE AMERICAN LOBSTER FISHERY MANAGEMENT PLAN

Legal Authority: 16 USC 1801 et seq Magnuson Fishery Conservation & Mgmt. Act

CFR Citation: 50 CFR 649

Legal Deadline: Final, Statutory.
110 days after receipt from the fishery management council.

Abstract: The revised portion of the amendment will exempt Mid-Atlantic black sea bass fishing gear from the escape vent requirement in a specified fishing area east and south of Barnegat New Jersey.

DOC—NOAA

Proposed Rule Stage

Timetable:

Action	Date	FR Cite
NPRM	10/15/88	
NPRM Comment Period End	11/29/88	
Final Action	01/16/89	
Final Action Effective	02/17/89	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Sectors Affected: 091 Commercial Fishing

Agency Contact: Richard Roe, Director, Northeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, F/NER, 14 Elm Street, Federal Bldg., Gloucester, MA 01930, 508 281-3600

RIN: 0648-AB88

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322. AMENDMENT 1 TO THE SWORDFISH FMP

Significance: Regulatory Program

Legal Authority: 16 USC 1801 et seq Magnuson Fishery Conservation & Mgmt. Act

CFR Citation: 50 CFR 630

Legal Deadline: Final, Statutory. 110 days after receipt from the fishery management council.

Abstract: Amendment 1 will reflect concern for status of swordfish stocks based on recent stock assessments (Jan. and Nov. 1988). U.S. longline fishery now targets tunas and small swordfish in nearshore waters and seeks larger, more valuable swordfish in more distant waters. The Council will consider size limits, area closure, and quota management in Amendment 1 in an attempt to reduce the fishing mortality of small billfish in the exclusive economic zone.

Timetable:

Action	Date	FR Cite
NPRM	12/01/88	
NPRM Comment Period End	01/29/89	
Final Action	03/20/89	
Final Action Effective	04/20/89	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Sectors Affected: 091 Commercial Fishing

Agency Contact: Joseph W. Angelovic, Acting Regional Director, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 9450 Koger Blvd., St. Petersburg, FL 33702, 813 893-3141

RIN: 0648-AB82

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323. AMENDMENT 3 TO THE HIGH SEAS SALMON FISHERY OFF THE COAST OF ALASKA EAST OF 175 E. LONGITUDE

Legal Authority: 16 USC 1801 et seq Magnuson Fishery Conservation & Mgmt. Act

CFR Citation: 50 CFR 674

Legal Deadline: Final, Statutory. 110 days after receipt from the fishery management council.

Abstract: This Amendment will (1) update the scientific data and other information used as a basis for management actions, (2) enhance the framework aspect of annual and inseason rulemaking under the fishery management plan (FMP), and (3) ensure conformity of the FMP with the Pacific Salmon Treaty.

Timetable:

Action	Date	FR Cite
NPRM	02/00/89	
NPRM Comment Period End	03/00/89	
Final Action	04/00/89	
Final Action Effective	05/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Sectors Affected: 091 Commercial Fishing

Agency Contact: James W. Brooks, Acting Director, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802, 907 586-7221

RIN: 0648-AC00

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324. AMENDMENT 2 TO THE FISHERY MANAGEMENT PLAN FOR THE COASTAL MIGRATORY PELAGIC RESOURCES

Significance: Regulatory Program

Legal Authority: 16 USC 1801 et seq Magnuson Fishery Conservation & Mgmt. Act

CFR Citation: 50 CFR 642

Legal Deadline: Final, Statutory. 110 days after receipt from the fishery management council.

Abstract: This amendment will prohibit drift gillnets in the King and Spanish mackerel fisheries in the Gulf of Mexico and South Atlantic, and prohibit purse seines in the King mackerel fishery in the South Atlantic.

Timetable:

Action	Date	FR Cite
NPRM	01/00/89	
NPRM Comment Period End	02/20/89	
Final Action	04/14/89	
Final Action Effective	05/14/89	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Sectors Affected: 091 Commercial Fishing

Agency Contact: Joseph W. Angelovic, Acting Director, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, F/SER, 9450 Koger Blvd., St. Petersburg, FL 33702, 813 893-3141

RIN: 0648-AC11

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325. ◆ AMENDMENT 4 TO THE FISHERY MANAGEMENT PLAN FOR THE SHRIMP FISHERY OF THE GULF OF MEXICO

Legal Authority: 16 USC 1801 et seq Magnuson Fishery Conservation & Mgmt. Act

CFR Citation: 50 CFR 650

Legal Deadline: Final, Statutory. 75 days after receipt from the fishery management council.

Abstract: This amendment will require that white shrimp taken in the Exclusive Economic Zone conform to the minimum size, landing, and possession limits of the State in which they are landed; will simplify the annual review process for the Tortugas Sanctuary; delay the Gulf of Mexico Council/Southeast Regional Director's decision on the Texas closure to February 1; and recommend expanding the sea turtle education and headstart program.

DOC—NOAA

Proposed Rule Stage

Timetable:

Action	Date	FR Cite
NPRM	10/03/88	
NPRM Comment Period End	11/17/88	
Final Action	01/06/89	
Final Action Effective	02/05/89	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Sectors Affected: 091 Commercial Fishing

Agency Contact: Joseph W. Angelovic, Acting Director, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, F/SER, 9450 Koger Blvd., St. Petersburg, FL 33702, 813 893-3141

RIN: 0648-AC17

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326. IMPLEMENTATION OF CONDITIONALLY APPROVED MEASURES UNDER AMENDMENT 1 TO THE SPINY AND SLIPPER LOBSTER FMP IN THE GULF OF MEXICO AND SOUTH ATLANTIC - PERMITS AND BAG LIMITS

Legal Authority: 16 USC 1801 et seq Magnuson Fishery Conservation & Mgmt. Act

CFR Citation: 50 CFR 640

Legal Deadline: None

Abstract: This rule will require commercial and tail separation permits and establish a recreational bag limit during the regular season.

Timetable:

Action	Date	FR Cite
NPRM	01/23/89	52 FR 8485
NPRM Comment Period End	03/07/89	52 FR 8485
Final Action	04/28/89	
Final Action Effective	05/28/89	

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 091 Commercial Fishing

Agency Contact: Joseph W. Angelovic, Acting Director, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 9450 Koger Blvd., St. Petersburg, FL 33702, 813 893-3141

RIN: 0648-AC25

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327. AMENDMENT 2 TO THE NORTHEAST MULTISPECIES FISHERY MANAGEMENT PLAN

Significance: Regulatory Program

Legal Authority: 16 USC 1801 et seq Magnuson Fishery Conservation & Mgmt. Act

CFR Citation: 50 CFR 651

Legal Deadline: Final, Statutory. 110 days after receipt from the fishery management council.

Abstract: Amendment 2 will provide additional protection to groundfish resources in the North Atlantic beyond that provided by the FMP. The amendment is aimed at reducing fishing pressure on ten valuable fish species and rebuilding their stocks (cod; haddock; yellowtail, winter, windowpane, and witch flounders; pollock; redfish; American plaice; and white hake). Alternative management measures to be considered include increases in minimum sizes of four regulated species, establishment of a 9 inch minimum size for redfish, requirement for 5 1/2 inch minimum mesh throughout the net by October 1, 1989 in the regulated mesh area, a trip bycatch limit of 25 percent of regulated species weight for vessels operating in the exempted Fisheries Program, as well as other measures.

Timetable:

Action	Date	FR Cite
Notice of hearings= request for comments	07/14/88	53 FR 26616
ANPRM	09/01/88	
NPRM	09/15/88	
NPRM Comment Period End	11/01/88	
Final Action	12/16/88	
Final Action Effective	01/18/89	

Small Entities Affected: Businesses

Government Levels Affected: Federal

Sectors Affected: 091 Commercial Fishing

Agency Contact: Richard B. Roe, Director, Northeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 14 Elm Street, Gloucester, MA 01930-3799, 508 281-3600

RIN: 0648-AC26

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328. FISH AND SEAFOOD PROMOTION ACT OF 1986

Significance: Regulatory Program

Legal Authority: 16 USC 4001 to 4017 Fish & Seafood Promotion Act of 1986 (FSPA)

CFR Citation: 50 CFR 751

Legal Deadline: None

Abstract: The proposed rule describes the conditions under which seafood marketing councils for one or more species of fish or fish products authorized under the FSPA may be established and operated. The councils will be funded through self-assessment by segments of the industry represented on the council and are established through (1) application of particular sector(s) of industry to the Secretary of Commerce; (2) favorable Secretarial review of the application and (3) passage of a referendum conducted by the Secretary among sector participants. The Secretary appoints members to the councils from lists of nominees supplied by the industry. Councils will submit annual plans and budgets for species-specific marketing and promotion, including consumer education, research, and other activities. Costs to the Federal Government are estimated to range from $100,000 to $200,000 for program start-up and other initial costs to establish one council. Annual costs will vary and depend upon the number of applications received and the number of referenda conducted. Benefits to the industry may be substantial.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Complete DOC/OMB review	10/00/88	
NPRM Comment Period End	12/00/88	
Final Action	04/00/89	
Final Action Effective	04/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Sectors Affected: Multiple

Agency Contact: Carmen J. Blondin, Director, Off. of Trade & Industry

DOC—NOAA

Proposed Rule Stage

Services, Department of Commerce, National Oceanic and Atmospheric Administration, Washington, DC 20235, 202 673-5200

RIN: 0648-AC27

329. AMENDMENT 3 TO THE AMERICAN LOBSTER FISHERY MANAGEMENT PLAN

Legal Authority: 16 USC 1801 et seq Magnuson Fishery Conservation & Mgmt. Act

CFR Citation: 50 CFR 649

Legal Deadline: Final, Statutory. 110 days after submission by the fishery management council.

Abstract: This action will change the date from 1990 to 1992 to establish the new minimum vent size at 1 15/16 inches by 6 inches for rectangular vents or 2 7/16 inches diameter for circular vents; and to implement a requirement that each trap shall have an escape panel fastened with biodegradable material.

Timetable:

Action	Date	FR Cite
NPRM	11/15/88	
NPRM Comment Period End	12/30/88	
Final Action	02/10/89	
Final Action Effective	03/20/89	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Sectors Affected: 091 Commercial Fishing

Agency Contact: Richard B. Roe, Director, Northeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 14 Elm Street, Gloucester, MA 01930, 508 281-3600

RIN: 0648-AC28

330. AMENDMENT 2 TO THE SPINY LOBSTER FISHERY MANAGEMENT PLAN OF THE GULF OF MEXICO AND SOUTH ATLANTIC

Significance: Regulatory Program

Legal Authority: 16 USC 1801 et seq Magnuson Fishery Conservation & Mgmt. Act

CFR Citation: 50 CFR 640

Legal Deadline: Final, Statutory.

110 days after receipt from the fishery management council.

Abstract: This rule would propose a limited entry system for the fishery.

Timetable:

Action	Date	FR Cite
NPRM	12/16/88	
NPRM Comment Period End	01/31/89	
Final Action	03/24/89	
Final Action Effective	04/24/89	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Sectors Affected: 091 Commercial Fishing

Agency Contact: Joseph W. Angelovic, Acting Director, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 9450 Koger Blvd., St. Petersburg, FL 33702, 813 893-3141

RIN: 0648-AC29

331. FOREIGN FISHING POUNDAGE AND PERMIT FEES, 1989

Legal Authority: 16 USC 1801 et seq Magnuson Fishery Conservation and Mgmt. Act

CFR Citation: 50 CFR 611.22

Legal Deadline: None

Abstract: This rule will set poundage and permit fees for foreign fishing in 1989.

Timetable:

Action	Date	FR Cite
NPRM	09/30/88	
NPRM Comment Period End	10/30/88	
Final Action	12/15/88	
Final Action Effective	01/01/89	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Sectors Affected: 091 Commercial Fishing

Agency Contact: Alfred J. Bilik, Fishery Management Office, Department of Commerce, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW, Washington, DC 20235, 202 673-5319

RIN: 0648-AC30

332. AMENDMENT 12 TO THE FMP FOR GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

Legal Authority: 16 USC 1801 et seq Magnuson Fishery Conservation & Mgmt. Act

CFR Citation: 50 CFR 675; 50 CFR 611

Legal Deadline: Final, Statutory. 110 days after receipt from the fishery management council.

Abstract: The amendment would provide for requiring all floating processors receiving fish caught in Federal waters to hold a Federal permit and make weekly reports on catch.

Timetable:

Action	Date	FR Cite
NPRM	11/01/88	
NPRM Comment Period End	12/17/88	
Final Action	02/20/89	
Final Action Effective	03/22/89	

Small Entities Affected: Businesses

Government Levels Affected: Federal

Sectors Affected: 091 Commercial Fishing

Agency Contact: James W. Brooks, Acting Director, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 1668, Juneau, AK 99802, 907 586-7221

RIN: 0648-AC32

333. FISHERY MANAGEMENT PLAN FOR KING AND TANNER CRAB IN THE BERING SEA AND ALEUTIAN ISLANDS

Significance: Regulatory Program

Legal Authority: 16 USC 1801 et seq Magnuson Fishery Conservation & Mgmt. Act

CFR Citation: 50 CFR 671

Legal Deadline: Final, Statutory. 110 days after receipt from the fishery management council.

Abstract: The FMP would govern fishing for king and tanner crab in the EEZ by minimum sizes, annual guideline harvest levels, definition of legal gear, restriction on harvest of female crabs, registration areas, fishing seasons, and provisions for inseason adjustments. The State of Alaska would adopt measures for reporting requirements, gear placement, gear storage, gear restrictions, and vessel tank inspections. A person may appeal to the Secretary if he believes a State action does not comply with the FMP, the Magnuson Act, or other applicable law.

Timetable:

Action	Date	FR Cite
NPRM	11/01/88	
NPRM Comment Period End	12/16/88	
Final Action	02/07/89	
Final Action Effective	03/07/89	

Small Entities Affected: Undetermined

Government Levels Affected: State, Federal

Sectors Affected: 091 Commercial Fishing

Agency Contact: James W. Brooks, Acting Director, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 1668, Juneau, AK 99802, 907 586-7221

RIN: 0648-AC34

334. REPORTING REQUIREMENTS GOVERNING SALMON TAKEN OFF ALASKA AND DELIVERED OR LANDED OUTSIDE ALASKA

Legal Authority: 16 USC 1801 et seq Magnuson Fishery Conservation & Mgmt. Act

CFR Citation: 50 CFR 674

Legal Deadline: Final, Statutory. 110 days after receipt from the fishery management council.

Abstract: A mandatory reporting requirement for fishing vessel operators who harvest salmon in the EEZ off Alaska and who sell, transport, or deliver salmon in the EEZ or to a U.S. port outside Alaska. The operator must submit a fish ticket to the Alaska Department of Fish and Game after each sale, transfer or delivery. Receipt of this ticket is necessary to obtain timely data on salmon catches.

Timetable:

Action	Date	FR Cite
NPRM	01/15/89	
NPRM Comment Period End	03/03/89	
Final Action	04/03/89	
Final Action Effective	05/03/89	

DOC—NOAA

Proposed Rule Stage

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Sectors Affected: 091 Commercial Fishing

Agency Contact: James W. Brooks, Acting Director, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 1668, Juneau, AK 99802, 907 586-7221

RIN: 0648-AC39

335. ATLANTIC TUNA FISHERIES - REGULATORY AMENDMENT

Legal Authority: 16 USC 971 et seq

CFR Citation: 50 CFR 285

Legal Deadline: None

Abstract: Regulatory Amendment to clarify intent of existing regulation through international agreements that no directed fishing is allowed on Atlantic bluefin tuna in the Gulf of Mexico. The existing regulation has a category for incidental catch of bluefin in the domestic longline fishery for other species. The intent of the existing regulation is no fishing in the Gulf of Mexico for bluefin tuna under any other category of fishing. This amendment will clarify that point. A modification of the quota or adjustment in fishing seasons may be necessary.

Timetable:

Action	Date	FR Cite
NPRM	09/00/88	
NPRM Comment Period End	10/00/88	
Final Action	11/00/88	
Final Action Effective	12/31/88	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Sectors Affected: 091 Commercial Fishing

Agency Contact: Richard Roe, Director, Northeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 14 Elm Street, Federal Bldg., Gloucester, MA 01930, 617 281-3600

RIN: 0648-AC40

336. REGULATORY AMENDMENT TO THE FISHERY MANAGEMENT PLAN FOR THE ATLANTIC SWORDFISH FISHERY

Legal Authority: 16 USC 1801 et seq Magnuson Fishery Conservation & Mgmt. Act

CFR Citation: 50 CFR 630

Legal Deadline: Final, Statutory. 110 days after receipt from the fishery management council.

Abstract: This regulatory amendment will modify the present data collection system to require 100 percent mandatory dealer reporting of landings and value, for swordfish and other species caught in the domestic longline fishery. This information is required to determine total fishery landings, fishing effort, and biological data (e.g., size of population, age classes) for stock assessment purposes.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
NPRM Comment Period End	12/00/88	
Final Action	02/00/89	
Final Action Effective	03/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Sectors Affected: 091 Commercial Fishing

Agency Contact: Joseph W. Angelovic, Acting Director, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 9450 Koger Blvd., St. Petersburg, FL 33702, 813 893-3141

RIN: 0648-AC41

337. AMENDMENT 17 TO THE FMP FOR GROUNDFISH OF THE GULF OF ALASKA

Significance: Regulatory Program

Legal Authority: 16 USC 1801 et seq Magnuson Fishery Conservation & Mgmt. Act

CFR Citation: 50 CFR 672; 50 CFR 611

Legal Deadline: Final, Statutory. 110 days after receipt from the fishery management council.

Abstract: The amendment would require floating processors receiving fish caught in Federal waters to hold a

Federal permit, and make weekly reports on catch.

Timetable:

Action	Date	FR Cite
NPRM	11/01/88	
NPRM Comment Period End	12/17/88	
Final Action	02/20/89	
Final Action Effective	03/22/89	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Sectors Affected: 091 Commercial Fishing

Agency Contact: James W. Brooks, Acting Director, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 1668, Juneau, AK 99802, 907 586-7221

RIN: 0648-AC42

338. AMENDMENT 3 TO THE FISHERY MANAGEMENT PLAN FOR ATLANTIC SEA SCALLOPS

Significance: Regulatory Program

Legal Authority: 16 USC 1801 et seq Magnuson Fishery Conservation & Mgmt. Act

CFR Citation: 50 CFR 650

Legal Deadline: Final, Statutory. 110 days after receipt from the fishery management council.

Abstract: This amendment will involve a major revision of the management plan with the purpose of replacing a management program based on a meat count standard measure with some other management approach of equal or greater effectiveness in meeting the plan's objectives. The Council is considering optional means of effort control, which would have industry support, as a basis for a new management program.

Timetable:

Action	Date	FR Cite
NPRM	01/06/89	
NPRM Comment Period End	02/20/89	
Final Action	04/14/89	
Final Action Effective	05/14/89	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Sectors Affected: 091 Commercial Fishing

Agency Contact: Richard B. Roe, Director, Northeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 14 Elm Street, Gloucester, MA 01930, 508 281-3600

RIN: 0648-AC44

339. REGULATORY AMENDMENT TO DESIGNATE SPECIAL FISHING AREAS IN THE SNAPPER-GROUPER FISHERY OF THE SOUTH ATLANTIC

Legal Authority: 16 USC 1801 et seq Magnuson Fishery Conservation & Mgmt. Act

CFR Citation: 50 CFR 646

Legal Deadline: None

Abstract: The regulatory amendment would establish two special management zones around artificial reefs that were requested by the Ft. Pierce Sport Fishing Club and approved by the South Atlantic Fishery Management Council. Within the fishery management plan for the snapper-grouper fishery, use of fish traps, bottom longlines, hydraulic and electric reels unless mounted on a hand-held rod would be prohibited. In addition, spear fishing on the inshore site is prohibited and possession or harvest of jewfish would be prohibited.

Timetable:

Action	Date	FR Cite
NPRM	09/00/88	
NPRM Comment Period End	10/00/88	
Final Action	11/18/88	
Final Action Effective	12/18/88	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Sectors Affected: 091 Commercial Fishing

Agency Contact: Joseph W. Angelovic, Acting Regional Director, Department of Commerce, National Oceanic and Atmospheric Administration, 9450 Koger Blvd., St. Petersburg, FL 33702, 813 893-3141

RIN: 0648-AC46

340. AMENDMENT 9 TO THE FISHERY MANAGEMENT PLAN FOR COMMERCIAL AND RECREATIONAL SALMON FISHERIES OFF THE COASTS OF WASHINGTON, OREGON, AND CALIFORNIA

Significance: Regulatory Program

Legal Authority: 16 USC 1801 et seq Magnuson Fishery Conservation & Mgmt. Act

CFR Citation: 50 CFR 661

Legal Deadline: Final, Statutory. 110 days after receipt from the fishery management council.

Abstract: This Amendment will address: (1) allocation of chinook and coho salmon north of Cape Falcon between non-Indian commercial and recreational fisheries, (2) the ocean escapement goal for Klamath River Fall chinook, (3) clarification of steelhead management objectives, (4) revision of the notice procedure for inseason management actions, (5) framework provisions for reporting requirements for certain fishery information, and (6) allowance for commercial coho fishing north of the California-Oregon border prior to July 1.

Timetable:

Action	Date	FR Cite
NPRM	09/02/88	
NPRM Comment Period End	10/17/88	
Final Action	01/17/89	
Final Action Effective	02/04/89	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Sectors Affected: 091 Commercial Fishing

Agency Contact: Rolland A. Schmitten, Director, Northwest Region, Department of Commerce, National Oceanic and Atmospheric Administration, 7600 Sand Point Way, NE, Building 1, Seattle, WA 98115, 206 526-6150

RIN: 0648-AC49

341. AMENDMENT 1 TO THE FISHERY MANAGEMENT PLAN FOR THE SNAPPER- GROUPER FISHERY OF THE SOUTH ATLANTIC

Legal Authority: 16 USC 1801 et seq Magnuson Fishery Conservation & Mgmt. Act

CFR Citation: 50 CFR 646

Legal Deadline: Final, Statutory. 110 days after receipt from the South Atlantic Fishery Management Council.

Abstract: Amendment 1 would prohibit the use of trawl gear in the directed fishery for snapper-groupers. The ban would apply from Cape Hatteras south through the Atlantic coast of Florida to Cape Canaveral. The prohibition is aimed primarily at fishing with roller trawls which destroy sessile organisms in live-bottom areas, including sponges and sea fans.

Timetable:

Action	Date	FR Cite
ANPRM	09/01/88	
NPRM	09/15/88	
NPRM Comment Period End	10/30/88	
Final Action	12/19/88	
Final Action Effective	01/18/89	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Sectors Affected: 091 Commercial Fishing

Agency Contact: Joseph W. Angelovic, Acting Regional Director, Department of Commerce, National Oceanic and Atmospheric Administration, 9450 Koger Blvd., St. Petersburg, FL 33702, 813 893-3141

RIN: 0648-AC50

342. ◆ AMENDMENT 4 TO THE FISHERY MANAGEMENT PLAN FOR THE COASTAL MIGRATORY PELAGIC RESOURCES

Legal Authority: 16 USC 1801 et seq Magnuson Fishery Conservation & Mgmt. Act

CFR Citation: 50 CFR 642

Legal Deadline: Final, Statutory. 110 days after receipt from the fishery management council.

Abstract: Actions which may be considered for inclusion in the amendment are: (1) adjustment of the Spanish Mackerel Commercial Fishery allocation, (2) adjustment of the bag limits in the recreational fishery, (3) divide quotas by time or area, (4) adjust qualification criteria for commercial permits, (5) prohibit charter boats from obtaining a commercial permit, (6) prohibit the sale of mackerel taken under the bag limit, (7) establish subquotas for king mackerel by gear type in the commercial fishery, (8) adjust the seasonal boundaries, and (9) impose bag limits of cobia in both the recreational and commercial fisheries.

Timetable:

Action	Date	FR Cite
NPRM	02/00/89	
Final Action	05/20/89	
Final Action Effective	06/19/89	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Sectors Affected: 091 Commercial Fishing

Agency Contact: Joseph W. Angelovic, Acting Director, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, F/SER, 9450 Koger Blvd., St. Petersburg, FL 33702, 813 893-3141

RIN: 0648-AC55

343. ◆ REGULATORY AMENDMENT TO THE FISHERY MANAGEMENT PLAN FOR THE SHRIMP FISHERY OF THE GULF OF MEXICO - THE TORTUGAS SANCTUARY

Legal Authority: 16 USC 1801 et seq Magnuson Fishery Conservation & Mgmt. Act

CFR Citation: 50 CFR 654

Legal Deadline: None

Abstract: This amendment will reopen a portion of the Tortugas Sanctuary that has been closed to shrimp fishing.

Timetable:

Action	Date	FR Cite
NPRM	09/15/88	
NPRM Comment Period End	10/14/88	
Final Action	11/14/88	
Final Action Effective	12/01/88	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Sectors Affected: 091 Commercial Fishing

Agency Contact: Joseph W. Angelovic, Acting Director, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, F/SER, 9450 Koger Blvd., St. Petersburg, FL 33702, 813 893-3141

RIN: 0648-AC58

344. ◆ FISHERY MANAGEMENT PLAN FOR THE HIGH SEAS SALMON FISHERY OFF THE COAST OF ALASKA EAST OF 175 EAST LONGITUDE - REGULATORY AMENDMENT

Legal Authority: 16 USC 1801 et seq Magnuson Fishery Conservation & Mgmt. Act

CFR Citation: 50 CFR 600

Legal Deadline: None

Abstract: This regulatory amendment would modify the regulations implementing the FMP in order to bring them into conformity with the FMP measures concerning the Secretary's authority to open and close fishing areas.

Timetable:

Action	Date	FR Cite
NPRM	03/00/89	
NPRM Comment Period End	04/00/89	
Final Action	05/00/89	
Final Action Effective	06/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Sectors Affected: 091 Commercial Fishing

Agency Contact: James W. Brooks, Acting Director, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 1668, Juneau, AK 99801, 907 586-7221

RIN: 0648-AC57

345. ◆ AMENDMENT 3 TO THE FISHERY MANAGEMENT PLAN FOR THE RED DRUM FISHERY OF THE GULF OF MEXICO

Legal Authority: 16 USC 1801 et seq Magnuson Fishery Conservation & Mgmt. Act

CFR Citation: 50 CFR 654

Legal Deadline: Final, Statutory. 110 days after receipt from the fishery management council.

Abstract: Amendment 3 would establish a regulatory framework measure which allows the Secretary of

Commerce to (1) adjust the total allowable catch in the Gulf of Mexico exclusive economic zone based upon the latest scientific assessment of the status of the stock, and (2) allocate the available catch between commercial and recreational users according to a preestablished allocation schedule.

Timetable:

Action	Date	FR Cite
NPRM	08/00/89	
NPRM Comment Period End	09/00/89	
Final Action	11/00/89	
Final Action Effective	12/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Sectors Affected: 091 Commercial Fishing

Agency Contact: Joseph W. Angelovic, Acting Director, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 9450 Koger Blvd., St. Petersburg, FL 33702, 813 893-3141

RIN: 0648-AC56

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346. ◆ REGULATORY AMENDMENT TO CLARIFY TRIP LIMIT REGULATIONS FOR THE PACIFIC COAST GROUNDFISH AND SALMON FISHERIES

Legal Authority: 16 USC 1801 et seq Magnuson Fishery Conservation & Mgmt. Act

CFR Citation: 50 CFR 661; 50 CFR 661

Legal Deadline: None

Abstract: The regulatory amendment would clarify trip limit restrictions in the groundfish and salmon fisheries off the coasts of Washington, Oregon, and California. The definitions of "land or landing" and "fishing trip" are modified to clarify trip limit restrictions, to provide consistent regulations in the two fisheries, and to facilitate enforcement.

Timetable:

Action	Date	FR Cite
NPRM	09/01/88	
NPRM Comment Period End	10/01/88	
Final Action	12/01/88	
Final Action Effective	01/01/89	

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 091 Commercial Fishing

Agency Contact: Rolland A. Schmitten, Director, Northwest Region, Department of Commerce, National Oceanic and Atmospheric Administration, F/NWR, 7600 Sand Point Way, NE, Bldg. 1, Seattle, WA 98115, 206 526-6150

RIN: 0648-AC59

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347. ◆ SCIENTIFIC RESEARCH - DOMESTIC AND FOREIGN FISHING

Legal Authority: 16 USC 1801 et seq Magnuson Fishery Conservation and Mgmt. Act

CFR Citation: 50 CFR 630

Legal Deadline: None

Abstract: The rule would define scientific research under the Magnuson Act.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
NPRM Comment Period End	11/00/88	
Final Action	04/00/89	
Final Action Effective	05/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Sectors Affected: 091 Commercial Fishing

Agency Contact: Margaret Pralley, Assistant General Counsel for Enforcement and Litigation, Department of Commerce, National Oceanic and Atmospheric Administration, 1825 Connecticut Ave., NW, Washington, DC 20235, 202 673-5230

RIN: 0648-AC01

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348. ◆ IMPLEMENTATION OF PL 99-659 AND OTHER RECOMMENDATIONS TO IMPROVE THE FISHERY MANAGEMENT SYSTEM - THE CONSERVATION STANDARD

Significance: Regulatory Program

Legal Authority: 16 USC 1801 et seq Magnuson Fishery Conservation & Mgmt. Act

CFR Citation: 50 CFR 602

Legal Deadline: None

Abstract: Revision of regulatory guidance with regard to establishing a conservation standard for determining a biologically acceptable catch for each managed fishery. This is being considered to conform with recommendations and new administration policy.

Timetable:

Action	Date	FR Cite
NPRM	12/31/88	
NPRM Comment Period End	02/28/89	
Final Action	07/14/89	
Final Action Effective	08/13/89	

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: None

Agency Contact: Richard H. Schaefer, Director, Office of Fisheries Conservation and Management, Department of Commerce, National Oceanic and Atmospheric Administration, Washington, DC 20235, 202 673-5263

RIN: 0648-AC63

NATIONAL OCEAN SURVEY/OFFICE OF COASTAL RESOURCES MANAGEMENT

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349. PROPOSED REGULATIONS FOR THE KEY LARGO NATIONAL MARINE SANCTUARY

Legal Authority: 16 USC 1431 to 1434

CFR Citation: 15 CFR 929

Legal Deadline: None

Abstract: These regulations are being revised to update enforcement provisions and to change research permit requirements.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	
NPRM Comment Period End	02/00/89	
Final Action	06/00/89	
Final Action Effective	07/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Neither an RIA nor an RFA is required or will be prepared.

Agency Contact: Joseph A. Uravitch, Chief, Marine and Estuarine Management Division, Department of Commerce, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW, Suite 714, Washington, DC 20235, 202 673-5126

RIN: 0648-AA33

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350. FEDERAL CONSISTENCY WITH APPROVED COASTAL ZONE MANAGEMENT PROGRAMS

Significance: Regulatory Program

Legal Authority: 16 USC 1456 Coastal Zone Management Act of 1972

CFR Citation: 15 CFR 930

Legal Deadline: None

Abstract: On January 11, 1984, the U.S. Supreme Court issued its decision in Secretary of the Interior et al. v. California et al. No. 82-1326. The Court held that the sale of Outer Continental Shelf (OCS) oil and gas leases is not an activity "directly affecting" the Coastal Zone Management Act of 1972, as amended (CZMA), and therefore, that a consistency determination is not required under that section before such sales may be made. Section 307 (c)(1) required that Federal agencies conducting or supporting activities "directly affecting the coastal zone" must conduct or support those activities in a manner which is consistent to the maximum extent practicable with federally approved state coastal zone management programs. NOAA engaged in rulemaking to revise certain CZMA regulations as a result of the Supreme Court decision. NOAA removed those references which identify OCS lease sales as activities covered by the Section 307(c)(1) requirements.

Timetable:

Action	Date	FR Cite
ANPRM	06/01/84	49 FR 22825
ANPRM Comment Period End	08/31/84	49 FR 22825
NPRM	01/28/85	50 FR 3798
NPRM Comment Period End	03/01/85	50 FR 3798
Final Action	08/30/85	50 FR 35210
Decision whether to proceed with rulemaking	10/31/88	

Small Entities Affected: None

Government Levels Affected: None

Sectors Affected: Multiple

Additional Information: NOAA issued a final rule August 31, 1985 making the changes required by the Supreme Court decision, and decided to undertake a comprehensive study of the Federal consistency process. The Draft Study issued April 1985 will assist NOAA in evaluating the need for and consequences of further revision of the Federal consistency regulations. Further revision has been deferred pending review of public comment on the April study, and amendments to the CZMA enacted in 1988, and the outcome of pending litigation.

Agency Contact: James P. Blizzard, Deputy Director, Office of Ocean and Coastal Resource Mgmt., Department of Commerce, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW, Washington, DC 20235, 202 673-5111

RIN: 0648-AA34

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351. DRAFT REGULATIONS FOR THE PROPOSED FLOWER GARDEN BANKS NATIONAL MARINE SANCTUARY

Legal Authority: 16 USC 1431 to 1434

CFR Citation: 15 CFR 943

Legal Deadline: None

Abstract: These regulations will protect the ecological and biological reef communities of the East and West Flower Garden Banks offshore Texas and Louisiana, if the area is designated as a national marine sanctuary.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
NPRM Comment Period End	12/00/88	
Final Action	04/00/89	
Final Action Effective	05/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Joseph A. Uravitch, Chief, Marine and Estuarine Management Division, Department of Commerce, National Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resource Mgt., 1825 Connecticut Avenue, NW, Suite 714, Washington, DC 20235, 202 673-5126

RIN: 0648-AD49

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352. PROPOSED REGULATIONS FOR THE LOOE KEY NATIONAL MARINE SANCTUARY

Legal Authority: 16 USC 1431 to 1434

CFR Citation: 15 CFR 937

Legal Deadline: None

Abstract: These regulations are being revised to update enforcement provisions and to change research permit requirements.

Timetable:

Action	Date	FR Cite
NPRM	09/00/88	
NPRM Comment Period End	11/00/88	
Final Action	03/00/89	
Final Action Effective	04/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Neither an RIA nor an RFA is required or will be prepared.

Agency Contact: Joseph A. Uravitch, Chief, Marine and Estuarine Management Division, Department of Commerce, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW, Suite 714, Washington, DC 20235, 202 673-5126

RIN: 0648-AB64

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353. PROPOSED REGULATIONS FOR THE NATIONAL ESTUARINE RESERVE RESEARCH PROGRAM

Legal Authority: 16 USC 1461

CFR Citation: 15 CFR 921

Legal Deadline: None

Abstract: When the Coastal Zone Management Reauthorization Act of 1985 becomes effective, the existing regulations for the National Estuarine Sanctuary Program will need to be updated to reflect the changes that will occur in the program--(1) a stronger emphasis for conducting, promoting and coordinating research within the system; (2) changes the name of the program to "National Estuarine Reserve Research System"; (3) the amount of Federal financial assistance is increased to $4,000,000 per site; and (4) submission of an annual report to Congress beginning with fiscal year 1990.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
NPRM Comment Period End	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Joseph A. Uravitch, Chief, Marine and Estuarine Management Division, Department of Commerce, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW, Suite 714, Washington, DC 20235, 202 673-5126

RIN: 0648-AB88

354. RULEMAKING TO IMPLEMENT 1985 REAUTHORIZATION OF THE COASTAL ZONE MANAGEMENT ACT (CZMA)

Legal Authority: 16 USC 1456; PL 99-272, Subtitle D

CFR Citation: 15 CFR 923

Legal Deadline: None

Abstract: PL 99-272, the Coastal Zone Management Reauthorization Act of 1985, amended Sec 306(g) of the Coastal Zone Management Act (16 USC 1456) dealing with submission and approval of changes to federally approved state coastal zone management programs. NOAA/OCRM intends to issue regulations to implement these provisions and to correct problems NOAA/OCRM and the states have experienced in processing program change requests.

Timetable:

Action	Date	FR Cite
Issue paper distributed	09/12/96	
NPRM	03/31/89	
NPRM Comment Period End	04/30/89	
Final Action	10/01/88	
Final Action Effective	12/01/89	

Small Entities Affected: None

Government Levels Affected: State

Public Compliance Cost: Initial Cost: $0; Yearly Recurring Cost: $0

Sectors Affected: None

Agency Contact: Mark Stanga, Associate Director, OCRM, Department of Commerce, National Oceanic and Atmospheric Administration, 1825 Connecticut Ave., NW, Room 701, Washington, DC 20235, 202 673-5160

RIN: 0648-AC02

355. PROPOSED REGULATIONS FOR THE CHANNEL ISLANDS NATIONAL MARINE SANCTUARY

Legal Authority: 16 USC 1431 to 1439

CFR Citation: 15 CFR 935

Legal Deadline: None

Abstract: These regulations are being revised to update enforcement provisions and permit requirements.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Joseph A. Uravitch, Chief, Marine and Estuarine Management Division, Department of Commerce, National Oceanic and Atmospheric Administration, 1825 Connecticut Ave., NW, Suite 714, Washington, DC 20235, 202 673-5126

RIN: 0648-AC03

356. PROPOSED REGULATIONS FOR THE POINT REYES-FARALLON ISLANDS NATIONAL MARINE SANCTUARY

Legal Authority: 16 USC 1431 to 1439

CFR Citation: 15 CFR 936

Legal Deadline: None

Abstract: These regulations are being revised to update enforcement provisions and permit requirements.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Joseph A. Uravitch, Chief, Marine and Estuarine Management Division, Department of Commerce, National Oceanic and Atmospheric Administration, 1825 Connecticut Ave., NW, Suite 714, Washington, DC 20235, 202 673-5126

RIN: 0648-AC05

357. ◆ PROPOSED REGULATIONS FOR THE NATIONAL MARINE SANCTUARY PROGRAM

Legal Authority: 16 USC 1431 to 1434

CFR Citation: 15 CFR 922

Legal Deadline: NPRM, Statutory. Within 12 months of enactment.

Abstract: As a result of the Marine Protection Research and Sanctuaries Act re-authorization anticipated in 1988, the regulations will be revised to incorporate modifications from the new legislation.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Joseph A. Uravitch, Chief, Marine and Estuarine Management Division, Department of Commerce, National Oceanic and Atmospheric Administration, NOS Universal Bldg., Rm. 714, 1825 Conn. Ave., NW, Washington, DC 20235, 202 673-5126

RIN: 0648-AC33

358. ◆ PROPOSED REGULATIONS FOR THE MONTEREY BAY NATIONAL MARINE SANCTUARY

Legal Authority: 16 USC 1431 to 1434

CFR Citation: Not yet determined

Legal Deadline: None

Abstract: These regulations will protect the ecological, recreational, and esthetic resources of the waters surrounding Monterey Bay, if the area is designated as a National Marine Sanctuary.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Joseph A. Uravitch, Chief, Marine and Estuarine Management Division, Department of Commerce, National Oceanic and Atmospheric Administration, NOS, Universal Bldg., Rm. 714, 1825 Conn. Ave., NW, Washington, DC 20235, 202 673-5126

RIN: 0648-AC53

OFFICE OF THE ADMINISTRATOR

359. ◆ NATIONAL SEA GRANT PROGRAM FUNDING REGULATIONS

Legal Authority: 33 USC 1123 (d)(7); 33 USC 1125; 33 USC 1127

CFR Citation: 15 CFR 917.2 (Revision); 15 CFR 917.11 (Revision); 15 CFR 917.20 (Revision); 15 CFR 917.21 (Revision); 15 CFR 917.22 (Revision); 15 CFR 917.30 (Revision)

Legal Deadline: Final, Statutory, December 28, 1988. Applies only to revision of 15 CFR 917.20 - 917.22.

Abstract: Amendments to the Sea Grant Act require updating of implementing regulations to include:

Replace the "National Needs" program with a "strategic research program," essentially to focus on a more limited number of priority research areas;

Include two types of fellowships not previously recognized by statute and set forth selection procedures;

To update the international program in view of the broader geographic areas and activities authorized;

To provide more specific support for graduate education and interdisciplinary research in marine affairs.

There are no alternatives. Statutory amendments explicitly or implicitly require conforming amendments to the funding regulations. There are no costs involved.

Timetable:

Action	Date	FR Cite
NPRM	10/01/88	
NPRM Comment Period End	11/29/88	
Final Action	12/28/88	

Small Entities Affected: None

Government Levels Affected: Federal

Public Compliance Cost: Initial Cost: $0; Yearly Recurring Cost: $0

Agency Contact: John Milholland, Senior Counselor, Department of Commerce, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW, Universal South Bldg., Rm. 603, Washington, DC 20230, 202 673-5200

RIN: 0648-AC54

DEPARTMENT OF COMMERCE (DOC) — Final Rule Stage

National Oceanic and Atmospheric Administration (NOAA)

NATIONAL MARINE FISHERIES SERVICE

360. FISHERY CONSERVATION AND MANAGEMENT: CONFIDENTIALITY OF STATISTICS

Legal Authority: 16 USC 1801 et seq Magnuson Fishery Conservation and Mgmt. Act

CFR Citation: 50 CFR 603

Legal Deadline: None

Abstract: The regulations provide internal procedures to protect statistics collected from the public under the Magnuson Fishery Conservation and Management Act from disclosure.

Timetable:

Action	Date	FR Cite
NPRM	01/09/78	43 FR 1460
Interim Final Rule	12/07/79	44 FR 237
Interim Final Rule	07/16/87	52 FR 26665
Final Action	12/31/88	

Small Entities Affected: None

Government Levels Affected: None

Sectors Affected: 091 Commercial Fishing

Analysis: See Additional Information

Additional Information: Neither an RIA nor an RFA is required or will be prepared. The Regulatory Flexibility Act does not apply because the regulations affect only internal operations of an agency.

Agency Contact: Mark Holliday, Acting Chief, Fisheries Statistics Division, Department of Commerce, National Oceanic and Atmospheric Administration, Off. of Research and Environmental Informat., NMFS, Washington, DC 20235, 202 673-5335

RIN: 0648-AA38

361. U.S. GENERAL STANDARDS FOR GRADES OF SHRIMP

Legal Authority: 7 USC 1621 to 1630 Agricultural Marketing Act of 1946

CFR Citation: 50 CFR 265A

Legal Deadline: None

Abstract: The final rule will establish general quality grading standards for all non-breaded forms of fresh or frozen shrimp. These grading standards will provide for the systematic differentiation of the quality of shrimp into four categories – U.S. Grades A, B, C and Substandard. The proposed standards will be applied to all commercial species of fresh or frozen shrimp in raw or cooked states in all non-breaded market forms. The adoption of grading standards is expected to facilitate trade in shrimp of all commercial species, as consumers will be able to select shrimp on the basis of identified quality. Industry has shown great interest in and support for the standards. Timetable for next action is very tentative. Public comments received indicate a need for further research before the rule is published.

Timetable:

Action	Date	FR Cite
NPRM	05/20/82	47 FR 21640
NPRM Comment Period End	08/18/82	47 FR 21640
Interim Final Rule	03/01/89	

Small Entities Affected: None

Government Levels Affected: None

Sectors Affected: 091 Commercial Fishing; 209 Miscellaneous Food Preparations and Kindred Products

Analysis: See Additional Information

Additional Information: Neither an RIA nor an RFA is required or will be prepared.

Agency Contact: Tom Moreau, Director, Technical Services Unit, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, P.O. Box 1168, Emerson Ave., Gloucester, MA 01930, 617 281-3600

RIN: 0648-AA47

DOC—NOAA

Final Rule Stage

362. IMPLEMENTATION OF PL 99-659 AND OTHER RECOMMENDATIONS TO IMPROVE THE FISHERY MANAGEMENT SYSTEM - COUNCIL OPERATIONS

Significance: Regulatory Program

Legal Authority: 16 USC 1801 et seq Magnuson Fishery Conservation & Mgmt. Act

CFR Citation: 50 CFR 600,601,604,605

Legal Deadline: None

Abstract: Revision of regulatory guidance with regard to the operations of the Regional Fishery Management Councils is being considered to conform with new legislation and administration regulatory policy. These guidelines will not have a direct regulatory impact on the fishing industry or entities participating in the industry.

Timetable:

Action	Date	FR Cite
NPRM	06/10/88	53 FR 21863
NPRM Comment Period End	08/09/88	53 FR 21863
Final Action	12/31/88	
Final Action Effective	01/30/89	

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: None

Additional Information: Neither an RIA nor an RFA is required or will be prepared.

Agency Contact: Richard H. Schaefer, Director, Office of Fisheries, Conservation and Management, Department of Commerce, National Oceanic and Atmospheric Administration, Washington, DC 20235, [redacted]

RIN: 0648-AB59

363. FOREIGN FISHING - SCIENTIFIC RESEARCH

Legal Authority: 16 USC 1801 et seq Magnuson Fishery Conservation & Mgmt. Act

CFR Citation: 50 CFR 611.14

Legal Deadline: None

Abstract: The action would revise the scientific research provisions of the foreign fishing regulations. The action is necessary to bring the regulations into compliance with current policy on scientific research and clarify what foreign vessels may be considered scientific research vessels while conducting activities which might otherwise be considered fishing.

Timetable:

Action	Date	FR Cite
NPRM	05/01/84	49 FR 50498
NPRM Comment Period End	06/14/84	49 FR 50498
Final Action	12/31/86	
Final Action Effective	12/31/88	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Sectors Affected: None

Additional Information: This action is related to RIN 0648-AA40 General and Recreational Foreign Fishing.

Agency Contact: Alfred J. Bilik, Fishery Management Officer, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 1825 Connecticut Avenue, NW, Washington, DC 20235, 202 673-5319

RIN: 0648-AB23

364. DEVELOPMENT OF A FISHERY MANAGEMENT PLAN FOR SUMMER FLOUNDER

Legal Authority: 16 USC 1801 et seq Magnuson Fishery Conservation & Mgmt. Act

CFR Citation: 50 CFR 653, (Reserved)

Legal Deadline: Final, Statutory. 110 days after receipt from the fishery management council.

Abstract: Summer flounder is seasonably vulnerable to very large and varied commercial and recreational fisheries. Landings have declined in recent years and there is concern that overfishing may occur. The summer flounder crosses Council and Regional boundaries necessitating close coordination between the constituent agencies. The long-term benefits of higher production and revenue to the fishermen and processors are expected to outweigh any short-term limitations on catches in order to rebuild the stocks. Rebuilding the stocks to the maximum level, the efficiency of the fleet will improve as catches per unit of effort will correspondingly rise.

Timetable:

Action	Date	FR Cite
NPRM	07/21/88	53 FR 27536
NPRM Comment Period End	09/06/88	53 FR 27536
Final Action	10/26/88	
Final Action Effective	11/25/88	

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 091 Commercial Fishing

Agency Contact: Richard B. Roe, Director, Northeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 14 Elm St., FNER, Gloucester, MA 01930, 508 281-3600

RIN: 0648-AB30

365. REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS; IMPORTATION OF YELLOWFIN TUNA

Significance: Regulatory Program

Legal Authority: 16 USC 1361 et seq Marine Mammal Protection Act of 1972

CFR Citation: 50 CFR 216.24

Legal Deadline: None

Abstract: U.S. tuna purse seine fishermen operating in the eastern tropical Pacific have been subject to certain restrictions relating to the take of marine mammals, whereas other nations fishing in a similar manner that export tuna to the U.S. often do not impose similar constraints on their own industry. Therefore, the Marine Mammal Protection Act of 1972 was amended to require all such nations, prior to being allowed to import tuna, to provide documentary evidence that they have adopted a program governing the incidental taking of marine mammals that is comparable to that of the U.S. and that the average rate of incidental take in the fishery is comparable to the U.S. These regulations will implement this requirement.

Timetable:

Action	Date	FR Cite
ANPRM	11/29/84	49 FR 46821
NPRM	08/13/86	51 FR 28963
NPRM Comment Period End	11/14/86	51 FR 36568

DOC—NOAA

Final Rule Stage

Action	Date	FR Cite
Interim Final Rule	03/18/88	53 FR 8910
Final Action	09/00/88	
Begin Review	09/00/88	
Final Action Effective	10/00/88	
End Review	01/00/89	

Small Entities Affected: None

Government Levels Affected: Federal

Public Compliance Cost: Initial Cost: $9,825; Yearly Recurring Cost: $9,825; Base Year for Dollar Estimates: 1985

Sectors Affected: 091 Commercial Fishing

Additional Information: This action will require restrictions on foreign nations that export tuna to the U.S. similar to those imposed on U.S. tuna fishermen. These regulations will have no impact domestically in terms of bringing more U.S. nationals under Federal regulations.

Agency Contact: Kenneth E. Hollingshead, Marine Resource Management Specialist, Department of Commerce, National Oceanic and Atmospheric Administration, Office of Protected Resources & Habitat Programs, NMFS, Washington, DC 20235, 202 673-5351

RIN: 0648-AB46

366. ENDANGERED FISH AND WILDLIFE; APPROACHING HUMPBACK WHALES IN HAWAIIAN WATERS

Legal Authority: 16 USC 1362(a); 16 USC 1540(f)

CFR Citation: 50 CFR 222.31

Legal Deadline: None

Abstract: This rule will establish as regulation a previously published Notice of Interpretation regarding minimum distances that should be maintained in the presence of humpback whales in Hawaii. Establishing a 100 yard perimeter around any of the whales while in the Hawaiian Exclusive Zone as a regulation is considered necessary given a large increase in vessel traffic and other water use activities in areas where this species historically occurs. In response to comments received in the public record, NOAA is defining two specific sites as cow/calf areas in which an approach closer than 300 yd is prohibited. This addition creates a new subsection to the rule.

Timetable:

Action	Date	FR Cite
NPRM	11/24/86	51 FR 42271
NPRM Comment Period End	12/24/86	51 FR 42271
Interim Final Rule	11/23/87	52 FR 44912
Final Action	11/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: None

Sectors Affected: 091 Commercial Fishing

Agency Contact: E. Charles Fullerton, Director, Southwest Region, Department of Commerce, National Oceanic and Atmospheric Administration, 300 South Ferry Street, Terminal Island, CA 90731, 213 514-6201

RIN: 0648-AB70

367. SAFETY OF UNITED STATES OBSERVERS ABOARD FOREIGN FISHING VESSELS

Significance: Regulatory Program

Legal Authority: PL 99-659

CFR Citation: 50 CFR 611.8

Legal Deadline: None

Abstract: United States observers are required aboard foreign vessels permitted to fish in the U.S. Exclusive Economic Zone (EEZ). Conditions aboard these vessels can be hazardous to the safety of observers. To prevent injury to observers, the Department of Commerce intends to publish minimum safety standards that must be maintained aboard foreign fishing vessels before they will be permitted to fish in the U.S. EEZ.

The alternative to establishing U.S. standards is to accept flag-state standards as adequate. This solution will probably not be feasible because there is a wide variation in foreign safety standards and differing degrees of compliance with standards. In some cases, foreign fishing vessels meeting existing flag-state standards would not be suitable for U.S. observers.

Costs of this action will be borne by the owners of foreign fishing vessels. This action is beneficial in that it may prevent serious injury, including death, to observers during the performance of their duty.

Timetable:

Action	Date	FR Cite
NPRM	07/25/88	53 FR 27887
NPRM Comment Period End	09/26/88	
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Gary A. Wood, Special Agent, Department of Commerce, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW, Washington, DC 20235, 202 673-5200

RIN: 0648-AE04

368. U.S. STANDARDS FOR GRADES OF FISH FILLETS

Significance: Agency Priority

Legal Authority: 7 USC 1621 to 1630 Agricultural Marketing Act of 1946

CFR Citation: 50 CFR 265

Legal Deadline: None

Abstract: This revised rule will expand the coverage of established voluntary standards for grades of fish fillets to include a new market form or style of fillet whereby the pin-bones, the bones radiating laterally from the spinal column, are not removed. This style of fillet has become more familiar in the marketplace, resulting in the industry requesting the amendment. Responses to a previous request for comments indicate a national interest in this style of presentation. The amendment will allow this market form, bearing FDA's recommended labeling, to be inspected and reflect the U.S. Grade A mark.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/30/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Moreau, Director, Technical Services Unit, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, P.O. Box 1188, Emerson Ave., Gloucester, MA 01930, 617 281-3600

RIN: 0648-AC12

DOC—NOAA

Final Rule Stage

369. FISHERY MANAGEMENT PLAN FOR ATLANTIC BILLFISHES

Significance: Regulatory Program

Legal Authority: 16 USC 1801 et seq Magnuson Fishery Conservation & Mgmt. Act

CFR Citation: 50 CFR 644

Legal Deadline: Final, Statutory. 110 days after receipt from the fishery management council.

Abstract: The plan was prepared jointly by the South Atlantic, New England, Mid-Atlantic, Gulf and Caribbean Fishery Management Councils. It would establish a management regime for sailfish, white and blue marlin, and longbill spearfish in the Atlantic, Gulf, and Caribbean exclusive economic zone. The plan's objectives are to maintain the highest availability of billfishes to the recreational fishery, to optimize social and economic benefits by reserving billfish for its traditional use, and to improve the understanding of the condition of billfish stocks and the fishery. Proposed management measures include (1) prohibition on the sale of billfish caught from the management unit, (2) possession prohibition aboard pelagic longline and drift gill net vessels, (3) possession or retention of billfish shoreward of the outer boundary of the EEZ limited to those caught by rod and reel, (4) recreational minimum size limits, (5) mandatory catch and effort reports from billfish tournaments, and (6) limited exemptions for a Puerto Rico handline fishery.

Timetable:

Action	Date	FR Cite
NPRM	06/29/88	53 FR 24462
NPRM Comment Period End	08/08/88	53 FR 24462
Final Action	09/19/88	
Final Action Effective	10/18/88	

Small Entities Affected: Businesses, Organizations

Government Levels Affected: Federal

Sectors Affected: 091 Commercial Fishing

Analysis: Regulatory Flexibility Analysis

Agency Contact: Joseph W. Angelovic, Acting Director, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 9450 Koger Boulevard, St. Petersburg, FL 33702, 813 893-3141

RIN: 0648–AC26

370. REGULATORY AMENDMENT TO REQUIRE REPORTING OF PACIFIC COAST GROUNDFISH LANDING TO STATES

Legal Authority: 16 USC 1801 et seq Magnuson Fishery Conservation & Mgmt. Act

CFR Citation: 50 CFR 663

Legal Deadline: None

Abstract: The regulatory amendment would make it a Federal requirement that all landings of groundfish be reported to the appropriate states in compliance with state laws.

Timetable:

Action	Date	FR Cite
NPRM	06/15/88	53 FR 22366
NPRM Comment Period End	07/11/88	53 FR 22366
Final Action	09/01/88	
Final Action Effective	10/01/88	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Sectors Affected: 091 Commercial Fishing

Agency Contact: Rolland A. Schmitten, Director, Northwest Region, Department of Commerce, National Oceanic and Atmospheric Administration, F/NWR, 7600 Sand Point Way, NE, Bldg. 1, Seattle, WA 98115, 206 526-6150

RIN: 0648–AC31

371. POLICY TO REQUIRE OBSERVERS TO BE CARRIED ON DOMESTIC FISHING VESSELS

Significance: Regulatory Program

Legal Authority: 16 USC 1801 et seq Magnuson Fishery Conservation & Mgmt. Act

CFR Citation: 50 CFR 620

Legal Deadline: None

Abstract: The policy would establish guidelines for the use of observers in the domestic fisheries managed under the Magnuson Act. The observers collect catch and effort data on fishing operations, and biological information on fish stocks and the marine ecosystem.

Timetable:

Action	Date	FR Cite
NPRM	06/06/88	53 FR 20661
NPRM Comment Period End	07/18/88	53 FR 20661
Final Action	02/01/89	
Final Action Effective	03/02/89	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Sectors Affected: 091 Commercial Fishing

Agency Contact: Peter H. Fricke, Department of Commerce, National Oceanic and Atmospheric Administration, Office of Fisheries Cons. and Mgt., 1825 Connecticut Ave., NW, Washington, DC 20235, 202 673-5264

RIN: 0648–AC45

NATIONAL OCEAN SURVEY/OFFICE OF COASTAL RESOURCES MANAGEMENT

372. PROPOSED REGULATIONS FOR THE NATIONAL MARINE SANCTUARY PROGRAM

Legal Authority: 16 USC 1431 to 1434

CFR Citation: 15 CFR 921

Legal Deadline: None

Abstract: As a result of the Marine Protection, Research and Sanctuaries Act reauthorization signed by the President on October 19, 1984, the regulations are being revised to incorporate modifications from the new legislation regarding the sanctuary designation process and site selection criteria.

Timetable:

Action	Date	FR Cite
NPRM	06/12/86	51 FR 21369
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Neither an RIA nor an RFA is required or will be prepared.

Agency Contact: Joseph A. Uravitch, Chief, Marine and Estuarine Management Division, Department of Commerce, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW, Suite 714, Washington, DC 20235, 202 673-5126

RIN: 0648–AA31

373. DRAFT REGULATIONS FOR THE PROPOSED CORDELL BANK NATIONAL MARINE SANCTUARY

Legal Authority: 16 USC 1431 to 1434

CFR Citation: 15 CFR 942

Legal Deadline: None

Abstract: These regulations will protect the ecological, recreational, and esthetic resources of the waters surrounding Cordell Bank, if the area is designated as a national marine sanctuary.

Timetable:

Action	Date	FR Cite
Final Action	10/00/88	
Final Action Effective	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Joseph A. Uravitch, Chief, Marine and Estuarine Management Division, Department of Commerce, National Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resource Mgt., 1825 Connecticut Avenue, NW, Suite 714, Washington, DC 20235, 202 673-5126

RIN: 0648–AB50

NATIONAL OCEAN SURVEY/OFFICE OF MINERAL ENERGY

374. DEEP SEABED MINING REGULATIONS FOR COMMERCIAL RECOVERY

Significance: Regulatory Program

Legal Authority: 30 USC 1401 et seq Deep Seabed Hard Mineral Resources Act

CFR Citation: 15 CFR 970, (Exploration Regulations); 15 CFR 971

Legal Deadline: None

Abstract: Under 15 CFR 970, prospective deep seabed miners may apply to NOAA for the exploration license needed to explore the deep seabed for manganese nodules. Under the new regulations (15 CFR 971), prospective miners will be able to apply to NOAA for a permit to commercially recover and process nodules to obtain strategic metals (nickel, copper, cobalt, manganese). These permits would provide security of tenure for applicants with respect to other U.S. citizens and other nations' permittees in accordance with applicable international agreements. Fees for securing and maintaining a permit will be based on the Government's processing costs. These fees would be an inconsequential portion of the cost of a commercial recovery operation. The cost of a commercial recovery operation is expected to exceed one billion dollars. Alternatives to the regulation would require amending the Deep Seabed Hard Mineral Resources Act, which would be considered in the context of the U.S. law of the sea policy.

Timetable:

Action	Date	FR Cite
ANPRM	12/28/82	47 FR 57903
NPRM	07/25/86	51 FR 26794
Public Hearings, 09/25/86, 09/11/86	09/09/86	51 FR 26794
NPRM Comment Period End	11/24/86	
NPRM	09/14/87	52 FR 34748
Final Action	09/00/88	
Final Action Effective	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Sectors Affected: 102 Copper Ores; 106 Ferroalloy Ores, Except Vanadium; 108 Metal Mining Services; 331 Steel Works, Blast Furnaces, and Rolling and Finishing Mills; 333 Primary Smelting and Refining of Nonferrous Metals; 951 Administration of Environmental Quality Programs

Analysis: Regulatory Impact Analysis; See Additional Information

Additional Information: A final RIA has been prepared for the commercial regulations to cover new issues raised by the commercial recovery permit regulations. It is expected that small entities will not be permittees. Rather some small entities are expected to be contractors or subcontractors to permittees. The final RIA is available as is the programmatic environmental impact statement and the supplemental environmental assessment. After considering public comments on the proposed major rule, NOAA determined that certain issues were significantly different than the proposed rules. Those limited issues were reproposed for further public comment prior to NOAA's issuing the final regulations.

Agency Contact: James P. Lawless, Chief, Oceans Minerals and Energy Division, Department of Commerce, National Oceanic and Atmospheric Administration, Office of Ocean Minerals and Energy, 1825 Connecticut Ave., NW, Suite 710, Washington, DC 20235, 202 673-5121

RIN: 0648–AA36

DEPARTMENT OF COMMERCE (DOC)

Completed Actions

National Oceanic and Atmospheric Administration (NOAA)

375. AMENDMENT 2 TO THE FISHERY MANAGEMENT PLAN FOR ATLANTIC SEA SCALLOPS

Legal Authority: 16 USC 1801 et seq Magnuson Fishery Conservation & Mgmt. Act

CFR Citation: 50 CFR 650

Legal Deadline: Final, Statutory. 110 days after receipt from the fishery management council.

Abstract: Amendment 2 revised the management program to (1) specify a 10 percent increase in the meat count standard during the months of October through January (primary period when spawning causes a reduction in individual meat weight of harvestable age scallops) and (2) provide a framework regulatory mechanism to change the magnitude and/or timing of the meat count standard adjustment during the spawning season. The purpose of Amendment 2 is to provide regulatory relief to the industry while still conserving the scallop resource.

Timetable:

Action	Date	FR Cite
NPRM	04/18/88	53 FR 12709
NPRM Comment Period End	04/29/88	53 FR 12709
Final Action	06/23/88	53 FR 23634

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Action	Date	FR Cite
Final Action Effective	07/22/88	53 FR 23634

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Sectors Affected: 091 Commercial Fishing

Agency Contact: Richard B. Roe, Director, Northeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 14 Elm Street, Gloucester, MA 01930, [illegible]

RIN: 0648–AB63

378. GROUNDFISH OF THE GULF OF ALASKA - AMENDMENT 18 AND GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA - AMENDMENT 11A

Legal Authority: 16 USC 1801 et seq Magnuson Fishery Conservation & Mgmt. Act

CFR Citation: 50 CFR 672; 50 CFR 675

Legal Deadline: Final, Statutory. 110 days after receipt from the fishery management council.

Abstract: The regulation addresses the revision of the definition of "prohibited species" and requires catcher/processor vessels operating in the Gulf of Alaska or the Bering Sea and Aleutian Islands area to keep records on groundfish production and transfers of groundfish products.

Timetable:

Action	Date	FR Cite
NPRM	12/21/87	52 FR 48303
NPRM Comment Period End	01/20/88	
Final Action	03/10/88	53 FR 7756
Final Action Effective	04/07/88	53 FR 7756

Small Entities Affected: Businesses

Government Levels Affected: Federal

Sectors Affected: 091 Commercial Fishing

Analysis: Regulatory Flexibility Analysis

Agency Contact: James W. Brooks, Acting Director, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 1668, Juneau, AK [illegible], 907 586-7221

RIN: 0648–AE88

377. TAKING OF MARINE MAMMALS INCIDENTAL TO UNDERWATER TESTS BY THE DEPARTMENT OF THE NAVY

Legal Authority: 16 USC 1361 to 1407 Marine Mammal Protection Act of 1972

CFR Citation: 50 CFR 228

Legal Deadline: None

Abstract: Based on a request from the Department of the Navy, NMFS is considering regulations that would allow a small number of harbor seals and California sea lions to be taken incidental to underwater explosive tests in San Francisco Bay. Section 101(a)(5) of the Marine Mammal Protection Act allows the taking of small numbers of marine mammals incidental to specified activities provided that certain findings can be made and regulations are established that set forth permissable methods of taking and requirements for monitoring and reporting.

Timetable:

Action	Date	FR Cite
Final Action	01/24/89	
Withdrawn Navy has never submitted request; withdraw action	08/24/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Nancy Foster, Director, Office of Protected Resources, and Habitat Programs, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 1825 Connecticut Ave., NW, Washington, DC 20235, 202 673-5330

RIN: 0648–AC08

376. AMENDMENT 3 TO THE FISHERY MANAGEMENT PLAN FOR THE BOTTOMFISH AND SEAMOUNT GROUNDFISH FISHERIES OF THE WESTERN PACIFIC REGION

Significance: Regulatory Program

Legal Authority: 16 USC 1801 et seq; Magnuson Fishery Conservation and Management Act

CFR Citation: 50 CFR 663

Legal Deadline: Final, Statutory. 110 days after receipt from the fishery management council.

Abstract: The amendment will establish a limited access system in the bottomfish fisheries of the Western Pacific.

Timetable:

Action	Date	FR Cite
NPRM	05/11/88	53 FR 16736
NPRM Comment Period End	06/26/88	53 FR 16736
Final Action	08/08/88	53 FR 29807

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 091 Commercial Fishing

Agency Contact: E. Charles Fullerton, Director, Southwest Region, Department of Commerce, National Oceanic and Atmospheric Administration, F/SWR, 300 S. Ferry Street, Terminal Island, CA 90731, 213 514-6660

RIN: 0648–AC19

375. AMENDMENT TO REGULATION PROVIDING FOR ALLOCATION OF PACIFIC HALIBUT AMONG DOMESTIC FISHERMEN

Legal Authority: North Pacific Halibut Act of 1982

CFR Citation: 50 CFR 301

Legal Deadline: None

Abstract: The amendment addresses the allocation among domestic fishermen of the U.S. quota of Pacific halibut as determined by the International Pacific Halibut Commission.

Timetable:

Action	Date	FR Cite
Final Action Effective	06/01/88	53 FR 20327
Final Action	05/03/88	53 FR 20327

Small Entities Affected: Businesses

Government Levels Affected: Federal

Sectors Affected: 091 Commercial Fishing

Agency Contact: James W. Brooks, Acting Director, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802, 907 586-7221

RIN: 0648–AC20

380. AMENDMENT 1 TO THE FISHERY MANAGEMENT PLAN FOR THE PRECIOUS CORAL FISHERY OF THE WESTERN PACIFIC REGION

Legal Authority: 16 USC 1801 et seq Magnuson Fishery Conservation and Mgmt. Act

CFR Citation: 50 CFR 660

Legal Deadline: Final, Statutory. 110 days after receipt from the fishery management council.

Abstract: The amendment will include measures to encourage local fishermen to increase effort to harvest precious coral.

Timetable:

Action	Date	FR Cite
NPRM	04/26/88	53 FR 14824
NPRM Comment Period End	06/06/88	53 FR 14824
Final Action	07/21/88	53 FR 27519
Final Action Effective	08/17/88	53 FR 27519

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 091 Commercial Fishing

Agency Contact: E. Charles Fullerton, Director, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 300 South Ferry Street, Terminal Island, CA 90731, 213 514-6660

RIN: 0648–AC33

381. REGULATORY AMENDMENT TO PROHIBIT LANDINGS OF UNDERSIZE RED SNAPPER IN THE REEF FISH FISHERY OF THE GULF OF MEXICO

Legal Authority: 16 USC 1801 et seq Magnuson Fishery Conservation & Mgmt. Act

CFR Citation: 50 CFR 641

Legal Deadline: None

Abstract: The regulatory amendment would close a loophole that fishermen are using to land undersized red snapper in the Gulf of Mexico reef fish fishery. Currently, persons lawfully fishing with trawls from domestic vessels are exempt from the minimum size limit for red snapper. The regulatory amendment would only allow retention of trawl-caught red snapper if fishing for species other than red snapper, provided the total weight of red snapper does not exceed five percent of all other species aboard.

Timetable:

Action	Date	FR Cite
NPRM	02/26/88	53 FR 5809
NPRM Comment Period End	03/28/88	53 FR 5809
Final Action	06/16/88	53 FR 30846
Final Action Effective	09/15/88	

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 091 Commercial Fishing

Agency Contact: Joseph W. Angelovic, Acting Director, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 9450 Koger Blvd., St. Petersburg, FL 33702, 813 893-3141

RIN: 0648–AC36

382. IMPLEMENTATION OF CONDITIONALLY APPROVED MEASURES UNDER AMENDMENT TO THE SPINY AND SLIPPER LOBSTER FMP IN THE GULF OF MEXICO AND SOUTH ATLANTIC – TRAP REMOVAL

Legal Authority: 16 USC 1801 et seq Magnuson Fishery Conservation & Mgmt. Act

CFR Citation: 50 CFR 640

Legal Deadline: None

Abstract: This rule (1) changed the dates of the two-day non-trap recreational season and the beginning of the regular season; (2) removed the daily boat limit of 24 spiny lobsters during the two-day non-trap recreational season; (3) provided for a ten-day extension of the period for trap removal after the season closes under certain circumstances; and (4) revised the requirements for holding undersized spiny lobsters for use as attractants.

Timetable:

Action	Date	FR Cite
NPRM	03/18/87	52 FR 8485
NPRM Comment Period End	04/18/87	52 FR 8485
Final Action	05/11/88	53 FR 17194
Effective		
Final Action	05/16/88	53 FR 17194

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 091 Commercial Fishing

Agency Contact: Joseph W. Angelovic, Acting Director, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 9450 Koger Blvd., St. Petersburg, FL 33702, 813 893-3141

RIN: 0648–AC37

383. AMENDMENT 2 TO THE FISHERY MANAGEMENT PLAN FOR THE RED DRUM FISHERY OF THE GULF OF MEXICO

Legal Authority: 16 USC 1801 et seq Magnuson Fishery Conservation & Mgmt. Act

CFR Citation: 50 CFR 653

Legal Deadline: Final, Statutory. 110 days after receipt from the fishery management council.

Abstract: Amendment 2 (1) sets total allowable catch (TAC) of red drum from the primary management area of the exclusive economic zone (EEZ) to zero by reducing recreational and commercial quotas to zero, thereby extending the previous prohibition on the harvest or possession of red drum in the secondary areas to the entire Gulf of Mexico EEZ, and (2) makes a technical correction to the specifications to the fishing year, and to the allowable catch and allocation procedures. It also modifies management objective 1 and the statement of optimum yield to provide for a 30 percent escapement rate for juvenile red drum (an increase over the previous 20 percent level) from inshore and nearshore areas to the offshore spawning stock. The action is based upon new biological information indicating significant problems with the condition of the adult brood stock and recommendations of scientific advisors to take immediate protective measures for the brood stock and to increase the escapement of juveniles from the inshore areas to the offshore brood stock.

Timetable:

Action	Date	FR Cite
NPRM	04/19/88	53 FR 12790
NPRM Comment Period End	05/21/88	53 FR 12790
Final Action	06/29/88	53 FR 24662

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 091 Commercial Fishing

Agency Contact: Joseph W. Angelovic, Acting Director, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 9450 Koger Blvd., St. Petersburg, FL 33702, 813 893-3141

RIN: 0648–AC37

DOC—NOAA — Completed Actions

Action	Date	FR Cite
Final Action Effective	08/29/88	53 FR 24662

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 091 Commercial Fishing

Agency Contact: Joseph W. Angelovic, Acting Director, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 9450 Koger Blvd., St. Petersburg, FL 33702, 813 893-3141

RIN: 0648-AC26

384. REGULATORY AMENDMENT MODIFYING THE BOUNDARY OF THE TEXAS SEASONAL CLOSURE OF THE SHRIMP FISHERY OF THE GULF OF MEXICO FOR 1988

Legal Authority: 16 USC 1801 et seq Magnuson Fishery Conservation & Mgmt. Act

CFR Citation: 50 CFR 638

Legal Deadline: None

Abstract: This action will change the seaward boundary of the 1988 Texas closure from 200 nautical miles off the Texas coast to 15 nautical miles. This modification will allow fishermen to harvest marketable-sized shrimp from the previously closed area, and will allow NMFS to collect current data on fishing effort and patterns to evaluate the impact of the seasonal closure.

Timetable:

Action	Date	FR Cite
NPRM	04/12/88	53 FR 12046
Final Action Effective	05/24/88	53 FR 18840
Final Action	05/25/88	53 FR 18840

Small Entities Affected: Businesses

Government Levels Affected: Federal

Sectors Affected: 091 Commercial Fishing

Agency Contact: Joseph W. Angelovic, Acting Director, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, F/SER, 9450 Koger Blvd., St. Petersburg, FL 33702, 813 893-3141

RIN: 0648-AC46

385. REGULATORY AMENDMENT REVISING THE FINAL REGULATIONS IMPLEMENTING THE FISHERY MANAGEMENT PLAN FOR THE COASTAL MIGRATORY PELAGIC RESOURCES

Legal Authority: 16 USC 1801 et seq Magnuson Fishery Conservation & Mgmt. Act

CFR Citation: 50 CFR 642

Legal Deadline: None

Abstract: This amendment will ban drift gillnets in the king mackerel fishery.

Timetable:

Action	Date	FR Cite
Withdrawn — action will be taken in Amendment 3 to the FMP	07/01/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Sectors Affected: 091 Commercial Fishing

Agency Contact: Joseph W. Angelovic, Acting Director, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, F/SER, 9450 Koger Blvd., St. Petersburg, FL 33702, 813 893-3141

RIN: 0648-AC47

386. INTERJURISDICTIONAL FISHERIES

Legal Authority: 16 USC 4100 et seq; PL 99-659, Title III, Interjurisdctnl Fisheries Act of 1986

CFR Citation: 50 CFR 253

Legal Deadline: None

Abstract: Provides State agencies guidance in receiving grants under the Interjurisdictional Act of 1986. The act allows the Secretary of Commerce to distribute funds to the States and Interstate Commissions to conduct projects on interjurisdictional species and to enter into agreements with the States for enforcement of State and Federal fishery regulations.

Timetable:

Action	Date	FR Cite
NPRM	11/23/87	52 FR 44922
NPRM Comment Period End	12/23/87	52 FR 44922
Final Action	06/03/88	53 FR 20323
Final Action Effective	06/30/88	53 FR 20323

Small Entities Affected: None

Government Levels Affected: State, Federal

Agency Contact: Austin R. Magill, Division of Recreational and Interjurisdictional Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, 1825 Connecticut Ave., NW, Washington, DC 20235, 202 673-5272

RIN: 0648-AC32

DEPARTMENT OF COMMERCE (DOC) — Prerule Stage
Office of Productivity, Technology and Innovation (OPTI)

367. ADMINISTRATION OF A UNIFORM PATENT POLICY WITH RESPECT TO DOMESTIC RIGHTS IN INVENTIONS MADE BY GOVERNMENT EMPLOYEES

Significance: Agency Priority

Legal Authority: EO 10096; EO 10930; 35 USC 207 to 209; 15 USC 3701 et seq

CFR Citation: 37 CFR 100

Legal Deadline: None

Abstract: PL 99-502 amended the Stevenson-Wydler Innovation Act of 1980 by establishing a number of procedures to encourage the development of technologies by laboratories owned or operated by the Federal government, to facilitate the transfer of such technologies to the public, and to promote cooperation between these laboratories and the private sector.

Executive Order 10096 would be amended with regard to the government's rights to ownership of inventions created in laboratories owned or operated by the Federal government. A revised version of the executive order might be prepared and regulations would be developed to implement the amendments effected by PL 99-502.

This action will not increase Federal costs. In the short run it will encourage private sector collaboration to assist work done in Federal laboratories by appropriated funds, and in the long run increased commercialization of patents and inventions will increase tax revenues.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Sectors Affected: None

Agency Contact: Joseph P. Allen, Director, Office of Federal Technology Management, Department of Commerce, Office of Productivity, Technology and Innovation, Room H 4837, Washington, DC 20230, 202 377-8181

RIN: 0692-AA05

DOC—OPTI — Prerule Stage

DEPARTMENT OF COMMERCE (DOC) — Proposed Rule Stage
Office of Productivity, Technology and Innovation (OPTI)

368. LICENSING OF GOVERNMENT-OWNED INVENTIONS

Legal Authority: 35 USC 206

CFR Citation: 37 CFR 404

Legal Deadline: None

Abstract: This action will revise 37 CFR 404 to simplify the process by which U.S. industry can obtain license to patented inventions owned by the Government. PL 99-502 is expected to increase industry interest in licensing inventions from Federal laboratories.

The existing regulation was written by GSA on the basis of 1980 legislation. It may be possible to remove some of the difficulties that potential licensees must overcome.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Sectors Affected: All

Agency Contact: Joseph P. Allen, Director, Office of Federal Technology Management, Department of Commerce, Office of Productivity, Technology and Innovation, Room H 4837, Washington, DC 20230, 202 377-8181

RIN: 0692-AA04

DEPARTMENT OF COMMERCE (DOC) — Proposed Rule Stage
Patent and Trademark Office (PTO)

389. DEPOSIT OF BIOLOGICAL MATERIALS FOR PATENT PURPOSES

Significance: Regulatory Program

Legal Authority: 35 USC 6

CFR Citation: 37 CFR 1.200 (New); 37 CFR 1.201 (New); 37 CFR 1.202 (New); 37 CFR 1.203 (New); 37 CFR 1.204 (New); 37 CFR 1.205 (New); 37 CFR 1.206 (New); 37 CFR 1.207 (New); 37 CFR 1.208 (New)

Legal Deadline: None

Abstract: PTO will propose amendment of its rules of practice in patent cases to govern the deposit of biological materials for patent purposes.

Timetable:

Action	Date	FR Cite
ANPRM	09/06/87	52 FR 34000
ANPRM Comment Period End	11/09/87	
NPRM	10/00/88	
NPRM Comment Period End	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Sectors Affected: Multiple

Additional Information: Neither an RIA nor an RFA is required or will be prepared.

Agency Contact: Charles E. Van Horn, Deputy Solicitor, Department of Commerce, Patent and Trademark Office, Washington, DC 20231, 703 557-4035

RIN: 0651-AA13

390. TRADEMARK AUTOMATED SEARCH SYSTEM FEES

Legal Authority: 15 USC 1113; 15 USC 1123; PL 98-617; PL 97-247

CFR Citation: 37 CFR 2.6

Legal Deadline: None

Abstract: PTO proposes to amend its rules to establish user fees for members of the public desiring to conduct trademark searches of the computerized data bases in the PTO's automated trademark search system.

Timetable:

Action	Date	FR Cite
NPRM	08/07/84	49 FR 31460
NPRM Comment Period End	09/05/84	
NPRM Comment Period Extended to	09/25/84	49 FR 35527

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Sectors Affected: Multiple

Analysis: See Additional Information

Additional Information: Neither an RIA nor an RFA is required or will be prepared.

Agency Contact: Bradford R. Huther, Asst. Commissioner for Finance & Planning, Department of Commerce, Patent and Trademark Office, Washington, DC 20231, 703 557-1572

RIN: 0651-AA18

DOC—PTO

Proposed Rule Stage

391. TRADEMARK APPLICATIONS PURSUANT TO 15 USC 1126

Significance: Regulatory Program

Legal Authority: 15 USC 1123; Crocker National Bank v. Canadian Imperial Bank of Commerce; 223 USPQ 909 (TTAB 1984); In re International Barrier Corp., 231 USPQ 310 (TTAB 1986); In re ETA Systems, Inc., 2 USPQ 2d 1367 (TTAB 1987)

CFR Citation: 37 CFR 2.21; 37 CFR 2.33; 37 CFR 2.39; 37 CFR 2.56; 37 CFR 2.57; 37 CFR 2.58

Legal Deadline: None

Abstract: PTO plans to propose amendment of its rules of practice in trademark cases to revise the use and specimen requirements in trademark applications filed pursuant to Section 44 of the Trademark Act, 15 USC 1126. The revision would conform the use and specimen requirements with the decisions of the Trademark Trial and Appeal Board in Crocker National Bank v. Canadian Imperial Bank of Commerce, 223 USPQ 909 (1984), in re International Barrier Corp., 231 USPQ 310 (1986) and in re ETA Systems, Inc., 2 USPQ 2d 1367 (1987).

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
NPRM Comment Period End	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

Sectors Affected: Multiple

Analysis: See Additional Information

Additional Information: Neither an RIA nor an RFA is required or will be prepared.

Agency Contact: Ms. Carlisle Walters, Department of Commerce, Patent and Trademark Office, Washington, DC 20231, 703 557-3061

RIN: 0651–AA23

392. DUTY OF DISCLOSURE - INFORMATION DISCLOSURE STATEMENT

Significance: Agency Priority

Legal Authority: 35 USC 6

CFR Citation: 37 CFR 1.56; 37 CFR 1.97; 37 CFR 1.98; 37 CFR 1.99

Legal Deadline: None

Abstract: 37 CFR 1.56 and 1.97-1.99, which relate to the duty of patent applicants and owners to disclose information material to the examination of patent applications or to reexaminations, will be amended to specify more clearly the requirements to be met in making disclosures.

Timetable:

Action	Date	FR Cite
NPRM	01/00/89	
NPRM Comment Period End	03/00/89	

Small Entities Affected: None

Government Levels Affected: None

Sectors Affected: Multiple

Agency Contact: R. Franklin Burnett, Special Assistant, Department of Commerce, Patent and Trademark Office, Washington, DC 20231, 703 557-3054

RIN: 0651–AA27

393. REVISION OF PATENT FEES

Significance: Agency Priority

Legal Authority: 35 USC 6; 35 USC 41; 35 USC 376

CFR Citation: 37 CFR 1.16; 37 CFR 1.17; 37 CFR 1.18; 37 CFR 1.19; 37 CFR 1.20; 37 CFR 1.21; 37 CFR 1.24; 37 CFR 1.28; 37 CFR 1.297; 37 CFR 1.445; 37 CFR 1.482

Legal Deadline: None

Abstract: PTO plans to propose amendments of its rules of practice in patent cases to adjust patent fees effective October 1, 1988, to reflect the fluctuations in the Consumer Price Index during the previous three years.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
NPRM Comment Period End	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Sectors Affected: Multiple

Agency Contact: Frances Michalkewicz, Department of Commerce, Patent and Trademark Office, Commissioner of Patents and Trademarks, Washington, DC 20231, 703 557-1810

RIN: 0651–AA30

394. ◆ REQUESTS FOR RECONSIDERATION IN PATENT AND TRADEMARK OFFICE DISCIPLINARY PROCEEDINGS

Legal Authority: 5 USC 500; 15 USC 1123; 35 USC 6; 35 USC 32; 35 USC 34; 35 USC 41

CFR Citation: 37 CFR 10.156

Legal Deadline: None

Abstract: The proposed rule change will prescribe the date on which the decision of the Commissioner of Patents and Trademarks in a PTO disciplinary proceeding becomes final agency action for purposes of judicial review. It will also provide for one request for reconsideration or modification of such decision by a party.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
NPRM Comment Period End	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Harris A. Pitlick, Associate Solicitor, Department of Commerce, Patent and Trademark Office, Box 8, Commissioner of Patents and Trademarks, Washington, DC 20231, 703 557-4035

RIN: 0651–AA33

395. ◆ MISCELLANEOUS CHANGES IN PATENT PRACTICE

Significance: Agency Priority

Legal Authority: 35 USC 6

CFR Citation: 37 CFR 1.1; 37 CFR 1.12; 37 CFR 1.84; 37 CFR 1.88

Legal Deadline: None

Abstract: Clarifications to requirements for patent application drawings. Revisions for addressing mail to the Patent and Trademark Office. Inclusion of security agreement recording in trademark records of ownership (assignments).

DOC—PTO

Proposed Rule Stage

Timetable:

Action	Date	FR Cite
NPRM	04/15/89	
NPRM Comment Period End	06/15/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Theresa A. Brelsford, Assistant Commissioner for Administration, Department of Commerce, Patent and Trademark Office, 2121 Crystal Drive, PK2 908, Arlington, VA 20231, 703 557-2299

RIN: 0651–AA34

396. ◆ AMENDMENTS OF PATENT AND TRADEMARK RULES CONCERNING JUDICIAL REVIEW OF DECISIONS

Legal Authority: 35 USC 6

CFR Citation: 37 CFR 1.136; 37 CFR 1.191; 37 CFR 1.196; 37 CFR 1.197; 37 CFR 1.304; 37 CFR 1.550; 37 CFR 1.645; 37 CFR 1.658; 37 CFR 2.129; 37 CFR 2.144; 37 CFR 2.145

Legal Deadline: None

Abstract: PTO proposes to amend its rules to clarify when a decision of the Board of Patent Appeals and Interferences becomes final for purposes of judicial review. The proposed rule changes will eliminate any confusion as to when judicial review must be sought and standardizes the manner of obtaining extensions of time to seek judicial review of decisions of the Board of Appeals and Interferences and Trademark Trial and Appeal Board.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	
NPRM Comment Period End	02/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Richard E. Schafer, Associate Solicitor, Department of Commerce, Patent and Trademark Office, Box 8, Commissioner of Patents and Trademarks, Washington, DC 20231, 703 557-4035

RIN: 0651–AA35

397. ◆ AMENDMENTS OF TRADEMARK RULES GOVERNING INTER PARTES PROCEEDINGS; MISCELLANEOUS AMENDMENTS OF OTHER TRADEMARK RULES

Legal Authority: 15 USC 1123

CFR Citation: 37 CFR 2.102; 37 CFR 2.102(c); 37 CFR 2.119(d), (New); 37 CFR 2.119(e), (New); 37 CFR 2.120(d); 37 CFR 2.120(g); 37 CFR 2.120(j)(3); 37 CFR 2.120(j)(5); 37 CFR 2.120(j) (8); 37 CFR 2.123(c); 37 CFR 2.123(e)(2); 37 CFR 2.127(e)(1), (New); 37 CFR 2.127(e)(2), (New); 37 CFR 2.128(b); 37 CFR 2.186; ...

Legal Deadline: None

Abstract: The rules of practice in trademark cases are proposed to be amended to revise, simplify, clarify, or delete existing rules or to codify in rules certain practices which are currently in effect. The rules involved are those relating to the requirements for concurrent use applications; abandonment of trademark applications; appeals to the TTAB from the final refusal of registration in ex parte cases; the institution and conduct of interference, concurrent use, opposition, and cancellation proceedings before the TTAB; review by civil action of a decision of the TTAB; and allowing an assignee to take action with respect to the assigned application or registration. The proposed amendments will assist the orderly and prompt resolution of issues in proceedings before the TTAB.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Janet E. Rice, Member, Trademark Trial and Appeal Board, Department of Commerce, Patent and Trademark Office, Commissioner of Patents and Trademarks, Box 5: Trademark Trial and Appeal Board, Washington, DC 20231, 703 557-3551

RIN: 0651–AA36

398. ◆ REQUIREMENTS FOR PATENT APPLICATIONS CONTAINING DNA/RNA AND PROTEIN SEQUENCE DISCLOSURES

Significance: Agency Priority

Legal Authority: 35 USC 6

CFR Citation: 37 CFR 1.821, (New); 37 CFR 1.822, (New); 37 CFR 1.823, (New); 37 CFR 1.824, (New); 37 CFR 1.825, (New)

Legal Deadline: None

Abstract: The rules would require the submission of DNA/RNA and protein sequences to be in a standard format in patent applications, to be in a separate part and also be submitted in electronic form such as diskette or tape. The submissions would simplify search, examination and publication and would facilitate the establishment of a searchable data base.

Timetable:

Action	Date	FR Cite
NPRM	01/00/89	
NPRM Comment Period End	04/00/89	
Final Action	09/00/89	
Final Action Effective	01/00/90	

Small Entities Affected: None

Government Levels Affected: None

Public Compliance Cost: Initial Cost: $0; Yearly Recurring Cost: $0

Agency Contact: John Kittle, Director, Group 180, Department of Commerce, Patent and Trademark Office, CP2-9A09, Washington, DC 20231, 703 557-3537

RIN: 0651–AA37

DEPARTMENT OF COMMERCE (DOC)
Patent and Trademark Office (PTO)

Final Rule Stage

399. REQUESTS FOR IDENTIFIABLE RECORDS

Legal Authority: 35 USC 6

CFR Citation: 37 CFR 1.15

Legal Deadline: None

Abstract: The existing regulations govern requests for records not disclosed to the public as part of PTO's informational activities. The regulations

DOC—PTO — Final Rule Stage

need to be revised to eliminate obsolete provisions.

Timetable:

Action	Date	FR Cite
NPRM	07/19/88	53 FR 27177
NPRM Comment Period End	09/20/88	
Final Action	11/00/88	
Final Action Effective	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

Sectors Affected: Multiple

Analysis: See Additional Information

Additional Information: Neither an RIA nor an RFA is required or will be prepared.

Agency Contact: John W. Dewhirst, Department of Commerce, Patent and Trademark Office, Ofc. of the Solicitor, Washington, DC 20231, 703 557-4035

RIN: 0651-AA04

400. VARIETY DENOMINATION REQUIREMENTS FOR PLANT PATENT APPLICATIONS

Legal Authority: 35 USC 41; 35 USC 6

CFR Citation: 37 CFR 1.17; 37 CFR 1.72; 37 CFR 1.168

Legal Deadline: None

Abstract: PTO will propose amendment of its rules of practice in patent cases to implement the International Convention for the Protection of New Varieties of Plants. The International Convention requires registration of a plant variety name at the time a patent on a plant variety is issued. Compliance with the registration requirements of the Convention would be determined in the process of examining plant patent applications.

Timetable:

Action	Date	FR Cite
Notice	12/27/85	50 FR 52963
NPRM	09/18/87	52 FR 42016
NPRM	11/02/87	52 FR 42016
NPRM Comment Period End	01/26/88	
Final Action	11/00/88	
Final Action Effective	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

Sectors Affected: Multiple

Additional Information: Neither an RIA nor an RFA is required or will be prepared.

Agency Contact: Michael K. Kirk, Assistant Commissioner for External Affairs, Department of Commerce, Patent and Trademark Office, Washington, DC 20231, 703 557-3065

RIN: 0651-AA12

401. PRACTICE BEFORE THE PATENT AND TRADEMARK OFFICE

Significance: Agency Priority

Legal Authority: 35 USC 6; 35 USC 31; 35 USC 32; 5 USC 500; 15 USC 1123

CFR Citation: 37 CFR 10.5; 37 CFR 10.6; 37 CFR 10.23

Legal Deadline: None

Abstract: PTO proposes to amend its rules governing the admission of officers and employees of the United States to the register of attorneys and agents authorized to practice before the PTO in patent cases, and the practice of former PTO employees before the Office. The amendment would eliminate a restriction excluding Federal employees from registration which has been held invalid on judicial review. Provisions affected by the elimination of that restriction would also be amended.

Timetable:

Action	Date	FR Cite
NPRM	06/07/88	53 FR 20871
NPRM Comment Period End	08/09/88	53 FR 20871
Final Action	10/00/88	
Final Action Effective	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Sectors Affected: Multiple

Agency Contact: Louis O. Maassel, Editor, MPEP, Department of Commerce, Patent and Trademark Office, Commissioner of Patents and Trademarks, Washington, DC 20231, 703 557-3078

RIN: 0651-AA32

DEPARTMENT OF COMMERCE (DOC) — Completed Actions

Patent and Trademark Office (PTO)

403. MISCELLANEOUS AMENDMENTS OF PATENT RULES

Legal Authority: 35 USC 6; 35 USC 135

CFR Citation: 37 CFR 1.14; 37 CFR 1.131; 37 CFR 1.192; 37 CFR 1.194; 37 CFR 1.196; 37 CFR 1.804; 37 CFR 1.607; 37 CFR 1.612; 37 CFR 1.637; 37 CFR 1.658; 37 CFR 1.662; 37 CFR 5.3

Legal Deadline: None

DOC—PTO — Completed Actions

Abstract: PTO plans to amend its rules of practice to clarify the procedure in patent interference cases, to make ex parte practice in patent cases consistent with the procedure in patent interference cases, and to expedite the disposition of appeals in ex parte cases.

Timetable:

Action	Date	FR Cite
NPRM	09/30/87	52 FR 36736
NPRM Comment Period End	12/01/87	
Final Action	06/23/88	53 FR 23728
Final Action Effective	09/12/88	53 FR 23728

Small Entities Affected: None

Government Levels Affected: None

Sectors Affected: Multiple

Agency Contact: Saul I. Serota, Department of Commerce, Patent and Trademark Office, Washington, DC 20231, 703 557-4072

RIN: 0651-AA25

404. REQUESTS FOR PRESIDENTIAL PROCLAMATIONS UNDER THE SEMICONDUCTOR CHIP PROTECTION ACT

Significance: Regulatory Program

Legal Authority: 35 USC 6; 17 USC 901; EO 12504

CFR Citation: 37 CFR 150.1; 37 CFR 150.2; 37 CFR 150.3; 37 CFR 150.4; 37 CFR 150.5; 37 CFR 150.6

Legal Deadline: None

Abstract: PTO proposes to amend its rules of practice to provide procedures implementing the provision in the Semiconductor Chip Protection Act of 1984 for the issuance of Presidential Proclamations to protect semiconductor chip products against unauthorized duplication.

Timetable:

Action	Date	FR Cite
NPRM	02/25/88	53 FR 5588
Final Action	06/29/88	53 FR 24444
Final Action Effective	08/01/88	53 FR 24444

Small Entities Affected: None

Government Levels Affected: None

Sectors Affected: Multiple

Agency Contact: Michael K. Kirk, Assistant Commissioner for External Affairs, Department of Commerce, Patent and Trademark Office, Commissioner of Patents and Trademarks, Box 4, Washington, DC 20231, 703 557-3065

RIN: 0651-AA29

DEPARTMENT OF COMMERCE (DOC) — Prerule Stage

United States Travel and Tourism Administration (USTTA)

405. TRAVEL PROMOTION FEE

Significance: Regulatory Program

Legal Authority: Not yet enacted

CFR Citation: Not yet determined

Legal Deadline: None

Abstract: USTTA has primary Federal responsibility for stimulating U.S. export earnings through trade in tourism. Trade development coordination and other related services are currently provided without charge, however, various public and private sector partners do support USTTA cooperative programs at a level nearly equal the funding provided the agency by Congress. The Administration has directed USTTA to undertake efforts to replace funding it receives from general Treasury revenue with monies raised by assessing a fee on all inbound tickets sold to airline and cruiseline passengers except those coming from Canada, Mexico, the Caribbean and U.S. territories. Upon enactment of this legislation USTTA will issue implementing regulations.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Eric C. Peterson, Dpty. Under Secretary for Travel and Tourism, Department of Commerce, United States Travel and Tourism Administration, Room 1865, Washington, DC 20230, 202 377-0140

RIN: 0651-AA10

[FR Doc. 88-23880 Filed 10-21-88; 8:45 am]

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Part V

Department of Defense

Semiannual Regulatory Agenda

DEPARTMENT OF DEFENSE (DOD)

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Chs. I, V, VI, and VII

33 CFR Ch. II

36 CFR Ch. III

Improving Government Regulations; Semiannual Agenda of Regulations

AGENCY: Office of the Secretary, DoD.

ACTION: Publication of the consolidated semiannual agenda of DoD regulatory documents.

SUMMARY: The Department of Defense is publishing this consolidated semiannual agenda of regulatory documents for public information and comments under E.O. 12291, "Federal Regulation." This agenda incorporates the objective and criteria, when applicable, of the regulatory reform program under E.O. 12291, and other regulatory programs. It contains DoD issuances initiated by DoD Components that may have economic and environmental impact on state, local, public or private interests under the criteria of E.O. 12291. Although most DoD issuances listed in the agenda are of negligible public impact, their nature may be of public interest and, therefore, are published to provide notice of rulemaking and an opportunity for public participation in the internal DoD rulemaking process.

This agenda updates the report published on April 25, 1988, and includes regulations expected to be issued and under review over the next 12 months. The next agenda is scheduled to be published in April 1989. In addition to this agenda, DoD Components also publish rulemaking notices pertaining to their specific statutory administration requirements as required.

FOR FURTHER INFORMATION CONTACT: For information concerning the overall DoD regulatory improvement program and for general semiannual agenda information, contact Ms. Pearl Rascoe-Harrison, telephone 202-746-0933 or write to Directorate for Information Operations and Reports, Washington Headquarters Services, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302.

For questions of a legal nature concerning the agenda and its statutory requirements or obligations, contact the Office of the General Counsel, DoD, Washington, DC 20301, or call 202-697-2714.

For general information on Office of the Secretary regulations, contact Mrs. Patricia H. Means, Directives Division, Correspondence and Directives, Directorate, Washington Headquarters Services, telephone 202-697-4111.

For general information on Department of the Army regulations, contact Mr. John O. Roach, telephone 202-325-6297 or write to HQDA, SFIS-APP, Room 1010, Hoffman I, Alexandria, Virginia 22331-0302.

For general information on Department of the Navy regulations, contact Ms. Alcinda P. Wenberg, telephone 202-697-7216 or write to Department of the Navy, Information Resources Management, IRM/C, Washington, DC 20350-1000.

For general information on Department of the Air Force regulations, contact Ms. Patsy J. Conner, telephone 202-694-3527 or write to Department of the Air Force, SAF/AADA, Pentagon, Washington, DC 20330-1000.

For specific agenda items, contact the appropriate individual indicated in each DoD Component report.

SUPPLEMENTARY INFORMATION: This consolidated agenda is composed of the regulatory status reports from the Office of the Secretary of Defense and the Departments of the Army, Navy, and Air Force. Included also in this agenda is the regulatory report from the U.S. Army Corps of Engineers, whose civil works functions fall under the reporting requirements of E.O. 12291. Their agenda will reflect these requirements, with follow-on reporting actions taken, as necessary.

DoD issuances range from DoD Directives (reflecting departmental policy) to implementing instructions and regulations (largely internal and used to implement Directives). The OSD agenda section contains the primary Directives under which DoD Components promulgate their implementing regulations.

To ease identification and to clarify the differences among the variety of issuances reported, they are identified by their DoD internal numbering system, which denotes Component level of authority and type of issuance in addition to the required CFR number.

In addition, this agenda, although published under the reporting requirements of E.O. 12291, will continue to be the DoD single source reporting vehicle which will identify issuances that are currently applicable under the various regulatory reform programs in progress. Therefore, when applicable, DoD Components will identify those rules which come under the criteria of the:

a. Regulatory Flexibility Act;

b. Paperwork Reduction Act; and

c. GATT International Trade Agreement.

These DoD issuances which are directly applicable under these statutes will be identified in the agenda and their action status indicated. Generally, the reports in this agenda will contain four sections: (1) Prerule stage; (2) proposed rule stage; (3) final rule stage; and (4) completed actions.

Although not a regulatory agency, the Department of Defense will continue to participate in regulatory initiatives designed to reduce the economic costs and unnecessary environmental burdens upon the public. Comments and recommendations are invited on the rules reported and should be addressed to the DoD Component representatives identified in each section.

Although sensitive to the needs of the public and regulatory reform, the Department of Defense reserves the right to exercise the exemptions and flexibility permitted in its rulemaking process in order to proceed with its overall defense-oriented mission.

Note: The publishing of this agenda does not waive the applicability of the military affairs exemption in title 5, section 553 and section 1 of E.O. 12291.

Dated: August 25, 1988.

D. O. Cooke,

Director, Administration and Management.

DOD

Office of the Secretary—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
406	Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Implementation of Section 504 of PL 93-112, the Rehabilitation Act of 1973 (DoD 6010.8-R)	[illegible]
407	Commercial Activities Program; Procedures (DoD Instruction 4100.33)	[illegible]
408	Implementation of the Program Fraud Civil Remedies Act (DoD Directive 5505.xx)	[illegible]
409	Department of Defense (DoD) Program Fraud Civil Remedies Regulation (DoD Directive 5505.xx)	[illegible]
410	Defense Industrial Personnel Security Clearance Review Program (DoD Directive 5220.6)	[illegible]
411	Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Updating CHAMPUS Prevailing Charges (DoD 6010.8-R)	0790-AB05
412	Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Per Diem Based Payment Method for Mental Health Services (DoD 6010.8-R)	0790-AB06
413	Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Changes to the CHAMPUS DRG-Based Payment System and Fiscal Year 1989 Rates (DoD 6010.8-R)	0790-AB07

Office of the Secretary—Completed Actions

Sequence Number	Title	Regulation Identifier Number
414	DoD Freedom of Information Act Program (DoD Directive 5400.7)	0790-AA88
415	Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Modification of Payment Limitation for Multiple Surgical Procedures (DoD 6010.8-R, Amendment 10)	0790-AA89
416	Strategic Defense Initiative Organization (SDIO) (DoD Directive 5141.5)	0790-AB08
417	Audits of State and Local Governments (DoD Directive 7600.10)	0790-AB09
418	Armed Forces Institute of Pathology (AFIP) (DoD Directive 5154.24)	[illegible]
419	Armed Forces Radiobiology Research Institute (AFRRI) (DoD Directive 5105.33)	0790-AB11
420	Smoking in DoD Occupied Building (DoD Instruction 6015.18)	0790-AB12
421	Availability to the Public of Defense Intelligence Agency Information	[illegible]
422	Director of Administration and Management (DoD Directive 5105.53)	[illegible]
423	Employment and Volunteer Work for Spouses of Military Personnel (DoD Directive 1400.33)	0790-AB15
424	Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); The Military-Civilian Health Services Partnership Program (DoD 6010.8-R, Amendment 11)	[illegible]
425	Reserve Components Common Personnel Data System (RCCPDS) (DoD Instruction 7730.54)	0790-AB17
426	Service by Members of the Armed Forces on State and Local Juries (DoD Directive 5525.8)	0790-AB18
427	Voluntary Education Programs in Overseas Areas (DoD Instruction 1322.19)	[illegible]
428	Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Mental Health Counselors (DoD 6010.8-R Amendment 8)	0790-AB20
429	Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Birthing Centers and Eligibility of Adult Adoptees Medical Benefits (DoD 6010.8-R, Amendment 9)	0790-AB21

Department of the Army—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
430	The Army General Counsel's Honors Programs	0702-AA00
431	Airfield Certification and Use of Army Airfields by Other than U.S. Department of Defense Aircraft	[illegible]
432	Regulations Affecting Military Reservations: Prohibited Activities at Fort Bragg, NC	0702-AA17

Department of the Army—Completed Actions

Sequence Number	Title	Regulation Identifier Number
433	Personal Check Cashing Control and Abuse Prevention	0702-AA18

DOD

U.S. Army Corps of Engineers—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
434	Regulatory Programs of the Corps of Engineers, Part 325, Appendix D–Endangered Species Counterpart Regulations	0710-AA17
435	Nationwide Permit Program	0710-AA20

U.S. Army Corps of Engineers—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
436	Regulatory Programs of the Corps of Engineers Part 325, App. C, Historic Properties	0710-AA12

Department of the Navy—Completed Actions

Sequence Number	Title	Regulation Identifier Number
437	Availability of Department of the Navy Records and Publications of the Navy Documents Affecting the Public	0703-AA17

Department of the Air Force—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
438	Public Affairs Policies and Procedures (AFR 190-1)	0701-AA18
439	Claims and Tort Litigation (AFR 112-1)	0701-AA19
440	Leasing USAF Aircraft and Related Equipment to Nongovernment Organizations	0701-AA26

Department of the Air Force—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
441	Air Force Supplement to the Federal Acquisition Regulation (FAR)	0701-AA14

Department of the Air Force—Completed Actions

Sequence Number	Title	Regulation Identifier Number
442	Delivery of Air Force Personnel to U.S. Civilian Authorities for Trial (AFR 111-11)	0701-AA20
443	Environmental Impact Analysis Process (ANGR 19-02)	0701-AA22
444	Personal Financial Responsibility (AFR 35-18)	0701-AA23
445	Air Force Systems Command Contractor Performance Assessment	0701-AA27

DEPARTMENT OF DEFENSE (DOD)
Office of the Secretary (OS)

Final Rule Stage

406. CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS); IMPLEMENTATION OF SECTION 504 OF PL 93-112, THE REHABILITATION ACT OF 1973 (DOD 6010.8-R)

Legal Authority: 10 USC 1079; 10 USC 1086; 5 USC 301; 29 USC 794

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: The purpose of this rule is to revise the DoD Regulation 6010.8-R (32 CFR 199) to meet the intent of Section 504 of the Rehabilitation Act of 1973, as amended.

Timetable:

Action	Date	FR Cite
NPRM	10/31/86	51 FR 39757
NPRM Comment Period End	12/01/86	51 FR 39757
Final Action	05/30/89	
Final Action Effective	05/30/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: T. Shahid, Department of Defense, Office of the Secretary, 303 361-3587

RIN: 0790–AA71

407. COMMERCIAL ACTIVITIES PROGRAM; PROCEDURES (DOD INSTRUCTION 4100.33)

Legal Authority: 5 USC 301; 5 USC 552; PL 93-400

CFR Citation: 32 CFR 169

Legal Deadline: None

Abstract: This part establishes DoD policies to implement OMB Circular No. A-76, which are currently included in 32 CFR Part 169. It establishes procedures and criteria for use by the Department of Defense to determine whether DoD commercial activities should be performed by DoD personnel in-house or by contract with commercial sources. 32 CFR Part 169, "Commercial Activities Program" and 32 CFR Part 169a, "Commercial Activities Program Procedures" are proposed to be removed in their entirety.

Timetable:

Action	Date	FR Cite
NPRM	12/03/86	51 FR 43619
NPRM Comment Period End	01/02/87	51 FR 43620
Final Action	05/30/89	
Final Action Effective	05/30/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: T. Shahid, Department of Defense, Office of the Secretary, 303 361-3587

RIN: 0790–AA73

408. IMPLEMENTATION OF THE PROGRAM FRAUD CIVIL REMEDIES ACT (DOD DIRECTIVE 5505.XX)

Legal Authority: 31 USC 3807; PL 99-509

CFR Citation: 32 CFR 276

Legal Deadline: None

Abstract: This part implements Program Fraud Civil Remedies Act by establishing an administrative process within the Departments of the Army, Navy, and Air Force for the adjudication of fraudulent claims of less than $150,000 or false statements.

Timetable:

Action	Date	FR Cite
NPRM	07/16/87	52 FR 26972
NPRM Comment Period End	08/17/87	52 FR 29952
Final Action	05/30/89	
Final Action Effective	05/30/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: M. Sterlacci, Department of Defense, Office of the Secretary, 202 697-2714

RIN: 0790–AA82

409. DEPARTMENT OF DEFENSE (DOD) PROGRAM FRAUD CIVIL REMEDIES REGULATION (DOD DIRECTIVE 5505.XX)

Legal Authority: 31 USC 3807; PL 99-509

CFR Citation: 32 CFR 277

Legal Deadline: None

Abstract: This part establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious or fraudulent claims or written statements to authorities or to their agents. It also specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments.

Timetable:

Action	Date	FR Cite
NPRM	07/16/87	52 FR [illegible]
NPRM Comment Period End	08/17/87	52 FR 29953
Final Action	05/30/89	
Final Action Effective	05/30/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: M. Sterlacci, Department of Defense, Office of the Secretary, 202 697-2714

RIN: 0790–AA83

410. DEFENSE INDUSTRIAL PERSONNEL SECURITY CLEARANCE REVIEW PROGRAM (DOD DIRECTIVE 5220.6)

Legal Authority: 5 USC 504; EO 10865

CFR Citation: 32 CFR 155

Legal Deadline: None

Abstract: This part is being revised and reissued to establish a standard for determining petitions for reimbursement for loss of earnings, incorporate the revised DoD Adjudication Policies for security clearance determinations under this rule, and revise procedures for cases not requiring a hearing, and procedures for considering issues raised on appeal.

Timetable:

Action	Date	FR Cite
NPRM	03/30/87	52 FR 10864
NPRM Comment Period End	04/29/87	52 FR 10864
Final Action	05/30/89	
Final Action Effective	05/30/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: J. Brown, Department of Defense, Office of the Secretary, 202 695-4589

RIN: 0790–AA84

DOD—OS

Final Rule Stage

411. ● CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS); UPDATING CHAMPUS PREVAILING CHARGES (DOD 6010.8-R)

Legal Authority: 10 USC 1079; 10 USC 1086; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This proposed amendment revises DoD 6010.8-R to allow the Secretary of Defense increased flexibility regarding the timing of updates to the prevailing charge levels which limit the amounts that are payable under CHAMPUS for professional services.

Timetable:

Action	Date	FR Cite
ANPRM	06/03/88	53 FR 20592
Comment Period End		
NPRM	07/05/88	53 FR 20592
Final Action	12/31/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: C. Gallegos, Department of Defense, Office of the Secretary, 303 981-3985

RIN: 0790-AB06

412. ● CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS); PER DIEM BASED PAYMENT METHOD FOR MENTAL HEALTH SERVICES (DOD 6010.8-R)

Legal Authority: 10 USC 1079; 10 USC 1086; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This proposed rule, if adopted, would revise the comprehensive CHAMPUS regulation to establish a new method of paying for mental health hospital care. Rather than continuing to pay billed charges, the new method would pay hospitals based on prospectively set fixed rates for each day of hospital services provided. These per diem rates would be calculated to be revenue neutral in the base period of calculation, with full adjustments for price inflation. The result will be nearly revenue neutral in fiscal year 1989 with respect to CHAMPUS payments for inpatient mental health services.

Timetable:

Action	Date	FR Cite
NPRM	06/03/88	53 FR 20585
NPRM Comment Period End	07/05/88	53 FR 20585
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: S. Regensberg, Department of Defense, Office of the Secretary, 303 981-3572

RIN: 0790-AB08

413. ● CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS); CHANGES TO THE CHAMPUS DRG-BASED PAYMENT SYSTEM AND FISCAL YEAR 1989 RATES (DOD 6010.8-R)

Legal Authority: 10 USC 1079; 10 USC 1086; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This proposed amendment changes CHAMPUS DRG-based payment system which was implemented on October 1, 1987. Some of these changes are necessary as a result of our experience with the system or to conform to a number of recent statutory changes affecting the Medical Prospective Payment System (PPS) upon which the CHAMPUS DRG-based payment system is modeled. Other changes expand the scope of the DRG-based payment system.

Timetable:

Action	Date	FR Cite
NPRM	06/03/88	53 FR 20576
NPRM Comment Period End	07/05/88	53 FR 20576
Final Action Effective	12/31/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: S. Isaacson, Department of Defense, Office of the Secretary, 303 981-4005

RIN: 0790-AB07

DEPARTMENT OF DEFENSE (DOD)

Office of the Secretary (OS)

Completed Actions

414. ● DOD FREEDOM OF INFORMATION ACT PROGRAM (DOD DIRECTIVE 5400.7)

Legal Authority: PL 99-570, Sec 1801 to 1804; PL 99-661, Sec 2328; 5 USC 552

CFR Citation: 32 CFR 286

Legal Deadline: None

Abstract: This final rule publishes a revision of DoD Directive 5400.7, which is the authority document for the publication of DoD 5400.7-R (32 CFR 286). This rule merely addresses nonsubstantive administrative changes to the Directive and makes it consistent with 32 CFR 286.

Timetable:

Action	Date	FR Cite
Final Action Effective	05/13/88	53 FR 19005
Final Action	06/01/88	53 FR 19005

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: C. Talbott, Department of Defense, Office of the Secretary, 202 697-1100

RIN: 0790-AA85

DOD—OS

Completed Actions

415. CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS); MODIFICATION OF PAYMENT LIMITATION FOR MULTIPLE SURGICAL PROCEDURES (DOD 6010.8-R, AMENDMENT 10)

Legal Authority: 10 USC 1079; 10 USC 1086; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This final rule revises the comprehensive CHAMPUS regulation pertaining to payment for multiple surgical procedures performed during the same operative session. This final rule allows payment for second and subsequent surgical procedures at fifty percent of the CHAMPUS-determined allowable charge, whether or not the second and subsequent procedures are related i.e., performed through the same surgical opening as the first procedure.

Timetable:

Action	Date	FR Cite
NPRM	03/11/87	52 FR 7453
NPRM Comment Period End	04/10/87	52 FR 7453
Final Action	07/06/88	53 FR 25327
Final Action Effective	08/05/88	53 FR 25327

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: S. Isaacson, Department of Defense, Office of the Secretary, 303 982-4005

RIN: 0790-AA89

416. ● STRATEGIC DEFENSE INITIATIVE ORGANIZATION (SDIO) (DOD DIRECTIVE 5141.5)

Legal Authority: 10 USC 192

CFR Citation: 32 CFR 388

Legal Deadline: None

Abstract: This part establishes the Strategic Defense Initiative Organization (SDIO) as an agency of the Department of Defense and delineates its responsibilities, functions, relationships, and authorities.

Timetable:

Action	Date	FR Cite
Final Action	04/04/88	53 FR 10676
Final Action Effective	06/04/88	53 FR 10676

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: R. Furtner, Department of Defense, Office of the Secretary, 202 695-4281

RIN: 0790-AB08

417. ● AUDITS OF STATE AND LOCAL GOVERNMENTS (DOD DIRECTIVE 7600.10)

Legal Authority: PL 98-502, 98 Stat 2327; 31 USC 7501 note

CFR Citation: 32 CFR 286

Legal Deadline: None

Abstract: This part implements PL 98-502 and authorizes DoD components to provide for additional audits of Federal financial assistance when required by regulation or to ensure effective use of such assistance. It also specifies the responsibilities of the Inspector General, Department of Defense, and the Heads of DoD components for monitoring compliance with the provisions of the new 32 CFR 286.

Timetable:

Action	Date	FR Cite
Final Action Effective	02/12/88	53 FR 24066
Final Action	06/27/88	53 FR 24066

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: V. Stone, Department of Defense, Office of the Secretary, 202 693-8017

RIN: 0790-AB09

418. ● ARMED FORCES INSTITUTE OF PATHOLOGY (AFIP) (DOD DIRECTIVE 5154.24)

Legal Authority: 10 USC 133

CFR Citation: 32 CFR 390a

Legal Deadline: None

Abstract: This part is issued to incorporate changes to DoD Directive 5154.24, as requested, by the Department of Defense Inspector General, the Assistant Secretary of Defense (Comptroller), and the Military Departments. This part delineates the functions and responsibilities of the AFIP.

Timetable:

Action	Date	FR Cite
Final Action Effective	05/24/88	53 FR 24442
Final Action	06/29/88	53 FR 24442

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: D. Uddin, Department of Defense, Office of the Secretary, 202 695-7117

RIN: 0790-AB10

419. ● ARMED FORCES RADIOBIOLOGY RESEARCH INSTITUTE (AFRRI) (DOD DIRECTIVE 5105.33)

Legal Authority: 10 USC 133

CFR Citation: 32 CFR 390

Legal Deadline: None

Abstract: This part establishes the Armed Forces Radiobiology Research Institute as a subordinate command of the Defense Nuclear Agency. This part updates and clarifies the responsibilities of the AFRRI. The Institute was established under the authority vested in the Secretary of Defense and serves as principal ionizing radiation radiobiology research laboratory for the Department of Defense.

Timetable:

Action	Date	FR Cite
Final Action	05/06/88	53 FR 16254
Final Action Effective	11/25/88	53 FR 16254

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: R. Sphar, Department of Defense, Office of the Secretary, 202 697-8535

RIN: 0790-AB11

420. ● SMOKING IN DOD OCCUPIED BUILDING (DOD INSTRUCTION 6015.18)

Legal Authority: 5 USC 301

CFR Citation: 32 CFR 203

Legal Deadline: None

Abstract: DoD Directive 1010.10, "Health Promotion" canceled DoD Instruction 6015.18. Therefore, 32 CFR 203 is removed.

Timetable:

Action	Date	FR Cite
Final Action Effective	07/18/88	

DOD—OS

Completed Actions

Action	Date	FR Cite
Final Action	07/21/88	53 FR 27511

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: A. Hagey, Department of Defense, Office of the Secretary, 202 695-6988

RIN: 0790-AH12

421. ◆ AVAILABILITY TO THE PUBLIC OF DEFENSE INTELLIGENCE AGENCY INFORMATION

Legal Authority: 5 USC 552

CFR Citation: 32 CFR 292

Legal Deadline: None

Abstract: This final rule revises 32 CFR 292. This revision incorporates changes occasioned by the publication of DoD 5400.7-R (32 CFR Part 286).

Timetable:

Action	Date	FR Cite
Final Action	07/05/88	53 FR 25157
Final Action Effective	07/05/88	53 FR 25157

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: R. Hardzog, Department of Defense, Office of the Secretary, 202 373-3818

RIN: 0790-AH13

422. ◆ DIRECTOR OF ADMINISTRATION AND MANAGEMENT (DOD DIRECTIVE 5105.53)

Legal Authority: 10 USC 113

CFR Citation: 32 CFR 181

Legal Deadline: None

Abstract: This part establishes the Office of the Director of Administration and Management and delineates its responsibilities, functions, relationships, and authorities. An addition to the Defense Department organization makes this part necessary.

Timetable:

Action	Date	FR Cite
Final Action Effective	05/25/88	53 FR 22649
Final Action	06/17/88	53 FR 22648

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: H. Becker, Department of Defense, Office of the Secretary, 202 695-4301

RIN: 0790-AH14

423. ◆ EMPLOYMENT AND VOLUNTEER WORK FOR SPOUSES OF MILITARY PERSONNEL (DOD DIRECTIVE 1400.33)

Legal Authority: 10 USC 113 note

CFR Citation: 32 CFR 100

Legal Deadline: None

Abstract: This part specifies that no DoD official shall, directly or indirectly, interfere with the right of spouses of military members to choose to pursue and hold a job, attend schools, or volunteer services on or off a military installation nor shall their decision, or the marital status of military members affect, favorably or adversely, military members' performance appraisals, assignments, or promotions.

Timetable:

Action	Date	FR Cite
Final Action Effective	02/10/88	53 FR 15205
Final Action	04/28/88	53 FR 15205

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: K. O'Beirne, Department of Defense, Office of the Secretary, 202 697-7191

RIN: 0790-AB15

424. ◆ CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS); THE MILITARY-CIVILIAN HEALTH SERVICES PARTNERSHIP PROGRAM (DOD 6010.8-R, AMENDMENT 11)

Legal Authority: 10 USC 1079; 10 USC 1086; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This final rule revises DoD 6010.8-R to incorporate revisions resulting from Section 1096, Chapter 55, Title 10, United States Code, which establishes a Military-Civilian Health Services Partnership Program. Under this program, CHAMPUS beneficiaries can receive inpatient and outpatient care from civilian personnel providing health care services in military treatment facilities and from uniformed service professional providers in civilian facilities.

Timetable:

Action	Date	FR Cite
Final Action Effective	02/01/88	53 FR 27980
Final Action	07/26/88	53 FR 27980

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: R. Sabo, Department of Defense, Office of the Secretary, 303 361-8014

RIN: 0790-AB16

425. ◆ RESERVE COMPONENTS COMMON PERSONNEL DATA SYSTEM (RCCPDS) (DOD INSTRUCTION 7730.54)

Legal Authority: 10 USC 261; 10 USC 267; 10 USC 275; 10 USC 511; 10 USC 651; 10 USC 652; 10 USC 671; 10 USC 1331; 10 USC 3914; 10 USC 8330; 10 USC 8914

CFR Citation: 32 CFR 114

Legal Deadline: None

Abstract: This part provides DoD policy and guidance for reporting Reserve Component categories, personnel transactions accounting, personnel data items, definitions, and accuracy standards to the Reserve Components Common Personnel Data System (RCCPDS). The RCCPDS is the computerized data base that has been established to meet the policy requirements and to provide statistical tabulations of Reserve Components strengths and related data for use throughout the Department of Defense, other Government Agencies, and the Congress.

Timetable:

Action	Date	FR Cite
Final Action Effective	05/13/88	53 FR 20645
Final Action	05/07/88	53 FR 20644

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: K. Robinson, Department of Defense, Office of the Secretary, 202 696-8648

RIN: 0790-AH17

DOD—OS

Completed Actions

426. ◆ SERVICE BY MEMBERS OF THE ARMED FORCES ON STATE AND LOCAL JURIES (DOD DIRECTIVE 5525.8)

Significance: Agency Priority

Legal Authority: 10 USC 982

CFR Citation: 32 CFR 144

Legal Deadline: None

Abstract: This part implements 10 USC 982 by establishing uniform DoD policies concerning jury duty service by active-duty members. Section 502 of the FY 1987 Defense Authorization Act, PL 99-661, codified at 10 USC 982, authorized the Secretaries of the Military Departments to exempt active-duty members from State and local jury duty under certain conditions.

Timetable:

Action	Date	FR Cite
Final Action Effective	06/13/88	53 FR 23579
Final Action	06/24/88	53 FR 23579

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: R. Ketler, Department of Defense, Office of the Secretary, 202 697-3387

RIN: 0790-AB18

427. ◆ VOLUNTARY EDUCATION PROGRAMS IN OVERSEAS AREAS (DOD INSTRUCTION 1322.19)

Legal Authority: PL 99-145, Sec 1212

CFR Citation: 32 CFR 72

Legal Deadline: None

Abstract: This part establishes responsibilities and procedures for providing civilian postsecondary education programs in overseas areas. The part also sets criteria to avoid unnecessary duplication of educational programs on military installations.

Timetable:

Action	Date	FR Cite
Final Action Effective	05/09/88	53 FR 22648
Final Action	06/17/88	53 FR 22648

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: L. Saltman, Department of Defense, Office of the Secretary, 202 695-8823

RIN: 0790-AB19

428. ◆ CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS); MENTAL HEALTH COUNSELORS (DOD 6010.8-R AMENDMENT 9)

Legal Authority: 10 USC 1079; 10 USC 1086; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This amendment authorizes mental health providers. It adds mental health counselors as authorized mental health providers and states the specific requirements that must be met. The amendment will help assure that CHAMPUS beneficiaries have greater access to quality mental health services.

Timetable:

Action	Date	FR Cite
Final Action	02/24/88	53 FR 5370
Final Action Effective	02/24/88	53 FR 5370

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: R. Michak, Department of Defense, Office of the Secretary, 303 361-4976

RIN: 0790-AB20

429. ◆ CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS); BIRTHING CENTERS AND ELIGIBILITY OF ADULT ADOPTEES MEDICAL BENEFITS (DOD 6010.8-R, AMENDMENT 8)

Legal Authority: 10 USC 1079; 10 USC 1086; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This amendment defines and establishes birthing centers as a category of institutional health care provider, prescribes the criteria for assessing a birthing center application for authorized status and the birthing center reimbursement method. It also clarifies the intent of 10 USC 1072(2) concerning eligibility of adopted children. This amendment is necessary to ensure that reasonable limits are placed on CHAMPUS eligibility.

Timetable:

Action	Date	FR Cite
Final Action	05/16/88	53 FR 17190
Final Action Effective	05/16/88	53 FR 17190

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: T. Shahid, Department of Defense, Office of the Secretary, 303 361-3587

RIN: 0790-AB21

DEPARTMENT OF DEFENSE (DOD)

Prerule Stage

Department of the Army (DOA)

430. THE ARMY GENERAL COUNSEL'S HONORS PROGRAMS

Legal Authority: 10 USC 302; 10 USC 3005

CFR Citation: 32 CFR 585

Legal Deadline: None

Abstract: Army General Counsel's Honors Program. To recruit highly qualified attorneys to fill vacancies in the Army General Counsel's Office. Comment period completed. The document explains the methods of application and the requirements and procedures for the appointment to that office.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Paperwork Reduction Act Impact - None.

DOD—DOA — Prerule Stage

International Trade Impact - None.

Agency Contact: John Pavlick, Department of Defense, Department of the Army, Office of the Army General Counsel, [illegible]

RIN: 0702-AA09

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431. ARFIELD CERTIFICATION AND USE OF ARMY AIRFIELDS BY OTHER THAN U.S. DEPARTMENT OF DEFENSE AIRCRAFT

Legal Authority: PL 85-726; PL 97-248; PL 01-228

CFR Citation: Not yet determined

Legal Deadline: None

Abstract: Prescribes responsibilities and procedures with regard to use of U.S. Army airfields by other than DoD.

Timetable:

Action	Date	FR Cite
End Review	04/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Paperwork Reduction Act Impact - None.

International Trade Impact - None.

Agency Contact: Robert C. Cole, Department of Defense, Department of the Army, US Army Air Traffic Control Activity, Aeronautical Service Office, 703 272-7796

RIN: 0702-AA02

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432. ◆ REGULATIONS AFFECTING MILITARY RESERVATIONS: PROHIBITED ACTIVITIES AT FORT BRAGG, NC

Legal Authority: 10 USC 3012

CFR Citation: 32 CFR 552

Legal Deadline: None

Abstract: This regulation establishes the criteria for enforcement of certain State laws and installation rules pertaining to driving offenses and hunting and fishing privileges on the Fort Bragg installation. This regulation provides guidance on motor vehicle offenses and the requirements to obtain hunting and fishing privileges for anyone (military or civilian) employed on, visiting, or traveling through the above reservation.

Timetable:

Action	Date	FR Cite
ANPRM	10/01/88	32 FR 552

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: John O. Roach, Army Liaison Officer with the Federal Register, Department of Defense, Department of the Army, HQDA, SFIS-APP, Alexandria, VA, 703 325-6267

RIN: 0702-AA17

DEPARTMENT OF DEFENSE (DOD)
Department of the Army (DOA) — Completed Actions

433. ◆ PERSONAL CHECK CASHING CONTROL AND ABUSE PREVENTION

Legal Authority: 5 USC 5511 to 5512; 37 USC 1007; 18 USC 1382

CFR Citation: 32 CFR 627

Legal Deadline: None

Abstract: This regulation standardizes dishonored check procedures at check cashing facilities on Army installations and implements fair, but firm controls over dishonored check writers.

Timetable:

Action	Date	FR Cite
Final Action	05/27/88	53 FR 19286
Final Action Effective	06/27/88	

Small Entities Affected: Businesses, Organizations

Government Levels Affected: Local

Agency Contact: John O. Roach, Army Liaison Officer with the Federal Register, Department of Defense, Department of the Army, HQDA, SFIS-APP, Alexandria, VA, 703 325-6267

RIN: 0703-AA18

DEPARTMENT OF DEFENSE (DOD)
U.S. Army Corps of Engineers (COE) — Proposed Rule Stage

434. REGULATORY PROGRAMS OF THE CORPS OF ENGINEERS, PART 325, APPENDIX D—ENDANGERED SPECIES COUNTERPART REGULATIONS

Legal Authority: 33 USC 401; 33 USC 403; 33 USC 1344; 33 USC 1413

CFR Citation: 33 CFR 325, Appendix D

Legal Deadline: None

Abstract: Procedures for the protection of endangered species in the regulatory program of the Corps of Engineers. Because of the increased emphasis being placed on endangered species by the Federal and State resource agencies, the Corps identified a need to provide more definitive guidance on implementing the Endangered Species Act (ESA) in its regulatory program. The Corps is now developing counterpart regulations with the Department of Interior. The regulations will basically bring together various guidance used in the past by both the Corps and DOI. The regulations will include guidance on how the ESA Amendments impact applicants for Federal permits.

Timetable:

Action	Date	FR Cite
NPRM	05/00/89	
NPRM Comment Period End	07/10/89	
Final Action	09/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Sam Collinson, Chief, Regulation Section, Department of Defense, U.S. Army Corps of Engineers, Washington, DC 20314-1000, ATTN: CECW-OR, 202 272-0199

RIN: 0710-AA19

Abstract: The Corps intends to propose revisions to 33 CFR 330. The intent of the proposed revisions will be to simplify and clarify the nationwide permit program of the Corps. The nationwide permit program is designed to authorize projects that have minimal impacts with little or no paperwork or delay. Section 330 of the regulation has become so complex that this goal is no longer being met.

Timetable:

Action	Date	FR Cite
NPRM	10/18/88	
Final Action	05/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Bernie Goode, Chief, Regulatory Branch, Department of Defense, U.S. Army Corps of Engineers, Washington, DC 20314-1000, ATTN: CECW-OR, 202 272-0199

RIN: 0710-AA20

DOD—COE — Proposed Rule Stage

Washington, DC 20314-1000, ATTN: CECW-OR, 202 272-0199

RIN: 0710-AA17

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435. NATIONWIDE PERMIT PROGRAM

Significance: Regulatory Program

Legal Authority: 33 USC 401; 33 USC 403; 33 USC 1344; 33 USC 1413

CFR Citation: 33 CFR 330

Legal Deadline: None

Abstract: The Corps intends to propose revisions to 33 CFR 330. The intent of the proposed revisions will be to simplify and clarify the nationwide permit program of the Corps. The nationwide permit program is designed to authorize projects that have minimal impacts with little or no paperwork or delay. Section 330 of the regulation has become so complex that this goal is no longer being met.

Timetable:

Action	Date	FR Cite
NPRM	10/18/88	
Final Action	05/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Bernie Goode, Chief, Regulatory Branch, Department of Defense, U.S. Army Corps of Engineers, Washington, DC 20314-1000, ATTN: CECW-OR, 202 272-0199

RIN: 0710-AA20

DEPARTMENT OF DEFENSE (DOD)
U.S. Army Corps of Engineers (COE) — Final Rule Stage

436. REGULATORY PROGRAMS OF THE CORPS OF ENGINEERS PART 325, APP. C, HISTORIC PROPERTIES

Legal Authority: 33 USC 401; 33 USC 1344; 33 USC 1413

CFR Citation: 33 CFR 325, Appendix C

Legal Deadline: None

Abstract: Procedure for protection of historic properties and compliance with Sections 106 and 110(f) of the National Historic Preservation Act.

Timetable:

Action	Date	FR Cite
NPRM	05/04/84	49 FR 19036
NPRM Comment Period End	06/04/84	49 FR 19036
Final Action	10/00/88	
Final Action Effective	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Sectors Affected: None

Additional Information: Paperwork Reduction Act Impact - The paperwork, reports, studies, etc., required of Government at all levels, business and citizens will be reduced by the revised procedures.

Small Business Impact - By streamlining the procedures for obtaining a Corps permit, the regulatory burden on small businesses will be reduced.

GATT Impact - None.

Agency Contact: Sam Collinson, Department of Defense, U.S. Army Corps of Engineers, Washington, DC 20314-1000, ATTN: CECW-OR, 202 272-0199

RIN: 0710-AA12

DEPARTMENT OF DEFENSE (DOD)
Department of the Navy (NAVY) — Completed Actions

437. ◆ AVAILABILITY OF DEPARTMENT OF THE NAVY RECORDS AND PUBLICATIONS OF THE NAVY DOCUMENTS AFFECTING THE PUBLIC

Legal Authority: 5 USC 552a; 32 CFR 806a

CFR Citation: 32 CFR 701

Legal Deadline: None

Abstract: A new specific exemption rule is proposed to protect from access the personal information contained in a new record system.

Timetable:

Action	Date	FR Cite
Final Action	06/13/88	53 FR 22027
Final Action Effective	06/13/88	53 FR 22027

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Gwen Aitken, Department of Defense, Department of the Navy, Office of Chief of Naval Operations, Washington, DC 20350-2000, 202 697-1459

RIN: 0703-AA17

DEPARTMENT OF DEFENSE (DOD)
Department of the Air Force (AF) — Proposed Rule Stage

438. PUBLIC AFFAIRS POLICIES AND PROCEDURES (AFR 190-1)

Legal Authority: 10 USC 8013

CFR Citation: 32 CFR 837

Legal Deadline: None

Abstract: Describes Air Force Public Affairs program and how public affairs resources are to be managed to effectively reach public affairs goals.

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DOD—AF

Proposed Rule Stage

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Lt Col Hessenflow, Department of Defense, Department of the Air Force, HQ USAF (SAF/PAR), Washington, DC 20330, 202 697-6701

RIN: 0701–AA18

439. CLAIMS AND TORT LITIGATION (AFR 112-1)

Legal Authority: 10 USC 8013

CFR Citation: 32 CFR 842

Legal Deadline: None

Abstract: Establishes standard policies and procedures to administratively process claims and tort litigation involving the Air Force.

Timetable:

Action	Date	FR Cite
Begin Review	02/28/88	
End Review	01/31/88	
NPRM	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Lt Col Kilroy, Department of Defense, Department of the Air Force, HQ USAF/JACC, Bldg. 5663, Bolling AFB, DC 20332-6128, 202 767-1585

RIN: 0701–AA19

440. LEASING USAF AIRCRAFT AND RELATED EQUIPMENT TO NONGOVERNMENT ORGANIZATIONS

Legal Authority: 10 USC 2667

CFR Citation: None

Legal Deadline: None

Abstract: This regulation outlines USAF policies and procedures for the provision of leasing USAF aircraft and related equipment to nongovernment organizations.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Eric Kattner, Procurement Analyst, Department of Defense, Department of the Air Force, SAF/AQCM, Washington, DC 20330-1000, 703 695-6963

RIN: 0701–AA26

DEPARTMENT OF DEFENSE (DOD)
Department of the Air Force (AF)

Final Rule Stage

441. AIR FORCE SUPPLEMENT TO THE FEDERAL ACQUISITION REGULATION (FAR)

Legal Authority: PL 93-400; PL 96-83

CFR Citation: 48 CFR Chapter 53

Legal Deadline: None

Abstract: Air Force FAR Supplement establishes for the Air Force uniform policy and procedures implementing and supplementing the FAR, the DOD FAR Supplement, and other DOD publications concerning contracting.

Timetable:

Action	Date	FR Cite
48 CFR Ch 53, AFLC FARS; Surplus Material Acquisition	10/30/86	51 FR 39676
48 CFR 5315, AF FARS; Price Negotiation	03/04/87	52 FR 6590
48 CFR Ch 53, AFSC FARS; Contracting by Negotiation	09/14/87	52 FR 34692
Final Action	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Lt Col Rick Hampton, Special Assistant for FAR, Department of Defense, Department of the Air Force, SAF/AQCF, 202 695-3858

RIN: 0701–AA14

DEPARTMENT OF DEFENSE (DOD)
Department of the Air Force (AF)

Completed Actions

442. DELIVERY OF AIR FORCE PERSONNEL TO U.S. CIVILIAN AUTHORITIES FOR TRIAL (AFR 111-11)

Legal Authority: 10 USC 8013; 10 USC 815

CFR Citation: 32 CFR 884

Legal Deadline: None

Abstract: Regulation sets forth the authority, policy and procedures for delivery of Air Force personnel to United States civil authorities for trial.

Timetable:

Action	Date	FR Cite
Final Action	02/11/88	53 FR 4014
Final Action Effective	03/14/88	53 FR 4014

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Major James, Department of Defense, Department of the Air Force, HQ USAF/JAJM, Bldg. 5663, Bolling AFB, DC 20332-6128, 202 767-1539

RIN: 0701–AA20

443. ENVIRONMENTAL IMPACT ANALYSIS PROCESS (ANGR 19-02)

Legal Authority: 10 USC 8013

CFR Citation: None

Legal Deadline: None

Abstract: Identifies Air National Guard's policies and procedures for the Environmental Impact Analysis Process (EIAP).

Timetable:

Action	Date	FR Cite
No action expected next 12 months	08/26/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Mr. Householder, Environmental Engineer, Department of Defense, Department of the Air Force, ANGSC/DEV, Andrews AFB, MD 20331-6106, 301 981-3566

RIN: 0701–AA22

444. PERSONAL FINANCIAL RESPONSIBILITY (AFR 35-18)

Legal Authority: 10 USC 8013; 15 USC 1673; 42 USC 659; 42 USC 661; 42 USC 662; 42 USC 665

CFR Citation: 32 CFR 818

Legal Deadline: None

Abstract: Establishes Air Force policy governing delinquent financial obligations and sets forth procedures for processing any claims of this nature. It is designed to ensure that Air Force members pay their just financial obligations in a proper and timely manner.

Timetable:

Action	Date	FR Cite
Final Action	06/30/88	53 FR 24688
Final Action Effective	08/30/88	53 FR 24688

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Mr. Taylor, Department of Defense, Department of the Air Force, HQ AFMPC/DPMASC2, Randolph AFB, TX 78150-6001, 512 652-3578

RIN: 0701–AA23

445. ● AIR FORCE SYSTEMS COMMAND CONTRACTOR PERFORMANCE ASSESSMENT

Legal Authority: 10 USC 2305(a)(3)

CFR Citation: 32 CFR 838

Legal Deadline: None

Abstract: This part sets policy, assigns responsibilities, and provides implementing procedures for systematically assessing contractor performance on current contracts. It will assess contractor performance on current AFSC contracts for use in future contract award decisions.

Timetable:

Action	Date	FR Cite
NPRM	03/23/88	53 FR 9455
NPRM Comment Period End	04/22/88	53 FR 9455
Final Action	08/11/88	53 FR 30253
Final Action Effective	09/01/88	53 FR 30253

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Susan Wright, Department of Defense, Department of the Air Force, HQ AFSC/PKCP, Andrews AFB DC 20334, 301 981-6822

RIN: 0701–AA27

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Part VI

Department of Education

Semiannual Regulatory Agenda

DEPARTMENT OF EDUCATION (ED)

DEPARTMENT OF EDUCATION

Office of the Secretary

34 CFR Subtitles A and B

Unified Agenda of Federal Regulations

AGENCY: Department of Education.

ACTION: Publication of the semiannual agenda of Federal regulations.

SUMMARY: The Secretary of Education publishes a Semiannual Agenda of Federal Regulations as required by Office of Management and Budget (OMB) Bulletin 88-15 issued under the authority of section 6(b) of Executive Order 12291 (Federal Regulations). The purpose of the agenda is to encourage more effective public participation in the regulatory process by giving the public early information about pending regulatory activities.

FOR FURTHER INFORMATION CONTACT: Questions or comments related to specific regulations listed in this agenda should be directed to the contact person listed for that set of regulations. Questions or comments on the overall agenda should be directed to A. Neal Shedd, Director, Division of Regulations Management, Office of the General Counsel, Department of Education, Room 2131, FOB-6, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone: (202) 732-2887.

SUPPLEMENTARY INFORMATION: Executive Order 12291, dated February 17, 1981, and the Regulatory Flexibility Act, Pub. L. 96-354, enacted September 19, 1980, require the Department of Education to publish, in October and April of each year, (1) an agenda of regulations that the Department expects to issue, and (2) currently effective regulations that are under review. The agenda includes both notices of proposed rulemaking (NPRMs) currently being drafted and pending final regulations.

Under the authority of Executive Order 12291, the Director of OMB has issued OMB Bulletin No. 88-15, dated June 27, 1988, prescribing the content and structure of the Unified Agenda of Federal Regulations. The Unified Agenda will be issued semiannually and will cover the succeeding 12 months from the date of publication.

For each set of regulations listed, the Agenda provides the title of the document, the type of document, a citation of any rulemaking or other action taken since publication of the most recent Agenda, and planned dates of future rulemaking. In addition, the Agenda provides the following information:

- An abstract, which includes a description of the problem to be addressed, any principal alternatives being considered, and potential costs and benefits of the action.
- An indication of whether the planned action is likely to have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601(b)).
- A reference to where a reader can find the current regulations in the Code of Federal Regulations.
- A citation of legal authority.
- The name, address, and telephone number of the contact person at the Department from whom a reader can obtain additional information regarding the planned action.
- An indication if the action is priority and the criteria used in determining the priority status.

If the "Abstract" section of an entry refers readers to the preamble, it means that amendments to those particular regulations would be designed (1) to effect regulatory relief, including reducing paperwork and compliance burdens, improving cost effectiveness and, to the extent possible, vesting greater discretion in State and local agencies, and (2) if necessary, to clarify and simplify requirements governing that program.

This publication in the **Federal Register** does not impose any binding obligation on the Department with regard to any specific item on the agenda. Regulatory action in addition to the items listed is not precluded. Dates of future regulatory action are subject to revision in subsequent agendas.

Dated: October 17, 1988.

Diane Weintein,

Acting General Counsel.

Departmental Management—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
446	U.S. Exchange Visitor Program - Request for Waiver of the Two- year Foreign Residence Requirement	1880-AA29

Departmental Management—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
447	Disposal and Utilization of Surplus Real Property For Educational Purposes	1880-AA27
448	Uniform Administrative Requirements for Grants and Cooperative Agreements	1880-AA34
449	General Education Provisions Act - Enforcement	1880-AA35

ED

Departmental Management—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
450	Debt Collection; Interest on Outstanding Debts	1880-AA03
451	Education Department General Administrative Regulations – Amendments II	1880-AA24
452	Technical Amendments to Program Regulations	1880-AA33

Departmental Management—Completed Actions

Sequence Number	Title	Regulation Identifier Number
453	Debt Collection	1880-AA09
454	Audit Requirements for State and Local Governments	1880-AA26
455	Debarment and Suspension (Nonprocurement)	1880-AA32
456	Family Educational Rights and Privacy Act	1880-AA18
457	Education Department Acquisition Regulation (EDAR)	1880-AA16

Office of Bilingual Education and Minority Languages Affairs—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
458	Bilingual Education: Technical Amendments	1885-AA17
459	Transition Program for Refugee Children	1885-AA10
460	Bilingual Education: State Educational Agency Program	1885-AA18

Office for Civil Rights—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
461	Nondiscrimination on the Basis of Handicap in Federally Assisted Programs - Accessibility Standards	1870-AA00
462	Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving or Benefiting from Federal Financial Assistance	1870-AA05

Office for Civil Rights—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
463	Nondiscrimination on the Basis of Handicap in Federally Conducted Programs	1870-AA06
464	Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance	1870-AA09

Office of Educational Research and Improvement—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
465	Partnerships in Education for Mathematics, Science, and Engineering	1850-AA15
466	Secretary's Fund for Innovation in Education	1850-AA35
467	Fund for the Improvement and Reform of Schools and Teaching	1850-AA33
468	College Library Resources Program	1850-AA21

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Office of Educational Research and Improvement—Proposed Rule Stage—Continued

Sequence Number	Title	Regulation Identifier Number
469	National Diffusion Network	1850-AA19

Office of Educational Research and Improvement—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
470	Dwight D. Eisenhower Mathematics and Science Education Program - National Programs	1850-AA34
471	Territorial Teacher Training Assistance Program	1850-AA10

Office of Educational Research and Improvement—Completed Actions

Sequence Number	Title	Regulation Identifier Number
472	Star Schools Program	1850-AA32
473	Educational Research Grant Program	1850-AA23
474	Regional Educational Laboratories and Research and Development Centers Program: General Provisions; Regional Educational Laboratories; and Research and Development Centers	1850-AA28
475	Library Career Training Program	1850-AA24
476	Strengthening Research Library Resources Program	1850-AA22
477	College Library Technology and Cooperation Grants	1850-AA26
478	National Assessment of Educational Progress	1850-AA31

Office of Elementary and Secondary Education—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
479	Dwight D. Eisenhower Mathematics and Science Education Program	1810-AA40
480	Federal, State, and Local Partnership for Educational Improvement	1810-AA49
481	Assistance for Educationally Deprived Children in Local Educational Agencies	1810-AA50
482	Financial Assistance to State Educational Agencies to Meet Special Educational Needs of Migratory Children	1810-AA46
483	Chapter 1 for Neglected or Delinquent Children	1810-AA45
484	Even Start Migrant Education Program	1810-AA39
485	Even Start Program	1810-AA47
486	Assist. for LEAs in Areas Affected by Fed. Acts. and Arrangements for Ed. of Children Where LEAs Cannot Provide Suitable Free Pub. Ed.--Heavily Impacted Districts; Avg. Daily	1810-AA20
487	Christa McAuliffe Fellowship Program	1810-AA35
488	Women's Educational Equity Act Program	1810-AA16
489	Indian Education Formula Grant Program -- Local Educational Agencies	1810-AA43
490	Indian Education General Provisions and Discretionary Grant Programs - Amendments to Selection Criteria	1810-AA31
491	Indian Fellowship Program	1810-AA44
492	Magnet Schools Assistance Program	1810-AA13

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Office of Elementary and Secondary Education—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
493	Financial Assistance to State Educational Agencies to Improve Interstate and Intrastate Coordination of Activities	1810-AA42
494	Assistance for Local Ed. Agencies in Areas Affected by Federal Activities and Arrangements for Ed. of Children where Local Edu- cation Agencies Cannot Provide Suitable Free Public Education	1810-AA45

Office of Elementary and Secondary Education—Completed Actions

Sequence Number	Title	Regulation Identifier Number
495	Assist. for Local Educational Agencies (LEAs) in Areas Affected by Fed. Activities and Arrangements for Ed. of Children Where LEAs Cannot Provide Suitable Free Public Ed. - Tech. Amendments	1810-AA41
496	Indian Education Act - Formula Grants to LEAs and Tribal Schools Amendments (Certification of Eligibility)	1810-AA28
497	Indian Education: Formula Grants to LEAs and Tribal Schools; Indian-Controlled Schools Enrichment; Indian Fellowship Program (Amendments)	1810-AA26

Office of Planning and Budget and Evaluation—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
498	Protection of Human Subjects in Research	1875-AA07

Office of Postsecondary Education—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
499	Institutional Eligibility Conversion of Clock Hours	1840-AA32
500	Eligibility of Foreign Postsecondary Educational Institutions Under the Guaranteed Student Loan Program	1845-AA06
501	Paul Douglas Teacher Scholarship Program and Guaranteed Student Loan and PLUS Programs--Targeted Teacher Deferments	1840-AA00
502	Direct Individual Foreign Language and Area Studies Fellowship Program	1840-AB27
503	Student Assistance General Provisions - Verification	1845-AB07
504	Student Assistance General Provisions and Institutional Eligibility--Secretary's Accountability Initiatives	1845-AB16
505	Student Assistance General Provisions -- Miscellaneous Amendments (Institutional Eligibility, Refund Requirements	1840-AB19
506	Perkins Loan Program, College Work-Study, and Supplemental Educational Opportunity Grant Programs--(Miscellaneous changes)	1840-AB22
507	Guaranteed Student Loan/PLUS/Supplemental Loans for Students/ Consolidation Loan Programs	1845-AA96
508	Treatment of Territories and Territorial Student Assistance	1840-AA74

Office of Postsecondary Education—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
509	Strengthening Historically Black Colleges and Universities - Strengthening Institutions Programs	1840-AA62
510	Training Program for Special Program Staff and Leadership Personnel	1840-AB01
511	Robert C. Byrd Honors Scholarship Program	1845-AB06
512	Student Assistance General Provisions, Guaranteed Loan/PLUS, and Supplemental Loans for Student's Programs--Default Reduction	1840-AB21
513	Language Resource Centers Program	1840-AA67
514	Summer Intensive Language Institutes	1840-AA68
515	Foreign Periodicals Program	1840-AA69

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Office of Postsecondary Education—Final Rule Stage—Continued

Sequence Number	Title	Regulation Identifier Number
516	Income Contingent Loan Program - Due Diligence	1840-AB04
517	Perkins Loan, College Work-Study, and Supplemental Educational Opportunity Grant Programs -- Treatment of Non-need Based Earnings	1840-AB25

Office of Postsecondary Education—Completed Actions

Sequence Number	Title	Regulation Identifier Number
518	Secretary's Procedures and Criteria for Recognition of Accrediting Agencies	1840-AA57
519	Strengthening Historically Black Colleges and Universities	1840-AB00
520	Drug Prevention Programs in Higher Education	1840-AB11
521	Talent Search Program	1840-AB12
522	Educational Opportunity Centers Program	1840-AB13
523	National Resource Centers Program for Foreign Language and Area Studies or Foreign Language and International Studies	1840-AA65
524	Foreign Language and Area Studies Fellowships Program	1840-AA66
525	Student Assistance General Provisions - Subpart A	1840-AB23
526	Disclosure of Foreign Gifts	1840-AA75

Office of Special Education and Rehabilitative Services—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
527	State Operated or Supported Programs for Handicapped Children	1820-AA82
528	Services for Deaf-Blind Children and Youth Program	1820-AA53
529	Technology - Related Assistance for Individuals with Disabilities	1820-AA84
530	The State Vocational Rehabilitation Services Program - Deregulation	1820-AA47
531	Rehabilitation Services Administration General Deregulation	1820-AA45
532	The State Independent Living Rehabilitation Services Program - Deregulation	1820-AA37
533	Centers for Independent Living - Standards and Evaluation Indicators	1820-AA81
534	Projects with Industry - Compliance Indicators	1820-AA52

Office of Special Education and Rehabilitative Services—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
535	Assistance to States for Education of Handicapped Children	1820-AA71
536	Preschool Grants for Handicapped Children's Program	1820-AA48
537	Early Intervention Program for Infants and Toddlers with Handicaps	1820-AA49
538	Training Personnel for the Education of the Handicapped - Parent Training and Information Centers; Special Projects; and General	1820-AA68
539	Captioned Films Loan Service for the Deaf Program and Educational Media Loan Service for the Handicapped Program	1820-AA51
540	Vocational Rehabilitation Services to Individuals with Severe Handicaps/Special Projects and Demonstrations for Providing Supported Employment Serv. to Individuals with Severe Handicaps	1820-AA76

ED

Office of Special Education and Rehabilitative Services—Completed Actions

Sequence Number	Title	Regulation Identifier Number
541	Handicapped Special Studies Program	1820-AA72
542	Field Initiated Research	1820-AA80
543	National Institute on Disability and Rehabilitation Research-- Research Training and Career Development Program	1820-AA77
544	The State Vocational Rehabilitation Services Program	1820-AA40
545	Miscellaneous Technical Amendments to the Rehabilitation Services Regulations	1820-AA36
546	Independent Living Services for Older Blind Individuals	1820-AA41

Office of Vocational and Adult Education—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
547	State Administered Adult Education Program and Secretary's Discretionary Programs of Adult Education	1830-AA06

Office of Vocational and Adult Education—Completed Actions

Sequence Number	Title	Regulation Identifier Number
548	Vocational Education Programs - Amendments	1830-AA05

Office of Intergovernmental and Interagency Affairs—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
549	Intergovernmental Review of Department of Education Programs and Activities -- List of Programs	1880-XXXX

Office of the General Counsel—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
550	Equal Access to Justice	1801-AA01

Office of the General Counsel—Completed Actions

Sequence Number	Title	Regulation Identifier Number
551	Program Fraud Civil Remedies	1801-AA15
552	Consolidated Appeal Regulation	1801-AA02

DEPARTMENT OF EDUCATION (ED)
Departmental Management (EDMAN)

Prerule Stage

446. U.S. EXCHANGE VISITOR PROGRAM - REQUEST FOR WAIVER OF THE TWO- YEAR FOREIGN RESIDENCE REQUIREMENT

Legal Authority: 8 USC 1182(e); 22 USC 2451

CFR Citation: 34 CFR 050

Legal Deadline: None

Abstract: See Preamble.

Timetable:

Action	Date	FR Cite
Begin Review	11/05/88	
End Review	03/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Stewart Tinsman, Director International and Territorial Affairs Staff, Department of Education, Departmental Management, Intergovernmental and Interagency Affairs, 400 Maryland Ave., SW (Rm. 3023, FOB-6), Washington, DC 20202, 202 732-5438

RIN: 1880-AA29

DEPARTMENT OF EDUCATION (ED)
Departmental Management (EDMAN)

Proposed Rule Stage

447. DISPOSAL AND UTILIZATION OF SURPLUS REAL PROPERTY FOR EDUCATIONAL PURPOSES

Legal Authority: 40 USC 484

CFR Citation: 34 CFR 012

Legal Deadline: None

Abstract: See Preamble.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
Final Action	03/00/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: David B. Hakola, Staff Assistant, Administrator for Management Services, Department of Education, Departmental Management, 400 Maryland Ave., SW (Rm. 1175, FOB-6, Washington, DC 20202, 202 245-8366

RIN: 1880-AA37

448. ◆ UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS

Legal Authority: 20 USC 1221e-3(a)(1)

CFR Citation: 34 CFR 074

Legal Deadline: None

Abstract: These regulations propose government-wide administrative requirements for grants and cooperative agreements to State and local governments, non-profit and commercial organizations, hospitals and institutions of higher education. These regulations are based on OMB Circulars A-102 (Grants and Cooperative Agreements with State and Local Governments) and A-110 (Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations).

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	05/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Mary Hughes, Grants and Contracts Service, Office of Management, Department of Education, Departmental Management, 400 Maryland Ave., SW, Room 3122, ROB-3, Washington, DC, 202 732-7460

RIN: 1880-AA34

449. ◆ GENERAL EDUCATION PROVISIONS ACT - ENFORCEMENT

Legal Authority: PL 100-297

CFR Citation: 34 CFR 081

Legal Deadline: None

Abstract: These regulations will govern the enforcement of legal requirements under most grant programs administered by the Secretary of Education. The regulations will implement amendments to Part E of the General Education Provisions Act enacted in PL 100-297.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Barry W. Stevens, Counsel, Department of Education, Departmental Management, 400 Maryland Ave., SW, Room 4081, Washington, DC, 20202, 202 732-2730

RIN: 1880-AA35

DEPARTMENT OF EDUCATION (ED)
Departmental Management (EDMAN)

Final Rule Stage

450. DEBT COLLECTION; INTEREST ON OUTSTANDING DEBTS

Legal Authority: 20 USC 1221e-3(a)(1); 20 USC 3474(a); 31 USC 3717

CFR Citation: 34 CFR 030

Legal Deadline: None

Abstract: These regulations would establish Departmental policies for assessing interest on outstanding debts and implementing the interest assessment provisions of the Debt Collection Act of 1982.

ED—EDMAN

Final Rule Stage

Timetable:

Action	Date	FR Cite
NPRM	07/11/84	49 FR 28264
NPRM Comment Period End	08/27/84	
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Betty Hepske, Director, Financial Assistance, Department of Education, Departmental Management, 400 Maryland Ave., SW (Rm. 3091, FOB-6), Washington, DC 20202, 202 732-4166

RIN: 1880-AA03

451. EDUCATION DEPARTMENT GENERAL ADMINISTRATIVE REGULATIONS -- AMENDMENTS II

Legal Authority: 20 USC 1221e-3(a)(1)

CFR Citation: 34 CFR 74; 34 CFR 75; 34 CFR 76; 34 CFR 77

Legal Deadline: None

Abstract: See Preamble. The Department is proposing miscellaneous amendments to update and improve the regulations in 34 CFR Parts 74, 75, 76, and 77 of the Education Department General Administrative Regulations (EDGAR).

Timetable:

Action	Date	FR Cite
NPRM	08/16/88	53 FR 31580
Final Action	01/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Mary Hughes, Grants and Contracts Service, Department of Education, Departmental Management, 400 Maryland Ave., SW (Rm. 3122, ROB-3), Washington, DC 20202, 202 732-7460

RIN: 1880-AA24

452. ◆ TECHNICAL AMENDMENTS TO PROGRAM REGULATIONS

Legal Authority: 20 USC 1221e-3(a)(1)

CFR Citation: 34 CFR 080

Legal Deadline: None

Abstract: On March 11, 1988, the Department published in a new 34 CFR Part 80 regulations to implement the General Administrative Provisions in Office of Management and Budget (OMB) revised Circular A-102. These amendments to program regulations specify the extent to which the Part 80 regulations apply to the programs of the Department. Circular A-102 applies to State and local governments. On March 11, the Department also revised its existing General Administrative Provisions in Part 74. Part 74 formerly applied to all grantees. The March 11, amendments restricted the scope of Part 74 so it would no longer apply to State and local governments. These amendments also specify the extent to which Part 74 applies to the programs of the Department.

Timetable:

Action	Date	FR Cite
Final Action	10/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: RIN 1890-AA26 now a part of this document

Agency Contact: Mary Hughes, Grants and Contracts Service, Office of Management, Department of Education, Departmental Management, 400 Maryland Ave., SW, Room 3122, ROB-3, Washington, DC 20202, 202 732-7460

RIN: 1890-AA33

DEPARTMENT OF EDUCATION (ED)
Departmental Management (EDMAN)

Completed Actions

453. DEBT COLLECTION

Significance: Regulatory Program

CFR Citation: 34 CFR 030

Completed:

Reason	Date	FR Cite
Final Action	08/30/88	53 FR 33424

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: James Neilson 202 732-4194

RIN: 1880-AA00

454. AUDIT REQUIREMENTS FOR STATE AND LOCAL GOVERNMENTS

CFR Citation: 34 CFR 074

Completed:

Reason	Date	FR Cite
Withdrawn - now part of RIN 1880-AA33	08/16/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Guido Piacesi 202 245-8271

RIN: 1880-AA26

455. DEBARMENT AND SUSPENSION (NONPROCUREMENT)

CFR Citation: 34 CFR 85

Completed:

Reason	Date	FR Cite
Final Action	05/26/88	53 FR 19161
Final Action Effective	07/11/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

456. FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT

Significance: Regulatory Program

CFR Citation: 34 CFR 099

Completed:

Reason	Date	FR Cite
Final Action	04/11/88	53 FR 11942
Final Action Effective	05/26/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Mary Jane Kane 202 732-7460

RIN: 1880-AA25

ED—EDWAR — Completed Actions

Agency Contact: LeRoy Rooker 202 732-3987

RIN: 1880-AA36

457. EDUCATION DEPARTMENT ACQUISITION REGULATION (EDAR)

CFR Citation: 48 CFR "Chapter 34"

Completed:

Reason	Date	FR Cite
Final Action	05/26/88	53 FR 19116
Final Action Effective	07/19/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Richard Galloway 202 732-3935

RIN: 1880-AA16

DEPARTMENT OF EDUCATION (ED)
Office of Bilingual Education and Minority Languages Affairs (OBEMLA)

Final Rule Stage

458. ◆ BILINGUAL EDUCATION: TECHNICAL AMENDMENTS

Legal Authority: 20 USC 3281 to 3341

CFR Citation: 34 CFR 500; 34 CFR 501; 34 CFR 524; 34 CFR 525; 34 CFR 526; 34 CFR 528; 34 CFR 592; 34 CFR 593; 34 CFR 573; 34 CFR 574

Legal Deadline: None

Abstract: These final regulations would implement certain provisions of the Augustus F. Hawkins - Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, PL 100-297.

Timetable:

Action	Date	FR Cite
Final Action	10/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Mary T. Mahony, Acting Director, Division of National Programs, Department of Education, Office of Bilingual Education and Minority Languages Affairs, 400 Maryland Ave., SW, Room 5624, Switzer Bldg., Washington, DC 20202, 202 732-8758

RIN: 1885-AA17

459. TRANSITION PROGRAMS FOR REFUGEE CHILDREN

Significance: Regulatory Program

Legal Authority: 8 USC 1522(d)

CFR Citation: 34 CFR 538

Legal Deadline: None

Abstract: See Preamble

Timetable:

Action	Date	FR Cite
NPRM	02/26/88	53 FR 5852
Final Action	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Fayetta McAleer, Acting Executive Officer, Department of Education, Office of Bilingual Education and Minority Languages Affairs, 400 Maryland Ave, SW (Rm. 421 Rptrs. Bldg.), Washington, DC 20202, 202 732-8670

RIN: 1885-AA10

460. ◆ BILINGUAL EDUCATION: STATE EDUCATIONAL AGENCY PROGRAM

Legal Authority: 20 USC 3281 to 3341

CFR Citation: 34 CFR 548

Legal Deadline: None

Abstract: These final regulations implement certain provisions of the Augustus F. Hawkins - Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, PL 100-297.

Timetable:

Action	Date	FR Cite
Final Action	11/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Luis A. Calatrava, Bilingual and Minority Languages Affairs, Department of Education, Office of Bilingual Education and Minority Languages Affairs, 400 Maryland Ave., SW, Room 5086, Switzer Bldg., Washington, DC 20202, 202 732-8798

RIN: 1885-AA18

DEPARTMENT OF EDUCATION (ED)
Office for Civil Rights (OCR)

Proposed Rule Stage

461. ◆ NONDISCRIMINATION ON THE BASIS OF HANDICAP IN FEDERALLY ASSISTED PROGRAMS - ACCESSIBILITY STANDARDS

Legal Authority: 29 USC 794; 29 USC 1405

CFR Citation: 34 CFR 104

Legal Deadline: None

Abstract: These proposed amendments would include a cross-reference to the Uniform Federal Accessibility Standards in federally assisted programs or activities.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Terence J. Pell, Deputy Assistant Secretary, for Policy, Department of Education, Office for Civil Rights, 400 Maryland Ave., SW, Room 5050, Switzer Bldg., Washington, DC 20202, 202 732-1635

RIN: 1870-AA09

ED—OCR — Proposed Rule Stage

462. NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL FINANCIAL ASSISTANCE

Legal Authority: 20 USC 1681; 20 USC 1682

CFR Citation: 34 CFR 106

Legal Deadline: None

Abstract: These proposed regulations would amend the fringe benefits provision of the regulations implementing Title IX of the Education Amendments of 1972. The regulations would require employers offering employees a fringe benefit plan to have both equal pay-in and equal pay-out provisions, regardless of the sex of the employee.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Terence J. Pell, Deputy Assistant Secretary, for Policy, Department of Education, Office for Civil Rights, 400 Maryland Ave, SW, Rm 5050, Switzer Bldg., Washington, DC 20202, 202 732-1635

RIN: 1870-AA00

DEPARTMENT OF EDUCATION (ED)
Office for Civil Rights (OCR)

Final Rule Stage

463. NONDISCRIMINATION ON THE BASIS OF HANDICAP IN FEDERALLY CONDUCTED PROGRAMS

Legal Authority: 29 USC 794

CFR Citation: 34 CFR 105

Legal Deadline: None

Abstract: This regulation would specify the applicability of Sec. 504 of the Rehabilitation Act of 1973 to the federally conducted pro- grams of the Department of Education. Sec. 504 prohibits discrimination on the basis of an individual's handicap.

Timetable:

Action	Date	FR Cite
NPRM	04/01/88	53 FR 10808
Final Action	11/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Kathy Hogancamp, Special Advisor, Management, Department of Education, Office for Civil Rights, Department of Education, 400 Md. Ave., SW, Rm. 3021, FOB-6, Washington, D.C. 20202, 202 732-2057

RIN: 1870-AA08

464. NONDISCRIMINATION ON THE BASIS OF AGE IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Legal Authority: 42 USC 6101 et seq

CFR Citation: 34 CFR 110

Legal Deadline: None

Abstract: These agency-specific final regulations would provide appropriate investigative, conciliation, and enforcement procedures consistent with the general Age Discrimination Act regulations issued by DHEW, now the Department of Health and Human Services.

Timetable:

Action	Date	FR Cite
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Terence J. Pell, Deputy Assistant Secretary, for Policy, Department of Education, Office for Civil Rights, 400 Maryland Ave, SW, Room 5050, Switzer Bldg., Washington, DC 20202, 202 732-1635

RIN: 1870-AA05

DEPARTMENT OF EDUCATION (ED)
Office of Educational Research and Improvement (OERI)

Proposed Rule Stage

465. PARTNERSHIPS IN EDUCATION FOR MATHEMATICS, SCIENCE, AND ENGINEERING

Legal Authority: PL 100-297

CFR Citation: Not yet determined

Legal Deadline: None

Abstract: These proposed regulations would implement certain provisions in the Education for Economic Security Act, as amended by PL 100 - 297.

Timetable:

Action	Date	FR Cite
NPRM	03/00/89	
Final Action	07/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: William Wooten, Secretary's Discretionary Fund Staff, Department of Education, Office of Educational Research and Improvement, 400 Maryland Avenue, SW, Room 4132, FOB-6, Washington, DC 20202-5524, 202 732-3266

RIN: 1850-AA15

466. ◆ SECRETARY'S FUND FOR INNOVATION IN EDUCATION

Legal Authority: PL 100-297

CFR Citation: 34 CFR 731; 34 CFR 732; 34 CFR 733; 34 CFR 734

Legal Deadline: None

Abstract: These proposed regulations would implement certain provisions of the Augustus F. Hawkins - Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, PL 100-297.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	12/00/88	

Small Entities Affected: Undetermined

ED—OERI — Proposed Rule Stage

Government Levels Affected:
Undetermined

Agency Contact: William Wooten, Director, Secretary's Discretionary Fund Staff, Department of Education, Office of Educational Research and Improvement, 400 Maryland Ave., SW, Room 4132, Washington, DC 20202-5524, 202 732-3388

RIN: 1850–AA35

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467. ◆ FUND FOR THE IMPROVEMENT AND REFORM OF SCHOOLS AND TEACHING

Legal Authority: PL 100-297

CFR Citation: 34 CFR 757; 34 CFR 758

Legal Deadline: None

Abstract: These proposed regulations would implement certain provisions of the Augustus F. Hawkins - Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, PL 100-297.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected:
Undetermined

Agency Contact: Louise V. Sutherland, Administrative Librarian, Department of Education, Office of Educational Research and Improvement, 555 New Jersey Ave., NW, Rm. 510, Capitol Place Bldg., Washington, DC 20208-5645, 202 357-6134

RIN: 1850–AA33

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468. COLLEGE LIBRARY RESOURCES PROGRAM

Legal Authority: 20 USC 1021 to 1047

CFR Citation: 34 CFR 773

Legal Deadline: None

Abstract: These regulations would implement certain provisions of Title II of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1986 (PL 99-498).

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	02/00/89	

Small Entities Affected: Undetermined

Government Levels Affected:
Undetermined

Agency Contact: Lois Weinberg, Education Program Specialist, Department of Education, Office of Educational Research and Improvement, 555 New Jersey Ave., NW, Rm. 510, Capitol Place Bldg., Washington, DC 20208-5645, 202 357-6134

RIN: 1850–AA33

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469. ◆ NATIONAL DIFFUSION NETWORK

Legal Authority: PL 100-297

CFR Citation: 34 CFR 785; 34 CFR 786; 34 CFR 787

Legal Deadline: None

Abstract: These proposed regulations would implement certain provisions of the Augustus F. Hawkins - Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, PL 100-297.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected:
Undetermined

Agency Contact: Lois Weinberg, Education Program Specialist, Department of Education, Office of Educational Research and Improvement, 555 New Jersey Ave. NW, Room 510, Capitol Place Bldg., Washington,DC 20208-5645, 202 357-6134

RIN: 1850–AA19

DEPARTMENT OF EDUCATION (ED)
Office of Educational Research and Improvement (OERI)

Final Rule Stage

470. ◆ DWIGHT D. EISENHOWER MATHEMATICS AND SCIENCE EDUCATION PROGRAM - NATIONAL PROGRAMS

Legal Authority: PL 100-297

CFR Citation: 34 CFR 755

Legal Deadline: None

Abstract: These regulations would implement certain provisions of the Augustus F. Hawkins - Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, PL 100-297.

Timetable:

Action	Date	FR Cite
Final Action	10/00/88	

Small Entities Affected: Undetermined

Government Levels Affected:
Undetermined

Agency Contact: William Wooten, Director, Secretary's Discretionary Fund Staff, Department of Education, Office of Educational Research and Improvement, 400 Maryland Ave., SW, Room 4132, Washington, DC 20202, 202 732-3388

RIN: 1850–AA34

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471. TERRITORIAL TEACHER TRAINING ASSISTANCE PROGRAM

Legal Authority: PL 100-297

CFR Citation: 34 CFR 790

Legal Deadline: None

Abstract: These regulations amend 34 CFR 790.2 (Eligible Parties) to promote increased participation in the Territorial Teacher Training Program on the part of the institutions of higher education in each respective territory.

Timetable:

Action	Date	FR Cite
NPRM	12/10/87	52 FR 46785
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected:
Undetermined

Agency Contact: Ilmalie Spriggs, Project Officer, Programs for the Improvement of Practice, Department of Education, Office of Educational Research and Improvement, 555 New Jersey Ave., NW, Rm. 502, Capitol Place Bldg., Washington, DC 20208-5644, 202 357-6140

RIN: 1850–AA10

DEPARTMENT OF EDUCATION (ED)
Office of Educational Research and Improvement (OERI)

Completed Actions

472. STAR SCHOOLS PROGRAM

CFR Citation: 34 CFR 005

Completed:

Reason	Date	FR Cite
Withdrawn	08/18/88	

Small Entities Affected: Undetermined

Government Levels Affected:
Undetermined

Agency Contact: Frank Withrow 202 357-6129

RIN: 1850–AA32

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473. EDUCATIONAL RESEARCH GRANT PROGRAM

CFR Citation: 34 CFR 700

Completed:

Reason	Date	FR Cite
Final Action	07/18/88	53 FR 27108
Final Action Effective	08/16/88	

Small Entities Affected: Undetermined

Government Levels Affected:
Undetermined

Agency Contact: Helen O'Leary 202 357-6339

RIN: 1850–AA33

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474. REGIONAL EDUCATIONAL LABORATORIES AND RESEARCH AND DEVELOPMENT CENTERS PROGRAM: GENERAL PROVISIONS; REGIONAL EDUCATIONAL LABORATORIES; AND RESEARCH AND DEVELOPMENT CENTERS

CFR Citation: 34 CFR 706; 34 CFR 707; 34 CFR 708

Completed:

Reason	Date	FR Cite
Final Action	08/10/88	52 FR 30790
Final Action Effective	09/26/88	

Small Entities Affected: Undetermined

Government Levels Affected:
Undetermined

Agency Contact: Helen O'Leary 202 357-6339

RIN: 1850–AA26

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475. LIBRARY CAREER TRAINING PROGRAM

CFR Citation: 34 CFR 770

Completed:

Reason	Date	FR Cite
Final Action	05/20/86	51 FR 18136
Final Action Effective	07/19/86	

Small Entities Affected: Undetermined

Government Levels Affected:
Undetermined

Agency Contact: Louise V. Sutherland 202 357-6315

RIN: 1850–AA24

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476. STRENGTHENING RESEARCH LIBRARY RESOURCES PROGRAM

CFR Citation: 34 CFR 775

Completed:

Reason	Date	FR Cite
Final Action	05/15/88	53 FR 17160
Final Action Effective	06/27/88	

Small Entities Affected: Undetermined

Government Levels Affected:
Undetermined

Agency Contact: Louise V. Sutherland 202 357-6315

RIN: 1850–AA22

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477. COLLEGE LIBRARY TECHNOLOGY AND COOPERATION GRANTS

CFR Citation: 34 CFR 779

Completed:

Reason	Date	FR Cite
Final Action	07/18/88	53 FR 27114
Final Action Effective	09/16/88	

Small Entities Affected: Undetermined

Government Levels Affected:
Undetermined

Agency Contact: Louise V. Sutherland 202 357-6315

RIN: 1850–AA25

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478. NATIONAL ASSESSMENT OF EDUCATIONAL PROGRESS

CFR Citation: 34 CFR 790

Completed:

Reason	Date	FR Cite
Withdrawn	08/18/88	

Small Entities Affected: Undetermined

Government Levels Affected:
Undetermined

Agency Contact: Maureen Treacy 202 357-6724

RIN: 1850–AA21

DEPARTMENT OF EDUCATION (ED)
Office of Elementary and Secondary Education (OESE)

Proposed Rule Stage

479. ◆ DWIGHT D. EISENHOWER MATHEMATICS AND SCIENCE EDUCATION PROGRAM

Legal Authority: 20 USC 2961 to 2993

CFR Citation: 34 CFR 208

Legal Deadline: None

Abstract: These proposed regulations would implement certain provisions of the Augustus F. Hawkins - Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, PL 100-297.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected:
Undetermined

Agency Contact: Allen Schmieder, Math and Science Section, Department of Education, Office of Elementary and Secondary Education, 400 Maryland Ave., SW, Room 2040, Washington, DC 20202-6447, 202 732-4398

RIN: 1810–AA40

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Proposed Rule Stage

480. ◆ FEDERAL, STATE, AND LOCAL PARTNERSHIP FOR EDUCATIONAL IMPROVEMENT

Legal Authority: 20 USC 2911 to 2932; 20 USC 2971 to 2978

CFR Citation: 34 CFR 76; 34 CFR 78; 34 CFR 256

Legal Deadline: None

Abstract: These proposed regulations would implement certain provisions of the Augustus F. Hawkins - Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, PL 100-297.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Zulia Toney, Block Grants Section, Department of Education, Office of Elementary and Secondary Education, 400 Maryland Ave., SW, Room 2040, Washington, DC 20202-6447, 202 732-4136

RIN: 1810-AA40

481. ◆ ASSISTANCE FOR EDUCATIONALLY DEPRIVED CHILDREN IN LOCAL EDUCATIONAL AGENCIES

Legal Authority: 20 USC 2701 et seq

CFR Citation: 34 CFR 75; 34 CFR 76; 34 CFR 78; 34 CFR 200; 34 CFR 204

Legal Deadline: None

Abstract: These proposed regulations would implement certain provisions of the Augustus F. Hawkins - Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, PL 100-297.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Jesse E. Ogata, Chief, Program Policy Branch, Department of Education, Office of Elementary and Secondary Education, 400 Maryland Ave., SW, Room 2013, Washington, DC 20202-6132, 202 732-4701

RIN: 1810-AA30

482. ◆ FINANCIAL ASSISTANCE TO STATE EDUCATIONAL AGENCIES TO MEET SPECIAL EDUCATIONAL NEEDS OF MIGRATORY CHILDREN

Legal Authority: 20 USC 2761; 20 USC 2762

CFR Citation: 34 CFR 201

Legal Deadline: None

Abstract: These proposed regulations would implement certain provisions of the Augustus F. Hawkins - Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, PL 100-297.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Joseph F. Bertoglio, Office of Migrant Education, Department of Education, Office of Elementary and Secondary Education, 400 Maryland Ave., SW, Room 2145, Washington, DC 20202-6135, 202 732-4758

RIN: 1810-AA48

483. ◆ CHAPTER 1 FOR NEGLECTED OR DELINQUENT CHILDREN

Legal Authority: 20 USC 2721(a); 20 USC 2724(b); 20 USC 2728(a),(b),(d); 20 USC 2729(b); 20 USC 2801 to 2804; 20 USC 2811; 20 USC 2812; 20 USC 2824(a),(b); 20 USC 2831(a); 20 USC 2835(a),(d); 20 USC 2838(a),(b),(c); 20 USC 2851; 20 USC 3853; 20 USC 3891

CFR Citation: 34 CFR 203

Legal Deadline: None

Abstract: These proposed regulations would implement certain provisions of the Augustus F. Hawkins - Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, PL 100-297.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Jesse E. Ogata, Chief, Program Policy Branch, Department of Education, Office of Elementary and Secondary Education, 400 Maryland Ave., SW, Room 2013, Washington, DC 20202-6132, 202 732-4701

RIN: 1810-AA46

484. ◆ EVEN START MIGRANT EDUCATION PROGRAM

Legal Authority: 20 USC 2741

CFR Citation: 34 CFR 212

Legal Deadline: None

Abstract: These proposed regulations would implement certain provisions of the Augustus F. Hawkins - Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, PL 100-297.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Joseph F. Bertoglio, Office of Migrant Education, Department of Education, Office of Elementary and Secondary Education, 400 Maryland Ave., SW, Room 2145, Washington, DC 20202-6135, 202 732-4758

RIN: 1810-AA39

485. ◆ EVEN START PROGRAM

Legal Authority: 20 USC 2741 to 2749; 20 USC 2861

CFR Citation: 34 CFR 212

Legal Deadline: None

Abstract: These proposed regulations would implement certain provisions of the Augustus F. Hawkins - Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, PL 100-297.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	12/00/88	

Small Entities Affected: Undetermined

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Government Levels Affected: Undetermined

Agency Contact: Thomas W. Fagan, Compensatory Education Programs, Department of Education, Office of Elementary and Secondary Education, 400 Maryland Ave., SW, Room 2043, Washington, DC 20202-6132, 202 732-4662

RIN: 1810-AA47

486. ASSIST. FOR LEAS IN AREAS AFFECTED BY FED. ACTS. AND ARRANGEMENTS FOR ED. OF CHILDREN WHERE LEAS CANNOT PROVIDE SUITABLE FREE PUB. ED.—HEAVILY IMPACTED DISTRICTS; AVG. DAILY

Legal Authority: 20 USC 236; 20 USC 238; 20 USC 240; 20 USC 242; 20 USC 244

CFR Citation: 34 CFR 222

Legal Deadline: None

Abstract: These proposed regulations would implement section 3(d)(2)(B) of the Impact Aid law, PL 81-874, which authorizes supplemental payments enabling LEAs that are heavily impacted by federally connected children to provide a level of education that is equivalent to that maintained in comparable school districts. These regulations would also establish definitions and procedures for calculating payments for local educational agencies in states that do not collect average daily attendance data. These regulations would also implement certain provisions of the Augustus F. Hawkins - Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, PL 100-297.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	01/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Richard LaPointe, Deputy Assistant Secretary, Regulations, Innovation and Development, Department of Education, Office of Elementary and Secondary Education, 400 Maryland Ave., SW, Room 2181, Washington, DC 20202-6122, 202 732-4112

RIN: 1810-AA15

487. ◆ CHRISTA MCAULIFFE FELLOWSHIP PROGRAM

Legal Authority: 20 USC 1113 to 1113e

CFR Citation: 34 CFR 237

Legal Deadline: None

Abstract: These proposed regulations would establish a minimum and partial amount for which fellowships may be awarded and would also clarify the redistribution method used by the Department if States do not comply with certain requirements.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	01/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Richard LaPointe, Deputy Assistant Secretary, Regulations, Innovation and Development, Department of Education, Office of Elementary and Secondary Education, 400 Maryland Ave., SW, Room 2181, Washington, DC 20202-6122, 202 732-4112

RIN: 1810-AA35

488. ◆ WOMEN'S EDUCATIONAL EQUITY ACT PROGRAM

Legal Authority: 20 USC 3041 to 3047

CFR Citation: 34 CFR 245; 34 CFR 246; 34 CFR 247

Legal Deadline: None

Abstract: See Preamble. These proposed regulations would also implement certain provisions of the Education Amendments of 1984, PL 98-511 and the Augustus F. Hawkins - Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, PL 100-297.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Charles E. Hansen, Acting Director, Division of Impact Aid, Department of Education, Office of Elementary and Secondary Education, 400 Maryland Ave., SW, Room 2079, Washington, DC 20202-6283, 202 732-4658

RIN: 1810-AA30

489. ◆ INDIAN EDUCATION FORMULA GRANT PROGRAM -- LOCAL EDUCATIONAL AGENCIES

Legal Authority: 25 USC 2601 to 2606

CFR Citation: 34 CFR 251

Legal Deadline: None

Abstract: These proposed regulations would implement certain provisions of the Augustus F. Hawkins - Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, PL 100-297.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Alice T. Ford, Women's Educational Equity Act Program, Department of Education, Office of Elementary and Secondary Education, 400 Maryland Ave., SW, Room 2053, Washington, DC 20202-6439, 202 732-4351

RIN: 1810-AA16

490. ◆ INDIAN EDUCATION GENERAL PROVISIONS AND DISCRETIONARY GRANT PROGRAMS – AMENDMENTS TO SELECTION CRITERIA

Legal Authority: 25 USC 2602(c); 25 USC 2621(a),(c); 25 USC 2621(a),(b); 25 USC 2621(d); 25 USC 2622; 25 USC 2631(a),(b)

CFR Citation: 34 CFR 252; 34 CFR 253; 34 CFR 254; 34 CFR 256; 34 CFR 257; 34 CFR 259

Legal Deadline: None

Abstract: These proposed amendments would clarify the criteria that serve as standards for assessing the merit of applications. This change will improve the process for selecting grantees. The weights assigned to the criteria for the Education Personnel Development Programs will be revised to give more emphasis to the need to assure that

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participants will serve Indian children after completing their training.

Timetable:

Action	Date	FR Cite
NPRM	05/05/89	
Final Action Effective	10/01/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Brian Stacey, Acting Director, Indian Education Programs, Department of Education, Office of Elementary and Secondary Education, 400 Maryland Ave., SW, Room 2177, Washington, DC 20202-6138, 202 732-1887

RIN: 1810-AA51

491. ◉ INDIAN FELLOWSHIP PROGRAM

Legal Authority: 20 USC 2823

CFR Citation: 34 CFR 263

Legal Deadline: None

Abstract: These proposed regulations would implement certain provisions of the Augustus F. Hawkins - Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, PL 100-297.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	12/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Dorothea Perkins, Indian Education Programs, Department of Education, Office of Elementary and Secondary Education, 400 Maryland Ave., SW, Room 2164, Washington, DC 20202-6139, 202 732-1986

RIN: 1810-AA44

492. ◉ MAGNET SCHOOLS ASSISTANCE PROGRAM

Legal Authority: 20 USC 3021 to 3032

CFR Citation: 34 CFR 280

Legal Deadline: None

Abstract: These proposed regulations would implement certain provisions of the Augustus F. Hawkins - Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, PL 100-297.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Annie Mack, Magnet Schools Assistance Program, Department of Education, Office of Elementary and Secondary Education, 400 Maryland Ave., SW, Room 2057, Washington, DC 20202-6440, 202 732-4339

RIN: 1810-AA13

DEPARTMENT OF EDUCATION (ED) — Final Rule Stage

Office of Elementary and Secondary Education (OESE)

493. ◉ FINANCIAL ASSISTANCE TO STATE EDUCATIONAL AGENCIES TO IMPROVE INTERSTATE AND INTRASTATE COORDINATION OF ACTIVITIES

Legal Authority: 20 USC 2783

CFR Citation: 34 CFR 205

Legal Deadline: None

Abstract: These final regulations would implement certain provisions of the Augustus F. Hawkins - Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, PL 100-297.

Timetable:

Action	Date	FR Cite
Final Action	10/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Joseph P. Bertoglio, Office of Migrant Education, Department of Education, Office of Elementary and Secondary Education, 400 Maryland Ave., SW, Room 2145, Washington, DC 20202-6135, 202 732-4758

RIN: 1810-AA42

494. ◉ ASSISTANCE FOR LOCAL ED. AGENCIES IN AREAS AFFECTED BY FEDERAL ACTIVITIES AND ARRANGEMENTS FOR ED. OF CHILDREN WHERE LOCAL EDUCATION AGENCIES CANNOT PROVIDE SUITABLE FREE PUBLIC EDUCATION

Legal Authority: 20 USC 236 to 241-1

CFR Citation: 34 CFR 222

Legal Deadline: None

Abstract: These final regulations would implement changes in eligibility and entitlement determinations for local educational agencies that apply for assistance under section 2 of this program.

Timetable:

Action	Date	FR Cite
Final Action	01/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Charles E. Hansen, Acting Director, Division of Impact Aid, Department of Education, Office of Elementary and Secondary Education, 400 Maryland Ave., SW, Room 2079, Washington, DC 20202-6263, 202 732-4855

RIN: 1810-AA45

DEPARTMENT OF EDUCATION (ED) — Completed Actions

Office of Elementary and Secondary Education (OESE)

495. ◉ ASSIST. FOR LOCAL EDUCATIONAL AGENCIES (LEAS) IN AREAS AFFECTED BY FED. ACTIVITIES AND ARRANGEMENTS FOR ED. OF CHILDREN WHERE LEAS CANNOT PROVIDE SUITABLE FREE PUBLIC ED. - TECH. AMENDMENTS

Legal Authority: 20 USC 241-1; 20 USC 646; 20 USC 236 to 244

CFR Citation: 34 CFR 222

Legal Deadline: None

Abstract: These final regulations would implement certain provisions of the Augustus F. Hawkins - Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, PL 100-297.

Timetable:

Action	Date	FR Cite
Final Action	10/04/88	53 FR 39018

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Charles E. Hansen, Acting Director, Division of Impact Aid, Department of Education, Office of Elementary and Secondary Education, 400 Maryland Ave., SW, Room 2079, Washington, DC 20202-6263, 202 732-4855

RIN: 1810-AA41

496. INDIAN EDUCATION ACT - FORMULA GRANTS TO LEAS AND TRIBAL SCHOOLS AMENDMENTS (CERTIFICATION OF ELIGIBILITY)

CFR Citation: 34 CFR 251

Completed:

Reason	Date	FR Cite
Withdrawn	05/05/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Ervin Keith 202 732-1887

RIN: 1810-AA28

497. INDIAN EDUCATION: FORMULA GRANTS TO LEAS AND TRIBAL SCHOOLS; INDIAN-CONTROLLED SCHOOLS ENRICHMENT; INDIAN FELLOWSHIP PROGRAM (AMENDMENTS)

CFR Citation: 34 CFR 251; 34 CFR 253; 34 CFR 263

Completed:

Reason	Date	FR Cite
Withdrawn	05/10/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Ervin Keith 202 732-1887

RIN: 1810-AA36

DEPARTMENT OF EDUCATION (ED) — Proposed Rule Stage

Office of Planning and Budget and Evaluation (OPBE)

498. ◉ PROTECTION OF HUMAN SUBJECTS IN RESEARCH

Legal Authority: 5 USC 301

CFR Citation: 34 CFR 097

Legal Deadline: None

Abstract: These regulations would implement procedures to protect human research subjects and implement a recommendation from the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research. The regulations set forth a common Federal policy for the protection of human subjects accepted by the Office of Science and Technology Policy in the Executive Office of the President.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	03/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Ed Glaseman, Evaluation Systems Expert, Department of Education, Office of Planning and Budget and Evaluation, 400 Maryland Ave., SW, Room 3127, Washington, DC 20202, 202 732-3153

RIN: 1875-AA07

DEPARTMENT OF EDUCATION (ED) — Proposed Rule Stage

Office of Postsecondary Education (OPE)

499. ◉ INSTITUTIONAL ELIGIBILITY CONVERSION OF CLOCK HOURS

Legal Authority: 20 USC 1085; 20 USC 1088; 20 USC 1094(c)(3); 20 USC 1141

CFR Citation: 34 CFR 600

Legal Deadline: None

Abstract: These proposed amendments contain provisions for evaluating the conversion of educational programs from clock hours to credit hours by eligible institutions.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
Final Action	03/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Virginia G. Re, Division of Eligibility And Certification, Department of Education, Office of Postsecondary Education, 400 Maryland Ave., SW, Room 3030, ROB-3, Washington, DC 20202, 202 732-4888

RIN: 1840-AA32

500. ELIGIBILITY OF FOREIGN POSTSECONDARY EDUCATIONAL INSTITUTIONS UNDER THE GUARANTEED STUDENT LOAN PROGRAM

Legal Authority: 20 USC 1071 to 1087-2

CFR Citation: 34 CFR 601

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Legal Deadline: None

Abstract: These regulations would establish procedures and criteria the Secretary would use to determine the eligibility of institutions located outside the United States for participation in student loan programs authorized under Titles IV, Part B of the Higher Education Act of 1965, as amended.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
Final Action	03/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Virginia Re, Division of Eligibility, and Certification, Department of Education, Office of Postsecondary Education, 400 Maryland Avenue, SW, Room 3030 - ROB-3, Washington,DC 20202, 202 732-4866

RIN: 1840-AB20

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501. PAUL DOUGLAS TEACHER SCHOLARSHIP PROGRAM AND GUARANTEED STUDENT LOAN AND PLUS PROGRAMS--TARGETED TEACHER DEFERMENTS

Legal Authority: 20 USC 1111b

CFR Citation: 34 CFR 653; 34 CFR 682

Legal Deadline: None

Abstract: These regulations would implement certain provisions of the Higher Education Act of 1965, as amended by the Higher Education Technical Amendments Act of 1987 (PL 100-50).

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Pamela Moran, Chief, Policy Section, Guaranteed Student Loan Branch, Department of Education, Office of Postsecondary Education, 400 Md. Ave., S.W. (Rm. 4310 - ROB-3), Washington, DC 20202, 202 732-4242

RIN: 1840-AB88

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502. ◆ DIRECT INDIVIDUAL FOREIGN LANGUAGE AND AREA STUDIES FELLOWSHIP PROGRAM

Legal Authority: 20 USC 1121

CFR Citation: 34 CFR 659

Legal Deadline: None

Abstract: These proposed regulations would implement certain provisions of the Higher Education Act of 1965, as Amended by the Higher Education Amendments of 1986 (PL 99-498).

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Joseph P. Belmonte, Acting Deputy Director, Center for International, Department of Education, Office of Postsecondary Education, 400 Maryland Ave., SW, ROB-3 Room 3054, Washington, DC 20202, 202 732-3304

RIN: 1840-AB27

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503. STUDENT ASSISTANCE GENERAL PROVISIONS - VERIFICATION

Legal Authority: 20 USC 1085; 20 USC 1088; 20 USC 1091; 20 USC 1094; 20 USC 1141

CFR Citation: 34 CFR 668

Legal Deadline: None

Abstract: These regulations would implement certain provisions of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1986 (PL 99-498), Tax Reform Act of 1986, and the Compact of Free Association.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	04/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Lorraine Kennedy, Student Verification Branch, Division of Policy and Program Development, Department of Education, Office of Postsecondary Education, 400 Maryland Ave., S.W., (Room 4613 - ROB-3), Washington, DC 20202, 202 245-2724

RIN: 1840-AB07

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504. STUDENT ASSISTANCE GENERAL PROVISIONS AND INSTITUTIONAL ELIGIBILITY--SECRETARY'S ACCOUNTABILITY INITIATIVES

Legal Authority: 20 USC 1085; 20 USC 1088; 20 USC 1091; 20 USC 1092; 20 USC 1094; 20 USC 1141

CFR Citation: 34 CFR 600; 34 CFR 668

Legal Deadline: None

Abstract: These regulations would be designed to help achieve better accountability in the student financial aid programs.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
Final Action	04/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: John DeCloss, Policy Director, Pell Program, Department of Education, Office of Postsecondary Education, 400 Maryland Avenue, SW, Room 4318, ROB-3, Washington, DC 20202, 202 732-4888

RIN: 1840-AB16

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505. STUDENT ASSISTANCE GENERAL PROVISIONS -- MISCELLANEOUS AMENDMENTS SELECTIVE SERVICE, REFUND REQUIREMENTS

Legal Authority: 20 USC 1085; 20 USC 1088; 20 USC 1091; 20 USC 1092; 20 USC 1094; 20 USC 1141

CFR Citation: 34 CFR 668

Legal Deadline: None

Abstract: These regulations would amend the provisions related to selective service requirements and make other miscellaneous changes in the student assistance general provisions.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	
Final Action	04/00/89	

Small Entities Affected: Undetermined

ED—OPE

Proposed Rule Stage

Government Levels Affected: Undetermined

Agency Contact: Fred Sellers, Chief, Policy Section, Pell Grant Program, Department of Education, Office of Postsecondary Education, 400 Maryland Avenue, SW, Room 4318 - ROB-3, Washington, DC 20202, 202 732-4888

RIN: 1840-AB19

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506. PERKINS LOAN PROGRAM, COLLEGE WORK-STUDY, AND SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAMS--(MISCELLANEOUS CHANGES)

Legal Authority: 20 USC 1087aa to 1087hh

CFR Citation: 34 CFR 674; 34 CFR 675; 34 CFR 676

Legal Deadline: None

Abstract: These proposed regulations would further implement provisions of the Higher Education Amendments of 1986. The regulations would also establish procedures that would make the Supplemental Educational Opportunity Grant Program consistent with the Pell Grant program with respect to collection of outstanding overpayments.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
Final Action	04/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Margaret Henry, Chief, Policy Section, Campus & State Grant Branch, Department of Education, Office of Postsecondary Education, 400 Maryland Avenue, SW, Room 4018 - ROB-3, Washington, DC 20202, 202 732-4489

RIN: 1840-AB22

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507. GUARANTEED STUDENT LOAN/PLUS/SUPPLEMENTAL LOANS FOR STUDENTS/ CONSOLIDATION LOAN PROGRAMS

Legal Authority: 20 USC 1071 et seq

CFR Citation: 34 CFR 682

Legal Deadline: None

Abstract: These regulations would implement certain provisions of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1986 (PL 99-498).

Timetable:

Action	Date	FR Cite
NPRM	01/00/89	
Final Action	07/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Pamela Moran, Chief, Policy Section, Guaranteed Student Loan Branch, Department of Education, Office of Postsecondary Education, 400 Maryland Ave., SW, (Rm. 4310 ROB-3), Washington, DC 20202, 202 732-4242

RIN: 1840-AA05

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508. TREATMENT OF TERRITORIES AND TERRITORIAL STUDENT ASSISTANCE

Legal Authority: 20 USC 1144a

CFR Citation: 34 CFR 686

Legal Deadline: None

Abstract: These regulations would implement certain provisions of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1986, (PL 99-498), as amended by PL 100-369.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	
Final Action	03/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Jerry Whitlock, Office of Policy Development, Department of Education, Office of Postsecondary Education, 400 Maryland Ave., SW, (Rm. 4060 ROB-3), Washington, DC 20202, 202 732-4351

RIN: 1840-AA74

DEPARTMENT OF EDUCATION (ED)

Office of Postsecondary Education (OPE)

Final Rule Stage

509. ◆ STRENGTHENING HISTORICALLY BLACK COLLEGES AND UNIVERSITIES - STRENGTHENING INSTITUTIONS PROGRAMS

Legal Authority: PL 100-369

CFR Citation: 34 CFR 608; 34 CFR 625

Legal Deadline: None

Abstract: These regulations implement certain provisions of the Higher Education Act of 1965, as amended by PL 100-369.

Timetable:

Action	Date	FR Cite
Final Action	03/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Richard L. Fairley, Chief, Program Services Branch, Department of Education, Office of Postsecondary Education, 400 Maryland Ave., SW, Room 3006, ROB-3, Washington, DC 20202, 202 732-2582

RIN: 1840-AA62

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510. TRAINING PROGRAM FOR SPECIAL PROGRAM STAFF AND LEADERSHIP PERSONNEL

Legal Authority: PL 99-498

CFR Citation: 34 CFR 642

Legal Deadline: None

Abstract: These regulations would implement certain provisions of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1986 (PL 99-498).

Timetable:

Action	Date	FR Cite
NPRM	06/23/88	53 FR 27324
Final Action	11/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Daniel Davis, Director, Division of Student Services, Department of Education, Office of Postsecondary Education, 400 Maryland

Ave., SW, (Rm. 3012 ROB-3), Washington, DC 20202, 202 732-4622

RIN: 1840-AE01

511. ROBERT C. BYRD HONORS SCHOLARSHIP PROGRAM

Legal Authority: 20 USC 1070d-31 to 1070d-41

CFR Citation: 34 CFR 654

Legal Deadline: None

Abstract: These regulations would implement certain provisions of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1986 (PL 99-498).

Timetable:

Action	Date	FR Cite
NPRM	09/30/88	53 FR 38660
Final Action	03/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Steve Wingard, Chief, State Student Incentive, Grant Program, Department of Education, Office of Postsecondary Education, 400 Md. Ave., (Rm. 4018, ROB-3), Washington, D.C. 20202, 202 732-4597

RIN: 1840-AB08

512. STUDENT ASSISTANCE GENERAL PROVISIONS, GUARANTEED LOAN/PLUS, AND SUPPLEMENTAL LOANS FOR STUDENT'S PROGRAMS--DEFAULT REDUCTION

Significance: Regulatory Program

Legal Authority: 20 USC 1071 to 1087-2

CFR Citation: 34 CFR 668; 34 CFR 682

Legal Deadline: None

Abstract: These regulations would establish procedures to increase institutional responsibilities in the administration of these programs, as well as provide procedures that the Secretary would use to implement the Default Reduction Initiative Program.

Timetable:

Action	Date	FR Cite
NPRM	09/16/88	53 FR 36216
Final Action	05/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Pamela Moran, Chief, Policy Section, Guaranteed Student Loan Branch, Department of Education, Office of Postsecondary Education, 400 Maryland Avenue, SW, Room 4310 - ROB-3, Washington, DC 20202, 202 732-4242

RIN: 1840-AB21

513. LANGUAGE RESOURCE CENTERS PROGRAM

Legal Authority: 20 USC 1123

CFR Citation: 34 CFR 669

Legal Deadline: None

Abstract: These regulations would implement certain provisions of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1986 (PL 99-498).

Timetable:

Action	Date	FR Cite
NPRM	02/02/88	53 FR 2918
Final Action	11/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Joseph Belmonte, Acting Deputy Director, Center for International Education, Department of Education, Office of Postsecondary Education, 400 Maryland Ave., SW, (Rm. 3045 ROB-3), Washington, DC 20202, 202 732-3304

RIN: 1840-AA07

514. SUMMER INTENSIVE LANGUAGE INSTITUTES

Legal Authority: 20 USC 1124a

CFR Citation: 34 CFR 670

Legal Deadline: None

Abstract: These regulations would implement certain provisions of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1986 (PL 99-498).

Timetable:

Action	Date	FR Cite
NPRM	06/13/88	53 FR 22072
Final Action	11/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Joseph Belmonte, Acting Deputy Director, Center for International Education, Department of Education, Office of Postsecondary Education, 400 Maryland Ave., SW, (Rm. 3064 ROB-3), Washington, DC 20202, 202 732-3304

RIN: 1840-AA08

515. FOREIGN PERIODICALS PROGRAM

Legal Authority: 20 USC 1125a

CFR Citation: 34 CFR 671

Legal Deadline: None

Abstract: These regulations would implement certain provisions of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1986 (PL 99-498).

Timetable:

Action	Date	FR Cite
NPRM	12/29/87	52 FR 49122
Final Action	10/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Joseph Belmonte, Acting Deputy Director, Center for International Education, Department of Education, Office of Postsecondary Education, 400 Maryland Ave., SW, (Rm. 3054 ROB-3), Washington, DC 20202, 202 732-3304

RIN: 1840-AA09

516. INCOME CONTINGENT LOAN PROGRAM - DUE DILIGENCE

Legal Authority: 20 USC 1087a to 1087e

CFR Citation: 34 CFR 673

Legal Deadline: None

Abstract: These regulations would implement certain provisions of the Higher Education Act of 1965, as amended by the Higher Education Amendments Act of 1986 (99-498).

Timetable:

Action	Date	FR Cite
NPRM	11/25/87	52 FR 45578
Final Action	11/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Casey McCullough, Division of Policy and Program Development, Department of Education, Office of Postsecondary Education, 400 Md. Ave.,SW, (Rm. 4318, ROB-3), Washington, DC 20202, 202 732-4888

RIN: 1840-AB04

517. ◆ PERKINS LOAN, COLLEGE WORK-STUDY, AND SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAMS -- TREATMENT OF NON-NEED BASED EARNINGS

Legal Authority: 20 USC 1087dd to 1087hh

CFR Citation: 34 CFR 674; 34 CFR 675; 34 CFR 676

Legal Deadline: None

Abstract: These regulations would revise the definition of need-based employment and establish consistency in the treatment of earnings between Part F of the Higher Education Act of 1965 and the campus based programs.

Timetable:

Action	Date	FR Cite
Final Action	10/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Margaret Henry, Chief, Policy Section, Campus and State Grant Branch, Department of Education, Office of Postsecondary Education, 400 Maryland, Ave., SW, Room 4018, ROB-3, Washington, DC 20202, 202 732-4488

RIN: 1840-AB25

DEPARTMENT OF EDUCATION (ED)
Office of Postsecondary Education (OPE)

Completed Actions

518. SECRETARY'S PROCEDURES AND CRITERIA FOR RECOGNITION OF ACCREDITING AGENCIES

Significance: Regulatory Program

CFR Citation: 34 CFR 602; 34 CFR 603

Completed:

Reason	Date	FR Cite
Final Action	07/01/88	53 FR 25088
Final Action Effective	09/16/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: James B. Williams 202 245-9758

RIN: 1840-AA57

519. ◆ STRENGTHENING HISTORICALLY BLACK COLLEGES AND UNIVERSITIES

CFR Citation: 34 CFR 608

Legal Deadline: None

Abstract: These regulations would implement certain provisions of the Higher Education Act of 1965, as amended by PL 100-369.

Timetable:

Action	Date	FR Cite
Withdrawn - now part of RIN 1840-AA62	09/16/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Richard L. Fairley, Chief, Program Services Branch, Department of Education, Office of Postsecondary Education, 400 Maryland Ave., SW, Room 3006, ROB-3, Washington, DC 20202, 202 732-2502

RIN: 1840-AB01

520. DRUG PREVENTION PROGRAMS IN HIGHER EDUCATION

CFR Citation: 34 CFR 612

Completed:

Reason	Date	FR Cite
Final Action	06/30/88	53 FR 24884
Final Action Effective	09/16/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Ronald Bucknam 202 245-8180

RIN: 1840-AB11

521. TALENT SEARCH PROGRAM

CFR Citation: 34 CFR 643

Completed:

Reason	Date	FR Cite
Withdrawn	09/02/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Daniel Davis 202 732-4922

RIN: 1840-AB12

522. EDUCATIONAL OPPORTUNITY CENTERS PROGRAM

CFR Citation: 34 CFR 644

Completed:

Reason	Date	FR Cite
Withdrawn	09/02/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Daniel Davis 202 732-4922

RIN: 1840-AB13

523. NATIONAL RESOURCE CENTERS PROGRAM FOR FOREIGN LANGUAGE AND AREA STUDIES OR FOREIGN LANGUAGE AND INTERNATIONAL STUDIES

CFR Citation: 34 CFR 657

Completed:

Reason	Date	FR Cite
Final Action	05/20/88	53 FR 18228
Final Action Effective	07/15/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Joseph Belmonte 202 732-3304

RIN: 1840-AA63

524. FOREIGN LANGUAGE AND AREA STUDIES FELLOWSHIPS PROGRAM

CFR Citation: 34 CFR 657

ED—OPE

Completed Actions

Completed:

Reason	Date	FR Cite
Final Action	04/01/88	53 FR 10820
Final Action Effective	05/16/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Joseph Belmonte 202 732-3304

RIN: 1840-AA08

525. STUDENT ASSISTANCE GENERAL PROVISIONS - SUBPART A

CFR Citation: 34 CFR 668

Completed:

Reason	Date	FR Cite
Withdrawn	08/02/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Fred Sellers 202 732-4888

RIN: 1840-AB23

526. DISCLOSURE OF FOREIGN GIFTS

CFR Citation: 34 CFR 669

Completed:

Reason	Date	FR Cite
Withdrawn	05/13/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Joan E. Duval 202 245-9783

RIN: 1840-AA75

DEPARTMENT OF EDUCATION (ED)

Office of Special Education and Rehabilitative Services (OSERS)

Proposed Rule Stage

527. ◆ STATE OPERATED OR SUPPORTED PROGRAMS FOR HANDICAPPED CHILDREN

Legal Authority: 20 USC 2791 to 2796

CFR Citation: 34 CFR 302

Legal Deadline: None

Abstract: These proposed regulations would implement certain provisions of the Augustus F. Hawkins - Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, PL 100-297.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	
Final Action	12/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Shirley Jones, Acting Chief, Programs Administration Branch, Department of Education, Office of Special Education and Rehabilitative Services, 400 Maryland Ave., SW, Room 3613, Switzer Bldg., Washington, DC 20202, 202 732-1082

RIN: 1820-AA53

528. SERVICES FOR DEAF-BLIND CHILDREN AND YOUTH PROGRAM

Legal Authority: 20 USC 1422

CFR Citation: 34 CFR 307

Legal Deadline: None

Abstract: These regulations are needed to implement certain provisions of the Education of the Handicapped Act Amendments of 1986, PL 99-457.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	11/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Nancy Safer, Director, Division of Educational Services, Department of Education, Office of Special Education and Rehabilitative Services, Department of Education, 400 Md. Ave., (Rm. 4605 - Switzer Bldg.), Washington, DC 20202, 202 732-1100

RIN: 1820-AA52

529. ◆ TECHNOLOGY - RELATED ASSISTANCE FOR INDIVIDUALS WITH DISABILITIES

Legal Authority: PL 100-407

CFR Citation: 34 CFR 364

Legal Deadline: None

Abstract: These regulations would implement certain provisions of the Technology Related Assistance for Individuals with Disabilities Act of 1988.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	
Final Action	04/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Ann Weinheimer, Director, Planning and Policy Staff, Department of Education, Office of Special Education and Rehabilitative Services Administration, Room 3220, Switzer Building, Washington, DC 20202, 202 732-1297

RIN: 1820-AA81

530. THE STATE VOCATIONAL REHABILITATION SERVICES PROGRAM - DEREGULATION

Legal Authority: 29 USC 701 to 731

CFR Citation: 34 CFR 361

Legal Deadline: None

Abstract: See Preamble

Timetable:

Action	Date	FR Cite
Begin Review	01/26/88	
End Review	05/16/88	
NPRM	11/00/88	
Final Action	01/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Ann Weinheimer, Director, Planning and Policy Staff, Department of Education, Office of Special Education and Rehabilitative Services Administration, Room 3220, Switzer Building, Washington, DC 20202, 202 732-1297

RIN: 1820-AA45

531. REHABILITATION SERVICES ADMINISTRATION GENERAL DEREGULATION

Legal Authority: 20 USC 107 et seq; 29 USC 701 et seq

CFR Citation: 34 CFR 362; 34 CFR 366; 34 CFR 369; 34 CFR 371; 34 CFR 372; 34 CFR 374; 34 CFR 375; 34 CFR 378; 34 CFR 379; 34 CFR 385; 34 CFR 386; 34 CFR 387; 34 CFR 388; 34 CFR 389; 34 CFR 390

Legal Deadline: None

Abstract: See Preamble

Timetable:

Action	Date	FR Cite
NPRM	03/00/89	
Final Action	09/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: ADDITIONAL CFR CITATION: 34 CFR 395.

Agency Contact: Ann Weinheimer, Director, Planning and Policy Staff, Department of Education, Office of Special Education and Rehabilitative Services, Rehabilitation Services Administration, Room 3220, Switzer Building, Washington, DC 20202, 202 732-1297

RIN: 1820-AA47

532. THE STATE INDEPENDENT LIVING REHABILITATION SERVICES PROGRAM - DEREGULATION

Significance: Regulatory Program

ED—OSERS

Proposed Rule Stage

Legal Authority: 29 USC 796 to 796d

CFR Citation: 34 CFR 366

Legal Deadline: None

Abstract: See Preamble

Timetable:

Action	Date	FR Cite
ANPRM	08/27/88	53 FR 24175
NPRM	11/00/88	
Final Action	01/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Susan Daniels, Associate Commissioner, Department of Education, Office of Special Education and Rehabilitative Services, Rehabilitation Services Administration, (Rm. 3034, Switzer Building), Washington, DC 20202, 202 732-1437

RIN: 1820-AA37

533. CENTERS FOR INDEPENDENT LIVING - STANDARDS AND EVALUATION INDICATORS

Legal Authority: 20 USC 796e

CFR Citation: 34 CFR 350

Legal Deadline: None

Abstract: These proposed regulations would implement certain changes to the Rehabilitation Act of 1973 made by the Rehabilitation Act Amendments of 1986.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	
Final Action	03/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Ann Weinheimer, Director, Planning and Policy Staff, Department of Education, Office of Special Education and Rehabilitative Services, 400 Maryland Avenue, SW, Room 3220 - Switzer Bldg., Washington, DC 20202, 202 732-1297

RIN: 1820-AA82

534. PROJECTS WITH INDUSTRY - COMPLIANCE INDICATORS

Legal Authority: 20 USC 795g(j)(1)

CFR Citation: 34 CFR 379

Legal Deadline: None

Abstract: These proposed regulations would implement certain changes to the Rehabilitation Act of 1973 made by the Rehabilitation Act Amendments of 1986.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
Final Action	02/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Ann Weinheimer, Director, Planning and Policy Staff, Department of Education, Office of Special Education and Rehabilitative Services, 400 Maryland Avenue, SW, Room 3220 - Switzer Bldg., Washington, DC 20202, 202 732-1297

RIN: 1820-AA62

DEPARTMENT OF EDUCATION (ED)

Office of Special Education and Rehabilitative Services (OSERS)

Final Rule Stage

515. ASSISTANCE TO STATES FOR EDUCATION OF HANDICAPPED CHILDREN

Legal Authority: 20 USC 1401; 20 USC 1412; 20 USC 1413

CFR Citation: 34 CFR 300

Legal Deadline: None

Abstract: These regulations are needed to implement certain provisions of the Education of the Handicapped Act Amendments of 1986, PL 99-457.

Timetable:

Action	Date	FR Cite
NPRM	03/14/88	53 FR 8390
Final Action	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Jeffrey Champagne, Director, Division of Assistance to States, Department of Education, Office of Special Education and Rehabilitative Services, 400 Md. Ave., SW, (Rm. 3609 - Switzer Bldg), Washington, DC 20202, 202 732-1058

RIN: 1820-AA71

ED—OSERS

Final Rule Stage

536. PRESCHOOL GRANTS FOR HANDICAPPED CHILDREN'S PROGRAM

Legal Authority: 20 USC 1419

CFR Citation: 34 CFR 301

Legal Deadline: None

Abstract: These regulations are needed to implement certain provisions of the Education of the Handicapped Act Amendments of 1986, PL 99-457.

Timetable:

Action	Date	FR Cite
NPRM	11/18/87	52 FR 44346
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Nancy Treusch, Educational Program Specialist, Division of Educational Services, Department of Education, Office of Special Education and Rehabilitative Services, Department of Education, 400 Md. Ave., SW, Switzer Bldg. (Rm. 4615), Washington, DC 20202, 202 732-1087

RIN: 1820-AA46

537. EARLY INTERVENTION PROGRAM FOR INFANTS AND TODDLERS WITH HANDICAPS

Legal Authority: 20 USC 1471 to 1485

CFR Citation: 34 CFR 303

Legal Deadline: None

Abstract: These regulations are needed to implement certain provisions of Education of the Handicapped Act Amendments of 1986, PL 99-457.

Timetable:

Action	Date	FR Cite
NPRM	11/18/87	52 FR 44352
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Thomas B. Irvin, Deputy Director, Division of Program Analysis and Planning, Department of Education, Office of Special Education and Rehabilitative Services, Department of Education, 400 Md. Ave., SW, (Rm. 3092 - Switzer Bldg.), Washington, DC 20202, 202 732-1114

RIN: 1820-AA49

538. TRAINING PERSONNEL FOR THE EDUCATION OF THE HANDICAPPED - PARENT TRAINING AND INFORMATION CENTERS; SPECIAL PROJECTS; AND GENERAL

Legal Authority: 20 USC 1431; 20 USC 1434

CFR Citation: 34 CFR 316; 34 CFR 318

Legal Deadline: None

Abstract: These regulations are needed to clarify certain provisions of the Education of the Handicapped Act Amendments of 1986, PL 99-457.

Timetable:

Action	Date	FR Cite
NPRM	07/11/88	53 FR 26190
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Norman Howe, Acting Division Director, Division of Personnel Preparation, Department of Education, Office of Special Education and Rehabilitative Services, 400 Md. Ave., SW, (Rm. 3072 - Switzer Bldg), Washington, DC 20202, 202 732-1088

RIN: 1820-AA66

539. CAPTIONED FILMS LOAN SERVICE FOR THE DEAF PROGRAM AND EDUCATIONAL MEDIA LOAN SERVICE FOR THE HANDICAPPED PROGRAM

Legal Authority: 20 USC 1451; 20 USC 1452; 20 USC 1454

CFR Citation: 34 CFR 330; 34 CFR 331

Legal Deadline: None

Abstract: See preamble. These regulations are also needed to implement certain provisions the Education of the Handicapped Act Amendments of 1986, PL 99-457.

Timetable:

Action	Date	FR Cite
NPRM	03/15/88	53 FR 8528
Final Action	10/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Nancy Safer, Director, Division of Educational Services, Department of Education, Office of Special Education and Rehabilitative Services, Department of Education, 400 Md. Ave., SW, (Rm. 4606 - Switzer Bldg.), Washington, DC 20202, 202 732-1166

RIN: 1820-AA61

540. VOCATIONAL REHABILITATION SERVICES TO INDIVIDUALS WITH SEVERE HANDICAPS/SPECIAL PROJECTS AND DEMONSTRATIONS FOR PROVIDING SUPPORTED EMPLOYMENT SERV. TO INDIVIDUALS WITH SEVERE HANDICAPS

Legal Authority: 20 USC 777a(a)(1); 20 USC 777a(d)

CFR Citation: 34 CFR 373; 34 CFR 380

Legal Deadline: None

Abstract: These regulations would implement certain changes to Sec. 311 of the Rehabilitation Act of 1973, made by the Rehabilitation Act Amendments of 1986. (PL 99-506)

Timetable:

Action	Date	FR Cite
NPRM	05/03/88	53 FR 15776
Final Action	11/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Ann Weinheimer, Director, Planning and Policy Staff, Department of Education, Office of Special Education and Rehabilitative Services, Department of Education, Room 3220, Switzer Bldg., Washington, DC 20202, 202 732-1299

RIN: 1820-AA76

DEPARTMENT OF EDUCATION (ED)

Office of Special Education and Rehabilitative Services (OSERS)

Completed Actions

541. HANDICAPPED SPECIAL STUDIES PROGRAM

CFR Citation: 34 CFR 327

Completed:

Reason	Date	FR Cite
Final Action	07/12/88	32 FR 26550
Final Action Effective	09/16/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Linda Glidewell 202 732-1099

RIN: 1820-AA72

542. FIELD INITIATED RESEARCH

CFR Citation: 34 CFR 350; 34 CFR 357

Completed:

Reason	Date	FR Cite
Final Action	06/27/88	53 FR 24244
Final Action Effective	08/11/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Betty Jo Berland 202 732-1139

RIN: 1820-AA80

543. NATIONAL INSTITUTE ON DISABILITY AND REHABILITATION RESEARCH-- RESEARCH TRAINING AND CAREER DEVELOPMENT PROGRAM

CFR Citation: 34 CFR 390

Completed:

Reason	Date	FR Cite
Final Action	06/21/88	53 FR 23390
Final Action Effective	08/05/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Betty Jo Berland 202 732-1139

RIN: 1820-AA77

544. THE STATE VOCATIONAL REHABILITATION SERVICES PROGRAM

CFR Citation: 34 CFR 361

Completed:

Reason	Date	FR Cite
Final Action	05/12/88	53 FR 16978
Final Action Effective	08/26/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Mark Shoob 202 732-1406

RIN: 1820-AA40

545. MISCELLANEOUS TECHNICAL AMENDMENTS TO THE REHABILITATION SERVICES REGULATIONS

CFR Citation: 34 CFR 363; 34 CFR 365; 34 CFR 366; 34 CFR 369; 34 CFR 370; 34 CFR 375; 34 CFR 378; 34 CFR 379; 34 CFR 385; 34 CFR 387; 34 CFR 388; 34 CFR 390

Completed:

Reason	Date	FR Cite
Final Action	05/13/88	53 FR 17140
Final Action Effective	08/27/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Ann Weinheimer 202 732-1299

RIN: 1820-AA39

546. INDEPENDENT LIVING SERVICES FOR OLDER BLIND INDIVIDUALS

CFR Citation: 34 CFR 367

Completed:

Reason	Date	FR Cite
Final Action	07/15/88	53 FR 26976
Final Action Effective	09/16/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Ann Weinheimer 202 732-1299

RIN: 1820-AA41

DEPARTMENT OF EDUCATION (ED)

Office of Vocational and Adult Education (OVAE)

Proposed Rule Stage

547. ◆ STATE ADMINISTERED ADULT EDUCATION PROGRAM AND SECRETARY'S DISCRETIONARY PROGRAMS OF ADULT EDUCATION

Legal Authority: 20 USC 12 et seq; 42 USC 11421

CFR Citation: 34 CFR 425; 34 CFR 426; 34 CFR 431; 34 CFR 432; 34 CFR 433; 34 CFR 434; 34 CFR 435; 34 CFR 436; 34 CFR 437; 34 CFR 438; 34 CFR 441

Legal Deadline: None

Abstract: These proposed regulations would implement certain provisions of the Augustus F. Hawkins - Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, PL 100-297, and the Stewart B. McKinney Homeless Assistance Program.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Thomas L. Johns, Director, Policy Staff, Department of Education, Office of Vocational and Adult Education, 400 Maryland Ave., SW, Room 4521, Switzer Bldg., Washington, DC 20202, 202 732-2237

RIN: 1830-AA36

DEPARTMENT OF EDUCATION (ED) — **Completed Actions**
Office of Vocational and Adult Education (OVAE)

548. ◆ VOCATIONAL EDUCATION PROGRAMS - AMENDMENTS

Legal Authority: PL 100-297

CFR Citation: 34 CFR 400; 34 CFR 401

Legal Deadline: None

Abstract: These amendments would implement certain provisions of the Augustus F. Hawkins - Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, PL 100-297.

Timetable:

Action	Date	FR Cite
Final Action	09/12/88	53 FR 35258

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Sharon A. Jones, Chairperson, Vocational Education, Regulations Task Force, Department of Education, Office of Vocational and Adult Education, 400 Maryland Ave., SW, Room 620 - Reporters Bldg., Washington, DC 20202, 202 732-2478

RIN: 1830-AA05

DEPARTMENT OF EDUCATION (ED) — **Proposed Rule Stage**
Office of Intergovernmental and Interagency Affairs (EDSI)

549. INTERGOVERNMENTAL REVIEW OF DEPARTMENT OF EDUCATION PROGRAMS AND ACTIVITIES -- LIST OF PROGRAMS

Legal Authority: EO 12372; 31 USC 6506; 42 USC 3334

CFR Citation: 34 CFR 79

Legal Deadline: None

Abstract: This regulatory action would propose those ED programs to be included and those ED programs to be excluded under EO 12372 and ED's implementing regulations in 34 CFR Part 79. The public will be given an opportunity to comment on the listing.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
Final Action	03/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Leroy Waiser, Executive Director, Federal Interagency Committee on Education, Department of Education, Office of Intergovernmental and Interagency Affairs, Room 503 Rptrs. Bldg., Washington, DC 20202, 202 732-3660

RIN: 1880-AA00

DEPARTMENT OF EDUCATION (ED) — **Proposed Rule Stage**
Office of the General Counsel (EDOGC)

550. EQUAL ACCESS TO JUSTICE

Legal Authority: 5 USC 504

CFR Citation: 34 CFR 21

Legal Deadline: None

Abstract: These regulations would amend the procedures for the award of fees and other expenses to applicants who prevail in adversary adjudications before the Department of Education. The current regulations must be amended to reflect amendments to the Equal Access to Justice Act made by P.L. 99-80.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
Final Action	05/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Jo-Ann Frey, General Attorney, Office of the General Counsel, Department of Education, Office of the General Counsel, 400 Maryland Ave., SW, Room 4122, Washington, DC 20202, 202 732-2000

RIN: 1801-AA01

DEPARTMENT OF EDUCATION (ED) — **Completed Actions**
Office of the General Counsel (EDOGC)

551. PROGRAM FRAUD CIVIL REMEDIES

CFR Citation: 34 CFR 83

Completed:

Reason	Date	FR Cite
Final Action	05/03/88	53 FR 15673
Final Action Effective	06/17/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Sarah L. Kemble 202 732-2730

RIN: 1801-AA01

552. CONSOLIDATED APPEAL REGULATION

CFR Citation: 34 CFR 78

Completed:

Reason	Date	FR Cite
Withdrawn	06/16/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

ED—EDOGC — **Completed Actions**

Agency Contact: Sarah Kemble 202 732-2730

RIN: 1801-AA02

[FR Doc. 88-20861 Filed 10-21-88; 8:45 am]
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Part VII

Department of Energy

Semiannual Regulatory Agenda

DEPARTMENT OF ENERGY (DOE)

DEPARTMENT OF ENERGY

10 CFR Chs. II, III, and X

41 CFR Chs. 9 and 109

48 CFR Ch. 9

Regulatory Agenda

AGENCY: Department of Energy.

ACTION: October 1988 regulatory agenda.

SUMMARY: In furtherance of this Administration's commitment to make government more responsive to the citizens of the United States and to assist in fulfilling the President's mandate to lessen regulatory burdens, the Department of Energy (DOE) is publishing this agenda of regulatory activities that DOE has in progress, as well as proposed rulemakings that DOE foreseeably may issue in the next year. This agenda provides the Administration with an effective tool for monitoring and controlling the promulgation of regulations. It includes (1) all rules expected to be issued as proposed or final rules before October 1989, (2) all rules being reviewed within the Department to determine whether to propose modifications through rulemaking, and (3) all rulemakings and rule reviews for which action has been completed since the April 1988 Regulatory Agenda. In addition, the agenda meets requirements under the Regulatory Flexibility Act for information on any rulemakings which are "likely to have a significant economic impact on a substantial number of small entities." The agenda may not include all routine regulations or those that relate to internal agency management.

FOR FURTHER INFORMATION CONTACT:

General: For further information on the agenda in general, contact: Robert E. Morey, Department of Energy, Room 6B-128, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6507.

Specific: For further information about any particular item on the agenda, contact the individual listed under that item.

SUPPLEMENTARY INFORMATION:

Under Executive Order 12291, 46 FR 13193, February 19, 1981, each covered agency publishes, in April and October of each year, an agenda of all rulemakings in progress or expected to be commenced within the next year, and currently effective rules that are under agency review. The Executive Order authorizes the Office of Management and Budget (OMB) to set forth standards and procedures for the preparation of these agendas. The October 1988 Regulatory Agenda has been prepared in accordance with OMB Bulletin No. 88-15.

There are important reasons for preparing this agenda. It is vital in this Administration's efforts to reduce the burdens of existing and future regulations, to increase agency accountability for regulatory actions, to provide for Presidential oversight of the regulatory process, to minimize duplication and conflict of regulations, and to insure well-reasoned regulations. This Administration has made considerable progress in these efforts.

Executive Order 12291 provides that the regulatory agenda may be incorporated with the "regulatory flexibility agenda" required under the Regulatory Flexibility Act, 5 U.S.C. 602 *et seq.* The regulatory flexibility agenda must contain: (1) A brief description of the subject area and a summary of the nature of any rule which the agency expects to propose or promulgate which is "likely to have a significant economic impact on a substantial number of small entities;" (2) the objectives and legal basis for the issuance of the rule and an approximate schedule for completing action on any rule for which the agency has issued a general notice of proposed rulemaking; and (3) the name and telephone number of an agency official knowledgeable about each rule. The regulatory flexibility agenda required under 5 U.S.C. 602(a) is incorporated in today's notice.

Entries appended to this notice reflect the status of regulatory activities as of approximately August 15, 1988. Regulatory activities have been divided among categories according to their next stage: Prerulemaking action, proposed rule, final rule, or completed action.

Regulations designated as "significant" are those which are also included in the Regulatory Program of the United States Government, prepared pursuant to Executive Order 12498, 50 FR 1036, January 8, 1985. Significant regulations also include those which, while not of Government-wide interest or importance, nevertheless are priorities of the Department.

Each item contains the following information: (1) DOE office or administration (that is, the DOE organizational unit responsible for the regulation); (2) RIN number (that is, the Regulation Identifier Number assigned by OMB/OIRA); (3) title; (4) significance; (5) agency contact (that is, the name, title, address and telephone number of a person who is knowledgeable about the regulation); (6) effects on small businesses and other entities (that is, whether the action is likely to have a significant economic impact on a substantial number of "small entities" as defined by the Regulatory Flexibility Act); (7) CFR citation (that is, the section of the Code of Federal Regulations that will be affected); (8) legal authority (that is, a citation to the section of the United States Code (U.S.C.), Public Law (P.L.) or the Executive Order (E.O.) that authorizes the regulatory action); (9) abstract (that is, a description of the problem the regulation will address, the regulatory approach under consideration, the alternatives being considered for addressing the problem, and the potential costs and benefits of the action); (10) legal deadline (that is, the statutory or judicial deadline, if any); and (11) timetable (that is, the dates, and citations if applicable, for all past stages and at least the next stage of the rulemaking). In addition, each item regarding completed actions (that is, regulations completed or withdrawn and reviews completed since the preceding agenda) states the date, and citation if appropriate.

A draft of this agenda has been transmitted to the Chief Counsel for Advocacy of the Small Business Administration for comment, if any, to fulfill the requirements of 5 U.S.C. 602(b).

DOE's next agenda will be published in April 1989.

Issued in Washington, DC on August 24, 1988.

Eric J. Fygi,

Acting General Counsel.

Conservation and Renewable Energy—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
553	Federal Energy Management & Planning Programs Methodology & Procedures for Life Cycle Costing Analyses	1904-AA08
554	Energy-Efficiency Standards for Refrigerators and Related Products, Small Gas Furnace and Television Sets	1904-AA20
555	Energy Conservation Performance Standards for New Buildings; Subpart B - Voluntary Performance Standards for New Non-Federal Residential Buildings	1904-AA34
556	Energy-Efficiency Test Procedures for Refrigerator-Freezers and Freezers	1904-AA35
557	Energy Conservation Standards for Water Heaters; Technical Amendments	1904-AA36
558	Energy-Efficiency Standards for Dishwashers, Clothes Washers and Clothes Dryers	1904-AA37

Conservation and Renewable Energy—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
559	Energy Conservation Performance Standards for New Buildings; Subpart A - Commercial and Multi-Family High Rise Residential Buildings	1904-AA09
560	Energy Efficiency Test Procedures for Water Heaters	1904-AA12
561	Energy Conservation Performance Standards for New Buildings; Subpart C - Mandatory Performance Standards for New Federal Residential Buildings	1904-AA27
562	State Energy Conservation Program (SECP) -- Use of Oil Overcharge Funds for Building Energy Conservation Measures and Equipment	1904-AA30
563	Regulations Implementing National Appliance Energy Conservation Act; Certification and Enforcement, Waiver of Federal Preemption and Small Manufacturer Exemptions	1904-AA32

Defense Programs—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
564	Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Significant Quantities of Special Nuclear Material	1992-AA11

Departmental and Others—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
565	Part 605 Special Research Grants Program; Proposed Rule	1901-AA07
566	Annotation of Land Records and Documentation of Property Owner Refusals to Participate in the Uranium Mill Tailings Remedial Action Program	1901-AA12
567	Model Federal Policy for Protection of Human Research Subjects	1901-AA13

Departmental and Others—Completed Actions

Sequence Number	Title	Regulation Identifier Number
568	Petitions Requesting Disposal Capacity for Unusual or Unexpected Volumes of Low-Level Radioactive Waste; Submission and Evaluation Requirements	1901-AA15

DOE

Economic Regulatory Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
569	Proposed Rule Establishing New Administrative Procedures with Respect to Short-Term Imports and Exports of Natural Gas	1903-AA07
570	Powerplant and Industrial Fuel Use Act of 1978; Revisions	1903-AA08

Management and Administration—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
571	Proposed Rule on DOE Contractor Drug Free Workplace Policy	1991-AA39
572	Department of Energy Financial Assistance Rules; Merit Review	1991-AA41

Management and Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
573	Department of Energy Acquisition Regulation Revisions; Patent Policy	1991-AA23
574	Department of Energy Property Management Regulation; Official Use of Motor Vehicles	1991-AA28
575	Department of Energy Acquisition Regulation; Miscellaneous Changes on Acquisition of Personal Property	1991-AA32
576	Contracting for Basic and Applied Research	1991-AA42
577	Resolution of Disputes Between Subcontractors and DOE Management and Operating Contractors	1991-AA44

Management and Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
578	Department of Energy Acquisition Regulation; Use of Contract Carriers by Cost Reimbursable Contractors	1991-AA37

Management and Administration—Completed Actions

Sequence Number	Title	Regulation Identifier Number
579	Department of Energy Acquisition Regulation; Management and Operating Contractor Purchasing Systems	1991-AA25
580	Department of Energy Financial Assistance Rules; Restriction of Eligibility	1991-AA35
581	Debarment and Suspension (Nonprocurement)	1991-AA40
582	Department of Energy Acquisition Regulation; Legislative Lobbying	1991-AA45
583	Collection of Claims Owed the United States	1991-AA47
584	Freedom of Information Regulations: Revisions to Fee Schedules and Procedures	1991-AA48

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Office of General Counsel—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
585	Indemnification of Department of Energy Officials and Employees	1990-AA11
586	Production or Disclosure of Material or Information and Provision of Agency Witnesses in Federal and State Proceedings	1990-AA12

Office of General Counsel—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
587	Amendments to Department of Energy Conduct of Employees Regulations	1990-AA00
588	Patent Waiver Regulation	1990-AA02
589	Foreign Gifts and Decorations	1990-AA04
590	Class Patent Waivers	1990-AA07

Office of General Counsel—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
591	Implementation of the Program Fraud Civil Remedies Act of 1986	1990-AA08

Office of General Counsel—Completed Actions

Sequence Number	Title	Regulation Identifier Number
592	Cooperation with the Inspector General	1990-AA06

DEPARTMENT OF ENERGY (DOE)

Proposed Rule Stage

Conservation and Renewable Energy (CE)

553. FEDERAL ENERGY MANAGEMENT & PLANNING PROGRAMS METHODOLOGY & PROCEDURES FOR LIFE CYCLE COSTING ANALYSES

Legal Authority: 42 USC 8255; PL 95-619, Sec 545; PL 99-509, Sec 3301; EO 11912; EO 12003; PL 99-509

CFR Citation: 10 CFR 436

Legal Deadline: None

Abstract: Under the National Energy Conservation Policy Act, DOE has promulgated regulations establishing a methodology for estimating and comparing the life cycle costs of Federal buildings and for determining life cycle cost effectiveness. The Energy Security Act required that the regulations provide for the use of marginal energy costs in the life cycle cost analyses. DOE sought legislative revisions to authorize use of average energy costs rather than marginal costs. Appropriate legislative relief came with the Omnibus Budget Reconciliation Act of 1986. The current rulemaking would update base year prices and energy cost escalation rates based on current average energy cost projections. It would also eliminate the need for Federal Register publication of future annual updates so long as there is no significant change in the method for making average energy cost projections.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: K. Dean DeVine, Federal Energy Management Program, Department of Energy, Conservation and Renewable Energy, 1000 Independence Avenue, SW, Washington, DC 20585, 202 586-8784

RIN: 1904-AA00

554. ENERGY-EFFICIENCY STANDARDS FOR REFRIGERATORS AND RELATED PRODUCTS, SMALL GAS FURNACE AND TELEVISION SETS

Significance: Regulatory Program

Legal Authority: 42 USC 6295

CFR Citation: 10 CFR 430.32

Legal Deadline: Other, Statutory, December 31, 2000.
The NAECA requires DOE determinations to amend Federal appliance standards in a period from 7/1/89 to 1/1/94. The Statute requires completion of a second reanalysis of all then-extant (cont)

Abstract: The National Appliance Energy Conservation Act of 1987 (NAECA) was enacted March 17, 1987. The NAECA extensively amends the Department's statutory authorities and responsibilities regarding energy efficiency standards for major household appliances. The NAECA establishes initial statutory energy-efficiency standard levels for most types of major appliances and generally requires the Department to undergo two subsequent rulemakings, at specified times, to determine whether the extant standard for a covered product should be amended. These products are: refrigerators, refrigerator-freezers, and freezers; room air conditioners; central air conditioners and central air conditioning heat pumps; water heaters; pool heaters; direct heating equipment; furnaces; dishwashers; clothes washers; clothes dryers; and kitchen ranges and ovens. Other appliances, including television sets, may be regulated by the Department essentially as provided for in prior law. This rulemaking will review the statutory standard levels for refrigerators, refrigerator-freezers, and freezers to determine whether those levels need to be (cont)

Timetable:

Action	Date	FR Cite
ANPRM	12/07/87	52 FR 46367
ANPRM Comment Period End	02/05/88	52 FR 46367
NPRM	10/00/88	
NPRM Comment Period End	12/00/88	
Final Action	01/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Local, State

Additional Information: ABSTRACT CONT: amended; for small gas furnaces, will set an initial standard within the statutory range; and will determine whether any standard for television sets is warranted.

LEGAL DEADLINE CONT: standards in a period from 7/1/94 to 12/31/2006. Also statutory deadlines for a proposal on standards for refrigerators and related products (7/1/88) and establishment of the small gas furnace standards level (1/1/89), the earliest NAECA deadline for a final action.

Agency Contact: Michael J. McCabe, Supervisory Engineer, Department of Energy, Conservation and Renewable Energy, 1000 Independence Avenue, SW, Washington, DC 20585, 202 586-9127

RIN: 1904-AA30

555. ENERGY CONSERVATION PERFORMANCE STANDARDS FOR NEW BUILDINGS; SUBPART B - VOLUNTARY PERFORMANCE STANDARDS FOR NEW NON-FEDERAL RESIDENTIAL BUILDINGS

Legal Authority: 42 USC 6831 et seq

CFR Citation: 10 CFR 435

Legal Deadline: Final, Statutory, October 1993.

Abstract: Title III of the Energy Conservation and Production Act, as amended, requires the development and promulgation of energy performance standards for new buildings. In order to comply with this requirement, DOE currently is developing voluntary guidelines for the private sector. Subpart B develops voluntary standards for new non-Federal residential buildings.

Timetable:

Action	Date	FR Cite
NPRM	02/00/89	

Small Entities Affected: None

Government Levels Affected: Local, State

Agency Contact: James A. Smith, Director, Building Systems Division, Department of Energy, Conservation and Renewable Energy, 1000 Independence Avenue, SW, Washington, DC 20585, 202 586-9445

RIN: 1904-AA34

556. ENERGY-EFFICIENCY TEST PROCEDURES FOR REFRIGERATOR-FREEZERS AND FREEZERS

Legal Authority: 42 USC 6293

CFR Citation: 10 CFR 430.22

Legal Deadline: None

Abstract: The regulation will amend existing test procedures for refrigerator-freezers and freezers to alleviate the requirement for waivers for units equipped with variable defrost controls. It will also address refrigerator-freezers equipped with two compressors. The amendments will eliminate the need for the test procedure waivers granted Whirlpool and White Consolidated Industries, Inc., for their variable defrost control refrigerator-freezers.

Timetable:

Action	Date	FR Cite
NPRM	09/26/88	53 FR 37416
NPRM Comment Period End	11/25/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Michael J. McCabe, Supervisory Mechanical Engineer, Department of Energy, Conservation and Renewable Energy, 1000 Independence Avenue, SW, Washington, DC 20585, 202 586-9127

RIN: 1904-AA35

557. ENERGY CONSERVATION STANDARDS FOR WATER HEATERS; TECHNICAL AMENDMENTS

Legal Authority: 42 USC 6292

CFR Citation: 10 CFR 430.32

Legal Deadline: None

Abstract: This action would be a technical amendment, based on water heater test procedure changes in progress (see 1904 - AA12), of the statutory standard for water heaters contained in the National Appliance Energy Conservation Act of 1987 (NAECA) enacted March 17, 1987. This amendment could change the way the standard level is measured, but would not change the level of the minimum energy conservation standard itself. NAECA requires amendment of the applicable standard if the Secretary determines that an amended test procedure will alter the measured efficiency of the standard. This technical amendment of the standard is to be completed concurrently with the rulemaking with respect to the amended test procedure.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
NPRM Comment Period End	01/00/89	
Final Action	09/00/89	
Final Action Effective	09/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Local, State

Agency Contact: Michael J. McCabe, Supervisory Mechanical Engineer, Department of Energy, Conservation and Renewable Energy, 1000 Independence Avenue, SW, Washington, DC 20585, 202 586-9127

RIN: 1904-AA36

558. ENERGY-EFFICIENCY STANDARDS FOR DISHWASHERS, CLOTHES WASHERS AND CLOTHES DRYERS

Significance: Regulatory Program

Legal Authority: 42 USC 6295

CFR Citation: 10 CFR 430.32

Legal Deadline: Other, Statutory.

The NAECA requires DOE determinations on need to amend Federal appliance standards in a period from 7/1/89 to 1/1/94. The statute requires completion of a second reanalysis of all(cont)

Abstract: The National Appliance Energy Conservation Act of 1987 (NAECA) was enacted March 17, 1987. The NAECA extensively amends the Department's statutory authorities and responsibilities regarding energy efficiency standards for major household appliances. The NAECA establishes initial energy-efficiency standard levels for most types of major appliances and generally requires DOE to undergo two subsequent rulemakings, at specified times, to determine whether the extant standard for a covered product should be amended. These products are: refrigerators, refrigerator-freezers, and freezers; room air conditioners; central air conditioners and central air conditioning heat pumps; water heaters; pool heaters; direct heating equipment; furnaces; dishwashers; clothes washers; clothes dryers; and kitchen ranges and ovens. Other appliances, including television sets, may be regulated by the Department essentially as provided for in prior law. This rulemaking will review the statutory standards for dishwashers, clothes washers and clothes dryers to determine whether those levels need to be amended.

Timetable:

Action	Date	FR Cite
ANPRM	05/18/88	53 FR 17712
ANPRM Comment Period End	07/18/88	53 FR 17712
NPRM	01/00/89	
NPRM Comment Period End	03/00/89	
Final Action	01/00/90	

Small Entities Affected: Undetermined

Government Levels Affected: Local, State

Additional Information: LEGAL DEADLINE CONT: then-extant standards in a period from 7/1/94 to 12/31/2006. The NAECA requires a final determination on these three products by 01/01/90.

Agency Contact: Michael J. McCabe, Supervisory Mechanical Engineer, Department of Energy, Conservation and Renewable Energy, 1000 Independence Avenue, SW, Washington, DC 20585, 202 586-9127

RIN: 1904-AA37

DEPARTMENT OF ENERGY (DOE)

Final Rule Stage

Conservation and Renewable Energy (CE)

559. ENERGY CONSERVATION PERFORMANCE STANDARDS FOR NEW BUILDINGS; SUBPART A - COMMERCIAL AND MULTI-FAMILY HIGH RISE RESIDENTIAL BUILDINGS

Legal Authority: 42 USC 6831 et seq

CFR Citation: 10 CFR 435

Legal Deadline: Final, Statutory, October 1993.

Abstract: Title III of the Energy Conservation and Production Act, as amended, requires the development and promulgation of energy performance standards for new buildings. In order to comply with this requirement, DOE currently is developing voluntary standards for the non-Federal sector and mandatory standards for the Federal Government. Subpart A develops standards for both Federal and non-Federal commercial buildings and multi-family high rise buildings.

Timetable:

Action	Date	FR Cite
NPRM	05/06/87	87 FR 5476
NPRM Comment Period End	08/04/87	
Interim Final Rule	04/00/89	
Interim Final Rule Effective Date	05/00/89	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: James A. Smith, Director, Buildings Systems Division, Department of Energy, Conservation and Renewable Energy, 1000 Independence Avenue, SW, Washington, DC 20585, 202 586-9445

RIN: 1904-AA00

560. ENERGY EFFICIENCY TEST PROCEDURES FOR WATER HEATERS

Legal Authority: 42 USC 6293

CFR Citation: 10 CFR 430.22

Legal Deadline: None

Abstract: Final test procedures for 13 types of appliances were established during 1978. The test procedures form the basis of manufacturers' representations on the Federal Trade Commission's EnergyGuide label. In February 1984, DOE proposed to establish test procedures for heat pump water heaters and to eliminate the need for the test procedure waiver granted to A.O. Smith for its water heater with a thermal compensatory dip tube. Based on the comments received pursuant to the February 6, 1984 NPRM, the Department prepared a new NPRM published March 13, 1987. This NPRM proposed a single test procedure to cover gas, oil and electric water heaters

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DOE—CE

Final Rule Stage

as well as heat pump water heaters, and extended the test procedures to cover instantaneous type water heaters. In addition to the A.O. Smith matter, the rulemaking would eliminate the need for the test procedure waivers granted Bock Corp., Ford Products and Lockinvar Corp. for their high mass oil-fired water heaters.

Timetable:

Action	Date	FR Cite
NPRM	02/08/84	49 FR 4670
NPRM Comment Period End	05/21/84	49 FR 4670
NPRM Test Procedure for Water Heaters	03/13/87	49 FR 7972
Final Action	08/00/89	
Final Action Effective	09/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Under a separate rulemaking (RIN: 1904-AA36), the Secretary will determine whether the test procedure amendment alters the measured water heater efficiency and, if so, will establish corrective technical amendments to the energy conservation standard.

Agency Contact: Michael J. McCabe, Supervisory Mechanical Engineer, Department of Energy, Conservation and Renewable Energy, 1000 Independence Avenue, SW, Washington, DC 20585, 202 586-9127

RIN: 1904-AA12

501. ENERGY CONSERVATION PERFORMANCE STANDARDS FOR NEW BUILDINGS; SUBPART C - MANDATORY PERFORMANCE STANDARDS FOR NEW FEDERAL RESIDENTIAL BUILDINGS

Legal Authority: 42 USC 6831 et seq

CFR Citation: 10 CFR 435

Legal Deadline: Final, Statutory, October 1983.

Abstract: Title III of the Energy Conservation and Production Act, as amended, requires the development and promulgation of energy performance standards for new buildings. In order to comply with this requirement, DOE currently is developing voluntary standards for the non-Federal sector and mandatory standards for the Federal Government. Subpart C develops mandatory standards for new Federal residential buildings.

Timetable:

Action	Date	FR Cite
NPRM	08/20/86	51 FR 29754
NPRM Comment Period End	01/16/87	51 FR 222
Interim Final Rule	09/12/88	53 FR 35526
Proposed modification of Interim Final Rule	08/25/91	53 FR 32547
Public comment period end	11/23/88	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: James A. Smith, Director, Building Systems Division, Department of Energy, Conservation and Renewable Energy, 1000 Independence Ave., SW, Washington, DC 20585, 202 586-9445

RIN: 1904-AA27

502. STATE ENERGY CONSERVATION PROGRAM (SECP) -- USE OF OIL OVERCHARGE FUNDS FOR BUILDING ENERGY CONSERVATION MATERIALS AND EQUIPMENT

Legal Authority: 42 USC 6321 to 6327

CFR Citation: 10 CFR 420, (Revision)

Legal Deadline: None

Abstract: This rulemaking will modify the prohibition in the State Energy Conservation Program (SECP) regulations on purchases or installation of equipment and materials for energy conservation building retrofits and weatherization. This prohibition is being relaxed in order to take advantage of the so-called petroleum violation escrow (PVE) funds the State elects to spend through the SECP. The funds will be used to promote the leveraging of funds through financial incentive mechanisms. As with all State SECP activities, actions taken under these amendments would have to be included in an approved program plan.

Timetable:

Action	Date	FR Cite
NPRM	10/22/87	52 FR 39094
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Sambo Mouja, Energy Conservation Program Specialist, Department of Energy, Conservation and Renewable Energy, Energy Management and Extension, Office of State and Local Assistance, Washington, DC 20585, 202 586-2285

RIN: 1904-AA51

503. REGULATIONS IMPLEMENTING NATIONAL APPLIANCE ENERGY CONSERVATION ACT; CERTIFICATION AND ENFORCEMENT, WAIVER OF FEDERAL PREEMPTION AND SMALL MANUFACTURER EXEMPTIONS

Significance: Regulatory Program

Legal Authority: 42 USC 6291 to 6309

CFR Citation: 10 CFR 430.1; 10 CFR 430.2; 10 CFR 430.22; 10 CFR 430.40; 10 CFR 430.50; 10 CFR 430.60; 10 CFR 430.70

Legal Deadline: None

Abstract: The National Appliance Energy Conservation Act of 1987 (NAECA) extensively amended the Department's statutory authorities and responsibilities regarding energy efficiency standards for major household appliances. The NAECA establishes initial statutory energy-efficiency standard levels for most types of major appliances. These products are: refrigerators, refrigerator-freezers, and freezers; room air conditioners; central air conditioners and central air conditioning heat pumps; water heaters; pool heaters; direct heating equipment; furnaces; dishwashers; clothes washers; clothes dryers; and kitchen ranges and ovens. Other appliances, including television sets, may be regulated by the Department essentially as provided for in prior law. Although the standards prescribed by the NAECA generally supersede all State and local standards for these products, the Act allows States to petition for and DOE to grant exemption from Federal preemption and allows small manufacturers to apply for temporary exemption from the standards. This rulemaking will establish procedures for these preemption and exemption provisions, and for certification (cont)

DOE—CE

Final Rule Stage

Timetable:

Action	Date	FR Cite
NPRM	03/04/86	53 FR 7110
NPRM Comment Period End	05/03/88	
Final Action	01/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: State

Additional Information: ABSTRACT CONT: and enforcement aspects of the program.

Agency Contact: Michael J. McCabe, Supervisory Engineer, Department of Energy, Conservation and Renewable Energy, CE-132, 1000 Independence Avenue, SW, Washington, DC 20585, 202 586-9127

RIN: 1904-AA32

DEPARTMENT OF ENERGY (DOE)
Defense Programs (DP)

Proposed Rule Stage

504. CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO CLASSIFIED MATTER OR SIGNIFICANT QUANTITIES OF SPECIAL NUCLEAR MATERIAL

Significance: Agency Priority

Legal Authority: 42 USC 2014aa Atomic Energy Act of 1954, Sec 11aa; 42 USC 2201 Atomic Energy Act of 1954, Sec 161; 10 CFR 710

CFR Citation: 10 CFR 710

Legal Deadline: None

Abstract: The protection of certain of the Department's security interests, with the potential, if misused, of causing unacceptable damage to the national security, requires the implementation of a program designed to assure that individuals occupying positions affording access to certain material, facilities, and programs meet the highest standards of reliability. This action would establish a Q (R) access authorization for individuals applying for or currently holding a position identified as a personnel security assurance program (PSAP) position. The security clearance determination would, through a system of continuous evaluation, identify those individuals whose judgment may be impaired by physical and/or emotional disorders, the use of controlled substances, or the use of alcohol habitually to excess.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Merle Hankwerts, Chief, Assurance and Analysis Br. (DP-344.3), Assurance Program, Department of Energy, Defense Programs, Office of Safeguards & Security, DP-344.3, Washington, DC 20585, 301 353-5871

RIN: 1901-AA11

DEPARTMENT OF ENERGY (DOE)
Departmental and Others (ENDEP)

Proposed Rule Stage

505. PART 605 SPECIAL RESEARCH GRANTS PROGRAM; PROPOSED RULE

Legal Authority: 42 USC 2051; 42 USC 5817; 42 USC 5901; 42 USC 7254; 42 USC 7256; 31 USC 6301 et seq

CFR Citation: 10 CFR 605

Legal Deadline: None

Abstract: This action would revise administrative guidelines in order to clarify and streamline DOE-OER pre- and post-award policies and procedures.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	02/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Robert Zich, Director, Acquisition and Assistance, Management Division (ER-64), Department of Energy, Departmental and Others, (ER64) Office of Energy Research, Washington, DC 20545, 301 353-5544

RIN: 1901-AA07

506. ANNOTATION OF LAND RECORDS AND DOCUMENTATION OF PROPERTY OWNER REFUSALS TO PARTICIPATE IN THE URANIUM MILL TAILINGS REMEDIAL ACTION PROGRAM

Significance: Agency Priority

Legal Authority: 42 USC 7901 Uranium Mill Tailings Radiation Control Act of 1978

CFR Citation: Not yet determined

Legal Deadline: None

Abstract: PL 95-604 assigned the Department of Energy the authority to conduct remedial actions at 24 processing sites and associated vicinity properties. Section 104(d) states that the Department shall issue appropriate rules and regulations concerning annotation of land records where residual radioactive materials were located and when remedial action took place. The Department will begin rulemaking proceedings during FY 1988.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
NPRM Comment Period End	11/00/88	
Interim Final Rule	01/00/89	
Final Action	05/01/89	
Final Action Effective	05/01/89	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Additional Information: The current schedule for Annotation of Land Records activities is as follows: each State is to provide draft procedures to the DOE by October 1, 1988; the Office of General Counsel will publish the Public Notice, that presents the proposed rule, by October 1, 1988; State procedures are to be reviewed and revised by January 1, 1989; and the final

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rule is anticipated to be published by March 1, 1989.

Agency Contact: Sally A. Mann, Dir., Div. of Uranium Mill Tailings Projects, Division, NE-22, Department of Energy, Departmental and Others, Office of Nuclear Energy, Washington, DC 20545, 301 353-6436

RIN: 1901-AA12

567. MODEL FEDERAL POLICY FOR PROTECTION OF HUMAN RESEARCH SUBJECTS

Significance: Agency Priority

Legal Authority: PL 95-622; PL 93-438, Sec 105A

CFR Citation: 10 CFR 745, (Revision)

Legal Deadline: None

Abstract: In response to the First Biennial Report of the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research, DOE along with all other affected Federal departments and agencies following the lead of DHHS will adopt and implement a uniform code of regulations for the protection of human subjects in Federal research projects. This will replace the prior regulations adopted by DOE in 1976 and make DOE requirements uniform with the DHHS policies.

Timetable:

Action	Date	FR Cite
Proposed Model Policy for Protection of Human Subjects	08/03/86	51 FR 106
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Susan L. Rose, Health Scientist, Department of Energy, Departmental and Others, Office of Energy Research, Human Health and Assessments Division(ER-73), Washington, DC 20545, 301 353-4721

RIN: 1901-AA13

DEPARTMENT OF ENERGY (DOE)
Departmental and Others (ENDEP)

Completed Actions

564. PETITIONS REQUESTING DISPOSAL CAPACITY FOR UNUSUAL OR UNEXPECTED VOLUMES OF LOW-LEVEL RADIOACTIVE WASTE; SUBMISSION AND EVALUATION REQUIREMENTS

Significance: Agency Priority

Legal Authority: PL 99-240, Sec 5(c)(5); 42 USC 2021(e)

CFR Citation: 10 CFR 730, (New)

Legal Deadline: None

Abstract: These rules are proposed in order to allow DOE to implement its responsibilities under Section 5(c)(5) of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (PL 99-240) (the Act). This section authorizes DOE to grant to commercial nuclear power reactors allocations of disposal capacity in order to permit the disposal of low-level waste generated by unusual or unexpected activities. The program estimates that up to five petitions each year through 1992 will be prepared by utilities, at an estimated 80 burden-hours per petition. The rules will benefit utilities by ensuring that disposal capacity set aside for unusual or unexpected activities will be disbursed equitably and evenly over the 7-year "interim access period."

Timetable:

Action	Date	FR Cite
NPRM	01/20/88	53 FR 1594
NPRM Comment Period End	03/21/88	53 FR 1594
Final Action	09/23/88	53 FR 36960
Final Action Effective	09/23/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Joseph A. Coleman, Act. Mgr., Low-Level Waste Program, Office of Nuclear Energy, Department of Energy, Departmental and Others, NE-24, Washington, DC 20545, 301 353-4728

RIN: 1901-AA15

DEPARTMENT OF ENERGY (DOE)
Economic Regulatory Administration (ERA)

Proposed Rule Stage

568. PROPOSED RULE ESTABLISHING NEW ADMINISTRATIVE PROCEDURES WITH RESPECT TO SHORT-TERM IMPORTS AND EXPORTS OF NATURAL GAS

Legal Authority: 15 USC 717b; 42 USC 7101 et seq; EO 12009

CFR Citation: 10 CFR 590

Legal Deadline: None

Abstract: The proposed rule would amend the administrative procedure regulations contained in 10 CFR 590, by establishing a new Subpart F to provide alternative, expedited procedures regarding applications to import and export natural gas on a short-term basis. The purpose of the proposed rule is to reduce the regulatory burden on parties wishing to import or export natural gas on a short-term or spot market basis by streamlining our licensing process, thus facilitating the operation of the market.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Constance L. Buckley, Director, Natural Gas Division, Department of Energy, Economic Regulatory Administration, 1000

DOE—ERA — Proposed Rule Stage

Independence Avenue, SW, Washington, DC 20585, 202 586-6662

RIN: 1903-AA07

570. ● POWERPLANT AND INDUSTRIAL FUEL USE ACT OF 1978; REVISIONS

Significance: Agency Priority

Legal Authority: 42 USC 8301 et seq; PL 100-42; 42 USC 7101 et seq; EO 12009

CFR Citation: 10 CFR 500; 10 CFR 501; 10 CFR 503; 10 CFR 504

Legal Deadline: None

Abstract: Legislative changes and economic conditions have made it necessary to modify the regulatory language to comport with Congressional intent of the amended Fuel Use Act. Specifically, all language that relates to industrial facilities will be removed. The fuel price calculations and inflation indices used in the cost test calculations supporting exemptions based on a lack of alternate fuel at a cost that does not substantially exceed the cost of using imported petroleum will be changed. ERA will also insert language that will dramatically decrease the evidence that must be presented to qualify for an FUA exemption when a power plant certifies to the technical and financial feasibility of using an alternate fuel at a future date.

Timetable:

Action	Date	FR Cite
NPRM	11/01/88	
NPRM Comment Period End	12/16/88	
Final Action	06/16/89	

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Anthony J. Como, Director, Coal & Electricity Division, Department of Energy, Economic Regulatory Administration, 1000 Independence Ave., SW, Room GA-093 RG-22, Washington, DC 20585, 202 586-5835

RIN: 1903-AA06

DEPARTMENT OF ENERGY (DOE)
Management and Administration (MA)

Prerule Stage

571. PROPOSED RULE ON DOE CONTRACTOR DRUG FREE WORKPLACE POLICY

Significance: Agency Priority

Legal Authority: 42 USC 2011 et seq Atomic Energy Act

CFR Citation: Not yet determined

Legal Deadline: None

Abstract: Will establish comprehensive drug abuse prevention policy and program at DOE-owned or -leased operations consistent with DOE responsibility to protect public health and safety and national security. Regulation will address drug testing requirements, educational and training programs, drug counseling and rehabilitation, confidentiality and protection of privacy of employees. Costs incurred will affect cost reimbursement type contracts for managing, operating, constructing, and servicing DOE facilities. Benefits will be in establishing reasonable level of consistency among contractor programs and resultant cost to the Government and in reducing risk of unacceptable damage to security environment, health and safety of employees and the public.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Sectors Affected: None

Agency Contact: Juanita E. Smith, Director, Employee Relations, Office of Industrial Relations, Department of Energy, Management and Administration, 1000 Independence Avenue, SW, Washington, DC 20585, 202 586-9033

RIN: 1901-AA30

572. DEPARTMENT OF ENERGY FINANCIAL ASSISTANCE RULES; MERIT REVIEW

Legal Authority: 42 USC 7254; 42 USC 7256; 31 USC 6301 et seq

CFR Citation: 10 CFR 600.3; 10 CFR 600.9; 10 CFR 600.16; 10 CFR 600.103; 10 CFR 600.105

Legal Deadline: None

Abstract: This regulatory revision to the DOE Financial Assistance Rules would establish procedures for the merit review of applications for financial assistance.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: James J. Cavanagh, Director, Business and Financial Policy Division, Department of Energy, Management and Administration, 1000 Independence Avenue, SW, Washington, DC 20585, 202 586-8176

RIN: 1901-AA41

DEPARTMENT OF ENERGY (DOE)
Management and Administration (MA)

Proposed Rule Stage

573. DEPARTMENT OF ENERGY ACQUISITION REGULATION REVISIONS; PATENT POLICY

Legal Authority: 41 USC 401 et seq The Office of Federal Procurement Policy Act; 42 USC 7101 et seq The Department of Energy Organization Act; EO 12352 Procurement Reforms

CFR Citation: 48 CFR 927; 48 CFR 970

Legal Deadline: None

Abstract: The Department of Energy Acquisition Regulation, promulgated March 29, 1984, at 49 FR 11922, supplements and implements the Federal Acquisition Regulation. A more recent Federal Acquisition Circular has been issued to establish a FAR Part 27 concerning Patents. It will be necessary to revise Part 927 of the DEAR to supplement and implement the FAR and to explain how DOE patent policy will differ due to our statutory requirements.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	
NPRM Comment Period End	02/00/89	
Final Action	05/00/89	
Final Action Effective	06/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Robert M. Webb, Procurement Analyst, Department of Energy, Management and Administration, 1000 Independence Ave., SW, Washington, DC 20585, 202 586-8247

RIN: 1991-AA23

574. DEPARTMENT OF ENERGY PROPERTY MANAGEMENT REGULATION; OFFICIAL USE OF MOTOR VEHICLES

Legal Authority: 42 USC 7254

CFR Citation: 41 CFR 109

Legal Deadline: None

Abstract: To update the Property Management Regulations regarding official use of motor vehicles. The rule would also make various other minor upgrading changes.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
NPRM Comment Period End	11/00/88	
Final Action	12/00/88	
Final Action Effective	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Robert Wilson, Supply Management Representative, Department of Energy, Management and Administration, 1000 Independence Ave., SW, Washington, DC 20585, 202 586-8260

RIN: 1991-AA28

575. DEPARTMENT OF ENERGY ACQUISITION REGULATION; MISCELLANEOUS CHANGES ON ACQUISITION OF PERSONAL PROPERTY

Legal Authority: 42 USC 7254

CFR Citation: 48 CFR 906; 48 CFR 970; 48 CFR 907; 48 CFR 944; 48 CFR 945; 48 CFR 951; 48 CFR 952

Legal Deadline: None

Abstract: To provide additional policy guidance on the acquisition of personal property in the areas concerning acquisition plans, Government supply sources, consideration for subcontracts, Government property, and updating solicitation provisions and contract clauses.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
NPRM Comment Period End	11/00/88	
Final Action	12/00/88	
Final Action Effective	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Robert Wilson, Supply Management Representative, Department of Energy, Management and Administration, 1000 Independence Ave., SW, Washington, DC 20585, 202 586-8260

RIN: 1991-AA33

576. CONTRACTING FOR BASIC AND APPLIED RESEARCH

Legal Authority: 42 USC 7254 et seq

CFR Citation: 48 CFR 935

Legal Deadline: None

Abstract: The purpose of this action is to amend the Acquisition Regulations (DEAR) to implement policies and procedures concerning the use of broad agency announcements, a form of competitive solicitation, as allowed by FAR 35.016.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
NPRM Comment Period End	12/00/88	
Final Action	02/00/89	
Final Action Effective	03/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Edward Simpson, Procurement Analyst, Department of Energy, Management and Administration, MA 421, 1000 Independence Avenue, SW, Washington, DC 20585, 202 586-8246

RIN: 1991-AA42

577. RESOLUTION OF DISPUTES BETWEEN SUBCONTRACTORS AND DOE MANAGEMENT AND OPERATING CONTRACTORS

Legal Authority: 42 USC 7254; 40 USC 486(c)

CFR Citation: 48 CFR 970

Legal Deadline: None

Abstract: Establishes a system, by regulation, to allow subcontractors under DOE Management and Operating contracts access to the Energy Board of Contract Appeals in resolution of disputes with the contractor. Also clarifies DOE Contracting Officers lack authority to designate Management and Operating contractors as purchasing agents for DOE absent special authorization.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	
NPRM Comment Period End	02/00/89	
Final Action	05/00/89	
Final Action Effective	06/00/89	

DOE—MA

Proposed Rule Stage

Small Entities Affected: None

Government Levels Affected: None

Additional Information: See also 1991-AA25.

Agency Contact: Robert M. Webb, Procurement Analyst, Department of Energy, Management and Administration, 1000 Independence Avenue, SW, Washington, DC 20585, 202 586-8247

RIN: 1991-AA44

DEPARTMENT OF ENERGY (DOE)
Management and Administration (MA)

Final Rule Stage

578. DEPARTMENT OF ENERGY ACQUISITION REGULATION; USE OF CONTRACT CARRIERS BY COST REIMBURSABLE CONTRACTORS

Legal Authority: PL 95-91

CFR Citation: 48 CFR 952

Legal Deadline: None

Abstract: Amend Procurement Regulations (DEAR) in order to implement GSA Bulletin FPMR A-90 and FPMR Temporary Regulation 30. Use of Government contractor airlines, hotels/motels and car rental agencies by cost reimbursable contractor employees.

Timetable:

Action	Date	FR Cite
NPRM	12/29/86	51 FR 46884
NPRM Comment Period End	01/28/87	51 FR 46884
Final Action Effective	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Public Compliance Cost: Initial Cost: $0; Yearly Recurring Cost: $0

Sectors Affected: None

Additional Information: DOE is awaiting action by the DAR Council and the CAA Council which published a similar proposed rule on 3/24/87. Publication of their final rule for the FAR will override the need for a final rule to be published for the DEAR.

Agency Contact: Rudolph Schuhbauer, Procurement Analyst, Department of Energy, Management and Administration, 1000 Independence Avenue, SW, Washington, DC 20585, 202 586-8175

RIN: 1991-AA37

DEPARTMENT OF ENERGY (DOE)
Management and Administration (MA)

Completed Actions

579. DEPARTMENT OF ENERGY ACQUISITION REGULATION; MANAGEMENT AND OPERATING CONTRACTOR PURCHASING SYSTEMS

Legal Authority: 42 USC 2011 et seq; 42 USC 7154

CFR Citation: 48 CFR 970

Legal Deadline: None

Abstract: This action would update and consolidate in one place virtually all provisions applicable to the subcontracting practices of DOE management and operating contractors. Elsewhere in the Agenda, there is also a rulemaking involving subcontractor access to the Board of Contract Appeals and another issue.

Timetable:

Action	Date	FR Cite
NPRM	06/18/87	
NPRM Comment Period End	10/01/87	
Final Action	06/27/88	53 FR 24224
Final Action Effective	07/27/88	53 FR 24224

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Robert M. Webb, Procurement Analyst, Department of Energy, Management and Administration, 1000 Independence Ave., SW, Washington, DC 20585, 202 586-8247

RIN: 1991-AA25

580. DEPARTMENT OF ENERGY FINANCIAL ASSISTANCE RULES; RESTRICTION OF ELIGIBILITY

Legal Authority: 42 USC 7254; 42 USC 7256; 31 USC 6301 et seq

CFR Citation: 10 CFR 600.6; 10 CFR 600.7; 10 CFR 600.14; 10 CFR 600.106

Legal Deadline: None

Abstract: This regulatory revision of DOE Financial Assistance Rules (FAR) would establish more detailed documentation procedures and clarify the restricted eligibility requirements governing financial assistance awards on a non-competitive basis.

Timetable:

Action	Date	FR Cite
NPRM	09/17/87	52 FR 35111
NPRM Comment Period End	10/19/87	52 FR 35111
Final Action	04/13/88	53 FR 12137
Final Action Effective	05/13/88	53 FR 12137

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Related to 1991-AA21.

Agency Contact: James J. Cavanagh, Dir., Business & Financial Policy Division, Department of Energy, Management and Administration, 1000 Independence Avenue, SW, Washington, DC 20585, 202 586-8178

RIN: 1991-AA35

581. DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Legal Authority: EO 12549

CFR Citation: 10 CFR 1035; 10 CFR 1036

Legal Deadline: None
OMB requests draft agency regulations be submitted by September 29, 1987.

Abstract: This regulation will implement EO 12549 and OMB

Guidelines for nonprocurement debarment and suspension.

Timetable:

Action	Date	FR Cite
NPRM	12/24/87	52 FR 48693
NPRM Comment Period End	02/22/88	
Final Action	06/26/88	53 FR 19171
Final Action Effective	10/01/88	53 FR 19171

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Thomas E. Brown, Procurement Analyst, Department of Energy, Management and Administration, 202 586-8675

RIN: 1901-AA40

582. DEPARTMENT OF ENERGY ACQUISITION REGULATION; LEGISLATIVE LOBBYING

Legal Authority: PL 99-145, Sec 1534; PL 100-180, Sec 3131; PL 100-202, Sec 305(a)

CFR Citation: 48 CFR 970

Legal Deadline: Final, Statutory, March 4, 1988.

Abstract: This action would implement recent statutory amendments to Section 1534(a)(2) of the DOD Authorization Act of 1986, by adding to the DEAR a contract clause applicable to DOE's management and operating contractors, providing that the cost of engaging in legislative liaison activities solely on their own behalf may not be charged to DOE contracts. However, the cost of providing information in response to a request from Congress shall continue to be allowable and reimbursable, as specified in the statutes.

Timetable:

Action	Date	FR Cite
Final Action Effective	01/14/87	53 FR 21646
NPRM	04/04/88	
Final Action	08/03/88	53 FR 21646

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: S. Maumigham, Director, Office of Policy, Procurement and Assistance Management, Department of Energy, Management and Administration, 1000 Independence Avenue, SW, Washington, DC 20585, 202 586-8183

RIN: 1901-AA48

583. COLLECTION OF CLAIMS OWED THE UNITED STATES

Legal Authority: 31 USC 3701 to 3719; PL 97-365

CFR Citation: 10 CFR 1015

Legal Deadline: None

Abstract: This rule establishes the overall regulations under which the Department of Energy will collect claims owed to the United States. These regulations implement the Federal Claims Collection Act (31 USC 3701-3719) as amended by the Debt Collection Act of 1982 (PL 97-365) and incorporate the Federal Claims Collections Standards (4 CFR 101-105) published jointly by the Department of Justice and the General Accounting Office. The preamble to the Federal Claims Collection Standards states that each Federal agency is required to develop its own implementing regulations based on and consistent with these standards. Furthermore, the Debt Collection Act specifies that each agency must prescribe regulations on certain aspects of the debt collection process. We do not consider that there is any alternative to issuance of these regulations that would address this need.

Timetable:

Action	Date	FR Cite
ANPRM	11/09/87	52 FR 43168
ANPRM Comment Period End	12/09/87	52 FR 43168
Final Action	06/29/88	53 FR 24624
Final Action Effective	08/29/88	53 FR 24624

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Helen O. Sherman, Deputy Director, Office of Financial Policy, Department of Energy, Management and Administration, 1000 Independence Avenue, SW, Washington, DC 20585, 202 586-4900

RIN: 1901-AA47

584. FREEDOM OF INFORMATION REGULATIONS; REVISIONS TO FEE SCHEDULES AND PROCEDURES

Legal Authority: PL 99-570, Sec 1803

CFR Citation: 10 CFR 1004

Legal Deadline: None

Abstract: The Freedom of Information Reform Act (FOIRA) of 1986, PL 99-570, requires that each agency promulgate regulations to establish a fee schedule to process requests for information and to establish procedures and guidelines to determine when such fees should be waived or reduced. The DOE fee schedule and procedures conform to the guidelines issued by the Office of Management and Budget (OMB) for agencies to follow in implementing these regulations. The rule revises existing DOE fee schedules and procedures in accordance with the Reform Act and makes other technical and editorial changes to the DOE regulations that implement the FOIA.

Timetable:

Action	Date	FR Cite
NPRM	06/17/87	52 FR 23156
NPRM Comment Period End	07/17/87	52 FR 23156
Final Action	05/03/88	53 FR 15680
Final Action Effective	06/02/88	53 FR 15680

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: John H. Carter, Chief, FOI and Privacy Acts Branch, Department of Energy, Management and Administration, 1000 Independence Avenue, SW, Washington, DC 20585, 202 586-5955

RIN: 1901-AA46

DEPARTMENT OF ENERGY (DOE)
Office of General Counsel (OGC) Prerule Stage

585. ● INDEMNIFICATION OF DEPARTMENT OF ENERGY OFFICIALS AND EMPLOYEES

Legal Authority: 42 USC 7131; 42 USC 7231; 42 USC 7254; 28 CFR 50.15 (a)(7)(iii)

CFR Citation: 10 CFR 1012

Legal Deadline: None

Abstract: The Department of Energy does not have a policy for indemnifying its employees who are sued personally and suffer an adverse judgment as a result of conduct taken within the scope of employment. Lawsuits against Federal employees in their personal capacity can constitute a major impediment to the effective conduct of the public's business, since employees faced with the potential of being held personally liable may be inhibited in discharging their duties. To deal with this problem, the Department proposes to establish a policy permitting, but not requiring, the idemnification of an employee who suffers an adverse verdict, judgment, or other monetary award when the actions giving rise to liability were within the scope of his employment and indemnification is in the interest of the Government. This policy would be modeled on a similar policy already adopted by the Department of Justice for its employees.

Timetable:

Action	Date	FR Cite
ANPRM	10/01/88	
ANPRM Comment Period End	12/01/88	
NPRM	02/01/89	
NPRM Comment Period End	04/01/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Jacob D. Vreeland, Trial Attorney, Department of Energy, Office of General Counsel, GC-22, Washington, DC 20585, 202 586-6700

RIN: 1990-AA11

586. ● PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION AND PROVISION OF AGENCY WITNESSES IN FEDERAL AND STATE PROCEEDINGS

Legal Authority: 42 USC 7254; 5 USC 301; 28 CFR 1621

CFR Citation: 10 CFR 202

Legal Deadline: None

Abstract: The intent of this regulation is to establish an agency-wide procedure for processing and responding to subpoenas or requests for Department of Energy records or testimony by Department of Energy officers and employees. A regulation intended to fulfill this purpose currently exists. However, due to its location in the Code of Federal Regulations and due to anachronisms and ambiguities in its language, its application and the Department of Energy's authority under the regulation are unclear. The existing regulation is also in some respects arguably inconsistent with the corresponding Department of Justice regulations, which makes its application problematic since the Department of Justice is usually responsible for representing the Department of Energy in such matters. The cost of this action is expected to be de minimis and could effect a savings, since revision and recodification of the existing regulation may avoid needless litigation.

Timetable:

Action	Date	FR Cite
ANPRM	10/01/88	
ANPRM Comment Period End	12/01/88	
NPRM	02/01/89	
NPRM Comment Period End	03/01/89	

Small Entities Affected: None

Government Levels Affected: State, Federal

Agency Contact: Robin A. Henderson, Trial Attorney, Department of Energy, Office of General Counsel, 1000 Independence Ave., SW, GC-22, Washington, DC 20585, 202 586-6700

RIN: 1990-AA12

DEPARTMENT OF ENERGY (DOE)
Office of General Counsel (OGC) Proposed Rule Stage

587. AMENDMENTS TO DEPARTMENT OF ENERGY CONDUCT OF EMPLOYEES REGULATIONS

Legal Authority: 18 USC 201 to 209; 42 USC 7211 to 7218; EO 11222

CFR Citation: 10 CFR 1010

Legal Deadline: None

Abstract: The regulations need to be revised to reflect the provisions and requirements of the Ethics in Government Act. In addition, it is anticipated that certain sections of the regulations will be clarified and/or revised to reflect current Office of General Counsel policy and interpretations.

Timetable:

Action	Date	FR Cite
NPRM	12/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Appendix I of the Regulations, regarding employee financial disclosure requirements, was published as a Final Rule in April 1988.

Agency Contact: MaryAnn Shebek, Acting Deputy Assistant General Counsel for General Law, Department of Energy, Office of General Counsel, 1000 Independence Avenue, SW, Washington, DC 20585, 202 586-1522

RIN: 1990-AA10

588. PATENT WAIVER REGULATION

Legal Authority: 42 USC 2182; 42 USC 5908; PL 98-501

CFR Citation: 10 CFR 784; 41 CFR 9-9.109-6

Legal Deadline: None

Abstract: The regulation provides procedures and standards for obtaining a waiver of the Government's rights in inventions made under DOE research and development contracts with entities that are not small businesses or

DOE—OGC — Proposed Rule Stage

nonprofit institutions, and terms and conditions of such waivers. Currently, DOE waiver policy is provided in DOE Procurement Regulations (41 CFR 9-9.109-6). The proposed regulation places DOE patent waiver policy in a separate regulation, and also provides updates, revisions and clarifications to waiver policy as contained in 41 CFR 9-9.109-6.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	
NPRM Comment Period End	02/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Richard E. Constant, Assistant General Counsel for Patents, Department of Energy, Office of General Counsel, 1000 Independence Avenue, SW, Washington, DC 20585, 202 586-2802

RIN: 1990-AA02

589. FOREIGN GIFTS AND DECORATIONS

Legal Authority: 5 USC 7342; 41 CFR 101-49.101-5

CFR Citation: 10 CFR 1009

Legal Deadline: None

Abstract: The regulations need to be amended to reflect the increase in the dollar amount of "minimal value." (Whether a gift is of minimal value is a factor as to whether the regulations apply.) The dollar amount of minimal value is determined by the General Services Administration, by GSA regulation. Accordingly, the DOE regulations will reference the GSA regulation.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: MaryAnn Shebek, Acting Deputy Assistant General Counsel for General Law, Department of Energy, Office of General Counsel, 1000 Independence Avenue, SW, Washington, DC 20585, 202 586-1522

RIN: 1990-AA04

590. CLASS PATENT WAIVERS

Legal Authority: 42 USC 2182; 42 USC 5908

CFR Citation: 10 CFR 715

Legal Deadline: None

Abstract: The proposed regulation would provide for certain class waivers, serving to streamline and simplify procedures for DOE contractors to seek rights in inventions made under DOE research and development contracts.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
NPRM Comment Period End	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Richard Constant, Assistant General Counsel for Patents, Department of Energy, Office of General Counsel, 1000 Independence Avenue, SW, Washington, DC 20585, 202 586-2802

RIN: 1990-AA07

DEPARTMENT OF ENERGY (DOE)
Office of General Counsel (OGC) — Final Rule Stage

591. IMPLEMENTATION OF THE PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

Legal Authority: 31 USC 3801 to 3812

CFR Citation: 10 CFR 1013

Legal Deadline: Final, Statutory, May 1, 1987.

Abstract: These regulations establish administrative procedures for imposing the statutorily authorized civil penalties and assessments against any person who makes, submits, or presents a false, fictitious, or fraudulent claim or written statement to the Department of Energy. No other alternatives are being considered, since these are congressionally mandated regulations.

Timetable:

Action	Date	FR Cite
NPRM	06/01/87	52 FR 20403
NPRM Comment Period End	07/31/87	52 FR 20403
Final Action	10/00/88	
Final Action Effective	10/00/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Jack M. Kress, Deputy General Counsel for Legal Services, Department of Energy, Office of General Counsel, 1000 Independence Ave., SW, Washington, DC 20585, 202 586-5246

RIN: 1990-AA06

DEPARTMENT OF ENERGY (DOE)
Office of General Counsel (OGC) — Completed Actions

592. COOPERATION WITH THE INSPECTOR GENERAL

Legal Authority: 42 USC 7138; 42 USC 7211 to 7218; 42 USC 7254; 42 USC 6392; 42 USC 5816a; 5 USC 301; 5 USC 303(a); 5 USC (app.4) 207(a); 18 USC 201 to 209; EO 11222, as amended by EO 12565

CFR Citation: 10 CFR 1010.217, (New)

Legal Deadline: None

Abstract: This regulation will codify existing Department of Energy policy and clarify the authority provided by existing statutes and Federal case law with respect to the obligations of Department employees to cooperate with the Office of Inspector General in official investigations.

DOE—OGC — Completed Actions

Timetable:

Action	Date	FR Cite
NPRM	10/19/87	52 FR 38770
NPRM Comment Period End	11/18/87	52 FR 38770
Final Action	05/20/88	53 FR 18074
Final Action Effective	06/20/88	53 FR 18074

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Published as a Final Rule in May 1988.

Agency Contact: MaryAnn Shebek, Acting Deputy Assistant General Counsel for General Counsel, Department of Energy, Office of General Counsel, 1000 Independence Avenue, SW, Washington, DC 20585, 202 586-1522

RIN: 1990-AA09

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Part VIII

Department of Health and Human Services

Semiannual Regulatory Agenda

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

20 CFR Ch. III

21 CFR Ch. I

42 CFR Chs. I-V

45 CFR Subtitle A, Chs. II, III, and XIII

Unified Agenda of Regulations

AGENCY: Department of Health and Human Services.

ACTION: Publication of unified agenda of regulations.

SUMMARY: The President's February 17, 1981, Executive Order (12291) and the Regulatory Flexibility Act of 1980 require the Department to publish an agenda of significant regulations being developed and an indication of those regulatory actions that are being analyzed for their effect on small businesses. The Department published its last agenda on April 25, 1988.

FOR FURTHER INFORMATION CONTACT: For further inquiries or comments related to specific regulations listed in the agenda, the public is encouraged to contact the appropriate responsible individual. Questions or comments on the overall agenda should be sent to: W. Keith Lively, Deputy Executive Secretary, Office of the Secretary, Department of Health and Human Services, 200 Independence Avenue, SW., Washington, DC 20201, Telephone: (202) 245-7699.

Aletha E. Owens,

Executive Secretary to the Department.

Office of the Secretary—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
593	Privacy Act Regulation	0991-AA11

Office of the Secretary—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
594	Principles for Determining Costs and Cost Allocation Procedures Applicable to Grants, Contracts, and Other Agreements for Work Performed by Hospitals	0991-AA12
595	Civil Money Penalties and Sanctions for HMOs and Competitive Medical Plans	0991-AA44
596	Prohibition on Use of Physician Incentive Plans	0991-AA45
597	New Civil Money Penalties and Exclusions Authorities Resulting from OBRA 1986 and OBRA 1987	0991-AA46
598	Amendments to OIG Exclusion and CMP Authorities Resulting from PL 100-93	0991-AA47
599	OIG Anti-Kickback Provisions	0991-AA49
600	PRO Rural Practitioners Amendments	0991-AA51
601	Civil Money Penalties and Sanction Authorities Relating to the Medicare Catastrophic Coverage Provisions	0991-AA52
602	Civil Money Penalties for Violations Relating to Medical Supplemental Policies	0991-AA53
603	Civil Money Penalties for Misuse of Departmental Symbols or Emblems	0991-AA54

Office of the Secretary—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
604	Nondiscrimination Requirements (Including on the Basis of Sex or Religion) Applicable to Block Grants and Standard Nondiscrimination Procedures Applicable to Certain Other Programs	0991-AA02
605	Freedom of Information Act Regulation	0991-AA07
606	Equal Opportunity in Employment: Public Broadcasting, Public Radio and Public Telecommunications Entities Receiving Federal Funds from the Corporation for Public Broadcasting	0991-AA22
607	Audits of Non-governmental Grantees	0991-AA28
608	Civil Money Penalties and Exclusions for Assistants at Cataract Surgery	0991-AA37
609	Civil Money Penalties for Failure to Report Medical Malpractice Payments and for Breaching the Confidentiality of Information	0991-AA40

HHS

Office of the Secretary—Completed Actions

Sequence Number	Title	Regulation Identifier Number
610	Enforcement of Nondiscrimination on the Basis of Handicap in the Department of Health and Human Services	0991-AA17
611	Automatic Data Processing Equipment and Services; Conditions for Federal Financial Participation II	0991-AA34
612	Block Grant Programs	0991-AA38
613	Program Fraud Civil Remedies	0991-AA41
614	Targeting of, and Tolerances for, Income and Eligibility Verification System Data	0991-AA42
615	Governmentwide Debarment and Suspension (Nonprocurement)	0991-AA43
616	Program Fraud Civil Remedies	0991-AA50

Departmental Management—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
617	Implementation of the Equal Access to Justice Act in Agency Proceedings	0990-AA02
618	Testimony by Employees and the Production of Documents in Proceedings Where the United States is not a Party	0990-AA03

Office of Human Development Services—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
619	Foster Care, Adoption Assistance, and Child Welfare Services	0980-AA09
620	Runaway and Homeless Youth Program	0980-AA11
621	Head Start Criteria for Selection of New Grantees	0980-AA17
622	Head Start Staff and Program Options Requirements	0980-AA18
623	Head Start Appeals Process	0980-AA20
624	Head Start Performance Standards for Services to Handicapped Children	0980-AA21
625	Head Start Recruitment Selection and Enrollment of Children	0980-AA27
626	Head Start: Limits on Costs of Development and Administration	0980-AA32
627	Head Start Performance Standards for Infants and Toddlers	0980-AA33
628	Adoption and Foster Care Information	0980-AA35
629	Developmental Disabilities Program	0980-AA36
630	Child Abuse and Neglect: technical amendments	0980-AA40

Office of Human Development Services—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
631	Nonrecurring Costs of Adoption	0980-AA24
632	Native Hawaiian Loan Fund Demonstration Project	0980-AA37

Office of Human Development Services—Completed Actions

Sequence Number	Title	Regulation Identifier Number
633	Head Start Personnel Policies	0980-AA19
634	Grants for State and Community Programs on Aging; Grants to Indian Tribes; and Grants to Organizations Serving Older Hawaiians for Supportive and Nutrition Services	0985-AA31

HHS

Social Security Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
635	Old-Age, Survivors, and Disability Insurance Program; Treatment of OASDI Lump Sum and Monthly Payments in the Aid to Families with Dependent Children Program	[illegible]
636	Old-Age, Survivors, and Disability Insurance Program; Revised Medical Criteria for Determination of Disability; Cardiovascular System	0960-AA99
637	Old-Age, Survivors, and Disability Insurance Program; Revised Medical Criteria for Determination of Disability; Respiratory System	0960-AB00
638	Old-Age, Survivors, and Disability Insurance Program; Revised Medical Criteria for Determination of Disability; Musculoskeletal System	0960-AB01
639	Supplemental Security Income Program and Medicaid Assistance; What Is Not Income	0960-AB09
640	Old-Age, Survivors, and Disability Insurance and Supplemental Security Income Programs; Adjustments in SSI Benefits on Account of Retroactive Benefits Under Title II	0960-AB38
641	Supplemental Security Income Program; Limitation on Recoupment Rate in Case of Overpayment	0960-AB40
642	Old-Age, Survivors, and Disability Insurance and Supplemental Security Income Programs; Evaluation Guides for Determining Substantial Gainful Activity (SGA)	0960-AB73
643	OASDI & SSI Programs; Definition of Overpayment and Liability for Repayment of an Overpayment	0960-AB78
644	Supplemental Security Income Program; Treatment of Property Held in Trust or Other Similar Legal Devices When the Property is Available for a Beneficiary's Support and Maintenance	0960-AB72
645	Old-Age, Survivors and Disability Insurance; Black Lung; and Supplemental Security Income Programs; and Organization and Procedures; Application of Circuit Court Law	0960-AB85
646	Supplemental Security Income Program; Exclusions from Income and Resources of Indian Judgement Funds and Per Capita Distributions	0960-AB86
647	Old-Age, Survivors, and Disability Insurance Program; Revised Medical Criteria for Determination of Disability; Mental Disorders-Childhood	0960-AB96
648	Old-Age, Survivors, and Disability Insurance Program; Medical Evaluation Criteria for Acquired Immune Deficiency Syndrome (AIDS)	0960-AC06
649	Old-Age Survivors and Disability Insurance and Supplemental Security Income Programs; The Hearings and Appeals Process and Reopening Determinations and Decisions	0960-AC15
650	Old-Age, Survivors, and Disability Insurance Program; Nonpayment of Benefits to Prisoners, Vocational Rehabilitation Exception	0960-AC16
651	Supplemental Security Income Program; Employment Opportunities for the Disabled	0960-AC22
652	Supplemental Security Income Program; Permanent Residence in the United States Under Color of Law - Additional Category	0960-AC26
653	Supplemental Security Income Program; Payment of Benefits Due Deceased Recipients	0960-AC28
654	Old-Age, Survivors and Disability Insurance Program and Organization and Functions; Records of Earnings	0960-AC30
655	Organization and Procedures, and Old-Age, Survivors, and Disability Insurance Programs; Social Security Number Cards for Aliens	0960-AC34
656	Old-Age Survivors and Disability Insurance and Supplemental Security Income Programs; Past Work Experience and Adjustment to Other Work	0960-AC39
657	Old-Age Survivors and Disability Insurance and Supplemental Security Income Programs; Cancelled Consultative Examinations	0960-AC40
658	Old-Age Survivors and Disability Insurance and Supplemental Security Income Programs; Determining Disability and Blindness; Fee Limitation Policy for Purchase of Laboratory Tests	0960-AC41
659	Supplemental Security Income Program; Proceeds of a Loan, Payment of Pro Rata Share of Household Operating Expenses	0960-AC42
660	Supplemental Security Income Program; Exclusion from Countable Resources of the Value of Promissory Notes in Home Replacement Situations	0960-AC43
661	Old-Age, Survivors, and Disability Insurance Program; Extension of Social Security Coverage to Certain Workers; Medicare Only Coverage of Certain State and Local Government Employees	0960-AC45
662	Old-Age, Survivors, and Disability Insurance Program; Applicability of Government Pension to Certain Federal Employees	0960-AC46
663	Supplemental Security Income Program; Exclusion From Resources of Funds Set Aside for Burial and Burial Spaces	0960-AC48
664	Supplemental Security Income Program; Exemption of Certain Assistance Payments from Retrospective Monthly Accounting	0960-AC49
665	Supplemental Security Income Program; Increase in Emergency Advance Payments	0960-AC50
666	Supplemental Security Income Program; Modification of Interim Assistance Reimbursement Program	0960-AC51
667	Supplemental Security Income Program; Exclusion from Income of Payments Received For and Used to Pay Last Illness and Death	0960-AC52
668	Supplemental Security Income Program; Continuation of Full Benefit Standard for Person in Medicaid Institution	0960-AC55
669	Old-Age, Survivors, and Disability Insurance Program; Social Security Numbers for Newborn Children	0960-AC56
670	Old-Age, Survivors, and Disability Insurance Program; Revision of Contributions for Support Rules	0960-AC57
671	Old-Age, Survivors, and Disability Insurance Program; Supplemental Earnings Reports	0960-AC58

HHS

Social Security Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
672	Supplemental Security Income Program; Reductions, Suspensions and Terminations	0960-AA22
673	Supplemental Security Income Program; Reopening and Revising Supplemental Security Income Determinations and Decisions Within Four Years of the Notice of the Initial Determination	0960-AA59
674	Old-Age, Survivors, and Disability Insurance Program; Coverage of Certain Federal Employees; Coverage of Earnings of Federal Judges	[illegible]
675	Old-Age, Survivors, and Disability Insurance and Supplemental Security Income Program; Continued Payment of Benefits to Persons in Vocational Rehabilitation Programs	0960-AB05
676	Old Age Survivors Disability Insurance and Supplemental Security Income Programs; Standards for Consultative Examinations; Existing Medical Evidence	0960-AB22
677	Supplemental Security Income Program; How We Count Unearned Income--Funds Used to Pay Indebtedness	0960-AB29
678	Old Age Survivors Disability Insurance and Supplemental Security Income Programs; Determinations of Disability-Compliance, and Other Changes	0960-AB26
679	Old Age Survivors Disability Insurance and Supplemental Security Income Programs; Payment of Costs of Rehabilitation Services	0960-AB37
680	Old Age, Survivors, Disability Insurance and Supplemental Security Income Programs; Determining Disability and Blindness; Multiple Impairments	0960-AB39
681	Old-Age, Survivors, Disability Insurance and Supplemental Security Income Programs: Evaluation of Symptoms, Including Pain	0960-AB41
682	Old-Age, Survivors, and Disability Insurance Program; Reduction Because of Entitlement to Other Benefits	0960-AB97
683	Old-Age, Survivors, and Disability Insurance and Supplemental Security Income Programs; Decisions by Administrative Law Judges in Cases Remanded by Courts	0960-AC07
684	Supplemental Security Income Program: Federal Administration of Optional State Supplementation	0960-AC13
685	Old-Age, Survivors, and Disability Insurance Program; Wages-- Deferred Compensation	0960-AC27
686	Old-Age, Survivors, and Disability Insurance and Supplemental Security Income Programs; Consideration of Vocational Factors	0960-AC31
687	Organization and Procedures, and OASDI Programs; Evidence Required for Original or Duplicate Social Security Number Card	0960-AC32
688	Old-Age, Survivors, and Disability Insurance Program; Addition of Down Syndrome to the Listing of Impairments	0960-AC35
689	Supplemental Security Income Program; Exclusion of Real Property When It Cannot Be Sold; and Transfer of Assets for Less Than Fair Market Value	0960-AC47
690	Supplemental Security Income Program; Public Emergency Shelters for the Homeless, Exclusion of Underpayments, Increase in Personal Needs Allowance	0960-AC54

Social Security Administration—Completed Actions

Sequence Number	Title	Regulation Identifier Number
691	Old-Age, Survivors, and Disability Insurance Program; Coverage of Employees of State and Local Governments	0960-AA13
692	Old-Age, Survivors, and Disability Insurance Program; Provision for Inferring a Person Is Dead	0960-AA54
693	Supplemental Security Income Programs; Assignment of Rights to Third-Party Medical Payments to State	0960-AB28
694	Old-Age, Survivors, and Disability Insurance and Supplemental Security Income Programs; Continued Payment of Benefits During Appeal	0960-AB30
695	Supplemental Security Income Program; Treatment of Overpayments When Recipient's Countable Assets Exceed Limits in Certain Cases	0960-AB32
696	Old-Age, Survivors, and Disability Insurance Program; Determining Disability and Blindness, Medical-Vocational Guidelines, Illiteracy and Inability to Communicate in English	0960-AB94
697	Supplemental Security Income Program; Spousal Deeming Computation Involving State Supplementation	0960-AB95
698	Supplemental Security Income Program; Prohibition on Direct Payment of Fees to Representatives	0960-AC08
699	Supplemental Security Income Program; Define Out of Resources for One Month Certain Cash Payments for Medical/Social Services	0960-AC11
700	Old-Age, Survivors, and Disability Insurance and Supplemental Security Income Programs; Against Equity and Good Conscience: Defined	0960-AC33
701	Old-Age, Survivors, and Disability Insurance Program; Extension of Expiration Date for Mental Disorders Listings	0960-AC44
702	Supplemental Security Income Program; Exclusion of Certain Support and Maintenance Assistance Based on Need	0960-AC53

HHS

Public Health Service—Centers for Disease Control (CDC)—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
703	Subchapter J - National Vaccine Program, Part 110 Information and Education, Subpart A - Vaccine Information Materials	0905-AC83
704	Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities	0905-AC84

Public Health Service—Centers for Disease Control (CDC)—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
705	NIOSH Revision of Tests and Requirements of Certification of Permissibility of Respiratory Protective Devices Used in Mines and Mining	0905-AB58

Public Health Service—Centers for Disease Control (CDC)—Completed Actions

Sequence Number	Title	Regulation Identifier Number
706	Project Grants for Health Programs for Refugees	0905-AB43

Public Health Service—Food and Drug Administration (FDA)—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
707	Drug Exports	0905-AC44
708	Computer Products; Policy Guidance	0905-AC72

Public Health Service—Food and Drug Administration (FDA)—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
709	Current Good Manufacturing Practice for Finished Pharmaceuticals; Retrospective Review	0905-AA73
710	Current Good Manufacturing Practice (CGMP) for Blood and Blood Components; Retrospective Review	0905-AA75
711	New Animal Drug Approval Process	0905-AA96
712	Policies Concerning Uses of Sulfiting Agents	0905-AB52
713	Requirements for Adverse Experience Reporting for Licensed Biological Products	0905-AB53
714	Proposed Rule to Implement the Orphan Drug Amendments to the Federal Food, Drug, and Cosmetic Act	0905-AB55
715	Implementation of Title I of the "Drug Price Competition and Patent Term Restoration Act of 1984" (Title I)	0905-AB63
716	Abbreviated New Animal Drug Applications for Post-1962 Animal Drugs	0905-AB72
717	Protection of Human Subjects; Informed Consent; Standards for Institutional Review Boards for Clinical Investigations	0905-AC32
718	Menstrual Tampons; Proposed User Labeling	0905-AC54
719	Action Levels for Added Poisonous or Deleterious Substances in Food (including Animal Feed)	0905-AC73
720	Prescription Drug Marketing Act of 1987; Implementation	0905-AC81

HHS

Public Health Service—Food and Drug Administration (FDA)—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
721	Over-the-Counter (OTC) Drug Review	0905-AA06
722	Availability of Bulk New Animal Drug Substances for Use By Licensed Veterinarians	0905-AB01
723	Provisionally Listed Color Additives	0905-AB80
724	Food Labeling Information Regarding Good Nutrition and Health	0905-AB87
725	Food Labeling; Definitions of Cholesterol Free, Low Cholesterol, and Reduced Cholesterol	0905-AB88
726	Methylene Chloride	0905-AC00
727	Infant Formula Act	0905-AC46
728	Common or Usual Name for Diluted Fruit or Vegetable Juice Beverages Other than Diluted Orange Juice Beverages	0905-AC48
729	Tamper-Resistant Packaging Requirements for Over-the-Counter (OTC) Drugs	0905-AC70

Public Health Service—Food and Drug Administration (FDA)—Completed Actions

Sequence Number	Title	Regulation Identifier Number
730	Proposed User Charge; New Drug Applications, Abbreviated New Drug Applications, New Device Applications, and Antibiotic Applications Review	0905-AB56
731	Patent Term Restoration for Certain Regulated Products (Title II of "Drug Price Competition and Patent Term Restoration Act of 1984")	0905-AB60
732	Menstrual Tampons; Proposed User Labeling	0905-AC54

Public Health Service—Health Resources and Services Administration (HRSA)—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
733	Health Education Assistance Loan (HEAL) Program: Implementation of Pub. L. 99-129	0905-AC28
734	Post-Baccalaureate Faculty Fellowship Program	0905-AC34
735	Grants for Community Health Services: Criteria and Procedure for Determining Medically Underserved Populations (MUP)	0905-AC35
736	Area Health Education Center (AHEC) Program	0905-AC67
737	Designation of Mental Health Manpower Shortage Areas	0905-AC68
738	Grants for Faculty Training Projects in Geriatric Medicine and Dentistry	0905-AC71
739	Health Education Assistance Loan (HEAL) Program: Bankruptcy Revisions	0905-AC73
740	Nursing Student Loan (NSL) Program: Cash Management	0905-AC76
741	Centers for Excellence	0905-AC77
742	Health Professions Student Loan (HPSL) Program: Cash Management	0905-AC78

Public Health Service—Health Resources and Services Administration (HRSA)—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
743	Grants for Residency Training and Faculty Development in General Internal Medicine and/or General Pediatrics	0905-AB50
744	Grants for Nurse Practitioner and Nurse Midwifery Traineeship Programs	0905-AC30
745	Nursing Student Loan (NSL) Program: Implementation of the Law (Pub. L. 99-92)	0905-AC31
746	Health Professions Student Loan (HPSL) Program: Implementation of the Law (Pub. L. 99-129)	0905-AC32
747	Grants for Health Professions Projects in Geriatrics	0905-AC33
748	Health Manpower Shortage Area Designation Criteria For Correctional Facilities	0905-AC69
749	Implementation of Health Care Quality Improvement Act of 1986 (Title IV, Public Law 99-660)	0905-AC81
750	National Health Service Corps, State Loan Repayment And Special Repayment Programs	0905-AC85
751	Health Education Assistance Loan (Heal): Litigation	0905-AC89

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Public Health Service—Health Resources and Services Administration (HRSA)—Completed Actions

Sequence Number	Title	Regulation Identifier Number
752	Grants for Nurse Anesthetist Traineeships	0905-AB33
753	Health Professions Student Loan (HPSL) Program: Deferment Revisions	0905-AC05
754	Health Education Assistance Loan (HEAL) Program: Deferment Revisions	0905-AC07
755	Nursing Special Project Grants	0905-AC18
756	Area Health Education Centers (AHEC)	0905-AC22
757	Grants For Construction of Teaching Facilities, Educational Improvements, Scholarships, and Student Loans	0905-AC66
758	Removal of Obsolete Regulations on Hemophilia Treatment Centers and Genetic Disease Testing and Counseling Programs	0905-AC82

Public Health Service—National Institutes of Health (NIH)—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
759	Misconduct in Science	0905-AB91

Public Health Service—National Institutes of Health (NIH)—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
760	Changes in NIH Program Regulations due to P.L. 99-158,P.L. 99-499 and Title X of P.L. 99-660	0905-AC02
761	National Institutes of Health Center Grants 42 CFR Part 52a	0905-AC27

Public Health Service—National Institutes of Health (NIH)—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
762	National Library of Medicine Programs. Revision of General Rules for the National Library of Medicine and National Library of Medicine Grants	0905-AA60

Health Care Financing Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
763	Administrative Appeals Process for Provider Payment Disputes Including Amending Cost Reports & Reopening Intermediary Payment Determinations & Administrative Review Decisions	0938-AA33
764	Medicaid Eligibility	0938-AA58
765	MMIS: Definition of "Mechanized Claims Processing and Information Retrieval System"	0938-AA63
766	Deduction of Incurred Medical Expenses (Spenddown)	0938-AB07
767	Payment for Clinical Diagnostic Laboratory Services	0938-AB50
768	Payment for the Services of Physicians Furnished in Teaching Settings and Other Providers	0938-AB61
769	Revision of the Clinical Laboratory Regulations for the Medicare, Medicaid, and Clinical Laboratories Improvement Act of 1967 Programs	0938-AB96
770	Changes in Payment Policy for Direct Graduate Medical Education Costs	0938-AC27
771	Use of the HCFA Hospital Wage Index for Determining Payment to Hospices	0938-AC49
772	Hospice/Case Management	0938-AC52
773	Medicare Beneficiary Appeals	0938-AC61
774	Denial of Payment for Substandard Quality Care, Review of Beneficiary Complaints	0938-AC64
775	Revised Effective Date of Medicare/Medicaid Provider Agreement and Supplier Participation	0938-AC66
776	Recognition of College of American Pathologists Laboratory Accreditation Program	0938-AC69

HHS

Health Care Financing Administration—Proposed Rule Stage—Continued

Sequence Number	Title	Regulation Identifier Number
777	PRO Review of Surgical Procedures and Requirements for Second Opinions	0938-AC90
778	Payment for the Cost of Malpractice Insurance for Hospitals Excluded from the Prospective Payment System	0938-AC97
779	Changes Concerning Suspension of Medicare Payments, Interest Rates Charged on Overpayments and Underpayments, and Determinations of Allowable Interest Expense	0938-AC99
780	Changes Concerning the Definition of Accrual Basis of Accounting	0938-AD01
781	Optional Payment System for Low Medicare Volume Skilled Nursing Facilities	0938-AD02
782	Criteria and Procedures for Medical Services Coverage Decisions	0938-AD07
783	Recognition of Joint Commission on Accreditation of Healthcare Organizations' Home Care Program Standards and the National League for Nursing's Standards for Home Health Agencies	0938-AD10
784	Eligibility of Aliens for Medicaid	0938-AD15
785	Medicaid: Eligibility Groups Extended Coverage of Services, and Conditions of Eligibility: OBRA '87, COBRA, and TEFRA	0938-AD16
786	Medicaid Eligibility of Poverty Level Groups and Extended Coverage of Services	0938-AD17
787	Transfer of Assets	0938-AD18
788	Payment for Services of Certified Registered Nurse Anesthetists	0938-AD25
789	Withdrawal of Coverage of Single Photon Absorptiometry	0938-AD28
790	Modification of Certain Requirements for Health Insuring Organizations	0938-AD31
791	Occupational Therapy, Physician Assistants	0938-AD32
792	Prohibition on Unbundling of Hospital Outpatient Services	0938-AD33
793	Physician Liability on Non-Assigned Claims	0938-AD34
794	State Share of Financial Participation	0938-AD36
795	PRO Disclosure to Licensing and Certification Bodies	0938-AD42
796	Revision of the Medicare Economic Index	0938-AD43
797	Update of Ambulatory Surgical Center Payment Rates for July 1, 1989	0938-AD44
798	Schedule of Limits for Skilled Nursing Facility Inpatient Routine Service Costs for Reporting Periods Beginning On or After October 1, 1988	0938-AD46
799	Application of the Comparable Services Limitation in Determining Reasonable Charges	0938-AD50
800	Home and Community-Based Services for the Elderly	0938-AD55
801	Revisions to the Freedom of Information Regulations	0938-AD59
802	Fee Schedules for Radiologist Services	0938-AD62
803	Establishment of Medicare Economic Index for 1989	0938-AD64
804	Payment for Durable Medical Equipment and Orthotic and Prosthetic Devices	0938-AD65
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807	Outpatient Surgery and Pre-admission Diagnostic Testing for Inpatient Surgery under Medicaid	0938-AD70
808	Changes to the Reasonable Cost Regulation Concerning Investment Income	0938-AD72
809	Medicare Secondary Payer for Disabled Active Individuals	0938-AD73
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811	Clarification of Durable Medical Equipment Coverage under Medicare	0938-AD77
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814	Prohibitions on FFP for Educational and Vocational Training for Institutionalized Individuals	0938-AD80
815	OBRA '87 Long Term Care Facilities Conditions of Participation	0938-AD81
816	Medigap Policy Standards - Direct Transmittal of Claims from Medicare Carriers to Medigap Insurers and Related User Fees	0938-AD82
817	Coverage of Psychologists' Services Furnished at Rural Health Clinics	0938-AD84
818	Coverage of Screening Mammography	0938-AD88
819	Coverage of Home Intravenous Drug Therapy Services	0938-AD89
820	In-Home Care for Chronically Dependent Individuals	0938-AD90
821	Outpatient Drug Coverage and Reimbursement	0938-AD91
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Health Care Financing Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
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827	Medicare: Health Maintenance Organizations and Competitive Medical Plans: Coordinated Open Enrollment	0938-AB57
828	Indirect Part B Payment Procedure	0938-AB59
829	Hospital Insurance Entitlement and Supplementary Medical Insurance Enrollment and Entitlement	0938-AB60
830	Medicare/Medicaid Reinstatement of Assets	0938-AB64
831	Clarification of Policy on Adjusting the Hospital-Specific Portion of the Prospective Payment Rate	0938-AB71
832	Revision of Medicaid Eligibility Quality Control (MEQC) Program Requirements	0938-AB85
833	Medicare Secondary Payor and Medicare Recovery Against Third Parties	0938-AC05
834	Medicare Coverage of Hepatitis B Vaccine for High and Intermediate Risk Individuals, Hemophilia Clotting and Certain X-Ray Services	0938-AC07
835	Medicaid: Eligibility Determinations Based on Disability	0938-AC31
836	Effect of Appeals on Hospital-Specific Portion of the Prospective Payment Rate	0938-AC40
837	Additions to and Deletions From Current List of Covered Surgical Procedures for Ambulatory Surgical Centers	0938-AC45
838	Employers Contribution to Health Maintenance Organizations Option	0938-AC48
839	Home and Community-Based Services and Respiratory Care for Ventilator-Dependent Individuals	0938-AC55
840	Billing and Verification Add-On Relating to Home Health Agencies Cost Per Visit Limits	0938-AC56
841	Reimbursement for Physician's Outpatient Maintenance Dialysis Services	0938-AC57
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843	Payment for Kidneys Sent to Foreign Countries or Transplanted in Patients Other than Medicare Beneficiaries	0938-AC59
844	State Plan Requirements and Other Provisions Relating to State Third-Party Liability Programs	0938-AC64
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846	Refunding of Federal Share of Overpayments Made to Medicaid Providers	0938-AC83
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848	Revisions to Conditions of Participation for Hospitals and Conditions for Coverage of Services of Independent Laboratories and Suppliers of ESRD Services	0938-AD11
849	Conditions of Participation for Long Term Care Facilities	0938-AD12
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851	Discontinuation of Prevailing Charge Differentials for Specialists	0938-AD26
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853	Medicare, Medicaid, and Clinical Laboratories Improvement Act (CLIA) Patient Confidentiality Rules	0938-AD40
854	Home Health Agencies: Conditions of Participation and Reduction in Recordkeeping Requirements	0938-AD45
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856	Changes to the Inpatient Hospital Prospective Payment System and Fiscal Year 1989 Rates	0938-AD49
857	Protocol for the Reuse of Dialysis Bloodlines	0938-AD52
858	Uniform Relative Value Guide for Anesthesia Services Furnished by Physicians	0938-AD53
859	Inpatient Hospital Deductible, SNF Coinsurance Amount and Part A Premium for the Uninsured Aged for 1989	0938-AD68
860	Periodic Payments for Hospitals and Other Providers	0938-AD71
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863	Swing-Bed Program Changes	0938-AD83
864	Coverage of and Payment for Certified Nurse-Midwife Services	0938-AD85
865	Second Surgical Opinion Requirements for Medicaid Recipients	0938-AD86
866	Conforming Amendments Resulting from the Omnibus Budget Reconciliation Act of 1987	0938-AD92
867	Catastrophic Coverage Conforming Amendments	0938-AD93
868	Carrier Bonuses for Increasing Physicians' Participation or Payments	0938-AD95
869	National Average Actuarial Value of Duplicative Part A and Part B Medicare Benefits	0938-AD98

Health Care Financing Administration—Completed Actions

Sequence Number	Title	Regulation Identifier Number
870	Payments to Institutions	0938-AB00
871	Changes to the Lesser of Costs or Charges Provisions	0938-AB29
872	Revisions in Reporting and Recordkeeping Requirements	0938-AB46
873	Physician Certification and Plan of Care Requirements and Inspection of Care Reviews	0938-AB55
874	Treatment of Social Security Cost of Living Increases for Individuals Who Lose SSI Eligibility	0938-AB62

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Health Care Financing Administration—Completed Actions—Continued

Sequence Number	Title	Regulation Identifier Number
875	OMB Review of Information Collection and Recordkeeping Requirements for Home Health Agencies, and Providers of Outpatient, Physical Therapy and/or (cont)	0938-AB66
876	Conditions for Intermediate Care Facilities for the Mentally Retarded	0938-AB76
877	Reasonable Charge Limitations	0938-AC02
878	Assignment and Reassignment of Provider-Based Home Health Agencies and Hospices to Designated Regional Intermediaries	0938-AC20
879	Fire Safety Standards for Hospitals, Skilled Nursing Facilities, Hospices, Intermediate Care Facilities and Ambulatory Surgical Centers	0938-AC28
880	Alternate Sanctions for ESRD Facilities	0938-AC66
881	Long Term Care Survey	0938-AD41
882	Miscellaneous Changes Affecting Payment for Inpatient Hospital Services	0938-AD46
883	Fees for Appeals	0938-AD54
884	Revisions to Medicaid Eligibility Quality Control Program Requirements Based on Findings of COBRA Studies	0938-AD56
885	Procedures for Terminating Program Participation of Providers and Suppliers	0938-AD57
886	Monthly Actuarial Rates and Part B Premium Rates Beginning January 1, 1989	0938-AD58
887	Miscellaneous Amendments to the HMO and CMP Requirements	0938-AD61

Family Support Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
888	Aid to Families with Dependent Children Program; Administrative Improvement in the AFDC Program	0970-AA09
889	Standards for Child Support Enforcement Program Operations	0970-AA16
890	Child Support Enforcement Audit Regulations	0970-AA17
891	Distribution of Child Support Collections	0970-AA18
892	Alien Verification Procedures for AFDC; State Administered Adult Assistance and Medicaid Programs; Notice of Proposed Rulemaking	0970-AA41
893	Exclusion of Indian Trust Funds and Alaska Native Claims Settlement Act Distributions (ANCSA)	0970-AA47
894	Cooperation in Third Party Health Coverage	0970-AA49
895	Cooperative agreements	0970-AA50
896	Omnibus Budget Reconciliation Act of 1987	0970-AA56
897	Services to Post-AFDC and Medicaid only families	0970-AA61

Family Support Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
898	Scope of Payments	0970-AA00
899	Retroactive Modification of Child Support Arrearages	0970-AA03
900	Aid to Families With Dependent Children; Definition of Permissible State Practice-Quality Control	0970-AA04
901	Aid to Families With Dependent Children Program; Implementation of the Deficit Reduction Act of 1984	0970-AA06
902	Consistency for the Food Stamp Program, AFDC Program, and the Adult Assistance Programs	0970-AA08
903	Refugee Resettlement Program; Refugee Cash and Assistance; Requirements for Job Search, Employment Services, and Employment; Refugee Medical Assistance; and Refugee Social Services	0970-AA10
904	Aid to Families with Dependent Children Program; General Administration -- Public Assistance Program -- Quality Control System	0970-AA11
905	Essential Persons	0970-AA44
906	Federal Tax Refund Offset Process - Pre-Offset Notice Fee	0970-AA52
907	Emergency Community Services Homeless Grant Program; Interim Final Rule with Request for Comments	0970-AA57
908	Targeting of, and Tolerances for, Income and Eligibility Verification System Data	0970-AA58
909	Automated Data Processing Equipment and Services; Conditions for Federal Financial Participation II	0970-AA59

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HHS

Family Support Administration—Completed Actions

Sequence Number	Title	Regulation Identifier Number
910	Refugee Cash and Medical Assistance	0970-AA01
911	Aid to Families with Dependent Children; Treatment of Utility Payments By Applicant or Recipients Living in Certain Federally Assistance Housing	0970-AA05
912	Aid to Families With Dependent Children Program; Extension of Medicaid Eligibility When Support Collections Result in Termination of AFDC Eligibility	0970-AA07
913	Medical Support Enforcement #2	0970-AA13
914	Disregard of Child Support Payments; Regulations Implementing the Deficit Reduction Act of 1984	0970-AA15
915	Grants to States for Public Assistance Programs; Treatment of Replacement Checks	0970-AA19
916	Alien Legalization	0970-AA48
917	FY 1988 Scoring System for Performance Indicators	0970-AA51

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)
Office of the Secretary (OS)

Prerule Stage

583. PRIVACY ACT REGULATION

Legal Authority: 5 USC 552a

CFR Citation: 45 CFR 5b

Legal Deadline: None

Abstract: This will be the first complete update since 1975 of the Department's Privacy Act Regulation implementing the Privacy Act of 1974. It will facilitate individuals' access to information and records that the Department maintains about them in more than 330 designated Privacy Act Systems of Records, clarifying and promulgating at one time all the subparts of the regulation. It will also help Departmental personnel processing Privacy Act requests by providing them with an integrated regulation that is compatible with current procedures for processing such requests. The only alternative to this complete update is to continue to operate with a regulation that in the past has been revised on a piecemeal basis.

Timetable:

Action	Date	FR Cite
ANPRM	03/01/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Russell M. Roberts, Director, FOI/Priv Div, Department of Health and Human Services, Office of the Secretary, Off of Pub Affairs, Rm 645-F, HHH Bldg, 200 Independence Avenue, SW, Washington, DC 20201, 202 472-7453

RIN: 0991-AA11

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)
Office of the Secretary (OS)

Proposed Rule Stage

584. PRINCIPLES FOR DETERMINING COSTS AND COST ALLOCATION PROCEDURES APPLICABLE TO GRANTS, CONTRACTS, AND OTHER AGREEMENTS FOR WORK PERFORMED BY HOSPITALS

Legal Authority: 5 USC 301

CFR Citation: 45 CFR 74, Appendix E; 45 CFR 78

Legal Deadline: None

Abstract: This action will revise the Department's current cost principles for research and development activities under grants and contracts with hospitals to make them clearer, more specific, and compatible with cost principles issued by OMB for educational institutions and nonprofit organizations. The revision will also broaden the coverage of the principles to include all grants, contracts and other agreements with hospitals (except the Medicare & Medicaid programs).

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: Local, State

Additional Information: OMB is considering revisions to Circular A-21 and A-122 as a result of the Defense Procurement Improvement Act of 1985 (P.L. 99-145) and the Civilian Employee and Contractor Travel Expenses Act of 1985 (P.L. 99-234). This action should conform to those revisions also.

Agency Contact: Terrance J. Tychan, Director, Office of Procurement & Logistics Policy, Department of Health and Human Services, Office of the Secretary, Office of Procurement, Assist & Logistics, Rm 512D, HHH Bldg, 200 Independence Ave. SW, Washington, DC 20201, 202 245-6870

RIN: 0991-AA12

585. CIVIL MONEY PENALTIES AND SANCTIONS FOR HMOS AND COMPETITIVE MEDICAL PLANS

Legal Authority: PL 99-501, Sec 9312; PL 99-501, Sec 9434; PL 100-203, Sec

HHS—OS

Proposed Rule Stage

4014; PL 100-360, Sec 224; PL 100-360, Sec 411

CFR Citation: 42 CFR 1003; 42 CFR 417

Legal Deadline: None

Abstract: This proposed rule would provide for CMPs for each violation against any risk-sharing organization that: (1) fails substantially to provide medically necessary items and services that are required under the contract; (2) imposes premiums on enrolled individuals in excess of premiums permitted; (3) acts to expel or refuse, or to re-enroll an individual; (4) misrepresents or falsifies information; (5) engages in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment; or, (6) fails to provide for prompt payment of claims for services provided to enrollees. In addition, this rule would authorize the Medicare program to suspend enrollment of individuals in, and payment to a risk-sharing organization that (1) denies medically necessary care to a beneficiary or (2) commits marketing abuses or other violations specified in section 1876(i)(6) of the Social Security Act.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
NPRM Comment Period End	01/00/89	
Final Action	06/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: This joint OIG/HCFA proposed rule is being revised as a result of broadened CMP and sanction authorities contained in PL 100-203, in addition to a technical amendment contained in PL 100-360.

Agency Contact: James Patton, Director, Health Care Admin. Sanctions Div., Office of Investigations, Department of Health and Human Services, Office of the Secretary, Office of Inspector General, 6325 Security Boulevard, Baltimore, MD 21207 21207, 301 965-8901

RIN: 0991-AA44

586. PROHIBITION ON USE OF PHYSICIAN INCENTIVE PLANS

Legal Authority: PL 99-501, Sec 9313

CFR Citation: 42 CFR 1001; 42 CFR 1003

Legal Deadline: None

Abstract: This proposed rule would prohibit a hospital from knowingly making incentive payments to a physician as an inducement to that physician to reduce or limit services provided to program beneficiaries who are under the direct care of that physician.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	
NPRM Comment Period End	02/00/89	
Final Action	06/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: The effective date for implementing regulations addressing physician incentive plans by risk-sharing HMOs and competitive medical plans has been delayed to 4/1/90 by P.L. 100-203, Sec 4016. This provision will be addressed through separate rulemaking at a later date.

Agency Contact: Joel Jay Schaer, Regulations Officer, Office of Inspector General, AO, Department of Health and Human Services, Office of the Secretary, Legislation, Regulations & Public Affairs, 330 Independence Avenue, S.W., Washington, D.C. 20201 202 472-2279

RIN: 0991-AA45

587. NEW CIVIL MONEY PENALTIES AND EXCLUSIONS AUTHORITIES RESULTING FROM OBRA 1986 AND OBRA 1987

Legal Authority: PL 99-501, Sec 9320; PL 99-501, Sec 9331; PL 99-501, Sec 9332; PL 99-501, Sec 9334; PL 99-501, Sec 9338; PL 100-203, Sec 4022; PL 100-203, Sec 4023; PL 100-203, Sec 4039; PL 100-203, Sec 4045; PL 100-203, Sec 4049; PL 100-203. Sec 4051; PL 100-203, Sec 4062; PL 100-203, Sec 4064; PL 100-203, Sec 4085; PL 100-203, Sec 4118; ...

CFR Citation: 42 CFR 1001; 42 CFR 1002; 42 CFR 1003

Legal Deadline: None

Abstract: This proposed rule provides for civil money penalties and exclusions for various program violations resulting from OBRA 1986 and OBRA 1987, as amended by the Medicare Catastrophic Coverage Act of 1988. Penalties and sanctions may be imposed against among other things: (1) those who bill Medicare beneficiaries on a non-assigned basis for services of a certified nurse anesthetist or a physician assistant: (2) non participating physicians billing for actual charges above permitted charges (3) nursing homes: (4) home health care providers: (5) unassigned lab services: (6) DME rental providers: and (7) providers of laboratory tests.

Timetable:

Action	Date	FR Cite
NPRM	04/00/89	
NPRM Comment Period End	06/00/89	
Final Action	12/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: State, Federal

Additional Information: PL 100-360, Sec 204 PL 100-360, Sec 411 This proposed rule is being revised as a result of broadened CMP and sanction authorities contained in P.L. 100-203. In addition, various technical amendments to the OBRA '87 provisions contained in P.L. 100-360, the Medicare Catastrophic Coverage Act of 1988, will be incorporated into this proposed rulemaking.

Agency Contact: James Patton, Director, Health Care Admin. Sanctions Div., Office of Investigations, Department of Health and Human Services, Office of the Secretary, Office of Inspector General, 6325 Security Boulevard, Baltimore, Maryland 21207, 301 965-8901

RIN: 0991-AA46

588. AMENDMENTS TO OIG EXCLUSION AND CMP AUTHORITIES RESULTING FROM PL 100-93

Significance: Agency Priority

Legal Authority: PL 100-93; PL 100-360, Sec 411

CFR Citation: 42 CFR 1001; 42 CFR 1002; 42 CFR 1003; 42 CFR 1004

Legal Deadline: None

Abstract: These regulations are designed to protect program beneficiaries from unfit health care practitioners, and otherwise to improve the anti-fraud provisions relating to Titles 5, 11, 18, 19, and 20.

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Proposed Rule Stage

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	
NPRM Comment Period End	01/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: State, Federal

Additional Information: This proposed rule incorporates two previous items of proposed rulemaking (0991-AA21 and 0991-AAA39) as a result of the passage of PL 100-93. Technical amendments contained in PL 100-360, the Medicare Catastrophic Coverage Act of 1988 are also being incorporated into these proposed regulations.

Agency Contact: James Patton, Director, Health Care Admin. Sanctions Div., Office of Investigations, Department of Health and Human Services, Office of the Secretary, Office of Inspector General, 6325 Security Boulevard, Baltimore, Maryland 21207, 301 965-3901

RIN: 0991-AA47

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599. OIG ANTI-KICKBACK PROVISIONS

Legal Authority: PL 100-93, Sec 4; PL 100-93, Sec 14

CFR Citation: 42 CFR 1001

Legal Deadline: Final, Statutory, August 18, 1988.

Abstract: This proposed rule will specify payment practices which, although potentially capable of inducing referrals of business under Medicare, are not to be considered kickbacks for purposes of criminal or civil remedies.

Timetable:

Action	Date	FR Cite
ANPRM	10/19/87	52 FR 38794
ANPRM Comment Period End	12/18/87	
NPRM	09/00/88	
NPRM Comment Period End	11/00/88	
Final Action	08/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Joel Schaer, Regulations Officer, Office of Inspector General, AO, Department of Health and Human Services, Office of the Secretary, 330 Independence Avenue, SW, Washington, D.C. 20201, 388 472-2279

RIN: 0991-AA49

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600. PHO RURAL PRACTITIONERS AMENDMENTS

Legal Authority: PL 100-203, Sec 4082

CFR Citation: 42 CFR 1004

Legal Deadline: None

Abstract: This proposed rule would permit a hearing before an Administrative Law Judge of a provider in a rural health manpower shortage area, or in a county with a population of less than 70,000 before a program exclusion of that provider took place.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Agency Contact: James Patton, Director, Health Care Admin. Sanctions Div., Office of Inspector General, Department of Health and Human Services, Office of the Secretary, Office of Investigations, 6325 Security Boulevard, Baltimore, MD 21207, 301 965-3901

RIN: 0991-AA51

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601. ◆ CIVIL MONEY PENALTIES AND SANCTION AUTHORITIES RELATING TO THE MEDICARE CATASTROPHIC COVERAGE PROVISIONS

Legal Authority: PL 100-360, Sec 202; PL 100-360, Sec 222; PL 100-360, Sec 221

CFR Citation: 42 CFR 1001; 42 CFR 1003

Legal Deadline: None

Abstract: This proposed rule would establish various new sanction and civil money penalties resulting from the Medicare Catastrophic Coverage Act of 1988. Among other provisions, these regulations would address CMPs for (1) failure to provide required survey data relating to covered outpatient drugs; (2) a physician's failure to provide appropriate diagnostic codes and information; and (3) the submission of improper claims for home IV drug therapy services.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
NPRM Comment Period End	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Joel Jay Schaer, Regulations Officer, Office of Inspector, AO, Department of Health and Human Services, Office of the Secretary, Legislation, Regulations & Public Affairs, 330 Independence Avenue, S.W., Washington, D.C. 20201, 202 472-5270

RIN: 0991-AA52

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602. ◆ CIVIL MONEY PENALTIES FOR VIOLATIONS RELATING TO MEDICAL SUPPLEMENTAL POLICIES

Legal Authority: PL 100-360, Sec 428(b)

CFR Citation: 42 CFR 1003

Legal Deadline: None

Abstract: This proposed rule would establish CMPs in all cases where only criminal penalties previously applied for deceptive selling practices relating to Medicare Supplemental health insurance - or Medigap - policies.

Timetable:

Action	Date	FR Cite
NPRM	01/00/89	
NPRM Comment Period End	03/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Joel Jay Schaer, Regulations Officer, Office of Inspector General, AO, Department of Health and Human Services, Office of the Secretary, Legislation, Regulations & Public Affairs, 330 Independence Avenue, S.W., Washington, D.C. 20201, 202 472-5270

RIN: 0991-AA53

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603. ◆ CIVIL MONEY PENALTIES FOR MISUSE OF DEPARTMENTAL SYMBOLS OR EMBLEMS

Significance: Agency Priority

Legal Authority: PL 100-360, Sec 428(a)

CFR Citation: 42 CFR 1003

Legal Deadline: None

HHS—OS

Proposed Rule Stage

Abstract: This proposed rule would establish civil money penalties for the unauthorized use, in advertising or solicitation, of certain words letters, symbols or emblems associated with the Department or its programs in a manner that would convey and impression that an item or service was approved, endorsed or authorized by HHS.

Timetable:

Action	Date	FR Cite
NPRM	02/00/89	
NPRM Comment Period End	04/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Joel Jay Schaer, Regulations Officer, Office of Inspector General, AO, Department of Health and Human Services, Office of the Secretary, Legislation, Regulations & Public Affairs, 330 Independence Avenue, S.W., Washington, D.C. 20201, 202 472-5270

RIN: 0991-AA54

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Final Rule Stage

Office of the Secretary (OS)

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604. NONDISCRIMINATION REQUIREMENTS (INCLUDING ON THE BASIS OF SEX OR RELIGION) APPLICABLE TO BLOCK GRANTS AND STANDARD NONDISCRIMINATION PROCEDURES APPLICABLE TO CERTAIN OTHER PROGRAMS

Legal Authority: 42 USC 9906; 42 USC 300x-9; 42 USC 728; 42 USC 8625; 42 USC 9821; 42 USC 9849

CFR Citation: 45 CFR 92

Legal Deadline: None

Abstract: To implement the nondiscrimination requirements applicable to block grants authorized by the Omnibus Budget Reconciliation Act of 1981, P.L. 97-35.

Timetable:

Action	Date	FR Cite
NPRM	01/21/86	51 FR 2806
NPRM Comment Period End	03/24/86	51 FR 2806
Interim Final Rule	12/00/88	

Small Entities Affected: Businesses, Governmental jurisdictions, Organizations

Government Levels Affected: Local, State

Additional Information: New CFR Subpart to be assigned.

Agency Contact: Marcella Haynes, Director, Policy and Special Projects Staff, Department of Health and Human Services, Office of the Secretary, Policy and Special Staff, OCR, Room 5032, HHS North Bldg, 330 Independence Ave, SW, Washington, DC 20201, 202 245-6871

RIN: 0991-AA02

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605. FREEDOM OF INFORMATION ACT REGULATION

Legal Authority: 5 USC 552; 18 USC 1905; 31 USC 9701; 42 USC 1306a; EO 12600

CFR Citation: 45 CFR 5

Legal Deadline: Final, Statutory, April 25, 1987.

Abstract: This will be the first complete update since August 1974 of the Department's Public Information Regulation implementing the Freedom of Information Act. It will facilitate public access to information by making necessary revisions, clarifying, and promulgating at one time all the subparts of the regulation. It will also help Departmental personnel processing FOIA requests by providing them with an integrated regulation that is compatible with current procedures for processing FOIA requests and assessing search and copy fees that reflect the increased cost of such services. The only alternative to this complete update is to continue to operate with a regulation that is the past has been revised on a piecemeal basis.

Timetable:

Action	Date	FR Cite
NPRM	04/06/86	51 FR 13250
NPRM Comment Period End	06/17/87	51 FR 13250
Interim Final Rule	11/13/87	52 FR 43575
Interim Final Rule Public Comment Period Ends	12/14/87	52 FR 43575
Final Action	10/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Russell M. Roberts, Director, FOI/Priv Div, Department of Health and Human Services, Office of the Secretary, Off of Pub Affairs, Rm 645-F, Humphrey Bldg, 200 Independence Ave, SW, Washington, DC 20201, 202 475-7453

RIN: 0991-AA07

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606. EQUAL OPPORTUNITY IN EMPLOYMENT; PUBLIC BROADCASTING, PUBLIC RADIO AND PUBLIC TELECOMMUNICATIONS ENTITIES RECEIVING FEDERAL FUNDS FROM THE CORPORATION FOR PUBLIC BROADCASTING

Legal Authority: 47 USC 2405

CFR Citation: 45 CFR 87.1-40

Legal Deadline: None

Abstract: Implements the Equal Opportunity in Employment Provisions of the Public Telecommunications Financing Act of 1978, PUB. L. 95-567, 47 U.S.C. 398(b)(1). This provision requires that equal opportunity in employment be afforded to all persons and that no person shall be subjected to discrimination in employment on the grounds of race, color, religion, national origin, or sex by the Public Broadcasting Service, National Public Radio, and public telecommunications entities receiving Federal funds from the Corporation for Public Broadcasting.

Timetable:

Action	Date	FR Cite
ANPRM	03/13/79	
NPRM	12/21/79	44 FR 75676
Final Action	12/00/88	
Final Action Effective	12/00/88	

Small Entities Affected: Businesses

Government Levels Affected: Local, State

Public Compliance Cost: Yearly Recurring Cost: $6,000

HHS—OS — Final Rule Stage

Agency Contact: Frank E. G. Weil, Chief, Policy Branch, Department of Health and Human Services, Office of the Secretary, Office for Civil Rights, 330 Independence Avenue, SW, Room 5411, Washington, DC 20201, 202 245-6700

RIN: 0991–AA22

607. AUDITS OF NON-GOVERNMENTAL GRANTEES

Significance: Agency Priority

Legal Authority: 5 USC 301

CFR Citation: 45 CFR 74.62(b), (Revised)

Legal Deadline: None

Abstract: This action will implement revised OMB Circular A-88 which is expected to be issued sometime this year. The Circular will provide governmentwide standards for non-Federal audits of college and university recipients of Federal grants and contracts. The Circular and three amendments will replace the audit requirements currently contained in OMB Circular A-110.

Timetable:

Action	Date	FR Cite
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: It is expected that OMB will publish a draft of its Circular in the Federal Register and obtain public comments. The specific form and nature of our action is expected to be mandated by OMB.

Agency Contact: Gary Hinsknacht, Acting Director, Office of Assistance, and Cost Policy, Department of Health and Human Services, Office of the Secretary, Room 513D, Hubert H. Humphrey Bldg., 200 Independence Ave., SW, Washington, DC 20201, 202 245-7585

RIN: 0991–AA20

608. CIVIL MONEY PENALTIES AND EXCLUSIONS FOR ASSISTANTS AT CATARACT SURGERY

Legal Authority: PL 99-272, Sec 9307; PL 99-514, Sec 1895(b)(16)

CFR Citation: 42 CFR 1001; 42 CFR 1003

Legal Deadline: None

Abstract: These final regulations provide for the imposition of civil money penalties and exclusions against physicians billing the Medicare program or program beneficiaries for services of an assistant at surgery for cataract operations where prior approval has not been granted. This rule specifically responds to various comments raised as a result of the interim final, and makes a number of technical corrections to those final regulations.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/10/87	52 FR 11649
Final Action	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: James Patton, Director, Health Care Admin. Sanctions Div., Office of Investigations, Department of Health and Human Services, Office of the Secretary, Office of Inspector General, 6325 Security Boulevard, Baltimore, MD 21207, 301 965-3901

RIN: 0991–AA27

609. CIVIL MONEY PENALTIES FOR FAILURE TO REPORT MEDICAL MALPRACTICE PAYMENTS AND FOR BREACHING THE CONFIDENTIALITY OF INFORMATION

Legal Authority: PL 99-660, Sec 421(c) and 427(b)

CFR Citation: 42 CFR 1003

Legal Deadline: None

Abstract: This final rule establishes civil money penalties against any individual or entity that fails to report information on medical malpractice payments in accordance with the Health Care Quality Improvement Act of 1986, and against any individual who breaches the confidentiality of information reported to the data bank established to collect and disseminate required information in accordance with that Act.

Timetable:

Action	Date	FR Cite
NPRM	03/21/88	53 FR 9260
NPRM Comment Period End	05/20/88	
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: James Patton, Director, Health Care Admin. Sanctions Div., Office of Investigations, Department of Health and Human Services, Office of the Secretary, Department of Health and Human Services, Baltimore, MD 21207, Office of Inspector General, 301 965-3901

RIN: 0991–AA40

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)
Office of the Secretary (OS)

Completed Actions

610. ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

Significance: Agency Priority

CFR Citation: 45 CFR 85.1-62

Completed:

Reason	Date	FR Cite
Final Action	07/08/88	53 FR 25595
Final Action Effective	09/06/88	53 FR 25595

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Frank E.G. Weil 202 245-6700

RIN: 0991–AA17

611. AUTOMATIC DATA PROCESSING EQUIPMENT AND SERVICES; CONDITIONS FOR FEDERAL FINANCIAL PARTICIPATION II

Significance: Agency Priority

HHS—OS — Completed Actions

CFR Citation: 45 CFR 95.601; 45 CFR 95.605; 45 CFR 95.611; 45 CFR 95.612; 45 CFR 95.613; 45 CFR 95.615; 45 CFR 95.617; 45 CFR 95.619; 45 CFR 95.621; 45 CFR 95.623; 45 CFR 95.624; 45 CFR 95.625; 45 CFR 95.631; 45 CFR 95.633; 45 CFR 95.641

Completed:

Reason	Date	FR Cite
Transferred to Family Support Administration under RIN 0970-AA59	08/26/88	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Ron Lentz 202 245-7354

RIN: 0991–AA34

612. BLOCK GRANT PROGRAMS

Significance: Agency Priority

CFR Citation: 45 CFR 96

Completed:

Reason	Date	FR Cite
Final Action	03/03/88	53 FR 6824
Final Action Effective	04/04/88	53 FR 6824

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Robert C. Raymond 202 245-7316

RIN: 0991–AA36

613. PROGRAM FRAUD CIVIL REMEDIES

Significance: Agency Priority

CFR Citation: 45 CFR 79

Completed:

Reason	Date	FR Cite
Final Action	04/08/88	53 FR 11856
Final Action Effective	04/08/88	

Small Entities Affected: Businesses, Organizations

Government Levels Affected: Federal

Agency Contact: D. McCarty Thornton 202 245-6306

RIN: 0991–AA41

614. TARGETING OF, AND TOLERANCES FOR, INCOME AND ELIGIBILITY VERIFICATION SYSTEM DATA

Significance: Agency Priority

CFR Citation: 42 CFR 453.952; 45 CFR 205.56

Completed:

Reason	Date	FR Cite
Transferred to Family Support Administration under RIN 0970-AA56	08/26/88	

Small Entities Affected: None

Government Levels Affected: State, Federal

Agency Contact: Sheldon Shalit 202 245-0384

RIN: 0991–AA42

615. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

CFR Citation: 45 CFR 76

Completed:

Reason	Date	FR Cite
Final Action	05/26/88	53 FR 19200
Final Action Effective	10/01/88	

Small Entities Affected: None

Government Levels Affected: Local, State

Agency Contact: Gary Housekneckt 202 245-7000

RIN: 0991–AA43

616. PROGRAM FRAUD CIVIL REMEDIES

CFR Citation: 45 CFR 79

Completed:

Reason	Date	FR Cite
Duplicate of RIN 0991-AA41	08/26/88	

Small Entities Affected: None

Government Levels Affected: State, Federal

Agency Contact: Joel Schaer 202 472-5270

RIN: 0991–AA50

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)
Departmental Management (HHSDM)

Final Rule Stage

617. IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN AGENCY PROCEEDINGS

Legal Authority: 5 USC 504(c)(1)

CFR Citation: 45 CFR 13

Legal Deadline: None

Abstract: The Equal Access to Justice Act requires agencies to pay attorney fees to parties prevailing against the Government in certain types of administrative proceedings. It requires each agency to issue rules implementing the Act as it applies to these proceedings. As originally enacted, the Act had a sunset clause. A recent statutory amendment eliminated the sunset provision and made other changes in the Act. The instant regulation would amend 45 CFR Part 13 (HHS's regulation implementing the Act) to eliminate the corresponding sunset provision and to make other changes conforming with the statutory changes.

Timetable:

Action	Date	FR Cite
Final Action Effective	10/01/84	
NPRM	06/19/87	52 FR 23311
NPRM Comment Period End	08/17/87	
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Darrel J. Grinstead, Associate General Counsel, Business and Administrative Law Division, Department of Health and Human Services, Departmental Management, Room 5362, HHS North Building, 330

HHS—HHSDM — Final Rule Stage

Independence Avenue, SW, Washington, DC 20201, 202 475-0150

RIN: 0000-AA02

618. TESTIMONY BY EMPLOYEES AND THE PRODUCTION OF DOCUMENTS IN PROCEEDINGS WHERE THE UNITED STATES IS NOT A PARTY

Significance: Agency Priority

Legal Authority: 5 USC 301; 5 USC 552

CFR Citation: 45 CFR 2

Legal Deadline: None

Abstract: Part 2 of Title 45, CFR, governs the testifying of HHS employees as part of their official duties in litigation where neither the United States nor other Federal agencies are parties. This rule will amend Part 2 to clarify it and to resolve minor technical problems.

Timetable:

Action	Date	FR Cite
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Darrel J. Grinstead, Associate General Counsel, Business and Administrative Law Division, Department of Health and Human Services, Departmental Management, Room 5362, Wilbur J. Cohen Building, 330 Independence Avenue, SW, Washington, D.C. 20201, 202 475-0150

RIN: 0990-AA03

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)
Office of Human Development Services (HDSO)

Proposed Rule Stage

619. FOSTER CARE, ADOPTION ASSISTANCE, AND CHILD WELFARE SERVICES

Legal Authority: 42 USC 670 et seq; Federal Payment for Foster Care and Adoption Assistance; 42 USC 620 et seq Child Welfare Services; 42 USC 1302 Rules and Regulations

CFR Citation: 45 CFR 1356; 45 CFR 1357

Legal Deadline: None

Abstract: This NPRM will propose criteria the Department will use to verify that a State has met statutory requirements and is eligible to receive additional funds under Section 427 of the Social Security Act as amended by the Adoption Assistance and Child Welfare Act of 1980 (Pub. L. 96-272). The proposed rule will contain the specific criteria by which State performance in meeting the requirements of Section 427 is determined, the percentage levels and other standards for case record compliance, and procedures for conducting compliance reviews.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Betty Stewart, Associate Commissioner, Children's Bureau, ACYF, Department of Health and Human Services, Office of Human Development Services, P.O. Box 1182, Washington, DC 20201, 202 755-7600

RIN: 0980-AA08

620. RUNAWAY AND HOMELESS YOUTH PROGRAM

Legal Authority: 42 USC 5701 Note The Runaway and Homeless Youth Act, as amended

CFR Citation: 45 CFR 1351

Legal Deadline: None

Abstract: These rules will make technical changes in 45 CFR 1351 to incorporate changes made by reauthorization of the Runaway and Homeless Youth Act.

Timetable:

Action	Date	FR Cite
NPRM	03/30/89	

Small Entities Affected: Organizations

Government Levels Affected: None

Agency Contact: Paget W. Hinch, Associate Commissioner, ACYF/HDS, Department of Health and Human Services, Office of Human Development Services, Family and Youth Services Bureau, ACYF/HDS, PO Box 1182, Washington, DC 20013, 202 472-4426

RIN: 0980-AA11

621. HEAD START CRITERIA FOR SELECTION OF NEW GRANTEES

Legal Authority: 42 USC 9831 et seq Head Start Act

CFR Citation: 42 CFR 1302

Legal Deadline: None

Abstract: The NPRM will propose additional new criteria that, if adopted, will be used in the selection of new Head Start grantees.

Timetable:

Action	Date	FR Cite
NPRM	12/30/88	

Small Entities Affected: Organizations

Government Levels Affected: None

Agency Contact: Doug Klafehn, Head Start Bureau ACYF/OHDS, Department of Health and Human Services, Office of Human Development Services, P. O. Box 1182, Washington, DC 20013, 202 755-0990

RIN: 0980-AA17

622. HEAD START STAFF AND PROGRAM OPTIONS REQUIREMENTS

Significance: Agency Priority

Legal Authority: 42 USC 9831 et seq Head Start Act

CFR Citation: 45 CFR 1304; 45 CFR 1306

Legal Deadline: None

Abstract: The NPRM will propose changes in existing regulations related to program design including class size, hours of operation, and program options such as center-based and home-based Head Start services. The NPRM will also propose, in a new Part, the requirements for home-based Head Start services.

HHS—HDSO — Proposed Rule Stage

Timetable:

Action	Date	FR Cite
NPRM	12/30/88	

Small Entities Affected: Organizations

Government Levels Affected: None

Agency Contact: Doug Klafehn, Chief, Program Management and Operations Branch Head Start Bureau, ACYF/OHDS, Department of Health and Human Services, Office of Human Development Services, P. O. Box 1182, Washington, DC 20013, 202 755-0990

RIN: 0980-AA18

623. HEAD START APPEALS PROCESS

Legal Authority: 42 USC 9831 et seq Head Start Act

CFR Citation: 45 CFR 1303

Legal Deadline: None

Abstract: The NPRM will propose revisions to current procedures for appeals from Head Start grantees and delegate agencies to improve the effectiveness and efficiency of the appeals process.

Timetable:

Action	Date	FR Cite
NPRM	01/01/89	

Small Entities Affected: Organizations

Government Levels Affected: None

Agency Contact: Doug Klafehn, Chief, Program Management and Operations Branch, Head Start Bureau, ACYF/OHDS, Department of Health and Human Services, Office of Human Development Services, P. O. Box 1182, Washington, DC 20013, 202 755-0990

RIN: 0980-AA20

624. HEAD START PERFORMANCE STANDARDS FOR SERVICES TO HANDICAPPED CHILDREN

Legal Authority: 42 USC 9839

CFR Citation: 45 CFR 1308

Legal Deadline: None

Abstract: The NPRM will propose to establish a new part 1308 setting forth proposed performance standards that must be used in providing Head Start services to handicapped children.

Timetable:

Action	Date	FR Cite
NPRM	12/30/88	

Small Entities Affected: Organizations

Government Levels Affected: None

Agency Contact: Jane DeWeerd, Child Development Specialist, Department of Health and Human Services, Office of Human Development Services, Administration for Children, Youth and Families, PO Box 1182, Washington, DC 20013, 202 755-7844

RIN: 0980-AA21

625. HEAD START RECRUITMENT SELECTION AND ENROLLMENT OF CHILDREN

Legal Authority: 45 USC 9831 et seq

CFR Citation: 45 CFR 1305

Legal Deadline: None

Abstract: In this NPRM, the Head Start Bureau will propose amendments to existing regulations governing recruitment, selection, and enrollment of children.

Timetable:

Action	Date	FR Cite
NPRM	12/30/88	

Small Entities Affected: Organizations

Government Levels Affected: None

Agency Contact: Doug Klafehn, Department of Health and Human Services, Office of Human Development Services, Head Start Bureau, Box 1182, Washington, D.C. 20013, 202 755-0990

RIN: 0980-AA27

626. HEAD START: LIMITS ON COSTS OF DEVELOPMENT AND ADMINISTRATION

Legal Authority: 42 USC 9839

CFR Citation: 45 CFR 1301

Legal Deadline: None

Abstract: 45 CFR 1301.32 is being amended to provide additional clarification to Head Start programs in meeting the requirement that the costs of developing and administering a Head Start program not exceed 15 percent of total costs.

Timetable:

Action	Date	FR Cite
NPRM	03/31/89	

Small Entities Affected: Organizations

Government Levels Affected: None

Agency Contact: Douglas Klafehn, Head Start Bureau, Department of Health and Human Services, Office of Human Development Services, Room 5851, 400 6th Street, S.W., Washington, DC 20213, 202 755-0280

RIN: 0980-AA32

627. HEAD START PERFORMANCE STANDARDS FOR INFANTS AND TODDLERS

Legal Authority: 42 USC 9831 et seq

CFR Citation: 45 CFR 1307

Legal Deadline: None

Abstract: The NPRM will propose to establish a new Part 1307 setting forth performance standards that must be used in providing Head Start services to infants and toddlers.

Timetable:

Action	Date	FR Cite
NPRM	12/30/88	

Small Entities Affected: Organizations

Government Levels Affected: None

Agency Contact: Douglas Klafehn, Head Start Bureau, Department of Health and Human Services, Office of Human Development Services, Room 5851, 400 6th Street, S.W., Washington, D.C. 20213, 202 755-0280

RIN: 0980-AA33

628. ADOPTION AND FOSTER CARE INFORMATION

Legal Authority: 42 USC 679

CFR Citation: 45 CFR 1355; 45 CFR 1356; 45 CFR 1357

Legal Deadline: NPRM, Statutory, December 31, 1988.

Abstract: Section 479 of the Social Security Act requires the Secretary to publish regulations to collect data relating to foster care and adoption in the United States.

Timetable:

Action	Date	FR Cite
NPRM	12/30/88	

Small Entities Affected: None

HHS—HDSO — Proposed Rule Stage

Government Levels Affected: State

Agency Contact: Joseph Mottola, Deputy Commissioner, Administration for Children, Youth and Families, Department of Health and Human Services, Office of Human Development Services, Room 2030, 400 6th Street, S.W., Washington, DC 20213, 202 755-7728

RIN: 0960-AA35

629. DEVELOPMENTAL DISABILITIES PROGRAM

Legal Authority: 42 USC 6000 et seq

CFR Citation: 45 CFR 1385; 45 CFR 1386; 45 CFR 1387; 45 CFR 1388

Legal Deadline: NPRM, Statutory, April 30, 1988.

Abstract: This proposed rule will amend current regulations to implement statutory changes made by passage of Public Law 100-146, the Developmental Disabilities Assistance and Bill of Rights Act of 1987. The NPRM will include proposals to establish a peer review process for the University Affiliated Facilities program, set forth standards to assure that States supplement and do not supplant program resources, and revise paperwork and reporting requirements.

Timetable:

Action	Date	FR Cite
NPRM	12/30/88	

Small Entities Affected: Organizations

Government Levels Affected: State

Agency Contact: James J. Colarusso, Director, Management Services, Administration on Developmental Disabilities, Department of Health and Human Services, Office of Human Development Services, Room 351-D, 200 Independence Ave., S.W., Washington, DC 20201, 202 245-2890

RIN: 0980-AA36

630. ◆ CHILD ABUSE AND NEGLECT: TECHNICAL AMENDMENTS

Legal Authority: 42 USC 5101 et seq

CFR Citation: 45 CFR 1340

Legal Deadline: None

Abstract: Technical and conforming changes will be made in 45 CFR 1340 to implement statutory changes made by the recent reenactment of the Child Abuse Prevention and Treatment Act.

Timetable:

Action	Date	FR Cite
NPRM	12/30/88	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Susan Weber, Deputy Associate Commissioner, National Center on Child Abuse and Neglect, Department of Health and Human Services, Office of Human Development Services, Room 2030, 400 6th St., S.W., Washington, DC 20213, 202 755-7980

RIN: 0980-AA40

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)
Office of Human Development Services (HDSO)

Final Rule Stage

621. NONRECURRING COSTS OF ADOPTION

Legal Authority: 42 USC 673

CFR Citation: 45 CFR 1356

Legal Deadline: None

Abstract: This rule will implement new statutory requirements for States to establish a program to reimburse parent(s) who adopt a child with special needs for their nonrecurring costs of adoption.

Timetable:

Action	Date	FR Cite
NPRM	04/14/88	53 FR 12436
NPRM Comment Period End	06/13/88	
Final Action	12/30/88	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Beverly Stubbee, Department of Health and Human Services, Office of Human Development Services, Children's Bureau, P.O. Box 1182, Washington, D.C. 20201, 202 755-7447

RIN: 0980-AA24

632. NATIVE HAWAIIAN LOAN FUND DEMONSTRATION PROJECT

Legal Authority: 42 USC 2991 et seq

CFR Citation: 45 CFR 1336

Legal Deadline: Final, Statutory, March 29, 1988.

Abstract: This rule will amend regulations that implement recent statutory changes in the Native American Programs Act to set forth the procedures and criteria to be used in making a demonstration grant to operate a revolving loan fund for the purpose of economic and social self-sufficiency of Native Hawaiians.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/24/88	53 FR 23964
Final Action	12/30/88	

Small Entities Affected: Organizations

Government Levels Affected: State

Agency Contact: Jan Phelan, Program Analyst, Administration for Native Americans, Department of Health and Human Services, Office of Human Development Services, Room 5300, 330 Independence Ave., S.W., Washington, DC 20201, 202 245-7714

RIN: 0980-AA37

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)
Office of Human Development Services (HDSO)

Completed Actions

633. HEAD START PERSONNEL POLICIES

Significance: Regulatory Program

CFR Citation: 45 CFR 1301

Completed:

Reason	Date	FR Cite
Final Action	02/29/88	53 FR 5975
Final Action Effective	03/30/88	

Small Entities Affected: Organizations

Government Levels Affected: None

Agency Contact: Doug Klafehn 202 755-8599

RIN: 0980-AA18

634. GRANTS FOR STATE AND COMMUNITY PROGRAMS ON AGING; GRANTS TO INDIAN TRIBES; AND GRANTS TO ORGANIZATIONS SERVING OLDER HAWAIIANS FOR SUPPORTIVE AND NUTRITION SERVICES

CFR Citation: 45 CFR 1321; 45 CFR 1326; 45 CFR 1328

Completed:

Reason	Date	FR Cite
Final Action	08/31/88	53 FR 33758
Final Action Effective	08/31/88	

Small Entities Affected: Governmental Jurisdictions, Organizations

Government Levels Affected: State

Agency Contact: Frederick Luhmann 202 245-2618

RIN: 0980-AA34

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)
Social Security Administration (SSA)

Proposed Rule Stage

635. OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE PROGRAM; TREATMENT OF OASDI LUMP SUM AND MONTHLY PAYMENTS IN THE AID TO FAMILIES WITH DEPENDENT CHILDREN PROGRAM

Significance: Agency Priority

Legal Authority: 42 USC 405; 42 USC 407; 42 USC 602; 42 USC 1302; 42 USC 1383(a)

CFR Citation: 20 CFR 404U; 20 CFR 416F

Legal Deadline: None

Abstract: These proposed rules would revise 20 CFR 404.2040, which stipulates the use of benefit payments by a representative payee, explaining that retroactive and monthly title II benefits received by a representative payee may be used for other members of the AFDC Unit. We are also proposing direct payment to a beneficiary under age 18 if the beneficiary is within 7 months of attaining age 18 and is initially filing an application for benefits. This proposed revision represents a policy change and is an extension of the 4-month period in our current regulations.

Timetable:

Action	Date	FR Cite
NPRM	08/22/88	53 FR 31886
NPRM Comment Period End	10/21/88	
Final Action	05/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Phil Berge, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, Maryland 21235, 301 965-1769

RIN: 0960-AA10

636. OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE PROGRAM; REVISED MEDICAL CRITERIA FOR DETERMINATION OF DISABILITY; CARDIOVASCULAR SYSTEM

Legal Authority: 42 USC 1302; 42 USC 1383; 42 USC 405

CFR Citation: 20 CFR 404.1500ff Appendix 1

Legal Deadline: None

Abstract: Section 4.00 of Appendix 1 of the Disability regulations (404.1501 through 404.1599) describes cardiovascular impairments considered severe enough to prevent an individual from doing any gainful activity. Because of the advances in medical technologies and practice in this area we anticipate the need to revise the criteria in the Listing of Impairments to bring this section up to date. The Supplemental Security Income program incorporates by reference and uses the same medical criteria as the Old-Age, Survivors, and Disability Insurance program.

Timetable:

Action	Date	FR Cite
NPRM	04/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Harry Short, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Blvd., Baltimore, MD 21235, 301 965-1757

RIN: 0960-AA39

637. OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE PROGRAM; REVISED MEDICAL CRITERIA FOR DETERMINATION OF DISABILITY; RESPIRATORY SYSTEM

Legal Authority: 42 USC 1302; 42 USC 1383; 42 USC 405

CFR Citation: 20 CFR 404.1500ff. Appendix 1

Legal Deadline: None

Abstract: Section 3.00 of Appendix 1 to the Disability Regulations (404.1501 through 404.1599) describes those respiratory impairments which are considered severe enough to prevent a person from engaging in any gainful activity. We are proposing comprehensive revisions to that section to require consideration of the nature and clinical manifestations of respiratory disorders, as well as consideration of the degree of limitations such disorders may impose on an individual's ability to work. The Supplemental Security Income program incorporates by reference and uses the same medical criteria as the Old-Age, Survivors, and Disability Insurance programs.

Timetable:

Action	Date	FR Cite
NPRM	11/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Henry Short, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Blvd., Baltimore, MD 21235, 301 965-1727

RIN: 0960-AE01

838. OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE PROGRAM; REVISED MEDICAL CRITERIA FOR DETERMINATION OF DISABILITY; MUSCULOSKELETAL SYSTEM

Legal Authority: 42 USC 1302; 42 USC 405; 42 USC 1383

CFR Citation: 20 CFR 404.1500ff, Appendix 1

Legal Deadline: None

Abstract: Section 1.00 of Appendix 1 to the Disability Regulations 404.1501 through 404.1599 describes those musculoskeletal impairments which are considered severe enough to prevent a person from doing any gainful activity. We are proposing comprehensive revisions to that section to ensure that the medical evaluation criteria are up to date and consistent with the latest advances in medicine. The Supplemental Security Income program incorporates by reference and uses the same medical criteria as the Old-Age Survivors, and Disability Insurance program.

Timetable:

Action	Date	FR Cite
NPRM	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Henry Lerner, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Blvd., Baltimore, MD 21235, 301 965-1759

RIN: 0960-AB01

839. ◆ SUPPLEMENTAL SECURITY INCOME PROGRAM AND MEDICAID ASSISTANCE; WHAT IS NOT INCOME

Legal Authority: 42 USC 1382a

CFR Citation: 20 CFR 416.1103(a); 42 CFR 435.725(c); 42 CFR 435.726(c); 42 CFR 435.733(c); 42 CFR 435.735(c); 42 CFR 404.331(a); 42 CFR 436.832(c)

Legal Deadline: None

Abstract: The proposed rule changes SSI policy to consider Veterans Administration payments resulting from unusual medical expenses not to be income for SSI purposes.

Timetable:

Action	Date	FR Cite
NPRM	08/24/88	53 FR 32252
NPRM Comment Period End	10/24/88	
Final Action	04/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Irving Darrow, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Blvd., Baltimore, MD 21235, 301 965-1759

RIN: 0960-AB09

840. OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE AND SUPPLEMENTAL SECURITY INCOME PROGRAMS; ADJUSTMENTS IN SSI BENEFITS ON ACCOUNT OF RETROACTIVE BENEFITS UNDER TITLE II

Significance: Regulatory Program

Legal Authority: 42 USC 405; 42 USC 1320a-6; 42 USC 1302; 42 USC 1383; PL 98-369, Sec 2615; 42 USC 1383b; 42 USC 1327

CFR Citation: 20 CFR 404.408b; 20 CFR 416.1123; 20 CFR 416.1402(m); 20 CFR 416.1123a; 20 CFR 404.902

Legal Deadline: None

Abstract: Sec. 2615 of Pub. L. 98-369 amended sec. 1127 of the Social Security Act to eliminate loopholes that permitted some people who were paid Old-Age, Survivors and Disability Insurance (OASDI) and Supplemental Security Income (SSI) benefits retroactively to receive more in total benefits for the same period than if they had been paid the benefits when regularly due. The two main changes are: (1) SSI benefits will be reduced where retroactive OASDI benefits have been paid before the SSI benefits. Under prior law, reductions could be made only in retroactive OASDI benefits and only when the retroactive SSI had been paid first. (2) OASDI or SSI benefits payable upon reinstatement following a period of suspension or termination will be reduced by the amount of SSI benefits that would not have been paid if the OASDI benefits had been paid when regularly due. We will amend our regulations to conform to the statutory changes. The program savings to SSA are estimated as $5 million a year.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Jack Schaubergar, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, Maryland 21235, 301 965-8471

RIN: 0960-AE35

841. SUPPLEMENTAL SECURITY INCOME PROGRAM; LIMITATION ON RECOUPMENT RATE IN CASE OF OVERPAYMENT

Legal Authority: 42 USC 1302; 42 USC 1381; 42 USC 1381a; 42 USC 1382; 42 USC 1382c; 42 USC 1383; 42 USC 1383b

CFR Citation: 20 CFR 416E

Legal Deadline: None

Abstract: These proposed rules which implement section 2612 of Pub. L. 98-369 will limit the rate at which an overpayment may be recovered from an individual still receiving benefits (SSI or federally administered supplementary payments, or both) to 10 percent of the recipient's total income (countable income plus SSI and State supplementary payments) or the recipient's payment for the month, whichever is less. The 10 percent requirement will apply only to recipients in current payment status. The 10 percent limit will not apply in situations involving conditional disposition of resources agreements, misuse of burial funds, recovery by refund, cross program adjustment for individuals not in SSI current pay or where it is determined that the overpayment occurred because of recipient fraud, willful misrepresentation, or concealment. The proposed rules, in negotiated cases, set a rate of withholding that is appropriate for the financial condition of the overpaid person after (continued)

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ABSTRACT CONT: factual evaluation. Such cases will also be considered initial determinations for which the recipient has appeal rights. Estimated costs are FY 1988 through FY 1989 - program costs of $18 million per year and administrative costs of $ .5 million per year.

Agency Contact: Larry Dudar, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235, 301 965-1795

RIN: 0960-AB40

842. OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE AND SUPPLEMENTAL SECURITY INCOME PROGRAMS; EVALUATION GUIDES FOR DETERMINING SUBSTANTIAL GAINFUL ACTIVITY (SGA)

Legal Authority: PL 98-460, Sec 10

CFR Citation: 20 CFR 404; 20 CFR 416

Legal Deadline: None

Abstract: These proposed changes will incorporate into regulations of the Social Security Administration a number of policies relating to the evaluation of a person's work activity that are now in Social Security Rulings published in 1983 and 1984.

Timetable:

Action	Date	FR Cite
NPRM	02/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Harry Short, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235, 301 965-1757

RIN: 0960-AE73

843. OASDI & SSI PROGRAMS; DEFINITION OF OVERPAYMENT AND LIABILITY FOR REPAYMENT OF AN OVERPAYMENT

Legal Authority: 42 USC 404; 42 USC 405; 42 USC 1302

CFR Citation: 20 CFR 404.501; 20 CFR 404.502; 20 CFR 416.537; 20 CFR 404.501a

Legal Deadline: None

Abstract: These proposed rules implement section 12113 of Pub. L. 99-272 (Consolidated Omnibus Budget Reconciliation Act of 1985) enacted April 7, 1986. That legislation establishes a Social Security benefit overpayment or a Supplemental Security Income benefit overpayment to a joint account owner in certain cases in which the beneficiary is deceased and payment is made after death. Also, we propose to add clarifying changes to the title II and title XVI regulations to explain the procedures used to collect benefit overpayments.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Duane Heaton, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Blvd., Baltimore, MD 21235, 301 965-9470

RIN: 0960-AB78

844. SUPPLEMENTAL SECURITY INCOME PROGRAM; TREATMENT OF PROPERTY HELD IN TRUST OR OTHER SIMILAR LEGAL DEVICES WHEN THE PROPERTY IS AVAILABLE FOR A BENEFICIARY'S SUPPORT AND MAINTENANCE

Legal Authority: 42 USC 1302; 42 USC 1381; 42 USC 1381a; 42 USC 1382; 42 USC 1382a; 42 USC 1382b; 42 USC 1382c(f); 42 USC 1383

CFR Citation: 20 CFR 416.1201

Legal Deadline: None

Abstract: This proposed regulation provides that assets held in any revocable or irrevocable trust or any other similar legal device including but not limited to gifts made in accordance with the Uniform Gifts to Minors Act, if available for the beneficiary's support and maintenance, will be a countable resource. It would include as a resource trust assets that could be but are not disbursed to the beneficiary either at the discretion of the trustees or at the direction of the trustor because such disbursement would adversely affect the beneficiary's eligibility for Supplemental Security Income benefits.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Henry D. Lerner, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Blvd., Baltimore, MD 21235, 301 965-1759

RIN: 0960-AB79

845. OLD-AGE, SURVIVORS AND DISABILITY INSURANCE; BLACK LUNG; AND SUPPLEMENTAL SECURITY INCOME PROGRAMS; AND ORGANIZATION AND PROCEDURES; APPLICATION OF CIRCUIT COURT LAW

Significance: Agency Priority

Legal Authority: 42 USC 405; 42 USC 1302; 42 USC 1395; 42 USC 1395(a)(2); 42 USC 1395hh; 5 USC 552

CFR Citation: 20 CFR 422; 20 CFR 404; 20 CFR 410F; 20 CFR 416N

Legal Deadline: None

Abstract: The proposed regulations describe a new type of Social Security Ruling which is available to the public and which is issued when the decision of a United States Court of Appeals conflicts with Social Security Administration policy. The Ruling states how the decision is applied to claims of persons living in the particular circuit.

Timetable:

Action	Date	FR Cite
Prior Notice of Proposed Rulemaking	01/23/87	52 FR 02557
NPRM	10/00/88	

Small Entities Affected: None

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Government Levels Affected: None

Agency Contact: Phil Berge, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Blvd., Baltimore, MD 21235, 301 965-1759

RIN: 0960-AB85

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646. SUPPLEMENTAL SECURITY INCOME PROGRAM; EXCLUSIONS FROM INCOME AND RESOURCES OF INDIAN JUDGEMENT FUNDS AND PER CAPITA DISTRIBUTIONS

Legal Authority: PL 97-458; PL 98-64; PL 100-241

CFR Citation: 20 CFR 416K Appendix; 20 CFR 416.1234; 20 CFR 416.1236

Legal Deadline: None

Abstract: The proposed regulation reflects the provisions of the following statutes: (1) Pub. L 97-458 enacted January 12, 1983, which provides that Indian judgement funds held in trust or distributed per capita pursuant to a plan approved by Congress or the Secretary of the Interior are excluded from income and resources under the Supplemental Security Income program (2) Pub. L 98-64 enacted August 7, 1983, which provides for the exclusion of all funds held in trust by the Secretary of the Interior for an Indian tribe and distributed per capita to a member of that tribe and (3) Pub. L 100-241 enacted February 3, 1988, which provides for the exclusion from income and resources of certain items received by an individual Alaska native or descendent of an Alaska native from a native corporation. Some savings in program costs may result from these changes.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Irv Darrow, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Blvd., Baltimore, MD 21235, 301 965-1758

RIN: 0960-AB86

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647. OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE PROGRAM; REVISED MEDICAL CRITERIA FOR DETERMINATION OF DISABILITY; MENTAL DISORDERS-CHILDHOOD

Significance: Regulatory Program

Legal Authority: 42 USC 405; 42 USC 1302; 42 USC 1383

CFR Citation: 20 CFR 404P

Legal Deadline: None

Abstract: Section 112.00 of Appendix 1 to the Old-Age, Survivors, and Disability Insurance Disability Regulations 404.1501 through 404.1599 describe the medical criteria that apply only to the evaluation of mental impairments of persons under age 18. We are proposing comprehensive revisions to that section to ensure that the medical criteria are up to date and consistent with the latest advances in medicine. The Supplemental Security Income program incorporates by reference and uses the same medical criteria as the Old-Age, Survivors, and Disability Insurance program.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: William Ziegler, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Blvd., Baltimore, MD 21235, 301 965-1758

RIN: 0960-AB96

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648. OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE PROGRAM; MEDICAL EVALUATION CRITERIA FOR ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS)

Significance: Regulatory Program

Legal Authority: 42 USC 405; 42 USC 1302

CFR Citation: 20 CFR 404P

Legal Deadline: None

Abstract: Section 10.00 of Appendix 1 to the Disability Regulations (404.1501 through 404.1599) describes multiple body system impairments which are severe enough to prevent a person from doing any gainful activity. We are proposing to add the criteria for evaluation of AIDS to this section. The Supplemental Security Income program incorporates by reference and uses the same medical criteria as the Old-Age, Survivors, and Disability Insurance program. The budgetary impact is unknown at this time.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: William Ziegler, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Blvd., Baltimore, MD 21235, 301 965-1759

RIN: 0960-AC00

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649. OLD-AGE SURVIVORS AND DISABILITY INSURANCE AND SUPPLEMENTAL SECURITY INCOME PROGRAMS; THE HEARINGS AND APPEALS PROCESS AND REOPENING DETERMINATIONS AND DECISIONS

Significance: Agency Priority

Legal Authority: 42 USC 405; 42 USC 1302; 42 USC 1383; 42 USC 401; 42 USC 404

CFR Citation: 20 CFR 404J; 20 CFR 404R; 20 CFR 410F; 20 CFR 416N; 20 CFR 416O; 20 CFR 422

Legal Deadline: None

Abstract: These regulations propose changes in the policies and procedures governing the hearings and appeals process, and in the structure of SSA's Appeals Council, which conducts the last step in the administrative review process; clarify certain issues with respect to the scope of that review; and make changes in other parts of the process related thereto. The regulations will also propose changes in the regulations concerning SSA's authority to reopen and revise determinations and decisions which have become final.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Philip Berge, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235, 301 965-1759

RIN: 0960-AC15

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650. ● OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE PROGRAM; NONPAYMENT OF BENEFITS TO PRISONERS, VOCATIONAL REHABILITATION EXCEPTION

Legal Authority: 42 USC 402(x)(1); 42 USC 405

CFR Citation: 20 CFR 404D

Legal Deadline: None

Abstract: Existing regulations at 20 CFR 404.468(d) provide a vocational rehabilitation exception to the nonpayment of benefits to prisoners provision described at 20 CFR 404.468(a). Under the exception, the nonpayment provision does not apply if a prisoner who is entitled to benefits on the basis of disability is actively and satisfactorily participating in a rehabilitation program which has been specifically approved for the individual by court of law. In addition, the Secretary must determine that the program is expected to result in the individual being able to do substantial gainful activity upon release and within a reasonable time. No benefits will be paid to the prisoner for any month prior to the approval of the program. The proposed regulations would set out more definitive criteria for applying the exception and would define terms, such as "rehabilitation program", "court of law", and "reasonable time", for purposes of applying the exception.

Timetable:

Action	Date	FR Cite
NPRM	06/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: David Smith, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Blvd., Baltimore, MD 21235, 301 965-1758

RIN: 0960-AC10

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651. SUPPLEMENTAL SECURITY INCOME PROGRAM; EMPLOYMENT OPPORTUNITIES FOR THE DISABLED

Legal Authority: PL 99-643, Sec 2; PL 99-643, Sec 3; PL 99-643, Sec 4; PL 99-643, Sec 5

CFR Citation: 20 CFR 416.260; 20 CFR 416.261; 20 CFR 416.262; 20 CFR 416.263; 20 CFR 416.264; 20 CFR 416.265; 20 CFR 416.266; 20 CFR 416.267; 20 CFR 416.268; 20 CFR 416.269; 20 CFR 416.211; 20 CFR 416.414; 20 CFR 416.640; 20 CFR 416.901; 20 CFR 416.990; ...

Legal Deadline: None

Abstract: These proposed regulations will implement statutory changes contained in sections 2, 3, 4, and 5 of P.L. 99-643. These provisions: (1) make section 1619 of the Social Security Act permanent; (2) allow certain blind and disabled beneficiaries to receive up to 2 months of SSI benefits during temporary periods when they are in certain institutions; and (3) simplify the transitions among regular SSI status, special benefit status, and special Medicaid status.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Harry Short, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Blvd., Baltimore, MD 21235, 301 965-1757

RIN: 0960-AC22

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652. SUPPLEMENTAL SECURITY INCOME PROGRAM; PERMANENT RESIDENCE IN THE UNITED STATES UNDER COLOR OF LAW - ADDITIONAL CATEGORY

Significance: Agency Priority

Legal Authority: 42 USC 1382c; PL 99-603

CFR Citation: 20 CFR 416.1616; 20 CFR 416.1615

Legal Deadline: None

Abstract: This proposed regulation will add the specific categories of aliens legalized by P. L. 99-603 to be considered permanently residing in the United States under color of law or lawfully admitted for permanent residence in the United States.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: David Smith, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Blvd., Baltimore, MD 21235, 301 965-1759

RIN: 0960-AC23

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653. SUPPLEMENTAL SECURITY INCOME PROGRAM; PAYMENT OF BENEFITS DUE DECEASED RECIPIENTS

Legal Authority: 42 USC 1383(b)(1)(A)

CFR Citation: 20 CFR 416.340; 20 CFR 416.345; 20 CFR 416.538; 20 CFR 416.542; 20 CFR 416.543; 20 CFR 416.1457(c)(4)

Legal Deadline: None

Abstract: Section 8 of Pub. L. 99-643 provides that effective for benefits payable for months after May 1986, an underpayment shall be paid to any surviving spouse of a deceased SSI recipient whether or not the spouse was eligible for SSI, if such spouse was living in the same household with the recipient at the time of death, or within the 6 months immediately preceding the month of death, or to the parent(s) of a deceased disabled or blind child who was an SSI recipient if the child was living with the parent(s) at the time of death or within the 6 months immediately preceding the month of death. These proposed regulations would also reflect a policy change that would continue the appeals process (versus automatic dismissal), at the Administrative Law Judge or Appeals Council level, for the survivors' entitlement to an underpayment if they meet certain conditions. The cost estimate for these provisions is estimated to be $2 million per year in program costs and less than $1 million and 30 workyears in administrative expenses.

Timetable:

Action	Date	FR Cite
NPRM	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Larry Dudar, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Blvd., Baltimore, MD 21235, 301 965-1759

RIN: 0960-AC29

854. ● OLD-AGE, SURVIVORS AND DISABILITY INSURANCE PROGRAM AND ORGANIZATION AND FUNCTIONS; RECORDS OF EARNINGS

Significance: Agency Priority

Legal Authority: 42 USC 1302; 42 USC 405

CFR Citation: 20 CFR 404.810; 20 CFR 404.820; 20 CFR 404.820a; 20 CFR 404.831; 20 CFR 422.125

Legal Deadline: None

Abstract: This proposed regulation will establish rules on the evidence an individual must submit with a request to correct the Secretary's record of earnings and state the conditions under which the Secretary will assist the requester in obtaining evidence that establishes such records as incorrect. This proposed regulation will reduce the number of unproductive efforts the agency makes to investigate unsubstantiated assertions that the Secretary's records are incorrect and facilitate the correction process in many cases by relying more upon evidence readily available to the requester, rather than requiring the agency to attempt to obtain evidence from the employer.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Jack Schanberger, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Blvd., Baltimore, MD 21235, 301 965-8471

RIN: 0960-AC30

855. ORGANIZATION AND PROCEDURES; AND OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE PROGRAMS; SOCIAL SECURITY NUMBER CARDS FOR ALIENS

Legal Authority: 42 USC 405; 42 USC 1301

CFR Citation: 20 CFR 422.5

Legal Deadline: None

Abstract: The proposed regulation will reflect the role of the Immigration and Naturalization Service in obtaining applications for Social Security numbers from aliens when they apply for temporary legal resident status. Rules on evidence needed to support an application are being updated and revised. The proposed regulations will also reflect the role of the States in obtaining applications for Social Security numbers from welfare claimants and recipients. Savings for the Federal government are estimated to be $5.9 million for FY 1988 and $6.3 million for subsequent years.Virtually all of the savings are derived from the provision to reflect the role of the States in enumeration of welfare recipients.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Jack Schanberger, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235, 301 965-8471

RIN: 0960-AC34

856. OLD-AGE SURVIVORS AND DISABILITY INSURANCE AND SUPPLEMENTAL SECURITY INCOME PROGRAMS; PAST WORK EXPERIENCE AND ADJUSTMENT TO OTHER WORK

Legal Authority: 42 USC 405; 42 USC 1302; 42 USC 1383

CFR Citation: 20 CFR 404.1502; 20 CFR 404.1560; 20 CFR 416.902; 20 CFR 416.965

Legal Deadline: None

Abstract: We are proposing to include in our regulations vocational evaluation standards used in determining disability under titles II and XVI of the Social Security Act (the Act). The guidelines apply to assessing past work as a vocational factor and evaluating medical-vocational circumstances demonstrating an inability to make an adjustment to other work. These standards are presently contained in Social Security Rulings (SSR's) and the Program Operating Manual System (POMS).

Timetable:

Action	Date	FR Cite
NPRM	02/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: William J. Ziegler, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235, 301 965-1759

RIN: 0960-AC39

857. OLD-AGE SURVIVORS AND DISABILITY INSURANCE AND SUPPLEMENTAL SECURITY INCOME PROGRAMS; CANCELLED CONSULTATIVE EXAMINATIONS

Significance: Agency Priority

Legal Authority: 42 USC 405; 42 USC 1302; 42 USC 1383

CFR Citation: 20 CFR 404.1524; 20 CFR 416.1024

Legal Deadline: None

Abstract: We are proposing to no longer pay for consultative examinations when services are not rendered because the scheduled appointment was broken or otherwise not kept. Presently, the States decide whether to pay for these canceled examinations and such payments have already been abolished in 22 States. The total elimination of these payments will establish a uniform national policy.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: William J. Ziegler, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235, 301 965-1759

RIN: 0960-AC40

858. OLD-AGE SURVIVORS AND DISABILITY INSURANCE AND SUPPLEMENTAL SECURITY INCOME PROGRAMS; DETERMINING DISABILITY AND BLINDNESS; FEE LIMITATION POLICY FOR PURCHASE OF LABORATORY TESTS

Legal Authority: 42 USC 1302; 42 USC 1383b

CFR Citation: 20 CFR 404.1624; 20 CFR 416.1024

Legal Deadline: None

Abstract: These proposed regulations will place a limitation on the rates of payment a State may pay for laboratory tests purchased by the disability determination services (DDS). Under these proposed regulations a DDS will be required to limit the amounts it pays for laboratory tests to the maximum payment level contained in the Health Care Financing Administration's (HCFA) Medicare Limitation Amounts for Laboratory Fee Schedules. Currently the only payment requirement is that the rates of payment not exceed the highest rates paid by Federal or other agencies in the State for the same or similar types of services.

Timetable:

Action	Date	FR Cite
NPRM	04/00/89	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Harry J. Short, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235, 301 965-1737

RIN: 0960-AC41

859. ● SUPPLEMENTAL SECURITY INCOME PROGRAM; PROCEEDS OF A LOAN, PAYMENT OF PRO RATA SHARE OF HOUSEHOLD OPERATING EXPENSES

Significance: Agency Priority

Legal Authority: 42 USC 1102

CFR Citation: 20 CFR 416.1103; 20 CFR 416.1133

Legal Deadline: None

Abstract: It is our policy that money borrowed (a loan) is not income for SSI purposes and therefore has no effect on a person's SSI benefits. These proposed regulations will state that only cash transactions may be considered loans. These proposed regulations will also provide that the one-third reduction rule which applies when a person who lives in another's household and receives in-kind support and maintenance will not apply if the SSI recipient pays his or her pro rata share in cash and no later than the month under consideration. No additional costs or savings are anticipated since these proposed regulations will codify existing policy.

Timetable:

Action	Date	FR Cite
NPRM	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: David Smith, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Blvd., Baltimore, MD 21235, 301 965-1758

RIN: 0960-AC42

860. ● SUPPLEMENTAL SECURITY INCOME PROGRAM; EXCLUSION FROM COUNTABLE RESOURCES OF THE VALUE OF PROMISSORY NOTES IN HOME REPLACEMENT SITUATIONS

Legal Authority: 42 USC 1302; 42 USC 1383

CFR Citation: 20 CFR 416.1212

Legal Deadline: None

Abstract: We propose to amend the regulations under the Supplemental Security Income program to provide that the current market value of an installment sales contract is excluded as part of an excluded home when certain conditions are met. The costs will be insignificant since the policy is currently in use under our operating instructions.

Timetable:

Action	Date	FR Cite
NPRM	03/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Henry Lerner, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Blvd., Baltimore, MD 21235, 301 965-1758

RIN: 0960-AC43

861. ● OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE PROGRAM; EXTENSION OF SOCIAL SECURITY COVERAGE TO CERTAIN WORKERS; MEDICARE ONLY COVERAGE OF CERTAIN STATE AND LOCAL GOVERNMENT EMPLOYEES

Legal Authority: PL 100-203, Sec 9001; PL 100-203, Sec 9002; PL 100-203, Sec 9003; PL 100-203, Sec 9004; PL 100-203, Sec 9005; PL 100-203, Sec 9022; PL 99-272, Sec 13205; PL 99-514, Sec 1895

CFR Citation: 20 CFR 404.429(c)(3); 20 CFR 404.1015; 20 CFR 404.1018b; 20 CFR 404.1019; 20 CFR 404.1020; 20 CFR 404.1021; 20 CFR 404.1055; 20 CFR 404.1058; 20 CFR 404.1097

Legal Deadline: None

Abstract: These regulations reflect statutory changes that extend social security coverage to work situations not previously covered. These newly covered work situations include: (1) Inactive duty training in the uniformed services; (2) Certain agriculture labor situations; and (3) Work for a spouse or parent. Additionally, employer-paid insurance premiums may be wages and the year for reporting corporate directors income has been changed. Last, Medicare coverage is provided to many previously uncovered State and local government employees.

Timetable:

Action	Date	FR Cite
NPRM	01/00/89	

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Local, State, Federal

Agency Contact: Charles Campbell, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Blvd., Baltimore, MD 21235, 301 965-1781

RIN: 0960-AC45

663. ● OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE PROGRAM; APPLICABILITY OF GOVERNMENT PENSION TO CERTAIN FEDERAL EMPLOYEES

Significance: Agency Priority

Legal Authority: 42 USC 402 (b),(c),(e),(f),(g); PL 100-203, Sec 9007

CFR Citation: 20 CFR 404.408a

Legal Deadline: None

Abstract: We are proposing to revise our rules on reducing the Social Security spouse's benefits of a person who is also receiving a Government pension based on noncovered employment. The Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203, sec 9007) requires that a Federal Government employee who elects to be covered under Social Security after December 31, 1987 must work for at least 60 months after that date in order to avoid the reduction after he or she becomes entitled to Social Security spouse's benefits.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Jack Schanberger, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Blvd., Baltimore, MD 21235, 301 965-0471

RIN: 0960-AC46

663. ● SUPPLEMENTAL SECURITY INCOME PROGRAM; EXCLUSION FROM RESOURCES OF FUNDS SET ASIDE FOR BURIAL AND BURIAL SPACES

Significance: Agency Priority

Legal Authority: 42 USC 1302; 42 USC 1383

CFR Citation: 20 CFR 416.1231

Legal Deadline: None

Abstract: We propose to amend our regulations to reflect the changes made by section 9105 of Pub. L. 100-203 (the Omnibus Budget Reconciliation Act of 1987) and to make other policy changes concerning the treatment of burial spaces and certain funds set aside for burial expenses in the Supplemental Security Income program. The cost/savings and workyear impact for this NPRM have been estimated to be insignificant.

Timetable:

Action	Date	FR Cite
NPRM	09/15/88	53 FR 35830
NPRM Comment Period End	11/14/88	
Final Action	06/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Henry Lemer, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Blvd., Baltimore, MD 21235, 301 965-1758

RIN: 0960-AC48

664. ● SUPPLEMENTAL SECURITY INCOME PROGRAM; EXEMPTION OF CERTAIN ASSISTANCE PAYMENTS FROM RETROSPECTIVE MONTHLY ACCOUNTING

Legal Authority: PL 100-203, Sec 9106

CFR Citation: 20 CFR 416.420

Legal Deadline: None

Abstract: Section 9106 of P.L. 100-203 exempts certain income from retrospective monthly accounting in determining a person's Supplemental Security Income (SSI) benefit amount. Generally, an SSI benefit for a month is computed using income from two months prior. Section 9106, which is reflected in this regulation change, provides for the following types of income to be used only in the month received to compute the benefit amount: (1) Aid to Families with Dependent Children (AFDC); (2) Foster Care (Title IV-E); (3) Refugee Cash Assistance; (4) Cuban and Haitian Entrant Assistance; and (5) Bureau of Indian Affairs general assistance and child welfare assistance. Program costs are expected to be negligible.

Timetable:

Action	Date	FR Cite
NPRM	03/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Irving Darrow, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Blvd., Baltimore, MD 21235, 301 965-1765

RIN: 0960-AC49

665. ● SUPPLEMENTAL SECURITY INCOME PROGRAM; INCREASE IN EMERGENCY ADVANCE PAYMENTS

Legal Authority: 42 USC 1383(a); PL 100-203, Sec 9109

CFR Citation: 20 CFR 416.502; 20 CFR 416.521; 20 CFR 416.1403

Legal Deadline: None

Abstract: The proposed rules will reflect section 9109 of Pub. L. 100-203. They raise the amount of the emergency advance payment that can be paid to a person presumptively eligible for SSI payments. Because the emergency advance payment is an advance of benefits and later deducted from the benefits due an individual, no increased costs are anticipated.

Timetable:

Action	Date	FR Cite
NPRM	01/00/89	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: David Smith, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Blvd., Baltimore, MD 21235, 301 965-1758

RIN: 0960-AC50

666. ● SUPPLEMENTAL SECURITY INCOME PROGRAM; MODIFICATION OF INTERIM ASSISTANCE REIMBURSEMENT PROGRAM

Legal Authority: 42 USC 1302; PL 100-203, Sec 9110

CFR Citation: 20 CFR 416.1901; 20 CFR 416.1902; 20 CFR 416.1906

Legal Deadline: None

Abstract: These proposed rules reflect sec. 9110 of Pub.L. 100-203. They extend Interim Assistance Reimbursement to cases in which assistance is provided by a State while an individual's Supplemental Security Income (SSI) payments are suspended or terminated and then subsequently reinstated. Current regulations provide for reimbursement to a State only for interim assistance payments made while an individual's initial application for SSI is pending. No additional program costs are anticipated since the amount reimbursed to the State is later deducted from the individual's SSI payments.

Timetable:

Action	Date	FR Cite
NPRM	02/00/89	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: David Smith, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Blvd., Baltimore, MD 21235, 301 965-1758

RIN: 0960-AC51

667. ● SUPPLEMENTAL SECURITY INCOME PROGRAM; EXCLUSION FROM INCOME OF PAYMENTS RECEIVED FOR AND USED TO PAY LAST ILLNESS AND DEATH

Legal Authority: PL 100-203, Sec 9120

CFR Citation: 20 CFR 416.1121; 20 CFR 416.1201

Legal Deadline: None

Abstract: The regulation reflects the provisions of section 9120 of Pub. L. 100-203 by providing that payments to an individual (including gifts and inheritances) occasioned by the death of another person are not considered income for supplemental security income purposes to the extent that such payments are expended by such individual for purposes of the deceased person's last illness and burial. Also, the regulations propose a policy change to not consider the same payments as resources for one month following receipt. Any increased costs will be negligible.

Timetable:

Action	Date	FR Cite
NPRM	03/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Irving Darrow, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Blvd., Baltimore, MD 21235, 301 965-1758

RIN: 0960-AC52

668. ● SUPPLEMENTAL SECURITY INCOME PROGRAM; CONTINUATION OF FULL BENEFIT STANDARD FOR PERSON IN MEDICAID INSTITUTION

Legal Authority: PL 100-203, Sec 9115

CFR Citation: 20 CFR 416.211; 20 CFR 416.414; 20 CFR 416.1149; 20 CFR 416.1167; 20 CFR 416.1325; 20 CFR 416.2010

Legal Deadline: None

Abstract: This amendment requires continued payment based on the full payment rate to persons eligible for SSI payments under section 1611(e) of the Act who enter certain medical institutions but whose stay is not expected to last more than 3 months and who have continuing expenses associated with maintaining their homes. For the period of hospitalization, such persons' benefits will be based on living arrangements prior to institutionalization.

Timetable:

Action	Date	FR Cite
NPRM	02/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Charles Campbell, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Blvd., Baltimore, MD 21235, 301 965-1704

RIN: 0960-AC55

669. ● OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE PROGRAM; SOCIAL SECURITY NUMBERS FOR NEWBORN CHILDREN

Significance: Agency Priority

Legal Authority: 42 USC 405

CFR Citation: 20 CFR 422.103

Legal Deadline: None

Abstract: Under the proposed rule, a parent will be able to request a Social Security number in the hospital when he or she provides birth registration information for a newborn child. The State vital statistics office will receive the information and the request from the hospital and electronically transmit this information to the Social Security Administration (SSA). SSA will assign a Social Security number to the child and send a card to the parents. We expect annual savings of $11.4 million. A pilot project in three States has shown this procedure to be efficient and well-received.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Jack Schanberger, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Blvd., Baltimore, MD 21235, 301 965-0471

RIN: 0960-AC56

670. ● OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE PROGRAM; REVISION OF CONTRIBUTIONS FOR SUPPORT RULES

Legal Authority: 42 USC 1302

CFR Citation: 20 CFR 404.366(a)

Legal Deadline: None

Abstract: This proposed rule will change one of the requirements for determining whether an insured person is contributing to the support of a child at a specific time. The requirements that contributions be made regularly and be large enough to meet an important part of a child's living expenses will be replaced by a requirement that consideration be given to the economic circumstances of both the insured person and the child and that recognition also be given to the child's needs. Because of the minimal number of persons who will be affected by these proposed changes any additional program costs will be negligible.

Timetable:

Action	Date	FR Cite
NPRM	03/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: David Smith, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Blvd., Baltimore, MD 21235, 301 965-1758

RIN: 0960-AC57

HHS--SSA — Proposed Rule Stage

571. ● OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE PROGRAM; SUPPLEMENTAL EARNINGS REPORTS

Legal Authority: 42 USC 403

CFR Citation: 20 CFR 404.455

Legal Deadline: None

Abstract: We have learned that old-age and survivors' insurance beneficiaries whose estimate of earnings for the current year is more than the exempt amount for that year, but is equal to or less than the prior year's earnings, tend to underestimate or fail to report their work for the next year which results in overpayments. We are proposing an addition to the current regulation which will clarify that our interpretation of Section 203(h)(3) and (h)(4) of the Social Security Act permits SSA to request estimates of earnings for the next taxable year as well as the current taxable year. If a beneficiary does not furnish the requested future year's earnings estimate, we will use the estimate for the current year to determine whether to withhold benefits for the next year. We estimate savings of $3.5 million per year.

Timetable:

Action	Date	FR Cite
NPRM	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Jack Schamberger, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Blvd., Baltimore, MD 21235, 301 965-0471

RIN: 0960-AC58

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS) — Final Rule Stage
Social Security Administration (SSA)

672. SUPPLEMENTAL SECURITY INCOME PROGRAM; REDUCTIONS, SUSPENSIONS AND TERMINATIONS

Legal Authority: 42 USC 1302; 42 USC 1382; 42 USC 1382a; 42 USC 1382b; 42 USC 1382c; 42 USC 1382d; 42 USC 1383

CFR Citation: 20 CFR 416M

Legal Deadline: None

Abstract: This regulation reorganizes, revises, and clarifies the rules on withholding, reducing, suspending, and terminating an SSI beneficiary's benefits. This regulation includes changes in the present rules that are required by recent statutory enactments and, additionally, make the rules easier to read and understand. This regulation will have no impact on SSA programs and administrative costs.

Timetable:

Action	Date	FR Cite
Notice of Decision to Develop Regs	08/19/79	44 FR 35241
NPRM	05/06/86	51 FR 17057
NPRM Comment Period End	07/07/86	
Final Action	02/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Charles H. Campbell, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235, 301 965-1784

RIN: 0960-AA22

673. SUPPLEMENTAL SECURITY INCOME PROGRAM; REOPENING AND REVISING SUPPLEMENTAL SECURITY INCOME DETERMINATIONS AND DECISIONS WITHIN FOUR YEARS OF THE NOTICE OF THE INITIAL DETERMINATION

Legal Authority: 42 USC 1302; 42 USC 1383; 42 USC 1383b

CFR Citation: 20 CFR 416.1488

Legal Deadline: None

Abstract: The proposed rules would provide for the reopening and revising of Supplemental Security Income determinations within four years of the notice of the initial determination if we discovered an error affecting a claimant's eligibility or benefit amount during this period through the use of information exchange and data gathering involving either our records or our records and those of other Federal or State agencies.

Timetable:

Action	Date	FR Cite
NPRM	08/27/86	51 FR 30499
NPRM Comment Period End	10/27/86	
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Philip Berge, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, Maryland 21235, 301 965-1769

RIN: 0960-AA59

674. OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE PROGRAM; COVERAGE OF CERTAIN FEDERAL EMPLOYEES; COVERAGE OF EARNINGS OF FEDERAL JUDGES

Significance: Agency Priority

Legal Authority: PL 98-21, Sec 101; PL 98-118, Sec 4; PL 99-272, Sec 12112; PL 99-335, Sec 301; PL 97-248, Sec 278; PL 98-369, Sec 2601; PL 99-221, Sec 3

CFR Citation: 20 CFR 404.1011

Legal Deadline: None

Abstract: The proposed regulations would codify section 101 of Pub. L. 98-21, as amended by sec. 4 of Pub. L. 98-118, which generally provides Social Security coverage for certain Federal employees and covers certain payments to retired Federal judges after 1985. Also, the proposed regulations would codify section 12112 of Pub. L. 99-272 which provides exemption from Social Security coverage for retired Federal judges on active duty. In addition, the proposed regulations would provide: 1) that Federal employees not otherwise subject to the Social Security tax are nevertheless subject to the Health Insurance portion of the tax under Pub. L. 97-248, 2) that individuals covered by the Civil Service Retirement System may elect during a limited time to be covered under the Federal Employees Retirement System, which includes Social Security coverage under Pub. L. 99-335, and 3) that certain periods are

HHS--SSA — Final Rule Stage

excluded in determining continuous Federal service under Pub. L. 98-369 and Pub. L. 99-221.(continued)

Timetable:

Action	Date	FR Cite
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: With the exception of Pub. L. 99-335, there are no additional cost/savings associated with this regulation because the provisions are already in effect. Pub. L. 99-335 is expected to produce trust fund tax revenue of approximately $2 billion for fiscal year (FY) 1988 to FY 1993 and administrative costs of approximately $300 million for the same period.

Agency Contact: Duane Heaton, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235, 301 965-0476

RIN: 0960-AA39

675. ● OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE AND SUPPLEMENTAL SECURITY INCOME PROGRAM; CONTINUED PAYMENT OF BENEFITS TO PERSONS IN VOCATIONAL REHABILITATION PROGRAMS

Significance: Agency Priority

Legal Authority: 42 USC 405; 42 USC 425; 42 USC 1302; 42 USC 1383

CFR Citation: 20 CFR 404.316; 20 CFR 404.337; 20 CFR 404.352; 20 CFR 404.902; 20 CFR 404.1596; 20 CFR 404.1598; 20 CFR 404.1597; 20 CFR 416.1321; 20 CFR 416.1338; 20 CFR 416.1331; 20 CFR 416.1402

Legal Deadline: None

Abstract: This change permits the continued payment of disability benefits to persons who medically recover while participating in a vocational rehabilitation (VR) program, without regard to whether the person was expected at the onset of the VR program to medically recover before the scheduled completion date of the program and without regard to whether the person has any residual functional limitation. These changes bring the regulations into conformity with certain recent court decisions.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/14/86	51 FR 17616
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Harry Short, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Blvd., Baltimore, MD 21235, 301 965-1757

RIN: 0960-AB06

676. OLD AGE SURVIVORS DISABILITY INSURANCE AND SUPPLEMENTAL SECURITY INCOME PROGRAMS; STANDARDS FOR CONSULTATIVE EXAMINATIONS; EXISTING MEDICAL EVIDENCE

Significance: Regulatory Program

Legal Authority: PL 98-460, Sec 9; 42 USC 405; 42 USC 421; 42 USC 423; 42 USC 1302; 42 USC 1382c; 42 USC 1383

CFR Citation: 20 CFR 404.1512; 20 CFR 416.912; 20 CFR 404.1519; 20 CFR 416.919; 20 CFR 404.1502; 20 CFR 416.920; 20 CFR 404.1593; 20 CFR 416.993; 20 CFR 416.902; 20 CFR 404.1513; 20 CFR 416.913; 20 CFR 404.1520; 20 CFR 404.1545; 20 CFR 416.945; 20 CFR 404.1546; ...

Legal Deadline: None

Abstract: The proposed regulations include standards for obtaining consultative examinations, the types of consultative examination referrals to be made, and monitoring procedures for consultative examinations and the referral process. The proposed regulations also provide for evaluating all medical evidence of record and developing a 12-month medical history. References to "medical assessments" will be replaced by references to medical source statements as to what a person can still do despite his or her impairment(s). The regulations also set forth the standards to be used in evaluating the medical opinions of treating and other medical sources. The changes will not have any significant impact on either administrative or program costs.

Timetable:

Action	Date	FR Cite
NPRM	04/20/87	52 FR 13014
NPRM Comment Period End	06/19/87	
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: William Ziegler, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Blvd., Baltimore, MD 21235, 301 965-1758

RIN: 0960-AB22

677. SUPPLEMENTAL SECURITY INCOME PROGRAM; HOW WE COUNT UNEARNED INCOME--FUNDS USED TO PAY INDEBTEDNESS

Legal Authority: 42 USC 1302; 42 USC 1382a

CFR Citation: 20 CFR 416.1123(b)

Legal Deadline: None

Abstract: The issue is whether amounts otherwise due an individual assigned to repay a legal obligation should continue to be included in income under the Supplemental Security Income (SSI) program. The proposed regulation will clarify that we count such amounts as income. Because this clarification only will reflect current operating policy, no costs/savings are anticipated.

Timetable:

Action	Date	FR Cite
NPRM	09/15/87	52 FR 34813
NPRM Comment Period End	11/16/87	
Final Action	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Irving Darrow, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Blvd., Baltimore, Maryland 21235, 301 965-1755

RIN: 0960-AB20

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678. OLD AGE SURVIVORS DISABILITY INSURANCE AND SUPPLEMENTAL SECURITY INCOME PROGRAMS; DETERMINATIONS OF DISABILITY-COMPLIANCE, AND OTHER CHANGES

Legal Authority: 42 USC 405; 42 USC 421; 42 USC 1302; PL 98-460, Sec 17; 42 USC 1301

CFR Citation: 20 CFR 404.1601; 20 CFR 416.1001; 20 CFR 404.1602; 20 CFR 416.1002; 20 CFR 404.1615; 20 CFR 416.1015; 20 CFR 404.1620; 20 CFR 416.1020; 20 CFR 404.1632; 20 CFR 416.1032; 20 CFR 404.1628; 20 CFR 416.1028; 20 CFR 404.1627; 20 CFR 416.1027; 20 CFR 404.1633; ...

Legal Deadline: None

Abstract: These regulations for administering the disability determination function make changes to improve the disability determination process by modifying our State agency monitoring and technical and management assistance procedures, administrative standards, and fiscal, audit, and appeals requirements. They also clarify when we will find that a State agency has substantially failed to make disability determinations consistent with the regulations and other written guidelines.

Timetable:

Action	Date	FR Cite
NPRM	04/25/86	51 FR 15638
NPRM Comment Period End	06/24/86	
Final Action	01/00/89	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Irving Darrow, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Blvd., Baltimore, MD 21235, 301 965-1758

RIN: 0960-AB30

679. OLD AGE SURVIVORS DISABILITY INSURANCE AND SUPPLEMENTAL SECURITY INCOME PROGRAMS; PAYMENT OF COSTS OF REHABILITATION SERVICES

Legal Authority: PL 98-460, Sec 11; 42 USC 405; 42 USC 422; 42 USC 1302; 42 USC 1382d; 42 USC 1383

CFR Citation: 20 CFR 404.V; 20 CFR 416.V

Legal Deadline: None

Abstract: Public Law 98-460 created 2 new provisions under which SSA will pay vocational rehabilitation (VR) agencies for the costs of services provided to disabled or blind social security beneficiaries or SSI recipients. Under the first new provision, SSA will allow payment to vocational rehabilitation agencies (VRAs) for the costs of VR services provided to individuals continuing to receive payment because they are participating in a VR program after their period of disability has ceased due to their medical recovery. The second new provision allows payment to VRAs for the costs of VR services provided to beneficiaries/recipients who refuse without good cause to continue or to cooperate in a VR program in such a way as to preclude their successful rehabilitation with such refusal resulting in the nonpayment of their disability or blindness payments. It is estimated that the first year costs of this program will be less than 1 million dollars.

Timetable:

Action	Date	FR Cite
NPRM	10/10/86	51 FR 36510
NPRM Comment Period End	12/09/86	
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Dave Smith, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Blvd., Baltimore, MD 21235, 301 965-1758

RIN: 0960-AB37

680. OLD AGE, SURVIVORS, DISABILITY INSURANCE AND SUPPLEMENTAL SECURITY INCOME PROGRAMS; DETERMINING DISABILITY AND BLINDNESS; MULTIPLE IMPAIRMENTS

Legal Authority: PL 98-460, Sec 4; 42 USC 405; 42 USC 423; 42 USC 1302; 42 USC 1382c

CFR Citation: 20 CFR 404.1529; 20 CFR 404.1521; 20 CFR 404.1522; 20 CFR 404.1523; 20 CFR 416.920; 20 CFR 416.921; 20 CFR 416.922; 20 CFR 416.923

Legal Deadline: None

Abstract: This provision of the law requires us to consider the combined effect of all of a person's impairments in determining disability regardless of whether any single impairment, if considered separately, would be of sufficient severity. If we do find a medically severe combination of impairments, the combined impact of the impairments must be considered throughout the disability determination process. We are revising regulations to reflect that we will now consider the combined effect of impairments to determine severity. When the combined effect is found to be severe, the person's impairments are evaluated throughout the full sequential evaluation process.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/05/85	50 FR 08726
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: William Ziegler, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Blvd., Baltimore, MD 21235, 301 965-1759

RIN: 0960-AB39

681. OLD-AGE, SURVIVORS, DISABILITY INSURANCE AND SUPPLEMENTAL SECURITY INCOME PROGRAMS; EVALUATION OF SYMPTOMS, INCLUDING PAIN

Significance: Agency Priority

Legal Authority: 42 USC 405; 42 USC 423; 42 USC 1382c; 42 USC 1383; 42 USC 1302

CFR Citation: 20 CFR 404P; 20 CFR 416I

Legal Deadline: None

Abstract: These proposed regulations expand the existing regulations pertaining to the evaluation of cases involving pain or other symptoms to provide a more detailed explanation of SSA's current policy for evaluating symptoms, including pain.

Timetable:

Action	Date	FR Cite
NPRM	09/14/88	53 FR 35577
Final Action	06/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: William Ziegler, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Blvd., Baltimore, Maryland 21235, 301 965-1759

RIN: 0960-AD41

682. OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE PROGRAM; REDUCTION BECAUSE OF ENTITLEMENT TO OTHER BENEFITS

Legal Authority: 42 USC 405; 42 USC 407; 42 USC 1302; 42 USC 402

CFR Citation: 20 CFR 404.407; 20 CFR 404.612

Legal Deadline: None

Abstract: Section 202(k)(4) of the Social Security Act discusses simultaneous entitlement to retirement and disability insurance benefits (RIB/DIB) and provides that SSA will pay the higher benefit unless the claimant elects to be paid the lower. Section 223(a)(1) explains that an application for DIB may be filed by someone other than the insured individual within 3 months after the month of the insured individual's death. We are proposing to change CFR 404.407(c) to clarify that the person described in section 404.612(d) may make the election discussed in section 202(k)(4).

Timetable:

Action	Date	FR Cite
NPRM	06/09/88	53 FR 21667
NPRM Comment Period End	08/08/88	
Final Action	03/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: We foresee minimal costs from this change since the number of potentially affected beneficiaries is small and the period of time during which they will receive the higher family maximum amount (based on the RIB) will only be for the months during which the deceased NH is simultaneously entitled to DIB. Also, this cost will be offset by administrative savings since overpayments will not be created and have to be recovered in situations where individuals are able to elect the lower family maximum (based on DIB) on behalf of the deceased NH.

Agency Contact: Lawrence V. Dudar, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Blvd., Baltimore, MD 21235, 301 965-1758

RIN: 0960-AB87

683. OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE AND SUPPLEMENTAL SECURITY INCOME PROGRAMS; DECISIONS BY ADMINISTRATIVE LAW JUDGES IN CASES REMANDED BY COURTS

Significance: Agency Priority

Legal Authority: 42 USC 405; 42 USC 1302; 42 USC 1383; 42 USC 401; 42 USC 421

CFR Citation: 20 CFR 404.953; 20 CFR 404.983; 20 CFR 404.984; 20 CFR 416.1453; 20 CFR 416.1483; 20 CFR 416.1484; 20 CFR 404.955; 20 CFR 404.966; 20 CFR 416.1455; 20 CFR 416.1456

Legal Deadline: None

Abstract: If the court remands a case and the SSA Appeals Council remands it to an administrative law judge (ALJ), under current regulations the ALJ returns the case to the Appeals Council with a recommended decision, and the Appeals Council must review that decision and take further action in every case before the decision becomes final. This can involve delay. The proposed regulation would permit the ALJ to make a decision which would become final unless, within 30 days after the decision is received, the claimant files exceptions or within that period requests an extension of time to file exceptions, or within 60 days after the date of the decision the Appeals Council decides to review the decision on its own. The change will permit prompter final decisions and some administrative savings. It will not affect program cost.

Timetable:

Action	Date	FR Cite
NPRM	10/16/87	52 FR 38466
NPRM Comment Period End	12/15/87	
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Phil Berge, Legal Assistant, Department of Health and Human Services, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, 301 965-1769

RIN: 0960-AC07

684. SUPPLEMENTAL SECURITY INCOME PROGRAM; FEDERAL ADMINISTRATION OF OPTIONAL STATE SUPPLEMENTATION

Legal Authority: 42 USC 1382e; 42 USC 1302

CFR Citation: 20 CFR 416.2030(a)(2); 20 CFR 416.2040(b)

Legal Deadline: None

Abstract: 42 USC 1382e provides that at the option of a State with a federally administered optional supplementation program, the supplementation agreement between such State and the Secretary of HHS may be modified to allow Federal administration of optional supplementary payments to any individual in a medical facility where more than 50 percent of the individual's care is covered by the Medicaid program (Living Arrangements (LA) "D" recipients). The proposed regulation will reflect the amendment to the statute discussed above.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/88	

Small Entities Affected: None

Government Levels Affected: State, Federal

Public Compliance Cost: Initial Cost; $0; Yearly Recurring Cost: $0

Sectors Affected: None

Agency Contact: Irving Darrow, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235, 301 965-1765

RIN: 0960-AC13

685. OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE PROGRAM; WAGES—DEFERRED COMPENSATION

Legal Authority: PL 98-21; PL 99-514; PL 98-369

CFR Citation: 20 CFR 404.1041; 20 CFR 404.1042; 20 CFR 404.1068; 20 CFR

404.1048; 20 CFR 404.1050; 20 CFR 404.1061; 20 CFR 404.1062; 20 CFR 404.1040; 20 CFR 404.1048; 20 CFR 404.1061; 20 CFR 404.1062; 20 CFR 404.1063; 20 CFR 404.1065; 20 CFR 404.1056; 20 CFR 404.1070; ...

Legal Deadline: None

Abstract: P. L. 98-21, the Social Security Amendments of 1983, changed the timing of crediting deferred compensation for Social Security purposes. It also changed the treatment of retirement pay depending upon whether it is paid under a qualified deferred compensation plan. Further, it excluded from coverage various fringe benefits and payments under a Simplified Employee Pension Plan (SEP). Finally, the amendments codify certain provisions pertaining to meals and lodging and tax-sheltered annuities. P.L. 98-369 amended the wage exclusion for qualified bond purchase plans. P.L. 99-514 excluded from coverage payments under a cafeteria plan as described in section 125 of the Internal Revenue Code. Section 1882 of P.L. 99-514 amends the law for determining self-employment income when an individual works for a church or church-controlled organization which has elected not to pay social security taxes. Section 1704 of P.L. 99-514 amends the law for receiving an exemption from social security coverage for members of religious orders, ministers, and Christian Science practitioners. The regulations will be updated to reflect and implement these statutory provisions.

Timetable:

Action	Date	FR Cite
NPRM	06/30/88	53 FR 24727
NPRM Comment Period End	08/29/88	
Final Action	03/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Since the new rules are mandated by legislation, any costs or effects upon small entities are a result of the legislation and not a result of the proposed regulations.

Agency Contact: Charles Campbell, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Blvd., Baltimore, MD 21235, 301 965-1704

RIN: 0960-AC27

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686. OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE AND SUPPLEMENTAL SECURITY INCOME PROGRAMS; CONSIDERATION OF VOCATIONAL FACTORS

Significance: Agency Priority

Legal Authority: 42 USC 421; 42 USC 423; 42 USC 1302; 42 USC 1382c; 42 USC 405; 42 USC 1383

CFR Citation: 20 CFR 404.1560; 20 CFR 416.960

Legal Deadline: None

Abstract: These proposed regulations reflect longstanding policies followed by the Social Security Administration in making disability determinations and remove an ambiguity which exists in the present regulations regarding the factors that are considered when it is determined that a claimant is not disabled because he or she is able to do his or her past work. These proposed regulations do not reflect a substantive change in policy and are intended only to clarify what has always been agency policy.

Timetable:

Action	Date	FR Cite
NPRM	06/09/88	53 FR 21665
NPRM Comment Period End	08/08/88	
Final Action	04/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: William J. Ziegler, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235, 301 965-1759

RIN: 0960-AC21

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687. ORGANIZATION AND PROCEDURES, AND OASDI PROGRAMS; EVIDENCE REQUIRED FOR ORIGINAL OR DUPLICATE SOCIAL SECURITY NUMBER CARD

Legal Authority: 42 USC 405; 42 USC 1301

CFR Citation: 20 CFR 422.103

Legal Deadline: None

Abstract: The proposed regulations will allow the Social Security Administration (SSA) to test procedures that will provide an exception to the current requirement that an applicant for a duplicate card must submit corroborative evidence of identity. This will enable us to test procedures that would allow us to conduct much of our business in processing applications for duplicate Social Security number cards by telephone.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Jack Schamberger, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235, 301 965-8471

RIN: 0960-AC32

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688. OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE PROGRAM; ADDITION OF DOWN SYNDROME TO THE LISTING OF IMPAIRMENTS

Legal Authority: 42 USC 1302; 42 USC 405

CFR Citation: 20 CFR 404.1

Legal Deadline: None

Abstract: We propose to add Down Syndrome to the multiple body systems, category of impairments, in Part B of the Listing of Impairments to provide for evaluation of Down syndrome claims according to the impairment criteria for the major system affected. The Listing of Impairments describes, for each of the major body systems, a level of severity which is considered sufficient to find a person disabled or blind under the disability program. Part B contains additional medical criteria that apply only to the evaluation of impairments of persons under age 18.

Timetable:

Action	Date	FR Cite
NPRM	10/05/87	52 FR 37161
NPRM Comment Period End	12/04/87	
Final Action	03/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Harry J. Short, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235, 301 965-1737

RIN: 0960-AC35

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689. ◆ SUPPLEMENTAL SECURITY INCOME PROGRAM; EXCLUSION OF REAL PROPERTY WHEN IT CANNOT BE SOLD; AND TRANSFER OF ASSETS FOR LESS THAN FAIR MARKET VALUE

Significance: Agency Priority

Legal Authority: 42 USC 1302; 42 USC 1383

CFR Citation: 20 CFR 416.1242; 20 CFR 416.1245; 20 CFR 416.1246

Legal Deadline: Final, Statutory, April 1, 1988.

Abstract: We have amended regulations under the Supplemental Security Income program to implement sections 9103 and 9104 of Pub. L. 100-203 (the Omnibus Budget Reconciliation Act of 1987) dealing with the disposition and transfer of resources in determining eligibility for SSI benefits. The cost/savings and workyear impact for these regulations have been estimated to be insignificant.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/22/88	53 FR 13254
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Henry Lerner, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Blvd., Baltimore, MD 21235, 301 965-1758

RIN: 0960-AC47

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690. ◆ SUPPLEMENTAL SECURITY INCOME PROGRAM; PUBLIC EMERGENCY SHELTERS FOR THE HOMELESS, EXCLUSION OF UNDERPAYMENTS, INCREASE IN PERSONAL NEEDS ALLOWANCE

Legal Authority: PL 100-203, Sec 9113; PL 100-203, Sec 9114; PL 100-203, Sec 9110

CFR Citation: 20 CFR 416.201; 20 CFR 416.211; 20 CFR 416.414; 20 CFR 416.432; 20 CFR 416.1160; 20 CFR 416.1163; 20 CFR 416.1165; 20 CFR 416.1233; 20 CFR 416.2095; 20 CFR 416.2096; 20 CFR 416.2097; 20 CFR 416.2098; 20 CFR 416.1099

Legal Deadline: None

Abstract: These interim regulation will reflect sections 9113, 9114, and 9119 of Pub.L. 100-203 by increasing the number of months an individual who resides in a public emergency shelter for the homeless may be eligible for SSI payments, by temporarily extending the time period during which any retroactive payments made under the title II and title XVI programs will be excluded from resources, and increasing the benefit rate for persons in medical institutions where Medicaid pays more than one-half the cost of their care. We anticipate only a negligible increase in program costs.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Harry J. Short, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Blvd., Baltimore, MD 21235, 301 965-1753

RIN: 0960-AC54

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)
Social Security Administration (SSA)

Completed Actions

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691. OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE PROGRAM; COVERAGE OF EMPLOYEES OF STATE AND LOCAL GOVERNMENTS

CFR Citation: 20 CFR 404M

Completed:

Reason	Date	FR Cite
Final Action	08/29/88	53 FR 32972

Small Entities Affected: None

Government Levels Affected: Local, State

Agency Contact: Duane Heaton 301 965-8478

RIN: 0960-AA13

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692. OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE PROGRAM; PROVISION FOR INFERRING A PERSON IS DEAD

CFR Citation: 20 CFR 404H

Completed:

Reason	Date	FR Cite
Regulatory Action Discontinued	05/00/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Phil Berge 301 965-1769

RIN: 0960-AA51

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693. SUPPLEMENTAL SECURITY INCOME PROGRAMS; ASSIGNMENT OF RIGHTS TO THIRD-PARTY MEDICAL PAYMENTS TO STATE

CFR Citation: 20 CFR 416.2101 to 416.2176

Completed:

Reason	Date	FR Cite
Final Action	04/20/88	53 FR 12938

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: C. H. Campbell 301 965-1704

RIN: 0960-AD18

694. OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE AND SUPPLEMENTAL SECURITY INCOME PROGRAMS; CONTINUED PAYMENT OF BENEFITS DURING APPEAL

Significance: Agency Priority

CFR Citation: 20 CFR 404.1597; 20 CFR 404.1597d; 20 CFR 416.998; 20 CFR 416.998

Completed:

Reason	Date	FR Cite
Final Action	08/02/88	53 FR 29011

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Larry Dudar 301 965-1795

RIN: 0960-AB00

695. SUPPLEMENTAL SECURITY INCOME PROGRAM; TREATMENT OF OVERPAYMENTS WHEN RECIPIENT'S COUNTABLE ASSETS EXCEED LIMITS IN CERTAIN CASES

CFR Citation: 20 CFR 416

Completed:

Reason	Date	FR Cite
Final Action	05/10/88	53 FR 16615

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Larry Dudar 301 965-1795

RIN: 0960-AB32

696. OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE PROGRAM; DETERMINING DISABILITY AND BLINDNESS, MEDICAL-VOCATIONAL GUIDELINES, ILLITERACY AND INABILITY TO COMMUNICATE IN ENGLISH

CFR Citation: 20 CFR 404P; 20 CFR 416I

Completed:

Reason	Date	FR Cite
Regulatory action discontinued	07/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Harry Short 301 965-1757

RIN: 0960-AD00

697. SUPPLEMENTAL SECURITY INCOME PROGRAM; SPOUSAL DEEMING COMPUTATION INVOLVING STATE SUPPLEMENTATION

CFR Citation: 20 CFR 416.1163(d); 20 CFR 416.2025(b)

Completed:

Reason	Date	FR Cite
Final Action	07/05/88	53 FR 25150

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Dave Smith 301 965-1758

RIN: 0960-AB35

698. SUPPLEMENTAL SECURITY INCOME PROGRAM; PROHIBITION ON DIRECT PAYMENT OF FEES TO REPRESENTATIVES

CFR Citation: 20 CFR 416.1525; 20 CFR 416.1525; 20 CFR 416.1528; 20 CFR 416.1335

Completed:

Reason	Date	FR Cite
Withdrawn	05/23/88	53 FR 18292

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Jack Schanberger 301 965-8471

RIN: 0960-AC08

699. SUPPLEMENTAL SECURITY INCOME PROGRAM; DEFINE OUT OF RESOURCES FOR ONE MONTH CERTAIN CASH PAYMENTS FOR MEDICAL/SOCIAL SERVICES

CFR Citation: 20 CFR 416.1201(a)

Completed:

Reason	Date	FR Cite
Final Action	06/21/88	53 FR 23230

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Henry Lamer 301 965-1756

RIN: 0960-AC11

700. OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE AND SUPPLEMENTAL SECURITY INCOME PROGRAMS; AGAINST EQUITY AND GOOD CONSCIENCE; DEFINED

CFR Citation: 20 CFR 404.509; 20 CFR 416.554

Completed:

Reason	Date	FR Cite
Final Action	07/07/88	53 FR 25481

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Duane Heaton 301 965-8478

RIN: 0960-AC03

701. ● OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE PROGRAM; EXTENSION OF EXPIRATION DATE FOR MENTAL DISORDERS LISTINGS

Significance: Agency Priority

Legal Authority: 42 USC 1102

CFR Citation: 20 CFR 404P (Appendix)

Legal Deadline: None

Abstract: These final regulations will extend the expiration date of the mental disorders listing (12.00 of Part A of the Appendix to subpart P of Part 404) through August 27, 1990. No changes are being made and no additional costs are anticipated.

Timetable:

Action	Date	FR Cite
Final Action	08/09/88	53 FR 29878

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: William J. Ziegler, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Blvd., Baltimore, MD 21235, 301 965-1759

RIN: 0960-AC14

702. ● SUPPLEMENTAL SECURITY INCOME PROGRAM; EXCLUSION OF CERTAIN SUPPORT AND MAINTENANCE ASSISTANCE BASED ON NEED

Legal Authority: PL 100-203, Sec 9101

CFR Citation: 20 CFR 416.1157

Legal Deadline: None

Abstract: These final regulations implement section 9101 of Pub.L. 100-203, which makes permanent the provisions of section 1612(b)(13) of the Social Security Act. Section 1612(b)(13) provides that certain support and maintenance assistance not be counted as income when determining an individual's eligibility for and the amount of his or her supplemental security income payments. We anticipate minimal, if any, additional costs.

Timetable:

Action	Date	FR Cite
Final Action	09/15/88	53 FR 35807
Final Action Effective	09/15/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Harry Short, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Blvd., Baltimore, MD 21235, 301 965-1757

RIN: 0960-AC53

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Public Health Service (PHS)—Centers for Disease Control (CDC)

Proposed Rule Stage

703. ● SUBCHAPTER J - NATIONAL VACCINE PROGRAM, PART 110 INFORMATION AND EDUCATION, SUBPART A - VACCINE INFORMATION MATERIALS

Significance: Agency Priority

Legal Authority: 42 USC 300aa-26; PL 99-660, Sec 311(a)

CFR Citation: 42 CFR 110

Legal Deadline: Final, Statutory, December 22, 1988.

Abstract: This new regulation is required to implement the statutory requirements of Section 2126, Title XXI, Public Health Service Act as amended. The statute requires the Secretary to develop and disseminate vaccine information materials for distribution by health care providers. These materials will be published as an appendix of this regulation. The regulation describes the vaccine information materials and the health care providers' duties to disseminate a copy of the materials to any adult to whom the provider intends to administer vaccine and to the legal representative of any child to whom the provider intends to administer vaccine. The NPRM has a 90-day comment period, with the final rule to be published by December 22, 1988.

Timetable:

Action	Date	FR Cite
NPRM	10/01/88	
Public Hearingapprox 30 days after publication	11/00/88	
NPRM Comment Period End	12/30/88	
Final Action	03/00/89	
Final Action Effective	09/00/89	

Small Entities Affected: None

Government Levels Affected: Local, State

Agency Contact: Walter A. Orenstein, M.D., Director, Division of Immunization, Center for Prevention Services, Department of Health and Human Services, Public Health Service, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333, 404 639-1880

RIN: 0905-AC83

704. ● HEALTH ASSESSMENTS AND HEALTH EFFECTS STUDIES OF HAZARDOUS SUBSTANCES RELEASES AND FACILITIES

Legal Authority: 42 USC 9601 et seq, Sec 104(i) amended by Sec 110 of SARA; 42 USC 6939a(c)

CFR Citation: 42 CFR 00

Legal Deadline: None

Abstract: This regulation sets forth procedures the Agency for Toxic Substances and Disease Registry (ATSDR) will follow in determining when and how to conduct health assessments and health effects studies at hazardous substances releases and facilities. In addition to CERCLA-authorized health assessments and health effects studies, this regulation also applies to ATSDR health assessment activity under the Resource Conservation and Recovery Act (RCRA) (42 USC 6939a(c)). This proposal also contains provisions pertaining to the establishment of administrative records for ATSDR health assessments and health effects studies, for tracking costs of these studies for cost recovery purposes, and for safeguarding trade secret and other confidential information.

Timetable:

Action	Date	FR Cite
NPRM	06/24/88	53 FR 32259
NPRM Comment Period End	10/24/88	
Final Action	07/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Local, State, Federal

Agency Contact: Ralph J. Touch, Jr., Director, Planning and Special Programs, ATSDR, Department of Health and Human Services, Public Health Service, Chamblee 27, F38, 1600 Clifton Road, Atlanta, GA 30333, 404 488-4853

RIN: 0905-AC84

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)
Public Health Service (PHS)—Centers for Disease Control (CDC)

Final Rule Stage

705. NIOSH REVISION OF TESTS AND REQUIREMENTS OF CERTIFICATION OF PERMISSIBILITY OF RESPIRATORY PROTECTIVE DEVICES USED IN MINES AND MINING

Significance: Regulatory Program

Legal Authority: 30 USC 801; 30 USC 844; 30 USC 957

CFR Citation: 30 CFR 11; 42 CFR 84

Legal Deadline: None

Abstract: There are three major problems that the proposed regulatory action is intended to solve. First, the current regulatory provisions in 30 CFR 11 in some instances date back almost fifty years. As a result the provisions are not current with many of the extensive changes in respirator technology. Second, the current regulations do not provide for testing of respirators under either actual or simulated use conditions prior to certification. Third, the resources required to conduct routine respirator certification testing made it important for NIOSH alone to keep respirator performance standards current with advances in respirator technology and with new knowledge on respirator performance characteristics. Alternatives considered: (1) the Federal government could relinquish the field entirely to the private sector. (2) The Federal government could promulgate performance standards but not be involved in assuring compliance with those standards. (3) The Federal government could continue to be the certifier of respirators but have manufacturers conduct testing. (4) The Federal Government could continue its present role of total operation of the (cont)

Timetable:

Action	Date	FR Cite
NPRM	08/27/87	52 FR 32402
Final Action	10/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: ABSTRACT CONT: respirator system. NIOSH selected alternative number (3). Cost is yet to be determined. Public hearings on the proposal were held on January 20, 1988, in San Francisco, and on January 27-28 in Washington, DC. The record for these hearings closed February 27, 1988.

Agency Contact: Dr. Nelson A. Leidel, Senior Science Advisor, Office of the Director, NIOSH, Department of Health and Human Services, Public Health Service, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333, 404 639-3991

RIN: 0905-AB58

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)
Public Health Service (PHS)—Centers for Disease Control (CDC)

Completed Actions

705. PROJECT GRANTS FOR HEALTH PROGRAMS FOR REFUGEES

CFR Citation: 42 CFR 51a

Completed:

Reason	Date	FR Cite
Withdrawn	05/25/88	

Small Entities Affected: None

Government Levels Affected: Local, State

Agency Contact: Anthony M. Scaniaci 404 639-1861

RIN: 0905-AB43

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)
Public Health Service (PHS)—Food and Drug Administration (FDA)

Prerule Stage

707. DRUG EXPORTS

Significance: Agency Priority

Legal Authority: PL 99-660 Drug Export Amendments Act of 1986

CFR Citation: Not yet determined

Legal Deadline: None

Abstract: The Drug Export Amendments Act of 1986 authorizes the export for commercial marketing abroad of veterinary and human drugs not approved for marketing in the United States. Under previous law, the export of new human and animal drugs for marketing was confined to drugs that were approved by FDA for domestic use. The law establishes three separate pathways for the export of unapproved products. Under each pathway, FDA approval is required before export is permitted. As a prerulemaking activity, FDA is developing guidance material for manufacturers instructing them as to what information must be submitted to the agency to obtain approval for the export of unapproved products. The guidance material will also identify FDA sources of information on agency practices and policies concerning the implementation of the Drug Export Amendments Act of 1986. The agency will then decide what, if any, regulations are necessary for the efficient implementation of the amendments, and establish timeframes for the development of those regulations.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Wayne Mitchell, Regulatory Counsel, Division of Regulatory Affairs, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research (HFD-362), 5600 Fishers Lane, Rockville, MD 20857, 301 295-8046

RIN: 0905-AC44

HHS—PHS—FDA

Prerule Stage

708. ● COMPUTER PRODUCTS; POLICY GUIDANCE

Significance: Regulatory Program

Legal Authority: 21 USC 321(h)

CFR Citation: 21 CFR 880

Legal Deadline: None

Abstract: As a prerulemaking activity, FDA is developing guidance for manufacturers respecting how FDA would apply existing statutory requirements to the regulation of computer products (i.e., both hardware and software) when such products meet the definition of a medical device under the act.

On September 25, 1987, FDA made available a draft policy guidance intended to clarify how FDA would apply existing statutory requirements to the regulation of such products to provide opportunity for public participation in this activity.

Upon analysis of the public comments on the complex issues pertaining to the regulation of computer products, the agency will decide whether any additional steps are necessary to clarify which computer products meet the definition of a medical device and what level of regulation, if any, is appropriate under the act.

Timetable:

Action	Date	FR Cite
Proposed Draft Guideline	09/25/87	52 FR 36104
Final Policy Guidance	11/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Charles S. Furfine, Office of Standards and Regulations, Department of Health and Human Services, Food and Drug Administration, Center for Devices and Radiological Health (HFZ-84), 5600 Fishers Lane, Rockville, MD 20857, 301 443-3674

RIN: 0905-AC72

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)
Public Health Service (PHS)—Food and Drug Administration (FDA)

Proposed Rule Stage

709. CURRENT GOOD MANUFACTURING PRACTICE FOR FINISHED PHARMACEUTICALS; RETROSPECTIVE REVIEW

Significance: Agency Priority

Legal Authority: 21 USC 351 Federal Food, Drug, and Cosmetic Act; 21 USC 352 Federal Food, Drug, and Cosmetic Act; 21 USC 360b Federal Food, Drug, and Cosmetic Act; 21 USC 371(a) Federal Food, Drug, and Cosmetic Act

CFR Citation: 21 CFR 211

Legal Deadline: None

Abstract: As part of its retrospective review, FDA plans to determine the need for any changes in the current GMPs to eliminate unnecessary requirements and to allow flexibility without undermining protection of the public health.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Robert J. Meyer, Consumer Safety Officer, Division of Regulatory Affairs, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research (HFD-362), 5600 Fishers Lane, Rockville, MD 20857, 301 295-8046

RIN: 0905-AA73

710. CURRENT GOOD MANUFACTURING PRACTICE (CGMP) FOR BLOOD AND BLOOD COMPONENTS; RETROSPECTIVE REVIEW

Significance: Agency Priority

Legal Authority: 21 USC 321 Federal Food, Drug, and Cosmetic Act; 21 USC 352 Federal Food, Drug, and Cosmetic Act; 21 USC 355 Federal Food, Drug, and Cosmetic Act; 21 USC 371 Federal Food, Drug, and Cosmetic Act; 42 USC 262 Public Health Service Act; 5 USC 553 Administrative Procedures Act; 5 USC 702 Administrative Procedures Act; 5 USC 703 Administrative Procedures Act; 5 USC 704 Administrative Procedures Act

CFR Citation: 21 CFR 606

Legal Deadline: None

Abstract: FDA is responsible for issuing regulatory standards for blood and blood components to ensure the continued safety, purity, and potency of such products. Since 1975, CGMP regulations have been in effect that provide standards for facilities, personnel, and manufacturing procedures for blood and blood components. In accordance with the Regulatory Flexibility Act, FDA has conducted a retrospective review of its CGMP regulations for blood and blood components, to determine how the regulations may be revised to relieve regulatory burdens and increase flexibility without adversely affecting the public health. Part of the retrospective review of the CGMP will be completed through FDA's implementation of an efficacy review of blood and blood derivatives which responds to recommendations of a Committee of scientific experts--the Panel on Review of Blood and Blood Derivatives. To complete the remainder of the retrospective review program regarding the CGMP, FDA will issue a proposed rule to revise the CGMP regulations.

Timetable:

Action	Date	FR Cite
Blood & Blood Components; Retrospective Review		
NPRM	01/00/89	
Final Action	00/00/91	
Blood & Blood Derivatives; Implementation of Efficacy Review		
NPRM	12/24/85	(50 FR 52902)
Comment Period Ends	03/24/86	(50 FR 52902)
Final Action	00/00/91	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Steven F. Falter, Consumer Safety Officer, Department of Health and Human Services, Food and Drug Administration, Center for Biologics Evaluation and Research

(HFB-130), 5600 Fishers Lane, Rockville, MD 20857, 301 295-8046

RIN: 0905-AA75

711. NEW ANIMAL DRUG APPROVAL PROCESS

Significance: Agency Priority

Legal Authority: 21 USC 360b Federal, Food, Drug, and Cosmetic Act; 21 USC 371 Federal Food, Drug, and Cosmetic Act

CFR Citation: 21 CFR 514.1; 21 CFR 514.8

Legal Deadline: None

Abstract: Based upon an evaluation of an action issues report, the agency has concluded that it will recommend that the Secretary propose revision of the existing regulations in a manner consistent with the current procedural regulations for human drugs where appropriate. The New Animal Drug Application (NADA) revisions would articulate general requirements in regulations containing performance standards and would complement them through detailed guidelines on, among other matters, appropriate ways of meeting requirements for submission of chemistry, pharmacology, and statistical data that would better address the intricate scientific issues involved. Although the guidelines would not establish regulatory requirements, persons would be able to rely on them with confidence that action taken under a guideline would be acceptable to the agency. A separate proposed rule would provide for reporting requirements for marketed animal drugs.

Timetable:

New Animal Drug Approval Process
NPRM 03/00/89

Rptg. Requirements for Marketed Animal Drugs
NPRM 12/00/88

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: AGENCY CONTACT CONT: For Information Concerning Reporting Requirements for Marketed Animal Drugs Contact: Andrew J. Beaulieu, Director, Division of Surveillance, Center for Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-3044

Agency Contact: Frank G. Pugliese, Supervisory Consumer Safety Officer, Office of New Animal Drug Evaluation, Department of Health and Human Services, Food and Drug Administration, Center for Veterinary Medicine (HFV-102), 5600 Fishers Lane, Rockville, MD 20857, 301 443-4586

RIN: 0905-AA96

712. POLICIES CONCERNING USES OF SULFITING AGENTS

Significance: Regulatory Program

Legal Authority: 21 USC 342 Federal Food, Drug, and Cosmetic Act; 21 USC 371(a) Federal Food, Drug, and Cosmetic Act; 21 USC 321(n) and 321(s) Federal Food, Drug, and Cosmetic Act; 21 USC 348 Federal Food, Drug, and Cosmetic Act; 21 USC 336 Federal Food, Drug, and Cosmetic Act; 21 USC 341 Federal Food, Drug, and Cosmetic Act; 21 USC 343 Federal Food, Drug, and Cosmetic Act

CFR Citation: 21 CFR 182.3616; 21 CFR 182.3637; 21 CFR 182.3739; 21 CFR 182.3766; 21 CFR 182.3798; 21 CFR 182.3862; 21 CFR 100; 21 CFR 130.9

Legal Deadline: None

Abstract: Acceptable evidence and information exists to show that a subgroup of asthmatics is at moderate to severe risk for a severe reaction upon exposure to sulfites. The agency's primary tool for handling a situation where population subgroups may be at increased risk from a food ingredient that is safe for most people is to use labeling to inform those persons who need or want to avoid the ingredient. The agency issued a final rule, effective January 7, 1987, that requires that when a sulfiting agent is present in a finished food at 10 parts per million or greater, the sulfiting agent must be declared on the label. In addition, FDA issued a final rule, effective August 8, 1986, prohibiting the use of sulfiting agents on raw fruits and vegetables intended to be served or sold raw to consumers (e.g., in salad bars). The agency is now considering what it options are with regard to the GRAS status of 1) sulfiting agents used on "fresh" potatoes and 2) other food uses of sulfiting agents. Options being considered are: 1) affirming all uses of sulfiting agents as GRAS with specific limitation; 2) affirming most uses of (cont)

Timetable:

Food Labeling; Declaration of Sulfiting Agents
NPRM 04/03/85 (50 FR 13306)
Final Action 07/09/86 (51 FR 25012)
EFFECTIVE DATE 01/09/87 (51 FR 25012)

GRAS Status of the Use of Sulfiting Agents on Potatoes
NPRM 12/10/87 (52 FR 46968)
Final Action 03/00/89

GRAS Status of Certain Other Food Uses of Sulfiting Agents, Etc.
NPRM 10/00/88
Final Action 00/00/01

Revoking Use of Sulfiting Agents on Fruits & Vegetables, Etc.
NPRM 08/14/85 (50 FR 32836)
Final Action 07/09/86 (51 FR 25021)
Final Action Effective 08/09/86 (51 FR 25021)

Sulfiting Agents in Standardized Foods; Labeling Requirements
NPRM 10/00/88
Final Action 00/00/00

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ABSTRACT CONT: sulfiting agents as GRAS (excluding certain potato products) with specific limitations; and 3) revoking the GRAS status of all uses of sulfiting agents in food.

Agency Contact: Robert L. Martin, Division of Food and Color Additives, Department of Health and Human Services, Food and Drug Administration, Center for Food Safety and Applied Nutrition (HFF-334), 200 C Street, S.W., Washington, DC 20204, 202 426-9463

RIN: 0905-AB12

713. REQUIREMENTS FOR ADVERSE EXPERIENCE REPORTING FOR LICENSED BIOLOGICAL PRODUCTS

Significance: Agency Priority

Legal Authority: 21 USC 351 Federal Food, Drug, and Cosmetic Act; 21 USC 352 Federal Food, Drug, and Cosmetic Act; 21 USC 355 Federal Food, Drug, and Cosmetic Act; 21 USC 371 Federal Food, Drug, and Cosmetic Act; 21 USC 374 Federal Food, Drug, and Cosmetic Act; 42 USC 262 Public Health Service Act

CFR Citation: 21 CFR 211; 21 CFR 310; 21 CFR 600

Legal Deadline: None

Abstract: This regulatory action is being taken to improve the safety of marketed drug products by a reporting scheme that will require serious adverse reactions associated with licensed biological products to be reported to the Food and Drug Administration (FDA).

The purpose of the regulatory action is to require prompt reporting to the agency of serious adverse experiences for all licensed biological products.

The regulatory action being considered by FDA would be consistent with the agency's requirements regarding adverse reactions reporting for approved new drugs under 21 CFR 314.80 (see February 22, 1985; 50 FR 7452). These biologic regulations would require that all "serious and unexpected" adverse experiences and any "significant increase in frequency" of a serious expected event be reported to the agency within 15 working days. Known and nonserious adverse biological product experiences would be required to be reported to the agency at quarterly or annual intervals, depending on the length of marketing experience with the product. This information (cont)

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ABSTRACT CONT: permits the agency to monitor effectively the safety of all licensed biological products.

Agency Contact: Steven F. Falter, Consumer Safety Officer, Department of Health and Human Services, Food and Drug Administration, Center for Biologics Evaluation and Research (HFB-130), 5600 Fishers Lane, Rockville, MD 20857, 301 295-8046

RIN: 0905-AB53

714. PROPOSED RULE TO IMPLEMENT THE ORPHAN DRUG AMENDMENTS TO THE FEDERAL FOOD, DRUG, AND COSMETIC ACT

Significance: Regulatory Program

Legal Authority: PL 97-414 Orphan Drug Act; PL 100-290

CFR Citation: Not yet determined

Legal Deadline: None

Abstract: The Orphan Drug Act is intended to provide incentives for drug companies to invest in the development of drugs for rare diseases or conditions. Certain incentives are necessary because "orphan drugs" are unlikely to be profitable. The agency is required to carry out provisions of the Orphan Drug Act, e.g., by designating a drug as an orphan drug, by providing protocol assistance, and by granting seven years of exclusive approval status. The proposed rule would establish procedures whereby drug sponsors can take advantage of the incentives to encourage development of orphan drugs. While several provisions of the Orphan Drug Act call for promulgation of regulations, the agency is considering the extent to which regulations will be needed to provide the framework and guidance for implementing a program of incentives to drug sponsors and manufacturers.

Timetable:

Action	Date	FR Cite
Interim Guidelines	09/09/83	48 FR 40784
Revised Interim Guidelines	05/09/85	50 FR 19583
NPRM	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Emery J. Stumiolo, Assistant to the Director, Department of Health and Human Services, Food and Drug Administration, Office of Orphan Products Development (HF-35), 5600 Fishers Lane, Rockville, MD 20857, 301 443-4718

RIN: 0905-AB55

715. IMPLEMENTATION OF TITLE I OF THE "DRUG PRICE COMPETITION AND PATENT TERM RESTORATION ACT OF 1984" (TITLE I)

Significance: Agency Priority

Legal Authority: PL 98-417, (Title I)

CFR Citation: Not yet determined

Legal Deadline: None

Abstract: Until the passage of Title I of the "Drug Price Competition and Patent Term Restoration Act of 1984," abbreviated new drug application (ANDA) procedures were only available for generic products equivalent to pioneer drugs approved before 1962. Title I opened up the ANDA policy to generic copies of products approved after 1962. This rulemaking is intended to establish clear and uniform procedures for the review and timely approval of ANDAs. This should assist the generic drug industry by ending considerable confusion about the procedures governing review of ANDAs. In turn, with the availability of lower-cost generic products, it is estimated that consumers may save millions of dollars. The statute calls for promulgation of implementing regulations, however, the agency also expects to develop guidelines and other policy statements to assist in developing approvable applications. Revised target dates for this regulatory action are appropriate because many new issues have been identified in petitions and letters to the agency from trade associations and attorneys representing individual manufacturers concerning exclusivity, patent coverage, (cont)

Timetable:

Action	Date	FR Cite
NPRM	04/00/89	
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: ABSTRACT CONT: and some of the complex provisions of the act. The resolution of these many minor issues will be reflected in the NPRM and will permit the agency to develop a comprehensive proposed rule.

Agency Contact: Marilyn Watson, Special Asst. to the Division Director, Division of Regulatory Affairs, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research (HFD-360), 5600 Fishers Lane, Rockville, MD 20857, 301 295-8038

RIN: 0905-AB63

716. ABBREVIATED NEW ANIMAL DRUG APPLICATIONS FOR POST-1962 ANIMAL DRUGS

Significance: Agency Priority

Legal Authority: 21 USC 360b Federal Food, Drug, and Cosmetic Act

CFR Citation: 21 CFR 514.1; 21 CFR 514.2; 21 CFR 514.3; 21 CFR 514.11

Legal Deadline: None

Abstract: This proposed rule would permit applicants to file abbreviated new animal drug applications

(ANADAs) for products identical to approved post-1982 drugs and to omit certain reports that are required in full NADAs to show safety and effectiveness of the product. It would apply only to certain drug products specified by FDA. If adopted, the proposed rule would reduce duplicative testing of drugs and also reduce the cost to the manufacturer of getting the affected drugs on the market. This issue is currently under Congressional review. Further agency action contingent upon Congressional review.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Richard A. Carnevale, Deputy Director, Office of New Animal Drug Evaluation, Department of Health and Human Services, Food and Drug Administration, Center for Veterinary Medicine (HFV-120), 5600 Fishers Lane, Rockville, MD 20857, 301 443-4914

RIN: 0905-AB72

717. PROTECTION OF HUMAN SUBJECTS; INFORMED CONSENT; STANDARDS FOR INSTITUTIONAL REVIEW BOARDS FOR CLINICAL INVESTIGATIONS

Significance: Regulatory Program

Legal Authority: 21 USC 346(a) Federal Food, Drug and Cosmetic Act; 21 USC 351 to 357 Federal Food, Drug and Cosmetic Act; 21 USC 360 Federal Food, Drug and Cosmetic Act; 21 USC 360c to 360f Federal Food, Drug and Cosmetic Act; 21 USC 360h to 360j Federal Food, Drug and Cosmetic Act; 21 USC 371(a) Federal Food, Drug and Cosmetic Act; 21 USC 370 Federal Food, Drug and Cosmetic Act; 21 USC 381 Federal Food, Drug and Cosmetic Act; 42 USC 216 Public Health Service Act; 42 USC 241 Public Health Service Act; 42 USC 262 Public Health Service Act; 42 USC 263b to 263n Public Health Service Act

CFR Citation: 21 CFR 50; 21 CFR 56

Legal Deadline: None

Abstract: In the FEDERAL REGISTER of June 3, 1988 (51 FR 20204), the Office of Science and Technology Policy (OSTP) issued for public comment a proposed Model Federal Policy for the Protection of Human Research Subjects. This Model Policy is to enhance uniformity in the implementation of a common core of regulations governing research with human subjects. FDA has concurred in the proposed Model Policy to the extent permitted by law. FDA will propose to amend its regulations to eliminate certain inconsistencies with the proposed Model Policy. OSTP has advised the Agency that concurrent publication of the final Model Policy and FDA's proposed rule is needed.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Bonnie M. Lee, Public Health Advisor, Health Assessment Policy Staff, Department of Health and Human Services, Food and Drug Administration, Office of Health Affairs (HFY-20), 5600 Fishers Lane, Rockville, MD 20857, 301 443-1382

RIN: 0905-AC52

718. ◆ MENSTRUAL TAMPONS; PROPOSED USER LABELING

Significance: Regulatory Program

Legal Authority: 21 USC 321; 21 USC 352; 21 USC 360; 21 USC 371; 21 USC 374

CFR Citation: 21 CFR 801.430

Legal Deadline: None

Abstract: FDA is considering a proposal to require tampon manufacturers to include on the package label information to describe absorbency of the tampon. The NPRM would also propose requiring that absorbency be determined in accordance with a specific test method.

Timetable:

Action	Date	FR Cite
NPRM	09/23/88	53 FR 37250
NPRM Comment Period End	12/22/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Lee Weinstein, Office of Standards and Regulations, Department of Health and Human Services, Food and Drug Administration, Center for Devices and Radiological Health (HFZ-84), 5600 Fishers Lane, Rockville, Maryland 20857, 301 443-3674

RIN: 0905-AC34

719. ◆ ACTION LEVELS FOR ADDED POISONOUS OR DELETERIOUS SUBSTANCES IN FOOD (INCLUDING ANIMAL FEED)

Significance: Regulatory Program

Legal Authority: 21 USC 342(a)(1)

CFR Citation: 21 CFR 109; 21 CFR 509

Legal Deadline: None

Abstract: FDA is considering a proposed rule that would (1) amend its regulations creating and describing action levels for added poisonous or deleterious substances in food (including animal feed) to make clear that these action levels are prosecutorial guidelines rather than substantive rules, and (2) revoke the provisions for exceptions to action levels in 21 CFR Part 109 (human food) and 21 CFR Part 509 (animal feed).

Timetable:

Action	Date	FR Cite
Notice of Circuit Court Decision	02/19/88	53 FR 5043
NPRM	10/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: John R. Wessel, Director, Contaminants Policy Staff, Department of Health and Human Services, Food and Drug Administration, Office of Regulatory Affairs, 5600 Fishers Lane, Rockville, MD 20857, 301 443-1815

RIN: 0905-AC73

720. ◆ PRESCRIPTION DRUG MARKETING ACT OF 1987; IMPLEMENTATION

Significance: Agency Priority

Legal Authority: PL 100-293

CFR Citation: 21 CFR 380

Legal Deadline: Final, Statutory, October 20, 1988.
Statutory date applies only to issuing guidelines for State licensing of wholesale drug distributors.

Abstract: The Prescription Drug Marketing Act of 1987 (the new law) amends the Federal Food, Drug, and Cosmetic Act to: (1) require State licensing of wholesale distributors of prescription human drugs under Federal guidelines including minimum standards for storage, handling, and recordkeeping; (2) ban the reimportation of prescription human drugs produced in the United States, except when reimported by the manufacturer or for emergency use; (3) ban the sale, trade, or purchase of drug samples; (4) ban trafficking in or counterfeiting of drug coupons; (5) mandate storage, handling, and recordkeeping requirements for drug samples; (6) require practitioners to request drug samples in writing; (7) prohibit, with certain exceptions, the resale of prescription human drugs purchased by hospitals or health care facilities; and (8) set forth criminal and civil penalties for violations of these provisions. The new law requires that the guidelines under (1) above be promulgated as a regulation, through notice and comment rulemaking. It also provides that the prohibition against distribution of prescription drugs by unlicensed wholesalers becomes effective two years (cont)

Timetable:

Action	Date	FR Cite
ANPRM	10/00/88	
Comment Period End		
Final Action	10/00/90	
Effective		
NPRM	00/00/00	
Final Decision on Further Regulations	00/00/00	

Prescription Drug Marketing Act; Information Letter
Notice 08/08/88 (53 FR 29775)

Reimportation of Prescription Drugs; Import Alert
Notice 07/26/88 (53 FR 28269)

Wholesale Drug Distributors; Guidelines for State Licensing
NPRM 09/13/88 (53 FR 35325)
NPRM Public Comment Period End 10/13/88
Final 10/00/88

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: ABSTRACT CONT: after the final regulation is published by the agency in the FEDERAL REGISTER. FDA has developed guidance information respecting other sections of the new law. After seeking comments from the regulated industry and other interested persons, the agency will decide what, if any, regulations are necessary for implementing the other sections and will establish timeframes for the development of those regulations.

Agency Contact: Richard Arkin, Regulatory Counsel, Division of Regulatory Affairs, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research (HFD-362), 5600 Fishers Lane, Rockville, MD 20857, 301 295-8046

RIN: 0905-AC01

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)
Public Health Service (PHS)—Food and Drug Administration (FDA)

Final Rule Stage

721. OVER-THE-COUNTER (OTC) DRUG REVIEW

Significance: Agency Priority

Legal Authority: 21 USC 321(p) Federal Food, Drug, and Cosmetic Act; 21 USC 352 Federal Food, Drug, and Cosmetic Act; 21 USC 355 Federal Food, Drug, and Cosmetic Act; 21 USC 371(a) Federal Food, Drug, and Cosmetic Act

CFR Citation: 21 CFR 310; 21 CFR 330; 21 CFR 333; 21 CFR 334; 21 CFR 335; 21 CFR 336; 21 CFR 337; 21 CFR 338; 21 CFR 339; 21 CFR 340; 21 CFR 341; 21 CFR 342; 21 CFR 343; 21 CFR 344; 21 CFR 345; ...

Legal Deadline: None

Abstract: The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (i.e., final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. NOTE: NPRM for "Antidotes, Toxic Ingestion Products" to be combined with NPRM for "Emetic Products" and reproposed as "Poison Treatment Products." NPRM for "Astringent (Wet Dressings) Products" to be included in NPRMs for "External Analgesic" & "Skin Protectant Products." NPRM for "Diaper Rash Products" to be included in NPRMs for "Antifungal," "Antimicrobial," "External Analgesic" and "Skin Protectant Products." NPRM for "Fever Blister/Cold Sore Products (External)" to be included in NPRMs for "External Analgesic" and "Skin Protectant Products." NPRM for "Insect Bites and Stings (Relief) Products" to be included in NPRMs for "External Analgesic" and "Skin Protectant Products." "Poison Ivy/Oak/Sumac Prevention" to be included in NPRMs for "External Analgesic" and "Skin Protectant Products." NPRM for "Mercurial (Topical) Products" to be included in NPRM (cont)

Timetable:

Acne (Topical) Products
ANPRM 03/23/82 (47 FR 12430)
NPRM 01/15/85 (50 FR 2172)
Final Action 00/00/00

Alcohol (Topical) Products (To be merged w/other rulemkg)
ANPRM 05/21/82 (47 FR 22324)

Anorectal Products
ANPRM 05/27/80 (45 FR 35576)
NPRM 06/15/88 (53 FR 30756).

Antacid Drug Products
ANPRM 04/05/73 (38 FR 8714)
NPRM 11/12/73 (38 FR 31260)
Final Action 06/04/74 (39 FR 9862)

Antiemetic Products
ANPRM 09/09/82 (45 FR 60541)
NPRM 06/24/82 (47 FR 37062)
Final Action 06/01/86 (51 FR 27756)

Antiemetic First Aid Products
ANPRM 04/01/77 (42 FR 17642)
NPRM 07/09/82 (47 FR 29986)
Final Action 12/11/87 (52 FR 47312)

Antiemetic Products
ANPRM 03/26/80 (45 FR 20686)
NPRM 09/30/85 (50 FR 39854)
NPRM 06/15/88 (53 FR 22430)
Final Action 00/00/00

Antidiarrheal Products
ANPRM 03/21/75 (40 FR 12924)
NPRM 04/30/86 (51 FR 16138)
Final Action 00/00/00

Antidotes, Toxic Ingestion Prdts (Now Poison Treatment Prdts)
ANPRM 01/05/82 (47 FR 444)

Antiemetic Products
ANPRM 03/21/75 (40 FR 12934)
NPRM 07/13/79 (44 FR 41064)
Final Action 04/30/87 (52 FR 15886)

Antifungal Drug Products
NPRM 11/12/73 (38 FR 31260)
Final Action 06/04/74 (39 FR 19877)
NPRM (Amendment) 01/29/88 (53 FR 2716)

Antifungal (Topical) Products
ANPRM 03/23/82 (47 FR 12480)
NPRM 12/00/88

Antimicrobial Products
ANPRM 09/13/74 (39 FR 33103)
NPRM 01/06/78 (43 FR 1210)
Reveal NPRM 02/20/85

Antiperspirant Products
ANPRM 10/10/78 (43 FR 46684)
NPRM 08/20/82 (47 FR 36492)
Final Action 08/00/00

Aphrodisiac Products
ANPRM 10/01/82 (47 FR 43572)
NPRM 01/15/85 (50 FR 2168)
Final Action 04/00/89

Astringent (Wet Dressings) Prdts (To be merged w/other rulemkg)
ANPRM 09/07/82 (47 FR 39436)

Benign Prostatic Hypertrophy Products
ANPRM 10/01/82 (47 FR 43566)
NPRM 02/20/87 (52 FR 5406)
Final Action 00/00/00

Bird Ointments
ANPRM 06/25/82 (47 FR 28006)
NPRM 01/26/88 (53 FR 2198)
Final Action 05/00/00

Camphorated Oil Drug Products
ANPRM 08/28/80 (45 FR 63864)
Final Action 09/21/82 (47 FR 41716)

Cholecystokinetic Products
ANPRM 02/12/80 (45 FR 9286)
NPRM 08/24/82 (47 FR 37068)
Final Action 06/10/83 (48 FR 27004)
NPRM (Amendment) 08/15/88 (53 FR 30782)

Corn and Callus Remover Products
ANPRM 01/05/82 (47 FR 522)
NPRM 02/20/87 (52 FR 5412)
Final Action 00/00/00

Cough/Cold (Antihistamine) Products
ANPRM 09/09/76 (41 FR 38312)
NPRM 07/29/82 (47 FR 32902)
Final Action 11/08/85 (50 FR 46582)

Cough/Cold (Antitussive) Products
ANPRM 09/09/76 (41 FR 38312)
NPRM 01/15/85 (50 FR 2200)
NPRM (Amendment) 08/24/87 (52 FR 31682)
Final Action 00/00/00

Cough/Cold (Antitussive) Products
ANPRM 09/09/76 (41 FR 38312)
NPRM 10/19/83 (48 FR 48578)
Final Action 08/12/87 (52 FR 30042)

Cough/Cold (Bronchodilator) Products
ANPRM 09/09/76 (41 FR 38312)
NPRM 10/26/82 (47 FR 47520)
Final Action 10/02/86 (51 FR 35326)

Cough/Cold (Combination) Products
ANPRM 09/09/76 (41 FR 38312)
NPRM 08/25/88 (53 FR 30522)
Final Action 00/00/00

Cough/Cold (Expectorant) Products
ANPRM 09/09/76 (41 FR 38312)
NPRM 07/09/82 (47 FR 30002)
Final Action 04/00/89

Cough/Cold (Nasal Decongestant) Products
ANPRM 09/09/76 (41 FR 38312)
NPRM 01/15/85 (50 FR 2220)
Final Action 04/00/89

Dandruff, Seborrheic Dermatitis and Psoriasis Control Products
ANPRM 12/03/82 (47 FR 54646)
NPRM 07/20/86 (51 FR 27346)
Final Action 00/00/00

Daytime Sedatives
ANPRM 12/08/75 (40 FR 57292)
NPRM 06/13/78 (43 FR 25544)
Final Action 06/22/79 (44 FR 36376)

Diaper Rash Products (To be merged w/other rulemkg)
ANPRM 09/07/82 (47 FR 39406)

Digestive Aid Products
ANPRM 01/05/82 (47 FR 454)
NPRM 01/29/88 (53 FR 2706)
Final Action 00/00/00

Emetic Products
ANPRM 03/21/75 (40 FR 12839)
NPRM 09/05/78 (43 FR 39544)

Exocrine Pancreatic Insufficiency Products
ANPRM 12/21/79 (44 FR 75686)
NPRM 11/08/85 (50 FR 46594)
Final Action 00/00/00

External Analgesic Products
ANPRM 12/04/79 (44 FR 69788)
NPRM 02/08/83 (48 FR 5852)
NPRM (Amendment) 07/30/86 (51 FR 27200)
NPRM (Amendment) 08/25/88 (53 FR 32567)
Final Action 00/00/00

Fever Blister Products (Internal)
ANPRM 01/05/82 (47 FR 502)
NPRM 06/17/85 (50 FR 25156)
Final Action 00/00/00

Fvr Blister/Cold Sore Prdts (Ext.) (To be merged w/other rulemkg)
ANPRM 09/07/82 (47 FR 39436)

Hair Grower and Hair Loss Prevention Products
ANPRM 11/27/80 (45 FR 73955)
NPRM 01/15/85 (50 FR 2190)
Final Action 06/01/89

Hormone (Topical) Products
ANPRM 01/05/82 (47 FR 430)
NPRM 04/00/89

Hypo/Hyperphosphatemia Products
ANPRM 12/09/80 (45 FR 81154)
NPRM 01/15/85 (50 FR 2160)
Final Action 00/00/00

Ingrown Toenail Relief Products
ANPRM 10/17/80 (45 FR 69126)
NPRM 09/03/82 (47 FR 39120)
Final Action 00/00/00

Insect Bite & Sting (Relief) Prdts (To be merged w/other rulemkg)
ANPRM 09/07/82 (47 FR 39412)

Insect Repellent Drug Products (Internal)
ANPRM 01/05/82 (47 FR 424)
NPRM 06/10/83 (48 FR 26986)
Final Action 06/17/85 (50 FR 25170)

Internal Analgesic Products
ANPRM 07/08/77 (42 FR 35346)
NPRM 12/00/88

Internal Deodorant Products
ANPRM 01/05/82 (47 FR 512)
NPRM 06/17/85 (50 FR 25162)
Final Action 00/00/00

Laxative Products
ANPRM 03/21/75 (40 FR 12902)
NPRM 01/15/85 (50 FR 2124)
NPRM (Amendment) 10/01/86 (51 FR 35126)
Final Action 00/00/00

Leg Muscle Cramps (Nocturnal Relief) Products
ANPRM 10/01/82 (47 FR 43562)
NPRM 11/08/85 (50 FR 46588)
Final Action 00/00/00

Male Genital Deodorizer Products
ANPRM 09/07/82 (47 FR 39412)
NPRM 10/02/85 (50 FR 40360)
Final Action 00/00/00

Menstrual Products
ANPRM 12/07/82 (47 FR 55075)
NPRM 12/00/88

Mercurial (Topical) Products (To be merged w/other rulemkg)
ANPRM 01/05/82 (47 FR 436)

Nailbiting/Thumbsucking Deterrent Products
ANPRM 10/17/80 (45 FR 69122)
NPRM 09/03/82 (47 FR 39096)
Final Action 05/00/00

Nighttime Sleep Aid Products
ANPRM 12/08/75 (40 FR 57292)
NPRM 06/13/78 (43 FR 25544)
Final Action 10/00/88

Ophthalmic Products
ANPRM 05/08/80 (45 FR 30002)
NPRM 04/28/83 (48 FR 29781)
Final Action 03/04/88 (53 FR 7076)

Oral Discomfort (Relief) Products
ANPRM 05/25/82 (47 FR 22712)
NPRM 00/00/00

Oral Health Care Products
ANPRM 05/25/82 (47 FR 22760)
NPRM 01/27/88 (53 FR 2436)
Final Action 00/00/00

Oral Mucosal Injury Products (Merged w/Oral Health Care)
ANPRM 11/02/79 (44 FR 63270)
NPRM 07/26/83 (48 FR 33984)

Oral Wound Healing Products
ANPRM 11/02/79 (44 FR 63270)
NPRM 07/26/83 (48 FR 33984)
Final Action 07/18/86 (51 FR 26112)

Otic Products (Earwax)
NPRM 07/09/82 (47 FR 30012)
Final Action 08/08/86 (51 FR 28656)

Otic Products (Swimmers Ear)
NPRM 07/30/86 (51 FR 27366)
Final Action 05/00/00

Overindulgence Remedies
ANPRM 10/01/82 (47 FR 43540)
NPRM 00/00/00

Overindulgence Remedies/Prevention of Inebriation
ANPRM 10/01/82 (47 FR 43540)
Final Action 07/19/83 (48 FR 32872)

Pediculicide Products
ANPRM 06/29/82 (47 FR 28312)
NPRM 12/00/88

Poison Ivy/Oak/Sumac Prevention (To be merged w/other rulemkg)
ANPRM 09/07/82 (47 FR 39412)

Poison Treatment Products
NPRM 01/15/85 (50 FR 2244)
Final Action 00/00/00

Skin Bleaching Products
ANPRM 11/03/78 (43 FR 51546)
NPRM 09/03/82 (47 FR 39100)
Final Action 02/00/89

Skin Protectant Products
ANPRM 08/04/78 (43 FR 34628)
NPRM 02/15/83 (48 FR 6820)
Final Action 00/00/00

Smoking Deterrent Products
ANPRM 01/05/82 (47 FR 490)
NPRM 07/03/85 (50 FR 27552)
Final Action 00/00/00

Stimulant Products
ANPRM 12/08/75 (40 FR 57292)
NPRM 06/13/78 (43 FR 25544)
Final Action 02/20/88 (53 FR 5103)

Stomach Acidifier Products
ANPRM 10/19/79 (44 FR 60316)
NPRM 01/15/85 (50 FR 2184)
Final Action 08/17/88 (53 FR 31270)

Sunscreen Products
ANPRM 08/25/78 (43 FR 38206)
NPRM 00/00/00

Sweat Spirits of Nitre
ANPRM 02/22/80 (45 FR 11846)
Final Action 08/27/80 (45 FR 43400)

Vaginal Contraceptive Products
ANPRM 12/12/80 (45 FR 82014)
NPRM 00/00/00

Vaginal Drug Products
ANPRM 10/13/83 (48 FR 46694)
NPRM 00/00/00

Vitamin/Mineral Products
ANPRM 03/16/79 (44 FR 16126)
Withdrawal 11/27/81 (46 FR 57914)

Wart Remover Products
ANPRM 10/23/80 (45 FR 69500)
NPRM 09/03/82 (47 FR 39102)
NPRM (Amendment) 03/27/87 (52 FR 9992)
Final Action 00/00/00

Weight Control Products
ANPRM 02/25/82 (47 FR 8466)
NPRM 00/00/00

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ABSTRACT CONT: for "Antimicrobial Products." NPRM for "Alcohol (Topical) Products" to be included in revised NPRM for "Antimicrobial Products." The NPRM for "Antimicrobial Products" is being revised because it is being updated and split into two sections: first aid products and health care products.

SMALL BUSINESSES CONT: The effects, if any, vary depending on the individual rulemaking. However, the agency anticipates that the rules would not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act.

Agency Contact: William E. Gilbertson, Director, Division of OTC Drug Evaluation, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research (HFD-210), 5600 Fishers Lane, Rockville, MD 20857, 301 295-8000

RIN: 0905–AA06

722. AVAILABILITY OF BULK NEW ANIMAL DRUG SUBSTANCES FOR USE BY LICENSED VETERINARIANS

Significance: Regulatory Program

Legal Authority: 21 USC 360b Federal Food, Drug, and Cosmetic Act

CFR Citation: 21 CFR 514.1

Legal Deadline: None

Abstract: This proposed rule would permit veterinarians to obtain bulk new animal drug substances for compounding products for use in their own practice. A number of veterinarians have requested that the regulations be revised in order that bulk new animal drug substances may be legally obtained by them for use in their practices. Seventeen comments were received in response to the proposed rule, five from pharmaceutical companies, six from trade/professional associations, three from consultants, two from veterinary practitioners, and one from a Federal agency. Only three of those commenting supported the proposal. The remaining 14 comments opposed the proposal. The agency is reevaluating the proposal in light of the comments received. In December 1987, a district court held that veterinarians may obtain and compound bulk drugs for use in their practices without approval by FDA. The Federal government has appealed this decision which has been stayed by the court of appeals.

Timetable:

Action	Date	FR Cite
NPRM	07/01/85	50 FR 27016
NPRM Comment Period End	09/30/85	50 FR 27016
Final Action	11/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Donald A. Gable, Director, Division of Therapeutic Drugs for Food Animals, Department of Health and Human Services, Food and Drug Administration, Center for Veterinary Medicine (HFV-130), 5600 Fishers Lane, Rockville, MD 20857, 301 443-1418

RIN: 0905–AB01

723. PROVISIONALLY LISTED COLOR ADDITIVES

Significance: Agency Priority

Legal Authority: 21 USC 371 Federal Food, Drug, and Cosmetic Act; 21 USC 376(b) to 376(d) Federal Food, Drug, and Cosmetic Act; 21 USC 376 note Federal Food, Drug, and Cosmetic Act

CFR Citation: 21 CFR 81.1; 21 CFR 81.27

Legal Deadline: None

Abstract: Substantial progress has been made in reducing the number of provisionally listed additives and only 1 color additive remains on the provisional list. The agency is presently reviewing petitions to list the color additive permanently. Because FD&C Red No. 3 animal feeding studies have shown a treatment-related increased incidence of tumor bearing animals, the agency considered the use of quantitative risk assessment as a basis for assessing the safety of this color additive in external drugs and cosmetics. As a preliminary step in its consideration of this approach, the agency formed a scientific peer review panel of government scientists to consider whether it is possible to quantify the risk presented by the use of FD&C Red No. 3 based on the scientific data available to the agency and, if so, what level of risk is presented by the use of this color additive. The agency has received the report from the scientific review panel in which the panel estimates the risk of cancer from use of FD&C Red No. 3 in external drugs and cosmetics. Furthermore, for FD&C Red No. 3 the industry has postulated a secondary mechanism for the observed tumorigenic response in the animal feeding (cont)

Timetable:

D&C Red No. 33
Final Action 08/30/88 (53 FR 33110)

D&C Red No. 34
Final Action 08/02/88 (53 FR 29024)

FD&C Red No. 3
Final Action 00/00/00

FD&C Red No. 3; Extension of Provisional Listing
NPRM 08/30/88 (53 FR 33147)

FD&C Red No. 3; Request for Data for Specific Uses
Notice 11/19/87 (52 FR 44485)

FD&C Red No. 3; Request for Data for Specific Uses; Postponement
Notice 12/21/87 (52 FR 48326)

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ABSTRACT CONT: study. The agency asked a second scientific peer review panel of government scientists to consider data

relating to the issue of a possible secondary mechanism and implications for risk assessment. The panel was also asked to determine what, if any, further studies or analyses may be necessary to resolve the issues. The panel submitted its report to the Commissioner in July 1987. The report was made available to the public in August 1987.

Agency Contact: Donna A. Dennis, Supervisor, Division of Food and Color Additives, Department of Health and Human Services, Food and Drug Administration, Center for Food Safety and Applied Nutrition (HFF-330), 200 C Street, SW, Washington, DC 20204, 202 426-9463

RIN: 0905-AH60

724. FOOD LABELING INFORMATION REGARDING GOOD NUTRITION AND HEALTH

Significance: Regulatory Program

Legal Authority: 15 USC 1453 Fair Packaging and Labeling Act; 15 USC 1455 Fair Packaging and Labeling Act; 21 USC 321 Federal Food, Drug, and Cosmetic Act; 21 USC 343 Federal Food, Drug, and Cosmetic Act; 21 USC 348 Federal Food, Drug, and Cosmetic Act; 21 USC 371 Federal Food, Drug, and Cosmetic Act

CFR Citation: 21 CFR 101

Legal Deadline: None

Abstract: In the FEDERAL REGISTER of August 4, 1987, the Food and Drug Administration (FDA) discussed an initiative concerning health-related claims or information on food labeling and the criteria it will apply in evaluating the propriety of such labeling. Consistent with this initiative, FDA proposed to amend certain regulations on food labeling to codify and to clarify its policy on the appropriate use of health-related messages. The agency also announced its intention to form a Public Health Service (PHS) committee that will attempt to develop "health messages" appropriate for use on food labeling.

FDA recognizes that this initiative represents a substantive change in past agency policy, and because of the complexity of the matter and the broad public interest, wishes to proceed cautiously and deliberately in its regulatory approach.

Pending this rulemaking proceeding, the agency will employ the criteria discussed in the preamble to the notice in evaluating the propriety of bringing enforcement action against products bearing health messages on food labeling.

Timetable:

Action	Date	FR Cite
NPRM	08/04/87	52 FR 28843
NPRM - Comment Period Ends	11/02/87	52 FR 28843
NPRM - Extension of Comment Period	11/02/87	52 FR 42009
NPRM - Correction of Extension of Comment Period	11/16/87	52 FR 43772
NPRM - Extension of Comment Period Ends	01/04/88	52 FR 43772
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: David G. Hattan, Chief, Regulatory Affairs Staff, Department of Health and Human Services, Food and Drug Administration, Center for Food Safety and Applied Nutrition (HFF-204), 200 C Street, SW, Washington, DC 20204, 202 245-3117

RIN: 0905-AB07

725. FOOD LABELING: DEFINITIONS OF CHOLESTEROL FREE, LOW CHOLESTEROL, AND REDUCED CHOLESTEROL

Significance: Regulatory Program

Legal Authority: 21 USC 343 Federal Food, Drug, and Cosmetic Act; 21 USC 321(n) Federal Food, Drug, and Cosmetic Act; 21 USC 371 Federal Food, Drug, and Cosmetic Act

CFR Citation: 21 CFR 101.9; 21 CFR 101.23

Legal Deadline: None

Abstract: In the FEDERAL REGISTER of November 25, 1986, the agency published a proposed rule that would provide a mechanism to allow relevant, truthful, and nonmisleading claims about cholesterol and fatty acid on product labeling for consumers. This proposed rule resulted from the medical and consumer interest in the association between dietary fat and cholesterol and the occurrence of coronary heart disease, the leading cause of death and disability in the United States today. The proposed rule would allow industry voluntarily to provide consumers with cholesterol and fatty acid information currently prohibited by regulations by permitting the use of meaningful descriptors of the cholesterol content of foods as established by regulation (e.g., "cholesterol free," "low cholesterol," and "reduced cholesterol"). Additionally, the proposal would allow the use of comparative claims (e.g., 50 percent less cholesterol than our original product), provided quantitative cholesterol content information is supplied. Public comments submitted in response to the proposed rule are being reviewed.

Timetable:

Action	Date	FR Cite
NPRM	11/25/86	51 FR 42584
NPRM Extension of Comment Period	01/23/87	52 FR 2558
NPRM Comment Period End	03/27/87	52 FR 2558
Final Action	03/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: David G. Hattan, Chief, Regulatory Affairs Staff, Department of Health and Human Services, Food and Drug Administration, Center for Food Safety and Applied Nutrition (HFF-204), 200 C Street, SW, Washington, DC 20204, 202 245-3117

RIN: 0905-AB56

726. METHYLENE CHLORIDE

Significance: Agency Priority

Legal Authority: 21 USC 301 Federal Food, Drug, and Cosmetic Act; 21 USC 362 Federal Food, Drug, and Cosmetic Act; 21 USC 371(a) Federal Food, Drug, and Cosmetic Act

CFR Citation: 21 CFR 700.19

Legal Deadline: None

Abstract: Methylene chloride is used as a solvent in aerosol cosmetic products (hair sprays). Recent carcinogenicity bioassay studies, however, have shown that methylene chloride is an animal carcinogen. These studies indicate that

the continued use of methylene chloride, in functional amounts, in such cosmetic products may pose a significant risk to the public health, especially in specific segments of the population that are continually exposed to aerosol cosmetics containing methylene chloride. The agency has been informed of voluntary efforts by the cosmetic industry to replace methylene chloride but believes that prohibiting its use in cosmetics is the only approach that will assure that the public health will be fully safeguarded from all such products, both foreign and domestic. FDA announced in the December 18, 1985, NPRM its conclusion that methylene chloride used as a solvent to extract caffeine from green coffee beans was not a danger under the Delaney Clause to the Food Additives Amendment because the risk was so miniscule as to be considered de minimis. FDA is reconsidering this conclusion in light of a recent appeals court (cont)

Timetable:

Action	Date	FR Cite
NPRM	12/18/85	50 FR 51551
NPRM - Comment Period Ends	02/18/86	50 FR 51551
NPRM - Comment Period Extended	02/24/86	51 FR 6494
NPRM - Extended Comment Period Ends	04/04/86	51 FR 6494
NPRM - Comment Period Reopened	12/05/86	51 FR 43935
NPRM - Reopened Comment Period Ends	01/05/87	51 FR 43935
Final Action	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ABSTRACT CONT: decision that struck down a similar interpretation of the color additive Delaney Clause.

Agency Contact: Terry C. Troxell, Division of Regulatory Guidance, Department of Health and Human Services, Food and Drug Administration, Center for Food Safety and Applied Nutrition (HFF-312), 200 C Street, SW, Washington, DC 20204, 202 485-0220

RIN: 0905-AC00

727. INFANT FORMULA ACT

Significance: Regulatory Program

Legal Authority: 21 USC 371(a) Federal Food, Drug, and Cosmetic Act; PL 99-570 Infant Formula Act of 1986

CFR Citation: 21 CFR 7; 21 CFR 106

Legal Deadline: None

Abstract: The agency is preparing two proposals and one final rule which will implement the Infant Formula Act of 1986. The final rule will amend FDA's Infant Formula Recall regulations. These amended regulations will mandate the recall of infant formulas that are in violation of the Act and which have been determined by the Secretary to pose a health hazard. The first proposal will establish current good manufacturing practice regulations and strengthen the agency's existing quality control procedures for infant formulas. The second proposal will establish infant formula microbiological testing, consumer complaints, and record retention requirements.

Timetable:

Action	Date	FR Cite
Infant Form Cons Comp, Micro Test & Rcrd Retention Reg		
NPRM	12/00/88	
Infant Formula Current Good Practices; Qual Control Proc		
NPRM	01/00/89	
Infant Formula Recall		
NPRM	08/14/87	52 FR 30171
Comment Period Ends	10/13/87	52 FR 30171
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: AGENCY CONTACT CONT: For Information Concerning Infant Formula, Microbiological Testing, Consumer Complaints, Record Retention Requirements, Good Manufacturing Practices, and Quality Control Procedures Contact: Nicholas Duy, Consumer Safety Officer, Center for Food Safety and Applied Nutrition (HFF-204), Department of Health and Human Services, Food and Drug Administration, 200 C Street, SW, Washington, DC 20204, (202) 245-3117

Agency Contact: Curtis Coker, Consumer Safety Officer, (For Info Concerning Infant Formula Recalls), Department of Health and Human Services, Food and Drug Administration, Center for Food Safety and Applied Nutrition (HFF-314), 200 C Street, SW, Washington, DC 20204, 202 485-0024

RIN: 0905-AC46

728. COMMON OR USUAL NAME FOR DILUTED FRUIT OR VEGETABLE JUICE BEVERAGES OTHER THAN DILUTED ORANGE JUICE BEVERAGES

Significance: Regulatory Program

Legal Authority: 21 USC 321(n) Federal Food, Drug and Cosmetic Act; 21 USC 343 Federal Food, Drug and Cosmetic Act; 21 USC 371(a) Federal Food, and Cosmetic Act

CFR Citation: 21 CFR 102.33

Legal Deadline: None

Abstract: In 1980, FDA published a regulation (21 CFR 102.33) to require the declaration of the percent of juice contained in all diluted juice beverages. This regulation was published to extend the percent juice declaration required for diluted orange juice beverages (21 CFR 102.32) to all other diluted juice beverages. These two regulations were developed to provide consumers with information as to the various amounts of juice in the diluted juice beverages offered for sale. The regulation regarding percentage juice declaration for diluted orange juice beverages had been in effect for several years and functioning well before the regulation addressing all other diluted juice beverages was published. With publication of 21 CFR 102.33, a controversy developed over the applicability of the regulation to diluted cranberry juice beverages. The controversy centered around the fact that cranberry juice is a high acid juice and is not normally consumed as a single strength juice. Due to this unresolved controversy, 21 CFR 102.33 has not been made effective. In the FEDERAL REGISTER of July 16, 1987 (52 FR 26690), the agency proposed to revoke the common or usual (cont)

Timetable:

Action	Date	FR Cite
NPRM - To Revoke Regulation	07/16/87	52 FR 26690

HHS—PHS—FDA — Final Rule Stage

Action	Date	FR Cite
NPRM - Comment Period Ends	09/14/87	52 FR 26690
NPRM - Extension of Comment Period	09/25/87	52 FR 36046
NPRM - Extended Comment Period Ends	12/13/87	52 FR 36046
NPRM - Comment Period Reopened	01/22/88	53 FR 1795
NPRM - Reopened Comment Period Ends	01/27/88	53 FR 1795
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ABSTRACT CONT: name regulation (21 CFR 102.33) for diluted fruit or vegetable juice beverages other than diluted orange juice beverages. The revocation of this regulation will allow voluntary percentage labeling of these diluted juice beverages at the discretion of the manufacturer and according to the demands of the marketplace. Diluted orange juice beverages would continue to be subject to the percentage labeling requirement that has been in effect for diluted orange juice beverages since 1973. This proposed action also withdraws the proposed rule published in the FEDERAL REGISTER of June 1, 1984 (49 FR 22831), which, among other things, exempted cranberry juice products from percentage ingredient labeling requirements.

Agency Contact: Evelyn Oxman, Division of Regulatory Guidance, Department of Health and Human Services, Food and Drug Administration, Center for Food Safety and Applied Nutrition (HFF-312), 200 C Street, SW, Washington, DC 20204, 202 485-0220

RIN: 0905–AC48

729. TAMPER-RESISTANT PACKAGING REQUIREMENTS FOR OVER-THE-COUNTER (OTC) DRUGS

Significance: Regulatory Program

Legal Authority: 21 USC 321(n); 21 USC 351; 21 USC 352; 21 USC 355; 21 USC 356; 21 USC 357; 21 USC 371

CFR Citation: 21 CFR 211.132

Legal Deadline: None

Abstract: The agency is considering amending the current tamper-resistant packaging regulations and updating information it previously made available on tamper-resistant packaging technologies. Under this approach, the agency is considering revisions to require special precautions against tampering for two-piece, hard, gelatin capsules, the dosage form that has been the subject of fatal tamperings.

The agency is also considering other measures to provide additional guidance to manufacturers regarding tamper-resistant packaging technology and public education to improve consumer's alertness to tampering.

Any action taken would reflect the Administration policy that the consumer is the key to tamper resistance, and the ultimate goal of tamper-resistant packaging is that it should offer a signal to consumers about tampering.

Timetable:

Action	Date	FR Cite
NPRM	05/05/88	53 FR 16150
NPRM Comment Period End	07/05/88	53 FR 16150
Final Action	10/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Diane Goyette, Consumer Safety Officer, Division of Regulatory Affairs, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research (HFD-362), 5600 Fishers Lane, Rockville, MD 20857, 301 295-8046

RIN: 0905–AC70

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Completed Actions

Public Health Service (PHS)—Food and Drug Administration (FDA)

730. PROPOSED USER CHARGE; NEW DRUG APPLICATIONS, ABBREVIATED NEW DRUG APPLICATIONS, NEW DEVICE APPLICATIONS, AND ANTIBIOTIC APPLICATIONS REVIEW

Significance: Agency Priority

CFR Citation: 21 CFR 314

Completed:

Reason	Date	FR Cite
Withdrawn Withdrawn pending Congressional action.	08/31/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marilyn Watson 301 295-8038

RIN: 0905–AB56

731. PATENT TERM RESTORATION FOR CERTAIN REGULATED PRODUCTS (TITLE II OF "DRUG PRICE COMPETITION AND PATENT TERM RESTORATION ACT OF 1984")

Significance: Regulatory Program

CFR Citation: 21 CFR 60

Completed:

Reason	Date	FR Cite
Final Action	03/07/88	53 FR 7296
Final Action Effective	05/06/88	53 FR 7296

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Philip L. Chao 301 443-1382

RIN: 0905–AB85

732. MENSTRUAL TAMPONS; PROPOSED USER LABELING

Significance: Regulatory Program

CFR Citation: 21 CFR 801.430

Completed:

Reason	Date	FR Cite
RIN has been changed to 0905-AC54	08/26/88	

Small Entities Affected: Undetermined

Government Levels Affected: None

HHS—PHS—FDA — Completed Actions

Agency Contact: Lee Weinstein 301 443-4874

RIN: 0905–AC56

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Proposed Rule Stage

Public Health Service (PHS)—Health Resources and Services Administration (HRSA)

733. HEALTH EDUCATION ASSISTANCE LOAN (HEAL) PROGRAM; IMPLEMENTATION OF PUB. L. 99-129

Legal Authority: 42 USC 216; 42 USC 294 to 294l

CFR Citation: 42 CFR 60

Legal Deadline: None

Abstract: This rule proposes to implement provisions of the Health Professions Training Assistance Act of 1985 (Pub. L. 99-129) which require public comment before being published as final regulations.

Timetable:

Action	Date	FR Cite
NPRM	11/30/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Ms. Peggy Washburn, Chief, Program Devel. Br., DSA, BHPr, Department of Health and Human Services, Health Resources and Services Administration, Room 8-48, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, 301 443-4540

RIN: 0905–AC28

734. POST-BACCALAUREATE FACULTY FELLOWSHIP PROGRAM

Legal Authority: 42 USC 216; 42 USC 297-2

CFR Citation: 42 CFR 57

Legal Deadline: None

Abstract: These proposed regulations would implement section 830 (b) of the Public Health Service Act relating to post-baccalaureate fellowships for faculty to conform with the Nurse Education Amendments of 1985 (Pub. L. 99-92).

Timetable:

Action	Date	FR Cite
NPRM	11/30/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Ms. Jo Eleanor Elliott, R.N., M.A., Director, Division of Nursing, BHPr, Department of Health and Human Services, Health Resources and Services Administration, Room 5C-26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, 301 443-5786

RIN: 0905–AC34

735. GRANTS FOR COMMUNITY HEALTH SERVICES; CRITERIA AND PROCEDURE FOR DETERMINING MEDICALLY UNDERSERVED POPULATIONS (MUP)

Legal Authority: PL 99-280, Sec 2; 42 USC 254c(b)

CFR Citation: 42 CFR 51c

Legal Deadline: None

Abstract: Section 330(b) of the Public Health Service Act was amended by Section 2 of the Health Services Amendments Act of 1988 (P.L. 98-280). The amendment requires the Secretary to publish, in regulation, criteria for the designation of areas or population groups with shortages of personnel health services. These designated areas are eligible for the award of grants for planning and operating Community Health Centers. The amendment requires that the Secretary consult with the Chief Executive Officer of a State and local officials in publishing MUP designation criteria and in designating or dedesignating MUP. The amendment also requires the Secretary to consult with State organizations representing a majority of Community Health Centers in the State.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: James P. Purvis, Director, Office of Program and Policy, Development, Department of Health and Human Services, Health Resources and Services Administration, 5600 Fishers Lane, Room 7-15, Rockville, MD 20857, 301 443-1034

RIN: 0905–AC35

736. AREA HEALTH EDUCATION CENTER (AHEC) PROGRAM

Legal Authority: 42 USC 216; 42 USC 295g-1

CFR Citation: 42 CFR 57

Legal Deadline: None

Abstract: This NPRM proposes to amend the existing regulations governing the Area Health Education Center (AHEC) Program, under section 781 of the Public Health Service Act, to incorporate provisions that would: 1) limit involvement by the Federal Government in the support of any new project to a maximum of 5 years; 2) require an applicant to submit a plan describing how the center will continue operations after a maximum of 5 years of support by the Federal Government; and 3) add an evaluation criteria to include the extent to which minorities or low-income individuals reside in the area served by the Center.

Timetable:

Action	Date	FR Cite
NPRM	03/31/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Donald L. Weaver, M.D., Director, Division of Medicine, BHPr, Department of Health and Human Services, Health Resources and Services Administration, Room 4C-25, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, 301 443-6190

RIN: 0905–AC87

737. DESIGNATION OF MENTAL HEALTH MANPOWER SHORTAGE AREAS

Legal Authority: 42 USC 216; 42 USC 254e

CFR Citation: 42 CFR 5

Legal Deadline: None

HHS—PHS—HRSA — Proposed Rule Stage

Abstract: This notice proposes an amendment to the existing regulations governing the Designation of Health Manpower Shortage Areas authorized by section 332 of the Public Health Service Act, which would replace the current criteria for designations of areas having shortages of psychiatrists with criteria for mental health manpower shortage areas to include not only psychiatrists but also other core mental health professionals (clinical psychologists, psychiatric social workers and psychiatric nurses) in a geographic area.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Richard C. Lee, Chief, Shortage Analysis Staff, BHCDA, Department of Health and Human Services, Health Resources and Services Administration, Room 8-57, Parklawn Building, Rockville, MD, [illegible], 301 443-[illegible]

RIN: 0905-AC50

738. GRANTS FOR FACULTY TRAINING PROJECTS IN GERIATRIC MEDICINE AND DENTISTRY

Legal Authority: 42 USC 216; 42 USC 256g-5

CFR Citation: 42 CFR 57

Legal Deadline: None

Abstract: These proposed rules would govern grants made to schools of medicine, schools of osteopathy, teaching hospitals and graduate medical education programs for the purpose of providing support, including traineeships and fellowships, for geriatric medicine training projects to train physicians and dentists who plan to teach geriatric medicine or geriatric dentistry, in accordance with PL 100-177, the Public Health Amendments of 1987.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Donald L. Weaver, M.D., Director, Division of Medicine, BHPr, Department of Health and Human Services, Public Health Service, Room 4c-25 Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, 301 443-6190

RIN: 0905-AC71

739. ◆ HEALTH EDUCATION ASSISTANCE LOAN (HEAL) PROGRAM: BANKRUPTCY REVISIONS

Legal Authority: 42 USC 216; 42 USC 294 to 294l

CFR Citation: 42 CFR 60

Legal Deadline: None

Abstract: This NPRM would amend existing regulations governing the Health Education Assistance Loan (HEAL) Program, as authorized by sections 727-739 of the Public Health Service Act, to include revised procedures for handling HEAL bankruptcies.

Timetable:

Action	Date	FR Cite
NPRM	03/31/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Peggy Washburn, Chief, Program Development Br., DSA, BHPr, Department of Health and Human Services, Health Resources and Services Administration, Room 8-48 Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, 301 443-4540

RIN: 0905-AC75

740. ◆ NURSING STUDENT LOAN (NSL) PROGRAM: CASH MANAGEMENT

Legal Authority: 42 USC 216; 42 USC 297a to 297h

CFR Citation: 42 CFR 57

Legal Deadline: None

Abstract: This NPRM would revise the existing regulations governing the Nursing Student Loan (NSL) Program to improve the cash management practices of schools participating in the program. The revisions address recommendations made by the General Accounting Office in its report on debts owed by health professionals, including nurses, and the Office of the Inspector General as a result of several major cash management audits.

Timetable:

Action	Date	FR Cite
NPRM	11/30/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Peggy Washburn, Chief, Program Development Br., DSA, BHPr, Department of Health and Human Services, Health Resources and Services Administration, Room 8-48, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, 301 443-4540

RIN: 0905-AC76

741. ◆ CENTERS FOR EXCELLENCE

Legal Authority: 42 USC 295g-8a

CFR Citation: 42 CFR 57

Legal Deadline: None

Abstract: This NPRM proposes to establish regulations for Grants for Centers for Excellence, authorized by section 788A of the Public Health Service Act, to make grants to health professions schools to assist such schools in supporting programs of excellence in health professions education for minority individuals.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Clay E. Simpson, Jr.,Ph.D., Director, Division of Disadvantaged, Assistance, BHPr, Department of Health and Human Services, Health Resources and Services Administration, Room 8A-09, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, 301 443-2190

RIN: 0905-AC77

742. ◆ HEALTH PROFESSIONS STUDENT LOAN (HPSL) PROGRAM: CASH MANAGEMENT

Legal Authority: 42 USC 216; 42 USC 294m to 294q

CFR Citation: 42 CFR 57

Legal Deadline: None

Abstract: This NPRM would revise the existing regulations governing the Health Professions Student Loan program to improve the cash management practices of schools participating in the program. The revisions address recommendations made by the General Accounting Office in its report on debts owed by health professionals, and the Office of Inspector General as a result of several major cash management audits.

HHS—PHS—HRSA — Proposed Rule Stage

Timetable:

Action	Date	FR Cite
NPRM	11/30/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Peggy Washburn, Chief, Program Development Branch, DSA, BHPr, Department of Health and Human Services, Health Resources and Services Administration, Room 8-48, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, 301 443-4540

RIN: 0905-AC78

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS) — Final Rule Stage

Public Health Service (PHS)—Health Resources and Services Administration (HRSA)

743. GRANTS FOR RESIDENCY TRAINING AND FACULTY DEVELOPMENT IN GENERAL INTERNAL MEDICINE AND/OR GENERAL PEDIATRICS

Legal Authority: 42 USC 216; 42 USC 256g-4

CFR Citation: 42 CFR 57

Legal Deadline: None

Abstract: These regulations propose to amend the existing regulations for residency training in general internal medicine and general pediatrics and to implement section 784 (a)(3) and (4) to plan, develop, and operate a program and provide financial assistance to physicians who plan to teach in general internal medicine and general pediatrics.

Timetable:

Action	Date	FR Cite
NPRM	05/03/88	53 FR 15710
NPRM Comment Period End	07/05/88	
Final Action	12/30/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Donald L. Weaver, M.D., Director, Division of Medicine, BHPr, Department of Health and Human Services, Health Resources and Services Administration, Public Health Service, 5600 Fishers Lane, Room 4C-25, Rockville, MD 20857, 301 443-6190

RIN: 0905-AE50

744. GRANTS FOR NURSE PRACTITIONER AND NURSE MIDWIFERY TRAINEESHIP PROGRAMS

Legal Authority: 42 USC 216; 42 USC 296m

CFR Citation: 42 CFR 57

Legal Deadline: None

Abstract: These proposed regulations would implement the provisions of the Nurse Education Amendments of 1985 (Pub. L. 99-92) and add debt management provisions of the Debt Collection Act of 1982 (Pub. L. 97-365).

Timetable:

Action	Date	FR Cite
NPRM	05/05/88	53 FR 16158
NPRM Comment Period End	07/05/88	
Final Action	12/30/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Jo Eleanor Elliott, R.N., M.A., Director, Division of Nursing, BHPr, Department of Health and Human Services, Health Resources and Services Administration, Room 5C-26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, 301 443-5786

RIN: 0906-AC30

745. NURSING STUDENT LOAN (NSL) PROGRAM: IMPLEMENTATION OF THE LAW (PUB. L. 99-92)

Legal Authority: 42 USC 216; 42 USC 297a to 297h

CFR Citation: 42 CFR 57

Legal Deadline: None

Abstract: These regulations propose to implement provisions of the Nurse Education Amendments of 1985 (Pub. L. 99-92) which require public comment before being published in final regulations.

Timetable:

Action	Date	FR Cite
NPRM	06/05/87	52 FR 21486
NPRM Comment Period End	07/20/87	
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Ms. Peggy Washburn, Chief, Program Devel. Br., DSA, BHPr, Department of Health and Human Services, Public Health Service, Room 8-48, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, 301 443-4540

RIN: 0905-AC31

746. HEALTH PROFESSIONS STUDENT LOAN (HPSL) PROGRAM: IMPLEMENTATION OF THE LAW (PUB. L. 99-129)

Legal Authority: 42 USC 216; 42 USC 294m to 294q

CFR Citation: 42 CFR 57

Legal Deadline: None

Abstract: These regulations propose to implement provisions of the Health Professions Training Assistance Act of 1985 (Pub. L. 99-129) which require public comment before they can be published in final regulations.

Timetable:

Action	Date	FR Cite
NPRM	06/03/87	52 FR 20989
NPRM Comment Period End	07/20/87	
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Ms. Peggy Washburn, Chief, Program Devel. Br., DSA, BHPr, Department of Health and Human Services, Health Resources and Services Administration, Room 8-48,Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, 301 443-4540

RIN: 0906-AC32

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HHS—PHS—HRSA — Final Rule Stage

747. GRANTS FOR HEALTH PROFESSIONS PROJECTS IN GERIATRICS

Legal Authority: 42 USC 216; 42 USC 254g-4

CFR Citation: 42 CFR 57

Legal Deadline: None

Abstract: These proposed regulations would implement provisions for 788 (d) of the Public Health Service Act relating to geriatric education of the Health Professions Training Assistance Act of 1985 (Pub. L. 99-129).

Timetable:

Action	Date	FR Cite
NPRM	05/06/88	53 FR 16293
NPRM Comment Period End	07/05/88	
Final Action	12/30/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Thomas L. Lowder, D.D.S., Director, Div. of Associated and Dental Health Professions, BHPr, Department of Health and Human Services, Health Resources and Services Administration, Room 8-101, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, 301 443-6853

RIN: 0905–AC29

748. HEALTH MANPOWER SHORTAGE AREA DESIGNATION CRITERIA FOR CORRECTIONAL FACILITIES

Legal Authority: 42 USC 216; 42 USC 254e

CFR Citation: 42 CFR 5

Legal Deadline: None

Abstract: This notice proposes an amendment to the existing regulations governing the criteria for Designation of Health Manpower Shortage Areas required by Section 332 of the P.H.S Act. This amendment would revise the definition for the term "internees" used in the criteria for designating those Federal and State correctional institutions which have a shortage of primary medical care, dental care, or psychiatric manpower.

Timetable:

Action	Date	FR Cite
NPRM	10/29/87	52 FR 41594
NPRM Comment Period End	12/28/87	
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Richard C. Lee, Chief, Shortage Analysis Staff, BHCDA, Department of Health and Human Services, Public Health Service, Room 8-57, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, 301 443-6832

RIN: 0905–AC30

749. IMPLEMENTATION OF HEALTH CARE QUALITY IMPROVEMENT ACT OF 1986 (TITLE IV, PUBLIC LAW 99-660)

Significance: Regulatory Program

Legal Authority: 42 USC 11130; 42 USC 11137

CFR Citation: 45 CFR 60

Legal Deadline: None

Abstract: This rule proposes to implement the Health Care Quality Improvement Act of 1986, Title IV of PL 99-660, specifically related to section 426 for the disclosure and correction of information and section 427(b) for confidentiality of information .

Timetable:

Action	Date	FR Cite
NPRM	03/21/88	53 FR 9260
NPRM Comment Period End	05/20/88	
Final Action	12/30/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: J. Jarrett Clinton, M.D., Director, Bureau of Health Professions, Department of Health and Human Services, Public Health Service, Room 8-05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, 301 443-5798

RIN: 0905–AC31

750. NATIONAL HEALTH SERVICE CORPS, STATE LOAN REPAYMENT AND SPECIAL REPAYMENT PROGRAMS

Significance: Regulatory Program

Legal Authority: PL 100-177

CFR Citation: 42 CFR 62.21 to 62.27; 42 CFR 62.51 to 62.56; 42 CFR 62.71 to 62.76

Legal Deadline: Final, Statutory, May 23, 1988.

Abstract: The National Health Service Corps Amendments of 1987, PL 100-177 amends the Public Health Service Act adding a new section at 338B of the Act authorizing the Secretary to establish the NHSC Loan Repayment Program. PL 100-177 also amends the PHS Act by adding a new section 338H authorizing the Secretary to establish a program of matching grants to support state loan repayment programs similar to the Federal Loan Repayment Program. PL 100- 177 also establishes a new program which is not part of the PHS Act which provides a time limited opportunity for persons in default of their scholarship obligation as of November 1, 1987 to repay these obligations through service or through a combination of service and monetary payment. The publication of the regulations beyond the statutory date will not have any impact on the funding or implementation of the programs affected by these regulations.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/15/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: James P. Purvis, Director, Office Of Program and Policy, Development, BHCDA, Department of Health and Human Services, Health Resources and Services Administration, 5600 Fishers Lane, Room 7-05, Rockville, MD 20857, 301 443-1034

RIN: 0905–AC25

751. HEALTH EDUCATION ASSISTANCE LOAN (HEAL): LITIGATION

Legal Authority: 42 USC 216; 42 USC 2541

CFR Citation: 42 CFR 60

Legal Deadline: None

Abstract: This NPRM would amend the HEAL regulations, 42 CFR Part 60, to clarify the litigation requirement for all lenders and holders and to clarify the applicability of various sections of the regulations.

Timetable:

Action	Date	FR Cite
NPRM	07/25/88	53 FR 27950
NPRM Comment Period End	09/24/88	
Final Action	02/28/89	

HHS—PHS—HRSA — Final Rule Stage

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Ms. Peggy Washburn, Chief, Program Development Branch, DSA, BHPr, Department of Health and Human Services, Health Resources and Services Administration, Room 8-46, Parklawn Building, 5600 Fishers Lane , Rockville, MD 20857, 301 443-4540

RIN: 0905–AC38

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS) — Completed Actions

Public Health Service (PHS)—Health Resources and Services Administration (HRSA)

752. GRANTS FOR NURSE ANESTHETIST TRAINEESHIPS

CFR Citation: 42 CFR 57

Completed:

Reason	Date	FR Cite
Final Action	03/21/88	53 FR 9114
Final Action Effective	05/21/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Dr. Thomas P. Phillips 301 443-6333

RIN: 0905–AB33

753. HEALTH PROFESSIONS STUDENT LOAN (HPSL) PROGRAM: DEFERMENT REVISIONS

Significance: Agency Priority

CFR Citation: 42 CFR 57

Completed:

Reason	Date	FR Cite
Final Action	02/29/88	53 FR 6090
Final Action Effective	02/29/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Ms. Peggy Washburn 301 443-4548

RIN: 0905–AC08

754. HEALTH EDUCATION ASSISTANCE LOAN (HEAL) PROGRAM: DEFERMENT REVISIONS

Significance: Agency Priority

CFR Citation: 42 CFR 60

Completed:

Reason	Date	FR Cite
Final Action	02/29/88	53 FR 6094
Final Action Effective	02/29/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Ms. Peggy Washburn 301 443-4548

RIN: 0905–AC07

755. NURSING SPECIAL PROJECT GRANTS

CFR Citation: 42 CFR 57

Completed:

Reason	Date	FR Cite
Final Action	04/26/88	53 FR 14792
Final Action Effective	04/26/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Ms. Jo Eleanor Elliott, R.N., M.A. 301 443-5786

RIN: 0905–AC18

756. AREA HEALTH EDUCATION CENTERS (AHEC)

CFR Citation: 42 CFR 57

Completed:

Reason	Date	FR Cite
Withdrawn AC 22-AHEC final will be merged with AC67-AHEC (NPRM)	09/01/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Donald L. Weaver, M.D. 301 443-6190

RIN: 0905–AC22

757. GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENTS, SCHOLARSHIPS, AND STUDENT LOANS

CFR Citation: 42 CFR 57

Completed:

Reason	Date	FR Cite
Final Action	04/26/88	53 FR 14789
Final Action Effective	04/26/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Ms. Peggy Washburn 301 443-4548

RIN: 0905–AC37

758. ● REMOVAL OF OBSOLETE REGULATIONS ON HEMOPHILIA TREATMENT CENTERS AND GENETIC DISEASE TESTING AND COUNSELING PROGRAMS

Legal Authority: PL 97-35; 42 USC 702(a)

CFR Citation: 42 CFR 51d; 42 CFR 51f

Legal Deadline: None

Abstract: This rule removes obsolete regulations governing grants for hemophilia treatment centers and grants for genetic disease testing and counseling programs. These regulations have been replaced by unified regulations governing the maternal and child health project grant program including the hemophilia and genetic programs. This action will eliminate duplicative regulations applicable to the maternal and child health project grant program.

Timetable:

Action	Date	FR Cite
Final Action	07/25/88	53 FR 27859
Final Action Effective	07/25/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Dr. Roger McClung, Chief, Legislation, Regulations and Planning, Branch, BMCHRD, Department of Health and Human Services, Public Health Service, Room 9A33, 5600 Fishers Lane, Rockville, Maryland 20857, 301 443-4273

RIN: 0905–AC32

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)
Public Health Service (PHS)—National Institutes of Health (NIH)
Prerule Stage

755. MISCONDUCT IN SCIENCE

Significance: Regulatory Program

Legal Authority: 42 USC 241; 42 USC 289b

CFR Citation: 42 CFR 50

Legal Deadline: None

Abstract: Recipients of Public Health Service research and research training funds do not presently have sufficient guidance regarding their responsibility to investigate and report possible misconduct in PHS-funded research or research training. While many institutions have voluntarily established procedures for dealing with misconduct in science, they are not required to do so and in many recent instances the lack of defined procedures has delayed or compromised awardees' investigations. Institutional policies regarding reports to funding agencies vary considerably. The proposed regulation will define the point at which funding agencies are notified and will require awardees to develop procedures for dealing with misconduct in science. Section 493 of the PHS Act requires that the HHS Secretary issue regulations.

Timetable:

Action	Date	FR Cite
ANPRM	09/19/88	53 FR 36344
MRTM	09/19/88	53 FR 36347
ANPRM Comment Period End	11/18/88	
NPRM Comment Period End	11/18/88	
Final Action	06/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: George J. Galasso, Ph.D., Associate Director for Extramural Affairs, Department of Health and Human Services, Public Health Service, National Inst. of Health, Bldg. 1, Rm. 111, 9000 Rockville Pike, Bethesda, MD 20892, 301 496-5596

RIN: 0905-AB01

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)
Public Health Service (PHS)—National Institutes of Health (NIH)
Proposed Rule Stage

760. CHANGES IN NIH PROGRAM REGULATIONS DUE TO P.L. 99-158,P.L. 99-499 AND TITLE X OF P.L. 99-660

Legal Authority: PL 99-158, Sec 2; PL 99-499, Sec 128; PL 99-499, Sec 209; PL 99-660, Title X

CFR Citation: 42 CFR 4; 42 CFR 52 to 52h; 42 CFR 59a; 42 CFR 64; 42 CFR 66

Legal Deadline: None

Abstract: The regulations of the National Institutes of Health will be revised to show changed section numbers in the PHS Act and reflect program changes under the Health Research Extension Act of 1985 (P.L. 99-158), the Superfund Amendments and Reauthorization Act of 1986 (P.L. 99-499), and the provisions of Title X of P.L. 99-660 concerning Alzheimer's Disease and Related Dementias Research.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Local, State, Federal

Agency Contact: Lowell D. Peart, NIH Regulations Officer, Department of Health and Human Services, National Institutes of Health, 9000 Rockville Pike, 31/3B07, Bethesda, MD 20892, 301 496-4606

RIN: 0925-AC02

751. NATIONAL INSTITUTES OF HEALTH CENTER GRANTS 42 CFR PART 52A

Legal Authority: 42 USC 216; 42 USC 285a-3; 42 USC 285b-4; 42 USC 285c-5; 42 USC 285d-6; 42 USC 285e-2

CFR Citation: 42 CFR 52a

Legal Deadline: None

Abstract: The NIH Center Grants Regulations will be revised to incorporate changes necessitated by the Health Research Extension Act of 1985 (P.L. 99-158).

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Lowell D. Peart, NIH Regulations Officer, Department of Health and Human Services, National Institutes of Health, 9000 Rockville Pike, 31/3B07, Bethesda, MD 20892, 301 496-4606

RIN: 0925-AC27

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)
Public Health Service (PHS)—National Institutes of Health (NIH)
Final Rule Stage

762. NATIONAL LIBRARY OF MEDICINE PROGRAMS; REVISION OF GENERAL RULES FOR THE NATIONAL LIBRARY OF MEDICINE AND NATIONAL LIBRARY OF MEDICINE GRANTS

Legal Authority: 42 USC 216; 42 USC 286; 42 USC 286b-2; 42 USC 286b-3; 42 USC 286b-5; 42 USC 286b-6; 42 USC 284

CFR Citation: 42 CFR 4; 42 CFR 59a; 42 CFR 63; 42 CFR 64

Legal Deadline: None

Abstract: All of the regulations are being substantially clarified and reduced in size by eliminating out of date or otherwise available information. The regulations at 42 CFR Part 4 pertain to the access of facilities and library collections. Those at 42 CFR Part 59a deal with NLM extramural programs. Part 59a is being amended to remove the requirement that photocopies of biomedical material be provided without charge to users. The regulations at 42 CFR Part 63 deal with both NIH and NLM traineeships. Part 63 is proposed to be revised to reflect authority in section 405, PHS Act. The regulations at 42 CFR Part 64 govern the training grants of NIH and NLM.

Timetable:

Action	Date	FR Cite
NPRM	02/11/85	50 FR 05638
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Kenneth Carney, Executive Officer, Department of Health and Human Services, Public Health Service, National Library of Medicine, Bethesda, MD 20894, 301 496-6491

RIN: 0905-AA66

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)
Health Care Financing Administration (HCFA)
Proposed Rule Stage

763. ADMINISTRATIVE APPEALS PROCESS FOR PROVIDER PAYMENT DISPUTES INCLUDING AMENDING COST REPORTS & REOPENING INTERMEDIARY PAYMENT DETERMINATIONS & ADMINISTRATIVE REVIEW DECISIONS

Legal Authority: 42 USC 1302; 42 USC 1395f(b); 42 USC 1395g; 42 USC 1395l; 42 USC 1395x(v); 42 USC 1395hh; 42 USC 1395rr; 42 USC 1395ww; 42 USC 1395xx; 42 USC 405; 42 USC 1395ii; 42 USC 1395oo

CFR Citation: 42 CFR 405.453; 42 CFR 405.1833; 42 CFR 405.1885; 42 CFR 405.1887; 42 CFR 405.1803; 42 CFR 405.1811(a); 42 CFR 405.1813; 42 CFR 405.1837; 42 CFR 405.1841; 42 CFR 405.1863; 42 CFR 405.1877; 42 CFR 405.1889; 42 CFR 412.72(b)

Legal Deadline: None

Abstract: This proposal would clarify and establish rules governing the administrative appeals process for providing appeals of payment disputes including rules distinguishing between the amending of cost reports and the reopening of Medicare intermediary payment determinations and administrative review decisions. This proposal would provide guidance to intermediaries and the Provider Reimbursement Review Board concerning the circumstances under which those actions may be taken.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Paul Olenick, Division Director, Department of Health and Human Services, Health Care Financing Administration, Division of Medicare Eligibility Policy, Room 323 EHR, 6325 Security Blvd., Baltimore, MD 21207, 301 966-4472

RIN: 0938-AA33

764. MEDICAID ELIGIBILITY

Legal Authority: 42 USC 1396a(a)(10); 42 USC 1302; 42 USC 1396a(f); 42 USC 1396a(a)(17); 42 USC 1396b(f)(1); 42 USC 1396d(a)

CFR Citation: 42 CFR 435; 42 CFR 436

Legal Deadline: None

Abstract: This regulation would conform the current regulations to changes with respect to Medicaid eligibility groups and coverage criteria made primarily by Pub.L. 97-248. Most of these changes affect the provisions of September 30, 1981 regulations concerning Medicaid eligibility for the optional categorically needy and the medically needy, published as a result of the Omnibus Budget Reconciliation Act of 1981. The regulations would also respond to public comments received on the September 30 regulations and make some administrative changes to clarify policy and enhance the efficient operation of the Medicaid program (for example, clarification of policy on establishing the medically needy income level for one person).

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	

Small Entities Affected: None

Government Levels Affected: Local, State

Agency Contact: Marinos Svolos, Division Director, Department of Health and Human Services, Health Care Financing Administration, Div of Medicaid Eligibility, Room 416, East High Rise Bldg, 6325 Security Blvd, Baltimore, MD 21207, 301 966-4451

RIN: 0938-AA58

765. MMIS: DEFINITION OF "MECHANIZED CLAIMS PROCESSING AND INFORMATION RETRIEVAL SYSTEM"

Legal Authority: 42 USC 1302; 42 USC 1396b(a)(3); 42 USC 1396b(r)

CFR Citation: 42 CFR 433.111; 42 CFR 433.112; 42 CFR 433.113; 42 CFR 433.119; 42 CFR 433.120; 42 CFR 433.121; 42 CFR 433.122; 42 CFR 433.131

Legal Deadline: None

Abstract: This rule will change the definition of "mechanized claims processing and information retrieval systems" to clarify under what

circumstances we will pay Federal financial participation at a percentage higher than 50 percent for a Medicaid Management Information System.

Timetable:

Action	Date	FR Cite
NPRM	08/11/88	53 FR 30317
NPRM Comment Period End	10/11/88	53 FR 30317
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Guy Harriman, Director, Division of Payment Systems, Department of Health and Human Services, Health Care Financing Administration, Division of Medicaid Procedures, 233 EHR, 6305 Security Boulevard, Baltimore, MD 21207, 301 966-3292

RIN: 0938-AA03

766. DEDUCTION OF INCURRED MEDICAL EXPENSES (SPENDDOWN)

Significance: Agency Priority

Legal Authority: 42 USC 1302; 42 USC 1396a(a)(10); 42 USC 1396a(a)(17)

CFR Citation: 42 CFR 435.732; 42 CFR 435.831; 42 CFR 436.831

Legal Deadline: None

Abstract: These regulations permit States to revise the process by which medical expenses are considered in determining Medicaid eligibility. This process applies when an individual's income level during a budget period would ordinarily preclude eligibility except that incurred medical expenses reduce income to the eligibility level.

Timetable:

Action	Date	FR Cite
NPRM	09/02/83	48 FR 39959
NPRM Comment Period End	11/01/83	
Developing detailed study of issues	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: State

Agency Contact: Marinos Svolos, Director, Div. of Medicaid Eligibility, Department of Health and Human Services, Health Care Financing Administration, Room 416 East High Rise Bldg., 6325 Security Boulevard, Baltimore, MD 21207, 301 966-4451

RIN: 0938-AE07

767. PAYMENT FOR CLINICAL DIAGNOSTIC LABORATORY SERVICES

Legal Authority: 42 USC 1395l(a)(1)(D); 42 USC 1395l(a)(2)(D); 42 USC 1395l(b)(3); 42 USC 1395l(h); 42 USC 1395cc(a)(2)(A); 42 USC 1396b(i)(7); 42 USC 1302; 42 USC 1395hh; PL 100-203, Sec 4084

CFR Citation: 42 CFR 405.439; 42 CFR 405.501; 42 CFR 405.502; 42 CFR 405.505; 42 CFR 405.511; 42 CFR 405.516; 42 CFR 405.1672; 42 CFR 405.1675; 42 CFR 405.1684; 42 CFR 431.54; 42 CFR 447.10; 42 CFR 447.300; 42 CFR 447.321; 42 CFR 447.345

Legal Deadline: None

Abstract: These regulations would implement provisions of Pub.L. 98-369, 99-272, 99-509 and 100-203 regarding payment and "assignment" for diagnostic clinical laboratory tests, establishing in regulations the methods for implementing fee schedules. This rule would set forth the methods by which the fee schedules would be updated and would allow certain adjustment or exceptions to the fee schedules. In accordance with the statute, the regulations would provide that on January 1, 1990 and thereafter, fees will be determined on a nationwide basis.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Bernard Patashnik, Division Director, Department of Health and Human Services, Health Care Financing Administration, Division of Medical Services Reimbursement, Room 1-A-5 ELR, 6325 Security Blvd., Baltimore, MD 21207, 301 966-4497

RIN: 0938-AE50

768. PAYMENT FOR THE SERVICES OF PHYSICIANS FURNISHED IN TEACHING SETTINGS AND OTHER PROVIDERS

Legal Authority: 42 USC 1395u; 42 USC 1395x; 42 USC 1395xx; 42 USC 1302; 42 USC 1395l(a); 42 USC 1395hh

CFR Citation: 42 CFR 405.465; 42 CFR 405.466; 42 CFR 405.480; 42 CFR 405.481; 42 CFR 405.482; 42 CFR 405.522; 42 CFR 405.523; 42 CFR 405.524; 42 CFR 405.525; 42 CFR 405.550; 42 CFR 405.551; 42 CFR 405.552; 42 CFR 405.553; 42 CFR 405.554; 42 CFR 405.555; ...

Legal Deadline: None

Abstract: These regulations would implement provisions of section 946 of P.L. 98-499 and section 2307 of P.L. 98-369. This legislation deals with certain problems that have arisen in the Medicare program with respect to payment for physicians in the teaching setting. Specifically addressed by Congress is the problem of distinguishing between the services a physician furnishes to individual patients as a teaching physician and services furnished to the provider, as well as the method of reimbursement for these services. This proposed rule sets forth the conditions under which physicians in teaching settings would be reimbursed on a reasonable cost basis or, alternatively, on a reasonable charge basis. It also describes the methods used to determine the customary charges for the services of those physicians. This rule would also clarify related issues of physician reimbursement.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Bernard Patashnik, Director, Division of Medical Services Reimbursement, Department of Health and Human Services, Health Care Financing Administration, Room 1-H-5 ELR, 6325 Security Blvd., Baltimore, MD 21207, 301 966-4497

RIN: 0938-AE01

769. REVISION OF THE CLINICAL LABORATORY REGULATIONS FOR THE MEDICARE, MEDICAID, AND CLINICAL LABORATORIES IMPROVEMENT ACT OF 1967 PROGRAMS

Significance: Regulatory Program

Legal Authority: 42 USC 1395x; 42 USC 1302; 42 USC 1395hh; 42 USC 263a

CFR Citation: 42 CFR 405.1310 to 405.1317; 42 CFR 482.27; 42 CFR 74

Legal Deadline: None

Abstract: Currently, hospital-based and independent laboratories are subject to varying State Licensure requirements and to Medicare regulations that vary from requirements of private accreditation entities and from regulations governing laboratories performing tests under interstate commerce. One consequence is that the quality of laboratories' services is adjudged using different standards. Inconsistent standards not only create confusion regarding necessary performance levels, but may permit laboratories with substandard performance to continue furnishing covered services. This proposed rule would establish better measures of performance and amend requirements to improve the quality of laboratory services.

Timetable:

Action	Date	FR Cite
NPRM	08/05/88	53 FR 29590
NPRM Comment Period End	11/03/88	53 FR 29590
Final Action	00/00/00	

Small Entities Affected: Businesses

Government Levels Affected: State

Additional Information: Taken from the Regulatory Program of the United States Government 1987 - 1988 which projected final action in October 1987.

Agency Contact: Wayne Smith, Director, Office of Survey and Certification, Department of Health and Human Services, Health Care Financing Administration, 2-D-2 ME, 6300 Security Blvd., Baltimore, MD 21207, 301 966-6763

RIN: 0938-AB96

770. CHANGES IN PAYMENT POLICY FOR DIRECT GRADUATE MEDICAL EDUCATION COSTS

Significance: Regulatory Program

Legal Authority: 42 USC 1395ww(h); PL 99-272, Sec 9202; PL 99-509, Sec 9314

CFR Citation: 42 CFR 405.521; 42 CFR 405.522; 42 CFR 412.113; 42 CFR 413.85; 42 CFR 413.86; 42 CFR 413.170

Legal Deadline: None

Abstract: This rule will set forth changes in Medicare Policy concerning payment for direct graduate medical education costs of providers associated with approved residency programs. These changes are necessary in order to implement section 1886(h) of the Social Security Act which was added by section 9202 of the Consolidated Omnibus Budget Reconciliation Act of 1985 and amended by section 9314 of the Omnibus Budget Reconciliation Act of 1986. The changes in this rule are effective for cost reporting periods beginning on or after July 1, 1985.

Timetable:

Action	Date	FR Cite
NPRM	09/21/88	53 FR 36589
NPRM Comment Period End	11/21/88	
Final Action	00/00/00	

Small Entities Affected: Businesses

Government Levels Affected: State

Agency Contact: Linda Magno, Director, Div. of Hospital Payment Policy, Office of Reimbursement Policy, Department of Health and Human Services, Health Care Financing Administration, 1-H-1 ELR, 6325 Security Blvd., Baltimore, MD 21207, 301 966-4529

RIN: 0938-AC27

771. USE OF THE HCFA HOSPITAL WAGE INDEX FOR DETERMINING PAYMENT TO HOSPICES

Legal Authority: 42 USC 1395f(i)

CFR Citation: 42 CFR 418.306(c)

Legal Deadline: None

Abstract: This notice would replace the current wage index used to determine payment for hospice care furnished to Medicare beneficiaries with the HCFA survey-based hospital wage index.

Timetable:

Action	Date	FR Cite
Proposed Notice	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Anthony Lovecchio, Director, Div. of Alternative Reimbursement Systems, Department of Health and Human Services, Health Care Financing Administration, 1-A-3 East Low Rise, 6325 Security Blvd., Baltimore, MD 21207, 301 966-4575

RIN: 0938-AC49

772. HOSPICE/CASE MANAGEMENT

Legal Authority: 42 USC 1396d(a)(18); 42 USC 1396d(o); 42 USC 1396b(a)(13)(C); 42 USC 1396o(a)(2)(E); 42 USC 1396o(b)(2)(E); 42 USC 1302; 42 USC 1396n(g); PL 99-509; PL 99-514; PL 99-272

CFR Citation: 42 CFR 418.32; 42 CFR 431.50; 42 CFR 435.218; 42 CFR 435.231; 42 CFR 440.185; 42 CFR 440.190; 42 CFR 440.250; 42 CFR 441; 42 CFR 447.53; 42 CFR 447.327; 42 CFR 447.361 to 384; 42 CFR 435.726; 42 CFR 435.735; 42 CFR 436.231; 42 CFR 441.18; ...

Legal Deadline: None

Abstract: These regulations would implement 3 provisions of Pub. L. 99-272: (1) under section 9505, Medicaid coverage of hospice care at State option, the regulations would establish eligibility requirements, covered services, reimbursement procedures and conditions of participation; (2) under section 9508, Medicaid coverage of case management services, at State option case management services may be furnished to specific Medicaid groups or geographic areas within a State; (3) under section 9123 there is an indefinite extension of the Medicare hospice benefit, which was scheduled to end on 09/30/86. These regulations would also implement sections 9411, 9412, and 9435d of Pub. L. 99-509, and section 1895(c) of Pub. L. 99-514, all relating to optional State coverage of case management and hospice services for the Medicaid population.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Organizations

Government Levels Affected: State

Agency Contact: Thomas Hoyer, Director, Div. of Provider Services & Coverage Policy, Department of Health and Human Services, Health Care Financing Administration, Room 405

EHR, 6325 Security Blvd., Baltimore, MD 21207, 301 966-4607

RIN: 0938-AC52

773. MEDICARE BENEFICIARY APPEALS

Legal Authority: 42 USC 1302; 42 USC 1395ff; 42 USC 1395hh; 42 USC 1395 et seq; 42 USC 1395ii; 42 USC 1395pp; 42 USC 1395u; 42 USC 405(a); 42 USC 405(d); 42 USC 1320(c); 42 USC 1395i; 42 USC 1395cc; PL 100-203, Sec 4207

CFR Citation: 42 CFR 405.701; 42 CFR 405.708; 42 CFR 405.718; 42 CFR 405.717; 42 CFR 405.718a through d; 42 CFR 405.719; 42 CFR 405.720; 42 CFR 405.722; 42 CFR 405.724; 42 CFR 405.730; 42 CFR 405.801; 42 CFR 426; 42 CFR 405.702

Legal Deadline: None

Abstract: These regulations would establish a new Part 426, setting forth the procedures under which HCFA Administrative Law Judges (ALJs) would conduct hearings of certain Medicare appeals, which are now heard by ALJs of the Social Security Administration. These hearings involve appeals under section 1869 and 1879 of the Social Security Act concerning the amount of benefits payable under Part A and Part B. Prior to enactment of the Omnibus Reconciliation Act of 1986, ALJ hearings were not available for appeals of Part B payments, except for certain matters arising under section 1876 of the Act (payment to health maintenance organizations and competitive medical plans). Part 426 also would establish procedures for a Medicare Review Board, judicial review, reopening of ALJ and Board decisions, representation of parties and payment of certain travel expenses.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Harold Shaffer, Special Assistant, AAO, Department of Health and Human Services, Health Care Financing Administration, Room 784 EHR Bldg., 6325 Security Blvd., Baltimore, MD 21207, 301 966-5765

RIN: 0938-AC31

774. DENIAL OF PAYMENT FOR SUBSTANDARD QUALITY CARE, REVIEW OF BENEFICIARY COMPLAINTS

Significance: Regulatory Program

Legal Authority: 42 USC 1320c-3(a); 42 USC 1395cc(a)(1)(K); 42 USC 1395u; 42 USC 1395pp(b); PL 99-272, Sec 9403; PL 99-509, Sec 9353(c); PL 100-203, Sec 4096(a)(1)(A)

CFR Citation: 42 CFR 463.105; 42 CFR 466.70; 42 CFR 466.74; 42 CFR 466.83; 42 CFR 466.88; 42 CFR 466.93; 42 CFR 466.94; 42 CFR 466.98; 42 CFR 466.100; 42 CFR 466.108; 42 CFR 473.12; 42 CFR 473.14; 42 CFR 473.40; 42 CFR 476.133; 42 CFR 489.21; ...

Legal Deadline: None

Abstract: The purpose of this proposed rule is to implement section 9403 of PL 99-272 and 9353(c) of PL 99-509 and PL 100-203, section 4096(a)(1)(A). Under section 9403 of PL 99-272, Peer Review Organizations (PROs) are authorized to deny Medicare payment to a physician or hospital for services furnished that are of substandard quality. The PRO determinations to deny Medicare payment for these services would be made on the basis of criteria that are consistent with guidelines established by the Secretary. Under section 9353(c) of PL 99-509, PROs would conduct an appropriate review of all written complaints from beneficiaries or their representatives about the quality of services not meeting professionally recognized standards of health care. Under PL 100-203 beneficiaries are protected from liability for the cost of physician services where payment is denied because services were of substandard quality.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Patricia Booth, Director, Division of Review Program, Department of Health and Human Services, Health Care Financing Administration, 2-D-2 Meadows East Bldg., 6300 Security Blvd., Baltimore, MD 21207, 301 966-6880

RIN: 0938-AC34

775. REVISED EFFECTIVE DATE OF MEDICARE/MEDICAID PROVIDER AGREEMENT AND SUPPLIER PARTICIPATION

Legal Authority: 42 USC 1302; 42 USC 1395cc; 42 USC 1395ff(c); 42 USC 1395hh; 42 USC 1396i

CFR Citation: 42 CFR 440.10; 42 CFR 440.70; 42 CFR 442.13; 42 CFR 488.40; 42 CFR 489.13; 42 CFR 498.3

Legal Deadline: None

Abstract: This proposed rule would revise Medicare and Medicaid rules to provide for a 60-day conditional certification period for facilities seeking participation in the Medicare and Medicaid program to apply uniform effective rules to all Medicare or Medicaid providers, including Medicare Suppliers, and Medicaid only hospitals and home health agencies; and to specify that effective date decisions are precluded from Medicare reconsiderations and hearings.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State, Federal

Agency Contact: Alfreda Stanton, Program Analyst, Office of Survey and Certification, Department of Health and Human Services, Health Care Financing Administration, Room 2-D-2 Meadows East Bldg., 6300 Security Blvd., Baltimore, MD 21207, 301 966-6770

RIN: 0938-AC24

776. RECOGNITION OF COLLEGE OF AMERICAN PATHOLOGISTS LABORATORY ACCREDITATION PROGRAM

Legal Authority: 42 USC 1395bb

CFR Citation: 42 CFR 405.1310; 42 CFR 493.27

Legal Deadline: None

Abstract: This notice proposes that the Health Care Financing Administration recognize the accreditation program of the College of American Pathologists for clinical laboratories participating in the Medicare program. As a result of HCFA's recognition, these laboratories would not ordinarily be subject to an inspection by State survey agencies to determine their compliance with Federal requirements. They would be "deemed" to meet the Medicare Conditions of Participation for Hospital-Based Laboratories or conditions for coverage of services of independent laboratories.

Timetable:

Action	Date	FR Cite
Final Notice	00/00/00	
Proposed Notice	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Mike Goldman, Chief, Laboratory and Ambulatory Services Branch, Department of Health and Human Services, Health Care Financing Administration, 2-D-2 Meadows East Building, 6300 Security Boulevard, Baltimore, MD 21207, 301 966-6613

RIN: 0938-AC80

777. PRO REVIEW OF SURGICAL PROCEDURES AND REQUIREMENTS FOR SECOND OPINIONS

Legal Authority: 42 USC 1320c-13; 42 USC 1302; 42 USC 1395hh; 42 USC 1395pp

CFR Citation: 42 CFR 466.150 to 190; 42 CFR 473.12; 42 CFR 473.14; 42 CFR 473.40; 42 CFR 405.332

Legal Deadline: None

Abstract: This proposed rule would implement section 9401 of Pub.L. 99-272, which provides that, under Medicare, a physician must request from the Peer Review Organization (PRO) preadmission review for certain surgical procedures. Under section 9401, if the PRO determines that the procedure is not appropriate and medically necessary, the PRO will deny payment under Medicare. If the PRO cannot determine whether a surgical procedure is medically necessary and appropriate, the beneficiary would obtain an opinion from a second physician, or where the opinion of the second physician differs from the first physician, the beneficiary may obtain an opinion from a third physician. In addition, as required by section 4098(b) of Pub. L.100-203, if an assigned claim by a physician or supplier or any claim by a provider is denied because the services furnished are not reasonable and necessary or constitute custodial care and the physician, suppler or provider, but not the beneficiary, knew, or reasonably could be expected to know, that the services were not covered by Medicare, (Continued under Additional Information)

Timetable:

Action	Date	FR Cite
NPRM	10/05/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: (Abstract Continued): the physician, supplier or provider would not be entitled to collect and retain payment from the beneficiary for those services.

Agency Contact: Richard Husk, Director, Office of Medical Review, Department of Health and Human Services, Health Care Financing Administration, Room 2-D-2 Meadows East Bldg., 6300 Security Blvd., Baltimore, MD 21207, 301 966-4650

RIN: 0938-AC90

778. PAYMENT FOR THE COST OF MALPRACTICE INSURANCE FOR HOSPITALS EXCLUDED FROM THE PROSPECTIVE PAYMENT SYSTEM

Legal Authority: 42 USC 1302; 42 USC 1395f(b); 42 USC 1395g; 42 USC 1395l(a); 42 USC 1395x(v); 42 USC 1395hh; 42 USC 1395rr; 42 USC 1395ww; 42 USC 1395xx

CFR Citation: 42 CFR 413.58

Legal Deadline: None

Abstract: Medicare's share of payment for the cost of a hospital's malpractice insurance is determined in part through the use of a scaling factor formula. In this notice, we are undertaking to develop a separate set of values for use in the scaling factor formula for hospitals excluded from the prospective payment system.

Timetable:

Action	Date	FR Cite
Notice	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Paul Trimble, Special Assistant, Office of Reimbursement Policy, Department of Health and Human Services, Health Care Financing Administration, 1-F-5 East Low Rise Bldg., 6325 Security Blvd., Baltimore, MD 21207, 301 966-4589

RIN: 0938-AC07

779. CHANGES CONCERNING SUSPENSION OF MEDICARE PAYMENTS, INTEREST RATES CHARGED ON OVERPAYMENTS AND UNDERPAYMENTS, AND DETERMINATIONS OF ALLOWABLE INTEREST EXPENSE

Legal Authority: 42 USC 1320b-4; 42 USC 1395g; 42 USC 1395u; 42 USC 1395x(v)(1)(A); 42 USC 1395hh; 42 USC 1302; 42 USC 13951

CFR Citation: 42 CFR 413.153; 42 CFR 405.370; 42 CFR 405.376; 42 CFR 413.5(c)(3)

Legal Deadline: None

Abstract: This rule will change the Medicare regulations to provide for the following: (1) elimination of the requirement that in case of overpayments to health care providers, the contractor makes a determination that a suspension of payment is needed to protect the program against financial loss before the payment can be suspended; (2) elimination of the requirement that investment income of providers from gifts, grants, and endowments be offset against allowable interest expenses if that investment income is not held separately (that is, commingled with other funds); and (3) extension of the list of exceptions to the interest expense reduction provision to include investment income from deferred compensation plans and self-insurance funds; and (4) permitting interest on overpayments and underpayments to be assessed at the higher of the private consumer rate or the current value of funds rate.

Timetable:

Action	Date	FR Cite
NPRM	06/22/88	53 FR 31888
NPRM Comment Period End	10/21/88	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: William Goeller, Director, Division of Payment and Reporting Policy, Department of Health and Human Services, Health Care Financing Administration, 1-F-5 East

Low Rise Building, 6325 Security Blvd., Baltimore, MD 21207, 301 966-4513

RIN: 0938-AC09

780. CHANGES CONCERNING THE DEFINITION OF ACCRUAL BASIS OF ACCOUNTING

Legal Authority: 42 USC 1395x(v)

CFR Citation: 42 CFR 413.24

Legal Deadline: None

Abstract: This rule proposes to revise the Medicare regulations to clarify the definition of "accrual basis of accounting" to indicate that expenses must be incurred by provider of health care services before Medicare will pay its share of those expenses. This change is intended to conform the regulations with the law and to promote economy and efficiency in the administration of the Medicare program.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: William Goeller, Director, Division of Payment and Reporting Policy, Department of Health and Human Services, Health Care Financing Administration, Room 1-F-5 ELR, 6325 Security Blvd., Baltimore, MD 21207, 301 966-4513

RIN: 0938-AD01

781. OPTIONAL PAYMENT SYSTEM FOR LOW MEDICARE VOLUME SKILLED NURSING FACILITIES

Significance: Regulatory Program

Legal Authority: 42 USC 1395yy(d)

CFR Citation: 42 CFR 413.200; 42 CFR 413.202; 42 CFR 413.204; 42 CFR 413.208; 42 CFR 413.210; 42 CFR 413.212; 42 CFR 413.214; 42 CFR 413.216; 42 CFR 413.220; 42 CFR 413.221; 42 CFR 413.1; 42 CFR 413.24

Legal Deadline: None

Abstract: This rule proposes to establish optional prospective payment rates for routine services furnished by certain skilled nursing facilities. The prospective rate would be on a per diem basis and would include payment for the cost of furnishing general inpatient routine services and associated capital-related costs. As specified in the Conference Committee Report accompanying PL 99-272, the rates paid to proprietary SNFs would include a component for the routine service portion of the return on equity capital. As specified in section 1861(v)(1)(B) of the Act, the return on equity component would only be included in the rate paid to proprietary SNFs. This rule would propose instructions for determining eligibility for payment under this system, and the methodology for calculating the prospective payment rates.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: William Goeller, Director, Division of Payment and Reporting Policy, Department of Health and Human Services, Health Care Financing Administration, Room 1-F-5 ELR, 6325 Security Blvd., Baltimore, MD 21207, 301 966-4513

RIN: 0938-AD02

782. CRITERIA AND PROCEDURES FOR MEDICAL SERVICES COVERAGE DECISIONS

Significance: Regulatory Program

Legal Authority: 42 USC 1395y; 42 USC 1302; 42 USC 1395hh; 42 USC 1395xx

CFR Citation: 42 CFR 400.200; 42 CFR 400.202; 42 CFR 405.380; 42 CFR 405.381; 42 CFR 405.382; 42 CFR 405.383

Legal Deadline: None

Abstract: The proposed rule would establish in regulations generally applicable standards and procedures for HCFA determinations as to whether and under what circumstances specific medical items and services should be paid for under Medicare. It establishes and explains the criteria relied upon for determining whether an item or service is "reasonable and necessary." The objective of the criteria and procedures set forth in this proposed rule is to assure that Federal funds are expended only for medical services that are covered under the Medicare program.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Sam DellaVecchia, Chief, Special Coverage Issues Branch, Department of Health and Human Services, Health Care Financing Administration, 455 East High Rise Bldg., 6325 Security Blvd., Baltimore, MD 21207, 301 966-5715

RIN: 0938-AD07

783. RECOGNITION OF JOINT COMMISSION ON ACCREDITATION OF HEALTHCARE ORGANIZATIONS' HOME CARE PROGRAM STANDARDS AND THE NATIONAL LEAGUE FOR NURSING'S STANDARDS FOR HOME HEALTH AGENCIES

Significance: Agency Priority

Legal Authority: 42 USC 1395bb(a); 42 USC 1302; 42 USC 1395hh

CFR Citation: Not applicable

Legal Deadline: None

Abstract: Under this final notice, hospital-based home health agencies accredited by the Joint Commission on Accreditation for Healthcare Organizations' and home health agencies accredited by the National League for Nursing are considered or "deemed" to meet the Medicare conditions of participation. Thus, these agencies will not ordinarily be subject to an inspection by State survey agencies to determine their compliance with Federal requirements. As a result of the home health agency's deemed status, a State also can choose to permit the agency to participate as a provider under the Medicaid program.

Timetable:

Action	Date	FR Cite
Proposed Notice	12/31/87	52 FR 49510
Public Comment Period End	02/29/88	
Final Notice	00/00/00	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Anita Heygster, Program Analyst, Long Term Care Branch, Department of Health and Human Services, Health Care Financing Administration, Room 431 EHR, 6325

Security Blvd., Baltimore, MD 21207, 301 966-5867

RIN: 0938-AD13

784. ELIGIBILITY OF ALIENS FOR MEDICAID

Significance: Regulatory Program

Legal Authority: 42 USC 1396b(u); PL 99-603, Sec 201; PL 99-509

CFR Citation: 42 CFR 435.402; 42 CFR 436.402; 42 CFR 440.200; 42 CFR 440.250; 42 CFR 436.128; 42 CFR 436.406; 42 CFR 436.406; 42 CFR 436.2; 42 CFR 440.255; 42 CFR 435.139; 42 CFR 435.406; 42 CFR 435.406; 42 CFR 435.1; 42 CFR 435.3; 42 CFR 436.128; ...

Legal Deadline: None

Abstract: This proposed rule would revise Medicaid regulations applicable for aliens who meet eligibility requirements as categorically needy or medically needy. It would establish in the regulations that aliens lawfully admitted for permanent residence or permanently residing in the United States under color of law may be eligible for all Medicaid services. It also would identify those aliens who may be eligible only for limited services.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Marinos T. Svolos, Director, Division of Medicaid Eligibiltiy Policy, Department of Health and Human Services, Health Care Financing Administration, Room 400 East High Rise Bldg., 6325 Security Blvd., Baltimore, MD 21207, 301 966-4451

RIN: 0938-AD15

785. MEDICAID: ELIGIBILITY GROUPS EXTENDED COVERAGE OF SERVICES, AND CONDITIONS OF ELIGIBILITY; OBRA '87, COBRA, AND TEFRA

Legal Authority: 42 USC 1396a(a)(10); 42 USC 1302; 42 USC 1396d(a); 42 USC 1396k(a); 42 USC 1396a; 42 USC 1383c; 42 USC 673; 42 USC 675; 42 USC 672; 42 USC 1396a(a)(25)(b); 42 USC 1396a(e)(3)

CFR Citation: 42 CFR 435; 42 CFR 436

Legal Deadline: None

Abstract: This proposed rule would amend the Medicaid regulations to incorporate numerous eligibility groups for Medicaid coverage: pregnant women; children in adoption and foster care; certain disabled widows and widowers; certain disabled children being cared for at home; and qualified children. The rule would also provide for extended care for pregnant women after termination of pregnancy and add a condition of eligibility relating to third party liability. The amendments would conform the regulations to provisions of the Omnibus Budget Reconciliation Act of 1987, the Consolidated Omnibus Budget Reconciliation Act of 1985, and the Tax Equity and Fiscal Responsibility Act of 1982. States have been informed that these provisions of the statute are self-implementing. Manual instructions containing procedures for States to implement the requirements have been issued.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: Local, State

Agency Contact: Marinos Svolos, Director, Division of Medicaid Eligibility Policy, Department of Health and Human Services, Health Care Financing Administration, Room 416 East High Rise Bldg., 6325 Security Blvd., Baltimore, MD 21207, 301 966-4451

RIN: 0938-AD16

786. MEDICAID ELIGIBILITY OF POVERTY LEVEL GROUPS AND EXTENDED COVERAGE OF SERVICES

Legal Authority: 42 USC 1396a(a)(10); 42 USC 1396a(l); 42 USC 1396a(f); 42 USC 1396a(b)(2); 42 USC 1302; 42 USC 1396a(m); 42 USC 1396a(n); 42 USC 1396b(f); 42 USC 1396b(u); 42 USC 1396d(p); 42 USC 1396r-1; 42 USC 1396a(a)(47); 42 USC 1396a(e)(6); 42 USC 1396a(e)(8); 42 USC 1396a(a)(17)

CFR Citation: 42 CFR 431; 42 CFR 435; 42 CFR 436; 42 CFR 440; 42 CFR 447

Legal Deadline: None

Abstract: This proposed rule would amend the Medicaid regulations to incorporate changes relating to Medicaid eligibility groups and coverage of services made by the Medicare Catastrophic Coverage Act (P.L. 100-360), the Omnibus Budget Reconciliation Acts of 1987 and 1986,(P.L. 100-203 and P.L. 99-509), and the Homeless Eligibility Clarification Act of 1988 (P.L. 99-570). This rule would add eligibility groups of pregnant women, infants and children, and aged and disabled individuals with incomes up to a specified percentage of the Federal poverty line; provide for Medicaid coverage of Medicare cost-sharing expenses for qualified Medicare beneficiaries with incomes at or below the Federal poverty line; clarify eligibility of homeless individuals; add provisions for a presumptive eligibility period for pregnant women who, based on preliminary information, appear to meet income requirements under Medicare, and clarify coverage of and services to pregnant women and children.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: Local, State

Agency Contact: Marinos Svolos, Director, Division of Medicaid Eligibility, Department of Health and Human Services, Health Care Financing Administration, Room 416 East High Rise, 6325 Security Blvd., Baltimore, MD 21207, 301 966-4452

RIN: 0938-AD17

787. TRANSFER OF ASSETS

Legal Authority: PL 100-360, Sec 303(b)

CFR Citation: 42 CFR 435; 42 CFR 436

Legal Deadline: None

Abstract: These regulations would implement the provisions of section 303(b) of Pub.L.100-360, which require that State Medicaid agencies, in determining an institutionalized individual's eligibility for Medicaid, to include as a resource the uncompensated value of assets such as cash or property that the individual has transferred to someone else for less than fair market value within the 30 months preceding a Medicaid application.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Local, State

Agency Contact: Marinos Svolos, Director, Division of Medicaid Eligibility, Department of Health and Human Services, Health Care Financing Administration, Room 416 East High Rise, 6325 Security Blvd., Baltimore, MD 21207, 301 966-4461

RIN: 0938-AD18

785. PAYMENT FOR SERVICES OF CERTIFIED REGISTERED NURSE ANESTHETISTS

Legal Authority: 42 USC 1395x(s)(ll); 42 USC 1395l(l); 42 USC 1395x(bb); 42 USC 1302; 42 USC 1395hh

CFR Citation: 42 CFR 405.553; 42 CFR 405.502; 42 CFR 413.80

Legal Deadline: NPRM, Statutory, January 1, 1989. Final, Statutory, January 1, 1989.

Abstract: Section 9320 of Pub. L. 99-509 provides for payment on a fee schedule basis for services of certified registered nurse anesthetists (CRNAs) furnished to Medicare beneficiaries on or after January 1, 1989. The payment amount would be equal to the least of 80 percent of a fee schedule established by the Secretary (and adjusted annually by the change in the Medicare economic index), 80 percent of the prevailing charge for an anesthesiologist; or 80 percent of the actual charge. CRNAs would be required to accept assignment for all Medicare services and civil monetary penalties could be imposed for violations of this requirement. Alternatively, the hospital or physician could bill for and receive payment for services of CRNAs where an employment relationship or contract so stipulates. The hospital or physician could not bill more for CRNA services than the amount the CRNA could bill directly.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	12/00/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Bernard Fulmbulk, Director, Division of Medical Services, Reimbursement, Department of Health and Human Services, Health Care Financing Administration, 6325 Security Blvd., Baltimore, MD. 21207, 301 966-4497

RIN: 0938-AD25

788. WITHDRAWAL OF COVERAGE OF SINGLE PHOTON ABSORPTIOMETRY

Legal Authority: 42 USC 1395y; 42 USC 1302; 42 USC 1395hh

CFR Citation: Not applicable

Legal Deadline: None

Abstract: This notice announces the Medicare program's intent to withdraw Medicare coverage (including coverage under the End-Stage Renal Disease (ESRD) program) for single photon absorptiometry and radiographic absorptiometry for measuring bone mineral density for either diagnostic or treatment purposes, and to continue noncoverage of dual photon absorptiometry.

Timetable:

Action	Date	FR Cite
Proposed Notice	09/06/88	53 FR 34898
Public Comment Period End	11/07/88	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Sam DellaVecchia, Chief, Special Coverage Issue Branch, Office of Coverage Policy, Department of Health and Human Services, Health Care Financing Administration, Rm. 455 EHR, 6325 Security Blvd., Baltimore, MD. 21207, 301 966-5316

RIN: 0938-AD35

790. MODIFICATION OF CERTAIN REQUIREMENTS FOR HEALTH INSURING ORGANIZATIONS

Legal Authority: 42 USC 1302; 42 USC 1396b(m)(2)(A); PL 99-272, Sec 9517(c); PL 99-514, Sec 1895(c)(4); PL 99-509, Sec 9435(e)

CFR Citation: 42 CFR 434.14; 42 CFR 434.20; 42 CFR 434.40; 42 CFR 434.42; 42 CFR 434.44; 42 CFR 434.2

Legal Deadline: None

Abstract: The final rule will describe the conditions under which a Health Insuring Organization (HIO) is subject to Medicaid Health Maintenance Organization (HMO) regulations. It would require that an HIO which becomes operational on or after January 1, 1986 and arranges for the delivery of services to recipients be subject to HMO requirements. The regulations would specify that exemptions from certain HMO requirements are permitted for HIOs which began operations on or after January 1, 1986 if the HIOs obtained a section 1915(b) waiver prior to that date, or if an HIO is otherwise identified in the law. The exemptions last only until the expiration of a section 1915(b) waiver.

Timetable:

Action	Date	FR Cite
NPRM	08/25/88	53 FR 32406
NPRM Comment Period End	10/24/88	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Robert E. Wren, Office Director, Department of Health and Human Services, Health Care Financing Administration, Office of Coverage Policy, Rm. 401 EHR, 6325 Security Blvd., Baltimore, MD. 21207, 301 966-5861

RIN: 0938-AD31

791. OCCUPATIONAL THERAPY, PHYSICIAN ASSISTANTS

Legal Authority: 42 USC 1302; 42 USC 1395x(g); 42 USC 1395cc; 42 USC 1395k; 42 USC 1395l; 42 USC 1395n; 42 USC 1395x(r); 42 USC 1395x(s); 42 USC 1395x(cc); 42 USC 1395hh; 42 USC 1395rr; 42 USC 1395x; 42 USC 1395aa

CFR Citation: 42 CFR 405.1634; 42 CFR 410.150; 42 CFR 486.1; 42 CFR 486.2; 42 CFR 486.3; 42 CFR 486.13; 42 CFR 486.14; 42 CFR 486.21; 42 CFR 486.22; 42 CFR 486.23; 42 CFR 486.24; 42 CFR 486.15; 42 CFR 486.16; 42 CFR 486.17; 42 CFR 486.19; ...

Legal Deadline: None

Abstract: This proposed rule would implement sections 9337 and 9338 of Pub.L. 99-509 which provide Medicare coverage for outpatient occupational therapy services furnished by providers and independent practitioners, identical to the coverage for outpatient physical therapy, and for physician assistant services.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Sheridan Gladhill, Program Analyst, Department of Health and Human Services, Health Care Financing Administration, Rm. 403, EHR, 6325 Security Blvd., Baltimore, MD. 21207, 301 966-4605

RIN: 0938-AD32

792. PROHIBITION ON UNBUNDLING OF HOSPITAL OUTPATIENT SERVICES

Legal Authority: 42 USC 1302; 42 USC 1395y(a)(14); 42 USC 1395cc(a)(1)(H); 42 USC 1395cc(g); 42 USC 1395hh

CFR Citation: 42 CFR 405; 42 CFR 410; 42 CFR 489; 42 CFR 1003

Legal Deadline: None

Abstract: This rule, issued jointly by HCFA and OIG, will prohibit Medicare payment for nonphysician services furnished to a hospital outpatient by a provider or supplier other than the hospital, unless the services are furnished under an arrangement with the hospital. The hospital will be obligated by its provider agreement to furnish the services directly or under an arrangement. These regulations also authorize OIG to impose a civil money penalty, not to exceed $2,000, against any individual who knowingly and willfully presents, or causes to be presented, a bill or request for payment for a hospital outpatient service under Part B of Medicare in violation of an arrangement. These regulations would sections 9343(c)(1), (c)(2), and (c)(3) of the Omnibus Budget Reconciliation Act of 1986.

Timetable:

Action	Date	FR Cite
NPRM	08/05/88	53 FR 29486
NPRM Comment Period End	10/04/88	53 FR 29486
Final Action	00/00/00	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Tom Hoyer, Director, Division of Provider Services and, Coverage Policy, Department of Health and Human Services, Health Care Financing Administration, Rm. 405 EHR, 6325 Security Blvd., Baltimore, MD. 21207, 301 966-4607

RIN: 0938-AD33

793. PHYSICIAN LIABILITY ON NON-ASSIGNED CLAIMS

Legal Authority: PL 99-509, Sec 9332; 42 USC 1395u; 42 USC 1302; 42 USC 1395hh

CFR Citation: 42 CFR 405.339

Legal Deadline: None

Abstract: This regulation would implement Section 9332(c) of the Omnibus Budget Reconciliation Act of 1986 under which nonparticipating physicians who provide on an unassigned basis services which are determined to be medically unnecessary are required to refund to the beneficiary any amounts collected for such services. Exceptions to the refund requirement would be granted only if the physician did not know and could not reasonably have been expected to know that the service was not covered, or if the beneficiary, after being informed that Medicare will not pay for the service, agrees to pay.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Elmer Smith, Director, Office of Eligibility Policy, Department of Health and Human Services, Health Care Financing Administration, Rm. 400 EHR, 6325 Security Blvd., Baltimore, MD. 21207, 301 966-5648

RIN: 0938-AD34

794. STATE SHARE OF FINANCIAL PARTICIPATION

Significance: Regulatory Program

Legal Authority: 42 USC 1302

CFR Citation: 42 CFR 433

Legal Deadline: None

Abstract: This rule revises the current regulations concerning State's use of donations and certain taxes in determining the State share of financial participation in Medicaid.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: State

Agency Contact: Tzvi Hefner, Program Analyst, Department of Health and Human Services, Health Care Financing Administration, Room 1-A-3, ELR, 6325 Security Blvd., Baltimore, MD. 21207, 301 965-4588

RIN: 0938-AD16

795. PRO DISCLOSURE TO LICENSING AND CERTIFICATION BODIES

Legal Authority: 42 USC 1395hh; 42 USC 1395ww; 42 USC 1302

CFR Citation: 42 CFR 400; 42 CFR 412; 42 CFR 476; 42 CFR 498; 42 CFR 1001

Legal Deadline: None

Abstract: This proposed rule would revise and clarify HCFA's authority with respect to corrective action procedures and procedures for program payment denial against those hospital providers who circumvent PPS.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Richard Husk, Director, Office of Medical Review, Health Standards and Quality Bureau, Department of Health and Human Services, Health Care Financing Administration, 2-D-2 Meadows East, 6325 Security Boulevard, Baltimore, MD 21207, 301 966-6859

RIN: 0938-AD42

796. REVISION OF THE MEDICARE ECONOMIC INDEX

Legal Authority: 42 USC 1302; 42 USC 1395hh; 42 USC 1395u(b)(3)

CFR Citation: 42 CFR 405.504

Legal Deadline: None

Abstract: This proposed rule would establish in regulations the revised proxy measures which we believe have a sounder economic foundation than the current ones and meet the requirements of the statute.

HHS—HCFA — Proposed Rule Stage

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Ross H. Arnett, III, Chief, Economics and Actuarial Analysis Branch, Department of Health and Human Services, Health Care Financing Administration, 1705 Equitable Building Room 100, 6325 Security Blvd, Baltimore, MD 21207, 301 966-7934

RIN: 0938-AD43

797. UPDATE OF AMBULATORY SURGICAL CENTER PAYMENT RATES FOR JULY 1, 1989

Significance: Agency Priority

Legal Authority: 42 USC 1395l(a)(4); 42 USC 1395l(i); 42 USC 1395k(a)(2)(F)

CFR Citation: 42 CFR 416.130

Legal Deadline: NPRM, Statutory, July 1, 1989.

Abstract: We will state the methodology used to determine the payment amounts for ambulatory surgical services and update payment rates, effective July 1, 1989.

Timetable:

Action	Date	FR Cite
Proposed Notice	08/18/88	53 FR 31468
Public Comment Period End	10/17/88	
Final Notice	12/00/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Charles Booth, Director, Office of Reimbursement Policy, Department of Health and Human Services, Health Care Financing Administration, Room 161 EHR, 6325 Security Blvd., Baltimore, MD 21207, 301 966-4497

RIN: 0938-AD34

798. SCHEDULE OF LIMITS FOR SKILLED NURSING FACILITY INPATIENT ROUTINE SERVICE COSTS FOR REPORTING PERIODS BEGINNING ON OR AFTER OCTOBER 1, 1988

Significance: Agency Priority

Legal Authority: 42 USC 1395x(v)(1); 42 USC 1395yy; 42 USC 1302; 42 USC 1395hh

CFR Citation: 42 CFR 413.30

Legal Deadline: None

Abstract: This notice would set forth a revised schedule of limits on skilled nursing facility inpatient routine service costs that are reimbursed under Medicare. This schedule would apply to cost reporting periods beginning on or after October 1, 1988.

Timetable:

Action	Date	FR Cite
Notice	10/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: William Goeller, Director, Division of Payment and Reporting Policy, Department of Health and Human Services, Health Care Financing Administration, 1-F-5 ELR, 6325 Security Blvd., Baltimore, MD 21207, 301 966-4513

RIN: 0938-AD48

799. APPLICATION OF THE COMPARABLE SERVICES LIMITATION IN DETERMINING REASONABLE CHARGES

Legal Authority: 42 USC 1395u(b)(3)(B); 42 USC 1302; 42 USC 1395hh

CFR Citation: 42 CFR 405.506

Legal Deadline: None

Abstract: This proposed rule would clarify the circumstances under which Medicare carriers are to apply the comparable services limitation in making their determination of a reasonable charge for Medicare Part B services. Under section 1842(b)(3)(B) of the Act, carriers are prohibited from making a determination of a reasonable charge that would be higher than the charge upon which it would base payment to its own policyholders for a comparable service under comparable circumstances. Currently, there is a great deal of confusion among the carriers as to what constitutes comparable services and comparable circumstances, the result of which is that very few carriers are applying the comparable services limitation in their reasonable charge determination. We would revise the regulations to more clearly state how the comparable services limitation should be implemented by the carriers.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Bernard Faiashnik, Director, Division of Medical Services Reimbursement, Department of Health and Human Services, Health Care Financing Administration, 1-H-5 ELR, 6325 Security Blvd., Baltimore, MD 21207, 301 966-4487

RIN: 0938-AD59

800. HOME AND COMMUNITY-BASED SERVICES FOR THE ELDERLY

Legal Authority: 42 USC 1396n(d); 42 USC 1396

CFR Citation: 42 CFR 441

Legal Deadline: NPRM, Statutory, October 1, 1989. Final, Statutory, July 1, 1989.
Regulation must be promulgated containing methodology.

Abstract: This regulation would implement section 1915(d) of the Act. These rules would allow a State to provide skilled nursing facility (SNF), intermediate care facility (ICF), and home and community-based services to individuals 65 years of age and older, in exchange for a "cap" on the amount of money for which Medicaid Federal financial participation would be available. The program would be administered by means of waivers which a State could request. As currently constructed, the statute allows for waivers of statewideness, comparability, and income deeming. Home and community-based services could be made available to individuals age 65 or older who are shown by an evaluation to be likely to require the level of care provided in an SNF or ICF, the cost for which could be paid by Medicaid. For States electing this option, the waiver would replace the home and community-based services waivers available under section 1915(c) of the Act, for individuals in this age category.

HHS—HCFA — Proposed Rule Stage

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Local, State

Agency Contact: Thomas Hoyer, Director, Division of, Provider Services Coverage Policy, Department of Health and Human Services, Health Care Financing Administration, Room 405 EHR ., 6325 Security Blvd., Baltimore, MD 21207, 301 966-4497

RIN: 0938-AD56

801. REVISIONS TO THE FREEDOM OF INFORMATION REGULATIONS

Legal Authority: 42 USC 1308; 5 USC 552; 42 USC 1302

CFR Citation: 42 CFR 401.101; 42 CFR 401.102; 42 CFR 401.103; 42 CFR 401.104; 42 CFR 401.110; 42 CFR 401.111; 42 CFR 401.112; 42 CFR 401.130 to 401.138; 42 CFR 401.140 to 401.145; 42 CFR 401.150 to 401.154; 42 CFR 401.120 to 401.125

Legal Deadline: None

Abstract: This rule proposes changes to the regulations implementing the Freedom of Information Act. The regulations would be brought up-to-date in light of HCFA's experience with the FOIA and would conform HCFA's FOIA rules to the new HHS FOIA regulations, the guidelines from OMB and the Department of Justice, a Presidential Order, and the Freedom of Information Reform Act of 1986.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Rosario Cirrincione, Chief, Freedom of Information Branch, Department of Health and Human Services, Health Care Financing Administration, Room 100 Professional Bldg., 6660 Security Blvd., Baltimore, MD 21207, 301 966-5352

RIN: 0938-AD60

802. FEE SCHEDULES FOR RADIOLOGIST SERVICES

Significance: Regulatory Program

Legal Authority: 42 USC 1395l(a)(1)(J); 42 USC 1395m(b); 42 USC 1302; 42 USC 1395hh; PL 100-203, Sec 4049

CFR Citation: 42 CFR 405.501; 42 CFR 405.530; 42 CFR 405.531; 42 CFR 405.532; 42 CFR 405.533; 42 CFR 405.550; 42 CFR 405.551; 42 CFR 405.554; 42 CFR 405.555

Legal Deadline: NPRM, Statutory, August 1, 1988.
Effective for services performed on or after 01/01/89.

Abstract: As a result of provisions included in section 4049 of PL 100-203, we are proposing a fee schedule for radiology services furnished by a board-certified or board eligible radiologist or by a physician whose charges for radiology services account for 50 percent or more of his or her total Medicare charges. These physicians would be paid at 80 percent of the lower of the actual charge or the appropriate fee schedule amount. The fee schedule amount for a nonparticipating physician would be 95 percent of the amount applicable to a participating physician. In addition, a nonparticipating physician's charges to beneficiaries would be capped. The proposed fee schedule would result in overall amount of payment to physicians for radiology services of 3 percent less than would have occurred without a fee schedule. The fee schedule would be updated annually in accordance with the annual increase in the Medicare Economic Index.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	12/01/88	
Fee schedule in place for services performed on or after	01/01/89	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Bernard Patashnik, Director, Division of Medical Services Reimbursement, Department of Health and Human Services, Health Care Financing Administration, Room 1-H-5 ELR, 6325 Security Blvd., Baltimore, MD 21207, 301 966-4497

RIN: 0938-AD62

803. ESTABLISHMENT OF MEDICARE ECONOMIC INDEX FOR 1989

Legal Authority: 42 USC 1395u(b)(3); 42 USC 1395u(b)(4); 42 USC 1302; 42 USC 1395hh

CFR Citation: Not applicable

Legal Deadline: None

Abstract: This notice updates the Medicare economic index which is used to calculate the prevailing charge levels that help to determine reasonable charges for physician services under Medicare. For physician services furnished, on or after January 1, 1989 and before January 1, 1990, the increase for primary care services will be 3.0 percent, and for other services it will be 1.0 percent.

Timetable:

Action	Date	FR Cite
Notice	11/00/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Paul Riesel, Technical Assistant, Office of Reimbursement Policy, Department of Health and Human Services, Health Care Financing Administration, Room 1-H-5 ELR, 6325 Security Blvd., Baltimore, MD 21207, 301 966-4494

RIN: 0938-AD64

804. PAYMENT FOR DURABLE MEDICAL EQUIPMENT AND ORTHOTIC AND PROSTHETIC DEVICES

Legal Authority: 42 USC 1302; 42 USC 1395hh; 42 USC 1395m; 42 USC 1395zz

CFR Citation: 42 CFR 405.502; 42 CFR 405.514; 42 CFR 414.200; 42 CFR 414.202; 42 CFR 414.210; 42 CFR 414.220; 42 CFR 414.222; 42 CFR 414.224; 42 CFR 414.226; 42 CFR 414.228; 42 CFR 414.230

Legal Deadline: None

Abstract: This final rule with comment period implements section 4062 of PL 100-203. It establishes fee schedules and payment methodologies that govern payments for six categories of durable medical equipment and orthotic and prosthetic devices as required by section 4062 of PL 100-203. The new payment rates are to be effective for items provided on or after January 1, 1989.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
Final with comment period	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Bernard Pateshnik, Director of Medical Services Reimbursement, Office of Reimbursement Policy, Department of Health and Human Services, Health Care Financing Administration, Room 1-H-5 ELR, 6325 Security Blvd., Baltimore, MD 21207, 301 966-6497

RIN: 0938–AD05

805. CHARGES TO RESIDENTS' FUNDS IN NURSING HOMES

Legal Authority: PL 100-203, Sec 4201(a)(3); PL 100-203, Sec 4211(a)(3); 42 USC 1302

CFR Citation: 42 CFR 405; 42 CFR 442

Legal Deadline: NPRM, Statutory, July 1, 1988. Final, Statutory, July 1, 1989.

Abstract: This proposed rule would define those costs which may be charged to the personal funds of Medicare and Medicaid patients in nursing facilities and the costs which are to be included in the payment amount for nursing facility services.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Samuel Kidder, Chief, Long Term Care Branch, Department of Health and Human Services, Health Care Financing Administration, 429 EHR Bldg., 6325 Security Blvd., Baltimore, MD 21207, 301 966-4638

RIN: 0938–AD00

806. CRITERIA FOR STANDARD AND EXTENDED HOME HEALTH AGENCY SURVEYS

Legal Authority: 42 USC 1395bbb(c)(d); 42 USC 1395hh; PL 100-203, Sec 4022

CFR Citation: 42 CFR 484

Legal Deadline: NPRM, Statutory, January 1, 1989. Final, Statutory, July 1, 1989.

Abstract: This regulation would implement the requirements of PL 100-203, section 4022 which specify criteria for standard and extended home health agency surveys. The regulation would define each survey and the criteria for its use. It would additionally implement a new survey instrument and a home visit process. Finally, the regulation would require a Statewide 12 month average survey cycle.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Walter Merten, Director, Division of Survey Procedures and Training, Department of Health and Human Services, Health Care Financing Administration, Meadows East Building, 6325 Security Blvd., Baltimore, MD 21207, 301 966-6767

RIN: 0938–AD67

807. ◆ OUTPATIENT SURGERY AND PRE-ADMISSION DIAGNOSTIC TESTING FOR INPATIENT SURGERY UNDER MEDICAID

Significance: Regulatory Program

Legal Authority: 42 USC 1302; 42 USC 1396a(30)(A)

CFR Citation: 42 CFR 431

Legal Deadline: None

Abstract: This proposed rule would amend current Medicaid rules to require that State Medicaid plans include programs requiring pre-admission review and approval for selected surgical procedures and medical treatment; identify surgical procedures that can be safely performed on an ambulatory basis; require diagnostic testing prior to admission; and schedule hospital admission on the same day as surgery.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
Final Action	04/00/89	

Small Entities Affected: Businesses

Government Levels Affected: State

Agency Contact: Ernestine Jones, Program Analyst, Department of Health and Human Services, Health Care Financing Administration, Room 463, EHR, 6325 Security Boulevard, Baltimore, Maryland 21207, 301 966-4646

RIN: 0938–AD70

808. ◆ CHANGES TO THE REASONABLE COST REGULATION CONCERNING INVESTMENT INCOME

Legal Authority: 42 USC 1395x(v)

CFR Citation: 42 CFR 413.153; 42 CFR 413.17; 42 CFR 413.130

Legal Deadline: None

Abstract: This rule proposes to revise 42 CFR 413.153(b)(2), which requires that "necessary interest" be offset by investment income. Rather than to offset interest expense by investment income, we propose to reduce (dollar for dollar) allowable debt principal related to patient care by the principal amount of investment funds generated from operations related to patient care and subsequently invested in nonpatient care activities or in another provider's patient care activities.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: William J. Goeller, Director, Division of Payment and Reporting Policy, Department of Health and Human Services, Health Care Financing Administration, Room 1-F-5, ELR, 6325 Security Boulevard, Baltimore, Maryland 21207, 301 966-4513

RIN: 0938–AD72

809. ◆ MEDICARE SECONDARY PAYER FOR DISABLED ACTIVE INDIVIDUALS

Legal Authority: 42 USC 1302; 42 USC 1395y(b); 42 USC 1395hh

CFR Citation: 42 CFR 411

Legal Deadline: None

Abstract: These rules would establish limitations on Medicare payment for services furnished to disabled "active individuals" who are also covered under a large group health plan (LGHP), and prohibit discrimination by an LGHP against such individuals.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Herbert Pollock, Branch Chief, Department of Health and Human Services, Health Care Financing Administration, Medicare Claims Payment Policy Branch, Room 323, EHR, 6325 Security Boulevard, Baltimore, Maryland 21207, 301 966-4474

RIN: 0938–AD73

810. ◆ INHERENT REASONABLENESS FOR HOME DIALYSIS SUPPLIES AND EQUIPMENT

Legal Authority: 42 USC 1395u(b)(8)

CFR Citation: None

Legal Deadline: None

Abstract: This notice would establish a special reasonable charge payment limit for home dialysis equipment and supplies to prevent excessive payment for these items.

Timetable:

Action	Date	FR Cite
Proposed Notice	11/00/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Bob Niemann, Program Analyst, Department of Health and Human Services, Health Care Financing Administration, Div. of Dialysis & Transplant Payment Policy, 1-A-5, ELR, 6325 Security Boulevard, Baltimore, Maryland 21207, 301 966-4566

RIN: 0938–AD74

811. ◆ CLARIFICATION OF DURABLE MEDICAL EQUIPMENT COVERAGE UNDER MEDICARE

Legal Authority: 42 USC 1395x; 42 USC 1395hh; 42 USC 1395k; 42 USC 1395l

CFR Citation: Not yet determined

Legal Deadline: None

Abstract: These regulations would codify longstanding policies that concern the coverage, limitations, and exclusions applicable to durable medical equipment [DME]. It would describe how all items of DME must be ordered by a physician and explain the requirements necessary for an item to be considered durable.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: James Hannon, Chief, Physician and Other Medical, Services Branch, Department of Health and Human Services, Health Care Financing Administration, Room 479, EHR, 6325 Security Boulevard, Baltimore, Maryland 21207, 301 966-4636

RIN: 0938–AD77

812. ◆ MEDICARE COVERAGE OF HOME HEALTH SERVICES, MEDICARE CONDITIONS OF PARTICIPATION AND HOME AIDE SUPERVISION AND DISCHARGE PLANNING

Legal Authority: 42 USC 1302; 42 USC 1395u; 42 USC 1395x; 42 USC 1395y; 42 USC 1395hh

CFR Citation: 42 CFR 405; 42 CFR 409; 42 CFR 418

Legal Deadline: None

Abstract: This proposed rule would establish home health aid supervision and duty requirements applicable to all HHA's that provide services under Medicare. In addition, these regulations would codify longstanding policies that concern the limitations and exclusions applicable to home health services under Medicare.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Tom Hoyer, Director, Div. of Provider Services Coverage Policy, Department of Health and Human Services, Health Care Financing Administration, 6325 Security Blvd., Room 405 EHR, Baltimore, Maryland 21207, 301 966-4607

RIN: 0938–AD78

813. ◆ PREPAID HEALTH CARE PLANS: BENEFICIARY AND OTHER RELATED PROVISIONS

Legal Authority: 42 USC 1395mm; 42 USC 1302; 42 USC 1395hh; 42 USC 1395l(a)(1)(A)

CFR Citation: 42 CFR 405; 42 CFR 417; 42 CFR 463

Legal Deadline: None

Abstract: This proposed rule would make a number of changes to the regulations governing health maintenance organizations, competitive medical plans, and health care prepayment plans that furnish Medicare covered services to Medicare beneficiaries. These proposed changes relate to the provision of services, beneficiary and plan rights and liabilities, and contracts. Most of the changes would clarify or establish policy in areas in which operational experiences have demonstrated a need for revision. Several of the changes would implement provisions of the Omnibus Budget Reconciliation Act of 1987.

Timetable:

Action	Date	FR Cite
NPRM	01/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Joan Mahanes, Program Analyst, Div of Medical Services Coverage Policy, Department of Health and Human Services, Health Care Financing Administration, Room 463 EHR, 6325 Security Boulevard, Baltimore, Maryland 21207, 301 966-4642

RIN: 0938–AD79

814. ◆ PROHIBITIONS ON FFP FOR EDUCATIONAL AND VOCATIONAL TRAINING FOR INSTITUTIONALIZED INDIVIDUALS

Legal Authority: 42 USC 1302; 42 USC 1396a(a)(17)(B); 42 USC 1396a(a)(25); 42 USC 1396b(c)

CFR Citation: 42 CFR 441

Legal Deadline: None

Abstract: This proposed rule would revise and clarify the meaning of the prohibition against Federal financial participation for vocational training and educational activities in intermediate care facilities for the mentally retarded and in psychiatric facilities, or in programs providing psychiatric services to individuals under age 21.

HHS—HCFA

Proposed Rule Stage

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Samuel W. Kidder, Chief, Long Term Care Branch, Department of Health and Human Services, Health Care Financing Administration, 428 EHR, 6325 Security Boulevard, Baltimore, Maryland, 301 966-4629

RIN: 0938-AD60

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815. ● OBRA '87 LONG TERM CARE FACILITIES CONDITIONS OF PARTICIPATION

Significance: Agency Priority

Legal Authority: 42 USC 1395x; 42 USC 1395aa; 42 USC 1395i-3; PL 100-203, Sec 4201; 42 USC 1396r; PL 100-203, Sec 4211

CFR Citation: 42 CFR 483

Legal Deadline: None

Abstract: This proposed rule would implement provisions of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), PL 100-203, which long term care facilities would be required to meet to participate in the Medicare and Medicaid programs effective October 1, 1990.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Samuel Kidder, Chief, Long Term Care Branch, Department of Health and Human Services, Health Care Financing Administration, Room 300, EHR, 6325 Security Boulevard, Baltimore, Maryland 21207, 301 966-4629

RIN: 0938-AD61

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816. ● MEDIGAP POLICY STANDARDS - DIRECT TRANSMITTAL OF CLAIMS FROM MEDICARE CARRIERS TO MEDIGAP INSURERS AND RELATED USER FEES

Legal Authority: 42 USC 1302; 42 USC 1395ss; 42 USC 1395hh

CFR Citation: 42 CFR 403.206; 42 CFR 403.218; 42 CFR 403.222; 42 CFR 403.232

Legal Deadline: None

Abstract: These proposed regulations would add requirements for the direct transmittal of bills submitted for services to Part B beneficiaries by participating physicians and suppliers from Medicare carriers to Medigap insurers.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Thomas E. Hoyer, Director, Div. of Provider Services & Coverage Policy, Department of Health and Human Services, Health Care Financing Administration, Room 405, EHR, 6325 Security Boulevard, Baltimore, Maryland 21207, 301 966-4607

RIN: 0938-AD62

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817. ● COVERAGE OF PSYCHOLOGISTS' SERVICES FURNISHED AT RURAL HEALTH CLINICS

Legal Authority: 42 USC 1395k(a); 42 USC 1395x(s); 42 USC 1395x(aa); 42 USC 1395x(gg); 42 USC 1395hh; 42 USC 1395l

CFR Citation: 42 CFR 405

Legal Deadline: None

Abstract: This proposed notice would provide a fee schedule for services furnished by a clinical psychologist at a rural health clinic even if not furnished under the supervision of a physician. Medicare payment would be made on an assignment related basis only.

Timetable:

Action	Date	FR Cite
Notice	00/00/00	

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: Stanley Katz, Director, Div. of Medical Services Coverage Policy, Department of Health and Human Services, Health Care Financing Administration, Room 489, EHR, 6325 Security Boulevard, Baltimore, Maryland 21207, 301 966-4637

RIN: 0938-AD64

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818. ● COVERAGE OF SCREENING MAMMOGRAPHY

Legal Authority: 42 USC 1395x; 42 USC 1395m; 42 USC 1395z; 42 USC 1395aa(a); 42 USC 1395(a)(2)(E); 42 USC 1395hh; 42 USC 1395f; 42 USC 1395bb; 42 USC 1395y; 42 USC 1396a; 42 USC 1302; 42 USC 1395u

CFR Citation: Not yet determined

Legal Deadline: None

Abstract: This regulation would implement section 204 of Pub.L. 100-360 by providing coverage and payment standards for screening mammography, information on the frequency of coverage, and certification of quality standards.

Timetable:

Action	Date	FR Cite
NPRM	05/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Stanley Katz, Director, Div. of Medical Services Coverage Policy, Department of Health and Human Services, Health Care Financing Administration, Room 489, EHR, 6325 Security Boulevard, Baltimore, Maryland 21207, 301 966-4637

RIN: 0938-AD88

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819. ● COVERAGE OF HOME INTRAVENOUS DRUG THERAPY SERVICES

Legal Authority: 42 USC 1395k(a)(2)(A); 42 USC 1395x; 42 USC 1395l; 42 USC 1395n(a)(2); 42 USC 1320c to 3(a); 42 USC 1395hh; 42 USC 1395z; 42 USC 1395aa; 42 USC 1395w; 42 USC 1395h; 42 USC 1395m; 42 USC 1395bb; 42 USC 1395y; 42 USC 1396a

CFR Citation: Not yet determined

Legal Deadline: None

Abstract: This regulation would implement section 203 of Pub.L. 100-360. In particular it would define those services which could be covered as home intravenous drug therapy services, would provide payment guidelines and would require that all home intravenous therapy services be reviewed and approved by a Peer Review Organization.

HHS—HCFA

Proposed Rule Stage

Timetable:

Action	Date	FR Cite
NPRM	05/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Sam Kidder, Chief, Long Term Care Branch, Department of Health and Human Services, Health Care Financing Administration, Room 429, EHR, 6325 Security Boulevard, Baltimore, Maryland 21207, 301 966-4620

RIN: 0938-AD69

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820. ● IN-HOME CARE FOR CHRONICALLY DEPENDENT INDIVIDUALS

Legal Authority: 42 USC 1395x; 42 USC 1395l(a); 42 USC 1395n(a)(2); 42 USC 1395y(a); 42 USC 1302

CFR Citation: 42 CFR 406; 42 CFR 460

Legal Deadline: None

Abstract: This regulation would implement sections 205(b) through 205(e). It would define under the Medicare program covered services, eligible persons, payment guidelines, certification guidelines and standards for utilization of services for in-home care of chronically dependent individuals.

Timetable:

Action	Date	FR Cite
NPRM	03/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Tom Hoyer, Director, Div. of Provider Services Coverage Policy, Department of Health and Human Services, Health Care Financing Administration, Room 405, EHR, 6325 Security Boulevard, Baltimore, Maryland 21207, 301 966-4607

RIN: 0938-AD60

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821. ● OUTPATIENT DRUG COVERAGE AND REIMBURSEMENT

Legal Authority: 42 USC 1395x; 42 USC 1395l(b); 42 USC 1395m; 42 USC 1395t; 42 USC 1395y(c); 42 USC 1395u(f); 42 USC 1395u(b)(3); 42 USC 1395u(h)(2); 42 USC 1395mm(e)(1); 42 USC 1395cc(a)(2)(A); 42 USC 1396b(i)(5); 42 USC 1395hh; 42 USC 1395x; 42 USC 1320c-7a

CFR Citation: Not yet determined

Legal Deadline: None

Abstract: This regulation would implement Sec. 202 of Pub.L. 100-360 which adds outpatient drugs as a covered service under Medicare. This regulation would provide a description of covered outpatient drugs, deductible and payment amounts and give specific guidelines on the time period a prescription would be covered.

Timetable:

Action	Date	FR Cite
NPRM	04/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Stanley Katz, Director, Div. of Medical Services Coverage Policy, Department of Health and Human Services, Health Care Financing Administration, Room 489, EHR, 6325 Security Boulevard, Baltimore, Maryland 21207, 301 966-4637

RIN: 0938-AD87

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822. ● SURVEY AND CERTIFICATION

Legal Authority: 42 USC 1395aa; 42 USC 1395i-3; PL 100-203, Sec 4202; 42 USC 1396r; PL 100-203, Sec 4212

CFR Citation: 42 CFR 488

Legal Deadline: None

Abstract: This proposed rule would implement provisions of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), Pub.L. 100-203, which govern the process used by HCFA to survey long-term care facilities, and certify that the facilities meet the conditions of participation for the Medicare and Medicaid programs.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Wayne Smith, Director, Office of Survey and Certification, Department of Health and Human Services, Health Care Financing Administration, 6325 Security Boulevard, Baltimore, Maryland 21207, 301 966-6763

RIN: 0938-AD94

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823. ● RECOVERY OF OVERPAYMENTS RESULTING FROM COMPUTATIONAL ERRORS

Legal Authority: 42 USC 1395gg; 42 USC 1302; 42 USC 1395hh

CFR Citation: 42 CFR 405.350(a)(2); 42 CFR 405.355(a)

Legal Deadline: None

Abstract: Due to a computational errors , some physicians and beneficiaries received substantial sums of incorrect payments. This proposed rule would clarify situations where being without fault relieves a recipient of the obligation to return incorrect payments.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Sam Guida, Director, Division of Overpayment Prevention, Department of Health and Human Services, Health Care Financing Administration, 6325 Security Boulevard, Baltimore, Maryland 21207, 301 966-7521

RIN: 0938-AD05

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824. ● GRACE PERIOD AND TERMINATION FOR NON-PAYMENT OF SUPPLEMENTARY MEDICAL INSURANCE (PART B) PREMIUMS FOR INSURED PERSONS

Legal Authority: 42 USC 1395j; 42 USC 1395q; 42 USC 1395hh; 42 USC 1302

CFR Citation: 42 CFR 408.8; 42 CFR 408.83

Legal Deadline: None

Abstract: Under current rules, individuals who do not pay their Part B premiums will have their coverage terminated after a grace period that allows several months lateness. The grace period for individuals eligible for monthly social security cash payments is different from that of other individuals. This proposed rule would allow a uniform 3-month grace period to treat all individuals identically.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

HHS—HCFA — Proposed Rule Stage

Government Levels Affected: None

Agency Contact: Paul Boerschel, Program Analyst, Bureau of Program Operations, Department of Health and Human Services, Health Care Financing Administration, Room 233, EHR, 6325 Security Boulevard, Baltimore, Maryland 21207, 301 966-5941

RIN: 0938-AD97

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS) — Final Rule Stage
Health Care Financing Administration (HCFA)

825. MISCELLANEOUS MEDICARE AND MEDICAID AMENDMENTS

Legal Authority: 42 USC 1302; 42 USC 1395hh

CFR Citation: 42 CFR 405; 42 CFR 408; 42 CFR 410; 42 CFR 416; 42 CFR 421; 42 CFR 441; 42 CFR 489

Legal Deadline: None

Abstract: These rules amend existing Medicare and Medicaid regulations to conform them to statutory and policy changes that have occurred since those regulations were last published. The pertinent statutory changes are primarily those contained in the Omnibus Reconciliation Act of 1980 (P.L. 96-499).

Timetable:

Action	Date	FR Cite
NPRM	12/16/87	52 FR 48127
NPRM Comment Period End	02/16/88	
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Luisa Iglesias, Technical Assistant, Department of Health and Human Services, Health Care Financing Administration, BERC Regulations Staff, Rm. 4243 North, 300 Independence Ave., S.W., Washington, DC 20201, 202 245-8353

RIN: 0938-AB36

826. WAIVER OF CERTAIN MEMBERSHIP REQUIREMENTS FOR CERTAIN HEALTH MAINTENANCE ORGANIZATIONS (HMOS) AND STATE OPTION FOR DISENROLLMENT RESTRICTIONS FOR CERTAIN HMOS UNDER MEDICAID

Legal Authority: 42 USC 1302; 42 USC 1396a(e)(2); 42 USC 1396b(m)

CFR Citation: 42 CFR 434.20; 42 CFR 434.27; 42 CFR 434.20; 42 CFR 435.212; 42 CFR 435.328

Legal Deadline: None

Abstract: This rule revises current Medicaid rules to expand the waiver authority of the Secretary to permit certain health maintenance organizations (HMOs) meeting certain requirements, to exceed the composition of enrollment limit to allow certain organizations to contract on a risk basis, to permit continuation of benefits to recipients enrolled in certain organizations after they have lost entitlement to Medicaid, and give a State the option of restricting a Medicaid enrollee's right to disenroll from certain types of risk HMOs and other organizations. These regulations would conform our regulations with authority provided in section 2364 of Pub.L. 98-369, the Deficit Reduction Act of 1984, as amended by section 9517 of Pub.L. 99-272, the Consolidated Omnibus Budget Reconciliation Act of 1985.

Timetable:

Action	Date	FR Cite
NPRM	01/12/88	53 FR 744
NPRM Comment Period End	03/14/88	53 FR 744
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Robert E. Wren, Office Director, Department of Health and Human Services, Health Care Financing Administration, Office of Coverage Policy, Room 401 EHR, 6325 Security Blvd., Baltimore, MD 21207, 301 966-5662

RIN: 0938-AB54

827. MEDICARE: HEALTH MAINTENANCE ORGANIZATIONS AND COMPETITIVE MEDICAL PLANS: COORDINATED OPEN ENROLLMENT

Significance: Agency Priority

Legal Authority: 42 USC 1395mm(c)(3)(A)(ii); 42 USC 1302; 42 USC 1395hh

CFR Citation: 42 CFR 417

Legal Deadline: None

Abstract: These regulations will implement section 2350 of Pub. L. 98-369 by requiring that HMOs and CMPs hold coordinated open enrollment periods for Medicare beneficiaries.

Timetable:

Action	Date	FR Cite
NPRM	06/09/88	53 FR 21696
NPRM Comment Period End	08/08/88	53 FR 21697
Final Action	10/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Stanley Katz, Division Director, Department of Health and Human Services, Health Care Financing Administration, Div. of Medical Services Coverage Policy, Room 459 EHR, 6325 Security Blvd., Baltimore, MD 21207, 301 966-5337

RIN: 0938-AB57

828. INDIRECT PART B PAYMENT PROCEDURE

Legal Authority: 42 USC 1395u(b)(6)(B); 42 USC 1395hh; 42 USC 1302

CFR Citation: 42 CFR 424.36; 42 CFR 424.60; 42 CFR 424.66

Legal Deadline: None

Abstract: This regulation would conform existing regulations to the provisions of Pub.L. 98-369 that allows payment for services furnished under Part B of Medicare to be made to a health benefits plan.

Timetable:

Action	Date	FR Cite
NPRM	07/01/88	51 FR 23792
NPRM Comment Period End	07/31/88	51 FR 23792
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Paul Olenick, Division Director, Department of Health and Human Services, Health Care

HHS—HCFA — Final Rule Stage

Financing Administration, Division of Medicare Eligibility, Room 448 EHR, 6325 Security Blvd., Baltimore, MD 21207, 301 966-4572

RIN: 0938-AE59

829. HOSPITAL INSURANCE ENTITLEMENT AND SUPPLEMENTARY MEDICAL INSURANCE ENROLLMENT AND ENTITLEMENT

Legal Authority: 42 USC 426; 42 USC 426-1; 42 USC 426a; 42 USC 1395c; 42 USC 1395i-2; 42 USC 1395p; 42 USC 1395q; 42 USC 1395r; 42 USC 1395v; 42 USC 1302; 42 USC 1395hh

CFR Citation: 42 CFR 406; 42 CFR 408; 42 CFR 407

Legal Deadline: None

Abstract: This regulation will revise the Medicare rules that deal with hospital insurance entitlement and with supplementary medical insurance (SMI) enrollment and entitlement, as required by amendments to the Social Security Act. It will also revise Medicaid rules that deal with State buy-in agreements, under which States secure SMI benefits for certain Medicaid-eligible individuals, by paying their SMI premiums.

Timetable:

Action	Date	FR Cite
NPRM	02/19/88	53 FR 5008
NPRM Comment Period End	04/19/88	53 FR 5008
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Denis Garrison, Chief, Medicare Eligibility and, Technical Issues Branch, Department of Health and Human Services, Health Care Financing Administration, Division of Medicare Eligibility Policy, Room 357 EHR, 6325 Security Blvd., Baltimore, MD 21207, 301 966-5543

RIN: 0938-AB60

830. MEDICARE/MEDICAID REVALUATION OF ASSETS

Significance: Regulatory Program

Legal Authority: 42 USC 1302; 42 USC 1395hh; 42 USC 1395x(v)(1)(O); 42 USC 1396a(a)(13)(B)

CFR Citation: 42 CFR 413.130; 42 CFR 413.134; 42 CFR 447.250; 42 CFR 447.253

Legal Deadline: None

Abstract: This final rule implements changes to the regulations as required by section 2314 of Pub. L. 98-369 and sections 9110 and 9509 of Pub. L. 99-272. This rule imposes new limitation on the valuation of assets acquired as the result of changes in ownership occurring on or after July 18, 1984. These changes will affect hospitals and skilled nursing facilities under the Medicare program and hospitals, skilled nursing facilities, intermediate care facilities, and intermediate care facilities for the mentally retarded under the Medicaid program.

Timetable:

Action	Date	FR Cite
NPRM	10/26/87	52 FR 39927
NPRM Comment Period End	12/28/87	52 FR 39927
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: William J. Goeller, Director, Division of Payment and Reporting Policy, Department of Health and Human Services, Health Care Financing Administration, Room 1-F-5 ELR, 6325 Security Blvd., Baltimore, MD 21207, 301 966-4113

RIN: 0938-AB64

831. CLARIFICATION OF POLICY ON ADJUSTING THE HOSPITAL-SPECIFIC PORTION OF THE PROSPECTIVE PAYMENT RATE

Significance: Agency Priority

Legal Authority: 42 USC 1395ww(d); 42 USC 1302; 42 USC 1395hh

CFR Citation: 42 CFR 412.72

Legal Deadline: None

Abstract: This final rule clarifies Medicare's policy on adjusting the hospital-specific portion of the prospective payment rate for inpatient hospital services as the result of adjustments to a hospital's target amount for events occurring in the year following its base year. It clarifies that exemptions, exceptions, or adjustments granted under section 1886(b)(4) of the Act or 42 CFR 413.30 or 413.40(e)-(h) for periods subsequent to the base year have no effect on the hospital-specific portion of the prospective payment rates.

Timetable:

Action	Date	FR Cite
NPRM	03/10/86	51 FR 8208
NPRM Comment Period End	04/19/86	51 FR 8208
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Edward Rees, Branch Chief, Department of Health and Human Services, Health Care Financing Administration, Payment Determination Policy Branch, DHPP, R. 1-H-1 ELR, 6325 Security Blvd., Baltimore, MD 21207, 301 966-4539

RIN: 0938-AH71

832. REVISION OF MEDICAID ELIGIBILITY QUALITY CONTROL (MEQC) PROGRAM REQUIREMENTS

Significance: Regulatory Program

Legal Authority: 42 USC 1396b; 42 USC 1302

CFR Citation: 42 CFR 431.800 to 431.806; 42 CFR 431.810 to 431.822; 42 CFR 431.830 to 431.836; 42 CFR 431.861 to 431.866

Legal Deadline: None

Abstract: This final rule revises the regulations governing the Medicaid eligibility quality control (MEQC) program to include more specified program requirements and to establish new time frames for completing and reporting MEQC case findings to HCFA. The final rule also establishes a performance-based threshold for States to meet before HCFA will consider good faith waiver requests of disallowance of Federal financial participation in erroneous Medicaid payments and provides more definitive criteria for evaluating States good faith efforts to meet the national standard error rate. In addition, the rule makes several technical changes and specifies that States may rebut their quarterly projected error rates when they can present evidence that the projected rates were based on erroneous data. The revisions will strengthen the MEQC program and provide flexibility and incentives to States to produce more accurate Medicaid eligibility determinations.

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Timetable:

Action	Date	FR Cite
NPRM	01/26/87	52 FR 02733
NPRM Comment Period End	03/27/87	52 FR 02733
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Randolph Graydon, Acting Director, Division of Program Performance, Department of Health and Human Services, Health Care Financing Administration, Bureau of Quality Control, 207-L ELR, 6325 Security Blvd., Baltimore, MD 21207, 301 966-3294

RIN: 0938–AB35

833. MEDICARE SECONDARY PAYOR AND MEDICARE RECOVERY AGAINST THIRD PARTIES

Significance: Regulatory Program

Legal Authority: 42 USC 1302; 42 USC 1395y(b); 42 USC 1395hh

CFR Citation: 42 CFR 406; 42 CFR 411; 42 CFR 489

Legal Deadline: None

Abstract: This rule revises regulations to reflect recent statutory provisions regarding HCFA's right to bring an action directly against certain third parties or to join or intervene in an action against a third party. It would also place certain requirements on hospitals regarding the identification and billing of potential Medicare secondary payor cases. Additionally, it would include requirements regarding timely refunds to Medicare when collections have been made from another insurer. It also clarifies rules for Medicare payment for services furnished to an end-stage renal disease (ESRD) patient who is also covered under an employer group health plan. It would include the changes pertaining to Medicare conditional payments for ESRD beneficiaries made by section 4036(a) of the Omnibus Budget Reconciliation Act of 1987. It would update policies pertaining to Medicare payment for services covered under a workers' compensation law or plan, or under no-fault or liability insurance. It would make Medicare secondary to all kinds of no-fault insurance, not just automobile no-fault insurance.

Timetable:

Action	Date	FR Cite
NPRM	06/15/88	53 FR 22335
NPRM Comment Period End	08/15/88	
Final Action	12/00/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Herbert Pollack, Branch Chief, Department of Health and Human Services, Health Care Financing Administration, Medicare Claims Payment Policy Branch, Rm. 323 EHR, 6325 Security Blvd., Baltimore, MD 21207, 301 966-4474

RIN: 0938–AC15

834. MEDICARE COVERAGE OF HEPATITIS B VACCINE FOR HIGH AND INTERMEDIATE RISK INDIVIDUALS, HEMOPHILIA CLOTTING AND CERTAIN X-RAY SERVICES

Legal Authority: 42 USC 1395x(s)(2)(I); 42 USC 1395x(s)(10)(B); 42 USC 1395l(k); 42 USC 1395rr(b)(11); 42 USC 1302; 42 USC 1395(g); 42 USC 1395l; 42 USC 1395u; 42 USC 1395x; 42 USC 1395y; 42 USC 1395cc; 42 USC 1395gg; 42 USC 1395hh; 42 USC 1395pp

CFR Citation: 42 CFR 405.231(r); 42 CFR 405.232(b); 42 CFR 405.232(c); 42 CFR 405.310(a); 42 CFR 405.310(e); 42 CFR 405.310(k); 42 CFR 410.10; 42 CFR 410.28; 42 CFR 410.32; 42 CFR 410.63

Legal Deadline: None

Abstract: This final rule implements section 2323 of P.L. 98-369 which provides Medicare coverage for hepatitis B vaccine for those individuals who are eligible for Medicare and at high or intermediate risk of contracting hepatitis B. It would implement section 2324 of P.L. 98-369 that provides coverage for the self-administration of hemophilia clotting factors and the items necessary for their administration to Medicare eligibles. The final rule would also clarify Medicare coverage of certain x-ray services.

Timetable:

Action	Date	FR Cite
NPRM	09/10/87	52 FR 34244
NPRM Comment Period End	11/09/87	52 FR 34244
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: James Hannon, Chief, Physician and Other Medical Services Branch, Department of Health and Human Services, Health Care Financing Administration, Office of Coverage Policy, Rm. 479 EHR, 6325 Security Blvd., Baltimore, MD 21207, 301 966-4636

RIN: 0938–AC07

835. MEDICAID: ELIGIBILITY DETERMINATIONS BASED ON DISABILITY

Legal Authority: 42 USC 1396a(a)(10); 42 USC 1396d(a); 42 USC 1302

CFR Citation: 42 CFR 435.541; 42 CFR 435.911; 42 CFR 436.541

Legal Deadline: None

Abstract: These regulations make explicit in the regulations HCFA's policy on the relationship between State Medicaid eligibility determinations based on disability and disability determinations by SSA under the Supplemental Security Income Program. The regulations incorporate the conditions under which the State agency must make independent determinations of disability and the effect of only SSA determination on Medicaid eligibility. The regulations also conform the Medicaid provisions on composition of medical review teams, required information, and the time limit for making determinations more closely to those used by SSA in making SSI determinations. Because of numerous questions raised and litigation, it is necessary to clarify our policy on the controlling nature of SSI disability determinations on Medicaid eligibility.

Timetable:

Action	Date	FR Cite
NPRM	12/14/87	52 FR 47414
NPRM Comment Period End	02/12/88	52 FR 47414
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Marinos Svolos, Director, Division of Medicaid Eligibility Policy, Department of Health and Human Services, Health Care Financing Administration, 436 East High Rise Bldg., 6325 Security Blvd., Baltimore, MD 21207, 301 966-4451

RIN: 0938–AC31

836. EFFECT OF APPEALS ON HOSPITAL-SPECIFIC PORTION OF THE PROSPECTIVE PAYMENT RATE

Significance: Agency Priority

Legal Authority: 42 USC 1302; 42 USC 1395hh; 42 USC 1395ww

CFR Citation: 42 CFR 412.71; 42 CFR 412.72; 42 CFR 412.73; 42 CFR 412.76; 42 CFR 412.128

Legal Deadline: None

Abstract: This final rule amends and clarifies the prospective payment regulations governing administrative and judicial review of payment amounts in order to resolve confusion concerning interpretation of those regulations. In particular, the rule amends and clarifies the provisions pertaining to adjustment of the hospital-specific rate under the prospective payment system.

Timetable:

Action	Date	FR Cite
NPRM	06/13/88	53 FR 22026
NPRM Comment Period End	08/12/88	53 FR 22026
Final Action	00/00/00	

Small Entities Affected: Businesses

Government Levels Affected: Local, State

Agency Contact: Edward Rees, Branch Chief, Department of Health and Human Services, Health Care Financing Administration, Payment Determination Policy Branch, Rm. 1-H-1 ELR, 6325 Security Blvd., Baltimore, MD 21207, 301 966-4536

RIN: 0938–AC40

837. ADDITIONS TO AND DELETIONS FROM CURRENT LIST OF COVERED SURGICAL PROCEDURES FOR AMBULATORY SURGICAL CENTERS

Significance: Regulatory Program

Legal Authority: 42 USC 1395l(i)(1)

CFR Citation: 42 CFR 416.65

Legal Deadline: None

Abstract: This notice announces additions to and deletions from the current list of surgical procedures for which facility services are covered when the procedures are performed in an ambulatory surgical center (ASC).

Timetable:

Action	Date	FR Cite
Proposed Notice	08/11/87	52 FR 29729
Comment period ends	10/13/87	
Final Notice	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Stan Katz, Director, Division of Medical Services Coverage Policy, Department of Health and Human Services, Health Care Financing Administration, 489 East High Rise Bldg., 6325 Security Blvd., Baltimore, MD 21207, 301 966-4537

RIN: 0938–AC05

838. EMPLOYERS CONTRIBUTION TO HEALTH MAINTENANCE ORGANIZATIONS OPTION

Significance: Regulatory Program

Legal Authority: 42 USC 300e-9

CFR Citation: 42 CFR 417.107

Legal Deadline: None

Abstract: This final rule will revise the requirement regarding employer contributions to a Health Maintenance Organization employee benefit plans.

Timetable:

Action	Date	FR Cite
NPRM	01/13/87	52 FR 01343
NPRM Comment Period End	03/16/87	
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: "The Regulatory Program of the United States Government 1987-1988 projected final publication in July, 1987.

Agency Contact: Larry Sobel, Legal Adviser, Office of Prepaid Health Care, Department of Health and Human Services, Health Care Financing Administration, 423H HHH Bldg., 200 Independence Ave., SW, Washington, DC 20201, 202 245-0197

RIN: 0938–AC48

839. HOME AND COMMUNITY-BASED SERVICES AND RESPIRATORY CARE FOR VENTILATOR-DEPENDENT INDIVIDUALS

Legal Authority: 42 USC 1302; 42 USC 1396n(c)

CFR Citation: 42 CFR 435.726; 42 CFR 435.735; 42 CFR 440.180; 42 CFR 441.301; 42 CFR 441.302; 42 CFR 441.303; 42 CFR 441.304; 42 CFR 441.305; 42 CFR 441.306; 42 CFR 441.307; 42 CFR 441.308; 42 CFR 441.310; 42 CFR 440.185; 42 CFR 440.250

Legal Deadline: None

Abstract: This rule revises the regulations for home and community based services as required by section 9502 of Pub.L. 99-272 and sections 9406 and 9411 of Pub.L. 99-509. Also, this rule would provide for respiratory care services as medical assistance under the State plan, in accordance with section 9406 of Pub.L. 99-509.

Timetable:

Action	Date	FR Cite
NPRM	06/01/88	53 FR 19950
NPRM Comment Period End	07/31/88	53 FR 19950
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: Local, State

Agency Contact: Thomas Hoyer, Director, Division of Provider Services Coverage Pol., Department of Health and Human Services, Health Care Financing Administration, Room 405 EHR, 6325 Security Blvd., Baltimore, MD 21207, 301 966-4487

RIN: 0938–AC55

840. BILLING AND VERIFICATION ADD-ON RELATING TO HOME HEALTH AGENCIES COST PER VISIT LIMITS

Legal Authority: 42 USC 1395x(v)(1)(A); 42 USC 1395x(v)(1)(L)

CFR Citation: 42 CFR 413.30

Legal Deadline: None

Abstract: This notice responds to the public comments we received concerning the billing and verification add-on factors that were included in the two schedules of limits on home health agency costs that were published in the Federal Register on July 7, 1987 (52 FR 25562). The first schedule of limits was applicable to cost reporting periods beginning on or after July 1,

1988 but before July 1, 1987, and the second to cost reporting periods beginning on or after July 1, 1987.

Timetable:

Action	Date	FR Cite
Final notice for comments	07/07/87	52 FR 25562
Comment period ends	09/08/87	52 FR 25562
Final	10/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: William J. Goeller, Director, Division of Payment and Reporting Policy, Department of Health and Human Services, Health Care Financing Administration, Room 1-F-5 ELR, 6325 Security Blvd, Baltimore, MD 21207, 301 966-4511

RIN: 0938-AC29

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841. REIMBURSEMENT FOR PHYSICIAN'S OUTPATIENT MAINTENANCE DIALYSIS SERVICES

Legal Authority: 42 USC 1395rr; 42 USC 1302; 42 USC 1395hh

CFR Citation: 42 CFR 405.439(c)(5); 42 CFR 405.502(f)(1); 42 CFR 405.542(a); 42 CFR 405.542(b); 42 CFR 405.542(c)

Legal Deadline: None

Abstract: This rule is necessitated by a court decision requiring the Secretary to reinstate a modified version of the initial method of reimbursement for physician's dialysis services. We also are clarifying and modifying some of the principles of the monthly capitation payment method. In addition, we will clarify that physician's services reimbursable under both the initial method and the monthly capitation payment must meet the general program requirements for dialysis services furnished to patients.

Timetable:

Action	Date	FR Cite
NPRM	10/05/87	52 FR 37176
NPRM Comment Period End	12/04/87	52 FR 37176
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Robert Niemann, Program Analyst, Reimbursement Policy Branch, Department of Health and Human Services, Health Care Financing Administration, 1-A-5 EHR Bldg., 6325 Security Blvd., Baltimore, MD 21207, 301 966-4566

RIN: 0938-AC37

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842. PARTICIPATION IN CHAMPUS AND CHAMPVA, HOSPITAL ADMISSIONS FOR VETERANS, DISCHARGE RIGHTS NOTICE, AND HOSPITAL RESPONSIBILITY FOR EMERGENCY CARE

Significance: Agency Priority

Legal Authority: 42 USC 1395x; 42 USC 1395cc; 42 USC 1395dd; 42 USC 1395hh; 42 USC 1302

CFR Citation: 42 CFR 405.1903; 42 CFR 489.20; 42 CFR 489.24; 42 CFR 489.25; 42 CFR 489.26; 42 CFR 489.27; 42 CFR 489.53; 42 CFR 1001.202; 42 CFR 1001.203; 42 CFR 1001.211; 42 CFR 1001.221; 42 CFR 1003.100; 42 CFR 1003.101; 42 CFR 1003.102; 42 CFR 1003.106; ...

Legal Deadline: None

Abstract: This final rule will implement sections 9121 and 9122 of PL 99-272 as amended by PL 100-203. Specifically, under section 9121, Medicare participating hospitals with emergency departments would be required to provide upon request medical examinations and treatments for individuals with emergency medical conditions and women in active labor. Hospitals failing to meet those requirements may have their Medicare provider agreements suspended or terminated. In addition, the hospital and the responsible physician may each be subject to a civil money penalty for each such violation. Under section 9122, Medicare participating hospitals would be required to accept CHAMPUS and CHAMPVA payment as payment in full for services provided to CHAMPUS and CHAMPVA beneficiaries. These regulations will also implement section 233 of PL 99-576, which requires Medicare hospitals to admit veterans. They will also implement section 9305(b)(1) of PL 99-509, which requires Medicare hospitals to give patients a notice of their discharge rights.

Timetable:

Action	Date	FR Cite
NPRM	06/16/88	53 FR 22513
NPRM Comment Period End	08/15/88	53 FR 22513
Final Action	12/00/88	

Small Entities Affected: Business

Government Levels Affected: None

Agency Contact: Thomas Hoyer, Director, Div. of Provider Services & Coverage Policy, Department of Health and Human Services, Health Care Financing Administration, Room 405 EHR Bldg., 6325 Security Blvd., Baltimore, MD 21207, 301 966-4557

RIN: 0938-AC34

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843. PAYMENT FOR KIDNEYS SENT TO FOREIGN COUNTRIES OR TRANSPLANTED IN PATIENTS OTHER THAN MEDICARE BENEFICIARIES

Legal Authority: 42 USC 1395rr; 42 USC 1302; 42 USC 1395hh

CFR Citation: 42 CFR 413.170

Legal Deadline: None

Abstract: These regulations will exclude from Medicare payments made to organ procurement organizations the costs associated with kidneys sent to foreign countries or transplanted in patients other than Medicare beneficiaries.

Timetable:

Action	Date	FR Cite
NPRM	03/02/88	53 FR 6672
NPRM Comment Period End	05/02/88	53 FR 6672
Final Action	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Mark Homey, Program Analyst, Office of Reimbursement Policy, Department of Health and Human Services, Health Care Financing Administration, 1-A-5 ELR, 6325 Security Boulevard, Baltimore, MD 21207, 301 966-4554

RIN: 0938-AC59

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844. STATE PLAN REQUIREMENTS AND OTHER PROVISIONS RELATING TO STATE THIRD-PARTY LIABILITY PROGRAMS

Significance: Agency Priority

Legal Authority: 42 USC 1396a(a)(25); 42 USC 1302

CFR Citation: 42 CFR 433.138; 42 CFR 433.139; 42 CFR 447.20; 42 CFR 447.21

Legal Deadline: Final, Statutory, October 7, 1988.
Section 9503 of Pub. L. 99-272 (April 7, 1986) requires that final regulations be published within 6 months after date of enactment.

Abstract: This rule implements, in part, those portions of sec. 9503 of Pub. L. 99-272 that set forth State plan requirements and other provisions relating to State third-party liability (TPL) programs. The provisions deal with (1) the integration of a State's pursuit of third-party claims with its Mechanized Claims Processing and Information Retrieval Systems and the Secretary's responsibility to develop performance standards to assess TPL collection efforts with respect to this integration; (2) certain exceptions to the cost avoidance method of claims payment in TPL situations; and (3) provider restrictions and provider penalties related to attempts at collection of cost sharing or portions of those amounts from Medicaid recipients when third party liability has been established.

Timetable:

Action	Date	FR Cite
NPRM	03/03/87	52 FR 06350
NPRM Comment Period End	04/02/87	52 FR 06350
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Sue Knefley, Program Analyst, Bureau of Quality Control, Department of Health and Human Services, Health Care Financing Administration, Third Party Liability Branch, 233 EHR, 6325 Security Blvd., Baltimore, MD 21207, 301 966-3396

RIN: 0938-AC84

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845. MEDICAID ELIGIBILITY FOR QUALIFIED SEVERELY IMPAIRED INDIVIDUALS

Legal Authority: 42 USC 1302; 42 USC 1396a(f); 42 USC 1396a(10)(A)(i)(II); 42 USC 1396a(O); 42 USC 1396d(q); 42 USC 1382h; 42 USC 1382h note; 42 USC 1396a note

CFR Citation: 42 CFR 435.120; 42 CFR 435.121; 42 CFR 435.725; 42 CFR 435.733

Legal Deadline: None

Abstract: This final rule amends the Medicaid regulations to specify for Medicaid, mandatory categorically needy eligibility for individuals who, although severely impaired, work and demonstrate ability to perform substantial gainful activity and who are considered to be Supplemental Security Income (SSI) beneficiaries by virtue of 1619 of the Act. It also specifies how States electing the option under Section 1902 to provide Medicaid under criteria more restrictive than SSI, will treat the "1619" individuals. It also specifies how SSI payments made to certain institutionalized individuals are to be disregarded as income under Medicaid for up to two months. The amendments conform the regulations to provisions of the Omnibus Budget Reconciliation Act of 1986 and the Employment Opportunities for Disabled Americans Act.

Timetable:

Action	Date	FR Cite
NPRM	05/04/88	53 FR 15857
NPRM Comment Period End	07/05/88	53 FR 15857
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: Local, State

Agency Contact: Richard Strauss, Program Analyst, Division of Medicaid Eligibility Policy, Department of Health and Human Services, Health Care Financing Administration, Room 448 East High Rise Bldg., 6325 Security Blvd., Baltimore, MD 21207, 301 966-4454

RIN: 0938-AC82

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846. REFUNDING OF FEDERAL SHARE OF OVERPAYMENTS MADE TO MEDICAID PROVIDERS

Legal Authority: 42 USC 1396b(d)

CFR Citation: 42 CFR 433.32 to 35; 42 CFR 433.112; 42 CFR 433.116; 42 CFR 433.300 to 322

Legal Deadline: None

Abstract: These regulations specify the requirements and procedures under which States are allowed 60 days following the date of discovery of an overpayment to a Medicaid provider to recover or attempt to recover the overpayment before the Federal share must be credited to HCFA. The Federal Government will share in any overpayments that the State documents it is unable to recover because the debts of the provider have been discharged in bankruptcy or the provider is out-of-business. The regulations, which implement section 9512 of the Consolidated Omnibus Budget Reconciliation Act of 1986, are intended to aid in recovering improperly spent Federal funds expeditiously.

Timetable:

Action	Date	FR Cite
NPRM	12/21/87	52 FR 48290
NPRM Comment Period End	02/09/88	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: David Greenberg, Program Analyst, Bureau of Quality Control, Department of Health and Human Services, Health Care Financing Administration, Room 300 Meadows East Bldg., 6300 Security Blvd., Baltimore, MD 21207, 301 966-3278

RIN: 0938-AC83

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847. MEDICARE COVERAGE OF IMMUNOSUPPRESSIVE DRUGS

Significance: Regulatory Program

Legal Authority: 42 USC 1395x(s)(2)(J); 42 USC 1302

CFR Citation: 42 CFR 410.10; 42 CFR 410.29; 42 CFR 410.65

Legal Deadline: None

Abstract: This rule will implement section 9335(c) of Pub.L. 99-509 which authorizes Medicare coverage of immunosuppressive drugs for a period of 1-year following a Medicare-covered organ transplant. Current regulations reflect the statutory exclusion from Medicare Part B coverage of drugs or biologicals that can be self-administered. The regulations will be amended to reflect the new statutory requirement. Final regulation will also implement section 4075 of P.L. 100-203, which expanded coverage from "immunosuppressive drugs" to "prescription drugs used in immunosuppressive therapy."

Timetable:

Action	Date	FR Cite
NPRM	01/19/88	53 FR 1383
NPRM Comment Period End	03/21/88	
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

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Agency Contact: James Hannen, Chief, Physician & Other Medical Services Branch, Department of Health and Human Services, Health Care Financing Administration, Room 479 East High Rise, 6325 Security Blvd., Baltimore, MD 21207, [redacted]

RIN: 0938–AD39

848. REVISIONS TO CONDITIONS OF PARTICIPATION FOR HOSPITALS AND CONDITIONS FOR COVERAGE OF SERVICES OF INDEPENDENT LABORATORIES AND SUPPLIERS OF ESRD SERVICES

Significance: Regulatory Program

Legal Authority: 42 USC 1395x(e)(6)(B); PL 99-509, Sec 9339(d); 42 USC 1395x(ee); 42 USC 1302; 42 USC 1395hh

CFR Citation: 42 CFR 405.1312; 42 CFR 482.21; 42 CFR 405.2135; 42 CFR 405.2137; 42 CFR 482.27; 42 CFR 482.43

Legal Deadline: None

Abstract: These revisions will (a) require hospitals to provide a discharge planning process; and (b) allow a laboratory director to meet State standards for qualifications, rather than federal, if they differ. These revisions will conform our regulations with requirements of Pub.L. 99-509.

Timetable:

Action	Date	FR Cite
NPRM	06/16/88	53 FR 22506
NPRM Comment Period End	08/15/88	53 FR 22506
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Robert Wren, Director, Office of Coverage Policy, Department of Health and Human Services, Health Care Financing Administration, Room 401 East High Rise, 6325 Security Blvd., Baltimore, MD 21207, 301 966-5861

RIN: 0938–AD11

849. CONDITIONS OF PARTICIPATION FOR LONG TERM CARE FACILITIES

Significance: Regulatory Program

Legal Authority: 42 USC 1395x(j); 42 USC 1396a(a)(28); 42 USC 1396d(c); 42 USC 1302; 42 USC 1395hh

CFR Citation: 42 CFR 442.1; 42 CFR 442.30; 42 CFR 442.100; 42 CFR 442.101; 42 CFR 442.105; 42 CFR 442.300 to 442.346; 42 CFR 442.250 to 442.254; 42 CFR 483.1 to 483.75

Legal Deadline: None

Abstract: In this final rule we respond to comments on our proposal and incorporate a number of self-implementing changes to the statute made by the Omnibus Budget Reconciliation Act of 1987, which was enacted after the proposed rule was published. These conditions would replace the existing separate conditions for SNFs participating in the Medicare program, and SNFs and ICFs participating in the Medicaid program. Although some essential distinctions imposed by the statute remain, these new conditions reflect common needs in SNFs and ICFs. The purpose of these revisions is to focus on actual facility performance in meeting residents' needs in a safe and healthful environment, rather than on the capacity of a facility to provide appropriate services. The results of this change in focus will be to enforce requirements from the perspective of quality of care and life for long term care patients, not only under Medicare and Medicaid, but generally since most of these requirements pertain to all patients of an SNF or ICF. These revisions are also expected to simplify Federal enforcement by using a single set of conditions for those activities we identify as common to all facilities.

Timetable:

Action	Date	FR Cite
NPRM	10/16/87	52 FR 38582
NPRM Comment Period End	01/14/88	52 FR 38582
Final Action	10/00/88	

Small Entities Affected: Businesses, Organizations

Government Levels Affected: Undetermined

Agency Contact: Samuel Kidder, Chief, Long Term Care Branch, Department of Health and Human Services, Health Care Financing Administration, Room 300 East High Rise, 6325 Security Blvd., Baltimore, MD 21207, 301 966-4629

RIN: 0938–AD12

850. EXPLANATION OF RIGHTS AND OTHER HMO/CMP PROVISIONS

Legal Authority: 42 USC 1395mm; PL 99-509, Sec 9312(a); 42 USC 1302; 42 USC 1395hh; PL 100-203, Sec 4011(b)

CFR Citation: 42 CFR 417.413; 42 CFR 417.428; 42 CFR 417.432; 42 CFR 417.436; 42 CFR 417.446; 42 CFR 417.448; 42 CFR 417.460; 42 CFR 417.640; 42 CFR 417.494; 42 CFR 417.444; 42 CFR 417.597

Legal Deadline: None

Abstract: This rule revises Medicare regulations to repeal the "two-for-one" rule for Medicare enrollees; expand required information and require annual notice of HMO/CMP enrollees rights; and add a provision to terminate a contract for noncompliance pertaining to restrictions on waivers of 50 percent for Medicare enrollment. These revisions implement provisions of the Omnibus Budget Reconciliation Act of 1986, provisions of the Omnibus Budget Reconciliation Acts of 1986 and 1987.

Timetable:

Action	Date	FR Cite
NPRM	07/22/88	53 FR 27718
NPRM Comment Period End	09/20/88	53 FR 27718
Final Action	00/00/00	

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: Joan Mahanes, Program Analyst, Office of Coverage Policy, Department of Health and Human Services, Health Care Financing Administration, Room 403 East High Rise Bldg., 6325 Security Blvd., Baltimore, MD 21207, 301 966-4642

RIN: 0938–AD14

851. DISCONTINUATION OF PREVAILING CHARGE DIFFERENTIALS FOR SPECIALISTS

Legal Authority: 42 USC 1395u(b)(3)

CFR Citation: 42 CFR 405.504(b)

Legal Deadline: None

Abstract: This notice requests comments on a possible change to the regulations that govern determinations of the reasonable charges that Medicare pays for physician services. We are considering discontinuing the establishment of separate prevailing charge screens for physicians' services based on specialty practice, with the possible exception of specified medical visits and consultations.

Timetable:

Action	Date	FR Cite
Notice of Request For Comments	04/12/88	53 FR 12037
Comment period ends	06/13/88	53 FR 12037

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Bernard Pateshnik, Director, Division of Medical Services, Reimbursement, Department of Health and Human Services, Health Care Financing Administration, Rm. 1-H-5 ELR, 6325 Security Blvd., Baltimore, MD. 21207, 301 966-4497

RIN: 0938–AD26

852. CHANGES TO PEER REVIEW ORGANIZATION REGULATIONS

Legal Authority: 42 USC 1395y(a); 42 USC 1320(c); 42 USC 1395hh; 42 USC 1396a(a)(30)

CFR Citation: 42 CFR 405.310; 42 CFR 431.630; 42 CFR 433.15; 42 CFR 434.53; 42 CFR 456.2; 42 CFR 456.650; 42 CFR 462.101; 42 CFR 462.102; 42 CFR 462.106; 42 CFR 462.107; 41 CFR 466.71; 42 CFR 466.78; 42 CFR 466.78; 42 CFR 466.83; 42 CFR 466.93; ...

Legal Deadline: None

Abstract: This rule sets forth several changes to the Medicare regulations governing Peer Review Organizations. Some of these changes are the result of the passage of the Consolidated Omnibus Budget Reconciliation Act of 1985 and the Omnibus Budget Reconciliation Act of 1986. Other changes are of a technical nature and are intended to clarify and correct existing regulations on the Peer Review Organization Program. The rule also sets forth the policy for reimbursement of costs incurred by hospitals for photocopying medical records needed by PROs during offsite reviews.

Timetable:

Action	Date	FR Cite
NPRM	03/16/88	53 FR 8654
NPRM Comment Period End	05/16/88	53 FR 8654
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Richard Husk, Director, Office of Medical Review, Department of Health and Human Services, Health Care Financing Administration, Rm. 2-D-2 Meadows East Bdlg., 6325 Security Blvd., Baltimore, MD. 21207, 301 966-6850

RIN: 0938–AD38

853. MEDICARE, MEDICAID, AND CLINICAL LABORATORIES IMPROVEMENT ACT (CLIA) PATIENT CONFIDENTIALITY RULES

Legal Authority: 42 USC 216; 42 USC 1302; 42 USC 1395x; 42 USC 1395hh

CFR Citation: 42 CFR 74; 42 CFR 405; 42 CFR 441

Legal Deadline: None

Abstract: This rule eliminates the requirement that a laboratory maintain the name and other identification of individuals undergoing testing to determine the presence of the Human Immunodeficiency Virus (HIV) antibody or causative agent, if the laboratory is not seeking Medicare or Medicaid payment for these tests.

Timetable:

Action	Date	FR Cite
NPRM	03/31/88	53 FR 10404
NPRM Comment Period End	05/31/88	53 FR 10404
Interim Final Rule	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Mike Goldman, Chief, Laboratory and Ambulatory Branch, Department of Health and Human Services, Health Care Financing Administration, 2D2 Meadows East, 6300 Security Blvd., Baltimore, MD 21207, 301 966-6813

RIN: 0938–AD40

854. HOME HEALTH AGENCIES: CONDITIONS OF PARTICIPATION AND REDUCTION IN RECORDKEEPING REQUIREMENTS

Significance: Regulatory Program

Legal Authority: 42 USC 1302; 42 USC 1395x; 42 USC 1395hh; 42 USC 1395bbb

CFR Citation: 42 CFR 484

Legal Deadline: Final, Statutory, October 1, 1988.
Minimum standards for home health aide training and competency evaluation programs must, pursuant to P.L. 100-203, be established by October 1, 1988.

Abstract: These regulations specify requirements for home health agencies for: protecting and promoting patient rights; training and competency of home health aides; notifying State entities responsible for the licensing or certification of HHAs of changes in ownership, managing employees, and managing organizations; including an individual's plan of care as part of the individual's clinical records; and operating and furnishing services in compliance with accepted professional standards and principles that apply to professionals furnishing home health services.

Timetable:

Action	Date	FR Cite
Final With Comment Period	10/01/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Thomas Hoyer, Director, Division of, Provider Services Coverage Policy, Department of Health and Human Services, Health Care Financing Administration, Room 405, EHR, 6325 Security Blvd, Baltimore, MD 21207, 301 966-4607

RIN: 0938–AD45

855. SCHEDULES OF LIMITS ON HOME HEALTH AGENCY COSTS PER VISIT FOR COST REPORTING PERIODS BEGINNING ON OR AFTER JULY 1, 1988

Significance: Agency Priority

Legal Authority: 42 USC 1395hh; 42 USC 1302; 42 USC 1395x(v)(1)(A); 42 USC 1395x(v)(1)(L)

CFR Citation: 42 CFR 413.30

Legal Deadline: Final, Statutory, July 1, 1989.
Pub.L. 100-360 requires the development of a wage index based on wage data from HHAs by July 1, 1989.

Abstract: This final notice with comment period set forth an updated schedule of limits on home health agency costs that may be reimbursed

under the Medicare program. This updated schedule of limits will be applicable to cost reporting periods beginning on or after July 1, 1988.

Timetable:

Action	Date	FR Cite
Final Notice With Comment	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: William J. Goeller, Director, Division of Payment and Reporting, Department of Health and Human Services, Health Care Financing Administration, 1-F-5 ELR, 6325 Security Blvd., Baltimore, MD 21207, 301 966-4513

RIN: 0938-AD47

856. CHANGES TO THE INPATIENT HOSPITAL PROSPECTIVE PAYMENT SYSTEM AND FISCAL YEAR 1989 RATES

Significance: Regulatory Program

Legal Authority: 42 USC 1395ww; 42 USC 1302; 42 USC 1395hh

CFR Citation: 42 CFR 405; 42 CFR 412; 42 CFR 413

Legal Deadline: Final, Statutory, October 1, 1988.
In accordance with 42 USC 1395ww an NPRM must be published by 06/01/88. Final rule must be published by 09/01/88.

Abstract: This final rule makes revisions to the inpatient hospital prospective payment system. It also includes changes in the methods, amounts and factors used to determine the prospective payment rates applicable to discharges occurring during FY 1989. In addition, this final rule implements relevant provisions of both PL 100-203 that are applicable to discharges occurring during FY 1988 and 1989 and Pub. L. 100-360 that are applicable to discharges occurring during FY 1989. This rule also finalizes miscellaneous changes proposed on March 22, 1988 (53 FR 9337).

Timetable:

Action	Date	FR Cite
NPRM	05/27/88	53 FR 19498
NPRM Comment Period End	07/26/88	53 FR 1948
Final Action with comments	09/30/88	53 FR 38476
Final Action generally effective	10/01/88	
Final Action Public Comment Period End	11/29/88	

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Linda Magno, Director, Division of Hospital Payment Policy, Department of Health and Human Services, Health Care Financing Administration, 1-H-1 ELR, 6325 Security Blvd., Baltimore, MD 21207, 301 966-4529

RIN: 0938-AD49

857. PROTOCOL FOR THE REUSE OF DIALYSIS BLOODLINES

Legal Authority: 42 USC 1395rr(a)(7), as amended by PL 100-203; 42 USC 1302; 42 USC 1395hh

CFR Citation: 42 CFR 405.2150(d)

Legal Deadline: None
While the Secretary is not required to publish a regulation, ESRD facilities will not otherwise be permitted to re-use bloodlines after June 30, 1988.

Abstract: This rule would establish standards for safe and effective reuse of bloodlines. The statute forbids ESRD facilities to reuse bloodlines beginning July 1, 1988, unless the Secretary has established and the facilities follow, protocols for their reuse. The protocols would be incorporated into conditions of coverage.

Timetable:

Action	Date	FR Cite
NPRM	07/27/88	53 FR 28236
NPRM Comment Period End	09/26/88	53 FR 28236
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Rita McGrath, Chief, Alternate Delivery Organization Branch, Department of Health and Human Services, Health Care Financing Administration, Room 489 EHR Bldg., 6325 Security Blvd., Baltimore, MD 21207, 301 966-4115

RIN: 0938-AD52

858. UNIFORM RELATIVE VALUE GUIDE FOR ANESTHESIA SERVICES FURNISHED BY PHYSICIANS

Legal Authority: PL 100-203, Sec 4048(b); 42 USC 1302; 42 USC 1395hh

CFR Citation: 42 CFR 405.553

Legal Deadline: Final, Statutory, January 1, 1989.
Under section 4048(b) of PL 100-203 the relative value guide is to be used for physician anesthesia services furnished on or after 01/01/89.

Abstract: This final rule with comment period establishes a relative value guide for use in all carrier localities in making payment for anesthesia services furnished by physicians under Medicare Part B. This rule implements section 4048(b) of PL 100-203. Payments made using the relative value guide are designed to ensure that expenditures do not exceed the amount that otherwise would have been made absent the implementation of the relative value guide.

Timetable:

Action	Date	FR Cite
Final Notice with comment period	10/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Bernard Pateshnik, Director, Division of, Medical Services Reimbursement, Department of Health and Human Services, Health Care Financing Administration, Room 1-H-5 ELR, 6325 Security Blvd., Baltimore, MD 21207, 301 966-4457

RIN: 0938-AD63

859. INPATIENT HOSPITAL DEDUCTIBLE, SNF COINSURANCE AMOUNT AND PART A PREMIUM FOR THE UNINSURED AGED FOR 1989

Legal Authority: 42 USC 1395e; 42 USC 1395i-2

CFR Citation: 42 CFR 408.22; 42 CFR 409.80; 42 CFR 409.82; 42 CFR 409.83; 42 CFR 409.85

Legal Deadline: Final, Statutory, September 15, 1988.

Abstract: This notice announces the inpatient hospital deductible and SNF coinsurance amounts and the monthly hospital insurance premium for calendar year 1989 under Medicare's hospital insurance program. The Medicare statute specifies the formulae to be used to determine these amounts.

Timetable:

Action	Date	FR Cite
Notice (Inpatient Hospital Deductible)	09/30/88	53 FR 38537
Notice (Skilled Nursing)	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Solomon Mussey, Supervisory Actuary, Department of Health and Human Services, Health Care Financing Administration, M-1 1705 Equitable Bldg., 6325 Security Blvd., Baltimore, MD 21207, 301 966-6386

RIN: 0938-AD68

860. ● PERIODIC PAYMENTS FOR HOSPITALS AND OTHER PROVIDERS

Legal Authority: 42 USC 1395g(e); 42 USC 1395h(c)(2); PL 98-509, Sec 9311; 42 USC 1302; 42 USC 1395hh

CFR Citation: 42 CFR 412.116

Legal Deadline: None

Abstract: In this final rule, we set forth the circumstances under which the periodic interim payment method is available for services furnished by hospitals and other providers. Generally, inpatient hospital services furnished by hospitals excluded from the prospective payment system, as well as skilled nursing facility services, home health services, and hospice care services, may be paid for on a periodic interim payment basis. With certain exceptions, inpatient hospital services furnished by prospective payment hospitals are not eligible for payment on a periodic interim payment basis.

Timetable:

Action	Date	FR Cite
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: William Goeller, Director, Division of Payment and Reporting Policy, Department of Health and Human Services, Health Care Financing Administration, 1-F-5 East Low Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, 301 966-4513

RIN: 0938-AD71

861. ● HOSPICE CAP

Legal Authority: 42 USC 1395f(i)

CFR Citation: 42 CFR 418.309

Legal Deadline: None

Abstract: This notice announces an updated payment cap for hospice care under the Medicare program. The revised cap amount applies to payments made to a hospice during the period November 1, 1987 through October 31, 1988.

Timetable:

Action	Date	FR Cite
Notice	10/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Anthony Lovecchio, Director, Div of Alternative Reimbursement System, Department of Health and Human Services, Health Care Financing Administration, 1-A-3 ELR, 6325 Security Boulevard, Baltimore, Maryland 21207, 301 966-4575

RIN: 0938-AD75

862. ● PAYMENT FOR OUTPATIENT SURGERY AT EYE SPECIALTY HOSPITALS AND EYE AND EAR SPECIALTY HOSPITALS

Legal Authority: 42 USC 1395l(i)(3)(B)(ii); PL 100-203, Sec 4068(a)

CFR Citation: 42 CFR 413.118

Legal Deadline: None

Abstract: In accordance with section 4068(a) of PL 100.203, we are revising the payment provisions concerning hospital outpatient services furnished in connection with ambulatory surgical procedures for certain qualified eye hospitals and eye and ear hospitals. For cost reporting periods beginning on or after October 1, 1988 and before October 1, 1990, the blended payment amount applicable to these hospitals remains at 75 percent of the hospital-specified amount and 25 percent of the ambulatory surgical center amount.

Timetable:

Action	Date	FR Cite
Final with comment period	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Hoyer, Director, Div. of Provider Services Coverage Policy, Department of Health and Human Services, Health Care Financing Administration, Room 405, EHR, 6325 Security Boulevard, Baltimore, Maryland 21207, 301 966-4697

RIN: 0938-AD83

863. ● SWING-BED PROGRAM CHANGES

Legal Authority: 42 USC 1302; 42 USC 1320a-1; 42 USC 1395f(b); 42 USC 1395g; 42 USC 1395l(a); 42 USC 1395x(v); 42 USC 416(j); 42 USC 1395hh

CFR Citation: 42 CFR 413; 42 CFR 424; 42 CFR 482; 42 CFR 489

Legal Deadline: None

Abstract: These regulations revise the Medicare rules relating to approved swing-bed hospitals. They implement the provisions of Pub. L. 100-203 which expand the swing-bed program to rural hospitals with less than 100 beds. Payment for extended care services furnished by hospitals with 50-99 beds are subject to additional conditions.

Timetable:

Action	Date	FR Cite
Final with comment period	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Hoyer, Director, Div. of Provider Services Coverage Policy, Department of Health and Human Services, Health Care Financing Administration, Room 405, EHR, 6325 Security Boulevard, Baltimore, Maryland 21207, 301 966-4697

RIN: 0938-AD83

864. ● COVERAGE OF AND PAYMENT FOR CERTIFIED NURSE-MIDWIFE SERVICES

Legal Authority: PL 100-203, Sec 4073; 42 USC 1395k(a)(2)(B); 42 USC

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1395l(a)(1) and (m); 42 USC 1395x(s)(2); 42 USC 1395hh; 42 USC 1395ff

CFR Citation: 42 CFR 405; 42 CFR 410

Legal Deadline: None

Abstract: This final rule with comment period provides for the establishment of a fee schedule for the services of certified nurse midwives under the Medicare program. As required by section 4073 of the Omnibus Budget Reconciliation Act of 1987 (PL 100-203) the fee schedule would apply to Medicare services provided by certified nurse midwives on or after July 1, 1988.

Timetable:

Action	Date	FR Cite
Final with comment period	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Robert E. Wren, Director, Office of Coverage Policy, Department of Health and Human Services, Health Care Financing Administration, Room 401, EHR, 6325 Security Boulevard, Baltimore, Maryland 21207, 301 966-5861

RIN: 0938-AD85

865. ◆ SECOND SURGICAL OPINION REQUIREMENTS FOR MEDICAID RECIPIENTS

Legal Authority: 42 USC 1302; 42 USC 1396a(30)(A)

CFR Citation: 42 CFR 431.600 to 431.630

Legal Deadline: None

Abstract: These regulations require each Medicaid plan to include a program requiring second surgical opinions for certain surgical procedures. This program is aimed at preventing unnecessary surgery and improving patient awareness of all treatment options, where alternatives to surgery are available.

Timetable:

Action	Date	FR Cite
NPRM	06/17/86	
Final Action	04/00/89	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Emmeline Jones, Program Analyst, Department of Health and Human Services, Health Care Financing Administration, Room 463, EHR, 6325 Security Boulevard, Baltimore, Maryland 21207, 301 966-4648

RIN: 0938-AD66

866. ◆ CONFORMING AMENDMENTS RESULTING FROM THE OMNIBUS BUDGET RECONCILIATION ACT OF 1987

Legal Authority: 42 USC 1395x(r); 42 USC 1395l(ell); 42 USC 1395x(e); 42 USC 1395y; 42 USC 1395x(e); 42 USC 1395c; 42 USC 426; 42 USC 1396d; 42 USC 1396n; 42 USC 1396b; 42 USC 1395hh; 42 USC 1302

CFR Citation: 42 CFR 400.200; 42 CFR 400.203; 42 CFR 405.522; 42 CFR 405.1101; 42 CFR 405.1202; 42 CFR 405.1702; 42 CFR 405.1731; 42 CFR 405.2102; 42 CFR 408.20; 42 CFR 408.24; 42 CFR 417.104; 42 CFR 417.107; 42 CFR 417.144; 42 CFR 417.174; 42 CFR 417.242; ...

Legal Deadline: None

Abstract: These regulations conform HCFA rules to certain self-executing provisions of the Omnibus Budget Reconciliation Act of 1987. They are needed to made HCFA rules consistent with current provisions of law and to ensure that users of the regulations are not confused by outdated provisions or unclear language. Under the Medicare program's rules changes are made affecting: services of podiatrists; outpatient psychiatric services; physician assistant services; and comprehensive outpatient rehabilitative facility services. Under the Medicaid program changes are made affecting: services of dentists; clinic services; and waivers of certain State plan requirements. In addition, we make other conforming and transitional amendments.

Timetable:

Action	Date	FR Cite
Final with comment period	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Luisa V. Iglesias, Technical Assistant, Department of Health and Human Services, Health Care Financing Administration, Room 4243 Cohen Building, 300 Independence Avenue, SW, Washington, D.C. 20201, 202 245-0363

RIN: 0938-AD93

867. ◆ CATASTROPHIC COVERAGE CONFORMING AMENDMENTS

Legal Authority: 42 USC 1302; 42 USC 1395hh; 42 USC 1395e; 42 USC 1395f; 42 USC 1395i; 42 USC 1395r; 42 USC 1396a; 42 USC 1396d; 42 USC 1395v; 42 USC 1395b

CFR Citation: 42 CFR 406; 42 CFR 408; 42 CFR 409; 42 CFR 416; 42 CFR 435

Legal Deadline: None

Abstract: These regulations conform HCFA rules to certain self executing provisions of the Medicare Catastrophic Coverage Act of 1988 which: expand the scope of benefits under Medicare Part A; change the rules applicable to deductible and coinsurance; effect the determination and promulgation of Medicare Part A premiums; impose additional premiums for Medicare Part B; require Medicaid agencies to pay Medicare premiums deductibles and coinsurance on behalf of qualified Medicare beneficiaries and make other conforming and transitional amendments. They are needed to make HCFA rules consistent with current provisions of law and to ensure that users of the regulations are not confused by outdated provisions or unclear language.

Timetable:

Action	Date	FR Cite
Final Action	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Luisa V. Iglesias, Technical Assistant, Department of Health and Human Services, Health Care Financing Administration, Room 4243, Cohen Building, 300 Independence Avenue, SW, Washington, D.C. 20201, 202 245-0363

RIN: 0938-AD93

868. ◆ CARRIER BONUSES FOR INCREASING PHYSICIANS' PARTICIPATION OR PAYMENTS

Legal Authority: 42 USC 1395m(b)(3)(iii); 42 USC 1395b; PL 100-360, Sec 411(f)(2)(D); PL 99-509, Sec 9332(a); PL 100-203, Sec 4041(a); PL 100-203, Sec 4085(i)

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CFR Citation: Not applicable

Legal Deadline: None

Abstract: This notice describes the methodology we will use to award incentive payments to carriers that successfully increase the number of participating physicians, i.e., physicians who agree to accept Medicare's reasonable charge for Part B services that they provide to Medicare beneficiaries.It implements provisions of the Omnibus Budget Reconciliation Act of 1986, the Omnibus Budget Reconciliation Act of 1987, and the Medicare Catastrophic Coverage Act of 1988 which require us to publish our system for providing payment of a bonus to carriers based on their performance in increasing the number of participating physicians' services in their service areas.

Timetable:

Action	Date	FR Cite
Notice	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Louis Palmieri, Jr., Budget Analyst, Bureau of Program Operations, Department of Health and Human Services, Health Care Financing Administration, Room 368, Meadows East Building, 6325 Security Boulevard, Baltimre, Maryland 21207, 301 966-7542

RIN: 0938-AD98

869. ◆ NATIONAL AVERAGE ACTUARIAL VALUE OF DUPLICATIVE PART A AND PART B MEDICARE BENEFITS

Legal Authority: PL 100-360, Sec 421

CFR Citation: Not applicable

Legal Deadline: None

Abstract: This final notice announces the national average actuarial value (NAAV) of duplicative Part A benefits and duplicative Part B benefits for 1988. Under sec. 421 of the Medicare Catastrophic Coverage Act of 1988 an employer that provides to current or retired employees benefits, the actuarial value of which is at least 50 percent of the NAAV, it must provide those persons with additional benefits, a refund, or some combination. Guidelines also will be included for employers to use in computing the actuarial value of duplicative benefits, as required by sec. 421

Timetable:

Action	Date	FR Cite
Final Action	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Solomon Mussey, Director, Office of Medicare Cost Estimates, Department of Health and Human Services, Health Care Financing Administration, Room M-1, EQ-05, 1705 Whitehead Road, Baltimore, Maryland 21207, 301 966-4386

RIN: 0938-AD68

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS) — Completed Actions
Health Care Financing Administration (HCFA)

870. PAYMENTS TO INSTITUTIONS

Significance: Agency Priority

CFR Citation: 42 CFR 435.722; 42 CFR 435.725; 42 CFR 435.733; 42 CFR 435.832; 42 CFR 436.832

Completed:

Reason	Date	FR Cite
Final Action	02/08/88	53 FR 3586
Final Action Effective	04/08/88	

Small Entities Affected: Businesses

Government Levels Affected: State

Agency Contact: Marinos Svolos 301 966-4457

RIN: 0938-AB00

871. CHANGES TO THE LESSER OF COSTS OR CHARGES PROVISIONS

Significance: Regulatory Program

CFR Citation: 42 CFR 413.13

Completed:

Reason	Date	FR Cite
Final Action	03/29/88	53 FR 10077
Final Action Effective	04/28/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: William Goeller 301 966-4113

RIN: 0938-AB29

872. REVISIONS IN REPORTING AND RECORDKEEPING REQUIREMENTS

CFR Citation: 42 CFR 405.1413(c); 42 CFR 405.1716(c); 42 CFR 405.1716(d); 42 CFR 405.1717(b); 42 CFR 405.1717(e); 42 CFR 405.1725(a); 42 CFR 405.1702; 42 CFR 405.1731(a); 42 CFR 405.1731(c); 42 CFR 434.36; 42 CFR 434.55; 42 CFR 405.1733(a); 42 CFR 405.1733(b); 42 CFR 434.27(a)

Completed:

Reason	Date	FR Cite
Withdrawn Will be developed into three separate regulations.	03/11/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Completed:

Reason	Date	FR Cite
Final Action	04/12/88	53 FR 12010
Final Action Effective	05/12/88	53 FR 12010

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Stanley Katz 301 966-4637

RIN: 0938-AB46

873. PHYSICIAN CERTIFICATION AND PLAN OF CARE REQUIREMENTS AND INSPECTION OF CARE REVIEWS

CFR Citation: 42 CFR 400; 42 CFR 440; 42 CFR 441; 42 CFR 456

Agency Contact: Thomas E. Hoyer 301 966-6907

RIN: 0938-AH68

874. TREATMENT OF SOCIAL SECURITY COST OF LIVING INCREASES FOR INDIVIDUALS WHO LOSE SSI ELIGIBILITY

Significance: Agency Priority

CFR Citation: 42 CFR 435.135; 42 CFR 431.130

Completed:

Reason	Date	FR Cite
Final Action	05/10/88	53 FR 16550

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Roy Trudal 301 966-4457

RIN: 0938-AB82

875. OMB REVIEW OF INFORMATION COLLECTION AND RECORDKEEPING REQUIREMENTS FOR HOME HEALTH AGENCIES, AND PROVIDERS OF OUTPATIENT, PHYSICAL THERAPY AND/OR (CONT)

CFR Citation: 42 CFR 405.1221(e); 42 CFR 405.1221(f); 42 CFR 405.1221(g); 42 CFR 405.1221(i); 42 CFR 405.1223(b); 42 CFR 405.1229(a); 42 CFR 405.1720(b); 42 CFR 405.1721; 42 CFR 405.1224; 42 CFR 405.1228; 42 CFR 405.1225(a); 42 CFR 405.1239

Completed:

Reason	Date	FR Cite
Withdrawn To be included in various other HCFA regulations.	08/03/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Stefan Miller 301 966-4638

RIN: 0938-AB66

876. CONDITIONS FOR INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED

Significance: Agency Priority

CFR Citation: 42 CFR 435; 42 CFR 442; 42 CFR 431.610(f)(1); 42 CFR 440.150(c)(3); 42 CFR 483

Completed:

Reason	Date	FR Cite
Final Action	05/03/88	53 FR 20448
Final Action Effective	10/03/88	53 FR 20448

Small Entities Affected: None

Government Levels Affected: Local, State

Agency Contact: Samuel Kidder 301 966-4629

RIN: 0938-AB70

877. REASONABLE CHARGE LIMITATIONS

Significance: Regulatory Program

CFR Citation: 42 CFR 405.502

Completed:

Reason	Date	FR Cite
Final Action	07/11/88	53 FR 26067
Final Action Effective	09/09/88	53 FR 26067

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Bernard Patashnik 301 966-4495

RIN: 0938-AC08

878. ASSIGNMENT AND REASSIGNMENT OF PROVIDER-BASED HOME HEALTH AGENCIES AND HOSPICES TO DESIGNATED REGIONAL INTERMEDIARIES

Significance: Regulatory Program

CFR Citation: 42 CFR 421.3; 42 CFR 421.117; 42 CFR 421.128

Completed:

Reason	Date	FR Cite
Final Action	05/19/88	53 FR 17936
Final Action Effective	06/20/88	53 FR 17936

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Irvin Robinson 301 966-7422

RIN: 0938-AC20

879. FIRE SAFETY STANDARDS FOR HOSPITALS, SKILLED NURSING FACILITIES, HOSPICES, INTERMEDIATE CARE FACILITIES AND AMBULATORY SURGICAL CENTERS

Significance: Agency Priority

CFR Citation: 42 CFR 405.1022(b)(1); 42 CFR 405.1134(a); 42 CFR 416.44(b); 42 CFR 442.321(a); 42 CFR 442.321(c); 42 CFR 442.322; 42 CFR 442.323; 42 CFR 416.100(d); 42 CFR 482.41(b)

Completed:

Reason	Date	FR Cite
Final Action	04/07/88	53 FR 11504
Final Action Effective	06/09/88	53 FR 11504

Small Entities Affected: None

Government Levels Affected: Local, State

Agency Contact: Samuel Kidder 301 966-4629

RIN: 0938-AC26

880. ALTERNATE SANCTIONS FOR ESRD FACILITIES

CFR Citation: 42 CFR 405

Completed:

Reason	Date	FR Cite
Final Action	09/19/88	53 FR 36274
Final Action Effective	10/19/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Spencer B. Colburn 301 966-8923

RIN: 0938-AC58

881. LONG TERM CARE SURVEY

CFR Citation: 42 CFR 405.1901 to 1913; 42 CFR 442.30; 42 CFR 488.1 to 488.115

Completed:

Reason	Date	FR Cite
Final Action	06/17/88	53 FR 22850
Final Action Effective	07/18/88	53 FR 22850

Small Entities Affected: Organizations

Government Levels Affected: Local, State

Agency Contact: Wayne Smith 301 966-6763

RIN: 0938-AD41

882. MISCELLANEOUS CHANGES AFFECTING PAYMENT FOR INPATIENT HOSPITAL SERVICES

Significance: Agency Priority

CFR Citation: 42 CFR 405.310; 42 CFR 412.2; 42 CFR 412.50; 42 CFR 412.63; 42 CFR 412.92; 42 CFR 412.108; 42 CFR 412.210; 42 CFR 413.30; 42 CFR 413.40; 42 CFR 489.23

Completed:

Reason	Date	FR Cite
Withdrawn Will be incorporated into another regulation.	05/03/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Linda Magno 301 966-4529

RIN: 0938-AD46

883. FEES FOR APPEALS

CFR Citation: 42 CFR 405.701 to 42

Completed:

Reason	Date	FR Cite
Withdrawn Continuing to analyze issues.	06/23/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: James Conrad 301 966-5477

RIN: 0938-AD51

884. REVISIONS TO MEDICAID ELIGIBILITY QUALITY CONTROL PROGRAM REQUIREMENTS BASED ON FINDINGS OF COBRA STUDIES

CFR Citation: 42 CFR 431

Completed:

Reason	Date	FR Cite
Withdrawn Analyzing findings of the NAS and Department studies.	03/30/88	

Small Entities Affected: Undetermined

Government Levels Affected: State

Agency Contact: Larry Reed 301 966-5937

RIN: 0938-AD55

885. PROCEDURES FOR TERMINATING PROGRAM PARTICIPATION OF PROVIDERS AND SUPPLIERS

CFR Citation: 42 CFR 405; 42 CFR 416.35; 42 CFR 431.154; 42 CFR 442; 42 CFR 488; 42 CFR 489.53; 42 CFR 498.53; 42 CFR 498.5; 42 CFR 498.20; 42 CFR 498.56

Completed:

Reason	Date	FR Cite
Withdrawn To be incorp. into other regs implementing OBRA 87.	05/31/88	

Small Entities Affected: Businesses, Organizations

Government Levels Affected: Undetermined

Agency Contact: Alfreda Staton 301 966-6679

RIN: 0938-AD57

886. MONTHLY ACTUARIAL RATES AND PART B PREMIUM RATES BEGINNING JANUARY 1, 1989

CFR Citation: 42 CFR 408.20

Completed:

Reason	Date	FR Cite
Notice	09/30/88	53 FR 38348

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Solomon Mussey 301 966-6386

RIN: 0938-AD58

887. MISCELLANEOUS AMENDMENTS TO THE HMO AND CMP REQUIREMENTS

CFR Citation: 42 CFR 417

Completed:

Reason	Date	FR Cite
Withdrawn To be incorporated into another regulation	05/27/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Larry Sobel 202 245-0137

RIN: 0938-AD01

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS) — Proposed Rule Stage

Family Support Administration (FSA)

888. AID TO FAMILIES WITH DEPENDENT CHILDREN PROGRAM; ADMINISTRATIVE IMPROVEMENT IN THE AFDC PROGRAM

Significance: Regulatory Program

Legal Authority: 42 USC 303; 42 USC 602; 42 USC 606; 42 USC 1403; 42 USC 1383 Note; 42 USC 1302

CFR Citation: 45 CFR 205; 45 CFR 224; 45 CFR 232; 45 CFR 233; 45 CFR 238

Legal Deadline: None

Abstract: The proposed rule will organize and codify those administrative changes which will better target program resources, reduce administrative cost, or increase State flexibility.

Timetable:

Action	Date	FR Cite
NPRM	02/00/89	
NPRM Comment Period End	04/00/89	
Final Action	12/00/89	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Diann Dawson, Director, Division of Policy, Office of Family Assistance, Department of Health and Human Services, Family Support Administration, 370 L'Enfant Promenade, SW 20447, Washington, DC, 202 252-5116

RIN: 0970-AA09

889. STANDARDS FOR CHILD SUPPORT ENFORCEMENT PROGRAM OPERATIONS

Significance: Regulatory Program

Legal Authority: 42 USC 1302

CFR Citation: 45 CFR 302; 45 CFR 303; 45 CFR 304; 45 CFR 305; 45 CFR 306

Legal Deadline: None

Abstract: These proposed regulations will revise requirements and program standards to streamline and improve case processing within the IV-D agency. Specific standards and timeframes will be proposed for certain actions required to be taken in processing an IV-D case.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	
Final Action	07/00/89	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Joyce Linder, Program Specialist, Office of Child Support Enforcement, FSA, Department of Health and Human Services, Family Support Administration, 370 L'Enfant Promenade, SW, Washington, DC 20447, [redacted]

RIN: 0970–AA15

890. CHILD SUPPORT ENFORCEMENT AUDIT REGULATIONS

Significance: Regulatory Program

Legal Authority: 42 USC 603(h); 42 USC 604(d); 42 USC 652(a)(1); 42 USC 652(a)(4); 42 USC 1302

CFR Citation: 45 CFR 305

Legal Deadline: None

Abstract: OCSE is proposing to amend the current program regulations governing child support program audits. These proposed rules would streamline the current audit process and requirements and make corrections to certain inaccuracies in the audit regulations. In addition, we propose to add new performance indicators and update the scoring system.

Timetable:

Action	Date	FR Cite
NPRM	01/00/89	
Final Action	07/00/89	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Elizabeth Matheson, Chief, Policy Branch, Office of Child Support Enforcement, FSA, Department of Health and Human Services, Family Support Administration, 370 L'Enfant Promenade, SW, Washington, DC 20447, [redacted]

RIN: 0970–AA17

891. DISTRIBUTION OF CHILD SUPPORT COLLECTIONS

Legal Authority: 42 USC 657; 42 USC 1302

CFR Citation: 45 CFR 302.51; 45 CFR 302.32; 45 CFR 303.101

Legal Deadline: None

Abstract: OCSE is proposing to revise the child support enforcement program regulations governing the distribution of child support collections. These proposed rules would clarify the requirements that State child support enforcement agencies must adhere to when distributing payments made to AFDC families distributing collections in all IV-D cases and distributing payments made to AFDC families.

Timetable:

Action	Date	FR Cite
NPRM	03/00/89	
Final Action	09/00/89	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Michael Fitzgerald, Program Specialist, Office of Child Support Enforcement, FSA, Department of Health and Human Services, Family Support Administration, 370 L'Enfant Promenade, SW, Washington, DC 20447, 202 252-5364

RIN: 0970–AA16

892. ALIEN VERIFICATION PROCEDURES FOR AFDC; STATE ADMINISTERED ADULT ASSISTANCE AND MEDICAID PROGRAMS; NOTICE OF PROPOSED RULEMAKING

Significance: Agency Priority

Legal Authority: PL 99-603, Sec 121; Immigration Reform and Control Act of 1986

CFR Citation: 45 CFR 233; 42 CFR 435; 45 CFR 205; 45 CFR 433; 42 CFR 436

Legal Deadline: NPRM, Statutory, October 1, 1987.

Abstract: IRCA imposes new procedures on the AFDC, Adult Assistance Programs and Medicaid to verify immigration status of aliens applying for benefits under these programs with the Immigration and Naturalization Service. Under the law, States must be reimbursed at 100% for costs of their implementation and operation to access the alien status verification system. This regulation will specify what costs incurred by states will be subject to 100% reimbursement.

Timetable:

Action	Date	FR Cite
NPRM	11/30/88	
NPRM Comment Period End	12/30/88	
Final Action	08/30/89	
Final Action Effective	09/30/89	

Small Entities Affected: None

Government Levels Affected: State

Additional Information: INS must establish an alien verification system that can be accessed by States by October 1, 1987. States may claim 100% reimbursement for implementing and operating SAVE on October 1, 1987.

Agency Contact: Diana Dawson, Director, Division of Policy, Office of Family Assistance, Department of Health and Human Services, Family Support Administration, 370 L'Enfant Plaza Promenade, SW, Washington, DC 20447, 202 252-5116

RIN: 0970–AA41

893. EXCLUSION OF INDIAN TRUST FUNDS AND ALASKA NATIVE CLAIMS SETTLEMENT ACT DISTRIBUTIONS (ANCSA)

Significance: Regulatory Program

Legal Authority: PL 97-458, Sec 4; PL 98-64, Sec 2; PL 100-241, Sec 15

CFR Citation: 45 CFR 233.20(a)(4)(ii)(n); 45 CFR 233.20(a)(4)(ii)(o); 45 CFR 233.20(a)(4)(ii)(e); 45 CFR 233.20(a)(4)(ii)(k)

Legal Deadline: None

Abstract: Would update current regulations by adding statutory exclusions for certain per capita distributions of Indian judgment funds and other funds held in trust by the Department of Interior, and initial purchases made with such funds. Additionally, would exclude the following types of distributions received from a Native Corporation pursuant to the Alaska Native Claims Settlement Act. (1) Cash to the extent that it does not in the aggregate, exceed $2,000 per individual per annum; (2) Stocks; (3) A partnership interest; (4) Land or an interest in land; and (5) An interest in a settlement trust. Regulations would reflect the statutes, therefore, no alternatives are being considered. We estimate that the Federal share of the cost of the trust funds exclusions required under PL 97-458 and PL 98-64 would be $696,960 per year, the Federal share of the cost of the Alaska Native Claims Settlement Act exclusions required under PL 100-241 would be $1,878,108 per year. Therefore, the annual result would be a cost of $3,575,068.

Timetable:

Action	Date	FR Cite
NPRM	02/00/89	
NPRM Comment Period End	04/00/89	
Final Action	11/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Diana Dawson, Director, Division of Policy, Office of Family Assistance, Department of Health and Human Services, Family Support Administration, 370 L'Enfant Plaza Promenade, SW, Washington, DC 20447, 202 252-5116

RIN: 0970–AA47

894. COOPERATION IN THIRD PARTY HEALTH COVERAGE

Significance: Regulatory Program

Legal Authority: Sec 402(a)(26) of the Scl Scrty Act as amended by Sec 12304; The Consolidated Omnibus Budget Reconciliation Act of 1985

CFR Citation: 45 CFR 232.13; 45 CFR 232.40; 45 CFR 232.41; 45 CFR 232.42; 45 CFR 232.43; 45 CFR 232.44; 45 CFR 232.45; 45 CFR 232.47; 45 CFR 232.48; 45 CFR 232.49; 45 CFR 234.60; 45 CFR 235.70

Legal Deadline: None

Abstract: The proposed rules specify that as a condition of eligibility for AFDC, each applicant or recipient must cooperate with the State by identifying and providing information to assist the State in pursuing any third party who may be liable to pay for care and services available under the State's plan for medical assistance under title XIX, unless such individual has good cause for refusing to cooperate as determined by the State agency in accordance with standards prescribed by the Secretary.

Timetable:

Action	Date	FR Cite
NPRM	01/00/89	
NPRM Comment Period End	02/00/89	
Final Action	11/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Diana Dawson, Director, Division of Policy, Office of Family Assistance, Department of Health and Human Services, Family Support Administration, 370 L'Enfant Plaza Promenade, SW, Washington, DC 20447, 202 252-5116

RIN: 0970–AA49

895. COOPERATIVE AGREEMENTS

Significance: Agency Priority

Legal Authority: 42 USC 1302; 42 USC 654(7); 42 USC 652

CFR Citation: 45 CFR 302.34; 45 CFR 303.107; 45 CFR 304.22; 45 CFR 305.34

Legal Deadline: None

Abstract: The regulation specifies provisions that must be contained in all cooperative agreements between IV-D agencies and courts and law enforcement agencies.

Timetable:

Action	Date	FR Cite
NPRM	10/05/88	53 FR 39110
NPRM Comment Period End	12/05/88	
Final Action	06/00/89	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Norma Staley, Program Analyst, Office of Child Support Enforcement, Department of Health and Human Services, Family Support Administration, 370 L'Enfant Promenade, SW 20447, Washington, D.C, 202 252-5374

RIN: 0970–AA50

896. OMNIBUS BUDGET RECONCILIATION ACT OF 1987

Significance: Agency Priority

Legal Authority: PL 100-203, Sec 9133; The Omnibus Budget Reconciliation Act of 1987

CFR Citation: 45 CFR 233.53; 45 CFR 235.111; 45 CFR 233.20(a)(3)(x)

Legal Deadline: None

Abstract: These proposed rules implement sections of OBRA regarding the support and maintenance disregard, the optional fraud control program, and treatment of foster care payments.

Timetable:

Action	Date	FR Cite
NPRM	03/00/89	
NPRM Comment Period End	05/00/89	
Final Action Effective	12/00/89	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Diana Dawson, Director, Division of Policy, Office of Family Assistance, Department of Health and Human Services, Family Support Administration, 370 L'Enfant Plaza Promenade, SW, Washington, DC 20447, [redacted]

RIN: 0970–AA58

897. ◆ SERVICES TO POST-AFDC AND MEDICAID ONLY FAMILIES

Significance: Agency Priority

Legal Authority: 42 USC 654(4); 42 USC 654(5); 42 USC 657(c)

CFR Citation: 45 CFR 301.1; 45 CFR 302.31; 45 CFR 302.33; 45 CFR 302.70; 45 CFR 302.51; 45 CFR 303.72; 45 CFR 303.102; 45 CFR 304.20; 45 CFR 306.50; 45 CFR 306.51

Legal Deadline: None

Abstract: This regulation would implement sections 9141 of P.L. 100-203, the Omnibus Budget Reconciliation Act of 1987 under which child support agencies are required to continue to provide IV-D services to persons no longer eligible for AFDC without requiring an application or payment of an application fee. It also implements section 9142 of P.L. 100-203 which requires child support agencies to provide IV-D services to all families with an absent parent who receive Medicaid and have assigned their rights to medical support to the State.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	
Final Action	06/00/89	

HHS—FSA

Proposed Rule Stage

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Andrew Hagan, Program Specialist, Department of Health and Human Services, Family Support Administration, 370 L'Enfant Promenade, SW, Washington, DC 20447, 202 252-5374

RIN: 0970–AA01

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)
Family Support Administration (FSA)

Final Rule Stage

898. SCOPE OF PAYMENTS

Significance: Regulatory Program

Legal Authority: 42 USC 1102; 42 USC 602

CFR Citation: 45 CFR 233.20(a)(2)(i); 45 CFR 233.20(a)(2)(V); 45 CFR 233.120)

Legal Deadline: None

Abstract: These proposed regulations would clarify that States may not provide simultaneous multiple shelter allowances or special need allowances to recipients under Titles I, IV-A, X, XIV, and XVI of the Social Security Act based on the type of housing in which they reside. Also, these regulations would limit Federal matching under the Emergency Assistance program to one 30-day period in twelve consecutive months and would require States to specify the maximum amount of assistance to be provided for each type of emergency.

Timetable:

Action	Date	FR Cite
NPRM	12/14/87	52 FR 47420
NPRM Comment Period End	01/28/88	
Final Action	11/00/88	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Public Compliance Cost: Initial Cost: $0; Yearly Recurring Cost: $0

Additional Information: Split off from Regulation on Administrative Improvement in the AFDC Program (RIN 0960-AB72).

Agency Contact: Diann Dawson, Director, Division of Policy, Office of Family Assistance, Department of Health and Human Services, Family Support Administration, 370 L'Enfant Plaza Promenade, SW, Washington, DC 20447, 202 252-5116

RIN: 0970–AA00

899. RETROACTIVE MODIFICATION OF CHILD SUPPORT ARREARAGES

Legal Authority: PL 99-509, Sec 9103

CFR Citation: 45 CFR 302; 45 CFR 303; 45 CFR 304

Legal Deadline: None

Abstract: This regulation requires, as a result of the Omnibus Budget Reconciliation Act of 1986, that child support payments be judgments on and after the day they fall due as well as requires that States have procedures to prohibit the retroactive modification of child support arrearages.

Timetable:

Action	Date	FR Cite
NPRM	09/14/87	52 FR 34689
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Michael Fitzgerald, Program Specialist, Office of Child Support Enforcement, Department of Health and Human Services, Family Support Administration, 370 L'Enfant Promenade, SW20447, Washington, DC, 202 252-5366

RIN: 0970–AA03

900. AID TO FAMILIES WITH DEPENDENT CHILDREN; DEFINITION OF PERMISSIBLE STATE PRACTICE-QUALITY CONTROL

Significance: Agency Priority

Legal Authority: 42 USC 1302; 42 USC 603

CFR Citation: 45 CFR 205.40(a)(8)

Legal Deadline: None

Abstract: This rule will amend the definition of "Permissible State Practice." The rule will enable quality control to review against Federal statutes and regulations when a state plan is not amended to reflect new federal rules.

Timetable:

Action	Date	FR Cite
NPRM	06/16/85	50 FR 25269
NPRM Comment Period End	08/19/85	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Diann Dawson, Director, Division of Policy, Office of Family Assistance, Department of Health and Human Services, Family Support Administration, 370 L'Enfant Plaza Promenade, SW, Washington, DC, 202 252-5116

RIN: 0970–AA04

901. AID TO FAMILIES WITH DEPENDENT CHILDREN PROGRAM; IMPLEMENTATION OF THE DEFICIT REDUCTION ACT OF 1984

Significance: Agency Priority

Legal Authority: 42 USC 1302; PL 98-369 The Deficit Reduction Act of 1984; PL 99-514 The Tax Reform Act of 1986

CFR Citation: 45 CFR 233.36; 45 CFR 237.50; 45 CFR 238.16; 45 CFR 238.20; 45 CFR 238.50; 45 CFR 239.12; 45 CFR 239.14; 45 CFR 239.16; 45 CFR 239.24; 45 CFR 239.58; 45 CFR 239.62; 45 CFR 233.10; 45 CFR 233.90; 45 CFR 232.20; 45 CFR 233.35; ...

Legal Deadline: None

Abstract: The final regulations will clarify provisions first published in the Interim Final Rules implementing the Deficit Reduction Act of 1984 and as clarified by the Tax Reform Act of 1986.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/10/84	49 FR 35586
Final Action	02/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Diann Dawson, Director, Division of Policy, Office of Family Assistance, Department of Health and Human Services, Family Support Administration, 370 L'Enfant Plaza Promenade, SW, Washington, DC 20447, 202 252-5116

RIN: 0970–AA06

HHS—FSA

Final Rule Stage

902. CONSISTENCY FOR THE FOOD STAMP PROGRAM, AFDC PROGRAM, AND THE ADULT ASSISTANCE PROGRAMS

Significance: Regulatory Program

Legal Authority: 42 USC 1302; Sec. 1102, 49 Stat. 647

CFR Citation: 45 CFR 205.10(a)(4)(ii); 45 CFR 233.31(b); 45 CFR 233.20(a)(6)(v)(B); 45 CFR 205.10(a)(7); 45 CFR 205.10(a)(13); 45 CFR 205.52; 45 CFR 233.20(a)(3)(ii)(D); 45 CFR 233.20(a)(3)(iii)

Legal Deadline: None

Abstract: Proposed rule will provide increased consistency in eligibility policies and procedures between the AFDC and Food Stamp programs, within existing statutory requirements. The aim is to improve and simplify program administration and ease the burden placed upon the State agencies and individuals applying for assistance.

Timetable:

Action	Date	FR Cite
ANPRM	02/19/85	50 FR 6970
ANPRM Comment Period End	04/22/85	50 FR 6970
NPRM	09/29/87	52 FR 36546
NPRM Comment Period End	11/30/87	
Final Action	11/00/88	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Diann Dawson, Director, Division of Policy, Office of Family Assistance, Department of Health and Human Services, Family Support Administration, 370 L'Enfant Plaza Promenade, SW 20447, Washington, DC, 202 252-5116

RIN: 0970–AA08

903. REFUGEE RESETTLEMENT PROGRAM; REFUGEE CASH AND ASSISTANCE; REQUIREMENTS FOR JOB SEARCH, EMPLOYMENT SERVICES, AND EMPLOYMENT; REFUGEE MEDICAL ASSISTANCE; AND REFUGEE SOCIAL SERVICES

Significance: Regulatory Program

Legal Authority: 8 USC 1522(a)(9)

CFR Citation: 45 CFR 400

Legal Deadline: None

Abstract: This regulation will establish requirements governing refugee cash assistance; refugee medical assistance; and refugee support (social) services, including job search employability services, and employment.

Timetable:

Action	Date	FR Cite
NPRM	01/30/86	51 FR 03918
NPRM Comment Period End	04/30/86	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Philip A. Holman, Director, Div. of Policy & Analysis, Department of Health and Human Services, Family Support Administration, 370 L'Enfant Promenade, S.W., Washington, DC 20447, 202 252-6388

RIN: 0970–AA10

904. AID TO FAMILIES WITH DEPENDENT CHILDREN PROGRAM; GENERAL ADMINISTRATION — PUBLIC ASSISTANCE PROGRAM — QUALITY CONTROL SYSTEM

Significance: Agency Priority

Legal Authority: 42 USC 1302; PL 97-248

CFR Citation: 45 CFR 205.44

Legal Deadline: None

Abstract: These proposed rules amend the QC regulations under the AFDC program by establishing more definitive criteria to be used in determining whether waivers will be granted to states that fail to meet the statutory error standard.

Timetable:

Action	Date	FR Cite
NPRM	02/02/87	52 FR 21
NPRM Comment Period End	04/03/87	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Public Compliance Cost: Initial Cost: $0; Yearly Recurring Cost: $0; Base Year for Dollar Estimates: 86

Agency Contact: Sean Hurley, Director, Division of Quality Control, Office of Family Assistance, Department of Health and Human Services, Family Support Administration, 370 L'Enfant Plaza Promenade, SW, Washington, DC 20447, 202 252-5875

RIN: 0970–AA11

905. ESSENTIAL PERSONS

Significance: Regulatory Program

Legal Authority: 42 USC 602; 42 USC 1302

CFR Citation: 45 CFR 233.20

Legal Deadline: None

Abstract: The proposed regulation would preclude States from considering individuals to be essential persons for purposes of the AFDC program if they do not provide an essential benefit or service to the family.

Timetable:

Action	Date	FR Cite
NPRM	10/05/87	52 FR 37183
NPRM Comment Period End	11/19/87	
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Public Compliance Cost: Initial Cost: $0; Yearly Recurring Cost: $0

Additional Information: Split off from Regulation 00 Administrative Improvement in the AFDC Program (RIN 0970-ao09)

Agency Contact: Diann Dawson, Director, Division of Policy, Office of Family Assistance, Department of Health and Human Services, Family Support Administration, 370 L'Enfant Plaza Promenade, SW, Washington, DC 20447, 202 252-5116

RIN: 0970–AA44

906. FEDERAL TAX REFUND OFFSET PROCESS - PRE-OFFSET NOTICE FEE

Significance: Agency Priority

HHS—FSA

Final Rule Stage

Legal Authority: 42 USC 664; 42 USC 1302; 42 USC 654(13); 42 USC 6505

CFR Citation: 45 CFR 303.72

Legal Deadline: None

Abstract: These regulations would permit OCSE to charge a fee for services provided in the Federal tax refund offset process. They would require State IV-D agencies to send pre-offset notices to absent parents unless the State requests and OCSE agrees to send the notices. In addition IRS fees would be deducted from offset amounts rather than billed and collected by HHS.

Timetable:

Action	Date	FR Cite
NPRM	04/12/88	53 FR 12041
Final Action	11/00/88	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Carol Jordan, Program Specialist, Office of Child Support Enforcement, Department of Health and Human Services, Family Support Administration, 370 L'Enfant Promenade, SW 20447, Washington, D.C. 202 252-5385

RIN: 0970-AA12

907. ◉ EMERGENCY COMMUNITY SERVICES HOMELESS GRANT PROGRAM; INTERIM FINAL RULE WITH REQUEST FOR COMMENTS

Legal Authority: 42 USC 11302; 42 USC 11461 to 11464; 42 USC 11472

CFR Citation: 45 CFR 1060; 45 CFR 96.12; 45 CFR 96.14; 45 CFR 96C; 45 CFR 98E; 45 CFR 99?

Legal Deadline: None

Abstract: The regulations establish procedures that States, territories, Indian tribes, and other organizations must follow to apply for and use funds appropriated for the Emergency Community Services Homeless Grant Program (EHP) established by the Stewart B. McKinney Homeless Assistance Act (Published Law 100-77). The Act requires the funds to be distributed to States and territories that receive funds under the Community Services Block Grant (CSBG) program, using the CSBG allocation formula, and sets aside funds to be awarded directly to certain Indian tribes. The regulations require an annual application from the 57 States and territories, and an annual report from all grantees, including an estimated 75 Indian tribes. Annual paperwork burden estimates are: (a) 80 hours per State application, for a total of 4560 hours, (b) 30 hours per grantee to complete the report, for a total of 3960 hours, and (c) 2 hours per grantee for recordkeeping, for a total of 264 hours.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/22/88	53 FR 23668
Final Action	02/00/89	

Small Entities Affected: None

Government Levels Affected: State

Public Compliance Cost: Initial Cost: 80; Yearly Recurring Cost: $105,408; Base Year for Dollar Estimates: 1988

Sectors Affected: None

Agency Contact: Janet Fox, Chief, Homeless Grant Program, Department of Health and Human Services, Family Support Administration, Room 2038 Switzer Building, 330 C Street, S.W., Washington, D.C. 20201, 202 475-9418

RIN: 0970-AA57

908. ◉ TARGETING OF, AND TOLERANCES FOR, INCOME AND ELIGIBILITY VERIFICATION SYSTEM DATA

Significance: Regulatory Program

Legal Authority: PL 99-509, Sec 9101 Omnibus Budget Reconciliation Act of 1986

CFR Citation: 45 CFR 205.56

Legal Deadline: None

Abstract: These rules make revisions to the regulations designed to incorporate changes made by Section 9101 of PL 99-509, which amended Section 1137 of the Social Security Act to allow States flexibility in targeting uses of data through the Income and Eligibility Verification System. States will not be required to verify and act on all data. This changes earlier regulations which required 100% verification and allows the States the option to target their uses to those identified in the State Plan as most likely to be productive. ADDITIONAL INFORMATION: These regulations are planned to be issued at the same time regulations being issued by the Department of Agriculture to provide consistency of implementation with the Federally assisted benefit program at that department.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Sheldon Shiloh, Management Analyst, Department of Health and Human Services, Family Support Administration, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, 202 252-4893

RIN: 0970-AA10

909. ◉ AUTOMATED DATA PROCESSING EQUIPMENT AND SERVICES; CONDITIONS FOR FEDERAL FINANCIAL PARTICIPATION II

Significance: Regulatory Program

Legal Authority: 5 USC 301

CFR Citation: 45 CFR 95.601; 45 CFR 95.605; 45 CFR 95.611; 45 CFR 95.612; 45 CFR 95.613; 45 CFR 95.615; 45 CFR 95.617; 45 CFR 95.619; 45 CFR 95.621; 45 CFR 95.623; 45 CFR 95.624; 45 CFR 95.625; 45 CFR 95.631; 45 CFR 95.633; 45 CFR 95.641

Legal Deadline: None

Abstract: This final rule changes regulations of 45 CFR 95.600, et seq., to reduce the amount of time necessary to review and respond to State and local agency requests for FFP. The reduction in process time will be accomplished by streamlining the review process and requiring fewer points of prior approval for smaller expenditures by the Department.

Timetable:

Action	Date	FR Cite
NPRM	09/21/87	52 FR 182
NPRM Comment Period End	11/30/87	
Final Action	02/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Ron Lentz, Management Analyst, Department of Health and Human Services, Family Support Administration, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, 202 252-4795

RIN: 0970-AA39

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)
Family Support Administration (FSA)

Completed Actions

910. REFUGEE CASH AND MEDICAL ASSISTANCE

Significance: Regulatory Program

CFR Citation: 45 CFR 400

Completed:

Reason	Date	FR Cite
Final Action	08/24/88	53 FR 32222
Final Action Effective	08/24/88	53 FR 32222

Small Entities Affected: None

Government Levels Affected: Local, State

Agency Contact: Philip A. Holman 202 252-4566

RIN: 0970-AA01

911. AID TO FAMILIES WITH DEPENDENT CHILDREN; TREATMENT OF UTILITY PAYMENTS BY APPLICANT OR RECIPIENTS LIVING IN CERTAIN FEDERALLY ASSISTANCE HOUSING

CFR Citation: 45 CFR 233.20

Completed:

Reason	Date	FR Cite
Final Action	09/12/88	53 FR 35198
Final Action Effective	09/12/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Diana Dawson 202 252-5168

RIN: 0970-AA05

912. AID TO FAMILIES WITH DEPENDENT CHILDREN PROGRAM; EXTENSION OF MEDICAID ELIGIBILITY WHEN SUPPORT COLLECTIONS RESULT IN TERMINATION OF AFDC ELIGIBILITY

CFR Citation: 45 CFR 233; 42 CFR 435; 42 CFR 430

Completed:

Reason	Date	FR Cite
No regulation will be issued because statute has expired	10/01/88	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Diana Dawson 202 252-5118

RIN: 0970-AA07

913. MEDICAL SUPPORT ENFORCEMENT #2

Significance: Regulatory Program

CFR Citation: 45 CFR 305; 45 CFR 306

Completed:

Reason	Date	FR Cite
Final Action	09/16/88	53 FR 36014
Final Action Effective	09/16/88	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Andrew Hagan 202 252-5368

RIN: 0970-AA13

914. DISREGARD OF CHILD SUPPORT PAYMENTS; REGULATIONS IMPLEMENTING THE DEFICIT REDUCTION ACT OF 1984

CFR Citation: 45 CFR 302.51

Completed:

Reason	Date	FR Cite
Final Action	06/09/88	53 FR 21642

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Carol Jordan 202 252-5368

RIN: 0970-AA15

915. GRANTS TO STATES FOR PUBLIC ASSISTANCE PROGRAMS, TREATMENT OF REPLACEMENT CHECKS

CFR Citation: 45 CFR 201.5

Completed:

Reason	Date	FR Cite
Final Action	06/28/88	53 FR 24267
Final Action Effective	06/28/88	53 FR 24267

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: John B. McDonald 202 252-4586

RIN: 0970-AA18

916. ALIEN LEGALIZATION

Significance: Regulatory Program

CFR Citation: 45 CFR 206.10(a)(1)(vii)(B); 45 CFR 233.20(a)(3)(vi)(B); 45 CFR 233.50(c)

Completed:

Reason	Date	FR Cite
Final Action	08/12/88	53 FR 30432
Final Action Effective	09/30/88	53 FR 30432

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Diana Dawson 202 252-5118

RIN: 0970-AA40

917. FY 1988 SCORING SYSTEM FOR PERFORMANCE INDICATORS

Significance: Agency Priority

CFR Citation: 45 CFR 305.90

Completed:

Reason	Date	FR Cite
Decision made to terminate rulemaking	10/01/88	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: John Treacy 202 252-5363

RIN: 0970-AA01

[FR Doc. 88-20997 Filed 10-21-88; 8:45 am]
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Part IX

Department of Housing and Urban Development

Semiannual Regulatory Agenda

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Subtitles A and B

[Docket No. N-88-1453; FR-2506]

Semiannual Agenda of Regulations

AGENCY: Department of Housing and Urban Development.

ACTION: Semiannual agenda, under Executive Order 12291 and the Regulatory Flexibility Act, of regulations expected to be issued and under review.

SUMMARY: In accordance with section 5 of Executive Order 12291, "Federal Regulation," the Department is publishing its agenda of proposed regulations already issued or expected to be issued, and of currently effective rules that are under review. Also, under section 602 of the Regulatory Flexibility Act, the Department has prepared a regulatory flexibility agenda of regulations expected to be proposed or promulgated which are likely to have a significant economic impact on a substantial number of small entities. As permitted by Executive Order 12291 and the Regulatory Flexibility Act, the two agendas are combined for publication.

FOR FURTHER INFORMATION CONTACT: Grady J. Norris, Assistant General Counsel for Regulations, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410, (202) 755-7055. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Executive Order 12291, "Federal Regulation," issued on February 17, 1981 (46 FR 13193), requires each agency to publish semiannually an agenda of regulations that the agency has issued or expects to issue and of currently effective regulations that are under agency review.

The Regulatory Flexibility Act, 5 U.S.C. 601-612, requires each agency to publish semiannually a regulatory flexibility agenda of rules expected to be proposed or promulgated which are likely to have a significant economic impact on a substantial number of "small entities," meaning small businesses, small organizations, or small governmental jurisdictions.

Executive Order 12291 and section 605 of the Regulatory Flexibility Act each permit incorporation of the agenda it requires with any other prescribed agenda. Accordingly, the agenda set out below combines the information required by the Executive Order and by the Regulatory Flexibility Act. In addition, the agenda contains certain information not required by either the Executive Order or by the Act which the Department considers useful, both better to inform the public and to enhance the Department's own inventory control over its body of regulations.

For purposes of Executive Order 12291, "regulation" or "rule" is defined as "an agency statement of general applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the procedure or practice requirements of an agency," subject to certain exceptions. The agenda published below concentrates upon regulatory material contained, or expected to be contained, in the Code of Federal Regulations (CFR) (or incorporated therein by reference) following publication in the **Federal Register**. As appropriate, however, issuances in the nature of general statements of policy may be published in the **Federal Register** but not for codification in the CFR.

The Department also is subject to certain requirements involving congressional review of rulemaking actions, including publication of an agenda. Section 7(o) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)) requires that the Secretary transmit to the congressional committees having jurisdictional oversight (the Senate Committee on Banking, Housing and Urban Affairs and the House Committee on Banking, Finance and Urban Affairs) a semiannual agenda of all rules or regulations which are under development or review by the Department. A rule appearing on the agenda cannot be published for comment before or during the first 15 calendar days of continuous session of Congress after transmittal of the agenda. If, within such period, either Committee notifies the Secretary that it intends to review any rule or regulation or portion thereof which appears on the agenda, the Secretary must submit to both Committees a copy of the rule or regulation, in the form it is intended to be proposed, at least 15 calendar days of continuous session before it is published for comment. The Semiannual Agenda appearing hereinafter is the agenda transmitted to the Committees in compliance with the foregoing requirement.

The agenda items are divided first by program office. Within each program office, the agenda items are divided into four groups: (i) Prerulemaking actions, (ii) publications or other implementations of notices of proposed rulemaking, (iii) publications or other implementations of final rules, and (iv) completed actions. Within each grouping, rules are listed in chronological order by the Part number of the CFR affected. Where a rule affects multiple parts of the CFR, the rule is listed by the first affected Part number. Priority rules include all regulations designated for priority development by the Department.

Items listed in this agenda are from the following Offices within the Department: Office of the Secretary; Office of Housing; Office of Public and Indian Housing; Office of Community Planning and Development; Office of Fair Housing and Equal Opportunity; Office of Administration; and Government National Mortgage Association.

Dated: August 26, 1988.

J. Michael Dorsey,

General Counsel.

Office of the Secretary—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
918	24 CFR 50 Departmental Policies, Responsibilities, and Procedures for Protection and Enhancement of Environmental Quality (S-4-85; FR-2206)	2501-AA30

HUD

Office of the Secretary—Prerule Stage—Continued

Sequence Number	Title	Regulation Identifier Number
919	24 CFR 56 Flood Insurance Requirements for Mortgage Insurance Loan and Grant Programs (S-3-85; FR-2007)	2501-AA59
920	24 CFR 0058 Environmental Review Procedures for the Community Development Block Grant, Rental Rehabilitation and Housing Development Grant Programs (S-13-86; FR-2316)	2501-AA30
921	24 CFR 81.41 Secondary Market Operations of the Federal National Mortgage Association (FNMA) (S-3-81)	2501-AA31

Office of the Secretary—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
922	24 CFR 206 Home Equity Conversion Mortgage Insurance Demonstration (S-2-86; FR-2481)	2501-AA67
923	24 CFR 0003 Elimination of Obsolete Regulations (S-16-86; FR-2261)	2501-AA50
924	24 CFR 10 Amending Rules on Rules and FOIA Rules (S-3-87; FR-2320)	2501-AA57
925	24 CFR 46 Protection of Human Subjects in Research (S-6-83; FR-1807)	2501-AA15
926	24 CFR 50 Procedure for Floodplain Management and the Protection of Wetlands. Implementation of Executive Orders 11988 and 11990 (S-7-84; FR-865)	2501-AA22
927	24 CFR 14 Fair Housing; Implementation of the Fair Housing Amendments Act of 1988 (S-8-88; FR-2565)	2501-AA76
928	24 CFR 200 Restrictions on Housing Assistance to Ineligible Aliens (S-7-87; FR-2383 (formerly FR-1588))	2501-AA63
929	24 CFR 200 Implementation of Sec. 165 of the HCD Act of 1987--Social Security Rule (S-4-88; FR-2501)	2501-AA72
930	24 CFR 576 Amendment to the McKinney Act of 1987 (S-6-88; FR-2562)	2501-AA74
931	24 CFR 18 Disallowance of Legal Fees; Litigation Controls for HUD Assistance Recipients (S-7-88; FR-2134)	2501-AA75

Office of the Secretary—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
932	24 CFR 17 Administrative Claim: Implementing Certain Provisions of the Debt Collection Act of 1982 (S-10-86; FR-1644)	2501-AA58
933	24 CFR 24 Debarment Suspension and Limited Denial of Participation--All- Cash Sales Exception (S-4-87; FR-2356)	2501-AA60
934	24 CFR 58 Environmental Review Procedures - Rental Rehabilitation and Housing Development Grant Program (S-6-84; FR-1965)	2501-AA25
935	24 CFR 203 Insurance of Price Level Adjusted Mortgages (Indexed Mortgages) (S-5-88; FR-2518)	2501-AA73

Office of the Secretary—Completed Actions

Sequence Number	Title	Regulation Identifier Number
936	24 CFR 15.14 Freedom of Information Reform Act of 1986--Fee Schedule and Fee Waiver Regulations (S-6-87; FR2362)	2501-AA62
937	24 CFR 24 Suspension and Debarment (S-2-79; FR-1676)	2501-AA05
938	24 CFR 28 Administrative Remedies for False Claims and Statements (S-2-87; FR-2310)	2501-AA56
939	24 CFR 35 Lead-Based Paint Hazard Elimination (S-1-88; FR-2447)	2501-AA68
940	24 CFR 0042 Uniform Relocation Act Amendments of 1987 (S-3-88; FR-2357) (formerly CPD-3-87)	2501-AA70

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Office of Housing—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
941	24 CFR 203.2 Eligibility Requirements–Mortgages Approval (H-13-88; FR-2453)	2502-AE37
942	24 CFR 219 Flexible Subsidy Program; 1983 Amendments (H-50-84)	2502-AC31
943	24 CFR 3280 Manufactured Home Construction & Safety Construction on Siding & Roofing Materials & Application Criteria (H-8-87; FR2327)	2502-AE06

Office of Housing—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
944	00 CFR 000 Capital Improvements Assistance–Section 201 of the HCD Amendments of 1978 (H-34-88; FR-2541)	2502-AE55
945	24 CFR 50 Coinsurance of Equity Loans (H-37-88, FR2560)	2502-AE60
946	24 CFR 200 Authorize Additional Types of Loans for Direct Endorsement Processing (H-4-88; FR-2433)	2502-AE48
947	4 CFR 203 Retention Period for Mortgagee Single Family Claim Records (H-81-84)	2502-AC50
948	24 CFR 203 Penalty for Lack of Documentation (H-80-84)	2502-AC54
949	24 CFR 203.366 Mortgagee Charges for Serious Title Defects (H-26-87; FR-2368)	2502-AE11
950	24 CFR 203 Emergency Homeownership Counseling (H-20-88; FR-2460) 1987 HCD Act	2502-AE20
951	24 CFR 203 Single Family Mortgage Insurance - Occupant and Investor Mortgagors (H-16-88; FR-2456) 1987 HCD Act	2502-AE40
952	24 CFR 203.400 Deadline for Filing Single Family Supplemental Claims (H-26-88; FR-2487)	2502-AE51
953	24 CFR 203 Action to Reduce Losses under FHA Single Family Mortgage Insurance Program (H-28-88; FR-2491)	2502-AE52
954	24 CFR 204.280 Claim Processing on Defaulted Coinsured Single-Family Mortgages (H-1-88; FR-2410)	2502-AE25
955	24 CFR 207 Limitation on Prepayment of Mortgages on Multifamily Rental Housing (H-54-84; FR-1952)	2502-AC49
956	24 CFR 221.55 Assignment Option (H-44-86)	2502-AD78
957	24 CFR 280 Nehemiah Opportunity Grants Program (H-25-88; FR-2478) 1987 HCD Act	2502-AE45
958	24 CFR 3282 Manufactured Home Procedural and Enforcement Regulations Interpretative Bulletins (H-31-87; FR-2380)	2502-AE10
959	24 CFR 791 Review of Applications for Housing Assistance and Allocation of Housing Assistance Funds (S-10-84; FR-1896)	2502-AA73
960	24 CFR 882 Conforming Section 8 Existing Certificate Regulation to Housing Voucher Format (H-2-87; FR-2294)	2502-AD91
961	24 CFR 882 Interprogram Transfers of Assisted Tenants (H-8-88; FR-2436)	2502-AE32
962	24 CFR 885 Loans for the Elderly or Handicapped - Housing for the Handicapped (H-23-88; FR-2476) 1987 HCD Act	2502-AE47
963	24 CFR 886 Provision of Section 8 Existing Housing Assistance for Projects at Foreclosure Sales (H-3-86; FR-2158)	2502-AD43
964	24 CFR 886.310 Miscellaneous Revisions of Part 886 (H-37-86; FR-2275)	2502-AD69
965	24 CFR 1710 Land Registration (H-21-86)	2502-AD54
966	24 CFR 1710 Amendments to Interstate Land Sales Registration (H-47-86; FR-2503)	2502-AD81
967	24 CFR 3280.308 Manufactured Home Construction and Safety Standards - Formaldehyde Regulations (H-10-87; FR-2332)	2502-AE02
968	24 CFR 3280.309 Notice of Formaldehyde; Manufactured Home Construction and Safety (H-23-87; FR2349)	2502-AE21
969	24 CFR 3280.506 Manufactured Housing Energy Conservation Standards (H-29-88; FR-2497) 1987 HCD Act	2502-AE53
970	24 CFR 3282 Manufactured Home Procedural and Enforcement System (H-40-86; FR-2278)	2502-AD60
971	24 CFR 3282 Manufactured Home Design Inspection System (H-41-86; FR-2279)	2502-AD61

Office of Housing—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
972	00 CFR 000 Tenant Participation in Multifamily Projects (H-11-88; FR-2451) 1987 HCD Act	2502-AE35
973	00 CFR 000 HODAG 1987 Act Amendments (H-19-88; FR-2459)	2502-AE13
974	00 CFR 000 Section 8 Certificate Program Project-Based Assistance (H-30-88; FR-2502)	2502-AE56
975	24 CFR 200 Applicability of Minimum Property Standards Manufactured Homes under Title II of the National Housing Act (H-82-82; FR-1578)	2502-AB24
976	24 CFR 200 Minimum Property Standards (MPS) for Housing -- Water Supply Systems (H-31-86; FR-2255)	2502-AD64
977	24 CFR 200 Restrictions on All-Cash Sales (Amendment to Part 200) (H-30-87; FR-2374)	2502-AE12
978	24 CFR 201 Amendments to the Title I Regulations (H-19-87; FR2370)	2502-AE15
979	24 CFR 203 HUD Inspections - No Duty of Care (H-1-85; FR-2025)	2502-AC92

HUD

Office of Housing—Final Rule Stage—Continued

Sequence Number	Title	Regulation Identifier Number
980	24 CFR 203 Temporary Mortgage Assistance Payments (TMAP) and Assignments to HUD (H-44-85; FR-2147)	2502-AD34
981	24 CFR 203 Criteria for Acceptability of Insured 10-Year Protection Plans (H-26-86; FR-2036)	2502-AD65
982	24 CFR 203 Deregulation of Loan Origination Fees in FHA Single Family Housing (H-18-87; FR-2333)	2502-AD98
983	24 CFR 209 Allegany Reservation of the Seneca Nation (H-32-87; FR-2382)	2502-AE09
984	24 CFR 203 Disclosure of Annual Rate Changes of Adjustable Rate Mortgages (H-35-88; FR-2542)	2502-AE57
985	24 CFR 207 Revisions Relating to Full Insurance and Coinsurance of Existing Cooperatives (H-31-88; FR-2511)	2502-AE54
986	24 CFR 208 Computer Automation of Required Data for Certification and Recertifications Subsidy Billing Procedures for Certain Multifamily Subsidized Projects (H-2-86; FR-2421)	2502-AE31
987	24 CFR 215 State Agency Amendments (H-70-84; FR-1997)	2502-AC71
988	24 CFR 50 Prepayment of Mortgages on Low- and Moderate-Income Housing (H-10-88; FR-2450) 1987 HCD Act	2502-AE34
989	24 CFR 219 Eligibility of Section 23 and Section 202 Housing for Flexible Subsidy (H-18-88; FR-2458) 1987 HCD Act	2502-AE42
990	24 CFR 290 HUD-Owned Multifamily Projects-Management and Disposition (H-69-78; FR-432)	2502-AC88
991	24 CFR 735 Section 236 Rent Supplement (H-17-88; FR-2457) 1987 HCD Act	2502-AE41
992	24 CFR 850 Housing Development Grant Program (H-26-84; FR-1902)	2502-AC31
993	24 CFR 880 Section 8 Housing Assistance Payments Programs – Revisions to Contract Rent Adjustment Regulations (H-22-88; FR-2469) 1987 HCD Act	2502-AE44
994	24 CFR 882 Shared Housing in the Section 8 Moderate Rehabilitation Program (H-26-86; FR-2236)	2502-AD90
995	24 CFR 885 Management Rules and Comprehensive Housing and Community Development Amendments (H-34-83; FR-1761)	2502-AC03
996	24 CFR 885 Loans for the Elderly or Handicapped - Loan Interest Rate Provisions (H-24-86; FR-2477) 1987 HCD Act	2502-AE46
997	24 CFR 885 Loans for Housing for the Elderly or Handicapped Duration of Section 202 Fund Reservation (H-33-88; FR2536)	2502-AE36
998	24 CFR 3500 Real Estate Settlement Procedures Act – Controlled Business Provisions and Miscellaneous Amendments (H-45-84; FR-1942)	2502-AC29

Office of Housing—Completed Actions

Sequence Number	Title	Regulation Identifier Number
999	00 CFR 000 Supportive Housing Demonstration Program (H-34-87; FR2385)	2502-AE13
1000	24 CFR 200 Issuance of FHA Debentures (H-36-86; FR-2268)	2502-AD68
1001	24 CFR 200 Revision of Use of Materials Bulletin used in the HUD Bldg. Product Standard and Certification Program (H-4-87; FR2308)	2502-AE04
1002	24 CFR 200 Manufactured Home Construction and Safety Standards for Lead in Water Piping(H-3-87; FR-2296)	2502-AE05
1003	24 CFR 201.54 Filing Period for Resubmission of Denied Claims (H-43-86)	2502-AD80
1004	24 CFR 203 Revision of HUD Mortgage Approval Process (H-5-86; FR-2434)	2502-AE27
1005	24 CFR 203 Deadline for Filing Single Family Supplemental Claims (H-36-88; FR-2559)	2502-AE59
1006	24 CFR 207.19 Multifamily Housing Mortgage Insurance -- Regulation of Rents (H-9-88; FR-2448) 1987 HCD Act	2502-AE33
1007	24 CFR 215 Rent Supplement Federal Tenant Selection Preference (H-12-88; FR-2452) 1987 HCD Act	2502-AE38
1008	24 CFR 232 FHA Insurance of Mortgages Covering Nursing Homes and Similar Projects (H-27-88; FR-2490)	2502-AE39
1009	24 CFR 241 Additional Revisions - Hospital Insurance (H-24-86; FR-2227)	2502-AD70
1010	24 CFR 242 Hospital Insurance - Alternate Certification Requirements (H-21-88; FR-2466) 1987 HCD Act	2502-AE29
1011	24 CFR 251 Assignment of Interest of Coinsuring Lender to Warehouse Bank for Interim Funding (H-15-88; FR-2455)	2502-AE39
1012	24 CFR 252 Coinsurance for Nursing Homes and Intermediate Care Facilities (H-32-86; FR-2256)	2502-AD74
1013	24 CFR 887 Section 8 Housing Assistance Payments Program - Housing Vouchers (H-42-85; FR-2170)	2502-AD30

Office of Community Planning and Development—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1014	24 CFR 510.34 Removal of Risk Premium Provisions in Section 312 Program (CPD-9-88; FR-2553)	2506-AA87
1015	24 CFR 0510 Personal Liability for Repayment on Section 312 Rehabilitation Loans (CPD-10-88; FR-2557)	2506-AA89
1016	24 CFR 511 Rental Rehabilitation Program (CPD-11-88; FR-2558)	2506-AA88
1017	24 CFR 570.488 Community Development Block Grants: State's Program (CPD-7-83; FR-1877)	2506-AA36

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Office of Community Planning and Development—Proposed Rule Stage—Continued

Sequence Number	Title	Regulation Identifier Number
1018	24 CFR 570 Urban Development Action Grant Applications from Consortia of Small Cities (CPD-6-87; FR2381)	2506-AA76
1019	24 CFR 0570 Secretary's Discretionary Fund - Work Study Program (CPD-4-88; FR-2475) 1987 HCD Act	2506-AA81
1020	24 CFR 570 Miscellaneous Revisions of Part 570 - 1987 HCD Act (CPD-5-88; FR-2496)	2506-AA84
1021	24 CFR 590 Urban Homesteading Selection Procedures and Eligibility for Discretionary Fund Technical Assistance (CPD-1-88; FR-2461)	2506-AA79

Office of Community Planning and Development—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1022	24 CFR 511 Residential Rental Rehabilitation Program (CPD-7-84; FR-1901)	2506-AA55
1023	24 CFR 0570.511 Community Development Block Grant Program: Escrow Accounts (CPD-2-88; FR-2164)	2506-AA66
1024	24 CFR 570 Conserving Neighborhoods by Prohibiting Displacement (CPD-3-88; FR-2474) 1987 HCD Act	2506-AA82
1025	24 CFR 0570 Implementation of Prohibition on Use of UDAG Grants for Business Relocation (CPD-6-88; FR-2500)	2506-AA86

Office of Community Planning and Development—Completed Actions

Sequence Number	Title	Regulation Identifier Number
1026	24 CFR 511.1 Rental Rehabilitation Grants (CPD-2-88; FR-2472)	2506-AA80
1027	24 CFR 511.33 Rental Rehabilitation Program; Reallocation of Rental Rehabilitation Grant Amounts (CPD-7-88; FR-2530)	2506-AA85
1028	24 CFR 570 Community Development Block Grant Regulations (CPD-6-84; FR-1895)	2506-AA47
1029	24 CFR 570.450 to 465 Community Development Block Grants, Urban Development Action Grants (CPD-9-86; FR-2449)	2506-AA72
1030	24 CFR 571.702 (b) Indian Community Development Block Grant Program: Revision to Corrective and Remedial Action (CPD-13-84; FR-2102)	2506-AA58
1031	24 CFR 576 Emergency Shelter Grants ('87 Act) (CPD-7-87; FR2387)	2506-AA77
1032	24 CFR 596 Enterprise Zone Development (CPD-11-83; FR-1913)	2506-AA45

Government National Mortgage Association—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1033	24 CFR 390 Book-Entry Securities of GNMA (GNMA-2-85)	2503-AA03
1034	24 CFR 390.17 GNMA Fees (GNMA-1-87; FR2395)	2503-AA05
1035	24 CFR 390 GNMA Mortgage-Backed Securities (GNMA-1-86; FR-2548)	2503-AA06

Office of Fair Housing and Equal Opportunity—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1036	24 CFR 9.101 Nondiscrimination Based on Handicapped in Programs Conducted by HUD (FR-2163; FH&EO-2-85)	2529-AA26
1037	24 CFR 105 Procedure for Processing Complaints under Section 810 of the Fair Housing Act (FHEO-5-88; FR-2563)	2529-AA40
1038	24 CFR 111 Redesign for Fair Housing Assistance Program (FHEO-2-87; FR-2403)	2529-AA33
1039	24 CFR 115 Recognition of Jurisdictions with Substantially Equivalent Fair Housing Laws (FHEO-1-88)	2529-AA31
1040	24 CFR 120 Community Housing Resource Board Program (FH&EO-4-88; FR-2561)	2529-AA39

HUD

Office of Fair Housing and Equal Opportunity—Proposed Rule Stage—Continued

Sequence Number	Title	Regulation Identifier Number
1041	24 CFR 125 Fair Housing - Coordination of Executive Agency and Regulatory Agency Affirmative Administration of Programs in Connection with HUD (FH&EO-1-88; FR-2480)	2529-AA36

Office of Fair Housing and Equal Opportunity—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1042	24 CFR 125 The Fair Housing Initiatives Program (FH&EO-2-88; FR-2486) 1987 HCD Act	2529-AA37
1043	24 CFR 735 Conforming Amendments to HUD Rules to Comply with Sec. 504 of the Rehab Act and Other Authorities (FH&EO-3-88; FR-2531)	2529-AA38

Office of Fair Housing and Equal Opportunity—Completed Actions

Sequence Number	Title	Regulation Identifier Number
1044	24 CFR 8 Nondiscrimination Based on Handicap in Federally-Assisted Programs and Activities (FH&EO-4-84; FR-770)	2529-AA20
1045	24 CFR 105 Procedure for Processing Complaints under Section 804 of the Fair Housing Act (FH&EO-6-84; FR 2012)	2529-AA24

Office of Administration—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
1046	24 CFR 3 Organization, Function, and Delegations of Authority Subpart C - Secretary's Delegations of Authority to Heads of Offices (ADM-2-82)	2535-AA01
1047	24 CFR 570 Federal Procurement of Cement Containing Fly Ash (ADM-1-84; FR-1938)	2535-AA05

Office of Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1048	48 CFR 24 HUD Acquisition Regulation (ADM-2-88; FR-2473)	2535-AA18
1049	24 CFR 29 OMB Cir. A-110, Uniform Administrative Requirements for Grants and Agreements with Universities, Hospitals and Other Nonprofit Organizations (ADM-1-87; FR-2376)	2535-AA15

Office of Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1050	48 CFR Chap. 24 Amendment of the HUD Acquisition Regulations (ADM-5-85; FR-2131)	2535-AA10
1051	48 CFR 2401 Revisions of HUDAR to Reflect Changes in GNMA Procurement Procedures (ADM-3-86; FR-2534)	2535-AA17

HUD

Office of Public and Indian Housing—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
1052	00 CFR 000 Economic Rent in Public Housing Projects (P-4-88; FR-2462) 1987 HCD Act	2577-AA57

Office of Public and Indian Housing—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1053	00 CFR 000 Limitation on Public Housing Development (P-6-88; FR-2464) 1987 HCD Act	2577-AA59
1054	24 CFR 0080 Determination of Wage Rates for Maintenance and Technical Employees of Public Housing Agencies and Indian Housing Authorities (P-10-88; FR2211)	2577-AA58
1055	24 CFR 904 Turnkey III Homeownership Opportunities Program (P-3-88; FR-2138)	2577-AA34
1056	24 CFR 905 Establishment of Preference for Elderly and Near Elderly Families (P-13-88; FR-2505)	2577-AA69
1057	24 CFR 912 Increase in Single Person Occupancy Limits (P-48-84; FR-2063)	2577-AA27
1058	24 CFR 968.12(i) Decontrol of Public Housing Authorities; CIAP Development (P-5-87; FR-2409)	2577-AA48
1059	24 CFR 968 Modernization Grant Program (P-8-88; FR-2486)	2577-AA66
1060	24 CFR 968 Comprehensive Improvement Assistance Program--Special Purpose Modernization (P-18-88; FR-2545)	2577-AA72
1061	24 CFR 969 PHA Obligations with respect to Residual Receipts in the Public Housing, Turnkey III, and Sec. 23 Programs; (P-2-87; FR2354; formerly H-27-87)	2577-AA49
1062	24 CFR 990 Performance Funding System Revisions (87 Act)--Formal Review Process Energy Conservation Savings, Audit Responsibilities (P-12-88; FR-2504)	2577-AA71

Office of Public and Indian Housing—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1063	24 CFR 970 Replacement Housing for Public Housing Demolition and Disposition (P-5-88; FR-2463) 1987 HCD Act	2577-AA58
1064	02 CFR 000 Implementation of Percentage Limit Provisions Under Section 16 of the United Housing Act of 1937 (P-7-88; FR-2465) 1987 HCD Act	2577-AA60
1065	24 CFR 813 Indian Housing Act of 1988 (P-16-88; FR-2536)	2577-AA70
1066	24 CFR 905 Indian Housing Program--Revised Program Regulations (P-2-88; FR-2206)	2577-AA32
1067	24 CFR 968 Public and Indian Housing - Cost Containment Procedures (P-1-88; FR-2191)	2577-AA37
1068	24 CFR 905 Self-Help Homeownership Program (P-17-88; FR-2544)	2577-AA74
1069	24 CFR 965.304 Individual Metering of Utilities of Existing PHA-Owned Projects (P-36-83; FR-1769)	2577-AA27
1070	24 CFR 965 PHA-Owned and Leased Project; Maintenance and Operation; Tenant Allowance for Utilities (P-8-86; FR-2259)	2577-AA40
1071	24 CFR 965 Change in Consolidated Supply Program (CSP) (P-11-88; FR2482)	2577-AA67
1072	24 CFR 968 Public and Indian Housing Cost Containment Procedures - Comprehensive Improvement Assistance Program and Indian Housing (P-8-88; FR-2262)	2577-AA43
1073	24 CFR 990 Revision to PFS - Insurance Costs (P-2-88; FR-2437) 1987 HCD Act	2577-AA50

Office of Public and Indian Housing—Completed Actions

Sequence Number	Title	Regulation Identifier Number
1074	24 CFR 905.211 Preemption of Certain State-Determined Prevailing Wage Rates Applicable to Public and Indian Housing Projects (P-6-88; FR-2231)	2577-AA42
1075	24 CFR 905 Public Housing Homeownership (P-9-88; FR-2469) 1987 HCD Act	2577-AA65
1076	24 CFR 960 Public Housing -- Tenant Leases and PHA Grievance Hearings (P-28-79; FR-1164)	2577-AA18
1077	24 CFR 964 Tenant Management in Public Housing (P-14-88; FR-2519)	2577-AA73
1078	24 CFR 968.5(g) Comprehensive Improvement Assistance Program: Multi-Stage Funding (P-1-88; FR-2415)	2577-AA55
1079	24 CFR 989 Effects of Debt Forgiveness on Public Housing Agency Annual Contributions Contracts (P-6-87; FR-2409)	2577-AA51

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)
Office of the Secretary (HUDSEC)

Prerule Stage

918. DEPARTMENTAL POLICIES, RESPONSIBILITIES, AND PROCEDURES FOR PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY (S-4-88; FR-2206)

Legal Authority: 42 USC 4321; PL 95-557

CFR Citation: 24 CFR 50

Legal Deadline: None

Abstract: This rule proposes revisions in the regulations governing HUD's consideration of environmental factors in decision-making under HUD programs other than the Community Development Block Grant, Urban Development Action Grant, Rental Rehabilitation, and Housing Development Grant Programs. The rule is intended to reduce regulatory burdens and procedural details based on experience under the existing regulations; reflect field office reorganization; and implement sec. 535 of the Housing Act of 1949, as amended.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Replaces RIN: 2505-AA10

Agency Contact: Walter Prybyla, Department of Housing and Urban Development, Office of Community Planning and Development, Office of Environment and Energy, 202 755-6611

RIN: 2501–AA30

919. FLOOD INSURANCE REQUIREMENTS FOR MORTGAGE INSURANCE LOAN AND GRANT PROGRAMS (S-3-88; FR-2007)

Legal Authority: 42 USC 4012(a); 42 USC 4106(a)

CFR Citation: 24 CFR 56; 24 CFR 207; 24 CFR 232; 24 CFR 234; 24 CFR 236; 24 CFR 241; 24 CFR 242; 24 CFR 244; 24 CFR 250; 24 CFR 511; 24 CFR 570; 24 CFR 884; 24 CFR 904; 24 CFR 905

Legal Deadline: None

Abstract: This rule would implement HUD's responsibilities under the Flood Disaster Protection Act of 1973. It would add a new Part 56 to specify HUD's responsibilities to require that flood insurance be obtained for eligible properties. This part would then be cross-referenced in the rules governing programs involving mortgage insurance, loans and grants.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: Replaced RIN: 2502-AC76

Agency Contact: Walter Prybyla, Deputy Director, Environmental Mgt. Div., Department of Housing and Urban Development, Office of Community Planning and Development, 202 755-6611

RIN: 2501–AA30

920. ENVIRONMENTAL REVIEW PROCEDURES FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT, RENTAL REHABILITATION AND HOUSING DEVELOPMENT GRANT PROGRAMS (S-12-86; FR-2316)

Legal Authority: EO 11514; EO 11991; 42 USC 1437(i); 42 USC 4332; 42 USC 5304(f)

CFR Citation: 24 CFR 0050

Legal Deadline: None

Abstract: This rule is related to RIN: 2501-AA25 (S-6-84; FR-1965). It proposes revisions in the regulations governing environmental review, decisionmaking and other actions by recipients of HUD assistance under the CDBG, Rental Rehabilitation and Housing Development grant programs that are not appropriate for final rulemaking. The proposed rulemaking is intended to solicit comments from the public on revisions to environmental policy that program experience has indicated may enhance compliance with NEPA, other environmental authorities and HUD legislation under the affected assistance programs.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Charles E. Thomsen, Architect, Department of Housing and Urban Development, Office of Community Planning and Development, Office of Environment and Energy, 202 755-6611

RIN: 2501–AA19

921. SECONDARY MARKET OPERATIONS OF THE FEDERAL NATIONAL MORTGAGE ASSOCIATION (FNMA) (S-3-81)

Legal Authority: 12 USC 1723a; 42 USC 3535(d)

CFR Citation: 24 CFR 81.41; 24 CFR 81.45

Legal Deadline: None

Abstract: This rule would amend the definition of "FNMA security" at 24 CFR 81.41(b) to delete the exclusionary parenthetical and to remove the provision in 24 CFR 81.45(b) which allows FNMA debentures in book-entry form only.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Walter T. Cassidy, Assistant General Counsel for Finance, Department of Housing and Urban Development, Office of the General Counsel, 202 755-7260

RIN: 2501–AA10

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)
Office of the Secretary (HUDSEC)

Proposed Rule Stage

923. HOME EQUITY CONVERSION MORTGAGE INSURANCE DEMONSTRATION (S-2-88; FR-2461)

Significance: Regulatory Program

Legal Authority: PL 100-242, Sec 417

CFR Citation: 24 CFR 206

Legal Deadline: NPRM, Statutory, November 1988.

Abstract: This regulation is intended to implement the Home Equity Conversion Mortgage demonstration program in order to meet the special needs of the elderly by permitting the conversion of a portion of accumulated home equity into liquid assets, and to encourage and increase the involvement of mortgagees and participants in the mortgage markets in the making and servicing of home equity conversion mortgages for elderly homeowners.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
NPRM Comment Period End	01/00/89	
Final Action	04/00/89	
Final Action Effective	05/00/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Judith V. May, Office of Economic Affairs, Department of Housing and Urban Development, Policy Development and Research, 202 755-5537

RIN: 2501–AA67

933. ELIMINATION OF OBSOLETE REGULATIONS (S-16-86; FR-2261)

Legal Authority: 42 USC 3535(d)

CFR Citation: 24 CFR 0202; 24 CFR 1043; 24 CFR 0852; 24 CFR 0136; 24 CFR 0230; 24 CFR 0203; 24 CFR 0205; 24 CFR 0207; 24 CFR 0209; 24 CFR 0210; 24 CFR 0211; 24 CFR 0213; 24 CFR 0215; 24 CFR 0220; 24 CFR 0221; ...

Legal Deadline: None

Abstract: This rule would remove regulations that are obsolete or duplicative. The rule would also decontrol some programs.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Tim Coward, Attorney Advisor, Office of Regulations, Department of Housing and Urban Development, Office of the General Counsel, 202 755-7065

RIN: 2501–AA50

934. AMENDING RULES ON RULES AND FOIA RULES (S-3-87; FR-2330)

Significance: Regulatory Program

Legal Authority: 42 USC 3535(d)

CFR Citation: 24 CFR 10; 24 CFR 15; 24 CFR 1720

Legal Deadline: None

Abstract: The Department is reviewing its procedural rules to determine to what extent they need to be updated. This includes the rules the Department uses in developing new rules or amending existing regulations, and the procedures the public may use in commenting on a rulemaking or must use to obtain information from HUD under the Freedom of Information Act as well as procedures applicable to the Interstate Land Sales Registration Program. It is the Department's intention to streamline procedures, to make procedures more uniform, to clarify procedures for public petition for rulemaking, and to be more explicit about the kinds of rulemaking that will be subject to public participation and the circumstances under which rules may receive expedited treatment.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Grady J. Norris, Assistant General Counsel for Regulations, Department of Housing and Urban Development, Office of the General Counsel, 202 755-7253

RIN: 2501–AA57

935. PROTECTION OF HUMAN SUBJECTS IN RESEARCH (S-6-83; FR-1807)

Legal Authority: 42 USC 3535(d)

CFR Citation: 24 CFR 46

Legal Deadline: None

Abstract: In response to a Presidential Commission, an Interagency Task Force on the Protection of Human Subjects in Research has proposed that all Federal agencies adopt a common policy and uniform regulations for the protection of human subjects in research.

HUD has agreed to adopt the policy and to issue a regulation based on a model that has been promulgated by the Office of Science and Technology Policy.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: Compliance costs for HUD's adoption of the model regulation will be minimal, because almost all research conducted by HUD falls within categories exempted from the requirements of the model regulation. The infrequent projects that may not be exempt (perhaps one every two years) have in the past been proposed by organizations already subject to the Department of Health and Human Services regulation, and thus would not have any incremental compliance costs for the organization, other than the actual project requirements.

Costs would be slight.

Affected Sectors: Profit and Non-profit Research Organizations.

Agency Contact: Arthur S. Newburg, Senior Advisor for Research Management, Department of Housing and Urban Development, Office of the Secretary, 202 755-6230

RIN: 2501–AA15

936. PROCEDURE FOR FLOODPLAIN MANAGEMENT AND THE PROTECTION OF WETLANDS. IMPLEMENTATION OF EXECUTIVE ORDERS 11988 AND 11990 (S-7-84; FR-862)

Legal Authority: EO 11988; EO 11990; 42 USC 3535(d)

CFR Citation: 24 CFR 50; 24 CFR 55; 24 CFR 58; 24 CFR 200

Legal Deadline: None

Abstract: This regulation sets forth the policy, procedure and responsibilities of the Department of Housing and Urban Development to implement and enforce Executive Order 11988, Floodplain Management, and Executive Order 11990, the Protection of Wetlands. This regulation replaces a general statement of Departmental policy (44 FR 47623; August 14, 1979) implementing these Executive Orders. In addition, this rule would revise HUD's Minimum Property Standards for One and Two Family Dwellings to accord with Executive Order 11988 and FEMA's regulations for its National Flood Insurance Program.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Richard H. Broun, Director, Office of Environment & Energy, Department of Housing and Urban Development, Office of Community Planning and Development, 202 755-7894

RIN: 2501–AA23

937. ● FAIR HOUSING; IMPLEMENTATION OF THE FAIR HOUSING AMENDMENTS ACT OF 1988 (S-5-88; FR-2585)

Significance: Regulatory Program

Legal Authority: 5 USC 504(c)(1); 42 USC 3600 to 3620

CFR Citation: 24 CFR 14; 24 CFR 105; 24 CFR 115

Legal Deadline: Final, Statutory, March 12, 1989.

Abstract: The Fair Housing Amendments Act of 1988 (PL 100-430, approved September 13, 1988) revises title VIII of the Civil Rights Act of 1968 (PL 90-285, approved April 11, 1968). The 1988 Amendments adds handicap and familial status to the existing categories protected under the Act (race, color, national origin, religion and sex), and creates a more effective administrative enforcement system under the Act. This proceeding would implement the 1988 Amendments. HUD may issue rules by one or more separate rulemakings.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Lawrence D. Pearl, Director, Office of Program Standards and, Evaluation, Department of Housing and Urban Development, Office of the Secretary, 202 755-5286

RIN: 2501–AA70

938. RESTRICTIONS ON HOUSING ASSISTANCE TO INELIGIBLE ALIENS (S-7-87; FR-2383 (FORMERLY FR-1586))

Significance: Regulatory Program

Legal Authority: 42 USC 1436a

CFR Citation: 24 CFR 200; 24 CFR 215; 24 CFR 235; 24 CFR 236; 24 CFR 247; 24 CFR 812; 24 CFR 880; 24 CFR 881; 24 CFR 882; 24 CFR 883; 24 CFR 884; 24 CFR 885; 24 CFR 886; 24 CFR 887; 24 CFR 912

Legal Deadline: NPRM, Statutory, October 1, 1988.

Abstract: This proposed rule will implement section 214 of the Housing and Community Development Act of 1980, as amended in 1981, 1986, and 1988. That Act prohibits the Secretary from providing financial assistance to substantially all illegal aliens as well as to most classes of aliens admitted for temporary purposes. The restriction applies to the Public and Indian Housing programs, the Section 8 Housing Assistance Payments programs, the Rent Supplement program, the Section 236 program, and the Section 235 homeownership assistance program.

This rule will replace the rule published on April 1, 1986, which was not made effective, but has been withdrawn. This new rule will provide that alien status must be verified with the Immigration and Naturalization Service by the entity responsible for tenant selection (or for approval of a Section 235 mortgage application).

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Additional Information:

ADDITIONAL CONTACT PERSON (Public and Indian Housing):

Edward Whipple, Director, Rental and Occupancy Branch, Office of Public Housing, (202) 426-0744

Agency Contact: James J. Tahash, Director, Program Planning Division, Office of Multifamily Hsg. Management, Department of Housing and Urban Development, Office of Housing, 202 426-3944

RIN: 2501–AA83

939. ● IMPLEMENTATION OF SEC. 165 OF THE HCD ACT OF 1987–SOCIAL SECURITY RULE (S-4-88; FR-2501)

Legal Authority: 42 USC 3543

CFR Citation: 24 CFR 200; 24 CFR 215; 24 CFR 221; 24 CFR 236; 24 CFR 290; 24 CFR 750; 24 CFR 813; 24 CFR 840; 24 CFR 841; 24 CFR 850; 24 CFR 880; 24 CFR 881; 24 CFR 882; 24 CFR 883; 24 CFR 885; ...

Legal Deadline: None

Abstract: This proposed rule would implement section 165 of the HCD Act of 1987 by providing for required disclosure of social security numbers by certain HUD program users, including applicants, managing principals, contractors, corporate officers, and other officials involved in HUD's FHA mortgage and loan insurance programs, rental assistance programs, and public housing programs.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
NPRM Comment Period End	11/00/88	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Edward Murphy, Associate General Counsel, for Legislation and Regulations, Department of Housing and Urban Development, Office of the General Counsel, 202 755-7963

RIN: 2501–AA72

940. ● AMENDMENT TO THE MCKINNEY ACT OF 1987 (S-6-88; FR-2582)

Legal Authority: Not yet determined

CFR Citation: 24 CFR 578

Legal Deadline: NPRM, Statutory, 00/00/00.
The Act, when approved, is expected to contain deadlines similar to those

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contained in earlier baseless legislation.

Abstract: The rule would revise the Emergency Shelter Grant Program rule 24 CFR 576 as necessary to implement certain changes in a currently pending bill, the Omnibus McKinney Homeless Assistance Act of 1988. The rule will cover miscellaneous changes to the Comprehensive Homeless Assistance Plan (CHAP) requirements and to the Emergency Shelter Grants Program (ESG).

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: James R. Broughman, Director, Entitlement Cities Division, Office of Block Grant Assistance, Department of Housing and Urban Development, Office of Community Planning and Development, 202 755-5977

RIN: 2501–AA74

931. DISALLOWANCE OF LEGAL FEES; LITIGATION CONTROLS FOR HUD ASSISTANCE RECIPIENTS (S-7-88; FR-2134)

Legal Authority: 42 USC 1437g

CFR Citation: 24 CFR 18

Legal Deadline: None

Abstract: This proposed rule will declare HUD policy regarding PHA legal expenses for litigation against HUD and prescribe limited litigation reporting procedures for HUD assistance recipients.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Nancy Chisholm, Director, Office of Policy, Department of Housing and Urban Development, Office of the Secretary, 202 755-6713

RIN: 2501–AA75

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)
Office of the Secretary (HUDSEC)

Final Rule Stage

932. ADMINISTRATIVE CLAIM: IMPLEMENTING CERTAIN PROVISIONS OF THE DEBT COLLECTION ACT OF 1982 (S-10-86; FR-1644)

Legal Authority: 42 USC 3711; 42 USC 3717; 42 USC 3535(d)

CFR Citation: 24 CFR 17

Legal Deadline: None

Abstract: This rule would make final an interim rule published in 1984, implementing the administrative offset and salary offset provisions of the Debt Collection Act of 1982.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/14/84	49 FR 32346
Final Action	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: Previously listed as 2535-AA09. Includes: ADM-1-82.

Agency Contact: Samuel B. Rothman, Attorney Advisor, Office of Program Enforcement, Department of Housing and Urban Development, Office of the General Counsel, 202 755-7184

RIN: 2501–AA55

933. DEBARMENT SUSPENSION AND LIMITED DENIAL OF PARTICIPATION—ALL- CASH SALES EXCEPTION (S-4-87; FR-2356)

Legal Authority: 42 USC 3535(d)

CFR Citation: 24 CFR 24

Legal Deadline: None

Abstract: This interim rule contains provisions of the common rule on Nonprocurement Debarment and Suspension which HUD could not adopt at the time that rule was published because of statutory requirements for congressional pre-publication review. These provisions relate to the application of debarment and suspension to foreign governments and organizations. The interim rule also deletes the exception for all cash sales at 24 CFR 24. The exception is being removed as a response to fraudulent practices experienced by the Department.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/10/88	53 FR 30049
Interim Final Rule Effective	10/01/88	53 FR 30049
Interim Final Rule Comments Due	10/11/88	53 FR 30049
Final Action	02/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Patricia Black, Assistant General Counsel for Inspector General & Admin Proceedings, Department of Housing and Urban Development, Office of the General Counsel, 202 755-7200

RIN: 2501–AA60

934. ENVIRONMENTAL REVIEW PROCEDURES - RENTAL REHABILITATION AND HOUSING DEVELOPMENT GRANT PROGRAM (S-5-84; FR-1985)

Legal Authority: 42 USC 1437o(i); 42 USC 5304(f)

CFR Citation: 24 CFR 58

Legal Deadline: None

Abstract: This agenda item makes final two current interim rules. These rules provide policies and procedures by which assisted communities and participating States discharge Federal environmental review responsibilities. They also streamline and reduce environmental requirements. They include: (1) an expanded listing of block grant activities and projects exempt or categorically excluded from the NEPA requirements; (2) a definitive list of related statutes and authorities that must be observed by grant recipients for the release of block grant funds as required by HUD legislation; and (3)

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additional provisions needed to conform with and implement innovative measures included in the HUD Amendments of 1981, such as the State-administered block grant program for small cities and the assumption of the environmental oversight responsibilities by States; and (4) (CONT)

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/07/84	49 FR 23610
Interim Final Rule Effective	07/31/84	49 FR 23610
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ABSTRACT CONTD: provisions for extending and adopting the environmental procedures, including historic preservation requirements, to the programs established by title III of the Housing and Urban-Rural Recovery Act of 1983.

Includes: RIN 2506-AA05 (CPD-21-81; FR-1027)

Agency Contact: Charles E. Thomsen, Department of Housing and Urban Development, Office of Community Planning and Development, Office of Environmental and Energy, Environmental Management Division, 202 755-6011

RIN: 2501–AA25

935. ● INSURANCE OF PRICE LEVEL ADJUSTED MORTGAGES (INDEXED MORTGAGES) (S-5-86; FR-2518)

Legal Authority: 12 USC 1715z to 10

CFR Citation: 24 CFR 203; 24 CFR 220. 24 CFR 221; 24 CFR 234; 24 CFR 235

Legal Deadline: None

Abstract: This rule provides for the insurance of Price Level Adjusted Mortgages (PLAMs) which are intended to increase the availability of homeownership opportunities for homebuyers while protecting the FHA against default exposure.

Timetable:

Action	Date	FR Cite
NPRM	06/04/84	49 FR 23063
NPRM Comment Period End	08/03/84	49 FR 23063
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Shamsun Dosky, Attorney-Advisor, Department of Housing and Urban Development, Office of the General Counsel, 202 755-7055

RIN: 2501–AA73

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)
Office of the Secretary (HUDSEC)

Completed Actions

936. FREEDOM OF INFORMATION REFORM ACT OF 1986—FEE SCHEDULE AND FEE WAIVER REGULATIONS (S-6-87; FR2362)

CFR Citation: 24 CFR 15.14; 24 CFR 15.15; 24 CFR 15.16; 24 CFR 15.17; 24 CFR 15.18; 24 CFR 15.21; 24 CFR 15.31; 24 CFR 15.32; 24 CFR 15.33; 24 CFR 15.41; 24 CFR 15.42; 24 CFR 2002

Completed:

Reason	Date	FR Cite
Final Action	09/27/88	53 FR 37546
Final Action Effective	09/00/00	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: David D. White 202 755-7137

RIN: 2501–AA62

937. SUSPENSION AND DEBARMENT (S-2-79; FR-1676)

Significance: Agency Priority

CFR Citation: 24 CFR 24

Completed:

Reason	Date	FR Cite
Final Action	05/26/88	53 FR 19161
Final Action Effective	10/01/88	53 FR 19161

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Patricia Black 202 755-7200

RIN: 2501–AA05

938. ADMINISTRATIVE REMEDIES FOR FALSE CLAIMS AND STATEMENTS (S-2-87; FR-2310)

Significance: Agency Priority

CFR Citation: 24 CFR 28

Completed:

Reason	Date	FR Cite
Final Action	06/24/88	53 FR 24000
Final Action Effective	08/10/88	53 FR 24000

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Patricia M. Black 202 755-7200

RIN: 2501–AA58

939. LEAD-BASED PAINT HAZARD ELIMINATION (S-1-88; FR-2447)

CFR Citation: 24 CFR 35; 24 CFR 200; 24 CFR 510; 24 CFR 511; 24 CFR 570; 24 CFR 575; 24 CFR 576; 24 CFR 590; 24 CFR 840; 24 CFR 881; 24 CFR 882; 24 CFR 905; 24 CFR 965; 24 CFR 968

Completed:

Reason	Date	FR Cite
Final Action	06/06/88	53 FR 20790
Final Action Effective	06/06/88	53 FR 20790

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Garth Rieman 202 755-3532

RIN: 2501–AA68

940. UNIFORM RELOCATION ACT AMENDMENTS OF 1987 (S-3-88; FR-2357) (FORMERLY CPD-3-87)

CFR Citation: 24 CFR 0042

Completed:

Reason	Date	FR Cite
End Review - DOT is lead agency for the final rule	09/19/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

HUD—HUDSEC

Completed Actions

Agency Contact: R. Harold Hunter
202 755-6336

RIN: 2501–AA70

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)
Office of Housing (OH)

Prerule Stage

841. ELIGIBILITY REQUIREMENTS—MORTGAGEE APPROVAL (H-13-88; FR-2453)

Legal Authority: 12 USC 1709

CFR Citation: 24 CFR 203.2

Legal Deadline: None

Abstract: This rule would clarify HUD requirements for approval of partnerships as mortgagees for mortgage insurance programs. The current rule only mentions limited partnerships with one general partner. The new rule would explain approval conditions for other limited partnerships and general partnerships.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Sandra Allison, Dir., Lender Approval & Recertification Div., Department of Housing and Urban Development, Office of Housing, 202 755-6824

RIN: 2502–AE37

843. FLEXIBLE SUBSIDY PROGRAM; 1988 AMENDMENTS (H-50-84)

Legal Authority: 12 USC 1715z to 1a

CFR Citation: 24 CFR 219

Legal Deadline: None

Abstract: Implements section 217 of the Housing and Urban Rural Recovery Act of 1983.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: James J. Tahash, Director, Program Planning Division, Department of Housing and Urban Development, Office of the General Counsel, Office of Multifamily Housing Management, 202 426-3870

RIN: 2502–AC31

843. MANUFACTURED HOME CONSTRUCTION & SAFETY CONSTRUCTION ON SIDING & ROOFING MATERIALS & APPLICATION CRITERIA (H-6-87; FR3327)

Significance: Regulatory Program

Legal Authority: 42 USC 5403

CFR Citation: 24 CFR 3280

Legal Deadline: None

Abstract: This Advance Notice of Proposed Rulemaking requests public comment on those portions of the Manufactured Home Construction and Safety Standards (Standards) that are applicable to the materials and application criteria for external coverings. The Department is concerned that certain siding and roofing materials, more common to conventional-type construction may not be compatible in important aspects with typical manufactured home construction. Consumer complaint information indicates that the current Standards do not address certain important problems areas.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Mark W. Holman, Acting Director, Manufactured Hsg. &, Construction Standards Division, Department of Housing and Urban Development, Office of Housing, 202 755-6590

RIN: 2505–AE08

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)
Office of Housing (OH)

Proposed Rule Stage

844. ● CAPITAL IMPROVEMENTS ASSISTANCE–SECTION 201 OF THE HCD AMENDMENTS OF 1978 (H-34-88; FR-2541)

Legal Authority: 12 USC 1715z-1a

CFR Citation: 00 CFR 000

Legal Deadline: None

Abstract: This rule would implement section 185 of the Housing & Community Act of 1987 (P. Law 100-242), which permits HUD to make loans for capital improvements to multifamily housing projects under specified terms and conditions set out in the statute.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
NPRM Comment Period End	01/00/89	
Final Action	04/00/89	
Final Action Effective	05/00/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: James J. Tahash, Director, Planning & Procedures Division, Department of Housing and Urban Development, Office of Housing, 202 426-3944

RIN: 2502–AE55

HUD—OH

Proposed Rule Stage

845. ● COINSURANCE OF EQUITY LOANS (H-37-88, FR2560)

Legal Authority: PL 100-242

CFR Citation: 24 CFR 30; 24 CFR 221; 24 CFR 236; 24 CFR 241; 24 CFR 248

Legal Deadline: None

Abstract: This rule implements the Preservation of Low Income Housing Act adopted by Congress to avoid the irreplaceable loss of income housing and irrevocable displacement of tenants due to the prepayment of FHA-insured mortgages covering subsidized projects. Pursuant to this enactment, the Secretary may offer the owner of an eligible multifamily project several inducements not to prepay the mortgage. One such inducement, provided by these regulations, is the insurance of an equity loan which the owner of the project may use as a vehicle to capture a portion of the project's appreciation.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: James Hammernick, Director, Multifamily Development, Department of Housing and Urban Development, Office of Housing, 202 755-6306

RIN: 2502–AE60

846. AUTHORIZE ADDITIONAL TYPES OF LOANS FOR DIRECT ENDORSEMENT PROCESSING (H-4-88; FR-2433)

Significance: Agency Priority

Legal Authority: 12 USC 1709; 12 USC 1715(b)

CFR Citation: 24 CFR 200; 24 CFR 203

Legal Deadline: None

Abstract: This rule proposes to make the following types of mortgages eligible for processing through the direct endorsement program as (1) those insured under sections 222 and 203(k) and (2) those insured pursuant to section 238(c) of the National Housing Act.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Stephen Martin, Dir., Office of Insured Single Family Hsg., Department of Housing and Urban Development, Office of Housing, 202 755-6648

RIN: 2502–AE48

847. RETENTION PERIOD FOR MORTGAGEE SINGLE FAMILY CLAIM RECORDS (H-61-84)

Legal Authority: 42 USC 3535(d)

CFR Citation: 4 CFR 103

Legal Deadline: None

Abstract: Under the new Single Family Claims System, the mortgagee is not required to provide documentation to support the fiscal data reported or entered on the new claim form. Instead, the mortgagee will be randomly audited; at that time, the mortgagee will be expected to produce all the supporting receipts, payment ledger records, etc.

Regulations will be changed to specify the retention period and the required file contents for records supporting single family claim payments and mortgagee reviews.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Undetermined

Agency Contact: John J. Coonts, Deputy Director, Office of Insured Single Family Housing, Department of Housing and Urban Development, Office of Housing, 202 755-3946

RIN: 2502–AC50

848. PENALTY FOR LACK OF DOCUMENTATION (H-90-84)

Legal Authority: 42 USC 3535(d)

CFR Citation: 24 CFR 203

Legal Deadline: None

Abstract: The new single family process provides for "random audits" of mortgagees' records when single family claims for insurance benefits are filed with HUD. During the audit, the mortgagee will be required to provide specific supporting documentation. When the mortgagee cannot produce the required documentation, HUD will penalize the mortgagee for the amount not supported plus an amount representing the current interest rate on that unsupported amount from the date of payment.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Ann M. Sudduth, Chief, Insured Servicing Branch, Single Family Servicing Division, Department of Housing and Urban Development, Office of Housing, 202 755-7330

RIN: 2502–AC54

849. MORTGAGEE CHARGES FOR SERIOUS TITLE DEFECTS (H-25-87; FR-2364)

Legal Authority: 12 USC 1710; 12 USC 1715(b); 12 USC 1709

CFR Citation: 24 CFR 203.366; 24 CFR 203.403

Legal Deadline: None

Abstract: Proposed rule is intended to impose graduated charges on mortgagees who convey FHA-insured properties to HUD with serious title defects. These charges would increase with the length of time required by the mortgagee to rectify the defects.

Exploring the base on which the graduated charges will be calculated; i.e., whether to use a percentage of the total insured claim or materials averages of daily holding costs.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Jacqueline Campbell, Dir., Single Family Property Disposition, Division, Department of Housing and Urban Development, Office of Housing, 202 755-5740

RIN: 2502-AE11

950. EMERGENCY HOMEOWNERSHIP COUNSELING (H-20-88; FR-2460) 1987 HCD ACT

Legal Authority: PL 100-242, Sec 169

CFR Citation: 24 CFR 203

Legal Deadline: None

Abstract: This rule would implement sec. 169(b) of the Housing and Community Development Act of 1987 authorizing HUD to make grants to nonprofit organizations to provide homeownership counseling to eligible homeowners.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Stephen Martin, Dir., Office of Insured Single Family Hsg., Department of Housing and Urban Development, Office of Housing, 202 755-3946

RIN: 2502-AE21

951. SINGLE FAMILY MORTGAGE INSURANCE - OCCUPANT AND INVESTOR MORTGAGORS (H-15-88; FR-2458) 1987 HCD ACT

Legal Authority: 12 USC 1709; 12 USC 1715b

CFR Citation: 24 CFR 203; 24 CFR 213; 24 CFR 221; 24 CFR 222; 24 CFR 226; 24 CFR 233; 24 CFR 234; 24 CFR 235

Legal Deadline: None

Abstract: This rule would implement section 406 of the Housing & Community Development Act of 1987. Section 406 authorizes HUD (1) to insure single family mortgages under title II of the National Housing Act, or (2) to approve a substitute mortgagor for single family mortgages insured under title II, only if the mortgagor is to occupy the dwelling as a principal or secondary residence, as determined by HUD. Section 406 provides that this occupancy requirement only applies if the mortgage involve a principal obligation that exceeds 75 percent of the loan-to-value or equivalent calculation under the insuring authority involved. The action exempts from the occupancy requirement, mortgagors under the Rehabilitation Loan program under section 203(k) of the National Housing Act, and certain public entity, nonprofit, serviceperson, and other mortgagors under various National Housing Act activities.

Timetable:

Action	Date	FR Cite
NPRM	10/03/88	53 FR 38844
NPRM Comment Period End	12/02/88	
Final Action	02/00/89	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Morris Carter, Dir., Single Family Development Division, Department of Housing and Urban Development, Office of Housing, 202 755-6720

RIN: 2502-AE40

952. DEADLINE FOR FILING SINGLE FAMILY SUPPLEMENTAL CLAIMS (H-26-88; FR-2457)

Legal Authority: 12 USC 1710

CFR Citation: 24 CFR 203.400

Legal Deadline: None

Abstract: At present, there is no regulatory control over the time period that mortgagees can submit applications for supplemental insurance benefits. The Department has instructed lenders to file these supplemental claim within one year of the date of the original insurance settlement. This information has so far been contained in the Instructions for Single Family Application for Insurance Benefits, Form HUD-27011. This rule will formalize the requirement that lenders follow this one-year filing period for supplemental claims.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Robert E. Falkenstein, Jr., Director, Single Family Servicing Div., Department of Housing and Urban Development, Office of Housing, 202 755-6672

RIN: 2502-AE51

953. ACTION TO REDUCE LOSSES UNDER FHA SINGLE FAMILY MORTGAGE INSURANCE PROGRAM (H-28-88; FR-2491)

Legal Authority: 12 USC 1715b; 12 USC 1735f(1); PL 100-242, Sec 407

CFR Citation: 24 CFR 203

Legal Deadline: None

Abstract: This rule proposes to implement section 407 of the Housing and Community Development Act of 1987. Where, as a result of an annual review, the Secretary finds a mortgagee with a higher than normal default and claim rate, the Secretary shall require the mortgagee to submit a report with a plan for corrective action. Failure to submit the report or complete the plan for corrective action within the timeframe required may be cause for suspension of the mortgagee from participation in FHA programs.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
NPRM Comment Period End	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: James Nistler, Deputy Asst. Sec. for Single Family Hsg., Department of Housing and Urban Development, Office of Housing, 202 755-6675

RIN: 2502-AE52

954. CLAIM PROCESSING ON DEFAULTED COINSURED SINGLE-FAMILY MORTGAGES (H-1-88; FR-2410)

Legal Authority: 12 USC 1715z-9

CFR Citation: 24 CFR 204.280; 24 CFR 204.281; 24 CFR 204.282; 24 CFR 204.283; 24 CFR 204.284; 24 CFR 204.292; 24 CFR 204.293; 24 CFR 204.294; 24 CFR 204.300; 24 CFR 204.301; 24 CFR 204.302

Legal Deadline: None

Abstract: The rule will modify the foreclosure and claim processing provisions for coinsured mortgages to conform them to the requirements of Part 203 to the effect that defaulted insured mortgagors must be considered for TMAP or assignment/forbearance assistance to avoid foreclosure.

Timetable:

Action	Date	FR Cite
NPRM	04/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Curtis Myron, Dep. Dir., Single Family Servicing Div., Office of Insured Single Family Housing, Department of Housing and Urban Development, Office of Housing, 202 755-6664

RIN: 2502-AE25

955. LIMITATION ON PREPAYMENT OF MORTGAGES ON MULTIFAMILY RENTAL HOUSING (H-54-84; FR-1952)

Significance: Regulatory Program

Legal Authority: 12 USC 1715z-15; PL 100-242, Sec 261

CFR Citation: 24 CFR 207; 24 CFR 221; 24 CFR 215; 24 CFR 886; 24 CFR 245; 24 CFR 277; 24 CFR 219; 24 CFR 231; 24 CFR 242; 24 CFR 244

Legal Deadline: None

Abstract: This rule would codify HUD policies for implementing section 250(a) and (b) of the National Housing Act, as added by section 433 of the Housing and Urban-Rural Recovery Act of 1983 and amended by section 261 of the Housing and Community Development Act of 1987. This rule would restrict prepayment of multifamily project mortgages whenever Secretary has prepayment approval responsibilities. Prepayment will not be approved unless project is no longer needed for lower income housing, tenants have been given notice and opportunity to comment, and a relocation assistance plan has been put in place. Similar restrictions will apply to termination of insurance. Where the Secretary is not responsible for approving prepayment and therefore cannot restrict it, priority will be given for additional section 8 and troubled project assistance in order to discourage prepayment. Additional requirements imposed on the prepayment of multifamily project mortgages by Title II, Subtitle B of the Housing and Community Development Act of 1987 are being implemented by separate rulemaking (FR-2450; H-10-88; RIN: 2502-AE34).

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Linda Gibbs, Director, Mortgage Insurance Accounting and Servicing, Department of Housing and Urban Development, Office of Housing, 202 755-2532

RIN: 2502-AD78

957. NEHEMIAH OPPORTUNITY GRANTS PROGRAM (H-22-88; FR-2478) 1987 HCD ACT

Significance: Regulatory Program

Legal Authority: PL 100-242, Sec 611

CFR Citation: 24 CFR 281

Legal Deadline: None

Abstract: This rule would implement the Nehemiah Housing Opportunity Grants Program. Under this program HUD would provide assistance to private nonprofit organizations in the form of grants. The nonprofit organizations receiving grants would use the assistance to provide loans to families purchasing homes constructed or substantially rehabilitated under the program.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
NPRM Comment Period End	12/00/88	

Small Entities Affected: None

Government Levels Affected: Local, Federal

Agency Contact: Morris Carter, Director, Single Family Development Div., Department of Housing and Urban Development, Office of Housing, 202 755-6720

RIN: 2502-AI45

958. MANUFACTURED HOME PROCEDURAL AND ENFORCEMENT REGULATIONS INTERPRETATIVE BULLETINS (H-31-87; FR-2390)

Legal Authority: 42 USC 5424

CFR Citation: 24 CFR 3282

Legal Deadline: None

Abstract: This proposed rule would amend the Manufactured Home Procedural and Enforcement Regulations in order to remove the issuance of Interpretative Bulletins from the rulemaking process. The purpose of this procedural modification is to promote efficiency in issuing Interpretative Bulletins so that important guidance can be provided to the manufactured housing industry in a timely manner.

Timetable:

Action	Date	FR Cite
NPRM	01/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Agency Contact: Mark W. Holman, Acting Director, Manufactured Housing &, Construction Standards Division, Department of Housing and Urban Development, Office of Housing, 202 755-5210

RIN: 2502-AE10

898. REVIEW OF APPLICATIONS FOR HOUSING ASSISTANCE AND ALLOCATION OF HOUSING ASSISTANCE FUNDS (I-10-84; FR-1996)

Legal Authority: 42 USC 1439

CFR Citation: 24 CFR 791

Legal Deadline: None

Abstract: The rule revises HUD's regulations for the allocation of housing assistance funds to conform with statutory changes made by the Housing and Urban-Rural Recovery Act of 1983. It contains an explicit description of the allocation formula, including some modifications to the factors making up the formula; deletes specific requirements on allocating funds in accordance with approved Housing Assistance Plans; and eliminates the requirements for local consultation in the allocation process. Part 791 would also be amended to consolidate local government submission requirements and HUD criteria for review of applications for housing.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Additional Information: Includes: H-4-81, FR-1512.

Agency Contact: Stephen Conley, Office of Housing Policy, Department of Housing and Urban Development, Office of Housing, 202 755-6454

RIN: 2503–AA75

900. CONFORMING SECTION 8 EXISTING CERTIFICATE REGULATION TO HOUSING VOUCHER FORMAT (H-2-87; FR-2254)

Significance: Regulatory Program

Legal Authority: 42 USC 1437f; PL 100-242, Sec 144; PL 100-242, Sec 145; PL 100-242, Sec 146; PL 100-242, Sec 147; PL 100-242, Sec 148; PL 100-242, Sec 149; PL 100-242, Sec 202

CFR Citation: 24 CFR 882

Legal Deadline: None

Abstract: This rule will revise the Section 8 Certificate Program regulations in Part 882 to conform them to the extent practicable to the closely-related Housing Voucher Program regulations in Part 887, to implement certain statutory amendments to the Program under the Housing and Community Development Act of 1987 and to propose certain revisions based on programmatic experience.

Timetable:

Action	Date	FR Cite
NPRM	05/00/89	

Small Entities Affected: None

Government Levels Affected: Local, State

Agency Contact: Madeline Hastings, Director, Existing Housing Division, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, Office of Housing, 202 755-6887

RIN: 2502–AD91

901. INTERPROGRAM TRANSFERS OF ASSISTED TENANTS (H-8-86; FR-2436)

Legal Authority: 42 USC 3535(d)

CFR Citation: 24 CFR 882; 24 CFR 887; 24 CFR 908; 24 CFR 950

Legal Deadline: None

Abstract: Because currently assisted tenants are unlikely to receive a Federal preference, the implementation of the Preference Rule (FR-1597) could have the effect of locking most public housing tenants in the public housing program, thereby denying them any opportunity they currently might have to move to the top of the waiting list for a Section 8 certificate or voucher. This virtually eliminates any possibility for the family to retain their assistance and also move closer to areas of better economic opportunity.

This proposed rule would allow a PHA to treat a currently assisted family's request for a transfer among the public housing, Section 8 certificate, and Housing Voucher programs it administers as an interprogram transfer rather than as a new admission.

This rule would complement the new provision in Sec. 146 of the Housing and Community Development Act of 1987 prohibiting a PHA in selecting families for assistance under Sec. 8, from excluding a family because the family resides in a public housing project.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: James J. Tahash, Dir., Planning and Procedures Division, Department of Housing and Urban Development, Office of Housing, 202 426-3944

RIN: 2502–AE32

903. LOANS FOR THE ELDERLY OR HANDICAPPED - HOUSING FOR THE HANDICAPPED (H-23-88; FR-2476) 1987 HCD ACT

Significance: Regulatory Program

Legal Authority: 12 USC 1701q

CFR Citation: 24 CFR 885

Legal Deadline: None

(HUD was directed to publish a NOFA to implement the program of Housing for nonelderly handicapped families not later than the expiration of the 120 day period following the date of (cont)

Abstract: Section 162 of the Housing and Community Development Act of 1987 authorizes a new type of assistance payments to be made to replace section 8 assistance payments made in connection with section 202 housing for the nonelderly handicapped. This rule would establish regulations for this program and modify existing Part 885 to exclude housing for the handicapped.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
NPRM Comment Period End	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LEGAL DEADLINE CONT: enactment of the 1987 Act, to the extent that amounts are approved in an appropriations act.)

Agency Contact: Margaret Milner, Office of Policy, Financial Management, and Administration, Department of Housing and Urban Development, Office of Housing, 202 755-6742

RIN: 2502–AE47

903. PROVISION OF SECTION 8 EXISTING HOUSING ASSISTANCE FOR PROJECTS AT FORECLOSURE SALES (H-3-88; FR-2158)

Significance: Agency Priority

Legal Authority: 42 USC 1437f; 12 USC 3708; 12 USC 3717; 12 USC 1713(k)

CFR Citation: 24 CFR 886; 24 CFR 27

Legal Deadline: None

Abstract: This proposed rule would amend Parts 886 and 27 to make Section 8 assistance available for projects sold at foreclosure sales and to propose any revisions or additions to HUD regulations that may be necessary to implement section 181 of the Housing and Community Development Act of 1987 and that require prior public comment.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: James J. Tahash, Director, Planning and Procedures Division, Department of Housing and Urban Development, Office of Housing, Office of Multifamily Housing Management, 202 426-3944

RIN: 2502–AD43

904. MISCELLANEOUS REVISIONS OF PART 886 (H-37-86; FR-2275)

Legal Authority: 42 USC 1437a; 42 USC 1437c; 42 USC 1437f

CFR Citation: 24 CFR 886.310; 24 CFR 886.330; 24 CFR 886.331; 24 CFR 886.334; 24 CFR 886.322; 24 CFR 886.333; 24 CFR 886.122

Legal Deadline: None

Abstract: This proposed rule would amend Part 886 which governs procedures for additional assistance for projects with HUD-insured or HUD-held mortgages (Subpart A) and the Section 8 housing assistance payments program for the disposition of HUD owned projects (Subpart C). This rule would (1) modify the maximum monthly rent provisions of Subpart C to reflect Section 102(b)(7) of the Housing and Community Development Amendments of 1984; (2) amend the work write-up, cost estimate and cost certification provisions governing the rehabilitation of projects under Subpart C and (3) make other miscellaneous changes to Part 886.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: Federal

Additional Information: This proposal was originally included as part of FR-1950.

Agency Contact: James Tahash, Director, Program Planning Division, Department of Housing and Urban Development, Office of Housing, 202 426-3970

RIN: 2502–AD69

905. LAND REGISTRATION (H-21-86)

Legal Authority: 15 USC 1701

CFR Citation: 24 CFR 1710

Legal Deadline: None

Abstract: This rule would adjust the reporting and registering requirements for land registration and adjust the fee payment procedures.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Lionel Cabrera, Chief, Land Sales Policy Examination Branch, Department of Housing and Urban Development, Office of Housing, 202 755-6924

RIN: 2502–AD54

906. AMENDMENTS TO INTERSTATE LAND SALES REGISTRATION (H-47-86; FR-2303)

Significance: Agency Priority

Legal Authority: 15 USC 1718; 42 USC 3535(d)

CFR Citation: 24 CFR 1710

Legal Deadline: None

Abstract: The Department is proposing to amend the regulatory exemption section of its regulations to provide further relief from registration requirements with no loss in consumer protection.

Timetable:

Action	Date	FR Cite
NPRM	08/12/88	53 FR 30443
NPRM Comment Period End	10/11/88	53 FR 30443
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: John L. Brady, Director, Interstate Land Registration Division, Department of Housing and Urban Development, Office of Housing, 202 755-6910

RIN: 2502–AD61

907. MANUFACTURED HOME CONSTRUCTION AND SAFETY STANDARDS - FORMALDEHYDE REGULATIONS (H-10-87; FR-2332)

Significance: Regulatory Program

Legal Authority: 42 USC 5403

CFR Citation: 24 CFR 3280.308; 24 CFR 3280.309; 24 CFR 3280.406

Legal Deadline: None

Abstract: Medium density fiberboard is not currently covered by the standards but is a major emitter of formaldehyde. It is used extensively in cabinet construction and can cause problems similar to particleboard or plywood, materials already regulated by the standards.

Second, the Department has received a number of complaints concerning the language and posting requirements of the health notice. Consideration will be given to different notice requirements if the manufactured home meets more than the minimum standard of formaldehyde levels.

Third, the current rule requires recertification of plywood and particleboard following treatment with a product containing formaldehyde.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Mark W. Holman, Acting Director, Manufactured Housing &, Construction Standards Division, Department of Housing and Urban

HUD—OH — Proposed Rule Stage

Development, Office of Housing, 202 755-6310

RIN: 2502-AH82

966. NOTICE OF FORMALDEHYDE; MANUFACTURED HOME CONSTRUCTION AND SAFETY (H-23-87; FR2340)

Legal Authority: 42 USC 5403

CFR Citation: 24 CFR 3280.309

Legal Deadline: None

Abstract: This rule would revise the Health Notice on formaldehyde emissions required under the Manufactured Home Construction and Safety Standards at 24 CFR 3280.309. The primary revisions would involve the shortening of the background information in the Notice on health risks arising from formaldehyde and engineering options to reduce formaldehyde levels, and the addition of an option for manufacturers concerning the location of the Notice.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Mark W. Holman, Acting Director, Manufactured Housing &. Construction Standards Division, Department of Housing and Urban Development, Office of Housing, 202 755-6590

RIN: 2502-AE21

969. MANUFACTURED HOUSING ENERGY CONSERVATION STANDARDS (H-23-88; FR-2497) 1987 HCD ACT

Legal Authority: PL 100-242, Sec 568

CFR Citation: 24 CFR 3280.506

Legal Deadline: None

Abstract: The regulation would revise the Department's thermal energy standards to comport with section 568's requirements that the Department's standards be "cost-effective energy conservation standards designed to ensure the lowest total of construction and operating costs."

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Mark Holman, Director, Manufactured Housing and, Construction Standards Division, Department of Housing and Urban Development, Office of Housing, 202 755-6310

RIN: 2502-AE53

970. MANUFACTURED HOME PROCEDURAL AND ENFORCEMENT SYSTEM (H-40-86; FR-2278)

Significance: Regulatory Program

Legal Authority: 42 USC 5403

CFR Citation: 24 CFR 3282

Legal Deadline: None

Abstract: This rule would propose revisions to HUD enforcement regulations at 24 CFR Part 3282 to improve the effectiveness of Production Inspection Primary Inspection Agencies (IPIAs).

Timetable:

Action	Date	FR Cite
ANPRM	05/08/87	52 FR 17411
NPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Mark W. Holman, Acting Director, Manufactured Housing &. Construction Standards Division, Department of Housing and Urban Development, Office of Housing, 202 755-6310

RIN: 2502-AD60

971. MANUFACTURED HOME DESIGN INSPECTION SYSTEM (H-41-86; FR-2279)

Significance: Regulatory Program

Legal Authority: 42 USC 5403

CFR Citation: 24 CFR 3282

Legal Deadline: None

Abstract: This proposed rule will deregulate the current design inspection system on manufactured homes and substitute a procedure for manufacturer certification, among other revisions.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Mark W. Holman, Acting Director, Manufactured Housing &. Construction Standards Division, Department of Housing and Urban Development, Office of Housing, 202 755-6310

RIN: 2502-AD61

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)
Office of Housing (OH)

Final Rule Stage

972. TENANT PARTICIPATION IN MULTIFAMILY PROJECTS (H-11-88; FR-2451) 1987 HCD ACT

Legal Authority: PL 100-242, Sec 183

CFR Citation: 00 CFR 000

Legal Deadline: None

Abstract: This rule provides for the applicability of the tenant participation requirements of section 202 of the HCDA of 1978 to section 202 elderly and handicapped projects. The rule also removes the Secretary's authority not to provide for tenant participation in certain owner actions and authorizes the application of the tenant participation requirements in the Secretary's proposal to sell a multifamily housing project.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

HUD—OH — Final Rule Stage

Government Levels Affected: Undetermined

Agency Contact: James J. Tahash, Dir., Planning and Procedures Division, Department of Housing and Urban Development, Office of Housing, 202 426-3944

RIN: 2502-AE35

973. HODAG 1987 ACT AMENDMENTS (H-19-88; FR-2450)

Legal Authority: PL 100-242, Sec 151(a)-(e)

CFR Citation: 00 CFR 000

Legal Deadline: None

Abstract: This final rule would amend existing provisions and add new provisions implementing section 151 of the HCDA of 1987.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Jessica Franklin, Director, Development Grant Division, Department of Housing and Urban Development, Office of Housing, 202 755-6143

RIN: 2502-AE43

974. ● SECTION 8 CERTIFICATE PROGRAM PROJECT-BASED ASSISTANCE (H-30-88; FR-2502)

Significance: Agency Priority

Legal Authority: 42 USC 1437f

CFR Citation: 00 CFR 000

Legal Deadline: None

Abstract: Section 148 of the Housing and Community Development Act of 1987 amended section 8(d)(2) of the United States Housing Act of 1937 to require the Department to permit a PHA to attach not more than 15 percent of the section 8 Existing Housing Program assistance to existing structures if the owner agrees to rehabilitate the structure other than with assistance under the 1937 Act. Section 8(d)(2) of the 1937 Act also permits the attachment of more than 15 percent of such assistance if HUD and the PHA agree. This rule would implement these provisions by establishing a new Subpart G to 24 CFR Part 882 for project-based certification.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Lawrence Goldberger, Director, Office of Elderly and, Assisted Housing, Department of Housing and Urban Development, Office of Housing, 202 755-6728

RIN: 2502-AE56

975. APPLICABILITY OF MINIMUM PROPERTY STANDARDS MANUFACTURED HOMES UNDER TITLE II OF THE NATIONAL HOUSING ACT (H-62-82; FR-1578)

Legal Authority: 42 USC 3535(d)

CFR Citation: 24 CFR 200; 24 CFR 203

Legal Deadline: None

Abstract: Interim rule permits insured financing of properties with manufactured homes under Title II of the National Housing Act, as a means of broadening affordable home ownership opportunities. To qualify for such financing, the manufactured homes, foundations and sites must meet prescribed standards to insure adequate security for HUD-insured mortgages. By such action homeowners can expect reduced housing cost without sacrificing housing quality or durability.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/24/83	48 FR 7731
Final Action	01/00/89	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Morris Carter, Director, Single Family Development, Division, Department of Housing and Urban Development, Office of Housing, 202 755-6700

RIN: 2502-AB24

976. MINIMUM PROPERTY STANDARDS (MPS) FOR HOUSING - WATER SUPPLY SYSTEMS (H-31-88; FR-2355)

Legal Authority: 12 USC 1701 to 1715z-10

CFR Citation: 24 CFR 200

Legal Deadline: None

Abstract: This proposed rule would amend the regulation relating to the applicability of the chemical and bacteriological standards of local health authorities to HUD-insured one- and two-family dwellings. This proposal provides that in the absence of local standards, those of the appropriate State agency would apply. This revision would simplify the requirements for water supply systems while furthering the Department's policy of relying on acceptable State and local building codes.

Timetable:

Action	Date	FR Cite
NPRM	06/06/87	52 FR 21596
NPRM Comment Period End	08/07/87	52 FR 21596

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Mark W. Holman, Acting Director, Manufactured Housing &. Construction Standards Division, Department of Housing and Urban Development, Office of Housing, 202 755-6310

RIN: 2502-AD64

977. RESTRICTIONS ON ALL-CASH SALES (AMENDMENT TO PART 200) (H-30-87; FR-2374)

Legal Authority: 12 USC 1703; 12 USC 1715b

CFR Citation: 24 CFR 200

Legal Deadline: None

Abstract: This interim rule is intended to prohibit assumptors of a mortgage, or other persons purchasing property subject to a mortgage, on which an insured claim has been paid by the Department, from participating in a HUD "all cash public sale."

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HUD—OH

Final Rule Stage

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: John J. Coonts, Deputy Director, Office of Single Family, Housing, Department of Housing and Urban Development, Office of Housing, 202 755-3046

RIN: 2502–AE12

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976. AMENDMENTS TO THE TITLE I REGULATIONS (H-10-87; FR3370)

Legal Authority: 12 USC 1703

CFR Citation: 24 CFR 201

Legal Deadline: None

Abstract: This rule would involve the following revisions to the Title I loan insured program:(1) a requirement that affected new manufactured homes meet the thermal energy requirements in HUD's Minimum Property Standards; (2) restrictions on the use of loan proceeds for the acquisition of furniture; (3) a reduction in the length of hazard insurance coverage that can be financed; (4) an increase in the property improvement loan amount on which a security interest is required; and (5) the collection of a higher percentage of the loan insurance premium in the early years when the risks of default are greatest.

Timetable:

Action	Date	FR Cite
NPRM	08/15/88	53 FR 30697
NPRM Comment Period End	09/29/88	53 FR 30697
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Robert J. Coyle, Director, Title I Insurance Division, Department of Housing and Urban Development, Office of Housing, 202 755-6880

RIN: 2502–AE15

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979. HUD INSPECTIONS - NO DUTY OF CARE (H-1-88; FR-2025)

Legal Authority: 42 USC 3535(d)

CFR Citation: 24 CFR 203; 24 CFR 234

Legal Deadline: None

Abstract: Proposed regulation to protect HUD against suits brought under the Federal Tort Claims Act claiming negligent inspection of FHA-insured properties.

Timetable:

Action	Date	FR Cite
NPRM	04/13/88	53 FR 12431
NPRM Comment Period End	06/13/88	53 FR 12431

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: John J. Coonts, Deputy Director, Office of Insured Single, Family Housing Division, Department of Housing and Urban Development, Office of Housing, 202 755-3046

RIN: 2502–AC82

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980. TEMPORARY MORTGAGE ASSISTANCE PAYMENTS (TMAP) AND ASSIGNMENTS TO HUD (H-44-85; FR-2147)

Significance: Agency Priority

Legal Authority: 12 USC 1715b; 12 USC 1715z

CFR Citation: 24 CFR 203; 24 CFR 204

Legal Deadline: None

Abstract: Additional amendments to TMAP and Assignment rule are needed to reflect change in TMAP interest rate made by section 428 of the Housing and Community Development Act of 1987 and to assure that mortgagees inform mortgagors of the possible right to TMAP or assignment before they accept a deed in lieu of foreclosure from the mortgagor. (This rule was identified in earlier Agendas as RIN: 2502-AB79; H-29-81; FR-1415.)

Timetable:

Action	Date	FR Cite
NPRM	01/03/86	51 FR 216
NPRM Comment Period End	03/04/86	51 FR 216
Final Action	09/05/87	52 FR 6906
Final Action Effective	04/00/89	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Stephen Martin, Director, Office of Insured Single, Family Housing, Department of Housing and Urban Development, Office of Housing, 202 755-3046

RIN: 2502–AD34

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981. CRITERIA FOR ACCEPTABILITY OF INSURED 10-YEAR PROTECTION PLANS (H-28-86; FR-2036)

Significance: Agency Priority

Legal Authority: 12 USC 1709, Sec 203, 211; 12 USC 1715b; 42 USC 3535(d)

CFR Citation: 24 CFR 203

Legal Deadline: None

Abstract: This proposed rule would revise the existing administrative criteria for acceptability of insured 10-year protection Plans (Plans). The Department began this proceeding by publishing a Notice informing the public that HUD intended to revise the criteria. This rule describes, among other things, criteria related to Plan acceptability, insurance and financial backing, Plan coverage, and methods for determining Plan obligations.

HUD acceptance of these Plans is a prerequisite to reduced inspection requirements on a property accepted for mortgage insurance before the commencement of construction. It is also a prerequisite to high loan-to-value insured financing for existing one-to-four family dwellings that are less than one year old and that were not approved and inspected by HUD or the Veterans Administration before the start of construction.

Timetable:

Action	Date	FR Cite
NPRM	08/10/87	52 FR 21961
NPRM Comment Period End	08/10/87	52 FR 21961
Final Action	10/00/88	

Public Comments

Notice of Solicitation 11/14/84 (49 FR 45075)

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Stephen Martin, Director, Office of Insured, Single Family Housing, Department of Housing and Urban Development, Office of Housing, 202 755-3046

RIN: 2502–AD05

HUD—OH

Final Rule Stage

982. DEREGULATION OF LOAN ORIGINATION FEES IN FHA SINGLE FAMILY HOUSING (H-18-87; FR-2333)

Legal Authority: 42 USC 3535(d)

CFR Citation: 24 CFR 203

Legal Deadline: None

Abstract: Origination fees in the FHA single family program will be deregulated, and the methods for determining mortgagor income would be revised.

Timetable:

Action	Date	FR Cite
NPRM	04/29/88	53 FR 15408
NPRM Comment Period End	06/28/88	53 FR 15408

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Agency Contact: Morris E. Carter, Director, Single Family Development Div., Department of Housing and Urban Development, Office of Housing, 202 755-6720

RIN: 2502–AD86

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983. ALLEGANY RESERVATION OF THE SENECA NATION (H-32-87; FR-2362)

Legal Authority: 12 USC 1709

CFR Citation: 24 CFR 203

Legal Deadline: None

Abstract: This rule implements Public Law 99-801. The law authorizes the Secretary of HUD, notwithstanding any contrary requirements in the National Housing Act, to insure single family mortgages covering certain properties located on lands within the Allegany Reservation of the Seneca Indian Nation.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/21/87	52 FR 48197
Interim Final Rule Comments	02/19/88	52 FR 48197
Interim Final Rule Effective	03/28/88	53 FR 9868
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: Local, Federal

Agency Contact: Stephen Martin, Director, Office of Insured Single, Family Housing, Department of Housing and Urban Development, Office of Housing, 202 755-3046

RIN: 2502–AE09

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984. ● DISCLOSURE OF ANNUAL RATE CHANGES OF ADJUSTABLE RATE MORTGAGES (H-25-88; FR-2542)

Legal Authority: 12 USC 1709; 12 USC 1715b

CFR Citation: 24 CFR 203

Legal Deadline: None

Abstract: This rule will reduce the minimum day requirement HUD must adhere to when it makes effective any annual adjustment to a mortgagor's monthly payment on an adjustable rate mortgage.

Timetable:

Action	Date	FR Cite
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Robert Falkenstein, Director, Single Family Servicing Division, Department of Housing and Urban Development, Office of Housing, 202 755-6672

RIN: 2502–AE57

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985. ● REVISIONS RELATING TO FULL INSURANCE AND COINSURANCE OF EXISTING COOPERATIVES (H-31-88; FR-2511)

Legal Authority: 42 USC 3535

CFR Citation: 24 CFR 207; 24 CFR 255

Legal Deadline: None

Abstract: This rule makes a number of technical corrections to HUD regulations (24 CFR Parts 207 and 255) governing eligibility of existing cooperative housing projects for FHA full insurance or coinsurance.

Timetable:

Action	Date	FR Cite
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Stephen Martin, Dir., Office of Insured Single Family Hsg., Department of Housing and Urban Development, Office of Housing, 202 755-3046

RIN: 2502–AE54

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986. COMPUTER AUTOMATION OF REQUIRED DATA FOR CERTIFICATION AND RECERTIFICATIONS SUBSIDY BILLING PROCEDURES FOR CERTAIN MULTIFAMILY SUBSIDIZED PROJECTS (H-2-88; FR-2421)

Significance: Agency Priority

Legal Authority: 42 USC 3535(d)

CFR Citation: 24 CFR 208

Legal Deadline: None

Abstract: This rule would require owners of certain multifamily subsidized projects to automate the information and transmission of HUD forms and worksheets for certification and recertification of compliance with HUD's tenant eligibility and rent procedures, and the computation of tenant rent/payment and the monthly subsidy billing forms, as applicable. This rule would apply to multifamily projects under the following program: section 236 rental assistance payments, section 8 housing assistance payments, section 221(d)(5), below market interest rate housing for low and moderate income mortgage insurance, and section 101 rent supplements.

Timetable:

Action	Date	FR Cite
NPRM	06/06/88	53 FR 20649
NPRM Comment Period End	07/21/88	53 FR 20649
Final Action	02/00/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: James J. Tahash, Director, Planning and Procedures Division, Department of Housing and Urban Development, Office of Housing, 202 426-3970

RIN: 2502–AE58

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987. STATE AGENCY ASSIGNMENTS (H-70-84; FR-1997)

Legal Authority: 12 USC 1715z-16(b); 12 USC 1715z-16(c)

CFR Citation: 24 CFR 215; 24 CFR 221; 24 CFR 236; 24 CFR 245

Legal Deadline: None

HUD—OH

Final Rule Stage

Abstract: This rule would make the Department's regulations on prohibited lease terms applicable to section 236 projects financed by state housing agencies.

Timetable:

Action	Date	FR Cite
NPRM	12/21/87	52 FR 48276
NPRM Comment Period End	02/19/88	52 FR 48276

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: State, Federal

Agency Contact: James Tahash, Director, Program Planning Division, Department of Housing and Urban Development, Office of Housing, Office of Multifamily Housing Management, 202 426-3970

RIN: 2502–AC73

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968. PREPAYMENT OF MORTGAGES ON LOW- AND MODERATE-INCOME HOUSING (H-10-88; FR-2450) 1987 HCD ACT

Legal Authority: PL 100-242

CFR Citation: 24 CFR 50; 24 CFR 221; 24 CFR 236; 24 CFR 241; 24 CFR 248; 24 CFR 880; 24 CFR 881; 24 CFR 883

Legal Deadline: None

Abstract: The regulation implements provisions of the Housing and Community Development Act of 1987 that provide that mortgages on "eligible low income housing" may be prepaid only in accordance with a "plan of action" approved by the Secretary. The regulation establishes procedures for the submission and negotiation of such plans of action, lists incentives which may be part of the plan of action, and provides standards which the plans of action must meet. The regulation is designed to preserve needed low income housing in cases where the project owner might otherwise prepay its mortgage and convert the project to higher-income use.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/05/88	53 FR 11224
Interim Final Rule Effective Date	05/20/88	53 FR 11224
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: James J. Tahash, Director, Planning & Procedure Division, Office of Multifamily Housing Management, Department of Housing and Urban Development, Office of Housing, 202 426-3944

RIN: 2502–AE34

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969. ELIGIBILITY OF SECTION 23 AND SECTION 202 HOUSING FOR FLEXIBLE SUBSIDY (H-18-88; FR-2498) 1987 HCD ACT

Legal Authority: PL 100-242, Sec 185(b); PL 100-242, Sec 186(b)

CFR Citation: 24 CFR 219

Legal Deadline: None

Abstract: This final rule will implement section 185(b) and 186(b) of the HCDA of 1987 making section 23 and section 202 housing eligible for flexible subsidy.

Timetable:

Action	Date	FR Cite
Final Action	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: James J. Tahash, Dir., Planning and Procedures Division, Department of Housing and Urban Development, Office of Housing, 202 426-3944

RIN: 2502–AE42

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970. HUD-OWNED MULTIFAMILY PROJECTS-MANAGEMENT AND DISPOSITION (H-65-78; FR-452)

Significance: Regulatory Program

Legal Authority: 12 USC 1701z-11; 12 USC 1701z-12; 12 USC 1713; 12 USC 1715b; PL 100-242, Sec 181

CFR Citation: 24 CFR 290; 24 CFR 886

Legal Deadline: None

Abstract: Would conform current regulation more closely to Section 203 of the Housing and Community Development Act of 1978, as amended by Section 181 of the Housing and Community Development Act of 1988.

Timetable:

Action	Date	FR Cite
NPRM	10/18/84	49 FR 40688
NPRM Comment Period End	12/17/84	49 FR 40688
Final Action	02/00/89	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Marc Harris, Multifamily Property Disposition Division, Department of Housing and Urban Development, Office of Housing, Office of Multifamily Housing Management, 202 755-6280

RIN: 2502–AC06

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971. SECTION 236 RENT SUPPLEMENT (H-17-88; FR-2457) 1987 HCD ACT

Legal Authority: PL 100-242, Sec 167(a)

CFR Citation: 24 CFR 735

Legal Deadline: None

Abstract: This rule will increase assistance to owners to provide sufficient payments to cover 100 (formerly 90%) of the necessary rent increases and changes in the income of eligible tenants.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: James Tahash, Dir., Planning & Procedures Division, Department of Housing and Urban Development, Office of Housing, 202 426-3944

RIN: 2502–AE41

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972. HOUSING DEVELOPMENT GRANT PROGRAM (H-26-84; FR-1902)

Legal Authority: 42 USC 1437o

CFR Citation: 24 CFR 850

Legal Deadline: None

Abstract: Implements the Housing Development Grant Program established by Section 301 of the Housing and Urban-Rural Recovery Act of 1983. Under this Program, the Secretary is authorized to make grants to cities and urban counties and to States acting on behalf of units of general local government to support new construction or substantial rehabilitation of residential rental housing. At least 20 percent of the units in a project assisted under this Program must be leased to, or made available for occupancy by, lower income families for a period of 20 years. The rent for these units cannot exceed 30 percent of the adjusted income of a family at 50 percent of area median income. Assisted projects must be located within eligible areas, special purpose areas or neighborhood preservation areas.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/14/84	49 FR 24634
Interim Final Rule effective	08/07/84	49 FR 24634

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Jessica Franklin, Director, Department of Housing and Urban Development, Office of Housing, Development Grant Division, 202 755-6142

RIN: 2502–AC23

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973. SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS – REVISIONS TO CONTRACT RENT ADJUSTMENT REGULATIONS (H-22-88; FR-2469) 1987 HCD ACT

Legal Authority: 42 USC 1437f; PL 100-242, Sec 142

CFR Citation: 24 CFR 880; 24 CFR 881; 24 CFR 882; 24 CFR 883; 24 CFR 884; 24 CFR 885; 24 CFR 886; 24 CFR 888

Legal Deadline: None

Abstract: This rule implements the statutory changes in contract rent adjustments for the several Section 8 Housing Assistance Payments Programs enacted in section 142 of the Housing and Community Development Act of 1987.

Timetable:

Action	Date	FR Cite
Final Action	01/00/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

HUD—OH

Final Rule Stage

Agency Contact: James J. Tahash, Dir., Planning & Procedures Division, Department of Housing and Urban Development, Office of Housing, 202 426-3944

RIN: 2502–AE44

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974. SHARED HOUSING IN THE SECTION 8 MODERATE REHABILITATION PROGRAM (H-20-88; FR-2238)

Significance: Agency Priority

Legal Authority: 42 USC 1437f(p); 42 USC 3535(d)

CFR Citation: 24 CFR 882

Legal Deadline: None

Abstract: This final rule will permit eligible applicants and tenants to share housing units with other eligible applicants or tenants in Section 8 Moderate Rehabilitation units, in accordance with the statutory directive in 42 USC 1437f(p). A proposed rule that included this program was published in 1984.

Timetable:

Action	Date	FR Cite
NPRM	12/07/84	49 FR 48005
NPRM Comment Period End	02/05/85	49 FR 48005
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Madeline Hastings, Director, Existing Housing Division, Department of Housing and Urban Development, Office of Housing, 202 755-6887

RIN: 2502–AD56

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975. MANAGEMENT RULES AND COMPREHENSIVE HOUSING AND COMMUNITY DEVELOPMENT AMENDMENTS (H-34-83; FR-1781)

Legal Authority: 12 USC 1701q; 42 USC 3535(d)

CFR Citation: 24 CFR 885

Legal Deadline: None

Abstract: This final rule will amend HUD's regulations on loans for housing for the elderly or handicapped. The regulation adds regulatory provisions to govern section 202/8 project operations and management; incorporates changes required by statutory requirements governing housing assistance payments contracts.

Timetable:

Action	Date	FR Cite
NPRM	12/09/87	52 FR 46614
NPRM Comment Period End	02/08/88	52 FR 46614

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: James J. Tahash, Director, Department of Housing and Urban Development, Office of Housing, Program Planning Division, Office of Multifamily Housing Management, 202 426-3970

RIN: 2502–AC03

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976. LOANS FOR THE ELDERLY OR HANDICAPPED - LOAN INTEREST RATE PROVISIONS (H-24-88; FR-2477) 1987 HCD ACT

Legal Authority: 12 USC 1701q

CFR Citation: 24 CFR 885

Legal Deadline: None

Abstract: This interim rule amended HUD's regulations governing projects that receive direct loans under section 202 of the Housing Act of 1959 and housing assistance payments under section 8 of the United States Housing Act of 1937. The rule incorporated recent amendments to interest rate calculation provisions contained in the Housing and Community Development Act of 1987.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/01/88	53 FR 19899
Interim Final Rule Effective	07/11/88	53 FR 19899
Interim Final Rule Comments Due	07/31/88	53 FR 19899
Final Action	11/00/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Robert Wilden, Dir., Assisted Elderly and Handicapped, Housing Division, Department of Housing and Urban Development, Office of Housing, 202 426-8730

RIN: 2502–AH40

HUD—OH

Final Rule Stage

997. ◆ LOANS FOR HOUSING FOR THE ELDERLY OR HANDICAPPED DURATION OF SECTION 202 FUND RESERVATION (H-23-88; FR2536)

Legal Authority: 12 USC 1701q

CFR Citation: 24 CFR 885

Legal Deadline: None

Abstract: This final rule amends HUD's regulations governing projects that receive direct loans under section 202 of the Housing Act of 1959 and housing assistance payments under section 8 of the United States Housing Act of 1937. The rule amends 24 CFR 885.220. Duration of section 202 fund reservation by (1) to permit HUD's Regional Office to extend the duration of fund reservation by an additional 12 months and (2) to add procedures governing the appeal of HUD decisions to cancel section 202 fund reservation as required by section 161(2) of the Housing and Community Development Act of 1987 (Pub. L. 100-242 approved February 5, 1988).

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Robert Wilkins, Director, Assisted Elderly & Handicapped, Housing Division, Department of Housing and Urban Development, Office of Housing, 202 426-0730

RIN: 2502–AE20

998. REAL ESTATE SETTLEMENT PROCEDURES ACT – CONTROLLED BUSINESS PROVISIONS AND MISCELLANEOUS AMENDMENTS (H-45-84; FR-1842)

Significance: Agency Priority

Legal Authority: 12 USC 2601; 12 USC 2607; PL 98-181

CFR Citation: 24 CFR 3500

Legal Deadline: None

Abstract: The rule will implement statutory amendments established by Section 461 of the Housing and Urban Rural Recovery Act of 1983 (Pub.L.98-181). The amendments address a problem identified as "controlled business" and the manner in which Section 8 of the Real Estate Settlement Procedures Act (12 USC 2607), the kickback prohibition of RESPA, is to be applied to such arrangements. No alternatives are being considered because of the statutory mandate. The potential costs cannot be accurately projected but are believed to be incidental. The rule will also contain other miscellaneous changes to clarify and update the existing rule.

Timetable:

Action	Date	FR Cite
NPRM	05/16/88	53 FR 17424
NPRM Comment Period End	07/15/88	53 FR 17424

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Grant E. Mitchell, Department of Housing and Urban Development, Office of the General Counsel, Office of Equal Opportunity and Admin. Law, 202 755-6590

RIN: 2502–AC09

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)

Completed Actions

Office of Housing (Oh)

999. SUPPORTIVE HOUSING DEMONSTRATION PROGRAM (H-54-87; FR2285)

CFR Citation: 00 CFR 000

Completed:

Reason	Date	FR Cite
Final Action	05/24/88	53 FR 23056
Final Action Effective	09/01/88	53 FR 23056

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Lawrence Goldberger 202 755-5720

RIN: 2502–AE13

1000. ISSUANCE OF FHA DEBENTURES (H-36-88; FR-2386)

CFR Citation: 24 CFR 200; 24 CFR 203; 24 CFR 207

Completed:

Reason	Date	FR Cite
Withdrawn	05/10/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Robert A. Spiegel 202 755-5258

RIN: 2502–AD58

1001. REVISION OF USE OF MATERIALS BULLETIN USED IN THE HUD BLDG. PRODUCT STANDARD AND CERTIFICATION PROGRAM (H-4-87; FR2308)

CFR Citation: 24 CFR 200

Completed:

Reason	Date	FR Cite
Withdrawn	08/16/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Leslie H. Breden 202 755-5929

RIN: 2502–AE04

1002. MANUFACTURED HOME CONSTRUCTION AND SAFETY STANDARDS FOR LEAD IN WATER PIPING(H-3-87; FR-2296)

CFR Citation: 24 CFR 200

Completed:

Reason	Date	FR Cite
Final Action	06/23/88	53 FR 23610
Final Action Effective	08/11/88	53 FR 23610

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Mark W. Halmon 202 755-5210

RIN: 2502–AE05

HUD—OH

Completed Actions

1003. FILING PERIOD FOR RESUBMISSION OF DENIED CLAIMS (H-43-86)

CFR Citation: 24 CFR 201.54

Completed:

Reason	Date	FR Cite
Withdrawn	07/27/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Donald C. Demitros 202 755-6300

RIN: 2502–AD80

1004. REVISION OF HUD MORTGAGE APPROVAL PROCESS (H-5-88; FR-2434)

Significance: Agency Priority

CFR Citation: 24 CFR 203

Completed:

Reason	Date	FR Cite
Final Action	09/06/88	53 FR 34279
Final Action Effective	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Stephen Martin 202 755-5946

RIN: 2502–AE27

1005. ◆ DEADLINE FOR FILING SINGLE FAMILY SUPPLEMENTAL CLAIMS (H-36-88; FR-2559)

Legal Authority: 12 USC 1710

CFR Citation: 24 CFR 203

Legal Deadline: None

Abstract: At present , there is no regulatory control over the time period that mortgagees can submit applications for supplemental insurance benefits. The Department has instructed lenders to file these supplemental claims within one year of the date of the original insurance settlement. This information has so far been contained in the Instructions for Single Family Application for Insurance Benefits, Form HUD-27011. This rule will formalize the requirement that lenders follow this one-year filing period for supplemental claims.

Timetable:

Action	Date	FR Cite
Withdrawn (See FR-2487 RIn: 2502-AE51)	05/24/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Robert E. Falkenstein, Jr., Director, Single Family Servicing Div., Department of Housing and Urban Development, Office of Housing, 202 755-6680

RIN: 2502–AE59

1006. MULTIFAMILY HOUSING MORTGAGE INSURANCE – REGULATION OF RENTS (H-8-88; FR-2448) 1987 HCD ACT

CFR Citation: 24 CFR 207.19; 24 CFR 220.511; 24 CFR 221.530

Completed:

Reason	Date	FR Cite
Final Action	05/04/88	53 FR 15813
Final Action Effective	06/16/88	53 FR 15813

Small Entities Affected: None

Government Levels Affected: Local, Federal

Agency Contact: James J. Tahash 202 426-3944

RIN: 2502–AE33

1007. RENT SUPPLEMENT FEDERAL TENANT SELECTION PREFERENCE (H-12-88; FR-2452) 1987 HCD ACT

CFR Citation: 24 CFR 215; 24 CFR 885

Completed:

Reason	Date	FR Cite
Final Action	05/04/88	53 FR 15818
Final Action Effective	06/16/88	53 FR 15818

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: James J. Tahash 202 426-3944

RIN: 2502–AE35

1008. FHA INSURANCE OF MORTGAGES COVERING NURSING HOMES AND SIMILAR PROJECTS (H-27-88; FR-2490)

CFR Citation: 24 CFR 232

Completed:

Reason	Date	FR Cite
Final Action	05/03/88	53 FR 15671
Final Action Effective	06/16/88	53 FR 15671

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: James Hammerick 202 755-6590

RIN: 2502–AE36

1009. ADDITIONAL REVISIONS - HOSPITAL INSURANCE (H-24-88; FR-2227)

Significance: Regulatory Program

CFR Citation: 24 CFR 241; 24 CFR 242

Completed:

Reason	Date	FR Cite
Final Action	05/05/88	53 FR 16068
Final Action Effective	06/16/88	53 FR 16068

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: James L. Hammick 202 755-6300

RIN: 2502–AD70

1010. HOSPITAL INSURANCE - ALTERNATE CERTIFICATION REQUIREMENTS (H-21-88; FR-2400) 1987 HCD ACT

Significance: Agency Priority

CFR Citation: 24 CFR 242

Completed:

Reason	Date	FR Cite
Withdrawn (Merged with FR-2227 - RIN: 2502-AD70)	02/06/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: James Hammerick 202 755-6590

RIN: 2502–AE29

1011. ASSIGNMENT OF INTEREST OF COINSURING LENDER TO WAREHOUSE BANK FOR INTERIM FUNDING (H-15-88; FR-2455)

CFR Citation: 24 CFR 251; 24 CFR 255

HUD—OH

Completed Actions

Completed:

Reason	Date	FR Cite
Withdrawn	08/09/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: James Hamernick 202 755-6580

RIN: 2502-AE20

1012. CONSURANCE FOR NURSING HOMES AND INTERMEDIATE CARE FACILITIES (H-22-88; FR-2296)

CFR Citation: 24 CFR 252

Completed:

Reason	Date	FR Cite
Final Action	08/31/88	53 FR 33724

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: James L. Hamernick 202 755-6580

RIN: 2502-AD74

1013. SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM - HOUSING VOUCHERS (H-42-88; FR-2170)

Significance: Regulatory Program

CFR Citation: 24 CFR 887

Completed:

Reason	Date	FR Cite
Final Action	09/06/88	53 FR 34372

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Gerald Benoit 202 755-6477

RIN: 2502-AD28

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)

Office of Community Planning and Development (CPD)

Proposed Rule Stage

1014. ● REMOVAL OF RISK PREMIUM PROVISIONS IN SECTION 312 PROGRAM (CPD-9-88; FR-2558)

Legal Authority: 42 USC 1452b

CFR Citation: 24 CFR 510.34; 24 CFR 510.36

Legal Deadline: None

Abstract: This rule will amend Part 510 to implement Sec. 518(b) of Housing and Community Development Act of 1987 by removing requirements of risk premiums or loan fees on loans made under Sec. 312 Rehabilitation Loan Program.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: David Cohen, Director, Office of Urban Rehabilitation, Department of Housing and Urban Development, Office of Community Planning and Development, 202 755-6685

RIN: 2506-AA07

1015. ● PERSONAL LIABILITY FOR REPAYMENT ON SECTION 312 REHABILITATION LOANS (CPD-10-88; FR-2557)

Legal Authority: 42 USC 1452b

CFR Citation: 24 CFR 0510

Legal Deadline: None

Abstract: This rule eliminates the requirement that all partners of any partnership on a Section 312 loan shall be personally liable for its repayment. It establishes criteria under which loans will be made without personal endorsement as security. This will maintain adequate security for the government's loan.

Timetable:

Action	Date	FR Cite
NPRM	12/01/88	
Final Action	04/01/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Richard R. Burk, Director, Rehab Loans & Homesteading, Department of Housing and Urban Development, Office of Community Planning and Development, 202 755-6367

RIN: 2506-AA51

1016. ● RENTAL REHABILITATION PROGRAM (CPD-11-88; FR-2556)

Legal Authority: PL 100-242, Sec 150(b); PL 100-242, Sec 150(f)

CFR Citation: 24 CFR 511

Legal Deadline: None

Abstract: This rule will implement sections 150(b) and 150(f) of the Housing and Community Development Act of 1987 which amend sections 17(e)(1)(A)and 17(k)(4), respectively, of the United States Housing Act of 1937. Section 150(b) makes eligible for rehabilitation grant funds property that will be privately owned upon completion of rehabilitation. The previous authorizing legislation and current regulations limit the use of rehabilitation grant funds to properties that are (and continue to be) privately owned. Section 150(f) expands the definition of "privately owned real property to be used primarily for residential rental purposes" (and thus eligible for rehabilitation grant funds) to include housing that is owned by a State or locally chartered, neighborhood based, nonprofit organization the primary purpose of which is the provision and improvement of housing.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: Local, State

Agency Contact: Mary Kolesar, Director, Rehabilitation Management Division, Office of Urban Rehabilitation, Department of Housing and Urban Development, Office of Community Planning and Development, 202 755-5979

RIN: 2506-AA55

1017. COMMUNITY DEVELOPMENT BLOCK GRANTS: STATE'S PROGRAM (CPD-7-83; FR-1677)

Significance: Regulatory Program

HUD—CPD

Proposed Rule Stage

Legal Authority: 42 USC 5301; PL 98-181, Sec 104; PL 98-181, Sec 101

CFR Citation: 24 CFR 570.483

Legal Deadline: None

Abstract: This revision would implement amendments to the State administered CDBG program made in the Housing and Urban-Rural Recovery Act (Pub. L. 98-181) approved November 30, 1983, and the Housing and Community Development Act of 1987 (Pub. L. 100-242) approved February 5, 1988. The rule includes definitions of low and moderate income persons, requirements for meeting the three national objectives, the 60% test for low and moderate income benefit, added local and state public participation, coverage of program income, performance reporting and record keeping, and consequences of States' dropping program administration after FY 89.

Timetable:

Action	Date	FR Cite
NPRM	01/00/89	

Small Entities Affected: None

Government Levels Affected: State, Federal

Agency Contact: Richard J. Kennedy, Asst. Dir. State Small Cities Div., Department of Housing and Urban Development, Office of Community Planning and Development, Office of Block Grant Assistance, State and Small Cities Division, 202 755-6322

RIN: 2506-AA38

1018. URBAN DEVELOPMENT ACTION GRANT APPLICATIONS FROM CONSORTIA OF SMALL CITIES (CPD-6-87; FR2381)

Legal Authority: 42 USC 5318

CFR Citation: 24 CFR 570

Legal Deadline: None

Abstract: The Housing and Urban-Rural Recovery Act of 1983 permits consortia of small cities to apply for UDAG funds. This would allow geographically proximate small communities to apply jointly for funds to deal with common economic development problems beyond the administrative or financial capacities of any one of the communities.

Timetable:

Action	Date	FR Cite
NPRM	08/12/88	53 FR 30442
NPRM Comment Period End	10/11/88	53 FR 30442
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: Local, Federal

Agency Contact: Stanley Newman, Director, Office of Urban Development, Action Grants, Department of Housing and Urban Development, Office of Community Planning and Development, 202 755-6290

RIN: 2506-AA76

1019. SECRETARY'S DISCRETIONARY FUND - WORK STUDY PROGRAM (CPD-4-88; FR-2479) 1987 HCD ACT

Legal Authority: PL 100-242, Sec 107

CFR Citation: 24 CFR 0570

Legal Deadline: None

Abstract: The proposed rule would implement section 501(b)(2) of the Housing and Community Development Act of 1987 under which HUD would use amounts set aside for the Secretary's Discretionary Fund for grants to institutions of higher education for the purposes of providing assistance to economically disadvantaged and minority students who participate on community development work-study programs.

Timetable:

Action	Date	FR Cite
NPRM	08/17/88	53 FR 31224
NPRM Comment Period End	10/17/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: James Turk, Technical Assistance Division, Office of Program Policy Development, Department of Housing and Urban Development, Office of Community Planning and Development, 202 755-6692

RIN: 2506-AA61

1020. MISCELLANEOUS REVISIONS OF PART 570 - 1987 HCD ACT (CPD-6-88; FR-2496)

Legal Authority: PL 100-242

CFR Citation: 24 CFR 570

Legal Deadline: None

Abstract: The proposed rule would revise the Community Development Block Grants Program rules 24 CFR Part 570 as necessary to implement certain changes made in the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988). The proposed rule will mainly address those changes to the entitlement program that could not be included in the related rule in FR-1677. The proposed rule would also add the payment of special assessments to the list of eligible activities under the CDBG program as permitted by the Department of Housing and Urban Development - Independent Agencies Appropriations Act, 1989 (PL 100 - 404, approved August 19, 1988).

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Jim Broughman, Director, Entitlement Cities Division, Department of Housing and Urban Development, Office of Community Planning and Development, 202 755-5977

RIN: 2506-AA84

1021. URBAN HOMESTEADING SELECTION PROCEDURES AND ELIGIBILITY FOR DISCRETIONARY FUND TECHNICAL ASSISTANCE (CPD-1-88; FR-2461)

Significance: Agency Priority

Legal Authority: 12 USC 1706e

CFR Citation: 24 CFR 590

Legal Deadline: None

Abstract: This rule would establish new selection procedures for urban homesteading programs and would make urban homesteading eligible for technical assistance from the Secretary's Discretionary Fund. This rule would also permit States and units of government to transfer urban homesteading property under the regular homesteading program and the State/local Demonstration Program to a qualified community organization that would carry out the functions of the State or unit of government.

HUD—CPD

Proposed Rule Stage

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Richard Burk, Dir., Rehabilitation Loans & Homesteading, Department of Housing and Urban Development, Office of Community Planning and Development, 202 755-5327

RIN: 2506-AA79

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)
Office of Community Planning and Development (CPD)

Final Rule Stage

1021. RESIDENTIAL RENTAL REHABILITATION PROGRAM (CPD-7-84; FR-1901)

Legal Authority: 42 USC 1437o; 42 USC 3535(d); PL 98-479, Sec 103; PL 98-181, Sec 302; PL 98-181, Sec 301

CFR Citation: 24 CFR 511

Legal Deadline: None

Abstract: This rule implements the Rental Rehabilitation Program authorized by section 17 of the U.S. Housing Act of 1937. The regulation (1) sets out a variety of program and other requirements to be met by grantees, State recipients and others that use or benefit from rental rehabilitation grants amounts, (2) enumerates the requirements for participating in the Rental Rehabilitation Program, (3) sets forth the formula by which allocations of rental rehabilitation grant amounts will be made to eligible grantees, (4) explains the rental housing assistance available for tenants, (5) enumerates administrative requirements for the Program, and (6) explains how HUD will review program performance.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/20/84	49 FR 16936
Interim Rule Effective	05/24/84	49 FR 16936
Final Action	02/00/89	

Small Entities Affected: None

Government Levels Affected: State, Federal

Additional Information: Includes: CPD-17-82; CPD-8-84; FR-1912; FR-2055 (RIN: 2506-AA88)

Agency Contact: Mary Kolesar, Director, Rental Rehabilitation Division, Department of Housing and Urban Development, Office of Community Planning and Development, 202 755-5970

RIN: 2506-AA54

1023. COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM; ESCROW ACCOUNTS (CPD-2-88; FR-2164)

Legal Authority: 42 USC 5301 to 5321

CFR Citation: 24 CFR 0570.511

Legal Deadline: None

Abstract: The Department is proposing to establish a rule that would govern the circumstances under which CDBG program recipients could establish escrow accounts for the purpose of disbursing funds to contractors expeditiously. The rule reflects U.S. Treasury Department requirements governing cash withdrawals.

Timetable:

Action	Date	FR Cite
NPRM	10/05/87	52 FR 37162
NPRM Comment Period End	12/04/87	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: State, Federal

Agency Contact: Paul D. Webster, Dir., Financial Management Division, Department of Housing and Urban Development, Office of Community Planning and Development, 202 755-1871

RIN: 2506-AA66

1024. CONSERVING NEIGHBORHOODS BY PROHIBITING DISPLACEMENT (CPD-3-88; FR-2474) 1987 HCD ACT

Legal Authority: 42 USC 5301 to 5320

CFR Citation: 24 CFR 570

Legal Deadline: Other, Statutory, October 1988.
The program will take effect on 10/00/88 under section 509(b) of the 1987 Act.

Abstract: This interim rule implements section 509 of the Housing and Community Development Act of 1987 which requires an antidisplacement program as a condition to CPDG or UDAG amount.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/17/88	53 FR 31234
Interim Final Rule Comments Due	10/17/88	53 FR 31234
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Harold J. Huecker, Director, Relocation and Real Estate Div., Office of Urban Rehabilitation, Department of Housing and Urban Development, Office of Community Planning and Development, 202 755-6338

RIN: 2506-AA62

1025. ◆ IMPLEMENTATION OF PROHIBITION ON USE OF UDAG GRANTS FOR BUSINESS RELOCATION (CPD-6-88; FR-2501)

Legal Authority: PL 100-242, Sec 16

CFR Citation: 24 CFR 0570

Legal Deadline: None

Abstract: This rule amends the regulations governing Urban Development Action Grants by revising, and adding new text to, existing provisions pertaining to prohibitions on the use of UDAG for business relocations. This proposal (1) elaborates on the existing prohibition on the use of UDAG funds for speculative projects intended to facilitate the relocation of business from one are to another to incorporate existing HUD policies regarding this prohibition, and (2) implements statutory amendments which additionally prohibit the use of UDAG funds for projects with identified intended occupants where the project is likely to facilitate the relocation of businesses from one area to another.

HUD—CPD

Final Rule Stage

Timetable:

Action	Date	FR Cite
NPRM	05/18/88	53 FR 17724
NPRM Comment Period End	06/17/88	53 FR 17724
Final Action	11/00/88	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Stanley Newman, Director, Urban Development Action Grants, Department of Housing and Urban Development, Office of Community Planning and Development, 202 755-6256

RIN: 2506-AA80

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)
Office of Community Planning and Development (CPD)

Completed Actions

1026. RENTAL REHABILITATION GRANTS (CPD-2-88; FR-2472)

CFR Citation: 24 CFR 511.1; 24 CFR 511.3; 24 CFR 511.4; 24 CFR 511.10; 24 CFR 511.20

Completed:

Reason	Date	FR Cite
Final Action	07/06/88	53 FR 25462
Final Action Effective	09/12/88	53 FR 25462

Small Entities Affected: None

Government Levels Affected: Local, Federal

Agency Contact: Mary Ann Kolesar 202 755-5970

RIN: 2506-AA83

1027. ◆ RENTAL REHABILITATION PROGRAM; REALLOCATION OF RENTAL REHABILITATION GRANT AMOUNTS (CPD-7-88; FR-2530)

Legal Authority: 42 USC 1437o

CFR Citation: 24 CFR 511.33

Legal Deadline: None

Abstract: Under 24 CFR 511.33(b), a Rental Rehabilitation grantee may receive reallocated funds in an amount not exceeding 30 percent of the cumulative amount initially obligated to the grantee for the current fiscal year and for any preceding fiscal year for which rehabilitation grant amounts remain available for obligation. This final rule eliminates this administratively established ceiling on the maximum amount of additional rental rehabilitation grant funds an existing grantee can receive through the program's "reallocation" process.

Timetable:

Action	Date	FR Cite
Final Action	08/01/88	53 FR 28990
Final Action Effective	09/26/88	53 FR 28990

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Mary Ann Kolesar, Director, Rehabilitation Management, Division, Department of Housing and Urban Development, Office of Community Planning and Development, 202 755-5970

RIN: 2506-AA85

1029. COMMUNITY DEVELOPMENT BLOCK GRANT REGULATIONS (CPD-5-84; FR-1295)

Significance: Regulatory Program

CFR Citation: 24 CFR 570

Completed:

Reason	Date	FR Cite
Final Action	09/06/88	53 FR 34416

Small Entities Affected: None

Government Levels Affected: Local, Federal

Agency Contact: James R. Broughman 202 755-5237

RIN: 2506-AA47

1028. COMMUNITY DEVELOPMENT BLOCK GRANTS, URBAN DEVELOPMENT ACTION GRANTS (CPD-8-84; FR-2449)

Significance: Regulatory Program

CFR Citation: 24 CFR 570.450 to 465

Completed:

Reason	Date	FR Cite
Final Action	08/29/88	53 FR 33026
Final Action Effective	00/00/00	

Small Entities Affected: None

Government Levels Affected: Local, Federal

Agency Contact: Michael McMahon 202 755-6227

RIN: 2506-AA72

1030. INDIAN COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM; REVISION TO CORRECTIVE AND REMEDIAL ACTION (CPD-13-84; FR-2102)

Significance: Regulatory Program

CFR Citation: 24 CFR 571.702 (b); 24 CFR 571.302(a)

Completed:

Reason	Date	FR Cite
Withdrawn	07/21/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Leroy P. Gonnella 202 755-6862

RIN: 2506-AA59

1031. EMERGENCY SHELTER GRANTS (87 ACT) (CPD-7-87; FR2357)

Significance: Regulatory Program

CFR Citation: 24 CFR 575

Completed:

Reason	Date	FR Cite
Final Action	06/10/88	53 FR 30166
Final Action Effective	11/05/88	53 FR 30166

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Don I. Patch 202 755-6587

RIN: 2506-AA77

1032. ◆ ENTERPRISE ZONE DEVELOPMENT (CPD-11-88; FR-1913)

Significance: Regulatory Program

Legal Authority: 42 USC 11501 to 11505

CFR Citation: 24 CFR 595

Legal Deadline: None

HUD—CPD — Completed Actions

Abstract: This final rule implements Title VII (Enterprise Zone Development) of the Housing and Community Development Act of 1987 (Pub. L. 100-242). This Title authorizes the Secretary of the Department of Housing and Urban Development (HUD) to designate not more than 100 zones based entirely on rank order of distress. The Secretary is authorized to waive HUD regulations, promote coordination and expedite consideration of all HUD programs within the designated zones.

Timetable:

Action	Date	FR Cite
NPRM	06/03/88	53 FR 20556
NPRM Comment Period End	07/05/88	53 FR 20556
Final Action	08/16/88	53 FR 30944

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Michael T. Savage, Deputy Director, Office of Block Grant Assistance, Department of Housing and Urban Development, Office of Community Planning and Development, 202 755-6588

RIN: 2506-AA45

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) — Proposed Rule Stage
Government National Mortgage Association (GNMA)

1033. BOOK-ENTRY SECURITIES OF GNMA (GNMA-2-88)

Significance: Agency Priority

Legal Authority: 12 USC 1701

CFR Citation: 24 CFR 390

Legal Deadline: None

Abstract: The regulation will provide for utilization of a book-entry system to govern the issuance and custody of GNMA securities. The system allows for maintenance of records by an Agent Bank and utilization of wire transfers. Further, the book-entry system will curtail loss, theft and repeated pledging of GNMA securities.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Agency Contact: Walter T. Cassidy, Assistant General Counsel for Finance, Department of Housing and Urban Development, Office of the General Counsel, Office of Insured Housing and Finance, 202 755-7260

RIN: 2503-AA03

1034. GNMA FEES (GNMA-1-87; FR2395)

Legal Authority: 00 USC 0000

CFR Citation: 24 CFR 390.17

Legal Deadline: None

Abstract: This proposed rule would revise the regulations in accordance with Pub. L. 100-14 relating to the charges and fees that GNMA may charge for its guaranty of mortgage-backed securities.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Walter T. Cassidy, Assistant General Counsel for Finance, Department of Housing and Urban Development, Office of the General Counsel, 202 755-7260

RIN: 2503-AA03

1035. ● GNMA MORTGAGE-BACKED SECURITIES (GNMA-1-88; FR-2548)

Legal Authority: 42 USC 3535

CFR Citation: 24 CFR 390

Legal Deadline: None

Abstract: Rule proposes to increase net worth eligibility requirements for issuers of mortgage-backed securities.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Robert P. Kalish, Vice President, Office of Mortgage Finance, Department of Housing and Urban Development, Government National Mortgage Association, 202 755-5583

RIN: 2503-AA05

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) — Proposed Rule Stage
Office of Fair Housing and Equal Opportunity (FHEO)

1036. NONDISCRIMINATION BASED ON HANDICAPPED IN PROGRAMS CONDUCTED BY HUD (FR-2162; FH&EO-2-87)

Significance: Regulatory Program

Legal Authority: 29 USC 794

CFR Citation: 24 CFR 8.101; 24 CFR 8.102; 24 CFR 8.103; 24 CFR 8.110; 24 CFR 8.111; 24 CFR 8.130; 24 CFR 8.140; 24 CFR 8.149; 24 CFR 8.150; 24 CFR 8.151; 24 CFR 8.160; 24 CFR 8.170

Legal Deadline: None

Abstract: This proposed rule would implement section 504 of the Rehab Act of 1973 (as extended by the Rehab. Comprehensive Service and Developmental Disabilities Act of 1978) for HUD-conducted programs or activities. This proposed rule will be a companion rule to the Department's rule on nondiscrimination based on handicap in federally assisted programs.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: David Enzel, Attorney, Department of Housing and Urban Development, Office of the General Counsel, 202 755-7260

RIN: 2503-AA05

HUD—FHEO — Proposed Rule Stage

Urban Development, Office of the General Counsel, 202 755-6287

RIN: 2529-AA28

1037. ● PROCEDURE FOR PROCESSING COMPLAINTS UNDER SECTION 810 OF THE FAIR HOUSING ACT (FHEO-5-88; FR-2563)

Legal Authority: Not yet determined

CFR Citation: 24 CFR 105

Legal Deadline: None

Abstract: This rule would implement the procedures for the enforcement of fair housing as enacted in the Fair Housing Amendments Act of 1988. The rule would revise Part 105 and would add more specific descriptions of the procedures used to investigate/conciliate fair housing complaints, prepare reasonable cause determinations and prepare for administrative hearings before Administrative Law Judges or Federal District Courts.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
NPRM Comment Period End	12/30/88	
Final Action	03/00/89	
Final Action Effective	04/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Agency Contact: Laurence Pearl, Director, Office of Program Standard, and Evaluation, Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, 202 755-5288

RIN: 2529-AA05

1038. REDESIGN FOR FAIR HOUSING ASSISTANCE PROGRAM (FHEO-2-87; FR-2403)

Significance: Regulatory Program

Legal Authority: 42 USC 3601-9

CFR Citation: 24 CFR 111

Legal Deadline: None

Abstract: This rule will change the current funding mechanism of the Fair Housing Assistance Program (FHAP) from a dual noncompetitive and competitive system to a single comprehensive noncompetitive funding mechanism. The new system will allow the same disbursement of 5 million dollars to substantially equivalent agencies. The FHAP agencies will be funded for cases processed and other eligible activities.

Timetable:

Action	Date	FR Cite
NPRM	09/07/88	53 FR 34668
NPRM Comment Period End	10/07/88	
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Maxine Cunningham, Director, Federal, State & Local Programs, Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, 202 755-0455

RIN: 2529-AA32

1039. RECOGNITION OF JURISDICTIONS WITH SUBSTANTIALLY EQUIVALENT FAIR HOUSING LAWS (FHEO-1-88)

Legal Authority: 42 USC 3610; 42 USC 3535(d)

CFR Citation: 24 CFR 115

Legal Deadline: None

Abstract: Some of the sections in this Regulation need to be changed to add definitions, set out specific issues and examples that qualify as acceptable/unacceptable under the rule; and clarify time frames. The proposed revisions will make application and recognition procedures easier for the Department relative to implementation. Agencies currently recognized will not be affected. However, agencies in the interim recognition stage may be affected.

Timetable:

Action	Date	FR Cite
NPRM	08/00/89	
NPRM Comment Period End	09/00/89	
Final Action	10/00/89	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Sectors Affected: 919 General Government, Not Elsewhere Classified

Agency Contact: Wagner Jackson, Acting Director, Office of Fair Housing Enforcement & Sec. 3 Compliance, Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, 202 755-6836

RIN: 2529-AA31

1040. ● COMMUNITY HOUSING RESOURCE BOARD PROGRAM (FH&EO-4-88; FR-2561)

Legal Authority: 42 USC 3601

CFR Citation: 24 CFR 120

Legal Deadline: None

Abstract: This rule implements the Community Housing Resource Board Grant Program. Under this program HUD fulfills its contractual agreement to provide technical assistance to local real estate boards in achieving VAMA goals by supporting projects that improve Resource Board performance and increase their ability to effectively plan, finance, and carry out activities to assist signatory real estate boards in fully implementing the provisions of the VAMA.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Florence Maltbie, Director, Office of Voluntary Compliance, Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, 202 755-7827

RIN: 2529-AA38

1041. FAIR HOUSING - COORDINATION OF EXECUTIVE AGENCY AND REGULATORY AGENCY AFFIRMATIVE ADMINISTRATION OF PROGRAMS IN CONNECTION WITH HUD (FH&EO-1-88; FR-2490)

Legal Authority: 42 USC 3601

CFR Citation: 24 CFR 115

Legal Deadline: None

Abstract: The Fair Housing Law, Title VIII of the Civil Rights Act of 1968, charges the Secretary with the responsibility for the administration and enforcement of Title VIII. Section 808 of Title VIII requires the Secretary to administer programs and activities relating to housing and urban

HUD—FHEO — Proposed Rule Stage

development in a manner affirmatively to further fair housing. All other Executive Agencies are required to administer programs relating to housing and urban development in a manner affirmatively to further fair housing and to cooperate with the Secretary in further fair goal of fair housing. In December 1988, Executive Order 12259 was issued to assure interagency coordination and consistent and effective implementation of Section 808. The Order reemphasizes the mandate of Tle VIII. I, stipulates the Secretary's leadership and coordination role and states the responsibilities of all Executive Agencies; includes Regulatory Agencies, in connection with the preparation and implementation of rules, regulations and procedures. The time has come to publish a rule for comment. A proposed rule in 1981 failed to be published.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	
NPRM Comment Period End	02/00/89	
Final Action	05/00/89	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Wagner D. Jackson, Acting Director, Office of Fair Housing, Enforcement and Sec. 3 Compliance, Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, 202 755-6530

RIN: 2529-AA26

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) — Final Rule Stage
Office of Fair Housing and Equal Opportunity (FHEO)

1042. THE FAIR HOUSING INITIATIVES PROGRAM (FHAEO-2-86; FR-2489) 1987 HCD ACT

Significance: Regulatory Program

Legal Authority: PL 100-242, Sec 561

CFR Citation: 24 CFR 125

Legal Deadline: Final, Statutory, 00/00/00.
In addition to regular Congressional review, the authorizing legislation requires that effective date of final rule can not occur prior to 60 days after rule is submitted to Congress and

Abstract: The regulation describes the method by which HUD will fund fair housing enforcement activities in the fair housing initiatives program (FHIP).

The regulation also describes the guidelines for the conduct of a two fair housing testing demonstration in the private enforcement initiative of FHIP as required by the legislation.

Timetable:

Action	Date	FR Cite
NPRM	07/07/88	53 FR 25576
NPRM Comment Period End	09/05/88	53 FR 25576
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Henry L. Carey, Attorney-Advisor, Department of Housing and Urban Development, Office of the General Counsel, 202 755-8079

RIN: 2529-AA37

1043. ● CONFORMING AMENDMENTS TO HUD RULES TO COMPLY WITH SEC. 504 OF THE REHAB ACT AND OTHER AUTHORITIES (FHAEO-3-88; FR-2531)

Legal Authority: 29 USC 794

CFR Citation: 24 CFR 735

Legal Deadline: None

Abstract: Conforming HUD rules to comply with Sec. 504 of the Rehabilitation Act and other authorities.

Timetable:

Action	Date	FR Cite
Final Action	01/00/89	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Robert Ardinger, Program Compliance, Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, 202 755-5491

RIN: 2529-AA38

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) — Completed Actions
Office of Fair Housing and Equal Opportunity (FHEO)

1044. NONDISCRIMINATION BASED ON HANDICAP IN FEDERALLY-ASSISTED PROGRAMS AND ACTIVITIES (FHAEO-1-84; FR-770)

Significance: Regulatory Program

CFR Citation: 24 CFR 8

Completed:

Reason	Date	FR Cite
Final Action	05/02/88	53 FR 20216
Final Action Effective	07/11/88	53 FR 20216

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: David Rasul 202 755-6207

RIN: 2529-AA30

1045. PROCEDURE FOR PROCESSING COMPLAINTS UNDER SECTION 504 OF THE FAIR HOUSING ACT (FHAEO-5-84; FR 2012)

Significance: Regulatory Program

CFR Citation: 24 CFR 105

HUD—FHEO — Completed Actions

Completed:

Reason	Date	FR Cite
Final Action	06/28/88	53 FR 24164
Final Action Effective	10/01/88	53 FR 24164

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Charles M. Farbstein 202 755-5578

RIN: 2529-AA24

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) — Prerule Stage
Office of Administration (OA)

1046. ORGANIZATION, FUNCTION, AND DELEGATIONS OF AUTHORITY SUBPART C - SECRETARY'S DELEGATIONS OF AUTHORITY TO HEADS OF OFFICES (ADM-2-87)

Legal Authority: 42 USC 3535(d)

CFR Citation: 24 CFR 3

Legal Deadline: None

Abstract: Subpart C delegates authority from the Secretary to the Comptroller and then to certain Divisions. This subpart is almost entirely obsolete. The alternatives being considered are to eliminate Subpart C entirely or to update all of the obsolete references. The benefits of both alternatives are to eliminate a potentially confusing delegation of authority.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Albert M. Miller, Deputy Director, Department of Housing and Urban Development, Office of Administration, Office of Finance and Accounting, 202 755-6310

RIN: 2535-AA01

1047. FEDERAL PROCUREMENT OF CEMENT CONTAINING FLY ASH (ADM-1-84; FR-1938)

Legal Authority: 42 USC 3535(d); 42 USC 6962

CFR Citation: 24 CFR 570; 24 CFR 207

Legal Deadline: None

Abstract: Rule will provide restrictions on Federal procurement of cement and concrete containing fly ash. Will be patterned on Environmental Protection Agency guidelines.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: Local, State

Sectors Affected: Multiple

Agency Contact: Ed Girovasi, Director, Department of Housing and Urban Development, Office of Administration, Policy and Evaluation Division, Office of Procurement And Contracts, 202 755-5294

RIN: 2535-AA05

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) — Proposed Rule Stage
Office of Administration (OA)

1048. HUD ACQUISITION REGULATION (ADM-2-86; FR-2473)

Legal Authority: 42 USC 3535(d)

CFR Citation: 48 CFR 24

Legal Deadline: None

Abstract: The proposed rule will update the HUD Acquisition Regulation to conform to changes in the Federal Acquisition Regulation (FAR).

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Edward L. Girovasi, Jr., Director, Policy and Evaluation Division, Office of Procurement and Contracts, Department of Housing and Urban Development, Office of Administration, 202 755-5294

RIN: 2535-AA16

1049. OMB CIR. A-110, UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH UNIVERSITIES, HOSPITALS AND OTHER NONPROFIT ORGANIZATIONS (ADM-1-87; FR-2378)

Legal Authority: 42 USC 3535(d)

CFR Citation: 24 CFR 20

Legal Deadline: None

Abstract: This proposed rule would follow a government-wide common rule to provide uniformity to the administrative requirements for grants and agreements with universities, hospitals and other nonprofit organizations.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Edward L. Girovasi, Jr., Director, Policy & Evaluation Division, Office of Procurement & Contracts, Department of Housing and Urban Development, Office of Administration, 202 755-5294

RIN: 2535-AA15

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)
Office of Administration (OA)

Final Rule Stage

1050. AMENDMENT OF THE HUD ACQUISITION REGULATIONS (ADM-5-85; FR-2121)

Legal Authority: 40 USC 486(c); 42 USC 3535(d)

CFR Citation: 48 CFR Chap. 24

Legal Deadline: None

Abstract: The rule adds Part 2452, Solicitation Provisions and Contract Clauses and Part 2453, Forms. When the original HUDAR was published in March, 1984, solicitation provisions and contract clauses were incorrectly placed, and no HUD forms were included at all.

Timetable:

Action	Date	FR Cite
NPRM	12/08/87	52 FR 46560
NPRM Comment Period End	02/06/88	52 FR 46560
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Gladyes Glass, Deputy Director, Policy & Evaluation, Division, Department of Housing and Urban Development, Office of Administration, Office of Procurement and Contracts, 202 755-5284

RIN: 2535-AA19

1051. ● REVISIONS OF HUDAR TO REFLECT CHANGES IN GNMA PROCUREMENT PROCEDURES (ADM-3-88; FR-2534)

Legal Authority: 42 USC 3535

CFR Citation: 48 CFR 2401; 48 CFR 2402

Legal Deadline: None

Abstract: Rule to amend HUDAR to clarify circumstances under which GNMA may exercise its "statutory procurement authority" without regard to FAR or FIRMR. The rule will direct that all HUD procurement policy regulations and procedures are the responsibility of the Assistant Secretary for Administration except transactions between GNMA and issuers of mortgage-backed securities in furtherance of GNMA's guaranty of such securities.

Timetable:

Action	Date	FR Cite
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Gladys Glass, Office of Procurement & Contracts, Department of Housing and Urban Development, Office of Administration, 202 755-5284

RIN: 2535-AA17

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)
Office of Public and Indian Housing (PIH)

Prerule Stage

1052. ECONOMIC RENT IN PUBLIC HOUSING PROJECTS (P-4-88; FR-2462) 1987 HCD ACT

Legal Authority: 42 USC 1437a; PL 100-242, Sec 102(a)

CFR Citation: 00 CFR 000

Legal Deadline: None

Abstract: This policy would permit PHAs to establish monthly ceiling rents for a period of three years and IHAs for an unlimited time period of amounts determined by the PHAs and IHAs to be appropriate but not to exceed certain statutory limitations.

Timetable:

Action	Date	FR Cite
Policy Statement	10/00/88	
NPRM	11/00/88	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Nancy Chisholm, Director, Office of Policy, Department of Housing and Urban Development, Office of Public and Indian Housing, 202 755-6713

RIN: 2577-AA57

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)
Office of Public and Indian Housing (PIH)

Proposed Rule Stage

1053. LIMITATION ON PUBLIC HOUSING DEVELOPMENT (P-6-88; FR-2464) 1987 HCD ACT

Significance: Agency Priority

Legal Authority: 42 USC 1437c; 42 USC 1437d; PL 100-242, Sec 103(a)&(b)

CFR Citation: 00 CFR 000

Legal Deadline: None

Abstract: This rule would impose limitations on the use of public housing funds for development purposes for fiscal years beginning with fiscal year 1988. This rule would also require that (1) HUD enter into a contract involving new construction only if the PHA demonstrates to HUD's satisfaction that the cost of new construction is less than the cost of acquisition and rehabilitation and (2) the area for making this determination is the neighborhood where the PHA determines that the housing is needed.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Nancy Chisholm, Director, Office of Policy, Department of Housing and Urban Development, Office of Public and Indian Housing, 202 755-6713

RIN: 2577-AA58

HUD—PIH

Proposed Rule Stage

1054. DETERMINATION OF WAGE RATES FOR MAINTENANCE AND TECHNICAL EMPLOYEES OF PUBLIC HOUSING AGENCIES AND INDIAN HOUSING AUTHORITIES (P-10-88; FR2211)

Legal Authority: 42 USC 1437j

CFR Citation: 24 CFR 0060

Legal Deadline: None

Abstract: This rule would describe the Department's policies and procedures for determining or adopting prevailing wage rates for public housing maintenance employees under section 12 of the United States Housing Act of 1937.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Justin Logsdon, Assistant to the Secretary for Labor Relations, Department of Housing and Urban Development, Office of the Secretary, 202 755-5370

RIN: 2577-AA68

1055. TURNKEY III HOMEOWNERSHIP OPPORTUNITIES PROGRAM (P-3-85; FR-2138)

Legal Authority: 42 USC 1437

CFR Citation: 24 CFR 904

Legal Deadline: None

Abstract: This rule would make miscellaneous amendments to the existing Turnkey III program regulations to facilitate program administration and to allow flexibility to address specific local problems. The amendments will clarify appropriate procedures to use when existing occupants are eligible to become homebuyers and to facilitate the actual sales of the units.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Wayne Hunter, Senior Program Analyst, Department of Housing and Urban Development, Office of Public and Indian Housing, Office of Public Housing, 202 755-6713

RIN: 2577-AA34

1056. ● ESTABLISHMENT OF PREFERENCE FOR ELDERLY AND NEAR ELDERLY FAMILIES (P-15-88; FR-2505)

Legal Authority: 42 USC 1437a; PL 100-242, Sec 111

CFR Citation: 24 CFR 000; 24 CFR 060

Legal Deadline: None

Abstract: This rule would establish a preference for elderly families in projects or building designated for the elderly and a discretionary preference for "near elderly" families to be used when a PHA determines, in accordance with HUD regulations, that there are more vacant units than needed in an elderly project or building to meet the demand for units occupied by the elderly.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Edward Whipple, Chief, Occupancy Branch, Office of Public Housing, Department of Housing and Urban Development, Office of Public and Indian Housing, 202 426-8744

RIN: 2577-AA59

1057. INCREASE IN SINGLE PERSON OCCUPANCY LIMITS (P-48-84; FR-2063)

Legal Authority: 42 USC 1437a

CFR Citation: 24 CFR 812; 24 CFR 912

Legal Deadline: None

Abstract: Implements Section 202 of the Housing and Urban-Rural Recovery Act of 1983 to permit the Secretary to increase from 15 percent to 30 percent the number of units that may be occupied by single persons and are within the jurisdiction of any public housing agency. In addition, this rule would revise the procedures for HUD's approval of single person occupancy for affected dwelling units.

Timetable:

Action	Date	FR Cite
NPRM	02/00/89	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Additional Information: ADDITIONAL CONTACT PERSON: James J. Tahash; Director, Program Planning Division; Office of Multifamily Housing Management. (202) 426-3970.

Agency Contact: Edward Whipple, Chief, Occupancy Branch, Office of Public Housing, Department of Housing and Urban Development, Office of Public and Indian Housing, 202 426-8744

RIN: 2577-AA17

1058. DECONTROL OF PUBLIC HOUSING AUTHORITIES; CIAP DEVELOPMENT (P-6-87; FR-2408)

Legal Authority: 42 USC 1437

CFR Citation: 24 CFR 968.12(i); 24 CFR 968.15

Legal Deadline: None

Abstract: This rule change to Part 968 would allow for PHAs who qualify as Recognized Performers to certify compliance with HUD requirements instead of obtaining HUD approval in two areas: management improvement contracts and line item budget revisions. Recognized Performers would still be required to include all elements of the appropriate certification specified in the rule, and to maintain the certification in their files.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Nancy S. Chisholm, Director, Policy Staff, Department of Housing and Urban Development, Office of Public and Indian Housing, 202 755-6713

RIN: 2577-AA40

HUD—PIH — Proposed Rule Stage

1058. MODERNIZATION GRANT PROGRAM (P-5-88; FR-2483)

Significance: Regulatory Program

Legal Authority: PL 100-242, Sec 119

CFR Citation: 24 CFR 968

Legal Deadline: None

Abstract: Section 119 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) begins a two-part legislative process designed to develop an improved means of allocating funds for the modernization of public housing for PHAs that own or operate a total of 500 or more units.

Section 119 contemplates the adoption, by the Congress, of a follow-up statute providing for a revised method for allocating assistance under the new program. Until this additional legislation is approved, HUD's current method of allocating funds will continue in effect.

The Department will develop procedural rules to govern administration of the new Modernization Grant Program (MGP) under the new system outlined in section 119, and will publish proposed rules on the subject. The proposed rule will also propose simplifying changes to the current CIAP program and limit it to PHAs that own or operate fewer than 500 units.

After a new statutory formula is adopted, the Department will publish a final rule linking the statutory allocation (CONT)

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Additional Information: ABSTRACT CONT: method with the previously proposed procedural rule, so that the Modernization Grant concept can be put into operation as promptly as possible.

Final action dependent on Congressional adoption of Modernization formula revisions to be submitted by HUD in 1988.

Agency Contact: Nancy Chisholm, Director, Office of Policy, Department of Housing and Urban Development, Office of Public and Indian Housing, 202 755-6713

RIN: 2577-AA08

1060. ◆ COMPREHENSIVE IMPROVEMENT ASSISTANCE PROGRAM—SPECIAL PURPOSE MODERNIZATION (P-15-88; FR-2545)

Significance: Agency Priority

Legal Authority: 42 USC 1437l

CFR Citation: 24 CFR 968

Legal Deadline: None

Abstract: This rule would amend the existing Comprehensive Improvement Assistance Program (CIAP) regulation to make changes in "special purpose modernization", reflecting statutory amendments contained in Section 121 of the Housing and Community Development Act of 1987, and related changes. The existing rule restricts eligible work items to physical improvements for cost-effective energy conservation. The proposed rule would add four additional special purpose work items, physical improvements for replacing or repairing major equipment systems or structural elements; upgrading security; increasing accessibility for the elderly and handicapped; and reducing the number of vacant, substandard units. Special purpose funding would, however, be limited to work which is necessary and sufficient to extend substantially the useful life of the project. The rule will also permit HUD to set aside up to 20 percent of available CIAP funds for special purpose use.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Nancy Chisholm, Director, Office of Public Housing, Department of Housing and Urban Development, Office of Public and Indian Housing, 202 755-6713

RIN: 2577-AA72

1061. PHA OBLIGATIONS WITH RESPECT TO RESIDUAL RECEIPTS IN THE PUBLIC HOUSING, TURNKEY III, AND SEC. 23 PROGRAMS; (P-3-87; FR2354; FORMERLY H-27-87)

Legal Authority: 42 USC 1437g

CFR Citation: 24 CFR 990

Legal Deadline: None

Abstract: This rule would reiterate the requirement of the Annual Contributions Contract that a PHA must submit to HUD its residual receipts within 60 days of the end of its fiscal year. The rule would also prescribe the method for determining the rate of interest due when residuals are not remitted on time. The rule will contain provisions for retention of residual receipts by the PHA under certain circumstances.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Nancy Chisholm, Director, Office of Policy, Office of Policy & Indian Housing, Department of Housing and Urban Development, Office of Public and Indian Housing, 202 755-6713

RIN: 2577-AA49

1062. ◆ PERFORMANCE FUNDING SYSTEM REVISIONS (87 ACT)—FORMAL REVIEW PROCESS ENERGY CONSERVATION SAVINGS, AUDIT RESPONSIBILITIES (P-12-88; FR-2504)

Legal Authority: 42 USC 1437g

CFR Citation: 24 CFR 990

Legal Deadline: None

Abstract: This rule would implement section 118(a) and 118(d). Section 118(a) requires HUD to amend the Performance Funding System, among other things, to provide for a formal review process for PHAs to obtain a change in allowable expense level to correct inequities in the original base year expense level, to correct for changes in operating circumstances and to reflect the level of economic distress of the locality. Section 118(d) also provides for sharing of the savings between a PHA and HUD for energy conservation improvements, and for preservation of subsidy when several units are rehabilitated and combined into fewer units.

Timetable:

Action	Date	FR Cite
NPRM	02/00/89	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Nancy Chisholm, Director, Office of Policy, Department of Housing and Urban Development, Office of Public and Indian Housing, 202 755-6713

RIN: 2577-AA71

HUD—PIH — Proposed Rule Stage

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)
Office of Public and Indian Housing (PIH)

Final Rule Stage

1063. REPLACEMENT HOUSING FOR PUBLIC HOUSING DEMOLITION AND DISPOSITION (P-5-88; FR-2483) 1987 HCD ACT

Significance: Regulatory Program

Legal Authority: 42 USC 1437p; PL 100-242, Sec 121(a)-(d)

CFR Citation: 24 CFR 970

Legal Deadline: None

Abstract: This rule would establish procedures for the approval and funding of replacement housing for public housing units that have been demolished or disposed of. In addition, this rule would require that HUD may approve an application for demolition if the project is obsolete, making it unusable for housing purposes and if no reasonable program modifications are feasible to return the project to a useful life. The rule would also require HUD, in allocating assistance for public housing acquisition or development or for Section 8 moderate rehabilitation, to give consideration to housing that replaces demolished public housing units in accordance with an approved replacement plan. PHAs would be prohibited from taking any action to demolish or dispose of public housing projects without obtaining HUD's approval and satisfying pertinent statutory requirements.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/17/88	53 FR 30984
Final Action	02/00/89	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Nancy Chisholm, Director, Office of Policy, Department of Housing and Urban Development, Office of Public and Indian Housing, 202 755-6713

RIN: 2577-AA58

1064. IMPLEMENTATION OF PERCENTAGE LIMIT PROVISIONS UNDER SECTION 16 OF THE UNITED HOUSING ACT OF 1937 (P-7-88; FR-2465) 1987 HCD ACT

Significance: Agency Priority

Legal Authority: 42 USC 1437n

CFR Citation: 00 CFR 000

Legal Deadline: None

Abstract: This rule would establish admission procedures which set differing percentage limitations on admission of lower income families in separate assisted housing programs that when aggregated will achieve the overall 5 percent limitation on occupancy under public housing annual contribution contracts and section 8 housing assistance payments contracts.

Timetable:

Action	Date	FR Cite
NPRM	04/29/88	53 FR 15412
NPRM Comment Period End	05/31/88	53 FR 15412
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Nancy Chisholm, Director, Office of Policy, Department of Housing and Urban Development, Office of Public and Indian Housing, 202 755-6713

RIN: 2577-AA60

1065. ◆ INDIAN HOUSING ACT OF 1988 (P-16-88; FR-2538)

Legal Authority: PL 100-358

CFR Citation: 24 CFR 813; 24 CFR 905; 24 CFR 913; 24 CFR 942

Legal Deadline: Final, Statutory, September 28, 1988.

Abstract: This final rule will implement all of the provisions of the Indian Housing Act except for the new Self-Help program. It will provide for Indian preference for eligibility on reservations and in Indian areas. The number of non-lower income Indians to be housed in any project is to be limited to the higher of 10 percent or 5 units. The mutual help contribution must be at least $1500. In determining adjusted income, IHAs will exclude excessive work or educational travel expenses up to $25 per week if that amount is higher than child care expenses. The rule will also make Part 942 concerning pet ownership in projects for the elderly or handicapped inapplicable to Indian housing.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/26/88	53 FR 37494
Interim Final Rule Effective Date	09/26/88	
Interim Final Rule Public Comment Period End	11/25/88	
Final Action	04/00/89	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Patricia Arnaudo, Deputy Director, Office of Indian Housing, Department of Housing and Urban Development, Office of Public and Indian Housing, 202 755-1015

RIN: 2577-AA70

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1066. INDIAN HOUSING PROGRAM—REVISED PROGRAM REGULATIONS (P-2-86; FR-2206)

Legal Authority: 25 USC 450e(b); PL 100-358

CFR Citation: 24 CFR 905

Legal Deadline: None

Abstract: This rule will constitute a consolidation of relevant provisions of regulations flowing from the U.S. Housing Act of 1937, as amended by the Indian Housing Act of 1988. It is the Department's intention that this consolidated Part 905, followed with a comprehensive Indian Housing Handbook, should be the controlling regulatory authority governing the development and operation of Indian housing projects.

Timetable:

Action	Date	FR Cite
NPRM	06/29/88	53 FR 24554
Final Action	04/00/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: Includes: P-31-82 (RIN: 2577-AA17)

Agency Contact: Patricia Arnaudo, Deputy Director, Office of Indian Housing, Department of Housing and Urban Development, Office of Public and Indian Housing, 202 755-1015

RIN: 2577-AA31

1067. PUBLIC AND INDIAN HOUSING - COST CONTAINMENT PROCEDURES (P-1-88; FR-2191)

Significance: Regulatory Program

Legal Authority: 42 USC 1437d; PL 99-100

CFR Citation: 24 CFR 968; 24 CFR 941; 24 CFR 905

Legal Deadline: None

Abstract: This rule will amend Public housing development regulations to reflect the repeal of Sec. 6(b) of the United States Housing Act. Sec. 6(b) limits on dwelling construction and equipment cost for the different areas of the country. The rule will also amend these regulations to incorporate new cost containment procedures.

Timetable:

Action	Date	FR Cite
NPRM	09/26/88	53 FR 37503
Interim Final Rule	09/26/88	
Interim Final Rule Effective Date	11/25/88	
Interim Final Rule Public Comment Period End	11/25/88	
Final Action	04/00/89	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Nancy Chisholm, Director, Office of Policy, Department of Housing and Urban Development, Office of Public and Indian Housing, 202 755-6713

RIN: 2577-AA37

1068. ® SELF-HELP HOMEOWNERSHIP PROGRAM (P-17-88; FR-2944)

Significance: Agency Priority

Legal Authority: PL 100-358

CFR Citation: 24 CFR 905

Legal Deadline: Final, Statutory, September 28, 1988.
The rule must be effective by September 28, 1988

Abstract: The Indian Housing Act of 1988 requires HUD to establish a self-help housing program within the Mutual Help Homeownership Opportunity Program. The statute requires the self-help program to be modeled on the Farmers Home Administration self-help program with respect to labor contribution and with respect to technical and supervisory assistance. The statute also requires HUD to allow any Indian housing authority to apply for participation in the new program. This interim rule will fulfill the statutory requirements providing for groups of 4-10 families to cooperate in constructing their homes in return for a reduced purchase price.

Timetable:

Action	Date	FR Cite
NPRM	09/24/86	51 FR 33904
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Nancy Chisholm, Director, Office of Policy, Department of Housing and Urban Development, Office of Public and Indian Housing, 202 755-6713

RIN: 2577-AA37

1069. INDIVIDUAL METERING OF UTILITIES OF EXISTING PHA-OWNED PROJECTS (P-36-83; FR-1799)

Legal Authority: 42 USC 1437 note; 42 USC 1437a; 42 USC 1437d; 42 USC 1437g

CFR Citation: 24 CFR 965.301; 24 CFR 965.310; 24 CFR 965.404; 24 CFR 965.409

Legal Deadline: None

Abstract: Rule would revise the factors that PHAs use in estimating utility consumption savings resulting from conversions from master metered utilities systems to individually metered system and would amend energy audit provisions.

Timetable:

Action	Date	FR Cite
NPRM	11/14/83	48 FR 51785
NPRM Comment Period End	01/13/84	48 FR 51785

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Charles R. Ashmore, Utilities Officer, Department of Housing and Urban Development, Office of Public and Indian Housing, 202 755-0649

RIN: 2577-AA27

1070. PHA-OWNED AND LEASED PROJECT; MAINTENANCE AND OPERATION; TENANT ALLOWANCE FOR UTILITIES (P-8-86; FR-2260)

Significance: Regulatory Program

Legal Authority: 42 USC 1437; 42 USC 1437a; 42 USC 1437d; 42 USC 1437g

CFR Citation: 24 CFR 965

Legal Deadline: None

Abstract: HUD's procedures for the establishment and administration by PHAs of allowances for utilities and surcharges for excess consumption are contained in Part 965, Subpart E. This rule amends Subpart E to clarify how utility consumption attributable to air conditioning and certain tenant supplied major equipment will be treated under the allowance and surcharge provisions.

Timetable:

Action	Date	FR Cite
NPRM	10/16/87	52 FR 38470
NPRM Comment Period End	12/04/87	52 FR 38470

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Charles Ashmore, Utility Specialist, Department of Housing and Urban Development, Office of Public and Indian Housing, 202 755-0649

RIN: 2577-AA40

1071. CHANGE IN CONSOLIDATED SUPPLY PROGRAM (CSP) (P-11-86; FR2482)

Legal Authority: 42 USC 1437; 42 USC 1437a; 42 USC 1437d; 42 USC 1427g

CFR Citation: 24 CFR 965

Legal Deadline: None

Abstract: This rule proposes to remove the requirement to use purchase agreements for buying supplies with a value not in excess of the Open Market Purchase Limitation (currently $10,000).

Timetable:

Action	Date	FR Cite
NPRM	07/06/88	53 FR 25348
NPRM Comment Period End	09/06/88	53 FR 25348
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Michael E. Diggs, Chief, Consolidation Supply & Procurement, Branch, Department of Housing and Urban Development, Office of Public and Indian Housing, 202 472-4703

RIN: 2577-AA57

1072. PUBLIC AND INDIAN HOUSING COST CONTAINMENT PROCEDURES - COMPREHENSIVE IMPROVEMENT ASSISTANCE PROGRAM AND INDIAN HOUSING (P-9-86; FR-2262)

Legal Authority: 42 USC 1437d; PL 99-100

CFR Citation: 24 CFR 968; 24 CFR 905

Legal Deadline: None

Abstract: This rule would amend the Comprehensive Improvement Assistance Program and the Indian Housing Program regulations to reflect the repeal of Section 6(b) of the United States Housing Act. Section 6(b) limits dwelling construction and equipment costs for various areas of the country. This rule will also amend the regulations to incorporate new cost containment procedures.

Timetable:

Action	Date	FR Cite
NPRM	02/11/87	52 FR 4349
NPRM Comment Period End	04/13/87	52 FR 4349
Final Action	11/00/88	

Small Entities Affected: None

Government Levels Affected: Local, State

Additional Information: This proposed rule was split off from FR-2191.

Agency Contact: Nancy Chisholm, Director, Policy Staff, Office of Public Housing, Department of Housing and Urban Development, Office of Public and Indian Housing, 202 755-6713

RIN: 2577-AA43

1073. REVISION TO PFS - INSURANCE COSTS (P-2-88; FR-2437) 1987 HCD ACT

Significance: Regulatory Program

Legal Authority: 42 USC 1437g

CFR Citation: 24 CFR 968

Legal Deadline: None

Abstract: Section 118 of the Housing and Community Development Act of 1987 requires that HUD revise the PFS "to accurately reflect the increase in insurance costs incurred by (PHAs)."

This rule implements section 118 by increasing the Allowable Expense Level of all PHAs/IHAs by $8.43 to reflect the recent increases in the costs of risk protection coverage.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/05/88	53 FR 25152
Final Action	04/01/89	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Nancy Chisholm, Director, Policy Staff, Office of Public Housing, Department of Housing and Urban Development, Office of Public and Indian Housing, 202 755-6713

RIN: 2577-AA36

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) — Completed Actions

Office of Public and Indian Housing (PIH)

1074. PREEMPTION OF CERTAIN STATE-DETERMINED PREVAILING WAGE RATES APPLICABLE TO PUBLIC AND INDIAN HOUSING PROJECTS (P-6-86; FR-2231)

CFR Citation: 24 CFR 905.211

Completed:

Reason	Date	FR Cite
Final Action	08/10/88	53 FR 30206
Final Action Effective	10/06/88	53 FR 30206

Small Entities Affected: None

Government Levels Affected: State, Federal

Agency Contact: Justin Logsdon 202 755-5378

RIN: 2577-AA42

1075. PUBLIC HOUSING HOMEOWNERSHIP (P-9-88; FR-2480) 1987 HCD ACT

Significance: Regulatory Program

CFR Citation: 24 CFR 905; 24 CFR 965; 24 CFR 967

Completed:

Reason	Date	FR Cite
Withdrawn	08/24/88	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

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Agency Contact: Nancy Chisholm 202 755-6713

RIN: 2577–AA65

1676. PUBLIC HOUSING — TENANT LEASES AND PHA GRIEVANCE HEARINGS (P-25-76; FR-1164)

Significance: Regulatory Program

CFR Citation: 24 CFR 960; 24 CFR 966

Completed:

Reason	Date	FR Cite
Final Action	08/30/88	53 FR 33216

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Edward Whipple 202 426-8744

RIN: 2577–AA18

1677. ● TENANT MANAGEMENT IN PUBLIC HOUSING (P-14-88; FR-2519)

Legal Authority: 42 USC 1437r

CFR Citation: 24 CFR 964

Legal Deadline: None

Abstract: This rule establishes a new program of resident management of public housing. Under the program, resident councils that represents public housing residents could approve the formation of a resident management corporation. A qualifying resident management corporation could enter into a management contract with the public housing agency (PHA) establishing the respective management rights and responsibilities of the PHA and corporation with respect to the public housing management involved. The program will give PHAs and resident management corporations wide latitude in establishing their respective roles and relationship under the contract.

Timetable:

Action	Date	FR Cite
NPRM	07/05/88	53 FR 25276
NPRM Comment Period End	08/04/88	53 FR 25276
Final Action	09/07/88	53 FR 34676

Small Entities Affected: None

Government Levels Affected: Local, Federal

Agency Contact: Nancy Chisholm, Director, Office of Policy, Department of Housing and Urban Development, Office of Public and Indian Housing, 202 755-6713

RIN: 2577–AA73

1678. COMPREHENSIVE IMPROVEMENT ASSISTANCE PROGRAM; MULTI-STAGE FUNDING (P-1-88; FR-2415)

CFR Citation: 24 CFR 968.5(g)

Completed:

Reason	Date	FR Cite
Final Action	05/02/88	53 FR 15551
Final Action Effective	05/16/88	53 FR 15551

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Nancy Chisholm 202 755-6713

RIN: 2577–AA55

1679. EFFECTS OF DEBT FORGIVENESS ON PUBLIC HOUSING AGENCY ANNUAL CONTRIBUTIONS CONTRACTS (P-5-87; FR-2488)

Significance: Regulatory Program

CFR Citation: 24 CFR 958; 24 CFR 970

Completed:

Reason	Date	FR Cite
Final Action	10/17/88	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Robert Kenison 202 426-8812

RIN: 2577–AA51

[FR Doc. 88-23969 Filed 10-21-88; 8:45 am]

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federal register

Monday
October 24, 1988

Part X

Department of the Interior

Semiannual Regulatory Agenda

DEPARTMENT OF THE INTERIOR (DOI)

DEPARTMENT OF THE INTERIOR

Office of the Secretary

25 CFR Ch. I

30 CFR Chs. II, IV and VII

36 CFR Ch. I

43 CFR Subtitle A, Chs. I and II

48 CFR Ch. 14

50 CFR Chs. I and IV

Semiannual Agenda of Rules Scheduled for Review or Development

AGENCY: Office of the Secretary, Interior.

ACTION: Semiannual agenda of rules scheduled for review or development.

SUMMARY: This notice provides the semiannual agenda of rules scheduled for review or development between October 1988 and April 1989. An agenda is required by Executive Order 12291 and the Regulatory Flexibility Act.

ADDRESS: Unless otherwise indicated, all Agency Contacts are located at the Department of the Interior, 18th and C Streets, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: All comments and inquiries with regard to these rules should be directed to the appropriate Agency Contact. General comments relating to the agenda should be directed to the Division of Directives and Regulatory Management, Office of Management Improvement, Department of the Interior, 18th and C Streets, NW., MIB-2242, Washington, DC 20240, or on 202-343-0191.

SUPPLEMENTARY INFORMATION: With this publication, the Department satisfies the requirement of Executive Order 12291 that the Department publish in April and October of each year an agenda of rules that have been issued or are expected to be issued, and currently effective rules that are scheduled for review.

Simultaneously, the Department meets the requirement of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that an agenda be published in April and October of each year identifying rules which will have significant economic effects on a substantial number of small entities; those rules which will have such effects are specifically identified in the agenda.

This agenda also identifies rules determined to be "significant" under Executive Order 12498 and which are included in this Department's 1988-89 regulatory program. A more comprehensive discussion of this program and the rules are contained in the Regulatory Program of the United States Government which is published by the Office of Management and Budget.

Dated: August 22, 1988.

Rick Venture,

Assistant Secretary, Policy, Budget and Administration.

Assistant Secretary for Policy, Budget, and Administration—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
1060	Natural Resource Damage Assessments	1090-AA21

Assistant Secretary for Policy, Budget, and Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1061	Natural Resource Damage Assessments	1090-AA22
1062	Natural Resource Damage Assessments	1090-AA23
1063	Department of the Interior, Nonprocurement Debarment and Suspension Regulation	1090-AA24
1064	Certification of Non-Delinquency by Applicants for Federal Financial Assistance	1090-AA25
1065	Department of the Interior Acquisition Regulation	1090-AA14

Assistant Secretary for Policy, Budget, and Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1066	Department of the Interior, Procurement Ethics Regulation	1090-AA15
1067	Department of the Interior Acquisition Regulation	1090-AA13

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Assistant Secretary for Policy, Budget, and Administration—Completed Actions

Sequence Number	Title	Regulation Identifier Number
1088	Department of the Interior - Nonprocurement Debarment and Suspension Regulation	1090-AA12
1089	Certification of Non-Delinquency by Applicants for Federal Financial Assistance	1090-AA19
1090	Department of the Interior Acquisition Regulation	1090-AA10

Office of the Solicitor—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1091	Practices Before the Department	1092-AA00

Office for Equal Opportunity—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1092	Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving or Benefiting from Federal Financial Assistance	1091-AA00

Office for Equal Opportunity—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1093	Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance	1091-AA00

Office of Hearings and Appeals—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1094	Special Rules Applicable to Public Land Hearings and Appeals	1094-AA25

Office of Hearings and Appeals—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1095	Department Hearings and Appeals Procedures	1094-AA20
1096	Special Rules Applicable in Indian Affairs Hearings and Appeals	1094-AA21
1097	Burden of Proof in Civil Penalty Proceedings	1094-AA23
1098	Amendment of Regulation Establishing Age at Which an Indian Can Execute a Will Devising Trust or Restricted Property	1094-AA25
1099	Special Rules Applicable to Public Land Hearings and Appeals	1094-AA30

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Office of Hearings and Appeals—Completed Actions

Sequence Number	Title	Regulation Identifier Number
1100	Special Rules Applicable to Surface Coal Mining Hearings and Appeals	1094-AA28
1101	Commencement of Probate Anti-Lapse Provisions	1094-AA36
1102	Tribal Acquisition of Interests Under Special Statute	1094-AA25
1103	Service of Notice of Appeal and of Other Documents	1094-AA34

United States Fish and Wildlife Service—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
1104	Migratory Bird Hunting	1018-AA24
1105	Administrative Requirements, Federal Aid in Fish and Federal Aid in Wildlife Restoration Acts	1018-AB15

United States Fish and Wildlife Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1106	Humane Transport of Wild Mammals and Birds	1018-AA07
1107	Importation, Exportation, and Transportation of Wildlife	1018-AB20
1108	Injurious Wildlife: Mitten Crabs	1018-AB04
1109	Injurious Wildlife: Importation of Live or Dead Fish, Mollusks, and Crustaceans, or Their Eggs	1018-AB13
1110	Captive Bred Wildlife	1018-AB19
1111	Proposed Determination of Nonessential Experimental Population Status for an Introduced Population of the Nashville Crayfish in Tennessee	1018-AB12
1112	Endangered and Threatened Wildlife and Plants; Special Rules for Mammals	1018-AB18
1113	Marine Mammals: Change definition of U.S. Citizen	1018-AB16
1114	Nontoxic Shot Regulations for Hunting Migratory Birds	1018-AA82
1115	Subsistence Take of Migratory Birds in Alaska	1018-AB03
1116	Refuge-Specific Hunting Regulations	1018-AA71
1117	Refuge-Specific Sport Fishing Regulations	1018-AA50
1118	Implementation of Klamath River Basin Fishery Resources Restoration Act	1018-AB11

United States Fish and Wildlife Service—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1119	Importation, Exportation, and Transportation of Wildlife	1018-AA70
1120	Endangered and Threatened Wildlife and Plants	1018-AA10
1121	Endangered and Threatened Wildlife and Plants	1018-AA64
1122	Endangered and Threatened Wildlife and Plants	1018-AA65
1123	Endangered and Threatened Wildlife and Plants	1018-AA25
1124	Endangered and Threatened Wildlife and Plants	1018-AA08
1125	Endangered and Threatened Wildlife and Plants	1018-AB02
1126	Endangered and Threatened Wildlife and Plants	1018-AB06
1127	Proposed Determination of Experimental Population Status for an Introduced Population of Colorado Squawfish	1018-AB03
1128	Endangered and Threatened Wildlife and Plants	1018-AB14
1129	Endangered and Threatened Wildlife and Plants	1018-AB18
1130	Marine Mammals: Incidental Taking by Commercial Fishing Operations	1018-AA06
1131	Marine Mammals: Take of Small Numbers Incidental to Specified Activities	1018-AB05
1132	Subsistence Take of Migratory Birds	1018-AA92
1133	General Permit Procedures and Migratory Bird Permits: Raptor Propagation and Falconry Regulations	1018-AB01
1134	Endangered Species Convention	1018-AA22
1135	Public Entry and Use	1018-AA56

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United States Fish and Wildlife Service—Final Rule Stage—Continued

Sequence Number	Title	Regulation Identifier Number
1136	Fish and Wildlife Restoration Grants; Interest Earned on License Fees	1018-AA97

United States Fish and Wildlife Service—Completed Actions

Sequence Number	Title	Regulation Identifier Number
1137	Proposed Determination of Nonessential Experimental Population Status for an Introduced Population of the Yellowfin Madtom in Virginia	1018-AD08
1138	Technical Amendments to the Sea Otter Translocation Regulations	1018-AB17
1139	Marine Mammals: Reporting and Sealing Requirements for Alaska Natives	1018-AA20

National Park Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1140	Yosemite National Park; Wawona Zoning Regulations	1024-AB77
1141	Appalachian National Scenic Trail	1024-AD07
1142	Hawaii Volcanoes National Park: Fishing Regulations	1024-AB66
1143	Mammoth Cave NP: Fishing	1024-AA84
1144	Cape Hatteras National Seashore: Off-Road Vehicle Regulations	1024-AB54
1145	Glen Canyon National Recreation Area: Commercial Operations and Whitewater Boating Regulations	1024-AB72
1146	Sequoia and Kings Canyon National Parks: Fishing Regulations	1024-AB76
1147	Big Thicket National Preserve: Hunting Regulations	1024-AB48
1148	Cape Lookout National Seashore: Off-Road Vehicles	1024-AA80
1149	Minerals Management - Non-Federal Oil and Gas	1024-AB39
1150	Management of Mineral Development Associated with Mining Claims	1024-AB74
1151	Minerals Management: Nonfederal Rights Other Than Oil and Gas	1024-AD75
1152	NPS Units in Alaska: Concessions	1024-AB18
1153	Katmai National Park and Preserve Fishing Regulations	1024-AB76
1154	Archeological and Historic Preservation Act; Department of the Interior Regulations	1024-AA49
1155	Cemetery Sites and Historical Places	1024-AA54

National Park Service—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1156	Cuyahoga Valley NRA: Off-Road Vehicles and Snowmobiles	1024-AB44
1157	Canyon De Chelly National Monument	1024-AB47
1158	Fort Jefferson NM: Fishing; Boundary Adjustments	1024-AA96
1159	Jean Lafitte NHP: Crawfishing Regulations	1024-AB33
1160	Everglades NP: Mining	1024-AB19
1161	Lake Chelan NRA: Target Practice	1024-AD10
1162	Ross Lake NRA: Target Practice	1024-AB28
1163	Rocky Mountain National Park: Fishing Regulations	1024-AB45
1164	Rocky Mountain National Park: Trucking Regulations	1024-AB67
1165	Big Cypress National Preserve: Indian Use and Occupancy	1024-AA97
1166	Whiskeytown National Recreation Area Fishing Regulations	1024-AB61
1167	Whiskeytown Unit, Whiskeytown - Shasta - Trinity NRA Gold Panning Regulations	1024-AB71
1168	Bighorn Canyon National Recreation Area - Fishing Regulations	1024-AB62
1169	NPS Units in Alaska: Closure Regulations	1024-AA71
1170	Fire Island National Seashore: Zoning	1024-AA90
1171	National Register of Historic Places	1024-AA44
1172	Determination of Eligibility for Inclusion in the National Register of Historic Places	1024-AA46

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National Park Service—Final Rule Stage—Continued

Sequence Number	Title	Regulation Identifier Number
1173	Historic Preservation Certifications Pursuant to Section 48(g) and Section 170(h) of the Internal Revenue Code of 1986	1024-AB73
1174	Curation of Federally Owned and Administered Archeological Collections	1024-AB13

National Park Service—Completed Actions

Sequence Number	Title	Regulation Identifier Number
1175	Lake Mead National Recreation Area: Noise Abatement Exemption	1024-AB50
1176	Management of Mining Claim Activities	1024-AB37
1177	National Park Service Acquisition Regulation	1024-AB35

Bureau of Indian Affairs—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1178	Procedures for Establishing that an American Indian Group Exists as an Indian Tribe	1076-AC15
1179	The Indian Police	1076-AB98
1180	Small Estates - Osage	1076-AC18
1181	Financial Assistance and Social Services Program	1076-AB99
1182	Financial Assistance and Social Services Program	1076-AC13
1183	Administration of a Program of Employment Assistance for Adult Indians	1076-AA04
1184	School Boards	1076-AC14
1185	Grants to Tribally Controlled Community Colleges and Navajo Community College	1076-AA11
1186	Certificates of Degree of Indian Blood	1076-AC16
1187	Loans to Indians from the Revolving Loan Fund	1076-AC00
1188	Loan Guaranty, Insurance, and Interest Subsidy	1076-AC01
1189	Individual Indian Money Accounts	1076-AB91
1190	Leasing and Permitting	1076-AA28
1191	Roads of the Bureau of Indian Affairs	1076-AB05
1192	Leasing of Restricted Lands of Members of Five Civilized Tribes, Oklahoma, for Mining	1076-AB41
1193	Indian Business Development Program	1076-AA55
1194	Tribal Bingo Management Contracts	1076-AC07

Bureau of Indian Affairs—Final Rule Stage

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1195	Appeals from Administrative Actions	1076-AB21
1196	Law and Order on Indian Reservations	1076-AA01
1197	Education Personnel	1076-AB02
1198	Administration of the Higher Education Program	1076-AA10
1199	Administration of the Indian Adult Education Programs	1076-AA15
1200	Preparation of Rolls of Indians	1076-AC11
1201	Attorney Fee Contracts with Indian Tribes; Payment of Tribal Attorney Fees with Federally Appropriated Funds	1076-AB87
1202	Revolving Cattle Pool	1076-AC02
1203	Management of Osage Judgment Funds for Education and Socio-Economic Programs	1076-AB51
1204	Navajo Grazing Regulations	1076-AA23
1205	Rights-of-Way Over Indian Lands	1076-AB69
1206	San Carlos Indian Irrigation Project, Arizona	1076-AC08
1207	Contracts for Prospecting and Mining on Indian Mineral Lands	1076-AA38
1208	Leasing of Allotted Lands for Mining	1076-AA39
1209	Oil and Gas Mineral Agreements	1076-AA82

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Bureau of Indian Affairs—Final Rule Stage—Continued

Sequence Number	Title	Regulation Identifier Number
1210	Leasing of Osage Reservation Lands for Oil and Gas Mining	1076-AC09
1211	Buy Indian Act Contracting	1076-AA54

Bureau of Indian Affairs—Completed Actions

Sequence Number	Title	Regulation Identifier Number
1212	Federal Schools For Indians (Revision)	1076-AB47
1213	The Indian School Equalization Program (New School Starts, Program Expansions, School Closures, Consolidations, and Program Reductions)	1076-AB48
1214	Preparation of a Roll of Alaska Natives	1076-AC12
1215	Revision of the Membership Roll of the Eastern Band of Cherokee Indians, North Carolina	1076-AB54
1216	Life Estates and Future Interests	1076-AC06
1217	Indian Fishing: Hoopa Valley Indian Reservation	1076-AA83
1218	Contracts Under Indian Self-Determination Act (Subpart H - New School Starts and Program Expansions)	1076-AB49
1219	Small Tribes Governmental Assistance Grant Program	1076-AC10

Minerals Management Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1220	Processing and Transportation Allowances, Return on Capital Investment	1010-AB12
1221	Revision of Royalty Valuation Regulations Governing Gas Sales Under Percentage-of-Proceeds Contracts	1010-AB17
1222	Amendment of Regulations, Oil and Gas Transportation Allowances and Gas Processing Allowances	1010-AB18
1223	Geothermal Resources Used to Generate Electricity, Product Valuation for Royalty Purposes	1010-AB22
1224	Recoupments and Refunds of Excess Payments Under Federal Offshore Mineral Leases	1010-AB11
1225	Revision of Regulations Governing Appeals	1010-AB13
1226	Air Quality -- Outer Continental Shelf Wide	1010-AB14
1227	Oil and Gas and Sulphur Operations in the Outer Continental Shelf (OCS), Subpart O, Training	1010-AB21
1228	Oil and Gas and Sulphur Operations in the Outer Continental Shelf, Subpart P, Sulphur Operations	1010-AB23
1229	Air Quality - Offshore California	1010-AA81
1230	Leasing of Minerals Other than Oil, Gas, and Sulphur in the Outer Continental Shelf	1010-AA82
1231	Mining Operations for Minerals Other Than Oil, Gas, and Sulphur in the Outer Continental Shelf	1010-AA81

Minerals Management Service—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1232	Valuation of Coal for Royalty Purposes from Federal and Indian Leases	1010-AA83
1233	Amendment of Oil and Gas Royalty Valuation Regulations	1010-AB24
1234	Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Safety and Pollution-Prevention Equipment	1010-AB10
1235	Supplemental Sales	1010-AB25
1236	Nondiscrimination in Employment in the Outer Continental Shelf	1010-AA87
1237	Appeals Procedures	1010-AB29

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Minerals Management Service—Completed Actions

Sequence Number	Title	Regulation Identifier Number
1238	Onshore Production Reporting and Accounting	1010-AB10
1239	Oil and Gas and Sulphur Operations on the Outer Continental Shelf (OCS)	1010-AA53
1240	Prospecting for Minerals Other than Oil, Gas, and Sulphur in the Outer Continental Shelf	1010-AA71

Office of Surface Mining Reclamation and Enforcement—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1241	Surface Coal Mining and Reclamation Operations; Two Acre Exemption Repeal	1029-AB15
1242	Permit to Reclaim Rule	1029-AB26
1243	Permanent Regulatory Program; Requirements for Permits for Special Categories of Mining	1029-AA54
1244	Interim Program Revisions	1029-AB24
1245	Federal Lands Program	1029-AA76
1246	Definition and Criteria for Valid Existing Rights	1029-AA77
1247	Lands Unsuitable Regulations	1029-AA90
1248	Permanent Regulatory Program Definitions; Areas Unsuitable for Mining	1029-AA80
1249	Approximate Original Contour Variances	1029-AB27
1250	Reprocessing Coal Waste	1029-AB23
1251	Permanent Program Performance Standards; Disposal of Coal Mine Waste	1029-AB09
1252	Permanent Program Performance Standards; Surface Mining Activities; Contemporaneous Reclamation	1029-AB02
1253	Permanent Program Performance Standards; Surface and Underground Mining Activities; Backfilling and Grading	1029-AA57
1254	Disposal of Excess Spoil on Preexisting Benches	1029-AB18
1255	Assessment Conference Scheduling	1029-AB22
1256	Delinquent Abandoned Mine Land Reclamation Fees	1029-AB21
1257	Abandoned Mine Land Reclamation; State Reclamation Grants	1029-AB13

Office of Surface Mining Reclamation and Enforcement—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1258	Termination of Jurisdiction Under SMCRA	1029-AB07
1259	Permanent Program Performance Standards; Surface and Underground Activities; Roads	1029-AA60
1260	Permanent Regulatory Program Definition of Support Facilities	1029-AA94
1261	Exemption for Coal Extraction Incidental to the Extraction of Other Minerals	1029-AA53
1262	Requirements for Coal Exploration--Permit Requirements for Exploration Removing More than 250 Tons of Coal	1029-AA92
1263	Federal Regulatory Programs; Permit Application Fees	1029-AB15
1264	Surface Coal Mining and Reclamation Operations on Indian Lands	1029-AB04
1265	Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program-Ownership and Control	1029-AA56
1266	Requirements for Permits and Permit Processing; Permit Applications Minimum Requirements for Legal Financial Civil Penalties	1029-AA58
1267	Permanent Regulatory Program - Ownership Information	1029-AA96
1268	Permanent Regulatory Program; Requirements for Permits, Information on Hydrologic Impacts	1029-AB11
1269	Surface Coal Mining Operations; Definition of "In Connection With"	1029-AB06
1270	Permanent Program Performance Standards - Surface Mining Activities, Underground Mining Activities -- Revegetation	1029-AA56
1271	Permanent Program Performance Standards - Surface Mining Activities, Underground Mining Activities - Impoundments	1029-AA79
1272	Special Permanent Program Performance Standards; Operations on Prime Farmland	1029-AA64
1273	Improvidently Issued Permits	1029-AB20
1274	Tennessee Program Amendment; Significant Permit Revisions	1029-AB17

DOI

Office of Surface Mining Reclamation and Enforcement—Completed Actions

Sequence Number	Title	Regulation Identifier Number
1275	Substantial Legal and Financial Commitment	1029-AB01
1276	Permit Processing	1029-AB14
1277	Permanent Program Performance Standards; Highwall Policy	1029-AB19
1278	Surface Coal Mining and Reclamation Operations; Permanent Regulatory Programs; Permanent Program Inspection and Enforcement Procedures	1029-AA87
1279	Ten Day Notice Review Criteria	1029-AB12
1280	Collection of AML Fees - Moisture Content of Coal	1029-AB03
1281	California Federal Program	1029-AB05

Bureau of Reclamation—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1282	Procedure to Process and Recover the Value of Rights-of-Use and Administrative Costs Incurred in Permitting Such Use	1006-AA18

Bureau of Reclamation—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1283	Acreage Limitation Rules and Regulations	1006-AA17

Bureau of Land Management—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1284	Minerals (Nonmineral Entries on Mineral Lands)	1004-AB20
1285	Exchanges - General Procedures	1004-AB28
1286	Indian Allotments	1004-AB10
1287	Rights-of-Way, Principles and Procedures	1004-AB30
1288	Rights-of-Way, Trespass, and Law Enforcement - Criminal	1004-AB46
1289	Rights-of-Way under the Mineral Leasing Act	1004-AA86
1290	Recreation and Public Purposes Act Leases	1004-AA73
1291	Onshore Oil and Gas Order No. 8 - Well Workovers, Completions, Abandonments	1004-AB37
1292	Onshore Oil and Gas Order No. 7 - Disposal of Produced Water	1004-AA88
1293	Onshore Oil and Gas Order No. 6 - Hydrogen Sulfide Operations	1004-AA67
1294	Onshore Oil and Gas Order No. 9 - Waste Prevention and Beneficial Use of Oil and Gas	1004-AB47
1295	Onshore Oil and Gas Operations - Cooperative Agreements, Delegations of Authority and Contracts for Oil and Gas Inspection and Enforcement	1004-AB32
1296	Geothermal Resource Operations	1004-AB18
1297	Sales of Forest Products; General - Preparation for Sale	1004-AB34
1298	Coal Exploration and Mining Operations Rules	1004-AB44
1299	Management of Existing Leases	1004-AB36
1300	Coal Exploration and Mining Operations Rules	1004-AB42
1301	Operating Regulations for Exploration, Development and Production	1004-AA58
1302	Multiple Use: Mining: Mining Claims Under the General Mining Laws	1004-AD04
1303	Mining Claims Under the General Mining Law - Nature and Classes of Mining Claims Assessment Work	1004-AB43
1304	Mining Claims Under the General Mining Laws	1004-AD06
1305	Sales of Forest Products; Conduct of Sales	1004-AB39
1306	Sales of Forest Products; Award of Contract	1004-AB40
1307	Award of Contract; Sales Administration	1004-AB45
1308	Cultural Resource Management	1004-AA89
1309	Paleontology	1004-AA27

DOI

Bureau of Land Management—Proposed Rule Stage—Continued

Sequence Number	Title	Regulation Identifier Number
1310	Recreation: General	1004-AA36
1311	Cadastral Survey	1004-AB37
1312	Unauthorized Use of Public Lands	1004-AA38
1313	Law Enforcement, Criminal	1004-AB48

Bureau of Land Management—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1314	Land Classification	1004-AB19
1315	Onshore Oil and Gas Operations - Onshore Oil and Gas Order Number 4 - Measurement of Crude Oil	1004-AA06
1316	Onshore Oil and Gas Order No. 2 - Drilling Operations	1004-AB21
1317	Onshore Oil and Gas Order No. 3 - Site Security	1004-AB24
1318	Onshore Oil and Gas Order No. 5 - Measurement of Natural Gas	1004-AB22
1319	Fees, Rents, and Royalties	1004-AB45
1320	Conduct of Sales (Timber)	1004-AB35
1321	Off-Road Vehicles	1004-AB26

Bureau of Land Management—Completed Actions

Sequence Number	Title	Regulation Identifier Number
1322	Public Land Records	1004-AA77
1323	Oil and Gas Leasing and Geothermal Resource Leasing - General	1004-AA97
1324	Exploration Activity; Oil and Gas Leasing; Geothermal Resource Leasing - General	1004-AB13
1325	Oil and Gas Leasing - Fees, Rentals and Royalties	1004-AB31
1326	Oil and Gas Leasing Competitive Leases	1004-AB41
1327	Grazing Administration - Exclusive of Alaska	1004-AB29
1328	Protection of Special Status Plants	1004-AB09
1329	Use Authorizations; Special Recreation Permits	1004-AA36

DEPARTMENT OF THE INTERIOR (DOI)

Prerule Stage

Assistant Secretary for Policy, Budget, and Administration (ASPBA)

1080. NATURAL RESOURCE DAMAGE ASSESSMENTS

Significance: Regulatory Program

Legal Authority: 42 USC 9651(c) CERCLA

CFR Citation: 43 CFR 11

Legal Deadline: Other, Statutory, March 20, 1989.
42 USC 9651(c)(3) requires biennial review and revision as appropriate of the regulations.

Abstract: CERCLA allows natural resource trustees to bring a claim against a potentially responsible party for resources that have been injured by a release of a hazardous substance or, under certain circumstances, a discharge of oil. Section 301(c)(2)(A) calls for the promulgation of simplified procedures for coastal and marine environments through the use of a computer model known as the natural resource damage assessment model for coastal and marine environments (NRDAM/CME). Section 301(c)(3) of CERCLA requires the biennial review of these natural resource damage assessment regulations. Since type A regulations were published as a final rule with an effective date of April 20, 1987, the Department will issue an advance notice of proposed rulemaking (ANPRM). This ANPRM will ask trustees, other interested parties, and members of the public to draw upon their experience with the type A procedures to advise the Department of areas where revisions to the type A procedures may be appropriate.

Timetable:

Action	Date	FR Cite
ANPRM	10/20/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

DOI—ASPBA

Prerule Stage

Agency Contact: Bruce Blanchard, Director, Office of Envir. Project Review, Department of the Interior, Assistant Secretary for Policy, Budget, and Administration, Room 4239, MIB, 1801 C Street, NW, Washington, DC 20240, 202 343-3891

RIN: 1090-AA21

DEPARTMENT OF THE INTERIOR (DOI)

Proposed Rule Stage

Assistant Secretary for Policy, Budget, and Administration (ASPBA)

1081. NATURAL RESOURCE DAMAGE ASSESSMENTS

Significance: Regulatory Program

Legal Authority: 42 USC 9651(c) CERCLA

CFR Citation: 43 CFR 11

Legal Deadline: Other, Statutory, September 1, 1988.
42 USC 9651(c)(3) requires biennial review and revision as appropriate of the regulations.

Abstract: CERCLA allows natural resource trustees to bring a claim against a potentially responsible party for resources that have been injured by a release of a hazardous substance or, under certain circumstances, a discharge of oil. Section 301(c)(2)(B) calls for the promulgation of a set of alternative protocols for the testing, sampling, and valuing of natural resource damages, referred to as the type B procedures. Section 301(c)(3) of CERCLA requires the biennial review of these natural resource damage assessment regulations. Since the general process and type B regulations were published as a final rule with an effective date of September 1, 1988, the Department will issue an advance notice of proposed rulemaking. This ANPRM will ask trustees, other interested parties, and members of the public to draw upon their experience with the type B procedures, and the general assessment process, to advise the Department of areas where revisions to the process and the type B procedures may be appropriate.

Timetable:

Action	Date	FR Cite
ANPRM	05/03/88	53 FR 15714
ANPRM Comment Period End	07/05/88	53 FR 15714
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Bruce Blanchard, Director, Office of Envir. Project Review, Department of the Interior, Assistant Secretary for Policy, Budget, and Administration, Room 4239, 1801 C St., NW, Washington, DC 20240, 202 343-3891

RIN: 1090-AA22

1082. NATURAL RESOURCE DAMAGE ASSESSMENTS

Significance: Regulatory Program

Legal Authority: 42 USC 9651(c) CERCLA

CFR Citation: 43 CFR 11

Legal Deadline: None

Abstract: The Department has promulgated regulations, codified at 43 CFR Part 11, for the assessment of damages to natural resources injured by a release of a hazardous substance or, under certain circumstances, a discharge of oil. The regulations provide two types of assessment procedures: simplified procedures requiring minimal field investigation, referred to as the type A procedures; and alternative protocols for the testing, sampling, and valuing of natural resource damages, referred to as the type B procedures. The type A procedures that have been developed are for use in coastal and marine environments. The Department has stated that, when possible, it would develop additional type A procedures for other environments or natural resources. An advance notice of proposed rulemaking (ANPRM) will be issued by the Department. This ANPRM will solicit suggestions and supporting technical information for possible development of other type A procedures.

Timetable:

Action	Date	FR Cite
ANPRM	06/02/88	53 FR 20143
ANPRM Comment Period End	07/18/88	53 FR 20143
NPRM	03/00/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Bruce Blanchard, Director, Office of Envir. Project Review, Department of the Interior, Assistant Secretary for Policy, Budget, and Administration, Room 4239, 1801 C St., NW, Washington, DC 20240, 202 343-3891

RIN: 1090-AA23

1083. ● DEPARTMENT OF THE INTERIOR, NONPROCUREMENT DEBARMENT AND SUSPENSION REGULATION

Legal Authority: EO 12549; 5 USC 301

CFR Citation: 43 CFR 12

Legal Deadline: None

Abstract: This action proposes a revision to the Department's regulation establishing a uniform system of nonprocurement debarment and suspension. This proposed rule would implement the requirements of paragraph (a)(1) of section .110, Coverage, of common final rule on Governmentwide Debarment and Suspension (Nonprocurement).

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
NPRM Comment Period End	12/29/88	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Jerry B. Vance, Director, Office of Acquisition and Property Management, Department of the Interior, Assistant Secretary for Policy, Budget, and Administration, 18th & C Sts., NW, Washington, DC 20240, 202 343-6868

RIN: 1090-AA24

DOI—ASPBA — **Proposed Rule Stage**

1084. ◆ CERTIFICATION OF NON-DELINQUENCY BY APPLICANTS FOR FEDERAL FINANCIAL ASSISTANCE

Legal Authority: 31 USC 3511; 31 USC 3512; 31 USC 3302; 31 USC 3701; 31 USC 3711; 31 USC 3716 to 3719

CFR Citation: 43 CFR 12

Legal Deadline: None

Abstract: This notice of proposed rulemaking proposes a regulation requiring the use of an application form which includes a question to be answered "yes" or "no" regarding whether the applicant is delinquent on any Federal debt. The Department has withdrawn the Notice of Proposed Rulemaking published on May 11, 1988, because subsequent guidance from the Office of Management and Budget conflicted with the proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Jerry B. Vance, Director, Office of Acquisition and Property Management, Department of the Interior, Assistant Secretary for Policy, Budget, and Administration, 18th & C Sts., NW, Washington, DC 20240, 202 343-6068

RIN: 1090-AA23

1085. DEPARTMENT OF THE INTERIOR ACQUISITION REGULATION

Legal Authority: 5 USC 301

CFR Citation: 48 CFR 1400

Legal Deadline: None

Abstract: This rule makes miscellaneous revisions to the Department of the Interior Acquisition Regulation.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: William Opdyke, Acting Chief, Acquisition and Assistance Division, Department of the Interior, Assistant Secretary for Policy, Budget, and Administration, 18th & C Streets, NW, Washington, DC 20240, 202 343-3433

RIN: 1090-AA14

DEPARTMENT OF THE INTERIOR (DOI) — **Final Rule Stage**

Assistant Secretary for Policy, Budget, and Administration (ASPBA)

1086. DEPARTMENT OF THE INTERIOR, PROCUREMENT ETHICS REGULATION

Legal Authority: 5 USC 301; EO 11222; 43 CFR 20.735

CFR Citation: 48 CFR 1401; 48 CFR 1402; 48 CFR 1415; 48 CFR 1453

Legal Deadline: None

Abstract: This notice of proposed rulemaking proposes to provide implementing regulations in the Department of the Interior Acquisition Regulation for EO 11222 governing ethics conduct for Government employees. The proposed rule would also provide a special code of conduct for employees with procurement responsibilities in accordance with 43 CFR 20.735-2(h).

Timetable:

Action	Date	FR Cite
NPRM	05/13/88	53 FR 17088
NPRM Comment Period End	07/12/88	53 FR 17088
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: William S. Opdyke, Chief, Division of Acquisition and Assistance, Department of the Interior, Assistant Secretary for Policy, Budget, and Administration, 18th and C Streets, NW, Washington, DC 20240, 202 343-3433

RIN: 1090-AA15

1087. DEPARTMENT OF THE INTERIOR ACQUISITION REGULATION

Legal Authority: 5 USC 301

CFR Citation: 48 CFR 1415

Legal Deadline: None

Abstract: This rule will establish formal source selection procedures for the Department pursuant to FAR 15.612.

Timetable:

Action	Date	FR Cite
NPRM	12/21/87	52 FR 48201
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: William Opdyke, Acting Chief, Acquisition and Assistance Division, Department of the Interior, Assistant Secretary for Policy, Budget, and Administration, 18th & C Streets, NW, Washington, DC 20240, 202 343-3433

RIN: 1090-AA13

DEPARTMENT OF THE INTERIOR (DOI) — **Completed Actions**

Assistant Secretary for Policy, Budget, and Administration (ASPBA)

1088. DEPARTMENT OF THE INTERIOR - NONPROCUREMENT DEBARMENT AND SUSPENSION REGULATION

Legal Authority: 5 USC 301; EO 12549

CFR Citation: 43 CFR 12

Legal Deadline: None

Abstract: This notice of proposed rulemaking proposes common regulations implementing the Office of Management and Budget guidelines which prescribe the scope, government criteria, minimum due process procedures, and other guidance for a system for nonprocurement debarment or suspension of a nonprocurement program participant and will have governmentwide effect.

Timetable:

Action	Date	FR Cite
NPRM	10/25/87	52 FR 39942
NPRM Comment Period End	12/21/87	52 FR 39942
Final Action	05/26/88	53 FR 19161
Final Action Effective	10/01/88	53 FR 19161

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Colonel C. Armstrong, Deputy Director, Office of Acquisition & Property Management, Department of the Interior, Assistant Secretary for Policy, Budget, and Administration, Washington, DC 20240, 202 343-6431

RIN: 1090-AA12

1089. CERTIFICATION OF NON-DELINQUENCY BY APPLICANTS FOR FEDERAL FINANCIAL ASSISTANCE

Legal Authority: 31 USC 3511; 31 USC 3512; 31 USC 3302; 31 USC 3701; 31 USC 3711; 31 USC 3716 to 3719

CFR Citation: 43 CFR 12

Legal Deadline: None

Abstract: This Notice of Proposed Rulemaking proposes a regulation requiring that a certification of nondelinquency be included in applications for Federal financial assistance. This proposed regulation will implement Paragraph 6 of Office of Management and Budget Circular A-129, "Managing Federal Credit Programs."

Timetable:

Action	Date	FR Cite
NPRM	05/11/88	53 FR 16733
NPRM Comment Period End	07/11/88	53 FR 16733
Withdrawn -- revised OMB guidance requires issuance of new NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: William Opdyke, Acting Chief, Acquisition and Assistance Division, Department of the Interior, Assistant Secretary for Policy, Budget, and Administration, 18th & C Sts., NW, Washington, DC 20240, 202 343-3433

RIN: 1090-AA10

BILLING CODE 4310-RK-T

1090. DEPARTMENT OF THE INTERIOR ACQUISITION REGULATION

Legal Authority: 5 USC 301

CFR Citation: 48 CFR 1400

Legal Deadline: None

Abstract: This rule will implement changes in the FAR as a result of the Small Business and Federal Procurement Competition Enhancement Act of 1988, PL 98-577.

Timetable:

Action	Date	FR Cite
Withdrawn -- FAR coverage has not been issued yet	07/20/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: William S. Opdyke, Acting Chief, Acquisition and Assistance Division, Department of the Interior, Assistant Secretary for Policy, Budget, and Administration, 18th & C Streets, NW, Washington, DC 20240, 202 343-3433

RIN: 1090-AA19

DEPARTMENT OF THE INTERIOR (DOI) — **Proposed Rule Stage**

Office of the Solicitor (OSOL)

1091. PRACTICES BEFORE THE DEPARTMENT

Legal Authority: 43 USC 1464

CFR Citation: 43 CFR 1

Legal Deadline: None

Abstract: This rule governs practice in administrative proceedings before the Department. It will be revised to update its provisions and assure that they are consistent with the Department's employee conduct regulations (43 CFR Part 20) and the Ethics in Government Act.

Timetable:

Action	Date	FR Cite
NPRM	01/31/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Originally scheduled: January 1961.

Agency Contact: Barbara Abate, Paralegal, Department of the Interior, Office of the Solicitor, 18th and C Streets, NW, Washington, DC 20240, 202 343-6216

RIN: 1093-AA00

BILLING CODE 4310-RK-T

DEPARTMENT OF THE INTERIOR (DOI)
Office for Equal Opportunity (OEO)

Proposed Rule Stage

1082. NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL FINANCIAL ASSISTANCE

Legal Authority: PL 92-318 Title IX of the Education Amendment of 1972; PL 93-568; PL 94-482; 20 USC 1681 to 1688

CFR Citation: 43 CFR 17, Subpart D

Legal Deadline: None

Abstract: The Title IX regulation is intended to address the problem of discrimination on the basis of sex in any education program or activity receiving or benefiting from Federal financial assistance administered by the Department of the Interior (DOI).

No alternative for addressing problems of discrimination in DOI's education programs can be considered due to the fact that Title IX requires each Federal agency which extends Federal financial assistance to any educational program or activity, to issue rules and regulations implementing Title IX.

DOI's recipients are anticipated to incur expenses in two (2) areas: (1) Data collection and recordkeeping; (2) rectifying areas of noncompliance with Title IX. With respect to DOI, expenses will be incurred in three (3) areas: (1) Development and publication of the Title IX rule; (2) Provision of technical assistance; and (3) Accomplishing compliance reviews and enforcement activities.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Melvin C. Fowler, Supv. Equal Opportunity Spc., Department of the Interior, Office for Equal Opportunity, Washington, DC 20240, 202 343-3455

RIN: 1091-AA02

DEPARTMENT OF THE INTERIOR (DOI)
Office for Equal Opportunity (OEO)

Final Rule Stage

1083. NONDISCRIMINATION ON THE BASIS OF AGE IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Legal Authority: The Age Discrimination Act of 1975, as amended; 42 USC 6101; 45 CFR 90

CFR Citation: 43 CFR 17, Subpart C

Legal Deadline: None

Abstract: This rule will set forth guidelines for nondiscrimination on the basis of age in programs or activities receiving Federal financial assistance from the Department.

Timetable:

Action	Date	FR Cite
NPRM	10/21/87	52 FR 39243
NPRM Comment Period End	11/20/87	52 FR 39243
Final Action	11/00/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Public Compliance Cost: Initial Cost: $0; Yearly Recurring Cost: $0; Base Year for Dollar Estimates: 1980

Sectors Affected: None

Additional Information: LEGAL AUTHORITY: Originally scheduled: January 1979.

Agency Contact: Melvin C. Fowler, Supervisory Equal Opportunity Spc., Department of the Interior, Office for Equal Opportunity, 18th and C Streets, NW, Washington, DC 20240, 202 343-3455

RIN: 1091-AA00

BILLING CODE 4310-RE-T

DEPARTMENT OF THE INTERIOR (DOI)
Office of Hearings and Appeals (OHA)

Proposed Rule Stage

1094. SPECIAL RULES APPLICABLE TO PUBLIC LAND HEARINGS AND APPEALS

Legal Authority: 43 USC 1201

CFR Citation: 43 CFR 4.401(c); 43 CFR 4.413

Legal Deadline: None

Abstract: Rulemaking is being proposed to amend the requirements for proof of service of documents to require that a party serving a document other than the notice of appeal certify that he sent the document to the adverse party by mail.

Timetable:

Action	Date	FR Cite
NPRM	02/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Wm. Philip Horton, Chief Administrative Judge, Department of the Interior, Office of Hearings and Appeals, 4015 Wilson Boulevard, Arlington, VA 22203, 703 235-3750

RIN: 1094-AA25

DEPARTMENT OF THE INTERIOR (DOI)
Office of Hearings and Appeals (OHA)

Final Rule Stage

1095. DEPARTMENT HEARINGS AND APPEALS PROCEDURES

Legal Authority: 43 USC 1201

CFR Citation: 43 CFR 4, Subpart B

Legal Deadline: None

Abstract: Rulemaking is being proposed to make express provision for in camera review of information which is exempt, protected, or prohibited from unauthorized disclosure by Federal statute when such information is submitted in an administrative proceeding.

Timetable:

Action	Date	FR Cite
NPRM	06/03/87	52 FR 20755
NPRM Comment Period End	07/06/87	52 FR 20755
Final Action	10/01/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Bruce A. Johnson, Deputy Director, Department of the Interior, Office of Hearings and Appeals, 4015 Wilson Boulevard, Arlington, VA 22203, 703 235-3810

RIN: 1094-AA26

1096. SPECIAL RULES APPLICABLE IN INDIAN AFFAIRS HEARINGS AND APPEALS

Legal Authority: 36 Stat. 855, as amended; 38 Stat. 586; 42 Stat. 1185, as amended; 56 Stat. 1021-1022; R.S. 463; R.S. 465; 5 USC 301; 25 USC 2; 25 USC 9; 25 USC 372; 25 USC 373; 25 USC 374; 25 USC 373a; 25 USC 373b

CFR Citation: 43 CFR 4, Subpart D

Legal Deadline: None

Abstract: The agency is proposing to make changes to its regulations governing appeals to the Board of Indian Appeals in order to ensure compatibility between those regulations and proposed changes to administrative appeals regulations of the Bureau of Indian Affairs in 25 CFR Part 2. The rulemaking would incorporate two specific changes to regulations in 43 CFR Part 4, Subpart D, listed on previous agenda.

Timetable:

Action	Date	FR Cite
NPRM	11/06/87	52 FR 43009
NPRM Comment Period End	01/05/88	52 FR 43009
Final Action	10/01/88	

Small Entities Affected: None

Government Levels Affected: Local

Agency Contact: Kathryn Lynn, Chief Administrative Judge, Department of the Interior, Office of Hearings and Appeals, 4015 Wilson Boulevard, Arlington, VA 22203, 703 235-3810

RIN: 1094-AA31

1097. BURDEN OF PROOF IN CIVIL PENALTY PROCEEDINGS

Legal Authority: 30 USC 1268; 5 USC 301

CFR Citation: 43 CFR 4.1155

Legal Deadline: None

Abstract: The proposed amendment of 43 CFR 4.1155 would correct the allocation of the ultimate burden of persuasion as to the fact of a violation in a civil penalty proceeding under section 518 of the Surface Mining Control and Reclamation Act of 1977 by changing it from the Office of Surface Mining Reclamation and Enforcement to the person who petitions for review of the civil penalty.

Timetable:

Action	Date	FR Cite
NPRM	10/15/87	52 FR 38246
NPRM Comment Period End	11/16/87	52 FR 38246
Final Action	10/01/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Will A. Irwin, Administrative Judge, Department of the Interior, Office of Hearings and Appeals, 4015 Wilson Boulevard, Arlington, VA 22203, 703 235-3750

RIN: 1094-AA33

1098. AMENDMENT OF REGULATION ESTABLISHING AGE AT WHICH AN INDIAN CAN EXECUTE A WILL DEVISING TRUST OR RESTRICTED PROPERTY

Legal Authority: 25 USC 373

CFR Citation: 43 CFR 4.280

Legal Deadline: None

Abstract: The amendment to the regulation will reflect the congressional determination to reduce from 21 to 18 the age at which an Indian can execute a will devising trust or restricted property. The amendment is contained in section 2 of the Act of Nov. 5, 1987, 101 Stat. 886, PL 100-153.

Timetable:

Action	Date	FR Cite
Final Action	10/01/88	
Final Action Effective	10/01/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Parlen McKenna, Chief Administrative Law Judge, Department of the Interior, Office of Hearings and Appeals, 4015 Wilson Boulevard, Arlington, VA 22203, 703 235-3810

RIN: 1094-AA35

1099. SPECIAL RULES APPLICABLE TO PUBLIC LAND HEARINGS AND APPEALS

Legal Authority: 43 USC 1201

CFR Citation: 43 CFR 4.411

Legal Deadline: None

Abstract: The agency will propose to amend its procedural regulations to provide relief to appellants who mistakenly file their notices of appeal with the Board instead of the office specified in the regulations.

Timetable:

Action	Date	FR Cite
NPRM	10/20/87	52 FR 38950
NPRM Comment Period End	11/19/87	52 FR 38950
Final Action	05/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: David L. Hughes, Attorney-Advisor, Department of the Interior, Office of Hearings and Appeals, 4015 Wilson Boulevard, Arlington, VA 22203, 703 235-3750

RIN: 1094-AA30

DEPARTMENT OF THE INTERIOR (DOI) — **Completed Actions**
Office of Hearings and Appeals (OHA)

1100. SPECIAL RULES APPLICABLE TO SURFACE COAL MINING HEARINGS AND APPEALS

Legal Authority: 30 USC 1201

CFR Citation: 43 CFR 4.1100 et seq, Subpart L

Legal Deadline: None

Abstract: Regulations will be proposed to add procedures for the assessment of individual civil penalties under 30 USC 1268(i).

Timetable:

Action	Date	FR Cite
NPRM	12/24/86	51 FR 46846
NPRM Comment Period End	02/23/87	51 FR 46846
Final Action	03/17/88	53 FR 8752
Final Action Effective	04/18/88	53 FR 8752

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Will A. Irwin, Administrative Judge, Department of the Interior, Office of Hearings and Appeals, 4015 Wilson Boulevard, Arlington, VA 22203, 703 235-3750

RIN: 1094-AA28

1101. ◆ COMMENCEMENT OF PROBATE ANTI-LAPSE PROVISIONS

Legal Authority: 38 Stat. 855-856, as amended; 38 Stat. 586; 42 Stat. 1185, as amended; 56 Stat. 1021-1022; R.S. 463; R.S. 465; 5 USC 301; 25 USC 2; 25 USC 9; 25 USC 372; 25 USC 373; 25 USC 373a; 25 USC 373b; 25 USC 374

CFR Citation: 43 CFR 4.210; 43 CFR 4.261

Legal Deadline: None

Abstract: This office proposes to make two amendments to its regulations concerning the probate of the estates of Indians who died possessed of property in Indian trust or restricted status. The first proposed amendment would clarify the kinds of evidence acceptable to establish death. The second proposed amendment would broaden the present regulation providing alternate devisees or legatees when an individual named in an Indian will predeceases the testator.

Timetable:

Action	Date	FR Cite
NPRM	06/21/88	53 FR 23291
NPRM Comment Period End	07/21/88	53 FR 23291
Final Action	10/01/88	
Final Action Effective	11/01/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Parlen McKenna, Chief Administrative Law Judge, Department of the Interior, Office of Hearings and Appeals, 4015 Wilson Blvd., Arlington, VA 22203, 703 235-3800

RIN: 1094-AA36

1102. TRIBAL ACQUISITION OF INTERESTS UNDER SPECIAL STATUTE

Legal Authority: 25 USC 2201 to 2210

CFR Citation: 43 CFR 4.300; 43 CFR 4.301; 43 CFR 4.302; 43 CFR 4.303; 43 CFR 4.304; 43 CFR 4.305; 43 CFR 4.306; 43 CFR 4.307; 43 CFR 4.308

Legal Deadline: None

Abstract: The Indian Land Consolidation Act (Act) was enacted on January 12, 1983, and changes existing law regarding the descent of Indian trust and restricted lands. The Act provides that certain undivided fractional interests in such lands can now be acquired by the tribe instead of descending by intestacy or devise. Existing regulations governing the probate of Indian lands by Indian Probate Judges must therefore be amended to conform with the Act.

Timetable:

Action	Date	FR Cite
No further action to be taken at this time	05/26/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Parlen L. McKenna, Chief Administrative Law Judge, Department of the Interior, Office of Hearings and Appeals, 4015 Wilson Blvd., Arlington, VA 22203, 703 235-3800

RIN: 1094-AA38

1103. SERVICE OF NOTICE OF APPEAL AND OF OTHER DOCUMENTS

Legal Authority: 43 USC 1201

CFR Citation: 43 CFR 4.413

Legal Deadline: None

Abstract: The rulemaking revises the existing rule to clarify and update procedural requirements for service by appellants of a notice of appeal and of other documents upon counsel who may represent the Government as a party in appeal proceedings before the Interior Board of Land Appeals. The outdated reference in the existing rule for service of appeals documents upon the Director of the U.S. Geological Survey is removed.

Timetable:

Action	Date	FR Cite
Final Action	04/22/88	53 FR 13266
Final Action Effective	06/21/88	53 FR 13266

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Parlen L. McKenna, Chief Administrative Law Judge, Department of the Interior, Office of Hearings and Appeals, 4015 Wilson Blvd., Arlington, VA 22203, 703 235-3800

RIN: 1094-AA39

DEPARTMENT OF THE INTERIOR (DOI) — **Prerule Stage**
United States Fish and Wildlife Service (FWS)

1104. MIGRATORY BIRD HUNTING

Significance: Regulatory Program

Legal Authority: 16 USC 703 to 711

CFR Citation: 50 CFR 20

Legal Deadline: None

Abstract: The Service annually publishes a series of documents establishing migratory bird hunting regulations for the 1988-89 season. This annual process consists of proposed frameworks providing outside limits for dates and hours of shooting, as well as bag and possession limits; final frameworks for hunting seasons from which States may select regulations; and final rules approving such State selections.

Timetable:

Action	Date	FR Cite
ANPRM	03/00/89	
NPRM	06/00/89	
Final Action	09/00/89	
1988-89 final frameworks for early seasons		
Final Action 08/09/88 (53 FR 29937)		
1988-89 proposed frameworks for late seasons		
NPRM 06/12/88 (53 FR 30622)		
Final Action 09/26/88 (53 FR 37944)		
1989-90 seasons (supplemental rule)		
NPRM 06/07/88 (53 FR 20674)		

Small Entities Affected: Businesses

Government Levels Affected: State

Analysis: Regulatory Impact Analysis; Regulatory Flexibility Analysis

Additional Information: SMALL BUSINESSES CONT: Small entities likely to be affected by these rules include some sporting goods stores, hardware stores, motels and hotels, restaurants, clothing stores, boat and marine equipment stores, marinas, gasoline stations, private hunting clubs, land owners' leasing hunting rights, and mail order houses selling hunting equipment and supplies. Originally scheduled: April 1985. E.O. 12291: These rules are major because of the economic values associated with migratory game bird hunting; however, the need to obtain and consider the latest population data for these migratory birds requires that the regulatory schedule be shortened. The regulatory impact analysis, as required by E.O. 12291, and the small entity flexibility analysis, as required by 5 U.S.C. 601 et seq., have been combined into one analysis as provided for by both authorities. Copies of the combined analysis will be available from the Agency Contact upon publication of the Notice of Intent in March 1985.

Agency Contact: Rollin D. Sparrowe, Chief, Migratory Bird Management Office, Department of the Interior, United States Fish and Wildlife Service, 18th and C Streets, NW, Washington, DC 20240, 202 254-3207

RIN: 1018-AA24

DOI—FWS — **Prerule Stage**

1105. ◆ ADMINISTRATIVE REQUIREMENTS, FEDERAL AID IN FISH AND FEDERAL AID IN WILDLIFE RESTORATION ACTS

Legal Authority: 16 USC 669 to 669i; 16 USC 777 to 777k

CFR Citation: 50 CFR 80

Legal Deadline: None

Abstract: The Service will incorporate the requirements of the Uniform Administrative Requirements for Grants and Cooperative Agree- ments to State and Local Governments (43 CFR 12) and update and clarify program requirements for grants to State agencies.

Timetable:

Action	Date	FR Cite
ANPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Cooley L. Moffatt, Chief, Division of Federal Aid, Department of the Interior, United States Fish and Wildlife Service, 18th and C Streets, NW, Washington, DC 20240, 703 235-1526

RIN: 1018-AB15

DEPARTMENT OF THE INTERIOR (DOI) — **Proposed Rule Stage**
United States Fish and Wildlife Service (FWS)

1106. HUMANE TRANSPORT OF WILD MAMMALS AND BIRDS

Significance: Regulatory Program

Legal Authority: PL 97-79, 95 Stat. 073

CFR Citation: 50 CFR 14

Legal Deadline: Final, Statutory, May 16, 1982.
180 days after enactment of Public Law 97-79, dated November 16, 1981.

Abstract: Section 9(d) of the Lacey Act Amendments of 1981 shifts authority for prescribing requirements for the humane and healthful transport of wild mammals and birds from the Secretary of the Treasury to the Secretary of the Interior. This authority will be promulgated in Part 14.

Timetable:

Action	Date	FR Cite
Begin Review	02/08/88	53 FR 3694
Final ActionDelay effective date of final rule	02/10/88	53 FR 3694
Final Action Notice of effective date and enforcement policy	04/27/88	53 FR 15042
ANPRM	08/10/88	53 FR 30077
ANPRM Comment Period End	09/09/88	53 FR 30077
NPRM	03/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Originally scheduled: April 1982. The final rule, published on November 10, 1987 (52 FR 43274), was to have taken effect on February 8, 1988; however, because of substantial controversy, the Service delayed the effective date until August. In response to a lawsuit, a preliminary injunction order was issued which ruled that delay of the effective date was without good cause. Consequently, the rule published in November is in force and effective as of February 8, 1988, as required by Court order. The service is reviewing the regulations for the purpose of proposing improvements and clarifications. A notice of intent to propose amendments was published on August 10, 1988.

Agency Contact: Marshall Jones, Acting Chief, Office of Management Authority, Department of the Interior, United States Fish and Wildlife Service, 18th and C Streets, NW, Washington, DC 20240, 202 343-9681

RIN: 1018-AA07

DOI—FWS

Proposed Rule Stage

1107. ◆ IMPORTATION, EXPORTATION, AND TRANSPORTATION OF WILDLIFE

Legal Authority: 18 USC 42; 16 USC 3371 to 3378; 16 USC 1538(d) to 1538(f); 16 USC 1540(f); 16 USC 1382; 16 USC 704; 16 USC 712; 31 USC 483(a); 16 USC 852(c)

CFR Citation: 50 CFR 14

Legal Deadline: None

Abstract: General review and evaluation of 50 CFR 14, including structure of import/export and user fees.

Timetable:

Action	Date	FR Cite
NPRM	09/08/88	53 FR 34795
NPRM Comment Period End	10/11/88	
Final Action	07/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Clark R. Bavin, Chief, Division of Law Enforcement, Department of the Interior, United States Fish and Wildlife Service, 18th and C Streets, NW., Washington, DC. 20240, 202 343-9242

RIN: 1018-AB30

1108. INJURIOUS WILDLIFE: MITTEN CRABS

Legal Authority: 18 USC 42

CFR Citation: 50 CFR 16

Legal Deadline: None

Abstract: Regulations will be developed which would determine whether to add the mitten crab to the list of injurious wildlife. The Lacey Act prohibits importation and introduction into the natural eco- system of the United States any species which may pose a threat to agriculture, the health and welfare of human beings, and the welfare and survival of native wildlife species.

Timetable:

Action	Date	FR Cite
ANPRM	01/26/87	52 FR 2748
NPRM	01/00/89	
Mitten crabs		
Request for Information 01/26/87 (52 FR 2748)		

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Lynn B. Starnes, Chief, Division of Fish and Wildlife Management Assistance, Department of the Interior, United States Fish and Wildlife Service, 18th and C Streets, NW, Washington, DC 20240, 202 653-2382

RIN: 1018-AB16

1109. INJURIOUS WILDLIFE: IMPORTATION OF LIVE OR DEAD FISH, MOLLUSKS, AND CRUSTACEANS, OR THEIR EGGS

Legal Authority: 18 USC 42

CFR Citation: 50 CFR 16

Legal Deadline: None

Abstract: Regulations regarding importation of fish or fish eggs of the fish family Salmonidae will be revised to reflect current scientific information.

Timetable:

Action	Date	FR Cite
NPRM	04/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Joseph J Webster, Chief, National Fish Hacheries, Department of the Interior, United States Fish and Wildlife Service, 18th and C Streets, NW, Washington, D.C. 20240, 202 653-8748

RIN: 1018-AB13

1110. CAPTIVE BRED WILDLIFE

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: This rule will be revised to relieve certain restrictions on the public that have been determined to be outmoded, burdensome and counter productive.

Timetable:

Action	Date	FR Cite
NPRM	04/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Marshall Jones, Acting Chief, Office of Management Authority, Department of the Interior, United States Fish and Wildlife Service, 18th and C Streets, NW, Washington, DC 20240, 202 653-5948

RIN: 1018-AB11

1111. PROPOSED DETERMINATION OF NONESSENTIAL EXPERIMENTAL POPULATION STATUS FOR AN INTRODUCED POPULATION OF THE NASHVILLE CRAYFISH IN TENNESSEE

Significance: Regulatory Program

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: The Service proposes to reintroduce the Nashville Crayfish (Orconectes shoupi), federally listed as an endangered species, into Richland Creek, Davidson County, Tennessee, and to determine this population to be a nonessential experimental population according to Section 10(j) of the Endangered Species Act of 1973, as amended. Section 10(j) of the Act authorizes nonessential experimental populations to be treated as if they were proposed species for the purposes of Section 7 of the Act. The Nashville crayfish is presently know to inhabit Mill Creek and five of its tributaries in Davidson and Williamson Counties, Tennessee.

Timetable:

Action	Date	FR Cite
NPRM	04/00/89	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Janet Hohn, Acting Chief, Branch of Listing and Recovery, Department of the Interior, United States Fish and Wildlife Service, 18th and C Streets, NW., Washington, DC 20240, 703 235-1975

RIN: 1018-AB12

1112. ◆ ENDANGERED AND THREATENED WILDLIFE AND PLANTS; SPECIAL RULES FOR MAMMALS

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17.40

Legal Deadline: None

Abstract: This amendment brings the endangered species regulations into compliance with control procedures for African elephant ivory trade.

DOI—FWS

Proposed Rule Stage

Timetable:

Action	Date	FR Cite
NPRM	01/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Clark R. Bavin, Chief, Division of Law Enforcement, Department of the Interior, United States Fish and Wildlife Service, 18th and C Streets, NW., Washington, DC 20240, 202 343-9242

RIN: 1018-AB19

1113. ◆ MARINE MAMMALS; CHANGE DEFINITION OF U.S. CITIZEN

Significance: Agency Priority

Legal Authority: 16 USC 1371(a)(5); 16 USC 1371(a)(4)

CFR Citation: 50 CFR 18.27; 50 CFR 18.23

Legal Deadline: None

Abstract: Under existing regulations implementing the Marine Mammal Protection Act (MMPA), corporations organized under United States laws, but not controlled by individuals who are U.S. citizens, cannot be issued Letters of Authorization to undertake activities pursuant to any specific regulations authorizing an incidental take of marine mammals. This rule will amend the definition of U.S. citizen in the current regulations to allow corporations subject to U.S. jurisdiction to participate under the MMPA.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	
NPRM Comment Period End	02/00/89	
Final Action	05/00/89	
Final Action Effective	06/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Lynn B. Starnes, Chief, Division of Fish and Wildlife Management Assistance, Department of the Interior, United States Fish and Wildlife Service, 18th and C Streets, NW., Washington, DC 20240, 202 653-2382

RIN: 1018-AB18

1114. NONTOXIC SHOT REGULATIONS FOR HUNTING MIGRATORY BIRDS

Significance: Regulatory Program

Legal Authority: 16 USC 701 to 718

CFR Citation: 50 CFR 20

Legal Deadline: None

Abstract: The Service, in coordination with the States, identifies areas of migratory bird hunting where the use of conventional lead shotshells results in lead poisoning of such birds and other wildlife. The Service will review existing nontoxic shot zones for the continued need for inclusion, and propose new areas for consideration as appropriate.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	03/00/89	
1988-89 nontoxic shot zones		
Final Action 09/29/88 (53 FR 24264)		
1989-90 nontoxic shot zones		
Final Action 09/00/89		

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Rollin Sparrowe, Chief, Office of Migratory Bird Management, Department of the Interior, United States Fish and Wildlife Service, Room 536 Matomic, Washington, DC 20240, 202 254-3207

RIN: 1018-AA93

1115. SUBSISTENCE TAKE OF MIGRATORY BIRDS IN ALASKA

Significance: Regulatory Program

Legal Authority: 16 USC 703

CFR Citation: 50 CFR 20

Legal Deadline: None

Abstract: The Service will develop regulations that provide for subsistence harvest of migratory birds in Alaska. This action is being developed in cooperation with the State of Alaska, Alaskan Native organizations, and Canada.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: The Appeals Court recently ruled that the Migratory Bird Treaty does not permit subsistence hunting.

Agency Contact: Marvin L. Plenert, Acting Assistant Director, Refuges and Wildlife, Department of the Interior, United States Fish and Wildlife Service, Room 3252 Interior, US Fish and Wildlife Service, Washington, DC 20240, 202 343-5333

RIN: 1018-AB33

1116. REFUGE-SPECIFIC HUNTING REGULATIONS

Legal Authority: 16 USC 460k; 16 USC 668dd

CFR Citation: 50 CFR 32

Legal Deadline: None

Abstract: The Service will review annually and prior to each hunting season may amend hunting regulations for specific national wildlife refuges.

Timetable:

Action	Date	FR Cite
NPRM	07/00/89	
Final Action	09/00/89	
1989-90 hunting seasons		
NPRM 07/13/88 (53 FR 26461)		

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Originally scheduled: April 1989.

Agency Contact: Tom Foltrath, Acting Chief, Division of Refuge Management, Department of the Interior, United States Fish and Wildlife Service, 18th and C Streets, NW, Washington, DC 20240, 202 343-4311

RIN: 1018-AA71

1117. REFUGE-SPECIFIC SPORT FISHING REGULATIONS

Legal Authority: 16 USC 460k; 16 USC 668dd

CFR Citation: 50 CFR 32

Legal Deadline: None

Abstract: The Service will review annually, and prior to each fishing season may amend fishing regulations for specific national wildlife refuges.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	12/00/88	

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DOI—FWS

Proposed Rule Stage

1987-88 refuge-specific regulations
NPRM 01/20/88 (52 FR 1467)

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Originally scheduled: October 1983

Agency Contact: Tom Follrath, Acting Chief, Division of Refuges, Department of the Interior, United States Fish and Wildlife Service, 18th and C Streets, NW, Washington, DC 20240, 202 343-4311

RIN: 1018–AA50

1118. IMPLEMENTATION OF KLAMATH RIVER BASIN FISHERY RESOURCES RESTORATION ACT

Legal Authority: 16 USC 460

CFR Citation: 50 CFR 72

Legal Deadline: None

Abstract: This rule is necessary to implement the Klamath River Basin Fishery Resources Restoration Act. These include designation of the Klamath River Basin Conservation Area, establishment of qualifications of volunteers who carry out surveys, censuses, and other scientific studies, establishment of standards for determining the value of in-kind contributions and real and personal property provided by non-Federal sources to implement the conservation area restoration program, and establishment of the basis for determining whether matching funds will be provided in a timely and appropriate manner.

Timetable:

Action	Date	FR Cite
ANPRM	08/25/87	52 FR 9650
ANPRM Comment Period End	05/11/87	
NPRM	02/01/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Gary Edwards, Assistant Director - Fisheries, Department of the Interior, United States Fish and Wildlife Service, 18th and C Streets, NW, Washington, DC 20240, 202 343-4384

RIN: 1018–AD11

DEPARTMENT OF THE INTERIOR (DOI)
United States Fish and Wildlife Service (FWS)

Final Rule Stage

1119. IMPORTATION, EXPORTATION, AND TRANSPORTATION OF WILDLIFE

Legal Authority: 16 USC 3376(a)(2)

CFR Citation: 50 CFR 14

Legal Deadline: None

Abstract: The Service would amend the requirements for marking and labeling containers or packages containing fish or wildlife in a joint rulemaking with the Department of Commerce. The Lacey Act Amendments of 1981 make it unlawful to import, export, or transport in interstate commerce any containers or packages containing fish or wildlife that are not marked or labeled in accordance with regulations jointly issued by the Secretaries of the Interior and of Commerce. Such regulations will be in accordance with existing commercial practices.

Timetable:

Action	Date	FR Cite
NPRM	07/07/86	51 FR 24559
NPRM Comment Period End	09/05/86	51 FR 24559
Final Action	04/00/89	

Small Entities Affected: None

Government Levels Affected: State, Federal

Additional Information: Originally scheduled: October 1983.

Agency Contact: Clark R. Bavin, Chief, Division of Law Enforcement, Department of the Interior, United States Fish and Wildlife Service, 18th and C Streets, NW, Washington, DC 20240, 202 343-9242

RIN: 1018–AA79

1120. ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Legal Authority: 16 USC 1531 to 1543

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Statutory. Final, Statutory. Other, Statutory.
In accordance with 16 U.S.C. 1533, the Service must take action (list, withdraw, or extend the rulemaking for six months) on a proposed listing no later than one year after such proposal.

Abstract: Regulations will be developed which would list, reclassify, or delist, as appropriate, certain species of fish, wildlife, and plants under the Endangered Species Act, and where prudent, would identify critical habitat for endangered and threatened species. Such actions are taken upon determination that species are endangered, threatened, or neither and are based solely on the biological information available to the Department.

Timetable:

California freshwater shrimp
NPRM 04/22/87 (52 FR 13754)
Final Action 00/00/00

Chisos Mountain hedgehog cactus
NPRM 07/06/87 (52 FR 25275)
Final Action 00/00/00

Cumberland sandwort
NPRM 07/06/87 (52 FR 25268)
Final Action 06/23/88 (53 FR 23745)

Daphnopsis helleriana
NPRM 07/06/87 (52 FR 25265)
Final Action 06/23/88 (53 FR 23740)

Houghton's goldenrod
NPRM 08/19/87 (52 FR 31045)
Final Action 07/18/88 (53 FR 27134)

Kearney's blue star
NPRM 07/10/87 (52 FR 26030)
Final Action 00/00/00

Lakeside daisy
NPRM 08/19/87 (52 FR 31048)
Final Action 06/23/88 (53 FR 23742)

Large-fruited sand verbena
NPRM 06/16/87 (52 FR 22944)
Final Action 09/28/88 (53 FR 37975)

Mariola spiderlily
NPRM 07/10/87 (52 FR 26033)
Extension of comment period 07/14/88 (53 FR 26616)
Final Action 00/00/00

Mexican and Sanborn's long nosed bats
NPRM 07/06/87 (52 FR 25271)
Final Action 09/30/88 (53 FR 38456)

Palo de Higua
NPRM 04/24/87 (52 FR 13792)
Final Action 04/07/88 (53 FR 11610)

Pitcher's thistle
NPRM 07/20/87 (52 FR 27229)

Pitcher's Thistle
Final Action 07/18/88 (53 FR 27137)

DOI—FWS

Final Rule Stage

Rydberg milkvetch
NPRM 06/04/87 (52 FR 21088)
Final Action 04/04/88 (53 FR 10879)

Sacramento prickly poppy
NPRM 07/13/87 (52 FR 26164)
Final Action 00/00/00

Shasta crayfish
NPRM 07/10/87 (52 FR 26036)
Extension of comment period 09/09/87 (52 FR 33950)
Final Action 09/30/88 (53 FR 38460)

Tipton kangaroo rat
NPRM 07/10/87 (52 FR 26040)
Extension of comment period 09/09/87 (52 FR 33950)
Final Action 00/00/00

Wenyon clam
NPRM 08/19/87 (52 FR 31051)
Final Action 09/01/88 (53 FR 33990)

White-haired goldenrod
NPRM 04/24/87 (52 FR 13797)
Final Action 04/07/88 (53 FR 11612)

Small Entities Affected: None

Government Levels Affected: State

Additional Information: After reviewing the biological status of candidate and listed species, the Service promptly proceeds to propose rules to list, delist, or reclassify such species as appropriate. Generally, final action on the proposed rules must be taken within one year.

Agency Contact: Janet Hohn, Acting Chief, Branch of Listing and Recovery, Department of the Interior, United States Fish and Wildlife Service, 18th and C Streets, NW, Washington, DC 20240, 703 235-1975

RIN: 1018–AA10

1121. ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Legal Authority: 16 USC 1531 to 1543

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Statutory. Final, Statutory. Other, Statutory.
In accordance with 16 U.S.C. 1533, the Service must take action (list, withdraw, or extend the rulemaking for six months) on a proposed listing no later than one year after such proposal.

Abstract: Regulations will be developed to list, reclassify or delist certain species of wildlife and plants as endangered or threatened species. When prudent, critical habitat will also be identified.

Timetable:

Thornber's fishhook cactus
NPRM 04/24/84 (49 FR 17551)
Final Action 00/00/00

Welsh's milkweed
NPRM 05/16/84 (49 FR 23386)
Final Action 10/26/87 (52 FR 41405)

Small Entities Affected: None

Government Levels Affected: State

Additional Information: Originally scheduled: October 1984.

Agency Contact: Janet Hohn, Acting Chief, Branch of Listing and Recovery, Department of the Interior, United States Fish and Wildlife Service, Washington, DC 20240, 703 235-1975

RIN: 1018–AA64

1122. ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Legal Authority: 16 USC 1531 to 1543

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Statutory. Final, Statutory. Other, Statutory.
In accordance with 16 U.S.C. 1533, the Service must take action (list, withdraw, or extend the rulemaking for six months) on a proposed listing no later than one year after such proposal.

Abstract: Regulations will be developed to list, reclassify, or delist certain species of wildlife and plants as endangered or threatened species. When prudent, critical habitat will also be identified.

Timetable:

Blackside dace
NPRM 05/21/86 (51 FR 18624)
Final Action 06/12/87 (52 FR 22580)

Inyo brown towhee (critical habitat)
NPRM 06/03/87 (52 FR 28787)
Final Action 00/00/00

Inyo brown towhee(listing)
NPRM 03/07/85 (50 FR 9300)
Final Action 06/03/87 (52 FR 28717)

Small Entities Affected: None

Government Levels Affected: State

Additional Information: Originally scheduled: April 1985.

Agency Contact: Janet Hohn, Acting Chief, Branch of Listing and Recovery, Department of the Interior, United States Fish and Wildlife Service, 18th & C Streets, NW, Washington, DC 20240, 703 235-1975

RIN: 1018–AA85

1123. ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Legal Authority: 16 USC 1531 to 1543

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Statutory. Final, Statutory. Other, Statutory.
In accordance with 16 U.S.C. 1533, the Service must take action (list, withdraw, or extend the rulemaking for six months) on a proposed listing no later than one year after such proposal.

Abstract: Regulations will be developed which would list, reclassify, or delist, as appropriate, certain species of fish, wildlife and plants under the Endangered Species Act, and where prudent would identify critical habitat for endangered and threatened species. Such actions are taken upon determination that species are endangered, threatened, or neither and are based solely on the biological information available to the Department.

Timetable:

Least Bell's vireo critical habitat
Final Action 06/00/89

Least Bell's vireo listing
NPRM 05/03/85 (50 FR 18968)
Final Action 05/02/86 (51 FR 16474)

Small Entities Affected: None

Government Levels Affected: State

Additional Information: After reviewing the biological status of candidate and listed species, the Service promptly proceeds to propose rules to list, delist, or reclassify such species as appropriate. Generally, final action on the proposed rules must be taken within one year.

Agency Contact: Janet Hohn, Acting Chief, Branch of Listing and Recovery, Department of the Interior, United States Fish and Wildlife Service, 18th and C Streets, NW., Washington, DC 20240, 703 235-1975

RIN: 1018–AA95

1124. ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Legal Authority: 16 USC 1531 to 1543

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Statutory. Final, Statutory. Other, Statutory.
In accordance with 16 U.S.C. 1533, the Service must take action (list, withdraw, or extend the rulemaking for six months) on a proposed listing no later than one year after such proposal.

Abstract: Regulations will be developed which would list, reclassify, or delist,

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as appropriate, certain species of fish, wildlife and plants under the Endangered Species Act, and where prudent would identify critical habitat for endangered and threatened species. Such actions are taken upon determination that species are endangered, threatened, or neither and are based solely on the biological information available to the Department.

Timetable:

Bruneau hot spring snail
NPRM 12/30/86 (51 FR 47033)
Final Action 00/00/00
Leopard, goral, serow in Nepal
NPRM 06/14/85 (50 FR 24917)
Final Action 00/00/00

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Janet Hohn, Acting Chief, Branch of Listing and Recovery, Department of the Interior, United States Fish and Wildlife Service, 18th and C Streets, NW, Washington, DC 20240, 703 235-1975

RIN: 1018-AA98

1125. ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Legal Authority: 16 USC 1531

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Statutory. Final, Statutory. Other, Statutory.
In accordance with 16 U.S.C. 1533, the Service must take action (list, withdraw, or extend the rulemaking for six months) on a proposed listing no later than one year after such proposal.

Abstract: Regulations will be developed which would list, reclassify, or delist, as appropriate certain species of fish, wildlife and plants under the Endangered Species Act, and where prudent, would identify critical habitat for endangered and threatened species. Such actions are taken upon determination that species are endangered, threatened, or neither and are based solely on the biological information available to the Department.

Timetable:

Fish Creek Springs tui chub
NPRM 03/10/86 (51 FR 8215)
Final Action 00/00/00
Virgin River chub
NPRM 06/24/86 (51 FR 22942)
Final Action 00/00/00
Wild life crocodile-Zimbabwe
NPRM 01/21/87 (52 FR 2227)
Extension of comment period 10/08/87 (52 FR 37640)
Final Action 09/30/88 (53 FR 38451)

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Janet Hohn, Acting Chief, Branch of Listing and Recovery, Department of the Interior, United States Fish and Wildlife Service, 18th and C Streets, NW, Washington, DC 20240, 703 235-1975

RIN: 1018-AB32

1126. ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Legal Authority: 16 USC 1531

CFR Citation: 50 CFR 017

Legal Deadline: NPRM, Statutory. Final, Statutory. Other, Statutory.
In accordance with 16 USC 1533, the Service must take action (list, withdraw, or extend the rulemaking for six months) on a proposed listing no later than one year after such proposal.

Abstract: Regulations will be developed which would list, reclassify, or delist, as appropriate certain species of fish, wildlife and plants under the Endangered Species Act, and where prudent, would identify critical habitat for endangered and threatened species. Such actions are taken upon determination that species are endangered, threatened, or neither and are based solely on the biological information available to the Department.

Timetable:

Bradshaw's lomatium
NPRM 11/21/86 (51 FR 42116)
Final Action 09/30/88 (53 FR 38448)
Florida lizards
NPRM 01/21/87 (52 FR 2242)
Final Action 00/00/00
Miami palmetto
NPRM - Extend comment period 07/21/87 (52 FR 27437)
Final Action 00/00/00

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Janet Hohn, Acting Chief, Branch of Listing and Recovery, Department of the Interior, United States Fish and Wildlife Service, 18th and C Streets, NW, Washington, DC 20240, 703 235-1975

RIN: 1018-AB36

1127. PROPOSED DETERMINATION OF EXPERIMENTAL POPULATION STATUS FOR AN INTRODUCED POPULATION OF COLORADO SQUAWFISH

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: The Service proposes to introduce Colorado squawfish (Ptychocheilus lucius) into the lower Colorado River in Arizona and to determine the population to be "nonessential experimental" population according to Section 10(j) of the Endangered Species Act. The Service will propose a special rule to allow take in accordance with State law. In the past, Colorado squawfish were more widespread in the State of Arizona, occurring in several river drainages. This action is being taken in an effort to establish an additional population within the species' historic range.

Timetable:

Action	Date	FR Cite
NPRM	08/26/87	52 FR 32143
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Janet Hohn, Acting Chief, Branch of Listing and Recovery, Department of the Interior, United States Fish and Wildlife Service, 18th and C Streets, NW, Washington, DC 20240, 703 235-1975

RIN: 1018-AB38

1128. ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Legal Authority: 16 USC 1531 to 1543

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Statutory. Final, Statutory. Other, Statutory.
In accordance with 16 U.S.C. 1533, the Service must take action (list, withdraw, or extend the rulemaking for six months) on a proposed listing no later than one year after such proposal.

Abstract: Regulations will be developed which would list, reclassify or delist, as

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appropriate, certain species of fish, wildlife, and plants under the Endangered Species Act, and where prudent, would identify critical habitat for endangered and threatened species. Such actions are taken upon determination that species are endangered, threatened, or neither and are based solely on the biological information available to the Department.

Timetable:

Alabama cave shrimp
NPRM 11/19/87 (52 FR 44578)
Final Action 08/26/88 (53 FR 32827)
Alabama cavefish
NPRM 12/04/87 (52 FR 46106)
Final Action 12/00/88
Boulder darter
NPRM 11/17/87 (52 FR 43921)
Final Action 09/01/88 (53 FR 33996)
Decurrent false aster
NPRM 02/25/88 (53 FR 5508)
Final Action 02/00/89
Dwarf lake iris
NPRM 12/04/87 (52 FR 46334)
Final Action 09/26/88 (53 FR 37972)
Erebia
NPRM 11/19/87 (52 FR 44580)
Final Action 11/00/88
Fassett's locoweed
NPRM 12/04/87 (52 FR 46336)
Final Action 09/26/88 (53 FR 37970)
Gila trout
NPRM 10/21/87 (52 FR 37424)
Final Action 10/00/88
Harperella
NPRM 02/25/88 (53 FR 5736)
Final Action 09/26/88 (53 FR 37978)
Hinckley oak
NPRM 09/16/87 (52 FR 34986)
Final Action 08/26/88 (53 FR 32824)
Independence Valley Speckled & Clover Valley dace
NPRM 09/18/87 (52 FR 35282)
Final Action 09/30/88 (53 FR 38309)
James River spiny mussel
NPRM 09/01/87 (52 FR 32939)
Final Action 07/22/88 (53 FR 27689)
Mead's milkweed
NPRM 10/21/87 (52 FR 39256)
Final Action 09/01/88 (53 FR 33992)
Mohr's Barbara's buttons
NPRM 11/19/87 (52 FR 44583)
Final Action 09/07/88 (53 FR 34690)
Sandplain gerardia
NPRM 11/19/87 (52 FR 44450)
Final Action 09/07/88 (53 FR 34701)
Short nose & Lost River sucker
NPRM 08/26/87 (52 FR 32145)
Final Action 07/18/88 (53 FR 27130)
Stephen's kangaroo rat
NPRM 11/19/87 (52 FR 44453)
Final Action 09/30/88 (53 FR 38466)
Swamp pink
NPRM 02/25/88 (53 FR 5740)
Final Action 09/26/88 (53 FR 35076)

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Janet Hohn, Acting Chief, Branch of Listing and Recovery, Department of the Interior, United States Fish and Wildlife Service, 18th and C Streets, NW, Washington, D.C. 20240, 703 235-1975

RIN: 1018-AB14

1129. ● ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Legal Authority: 16 USC 1531 to 1543

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Statutory. Final, Statutory. Other, Statutory.
In accordance with 16 USC 1533, the Service must take action (list, withdraw, or extend the rulemaking for six months) on a proposed listing no later than one year after such proposal.

Abstract: Regulations will be developed which would list, reclassify, or delist, as appropriate, certain species of fish, wildlife, and plants under the Endangered Species Act, and where prudent, would identify critical habitat for endangered and threatened species. Such actions are taken upon determination that species are endangered, threatened, or neither and are based solely on the biological information available to the Department.

Timetable:

Alabama canebrake pitcher plant
NPRM 04/21/88 (53 FR 13230)
Final Action 04/00/89
Anastasia Island and Southeastern beach mouse
NPRM 07/05/88 (53 FR 25185)
Final Action 07/00/89
Autumn buttercup
NPRM 07/22/88 (53 FR 27724)
Final Action 07/00/89
Bee Creek Cave harvestman
NPRM 04/19/88 (53 FR 12787)
Final Action 04/00/89
Cooley's meadowrue
NPRM 04/21/88 (53 FR 13220)
Final Action 04/00/89
Dwarf-flowered heartleaf
NPRM 04/21/88 (53 FR 13223)
Final Action 04/00/89
Kretschmarr Cave mold beetle
NPRM 04/19/88 (53 FR 12787)
Final Action 04/00/89
Little-wing pseudosymmetal
NPRM 04/21/88 (53 FR 1322)
Final Action 04/00/89
Magazine Mountain shagreen
NPRM 07/05/88 (53 FR 25179)
Final Action 07/00/89
Osterhout milkvetch
NPRM 07/05/88 (53 FR 25181)
Final Action 07/00/89
Penland beard
NPRM 07/05/88 (53 FR 25181)
Final Action 07/00/89
Speckled pocketbook mussell
NPRM 07/25/88 (53 FR 27864)
Final Action 07/00/89
Tooth Cave ground beetle
NPRM 04/19/88 (53 FR 12787)
Final Action 04/00/89
Tooth Cave pseudoscorpion
NPRM 04/19/88 (53 FR 12787)
Final Action 04/00/89
Tooth Cave spider
NPRM 04/19/88 (53 FR 12787)
Final Action 04/00/89

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Janet Hohn, Acting Chief, Branch of Listing and Recovery, Department of the Interior, United States Fish and Wildlife Service, 18th and C Streets, NW., Washington, DC 20240, 703 235-1975

RIN: 1018-AB18

1130. MARINE MAMMALS: INCIDENTAL TAKING BY COMMERCIAL FISHING OPERATIONS

Legal Authority: 16 USC 101(a)(4); 16 USC 109(h)

CFR Citation: 50 CFR 18.22; 50 CFR 18.24

Legal Deadline: None

Abstract: The Service will develop regulations to implement a provision contained in the 1981 amendments to the Marine Mammal Protection Act, concerning the incidental taking of marine mammals by commercial fishermen. The rules would apply to those species of marine mammals for which the Service has responsibility, i.e. sea otters, walrus, polar bears, manatees, and dugongs, except those listed as depleted.

Timetable:

Action	Date	FR Cite
NPRM	04/12/88	53 FR 12043
NPRM Comment Period End	07/29/88	53 FR 24330
Final Action	01/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Lynn Starnes, Chief, Division of Fish and Wildlife, Management Assistance, Department of the Interior, United States Fish and Wildlife Service, 18th and C Streets,

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NW, Washington, DC 20240, 202 638-2362

RIN: 1018-AA26

1131. MARINE MAMMALS; TAKE OF SMALL NUMBERS INCIDENTAL TO SPECIFIED ACTIVITIES

Legal Authority: 16 USC 1371(a)(5)(A); 16 USC 1538(b)(4)

CFR Citation: 50 CFR 18.27; 50 CFR 402.14(i)

Legal Deadline: None

Abstract: This rule will implement the 1986 amendments to the Marine Mammal Protection Act to allow the incidental take of depleted as well as non-depleted marine mammals, modify standards for determining whether to allow incidental taking and require that the incidental take of endangered or threatened marine mammals not be authorized until authorized under the provisions of the Marine Mammal Protection Act.

Timetable:

Action	Date	FR Cite
NPRM	05/15/86	53 FR 6471
NPRM Comment Period End	07/05/88	53 FR 17964
Final Action	11/00/88	

Small Entities Affected: Businesses

Government Levels Affected: State

Agency Contact: Lynn B. Starnes, Chief, Division of Fish and Wildlife Management Assistance, Department of the Interior, United States Fish and Wildlife Service, 18th and C Streets, NW, Washington, DC 20240, 202 632-2322

RIN: 1018-AB05

1132. SUBSISTENCE TAKE OF MIGRATORY BIRDS

Significance: Regulatory Program

Legal Authority: 16 USC 701 to 718

CFR Citation: 50 CFR 20

Legal Deadline: None

Abstract: In 1979, the United States and Canada signed a protocol to amend the 1916 treaty concerning management of migratory birds. The protocol initiated efforts to recognize historical native subsistence of such birds. A rule will be developed to implement this international agreement.

Timetable:

Action	Date	FR Cite
ANPRM	05/15/85	46 FR 10431
NPRM	05/19/86	51 FR 18340

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: The protocol has been reviewed by Canadian officials and they wish to reopen negotiations. This will delay indefinitely final action on development of an international agreement.

Agency Contact: Marvin Plenert, Acting Assistant, Director - Refuges and Wildlife, Department of the Interior, United States Fish and Wildlife Service, 18th and C Streets, NW, Washington, DC 20240, 202 343-5333

RIN: 1018-AA92

1133. GENERAL PERMIT PROCEDURES AND MIGRATORY BIRD PERMITS; RAPTOR PROPAGATION AND FALCONRY REGULATIONS

Legal Authority: 16 USC 703; 16 USC 1531

CFR Citation: 50 CFR 21; 50 CFR 13

Legal Deadline: None

Abstract: This action will examine changes to the restrictions concerning propagation of raptors and standards for falconry. The Service will expand authorized activities and de-regulate certain other activities.

Timetable:

Action	Date	FR Cite
ANPRM	05/22/86	51 FR 18812
ANPRM Comment Period End	06/23/86	51 FR 18812
NPRM	12/28/87	52 FR 48948
NPRM Comment Period End	02/26/88	52 FR 48948
Final Action	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: State

Agency Contact: Clark Bavin, Chief, Division of Law Enforcement, Department of the Interior, United States Fish and Wildlife Service, Room 300 Hamilton, US Fish and Wildlife Service, Washington, DC 20240, 202 343-9242

RIN: 1018-AB01

1134. ENDANGERED SPECIES CONVENTION

Legal Authority: 16 USC 1531 to 1543

CFR Citation: 50 CFR 23

Legal Deadline: None

Abstract: The regulations implementing the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) will be clarified and revised to incorporate recommendations of the Parties.

Timetable:

Action	Date	FR Cite
NPRM	09/23/87	52 FR 35743
Final Action	12/00/88	

Changes in list of species in Appendices to CITES
Final Action 12/28/87 (52 FR 48620)

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marshall Jones, Acting Chief, Office of Management Authority, Department of the Interior, United States Fish and Wildlife Service, 18th and C Streets, NW, Washington, DC 20240, 202 343-4968

RIN: 1018-AA29

1135. PUBLIC ENTRY AND USE

Legal Authority: 16 USC 460k; 16 USC 668dd

CFR Citation: 50 CFR 26

Legal Deadline: None

Abstract: Regulations will be proposed which will simplify and reduce administrative costs related to the process by which special regulations, relating to public, access use, and recreation are issued for units of the National Wildlife Refuge system. Special regulations will be used for public access use and recreation on individual national wildlife refuges.

Timetable:

Action	Date	FR Cite
Final Action	12/00/88	

Public entry and use, Back Bay NWR
Final Action 09/23/87 (52 FR 35710)

Small Entities Affected: None

Government Levels Affected: Undetermined

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Additional Information: Originally scheduled: April 1981.

Agency Contact: Tom Folrath, Acting Chief, Division of Refuges, Department of the Interior, United States Fish and Wildlife Service, 18th and C Streets, NW, Washington, DC 20240, 202 343-4311

RIN: 1018-AA36

1136. FISH AND WILDLIFE RESTORATION GRANTS; INTEREST EARNED ON LICENSE FEES

Legal Authority: 16 USC 669i; 16 USC 777i

CFR Citation: 50 CFR 80

Legal Deadline: None

Abstract: This action proposes to incorporate general accepted accounting principles related to interest earned on fees collected by the States through the sale of hunting and fishing licenses. The rule would require States to ensure that such interest is used in their fish and wildlife conservation programs.

Timetable:

Action	Date	FR Cite
NPRM	12/09/85	51 FR 50185
NPRM Comment Period End	03/28/86	51 FR 7579
Revised NPRM	08/05/88	53 FR 29500
NPRM Public Comment Period End	09/19/88	
Final Action	01/00/89	

Small Entities Affected: None

Government Levels Affected: State

Additional Information: Because of the high number of comments received suggesting modification, the rule, as proposed, was not adopted. The amended proposed rule is being proposed to accommodate the concerns expressed.

Agency Contact: Conley Moffett, Chief, Division of Federal Aid, Department of the Interior, United States Fish and Wildlife Service, 18th and C Streets, NW, Washington, DC 20240, 703 235-1526

RIN: 1018-AA97

DEPARTMENT OF THE INTERIOR (DOI)
United States Fish and Wildlife Service (FWS)

Completed Actions

1137. PROPOSED DETERMINATION OF NONESSENTIAL EXPERIMENTAL POPULATION STATUS FOR AN INTRODUCED POPULATION OF THE YELLOWFIN MADTOM IN VIRGINIA

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: The Service proposes to reintroduce a small catfish, the yellow madtom (Noturus flavipinnis), into the North Fork Holston River, Smyth County, Virginia, and determine this population to be a nonessential experimental population according to Section 10(j) of the Endangered Species Act of 1973, as amended. The Yellowfin madtom once likely inhabited many of the lower gradient streams of the Tennessee River basin upstream of Chattanooga, Tennessee. Presently, populations are confined to only three stream reaches in the Tennessee River Valley. This action is being taken in an effort to re-establish the yellowfin madtom within its historic range.

Timetable:

Action	Date	FR Cite
Final Action	08/04/88	53 FR 29335
Final Action Effective	09/06/88	
NPRM	12/08/88	52 FR 33850

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Janet Hohn, Acting Chief, Branch of Listing and Recovery, Department of the Interior, United States Fish and Wildlife Service, 18th and C Streets, NW, Washington, DC 20240, 703 235-1975

RIN: 1018-AB08

1138. ● TECHNICAL AMENDMENTS TO THE SEA OTTER TRANSLOCATION REGULATIONS

Significance: Agency Priority

Legal Authority: 16 USC 1531 et seq; PL 99-625

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: The Service is proposing to amend the Translocation Regulations for southern sea otters, a threatened species of marine mammal. Regulations were promulgated for the translocation of southern sea otters to San Nicolas Island pursuant to PL 99-625. The proposed changes would address certain technical problems identified during the first year of the translocation concerning the age and number of animals released at any one time, the number of animals with implanted radio transmitters, the season for capture, and the retainment of animals in temporary holding pens. The changes are expected to promote survival and reduce dispersal of the translocated otters.

Timetable:

Action	Date	FR Cite
NPRM	08/19/88	53 FR 31722
Final Action	09/27/88	53 FR 37577
Final Action Effective	09/27/88	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Janet Hohn, Acting Chief, Branch of Listing and Recovery, Department of the Interior, United States Fish and Wildlife Service, 18th & C Streets, NW., Washington, DC 20240, 703 235-1975

RIN: 1018-AB17

1139. MARINE MAMMALS; REPORTING AND SEALING REQUIREMENTS FOR ALASKA NATIVES

Legal Authority: 16 USC 1379(i)

CFR Citation: 50 CFR 18.23(f)

Legal Deadline: None

Abstract: The Service will propose rules that would require the marking, tagging, or otherwise identifying of raw parts of certain marine mammals lawfully taken for Alaska Natives for purposes of subsistence or the creation and selling of authentic native articles of handicrafts and clothing. This rule is necessary for management purposes.

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Completed Actions

Timetable:

Action	Date	FR Cite
NPRM	12/03/85	50 FR 49577
Final Action	09/28/88	53 FR 34277
Final Action Effective	10/28/88	53 FR 34277

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Originally scheduled: July 1988.

Agency Contact: Lynn Starnes, Chief, Division of Fish and Wildlife, Management Assistance, Department of the Interior, United States Fish and Wildlife Service, 18th and C Streets, NW, Washington, DC 20240, 202 632-2202

RIN: 1018-AA20

BILLING CODE 4310-55-T

DEPARTMENT OF THE INTERIOR (DOI)

National Park Service (NPS)

Proposed Rule Stage

1140. ● YOSEMITE NATIONAL PARK; WAWONA ZONING REGULATIONS

Legal Authority: 16 USC 1; 16 USC 3; 16 USC 61

CFR Citation: 36 CFR Not yet determined

Legal Deadline: None

Abstract: The proposed rulemaking will provide for land use controls on privately owned lands in Wawona, Yosemite National Park, CA. The rulemaking will allow residential development to occur without threat of condemnation if the development is compatible with Federal and private interests, and if it meets the specific zoning requirements.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Jack Morehead, Superintendent, Department of the Interior, National Park Service, Yosemite National Park, P.O. Box 1024, Yosemite, CA 95389, 209 375-6321

RIN: 1024-AB77

1141. APPALACHIAN NATIONAL SCENIC TRAIL

Legal Authority: 16 USC 3; 16 USC 1246(i)

CFR Citation: 36 CFR 7.101

Legal Deadline: None

Abstract: The Service proposes to review the levels of resource and visitor protection on the Appalachian Trail provided by the General Regulations in 36 CFR Parts 1 and 2 and to revise 36 CFR 7.100 accordingly.

Timetable:

Action	Date	FR Cite
NPRM	03/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: David A. Ritchie, Project Manager, Department of the Interior, National Park Service, Appalachian Trail Project Office, Harpers Ferry Center, Harpers Ferry, WV 25425, 304 535-2346

RIN: 1024-AB87

1142. HAWAII VOLCANOES NATIONAL PARK: FISHING REGULATIONS

Legal Authority: 16 USC 3

CFR Citation: 36 CFR 7.25

Legal Deadline: None

Abstract: The Service is proposing to revise the fishing regulations that pertain to Hawaii Volcanoes National Park to clarify provisions that address Native Hawaiian fishing rights in the Kalapana extension area of the Park.

Timetable:

Action	Date	FR Cite
NPRM	03/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: David Ames, Superintendent, Hawaii Volcanoes National Park, Department of the Interior, National Park Service, Hawaii 96718-0052, 808 967-7311

RIN: 1024-AB90

1143. MAMMOTH CAVE NP: FISHING

Legal Authority: 16 USC 1; 16 USC 3

CFR Citation: 36 CFR 7.30

Legal Deadline: None

Abstract: This proposed regulation pertains to Mammoth Cave National Park. The regulation will allow fishing to take place in accordance with applicable Kentucky State law.

Timetable:

Action	Date	FR Cite
NPRM	03/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: William Sturgeon, Acting Chief, Ranger Activities Branch, Department of the Interior, National Park Service, 75 Spring Street, SW, Atlanta, GA 30303, 404 221-4916

RIN: 1024-AA94

1144. CAPE HATTERAS NATIONAL SEASHORE: OFF-ROAD VEHICLE REGULATIONS

Legal Authority: 16 USC 3

CFR Citation: 36 CFR 7.58

Legal Deadline: None

Abstract: The Service proposes to designate by regulation routes available for off-road vehicle use at Cape Hatteras National Seashore, NC.

Timetable:

Action	Date	FR Cite
NPRM	03/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Thomas Hartman, Superintendent, Cape Hatteras National Seashore, Department of the Interior, National Park Service, Route 1, Box 675, Manteo, NC 27954, 919 473-2111

RIN: 1024-AB94

DOI—NPS

Proposed Rule Stage

1145. GLEN CANYON NATIONAL RECREATION AREA: COMMERCIAL OPERATIONS AND WHITEWATER BOATING REGULATIONS

Legal Authority: 16 USC 3

CFR Citation: 36 CFR 7.70

Legal Deadline: None

Abstract: The Service proposes to amend special regulations that apply to Glen Canyon National Recreation Area by clarifying provisions that pertain to commercial operations and deleting duplicative provisions that pertain to Colorado River Whitewater boat trips.

Timetable:

Action	Date	FR Cite
NPRM	03/00/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: John Lancaster, Superintendent, Department of the Interior, National Park Service, Glen Canyon National Recreation Area, Box 1507, Page, AZ 86040, 602 645-2471

RIN: 1024-AB72

1146. ● SEQUOIA AND KINGS CANYON NATIONAL PARKS: FISHING REGULATIONS

Legal Authority: 16 USC 3

CFR Citation: 36 CFR 7.8

Legal Deadline: None

Abstract: The proposed rulemaking would revise the Parks' fishing regulation. The changes would simplify existing fishing regulation, maintain the existing variety of recreational fishing opportunities, help restore the natural distribution and abundance of native species, help retard expansion of introduced species, and open most streams to fishing which are currently closed. Anglers would have to be able to identify fish they kept, and in some areas they would be required to use single barbless hooks.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Harold Werner, Fish and Wildlife Biologist, Department of the Interior, National Park Service, Sequoia and Kings Canyon National Park, Three Rivers, CA 93271, 209 565-3341

RIN: 1024-AB76

1147. BIG THICKET NATIONAL PRESERVE: HUNTING REGULATIONS

Legal Authority: 16 USC 3

CFR Citation: 36 CFR 7.88

Legal Deadline: None

Abstract: The Service proposes to revise the hunting regulations that apply to the Big Thicket. Changes proposed include dates for open seasons, the use of temporary blinds, permits, the use of calling devices and the use of dogs.

Timetable:

Action	Date	FR Cite
NPRM	03/00/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Ken Mabery, Park Ranger, Department of the Interior, National Park Service, Southwest Region, P.O. Box 728, Santa Fe, NM 87501, 505 988-6171

RIN: 1024-AB48

1148. CAPE LOOKOUT NATIONAL SEASHORE: OFF-ROAD VEHICLES

Legal Authority: 16 USC 1; 16 USC 3

CFR Citation: 36 CFR 7.58

Legal Deadline: None

Abstract: This proposed regulation pertains to Cape Lookout National Seashore and will establish criteria for the operation of vehicles in off-road situations consistent with existing NPS policy.

Timetable:

Action	Date	FR Cite
NPRM	03/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: William Sturgeon, Acting Chief, Ranger Activities Branch, Department of the Interior, National Park Service, 75 Spring Street, SW, Atlanta, GA 30303, 404 221-4916

RIN: 1024-AA80

1149. MINERALS MANAGEMENT - NON-FEDERAL OIL AND GAS

Significance: Agency Priority

Legal Authority: 16 USC 1 et seq.; 16 USC 410g; 16 USC 410l; 16 USC 459d-3; 16 USC 459h-3; 16 USC 698c; 16 USC 698i; 16 USC 460-2(i); 16 USC 450kk; 16 USC 230a; PL 100-301, Sec 6

CFR Citation: 36 CFR 9, Subpart B

Legal Deadline: Final, Statutory, January 29, 1989.
Section 6 of the Big Cypress National Preserve Addition Act directs the Secretary of the Interior to promulgate regulations governing non-Federal oil and gas development in the (cont)

Abstract: Several sections of 36 CFR Part 9, Subpart B contain ambiguous language which has caused confusion in interpreting the existing regulations. The NPS wants to make technical revisions to clarify requirements for both applicants and the Service. Also, the existing regulations exempt two classes of operators from compliance. Because of these exemptions, the regulations apply to only 35% of the existing operations resulting in avoidable impacts to park resources and visitor values from unregulated operations. Finally, the Service intends to revise the existing regulations to incorporate Congressionally mandated requirements and timetables governing nonfederal oil and gas development in the Big Cypress National Preserve Addition. Examples of such revisions include: making the regulations applicable to all oil and gas operations within all units of the National Park System; updating terms for consistency with existing policies, practices, and laws; removing the monetary ceiling and floor on bonds and security deposits so that bonds may be calculated and posted commensurate with reclamation costs; revising sections of the regulations to make them consistent with the enabling (Cont)

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
NPRM Comment Period End	11/30/88	
Final Action	01/00/89	

DOI—NPS

Proposed Rule Stage

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: ABSTRACT CONT: legislation of affected units; and, clarifying compliance issues associated with different access conditions. Revisions will decrease the potential for prolonged uncertainty among applicants.

LEGAL DEADLINE CONT: "Addition" within nine months of the date of the enactment of that statute, which was signed into law on April 29, 1988.

Agency Contact: Pam Matthes, Environmental Protection Specialist, Land Resources Division, Department of the Interior, National Park Service, P.O. Box 37127, Room 3223, 1100 L St., NW, Washington, DC 20013-7127, 202 523-5126

RIN: 1024-AB30

1150. MANAGEMENT OF MINERAL DEVELOPMENT ASSOCIATED WITH MINING CLAIMS

Significance: Agency Priority

Legal Authority: 16 USC 1901 et seq Mining in the Parks Act of 1976; 16 USC 1 et seq NPS Organic Act; 30 USC 21 et seq Mining Law of 1872

CFR Citation: 36 CFR 9, Subpart A

Legal Deadline: None

Abstract: The existing regulations at 36 CFR Part 9, Subpart A, promulgated in January of 1977, contain several provisions that are either outdated or have proven difficult to understand, enforce and comply with. Most notable is a provision regarding the use of water in connection with mining claims within National Park System units. The current language creates a "catch 22" for miners seeking to use water in connection with their claims. In order to use water in a park, a miner must have perfected water right. However, to obtain a perfected water right, a miner must use water. Herein lies the "catch 22." The National Park Service (NPS) would like to rectify this dilemma through a rule change that would eliminate the perfected water right language while at the same time preserve the Service's ability to protect water quality and quantity. Additional changes sought by the NPS are as follows: Several sections of the regulations refer to a surface disturbance moratorium (mandated by the Mining in the Parks Act of 1976, 16 USC 1901 et seq.) which expired in 1993. Other sections include transitional procedures used temporarily in implementing the regulations.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
NPRM Comment Period End	12/00/88	
Final Action	02/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Carol McCoy, Chief, Policy and Regulations Section, Land Resources Division, Department of the Interior, National Park Service, P.O. Box 37127, Room 3223, 1100 L St., NW, Washington, DC 20013-7127, 202 523-5126

RIN: 1024-AB74

1151. MINERALS MANAGEMENT: NONFEDERAL RIGHTS OTHER THAN OIL AND GAS

Significance: Agency Priority

Legal Authority: 16 USC 1 et seq; 31 USC 9701; 5 USC 301

CFR Citation: 36 CFR 9, Subpart C

Legal Deadline: None

Abstract: Extensive nonfederal mineral rights exist within units of the National Park System. The Service presently regulates only nonfederal oil and gas activities occurring in those units. Mineral activities, other than those associated with nonfederal oil and gas, are occurring in approximately 13 units of the System. There are also 7 additional units in which nonfederal mineral development is currently proposed or has recently been proposed. The Service is charged by Congress to ensure that the development of nonfederal mineral rights within park boundaries is consistent with the purposes for which the units were established. The proposed regulation would establish procedures and standards governing nonfederal mineral development, other than nonfederal oil and gas, in a manner that protects affected park units until such time that the Service has sufficient funds to acquire the mineral right.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
Final Action	01/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Sharon Kilwinski, Environmental Protection Specialist, Land Resources Division, Department of the Interior, National Park Service, P.O. Box 37127, Room 3223, 1100 L Street, NW, Washington, DC 20013-7127, 202 523-5126

RIN: 1024-AB75

1152. NPS UNITS IN ALASKA: CONCESSIONS

Legal Authority: 16 USC 1

CFR Citation: 36 CFR 13

Legal Deadline: None

Abstract: This rulemaking will establish procedures for providing commercial visitor services in certain Alaska national park areas as provided for by the Alaska National Interest Lands Act.

Timetable:

Action	Date	FR Cite
NPRM	03/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: David B. Ames, Associate Regional Director, Department of the Interior, National Park Service, Alaska Regional Office - NPS, 2525 Gambell Street, Anchorage, AK 99503, 907 271-4551

RIN: 1024-AB18

1153. ◆ KATMAI NATIONAL PARK AND PRESERVE FISHING REGULATIONS

Legal Authority: 16 USC 3

CFR Citation: 36 CFR 13.66

Legal Deadline: None

Abstract: This proposal is to modify fishing regulations for the Brooks River in Katmai National Park and Preserve. A change will be made to the open bait season on the Naknek River to remain consistent with changing State regulations.

DOI—NPS

Proposed Rule Stage

This proposal is consistent with National Park Service General Regulations and Policies.

Timetable:

Action	Date	FR Cite
NPRM	08/08/88	53 FR 29746
NPRM Comment Period End	10/07/88	53 FR 29746

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Stephen Hurd, Chief Ranger, Department of the Interior, National Park Service, P.O. Box 7, King Salmon, AK 99613, 907 246-3305

RIN: 1024-AB78

1154. ARCHEOLOGICAL AND HISTORIC PRESERVATION ACT DEPARTMENT OF THE INTERIOR REGULATIONS

Legal Authority: 16 USC 469; 16 USC 470; 16 USC 470aa

CFR Citation: 36 CFR 65

Legal Deadline: None

Abstract: This rule is part of the Department's proposed overall rulemaking with respect to the Archeological and Historic Preservation Act of 1974. This guidance will facilitate the Department's coordination of activities authorized under the Act, and its reporting to Congress on the scope and effectiveness of the program, as required by section 5(c) of the Act.

Timetable:

Action	Date	FR Cite
ANPRM	10/20/85	50 FR 41587
ANPRM Comment Period End	11/27/85	50 FR 43587
NPRM	06/00/89	
Final Action	12/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Dr. Bennie C. Keel, Departmental Consulting Archeologist, Department of the Interior, National Park Service, P.O. Box 37127, Washington, DC 20013-7127, 202 343-1876

RIN: 1024-AA49

1155. CEMETERY SITES AND HISTORICAL PLACES

Legal Authority: 16 USC 3

CFR Citation: 43 CFR 2653

Legal Deadline: None

Abstract: The Service is proposing to amend 43 CFR 2653.5 by deleting all references to the Service as the consulting agency concerning the cultural value and significance of existing Alaska Native cemetery sites and historical places. This revision will relieve the Service from the responsibility of being the consulting agency for sites located on all Federal lands in Alaska, thus eliminating an expensive duplication of Federal effort.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: Originally scheduled: October 1983.

Agency Contact: Rich O'Guinn, Department of the Interior, National Park Service, Alaska Regional Office, 2525 Gambell Street, Anchorage, AK 99503, 907 271-2660

RIN: 1024-AA84

DEPARTMENT OF THE INTERIOR (DOI)
National Park Service (NPS)

Final Rule Stage

1156. CUYAHOGA VALLEY NRA: OFF-ROAD VEHICLES AND SNOWMOBILES

Legal Authority: 16 USC 3

CFR Citation: 36 CFR 7.17

Legal Deadline: None

Abstract: The Service proposes to designate routes for off-road vehicles and snowmobile use in compliance with Executive Order 11644, in an area west of Riverview Road bounded by I-80 and I-271.

Timetable:

Action	Date	FR Cite
NPRM	06/15/87	52 FR 22662
NPRM Comment Period End	07/15/87	52 FR 22662
Final Action	03/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Brian McHugh, Chief Park Ranger, Cuyahoga Valley NRA, Department of the Interior, National Park Service, 15610 Vaughn Road, Brecksville, OH 44141, 216 526-5256

RIN: 1024-AD44

1157. CANYON DE CHELLY NATIONAL MONUMENT

Legal Authority: 16 USC 3

CFR Citation: 36 CFR 7.19

Legal Deadline: None

Abstract: This proposed rulemaking will establish criteria for the operation of horse rental facilities within Canyon De Chelly National Monument.

Timetable:

Action	Date	FR Cite
NPRM	05/27/87	52 FR 19735
NPRM Comment Period End	06/26/87	52 FR 19735
Final Action	03/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Ken Mabery, Park Ranger, Department of the Interior, National Park Service, Southwest Region, P.O. Box 728, Santa Fe, NM 87501, 505 988-6371

RIN: 1024-AB47

1158. FORT JEFFERSON NM: FISHING; BOUNDARY ADJUSTMENTS

Legal Authority: 16 USC 1; 16 USC 3

CFR Citation: 36 CFR 7.27

Legal Deadline: None

Abstract: This proposed regulation pertains to Fort Jefferson National Monument and will delete references to the taking of crayfish and conch. Information will be included to redefine the park boundary. These changes are necessary to reflect a closure of park waters to the removal of crayfish and conch and to update boundary changes

DOI—NPS

Final Rule Stage

mandated by Congressional action in 1980 that enlarged the park area.

Timetable:

Action	Date	FR Cite
NPRM	08/05/86	51 FR 28110
Final Action	03/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: William Sturgeon, Acting Chief, Ranger Activities Branch, Department of the Interior, National Park Service, 75 Spring Street, SW, Atlanta, GA 30303, 404 221-4916

RIN: 1024-AA96

1159. JEAN LAFITTE NHP: CRAWFISHING REGULATIONS

Legal Authority: 16 USC 3; 16 USC 230l

CFR Citation: 36 CFR 7.37

Legal Deadline: None

Abstract: The proposed rulemaking pertains to Jean Lafitte National Historical Park located in Louisiana. The rulemaking will establish criteria for the harvesting of crawfish in the Barataria Unit and will establish a recreational and subsistence season. The policy is consistent with Public Law 95-625 and existing National Park Service and Department of the Interior policies.

Timetable:

Action	Date	FR Cite
NPRM	08/18/86	51 FR 29498
Final Action	03/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: James L. Isenogle, Superintendent, Jean Lafitte National Historical Park, Department of the Interior, National Park Service, 423 Canal Street, Rm. 206, New Orleans, LA 70130, 504 589-3882

RIN: 1024-AB32

1160. EVERGLADES NP: MINING

Legal Authority: 16 USC 3

CFR Citation: 36 CFR 7.45(a)

Legal Deadline: None

Abstract: This deletion applies to Everglades National Park in Florida. Section 7.45(a) will be deleted because it is a duplication of the General Regulations 36 CFR, Sections 1.6, 1.7 and 2.1.

Timetable:

Action	Date	FR Cite
NPRM	08/05/86	51 FR 28108
NPRM Comment Period End	09/04/86	51 FR 28108
Final Action	03/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: FTS 242-4916.

Agency Contact: William Sturgeon, Regional Law Enforcement Specialist, Department of the Interior, National Park Service, Southeast Regional Office, 75 Spring Street, SW, Atlanta, GA 30303, 404 221-4916

RIN: 1024-AJ10

1161. LAKE CHELAN NRA: TARGET PRACTICE

Legal Authority: 16 USC 3

CFR Citation: 36 CFR 7.62

Legal Deadline: None

Abstract: This proposed rulemaking pertains to Lake Chelan NRA and will designate a specially designed and constructed facility and time and location for target practice.

Timetable:

Action	Date	FR Cite
NPRM	05/09/85	50 FR 19546
NPRM Comment Period End	06/10/85	50 FR 19546
Final Action	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: John Reynolds, Superintendent, North Cascades National Park, Department of the Interior, National Park Service, 800 State Street, Sedro Wooley, WA 98284, 206 855-1331

RIN: 1024-AB19

1162. ROSS LAKE NRA: TARGET PRACTICE

Legal Authority: 16 USC 1

CFR Citation: 36 CFR 7.62

Legal Deadline: None

Abstract: This proposed rulemaking pertains to Ross Lake National Recreation Area and will designate a specially designed and constructed facility and time and location for target practice.

Timetable:

Action	Date	FR Cite
NPRM	05/09/85	50 FR 19546
NPRM Comment Period End	06/10/85	50 FR 19546
Final Action	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: John Reynolds, Superintendent, North Cascades National Park, Department of the Interior, National Park Service, 800 State Street, Sedro Wooley, WA 98284, 206 855-1331

RIN: 1024-AB20

1163. ROCKY MOUNTAIN NATIONAL PARK: FISHING REGULATIONS

Legal Authority: 16 USC 3

CFR Citation: 36 CFR 7.7(a)

Legal Deadline: None

Abstract: The Service proposes to revise this section to further define waters closed to fishing as well as to further clarify the possession limit of fish.

Timetable:

Action	Date	FR Cite
NPRM	09/00/88	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: David R. Stevens, Research Biologist, Department of the Interior, National Park Service, Rocky Mountain National Park, Estes Park, CO 80517, 303 586-2371

RIN: 1024-AB45

1164. ROCKY MOUNTAIN NATIONAL PARK: TRUCKING REGULATIONS

Legal Authority: 16 USC 3

CFR Citation: 36 CFR 7.7

Legal Deadline: None

Abstract: The Service proposes to revise regulations that address permit requirements and establish a fee schedule for commercial trucks that use Trail Ridge Road within Rocky Mountain National Park.

DOI—NPS

Final Rule Stage

Timetable:

Action	Date	FR Cite
NPRM	09/00/88	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: David Essex, Chief Ranger, Rocky Mountain National Park, Department of the Interior, National Park Service, Estes Park, CO 80517, 303 586-2371

RIN: 1024-AB37

1165. BIG CYPRESS NATIONAL PRESERVE: INDIAN USE AND OCCUPANCY

Legal Authority: 16 USC 3

CFR Citation: 36 CFR 7.58

Legal Deadline: None

Abstract: This rule will define the Statutory rights of the Miccosukee and Seminole Indians within Big Cypress National Preserve. Although a proposed rule was published in 1981, a revised proposed rulemaking will be developed.

Timetable:

Action	Date	FR Cite
NPRM	11/21/81	46 FR 55709
NPRM	05/10/88	53 FR 16561
NPRM Comment Period End	07/11/88	53 FR 16561
Final Action	12/00/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: Originally scheduled: January 1981.

Agency Contact: William Sturgeon, Acting Chief, Ranger Activities, Department of the Interior, National Park Service, Southeast Regional Office, 75 Spring Street, SW, Atlanta, GA 30303, 404 242-4916

RIN: 1024-AA87

1166. WHISKEYTOWN NATIONAL RECREATION AREA FISHING REGULATIONS

Legal Authority: 16 USC 3

CFR Citation: 36 CFR 7.91

Legal Deadline: None

Abstract: The Service is proposing to allow fishing at Whiskeytown National Recreation area in any manner authorized under applicable State law.

Timetable:

Action	Date	FR Cite
NPRM	02/09/88	53 FR 3759
NPRM Comment Period End	03/10/88	53 FR 3759
Final Action	03/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Ray Foust, Superintendent, Department of the Interior, National Park Service, PO Box 188, Whiskeytown, CA 96095, 916 241-6584

RIN: 1024-AB51

1167. WHISKEYTOWN UNIT, WHISKEYTOWN - SHASTA - TRINITY NRA GOLD PANNING REGULATIONS

Legal Authority: 16 USC 3

CFR Citation: 36 CFR 7.91

Legal Deadline: None

Abstract: The Service proposes to allow visitors to engage in limited gold panning activities, using pan and trowel only, in certain designated streams within the recreation area. Any gold recovered by such methods could be retained for personal, non-commercial use.

Timetable:

Action	Date	FR Cite
NPRM	02/09/88	53 FR 3759
Final Action	03/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Ray Foust, Superintendent, Department of the Interior, National Park Service, Whiskeytown National Recreation Area, Box 188, Whiskeytown, CA 96095, 916 241-6584

RIN: 1024-AB71

1168. NPS UNITS IN ALASKA: CLOSURE REGULATIONS

Legal Authority: 16 USC 3

CFR Citation: 36 CFR 13

Legal Deadline: None

Abstract: This rule will provide for the closure of certain areas within Denali National Park and Preserve, Glacier Bay National Park and Preserve, Gates of the Arctic National Park and Preserve and Katmai National Park and Preserve to snowmachines, motorboat and aircraft use.

Timetable:

Action	Date	FR Cite
NPRM	04/06/83	48 FR 14978
NPRM Comment Period End	06/06/83	48 FR 14978
Comment Period Extension Begin	06/06/83	48 FR 26319
Comment Period Extension Ends	08/26/83	
Final Action	03/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Originally scheduled: April 1982.

Agency Contact: David B. Ames, Associate Regional Director, Department of the Interior, National Park Service, Alaska Regional Office, 2525 Gambell Street, Anchorage, AK 99503, 907 271-2644

RIN: 1024-AA71

1169. BIGHORN CANYON NATIONAL RECREATION AREA - FISHING REGULATIONS

Legal Authority: 16 USC 3

CFR Citation: 36 CFR 7.92

Legal Deadline: None

Abstract: The Service proposes to authorize fishing at Bighorn Canyon National Recreation area in any manner authorized under the applicable laws of Montana and Wyoming.

Timetable:

Action	Date	FR Cite
NPRM	10/10/86	51 FR 36409
NPRM Comment Period End	11/10/86	51 FR 36409
Final Action	03/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Richard Lake, Chief, Park Ranger, Bighorn Canyon NRS, Department of the Interior, National Park Service, PO Box 458, Ft. Smith, MT 59035, 406 666-2412

RIN: 1024-AB83

DOI—NPS

Final Rule Stage

1170. FIRE ISLAND NATIONAL SEASHORE: ZONING

Legal Authority: 16 USC 3

CFR Citation: 36 CFR 28

Legal Deadline: None

Abstract: This rule will be revised to add new definitions, to amend permitted and prohibited uses and to update zoning standards to reflect Seashore policy and local zoning ordinances.

Timetable:

Action	Date	FR Cite
NPRM	10/07/87	52 FR 37586
NPRM Comment Period End	11/06/87	52 FR 37586
Final Action	04/00/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Larry Hovig, Department of the Interior, National Park Service, North Atlantic Regional Office, 15 State Street, Boston, MA 02109, 617 223-3778

RIN: 1024-AA86

1171. NATIONAL REGISTER OF HISTORIC PLACES

Legal Authority: 16 USC 470 et seq

CFR Citation: 36 CFR 60

Legal Deadline: None

Abstract: This rule is being amended to revise: appeals for listing nominations by persons or local governments in States without approved State historic preservation programs; procedures for nominations from State and Federal agencies; and procedures for making changes to listed properties and removals from the National Register, including appeals, and to incorporate 36 CFR Part 63.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/16/81	
NPRM	09/05/86	51 FR 28204
NPRM Comment Period End	10/06/86	51 FR 28204
Final Action	11/30/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: Originally scheduled: January 1981.

Agency Contact: Carol Shull, Chief, National Register Branch, Interagency Resources Division, Department of the Interior, National Park Service, 18th and C Streets, NW, Washington, DC 20240, 202 343-9569

RIN: 1024-AA44

1172. DETERMINATION OF ELIGIBILITY FOR INCLUSION IN THE NATIONAL REGISTER OF HISTORIC PLACES

Legal Authority: 16 USC 470 et seq

CFR Citation: 36 CFR 63

Legal Deadline: None

Abstract: This rule incorporates certain revisions responding to the National Historic Preservation Act Amendments of 1980. In addition to responding to the new law, these changes update and revise in other minor respects the procedures for determining the eligibility of properties for the National Register. This rule will be consolidated with 36 CFR Part 60. Proposed rule (36 CFR Part 1204) was published May 23, 1980 (45 FR 34909).

Timetable:

Action	Date	FR Cite
NPRM 36 CFR 1204	05/23/80	45 FR 34909
NPRM	09/05/86	51 FR 28216
NPRM Comment Period End	10/06/86	51 FR 28216
Final Action	11/30/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: Originally scheduled: July 1979.

Agency Contact: Carol Shull, Chief, National Register Branch, Interagency Resources Division, Department of the Interior, National Park Service, 18th and C Streets, NW, Washington, DC 20240, 202 343-9569

RIN: 1024-AA46

1173. HISTORIC PRESERVATION CERTIFICATIONS PURSUANT TO SECTION 48(G) AND SECTION 170(H) OF THE INTERNAL REVENUE CODE OF 1986

Legal Authority: 16 USC 470(a) (1)(A); 26 USC 48 (g); 26 USC 170(h)

CFR Citation: 36 CFR 67, (Revised)

Legal Deadline: None

Abstract: This proposed rule restates and makes amendments to the procedures by which owners desiring tax benefits for rehabilitation of historic buildings apply for certifications pursuant to Section 48(g) and Section 170(h) of the Internal Revenue Code of 1986. These tax laws require certifications from the Secretary of the Interior in order for taxpayers to receive tax benefits.

Timetable:

Action	Date	FR Cite
NPRM	05/23/88	53 FR 18292
NPRM Comment Period End	07/22/88	53 FR 18292
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: H. Ward Jandl, Chief, Technical Preservation Services Branch, Department of the Interior, National Park Service, P O Box 37127, Washington, DC 20013-7127, 202 343-9594

RIN: 1024-AB73

1174. CURATION OF FEDERALLY OWNED AND ADMINISTERED ARCHEOLOGICAL COLLECTIONS

Legal Authority: 16 USC 470a; 16 USC 470bb

CFR Citation: 36 CFR 79

Legal Deadline: None

Abstract: This rule fulfills the Secretary of the Interior's responsibility to issue regulations on the disposition, exchange and curation of federally owned and administered prehistoric and historic archeological artifacts and associated records recovered under the Antiquities Act of 1906, the Reservoir Salvage Act of 1960 (as amended by the Archeological and Historic Preservation Act of 1974), Section 110 of the National Historic Preservation Act of 1966 (as amended) and the Archeological Resources Protection Act of 1979. The regulation will establish (a) minimum standards for repositories that provide long-term curatorial services; (b) guidelines for Federal agencies for entering into contracts and agreements with repositories and other parties for the care and management of collections; (c) guidelines for access to, loan of and use of collections; and (d) guidelines for the exchange and ultimate disposition of collections.

DOI—NPS

Final Rule Stage

Timetable:

Action	Date	FR Cite
ANPRM	10/11/85	50 FR 41527
ANPRM Comment Period End	11/12/85	50 FR 41527
NPRM	08/28/87	52 FR 32740
NPRM Comment Period End	10/27/87	52 FR 32740
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: The proposed rule was published for public comment on August 28, 1987. Comments were received from 41 agencies and organizations, including 11 Federal agencies, 7 State agencies, 8 Indian tribes and organizations, 7 museums, 5 archeological and museum organizations, 2 industrial firms, and 1 individual. The National Park Service is in the process of analyzing the comments, making appropriate revisions, and preparing responses to the comments for publication in the preamble of the final rulemaking.

Agency Contact: Dr. Bennie C. Keel, Departmental Consulting Archeologist, Department of the Interior, National Park Service, P.O. Box 37127, Washington, DC 20013-7127, 202 343-1876

RIN: 1024-AB13

DEPARTMENT OF THE INTERIOR (DOI)

National Park Service (NPS)

Completed Actions

1175. LAKE MEAD NATIONAL RECREATION AREA: NOISE ABATEMENT EXEMPTION

Legal Authority: 16 USC 3

CFR Citation: 36 CFR 7.48(i)

Legal Deadline: None

Abstract: The proposed rulemaking pertains to Lake Mead National Recreation Area, located in Arizona and Nevada. It would allow motor vessels to exceed existing noise limitations while participating in regattas; thereby, making possible the continuation of a traditional activity.

Timetable:

Action	Date	FR Cite
NPRM	12/20/85	50 FR 51866
NPRM Comment Period End	01/21/86	50 FR 51866
Final Action	08/08/88	53 FR 29681
Final Action Effective	09/07/88	53 FR 29681

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Newton Sikes, Chief Ranger, Department of the Interior, National Park Service, 601 Nevada Hwy., Boulder City, NV 89005, 702 293-1941

RIN: 1024-AB50

1176. MANAGEMENT OF MINING CLAIM ACTIVITIES

Legal Authority: 16 USC 3 et seq NPS Organic Act; 16 USC 1901 et seq Mining in the Parks Act of 1976

CFR Citation: 36 CFR 9, Subpart A

Legal Deadline. None

Abstract: The intent of this current rulemaking is to explain that mineral development on mining claims within the boundaries of units of the National Park System is governed by regulations at 36 CFR Part 9, Subpart A without regard to whether the claim is patented or how the claim is accessed. This rulemaking also explains the relationship of the 36 CFR Part 9, Subpart A regulations to those governing access in Alaska in 43 CFR Part 36. This rulemaking is necessary because confusion exists in the mining community in Alaska as to the scope of these regulations due to a regulatory provision that was contained at 36 CFR Part 13.15(d)(1) that exempted operators from compliance with the 36 CFR Part 9, Subpart A regulations if the operators could access their patented claims without crossing federally owned parklands. Because there was no legal basis for such an exemption in either the Mining In The Parks Act or the Alaska National Interest Lands Conservation Act of 1980, the Department eliminated the exemption when it promulgated its regulations at 43 CFR Part 36.

Timetable:

Action	Date	FR Cite
ANPRM	07/20/84	49 FR 29415
ANPRM Comment Period End	08/20/84	49 FR 29415
30 day extension to ANPRM comment period to	09/20/84	
NPRM	04/03/87	52 FR 10866
NPRM Comment Period End	09/04/87	52 FR 28850
Final Action	07/05/88	53 FR 25160
Final Action Effective	08/05/88	53 FR 25160

Small Entities Affected: None

Government Levels Affected: None

Analysis: EA in compliance with NEPA

Agency Contact: Carol McCoy, Chief, Policy and Regulations Section, Land Resources Division, Department of the Interior, National Park Service, Room 3223 (660), Box 37127, Washington, DC 20013-7127, 202 343-9138

RIN: 1024-AB37

1177. NATIONAL PARK SERVICE ACQUISITION REGULATION

Legal Authority: 5 USC 301; 40 USC 486(c)

CFR Citation: 48 CFR 1489; 48 CFR 1452.289; 48 CFR 1453.2; 48 CFR 1453.3

Legal Deadline: None

Abstract: The proposed regulation would establish Bureau-specific solicitation provisions, contract clauses and prescriptions for their use. These are necessary to supplement and implement the Federal Acquisition Regulation and the Department of the Interior Acquisition Regulation. This will provide standard contractual language for provisions and clauses not otherwise available in the Federal or Interior regulations that are needed by our operational contracting activities. This action should result in cost savings as this development and standardization will relieve the individual contracting activities of the responsibility of developing their own.

DOI—NPS

Completed Actions

Timetable:

Action	Date	FR Cite
Withdrawn Delete 07/01/88 clauses no longer in use		

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Lawrence E. Sawtelle, Chief, Acquisition and Assistance System Branch, Department of the Interior, National Park Service, P.O. Box 37127, Washington, DC 20013-7127, 202 523-5021

RIN: 1024-AB35

MAILING CODE 4310-70-T

DEPARTMENT OF THE INTERIOR (DOI)

Proposed Rule Stage

Bureau of Indian Affairs (BIA)

1178. PROCEDURES FOR ESTABLISHING THAT AN AMERICAN INDIAN GROUP EXISTS AS AN INDIAN TRIBE

Significance: Regulatory Program

Legal Authority: 5 USC 301; 25 USC 2; 25 USC 9

CFR Citation: 25 CFR 83

Legal Deadline: None

Abstract: The proposed rule revision will resolve problems encountered with existing regulations published almost ten years ago. Revisions will reduce time and resources required to process petitions, clarify terms and definitions, interpret criteria, add a process whereby groups may withdraw a petition, improve the appeal process and respond to changing conditions. The revised rule will be more cost effective for the Department and Indian groups petitioning for Federal acknowledgment. The proposed revisions will be published taking into consideration ten years of experience with the regulations. Revisions will reflect recommendations received from the Congress, Indian groups and tribes, other Federal agencies and national organizations.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	
NPRM Comment Period End	04/00/89	
Final Action	12/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Lynn Forcia, Chief, Branch of Acknowledgment and Research, Department of the Interior, Bureau of Indian Affairs, Room 1362 Main Interior, 18th & C Streets, NW, Washington, DC 20240, 202 343-3596

RIN: 1076-AC15

1179. THE INDIAN POLICE

Significance: Agency Priority

Legal Authority: 25 USC 2; 25 USC 9; 25 USC 13

CFR Citation: 25 CFR 11

Legal Deadline: None

Abstract: The Bureau of Indian Affairs is revising its regulations governing the Bureau's police operations to make them consistent with contemporary enforcement policies and procedures and changes in the Interior Department Manual and the BIA Manual.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	
NPRM Comment Period End	03/00/89	
Final Action	10/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: James P. Donovan, Acting Chief, Division of Law Enforcement Services, Department of the Interior, Bureau of Indian Affairs, 1951 Constitution Ave., NW, Room 1342, Code 490, Washington, DC 20245, 202 343-5708

RIN: 1076-AB66

1180. ● SMALL ESTATES - OSAGE

Legal Authority: 92 Stat. 1660

CFR Citation: 25 CFR 16

Legal Deadline: None

Abstract: This rulemaking action would permit the Field Solicitor, Pawhuska, Oklahoma, to determine the heirs, devisees and/or legatees of estates under the jurisdiction of the Osage Agency, consisting of Osage headright interest, real estate on which restrictions against alienation have not been removed, and/or funds on deposit at the Osage Agency, all of which do not exceed a valuation of $10,000 on the date of death of a decedent, when requested in writing by one or more of the heirs, devisees and/or legatees; provided, that a court of competent jurisdiction has not proceeded to administer or probate the estate. The administration of such estates by the Field Solicitor would alleviate the necessity of the employment of an attorney by the beneficiaries, approval of the will pursuant to 25 CFR Part 17, and the filing of administration or probate proceedings in State Court. Because of the size of these estates, it is financially impractical for the beneficiaries to employ attorneys for that purpose.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Howard Plepenbrink, Chief, Branch of Titles and Research, Division of Real Estate Services, Department of the Interior, Bureau of Indian Affairs, 18th & C Streets, NW, Washington, DC 20240, 202 343-5478

RIN: 1076-AC18

1181. FINANCIAL ASSISTANCE AND SOCIAL SERVICES PROGRAM

Significance: Regulatory Program

Legal Authority: 25 USC 13; PL 98-473

CFR Citation: 25 CFR 20

Legal Deadline: None

Abstract: The Bureau is amending existing Financial Assistance and Social Services Program regulations to further define the adult care services provided to Indian people. These proposed regulations define the extent of the program, establish eligibility requirements, and establish adult care services as a social services program separate and distinct from the general assistance program. The revision is needed to specifically define the Bureau's role in the provision of institutional and in-home care to Indian adults who are mentally or physically handicapped or otherwise disabled. The Bureau is also amending miscellaneous assistance provisions to conform with the congressional directive in Public Law 98-473. Miscellaneous assistance will be revised and defined as burial assistance. Emergency assistance previously provided under miscellaneous assistance was transferred to general assistance by revision of 25 CFR Part 20(c) on September 30, 1985.

Timetable:

Action	Date	FR Cite
Distribute draft rule to all Area Offices for review	04/30/88	
NPRM	04/00/89	
Final Action	12/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: David Hickman, Acting Chief, Division of Social Services, Department of the Interior, Bureau of Indian Affairs, 1951 Constitution Ave., NW, Washington, DC 20245, 202 343-6434

RIN: 1076-AB09

DOI—BIA

Proposed Rule Stage

1182. FINANCIAL ASSISTANCE AND SOCIAL SERVICES PROGRAM

Legal Authority: 25 USC 13

CFR Citation: 25 CFR 20

Legal Deadline: None

Abstract: This rulemaking action is being taken to further define various programmatic responsibilities of the Child Welfare Assistance and Child and Family Service Program under this part.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	
NPRM Comment Period End	02/00/89	
Final Action Effective	10/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: David L. Hickman, Acting Chief, Division of Social Services, Department of the Interior, Bureau of Indian Affairs, 1951 Constitution Avenue, NW, Washington, DC 20245, 202 343-6434

RIN: 1076-AC13

1183. ● ADMINISTRATION OF A PROGRAM OF EMPLOYMENT ASSISTANCE FOR ADULT INDIANS

Legal Authority: 25 USC 13

CFR Citation: 25 CFR 26

Legal Deadline: None

Abstract: The purpose of the rule is to combine the rules described in 25 CFR Part 26, Employment Assistance for Adult Indians, and 25 CFR Part 27, Vocational Training for Adult Indians, into a new 25 CFR Part 26. The application and selection process, financial assistance, program services, and employment as the objective are common to both Parts 26 and 27. Another purpose is to establish uniform procedures for administration of the employment assistance for adult Indians program and include requirements to improve the administrative efficiency of the program.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Deane Polashia, Actg. Division Chief, Job Placement and Training, Department of the Interior, Bureau of Indian Affairs, 18th & C Streets, NW, Washington, DC 20240, 202 343-3570

RIN: 1076-AA01

1184. SCHOOL BOARDS

Significance: Agency Priority

Legal Authority: 25 USC 2001 et seq

CFR Citation: 25 CFR 35

Legal Deadline: None

Abstract: The purpose of this rule is to define and delineate the duties and responsibilities of local Indian School Boards in accordance with Federal statutes and regulations. This rule will provide Bureau-wide consistency for the overall exercise of authority and control of Bureau operated schools.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: George D. Scott, Education Specialist, Department of the Interior, Bureau of Indian Affairs, Office of Indian Education Programs, 18th & C Streets, NW, Washington, DC 20240, 202 343-4872

RIN: 1076-AC14

1185. GRANTS TO TRIBALLY CONTROLLED COMMUNITY COLLEGES AND NAVAJO COMMUNITY COLLEGE

Significance: Agency Priority

Legal Authority: 25 USC 1815; 25 USC 640

CFR Citation: 25 CFR 41, (Revision)

Legal Deadline: None

Abstract: The Secretary proposes to revise the current regulations which are used to govern the administration of grants to the Tribally Controlled Community Colleges. The revision is mandatory since the current regulations do not apply to the new requirements which were made under the Amendments Act. The revision will govern the new requirements which include: 1. Planning Grants; 2. Forward Funding; 3. Facility Construction; 4. Endowments; and 5. New Method of Counting Students.

Timetable:

Action	Date	FR Cite
NPRM	04/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Esther Whales, Chief, Branch of Postsecondary Education, Department of the Interior, Bureau of Indian Affairs, 1951 Constitution Avenue, NW, Washington, DC 20245, 202 343-3171

RIN: 1076-AA11

1186. ● CERTIFICATES OF DEGREE OF INDIAN BLOOD

Legal Authority: 5 USC 301; 25 USC 2; 25 USC 9

CFR Citation: 25 CFR 70

Legal Deadline: None

DOI—BIA

Proposed Rule Stage

Abstract: This rulemaking action is to add a new Part 70 to govern the issuance of Certificates of Degree of Indian Blood (CDIB's). There has been a sharp increase in the number of requests for CDIB's over the past few years. More and more programs are requiring individuals to submit CDIB's to document possession of Indian blood. This rulemaking action is intended to clarify the circumstances under which the Bureau will issue CDIB's; the documents and records on which the Bureau will base the issuance of CDIB's; and the procedures that individuals will need to follow, including any documentation requirements, to obtain CDIB's.

Timetable:

Action	Date	FR Cite
NPRM	03/00/89	
NPRM Comment Period End	04/00/89	
Final Action	08/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Kathleen L. Slover, Tribal Enrollment Specialist, Department of the Interior, Bureau of Indian Affairs, 18th & C Streets, NW, Washington, DC 20240, 202 343-1702

RIN: 1076-AC19

1187. LOANS TO INDIANS FROM THE REVOLVING LOAN FUND

Legal Authority: 25 USC 1451; PL 93-262

CFR Citation: 25 CFR 101

Legal Deadline: None

Abstract: This part is being revised to incorporate legislative changes made pursuant to the Amendments to the Indian Financing Act of 1984, to reflect policy changes in program administration and to add clarifying language to the existing rule.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	
NPRM Comment Period End	01/00/89	
Final Action	10/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: J. D. Colbert, Chief, Division of Financial Assistance, Office of Trust and Economic Development, Department of the Interior, Bureau of Indian Affairs, 18th and C Streets, NW, Washington, DC 20240, 202 343-5831

RIN: 1076-AC00

1188. LOAN GUARANTY, INSURANCE, AND INTEREST SUBSIDY

Legal Authority: 88 Stat. 77

CFR Citation: 25 CFR 103

Legal Deadline: None

Abstract: This part is being revised to incorporate legislative changes made pursuant to the Amendments to the Indian Financing Act of 1984, to reflect policy changes in program administration and to add clarifying language to the existing rule.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	
NPRM Comment Period End	01/00/89	
Final Action	10/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: J. D. Colbert, Chief, Division of Financial Assistance, Office of Trust and Economic Development, Department of the Interior, Bureau of Indian Affairs, 18th and C Streets, NW, Washington, DC 20240, 202 343-5831

RIN: 1076-AC00

1189. INDIVIDUAL INDIAN MONEY ACCOUNTS

Significance: Regulatory Program

Legal Authority: 5 USC 301; 25 USC 2; 25 USC 9; 43 USC 1457

CFR Citation: 25 CFR 115

Legal Deadline: None

Abstract: The Individual Indian Money Account program involves funds held in trust status for individuals. Although the rule generally prohibits voluntary accounts, except in circumstances of substantial hardship, the Bureau currently maintains many such accounts in the program. The current regulations will be revised to include specific criteria which must be met by voluntary depositors and which determine cases of "substantial hardship" as required by the regulations.

Timetable:

Action	Date	FR Cite
Revise regulations for Exception Criteria	01/31/87	
NPRM	06/00/89	
Final Action	12/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Betty L. Wilkinson, Chief, Division of Accounting Management, Department of the Interior, Bureau of Indian Affairs, 1951 Constitution Avenue, NW, Washington, DC 20245, 202 343-1575

RIN: 1076-AB91

1190. ◆ LEASING AND PERMITTING

Significance: Agency Priority

Legal Authority: 25 USC 395; 25 USC 402; 25 USC 403; 25 USC 466

CFR Citation: 25 CFR 162

Legal Deadline: None

Abstract: The Bureau proposes to reorganize Part 162 into subparts to facilitate the use of the regulations for easier reference and to incorporate requirements for grazing permits within the rule for Leasing and Permitting. The inclusion of the requirements for grazing permits in this part will result in the removal of 25 CFR Part 166, General Grazing Regulations, from the 25 CFR.

Timetable:

Action	Date	FR Cite
NPRM	04/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Dave Pennington, Natural Resources Officer, Billings Area Office, Department of the Interior, Bureau of Indian Affairs, 316 North 26th Street, Billings, MT 58101, 406 657-6145

RIN: 1076-AA29

1191. ◆ ROADS OF THE BUREAU OF INDIAN AFFAIRS

Legal Authority: 25 USC 47; 25 USC 318a; 23 USC 202; 23 USC 204

CFR Citation: 25 CFR 170

Legal Deadline: None

DOI—BIA

Proposed Rule Stage

Abstract: The Bureau of Indian Affairs is proposing revising 25 CFR Part 170 to reflect the current Bureau of Indian Affairs (BIA) and Federal Highway Administration (FHWA) policies for the road systems on Indian reservations, to assure funds are apportioned from the Highway Trust Fund (HTF) for construction projects on Indian reservations roads in accordance with the relative needs of the reservation, and to implement tribal self-determination.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: James Ball, Chief, Division of Transportation, Department of the Interior, Bureau of Indian Affairs, 18th & C Streets, NW, Washington, DC 20240, 202 343-4359

RIN: 1076-AB65

1192. LEASING OF RESTRICTED LANDS OF MEMBERS OF FIVE CIVILIZED TRIBES, OKLAHOMA, FOR MINING

Legal Authority: Sec. 2, 35 Stat. 312; Sec. 18, 41 Stat. 426; Sec. 1, 45 Stat. 495; Sec. 1, 47 Stat. 777; 25 USC 356; Secs. 3, 11, 35 Stat. 313, 316; Sec. 8, 47 Stat. 779

CFR Citation: 25 CFR 213

Legal Deadline: None

Abstract: This rule is being revised to ensure consistency with existing law and to improve operating procedures. Issues to be addressed include authority to lease inherited restricted land, the processing of lease payments through the Minerals Management Service, and the approval process for division orders. There are no alternatives being considered and the potential cost is unknown.

Timetable:

Action	Date	FR Cite
NPRM	06/00/89	
NPRM Comment Period End	07/00/89	
Final Action	12/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: J. D. Colbert, Chief, Division of Financial Assistance, Department of the Interior, Bureau of Indian Affairs, Office of Trust and Economic Development, Division of Financial Assistance, Washington, DC 20240, 202 343-5831

RIN: 1076-AA55

1193. INDIAN BUSINESS DEVELOPMENT PROGRAM

Significance: Regulatory Program

Legal Authority: 25 USC 1524 Indian Financing Act of 1974

CFR Citation: 25 CFR 286

Legal Deadline: None

Abstract: This rule will activate an old grant program that has been granted appropriation authority since FY 1986. The Indian Financing Act amendments of 1984 authorize grants up to $250,000 to tribes and up to $100,000 to individual Indians for economic enterprises.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	
NPRM Comment Period End	02/00/89	
Final Action	10/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Joel Starr, Staff Assistant, Office of the Assistant Secretary, Department of the Interior, Bureau of Indian Affairs, 1951 Constitution Ave., NW, Washington, DC 20245, 202 343-8831

RIN: 1076-AC07

1194. TRIBAL BINGO MANAGEMENT CONTRACTS

Significance: Regulatory Program

Legal Authority: 25 USC 81; 25 USC 415; 25 USC 301

CFR Citation: 25 CFR 207

Legal Deadline: None

Abstract: The Bureau of Indian Affairs is proposing a new rule which establishes the requirements to be met and procedures to be followed to obtain approval of management contracts for tribal bingo enterprises. This action is necessary because the Federal courts have held that such management contracts are null and void without Secretarial approval pursuant to 25 USC 81. The intended effect of this rule is to replace the administrative guidelines previously announced by the Bureau for approval of such contracts and to establish uniform minimum standards for the review and approval of all such gaming management contracts.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	
NPRM Comment Period End	02/00/89	
Final Action	10/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Joel Starr, Staff Assistant, Office of the Assistant Secretary, Department of the Interior, Bureau of Indian Affairs, 1951 Constitution Ave., NW, Washington, DC 20245, 202 343-8831

RIN: 1076-AC07

DEPARTMENT OF THE INTERIOR (DOI)

Final Rule Stage

Bureau of Indian Affairs (BIA)

1195. APPEALS FROM ADMINISTRATIVE ACTIONS

Legal Authority: 5 USC 301; 25 USC 2; 25 USC 9

CFR Citation: 25 CFR 2

Legal Deadline: None

Abstract: The present administrative appeal regulations are ambiguous and misleading. It is difficult to tell what issues may be appealed and to whom the appeal should be sent. Most deadlines are uncertain. Those that are certain are often unrealistic. It is also unclear when a final decision will be rendered by the Interior Board of Indian Appeals and when it will be rendered by the Assistant Secretary for Indian Affairs. Alternatives will be developed by reviewing the existing appeal regulations of other agencies.

DOI—BIA

Final Rule Stage

Consideration will be given to specifying which types of appeals go to the Assistant Secretary and which to the Board. The alternative of providing for the Assistant Secretary to make a case-by-case decision whether or not to refer the matter to the Board will also be considered. The primary benefit should be reduced frustration for both appellants and the BIA officials who handle the appeals. The greatest cost may be that both appellants and BIA officials may have to comply with more specified procedures and meet more deadlines in order for the system to work.

Timetable:

Action	Date	FR Cite
NPRM	11/06/87	52 FR 43006
NPRM Comment Period End	01/05/88	52 FR 43006
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Anne Bolton, Management Analyst, Department of the Interior, Bureau of Indian Affairs, Room 320 - Interior South, 1951 Constitution Avenue, NW, Washington, DC 20245, [redacted]

RIN: 1076-AH21

1196. LAW AND ORDER ON INDIAN RESERVATIONS

Significance: Agency Priority

Legal Authority: 25 USC 2; 25 USC 9; 25 USC 13

CFR Citation: 25 CFR 11

Legal Deadline: None

Abstract: The present regulations contain a very incomplete criminal code that does not cover many areas of the law that are usually in the laws of the State where the reservation is located. The current regulations also contain very sketchy provisions on criminal and civil procedure. It is proposed to update the sections on criminal offenses, and essentially create new sections on criminal procedures, domestic relations, probate proceedings, appellate proceedings and juvenile proceedings. This will provide the Courts of Indian Offenses with more complete and up to date procedures and rules. Courts will have a six month period from the date of publications of the final rule to the effective date in which to revise their court codes. It is not anticipated that this revision will have any effect on the annual case load for these courts or require additional staffing. Therefore, the initiation of these rules should not result in additional costs.

Timetable:

Action	Date	FR Cite
NPRM	10/24/85	50 FR 43235
NPRM Comment Period End	01/31/86	51 FR 400
Code revisions by courts	12/00/88	
Final Action	12/00/88	
Final Action Effective	06/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: Originally scheduled: January 1981.

Agency Contact: Maria Mendoza, Branch of Judicial Services, Department of the Interior, Bureau of Indian Affairs, 18th and C Streets, NW, Washington, DC 20240, [redacted]

RIN: 1076-AA01

1197. EDUCATION PERSONNEL

Significance: Agency Priority

Legal Authority: 25 USC 2011; 25 USC 2015

CFR Citation: 25 CFR 38, (Revision)

Legal Deadline: None

Abstract: The review of this rule is to update and/or delete the requirements that apply to all individuals appointed or converted to contract education positions in the Bureau of Indian Affairs. The review applies to employees with continuing tenure in both the competitive and excepted service who incumber education positions.

Timetable:

Action	Date	FR Cite
NPRM	09/02/87	52 FR 33382
NPRM Comment Period End	10/02/87	52 FR 33382
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: George D. Scott, Education Specialist, Department of the Interior, Bureau of Indian Affairs, Office of Indian Education Programs, 18th and C Streets, NW, Washington, DC 20240, [redacted]

RIN: 1076-AA02

1198. ADMINISTRATION OF THE HIGHER EDUCATION PROGRAM

Significance: Regulatory Program

Legal Authority: 25 USC 13; PL 67-85

CFR Citation: 25 CFR 40

Legal Deadline: None

Abstract: This rule will revise established policies and provide uniform procedures to govern the higher education program administered under the authority of 25 USC 13. This rule applies only to educational grants; Bureau educational loans are governed by 25 CFR Part 91. This part has been redesignated from 25 CFR Part 32.

Timetable:

Action	Date	FR Cite
NPRM	03/03/87	52 FR 6482
NPRM Comment Period End	05/04/87	52 FR 11503
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: Federal

Additional Information: Originally scheduled: January 1980.

Agency Contact: Esther Whalen, Chief, Branch of Postsecondary Education, Department of the Interior, Bureau of Indian Affairs, 18th and C Streets, NW, Washington, DC 20240, 202 343-4871

RIN: 1076-AA10

1199. ADMINISTRATION OF THE INDIAN ADULT EDUCATION PROGRAMS

Significance: Agency Priority

Legal Authority: 25 USC 13

CFR Citation: 25 CFR 46

Legal Deadline: None

Abstract: These proposed regulations are designed to provide standardized administrative procedures for administering and operating Indian adult education programs.

Timetable:

Action	Date	FR Cite
NPRM	12/30/87	52 FR 49172
NPRM Comment Period End	02/29/88	52 FR 49172
Final Action	12/00/88	

DOI—BIA

Final Rule Stage

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Esther Whalen, Chief, Branch of Postsecondary Education, Department of the Interior, Bureau of Indian Affairs, Office of Indian Education Programs, 18th and C Streets, NW, Washington, DC 20240, 202 343-4871

RIN: 1076-AA15

1200. PREPARATION OF ROLLS OF INDIANS

Legal Authority: 5 USC 301; 25 USC 2; 25 USC 9; PL 100-139

CFR Citation: 25 CFR 61

Legal Deadline: Final, Statutory, October 26, 1988.
One year from date of enactment for completion of the tribal membership roll.

Abstract: This rulemaking action is being taken to amend the regulations contained in 25 CFR Part 61. Part 61 contains general enrollment procedures which can be made specifically applicable in the preparation of a particular roll by the Secretary by amending section 61.4 to include the qualifications for enrollment for that particular roll. Under the Cow Creek Band of Umpqua Tribe of Indians Distribution of Judgment Funds Act of 1987, the Secretary has been directed to prepare certain rolls of Cow Creek Indians to be used in the implementation of the Act. The proposed amendment is, therefore, to make the procedures contained in Part 61 applicable to the preparation of the Cow Creek rolls by adding in section 61.4 the qualifications for enrollment for each of the rolls to be prepared.

Timetable:

Action	Date	FR Cite
NPRM	06/03/88	53 FR 20335
NPRM Comment Period End	07/05/88	53 FR 20335
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Kathleen L. Slover, Tribal Enrollment Specialist, Department of the Interior, Bureau of Indian Affairs, Room 2609 Main Interior, 1951 Constitution Ave., NW, Washington, DC 20245, 202 343-1702

RIN: 1076-AC11

1201. ATTORNEY FEE CONTRACTS WITH INDIAN TRIBES; PAYMENT OF TRIBAL ATTORNEY FEES WITH FEDERALLY APPROPRIATED FUNDS

Significance: Agency Priority

Legal Authority: 5 USC 301; 25 USC 476; 25 USC 13; 25 USC 2; 25 USC 9

CFR Citation: 25 CFR 89.40 to 89.46

Legal Deadline: None

Abstract: The Bureau of Indian Affairs proposes to revise the rule concerning the circumstances under which the Bureau of Indian Affairs, in the performance of the Federal Government's trust responsibility to Indian tribes, may, in its discretion, provide Departmental funds to an Indian tribe or other Indian organization for the payment of a private attorney's legal services. The proposed revisions would not change the underlying policy of the current rule which is to pay for private counsel to represent Indian tribes only in exceptional circumstances. The principal changes involve representation in child custody proceedings, services of tribal court personnel, and non-litigation services. The proposed revision would also provide that when trust resources are involved, tribes and individual Indian allottees are eligible to apply for and receive federally appropriated funds under 25 CFR 89.

Timetable:

Action	Date	FR Cite
NPRM	01/21/86	51 FR 2722
NPRM Comment Period End	03/24/86	51 FR 2722
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Frank Keel, Special Assistant, Office of Trust and Economic Development, Department of the Interior, Bureau of Indian Affairs, 1951 Constitution Avenue, NW, Code 201, Washington, DC 20245, 202 343-1861

RIN: 1076-AB87

1202. REVOLVING CATTLE POOL

Legal Authority: 5 USC 301

CFR Citation: 25 CFR 102

Legal Deadline: None

Abstract: This program was transferred to the Bureau of Indian Affairs in the 1950's and is currently inactive. There have been no funds appropriated for the program; therefore, this part is proposed for removal. The terms and conditions of loans of cattle by the United States Government to tribes, tribal corporations or tribal members were prescribed in 25 CFR 102. The loans consisted of cattle repayable in kind or assignment of cattle under specific agreements.

Timetable:

Action	Date	FR Cite
Final Action	12/00/88	
Final Action Effective	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Pursuant to 5 USC 553(b)(B), the Bureau of Indian Affairs has determined that notice and public procedure concerning removal of this rule are unnecessary because there is no longer an active revolving cattle pool activity under this part.

Agency Contact: J. D. Colbert, Chief, Division of Financial Assistance, Office of Trust and Economic Development, Department of the Interior, Bureau of Indian Affairs, 18th and C Streets, NW, Washington, DC 20240, 202 343-3657

RIN: 1076-AC32

1203. MANAGEMENT OF OSAGE JUDGMENT FUNDS FOR EDUCATION AND SOCIO-ECONOMIC PROGRAMS

Significance: Agency Priority

Legal Authority: 86 Stat. 1295

CFR Citation: 25 CFR 122

Legal Deadline: None

Abstract: The implementing rule for 25 CFR 122 has been reviewed and a determination was made that the portion of the regulations governing socio-economic programs is no longer needed. The rule will be revised to remove that portion of the program.

Timetable:

Action	Date	FR Cite
NPRM	06/30/88	53 FR 24732
NPRM Comment Period End	08/29/88	53 FR 24732

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DOI—BIA

Final Rule Stage

Action	Date	FR Cite
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Esther Whalen, Chief, Branch of Postsecondary Education, Division of Education Programs, Department of the Interior, Bureau of Indian Affairs, 1951 Constitution Avenue, NW, Washington, DC 20245, 202 343-3671

RIN: 1076-AB01

1204. NAVAJO GRAZING REGULATIONS

Legal Authority: 5 USC 301; 25 USC 2; 25 USC 9; 25 USC 640d; 25 USC 640d-28

CFR Citation: 25 CFR 167

Legal Deadline: None

Abstract: This rule will be revised to clarify the Secretary's responsibilities over grazing control and range restoration activities in the area formerly known as the Joint Use Area under the July 9, 1980 amendments to the Navajo-Hopi Settlement Act, 25 USC 640d and 640d-28. The rule will form Subpart B of the Existing Navajo Grazing Regulations, which are redesignated as Subpart A of 25 CFR Part 167.

Timetable:

Action	Date	FR Cite
NPRM	03/05/87	52 FR 6822
NPRM Comment Period End	05/04/87	52 FR 6822
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: In May 1982, the District Court for the District of Arizona invalidated the regulation of 25 CFR 167 and ordered the Bureau to publish new regulations. The Bureau published interim regulations on Hopi partitioned lands on September 8, 1982. During the past year several meetings have been held with the Navajo Tribe to obtain concurrence to include Navajo partitioned land in the regulations. The Navajo Tribe expressed the desire for separate regulations and the Bureau has drafted a new regulation for Navajo Partitioned Land within the existing 25 CFR Part 167.

Agency Contact: Frank H. Khattat, Natural Resources Specialist, Department of the Interior, Bureau of Indian Affairs, 18th and C Streets, NW, Washington, DC 20245, 202 343-3669

RIN: 1076-AA33

1205. RIGHTS-OF-WAY OVER INDIAN LANDS

Legal Authority: 5 USC 301; 25 USC 323 to 328

CFR Citation: 25 CFR 169

Legal Deadline: None

Abstract: The Bureau of Indian Affairs intends to amend several sections of its rights-of-way regulations which impose a variety of specific requirements on grantees of rights-of-way over Indian lands. These requirements were intended to implement public laws enacted around the turn of the century which authorized the Secretary of the Interior to issue rights-of-way for various specific purposes. In 1948 Congress gave the Department comprehensive authority to grant rights-of-way for any purpose or any term of years without the antiquated restrictions of the older statutes. The regulations continue to reflect the old requirements and the result has been inconsistent application of the 1948 Act. The removal or revisions of these sections would end that practice.

Timetable:

Action	Date	FR Cite
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Frank Hissong, Realty Specialist, Division of Real Estate Services, Department of the Interior, Bureau of Indian Affairs, 1951 Constitution Avenue, NW, Code 220, Washington, DC 20245, 202 343-3611

RIN: 1076-AB99

1206. SAN CARLOS INDIAN IRRIGATION PROJECT, ARIZONA

Significance: Agency Priority

Legal Authority: 43 Stat. 476, Sec 5; 45 Stat. 210; 45 Stat. 211; 5 USC 301

CFR Citation: 25 CFR 177

Legal Deadline: None

Abstract: The Bureau of Indian Affairs is amending the pertinent sections of the regulations governing charges and costs assessed the electric power customers for the electric power, energy and associated electric power services provided by the San Carlos Indian Irrigation (Project), Arizona. The purpose of the regulatory amendments is to increase the costs to the public for the services provided by the electric power division of the Project. The proposed rules increase the electric power assessment rates in the residential and general service rate schedules. This action causes the generation of needed additional revenues for the Project. The increased assessment rates reflect the increased operating costs associated with labor, equipment and supplies. The electric power bills for service under the residential and general rate schedules will be increased by approximately 12.4 percent.

Timetable:

Action	Date	FR Cite
NPRM	12/10/87	52 FR 46781
NPRM Comment Period End	01/11/88	52 FR 46781
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Samuel Miller, Water and Land Resources Officer, Division of Water and Land Resources, Department of the Interior, Bureau of Indian Affairs, 18th and C Streets, NW, Washington, DC 20240, 202 343-4564

RIN: 1076-AC05

1207. CONTRACTS FOR PROSPECTING AND MINING ON INDIAN MINERAL LANDS

Significance: Agency Priority

Legal Authority: 25 USC 396; 25 USC 396d; 25 USC 415; 25 USC 476; 25 USC 477

CFR Citation: 25 CFR 211

Legal Deadline: None

Abstract: The regulations in this part govern contracts for the prospecting and mining of Indian-owned minerals, other than oil and gas. Revisions will be made which would combine rules for the review and approval of mineral development contracts on both tribal and allotted lands into one part. This part has been redesignated from 25 CFR Part 171.

DOI—BIA

Final Rule Stage

Timetable:

Action	Date	FR Cite
NPRM	08/11/80	45 FR 53164
NPRM	07/12/83	48 FR 31976
NPRM	10/21/87	52 FR 39332
NPRM Public Comment Period End	12/21/87	52 FR 39332
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: The rule was republished as a proposed rule on 10/21/87 (52 FR 39332) to allow for additional public comment.

Agency Contact: Frank Keel, Chief, Div. of Energy & Mineral Resources, Department of the Interior, Bureau of Indian Affairs, 1951 Constitution Avenue, NW, Washington, DC 20245, 202 343-2790

RIN: 1076-AA38

1208. LEASING OF ALLOTTED LANDS FOR MINING

Significance: Agency Priority

Legal Authority: 25 USC 396; 35 Stat. 396

CFR Citation: 25 CFR 212

Legal Deadline: None

Abstract: As a result of the public comments on the proposed rules for 25 CFR Parts 211 and 225, it has been determined that this part will not be removed. Public response to the proposed rule contained reasonable and compelling arguments for retaining 25 CFR Part 212 and for restructuring the format of the regulations.

Timetable:

Action	Date	FR Cite
NPRM	08/11/80	45 FR 53164
NPRM for removal	10/21/87	52 FR 39332
NPRM Public Comment Period End	12/21/87	52 FR 39332
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: The rule was republished for proposed removal with the proposed rulemaking actions for 25 CFR Parts 211 and 225 on 10/21/87 (52 FR 39332).

Agency Contact: Frank Keel, Chief, Div. of Energy & Mineral Resources, Department of the Interior, Bureau of Indian Affairs, 1951 Constitution Avenue, NW, Washington, DC 20245, 202 343-2790

RIN: 1076-AA39

1209. OIL AND GAS MINERAL AGREEMENTS

Legal Authority: PL 97-382; 52 Stat. 347; 35 Stat. 783

CFR Citation: 25 CFR 225

Legal Deadline: None

Abstract: The Bureau proposes to publish regulations that will govern mineral agreements for the development of Indian owned oil and gas resources pursuant to the Indian Mineral Development Act of 1982, Public Law 97-382, which authorizes the tribes to enter into negotiated agreements rather than go through the previously required competitive advertising procedure.

Timetable:

Action	Date	FR Cite
NPRM	07/12/83	48 FR 31976
NPRM	10/21/87	52 FR 39332
NPRM Public Comment Period End	12/21/87	52 FR 39332
Final Action	10/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: Originally scheduled: April 1983.

Agency Contact: Frank Keel, Chief, Div. of Energy and Mineral Resources, Department of the Interior, Bureau of Indian Affairs, 1951 Constitution Avenue, NW, Washington, DC 20245, 202 343-2790

RIN: 1076-AA82

1210. LEASING OF OSAGE RESERVATION LANDS FOR OIL AND GAS MINING

Legal Authority: Sec 3, 34 Stat. 543; Sec 1, 45 Stat. 1478; Sec 2, 45 Stat. 1478; Sec 1, 45 Stat. 1479; Sec 2, 45 Stat. 1479

CFR Citation: 25 CFR 226

Legal Deadline: None

Abstract: The rules are being amended to strengthen the management of the Osage mineral estates and relieve the Osage oil lessees from basing the payment of royalties to the Osage Tribe on the offered or posted price of a major purchaser in the Kansas-Oklahoma area. These regulations will improve the management of the Osage mineral estate and will alleviate the economic hardship placed on the oil lessees.

Timetable:

Action	Date	FR Cite
NPRM	10/16/87	52 FR 38606
NPRM Comment Period End	11/16/87	52 FR 38606
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Frank Keel, Chief, Division of Energy and Mineral Resources, Department of the Interior, Bureau of Indian Affairs, 1951 Constitution Avenue, NW, Washington, DC 20240, 202 343-2790

RIN: 1076-AC09

1211. BUY INDIAN ACT CONTRACTING

Legal Authority: 25 USC 47; 36 Stat. 861

CFR Citation: 48 CFR 1480

Legal Deadline: None

Abstract: This rule will be codified as the new 48 CFR 1480 instead of the old 41 CFR Part 14H to establish policies and procedures concerning the Bureau of Indian Affairs acquisition management system. This issuance pertains to contracts (excluding building construction) entered pursuant to the Act of June 25, 1910 (25 USC 47), which is usually referred to as the "Buy Indian Act."

Timetable:

Action	Date	FR Cite
Proposed	11/15/84	49 FR 45187
NPRM	06/30/88	53 FR 24738
NPRM Comment Period End	08/01/88	53 FR 24738
Final Action	04/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Originally scheduled: April 1982.

Agency Contact: Peter A. Campanelli, Procurement Analyst, Department of the Interior, Bureau of Indian Affairs,

DOI—BIA

Final Rule Stage

18th and C Streets, NW, Washington, DC 20240, [illegible]

RIN: 1076–AA56

DEPARTMENT OF THE INTERIOR (DOI)
Bureau of Indian Affairs (BIA)

Completed Actions

1212. FEDERAL SCHOOLS FOR INDIANS (REVISION)

Legal Authority: 34 Stat. 1016; 35 Stat. 783; 40 Stat. 564; 25 USC 288; 25 USC 289

CFR Citation: 25 CFR 31, (Revision)

Legal Deadline: None

Abstract: The purpose of the proposed revision is to define the various types of schools funded by the Bureau and to clarify and define eligibility for non-Indian and Indian children of less than one-fourth blood who wish to attend Bureau-funded day and boarding schools. This proposed revision will also address criteria by which these students may attend Bureau-funded schools and tuition payments related thereto. Costs related to this part will be assumed by the public school district in the form of tuition payments, at no cost to the Bureau. Tuition fees charged will be comparable to but will not exceed the tuition cost charged by the State or County in which the Bureau school is located.

Timetable:

Action	Date	FR Cite
Withdrawn No further action may be taken until 7/1/89 per PL 100-297.	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Section 31.3 was revised separately and published as a proposed rule. The passage of PL 99-228 supersedes that earlier revision and the conditions under which non-eligible students may attend Bureau-funded schools are incorporated in the current revision.

Agency Contact: George Scott, Education Specialist, Branch of Elementary and Secondary Programs, Department of the Interior, Bureau of Indian Affairs, 18th & C Sts. NW, Washington, DC 20240, [illegible]

RIN: 1076–AB47

1213. THE INDIAN SCHOOL EQUALIZATION PROGRAM (NEW SCHOOL STARTS, PROGRAM EXPANSIONS, SCHOOL CLOSURES, CONSOLIDATIONS, AND PROGRAM REDUCTIONS)

Significance: Regulatory Program

Legal Authority: 92 Stat 2320; 42 Stat 208

CFR Citation: 25 CFR 39.22

Legal Deadline: None

Abstract: The addition of regulations for "School Closures and Consolidations" will address a uniform procedure for school closure and consolidation in the Bureau-operated and funded schools. The new rule would provide the Bureau advance planning time in the development of its future budgets. The companion regulation on new school starts and program expansions will appear at 25 CFR 271, Subpart H and are incorporated by reference in this part.

Timetable:

Action	Date	FR Cite
Withdrawn No further action to be taken until 7/1/89 per PL 100-297.	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: George Scott, Education Specialist, Department of the Interior, Bureau of Indian Affairs, 18th & C Sts. NW, Washington, DC 20240, [illegible]

RIN: 1076–AB61

1214. PREPARATION OF A ROLL OF ALASKA NATIVES

Legal Authority: 43 USC 1601 et seq; 5 USC 301; 25 USC 2; 25 USC 9

CFR Citation: 25 CFR 69

Legal Deadline: None

Abstract: This rulemaking action is being taken to remove 25 CFR Part 69 from the Code of Federal Regulations. The regulations provided procedural rules governing the preparation of a roll of Alaska Natives pursuant to the Alaska Native Claims Settlement Act of 1971, as amended. The application and appeal processes for preparing the roll of Alaska Natives were completed in 1981 and the rule is no longer needed. This Part has been redesignated from 25 CFR Part 43h.

Timetable:

Action	Date	FR Cite
Final Action	06/13/88	53 FR 21995
Final Action Effective	06/13/88	53 FR 21995

Small Entities Affected: None

Government Levels Affected: None

Additional Information: It has been determined that this is a rule of agency procedure and practice and therefore does not require publication of a proposed rule.

Agency Contact: Kathleen L. Slover, Tribal Enrollment Specialist, Department of the Interior, Bureau of Indian Affairs, Room 2609 Main Interior, 1951 Constitution Ave., NW, Washington, DC 20245, 202 343-1762

RIN: 1076–AC12

1215. REVISION OF THE MEMBERSHIP ROLL OF THE EASTERN BAND OF CHEROKEE INDIANS, NORTH CAROLINA

Legal Authority: PL 65-154

CFR Citation: 25 CFR 75

Legal Deadline: None

Abstract: This rule, which is subject to review, governed the revision authorized by the Act of August 21, 1957, PL 85-154 (71 Stat. 374), of the membership roll of the Eastern Band of Cherokee Indians, North Carolina, prepared and approved in accordance

DOI—BIA

Completed Actions

with the Act of June 4, 1924 (43 Stat. 376), and the Act of March 4, 1931 (46 Stat. 1518). The rule also provides procedures for maintaining a current membership roll. This Part has been redesignated from 25 CFR Part 47.

Timetable:

Action	Date	FR Cite
Withdrawn – no further action will be taken at this time	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Kathleen L. Slover, Tribal Enrollment Specialist, Department of the Interior, Bureau of Indian Affairs, 1951 Constitution Avenue, NW, Washington, DC 20245, 202 343-1762

RIN: 1076–AB54

1216. LIFE ESTATES AND FUTURE INTERESTS

Significance: Agency Priority

Legal Authority: 25 USC 372; 25 USC 373; 25 USC 487; 25 USC 607; 25 USC 2201 to 2211

CFR Citation: 25 CFR 179

Legal Deadline: None

Abstract: The proposed rule would add a new Part 179 to Title 25 of the Code of Federal Regulations to set forth the authorities, policy, and procedures to be followed in the administration of life estates and future interests on Indian land. These regulations are being proposed to address the need for a clearly stated uniform policy. At the present time, there are no regulations dealing with life estates and future interests, even though these have become increasingly prevalent in the activities of Indians and the Bureau of Indian Affairs.

Timetable:

Action	Date	FR Cite
NPRM	08/11/87	52 FR 29701
NPRM Comment Period End	10/13/87	52 FR 29701
Final Action	07/00/88	53 FR 25952
Final Action Effective	08/00/88	53 FR 25952

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Howard Piepenbrink, Chief, Branch of Titles and Research, Division of Real Estate Services, Department of the Interior, Bureau of Indian Affairs, 18th & C Street, NW, Washington, DC 20240, 202 343-5473

RIN: 1076–AC06

1217. INDIAN FISHING: HOOPA VALLEY INDIAN RESERVATION

Legal Authority: 25 USC 2; 25 USC 9; 5 USC 301; Reorganization Plan No. 3 of 1950; 64 Stat. 1262

CFR Citation: 25 CFR 250

Legal Deadline: None

Abstract: This rule, which contains the regulations for the Hoopa fishery, will be revised to remove burdensome requirements.

Timetable:

Action	Date	FR Cite
NPRM	[illegible]	45 FR [illegible]
Interim Final Rule	07/21/87	52 FR 27329
Public Comment Period End	08/20/87	52 FR 27329
Withdrawn – no further action will be taken at this time	10/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: Originally scheduled: April 1983.

Agency Contact: Gary L. Ronkal, Chief, Branch of Fish, Wildlife & Recreation, Department of the Interior, Bureau of Indian Affairs, Main Interior, 18th & C Streets, NW, Washington, DC 20245, 202 343-4066

RIN: 1076–AA63

1218. CONTRACTS UNDER INDIAN SELF-DETERMINATION ACT (SUBPART H - NEW SCHOOL STARTS AND PROGRAM EXPANSIONS)

Significance: Agency Priority

Legal Authority: 88 Stat. 2203; 42 Stat. 208

CFR Citation: 25 CFR 271

Legal Deadline: None

Abstract: The purpose of the addition of the new rule "New Starts and Program Expansions," is to establish uniform application procedures and approval criteria for tribes seeking to operate new schools or to expand existing education programs through funding by the Indian School Equalization Formula. This rule would provide further clarification of the clause "adequate, free public school facilities" and refine existing criteria.

Timetable:

Action	Date	FR Cite
Hearings held with Indian leadership	08/00/88	
Withdrawn Further action will not be taken until 7/89 due to PL 100-297	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Adds a new Subpart H to 25 CFR 271.

Agency Contact: George Scott, Education Specialist, Department of the Interior, Bureau of Indian Affairs, 18th & C Sts., NW, Washington, DC 20245, 202 343-6872

RIN: 1076–AB49

1219. SMALL TRIBES GOVERNMENTAL ASSISTANCE GRANT PROGRAM

Significance: Agency Priority

Legal Authority: 25 USC 450; 25 USC 13

CFR Citation: 25 CFR 276

Legal Deadline: None

Abstract: This is a new program which will provide grants to small tribes to enable them to establish, improve or maintain basic governmental functions. This grant program will provide resources needed to allow small tribes to improve their capacity and ability to govern. The program also represents a refocus or redirection of activities previously conducted under the Self-Determination and Small Tribes Core Management Grant Programs. Therefore, Part 276 is proposed for removal from 25 CFR Subchapter M.

Timetable:

Action	Date	FR Cite
Withdrawn – no further action will be taken at this time	10/00/88	

Small Entities Affected: None

DOI—BIA

Completed Actions

Government Levels Affected: None

Agency Contact: George Clark, Division of Self-Determination Services, Office of Tribal Services, Department of the Interior, Bureau of Indian Affairs, 1951 Constitution Avenue, NW, Washington, DC 20245, 202 343-2727

RIN: 1076-AC10

BILLING CODE 4310-02-T

DEPARTMENT OF THE INTERIOR (DOI)
Minerals Management Service (MMS)

Proposed Rule Stage

1220. PROCESSING AND TRANSPORTATION ALLOWANCES, RETURN ON CAPITAL INVESTMENT

Legal Authority: 25 USC 396 et seq; 25 USC 396a et seq; 25 USC 2101 et seq; 30 USC 181 et seq; 30 USC 351 et seq; 30 USC 1001 et seq; 30 USC 1701 et seq; 31 USC 9701; 43 USC 1301 et seq; 43 USC 1331 et seq; 43 USC 1801 et seq

CFR Citation: 30 CFR 206

Legal Deadline: None

Abstract: The Minerals Management Service (MMS) published new oil and gas product valuation regulations in the Federal Register on January 15, 1988 (53 FR 1184 and 53 FR 1230). If a lessee has a non-arm's-length contract or has no contract for processing or transportation of oil or gas, the new regulations provide for an allowable deduction from royalty payments based upon the lessee's reasonable actual costs during the reporting period. These actual cost deductions allow the lessee to deduct operating and maintenance expenses, overhead, and at the lessee's option, either depreciation plus a return on undepreciated capital investment in the processing plant or transportation system, or a fixed cost equal to the initial depreciable investment multiplied by a rate of return. An amendment is needed to the regulations to establish the method to be used to determine the cost of capital, i.e., rate of return, to be applied to the lessee's investment in a processing plant or transportation system.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Dennis C. Whitcomb, Chief, Rules and Procedures, Department of the Interior, Minerals Management Service, Denver Federal Center, MS 662, Bldg. 85, Denver, CO 80225, 303 231-3432

RIN: 1010-AB12

1221. ● REVISION OF ROYALTY VALUATION REGULATIONS GOVERNING GAS SALES UNDER PERCENTAGE-OF-PROCEEDS CONTRACTS

Legal Authority: 25 USC 396 et seq; 25 USC 396a et seq; 25 USC 2101 et seq; 30 USC 181 et seq; 30 USC 351 et seq; 30 USC 1001 et seq; 30 USC 1701 et seq; 30 USC 9701; 43 USC 1301 et seq; 43 USC 1331 et seq; 43 USC 1001 et seq

CFR Citation: 30 CFR 206

Legal Deadline: None

Abstract: The Minerals Management Service (MMS) published final revised regulations governing the valuation of gas from Federal leases onshore and on the Outer Continental Shelf and from Indian Tribal and allotted leases in the Federal Register on January 15, 1988 (53 FR 1230). The proposed gas valuation provisions of section 206.153, in part, govern the determination of value in situations where the lessee's contract for the sale of gas prior to processing provides for the value to be determined based upon a percentage of the purchases proceeds resulting from processing the gas. However, the inclusion of these percentages-of-proceeds contracts under section 206.153 has created unreasonable burdens on lessees. Consequently, MMS is proposing to amend its regulations to provide for the valuation of gas under percentage-of-proceeds contracts to be under the unprocessed gas valuation standards of section 206.152, rather than section 206.153.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
NPRM Comment Period End	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Dennis C. Whitcomb, Chief, Rules and Procedures, Department of the Interior, Minerals Management Service, Denver Federal Center, MS 662, Bldg. 85, Denver, CO 80225, 303 231-3432

RIN: 1010-AB17

1222. ● AMENDMENT OF REGULATIONS, OIL AND GAS TRANSPORTATION ALLOWANCES AND GAS PROCESSING ALLOWANCES

Legal Authority: 25 USC 396 et seq; 25 USC 396a et seq; 25 USC 2101 et seq; 30 USC 181 et seq; 30 USC 351 et seq; 30 USC 1001 et seq; 30 USC 1701 et seq; 31 USC 9701; 43 USC 1301 et seq; 43 USC 1331 et seq; 43 USC 1801 et seq

CFR Citation: 30 CFR 206

Legal Deadline: None

Abstract: The Minerals Management Service (MMS) published final revised regulations governing the valuation of oil and gas from Federal leases onshore and on the Outer Continental Shelf and from Indian Tribal and allotted leases in the Federal Register on January 15, 1988 (53 FR 1184 and 53 FR 1230). A subsequent review of the regulations disclosed that the wording of the provisions concerning the calculation of oil and gas transportation allowances and gas processing allowances was inconsistent with MMS's intent. An amendment is needed to the provisions to clarify MMS's intent.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
NPRM Comment Period End	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Dennis C. Whitcomb, Chief, Rules and Procedures, Department of the Interior, Minerals Management Service, Denver Federal Center, MS 662, Bldg. 85, Denver, CO 80225, 303 231-3432

RIN: 1010-AB18

DOI—MMS

Proposed Rule Stage

1223. ● GEOTHERMAL RESOURCES USED TO GENERATE ELECTRICITY, PRODUCT VALUATION FOR ROYALTY PURPOSES

Legal Authority: 25 USC 396 et seq; 25 USC 396a et seq; 25 USC 2101 et seq; 30 USC 181 et seq; 30 USC 351 et seq; 30 USC 1001 et seq; 30 USC 1701 et seq; 31 USC 9701; 43 USC 1301 et seq; 43 USC 1331 et seq; 43 USC 1801 et seq

CFR Citation: 30 CFR 206

Legal Deadline: None

Abstract: Existing regulations governing the valuation of geothermal resources provide insufficient guidance for the valuation of geothermal resources utilized to generate electricity in a lessee-owned power plant. Consequently, the Minerals Management Service has issued a report entitled "Valuation of Federal Geothermal Resources--Electrical Generation" which describes a "geothermal netback procedure" to value these "no sales" resources. An amendment is needed to the existing regulations to provide regulatory guidance after receipt and consideration of comments from the public to the existing geothermal netback procedure.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	
NPRM Comment Period End	02/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Dennis C. Whitcomb, Chief, Rules and Procedures, Department of the Interior, Minerals Management Service, Denver Federal Center, MS 662, Bldg. 85, Denver, CO 80225, 303 231-3432

RIN: 1010-AB22

1224. RECOUPMENTS AND REFUNDS OF EXCESS PAYMENTS UNDER FEDERAL OFFSHORE MINERAL LEASES

Significance: Regulatory Program

Legal Authority: 43 USC 1339

CFR Citation: 30 CFR 250

Legal Deadline: None

Abstract: This rulemaking is needed to add new regulations covering recoupment and refunds of excess payments made under Federal offshore mineral leases which are subject to section 10 of the Outer Continental Shelf Lands Act of 1953 (OCSLA), 43 USC 1339. This rule would establish requirements and guidelines for crediting (recouping) excess payments of royalties, rentals, bonuses, or other amounts against a current or future payment obligation or refunding such excess payment to any person lawfully entitled to receive a refund or credit for an overpayment made under an offshore lease. The new regulation is intended to lessen confusion on the part of payors, operators, and the Minerals Management Service.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	
NPRM Comment Period End	02/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Dennis C. Whitcomb, Chief, Rules and Procedures, Department of the Interior, Minerals Management Service, Denver Federal Center, MS 662, Bldg. 85, Denver, CO 80225, 303 231-3432

RIN: 1010-AB11

1225. REVISION OF REGULATIONS GOVERNING APPEALS

Legal Authority: 30 USC 1701 et seq

CFR Citation: 30 CFR 243

Legal Deadline: None

Abstract: Payors who appeal a bill for payment of additional royalty, rents, bonuses, penalties, or other assessments, are required by the existing appeal regulations to submit payment of the billed amount or to post a bond in an amount adequate to indemnify the lessor from loss or damage. However, some bills for payment that have been appealed have been neither paid nor secured by an acceptable surety. An amendment to the existing regulations is needed to establish a requirement that payment must be made or that an acceptable surety must be posted within a specified period of time as a condition for acceptance of the appeal for consideration by the Director, Minerals Management Service (MMS). An amendment is also needed to permit the posting of letters of credit, in addition to bonds, in accordance with current MMS practice.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	
NPRM Comment Period End	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Dennis C. Whitcomb, Chief, Rules and Procedures, Department of the Interior, Minerals Management Service, Denver Federal Center, MS 662, Bldg. 85, Denver, CO 80225, 303 231-3432

RIN: 1010-AB13

1226. AIR QUALITY -- OUTER CONTINENTAL SHELF WIDE

Significance: Regulatory Program

Legal Authority: 30 USC 1334

CFR Citation: 30 CFR 250.44; 30 CFR 250.45; 30 CFR 250.46; 30 CFR 250.57

Legal Deadline: None

Abstract: Amendments to the Department of the Interior (DOI) Air Quality regulation for oil and gas operations will be proposed for all Outer Continental Shelf (OCS) areas. The changes would update requirements and consider the need for current information collection burdens, and provide additional safeguards for those pollutants which could be critical to air quality in areas adjoining the OCS. A determination of potential costs and benefits cannot be made until the final rulemaking has been prepared for RIN 1010-AA61, dealing with amendments to the DOI Air Quality regulation for oil and gas operations adjacent to the State of California. Considerable information has been developed during the negotiations conducted to implement that rulemaking. There have also been revisions to the related Environmental Protection Agency regulations which will affect both of these rulemakings. Timing, content, and format for this rulemaking for all OCS areas will not

be determined until completion of the rulemaking RIN 1010-AA61.

Timetable:

Action	Date	FR Cite
NPRM	03/00/89	
NPRM Comment Period End	05/00/89	
Final Action	08/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: William S. Cook, Petroleum Engineer, Department of the Interior, Minerals Management Service, Mail Stop 646, 12203 Sunrise Valley Drive, Reston, VA 22091, 703 648-7818

RIN: 1010-AB14

1227. ● OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF (OCS), SUBPART O, TRAINING

Legal Authority: 43 USC 1334

CFR Citation: 30 CFR 250.210

Legal Deadline: None

Abstract: The rules at 30 CFR Part 250 which govern oil and gas and sulphur operations in the OCS will be revised to address in greater specificity training requirements for personnel engaged in oil, gas, and sulphur drilling, development, and production operations in the OCS. Training requirements were addressed in a proposed rule to consolidate into one document the rules governing oil and gas and sulphur operations in the OCS which was published on March 18, 1986 (51 FR 9316). The training provisions of that proposed rule have been revised, updated, and consolidated under a new Subpart O, Training. Other alternatives considered were not revising the regulations and revising only those regulations identified by industry. Promulgation of the regulation is not expected to result in costs significantly more than those incurred through the unregulated use of good commercial practices.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
NPRM Comment Period End	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Gerald D. Rhodes, Chief, Rules, Orders, and Standards Branch, Department of the Interior, Minerals Management Service, Mail Stop 646, 12203 Sunrise Valley Drive, Reston, VA 22091, 703 648-7816

RIN: 1010-AB21

1228. ● OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF, SUBPART P, SULPHUR OPERATIONS

Legal Authority: 43 USC 1334

CFR Citation: 30 CFR 250.250

Legal Deadline: None

Abstract: The rules at 30 CFR 250 which govern oil and gas and sulphur operations in the Outer Continental Shelf (OCS) will be revised to address sulphur exploration, development, and production operations with more specificity. Sulphur operations are currently addressed through rules applicable to oil, gas, and sulphur and through OCS Order No. 10, Sulphur Drilling Procedures, issued by the Gulf of Mexico OCS Region. Comments received as the result of the publication on March 18, 1986 (51 FR 9316), of a proposed rule to consolidate rules governing oil, gas, and sulphur operations in the OCS included recommendations for the development of regulations which treat sulphur operations in the OCS with greater specificity. Other alternatives considered were not revising the regulations. Promulgation of the regulation is not expected to result in costs significantly more than those incurred through the unregulated use of good commercial practices.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
NPRM Comment Period End	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Gerald D. Rhodes, Chief, Rules, Orders, and Standards Branch, Department of the Interior, Minerals Management Service, Mail Stop 646, 12203 Sunrise Valley Drive, Reston, VA 22091, 703 648-7816

RIN: 1010-AB23

1229. AIR QUALITY - OFFSHORE CALIFORNIA

Significance: Regulatory Program

Legal Authority: 43 USC 1334

CFR Citation: 30 CFR 250.47

Legal Deadline: None

Abstract: Amendments to the DOI Air Quality regulation for oil and gas operations will be proposed for Outer Continental Shelf areas adjacent to California. The changes would provide additional safeguards for those pollutants which could be critical to air quality in the region. The costs have been determined to have a net present value of approximately $25M to the regulated industry; the net benefits have not been quantified but would be a reduction in any effect of emissions from OCS operations on the ozone levels in adjacent onshore areas. This may be expected to yield cost reductions in health services and other related areas. The DOI has conducted a conflict assessment to determine the likelihood of the interested and affected parties being able to reach an agreement on an air quality regulatory program. If the affected parties involved can develop a mutually agreeable set of requirements, then DOI will initiate rulemaking based on that agreement.

Timetable:

Action	Date	FR Cite
ANPRM	01/07/85	50 FR 838
ANPRM Comment Period End	03/08/85	
Begin conflict assessment phase of negotiated rulemaking process	04/15/86	
Determine potential for negotiated agreement	07/30/86	
Complete Determination of Effects of Rules	05/18/88	
Reach agreement on a negotiated rule or begin development of rule through std process	07/31/88	
NPRM	10/00/88	
NPRM Comment Period End	12/00/88	
Final Action	03/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: William S. Cook, Petroleum Engineer, Department of the Interior, Minerals Management Service, Mail Stop 646, Reston, VA 22091, 703 648-7818

RIN: 1010-AA61

1230. LEASING OF MINERALS OTHER THAN OIL, GAS, AND SULPHUR IN THE OUTER CONTINENTAL SHELF

Significance: Regulatory Program

Legal Authority: 43 USC 1334

CFR Citation: 30 CFR 281

Legal Deadline: None

Abstract: Proposes the desirability of new regulations to govern lease issuance on the Outer Continental Shelf (OCS) for minerals other than oil, gas, and sulphur under the authority of the OCS Lands Act; and requests comments and recommendations from interested parties. Alternative is to not have leasing requirements in regulations. Promulgation of regulation for leasing of hard mineral resources is not expected to add to the cost to industry. Regulations will ensure uniform leasing policy for all interested parties.

Timetable:

Action	Date	FR Cite
ANPRM	04/19/85	50 FR 15590
ANPRM Comment Period End	08/19/85	
NPRM	10/00/88	
Final Action	12/00/88	
Final Action Effective	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Gerald D. Rhodes, Chief, Rules, Orders, and Standards Branch, Department of the Interior, Minerals Management Service, Mail Stop 646, 12203 Sunrise Valley Drive, Reston, VA 22091, 703 648-7816

RIN: 1010-AA82

1231. MINING OPERATIONS FOR MINERALS OTHER THAN OIL, GAS, AND SULPHUR IN THE OUTER CONTINENTAL SHELF

Significance: Regulatory Program

Legal Authority: 43 USC 1334

CFR Citation: 30 CFR 282

Legal Deadline: None

Abstract: Proposes the desirability of new regulations to govern Production and Development Operations on the Outer Continental Shelf (OCS) for minerals other than oil, gas, and sulphur under the authority of the OCS Lands Act; and requests comments and recommendations from interested parties. Alternative is to specify requirements in a lease document. Promulgation of regulation is not expected to result in costs significantly more than those incurred through the unregulated use of good commercial practices. The regulation will require that hard mineral operations are conducted in a manner that will ensure safety and protection of the environment.

Timetable:

Action	Date	FR Cite
ANPRM	04/09/86	51 FR 12163
ANPRM Comment Period End	08/07/86	
NPRM	11/00/88	
Final Action	12/00/88	
Final Action Effective	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Gerald D. Rhodes, Chief, Rules, Orders, and Standards Branch, Department of the Interior, Minerals Management Service, Mail Stop 646, 12203 Sunrise Valley Drive, Reston, VA 22091, 703 648-7816

RIN: 1010-AA81

DEPARTMENT OF THE INTERIOR (DOI)
Minerals Management Service (MMS)

Final Rule Stage

1232. VALUATION OF COAL FOR ROYALTY PURPOSES FROM FEDERAL AND INDIAN LEASES

Significance: Regulatory Program

Legal Authority: 25 USC 396 et seq; 25 USC 396a et seq; 25 USC 2101 et seq; 30 USC 181 et seq; 30 USC 192 et seq; 30 USC 351 et seq; 30 USC 1001 et seq; 30 USC 1701 et seq; 31 USC 9701; 43 USC 1301 et seq; 43 USC 1331 et seq; 43 USC 1801 et seq

CFR Citation: 30 CFR 202; 30 CFR 203; 30 CFR 206; 30 CFR 212

Legal Deadline: None

Abstract: This regulation will provide consistent valuation procedures for coal for the purpose of royalty computations. It is being prepared in response to a Linowes Commission recommendation for a detailed definitive product valuation regulation which contains clear terms and procedures.

Timetable:

Action	Date	FR Cite
ANPRM	02/05/86	51 FR 4507
ANPRM Comment Period End	04/07/86	
NPRM	01/15/87	52 FR 1840
NPRM Comment Period End	04/15/87	
Reopen Public Comment Period	07/09/87	52 FR 25887
Reopened Public Comment Period End	07/23/87	
Reopened Public Comment Period	08/12/87	52 FR 29868
Notice of Intent to Issue NPRM	11/17/87	52 FR 43919
Further NPRM	07/15/88	53 FR 26942
Further NPRM Public Comment Period End	09/13/88	
Final Action	12/00/88	
Final Action Effective	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Dennis Whitcomb, Chief, Rules and Procedures, Department of the Interior, Minerals Management Service, Denver Federal

Center, MS 662, Bldg. 85, Denver, CO 80225, [illegible]

RIN: 1010-AA88

1233. ◆ AMENDMENT OF OIL AND GAS ROYALTY VALUATION REGULATIONS

Legal Authority: 25 USC 396 et seq; 25 USC 396a et seq; 25 USC 2101 et seq; 30 USC 181 et seq; 30 USC 351 et seq; 30 USC 1001 et seq; 30 USC 1701 et seq; 31 USC 9701; 43 USC 1301 et seq; 43 USC 1331 et seq; 43 USC 1801 et seq

CFR Citation: 30 CFR 206

Legal Deadline: None

Abstract: The Minerals Management Service (MMS) published final revised regulations governing the valuation of oil and gas from Federal leases onshore and on the Outer Continental Shelf, and from Indian Tribal and allotted leases in the Federal Register on January 15, 1988 (53 FR 1184 and 53 FR 1230). A subsequent review of the regulations disclosed that the wording of several provisions was inconsistent with MMS's intent as discussed in the preamble to the final rules. An amendment is needed to the provisions to clarify MMS's intent.

Timetable:

Action	Date	FR Cite
Final Action	10/00/88	
Final Action Effective	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Dennis C. Whitcomb, Chief, Rules and Procedures, Department of the Interior, Minerals Management Service, Denver Federal Center, MS 662, Bldg. 85, Denver, CO 80225, [illegible]

RIN: 1010-AB54

1234. ◆ OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF; SAFETY AND POLLUTION-PREVENTION EQUIPMENT

Legal Authority: 43 USC 1334

CFR Citation: 30 CFR 250.1; 30 CFR 250.126

Legal Deadline: None

Abstract: The rules at 30 CFR 250.126 on the manufacture of safety and pollution-prevention equipment (i.e., surface and subsurface safety valves) are being amended. The amendment would update the American National Standards Institute/American Society of Mechanical Engineers (ANSI/ASME) SPPE-1 standard from the 1985 edition to the 1988 edition and allow compliance with either the updated version of the ANSI/ASME SPPE-1 quality assurance (QA) program (1988 edition) or the proposed American Petroleum Institute (API) QA program (API Spec Q1 in combination with API Specs 14A and 14b). Other alternatives considered were not to amend the rule and to continue using ANSI/ASME SPPE-1 as the only type of certification for the QA program. The costs to lessees under the API program or the updated ANSI/ASME SPPE-1 program are not expected to be significantly different than the costs under the current program. If there is any cost difference, it is expected to be a reduction in cost since the use of the API program is an option to the use of the ANSI/ASME SPPE-1 program. Lessees would not be expected to choose the use of the more expensive of the approved QA programs.

Timetable:

Action	Date	FR Cite
NPRM	07/05/88	53 FR 25349
NPRM Comment Period End	08/05/88	
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: M. L. Courtois, Chief, Offshore Inspection and Enforcement Division, Department of the Interior, Minerals Management Service, Mail Stop 647, 12203 Sunrise Valley Drive, Reston, VA 22091, 703 648-7750

RIN: 1010-AJ19

1235. SUPPLEMENTAL SALES

Legal Authority: 43 USC 1331 et seq

CFR Citation: 30 CFR 256.12; 30 CFR 256.26

Legal Deadline: None

Abstract: The rules at 30 CFR Part 256 will be revised to provide for supplemental sales and to establish limits on those supplemental sales. This rule is intended to allow the offering of rejected bid blocks, drainage blocks, and development blocks. The alternative is to operate under the current regulation and delay the leasing of certain blocks which may be critical to the development of an area or may be susceptible to loss of hydrocarbons.

Timetable:

Action	Date	FR Cite
NPRM	03/28/87	52 FR 9672
NPRM Comment Period End	04/27/87	
Comment Period Reopened	06/08/87	52 FR 28222
Final Action	10/00/88	
Final Action Effective	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Mary McDonald, Program Analyst, Department of the Interior, Minerals Management Service, Mail Stop 646, 12203 Sunrise Valley Drive, Reston, VA 22091, 703 648-7826

RIN: 1010-AE05

1236. NONDISCRIMINATION IN EMPLOYMENT IN THE OUTER CONTINENTAL SHELF

Legal Authority: 43 USC 1863; 43 USC 1331 et seq; 42 USC 2000d to 2000e

CFR Citation: 30 CFR 271

Legal Deadline: None

Abstract: There are no provisions in current Minerals Management Service regulations which provide a mechanism for remedy of unlawful discrimination in Outer Continental Shelf (OCS) employment. Rules would be developed to provide a process whereby persons who believed they had been denied employment because of unlawful discrimination would have a forum. These rules would implement the purposes of section 604 of the OCS Lands Act Amendment of 1978. Alternatives considered are no action, issuance of a policy statement and no rules, and proposal of extensive affirmative action rules similar to those rescinded in the past. Very few complaints are expected to arise as there has been no evidence of discrimination to date. Therefore, costs are expected to be minimal. Benefits would be the assurance that the requirements of section 604 are being fully carried out.

Timetable:

Action	Date	FR Cite
NPRM	05/12/87	52 FR 17770
NPRM Comment Period End	06/11/87	
Final Action	10/00/88	
Final Action Effective	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Mary McDonald, Program Analyst, Department of the Interior, Minerals Management Service, Mail Stop 646, 12203 Sunrise Valley Drive, Reston, VA 22091, 703 648-7817

RIN: 1010-AA87

1237. ◆ APPEALS PROCEDURES

Legal Authority: 43 USC 1334

CFR Citation: 30 CFR 290

Legal Deadline: None

Abstract: Appeals are required to be filed within 30 days of the issuance of an order or decision by a Minerals Management Service official. The rule will create a "grace period" for determining whether notices of appeals have been filed in a timely manner. Appeals will be considered timely if they are received within 10 days after the end of the initial 30 days and there is evidence of transmittal within the initial 30 days (e.g., a postmark).

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Jane A. Roberts, Paralegal Specialist, Department of the Interior, Minerals Management Service, 1951 Kidwell Drive, MS 623, Vienna, VA 22180, 703 [illegible]

RIN: 1010-AB30

DEPARTMENT OF THE INTERIOR (DOI)
Minerals Management Service (MMS)

Completed Actions

1238. ONSHORE PRODUCTION REPORTING AND ACCOUNTING

Significance: Regulatory Program

Legal Authority: 30 USC 1701 et seq

CFR Citation: 30 CFR 216; 43 CFR 3160

Legal Deadline: None

Abstract: This rulemaking is needed to redesignate the Bureau of Land Management regulations at 43 CFR 3160 applicable to production reporting and accounting to Minerals Management Service regulations at 30 CFR 216 to reflect the transfer in functions. Also, a requirement will be added for unique information needed to report information by oil and gas well.

Timetable:

Action	Date	FR Cite
NPRM	01/15/88	53 FR 1039
NPRM Comment Period End	02/16/88	
Final Action	05/09/88	53 FR 16408
Final Action Effective	06/01/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Dennis C. Whitcomb, Chief, Rules and Procedures, Department of the Interior, Minerals Management Service, Denver Federal Center, MS 662, Bldg. 85, Denver, CO 80225, 303 231-3432

RIN: 1010-AJ10

1239. OIL AND GAS AND SULPHUR OPERATIONS ON THE OUTER CONTINENTAL SHELF (OCS)

Significance: Regulatory Program

Legal Authority: 43 USC 1334

CFR Citation: 30 CFR 250, (Revision)

Legal Deadline: None

Abstract: The rules at 30 CFR 250 will be revised by consolidating regulations, OCS Orders, Notices to Lessees, and related offshore operating requirements into a unified body of regulations; eliminating burdensome and counterproductive requirements; adding performance standards; and simplifying and streamlining these rules to the maximum extent practicable. Other alternatives considered were not revising the regulations and revising only those regulations identified by industry.

Timetable:

Action	Date	FR Cite
NPRM	03/18/86	51 FR 9316
NPRM Comment Period End	11/25/86	51 FR 40819
Complete Initial Review of public comments	09/16/87	
Further NPRM : 30 CFR 250.1	09/22/87	52 FR 35559
Complete draft of Final Rule	12/04/87	
Final Action	04/01/88	53 FR 10596
Final Action Effective	05/31/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Merged in whole or in part into one rulemaking: 1010-AA11, 30 CFR 250.70 and .80, Penalties; 1010-AA13, 30 CFR 250.3, Disclosure of Information; 1010-AA25, OCS Order No. 2, para. 8, Safety Requirements for Drilling Operations in an H2S Environment; 1010-AA26, OCS Order No. 6, Well Completion of Oil & Gas Wells; 1010-AA28, OCS Order No. 11, Oil & Gas Production Rates, Prevention Waste, & Protection of Correlative Rights; 1010-AA32, 30 CFR 250.45, Reports of Accidents & Malfunctions; 1010-AA34, 30 CFR 250.75, Self-Inspection; 1010-AA47, 30 CFR 250.80-2, Remedies & Penalties; 1010-AA48, 30 CFR 250, Environmental Reports; 1010-AA49, 30 CFR 250, Protection of Cultural Resources; 1010-AA50, 30 CFR 250.35, Effects of Drilling & Reworking on Lease Term; 1010-AA51, OCS Order No. 5, Production Safety Systems; 1010-AA52, OCS Order No. 9, Pipelines; 1010-AA96, 30 CFR 250.44, Borehole Abandonment.

Agency Contact: Gerald D. Rhodes, Chief, Rules, Orders, and Standards Branch, Department of the Interior, Minerals Management Service, Mail Stop 646, Reston, VA 22091, 703 648-7816

RIN: 1010-AA53

DOI—MMS — Completed Actions

1240. PROSPECTING FOR MINERALS OTHER THAN OIL, GAS, AND SULPHUR IN THE OUTER CONTINENTAL SHELF

Significance: Regulatory Program

Legal Authority: 43 USC 1334

CFR Citation: 30 CFR 280

Legal Deadline: None

Abstract: Proposes the desirability of new regulations to govern exploration on the Outer Continental Shelf (OCS) for minerals other than oil, gas, and sulphur under the authority of the OCS Lands Act; and requests comments and recommendations from interested parties. Alternative is to specify requirements in a permitting document rather than in regulations. Promulgation of regulations is not expected to result in costs significantly more than those incurred through the unregulated use of good commercial practices. The rules will require that hard mineral operations will be conducted in a manner which will ensure safety and protection of the environment.

Timetable:

Action	Date	FR Cite
ANPRM	12/07/84	49 FR 47871
ANPRM Comment Period End	04/08/85	
NPRM	03/26/87	52 FR 9758
NPRM Comment Period End	05/24/87	
Final Action	07/05/88	53 FR 25242
Final Action Effective	08/04/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Gerald D. Rhodes, Chief, Rules, Orders, and Standard Branch, Department of the Interior, Minerals Management Service, Mail Stop 646, 12203 Sunrise Valley Drive, Reston, VA 22091, 703 648-7816

RIN: 1010-AA71

DEPARTMENT OF THE INTERIOR (DOI) — Proposed Rule Stage

Office of Surface Mining Reclamation and Enforcement (OSMRE)

1241. SURFACE COAL MINING AND RECLAMATION OPERATIONS; TWO ACRE EXEMPTION REPEAL

Legal Authority: 30 USC 1201 et seq; PL 100-34

CFR Citation: 30 CFR 700.11; 30 CFR 870.11

Legal Deadline: None

Abstract: Section 528(2) of the Surface Mining Control and Reclamation Act of 1977, exempted from the requirements of the Act "the extraction of coal for commercial purposes where the surface mining operation affects two acres or less." On May 7, 1987, the President signed PL 100-34 which repealed the exemption. The rule action would remove the exemption provision from the regulations at 30 CFR 700 and 30 CFR 870.

Timetable:

Action	Date	FR Cite
Notice of Suspension: Two-Acre Exemption Repeal	06/04/87	52 FR 21228
NPRM	03/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: State, Federal

Agency Contact: Arthur Abbs, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW, Washington, DC 20240, 202 343-5351

RIN: 1029-AB16

1242. ◆ PERMIT TO RECLAIM RULE

Significance: Agency Priority

Legal Authority: 30 USC 1201 et seq; PL 100-34

CFR Citation: 30 CFR 701; 30 CFR 740; 30 CFR 750; 30 CFR 773; 30 CFR 843

Legal Deadline: None

Abstract: The Office of Surface Mining Reclamation and Enforcement (OSMRE) proposes to amend its rules to provide for specific situations where a coal mine operator may be required to obtain a permit to conduct reclamation activities on a location where no coal extraction is taking place. The proposed rule would remove requirements to obtain or renew a permit when only reclamation activities must be performed.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: State, Federal

Agency Contact: Dr. Fred Block, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW, Washington, DC 20240, 202 343-4353

RIN: 1029-AB20

1243. PERMANENT REGULATORY PROGRAM REQUIREMENTS FOR PERMITS FOR SPECIAL CATEGORIES OF MINING

Significance: Regulatory Program

Legal Authority: 30 USC 1201 et seq; PL 100-34

CFR Citation: 30 CFR 701.5; 30 CFR 785.19(d)

Legal Deadline: None

Abstract: This proposed rule would respond to a ruling by the District Court for the District of Columbia which stated that the definition of farming and agricultural activities was not equal as it related to Alluvial Valley Floors as defined in OSM's regulations. The Court ordered that the definition be repromulgated in a manner consistent with Congressional intent. Pursuant to the Court ruling, additional guidance would be provided as to what the "essential hydrologic functions" are of AVFs.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: State, Federal

DOI—OSMRE — Proposed Rule Stage

Agency Contact: Doug Growitz, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW, Washington, DC 20240, 202 343-1307

RIN: 1029-AA54

1244. INTERIM PROGRAM REVISIONS

Legal Authority: 30 USC 1201 et seq; PL 100-34

CFR Citation: 30 CFR 710; 30 CFR 715; 30 CFR 716; 30 CFR 717; 30 CFR 718; 30 CFR 720; 30 CFR 721; 30 CFR 722

Legal Deadline: None

Abstract: The rule would amend those portions of the OSMRE interim regulatory program regulations which are different from the permanent regulatory program. OSMRE is undertaking this action to provide equity and regulatory consistency between the programs.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: State, Federal

Agency Contact: Dermot Winters, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW, Washington, DC 20240, 202 343-5311

RIN: 1029-AB24

1245. FEDERAL LANDS PROGRAM

Significance: Regulatory Program

Legal Authority: 30 USC 1201 et seq; 30 USC 181 et seq; PL 100-34

CFR Citation: 30 CFR 740

Legal Deadline: None

Abstract: Various language changes will be proposed in 30 CFR 740, 745, and 746 in response to a ruling by the District Court for the District of Columbia with respect to the definition of "mining plans," the applicability of the Federal lands program, and for technical accuracy and to clarify ambiguous language that has surfaced since publication of the rules in February 1983.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: State, Federal

Agency Contact: Fred Block, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW, Washington, DC 20240, 202 343-4569

RIN: 1029-AA76

1246. DEFINITION AND CRITERIA FOR VALID EXISTING RIGHTS

Significance: Regulatory Program

Legal Authority: 30 USC 1201 et seq; PL 100-34

CFR Citation: 30 CFR 761.5; 30 CFR 761.11(h)

Legal Deadline: None

Abstract: OSM is repromulgating certain portions of its regulations which define "valid existing rights" and prohibit surface coal mining on lands within units of the National Park System, National Wildlife Refuge System and certain other areas designated by Congress. OSM is repromulgating these regulations as a result of a District Court Decision in Round III of the present litigation on OSM's permanent program regulations.

Timetable:

Action	Date	FR Cite
Notice of EIS and RIA Scoping Meeting, Request for Comments	01/22/87	52 FR 2421
Scoping Hearings for NEPA and RIA	02/06/87	
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: State, Federal

Agency Contact: Annetta Cheek, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW, Washington, DC 20240, 202 343-2073

RIN: 1029-AA77

1247. LANDS UNSUITABLE REGULATIONS

Significance: Agency Priority

Legal Authority: 30 USC 1201 et seq; PL 100-34

CFR Citation: 30 CFR 761.5; 30 CFR 761.11(a); 30 CFR 761.11(c); 30 CFR 769.14(a)(3); 30 CFR 769.14(b)(2)

Legal Deadline: None

Abstract: OSMRE is repromulgating certain portions of its regulations under Subchapter F which contain criteria for and describe the petition process for designating lands unsuitable for surface coal mining operations. OSM is repromulgating these regulations as a result of a District Court decision in Round III of the present litigation on OSMRE's permanent program regulations.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: State, Federal

Agency Contact: Jerry Schwartz, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW, Washington, DC 20240, 202 343-5166

RIN: 1029-AA90

1248. PERMANENT REGULATORY PROGRAM DEFINITIONS; AREAS UNSUITABLE FOR MINING

Significance: Regulatory Program

Legal Authority: 30 USC 1201 et seq; PL 100-34

CFR Citation: 30 CFR 761

Legal Deadline: None

Abstract: The proposed rule would clarify the applicability of the prohibitions in section 522(e) of the Surface Mining Control and Reclamation Act to the surface impacts of underground mining. The issue of the relationship between section 522(e) and mining related subsidence will be addressed in the proposed rulemaking. The rulemaking will seek to clarify whether OSM's rules have the effect of prohibiting underground mining operations related to the features and facilities within the distance limitations enumerated in section 522(e) of the Act.

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The proposed rulemaking will address the issue of what is a "Surface Impact" incident to an underground mine.

Timetable:

Action	Date	FR Cite
ANPRM	04/03/85	50 FR 13250
ANPRM Comment Period End	06/27/85	50 FR 13250
Notice of EIS and RIA Scoping Meeting and Request for Comments	01/22/87	52 FR 2421
EIS and RIA Scoping Meeting	02/06/87	
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: State, Federal

Additional Information: The Office of Surface Mining has determined that the proposed rulemaking constitutes a major Federal action requiring an EIS to meet the requirements of the National Environmental Policy Act. OSM has also made the determination that the proposed rule may be significant within the meaning of EO 12291. Precise cost/price impacts cannot be determined prior to further development of the regulation, but such costs are anticipated to be significant in terms of EO 12291 and the Regulatory Flexibility Act. Therefore, a Preliminary Regulatory Impact Analysis and Small Entity Flexibility Analysis are being prepared.

Agency Contact: Dermot Winters, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW, Washington, DC 20240, 202 343-1928

RIN: 1029–AA80

1249. ◆ APPROXIMATE ORIGINAL CONTOUR VARIANCES

Legal Authority: 30 USC 1201 et seq; PL 100-34

CFR Citation: 30 CFR 785

Legal Deadline: None

Abstract: The Office of Surface Mining Reclamation and Enforcement (OSMRE) proposes to amend its rules to allow issuance of a permit for nonmountaintop removal, steep slope, surface coal mining and reclamation operations which includes a variance from the requirements to restore the disturbed areas to their approximate original contour.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: State, Federal

Agency Contact: Suzanne Hudak, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW, Washington, DC 20240, 202 343-4549

RIN: 1029–AB27

1250. REPROCESSING COAL WASTE

Legal Authority: 30 USC 1201 et seq; PL 100-34

CFR Citation: 30 CFR 786, (New); 30 CFR 829, (New); 30 CFR 701; 30 CFR 785

Legal Deadline: None

Abstract: The rule would revise existing permitting and performance standards to take into consideration the unique circumstances and requirements for reprocessing coal waste. The rule would identify the minimum requirements for this type of activity. The action is being undertaken in response to findings and planned actions identified during OSMRE's study of remining initiatives.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: State, Federal

Agency Contact: Ray Aufmuth, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW, Washington, DC 20240, 202 342-1514

RIN: 1029–AB23

1251. PERMANENT PROGRAM PERFORMANCE STANDARDS; DISPOSAL OF COAL MINE WASTE

Legal Authority: 30 USC 1201 et seq; PL 100-34

CFR Citation: 30 CFR 816; 30 CFR 817

Legal Deadline: None

Abstract: The rule will reexamine performance standards and design criteria for coal waste disposal. The action is in response to a District Court for the District of Columbia remand order which cited procedural defects in an earlier rulemaking (47 FR 44008, September 28, 1983), involving inadequate notice and comment and an inadequate administrative record.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: State, Federal

Agency Contact: Dr. C. Y. Chen, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW, Washington, DC 20240, 202 343-1301

RIN: 1029–AB09

1252. PERMANENT PROGRAM PERFORMANCE STANDARDS; SURFACE MINING ACTIVITIES; CONTEMPORANEOUS RECLAMATION

Significance: Agency Priority

Legal Authority: 30 USC 1201 et seq; PL 100-34

CFR Citation: 30 CFR 816.100; 30 CFR 816.101

Legal Deadline: None

Abstract: The rule is being proposed in response to a remand by the Court to provide additional guidance to the regulatory authorities. The proposed rule should ensure that all reclamation efforts proceed as contemporaneously as practicable with surface coal mining operations in accordance with Section 515(b)(16) of the Surface Mining Control and Reclamation Act of 1977.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: State, Federal

Agency Contact: Robert Wiles, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW, Washington, DC 20240, 202 343-1502

RIN: 1029–AA57

1254. DISPOSAL OF EXCESS SPOIL ON PREEXISTING BENCHES

Legal Authority: 30 USC 1201 et seq; PL 100-34

CFR Citation: 30 CFR 816.74; 30 CFR 817.74

Legal Deadline: None

Abstract: The regulations at 30 CFR 816.74/817.74 allow, with the approval of the regulatory authority, the disposal of excess spoil through placement on preexisting benches provided that the standards set forth in sections 816.71/817.71 are met. These standards contain the general requirements for the disposal of excess spoil. Based on the draft study entitled "Encouraging Abandoned Mine Land Reclamation via Remining: A Federal, State and Industry Initiative" and comments received, OSMRE has reviewed these regulations. Based on this review, OSMRE has concluded that excess spoil, when placed on the benches is similar to backfilling and grading of a highwall and bench and therefore could be regulated under the backfilling and grading regulations in section 816.102/817.102, in lieu of the "excess spoil" standards while maintaining the same environmental and safety standards. The proposed rule would apply the backfilling and grading requirements to disposal of excess spoil on preexisting benches.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: State, Federal

Agency Contact: Raymond Aufmuth, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW, Washington, DC 20240, 202 343-1514

RIN: 1029–AB18

1255. ASSESSMENT CONFERENCE SCHEDULING

Legal Authority: 30 USC 1201 et seq; PL 100-34

CFR Citation: 30 CFR 843; 30 CFR 845

Legal Deadline: None

Abstract: The rule would eliminate some procedural inconsistencies remaining from previous 30 CFR 843 and 845 rulemakings. In particular, the rules would allow for a more efficient and practical time frame for scheduling assessment conferences. OSMRE is undertaking this action in response to suggestions from the Interior Department's Office of the Solicitor and from OSMRE personnel involved in administering the existing 30 CFR Part 843 and 845 requirements.

Timetable:

Action	Date	FR Cite
NPRM	03/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: State, Federal

Agency Contact: Hugo Fleischman, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW, Washington, DC 20240, 202 343-5564

RIN: 1029–AB22

1256. DELINQUENT ABANDONED MINE LAND RECLAMATION FEES

Legal Authority: 30 USC 1201 et seq; PL 100-34

CFR Citation: 35 CFR 843; 35 CFR 845

Legal Deadline: None

Abstract: The rule will clarify that when OSMRE issues a notice of violation or cessation order for delinquent AML fees, that determination of civil penalties is not to be treated as an environmental violation, but must follow a discrete procedure. Present rules do not address this circumstance, necessitating this rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Daniel Lytton, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW, Washington, DC 20240, 202 653-8871

RIN: 1029–AB21

1257. ABANDONED MINE LAND RECLAMATION; STATE RECLAMATION GRANTS

Legal Authority: 30 USC 1201 et seq; PL 100-34

CFR Citation: 30 CFR 886

Legal Deadline: None

Abstract: Cases have been identified where coal mine operators have also contracted with a State to conduct reclamation of abandoned mine land. This reclamation is conducted under the Abandoned Mine Land (AML) Reclamation Program and is funded by fees paid by coal operators on productions. Under the proposed rule, a reclamation contract could not be let to an operator with certain outstanding violations of the Surface Mining Control and Reclamation Act. The violations

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would include outstanding cessation orders and unpaid civil penalties and abandoned mine reclamation fees. The rule action is being initiated to prevent operators in violation of SMCRA from benefiting from the Act by receiving contracts funded under the AML program.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: State, Federal

Agency Contact: Danny Lytton, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW, Washington, DC 20240, 202 343-2866

RIN: 1029–AB13

DEPARTMENT OF THE INTERIOR (DOI) — Final Rule Stage
Office of Surface Mining Reclamation and Enforcement (OSMRE)

1258. TERMINATION OF JURISDICTION UNDER SMCRA

Significance: Regulatory Program

Legal Authority: 30 USC 1201 et seq; PL 100-34

CFR Citation: 30 CFR 700.11; 30 CFR 700.12

Legal Deadline: None

Abstract: The Surface Mining Control and Reclamation Act (the Act) doesn't specifically define the point at which regulatory jurisdiction ends. Therefore, a regulation is needed to define that point. The regulation in question is specific to the responsibilities of the Department of the Interior, OSMRE, and implements the Act. No other Federal agency is authorized to undertake this action on behalf of the Department. OSMRE has never addressed this issue in a rulemaking. The regulatory authority will issue a written determination ending regulatory jurisdiction under the Act when the following conditions apply. For permanent program operations, it proposed to terminate regulatory jurisdiction under the Act at the time of final bond release or when all regulatory program requirements have been met. For initial program operations, regulatory jurisdiction will end when all requirements of the regulatory program have been met.

Timetable:

Action	Date	FR Cite
NPRM	06/26/87	52 FR 24092
NPRM Comment Period End	09/04/87	52 FR 24092
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: State, Federal

Agency Contact: Daniel Stocker, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW, Washington, DC 20240, 202 343-1171

RIN: 1029–AB87

1259. PERMANENT PROGRAM PERFORMANCE STANDARDS SURFACE AND UNDERGROUND ACTIVITIES ROADS

Significance: Regulatory Program

Legal Authority: 30 USC 1201 et seq; PL 100-34

CFR Citation: 30 CFR 701.5; 30 CFR 816.150; 30 CFR 816.151; 30 CFR 817.150; 30 CFR 817.151

Legal Deadline: None

Abstract: The regulation will address the sections that were remanded back to OSM by the action of the Court and modify some provisions that are confusing in the existing file. The changes will provide additional guidance to the surface coal mine operator in fulfilling the performance standards of the Act. Costs will not be increased because the regulations will amplify existing requirements.

Timetable:

Action	Date	FR Cite
NPRM	11/03/87	52 FR 42259
NPRM Comment Period End	01/12/88	52 FR 42259
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: State, Federal

Agency Contact: Patrick Boyd, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW, Washington, DC 20240, 202 343-4033

RIN: 1029–AA80

1260. PERMANENT REGULATORY PROGRAM DEFINITION OF SUPPORT FACILITIES

Significance: Agency Priority

Legal Authority: 30 USC 1201 et seq; PL 100-34

CFR Citation: 30 CFR 701.5

Legal Deadline: None

Abstract: The Office of Surface Mining Reclamation and Enforcement (OSMRE) proposes to remove the definition of "support facilities" from its regulations. In reviewing the decisions of regulatory authorities during the time periods when no definition was in effect (prior to the 1983 introduction of a definition and since the 1985 suspension of the definition), OSMRE found that the identification of facilities that support surface coal mining operations has been conducted in a manner consistent with the intent of the Surface Mining Control and Reclamation Act (SMCRA). Therefore, OSMRE has determined that a definition of "support facilities" is not needed in order to ensure that such facilities are regulated under SMCRA. This proposed rule would impose only minor costs to the coal industry since relatively few operations will be affected.

Timetable:

Action	Date	FR Cite
NPRM	06/22/88	53 FR 23522
NPRM Comment Period End	08/08/88	53 FR 23522
Final Action	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: State, Federal

Agency Contact: Stephen Sheffield, Physical Scientist, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW, Washington, DC 20240, 202 343-4553

RIN: 1029–AA94

DOI—OSMRE — Final Rule Stage

1261. EXEMPTION FOR COAL EXTRACTION INCIDENTAL TO THE EXTRACTION OF OTHER MINERALS

Legal Authority: 30 USC 1201 et seq; PL 100-34

CFR Citation: 30 CFR 702

Legal Deadline: None

Abstract: The Surface Mining Act exempts mining operations that extract other minerals where coal does not exceed 16 2/3 percent of tonnage of minerals removed for sale. Evidence of abuse of this exemption has been identified. Proposed regulations would establish procedures to administer the exemption. The costs of compliance for these operations are undetermined. Benefits would be to the public in terms of protection of health, safety, and environment from detrimental effects of mining. Legitimate noncoal operators would be able to compete fairly with those operations now using the exemption to undersell their legitimate competitors.

Timetable:

Action	Date	FR Cite
NPRM	06/01/87	52 FR 20546
NPRM Comment Period End	08/10/87	52 FR 20546
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: State, Federal

Agency Contact: James Fary, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW, Washington, DC 20240, 202 343-5384

RIN: 1029–AA53

1262. REQUIREMENTS FOR COAL EXPLORATION—PERMIT REQUIREMENTS FOR EXPLORATION REMOVING MORE THAN 250 TONS OF COAL

Significance: Agency Priority

Legal Authority: 30 USC 1201 et seq; PL 100-34

CFR Citation: 30 CFR 772.11; 30 CFR 772.12; 30 CFR 772.14; 30 CFR 815.2; 30 CFR 942.772

Legal Deadline: None

Abstract: The proposed rule would comply with a court order of the District Court for the District of Columbia which remanded OSM reporting requirements for surface coal exploration. The proposed rule would revise existing requirements to include the filing of a notice by all individuals or operators planning coal exploration, and specify the information required on applications for coal exploration. The obligation to report is a standing requirement of existing regulations. This rule would expand the requirement to report. Because affected States already have the expanded requirement in place, no additional costs or benefits are expected to be associated with the rule.

Timetable:

Action	Date	FR Cite
NPRM	06/22/88	53 FR 23532
NPRM Comment Period End	08/08/88	53 FR 23532
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: State, Federal

Agency Contact: Fred Block, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW, Washington, DC 20240, 202 343-4553

RIN: 1029–AA92

1263. FEDERAL REGULATORY PROGRAMS; PERMIT APPLICATION FEES

Legal Authority: 30 USC 1201 et seq; PL 100-34

CFR Citation: 30 CFR 736; 30 CFR 740; 30 CFR 750

Legal Deadline: None

Abstract: The proposed rule would govern the collection by OSMRE of application fees for permits to conduct surface coal mining and reclamation operations, and for permits to conduct coal exploration, as well as fees for processing mining plans and for midterm review of surface coal mining and reclamation permits. Recipients of these services would be required to reimburse OSMRE for costs incurred in providing the services.

Timetable:

Action	Date	FR Cite
NPRM	05/17/88	53 FR 17568
NPRM Comment Period End	07/18/88	53 FR 17568
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: State, Federal

Agency Contact: Arthur Abbs, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW, Washington, DC 20240, 202 343-5351

RIN: 1029–AB15

1264. SURFACE COAL MINING AND RECLAMATION OPERATIONS ON INDIAN LANDS

Legal Authority: 30 USC 1201 et seq; PL 100-34

CFR Citation: 30 CFR 750

Legal Deadline: None

Abstract: The proposed rule would implement court approved settlements involving OSMRE, the State of New Mexico, and the National Coal Association/American Mining Congress Joint Committee in regard to final Indian lands regulations. The rule would delete the reference to the American Indian Religious Freedom Act and revise the requirements addressing inclusion of surface coal mining and reclamation provisions in Indian leases.

Timetable:

Action	Date	FR Cite
NPRM	02/10/88	53 FR 3982
NPRM Comment Period End	04/20/88	53 FR 3982
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: State, Federal

Agency Contact: Suzanne Hudak, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW, Washington, DC 20240, 202 343-4548

RIN: 1029–AB04

DOI—OSMRE

Final Rule Stage

1265. SURFACE COAL MINING AND RECLAMATION OPERATIONS PERMANENT REGULATORY PROGRAM-OWNERSHIP AND CONTROL

Significance: Regulatory Program

Legal Authority: 30 USC 1201 et seq; PL 100-34

CFR Citation: 30 CFR 773

Legal Deadline: None

Abstract: The proposed rule would require the regulatory authority to make findings prior to permit issuance that the applicant and persons or business entities closely connected to the applicant do not have any outstanding unabated violations, delinquent AML reclamation fee accounts, or unpaid final civil penalties.

Timetable:

Action	Date	FR Cite
NPRM	04/05/85	50 FR 13724
NPRM Comment Period End	11/04/87	52 FR 37164
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: State, Federal

Agency Contact: Andrew F. DeVito, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW, Washington, DC 20240, 202 343-5241

RIN: 1029-AA16

1266. REQUIREMENTS FOR PERMITS AND PERMIT PROCESSING PERMIT APPLICATIONS MINIMUM REQUIREMENTS FOR LEGAL FINANCIAL CIVIL PENALTIES

Significance: Regulatory Program

Legal Authority: 30 USC 1201 et seq; PL 100-34

CFR Citation: 30 CFR 773, (Revision); 30 CFR 843

Legal Deadline: None

Abstract: The existing rules pertaining to the requirements for permit and permit processing, permit applications and civil penalties are to be amended. The proposed revisions expressly establish an affirmative obligation on permittees and permit applicants to pay uncontested penalties and abate uncontested violations. Permittees and applicants for permits must meet these obligations prior to the issuance of a permit and as a condition of continued operation under existing permits.

Timetable:

Action	Date	FR Cite
NPRM	07/16/86	51 FR 25822
NPRM Comment Period End	10/24/86	51 FR 33905
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: State, Federal

Agency Contact: Andrew DeVito, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW, Washington, DC 20240, 202 343-5241

RIN: 1029-AA50

1267. PERMANENT REGULATORY PROGRAM - OWNERSHIP INFORMATION

Significance: Agency Priority

Legal Authority: 30 USC 1201 et seq; PL 100-34

CFR Citation: 30 CFR 778

Legal Deadline: None

Abstract: The Office of Surface Mining Reclamation and Enforcement is proposing to revise 30 CFR 778 which specifies what information must be furnished in a surface coal mining permit application. The permit application requirements are being revised in order to conform them to proposed revisions in 30 CFR 773 which govern the issuance of surface coal mining permits. The proposed revisions to 30 CFR 778 will require the submission of more detailed information on the ownership and control of permit applicants. It is not anticipated that the revision will impose a substantial financial burden on those applying for permits.

Timetable:

Action	Date	FR Cite
NPRM	05/28/87	52 FR 20032
NPRM Comment Period End	08/06/87	52 FR 20032
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: State, Federal

1268. PERMANENT PROGRAM; REQUIREMENTS FOR PERMITS, INFORMATION ON HYDROLOGIC IMPACTS

Significance: Agency Priority

Legal Authority: 30 USC 1201 et seq; PL 100-34

CFR Citation: 30 CFR 780.21(f); 30 CFR 784.14(e)

Legal Deadline: None

Abstract: The rule sets a life of permit as the parameter for the determination of the probable hydrologic consequences (PHC) of the proposed operation upon the quality and quantity of surface and groundwater under seasonal flow conditions for the proposed permit and adjacent areas. The rule repromulgates the suspended 1983 rules with an expanded preamble and record to support the rule language. This was requested by the Court as a result of litigation. The rule will result in lower costs to industry and a reduction in their information collection requirements.

Timetable:

Action	Date	FR Cite
NPRM	08/28/87	52 FR 32764
NPRM Comment Period End	11/06/87	52 FR 32764
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: State, Federal

Agency Contact: Doug Growitz, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW, Washington, DC 20240, 202 343-1307

RIN: 1029-AB11

1269. SURFACE COAL MINING OPERATIONS; DEFINITION OF "IN CONNECTION WITH"

Significance: Agency Priority

Legal Authority: 30 USC 1201 et seq; PL 100-34

DOI—OSMRE

Final Rule Stage

CFR Citation: 30 CFR 785.21; 30 CFR 827.1

Legal Deadline: None

Abstract: The proposed rule would amend the regulations to clarify the circumstances under which coal preparation plants located outside of the permit area of a mine are subject to the performance standards and permitting requirements of the Surface Mining Control and Reclamation Act (SMCRA).

Timetable:

Action	Date	FR Cite
NPRM	06/22/88	53 FR 23526
NPRM Comment Period End	08/08/88	53 FR 23526
Final Action	11/00/88	

Small Entities Affected: None

Government Levels Affected: State, Federal

Agency Contact: Stephen Sheffield, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW, Washington, DC 20240, 202 343-5950

RIN: 1029-AB08

1270. PERMANENT PROGRAM PERFORMANCE STANDARDS - SURFACE MINING ACTIVITIES, UNDERGROUND MINING ACTIVITIES - REVEGETATION

Significance: Agency Priority

Legal Authority: 30 USC 1201 et seq; PL 100-34

CFR Citation: 30 CFR 816.116(b)(3)(ii); 30 CFR 816.116(c)(4); 30 CFR 817.116(b)(3)(ii); 30 CFR 817.116(c)(4); 30 CFR 816.116(c)(2); 30 CFR 817.116(c)(2)

Legal Deadline: None

Abstract: This rule is being proposed in response to an order of the U.S. District Court remanding several aspects of OSM regulations concerning revegetation which has inadequate support in the administrative record. OSM will propose rules concerning replanting of trees as a normal husbandry practice, the period for revegetation success, and rills and gullies control as a normal conservation practice. Costs and benefits of this action have not been determined since the final scope of the rule is not certain. This analysis will be based in large part on public comments received on the proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	07/27/87	52 FR 28012
NPRM Comment Period End	02/01/88	52 FR 37334
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: State, Federal

Agency Contact: Patrick Boyd, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW, Washington, DC 20240, 202 343-4561

RIN: 1029-AA85

1271. PERMANENT PROGRAM PERFORMANCE STANDARDS - SURFACE MINING ACTIVITIES, UNDERGROUND MINING ACTIVITIES - IMPOUNDMENTS

Significance: Regulatory Program

Legal Authority: 30 USC 1201 et seq; PL 100-34

CFR Citation: 30 CFR 816.49; 30 CFR 817.49

Legal Deadline: None

Abstract: The regulation will address the issue addressed in a district court challenge to OSM regulations. The rule will address the problem of combination spillways and will specify a spillway configuration that must be installed to safely pass the designed precipitation event. In some cases, the rule may allow one spillway to serve as a combination principal and emergency spillway. The proposed action may reduce costs in those cases where one spillway will safely pass the design precipitation event with no corresponding decrease in environmental protection.

Timetable:

Action	Date	FR Cite
NPRM	10/21/87	52 FR 39364
NPRM Comment Period End	12/30/87	52 FR 39364
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: State, Federal

Agency Contact: Robert Wiles, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW, Washington, DC 20240, 202 343-1502

RIN: 1029-AA72

1272. SPECIAL PERMANENT PROGRAM PERFORMANCE STANDARDS OPERATIONS ON PRIME FARMLAND

Significance: Regulatory Program

Legal Authority: 30 USC 1201 et seq; PL 100-34

CFR Citation: 30 CFR 823.11(a); 30 CFR 823.11(b)

Legal Deadline: None

Abstract: These regulations are being revised as ordered by the District Court for the District of Columbia. They will amend OSM's permanent program performance standards with respect to prime farmlands by allowing last cut lakes to remain after mining is complete only where they are beneficial or necessary to agricultural activity and allowing for a support facility exemption only for underground mines. These changes are mandated by court order, thus, no alternatives to this action are being considered.

Timetable:

Action	Date	FR Cite
NPRM	03/25/87	52 FR 9644
NPRM Comment Period End	06/03/87	52 FR 9644
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: State, Federal

Agency Contact: Dermot Winters, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW, Washington, DC 20240, 202 343-1928

RIN: 1029-AA84

1273. IMPROVIDENTLY ISSUED PERMITS

Legal Authority: 30 USC 1201 et seq; PL 100-34

CFR Citation: 30 CFR 840

Legal Deadline: None

DOI—OSMRE

Final Rule Stage

Abstract: This rule will clarify that OSMRE will not require the assessment of civil penalties for notices of violation or cessation orders issued to a permittee who has secured an improvidently issued permit from a State regulatory authority. OSMRE distinguishes this type of violation from an environmental violation, which would be treated differently. However, present rules do not address this type of violation, necessitating this rulemaking.

Timetable:

Action	Date	FR Cite
Final Action	11/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: State, Federal

Agency Contact: Andrew DeVito, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW, Washington, DC 20240, 202 343-5854

RIN: 1029–AB20

1274. TENNESSEE PROGRAM AMENDMENT; SIGNIFICANT PERMIT REVISIONS

Legal Authority: 30 USC 1201 et seq; PL 100-34

CFR Citation: 30 CFR 942.774

Legal Deadline: None

Abstract: The rule applies to the Federal program for Tennessee and would establish guidelines for determining whether a proposed revision to an existing coal mining permit is significant. Significant permit revisions are subject to public comment and hearing requirements. The rule would assist OSMRE in making consistent determinations concerning the significance of permit revisions in Tennessee. The rule is being proposed in response to a decision on a petition for rulemaking, submitted to the Director, OSMRE.

Timetable:

Action	Date	FR Cite
Notice of Decision on Petition for Rulemaking	03/05/87	52 FR 6827
NPRM	07/13/88	53 FR 26566
Final Action	01/00/89	

Small Entities Affected: None

Government Levels Affected: State, Federal

Agency Contact: Fred Block, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Washington, DC 20240, 202 343-4580

RIN: 1029–AB17

DEPARTMENT OF THE INTERIOR (DOI)

Office of Surface Mining Reclamation and Enforcement (OSMRE)

Completed Actions

1275. SUBSTANTIAL LEGAL AND FINANCIAL COMMITMENT

Significance: Agency Priority

Legal Authority: 30 USC 1201 et seq; PL 100-34

CFR Citation: 30 CFR 762.5

Legal Deadline: None

Abstract: The proposed rule would amend the definition of the phrase "substantial legal and financial commitments" as required by a District Court decision in Round III of the present litigation on OSMRE's permanent program regulations. The definition will clarify what is needed for a determination of a "substantial legal and financial commitment" in a surface coal mining operation. Such a determination would exempt land from a designation as unsuitable for surface coal mining operations.

Timetable:

Action	Date	FR Cite
NPRM	10/20/87	52 FR 39186
NPRM Comment Period End	12/29/87	52 FR 39186
Final Action	07/13/88	53 FR 26582
Final Action Effective	08/12/88	53 FR 26582

Small Entities Affected: None

Government Levels Affected: State, Federal

Agency Contact: James M. Kress, Federal Land Specialist, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW, Washington, DC 20240, 202 343-8165

RIN: 1029–AB21

1276. PERMIT PROCESSING

Legal Authority: 30 USC 1201 et seq; PL 100-34

CFR Citation: 30 CFR 773.11

Legal Deadline: None

Abstract: The proposed rule would require operators of surface coal mining operations who operated during the initial regulatory program without a permit to cease mining until they secure a permanent program permit. Only operators who held initial program permits may continue to operate after the Secretary has approved a State regulatory program, if they have submitted an application for a permanent program permit. The proposed rule responds to a remand of previously proposed regulation, in which the U.S. District Court concluded that the rule was inconsistent with the statute.

Timetable:

Action	Date	FR Cite
NPRM	11/09/87	52 FR 43174
NPRM Comment Period End	01/19/88	52 FR 43174
Final Action	04/07/88	53 FR 11606
Final Action Effective	05/09/88	53 FR 11606

Small Entities Affected: None

Government Levels Affected: State, Federal

Agency Contact: Patrick Boyd, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW, Washington, DC 20240, 202 343-4561

RIN: 1029–AB14

1277. PERMANENT PROGRAM PERFORMANCE STANDARDS; HIGHWALL POLICY

Legal Authority: 30 USC 1201 et seq; PL 100-34

CFR Citation: 30 CFR 816.102

Legal Deadline: None

DOI—OSMRE

Completed Actions

Abstract: The proposed regulation is in accordance with a court approved settlement agreement and would provide a method of calculating civil penalties when compliance with Section 30 CFR 816.102(a) cannot be accomplished using Best Technology Currently Available or where compliance would result in significant harm to the environment and the operation does not qualify for an exemption to total highwall elimination in accordance with 30 CFR 816.102(k). The regulation will require an undetermined information collection requirement on the regulatory authority, the cost of which has not been calculated.

Timetable:

Action	Date	FR Cite
NPRM	10/29/87	52 FR 41666
NPRM Comment Period End	01/07/88	52 FR 41666
Withdrawn	06/00/88	

Small Entities Affected: None

Government Levels Affected: State, Federal

Agency Contact: Ralph McDonald, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW, Washington, DC 20240, 202 343-1311

RIN: 1029–AB10

1278. SURFACE COAL MINING AND RECLAMATION OPERATIONS; PERMANENT REGULATORY PROGRAMS; PERMANENT PROGRAM INSPECTION AND ENFORCEMENT PROCEDURES

Significance: Regulatory Program

Legal Authority: 30 USC 1201 et seq; PL 100-34

CFR Citation: 30 CFR 840; 30 CFR 842; 30 CFR 843

Legal Deadline: None

Abstract: The proposed rule would define an "abandoned site" and address the inspection frequency for those sites. The rule would enable regulatory authorities to allocate inspector resources to ongoing operations where they are most needed by reducing the inspection frequency for abandoned sites as necessary to monitor conditions or changes of status without sacrificing environmental quality control.

Timetable:

Action	Date	FR Cite
NPRM	08/28/87	52 FR 32758
NPRM Comment Period End	11/30/87	52 FR 41471
Final Action	06/30/88	53 FR 24872
Final Action Effective	08/01/88	53 FR 24872

Small Entities Affected: None

Government Levels Affected: State, Federal

Agency Contact: Daniel E. Stocker, Chief, Section of Inspection, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW, Washington, DC 20240, 202 343-1314

RIN: 1029–AA67

1279. TEN DAY NOTICE REVIEW CRITERIA

Significance: Regulatory Program

Legal Authority: 30 USC 1201 et seq; PL 100-34

CFR Citation: 30 CFR 842.11; 30 CFR 843.12

Legal Deadline: None

Abstract: The proposed rule would provide guidance to OSMRE in its evaluation of State responses to ten day notices. It would provide that OSMRE must accept a State's response as constituting appropriate action to cause a violation to be corrected or showing good cause for such failure, unless that response is arbitrary, capricious, or an abuse of discretion under the State program. The rule would also provide a mechanism whereby a State could seek informal review within OSMRE of an initial decision to inspect a mine site when OSMRE rejects the State's response to the ten day notice. The rulemaking is being proposed in response to a decision on a petition for rulemaking submitted to the Director, OSMRE.

Timetable:

Action	Date	FR Cite
Notice of Decision on Petition for Rulemaking	06/06/87	52 FR 21598
NPRM	09/09/87	52 FR 34050
NPRM Comment Period End	11/20/87	52 FR 41309
Final Action	07/14/88	53 FR 26728
Final Action Effective	08/15/88	53 FR 26728

Small Entities Affected: None

Government Levels Affected: State, Federal

Agency Contact: Daniel Stocker, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW, Washington, DC 20240, 202 343-1314

RIN: 1029–AB12

1280. COLLECTION OF AML FEES - MOISTURE CONTENT OF COAL

Significance: Regulatory Program

Legal Authority: 30 USC 1201 et seq; PL 100-34

CFR Citation: 30 CFR 870

Legal Deadline: None

Abstract: The present regulations require the weight of coal (for the purpose of calculating the tonnage upon which the AML fee is calculated) to be determined at the point of first sale. This weight includes not only that of the saleable coal, but also that of the extraneous material including the moisture content. Recent action by the Internal Revenue Service (IRS) issued a revenue-ruling for the Black Lung Tax to allow for the deduction of a moisture content allowance from the tonnage upon which the Black Lung Tax is collected. The IRS decision to make this change in its regulations was based on a Federal court decision, Taft Coal Co. v. U.S., 605 F. Supp. 366, (N.D. Ala. 1984). OSMRE proposes to change the existing regulations to create a standard moisture allowance which would be consistent with that allowed by the IRS for the Black Lung Tax program. Regulations dealing with the basis upon which a tax or fee is assessed should be consistent for administrative convenience and equity to the coal operator. Federal action is required since OSMRE is directly responsible for collecting the AML fee and for establishing the regulations promulgating (cont)

Timetable:

Action	Date	FR Cite
NPRM	05/18/87	52 FR 18680
NPRM Comment Period End	08/07/87	52 FR 27419

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DOI—OSMRE — **Completed Actions**

Action	Date	FR Cite
Final Action	05/27/88	53 FR 19718
Final Action Effective	07/01/88	53 FR 19718

Small Entities Affected: None

Government Levels Affected: Federal

Additional Information: ABSTRACT CONT: standards under which the fee is collected. The regulations in question are specific to the responsibilities of the Department of the Interior, OSMRE, and they implement SMCRA. No other Federal agency is authorized to undertake this action on behalf of the Department. The regulation will be changed to include a moisture content allowance. Standards will be developed to establish a percentage allowance consistent with the IRS approach for the Black Lung Program and with industry technical standards for moisture content calculation.

Agency Contact: Jane Robinson, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW, Washington, DC 20240, 202 343-2863

RIN: 1029-AB03

1251. CALIFORNIA FEDERAL PROGRAM

Legal Authority: 30 USC 1201 et seq; PL 100-34

CFR Citation: 30 CFR 905

Legal Deadline: None

Abstract: The proposed rule would establish a Federal program for the State of California. Under the Federal program, surface coal mining and reclamation operations in California will be subject to the OSMRE's permanent program requirements.

Timetable:

Action	Date	FR Cite
NPRM	10/22/87	52 FR 39594
NPRM Comment Period End	12/31/87	52 FR 39594
Final Action	07/13/88	53 FR 26570
Final Action Effective	08/12/88	53 FR 26570

Small Entities Affected: None

Government Levels Affected: State, Federal

Agency Contact: Pat Boyd, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW, Washington, DC 20240, 202 343-4561

RIN: 1029-AB05

BILLING CODE 4310-05-T

DEPARTMENT OF THE INTERIOR (DOI) — **Proposed Rule Stage**

Bureau of Reclamation (RB)

1252. PROCEDURE TO PROCESS AND RECOVER THE VALUE OF RIGHTS-OF-USE AND ADMINISTRATIVE COSTS INCURRED IN PERMITTING SUCH USE

Legal Authority: 43 USC 387; 31 USC 483(a)

CFR Citation: 43 CFR 429.3(a), (Revision); 43 CFR 429.3(d), (New); 43 CFR 429.8(c), (Revision)

Legal Deadline: None

Abstract: These changes to 43 CFR 429 will provide greater flexibility in determining the value of low value uses by third parties of lands administered by the Bureau of Reclamation. Currently an appraisal is required to provide the use value. A periodic review of the value of the use will also be provided. And finally, the authority of Reclamation's regional directors to modify or waive the values to be recovered is further clarified.

Timetable:

Action	Date	FR Cite
NPRM	10/01/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Sectors Affected: Multiple

Agency Contact: Edwin W. Cramer, Department of the Interior, Bureau of Reclamation, Denver Office, P.O. Box 25007, Denver, CO 80225-0007, 303 776-8314

RIN: 1006-AA18

DEPARTMENT OF THE INTERIOR (DOI) — **Final Rule Stage**

Bureau of Reclamation (RB)

1253. ACREAGE LIMITATION RULES AND REGULATIONS

Legal Authority: 5 USC 552; 43 USC 371; 43 USC 390

CFR Citation: 43 CFR 426

Legal Deadline: None

Abstract: This rule will be revised to incorporate amendments to the Reclamation Reform Act included in PL 100-203 (Omnibus Budget Reconciliation Act of 1987).

Timetable:

Action	Date	FR Cite
NPRM	06/10/88	53 FR 21857
NPRM Comment Period End	07/11/88	
Final Action	10/01/88	

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Local, State, Federal

Sectors Affected: All

Agency Contact: Gary Anderson, Acreage Limitation Specialist, Department of the Interior, Bureau of Reclamation, Denver Office, P.O. Box 25007, Denver, CO 80225-0007, 303 776-8064

RIN: 1006-AA17

BILLING CODE 4310-09-T

DEPARTMENT OF THE INTERIOR (DOI) — **Proposed Rule Stage**

Bureau of Land Management (BLM)

1244. MINERALS (NONMINERAL ENTRIES ON MINERAL LANDS)

Legal Authority: 30 USC 186; 30 USC 124

CFR Citation: 43 CFR Subpart 2093

Legal Deadline: None

Abstract: The amendments made by this rulemaking would eliminate portions of the existing regulations that refer to repealed authorities and make minor changes that reflect the merger of functions between the Bureau of Land Management and the Minerals Management Service.

Timetable:

Action	Date	FR Cite
NPRM	01/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Gary Rowe, Department of the Interior, Bureau of Land Management, 1800 C Street, NW, Washington, DC 20240, 202 343-8693

RIN: 1004-AB20

1245. EXCHANGES - GENERAL PROCEDURES

Legal Authority: 43 USC 1715; 43 USC 1716; 43 USC 1732; 43 USC 1740

CFR Citation: 43 CFR 2200

Legal Deadline: None

Abstract: This rule will amend the existing regulations to provide procedures to facilitate and expedite the processing of land exchanges.

Timetable:

Action	Date	FR Cite
NPRM	01/00/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Dave Hemstreet, Department of the Interior, Bureau of Land Management, 1800 C Street, NW, Washington, DC 20240, 202 343-8693

RIN: 1004-AB28

1246. INDIAN ALLOTMENTS

Legal Authority: 25 USC 334

CFR Citation: 43 CFR 2530

Legal Deadline: None

Abstract: This rule would revise the existing regulations to remove obsolete and burdensome provisions and clarify and simplify the remaining provisions.

Timetable:

Action	Date	FR Cite
NPRM	01/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Gary Rowe, Department of the Interior, Bureau of Land Management, 1800 C Street, NW, Washington, DC 20240, 202 343-8693

RIN: 1004-AB10

1247. RIGHTS-OF-WAY, PRINCIPLES AND PROCEDURES

Legal Authority: 43 USC 1748

CFR Citation: 43 CFR 2800

Legal Deadline: None

Abstract: This rule will be amended to provide for improved administration of rights-of-way under the Federal Land Policy and Management Act.

Timetable:

Action	Date	FR Cite
NPRM	01/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Theodore Bingham, Department of the Interior, Bureau of Land Management, 1800 C Street, NW, Washington, DC 20240, 202 343-5441

RIN: 1004-AB00

1248. ● RIGHTS-OF-WAY, TRESPASS, AND LAW ENFORCEMENT - CRIMINAL

Legal Authority: 16 USC 433; 16 USC 460l-6a; 16 USC 670j; 16 USC 1246(i); 16 USC 1338; 18 USC 1851 to 1861; 43 USC 315(a); 43 USC 1061; 43 USC 1161a; 43 USC 1732; 43 USC 1733; 43 USC 1740; 43 USC 1761 to 1771; 43 USC 1063; 43 USC 1161b

CFR Citation: 43 CFR 2800; 43 CFR 2810; 43 CFR 2880; 43 CFR 9230; 43 CFR 9239

Legal Deadline: None

Abstract: This rule will amend the existing regulations to address administrative costs associated with trespass resolution and to establish penalties for willful right-of-way trespass.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
NPRM Comment Period End	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Oscar Anderson, Natural Resource Specialist, Department of the Interior, Bureau of Land Management, 18th & C Streets, NW, Washington, DC 20240, 202 343-5441

RIN: 1004-AB46

1249. RIGHTS-OF-WAY UNDER THE MINERAL LEASING ACT

Legal Authority: 30 USC 185

CFR Citation: 43 CFR 2880

Legal Deadline: None

Abstract: This rule will be amended to provide for improved administration of rights-of-way under the Mineral Leasing Act.

Timetable:

Action	Date	FR Cite
NPRM	01/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Theodore Bingham, Department of the Interior, Bureau of Land Management, 1800 C Street, NW, Washington, DC 20240, 202 343-5441

RIN: 1004-AA98

1250. RECREATION AND PUBLIC PURPOSES ACT LEASES

Legal Authority: 43 USC 869 et seq

CFR Citation: 43 CFR 2910; 43 CFR 2911

Legal Deadline: None

Abstract: The rule will amend the existing regulations to implement policy changes as they relate to the leasing of public lands for recreation and public purposes under the Recreation and Public Purposes Act.

Timetable:

Action	Date	FR Cite
NPRM	04/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Gary Rowe, Department of the Interior, Bureau of Land Management, 1800 C Street, NW, Washington, DC 20240, 202 343-8693

RIN: 1004-AA73

1291. ONSHORE OIL AND GAS ORDER NO. 6 - WELL WORKOVERS, COMPLETIONS, ABANDONMENTS

Legal Authority: 30 USC 189; 30 USC 359; 30 USC 396; 25 USC 396(d)

CFR Citation: 43 CFR 3162; 43 CFR 3164.1(b)

Legal Deadline: None

Abstract: This Order is being issued under the Oil and Gas Operations regulations as found in 43 CFR Part 3160. The Order details the minimum standards of performance when conducting workover, completions, and abandonment of existing wells on Federal and Indian lands (except Osage Tribe). It also will contain enforcement actions that will result from the failure to meet the minimum standards.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Sie Ling Chiang, Department of the Interior, Bureau of Land Management, 1800 C Street, NW, Washington, DC 20240, 202 653-2127

RIN: 1004-AB37

1292. ONSHORE OIL AND GAS ORDER NO. 7 - DISPOSAL OF PRODUCED WATER

Legal Authority: 30 USC 189; 30 USC 359

CFR Citation: 43 CFR 3164.1(b); 43 CFR 3162.3; 43 CFR 3162.5

Legal Deadline: None

Abstract: This order is being issued under the revised oil and gas regulations as found in 43 CFR Part 3160. The order details the requirements for the handling, storing or disposing of water produced from oil or gas wells. It replaces NTL-2B. The Order will also contain inspection standards. This order is referenced in the Table at 43 CFR 3164.1(b).

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Sie Ling Chiang, Department of the Interior, Bureau of Land Management, 1800 C Street, NW, Washington, DC 20240, 202 653-2127

RIN: 1004-AA66

1293. ONSHORE OIL AND GAS ORDER NO. 9 - HYDROGEN SULFIDE OPERATIONS

Significance: Regulatory Program

Legal Authority: 30 USC 189; 30 USC 359

CFR Citation: 43 CFR 3164.1(b); 43 CFR 3162.3; 43 CFR 3162.5

Legal Deadline: None

Abstract: This order is being issued under the revised oil and gas regulations as found in 43 CFR Part 3160. The order details the requirements for protecting workers and the public from hydrogen sulfide. It specifies documentation needed prior to operation and measures required during drilling and production. This order is referenced in the Table at 43 CFR 3164.1(b).

Timetable:

Action	Date	FR Cite
NPRM	10/15/84	49 FR 40354
NPRM Comment Period End	01/14/85	49 FR 46576
NPRM - Second	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Sie Ling Chiang, Department of the Interior, Bureau of Land Management, 1800 C Street, NW, Washington, DC 20240, 202 653-2127

RIN: 1004-AA67

1294. ONSHORE OIL AND GAS ORDER NO. 9 - WASTE PREVENTION AND BENEFICIAL USE OF OIL AND GAS

Legal Authority: 30 USC 189; 30 USC 359; 30 USC 396; 25 USC 396(d)

CFR Citation: 43 CFR 3164.1; 43 CFR 3162.4; 43 CFR 3162.5; 43 CFR 3162.7-1; 43 CFR 3162.7-2; 43 CFR 3162.7-3; 43 CFR 3165.3; 43 CFR 3165.4

Legal Deadline: None

Abstract: This order is being issued under the revised oil and gas operations regulations as found in 43 CFR 3160. This order details the requirements in order to prevent wastes and promote beneficial uses of oil and gas. This order also provides the enforcement actions that will result when violations of standards occur. It also replaces NTL-4A. This order is to be referenced in the table at 43 CFR 3164.1(b).

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
NPRM Comment Period End	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Sie Ling Chiang, Division Chief, Fluid Mineral Lease & Reservoir Management, Department of the Interior, Bureau of Land Management, 18th & C Streets, NW, Washington, DC 20240, 202 343-2133

RIN: 1004-AB47

1295. ONSHORE OIL AND GAS OPERATIONS - COOPERATIVE AGREEMENTS, DELEGATIONS OF AUTHORITY AND CONTRACTS FOR OIL AND GAS INSPECTION AND ENFORCEMENT

Legal Authority: 30 USC 1701; 30 USC 1732; 30 USC 1735; 30 USC 1751

CFR Citation: 43 CFR 3190

Legal Deadline: None

Abstract: This rule will provide the procedures for implementing the provisions of the Federal Oil and Gas Royalty Management Act authorizing delegations of authority to States in connection with oil and gas operations.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Susan Pepperney, Department of the Interior, Bureau of Land Management, 1800 C Street, NW, Washington, DC 20240, 202 653-2200

RIN: 1004-AB32

1296. GEOTHERMAL RESOURCE OPERATIONS

Legal Authority: 30 USC 1001 to 1025

CFR Citation: 43 CFR 3200; 43 CFR 3260; 43 CFR 3270

Legal Deadline: None

Abstract: This rulemaking will revise provisions related to geothermal leasing and geothermal operations conducted on Federal lands. The changes are designed to remove burdensome and cumbersome provisions and simplify the regulations.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Sie Ling Chiang, Department of the Interior, Bureau of Land Management, 1800 C Street, NW, Washington, DC 20240, 202 653-2127

RIN: 1004-AB18

1297. SALES OF FOREST PRODUCTS; GENERAL - PREPARATION FOR SALE

Legal Authority: PL 90-554

CFR Citation: 43 CFR 5400; 43 CFR 5420

Legal Deadline: None

Abstract: Existing regulations permit timber export and purchase volumes to "ratchet" upward at a questionable rate, leading to substitution. The existing regulations need simplification. The rule would correct both of these concerns.

Timetable:

Action	Date	FR Cite
NPRM	04/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Lyndon Werner, Department of the Interior, Bureau of Land Management, 1800 C Street, NW, Washington, DC 20240, 202 653-8864

RIN: 1004-AB34

1298. COAL EXPLORATION AND MINING OPERATIONS RULES

Legal Authority: 30 USC 181 et seq

CFR Citation: 43 CFR 3400; 43 CFR 3410; 43 CFR 3440; 43 CFR 3450; 43 CFR 3460; 43 CFR 3470; 43 CFR 3480

Legal Deadline: None

Abstract: This rule will revise the exploration and mining operations, regulations, as well as other operations-related regulations, to streamline them and to have them reflect current policy and standard industry operating practices relating to Federal coal.

Timetable:

Action	Date	FR Cite
NPRM	09/00/88	
NPRM Comment Period End	11/00/88	
Final Action	05/00/89	
Final Action Effective	07/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Paul Politzer, Chief, Division of Solid Mineral Operations, Department of the Interior, Bureau of Land Management, 18th & C Streets, NW, Washington, DC 20240, 202 343-7722

RIN: 1004-AB44

1299. MANAGEMENT OF EXISTING LEASES

Legal Authority: 30 USC 181 et seq; 30 USC 351 to 359; 30 USC 521 to 531; 30 USC 1201 et seq

CFR Citation: 43 CFR 3450

Legal Deadline: None

Abstract: This rule would eliminate the right of a lessee to object to readjusted lease terms and conditions that are mandated by law or required by regulation, and also would make the readjusted royalty and rental rates effective as of the date of the lease readjustment, regardless of whether there is a subsequent appeal of the readjusted terms and conditions.

Timetable:

Action	Date	FR Cite
NPRM	12/08/87	52 FR 46499
NPRM Comment Period End	01/07/88	52 FR 46499
NPRM - Second	10/00/88	
NPRM Public Comment Period End	11/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Harry W. Moritz, Department of the Interior, Bureau of Land Management, 1800 C Street, NW, Washington, DC 20240, 202 343-7722

RIN: 1004-AB58

1300. COAL EXPLORATION AND MINING OPERATIONS RULES

Legal Authority: 30 USC 181 et seq; 30 USC 351 to 359; 30 USC 1201 et seq

CFR Citation: 30 CFR 3410

Legal Deadline: None

Abstract: This regulation will remove from the existing regulations language that provides that a suspension of a coal lease does not suspend the diligent development requirement.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Paul Politzer, Department of the Interior, Bureau of Land Management, 1800 C Street, NW, Washington, DC 20240, 202 343-7722

RIN: 1004-AB42

1301. OPERATING REGULATIONS FOR EXPLORATION, DEVELOPMENT AND PRODUCTION

Legal Authority: 30 USC 181 et seq

CFR Citation: 43 CFR 3590

Legal Deadline: None

Abstract: This rule will revise the existing regulations to streamline them and to have them reflect current policy and industry operating practices

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relating to the leasing of minerals other than oil and gas.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Harry Moritz, Department of the Interior, Bureau of Land Management, 1800 C Street, NW, Washington, DC 20240, 202 343-7722

RIN: 1004-AA09

1302. MULTIPLE USE; MINING; MINING CLAIMS UNDER THE GENERAL MINING LAWS

Legal Authority: 30 USC 22 et seq; 30 USC 521 to 540; 30 USC 601 to 615; 30 USC 621 to 625; 43 USC 2; 43 USC 1732; 43 USC 1740; 61 Stat. 681

CFR Citation: 43 CFR Group 3700; 43 CFR Group 3800

Legal Deadline: None

Abstract: These two groups of regulations will be combined into a single group, with the language being revised to remove burdensome, cumbersome and unnecessary provisions. In addition, the language will be updated and clarified and some provisions will be revised to meet the needs of today's conditions.

Timetable:

Action	Date	FR Cite
Notice of Intent to Propose Rulemaking	12/27/82	47 FR 57521
NPRM	04/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Bill Caudill, Department of the Interior, Bureau of Land Management, 1800 C Street, NW, Washington, DC 20240, 202 343-8537

RIN: 1004-AB04

1303. MINING CLAIMS UNDER THE GENERAL MINING LAW - NATURE AND CLASSES OF MINING CLAIMS ASSESSMENT WORK

Legal Authority: 43 USC 1732 to 1733; 30 USC 28 - 1 - 2; 30 USC 28; 30 USC 33; 43 USC 1782

CFR Citation: 43 CFR 3800; 43 CFR 3840; 43 CFR 3850

Legal Deadline: None

Abstract: This rulemaking will amend the existing regulations to include the criteria for the standard of discovery as applied to oil shale placer mining claims and provide clarification of what constitutes substantial compliance with assessment work requirements under the Mining Law.

Timetable:

Action	Date	FR Cite
NPRM	04/00/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Bill Caudill, Department of the Interior, Bureau of Land Management, 1800 C Street, NW, Washington, DC 20240, 202 343-8537

RIN: 1004-AB03

1304. MINING CLAIMS UNDER THE GENERAL MINING LAWS

Legal Authority: 30 USC 22; 43 USC 1201; 43 USC 1744; 43 USC 1734; 43 USC 1740

CFR Citation: 43 CFR Subpart 3809; 43 CFR Subpart 3833

Legal Deadline: None

Abstract: This rule would make amendments to the regulatory provisions dealing with the surface management of mining claims to incorporate changes recommended by a task force that studied this area.

Timetable:

Action	Date	FR Cite
NPRM	04/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Rick Deery, Department of the Interior, Bureau of Land Management, 1800 C Street, NW, Washington, DC 20240, 202 343-8537

RIN: 1004-AB06

1305. SALES OF FOREST PRODUCTS; CONDUCT OF SALES

Legal Authority: 30 USC 601 et seq; 43 USC 1181a

CFR Citation: 43 CFR 5400

Legal Deadline: None

Abstract: This rule will amend the existing regulations to specify the conditions under which the provisions of this subpart are applicable to contracts that are not completed.

Timetable:

Action	Date	FR Cite
NPRM	04/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Lyndon Werner, Department of the Interior, Bureau of Land Management, 1800 C Street, NW, Washington, DC 20240, 202 653-8864

RIN: 1004-AB39

1306. SALES OF FOREST PRODUCTS; AWARD OF CONTRACT

Legal Authority: 30 USC 601 et seq; 43 USC 1181a

CFR Citation: 43 CFR 5400; 43 CFR 5450

Legal Deadline: None

Abstract: This rule will amend the existing regulations as they relate to timber sale contract performance bonds to discourage bidding at such a rate that the bidder, if awarded the contract, would be unable to perform under the terms of the contract.

Timetable:

Action	Date	FR Cite
NPRM	04/00/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Lyndon Werner, Department of the Interior, Bureau of Land Management, 1800 C Street, NW, Washington, DC 20240, 202 653-8864

RIN: 1004-AB40

1307. ◆ AWARD OF CONTRACT; SALES ADMINISTRATION

Legal Authority: 43 USC 1181e; 30 USC 601 et seq

CFR Citation: 43 CFR 5450; 43 CFR 5460

Legal Deadline: None

Abstract: It is necessary to amend existing regulations concerning timber sale contract performance bonds and payments to encourage responsible bidding at such a rate that the bidder, if awarded the contract, would be able to perform the obligations under the contract.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
NPRM Comment Period End	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Lyndon A. Werner, Forester, Department of the Interior, Bureau of Land Management, 18th & C Streets, NW, Washington, DC 20240, 202 343-8864

RIN: 1004-AB40

1308. CULTURAL RESOURCE MANAGEMENT

Legal Authority: 43 USC 1701 et seq; 16 USC 470 et seq; 42 USC 4321; 16 USC 432; 16 USC 470aa et seq; 42 USC 1996; 16 USC 433; 36 CFR 800.11

CFR Citation: 43 CFR 8100; 43 CFR 8110; 43 CFR 8111; 43 CFR 8140; 43 CFR 8141; 43 CFR 8142; 43 CFR 8143

Legal Deadline: None

Abstract: The rule will adapt a Governmentwide compliance procedure to a Bureau-specific procedure, with substantial streamlining, reduction of outside consultation, quicker management decisions that are more rapidly carried out, public land users being allowed to proceed with land or resource use with less delay and cultural resources being protected as effectively as under the existing system of review.

Timetable:

Action	Date	FR Cite
NPRM	04/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: John G. Douglas, Department of the Interior, Bureau of Land Management, 1800 C Street, NW, Washington, DC 20240, 202 343-9353

RIN: 1004-AA09

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1309. PALEONTOLOGY

Legal Authority: 43 USC 1701 et seq

CFR Citation: 43 CFR 8270

Legal Deadline: None

Abstract: This rule will be revised to provide the procedures for the management of paleontological specimens located on the public lands.

Timetable:

Action	Date	FR Cite
NPRM	08/17/82	47 FR 35914
NPRM - Second	04/00/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Carl Barna, Department of the Interior, Bureau of Land Management, 18th and C Streets, NW, Washington, DC 20240, 202 343-3207

RIN: 1004-AA27

1310. RECREATION; GENERAL

Legal Authority: 43 USC 1701 et seq; 43 USC 869; 43 USC 1181a; 43 USC 315; 43 USC 4321 et seq; 16 USC 460l to 461; 16 USC 1131; 16 USC 1271 to 1287; 16 USC 1241; 16 USC 670; 29 USC 794

CFR Citation: 43 CFR Subpart 8300

Legal Deadline: None

Abstract: This rule will be amended to revise the policy statement for recreation management of the public lands.

Timetable:

Action	Date	FR Cite
NPRM	04/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Bob Schneider, Department of the Interior, Bureau of Land Management, 18th and C Streets, NW, Washington, DC 20240, 202 343-9353

RIN: 1004-AA35

1311. CADASTRAL SURVEY

Legal Authority: 43 USC 1701 et seq; 48 USC 351; 43 USC 772; 43 USC 773

CFR Citation: 43 CFR 9180

Legal Deadline: None

Abstract: This rule would revise the existing regulations to remove obsolete and burdensome provisions and clarify and simplify the remaining provisions.

Timetable:

Action	Date	FR Cite
NPRM	04/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Bernard W. Hostrop, Department of the Interior, Bureau of Land Management, 1800 C Street, NW, Washington, DC 20240, 202 653-8788

RIN: 1004-AB07

1312. UNAUTHORIZED USE OF PUBLIC LANDS

Legal Authority: 43 USC 1701 et seq

CFR Citation: 43 CFR 9239

Legal Deadline: None

Abstract: This rule will be amended to clarify those activities that are prohibited on the public lands, to provide managers with additional authority to resolve existing violations and to clarify the authority of the Secretary of the Interior in instances of mineral trespass.

Timetable:

Action	Date	FR Cite
NPRM	01/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Walter L. Johnson, Jr., Department of the Interior, Bureau of Land Management, 18th and C Streets, NW, Washington, DC 20240, 202 653-8815

RIN: 1004-AA36

1313. ◆ LAW ENFORCEMENT, CRIMINAL

Legal Authority: 16 USC 1852; 16 USC 1853; 43 USC 1733

CFR Citation: 43 CFR 9260

Legal Deadline: None

Abstract: It is necessary to amend existing regulations concerning the unlawful removal of forest products from public lands. Existing regulations rely on State statutes in those States with statutes, but little support is

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provided if State statutes do not exist. This regulation would provide this support and improve overall management of the public lands.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
NPRM Comment Period End	01/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Gary Ryan, Forester, Department of the Interior, Bureau of Land Management, 18th & C Streets, NW, Washington, DC 20240, 202 343-8864

RIN: 1004-AD40

DEPARTMENT OF THE INTERIOR (DOI)
Bureau of Land Management (BLM)

Final Rule Stage

1214. LAND CLASSIFICATION

Legal Authority: 43 USC 315f; 43 USC 869; 43 USC 1701 et seq

CFR Citation: 43 CFR 2400

Legal Deadline: None

Abstract: The rulemaking will revise the existing land classification regulations, will remove obsolete provisions, remove burdensome provisions, simplify the land classification system and provide a new protest system for use in connection with land classification decisions.

Timetable:

Action	Date	FR Cite
NPRM	10/22/87	52 FR 39542
NPRM Comment Period End	12/21/87	52 FR 39542
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Jim Paugh, Department of the Interior, Bureau of Land Management, 1800 C Street, NW, Washington, DC 20240, 202 343-8693

RIN: 1004-AB19

1315. ONSHORE OIL AND GAS OPERATIONS - ONSHORE OIL AND GAS ORDER NUMBER 4 - MEASUREMENT OF CRUDE OIL

Legal Authority: 30 USC 189; 30 USC 359; 25 USC 396; 25 USC 396(d)

CFR Citation: 43 CFR 3164.1(b); 43 CFR 3162.7

Legal Deadline: None

Abstract: This document is being issued under the oil and gas operations regulations as found in 43 CFR Part 3160. The order details the requirements for the accurate measurement and recording of the volumes of crude oil and lease condensation produced and sold from Federal and Indian (except Osage) leases. This includes such production from other leases which is allocated to a covered lease. This order will also contain inspection standards. This is referenced in the Table at 43 CFR 3164.1(b).

Timetable:

Action	Date	FR Cite
NPRM	02/03/88	53 FR 3158
NPRM Comment Period End	04/04/88	
Final Action	10/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Sie Ling Chiang, Department of the Interior, Bureau of Land Management, 1800 C Street, NW, Washington, DC 20240, 202 653-2127

RIN: 1004-AA56

1316. ONSHORE OIL AND GAS ORDER NO. 2 - DRILLING OPERATIONS

Legal Authority: 30 USC 189; 30 USC 359; 30 USC 226; 25 USC 396; 25 USC 396(d)

CFR Citation: 43 CFR 3164.1(b); 43 CFR 3162.3; 43 CFR 3162.5

Legal Deadline: None

Abstract: This order is being issued under the revised oil and gas operations regulations as found in 43 CFR Part 3160. The order details the uniform national minimum standards of performance which are expected for drilling operations on Federal and Indian (except Osage) lands. It also will contain enforcement actions that will result from failure to meet the minimum standards.

Timetable:

Action	Date	FR Cite
NPRM	08/13/87	52 FR 30310
NPRM Comment Period End	10/13/87	
Final Action	10/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Sie Ling Chiang, Department of the Interior, Bureau of Land Management, 1800 C Street, NW, Washington, DC 20240, 202 653-2127

RIN: 1004-AB21

1317. ONSHORE OIL AND GAS ORDER NO. 3 - SITE SECURITY

Significance: Regulatory Program

Legal Authority: 30 USC 189; 30 USC 359; 30 USC 1701 et seq.; 25 USC 396; 25 USC 396(d)

CFR Citation: 43 CFR 3164.1(b); 43 CFR 3161.3; 43 CFR 3162.7-1; 43 CFR 3162.7-4

Legal Deadline: None

Abstract: This order is being issued under the revised oil and gas operations regulations as found in 43 CFR Part 3160. The order supplements the minimum standards found in the regulations at 43 CFR 3162.7-4(b), (c) and (d).

Timetable:

Action	Date	FR Cite
NPRM	08/13/87	52 FR 30282
NPRM Comment Period End	10/13/87	
Final Action	10/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Sie Ling Chiang, Department of the Interior, Bureau of Land Management, 1800 C Street, NW, Washington, DC 20240, 202 653-2127

RIN: 1004-AB24

DOI—BLM

Final Rule Stage

1318. ONSHORE OIL AND GAS ORDER NO. 5 - MEASUREMENT OF NATURAL GAS

Legal Authority: 30 USC 189; 30 USC 359; 25 USC 396; 25 USC 396(d)

CFR Citation: 43 CFR 3164.1(b); 43 CFR 3162.7

Legal Deadline: None

Abstract: This order is being issued under the revised oil and gas operations regulations as found in 43 CFR Part 3160. The order details the requirements for the accurate measurement of the volumes of natural gas produced and sold from Federal and Indian (except Osage) leases. This includes such production from other leases which is allocated to a covered lease. The order also will contain inspection standards. This order is to be referenced in the Table at 43 CFR 3164.1(b).

Timetable:

Action	Date	FR Cite
NPRM	07/29/88	53 FR 28822
NPRM Comment Period End	09/28/88	
Final Action	10/00/88	
Final Action Effective	10/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Paul Politzer, Chief, Division of Solid Mineral Operations, Department of the Interior, Bureau of Land Management, 18th & C Streets, NW, Washington, DC 20240, 202 343-7722

RIN: 1004-AD45

1319. ⊕ FEES, RENTS, AND ROYALTIES

Significance: Agency Priority

Legal Authority: 30 USC 181 et seq

CFR Citation: 43 CFR 3473.3-2(a)(3)

Legal Deadline: None

Abstract: This rule will revise the royalty rate for coal removed from an underground mine to be a fixed percentage in the range limited by 5 percent and 8 percent.

Timetable:

Action	Date	FR Cite
NPRM	02/03/88	53 FR 3168
NPRM Comment Period End	04/04/88	
Final Action	10/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Sie Ling Chiang, Department of the Interior, Bureau of Land Management, 1800 C Street, NW, Washington, DC 20240, 202 653-2127

RIN: 1004-AB22

1320. CONDUCT OF SALES (TIMBER)

Legal Authority: 43 USC 1181e; 30 USC 601 et seq

CFR Citation: 43 CFR 5400

Legal Deadline: None

Abstract: This rule would amend the existing regulations to define more precisely when someone may be disbarred from participating in a timber sale and would provide notice and opportunity for a hearing to those who are subject to debarment.

Timetable:

Action	Date	FR Cite
NPRM	08/04/87	52 FR 28830
NPRM Comment Period End	10/05/87	52 FR 28830
Final Action	04/00/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Lyndon Werner, Department of the Interior, Bureau of Land Management, 1800 C Street, NW, Washington, DC 20240, 202 653-8864

RIN: 1004-AD35

1321. OFF-ROAD VEHICLES

Legal Authority: 43 USC 1201; 43 USC 315a; 16 USC 1531 et seq; 16 USC 1281c; 16 USC 670 et seq; 16 USC 4601 to 6a; 16 USC 1241 et seq; 43 USC 1701 et seq

CFR Citation: 43 CFR 8340

Legal Deadline: None

Abstract: This rule will amend the existing regulations to clarify some of the definitions to remove confusion that has arisen since the implementation of the existing regulations and to improve the public notification process provided by the regulations.

Timetable:

Action	Date	FR Cite
NPRM	07/17/87	52 FR 27017
NPRM Comment Period End	09/15/87	52 FR 27017
Final Action	04/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Richard E. Traylor, Department of the Interior, Bureau of Land Management, 1800 C Street, NW, Room 2661, Main Interior Bldg., Washington, DC 20240, 202 343-8353

RIN: 1004-AB26

DEPARTMENT OF THE INTERIOR (DOI)
Bureau of Land Management (BLM)

Completed Actions

1322. PUBLIC LAND RECORDS

Legal Authority: 5 USC 301; 43 USC 2; 44 USC 3101; 43 USC 13; 43 USC 751; 43 USC 1201; 43 USC 2457; 43 USC 1740

CFR Citation: 43 CFR 1813

Legal Deadline: None

Abstract: This rule will amend the existing regulations by updating them to reflect and accommodate the transition from the Manual Record System (Tract Books, Master Plats, etc.) to an Automated Records System.

Timetable:

Action	Date	FR Cite
Withdrawn - BLM determined this rule not needed	08/26/88	

DOI—BLM

Completed Actions

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: John Butterfield, Department of the Interior, Bureau of Land Management, 1800 C Street, NW, Washington, DC 20240, 202 343-8693

RIN: 1004-AA77

1323. OIL AND GAS LEASING AND GEOTHERMAL RESOURCE LEASING - GENERAL

Legal Authority: 16 USC 3101 et seq; 30 USC 181 et seq; 30 USC 351 to 359; 40 USC 760 et seq; 43 USC 1701 et seq

CFR Citation: 43 CFR 1450; 43 CFR 3040; 43 CFR Group 3100; 43 CFR Group 3200

Legal Deadline: None

Abstract: This rulemaking will make corrections and modifications to the existing regulations, including procedural changes that have resulted from operations under the regulations.

Timetable:

Action	Date	FR Cite
NPRM	06/12/87	52 FR 22592
NPRM Comment Period End	08/11/87	52 FR 22592
Final Action	05/16/88	53 FR 17340
Final Action Effective	06/15/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Mona Schermerhorn, Department of the Interior, Bureau of Land Management, 1800 C Street, NW, Washington, DC 20240, 202 653-2228

RIN: 1004-AA87

1324. EXPLORATION ACTIVITY; OIL AND GAS LEASING; GEOTHERMAL RESOURCE LEASING - GENERAL

Legal Authority: 30 USC 181 et seq; 30 USC 301 to 306; 30 USC 351 to 359; 43 USC 1701 et seq; PL 96-514; 40 Op. Atty. Gen. 41

CFR Citation: 43 CFR 3040; 43 CFR 3100; 43 CFR 3130; 43 CFR 3200

Legal Deadline: None

Abstract: This rule would amend the existing regulations as they relate to bond coverage for oil and gas and geothermal resources. As a result of comments and a study by a special task force, several alternatives for bonding have been identified. These alternatives will be addressed in a second proposed rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	05/01/85	50 FR 18614
NPRM Comment Period End	07/01/85	50 FR 18614
Absorbed into RIN 1004-AA87	05/16/88	53 FR 17340

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Rob Cervantes, Department of the Interior, Bureau of Land Management, 1800 C Street, NW, Washington, DC 20240, 202 653-2199

RIN: 1004-AB13

1325. OIL AND GAS LEASING - FEES, RENTALS AND ROYALTIES

Legal Authority: 16 USC 3101 et seq; 30 USC 181 et seq; 30 USC 351 to 359; 40 USC 760 et seq; 43 USC 1701 et seq

CFR Citation: 43 CFR 3130

Legal Deadline: None

Abstract: This rule would amend the existing regulations to maintain all noncompetitive lease rentals at $1 per acre per year. This change would primarily be applicable to those noncompetitive leases that are later determined to be included in a known geologic structure.

Timetable:

Action	Date	FR Cite
Absorbed into RIN 1004-AB41	06/17/88	53 FR 22814

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Mona Schermerhorn, Department of the Interior, Bureau of Land Management, 1800 C Street, NW, Washington, DC 20240, 202 653-2190

RIN: 1004-AB31

1326. OIL AND GAS LEASING COMPETITIVE LEASES

Significance: Agency Priority

Legal Authority: 30 USC 181 et seq; 30 USC 351 to 359; 16 USC 3101 et seq; 43 USC 1701 et seq; PL 97-35; PL 100-203

CFR Citation: 43 CFR 3100; 43 CFR 3120

Legal Deadline: Final, Statutory, June 23, 1988.

Abstract: This rulemaking action will provide the procedures for the regulatory implementation of the Federal Onshore Oil and Gas Leasing Reform Act passed by the Congress as part of the Omnibus Budget Reconciliation Act of 1987.

Timetable:

Action	Date	FR Cite
NPRM	03/21/88	53 FR 9214
NPRM Comment Period End	04/21/88	
Final Action	06/17/88	53 FR 22814
Final Action Effective	06/17/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: Robert C. Bruce - 202 343-8735

Agency Contact: Jeff Zabler, Department of the Interior, Bureau of Land Management, 1800 C Street, NW, Washington, DC 20240, 202 653-2182

RIN: 1004-AB41

1327. GRAZING ADMINISTRATION - EXCLUSIVE OF ALASKA

Legal Authority: 43 USC 315a to 315r; 43 USC 1701 et seq; 43 USC 118(d); 43 USC 1901 et seq

CFR Citation: 43 CFR 4100

Legal Deadline: None

Abstract: The amendment made by this rulemaking would bring the existing regulations into compliance with the decision in Natural Resources Defense Council, Inc. v. Hodel, et al., No. CIV. S-84-616 RAR (1985). It also would update the existing regulations to have them conform to recent grazing policy changes.

Timetable:

Action	Date	FR Cite
NPRM	05/20/87	52 FR 19032
NPRM Comment Period End	08/19/87	52 FR 27321
Final Action	03/29/88	53 FR 10224
Final Action Effective	04/28/88	

Small Entities Affected: Undetermined

DOI—BLM

Completed Actions

Government Levels Affected: Undetermined

Agency Contact: Billy R. Templeton, Department of the Interior, Bureau of Land Management, 1800 C Street, NW, Washington, DC 20240, 202 653-9195

RIN: 1004-AB33

1328. PROTECTION OF SPECIAL STATUS PLANTS

Legal Authority: 43 USC 1701 et seq

CFR Citation: 43 CFR 8850

Legal Deadline: None

Abstract: This rule will provide the procedure for protecting rare plants located on the public lands. The uncontrolled collection of these rare plants will endanger their existence.

Timetable:

Action	Date	FR Cite
Withdrawn -- not necessary at this time	07/20/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: William H. Radtkey, Department of the Interior, Bureau of Land Management, 1800 C Street, NW, Washington, DC 20240, 202 653-9262

RIN: 1004-AB00

1329. USE AUTHORIZATIONS; SPECIAL RECREATION PERMITS

Legal Authority: 43 USC 1201 et seq; 43 USC 1701 et seq; 43 USC 1181a; 16 USC 460 to 6a

CFR Citation: 43 CFR Subpart 8372

Legal Deadline: None

Abstract: This rule is being revised to reflect revised, special recreation policies.

Timetable:

Action	Date	FR Cite
NPRM	09/16/85	50 FR 37555
NPRM Comment Period End	11/15/85	50 FR 37555
Final Action	03/31/88	53 FR 10394
Final Action Effective	05/02/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Gary Marsh, Department of the Interior, Bureau of Land Management, 18th and C Streets, NW, Washington, DC 20240, 202 343-9153

RIN: 1004-AA36

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Part XI

Department of Justice

Semiannual Regulatory Agenda

DEPARTMENT OF JUSTICE (DOJ)

DEPARTMENT OF JUSTICE

8 CFR Ch. I

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48 CFR Ch. 28

Regulatory Agenda

AGENCY: Justice Management Division, Justice.

ACTION: Regulatory agenda.

SUMMARY: The Department of Justice is publishing its October 1988 regulatory agenda pursuant to Executive Order No. 12291, "Federal Regulation," 3 CFR Part 127 (1981 Compilation), the Regulatory Flexibility Act, 5 U.S.C.A. 601-612 (West 1984), and Office of Management and Budget Bulletin No. 88-15, June 24, 1988.

FOR FURTHER INFORMATION CONTACT: Terry Samuels, Executive Secretariat, Justice Management Division, Department of Justice, Room 1110, 10th and Constitution Avenue, NW., Washington, DC 20530 (202-633-3123).

Dated: September 7, 1988.

Harry H. Flickinger,

Assistant Attorney General for Administration.

Civil Rights Division—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1330	Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance	1190-AA03

Civil Rights Division—Completed Actions

Sequence Number	Title	Regulation Identifier Number
1331	Enforcement of Nondiscrimination on the Basis of Handicap in Department of Justice Programs	1190-AA16

General Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1332	Determination for Access to National Security Information: Eligibility, Adjudication, and Appeal Procedures	1103-AA18

General Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1333	Rules of Practice and Procedure for Administrative Hearings Before Administrative Law Judges in Cases Involving Allegations of Unlawful Employment of Aliens and Unfair (Cont)	1103-AA14
1334	Procedures for Tax Refund Offsets for the Collection of Judgments	1103-AA16
1335	Justice Acquisition Regulations Title 48 2870 Nondiscrimination on the Basis of Handicap in DOJ Contracting Activities	1103-AA17
1336	Aliens and Nationality, Asylum and Withholding of Deportation Proceedings	1103-AA19

General Administration—Completed Actions

Sequence Number	Title	Regulation Identifier Number
1337	Representation and Appearances	1103-AA05
1338	Implementation of the Program Fraud Civil Remedies Act of 1986	1103-AA15

DOJ

Immigration and Naturalization Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1339	Nonimmigrant Classes, Special Requirements	1115-AA65
1340	Application for Verification of Information from INS Service Records; Form and Fee Cancellation	1115-AA66
1341	Establishment of National Fines Office	1115-AA73
1342	Acceptance by Overseas Immigration and Naturalization Service Officers and American Consulates of Jurisdiction of Relative Petitions based on Residence of Petitioners	1115-AB01
1343	Notice of Availability of Preliminary Working Drafts of Replenishment Agricultural Workers Regulations	1115-AB05
1344	INS/EOIR Fee Review	1115-AB11

Immigration and Naturalization Service—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1345	Asylum Procedures	1115-AA13
1346	Documentary Requirements: Nonimmigrants; Waivers; Admission of Certain Inadmissible Aliens; Parole; Direct Transit	1115-AA19
1347	Powers and Duties of Service Officers; Availability of Service Records	1115-AA21
1348	Nonimmigrant Classes; Temporary Employees	1115-AA25
1349	Powers and Duties of Service Officers; Availability of Service Records	1115-AA28
1350	Powers and Duties of Service Officers; Availability of Service Records; Nonimmigrant Classes	1115-AA29
1351	Adjustment of Status to That of Persons Admitted for Permanent Residence; Creation of Records of Lawful Admission of Permanent Residence	1115-AA31
1352	Applicant Processing for the Legalization Program; Conforming Amendments	1115-AA38
1353	Bonds	1115-AA41
1354	Temporary Alien Workers Seeking Classification Under the Immigration and Nationality Act	1115-AA44
1355	State Employment Agencies	1115-AA50
1356	Adjustment of Status for Certain Aliens	1115-AA52
1357	Display of Control Numbers	1115-AA54
1358	Temporary Disqualification of Certain Newly Legalized Aliens from Receiving Benefits from Federal Programs of Financial Assistance	1115-AA55
1359	Documentary Requirements: Nonimmigrants; Waivers; Admission of Certain Inadmissible Aliens; Parole	1115-AA59
1360	Certificate of Citizenship	1115-AA67
1361	Nonimmigrant Classes; Special Requirements for Admission; Extension and Maintenance of Status	1115-AA68
1362	Equal Treatment of Fathers	1115-AA76
1363	Immigration User Fee, Conforming Amendments	1115-AA81
1364	Special Agricultural Workers	1115-AA83
1365	Change of Nonimmigrant Classification	1115-AA87
1366	Contracts with Transportation Lines	1115-AA88
1367	Revision of Regulations Regarding the Seizure and Forfeiture of Conveyances	1115-AA95
1368	Adjustment of Status for Certain Aliens	1115-AA97
1369	Documentary Requirements; Nonimmigrants; Waivers; Admission of Certain Inadmissible Aliens; Parole	1115-AB00
1370	Special Agricultural Workers	1115-AB03
1371	Alien Commuters	1115-AB08

Immigration and Naturalization Service—Completed Actions

Sequence Number	Title	Regulation Identifier Number
1372	Seizure and Forfeiture of Vehicles, Vessels and Aircraft	1115-AA26
1373	Inspection of Persons Applying for Admission	1115-AA27
1374	Marriage Fraud Amendment Regulations	1115-AA32
1375	Detention and Release of Juveniles	1115-AA53
1376	Special Agricultural Workers	1115-AA57
1377	Definitions of Felony and Misdemeanor	1115-AA58
1378	Revision of Field Office Listing	1115-AA60
1379	Adjustment of Status for Certain Aliens	1115-AA64
1380	Prevention of Unauthorized Landing of Aliens, by Owners and Operators of Railroad Lines, International Bridges, or Toll Roads	1115-AA72

DOJ

Immigration and Naturalization Service—Completed Actions—Continued

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1383	Public Notice -- Change in Asylum Adjudications	1115-AA94
1384	Direct Mail of Applications and Petitions to the Regional Service Center in San Ysidro, California	1115-AA98
1385	Public Notice, Notice of Proposed Solicitation	1115-AB02
1386	Immigration Forms and Nationality Forms	1115-AB04
1387	Certification of State Governments as Qualified Designated Entities	1115-AB06
1388	Statement of Organization: Ports of Entry for Aliens Arriving by Vessel or by Land Transportation	1115-AB07
1389	Powers and Duties of Service Officers; Availability of Service Records; Authority of District Director and Visa Petitions	1115-AB09
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Legal Activities—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1391	Implementation of the Equal Access to Justice Act in Department of Justice Administrative Proceedings	1105-AA05

Office of Justice Programs—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1392	Criminal Intelligence Systems Operating Policies	1121-AA12

Office of Justice Programs—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1393	Equal Employment Opportunity Program Guidelines	1121-AA10
1394	Nondiscrimination in Federal Assisted Programs -- Implementation of Section 809 (c) (1) of the Justice Assistance Act of 1984	1121-AA11
1395	Criminal Justice Information Systems	1121-AA13

DEPARTMENT OF JUSTICE (DOJ)
Civil Rights Division (CRT)
Final Rule Stage

1330. NONDISCRIMINATION ON THE BASIS OF AGE IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Legal Authority: 42 USC 6103

CFR Citation: 28 CFR 42, Subpart I, (New)

Legal Deadline: None

Abstract: This regulation will implement the Age Discrimination Act of 1975, as amended, in programs or activities assisted by the Department of Justice (DOJ). The statute, 42 USC 6103(a)(4), requires that Federal agencies providing Federal financial assistance promulgate implementing regulations consistent with the general regulations issued by the Secretary of Health and Human Services (HHS), and the statute provides that such agency regulations shall not be effective until approved by HHS. In 1980 the proposed rule was published for comment, modified, approved by the DOJ Office of Legal Counsel, and on November 10, 1980 a draft final rule was forwarded to HHS for approval. On July 13, 1984 HHS conditionally approved the draft regulation. On August 12, 1987 DOJ submitted to HHS a draft final regulation.

DOJ—CRT
Final Rule Stage

Timetable:

Action	Date	FR Cite
NPRM Comment Period End	06/18/80	45 FR 32710
Final Action	00/00/00	

Small Entities Affected: None
Government Levels Affected: Undetermined
Agency Contact: Doreen Dennis, Attorney, Coordination and Review Section, Department of Justice, Civil Rights Division, P.O. Box 66118, Washington, DC 20035-6118, 202 724-2219
RIN: 1190-AA03

DEPARTMENT OF JUSTICE (DOJ)
Civil Rights Division (CRT)
Completed Actions

1331. ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN DEPARTMENT OF JUSTICE PROGRAMS

CFR Citation: 28 CFR 42

Completed:

Reason	Date	FR Cite
Final Action	05/04/88	53 FR 3203
Final Action Effective	05/07/88	

Small Entities Affected: None
Government Levels Affected: Undetermined
Agency Contact: Merrily Raffa 202 724-2216
RIN: 1190-AA16

DEPARTMENT OF JUSTICE (DOJ)
General Administration (DOJADM)
Proposed Rule Stage

1332. DETERMINATION FOR ACCESS TO NATIONAL SECURITY INFORMATION ELIGIBILITY, ADJUDICATION, AND APPEAL PROCEDURES

Legal Authority: EO 12356

CFR Citation: 28 CFR 17

Legal Deadline: None

Abstract: To establish procedures for granting, denying, suspending, and revoking access to national security information originated by, or in the control of, the Department of Justice.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined
Government Levels Affected: Federal
Agency Contact: D. Jerry Rubino, Director, Security and Emergency Planning Staff, Department of Justice, General Administration, 10th & Constitution Avenue, NW, Washington, DC 20530, 202 633-2094
RIN: 1103-AA18

DEPARTMENT OF JUSTICE (DOJ)
General Administration (DOJADM)
Final Rule Stage

1333. RULES OF PRACTICE AND PROCEDURE FOR ADMINISTRATIVE HEARINGS BEFORE ADMINISTRATIVE LAW JUDGES IN CASES INVOLVING ALLEGATIONS OF UNLAWFUL EMPLOYMENT OF ALIENS AND UNFAIR (CONT)

Significance: Agency Priority

Legal Authority: 5 USC 301; 5 USC 554; 8 USC 1103; 8 USC 1324a; 8 USC 1324b

CFR Citation: 28 CFR 68

Legal Deadline: None

Abstract: These regulations will provide the rules of practice and procedure in administrative hearings regarding allegations of unlawful hiring, recruiting or referring for a fee, for employment in the United States of aliens, knowing that the aliens are not authorized to work in the United States, or the continued employment of aliens in the United States knowing the aliens are (or have become) unauthorized to work in the United States, failure to comply with the employment verification requirements and unfair immigration-related employment practices.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/24/87	52 FR 44972
Final Action	11/01/88	
Final Action Effective	11/01/88	

Small Entities Affected: None
Government Levels Affected: None
Additional Information: TITLE CONT: Immigration-Related Employment Practices
Agency Contact: Gerald S. Hurwitz, Counsel to the Director, Department of Justice, General Administration, Executive Office for Immigration Review, 5203 Leesburg Pike, Suite 1609, Falls Church, VA 22041, 703 756-6470
RIN: 1103-AA14

1334. PROCEDURES FOR TAX REFUND OFFSETS FOR THE COLLECTION OF JUDGMENTS

Legal Authority: 31 USC 3720A; 31 USC 3718; 28 USC 509; 28 USC 510

CFR Citation: 28 CFR 11

Legal Deadline: None

Abstract: The proposed regulation will establish procedures for referring to the Department of the Treasury debts for collection by offset against Federal income tax refunds. Authority to do this

DOJ—DOJADM — Final Rule Stage

program expired on June 30, 1988. In limbo at present time pending Congress' action on authorization to extend offset authority. If Congress approves authorization to extend offset authority, we will follow up with necessary action.

Timetable:

Action	Date	FR Cite
NPRM	06/13/88	
NPRM Comment Period End	07/13/88	53 FR 22026
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Robert C. Niffenegger, Department of Justice, General Administration, 10th Street and Constitution Avenue, NW, Washington, DC 20530, 202 633-5345

RIN: 1103–AA19

1335. JUSTICE ACQUISITION REGULATIONS TITLE 48 2870 NONDISCRIMINATION ON THE BASIS OF HANDICAP IN DOJ CONTRACTING ACTIVITIES

Legal Authority: 29 USC 794

CFR Citation: 48 CFR 2870, (New); 48 CFR 2852.270-1

Legal Deadline: None

Abstract: These rules will prohibit discrimination against the handicapped in agency programs or activities conducted by contractors. The rules will not have a significant cost impact on contractors but will enhance services to the handicapped and prevent discrimination.

Timetable:

Action	Date	FR Cite
NPRM	05/18/88	53 FR 17729
NPRM Comment Period End	06/18/88	53 FR 17729
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: W. L. Vann, Procurement Executive, Department of Justice, General Administration, 601 D Street, NW, Room 6406, Washington, DC 20530, 202 272-8354

RIN: 1103–AA17

1336. ◆ ALIENS AND NATIONALITY, ASYLUM AND WITHHOLDING OF DEPORTATION PROCEEDINGS

Significance: Agency Priority

Legal Authority: 8 USC 1103; 8 USC 1158; 8 USC 1253

CFR Citation: 8 CFR 208.10

Legal Deadline: None

Abstract: The proposed regulation change would make certain grounds for the mandatory denial of asylum claims, such as certain serious criminal convictions, applicable in deportation and exclusion proceedings. It would clarify the authority of immigration judges to deny an application for asylum or withholding of deportation for mandatory reasons without an unnecessary evidentiary hearing into other aspects of the alien's case.

Timetable:

Action	Date	FR Cite
NPRM	07/27/88	53 FR 28231
NPRM Comment Period End	08/26/88	53 FR 28231
Final Action	11/01/88	
Final Action Effective	11/01/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Gerald S. Hurwitz, Counsel to the Director, Department of Justice, General Administration, Suite 1609, 5203 Leesburg Pike, Falls Church, VA 22041, 703 756-6470

RIN: 1103–AA19

DEPARTMENT OF JUSTICE (DOJ)
General Administration (DOJADM)

Completed Actions

1337. REPRESENTATION AND APPEARANCES

Significance: Agency Priority

CFR Citation: 8 CFR 292.1

Completed:

Reason	Date	FR Cite
Final Action	03/10/88	53 FR 7727
Final Action Effective	04/11/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Gerald S. Hurwitz 703 756-6470

RIN: 1103–AA55

1338. IMPLEMENTATION OF THE PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

CFR Citation: 28 CFR 0; 28 CFR 71

Completed:

Reason	Date	FR Cite
Final Action	04/08/88	53 FR 11645
Final Action Effective	04/08/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Janis A. Sposato/Michael F. Hertz 202 633-3452

RIN: 1103–AA15

DEPARTMENT OF JUSTICE (DOJ)
Immigration and Naturalization Service (INS)

Proposed Rule Stage

1339. NONIMMIGRANT CLASSES; SPECIAL REQUIREMENTS

Legal Authority: 8 USC 1101; 8 USC 1184

CFR Citation: 8 CFR 214.2(b)

Legal Deadline: None

Abstract: The Immigration and Naturalization Service ("the Service") proposes to restrict the types of situations under which an alien may apply for an extension of stay as a nonimmigrant visitor for pleasure (B-2). Faced with ever-increasing adjudications caseloads and with resources which fail to keep pace with those increases, the Service must continually seek ways to carry out its responsibilities in a more efficient manner. By limiting the situations under which a visitor for pleasure may seek an extension of stay, the Service will decrease the amount of resources which must be dedicated to this area and will be able to increase its efforts in other areas having higher priority.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: Federal

Additional Information: INS Number 1029-88

Agency Contact: Michael L. Shaul, Senior Immigration Examiner, Department of Justice, Immigration and Naturalization Service, 202 633-3946

RIN: 1115–AA63

1340. APPLICATION FOR VERIFICATION OF INFORMATION FROM INS SERVICE RECORDS; FORM AND FEE CANCELLATION

Legal Authority: 8 USC 1103; 31 USC 9701

CFR Citation: 8 CFR 103.7

Legal Deadline: None

Abstract: The Immigration and Naturalization Service ("the Service") entertains numerous requests for Verification of Information from INS Service Records, via Form G-641. This form has been misused as a substitute document, while other INS documents are being prepared (i.e., I-94, I-551 or Certificate of Naturalization or Citizenship). Should an applicant need to have his or her status verified while waiting for one of these documents to be processed, and such verification can be satisfied by obtaining a copy of a document (certified if necessary), an FOIA/PA request can be made. If verification is needed to obtain a benefit and a copy will not suffice, the agency needing verification can make a direct request to the INS and it will be handled as appropriate. Discontinuing the use of Form G-641 will also eliminate the need to request Form G-350, Certification of Birth Data. Requests for this document are minimal since foreign-born children are issued an alien registration receipt card or a citizenship document by INS and no other form of identification should be necessary.

Timetable:

Action	Date	FR Cite
NPRM	06/30/89	
NPRM Comment Period End	09/30/89	

Small Entities Affected: None

Government Levels Affected: Federal

Additional Information: INS Number 1108-88

Agency Contact: Daniel J. Stephan, Assistant Chief Inspector, Department of Justice, Immigration and Naturalization Service, 202 633-2880

RIN: 1115–AA73

1341. ESTABLISHMENT OF NATIONAL FINES OFFICE

Legal Authority: PL 99-591

CFR Citation: 8 CFR 286

Legal Deadline: None

Abstract: This rule establishes a centralized handling of administrative fines; department established as a precursor of National Collections office. Removes workload from district examiners.

Timetable:

Action	Date	FR Cite
NPRM	12/30/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INS Number 1095-88

Agency Contact: Yolanda Sanchez-K, Senior Immigration Examiner, Department of Justice, Immigration and Naturalization Service, 202 633-5814

RIN: 1115–AB01

1342. ACCEPTANCE BY OVERSEAS IMMIGRATION AND NATURALIZATION SERVICE OFFICERS AND AMERICAN CONSULATES OF JURISDICTION OF RELATIVE PETITIONS BASED ON RESIDENCE OF PETITIONERS

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1151; 8 USC 1153; 8 USC 1154; 8 USC 1182; 8 USC 1255

CFR Citation: 8 CFR 204

Legal Deadline: None

Abstract: This amendment revises and clarifies the process used by overseas INS offices and American consulates in accepting jurisdiction of Forms I-130, petitions for alien relatives.

Timetable:

Action	Date	FR Cite
NPRM	12/30/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INS Number 1095-88

Agency Contact: Yolanda Sanchez-K, Senior Immigration Examiner, Department of Justice, Immigration and Naturalization Service, 202 633-5814

RIN: 1115–AB01

1343. ◆ NOTICE OF AVAILABILITY OF PRELIMINARY WORKING DRAFTS OF REPLENISHMENT AGRICULTURAL WORKERS REGULATIONS

Legal Authority: PL 99-603

CFR Citation: 8 CFR 210a

Legal Deadline: None

Abstract: Section 210A of the Immigration Reform and Control Act of 1986 provides for the admission or adjustment of replenishment agricultural workers (RAWs) to temporary residence. This notice announces the availability to the public of a preliminary working draft of the proposed regulations for the admission or adjustment of a RAW to temporary resident status. This action is taken to communicate the availability of the preliminary working draft to interested parties and ensure that the public has an opportunity to provide comments at the preliminary working draft step in the formulation process for the Service's proposed regulations.

DOJ—INS — Proposed Rule Stage

Timetable:

Action	Date	FR Cite
Comments due date	09/14/88	53 FR 30686
NPRM	01/00/89	

Availability
Public Notice–Notice of 09/15/88 (53 FR 30680)

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Additional Information: INS Number 1119-88

Agency Contact: Aaron Bodin, Deputy Assistant Commissioner, Special Agricultural Workers, Department of Justice, Immigration and Naturalization Service, 425 Eye Street NW, Washington, DC 20536, 202 786-5723

RIN: 1115-AB86

1344. ● INS/EOIR FEE REVIEW

Significance: Agency Priority

Legal Authority: 31 USC 9701

CFR Citation: 8 CFR 103.7

Legal Deadline: None

Abstract: This rule proposes to amend the existing fee schedule of the Immigration and Naturalization Service and the Executive Office for Immigration Review (EOIR). These changes are necessary to place the financial burden of providing special services and benefits which do not accrue to the public at large on the recipients of these special services and benefits. Charges have been adjusted to more nearly reflect the current recovery cost of providing these special services and benefits, taking into account public policy and other pertinent facts.

Timetable:

Action	Date	FR Cite
NPRM	09/30/88	
NPRM Comment Period End	11/29/88	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Additional Information: INS Number F-88

Agency Contact: Charles S. Thomason, Jr., Systems Accountant, Finance Branch, Department of Justice, Immigration and Naturalization Service, 425 Eye Street, NW, Washington, DC 20536, 202 633-4705

RIN: 1115–AB11

DEPARTMENT OF JUSTICE (DOJ) — Final Rule Stage

Immigration and Naturalization Service (INS)

1345. ASYLUM PROCEDURES

Significance: Regulatory Program

Legal Authority: 8 USC 1103; 8 USC 1158; 8 USC 1182; 8 USC 1225; 8 USC 1226; 8 USC 1252; 8 USC 1253; 8 USC 1283

CFR Citation: 8 CFR 208; 8 CFR 236.3; 8 CFR 242.17(c); 8 CFR 243.9; 8 CFR 253.1(f); 8 CFR 3

Legal Deadline: None

Abstract: The proposed rule would set forth procedures to be used in adjudicating asylum and withholding of deportation applications under sections 208 and 243(h) of the Immigration and Nationality Act.

Timetable:

Action	Date	FR Cite
NPRM	08/28/87	52 FR 32552
NPRM Comment Period End	10/27/87	52 FR 32552
Final Action	11/30/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: DOJ Order Number 1211-87

Agency Contact: Ralph B. Thomas, Immigration Inspector, Department of Justice, Immigration and Naturalization Service, 425 Eye St., NW, Washington, DC 20536, 202 633-3483

RIN: 1115–AA13

1346. DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE; DIRECT TRANSITS

Legal Authority: 8 USC 1182

CFR Citation: 8 CFR 212.7(d)

Legal Deadline: None

Abstract: This final rule outlines requirements for approval of section 212(k) waivers, including an amended I-193 for use in making the application.

Timetable:

Action	Date	FR Cite
Final Action	12/30/88	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Harvey Adler, Assistant Chief Inspector, Department of Justice, Immigration and Naturalization Service, 425 Eye St., NW, Washington, DC 20536, 202 633-3725

RIN: 1115–AA19

1347. ● POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

Legal Authority: 8 USC 1103; Office of Management and Budget Circular A-25

CFR Citation: 8 CFR 103

Legal Deadline: None

Abstract: This rule proposes to amend the fee schedule of the Immigration and Naturalization Service. This change will add fees for two new forms created as a result of the Immigration Marriage Fraud Amendments of 1986 (IMFA). These forms are the Joint Petition to Remove the Conditional Basis of Alien's Permanent Resident Status (Form I-751) and the Application for Waiver of Requirement to File Joint Petition for Removal of Conditions (Form I-752). The proposed charges reflect the estimated cost of providing the benefits and services to the public, taking into account public policy and other pertinent facts.

Timetable:

Action	Date	FR Cite
NPRM	01/27/88	53 FR 2426
Final Action	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Additional Information: INS Number E-88

DOJ—INS — Final Rule Stage

Agency Contact: Michael Shaul, Senior Immigration Examiner, Department of Justice, Immigration and Naturalization Service, 425 Eye Street, NW, Washington, DC 20536, 202 633-3946

RIN: 1115–AA21

1348. NONIMMIGRANT CLASSES; TEMPORARY EMPLOYEES

Significance: Regulatory Program

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1182; 8 USC 1184; 8 USC 1258

CFR Citation: 8 CFR 214.2(h)

Legal Deadline: None

Abstract: The Immigration Reform and Control Act of 1986 (IRCA) imposes sanctions against employers who hire aliens not authorized to work. Since many of the nation's agricultural employers have become dependent upon such workers to meet production and harvesting needs, Congress created the Special Agricultural Workers (SAW) Program and the Replenishment Agricultural Workers (RAW) Program to provide permanent resident status to certain agricultural workers. To clarify the process through which employers can employ nonimmigrant seasonal and temporary agricultural workers, Congress moved agricultural employment from H-2 classification into a separate H-2A class, and incorporated a labor certification process into the statute. This interim rule establishes special H-2A regulatory criteria. It supplements the Department of Labor's rules covering the temporary agricultural labor certification process. This rule amends Service regulations relating therefore to temporary alien workers seeking classification under section 101(a)(15) (H) of the Immigration and Nationality Act.

Timetable:

Action	Date	FR Cite
NPRM	08/08/86	51 FR 28576
NPRM Comment Period End	10/07/86	51 FR 28576
Interim Final Rule	06/01/87	52 FR 20554
Interim Rule Effective Date	06/01/87	52 FR 20554
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: Federal

Additional Information: INS Number 1006-86

Agency Contact: Michael L. Aytes, Senior Immigration Examiner, Department of Justice, Immigration and Naturalization Service, 425 Eye St., NW, Washington, DC 20536, 202 633-3946

RIN: 1115–AA25

1349. POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

Legal Authority: 8 USC 1103

CFR Citation: 8 CFR 103.2(b)

Legal Deadline: None

Abstract: This proposed rule would authorize a district director to withhold adjudication of a visa petition or application when determined necessary to pursue a criminal investigation.

Timetable:

Action	Date	FR Cite
NPRM	05/30/86	51 FR 19559
NPRM Comment Period End	07/29/86	51 FR 19559
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Lori Scialabba, Assistant General Counsel, Department of Justice, Immigration and Naturalization Service, 425 Eye St., NW, Washington, DC 20536, 202 633-3197

RIN: 1115–AA28

1350. POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS; NONIMMIGRANT CLASSES

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1182; 8 USC 1184; 8 USC 1351; 8 USC 1454; 8 USC 1455

CFR Citation: 8 CFR 103.1(f)(1); 8 CFR 214.4

Legal Deadline: None

Abstract: This proposed rule would revise the procedures and authority to withdraw approval of a school to enroll foreign students.

Timetable:

Action	Date	FR Cite
NPRM	11/05/86	51 FR 40207
NPRM Comment Period End	01/05/87	51 FR 40207
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: Federal

Additional Information: INS Number C-88

Agency Contact: Joanna London, Associate General Counsel, Department of Justice, Immigration and Naturalization Service, 425 Eye St., NW, Washington, DC 20536, 202 633-2895

RIN: 1115–AA29

1351. ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR PERMANENT RESIDENCE; CREATION OF RECORDS OF LAWFUL ADMISSION OF PERMANENT RESIDENCE

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1151; 8 USC 1153; 8 USC 1154; 8 USC 1182; 8 USC 1255; 8 USC 1257; 8 USC 1259

CFR Citation: 8 CFR 245.1; 8 CFR 245.6; 8 CFR 245.7; 8 CFR 245.8; 8 CFR 245.9; 8 CFR 249.2

Legal Deadline: None

Abstract: This interim rule will implement sections 117, 202, and 203 of the Immigration Reform and Control Act of 1986. Section 107 contains prohibitions on adjustment of lawful permanent resident status by certain individuals. Section 202 provides for adjustment to lawful permanent resident status by certain nationals of Cuba and Haiti. Section 203 changes the registry date for creation of record of lawful permanent residence from June 30, 1948 to January 1, 1972.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/03/87	52 FR 6320
Correction of legal citation	04/27/87	52 FR 13827
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: Federal

Additional Information: INS Number 1031-87

Agency Contact: Joseph D. Cuddihy, Senior Immigration Examiner, Department of Justice, Immigration and Naturalization Service, 425 Eye St., NW, Washington, DC 20536, 202 633-3328

RIN: 1115–AA31

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DOJ—INS

Final Rule Stage

1352. ● APPLICANT PROCESSING FOR THE LEGALIZATION PROGRAM; CONFORMING AMENDMENTS

Significance: Regulatory Program

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1201; 8 USC 1301; 8 USC 1302; 8 USC 1303; 8 USC 1304; 8 USC 1305; 8 USC 1351; 8 USC 1443; 8 USC 1454; 8 USC 1455; 66 Stat 173; 66 Stat 191; 66 Stat 223; ...

CFR Citation: 8 CFR 100; 8 CFR 103; 8 CFR 284; 8 CFR 299

Legal Deadline: None

Abstract: This rule proposed to amend certain regulations to conform to proposed regulation changes published at 53 FR 29804, 8-8-88. These provisions relate to the processing of applicants for permanent residence under the Legalization Program as authorized by the Immigration Reform and Control Act of 1986 (IRCA). The Service published conforming amendment regulations at 52 FR 16205, May 1, 1987. This rule affects some of these regulations.

Timetable:

Action	Date	FR Cite
Phase I of IRCA Final Rule	05/01/87	52 FR 16190
NPRM	08/08/88	53 FR 29818
NPRM Comment Period End	09/07/88	53 FR 29818
Final Action Effective	01/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Additional Information: INS Number 1020R-88. This proposed rule initiates Phase II of the IRCA program which was initiated in 1987. Phase I activities were presented in the FR at the following citations: 52 FR 8740, 3-19-87 and 52 FR 16190, 5-1-87.

Agency Contact: Terrance O'Reilly, Deputy Assistant Commissioner, Legalization, Department of Justice, Immigration and Naturalization Service, 425 I Street, NW, Washington, DC [illegible]

RIN: 1115–AA39

1353. BONDS

Legal Authority: 5 USC 552(A); 8 USC 1101; 8 USC 1103; 8 USC 1201; 8 USC 1301; 8 USC 1302; 8 USC 1303; 8 USC 1304; 8 USC 1305; 8 USC 1351; 8 USC 1443; 8 USC 1454; 8 USC 1455; 28 USC 1746; 7 USC 2243; ...

CFR Citation: 8 CFR 103

Legal Deadline: None

Abstract: This rule proposes to eliminate surety bonds as acceptable security on immigration appearance, public charge, and maintenance of status and departure bonds. This change is necessary to increase alien appearances and minimize dollar losses to the U.S.

Timetable:

Action	Date	FR Cite
NPRM	07/01/87	52 FR 24475
NPRM Comment Period End	07/31/87	52 FR 24475
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Additional Information: INS Number 1038-87

Agency Contact: Wanda LaBey, Associate General Counsel, Department of Justice, Immigration and Naturalization Service, 202 376-2834

RIN: 1115–AA41

1354. TEMPORARY ALIEN WORKERS SEEKING CLASSIFICATION UNDER THE IMMIGRATION AND NATIONALITY ACT

Legal Authority: 8 USC 1101

CFR Citation: 8 CFR 214.2(h)

Legal Deadline: None

Abstract: The proposed rule amends regulations of the INS relating to Temporary Alien Workers seeking classification under section 101(a) (15) (H) of the Immigration and Nationality Act.

Timetable:

Action	Date	FR Cite
NPRM	08/08/86	51 FR 28576
NPRM Comment Period End	10/07/86	51 FR 28576
Final Action	11/30/88	

Small Entities Affected: None

Government Levels Affected: Federal

Additional Information: INS Number 1040-86

Agency Contact: Flora Richardson, Senior Immigration Examiner, Department of Justice, Immigration and Naturalization Service, 202 633-3246

RIN: 1115–AA44

1355. STATE EMPLOYMENT AGENCIES

Significance: Agency Priority

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1324a; PL 99-603

CFR Citation: 8 CFR 274a.6

Legal Deadline: None

Abstract: This interim rule amends the regulations at 8 CFR 274a.6, defining procedures for State employment agencies in verifying the identity and employment eligibility of individuals and certifying verifications to employers.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/09/87	52 FR 43050
Effective date of Interim Rule	11/09/87	52 FR 43050
Comment period closes on Interim Rule	01/08/88	52 FR 43050
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: State, Federal

Additional Information: INS Number 1046-87

Agency Contact: Christopher Pohl, Senior Special Agent, Department of Justice, Immigration and Naturalization Service, 202 633-4485

RIN: 1115–AA50

1356. ● ADJUSTMENT OF STATUS FOR CERTAIN ALIENS

Significance: Regulatory Program

Legal Authority: 8 USC 1101; PL 99-603; 100 Stat. 3359

CFR Citation: 8 CFR 245a

Legal Deadline: Other, Statutory, July 7, 1988.

Abstract: Section 201 of the Immigration Reform and Control Act of 1986 (IRCA) provides for the legalization of certain aliens who have been residing illegally in the United States since before January 1, 1982. This section directs the Attorney General to adjust the status of a temporary resident alien to that of an alien lawfully admitted for permanent residence if the alien meets certain requirements. This proposed rule addresses the adjustment of status of temporary resident aliens lawfully admitted for permanent residence.

Timetable:

Action	Date	FR Cite
Phase I of IRCA Final Rule	05/01/87	52 FR 15205
NPRM	08/08/88	53 FR 29804
NPRM Comment Period End	09/07/88	53 FR 29804
Final Action Effective	01/00/89	

Small Entities Affected: None

Government Levels Affected: Federal

Additional Information: INS Number 1022R-88 This proposed rule initiates Phase II of the IRCA program which was initiated in 1987. Phase I activities were presented in the FR at the following citations: 52 FR 8752, 3-19-87 and 52 FR 16205, 5-1-87.

Agency Contact: Terrance O'Reilly, Deputy Assistant Commissioner, Legalization, Department of Justice, Immigration and Naturalization Service, 425 I Street, NW, Washington, DC [illegible]

RIN: 1115–AA52

1357. DISPLAY OF CONTROL NUMBERS

Legal Authority: 66 Stat. 173; 8 USC 1103

CFR Citation: 8 CFR 299.5

Legal Deadline: None

Abstract: A new Section 299.5 is being added to 8 CFR Part 299. The new section, titled Display of Control Numbers, will allow the Immigration and Naturalization Service (Service), to compile, in one centralized location within its regulations, a listing of all current Service public use forms and their respective control numbers as assigned by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The consolidated identification of public use forms will enable both Service officials and the public to easily identify those public use forms in current use by the Immigration and Naturalization Service.

Timetable:

Action	Date	FR Cite
Final Action	10/31/88	

Small Entities Affected: None

Government Levels Affected: Federal

Additional Information: INS Number 1065-88

Agency Contact: Sharon A. Andrade, Management Analyst, Department of Justice, Immigration and Naturalization Service, 202 633-3291

RIN: 1115–AA54

1358. TEMPORARY DISQUALIFICATION OF CERTAIN NEWLY LEGALIZED ALIENS FROM RECEIVING BENEFITS FROM FEDERAL PROGRAMS OF FINANCIAL ASSISTANCE

Significance: Agency Priority

Legal Authority: 8 USC 1101 (Note); PL 99-603; 100 Stat. 3359

CFR Citation: 8 CFR 245a

Legal Deadline: None

Abstract: This proposed rule implements section 245A of the Immigration and Nationality Act ("ACT"), as amended by section 201 of the Immigration Reform and Control Act of 1986, PL 99-603 ("IRCA"). Section 245A(h) of the Act provides that, with certain exceptions, aliens granted lawful temporary resident status pursuant to section 245A(a) are not eligible for a period of five years after such grant to receive benefits from programs of financial assistance furnished under Federal law on the basis of financial need. The Attorney General is required by section 245A(h)(1)(A)(i) of the Act to identify such programs after consultation with other appropriate heads of the various departments and agencies of Government. This proposed rule implements such provision.

Timetable:

Action	Date	FR Cite
NPRM	08/24/87	52 FR 31784
NPRM Comment Period End	09/23/87	52 FR 31784
Final Action	10/30/88	

Small Entities Affected: None

Government Levels Affected: Federal

Analysis: Regulatory Impact Analysis

Additional Information: INS Number 1039-88

Agency Contact: Paul W. Virtue, Deputy General Counsel, Department of Justice, Immigration and Naturalization Service, 202 633-2656

RIN: 1115–AA55

1359. DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

Legal Authority: 8 USC 1103; 8 USC 1182

CFR Citation: 8 CFR 212.1(e)(3)

Legal Deadline: None

Abstract: This rule amends the listing of countries, for which transit without visa privileges is unavailable, to include Syria.

Timetable:

Action	Date	FR Cite
Interim Final Rule	00/00/00	

Small Entities Affected: None

Government Levels Affected: Federal

Additional Information: INS Number 1013-88

Agency Contact: Y. Peggy Wong, Assistant Chief Inspector, Department of Justice, Immigration and Naturalization Service, 202 633-4033

RIN: 1115–AA59

1360. CERTIFICATE OF CITIZENSHIP

Legal Authority: PL 99-653; 8 USC 1103; 8 USC 1409(c); 8 USC 1434; 8 USC 1444; 8 USC 1448; 8 USC 1452; 8 USC 1455

CFR Citation: 8 CFR 341

Legal Deadline: None

Abstract: This rule change will implement section 22 of P.L. 99-653, the Immigration and Nationality Act Amendments of 1986, regarding issuance of certificates of citizenship for adopted children. The effect of this rule change is to facilitate acquisition of United States citizenship by adopted alien children once they enter the United States.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/22/87	52 FR 13229

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DOJ—INS

Final Rule Stage

Action	Date	FR Cite
Notice of Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: Federal

Additional Information: INS Number 1007-88

Agency Contact: Thomas E. Cook, Senior Immigration Examiner, Department of Justice, Immigration and Naturalization Service, 202 633-5014

RIN: 1115–AA67

1361. NONIMMIGRANT CLASSES; SPECIAL REQUIREMENTS FOR ADMISSION, EXTENSION AND MAINTENANCE OF STATUS

Legal Authority: 8 USC 1101 (a)(15)(B); 8 USC 1184

CFR Citation: 8 CFR 214.2(b)

Legal Deadline: None

Abstract: This notice announces the intent of the Immigration and Naturalization Service ("the Service") to set forth, in regulatory form, the special requirements for admission, extension and maintenance of status of nonimmigrant alien visitors for business and visitors for pleasure. Much of the Service's written policy relating to this subject is now contained in the Service's Operations Instructions at O.I. 214.2(b). Because it is more appropriate for interpretations and rules to be set forth in regulatory form, this information will become part of 8 CFR 214. In addition, the proposed rulemaking will clarify the criteria for according B-1 classification to members of certain occupations (such as participants in religious programs and members of foreign film crews). By issuing this advance notice, the Service is providing an opportunity to the public to submit comments and make suggestions at an earlier stage of the process. This will result in a proposed rule which is more comprehensive in its scope and more understandable to the public.

Timetable:

Action	Date	FR Cite
ANPRM	10/01/87	52 FR 36783
ANPRM Comment Period End	11/16/87	52 FR 36783
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: Federal

Additional Information: INS Number 1035-87

Agency Contact: Michael L. Shaul, Senior Immigration Examiner, Department of Justice, Immigration and Naturalization Service, 202 633-3946

RIN: 1115–AA66

1362. EQUAL TREATMENT OF FATHERS

Legal Authority: PL 99-603; 8 USC 1101; 8 USC 1103; 8 USC 1151; 8 USC 1153; 8 USC 1154; 8 USC 1182; 8 USC 1255

CFR Citation: 8 CFR 204

Legal Deadline: None

Abstract: This revision is to assist in the implementation of PL 99-603, the Immigration Reform and Control Act of 1986, which recognizes, for preference petition purposes, the relationship between a biological father and his illegitimate child.

Timetable:

Action	Date	FR Cite
Interim Final Rule	00/00/00	

Small Entities Affected: None

Government Levels Affected: Federal

Additional Information: INS Number 1049-87

Agency Contact: Thomas E. Cook, Senior Immigration Examiner, Department of Justice, Immigration and Naturalization Service, 202 633-5014

RIN: 1115–AA76

1363. IMMIGRATION USER FEE, CONFORMING AMENDMENTS

Significance: Regulatory Program

Legal Authority: 8 USC 1103; 8 USC 1356; PL 99-591

CFR Citation: 8 CFR 232; 8 CFR 233; 8 CFR 235; 8 CFR 237; 8 CFR 238; 8 CFR 239; 8 CFR 271; 8 CFR 273; 8 CFR 280; 8 CFR 299

Legal Deadline: None

Abstract: Section 101(b) subsection 205 of the Department of Justice Appropriation Act, 1987 (PL 99-591) establishes the collection, payment, and remittance of a specific user fee for the Immigration inspection or preinspection of passengers (with certain exceptions) arriving in the U.S. aboard commercial aircraft or commercial vessels. Subsection 206 of PL 99-591 places the responsibility for physical custody of excludable aliens pursuant to former section 233 of the I & N Act of 1952, as amended on the INS. This proposed rule addresses this change from carrier responsibility to INS responsibility. This rule would also amend present regulations to conform to statutory deletions and amendments.

Timetable:

Action	Date	FR Cite
NPRM	01/22/88	53 FR 1791
NPRM Comment Period End	03/22/88	53 FR 1791
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: Federal

Additional Information: INS Number 1037-88

Agency Contact: Charles S. Thomason, Jr., Systems Accountant, Department of Justice, Immigration and Naturalization Service, 202 633-4706

RIN: 1115–AA81

1364. SPECIAL AGRICULTURAL WORKERS

Significance: Agency Priority

Legal Authority: PL 99-603; 100 Stat. 3359; 8 USC 1101 note; 8 USC 1301; 8 USC 1302; 8 USC 1303; 8 USC 1304; 8 USC 1305; 8 USC 1351; 8 USC 1443; 8 USC 1454; 8 USC 1455; 8 USC 1182; 8 USC 1252; 8 USC 1362; ...

CFR Citation: 8 CFR 103; 8 CFR 210; 8 CFR 242

Legal Deadline: None

Abstract: This rule implements a new amendment to section 210 of the INA by deleting the entry cut-off date for eligibility to file applications under section 210 in the United States; and establishing standards and procedures for processing "preliminary applications" at designated ports of entry on the southern land border. This rule clarifies and makes various grammatical and technical amendments to the regulations governing the Special Agricultural Worker Program including changes necessitated by the new amendments to section 210. The rule defines the term "preliminary application"; deletes the limitation on the authority of District Directors to deny applications at legalization offices; deletes the filing date requirement for eligible aliens apprehended prior to the application period; clarifies the provision concerning where appeals under Part 210 are to be filed; deletes the references to issuance of an Order to Show Cause and Warrant of Arrest in cases where the United States Attorney declines prosecution; clarifies the provision requiring notification of decisions to the applicant's representative; confirms that Special Agricultural Worker (CONT)

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/29/88	53 FR 10062
Comment period closes	04/28/88	53 FR 10062

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Federal

Additional Information: INS Number 1101-88

ADDITIONAL ABSTRACT: (SAW) applicants are permitted to travel outside the United States and reenter upon the presentation of a valid unexpired Form I-668A; provides for eligible applicants to be issued the Temporary Resident Card at any Legalization Office; and, deletes the transitional admission.

Agency Contact: Aaron Bodin, Deputy Assistant Commissioner, Special Agricultural Workers (SAW), Department of Justice, Immigration and Naturalization Service, 202 786-3658

RIN: 1115–AA83

1365. CHANGE OF NONIMMIGRANT CLASSIFICATION

Legal Authority: PL 99-603; 8 USC 1101; 8 USC 1103; 8 USC 1184; 8 USC 1257; 8 USC 1258

CFR Citation: 8 CFR 248

Legal Deadline: None

Abstract: This rule change will implement section 312 of PL 99-603, the Immigration Reform and Control Act of 1986, to facilitate an application for a change to nonimmigrant (N) status while in the United States.

DOJ—INS

Final Rule Stage

Timetable:

Action	Date	FR Cite
Interim Final Effective Date	11/06/86	52 FR 11621
Interim Final Rule	05/11/87	52 FR 11621
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: Federal

Additional Information: INS Number 1000-87

Agency Contact: Thomas E. Cook, Senior Immigration Examiner, Department of Justice, Immigration and Naturalization Service, 202 633-5014

RIN: 1115–AA67

1366. CONTRACTS WITH TRANSPORTATION LINES

Legal Authority: 8 USC 1103; 8 USC 1228

CFR Citation: 8 CFR 238

Legal Deadline: None

Abstract: This rule amends the listing of transportation lines which have entered into agreements with the INS for the preinspection of their passengers and crew at locations outside the United States.

Timetable:

Action	Date	FR Cite
Update listing as required quarterly, bi-annually, or annually	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: INS Number 1041-88

Agency Contact: Y. Peggy Wong, Assistant Chief Inspector, Department of Justice, Immigration and Naturalization Service, 202 633-4033

RIN: 1115–AA88

1367. REVISION OF REGULATIONS REGARDING THE SEIZURE AND FORFEITURE OF CONVEYANCES

Legal Authority: 8 USC 1103; 8 USC 1324(b)

CFR Citation: 8 CFR 274

Legal Deadline: None

Abstract: The rule revises the extant regulations regarding (conveyances seizures and forfeitures) by the INS. It clarifies and amends the regulations to reflect changes in the authorizing statute, section 274(b) of the Immigration and Nationality Act (8 USC 1324(b)), and applicable provisions of regulations of the Department of Justice in 28 CFR Part 9.

Timetable:

Action	Date	FR Cite
Final Action	10/00/88	

Small Entities Affected: Business

Government Levels Affected: Federal

Additional Information: INS Number 1061-87

Agency Contact: David Yost, Associate General Counsel, Department of Justice, Immigration and Naturalization Service, 202 633-2554

RIN: 1115–AA95

1368. ADJUSTMENT OF STATUS FOR CERTAIN ALIENS

Legal Authority: PL 99-603; 100 Stat. 3359; 8 USC 1101 (Note); PL 100-204; 101 Stat. 1331

CFR Citation: 8 CFR 245a

Legal Deadline: None

Abstract: This rule amends the regulations published in the Federal Register at 52 FR 16205 on May 1, 1987, and 52 FR 43843 published on November 17, 1987. The rule further provides for another class of eligible aliens, specifically, certain nationals of countries for which extended voluntary departure (EVD) was made available at any time during the 5 year period ending on November 1, 1987.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/21/88	53 FR 9274
Comment period closes	04/20/88	53 FR 9274
Final Action	01/00/89	

Small Entities Affected: None

Government Levels Affected: Federal

Additional Information: INS Number 1106-88

Agency Contact: Terrance M. O'Reilly, Deputy Assistant Commissioner,

DOJ—INS

Final Rule Stage

Department of Justice, Immigration and Naturalization Service, [illegible]

RIN: 1115–AA87

1369. DOCUMENTARY REQUIREMENTS; NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

Legal Authority: 8 USC 1101; 8 USC 1102; 8 USC 1103; 8 USC 1182; 8 USC 1184; 8 USC 1225; 8 USC 1226; 8 USC 1252; 48 FR 8039; 8 CFR 2

CFR Citation: 8 CFR 212

Legal Deadline: None

Abstract: This rule expands the coverage of the waiver of inadmissibility of mentally retarded aliens seeking entry as nonimmigrants.

Timetable:

Action	Date	FR Cite
NPRM	02/05/88	53 FR 3403
NPRM Comment Period End	04/05/88	53 FR 3403
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: Federal

Additional Information: INS Number 1102-87

Agency Contact: Janice Podolny, Associate General Counsel, Department of Justice, Immigration and Naturalization Service, [illegible]

RIN: 1115–AB00

1370. ● SPECIAL AGRICULTURAL WORKERS

Significance: Agency Priority

Legal Authority: PL 99-603; 100 Stat 3359; 8 USC 1101 note

CFR Citation: 8 CFR 210

Legal Deadline: None

Abstract: Section 210 (b) (3) (ii) of the Immigration Reform and Control Act of 1986 (IRCA) provides for the Attorney General to promulgate regulations relative to securing timely production of employment records from employers or farm labor contractors under the Special Agricultural Worker (SAW) program. This rule identifies Service procedures in securing SAW employment records.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/20/88	53 FR 27335
Effective date	07/20/88	53 FR 27335
Comments due to INS by	09/19/88	53 FR 27335
Final Action Effective	01/00/89	

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: INS Number 1118-88

Agency Contact: Aaron Bodin, Deputy Assistant Commissioner, SAW, Department of Justice, Immigration and Naturalization Service, 425 I Street NW, Washington, DC 20536, 202 786-3858

RIN: 1115–AB03

1371. ● ALIEN COMMUTERS

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1181; 8 USC 1182; 8 USC 1203; 8 USC 1225; 8 USC 1257

CFR Citation: 8 CFR 211

Legal Deadline: None

Abstract: This rule amends 8 CFR 211.5 to provide that commuter aliens, in order to retain resident status, must demonstrate either that they have not been unemployed for a continuous period of six months or that they have worked ninety days, in the aggregate, during the twelve-month period preceeding their application for admission into the United States. The current regulations governing alien commuters provide for a loss of permanent resident status to commuters who have been out of regular employment in the United States for a continuous period of six months.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/23/88	53 FR 18259
Interim Final Rule Effective	05/23/88	53 FR 18259
Interim Final Rule Public Comment Period End	06/22/88	53 FR 18259
Final Action Effective	01/00/89	

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: INS Number 1105-88

Agency Contact: Aaron Bodin, Deputy Assistant Commissioner, Special Agricultural Workers, Department of Justice, Immigration and Naturalization Service, 425 I Street, NW, Washington, DC 20536, 202 633-5386

RIN: 1115–AB08

DEPARTMENT OF JUSTICE (DOJ)

Immigration and Naturalization Service (INS)

Completed Actions

1372. SEIZURE AND FORFEITURE OF VEHICLES, VESSELS AND AIRCRAFT

CFR Citation: 8 CFR 274

Completed:

Reason	Date	FR Cite
Duplicate of RIN 1115-AA85	08/26/88	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Paul Virtue 202 633-3656

RIN: 1115–AA26

1373. INSPECTION OF PERSONS APPLYING FOR ADMISSION

CFR Citation: 8 CFR 235.11

Completed:

Reason	Date	FR Cite
Withdrawn due to passage of PL 99-591, Sec 205	02/26/88	53 FR 5756

Small Entities Affected: None

Government Levels Affected: Federal

DOJ—INS

Completed Actions

Agency Contact: Charles S. Thomason, Jr. 202 633-4705

RIN: 1115–AA27

1374. MARRIAGE FRAUD AMENDMENT REGULATIONS

Significance: Regulatory Program

CFR Citation: 8 CFR 204.1; 8 CFR 205.1; 8 CFR 211.1; 8 CFR 212.7; 8 CFR 214.2; 8 CFR 216.1; 8 CFR 216.2; 8 CFR 216.3; 8 CFR 216.4; 8 CFR 216.5; 8 CFR 223.2; 8 CFR 223a.4; 8 CFR 235.11; 8 CFR 242.7; 8 CFR 242.17; ...

Completed:

Reason	Date	FR Cite
Final Action	08/10/88	53 FR 30011
Final Action Effective	09/10/88	53 FR 30011

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Michael L. Shaul 202 633-3946

RIN: 1115–AA32

1375. DETENTION AND RELEASE OF JUVENILES

CFR Citation: 8 CFR 212; 8 CFR 242

Completed:

Reason	Date	FR Cite
Final Action	05/17/88	53 FR 17449
Final Action Effective	05/17/88	53 FR 17449

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Mary Ruth Calhoun 202 633-4128

RIN: 1115–AA53

1376. SPECIAL AGRICULTURAL WORKERS

Significance: Agency Priority

CFR Citation: 8 CFR 210

Completed:

Reason	Date	FR Cite
Incorporated into RIN 1115-AA83	08/26/88	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Agency Contact: Gerald Heinauer 202 633-4657

RIN: 1115–AA57

1377. DEFINITIONS OF FELONY AND MISDEMEANOR

CFR Citation: 8 CFR 245a

Completed:

Reason	Date	FR Cite
Final Action	03/28/88	53 FR 9862
Final Action Effective	03/28/88	53 FR 9862

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Lori Scialabba 202 633-3187

RIN: 1115–AA58

1378. REVISION OF FIELD OFFICE LISTING

CFR Citation: 8 CFR 100.4(d); 8 CFR 337; 8 CFR 341

Completed:

Reason	Date	FR Cite
Final Action	06/23/88	53 FR 23603
Final Action Effective	06/23/88	53 FR 23603

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Raymond Jaroneski 202 633-1100

RIN: 1115–AA60

1379. ADJUSTMENT OF STATUS FOR CERTAIN ALIENS

CFR Citation: 8 CFR 245a

Completed:

Reason	Date	FR Cite
Final Action	06/22/88	53 FR 23380
Final Action Effective	06/22/88	53 FR 23380

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Terrance M. O'Reilly 202 633-4657

RIN: 1115–AA64

1380. PREVENTION OF UNAUTHORIZED LANDING OF ALIENS, BY OWNERS AND OPERATORS OF RAILROAD LINES, INTERNATIONAL BRIDGES, OR TOLL ROADS

CFR Citation: 8 CFR 271

Completed:

Reason	Date	FR Cite
Final Action	07/11/88	53 FR 26035
Final Action Effective	07/11/88	53 FR 26035

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Daniel Stephen 202 633-2745

RIN: 1115–AA72

1381. VISA WAIVER PILOT PROGRAM

Significance: Agency Priority

CFR Citation: 8 CFR 212

Completed:

Reason	Date	FR Cite
Final Action	06/30/88	53 FR 24898
Final Action Effective	07/01/88	53 FR 24898

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Agency Contact: Y. Peggy Wong 202 633-4833

RIN: 1115–AA75

1382. RULE REVISION TO ADD NEW SPECIAL IMMIGRANT AND NONIMMIGRANT CLASSIFICATIONS

CFR Citation: 8 CFR 101; 8 CFR 214

Completed:

Reason	Date	FR Cite
Final Action	07/12/88	53 FR 26230

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Thomas E. Cook 202 633-5814

RIN: 1115–AA80

1383. ● PUBLIC NOTICE – CHANGE IN ASYLUM ADJUDICATIONS

Legal Authority: 8 USC 1101; 8 USC 1158; 94 Stat 105

CFR Citation: 8 CFR 208

Legal Deadline: None

Abstract: Beginning November 2, 1987, the Bureau of Human Rights and Humanitarian Affairs (BHRHA) in the Department of State will no longer issue an advisory opinion for each request submitted by the Immigration and Naturalization Service. They will, however, respond to each case

notifying the INS of their disposition. This procedure modifies INS operating procedures/instructions (208.8e) and District Directors of the INS have been instructed to proceed to a final determination on an asylum request when BHRHA has indicated that no opinion will be provided. Asylum adjudicators have been instructed that in cases where they are unable to make a final decision without input from the Department of State, they are to pose specific questions which will be addressed by BHRHA.

Timetable:

Action	Date	FR Cite
Public Notice	02/02/88	53 FR 2893

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Additional Information: INS Number 1089-88

Agency Contact: Ralph Thomas, Deputy Assistant Commissioner, Refugee, Asylum, and Parole, Department of Justice, Immigration and Naturalization Service, 425 I Street, NW, Washington, DC 20536, 202 633-5483

RIN: 1115–AA94

1384. ● DIRECT MAIL OF APPLICATIONS AND PETITIONS TO THE REGIONAL SERVICE CENTER IN SAN YSIDRO, CALIFORNIA

Legal Authority: 8 USC 1103

CFR Citation: 8 CFR 100

Legal Deadline: None

Abstract: Applications and petitions for benefits under the Immigration and Nationality Act are currently being filed at district offices within the Western Region. This notice establishes the Regional Service Center in San Ysidro, California as the one approved filing locating for the applications and petitions described in this notice and in the corrected notice.

Timetable:

Action	Date	FR Cite
Notice of change of location where applications and petitions are filed	02/24/88	53 FR 5479
Correction to notice published at 53 FR 5479	03/22/88	53 FR 9362

Small Entities Affected: None

Government Levels Affected: Federal

Additional Information: INS Number 1104-88

Agency Contact: Lloyd Sutherland, Senior Immigration Examiner, Department of Justice, Immigration and Naturalization Service, 425 I Street, NW, Washington, DC 20536, 202 633-3946

RIN: 1115–AA96

1385. PUBLIC NOTICE, NOTICE OF PROPOSED SOLICITATION

CFR Citation: 8 CFR 245

Completed:

Reason	Date	FR Cite
Public Notice	06/06/88	53 FR 21535

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Terrance M. O'Reilly 202 786-3638

RIN: 1115–AD02

1386. ● IMMIGRATION FORMS AND NATIONALITY FORMS

Legal Authority: 8 USC 1101; 8 USC 1103

CFR Citation: 8 CFR 299; 8 CFR 499

Legal Deadline: None

Abstract: This rule revises the listings of forms (Immigration Forms, and Nationality Forms) that are contained in 8 CFR Parts 299 and 499. This revision is necessary to ensure that the Immigration and Naturalization Service uses and accepts only the current editions of the forms shown in sections 299.1 and 499.1 of this chapter.

Timetable:

Action	Date	FR Cite
Final Action	08/31/88	53 FR 33443
Final Action Effective	08/31/88	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Additional Information: INS Number 1115-88

Agency Contact: Raymond R. Jaroneski, Jr., Senior Immigration Examiner, Department of Justice, Immigration and Naturalization Service, 425 I Street, NW, Washington, DC 20536, 202 633-5014

RIN: 1115–AB04

1387. ● CERTIFICATION OF STATE GOVERNMENTS AS QUALIFIED DESIGNATED ENTITIES

Legal Authority: PL 99-603

CFR Citation: 8 CFR 245A

Legal Deadline: None

Abstract: The Immigration and Naturalization Service is exercising its option, relating to the INS cooperative agreement with qualified designated entities (QDEs) participating in the Service's legalization program, to request additional QDE applications from State governments and other certain similar entities. This action is being taken by the INS in an effort to reach more potential aliens seeking temporary residence under the Immigration Reform and Control Act of 1986 (IRCA), before the May 4, 1988 deadline.

Timetable:

Action	Date	FR Cite
Public Notice	03/24/88	53 FR 9716

Small Entities Affected: Undetermined

Government Levels Affected: State, Federal

Additional Information: INS Number 1110-88

Agency Contact: E. B. Duarte, Director, Outreach, Department of Justice, Immigration and Naturalization Service, 425 I Street, NW, Washington, DC 20536, 202 633-4123

RIN: 1115–AB06

1388. ● STATEMENT OF ORGANIZATION: PORTS OF ENTRY FOR ALIENS ARRIVING BY VESSEL OR BY LAND TRANSPORTATION

Legal Authority: 66 Stat 173; 8 USC 1103

CFR Citation: 8 CFR 100

Legal Deadline: None

Abstract: This final rule designates Camden, New Jersey as a class "A" Port of Entry and further identifies the facility as a port of entry for all aliens. A full range of immigration services will be available at Camden, as the port will be regularly staffed by inspectors of the United States Immigration and Naturalization Service.

Timetable:

Action	Date	FR Cite
Final Action	04/28/88	53 FR 15194
Final Action Effective	04/28/88	53 FR 15194

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Additional Information: INS Number 1112-88

Agency Contact: Dwight S. Faulkner, Assistant Chief Inspector, Department of Justice, Immigration and Naturalization Service, 425 I Street, NW, Washington, DC 20536, 202 633-3946

RIN: 1115–AB07

1389. ● POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS; AUTHORITY OF DISTRICT DIRECTOR AND VISA PETITIONS

Legal Authority: 5 USC 552(a); 8 USC 1101; 8 USC 1103; 8 USC 1201; 8 USC 1303; 8 USC 1304; 8 USC 1305; 8 USC 1455; 31 USC 9701; EO 12356; 3 CFR, 1982 Comp., p. 166

CFR Citation: 8 CFR 103.2

Legal Deadline: None

Abstract: This rule revises 8 CFR 103.2(b) to authorize a district director to withhold adjudication of a visa petition or application where it is determined that an investigation is pending and the disclosure of evidence supporting the adjudication would prejudice the investigation. The provisions relating to disclosure of classified material are also revised to require authorization of disclosure by the classifying agency.

Timetable:

Action	Date	FR Cite
NPRM	05/30/86	51 FR 19559
NPRM Comment Period End	07/29/86	51 FR 19559
Final Action	07/11/88	53 FR 26034
Final Action Effective	07/11/88	53 FR 26034

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Additional Information: INS Number 1116-88

Agency Contact: Joanna London, Associate General Counsel, Department of Justice, Immigration and Naturalization Service, 425 I Street, NW, Washington, DC 20536, 202 633-2895

RIN: 1115–AB09

1390. ● INSPECTION OF PERSONS APPLYING FOR ADMISSION

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1225; PL 94-241; EO 12572

CFR Citation: 8 CFR 235

Legal Deadline: None

Abstract: This rule establishes authority to issue an identification card to persons born before November 3, 1986, who received United States citizenship pursuant to Public Law 94-241 and Executive Order 12572, which established the Commonwealth of the Northern Mariana Islands. This action is taken in response to a request from the Commonwealth of the Northern Mariana Islands.

Timetable:

Action	Date	FR Cite
Final Action	06/22/88	53 FR 23379
Final Action Effective	07/01/88	53 FR 23379

Small Entities Affected: Undetermined

Government Levels Affected: Local, State, Federal

Additional Information: INS Number 1111-88

Agency Contact: Thomas E. Cook, Senior Immigration Examiner, Department of Justice, Immigration and Naturalization Service, 425 I Street, NW, Washington, DC 20536, 202 633-3328

RIN: 1115–AB10

DEPARTMENT OF JUSTICE (DOJ)
Legal Activities (LA)

Proposed Rule Stage

1391. IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN DEPARTMENT OF JUSTICE ADMINISTRATIVE PROCEEDINGS

Legal Authority: 5 USC 504 Equal Access to Justice Act

CFR Citation: 28 CFR 24, (Revision)

Legal Deadline: None

Abstract: The Equal Access to Justice Act was reauthorized on August 5, 1985. Various new amendments have been adopted which require revision of the procedures for applications for attorneys fees, eligible parties, and proceedings covered.

Timetable:

Action	Date	FR Cite
NPRM	04/15/89	
NPRM Comment Period End	07/15/89	
Final Action	10/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Sectors Affected: Multiple

Analysis: Regulatory Impact Analysis

Agency Contact: John Wilson, Associate General Counsel, Department of Justice, Legal Activities, 633 Indiana Ave., NW, Room 1268, Washington, DC 20531, 202 724-7762

RIN: 1105–AA05

DEPARTMENT OF JUSTICE (DOJ)
Office of Justice Programs (OJP)

Proposed Rule Stage

1352. CRIMINAL INTELLIGENCE SYSTEMS OPERATING POLICIES

Legal Authority: 42 USC 3789(g), (c) and (d)

CFR Citation: 28 CFR 23

Legal Deadline: None

Abstract: To change Office and Bureau nomenclature to comply with changes resulting from the Justice Assistance Act of 1984, PL 98-473, and to clarify policy issues relating to time periods for validation of intelligence information.

Timetable:

Action	Date	FR Cite
NPRM	12/15/88	
NPRM Comment Period End	02/15/89	
Final Action	05/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Local, State

Public Compliance Cost: Initial Cost: $0

Agency Contact: John Wilson, Associate General Counsel, Department of Justice, Office of Justice Programs, 633 Indiana Ave., NW, Rm. 1254-C, Washington, DC 20531, 202 724-7795

RIN: 1121-AA12

DEPARTMENT OF JUSTICE (DOJ)
Office of Justice Programs (OJP)

Final Rule Stage

1353. EQUAL EMPLOYMENT OPPORTUNITY PROGRAM GUIDELINES

Legal Authority: 42 USC 3789d(c)

CFR Citation: 28 CFR 42.301

Legal Deadline: None

Abstract: To change Departmental nomenclature to comply with nomenclature changes in the Justice Assistance Act of 1984 and eliminate references to Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1977 which are not specifically applicable.

Timetable:

Action	Date	FR Cite
Final Action	02/01/89	
End Review	02/01/89	

Small Entities Affected: None

Government Levels Affected: Local, State

Agency Contact: Winifred A. Dunton, Director, Office of Civil Rights Compliance, Department of Justice, Office of Justice Programs, 633 Indiana Avenue, NW, Room 1269, Washington, DC 20531, 202 724-7541

RIN: 1121-AA10

1354. NONDISCRIMINATION IN FEDERAL ASSISTED PROGRAMS -- IMPLEMENTATION OF SECTION 809 (C) (1) OF THE JUSTICE ASSISTANCE ACT OF 1984

Legal Authority: 42 USC 3789d(c)

CFR Citation: 28 CFR 42.201

Legal Deadline: None

Abstract: To change Departmental nomenclature to comply with nomenclature changes in the Justice Assistance Act of 1984 and eliminate references to Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1977 which are not specifically applicable.

Timetable:

Action	Date	FR Cite
Final Action	02/01/89	

Small Entities Affected: Undetermined

Government Levels Affected: Local, State

Agency Contact: Winifred A. Dunton, Director, Office of Civil Rights Compliance, Department of Justice, Office of Justice Programs, 633 Indiana Avenue, NW, Room 1269, Washington, DC 20531, 202 724-7631

RIN: 1121-AA11

1355. CRIMINAL JUSTICE INFORMATION SYSTEMS

Legal Authority: 42 USC 3789g

CFR Citation: 28 CFR 20

Legal Deadline: None

Abstract: To change Office and Bureau nomenclature to comply with changes resulting from the Justice Assistance Act of 1984, PL 98-473 and State and Local Law Enforcement Assistance Act of 1988, PL 99-570 Subtitle K, and to delete obsolete terminology.

Timetable:

Action	Date	FR Cite
Final Action	11/00/88	

Small Entities Affected: None

Government Levels Affected: Local, State

Agency Contact: John J. Wilson, Associate General Counsel, Department of Justice, Office of Justice Programs, 633 Indiana Ave., NW, Room 1254-C, Washington, DC 20531, 202 724-7795

RIN: 1121-AA13

[FR Doc. 88-20999 Filed 10-21-88; 8:45 am]
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federal register

Monday
October 24, 1988

Part XII

Department of Labor

Semiannual Regulatory Agenda

DEPARTMENT OF LABOR (DOL)

DEPARTMENT OF LABOR

Office of the Secretary

20 CFR Chs. I, IV, V, VI, and VII

29 CFR Subtitle A and Chs. II, IV, V, XVII, and XXV

30 CFR Ch. I

41 CFR Ch. 60

48 CFR Ch. 29

Semiannual Agenda of Regulations

AGENCY: Office of the Secretary, Labor.

ACTION: Semiannual agenda of regulations selected for review or development.

SUMMARY: This document sets forth the Department's Semiannual Agenda of Regulations which has been selected for review or development during the coming one-year period. The agenda complies with the requirements of both Executive Order 12291 and the Regulatory Flexibility Act.

DATES: The agenda includes all regulations which are expected to be under review or development between October 1988 and October 1989.

FOR FURTHER INFORMATION CONTACT: Roland G. Droitsch, Deputy Assistant Secretary for Policy, Office of the Assistant Secretary for Policy, Department of Labor, 200 Constitution Avenue, NW., Room S-2312, Washington, DC 20210, (202) 523-9058.

Note: Information pertaining to a specific regulation can be obtained from the Agency Contact listed for that particular regulation.

SUPPLEMENTARY INFORMATION: Executive Order 12291 and the Regulatory Flexibility Act require the semiannual publication in the **Federal Register** of an agenda of regulations.

Executive Order 12291 became effective February 17, 1981, and in substance requires the Department of Labor to publish an agenda, listing all the regulations it expects to have under active consideration for promulgation, proposal or review during the coming one-year period. It also requires the Department to conduct a Regulatory Impact Analysis for all "major" regulations being developed.

The Regulatory Flexibility Act became effective on January 1, 1981. It applies only to regulations for which a notice of proposed rulemaking was issued on or after January 1, 1981, and requires the Department of Labor to publish an agenda, listing all the regulations it expects to propose or promulgate that are likely to have a "significant economic impact on a substantial number of small entities" (5 U.S.C. 602). For any regulation that will have this impact, the Department must conduct a Regulatory Flexibility Analysis to gauge the economic consequences of the rule, and to analyze the availability of more flexible approaches for lightening the rule's regulatory burden on "small entities."

If a proposed regulation will not have a "significant economic impact on a substantial number of small entities," the Department of Labor must publish a certification to that effect at the time of the general notice of proposed rulemaking or at the time of the publication of the final rule. That certification must be accompanied by a succinct statement explaining the reasons for the agency's determinations.

As permitted by law, the Department of Labor is combining this publication of its agendas under the Regulatory Flexibility Act and Executive Order 12291.

The regulatory reform process, of which the Unified Agenda is a part, continues to be an extremely valuable aid in the development of better regulations by the Department. We believe that our regulatory reform program has resulted in improved regulatory management, more clearly written regulations and significantly less burdensome regulations.

Further improvement is certainly needed, and we are constantly seeking new and innovative approaches in pursuit of this goal. All interested members of the public are invited and encouraged to let Departmental officials know how our regulatory reform process can be further improved and, of course, to participate in and comment on the review or development of the regulations listed on the agenda.

The Department of Labor's next semiannual agenda, under Executive Order 12291 and the Regulatory Flexibility Act, will be published in April 1989.

Ann McLaughlin,
Secretary of Labor.

Office of the Secretary—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1396	Production or Disclosure of Information or Materials	1290-AA08

Employment Standards Administration—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
1397	Child Labor Regulations, Orders and Statements of Interpretation (ESA/W-H)	1215-AA09

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Employment Standards Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1398	Government Contractors: Nondiscrimination and Affirmative Action Obligations (ESA/OFCCP)	1215-AA01
1399	Nondiscrimination and Affirmative Action Obligations for Disabled Veterans, Veterans of Vietnam Era, and Handicapped Workers (ESA/OFCCP)	1215-AA02
1400	Defining and Delimiting the Terms "Any Employee Employed in a Bona Fide Executive, Administrative, or Professional Capacity. . ." (ESA/W-H)	1215-AA14
1401	General Regulations Under the Walsh-Healey Public Contracts Act	1215-AA33

Employment Standards Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1402	Labor Standards Provisions, Davis-Bacon and Related Acts (ESA/W-H)	1215-AA07
1403	Claims for Compensation Under the Federal Employees' Compensation Act	1215-AA13
1404	Employment of Workers with Disabilities Under Special Certificates	1215-AA34
1405	Employment of Homeworkers in Certain Industries	1215-AA35
1406	Labor Standards for Foreign Agricultural Workers	1215-AA43
1407	Migrant and Seasonal Agricultural Worker Protection	1215-AA44
1408	Employee Polygraph Protection Act of 1988	1215-AA49

Employment Standards Administration—Completed Actions

Sequence Number	Title	Regulation Identifier Number
1409	Labor Standards on Projects or Productions Assisted by Grants from the National Endowment for the Arts (ESA/W-H)	1215-AA35
1410	Reporting System for Employment of Special Agricultural Workers	1215-AA48

Employment and Training Administration—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
1411	Services to Migrant and Seasonal Farmworkers, Job Service Complaint System, Monitoring and Enforcement	1205-AA37

Employment and Training Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1412	Airline Deregulation: Employee Benefit Program	1205-AA07
1413	Use of Funds Transferred to the States Under Section 903(c) of the Social Security Act (Reed Act)	1205-AA43
1414	Job Corps Program Under Title IV-B of the Job Training Partnership Act	1205-AA54
1415	Federal-State Unemployment Compensation Program: Income and Eligibility Verification System	1205-AA64
1416	Advances to States and Repayment of Advances; Interest on Advances	1205-AA65
1417	Labor Certification Process for the Permanent Employment of Aliens in the United States	1205-AA66
1418	Economic Dislocation and Worker Adjustment Assistance Program	1205-AA67
1419	Administrative Procedure, Federal State Unemployment Compensation Program	1205-AA69
1420	Trade Adjustment Assistance for Workers (OTCA)	1205-AA72
1421	Implementation of the Worker Adjustment and Retraining Notification Act (WARN)	1205-AA73

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Employment and Training Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1422	Unemployment Compensation for Ex-Servicemembers	1205-AA26
1423	Senior Community Service Employment Program	1205-AA29
1424	Job Training Partnership Act Audits	1205-AA53
1425	Labor Certification Process for Temporary Employment of Alien Workers in Agriculture: The H-2A Program	1205-AA59

Employment and Training Administration—Completed Actions

Sequence Number	Title	Regulation Identifier Number
1426	Limitations on Tax Credit Reduction and Interest on Advances to States	1205-AA14
1427	Extended Unemployment Compensation Program Extended Benefits	1205-AA15
1428	Administrative Procedure	1205-AA46
1429	Disaster Unemployment Assistance Program (DUA)	1205-AA50
1430	Preference in Federal Procurement For Labor Surplus Areas Under Executive Orders 12073 and 10582	1205-AA56
1431	Trade Adjustment Assistance for Workers	1205-AA61
1432	Labor Surplus Area Program Population Criteria Change as Revised by PL 99-272	1205-AA62
1433	Refocus of the Public Employment Service	1205-AA63
1434	Job Training Partnership Act - Amendment Concerning Fixed Unit Price Performance Based Contracts	1205-AA66

Pension and Welfare Benefits Administration—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
1435	"Top Hat" Plans	1210-AA21

Pension and Welfare Benefits Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1436	Qualified Domestic Relations Orders Under the Retirement Equity Act	1210-AA19
1437	Final Bonding Rules (FERSA and ERISA)	1210-AA31
1438	Civil Penalties Under FERSA	1210-AA32
1439	Civil Penalty for Failure or Refusal to File Annual Report	1210-AA34

Pension and Welfare Benefits Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1440	Individual Benefits Reporting and Recordkeeping for Multiple Employer Plans	1210-AA02
1441	Individual Benefits Reporting and Recordkeeping for Single Employer Plans	1210-AA03
1442	Participant Directed Individual Account Plans	1210-AA08
1443	Loans to Participants	1210-AA09
1444	Adequate Consideration	1210-AA15
1445	Proposed Regulation Exempting Certain Broker-Dealers and Investment Advisers From Bonding Requirements	1210-AA25
1446	Procedures for Filing and Processing Applications for Exemption from the Prohibited Transaction Provisions of ERISA, the Internal Revenue Code, and FERSA	1210-AA28
1447	Allocation of Fiduciary Responsibility (FERSA)	1210-AA30

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Pension and Welfare Benefits Administration—Completed Actions

Sequence Number	Title	Regulation Identifier Number
1448	Definition of "Plan Assets" (Participant Contributions) (Proposed at 44 FR 50363, August 28, 1979)	1210-AA16
1449	Procedures for the Administrative Imposition of Civil Sanctions Under Section 502(i) of the Employee Retirement Income Security Act of 1974 (ERISA)	1210-AA20
1450	Amount Of Bond For FERS Thrift Savings Fund	1210-AA28

Office of Labor Management Standards—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1451	Labor Organization Annual Financial Reports	1294-AA04

Mine Safety and Health Administration—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
1452	Notification, Investigation, Reports and Records of Accidents Injuries, Illnesses, Employment, and Coal Production in Mines	1219-AA33

Mine Safety and Health Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1453	Pattern of Violations	1219-AA04
1454	Underground Coal Mine Electrical Standards	1219-AA13
1455	Review of Metal and Nonmetal Electrical Standards	1219-AA14
1456	Review of Metal and Nonmetal Explosives Standards	1219-AA17
1457	Diesel-Powered Equipment for Underground Coal Mines	1219-AA27
1458	Rules of Practice for Petitions for Modification of Mandatory Safety Standards	1219-AA45
1459	Hazard Communication	1219-AA47
1460	Air Quality Standards	1219-AA48
1461	Refuse Pile and Impoundment Inspection Records	1219-AA49
1462	Mine Rescue Equipment Test and Inspection Records	1219-AA50
1463	SCSR Inspection Records	1219-AA51
1464	Safety Standards for Methane in Metal/Nonmetal Mines; Conforming Amendments	1219-AA52

Mine Safety and Health Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1465	Underground Coal Mine Ventilation	1219-AA11
1466	Explosives and Blasting in Underground Coal Mines	1219-AA18
1467	Approval Requirements for Explosives and Sheathed Explosive Units	1219-AA23
1468	Metal and Nonmetal Radiation Standards	1219-AA26
1469	Approval Criteria for Respiratory Protective Devices	1219-AA31
1470	Certification and Qualification of Persons	1219-AA35
1471	Automatic Warning Devices for Mobile Equipment	1219-AA38
1472	Automatic Emergency-Parking Brakes for Rubber-Tired Self-Propelled Electric Face Equipment	1219-AA39
1473	Electric Mine Lamps Other Than Standard Cap Lamps	1219-AA40

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Mine Safety and Health Administration—Final Rule Stage—Continued

Sequence Number	Title	Regulation Identifier Number
1474	Multiple-Shot Blasting Units	1219-AA42

Mine Safety and Health Administration—Completed Actions

Sequence Number	Title	Regulation Identifier Number
1475	Procedures for Approval of Mining Equipment	1219-AA06
1476	Safety Standards for Loading, Hauling and Dumping and Machinery and Equipment at Metal and Nonmetal Mines	1219-AA15
1477	Metal and Nonmetal Air Quality Standards	1219-AA21
1478	Coal Air Quality	1219-AA41
1479	Asbestos	1219-AA46

Office of the Assistant Secretary for Administration and Management—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1460	Nondiscrimination in Programs and Activities Receiving Federal Financial Assistance from the Department of Labor	1291-AA02
1461	Administrative Grants and Cooperative Agreements to Government and Nonprofit Institutions	1291-AA15

Office of the Assistant Secretary for Administration and Management—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1462	Department of Labor Acquisition Regulation (DOLAR) (Revision)	1291-AA06

Office of the Assistant Secretary for Administration and Management—Completed Actions

Sequence Number	Title	Regulation Identifier Number
1463	Guidelines for Nonprocurement Suspension and Debarment	1291-AA11

Occupational Safety and Health Administration—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
1484	Manual Lifting (Parts 1910, 1915, 1917, 1918, 1919, 1926 and 1928)	1218-AA25
1485	Medical Surveillance Programs for Employees	1218-AB50
1486	Generic Standard for Exposure Monitoring	1218-AB91

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Occupational Safety and Health Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1487	Carcinogen Policy	1218-AA01
1488	Respiratory Protection	1218-AA05
1489	Concrete and Masonry Construction (Part 1926)	1218-AA20
1490	Asbestos, Tremolite, Anthophyllite and Actinolite	1218-AA35
1491	Methods of Compliance	1218-AA28
1492	Oil and Gas Well Drilling and Servicing (Part 1910)	1218-AA34
1493	Benzene	1218-AA47
1494	Fall Protection Systems (Personal Protective Equipment) (Part 1910)	1218-AA48
1495	Confined Space (Part 1910)	1218-AA51
1496	Logging (Part 1910)	1218-AA52
1497	Safety and Health Regulations for Longshoring (Part 1918)	1218-AA56
1498	4,4'-Methylenedianiline	1218-AA58
1499	Electric Power Generation, Transmission and Distribution (Part 1910)	1218-AA59
1500	Pulp, Paper and Paperboard Mills (Part 1910)	1218-AA61
1501	Steel Erection (Part 1926)	1218-AA65
1502	Fall Protection (Part 1915)	1218-AA66
1503	Scaffolds (Part 1915)	1218-AA69
1504	Access and Egress (Part 1915)	1218-AA70
1505	Face, Head, Eye and Foot Protection (Personal Protective Equipment) (Part 1910)	1218-AA71
1506	Welding, Cutting and Brazing (Part 1910)	1218-AA72
1507	Welding, Cutting and Heating (Part 1915)	1218-AA73
1508	Personal Protective Equipment (Part 1915)	1218-AA74
1509	1,3-Butadiene	1218-AA82
1510	Glycol Ethers: 2-Methoxyethanol, 2-Ethoxyethanol and their Acetates	1218-AA84
1511	Explosive and Other Dangerous Atmospheres (Part 1915)	1218-AA91
1512	Gear Certification (Part 1919)	1218-AA97
1513	Methylene Chloride	1218-AA98
1514	Hazard Communication	1218-AB02
1515	Walking and Working Surfaces (Part 1910)	1218-AB04
1516	Bloodborne Infectious Diseases	1218-AB15
1517	Cadmium	1218-AB16
1518	Hazardous Materials (Part 1910)	1218-AB20
1519	Shipyard Employment: Phase II (Part 1915)	1218-AB22
1520	Hazardous Waste Training Course Certification (Part 1910)	1218-AB23

Occupational Safety and Health Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1521	Occupational Exposures to Hazardous Chemicals in Laboratories	1218-AA09
1522	Ethylene Dibromide (EDB)	1218-AA08
1523	Electrical Safety-Related Work Practices (Part 1910)	1218-AA32
1524	Powered Platforms for Exterior Building Maintenance (Part 1910)	1218-AA33
1525	Excavations (Part 1926)	1218-AA36
1526	Fall Protection (Part 1926)	1218-AA37
1527	Underground Construction (Tunnels and Shafts)(Part 1926)	1218-AA38
1528	Scaffolds (Part 1926)	1218-AA40
1529	Control of Hazardous Energy Sources (Lockout/Tagout) (Part 1910)	1218-AA53
1530	Stairways and Ladders (Part 1926)	1218-AA57
1531	Hazardous Waste Operations and Emergency Response (Part 1910)	1218-AB13
1532	Permissible Exposure Limit Update	1218-AB17
1533	Lead (Reconsideration of the Feasibility of Compliance in Nine Industry Sectors)	1218-AB19

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Occupational Safety and Health Administration—Completed Actions

Sequence Number	Title	Regulation Identifier Number
1534	Access to Employee Exposure and Medical Records	1218-AA15
1535	Crane or Derrick Suspended Platforms (Part 1926)	1218-AA45
1536	Motor Vehicles, Mechanized Equipment, and Marine Operations (Part 1926)	1218-AA03
1537	Compressed Air (Part 1926)	1218-AA76
1538	Asbestos Short Term Exposure Limit	1218-AB21

DEPARTMENT OF LABOR (DOL) — **Final Rule Stage**

Office of the Secretary (OS)

1296. PRODUCTION OR DISCLOSURE OF INFORMATION OR MATERIALS

Significance: Agency Priority

Legal Authority: 5 USC 552, as amended; EO 12600

CFR Citation: 29 CFR 70, (Revision)

Legal Deadline: Final, Statutory, April 27, 1987.

Abstract: The document proposes regulations to implement the Freedom of Information Reform Act of 1986, which requires agencies to promulgate regulations on a schedule of fees and on fee waivers, and Executive Order 12600, which requires predisclosure notification to submitters of confidential business information. The proposal also revises the existing DOL Freedom of Information Act (FOIA) regulations, which currently include interpretive material on FOIA exemptions, to limit the scope principally to procedural matters.

Timetable:

Action	Date	FR Cite
NPRM	02/23/88	53 FR 5346
NPRM Comment Period End	07/18/88	53 FR 22680
Final Action	10/00/88	
Final Action Effective	11/00/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Seth D. Zinman, Associate Solicitor for Legislation and, Legal Counsel, Department of Labor, Office of the Secretary, 200 Constitution Avenue, NW, Room N2428, FPBldg., Washington, DC 20210, 202 523-6261

RIN: 1290–AA06

DEPARTMENT OF LABOR (DOL) — **Prerule Stage**

Employment Standards Administration (ESA)

1297. CHILD LABOR REGULATIONS, ORDERS AND STATEMENTS OF INTERPRETATION (ESA/W-H)

Significance: Regulatory Program

Legal Authority: 29 USC 203

CFR Citation: 29 CFR 570

Legal Deadline: None

Abstract: Section 3(1) of the Fair Labor Standards Act requires the Secretary of Labor to issue regulations with respect to minors between 14 and 16 years of age ensuring that the periods and conditions of their employment do not interfere with their schooling, health, or well-being. The Secretary also is directed to designate occupations that may be particularly hazardous for minors between 16 and 18 years of age. Child Labor Regulation No. 3 sets forth the permissible industries and occupations in which 14 and 15 year olds may be employed. In addition, this regulation specifies the number of hours in a day and in a week, and time periods within a day that such minors may be employed. The nonagricultural hazardous occupations orders which prohibit the employment of minors in such occupations are also contained in 29 CFR 570. Changes in technology and job content over the years require a review of these regulations. In order to increase job opportunities for such minors, while maintaining essential protection for their well-being, modifications to these regulations may be needed. The Department has established a Child (cont)

Timetable:

Action	Date	FR Cite
Notice published—decision to establish Child Labor Advisory Committee	07/21/87	52 FR 27476
Notice published—announcing meetings of Committee on March 9-10, 1988	02/17/88	53 FR 4788
Notice published—announcing meetings on October 19-20, 1988	09/27/88	53 FR 37660

Next Action Undetermined

DOL—ESA — **Prerule Stage**

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: ABSTRACT CONT: Labor Advisory Committee to advise the Secretary on the effective administration of the child labor provisions of the FLSA. The recommendations of the committee will be given careful consideration in the review of these regulations. The committee convened on March 9-10, 1988. Subcommittees were established to review their respective issues. The full committee will present its findings and recommendations to the Wage-Hour Administrator in October 1988.

Agency Contact: Paula V. Smith, Administrator, Wage and Hour Division, Department of Labor, Employment Standards Administration, 200 Constitution Avenue, NW, Rm S3502, FPBldg., Washington, DC 20210, 202 523-8305

RIN: 1215–AA09

DEPARTMENT OF LABOR (DOL) — **Proposed Rule Stage**

Employment Standards Administration (ESA)

1298. GOVERNMENT CONTRACTORS: NONDISCRIMINATION AND AFFIRMATIVE ACTION OBLIGATIONS (ESA/OFCCP)

Significance: Regulatory Program

Legal Authority: EO 11246, as amended; 38 USC 2012; 29 USC 793; 29 USC 1781

CFR Citation: 41 CFR 60-1; 41 CFR 60-2; 41 CFR 60-4; 41 CFR 60-20; 41 CFR 60-30; 41 CFR 60-50; 41 CFR 60-60; 41 CFR 60-250; 41 CFR 60-741

Legal Deadline: NPRM, Statutory, October 1, 1983.
Rules implementing Section 481 of the 1982 JTPA (29 USC 1781). The operational aspects of such rules need to be coordinated with the pending revisions to the Executive Order 11246 program

Abstract: These regulations cover nondiscrimination and affirmative action obligations of Federal contractors under Executive Order 11246, as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 2012), as amended, and Section 503 of the Rehabilitation Act of 1973, as amended. Proposed changes were published in the Federal Register on 12/28/79 and 2/22/80. The resulting final rule was published on 12/30/80 but its effective date was stayed pending review in accordance with President Reagan's Executive Order 12291 of 2/17/81. Subsequently, OFCCP published an ANPRM (7/14/81, supplemented 8/21/81) and a NPRM 8/25/81, supplemented 4/23/82). The NPRM also extended the suspension of the effective date of the 12/30/80 final rule. OFCCP's review of regulatory options continues, and includes consideration of proposed regulations to integrate the requirements of Section 481 of the Job Training Partnership Act of 1982 (29 U.S.C. 1781) with the Executive Order 11246 program.

Timetable:

Action	Date	FR Cite
ANPRM	07/14/81	46 FR 36213
Supplement to ANPRM	08/21/81	46 FR 42490
Previous NPRM & Suspend Eff Date	08/25/81	46 FR 42968
NPRM	04/23/82	47 FR 17770
NPRM	03/00/89	
Final Action	09/00/89	

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State

Agency Contact: Leonard J. Biermann, Deputy Director, Office of Federal Contract, Compliance Programs, Department of Labor, Employment Standards Administration, 200 Constitution Ave., NW, Rm C3325, FPBldg., Washington, DC 20210, 202 523-9475

RIN: 1215–AA01

1299. NONDISCRIMINATION AND AFFIRMATIVE ACTION OBLIGATIONS FOR DISABLED VETERANS, VETERANS OF VIETNAM ERA, AND HANDICAPPED WORKERS (ESA/OFCCP)

Significance: Agency Priority

Legal Authority: 29 USC 793; 38 USC 2012

CFR Citation: 41 CFR 60-1; 41 CFR 60-250; 41 CFR 60-741

Legal Deadline: None

Abstract: This proposal would, among other things, incorporate 1978 and 1980 statutory amendments to definitions applicable to Section 503 of the Rehabilitation Act and to the Veterans' programs. However, since 1981 there have been additional amendments to the Rehabilitation Act and to the Vietnam Era Veterans' Readjustment Assistance Act affecting definitions applicable under the respective programs. All such statutorily required changes to the definitions would be incorporated into the proposed regulatory action contemplated under RIN - 1215-AA01.

Timetable:

Action	Date	FR Cite
NPRM	12/30/80	45 FR 86205
NPRM Comment Period End	03/02/81	45 FR 86205
NPRM Second	03/00/89	
Final Action	09/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Leonard J. Biermann, Deputy Director, Office of Federal Contract, Compliance Programs, Department of Labor, Employment Standards Administration, 200 Constitution Ave., NW, Rm C3325, FPBldg., Washington, DC 20210, 202 523-9475

RIN: 1215–AA02

1400. DEFINING AND DELIMITING THE TERMS "ANY EMPLOYEE EMPLOYED IN A BONA FIDE EXECUTIVE, ADMINISTRATIVE, OR PROFESSIONAL CAPACITY. . ." (ESA/W-H)

Significance: Regulatory Program

Legal Authority: 29 USC 213(a)(1)

CFR Citation: 29 CFR 541

Legal Deadline: None

Abstract: These regulations set forth the criteria used in the determination of the application of the Fair Labor

DOL—ESA

Proposed Rule Stage

Standards Act exemption for "executive," "administrative," "professional" and "outside sales employees" from the minimum wage and overtime requirements of the Act. The existing regulation was targeted for review by the President's Task Force on Regulatory Relief. A final rule increasing the salary test criteria was published on 01/13/81 (46 FR 3010) and was scheduled to become effective on 02/13/81. On 02/12/81 (46 FR 11972) an indefinite stay of the final rule was published. On 03/27/81 (46 FR 18998) a proposal to suspend the final rule indefinitely was published with comments due by 04/28/81. As a result of numerous comments and petitions received from industry groups regarding the duties and responsibilities tests as set forth in the regulations, as well as recent case law developments, the Department concluded that a more comprehensive review of these regulations was needed and decided to reopen the comment period and broaden the scope of the review to include all aspects of the regulations. An ANPRM was published on 11/19/85 and its comment period was (cont)

Timetable:

Action	Date	FR Cite
Indefinite Stay of Final Rule	02/12/81	46 FR 11972
Proposal to suspend rule publicly	03/27/81	46 FR 18998
Comments due on suspension proposal	04/28/81	46 FR 18998
ANPRM	11/19/85	50 FR 47696
Extension of ANPRM Comment Period from 01/21/86 to 03/22/86	01/17/86	51 FR 2525
ANPRM Comment Period End	03/22/86	51 FR 2525
NPRM	11/00/88	
Final Action	04/00/89	

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Local, State, Federal

Additional Information: ABSTRACT CONT: subsequently extended to 03/22/86. Action on this regulation was delayed due to other regulatory priorities.

Agency Contact: Paula V. Smith, Administrator, Wage and Hour Division, Department of Labor, Employment Standards Administration, Rm S3502, FPBldg, 200 Constitution Ave., NW, Washington, DC 20210, 202 523-8305

RIN: 1215–AA14

1401. ● GENERAL REGULATIONS UNDER THE WALSH-HEALEY PUBLIC CONTRACTS ACT

Significance: Agency Priority

Legal Authority: 41 USC 38; 41 USC 40

CFR Citation: 41 CFR 50-201.101(a)

Legal Deadline: None

Abstract: This proposed rule would amend the Walsh-Healey Public Contracts Act regulations to provide an alternative regular dealer definition applicable to information systems integration businesses which bid on contracts to furnish the government fully operational information processing ("ADP") systems. The alternative definition would relieve potential contractors in this industry from having to physically maintain inventories from which their sales are made, a custom that is inconsistent with this industry's practices.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Agency Contact: Paula V. Smith, Administrator, Wage and Hour Division, Department of Labor, Employment Standards Administration, 200 Constitution Avenue, NW, Room S3502, FPBldg., Washington, DC 20210, 202 523-8305

RIN: 1215–AA33.

DEPARTMENT OF LABOR (DOL)

Final Rule Stage

Employment Standards Administration (ESA)

1402. LABOR STANDARDS PROVISIONS, DAVIS-BACON AND RELATED ACTS (ESA/WH)

Significance: Regulatory Program

Legal Authority: 40 USC 276a to 276a7; 40 USC 276c; 40 USC 327 to 332; 5 USC Appendix Reorganization Plan No. 14 of 1950; 29 USC 259

CFR Citation: 29 CFR 1; 29 CFR 5

Legal Deadline: None

Abstract: These regulations govern labor standards applicable to federally funded or assisted construction contracts subject to the Davis- Bacon and Related Acts (as well as contracts subject to the Contract Work Hours and Safety Standards Act). The Department plans to implement provisions in these regulations that would permit contractors to expand their use of semi-skilled "helpers" on Davis-Bacon covered projects at wages lower than those paid to skilled journeymen. Revised final rules were originally published 05/28/82 (47 FR 23658), but were deferred on 07/26/82 (47 FR 32070) due to an injunction issued by the U.S. District Court. Although the U.S. Court of Appeals for the D.C. Circuit has since upheld most of the key provisions published in 1982, the district court injunction remains in effect against certain provisions dealing with helpers. The Department intends to implement the helper provisions in accordance with the decisions of the District and Appeals Courts. A revised proposal was published 08/19/87 (52 FR 31366), and the comment period was later extended to 11/18/87 (52 FR 38473).

Timetable:

Action	Date	FR Cite
NPRM	08/19/87	52 FR 31366
NPRM Comment Period End	11/18/87	52 FR 38473

Next Action Undetermined

Small Entities Affected: Businesses, Governmental Jurisdictions

DOL—ESA

Final Rule Stage

Government Levels Affected: Local, State, Federal

Agency Contact: Paula V. Smith, Administrator, Wage and Hour Division, Department of Labor, Employment Standards Administration, 200 Constitution Ave., NW, Rm S3502, FPBldg., Washington, DC 20210, 202 523-8305

RIN: 1215–AA07

1403. CLAIMS FOR COMPENSATION UNDER THE FEDERAL EMPLOYEES' COMPENSATION ACT

Significance: Agency Priority

Legal Authority: 5 USC 8101 et seq.

CFR Citation: 20 CFR 10

Legal Deadline: None

Abstract: Certain provisions of Final Rules published April 1, 1987, have been challenged as being promulgated in violation of the APA. Those sections deal with collection of forfeited compensation from on-going benefits. In order to ensure that any doubt as to the procedural validity of the rules is laid to rest, the Department has taken two actions: 1) publishing an interim final rule which reinstates the affected sections without the language which has been challenged; and 2) a proposed rule with an invitation to comment, which in effect would reinstate the April 1, 1987 rule but would assure that any defects in the comment period are corrected.

Timetable:

Action	Date	FR Cite
NPRM	04/07/88	53 FR 11596
Interim Final Rule (Reinstating Affected Sections)	04/07/88	53 FR 11594
NPRM Comment Period End	06/06/88	
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Thomas M. Markey, Associate Director for Federal Employees', Compensation, OWCP, Department of Labor, Employment Standards Administration, 200 Constitution Ave., NW, RM S3229 - FPBldg., Washington, DC 20210, 202 523-7552

RIN: 1215–AA25

1404. EMPLOYMENT OF WORKERS WITH DISABILITIES UNDER SPECIAL CERTIFICATES

Significance: Regulatory Program

Legal Authority: 29 USC 214; 29 USC 211

CFR Citation: 29 CFR 524; 29 CFR 525; 29 CFR 529

Legal Deadline: None

Abstract: These regulations establish the terms and conditions, pursuant to section 14(c) of the Fair Labor Standards Act (FLSA), under which handicapped workers may be employed, under certificate, at wage rates less than those otherwise required by statute. The 1986 Amendments to the FLSA substantially revised section 14(c) to simplify worker certification by eliminating separate certification for more productive workers, multiple handicapped individuals, and those in evaluation or training and work activities centers. Three affected regulations (29 CFR 524, 525 and 529) were combined into a single proposed new rule which was published for public comments on May 20, 1988.

Timetable:

Action	Date	FR Cite
NPRM	05/20/88	53 FR 18234
NPRM Comment Period End	07/19/88	53 FR 18234
Final Action	11/00/88	

Small Entities Affected: None

Government Levels Affected: Local, State

Agency Contact: Paula V. Smith, Administator, Wage and Hour Division, Department of Labor, Employment Standards Administration, 200 Constitution Ave., NW, RM S3502, FPBldg., Washington, DC 20210, 202 523-8305

RIN: 1215–AA34

1405. EMPLOYMENT OF HOMEWORKERS IN CERTAIN INDUSTRIES

Significance: Regulatory Program

Legal Authority: 29 USC 211

CFR Citation: 29 CFR 530

Legal Deadline: None

Abstract: This regulation sets forth restrictions on industrial homework and governs the issuance of certificates authorizing the employment of homeworkers in certain industries, pursuant to Section 11(d) of the Fair Labor Standards Act (FLSA). As originally issued, these regulations restricted the employment of industrial homework in seven industries: knitted outerwear; women's apparel; jewelry; buttons and buckles; gloves and mittens; handkerchiefs; and embroideries. The ban was removed on homework in the knitted outerwear industry by the Department on 11/9/81 following extensive hearings and public comment. This action was subsequently upheld by the District Court for the District of Columbia. However, on appeal the ban was reimposed 2/29/84 by the U.S. Court of Appeals for the District of Columbia Circuit. On 3/27/84 the Department published a proposed rule rescinding the ban on homework in the knitted outerwear industry only. In addition to soliciting comments on the proposed recission, the Department sought comments on various alternatives to such action (49 FR 11786). On November 5, 1984, a final rule was published lifting the ban on homework for employers (cont)

Timetable:

Action	Date	FR Cite
NPRM	08/21/86	51 FR 30036
NPRM Comment Period End	12/04/86	51 FR 37298
NPRM Second Comment Period End	03/30/88	53 FR 10342
NPRM Second	05/13/88	53 FR 15063

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ABSTRACT CONT: in the knitted outerwear industry who obtain a certificate from the Department. Based on analysis of the results of its enforcement experience under the new certification procedure, the Department is proposing to rescind the remaining restrictions in the other industries for employers who currently obtain certificates. A Notice of Proposed Rulemaking was published on August 21, 1986 (51 FR 30036). A notice extending the comment period to December 4, 1986 was published on October 21, 1986 (51 FR 37298). Based on the review of the comments and the Department's further examination of enforcement experience in knitted outerwear, a new proposal was published on March 30, 1988 (53 FR

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10342) which included enforcement mechanisms to enhance compliance among employers of homeworkers. The comment period was later extended to May 13, 1988 (53 FR 15083).

Agency Contact: Paula V. Smith, Administrator, Wage and Hour Division, Department of Labor, Employment Standards Administration, 200 Constitution Avenue, NW, Rm S3502, FPBldg., Washington, DC 20210, 202 523-8305

RIN: 1215-AA36

1406. LABOR STANDARDS FOR FOREIGN AGRICULTURAL WORKERS

Significance: Regulatory Program

Legal Authority: PL 99-603

CFR Citation: 29 CFR 501

Legal Deadline: Final, Statutory, June 1, 1987.

Abstract: The Immigration Reform and Control Act of 1986 contains certain labor standards requirements for foreign agricultural workers employed under the H-2A foreign agricultural worker program, as well as for U.S. workers hired by employers who utilize foreign agricultural workers. The standards relate to pay, working conditions, housing, transportation and recruitment. The Employment Standards Administration will issue regulations that incorporate the labor standards issued by the Employment and Training Administration and set forth procedures for enforcement of these labor standards. (Note: Final action on these regulations has been delayed until we acquire experience in enforcing the statutory requirements applicable to temporary foreign agricultural workers.

Timetable:

Action	Date	FR Cite
NPRM	05/05/87	52 FR 16795
NPRM Comment Period End	05/19/87	52 FR 16795
Interim Final Rule	06/01/87	52 FR 20524
Final Action	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Agency Contact: Paula V. Smith, Administrator, Wage and Hour Division, Department of Labor, Employment Standards Administration, 200 Constitution Avenue, NW, Rm S3502. FPBldg., Washington, DC 20210, 202 523-8305

RIN: 1215-AA45

1407. MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION

Significance: Agency Priority

Legal Authority: 29 USC 1801 to 1872; PL 99-603

CFR Citation: 29 CFR 500

Legal Deadline: Final, Statutory, June 1, 1987.

Abstract: The Immigration Reform and Control Act of 1986 amended the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) in a number of areas concerning the recruitment and employment of illegal aliens. Certain changes to the existing MSPA regulations are needed to conform them to the amended Act. These statutory changes became effective June 1, 1987. In addition, minor clarifying changes will be made in certain definitions in the current regulations.

Timetable:

Action	Date	FR Cite
NPRM	05/06/87	52 FR 16859
NPRM Comment Period End	06/05/87	52 FR 16859
Final Action	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: State

Agency Contact: Paula V. Smith, Administrator, Wage and Hour Division, Department of Labor, Employment Standards Administration, 200 Constitution Avenue, NW, Rm S3502, FPBldg., Washington, DC 20210, 202 523-8305

RIN: 1215-AA44

1408. ● EMPLOYEE POLYGRAPH PROTECTION ACT OF 1988

Significance: Regulatory Program

Legal Authority: PL 100-347, Employee Polygraph Protection Act of 1988

CFR Citation: 29 CFR 801 (new)

Legal Deadline: Final, Statutory, September 25, 1988.

Abstract: The Employee Polygraph Protection Act of 1988 (EPPA) was enacted June 27, 1988 and takes effect December 27, 1988. EPPA prohibits most private employers from administering lie detector tests to employees or prospective employees but permits the use of polygraph tests, subject to certain safeguards, under specific circumstances. The Secretary of Labor is authorized to issue rules and regulations to implement EPPA and to enforce it, including authority to conduct investigations, assess civil money penalties for violations, and bring suit in U.S. District Courts to enjoin violations of the Act.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Paula V. Smith, Administrator, Wage and Hour Division, Department of Labor, Employment Standards Administration, 200 Constitution Avenue, NW, Rm S3502, FPBldg., Washington, DC 20210, 202 523-8305

RIN: 1215-AA49

DEPARTMENT OF LABOR (DOL) — Completed Actions

Employment Standards Administration (ESA)

1409. LABOR STANDARDS ON PROJECTS OR PRODUCTIONS ASSISTED BY GRANTS FROM THE NATIONAL ENDOWMENT FOR THE ARTS (ESA/W-H)

Significance: Regulatory Program

Legal Authority: 20 USC 954(i); 20 USC 956 (g); 20 USC 954 (j)

CFR Citation: 29 CFR 505

Legal Deadline: Final, Statutory, June 18, 1988.

Abstract: The National Foundation on the Arts and Humanities Act of 1965, as amended in 1978, requires the Secretary to determine the prevailing minimum compensation for professional performers and related or supporting professional personnel employed on projects or productions assisted by grants from the National Endowment for the Arts and the National Endowment for the Humanities. As originally enacted, these labor standards only applied to the Arts: the 1976 Amendments applied the same labor standards to Humanities grants. The Arts, Humanities, and Museums Amendments of 1985, which were enacted on December 20, 1985, directed the Secretary of Labor to issue regulations to assure that prevailing minimum compensation is provided to all professional performers and related or supporting professional personnel employed on projects or productions financed in whole or in part by the National Endowment for the Humanities. Final regulations to carry out these provisions were published on June 22, 1988.

Timetable:

Action	Date	FR Cite
NPRM	09/21/87	52 FR 35447
NPRM Comment Period End	10/21/87	
Final Action	06/22/88	53 FR 23540
Final Action Effective	07/22/88	53 FR 23540

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Paula V. Smith, Administrator, Wage and Hour Division, Department of Labor, Employment Standards Administration, Room S3502, FPBldg., 200 Constitution Ave., NW, Washington, DC 20210, 202 523-8305

RIN: 1215-AA35

1410. REPORTING SYSTEM FOR EMPLOYMENT OF SPECIAL AGRICULTURAL WORKERS

Significance: Regulatory Program

Legal Authority: Immigration Reform and Control Act of 1986

CFR Citation: 29 CFR 500

Legal Deadline: Final, Statutory, October 1, 1988.

Abstract: The Immigration Reform and Control Act of 1986 requires employers of special agricultural workers (SAWs) to record and report information about the employment of these alien workers in seasonal agricultural services. The report to the Federal Government includes information such as the number of work days performed. The data reported will allow for estimates to be made in determining whether additional alien workers will be admitted as replenishment agricultural workers (RAWs). Each replenishment agricultural workers is entitled to receive a certificate from the employer regarding the number of work days such worker was employed in seasonal agricultural services. This certificate may be used by the worker in order to qualify for legalization.

Timetable:

Action	Date	FR Cite
NPRM	07/19/88	53 FR 27304
NPRM Comment Period End	08/15/88	
Final Action	09/09/88	53 FR 35154
Final Action Effective	10/01/88	

Small Entities Affected: None

Government Levels Affected: State, Federal

Agency Contact: Paula V. Smith, Administrator, Wage and Hour Division, Department of Labor, Employment Standards Administration, 200 Constitution Avenue, NW, Room S3502, FPBldg., Washington, DC 20210, 202 523-8305

RIN: 1215-AA48

DEPARTMENT OF LABOR (DOL) — Prerule Stage

Employment and Training Administration (ETA)

1411. SERVICES TO MIGRANT AND SEASONAL FARMWORKERS, JOB SERVICE COMPLAINT SYSTEM, MONITORING AND ENFORCEMENT

Significance: Regulatory Program

Legal Authority: 29 USC 49(k)

CFR Citation: 20 CFR 653; 20 CFR 658; 20 CFR 651

Legal Deadline: None

Abstract: ETA is reviewing services to migrant and seasonal farmworkers under the Wagner-Peyser Act as a result of amendments to Wagner-Peyser under Title V of the Job Training Partnership Act. It is anticipated that an ANPRM and subsequent rulemaking may result.

Timetable:

Action	Date	FR Cite
ANPRM	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: State, Federal

Agency Contact: Thomas M. Bruening, Chief, Division of Foreign Labor, Certifications, Department of Labor, Employment and Training Administration, 200 Constitution Ave., NW, Rm N4456, FPBldg., Washington, DC 20210, 202 523-8181

RIN: 1205-AA37

DEPARTMENT OF LABOR (DOL) — **Proposed Rule Stage**

Employment and Training Administration (ETA)

1412. AIRLINE DEREGULATION: EMPLOYEE BENEFIT PROGRAM

Significance: Regulatory Program

Legal Authority: 49 USC 1552

CFR Citation: 29 CFR 618

Legal Deadline: None

Abstract: These regulations are being developed to implement the benefit provisions contained in Sec. 43 of the Airline Deregulation Act of 1978. The Act requires the Secretary of Labor to specify the percentage of prior salary which an "eligible protected employee" would receive as a benefit payment under the Act. An eligible protected employee is a person who has had at least 4 years of employment with a certificated air carrier as of October 24, 1978 and who loses his or her job during the ten years following such date in a bankruptcy or major employment contraction if and only if the Department of Transportation determines that the principal causes of such job loss was deregulation. On May 17, 1984 the U.S. District Court for the District of Columbia held that Section 43 of the Airline Deregulation Act was unconstitutional. On July 16, 1985, the U.S. Court of Appeals decided that the employee protection provisions of Section 43 were severable from the legislative veto provisions. The U.S. Supreme Court ruled on March 25, 1987 that the legislative veto provisions were unconstitutional but the first right-to-hire provisions were constitutional, therefore, rulemaking can proceed on the (Cont'd)

Timetable:

Action	Date	FR Cite
NPRMPrevious	03/30/79	44 FR 19146
NPRM First right of hire	09/17/82	47 FR 41304
Comments due First right of hire NPRM	10/18/82	
NPRM	03/00/89	
NPRM Comment Period End	04/00/89	
Final Action	09/00/89	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Additional Information: ABSTRACT (CONT'D): monetary benefit aspects of the employee protection provisions.

Agency Contact: Lorenzo Roberts, Unemployment Insurance Specialist, Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW, Rm C4514, FPBldg., Washington, DC 20210, 202 535-0309

RIN: 1205-AA07

1413. USE OF FUNDS TRANSFERRED TO THE STATES UNDER SECTION 903(C) OF THE SOCIAL SECURITY ACT (REED ACT)

Legal Authority: 26 USC 3304; 42 USC 1302; 42 USC 503; 42 USC 1103

CFR Citation: 20 CFR 601; 20 CFR 651; 20 CFR 652; 20 CFR 658; 41 CFR 29 to 70

Legal Deadline: None

Abstract: This regulation sets out Reed Act requirements for States. It covers: restoration of Reed Act funds used to pay unemployment benefits; appropriation by the States and use of funds for administration; and disposition, reduced usage, and replacement of Reed Act-financed property. The regulation implements P.L. 97-248 and updates existing material issued as manuals. Alternatives being considered include: (1) Issuing a regulation, another type of directive, or nothing; (2) Limiting the scope of the regulation to areas involving compliance with Federal law or not limiting scope; and (3) which rules, if any, should be issued regarding the calculation of Reed Act balances, restorations of Reed Act funds, program income, and sales, other dispositions, and reduced usage of property acquired with Reed Act funds. Issuing a regulation will benefit grantees by reducing their uncertainty as to the applicable rules. No significant additional costs will result.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	
NPRM Comment Period End	01/00/89	
Final Action	01/00/90	

Small Entities Affected: None

Government Levels Affected: State, Federal

Public Compliance Cost: Initial Cost: $5,000; Yearly Recurring Cost: $5,000; Base Year for Dollar Estimates: 1984

Sectors Affected: 94 Administration of Human Resource Programs

Agency Contact: David Heuser, Chief, Division of Fiscal Policy, Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW, Room C5317, FPBldg., Washington, DC 20210, 202 535-0762

RIN: 1205-AA11

1414. JOB CORPS PROGRAM UNDER TITLE IV-B OF THE JOB TRAINING PARTNERSHIP ACT

Legal Authority: 29 USC 1579

CFR Citation: 20 CFR 664

Legal Deadline: None

Abstract: The regulations will revise and streamline the existing rules for the Job Corps program. These changes will not create new cost nor materially change the existing program. The new rules will be in compliance with Title IV-B of the Job Training Partnership Act.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
NPRM Comment Period End	11/00/88	
Final Action	06/00/89	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Peter E. Rell, Director, Office of Job Corps, Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW, Rm N4508, FPBldg., Washington, DC 20210, 202 535-0550

RIN: 1205-AA54

1415. FEDERAL-STATE UNEMPLOYMENT COMPENSATION PROGRAM: INCOME AND ELIGIBILITY VERIFICATION SYSTEM

Significance: Regulatory Program

Legal Authority: 42 USC 1302

CFR Citation: 20 CFR 603, (Revision)

Legal Deadline: None

Abstract: The Employment and Training Administration proposes to amend the regulations at 20 CFR 603, Income and Eligibility Verification System. The amendment will permit access to the State unemployment insurance information by the Federal Parent Locator Service for the purpose of child support enforcement.

DOL—ETA — **Proposed Rule Stage**

Timetable:

Action	Date	FR Cite
NPRM	09/21/88	53 FR 34120
NPRM Comment Period End	10/03/88	
Final Action	07/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Local, State, Federal

Additional Information: Levels of Government Affected - State and the Federal Parent Locator Service

Agency Contact: Barbara Ann Farmer, Director, Office of Program Management, Unemployment Insurance Service, Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW, Rm C4512, FPBldg., Washington, DC 20210, 202 535-0619

RIN: 1205-AA84

1416. ADVANCES TO STATES AND REPAYMENT OF ADVANCES; INTEREST ON ADVANCES

Significance: Regulatory Program

Legal Authority: 42 USC 1321; 42 USC 1322

CFR Citation: 20 CFR 606

Legal Deadline: None

Abstract: Since 1981, the Congress has enacted major changes in the Federal Unemployment Tax Act (FUTA) and Social Security Act (SSA) with respect to advances to States for the payment of unemployment benefits and the repayment of such advances. A Notice of Proposed Rulemaking governing relief provisions only was published in the Federal Register on October 28, 1987. This proposed rule will address the accrual and repayment of interest associated with advances. States applying for advances will be given formal procedures and guidance to follow in the loan application and repayment process as well as the interest payment process. To date, UIPLs have been issued to SESAs describing the process.

Timetable:

Action	Date	FR Cite
NPRM	06/00/89	
NPRM Comment Period End	07/00/89	
Final Action	04/00/90	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: James H. Manning, Chief, Division of Actuarial Services, Unemployment Insurance Service, Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW, Room S4519, FPBldg., Washington, DC 20210, 202 535-0640

RIN: 1205-AA85

1417. LABOR CERTIFICATION PROCESS FOR THE PERMANENT EMPLOYMENT OF ALIENS IN THE UNITED STATES

Significance: Regulatory Program

Legal Authority: 8 USC 1182(a)(14)

CFR Citation: 20 CFR 656

Legal Deadline: None

Abstract: Experience in administering the regulations relating to the certification of immigrant aliens for permanent employment in the United States indicates that a number of changes should be made to these regulations. The proposed amendments would be intended to make labor certification process more efficient, to prevent abuse or manipulation of the labor certification process, to clarify some apparent ambiguities in the regulations, and to make the regulations easier to read. Before the Department of State (DOS) and the Immigration and Naturalization Service (INS) may issue visas and admit certain immigrant aliens to work permanently in the United States, the Secretary of Labor pursuant to section 212(a)(14) of the Immigration and Naturalization Act (INA) must certify to the Secretary of State and to the Attorney General that: (a) There are not sufficient United States workers who are able, willing, qualified and available at the time of the application for a visa and admission into the United States and at the place where the alien is to perform work; and (cont)

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	
NPRM Comment Period End	01/00/89	
Final Action	06/00/89	

Small Entities Affected: None

Government Levels Affected: State, Federal

Additional Information: ABSTRACT CONT: (b) The employment of the alien will not adversely affect the wages and working conditions of similarly employed U.S. workers (8 USC 1182(a)(14). The Department of Labor (DOL) has promulgated regulations at 20 CFR Part 656 pursuant to and to implement section 212(a)(14) of the INA (8 USC 1182(a)(14). These regulations set forth the fact finding process designed to support the granting or denial of a permanent labor certification.

Agency Contact: Thomas M. Bruening, Chief, Division of Foreign Labor, Certification, Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW, Room N4456, FPBldg., Washington, DC 20210, 202 535-0163

RIN: 1205-AA86

1418. ECONOMIC DISLOCATION AND WORKER ADJUSTMENT ASSISTANCE PROGRAM

Significance: Regulatory Program

Legal Authority: 29 USC 1501

CFR Citation: 20 CFR 626; 20 CFR 627; 20 CFR 628; 20 CFR 629; 20 CFR 631

Legal Deadline: None

Abstract: In early 1987, the President proposed legislation for a new Worker Readjustment Program to respond to dislocations caused by plant closings, mass layoffs, international competition and technological change. The Congress is considering worker readjustment legislation as a replacement for the Job Training Partnership Act (JTPA) Title III program for dislocated workers. The Department anticipates enactment in 1988. The new program will incorporate several important new changes. Among these changes are: (1) institutionalizing a State rapid response capability, (2) changing delivery system to mandate the designation of substate grantees, (3) focusing on better resource utilization through reallotment and reallocation provisions, (4) greater emphasis on training in innovative features such as certificates of continuing eligibility and individual vouchers for training. In addition, greater emphasis will be placed upon coordination and linkages among major training and employment program components such as the public employment service, the UI and TAA programs.

DOL—ETA — Proposed Rule Stage

Timetable:

Program
NPRM 11/00/88
Interim Final Rule 02/00/89
Subsidy Designation
NPRM 10/00/88
Interim Final Rule 12/00/88

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Robert N. Columbo, Director, Office of Employment Training, Programs, Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW, Room N4469, FPBldg., Washington, DC 20210, 202 535-0577

RIN: 1205–AA67

1419. ● ADMINISTRATIVE PROCEDURE, FEDERAL STATE UNEMPLOYMENT COMPENSATION PROGRAM

Significance: Agency Priority

Legal Authority: Not Yet Determined

CFR Citation: 20 CFR 601; 29 CFR 96; 29 CFR 97; 29 CFR 98

Legal Deadline: None

Abstract: This proposed rule would replace outdated administrative regulations for the unemployment insurance (UI) program grants to States with reference to more current common administrative requirements for State governments codified elsewhere by the Department of Labor (DOL). Because of certain unique needs of the UI program, this action would also cover UI program exceptions to these requirements and clarifications of Employment and Training Administration (ETA) policy in applying requirements to State grantees. As a result, the proposed rule is expected to aid States in understanding and complying with the requirements.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	
NPRM Comment Period End	01/00/89	
Final Action	07/00/89	

Small Entities Affected: None

Government Levels Affected: State

Additional Information: The regulations proposed to be amended were last amended in 1977 and 1981, and since that time DOL has implemented changes in requirements for State governments which now need to be reflected in UI program regulations.

Agency Contact: Mary Ann Wyrsch, Director, Unemployment Insurance Service, Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW, Rm N4231, FPBldg., Washington, DC 20210, 202 523-7621

RIN: 1205–AA68

1420. ● TRADE ADJUSTMENT ASSISTANCE FOR WORKERS (OTCA)

Significance: Regulatory Program

Legal Authority: PL 100-418, The Omnibus Trade and Competitiveness Act of 1988; Part 3 – Trade Adjustment Assistance, of Subtitle D of Title I

CFR Citation: 20 CFR 617

Legal Deadline: None

Abstract: These regulations implement the Amendments to the trade adjustment assistance provisions of the Trade Act of 1974 in Pub. L. 100-418 by expanding the eligibility for TAA to workers in the oil and natural gas industry engaged in exploration and drilling; requiring a written notice to workers believed to be covered by a certification issued by the Department and the publication of a notice of certification in a newspaper of general circulation; making participation in training a condition for receiving trade readjustment allowances; authorizing the waiver of training for a worker when training is not feasible or appropriate; authorizing the payment of TRA to a worker during breaks in training that do not exceed 14 days; basing TAA benefits on the workers most recent separation rather than first qualifying separation as previously applied; extending the authorization of the TAA program to September 30, 1993; and, making other changes.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
NPRM Comment Period End	11/00/88	
Final Action	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Glenn M. Zech, Deputy Director, Office of Trade Adjustment Assistance, Department of Labor, Employment and Training Administration, 601 D Street, NW, Room 6434, Washington, Dc 20213, 202 376-6848

RIN: 1205–AA72

1421. ● IMPLEMENTATION OF THE WORKER ADJUSTMENT AND RETRAINING NOTIFICATION ACT (WARN)

Significance: Regulatory Program

Legal Authority: PL 100-379, Worker Adjustment and Retraining Notification Act

CFR Citation: Not yet determined

Legal Deadline: Final, Statutory, February 4, 1989.

Abstract: These regulations require that, with certain exceptions, companies with at least 100 workers give 60 days or more advance notice of a plant closing that would affect 50 or more full-time workers, or a 6-month or longer layoff that would affect at least one-third of the workforce (or 500 workers).

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
NPRM Comment Period End	12/00/88	
Final Action	01/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Robert N. Columbo, Director, Office of Employment and Training Administration, Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW, Room N4469, FP Bldg., Washington, DC 20210, 202 535-0577

RIN: 1205–AA73

DEPARTMENT OF LABOR (DOL)
Employment and Training Administration (ETA) — Final Rule Stage

1422. UNEMPLOYMENT COMPENSATION FOR EX-SERVICEMEMBERS

Significance: Regulatory Program

Legal Authority: 5 USC 8506; 5 USC 8521 to 8525

CFR Citation: 20 CFR 614

Legal Deadline: None

Abstract: Section 201 of Public Law 97-362 (Miscellaneous Revenue Act of 1982) amends the eligibility requirements for unemployment compensation for ex-servicemembers. The proposed regulations would implement these new requirements.

Timetable:

Action	Date	FR Cite
NPRM	12/09/87	52 FR 46604
NPRM Comment Period End	01/08/88	52 FR 46604
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Lorenzo Roberts, Unemployment Insurance Specialist, Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW, Rm C4514, FPBldg., Washington, DC 20210, 202 535-0300

RIN: 1205–AA26

1423. SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM

Significance: Regulatory Program

Legal Authority: 42 USC 3056 et seq. Older Americans Community Svcs Employ Act

CFR Citation: 20 CFR 674

Legal Deadline: Final, Statutory, May 5, 1988.
PL 98-459, Section 205(c)

Abstract: The regulations will revise and update the existing rules for the Senior Community Service Employment Program. These changes will not create new cost nor materially change the existing program. However, the new rules will place the program in compliance with the 1984 Amendments to the Older Americans Act.

Timetable:

Action	Date	FR Cite
NPRM	07/19/85	50 FR 29606
NPRM Comment Period End	08/27/85	50 FR 34725
Extension of Comment Period to 9/19/85	08/27/85	50 FR 34725
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: State, Federal

Agency Contact: Paul A. Mayrand, Director, Office of Special Targeted, Programs, Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW, Rm N4641, FPBldg., Washington, DC 20210, 202 535-0500

RIN: 1205–AA29

1424. JOB TRAINING PARTNERSHIP ACT AUDITS

Significance: Agency Priority

Legal Authority: Section 164 Job Training Partnership Act; Section 169 Job Training Partnership Act

CFR Citation: 20 CFR 629.42

Legal Deadline: None

Abstract: Governors are responsible for resolving audits of their JTPA subgrantees and subcontractors. Current ETA policy requires federal review and approval of these resolutions only in cases of fraud, gross mismanagement and abuse. More routine audit resolutions are only reviewed on a sample basis during onsite compliance reviews. However, a recent legal opinion stated that the JTPA regulations as presently written could be construed as requiring federal review and approval of all Governors' audit resolutions. The regulations may have to be amended in order to implement ETA's policy.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Sectors Affected: None

Agency Contact: David O. Williams, Administrator, Office of Financial and, Administrative Management, Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW, Rm N4671, FPBldg., Washington, DC 20210, 202 535-0669

RIN: 1205–AA53

1425. LABOR CERTIFICATION PROCESS FOR TEMPORARY EMPLOYMENT OF ALIEN WORKERS IN AGRICULTURE: THE H-2A PROGRAM

Significance: Regulatory Program

Legal Authority: 8 USC 1101(a)(15)(H)(ii)(a)

CFR Citation: 20 CFR 655

Legal Deadline: Other, Statutory, June 1, 1987.
IRCA required publication of interim final rule by June 1, 1987. This was accomplished.

Abstract: The regulation will implement the new H-2A program created by the Immigration Reform and Control Act of 1986 (IRCA). IRCA established H-2A as a new nonimmigrant subcategory for the admission of Foreign Temporary Agricultural Workers.

Timetable:

Action	Date	FR Cite
NPRM	05/05/87	52 FR 16770
NPRM Comment Period End	05/19/87	52 FR 16770
Interim Final Rule	06/01/87	52 FR 20496

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: State, Federal

Agency Contact: Thomas M. Bruening, Chief, Division of Foreign Labor, Certification, Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW, Rm N4456, FPBldg., Washington, DC 20210, 202 535-0153

RIN: 1205–AA59

DEPARTMENT OF LABOR (DOL)
Employment and Training Administration (ETA)

Completed Actions

1426. LIMITATIONS ON TAX CREDIT REDUCTION AND INTEREST ON ADVANCES TO STATES

Significance: Regulatory Program

Legal Authority: 26 USC 3302; 42 USC 1302; PL 97-35, Sec 2408

CFR Citation: 20 CFR 600, (New)

Legal Deadline: None

Abstract: The Omnibus Budget Reconciliation Act of 1981 amended the tax credit provisions of FUTA to authorize the placing of a "cap" on reductions in tax credits on a State-by-State basis in certain prescribed circumstances. The amendment requires these determinations to be made in accordance with regulations prescribed by the Secretary of Labor. The same Act also amended Title XII of the Social Security Act to assess interest on advances to States, the payment of which is prohibited from State unemployment funds. The proposal would implement these statutory changes.

Timetable:

Action	Date	FR Cite
NPRM	10/28/87	52 FR 41463
NPRM Comment Period End	11/27/87	52 FR 41463
Final Action	09/26/88	53 FR 37424
Final Action Effective	10/26/88	

Small Entities Affected: None

Government Levels Affected: State, Federal

Agency Contact: James Manning, Chief, Division of Actuarial Services, Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW, Rm S4519, FPBldg., Washington, DC 20210, 202 535-0648

RIN: 1205-AA14

1427. EXTENDED UNEMPLOYMENT COMPENSATION PROGRAM EXTENDED BENEFITS

Significance: Regulatory Program

Legal Authority: 26 USC 3304 Note; 42 USC 1302

CFR Citation: 20 CFR 615

Legal Deadline: None

Abstract: These regulations would be amended to implement various statutory amendments of 1980, 1981, 1982, and 1983 to the Federal-State Extended Unemployment Compensation Act of 1970. The regulations would (1) provide for the denial of extended benefits to certain interstate claimants and to individuals who fail to actively engage in seeking work or refuse to accept an offer of suitable work, (2) provide for the purging of certain disqualifications in order to establish eligibility for extended benefits, and (3) establish the method of determining the rate of insured unemployment for extended benefit claims, the State trigger rates and removal of the National trigger.

Timetable:

Action	Date	FR Cite
NPRM	10/24/86	51 FR 37741
NPRM Comment Period End	11/24/86	51 FR 37741
Final Action	07/25/88	53 FR 27926
Final Action Effective	08/24/88	53 FR 27926

Small Entities Affected: Undetermined

Government Levels Affected: State, Federal

Agency Contact: Lorenze Roberts, Unemployment Insurance Specialist, Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW, Rm C4514, FPBldg., Washington, DC 20210, 202 535-0369

RIN: 1205-AA15

1428. ADMINISTRATIVE PROCEDURE

Significance: Regulatory Program

Legal Authority: 42 USC 1302

CFR Citation: 20 CFR 601.9, (Revision)

Legal Deadline: None

Abstract: The regulation will provide States with administrative appeal rights before the Office of Administrative Law Judges for final determinations disallowing costs or imposing corrective actions as a result of all audits in the Federal-State unemployment benefit and allowance programs. Currently, no such appeal rights exist and if a State seeks review of one of the above actions the only appeal forum is the Federal Court. Provision of these appeal rights before the Office of Administrative Law Judges should reduce the workload of the Federal Court system and allow the Department of Labor adjudicate the issues in a more informal setting with the Administrative Law Judges, who are more accustomed to dealing with the particular issues involved. The regulation will also correct what is perceived as an inequity, since most Employment and Training Administration programs have administrative appeal rights.

Timetable:

Action	Date	FR Cite
NPRM	06/10/86	51 FR 20991
NPRM Comment Period End	07/10/86	51 FR 20991
Policy directive issued	07/29/88	

Small Entities Affected: None

Government Levels Affected: State, Federal

Additional Information: A Department of Labor Inter-Agency Task Force established to implement the Single Audit Act has decided that all Department of Labor programs shall have some type of appeal rights within the Department of Labor. The Office of the Assistant Secretary for Employment and Training Administration decided that appeal rights for all Employment and Training Administration programs shall be provided by the Office of Administrative Law Judges.

Agency Contact: Linda D. Kaminier, Chief, Division of Debt Management, Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW, Rm N4671, FPBldg., Washington, DC 20210, 202 535-0704

RIN: 1205-AA46

1429. DISASTER UNEMPLOYMENT ASSISTANCE PROGRAM (DUA)

Significance: Agency Priority

Legal Authority: 42 USC 5177

CFR Citation: 20 CFR 625, (Revision)

Legal Deadline: None

Abstract: A few technical amendments are necessary to update the DUA Final Regulations which were published September 26, 1977. A clarification is needed on the administration of DUA in the Virgin Islands. Also, the Canal Zone should be deleted from the eligible "States." The formula for computing DUA weekly benefit amounts needs to be simplified. The first week of DUA payable needs to be clarified and the appropriate share of Federal-State costs needs to be determined.

DOL—ETA

Completed Actions

Timetable:

Action	Date	FR Cite
No action anticipated	07/29/88	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Sectors Affected: None

Additional Information: Disaster Relief Act was not amended, therefore, no need to revise regulations. Significance policy decisions were put on hold that would have required changes.

Agency Contact: Lorenzo Roberts, Unemployment Insurance Specialist, Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW, Rm C4514, FPBldg., Washington, DC 20210, 202 535-0369

RIN: 1205-AA50

1430. PREFERENCE IN FEDERAL PROCUREMENT FOR LABOR SURPLUS AREAS UNDER EXECUTIVE ORDERS 12073 AND 10582

Significance: Regulatory Program

Legal Authority: EO 12073; EO 10582

CFR Citation: 20 CFR 654.5(b)

Legal Deadline: None

Abstract: Currently the Department of Labor only classifies civil jurisdictions (counties, cities over 50,000 population as well as townships and towns in certain selected States) as labor surplus areas. This policy has resulted in some employment centers in the nation's large metropolitan areas not being classified as labor surplus areas, even though the entire Metropolitan Statistical Areas or Primary Metropolitan Statistical Areas would meet the labor surplus area criteria if such geographic areas were classified. The proposed rule would grant the Assistant Secretary for Employment and Training the authority to classify Metropolitan Statistical Areas and Primary Metropolitan Statistical Areas as labor surplus areas to help alleviate unemployment in these areas. The change will add some additional labor surplus areas to the current list but it will not increase the funds going to such designated areas.

Timetable:

Action	Date	FR Cite
NPRM	07/24/86	51 FR 26555
NPRM Comment Period End	08/25/86	51 FR 26555
Final Action	06/21/88	53 FR 23346
Final Action Effective	06/21/88	

Small Entities Affected: None

Government Levels Affected: Local, State

Agency Contact: Robert A. Schaerfl, Director, United States Employment Service, Department of Labor, Employment and Training Administration, 200 Constitution Ave., NW, Rm N4470 FPBldg., Washington, DC 20210, 202 535-0157

RIN: 1205-AA03

1431. TRADE ADJUSTMENT ASSISTANCE FOR WORKERS

Significance: Regulatory Program

Legal Authority: PL 99-272 Consolidated Omnibus Budget Reconciliation Act (1985)

CFR Citation: 20 CFR 617

Legal Deadline: None

Abstract: These regulations implement PL 99-272, enacted on April 7, 1986, which amended the trade adjustment assistance provisions of the Trade Act of 1974, by extending the program for six (6) years to September 30, 1991; requiring participation in a job search program, where reasonably available, as a condition for receiving TRA payments; changing the number of weeks of employer authorized leave credited to satisfy the 26 weeks of employment in the last 52 weeks to qualify for TRA; extending the period to receiving basic TRA from 52 weeks to 104 weeks (no increase in the number of weeks payable); and making other changes.

Timetable:

Action	Date	FR Cite
NPRM	10/22/87	52 FR 39586
NPRM Comment Period End	11/23/87	52 FR 39586
Final Action	08/24/88	53 FR 32344
Final Action Effective	09/23/88	

Small Entities Affected: Undetermined

Government Levels Affected: State, Federal

Agency Contact: Glenn M. Zech, Deputy Director, Office of Trade, Adjustment Assistance, Department of Labor, Employment and Training Administration, 601 D Street, NW, Rm 6434, FPBldg., Washington, DC 20213, 202 376-6848

RIN: 1205-AA51

1432. LABOR SURPLUS AREA PROGRAM POPULATION CRITERIA CHANGE AS REVISED BY PL 99-272

Significance: Agency Priority

Legal Authority: EO 12073; EO 10582; PL 95-24; PL 96-302; PL 99-272

CFR Citation: 20 CFR 654

Legal Deadline: Final, Statutory, July 7, 1988.

Abstract: The Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272) Section 18003 amended the Small Business Act to require the Secretary of Labor to reduce the population criteria for labor surplus areas from fifty-thousand to twenty-five thousand. Section 18003 of Public Law 99-272 became effective on July 7, 1988. The Department of Labor is in the process of implementing the new requirements of the Law but such data did not exist for such areas on a monthly basis at the time Public Law 99-272 was enacted. Implementation has, therefore, been hampered while the data for hundreds of areas were being developed on a monthly basis going back to January 1984.

Timetable:

Action	Date	FR Cite
Final Action Combined with Federal Procurement Labor Surplus Regulations	06/21/88	53 FR 23346
Final Action Effective	06/21/88	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Agency Contact: Clayton J. Cottrell, Chief, Division of Planning and Operations, Department of Labor, Employment and Training Administration, 200 Constitution Avenue, N.W., Rm N4456, FPBldg., Washington, DC 20210, 202 535-0182

RIN: 1205-AA45

DOL—ETA

Completed Actions

1433. REFOCUS OF THE PUBLIC EMPLOYMENT SERVICE

Legal Authority: PL 97-300 Wagner-Peyser Act as amended by the JTPA

CFR Citation: 20 CFR 652; 20 CFR 653

Legal Deadline: None

Abstract: In September 1986, the Department of Labor announced in the Federal Register its review of the public employment service, raising the concern of the employment service capability to meet the current and future labor market needs, particularly the labor market needs that will emerge in the year 2000. The announcement provided the public an opportunity to respond either orally at public meetings held in October, 1986 or in writing directly to the Department. The announcement described the concern of the questions concerning the purpose and role of the employment service. An analysis of the public response to the announcement, as well as other data available to the Department from other research, studies, and papers provides the basis for the Department to propose a refocus of the employment service to address current and emerging labor force trends. Regulations may be proposed to the extent needed, to either implement any new legislation that may emerge or to achieve the new direction.

Timetable:

Action	Date	FR Cite
Deferred-no legislation	07/29/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Clayton J. Cottrell, Chief, Division of Planning and Operations, Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW, Rm N4456, FPBldg., Washington, DC 20210, 202 535-0182

RIN: 1205-AA53

1434. JOB TRAINING PARTNERSHIP ACT - AMENDMENT CONCERNING FIXED UNIT PRICE PERFORMANCE BASED CONTRACTS

Significance: Regulatory Program

Legal Authority: Not Yet Determined

CFR Citation: 20 CFR 629, (Revision)

Legal Deadline: None

Abstract: On October 13, the President signed into law the Job Training Partnership Act (JTPA) Amendments of 1986. In an Advance Notice of Proposed Rulemaking of January 16, 1987, the Department indicated that, in addition to proposed rules for the JTPA Amendments of 1986, it would review fixed-unit price performance- based contracting to determine the need for regulatory revision. The Department has completed this review with the resulting determination of the need for regulatory revision in this area. Proposed regulatory revisions will be published as a final rule around the latter part of 1988. The revisions will deal with the following critical areas: (1) the definition of the term "training" for the purposes of 20 CFR 629.38(e)(2) the allocation of charges among the several cost categories of the final elements of performance--"placement in unsubsidized employment in the occupation trained for, and at the specific wage"--do not occur; (3) clarification regarding the generation of profits and the use of such profits by contractors and/or (4) the practice of making incremental payments to contractors for achieving interim performance benchmarks rather than full performance.

Timetable:

Action	Date	FR Cite
Policy directive issued versus rulemaking	08/09/88	53 FR 29961

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Mr. Robert N. Colombo, Director, Office of Employment and Training, Programs, Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., Room N4469, FPBldg., Washington, DC 20210, 202 535-0577

RIN: 1205-AA66

DEPARTMENT OF LABOR (DOL)

Pension and Welfare Benefits Administration (PWBA)

Prerule Stage

1435. "TOP HAT" PLANS

Significance: Regulatory Program

Legal Authority: 29 USC 1135

CFR Citation: 29 CFR 2510

Legal Deadline: None

Abstract: This regulation would provide guidance as to what constitutes an unfunded employee benefit plan maintained primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees ("top hat" plans) for purposes of Title I of ERISA.

Timetable:

Action	Date	FR Cite
Agency to complete review with respect to necessity of a form of policy guidance	10/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Judith B. Kahn, Employee Benefit Plan Specialist, Department of Labor, Office of the Secretary, 200 Constitution Ave., NW, Rm N5669, FPBldg., Washington, DC 20210, 202 523-8881

RIN: 1210-AA21

DEPARTMENT OF LABOR (DOL)

Pension and Welfare Benefits Administration (PWBA)

Proposed Rule Stage

1436. QUALIFIED DOMESTIC RELATIONS ORDERS UNDER THE RETIREMENT EQUITY ACT

Legal Authority: 29 USC 1056(d)(3)(L); 29 USC 1135

CFR Citation: 29 CFR 2530

Legal Deadline: None

Abstract: This regulation would clarify the application of the qualified domestic relations order provisions of Section 206(d)(3) of ERISA added by the Retirement Equity Act of 1984.

Timetable:

Action	Date	FR Cite
NPRM	06/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Shelby Hoover, Counsel for Regulations, Department of Labor, Office of the Secretary, 200 Constitution Ave., NW, Rm N4611, FPBldg., Washington, DC 20210, 202 523-9329

RIN: 1210-AA18

1437. FINAL BONDING RULES (FERSA AND ERISA)

Significance: Regulatory Program

Legal Authority: 5 USC 8478

CFR Citation: Not yet determined

Legal Deadline: Final, Statutory, December 31, 1988.
Section 113 of the Federal Employees' Retirement System Technical Corrections Act of 1986 imposes a December 31, 1988 deadline for promulgating final bonding regulations under FERSA.

Abstract: FERSA Section 8478 requires the Secretary of Labor to promulgate regulations governing the bonding of fiduciaries and other persons who handle the funds or other property of the Thrift Savings Fund established under FERSA. The regulations set forth the required bonding procedures.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/23/87	52 FR 35864
NPRM	02/00/89	
NPRM Comment Period End	04/00/89	
Final Action	12/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Gerald B. Lindrew, Assistant Director for Policy and, Legislative Analysis, Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Room N5647, FPBldg., Washington, DC 20210, 202 523-7933

RIN: 1210-AA31

1438. CIVIL PENALTIES UNDER FERSA

Significance: Regulatory Program

Legal Authority: 5 USC 8477(e)(1)(B)

CFR Citation: Not yet determined

Legal Deadline: None

Abstract: Section 8477(e)(1)(B) of the Federal Employees' Retirement System Act of 1986 (FERSA) authorizes the Secretary of Labor to assess civil penalties against parties in interest who engage in prohibited transactions with the Thrift Savings Fund (Fund) established under FERSA. The regulations will govern the procedures for imposing sanctions and enable the Department to penalize persons who violate the prohibited transaction rules with respect to assets of the Fund.

Timetable:

Action	Date	FR Cite
NPRM	09/26/88	53 FR 37486
NPRM Comment Period End	11/25/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Susan Ross, Staff Attorney, Department of the Interior, Office of the Solicitor, 200 Constitution Avenue, NW, Room N5647, FPBldg., Washington, DC 20210, 202 523-8141

RIN: 1210-AA32

1439. CIVIL PENALTY FOR FAILURE OR REFUSAL TO FILE ANNUAL REPORT

Significance: Regulatory Program

Legal Authority: PL 100-203, Section 9341[c]

CFR Citation: Not yet determined

Legal Deadline: NPRM, Statutory, January 1, 1989.
Section 9342(d) of OBRA 1987 specifically directs the Secretary to issue not later than January 1, 1989, the regulations required to implement this provision.

Abstract: Section 502(c) of the Employee Retirement Income Security Act of 1974 (ERISA) was amended by Section 9342(c) of the Omnibus Budget Reconciliation Act of 1987 (OBRA 1987) to authorize the Secretary of Labor to assess a civil penalty of up to $1,000 a day from the date of a plan administrator's failure or refusal to file the complete annual report required to be filed with the Secretary under section 101(b)(4) of ERISA. This regulation would carry out the requirement of OBRA 1987 that the Secretary promulgate regulations implementing the new civil penalty provision relating to a plan administrator's failure or refusal to file a complete annual report.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
NPRM Comment Period End	11/00/88	
Final Action	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Gerald B. Lindrew, Assistant Director for Policy and, Legislative Analysis, Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Room N5647, FPBldg., Washington, DC 20210, 202 523-7933

RIN: 1210-AA34

DEPARTMENT OF LABOR (DOL)

Pension and Welfare Benefits Administration (PWBA)

Final Rule Stage

1440. INDIVIDUAL BENEFITS REPORTING AND RECORDKEEPING FOR MULTIPLE EMPLOYER PLANS

Significance: Regulatory Program

Legal Authority: 29 USC 1025; 29 USC 1059; 29 USC 1135

CFR Citation: 29 CFR 2520; 29 CFR 2530

Legal Deadline: None

Abstract: The rule would govern: (1) reports that must be furnished to participants and beneficiaries in multiple employer pension plans, regarding the benefits to which they are entitled, or may become entitled, at retirement; and (2) records that must be maintained to provide the information necessary to prepare these reports. This rule was first proposed on 02/09/79 (44 FR 8294) jointly with the single employer plan benefit reporting regulations.

Timetable:

Action	Date	FR Cite
NPRM Previous	02/09/79	44 FR 8294
NPRM	08/08/80	45 FR 52824
NPRM Comment Period End	10/06/80	
Notice of Public Hearing on 11/25/80	11/12/80	45 FR 74727
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Katherine Lewis, Employee Benefit Plan Specialist, Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Ave., NW, Rm N5669, FPBldg., Washington, DC 20210, 202 523-7901

RIN: 1210-AA03

1441. INDIVIDUAL BENEFITS REPORTING AND RECORDKEEPING FOR SINGLE EMPLOYER PLANS

Significance: Regulatory Program

Legal Authority: 29 USC 1025; 29 USC 1059; 29 USC 1135

CFR Citation: 29 CFR 2520; 29 CFR 2530

Legal Deadline: None

Abstract: The rule would govern: (1) reports that must be furnished to participants and beneficiaries in single employer pension plans, regarding the benefits to which they are entitled, or may become entitled, at retirement; and (2) records that must be maintained to provide the information necessary to prepare these reports. This rule was first proposed on 02/09/79 (44 FR 8294) jointly with the multiple employer plan benefit reporting regulation.

Timetable:

Action	Date	FR Cite
NPRM Previous	02/09/79	44 FR 8294
NPRM	08/01/80	45 FR 51231
Notice of Public Hearing on 11/25/80	11/12/80	45 FR 74728
NPRM Comment Period End	10/01/81	
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Katherine Lewis, Employee Benefit Plan Specialist, Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Ave., NW, Rm N5669, FPBldg., Washington, DC 20210, 202 523-7901

RIN: 1210-AA03

1442. PARTICIPANT DIRECTED INDIVIDUAL ACCOUNT PLANS

Significance: Regulatory Program

Legal Authority: 29 USC 1104(c); 29 USC 1135

CFR Citation: 29 CFR 2550

Legal Deadline: None

Abstract: The regulation would describe the kinds of participant directed individual account plans referred to in Section 404(c) of ERISA, the circumstances under which a participant or beneficiary will be considered to have exercised control over his individual account, and the consequences under section 404(c) of such an exercise of control.

Timetable:

Action	Date	FR Cite
NPRM	09/03/87	52 FR 33508
NPRM Comment Period End	11/02/87	
Final Action	04/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Shelby Hoover, Counsel for Regulations, Department of Labor, Office of the Secretary, 200 Constitution Ave., NW, Rm N4611, FPBldg., Washington, DC 20210, 202 523-8500

RIN: 1210-AA26

1443. LOANS TO PARTICIPANTS

Significance: Regulatory Program

Legal Authority: 29 USC 1135; 29 USC 1108

CFR Citation: 29 CFR 2550

Legal Deadline: None

Abstract: This rule describes the circumstances under which the exemption in Section 408(b)(1) of ERISA from the prohibited transaction provisions for loans by a plan to plan participants will be available.

Timetable:

Action	Date	FR Cite
NPRM	01/22/88	53 FR 1796
NPRM Comment Period End	03/22/88	
Final Action	11/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Susan Rees, Staff Attorney, Department of Labor, Office of the Secretary, 200 Constitution Ave., NW, Rm N4611, FPBldg., Washington, DC 20210, 202 523-8500

RIN: 1210-AA00

1444. ADEQUATE CONSIDERATION

Significance: Regulatory Program

Legal Authority: 29 USC 1002(3)(18); 29 USC 1135

CFR Citation: 29 CFR 2510

Legal Deadline: None

Abstract: This regulation would provide guidance as to what constitutes adequate consideration under Section 3(18) of ERISA for securities for which there is no generally recognized market.

Timetable:

Action	Date	FR Cite
NPRM	05/17/88	53 FR 17632
NPRM Comment Period End	07/16/88	
Final Action	01/00/89	

Small Entities Affected: Undetermined

DOL—PWBA

Final Rule Stage

Government Levels Affected: Undetermined

Agency Contact: Daniel J. Maguire, Staff Attorney, Department of Labor, Office of the Secretary, 200 Constitution Ave., NW, Rm N4611, FPBldg., Washington, DC 20210, 202 523-8508

RIN: 1210-AA15

1445. PROPOSED REGULATION EXEMPTING CERTAIN BROKER-DEALERS AND INVESTMENT ADVISERS FROM BONDING REQUIREMENTS

Significance: Agency Priority

Legal Authority: 29 USC 1135; 29 USC 1112

CFR Citation: 29 CFR 2580

Legal Deadline: None

Abstract: The proposed regulation is intended to provide an exemption from the bonding requirements of Section 412 (a) of ERISA for certain broker dealers and investment advisers who handle plan assets if the proposed regulation's alternative bonding requirements are met. If adopted, the regulation would permit broker-dealer and their investment adviser affiliates to substitute the fidelity bond required by the self-regulatory organizations of which they are members, subject to a minimum level of coverage, for the bond otherwise required by Section 412 of ERISA.

Timetable:

Action	Date	FR Cite
NPRM	08/19/87	52 FR 31039
NPRM Comment Period End	05/18/88	53 FR 11886
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Linda Shore, Employee Benefit Plan Specialist, Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Rm N5667 FPBuilding, Washington, DC 20210, 202 523-8671

RIN: 1210-AA25

1446. PROCEDURES FOR FILING AND PROCESSING APPLICATIONS FOR EXEMPTION FROM THE PROHIBITED TRANSACTION PROVISIONS OF ERISA, THE INTERNAL REVENUE CODE, AND FERSA

Significance: Regulatory Program

Legal Authority: 29 USC 1108; 29 USC 1135; 5 USC 8477 (C) (3)

CFR Citation: 29 CFR 2570

Legal Deadline: None

Abstract: This regulation describes the procedures for filing and processing applications for exemptions from the prohibited transaction provisions of ERISA of 1974 and IRC and FERSA of 1986. The proposed regulation updates the description of the Department's procedures to reflect changes in the Department of Labor's exemption authority and to clarify the procedures by providing a more detailed description of the prohibited transaction exemption process.

Timetable:

Action	Date	FR Cite
NPRM	06/28/88	53 FR 24422
NPRM Comment Period End	08/29/88	
Interim Final Rule	12/00/88	
Final Action	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Linda N. Winter, Staff Attorney, Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Rm N5669, FPBuilding, Washington, DC 20210, 202 523-8500

RIN: 1210-AA26

1447. ALLOCATION OF FIDUCIARY RESPONSIBILITY (FERSA)

Significance: Regulatory Program

Legal Authority: 5 USC 8477(e)(1)(E)

CFR Citation: Not yet determined

Legal Deadline: NPRM, Statutory, December 31, 1988.
Section 114 of the Federal Employees' Retirement System Technical Corrections Act of 1986 imposes a December 31, 1988 deadline for promulgating these regulations.

Abstract: Section 8477(e)(1)(E) of the Federal Employees' Retirement System Act of 1986 (FERSA) requires the Secretary of Labor to prescribe in regulations procedures for allocating fiduciary responsibilities among fiduciaries, including investment managers, with respect to the Thrift Savings Fund (Fund) established under FERSA. This regulation would carry out the requirement of FERSA that the Secretary promulgate regulations prescribing procedures for allocating fiduciary responsibility with respect to the Thrift Savings Fund.

Timetable:

Action	Date	FR Cite
NPRM	07/22/88	53 FR 27704
NPRM Comment Period End	08/21/88	
Final Action	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Shelby Hoover, Counsel for Regulation, Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Room N4611, FPBldg., Washington, DC 20210, 202 523-8500

RIN: 1210-AA30

DEPARTMENT OF LABOR (DOL)

Pension and Welfare Benefits Administration (PWBA)

Completed Actions

1448. DEFINITION OF "PLAN ASSETS" (PARTICIPANT CONTRIBUTIONS) (PROPOSED AT 44 FR 50363, AUGUST 28, 1979)

Significance: Agency Priority

Legal Authority: 29 USC 1135

CFR Citation: 29 CFR 2550

Legal Deadline: None

Abstract: This regulation would describe when monies paid to, or withheld by, an employer as contributions to an employee benefit plan are considered "Plan Assets" for purposes of Title I of ERISA and certain related provisions of the Internal Revenue Code. Proposed regulations

DOL—FWBA — Completed Actions

dealing with this matter were published by the Department on August 28, 1979.

Timetable:

Action	Date	FR Cite
NPRM	08/28/79	44 FR 50363
NPRM Comment Period End	01/07/80	
Public Hearings	02/27/80	
Final Action	05/17/88	53 FR 17626
Final Action Effective	08/15/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Subpart of RIN 1210-AA06 (Definition of Plan Assets) which will be handled separately. This item is included as 1210-AA23 in the U.S. Regulatory Program.

Agency Contact: Daniel J. Maguire, Staff Attorney, Department of Labor, Office of the Secretary, 200 Constitution Ave., NW, Rm N4611, FPBldg., Washington, DC 20210, 202 523-8596

RIN: 1210-AA16

1449. PROCEDURES FOR THE ADMINISTRATIVE IMPOSITION OF CIVIL SANCTIONS UNDER SECTION 502(i) OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974 (ERISA)

Significance: Regulatory Program

Legal Authority: 29 USC 1132 (i); 29 USC 1135

CFR Citation: 29 CFR 2560; 29 CFR 2570

Legal Deadline: None

Abstract: This procedural rule would implement Section 502(i) of ERISA which authorizes the Secretary of Labor to impose civil sanctions against parties in interest (as defined in ERISA Section 3(14)) who engage in prohibited transactions with welfare plans and nonqualified pension plans.

Timetable:

Action	Date	FR Cite
NPRM	08/27/86	51 FR 30501
NPRM Comment Period End	10/27/86	51 FR 30501
Final Action	09/26/88	53 FR 37474
Final Action	09/26/88	53 FR 37477
Final Action Effective	10/26/88	
Final Action Effective	10/26/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Susan Rees, Staff Attorney, Department of Labor, Office of the Secretary, 200 Constitution Ave., NW, Rm N4611, FPBldg., Washington, DC 20210, 202 523-8596

RIN: 1210-AA20

1450. AMOUNT OF BOND FOR FERS THRIFT SAVINGS FUND

Significance: Agency Priority

Legal Authority: 5 USC 8478

CFR Citation: Not yet determined

Legal Deadline: None

Abstract: Section 8478(b)(1) requires the Secretary of Labor to prescribe the amount of a bond at the beginning of each Fiscal Year of the fund. This rulemaking accomplishes that objective.

Timetable:

Action	Date	FR Cite
Subsumed by RIN 1210-AA31	07/29/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Rudy F. Nuisel, Employee Benefit Plan Specialist, Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Rm N5669 FP Building, Washington, DC 20210, 202 523-7901

RIN: 1210-AA28

DEPARTMENT OF LABOR (DOL) — Proposed Rule Stage

Office of Labor Management Standards (OLMS)

1451. LABOR ORGANIZATION ANNUAL FINANCIAL REPORTS

Legal Authority: 29 USC 431; 29 USC 436; 29 USC 461

CFR Citation: 29 CFR 403

Legal Deadline: None

Abstract: This proposed regulation would implement a new labor organization annual report form to replace Labor Organization Annual Report forms LM-2 and LM-3, which are incorporated in the Department's regulations at 29 CFR 403.3 and 403.4(a). It would also replace Form LM-1A, entitled "Report of Current Status: Labor Organization Information Supplement," which is incorporated in the regulations at 29 CFR 402.4(a).

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Kay H. Oshel, Chief, Division of Interpretations and, Standards, Department of Labor, Office of Labor Management Standards, 200 Constitution Avenue, NW, Room N5613, FPBldg., Washington, DC 20210, 202 523-7373

RIN: 1294-AA04

DEPARTMENT OF LABOR (DOL) — Prerule Stage

Mine Safety and Health Administration (MSHA)

1452. NOTIFICATION, INVESTIGATION, REPORTS AND RECORDS OF ACCIDENTS INJURIES, ILLNESSES, EMPLOYMENT, AND COAL PRODUCTION IN MINES

Significance: Regulatory Program

Legal Authority: 30 USC 957; 30 USC 813(d)

CFR Citation: 30 CFR 50

Legal Deadline: None

Abstract: In response to concerns raised by members of Congress and the mining community about the nature and accuracy of existing reporting obligations, MSHA established an intra-agency task force to review its requirements for reports of accidents, injuries and illnesses in coal and metal and nonmetal mines. The Agency focused on several aspects of the reporting requirements including the definition of an occupational injury or illness, and an expanded audit program. The Agency has determined that the existing regulations in Part 50 should be clarified and improved through the rulemaking process. MSHA will clarify the definitions of reportable injuries and illnesses and solicit suggestions from the public in this effort.

Timetable:

Action	Date	FR Cite
Begin Review	12/01/85	
Task Force Report Completed	03/00/86	
ANPRM	10/00/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, Department of Labor, Mine Safety and Health Administration, 4015 Wilson Boulevard, Rm 627, BT #3, Arlington, VA 22203, 703 235-1910

RIN: 1219-AA33

DEPARTMENT OF LABOR (DOL) — Proposed Rule Stage

Mine Safety and Health Administration (MSHA)

1453. PATTERN OF VIOLATIONS

Significance: Regulatory Program

Legal Authority: 30 USC 814(e); 30 USC 957

CFR Citation: 30 CFR 104

Legal Deadline: None

Abstract: This rulemaking would implement section 104(e) of the Federal Mine Safety and Health Act of 1977 which addresses mines with a pattern of repeated, significant and substantial violations. In 1985 MSHA issued an ANPRM which outlined new procedures for implementing the statutory provision for pattern of violations. The Agency reviewed comments and has been working to develop both appropriate criteria and a meaningful procedure for identifying operators who are potential pattern violators.

Timetable:

Action	Date	FR Cite
ANPRM	02/08/85	50 FR 5470
Withdrawal of 1980 NPRM	02/08/85	50 FR 5470
Extension of Comment Period to 5/10/85	04/05/85	50 FR 13617
ANPRM Comment Period End	04/09/85	50 FR 5470
NPRM	10/00/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, Department of Labor, Mine Safety and Health Administration, 4015 Wilson Blvd., Rm 627, BT #3, Arlington, VA 22203, 703 235-1910

RIN: 1219-AA04

1454. UNDERGROUND COAL MINE ELECTRICAL STANDARDS

Significance: Regulatory Program

Legal Authority: 30 USC 811

CFR Citation: 30 CFR 75.500; 30 CFR 75.600; 30 CFR 75.700; 30 CFR 75.800; 30 CFR 75.900; 30 CFR 75.1000

Legal Deadline: None

Abstract: Existing electrical standards for underground coal mines would be substantially reorganized, clarified, and updated. General incorporations by reference of the National Electric Code would be eliminated and replaced with specific standards applicable to underground coal mining operations. The Agency is in the process of developing a proposed rule that addresses the wide range of issues raised by commenters.

Timetable:

Action	Date	FR Cite
Begin Review	07/09/82	47 FR 30025
ANPRM	05/23/86	51 FR 18899
Comment Period Extended to 8/15/86	07/03/86	51 FR 24387
ANPRM Comment Period End	07/22/86	51 FR 18899
NPRM	12/00/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, Department of Labor, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, VA 22203, 703 235-1910

RIN: 1219-AA10

1455. REVIEW OF METAL AND NONMETAL ELECTRICAL STANDARDS

Significance: Regulatory Program

Legal Authority: 30 USC 811

CFR Citation: 30 CFR 56.12000; 30 CFR 57.12000

Legal Deadline: None

Abstract: The electrical standards are part of the overall review of regulations dealing with metal and nonmetal mines and mills. General incorporations by reference of the National Electric Code would be eliminated and replaced with standards applicable to metal and

nonmetal mining and mills.These standards would also be substantially clarified, updated, and realigned into functional categories, and would include technological advances in electrical systems.

Timetable:

Action	Date	FR Cite
Begin Review	03/25/83	48 FR 19267
ANPRM	05/20/83	48 FR 22895
ANPRM Comment Period End	07/19/83	
NPRM	12/00/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, Department of Labor, Mine Safety and Health Administration, 4015 Wilson Boulevard, Rm 627, Arlington, VA 22203, 703 235-1910

RIN: 1219–AA14

1456. REVIEW OF METAL AND NONMETAL EXPLOSIVES STANDARDS

Significance: Regulatory Program

Legal Authority: 30 USC 811

CFR Citation: 30 CFR 56.6000; 30 CFR 57.6000

Legal Deadline: None

Abstract: The explosives standards are part of the overall review of regulations dealing with metal and nonmetal mines and mills. These standards would be clarified and updated consistent with technological advances, such as gaseous initiation systems, miniaturized detonating cord systems and the use of bulk mixing of explosives materials.

Timetable:

Action	Date	FR Cite
Begin Review	03/25/80	45 FR 19267
ANPRM	08/20/84	49 FR 33087
Extension of ANPRM Comment Period to 11/16/84	09/25/84	49 FR 37640
ANPRM Comment Period End	10/19/84	
NPRM	10/00/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Public hearings will most likely be held in October 1988.

Agency Contact: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, Department of Labor, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, VA 22203, 703 235-1910

RIN: 1219–AA17

1457. DIESEL-POWERED EQUIPMENT FOR UNDERGROUND COAL MINES

Significance: Regulatory Program

Legal Authority: 30 USC 811; 30 USC 957

CFR Citation: 30 CFR 18; 30 CFR 36; 30 CFR 31; 30 CFR 32

Legal Deadline: None
Under the Mine act, the advisory committee must submit recommendations within 180 days of convening.

Abstract: MSHA has established a mining equipment approval program, including evaluation criteria, and corresponding safety standards requiring the use of certain equipment. Existing approval regulations do not generally apply to the diesel equipment now being used in underground coal mines. An Advisory Committee convened in January 1986 to make recommendations concerning what standards and regulations would be appropriate for coal mines. The Advisory Committee made recommendations to the Assistant Secretary for MSHA, to write proposed regulations for approval of equipment in July 1988.

Timetable:

Action	Date	FR Cite
Establishment of Advisory Committee	10/06/87	52 FR 37361
Notice of Appointment of Committee Members and Notice of First Meeting	01/05/88	53 FR 00189
Committee Deliberations/ Recommendations	07/27/88	
NPRM	12/00/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, Department of Labor, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, VA 22203, 703 235-1910

RIN: 1219–AA27

1458. RULES OF PRACTICE FOR PETITIONS FOR MODIFICATION OF MANDATORY SAFETY STANDARDS

Significance: Regulatory Program

Legal Authority: 30 USC 811

CFR Citation: 30 CFR 44

Legal Deadline: None

Abstract: On July 10, 1987, the United States Court of Appeals for the District of Columbia invalidated the Agency's existing interim relief regulation based in part, on procedural defects, holding that it was contrary to Congressional interest. (INT. UNION v. MSHA, 823 F. 2d 608 (D.C. Cir. 1987). Therefore, MSHA has issued a proposal addressing interim relief in situations where enforcement of a mandatory standard would result in a diminution of safety to affected miners or in emergency situations.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Patricia W. Silvey, Director, Office of Standard, Regulations and Variances, Department of Labor, Mine Safety and Health Administration, 4015 Wilson Blvd., Room 631, BT #3, Arlington, VA 22203, 703 235-1910

RIN: 1219–AA45

1459. HAZARD COMMUNICATION

Significance: Regulatory Program

Legal Authority: 30 USC 811

CFR Citation: 30 CFR Not yet determined

Legal Deadline: None

Abstract: The primary purpose of this action is to provide miners with the means to receive necessary information on the hazards of chemical to which they are exposed and the action necessary to protect their safety and health. MSHA is reviewing OSHA's hazard communication standard and is also reviewing information collected by NIOSH.

Timetable:

Action	Date	FR Cite
ANPRM	03/30/88	53 FR 10257
ANPRM Comment Period End	07/31/88	
NPRM	06/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, Department of Labor, Mine Safety and Health Administration, 4015 Wilson Blvd., Room 631, BT #3, Arlington, VA 22203, 703 235-1910

RIN: 1219–AA47

1460. ◆ AIR QUALITY STANDARDS

Significance: Regulatory Program

Legal Authority: 30 USC 811

CFR Citation: 30 CFR 55; 30 CFR 56; 30 CFR 70; 30 CFR 71

Legal Deadline: None

Abstract: This regulation combines 1219-AA21, 1219-AA41 and 1219-AA46. The agency is developing a NPRM which incorporates permissible exposure limits which are applicable to the hazards encountered in metal and nonmetal mines and exposure limits for most noxious and poisonous gases in underground coal mines. The proposal would solicit comment on which means of control would provide the necessary protection from airborne contaminants. Standards for use of respiratory protective equipment would replace an outdated incorporation by reference. The proposal would also update asbestos standards. Other issues being considered are: requirements for exposure monitoring and precautions for handling restricted-use chemicals; notification of workers of overexposures; and access to exposure limits.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, Department of Labor, Mine Safety and Health Administration, 4015 Wilson Blvd., Rm 627, BT #3, Arlington, VA 22203, 703 235-1910

RIN: 1219–AA48

1461. ◆ REFUSE PILE AND IMPOUNDMENT INSPECTION RECORDS

Legal Authority: 30 USC 811

CFR Citation: 30 CFR 75.215

Legal Deadline: None

Abstract: This rulemaking would principally address whether recordkeeping burdens could be reduced in 30 CFR 75.215 which addresses the annual status and certification and weekly inspections of refuse piles and impoundments.

Timetable:

Action	Date	FR Cite
NPRM	04/00/89	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, Department of Labor, Mine Safety and Health Administration, 4015 Wilson Blvd., Rm 627, BT #3, Arlington, VA 22203, 703 235-1910

RIN: 1219–AA49

1462. ◆ MINE RESCUE EQUIPMENT TEST AND INSPECTION RECORDS

Legal Authority: 30 USC 811

CFR Citation: 30 CFR 49

Legal Deadline: None

Abstract: This rulemaking would examine whether recordkeeping burdens could be reduced in 30 CFR 49.6(b) which requires records of monthly inspections and tests of mine rescue apparatus and equipment to be kept for one year.

Timetable:

Action	Date	FR Cite
NPRM	04/00/89	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, Department of Labor, Mine Safety and Health Administration, 4015 Wilson Blvd., Rm 627, BT #3, Arlington, VA 22203, 703 235-1910

RIN: 1219–AA50

1463. ◆ SCSR INSPECTION RECORDS

Legal Authority: 30 USC 811

CFR Citation: 30 CFR 75.1714-3

Legal Deadline: None

Abstract: This rulemaking would examine whether recordkeeping burdens could be reduced in 30 CFR 75.1714-3 which requires records of quarterly inspections and tests of self-contained self-rescue devices.

Timetable:

Action	Date	FR Cite
NPRM	04/00/89	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, Department of Labor, Mine Safety and Health Administration, 4015 Wilson Blvd., Rm 627, BT #3, Arlington, VA 22203, 703 235-1910

RIN: 1219–AA51

1464. ◆ SAFETY STANDARDS FOR METHANE IN METAL/NONMETAL MINES; CONFORMING AMENDMENTS

Significance: Agency Priority

Legal Authority: 30 USC 811

CFR Citation: 30 CFR 57

Legal Deadline: None

Abstract: Existing standards address the use of brattice cloth and ventilation tubing in underground metal/nonmetal mines with a history of, or potential for, methane liberation. These conforming amendments would replace a requirement that such materials have a flame spread rating of 25 or less with a requirement that brattice cloth and to ventilation tubing be approved by MSHA under 30 CFR Part 7.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

DOL—MSHA

Proposed Rule Stage

Government Levels Affected: None

Agency Contact: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, Department of Labor, Mine Safety and Health Administration, 4015 Wilson Blvd., Rm 631, BT #3, Arlington, VA 22203, 703 235-1910

RIN: 1219-AA12

DEPARTMENT OF LABOR (DOL)

Final Rule Stage

Mine Safety and Health Administration (MSHA)

1465. UNDERGROUND COAL MINE VENTILATION

Significance: Regulatory Program

Legal Authority: 30 USC 811

CFR Citation: 30 CFR 75.300

Legal Deadline: None

Abstract: The Agency published a proposed rule concerning ventilation in underground mines which included provisions for the introduction of new technology for systematic monitoring of explosive methane gas, as well as gases that may indicate a mine fire. Other important issues include ventilation of worked-out areas: timeframes for tests for methane; and using intake air that has been used to ventilate a belt conveyor entry. The existing escapeway standards contained in 30 CFR Part 75.1704 (previously RIN: 1219-AA37) are incorporated into the proposal.

Timetable:

Action	Date	FR Cite
Begin Review	07/09/82	47 FR 30025
ANPRM	11/19/85	50 FR 47702
Extension of ANPRM Comment Period to 4/4/86	02/14/86	51 FR 5546
ANPRM Comment Period End	02/18/86	
NPRM	01/27/88	53 FR 2382
NPRM Comment Period End	08/19/88	53 FR 26449
Final Action	06/00/89	

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Public hearings were held during June 1988.

Agency Contact: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, Department of Labor, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, VA 22203, 703 235-1910

RIN: 1219-AA11

1466. EXPLOSIVES AND BLASTING IN UNDERGROUND COAL MINES

Significance: Regulatory Program

Legal Authority: 30 USC 811

CFR Citation: 30 CFR 75.1300

Legal Deadline: None

Abstract: The existing standards governing the use of explosives in underground coal mines are outdated and incomplete. MSHA's final rule substantially reorganizes, clarifies and updates these requirements. In addition, the rule recognizes new explosives technology and permits future changes in technology with assurances for a safe mining environment.

Timetable:

Action	Date	FR Cite
Begin Review	07/09/82	47 FR 30025
ANPRM	05/08/84	49 FR 19801
ANPRM Comment Period End	07/20/84	49 FR 19801
NPRM	05/09/86	51 FR 17284
NPRM Comment Period End	07/08/86	51 FR 17284
Final Action	10/00/88	

Small Entities Affected: Businesses

Government Levels Affected: State

Additional Information: Public hearings were held in November 1986. See also RIN 1219-AA23 for abstract and timetables of related rulemaking to revise approval specifications for explosives. A supplemental public hearing was held 4/22/87 in Bruceton, PA in conjunction with public hearings on 30 CFR Part 15.

Agency Contact: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, Department of Labor, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, VA 22203, 703 235-1910

RIN: 1219-AA16

1467. APPROVAL REQUIREMENTS FOR EXPLOSIVES AND SHEATHED EXPLOSIVE UNITS

Significance: Agency Priority

Legal Authority: 30 USC 811

CFR Citation: 30 CFR 15

Legal Deadline: None

Abstract: The requirements for approval of explosives are part of the overall coal review of high priority standards. The final rule updates and clarifies existing specifications and tests, and recognizes new provisions in the development of sheathed explosive units. Public hearings on proposed Part 15 were held during April 1987.

Timetable:

Action	Date	FR Cite
ANPRM	06/05/84	49 FR 23281
ANPRM Comment Period End	08/10/84	
NPRM	11/12/86	51 FR 41046
NPRM Comment Period End	01/12/87	51 FR 41046
Final Action	10/00/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, Department of Labor, Mine Safety and Health Administration, 4015 Wilson Boulevard, Rm 627, Arlington, VA 22203, 703 235-1910

RIN: 1219-AA13

1468. METAL AND NONMETAL RADIATION STANDARDS

Significance: Regulatory Program

Legal Authority: 30 USC 811

CFR Citation: 30 CFR 57.5037 to 57.5047

Legal Deadline: None

Abstract: MSHA is reviewing its radiation standards for underground metal and nonmetal mines and has identified certain issues with respect to regulatory action. The Agency published a proposal in December 1986 revising its existing ionizing radiation standards. Public hearings were held in August 1987.Several issues still remain to be resolved in the final rule and MSHA is coordinating with NIOSH, EPA, and NRC.

Timetable:

Action	Date	FR Cite
ANPRM	11/19/85	50 FR 47700
ANPRM Comment Period End	02/18/86	
NPRM	12/19/86	51 FR 45678
NPRM Comment Period End	02/16/87	51 FR 45678
Final Action	11/00/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, Department of Labor, Mine Safety and Health Administration, 4015 Wilson Boulevard, Rm 627, Arlington, VA 22203, 703 235-1910

RIN: 1219-AA25

DOL—MSHA

Final Rule Stage

1469. APPROVAL CRITERIA FOR RESPIRATORY PROTECTIVE DEVICES

Significance: Regulatory Program

Legal Authority: 30 USC 957

CFR Citation: 30 CFR 11

Legal Deadline: None

Abstract: Under the 1977 Mine Act, MSHA and the National Institute for Occupational Safety and Health (NIOSH) jointly approve respirators for use in hazardous atmospheres. New technology has been developed which has not been accommodated by the existing regulations. In addition, questions have been raised about laboratory testing and field performance of respirators. The decision has been made for NIOSH to have the lead in approval of respirators. MSHA will be involved with the devices which are uniquely adapted or required for mining. A proposed rule to remove MSHA's regulations upon completion of a concurrent NIOSH rulemaking was published in August 1987. However, further rulemaking is contingent upon NIOSH's timetables.

Timetable:

Action	Date	FR Cite
NPRM	08/27/87	52 FR 32313
Final Action	12/00/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Completion of MSHA's final rule is contingent upon NIOSH's completion of parallel rulemaking.

Agency Contact: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, Department of Labor, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Va 22203, 703 235-1910

RIN: 1219-AA20

1470. CERTIFICATION AND QUALIFICATION OF PERSONS

Legal Authority: 30 USC 811

CFR Citation: 30 CFR 75.100; 30 CFR 75.150; 30 CFR 77.100; 30 CFR 77.105

Legal Deadline: None

Abstract: Certain MSHA regulations require persons working in coal mines to be qualified or certified to perform certain tasks, e.g., testing for methane, making ventilation examinations, etc. The existing rule requires operators to submit certification and qualification applications to MSHA every six months for recertification. The proposal eliminates the six-month limitation, permitting persons to remain certified or qualified for as long as they continue to satisfy the substantive requirements and remain employed at the same coal mine or independent contractor.

Timetable:

Action	Date	FR Cite
NPRM	04/13/88	53 FR 12250
NPRM Comment Period End	07/15/88	
Final Action	03/00/89	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, Department of Labor, Mine Safety and Health Administration, 4015 Wilson Blvd., Rm 631, BT #3, Arlington, VA 22203, 703 235-1910

RIN: 1219-AA38

1471. AUTOMATIC WARNING DEVICES FOR MOBILE EQUIPMENT

Legal Authority: 30 USC 811

CFR Citation: 30 CFR 77.410

Legal Deadline: None

Abstract: MSHA's existing standard requires mobile equipment to be equipped with devices which automatically sound an alarm when the equipment is put in reverse. MSHA is considering revising the standard to exclude pickup trucks if the driver has an unobstructed rear view. The Agency is also considering allowing alternatives to automatic warning devices.

Timetable:

Action	Date	FR Cite
NPRM	04/13/88	53 FR 12253
NPRM Comment Period End	07/15/88	
Final Action	03/00/89	

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: A hearing was held in Pittsburgh, Pennsylvania on August 30, 1988.

Agency Contact: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, Department of Labor, Mine Safety and Health Administration, 4015 Wilson Blvd., Rm 631, BT #3, Arlington, VA 22203, 703 235-1910

RIN: 1219-AA36

1472. AUTOMATIC EMERGENCY-PARKING BRAKES FOR RUBBER-TIRED SELF-PROPELLED ELECTRIC FACE EQUIPMENT

Significance: Regulatory Program

Legal Authority: 30 USC 811

CFR Citation: 30 CFR 75.523-3

Legal Deadline: None

Abstract: In 1973, the Agency issued installation and performance requirements for automatic emergency brakes on rubber-tired, self-propelled electric face equipment for underground coal mines. However, there was not sufficient technical data to develop criteria for evaluating the designs of these braking systems. On July 30, 1974, the effective dates for compliance with 75.523-3 were suspended indefinitely. MSHA now has sufficient technical date to review the standard. On March 1, 1988, MSHA published a proposed

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safety standard that would require automatic emergency-parking brakes for rubber-tired, self-propelled electric face equipment used in underground coal mines (53 FR 6512). The automatic emergency-parking brakes described in the proposal engage when there is a loss of power to such equipment, and be activated by the equipment operator in an emergency situation. The brakes also act automatically as a parking brake when the equipment is intentionally deenergized.

Timetable:

Action	Date	FR Cite
NPRM	03/01/88	53 FR 6512
NPRM Comment Period End	05/02/88	53 FR 6512
Notice of Public Hearing	07/12/88	53 FR 22502
Comment Period-Post Hearing	07/29/88	53 FR 22502
Extended Comment Period	09/29/88	
Final Action	02/00/89	

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: A public hearing was held on July 12, 1988 in Charleston, West Virginia.

Agency Contact: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, Department of Labor, Mine Safety and Health Administration, 4015 Wilson Blvd., Rm. 627, BT #3, Arlington, VA 22203, 703 235-1910

RIN: 1219-AA39

1473. ELECTRIC MINE LAMPS OTHER THAN STANDARD CAP LAMPS

Legal Authority: 30 USC 811

CFR Citation: 30 CFR 20

Legal Deadline: None

Abstract: Under existing standards MSHA is limited to investigating and approving lamps which meet the design, construction and test requirements specifically set forth in 30 CFR 20. As a result, the Agency is restricted from approving lamps that incorporate alternative technology. The proposal would amend Part 20 to enable the Agency to issue approvals for lamps which, after testing, are found to be safe for their intended use and provide, at a minimum, the same degree of protection as lamps currently approved under the existing standards.

Timetable:

Action	Date	FR Cite
NPRM	04/13/88	53 FR 12250
NPRM Comment Period End	07/15/88	
Final Action	03/00/89	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, Department of Labor, Mine Safety and Health Administration, 4015 Wilson Blvd., Rm 627, BT #3, Arlington, VA 22203, 703 235-1910

RIN: 1219-AA40

1474. MULTIPLE-SHOT BLASTING UNITS

Legal Authority: 30 USC 811

CFR Citation: 30 CFR 25

Legal Deadline: None

Abstract: The requirements for approval of blasting units are part of the overall coal review to update standards. The revision of existing Part 25 specifications was proposed as Subpart D to Part 7. Under this concept, testing would be done by the applicant or a third party, subject to Agency requirements and approval.

Timetable:

Action	Date	FR Cite
ANPRM	08/05/84	49 FR 23281
ANPRM Comment Period End	08/10/84	49 FR 23281
NPRM	06/22/88	53 FR 23506
NPRM Comment Period End	08/22/88	
Final Action	05/00/89	

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: The review of 30 CFR 25 was originally listed in the Agenda in 1984. In the October 1985 Agenda, MSHA consolidated the Review of Part 25 under 1219-AA16. A proposal was published June 22, 1988 which revises 30 CFR 25 and combines it as a subpart of 30 CFR 7. A hearing is scheduled for October 1988.

Agency Contact: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, Department of Labor, Mine Safety and Health Administration, 4015 Wilson Blvd., Rm 627, Arlington, VA 22203, 703 235-1910

RIN: 1219-AA42

DEPARTMENT OF LABOR (DOL)

Mine Safety and Health Administration (MSHA)

Completed Actions

1475. PROCEDURES FOR APPROVAL OF MINING EQUIPMENT

Significance: Regulatory Program

Legal Authority: 30 USC 811

CFR Citation: 30 CFR 7

Legal Deadline: None

Abstract: This new part allows manufacturers or independent laboratories to test certain equipment prior to issuance of the Agency's approval. The actual authority for approval continues to remain with the government. The final rule contains a mechanism for monitoring quality assurance and conducting post-approval audits.

Timetable:

Action	Date	FR Cite
ANPRM	03/04/83	48 FR 09475
Notice of Public Hearings	03/18/83	48 FR 11665
ANPRM Comment Period End	05/03/83	
NPRM	02/06/86	51 FR 4686
Notice of Public Hearings	02/06/86	51 FR 4686
Extension of Comment Period to 5/7/86	04/04/86	51 FR 11586
NPRM Comment Period End	04/07/86	51 FR 4686

Action	Date	FR Cite
Final Action	06/22/88	53 FR 23486
Final Action Effective	06/22/88	53 FR 23486

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Public hearings were held during July 1986.

Agency Contact: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, Department of Labor, Mine Safety and Health Administration, 4015 Wilson Blvd., Rm 627, BT #3, Arlington, VA 22203, 703 235-1910

RIN: 1219-AA06

1476. SAFETY STANDARDS FOR LOADING, HAULING AND DUMPING AND MACHINERY AND EQUIPMENT AT METAL AND NONMETAL MINES

Significance: Agency Priority

Legal Authority: 30 USC 811

CFR Citation: 30 CFR 56.9000; 30 CFR 57.9000

Legal Deadline: None

Abstract: The loading, hauling and dumping and machinery and equipment (previously RIN: 1219-AA19) standards are part of the overall review of regulations dealing with metal and nonmetal mines and mills. As a result of consideration of the public rulemaking records relating to both the machinery and equipment and loading, hauling and dumping standards, the Agency reorganized the standards to more accurately and clearly identify the hazards. A combined final rule of these two sections was published in April 1988.

Timetable:

Action	Date	FR Cite
Begin Review	03/25/80	45 FR 19267
ANPRM	04/22/83	48 FR 17513
ANPRM Comment Period End	06/21/83	
NPRM	12/18/84	49 FR 49202
NPRM Comment Period End	02/19/85	49 FR 49202
Final Action	08/25/88	53 FR 32496
Final Action Effective	10/24/88	

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: Public hearings were held during August 1985.

Agency Contact: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, Department of Labor, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, VA 22203, 703 235-1910

RIN: 1219-AA18

1477. METAL AND NONMETAL AIR QUALITY STANDARDS

Significance: Regulatory Program

Legal Authority: 30 USC 811

CFR Citation: 30 CFR 55; 30 CFR 56; 30 CFR 70; 30 CFR 71

Legal Deadline: None

Abstract: The Agency is developing a NPRM which would replace an incorporation by reference with updated permissible exposure limits which are specifically applicable to the hazards encountered in metal and nonmetal mining. The proposal would solicit comment on which means of control would provide the necessary protection from airborne contaminants. Standards for use of respiratory protective equipment would replace an outdated incorporation by reference. The proposal would also update asbestos standards. Other issues being considered are: requirements for exposure monitoring and precautions for handling restricted-use chemicals: notification of workers of overexposures: and access to exposure records.

Timetable:

Action	Date	FR Cite
Begin Review	03/25/80	45 FR 19267
ANPRM	07/06/83	48 FR 31171
ANPRM Comment Period End	11/07/83	
Integrated into 1219-AA48	07/29/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, Department of Labor, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, VA 22203, 703 235-1910

RIN: 1219-AA21

1478. COAL AIR QUALITY

Significance: Regulatory Program

Legal Authority: 30 USC 811

CFR Citation: 30 CFR 70

Legal Deadline: None

Abstract: Permissible exposure limits for most noxious and poisonous gases in underground coal mines are addressed in 30 CFR 75.301-2. This ventilation standard incorporates by reference an outdated national consensus standard. MSHA would replace the incorporation by reference with updated standards that are more specific to the mining industry. These standards would be recodified with other health standards for underground coal mining in 30 CFR 70.

Timetable:

Action	Date	FR Cite
Integrated into 1219-AA48	07/29/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, Department of Labor, Mine Safety and Health Administration, 4015 Wilson Blvd., Rm 627, BT #3, Arlington, VA 22203, 703 235-1910

RIN: 1219-AA41

1479. ASBESTOS

Significance: Regulatory Program

Legal Authority: 30 USC 811

CFR Citation: 30 CFR 71.702; 30 CFR 56.5001(b); 30 CFR 57.5001(h)

Legal Deadline: None

Abstract: In 1986, OSHA lowered its asbestos limit to general industry to .2 fibers per cubic centimeter. MSHA will consider whether this limit would also be appropriate for the mining industry based on the health risks posted and the economic and technical feasibility of lowering the present limit.

Timetable:

Action	Date	FR Cite
Integrated into 1219-AA48	07/29/88	

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DOL—MSHA — Completed Actions

Small Entities Affected: Undetermined
Government Levels Affected: None

Agency Contact: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, Department of Labor, Mine Safety and Health Administration, 4015 Wilson Blvd., Room 631, BT #3, Arlington, VA 22203, 703 235-1910

RIN: 1219-AA45

DEPARTMENT OF LABOR (DOL) — Proposed Rule Stage
Office of the Assistant Secretary for Administration and Management (OASAM)

1480. NONDISCRIMINATION IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE FROM THE DEPARTMENT OF LABOR

Significance: Regulatory Program

Legal Authority: 29 USC 794; 42 USC 6101 to 6107; 42 USC 2000d to 2000d-4; 20 USC 1681 to 1683; 15 USC 3151; 29 USC 1501 et seq; 20 USC 1685; 20 USC 1686

CFR Citation: 29 CFR 31

Legal Deadline: Final, Statutory, September 12, 1979.
Two of the statutes have deadlines by which the agency must publish regulations. The earliest deadline was set by the ADA, which required implementing regulations within (CONT'D) 12, 1979.

Abstract: DOL's existing regulations implementing Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973, as amended would be amended and revised as a single comprehensive civil rights regulation covering all DOL statutory authority relating to nondiscrimination in Federally assisted programs with uniform administrative and enforcement procedures.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Local, State

Public Compliance Cost: Initial Cost: $0

Sectors Affected: None

Additional Information: The regulation must be coordinated with DOJ pursuant to Executive Order 12250 and with the Office of Management and Budget for review pursuant to E.O. 12291, prior to publication as an NPRM. (#10 LEGAL DEADLINE (CONT'D): 90 days of the HHS guidance regulation published on June 12, 1979.

Agency Contact: William J. Harris, Director, Directorate of Civil Rights, Department of Labor, Office of the Assistant Secretary for Administration and Management, 200 Constitution Ave., NW, Rm N4123, FPBldg., Washington, DC 20210, 202 523-6827

RIN: 1291-AA02

1481. ◆ ADMINISTRATIVE GRANTS AND COOPERATIVE AGREEMENTS TO GOVERNMENT AND NONPROFIT INSTITUTIONS

Significance: Agency Priority

Legal Authority: OMB Circular A-110

CFR Citation: 29 CFR 97

Legal Deadline: None

Abstract: On March 11, 1988 a common final rule was published which implemented OMB Circular A-102, Administrative Requirements for Grants and Cooperative Agreements with State and Local governments. OMB and DHHS are now preparing a proposed common rule and revised Circular A-110 to conform the grants management requirements for non-governmental grantees. It is expected that the common rule already published on governmental grantees will be amended to incorporate the requirements for non-governmental grants.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Theodore Goldberg, Director, Office of Procurement and, Grant Policy, Department of Labor, Office of the Assistant Secretary for Administration and Management, 200 Constitution Avenue, NW, Washington, DC 20210, Rm S1522, FP Bldg., 202 523-9104

RIN: 1291-AA15

DEPARTMENT OF LABOR (DOL) — Final Rule Stage
Office of the Assistant Secretary for Administration and Management (OASAM)

1482. ◆ DEPARTMENT OF LABOR ACQUISITION REGULATION (DOLAR) (REVISION)

Legal Authority: 5 USC 301; 40 USC 486(c)

CFR Citation: 48 CFR 29

Legal Deadline: None

Abstract: Revise Department of Labor Acquisition Regulation (DOLAR) to delete duplicative material and make other editorial changes.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/88	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Theodore Goldberg, Director, Office of Procurement and, Grant Policy, Department of Labor, Office of the Assistant Secretary for Administration and Management, 200 Constitution Avenue, NW, Washington, DC 20210, Rm S1522, FP Bldg., 202 523-9174

RIN: 1291-AA08

DEPARTMENT OF LABOR (DOL) — Completed Actions
Office of the Assistant Secretary for Administration and Management (OASAM)

1483. GUIDELINES FOR NONPROCUREMENT SUSPENSION AND DEBARMENT

Significance: Agency Priority

Legal Authority: EO 12549

CFR Citation: 29 CFR 96

Legal Deadline: Final, Statutory, May 25, 1988.
Deadline required by E.O. 12549 of 2/18/86

Abstract: Executive Order 12549 provides that to the extent permitted by law, Executive Departments and agencies shall participate in a debarment and suspension from programs and activities involving Federal financial assistance. This proposed regulation covers the Department of Labor's participation in voluntary common rulemaking to implement the Executive Order. OMB has developed the guidelines and the proposed common rule.

Timetable:

Action	Date	FR Cite
NPRM	10/20/87	52 FR 39024
NPRM Comment Period End	12/20/87	
Final Action	05/26/88	53 FR 19161
Final Action Effective	10/01/88	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Theodore Goldberg, Director, Office of Procurement and Grant, Policy, Department of Labor, Office of the Assistant Secretary for Administration and Management, 200 Constitution Avenue, NW, Rm S1522, FPBldg., Washington, DC 20210, 202 523-9174

RIN: 1291-AA11

DEPARTMENT OF LABOR (DOL) — Prerule Stage
Occupational Safety and Health Administration (OSHA)

1484. MANUAL LIFTING (PARTS 1910, 1915, 1917, 1918, 1919, 1926 AND 1928)

Significance: Regulatory Program

Legal Authority: 29 USC 655(b)

CFR Citation: Not yet determined

Legal Deadline: None

Abstract: The Nation's number one injury problem is back injuries. These injuries account for one of five compensation claims and one of four dollars expended for compensation. The purpose of the proposed request for comments and information is to enable OSHA to determine a course of action--possibly either rulemaking or informal guidance-aimed at reducing the number of back-related injuries which result from improper manual lifting. The request will identify a number of approaches to improving manual lifting, and invite public comments and suggestions. Specific engineering and administrative controls should reduce the pain, suffering, and lost time of the workforce as well as reduce the associated economic costs.

Timetable:

Action	Date	FR Cite
Request for Information on Manual Lifting-Related Injuries	10/02/86	51 FR 35241
Reopening of Comment Period and Expansion of Scope	04/17/87	52 FR 12559

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: None

Sectors Affected: All

Additional Information: The Agency has determined that it will establish an interagency work group within the Department to seek more information in the area of manual lifting. Rulemaking is, therefore, not scheduled to begin immediately.

Agency Contact: Barry J. White, Director, Safety Standards Programs, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW, Rm N3605, FPBldg., Washington, DC 20210, 202 523-8061

RIN: 1218-AA95

1485. MEDICAL SURVEILLANCE PROGRAMS FOR EMPLOYEES

Significance: Regulatory Program

Legal Authority: 29 USC 655(b)

CFR Citation: Not yet determined

Legal Deadline: None

Abstract: OSHA is developing a modification of the Z table permissible exposure limits of 29 CFR 1910.1000 in response to current scientific data. Section 6(b) of the Act requires where appropriate, provision for medical surveillance in each 6(b) rulemaking for a harmful substance. A generic standard for medical surveillance would satisfy the requirements of the Act thus enabling the Agency to deal directly with the narrower issues of the revision of the tables. No costs or benefits have yet been estimated.

Timetable:

Action	Date	FR Cite
ANPRM	09/27/88	53 FR 37595
ANPRM Comment Period End	12/27/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Charles E. Adkins, Director, Health Standards Programs, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW, Rm N3718, FPBldg., Washington, DC 20210, 202 523-7075

RIN: 1218-AB30

1486. GENERIC STANDARD FOR EXPOSURE MONITORING

Significance: Regulatory Program

Legal Authority: 29 USC 655(b)

CFR Citation: Not yet determined

DOL—OSHA — Prerule Stage

Legal Deadline: None

Abstract: OSHA is developing a modification of the Z table permissible exposure limits of 29 CFR 1910.1000 in response to current scientific data. Section 6(b)(7) of the Act requires provisions for exposure monitoring for each substance undergoing 6(b) rulemaking. A generic standard for exposure monitoring would satisfy the monitoring requirement of the Act thus enabling the Agency to deal directly with the narrower issues of the revision of the Z tables. No costs or benefits have yet been estimated.

Timetable:

Action	Date	FR Cite
ANPRM	09/27/88	53 FR 37591
ANPRM Comment Period End	12/27/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Charles E. Adkins, Director, Health Standards Programs, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW, Rm N3718, FPBldg., Washington, DC 20210, 202 523-7075

RIN: 1218-AB01

DEPARTMENT OF LABOR (DOL) — Proposed Rule Stage

Occupational Safety and Health Administration (OSHA)

1487. CARCINOGEN POLICY

Significance: Regulatory Program

Legal Authority: 29 USC 653; 29 USC 655; 29 USC 657

CFR Citation: 29 CFR 1900

Legal Deadline: None

Abstract: The Carcinogen Policy describes the criteria and procedures OSHA will use to identify, classify, and then regulate carcinogens. The Policy also establishes a process for screening chemicals and for setting priorities for potential rulemaking activities. The Carcinogen Policy explicitly recognizes that periodic revisions are necessary in order to incorporate the latest scientific advances and techniques into the regulatory process. Hence, it is time for OSHA to review and modernize the carcinogen policy. The original standard was issued in 1980 before the Supreme Court "benzene" decision on significant risk. Thereafter, a final rule deleting provisions of the Carcinogen Policy that were inconsistent with the benzene decision was published on 1/19/81 (46 FR 4889). A proposal was published on 1/23/81 (46 FR 7402) to permit alternatives to the risk analysis section of the carcinogen policy to be addressed. The proposal was withdrawn on 3/27/81 (46 FR 19060). An advance notice of proposed rulemaking was published on 1/5/82 (47 FR 187) with comments due by 4/5/82. That document (cont'd)

Timetable:

Action	Date	FR Cite
ANPRM	01/05/82	47 FR 187
End of Comment Period on stay	02/18/82	
ANPRM	04/05/82	
Comment Period End		
Stay published	01/04/83	48 FR 241
NPRM	03/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: ABSTRACT CONT: also proposed to stay the publication of the candidate and priority lists. The final stay was published on 1/4/83 (48 FR 241). As part of its evaluation of the policy, OSHA is reviewing the public comments received in response to the document published by the Office of Science and Technology Policy entitled "Chemical Carcinogens, Review of the Science and its Associated Principles, May 1984" and is reviewing the later version of that document which was published March 14, 1985.

Agency Contact: Charles E. Adkins, Director, Health Standards Programs, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Ave., NW, Rm N3718, FPBldg., Washington, DC 20210, 202 523-7075

RIN: 1218-AA01

1488. RESPIRATORY PROTECTION

Significance: Regulatory Program

Legal Authority: 29 USC 655(b)

CFR Citation: 29 CFR 1910.134; 29 CFR 1915.152; 29 CFR 1916.102; 29 CFR 1926.103

Legal Deadline: None

Abstract: The present respiratory protection standards have been in place for more than 10 years and do not take into consideration the current state-of-the-art for respiratory protection. In addition, the general industry standard for respirators contains redundancies and includes several advisory provisions which should be eliminated or changed. OSHA has reviewed the current standards and intends to propose revisions.

Timetable:

Action	Date	FR Cite
ANPRM	05/14/82	47 FR 20803
ANPRM Comment Period End	09/13/82	
Public Comment Period on Preproposal Draft Ends	11/20/85	
NPRM	05/00/89	
NPRM Comment Period End	02/00/89	
Final Action	10/00/89	
Final Action Effective	12/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Charles E. Adkins, Director, Health Standards Programs, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Ave., NW, Rm N3718, FPBldg., Washington, DC 20210, 202 523-7075

RIN: 1218-AA05

1489. CONCRETE AND MASONRY CONSTRUCTION (PART 1926)

Significance: Regulatory Program

Legal Authority: 29 USC 655(b); 40 USC 333

DOL—OSHA — Proposed Rule Stage

CFR Citation: 29 CFR 1926.700; 29 CFR 1926.701; 29 CFR 1926.702

Legal Deadline: None

Abstract: One of the greatest hazards associated with concrete and masonry structures in the construction industry is the collapse or failure of the entire structure or its forms and shoring. The catastrophic failures of recent years indicated that revision of the existing standard applicable to such construction operations was necessary. The previous concrete standard contained outdated referenced standards, gaps in coverage, redundant provisions, and provisions which needed clarification. The referenced standards have been updated and placed in the body of the standard. New standards have been added to cover precast concrete erection and masonry wall construction. The provisions that were identified as being redundant have been removed and the ambiguous provisions have been clarified. However, the record will be reopened to allow information and evidence obtained from the investigation of a recent major accident to be included in the record pertaining to lift-slab operations. Revised lift-slab rules will then be proposed.

Timetable:

Action	Date	FR Cite
ANPRM	02/09/82	47 FR 5910
ANPRM Comment Period End	04/10/82	
NPRM	09/16/85	50 FR 37543
NPRM Comment Period End	11/15/85	50 FR 37543
Public Hearing Scheduled	04/08/86	51 FR 11945
Public Hearing Rescheduled and Held June 17-18, 1986	05/09/86	51 FR 17203
Final Action (Except Lift-Slab)	06/15/88	53 FR 22612
FINAL ACTION (EFFECTIVE DATE) (Except Lift-Slab)	08/15/88	53 FR 22612
NPRM — Reproposal of Lift-Slab Rules	09/15/88	53 FR 35972
NPRM Public Comment Period End — Reproposal of Lift-Slab Rules	11/14/88	
Final Action on Lift-Slab Rules	06/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: 1. 29 CFR 1926, Subpart Q currently entitled: "Concrete, Concrete Forms, and Shoring.

Agency Contact: Barry White, Director, Safety Standards Programs, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Ave., NW, Rm N3605, FPBldg., Washington, DC 20210, 202 523-8061

RIN: 1218-AA20

1490. ASBESTOS, TREMOLITE, ANTHOPHYLLITE AND ACTINOLITE

Significance: Regulatory Program

Legal Authority: 29 USC 655(b); 29 USC 657

CFR Citation: 29 CFR 1910.1001; 29 CFR 1926.58

Legal Deadline: None

Abstract: On June 17, 1986, OSHA issued revised standards governing occupational exposure to asbestos, tremolite, anthophyllite, and actinolite in general industry and in the construction industry. These standards replaced OSHA's previous asbestos standard promulgated in 1972. Since the issuance of the revised standards OSHA has received letters and petitions, from both rulemaking participants and nonparticipants, that contain additional comments, assertions and information that the rulemaking record may not fully reflect. These letters and petitions concern the appropriateness of regulating nonasbestiform tremolite, anthophyllite and actinolite as presenting the same health risk as asbestos.

OSHA has granted a temporary stay of the effective dates of the current standards as they apply to nonasbestiform varieties of tremolite, anthophyllite and actinolite. This action was taken, in part, to enable the Agency to review letters and memoranda from the National Institute for Occupational Safety and Health as well as submissions by the R.T. Vanderbilt Company and various other (Cont'd)

Timetable:

Action	Date	FR Cite
Notice of partial admin. stay	10/17/86	51 FR 37002
Extension of partial admin. stay	04/30/87	52 FR 15722
Extension of partial admin. stay	07/20/88	53 FR 27345
NPRM	02/00/89	

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: ABSTRACT (CONT'D): trade associations concerning the appropriateness of regulating nonasbestiform tremolite, anthophyllite and actinolite in the revised standards. In addition, the temporary stay was imposed to allow sufficient time for OSHA to reopen the rulemaking record and conduct supplemental proceedings on the issue of whether, and how, to regulate occupational exposure to the nonasbestiform varieties of tremolite, anthophyllite and actinolite.

Agency Contact: Charles E. Adkins, Director, Health Standards Programs, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW, Rm N3718, FPBldg., Washington, DC 20210, 202 523-7075

RIN: 1218-AA26

1491. METHODS OF COMPLIANCE

Significance: Regulatory Program

Legal Authority: 29 USC 655(b)

CFR Citation: 29 CFR 1910.1000(e); 29 CFR 1910.134(a)(1)

Legal Deadline: None

Abstract: OSHA's policy concerning the use of engineering controls and respirators was targeted for review by the President's Task Force on Regulatory Relief in 1981. Current OSHA regulations require that employers implement feasible engineering controls to maintain air contaminant concentrations in the workplace at or below the prescribed permissible exposure limits. The use of respirators is permitted only in those cases where engineering controls are not feasible, not yet installed, or not adequate. This policy has been criticized as being inflexible, not cost-effective, and often unnecessary for employee health protection. OSHA believes that any changes to the policy for use of engineering controls must be

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closely coordinated with revisions in the respiratory protection regulations (29 CFR 1910.134). This rulemaking does not address the assessment and reduction of any absolute existing risks, but rather addresses the possible change in risk abatement associated with the use of respirators instead of engineering controls.

Timetable:

Action	Date	FR Cite
ANPRM	02/22/83	48 FR 7473
ANPRM Comment Period End	06/22/83	
NPRM	10/00/88	
NPRM Comment Period End	12/00/88	
Final Action	10/00/89	
Final Action Effective	11/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Charles E. Adkins, Director, Health Standards Programs, Department of Labor, Occupational Safety and Health Administration, Rm N3718, FPBldg, 200 Constitution Ave., NW, Washington, DC 20210, 202 523-7075

RIN: 1218-AA28

1492. OIL AND GAS WELL DRILLING AND SERVICING (PART 1910)

Significance: Regulatory Program

Legal Authority: 29 USC 655(b)

CFR Citation: 29 CFR 1910.270

Legal Deadline: None

Abstract: Employees in oil and gas well drilling and servicing are exposed to a variety of safety hazards which are not specifically covered by present OSHA safety standards. It has proved difficult to apply the existing general industry standards to control the unique nature of this industry. OSHA is considering a standard which will address the unique problems of oil and gas well drilling and servicing.

Timetable:

Action	Date	FR Cite
NPRM	12/28/83	48 FR 57202
NPRM Comment Period End	06/04/84	49 FR 9913
Public Hearing Held: 07/24/84 Wnl	06/10/84	49 FR 9913
NPRM - Second	03/00/89	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Barry White, Director, Safety Standards Programs, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Ave., NW, Rm N3605, FPBldg., Washington, DC 20210, 202 523-8061

RIN: 1218-AA34

1493. BENZENE

Significance: Regulatory Program

Legal Authority: 29 USC 655(b)

CFR Citation: 29 CFR 1910.1000, (Table Z-2); 29 CFR 1910.1028

Legal Deadline: None

Abstract: OSHA has amended its standard for occupational exposure to benzene by reducing the permissible exposure limit from 10 parts benzene per million parts of air (10 ppm) to an eight-hour time-weighted average of 1 ppm and by adding appropriate industrial hygiene and medical surveillance provisions necessary for the protection of employee health. This action is based on OSHA's determination that the amendments are needed to reduce the risk of leukemia and other adverse health effects associated with occupational exposure to benzene.

OSHA published its final amendment to the standard on September 11, 1987. Due to technical problems associated with the completion of a detailed study of feasibility in barge and tanker cleaning and repair operations, however, OSHA exempted these operations from certain provisions of the standard. OSHA intends to issue a proposal to amend the benzene standard which will address the factors specific to the barge and tanker cleaning and repair industry.

Timetable:

Action	Date	FR Cite
NPRM	12/10/85	50 FR 50512
Notice Changing Public Hearing	01/28/86	51 FR 3474
NPRM Comment Period End	02/14/86	50 FR 50512
Public Hearings	03/11/86	50 FR 50512
Final Action	09/11/87	52 FR 34460
Final Action Effective	12/10/87	
NPRM on Barge/Tanker Cleaning and Repair Operations	03/00/89	
Final Action	12/00/89	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Charles E. Adkins, Director, Health Standards Programs, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Ave., NW, Rm N3718, FPBldg., Washington, DC 20210, 202 523-7075

RIN: 1218-AA47

1494. FALL PROTECTION SYSTEMS (PERSONAL PROTECTIVE EQUIPMENT) (PART 1910)

Significance: Regulatory Program

Legal Authority: 29 USC 655(b)

CFR Citation: 29 CFR 1910, (Subpart I)

Legal Deadline: None

Abstract: Existing standards do not contain criteria for personal fall protection systems. Consequently, requirements containing criteria for personal fall protection systems would be added to 29 CFR Part 1910; Subpart I, Personal Protection Equipment, to enhance employee protection from injury and death due to falls to different elevations.

Timetable:

Action	Date	FR Cite
NPRM	11/01/88	
Final Action	10/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: 1. 1218-AA46 will be issued concurrently with 1218-AB04.

Agency Contact: Barry J. White, Director, Safety Standards Programs, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Ave., NW, Rm N3605, FPBldg., Washington, DC 20210, 202 523-8061

RIN: 1218-AA46

1495. CONFINED SPACE (PART 1910)

Significance: Regulatory Program

Legal Authority: 29 USC 655(b)

CFR Citation: 29 CFR 1910.146

Legal Deadline: None

Abstract: Entry into confined spaces has been responsible for many employee deaths and injuries. However, current standards do not specifically address the hazards associated with entry into confined spaces. Therefore, OSHA is proposing certain criteria and precautions which are necessary to minimize the hazards associated with employees entering confined spaces.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
Final Action	12/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: None

Analysis: Regulatory Impact Analysis

Agency Contact: Barry J. White, Director, Safety Standards Programs, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Ave., NW, Rm N3605, FPBldg., Washington, DC 20210, 202 523-8061

RIN: 1218-AA51

1496. LOGGING (PART 1910)

Significance: Regulatory Program

Legal Authority: 29 USC 655(b)

CFR Citation: 29 CFR 1910.266, (Revision)

Legal Deadline: None

Abstract: Logging is a very hazardous industry. It has an incidence rate nearly twice that of manufacturing, and reflecting the seriousness of the injuries incurred, a lost workday rate nearly four times as high. The purpose of the standard will be to protect workers from the ever-present hazards of chain saw operation, falling objects (trees, branches), rolling or sliding logs, falls from trees, and materials handling accidents. At present there is no OSHA standard specifically applicable to logging in general. There is a standard, 29 CFR 1910.266, applicable only to pulpwood logging; however, pulpwood logging is estimated to account for less than half of the logging activity in the United States. Development of a national OSHA standard addressing all types of logging will provide coverage for those loggers not now protected. The new regulation will provide coverage where there is no approved state regulation and will set a minimum safety level for those states that chose to develop a state regulation.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	10/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: None

Sectors Affected: 24 Lumber and Wood Products, Except Furniture

Additional Information: A preproposal draft standard was circulated for public comment. The proposed standard will be developed to incorporate public comment as appropriate.

Agency Contact: Mr. Barry J. White, Director, Safety Standards, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Ave., NW, Rm N3605, FPBldg., Washington, DC 20210, 202 523-8061

RIN: 1218-AA52

1497. SAFETY AND HEALTH REGULATIONS FOR LONGSHORING (PART 1918)

Significance: Regulatory Program

Legal Authority: 29 USC 655 Occupational Safety and Health Act of 1970; 33 USC 941 Longshoremen's and Harborworkers Compensation Act

CFR Citation: 29 CFR 1910.16; 29 CFR 1918, (Revision)

Legal Deadline: None

Abstract: The purpose of this regulatory action would be to update and revise a standard first issued in 1960. The current language in many instances addresses the hazards to cargo handling involving methods long since abandoned, and fails to address the serious hazards of newer methods. Because much of the current standard is out of date, there are problems with compliance. These revised requirements will provide both employers and employees with a blueprint for effective and safe workpractices in the cargo handling industry. No alternative other than revision is contemplated. The annual cost of the revision is expected to be minimal -- less than five million dollars.

Timetable:

Action	Date	FR Cite
NPRM	08/00/88	
Final Action	05/00/90	

Small Entities Affected: Businesses

Government Levels Affected: None

Sectors Affected: 44 Water Transportation

Agency Contact: Barry White, Director, Safety Standards Programs, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Ave., NW, Rm N3605 FPBldg., Washington, DC 20210, 202 523-8061

RIN: 1218-AA56

1498. 4,4'-METHYLENEDIANILINE

Significance: Regulatory Program

Legal Authority: 29 USC 655(b); 29 USC 657

CFR Citation: 29 CFR 1910

Legal Deadline: None

Abstract: 4,4'-Methylenedianiline (MDA) is a chemical used primarily to manufacture methylenediphenyl diisocyanate, which is used to make polyurethane foams and elastomers. Recent scientific data indicate that MDA is a carcinogen in animals and a potential carcinogen in humans. In 1983, OSHA and the Environmental Protection Agency participated in a joint effort to publish an advance notice of proposed rulemaking to solicit information on MDA production and use, estimates of environmental and occupational exposure, and studies of its toxic and carcinogenic effects. EPA evaluated the data received in response to the advance notice and concluded that the chemical presents an unreasonable risk of injury to the health of exposed workers. Under the provisions of section 9(a) of the Toxic Substances Control Act, EPA referred MDA to OSHA for action. OSHA responded to the EPA referral on 2/26/86. OSHA established a mediated rulemaking advisory committee composed of interested parties from labor, industry and government to assist the agency in developing a proposed standard. The Committee completed its work in June 1987 (Cont'd)

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Timetable:

Action	Date	FR Cite
ANPRM	09/20/83	48 FR 42636
ANPRM Comment Period End	11/23/83	48 FR 42636
Publication of Committee Recommendation	07/16/87	52 FR 26776
NPRM	10/00/88	
NPRM Comment Period End	03/00/89	
Final Action	06/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ABSTRACT (CONT'D): and forwarded its recommendations to the Agency. OSHA published the Committee's recommendations on July 16, 1987, and intends to publish a proposed standard for MDA within 90 days.

Agency Contact: Charles E. Adkins, Director, Health Standards Programs, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Ave., NW, Rm N3718, FPBldg., Washington, DC 20210, 202 523-7075

RIN: 1218-AA58

1499. ELECTRIC POWER GENERATION, TRANSMISSION AND DISTRIBUTION (PART 1910)

Significance: Regulatory Program

Legal Authority: 29 USC 655(b)

CFR Citation: 29 CFR 1910.269

Legal Deadline: None

Abstract: A major area of coverage not addressed in the current OSHA electrical standards for general industry (29 CFR 1910) involves the maintenance and operation practices associated with electrical transmission and distribution lines, substations and generating stations. It is intended that the proposed standard fill this void by establishing minimum requirements for electrical safety work practices for qualified employees working on or near installations whose purpose is the generation and distribution of electricity.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	11/00/89	

Small Entities Affected: None

Government Levels Affected: None

Sectors Affected: Multiple

Agency Contact: Barry White, Director, Safety Standards Programs, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Ave., NW, Rm N3605, FPBldg., Washington, DC 20210, 202 523-8061

RIN: 1218-AA59

1500. PULP, PAPER AND PAPERBOARD MILLS (PART 1910)

Significance: Regulatory Program

Legal Authority: 29 USC 655(b)

CFR Citation: 29 CFR 1910.261, (Revision)

Legal Deadline: None

Abstract: This regulatory action will revise the existing standards covering mills where pulp, paper, and paperboard are manufactured and converted. The revision will develop performance oriented standards that address current gaps in coverage, the use of new technology, the elimination of outmoded or redundant provisions, and the use of appropriate OSHA general industry standards.

Timetable:

Action	Date	FR Cite
NPRM	06/00/89	
Final Action	06/00/90	

Small Entities Affected: Undetermined

Government Levels Affected: None

Sectors Affected: 26 Paper and Allied Products

Agency Contact: Barry J. White, Director, Safety Standards, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Ave., NW, Rm N3605, FPBldg., Washington, DC 20210, 202 523-8061

RIN: 1218-AA61

1501. STEEL ERECTION (PART 1926)

Significance: Regulatory Program

Legal Authority: 29 USC 655; 40 USC 333

CFR Citation: 29 CFR 1926.750, (Revision); 29 CFR 1926.751, (Revision); 29 CFR 1926.752, (Revision)

Legal Deadline: None

Abstract: This action will consolidate, clarify, and revise the existing provisions governing steel erection assembly, flooring, bolting, riveting, fitting-up, plumbing-up, and fall protection. When completed, the revise requirements may be relocated and be incorporated into Subpart M (of Part 1926) which is the general fall protection standard.

Timetable:

Action	Date	FR Cite
NPRM	04/00/89	
Final Action	12/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Barry J. White, Director, Safety Standards Programs, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Ave., NW, Rm N3605, FPBldg., Washington, DC 20210, 202 523-8061

RIN: 1218-AA65

1502. FALL PROTECTION (PART 1915)

Significance: Regulatory Program

Legal Authority: 29 USC 655(b); 33 USC 941

CFR Citation: 29 CFR 1915.201; 29 CFR 1915.202; 29 CFR 1915.203; 29 CFR 1915.73; 29 CFR 1915.74; 29 CFR 1915.75; 29 CFR 1915.77

Legal Deadline: None

Abstract: This regulatory action will revise the existing shipyard standard covering fall protection and will consolidate all related and applicable 29 CFR 1910 provisions into 29 CFR 1915. The revision will develop, in part, performance-oriented standards, address current gaps in coverage, address new technology and eliminate outmoded and redundant provisions.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	12/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: 1. Applicable Part 1910 provisions under consideration: 29 CFR 1910.21 - .23.

Agency Contact: Barry J. White, Director, Safety Standards Programs, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW, Room N3605, FPBldg., Washington, DC 20210, 202 523-8061

RIN: 1218-AA66

1503. SCAFFOLDS (PART 1915)

Significance: Regulatory Program

Legal Authority: 29 USC 655(b); 33 USC 941

CFR Citation: 29 CFR 1915.71; 29 CFR 1910.28; 29 CFR 1910.29

Legal Deadline: None

Abstract: This regulatory action will revise the existing shipyard standards covering scaffolds and will consolidate all related and applicable 29 CFR 1910 provisions into 29 CFR 1915. The revision will develop, in part, performance-oriented standards, address current gaps in coverage, address new technology, and eliminate outmoded and redundant provisions.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	12/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Applicable Part 1910 provisions under consideration: 29 CFR 1910.28 - .29.

Agency Contact: Barry J. White, Director, Safety Standards Programs, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Ave., NW, Rm N3605, FPBldg., Washington, DC 20210, 202 523-8061

RIN: 1218-AA68

1504. ACCESS AND EGRESS (PART 1915)

Significance: Regulatory Program

Legal Authority: 29 USC 655(b); 33 USC 941

CFR Citation: 29 CFR 1915.72; 29 CFR 1915.74; 29 CFR 1915.75; 29 CFR 1915.76

Legal Deadline: None

Abstract: This regulatory action will revise the existing shipyard standards covering access and egress and will consolidate all related and applicable 29 CFR 1910 provisions into 29 CFR 1915. The revision will develop, in part, performance-oriented standards, address current gaps in coverage, address new technology, and eliminate outmoded and redundant provisions.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	12/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: 1. Applicable Part 1910 provisions under consideration: 29 CFR 1910.24 - .27; 29 CFR 1910.36 - .37.

Agency Contact: Barry J. White, Director, Safety Standards Programs, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Ave., NW, Rm N3605, FPBldg., Washington, DC 20210, 202 523-8061

RIN: 1218-AA70

1505. FACE, HEAD, EYE AND FOOT PROTECTION (PERSONAL PROTECTIVE EQUIPMENT) (PART 1910)

Significance: Regulatory Program

Legal Authority: 29 USC 655(b)

CFR Citation: 29 CFR 1910

Legal Deadline: None

Abstract: Existing standards for eye, face, head, and foot protection reference outdated national consensus standards which have been updated and improved. Consequently, criteria for personal protective equipment for eye, face, head, and foot would be revised to reflect improved developments in these types of equipment. This would allow the use of better personal protective equipment and would result in improved employee protection from eye, face, head, and foot hazards.

Timetable:

Action	Date	FR Cite
NPRM	03/00/89	
Final Action	03/00/90	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Barry J. White, Director, Safety Standards Programs, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Ave., NW, Rm N3605

FPBldg., Washington, DC 20210, 202 523-8061

RIN: 1218-AA71

1506. WELDING, CUTTING AND BRAZING (PART 1910)

Significance: Regulatory Program

Legal Authority: 29 USC 655(b)

CFR Citation: 29 CFR 1910.251; 29 CFR 1910.252; 29 CFR 1910.253; 29 CFR 1910.254

Legal Deadline: None

Abstract: OSHA proposes to revise and update its existing Subpart Q covering welding, cutting and brazing operations, and to develop performance-oriented standards designed to reduce the number of deaths and injuries due to unsafe equipment and unsafe operations. There has been no substantial revision to Subpart Q since its adoption in 1971. A complete and comprehensive revision is needed at this time to bring the standard into line with the current state-of-the art and updated consensus standards.

Timetable:

Action	Date	FR Cite
NPRM	04/00/89	
Final Action	05/00/90	

Small Entities Affected: Undetermined

Government Levels Affected: None

Sectors Affected: Multiple

Agency Contact: Barry J. White, Director, Safety Standards Programs, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Ave., NW, Rm N3605, FPBldg., Washington, DC 20210, 202 523-8061

RIN: 1218-AA72

1507. WELDING, CUTTING AND HEATING (PART 1915)

Significance: Regulatory Program

Legal Authority: 29 USC 655(b); 33 USC 941

CFR Citation: 29 CFR 1915.51; 29 CFR 1915.52; 29 CFR 1915.53; 29 CFR 1915.54; 29 CFR 1915.55; 29 CFR 1915.56; 29 CFR 1915.57

Legal Deadline: None

Abstract: This regulatory action will revise the existing shipyard standard covering welding, cutting, and heating.

The revision will develop, in part, a performance-oriented standard, address current gaps in coverage, recognize new technology, and eliminate outmoded or redundant provisions. In addition, it will consolidate 29 CFR 1915 standards and applicable 29 CFR 1910 standards into one set of provisions.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	12/00/89	

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: 1. Applicable Part 1910 provisions under consideration: 29 CFR 1910.251 - .252.

Agency Contact: Barry J. White, Director, Safety Standards Programs, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Ave., NW, Rm N3605, FPBldg., Washington, DC 20210, 202 523-8061

RIN: 1218-AA73

1508. PERSONAL PROTECTIVE EQUIPMENT (PART 1915)

Significance: Regulatory Program

Legal Authority: 29 USC 656(b); 33 USC 941

CFR Citation: 29 CFR 1915.151; 29 CFR 1915.152; 29 CFR 1915.153; 29 CFR 1915.154

Legal Deadline: None

Abstract: This regulatory action will revise the existing shipyard standard covering personal protective equipment. The revision will develop, in part, a performance-oriented standard, address current gaps in coverage, recognize new technology, and eliminate outmoded or redundant provisions. It will consolidate 29 CFR 1915 standards and applicable 29 CFR 1910 standards into one set of provisions..

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	12/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: 1. Applicable Part 1910 provisions under consideration: 29 CFR 1910.132 through .137.

Agency Contact: Barry J. White, Director, Safety Standards Programs, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Ave., NW, Rm N3605, FPBldg., Washington, DC 20210, 202 523-8061

RIN: 1218-AA74

1509. 1,3-BUTADIENE

Significance: Regulatory Program

Legal Authority: 29 USC 655(b)

CFR Citation: 29 CFR 1910.1000, (Table Z-1)

Legal Deadline: None

Abstract: On October 10, 1985, EPA referred 1,3-butadiene (BD) to OSHA for possible regulatory action under section 9(a) of the Toxic Substance Control Act. On April 11, 1986, OSHA responded to the EPA referral indicating that the Agency has preliminarily concluded that BD poses risk to the occupationally exposed population at the current OSHA permissible exposure limit and that the risk can be reduced or prevented through the promulgation of a revised standard. OSHA intends to initiate rulemaking to revise the standard for BD pursuant to section 6(b) of the Occupational Safety and Health Act.

Timetable:

Action	Date	FR Cite
EPA Referral	10/10/85	50 FR 41398
Request for Comments	12/27/85	50 FR 52962
Response to EPA Referral	04/11/86	51 FR 12526
ANPRM	10/01/86	51 FR 35008
ANPRM Comment Period End	12/30/86	
NPRM	01/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Charles E. Adkins, Director, Health Standards Programs, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW, Rm N3718, FPBldg., Washington, DC 20210, 202 523-7075

RIN: 1218-AA83

1510. GLYCOL ETHERS: 2-METHOXYETHANOL, 2-ETHOXYETHANOL AND THEIR ACETATES

Significance: Regulatory Program

Legal Authority: 29 USC 655; 29 USC 657

CFR Citation: 29 CFR 1910.1000

Legal Deadline: None

Abstract: On May 20, 1986, the Environmental Protection Agency (EPA) issued a report to OSHA, under Section 9(a) of the Toxic Substances Control Act, stating that EPA has reasonable basis to conclude that the risk of injury to worker health from exposure to four glycol ethers during their manufacture, processing and use is unreasonable, and that this risk may be prevented or reduced to a significant extent by OSHA regulatory action. EPA gave OSHA 180 days in which to respond to its report. OSHA published its response on December 11, 1986, stating that OSHA had preliminarily concluded that occupational exposures to the subject glycol ethers at the current OSHA permissible exposure limits may present significant risks to the health of workers. OSHA announced that it would begin rulemaking proceedings for these chemicals.

Timetable:

Action	Date	FR Cite
ANPRM	04/02/87	52 FR 10586
ANPRM Comment Period End	07/31/87	
NPRM	03/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Charles E. Adkins, Director, Health Standards Programs, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW, Rm N3718, FPBldg., Washington, DC 20210, 202 523-7075

RIN: 1218-AA84

1511. EXPLOSIVE AND OTHER DANGEROUS ATMOSPHERES (PART 1919)

Significance: Regulatory Program

Legal Authority: 29 USC 655(b); 33 USC 941

CFR Citation: 29 CFR 1915.11; 29 CFR 1915.12; 29 CFR 1915.13; 29 CFR 1915.14; 29 CFR 1915.15; 29 CFR 1915.16

Legal Deadline: None

Abstract: This regulatory action will revise the existing shipyard standard covering explosive and other dangerous atmospheres. This revision will develop, in part, a performance-oriented standard, address any gaps in coverage, recognize new technology, and eliminate outmoded or redundant standards.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	12/00/89	

Small Entities Affected: None

Government Levels Affected: State, Federal

Sectors Affected: 373 Ship and Boat Building and Repairing

Agency Contact: Barry J. White, Director, Safety Standards Programs, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Ave., NW, Rm N3605, FPBldg., Washington, DC 20210, 202 523-8061

RIN: 1218-AA91

1512. GEAR CERTIFICATION (PART 1919)

Legal Authority: 29 USC 655; 29 USC 941

CFR Citation: 29 CFR 1919, (Revision)

Legal Deadline: None

Abstract: In its May 7, 1987, Federal Register notice the Agency requested information to assist in the possible revision of 29 CFR Part 1919. Part 1919, entitled "Gear Certification," implements requirements located in each of OSHA's maritime standards which cover work carried out within the Federal maritime jurisdiction. Changes in the design and composition of cargo handling gear which have evolved since these rules were last amended (1969) provided questions as to the efficacy of the current rules. Additionally, the Agency sought comments that would suggest ways in which the administrative function of the accreditation program could be improved. Comment period ended: August 5, 1987.

Timetable:

Action	Date	FR Cite
Request for Information	05/07/87	52 FR 17302
Comment Period Closed	08/05/87	

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: None

Sectors Affected: 37 Transportation Equipment; 44 Water Transportation

Additional Information: The Agency has determined, based on input to its "Request for Comments and Information," that minor revision to Gear Certification (Part 1919) is necessary.

Agency Contact: Barry J. White, Director, Safety Standards Programs, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW, Rm N3605, FPBldg., Washington, DC 20210, 202 523-8061

RIN: 1218-AA97

1513. METHYLENE CHLORIDE

Significance: Regulatory Program

Legal Authority: 29 USC 655; 29 USC 657

CFR Citation: 29 CFR 1910.1000

Legal Deadline: None

Abstract: In July 1985, OSHA was petitioned by the United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) to issue a hazard alert; issue an emergency temporary standard; and to begin work on a new permanent standard for methylene chloride (DCM). This request was based on information obtained from the Environmental Protection Agency and the National Toxicology Program indicating that DCM is an animal carcinogen and may have the potential to cause cancer in humans. In November 1986, OSHA notified the UAW that its petition had been granted, in part, and denied, in part. Specifically, OSHA has issued a set of guidelines for controlling occupational exposure to DCM and has decided to proceed with rulemaking to develop a new permanent standard. OSHA denied that portion of the petition requesting the issuance of an emergency temporary standard.

Timetable:

Action	Date	FR Cite
ANPRM	11/24/86	51 FR 42257
ANPRM Comment Period End	02/23/87	51 FR 42257
NPRM	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Charles E. Adkins, Director, Health Standards Programs, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Ave., NW, Rm N3718, FPBldg., Washington, DC 20210, 202 523-7075

RIN: 1218-AA98

1514. HAZARD COMMUNICATION

Significance: Regulatory Program

Legal Authority: 29 USC 653; 29 USC 655; 29 USC 657; 33 USC 941; 40 USC 333; 5 USC 553

CFR Citation: 29 CFR 1910.1200; 29 CFR 1915.99; 29 CFR 1917.28; 29 CFR 1918.90; 29 CFR 1926.59; 29 CFR 1928.21

Legal Deadline: None

Abstract: OSHA promulgated a final rule on August 24, 1987, that extended the protections of its Hazard Communication Standard (HCS) from the manufacturing sector to all other workplaces where employees are exposed to hazardous chemicals. The HCS requires covered employers to establish hazard communication programs for their employees, including labels on containers, material safety data sheets, and training programs. As the final rule was published pursuant to a court order without having published a NPRM, OSHA invited additional comment on the final rule for 60 days. The Agency is now proposing some modifications to the final rule to address issues of concern.

Timetable:

Action	Date	FR Cite
ANPRM	11/27/85	50 FR 48794
ANPRM Comment Period End	02/25/86	
NPRM	08/08/88	53 FR 29822
NPRM Comment Period End	10/24/88	
Final Action	02/00/89	

DOL—OSHA

Proposed Rule Stage

Action	Date	FR Cite
Final Action Effective	04/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Charles E. Adkins, Director, Health Standards Programs, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW, Rm N3718, FPBldg., Washington, DC 20210, 202 523-7075

RIN: 1218-AB02

1515. WALKING AND WORKING SURFACES (PART 1910)

Significance: Regulatory Program

Legal Authority: 29 USC 655(b)

CFR Citation: 29 CFR 1910.21; 29 CFR 1910.22; 29 CFR 1910.23; 29 CFR 1910.24; 29 CFR 1910.25; 29 CFR 1910.26; 29 CFR 1910.27; 29 CFR 1910.28; 29 CFR 1910.29; 29 CFR 1910.30; 29 CFR 1910.31; 29 CFR 1910.32

Legal Deadline: None

Abstract: Existing standards for walking and working surfaces need to be revised because they are out of date and restrict technological innovation. The proposed revision is performance-oriented and permits flexibility for compliance.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
Final Action	10/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: The agenda RIN 1218-AB06 is an aggregate of RIN 1218-AA46 (Scaffolds and Similar Work Surfaces (Part 1910)) and RIN 1218-AA50 (Ladders and Similar Climbing Devices (Part 1910)).

Agency Contact: Barry J. White, Director, Safety Standards Programs, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW, Rm N3605, FPBldg., Washington, DC 20210, 202 523-8061

RIN: 1218-AB06

1516. BLOODBORNE INFECTIOUS DISEASES

Significance: Regulatory Program

Legal Authority: 29 USC 655 et seq

CFR Citation: 29 CFR Not yet determined

Legal Deadline: None

Abstract: Many health-care workers are exposed to blood and body fluids from patients who have active bloodborne infections or are carriers of these infections. Such exposure presents a potential risk of disease for the health-care workers. One such disease, hepatitis B, has been shown to present a substantially increased risk for health-care workers. Data received by OSHA indicate that of the approximately 300,000 cases of hepatitis B diagnosed in the U.S. each year, approximately 6.0 percent, or 18,000 cases, are among health-care workers. It has been estimated that 222-295 health-care workers die each year as a result of hepatitis B and associated complications. About half of the nation's five million health-care workers are at increased risk from exposure to bloodborne infectious diseases. The highest risks are experienced by emergency room workers, dialysis unit workers, operating room personnel, intensive care unit workers and blood bank employees. OSHA's personal protective equipment standard, 29 CFR 1910.132(a), provisions for general housekeeping, 29 CFR 1910(a)(1) and waste disposal, 29 CFR 1910. 141(a)(4)(ii)] along with Section 5(a)(i) of the Act (Cont'd)

Timetable:

Action	Date	FR Cite
ANPRM	11/27/87	52 FR 45438
ANPRM Comment Period End	01/26/88	52 FR 45438
NPRM	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: ABSTRACT (CONT'D): requiring employers to provide employment and a place of employment free of recognized hazards ..., will be used to reduce some, but not all of the hazards of bloodborne diseases. In 1983, the Agency issued voluntary guidelines for reducing the occupational risk of hepatitis B infection. In September 1988, OSHA was petitioned by the American Federation of State, County and Municipal Employees and other unions for the issuance of an emergency temporary standard to protect workers from occupational exposure to bloodborne infectious diseases, such as hepatitis B and acquired immune deficiency syndrome (AIDS). The agency is currently drafting a proposed standard.

Agency Contact: Charles E. Adkins, Director, Health Standards Programs, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW, Rm N3718, FPBldg., Washington, Dc 20210, 202 523-7075

RIN: 1218-AB15

1517. CADMIUM

Significance: Regulatory Program

Legal Authority: 29 USC 655 et seq

CFR Citation: 29 CFR 1910, (Table Z-2)

Legal Deadline: None

Abstract: On June 18, 1986, the International Chemical Workers Union and the Public Citizen Health Research Group petitioned OSHA to issue an emergency temporary standard reducing the permissible exposure limit for cadmium to one microgram of cadmium per cubic meter of air. On June 25, 1987 the union and HRG filed a petition with the Court of Appeals requesting the Court to order OSHA to promulgate an ETS. In its July 1, 1987, response to the petitioners, OSHA stated that issuance of an emergency standard was not warranted, but that exposure to cadmium at levels permitted under the current standard represented a significant risk to worker health which would be addressed through section 6(b) rulemaking procedures. OSHA is in the process of developing a proposed standard.

Timetable:

Action	Date	FR Cite
Response to Petitioners	07/01/87	
NPRM	01/00/89	
Final Action	06/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Charles E. Adkins, Director, Health Standards Programs, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW, Rm N3718, FPBldg., Washington, DC 20210, 202 523-7075

RIN: 1218-AB16

1518. HAZARDOUS MATERIALS (PART 1910)

Significance: Regulatory Program

Legal Authority: 29 USC 655(b)

CFR Citation: 29 CFR 1910, (Subpart H)

Legal Deadline: None

Abstract: Standards in 29 CFR Part 1910, Subpart H, which address the storage, handling and use of hazardous materials, such as compressed gases, acetylene, hydrogen, oxygen, liquified petroleum gases, and flammable and combustible liquids, will be revised. This regulatory action will provide a new approach to the revision of Subpart H and will occur in three phases in an expanded timeframe. The three phases will be (1) Process Hazards Management, (2) Flammable and Compressed Gases, and, (3) Hazardous Liquids. The first phase of the proposed action is intended to better protect employees from unexpected releases of significant quantities od dangerous substances. The remaining phases are intended to simplify, clarify and consolidate standards on hazardous materials and assist employers and employees in general industry to better understand and better focus on the hazards inherent in the use, handling, and storage of such materials.

Timetable:

Action	Date	FR Cite
ANPRM	01/23/81	46 FR 7692
ANPRM Comment Period End	02/01/82	46 FR 38108
NPRM	08/00/89	
Final Action	06/00/90	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: This action merges two previous actions, "Hazardous Materials-- Flammable and Compressed Gases (Part 1910)" and "Hazardous Materials--Flammable and Combustible Liquids (Part 1910)" and will also include storage and handling of toxic materials.

Agency Contact: Barry J. White, Director, Safety Standards Programs, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW, Rm N3605, FPBldg., Washington, DC 20210, 202 523-8061

RIN: 1218-AB20

1519. SHIPYARD EMPLOYMENT; PHASE II (PART 1915)

Significance: Regulatory Program

Legal Authority: 29 USC 655(b); 33 USC 941

CFR Citation: 29 CFR 1915.1 et seq.; 29 CFR 1915.31 et seq.; 29 CFR 1915.91 et seq.; 29 CFR 1915.111 et seq.; 29 CFR 1915.131 et seq.; 29 CFR 1915.161 et seq.; 29 CFR 1915.171 et seq.; 29 CFR 1915.181; 29 CFR 1910.13; 29 CFR 1910.14; 29 CFR 1910.15; 29 CFR 1910.96; 29 CFR 1910.98; 29 CFR 1910.97; 29 CFR 1910.141; ...

Legal Deadline: None

Abstract: This regulatory action will complete the consolidation and updating of Parts 1915 and 1910 by providing shipyard employees with coverage under one comprehensive OSHA standard. This revision will involve the promulgation of 16 maritime subparts and their 1910 counterparts. Its completion will relieve shipyard owners from the burden of having to comply with two sets of rules that are complex, prescriptive, confusing and, in some cases, conflicting. OSHA will establish an Advisory Committee to assist the agency in reviewing and revising these subparts. Experts from government, industry, unions and the states will be asked to work with OSHA on this project. A previously identified project, Surface Preparation and Preservation (RIN: 1218-AA98), will be included in this project.

Timetable:

Action	Date	FR Cite
NPRM	08/00/89	
Final Action	06/00/90	

Small Entities Affected: None

Government Levels Affected: None

1520. ● HAZARDOUS WASTE TRAINING COURSE CERTIFICATION (PART 1910)

Significance: Regulatory Program

Legal Authority: PL 99-499 Section 126 (as amended); 29 USC 655; 29 USC 657; 5 USC 552(a); 5 USC 533

CFR Citation: 29 CFR 1910.120, (Subpart H)

Legal Deadline: None

Abstract: Public Law 99-499 requires the Secretary of Labor to promulgate a final standard for Hazardous Waste Operations and Emergency Response. Section 126 of Public Law 99-499 was amended by Congress on December 22, 1987 to require the Secretary of Labor to include in the final rule a training course certification program at least as comprehensive as the EPA's model program for asbestos abatement in public buildings. This proposed revision would add criteria and requirements for training course certification of training for workers involved in hazardous waste operations.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	
Final Action	10/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: State, Federal

Agency Contact: Barry J. White, Director, Safety Standards Programs, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW, Rm N3605, FPBldg., Washington, DC 20210, 202 523-8061

RIN: 1218-AB22

DEPARTMENT OF LABOR (DOL)

Final Rule Stage

Occupational Safety and Health Administration (OSHA)

1521. OCCUPATIONAL EXPOSURES TO HAZARDOUS CHEMICALS IN LABORATORIES

Significance: Regulatory Program

Legal Authority: 29 USC 655(b)

CFR Citation: 29 CFR 1910.1450

Legal Deadline: None

Abstract: Existing OSHA standards are designed to protect employees who are engaged in work involving exposure to only a few toxic chemicals during relatively standardized, continuous or repetitive processes. In contrast, laboratory workers are exposed to a multitude of toxic substances under frequently changing or unpredictable conditions. During this rulemaking, OSHA will examine whether prudent work practices and protective equipment, chosen for the specific facility and task, are more effective, feasible and economical for laboratory work than adhering to OSHA's current substance-specific standards. Accordingly, OSHA has proposed a special performance-oriented work practices standard that, if promulgated, would apply to laboratory workers and would contain provisions specifically designed for laboratory conditions.

Timetable:

Action	Date	FR Cite
ANPRM	04/14/81	46 FR 21785
ANPRM Comment Period End	07/15/81	
NPRM	07/24/86	51 FR 26660
NPRM Comment Period End	10/22/86	51 FR 26660
Public Hearings	03/24/87	52 FR 1212
Final Action	10/00/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Charles E. Adkins, Director, Health Standards Programs, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Ave., NW, Rm N3718, FPBldg., Washington, DC 20210, 202 523-7075

RIN: 1218-AA80

1522. ETHYLENE DIBROMIDE (EDB)

Significance: Regulatory Program

Legal Authority: 29 USC 655(b)

CFR Citation: 29 CFR 1910.1045

Legal Deadline: None

Abstract: Recent scientific studies have reported that ethylene dibromide causes cancer when administered orally, by inhalation and by skin application in laboratory animals. In addition, other studies have shown the chemical to be a mutagen, teratogen and testicular toxin in experimental animals. On the basis of these reports, OSHA has determined that its current permissible exposure limit of 20 ppm does not provide exposed workers adequate protection against cancer and other adverse health effects. A proposed standard for ethylene dibromide was published 10/07/83 (43 FR 45956). Public hearings were held in February 1984. OSHA is currently in the process of decisionmaking on the provisions to be included in the final standard.

Timetable:

Action	Date	FR Cite
ANPRM	12/16/81	46 FR 61671
ANPRM Comment Period End	05/31/82	
NPRM	10/07/83	48 FR 45956
NPRM Comment Period End	11/21/83	48 FR 45956
Public Hearing/Held	02/08/84	
Final Action	12/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Charles E. Adkins, Director, Health Standards Programs, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Ave., NW, Rm N3718, FPBldg., Washington, DC 20210, 202 523-7075

RIN: 1218-AA06

1523. ELECTRICAL SAFETY-RELATED WORK PRACTICES (PART 1910)

Significance: Regulatory Program

Legal Authority: 29 USC 655(b)

CFR Citation: 29 CFR 1910.331; 29 CFR 1910.332; 29 CFR 1910.333; 29 CFR 1910.334; 29 CFR 1910.335; 29 CFR 1910.399; 29 CFR 1910.26(c)(3)(iii); 29 CFR 1910.67(b)(4); 29 CFR 1910.68(b)(4); 29 CFR 1910.68(c)(5)(iv)(c); 29 CFR 1910.94(a)(2)(iii); 29 CFR 1910.103(b)(3)(iii)(e); 29 CFR 1910.106(h)(7)(iii)(a); 29 CFR 1910.110, (Table H-28); 29 CFR 1910.178(c)(2); ...

Legal Deadline: None

Abstract: Standards are currently under review for the second part (Subpart S of Part 1910) of OSHA's electrical standard which would establish a performance-oriented standard for electrical safety- related work practices to complement the existing electrical installation standards. The proposed standard includes requirements for work performed on or near exposed energized and deenergized parts of electrical equipment and includes requirements for both the safe use of the electrical equipment as well as the use of personal protection devices.

Timetable:

Action	Date	FR Cite
NPRM	11/30/87	52 FR 45530
NPRM Comment Period End	02/29/88	52 FR 45530
Final Action	06/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: None

Sectors Affected: All

Agency Contact: Barry White, Director, Safety Standards Programs, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Ave., NW, Rm N3605, FPBldg., Washington, DC 20210, 202 523-8061

RIN: 1218-AA82

1524. POWERED PLATFORMS FOR EXTERIOR BUILDING MAINTENANCE (PART 1910)

Significance: Regulatory Program

Legal Authority: 29 USC 655(b)

CFR Citation: 29 CFR 1910.66

Legal Deadline: None

Abstract: The present standard, which requires positive engagement of a powered platform with a building face to provide stabilization, may need to be revised because many variance designs have been submitted which do not provide positive engagement of the platform, yet claim equal stability. The agency believes there may be merit to this claim. The proposal provides flexibility in compliance through performance-oriented provisions as alternatives to positive engagement. It would also expand the scope of the current standard to include requirements covering additional suspension equipment, fall protection, and employee training.

DOL—OSHA

Final Rule Stage

Timetable:

Action	Date	FR Cite
ANPRM	02/11/83	48 FR 6368
ANPRM Comment Period End	03/14/83	48 FR 6368
NPRM	01/22/85	50 FR 2890
NPRM Comment Period End	03/25/85	50 FR 2890
Reopening of NPRM Comment Period to 8/1/85	07/02/85	50 FR 27307
Informal Public Hearing	02/20/86	
Final Action	11/00/86	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Barry White, Director, Safety Standards Programs, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Ave., NW, Rm N3605, FPBldg., Washington, DC 20210, 202 523-8061

RIN: 1218-AA33

1525. EXCAVATIONS (PART 1926)

Significance: Regulatory Program

Legal Authority: 29 USC 655(b); 40 USC 333

CFR Citation: 29 CFR 1926.650; 29 CFR 1926.651; 29 CFR 1926.652; 29 CFR 1926.653

Legal Deadline: None

Abstract: This rule prescribes the minimum measures to be taken to protect employees from injury during excavation work. A revision of the existing rule is being considered because trench and excavation sidewall failures that have resulted in death and injury to workers continue in significant numbers. Claims that the standards are ambiguous and too restrictive, especially with respect to the type of soil involved, have also been made.

Timetable:

Action	Date	FR Cite
NPRM	04/15/87	52 FR 12268
NPRM Comment Period End	10/14/87	52 FR 22799
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: 1. 29 CFR 1926.650 through .653 currently entitled: "Excavations, Trenching, and Shoring.

Agency Contact: Barry White, Director, Safety Standards Programs, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Ave., NW, Rm N3605, FPBldg., Washington, DC 20210, 202 523-8061

RIN: 1218-AA36

1526. FALL PROTECTION (PART 1926)

Significance: Regulatory Program

Legal Authority: 29 USC 655(b); 40 USC 333

CFR Citation: 29 CFR 1926.104; 29 CFR 1926.105; 29 CFR 1926.500; 29 CFR 1926.501; 29 CFR 1926.502; 29 CFR 1926.107(b); 29 CFR 1926.250(b)(2); 29 CFR 1926.651(t); 29 CFR 1926.700(b)(1); 29 CFR 1926.951(b)(4)(i); 29 CFR 1926.107(c); 29 CFR 1926.107(f); 29 CFR 1926.651(w)

Legal Deadline: None

Abstract: The existing standard has been proposed for revision because it is poorly formatted, contains unnecessary and restrictive provisions, and does not properly address the fall protection needs of certain areas and operations. The proposal raises several significant issues including (1) when fall protection systems must be installed, (2) whether work surface inspections are necessary to insure adequate structural integrity before commencing work, and (3) whether body belt systems or body harness systems are appropriate for use as fall protection. (Subpart M revised)

Timetable:

Action	Date	FR Cite
NPRM	11/25/86	51 FR 42680
NPRM Comment Period End	08/14/87	52 FR 20616
Final Action	04/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: This agenda entry is part of Regulatory Program RIN 1218-AB05; Elevated Surfaces (Part 1926).

Agency Contact: Barry White, Director, Safety Standards Programs, Department of Labor, Occupational Safety and Health Administration, Rm N3605, FPBldg, 200 Constitution Ave., NW, Washington, DC 20210, 202 523-8061

RIN: 1218-AA37

1527. UNDERGROUND CONSTRUCTION (TUNNELS AND SHAFTS)(PART 1926)

Significance: Regulatory Program

Legal Authority: 29 USC 655(b); 40 USC 333

CFR Citation: 29 CFR 1926.800

Legal Deadline: None

Abstract: The existing standards are being revised to update the treatment of hazards of construction in underground locations such as tunnels, shafts, chambers, passageways and covered excavations. In some cases, the existing standards are too restrictive. In addition, existing language is being rewritten to clarify the requirements.

Timetable:

Action	Date	FR Cite
NPRM	08/05/83	48 FR 35774
NPRM Comment Period extended to 02/17/84	12/19/83	48 FR 56087
Public Hearing Held	03/13/84	
Limited Reopening of Comment Period Until 10/15/85	08/19/85	50 FR 33357
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Barry White, Director, Safety Standards Programs, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Ave., NW, Rm N3605, FPBldg., Washington, DC 20210, 202 523-8061

RIN: 1218-AA39

1528. SCAFFOLDS (PART 1926)

Significance: Regulatory Program

Legal Authority: 29 USC 655(b); 40 USC 333

CFR Citation: 29 CFR 1926.451; 29 CFR 1926.452; 29 CFR 1910.28; 29 CFR 1910.29; 29 CFR 1926.752(k)

Legal Deadline: None

Abstract: The existing standard has been proposed for revision because it is poorly formatted, contains unnecessary

and restrictive provisions, and omits necessary specific coverage for certain types of scaffolds. The proposal raises several significant issues including: (1) the use of crossbraces as guardrails, (2) the use of fall protection during scaffold erection and dismantling operations, and (3) the role of engineers in scaffold design. (Subpart L, revised)

Timetable:

Action	Date	FR Cite
NPRM	11/25/86	51 FR 42680
NPRM Comment Period End	08/14/87	52 FR 20616
Final Action	04/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: This agenda entry is part of Regulatory Program RIN 1218-AB05; Elevated Surfaces (Part 1926).

Agency Contact: Barry White, Director, Safety Standards Programs, Department of Labor, Occupational Safety and Health Administration, Rm N3605, FPBldg, 200 Constitution Ave., NW, Washington, DC 20210, 202 523-8061

RIN: 1218-AA40

1525. CONTROL OF HAZARDOUS ENERGY SOURCES (LOCKOUT/TAGOUT) (PART 1910)

Significance: Regulatory Program

Legal Authority: 29 USC 655(b)

CFR Citation: 29 CFR 1910.147. (New)

Legal Deadline: None

Abstract: The proposed standard will fill a major gap in our current regulations which now depend for enforcement on the general duty clause, 5(a)(1). It will apply to those situations where the unexpected energization, start up or the release of stored energy could cause injury to employees. Providing comprehensive and uniform control procedures is also expected to reduce significantly the potential for injury and death of employees because the hazards targeted for control exist in virtually every workplace. Further, the proposed standard will respond to the concerns of organized labor who petitioned OSHA in 1979 and again in 1982 for regulatory action to protect employees and to the American National Standards Institute's petition for OSHA to adopt its consensus standard ANSI Z244.1-1982. Regulatory options involve developing a comprehensive standard covering all potentially hazardous energy sources or limiting the scope and application to those certain machines or industries that are causing most of the injuries.

Timetable:

Action	Date	FR Cite
ANPRM	06/17/80	45 FR 41012
ANPRM Comment Period End	09/15/80	
NPRM	04/29/88	53 FR 15496
NPRM Comment Period End	06/28/88	53 FR 15496
Final Action	05/00/89	

Small Entities Affected: Businesses

Government Levels Affected: None

Sectors Affected: Multiple

Agency Contact: Mr. Barry J. White, Director, Safety Standards, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Ave., NW, Rm. N3605, FPBldg., Washington, DC 20210, 202 523-8061

RIN: 1218-AA53

1530. STAIRWAYS AND LADDERS (PART 1926)

Significance: Regulatory Program

Legal Authority: 29 USC 655(b); 40 USC 333

CFR Citation: 29 CFR 1926.450; 29 CFR 1926.452; 29 CFR 1926.501; 29 CFR 1926.502; 29 CFR 1926.1050; 29 CFR 1926.1051

Legal Deadline: None

Abstract: The existing standard has been proposed for revision because it contains references to non-government voluntary regulations by topic. The proposal raises several significant issues including: (1) what is the appropriate height limit where the use of ladders as a means of access should be required, and (2) what are appropriate field tests for determining ladder strength. (New Subpart X)

Timetable:

Action	Date	FR Cite
NPRM	11/25/86	51 FR 42680
NPRM Comment Period End	08/14/87	52 FR 20616
Final Action	04/00/89	

Small Entities Affected: None

Government Levels Affected: None

Sectors Affected: Multiple

Additional Information: This new Subpart X is a revision of the ladder and stairway portions of existing Subparts L (ladders and scaffolds) and M (Floor and Wall Openings and Stairways). The remaining portions of Subparts L and M are being revised as Subparts L (Scaffolds) and M (Fall Protection). (RIN 1218-AA37 - Fall Protection; RIN 1218-AA40 - Scaffolds.) This agenda entry is part of Regulatory Program RIN 1218-AB05; Elevated Surfaces (Part 1926).

Agency Contact: Barry White, Director, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW, Rm N3605, FPBldg., Washington, DC 20210, 202 523-8061

RIN: 1218-AA57

1531. HAZARDOUS WASTE OPERATIONS AND EMERGENCY RESPONSE (PART 1910)

Significance: Regulatory Program

Legal Authority: PL 99-499 Section 126 (as amended); 29 USC 655; 29 USC 657; 5 USC 552(a); 5 USC 533

CFR Citation: 29 CFR 1910.120, (Subpart H)

Legal Deadline: Final, Statutory, October 16, 1987.

Abstract: Public Law 99-499 requires the Secretary of Labor to promulgate a final standard for Hazardous Waste Operations and Emergency Response by October 17, 1987. The law requires the proposed rule to address eleven areas: site analysis, training, medical surveillance, protective equipment, engineering controls, maximum exposure limits, informational programs, handling and labeling, new technology programs, decontamination procedures, and emergency response. The agency has developed a Preliminary Regulatory Impact Analysis which is available in the docket. The analysis estimates that the benefits are significant and that annualized costs are $71 million for training, $17 million for medical surveillance, $12 million for decontamination, $11 million for protection suits and $37 million for other requirements. OSHA held public hearings in Washington, D.C. and Seattle, Washington to enhance public comment and participation in this rulemaking.

On December 22, 1987 Congress amended SARA to require the Secretary of Labor to develop a training certification program at least as comprehensive as the EPA's Model Program for (CONT'D)

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/19/86	51 FR 45654
NPRM	08/10/87	52 FR 29620
NPRM Comment Period End	10/05/87	52 FR 29620
Public Hearings held in Washington, DC, and Seattle, Washington	10/13/87	52 FR 37973
Final Action	10/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: None

Sectors Affected: All

Additional Information: INFORMATION REGARDING ITEM #6: Because Public Law 99-499 requires the use of trained workers, there may be some impact or subcontractors who will either need to hire trained employees, than existing employees, or not participate in the cleanup of hazardous wastes. ABSTRACT (CONT'D): Asbestos Abatement in Schools. OSHA will be developing this certification program as a separate rulemaking.

Agency Contact: Barry J. White, Director, Safety Standards Programs, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW, Rm N3605, FPBldg., Washington, DC 20210, 202 523-8061

RIN: 1218-AB17

1532. PERMISSIBLE EXPOSURE LIMIT UPDATE

Significance: Regulatory Program

Legal Authority: 29 USC 655 et seq

CFR Citation: 29 CFR 1910.1000, (Tables Z-1 to Z-3)

Legal Deadline: None

Abstract: In 1972, OSHA promulgated permissible exposure limits (PELs) for a number of toxic substances, pursuant to authority granted by section 6(a) of the Act, which allowed OSHA (for a limited period) to adopt existing Federal standards or industry consensus standards as enforceable OSHA standards. Accordingly, the lists of toxic substances now codified at 29 CFR 1910.1000, Tables Z-1 and Z-3, were Federal standards adopted under the Walsh-Healey Public Contracts Act, which, in turn, were adopted from the American Conference of Governmental Industrial Hygienists (ACGIH) Threshold Limit Values (TLVs) for 1968. The substances listed at 29 CFR 1910.1000, Table Z-2, were adopted from American National Standards Institute standards. Industrial experience, new developments in control technology, and scientific data acquired since 1968 have led the ACGIH to make changes in its TLVs over the years. Many of the TLVs have been lowered, and limits for additional chemicals have been established. During this period, OSHA has promulgated revised standards for toxic substances on a substance-by-substance basis. This process, however, has not kept up with (Cont'd)

Timetable:

Action	Date	FR Cite
NPRM	06/07/88	53 FR 20960
NPRM Comment Period End	07/06/88	
Final Action	12/00/88	

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: ABSTRACT (CONT'D): the number of changes made by ACGIH. OSHA believes that 29 CFR 1910.1000, Tables Z-1, Z-2 and Z-3 should be updated, as appropriate, to conform with current scientific and technical knowledge. OSHA intends to initiate rulemaking to accomplish this update.

Agency Contact: Charles E. Adkins, Director, Health Standards Programs, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW, Rm N3718, FPBldg., Washington, DC 20210, 202 523-7075

RIN: 1218-AB17

1533. LEAD (RECONSIDERATION OF THE FEASIBILITY OF COMPLIANCE IN NINE INDUSTRY SECTORS)

Significance: Regulatory Program

Legal Authority: 29 USC 655 et seq

CFR Citation: 29 CFR 1910.1025

Legal Deadline: Final, Judicial, November 20, 1988.

Abstract: On December 11, 1981 (46 FR 60758), OSHA published a Revised Statement of Reasons concerning the feasibility of compliance with paragraph (e)(1) of the standard for occupational exposure to lead, which had been promulgated in 1978. In this revised statement, OSHA stated that it could not reach a conclusion regarding feasibility, on the basis of the existing rulemaking record, for eight specific industry sectors: lead chromate pigments, lead chemicals, nonferrous foundries, brass and bronze ingot production, secondary copper smelting leaded steel, shipbuilding and ship repair, stevedoring, and battery breaking separate from secondary smelting, and that in addition, it wished to reexamine the applicability of the lead standard to the stevedoring industry. OSHA requested that the record (which was under review by the U.S. Court of Appeals for the District of Columbia Circuit) be remanded for supplementary administrative proceedings. The Court granted OSHA's December 1981 request on March 31, 1987, and remanded the record to OSHA for further administrative proceedings to determine the feasibility of section (e)(1) for the nine industry sectors OSHA had (Cont'd)

Timetable:

Action	Date	FR Cite
Reopening of Lead Rulemaking Records	08/03/87	52 FR 28727
End of Comment Period	09/16/87	
Public Hearings	09/29/87	
Final Action	11/00/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: ABSTRACT (CONT'D): listed. The Court further ordered OSHA to return the record on or before October 1, 1987. On June 17, 1987, OSHA filed with the Court a motion requesting a 90-day extension to January 1, 1988. On July 31, 1987 the Court granted OSHA's motion. OSHA published in the Federal Register on August 3, 1987, a notice of a limited reopening of the rulemaking record (limited to the issue of feasibility) and specified September 2, 1987 for the receipt of comments from the public and September 15, 1987 for public hearings. Thereafter, at the request of industry and labor, OSHA deferred the

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relevant dates for the rulemaking until September 16 and 29, 1987, respectively.OSHA requested, and was granted by the Court, an extension for final action until July 15, 1988.Because of the complexity of the issues, OSHA petitioned the court on July 15 for an extension of time for the return of the record until the end of November 1988.

Agency Contact: Charles E. Adkins, Director, Health Standards Programs, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW, Rm N3718, FPBldg., Washington, DC 20210, 202 523-7075

RIN: 1218-AB18

DEPARTMENT OF LABOR (DOL) — Completed Actions

Occupational Safety and Health Administration (OSHA)

1534. ACCESS TO EMPLOYEE EXPOSURE AND MEDICAL RECORDS

Significance: Regulatory Program

Legal Authority: 29 USC 655(b); 29 USC 657

CFR Citation: 29 CFR 1910.20

Legal Deadline: None

Abstract: The existing record access rule was promulgated in May 1980. The rule requires employers to preserve and maintain exposure and medical records pertinent to employee exposure to toxic substances, and to ensure access to these records by employees, designated employee representatives and OSHA. As a result of numerous requests and suggestions for changes to the standard, OSHA published a proposal to revise the standard in 1982. OSHA intends to publish soon a final rule that resolves many of the issues raised in the 1982 proposal. This regulation will be similar to the regulation promulgated in 1980 with certain exceptions relating to: (1) first-aid records and medical records of short-term employees; (2) the microfilm storage of employee X-rays; (3) employer trade secrets; (4) employee exposure record requirements for other records; and (5) unconsented access to employee exposure records by union representatives.

Timetable:

Action	Date	FR Cite
NPRM	07/13/82	47 FR 30420
NPRM Comment Period End	09/14/82	
Public Hearing Held	10/05/82	
Final Action	09/29/88	53 FR 38140
Final Action Effective	11/28/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Charles E. Adkins, Director, Health Standards Programs, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Ave., NW, Rm N3718, FPBldg., Washington, DC 20210, 202 523-7075

RIN: 1218-AA15

1535. CRANE OR DERRICK SUSPENDED PLATFORMS (PART 1926)

Significance: Regulatory Program

Legal Authority: 29 USC 655(b); 40 USC 333

CFR Citation: 29 CFR 1926.550

Legal Deadline: None

Abstract: The use of cranes and derricks to suspend personnel in platforms is a hazardous operation that was not previously covered by OSHA Construction Standards. OSHA has issued administrative instructions on this practice, but this alternative to rulemaking was not successful. This final rule has been developed to reduce the number of accidents, many of which involve multiple fatalities, that result from equipment inadequacies and failures or improper work practices.

Timetable:

Action	Date	FR Cite
NPRM	02/17/84	49 FR 6260
NPRM Comment Period End	06/10/84	49 FR 25246
Public Hearing Held	09/18/84	
Final Action	08/02/88	53 FR 29116
Final Action Effective	10/03/88	

Small Entities Affected: None

Government Levels Affected: State, Federal

Sectors Affected: 15 Building Construction-General Contractors and Operative Builders; 16 Heavy Construction Other Than Building Construction-Contractors; 17 Construction-Special Trade Contractors

Analysis: Regulatory Impact Analysis; Regulatory Flexibility Analysis

Agency Contact: Barry White, Director, Safety Standards Programs, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW, Rm N3605, FPBldg., Washington, DC 20210, 202 523-8061

RIN: 1218-AA45

1536. MOTOR VEHICLES, MECHANIZED EQUIPMENT, AND MARINE OPERATIONS (PART 1926)

Legal Authority: 29 USC 655(b); 40 USC 333

CFR Citation: 29 CFR 1926.601; 29 CFR 1926.602; 29 CFR 1926.603; 29 CFR 1926.604; 29 CFR 1926.605; 29 CFR 1926.606

Legal Deadline: None

Abstract: This regulatory action is being made to update the rollover protective structures to reflect the latest technology. In addition, the action will eliminate redundant provisions, remove outdated referenced consensus standards, and delete ambiguous language from the existing provisions which address motor vehicles, material handling equipment, pile driving equipment, site clearing, and marine operations and equipment.

Timetable:

Action	Date	FR Cite
Deferred	07/29/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: OSHA has determined, based on staff resources and priorities, that immediate action will not be taken. Data collection will continue and the Agency intends to reevaluate the decision within 12 to 18 months.

DOL—OSHA — Completed Actions

Agency Contact: Barry J. White, Director, Safety Standards Programs, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Ave., NW, Rm N3605, FPBldg., Washington, DC 20210, 202 523-8061

RIN: 1218-AA63

1537. COMPRESSED AIR (PART 1926)

Legal Authority: 29 USC 655(b); 40 USC 333

CFR Citation: 29 CFR 1926.803

Legal Deadline: None

Abstract: OSHA published a "Request for Comments and Information" on April 22, 1985, on the subject of working in compressed air and decompression (50 FR 15756). Based on the information obtained, OSHA has determined that immediate action will not be taken. The Agency intends to continue data collection, and to reevaluate the decision in light of additional input, staff resources, and Agency priorities within 12 to 18 months.

Timetable:

Action	Date	FR Cite
Request for Comments and Information	04/22/85	50 FR 15756
Comment Period Closed	07/22/85	
Deferred	07/29/88	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Barry J. White, Director, Safety Standards Programs, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Ave., NW, Room N3605, FPBldg., Washington, DC 20210, 202 523-8061

RIN: 1218-AA76

1538. ASBESTOS SHORT TERM EXPOSURE LIMIT

Significance: Regulatory Program

Legal Authority: 29 USC 655(b)

CFR Citation: 29 CFR 1910.1001; 29 CFR 1926.58

Legal Deadline: Final, Judicial, September 8, 1988.
The United States Court of Appeals for the District of Columbia Circuit ordered OSHA's reconsideration of the STEL issue be completed within 60 days of the issuance of the mandate (Cont'd)

Abstract: In June 1986, OSHA promulgated revised standards governing exposure to asbestos in general industry and construction. OSHA reduced the 8-hour Time Weighted Average (TWA) Permissible Exposure Limit (PEL) to 0.2 f/cc, but did not issue a short term exposure limit (STEL). OSHA's principal reason for not issuing an excursion limit was that the rulemaking record failed to show a dose-rate effect. Subsequently, in July 1988, the Court of Appeals for the District of Columbia, in reviewing the EtO standard, held that OSHA may not base its determination to not issue a STEL on the lack of a "dose-rate effect" and that the "OSH Act compels the Agency to adopt a STEL if the record shows that it would further reduce a significant health risk and is feasible to implement." To conform to this judicial decision OSHA plans to amend the Asbestos standards by the issuance of an appropriate excursion limit for all workplaces affected by the revised Asbestos standards.

Timetable:

Action	Date	FR Cite
NPRM	04/01/84	49 FR 14116
Final Action	06/20/86	51 FR 22612
Final Action Effective	07/21/86	51 FR 22612
Final Action	09/14/88	53 FR 35610
Final Action Effective	10/14/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: #10 (Cont'd): (7/6/88) in the asbestos decision, Building and Construction Trades Department, AFL-CIO v. Brock 838 F.2d 1258, 1273 (CADC, 1988).

Agency Contact: Charles E. Adkins, Director, Health Standards Programs, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW, Rm N3718, FPBldg., Washington, DC 20210, 202 523-7075

RIN: 1218-AB21

[FR Doc. 88-20999 Filed 10-21-88; 8:45 am]

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Part XIII

Department of State

Semiannual Regulatory Agenda

BEST COPY AVAILABLE

DEPARTMENT OF STATE (STATE)

DEPARTMENT OF STATE

22 CFR Ch. I

[Docket No. SD - 218]

Unified Agenda of Federal Regulations

AGENCY: Department of State.

ACTION: Semiannual publication of regulatory agenda.

SUMMARY: As required by Executive Order 12291 and the Regulatory Flexibility Act of 1980 (Pub. L. No. 96-354), the October 1988 agenda of regulations of the Department of State is set forth below. This agenda was prepared under the guidelines of OMB Bulletin 88-15, dated June 24, 1988. The purpose of the agenda is to provide information to the public on the Department's regulatory plans.

FOR FURTHER INFORMATION CONTACT: James H. Thessin, Assistant Legal Adviser for Management, Department of State, Room 4427A, 2201 C Street, NW., Washington, DC 20520, telephone (202) 647-2350.

Dated: September 6, 1988.

Ronald I. Spiers,

Under Secretary for Management.

DEPARTMENT OF STATE (STATE) — Prerule Stage

1536. ESTABLISHMENT OF REGISTRY IN STATE DEPARTMENT FOR INFORMATION ABOUT EXECUTION OF INTERNATIONAL WILLS

Legal Authority: Eventual U.S. ratification of 1973 Convention; providing a Uniform Law on the Form of an International Will; will provide basis for establishing Registry

CFR Citation: 22 CFR 92.81(3); amendment to

Legal Deadline: None

Abstract: By resolution of the international diplomatic conference that adopted the final text of the Convention (see 3, above), there was a recommendation that States establish an internal system to permit the optional registration of information to facilitate the discovery of international wills. The President transmitted the Convention to the Senate on July 2, 1986 with the recommendation that the Senate give its advice and consent to U.S. ratification of the Convention, and information about the intention to establish the Registry in the Department of State (Senate Treaty Doc. 99-29).

Timetable:

Action	Date	FR Cite
Hearing of Senate Foreign Relations Committee on the Convention	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Carmen A. DiPlacido, Director, Office of Citizens Consular Services, Department of State, Bureau of Consular Affairs, Washington, DC 20520, 202 647-3666

RIN: 1400-AA09

1540. FISHERMEN'S PROTECTIVE ACT PROCEDURES UNDER SECTION 7

Legal Authority: 22 USC 1977

CFR Citation: 22 CFR 33, (Revision)

Legal Deadline: None

Abstract: This regulation clarifies procedures for the administration of the Fishermen's Guaranty Fund and claims evaluation, under Section 7 of the Fishermen's Protective Act, 22 USC 1971 et seq.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Peter H. Flournoy, Attorney-Adviser, Department of State, Office of the Legal Adviser, Washington, DC 20520, 202 647-2252

RIN: 1400-AA18

1541. SOUTH AFRICA AND FAIR LABOR STANDARDS

Legal Authority: 22 USC 5034; 22 USC 5035; 22 USC 5111; 22 USC 5113

CFR Citation: 22 CFR 60 to 65

Legal Deadline: None

Abstract: Executive Order 12532 of September 9, 1985 required U.S. firms operating in South Africa to take good faith measures with respect to certain fair labor standards. A final rule was promulgated for this purpose after receiving public comments. The requirements of this Executive Order were later codified in the Comprehensive Anti-Apartheid Act of October 2, 1986, and amendments to the regulations were promulgated as a final rule on October 22, 1986. The first annual review of the labor practices of U.S. firms was published in September 1987. The Department of State revised the questionnaire after the first report was published. The Department will review the regulations and questionnaire in the last quarter of 1988 after the second report is issued in September 1988.

Timetable:

Action	Date	FR Cite
Begin Review	10/01/88	
End Review	12/31/88	

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Robert Bruce, Executive Director, South Africa Fair Labor Standards Program, Department of State, AF/S, 2201 C Street, NW., Washington, DC 20520, 202 647-9696

RIN: 1400-AA19

1542. AUTOMOBILE LIABILITY INSURANCE REPORTING REQUIREMENTS UNDER THE FOREIGN MISSIONS ACT

Significance: Regulatory Program

Legal Authority: 22 USC 4301 et seq; 22 USC 254a

CFR Citation: 22 CFR 151

Legal Deadline: None

STATE — Prerule Stage

Abstract: The Foreign Missions Act Amendments of 1983 amended the Diplomatic Relations Act of 1978 and the Foreign Missions Act to enforce more effectively a requirement that persons connected with foreign missions carry liability insurance against risks arising from the operation in the U.S. of automobiles, vessels or aircraft by persons entitled to diplomatic or consular immunity. The Department issues and enforces pertinent regulations with the aim of ensuring that the objectives of this program are achieved. The regulations are designed to carry out the obligations of the U.S. to foreign diplomatic and consular missions, to induce concessions for U.S. diplomatic and consular missions abroad, and to protect the U.S. public against uninsured foreign drivers. The expected potential benefits to society will greatly outweigh potential costs. We continue our analysis and discussions to ensure that regulatory mechanisms chosen maximize net benefits and minimize net costs. We seek to set priorities for our regulatory goals and objectives to maximize aggregate net benefits to society. In that connection, the liability insurance regulations have first priority.

Timetable:

Action	Date	FR Cite
Determination of milestones for future action	05/05/88	
Continue discussions with insurance industry	01/01/89	
Continue Congressional review	12/30/89	

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: John Condayan, Acting Director, Office of Foreign Missions, Department of State, Room 2105, Washington, DC 20520, 202 647-3416

RIN: 1400-AA24

1543. ● COLLECTION OF DEBTS BY THE STATE DEPARTMENT UNDER THE DEBT COLLECTION ACT OF 1982

Legal Authority: 31 USC 3701 to 3719 Federal Claims Collection Act, as amended; PL 97-365 Debt Collection Act of 1982

CFR Citation: 22 CFR 34

Legal Deadline: None

Abstract: These regulations establish rules for the collection of debts owed to the State Department and the United States. The regulations implement the collection procedures authorized by the Federal Claims Collection Act as amended by the Debt Collection Act of 1982, which authorizes debt collection procedures including contracting for collection services, administrative offset and salary offset.

Timetable:

Action	Date	FR Cite
ANPRM	11/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Ramon A. Evon, Systems Accountant, Office of Financial Management, Department of State, Room 4709, SA-15, Washington, DC 20520, 202 875-6360

RIN: 1400-AA25

DEPARTMENT OF STATE (STATE) — Proposed Rule Stage

1544. FOREIGN MISSIONS ACT REGULATIONS

Significance: Regulatory Program

Legal Authority: 22 USC 4301 et seq; 22 USC 254(e)

CFR Citation: 22 CFR 151

Legal Deadline: None

Abstract: The Foreign Missions Act creates certain authorities for the Secretary of State relating to the regulation of foreign missions, diplomatic, consular, and international organizations. Exercise of those authorities could involve restricting or controlling the access of such missions to American vendors of goods and services. Exercise of other authorities in the Foreign Missions Act could affect the location of premises of foreign missions. Exercise of authority in the Diplomatic Relations Act, 22 USC 254(a) et seq., as amended by Title VI of PL 98-164, will have an impact on the acquisition of liability insurance coverage for the operation of motor vehicles, vessels, and aircraft by personnel of foreign missions, and could in certain situations, subject foreign missions to surcharges or fees. The regulations under consideration would provide procedures for exercise of these authorities. These regulations are at the stage of preliminary consideration. No timetable has been established other than that established in Title VI of PL 98-164.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: John Condayan, Acting Director, Office of Foreign Missions, Department of State, Room 2105, 2201 C Street, NW, Washington, DC 20520, 202 647-3416

RIN: 1400-AA04

1545. BANKING SERVICES - PROCEDURES FOR RESTRICTING

Legal Authority: 22 USC 4301 et seq

CFR Citation: 22 CFR 152

Legal Deadline: None

Abstract: The rule will set out the procedures that the Department of State will follow whenever the banking services of particular foreign missions are restricted pursuant to the Foreign Missions Act, 22 USC 4301 et seq.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

STATE — **Proposed Rule Stage**

Government Levels Affected: Undetermined

Agency Contact: John Condayan, Acting Director, Office of Foreign Missions, Department of State, Room 2105, 2201 C Street, NW, Washington, DC 20520, 202 647-3416

RIN: 1400–AA07

1546. REGULATIONS IMPLEMENTING THE PROGRAM FRAUD CIVIL REMEDIES ACT

Legal Authority: PL 99-509, Sec 6104; 31 USC 3801 to 3812

CFR Citation: Not yet determined

Legal Deadline: Final, Statutory, April 21, 1987.

Abstract: Regulations implement the Program Fraud Civil Remedies Act of 1986, which establishes an administrative remedy for fraudulent claims or statements submitted to agencies. Anyone who, with knowledge or reason to know, submits a false, fictitious or fraudulent claim or statement to an agency is liable for a $5,000 penalty and an assessment of double damages.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Jean Bailly, Attorney-Adviser, Department of State, L/M, Room 4427A, 2201 C Street, NW, Washington, DC 20520, 202 647-4448

RIN: 1400–AA13

1547. UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH UNIVERSITIES, HOSPITALS, AND OTHER NONPROFIT ORGANIZATIONS

Legal Authority: 22 USC 2658

CFR Citation: 22 CFR 135

Legal Deadline: None

Abstract: This regulation established uniform administrative requirements for grants and cooperative agreements to State and local governments. The regulation is being changed to include institutions of higher education, hospitals, and other nonprofit organizations. This effort represents a merging of OMB circulars A-102 and A-110, and is being promulgated by many Federal agencies under the common rulemaking procedures.

Timetable:

Action	Date	FR Cite
Notice requesting comments on OMB Circular A-110 review	05/24/87	52 FR 23729
Begin Review	06/24/87	52 FR 23729
NPRM	05/31/88	
NPRM Comment Period End	11/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: John J. Conway, Procurement Executive, Department of State, Room 227, SA-6, Washington, DC 20521, 703 875-7047

RIN: 1400–AA20

DEPARTMENT OF STATE (STATE) — **Completed Actions**

1548. IMPLEMENTATION OF 1980 HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

Significance: Regulatory Program

CFR Citation: 22 CFR 94 (108.870)

Completed:

Reason	Date	FR Cite
Final Action	06/24/88	53 FR 23843
Final Action Effective	07/01/88	53 FR 23843

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Carmen A. DiPlacido 202 647-3666

RIN: 1400–AA05

1549. DEPARTMENT OF STATE ACQUISITION REGULATION (DOSAR)

CFR Citation: 48 CFR 601 to 653

Completed:

Reason	Date	FR Cite
Final Action	07/11/88	53 FR 26158
Final Action Effective	07/11/88	53 FR 26158

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: John J. Conway 703 875-7047

RIN: 1400–AA16

1550. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

CFR Citation: 22 CFR 137

Completed:

Reason	Date	FR Cite
Final Action	05/26/88	53 FR 19161
Final Action Effective	10/01/88	53 FR 19161

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: John J. Conway 703 875-7047

RIN: 1400–AA21

1551. INTERNATIONAL TRAFFIC IN ARMS REGULATIONS (ITAR)

CFR Citation: 22 CFR 120 to 130

Completed:

Reason	Date	FR Cite
Final Action	04/04/88	53 FR 11494
Final Action Effective	04/04/88	53 FR 11494

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Kenneth Chard 703 875-6650

RIN: 1400–AA23

[FR Doc. 88-21373 Filed 10-21-88; 8:45 am]

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federal register

Monday
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Part XIV

Department of Transportation

Semiannual Regulatory Agenda

DEPARTMENT OF TRANSPORTATION (DOT)

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Chs. I and II

23 CFR Chs. I and II

33 CFR Chs. I and IV

41 CFR Ch. 12

46 CFR Chs. I-III

48 CFR Ch. 12

49 CFR Subtitle A, Chs. I-VI

[OST Docket No. 59; Notice 88-4]

Department Regulations Agenda; Semiannual Summary

AGENCY: Department of Transportation.

ACTION: Department regulations agenda.

SUMMARY: The Regulations Agenda is a semiannual summary of all current and projected rulemakings, reviews of existing regulations and completed actions of the Department. The agenda provides the public with information about the Department of Transportation's regulatory activity. It is expected that this information will enable the public to be more aware of, and allow it to more effectively participate in, the Department's regulatory activity.

ADDRESSES: The mailing address for the initiating offices of the Department which appear in the agenda is 400 Seventh Street, SW., Washington, DC 20590, except for the Federal Aviation Administration which is located at 800 Independence Avenue, SW., Washington, DC 20591; and the U.S. Coast Guard, which is located at 2100 Second Street, SW., Washington, DC 20593.

FOR FURTHER INFORMATION CONTACT:

General

For further information on the agenda in general, contact: Neil R. Eisner, Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, 202-366-4723.

Specific

For further information about any particular item on the agenda, contact the individual listed in the column headed "Agency Contact" for that item.

SUPPLEMENTARY INFORMATION:

Table of Contents

Supplementary Information:
- Background
- Regulatory Flexibility Act
- Regulatory Impact Analysis
- Definitions
- Explanation of Information on the Agenda
- Mailing Lists for Regulatory Documents
- General Rulemaking Contact Persons
- Public Rulemaking Dockets
- Request for Comments
- Purpose
- Appendix A - Instructions for Obtaining Copies of Regulatory Documents
- Appendix B - General Rulemaking Contact Persons
- Appendix C - Public Rulemaking Dockets

Agenda

Background

Improvement of government regulations is a prime goal of the Reagan Administration. There should be no more regulations than necessary, and those that are issued should be simpler, more comprehensible, and less burdensome. Regulations should not be issued without appropriate involvement of the public; once issued, they should be periodically reviewed and revised, as needed, to assure that they continue to meet the needs for which they originally were designed.

To help the Department of Transportation ("Department") achieve these goals, and in accordance with Executive Order 12291 ("Federal Regulation"; 46 FR 13193; February 19, 1981) and the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), the Department prepares a semiannual Regulations Agenda for publication in the **Federal Register**. The agenda summarizes all current and projected rulemaking, reviews of existing regulations and completed actions of the Department. These are matters on which action has begun or is projected during the succeeding twelve months or such longer period as may be anticipated or for which action has been completed since the last agenda.

The agendas are based on reports submitted by the initiating offices in January and July each year. After these reports are consolidated for, and reviewed by, the Department Regulations Council, the Department's Regulations Agenda is prepared and published in the **Federal Register**. The Department's last agenda was published in the **Federal Register** on April 25, 1988 (53 FR 14039). The next one is scheduled for publication in the **Federal Register** in April 1989.

Regulatory Flexibility Act

In 1980, Congress passed the Regulatory Flexibility Act (RFA), Pub. L. 96-354, which requires the designation of those regulations for which a Regulatory Flexibility Analysis will be prepared, i.e., those regulations that would have a significant economic impact on a substantial number of small entities. A Regulatory Flexibility Analysis is required for a rulemaking which, in the heading "Small Entities Affected," indicates an effect on small businesses, governmental jurisdictions, or organizations. If a Regulatory Flexibility Analysis will be prepared for a particular rulemaking, that fact also will be noted under the heading "Analysis."

The RFA also requires that each year the Department publish a list of those regulations that have a significant economic impact on a substantial number of small entities and are to be reviewed under the Act during the succeeding twelve months. The agenda includes those regulations to be reviewed under the RFA or those for which review has been concluded since the last agenda. However, it should be noted that, after a preliminary assessment of the regulations listed for RFA review, it may be found that the regulations, in fact, do not have a significant economic impact on a substantial number of small entities and a full RFA review will be unnecessary.

Regulatory Impact Analysis

A preliminary and final Regulatory Impact Analysis is required for each proposed and final regulation, respectively that

(1)Is likely to result in:

(a)An annual effect on the economy of $100 million or more;

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(b)A major effect on the general economy in terms of costs, consumer prices, or production;

(c)A major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions;

(d)Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets; or

(2)The Secretary or head of the initiating office has determined requires such an analysis.

Definitions

The agenda covers all rules and regulations of the Department, including those that establish conditions for financial assistance. The following definitions are provided for ease in understanding the information in this document.

(1) *Initiating office* means an operating administration or other organizational element within the Department, the head of which is authorized by law or delegation to issue regulations or to formulate regulations for issuance by the Secretary.

(2) *Significant regulation* means a regulation that is not an emergency regulation and that in the judgment of the head of the initiating office, or the Secretary, or the Deputy Secretary

(a) Is a major regulation;

(b) Concerns a matter on which there is substantial public interest or controversy;

(c) Has a major impact on another operating administration or other parts of the Department or other Federal Agency;

(d) Has a substantial effect on State and local governments;

(e) Has a substantial impact on a major transportation safety problem;

(f) Initiates a substantial regulatory program or change in policy;

(g) Is substantially different from international requirements or standards; or

(h) Otherwise involves important Department policy.

(3) *Major regulation* means a significant regulation for which a Regulatory Impact Analysis is required to be prepared.

(4) *Emergency regulation* means (a) a regulation that, in the judgment of the head of the initiating office, circumstances require to be issued without notice and opportunity for public comment or made effective in less than 30 days after publication in the **Federal Register**; or (b) is governed by short-term statutory or judicial deadlines.

(5) *Nonsignificant regulation* means a regulation that, in the judgment of the head of the initiating office, is neither a significant nor an emergency regulation.

Explanation of Information on the Agenda

The format for this agenda is required by Office of Management and Budget Bulletin No. 88-16 (July 2, 1988).

First, the agenda is divided by initiating offices. Then, in accordance with the OMB Bulletin, for each initiating office the agenda is divided into four categories: (1) Prerule stage, (2) proposed rule stage, (3) final rule stage, and (4) completed actions. For each entry, the agenda provides the following information: (1) The "significance" of the action (i.e., whether it is significant because it is on the Regulatory Program or because of agency priority; or whether it is nonsignificant or routine and frequent); (2) a short descriptive title; (3) the legal basis for the action being taken or the regulation being reviewed; (4) the related regulatory citation in the Code of Federal Regulations; (5) an indication of any legal deadline and, if so, for what type of action (e.g., NPRM, final rule); (6) an abstract of the review or the proposed or final regulation; (7) a timetable, including the earliest expected date for a decision on whether to issue the proposed or final regulation, or complete the review and determine the corrective action to be taken. (The action taken can be revocation or revision of the regulation, or it can be a determination that no regulatory action is necessary because the regulation is found to be achieving its goals and the goals and objectives of Executive Order 12291 and the Department's Regulatory Policies and Procedures.); (8) an indication as to whether the rulemaking will affect small entities and/or levels of government and which categories of small entities or governments will be impacted; (9) if there is information that does not fit in the other categories, it will be included under a separate heading, entitled "Additional Information"; (10) a listing, where determined, of any analyses an initiating office will prepare or has prepared for the rulemaking document; e.g., a Regulatory Impact Analysis or Evaluation, an Environmental Impact Statement (EIS), a Regulatory Flexibility Analysis, or an Urban Impact Analysis. (It should be noted that, even though a Regulatory Impact Analysis is not required for some items on the agenda, the Department requires an economic analysis for all of its regulations. This economic analysis is contained in the Regulatory Evaluation if a Regulatory Impact Analysis is not prepared.); (11) an agency contact office or official who can provide further information, including advice on how to obtain documents referenced in the agenda; and (12) a Regulation Identifier Number (RIN) assigned to identify an individual rulemaking in the agenda and facilitate tracing further action on the issue in the **Federal Register** which may occur between agenda publications. (Departmental rulemaking documents published in the **Federal Register** now contain RIN numbers.)

For nonsignificant regulations issued routinely and frequently as a part of an established body of technical requirements (such as the Federal Aviation Administration's Airspace Rules) to keep those requirements operationally current, only the general category of the regulations, the identity of a contact office or official, and an indication of the expected number of regulations are included; individual regulations are not listed.

If a regulatory docket number has already been established, it may be provided under the "Additional Information" heading. If a member of the public desires further information regarding a particular proposal or regulation, reference should be made to this docket number.

In the "Timetable" column, abbreviations are used to indicate the particular documents being considered for issuance by that date. ANPRM stands for Advance Notice of Proposed Rulemaking, SNPRM for Supplemental Notice of Proposed Rulemaking, NPRM for Notice of Proposed Rulemaking, and FR for Final Rule. Listing a future date in this column is not an indication that a proposed or a final rule will be issued on that date; it is the earliest date on which a decision is expected to be made

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on whether to issue the document listed. Submittal of any proposed or final rule to the Office of Management and Budget for review, under Executive Order 12291, must follow such a decision. For major rules, this review could take 60 days or more. If any document is issued, publication in the **Federal Register** would follow within a few days. In addition, these dates are based on current schedules. Information received subsequent to the issuance of this agenda could result in a decision not to take regulatory action or in changes to proposed publication dates. For example, the need for further evaluation could result in a later publication date; evidence of a greater need for the regulation could result in an earlier publication date.

Finally, a dot (●) preceding an entry indicates that the entry appears in the agenda for the first time.

Mailing Lists for Regulatory Documents

To assist the public in obtaining regulatory documents issued within the Department of Transportation, an Appendix A has been included in this document. The appendix contains instructions on how to be placed on mailing lists for, or to obtain, copies of regulatory documents, including the Department's Semiannual Regulations Agenda, issued by the operating administrations of the Department and the Office of the Secretary. There is no charge for this service; however, because of the costs involved, the number of copies of a document forwarded to an individual requestor may be limited. Persons already on mailing lists for particular documents within the Department will remain on those lists and should not reapply.

By following the instructions specified in the appendix, a person can be placed on a mailing list for future copies of the Department's Regulations Agenda, which will be updated and published in the **Federal Register** every year during April and October. By using the agenda, individuals can determine which Notice or Advance Notice of Proposed Rulemaking, to be issued by elements of the Department, is of interest to them. Then, using the instructions in the appendix, such persons also can be placed on a mailing list to ensure that, after the document of interest is issued, a copy will be mailed to them for their review and comment. In this way, individuals will be relieved of the burden of having to review the **Federal Register**, perhaps on a daily basis. The Department expects that this process will ensure that those people placed on mailing lists will receive early notice so that their views on the document can be adequately prepared and presented within the established comment period.

General Rulemaking Contact Persons

To assist persons desiring to obtain general information concerning the rulemaking process within the Department's operating administrations, an Appendix B has been added to the agenda. This appendix sets forth the addresses and the telephone numbers of the persons who can respond quickly to requests for general rulemaking information. Please note, however, that questions related to particular rulemaking actions should still be referred to the contact person listed with the particular rulemaking on the agenda.

Public Rulemaking Dockets

To facilitate the inspection of docket files and the submission of comments by the public, an Appendix C sets forth the addresses and working hours for the Rules Docket for each operating administration.

Request for Comments

Agenda

Our agenda is intended primarily for the use of the public. Since its inception, we have made modifications and refinements that we believe provide the public with more helpful information as well as make the agenda easier to use. We would also like you, the public, to make suggestions or comments on how the agenda could be further improved. For example, do you find the information presented in an easily understandable manner? Do you find it easy to follow a regulation's development from agenda to agenda? Do you find that the format for setting out the information enables you to use the agenda easily? Do you find that the presentation of the information in the agenda is clearly explained in the preamble to the agenda? Your responses to these questions or any other comments or suggestions you may have should be sent to Neil R. Eisner, whose address appears above.

Reviews

In an effort to comply further with the spirit of Executive Order 12291 and the Regulatory Flexibility Act, we are also seeking suggestions on existing regulations that should be included in our review of existing regulations; that is, which existing regulations issued by an operating administration of the Department or the Office of the Secretary do you believe need to be reviewed to determine whether they should be revised or revoked? The Department is particularly interested in obtaining information on requirements that have a "significant economic impact on small entities" and therefore must be reviewed under the Regulatory Flexibility Act. If you have any suggested regulations, please send them, along with your explanation of why they should be reviewed, to the concerned operating administration or the Office of the Secretary, at the appropriate address noted in the "Addresses" paragraph above.

In accordance with the Regulatory Flexibility Act, comments are specifically invited on regulations that are targeted for review under the RFA. Those comments should be addressed to the "contact" person of the operating administration involved, at the appropriate address noted in the "Addresses" paragraph above.

Purpose

The Department is publishing this Regulations Agenda in the **Federal Register** to share with interested members of the public the Department's preliminary expectations regarding its future regulatory actions. This should enable the public to be more aware of the Department's regulatory activity. Knowledge of the nature and scope of this activity, as well as the specific proposals and reviews being considered, should result in more effective public participation in the Department's regulatory activity. For example, awareness of the dates when notices may be issued seeking public comment should allow appropriate planning and more efficient use of the comment period. By providing the expected date for a decision on whether to issue a final rule, the Department expects that more appropriate planning by those concerned with the regulation will also be possible. This publication in the **Federal Register** does not impose any binding obligation on the Department, or any of the offices within the Department, with regard to any specific item on the agenda. Regulatory action in addition to the items listed is not precluded. If further information is desired on any of the items listed in the agenda, the public is encouraged to contact the individual listed for the particular item. Additional information concerning the agenda, in general, or the Department's Regulatory Policies and Procedures may be obtained from Neil R. Eisner, whose address and telephone number appear above.

Issued in Washington, DC on September 24, 1988.

[redacted],

Secretary of Transportation.

Appendix A - Instructions for Obtaining Copies of Regulatory Documents

Some Administrations within the Department differ in procedures, or as to inclusion on a mailing list. For the offices listed below, persons desiring to obtain a copy of any regulatory document to be issued, that is listed in this agenda, should communicate, either by telephone or by letter, with the contact person listed with the regulation, at the following addresses:

United States Coast Guard (USCG)

(Name of contact person), United States Coast Guard, 2100 Second Street, SW., Washington, DC 20593.

Federal Highway Administration (FHWA)

(Name of contact person), Federal Highway Administration, 400 7th Street, SW., Washington, DC 20590.

Federal Railroad Administration (FRA)

(Name of contact person), Federal Railroad Administration, 400 7th Street, SW., Washington, DC 20590.

National Highway Traffic Safety Administration (NHTSA)

(Name of contact person), National Highway Traffic Safety Administration, 400 7th Street, SW., Washington, DC 20590.

Urban Mass Transportation Administration (UMTA)

(Name of contact person), Urban Mass Transit Administration, 400 7th Street, SW., Washington, DC 20590.

Saint Lawrence Seaway Development Corporation (SLSDC)

(Name of contact person), Saint Lawrence Seaway Development Corporation, 400 7th Street, SW., Room 5424, Washington, DC 20590.

Research and Special Programs Administration (RSPA)

David A. Watson, Training Unit, DHM-51, OHMT/RSPA, 400 7th Street, SW., Washington, DC 20590.

Maritime Administration (MARAD)

James Saari, Secretary, Maritime Administration, 400 Seventh Street, SW., [Room 7300B], Washington, DC 20590, [202) 366-5746.

Federal Aviation Administration (FAA)

The FAA has a mailing list system for Notices and Advance Notices of Proposed Rulemaking (NPRMs and ANPRMs). Persons interested in obtaining future copies of all of those documents to be issued by the FAA or only of those concerning certain parts of the Federal Aviation Regulations should request a copy of Advisory Circular No. 11-2, which describes the application procedure, by calling 202-267-3479 or by writing to: Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-200, 800 Independence Avenue, SW., Washington, DC 20591.

Office of the Secretary (OST)

Persons desiring to receive future copies of the Department's Regulations Agenda should submit their request to: Assistant General Counsel for Regulation and Enforcement, C-50, Office of the General Counsel, Department of Transportation, Washington, DC 20590, (202) 366-4723.

Persons who have an interest in specific regulatory documents to be issued by the Office of the Secretary should forward requests for copies of those documents to the same address. These requests should fully identify the document desired. Persons interested in a rulemaking document on an aviation matter (of the kind formerly handled by the CAB) will be placed on a mailing list for all OST aviation-related rulemakings if they so request.

Appendix B - General Rulemaking Contact Persons

The following is a list of persons who can be contacted within the Department for general information concerning the rulemaking process within the various operating administrations.

USCG - Bruce Novak, Marine Safety Council, USCG Headquarters Building, Room 2110, 2100 Second Street, SW., Washington, DC 20593. Telephone: 202/267-1477.

FAA - John H. Cassady, Office of Chief Counsel, Regulations and Enforcement Division, 800 Independence Ave., SW., Room 915A, Washington, DC 20591. Telephone: 202/267-3073.

FHWA - Michael J. Laska, Office of the Chief Counsel, 400 7th Street, SW., Room 4223, Washington, DC 20590. Telephone: 202/366-1383.

FRA - Mike Haley, Office of Chief Counsel, 400 7th Street, SW., Room 8201, Washington, DC 20590. Telephone: 202/366-0767.

NHTSA - Steve Kratzke, Office of Chief Counsel, 400 7th Street, SW., Room 5219, Washington, DC 20590. Telephone: 202/366-2992.

UMTA - Linda Hart, Office of Chief Counsel, 400 7th Street, SW., Room 9316, Washington, DC 20590. Telephone: 202/366-4011.

SLSDC - Fredrick A. Bush, General Counsel's Office, 400 7th Street, SW., Room 5424, Washington, DC 20590. Telephone: 202/366-0101.

RSPA - Mary Crouter, Office of Chief Counsel, 400 7th Street, SW., Room 8420, Washington, DC 20590. Telephone: 202/366-4367.

MARAD - James Saari, Secretary, Maritime Administration, 400 7th Street, SW., Room 7300B, Washington, DC 20590. Telephone: 202/366-5746.

OST - Neil Eisner, Office of Regulation and Enforcement, 400 7th Street, SW., Room 10424, Washington, DC 20590. Telephone: 202/366-4723.

Appendix C - Public Rulemaking Dockets

The following is a list of Rule Docket locations for the various operating administrations where the public may review regulatory dockets and hand-deliver comments on advance notices and notices of proposed rulemaking:

USCG - Marine Safety Council, 2100 2nd Street, SW., Room 2110, Washington, DC 20593. Working Hours: 7:30-4:00 (Monday-Friday).

FAA - Rules Docket, Office of Chief Counsel, Regulations and Enforcement Division, 800 Independence Ave., SW., Room 915G, Washington, DC 20591. Working Hours: 8:30-5:00.

FHWA - Docket Room, 400 7th Street, SW., Room 4232, Washington, DC 20590. Working Hours: 8:30-3:30.

FRA - Docket Clerk, 400 7th Street, SW., Room 8201, Washington, DC 20590. Working Hours: 8:30-5:00.

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NHTSA - Docket Room, 400 7th Street, SW., Room 5109, Washington, DC 20590. Working Hours: 8:00-4:00.

UMTA - Docket Clerk, 400 7th Street, SW., Room 9316, Washington, DC 20590. Working Hours: 8:30-5:00.

SLSDC - 400 7th Street, SW., Room 5424, Washington, DC 20590. Working Hours: 8:15-4:45.

RSPA - Docket Branch, 400 7th Street, SW., Room 8426, Washington, DC 20590. Working Hours: 8:30-5:00.

MARAD - Docket Clerk, 400 7th Street, SW., Room 7300, Washington, DC 20590. Working Hours: 9:00-5:30.

OST - Docket Clerk, 400 7th Street, SW., Room 4107, Washington, DC 20590. Working Hours: 9:00-5:30.

Office of the Secretary—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
1552	+ Review of Department-Wide Drug Regulations	2105-AB24
[illegible]	+ Consumer Protection for Default by Scheduled Air Carriers	2105-AA28
1554	+ Escrow/Bond Protection for Airline Tickets	2105-AB35
1555	Air Carrier Cargo Tariff Publications	2105-AA31
[illegible]	Overseas Military Personnel Air-Charter Tariffs	2105-AA67
1557	Unfair and Deceptive Practices by Airline Ticket Agents	2105-AA70
[illegible]	Direct Flights	2105-AA73
[illegible]	Cargo Rate Changes on 30 Days' Notice	2105-AA88
1560	Comprehensive Review of CAB Consumer Rules	2105-AB03
1561	Price Advertising	2105-AB25

+ Designates significant regulation.

Office of the Secretary—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1562	+ Commercial Space Transportation: Liability Requirements for Commercial Space Launch Activities	2105-AA26
1563	+ Minority Business Enterprise Program (Financial Assistance Programs)	2105-AA04
1564	+ Statement of Enforcement Policy on Rebating	2105-AB39
1565	+ Antidrug Programs for Department of Transportation Contractors	2105-AB40
1566	Nondiscrimination in Federally-Assisted Programs of the Department of Transportation — State Transportation Agencies' EEO Affirmative Action Programs	2105-AA06
1567	Nondiscrimination on the Basis of Handicap (Directly Conducted Programs)	2105-AA29

+ Designates significant regulation.

Office of the Secretary—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1568	+ Nondiscrimination on the Basis of Handicap (Air Travel)	2105-AA18
1569	+ Electronic Filing of Tariffs	2105-AB02
1570	+ Liberalization of Air-Carrier Charter Rules	2105-AA41
1571	+ Smoking Aboard Aircraft; Notice to Passengers	2105-AA72
1572	+ Certification of Speed-Limit Enforcement	2105-AB22
1573	+ Nondiscrimination on the Basis of Handicap (Commuter Rail Programs)	2105-AB23
1574	+ Posting of Tariffs — Notice of Contract of Carriage	2105-AB38
1575	Title VI Civil Rights Regulation	2105-AA32
1576	Minority Business Enterprise Program (Direct Contracting)	2105-AA03
1577	Consolidation of Transportation Grants to U.S. Territories	2105-AA58
1578	Nondiscrimination on the Basis of Age in DOT Financial Assistance Programs	2105-AA09
1579	Airline Time and Mileage Guides	2105-AA39
1580	Direct Air Carrier Responsibility for Returning Stranded Charter Passengers	2105-AA40
1581	Zones for Airline Mail Rates	2105-AA44
1582	Air Travelers: Age Discrimination	2105-AA45
1583	Policy Statement on Airline Preemption	2105-AA46
1584	Insurance for On-Demand Air-Taxi Operators and Canadian Air Taxis	2105-AA47
1585	Effect of Expiration of a Bilateral on Foreign Air-Carrier Authority	2105-AA68
1586	Implementation of Statute Requiring Interest on Subsidy Claims	2105-AA77

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Office of the Secretary—Final Rule Stage—Continued

Sequence Number	Title	Regulation Identifier Number
1587	Diversion of Flights Within a Metropolitan Area	2105-AA78
1588	Simplified Aviation Exemption Procedures	2105-AA82
1589	Baggage Liability Notices in International Air Transportation	2105-AA84
1590	Simplified Airline Counter-Sign Notices	2105-AA86
1591	Exemption From Prior-Approval Requirements for Certain Transactions	2105-AB20
1592	Counting UMTA Reduced-Fare Program Costs Toward 504 Cost Cap	2105-AB29
1593	Collection of Claims Owed the United States	2105-AB33

+ Designates significant regulation.

Office of the Secretary—Completed Actions

Sequence Number	Title	Regulation Identifier Number
1594	+ Public Availability of Information	2105-AA05
1595	+ Denial of Public Works Contracts to Suppliers of Goods and Services of Countries That Deny Procurement Market Access to U.S. Contractors	2105-AB41
1596	Update the Department of Transportation Acquisition Regulations to Implement the Competition in Contracting Act as Set Forth in the Federal Acquisition Regulations — Proposed Rules	2105-AB15
1597	Warranty Regulations for Major System Acquisitions of the United States Coast Guard — Proposed Rule	2105-AB16
1598	Names of Air Carriers and Foreign Air Carriers	2105-AB18
1599	Airline Service Quality Performance	2105-AB28
1600	Debarment and Suspension (Nonprocurement)	2105-AB34
1601	Department of Transportation Board of Contract Appeals Rules	2105-AB35

+ Designates significant regulation.

U.S. Coast Guard—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
1602	+ Subdivision and Damage Stability of Dry Cargo Vessels (CGD 87-094)	2115-AC87
1603	Inland Waterway Navigation Regulations; All Waters Tributary to the Gulf of Mexico (85-096)	2115-AC33
1604	SOLAS 74/83 Emergency Drinking Water and Food Approval Requirements (85-202)	2115-AC48
1605	Hydraulic Release Units for Lifesaving Equipment: SOLAS 74/83 (85-206)	2115-AC52
1606	Revision of Davit and Winch Approval Requirements: SOLAS 74/83 (85-207)	2115-AC53
1607	Radar Reflector Approval Requirements: SOLAS 74/83 (85-209)	2115-AC54
1608	Revision of Lifebuoy Approval Requirements: SOLAS 74/83 (85-210)	2115-AC55
1609	Port Access Routes; Approach to Freeport, Texas (CGD 87-038)	2115-AC78
1610	Oil Discharge Monitoring and Control System (CGD 87-057)	2115-AC86
1611	Marine Transport of Bulk Solid Hazardous Materials (87-069)	2115-AD02
1612	Private Electronic Aids to Maritime Navigation (88-011)	2115-AD04
1613	Requirements for Marine Terminals Transferring Bulk Liquefied Hazardous Materials (88-049)	2115-AD06

+ Designates significant regulation.

U.S. Coast Guard—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1614	+ California Offshore Routing System (83-032)	2115-AB29
1615	+ Revisions of the Regulations on Outer Continental Shelf Activities (84-096)	2115-AB74
1616	+ User Fees for Coast Guard Services (84-026)	2115-AB79
1617	+ Licensing of Officers and Operators for Mobile Offshore Drilling Units (81-59a)	2115-AB91
1618	+ Regulations for Self-Elevating Offshore Service and Support Vessels (CGD 86-074)	2115-AC65
1619	+ Imposition of User Fees for Certain Coast Guard Services; Documentation and Licensing (CGD 87-020)	2115-AC74

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U.S. Coast Guard—Proposed Rule Stage—Continued

Sequence Number	Title	Regulation Identifier Number
1620	+ Prevention of Pollution by Plastics, Annex V of MARPOL(86-002)	2115-AC89
1621	Fixed Fire-Extinguishing Systems on Uninspected Vessels (74-284)	2115-AA08
1622	Crane Operator Qualifications and Standards for Offshore Crane Design, Inspection, Testing, and Operation (79-059)	2115-AA34
1623	Inflatable Liferaft Stability (80-113)	2115-AA50
1624	Maneuvering Performance Regulations (80-136)	2115-AA53
1625	Servicing Inflatable Liferafts (81-010)	2115-AA67
1626	Personal Flotation Devices (81-023)	2115-AA68
1627	General Revision of 46 CFR 151, Barges Carrying Certain Bulk Dangerous Cargoes (81-062)	2115-AA70
1628	Offshore Supply Vessel Regulations (82-004)	2115-AA77
1629	General Revisions of Pollution-Prevention Regulations for Tankers (82-030)	2115-AA88
1630	Aids to Navigation on Outer Continental Shelf (82-054)	2115-AA92
1631	Safety Standards for Self-Propelled Vessels Carrying Bulk Liquefied Gases (82-058)	2115-AA95
1632	Nautical Schools: Implementing the Maritime Educational Training Act of 1980 (82-082)	2115-AB21
1633	Reassessment of Coast Guard Fire Protection Regulations to Incorporate SOLAS 1974 (83-026)	2115-AB36
1634	Reassessment of Coast Guard Marine Engineering Regulations -- Incorporation of SOLAS 74 Amendments (83-043)	2115-AB41
1635	Marine Portable Tanks (84-043)	2115-AB60
1636	Personal Flotation Device Components (84-066)	2115-AB70
1637	Lifesaving Equipment--Implementation of 1983 Amendments to SOLAS 1974 (84-069)	2115-AB72
1638	Mobile Offshore Drilling Unit Regulations Revision (83-071a)	2115-AB88
1639	Safety Rules for Ships Carrying Hazardous Liquids (84-085)	2115-AB92
1640	Certification of Seamen (84-088)	2115-AC02
1641	Fire Detection and Alarm Systems (85-051)	2115-AC13
1642	Revisions to the Electrical Engineering Regulations (85-063)	2115-AC26
1643	Subchapter "T" Title 46, General Updates and Revisions (85-080)	2115-AC22
1644	Inspected Fish Processing and Fish Tender Vessels (86-026)	2115-AC27
1645	46 CFR Subchapter 1, Editorial Revisions and Corrections (86-033)	2115-AC28
1646	Updating Approval Requirements for Breathing Apparatus (86-036)	2115-AC30
1647	Revised Approval Specifications for Noncombustibles and Prohibition of Asbestos for Commercial Vessels (86-035)	2115-AC32
1648	Uninspected Fish-Processing Vessels (86-025)	2115-AC34
1649	Cargo Lists and Tables Update (CGD 86-100)	2115-AC35
1650	Load Lines (86-013)	2115-AC37
1651	Navigation Bridge Visibility (CGD 85-099)	2115-AC42
1652	Fire Extinguishers (Portable and Semi-Portable) - Revising Approval Specifications and Updating Carriage Requirements [illegible]-07)	2115-AC43
1653	SOLAS 74/83 Life Jacket Approval Requirements Revision (85-200)	2115-AC46
1654	SOLAS 74/83 Lifeboat and Rescue Boat Approval Requirements (85-201)	2115-AC47
1655	Revision of Pyrotechnic Distress Signal Approval Requirements: SOLAS 74/83 (85-203)	2115-AC49
1656	Revision of Disembarkation Ladder Approval Requirements: SOLAS 74/83 (85-204)	2115-AC50
1657	Revision to Inflatable Liferaft Approval: SOLAS 74/83 (85-205)	2115-AC51
1658	Revision of Life Jacket Light Approval Requirements: SOLAS 74/83 (85-211)	2115-AC56
1659	Advance Notice of Arrival (CGD 86-055)	2115-AC58
1660	Tonnage Measurement of Vessels (87-015b)	2115-AC67
1661	Posting Requirements on Inspected Vessels (87-031)	2115-AC68
1662	Small Passenger Vessel Manning and Personnel Qualifications (85-080a)	2115-AC83
1663	Lifeboat, Liferaft and Rescue Boat Approval Requirements - SOLAS 74/83 (85-201a)	2115-AC94
1664	Floating Electric Waterlights (85-208)	2115-AC96
1665	Suspension of Barrel Fees(88-050)	2115-AD01
1666	Cargo Gear Inspection and Testing (87-069)	2115-AD03
1667	Incorporation and Adoption of Industry Standards (88-032)	2115-AD05
1668	Part 165--Regulated Navigation Areas and Limited-Access Areas	2115-AD07

+ Designates significant regulation.

U.S. Coast Guard—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1669	+ Hazardous Materials Pollution Prevention: Bulk Liquids (86-034)	2115-AC29
1670	+ Tankerman Requirements (CGD 79-116)	2115-AA03
1671	+ Joint U.S.-Canada Vessel Traffic Management Regulations for the Pacific Region (79-131)	2115-AA39
1672	+ Licensing of Maritime Personnel (CGD 81 - 059)	2115-AA84

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U.S. Coast Guard—Final Rule Stage—Continued

Sequence Number	Title	Regulation Identifier Number
1673	+ Offshore Evacuation Procedures (84-096(b))	2115-AC41
1674	+ Programs for Chemical Drug and Alcohol Testing of Commercial Vessel Personnel (CGD 86-067)	2115-AC45
1675	Hopper Dredge Working Freeboard - Load Line and Stability Requirements (76-080)	2115-AA11
1676	Defect Notification and First-Purchaser Information (77-115)	2115-AA16
1677	Vessel Piping Systems (77-140)	2115-AA17
1678	Hybrid Personal Flotation Devices: Establishment of Approval Requirements (78-174)	2115-AA25
1679	Launching Devices for Liferafts (79-168)	2115-AA45
1680	General Bridge Permit Regulations (81-057)	2115-AA51
1681	Pollution Rules for Ships Carrying Hazardous Liquids (81-101)	2115-AA73
1682	Casualty Reporting Requirements for Recreational Boats (82-015)	2115-AA82
1683	Safety/Security Zone Regulations	2115-AA97
1684	Anchorage Area Regulations	2115-AA98
1685	Carriage and Use of Liquefied or Nonliquefied Flammable Gas as Cooking Fuels on Vessels Carrying Passengers for Hire (83-013)	2115-AB35
1686	Licensing of Pilots-Manning of Vessels (84-060)	2115-AB57
1687	Training in the Use of Automatic Radar Plotting Aids (ARPA) (85-069)	2115-AB90
1688	Oil Pollution Prevention, MARPOL Annex I (85-026)	2115-AC11
1689	Carriage and Operational Requirements for Inflatable Life Jackets (78-174b)	2115-AC16
1690	Intervals for Internal Examination and Hydrostatic Testing of Pressure Vessel Type Cargo Tanks (85-061)	2115-AC18
1691	Incorporations by Reference, Voluntary Industry Standards (CGD 87-046)	2115-AC72
1692	Electrical System Standard (CGD 87-009)	2115-AC73
1693	Port Access Routes; Approach to Mobile, Alabama (CGD 88-034)	2115-AC81
1694	Regattas and Marine Parades (CGD 87-067)	2115-AC84
1695	Alternative Provisions for Reinspections of Offshore Supply Vessels in Foreign Ports (CGD 82-004a)	2115-AC86
1696	Delegation of Authority to Area Commanders When Functioning as Maritime Defense Zone Commanders (CGD 87-065)	2115-AC88
1697	Anchorage Regulations (86-079)	2115-AC95
1698	Aids to Navigation System, Removal of References (88-018)	2115-AC97
1699	Documentation of Vessels - Codification of Law (88-030)	2115-AC98
1700	Documentation of Vessels - Controlling Interest (88-031)	2115-AC99
1701	Civil Appeals Procedures (88-033)	2115-AD00

+ Designates significant regulation.

U.S. Coast Guard—Completed Actions

Sequence Number	Title	Regulation Identifier Number
1702	+ Intervals for Drydocking and Tailshaft Examination on Inspected Vessels (84-024)	2115-AB58
1703	+ Mandatory Alcohol and Drug Testing Following Serious Marine Incidents Involving Commercial Vessels (CGD 86-080)	2115-AC62
1704	+ Safety Rules for Vessels Engaged in Chemical Waste Incineration at Sea (84-025)	2115-AB89
1705	Vital System Automation (CGD 81-030)	2115-AA59
1706	Handheld Flashlights (82-042)	2115-AA81
1707	Documentation of Vessels; Controlling Interest (82-105)	2115-AB27
1708	Hazardous Materials Used as Ship's Stores Onboard Vessels (84-044)	2115-AB65
1709	Oil-Water Interface Detectors (CGD 84-052)	2115-AB66
1710	Self-Inspection of Fixed OCS Facilities (CGD 84-096(a))	2115-AC40
1711	Emergency Position Indicating Radio Beacons for Uninspected Fishing, Fish Processing, and Fish Tending Vessels [illegible]7-015)	2115-AC69
1712	Delegation of Authority to Measure Vessels (87-015a)	2115-AC70
1713	Assistance Towing Licenses (CGD 87-017)	2115-AC82
1714	Anchor Requirements for Certain Vessels (87-013)	2115-AC90
1715	Posting Requirement for Placard of Lifesaving Signals and Breeches Buoy Instructions, Form CG-811 (CGD 87-031a)	2115-AC91
1716	Control of Residues and Mixtures Containing Oil or Noxious Liquid Substances (CGD 85-010)	2115-AC92

+ Designates significant regulation.

DOT

Federal Aviation Administration—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
1717	+ Flight Attendant Flight-Time Limitations and Rest Requirements	2120-AB97
1718	Review: Part 21--Certification Procedures for Products and Parts	2120-AB09
1719	Review: Part 121 -- Certification and Operations: Domestic, Flag and Supplemental Air Carriers and Commercial Operators of Large Aircraft	2120-AB27
1720	Review: Part 135 -- Air Taxi Operators and Commercial Operators	2120-AB28
1721	Accelerated Ground Training - Flight Engineers' Skill Requirements	2120-AA79
1722	Instrument Flight Rule Requirements	2120-AA82
1723	Amendment of Sections 91.171, 91.172, and Appendices E and F of Part 43	2120-AA96
1724	Fatigue Evaluation, Bird Impact, and Lightning Protection for Propellers of Composite Construction	2120-AB05
1725	Aircraft Registration; Recording of Aircraft Titles and Security Documents	2120-AC17
1726	Temporary Flight Restrictions	2120-AC40

+ Designates significant regulation.

Federal Aviation Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1727	+ Review of Parts 61, 141, 143 - Pilot, Pilot School, and Ground Instructor Rules	2120-AB12
1728	+ Review and Revision of Repair Station Requirements	2120-AC38
1729	+ Metropolitan Washington Airports Policy	2120-AA89
1730	+ Amend Part 23 to Include Requirements for Crash-Resistant Fuel Systems	2120-AA57
1731	+ Airplane Cabin-Fire Protection	2120-AB22
1732	+ Proposed Revision of Noise Certification of Turbojet and Large Transport Category Aircraft	2120-AB88
1733	+ Transponder Requirements in Coastal Air Defense Identification Zones (ADIZ)	2120-AB99
1734	+ Noise and Emission Standards for Aircraft Powered by Advanced Turboprop (Propfan) Engines	2120-AC20
1735	+ SST Stage 3 Compliance	2120-AC22
1736	+ Flight Attendant Requirements During Deplaning and Boarding	2120-AC32
1737	+ Part 129 Security Program for Foreign Air Carriers	2120-AC42
1738	+ Type and Number of Passenger Emergency Exits Required in Transport Category Airplanes	2120-AC43
1739	+ Improved Access to Type III and Type IV Emergency Exits	2120-AC48
1740	+ Pilots Convicted of Driving While Intoxicated (DWI)/Under Influence (DUI)	2120-AC51
1741	+ Flight Plan Filing Requirements; National Airspace Review Recommendation	2120-AC56
1742	+ Improved Survival Equipment for Inadvertent Water Landings	2120-AC72
1743	+ Exit Row Seating	2120-AC75
1744	+ Parts 121 and 135 - Training, Checking, Certification, and Qualifications Requirements	2120-AC78
1745	+ Advanced Flight Crewmember Training	2120-AC80
1746	+ Retrofit of Improved Seats in Air Carrier Transport Category Airplanes	2120-AC84
1747	Review of Medical Standards and Certification Procedures	2120-AA70
1748	Review Part 75 for Retention or Revocation	2120-AC55
1749	Part 91, Subpart B, Review for Simplification	2120-AA07
1750	Part 77 Review, Objects Affecting Navigable Airspace	2120-AA09
1751	Fuel System Fire Protection	2120-AA49
1752	Aircraft Simulator Use in Airmen Training and Certification	2120-AA83
1753	Standards for Approval for High Altitude Operation of Subsonic Airplanes	2120-AB18
1754	Transport Category Rotorcraft Performance	2120-AB36
1755	Miscellaneous Operational Amendments	2120-AB45
1756	Primary Category Aircraft	2120-AB53
1757	Part 157 Review	2120-AB74
1758	Part 101 Review Program	2120-AB75
1759	Engine Fuel and Induction Systems	2120-AB76
1760	Amend Section 43.17 to Allow for Maintenance of U.S. Aeronautical Products in Canada in Compliance with the U.S.-Canadian Bilateral Airworthiness Agreement	2120-AB89
1761	New Rotorcraft Emergency Power Ratings	2120-AB90
1762	Turbine Burst Protection for Transport Category Helicopters	2120-AB91
1763	Antiblocking Device	2120-AB92
1764	Airspace Redesignation	2120-AB95
1765	Type Certification Basis for Product Type Design Change	2120-AC05
1766	Passenger-Carrying and Cargo Air Operations for Compensation or Hire	2120-AC06
1767	Part 23 Airworthiness Review, Notice No. 5 (Equipment, Systems, and Installation)	2120-AC14
1768	Part 23 Airworthiness Review, Notice No. 2	2120-AC15

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Federal Aviation Administration—Proposed Rule Stage—Continued

Sequence Number	Title	Regulation Identifier Number
1769	Rotorcraft Certification Requirements; Coordination with European Airworthiness Authorities Steering Committee (AASC)	2120-AC27
1770	Miscellaneous Changes to Emergency Evacuation Demonstration Procedures, Exit Handle Illumination, and PA Handsets	2120-AC45
1771	Global Positioning System Use in Terminal Control Areas	2120-AC54
1772	Non-Federal Air Traffic Control Towers	2120-AC59
1773	Proposed Revision of Part 93, Subpart O(JAX)	2120-AC65
1774	Shoulder Harness for Each Seat in Part 27 and 29 Rotorcraft	2120-AC67
1775	Fuel System Crashworthiness	2120-AC68
1776	Indemnification of Publishers of Aeronautical Charts and Maps	2120-AC73
1777	Electrical and Electronic Systems Lightning Protection	2120-AC81
1778	Landing Gear Aural Warning	2120-AC82

+ Designates significant regulation.

Federal Aviation Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1779	+ Low-Altitude Windshear Equipment Requirements for Takeoffs/Landings of Transport Category Airplanes	2120-AA01
1780	+ Control of Drug and Alcohol Use for Personnel Engaged in Commercial and General Aviation Activities	2120-AC33
1781	+ Installation of Traffic Control Avoidance System in Domestic Transport Category Airplanes	2120-AC34
1782	+ Revision of Foreign Repair Station Rules	2120-AC50
1783	+ Inoperative Instruments or Equipment	2120-AA19
1784	+ Certification of Recreational Pilots and Annual Flight Review	2120-AA54
1785	+ Transport Category Rotorcraft Structural Fatigue Evaluation	2120-AA64
1786	+ Occupant Restraint in Normal and Transport Category Rotorcraft	2120-AB35
1787	+ Proposed Department of Energy Prohibited Areas	2120-AB39
1788	+ Elimination of Airport Delays	2120-AB42
1789	+ Proposed Revision to Noise Certification Standards for Propeller-Driven Small Airplanes	2120-AB47
1790	+ Proposed Limits on the Growth of Noise from Certain Airplanes and Airplane Types	2120-AB50
1791	+ Independent Power Source for Public Address System in Transport Category Airplanes	2120-AB77
1792	+ Flight Plan and Transponder-On Requirements in Air Defense Identification Zones (ADIZ)	2120-AC00
1793	+ Fire Protection Requirements for Cargo and Baggage Compartments - Parts 121 and 135	2120-AC04
1794	+ Location of Passenger Emergency Exits in Transport-Category Airplanes	2120-AC25
1795	+ Terminal Control Area Classification and Pilot/Equipment Requirements	2120-AC35
1796	+ Commuter Category Airplanes: Cockpit Voice Recorder (CVR) and Flight Data Recorder (FDR) Requirements	2120-AC46
1797	+ Design Standards for Fuel-Tank Access Panels	2120-AC58
1798	+ Access To Secured Areas on Airports	2120-AC69
1799	Revision of Part 91	2120-AA13
1800	Rotorcraft Regulatory Review Program Notice No. 4	2120-AA29
1801	Transport Category Airplane Airworthiness Standards	2120-AA47
1802	Miscellaneous Amendments	2120-AA50
1803	Amend Part 23 to Include Empennage Fatigue Requirements	2120-AA58
1804	National Airspace Review (NAR): Terminal Airspace Task Group Recommendations	2120-AB02
1805	Nighttime VFR Weather Minimums	2120-AB04
1806	Airworthiness Standards: Aircraft Engines, Electrical and Electronic Engine Control Systems	2120-AB06
1807	Standards for Approval of a Reduced V1 Methodology for Takeoff on Wet and Contaminated Runways	2120-AB17
1808	Low-Fuel-Quantity Alerting System	2120-AB48
1809	Helicopter Instrument Flight	2120-AB87
1810	Controlled Air Space Designations in International Air Space	2120-AB93
1811	Improved Structural Requirements for Pressurized Cabins and Compartments in Transport Category Airplanes	2120-AC44
1812	Fuel Venting and Exhaust-Emission Requirements for Turbine-Engine Powered Airplanes	2120-AC60
1813	Realignment of Restricted Areas in the Eglin AFB Area	2120-AC63
1814	Rules of Practice: FAA Civil Penalty Assessment Actions	2120-AC74
1815	Commuter Category - Response to Final Rule Comments	2120-AC77
1816	Airport-Related Proceedings	2120-AC76
1817	Smoking Aboard Aircraft	2120-AC83
1818	Part 95 Instrument Flight Rules	2120-AA63
1819	Airworthiness Directives	2120-AA64
1820	Standard Instrument Approach Procedures	2120-AA65

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Federal Aviation Administration—Final Rule Stage—Continued

Sequence Number	Title	Regulation Identifier Number
1821	Airspace Actions	2120-AA66

+ Designates significant regulation.

Federal Aviation Administration—Completed Actions

Sequence Number	Title	Regulation Identifier Number
1822	+ Improved Seat-Safety Standards	2120-AAMI
1823	+ Powered Ultralights: Airman Certification Requirements	2120-AB59
1824	+ Ultralight Aircraft Registration and Marking	2120-AC09
1825	+ Improved Flammability Standards for Materials Used in the Interior of Transport Category Airplane Cabins	2120-AB23
1826	+ Part 23 Airworthiness Review -- Notice No. 1 (Crashworthiness)	2120-AC16
1827	+ Transponder with Automatic Altitude Reporting Capability Requirement	2120-AC66
1828	+ Special Flight Rules in the Vicinity of the Grand Canyon National Park	2120-AC70
1829	Rotorcraft Regulatory Review Program Amendment No. 3	2120-AA28
1830	Noise Standards: Aircraft Type and Airworthiness Certification	2120-AA74
1831	Terminal Control Area (TCA) San Diego (Modification)	2120-AB98
1832	Part 150 - Airport Noise-Compatibility Planning	2120-AC19
1833	Part 99: Air Defense Identification Zones and Miscellaneous Editorial Revisions	2120-AC37
1834	Alternate Airport Weather Minimum	2120-AC41
1835	Mandatory Reporting for Emergency Evacuation Systems and Components	2120-AC49
1836	National Airspace Review Recommendation - Operations in the Vicinity of an Airport	2120-AC57

+ Designates significant regulation.

Federal Highway Administration—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
1837	+ Minimum Levels of Financial Responsibility for Motor Carriers: Self-Insurance	2125-AB65
1838	Review and Preemption of State Motor-Carrier Safety Regulations	2125-AC11
1839	Federal Motor Carrier Safety Regulations; Paperwork Burdens	2125-AC04

+ Designates significant regulation.

Federal Highway Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1840	+ Truck Size and Weight; Reasonable Access	2125-AB70
1841	+ Truck Size and Weight; Special Permits	2125-AB80
1842	+ Air Quality Procedures for Use in Federal-Aid Highway and Federally Funded Transit Programs	2125-AB10
1843	+ Private Carriage of Passengers	2125-AB62
1844	Review: General Materials Requirements	2125-AA19
1845	State Highway Agency Construction Contracts; Equal Opportunity Compliance Review; Program Requirements	2125-AB68
1846	Equal Employment Opportunity on Federal and Federal-Aid Construction Contracts (including Supportive Services)	2125-AB15
1847	Federal-Aid Programs Approval and Project Authorization	2125-AB16
1848	Administration of Contracts	2125-AB36
1849	Labor and Employment	2125-AB37
1850	Right-of-Way	2125-AB58
1851	Property Management, Disposals and Airspace	2125-AB60
1852	National Standards For Traffic Control Devices; Revision of Uniform Traffic Control Devices; Passing and No-Passing Zone Standards	2125-AB84
1853	Qualification of Drivers; Diabetes	2125-AB81
1854	Advance Construction of Federal-Aid Projects	2125-AC07

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Federal Highway Administration—Proposed Rule Stage—Continued

Sequence Number	Title	Regulation Identifier Number
1855	Construction Engineering Costs	2125-AC09
1856	Acquisition of Real Property for Rights-of-Way	2125-AC17
1857	Manual on Uniform Traffic Control Devices	2125-AA37

+ Designates significant regulation.

Federal Highway Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1858	+ Controlled Substances	2125-AA79
1859	+ Inspection, Repair, and Maintenance	2125-AB34
1860	+ Parts and Accessories Necessary for Safe Operation; General	2125-AB45
1861	+ Safety Fitness Procedures	2125-AB46
1862	+ Truck Size and Weight; Specialized Equipment; Maxi-Cube	2125-AB48
1863	+ Employee Safety and Health Standards	2125-AB50
1864	+ Driving a Motor Vehicle	2125-AB51
1865	+ Truck Size and Weight; Specialized Equipment; Boat Transporters	2125-AB53
1866	+ Qualification of Drivers; Hazardous Materials Drivers	2125-AB54
1867	+ Commercial Driver Test and Licensing Standards	2125-AB55
1868	+ Blood Alcohol Concentration Standard for Commercial Vehicle Operators	2125-AB79
1869	+ Uniform Relocation Act Amendments of 1987; General	2125-AB85
1870	+ Driver's Record of Duty Status; Onboard Recording Devices	2125-AB05
1871	+ Certification of Speed Limit Enforcement	2125-AC00
1872	Contract Procedures	2125-AA18
1873	Compliance with Motor Carrier Noise Standards	2125-AA27
1874	Railroad Grade Crossings	2125-AA36
1875	Acceleration of Projects	2125-AA07
1876	Pavement Policy for Highways	2125-AA88
1877	Erosion and Sediment Control on Highway Construction Projects	2125-AB06
1878	Structural Supports for Highway Signs, Luminaires and Traffic Signals	2125-AB56
1879	Construction and Maintenance; Contract Procedures; Standardized Contract Clauses	2125-AB87
1880	Truck Size and Weight; National Network; Iowa and South Carolina	2125-AC10
1881	Contract Procedures; Advertising for Bids; Noncollusion Affidavit/Declaration Requirement	2125-AC15
1882	Environmental Impact and Related Procedures; Constructive Use	2125-AC18

+ Designates significant regulation.

Federal Highway Administration—Completed Actions

Sequence Number	Title	Regulation Identifier Number
1883	+ Federal Motor Carrier Safety Regulations: General	2125-AA34
1884	+ Splash/Spray Suppressant Devices on Truck Tractors, Semitrailers and Trailers	2125-AA89
1885	+ Truck Size and Weight; Tandem Truck Safety Act	2125-AB29
1886	+ Semitrailer-Semitrailer; B-Train	2125-AB96
1887	Railroad-Highway Projects	2125-AB23
1888	Manual on Uniform Traffic Control Devices; Restructure	2125-AB57
1889	Reimbursement for Railroad Work	2125-AB59
1890	National Bridge Inspection Standards	2125-AB71
1891	Cargo Preference	2125-AB72
1892	Minimum Levels of Financial Responsibility for Motor Carriers; Environmental Restoration	2125-AB77
1893	National Standards For Traffic Control Devices; Revision of Part VI of the Manual On Uniform Traffic Control Devices	2125-AB83
1894	State Education and Training Program	2125-AB92
1895	Truck Size and Weight; Exception to Bridge Formula	2125-AC03
1896	State Fiscal Procedures and Reports; Rescission of Regulation	2125-AC08
1897	Utility Relocations, Adjustments, and Reimbursements	2125-AC12
1898	Truck Size and Weight; National Network; New York	2125-AC13

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Federal Highway Administration—Completed Actions—Continued

Sequence Number	Title	Regulation Identifier Number
[illegible]	Design Standards for Highways; Technical Amendment	2125-AC14
[illegible]	Commercial Motor Carrier Safety Assistance Program; Technical Amendments	2125-AC15

+ Designates significant regulation.

National Highway Traffic Safety Administration—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
1901	+ Side-Impact Protection, Head/Neck Protection, and Occupant Ejection Mitigation	2127-AB85
1902	+ Uniform Tire-Quality Grading	2127-AA52
1903	+ Side-Impact Protection -- Light Trucks, Vans, and Multipurpose Passenger Vehicles	2127-AC43
1904	+ Rollover	2127-AC64
[illegible]	Review: Schoolbus Seating Systems	2127-AA65
[illegible]	Review: Seating Systems	2127-AA69
[illegible]	Review: Lamps, Reflective Devices, and Associated Equipment	2127-AB76
[illegible]	Review: Impact Protection for the Driver from the Steering Control System	2127-AB75
[illegible]	Review: Roof Crush Resistance	2127-AC20
[illegible]	Air-Brake Systems	2127-AA27
[illegible]	Flammability of School Bus Interior Materials	2127-AA44
[illegible]	Occupant Protection in Interior Impact	2127-AB16
[illegible]	Federal Motor Vehicle Safety Standard No. 301 - Fuel-System Integrity	2127-AB43
[illegible]	Supplemental FMVSS No. 208 Injury Criteria - Facial Lacerations, Neck Injury, Knee Shear, Tibia and Ankle Injuries	2127-AC12
[illegible]	Mandatory Use of the Part 572(E) Dummy in FMVSS 208 Compliance Testing	2127-AC13
[illegible]	Federal Motor Vehicle Safety Standard -- Rear-View Mirrors - Sure-View Petition	2127-AC46
[illegible]	Federal Motor Vehicle Safety Standard No. 208 - Occupant Crash Protection	2127-AC57
[illegible]	Federal Motor Vehicle Safety Standard No. 301 - Fuel System Integrity	2127-AC58
[illegible]	Federal Motor Vehicle Safety Standard No. 108, Lamps, Reflective Devices, and Associated Equipment - Proposed Amendment to Permit the 9007 Bulb for Headlamps	2127-AC59
[illegible]	Federal Motor Vehicle Safety Standard No. 108, Lamps, Reflective Devices, and Associated Equipment	2127-AC61
[illegible]	Brake Lining	2127-AC66
[illegible]	Battery Explosions	2127-AC67

+ Designates significant regulation.

National Highway Traffic Safety Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1923	+ Commercial Vehicle Conspicuity	2127-AA12
1924	+ Anthropomorphic Test Dummies: Side-Impact Thorax Protection	2127-AA48
[illegible]	+ Uniform Tire Quality Grading Standards - Treadwear Amendments	2127-AB21
[illegible]	+ Side-Impact Protection: Thorax Protection	2127-AB90
1927	+ Post 1991 Light Truck Fuel Economy Standards	2127-AC51
1928	+ Heavy Duty Vehicle Brake Systems (Formerly Truck and Trailer Brake Systems)	2127-AA30
1929	+ Vehicle Classification	2127-AA57
[illegible]	+ Voluntary Tire Registration	2127-AB18
[illegible]	+ Heavy Trailer Stability	2127-AB42
1932	+ Occupant Crash Protection	2127-AB91
[illegible]	+ Head Restraints	2127-AC06
1934	+ Federal Motor Vehicle Safety Standard (FMVSS) No. 208, Occupant Crash Protection - Chest Injury Criteria	2127-AC94
[illegible]	Procedures for Considering Environmental Impacts	2127-AB79
1936	Voluntary Vehicle Identification Standard (Theft Prevention Standard)	2127-AB63
1937	Anthropomorphic Test Dummies Representing Children	2127-AB84
1938	Anthropomorphic Test Dummies Representing Children	2127-AC09
[illegible]	Anthropomorphic Test Dummies Representing Children	2127-AC10
1940	Federal Motor Vehicle Safety Standard No. 205, Glazing Materials	2127-AC14
[illegible]	Non-Pneumatic Tires for Passenger Cars	2127-AC18
1942	Federal Motor-Vehicle Safety Standard No. 221, Schoolbus Body Joint Strength	2127-AC19

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National Highway Traffic Safety Administration—Proposed Rule Stage—Continued

Sequence Number	Title	Regulation Identifier Number
[illegible]	Bumper Standard	2127-AC30
1944	Federal Motor Vehicle Safety Standard (FMVSS) No. 208, Occupant Crash Protection	2127-AC36
[illegible]	Federal Motor Vehicle Safety Standard (FMVSS) No. 205, Glazing Materials	2127-AC38
[illegible]	Federal Motor Vehicle Safety Standard No. 105 - Hydraulic Brake Systems	2127-AC50
1947	Federal Motor Vehicle Safety Standard No. 118 - Power-Operated Window Systems	[illegible]
[illegible]	Federal Motor Vehicle Safety Standard No. 106 - Brake Hoses	2127-AC52
1949	Federal Motor Vehicle Safety Standard No. 108, Lamps, Reflective Devices and Associated Equipment - Proposed Amendment to Permit a New Small Sealed Beam Headlamp	[illegible]
1950	Federal Motor Vehicle Safety Standard No. 301 - Fuel System Integrity	2127-AC62
[illegible]	Federal Motor Vehicle Safety Standard No. 108 - Lamps, Reflective Devices, and Associated Equipment	2127-AC68
1952	Comprehensive Review of Visibility Topics	2127-AC69
1953	Consumer Information Regulations	2127-AC72

+ Designates significant regulation.

National Highway Traffic Safety Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1954	+ Crashworthiness Ratings	2127-AA03
1955	+ Truck Rear Underride Protection	2127-AA43
1956	+ Pedestrian Protection	2127-AA45
1957	+ Post-1988 Passenger-Car Fuel-Economy Standards	2127-AB75
1958	+ Lighting Simplification--Potential Amendments to Simplify FMVSS 108 Lamps, Reflective Devices, and Associated Equipment	2127-AB87
1959	+ Federal Motor Vehicle Safety Standard No. 108 - Lighting Simplification - Potential Amendments - New Term Issues	2127-AC53
1960	+ Federal Motor Vehicle Safety Standard No. 222; Schoolbus Seating and Crash Protection	2127-AB84
1961	+ Standard No. 108, Lamps, Reflective Devices, and Associated Equipment	2127-AC22
1962	+ Passenger-Car Brake Systems	2127-AC63
1963	Passenger-Car Brake Systems	2127-AA13
1964	Rearview Mirror Systems: Heavy Vehicles	2127-AA21
1965	Rearview Mirror Systems: Light Vehicles	2127-AA23
[illegible]	Seating Reference Point/Motor Vehicle Driver's Eye Range	2127-AA49
1967	Rearview Mirrors	2127-AA88
[illegible]	Seat-Belt-Assembly Anchorages	[illegible]
[illegible]	Air-Brake Systems	2127-AB12
1970	Gear Lock; Theft Protection	2127-AC24
1971	Bumper Standard	2127-AC29
[illegible]	FMVSS No. 208 Occupant Crash Protection	2127-AC49
1973	Federal Motor Vehicle Safety Standard No. 102 - Transmission Shift-Lever Sequence, Starter Interlock, and Transmission Braking	2127-AC54
1974	Federal Motor Vehicle Safety Standard No. 107 - Reflecting Surfaces - Passenger Cars, Multipurpose Passenger Vehicles, Trucks, and Buses	2127-AC56
1975	Federal Motor Vehicle Safety Standard No. 115 - Vehicle Identification Number and Part 567 - Certification Regulation	[illegible]

+ Designates significant regulation.

National Highway Traffic Safety Administration—Completed Actions

Sequence Number	Title	Regulation Identifier Number
[illegible]	+ Splash and Spray Suppression Devices	2127-AA97
[illegible]	+ Daytime Running Lights	2127-AB92
1978	+ Passenger Automobile Average Fuel Economy Standard	2127-AC31
1979	+ Odometer Disclosure Requirements	2127-AC42
[illegible]	Consumer Information - Wet Stopping Distance	2127-AA86
1981	National Minimum Drinking Age	[illegible]

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National Highway Traffic Safety Administration—Completed Actions—Continued

Sequence Number	Title	Regulation Identifier Number
1982	Occupant Crash Protection	2127-AB71
1983	Child Restraint Systems -- Built-In Child Restraints	2127-AB97
1984	Glazing Materials	2127-AB98
1985	Occupant Crash Protection: Dynamic-Testing Petition	2127-AC00
1986	New Pneumatic Tires for Passenger Cars	2127-AC16
1987	Power-Operated Window Systems	2127-AC25
1988	Motor-Vehicle Brake Fluids	2127-AC26
1990	Consumer Information - Uniform Tire-Quality Grading Standards	2127-AC31
1990	Insurer Reporting Requirements	2127-AC32
1991	Federal Motor Vehicle Safety Standard No. 108 -- Lamps, Reflective Devices, and Associated Equipment -- Chemical Resistance Test	2127-AC45
1992	Federal Motor Vehicle Safety Standard (FMVSS) No. 121 -- Air-Brake Systems	2127-AC68
1993	Incentive Grant Criteria for Alcohol Traffic Safety Programs	2127-AC70
1994	Incentive Grant Criteria for Alcohol Traffic Safety Programs	2127-AC71
1995	Federal Motor Vehicle Traffic Safety Standard (FMVSS) No. 121; Air-Brake Systems	2127-AC73

+ Designates significant regulation.

Federal Railroad Administration—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
1996	+ Review of Radio Communication	2130-AA34
1997	+ Grade-Crossing Signals: Inspection and Maintenance Standards	2130-AA45
1998	+ Railroad Operating Practices; Procedures for Bridge-Worker Safety	2130-AA46
1999	+ Train Operation Event Recorders	2130-AA55
2000	Review: Regulatory Flexibility Act Reviews	2130-AA10
2001	Review of Locomotive Cab Safety	2130-AA32
2002	Review: Special Safety Inquiry; Power Brake Regulations	2130-AA40
2003	Rail-Highway Grade-Crossing Safety	2130-AA27
2004	Interior Noise Standards for On-Track Sleeping Quarters	2130-AA52

+ Designates significant regulation.

Federal Railroad Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
2005	+ Railroad Accident/Incident Reports Classification and Investigations Permitting Employee Supplements	2130-AA44
2006	+ Railroad Operating Practices -- Protection of On-Track Sleeping Quarters	2130-AA46
2007	+ Safety Enforcement Procedures; Disqualification of Employees	2130-AA49
2008	+ Jurisdictional Conformity Amendments	2130-AA50
2009	+ Locomotive Operator; Qualification Standards	2130-AA51

+ Designates significant regulation.

Federal Railroad Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
2010	+ Informal Safety Inquiry and Rulemaking; Control of Alcohol and Drug Use in Railroad Operations	2130-AA43
2011	+ Amendments to Railroad Safety Regulations to Increase the Maximum Civil Penalties and to Make Civil Penalties Available Against Individuals	2130-AA47
2012	+ Certification of Predeparture Inspections of Signal Device Mounted on Locomotives	2130-AA54
2013	+ Prohibiting Tampering with Safety Devices Mounted on Locomotives	2130-AA55

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Federal Railroad Administration—Final Rule Stage—Continued

Sequence Number	Title	Regulation Identifier Number

+ Designates significant regulation.

Federal Railroad Administration—Completed Actions

Sequence Number	Title	Regulation Identifier Number
2014	Safety Standards for Cabooses	2130-AA01
2015	Amendments to Regulations Implementing Section 905 of the 4R Act	2130-AA04
2016	Rules of Practice	2130-AA57

Urban Mass Transportation Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
2017	+ Major Capital Investment Projects	2132-AA22
2018	+ Implementation of Section 19 of the Urban Mass Transportation Act of 1964 as Amended -- Nondiscrimination	2132-AA01
2019	+ "Buy America" Requirements of the Surface Transportation Assistance Act of 1982	2132-AA15
2020	School Bus Operations	2132-AA06
2021	Air Quality Procedures for Use in Federal-Aid Highway and Federally Funded Transit Programs	2132-AA18
2022	Rolling Stock Purchase Audits	2132-AA29
2023	Bus Testing Guidelines	2132-AA30

+ Designates significant regulation.

Urban Mass Transportation Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
2024	+ Control of Drug Use in Federally Funded Mass Transportation Operations	2132-AA33
2025	+ Charter Service Amendment	2132-AA32
2026	Capital Leases	2132-AA26
2027	Project Management Oversight	2132-AA31

+ Designates significant regulation.

Urban Mass Transportation Administration—Completed Actions

Sequence Number	Title	Regulation Identifier Number
2028	Innovative Techniques and Methods	2132-AA05
2029	Technology Introduction	2132-AA07

Research and Special Programs Administration—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
2030	+ Registration of Shippers and Carriers of Hazardous Materials	2137-AB43
2031	+ OST-FAA Information Rules: Standardized Regulatory Flexibility Requirements	2137-AB16

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Research and Special Programs Administration—Prerule Stage—Continued

Sequence Number	Title	Regulation Identifier Number
2032	+ Highway Routing Standards for Certain Types and Quantities of Hazardous Materials	2137-AB42
2033	Review of Commuter Air Traffic and Market Data Reporting	2137-AB18
2034	Revision of Operating Procedures for Motor Vehicles	2137-AA07
2035	Consolidation and Revision of Requirements for the Carriage of Explosives by Vessel	2137-AA10
2036	Specification Packages of Type B and Fissile Radioactive Materials	2137-AA29
2037	DOT Specification 51 Portable Tanks	2137-AA36
2038	Transportation of Hazardous Materials; Miscellaneous Amendments	2137-AA44
2039	Airline Revenue/Nonrevenue, First Class/Coach Passengers: Revised Definitions	2127-AB00
2040	Subsidized Commuter Carriers and Foreign Air Carriers: Records and Retention Periods	2137-AB04

+ Designates significant regulation.

Research and Special Programs Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
2041	+ Training for Hazardous Materials Transportation	2137-AB26
2042	+ Recodification of Explosive Regulations	2137-AA03
2043	+ Gas Gathering Line Definition	2137-AB16
2044	+ Proposals for Pipeline Safety	2137-AB27
2045	+ Hazardous Materials in Intrastate Commerce	2137-AB37
2046	+ Pipeline Operator Qualifications	2137-AB38
2047	+ Operation and Maintenance Procedures for Gas Pipelines	2137-AB44
2048	+ Pressure Testing Existing Hazardous Liquid Pipelines	2137-AB45
2049	+ Maps and Records of Pipeline Location and Characteristics; Notification of State Agencies	2137-AB46
2050	Definition of a Flammable Solid	2137-AA05
2051	Private Carriers Licensed to Use Radioactive Materials	2137-AA28
2052	Quality Assurance for Radioactive Materials Shippers	2137-AA30
2053	Specification 8W and 8WA Welded Steel Cylinders	2137-AA63
2054	Consolidation of Specifications for High-Pressure Seamless Cylinders and Rewrite of 49 CFR 173.34	2137-AA92
2055	Deletion of Standards Affecting Iron and Copper Pipe and Other Materials	2137-AB24
2056	Enforcement of Motor Carrier Financial Responsibility Requirements	2137-AB35
2057	Detection and Repair of Cracks, Pits, Corrosion, Lining Flaws, Thermal Detection Flaws, and Other Defects of Tank Car Tanks	2137-AB40
2058	Fumigation	2137-AB41
2059	Conforming Gas and Liquid Pipeline Welding Standards: Final Phase	2137-AB45
2060	Gas Detection and Monitoring in Compressor Station Buildings	2137-AB49
2061	Determining the Extent of Corrosion on Exposed Gas Pipelines	2137-AB50
2062	DOT 3AL Aluminum Cylinders; Safety Problems	2137-AB51
2063	Operation of Existing Rural and Offshore Gas Pipelines at Stress Levels Higher than Permitted for New Pipelines	2137-AB53
2064	Revision of Operating Requirements for Rail Carriage	2137-AB55
2065	Etiologic Agents; Proposal to Remove the 50 Milliliter Exception	2137-AB56

+ Designates significant regulation.

Research and Special Programs Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
2066	+ Performance-Oriented Packaging Standards	2137-AA01
2067	+ Collection of Service Segment Data and Charter Data from Foreign Air Carriers	2127-AA07
2068	+ Alignment of Airline Uniform System of Accounts and Reports with Generally Accepted Accounting Principles	2137-AA09
2069	+ Collection of Service Segment Data and Charter Data from U.S. Air Carriers	2137-AB01
2070	+ Control of Drug Use in Natural Gas, Liquefied Natural Gas, and Hazardous-Liquid Pipeline Operations	2137-AB54
2071	+ Requirements for Cargo Tanks	2137-AA42
2072	+ Data Collection and Reporting: Hazardous Materials Incident Reports	2137-AA51
2073	+ Collection of Financial Information from the Commuter Air Carrier Industry	2127-AA08
2074	+ Natural Gas and Hazardous Liquid Pipeline Damage Prevention Program	2137-AB47
2075	Use of Interested Inspectors for Cylinder Inspections	2137-AA06

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Research and Special Programs Administration—Final Rule Stage—Continued

Sequence Number	Title	Regulation Identifier Number
2076	Oxidizing Materials Definition, Criteria and Proposed Regulations	2137-AA11
2077	Odorization of LP Gas	2137-AA25
2078	Modifications to DOT Specification 21PF-1 Overpacks	2137-AA72
2079	Limitation Aboard Aircraft	2137-AA85
2080	Emergency Response Communication Standards	2137-AA88
2081	Hazardous Materials; Uranium Hexafluoride	2137-AB10
2082	Exception from Pressure Testing Non-Welded Tie-In Joints	2137-AB19
2083	Confirmation or Revision of Maximum Allowable Operating Pressure; Alternate Method	2137-AB20
2084	Rear Bumpers on Cargo Tank Trucks	2137-AB34
2085	Standards for Construction of Fireworks and Novelties; Approval for Transportation	2137-AB36
2086	Shippers: Use of Tank-Car Tanks with Localized Thin Spots	2137-AB39

+ Designates significant regulation.

Research and Special Programs Administration—Completed Actions

Sequence Number	Title	Regulation Identifier Number
2087	+ Confidentiality of Parts 241 and 298 Airline Reports	2137-AB05
2088	+ Reporting Unsafe Conditions on Gas and Hazardous Liquid Pipelines and at Liquefied Natural Gas Facilities	2137-AB23
2089	Molten Sulfur	2137-AB31
2090	State Designations of Alternative Routes for Radioactive Materials Transportation	2137-AB32
2091	Notification to RSPA of Route Plans for Radioactive Materials Transportation	2137-AB33

+ Designates significant regulation.

Maritime Administration—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
2092	+ Participation by Vessels Built With Construction-Differential Subsidy in the Carriage of Oil from Alaska in the Domestic Trade	2133-AA62
2093	+ Procedures Governing the Evaluation of Bids for the Carriage of Preferred Cargoes on Subsidized Vessels	2133-AA77
2094	Regulations and Minimum Standards for State, Territorial, or Regional Maritime Academies and Colleges	2133-AA87
2095	Approval of Vessel Charters to Noncitizens	2133-AA73

+ Designates significant regulation.

Maritime Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
2096	+ Operating-Differential Subsidy for Bulk Cargo Vessels Engaged in Worldwide Services; Exclusion of Commercial Cargoes Reserved for U.S.-Flag Carriers	2133-AA66
2097	+ Cargo Preference – Implementation of P.L. 99-198	2133-AA83
2098	Procedures For Hearings on ODS Applications For Additional Service	2133-AA20
2099	Requirements for Conducting Vessel Subsidy Condition Surveys and for Accomplishing Subsidized Vessel Maintenance and Repairs	2133-AA64
2100	Capital Construction Fund – Federal Tax Amendments	2133-AA85
2101	Cargo Preference – U.S.-Flag Vessels; Department of Defense Sponsored and Generated Oceanborne Cargoes	2133-AA69

+ Designates significant regulation.

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Maritime Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
2102	+ Cargo Preference, U.S.-Flag Vessels: Determination of Fair and Reasonable Rates for Bulk Vessels	2133-AA43
2103	Suspension of ODS Agreements for All or Portion of the Vessels Included Therein	2133-AA17
2104	Marine Protection and Indemnity Insurance Instructions Under General Agency and Berth Agency Agreements	2133-AA51
2105	General Procedures for Determining Operating Differential Subsidy for Liner Vessels	2133-AA57
2106	Operating-Differential Subsidy for Bulk Cargo Vessels Engaged in Worldwide Service	2133-AA58

+ Designates significant regulation.

Maritime Administration—Completed Actions

Sequence Number	Title	Regulation Identifier Number
2107	+ Approval of Marine Hull Underwriters	2133-AA50
2108	+ Cargo Preference, U.S.-Flag Vessels: Evaluation of Bids for Subsidized Liner Vessels	2133-AA52
2109	Statistical Data for Use in Operating-Differential Subsidy (ODS) Application Hearings	2133-AA16

+ Designates significant regulation.

DEPARTMENT OF TRANSPORTATION (DOT)

Prerule Stage

Office of the Secretary (OST)

1532. + REVIEW OF DEPARTMENT-WIDE DRUG REGULATIONS

Significance: Agency Priority

Legal Authority: Not yet determined

CFR Citation: Not yet determined

Legal Deadline: None

Abstract: The Department will review existing regulations to determine whether changes are necessary for each of the Modal Administrations' drug regulations. The Department seeks to address the use of drugs through its regulatory authority. The review will encompass each Model Administration's program. This rulemaking is considered significant because of substantial public interest.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Local, State, Federal

Analysis: Regulatory Evaluation

Agency Contact: Samuel E. Whitehorn, Attorney, Office of the General Counsel, Department of Transportation, Office of the Secretary, Regulations and Enforcement, 400 7th St., SW, Washington, DC 20590, 202 366-9307

RIN: 2105–AB24

1553. + CONSUMER PROTECTION FOR DEFAULT BY SCHEDULED AIR CARRIERS

Significance: Regulatory Program

Legal Authority: 49 USC 1371; 49 USC 1372; 49 USC 1381

CFR Citation: None

Legal Deadline: None

Abstract: Transamerica petitioned the CAB to investigate ways to protect consumers against service defaults by scheduled air carriers in domestic, overseas, and foreign air transportation. Transamerica suggested that the Board condition the award of operating authority to perform direct carrier scheduled service by air carriers developing a default protection plan. For foreign air travel, it suggested that the obligation be limited to outbound flights. The petitioner argued that prompt action is necessary in order to ensure continued public confidence in scheduled air service and to protect passengers from unnecessary financial hardship. DOT is considering what action should be taken on the petition.

Timetable:

Action	Date	FR Cite
Petition filed in Docket 42368	07/25/84	

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Tim Kelly, Transportation Industry Analyst, Department of Transportation, Office of the Secretary, 400 Seventh Street, SW, Washington, DC 20590, 202 366-2220

RIN: 2105–AA56

1554. + ESCROW/BOND PROTECTION FOR AIRLINE TICKETS

Significance: Agency Priority

Legal Authority: 49 USC 1371; 49 USC 1372; 49 USC 1381

CFR Citation: Not yet determined

Legal Deadline: None

Abstract: This petition, filed by Mr. Theodore Harris, addresses the problem of airline passengers whose airline goes bankrupt after they bought their ticket but before they use it. The petitioner asks that airlines be required to protect such "unearned revenue" by escrowing it or by posting a bond in an amount equal to 150% of average unearned revenue. Exemptions could be granted to airlines which file evidence of ticket insurance plans or which enter into agreements with other airlines to accept the tickets of bankrupt carriers. This rulemaking is considered significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
Petition for rulemaking (Dkt 44304)	08/27/86	

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: None

Analysis: Regulatory Evaluation

Agency Contact: Tim Kelly, Transportation Industry Analyst, Department of Transportation, Office of the Secretary, 400 Seventh Street, SW, Washington, DC 20590, 202 366-2220

RIN: 2105–AB28

DOT—OST

Prerule Stage

1555. AIR CARRIER CARGO TARIFF PUBLICATIONS

Significance: Nonsignificant

Legal Authority: 49 USC 1324; 49 USC 1373; 49 USC 1482

CFR Citation: 14 CFR 221.171; 14 CFR 221.173

Legal Deadline: None

Abstract: This petition proposes to amend the requirement that air carriers post cargo tariffs at stations, offices, and locations other than their principal office. The petitioners proposed to allow carriers to maintain a memorandum tariff at each location and have a toll-free number for shippers to obtain access to complete tariff information. Petitioners alleged that such a change would substantially reduce the cost and time burden of maintaining and continually updating voluminous files of current and past tariffs at each location. Further action on the proposal will depend on final action in RIN 2105-AB38.

Timetable:

Action	Date	FR Cite
Petition Filed in Docket 42560	11/27/84	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Petition under consideration.

Agency Contact: Lawrence Myers, Attorney, Department of Transportation, Office of the Secretary, 400 Seventh Street, SW, Washington, DC 20590, 202 366-9161

RIN: 2105–AA31

1556. OVERSEAS MILITARY PERSONNEL AIR-CHARTER TARIFFS

Significance: Nonsignificant

Legal Authority: 49 USC 1373; 49 USC 1386

CFR Citation: 14 CFR 372

Legal Deadline: None

Abstract: The reference to tariffs in the rule governing Overseas Military Personnel Charters (OMPC) has become obsolete, at least with respect to domestic air transportation. The CAB was considering whether to eliminate the tariff requirement for all OMPC's and replace it with consumer-protection requirements similar to those in its Public Charter rule in Part 380. This proposal is still being considered by DOT.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Tim Kelly, Transportation Industry Analyst, Department of Transportation, Office of the Secretary, 400 Seventh Street, SW, Washington, DC 20590, 202 366-2220

RIN: 2105–AA67

1557. UNFAIR AND DECEPTIVE PRACTICES BY AIRLINE TICKET AGENTS

Significance: Nonsignificant

Legal Authority: 49 USC 1378; 49 USC 1381

CFR Citation: 14 CFR 399

Legal Deadline: None

Abstract: Enforcement policies currently make reference to tariffs. DOT is considering whether to limit these provisions to foreign air transportation or to eliminate them entirely.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Tim Kelly, Transportation Industry Analyst, Department of Transportation, Office of the Secretary, 400 Seventh Street, SW, Washington, DC 20590, 202 366-2220

RIN: 2105–AA70

1558. DIRECT FLIGHTS

Significance: Nonsignificant

Legal Authority: 49 USC 1381

CFR Citation: 14 CFR 399

Legal Deadline: None

Abstract: Donald L. Pevsner petitioned the CAB to institute a rulemaking proceeding to ban use of the term "direct flight" because it is deceptive, and to declare use of the term to be a prima facie violation of section 411 of the Federal Aviation Act of 1958. The Department is now considering what action to take in response to the petition.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Petition under consideration. It has been filed in Docket 41217.

Agency Contact: Tim Kelly, Transportation Industry Analyst, Department of Transportation, Office of the Secretary, 400 Seventh Street, SW, Washington, DC 20590, 202 366-2220

RIN: 2105–AA73

1559. CARGO RATE CHANGES ON 30 DAYS' NOTICE

Significance: Nonsignificant

Legal Authority: 49 USC 1373

CFR Citation: 14 CFR 221.160

Legal Deadline: None

DOT—OST — Prerule Stage

Abstract: This rule would amend regulations to allow cargo tariffs which are within the zones established under 14 CFR 399.41 to be filed on 30 days' notice. There are two alternatives: either maintain the status quo (60 days' notice) or change cargo tariff filing regulations to 30 days' notice to be consistent with passenger tariff-filing requirements. Standardization of the regulatory tariff-filing requirements for both cargo and passenger tariffs would benefit the industry.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Undetermined

Analysis: Regulatory Evaluation

Agency Contact: Tom Moore, Chief, Tariffs Division, Department of Transportation, Office of the Secretary, 400 7th Street, SW, Washington, DC 20590, 202 366-2414

RIN: 2105-AA99

1560. COMPREHENSIVE REVIEW OF CAB CONSUMER RULES

Significance: Nonsignificant

Legal Authority: 49 USC 1301 et seq Federal Aviation Act of 1958, as amended

CFR Citation: 14 CFR 201.0; 14 CFR 203; 14 CFR 206; 14 CFR 221, Subpart N; 14 CFR 249; 14 CFR 250; 14 CFR 252; 14 CFR 253; 14 CFR 254; 14 CFR 296.6 and 297.30; 14 CFR 298.30; 14 CFR 379; 14 CFR 380; 14 CFR 382; 14 CFR 399, Subpart G; ...

Legal Deadline: None

Abstract: The Civil Aeronautics Board was an independent agency; its rules have now been transferred to DOT, a cabinet department. This review will identify any CAB rules which are not consistent with Department or Administration regulatory criteria, such as those that impose an unnecessarily high cost or those with paperwork burdens that can be reduced or which involve a level of benefits or costs which are either higher or lower than necessary. The review will examine all alternatives, from strengthening a given rule to eliminating it. Nonregulatory approaches, including the supplying of information by the Government, or regulation by another level of government, will be also considered. The benefits and costs will be known only after these alternatives have been developed.

Timetable:

Action	Date	FR Cite
Begin Review	02/25/85	

Next Action Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: The committee conducting this review will examine all CAB consumer rules. Rulemaking proceedings on individual regulations may follow, depending on the committee's findings and recommendations.

Agency Contact: William C. Boyd, Senior Industry Analyst, Department of Transportation, Office of the Secretary, 400 Seventh Street, SW, Room 10222, Washington, DC 20590, 202 366-4870

RIN: 2105-AB33

1561. PRICE ADVERTISING

Significance: Nonsignificant

Legal Authority: 49 USC 1371; 49 USC 1551

CFR Citation: 14 CFR 380.30(e); 14 CFR 399.84

Legal Deadline: None

Abstract: The DOT rules cited above state that any price stated for air transportation, a tour or a tour component must be the entire price for that transportation, tour or component. In this petition, Mr. Donald Pevsner complains that some tour operators advertise prices which do not include additional features which must be purchased and which cost extra. He asks that the rules be amended to state that such additional features may only be priced separately if they may be purchased separately, i.e., if they are optional rather than mandatory.

Timetable:

Action	Date	FR Cite
Petition for rulemaking (Dkt 43147)	05/22/85	

Next Action Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Tim Kelly, Transportation Industry Analyst, Department of Transportation, Office of the Secretary, 400 Seventh Street, SW, Washington, DC 20590, 202 366-2220

RIN: 2105-AB25

DEPARTMENT OF TRANSPORTATION (DOT)
Office of the Secretary (OST)

Proposed Rule Stage

1562. + COMMERCIAL SPACE TRANSPORTATION: LIABILITY REQUIREMENTS FOR COMMERCIAL SPACE LAUNCH ACTIVITIES

Significance: Regulatory Program

Legal Authority: PL 98-575, Sec 15(c) to 16 Commercial Space Launch Act

CFR Citation: None

Legal Deadline: None

Abstract: Persons authorized to conduct commercial launch activities by a license issued by OCST are required to have in effect at least that amount of third-party liability insurance prescribed by DOT for the licensed activity. In addition, launch firms must secure an amount of insurance, or offer other assurance, that will be adequate to protect the Government when its property or personnel are directly involved in the conduct of commercial launch activities. Rulemaking sets out the criteria OCST will consider in setting the appropriate amount of third-party liability and other insurance firms subject to its authority must carry.

Timetable:

Action	Date	FR Cite
ANPRM	05/07/85	50 FR 19280
ANPRM Comment Period End	07/08/85	50 FR 19280
NPRM	10/15/88	

Small Entities Affected: None

Government Levels Affected: Federal

DOT—OST — Proposed Rule Stage

Analysis: Regulatory Evaluation 10/15/88

Agency Contact: Gerald Musarra, Department of Transportation, Office of the Secretary, Commercial Space Transportation, 400 Seventh Street, SW, Washington, DC 20590, 202 366-9305

RIN: 2105-AA35

1563. + MINORITY BUSINESS ENTERPRISE PROGRAM (FINANCIAL ASSISTANCE PROGRAMS)

Significance: Agency Priority

Legal Authority: 42 USC 2000d Civil Rights Act of 1964, Title VI; 49 USC 1730; 45 USC 908; 49 USC 1615; PL 97-424, Sec 105(f); PL 100-17, Sec 106(c)

CFR Citation: 49 CFR 23

Legal Deadline: None

Abstract: The Department is reviewing its regulation establishing a minority business enterprise (MBE) program in its financial assistance programs (49 CFR Part 23). This regulation has been controversial, is of interest to most DOT grant recipients and contractors, and affects the operations of all DOT financial assistance programs. Section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA) extended and modified the program as applied to FHWA and UMTA; similar legislation applied the same requirements to the FAA. The Department issued a final rule to make the STURAA changes in October 1987; a similar rule for FAA programs was published in May 1988. The Department intends subsequently to issue an NPRM that would propose further changes in the regulation.

Timetable:

Action	Date	FR Cite
Final Action	03/31/80	45 FR 21172
NPRM Interim amdt. to final rule, pending revision of entire rule	03/12/81	46 FR 16282
Final Action for interim amendment	04/27/81	46 FR 23457
Interim Final Rule	10/21/87	52 FR 39225
NPRM	10/03/88	

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Local, State, Federal

Analysis: Regulatory Flexibility Analysis; Regulatory Evaluation 04/27/81 (46 FR 23457)

Agency Contact: Robert C. Ashby, Department of Transportation, Office of the Secretary, 400 Seventh Street, SW, Washington, DC 20590, 202 366-9305

RIN: 2105-AA04

1564. ◆ + STATEMENT OF ENFORCEMENT POLICY ON REBATING

Significance: Agency Priority

Legal Authority: 49 USC 1373; 49 USC 1482; 49 USC 1324(a)

CFR Citation: 14 CFR 399.80; 14 CFR 399.85

Legal Deadline: None

Abstract: The Department is proposing to provide formal notice to the public of its enforcement policy concerning the rebating of international airline prices by adopting that policy as a Policy Statement in the regulations. No change in the substance of that policy is intended. The Department also proposes to revoke an existing Policy Statement on the advertising of rebates that is contrary to the Department's enforcement policy. The proposal responds to an informal request for such action by the American Society of Travel Agents.

Timetable:

Action	Date	FR Cite
NPRM	10/03/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Samuel Podberesky, Assistant General Counsel for Aviation Enforcement and Proceedings, Department of Transportation, Office of the Secretary, 400 Seventh St., SW., Washington, DC 20590, 202 366-9342

RIN: 2105-AD30

1565. ◆ + ANTIDRUG PROGRAMS FOR DEPARTMENT OF TRANSPORTATION CONTRACTORS

Significance: Agency Priority

Legal Authority: 49 USC 322; 40 USC 486(c); 48 CFR 1.301; 48 CFR 1.59

CFR Citation: 48 CFR 1228.7001; 48 CFR 1252.228-70; 48 CFR 34

Legal Deadline: None

Abstract: Consistent with DOT antidrug initiatives for DOT employees and employees of regulated industries, DOT is proposing to require its contractors to establish antidrug programs (including drug testing and employee assistance programs) for employees performing sensitive safety or security functions under DOT contracts. This rulemaking is significant because of substantial public interest and departmental policy.

Timetable:

Action	Date	FR Cite
NPRM	10/03/88	

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, Office of the Secretary, 400 7th St., S.W., Room 10424, Washington, D.C. 20590, 202 366-9305

RIN: 2105-AD40

1566. NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE DEPARTMENT OF TRANSPORTATION — STATE TRANSPORTATION AGENCIES' EEO AFFIRMATIVE ACTION PROGRAMS

Significance: Nonsignificant

Legal Authority: Federal-Aid Highway Act of 1968, as amended, Sec 22(a); RR Revitalization & Regulatory Reform Act of 1976, Sec 905; 49 USC 1615 Urban Mass Transportation Act of 1964, as amended; 29 USC 794 Rehabilitation Act of 1973, Sec 504

CFR Citation: 49 CFR 1.48(c); 49 CFR 2.49(u); 49 CFR 1.51(a)

Legal Deadline: None

Abstract: The proposed regulation would set forth requirements and procedures for all State Departments of Transportation (DOTs) equal employment opportunity compliance programs. It would also consolidate FHWA, FRA, and UMTA responsibilities in this area. This proposed regulation is significant because it would affect the equal opportunity employment programs of all State transportation agencies. It is needed because OST, FHWA, FRA, and UMTA each have responsibility for implementing the equal employment opportunity programs of State DOTs. This proposed rule would assure full

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coordination among these departmental elements, reduce the burden on the recipients, simplify reporting requirements, and eliminate duplication of effort.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Dorsey Thomas, Department of Transportation, Office of the Secretary, 400 Seventh Street, SW, Washington, DC 20590, 202 366-4754

RIN: 2105-AA01

1547. NONDISCRIMINATION ON THE BASIS OF HANDICAP (DIRECTLY CONDUCTED PROGRAMS)

Significance: Nonsignificant

Legal Authority: 29 USC 794

CFR Citation: 49 CFR 28

Legal Deadline: None

Abstract: This regulation would implement the 1978 amendments to section 504 of the Rehabilitation Act of 1973 which made its prohibition of discrimination on the ground of handicap applicable to the directly conducted programs of Federal agencies as well as to their financial assistance programs. The rule would apply to DOT facilities, personnel practices, and regulatory programs. It would be based on a model rule developed by the Department of Justice. The rule would also apply to DOT activities and functions transferred from the Civil Aeronautics Board after that agency's "sunset." A CAB NPRM that was being developed on this subject will be subsumed in this project. A draft NPRM is now being reviewed by the Department of Justice.

Timetable:

Action	Date	FR Cite
NPRM	10/03/88	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Robert Ashby, Department of Transportation, Office of the Secretary, 400 Seventh Street, SW, Washington, DC 20590, 202 366-9306

RIN: 2105-AA25

DEPARTMENT OF TRANSPORTATION (DOT)
Office of the Secretary (OST)

Final Rule Stage

1568. + NONDISCRIMINATION ON THE BASIS OF HANDICAP (AIR TRAVEL)

Significance: Regulatory Program

Legal Authority: 29 USC 794; Section 404(a) of the Federal Aviation Act of 1958, as amended

CFR Citation: 49 CFR 27; 14 CFR 382

Legal Deadline: NPRM, Statutory, January 30, 1987.

Abstract: The Civil Aeronautics Board (CAB) had a regulation providing protection of the rights of handicapped air travellers. Based on recent Congressional action, DOT began enforcing this regulation on January 1, 1985. The Supreme Court's decision in U.S. Department of Transportation v. Paralyzed Veterans of America held that Section 504 of the Rehabilitation Act of 1973 does not apply to nonsubsidized air carriers. This decision left the existing regulation intact. The Air Carrier Access Act of 1986 directed DOT to publish new regulations prohibiting disability-based discrimination in air travel. The Department will use comments received in response to its August 1986 information notice on issues affecting blind passengers as part of the record for this rulemaking. The Department convened an advisory committee to pursue the rulemaking through a negotiated process. The negotiations have concluded and an NPRM has been published.

Timetable:

Action	Date	FR Cite
NPRM	06/22/88	53 FR 23574
NPRM Comment Period End	09/20/88	
Final Action	12/31/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Analysis: Regulatory Evaluation 06/22/88 (53 FR 23574)

Agency Contact: Robert C. Ashby, Department of Transportation, Office of the Secretary, 400 Seventh Street, SW, Washington, DC 20590, 202 366-9306

RIN: 2105-AA16

1569. + ELECTRONIC FILING OF TARIFFS

Significance: Regulatory Program

Legal Authority: 49 USC 1373

CFR Citation: 14 CFR 221

Legal Deadline: None

Abstract: This project is examining whether conversion from a paper document system to a computerized system of filing and monitoring air carrier tariffs can reduce paper flow, speed up processing, and allow the industry to utilize computer and technology to communicate with DOT. The alternative is to maintain the current paper tariffs system. Potential savings to the industry may be greater than to the Government, since airlines already utilize automated fare and rate systems. In addition, airlines may be able to implement changes faster, thus responding more quickly to market conditions, and may be less burdened with the cost of producing and transmitting paper documents. The Department may reduce paper flow, experience savings in processing time and staffing, and improve the accuracy and control of tariff data. In order to assure that users' needs are taken into consideration and that the private sector is involved to the maximum extent in the design, implementation, and operation of such a system, the Department established an Advisory Committee to make continuing recommendations on technical, operational, and policy objectives of the electronic tariff system.

Timetable:

Action	Date	FR Cite
ANPRM	06/19/85	50 FR 33452
ANPRM Comment Period End	11/18/85	

DOT—OST — Final Rule Stage

Action	Date	FR Cite
Federal Register Notice establishing Advisory Committee	11/24/86	51 FR 42327
NPRM	07/08/88	53 FR 25615
NPRM Comment Period End	09/06/88	
Interim Final Rule	12/01/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Analysis: Regulatory Flexibility Analysis; Regulatory Evaluation 07/08/88 (53 FR 25615)

Additional Information: As a consequence of discussions with the Committee the Department is planning to experiment with existing data base and electronic mail systems, to determine whether any such systems can fulfill Departmental requirements for an electronic tariff system.

Agency Contact: Thomas Moore, Chief, Tariffs Division, Department of Transportation, Office of the Secretary, 400 Seventh Street, SW, Washington, DC 20590, 202 366-2414

RIN: 2105-AA00

1570. + LIBERALIZATION OF AIR-CARRIER CHARTER RULES

Significance: Agency Priority

Legal Authority: 49 USC 1324; 49 USC 1371; 49 USC 1372; 49 USC 1381; 49 USC 1100

CFR Citation: 14 CFR 207; 14 CFR 208; 14 CFR 212; 14 CFR 296; 14 CFR 380

Legal Deadline: None

Abstract: The CAB proposed new charter rules for direct and indirect air carriers. The proposed rules retain the financial protections of existing rules for direct air carriers while eliminating rules restricting the types of groups (such as "affinity" or "single-entity") to whom charters may be sold. The proposal would also retain a security instrument and depository system for indirect air carriers, along with contract rules for public protection. The proposal also highlights depository bank and travel agent responsibilities in handling passenger funds. The proposal replaces one made earlier. DOT is considering what action should be taken. This rulemaking is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	02/19/82	47 FR 7443
NPRM Comment Period End	04/20/82	
SNPRM	04/12/83	48 FR 15639
Comment Period End 06/13/83		

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 02/19/82 (47 FR 7443)

Additional Information: Docket 40126. Original NPRM was EDR-439/SPDR 86; SNPRM of 04/12/83 was EDR-456/SPDR-88.

Agency Contact: Tim Kelly, Transportation Industry Analyst, Department of Transportation, Office of the Secretary, 400 Seventh Street, SW, Washington, DC 20590, 202 366-2220

RIN: 2105-AA41

1571. + SMOKING ABOARD AIRCRAFT; NOTICE TO PASSENGERS

Significance: Agency Priority

Legal Authority: 49 USC 1324; 49 USC 1374; 49 USC 1377; 49 USC 1381; 49 USC 1357

CFR Citation: 14 CFR 252; 14 CFR 253

Legal Deadline: None

Abstract: This rule would inform passengers of their right to a seat in a nonsmoking section of an aircraft by one of two proposed alternatives. The first would require airlines to include a prescribed notice on or with their tickets. The second would include smoking in the list of subjects incorporated by reference in the contract of carriage, which would inform passengers that additional information may be obtained from the place of ticketing. This rulemaking is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	11/19/82	47 FR 52190
NPRM Comment Period End	12/20/82	

Next Action Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Analysis: Regulatory Evaluation

Additional Information: EDR-449, Docket 41000.

Agency Contact: Tim Kelly, Transportation Industry Analyst, Department of Transportation, Office of the Secretary, 400 Seventh Street, SW, Washington, DC 20590, 202 366-2220

RIN: 2105-AA71

1572. + CERTIFICATION OF SPEED-LIMIT ENFORCEMENT

Significance: Agency Priority

Legal Authority: 23 USC 141; 23 USC 154; 23 USC 118; 23 USC 315

CFR Citation: 23 CFR 650; 49 CFR 1.50; 49 CFR 1.48

Legal Deadline: None

Abstract: The Department will review the existing 55 MPH procedural regulations to determine if they can be made more efficient and to update the regulation where necessary. Provisions addressing the effect of future compliance (for a State found not to be in compliance in a given fiscal year) on the reinstatement of funds withheld will also be revised. This rulemaking is considered significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	03/11/88	53 FR 7943
NPRM Comment Period End	04/11/88	
Final Action	01/15/89	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Sam Whitehorn, Attorney, Department of Transportation, Office of the Secretary, 400 Seventh Street, SW, Washington, DC 20590, 202 366-9310

RIN: 2105-AB22

1573. + NONDISCRIMINATION ON THE BASIS OF HANDICAP (COMMUTER RAIL PROGRAMS)

Significance: Agency Priority

Legal Authority: 29 USC 794; 49 USC 1612(d)

CFR Citation: 49 CFR 27, Subpart E

Legal Deadline: None

DOT—OST

Final Rule Stage

Abstract: This notice asks comment on several alternatives for providing accessible commuter rail service, or a substitute for it, to disabled persons. The notice also requests information on the likely ridership and cost effects of the alternative approaches suggested in the notice. Comments have been received and are being reviewed. Studies have been received or are expected to be received in the near future. Final actions being considered include a number of alternatives spelled out in the notice, including various regulatory steps and taking no further regulatory action.

Timetable:

Action	Date	FR Cite
NPRM	05/23/86	51 FR 19032
NPRM Comment Period End	08/22/86	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Local, State

Analysis: Regulatory Evaluation

Agency Contact: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, Office of the Secretary, 400 7th St., SW, Washington, DC 20590, 202 366-9305

RIN: 2105–AB32

1574. ● POSTING OF TARIFFS—NOTICE OF CONTRACT OF CARRIAGE

Significance: Agency Priority

Legal Authority: 49 USC 1373

CFR Citation: 14 CFR 221

Legal Deadline: None

Abstract: DOT is proposing to allow carriers an alternative to the current requirement that they post their entire tariffs for passenger and cargo foreign air transportation in printed hard copy at each ticket sales location. Carriers would be able to provide more useful information to consumers using summaries, computer terminals, and printed copies of tariff information. This proposal would permit international carriers the option of making their tariff information available to customers in a manner similar to that currently used to provide notice of incorporated contract terms to airline passengers traveling in domestic air transportation. Specifically, it would permit the airlines to satisfy the posting requirements quickly and economically by largely eliminating the costly and onerous medium of paper at their sales locations. The airlines would be able to furnish information on fares, rates and rules subject to frequent change through the use of electronic transmissions to display terminals at their sales locations. This process would also allow airlines to provide consumers with printed copies of this information upon request. Only those rules subject to infrequent

Timetable:

Action	Date	FR Cite
NPRM	07/20/88	53 FR 27351
NPRM Comment Period End	09/19/88	
Final Action	12/01/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Analysis: Regulatory Evaluation 07/20/88 (53 FR 27351)

Additional Information: ABSTRACT CONT: changes would likely be maintained in printed form. This proposed alternative would in no way diminish the filed tariff as the prevailing contract of carriage.

Agency Contact: Thomas G. Moore, Chief, Tariffs Division, Department of Transportation, Office of the Secretary, 400 Seventh Street, SW, Washington, DC 20590, 202 366-2414

RIN: 2105–AB36

1575. TITLE VI CIVIL RIGHTS REGULATION

Significance: Nonsignificant

Legal Authority: 42 USC 2000d-4

CFR Citation: 49 CFR 21

Legal Deadline: None

Abstract: In 1981, the Department proposed a consolidation and expansion of its existing Title VI regulation (49 CFR Part 21). Few comments were received on this NPRM, and a final regulation was never published. The Department reviewed the existing regulation to determine if changes were needed. It was concluded that the Department can continue to enforce Title VI appropriately through the existing regulation. Consequently the Department does not anticipate further rulemaking action, and intends to withdraw the NPRM.

Timetable:

Action	Date	FR Cite
NPRM	01/19/81	46 FR 5588
NPRM Comment Period End	04/20/81	
To be withdrawn	12/31/89	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 01/19/81 (46 FR 5588)

Agency Contact: Dorsey Thomas, Department of Transportation, Office of the Secretary, 400 Seventh Street, SW, Washington, DC 20590, 202 366-4754

RIN: 2105–AA02

1576. MINORITY BUSINESS ENTERPRISE PROGRAM (DIRECT CONTRACTING)

Significance: Nonsignificant

Legal Authority: EO 11625; EO 12138; 49 USC 605; PL 95-507

CFR Citation: 49 CFR 23

Legal Deadline: None

Abstract: As part of the NPRM that proposed its minority business program rule (49 CFR Part 23), the Department proposed rules concerning minority business involvement in direct DOT procurement. However, because of the program established by Public Law 95-507, these proposed rules became unnecessary, and were never finalized. That program provides for subcontracting plans and goals in certain direct Federal contracts as well as for disadvantaged business set-asides under the Small Business Administration 8(a) program.

Timetable:

Action	Date	FR Cite
NPRM	05/17/79	44 FR 28928
NPRM Comment Period End	07/16/79	
Final Action concerning financial assistance programs	03/31/80	45 FR 21172
To be withdrawn	10/03/88	

Small Entities Affected: None

Government Levels Affected: Federal

Analysis: Regulatory Evaluation 05/17/79 (44 FR 28928)

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Final Rule Stage

Additional Information: The Department published a final rule concerning its financial assistance programs on March 31, 1980 (45 FR 21172). The Department has concluded that further rulemaking in the direct contracting field is unnecessary at this time, and intends to withdraw this proposed rule.

Agency Contact: Robert C. Ashby, Department of Transportation, Office of the Secretary, 400 Seventh Street, SW, Washington, DC 20590, 202 366-9305

RIN: 2105–AA03

1577. CONSOLIDATION OF TRANSPORTATION GRANTS TO U.S. TERRITORIES

Significance: Nonsignificant

Legal Authority: PL 95-134, Title V

CFR Citation: 49 CFR 29

Legal Deadline: None

Abstract: Title V of Pub. L. 95-134 permits departments and agencies to consolidate grant programs, reduce reporting requirements, and waive local matching fund requirements. This proposal is being withdrawn because of problems concerning legal requirements with changing grant conditions.

Timetable:

Action	Date	FR Cite
NPRM	01/08/79	44 FR 1765
To be withdrawn	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Jack Bennett, Department of Transportation, Office of the Secretary, 400 Seventh Street, SW, Washington, DC 20590, 202 366-9669

RIN: 2105–AA06

1578. NONDISCRIMINATION ON THE BASIS OF AGE IN DOT FINANCIAL ASSISTANCE PROGRAMS

Significance: Nonsignificant

Legal Authority: PL 94-135, Title III

CFR Citation: 29 CFR 1691

Legal Deadline: None

Abstract: This regulation would prohibit age discrimination by recipients of DOT financial assistance programs. Few comments were received on the NPRM. The Department intends to publish a final rule.

Timetable:

Action	Date	FR Cite
NPRM	10/22/79	44 FR 60846
Final Action	12/31/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Joseph Austin, Department of Transportation, Office of the Secretary, 400 Seventh Street, SW, Washington, DC 20590, 202 366-5862

RIN: 2105–AA09

1579. AIRLINE TIME AND MILEAGE GUIDES

Significance: Nonsignificant

Legal Authority: 49 USC 1302; 49 USC 1324; 49 USC 1371 to 1374; 49 USC 1381; 49 USC 1386; 49 USC 1481; 49 USC 1482

CFR Citation: 14 CFR 221

Legal Deadline: None

Abstract: The DOT currently prohibits fares or rates based upon units of time. This rule would remove these restrictions.

Timetable:

Action	Date	FR Cite
NPRM	10/27/82	47 FR 47589
NPRM Comment Period End	12/13/82	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Undetermined

Analysis: Regulatory Evaluation 00/00/00

Additional Information: EDR 446, Docket 41034. Formerly entitled: Tariffs; Removal of Requirements for Statements of Fares or Rates Based upon Units of Distance or Time.

Agency Contact: Thomas Moore, Chief, Tariffs Division, Department of Transportation, Office of the Secretary, 400 Seventh Street, SW, Washington, DC 20590, 202 366-2413

RIN: 2105–AA39

1580. DIRECT AIR CARRIER RESPONSIBILITY FOR RETURNING STRANDED CHARTER PASSENGERS

Significance: Nonsignificant

Legal Authority: 49 USC 1324; 49 USC 1371

CFR Citation: 14 CFR 207; 14 CFR 208

Legal Deadline: None

Abstract: This rule would make direct air carriers responsible for returning charter passengers stranded by strikes or other interruptions of their services by eliminating the force majeure clause from charter contracts. However, the Department is considering a comprehensive proposal (RIN 2105-AA41 in this agenda) to revise and simplify air charter rules. The Department's final action in this proceeding will be consistent with the comprehensive review of the charter rule.

Timetable:

Action	Date	FR Cite
NPRM	07/11/80	45 FR 46812
NPRM Comment Period End	09/25/80	
Reply Comment Period End	10/10/80	

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: None

Analysis: Regulatory Evaluation

Additional Information: EDR 466, Docket 37169.

Agency Contact: Tim Kelly, Transportation Industry Analyst, Department of Transportation, Office of the Secretary, 400 Seventh Street, SW, Washington, DC 20590, 202 366-2220

RIN: 2105–AA49

1581. ZONES FOR AIRLINE MAIL RATES

Significance: Nonsignificant

Legal Authority: 49 USC 1302; 49 USC 1324; 49 USC 1376; 49 USC 1551(b)(1)(D)

CFR Citation: 14 CFR 233, (Proposed)

Legal Deadline: None

Abstract: This proposed rule would end the current practice of prescribing fixed rates for the transportation of mail by air, and in its place establish zones for each category of mail. Each zone would be defined by maximum and minimum rates prescribed by DOT, and airlines would be free to contract with the Postal Service for the carriage of mail at any price within the zone. The rule is now moot with regard to domestic mail rates except in Alaska.

DOT—OST

Final Rule Stage

Timetable:

Action	Date	FR Cite
NPRM	09/07/79	44 FR 52246
NPRM Comment Period End	10/22/79	44 FR 52246
Comment Period End	12/19/80	45 FR 83510
SNPRM	12/19/80	45 FR 83510
Final Action	10/03/88	

Small Entities Affected: Undetermined

Government Levels Affected: None

Analysis: Regulatory Evaluation 06/13/84

Additional Information: Original NPRM of 09/07/79 was EDR-387/PDR 68, Docket 46497; the SNPRM of 12/19/80 was EDR-387C/PDR-68C.

Agency Contact: Lawrence Myers, Attorney, Department of Transportation, Office of the Secretary, 400 Seventh Street, SW, Washington, DC 20590, 202 366-9161

RIN: 2105–AA44

1582. AIR TRAVELERS: AGE DISCRIMINATION

Significance: Nonsignificant

Legal Authority: 42 USC 6102

CFR Citation: 14 CFR 378. (Proposed)

Legal Deadline: None

Abstract: This rule will prohibit discrimination against air travelers on the basis of age and implement the Age Discrimination Act of 1975. A final rule was adopted by the CAB on April 10, 1980, and was forwarded to the Secretary of HHS for approval, as required by the Age Discrimination Act. The rule was approved by HHS on July 13, 1984, with changes. However, these changes have not been incorporated. DOT is considering combining this rulemaking with a broader DOT age discrimination rule on which work is now under way.

Timetable:

Action	Date	FR Cite
NPRM	09/28/79	44 FR 56383
Final Action adopted by the Board	04/10/80	
HHS approved Final Rule with changes	07/13/84	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Additional Information: SPDR-74, Docket 39830.

Agency Contact: Robert Ashby, Department of Transportation, Office of the Secretary, 400 Seventh Street, SW, Washington, DC 20590, 202 366-9305

RIN: 2105–AA45

1583. POLICY STATEMENT ON AIRLINE PREEMPTION

Significance: Nonsignificant

Legal Authority: 49 USC 1305

CFR Citation: 14 CFR 399

Legal Deadline: None

Abstract: This rule will set out Department policies for regulation of the rates, routes, and services of airlines that have interstate authority. The CAB concluded that under section 105 of the Federal Aviation Act of 1958 it, not the States, was responsible for economic regulation (or deregulation, as the case may be) of all the routes, rates, or services of any airline holding either (i) a certificate of public convenience and necessity to provide interstate air transportation, or (ii) an exemption under section 416 of the Act from the requirement for such a certificate.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/15/79	44 FR 9948
Request for comments on Interim Rule (PSDR-56, Docket 34684)	02/15/79	44 FR 9953
Comment Period End	04/16/79	

Next Action Undetermined

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State, Federal

Additional Information: PS-83, Docket 34684.

Agency Contact: Lawrence Myers, Attorney, Department of Transportation, Office of the Secretary, 400 Seventh Street, SW, Washington, DC 20590, 202 366-9161

RIN: 2105–AA46

1584. INSURANCE FOR ON-DEMAND AIR-TAXI OPERATORS AND CANADIAN AIR TAXIS

Significance: Nonsignificant

Legal Authority: PL 85-504; 49 USC 1371; 49 USC 1374; 49 USC 1386

CFR Citation: 14 CFR 205; 14 CFR 298

Legal Deadline: None

Abstract: This rule would set the minimum per-person aircraft accident liability insurance limits for U.S. and Canadian on-demand air taxi operators at $150,000, instead of at $300,000 as it is for other air carriers. The NPRM further includes alternative proposals to set the per-person limit at $75,000 or $100,000 or to eliminate all minimum amounts, requiring a public notice instead. Other rules for insurance coverage for these carriers would be as in 14 CFR Part 205, including the prohibition on safety-related exclusions.

Timetable:

Action	Date	FR Cite
NPRM	02/04/80	45 FR 7566
NPRM Comment Period End	03/12/80	45 FR 7566
SNPRM	10/27/81	46 FR 52585
SNPRM	03/10/83	48 FR 10073

Next Action Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Analysis: Regulatory Evaluation

Additional Information: Docket 37531. Original NPRM (02/04/80) was EDR-395; the first SNPRM (10/27/81) was EDR-395I. The second SNPRM (03/10/83) was EDR-395C, and its comment period ended 05/17/83.

Agency Contact: John Hokanson, Chief, Regulatory Analysis Division, Department of Transportation, Office of the Secretary, 400 Seventh Street, SW, Washington, DC 20590, 202 366-1935

RIN: 2105–AA47

1585. EFFECT OF EXPIRATION OF A BILATERAL ON FOREIGN AIR-CARRIER AUTHORITY

Significance: Nonsignificant

Legal Authority: 49 USC 1159b; 49 USC 1324; 49 USC 1372; 49 USC 1386; 49 USC 1481; 49 USC 1502; 5 USC 558; 5 USC 559

CFR Citation: 14 CFR 377

Legal Deadline: None

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Final Rule Stage

Abstract: In the past, the CAB had held that a foreign air carrier's permit or exemption authority continues after the underlying bilateral Service Agreement expired, by virtue of section 558(c) of the Administrative Procedure Act. Further review has determined the contemplated change is unwarranted.

Timetable:

Action	Date	FR Cite
NPRM	06/03/83	48 FR 24923
NPRM Comment Period End	08/02/83	
To be withdrawn	10/03/88	

Small Entities Affected: None

Government Levels Affected: Federal

Additional Information: SPDR-89 and SPDR-89A, Docket 41466.

Agency Contact: Richard M. Loughlin, Chief, Licensing Division, Department of Transportation, Office of the Secretary, 400 Seventh Street, SW, Room 6412, Washington, DC 20590, 202 366-2388

RIN: 2105–AA09

1586. IMPLEMENTATION OF STATUTE REQUIRING INTEREST ON SUBSIDY CLAIMS

Significance: Nonsignificant

Legal Authority: 49 USC 1324; 49 USC 1376; 49 USC 1389; PL 97-369

CFR Citation: 14 CFR 326. (Proposed)

Legal Deadline: None

Abstract: Under section 322 of the FY 1983 Transportation Appropriations Act, interest may be paid on certain "hold-in" subsidy claims by certificated air carriers under sections 419 and 406 of the Act. This rule would set procedures for payment of that interest.

Timetable:

Action	Date	FR Cite
NPRM	12/22/83	48 FR 56599
NPRM Comment Period End	02/21/84	
Reply Comment Period End	03/02/84	
Final Action	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 11/00/88

Additional Information: Docket 41855; PDR 87.

Agency Contact: Robert Ross, Department of Transportation, Office of the Secretary, 400 Seventh Street, SW, Washington, DC 20590, 202 366-9154

RIN: 2105–AA77

1587. DIVERSION OF FLIGHTS WITHIN A METROPOLITAN AREA

Significance: Nonsignificant

Legal Authority: 49 USC 1301; 49 USC 1302; 49 USC 1305; 49 USC 1324; 49 USC 1371; 49 USC 1373; 49 USC 1377 to 1379; 49 USC 1381; 49 USC 1382; 49 USC 1386; 49 USC 1461; 49 USC 1481; 49 USC 1482; 49 USC 1502; 49 USC 1504

CFR Citation: 14 CFR 253; 14 CFR 399

Legal Deadline: None

Abstract: The CAB proposed to amend its rules requiring notice of contract terms for domestic travel to require that actual notice be given passengers of terms absolving carriers from any responsibility to transport a passenger to the destination named on the ticket, or to reimburse the passenger for expenses in reaching the airport noted on the ticket when a flight is diverted to another airport in the same metropolitan area. Alternatively, the Board proposed to declare it to be an unfair and deceptive practice to divert a passenger without arranging and paying for alternate transportation to the destination airport named on the passenger's ticket. The Board considered a final rule but did not decide what action to take. DOT is now considering what action to take.

Timetable:

Action	Date	FR Cite
NPRM	09/23/83	48 FR 43343
NPRM Comment Period End	11/07/83	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation

Additional Information: ADDITIONAL LEGAL AUTHORITIES: PL 96-354; 5 USC 601. Docket 41683, EDR 468/PSDR-81.

Agency Contact: Tim Kelly, Transportation Industry Analyst, Department of Transportation, Office of the Secretary, 400 Seventh Street, SW, Washington, DC 20590, 202 366-2220

RIN: 2105–AA78

1588. SIMPLIFIED AVIATION EXEMPTION PROCEDURES

Significance: Nonsignificant

Legal Authority: 49 USC 1371; 49 USC 1372; 49 USC 1386

CFR Citation: 14 CFR 302; 14 CFR 380; 14 CFR 399

Legal Deadline: None

Abstract: The CAB proposed updating its rules applicable to exemption procedures to conform the rules to the changes brought about by the Airline Deregulation Act and the International Air Transportation Competition Act of 1979, and to modernize the evidentiary and service requirements. The Department is evaluating comments received.

Timetable:

Action	Date	FR Cite
NPRM	10/05/84	49 FR 39337
NPRM Comment Period End	12/04/84	
Final Action	07/01/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: PDR-88/ODR-27/PSDR-83.

Agency Contact: Gwyneth Radloff, Department of Transportation, Office of the Secretary, 400 Seventh Street, SW, Washington, DC 20590, 202 366-9305

RIN: 2105–AA82

1589. BAGGAGE LIABILITY NOTICES IN INTERNATIONAL AIR TRANSPORTATION

Significance: Nonsignificant

Legal Authority: 49 USC 1302; 49 USC 1324; 49 USC 1371; 49 USC 1372; 49 USC 1373; 49 USC 1374; 49 USC 1381; 49 USC 1388; 49 USC 1481; 49 USC 1482

CFR Citation: 14 CFR 221

Legal Deadline: None

Abstract: In response to a petition by Mr. Howard Boros, the CAB proposed to amend the baggage liability notices provided to passengers in foreign air travel. The NPRM proposed to eliminate the disclaimer of liability for fragile and

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perishable items because that notice is false and misleading.

Timetable:

Action	Date	FR Cite
NPRM	12/18/84	49 FR 49111
NPRM Comment Period End	03/19/85	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation

Additional Information: Docket 41690; EDR-477.

Agency Contact: Timothy Kelly, Transportation Industry Analyst, Department of Transportation, Office of the Secretary, 400 Seventh Street, SW, Washington, DC 20590, 202 366-2220

RIN: 2105-AA84

1590. SIMPLIFIED AIRLINE COUNTER-SIGN NOTICES

Significance: Nonsignificant

Legal Authority: 49 USC 1301; 49 USC 1302; 49 USC 1324; 49 USC 1371 to 1374; 49 USC 1381; 49 USC 1386; 49 USC 1481; 49 USC 1482

CFR Citation: 14 CFR 221; 14 CFR 250; 14 CFR 296

Legal Deadline: None

Abstract: The American Association of Airport Executives, the Airport Operators Council International and the Air Transport Association of America petitioned the CAB to simplify its counter-sign requirements. Presently, airlines are required to display four different consumer protection notices on their ticket counters. The petitioners alleged that the current notices are hard to read and, therefore, do not provide much notice to passengers. They proposed replacing the four notices with one simplified counter sign. The CAB adopted an NPRM that proposed a number of alternatives, such as a long and/or short notice, where the notices would be required to be posted and whether a smoking notice should be included. DOT is now considering what action to take in response to the notice and comments filed.

Timetable:

Action	Date	FR Cite
NPRM	06/01/84	49 FR 30742
NPRM Comment Period End	09/17/84	
Reply Comment Period End	10/02/84	

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: None

Analysis: Regulatory Flexibility Analysis; Regulatory Evaluation

Additional Information: Docket 41071; EDR-474

Agency Contact: Tim Kelly, Transportation Industry Analyst, Department of Transportation, Office of the Secretary, 400 Seventh Street, SW, Washington, DC 20590, 202 366-2220

RIN: 2105-AA80

1591. EXEMPTION FROM PRIOR-APPROVAL REQUIREMENTS FOR CERTAIN TRANSACTIONS

Significance: Nonsignificant

Legal Authority: 49 USC 1301; 49 USC 1302; 49 USC 1303; 49 USC 1324; 49 USC 1371; 49 USC 1377; 49 USC 1378; 49 USC 1379; 49 USC 1382; 49 USC 1384; 49 USC 1386; 49 USC 1386; 49 USC 1551

CFR Citation: 14 CFR 303

Legal Deadline: None

Abstract: The Department is reviewing current aviation-merger procedural regulations to reduce regulatory obstacles to air carrier acquisitions of other air carriers.

Timetable:

Action	Date	FR Cite
NPRM	05/13/86	51 FR 17490
NPRM Comment Period End	06/12/86	
Final Action	03/30/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Donald Hora, Deputy Assistant General Counsel, for International Law, Department of Transportation, Office of the Secretary, 400 Seventh Street, SW, Washington, DC 20590, 202 366-2972

RIN: 2105-AB20

1592. COUNTING UMTA REDUCED-FARE PROGRAM COSTS TOWARD 304 COST CAP

Significance: Nonsignificant

Legal Authority: 29 USC 704; 49 USC 1612(d)

CFR Citation: 49 CFR 27

Legal Deadline: None

Abstract: The Department is considering whether or not to eliminate a provision in its rule concerning mass transit services for disabled persons, which permits incremental expenditures by recipients for the off-peak, reduced-fare program for elderly and handicapped passengers on mainline mass transit services to be counted in the calculation of the three-percent limit on required expenditures. The Department has proposed withdrawing this provision.

Timetable:

Action	Date	FR Cite
NPRM	06/24/88	53 FR 23776
NPRM Comment Period End	08/23/88	
Final Action	10/03/88	

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: Local, State

Analysis: Regulatory Evaluation 10/03/88

Agency Contact: Robert Ashby, Deputy Ass't General Counsel for Regulation and Enforcement, Department of Transportation, Office of the Secretary, 400 7th St SW, Washington, DC 20590, 202 366-9305

RIN: 2105-AB31

1593. COLLECTION OF CLAIMS OWED THE UNITED STATES

Significance: Nonsignificant

Legal Authority: 31 USC 3701 to 3720A

CFR Citation: 49 CFR 89

Legal Deadline: None

Abstract: This proposed rule would implement the Debt Collection Act of 1982. The rule would provide DOT with formal procedures for the collection of claims owed the United States arising from activities under the jurisdiction of the Department.

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Timetable:

Action	Date	FR Cite
NPRM	02/12/88	53 FR 4180
Final Action	10/03/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Analysis: Regulatory Evaluation 02/12/88 (53 FR 4180)

Agency Contact: Paul B. Larsen C-10, Attorney Adviser, Department of Transportation, Office of the Secretary, DOT/Office of the General Counsel, 400 Seventh Street, SW, Washington, DC 20590, 202 366-9187

RIN: 2105-AB33

DEPARTMENT OF TRANSPORTATION (DOT) — Completed Actions

Office of the Secretary (OST)

1594. ● PUBLIC AVAILABILITY OF INFORMATION

Significance: Agency Priority

Legal Authority: 5 USC 552 Freedom of Information Act

CFR Citation: 49 CFR 7

Legal Deadline: Final, Statutory, April 27, 1987.
The Freedom of Information Act of 1986, Pub. L. 99-570, Title I, Subtitle Q, requires agencies to promulgate regulations implementing the Act's new fee schedule, and establish guidelines

Abstract: This final rule revises DOT's Freedom of Information Act regulations. Specific areas addressed include fees to be charged for search and reproduction costs and the establishment of more precise criteria to enable the Department to determine when a waiver of fees is in the public interest. It also addressed records relating to those functions of the Civil Aeronautics Board that were transferred to DOT. This rulemaking was significant because of substantial public interest. It was needed to comply with recent statutory changes, including OMB and Department of Justice guidance, and periodic revisions to keep current with policy changes.

Timetable:

Action	Date	FR Cite
NPRM	10/17/85	50 FR 42049
NPRM Comment Period End	12/16/85	
SNPRM/Interim Final Rule	01/16/87	52 FR 1992
Comment Period End	02/17/87	
SNPRM Request for Comments	11/06/87	52 FR 42688
Final Action	06/11/88	53 FR 30265

Small Entities Affected: None

Government Levels Affected: Local, State

Analysis: Regulatory Evaluation 10/17/85 (50 FR 42049)

Additional Information: Further, the timeframe for a supplemental NPRM addressing PUB. L. 99-570 (fee schedule, fee waiver and law enforcement provisions) is in accordance with statutory requirements and cognizant of the recently published OMB guidelines (52 FR 10012).

Agency Contact: Rebecca H. Lima, Department of Transportation, Office of the Secretary, 400 Seventh Street, SW, Washington, DC 20590, 202 366-4542

RIN: 2105-AA65

1595. ● + DENIAL OF PUBLIC WORKS CONTRACTS TO SUPPLIERS OF GOODS AND SERVICES OF COUNTRIES THAT DENY PROCUREMENT MARKET ACCESS TO U.S. CONTRACTORS

Significance: Agency Priority

Legal Authority: PL 100-202, Sec 109(a); PL 100-223, Sec 115

CFR Citation: 49 CFR 30

Legal Deadline: None

Abstract: This rule implements statutory provisions prohibiting the expenditure of Federal funds (either in direct DOT contracting or under grants) to firms from countries that the U.S. Trade Representative (USTR) has placed on a list of countries that deny procurement market access to U.S. firms. Japan is the only country on the USTR list at this time. This rule is a significant one under the Department's Regulatory Policies and Procedures.

Timetable:

Action	Date	FR Cite
Final Action	06/01/88	53 FR 19914

Small Entities Affected: Businesses

Government Levels Affected: Local, State, Federal

Analysis: Regulatory Evaluation 06/01/88 (53 FR 19914)

Additional Information: The comment period on the final rule ended July 18, 1988.

Agency Contact: Roberta Gabel, Deputy Assistant General Counsel for Environmental, Civil Rights, and General Law, Department of Transportation, Office of the Secretary, 400 Seventh St., SW, Rm. 10102, Washington, DC 20590, 202 366-9161

RIN: 2105-AB41

1596. UPDATE THE DEPARTMENT OF TRANSPORTATION ACQUISITION REGULATIONS TO IMPLEMENT THE COMPETITION IN CONTRACTING ACT AS SET FORTH IN THE FEDERAL ACQUISITION REGULATIONS—PROPOSED RULES

Significance: Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC 2301; 48 CFR 1.301; 49 CFR 1.59; PL 98-369, Title VII

CFR Citation: 48 CFR 1201, (Revision)

Legal Deadline: None

Abstract: The Competition in Contracting Act (CICA) P.L. 98-369, effective April 1, 1985, makes major changes in the structure and control of the Federal acquisition process. These changes have been effected by the Federal Acquisition Regulation (FAR). The intent of the update of the Department's acquisition regulation is to implement the FAR coverage of CICA where required, and make other changes necessary to implement FAR changes through Federal Acquisition Circular #29.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/19/87	52 FR 44522
Comment Period End	01/19/88	52 FR 44522

Action	Date	FR Cite
Final Action	07/28/88	53 FR 28396
Correction to Final Action	08/17/88	53 FR 31006
Final Action Effective	08/29/88	
Correction to Final Action	09/06/88	53 FR 34301

Small Entities Affected: None

Government Levels Affected: Federal

Analysis: Regulatory Flexibility Analysis

Agency Contact: Roger C. Martino, Chief, Procurement Management Division, Department of Transportation, Office of the Secretary, Room 9100, 400 Seventh Street, SW, Washington, DC 20590, 202 366-4271

RIN: 2105-AB18

1597. WARRANTY REGULATIONS FOR MAJOR SYSTEM ACQUISITIONS OF THE UNITED STATES COAST GUARD -- PROPOSED RULE

Significance: Nonsignificant

Legal Authority: PL 98-473

CFR Citation: 48 CFR 1246

Legal Deadline: None

Abstract: Final rule established the regulations for Coast Guard warranties that shall be included in all contracts with prime contractors for major system acquisitions. It also provides additional guidance for use of warranties in all other Department contracts.

Timetable:

Action	Date	FR Cite
NPRM	02/04/88	53 FR 3222
NPRM Comment Period End	03/21/88	53 FR 3222
Final Action	08/10/88	53 FR 30176
Final Action Effective	09/09/88	

Small Entities Affected: None

Government Levels Affected: Federal

Analysis: Regulatory Evaluation 02/04/88 (52 FR 3222)

Agency Contact: Roger Martino, Department of Transportation, Office of the Secretary, Room 9100, 400 Seventh Street, SW, Washington, DC 20590, 202 366-4271

RIN: 2105-AB18

1598. NAMES OF AIR CARRIERS AND FOREIGN AIR CARRIERS

Significance: Nonsignificant

Legal Authority: 49 USC 1381; 49 USC 204(a); 49 USC 1371; 49 USC 1372; 49 USC 1389

CFR Citation: 14 CFR 215, (Revision)

Legal Deadline: None

Abstract: The Department has made final its proposal to reissue its rules for the use and change of names by airlines. The final rule replaces detailed requirements with a simple name-registration provision. Airlines are required under this rule to notify other airlines with similar names. The rule encourages carriers to resolve potential problems in the use of similar names among themselves, without unnecessary Government intervention. The rule will now apply to commuter air carriers. The Department retains its authority to take enforcement action, when necessary, against unfair and deceptive practices in the use of names.

Timetable:

Action	Date	FR Cite
NPRM	02/25/87	52 FR 5547
NPRM Comment Period End	04/27/87	52 FR 5547
Final Action	05/19/88	53 FR 17921
Final Action Effective	06/20/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 05/19/88 (53 FR 17921)

Agency Contact: Patricia Sarom, Chief, Air Carrier Fitness Division, Department of Transportation, Office of the Secretary, 400 Seventh Street, SW, Washington, DC 20590, 202 366-9721

RIN: 2105-AD16

1599. ◆ AIRLINE SERVICE QUALITY PERFORMANCE

Significance: Nonsignificant

Legal Authority: 49 USC 1302; 49 USC 1324; 49 USC 1374; 49 USC 1377; 49 USC 1381; 49 USC 1389; 49 USC 1502; 5 USC 553(e)

CFR Citation: 14 CFR 234; 14 CFR 255

Legal Deadline: None

Abstract: This rule amends the Department's airline service quality performance rule, issued Sept. 9, 1987 (52 FR 34056) to allow computerized reservations system (CRS) vendors 10 days, instead of 5 days, to include in their CRS displays the flight delay and cancellation information submitted by participating carriers. It responds to a request from the Air Transport Association (ATA) for more flexibility to accommodate the carrier computer loading schedules that are set up a year in advance. The rule also requires the participating carriers to assign a letter code to flights scheduled to operate three times or less during a month in their reports to CRS vendors.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/27/87	52 FR 48395
Final Action	07/22/88	53 FR 27676

Small Entities Affected: None

Government Levels Affected: Undetermined

Analysis: Regulatory Evaluation 12/27/87 (52 FR 48395)

Additional Information: Additional contact: Samuel Whitehorn - same address - 202 366-9307

Agency Contact: Gwyneth Radloff, Attorney, Department of Transportation, Office of the Secretary, Department of Transportation, Office of the General Counsel, C-50, 400 7th Street, SW, Washington, DC 20590, 202 366-9305

RIN: 2105-AB58

1600. DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Significance: Nonsignificant

Legal Authority: 49 USC 322; EO 12549

CFR Citation: 49 CFR 29

Legal Deadline: None

Abstract: EO 12549 provides that agencies shall participate in a system for debarment and suspension from programs and activities involving Federal financial aid and benefits. The Order directs agencies to issue implementing regulations that are consistent with OMB guidelines. This rulemaking established DOT's requirements and procedures for suspension and debarment in financial-assistance programs, consistent with the Executive Order.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/20/87	52 FR 39056
Final Action	05/26/88	53 FR 19203
Final Action Effective	10/01/88	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Analysis: Preliminary Regulatory Evaluation 10/20/87 (52 FR 39056)

Additional Information: This final action was part of a 27-agency common rule published 05/26/88 (53 FR 19161-211). OMB adopted the final rule as its guidelines the same date (53 FR 19160). OMB issued a further notice providing additional information on 09/06/88 (53 FR 34474).

Agency Contact: Paul B. Larsen C-10, Attorney Adviser, Department of Transportation, Office of the Secretary, DOT/Office of the General Counsel, 400 Seventh Street, SW, Washington, DC 20590, 202 366-9161

RIN: 2105-AB34

1601. ◆ DEPARTMENT OF TRANSPORTATION BOARD OF CONTRACT APPEALS RULES

Significance: Nonsignificant

Legal Authority: 41 USC 600 et seq

CFR Citation: 48 CFR Chapter 63

Legal Deadline: None

Abstract: This rule revises slightly the Department's Board of Contract Appeals Rules and transfers these from 41 CFR Parts 12-60 to 48 CFR Chapter 63.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/23/87	52 FR 48630
Final Action	09/02/88	53 FR 34104

Small Entities Affected: None

Government Levels Affected: Federal

Additional Information: This interim final rule was originally included in the recent interim final rule which revised the Transportation Acquisition Regulation (TAR). Upon consideration, it has been determined that the Board of Contract Appeals Rule should be recodified as a separate chapter of 48 CFR, which this action is to accomplish.

Agency Contact: Charles Ventura, Department of Transportation, Office of the Secretary, 400 Seventh St., SW, Washington, DC 20590, 202 366-4271

RIN: 2105-AB35

DEPARTMENT OF TRANSPORTATION (DOT)

Prerule Stage

U.S. Coast Guard (USCG)

1602. ◆ SUBDIVISION AND DAMAGE STABILITY OF DRY CARGO VESSELS (CGD 87-094)

Significance: Agency Priority

Legal Authority: 46 USC 3301

CFR Citation: 46 CFR 174

Legal Deadline: None

Abstract: This proposal would require dry cargo vessels to meet a minimum standard of subdivision and stability. This rulemaking is significant because of international implications.

Timetable:

Action	Date	FR Cite
ANPRM	04/06/88	53 FR 11440
ANPRM Comment Period End	01/00/89	
NPRM	09/00/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Analysis: Regulatory Evaluation 09/00/89

Agency Contact: Lt. E. Gilbert, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second St., SW, Washington, DC 20593-0001, 202 267-[illegible]

RIN: 2115-AC87

1603. INLAND WATERWAY NAVIGATION REGULATIONS; ALL WATERS TRIBUTARY TO THE GULF OF MEXICO (88-099)

Significance: Nonsignificant

Legal Authority: 33 USC 1221

CFR Citation: 33 CFR 162

Legal Deadline: None

Abstract: Contemplated action would revise and update the inland waterways navigation regulations for the Gulf Intercoastal Waterway from St. Marks, Fla. to the Rio Grande River.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Local, State

Agency Contact: Mr. H. Robinson, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001, 202 267-[illegible]

RIN: 2115-AC89

1604. SOLAS 74/83 EMERGENCY DRINKING WATER AND FOOD APPROVAL REQUIREMENTS (88-002)

Significance: Nonsignificant

Legal Authority: 46 USC 3306(a)

CFR Citation: 46 CFR 160

Legal Deadline: None

Abstract: Establish U.S. Coast Guard approval requirements for emergency drinking water and food meeting the 1983 Amendments to the Safety of Life at Sea Convention.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: To Be Assigned, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001, 202 267-0486

RIN: 2115-AC48

DOT—USCG

Prerule Stage

1605. HYDRAULIC RELEASE UNITS FOR LIFESAVING EQUIPMENT: SOLAS 74/83 (85-206)

Significance: Nonsignificant

Legal Authority: 46 USC 3306(a)

CFR Citation: 46 CFR 160

Legal Deadline: None

Abstract: Establish U.S. Coast Guard approval requirements for hydraulic releases meeting the 1983 Amendments to the 1974 Safety of Life at Sea Convention.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Mr. Milton Daniels, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second St., SW, Washington, DC 20593-0001, 202 267-1444

RIN: 2115-AC52

1606. REVISION OF DAVIT AND WINCH APPROVAL REQUIREMENTS: SOLAS 74/83 (85-207)

Significance: Nonsignificant

Legal Authority: 46 USC 3306(a)

CFR Citation: 46 CFR 160

Legal Deadline: None

Abstract: Establish U.S. Coast Guard approval requirements for davits and winches meeting the 1983 Amendments to the 1974 Safety of Life at Sea Convention.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Mr. Milton Daniels, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second St., SW, Washington, DC 20593-0001, 202 267-1444

RIN: 2115-AC53

1607. RADAR REFLECTOR APPROVAL REQUIREMENTS: SOLAS 74/83 (85-208)

Significance: Nonsignificant

Legal Authority: 46 USC 3306(a)

CFR Citation: 46 CFR 160

Legal Deadline: None

Abstract: Establish U.S. Coast Guard approval requirements for radar reflectors meeting the 1983 Amendments to the 1974 Safety of Life at Sea Convention.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: LCDR S. Dano, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second St., SW, Washington, DC 20593-0001, 202 267-1444

RIN: 2115-AC54

1608. REVISION OF LIFEBUOY APPROVAL REQUIREMENTS: SOLAS 74/83 (85-210)

Significance: Nonsignificant

Legal Authority: 46 USC 3306(a)

CFR Citation: 46 CFR 160

Legal Deadline: None

Abstract: Establish U.S. Coast Guard approval requirements for lifebuoys meeting the 1983 Amendments of the 1974 Safety of Life at Sea Convention.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: LTJG C. Deiso, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second St., SW, Washington, DC 20593-0001, 202 267-1444

RIN: 2115-AC55

1609. PORT ACCESS ROUTES; APPROACH TO FREEPORT, TEXAS (CGD 87-058)

Significance: Nonsignificant

Legal Authority: 33 USC 1223

CFR Citation: 33 CFR 166

Legal Deadline: None

Abstract: A study of fairway anchorage sites and areas adjacent to the fairway in the approach to Freeport, Texas, has been announced and comments requested.

Timetable:

Action	Date	FR Cite
Fairway study completed	07/02/87	52 FR 25039

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Ms. M. Hegy, Project Manager, Department of Transportation, U.S. Coast Guard, COMDT (G-NSS-2), 2100 2nd St., SW, Washington, DC 20593, 202 267-0415

RIN: 2115-AC78

1610. OIL DISCHARGE MONITORING AND CONTROL SYSTEM (CGD 87-057)

Significance: Nonsignificant

Legal Authority: 33 USC 1321(j); 33 USC 1903; 46 USC 391(a); 49 USC 1655(b)

CFR Citation: 46 CFR 162; 33 CFR 157

Legal Deadline: None

Abstract: This project would revise the existing equipment approval requirements for the oil discharge monitoring and control system to bring the U.S. requirements in line with the more stringent International Maritime Organization Resolution A.586(14) "Revised Guidelines and Specifications for Oil Discharge Monitoring and Control Systems for Oil Tankers." This project does not create any new installation requirements for oil pollution prevention equipment on any class of vessels.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

DOT—USCG

Prerule Stage

Government Levels Affected: None

Agency Contact: To Be Assigned, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second St. SW, Washington, DC 20593-0001, 202 267-1444

RIN: 2115-AC85

1611. ◆ MARINE TRANSPORT OF BULK SOLID HAZARDOUS MATERIALS (87-060)

Significance: Nonsignificant

Legal Authority: 49 USC 1803; 49 USC 1804; 49 USC 1808

CFR Citation: 46 CFR 148

Legal Deadline: None

Abstract: This proposal would incorporate into 46 CFR 148 the requirements for shipping certain frequently carried hazardous bulk solids. Putting these requirements into regulation would eliminate paperwork for both the Coast Guard and the shipping industry.

Timetable:

Action	Date	FR Cite
ANPRM	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 01/00/89

Agency Contact: Ms. D. Anderson, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second St., SW, Washington, DC 20593-0001, 202 267-1217

RIN: 2115-AD02

1612. ◆ PRIVATE ELECTRONIC AIDS TO MARITIME NAVIGATION (88-011)

Significance: Nonsignificant

Legal Authority: 14 USC 85

CFR Citation: 33 CFR 66; 33 CFR 164

Legal Deadline: None

Abstract: This proposal would amend the regulations on private aids to navigation by removing a restriction on the Coast Guard permitting of certain private electronic aids to navigation. The rulemaking might also amend regulations pertaining to vessels required to carry an electronic position-fixing device.

Timetable:

Action	Date	FR Cite
ANPRM	07/22/88	53 FR 27708
ANPRM Comment Period End	12/02/88	
NPRM	03/00/89	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 03/00/89

Agency Contact: LT G. Self, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second St., SW, Washington, DC 20593-0001, 202 267-6181

RIN: 2115-AD06

1613. ◆ REQUIREMENTS FOR MARINE TERMINALS TRANSFERRING BULK LIQUEFIED HAZARDOUS MATERIALS (88-040)

Significance: Nonsignificant

Legal Authority: 33 USC 1221

CFR Citation: 33 CFR 126

Legal Deadline: None

Abstract: This project would develop requirements for marine terminals transferring bulk liquefied hazardous gases (petroleum and chemical) and establish comparable levels of safety and contingency measures for these commodities as are now required for liquefied natural gas (LNG).

Timetable:

Action	Date	FR Cite
ANPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 12/00/88

Agency Contact: Mr. K. Szigety, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second St., SW., Washington, DC 20593-0001, 202 267-6181

RIN: 2115-AD04

DEPARTMENT OF TRANSPORTATION (DOT)

U.S. Coast Guard (USCG)

Proposed Rule Stage

1614. + CALIFORNIA OFFSHORE ROUTING SYSTEM (83-032)

Significance: Regulatory Program

Legal Authority: 33 USC 1223; 33 USC 1224

CFR Citation: 33 CFR 166; 33 CFR 167

Legal Deadline: None

Abstract: Would implement the results of the Port Access Route Study mandated by the Ports and Waterways Safety Act. As a result of the study, the Coast Guard has preliminarily determined that potential conflicts between oil drilling and shipping require creation of a fairway system off the coast of California from the vicinity of San Francisco to Los Angeles/Long Beach and changes to the San Francisco and Santa Barbara channel traffic-separation schemes. No structures would be permitted in the fairway.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Analysis: Regulatory Impact Analysis; Regulatory Evaluation 10/00/88

Additional Information: Results of the Port Access Study for California were published in the Federal Register on June 24, 1982 (47 FR 27430) and on October 14, 1982 (47 FR 46043), and on December 5, 1985 (50 FR 49861). This rulemaking will require coordination with the Minerals Management Service of the Department of the Interior.

Agency Contact: Mr. M. Hegy, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001, 202 267-0415

RIN: 2115-AE29

DOT—USCG

Proposed Rule Stage

1615. + REVISIONS OF THE REGULATIONS ON OUTER CONTINENTAL SHELF ACTIVITIES (84-098)

Significance: Regulatory Program

Legal Authority: 43 USC 1331

CFR Citation: 33 CFR 140; 33 CFR 141; 33 CFR 142; 33 CFR 143; 33 CFR 144; 33 CFR 145; 33 CFR 146

Legal Deadline: None

Abstract: Would modify 33 CFR Subchapter N by extending coverage of workplace safety rules and by modernizing material standards for fixed platforms.

Timetable:

Action	Date	FR Cite
ANPRM	03/07/85	50 FR 9250
Extension of Comment Period to 06/03/85	05/16/85	50 FR 20445
ANPRM Comment Period End	06/03/85	50 FR 20445
NPRM	02/00/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Analysis: Regulatory Evaluation 02/00/89

Additional Information: CGD 84-098(a) Self-inspection of Fixed OCS Facilities separated from CGD 84-098. CGD 84-098(b) Offshore Evacuation Procedures separated from CGD 84-098.

Agency Contact: Mr. J. Magill, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001, 202 267-2997

RIN: 2115-AE74

1616. + USER FEES FOR COAST GUARD SERVICES (84-026)

Significance: Agency Priority

Legal Authority: 31 USC 9701

CFR Citation: 33 CFR 27; 33 CFR 60; 33 CFR 74; 33 CFR 100

Legal Deadline: None

Abstract: This proposal would impose fees for certain Coast Guard services in keeping with the Administration's policy of recovering costs of services provided by the Federal Government to identifiable beneficiaries to extent practicable. This rulemaking is significant because it is likely to be of substantial interest to the public.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Additional Information: Further action must await enabling legislation.

Agency Contact: Mr. C. Perry, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001, 202 267-0979

RIN: 2115-AE73

1617. + LICENSING OF OFFICERS AND OPERATORS FOR MOBILE OFFSHORE DRILLING UNITS (81-59A)

Significance: Agency Priority

Legal Authority: 46 USC 3306; 46 USC 7101; 46 USC 7102; 46 USC 7103; 46 USC 7104; 46 USC 7105; 46 USC 7106; 46 USC 7107; 46 USC 7108; 46 USC 7009; 46 USC 7110; 46 USC 7111; 46 USC 7112; 46 USC 7113; 46 USC 7114; ...

CFR Citation: 46 CFR 10; 46 CFR 15

Legal Deadline: None

Abstract: This project resulted from comments received on Coast Guard proposed rulemaking 81-59, Licensing of Officers and Motorboat Operators and Registration of Staff Officers which is contained in this agenda under another listing. The comments suggested that licensing of officers on Mobile Offshore Drilling Units be discussed in a separate rulemaking. This project is the result of those suggestions: it establishes licensing requirements for officers on Mobile Drilling Units. The Coast Guard is reviewing the comments received and considering what further action to take on the proposal.This action is considered significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	08/08/83	48 FR 35820
SNPRM	10/24/85	50 FR 43316
Interim Final Rule	10/16/87	52 FR 38660
Second SNPRM	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 10/16/87 (52 FR 38660)

Additional Information: This project was split from Coast Guard docket 81-059, Licensing of Officers and Motorboat Operators and Registration of Staff Officers, which is listed elsewhere in this agenda with the RIN 2115-AA94.

Agency Contact: LCDR Jenkins, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001, 202 267-0224

RIN: 2115-AE71

1618. + REGULATIONS FOR SELF-ELEVATING OFFSHORE SERVICE AND SUPPORT VESSELS (CGD 86-074)

Significance: Agency Priority

Legal Authority: 46 USC 3306; 46 USC 3301

CFR Citation: 46 CFR 125 to 130; 46 CFR 170; 46 CFR 173; 46 CFR 174

Legal Deadline: None

Abstract: The Coast Guard is proposing regulations that will establish safety standards for self-elevating offshore service vessels commonly known as liftboats. The high rate of casualties which have been experienced by these vessels has emphasized the need for specific regulations addressing the hazards inherent in their operations. These vessels support the offshore mineral and energy industry by performing a multitude of services such as dive support, painting, sandblasting and well servicing, among others. In performing these services, these vessels fall within the statutory definition of Offshore Supply Vessels (OSV) and are therefore subject to inspection as OSVs. The Coast Guard will consider using existing standards wherever possible, particularly those that have and are being applied to conventional OSVs. However, because of the unique design and operating characteristics exhibited by these liftboats, many of the current regulations used to inspect and certificate conventional OSVs are inadequate to ensure the safe operation of these vessels. The Coast Guard believes that development and enforcement of standards specifically addressing these (CONT)

DOT—USCG

Proposed Rule Stage

Timetable:

Action	Date	FR Cite
ANPRM	04/16/87	52 FR 12439
ANPRM Comment Period End	07/16/87	52 FR 12439
NPRM	02/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Analysis: Regulatory Evaluation 02/00/89

Additional Information: unique hull forms and operating characteristics will significantly improve their safety record. These rules are not expected to impose substantial costs on industry. On February 14, 1983, the Coast Guard published an ANPRM concerning new construction of Offshore Supply Vessels (OSVs)(48 FR 6636). The information in the ANPRM presents the Coast Guard's overall approach with respect to developing comprehensive standards for conventional offshore supply vessels as contrasted with liftboats and other nonconventional OSVs. On March 7, 1985, the Coast Guard published an ANPRM on Revision of the Regulations on Outer Continental Shelf Activities (50 FR 9290). That ANPRM (CGD 84-098) solicited specific comments regarding appropriate standards that should be applied to the various types of vessels used for OCS activities. Some comments were received that addressed liftboats. These comments will be considered with the comments received in response to this rulemaking effort.

Agency Contact: LCDR S. Ciccalese, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second St., SW, Washington, DC 20593-0001, 202 267-2997

RIN: 2115-AC83

1619. + IMPOSITION OF USER FEES FOR CERTAIN COAST GUARD SERVICES; DOCUMENTATION AND LICENSING (CGD 87-020)

Significance: Agency Priority

Legal Authority: PL 99-509

CFR Citation: 46 CFR 169; 46 CFR 175

Legal Deadline: None

Abstract: This proposal would enumerate selected Coast Guard services for which user fees would be charged, indicate how the charges are to be made, and how they are to be paid. User fees are being considered for the following services to small passenger vessels and sailing school vessels: initial inspection for certification, inspection for certification, reinspection, drydock examination, licensing/certification, and documentation. This project is considered significant because of substantial public interest in the topic of user fees.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Analysis: Regulatory Evaluation

Agency Contact: LCDR Thompson, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001, 202 267-1483

RIN: 2115-AC74

1620. ● + PREVENTION OF POLLUTION BY PLASTICS, ANNEX V OF MARPOL(88-002)

Significance: Agency Priority

Legal Authority: PL 100-220

CFR Citation: 33 CFR 151; 33 CFR 156

Legal Deadline: None

Abstract: This proposal would implement Annex V of the International Convention for the Prevention of Pollution by Ships, 1973. The Act to Prevent Pollution from Ships, as amended by Title II of P. L. 100-220, requires the Secretary to administer and enforce the annex. The Act would reduce the incidence of discharges of plastics, including synthetic fishing nets and other ship-generated garbage, into the oceans. This rulemaking is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
ANPRM	01/14/88	53 FR 23854
ANPRM Comment Period End	07/25/88	
NPRM	10/03/88	
Interim Final Rule	12/00/88	

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Local, State, Federal

Analysis: Regulatory Flexibility Analysis; Regulatory Evaluation 10/03/88

Agency Contact: LCDR J. Whitehead, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second St., SW, Washington, DC 20593-0001, 202 267-0491

RIN: 2115-AC89

1621. FIXED FIRE-EXTINGUISHING SYSTEMS ON UNINSPECTED VESSELS (74-284)

Significance: Nonsignificant

Legal Authority: 46 USC 2104; 46 USC 4104; 46 USC 4105; 46 USC 4302; 49 USC 108

CFR Citation: 46 CFR 181.428

Legal Deadline: None

Abstract: Would establish standards for the construction and installation of Halon 1301 and other fixed fire extinguishing systems as optional systems for compliance with existing regulations. SNPRM will address new comments received requesting that industry specifications be used and incorporated by reference.

Timetable:

Action	Date	FR Cite
NPRM	04/19/82	47 FR 16648
SNPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 04/19/82 (47 FR 16648)

Additional Information: Docket No. CGD 74-284.

Agency Contact: Mr. K. Wahle, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001, 202 267-1444

RIN: 2115-AA00

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DOT—USCG

Proposed Rule Stage

1622. CRANE OPERATOR QUALIFICATIONS AND STANDARDS FOR OFFSHORE CRANE DESIGN, INSPECTION, TESTING, AND OPERATION (79-059)

Significance: Nonsignificant

Legal Authority: 46 USC 2104; 46 USC 3306; 46 USC 6101; 46 USC 6301; 49 USC 1655

CFR Citation: 33 CFR 140; 33 CFR 143; 33 CFR 149; 46 CFR 107; 46 CFR 108; 46 CFR 109

Legal Deadline: None

Abstract: Would develop required qualifications for crane operators employed on the Outer Continental Shelf and standards for crane design, inspection, and testing. SNPRM will address comments received on lessening the impact on small entities and other controversial issues.

Timetable:

Action	Date	FR Cite
ANPRM	01/10/80	45 FR 2052
NPRM	02/14/86	51 FR 5547
NPRM Comment Period End	06/15/86	51 FR 21378
SNPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 02/14/86 (51 FR 5547)

Additional Information: Docket No. CGD 79-059.

Agency Contact: LCDR Stephen Johnson, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001, 202 267-2997

RIN: 2115–AA34

1623. INFLATABLE LIFERAFT STABILITY (80-113)

Significance: Nonsignificant

Legal Authority: 46 USC 3306

CFR Citation: 46 CFR 160

Legal Deadline: None

Abstract: Would provide specific rules for function, size, and placement of stability appendages. Based on comments received, an SNPRM will issue.

Timetable:

Action	Date	FR Cite
ANPRM	08/29/81	46 FR 33341
NPRM	01/11/85	50 FR 1556
NPRM Comment Period End	04/11/85	
Comment Period Extended to 10/14/85	07/05/85	50 FR 27628
Comment Period Extended to 01/10/86	09/09/85	50 FR 36839
SNPRM	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 01/11/85 (50 FR 1558)

Additional Information: To be combined with Coast Guard Dockets 81-010 and 85-205 to form a new project.

Agency Contact: Mr. M. Daniels, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001, 202 267-1444

RIN: 2115–AA50

1624. MANEUVERING PERFORMANCE REGULATIONS (80-136)

Significance: Nonsignificant

Legal Authority: 46 USC 3703

CFR Citation: 46 CFR 1; 33 CFR 164

Legal Deadline: None

Abstract: Would establish requirements to improve ship maneuvering and stopping ability for new tank vessels and possibly all vessels in response to mandates in 46 USC 3703. International Maritime Organization recommendations will be considered.

Timetable:

Action	Date	FR Cite
ANPRM	09/14/81	46 FR 45631
ANPRM	07/17/84	49 FR 28893
NPRM	10/00/89	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 10/00/88

Additional Information: The Subcommittee on Ship Design and Equipment, IMO, completed action on this item in May 1986 and the results are being included in the NPRM. Final action by the IMO Assembly in November 1987 has made it possible for the Coast Guard to resume action on promulgation of a rule.

Agency Contact: Mr. P. Cojeen, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593, 202 267-2988

RIN: 2115–AA53

1625. SERVICING INFLATABLE LIFERAFTS (81-019)

Significance: Nonsignificant

Legal Authority: 46 USC 2104; 46 USC 3306

CFR Citation: 46 CFR 160

Legal Deadline: None

Abstract: Would revise inflatable liferaft servicing procedures and reduce direct Coast Guard involvement in the servicing of individual liferafts.

Timetable:

Action	Date	FR Cite
ANPRM	08/14/86	51 FR 29117
Public Meeting	01/27/87	51 FR 45783
ANPRM Comment Period End	02/10/87	
NPRM	01/00/89	

Small Entities Affected: Businesses

Government Levels Affected: Federal

Analysis: Regulatory Evaluation 01/00/89

Additional Information: Docket No. CGD 81-010.

Agency Contact: Mr. Milton Daniels, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001, 202 267-1444

RIN: 2115–AA57

1626. PERSONAL FLOTATION DEVICES (81-023)

Significance: Nonsignificant

Legal Authority: 46 USC 1454; 46 USC 1456

CFR Citation: 33 CFR 175; 33 CFR 181

Legal Deadline: None

Abstract: This action will revoke an obsolete provision and make several editorial changes. Upon further analysis, it has been determined that an SNPRM be issued.

DOT—USCG

Proposed Rule Stage

Timetable:

Action	Date	FR Cite
NPRM	04/12/82	47 FR 15606
SNPRM	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 04/12/82 (47 FR 15606)

Additional Information: Docket No. CGD 81-023.

Agency Contact: Mr. C. Perry, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001, 202 267-0979

RIN: 2115–AA58

1627. GENERAL REVISION OF 46 CFR 151, BARGES CARRYING CERTAIN BULK DANGEROUS CARGOES (81-067)

Significance: Nonsignificant

Legal Authority: 46 USC 3703

CFR Citation: 46 CFR 151

Legal Deadline: None

Abstract: Would revise the rules for barges carrying bulk cargoes by clarifying the language, eliminating unnecessary requirements, and upgrading some existing requirements.

Timetable:

Action	Date	FR Cite
ANPRM	06/04/84	49 FR 23085
NPRM	10/00/89	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 10/00/89

Additional Information: Docket No. CGD 81-082.

Docket No. CGD 81-067.

This project is being evaluated by the Chemical Transportation Advisory Committee.

Agency Contact: R. M. Query, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001, 202 267-1217

RIN: 2115–AA70

1628. OFFSHORE SUPPLY VESSEL REGULATIONS (83-004)

Significance: Nonsignificant

Legal Authority: 46 USC 3301; 46 USC 3305; 46 USC 3306

CFR Citation: 46 CFR 125 to 136; 46 CFR 174

Legal Deadline: None

Abstract: This proposal would create a new 46 CFR subchapter governing offshore supply vessels.

Timetable:

Action	Date	FR Cite
ANPRM	02/14/83	48 FR 6636
Comment Period Extended to 09/12/83	06/09/83	48 FR 26631
ANPRM Comment Period End	06/14/83	48 FR 6636
NPRM	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 11/00/88

Additional Information: Docket No. CGD 83-004.

Agency Contact: LCDR M. Rosecrans, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001, 202 267-2206

RIN: 2115–AA77

1629. GENERAL REVISIONS OF POLLUTION-PREVENTION REGULATIONS FOR TANKERS (82-030)

Significance: Nonsignificant

Legal Authority: 46 USC 3306; 46 USC 2104; 46 USC 3703

CFR Citation: 33 CFR 157

Legal Deadline: None

Abstract: Amend pollution regulations to clarify, correct minor errors, and incorporate policy decisions and international interpretations.

Timetable:

Action	Date	FR Cite
NPRM	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 01/00/89

Agency Contact: LCDR W. Cummins, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001, 202 267-1181

RIN: 2115–AA86

1630. AIDS TO NAVIGATION ON OUTER CONTINENTAL SHELF (82-054)

Significance: Nonsignificant

Legal Authority: 14 USC 2; 14 USC 83; 14 USC 85; 14 USC 92; 14 USC 633

CFR Citation: 33 CFR 67

Legal Deadline: None

Abstract: This item will modify existing requirements to allow for the following: central approval of aids to navigation lighting equipment, conformance to International Association of Lighthouse Authorities marking recommendations for offshore structures, and realistic light-intensity requirements.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 10/00/88

Additional Information: Docket No. 82-054.

Agency Contact: Mr. C. B. Mosher, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001, 202 267-0330

RIN: 2115–AA82

1631. SAFETY STANDARDS FOR SELF-PROPELLED VESSELS CARRYING BULK LIQUEFIED GASES (82-058)

Significance: Nonsignificant

Legal Authority: 46 USC 3703

CFR Citation: 46 CFR 154

Legal Deadline: None

Abstract: Would revise the standards for self-propelled vessels carrying bulk liquefied gases by adopting Amendments 1 through 4 of the International Maritime Organization Code for the construction and equipment of ships carrying gases in bulk.

DOT—USCG

Proposed Rule Stage

Timetable:

Action	Date	FR Cite
NPRM	10/00/89	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 10/00/89

Agency Contact: Ms. D. Anderson, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001, 202 267-1217

RIN: 2115–AA95

1632. NAUTICAL SCHOOLS: IMPLEMENTING THE MARITIME EDUCATIONAL TRAINING ACT OF 1980 (83-092)

Significance: Nonsignificant

Legal Authority: 46 USC 3306; 46 USC 12059(a)

CFR Citation: 46 CFR 166; 46 CFR 167; 46 CFR 168

Legal Deadline: None

Abstract: Would update authority cites for Nautical Schools Inspection Regulations (46 CFR Subchapter "R") and update certain parts to conform with current inspection policies. Nautical School vessels operated by the United States (formerly called "Public Nautical School Ships") between 15 and 300 gross tons would be subject to inspection for the first time.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Docket No. CGD 82-092.

Agency Contact: LCDR VanHaverbeke, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001, 202 267-1181

RIN: 2115–AB21

1633. REASSESSMENT OF COAST GUARD FIRE PROTECTION REGULATIONS TO INCORPORATE SOLAS 1974 (83-035)

Significance: Nonsignificant

Legal Authority: 46 USC 3301; 46 USC 3305; 46 USC 3306; 46 USC 3503; 46 USC 3703

CFR Citation: 46 CFR 34; 46 CFR 76; 46 CFR 95

Legal Deadline: None

Abstract: Would bring Coast Guard regulations into agreement with the international requirements of SOLAS 1974 (Safety of Life at Sea) and its amendments.

Timetable:

Action	Date	FR Cite
ANPRM	10/01/84	49 FR 38672
ANPRM Comment Period End	11/30/84	
NPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 12/00/88

Additional Information: Docket No. CGD 83-026. Incorporates part of docket CGD 81-080.

Agency Contact: Dr. A. Schneider, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001, 202 267-2997

RIN: 2115–AB36

1634. REASSESSMENT OF COAST GUARD MARINE ENGINEERING REGULATIONS -- INCORPORATION OF SOLAS 74 AMENDMENTS (83-043)

Significance: Nonsignificant

Legal Authority: 46 USC 3301; 46 USC 3305; 46 USC 3306; 46 USC 3307

CFR Citation: 46 CFR Subchapter F

Legal Deadline: None

Abstract: Would effect a general reassessment of Subchapter F and incorporation of international requirements of Sept. 1984.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 11/00/88

Additional Information: Docket No. CGD 83-043.

Agency Contact: Mr. M. Mattina, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001, 202 267-2206

RIN: 2115–AB41

1635. MARINE PORTABLE TANKS (84-045)

Significance: Nonsignificant

Legal Authority: 49 USC 1801 to 1812

CFR Citation: 46 CFR 04; 46 CFR 90.30; 46 CFR 98.33; 46 CFR 98.35

Legal Deadline: None

Abstract: This proposal would discontinue the Coast Guard specifications for Marine Portable Tanks. In their place, the Coast Guard would recognize tanks approved by the Department of Transportation, Research and Special Programs Administration as Intermodal Tanks.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Analysis: Regulatory Evaluation 11/00/88

Agency Contact: Mr. F. Thompson, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001, 202 267-1377

RIN: 2115–AB60

1636. PERSONAL FLOTATION DEVICE COMPONENTS (84-068)

Significance: Nonsignificant

Legal Authority: 46 USC 3306(a); 46 USC 4104; 46 USC 4302

CFR Citation: 46 CFR 164; 46 CFR 160

Legal Deadline: None

Abstract: This project would add state-of-the-art synthetic materials as standard components, add performance requirements for nonstandard components, and upgrade out-dated requirements.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: None

DOT—USCG

Proposed Rule Stage

Government Levels Affected: None

Analysis: Regulatory Evaluation 12/00/88

Agency Contact: Mr. K. Heinz, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001, 202 267-1444

RIN: 2115–AB70

1637. LIFESAVING EQUIPMENT—IMPLEMENTATION OF 1983 AMENDMENTS TO SOLAS 1974 (84-069)

Significance: Nonsignificant

Legal Authority: 46 USC 3306

CFR Citation: 46 CFR 199; 46 CFR 31; 46 CFR 33; 46 CFR 35; 46 CFR 71; 46 CFR 75; 46 CFR 78; 46 CFR 91; 46 CFR 94; 46 CFR 97; 46 CFR 107; 46 CFR 108; 46 CFR 109; 46 CFR 154; 46 CFR 160; ...

Legal Deadline: None

Abstract: This project would implement the provisions of the 1983 amendments to SOLAS 1974 (Safety of Life at Sea) which came into force in July of 1986. It would also reorganize the lifesaving equipment regulations in order to simplify, clarify, and reduce redundancy.

Timetable:

Action	Date	FR Cite
ANPRM	12/31/84	49 FR 50745
ANPRM Comment Period End	03/01/85	
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 10/00/88

Additional Information: 46 CFR 30; 46 CFR 90; 46 CFR 112; 46 CFR 113; 46 CFR 167; 46 CFR 189; 46 CFR 192; 46 CFR 196; 46 CFR 199

Agency Contact: Mr. R. Markle, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001, 202 267-1444

RIN: 2115–AB72

1638. MOBILE OFFSHORE DRILLING UNIT REGULATIONS REVISION (83-071A)

Significance: Nonsignificant

Legal Authority: 46 USC 86; 46 USC 2104; 46 USC 2303; 46 USC 3305; 46 USC 3306; 46 USC 3311; 46 USC 3312; 46 USC 3318

CFR Citation: 46 CFR 56; 46 CFR 58; 46 CFR 107; 46 CFR 108; 46 CFR 109; 46 CFR 111; 46 CFR 174

Legal Deadline: None

Abstract: This project would revise the regulations in subchapter I-A to clarify them, bring them up to date, delete some unnecessary requirements, and incorporate the recommendations developed from major casualties. These changes are largely editorial in nature.

Timetable:

Action	Date	FR Cite
ANPRM	01/25/85	50 FR 11741
Extension of Comment Period	06/18/85	50 FR 20461
ANPRM Comment Period End	09/23/85	
NPRM	07/00/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Analysis: Regulatory Evaluation 07/00/89

Additional Information: International Maritime Organization (IMO) action on Mobile Offshore Drilling Unit code expected in 12/88. No work on project until after IMO acts.

Agency Contact: LCDR Dupree, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001, 202 267-2997

RIN: 2115–AB88

1639. SAFETY RULES FOR SHIPS CARRYING HAZARDOUS LIQUIDS (84-065)

Significance: Nonsignificant

Legal Authority: 46 USC 3703; 49 USC 1803

CFR Citation: 46 CFR 153

Legal Deadline: None

Abstract: This project would amend 46 CFR Part 153 to incorporate changes to the International Maritime Organization code for the construction and equipment of ships carrying dangerous chemicals in bulk.

Timetable:

Action	Date	FR Cite
NPRM	05/00/89	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 05/00/89

Agency Contact: Mr. R. M. Query, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001, 202 267-1217

RIN: 2115–AB92

1640. CERTIFICATION OF SEAMEN (84-066)

Significance: Nonsignificant

Legal Authority: 46 USC 2103; 46 USC 7301

CFR Citation: 46 CFR 12

Legal Deadline: None

Abstract: This rulemaking would simplify and restructure the entire part. Among the changes contemplated are the addition of several new endorsements to seamen's documents and new ratings. An ANPRM was issued to gather necessary additional information.

Timetable:

Action	Date	FR Cite
ANPRM	02/04/85	50 FR 4875
Comment Period Extended to 06/01/85	06/03/85	50 FR 23318
ANPRM Comment Period End	06/01/85	
NPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: Federal

Analysis: Regulatory Evaluation 12/00/88

Agency Contact: Mr. S. Connaughton, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001, 202 267-1217

RIN: 2115–AC02

1641. FIRE DETECTION AND ALARM SYSTEMS (85-051)

Significance: Nonsignificant

Legal Authority: 46 USC 3306; 46 USC 3703

DOT—USCG

Proposed Rule Stage

CFR Citation: 46 CFR 181

Legal Deadline: None

Abstract: This rulemaking would update the 30-year-old Coast Guard specification for fire detection and alarm systems to use modern terminology and address modern systems. Consensus standards would be adopted by reference.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation

Additional Information: This proposal would incorporate by reference an ASTM standard which is still being developed. No further work will be done on the project until the ASTM standard is completed.

Agency Contact: LCDR S. Johnson, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001, 202 267-1997

RIN: 2115–AC13

1642. REVISIONS TO THE ELECTRICAL ENGINEERING REGULATIONS (86-083)

Significance: Nonsignificant

Legal Authority: 46 USC 2104; 46 USC 2113; 46 USC 3301; 46 USC 3306; 46 USC 3318; 46 USC 3703; 46 USC 4104

CFR Citation: 46 CFR 110; 46 CFR 111; 46 CFR 112; 46 CFR 113

Legal Deadline: None

Abstract: This rulemaking would generally update and revise 46 CFR Subchapter J to address changes in technology, include international conventions (Amendments to SOLAS '74), clarify requirements, and reflect experience gained as a result of vessel reflaggings.

Timetable:

Action	Date	FR Cite
NPRM	07/00/89	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 07/00/89

Agency Contact: Mr. Thomas Nolan, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001, 202 267-2206

RIN: 2115–AC20

1643. SUBCHAPTER "T" TITLE 46, GENERAL UPDATES AND REVISIONS (85-080)

Significance: Nonsignificant

Legal Authority: 46 USC 3306

CFR Citation: 46 CFR 175; 46 CFR 176; 46 CFR 177; 46 CFR 178; 46 CFR 179; 46 CFR 180; 46 CFR 181; 46 CFR 182; 46 CFR 183; 46 CFR 184; 46 CFR 185

Legal Deadline: None

Abstract: This rulemaking would revise Subchapter "T" to reflect recent statutory changes, incorporate new technology, and improve safety requirements. Among the changes contemplated would be a change in inspection intervals, drydocking intervals, lifesaving equipment requirements, and fire protection requirements.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Analysis: Regulatory Evaluation 11/00/88

Agency Contact: LCDR W. Cummins, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001, 202 267-1181

RIN: 2115–AC22

1644. INSPECTED FISH PROCESSING AND FISH TENDER VESSELS (86-026)

Significance: Nonsignificant

Legal Authority: 46 USC Subtitle II; PL 98-364

CFR Citation: 46 CFR 104

Legal Deadline: None

Abstract: This rulemaking project would implement the provisions of the Commercial Fishing Industry Vessel Act which requires development of regulations reflecting the specialized nature and economics of fish processing and fish tender vessel operations.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: Project currently inactive.

Agency Contact: LCDR G. Powers, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second St. SW, Washington, DC 20593-0001, 202 267-1181

RIN: 2115–AC27

1645. 46 CFR SUBCHAPTER 1, EDITORIAL REVISIONS AND CORRECTIONS (86-033)

Significance: Nonsignificant

Legal Authority: 46 USC 1801 to 1812

CFR Citation: 46 CFR 2 to 195

Legal Deadline: None

Abstract: This proposed rule would correct or remove outdated cross-references and statutory citations related to the transportation of hazardous materials throughout 46 CFR Chapter 1.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 10/00/88

Additional Information: Project entails replacement of words "46 CFR" with "49 CFR" with necessary revised leadins.

Agency Contact: Mr. F. Thompson, Department of Transportation, U.S. Coast Guard, 2100 2nd St. SW, Washington, DC 20593-0001, 202 267-1577

RIN: 2115–AC28

1646. UPDATING APPROVAL REQUIREMENTS FOR BREATHING APPARATUS (86-035)

Significance: Nonsignificant

DOT—USCG

Proposed Rule Stage

Legal Authority: 46 USC 3306(a)

CFR Citation: 46 CFR 160; 46 CFR 35 to 20

Legal Deadline: None

Abstract: Proposal would update the approval specifications for breathing apparatus for merchant vessels by citing present certification agencies and test schedules. It is also proposed to revise the tank vessel regulations for the carriage of approved pressure-demand type self-contained breathing apparatus.

Timetable:

Action	Date	FR Cite
NPRM	01/00/89	

Small Entities Affected: Businesses

Government Levels Affected: None

Analysis: Regulatory Evaluation 01/00/89

Agency Contact: LTJG C. DeLeo, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second St. SW, Washington, DC 20593-0001, 202 267-1444

RIN: 2115–AC30

1647. REVISED APPROVAL SPECIFICATIONS FOR NONCOMBUSTIBLES AND PROHIBITION OF ASBESTOS FOR COMMERCIAL VESSELS (86-035)

Significance: Nonsignificant

Legal Authority: 46 USC 3306 (a)

CFR Citation: 46 CFR 30 to 40; 46 CFR 70; 46 CFR 188 to 196; 46 CFR 140 to 154; 46 CFR 90

Legal Deadline: None

Abstract: Proposal would revise the approval specifications for noncombustible materials for merchant vessel construction to delete asbestos as an acceptable noncombustible material.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Analysis: Regulatory Evaluation 10/00/88

Agency Contact: Mr. K. Wahle, Department of Transportation, U.S. Coast Guard, 2100 Second St. SW, Washington, DC 20593-0001, 202 267-1444

RIN: 2115–AC32

1648. UNINSPECTED FISH-PROCESSING VESSELS (86-025)

Significance: Nonsignificant

Legal Authority: 46 USC 4502 (a)

CFR Citation: 46 CFR 27

Legal Deadline: None

Abstract: This rulemaking project would implement the provisions of the Commercial Fishing Industry Vessel Act which requires development of regulations for uninspected fish processing vessels that enter into service after December 31, 1987 and carry more than 16 persons who are primarily employed in the preparation of fish products.

Timetable:

Action	Date	FR Cite
ANPRM	07/09/87	52 FR 25890
Correction to ANPRM	08/10/87	52 FR 29556
ANPRM Comment Period End	09/08/87	52 FR 25890
NPRM	02/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Analysis: Regulatory Evaluation 02/00/89

Agency Contact: LCDR G. Powers, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second St. SW, Washington, DC 20593-0001, 202 267-1181

RIN: 2115–AC34

1649. CARGO LISTS AND TABLES UPDATE (CGD 86-100)

Significance: Nonsignificant

Legal Authority: 46 USC 3703; 49 USC 1804

CFR Citation: 46 CFR 1.46(b); 46 CFR 1.46(t); 46 CFR 1.46(u); 46 CFR 30; 46 CFR 150; 46 CFR 151; 46 CFR 153; 46 CFR 154

Legal Deadline: None

Abstract: The Coast Guard periodically issues rules listing additional cargoes which may be carried on tank vessels. Since this action is recurrent, the Coast Guard has established a continuing docket for this type of action. Notices for this rule are anticipated in Jan./Feb. of each year. Final rules will be completed prior to September 30 of each year.

Timetable:

Action	Date	FR Cite
Final Rule	06/04/87	52 FR 21036
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Former regulation title: Compatibility of Cargoes.

Agency Contact: Dr. M. Parnarouskis/Mr. Payne, Chemical Engineer, Department of Transportation, U.S. Coast Guard, 2100 Second St. SW, Washington, DC 20593-0001, 202 267-1577

RIN: 2115–AC35

1650. LOAD LINES (86-013)

Significance: Nonsignificant

Legal Authority: 46 USC 5115

CFR Citation: 46 CFR 41 to 48

Legal Deadline: None

Abstract: This proposal will revise 46 CFR Parts 42 and 44 through 46 and add Parts 41, 43, 47 and 48 (Subchapter E) to correct errors, replace previous omissions, incorporate new policies which have not been published and implement provisions of the new Load Line Law enacted on 21 Oct 86 and now in effect.

Timetable:

Action	Date	FR Cite
Notice	12/29/86	51 FR 46972
NPRM	03/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Analysis: Regulatory Evaluation 03/00/89

Agency Contact: Mr. R. Anderson, Naval Architect, Department of Transportation, U.S. Coast Guard, 2100 Second St. SW, Washington, DC 20593-0001, 202 267-2988

RIN: 2115–AC37

1651. NAVIGATION BRIDGE VISIBILITY (CGD 85-099)

Significance: Nonsignificant

Legal Authority: 46 USC 369; 46 USC 391a

CFR Citation: 33 CFR 164; 46 CFR 32; 46 CFR 72; 46 CFR 91; 46 CFR 92; 46 CFR 108; 46 CFR 157; 46 CFR 190

Legal Deadline: None

Abstract: Limited visibility from the navigation bridge of vessels has been identified as a factor in vessel casualties and near-misses. This action would establish standards for acceptable limits of visibility based on existing international guidelines. Because the primary focus is on new vessel design, costs are estimated to be minimal compared to potential benefits in casualties prevented.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 10/00/88

Agency Contact: LTJG E. Reynolds, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001, 202 267-0116

RIN: 2115–AC42

1652. FIRE EXTINGUISHERS (PORTABLE AND SEMI-PORTABLE) - REVISING APPROVAL SPECIFICATIONS AND UPDATING CARRIAGE REQUIREMENTS (85-072)

Significance: Nonsignificant

Legal Authority: 46 USC 3306(a)

CFR Citation: 46 CFR 162; 46 CFR 25; 46 CFR 34; 46 CFR 76; 46 CFR 95; 46 CFR 106; 46 CFR 168; 46 CFR 181; 46 CFR 193; 33 CFR 145; 33 CFR 149

Legal Deadline: None

Abstract: Action being considered would update approval specifications for portable and semiportable fire extinguishers to incorporate minimum acceptance standards, and minimum factory quality control and independent laboratory inspection levels; it would update extinguisher carriage and inspection requirements on vessels to reflect current fire extinguisher technology.

Timetable:

Action	Date	FR Cite
NPRM	02/00/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Analysis: Regulatory Evaluation 02/00/89

Agency Contact: Mr. Klaus Wahle, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second St., SW, Washington, DC 20593-0001, 202 267-1444

RIN: 2115–AC43

1653. SOLAS 74/83 LIFE JACKET APPROVAL REQUIREMENTS REVISION (85-202)

Significance: Nonsignificant

Legal Authority: 46 USC 3306(a)

CFR Citation: 46 CFR 160

Legal Deadline: None

Abstract: Would establish U.S. Coast Guard approval requirements for lifejackets meeting the 1983 Amendments to the 1974 Safety of Life at Sea Convention.

Timetable:

Action	Date	FR Cite
NPRM	07/00/89	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 07/00/89

Additional Information: This is the first in a series of projects, numbered 85-200 to 85-211, which have been split off from Coast Guard 84-069 which implemented the 1983 Amendments to SOLAS 1974. So many revisions were necessary that it was better to make several small and easily identifiable projects rather than a large and confusing one. Because of staffing assignments, the projects may not be completed in numerical order, and many cannot be given estimated completion dates.

Agency Contact: Mr. Samuel Weir, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second St., SW, Washington, DC 20593-0001, 202 267-1444

RIN: 2115–AC45

1654. SOLAS 74/83 LIFEBOAT AND RESCUE BOAT APPROVAL REQUIREMENTS (85-201)

Significance: Nonsignificant

Legal Authority: 46 USC 3306(a)

CFR Citation: 46 CFR 160

Legal Deadline: None

Abstract: Establish U.S. Coast Guard approval requirements for lifeboats and rescue boats meeting the 1983 Amendments to the 1974 Safety of Life at Sea Convention.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 10/00/88

Agency Contact: LCDR S. Deno, Department of Transportation, U.S. Coast Guard, 2100 Second St., SW, Washington, DC 20593-0001, 202 267-1444

RIN: 2115–AC47

1655. REVISION OF PYROTECHNIC DISTRESS SIGNAL APPROVAL REQUIREMENTS; SOLAS 74/83 (85-203)

Significance: Nonsignificant

Legal Authority: 46 USC 3306(a)

CFR Citation: 46 CFR 160

Legal Deadline: None

Abstract: Establish U.S. Coast Guard approval requirements for pyrotechnic distress signals meeting the 1983 Amendments to the 1974 Safety of Life at Sea Convention.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 10/00/88

Agency Contact: LCDR S. Deno, Department of Transportation, U.S. Coast Guard, 2100 Second St., SW, Washington, DC 20593-0001, 202 267-1444

RIN: 2115–AC48

1656. REVISION OF DISEMBARKATION LADDER APPROVAL REQUIREMENTS: SOLAS 74/83 (85-204)

Significance: Nonsignificant

Legal Authority: 46 USC 3306(a)

CFR Citation: 46 CFR 160

Legal Deadline: None

Abstract: Would establish U.S. Coast Guard approval requirements for disembarkation ladders meeting the 1983 Amendments to the Safety of Life at Sea Convention.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 10/00/88

Agency Contact: LCDR S. Deno, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second St., SW, Washington, DC 20593-0001, 202 267-1444

RIN: 2115–AC50

1657. REVISION TO INFLATABLE LIFERAFT APPROVAL: SOLAS 74/83 (85-205)

Significance: Nonsignificant

Legal Authority: 46 USC 3306(a)

CFR Citation: 46 CFR 160

Legal Deadline: None

Abstract: Establish U.S. Coast Guard approval requirement for inflatable liferafts meeting the 1983 Amendments to the 1974 Safety of Life at Sea Convention.

Timetable:

Action	Date	FR Cite
NPRM	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 01/00/89

Agency Contact: Mr. Milton Daniels, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second St., SW, Washington, DC 20593-0001, 202 267-1444

RIN: 2115–AC51

1658. REVISION OF LIFE JACKET LIGHT APPROVAL REQUIREMENTS: SOLAS 74/83 (85-211)

Significance: Nonsignificant

Legal Authority: 46 USC 3306(a)

CFR Citation: 46 CFR 161

Legal Deadline: None

Abstract: Establish U.S. Coast Guard approval requirement for life jacket lights meeting the 1983 Amendments to the 1974 Safety of Life at Sea Convention.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 10/00/88

Agency Contact: LCDR S. Deno, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second St., SW, Washington, DC 20593-0001, 202 267-1444

RIN: 2115–AC56

1658. ADVANCE NOTICE OF ARRIVAL (CGD 86-065)

Significance: Nonsignificant

Legal Authority: 33 USC 1223(a)(5)

CFR Citation: 33 CFR 160

Legal Deadline: None

Abstract: This revision to 33 CFR 160 Subpart C would require advance notices from all foreign commercial vessels of less than 1600 gross tons bound for parts or places in the Miami Captain of the Port zone. Currently 33 CFR 160.201(c)(1) excepts all vessels of less than 1600 gross tons from reporting advance notices of arrival. The revision would require vessels of more than 1600 gross tons to provide to the COTP crew makeup and charter information at least 24 hours prior to entering ports or places within the COTP zone.

Timetable:

Action	Date	FR Cite
NPRM	09/09/88	53 FR 35095
NPRM Comment Period End	10/24/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Analysis: Regulatory Evaluation 09/09/88 (53 FR 35095)

Agency Contact: Lt. J. McDowell, Office of Marine Safety, Security and Environmental Protection, Department of Transportation, U.S. Coast Guard, Commandant (G-MPS-3), 2100 Second Street, SW, Washington, DC 20593-0001, 202 267-0491

RIN: 2115–AC58

1660. TONNAGE MEASUREMENT OF VESSELS (87-016B)

Significance: Nonsignificant

Legal Authority: 46 USC 14102; 46 USC 14103

CFR Citation: 46 CFR 69

Legal Deadline: None

Abstract: This project would establish the International Convention on Tonnage Measurement of Ships, 1969, as the primary tonnage measurement system for measuring vessels of 79 feet and longer. The project will also extend simplified measurement to all vessels of less than 79 feet in length and eliminate all vessels of 79 feet in length and over from being measured under the simplified system.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	

Small Entities Affected: None

Government Levels Affected: Federal

Analysis: Regulatory Evaluation 11/00/88

Additional Information: Formerly entitled Measurement of Vessels.

Agency Contact: Mr. Dennis Lamont, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second St., SW, Washington, DC 20593, 202 267-2992

RIN: 2115–AC57

DOT—USCG — Proposed Rule Stage

1681. POSTING REQUIREMENTS ON INSPECTED VESSELS (#7-031)

Significance: Nonsignificant

Legal Authority: 46 USC 3306

CFR Citation: 46 CFR 31; 46 CFR 71; 46 CFR 91; 46 CFR 167; 46 CFR 176; 46 CFR 189

Legal Deadline: None

Abstract: Various laws, international agreements, and Coast Guard regulations require the posting of specific certificates, licenses, plans, operating instructions, and warnings onboard vessels. Some of these contain essential operational data which must be accessible at all times; others are primarily informational. This rulemaking project will seek to reduce posting requirements for nonessential operational data to reduce the burden on the public. Alternatives such as having items readily available rather than being posted are being considered.

Timetable:

Action	Date	FR Cite
ANPRM	08/24/87	52 FR 31786
ANPRM Comment Period End	11/24/87	52 FR 31786

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Additional Information: As a result of the ANPRM, a new project was created to remove regulations requiring merchant vessels to post Form 811. That project is Coast Guard Docket 87-031a (RIN 2115-AC91) and appears elsewhere in this agenda.

Agency Contact: LCDR W. C. Bennett, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593, 202 267-1181

RIN: 2115–AC88

1682. ◆ SMALL PASSENGER VESSEL MANNING AND PERSONNEL QUALIFICATIONS (85-060A)

Significance: Nonsignificant

Legal Authority: 46 USC 404; 46 USC 222; 46 USC 673

CFR Citation: 46 CFR 186; 46 CFR 187

Legal Deadline: None

Abstract: This proposal would require small passenger vessels to be manned by crew members who are trained specifically for this type of vessel and the service in which it is used.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Analysis: Regulatory Evaluation

Agency Contact: Mr. S. Connaughton, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second St. SW, Washington, DC 20593-0001, 202 267-0229

RIN: 2115–AC93

1683. ◆ LIFEBOAT, LIFERAFT AND RESCUE BOAT APPROVAL REQUIREMENTS - SOLAS 74/83 (85-201A)

Significance: Nonsignificant

Legal Authority: 46 USC 3306a

CFR Citation: 46 CFR 160; 46 CFR 161; 46 CFR 162; 46 CFR 164

Legal Deadline: None

Abstract: This project would revise approval requirements for position-indicating lights, coated cloth, foam buoyancy material and laminating resin used for survival craft and lifesaving equipment to meet the requirements of the international Safety of Life at Sea (SOLAS) convention.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: CDR W. Riley, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second St. SW, Washington, DC 20593, 202 267-1444

RIN: 2115–AC94

1684. ◆ FLOATING ELECTRIC WATERLIGHTS (85-208)

Significance: Nonsignificant

Legal Authority: 46 USC 3306a

CFR Citation: 46 CFR 161

Legal Deadline: None

Abstract: Would revise performance requirements of lifeboat search lights to meet the requirements of the 1983 Amendments to the Safety of Life at Sea (SOLAS) convention.

Timetable:

Action	Date	FR Cite
NPRM	06/00/89	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 06/00/89

Agency Contact: Mr. R. Crenwelge, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second St. SW, Washington, DC 20593-0001, 202 267-2206

RIN: 2115–AC95

1685. ◆ SUSPENSION OF BARREL FEES(88-050)

Significance: Nonsignificant

Legal Authority: 46 USC 1811

CFR Citation: 33 CFR 135

Legal Deadline: None

Abstract: The Offshore Oil Pollution Compensation Fund balance is now within the maintenance level range required by statute. This proposal would suspend the barrel fee which feeds the fund until the fund balance falls below the required level.

Timetable:

Action	Date	FR Cite
NPRM	10/03/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 10/03/88

Agency Contact: Mr. F. Martin, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001, 202 267-0120

RIN: 2115–AD01

1686. ◆ CARGO GEAR INSPECTION AND TESTING (87-089)

Significance: Nonsignificant

Legal Authority: 46 USC 170; 46 USC 363; 46 USC 367

CFR Citation: 46 CFR 31; 46 CFR 71; 46 CFR 91

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Legal Deadline: None

Abstract: This project would change the quadrennial cargo gear inspection and testing interval to five years. Improvements in material have been recognized worldwide and other nations have gone to a five-year interval.

Timetable:

Action	Date	FR Cite
NPRM	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 01/00/89

Agency Contact: LCDR S. Johnson, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second St., SW, Washington, DC 20593-0001, 202 267-2997

RIN: 2115–AD03

1687. ◆ INCORPORATION AND ADOPTION OF INDUSTRY STANDARDS (88-032)

Significance: Nonsignificant

Legal Authority: 33 USC 1321j; 46 USC 3306; 46 USC 3703

CFR Citation: 33 CFR 131

Legal Deadline: None

Abstract: This rulemaking would consist of a review of 33 CFR and 46 CFR and incorporate American Society of Testing and Materials (ASTM) standards or adopt the ASTM Code as appropriate in place of the regulations. The regulations for these items currently in Subchapter Q would be deleted.

Timetable:

Action	Date	FR Cite
NPRM	06/00/89	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 06/00/89

Agency Contact: Mr. F. Weidner, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second St., SW, Washington, DC 20593-0001, 202 267-2256

RIN: 2115–AD05

1688. ◆ PART 165—REGULATED NAVIGATION AREAS AND LIMITED-ACCESS AREAS

Significance: Nonsignificant

Legal Authority: 33 USC 1225; 33 USC 1231; 50 USC 191

CFR Citation: 33 CFR 165

Legal Deadline: None

Abstract: This proposal would eliminate the current Coast Guard requirement to record the identification of each towboat that moves a barge into, within, or out of a facility on the lower Mississippi River. The result of this proposal would be a reduction in the information collection burden imposed on the public.

Timetable:

Action	Date	FR Cite
NPRM	01/00/89	

Small Entities Affected: Businesses

Government Levels Affected: None

Analysis: Regulatory Evaluation 01/00/89

Agency Contact: LTJG E. Reynolds, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second St. SW, Washington, DC 20593-0001, 202 267-6606

RIN: 2115–AD07

DEPARTMENT OF TRANSPORTATION (DOT)

U.S. Coast Guard (USCG)

Final Rule Stage

1669. + HAZARDOUS MATERIALS POLLUTION PREVENTION: BULK LIQUIDS (88-034)

Significance: Regulatory Program

Legal Authority: 33 USC 1321

CFR Citation: 33 CFR 126

Legal Deadline: None

Abstract: This Project would apply the present oil pollution prevention regulations in 33 CFR Parts 154-156 to vessels and onshore and offshore facilities transferring hazardous substances. Although previously not categorized as significant, further analysis has determined this rulemaking to be significant because of safety and environmental considerations.

Timetable:

Action	Date	FR Cite
NPRM	06/13/88	53 FR 22116
NPRM Comment Period End	09/12/88	
Final Action	04/00/89	

Small Entities Affected: Businesses

Government Levels Affected: None

Analysis: Regulatory Evaluation 06/13/88 (53 FR 22116)

Additional Information: Former title: Hazardous Substances Pollution Prevention.

Agency Contact: Mr. K.J. Seigety, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second St. SW, Washington, DC 20593-0001, 202 267-0181

RIN: 2115–AC29

1670. + TANKERMAN REQUIREMENTS (CGD 78-116)

Significance: Agency Priority

Legal Authority: 46 USC 3703; 46 USC 7317; 46 USC 8703; 46 USC 9101; 46 USC 9108

CFR Citation: 33 CFR 155; 46 CFR 12; 46 CFR 13; 46 CFR 30; 46 CFR 31; 46 CFR 35; 46 CFR 70; 46 CFR 90; 46 CFR 98; 46 CFR 105; 46 CFR 151; 46 CFR 153; 46 CFR 157

Legal Deadline: None

Abstract: Rulemaking would redefine and establish more stringent qualifying criteria for individuals engaged in transporting and transferring various categories of oil and dangerous liquid cargoes. The Port and Tanker Safety Act of 1978 mandated the establishment of personnel qualification and manning standards for tank vessels. In addition, the International Convention on the

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Standards for Training, Certification, and Watchkeeping for Seafarers (STCW), 1978 has entered into effect and establishes international standards for tank vessel personnel qualifications. This project is significant because of its impact on the environment in a publicly sensitive area.

Timetable:

Action	Date	FR Cite
NPRM	12/18/80	45 FR 83268
NPRM Comment Period End	03/18/81	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Former title: Qualifications of the Person in Charge of Oil Transfer Operations: Tankerman Requirements (79-116). Public meetings were held during January and February of 1981.

Agency Contact: Mr. C. Heizer, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC [illegible], 202 267-0224

RIN: 2115–AA03

1671. + JOINT U.S.-CANADA VESSEL TRAFFIC MANAGEMENT REGULATIONS FOR THE PACIFIC REGION (79-131)

Significance: Agency Priority

Legal Authority: 33 USC 1221

CFR Citation: 33 CFR 161

Legal Deadline: None

Abstract: Would implement the provisions of an agreement for a cooperative vessel traffic management system for the Pacific region. This rulemaking is significant because of international considerations.

Timetable:

Action	Date	FR Cite
NPRM	08/18/83	48 FR 37433
NPRM Comment Period End	10/03/83	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Federal

Analysis: Regulatory Evaluation 08/18/83 (48 FR 37433)

Additional Information: All action on this proposal has been suspended pending legislative action by the Canadian Government.

Agency Contact: Mr. T. Falvey, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001, 202 267-6412

RIN: 2115–AA39

1672. + LICENSING OF MARITIME PERSONNEL (CGD 81 - 059)

Significance: Agency Priority

Legal Authority: 46 USC 3306; 46 USC 7101; 46 USC 7102; 46 USC 7103; 46 USC 7104; 46 USC 7105; 46 USC 7106; 46 USC 7107; 46 USC 7108; 46 USC 7009; 46 USC 7110; 46 USC 7111; 46 USC 7112; 46 USC 7113; 46 USC 7114; ...

CFR Citation: 46 CFR 10; 46 CFR 35; 46 CFR 157; 46 CFR 175; 46 CFR 185; 46 CFR 186; 46 CFR 187; 46 CFR 15; 46 CFR 26

Legal Deadline: None

Abstract: Amends the licensing regulations to simplify administration and improve readability to the public. Also provides a license structure for all mariners with which to advance in an orderly career pattern. Deletes many unnecessary and outdated licenses. This regulation has been made significant because of its far-reaching impact on all licensed officers of the merchant marine. The Coast Guard is reviewing the comments received and will issue an SNPRM.

Timetable:

Action	Date	FR Cite
ANPRM	10/29/81	46 FR 53624
NPRM	08/08/83	48 FR 35920
Comment Period Extended	11/10/83	48 FR 51650
NPRM Supplemental	10/24/85	50 FR 43316
Interim Final Rule	10/16/87	52 FR 38614
Final Action	10/03/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 08/08/83 (48 FR 35920)

Additional Information: ADDITIONAL LEGAL AUTHORITIES: 46 USC 8101; 46 USC 8105; 46 USC 8104; 46 USC 8301; 46 USC 8302; 46 USC 8303; 46 USC 8304; 46 USC 8502; 46 USC 7701; 46 USC 7702; 46 USC 7703; Comment period runs until 02/21/86. Public hearings held in Washington, D.C.; New York, New York; Seattle, Washington; San Francisco, California; and New Orleans, Louisiana.

Agency Contact: LCDR Jenkins, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593, 202 267-6224

RIN: 2115–AA54

1673. + OFFSHORE EVACUATION PROCEDURES (84-096(B))

Significance: Agency Priority

Legal Authority: 43 USC 1333(d); 43 USC 1348(c); 43 USC 1356

CFR Citation: 33 CFR 140; 33 CFR 146

Legal Deadline: Final, Statutory, September 1, 1987. Omnibus Budget Reconciliation Act of 1986 (PL 99-509)

Abstract: Would modify 33 CFR Subchapter N to require evacuation procedures for all Outer Continental Shelf (OCS) facilities on the U.S. OCS. This would apply to MODUs, both foreign and U.S.-flag; Fixed Platforms and Floating Facilities. Any designated standby vessel used as part of a plan would have to meet specific equipment requirements. This action is considered significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
ANPRM	03/07/85	50 FR 9290
ANPRM Comment Period End	09/03/85	50 FR 20445
NPRM	12/24/87	52 FR 48717
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: Federal

Analysis: Regulatory Evaluation 12/24/87 (52 FR 48717)

Additional Information: CGD 84-096(b) Offshore Evacuation Procedures for OCS facilities separated from CGD 84-096.

Agency Contact: LCDR A. Dupree, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second St., SW, Washington, DC 20593-0001, 202 267-2367

RIN: 2115–AC41

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1674. + PROGRAMS FOR CHEMICAL DRUG AND ALCOHOL TESTING OF COMMERCIAL VESSEL PERSONNEL (CGD 86-067)

Significance: Agency Priority

Legal Authority: 46 USC 2103; 46 USC 3306; 46 USC 7101; 46 USC 7503; 46 USC 7701; 46 USC 6101

CFR Citation: 46 CFR 5; 46 CFR 16; 46 CFR 4

Legal Deadline: None

Abstract: Because of the safety and health concerns associated with drug abuse by merchant marine personnel, as well as legal restrictions on drug use, the Coast Guard is proposing drug abatement programs which include periodic drug tests (urinalysis) as part of required physical examinations, preemployment testing and random sampling programs for all marine employees as well as post- accident and reasonable-cause testing. The post-accident and reasonable cause portions of the program will also involve testing for alcohol use. This rulemaking is considered significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	07/08/88	53 FR 25926
Notice of Public Hearings	07/26/88	53 FR 28024
NPRM Comment Period End	09/06/88	
Final Action	10/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Analysis: Regulatory Evaluation 07/08/88 (53 FR 25926)

Additional Information: This project now includes Coast Guard Docket 86-080 (RIN 2115- AC62)

Agency Contact: Mr. S. T. Connaughton, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001, 202 267-6229

RIN: 2115–AC45

1675. HOPPER DREDGE WORKING FREEBOARD - LOAD LINE AND STABILITY REQUIREMENTS (75-060)

Significance: Nonsignificant

Legal Authority: 43 USC 1333(d); 46 USC 3306; 46 USC 3703; 46 USC 5115

CFR Citation: 46 CFR 42; 46 CFR 44; 46 CFR 45; 46 CFR 174; 46 CFR 170

Legal Deadline: None

Abstract: Would permit self-propelled hopper dredge to load to a deeper draft (working freeboard). Only dredges desiring working freeboard must comply. Requirements for load line and stability are promulgated.

Timetable:

Action	Date	FR Cite
ANPRM	09/02/76	41 FR 32237
NPRM	12/10/79	44 FR 70791
SNPRM	01/24/80	45 FR 5760
SNPRM	12/14/87	52 FR 47422
SNPRM	02/22/88	53 FR 5200
Final Action	02/00/89	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 02/00/89

Agency Contact: Mr. W. Hayden, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001, 202 267-[illegible]

RIN: 2115–AA11

1676. DEFECT NOTIFICATION AND FIRST-PURCHASER INFORMATION (77-115)

Significance: Nonsignificant

Legal Authority: 46 USC 4310

CFR Citation: 33 CFR 179.01 to 179.19

Legal Deadline: None

Abstract: This rulemaking would require marine dealers to furnish boat and engine manufacturers with serial numbers of new boats and engines sold and the names and addresses of retail first purchasers of those products. Manufacturers would use the information to locate purchasers of boats and engines recalled for defects which create a substantial risk of personal injury to the public and for failures to comply with applicable regulations. Currently many manufacturers cannot obtain sufficient first-purchaser information and their attempts to notify during recalls are inadequate.

Timetable:

Action	Date	FR Cite
NPRM	12/29/80	45 FR 85475
SNPRM	05/29/87	52 FR 20115
SNPRM	12/16/87	52 FR 47590
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 12/16/87 (52 FR 47950)

Additional Information: Docket No. CGD 77-115.

Agency Contact: Mr. Colihan, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001, 202 267-[illegible]

RIN: 2115–AA16

1677. VESSEL PIPING SYSTEMS (77-140)

Significance: Nonsignificant

Legal Authority: 46 USC 3301; 46 USC 3305; 46 USC 3306

CFR Citation: 46 CFR 50; 46 CFR 56

Legal Deadline: None

Abstract: Would update Title 46, Subchapter F - Marine Engineering. Some facets of these regulations for shipboard piping systems have become obsolete as a result of technological developments and changes in cited codes and standards. SNPRM was issued to include additional clarifying language and to delete the manufacturers' affidavit system.

Timetable:

Action	Date	FR Cite
NPRM	01/09/85	50 FR 1073
NPRM Comment Period End	03/11/85	
Comment Period Extended	03/21/85	50 FR 11397
SNPRM	05/18/88	53 FR 17868
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 01/09/85 (50 FR 1073)

Additional Information: Docket No. CGD 77-140. Formerly entitled Miscellaneous Changes to 46 CFR 56.

Agency Contact: Mr. H. Hime, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW,

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Washington, DC 20593-0001, 202 267-2206

RIN: 2115–AA17

1678. HYBRID PERSONAL FLOTATION DEVICES; ESTABLISHMENT OF APPROVAL REQUIREMENTS (78-174)

Significance: Nonsignificant

Legal Authority: 46 USC 3306; 46 USC 3703; 46 USC 4104; 46 USC 4302

CFR Citation: 46 CFR 160

Legal Deadline: None

Abstract: Would establish performance standards for hybrid PFDs and procedures for granting product approval to these devices.

Timetable:

Action	Date	FR Cite
ANPRM	03/15/79	44 FR 15933
NPRM	05/29/85	50 FR 21862
NPRM Comment Period End	07/15/85	
Interim Final Rule	08/22/85	50 FR 33923
Final Action	04/00/89	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 08/22/85 (50 FR 33923)

Additional Information: A related project is listed in this agenda. That project is CGD 78-174b (RIN 2115-AC16), Carriage and Operational Requirements for Inflatable Life Jackets.

Agency Contact: Mr. S. Wehr, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001, 202 267-1444

RIN: 2115–AA29

1679. LAUNCHING DEVICES FOR LIFERAFTS (79-164)

Significance: Nonsignificant

Legal Authority: 46 USC 2104; 46 USC 3306

CFR Citation: 46 CFR 160; 46 CFR 163

Legal Deadline: None

Abstract: Would establish standards, procedures, and tests for approving equipment used to launch liferafts from vessels and offshore platforms.

Timetable:

Action	Date	FR Cite
NPRM	02/13/86	50 FR 5377
NPRM Comment Period End	05/13/86	
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 02/13/86 (51 FR 5377)

Additional Information: Docket No. CGD 79-166.

Agency Contact: LCDR Riley, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001, 202 267-1444

RIN: 2115–AA45

1680. GENERAL BRIDGE PERMIT REGULATIONS (81-057)

Significance: Nonsignificant

Legal Authority: 33 USC 401

CFR Citation: 33 CFR 115

Legal Deadline: None

Abstract: Would establish the general bridge-permit program. There is an initiative to transfer the Bridge Program to the Corps of Engineers. If the Corps agrees and Congress approves, the program will be transferred.

Timetable:

Action	Date	FR Cite
NPRM	09/23/82	47 FR 41988
NPRM Supplemental	04/24/86	51 FR 15503
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: Federal

Analysis: Regulatory Evaluation 04/24/86 (51 FR 15503)

Additional Information: This project is inactive pending transfer of the Bridge Program from Coast Guard to the Corps of Engineers.

Agency Contact: Mr. N. Mpras, Assistant Division Chief, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001, 202 267-0368

RIN: 2115–AA51

1681. ● POLLUTION RULES FOR SHIPS CARRYING HAZARDOUS LIQUIDS (81-101)

Significance: Nonsignificant

Legal Authority: 46 USC 3507; 46 USC 3703

CFR Citation: 46 CFR 30; 46 CFR 98; 46 CFR 151; 46 CFR 153

Legal Deadline: None

Abstract: The Coast Guard published rules implementing Annex II of MARPOL 73/78 on 03/12/87 (52 FR 7785). Experience under this rule has disclosed several areas that require clarification. This rule would clarify requirements of the Annex. An interim final rule was effective August 31, 1988; comment period closed September 15, 1988.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/01/88	53 FR 28970
Final Action	04/10/89	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 04/10/89

Agency Contact: Mr. R.M. Query, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second St. S.W., Washington, DC 20593-0001, 202 267-1217

RIN: 2115–AA73

1682. CASUALTY REPORTING REQUIREMENTS FOR RECREATIONAL BOATS (82-015)

Significance: Nonsignificant

Legal Authority: 46 USC 1486

CFR Citation: 33 CFR 173; 33 CFR 174

Legal Deadline: None

Abstract: Amend casualty and accident reporting requirements for operators of recreational boats involved in boating accidents, by raising the threshold for requiring an accident report from $200 to $400.

Timetable:

Action	Date	FR Cite
NPRM	04/25/88	53 FR 13417
Comment Period Extended to 07/25/88	06/10/88	53 FR 21856

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Action	Date	FR Cite
NPRM Comment Period End	06/24/88	53 FR 13417
Final Action	11/00/88	

Small Entities Affected: None

Government Levels Affected: State, Federal

Analysis: Regulatory Evaluation 04/25/88 (53 FR 13417)

Additional Information: Docket No. CGD 82-015.

Agency Contact: Mr. C. Perry, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001, 202 267-0979

RIN: 2115–AA82

1683. SAFETY/SECURITY ZONE REGULATIONS

Significance: Nonsignificant

Legal Authority: 33 USC 1233; 33 USC 1225

CFR Citation: 33 CFR 100; 33 CFR 165

Legal Deadline: None

Abstract: Nonsignificant regulations issued routinely and frequently as a part of an established body of technical requirements to keep those requirements operationally current. Total actions expected to continue through 10/00/89.

Timetable:

Action	Date	FR Cite
Total actions expected to end	10/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Ms. M. Hegy, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001, 202 267-0413

RIN: 2115–AA97

1684. ANCHORAGE AREA REGULATIONS

Significance: Nonsignificant

Legal Authority: 33 USC 471; 33 USC 2030; 33 USC 2035; 33 USC 2071

CFR Citation: 33 CFR 110

Legal Deadline: None

Abstract: Nonsignificant regulations issued routinely and frequently as a part of an established body of technical requirements to keep those requirements operationally current. Total actions expected to continue through 10/00/89.

Timetable:

Action	Date	FR Cite
Total actions expected to end	10/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Ms. M. Hegy, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001, 202 267-0413

RIN: 2115–AA09

1685. CARRIAGE AND USE OF LIQUEFIED OR NONLIQUEFIED FLAMMABLE GAS AS COOKING FUELS ON VESSELS CARRYING PASSENGERS FOR HIRE (83-013)

Significance: Nonsignificant

Legal Authority: 46 USC 2104; 46 USC 3306; 46 USC 4104; 46 USC 4105; 46 USC 4302

CFR Citation: 46 CFR 25; 46 CFR 58; 46 CFR 147; 46 CFR 184

Legal Deadline: None

Abstract: Proposed requirements for the use of liquefied flammable gas and compressed natural gas as cooking fuels on passenger vessels.

Timetable:

Action	Date	FR Cite
NPRM	03/22/84	49 FR 10685
SNPRM	04/18/86	50 FR 15522
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 03/22/84 (49 FR 10685)

Additional Information: Docket No. CGD 83-013.

Agency Contact: LCDR Vanhaverbeke, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001, 202 267-1181

RIN: 2115–AB35

1686. LICENSING OF PILOTS-MANNING OF VESSELS (84-057)

Significance: Nonsignificant

Legal Authority: 46 USC 2104; 46 USC 3306; 46 USC 7101; 46 USC 7109; 46 USC 7112; 46 USC 8101; 46 USC 8502

CFR Citation: 46 CFR 157; 46 CFR 10.07; 46 CFR 15.812; 46 CFR 10.700

Legal Deadline: None

Abstract: This proposal would: (1) delineate when certain inspected vessels are required to be under the direction and control of a pilot, (2) describe first class pilotage areas where local pilotage expertise is warranted, (3) allow licensed individuals to serve as pilot in areas not identified as first class pilotage areas on vessels that they are otherwise qualified to control, and (4) permit individuals with 5 years experience on towing vessel combinations of at least 5,000 gross tons while acting under the authority of a license as master, mate, or operator of uninspected towing vessels, with a minimum of 2 of the 5 years having been on towing vessels combinations of at least 10,000 gross tons, to obtain without a written examination, an endorsement as first class pilot, restricted to tug and barge combinations only, for those routes over which they have made the required number of round trips. Based on comments received, an SNPRM was issued.

Timetable:

Action	Date	FR Cite
NPRM	06/24/85	50 FR 26117
NPRM Comment Period End	12/23/85	
SNPRM Supplemental	06/06/88	53 FR 20654
Final Action	04/00/89	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 06/27/85 (50 FR 26117)

Additional Information: This proposal has been split from a previously published NPRM identified by the same title with Coast Guard Docket number 77-084 and RIN 2115-AA04.

Agency Contact: Mr. J. Hartke, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW,

DOT—USCG

Final Rule Stage

Washington, DC 20593-0001, 202 267-[illegible]

RIN: 2115–AB67

1687. TRAINING IN THE USE OF AUTOMATIC RADAR PLOTTING AIDS (ARPA) (CGD 85-069)

Significance: Nonsignificant

Legal Authority: 33 USC 1223; 46 USC 3703

CFR Citation: 33 CFR 164

Legal Deadline: None

Abstract: Current regulations require installation of ARPA on certain ships to improve vessel and waterway safety. Training in the use of this equipment is necessary to ensure its proper application and maximum benefit. A very small percentage of licensed personnel (those manning vessels of 10,000 GT or larger) would be required to complete an ARPA training course. The course is expected to take 5 days and cost about $600.00 per student.

Timetable:

Action	Date	FR Cite
ANPRM	10/24/85	50 FR 43318
ANPRM Comment Period End	12/23/85	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Mr. Robert Speers Jr., Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001, 202 267-[illegible]

RIN: 2115–AB99

1688. OIL POLLUTION PREVENTION, MARPOL ANNEX I (85-026)

Significance: Nonsignificant

Legal Authority: 33 USC 1321; 33 USC 1902; 33 USC 1903

CFR Citation: 33 CFR 155; 33 CFR 151

Legal Deadline: None

Abstract: This rulemaking would implement various provisions of the International Convention for the Prevention of Pollution from Ships 1973, as modified by the Protocol of 1978 Relating Thereto (MARPOL 73/78). These proposed changes are largely editorial.

Timetable:

Action	Date	FR Cite
NPRM	02/07/86	51 FR 4768
NPRM Comment Period End	03/24/86	
Final Action	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 11/00/88

Additional Information: Formerly entitled MARPOL Pollution Prevention Regulations.

Agency Contact: CDR David Pascoe, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001, 202 267-[illegible]

RIN: 2115–AC11

1689. CARRIAGE AND OPERATIONAL REQUIREMENTS FOR INFLATABLE LIFE JACKETS (78-174B)

Significance: Nonsignificant

Legal Authority: 46 USC 3306; 46 USC 3703; 46 USC 4104; 46 USC 4302

CFR Citation: 46 CFR 25; 46 CFR 26; 46 CFR 30; 46 CFR 33; 46 CFR 35; 46 CFR 70; 46 CFR 75; 46 CFR 78; 46 CFR 90; 46 CFR 94; 46 CFR 97; 46 CFR 108; 46 CFR 109; 46 CFR 160; 46 CFR 167; ...

Legal Deadline: None

Abstract: Would establish approval and operating requirements for inflatable life jackets. Their use would be optional.

Timetable:

Action	Date	FR Cite
NPRM	05/29/85	50 FR 21878
NPRM Comment Period End	07/15/85	
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 05/29/85 (50 FR 21878)

Additional Information: This project, and a companion, Recreational Hybrid PFD's (78-174a), split from the rule titled Hybrid PFD's; Establishment of Approval Requirements (78-174) (RIN: 2115-AA29),which was published as an interim final rule (50 FR 33923).

Agency Contact: Mr. Wehr, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001, 202 267-[illegible]

RIN: 2115–AC14

1690. INTERVALS FOR INTERNAL EXAMINATION AND HYDROSTATIC TESTING OF PRESSURE VESSEL TYPE CARGO TANKS (85-061)

Significance: Nonsignificant

Legal Authority: 46 USC 3703

CFR Citation: 46 CFR 38; 46 CFR 151; 46 CFR 54; 46 CFR 56

Legal Deadline: None

Abstract: The Coast Guard is proposing to amend the regulations that govern internal inspection and hydrostatic test intervals for pressure vessel cargo tanks on barges that transport liquefied gaseous cargoes and grade A flammable liquids.

Timetable:

Action	Date	FR Cite
ANPRM	12/03/85	50 FR 49536
ANPRM Comment Period End	03/03/86	
NPRM	09/08/87	52 FR 33841
Comment Period Extended to 03/07/88	12/01/87	52 FR 45665
NPRM Comment Period End	03/07/88	52 FR 45665
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 09/08/87 (52 FR 33841)

Agency Contact: LCDR Powers, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001, 202 267-1181

RIN: 2115–AC18

1691. INCORPORATIONS BY REFERENCE, VOLUNTARY INDUSTRY STANDARDS (CGD 87-046)

Significance: Nonsignificant

Legal Authority: 46 USC 4302; 49 CFR 1.46

CFR Citation: 33 CFR 183.5; 33 CFR 183.430; 33 CFR 183.435; 33 CFR 183.505; 33 CFR 183.510; 33 CFR 183.610

Legal Deadline: None

DOT—USCG

Final Rule Stage

Abstract: Rule amends 33 CFR 183, Subparts I, J and K, adopting the latest versions of voluntary industry standards by incorporation by reference. These changes do not involve substantive changes and are being published as as a final rule (editorial change).

Timetable:

Action	Date	FR Cite
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 12/00/88

Agency Contact: Mr. Alston Colihan, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001, 202 267-[illegible]

RIN: 2115–AC72

1692. ELECTRICAL SYSTEM STANDARD (CGD 87-091)

Significance: Nonsignificant

Legal Authority: 46 USC 4302; 49 CFR 1.46

CFR Citation: 33 CFR 183

Legal Deadline: None

Abstract: Rule proposes to amend current regulations on electrical systems for new boats by incorporating Underwriters Laboratories (UL) Standard 1426 by reference to replace UL Standard 83 in Subpart I of Part 83. The proposed rule would also delete a general reference to acceptable wire types in circuits of 50 volts or more. The intended effect is to recognize one of the most widely used wire types, UL boat cable, and to delete a very general reference that is not considered useful.

Timetable:

Action	Date	FR Cite
NPRM	11/23/87	52 FR 44918
NPRM Comment Period End	02/22/88	52 FR 44918
Final Action	12/00/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Analysis: Regulatory Evaluation 12/00/88

Additional Information: This project now incorporates the provisions of Coast Guard Docket 87-046 (RIN 2115-AC72). The incorporated project will no longer appear separately in the agenda.

Agency Contact: Mr. Alston Colihan, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001, 202 267-[illegible]

RIN: 2115–AC73

1693. PORT ACCESS ROUTES; APPROACH TO MOBILE, ALABAMA (CGD 88-034)

Significance: Nonsignificant

Legal Authority: 33 USC 1223

CFR Citation: 33 CFR 110

Legal Deadline: None

Abstract: This proposal would modify the fairway in the approach to Mobile, Alabama.

Timetable:

Action	Date	FR Cite
NPRM	07/01/88	53 FR 24959
NPRM Comment Period End	08/01/88	53 FR 24959
Final Action	04/00/89	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Analysis: Regulatory Evaluation 07/01/88 (53 FR 24959)

Agency Contact: Ms. M. Hegy, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 2nd St., SW, Washington, DC 20593, 202 267-0415

RIN: 2115–AC81

1694. REGATTAS AND MARINE PARADES (CGD 87-087)

Significance: Nonsignificant

Legal Authority: 33 USC 1233

CFR Citation: 33 CFR 100.15

Legal Deadline: None

Abstract: This proposal would amend current regatta and marine parade regulations to increase the lead time requirement for submitting regatta permit applications. The rulemaking will allow the Coast Guard adequate time to review regatta permit applications, conduct appropriate coordination, and provide necessary public notice relating to regattas and marine events.

Timetable:

Action	Date	FR Cite
NPRM	02/04/88	53 FR 3221
NPRM Comment Period End	04/04/88	53 FR 3221
Final Action	10/00/88	

Small Entities Affected: Organizations

Government Levels Affected: Local, State, Federal

Analysis: Regulatory Evaluation 02/04/88 (53 FR 3221)

Agency Contact: Mr. Carlton Perry, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001, 202 267-[illegible]

RIN: 2115–AC34

1695. ALTERNATIVE PROVISIONS FOR REINSPECTIONS OF OFFSHORE SUPPLY VESSELS IN FOREIGN PORTS (CGD 82-094A)

Significance: Nonsignificant

Legal Authority: 46 USC 3306; 33 USC 1321(j)(1)

CFR Citation: 46 CFR 91

Legal Deadline: None

Abstract: The Coast Guard is proposing to amend the regulations concerning the reinspection of offshore supply vessels (OSVs) in foreign ports. Currently OSVs holding two year certificates of inspection are reinspected between the 10th and 14th month of the certificate's period. In recent years, more OSVs have been based overseas in remote locations. Vessel owners must reimburse the Coast Guard for inspector travel and per diem costs in connection with foreign inspections. This action would propose an alternative to the traditional Coast Guard mid-period reinspection. The benefits would be flexibility and financial savings to the OSV industry and more effective use of Coast Guard resources.

Timetable:

Action	Date	FR Cite
NPRM	05/17/88	53 FR 17477
NPRM Comment Period End	08/15/88	
Final Action	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

DOT—USCG

Final Rule Stage

Analysis: Regulatory Evaluation 05/17/88 (53 FR 17477)

Agency Contact: LCDR Bennett, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001, 202 267-1181

RIN: 2115–AC26

1695. DELEGATION OF AUTHORITY TO AREA COMMANDERS WHEN FUNCTIONING AS MARITIME DEFENSE ZONE COMMANDERS (CGD 87-045)

Significance: Nonsignificant

Legal Authority: 50 USC 191; 33 USC 1231

CFR Citation: 33 CFR 6

Legal Deadline: None

Abstract: Following the 1986 reorganization of the Coast Guard, Area Commanders do not have authority to establish security zones, control vessels, or perform other necessary actions. This rule would delegate that authority to the Area Commanders. Since this proposal deals with agency procedure, it will be issued as a rule with no notice of proposed rulemaking.

Timetable:

Action	Date	FR Cite
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Cdr Stone, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second St. SW, Washington, DC 20593-0001, 202 267-0499

RIN: 2115–AC88

1697. ● ANCHORAGE REGULATIONS (86-079)

Significance: Nonsignificant

Legal Authority: 33 USC 471

CFR Citation: 33 CFR 165; 33 CFR 110

Legal Deadline: None

Abstract: This proposal would update the anchorage regulations by removing obsolete regulations, by making editorial changes, and by removing non-regulatory language and information from the regulatory text.

Timetable:

Action	Date	FR Cite
NPRM	03/11/88	53 FR 7949
NPRM Comment Period End	05/11/88	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 03/11/88 (53 FR 7949)

Agency Contact: Ms. M. Heggy, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second St., SW, Washington, DC 20593-0001, 202 267-0415

RIN: 2115–AC96

1698. ● AIDS TO NAVIGATION SYSTEM, REMOVAL OF REFERENCES (88-019)

Significance: Nonsignificant

Legal Authority: 14 USC 85; 33 USC 1233; 49 USC 1333(d)

CFR Citation: 33 CFR 62

Legal Deadline: None

Abstract: This project would remove parenthetical references now in the regulations to an old color scheme which is no longer used.

Timetable:

Action	Date	FR Cite
Final Action	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 01/00/89

Agency Contact: LTJG Wulfkehle, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second St. SW, Washington, DC 20593-0001, 202 267-1973

RIN: 2115–AC97

1699. ● DOCUMENTATION OF VESSELS - CODIFICATION OF LAW (88-030)

Significance: Nonsignificant

Legal Authority: PL 100-239

CFR Citation: 46 CFR 67

Legal Deadline: None

Abstract: The Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987 was recently enacted. The act prohibits United States-built fishing vessels from being extensively rebuilt overseas. This project would implement the provisions of the Act.

Timetable:

Action	Date	FR Cite
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 10/00/88

Agency Contact: LCDR Oxley, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second St. SW, Washington, DC 20593-0001, 202 267-1492

RIN: 2115–AC98

1700. ● DOCUMENTATION OF VESSELS - CONTROLLING INTEREST (88-031)

Significance: Nonsignificant

Legal Authority: PL 100-239

CFR Citation: 46 CFR 67

Legal Deadline: None

Abstract: The Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987 requires that for any United States-built vessel to be eligible for a fishery license the controlling interest in any corporation which owns the vessel must be owned by individuals who are citizens of the United States. This project would implement the provisions of the Act.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/00/89	

Small Entities Affected: Businesses

Government Levels Affected: None

Analysis: Regulatory Evaluation 01/00/89

Agency Contact: LCDR Oxley, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second St., SW, Washington, DC 20593-0001, 202 267-1492

RIN: 2115–AC99

1701. ● CIVIL APPEALS PROCEDURES (88-033)

Significance: Nonsignificant

DOT—USCG

Final Rule Stage

Legal Authority: 5 USC 552; 14 USC 633

CFR Citation: 46 CFR 1

Legal Deadline: None

Abstract: In order to reduce repetitive sections and improve clarity, this project would add an "Appeals" section in Part 1 of Chapter I and delete other civil appeals sections.

Timetable:

Action	Date	FR Cite
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 10/00/88

Agency Contact: Ms. Anderson, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second St., SW, Washington, DC 20593-0001], 202 267-1217

RIN: 2115–AD00

DEPARTMENT OF TRANSPORTATION (DOT)

U.S. Coast Guard (USCG)

Completed Actions

1702. + INTERVALS FOR DRYDOCKING AND TAILSHAFT EXAMINATION ON INSPECTED VESSELS (84-024)

Significance: Regulatory Program

Legal Authority: 46 USC 3306

CFR Citation: 46 CFR 31; 46 CFR 61; 46 CFR 71; 46 CFR 91; 46 CFR 167; 46 CFR 169; 46 CFR 189

Legal Deadline: None

Abstract: The Coast Guard has amended the intervals between drydocking and tailshaft examination by extending them in most cases for certain classes of vessels. These changes will decrease the cost incurred by the marine industry in meeting these examination requirements and harmonize the intervals with those specified by various classification societies and those under consideration internationally.

Timetable:

Action	Date	FR Cite
ANPRM	05/04/84	49 FR 19050
ANPRM Comment Period End	08/01/84	
NPRM	05/30/86	51 FR 19720
Correction to NPRM	06/09/86	51 FR 20847
NPRM Comment Period End	09/30/86	51 FR 29116
Interim Final Rule	10/23/87	52 FR 39639
Final Action	08/24/88	53 FR 32225
Correction to Final Action	09/08/88	53 FR 34872
Final Action Effective	09/23/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 10/23/87 (52 FR 39639)

Agency Contact: LCDR Powers, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001, 202 267-1181

RIN: 2115–AD38

1703. + MANDATORY ALCOHOL AND DRUG TESTING FOLLOWING SERIOUS MARINE INCIDENTS INVOLVING COMMERCIAL VESSELS (CGD 86-080)

Significance: Regulatory Program

Legal Authority: 33 USC 1231; 43 USC 1331; 46 USC 6101; 46 USC 6103

CFR Citation: 46 CFR 4

Legal Deadline: None

Abstract: This action involves regulations which would: 1) require the owner, charterer, managing operator, agent, master, or person in charge of a commercial vessel (designated the "marine employer") to obtain blood, urine, and breath samples as appropriate from persons directly involved in certain serious marine incidents, within prescribed time limits; 2) define the serious marine incident criteria for which this requirement would be applicable; 3) require the marine employer to ship blood and urine samples to a laboratory designated by the Coast Guard for appropriate chemical analysis; and, 4) establish procedures regarding accountability for and processing of blood and urine samples from the time of sampling to the time of receipt of samples at the laboratory.

Timetable:

Action	Date	FR Cite
Consolidated into Another Project	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: This project was combined with Coast Guard docket 86-067 (RIN 2115-AC45) and will no longer be carried separately in the agenda.

Agency Contact: CDR David H. Blomberg, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001, 202 267-2215

RIN: 2115–AC82

1704. + SAFETY RULES FOR VESSELS ENGAGED IN CHEMICAL WASTE INCINERATION AT SEA (84-025)

Significance: Agency Priority

Legal Authority: 46 USC 3703

CFR Citation: 46 CFR 150

Legal Deadline: None

Abstract: Establishes safety rules for the design of vessels engaged in the incineration of chemical wastes at sea. This regulation is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	08/25/86	51 FR 30241
NPRM Comment Period End	10/24/86	
Final Action	05/04/88	53 FR 15826
Final Action Effective	06/03/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Analysis: Regulatory Evaluation 05/04/88 (53 FR 15826)

Agency Contact: CDR R. Tanner, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW,

DOT—USCG

Completed Actions

Washington, DC 20593-0001, 202 267-1217

RIN: 2115–AB60

1705. VITAL SYSTEM AUTOMATION (CGD 81-030)

Significance: Nonsignificant

Legal Authority: 46 USC 3306; 46 USC 3103

CFR Citation: 46 CFR 52; 46 CFR 56; 46 CFR 58; 46 CFR 61; 46 CFR 62; 46 CFR 110; 46 CFR 111; 46 CFR 113

Legal Deadline: None

Abstract: Final rule includes provisions for the safe and reliable design and construction of vital system automation on new and modified U.S.-flag passenger vessels and U.S.-flag vessels regulated under 46 CFR Subchapters D, I, and U of 500 gross tons and over. It will also include the technical criteria for the evaluation of safe manning levels on automated vessels. Would incorporate the results of casualty analysis, the amendment to the International Convention for the Safety of Life at Sea, 1974 (SOLAS '74), and longstanding Coast Guard guidance on automation found in navigation and vessel inspection circulars NVIC 1-69 and NVIC 6-84.

Timetable:

Action	Date	FR Cite
NPRM	09/23/85	50 FR 38608
NPRM Comment Period End	02/21/86	
Final Action	05/18/88	53 FR 17820
Correction to Final Rule	06/28/88	53 FR 24269
Final Action Effective	08/16/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 05/18/88 (53 FR 17820)

Additional Information: Docket No. CGD 81-030.

Agency Contact: LCDR Randall, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593, 202 267-2286

RIN: 2115–AA30

1706. HANDHELD FLASHLIGHTS (82-043)

Significance: Nonsignificant

Legal Authority: 46 USC 3306; 46 USC 3703

CFR Citation: 46 CFR 33; 46 CFR 35; 46 CFR 75; 46 CFR 77; 46 CFR 94; 46 CFR 96; 46 CFR 108; 46 CFR 154; 46 CFR 160; 46 CFR 161; 46 CFR 192; 46 CFR 195

Legal Deadline: None

Abstract: Deletes 46 CFR 161.008 and incorporates by reference an industry standard in the applicable vessel subparts.

Timetable:

Action	Date	FR Cite
NPRM	09/25/87	52 FR 36062
NPRM Comment Period End	11/09/87	52 FR 36062
Final Action	05/18/88	53 FR 17702
Final Action Effective	08/16/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 05/18/88 (53 FR 17702)

Agency Contact: Mr. T. Nolan, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593, 202 267-2206

RIN: 2115–AA91

1707. DOCUMENTATION OF VESSELS; CONTROLLING INTEREST (82-105)

Significance: Nonsignificant

Legal Authority: 46 USC 12121; 49 USC 108

CFR Citation: 46 CFR 67

Legal Deadline: None

Abstract: Defines the term "controlling interests" for the purpose of documenting vessels owned by partnerships.

Timetable:

Action	Date	FR Cite
ANPRM	11/12/82	47 FR 51170
NPRM	07/16/84	49 FR 28744
NPRM Comment Period End	09/01/84	49 FR 28744
Comment period extended to 10/15/84	09/13/84	49 FR 35967
Final Action	05/17/88	53 FR 17467
Final Action Effective	08/16/88	

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: None

Analysis: Regulatory Evaluation 05/17/88 (53 FR 17467)

Additional Information: Docket No. CGD 82-105.

Agency Contact: Mr. T. L. Willis, Merchant Vessel Inspection and Documentation Division, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001, 202 267-1492

RIN: 2115–AB27

1708. HAZARDOUS MATERIALS USED AS SHIP'S STORES ONBOARD VESSELS (84-044)

Significance: Nonsignificant

Legal Authority: 46 USC 3306

CFR Citation: 46 CFR 2; 46 CFR 31; 46 CFR 34; 46 CFR 58; 46 CFR 71; 46 CFR 76; 46 CFR 91; 46 CFR 107; 46 CFR 108; 46 CFR 109; 46 CFR 147; 46 CFR 167; 46 CFR 176; 46 CFR 181; 46 CFR 189; ...

Legal Deadline: None

Abstract: Final action reduces burdens on shippers and manufacturers by deleting the requirement for separate Coast Guard classification of Ship's Stores and adopting the classification and identification provisions found in 49 CFR Subchapter C which are already required for transportation of hazardous materials. It also eliminated requirements for materials no longer in use and deleted Table S.

Timetable:

Action	Date	FR Cite
NPRM	07/07/87	52 FR 25409
Correction to NPRM	07/10/87	52 FR 26121
NPRM Comment Period End	10/05/87	52 FR 25409
Final Action	03/10/88	53 FR 7745
Final Action Effective	04/11/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 03/10/88 (53 FR 7745)

Agency Contact: Ms. D. Anderson, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001, 202 267-1217

RIN: 2115–AB85

DOT—USCG

Completed Actions

1709. OIL-WATER INTERFACE DETECTORS (CGD 84-052)

Significance: Nonsignificant

Legal Authority: 46 USC 3306; 46 USC 3703

CFR Citation: 46 CFR 162

Legal Deadline: None

Abstract: This project would propose a new specification for approval of oil-water interface detectors presently required by Annex 1 of MARPOL 73/78 (Marine Pollution Prevention).

Timetable:

Action	Date	FR Cite
Combined with another project	07/01/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: This project was combined with Coast Guard docket 87-057 (RIN 2115-AC85) and will no longer be carried separately in the Agenda.

Agency Contact: Ms. L. Martinez, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001, 202 267-1444

RIN: 2115–AB66

1710. SELF-INSPECTION OF FIXED OCS FACILITIES (CGD 84-098(A))

Significance: Nonsignificant

Legal Authority: 43 USC 1333(d)(1); 43 USC 1348(c); 43 USC 1356

CFR Citation: 33 CFR 140; 33 CFR 143

Legal Deadline: None

Abstract: Would modify 33 CFR Subchapter N by requiring owners/operators of fixed Outer Continental Shelf (OCS) facilities to conduct annual inspections for compliance with Coast Guard regulations and report the results of the self-inspection to the Coast on a Coast Guard-provided form. This proposal minimizes cost to the industry and, by allowing available Coast Guard resources to be concentrated on program oversight and on those operations with poor safety records, would improve safety on the OCS.

Timetable:

Action	Date	FR Cite
ANPRM	03/07/85	50 FR 9290
ANPRM Comment Period End	09/03/85	50 FR 20445
NPRM	07/07/87	52 FR 25392
NPRM Comment Period End	09/21/87	52 FR 25392
Final Action	05/26/88	53 FR 18977
Final Action Effective	06/27/88	

Small Entities Affected: None

Government Levels Affected: Federal

Analysis: Draft Regulatory Evaluation 05/26/88 (53 FR 18977)

Additional Information: CGD 84-098(a) Self-Inspection of Fixed OCS Facilities separated from CGD 84-098 on 28 Mar. 1988.

Agency Contact: LCDR A. Dupree, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second St., SW, Washington, DC 20593-0001, 202 267-2307

RIN: 2115–AC40

1711. EMERGENCY POSITION INDICATING RADIO BEACONS FOR UNINSPECTED FISHING, FISH PROCESSING, AND FISH TENDING VESSELS (87-010)

Significance: Nonsignificant

Legal Authority: 46 USC 4102 as amended by Coast Guard Authorization Act of 1986

CFR Citation: 46 CFR 25; 46 CFR 28

Legal Deadline: None

Abstract: The Coast Guard Authorization Act of 1986 amended 46 USC 4102 to require uninspected fishing, fish processing, and fish tender vessels operating on the high seas to carry "the number and type of Emergency Position Indicating Radio Beacons (EPIRBS) prescribed by regulation." In implementing the law, this regulation will ensure rapid, effective search and rescue during emergency situations.

Timetable:

Action	Date	FR Cite
NPRM	09/03/87	52 FR 33448
NPRM Comment Period End	11/19/87	52 FR 39548
Final Action	06/17/88	53 FR 31004
Final Action Effective	10/03/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Draft Regulatory Evaluation 05/14/87

Agency Contact: LCDR W. M. Riley, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second St., SW, Washington, DC 20593-0001, 202 267-1444

RIN: 2115–AC39

1712. DELEGATION OF AUTHORITY TO MEASURE VESSELS (87-015A)

Significance: Nonsignificant

Legal Authority: 46 USC 14103

CFR Citation: 46 CFR 69

Legal Deadline: None

Abstract: This final rule provides standards to enable maritime-related organizations to participate with the American Bureau of Shipping in measuring U.S. vessels.

Timetable:

Action	Date	FR Cite
NPRM	12/03/87	52 FR 46103
NPRM Comment Period End	02/02/88	52 FR 46103
Final Action	06/06/88	53 FR 20619
Final Action Effective	06/06/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 06/06/88 (53 FR 20619)

Agency Contact: Mr. Joseph T. Lewis, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second St., SW, Washington, DC 20593, 202 267-2982

RIN: 2115–AC70

1713. ASSISTANCE TOWING LICENSES (CGD 87-017)

Significance: Nonsignificant

Legal Authority: 46 USC 8904; 46 USC 7101; 49 CFR 1.46

CFR Citation: 46 CFR 10; 46 CFR 157; 46 CFR 187

Legal Deadline: Final, Statutory, September 15, 1988. Amendment to 46 USC 8904 requiring assistance towing licenses becomes effective 1 January 1988

BEST COPY AVAILABLE

DOT—USCG — Completed Actions

Abstract: Rule proposes to amend the regulations for the licensing of maritime personnel to include specific licensing and manning requirements for all vessels, regardless of size, which tow a disabled vessel for consideration. This proposal is made in response to a statutory change requiring such licenses. This action is intended to provide assurance to all involved parties that all persons who provide assistance towing services have met minimum established standards for knowledge and experience.

Timetable:

Action	Date	FR Cite
NPRM	08/20/87	52 FR 31429
NPRM Comment Period End	10/19/87	52 FR 31429
Final Action	05/24/88	53 FR 18559
Final Action Effective	09/15/88	53 FR 18559

Small Entities Affected: None

Government Levels Affected: None

Public Compliance Cost: Initial Cost: $18,750; Yearly Recurring Cost: $0; Base Year for Dollar Estimates: 1987

Analysis: Regulatory Evaluation 08/20/87 (52 FR 31429)

Agency Contact: LCDR Gary Kaminski, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second St., S.W., Washington, DC 20593-0001, 202 267-6318

RIN: 2115-AC82

1714. ◆ ANCHOR REQUIREMENTS FOR CERTAIN VESSELS (87-013)

Significance: Nonsignificant

Legal Authority: 46 USC 3306

CFR Citation: 46 CFR 77; 46 CFR 96; 46 CFR 196

Legal Deadline: None

Abstract: Final rule incorporated into 46 CFR standards for anchors and chains which are used on ferries, supply vessels, and tugs.

Timetable:

Action	Date	FR Cite
Final Action	08/06/88	53 FR 29823
Final Action Effective	07/06/88	53 FR 29823

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 08/06/88 (53 FR 29823)

Agency Contact: A. Penn, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second St., SW, Washington, DC 20593-0001, 202 267-2997

RIN: 2115-AC90

1715. ◆ POSTING REQUIREMENT FOR PLACARD OF LIFESAVING SIGNALS AND BREECHES BUOY INSTRUCTIONS, FORM CG-811 (CGD 87-031A)

Significance: Nonsignificant

Legal Authority: 46 USC 3306; 46 USC 3307

CFR Citation: 46 CFR 35; 46 CFR 78; 46 CFR 97; 46 CFR 108; 46 CFR 167; 46 CFR 199

Legal Deadline: None

Abstract: This rule removes the requirement that Form CG-811, "Lifesaving Signals, Helicopter Recovery Procedures, and Breeches Buoy Instructions" be posted in various locations throughout certain vessels and requires only that it be readily available to the deck officer of the watch. This action reduces the burden on the public of posting and maintaining several copies of the form.

Timetable:

Action	Date	FR Cite
ANPRM	08/24/87	52 FR 31786
ANPRM Comment Period End	11/23/87	
Final Action	07/22/88	53 FR 27668
Final Action Effective	07/22/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 07/22/88 (53 FR 27668)

Additional Information: In August of 1987 (52 FR 31786) the Coast Guard published an ANPRM soliciting comments on which posting requirements are unduly burdensome or duplicative. That solicitation preceded several suggestions for regulations changes. This rule implements one of the suggestions.

Agency Contact: LCDR G. Powers, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second St. SW., Washington, DC 20593-0001, 202 267-1181

RIN: 2115-AC01

1716. ◆ CONTROL OF RESIDUES AND MIXTURES CONTAINING OIL OR NOXIOUS LIQUID SUBSTANCES (CGD 85-010)

Significance: Nonsignificant

Legal Authority: 33 USC 1321; 33 USC 1902; 33 USC 1903

CFR Citation: 33 CFR 151; 33 CFR 156

Legal Deadline: None

Abstract: This rule amends the pollution regulations by reducing the amount of residues and mixtures allowed to remain in ships' cargo tanks, limiting the amount of noxious liquid substances discharged into the sea and ensuring that ships experience no undue delays while waiting to discharge noxious liquid substances to a reception facility.

Timetable:

Action	Date	FR Cite
Final Action	03/12/87	52 FR 7744
Final Action Effective	04/11/87	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 03/12/87 (52 FR 7744)

Agency Contact: LCDR J. Whitehead, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second Street, S. W., Washington, DC 20593-0001, 202 267-0494

RIN: 2115-AC32

DEPARTMENT OF TRANSPORTATION (DOT)
Federal Aviation Administration (FAA) — Prerule Stage

1717. ◆ FLIGHT ATTENDANT FLIGHT-TIME LIMITATIONS AND REST REQUIREMENTS

Significance: Agency Priority

Legal Authority: 49 USC 1354(a); 49 USC 1355; 49 USC 1356; 49 USC 1357; 49 USC 1401; 49 USC 1421 to 1431; 49 USC 1485; 49 USC 1502; 49 USC 106(g); PL 97-449

CFR Citation: 14 CFR 121; 14 CFR 135

Legal Deadline: None

Abstract: The Association of Flight Attendants and the Joint Council of Flight Attendant Unions have petitioned the FAA to amend Part 121 and 135 to establish maximum duty time limits and minimum hours of rest for flight attendants. Summaries of the petitions were published (50 FR 6185 and 50 FR 25252) and requested comments to assist the FAA in determining what, if any, regulatory proposals should be developed. This rulemaking is considered significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Larry Bedore, Department of Transportation, Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591, 202 267-8096

RIN: 2120-AB07

1718. REVIEW: PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

Significance: Nonsignificant

Legal Authority: 49 USC 1354(a) Federal Aviation Act of 1958, Sec. 313(a); 49 USC 1421 Federal Aviation Act of 1958, Sec. 601; 49 USC 1423 Federal Aviation Act of 1958, Sec. 603; 49 USC 1424 Federal Aviation Act of 1958, Sec. 604

CFR Citation: 14 CFR 21

Legal Deadline: None

Abstract: This part prescribes procedural requirements for the issuance of type certificates and changes to those certificates; the issuance of production certificates; the issuance of airworthiness certificates; and the issuance of export airworthiness approvals. In addition it prescribes rules governing the holders of these certificates and procedural requirements for the approval of certain materials, parts, processes, and appliances. The review will also evaluate the impact on small entities in accordance with the Regulatory Flexibility Act.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: Undetermined

Government Levels Affected: None

Analysis: Regulatory Flexibility Analysis

Agency Contact: M. C. Beard, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-8372

RIN: 2120-AE00

1719. REVIEW: PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

Significance: Nonsignificant

Legal Authority: 49 USC 1354(a) Federal Aviation Act of 1958, Sec. 313(a); 49 USC 1401 Federal Aviation Act of 1958, Sec. 501; 49 USC 1421 to 1430 Federal Aviation Act of 1958, Secs. 601-610; 49 USC 1502 Federal Aviation Act of 1958, Sec. 1102

CFR Citation: 14 CFR 121

Legal Deadline: None

Abstract: Review of rules governing the certification and operations of air carriers, supplemental air carriers, and commercial air carriers engaging in: (1) interstate or overseas transportation under a certificate of public convenience and necessity; (2) foreign air transportation under a certificate of public convenience and necessity; (3) charter flights or other special service operations; and (4) carriage of persons or property in air commerce for compensation or hire. These regulations are being reviewed to comply with the Regulatory Flexibility Act.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: Undetermined

Government Levels Affected: None

Analysis: Regulatory Flexibility Analysis

Agency Contact: Gary Martindell, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-3749

RIN: 2120-AE27

1720. REVIEW: PART 135 – AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

Significance: Nonsignificant

Legal Authority: 49 USC 1354(a) Federal Aviation Act of 1958, Sec. 313(a); 49 USC 1355(a) Federal Aviation Act of 1958, Sec. 314(a); 49 USC 1421 to 1430 Federal Aviation Act of 1958, Secs. 601-610; 49 USC 1502 Federal Aviation Act of 1958, Sec. 1102

CFR Citation: 14 CFR 135

Legal Deadline: None

Abstract: Review of rules governing: (1) air taxi operations conducted under Part 298; (2) transportation of mail by aircraft conducted under a postal service contract; and (3) carriage of persons or property for compensation or hire as a commercial operator in specified aircraft. These regulations are being reviewed to comply with the Regulatory Flexibility Act.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: Undetermined

Government Levels Affected: None

Analysis: Regulatory Flexibility Analysis

Agency Contact: Gary Davis, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-8096

RIN: 2120-AE35

DOT—FAA — Prerule Stage

1721. ACCELERATED GROUND TRAINING - FLIGHT ENGINEERS' SKILL REQUIREMENTS

Significance: Nonsignificant

Legal Authority: 49 USC 1348(a) Federal Aviation Act of 1958, Sec. 307(a); 49 USC 1348(c) Federal Aviation Act of 1958, Sec. 307(c); 49 USC 1354(a) Federal Aviation Act of 1958, Sec. 313(a); 49 USC 1421(a) Federal Aviation Act of 1958, Sec. 601(a)

CFR Citation: 14 CFR 63; 14 CFR 91; 14 CFR 125

Legal Deadline: None

Abstract: This proposed action would amend the regulations to allow the flight engineers' normal procedure practical test to be conducted in an approved flight simulator in lieu of conducting it, in flight, in an airplane.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Docket No. 22781.

Agency Contact: Michael J. Coffey, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-3758

RIN: 2120-AA79

1722. INSTRUMENT FLIGHT RULE REQUIREMENTS

Significance: Nonsignificant

Legal Authority: 49 USC 1348(a) Federal Aviation Act of 1958, Sec. 307(a); 49 USC 1348(c) Federal Aviation Act of 1958, Sec. 307(c); 49 USC 1354(a) Federal Aviation Act of 1958, Sec. 313(a); 49 USC 1421(a) Federal Aviation Act of 1958, Sec. 601(a)

CFR Citation: 14 CFR 135

Legal Deadline: None

Abstract: The FAA is considering rulemaking to revise several sections of Part 135 dealing with instrument flight rules. The proposed rule would: (1) permit IFR operations enroute with a VFR buffer zone underneath the cloud ceiling, and by permitting an IFR approach at destination; (2) change IFR takeoff minimums at U.S. military airports to be compatible with U.S. civil airport requirements, and (3) provide driftdown standards during enroute operations in IFR conditions in multiengine aircraft.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Michael J. Coffey, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-3758

RIN: 2120-AA82

1723. AMENDMENT OF SECTIONS 91.171, 91.172, AND APPENDICES E AND F OF PART 43

Significance: Nonsignificant

Legal Authority: 49 USC 1354 Federal Aviation Act of 1958, Sec. 313; 49 USC 1421 Federal Aviation Act of 1958, Sec. 601

CFR Citation: 14 CFR 43; 14 CFR 91

Legal Deadline: None

Abstract: This action would delay an October 15, 1992, compliance date to afford operators additional time to accomplish tests and inspections required by Sec. 91.171, correct inappropriate references, and delete a requirement for integrated system tests of ATC transponders by operators.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Al Hodges, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-8177

RIN: 2120-AA08

1724. FATIGUE EVALUATION, BIRD IMPACT, AND LIGHTNING PROTECTION FOR PROPELLERS OF COMPOSITE CONSTRUCTION

Significance: Nonsignificant

Legal Authority: 49 USC 1354 Federal Aviation Act of 1958, Sec. 313; 49 USC 1421 Federal Aviation Act of 1958, Sec. 601; 49 USC 1423 Federal Aviation Act of 1958, Sec. 603

CFR Citation: 14 CFR 35

Legal Deadline: None

Abstract: This action would revise Part 35 Fatigue Limit Test (Propellers) to add requirement for composite propellers to include environmental effects in fatigue evaluation, bird impact, and lightning protection.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: M. Buckman, Aerospace Engineer, Department of Transportation, Federal Aviation Administration, ANE-110, FAA NE Region, 12 New England Executive Park, Burlington, MA 01803, 617 273-7079

RIN: 2120-AB05

1725. AIRCRAFT REGISTRATION RECORDING OF AIRCRAFT TITLES AND SECURITY DOCUMENTS

Significance: Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 1354; 49 USC 1401; 49 USC 1403; 49 USC 1405; 49 USC 1406; 49 USC 1502; 4 UST 1830

CFR Citation: 14 CFR 47; 14 CFR 49

Legal Deadline: None

Abstract: This is a recodification of 14 CFR Parts 47 and 49 in order to modernize these parts, making them compatible with modern business practices, in keeping with FAA policy.

The potential costs have not yet been assessed, but are considered to be negligible as the impact will be procedural and not substantive.

The potential benefits are the clarification of regulatory language and facilitation of procedures for registration of aircraft and recordation of conveyances affecting ownership of or interest in US civil aircraft.

DOT—FAA — Prerule Stage

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Alonso J. Rodriguez, Attorney Advisor, Department of Transportation, Federal Aviation Administration, P.O. Box 25082, Oklahoma City, OK 73125, 405 686-2296

RIN: 2120-AC17

1726. TEMPORARY FLIGHT RESTRICTIONS

Significance: Nonsignificant

Legal Authority: 49 USC 3101(7); 49 USC 1303; 49 USC 1344; 49 USC 1348; 49 USC 1352 to 1355; 49 USC 1401; 49 USC 1421 to 1431; 49 USC 1471; 49 USC 1472; 49 USC 1502; 49 USC 1510; 49 USC 1522; 49 USC 2121 to 2125; 42 USC 4321 et seq; EO 11514; ...

CFR Citation: 14 CFR 91.91

Legal Deadline: None

Abstract: This proposal would amend Section 91.91 to prevent interference with ground or aerial search or investigation by nonparticipating aircraft.

Timetable:

Action	Date	FR Cite
ANPRM	01/02/89	

Small Entities Affected: Undetermined

Government Levels Affected: Local, State, Federal

Analysis: Regulatory Evaluation 01/02/89

Additional Information: LEGAL AUTHORITY CONT: 49 USC 106(g). (Revised Pub L. 97-449, January 12, 1983).

Regulatory Project No: ATO-200-87-9R

Agency Contact: Robert Laser, Air Traffic Control Specialist, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-9251

RIN: 2120-AC49

DEPARTMENT OF TRANSPORTATION (DOT)
Federal Aviation Administration (FAA)

Proposed Rule Stage

1727. + REVIEW OF PARTS 61, 141, 143 - PILOT, PILOT SCHOOL, AND GROUND INSTRUCTOR RULES

Significance: Agency Priority

Legal Authority: 49 USC 1354; 49 USC 1355; 49 USC 1421; 49 USC 1422; 49 USC 1427; 49 USC 106(g)

CFR Citation: 14 CFR 61; 14 CFR 141; 14 CFR 143

Legal Deadline: None

Abstract: The objective of this rulemaking project is to update and revise Parts 61, 141, and 143 of the Federal Aviation Regulations and determine the feasibility and need for consolidating Parts 61, 141, and 143 into a single regulation covering the entire spectrum of pilot training and certification. This rulemaking is considered significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
Notice of Public Hearings	06/27/88	53 FR 24178
Comment Period Extended	08/05/88	53 FR 29582

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: RIN 2120-AB14 has been combined into this review.

Agency Contact: John D. Lynch, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-8150

RIN: 2120-AB11

1728. + REVIEW AND REVISION OF REPAIR STATION REQUIREMENTS

Significance: Agency Priority

Legal Authority: 49 USC 1354; 49 USC 1355; 49 USC 1421; 49 USC 1427

CFR Citation: 14 CFR 145

Legal Deadline: None

Abstract: Current repair station rules were developed during the infancy of the aviation industry. Very few changes were made to those rules since they were adopted in 1952. This rulemaking project proposes to review foreign repair-station requirements and update the rules to reflect the current international and domestic environment and needs. This rulemaking is considered significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	08/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Leo Weston, Division Manager, AFS-300, Department of Transportation, Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591, 202 267-8203

RIN: 2120-AC38

1729. + METROPOLITAN WASHINGTON AIRPORTS POLICY

Significance: Regulatory Program

Legal Authority: 49 USC 1303 Federal Aviation Act of 1958, Sec. 103; 49 USC 1348(a) Federal Aviation Act of 1958, Sec. 307(a); 49 USC 1348(b) Federal Aviation Act of 1958, Sec. 307(b); 49 USC 1348(c) Federal Aviation Act of 1958, Sec. 307(c); 49 USC 1354(a) Federal Aviation Act of 1958, Sec. 313(a); Act for the Administration of Washington National Airport; Second Washington Airport Act; 64 Stat. 770, Sec. 4

CFR Citation: 14 CFR 93

Legal Deadline: None

Abstract: This action proposed various operational ceilings at Washington National Airport and contemplated future guidance on operation and development of National and Dulles Airports. Proposed action has been superseded by the Metropolitan Washington Airports Act of 1986 and will be withdrawn.

Timetable:

Action	Date	FR Cite
NPRM	04/26/83	48 FR 19174
NPRM Comment Period End	07/27/83	
SNPRM	06/14/84	49 FR 24626
Comment period end 07/16/84		
To be Withdrawn	11/00/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Analysis: Regulatory Evaluation 06/14/84 (49 FR 24626)

Agency Contact: David L. Bennett, Manager, Airspace and Air Traffic Law Branch, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-3461

RIN: 2120–AA89

1730. + AMEND PART 23 TO INCLUDE REQUIREMENTS FOR CRASH-RESISTANT FUEL SYSTEMS

Significance: Agency Priority

Legal Authority: 49 USC 1354 Federal Aviation Act of 1958, Sec. 313; 49 USC 1421 Federal Aviation Act of 1958, Sec. 601; 49 USC 1423 Federal Aviation Act of 1958, Sec. 603

CFR Citation: 14 CFR 23

Legal Deadline: None

Abstract: This action would amend Part 23 to include requirements for crash-resistant fuel tanks, lines and fittings. This rulemaking is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
ANPRM	03/05/85	50 FR 8948
ANPRM Comment Period End	07/03/85	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Earen L. Tankesley, Manager, Standards Office, Department of Transportation, Federal Aviation Administration, 601 E. 12th Street, Kansas City, MO 64106, 816 926-6930

RIN: 2120-AA57

1731. + AIRPLANE CABIN-FIRE PROTECTION

Significance: Agency Priority

Legal Authority: 49 USC 1344; 49 USC 1354(a); 49 USC 1355; 49 USC 1421 to 1430; 49 USC 106(g); PL 97-449

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: To develop a revision to FAR 25.853 to improve fire protection for lavatories and galleys by requiring that smoke detectors and fire extinguishers, among other things, be installed. This rulemaking is significant because it involves important Departmental policy.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Project follows completion of Part 121 rulemaking.

Agency Contact: Gary L. Killion, Department of Transportation, Federal Aviation Administration, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, 206 431-2112

RIN: 2120–AB22

1732. + PROPOSED REVISION OF NOISE CERTIFICATION OF TURBOJET AND LARGE TRANSPORT CATEGORY AIRCRAFT

Significance: Agency Priority

Legal Authority: 49 USC 1354(a) Federal Aviation Act of 1958, Sec. 313(a); 49 USC 1421(a) Federal Aviation Act of 1958, Sec. 601(a); 49 USC 1423 Federal Aviation Act of 1958, Sec. 603; 49 USC 1431(b) Federal Aviation Act of 1958, Sec. 611(b); 49 USC 1421 et seq National Environmental Policy Act, Title I; EO 11514

CFR Citation: 14 CFR 36; 14 CFR 91

Legal Deadline: None

Abstract: Contemplated action would revise certification and operational requirements for aircraft effective the date of the NPRM. On that date the current two-stage noise requirements would be replaced with a simpler single standard corresponding to the current Stage 3. This rulemaking is considered significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	10/03/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 10/03/88

Agency Contact: Steven Albersheim, Environmental Specialist, Department of Transportation, Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591, 202 267-3568

RIN: 2120–AB88

1733. + TRANSPONDER REQUIREMENTS IN COASTAL AIR DEFENSE IDENTIFICATION ZONES (ADIZ)

Significance: Agency Priority

Legal Authority: 49 USC 1348; 49 USC 1502; 49 USC 1510; 49 USC 1522; 49 USC 106(g) Revised Pub L 97-449, January 12, 1983

CFR Citation: 14 CFR 99

Legal Deadline: None

Abstract: This proposal would require aircraft to have an operating transponder when operating into, within, or out of the United States through coastal air defense identification zones (ADIZ). This rulemaking is considered significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
ANPRM	02/07/86	51 FR 4756
ANPRM Comment Period End	04/10/86	
NPRM	10/03/88	

Small Entities Affected: None

Government Levels Affected: None

Sectors Affected: Multiple

Analysis: Regulatory Evaluation 10/03/88

Additional Information: Regulatory Project ATO-200-85-8R (Docket # 24903)

Agency Contact: Reginald C. Matthews, Air Traffic Control Specialist, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-9245

RIN: 2120–AD30

1734. + NOISE AND EMISSION STANDARDS FOR AIRCRAFT POWERED BY ADVANCED TURBOPROP (PROPFAN) ENGINES

Significance: Agency Priority

Legal Authority: 49 USC 1354; 49 USC 1421; 49 USC 1423; 49 USC 1431

CFR Citation: 14 CFR 36

Legal Deadline: None

Abstract: Part 36 prescribes noise standards for type certification of airplanes. A new generation of aircraft powered by prop-fan engines may present a noise problem that is not currently addressed by Part 36 in that en route noise at cruise altitude (25,000 to 30,000 ft) may require a new standard. This proposal would establish a new standard to control high altitude flyover noise from these new types of aircraft, and is considered significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
ANPRM	03/13/87	52 FR 8050
ANPRM Comment Period End	06/11/87	
Comment period extended to 10/01/87	07/20/87	52 FR 27304
NPRM	10/03/88	

Small Entities Affected: Undetermined

Government Levels Affected: None

Analysis: Regulation Evaluation 10/03/88

Agency Contact: Harvey H. Van Wyen, Manager, Noise Policy & Regulatory Branch, Department of Transportation, Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591, 202 267-3553

RIN: 2120–AC20

1735. + SST STAGE 3 COMPLIANCE

Significance: Agency Priority

Legal Authority: 49 USC 1354; 49 USC 1421; 49 USC 1423; 49 USC 1431

CFR Citation: 14 CFR 36

Legal Deadline: None

Abstract: Part 36 prescribes noise type certification standards for turbojet airplanes. This proposal would revise Part 36 so that new type certificated supersonic aircraft would be required to meet Stage 3 noise levels. Action is considered significant because of the substantial public interest which may be generated on the issue.

Timetable:

Action	Date	FR Cite
ANPRM	10/30/86	51 FR 39863
ANPRM Comment Period End	02/27/87	
Comment Period Reopened Until 07/01/87	03/12/87	52 FR 7618
NPRM	10/03/88	

Small Entities Affected: Undetermined

Government Levels Affected: None

Analysis: Draft Regulatory Evaluation 10/30/86 (51 FR 39863)

Additional Information: Docket 25109.

Agency Contact: Steven Albersheim, Environmental Specialist, Department of Transportation, Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591, 202 267-3568

RIN: 2120–AC22

1736. + FLIGHT ATTENDANT REQUIREMENTS DURING DEPLANING AND BOARDING

Significance: Agency Priority

Legal Authority: 49 USC 1354(a); 49 USC 1355; 49 USC 1421; 49 USC 1422; 49 USC 1427; 49 USC 106(g)

CFR Citation: 14 CFR 121

Legal Deadline: None

Abstract: This action proposes to revise the regulation dealing with the required number of flight attendants to clarify the original intent of the regulation. The current regulations are confusing and not clearly understood. The proposed amendments would clarify the number of flight attendants required when passengers are onboard an airplane, during specified periods, and proposals would allow for a reduced number of flight attendants onboard an airplane during specified periods. The proposals would specify the conditions to be met to reduce the number of flight attendants at these stops. Additionally, the proposals would allow other authorized persons to be substituted for the required flight attendants at these stops, and would clearly establish the requirements for training for those authorized persons. A proposed new rule would clarify where the required flight attendants and other persons must be located when they are onboard the airplane. This action is considered significant because of the substantial public interest.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: David L. Casey, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-8094

RIN: 2120-AC21

1737. + PART 129 SECURITY PROGRAM FOR FOREIGN AIR CARRIERS

Significance: Agency Priority

Legal Authority: 49 USC 1348; 49 USC 1345(a); 49 USC 1356; 49 USC 1357; 49 USC 1421; 49 USC 1502; 49 USC 1511; 49 USC 106(g)

CFR Citation: 14 CFR 129

Legal Deadline: None

Abstract: Notice proposes to require foreign air carriers that land or takes off in the United States to submit to the Administrator for approval a written security program that describes the procedures, facilities, and equipment used by the foreign air carrier to provide for the protection of persons and property traveling in air transportation against acts of criminal violence and air piracy. This rulemaking is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	09/06/88	53 FR 34874
NPRM Comment Period End	11/07/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Flexibility Analysis; Regulatory Evaluation 09/06/88 (53 FR 34874)

DOT—FAA

Proposed Rule Stage

Agency Contact: David Smith, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-3468

RIN: 2120-AC42

1738. + TYPE AND NUMBER OF PASSENGER EMERGENCY EXITS REQUIRED IN TRANSPORT CATEGORY AIRPLANES

Significance: Agency Priority

Legal Authority: 49 USC 1344; 49 USC 1354(a); 49 USC 1355; 49 USC 1421; 49 USC 1423; 49 USC 1424; 49 USC 1425; 49 USC 1428; 49 USC 1429; 49 USC 1430; 49 USC 106(g); PL 97-449; 49 CFR 1.47(a)

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: This notice will propose to revise the current requirements for passenger emergency exits and to adopt two new exit types into the regulations. These proposals are intended to provide more consistent standards with respect to exit types and quantities required for passenger seating configurations while retaining the same level of safety. This notice also will propose to reduce the maximum inflation time of an escape slide to reflect the current state of the art. These proposals resulted from the Public Technical Conference on Emergency Evacuation of Transport Airplanes held in Seattle, Washington on September 3-6, 1985. This rulemaking is considered significant because it involves an important cabin-safety issue.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Franklin Tiangsing, Regulations Branch, Transport Standards Staff, Department of Transportation, Federal Aviation Administration, Northwest Mountain Region, 17900 Pacific Highway South C-68966, Seattle, WA 98168, 206 431-2124

RIN: 2120-AC43

1739. + IMPROVED ACCESS TO TYPE III AND TYPE IV EMERGENCY EXITS

Significance: Agency Priority

Legal Authority: 49 USC 1344; 49 USC 1354(a); 49 USC 1355 to 1357; 49 USC 1401; 49 USC 1421 to 1430; 49 USC 1472; 49 USC 1485; 49 USC 1502; 49 USC 106(g); PL 97-449

CFR Citation: 14 CFR 25; 14 CFR 121

Legal Deadline: None

Abstract: Notice will propose to amend Parts 25 and 121 of the FAR to provide for improved access to Type III and Type IV emergency exits. These proposals are intended to improve the ability of occupants to evacuate an airplane under emergency conditions. This rulemaking is considered to be significant because it involves an important cabin-safety issue.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Frank Tiangsing, Aerospace Engineer, Department of Transportation, Federal Aviation Administration, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, WA 98168, 206 431-2121

RIN: 2120-AC41

1740. + PILOTS CONVICTED OF DRIVING WHILE INTOXICATED (DWI)/UNDER INFLUENCE (DUI)

Significance: Agency Priority

Legal Authority: 49 USC 1354(a); 49 USC 1355; 49 USC 1421; 49 USC 1422; 49 USC 1427; 49 USC 106(g)

CFR Citation: 14 CFR 61; 14 CFR 65; 14 CFR 67

Legal Deadline: None

Abstract: Notice will propose to amend the existing Federal Aviation Regulations to allow pilot certification action when a pilot has been convicted of multiple DWI/DUI motor-vehicle offenses. This rulemaking is a significant FAA initiative based on the DOT/Inspector General Report of Feb. 17, 1987, entitled "Report on Audit of Airmen Medical Certification Program."

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Dr. Robert Bartasowica, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-8678

RIN: 2120-AC51

1741. + FLIGHT PLAN FILING REQUIREMENTS; NATIONAL AIRSPACE REVIEW RECOMMENDATION

Significance: Agency Priority

Legal Authority: 49 USC 1301(7); 49 USC 1303; 49 USC 1344; 49 USC 1348; 49 USC 1352 to 1355; 49 USC 1401; 49 USC 1421 to 1431; 49 USC 1471; 49 USC 1472; 49 USC 1502; 49 USC 1510; 49 USC 1522; 49 USC 2121 to 2125; 42 USC 4321 et seq; EO 11514; ...

CFR Citation: 14 CFR 91.83

Legal Deadline: None

Abstract: This action will propose to review flight-plan filing requirements and revise according to National Airspace Review Recommendations 2-3.1.4, 2-3.1.5, 2-3.1.6, 2-3.1.7, and 2-3.1.8, i.e., to establish lower ceiling and visibility criteria for rotorcraft so as to reduce the frequency of required IFR alternate airport filings; to allow fixed-wing aircraft to file IFR alternate airports that meet the same criteria as rotorcraft; to require pilots to indicate, in their flight plans, when their aircraft is equipped with special equipment. This rulemaking is considered significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	06/30/89	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: LEGAL AUTHORITY CONT: 49 USC 106(g), (Revised Pub L. 97-449, January 12, 1983)

Regulatory Project No: ATO-200-85-12R RIN AC41 was consolidated into this proceeding.

DOT—FAA

Proposed Rule Stage

Agency Contact: William C. Davis, Manager, Air Traffic Rule Branch, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-8783

RIN: 2120-AC30

1742. ● + IMPROVED SURVIVAL EQUIPMENT FOR INADVERTENT WATER LANDINGS

Significance: Agency Priority

Legal Authority: 49 USC 106(g); 49 USC 1354(a); 49 USC 1355; 49 USC 1356; 49 USC 1357; 49 USC 1374(d); 49 USC 1401; 49 USC 1421 to 1431; 49 USC 1472; 49 USC 1485; 49 USC 1502

CFR Citation: 14 CFR 121; 14 CFR 135

Legal Deadline: NPRM, Statutory, June 28, 1988.
PL 100-223 Sec 303

Abstract: This notice proposes new requirements for water-survival equipment carried aboard airplanes and rotocraft. The requirements would apply, after specified dates, to US-certificate holders that conduct common-carriage operations with airplanes and rotocraft. This proposal is in response to the Airport and Airway Safety and Capacity Enhancement Act of 1987 (PL 100-223) and relates to safety recommendations by the National Transportation Safety Board. The proposed requirements are intended to increase the likelihood of aircraft passengers surviving a crash landing in water and, thus, this rulemaking is significant because of the safety implications.

Timetable:

Action	Date	FR Cite
NPRM	06/30/88	53 FR 24890
NPRM Comment Period End	11/28/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 06/30/88 (53 FR 24890)

Agency Contact: Richard Nalson, Department of Transportation, Federal Aviation Administration, Office of Air Worthiness, 800 Independence Ave., SW, Washington, DC 20591, 202 267-8578

RIN: 2120-AC72

1743. ● + EXIT ROW SEATING

Significance: Agency Priority

Legal Authority: 49 USC 1354(a); 49 USC 2355; 49 USC 1356; 49 USC 1357; 49 USC 1401; 49 USC 1421 to 1430; 49 USC 1472; 49 USC 1485; 49 USC 1502; 49 USC 106(g)

CFR Citation: 14 CFR 121.585; 14 CFR 135.127

Legal Deadline: None

Abstract: This action would add new regulations to require air carriers to limit seating in exit rows to those persons they determine appear to be able to perform certain functions regarding emergency evacuation. Existing air carrier policies having this intent may be inadequate and would be rendered completely ineffective by proposed 49 CFR 382.31 which would prohibit air carriers from restricting seating except in accordance with FAA regulations. This rulemaking is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	10/03/88	

Small Entities Affected: None

Government Levels Affected: Federal

Analysis: Regulatory Evaluation 10/03/88

Additional Information: This issue will also be subsumed within the Regulatory Program proceeding entitled Nondiscrimination of the Basis of Handicap (Air Travel), RIN 2105-AA18.

Agency Contact: Irene Mields, Senior Attorney, General Legal Services Division, Department of Transportation, Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591, 202 267-3473

RIN: 2120-AC75

1744. ● + PARTS 121 AND 135 - TRAINING, CHECKING, CERTIFICATION, AND QUALIFICATIONS REQUIREMENTS

Significance: Agency Priority

Legal Authority: 49 USC 1354(a); 49 USC 1355; 49 USC 1421; 49 USC 1422; 49 USC 1427; 49 USC 106(g)

CFR Citation: 14 CFR 61; 14 CFR 63; 14 CFR 121; 14 CFR 135

Legal Deadline: None

Abstract: This action would revise and upgrade the Parts 121 and 135 training, checking, certification, and qualification requirements, including cockpit resource management. In addition, commuter air carriers conducting Part 135 commuter operations in airplanes that require two pilots would be required to meet the proposed ungraded Part 121 requirements. This action is in response to recommendations of the joint Government/Industry Task Force on Flight Crew Performance and is significant because of its safety implications.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Larry Bedore, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-8966

RIN: 2120-AC76

1745. ● + ADVANCED FLIGHT CREWMEMBER TRAINING

Significance: Agency Priority

Legal Authority: 49 USC 1354(a); 49 USC 1355; 49 USC 1421; 49 USC 1422; 49 USC 1427; 49 USC 106(g)

CFR Citation: 14 CFR 121

Legal Deadline: None

Abstract: This action would propose to improve aircrew performance in air carrier and commuter operations by establishing a core of training requirements to include cockpit resource management (CRM) training, airman upgrade training, milestone schedules for training, criteria for training centers, etc. This training method would not be mandatory but rather would provide an alternative method of meeting the training requirements of Parts 121 and 135. This project includes the development of an advisory circular which would provide an acceptable means for developing an advanced flight crewmember training program. This action is in response to recommendations of the joint Government/Industry Task Force on Flight Crew Performance and is

significant because of its safety implications.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Larry Bedore, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-8096

RIN: 2120-AC80

1746. ◆ + RETROFIT OF IMPROVED SEATS IN AIR CARRIER TRANSPORT CATEGORY AIRPLANES

Significance: Agency Priority

Legal Authority: 49 USC 1354(a); 49 USC 1355 to 1357; 49 USC 1401; 49 USC 1421 to 1430; 49 USC 1472; 49 USC 1485; 49 USC 1502; 49 USC 106(g); PL 97-449

CFR Citation: 14 CFR 121; 14 CFR 135

Legal Deadline: NPRM, Statutory, April 21, 1988.
PL 100-223 Sec 303

Abstract: The FAA proposes to require that all seats of transport category airplanes used in air carrier operations and transport category airplanes used in scheduled intrastate service comply with improved crashworthiness standards. The Airport and Airways Safety and Capacity Expansion Act of 1987 directs the Secretary of Transportation to initiate a rulemaking proceeding to consider requiring all seats onboard all air carrier aircraft to meet improved crashworthiness standards based upon the best available testing standards. The intended effect of this action is to increase passenger protection and survivability in survivable impact accidents. This rulemaking is considered significant because of its safety implications and statutory requirements.

Timetable:

Action	Date	FR Cite
NPRM	05/17/88	53 FR 17650
NPRM Comment Period End	10/14/88	

Small Entities Affected: Undetermined

Government Levels Affected: None

Analysis: Regulatory Evaluation 05/17/88 (53 FR 17650)

Additional Information: Docket 25611

Agency Contact: Arthur Hayes, Department of Transportation, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591, 202 267-9537

RIN: 2120-AC84

1747. REVIEW OF MEDICAL STANDARDS AND CERTIFICATION PROCEDURES

Significance: Nonsignificant

Legal Authority: 49 USC 1354(a) Federal Aviation Act of 1958, Sec. 313(a); 49 USC 1355 Federal Aviation Act of 1958, Sec. 314; 49 USC 1421 Federal Aviation Act of 1958, Sec. 601; 49 USC 1427 Federal Aviation Act of 1958, Sec. 607

CFR Citation: 14 CFR 67

Legal Deadline: None

Abstract: These regulations specify the medical standards which must be met before a medical certificate is issued to an airman. For example, a medical certificate is required before a person can obtain a pilot license. During rulemaking involving these regulations, a considerable number of commenters expressed the belief that the current standards should and could be revised to state, in generally applicable objective terms, all those circumstances in which the FAA will issue medical certificates. In the past, some certificates have been issued on a case-by-case basis, with appropriate limitations, under exemption and waiver provisions where strict compliance with the existing standards was not essential in the interest of safety. A comprehensive review of these regulations is necessary to determine if the commenters' arguments are correct. If they are and the requested regulatory changes are possible, it could greatly reduce burdens, both on the FAA and airmen, associated with the processing of medical certificates.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Additional Information: The FAA contracted with the American Medical Association (AMA) on August 29, 1983, to develop a comprehensive report which will be used by the FAA as part of its evaluation of Part 67 standards. AMA completed a professional review of the medical standards for civil airmen. The FAA announced the availability of the AMA report in the Federal Register on May 23, 1986 (51 FR 19040). RIN 2120-AB13 has been combined into this review.

Agency Contact: William H. Hark, M.D., Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-3902

RIN: 2120-AA70

1748. REVIEW PART 75 FOR RETENTION OR REVOCATION

Significance: Nonsignificant

Legal Authority: 49 USC 1348(a); 49 USC 1354(a); 49 USC 106(g), (Revised Pub L. 97-449, January 12, 1983); 14 CFR 11.69; 49 CFR 1.47

CFR Citation: 14 CFR 75

Legal Deadline: None

Abstract: This action will review Part 75 per National Airspace Review Recommendations toward revocation and establish nonrulemaking procedures for handling jet route actions.

Timetable:

Action	Date	FR Cite
NPRM	12/01/89	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: Regulatory Project No: ATO-200-84-24R

Agency Contact: A. Wayne Pierce, Air Traffic Control Specialist, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-8783

RIN: 2120-AC55

1749. PART 91, SUBPART B, REVIEW FOR SIMPLIFICATION

Significance: Nonsignificant

Legal Authority: 49 USC 1301(7); 49 USC 1303; 49 USC 1344; 49 USC 1348; 49 USC 1352; 49 USC 1353; 49 USC 1354; 49 USC 1355; 49 USC 1401; 49 USC 1421; 49 USC 1422; 49 USC 1423; 49 USC 1424; 49 USC 1425; 49 USC 1428

CFR Citation: 14 CFR 91

Legal Deadline: None

Abstract: The agency set up a National Airspace Review Task Group for the review of 14 CFR Part 91, Subpart B. This action will cover the recommendations made by the group.

Timetable:

Action	Date	FR Cite
NPRM	12/01/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Analysis: Regulatory Evaluation 12/01/89

Additional Information: LEGAL AUTHORITY CONT: 49 USC 1427; 49 USC 1428; 49 USC 1429; 49 USC 1430; 49 USC 1431; 49 USC 1471; 49 USC 1502; 49 USC 1510; 49 USC 1522; 49 USC 2121; 49 USC 2122; 49 USC 2123; 49 USC 2124; 49 USC 2125; 49 USC 4321 et seq; EO 11514; 49 USC 106(g) Revised Pub L 97-449 January 12, 1983 Regulatory Project ATO-200-83-31R

Agency Contact: Reginald Matthews, Air Traffic Control Specialist, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-9245

RIN: 2120-AA87

1750. PART 77 REVIEW, OBJECTS AFFECTING NAVIGABLE AIRSPACE

Significance: Nonsignificant

Legal Authority: 49 USC 1304 Federal Aviation Act of 1958, Sec. 104; 49 USC 1348 Federal Aviation Act of 1958, Sec. 307; 49 USC 1354 Federal Aviation Act of 1958, Sec. 313; 49 USC 1431 Federal Aviation Act of 1958, Sec. 611; 49 USC 1501 Federal Aviation Act of 1958, Sec. 1101

CFR Citation: 14 CFR 77

Legal Deadline: None

Abstract: This action would revise and reorganize 14 CFR Part 77 in a more logical sequence and present regulatory requirements relating to proposed construction or alteration and their impact on navigable airspace. It is also intended to clarify and strengthen agency actions in determining whether a particular object would be a hazard to air navigation.

Timetable:

Action	Date	FR Cite
Notice of Review	05/19/76	43 FR 26322
Review Conference	12/08/80	
National Airspace Review Begins	07/09/84	
NPRM	11/30/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Analysis: Final Regulatory Evaluation 11/30/88

Additional Information: No docket number assigned; Regulatory Project ATO-200-85-19R

Agency Contact: William C. Davis, Manager, Air Traffic Rules Branch, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-8783

RIN: 2120-AA09

1751. FUEL SYSTEM FIRE PROTECTION

Significance: Nonsignificant

Legal Authority: 49 USC 1354 Federal Aviation Act of 1958, Sec. 313; 49 USC 1421 Federal Aviation Act of 1958, Sec. 601; 49 USC 1423 Federal Aviation Act of 1958, Sec. 603; 49 USC 106(g)

CFR Citation: 14 CFR 25; 14 CFR 121; 14 CFR 135

Legal Deadline: None

Abstract: This action would amend Sec. 25.975 to require fuel tank vent protection during ground fires and Sec. 25.1189 to require design practices which maximize the probability of engine fuel supply shut-off in a potential fire situation.

Timetable:

Action	Date	FR Cite
ANPRM	09/26/84	49 FR 38078
ANPRM Comment Period End	01/25/85	

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: Docket 24251; formerly entitled Implementation of SAFER Propulsion System Recommendations.

Agency Contact: James M. Walker, Department of Transportation, Federal Aviation Administration, NorthWest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, WA 98168, 206 431-2110

RIN: 2120-AA49

1752. AIRCRAFT SIMULATOR USE IN AIRMAN TRAINING AND CERTIFICATION

Significance: Nonsignificant

Legal Authority: 49 USC 1354(a) Federal Aviation Act of 1958, Sec. 313(a); 49 USC 1421 Federal Aviation Act of 1958, Sec. 601; 49 USC 1424 Federal Aviation Act of 1958, Sec. 604

CFR Citation: 14 CFR 61; 14 CFR 135

Legal Deadline: None

Abstract: This notice will propose to amend Part 61 to permit additional use of and establish approval criteria for aircraft simulators and training devices for airman training and certification by amending various sections of Part 61 and appendices including additional appendices for rotorcraft and helicopters and by adding a new appendix for advanced simulation criteria. Additionally, this notice will propose to permit additional usage of aircraft simulators and training devices for the pilot-in-command proficiency requirements of Part 61 for airmen operating large or multiengine turbojet-powered aircraft.

Timetable:

Action	Date	FR Cite
NPRM	02/00/89	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 02/00/89

Agency Contact: Alberta A. Brown, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-8150

RIN: 2120-AA83

1753. STANDARDS FOR APPROVAL FOR HIGH ALTITUDE OPERATION OF SUBSONIC AIRPLANES

Significance: Nonsignificant

DOT—FAA — Proposed Rule Stage

Legal Authority: 49 USC 1344; 49 USC 1354(a); 49 USC 1355; 49 USC 1421; 49 USC 1423; 49 USC 1424; 49 USC 1425; 49 USC 1428; 49 USC 1429; 49 USC 1430; 49 USC 106(g); PL 97-449

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: This proposal would review special conditions issued for high altitude operation and consolidate and incorporate these special conditions into Part 25.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Sectors Affected: Multiple

Agency Contact: Gary Lium, Department of Transportation, Federal Aviation Administration, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, 206 431-2134

RIN: 2120-AB16

1754. TRANSPORT CATEGORY ROTORCRAFT PERFORMANCE

Significance: Nonsignificant

Legal Authority: 49 USC 1344; 49 USC 1354(A); 49 USC 1355; 49 USC 1421; 49 USC 1423; 49 USC 1424; 49 USC 1425; 49 USC 1428; 49 USC 1429; 49 USC 1430; 49 USC 106(g); PL 97-449

CFR Citation: 14 CFR 29

Legal Deadline: None

Abstract: This project is to solicit public comment on possible revision and clarification of transport rotorcraft performance and airworthiness standards and to establish minimum gradients of climb during takeoff.

Timetable:

Action	Date	FR Cite
ANPRM	10/17/85	50 FR 42126
ANPRM Comment Period End	01/15/86	
NPRM	07/30/89	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 07/30/89

Agency Contact: Jim S. Hensler, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0111, 817 624-5108

RIN: 2120-AB36

1755. MISCELLANEOUS OPERATIONAL AMENDMENTS

Significance: Nonsignificant

Legal Authority: 49 USC 1354 Federal Aviation Act of 1958 Sec. 313(a); 49 USC 1421 Federal Aviation Act of 1958 Sec. 601; 49 USC 1423 Federal Aviation Act of 1958 Sec. 603; 49 USC 1424 Federal Aviation Act of 1958 Sec. 604

CFR Citation: 14 CFR 121; 14 CFR 91; 14 CFR 125; 14 CFR 135

Legal Deadline: None

Abstract: This notice will propose to amend the regulations that deal with passenger information, safe passenger egress, child restraint, and emergency equipment. The proposals would prohibit smoking at any time in any location displaying a "no smoking" sign or placard. They would require that passengers wear safety belts at any time a "fasten seatbelts" sign is turned on. They would require that the "fasten seatbelts" sign be turned on during taxi. They would clearly establish a requirement for an assisting means of egress and the stowage of passenger service equipment prior to taxi. They would make the pilot in command or, in the case of operations under Part 121, the certificate holder responsible for informing the passengers that they may be liable for a civil penalty should they fail to comply with FAA regulations. They would require that supplementary child restraint devices be accepted by a certificate holder when requested by the child's attendant.

Timetable:

Action	Date	FR Cite
NPRM	07/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Gary Davis, Department of Transportation, Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591, 202 267-8[illegible]

RIN: 2120-AB45

1756. PRIMARY CATEGORY AIRCRAFT

Significance: Nonsignificant

Legal Authority: 49 USC 1344; 49 USC 1348(c); 49 USC 1352; 49 USC 1354(a); 49 USC 1355; 49 USC 1421 to 1431; 49 USC 1502; 49 USC 1651(b)(2); 42 USC 1857(f)-10; 42 USC 4321 et seq; EO 11514; 49 USC 106(g); PL 97-449

CFR Citation: 14 CFR 21; 14 CFR 36; 14 CFR 43; 14 CFR 91; 14 CFR 141; 14 CFR 147

Legal Deadline: None

Abstract: Action would propose to establish a new category of aircraft for type, production, and airworthiness certification. These aircraft will be designed for pleasure and personal use, and classified as a primary category aircraft. In addition, the notice will propose simplified type, production, and airworthiness certification procedures, special maintenance criteria, and associated changes to pilot requirements for this category of aircraft.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: Formerly entitled Primary Category Aircraft; Powered Ultralight; Falsification of Applications, Reports, or Records.

Agency Contact: Lyle Davis, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-9566

RIN: 2120-AB53

1757. PART 157 REVIEW

Significance: Nonsignificant

Legal Authority: Secs 309, 313(a), 314, 72 Stat. 751.; 49 USC 1350; 49 USC 1354(a); 49 USC 1355

CFR Citation: 14 CFR 157

Legal Deadline: None

Abstract: Contemplated revision of FAR Part 157 would include issues relating to ultralight activities and to require notice of proposed traffic patterns and changes thereto. Pending completion of Regulatory Evaluation.

DOT—FAA — Proposed Rule Stage

Timetable:

Action	Date	FR Cite
NPRM	10/03/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Analysis: Regulatory Evaluation 10/03/88

Additional Information: Regulatory Project ATO-200-88-13R

Agency Contact: Robert Laser, Air Traffic Control Specialist, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-8251

RIN: 2120-AH74

1758. PART 101 REVIEW PROGRAM

Significance: Nonsignificant

Legal Authority: Secs 307, 313(a), 402, 601, 602, 603, 902, 1110, 1302; 72 Stat 749; 49 USC 1348; 49 USC 1354; 49 USC 1372; 49 USC 1421; 49 USC 1442; 49 USC 1443; 49 USC 1472; 49 USC 1510; 49 USC 1522

CFR Citation: 14 CFR 1; 14 CFR 91; 14 CFR 101

Legal Deadline: None

Abstract: This review program is intended to provide full public participation in matters concerning FAA evaluation of the operation of moored balloons, kites, unmanned rockets, and unmanned free balloons. Pending completion of Regulatory Evaluation. NPRM is being drafted.

Timetable:

Action	Date	FR Cite
NPRM	12/01/90	

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Analysis: Regulatory Evaluation 12/01/90

Additional Information: Part 91 revision also is required to provide comprehensive treatment of manned balloon operations and to clarify the respective applicability and requirements of both Parts 91 and 101 with respect to balloon operations. Regulatory Project ATO-200-84-20R.

Agency Contact: Reginald C. Matthews, Air Traffic Control Specialist, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-8245

RIN: 2120-AH75

1759. ENGINE FUEL AND INDUCTION SYSTEMS

Significance: Nonsignificant

Legal Authority: 49 USC 1354 Federal Aviation Act of 1958, Sec. 313; 49 USC 1421 Federal Aviation Act of 1958, Sec. 601; 49 USC 1423 Federal Aviation Act of 1958, Sec. 603

CFR Citation: 14 CFR 33

Legal Deadline: None

Abstract: Advance notice proposed the addition of a new paragraph, FAR Section 33.35(f), to incorporate requirements for the fuel mixture to go to full-rich if a disconnect occurs in the mixture linkage. NPRM would require both the fuel-air mixture control device and throttle control device to move automatically to an acceptable position for continued safe operation in event control linkage of these levers become disconnected.

Timetable:

Action	Date	FR Cite
ANPRM	02/28/86	51 FR 7224
ANPRM Comment Period End	04/29/86	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: George Mulcahy, Aerospace Engineer, Department of Transportation, Federal Aviation Administration, NE Region, 12 New England Executive Park, Burlington, MA 01803, 617 273-7077

RIN: 2120-AE78

1760. AMEND SECTION 43.17 TO ALLOW FOR MAINTENANCE OF U.S. AERONAUTICAL PRODUCTS IN CANADA IN COMPLIANCE WITH THE U.S.-CANADIAN BILATERAL AIRWORTHINESS AGREEMENT

Significance: Nonsignificant

Legal Authority: 49 USC 1354; 49 USC 1421; 49 USC 1422; 49 USC 1423; 49 USC 1424; 49 USC 1425; 49 USC 106(g)

CFR Citation: 14 CFR 43

Legal Deadline: None

Abstract: Contemplated activity would revise Section 43.17 to provide for the acceptance of maintenance, alteration, or modification accomplished on U.S.-registered aircraft, other aeronautical products, and components, in Canada, by persons authorized by Transport Canada Airworthiness Group and approved for return to service in accordance with the U.S.-Canadian Bilateral Airworthiness Agreement.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: None

Analysis: Regulatory Evaluation

Agency Contact: Angelo Mastrullo, Department of Transportation, Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591, 202 267-9565

RIN: 2120-AB09

1761. NEW ROTORCRAFT EMERGENCY POWER RATINGS

Significance: Nonsignificant

Legal Authority: 49 USC 1344; 49 USC 1354(A); 49 USC 1355; 49 USC 1421; 49 USC 1523; 49 USC 1424; 49 USC 1425; 49 USC 1428; 49 USC 1429; 49 USC 1430; 49 USC 106(G); PL 97-449

CFR Citation: 14 CFR 27; 14 CFR 29

Legal Deadline: None

Abstract: This project proposes to revise Parts 27 and 29 to set forth qualifications and performance associated with optional 30-second/2-minute one-engine-inoperative (OEI) ratings for rotorcraft.

Timetable:

Action	Date	FR Cite
NPRM	06/01/89	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 06/01/89

Additional Information: Formerly entitled Revised One-Engine-Inoperative Ratings for Rotorcraft.

Agency Contact: Ray Twa, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0111, 817 624-5128

RIN: 2120-AB90

1762. TURBINE BURST PROTECTION FOR TRANSPORT CATEGORY HELICOPTERS

Significance: Nonsignificant

Legal Authority: 49 USC 1344; 49 USC 1354(A); 49 USC 1355; 49 USC 1421; 49 USC 1423; 49 USC 1424; 49 USC 1425; 49 USC 1428; 49 USC 1429; 49 USC 1430; 49 USC 106(G); PL 97-449

CFR Citation: 14 CFR 29

Legal Deadline: None

Abstract: This project proposes to revise Part 29 to require design features or other provisions to minimize the hazards of failure of high speed rotors used in turbine engines in transport category helicopters.

Timetable:

Action	Date	FR Cite
NPRM	04/30/89	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 04/30/89

Agency Contact: Mike Mathias, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0111, 817 624-5123

RIN: 2120-AB91

1763. ANTIBLOCKING DEVICE

Significance: Nonsignificant

Legal Authority: 49 USC 1348(a); 49 USC 106(g), (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.45; 49 USC 1354(a)

CFR Citation: 14 CFR 91

Legal Deadline: None

Abstract: Mr. John G. Rutty submitted a petition for rulemaking seeking to amend the FAR to require antiblocking and stuck microphone (ABD) relief circuitry operatively associated with aircraft voice communications radios employed in certain high-density air traffic areas. Action pending operational evaluation.

Timetable:

Action	Date	FR Cite
NPRM	12/01/89	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: Docket Number 23755. Regulatory Project ATO-200-84-2P

Agency Contact: Reginald C. Matthews, Air Traffic Control Specialist, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-9245

RIN: 2120-AB92

1764. AIRSPACE RECLASSIFICATION

Significance: Nonsignificant

Legal Authority: 49 USC 1348; 49 USC 1354; 14 CFR 11.45; 14 CFR 11.65

CFR Citation: 14 CFR 71; 14 CFR 73; 14 CFR 75; 14 CFR 91; 14 CFR 103; 14 CFR 105; 14 CFR 1

Legal Deadline: None

Abstract: Users organizations recommended, under the National Airspace Review, to redesign the airspace system to a more simple system similar to the systems in place in Canada and proposed under ICAO recommendations. Adoption of these recommendations was proposed in ANPRM.

Timetable:

Action	Date	FR Cite
ANPRM	02/05/85	50 FR 5046
ANPRM Comment Period End	06/06/85	50 FR 5046
NPRM	10/03/88	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Analysis: Regulatory Evaluation 10/03/88

Additional Information: Docket number 24456.

Regulatory Project ATO-200-84-7R. This action will incorporate RINS 2120-AB02, AB93 and AC57.

Agency Contact: Wayne Pierce, Air Traffic Control Specialist, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-9246

RIN: 2120-AB95

1765. TYPE CERTIFICATION BASIS FOR PRODUCT TYPE DESIGN CHANGE

Significance: Nonsignificant

Legal Authority: 49 USC 1344; 49 USC 1348(c); 49 USC 1352; 49 USC 1354(a); 49 USC 1355; 49 USC 1421 to 1431; 49 USC 1502; 49 USC 1651(b)(2); 42 USC 1857f-10; 42 USC 4321 et seq; EO 11514; 49 USC 106(g); PL 97-449

CFR Citation: 14 CFR 21

Legal Deadline: None

Abstract: This notice would propose to amend the Federal Aviation Regulations governing the certification procedures applicable to the type design approval of aircraft, aircraft engines, and propellers.

Timetable:

Action	Date	FR Cite
NPRM	06/00/89	

Small Entities Affected: None

Government Levels Affected: None

Sectors Affected: Multiple

Analysis: Regulatory Evaluation 00/00/00

Agency Contact: Lyle Davis, Department of Transportation, Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591, 202 267-9565

RIN: 2120-AC05

1766. PASSENGER-CARRYING AND CARGO AIR OPERATIONS FOR COMPENSATION OR HIRE

Significance: Nonsignificant

Legal Authority: 49 USC 1301(7); 49 USC 1303; 49 USC 1344; 49 USC 1348; 49 USC 1352 to 1357; 49 USC 1401; 49 USC 1421 to 1431; 49 USC 1471; 49 USC 1472; 49 USC 1502; 49 USC 1510; 49 USC 1522; 49 USC 2121 to 2125; 49 USC 1485; 49 USC 106(g)

CFR Citation: 14 CFR 91; 14 CFR 121; 14 CFR 129; 14 CFR 135

Legal Deadline: None

Abstract: The FAA proposes to update and clarify the certification and operations specifications requirements for persons who operate aircraft for compensation or hire by (1) codifying the Special Federal Aviation Regulation pertaining to the certification requirements and (2) consolidating into one part the certification and operations specifications requirements for persons who operate under Part 121 or Part 135. The proposal responds to the termination of the Civil Aeronautics Board (CAB) and to changes in the air transportation industry since the Airline Deregulation Act of 1978. The proposal would provide a guide enabling persons who operate aircraft for compensation or hire to determine the certification and operations requirements with which they must comply.

Timetable:

Action	Date	FR Cite
NPRM	10/03/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 10/03/88

Agency Contact: Michael J. Coffey, Department of Transportation, Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591, 202 267-3762

RIN: 2120-AC08

1767. PART 23 AIRWORTHINESS REVIEW, NOTICE NO. 5 (EQUIPMENT, SYSTEMS, AND INSTALLATION)

Significance: Nonsignificant

Legal Authority: 49 USC 1354; 49 USC 1421; 49 USC 1423

CFR Citation: 14 CFR 23

Legal Deadline: None

Abstract: This proposed amendment to Part 23 would allow certification of small airplanes with systems critical to safe flight that are not now approved without special conditions, exemptions, or equivalent safety findings.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation

Additional Information: This notice results from a regulatory review of Part 23 conducted in late 1984.

Agency Contact: Earsa L. Tankesley, Manager, Standards Office, Department of Transportation, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106, 816 926-6930

RIN: 2120-AC14

1768. PART 23 AIRWORTHINESS REVIEW, NOTICE NO. 2

Significance: Nonsignificant

Legal Authority: 49 USC 1354 Federal Aviation Act of 1958, Sec 313; 49 USC 1421 Federal Aviation Act of 1958, Sec 601; 49 USC 1423 Federal Aviation Act of 1958, Sec 603

CFR Citation: 14 CFR 23

Legal Deadline: None

Abstract: This project will propose design requirements applicable to advancements in technology being incorporated into current designs, allowing certification of spin resistant airplanes, reducing the regulatory burden in showing compliance with some requirements, and providing requirements for new technology that is being utilized in the development of small airplanes.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation

Additional Information: This notice results from a regulatory review of Part 23 conducted in late 1984.

Agency Contact: Earsa L. Tankesley, Manager, Standards Office, Department of Transportation, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106, 816 426-6930

RIN: 2120-AC15

1769. ROTORCRAFT CERTIFICATION REQUIREMENTS; COORDINATION WITH EUROPEAN AIRWORTHINESS AUTHORITIES STEERING COMMITTEE (AASC)

Significance: Nonsignificant

Legal Authority: 49 USC 1344; 49 USC 1354(a); 49 USC 1355; 49 USC 1421; 49 USC 1423; 49 USC 1424; 49 USC 1425; 49 USC 1428; 49 USC 1429; 49 USC 1430; 49 USC 106(g); PL 97-449

CFR Citation: 14 CFR 29; 14 CFR 27

Legal Deadline: None

Abstract: This action would propose changes to Parts 27 and 29, based primarily on proposals supported by the European Joint Airworthiness Requirements group. The proposed changes would affect systems, propulsion, and airframe components, and would introduce safety improvements, clarify existing regulations, and standardize terminology, in an effort to standardize airworthiness rules as much as possible between the United States and Europe, for the type certification of transport category rotorcraft.

Timetable:

Action	Date	FR Cite
NPRM	01/09/89	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 01/09/89

Agency Contact: R. T. Weaver, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0111, 817 624-5111

RIN: 2120-AC27

1770. MISCELLANEOUS CHANGES TO EMERGENCY EVACUATION DEMONSTRATION PROCEDURES, EXIT HANDLE ILLUMINATION, AND PA HANDSETS

Significance: Nonsignificant

Legal Authority: 49 USC 1344; 49 USC 1354(a); 49 USC 1355 to 1357; 49 USC 1401; 49 USC 1421 to 1430; 49 USC 1472; 49 USC 1485; 49 USC 1502; 49 USC 106(g); PL 97-449

CFR Citation: 14 CFR 25; 14 CFR 121

Legal Deadline: None

Abstract: Notice will propose to modify the procedures for conducting an emergency evacuation demonstration by requiring that the flight-crew take no active role in the demonstration and changing the age/sex distribution requirement for demonstration participants. This notice also proposes to standardize the illumination requirements for the handles of the various types of passenger emergency exits. In addition, it is proposed to add a requirement for a "push to talk" switch to the public address system.

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DOT—FAA

Proposed Rule Stage

These proposals are intended to enhance the provisions of transport category airplanes for egress of occupants during emergency conditions.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Frank Tiangsing, Aerospace Engineer, Department of Transportation, Federal Aviation Administration, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, WA 98168, 206 431-2121

RIN: 2120-AC45

1771. GLOBAL POSITIONING SYSTEM USE IN TERMINAL CONTROL AREAS

Significance: Nonsignificant

Legal Authority: 49 USC 1301(7); 49 USC 1303; 49 USC 1344; 49 USC 1348; 49 USC 1352 to 1355; 49 USC 1401; 49 USC 1421 to 1431; 49 USC 1471; 49 USC 1472; 49 USC 1502; 49 USC 1510; 49 USC 1522; 49 USC 2121 to 2125; 42 USC 4321 et seq; EO 11514; ...

CFR Citation: 14 CFR 91.90

Legal Deadline: None

Abstract: Adoption of this recommendation would allow aircraft operating in a Group I or II Terminal Control Area to be equipped with Global Position System (GPS), Very High Frequency Omnirange Station (VOR) or Tactical Air Navigation (TACAN) equipment.

Timetable:

Action	Date	FR Cite
NPRM	12/01/89	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: LEGAL AUTHORITY CONT: 49 USC 106(g), (Revised Pub L. 97-449, January 12, 1983)

Regulatory Project No: ATO-200-85-17R

Agency Contact: A. Wayne Pierce, Air Traffic Control Specialist, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-8246

RIN: 2120-AC54

1772. NON-FEDERAL AIR TRAFFIC CONTROL TOWERS

Significance: Nonsignificant

Legal Authority: 49 USC 1301(7); 49 USC 1303; 49 USC 1344; 49 USC 1348; 49 USC 1352 to 1355; 49 USC 1401; 49 USC 1421 to 1431; 49 USC 1471; 49 USC 1472; 49 USC 1502; 49 USC 1510; 49 USC 1522; 49 USC 2121 to 2125; 42 USC 4321; 49 USC 106(g) (Revised PL 97-449, January 12, 1983); ...

CFR Citation: 14 CFR 91; 14 CFR 105

Legal Deadline: None

Abstract: The adoption of this recommendation would allow review, study, and proposal of changes to Parts 91 and 105 of the regulations. This proposal would define the responsibilities of non-Federal air-traffic control towers as to compliance with FAA air-traffic control towers.

Timetable:

Action	Date	FR Cite
NPRM	06/01/89	

Small Entities Affected: Undetermined

Government Levels Affected: Local, State

Analysis: Regulatory Evaluation 12/01/88

Additional Information: Regulatory Project No. ATO-200-87-14R

Agency Contact: Robert Laser, Air Traffic Control Specialist, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-9251

RIN: 2120-AC59

1773. PROPOSED REVISION OF PART 93, SUBPART O(JAX)

Significance: Nonsignificant

Legal Authority: 49 USC 1302; 49 USC 1303; 49 USC 1348; 49 USC 1354(a); 49 USC 1421(a); 49 USC 1424; 49 USC 2402; 49 USC 2424; 49 USC 106(g)(Revised PL 97-449, January 12, 1983)

CFR Citation: 14 CFR 93

Legal Deadline: None

Abstract: The purpose of this proposal is to lessen the burden on the flying public by reducing the lateral size of the existing Jacksonville, Florida, Navy Airport Traffic Area.

Timetable:

Action	Date	FR Cite
NPRM	12/01/88	

Small Entities Affected: Undetermined

Government Levels Affected: None

Analysis: Regulatory Evaluation 12/01/88

Additional Information: Regulatory Project No. ATO-200-87-15R

Agency Contact: Wayne Pierce, Air Traffic Control Specialist, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-9246

RIN: 2120-AC65

1774. SHOULDER HARNESS FOR EACH SEAT IN PART 27 AND 29 ROTORCRAFT

Significance: Nonsignificant

Legal Authority: 49 USC 1344; 49 USC 1354(a); 49 USC 1355; 49 USC 1421; 49 USC 1423; 49 USC 1424; 49 USC 1425; 49 USC 1428; 49 USC 1429; 49 USC 1430; 49 USC 106(g); PL 97-449

CFR Citation: 14 CFR 27; 14 CFR 29

Legal Deadline: None

Abstract: This project proposes to amend Parts 27 and 29 to require a shoulder harness for each seat in rotorcraft manufactured after December 31, 1988.

Timetable:

Action	Date	FR Cite
NPRM	01/01/89	

Small Entities Affected: Businesses

Government Levels Affected: None

Analysis: Regulatory Flexibility Analysis; Regulatory Evaluation 01/01/89

Agency Contact: James Major, Department of Transportation, Federal Aviation Administration, PO Box 1689, Fort Worth, TX 79193-0111, 817 624-5117

RIN: 2120-AC67

1775. FUEL SYSTEM CRASHWORTHINESS

Significance: Nonsignificant

DOT—FAA

Proposed Rule Stage

Legal Authority: 49 USC 1344; 49 USC 1354; 49 USC 1354(a); 49 USC 1355; 49 USC 1421; 49 USC 1423; 49 USC 1424; 49 USC 1425; 49 USC 1428; 49 USC 1429; 49 USC 1430; 49 USC 106(g); PL 97-449

CFR Citation: 14 CFR 27; 14 CFR 29

Legal Deadline: None

Abstract: This project proposes to implement requirements in Parts 27 and 29 for crash-resistant fuel systems to reduce injuries or fatalities resulting from ignition of flammable fluids following an otherwise survivable crash of a rotorcraft.

Timetable:

Action	Date	FR Cite
NPRM	06/30/89	

Small Entities Affected: Undetermined

Government Levels Affected: None

Analysis: Regulatory Evaluation 06/30/89

Additional Information: Formerly entitled Crash-Resistant Fuel Systems.

Agency Contact: Mike Mathias, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0111, 817 624-5118

RIN: 2120-AC66

1776. ● INDEMNIFICATION OF PUBLISHERS OF AERONAUTICAL CHARTS AND MAPS

Significance: Nonsignificant

Legal Authority: 49 USC 1519

CFR Citation: 49 CFR 15.10; 49 CFR 15.11; 49 CFR 15.12; 49 CFR 15.13; 49 CFR 15.14; 49 CFR 15.15; 49 CFR 15.16; 49 CFR 15.17

Legal Deadline: None

Abstract: This proposed action would revise 49 USC 1519 to provide for the filing of indemnity claims by publishers of aeronautical charts and maps, who are not presently encompassed in that section, provided they meet certain specified conditions.

Timetable:

Action	Date	FR Cite
NPRM	08/16/88	53 FR 31608
NPRM Comment Period End	10/03/88	

Small Entities Affected: None

Government Levels Affected: Federal

Analysis: Regulatory Evaluation 08/16/88 (53 FR 31608)

Additional Information: This action is in response to an amendment of 49 USC 1519, which added a new section 1116 to the Federal Aviation Act of 1978, as amended.

Agency Contact: James S. Dillman, Assistant Chief Counsel, Litigation Division, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-3961

RIN: 2120-AC73

1777. ● ELECTRICAL AND ELECTRONIC SYSTEMS LIGHTNING PROTECTION

Significance: Nonsignificant

Legal Authority: 49 USC 1344; 49 USC 1354(a); 49 USC 1355; 49 USC 1421; 49 USC 1423; 49 USC 1425; 49 USC 1428; 49 USC 1429; 49 USC 1430; 49 USC 106(g); PL 97-449

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: This notice proposes to amend Part 25 of the Federal Aviation Regulations (FAR) to add a new standard for transport category airplanes which would provide lightning protection requirements for installed systems. This proposal is the result of an increasing concern for the vulnerability of electronic systems to the indirect effects of lightning, and is to promulgate specific lightning protection requirements for systems which perform essential and critical functions.

Timetable:

Action	Date	FR Cite
NPRM	06/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Gene Vandermolen, Aerospace Engineer, Department of Transportation, Federal Aviation Administration, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, 206 431-2114

RIN: 2120-AC01

1778. ● LANDING GEAR AURAL WARNING

Significance: Nonsignificant

Legal Authority: 49 USC 1354(a); 49 USC 1355; 49 USC 1356; 49 USC 1357; 49 USC 1401; 49 USC 1421 to 1430; 49 USC 1472; 49 USC 1485; 49 USC 1502; 49 USC 106(G); PL 97-449

CFR Citation: 14 CFR 25; 14 CFR 121; 14 CFR 125

Legal Deadline: None

Abstract: This notice proposes to amend the airworthiness standards for transport category airplane landing gear aural warning systems and the operating rules for air carrier and air taxi operators of transport airplanes by updating the present requirements to make them more functionally oriented. This proposal is prompted by reports of nuisance or inappropriate aural warnings which have occcurred in modern transport airplanes when strictly adhering to the present regulations. It is intended to enhance flight safety while decreasing the regulatory burden associated with making an equivalent level of safety finding or exemption, for those systems that do not meet the existing requirements. This proposal will not affect existing certified airplanes.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Gene Vandermolen, Flight Test and Systems Branch, Transport Standards Staff, Department of Transportation, Federal Aviation Administration, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, 206 431-2114

RIN: 2120-AC02

DEPARTMENT OF TRANSPORTATION (DOT)
Federal Aviation Administration (FAA)

Final Rule Stage

1779. + LOW-ALTITUDE WINDSHEAR EQUIPMENT REQUIREMENTS FOR TAKEOFFS/LANDINGS OF TRANSPORT CATEGORY AIRPLANES

Significance: Regulatory Program

Legal Authority: 49 USC 1354(a) Federal Aviation Act of 1958, Sec. 313(a); 49 USC 1421 Federal Aviation Act of 1958, Sec. 601; 49 USC 1424 Federal Aviation Act of 1958, Sec. 604

CFR Citation: 14 CFR 135; 14 CFR 121

Legal Deadline: None

Abstract: This notice proposes to require that all turbojet-powered airplanes operated in accordance with Part 121 have airborne systems that warn a flightcrew of the presence of low-altitude windshear conditions and then provide flight guidance to follow that would produce the optimal flight path for a missed approach procedure. This proposal would require that any Part 121 operator using an approved simulator as a part of its training program develop a specific windshear-related simulator flight training course for its flightcrews. This proposal would require that Part 121 and 135 operators using an approved training program include training concerning the low-altitude windshear phenomenon as a part of their normal ground training. Low-altitude windshear has been a prime causal factor in numerous air carrier accidents and possibly has contributed to a number of general aviation accidents.

Timetable:

Action	Date	FR Cite
ANPRM	05/03/79	44 FR 25807
ANPRM Comment Period End	06/03/79	
NPRM	06/01/87	52 FR 20560
NPRM Comment Period End	09/28/87	
Final Action	10/31/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 06/01/87 (52 FR 20560)

Additional Information: Docket No. 19110. In 1975, the FAA began a two-year effort to develop a windshear program. As part of the program, FAA began work to develop a windshear warning and pilot aiding device which has achieved encouraging results. Following the initial announcement of this proposal, it was determined that a regulatory analysis would not be required; however, an evaluation has been made and docketed.

Agency Contact: Gary Davis, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-9686

RIN: 2120-AA01

1782. + CONTROL OF DRUG AND ALCOHOL USE FOR PERSONNEL ENGAGED IN COMMERCIAL AND GENERAL AVIATION ACTIVITIES

Significance: Regulatory Program

Legal Authority: 49 USC 1354; 49 USC 1355 to 1357; 49 USC 1401; 49 USC 1421 to 1431; 49 USC 1472; 49 USC 1485; 49 USC 1502; 49 USC 106(g)

CFR Citation: 14 CFR 61; 14 CFR 63; 14 CFR 65; 14 CFR 121; 14 CFR 135

Legal Deadline: None

Abstract: This notice proposes to require domestic, flag, and supplemental air carriers, commercial operators of large aircraft, air taxi operators, commercial operators, certain contractors to these operators, and air traffic control facilities not operated by, or under contract with the FAA or the U.S. military to have an anti-drug program for employees who perform specific safety-related functions. The proposals are intended to ensure a drug-free aviation environment and to eliminate drug abuse in commercial aviation.

Timetable:

Action	Date	FR Cite
ANPRM	12/09/86	51 FR 44432
ANPRM Comment Period End	01/23/87	
Comment Period Extended to 02/23/87	01/23/87	52 FR 2547
NPRM	03/14/88	53 FR 8368
Notice of Public Hearings	05/20/88	53 FR 18250
NPRM Comment Period End	06/13/88	

Next Action Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Analysis: Draft Regulatory Evaluation 03/14/88 (53 FR 8368)

Agency Contact: Dr. Robert S. Bartanowicz, Assistant Manager, Safety Regulations Division, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-9678

RIN: 2120-AC33

1781. + INSTALLATION OF TRAFFIC CONTROL AVOIDANCE SYSTEM IN DOMESTIC TRANSPORT CATEGORY AIRPLANES

Significance: Regulatory Program

Legal Authority: 49 USC 1301; 49 USC 1303; 49 USC 1344; 49 USC 1352 to 1355; 49 USC 1401 to 1431; 42 USC 4321 et seq; 49 USC 106(g)

CFR Citation: 14 CFR 25; 14 CFR 121; 14 CFR 125; 14 CFR 129; 14 CFR 135

Legal Deadline: Other, Statutory, December 30, 1991. PL 100-223

Abstract: This notice proposes to require the installation and use of a Traffic Alert and Collision Avoidance System (TCAS) in large transport type airplanes and certain turbine powered smaller airplanes. TCAS, which utilizes the signal from existing transponders, would provide for a collision avoidance capability in the cockpit independent of the ground Air Traffic Control (ATC) system, or where there is no ATC coverage. Additionally, the notice proposes that all operators of TCAS-equipped airplanes have an FAA-approved TCAS training program for flight crewmembers.

Timetable:

Action	Date	FR Cite
NPRM	08/26/87	52 FR 32268
NPRM Comment Period End	12/24/87	
Final Action	10/26/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Analysis: Regulatory Flexibility Analysis; Regulatory Evaluation 08/26/87 (52 FR 32268)

Agency Contact: Frank Rock, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-9567

RIN: 2120-AC34

DOT—FAA

Final Rule Stage

1782. + REVISION OF FOREIGN REPAIR STATION RULES

Significance: Regulatory Program

Legal Authority: 49 USC 1354(a); 49 USC 1355(a); 49 USC 1421; 49 USC 1422; 49 USC 1423; 49 USC 1424; 49 USC 1425; 49 USC 1426; 49 USC 1427; 49 USC 1428; 49 USC 1429; 49 USC 1430; 49 USC 1431; 49 USC 1502; 49 USC 106(g); ...

CFR Citation: 14 CFR 145

Legal Deadline: None

Abstract: This notice proposes to update the regulations for certificating foreign repair stations to accommodate the increasing demand for maintenance and alteration of U.S.-registered aircraft manufactured worldwide. This proposal would (1) modify the requirement for determination of need before a foreign repair station may be considered for U.S. certification, and (2) modify the limitations on the scope of work that a foreign repair station may perform on U.S.-registered aircraft, engines, propellers, appliances, and component parts for use on U.S.-registered aircraft. In addition, it is proposed that a foreign or domestic manufacturer, or a product for which it holds a U.S. type certificate and that is certificated by the FAA as a repair station, be allowed to return to service a component maintained or altered by a noncertificated source subject to specified conditions. Lastly, to be consistent with the air carrier operating rules, the air taxi/commercial operator rules would be amended to permit the airworthiness release to be signed by a person authorized by a U.S.-certificated foreign repair station.

Timetable:

Action	Date	FR Cite
NPRM	11/24/87	52 FR 45124
NPRM Comment Period End	01/25/88	
Final Action	11/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: None

Analysis: Regulatory Evaluation 11/24/87 (52 FR 45124)

Agency Contact: Leo Weston, Manager, Aircraft Maintenance Division, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-8363

RIN: 2120-AC50

1783. + INOPERATIVE INSTRUMENTS OR EQUIPMENT

Significance: Agency Priority

Legal Authority: 49 USC 1348(a) Federal Aviation Act of 1958, Sec. 307(a); 49 USC 1348(c) Federal Aviation Act of 1958, Sec. 307(c); 49 USC 1354 Federal Aviation Act of 1958, Sec. 313; 49 USC 1354(a) Federal Aviation Act of 1958, Sec. 313(a); 49 USC 1355 Federal Aviation Act of 1958, Sec. 314; 49 USC 1355(a) Federal Aviation Act of 1958, Sec. 314(a); 49 USC 1421(a) to 1430 Fed. Av. Act 1958, Secs. 601(a) to 610; 49 USC 1502 Federal Aviation Act of 1958, Sec. 1102

CFR Citation: 14 CFR 43; 14 CFR 91

Legal Deadline: None

Abstract: This notice supplements NPRM 81-14, which proposed to permit the operation of powered aircraft with certain inoperative instruments and equipment that are not essential for the safe operation of the aircraft. After further review of the comments from the public, the FAA concluded that provisions in that notice could be accomplished with less paperwork, and the concept could be further modified to conform to other pertinent regulations. The supplemental NPRM proposed to permit rotorcraft and nonturbine powered airplanes (for which a master minimum equipment list has not been developed), that are not being utilized in an air carrier operation, to be operated with certain inoperative instruments and equipment. Furthermore, this supplemental NPRM proposed to permit flight operations with certain inoperative instruments and equipment for small multiengine rotorcraft and nonturbine-powered small multiengine airplanes (for which a master minimum equipment list has been developed and that are not being utilized in an air carrier operation) the option of selecting the minimum equipment (cont)

Timetable:

Action	Date	FR Cite
NPRM	10/26/81	46 FR 52278
NPRM Comment Period End	01/25/82	
SNPRM Comment Period End	12/15/87	52 FR 47680
	03/14/88	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 10/26/81 (46 FR 52278)

Additional Information: ABSTRACT CONT: list concept or complying with the provision contained in the new proposed regulations. This rulemaking is significant because of substantial public interest.

Agency Contact: John Lynch, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-3841

RIN: 2120-AA18

1784. + CERTIFICATION OF RECREATIONAL PILOTS AND ANNUAL FLIGHT REVIEW

Significance: Agency Priority

Legal Authority: 49 USC 1354(a) Federal Aviation Act of 1958, Sec. 313(a); 49 USC 1355 Federal Aviation Act of 1958, Sec. 314; 49 USC 1421 Federal Aviation Act of 1958, Sec. 601; 49 USC 1422 Federal Aviation Act of 1958, Sec. 602

CFR Citation: 14 CFR 61

Legal Deadline: None

Abstract: This final rule would establish a recreational pilot certificate which would allow a student pilot to receive certification to fly certain aircraft after fewer hours of training than are currently required of a private pilot applicant. The recreational pilot certificate is intended to be a low-cost alternative to a private pilot certificate for persons interested in flying basic, experimental, or homebuilt aircraft in close proximity to a home airport that is not in airspace in which communication with an air traffic control facility is required. The rule would also establish an annual flight review requirement for noninstrument-rated private pilots with fewer than 400 flight hours. This rulemaking is significant because of substantial public interest and safety implications.

Timetable:

Action	Date	FR Cite
NPRM	06/25/85	50 FR 26286
NPRM Comment Period End	09/24/85	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

DOT—FAA

Final Rule Stage

Analysis: Regulatory Evaluation 08/25/85 (50 FR 28288)

Additional Information: Docket No. 24695

Agency Contact: Edna French, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-3844

RIN: 2120-AA54

1785. + TRANSPORT CATEGORY ROTORCRAFT STRUCTURAL FATIGUE EVALUATION

Significance: Agency Priority

Legal Authority: 49 USC 1344; 49 USC 1354(A); 49 USC 1355; 49 USC 1421; 49 USC 1423; 49 USC 1424; 49 USC 1425; 49 USC 1428; 49 USC 1429; 49 USC 1430; 49 USC 106(G); PL 97-449

CFR Citation: 14 CFR 29

Legal Deadline: None

Abstract: This amendment would revise Section 29.571 to add flaw tolerance to the fatigue evaluation of rotorcraft structure. This rulemaking is considered significant because it involves important safety issues.

Timetable:

Action	Date	FR Cite
ANPRM	01/06/83	48 FR 772
ANPRM Comment Period End	04/18/83	48 FR 772
NPRM	09/22/86	51 FR 33704
NPRM Comment Period End	04/03/87	51 FR 45343
Final Action	02/22/89	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Draft Regulatory Evaluation 09/22/86 (51 FR 33704); Regulatory Evaluation 02/22/89

Additional Information: Docket No. 23485. Public meeting held on February 8, 1983. This project was formerly entitled Rotorcraft Structural Fatigue Including Tolerance to Flaws.

Agency Contact: Robert T. Weaver, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0111, 817 624-5111

RIN: 2120-AA54

1786. + OCCUPANT RESTRAINT IN NORMAL AND TRANSPORT CATEGORY ROTORCRAFT

Significance: Agency Priority

Legal Authority: 49 USC 1344 Federal Aviation Act of 1958, Sec. 303; 49 USC 1354(a) Federal Aviation Act of 1958, Sec. 313(a); 49 USC 1355 Federal Aviation Act of 1958, Sec. 314; 49 USC 1421 Federal Aviation Act of 1958, Sec. 601; 49 USC 1423 Federal Aviation Act of 1958, Sec. 603; 49 USC 1424 Federal Aviation Act of 1958, Sec. 604; 49 USC 1425 Federal Aviation Act of 1958, Sec. 605; 49 USC 1428 Federal Aviation Act of 1958, Sec. 608; 49 USC 1429 Federal Aviation Act of 1958, Sec. 609; 49 USC 1430 Federal Aviation Act of 1958, Sec. 610; 49 USC 106(g); PL 97-449

CFR Citation: 14 CFR 27; 14 CFR 29

Legal Deadline: None

Abstract: This project proposes to amend the rotorcraft airworthiness standards in Parts 27 and 29 of the FAR. These proposals would add two dynamic crash-impact design requirement conditions for seat and occupant restraint systems, increase the static design load factors for seating devices and items of mass in the cabin or adjacent to the cabin as prescribed, prescribe a shoulder harness for each occupant, and add human impact injury criteria for the dynamic crash-impact conditions. These proposals are intended to significantly improve occupant protection levels in a survivable emergency landing impact. This rulemaking is significant because of the obvious safety improvements in crash situations, but also because of industry and operator concerns as to incurred costs due to increased weight and design effort.

Timetable:

Action	Date	FR Cite
NPRM	06/03/87	52 FR 20938
NPRM Comment Period End	12/30/87	
Comment period reopened to 05/09/88	03/08/88	53 FR 7479

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Flexibility Analysis; Regulatory Evaluation 06/03/87 (52 FR 20938)

Agency Contact: James Major, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0111, 817 624-5117

RIN: 2120-AB35

1787. + PROPOSED DEPARTMENT OF ENERGY PROHIBITED AREAS

Significance: Agency Priority

Legal Authority: 49 USC 1348(a) Federal Aviation Act of 1958, Sec. 307(a); 49 USC 1354(a) Federal Aviation Act of 1958, Sec. 313(a); 49 USC 106(g) Revised, Pub. L. 97-449, January 12, 1983

CFR Citation: 14 CFR 11.85; 14 CFR 73

Legal Deadline: None

Abstract: This proposal was part of a Department of Energy (DOE) contemplated action to enhance protection of nuclear research and production facilities, whereby helicopter operations over the designated sites would be prohibited without prior DOE authorization. A summary of written and oral comments received in response to notices and hearings was sent to the DOE February 22, 1985, for them to address. DOE has conducted an indepth review of security at all sites, and has concluded that further regulatory action is not necessary. The proposal will be withdrawn.

Timetable:

Action	Date	FR Cite
ANPRM	02/08/84	49 FR 04765
ANPRM Comment Period End	04/09/84	
Public Hearings Announced	07/20/84	49 FR 29411
Comment Period Extended to 11/16/84	08/07/84	49 FR 31435
To be withdrawn	12/00/88	

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Undetermined

Agency Contact: Paul Gallant, Special Use Airspace, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-9250

RIN: 2120-AB39

DOT—FAA

Final Rule Stage

1788. + ELIMINATION OF AIRPORT DELAYS

Significance: Agency Priority

Legal Authority: 49 USC 1303 Federal Aviation Act of 1958, Sec. 103; 49 USC 1348 Federal Aviation Act of 1958, Sec. 307; 49 USC 1354(a) Federal Aviation Act of 1958, Sec. 313(a); 49 USC 1421(a) Federal Aviation Act of 1958, Sec. 601(a); 14 CFR 11.49

CFR Citation: 14 CFR 93

Legal Deadline: None

Abstract: This proposed rule was designed to alleviate increased delays throughout the air traffic system. The regulation was significant because of its involvement with important departmental policy. However, recent regulations issued by the Office of the Secretary and voluntary schedule changes by the airlines have lessened the need for this specific proposal. Therefore, this proposed rule will be withdrawn.

Timetable:

Action	Date	FR Cite
NPRM	08/20/84	49 FR 33082
NPRM Comment Period End	09/04/84	
To Be Withdrawn	11/00/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Analysis: Regulatory Evaluation 08/20/84 (49 FR 33082)

Additional Information: Docket No. 24206.

Agency Contact: David L. Bennett, Manager, Airspace and Air Traffic Law Branch, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-3491

RIN: 2120-AB42

1789. + PROPOSED REVISION TO NOISE CERTIFICATION STANDARDS FOR PROPELLER-DRIVEN SMALL AIRPLANES

Significance: Agency Priority

Legal Authority: 49 USC 1354 Federal Aviation Act of 1958, Sec. 313; 49 USC 1421 Federal Aviation Act of 1958, Sec. 601; 49 USC 1423 Federal Aviation Act of 1958, Sec. 603; 49 USC 1431 Federal Aviation Act of 1958, Sec. 611

CFR Citation: 14 CFR 21; 14 CFR 36

Legal Deadline: None

Abstract: Would revise noise certification standards for propeller-driven small airplanes to substitute the use of actual takeoff tests for the level flyover tests currently specified. This proposal would revise test procedures applicable to noise certification tests conducted on or after January 1, 1988. It would also revise the noise-level limit numbers to approximate the equivalent of the sound levels measured and corrected in accordance with the current standard. These proposals result from industry requests for certification to be more directly based upon typical inservice noise measurements and from studies conducted in several nations over a three-year period under the auspices of the International Civil Aviation Organization. In addition, the FAA proposes to exempt antique airplanes and changes involving the addition of floats or skis from the acoustical change measurement and documentation requirements of Part 21. This regulation is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	07/14/86	51 FR 25500
NPRM Comment Period End	10/09/86	
Final Action	10/03/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 07/14/86 (51 FR 25500)

Agency Contact: Steven Albersheim, Environmental Specialist, Department of Transportation, Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591, 202 267-3560

RIN: 2120-AB47

1790. + PROPOSED LIMITS ON THE GROWTH OF NOISE FROM CERTAIN AIRPLANES AND AIRPLANE TYPES

Significance: Agency Priority

Legal Authority: 49 USC 1354(a) Federal Aviation Act of 1958, Sec. 313(a); 49 USC 1421(a) Federal Aviation Act of 1958, Sec. 601(a); 49 USC 1423 Federal Aviation Act of 1958, Sec. 603; 49 USC 1431(b) Federal Aviation Act of 1958, Sec. 611(b); 49 USC 1421 et seq National Environmental Policy Act, Title I; EO 11514; 49 USC 106(g)

CFR Citation: 14 CFR 36; 14 CFR 91

Legal Deadline: None

Abstract: This proposal would revise both noise certification standards and operating noise rules to ensure that aircraft certificated within certain broad noise groups or "stages" remain within those stages. Those proposals would apply to transport category large aircraft and to turbojet powered aircraft regardless of category. The proposed rule would prohibit modification of both individual airplanes and whole airplane types where those modifications would result in the growth of noise beyond the limits of the airplane's current stage. While the proposal would not restrict airplane changes that result in lower noise, it would in some cases prohibit remodification of those aircraft to return to their original noise levels. The FAA believes that these rules are necessary to correct a defect in the current regulations and to protect airports, aircraft operators, and the public from the effects of that defect. This rulemaking is significant because of intense public interest.

Timetable:

Action	Date	FR Cite
NPRM	06/17/87	52 FR 23144
NPRM Comment Period End	09/14/87	
Final Action	10/16/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 06/17/87 (52 FR 23144)

Agency Contact: Steven Albersheim, Environmental Specialist, Department of Transportation, Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591, 202 267-3560

RIN: 2120-AB50

1791. + INDEPENDENT POWER SOURCE FOR PUBLIC ADDRESS SYSTEM IN TRANSPORT CATEGORY AIRPLANES

Significance: Agency Priority

Legal Authority: 49 USC 1344; 49 USC 1354(a); 49 USC 1355; 49 USC 1421; 49 USC 1423; 49 USC 1424; 49 USC 1425; 49 USC 1428; 49 USC 1429; 49 USC 1430; 49 USC 106(g); PL 97-449

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DOT—FAA

Final Rule Stage

CFR Citation: 14 CFR 25; 14 CFR 121

Legal Deadline: None

Abstract: This action would amend the regulations to require an independent power source for the public address (PA) system in certain transport category airplanes. The requirement would be applicable to future type certification of airplanes that are required to have PA systems for use in air carrier service and to such airplanes manufactured after a specified date, regardless of the date of application for type certificate. This rulemaking is considered significant because it involves an important cabin-safety issue.

Timetable:

Action	Date	FR Cite
NPRM	05/27/86	51 FR 19140
NPRM Comment Period End	11/24/86	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 05/27/86 (51 FR 19140)

Additional Information: Docket No. 24055

Agency Contact: Robert Hall, Department of Transportation, Federal Aviation Administration, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, 206 431-2143

RIN: 2120-AB77

1792. + FLIGHT PLAN AND TRANSPONDER-ON REQUIREMENTS IN AIR DEFENSE IDENTIFICATION ZONES (ADIZ)

Significance: Agency Priority

Legal Authority: 49 USC 1348; 49 USC 1502; 49 USC 1510; 49 USC 1522; 49 USC 106(g) Revised Pub L 97-449, January 12, 1983

CFR Citation: 14 CFR 99

Legal Deadline: None

Abstract: The proposal would require that all civil aircraft operating into, within, or out of the United States through a coastal air defense identification zone be operated under a filed flight plan regardless of true airspeed. Each such operation by an aircraft equipped with a functioning air traffic control (ATC) transponder would have to be conducted with that transponder on and replying on the appropriate code or on a code assigned by ATC. This rulemaking is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	10/24/86	51 FR 37882
NPRM Comment Period End	12/23/86	
Final Action	10/03/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 10/24/86 (51 FR 37882)

Additional Information: Regulatory Project ATO-200-85-13R (Docket # 25099)

Agency Contact: Reginald C. Matthews, Air Traffic Control Specialist, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-9245

RIN: 2120-AC00

1793. + FIRE PROTECTION REQUIREMENTS FOR CARGO AND BAGGAGE COMPARTMENTS - PARTS 121 AND 135

Significance: Agency Priority

Legal Authority: 49 USC 1354(a); 49 USC 1355; 49 USC 1356; 49 USC 1357; 49 USC 1401; 49 USC 1421 to 1430; 49 USC 1485; 49 USC 1502; 49 USC 106(g); PL 97-449; 49 USC 1472; 49 USC 1355(a); 49 USC 1431

CFR Citation: 14 CFR 121; 14 CFR 135

Legal Deadline: None

Abstract: This action would propose requirements to improve cargo compartment fire protection for transport category airplanes operated under Parts 121 and 135 after a specified date. This action would propose a new rule which would require, within two years, replacement of ceiling and sidewall (including door and bulkhead) cargo compartment fire resistant liner panels in Class C and D cargo compartments greater than 200 cubic feet in volume in certain transport category airplanes. This rulemaking is significant because of substantial public interest in crashworthiness criteria.

Timetable:

Action	Date	FR Cite
NPRM	11/05/87	52 FR 42512
NPRM Comment Period End	05/03/88	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 11/05/87 (52 FR 42512)

Agency Contact: Gary L. Killion, Department of Transportation, Federal Aviation Administration, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, 206 431-2112

RIN: 2120-AC04

1794. + LOCATION OF PASSENGER EMERGENCY EXITS IN TRANSPORT-CATEGORY AIRPLANES

Significance: Agency Priority

Legal Authority: 49 USC 1344; 49 USC 1354(a); 49 USC 1355; 49 USC 1421; 49 USC 1423; 49 USC 1424; 49 USC 1425; 49 USC 1428; 49 USC 1429; 49 USC 1430; 49 USC 106(g); PL 97-449

CFR Citation: 14 CFR 21; 14 CFR 25; 14 CFR 121

Legal Deadline: None

Abstract: This notice proposes to limit increases in passenger emergency escape path distance by establishing a new standard limiting the distance any passenger seat may be from the nearest emergency exit and the distance any exit may be from an adjacent exit. The proposal would make the standard applicable to type certification of new transport category airplane models, regardless of the date of original application for type certificate, and to airplanes operating under Part 121, except those already in operation. The standard would be applicable for issuance of standard airworthiness certificates for airplanes manufactured after the NPRM date. The proposal is a result of the recent public Emergency Evacuation Task Force and is intended to improve the likelihood of passengers safely escaping an airplane during an emergency evacuation; for this reason the rulemaking is considered significant.

DOT—FAA

Final Rule Stage

Timetable:

Action	Date	FR Cite
NPRM	10/20/87	52 FR 39190
NPRM Comment Period End	12/21/87	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Analysis: Draft Regulatory Evaluation 10/20/87 (52 FR 39190)

Agency Contact: Arthur Hayes, Aerospace Engineer, Department of Transportation, Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591, 202 267-9937

RIN: 2120-AC29

1795. + TERMINAL CONTROL AREA CLASSIFICATION AND PILOT/EQUIPMENT REQUIREMENTS

Significance: Agency Priority

Legal Authority: 49 USC 1301(7); 49 USC 1303; 49 USC 1348(a); 49 USC 1354(a); 49 USC 1355; 49 USC 1401; 49 USC 1421 thru 31; 49 USC 1502; 49 USC 1510; 49 USC 1522; 49 USC 2121 thru 25; 49 USC 106(g); EO 10854; 14 CFR 11.69

CFR Citation: 14 CFR 71; 14 CFR 91

Legal Deadline: None

Abstract: This rulemaking proposes to establish a single-class TCA, require all aircraft to be equipped with an automatic altitude reporting transponder when operating within 30 miles of a TCA primary airport, require student pilots to receive TCA training and instructor pilot endorsement in order to conduct operations in a TCA, require helicopters to be equipped with appropriate navigational aid equipment, and require a private pilot license for operations at certain TCA primary airports. A draft final rule is being prepared to extract all of the Mode C issues which have been disposed of in Amendment No. 91-203. This rulemaking is considered significant because it is controversial, involving substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	06/16/87	52 FR 22918
Comment Period Extended - NPRM to 09/16/87	08/06/87	52 FR 29205
NPRM Comment Period End	08/17/87	
Final Action	10/03/88	

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Analysis: Regulatory Evaluation 06/16/87 (52 FR 22918)

Additional Information: RIN 2120-AC36 has been combined into this proceeding. Regulatory Project No AT-200-86-21R (Docket #25304)

Agency Contact: Reginald C. Matthews, Air Traffic Control Specialist, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-9245

RIN: 2120-AC26

1796. + COMMUTER CATEGORY AIRPLANES: COCKPIT VOICE RECORDER (CVR) AND FLIGHT DATA RECORDER (FDR) REQUIREMENTS

Significance: Agency Priority

Legal Authority: 49 USC 1354(a); 49 USC 1355(a); 49 USC 1421; 49 USC 1422; 49 USC 1423; 49 USC 1424; 49 USC 1425; 49 USC 1426; 49 USC 1427; 49 USC 1428; 49 USC 1429; 49 USC 1430; 49 USC 1431; 49 USC 1502; 49 USC 106(g)

CFR Citation: 14 CFR 135

Legal Deadline: None

Abstract: The FAA amends its regulations to require digital flight data recorders and cockpit voice recorders (CVRs) to be installed in a broad category of airplanes and rotorcraft operated by air carriers and commuters, as well as in selected aircraft operated in general aviation. The amendments are in response to legislation which mandates the FAA to amend its flight recorder and CVR requirements in accordance with recommendations from the National Transportation Safety Board (NTSB). The intent of this rulemaking is to provide more information to accident investigators in determining the causes of accidents and the measures needed to correct the causes. In addition, the FAA also requests additional comments regarding the general aviation requirements. This rulemaking is considered significant because of substantial public and congressional interest.

Timetable:

Action	Date	FR Cite
NPRM	02/12/88	53 FR 4314
NPRM Comment Period End	03/28/88	53 FR 4314
Final Action	07/11/88	53 FR 26134
Correction to Final Action	08/16/88	53 FR 30838
Correction to Final Action	08/16/88	53 FR 30906
Final Action	10/11/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Analysis: Regulatory Flexibility Analysis; Regulatory Evaluation 07/11/88 (53 FR 26134)

Additional Information: Additional comments were invited through October 11, 1988.

Agency Contact: Frank Rock, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-9567

RIN: 2120-AC48

1797. + DESIGN STANDARDS FOR FUEL-TANK ACCESS PANELS

Significance: Agency Priority

Legal Authority: 49 USC 1354(a); 49 USC 1355; 49 USC 1356; 49 USC 1357; 49 USC 1401; 49 USC 1421 to 1430; 49 USC 1472; 49 USC 1485; 49 USC 1502; 49 USC 106(g); PL 97-449; 49 CFR 1.47(a)

CFR Citation: 14 CFR 25; 14 CFR 121

Legal Deadline: None

Abstract: This notice proposes to require that the fuel-tank access panels of transport category airplanes be designed to minimize penetration by likely foreign objects and be fire resistant. This proposed change is based on service experience and is intended to reduce the hazards associated with the loss of access panels. This notice also proposes to require that the panels of all turbine powered airplanes operated in air carrier service after a specified date meet these standards. This rulemaking is considered significant because it involves an important crashworthiness safety issue.

DOT—FAA

Final Rule Stage

Timetable:

Action	Date	FR Cite
NPRM	05/23/88	53 FR 18526
NPRM Comment Period End	09/17/88	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 05/23/88 (53 FR 18526)

Agency Contact: Ivan Connally, Department of Transportation, Federal Aviation Administration, 17900 Pacific Highway South, C-68966, Seattle, WA 98168, 206 431-2129

RIN: 2120-AC58

1798. + ACCESS TO SECURED AREAS ON AIRPORTS

Significance: Agency Priority

Legal Authority: 49 USC 1354; 49 USC 1356; 49 USC 1358; 49 USC 1421; 49 USC 106(g); PL 97-449

CFR Citation: 14 CFR 107

Legal Deadline: None

Abstract: This notice proposes to require certain airport operators to submit to the Administrator, for approval and inclusion in their approved security programs, a plan for the installation and use of a computer-controlled card system for access to secured areas of the airport. This notice proposes that airport operators submit a plan for a computer-controlled card system according to a schedule based on the number of passengers screened at the airport each year or as designated by the Director of Civil Aviation Security for the first phase of the schedule not withstanding the number of passengers screened annually. The proposal is significant because it is critical to aviation and airport security.

Timetable:

Action	Date	FR Cite
NPRM	03/18/88	53 FR 9094
NPRM Comment Period End	05/02/88	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Undetermined

Analysis: Regulatory Evaluation 03/18/88 (53 FR 9094)

Agency Contact: Sharon Sharp, Department of Transportation, Federal Aviation Administration, Office of Civil Aviation Security, 800 Independence Avenue, SW., Washington, DC 20591, 202 267-8047

RIN: 2120-AC69

1799. REVISION OF PART 91

Significance: Nonsignificant

Legal Authority: 49 USC 1348 Federal Aviation Act of 1958, Sec. 307; 49 USC 1354 Federal Aviation Act of 1958, Sec. 313; 49 USC 1354(a) Federal Aviation Act of 1958, Sec. 313(a); 49 USC 1355 Federal Aviation Act of 1958, Sec. 314; 49 USC 1401 Federal Aviation Act of 1958, Sec. 501; 49 USC 1402 Federal Aviation Act of 1958, Sec. 502; 49 USC 1421 Federal Aviation Act of 1958, Sec. 601; 49 USC 1422 to 1430 Fed. Aviation Act of 1958, Secs. 602 to 610; 49 USC 1502 Federal Aviation Act of 1958, Sec. 1102

CFR Citation: 14 CFR 91

Legal Deadline: None

Abstract: This proposed amendment reorganizes and realigns the general operating and flight rules to make them more understandable and easier to use. Also, several changes are being made to provide more flexibility for certain operations. These changes resulted from comments received from the general public and aviation industry in response to a request for specific comments to help identify substantive areas needing review.

Timetable:

Action	Date	FR Cite
ANPRM	01/22/79	44 FR 4571
NPRM	09/10/81	46 FR 45256
NPRM	03/20/85	50 FR 11282
NPRM Comment Period End	07/18/85	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 09/10/81 (46 FR 45256)

Additional Information: Docket No. 18334.

Agency Contact: Marion Clemens or Edna French, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-8150

RIN: 2120-AA11

1800. ROTORCRAFT REGULATORY REVIEW PROGRAM NOTICE NO. 4

Significance: Nonsignificant

Legal Authority: 49 USC 1344; 49 USC 1354(A); 49 USC 1355; 49 USC 1421; 49 USC 1423; 49 USC 1424; 49 USC 1425; 49 USC 1428; 49 USC 1429; 49 USC 1430; 49 USC 106(G); PL 97-449

CFR Citation: 14 CFR 27; 14 CFR 29

Legal Deadline: None

Abstract: This is Notice 4 of a series of notices issued as part of the FAA's comprehensive Rotorcraft Regulatory Review Program. This notice contains proposals which would amend and update the airframe and related equipment requirements in Parts 27 and 29 of the Federal Aviation Regulations.

Timetable:

Action	Date	FR Cite
NPRM	03/14/88	53 FR 9190
NPRM Comment Period End	09/19/88	53 FR 9190

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Impact Analysis; Regulatory Evaluation 03/14/88 (53 FR 9190)

Agency Contact: James Major, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0111, 817 624-5117

RIN: 2120-AA29

1801. TRANSPORT CATEGORY AIRPLANE AIRWORTHINESS STANDARDS

Significance: Nonsignificant

Legal Authority: 49 USC 1344; 49 USC 1354(a); 49 USC 1355; 49 USC 1421; 49 USC 1423; 49 USC 1424; 49 USC 1425; 49 USC 1428; 49 USC 1429; 49 USC 1430; 49 USC 106(g); PL 97-449

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: This action would amend the airworthiness standards contained in Part 25 applicable to transport category airplanes to: (1) relieve the regulatory burden wherever possible, (2) ensure the airworthiness standards are practicable for the light transport airplanes common to regional air carrier operation, and (3) update Part 25 for clarity and accuracy.

Timetable:

Action	Date	FR Cite
NPRM	12/03/84	49 FR 47358
NPRM Comment Period End	04/04/85	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Sectors Affected: Multiple

Analysis: Regulatory Evaluation 12/03/84 (49 FR 47358)

Additional Information: Docket No. 24344

Agency Contact: Gary Killion, Department of Transportation, Federal Aviation Administration, NorthWest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, WA 98168, 206 431-2112

RIN: 2120-AA47

1802. MISCELLANEOUS AMENDMENTS

Significance: Nonsignificant

Legal Authority: 49 USC 1352 Federal Aviation Act of 1958, Sec. 311; 49 USC 1354 Federal Aviation Act of 1958, Sec. 313; 49 USC 1354(a) Federal Aviation Act of 1958, Sec. 313(a); 49 USC 1355(a) Federal Aviation Act of 1958, Sec. 314(a); 49 USC 1421 to 1430 Fed Aviation Act of 1958, Secs. 601 to 610; 49 USC 1502 Federal Aviation Act of 1958, Sec. 1102

CFR Citation: 14 CFR 21; 14 CFR 65; 14 CFR 107; 14 CFR 121; 14 CFR 135; 14 CFR 145

Legal Deadline: None

Abstract: This action would amend various sections of the regulations. Some of the amendments are clarifying or editorial in nature or correct improper or obsolete references. Others relax certain existing requirements. Others allow issuance of special flight permits for an additional purpose, relax a requirement for passenger information signs, and eliminate the bulk erasure device on cockpit voice recorders. This action is in response to numerous complaints, suggestions, and petitions for exemption concerning several regulatory requirements received from users of the National Airspace System. These users state that these sections contain obsolete references and vague, complex, and inadequate language and that, in some instances, the cost of compliance is not justified by the benefits derived.

Timetable:

Action	Date	FR Cite
NPRM	10/03/83	48 FR 45214
NPRM Comment Period End	12/02/83	48 FR 45214

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 10/03/83 (48 FR 45214)

Additional Information: Docket No. 23781.

Agency Contact: Jean Casciano, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-9683

RIN: 2120-AA50

1803. AMEND PART 23 TO INCLUDE EMPENNAGE FATIQUE REQUIREMENTS

Significance: Nonsignificant

Legal Authority: 49 USC 1354 Federal Aviation Act of 1958, Sec. 313; 49 USC 1421 Federal Aviation Act of 1958, Sec. 601; 49 USC 1423 Federal Aviation Act of 1958, Sec. 603

CFR Citation: 14 CFR 23

Legal Deadline: None

Abstract: This action would provide for fatigue integrity of small airplane empennage structure where present Part 23 fatigue requirements apply only to the wing.

Timetable:

Action	Date	FR Cite
NPRM	09/22/86	51 FR 33700
NPRM Comment Period End	01/21/87	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 09/22/86 (51 FR 33700)

Additional Information: The FAA is evaluating additional data obtained from NASA.

Agency Contact: Earsa L. Tankesley, Manager, Standards Office, Department of Transportation, Federal Aviation Administration, 601 E. 12th Street, Kansas City, MO 64106, 816 426-6930

RIN: 2120-AA58

1804. NATIONAL AIRSPACE REVIEW (NAR): TERMINAL AIRSPACE TASK GROUP RECOMMENDATIONS

Significance: Nonsignificant

Legal Authority: 49 USC 1348 Federal Aviation Act of 1958, Sec. 307; 49 USC 1354(a) Federal Aviation Act of 1958, Sec. 313(a)

CFR Citation: 14 CFR 1; 14 CFR 71; 14 CFR 91

Legal Deadline: None

Abstract: Would: (1) reclassify terminal control areas into one category; (2) apply the operating requirements of the current Group I TCA to Group II TCA's; (3) require student pilots to obtain a logbook endorsement from a certified instructor pilot prior to operating in any TCA; (4) replace the term "airport traffic area" with the term "control tower area," (5) apply the two-way radio communications requirements of Section 91.87 for operations at an airport with an operating control tower operated by other entities; (6) adopt a new definition for airport traffic areas (control tower areas); (7) redefine control zones with a standard ceiling of 3,000 feet AGL; and (8) use nautical miles versus statute miles to describe certain terminal airspace designations.

Timetable:

Action	Date	FR Cite
ANPRM	02/05/85	50 FR 5055
ANPRM Comment Period End	06/06/85	50 FR 5055
To be consolidated	10/03/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: Regulatory Project ATO-200-83-17R (Docket # 24455). To be consolidated in RIN: 2120-AB95.

Agency Contact: Wayne Pieros, Air Traffic Control Specialist, Department

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Final Rule Stage

of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-9246

RIN: 2120–AB02

1805. NIGHTTIME VFR WEATHER MINIMUMS

Significance: Nonsignificant

Legal Authority: 49 USC 1301(7); 49 USC 1303; 49 USC 1344; 49 USC 1348; 49 USC 1352; 49 USC 1353; 49 USC 1354; 49 USC 1355; 49 USC 1401; 49 USC 1421; 49 USC 1422; 49 USC 1423; 49 USC 1424; 49 USC 1425; 49 USC 1428

CFR Citation: 14 CFR 91

Legal Deadline: None

Abstract: This proposal will increase the flight visibility and cloud clearance minimums for night operations in uncontrolled airspace. The minimum flight visibility will increase from one mile to three miles.

Timetable:

Action	Date	FR Cite
NPRM	07/23/85	50 FR 30124
NPRM Comment Period End	09/23/85	50 FR 30124
Final Action	10/03/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 07/23/85 (50 FR 30124)

Additional Information: LEGAL AUTHORITY CONT: 49 USC 1427; 49 USC 1428; 49 USC 1429; 49 USC 1430; 49 USC 1431; 49 USC 1471; 49 USC 1472; 49 USC 1502; 49 USC 1510; 49 USC 1522; 49 USC 2121; 49 USC 2122; 49 USC 2123; 49 USC 2124; 49 USC 2125; 42 USC 4321 et seq; EO 11514, 49 USC 106(a), Revised Pub. L. 97-449, January 12, 1983, Regulatory Project ATO-200-83-16R (Docket # 24722)

Agency Contact: Robert Laser, Air Traffic Control Specialist, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-9251

RIN: 2120–AB04

1806. AIRWORTHINESS STANDARDS: AIRCRAFT ENGINES, ELECTRICAL AND ELECTRONIC ENGINE CONTROL SYSTEMS

Significance: Nonsignificant

Legal Authority: 49 USC 1354 Federal Aviation Act of 1958, Sec. 313; 49 USC 1421 Federal Aviation Act of 1958, Sec. 601; 49 USC 1423 Federal Aviation Act of 1958, Sec. 603

CFR Citation: 14 CFR 33

Legal Deadline: None

Abstract: Would add a new section, FAR 33.28 to incorporate requirements for electronic controls for aircraft engines.

Timetable:

Action	Date	FR Cite
NPRM	02/14/85	50 FR 6186
NPRM Comment Period End	07/29/85	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 02/14/85 (50 FR 6186)

Agency Contact: Cosimo J. Bosco, Aerospace Engineer, Department of Transportation, Federal Aviation Administration, ANE-110, FAA NE Region, 12 New England Executive Park, Burlington, MA 01803, 617 270-2402

RIN: 2120–AB06

1807. STANDARDS FOR APPROVAL OF A REDUCED V1 METHODOLOGY FOR TAKEOFF ON WET AND CONTAMINATED RUNWAYS

Significance: Nonsignificant

Legal Authority: 49 USC 1344; 49 USC 1354(a) to 1357; 49 USC 1401; 49 USC 1421 to 1431; 49 USC 1472; 49 USC 1485; 49 USC 1502; 49 USC 106(g); PL 97-449

CFR Citation: 14 CFR 25; 14 CFR 121; 14 CFR 135

Legal Deadline: None

Abstract: This action proposes amendments to Parts 25, 121, and 135 of the Federal Aviation Regulations (FAR) to add new standards for transport category airplanes which would provide for approval of a reduced takeoff decision speed (V1) methodology for takeoff on wet and contaminated runways.

Timetable:

Action	Date	FR Cite
NPRM	11/30/87	52 FR 45578
NPRM Comment Period End	03/30/88	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 11/30/87 (52 FR 45578)

Additional Information: Docket 25471

Agency Contact: Bill Boxwell, Department of Transportation, Federal Aviation Administration, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, 206 431-2111

RIN: 2120–AB17

1808. LOW-FUEL-QUANTITY ALERTING SYSTEM

Significance: Nonsignificant

Legal Authority: 49 USC 1344; 49 USC 1354(a); 49 USC 1355; 49 USC 1421; 49 USC 1423; 49 USC 1424; 49 USC 1425; 49 USC 1428; 49 USC 1429; 49 USC 1430; 49 USC 106(g); PL 97-449

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: This action contemplates possible revision to FAR 25.1305 to include a requirement to install a means to alert the flightcrew of potentially unsafe low fuel.

Timetable:

Action	Date	FR Cite
NPRM	05/12/87	52 FR 17890
NPRM Comment Period End	09/09/87	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 05/12/87 (52 FR 17890)

Additional Information: Docket No 25213.

Agency Contact: Neil Schalekamp, Department of Transportation, Federal Aviation Administration, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, 206 431-2135

RIN: 2120–AB45

1809. HELICOPTER INSTRUMENT FLIGHT

Significance: Nonsignificant

Legal Authority: 49 USC 1344; 49 USC 1354(A); 49 USC 1355; 49 USC 1421; 49

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USC 1423; 49 USC 1424; 49 USC 1425; 49 USC 1428; 49 USC 1429; 49 USC 1430; 49 USC 106(G); PL 97-449

CFR Citation: 14 CFR 27; 14 CFR 29

Legal Deadline: None

Abstract: This project revises Appendix B of Parts 27 and 29 to permit IFR operations at airspeeds below the normal minimum instrument airspeed during approach and landing.

Timetable:

Action	Date	FR Cite
NPRM	06/12/86	51 FR 21488
NPRM Comment Period End	04/03/87	51 FR 45343
Final Action	06/15/89	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 06/12/86 (51 FR 21488)

Additional Information: The FAA has determined that adoption of this proposal will not result in an economic burden on the public. It is a relieving rule that removes a minimum speed limitation when certain optional performance standards are met.

Agency Contact: Jim S. Honaker, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0171, 817 624-5109

RIN: 2120–AB87

1810. CONTROLLED AIR SPACE DESIGNATIONS IN INTERNATIONAL AIR SPACE

Significance: Nonsignificant

Legal Authority: 49 USC 1348(a) F.A. Act, Section 307(a); 49 USC 1354(a) F.A. Act, Section 313(a)

CFR Citation: 14 CFR 71; 14 CFR 75

Legal Deadline: None

Abstract: User organizations recommended under the National Airspace Review to simplify the classification of offshore airspace designations.

Timetable:

Action	Date	FR Cite
ANPRM	07/29/85	50 FR 30798
ANPRM Comment Period End	10/28/85	50 FR 30798
To be consolidated	10/03/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Analysis: Regulatory Evaluation 07/29/85 (50 FR 30798)

Additional Information: Regulatory Project ATO-200-84-19R/ATO-200-84-7R. This action will be consolidated into RIN 2120-AB95.

Agency Contact: Wayne Pierce, Air Traffic Control Specialist, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-9246

RIN: 2120–AB03

1811. IMPROVED STRUCTURAL REQUIREMENTS FOR PRESSURIZED CABINS AND COMPARTMENTS IN TRANSPORT CATEGORY AIRPLANES

Significance: Nonsignificant

Legal Authority: 49 USC 1344; 49 USC 1354(a); 49 USC 1355; 49 USC 1421; 49 USC 1423; 49 USC 1424; 49 USC 1425; 49 USC 1428; 49 USC 1429; 49 USC 1430; 49 USC 106(g); PL 97-449; 49 CFR 1.47(a)

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: Notice proposes to amend Part 25 of the Federal Aviation Regulations (FAR) to upgrade the structural requirements for transport category airplane pressurized cabins by (1) amending the criteria for evaluation of the secondary effects of openings in the pressure vessel, and (2) extending the area of consideration to include openings anywhere within the pressure vessel. The required opening sizes to be considered would not be changed. The proposal is the result of an FAA review of the pressurized cabin load requirements and is intended to make the pressurized cabin load requirements less design-dependent and more objective. It would require evaluation of openings in any pressurized compartment and examination of the effects of differential pressure loads on any critical structure inside or outside of the pressurized cabin.

Timetable:

Action	Date	FR Cite
NPRM	03/16/88	53 FR 8742
Correction to NPRM	05/19/88	53 FR 18022
NPRM Comment Period End	06/20/88	53 FR 18530

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 03/16/88 (53 FR 8742)

Agency Contact: James Haynes, Policy and Procedures Branch, Transport Standards Staff, Department of Transportation, Federal Aviation Administration, Northwest Mountain Region, 17900 Pacific Highway South C-68966, Seattle, WA 98168, 206 431-2113

RIN: 2120–AC44

1812. FUEL VENTING AND EXHAUST-EMISSION REQUIREMENTS FOR TURBINE-ENGINE POWERED AIRPLANES

Significance: Nonsignificant

Legal Authority: 49 USC 1341(a); 49 USC 106(g)(Revised, PL 97-449, Jan. 12, 1983); 49 USC 1343(d); 49 USC 1348; 49 USC 1354(a); 49 USC 1401 to 1405; 49 USC 1421 to 1431; 49 USC 1481; 49 USC 1502

CFR Citation: 14 CFR 11; 14 CFR 21; 14 CFR 23; 14 CFR 25; 14 CFR 45; 14 CFR 91; 14 CFR 11, (SFAR 27)

Legal Deadline: None

Abstract: Special Federal Aviation Regulation (SFAR) 27 prescribes standards and test procedures for fuel venting and exhaust emissions for the turbine powered airplanes. This proposal would replace SFAR 27, as amended through SFAR 27-6, with a new Part 34 of the Federal Aviation Regulations which will include all of the standards and test procedures of 40 CFR 87 previously included in SFAR 27. This will codify in a single part all of the applicable requirements of 40 CFR 87, Control of Air Pollution from Aircraft and Aircraft Engines; Emissions Standards and Test Procedures, as amended, December 30, 1982, and insert requirements to comply with Part 34 in the other affected Parts where applicable.

Timetable:

Action	Date	FR Cite
NPRM	05/23/88	53 FR 18530
NPRM Comment Period End	08/22/88	

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Action	Date	FR Cite
Final Action	11/22/88	
Final Action Effective	12/22/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 05/03/88 (53 FR 18530)

Agency Contact: Nicholas P. Krull, Manager, Air Quality Staff, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, [redacted]

RIN: 2120-AC62

1813. REALIGNMENT OF RESTRICTED AREAS IN THE EGLIN AFB AREA

Significance: Nonsignificant

Legal Authority: 49 USC 1302; 49 USC 1303; 49 USC 1348; 49 USC 1348(a); EO 10854; 49 USC 108(g)(Revised PL 97-449, January 12, 1983); 14 CFR 11.69; 49 USC 1354(a); 49 USC 1421(a); 49 USC 1424; 49 USC 1510; 49 USC 1522; 49 USC 2402; 49 USC 2424

CFR Citation: 14 CFR 73; 14 CFR 93

Legal Deadline: None

Abstract: This revision proposes to realign restricted areas in the Eglin AFB area to increase the availability of airspace for civil users. In addition, to include certain portions of the realigned restricted areas, when not active in Section 93.81, Special Air Traffic Rule Airspace.

Timetable:

Action	Date	FR Cite
NPRM	01/08/88	53 FR 517
NPRM Comment Period End	02/19/88	53 FR 517
Final Action	12/01/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 01/08/88 (53 FR 517)

Additional Information: Regulatory Project No. ATO-200-87-11P

Agency Contact: Paul Gallant/Wayne Pierce, Air Traffic Control Specialists, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-8263

RIN: 2120-AC83

1814. ◆ RULES OF PRACTICE: FAA CIVIL PENALTY ASSESSMENT ACTIONS

Significance: Nonsignificant

Legal Authority: 49 USC 1345(a); 49 USC 1354(c); 49 USC 1374(a); 49 USC 1401 to 1408; 49 USC 1421 to 1428; 49 USC 1471; 49 USC 1475; 49 USC 1481; 49 USC 1482(a); 49 USC 1482(b); 49 USC 1482(c); 49 USC 1484 to 1489; 49 USC 1475; 49 USC APP 1475; 49 USC APP 1655(c)

CFR Citation: 14 CFR 13.15 (Revision); 14 CFR 13.16 (Revision); 14 CFR 13.31 (Revision); 14 CFR 13.201; 14 CFR 13.202; 14 CFR 13.203; 14 CFR 13.204; 14 CFR 13.205; 14 CFR 13.206; 14 CFR 13.207; 14 CFR 13.208; 14 CFR 13.209; 14 CFR 13.210; 14 CFR 13.211; 14 CFR 13.212

Legal Deadline: Other, Statutory, December 30, 1989.
Authority to assess civil penalties and conduct on-the-record hearing terminates 12/30/89; FAA must report to Congress by 06/30/89.

Abstract: This final rule revises the initiation procedures and provides new procedural rules regarding civil penalty assessment actions. The final rule provides procedures for on-the-record hearings required by Congress in civil actions not in excess of $50,000 assessed by the FAA.

Timetable:

Action	Date	FR Cite
Final Action	10/03/88	

Small Entities Affected: None

Government Levels Affected: Federal

Additional Information: This final rule is in response to congressional amendment of the Federal Aviation Act of 1958 as amended.

Agency Contact: Allan H. Horowitz, Manager, Enforcement Policy Branch, Office of Chief Counsel, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-3137

RIN: 2120-AC74

1815. ◆ COMMUTER CATEGORY - RESPONSE TO FINAL RULE COMMENTS

Significance: Nonsignificant

Legal Authority: 49 USC 1354; 49 USC 1421; 49 USC 1423

CFR Citation: 14 CFR 23

Legal Deadline: None

Abstract: This action would respond to and resolve comments received in response to the final rule, request for comments, which was published January 15, 1987 (52 FR 1806).

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Earsa L. Tanksley, Manager, Standards Office, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SWtion, Washington, DC 20591, 816 426-8258

RIN: 2120-AC77

1816. ◆ AIRPORT-RELATED PROCEEDINGS

Significance: Nonsignificant

Legal Authority: 49 USC 1354(a); 49 USC 1354(c); 49 USC 1374(a); 49 USC 1401-1408; 49 USC 1421-1428; 49 USC 1471; 49 USC 1475; 49 USC 1481; 49 USC 1482(a); 49 USC 1428(b); 49 USC 1428(c); 49 USC 1484-1489; 49 USC APP 1475; 49 USC APP 1655(c); 49 USC 106(g); ...

CFR Citation: 14 CFR 13.1(a); 14 CFR 13.3(a); 14 CFR 13.20(a); 14 CFR 13.3(b)

Legal Deadline: None

Abstract: This final rule revises several applicability sections of Part 13 to include reference to the Airport and Airway Improvement Act of 1982 and the Airport and Airway Safety and Capacity Expansion Act of 1987.

Timetable:

Action	Date	FR Cite
Final Action	08/31/88	53 FR 33782
Correction to Final Action	09/12/88	53 FR 35255
Final Action	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Comments were invited through September 30, 1988, the date this final rule was effective.

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Agency Contact: Denise Daniels Ross, Attorney, Regulations and Enforcement Div., Office of the Chief Counsel, Department of Transportation, Federal Aviation Administration, 800 Independence Aveune, SW, Washington, DC 20591, 202 267-3481

RIN: 2120-AC78

1817. ◆ SMOKING ABOARD AIRCRAFT

Significance: Nonsignificant

Legal Authority: 49 USC 1354(a); 49 USC 1355 to 1357; 49 USC 1374(d); 49 USC 1401; 49 USC 1421 to 1430; 49 USC 1472; 49 USC 1485; 49 USC 1502; 49 USC 108(g)

CFR Citation: 14 CFR 121; 14 CFR 135

Legal Deadline: Final, Statutory, April 23, 1988.
PL 100-202

Abstract: This rule requires the "no smoking" sign to be turned on at all times on scheduled airline flights, except for flights between the United States and other countries, which are scheduled to be two hours or less in duration. This rule carries out a ban on smoking on such flights mandated by PL 100-202. The rule also makes minor changes in other, related sections of Parts 121 and 135 which affect smoking aboard air carrier aircraft during flights not covered by a total ban. Smoking in lavatories is prohibited on all air carrier flights. By December 31, 1988, aircraft lavatories must have placards which notify passengers that tampering with smoke detectors is prohibited by Federal law. Finally the required passenger briefing must include more detailed instructions on smoking, including all these changes and the new statutory ban on tampering with smoke alarms in aircraft lavatories.

Timetable:

Action	Date	FR Cite
Final Action	04/13/88	53 FR 12358
Final Action Effective	04/25/88	
Correction to Final Rule	04/26/88	53 FR 14888
Final Action	10/03/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 04/13/88 (53 FR 12358)

Additional Information: Comments on the final rule were invited until May 31, 1988. Any action resulting from comments received will be handled by subsequent notice or amendment.

Agency Contact: Richard Belisl, Department of Transportation, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591, 202 267-8726

RIN: 2120-AC83

1818. PART 95 INSTRUMENT FLIGHT RULES

Significance: Routine and Frequent

Legal Authority: 49 USC 1348 F.A. Act of 1958, Sec. 307; 49 USC 1510 F.A. Act of 1958, Sec. 1110

CFR Citation: 14 CFR 95

Legal Deadline: None

Abstract: Nonsignificant regulations issued routinely and frequently as a part of an established body of technical requirements to keep those requirements operationally current. Total actions expected--2500. 11/00/88 - 11/00/89.

Timetable:

Action	Date	FR Cite
Final Action	11/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Don Funai, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-8277

RIN: 2120-AA03

1819. AIRWORTHINESS DIRECTIVES

Significance: Routine and Frequent

Legal Authority: 49 USC 1354(a) F.A. Act, Sec. 313(a); 49 USC 1421 F.A. Act, Sec. 601; 49 USC 1423 F.A. Act, Sec. 603; 49 USC 1431(b) F.A. Act, Sec. 611(b)

CFR Citation: 14 CFR 39

Legal Deadline: None

Abstract: Nonsignificant regulations issued routinely and frequently in order to correct known or expected safety problems on type certificated products. Total actions expected--300. 10/00/88 - 10/00/89.

Timetable:

Action	Date	FR Cite
Final Action	10/02/89	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: With regard to the CASA Model C-212, an NPRM was issued May 6, 1988 (53 FR 16289).

Agency Contact: Jack McGrath, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-9580

RIN: 2120-AA88

1820. STANDARD INSTRUMENT APPROACH PROCEDURES

Significance: Routine and Frequent

Legal Authority: 49 USC 1348 F.A. Act, Sec. 307; 49 USC 1354(a) F.A. Act, Sec. 313(a); 49 USC 1421 F.A. Act, Sec. 601; 49 USC 1510 F.A. Act, Sec. 1110

CFR Citation: 14 CFR 97

Legal Deadline: None

Abstract: Nonsignificant regulations issued routinely and frequently as a part of an established body of technical requirements to keep those requirements operationally current. Total actions expected--2800. 11/00/88 - 11/00/89.

Timetable:

Action	Date	FR Cite
Final Action	11/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Don Funai, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-8277

RIN: 2120-AA65

1821. AIRSPACE ACTIONS

Significance: Routine and Frequent

Legal Authority: 49 USC 1348(a) F.A. Act, Sec. 307(a); 49 USC 1354(a) F.A. Act, Sec. 313(a)

CFR Citation: 14 CFR 71; 14 CFR 73; 14 CFR 75

Legal Deadline: None

Abstract: Nonsignificant regulations issued routinely and frequently as a

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part of an established body of technical requirements to keep those requirements operationally current.

Timetable:

Action	Date	FR Cite
Final Action	10/02/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Robert G. Burns, Manager, Airspace Branch, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-3075

RIN: 2120-AA06

DEPARTMENT OF TRANSPORTATION (DOT) — Completed Actions
Federal Aviation Administration (FAA)

1822. + IMPROVED SEAT-SAFETY STANDARDS

Significance: Regulatory Program

Legal Authority: 49 USC 1344; 49 USC 1354(a); 49 USC 1355; 49 USC 1421; 49 USC 1423; 49 USC 1424; 49 USC 1425; 49 USC 1428; 49 USC 1429; 49 USC 1430; 49 USC 106(g); PL 97-449

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: This amendment upgrades the standards for occupant protection during emergency landing conditions in transport category airplanes by revising the seat restraint requirements and by defining impact injury criteria. These changes are based on research testing and service experience and are intended to increase airplane occupant protection during emergency landing conditions. This rulemaking is significant because it involves important Department policy.

Timetable:

Action	Date	FR Cite
NPRM	07/17/86	51 FR 25982
NPRM Comment Period End	01/14/87	
Final Action	05/17/88	53 FR 17640
Final Action Effective	06/16/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 07/17/86 (51 FR 25982)

Additional Information: Docket No. 25040

Agency Contact: Ivan Connally, Department of Transportation, Federal Aviation Administration, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, 206 431-2120

RIN: 2120-AA86

1823. + POWERED ULTRALIGHTS: AIRMAN CERTIFICATION REQUIREMENTS

Significance: Regulatory Program

Legal Authority: 49 USC 1301(7); 49 USC 1303; 49 USC 1344; 49 USC 1348; 49 USC 1352 to 1355; 49 USC 1401 to 1406; 49 USC 1421 to 1432; 49 USC 1471; 49 USC 1472; 49 USC 1502; 49 USC 1510; 49 USC 1522; 49 USC 2121 to 2125; 49 USC 106(g); 42 USC 4321

CFR Citation: 14 CFR 1; 14 CFR 61; 14 CFR 91; 14 CFR 103

Legal Deadline: None

Abstract: Action contemplated establishing airmen certification requirements for persons operating powered ultralight aircraft. After further consideration and lack of growth of the industry, the FAA has terminated the contemplated action.

Timetable:

Action	Date	FR Cite
Action terminated	05/06/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: William Cook, Department of Transportation, Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591, 202 267-3844

RIN: 2120-AB69

1824. + ULTRALIGHT AIRCRAFT REGISTRATION AND MARKING

Significance: Regulatory Program

Legal Authority: 49 USC 1348; 49 USC 1354; 49 USC 1401; 49 USC 1402; 49 USC 1421 to 1430; 49 USC 1423; 49 USC 1522; 49 USC 1655(c); 49 USC 1347; 49 USC 1357(d)(2); 49 USC 1372; 49 USC 1442; 49 USC 1443; 49 USC 1472; 49 USC 1432

CFR Citation: 14 CFR 1; 14 CFR 103

Legal Deadline: None

Abstract: This action contemplated establishing registration and marking requirements for powered ultralight aircraft. After further consideration and the lack of growth of the industry, the FAA has terminated the contemplated action.

Timetable:

Action	Date	FR Cite
Action terminated.	05/06/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Joseph Gwiazdowski, Department of Transportation, Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591, 202 267-9541

RIN: 2120-AC09

1825. ◆ + IMPROVED FLAMMABILITY STANDARDS FOR MATERIALS USED IN THE INTERIOR OF TRANSPORT CATEGORY AIRPLANE CABINS

Significance: Agency Priority

Legal Authority: 49 USC 1345(a); 49 USC 1355; 49 USC 1356; 49 USC 1357; 49 USC 1401; 49 USC 1421-1430; 49 USC 1472; 49 USC 1485; 49 USC 1502; 49 USC 106(g); 49 CFR 1.47(a)

CFR Citation: 14 CFR 25; 14 CFR 121

Legal Deadline: None

Abstract: These amendments upgrade the fire safety standards for cabin interior materials in transport category airplanes by establishing refined fire test procedures and apparatus and a new requirement for smoke emission testing. The refined test procedures and apparatus are the result of additional research and fire testing and are intended to improve the reproducibility of test results. The refinement for smoke emission testing is intended to minimize the possibility that emergency egress will be hampered by smoke

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obscuration. In addition, the operating rules for air carrier (Part 121) and air taxi (Part 135) operators, which were adopted in the original final rule, are amended to enable additional compliance time to be granted for the few interior components for which timely compliance cannot be achieved.

The FAA findings concerning the requested additional comments on the final flammability criteria are also presented. These amendment actions were considered significant because of public safety factors.

Timetable:

Action	Date	FR Cite
Final Action	08/25/88	53 FR 32567
Final Action Effective	09/26/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Gary Killion, Department of Transportation, Federal Aviation Administration, Northwest Mountain Region, 17900 Pacific Highway South C - 68966, Seattle Washington, DC 98168, 202 431-2114

RIN: 2120-AB23

1826. + PART 23 AIRWORTHINESS REVIEW – NOTICE NO. 1 (CRASHWORTHINESS)

Significance: Agency Priority

Legal Authority: 49 USC 1354; 49 USC 1421; 49 USC 1423

CFR Citation: 14 CFR 23

Legal Deadline: None

Abstract: This notice proposes changes to the airworthiness standards to enhance cabin safety and occupant protection by raising the level of crashworthiness for new designs of small airplanes type certificated after a certain date. This rulemaking is considered significant because it involves important cabin-safety and crashworthiness issues.

Timetable:

Action	Date	FR Cite
NPRM	12/12/86	51 FR 44878
NPRM Comment Period End	06/12/87	
Final Action	08/15/88	53 FR 30802
Correction to Final Action	09/02/88	53 FR 34194
Final Action Effective	09/14/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 12/12/86 (51 FR 44878)

Additional Information: This notice is the first of several planned notices resulting from a regulatory review of Part 23 conducted in late 1984.

Agency Contact: Earsa L. Tankesley, Manager, Standards Office, Department of Transportation, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106, 816 426-6930

RIN: 2120-AC15

1827. + TRANSPONDER WITH AUTOMATIC ALTITUDE REPORTING CAPABILITY REQUIREMENT

Significance: Agency Priority

Legal Authority: 49 USC 1301(7); 49 USC 1303; 49 USC 1344; 49 USC 1348; 49 USC 1352 to 1355; 49 USC 1401; 49 USC 1421 to 1431; 49 USC 1471; 49 USC 1472; 49 USC 1502; 49 USC 1510; 49 USC 1522; 49 USC 2121 to 2125; 42 USC 4321 et seq

CFR Citation: 14 CFR 91

Legal Deadline: Final, Statutory, June 30, 1988.

Abstract: This rulemaking requires a transponder and automatic altitude reporting equipment in terminal airspace of certain airports where air traffic control radar service is provided. Implementation will be in two phases: Phase I, effective June 1, 1989, requires a transponder with Mode C at and above 10,000 feet MSL, and within 30 miles of TCA primary airports. Balloons, gliders, and aircraft without an electrical system are excluded when operating outside a TCA below the altitude of the TCA ceiling and when operating between 10,000 and 18,000 feet MSL. Phase II, effective December 30, 1990, implements a transponder with Mode C requirement in and above the airspace of an ARSA up to 10,000 feet. This rulemaking was significant because of substantial public interest and statutory requirement.

Timetable:

Action	Date	FR Cite
NPRM	02/12/88	53 FR 4306
Comment period extended to 05/12/88	03/24/88	53 FR 9758
NPRM Comment Period End	03/28/88	53 FR 4306
Final Action	06/21/88	53 FR 23356
Correction To Final Rule	07/01/88	53 FR 25050
Correction to Final Rule	07/14/88	53 FR 26592
Final Action Effective	07/21/88	

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Analysis: Regulatory Evaluation 06/21/88 (53 FR 23356)

Additional Information: Legal Authority Cont: EO 11514 49 USC 106(g) (Revised Pub L 97-449, January 12, 1983) Regulatory Project No. ATO-200-87-18R Rulemaking to amend the base of the Continental Control Area (RIN 2120-AC84) has been combined into this rulemaking. Contemplated action in RIN AC52 has also been subsumed in this rulemaking action. This aspect is separated from other proposals in Notice 88-2; the issue of the U.S. control area proposal will be addressed outside the framework of this final rule.

Agency Contact: Reginald C. Matthews, Air Traffic Control Specialist, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-8245

RIN: 2120-AC66

1828. + SPECIAL FLIGHT RULES IN THE VICINITY OF THE GRAND CANYON NATIONAL PARK

Significance: Agency Priority

Legal Authority: PL 100-91; 49 USC 1348

CFR Citation: 14 CFR 91; 14 CFR 135

Legal Deadline: Final, Statutory, May 27, 1988.
PL 100-91 requires a final rule within 90 days of the date DOI submitted recommendations to the FAA, or by 3/28/88. However, if the recommendations would have adverse impacts on aviation

Abstract: PL 100-91, signed on August 18, 1987, required the Department of Interior to submit recommendations to the FAA for regulation of aircraft overflight of the Grand Canyon. DOI submitted its recommendations to FAA on December 29, 1987. The law further requires that FAA adopt regulations

which implement the DOI recommendations. This rulemaking fulfills that requirement. This rule is significant because of the direct effect on programs of the National Park Service, Department of the Interior.

Timetable:

Action	Date	FR Cite
NPRM	03/04/88	53 FR 7096
NPRM Comment Period End	03/25/88	
Final Action	06/02/88	53 FR 20264
Correction to Final Rule	06/13/88	53 FR 21996
Correction to Final Rule	06/28/88	53 FR 32603
Final Action Effective	09/22/88	

Small Entities Affected: Undetermined

Government Levels Affected: State, Federal

Analysis: Environmental Assessment 06/02/88 (53 FR 20264)

Agency Contact: David L. Bennett, Manager, Airspace and Traffic Branch, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-3491

RIN: 2120-AC70

1829. ROTORCRAFT REGULATORY REVIEW PROGRAM AMENDMENT NO. 3

Significance: Nonsignificant

Legal Authority: 49 USC 1344; 49 USC 1354(A); 49 USC 1355; 49 USC 1421; 49 USC 1423; 49 USC 1424; 49 USC 1425; 49 USC 1428; 49 USC 1429; 49 USC 1430; 49 USC 106(G); PL 97-449

CFR Citation: 14 CFR 1; 14 CFR 27; 14 CFR 29; 14 CFR 33

Legal Deadline: None

Abstract: This amendment changes Parts 1, 27, 29, and 33 in the area of propulsion system requirements. New rules or changes to rules are included in the area of engine ratings, detailed combustion heater requirements, lightning protection, system tests, and oil requirements.

Timetable:

Action	Date	FR Cite
NPRM	11/27/84	49 FR 46670
NPRM Comment Period End	03/26/85	
Final Action	09/02/88	53 FR 34196
Final Action Effective	10/03/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 11/27/84 (49 FR 46670)

Agency Contact: Mike Mathias, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0111, 817 624-5123

RIN: 2120-AA28

1830. NOISE STANDARDS: AIRCRAFT TYPE AND AIRWORTHINESS CERTIFICATION

Significance: Nonsignificant

Legal Authority: 49 USC 1354 Federal Aviation Act of 1958, Sec. 313; 49 USC 1421 Federal Aviation Act of 1958, Sec. 601; 49 USC 1423 Federal Aviation Act of 1958, Sec. 603; 49 USC 1431 Federal Aviation Act of 1958, Sec. 611

CFR Citation: 14 CFR 36

Legal Deadline: None

Abstract: Part 36 prescribes noise type certification standards for turbo jet powered airplanes and propeller driven small airplanes regardless of category. This rule reorganizes and realigns the noise standards to make them more understandable and easier to use. Other improvements are deleting redundancies, obsolete compliance dates, and other minor changes.

Timetable:

Action	Date	FR Cite
NPRM	01/29/85	50 FR 4172
NPRM Comment Period End	04/24/85	
Final Action	05/06/88	53 FR 16360
Final Action Effective	05/06/88	
Correction to final rule	05/25/88	53 FR 18835
Correction to final rule	05/25/88	53 FR 18949

Small Entities Affected: Businesses

Government Levels Affected: None

Analysis: Regulatory Flexibility Analysis; Environmental Assessment 01/29/85 (50 FR 4172); Regulatory Evaluation 01/29/85 (50 FR 4172)

Agency Contact: Steven Albersheim, Environmental Specialist, Department of Transportation, Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591, 202 267-3560

RIN: 2120-AA74

1831. TERMINAL CONTROL AREA (TCA) SAN DIEGO (MODIFICATION)

Significance: Nonsignificant

Legal Authority: 49 USC 1348(a); 49 USC 1354(a); 49 USC 1510

CFR Citation: 49 CFR 71

Legal Deadline: None

Abstract: Terminal Control Areas (TCA) reduce the midair collision potential by eliminating the mix of controlled and uncontrolled aircraft in a higher density terminal environment. This rule implements changes considered necessary safety enhancements for the San Diego TCA.

Timetable:

Action	Date	FR Cite
NPRM	03/04/86	51 FR 7448
NPRM Comment Period End	05/05/86	
Final Action	02/08/88	53 FR 3714
Final Action Effective	03/10/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 03/04/86 (51 FR 7448)

Agency Contact: Joe Gill, Air Traffic Control Specialist, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-8252

RIN: 2120-AB98

1832. PART 150 - AIRPORT NOISE-COMPATIBILITY PLANNING

Significance: Nonsignificant

Legal Authority: 49 USC 1348(c); 49 USC 1354(a); 49 USC 1421; 49 USC 1431(b); 49 USC 1655(c); 49 USC 2101 to 2104(b); 49 USC 1.47(n); 49 USC 2201 et seq.

CFR Citation: 14 CFR 150

Legal Deadline: None

Abstract: Part 150 of the Federal Aviation Regulations prescribes requirements for airport operators who voluntarily choose to submit compatibility planning programs to the FAA. Operators of airports whose maps and programs have been accepted by the FAA as meeting the Part 150 standards are then eligible to apply for funding noise-control projects under the Airport Improvement Program and are further afforded certain legal rights under the law. The rule extends coverage to free-standing public-use heliports.

Timetable:

Action	Date	FR Cite
ANPRM	11/04/86	51 FR 40037
ANPRM Comment Period End	02/02/87	
Final Action	03/16/88	53 FR 8722
Final Action Effective	03/16/88	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Analysis: Regulatory Evaluation 11/04/86 (51 FR 40037); Environmental Assessment 03/16/88 (53 FR 8722)

Agency Contact: Robert B. Hixson, Environmental Specialist, Department of Transportation, Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591, 202 267-8355

RIN: 2120-AC19

1833. PART 99: AIR DEFENSE IDENTIFICATION ZONES AND MISCELLANEOUS EDITORIAL REVISIONS

Significance: Nonsignificant

Legal Authority: 49 USC 1348; 49 USC 1502; 49 USC 1510; 49 USC 1522; 49 USC 106(g) Revised Pub L 97-449, January 12, 1983

CFR Citation: 14 CFR 99

Legal Deadline: None

Abstract: Amendment No. 99-13 amends, without prior notice, Part 99 of the FAR by changing the lateral boundaries of the Air Defense Identification Zones (ADIZ) around the continental U.S., Alaska, and Guam. Additionally, this amendment makes editorial changes and deletes references to Distant Early Warning Identification Zones (DEWIZ). Domestic ADIZ, and Coastal ADIZ.

Timetable:

Action	Date	FR Cite
Final Action	05/20/88	53 FR 18216
Final Action Effective	06/30/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Regulatory Project ATO-200-86-20P (Docket #25113). Comments were requested by August 15, 1988.

Agency Contact: Reginald C. Matthews, Air Traffic Control Specialist, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-8245

RIN: 2120-AC37

1834. ALTERNATE AIRPORT WEATHER MINIMUM

Significance: Nonsignificant

Legal Authority: 49 USC 1301(7); 49 USC 1303; 49 USC 1344; 49 USC 1348; 49 USC 1352 to 1355; 49 USC 1401; 49 USC 1421 to 1431; 49 USC 1471; 49 USC 1472; 49 USC 1502; 49 USC 1510; 49 USC 1522; 49 USC 2121 to 2125; 42 USC 4321 et seq; EO 11514

CFR Citation: 14 CFR 91.83(c)

Legal Deadline: None

Abstract: This action would revise Section 91.83(c)(1) of the Federal Aviation Regulations to include words that "any airport may be designated as an alternate airport if the forecast weather conditions will permit descent from the minimum en route altitude, approach, and landing under basic visual flight rules."

Timetable:

Action	Date	FR Cite
Consolidated into RIN AC56	06/02/88	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Additional Information: LEGAL AUTHORITY CONT: 49 USC 106(g), (Revised Pub L. 97-449, January 12, 1983)

Regulatory Project No ATO-200-87-6P (Docket #25213). Consolidated in RIN: 2120-AC56.

Agency Contact: William C. Davis, Manager, Air Traffic Rules Branch, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-8783

RIN: 2120-AC41

1835. MANDATORY REPORTING FOR EMERGENCY EVACUATION SYSTEMS AND COMPONENTS

Significance: Nonsignificant

Legal Authority: 49 USC 1354(a); 49 USC 1355; 49 USC 1356; 49 USC 1357; 49 USC 1401; 49 USC 1421; 49 USC 1422; 49 USC 1423; 49 USC 1424; 49 USC 1425; 49 USC 1428; 49 USC 1427; 49 USC 1428; 49 USC 1429; 49 USC 1430; ...

CFR Citation: 14 CFR 121.703(a)

Legal Deadline: None

Abstract: This action amends the mechanical reliability reporting requirement contained in Part 121 to require certificate holders to report each failure, malfunction, or defect of emergency evacuation systems and components. This action is necessary to collect, record, analyze, and disseminate data concerning those failures, malfunctions, or defects that occur during training, testing, or actual emergency conditions to improve the levels of reliability and safety.

Timetable:

Action	Date	FR Cite
NPRM	06/03/87	52 FR 20982
NPRM Comment Period End	09/01/87	
Final Action	03/16/88	53 FR 8726
Final Action Effective	04/15/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Int'l Trade Impact Assessment 03/16/88 (53 FR 8726)

Agency Contact: George Johnson, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-3788

RIN: 2120-AC85

1836. NATIONAL AIRSPACE REVIEW RECOMMENDATION - OPERATIONS IN THE VICINITY OF AN AIRPORT

Significance: Nonsignificant

Legal Authority: 49 USC 1301(7); 49 USC 1303; 49 USC 1344; 49 USC 1348; 49 USC 1401; 49 USC 1421 to 1431; 49 USC

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1452 to 1455; 49 USC 1471; 49 USC 1472; 49 USC 1502; 49 USC 1510; 49 USC 1522; 49 USC 2121 to 2125; 42 USC 4321 et seq; EO 11514; ...

CFR Citation: 14 CFR 91.03; 14 CFR 91.87; 14 CFR 91.89

Legal Deadline: None

Abstract: This action would reorganize Sections 91.85, and 91.89 into two sections: a general section concerning aircraft turns and traffic flows, and another section dealing with rules at airports with control towers. Certain current provisions would be deleted. This issue was consolidated into RIN=2120-AB95 on 07/01/88.

Timetable:

Action	Date	FR Cite
Consolidated into RIN: 2120-AB95	07/01/88	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: LEGAL AUTHORITY CONT: 49 USC 106(g), (Revised Pub. L. 97-449, January 12, 1983)

Regulatory Project No: ATO-200-85-14R

This issue was incorporated in RIN=2120-AB95.

Agency Contact: William C. Davis, Manager, Air Traffic Rules Branch, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 202 267-8783

RIN: 2120-AC57

DEPARTMENT OF TRANSPORTATION (DOT) — Prerule Stage
Federal Highway Administration (FHWA)

1837. + MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS; SELF-INSURANCE

Significance: Agency Priority

Legal Authority: 49 USC 10927 Note

CFR Citation: 49 CFR 387

Legal Deadline: None

Abstract: The FHWA has determined that the issues associated with its authority to permit motor carriers to self-insure need to be examined in light of the insurance crisis affecting the motor carrier industry. The FHWA is seeking public comment from interested parties concerning self-insurance as a viable and effective mechanism for demonstrating financial responsibility as required by the Motor Carrier Act of 1980. This rulemaking action is considered significant because of the public interest in the issue being considered.

Timetable:

Action	Date	FR Cite
ANPRM	06/16/86	51 FR 22086
ANPRM Comment Period End	07/16/86	51 FR 22086
SANPRM	02/00/89	

Small Entities Affected: None

Government Levels Affected: State

Analysis: Regulatory Evaluation 02/00/89

Additional Information: An interim final rule was published on June 16, 1986, at 51 FR 22080 permitting motor carriers of property to satisfy the financial responsibility requirements of the DOT (FHWA) by self-insuring if they have received approval from the ICC to self-insure and have maintained an FHWA "satisfactory" safety rating. This rulemaking action will further analyze the issues addressed in the interim final rule. After analyzing comments received to the 6/16/86 ANPRM, the FHWA has decided to issue a supplemental ANPRM in order to further explore the issues.

Agency Contact: Thomas P. Kozlowski, Department of Transportation, Federal Highway Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-2981

RIN: 2125-AB65

1838. REVIEW AND PREEMPTION OF STATE MOTOR-CARRIER SAFETY REGULATIONS

Significance: Nonsignificant

Legal Authority: 49 USC App. 2507; 49 USC App. 2508

CFR Citation: 49 CFR 390; 49 CFR 391; 49 CFR 392; 49 CFR 393; 49 CFR 394; 49 CFR 395; 49 CFR 396; 49 CFR 397; 49 CFR 398; 49 CFR 399

Legal Deadline: None

Abstract: Sections 207-209 of the Motor Carrier Safety Act of 1984 establish a process whereby any State law or regulation pertaining to commercial motor vehicle safety in interstate commerce will be reviewed and analyzed by the Commercial Motor Vehicle Safety Regulatory Review Panel (Safety Panel). The Safety Panel is to determine if such law or regulation has the same effect as, is less stringent than, or is additional to or more stringent than the Federal Motor Carrier Safety Regulations. Based on the determination of the Safety Panel, the Secretary is to initiate a rulemaking proceeding to determine if such a law or regulation may remain in effect and enforced. This advance notice of proposed rulemaking is the initial rulemaking action for any possible preemptive action by the Secretary. It will contain alternatives for comment on ways the Secretary may satisfy the requirements of section 208 of the Act.

Timetable:

Action	Date	FR Cite
ANPRM	12/05/88	
NPRM	06/00/89	

Small Entities Affected: None

Government Levels Affected: State

Analysis: Regulatory Evaluation 06/00/89

Agency Contact: Thomas Kozlowski, Department of Transportation, Federal Highway Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-2981

RIN: 2125-AC11

1839. FEDERAL MOTOR CARRIER SAFETY REGULATIONS; PAPERWORK BURDENS

Significance: Nonsignificant

Legal Authority: 49 USC 3102; 49 USC App 2503

CFR Citation: 49 CFR 350 to 399

Legal Deadline: None

Abstract: By this rulemaking, the FHWA will be considering ways to reduce paperwork burdens imposed on motor carriers subject to the requirements of the Federal Motor Carrier Safety Regulations (49 CFR 350-399). Changes are being considered in accordance with the requirements of the Paperwork Reduction Reauthorization Act of 1986. This Act requires the agencies to set goals to reduce the paperwork burden imposed on motor carriers by 20 percent by September 30, 1990.

Timetable:

Action	Date	FR Cite
ANPRM	10/00/88	
NPRM	04/00/89	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 04/00/89

Additional Information: A 90-day comment period will be provided for the ANPRM.

Agency Contact: Thomas P. Kozlowski, Department of Transportation, Federal Highway Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-2981

RIN: 2125-AC34

DOT—FHWA — Prerule Stage

DEPARTMENT OF TRANSPORTATION (DOT) — Proposed Rule Stage
Federal Highway Administration (FHWA)

1840. + TRUCK SIZE AND WEIGHT; REASONABLE ACCESS

Significance: Regulatory Program

Legal Authority: 49 USC 2311(d); 23 USC 315

CFR Citation: 23 CFR 658

Legal Deadline: None

Abstract: The FHWA is requesting information and comments on the existing FHWA regulation governing reasonable access by commercial vehicles with lengths and widths authorized by the Surface Transportation Assistance Act of 1982 (STAA) as amended.

Timetable:

Action	Date	FR Cite
ANPRM	01/05/87	52 FR 298
ANPRM Comment Period End	05/05/87	52 FR 298
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: Local, State

Analysis: Regulatory Evaluation 10/00/88

Agency Contact: Kevin E. Heanue, Department of Transportation, Federal Highway Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-2951

RIN: 2125-AB70

1841. + TRUCK SIZE AND WEIGHT; SPECIAL PERMITS

Significance: Regulatory Program

Legal Authority: 23 USC 127; 49 USC 2311; 49 USC 2313; 49 USC App. 2316; 23 USC 315

CFR Citation: 23 CFR 658

Legal Deadline: None

Abstract: This rulemaking action will delete language pertaining to the issuance of special permits in section 658.17 and will request that States identify grandfather rights claimed for single and tandem axle weight, gross weight, alternate bridge formula and special permit authority. The weights identified as having been determined by the States will be recognized as grandfather rights.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	04/00/89	

Small Entities Affected: None

Government Levels Affected: State

Analysis: Regulatory Evaluation 10/00/88

Agency Contact: John MacGowan, Department of Transportation, Federal Highway Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-4632

RIN: 2125-AB80

1842. + AIR QUALITY PROCEDURES FOR USE IN FEDERAL-AID HIGHWAY AND FEDERALLY FUNDED TRANSIT PROGRAMS

Significance: Agency Priority

Legal Authority: 23 USC 109(h); 23 USC 109(j); 23 USC 315; 42 USC 4332; 42 USC 7401; 42 USC 7506

CFR Citation: 23 CFR 770

Legal Deadline: None

Abstract: This regulation proposes to consolidate and amend existing air quality requirements for transportation projects into a single amended air quality regulation. The amended regulation is intended to streamline and simplify (1) the process of determining which highway projects are exempt from the Federal assistance limitations of section 176(a) of the Clean Air Act (CAA), and (2) the conformity and priority procedures contained in 23 CFR 770. The amendments are also intended to provide more authority and flexibility to States and to meet the objectives of the CAA in the most cost-effective and expeditious manner. The amendments are significant because they involve important departmental policy.

Timetable:

Action	Date	FR Cite
NPRM	09/09/88	53 FR 35178
NPRM Comment Period End	11/08/88	

Small Entities Affected: None

Government Levels Affected: State, Federal

Analysis: Regulatory Evaluation 09/09/88 (53 FR 35178)

Additional Information: ADDITIONAL AGENCY CONTACT: Jocelyn Karp (202) 366-4063.

Agency Contact: James M. Shrouds, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-4836

RIN: 2125-AB10

1843. + PRIVATE CARRIAGE OF PASSENGERS

Significance: Agency Priority

Legal Authority: 49 USC 104; 49 USC 3102; 49 USC App 2503; 49 USC App 2505

CFR Citation: 49 CFR 383; 49 CFR 390 to 393; 49 CFR 395; 49 CFR 396

Legal Deadline: None

Abstract: The FHWA is considering proposing revisions to the requirements for private motor carriers of passengers and the drivers of private motor vehicles of passengers. The proposed revisions would require private motor carriers of passengers and drivers of private motor vehicles of passengers to operate under the Federal Motor Carrier Safety Regulations (FMCSR). However, the paperwork burden of these requirements will be minimized and several parts of the FMCSR will not apply to either private motor carriers of passengers or to drivers of such vehicles. This rulemaking is significant in that it is controversial, involving bringing new carriers under the regulatory scheme.

Timetable:

Action	Date	FR Cite
ANPRM	01/23/85	50 FR 2998
ANPRM Comment Period End	03/11/85	50 FR 2998
NPRM	02/00/89	

Small Entities Affected: None

Government Levels Affected: Federal

Analysis: Regulatory Evaluation 02/00/89

Additional Information: This action was formerly entitled Minimum Requirements for Private Motor Carriers of Passengers and Drivers of Private Motor Vehicles of Passengers.

Agency Contact: Thomas P. Kozlowski, Department of Transportation, Federal Highway Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-2981

RIN: 2125–AB62

1844. REVIEW: GENERAL MATERIALS REQUIREMENTS

Significance: Nonsignificant

Legal Authority: 23 USC 112; 23 USC 113; 23 USC 114; 23 USC 117; 23 USC 128

CFR Citation: 23 CFR 635D

Legal Deadline: None

Abstract: This regulation would simplify procedures relating to general material requirements for Federal-aid construction work.

Timetable:

Action	Date	FR Cite
NPRM	01/29/81	46 FR 9642
SNPRM	11/00/88	

Small Entities Affected: None

Government Levels Affected: State

Analysis: Reg. Evaluation (Minimal Impact) 11/00/88

Agency Contact: William Weseman, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-8202

RIN: 2125–AA19

1845. STATE HIGHWAY AGENCY CONSTRUCTION CONTRACTS; EQUAL OPPORTUNITY COMPLIANCE REVIEW; PROGRAM REQUIREMENTS

Significance: Nonsignificant

Legal Authority: 23 USC 112(b); 23 USC 140(a); 23 USC 315

CFR Citation: 23 CFR 230

Legal Deadline: None

Abstract: The proposed revisions would amend the existing FHWA regulation governing construction contract equal employment opportunity (EEO) compliance procedures, which concern the employment practices of construction contractors on Federal highway projects. This proposal would eliminate existing detailed compliance procedures and allow States flexibility in adopting a procedure with respect to contract compliance.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: State

Analysis: Regulatory Evaluation 10/00/88

Agency Contact: Glenn R. Reed, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-1567

RIN: 2125–AB05

1846. EQUAL EMPLOYMENT OPPORTUNITY ON FEDERAL AND FEDERAL-AID CONSTRUCTION CONTRACTS (INCLUDING SUPPORTIVE SERVICES)

Significance: Nonsignificant

Legal Authority: 23 USC 101; 23 USC 112; 23 USC 117; 23 USC 140; 23 USC 315

CFR Citation: 23 CFR 230; 23 CFR 640; 23 CFR 642

Legal Deadline: None

Abstract: This revision will amend and update the existing policies and procedures relative to the equal employment opportunity program on Federal and Federal-aid highway construction contracts. In addition, this revision will amend the on-the-job training (OJT) special provisions and procedures for implementation of OJT supportive services programs to increase program effectiveness and address the current need for upgrading minorities and women in the skilled construction trades.

Timetable:

Action	Date	FR Cite
NPRM	11/22/82	47 FR 52470
NPRM Comment Period End	12/22/82	47 FR 52470
SNPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: State

Analysis: Reg. Evaluation (Minimal Impact) 11/22/82 (47 FR 52470)

Additional Information: A supplemental NPRM will be issued in order to propose updated revisions. The supplemental NPRM will address all procedures and provisions contained in 23 CFR 420. Therefore, the proposed rulemaking action explained under the entry (RIN No. 2125-AB27) formerly located in the "Proposed Rule Stage" portion of the agenda has been merged with this rulemaking action.

Agency Contact: Glenn Reed, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-1567

RIN: 2125–AB15

1847. FEDERAL-AID PROGRAMS APPROVAL AND PROJECT AUTHORIZATION

Significance: Nonsignificant

Legal Authority: 23 USC 105; 23 USC 108; 23 USC 118; 23 USC 134; 23 USC 315; PL 100-17, Sec 117(e)

CFR Citation: 23 CFR 630

Legal Deadline: None

Abstract: This action addresses FHWA's programming and authorization policies and procedures for projects under the Federal-aid program. This action will revise existing regulations and implement section 117 (e) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100-17). Section 117 (e) allows a State to contribute more State and/or local funds to a Federal-aid project under the minimum required by Title 23 of the United States Code.

Timetable:

Action	Date	FR Cite
ANPRM	06/03/84	49 FR 31079
NPRM	10/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: State

Analysis: Reg. Evaluation (Minimal Impact) 10/00/88

Agency Contact: James A. Carney, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-0476

RIN: 2125–AB18

1848. ADMINISTRATION OF CONTRACTS

Significance: Nonsignificant

Legal Authority: 23 USC 315; 23 USC 104(f); 23 USC 114(a); 23 USC 307(c); 23 USC 402; PL 100-17, Sec 111(b)

CFR Citation: 23 CFR 172

Legal Deadline: None

Abstract: Revisions to the existing regulation will be made to standardize the minimum requirements by including FHWA's interpretation of OMB Circular A-102 requirements. Inclusion of OMB Circular A-102 as an appendix to the regulations will be deleted. This rulemaking action will also address the changes to the selection procedures as required by section 111(b) of the Surface Transportation and Uniform Relocation Assistance Act of 1987.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: Local, State

Analysis: Reg. Evaluation (Minimal Impact) 10/00/88

Additional Information: A 60-day comment period will be provided.

Agency Contact: Si Silence, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-4628

RIN: 2125–AB31

1849. LABOR AND EMPLOYMENT

Significance: Nonsignificant

Legal Authority: 23 USC 113; 23 USC 315

CFR Citation: 23 CFR 635

Legal Deadline: None

Abstract: This amendment would revise the existing regulation prescribing the inclusion of prevailing wage rates determined by the Secretary of Labor in advertisements and contracts for Federal-aid highway projects. The proposed amendment would preclude the inclusion of State prevailing wage rates which are higher than those determined by the Department of Labor in Federal-aid contracts.

Timetable:

Action	Date	FR Cite
NPRM	09/27/85	50 FR 39137
NPRM Comment Period End	11/12/85	50 FR 39137
NPRM Supplemental	10/00/88	

Small Entities Affected: None

Government Levels Affected: State

Analysis: Reg. Evaluation (minimal impact) 09/27/85 (50 FR 30137)

Additional Information: Upon further review, the FHWA has determined to issue a supplemental NPRM.

Agency Contact: Kathy Markman, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-9760

RIN: 2125–AB37

1850. RIGHT-OF-WAY

Significance: Nonsignificant

Legal Authority: 23 USC 315

CFR Citation: 23 CFR 710; 23 CFR 712; 23 CFR 720

Legal Deadline: None

Abstract: The FHWA intends to publish an NPRM to update and reorganize its right-of-way regulations for the Federal-aid highway program. Subjects to be addressed include State highway agency responsibilities, authorizations, and reimbursement.

Timetable:

Action	Date	FR Cite
NPRM	03/00/89	

Small Entities Affected: None

Government Levels Affected: State

Analysis: Reg. Evaluation (Minimal Impact) 03/00/89

Agency Contact: Douglas A. Wubbels, Department of Transportation, Federal Highway Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-2819

RIN: 2125–AB50

1851. PROPERTY MANAGEMENT, DISPOSALS AND AIRSPACE

Significance: Nonsignificant

Legal Authority: 23 USC 315

CFR Citation: 23 CFR 713

Legal Deadline: None

Abstract: The FHWA intends to issue an NPRM proposing to update its regulations on property management, disposal and airspace relative to the Federal-aid highway program. This rulemaking action will reflect current departmental decisions and policies as well as recent legislative mandates.

Timetable:

Action	Date	FR Cite
NPRM	03/00/89	

Small Entities Affected: None

Government Levels Affected: State

Analysis: Reg. Evaluation (Minimal Impact) 03/00/89

Agency Contact: Douglas A. Wubbels, Department of Transportation, Federal Highway Administration, 400 Seventh

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St., SW, Washington, DC 20590, 202 366-2819

RIN: 2125–AB60

1852. NATIONAL STANDARDS FOR TRAFFIC CONTROL DEVICES; REVISION OF UNIFORM TRAFFIC CONTROL DEVICES; PASSING AND NO-PASSING ZONE STANDARDS

Significance: Nonsignificant

Legal Authority: 23 USC 109(d); 23 USC 315; 23 USC 402(a)

CFR Citation: 23 CFR 655

Legal Deadline: None

Abstract: The FHWA is considering issuing a NPRM in response to a petition filed by the Center for Auto Safety (CAS) to revise no-passing zone standards. If adopted, the revised standards could be incorporated into the Manual On Uniform Traffic Control Devices (MUTCD).

Timetable:

Action	Date	FR Cite
ANPRM	06/11/86	51 FR 21160
ANPRM Comment Period End	07/20/87	51 FR 21160

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Additional Information: FHWA Docket # 86-11 has been assigned to this rulemaking.

Agency Contact: Mr. Philip O. Russell, Department of Transportation, Federal Highway Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-0411

RIN: 2125–AB84

1853. QUALIFICATION OF DRIVERS; DIABETES

Significance: Nonsignificant

Legal Authority: 49 USC 3102; 49 USC App 2505; 23 USC 315

CFR Citation: 49 CFR 391.41(b)(3)

Legal Deadline: None

Abstract: This rulemaking action responds to a petition filed by the American Diabetes Association (ADA) and others. The current diabetic rule prohibits insulin-using diabetics from driving in interstate or foreign commerce. The ADA has petitioned to change the regulation to provide for exemptions. The purpose of this action is to consider the proposed exemption program.

Timetable:

Action	Date	FR Cite
ANPRM	11/25/87	52 FR 45204
ANPRM Comment Period End	02/01/88	53 FR 42

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Thomas P. Kozlowski, Department of Transportation, Federal Highway Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-2981

RIN: 2125–AB91

1854. ADVANCE CONSTRUCTION OF FEDERAL-AID PROJECTS

Significance: Nonsignificant

Legal Authority: 23 USC 101(a); 23 USC 104; 23 USC 109; 23 USC 110; 23 USC 113; 23 USC 115; 23 USC 120(f); 23 USC 121(c); 23 USC 125; 23 USC 315; 23 USC 320; PL 100-17, Sec 113

CFR Citation: 23 CFR 630

Legal Deadline: None

Abstract: The FHWA is revising its regulations relating to the advance construction of Federal-aid highway projects. The revisions incorporate new provisions mandated by section 113 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA). The procedures allow States to advance the construction of Federal-aid highway projects without requiring that Federal funds be obligated at the time the FHWA approves the project.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: State

Analysis: Reg. Evaluation (Minimal Impact) 10/00/88

Agency Contact: Max I. Inman, Department of Transportation, Federal Highway Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-2853

RIN: 2125–AC07

1855. CONSTRUCTION ENGINEERING COSTS

Significance: Nonsignificant

Legal Authority: 23 USC 101(e); 23 USC 114(a); 23 USC 115(b); 23 USC 120 to 122; 23 USC 315; PL 95-599, Sec 115(c); PL 100-17, Sec 114

CFR Citation: 23 CFR 140

Legal Deadline: None

Abstract: This rulemaking document will implement provisions mandated by section 114 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA). Section 114 revised 23 USC 121(d) by eliminating the 10-percent limitation on Construction Engineering (CE) costs and increasing the limitation to 15 percent of actual costs of construction excluding costs of right-of-way, preliminary engineering and CE.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: State

Analysis: Reg. Evaluation (Minimal Impact) 10/00/88

Agency Contact: Max I. Inman, Department of Transportation, Federal Highway Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-2853

RIN: 2125–AC09

1856. ◆ ACQUISITION OF REAL PROPERTY FOR RIGHTS-OF-WAY

Significance: Nonsignificant

Legal Authority: 23 USC 315; PL 100-17, Sec 128; PL 100-17, Sec 146

CFR Citation: 23 CFR 172; 23 CFR 710; 23 CFR 712; 23 CFR 713; 23 CFR 720; 23 CFR 740

Legal Deadline: None

Abstract: The Federal Highway Administration (FHWA) is proposing to revise and consolidate several right-of-way regulations to improve the organization of the subject matter and updating the content. This action will also implement sections 126 and 146

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(airspace and donations) of the Surface Transportation and Uniform Relocation Assistance Act of 1987.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: State

Analysis: Reg. Evaluation (Minimal Impact) 10/00/88

Agency Contact: Douglas Wubbels, Department of Transportation, Federal Highway Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-2819

RIN: 2125–AC17

1857. MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES

Significance: Routine and Frequent

Legal Authority: 23 USC 109(b); 23 USC 109(d); 23 USC 402(a)

CFR Citation: 23 CFR 655

Legal Deadline: None

Abstract: Nonsignificant regulations issued routinely and frequently as a part of an established body of technical requirements to keep those requirements operationally current. Total actions expected--2. 12/00/88.

Timetable:

Action	Date	FR Cite
Total actions expected to end	12/00/88	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Analysis: Reg. Evaluation (Minimal Impact) 12/00/88

Agency Contact: P. Russell, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-2184

RIN: 2125–AA37

DEPARTMENT OF TRANSPORTATION (DOT)
Federal Highway Administration (FHWA)

Final Rule Stage

1858. + CONTROLLED SUBSTANCES

Significance: Regulatory Program

Legal Authority: 49 USC 3102; 23 USC 315; 49 USC 104; 49 USC App 2505

CFR Citation: 49 CFR 382

Legal Deadline: None

Abstract: The FHWA is requesting comments on a proposal which would mandate chemical testing of interstate drivers of commercial motor vehicles for the use of drugs. The impetus for this action is the safety and health concern associated with the use of drugs by these personnel. The goal of the proposed rule is to reduce accidents and casualties that result from the use of drugs. This NPRM was preceded by two drug rulemaking actions which were published in the Federal Register on 5/13/86 (BMCS Docket No. MC-116, Amendment No. 83-17, 51 FR 17568; BMCS Docket No. MC-120, Notice No. 86-3, 51 FR 17572). The latter of those actions proposed a drug test plan (much less comprehensive than proposed here) for drivers of hazardous materials. The former requested comments on specific questions regarding the various aspects of a drug control program applicable to interstate drivers. The intent of this NPRM is to consolidate the subject matter of the previous actions and propose a comprehensive drug control program applicable to all drivers in interstate commerce. Because the impact of this proposal (cont)

Timetable:

Action	Date	FR Cite
ANPRM	06/27/82	47 FR 42383
Initial ANPRM Withdrawn	01/23/85	50 FR 2995
ANPRM	05/13/86	51 FR 17568
ANPRM Comment Period End	06/11/86	51 FR 17568
NPRM	06/14/88	53 FR 22258
Supplemental Notice of Public Hearings	07/06/88	53 FR 25353
NPRM Comment Period End	09/12/88	53 FR 22258
Final Action	11/00/88	

Small Entities Affected: None

Government Levels Affected: State

Analysis: Regulatory Impact Analysis; Regulatory Flexibility Analysis

Additional Information: ABSTRACT CONT: will result in an annual effect on the economy of over $100 million, this action is considered major under Executive Order 12291. This NPRM proposes a comprehensive drug testing program that incorporates a DOT modal approach to creating a drug-free transportation environment. A notice of public hearings was published on 7/6/88 at 53 FR 25353. Information obtained in the course of the public hearings will be used in the preparation of the final rule.

Agency Contact: Thomas P. Kozlowski, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-2981

RIN: 2125–AA79

1859. + INSPECTION, REPAIR, AND MAINTENANCE

Significance: Regulatory Program

Legal Authority: 49 USC 3102; PL 98-554, Sec 210; PL 98-554, Sec 204; 23 USC 315

CFR Citation: 49 CFR 396; 49 CFR 390; 49 CFR 393

Legal Deadline: None

Abstract: The FHWA is seeking public comment concerning the development of Federal commercial motor vehicle inspection standards which would be applicable to motor carriers engaged in interstate or foreign commerce. This action is required by section 210 of the Motor Carrier Safety Act of 1984. The proposed revisions will require motor carriers to comply with Federal inspection standards, a State inspection program or an authorized self-inspection program.

Timetable:

Action	Date	FR Cite
ANPRM	01/10/85	50 FR 1245
ANPRM Comment Period End	02/26/85	
NPRM	02/26/87	52 FR 5913

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Final Rule Stage

Action	Date	FR Cite
SNPRM Comment Period extended to 06/29/87	04/27/87	52 FR 13853
NPRM Comment Period End	06/29/87	52 FR 13853
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: State

Analysis: Regulatory Evaluation 02/26/87 (52 FR 5913)

Additional Information: The NPRM proposed revisions after taking into account the public comments received to the ANPRM (01/10/85), 50 FR 1245). The 1/10/85 ANPRM also solicited comments on the provisions relating to the parts and accessories necessary for the safe operation of commercial motor vehicles. This section (parts and accessories) and comments made to it is the subject of a separate rulemaking action. See Final Rule Stage, RIN 2125-AB45.

Agency Contact: Thomas P. Kozlowski, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-2981

RIN: 2125–AB34

1660. + PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION; GENERAL

Significance: Regulatory Program

Legal Authority: 49 USC 3102; PL 98-554, Sec 110

CFR Citation: 49 CFR 393

Legal Deadline: None

Abstract: This rulemaking action responds to section 210 of the Motor Carrier Safety Act of 1984. Section 210 requires the Department to open Part 393 of the Federal Motor Carrier Safety Regulations (FMCSR), which concerns the parts and accessories necessary for the safe operation of commercial motor vehicles for public comment and review. In essence, Part 393 is the basis for the vehicle inspection currently performed on vehicles operated by motor carriers subject to DOT jurisdiction.

Timetable:

Action	Date	FR Cite
ANPRM	01/10/85	50 FR 1245
ANPRM Comment Period End	02/25/85	50 FR 1245
NPRM	02/26/87	52 FR 5892
SNPRM Comment Period extended to 06/29/87	04/27/87	52 FR 13853
NPRM Comment Period End	06/29/87	52 FR 13853
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: State

Analysis: Regulatory Evaluation 02/26/87 (52 FR 5892)

Additional Information: For the rulemaking action specifically addressing 49 CFR 393.42 (Front Wheel Brakes), see the entry entitled "Parts and Accessories Necessary for Safe Operation: Front Wheel Brakes," in 52 FR 2801 (01/27/87).

Agency Contact: Thomas P. Kozlowski, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-2981

RIN: 2125–AB45

1661. + SAFETY FITNESS PROCEDURES

Significance: Regulatory Program

Legal Authority: PL 98-554, Sec 215; 49 USC 3102

CFR Citation: 49 CFR 385

Legal Deadline: None

Abstract: Section 215 of the Motor Carrier Safety Act of 1984 requires the FHWA, in cooperation with the Interstate Commerce Commission, to establish a procedure to determine the safety fitness of owners and operators of commercial motor vehicles including persons seeking new or additional operating authority as motor carriers. Comments were requested regarding the proposed changes in the current safety rating procedures and a new proposal for those carriers who have not previously been assigned a safety rating or who intend to be a new entrant into the motor carrier industry. It has been determined that this rulemaking action is a significant regulation under the regulatory policies and procedures of the Department of Transportation because of the total estimated indirect benefits that may result.

Timetable:

Action	Date	FR Cite
NPRM	06/25/86	51 FR 23088
NPRM Comment Period End	08/11/86	51 FR 23088
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: State

Analysis: Regulatory Evaluation 06/25/86 (51 FR 23088)

Agency Contact: Gerald J. Davis, Department of Transportation, Federal Highway Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-2998

RIN: 2125–AB48

1662. + TRUCK SIZE AND WEIGHT; SPECIALIZED EQUIPMENT; MAXI-CUBE

Significance: Regulatory Program

Legal Authority: 23 USC 315; 49 USC 2311(d); PL 99-591, Sec 324

CFR Citation: 23 CFR 658

Legal Deadline: None

Abstract: An ANPRM had been issued requesting public comment on a petition to designate a particular combination of vehicles as specialized equipment under the provisions of section 411(d) of the Surface Transportation Assistance Act of 1982 (STAA). Upon further review, the FHWA has determined that no rulemaking action is required at this time. This rulemaking action will be withdrawn.

Timetable:

Action	Date	FR Cite
ANPRM	12/27/85	50 FR 52940
ANPRM Comment Period End	02/10/86	50 FR 52940
ANPRM Supplemental	02/28/86	51 FR 7085
To be withdrawn	10/00/88	

Small Entities Affected: None

Government Levels Affected: State

Analysis: Reg. Evaluation (Minimal Impact) 10/00/88

Agency Contact: Philip W. Blow, Department of Transportation, Federal Highway Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-4836

RIN: 2125–AB49

1663. + EMPLOYEE SAFETY AND HEALTH STANDARDS

Significance: Regulatory Program

Legal Authority: PL 98-554, Sec 206; 49 USC App 2505

CFR Citation: 49 CFR 309

Legal Deadline: None

Abstract: The Federal Highway Administration (FHWA) was considering proposing to revise Part 309 of the Federal Motor Carrier Safety Regulations (FMCSR) to implement Section 206 of the Motor Carrier Safety Act of 1984. After reviewing the public comments received to the ANPRM published on January 23, 1985 (50 FR 2998), the FHWA has decided that no revisions to this Part are warranted at this time. This part will be considered reissued pursuant to the Motor Carrier Safety Act of 1984.

Timetable:

Action	Date	FR Cite
ANPRM	01/23/85	50 FR 2998
ANPRM Comment Period End	04/22/85	50 FR 2998
To be withdrawn	10/00/88	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Thomas P. Kozlowski, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-2981

RIN: 2125–AB50

1664. + DRIVING A MOTOR VEHICLE

Significance: Regulatory Program

Legal Authority: PL 98-554, Sec 206; 49 USC App 2505

CFR Citation: 49 CFR 392

Legal Deadline: None

Abstract: The FHWA had considered revising Part 392 of the Federal Motor Carrier Safety Regulations (FMCSR) in accordance with section 206 of the Motor Carrier Safety Act of 1984. After reviewing the comments received in response to the ANPRM published on January 23, 1985 (50 FR 2998), FHWA has decided not to make further revisions to Part 392 at this time. This Part will be considered reissued as currently written pursuant to the Motor Carrier Safety Act of 1984.

Timetable:

Action	Date	FR Cite
ANPRM	01/23/85	50 FR 2998
ANPRM Comment Period End	04/22/85	50 FR 2998
To be withdrawn	10/00/88	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Thomas P. Kozlowski, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-2981

RIN: 2125–AB51

1665. + TRUCK SIZE AND WEIGHT; SPECIALIZED EQUIPMENT; BOAT TRANSPORTERS

Significance: Regulatory Program

Legal Authority: 23 USC 315; 23 USC 2311(d); PL 100-17, Sec 133

CFR Citation: 23 CFR 658

Legal Deadline: None

Abstract: FHWA sought comments on a request to designate boat transporters as specialized equipment under provision of section 411(d) of the Surface Transportation Assistance Act of 1982 (STAA). Of prime concern were comments and information on the following issues relating to boat transporters: maneuvering characteristics, safety, control, offtracking, crosswind effects, and the need for overall length limits on boat transporters. Information on the similarities and dissimilarities between boat transporters and auto transporters was also solicited, as well as information on the consistency of truck configurations used for hauling boats. Comments were requested regarding the need to preempt current State regulation of this vehicle, as well as an actual definition and description of boat transporters, and on the types of vehicles that should be considered as specialized equipment as well as an actual definition.

Timetable:

Action	Date	FR Cite
ANPRM	03/18/86	51 FR 10234
ANPRM Comment Period End	05/09/86	51 FR 10234
NPRM	01/29/88	53 FR 2602
NPRM Comment Period End	04/18/88	53 FR 2602
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: State

Analysis: Regulatory Evaluation 01/29/88 (53 FR 2602)

Agency Contact: Philip W. Blow, Department of Transportation, Federal Highway Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-4836

RIN: 2125–AB55

1666. + QUALIFICATION OF DRIVERS; HAZARDOUS MATERIALS DRIVERS

Significance: Regulatory Program

Legal Authority: 49 USC 3102; 49 USC App 2505

CFR Citation: 49 CFR 391

Legal Deadline: None

Abstract: The notice of proposed rulemaking published on 5/13/86 (51 FR 17572) which proposed to establish stricter driver qualification rules for drivers of vehicles containing certain classes of hazardous materials will be withdrawn. Certain rulemaking actions mandated by the Commercial Motor Vehicle Safety Act of 1986 will supersede this action. The subject matter of this rulemaking regarding training will be addressed by RSPA in subsequent rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	05/13/86	51 FR 17572
NPRM Comment Period End	08/11/86	51 FR 17572
To be withdrawn	10/00/88	

Small Entities Affected: None

Government Levels Affected: State

Analysis: Regulatory Evaluation 05/13/86 (51 FR 17572)

Agency Contact: Jill Hochman, Department of Transportation, Federal Highway Administration, 400 Seventh

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DOT—FHWA — Final Rule Stage

St., SW, Washington, DC 20590, 202 366-4600

RIN: 2125-AB94

1867. + COMMERCIAL DRIVER TEST AND LICENSING STANDARDS

Significance: Regulatory Program

Legal Authority: 49 USC 2505; 49 USC 3102; PL 99-570, Sec 12006; PL 99-570, Sec 12008; PL 99-570, Sec 12009

CFR Citation: 49 CFR 383; 49 CFR 391

Legal Deadline: Final, Statutory, July 15, 1988.

Abstract: Sections 12005 and 12009 of Pub. L. 99-570 require certain requirements to be in place by July 15, 1988 regarding minimum Federal standards which States must use for testing and licensing commercial motor vehicle drivers. FHWA issued a NPRM on December 11, 1987 proposing the standards. Included in the proposal are requirements placed on the State in section 12009 pertaining to a check with the information system before issuing a license. This rulemaking action is considered significant because of the substantial public interest involved.

Timetable:

Action	Date	FR Cite
ANPRM	09/01/86	51 FR 27567
ANPRM Comment Period End	11/05/86	51 FR 35536
NPRM	12/11/87	52 FR 47326
NPRM Comment Period End	02/09/88	52 FR 47326
Final Action	07/21/88	53 FR 27628

Small Entities Affected: None

Government Levels Affected: State

Analysis: Regulatory Evaluation 12/11/87 (52 FR 47328)

Additional Information: Final action was effective 08/22/88, except 04/01/92 for Sec 383.23. Comments received are being analyzed and will be addressed by separate action.

Agency Contact: Jill L. Hochman, Department of Transportation, Federal Highway Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-4921

RIN: 2125-AI08

1868. + BLOOD ALCOHOL CONCENTRATION STANDARD FOR COMMERCIAL VEHICLE OPERATORS

Significance: Regulatory Program

Legal Authority: PL 99-570, Sec 12006; 49 USC App. 2505; 49 USC 3102

CFR Citation: 49 CFR 383; 49 CFR 391

Legal Deadline: Final, Statutory, October 27, 1988.

Abstract: In response to Section 12006 of the Commercial Motor Vehicle Safety Act of 1986, the FHWA requested comments on the establishment of a commercial driver blood alcohol concentration (BAC) standard for "driving under the influence." Also in response to Section 12006 of the Act, the National Academy of Sciences (NAS) conducted a study on the appropriateness of selecting one of several alternative BAC levels as the level at which a person operating a commercial motor vehicle would be deemed to be driving under the influence of alcohol. Based on the results of the study and the rulemaking comments, the Secretary of Transportation must promulgate a commercial driver BAC standard. States would be required to enact laws providing that any driver who operates a commercial motor vehicle at the Federal BAC level or above it is deemed to be driving under the influence of alcohol. States not enacting a BAC-level law for commercial motor vehicle drivers risk the loss of Federal-aid highway funds. The comments received were available to the NAS and served as the docket comments, along with the NAS study for the Notice of Proposed Rulemaking issued on May 10, 1988.

Timetable:

Action	Date	FR Cite
ANPRM	03/23/87	52 FR 9192
ANPRM Comment Period End	05/22/87	
NPRM	05/10/88	53 FR 16656
Correction to NPRM	06/02/88	53 FR 20147
NPRM Comment Period End	06/29/88	53 FR 16656
Final Action	10/03/88	
Final Action Effective	10/27/88	

Small Entities Affected: None

Government Levels Affected: State

Analysis: Regulatory Evaluation 05/10/88 (53 FR 16656)

Additional Information: If the Secretary does not promulgate a Federal standard by October 27, 1988, the BAC standard shall be deemed to be 0.04 percent.

Agency Contact: Jill L. Hochman, Department of Transportation, Federal Highway Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-4921

RIN: 2125-AB79

1869. + UNIFORM RELOCATION ACT AMENDMENTS OF 1987; GENERAL

Significance: Agency Priority

Legal Authority: 42 USC 4601 et seq; PL 100-17, Sec 4

CFR Citation: 49 CFR 24

Legal Deadline: Final, Statutory, April 2, 1989.
A final rule must be promulgated by 4/2/89.

Abstract: This rulemaking action addresses the implementation of Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987, Pub. L. 100-17, 101 Stat. 132 (STURAA). Title IV of STURAA amends the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act), 42 U.S.C. sections 4601 to 4655 (1982). Title IV establishes: a lead agency (FHWA) to insure consistent Federal implementation; an increase in the maximum monetary benefits that can be provided to persons forced to relocate by Federal or federally assisted projects; an expansion of the Uniform Act's coverage to insure more types of displacing activities; and an allowance for a State certification program. This rulemaking action is considered significant because of substantial public interest involved.

Timetable:

Action	Date	FR Cite
NPRM	07/21/88	53 FR 27598
Notice of Public Meetings	07/27/88	53 FR 28239
Correction to NPRM	08/01/88	53 FR 28995
Final Action	04/00/89	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

DOT—FHWA — Final Rule Stage

Analysis: Regulatory Evaluation 07/21/88 (53 FR 27598)

Agency Contact: Robert Moore, Department of Transportation, Federal Highway Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-0116

RIN: 2125-AE55

1870. + DRIVER'S RECORD OF DUTY STATUS; ONBOARD RECORDING DEVICES

Significance: Agency Priority

Legal Authority: 49 USC App 2505; 49 USC 3102

CFR Citation: 49 CFR 395

Legal Deadline: None

Abstract: The FHWA has initiated rulemaking to address the use of onboard recording devices in motor vehicles operating in interstate commerce. This action is being taken in response to a petition filed by the Insurance Institute for Highway Safety (IIHS) on 2/25/87. The original IIHS petition (10/88) requested that the FHWA require motor carriers to use onboard recording devices for recording the driver's hours of service. This rulemaking is considered significant because of the substantial public interest involved.

Timetable:

Action	Date	FR Cite
ANPRM	07/13/87	52 FR 26289
ANPRM Comment Period End	10/13/87	52 FR 26289
NPRM	03/14/88	53 FR 8228
NPRM Comment Period End	04/13/88	53 FR 8228
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: State

Analysis: Regulatory Evaluation 03/14/88 (53 FR 8228)

Agency Contact: Mr. Thomas P. Koslowski, Department of Transportation, Federal Highway Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-2981

RIN: 2125-AB95

1871. + CERTIFICATION OF SPEED LIMIT ENFORCEMENT

Significance: Agency Priority

Legal Authority: 23 USC 141; 23 USC 154; 23 USC 315; PL 100-17, Sec 174

CFR Citation: 23 CFR 650

Legal Deadline: None

Abstract: The FHWA and the National Highway Traffic Safety Administration (NHTSA) are amending the regulations on certification of speed limit enforcement in order to streamline the sanction process and to take into account the provisions mandated by section 174 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA). Section 174 of STURAA amended 23 U.S.C. 154 by giving the States the authority to increase, without loss of Federal-aid funds, the maximum speed limit to no more than 65 miles per hour (mph) on certain Interstate System highways. A notice of proposed rulemaking will be issued proposing revisions to the sanction process contained in 23 CFR Part 650. A separate final rulemaking action has been issued in order to provide the States the authority to adjust the speed sampling and analysis plan required for determining the level of 55 mph noncompliance.

Timetable:

Action	Date	FR Cite
Final Action Adjusting Sampling Plans	08/03/87	52 FR 28691
NPRM	03/11/88	53 FR 7943
NPRM Comment Period End	04/11/88	53 FR 7943
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: State, Federal

Analysis: Regulatory Evaluation 03/11/88 (53 FR 7943)

Additional Information: This rulemaking action, as well as the final rule on sampling plans (Supplemental), are considered significant because of the substantial public interest involved.

Agency Contact: Sheldon G. Strickland, Department of Transportation, Federal Highway Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-1993

RIN: 2125-AC00

1872. CONTRACT PROCEDURES

Significance: Nonsignificant

Legal Authority: 23 USC 112; 23 USC 113; 23 USC 114; 23 USC 117; 23 USC 128

CFR Citation: 23 CFR 635

Legal Deadline: None

Abstract: This revision will update and simplify existing Federal-aid contract procedures.

Timetable:

Action	Date	FR Cite
NPRM	08/18/78	43 FR 36685
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: State

Analysis: Regulatory Evaluation 10/00/88

Agency Contact: William Weseman, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-6392

RIN: 2125-AA16

1873. COMPLIANCE WITH MOTOR CARRIER NOISE STANDARDS

Significance: Nonsignificant

Legal Authority: 49 USC 3102

CFR Citation: 49 CFR 325

Legal Deadline: None

Abstract: The FHWA is considering amending the noise emission standards to add a new minimum distance of 31 feet from which to measure highway noise. FHWA is also considering eliminating the correction factor which allowed a variance for noise tests taken at hard sites, e.g., asphalt, compared to those taken at soft sites, e.g., grassy areas.

Timetable:

Action	Date	FR Cite
NPRM	04/03/80	45 FR 22120

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Thomas P. Koslowski, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-2981

RIN: 2125-AA27

1674. RAILROAD GRADE CROSSINGS

Significance: Nonsignificant

Legal Authority: 49 USC 3102

CFR Citation: 49 CFR 392.10

Legal Deadline: None

Abstract: The FHWA had considered a revision that would make this Federal regulation more consistent with the Uniform Vehicle Code with respect to stopping requirements. However, after further review it has been determined that no further action by the FHWA is needed in this area. Therefore, the 11/18/82 ANPRM will be withdrawn.

Timetable:

Action	Date	FR Cite
ANPRM	11/18/82	47 FR 51904
To be withdrawn	10/00/88	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Thomas P. Koclowski, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-2981

RIN: 2125–AA36

1675. ACCELERATION OF PROJECTS

Significance: Nonsignificant

Legal Authority: 23 USC 146; 23 USC 315; PL 97-424, Sec 129

CFR Citation: 23 CFR 630

Legal Deadline: None

Abstract: This revision was intended to expedite the processing of Federal-aid highways projects by promoting wider use of the findings and recommendations of the demonstration project carried out under section 141 of the 1976 Federal-Aid Highway Act. This action was also being taken pursuant to section 129 of the Surface Transportation Assistance Act of 1982.

Timetable:

Action	Date	FR Cite
ANPRM	08/26/83	48 FR 38854
ANPRM Comment Period End	11/25/83	48 FR 57330
To be withdrawn	10/00/88	

Small Entities Affected: None

Government Levels Affected: State

Analysis: Reg. Evaluation (Minimal impact) 08/26/83 (48 FR 38854)

Additional Information: An interim policy statement was published 6/6/83 (48 FR 25161) to implement acceleration methods for selected projects within existing regulations. Initially, FHWA had considered issuing a new regulation as a vehicle for accelerating Federal-aid projects pursuant to Section 129 of the STAA of 1982. However, it has been determined that the objectives of Section 129 can be best implemented by revisions to existing regulations. Therefore, separate regulations will not be issued regarding the acceleration program. This approach received the concurrence of Deputy Administrator Lamm on April 11, 1984. This regulation will be withdrawn.

Agency Contact: S. M. Sliwoski, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-4839

RIN: 2125–AA87

1676. PAVEMENT POLICY FOR HIGHWAYS

Significance: Nonsignificant

Legal Authority: 23 USC 109(a) to 109(c); 23 USC 315; 23 USC 101(e); 23 USC 402

CFR Citation: 23 CFR 626; 23 CFR 625

Legal Deadline: None

Abstract: The existing regulation on pavement design would be modified to eliminate unnecessary requirements and duplicative provisions. Currently, the Federal Highway Administration (FHWA) uses the "American Association of State Highway and Transportation Officials (AASHTO) Interim Guide for Design of Pavement Structures, 1972," Chapter III Revised, 1981, to evaluate the adequacy of the proposed pavement designs for Federal-aid projects. AASHTO has approved a new Pavement Design Guide. FHWA will solicit public comment on the revised guide and adopt it for application on Federal-aid projects as a guide, not standard. It will be acceptable for State highway agencies to design pavement structures based upon other procedures and practices that by past performance have proven satisfactory for the pertinent conditions. If a State highway agency elects to use procedures other than AASHTO's, the procedures will require FHWA approval. The FHWA will check or review pavement design in accordance with procedures approved by the State highway agency. Each State highway agency will be required to have a pavement management system.

Timetable:

Action	Date	FR Cite
NPRM	01/26/88	53 FR 2041
Comment Period Extended to 05/27/88	04/11/88	53 FR 11875
SNPRM	04/11/88	53 FR 11875
NPRM Comment Period End	04/25/88	53 FR 2041
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: State

Analysis: Reg. Evaluation (Minimal impact) 01/26/88 (53 FR 2041)

Additional Information: Register notice was published on 04/24/85 (50 FR 16103) outlining and explaining the procedural steps the FHWA would take to effectuate Federal adoption of the revised guide.

Agency Contact: Norman Van Ness, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-1324

RIN: 2125–AA88

1677. EROSION AND SEDIMENT CONTROL ON HIGHWAY CONSTRUCTION PROJECTS

Significance: Nonsignificant

Legal Authority: 23 USC 109(g); 23 USC 315; 23 USC 109(h); 33 USC 1323

CFR Citation: 23 CFR 650

Legal Deadline: None

Abstract: The proposed rule was intended to adopt the AASHTO Guide Specifications for water pollution control. After careful consideration of comments submitted in response to the NPRM and based upon a further review by FHWA, it has been determined that rulemaking in this area is no longer necessary. Therefore, the NPRM will be withdrawn.

Timetable:

Action	Date	FR Cite
NPRM	01/18/85	50 FR 2694
NPRM Comment Period End	03/18/85	
To be withdrawn	10/00/88	

Small Entities Affected: None

Government Levels Affected: State

Analysis: Reg. Evaluation (Minimal impact) 01/18/85 (50 FR 2694)

Agency Contact: Philip L. Thompson, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-4611

RIN: 2125–AB05

1678. STRUCTURAL SUPPORTS FOR HIGHWAY SIGNS, LUMINAIRES AND TRAFFIC SIGNALS

Significance: Nonsignificant

Legal Authority: 23 USC 109; 23 USC 315; 23 USC 402

CFR Citation: 23 CFR 625

Legal Deadline: None

Abstract: In May, 1985, the American Association of State Highway and Transportation Officials (AASHTO) approved its publication entitled "Standard Specification for Structural Supports for Highway Signs, Luminaires, and Traffic Signals," which is incorporated in 23 CFR 625 as a specification. FHWA proposed to adopt the AASHTO publication for Federal-aid application. An interim final rule adopted all of the 1985 AASHTO sign and luminaires specifications except section 7, Breakaway Supports. The SNPRM contained the results of FHWA's crash testing of previously accepted luminaire support systems and opened the docket for further comments.

Timetable:

Action	Date	FR Cite
NPRM	11/10/86	51 FR 40617
NPRM Comment Period End	05/11/87	51 FR 40617
Interim Final Rule	09/28/87	52 FR 32645
SNPRM	12/14/87	52 FR 47403
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Analysis: Regulatory Evaluation 12/14/87 (52 FR 47403)

Agency Contact: James H. Hatton, Department of Transportation, Federal Highway Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-1329

RIN: 2125–AB56

1679. CONSTRUCTION AND MAINTENANCE; CONTRACT PROCEDURES; STANDARDIZED CONTRACT CLAUSES

Significance: Nonsignificant

Legal Authority: 23 USC 112; 23 USC 117; 23 USC 315; PL 100-17, Sec 111(c)

CFR Citation: 23 CFR 635

Legal Deadline: None

Abstract: The FHWA is amending its regulations on contract procedures to implement the provisions of Section 111(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA). Section 111(c) of STURAA amends 23 USC 112 to require a standardized contract clause in all Federal-aid contracts unless otherwise provided for by State law. The standardized contract clause is to provide for the equitable adjustment of contract terms: (1) where site conditions differ from those specified in the contract; (2) where work has been suspended by order of the contracting agency (other than a suspension of work caused by the fault of the contractor or by weather); and (3) where there are material changes in the scope of the work.

Timetable:

Action	Date	FR Cite
NPRM	12/01/87	52 FR 45645
NPRM Comment Period End	02/01/88	52 FR 45645
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: State

Analysis: Reg. Evaluation (Minimal Impact) 12/01/87 (52 FR 45645)

Agency Contact: William A. Weseman, Chief, Construction and Maint. Division, Department of Transportation, Federal Highway Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-0312

RIN: 2125–AB87

1680. TRUCK SIZE AND WEIGHT; NATIONAL NETWORK; IOWA AND SOUTH CAROLINA

Significance: Nonsignificant

Legal Authority: 23 USC 127; 23 USC 315; 49 USC 2311; 49 USC 2313; 49 USC App 2316

CFR Citation: 23 CFR 658

Legal Deadline: None

Abstract: The FHWA is proposing to modify the National Network for commercial motor vehicles by deleting certain routes in Iowa and South Carolina. The National Network was established by the final rule on Truck Size and Weight published at 49 FR 23302 on June 5, 1984. It is maintained under 23 CFR 658, Appendix A, as amended.

Timetable:

Action	Date	FR Cite
NPRM	05/25/88	53 FR 18859
NPRM Comment Period End	07/25/88	53 FR 18859
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: Local, State

Analysis: Reg. Evaluation (Minimal Impact) 05/25/88 (53 FR 18859)

Agency Contact: Mr. Richard A. Turbik, Department of Transportation, Federal Highway Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-0233

RIN: 2125–AC10

1681. ● CONTRACT PROCEDURES; ADVERTISING FOR BIDS; NONCOLLUSION AFFIDAVIT/DECLARATION REQUIREMENT

Significance: Nonsignificant

Legal Authority: 23 USC 112-114; 23 USC 117; 23 USC 128; 23 USC 315; 31 USC 6506; 42 USC 3334; 42 USC 4601 et seq

CFR Citation: 23 CFR 635

Legal Deadline: None

Abstract: The Federal Highway Administration (FHWA) is revising its regulations on contract procedures regarding advertising for bids. The revised regulation provides the State highway agencies (SHA's) with the option to permit all bidders on a Federal-aid highway project to submit an unsworn noncollusion declaration, under penalty of prejury under the laws of the United States, as an alternative

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to the sworn noncollusion affidavit requirement of the existing regulation.

Timetable:

Action	Date	FR Cite
Final Action	10/31/88	

Small Entities Affected: None

Government Levels Affected: State

Analysis: Reg. Evaluation (minimal Impact) 10/00/88

Additional Information: Since the revisions are minor administrative adjustments and require no change to FHWA procedures, this document will be issued without a public comment period.

Agency Contact: William A. Weseman, Department of Transportation, Federal Highway Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-6362

RIN: 2125-AC16

1682. ◆ ENVIRONMENTAL IMPACT AND RELATED PROCEDURES; CONSTRUCTIVE USE

Significance: Nonsignificant

Legal Authority: 23 USC 315; 49 USC 303

CFR Citation: 23 CFR 771

Legal Deadline: None

Abstract: The need for rulemaking in this area has been caused by recent court decisions. The courts have delayed or halted several important Federal-aid highway projects on the grounds that the proximate effects or impacts from a given highway would constructively use land from a park or historic site. In each instance the FHWA had determined that there existed no constructive use. This determination was based on an analysis of proximity impacts and whether the impacts would substantially impair the functions or values which qualified the property for protection under Section 4(f) of the DOT Act. The FHWA has been operating under an informal policy directive on constructive use since 11/12/85. This rulemaking action would formalize existing policy on constructive use, and future court decisions would address the regulation rather than be based on ad hoc interpretations of specific project facts.

Timetable:

Action	Date	FR Cite
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: State, Federal

Analysis: Reg. Evaluation (Minimal Impact) 12/00/88

Agency Contact: Harter M. Rupert, Department of Transportation, Federal Highway Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-0093

RIN: 2125-AC18

DEPARTMENT OF TRANSPORTATION (DOT)
Federal Highway Administration (FHWA)

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1683. ◆ FEDERAL MOTOR CARRIER SAFETY REGULATIONS: GENERAL

Significance: Regulatory Program

Legal Authority: 49 USC 3102; PL 98-554, Sec 206

CFR Citation: 49 CFR 390

Legal Deadline: None

Abstract: This rulemaking action addressed the general provisions regarding the Motor Carrier Safety Regulations (FMCSR) contained in Part 390 of 49 CFR. This rulemaking was undertaken to implement section 206 of the Motor Carrier Safety Act (MCSA) of 1984 which mandated the reissuance of the FMCSR. The revisions will assist the various segments of the truck and bus industries in their efforts to comply with the FMCSR by (1) incorporating definitions from the Motor Carrier Safety Act of 1984; (2) clarifying and updating the regulations; (3) eliminating redundancy; (4) combining and locating in a single place the definitions of many general items presently located throughout the FMCSR; and (5) addressing comments concerning the elimination of certain regulatory exemptions.

Timetable:

Action	Date	FR Cite
ANPRM Fertilizer	02/10/82	47 FR 5273
ANPRM	01/23/85	50 FR 2998
Fertilizer ANPRM Withdrawn	01/23/85	50 FR 2998
ANPRM Comment Period End	03/11/85	50 FR 2998
NPRM	07/13/87	52 FR 26278
NPRM Comment Period End	09/11/87	52 FR 26278
Final Action	05/19/88	53 FR 18042
Correction to Final Rule	07/22/88	53 FR 27688
Final Action Effective	11/15/88	53 FR 18042

Small Entities Affected: None

Government Levels Affected: State

Analysis: Regulatory Evaluation 05/19/87 (53 FR 18042)

Agency Contact: Thomas P. Kozlowski, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-2981

RIN: 2125-AA34

1684. ◆ SPLASH/SPRAY SUPPRESSANT DEVICES ON TRUCK TRACTORS, SEMITRAILERS AND TRAILERS

Significance: Regulatory Program

Legal Authority: 49 USC 2314; 49 USC 3102; PL 97-424, Sec 414

CFR Citation: 49 CFR 393

Legal Deadline: Final, Statutory, April 2, 1988.

Abstract: Section 414 of the Surface Transportation Assistance Act of 1982 (Pub. L. 97-424) states that Congress declares the visibility on wet roadways in the Interstate System should be improved by reducing splash and spray from truck tractors, semitrailers and trailers. Congress instructed the Secretary to establish, by regulation, minimum standards with respect to the performance and installation of splash and spray suppression devices on truck tractors, semitrailers and trailers. Further, Congress mandated that all vehicles in use 5 years from date of enactment be equipped with such devices. This rulemaking was considered significant because of its economic impact on the motor carrier

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industry. Section 205 of the Surface Transportation Assistance Act of 1987 (P.L. 100-17) established a deadline of 4/2/88 for final action unless the Secretary determines that insufficient technology exists upon which to base a final rule. On 5/25/88, the FHWA determined that insufficient technology existed upon which to base a final rule. A termination notice was published.

Timetable:

Action	Date	FR Cite
NPRM	04/12/85	50 FR 14630
Comment Period Extended	06/11/85	50 FR 24549
NPRM Comment Period End	06/12/85	50 FR 24549
Withdrawn	05/25/88	53 FR 18660

Small Entities Affected: Undetermined

Government Levels Affected: State

Analysis: Regulatory Evaluation 05/25/88 (53 FR 18660)

Agency Contact: Thomas P. Kozlowski, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-2981

RIN: 2125-AA84

1685. ◆ TRUCK SIZE AND WEIGHT; TANDEM TRUCK SAFETY ACT

Significance: Regulatory Program

Legal Authority: 23 USC 315; PL 97-424, Sec 133; PL 97-424, Sec 411; PL 97-424, Sec 412; PL 97-424, Sec 413; PL 97-424, Sec 416

CFR Citation: 23 CFR 658

Legal Deadline: None

Abstract: The FHWA has provided a statement of FHWA interpretation and policy addressing the size and weight provisions contained in the Tandem Truck Safety Act of 1984 (TTSA) which amended the Surface Transportation Assistance Act of 1982 (STAA). This action addresses (1) conditions under which segments of the National System of Interstate and Defense Highways may be deleted from the National Truck Network, (2) conditions affecting the designation of new routes on the Federal-Aid Primary System as part of the National Truck Network, and (3) new provisions for 102-inch wide 28 1/2-foot semi-trailers. The issue relative to the qualifications of highways previously designated with lane widths less than 12 feet was the subject of a separate rulemaking action finalized at 52 FR 35064 (09/17/87).

Timetable:

Action	Date	FR Cite
NPRM	09/16/85	50 FR 37970
NPRM Comment Period End	11/04/85	50 FR 37970
Final Action	04/13/88	53 FR 12145
Final Action Effective	04/13/88	53 FR 12145

Small Entities Affected: None

Government Levels Affected: State

Analysis: Regulatory Evaluation 04/13/88 (53 FR 12145)

Additional Information: This action had previously been characterized as significant in the agenda. Upon further review, it has been determined that since this rulemaking proposes to technically amend the June 5, 1984, final rule on Truck Size and Weight and to finalize certain issues left unresolved, it is not considered significant. A Regulatory Impact Analysis has been prepared for the June 5 rulemaking and is available for inspection in the Headquarters office of FHWA, 400 Seventh Street, SW, Washington, D.C.

Agency Contact: C. John MacGowan, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-4832

RIN: 2125-AB28

1686. ◆ SEMITRAILER-SEMITRAILER; B-TRAIN

Significance: Regulatory Program

Legal Authority: 23 USC 325; PL 97-424, Sec 411; PL 97-424, Sec 413

CFR Citation: 23 CFR 658

Legal Deadline: None

Abstract: FHWA has interpreted 23 CFR 658.13 so that a combination of vehicles described as a truck-tractor semitrailer-semitrailer be considered as a truck-tractor semitrailer-trailer for purposes of 23 CFR 658. It is FHWA's intent to implement the Surface Transportation Assistance Act of 1982 so that all configurations that offer safety and productivity advantages will be recognized under the regulations. This action is significant because of industry interest and that of the general public.

Timetable:

Action	Date	FR Cite
NPRM	03/01/85	50 FR 8342
NPRM Comment Period End	04/30/85	50 FR 8342
NPRM Extended comment period to 05/14/85	01/29/85	52 FR 2803
Final Action	07/07/88	53 FR 25484
Final Action Effective	07/07/88	53 FR 25484

Small Entities Affected: None

Government Levels Affected: State

Analysis: Regulatory Evaluation 07/07/88 (53 FR 25484)

Agency Contact: Philip W. Blow, Department of Transportation, Federal Highway Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-4836

RIN: 2125-AH88

1687. RAILROAD-HIGHWAY PROJECTS

Significance: Nonsignificant

Legal Authority: 23 USC 109(e); 23 USC 120(d); 23 USC 130; 23 USC 315; 23 USC 405

CFR Citation: 23 CFR 646

Legal Deadline: None

Abstract: The FHWA has amended its regulation prescribing policies and procedures for advancing Federal-aid and direct Federal highway projects involving railroad facilities. The amendment incorporated and clarified existing FHWA policy regarding participation with Federal-aid highway funds in providing specified horizontal and vertical clearances for railroad overpass and underpass structures at highways.

Timetable:

Action	Date	FR Cite
NPRM	02/20/85	50 FR 7067
NPRM Comment Period End	04/22/85	
Final Action	08/24/88	53 FR 32215
Final Action Effective	10/24/88	

Small Entities Affected: None

Government Levels Affected: State

Analysis: Regulatory Evaluation 08/24/88 (53 FR 32215)

Additional Information: Upon further review, it was determined that a supplemental NPRM was not necessary.

Agency Contact: James A. Carney, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-0450

RIN: 2125-AB25

1866. MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES; RESTRUCTURE

Significance: Nonsignificant

Legal Authority: 23 USC 109(d); 23 USC 315; 23 USC 402(a)

CFR Citation: 23 CFR 655

Legal Deadline: None

Abstract: The FHWA considered the need for a new Manual on Uniform Traffic Control Devices (MUTCD) and a new format. The MUTCD is incorporated by reference in 23 CFR Part 655, Subpart F and is recognized as the national standard for traffic control devices on all public roads. Upon further review the FHWA determined that no action was necessary at this time. A termination of rulemaking and closing of docket was published on 1/6/88.

Timetable:

Action	Date	FR Cite
ANPRM	06/09/86	51 FR 20840
ANPRM Extended Comment period to 09/01/87	04/09/87	52 FR 11502
ANPRM Comment Period End	07/20/87	51 FR 20840
Action withdrawn	01/06/88	53 FR 236

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Additional Information: FHWA Docket No. 86-12.

Agency Contact: Philip O. Russell, Department of Transportation, Federal Highway Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-2194

RIN: 2125-AB17

1869. REIMBURSEMENT FOR RAILROAD WORK

Significance: Nonsignificant

Legal Authority: 23 USC 101; 23 USC 120(d); 23 USC 130; 23 USC 315

CFR Citation: 23 CFR 140

Legal Deadline: None

Abstract: The FHWA amended its regulation on reimbursement for railroad work to allow Federal-aid highway funds to be used to pay for various overhead and indirect construction costs incurred by railroad forces accomplishing work on Federal-aid highway projects.

Timetable:

Action	Date	FR Cite
NPRM	12/17/86	51 FR 44996
NPRM Comment Period End	02/17/87	51 FR 44996
Final Action	05/23/88	53 FR 18275
Final Action Effective	05/23/88	53 FR 18275

Small Entities Affected: None

Government Levels Affected: State

Analysis: Reg. Evaluation (Minimal Impact) 05/23/88 (53 FR 18275)

Agency Contact: James A. Carney, Department of Transportation, Federal Highway Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-4853

RIN: 2125-AB36

1880. NATIONAL BRIDGE INSPECTION STANDARDS

Significance: Nonsignificant

Legal Authority: 23 USC 109(h); 23 USC 116(d); 12 USC 144; 23 USC 315

CFR Citation: 23 CFR 650

Legal Deadline: None

Abstract: These revisions to the bridge inspection standards will retain the existing 2-year frequency as the basic requirement. The States will also be expected to inspect some bridges more often than once every two years when the condition, age, load capacity, or monitoring is needed. However, for certain types or groups of bridges the States would be permitted, under the proposed revisions, to request FHWA approval for appropriate inspection intervals that are longer than the basic 2-year interval. The modified inspection interval can be appropriate for groups of relatively new structures in good condition, which have safe laod capacities at least equal to the State legal load, in low traffic volume areas, with proven performance histories, provided that the inspection plan is approved by the FHWA.

Timetable:

Action	Date	FR Cite
NPRM	04/07/87	52 FR 11092
Notice Extension of public comments	06/03/87	52 FR 20726
NPRM Comment Period End	07/09/87	52 FR 20726
Final Action	08/26/88	53 FR 32611
Final Action Effective	10/25/88	

Small Entities Affected: None

Government Levels Affected: Local, State

Analysis: Reg. Evaluation (Minimal Impact) 04/07/87 (52 FR 11092)

Additional Information: This action was formerly entitled National Bridge Inspection Standards; Frequency of Inspection and Inventory.

Agency Contact: John J. Ahlskog, Department of Transportation, Federal Highway Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-4617

RIN: 2125-AB71

1881. CARGO PREFERENCE

Significance: Nonsignificant

Legal Authority: 23 USC 112; 23 USC 114; 23 USC 315; 23 USC 113; 23 USC 128; 31 USC 6505; 42 USC 3334; 42 USC 4602 et seq

CFR Citation: 23 CFR 635

Legal Deadline: None

Abstract: The Federal Highway Administration (FHWA) was incorporating into its regulations the cargo preference requirements as mandated by the Cargo Preference Act of 1954 (Act) and its implementing regulations (46 CFR 381) developed by the Maritime Administration (MARAD). On 2/2/88, the Department of Justice made a legal determination that Cargo Preference was not authorized to be imposed on Federal-aid highway projects. Therefore, this action was terminated on 2/2/88.

Timetable:

Action	Date	FR Cite
Action Terminated	02/02/88	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: William Weseman, Department of Transportation, Federal Highway Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-0392

RIN: 2125-AB73

1892. MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS; ENVIRONMENTAL RESTORATION

Significance: Nonsignificant

Legal Authority: 49 USC 10927 note

CFR Citation: 49 CFR 387

Legal Deadline: None

Abstract: The FHWA issued a final rule to redefine "environmental restoration" as that term is used in FHWA's financial responsibility regulations. This action was taken in response to a joint petition filed by the American Insurance Association (AIA) and the American Trucking Associations (ATA), and because of the current insurance crisis facing the motor carrier industry. This action made clear the motor carriers are required to provide evidence of financial responsibility to satisfy claims for damage to human health and to the environment, including necessary restoration costs, but not for potential or speculative damages for which they would not otherwise be found liable.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/23/86	51 FR 33854
Final Action	04/13/88	53 FR 12158
Final Action Effective	04/13/88	53 FR 12158

Small Entities Affected: None

Government Levels Affected: State

Analysis: Regulatory Evaluation 04/13/88 (53 FR 12158)

Additional Information: Upon issuances of the interim final rule, the FHWA gave notice that comments would be accepted on the rulemaking action. A comment period was provided and Docket No. MC-126; Amendment No. 83-14 was established to receive comments.

Agency Contact: Thomas P. Kozlowski, Department of Transportation, Federal Highway Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-2981

RIN: 2125-AB77

1893. NATIONAL STANDARDS FOR TRAFFIC CONTROL DEVICES; REVISION OF PART VI OF THE MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES

Significance: Nonsignificant

Legal Authority: 23 USC 109(b); 23 USC 315; 23 USC 402(a)

CFR Citation: 23 CFR 655

Legal Deadline: None

Abstract: The FHWA considered rulemaking regarding the need to update the standards in Part VI, Traffic Controls For Street and Highway Construction and Maintenance Operations, of the Manual On Uniform Traffic Control Devices (MUTCD). Upon further review the FHWA determined that action in this area was not necessary at this time. A termination of rulemaking and a closing of docket was published on 1/6/88.

Timetable:

Action	Date	FR Cite
Final Action	01/06/88	53 FR 236
Final Action Effective	01/06/88	
Action Terminated	01/06/88	53 FR 236

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Additional Information: FHWA Docket # 86-12 had been assigned to this rulemaking action.

Agency Contact: Mr. Philip O. Russell, Department of Transportation, Federal Highway Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-0411

RIN: 2125-AB83

1894. STATE EDUCATION AND TRAINING PROGRAM

Significance: Nonsignificant

Legal Authority: 23 USC 315; 23 USC 321(b); 23 USC 321 (c); PL 100-17, Sec 131

CFR Citation: 23 CFR 230

Legal Deadline: None

Abstract: The FHWA amended 23 CFR 230 to implement Section 131 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA) enacted on April 2, 1987. Section 131 of the STURAA amends Section 321 of Title 23, United States Code, by allowing the States to use Federal-aid funds to pay 75 percent of the cost of education and training purchased from any source including the National Highway Institute. The provisions contained in 23 CFR 230 addressing the administration of Federal-aid funds for education and training of State and local highway department employees were revised to reflect the statutory amendment.

Timetable:

Action	Date	FR Cite
Final Action	02/09/88	53 FR 3744
Final Action Effective	04/02/88	53 FR 3744

Small Entities Affected: None

Government Levels Affected: Local, State

Analysis: Reg. Evaluation (Minimal Impact) 02/09/88 (53 FR 3744)

Agency Contact: Larry Jones, National Highway Institute, Department of Transportation, Federal Highway Administration, 400 Seventh St., SW, Washington, DC 20590, 202 285-2778

RIN: 2125-AB82

1895. TRUCK SIZE AND WEIGHT; EXCEPTION TO BRIDGE FORMULA

Significance: Nonsignificant

Legal Authority: 23 USC 127; 49 USC 2311; 49 USC 2312; 49 USC 2313; 49 USC App 2316

CFR Citation: 23 CFR 658

Legal Deadline: None

Abstract: An exception was contemplated for tank trailers, dump trailers, and ocean transport containers to the Federal formula that specifies the maximum allowable gross weight for axle groups for vehicles operating on Interstate Highways. Upon further review, the FHWA has determined that no rulemaking action is required at this time. Therefore, on 6/1/88 this rulemaking action was terminated.

Timetable:

Action	Date	FR Cite
Action Terminated	06/01/88	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Philip W. Blow, Department of Transportation, Federal Highway Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-4636

RIN: 2125–AC08

1896. STATE FISCAL PROCEDURES AND REPORTS; RESCISSION OF REGULATION

Significance: Nonsignificant

Legal Authority: 23 USC 104(c); 23 USC 104(d); 23 USC 104(g); 23 USC 315

CFR Citation: 23 CFR 160

Legal Deadline: None

Abstract: The FHWA rescinded its regulations addressing the transfer of Federal-aid Highway and Safety Funds. These provisions contained in 23 CFR 160 were issued to prescribe the procedures for transfer of funds under subsections 104(c), (d) and (g), of Title 23, United States Code. The regulations are rescinded because their sole function has evolved to a simple restatement of statutory language.

Timetable:

Action	Date	FR Cite
Final Action Rescission	07/07/88	53 FR 25488
Final Action Effective	07/07/88	53 FR 25488

Small Entities Affected: None

Government Levels Affected: State

Analysis: Reg. Evaluation (Minimal Impact) 07/07/88 (53 FR 25488)

Agency Contact: Mr. Larry C. Hanna, Department of Transportation, Federal Highway Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-2966

RIN: 2125–AC06

1897. ● UTILITY RELOCATIONS, ADJUSTMENTS, AND REIMBURSEMENTS

Significance: Nonsignificant

Legal Authority: 23 USC 101; 23 USC 109; 23 USC 111; 23 USC 116; 23 USC 123; 23 USC 315; PL 100-17, Sec 108

CFR Citation: 23 CFR 646

Legal Deadline: None

Abstract: The FHWA amended its regulation on utility adjustments to clarify the circumstances under which Federal-aid highway funds may be used to reimburse highway agencies' costs incurred in implementing projects solely for corrective measures to reduce the hazards of utility facilities to highway users. This revision was made to implement section 108 of the Surface Transportation and Uniform Relocation Assistance Act (STURAA) of 1987 (Pub. L. 100-17, 101 Stat. 132) as it affects utility safety work.

Timetable:

Action	Date	FR Cite
Final Action	07/01/88	53 FR 24932
Final Action Effective	07/01/88	53 FR 24932

Small Entities Affected: None

Government Levels Affected: State

Analysis: Reg. Evaluation (Minimal Impact) 07/01/88 (53 FR 24932)

Agency Contact: Mr. James A. Carney, Department of Transportation, Federal Highway Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-4652

RIN: 2125–AC12

1898. ● TRUCK SIZE AND WEIGHT; NATIONAL NETWORK; NEW YORK

Significance: Nonsignificant

Legal Authority: 23 USC 127; 49 USC 2311; 49 USC 2372; 49 USC 2313; 49 USC App. 2316; 23 USC 315

CFR Citation: 23 CFR 658

Legal Deadline: None

Abstract: The rule technically amends Appendix A of 23 CFR Part 658 which identifies interstate and other Federal-aid primary routes designated as part of the National Network for trucks available to vehicles described in the Surface Transportation Assistance Act of 1982 (STAA). Specifically this rule removes the footnotes related to time of day and other restrictions on interstate highway segments in New York which are no longer valid. This amendment is in response to recent revisions to 23 CFR Part 658 which established specific approval requirements for use restrictions on interstate highways.

Timetable:

Action	Date	FR Cite
Final Action	08/01/88	53 FR 28870

Small Entities Affected: None

Government Levels Affected: Local, State

Analysis: Reg. Evaluation (Minimal Impact) 08/01/88 (53 FR 28870)

Agency Contact: Mr. Kevin E. Heanue, Department of Transportation, Federal Highway Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-2951

RIN: 2125–AC13

1899. ● DESIGN STANDARDS FOR HIGHWAYS; TECHNICAL AMENDMENT

Significance: Nonsignificant

Legal Authority: 23 USC 109; 23 USC 315; 23 USC 402

CFR Citation: 23 CFR 625

Legal Deadline: None

Abstract: The Federal Highway Administration (FHWA) updated the list of citations to publications which are incorporated by reference in 23 CFR 625 for application on Federal-aid projects. The list includes citations to publications containing standards, specifications, policies, guides, and references which have been approved for application in the geometric and structural design of federally funded highways. The revision amended the regulation by adding a publication that contains guidance and informational material.

Timetable:

Action	Date	FR Cite
Final Action	05/03/88	53 FR 15669
Final Action Effective	05/03/88	53 FR 15669

Small Entities Affected: None

Government Levels Affected: State

Analysis: Reg. Evaluation (Minimal Impact) 05/03/88 (53 FR 15669)

Agency Contact: Mr. Seppo I. Sillan, Department of Transportation, Federal Highway Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-1327

RIN: 2125–AC14

1900. ● COMMERCIAL MOTOR CARRIER SAFETY ASSISTANCE PROGRAM; TECHNICAL AMENDMENTS

Significance: Nonsignificant

Legal Authority: 49 USC App 2301-2305; 49 USC 3102

CFR Citation: 49 CFR 350

Legal Deadline: None

Abstract: The Federal Highway Administration (FHWA) amended the regulations contained in 49 CFR Part 350 that implement the Motor Carrier Safety Assistance Program (MCSAP). The technical amendments included in this document updated the current regulations to reflect current statutory authority, funding authorizations, and removal of inapplicable years and any mention of future years.

Timetable:

Action	Date	FR Cite
Final Action	05/04/88	53 FR 15845
Final Action Effective	05/04/88	53 FR 15845

Small Entities Affected: None

Government Levels Affected: Local, State

Analysis: Reg. Evaluation (Minimal Impact) 05/04/88 (53 FR 15845)

Agency Contact: William H. Nalley, Department of Transportation, Federal Highway Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-2948

RIN: 2125–AC15

DEPARTMENT OF TRANSPORTATION (DOT)

National Highway Traffic Safety Administration (NHTSA)

Prerule Stage

1901. + SIDE-IMPACT PROTECTION, HEAD/NECK PROTECTION, AND OCCUPANT EJECTION MITIGATION

Significance: Regulatory Program

Legal Authority: 15 USC 1392; 15 USC 1407

CFR Citation: 49 CFR 571.214

Legal Deadline: None

Abstract: Contemplated action proposes amending the current standard to include head/neck protection and to mitigate ejection through side windows and doors.

Timetable:

Action	Date	FR Cite
ANPRM	08/19/88	53 FR 31712
ANPRM Comment Period End	10/18/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Ralph Hitchcock, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-0842

RIN: 2127–AB85

1902. + UNIFORM TIRE-QUALITY GRADING

Significance: Agency Priority

Legal Authority: 15 USC 1423

CFR Citation: 49 CFR 575

Legal Deadline: None

Abstract: Contemplated action would include rolling resistance for tires as a substitute for top temperature resistance grade in the Uniform Tire Quality Grading Standards. This rulemaking is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Orron Kee, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-6946

RIN: 2127–AA52

1903. ● + SIDE-IMPACT PROTECTION – LIGHT TRUCKS, VANS, AND MULTIPURPOSE PASSENGER VEHICLES

Significance: Agency Priority

Legal Authority: 15 USC 1392; 15 USC 1401; 15 USC 1407

CFR Citation: 49 CFR 1.50

Legal Deadline: None

Abstract: The purpose of this advance notice is to announce that the NHTSA is considering the proposal of requirements for light trucks, vans, and multipurpose passenger vehicles intended to reduce the risk of fatalities and injuries in side impacts and other crashes where the side protection of the vehicle is a relevant factor, and to request comments to assist the agency in developing the proposal. The contemplated requirements would be part of the agency's efforts to address the serious problem of side impacts. As another part of those efforts, the agency earlier this year proposed requirements for passenger cars intended to reduce the risk of injuries to the thorax and pelvis in side impact crashes between vehicles. This rulemaking is considered significant because of the public safety implications.

Timetable:

Action	Date	FR Cite
ANPRM	08/19/88	53 FR 31716
ANPRM Comment Period End	10/18/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Ralph Hitchcock, Director, Office of Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, NRM-10, 400 7th Street, S.W., Washington, DC 20590, 202 366-6842

RIN: 2127–AC43

1904. ● + ROLLOVER

Significance: Agency Priority

Legal Authority: 15 USC 1392; 15 USC 1401; 15 USC 1403; 15 USC 1407

CFR Citation: 49 CFR 571.216

Legal Deadline: None

Abstract: Consumers Union petitioned for rulemaking to develop a new standard to protect against unreasonable risk of rollover. The petition is under consideration. This issue is considered significant because of substantial public interest and safety factors involved.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

DOT—NHTSA

Prerule Stage

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Ralph Hitchcock, Director, Office of Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 7th St., SW, Washington, DC 20590, 202 366-0842

RIN: 2127–AC84

1905. REVIEW: SCHOOLBUS SEATING SYSTEMS

Significance: Nonsignificant

Legal Authority: 15 USC 1392; 15 USC 1407

CFR Citation: 49 CFR 571.222

Legal Deadline: None

Abstract: This regulation was selected for review because of public interest.

Timetable:

Action	Date	FR Cite
Begin Review	01/01/88	
End Review	12/15/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Frank Ephraim, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-1574

RIN: 2127–AA85

1906. REVIEW: SEATING SYSTEMS

Significance: Nonsignificant

Legal Authority: 15 USC 1392; 15 USC 1401; 15 USC 1407

CFR Citation: 49 CFR 571.207

Legal Deadline: None

Abstract: This regulation was selected for review because of costs.

Timetable:

Action	Date	FR Cite
Begin Review	05/01/86	
Preliminary evaluation report published	02/10/87	52 FR 4818
End Review	10/15/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Frank Ephraim, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-1574

RIN: 2127–AA09

1907. REVIEW: LAMPS, REFLECTIVE DEVICES, AND ASSOCIATED EQUIPMENT

Significance: Nonsignificant

Legal Authority: 15 USC 1392; 15 USC 1401; 15 USC 1407

CFR Citation: 49 CFR 571.108

Legal Deadline: None

Abstract: The standard requires passenger cars sold after Oct. 1, 1985 to be equipped with center high-mounted stop lamps. The evaluation will determine the reduction of rear-impact collisions that occurred after the lamps were introduced in the vehicle fleet, as well as the cost of the lamps.

Timetable:

Action	Date	FR Cite
Begin Review	10/01/85	
Preliminary evaluation report published	03/20/87	52 FR 9609
Interim Report	06/01/89	
End Review	06/15/90	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: The preliminary evaluation report indicated that cars equipped with center high-mounted stop lamps were 22 percent less likely to be struck in the rear while braking than cars without the lamps.

Agency Contact: Frank G. Ephraim, Director, Office of Standards Evaluation, Department of Transportation, National Highway Traffic Safety Administration, NPP-10, 400 Seventh Street, SW, Washington, DC 20590, 202 366-1574

RIN: 2127–AH70

1908. REVIEW: IMPACT PROTECTION FOR THE DRIVER FROM THE STEERING CONTROL SYSTEM

Significance: Nonsignificant

Legal Authority: 15 USC 1392; 15 USC 1401; 15 USC 1407

CFR Citation: 49 CFR 571.203

Legal Deadline: None

Abstract: This review involves detailed quantitative analysis of factors limiting the performance of energy-absorbing steering assemblies in cars and an evaluation of the assemblies' fatality and injury reduction in light trucks.

Timetable:

Action	Date	FR Cite
Begin Review	06/01/86	
End Review	12/31/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Frank G. Ephraim, Director, Office of Standards Evaluation, Department of Transportation, National Highway Traffic Safety Administration, NNP-10, 400 Seventh Street, SW, Washington, DC 20590, 202 366-1574

RIN: 2127–AE78

1909. REVIEW: ROOF CRUSH RESISTANCE

Significance: Nonsignificant

Legal Authority: 15 USC 1392; 15 USC 1401; 15 USC 1407

CFR Citation: 49 CFR 571.216

Legal Deadline: None

Abstract: This program was selected for review because of costs. The evaluation will study the effect of roof crush strength on the crashworthiness of passenger cars in rollover crashes.

Timetable:

Action	Date	FR Cite
Begin Review	10/01/87	
End Review	12/31/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 12/31/88

Agency Contact: Frank Ephraim, Director, Office of Standards Evaluation, Department of Transportation, National Highway Traffic Safety Administration, 400 7th St., SW, Washington, DC 20590, 202 366-1574

RIN: 2127–AC20

1910. ANTI-BRAKE SYSTEMS

Significance: Nonsignificant

Legal Authority: 15 USC 1392; 15 USC 1407

DOT—NHTSA

Prerule Stage

CFR Citation: 49 CFR 571.121

Legal Deadline: None

Abstract: This project would revise the requirements in Standard No. 121 for parking and emergency brake functions for trailers. Based on comments to NPRM of 07/23/81 (46 FR 37952) a new NPRM may be deemed necessary.

Timetable:

Action	Date	FR Cite
NPRM	07/23/81	46 FR 37952
NPRM Comment Period End	08/24/81	46 FR 37952
SNPRM	03/22/89	

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Docket No. 79-03. NPRM, Notice 5.

Agency Contact: R. Hitchcock, Director, Office, Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, DC 20590, 202 366-0842

RIN: 2127–AA27

1911. FLAMMABILITY OF SCHOOL BUS INTERIOR MATERIALS

Significance: Nonsignificant

Legal Authority: 15 USC 1392; 15 USC 1407

CFR Citation: 49 CFR 571

Legal Deadline: None

Abstract: Contemplated actions would utilize guidelines prescribed by UMTA to define flammability characteristics of school bus interior materials.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Local, State

Agency Contact: R. Hitchcock, Director, Office of Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-0842

RIN: 2127–AA44

1912. OCCUPANT PROTECTION IN INTERIOR IMPACT

Significance: Nonsignificant

Legal Authority: 15 USC 1392; 15 USC 1401; 15 USC 1407

CFR Citation: 49 CFR 571.201

Legal Deadline: None

Abstract: This standard, which is applicable to passenger cars, light trucks and buses, and multipurpose passenger vehicles, includes requirements for padded instrument panels, seat backs, sun visors and arm rests. Its purpose is to provide impact protection for occupants. This regulation was selected for review because of costs, safety benefits, and public interest.

Timetable:

Action	Date	FR Cite
Begin Review	01/01/86	
Evaluation report published	01/25/88	53 FR 2516
End Review	10/15/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 10/15/88

Agency Contact: Frank Ephraim, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-1574

RIN: 2127–AB16

1913. FEDERAL MOTOR VEHICLE SAFETY STANDARD NO. 301 - FUEL-SYSTEM INTEGRITY

Significance: Nonsignificant

Legal Authority: 15 USC 1392; 15 USC 1401; 15 USC 1403; 15 USC 1407

CFR Citation: 49 CFR 571.301

Legal Deadline: None

Abstract: This standard, which is applicable to passenger cars, light trucks, and school buses, specifies requirements for the integrity of motor vehicle fuel systems. The purpose of the standard is to reduce deaths and injuries caused by fires which result from fuel spillage after motor vehicle crashes. This evaluation follows up and expands on a prior study on passenger cars which showed that, while the regulation was effective in preventing deaths and injuries, the incidence of crash fires appeared to be increasing. This evaluation will also provide the initial assessment of the regulation as it applies to light trucks.

Timetable:

Action	Date	FR Cite
End Review	02/15/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Frank Ephraim, Director, Office of Program Evaluation, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-1574

RIN: 2127–AB43

1914. SUPPLEMENTAL FMVSS NO. 208 INJURY CRITERIA - FACIAL LACERATIONS, NECK INJURY, KNEE SHEAR, TIBIA AND ANKLE INJURIES

Significance: Nonsignificant

Legal Authority: 15 USC 1392; 15 USC 1407

CFR Citation: 49 CFR 571.208

Legal Deadline: None

Abstract: The intention to apply in Federal Motor Vehicle Safety Standard No. 208 rulemaking additional injury criteria in order to prevent facial lacerations, neck injury, knee shear, tibia, and ankle trauma was announced in Notice 39 Docket 74-14. The final rule (Notice 40) stated that the agency will issue another Notice on the additional injury criteria to gain additional information about the potential effects of adopting these criteria. Alternatives and potential costs were addressed in Notice 39.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Ralph Hitchcock, Director, Office of Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 7th

DOT—NHTSA

Prerule Stage

St., SW, Washington, DC 20590, 202 366-0842

RIN: 2127–AC12

1915. MANDATORY USE OF THE PART 572(E) DUMMY IN FMVSS 208 COMPLIANCE TESTING

Significance: Nonsignificant

Legal Authority: 15 USC 1392; 15 USC 1407

CFR Citation: 49 CFR 571.208

Legal Deadline: None

Abstract: Petitions for reconsideration have raised the question of whether the Part 572(E) dummy's chest deflection limit of 2 in. is appropriate for belt restraints. The rulemaking will address the petitioner's issues.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Ralph Hitchcock, Director, Office of Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 7th St, SW, Washington, DC 20590, 202 366-0842

RIN: 2127–AC13

1916. ● FEDERAL MOTOR VEHICLE SAFETY STANDARD -- REAR-VIEW MIRRORS - SURE-VIEW PETITION

Significance: Nonsignificant

Legal Authority: 15 USC 1381 et. seq.

CFR Citation: 49 CFR 571.111

Legal Deadline: None

Abstract: This is in response to a petition from Sure-View Inc., requesting the Federal Motor Vehicle Safety Standard (FMVSS) No. 111 require that all motor vehicles contain a mirror system in which a plane mirror is in the same casing as a convex mirror. The agency is presently analyzing the petition.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Ralph Hitchcock, Director, Office of Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-0842

RIN: 2127–AC46

1917. ● FEDERAL MOTOR VEHICLE SAFETY STANDARD NO. 208 - OCCUPANT CRASH PROTECTION

Significance: Nonsignificant

Legal Authority: 15 USC 1392; 15 USC 1401; 15 USC 1403; 15 USC 1407

CFR Citation: 49 CFR 571.208

Legal Deadline: None

Abstract: Federal Motor Vehicle Safety Standard No. 208 requires safety belt systems in the front outboard seating positions of passenger cars to adjust automatically by means of emergency locking retractors. Horkey and Associates petitioned the agency to prohibit the use of emergency locking retractors as it is alleged they do not provide adequate protection against occupant rebound in rear impacts. The petition is under consideration.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Ralph Hitchcock, Director, Office of Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 7th St., SW, Washington, DC 20590, 202 366-0842

RIN: 2127–AC48

1918. ● FEDERAL MOTOR VEHICLE SAFETY STANDARD NO. 301 - FUEL SYSTEM INTEGRITY

Significance: Nonsignificant

Legal Authority: 15 USC 1392; 15 USC 1401; 15 USC 1403; 15 USC 1407

CFR Citation: 49 CFR 571.301

Legal Deadline: None

Abstract: Federal Motor Vehicle Safety Standard No. 301 specifies requirements for the integrity and security of vehicle's entire fuel system, including the fuel tank, fuel pump, lines and connections in front and rear, or lateral barrier impact tests; also fuel loss must not exceed one ounce per minute in a static rollover test following these barrier crash tests as well as not exceeding these limits after and incidental to the crash tests. Thomas Feahney petitioned the agency to amend the Standard to include simple functional testing to assure performance equivalent to fuel systems made of high density polyethylene. The petition is under consideration.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Ralph Hitchcock, Director, Office of Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 7th St., SW, Washington, DC 20590, 202 366-0842

RIN: 2127–AC54

1919. ● FEDERAL MOTOR VEHICLE SAFETY STANDARD NO. 108, LAMPS, REFLECTIVE DEVICES, AND ASSOCIATED EQUIPMENT - PROPOSED AMENDMENT TO PERMIT THE 9007 BULB FOR HEADLAMPS

Significance: Nonsignificant

Legal Authority: 15 USC 1407

CFR Citation: 49 CFR 552; 49 CFR 571.108

Legal Deadline: None

Abstract: Ford has petitioned to allow Federal Motor Vehicle Safety Standard No. 108 to be amended to permit a new replaceable bulb design for headlamps and replacement use. The petition is under consideration.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

DOT—NHTSA

Prerule Stage

Government Levels Affected: State, Federal

Agency Contact: Ralph J. Hitchcock, Director, Office, Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 7th Street, SW, Washington, DC 20590, 202 366-0842

RIN: 2127–AC59

1920. ● FEDERAL MOTOR VEHICLE SAFETY STANDARD NO. 108, LAMPS, REFLECTIVE DEVICES, AND ASSOCIATED EQUIPMENT

Significance: Nonsignificant

Legal Authority: 15 USC 1407

CFR Citation: 49 CFR 571.108

Legal Deadline: None

Abstract: Sylvania has petitioned National Highway Traffic Safety Administration to amend Federal Motor Vehicle Safety Standard No. 108 to permit a new multiple lamp headlamp system with integral aim capability. The petition is under consideration.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: State, Federal

Agency Contact: Ralph J. Hitchcock, Director, Office, Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 7th Street, SW, Washington, DC 20590, 202 366-0842

RIN: 2127–AC61

1921. ● BRAKE LINING

Significance: Nonsignificant

Legal Authority: 15 USC 1392; 15 USC 1401; 15 USC 1403; 15 USC 1407

CFR Citation: 49 CFR 571.105

Legal Deadline: None

Abstract: Petitions from R. Grabowsky and American Trucking Association (ATA) requesting initiation of rulemaking concerning brake linings (all vehicles and aftermarket). Mr. Grabowsky petitioned relative to stability, friction level, fade, wear, and identification of linings. ATA petitioned relative to friction level and identification of linings for heavy vehicles only. Petitions concerned both performance levels and test procedures, and are presently under consideration.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: State, Federal

Agency Contact: Ralph Hitchcock, Director, Office of Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 7th St., SW, Washington, DC 20590, 202 366-0842

RIN: 2127–AC66

1922. ● BATTERY EXPLOSIONS

Significance: Nonsignificant

Legal Authority: 15 USC 1407

CFR Citation: 49 CFR 571

Legal Deadline: None

Abstract: Petition to provide protection against battery explosions by providing a plastic barrier attached to battery has been received by Dr. Abraham. Analysis ongoing to determine magnitude of problem and benefits and costs of possible corrective actions.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Business

Government Levels Affected: Federal

Agency Contact: Ralph Hitchcock, Director, Office of Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 7th St., SW, Washington, DC 20590, 202 366-0842

RIN: 2127–AC67

DEPARTMENT OF TRANSPORTATION (DOT)

National Highway Traffic Safety Administration (NHTSA)

Proposed Rule Stage

1923. + COMMERCIAL VEHICLE CONSPICUITY

Significance: Regulatory Program

Legal Authority: 15 USC 1392; 15 USC 1417

CFR Citation: 49 CFR 571.108

Legal Deadline: None

Abstract: Proposed actions would improve the conspicuity of commercial vehicles by establishing in FMVSS 108 performance requirements for the total lighting and marking system of commercial vehicles (excluding headlights).

Timetable:

Action	Date	FR Cite
ANPRM	05/27/80	45 FR 35405
ANPRM Comment Period End	08/25/80	45 FR 35405
Request for Comments	09/18/87	52 FR 36345
Comment Period End	11/09/87	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Flexibility Analysis

Additional Information: Docket No. 80-9.

Research underway.

Agency Contact: Ralph Hitchcock, Director, Office of Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-1537

RIN: 2127–AA12

DOT—NHTSA

Proposed Rule Stage

1924. + ANTHROPOMORPHIC TEST DUMMIES: SIDE-IMPACT THORAX PROTECTION

Significance: Regulatory Program

Legal Authority: 15 USC 1392; 15 USC 1407

CFR Citation: 49 CFR 572

Legal Deadline: None

Abstract: Contemplated action would provide performance criteria for the adult surrogate dummies which would be required in dynamic testing of vehicles if Standard 214, Side Door Strength, is upgraded.

Timetable:

Action	Date	FR Cite
NPRM	01/27/88	53 FR 2254
Corrections to NPRM	03/17/88	53 FR 8783
NPRM Comment Period End	10/24/88	53 FR 2254

Small Entities Affected: None

Government Levels Affected: Undetermined

Analysis: Preliminary Regulatory Evaluation 01/27/88 (53 FR 2254)

Agency Contact: R. Hitchcock, Director, Office of Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-0843

RIN: 2127–AA48

1925. + UNIFORM TIRE QUALITY GRADING STANDARDS - TREADWEAR AMENDMENTS

Significance: Regulatory Program

Legal Authority: 15 USC 1423

CFR Citation: 49 CFR 575

Legal Deadline: None

Abstract: Contemplated action would amend treadwear grading procedures of the Uniform Tire Quality Grading Standards to assure greater reliability of grading information for consumers. Test procedures would be amended to reduce variability. This regulation is significant because it involves important departmental policy.

Timetable:

Action	Date	FR Cite
NPRM	01/20/89	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Preliminary Regulatory Evaluation 01/20/89

Agency Contact: Orron Kee, Chief, Motor Vehicle Requirements Div., Office of Market Incentives, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-0846

RIN: 2127–AA21

1926. + SIDE-IMPACT PROTECTION: THORAX PROTECTION

Significance: Regulatory Program

Legal Authority: 15 USC 1392; 15 USC 1407

CFR Citation: 49 CFR 571.214

Legal Deadline: None

Abstract: NPRM proposes amending the current standard to upgrade thoracic protection in passenger-car side impacts.

Timetable:

Action	Date	FR Cite
NPRM	01/27/88	53 FR 2239
NPRM technical correction	03/17/88	53 FR 8782
NPRM Comment Period End	10/24/88	53 FR 2239

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Analysis: Regulatory Evaluation 01/27/88 (53 FR 2239)

Agency Contact: Ralph Hitchcock, Director, Office, Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-0843

RIN: 2127–AB80

1927. ● + POST 1991 LIGHT TRUCK FUEL ECONOMY STANDARDS

Significance: Regulatory Program

Legal Authority: 15 USC 2002

CFR Citation: 49 CFR 533

Legal Deadline: Final, Statutory, March 31, 1990.
Light truck fuel economy standards are required to be set at least 18 months prior to the beginning of the Model Year.

Abstract: In accordance with the mandatory requirements of Section 502(b) of the Motor Vehicle Information and Cost Savings Act, this rulemaking will establish light truck average fuel economy standards for Model Year 1992 and later years.

Timetable:

Action	Date	FR Cite
NPRM	08/31/89	
NPRM Comment Period End	10/31/89	
Final Action	03/31/90	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Orron Kee, Chief, Motor Vehicle Requirements Division, Office of Market Incentives, Department of Transportation, National Highway Traffic Safety Administration, 400 7th St., SW, Washington, DC 20590, 202 366-0846

RIN: 2127–AC51

1928. + HEAVY DUTY VEHICLE BRAKE SYSTEMS (FORMERLY TRUCK AND TRAILER BRAKE SYSTEMS)

Significance: Agency Priority

Legal Authority: 15 USC 1392 National Traffic & Motor Vehicle Safety Act of 1966; 15 USC 1407 National Traffic & Motor Vehicle Safety Act of 1966

CFR Citation: 49 CFR 571.121; 49 CFR 571.105

Legal Deadline: None

Abstract: Proposed action would establish a new brake standard for all trucks, buses, and trailers with a Gross Vehicle Weight Rating (GVWR) over 10,000 pounds. This standard would replace Standard No. 121, Air Brake Systems, and that portion of Standard No. 105, Hydraulic Brake Systems, that applies to vehicles with a GVWR over 10,000 pounds. It would also establish new requirements for heavy trailers having other than air-actuated brakes. In developing the standard, the agency will consider compatibility with international regulations. Research programs in support of this new standard and possible future upgradings of the standard will investigate such long-term advanced braking system concepts as antilock systems, automatic brake adjustors, load-sensing proportioning values, air driers, and retarders for heavy trucks, buses, and trailers. This rule is considered significant because of the level of public and Congressional interest. It is necessary to prevent and reduce the severity of accidents involving heavy vehicles by providing increased accident avoidance capability.

Timetable:

Action	Date	FR Cite
ANPRM	02/15/79	44 FR 9783
ANPRM	02/28/80	45 FR 13155

Next Action Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Docket No. 79-03. ANPRM, Notice 1; Second ANPRM, Notice 3.

Research underway.

Agency Contact: R. Hitchcock, Director, Office, Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-0846

RIN: 2127–AA00

1929. + VEHICLE CLASSIFICATION

Significance: Agency Priority

Legal Authority: 15 USC 1392; 15 USC 1407; 15 USC 2001

CFR Citation: 49 CFR 571

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the advance notice invited comment on possible amendments to the regulation with respect to the manner in which light trucks, vans, multipurpose vehicles, and certain other vehicles are classified. This rulemaking is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
ANPRM	10/28/87	52 FR 41475
ANPRM Comment Period End	01/18/88	52 FR 41475
NPRM	10/00/88	
NPRM Comment Period End	01/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: None

Analysis: Regulatory Evaluation 10/03/88

Agency Contact: Deborah Parker, Special Project Staff, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-0851

RIN: 2127–AA57

1930. + VOLUNTARY TIRE REGISTRATION

Significance: Agency Priority

Legal Authority: 15 USC 1392; 15 USC 1401; 15 USC 1407; 15 USC 1418; 15 USC 1421

CFR Citation: 49 CFR 574

Legal Deadline: None

Abstract: This regulation requires that independent tire dealers provide customers with a card to register newly purchased tires so that the customer may send in the completed card. These dealers were formerly required to register the tires for the customer, a requirement which has been retained for manufacturer-owned stores. The Motor Vehicle Safety and Cost Savings Authorization Act of 1982 requires that an evaluation be conducted. This rulemaking is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
Begin Review	07/01/83	
Prelim. Evaluation Report Published	09/27/86	00 FR 166
ANPRM	12/23/86	51 FR 45916
ANPRM Comment Period End	02/06/87	51 FR 45916

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Frank Ephraim, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-1574

RIN: 2127–AB18

1931. + HEAVY TRAILER STABILITY

Significance: Agency Priority

Legal Authority: 15 USC 1392; 15 USC 1407

CFR Citation: 49 CFR 571

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency is proposing a new regulation to add a requirement that 102-inch wide trailers be equipped with axle tracks having a minimum axle width of 77 inches. An advanced notice of proposed rulemaking seeking comments on the safety issue raised by the petition was published on May 22, 1984 (49 FR 21551). This rulemaking is significant because of the possible substantial impact on the industry and because it is a joint venture involving two operating administrations.

Timetable:

Action	Date	FR Cite
ANPRM	05/22/84	49 FR 21551
ANPRM Comment Period End	08/20/84	49 FR 21551

Next Action Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Analysis: To Be Determined

Additional Information: This regulation is a joint endeavor of NHTSA and the Bureau of Motor Carrier Safety (BMCS). A departmental task force was formed in February 1985 to analyze the economic issues associated with this undertaking. Thus, further public action awaits the results of the task-force analysis, which are anticipated in 1988.

Agency Contact: Ralph J. Hitchcock, Director, Office of Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-0842

RIN: 2127–AD42

1932. + OCCUPANT CRASH PROTECTION

Significance: Agency Priority

Legal Authority: 15 USC 1392; 15 USC 1407

CFR Citation: 49 CFR 571.208

Legal Deadline: None

Abstract: ANPRM requested comments on proposing an amendment to Standard No. 208, Occupant Crash Protection, to require Type 2 safety belts in the outboard seating positions in the rear seats of passenger cars and MPVs and trucks with GVWR of 10,000 pounds or less. This action is significant because of the recent NTSB report on

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lap-belt injuries and resultant public interest expected.

Timetable:

Action	Date	FR Cite
ANPRM	06/16/87	52 FR 22818
ANPRM Comment Period End	07/31/87	52 FR 22818
NPRM	10/14/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Impact Analysis; Regulatory Evaluation 10/14/88

Agency Contact: Ralph J. Hitchcock, Director, Office of Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, NRM-10, 400 Seventh St., SW, Washington, DC [illegible]

RIN: 2127–AB01

1932. + HEAD RESTRAINTS

Significance: Agency Priority

Legal Authority: 15 USC 1392; 15 USC 1407

CFR Citation: 49 CFR 571.202

Legal Deadline: None

Abstract: Petition for rulemaking to require head restraints on vehicles other than passenger cars. NHTSA is currently reviewing the petition, to determine appropriate action. The issue of head restraints is considered significant in view of the safety implications.

Timetable:

Action	Date	FR Cite
NPRM	10/14/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Impact Analysis; Regulatory Evaluation 10/14/88

Agency Contact: Ralph Hitchcock, Director, Office of Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, NRM-10 400 Seventh St., SW, Washington, DC [illegible]

RIN: 2127–AC26

1934. + FEDERAL MOTOR VEHICLE SAFETY STANDARD (FMVSS) NO. 208, OCCUPANT CRASH PROTECTION - CHEST INJURY CRITERIA

Significance: Agency Priority

Legal Authority: 15 USC 1392; 15 USC 1407

CFR Citation: 49 CFR 571.208

Legal Deadline: Other, Statutory. Final rule requires resolution by 09/01/90.

Abstract: The intention is to upgrade the chest-deflection injury criteria for unrestrained occupants when vehicles are tested for Federal Motor Vehicle Safety Standard (FMVSS) No. 208 compliance with the Hybrid III Dummy. The Final Rule stated that the agency will have to resolve this issue by September 1, 1990. This rulemaking is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Ralph Hitchcock, Director, Office of Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 7th St., SW, Washington, DC 20590, 202 366-0842

RIN: 2127–AC34

1935. PROCEDURES FOR CONSIDERING ENVIRONMENTAL IMPACTS

Significance: Nonsignificant

Legal Authority: 42 USC 4321 et seq (National Environmental Policy Act-NEPA)

CFR Citation: 49 CFR 520

Legal Deadline: None

Abstract: NHTSA's regulation will be reviewed and reissued, as necessary, where it conflicts with or is duplicative of the regulations of Council on Environmental Quality (CEQ), 40 CFR Parts 1500-1508, and with DOT Order 5610.1C, each of which implements the National Environmental Policy Act (NEPA), 42 USC 4321, et seq.

Timetable:

Action	Date	FR Cite
NPRM	08/01/89	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Kathleen C. DeMeter, Ass't Chief Counsel for General Law, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC [illegible]

RIN: 2127–AB79

1936. VOLUNTARY VEHICLE IDENTIFICATION STANDARD (THEFT PREVENTION STANDARD)

Significance: Nonsignificant

Legal Authority: 15 USC 2033

CFR Citation: 49 CFR Not yet determined

Legal Deadline: None

Abstract: NHTSA will promulgate a voluntary vehicle identification standard under which any person may elect to inscribe or affix an identifying number or symbol on major parts of any motor vehicle manufactured or owned by such person for purposes of section 511 of Title 18, United States Code, and related provisions. Compliance with this standard shall not relieve any manufacturer of motor vehicles from compliance with the requirements of the Federal motor vehicle theft prevention standard (49 CFR Part 541), or any other applicable regulation. This rulemaking supplements the statutory requirement of 15 USC 2033 by allowing consumers to protect their vehicles and parts by identifying them.

Timetable:

Action	Date	FR Cite
NPRM	10/15/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 10/15/88

Agency Contact: Barbara Kurtz, Senior Program Analyst, Office of Market Incentives, Department of Transportation, National Highway Traffic Safety Administration, NRM-20, 400 Seventh S.., SW, Washington, DC [illegible]

RIN: 2127–AB83

1937. ANTHROPOMORPHIC TEST DUMMIES REPRESENTING CHILDREN

Significance: Nonsignificant

Legal Authority: 15 USC 1392; 15 USC 1407

CFR Citation: 49 CFR 572

Legal Deadline: None

Abstract: Contemplated action would update the specifications of Part 572 covering the three-year-old child dummy to allow optional use of new accelerometers and a new head design.

Timetable:

Action	Date	FR Cite
NPRM	10/14/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Analysis: Regulatory Evaluation 10/14/88

Agency Contact: Ralph Hitchcock, Director, Office, Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-0842

RIN: 2127–AB94

1938. ANTHROPOMORPHIC TEST DUMMIES REPRESENTING CHILDREN

Significance: Nonsignificant

Legal Authority: 15 USC 1392; 15 USC 1407

CFR Citation: 49 CFR 572

Legal Deadline: None

Abstract: This action would add the specifications covering the 6-year-old-child/test dummy to Part 572 to allow its use in evaluation of child restraints designated for older children.

Timetable:

Action	Date	FR Cite
NPRM	10/14/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Analysis: Regulatory Evaluation 10/14/88

Agency Contact: Ralph Hitchcock, Director, Office of Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 7th St, SW, Washington, DC 20590, 202 366-0842

RIN: 2127–AC09

1939. ANTHROPOMORPHIC TEST DUMMIES REPRESENTING CHILDREN

Significance: Nonsignificant

Legal Authority: 15 USC 1392; 15 USC 1407

CFR Citation: 49 CFR 572

Legal Deadline: None

Abstract: Contemplated action would add the specification covering the 9-month-old-child test dummy to Part 572 to allow its use in evaluation of restraints designated for infants and small toddlers.

Timetable:

Action	Date	FR Cite
NPRM	01/15/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Analysis: Regulatory Evaluation 01/18/89

Agency Contact: Ralph Hitchcock, Director, Office of Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 7th St, SW, Washington, DC 20590, 202 366-0842

RIN: 2127–AC10

1940. FEDERAL MOTOR VEHICLE SAFETY STANDARD NO. 205, GLAZING MATERIALS

Significance: Nonsignificant

Legal Authority: 15 USC 1392; 15 USC 1407

CFR Citation: 49 CFR 571.205

Legal Deadline: None

Abstract: Based on a petition, would amend Federal Motor Vehicle Safety Standard No. 205, Glazing Materials, to revise the ball drop test No. 26 to allow clamping of glass-plastic samples. NHTSA is evaluating the petitions.

Timetable:

Action	Date	FR Cite
NPRM	12/21/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Ralph Hitchcock, Director, Office of Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 7th St., SW, Washington, DC 20590, 202 366-0842

RIN: 2127–AC14

1941. NON-PNEUMATIC TIRES FOR PASSENGER CARS

Significance: Nonsignificant

Legal Authority: 15 USC 1392; 15 USC 1407

CFR Citation: 49 CFR 571.109

Legal Deadline: None

Abstract: Based on a petition, the agency is considering creation of a new standard for temporary-use non-pneumatic spare tires. At the present time Federal Motor Vehicle Safety Standard No. 110 prohibits the use of non-pneumatic tires.

Timetable:

Action	Date	FR Cite
Request for Comments	09/23/87	52 FR 35740
Comment Period End	12/22/87	
NPRM	12/15/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 12/15/88

Agency Contact: Ralph Hitchcock, Director, Office of Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 7th St., SW, Washington, DC 20590, 202 366-0842

RIN: 2127–AC18

1942. FEDERAL MOTOR-VEHICLE SAFETY STANDARD NO. 221, SCHOOLBUS BODY JOINT STRENGTH

Significance: Nonsignificant

Legal Authority: 15 USC 1392; 15 USC 1401; 15 USC 1407

CFR Citation: 49 CFR 571.221

Legal Deadline: None

Abstract: ANPRM requested comments on three items, all related to FMVSS No. 221 Schoolbus Body Joint Strength. These are: (a) possible new standard requiring minimum floor strength for large school buses over 10,000 lbs. GVWR, (b) revision of exemption provision for maintenance access panels, and (c) revision of test procedures of FMVSS No. 221.

Timetable:

Action	Date	FR Cite
ANPRM	06/10/87	52 FR 22314
ANPRM Comment Period End	08/03/87	52 FR 22314
Comment Period Extended to 10/15/87	08/12/87	52 FR 29873
NPRM	10/21/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Analysis: Regulatory Evaluation 10/21/88

Agency Contact: Ralph Hitchcock, Director, Office of Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 7th St, SW, Washington, DC 20590, 202 366-0842

RIN: 2127–AC19

1943. BUMPER STANDARD

Significance: Nonsignificant

Legal Authority: 15 USC 1392; 15 USC 1407

CFR Citation: 49 CFR 581

Legal Deadline: None

Abstract: Subaru of America has petitioned to modify the test conditions for bumper compliance testing so that vehicles with variable height suspension would be tested at the normal, unraised height position. This action will consider the arguments set forth in the petition and take appropriate further action.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Final action on this petition is awaiting disposition of a petition on vehicle classification.

Agency Contact: Orson E. Kee, Chief, Motor Vehicle Requirements Divison, Office of Market Incentives, Department of Transportation, National Highway Traffic Safety Administration, 400 7th St., SW, Washington, DC 20590, 202 366-0846

RIN: 2127–AC30

1944. FEDERAL MOTOR VEHICLE SAFETY STANDARD (FMVSS) NO. 208, OCCUPANT CRASH PROTECTION

Significance: Nonsignificant

Legal Authority: 15 USC 1392; 15 USC 1407

CFR Citation: 49 CFR 571.208

Legal Deadline: None

Abstract: Motor Vehicle Manufacturer's Association (MVMA) petitioned to amend Federal Motor Vehicle Safety Standard (FMVSS) No. 208, Occupant Crash Protection, to require that height-adjustable seats, and other adjustable seat features such as lumbar supports, be placed in the nominal design riding position specified by the manufacturer. A notice has been published, requesting comments.

Timetable:

Action	Date	FR Cite
Request for comments	05/02/86	53 FR 15576
NPRM	12/16/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 12/16/88

Agency Contact: Ralph Hitchcock, Director, Office of Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 7th St., SW, Washington, DC 20590, 366-0842

RIN: 2127–AC36

1945. FEDERAL MOTOR VEHICLE SAFETY STANDARD (FMVSS) NO. 205, GLAZING MATERIALS

Significance: Nonsignificant

Legal Authority: 15 USC 1392; 15 USC 1407

CFR Citation: 49 CFR 571.205

Legal Deadline: None

Abstract: The Taliq Corporation of Sunnyvale, CA, petitioned the agency to create a new category of glass-plastic glazing, AS-15. This proposed glazing would consist of a layer of tempered glass and a layer of plastic with the tempered glass layer on the outside surface when installed in the vehicle. This glazing would be permitted only in vehicle locations not requisite for driving visibility. The merits of the petition are being considered.

Timetable:

Action	Date	FR Cite
NPRM	12/21/88	
NPRM Comment Period End	03/21/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Ralph Hitchcock, Director, Office of Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 7th St., SW, Washington, DC 20590, 202 366-0842

RIN: 2127–AC35

1946. ● FEDERAL MOTOR VEHICLE SAFETY STANDARD NO. 105 - HYDRAULIC BRAKE SYSTEMS

Significance: Nonsignificant

Legal Authority: 15 USC 1392; 15 USC 1401; 15 USC 1403; 15 USC 1407

CFR Citation: 49 CFR 571.105

Legal Deadline: None

Abstract: Federal Motor Vehicle Safety Standard No. 105 requires vehicles to have one or more brake system indicator lamps in the instrument panel area, to warn drivers about certain types of brake failure and to indicate when the parking brake is in the applied position. Section S5.3.2 of the standard requires that the brake system indicator lamps be activated automatically when the vehicle is started, to enable the driver to check whether the lamp bulb is burned out. That section also provides that in a vehicle equipped with an automatic transmission, the activation of the lamp as a check of lamp function is not required when the transmission shift lever is in a forward or reverse drive position, since the vehicle cannot be started when the transmission shift lever is in those positions. In response to a petition for rulemaking submitted by Mazda, this notice proposes to amend the standard to provide that the activation of the lamp as a check of lamp function is not required whenever the starting of a vehicle is prevented by an interlock switch.

Timetable:

Action	Date	FR Cite
NPRM	08/18/88	53 FR 31379
NPRM Comment Period End	10/17/88	

Small Entities Affected: None

Government Levels Affected: Federal

Analysis: Regulatory Evaluation 08/18/88 (53 FR 31379)

Agency Contact: Ralph Hitchcock, Director, Office of Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 7th St., SW, Washington, DC 20590, 202 366-0842

RIN: 2127–AC30

1947. ● FEDERAL MOTOR VEHICLE SAFETY STANDARD NO. 118 - POWER-OPERATED WINDOW SYSTEMS

Significance: Nonsignificant

Legal Authority: 15 USC 1392; 15 USC 1409

CFR Citation: 49 CFR 571.118

Legal Deadline: None

Abstract: Amendments are proposed to Federal Motor Vehicle Safety Standard No. 118 to extend the standard's requirements to power-operated sunroofs and either permitting external non-key locking systems to operate power windows and sunroofs or prohibiting all external operating systems.

Timetable:

Action	Date	FR Cite
NPRM	01/18/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: This project has been seperated from RIN 2127-AC25.

Agency Contact: Ralph Hitchcock, Director, Office of Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 7th St., SW, Washington, DC 20590, 202 366-0842

RIN: 2127–AC32

1948. ● FEDERAL MOTOR VEHICLE SAFETY STANDARD NO. 106 - BRAKE HOSES

Significance: Nonsignificant

Legal Authority: 15 USC 1392; 15 USC 1401; 15 USC 1403; 15 USC 1407

CFR Citation: 49 CFR 571.106

Legal Deadline: None

Abstract: Volvo-White Truck Corporation petitioned to amend Federal Motor Vehicle Safety Standard No. 106 to change the definition of permanently attached end fitting to include fittings that are attached by permanent methods other than crimping or swaging. The petition is being considered.

Timetable:

Action	Date	FR Cite
NPRM	10/15/88	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Agency Contact: Ralph Hitchcock, Director, Office of Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 7th St., SW, Washington, DC 20590, 202 366-0842

RIN: 2127–AC55

1949. ● FEDERAL MOTOR VEHICLE SAFETY STANDARD NO. 108, LAMPS, REFLECTIVE DEVICES AND ASSOCIATED EQUIPMENT - PROPOSED AMENDMENT TO PERMIT A NEW SMALL SEALED BEAM HEADLAMP

Significance: Nonsignificant

Legal Authority: 15 USC 1407

CFR Citation: 49 CFR 552; 49 CFR 571.108

Legal Deadline: None

Abstract: General Motors petitioned the agency for a 55X135 mm sealed-beam headlamp system. The petition is under consideration.

Timetable:

Action	Date	FR Cite
NPRM	10/27/88	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Ralph Hitchcock, Director, Office, Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 7th Street, SW, Washington, DC 20590, 202 366-0842

RIN: 2127–AC60

1950. ● FEDERAL MOTOR VEHICLE SAFETY STANDARD NO. 301 - FUEL SYSTEM INTEGRITY

Significance: Nonsignificant

Legal Authority: 15 USC 1407; 15 USC 1410

CFR Citation: 49 CFR 552; 49 CFR 571

Legal Deadline: None

Abstract: Federal Motor Vehicle Safety Standard (FMVSS) No. 301 specifies requirements for the integrity of motor vehicle fuel systems so that fires that result from fuel spillage during and after motor vehicle crashes may be reduced. This standard applies to passenger cars and school buses, and to multipurpose passenger vehicles, trucks, and buses that have a gross vehicle weight rating of 10,000 pounds or less. The California Highway Patrol (CHP) petitioned the agency to specify requirements in FMVSS No. 301 to reduce fuel spills from the fuel tank or fuel lines on heavy trucks and truck tractors over 10,000 pounds. The fuel spills, according to the CHP, are due to damage caused by road debris. On May 2, 1988, the agency published a grant of petition for rulemaking in the Federal Register for the CHP petition. However, the agency is granting the petition pending the results of its forthcoming investigation of fuel-tank fires in over-the-road trucks.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Ralph Hitchcock, Director, Office of Vehicle Safety

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DOT—NHTSA — Proposed Rule Stage

Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 7th St., SW, Washington, DC 20590, 202 366-5842

RIN: 2127-AC83

1951. ● FEDERAL MOTOR VEHICLE SAFETY STANDARD NO. 108 - LAMPS, REFLECTIVE DEVICES, AND ASSOCIATED EQUIPMENT

Significance: Nonsignificant

Legal Authority: 15 USC 1407

CFR Citation: 49 CFR 571.108

Legal Deadline: None

Abstract: A petition from Truck Safety Equipment Institute (TSEI) primarily requested NHTSA to update references in Federal Motor Vehicle Safety Standard No. 108 to latest version of Society of Automotive Engineers (SAE) standards for stoplamps and turn signal lamps. NHTSA has decided to issue an NPRM.

Timetable:

Action	Date	FR Cite
NPRM	10/15/88	

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Ralph Hitchcock, Director, Office of Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 7th St., SW, Washington, DC 20590, 202 366-6842

RIN: 2127-AC83

1952. ● COMPREHENSIVE REVIEW OF VISIBILITY TOPICS

Significance: Nonsignificant

Legal Authority: 15 USC 1407

CFR Citation: 49 CFR 571.111; 49 CFR 571.219

Legal Deadline: None

Abstract: As a result of requests for interpretation for head-up displays and other devices which affect driver visibility through vehicle windows, the agency is conducting a comprehensive review of visibility research.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Ralph Hitchcock, Director, Office of Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 7th St., SW, Washington, DC 20590, 202 366-6842

RIN: 2127-AC09

1953. ● CONSUMER INFORMATION REGULATIONS

Significance: Nonsignificant

Legal Authority: 15 USC 1392; 15 USC 1401; 15 USC 1407; 15 USC 1421; 15 USC 1423

CFR Citation: 49 CFR 575

Legal Deadline: None

Abstract: This notice implements the granting of a petition by Motor Voters requesting that NHTSA require motor vehicle manufacturers to include information in their vehicle owner's manual advising owners about the agency's defect authority and providing them with the agency's Auto Safety Hotline. To encourage owners to report defects and to facilitate their doing so, this notice proposes to amend the agency's Consumer Information Regulations to require manufacturers to provide the requested information.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 10/00/88

Agency Contact: Marvin L. Shaw, Attorney, Department of Transportation, National Highway Traffic Safety Administration, NHTSA - NCC-20, 400 7th Street, SW, Washington, DC 20590, 202 366-2992

RIN: 2127-AC72

DEPARTMENT OF TRANSPORTATION (DOT) — Final Rule Stage

National Highway Traffic Safety Administration (NHTSA)

1954. + CRASHWORTHINESS RATINGS

Significance: Regulatory Program

Legal Authority: 15 USC 1401; 15 USC 1941

CFR Citation: 49 CFR Chapter 5

Legal Deadline: None

Abstract: Ratings: Would require manufacturers to disseminate crashworthiness performance information concerning their cars to the public, to provide consumers with comparative information on the crashworthiness performance of new car models. This rulemaking is considered significant because of the impact on manufacturers, the interest shown by consumers, and the potential significant effects on the automotive marketplace.

Timetable:

Action	Date	FR Cite
NPRM	01/22/81	46 FR 7025
Comment Period extended to 10/22/81	04/02/81	46 FR 19947
NPRM Comment Period End	04/22/81	46 FR 7025

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Impact Analysis; Draft Regulatory Evaluation 01/22/81 (46 FR 7025)

Additional Information: Docket No. 79-17. NPRM, Notice 1.

Agency Contact: Marilynne Jacobs, Director, Office, Market Incentives, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-1740

RIN: 2127-AA03

DOT—NHTSA — Final Rule Stage

1955. + TRUCK REAR UNDERRIDE PROTECTION

Significance: Regulatory Program

Legal Authority: 15 USC 1392; 15 USC 1407

CFR Citation: 49 CFR 571

Legal Deadline: None

Abstract: This project would require protective devices to reduce vehicle penetration under the rear ends of heavy trucks and trailers (without resulting in overly severe forces being transmitted to restrained and unrestrained occupants in vehicles that crash into the devices).

Timetable:

Action	Date	FR Cite
NPRM	01/08/81	46 FR 2136
NPRM Comment Period End	04/08/81	46 FR 2136

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: Docket No. 1-11. NPRM, Notice 8.

Research underway.

Agency Contact: R. Hitchcock, Director, Office of Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-6842

RIN: 2127-AA43

1956. + PEDESTRIAN PROTECTION

Significance: Regulatory Program

Legal Authority: 15 USC 1392; 15 USC 1407

CFR Citation: 49 CFR 571

Legal Deadline: None

Abstract: This proposal would reduce adult and child pedestrian injuries through modification of the vehicle frontal structure.

Timetable:

Action	Date	FR Cite
NPRM	01/22/81	46 FR 7015
NPRM Comment Period End	05/22/81	46 FR 7015

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: Docket No. 78-19. NPRM, Notice 1. Research underway.

Agency Contact: R. Hitchcock, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-6842

RIN: 2127-AA45

1957. + POST-1988 PASSENGER-CAR FUEL-ECONOMY STANDARDS

Significance: Regulatory Program

Legal Authority: 15 USC 2002

CFR Citation: 49 CFR 531

Legal Deadline: Final, Statutory, October 1, 1988.
Amendments reducing the fuel economy standard for a particular model year are required to be made by the beginning of a model year.

Abstract: Automotive Importers of America, Inc., Austin Rover Group Ltd., Mercedes-Benz of North America, Inc., Competitive Enterprise Institute, and General Motors Corporation petitioned to lower passenger car Corporate Average Fuel Economy (CAFE) standards for Model Years 1989 and 1990. The March 1988 SNPRM sought public comment on whether to reduce the CAFE standard for MY 1989 and/or 1990, to determine whether retaining the present standard would adversely affect U.S. employment or competitiveness of the U.S. auto industry.

Timetable:

Action	Date	FR Cite
NPRM	01/22/86	51 FR 2912
NPRM Comment Period End	03/24/86	
SNPRM	03/16/88	53 FR 8668
SNPRM	08/29/88	53 FR 33080
Final Action	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 08/29/88 (53 FR 33080); Environmental Assessment 08/29/88 (53 FR 33080)

Additional Information: Petitioners had addressed MY 1986 and beyond; MY 1986 through 1988 were covered on 10/06/86 (51 FR 35594). Comment period ended 09/15/88 for MY 1989; comment period ends 10/28/88 for MY 1990.

Agency Contact: Orron Kee, Chief, Motor Vehicle Requirements Div., Office of Market Incentives, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-0846

RIN: 2127-AH73

1958. + LIGHTING SIMPLIFICATION--POTENTIAL AMENDMENTS TO SIMPLIFY FMVSS 108 LAMPS, REFLECTIVE DEVICES, AND ASSOCIATED EQUIPMENT

Significance: Regulatory Program

Legal Authority: 15 USC 1392; 15 USC 1407

CFR Citation: 49 CFR 571.108

Legal Deadline: None

Abstract: NHTSA proposes a comprehensive review of headlighting requirements of FMVSS No. 108 which may be simplified, while being consistent with motor-vehicle safety. The agency has concentrated its efforts into five principal areas. This action addresses the first of these, which is the feasibility of a standard directed toward onboard original-equipment headlighting performance rather than toward performance of individual aftermarket headlamps in a laboratory environment. This action is considered significant because of safety implications. Based on comments received, an SNPRM will be issued.

Timetable:

Action	Date	FR Cite
ANPRM	10/22/85	50 FR 42735
ANPRM Comment Period End	03/06/86	51 FR 1542
NPRM	10/29/87	52 FR 49038
NPRM Comment Period End	03/28/88	
SNPRM	10/14/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Preliminary Regulatory Evaluation 12/29/87 (52 FR 49038)

Additional Information: Docket No. 85-15, Notice 1.

Docket No. 85-15, Notice 2.

Federal Register Notice (51 FR 1542) extended comments period from a closing date of Jan. 21, 1986 to March 6, 1986.

DOT—NHTSA

Final Rule Stage

Agency Contact: Ralph Hitchcock, Director, Office, Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-0842

RIN: 2127-AB87

1959. ● + FEDERAL MOTOR VEHICLE SAFETY STANDARD NO. 108 - LIGHTING SIMPLIFICATION - POTENTIAL AMENDMENTS - NEW TERM ISSUES

Significance: Regulatory Program

Legal Authority: 15 USC 1392; 15 USC 1407

CFR Citation: 49 CFR 571.108

Legal Deadline: None

Abstract: Proposes a comprehensive review of headlighting requirements of Federal Motor Vehicle Safety Standard No. 108 which may be simplified, while being consistent with motor vehicle safety. The agency has concentrated its efforts into five principal areas. This action addresses the second through the fifth. The second is the desirability of specifications for headlamp life. The third concerns the necessity of dimensional specifications for headlamp equipment. The fourth is the issue of headlamp aim. The fifth is the elimination of obsolete photometric requirements. These issues have been separated from RIN 2127-AB87. This rulemaking is considered significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
ANPRM	10/22/85	50 FR 42735
ANPRM Comment Period End	03/06/86	51 FR 1542
NPRM	12/29/87	52 FR 49036
NPRM Comment Period End	03/28/88	52 FR 49036
Final Action	10/14/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: Docket No. 85-15, Notice 1 (50 FR 42735) ANPRM; Docket No. 85-15, Notice 2 (50 FR 43970) extend comment period for ANPRM; Docket No. 85-15, Notice 3 (51 FR 2537) correction to ANPRM; Docket No. 85-15, Notice 4 (52 FR 49039) NPRM

Agency Contact: Ralph Hitchcock, Director, Office of Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 7th St., SW, Washington, DC 20590, 202 366-0842

RIN: 2127-AC33

1960. + FEDERAL MOTOR VEHICLE SAFETY STANDARD NO. 222; SCHOOLBUS SEATING AND CRASH PROTECTION

Significance: Agency Priority

Legal Authority: 15 USC 1392; 15 USC 1401; 15 USC 1407

CFR Citation: 49 CFR 571.222

Legal Deadline: None

Abstract: Proposed rule would amend Federal Motor Vehicle Safety Standard No. 222, School Bus Passenger Seating and Crash Protection, to set requirements for safety belts when belts are voluntarily installed on school buses having gross vehicle weight ratings greater than 10,000 pounds. This rulemaking is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	10/10/85	50 FR 41366
NPRM Comment Period End	11/25/85	50 FR 41366
Final Action	10/14/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Analysis: Regulatory Impact Analysis; Regulatory Evaluation 10/10/85 (50 FR 41366)

Additional Information: Notice grants a petition for rulemaking submitted by the Wayne Corporation and proposes an amendment to Federal Motor Vehicle Safety Standard No. 222. Previous title: Federal Motor Vehicle Safety Standards; Schoolbus Passenger Seating and Crash Protection.

Agency Contact: Ralph Hitchcock, Director, Office of Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, NRM-10, 400 Seventh Street, SW, Washington, DC 20590, 202 366-0842

RIN: 2127-AB84

1961. + STANDARD NO. 108, LAMPS, REFLECTIVE DEVICES, AND ASSOCIATED EQUIPMENT

Significance: Agency Priority

Legal Authority: 15 USC 1392; 15 USC 1407

CFR Citation: 49 CFR 571.108

Legal Deadline: None

Abstract: Volkswagen of America petitioned to change Federal Motor Vehicle Safety Standard No. 108, Lamps, Reflective Devices, and Associated Equipment to permit an additional standardized replaceable light source for motor vehicle headlamps. The type of light source proposed was that currently used in European headlamps, the type H-4. Review of the merits of the petition found that, as used in Europe, the light source was not capable of achieving the level of performance required of U.S. light sources and NHTSA subsequently proposed a U.S. version to be known as the type HB2, which would have interchangeability and performance aspects compatible with U.S. safety needs. Comments by the U.S. and foreign lighting and vehicle manufacturers led to a supplemental notice. This rulemaking is considered significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	05/13/85	50 FR 19961
NPRM Comment Period End	08/27/85	50 FR 19961
Supplemental NPRM comment period ended 07/14/86	06/13/86	51 FR 21696
Final Action	11/01/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 11/01/88

Agency Contact: Ralph Hitchcock, Director, Office of Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 7th St., SW, Washington, DC 20590, 202 366-0842

RIN: 2127-AC22

DOT—NHTSA

Final Rule Stage

1962. ● + PASSENGER-CAR BRAKE SYSTEMS

Significance: Agency Priority

Legal Authority: 15 USC 1392; 15 USC 1401; 15 USC 1403; 15 USC 1407

CFR Citation: 49 CFR 571.135

Legal Deadline: None

Abstract: New regulation to replace Federal Motor Vehicle Safety Standard No. 105, Hydraulic Brake Systems, as it applies to passenger cars. This new regulation will be harmonized with a corresponding new regulation to be issued by Economic Commission for Europe. This rulemaking is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	05/10/85	50 FR 19744
CORRECTION	06/20/85	50 FR 25612
Extended Comment Period to 01/13/86	09/17/85	50 FR 37702
NPRM Comment Period End	10/07/85	50 FR 19744
SNPRM	01/14/87	52 FR 1474
SNPRM	02/15/89	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Ralph Hitchcock, Director, Office of Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 7th St, SW, Washington, DC 20950, 202 366-0842

RIN: 2127-AC53

1963. PASSENGER-CAR BRAKE SYSTEMS

Significance: Nonsignificant

Legal Authority: 15 USC 1392; 15 USC 1407

CFR Citation: 49 CFR 571.105

Legal Deadline: None

Abstract: Action proposes a New Standard No. 135, "Passenger Car Brake System," which would replace Standard No. 105, "Hydraulic Brake System," as it applies to that vehicle type. New Standard would differ from the existing one primarily in that it contains a revised and shortened test procedure based on a draft harmonized international procedure developed by the United Nations Economic Commission for Europe (ECE).

Timetable:

Action	Date	FR Cite
NPRM	05/10/85	50 FR 19744
Extended comment period to 01/13/86	09/17/85	50 FR 37702
NPRM Comment Period End	10/07/85	50 FR 19744
SNPRM	01/14/87	52 FR 1474
SNPRM Comment Period End	10/13/87	
SECOND SNPRM	11/18/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 05/10/85 (50 FR 19744)

Additional Information: Docket No. 85-06.

Agency Contact: R. Hitchcock, Director, Office of Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-0842

RIN: 2127-AA13

1964. REARVIEW MIRROR SYSTEMS: HEAVY VEHICLES

Significance: Nonsignificant

Legal Authority: 15 USC 1392; 15 USC 1407

CFR Citation: 49 CFR 571.111

Legal Deadline: None

Abstract: Proposal would amend FMVSS No. 111 to improve mirror systems for trucks, buses, and multipurpose passenger vehicles with a GVWR over 10,000 pounds.

Timetable:

Action	Date	FR Cite
NPRM	11/06/78	43 FR 51657
NPRM Comment Period End	03/06/79	43 FR 51657

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Docket No. 71-3a. NPRM, Notice 4.

Research underway.

Agency Contact: R. Hitchcock, Director, Office, Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-0842

RIN: 2127-AA21

1965. REARVIEW MIRROR SYSTEMS: LIGHT VEHICLES

Significance: Nonsignificant

Legal Authority: 15 USC 1392; 15 USC 1407

CFR Citation: 49 CFR 571.111

Legal Deadline: None

Abstract: Proposal would amend Federal Motor Vehicle Safety Standard No. 111 to improve mirror systems for trucks, buses, and multipurpose passenger vehicles with a GVWR of 10,000 pounds or less.

Timetable:

Action	Date	FR Cite
NPRM	11/06/78	43 FR 51657
NPRM Comment Period End	03/06/79	43 FR 51657

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Docket No. 71-3a. NPRM, Notice 4.

Agency Contact: R. Hitchcock, Director, Office, Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-0842

RIN: 2127-AA23

1966. SEATING REFERENCE POINT/MOTOR VEHICLE DRIVER'S EYE RANGE

Significance: Nonsignificant

Legal Authority: 15 USC 1392; 15 USC 1407

CFR Citation: 49 CFR 571

Legal Deadline: None

Abstract: This project would update the definition of Seating Reference Point to incorporate latest industry practices.

DOT—NHTSA

Final Rule Stage

Timetable:

Action	Date	FR Cite
ANPRM	03/08/82	47 FR 9865
NPRM	06/05/86	51 FR 20536
NPRM Comment Period End	08/04/86	51 FR 20536
Final Action	12/20/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulation Evaluation (Minimal) 06/05/86 (51 FR 20536)

Additional Information: Docket No. 82-05.

Agency Contact: R. Hitchcock, Director, Office of Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-0842

RIN: 2127-AA46

1967. REARVIEW MIRRORS

Significance: Nonsignificant

Legal Authority: 15 USC 1392; 15 USC 1407

CFR Citation: 49 CFR 571.111

Legal Deadline: None

Abstract: This proposal would amend Federal Motor Vehicle Safety Standard No. 111 by establishing requirements for passenger cars to: a) reduce the blind areas by upgrading mirror visibility using improved compliance testing procedures, b) upgrade occupant protection requirements and add pedestrian protection requirements using shatter-resistant and breakaway or foldaway tests, c) set specifications for day-night reflectance requirements to reduce headlight glare, d) set specifications for convex mirror quality and use, and e) minimize obstruction of the forward view by establishing mirror location specifications. Final Rule to permit use of passenger side convex mirrors published. Final Rule responding to petitions and clarifying 1982 Final Rule published.

Timetable:

Action	Date	FR Cite
NPRM	11/06/78	43 FR 51657
Final Action to permit use of passenger side convex mirrors published	09/02/82	47 FR 38698
Final Action responding to petitions and clarifying 1982 FR published	08/26/83	48 FR 38842

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Docket No. 71-3a, NPRM, Notice 4; FR, Notice 6; FR, Notice 7.

Action to be terminated with respect to other issues not enumerated in the Abstract.

Agency Contact: R. Hitchcock, Director, Office of Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-0842

RIN: 2127-AA68

1968. SEAT-BELT-ASSEMBLY ANCHORAGES

Significance: Nonsignificant

Legal Authority: 15 USC 1392; 15 USC 1407

CFR Citation: 49 CFR 571.210

Legal Deadline: None

Abstract: This action proposes amending Standard No. 210 to harmonize the strength of the anchorage test with the United Nations Economic Commission for Europe (ECE) Regulation No. 14 and to upgrade other requirements and clarify language.

Timetable:

Action	Date	FR Cite
NPRM	02/03/87	52 FR 3293
NPRM Comment Period End	04/06/87	52 FR 3293
Final Action	11/04/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 02/03/87 (52 FR 3293)

Agency Contact: R. Hitchcock, Director, Office, Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-0842

RIN: 2127-AA95

1969. AIR-BRAKE SYSTEMS

Significance: Nonsignificant

Legal Authority: 15 USC 1392; 15 USC 1407

CFR Citation: 49 CFR 571.121

Legal Deadline: None

Abstract: This project would amend the brake application and release timing requirements and test devices in Federal Motor Vehicle Safety Standard No. 121 in order to better simulate the real-world performance with respect to towing and towed units, especially multitrailer combinations.

Timetable:

Action	Date	FR Cite
NPRM	05/14/85	50 FR 20113
NPRM Comment Period End	06/28/85	50 FR 20113
NPRM Comment Period Extended to 12-30-85	07/01/85	50 FR 27032
Final Action	10/21/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Analysis: Regulatory Evaluation (Minimal) 05/14/85 (50 FR 20113)

Agency Contact: Ralph Hitchcock, Director, Office of Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-0842

RIN: 2127-AA25

1969. AIR-BRAKE SYSTEMS

Significance: Nonsignificant

Legal Authority: 15 USC 1392; 15 USC 1407

CFR Citation: 49 CFR 571.121

Legal Deadline: None

Abstract: This project would amend the brake application and release timing requirements and test devices in Federal Motor Vehicle Safety Standard No. 121 in order to better simulate the real-world performance with respect to towing and towed units, especially multitrailer combinations.

Timetable:

Action	Date	FR Cite
NPRM	05/14/85	50 FR 20113
NPRM Comment Period End	06/28/85	50 FR 20113
NPRM Comment Period Extended to 12-30-85	07/01/85	50 FR 27032
Final Action	10/21/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Analysis: Regulatory Evaluation (Minimal) 05/14/85 (50 FR 20113)

Agency Contact: Ralph Hitchcock, Director, Office of Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-0842

RIN: 2127-AA25

1970. GEAR LOCK; THEFT PROTECTION

Significance: Nonsignificant

Legal Authority: 15 USC 1392; 15 USC 1407

CFR Citation: 49 CFR 571.114

Legal Deadline: None

Abstract: An amendment to Federal Motor Vehicle Safety Standard (FMVSS) No. 114 to prevent the inadvertent knocking out of gear of the gear shift lever and potential accidents, injuries and fatalities from vehicles rolling out of control. This amendment is in response to a petition for rulemaking relating to an inadvertent knock-out-of-gear accident resulting in a fatality. In addition, FMVSS 114 is proposed to be amended to insure that, if a steering column locking device is employed, the device cannot be activated until the key is removed and the vehicle must be in park on automatic transmission to remove the key and reverse for manual transmissions.

Timetable:

Action	Date	FR Cite
NPRM	04/05/88	53 FR 11105
Comment Period Extended to 07/05/88	05/18/88	53 FR 17732
NPRM Comment Period End	06/20/88	
Final Action	12/20/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Prelim. Regulatory Evaluation 04/05/88 (53 FR 11105)

Agency Contact: Ralph Hitchcock, Director, Office of Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 7th St. SW, Washington, DC 20590, 202 366-0842

RIN: 2127-AC24

1971. BUMPER STANDARD

Significance: Nonsignificant

Legal Authority: 15 USC 1392; 15 USC 1407

CFR Citation: 49 CFR 581; 49 CFR 582

Legal Deadline: None

Abstract: Consumers Union has petitioned to restore the bumper-damage criteria to the 1982 protection level of 5mph or, if this is not possible, to require automobile dealers to provide repair cost and insurance premium information related to the bumper systems on the passenger cars that they sell. The agency has completed and published a study on the cost effects and consumer interest in bumper-damageability standards. The agency will now consider the arguments set forth in the petition and take appropriate further action.

Timetable:

Action	Date	FR Cite
Final Action	10/15/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 10/15/88

Agency Contact: Orron Kee, Chief, Motor Vehicle Requirements Division, Office of Market Incentives, Department of Transportation, National Highway Traffic Safety Administration, 400 7th St., SW, Washington, DC 20590, 202 366-0846

RIN: 2127-AC29

1972. ◆ FMVSS NO. 208 OCCUPANT CRASH PROTECTION

Significance: Nonsignificant

Legal Authority: 15 USC 1392; 15 USC 1407

CFR Citation: 49 CFR 571.208

Legal Deadline: None

Abstract: This amendment proposes to extend requirements for Webbing Tension Relieving Devices to include air-bag-equipped cars and to permit testing of adjustable belt-anchorage points at manufacturers' nominal position.

Timetable:

Action	Date	FR Cite
NPRM	07/06/88	53 FR 25354
NPRM Comment Period End	08/22/88	
Final Action	04/01/89	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 07/06/88 (53 FR 25354)

Agency Contact: Ralph J. Hitchcock, Director, Office of Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, 202 366-0842

RIN: 2127-AC49

1973. ◆ FEDERAL MOTOR VEHICLE SAFETY STANDARD NO. 102 - TRANSMISSION SHIFT-LEVER SEQUENCE, STARTER INTERLOCK, AND TRANSMISSION BRAKING

Significance: Nonsignificant

Legal Authority: 15 USC 1392

CFR Citation: 49 CFR 571.102

Legal Deadline: None

Abstract: The current stated purpose of Federal Motor Vehicle Safety Standard No. 102 is to reduce the likelihood of shifting errors. Manufacturers have provided a permanently displayed shift lever position indicator to meet the requirement of S3.2 of this Standard. Chrysler and General Motors petitioned the agency to amend the Standard to allow the use of electronic "PRNDL" displays. As the proposed requirements would facilitate the use of electronic displays, while ensuring the information is displayed at all times, an NPRM was issued.

Timetable:

Action	Date	FR Cite
NPRM	08/25/88	53 FR 32409

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Ralph Hitchcock, Director, Office of Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 7th St., SW, Washington, DC 20590, 202 366-0842

RIN: 2127-AC54

1974. ◆ FEDERAL MOTOR VEHICLE SAFETY STANDARD NO. 107 - REFLECTING SURFACES - PASSENGER CARS, MULTIPURPOSE PASSENGER VEHICLES, TRUCKS, AND BUSES

Significance: Nonsignificant

Legal Authority: 15 USC 1407

CFR Citation: 49 CFR 571.107

Legal Deadline: None

Abstract: This standard requires that windshield wiper arms inside windshield moldings, horn rings, and frames and brackets of inside rearview mirrors have matte surfaces which will greatly reduce the likelihood of hazardous reflection into the driver's eyes. A petition has been filed to extend the standard to the above items which are made of non-metallic, as well as metallic, materials.

DOT—NHTSA

Final Rule Stage

Timetable:

Action	Date	FR Cite
NPRM	11/13/87	52 FR 43628
NPRM Comment Period End	12/28/87	52 FR 43628
Final Action	10/15/88	
Final Action Effective	04/01/89	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Agency Contact: Ralph Hitchcock, Director, Office of Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 7th St., SW, Washington, DC, 202 366-0842

RIN: 2127–AC56

1976. ◉ FEDERAL MOTOR VEHICLE SAFETY STANDARD NO. 115 - VEHICLE IDENTIFICATION NUMBER AND PART 567 - CERTIFICATION REGULATION

Significance: Nonsignificant

Legal Authority: 15 USC 1392; 15 USC 1397; 15 USC 1401; 15 USC 1403; 15 USC 1407; 15 USC 1912; 15 USC 1915; 15 USC 2022; 15 USC 2028; 15 USC 2120

CFR Citation: 49 CFR 571.115; 49 CFR 567

Legal Deadline: None

Abstract: The agency proposed to amend Federal Motor Vehicle Safety Standard No. 115 and Part 567 with regard to vehicles not originally manufactured for sale in the United States and that do not comply with Federal motor vehicle safety standards, but that are imported into this country by businesses unaffiliated with the original manufacturer. These vehicles often are labelled with "homemade" 17 digit Vehicle Identification Numbers (VIN). Under the proposal, the importer would label the vehicle partially exempt from Standard No. 115 and direct interested parties to the location of the original manufacturers's number to be used in lieu of the VIN. The agency is taking this action in response to a petition from the National Automobile Theft Bureau (NATB).

Timetable:

Action	Date	FR Cite
NPRM	05/13/88	53 FR 17066
NPRM Comment Period End	06/27/88	53 FR 17066
Final Action	10/20/88	

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Ralph Hitchcock, Director, Office of Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 7th St., SW, Washington, DC 20590, 202 366-0842

RIN: 2127–AC65

DEPARTMENT OF TRANSPORTATION (DOT)
National Highway Traffic Safety Administration (NHTSA)

Completed Actions

1975. + SPLASH AND SPRAY SUPPRESSION DEVICES

Significance: Regulatory Program

Legal Authority: 49 USC 2314

CFR Citation: 49 CFR 393

Legal Deadline: None

Standard for new vehicles is now required to take effect one year after final rule is published.

Abstract: In accordance with the mandate of section 414 of the Surface Transportation Assistance Act of 1982, this rulemaking proposed to establish minimum standards with respect to the performance of splash and spray suppression devices on truck tractors, semitrailers, and trailers. It also proposed to establish minimum standards with respect to the installation of splash and spray suppression devices on new vehicles. This regulation was significant because it was potentially controversial. After careful consideration, this proposal was withdrawn, as no available technology has been demonstrated as meeting the statutory criteria for establishing minimum performance standards.

Timetable:

Action	Date	FR Cite
NPRM	04/12/85	50 FR 14632
NPRM Comment Period Extended	02/13/86	51 FR 5383
NPRM Comment Period End	04/14/86	51 FR 5383
Request for Comment and Notice of Public Meetings	09/28/87	52 FR 36285
Comment Period End	11/27/87	
Withdrawn	05/25/88	53 FR 18861

Small Entities Affected: None

Government Levels Affected: None

Analysis: Preliminary Regulatory Evaluation 04/12/85 (50 FR 14632)

Agency Contact: R. Hitchcock, Director, Office of Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-0842

RIN: 2127–AA97

1977. + DAYTIME RUNNING LIGHTS

Significance: Agency Priority

Legal Authority: 15 USC 1392; 15 USC 1401; 15 USC 1403; 15 USC 1407

CFR Citation: 49 CFR 571.108

Legal Deadline: None

Abstract: A petition was received from the Insurance Institute for Highway Safety (IIHS) on November 8, 1985. It requested that the Federal lighting regulation (FMVSS No. 108) be changed to allow installation of daytime running lights (DRLs) by original equipment manufacturers. After issuing an NPRM in response to this petition, the agency has now withdrawn this proposal. The Executive Order on Federalism impacts on this action as do the apparent plans of vehicle manufacturers to not avail themselves of this option if it were made available as a final rule.

Timetable:

Action	Date	FR Cite
NPRM	03/24/87	52 FR 9316
NPRM Comment Period End	05/08/87	52 FR 9316
Withdrawn	06/23/88	53 FR 23673

DOT—NHTSA

Completed Actions

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Ralph J. Hitchcock, Director, Office, Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-0842

RIN: 2127–AB82

1978. + PASSENGER AUTOMOBILE AVERAGE FUEL ECONOMY STANDARD

Significance: Agency Priority

Legal Authority: 15 USC 2002

CFR Citation: 49 CFR 531.5

Legal Deadline: None

Abstract: The Mercedes Benz of North America, Inc. and the General Motors Corporation petitions to amend the passenger automobile Corporate Average Fuel Economy (CAFE) standards for Model Years (MY) 1984 and 1985 and for MY 1985, respectively, were denied. General Motors petitioned for a reconsideration of the denial for MY 1985 The agency will review this petition. This rulemaking is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
Petitions denied	04/28/88	53 FR 15241

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Orron E. Kee, Chief, Motor Vehicle Requirements Division, Office of Market Incentives, Department of Transportation, National Highway Traffic Safety Administration, 400 7th St., SW, Washington, DC 20590, 202 366-0846

RIN: 2127–AC33

1979. + ODOMETER DISCLOSURE REQUIREMENTS

Significance: Agency Priority

Legal Authority: 15 USC 1961

CFR Citation: 49 CFR 580

Legal Deadline: Final, Statutory, April 29, 1988.

Abstract: Odometer fraud costs the nation between $3 and $4 billion annually. Congress determined that legislation was needed to strengthen the provisions of the current law with respect to disclosure of motor vehicle mileage and enacted the Truth in Mileage Act of 1986. This rulemaking action implements the 1986 Act, and is considered significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	07/17/87	52 FR 27022
Comment period extended to 09/30/87	08/10/87	52 FR 29556
NPRM Comment Period End	09/15/87	52 FR 27022
Final Action	08/05/88	53 FR 29464
Final Action Effective	04/29/89	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Analysis: Regulatory Impact Analysis; Regulatory Evaluation 07/17/87 (52 FR 27022)

Additional Information: Provisions of the final rule concerning the procedures States may follow in requesting technical assistance, extensions of time or approval of alternate State mileage disclosure requirements shall be effective 30 days after publication in the Federal Register. All other provisions shall be effective 04/29/89.

Agency Contact: Judith S. Kaleta, Attorney-Advisor, Department of Transportation, National Highway Traffic Safety Administration, Office of Chief Counsel, 400 Seventh Street, S.W., Washington, DC 20590, 202 366-1834

RIN: 2127–AC42

1980. CONSUMER INFORMATION - WET STOPPING DISTANCE

Significance: Nonsignificant

Legal Authority: 15 USC 1392; 15 USC 1407

CFR Citation: 49 CFR 575.101

Legal Deadline: None

Abstract: This project contemplated a rule for consumer information as to differences in wet stopping distances among different car models on paved roads. As examination indicated too many variables to develop a consistent standard, further action was deemed unproductive and the project was terminated.

Timetable:

Action	Date	FR Cite
Action terminated	08/09/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Orron Kee, Chief, Motor Vehicle Requirements Division, Office of Market Incentives, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-0846

RIN: 2127–AA56

1981. ◉ NATIONAL MINIMUM DRINKING AGE

Significance: Nonsignificant

Legal Authority: 23 USC 158 as amended by PL 99-272

CFR Citation: 23 CFR; 12 CFR 1208

Legal Deadline: None

Abstract: This final rule implements PL 99-272 by making permanent the penalty for States that have failed to comply with the National Minimum Drinking Age; it provides that certain States that have failed to comply with the Act will not be penalized if they enact legislation that otherwise complies, but which includes "grandfather" rights to persons between 18 and 21.

Timetable:

Action	Date	FR Cite
Final Action	08/18/88	53 FR 31318

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Heidi Coleman, Attorney Adviser, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh St., S.W., Washington, D.C. 20590, 202 366-1834

RIN: 2127–AB30

1982. OCCUPANT CRASH PROTECTION

Significance: Nonsignificant

Legal Authority: 15 USC 1392; 15 USC 1407

CFR Citation: 49 CFR 571.208

Legal Deadline: None

Abstract: Final rule amends Standard No. 208, Occupant Crash Protection, to

upgrade the safety-belt requirements for new trucks, buses, and multipurpose passenger vehicles with a gross vehicle weight rating of more than 10,000 pounds.

Timetable:

Action	Date	FR Cite
NPRM	05/24/85	50 FR 23041
NPRM Comment Period End	07/15/85	
Final Action	07/06/88	53 FR 25337
Correction to final rule	07/18/88	53 FR 27106
Final Action Effective	01/03/89	53 FR 25337

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation (Minimal) 05/24/85 (50 FR 23041)

Agency Contact: Ralph Hitchcock, Director, Office of Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, NRM-10, 400 Seventh Street, SW, Washington, DC 20590, 202 366-0842

RIN: 2127–AB71

1983. CHILD RESTRAINT SYSTEMS – BUILT-IN CHILD RESTRAINTS

Significance: Nonsignificant

Legal Authority: 15 USC 1392; 15 USC 1407

CFR Citation: 49 CFR 571.213

Legal Deadline: None

Abstract: Standard 213 has been modified to allow built-in child restraints and specifies performance requirements for these restraints. The standard was published on January 22, 1988 and became effective on that date.

Timetable:

Action	Date	FR Cite
NPRM	03/23/87	52 FR 9194
NPRM Comment Period End	05/22/87	
Final Action	01/22/88	53 FR 1783
Final Action Effective	01/22/88	53 FR 1783

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Analysis: Regulatory Evaluation 03/23/87 (52 FR 9194)

Agency Contact: Ralph Hitchcock, Director, Office of Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, NRM-10, 400 Seventh St., SW, Washington, DC 20590, 202 366-0842

RIN: 2127–AB87

1984. GLAZING MATERIALS

Significance: Nonsignificant

Legal Authority: 15 USC 1392; 15 USC 1407

CFR Citation: 49 CFR 571.205

Legal Deadline: None

Abstract: This project involved possible amendment to Standard No. 205, Glazing Materials, to require marking remain visible when glazing is installed in vehicles. As there is now voluntary compliance by the industry, no further action is required.

Timetable:

Action	Date	FR Cite
Withdrawn Voluntary compliance by industry; no further action required	06/22/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Ralph Hitchcock, Director, Office of Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, NRM-10, 400 Seventh St., SW, Washington, DC 20590, 202 366-0842

RIN: 2127–AB97

1985. OCCUPANT CRASH PROTECTION: DYNAMIC-TESTING PETITION

Significance: Nonsignificant

Legal Authority: 15 USC 1392; 15 USC 1407

CFR Citation: 49 CFR 571.208

Legal Deadline: None

Abstract: The American Seat Belt Council petitioned the agency to amend Standard No. 208 to require that automatic belts and dynamically tested manual belts meet the webbing requirements of Standard No. 209. Upon consideration, the petition is denied and no further action deemed necessary.

Timetable:

Action	Date	FR Cite
Final Action Petition denied	02/25/88	53 FR 5578

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Ralph Hitchcock, Director, Office of Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, NRM-10 400 Seventh St., SW, Washington, DC 20590, 202 366-0842

RIN: 2127–AC20

1986. NEW PNEUMATIC TIRES FOR PASSENGER CARS

Significance: Nonsignificant

Legal Authority: 15 USC 1392; 15 USC 1407

CFR Citation: 49 CFR 571.109

Legal Deadline: None

Abstract: Non-substantive amendments to Federal Motor Vehicle Safety Standard No. 109 to add an inflation pressure for reinforced tires. This increase in inflation pressure will be done without an increase in the tire load capacity. This change will allow reinforced tires (extra-load tires) to operate at a higher pressure for safety and optimum vehicle handling. No cost is involved.

Timetable:

Action	Date	FR Cite
NPRM	01/14/88	53 FR 936
NPRM Comment Period End	02/29/88	53 FR 936
Final Action	05/19/88	53 FR 17950
Final Action Effective	06/20/88	53 FR 17950

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 05/19/88 (53 FR 17950)

Agency Contact: Ralph Hitchcock, Director, Office of Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 7th St, SW, Washington, DC 20590, 202 366-0842

RIN: 2127–AC16

1987. POWER-OPERATED WINDOW SYSTEMS

Significance: Nonsignificant

Legal Authority: 15 USC 1392; 15 USC 1407

CFR Citation: 49 CFR 571.118

Legal Deadline: None

Abstract: Amendments to Federal Motor Vehicle Safety Standard No. 118 extend applicability of the standard to light trucks to broaden the safety potential, to allow lowering of power windows after the key is removed to provide more consumer convenience without degrading safety.

Timetable:

Action	Date	FR Cite
NPRM	10/16/87	52 FR 38488
NPRM Comment Period End	11/30/87	52 FR 38488
Final Action Effective: paragraph S2 12/21/88; paragraph S3 07/25/88	06/24/88	53 FR 23766

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Analysis: Regulatory Evaluation 06/24/88 (53 FR 23766)

Agency Contact: Ralph Hitchcock, Director, Office of Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 7th St, SW, Washington, DC 20590, 202 366-0842

RIN: 2127–AC25

1988. MOTOR-VEHICLE BRAKE FLUIDS

Significance: Nonsignificant

Legal Authority: 15 USC 1392; 15 USC 1407

CFR Citation: 49 CFR 571.116

Legal Deadline: None

Abstract: Nonsubstantive amendment to Federal Motor Vehicle Safety Standard No. 116 allows the use of adhesive-type labels on fluid containers. Present standard allows only lithographed or silk-screen type labels directly on surface of containers. The latter type labels are considered more expensive for small-volume lots. No cost is irvo'ved.

Timetable:

Action	Date	FR Cite
NPRM	06/03/87	52 FR 10775
NPRM Comment Period End	08/02/87	52 FR 10775
Final Action	06/28/88	53 FR 24272
Final Action Effective	12/27/88	53 FR 24272

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 06/28/88 (53 FR 24272)

Agency Contact: Ralph Hitchcock, Director, Office of Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 7th St, SW, Washington, DC 20590, 202 366-0842

RIN: 2127–AC26

1989. CONSUMER INFORMATION - UNIFORM TIRE-QUALITY GRADING STANDARDS

Significance: Nonsignificant

Legal Authority: 15 USC 1392; 15 USC 1401; 15 USC 1407; 15 USC 1421; 15 USC 1423

CFR Citation: 49 CFR 575.104(d)(1)(i)(B)(2)

Legal Deadline: None

Abstract: The Rubber Manufacturers Association petitioned to eliminate the requirement for tire-tread labels for tire quality grading information. Arguments raised were previously considered in the decision to adopt the requirement. As there was no basis for proposing the requested amendment, the petition was denied.

Timetable:

Action	Date	FR Cite
Final Action Petition denied	05/05/88	53 FR 16167

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Orron E. Kee, Chief, Motor Vehicle Requirements Division, Office of Market Incentives, Department of Transportation, National Highway Traffic Safety Administration, 400 7th St., SW, Washington, DC 20590, 202 366-0846

RIN: 2127–AC31

1990. INSURER REPORTING REQUIREMENTS

Significance: Nonsignificant

Legal Authority: 15 USC 2032

CFR Citation: 49 CFR 544

Legal Deadline: None

Abstract: Section 612 of the Motor Vehicle Information and Cost Savings Act requires each subject insurer to furnish an annual report, recording comprehensive insurance for motor vehicles, and theft and recoveries of motor vehicles, unless exempted from requirements. The Preamble to 49 CFR 544 provides instructions to rental or leasing companies wishing to be exempted from the reporting requirements. This is a one-time only exemption, and is not provided for in the Final Rule.

Timetable:

Action	Date	FR Cite
Final Action	01/02/87	52 FR 88
Final Action Effective	01/02/87	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Impact Analysis

Additional Information: Annual notification of insurance companies required to report is published in the Federal Register. These companies were listed 09/09/88 (53 FR 35073) for the 1987 calendar year.

Agency Contact: Barbara Kurtz, Program Analyst, Office of Market Incentives, Department of Transportation, National Highway Traffic Safety Administration, 400 7th St., SW, Washington, DC 20590, 202 366-4866

RIN: 2127–AC32

1991. ◆ FEDERAL MOTOR VEHICLE SAFETY STANDARD NO. 108 – LAMPS, REFLECTIVE DEVICES, AND ASSOCIATED EQUIPMENT – CHEMICAL RESISTANCE TEST

Significance: Nonsignificant

Legal Authority: 15 USC 1381 et seq

CFR Citation: 49 CFR 571.108

Legal Deadline: None

Abstract: This notice responded to a petition for rulemaking submitted by Ford Motor Co., requesting changes in the chemical resistance tests for

headlamps in Federal Motor Vehicle Safety Standard No. 108. The agency has decided that some changes are appropriate and is thus changing the standard.

Timetable:

Action	Date	FR Cite
NPRM	03/18/87	52 FR 8462
NPRM Comment Period End	05/04/87	52 FR 8462
Final Action	08/17/88	53 FR 31007
Correction to Final Action	09/01/88	53 FR 33898
Final Action Effective	09/16/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 03/18/87 (52 FR 8462)

Agency Contact: Ralph Hitchcock, Director, Office of Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, National Highway Traffic Safety Standards, NRM-11, 400 Seventh Street, SW, Room 5307, Washington, DC 20590, 202 366-0842

RIN: 2127-AC45

1992. ● FEDERAL MOTOR VEHICLE SAFETY STANDARD (FMVSS) NO. 121 — AIR-BRAKE SYSTEMS

Significance: Nonsignificant

Legal Authority: 15 USC 1392; 15 USC 1401; 15 USC 1403; 15 USC 1407

CFR Citation: 49 CFR 571

Legal Deadline: None

Abstract: Standard No. 121, "Air Brake Systems," specifies braking requirements for trucks, buses, and trailers equipped with air-brake systems. The standard specifies various criteria, typically concerning configuration, speed, or weight, for excluding certain vehicles whose attributes result in restricted highway operation. In response to a petition submitted by Corpac Industries, the final rule eliminates from the standard the exclusion based on vehicle width, except for trailers exceeding the 102.36-inch width with extendable equipment in the retracted position and equipped with two short-track axles across the trailer width. The width exclusion is unnecessary to achieve the purpose of ensuring that the standard does not apply to certain vehicles that are appropriately excluded from it.

Timetable:

Action	Date	FR Cite
NPRM	01/21/88	53 FR 1643
NPRM Comment Period End	03/07/88	53 FR 1643
Final Action	08/15/88	53 FR 30680
Final Action Effective	09/14/88	

Small Entities Affected: None

Government Levels Affected: Federal

Analysis: Regulatory Evaluation (Minimal) 01/21/88 (53 FR 1643)

Agency Contact: Ralph J. Hitchcock, Director, Office of Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street, Washington, DC 20590, 202 366-0842

RIN: 2127-AC46

1993. ● INCENTIVE GRANT CRITERIA FOR ALCOHOL TRAFFIC SAFETY PROGRAMS

Significance: Nonsignificant

Legal Authority: PL 97-364, Sec 408

CFR Citation: 23 CFR 1309

Legal Deadline: None

Abstract: This final rule revises the agency's regulation implementing section 408 of the Highway Safety Act of 1966, relating to the criteria States must meet to be eligible for alcohol incentive grants. The agency believes some portions of the regulation are unnecessarily restrictive in defining the manner in which a State may demonstrate compliance with the statutory criteria. This action is intended to increase flexibility for the States, by establishing alternative methods of demonstrating compliance with the section 408 criteria to qualify for alcohol incentive grant funds.

Timetable:

Action	Date	FR Cite
NPRM	04/08/88	53 FR 11679
NPRM Comment Period End	05/09/88	
Final Action	08/25/88	53 FR 32375

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Bruce E. McGuire, Special Assistant for Traffic Safety, Programs, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-1755

RIN: 2127-AC70

1994. ● INCENTIVE GRANT CRITERIA FOR ALCOHOL TRAFFIC SAFETY PROGRAMS

Significance: Nonsignificant

Legal Authority: PL 97-364, Sec 408; PL 100-17, Sec 203

CFR Citation: 23 CFR 1309

Legal Deadline: None

Abstract: This final rule revises portions of the agency's regulation implementing section 408 of the Highway Safety Act of 1966, relating to supplemental alcohol incentive grants, to reflect the Surface Transportation and Uniform Relocation Assistance Act of 1987 amendment, which extended from three to five the number of fiscal years in which a State may receive alcohol incentive grants.

Timetable:

Action	Date	FR Cite
NPRM	07/22/87	52 FR 27616
NPRM Comment Period End	08/21/87	
Final Action	05/18/88	53 FR 17682

Small Entities Affected: None

Government Levels Affected: State

Analysis: Regulatory Evaluation 02/07/83 (48 FR 5545)

Additional Information: Other portions of the regulations were amended in a final rule published in the Federal Register on July 22, 1987 (52 FR 27614).

Agency Contact: Bruce E. McGuire, Special Assistant for, Traffic Safety Programs, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-1755

RIN: 2127-AC71

1995. ● FEDERAL MOTOR VEHICLE TRAFFIC SAFETY STANDARD (FMVSS) NO. 121; AIR-BRAKE SYSTEMS

Significance: Nonsignificant

Legal Authority: 15 USC 1392; 15 USC 1401; 15 USC 1403; 15 USC 1407

CFR Citation: 49 CFR 571

Legal Deadline: None

Abstract: Standard No. 121, Air-Brake Systems, specifies braking requirements for trucks, buses, and trailers equipped with air-brake systems. The purpose of this rulemaking was to clarify the standard's parking-brake requirements.

Timetable:

Action	Date	FR Cite
NPRM	03/17/87	52 FR 8317
Final Action	03/11/88	53 FR 7931
Delay of Effective Date and Reply to Petitions	09/09/88	53 FR 35075

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 03/11/88 (53 FR 7931)

Agency Contact: Ralph J. Hitchcock, Director, Office of Vehicle Safety Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-0842

RIN: 2127-AC73

DEPARTMENT OF TRANSPORTATION (DOT)
Federal Railroad Administration (FRA)

Proposed Stage

1996. ↓ REVIEW OF RADIO COMMUNICATION

Significance: Agency Priority

Legal Authority: 45 USC 431; 45 USC 437

CFR Citation: 49 CFR 220

Legal Deadline: None

Abstract: The Agency is engaged in a review of the issue of radio communication in the railroad industry. The review will evaluate possible future courses of action to enhance the safety of railroad operations involving radio communication. This review is considered significant because of public-safety considerations.

Timetable:

Action	Date	FR Cite
Notice of Special Safety Inquiry	11/04/86	51 FR 40101
Public Hearing, Washington, DC	01/27/87	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Philip Olekszyk, Department of Transportation, Federal Railroad Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-0897

RIN: 2130-AA34

1997. ● ↓ GRADE-CROSSING SIGNALS; INSPECTION AND MAINTENANCE STANDARDS

Significance: Agency Priority

Legal Authority: PL 100-342 Rail Safety Improvement Act of 1988

CFR Citation: Not yet determined

Legal Deadline: Final, Statutory, June 22, 1989.

Abstract: FRA must issue any necessary rules to ensure the safe maintenance of train-activated signal systems and devices at highway grade crossings. Data is being reviewed to better define the problem. This includes: current maintenance practices; allegations that such devices lack credibility for motorists; the history of accidents attributable to improperly functioning devices; and the need to acquire additional data before taking any action. This rulemaking is considered significant because of Departmental policy.

Timetable:

Action	Date	FR Cite
ANPRM	10/03/88	

Small Entities Affected: Undetermined

Government Levels Affected: None

Analysis: Regulatory Evaluation 03/01/89

Agency Contact: S. H. Stotts, Chief, Standards Division, Department of Transportation, Federal Railroad Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-0496

RIN: 2130-AA45

1998. ● ↓ RAILROAD OPERATING PRACTICES; PROCEDURES FOR BRIDGE-WORKER SAFETY

Significance: Agency Priority

Legal Authority: PL 100-342, Rail Safety Improvement Act of 1988

CFR Citation: Not yet determined

Legal Deadline: Final, Statutory, June 22, 1989.

Abstract: A recently enacted statute requires FRA to issue necessary rules to protect workers performing tasks on bridges. FRA is studying the casualty data, the appropriate types of protection, and the respective roles of FRA and OSHA. This proceeding is considered significant because of Departmental policy.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Edward R. English, Chief, Maintenance Programs Division, Department of Transportation, Federal Railroad Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-0186

RIN: 2130-AA48

1999. ● ↓ TRAIN OPERATION EVENT RECORDERS

Significance: Agency Priority

Legal Authority: PL 100-342, Rail Safety Improvement Act of 1988

CFR Citation: Not yet determined

Legal Deadline: Final, Statutory, December 22, 1989.

Abstract: FRA is required to issue necessary rules to provide for the recording of events relating to train operations and to ensure that devices recording those events are tamper-resistant. Aspects of the issue being explored include: determining the state of the art for such devices; the recordable events appropriate for accident investigation purposes;

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standards for "tamper resistance"; and regulatory structure. This project is considered significant because of Departmental policy.

Timetable:

Action	Date	FR Cite
ANPRM	10/03/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 00/01/89

Agency Contact: Edwards R. English, Chief, Maintenance Program Division, Department of Transportation, Federal Railroad Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-0178

RIN: 2130-AA53

2080. REVIEW: REGULATORY FLEXIBILITY ACT REVIEWS

Significance: Nonsignificant

Legal Authority: PL 96-354

CFR Citation: None

Legal Deadline: None

Abstract: In accordance with the Regulatory Flexibility Act (RFA) review plan published in the Federal Register on June 30, 1981 (46 FR 33983), FRA has not selected any specific regulations for RFA review at this time. Instead, FRA has established a plan to develop regulatory definitions of the criteria used in the RFA for the selection of regulations to be reviewed. A notice was published in the Federal Register on August 3, 1981 (46 FR 39461) initiating a safety inquiry to evaluate the effectiveness of the safety regulatory program as it applies to small railroads.

Timetable:

Action	Date	FR Cite
Review Plan	08/30/81	46 FR 33983
Notice of Safety Inquiry Review	08/03/81	46 FR 39461

Next Action Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Lawrence I. Wagner, Department of Transportation, Federal Railroad Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-0626

RIN: 2130-AA16

2081. REVIEW OF LOCOMOTIVE CAB SAFETY

Significance: Nonsignificant

Legal Authority: 45 USC 431; 45 USC 437; 45 USC 22; 45 USC 23; 45 USC 28; 45 USC 34

CFR Citation: 49 CFR 229

Legal Deadline: None

Abstract: The Agency is engaged in a review of the issue of locomotive cab environment. The review will evaluate possible future courses of action to enhance the safety of railroad employees who occupy locomotive cabs.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Philip Olekszyk, Department of Transportation, Federal Railroad Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-0897

RIN: 2130-AA32

2082. REVIEW: SPECIAL SAFETY INQUIRY; POWER BRAKE REGULATIONS

Significance: Nonsignificant

Legal Authority: 45 USC 431; 45 USC 437

CFR Citation: 49 CFR 232

Legal Deadline: None

Abstract: The inquiry will obtain information to assist in evaluation of the impact of the change in the power brake regulations made in August 1982 in Docket PB-8.

Timetable:

Action	Date	FR Cite
Notice of Special Safety Inquiry	09/03/85	50 FR 35643
Notice of Change of Hearing Date	09/26/85	50 FR 39025
Public Hearing, Washington, D.C.	10/24/85	
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Docket RSSI-85-1.

Agency Contact: Philip Olekszyk, Department of Transportation, Federal Railroad Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-0897

RIN: 2130-AA30

2083. RAIL-HIGHWAY GRADE-CROSSING SAFETY

Significance: Nonsignificant

Legal Authority: 45 USC 431; 45 USC 437; PL 100-432

CFR Citation: None

Legal Deadline: Final, Statutory, June 22, 1989.

Abstract: If necessary, rules on the inspection and maintenance of train-activated railroad-highway grade-crossing devices must be issued. An ANPRM will be issued to obtain information from the public to assist in evaluating future possible courses of action to enhance public safety at railroad-highway grade crossings.

Timetable:

Action	Date	FR Cite
Notice of Special Safety Inquiry	08/16/84	49 FR 24968
Public Hearing, St. Paul, Minnesota	07/16/84	
Notice of Special Safety Inquiry	12/24/84	49 FR 49861
Public Hearing, Washington, D.C. begins	01/23/85	
Summary Report on Hearings	07/16/85	
ANPRM	10/30/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Docket No. RSSI - 84-3.

Agency Contact: Philip Olekszyk, Department of Transportation, Federal Railroad Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-0897

RIN: 2130-AA27

DOT—FRA — Prerule Stage

2084. ● INTERIOR NOISE STANDARDS FOR ON-TRACK SLEEPING QUARTERS

Significance: Nonsignificant

Legal Authority: PL 100-342 Rail Safety Improvement Act of 1988

CFR Citation: 49 CFR 229

Legal Deadline: None

Abstract: FRA's interpretive guidance concerning compliance with an hours-of-service statute will be extended by operation of law unless FRA acts within 6 months. FRA guidelines specify a maximum noise level for the interior of facilities used to give train crews required periods of rest under the Hours of Service Act. The statute will make the noise level applicable to on-track vehicles used as dormitories for other railroad employees unless FRA alters its guidance on this matter for the on-track vehicles. Issues that need to be examined include the appropriateness of the current guidance in the expanded context, and the availability of reasonable alternatives.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Maryjo Spottswood, Trial Attorney, Office of Chief Counsel, Department of Transportation, Federal Railroad Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-0628

RIN: 2130-AA52

DEPARTMENT OF TRANSPORTATION (DOT)
Federal Railroad Administration (FRA)

Proposed Rule Stage

2085. ● + RAILROAD ACCIDENT/INCIDENT REPORTS CLASSIFICATION AND INVESTIGATIONS PERMITTING EMPLOYEE SUPPLEMENTS

Significance: Agency Priority

Legal Authority: PL 100-342 Rail Safety Improvement Act of 1988

CFR Citation: 49 CFR 225

Legal Deadline: None

Abstract: This project addresses possible problems of bias and inaccuracy in FRA's railroad data base. Although FRA investigates about 400 accidents a year and receives unsolicited information on a few more accidents, FRA's sole source of information on the great majority of railroad accidents is the railroad company itself. The proposed rule would require that the railroad provide written notification to any employee whom the railroad alleges to have caused a certain type of accident, informing the employee of the relevant allegations and of his or her right to file an accident statement with FRA. The proposed rule also would establish the format and filing procedures for such statements. Alternatives being considered are: (1) revising the reporting form itself to include boilerplate language regarding what, where, and how to file the employee statement and (2) requiring a separate notice to the employee with the same information. Potential costs have yet to be determined. This action is considered significant because of Departmental policy.

Timetable:

Action	Date	FR Cite
NPRM	10/15/88	

Small Entities Affected: Undetermined

Government Levels Affected: None

Analysis: Regulatory Evaluation 10/15/88

Agency Contact: J. A. McNally, Director, Office of Safety Enforcement, Department of Transportation, Federal Railroad Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-9252

RIN: 2130-AA41

2086. ● + RAILROAD OPERATING PRACTICES — PROTECTION OF ON-TRACK SLEEPING QUARTERS

Significance: Agency Priority

Legal Authority: PL 100-342 Rail Safety Improvement Act of 1988

CFR Citation: 49 CFR 218

Legal Deadline: Final, Statutory, June 22, 1989.

Abstract: Railroads use on-track equipment adapted for service as mobile sleeping quarters, in order to have large dormitories adjacent to work sites. A recently enacted statute requires FRA to establish rules to protect those vehicles from the risk of being struck by other on-track vehicles. This project is intended to accomplish that purpose and is therefore considered significant.

Timetable:

Action	Date	FR Cite
NPRM	10/03/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 10/03/88

Agency Contact: J. A. McNally, Director, Office of Safety Enforcement, Department of Transportation, Federal Railroad Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-9252

RIN: 2130-AA40

2087. ● + SAFETY ENFORCEMENT PROCEDURES; DISQUALIFICATION OF EMPLOYEES

Significance: Agency Priority

Legal Authority: PL 100-342 Rail Safety Improvement Act of 1988

CFR Citation: Not yet determined

Legal Deadline: None

Abstract: FRA has been granted legal authority to disqualify an individual railroad employee who is shown to be unfit to perform safety-sensitive functions based on a violation of FRA's safety rules. The procedures that FRA will employ in exercising this authority must include a notice and hearing for the individual. FRA must define what constitutes a safety-sensitive function; the nature of the hearing; appellate review structure; and criteria for what constitutes unfitness. This proceeding is

DOT—FRA — Proposed Rule Stage

considered significant because of Departmental policy.

Timetable:

Action	Date	FR Cite
NPRM	10/15/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 10/15/88

Agency Contact: Peter J. Hanmuns, Trial Attorney, Office of Chief Counsel, Department of Transportation, Federal Railroad Administration, 400 Seventh St., NW, Washington, DC 20590, 202 [illegible]

RIN: 2130-AA49

2008. ● + JURISDICTIONAL CONFORMITY AMENDMENTS

Significance: Agency Priority

Legal Authority: PL 100-342 Rail Safety Improvement Act of 1988

CFR Citation: 49 CFR 229; 49 CFR 231; 49 CFR 232

Legal Deadline: None

Abstract: FRA is amending three of its older safety regulations to conform their applicability provisions to statutory changes. The older statutes and rules describe their applicability in terms of "common carrier by rail subject to the Interstate Commerce Act" until they were amended to use the more common word "railroad". This action is considered significant because of Departmental policy.

Timetable:

Action	Date	FR Cite
NPRM	10/15/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 10/15/88

Agency Contact: Mark Tessler, Trial Attorney, Office of Chief Counsel, Department of Transportation, Federal Railroad Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-0628

RIN: 2130-AA50

2009. ● + LOCOMOTIVE OPERATOR; QUALIFICATION STANDARDS

Significance: Agency Priority

Legal Authority: PL 100-342, Rail Safety Improvement Act of 1988

CFR Citation: Not yet determined

Legal Deadline: Final, Statutory, June 22, 1989.

Abstract: FRA is required to adopt qualification standards for locomotive operators. Major elements that could be included in such standards involve initial training, retraining, performance monitoring, testing and retesting, and general fitness criteria. Issues being explored include the structure of the program to resolve questions of whether a Federal license program or a railroad licensing program meeting Federal criteria will best achieve the statutory intent. This rulemaking is significant because of Departmental policy.

Timetable:

Action	Date	FR Cite
NPRM	10/15/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 10/15/88

Agency Contact: Lawrence I. Wegner, Trial Attorney, Office of Chief Counsel, Department of Transportation, Federal Railroad Administration, 400 Seventh, St., SW, Washington, DC 20590, 202 366-0628

RIN: 2130-AA51

DEPARTMENT OF TRANSPORTATION (DOT)
Federal Railroad Administration (FRA)

Final Rule Stage

2010. + INFORMAL SAFETY INQUIRY AND RULEMAKING; CONTROL OF ALCOHOL AND DRUG USE IN RAILROAD OPERATIONS

Significance: Regulatory Program

Legal Authority: 45 USC 431; 45 USC [illegible]

CFR Citation: 49 CFR 219

Legal Deadline: None

Abstract: Based on experience derived from the first year of administration of FRA's rule on Control of Alcohol and Drug Use in Railroad Operations, FRA has identified the need for additional capability to detect and control drug use that can impact on the safety of rail transportation. Accordingly, FRA is developing a proposed rule prohibiting any unauthorized use of controlled substances by employees subject to the current rule and mandating random testing of those employees for controlled substances. FRA has also conducted a special safety inquiry on the administration of the present rule and is developing a notice of proposed rulemaking to refine and enhance the existing regulatory requirements.

Timetable:

Action	Date	FR Cite
Notice of Informal Safety Inquiry	01/20/87	52 FR 2116
Public Hearing, Washington, D.C.	02/18/87	
NPRM	05/10/88	53 FR 16640
Notice of public hearings	05/24/88	53 FR 18589
NPRM Comment Period End	08/08/88	
Final Action	10/03/88	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Analysis: Regulatory Evaluation 05/10/88 (53 FR 16640); Environmental Impact 05/10/88 (53 FR 16640)

Agency Contact: Walter C. Rockey, Jr., Executive Assistant to the Associate Administrator for Safety, Department of Transportation, Federal Railroad Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-0897

RIN: 2130-AA43

2011. ● + AMENDMENTS TO RAILROAD SAFETY REGULATIONS TO INCREASE THE MAXIMUM CIVIL PENALTIES AND TO MAKE CIVIL PENALTIES AVAILABLE AGAINST INDIVIDUALS

Significance: Agency Priority

Legal Authority: PL 100-342 Rail Safety Improvement Act of 1988

DOT—FRA — Final Rule Stage

CFR Citation: 49 CFR 209; 49 CFR 213; 49 CFR 215; 49 CFR 216; 49 CFR 217; 49 CFR 218; 49 CFR 220; 49 CFR 221; 49 CFR 223; 49 CFR 225; 49 CFR 228; 49 CFR 229; 49 CFR 231; 49 CFR 232; 49 CFR 238; ...

Legal Deadline: Final, Statutory, December 22, 1988.
Statute requires both a generic change within 30 days of enactment and a detailed change within 6 months of enactment.

Abstract: The Rail Safety Improvement Act raised the maximum civil penalty amount for violations of FRA rules. It also authorized the imposition of penalties against individuals for willful violations. In a two-stage process, FRA is conforming its rules to the new statute. In an interim rule, FRA is amending the language of its applicability and responsibility provisions. FRA is also stating its policies on what it considers "willful violations" and its procedural approach for handling allegations of noncompliance. In a second document, FRA will provide specific changes to its existing penalty schedules and any appropriate changes to its interim enforcement procedures. Because of the substantial public interest associated with issuance of the final rule, this project is considered significant.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/28/88	53 FR 28594
Final Action	12/22/88	
Final Action Effective	01/01/89	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 12/22/88

Agency Contact: Daniel C. Smith, Deputy Assistant Chief Counsel for Safety, Department of Transportation, Federal Railroad Administration, 400 Seventh St, SW, Washington, DC 20590, [illegible]

RIN: 2130-AA47

2012. ● + CERTIFICATION OF PREDEPARTURE INSPECTIONS OF SIGNAL DEVICES MOUNTED ON LOCOMOTIVES

Significance: Agency Priority

Legal Authority: PL 100-342 Rail Safety Improvement Act o1 1988

CFR Citation: 49 CFR 236

Legal Deadline: Final, Statutory, September 20, 1988.

Abstract: FRA is required to issue necessary rules requiring that tests of automatic train control, train stop, and cab signal be certified in writing. Anyone testing that equipment must certify that the required test was properly performed. FRA's current rule requires that virtually all such tests be certified; FRA proposes an expansion of that provision to cover all personnel. Although involving technical amendment with minimal cost implications, this rulemaking is considered significant due to substantial public interest and safety factors.

Timetable:

Action	Date	FR Cite
NPRM	06/31/88	53 FR 33789
NPRM Comment Period End	09/14/88	
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 06/31/88 (53 FR 33789)

Additional Information: FRA proposed to issue a final rule no later than the September, 1988 statutory deadline.

Agency Contact: S. H. Stotts, Chief, Standards Division, Department of Transportation, Federal Railroad Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-0178

RIN: 2130-AA54

2013. ● + PROHIBITING TAMPERING WITH SAFETY DEVICES MOUNTED ON LOCOMOTIVES

Significance: Agency Priority

Legal Authority: PL 100-342 Rail Safety Improvement Act of 1988

CFR Citation: 49 CFR 229; 49 CFR 236

Legal Deadline: Final, Statutory, September 20, 1988.

Abstract: FRA must issue necessary rules to prohibit tampering with certain locomotive-mounted safety systems. FRA is attempting to identify which systems should be addressed and the appropriate regulatory construction for this rule. This rulemaking is considered significant because of substantial public interest and safety factors.

Timetable:

Action	Date	FR Cite
NPRM	06/31/88	53 FR 33786
NPRM Comment Period End	09/14/88	
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation. 06/31/88 (53 FR 33786)

Additional Information: FRA proposed to issue a final rule by the September 1988 statutory deadline.

Agency Contact: Lawrence I. Wegner, Trial Attorney, Office Of Chief Counsel, Department of Transportation, Federal Railroad Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-0628

RIN: 2130-AA55

DEPARTMENT OF TRANSPORTATION (DOT)
Federal Railroad Administration (FRA)

Completed Actions

2014. SAFETY STANDARDS FOR CABOOSES

Significance: Nonsignificant

Legal Authority: 45 USC 431; 45 USC 438

CFR Citation: 49 CFR 237

Legal Deadline: None

Abstract: The proposed rule contemplated establishing comprehensive safety standards for cabooses. It has been overtaken by events that are eliminating the presence of cabooses.

Timetable:

Action	Date	FR Cite
Action terminated	07/15/88	

Small Entities Affected: None

Government Levels Affected: None

DOT—FRA

Completed Actions

Additional Information: Docket No. RSC-76-8

Agency Contact: Philip Olekszyk, Department of Transportation, Federal Railroad Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-0897

RIN: 2130–AA01

2015. AMENDMENTS TO REGULATIONS IMPLEMENTING SECTION 905 OF THE 4R ACT

Significance: Nonsignificant

Legal Authority: PL 94-210

CFR Citation: 49 CFR 265

Legal Deadline: None

Abstract: This proposed action contemplated amending 49 CFR 265 to make changes necessitated by the promulgation of the Department of Transportation's comprehensive Minority Business Enterprise regulation (49 CFR Part 23). Revisions to Part 23 have resolved this matter.

Timetable:

Action	Date	FR Cite
Action terminated	07/18/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: William Fashouer, Department of Transportation, Federal Railroad Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-0221

RIN: 2130–AA04

2016. RULES OF PRACTICE

Significance: Nonsignificant

Legal Authority: PL 96-354

CFR Citation: 49 CFR 211

Legal Deadline: None

Abstract: This action contemplated responding to the provisions of the Regulatory Flexibility Act of 1980 by defining the criteria used by FRA in determining whether any regulatory proposal or final rule will have a significant economic impact on a substantial number of small entities. Experience has shown that making case-by-case determinations is a more effective procedure.

Timetable:

Action	Date	FR Cite
Action terminated	07/15/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Lawrence I. Wagner, Department of Transportation, Federal Railroad Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-0626

RIN: 2130–AA07

DEPARTMENT OF TRANSPORTATION (DOT)

Urban Mass Transportation Administration (UMTA)

Proposed Rule Stage

2017. + MAJOR CAPITAL INVESTMENT PROJECTS

Significance: Regulatory Program

Legal Authority: 49 USC 1602; 49 USC 1604; 49 USC 1607; 49 USC 1607a-1; 23 USC 103(e)(4); 23 USC 142

CFR Citation: 49 CFR 611

Legal Deadline: None

Abstract: This regulation would set out the process applicants for grants under the UMT Act (49 USC 1601 et seq.) and the Federal-Aid Highway Act should follow in order to be eligible for Federal financial assistance for major urban mass transportation investments. A major urban mass transportation investment is any project that involves the construction of a new fixed guideway for use by buses or rail vehicles. This regulation is significant because it involves important departmental policy.

Timetable:

Action	Date	FR Cite
Notice of Policy	05/18/84	49 FR 21284
NPRM	10/00/88	

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: Local, State

Analysis: Regulatory Flexibility Analysis; Regulatory Evaluation 10/00/88

Agency Contact: Don Emerson, Department of Transportation, Urban Mass Transportation Administration, Office of Grants Management, 400 7th St., SW, Room 9301, Washington, DC 20590, 202 366-0556

RIN: 2132–AA22

2018. + IMPLEMENTATION OF SECTION 19 OF THE URBAN MASS TRANSPORTATION ACT OF 1964 AS AMENDED – NONDISCRIMINATION

Significance: Agency Priority

Legal Authority: 49 USC 1615

CFR Citation: 49 CFR 641

Legal Deadline: None

Abstract: The proposed regulations would unify the civil rights regulations that recipients of funds under the Urban Mass Transportation Act must meet. This rulemaking is significant because substantial public interest is anticipated. Regulations are needed to implement a statutory provision which consolidates UMTA's authority to assure effective and uniform compliance with civil rights and equal employment opportunity requirements in a manner comparable to other agencies within the Department of Transportation.

Timetable:

Action	Date	FR Cite
NPRM	01/15/89	

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: Local, State

Analysis: Regulatory Flexibility Analysis; Regulatory Evaluation 01/15/89

Additional Information: Section 19 was added to the UMT Act in November 1978 by the Surface Transportation Assistance Act of 1978. UMTA plans to issue an NPRM in 1989.

Agency Contact: Akiro Sano, Department of Transportation, Urban Mass Transportation Administration, Office of Technical Assistance, 400 7th St., SW, Room 7412, Washington, DC 20590, 202 366-4018

RIN: 2132–AA01

DOT—UMTA

Proposed Rule Stage

2019. + "BUY AMERICA" REQUIREMENTS OF THE SURFACE TRANSPORTATION ASSISTANCE ACT OF 1982

Significance: Agency Priority

Legal Authority: PL 97-424, Sec 165; PL 100-17, Sec 337

CFR Citation: 49 CFR 661

Legal Deadline: None

Abstract: This rulemaking will amend UMTA's Buy America requirements to implement new statutory provisions and reflect UMTA's experience with implementing the existing regulation. It is considered significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	06/29/88	53 FR 32994
NPRM Comment Period End	10/28/88	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Analysis: Regulatory Flexibility Analysis; Regulatory Evaluation 06/29/88 (53 FR 32994)

Additional Information: Section 337 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 amends the "Buy America" provisions of Section 165 of the Surface Transportation Assistance Act of 1982. UMTA's current "Buy America" regulation was issued as an Emergency Final Rule on September 15, 1983, 48 FR 41551.

Agency Contact: Edward J. Gill, Jr., Department of Transportation, Urban Mass Transportation Administration, Office of Chief Counsel, 400 7th St., SW, Room 9316, Washington, DC 20590, 202 366-4063

RIN: 2132–AA15

2020. SCHOOL BUS OPERATIONS

Significance: Nonsignificant

Legal Authority: 49 USC 1602(g); 49 USC 1608(c)(6); 23 USC 103(e)(4); 23 USC 142(a); 23 USC 142(c)

CFR Citation: 49 CFR 605

Legal Deadline: None

Abstract: This regulation provides information regarding the restrictions imposed by section 3(g) of the UMT Act on the school bus operations by UMTA recipients. UMTA plans to issue an NPRM in 1989.

Timetable:

Action	Date	FR Cite
ANPRM	10/12/82	47 FR 44795
ANPRM Comment Period End	11/29/82	
NPRM	04/00/89	

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: Local, State

Analysis: Regulatory Flexibility Analysis; Regulatory Evaluation 04/00/89

Additional Information: UMTA originally issued this regulation on April 1, 1976 (41 FR 14128). UMTA reviewed this regulation and issued an ANPRM that proposed three alternatives to the current regulation: (1) retain the existing regulation, (2) modify the definition of "tripper services," and (3) define "exclusive" schoolbus service.

Agency Contact: Daniel Duff, Assistant Chief Counsel, Legislation and Regulations, Department of Transportation, Urban Mass Transportation Administration, Office of Chief Counsel, 400 7th St., SW, Room 9316, Washington, DC 20590, 202 366-4063

RIN: 2132–AA09

2021. AIR QUALITY PROCEDURES FOR USE IN FEDERAL-AID HIGHWAY AND FEDERALLY FUNDED TRANSIT PROGRAMS

Significance: Nonsignificant

Legal Authority: 23 USC 109(h); 23 USC 109(j); 23 USC 315; 42 USC 4332; 42 USC 7401; 42 USC 7506

CFR Citation: 23 CFR 770; 49 CFR 623

Legal Deadline: None

Abstract: This regulation proposes to consolidate and amend existing air quality requirements for transportation projects into a single amended air quality regulation. The amended regulation is intended to streamline and simplify (1) the process of determining which highway projects are exempt from the Federal assistance limitations of section 176(a) of the Clean Air Act (CAA), and (2) the conformity and priority procedures contained in 23 CFR 770. The amendments are also intended to provide more authority and flexibility to State and local agencies and to meet the objectives of the CAA in the most cost-effective and expeditious manner.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: Local, State

Analysis: Regulatory Flexibility Analysis; Regulatory Evaluation 10/00/88

Additional Information: ADDITIONAL AGENCY CONTACT: James N. Shrouds, (202) 366-4836 of FHWA, RIN 2125-AB10.

Agency Contact: A. Joseph Ossi, Department of Transportation, Urban Mass Transportation Administration, Office of Grants Management, 400 7th St., SW, Room 9301, Washington, DC 20590, 202 366-0556

RIN: 2132–AA19

2022. ROLLING STOCK PURCHASE AUDITS

Significance: Nonsignificant

Legal Authority: 49 USC 1608(j)

CFR Citation: 49 CFR 663

Legal Deadline: None

Abstract: This regulation would implement a statutory provision that requires an independent pre-award and post-delivery audit of the purchase of transit rolling stock with UMTA assistance to assure compliance with Federal motor-vehicle safety standards, Buy America requirements, and adherence to bid specification requirements. Manufacturer certification of compliance with this requirement is not sufficient and independent inspections and auditing are required by the statute.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: Local, State

DOT—UMTA

Proposed Rule Stage

Analysis: Regulatory Flexibility Analysis; Regulatory Evaluation 10/00/88

Agency Contact: Daniel Duff, Assistant Chief Counsel for Legislation and Regulations, Department of Transportation, Urban Mass Transportation Administration, Office of Chief Counsel, 400 Seventh Street, SW, Room 9316, Washington, DC 20590, 202 366-4063

RIN: 2132-AA29

2022. BUS TESTING GUIDELINES

Significance: Nonsignificant

Legal Authority: 49 USC 1606(h)

CFR Citation: 49 CFR 665

Legal Deadline: None

Abstract: This regulation would implement a statutory provision that requires any new bus model purchased after September 30, 1988, to be tested at a facility established by the Secretary, by law, in Altoona, Pa.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: Local, State

Analysis: Regulatory Flexibility Analysis; Regulatory Evaluation 12/00/88

Additional Information: Section 12(h) of the UMT Act, as amended, defines a "new bus model" as a "bus model which has not been used in mass-transportation service in the United States before the date of production of such model, or a bus model which has been used in such service but which is being produced with a major change in configuration or components." UMTA plans to issue an NPRM in 1988.

Agency Contact: Daniel Duff, Assistant Chief Counsel for Legislation and Regulations, Department of Transportation, Urban Mass Transportation Administration, Office of Chief Counsel, Room 9316, 400 Seventh Street, SW, Washington, DC 20590, 202 366-4063

RIN: 2132-AA30

DEPARTMENT OF TRANSPORTATION (DOT)

Final Rule Stage

Urban Mass Transportation Administration (UMTA)

2024. ✦ CONTROL OF DRUG USE IN FEDERALLY FUNDED MASS TRANSPORTATION OPERATIONS

Significance: Regulatory Program

Legal Authority: 49 USC 1601; 49 USC 1602; 49 USC 1607; 49 USC 1615

CFR Citation: 49 CFR 653

Legal Deadline: None

Abstract: The purpose of this proposal is to eliminate the use of dangerous drugs by operators of mass transit vehicles or other transit safety sensitive workers. The proposal would require a recipient of Federal transit grants to certify that it has established a drug program consistent with the requirements of the regulation and providing for chemical testing of safety sensitive employees on a random basis as well as for pre-employment, post-accident, and reasonable suspicion.

Timetable:

Action	Date	FR Cite
NPRM	07/06/88	53 FR 25910
Notice of Public Hearings	07/12/88	53 FR 26289
Notice of Public Hearings	07/26/88	53 FR 28025
NPRM Comment Period End	09/06/88	53 FR 25910
Final Action	10/00/88	
Final Action Effective	04/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Analysis: Regulatory Flexibility Analysis; Regulatory Evaluation 07/06/88 (53 FR 25910)

Agency Contact: Daniel Duff, Assistant Chief Counsel for Legislation and Regulations, Department of Transportation, Urban Mass Transportation Administration, Office of the Chief Counsel, Room 9316, 400 7th St., SW, Washington, DC 20590, 202 366-4063

RIN: 2132-AA33

3025. ✦ CHARTER SERVICE AMENDMENT

Significance: Agency Priority

Legal Authority: 49 USC 1602(f); 49 USC 1608(c)

CFR Citation: 49 CFR 604

Legal Deadline: None

Abstract: This rulemaking would amend the regulation that implements section 3(f) of the UMT Act regarding charter bus operations by UMTA recipients. The amendment would concern the ability of certain nonprofit entities to obtain handicap-accessible vehicles for charter service, or to receive service that otherwise would be unavailable to them. This rulemaking is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	05/25/88	53 FR 18964
Notice of Public Hearings	06/06/88	53 FR 20660
NPRM Comment Period End	07/25/88	53 FR 18964
Final Action	10/00/88	
Final Action Effective	10/00/88	

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: Local, State

Sectors Affected: Multiple

Analysis: Regulatory Flexibility Analysis; Regulatory Evaluation 05/25/88 (53 FR 18964)

Additional Information: On April 13, 1987, UMTA published its final rule on charter bus service. Under this regulation a recipient of UMTA funds is prohibited from providing any charter service using UMTA funded equipment or facilities if there is at least one available charter operator willing and able to provide the charter service that the recipient proposes to provide. Congress is concerned that, under the requirements of this regulation, non-profit entities may not be able to afford the services of private charter operators, or, in the case of certain organizations, obtain the necessary handicap-accessible vehicles for charter service. This proposed amendment would address those concerns.

Agency Contact: Theodore Munter, Department of Transportation, Urban Mass Transportation Administration, Office of Chief Counsel, 400 7th St., SW, Room 9316, Washington, DC 20590, 202 366-4063

RIN: 2132-AA32

DOT—UMTA

Final Rule Stage

2026. CAPITAL LEASES

Significance: Nonsignificant

Legal Authority: 49 USC 1607a(j)

CFR Citation: 49 CFR 639

Legal Deadline: NPRM, Statutory, June 1, 1987. Final, Statutory, November 28, 1987.

Abstract: This regulation would implement a statutory provision requiring UMTA to prescribe policies and procedures governing the eligibility for capital assistance under section 9 of the UMT Act, as amended, for leases of equipment and facilities where leasing is more cost-effective than purchase or construction.

Timetable:

Action	Date	FR Cite
NPRM	05/20/88	53 FR 18222
NPRM Comment Period End	07/19/88	53 FR 18222
Final Action	10/00/88	
Final Action Effective	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Daniel Duff, Assistant Chief Counsel for Legislation and Regulations, Department of Transportation, Urban Mass Transportation Administration, Office of Chief Counsel, 400 7th St., SW, Room 9316, Washington, DC 20590, 202 366-4063

RIN: 2132-AA28

2027. PROJECT MANAGEMENT OVERSIGHT

Significance: Nonsignificant

Legal Authority: 49 USC 1619

CFR Citation: 49 CFR 633

Legal Deadline: NPRM, Statutory, June 1, 1987. Final, Statutory, September 29, 1987.

Abstract: This regulation would implement a statutory provision that permits UMTA to use a portion of the funding of its major capital programs to hire outside contractors to perform project management oversight of major capital projects, and require an UMTA grantee constructing a major capital project to prepare and, after UMTA approval, implement a project management plan.

Timetable:

Action	Date	FR Cite
NPRM	08/11/87	52 FR 29709
NPRM Comment Period End	10/13/87	52 FR 29709
Final Action	10/00/88	

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: Local, State

Analysis: Regulatory Flexibility Analysis; Regulatory Evaluation 10/00/88

Agency Contact: Daniel Duff, Assistant Chief Counsel for Legislation, and Regulations, Department of Transportation, Urban Mass Transportation Administration, Office of Chief Counsel, 400 Seventh Street, SW, Room 9316, Washington, DC 20590, 202 366-4063

RIN: 2132-AA31

DEPARTMENT OF TRANSPORTATION (DOT)

Completed Actions

Urban Mass Transportation Administration (UMTA)

2028. INNOVATIVE TECHNIQUES AND METHODS

Significance: Nonsignificant

Legal Authority: 49 USC 1603(i)

CFR Citation: 49 CFR 644

Legal Deadline: None

Abstract: UMTA has withdrawn this rulemaking, which would have prescribed policies and procedures for administering the grant programs for projects using innovative techniques and methods in the management and operation of public transportation services under section 4(i) of the UMT Act, as amended, because UMTA now uses a different method of project selection which does not require solicitation.

Timetable:

Action	Date	FR Cite
NPRM	12/01/80	45 FR 79869
Withdrawn	09/07/88	53 FR 34560

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Analysis: Regulatory Evaluation 12/01/80 (45 FR 79869)

Agency Contact: Joseph Goodman, Department of Transportation, Urban Mass Transportation Administration, Office of Technical Assistance, 400 7th St., SW, Room 6100, Washington, DC 20590, 202 366-4248

RIN: 2132-AA05

2029. TECHNOLOGY INTRODUCTION

Significance: Nonsignificant

Legal Authority: 49 USC 1602

CFR Citation: 49 CFR 643

Legal Deadline: None

Abstract: UMTA has withdrawn this rulemaking, which would have prescribed policies and procedures for administering the grant program for projects that would introduce new technology into public-transportation services under section 3(a)(1)(C) of the UMT Act, as amended, because UMTA now uses a different method of project selection which does not require solicitation.

Timetable:

Action	Date	FR Cite
NPRM	01/19/81	46 FR 5832
Withdrawn	09/07/88	53 FR 34560

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

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DOT—UMTA — Completed Actions

Analysis: Regulatory Evaluation 01/19/81 (46 FR 5832)

Agency Contact: Joseph Goodman, Department of Transportation, Urban Mass Transportation Administration, Office of Technical Assistance, 400 7th St., SW, Room 6108, Washington, DC 20590, [illegible]

RIN: 2132–AA07

DEPARTMENT OF TRANSPORTATION (DOT)
Research and Special Programs Administration (RSPA)

Prerule Stage

2030. + REGISTRATION OF SHIPPERS AND CARRIERS OF HAZARDOUS MATERIALS

Significance: Regulatory Program

Legal Authority: 49 USC 1804

CFR Citation: 49 CFR 171; 49 CFR 173; 49 CFR 177

Legal Deadline: None

Abstract: DOT lacks comprehensive data on the number, volume, and other statistics characterizing the transportation of hazardous materials in commerce. Comments will be requested on the burdens and benefits associated with various alternatives that could be used to obtain such information. The registration of carriers and shippers is one such alternative.

Timetable:

Action	Date	FR Cite
ANPRM	11/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Joseph S. Nalevanko, Department of Transportation, Research and Special Programs Administration, 400 Seventh St., SW, Washington, DC [illegible], [illegible]

RIN: 2137–AD45

2031. + OST-FAA INFORMATION RULES; STANDARDIZED REGULATORY FLEXIBILITY REQUIREMENTS

Significance: Agency Priority

Legal Authority: 49 USC 1324; 49 USC 1371; 49 USC 1357

CFR Citation: 14 CFR 241; 14 CFR 298; 14 CFR 399

Legal Deadline: None

Abstract: The threshold for the aviation-information program for regulatory flexibility analysis is 60 seats or maximum payload of 18,000 pounds or less. Carriers operating aircraft under these limits are considered small carriers. FAA, on the other hand, uses a threshold based on the operational certificate requirements (Part 121 versus Part 135) with the threshold established at 30 seats or maximum payload of 7,500 pounds for a Part 135 certificate. FAA regulatory analysis for safety, congestion, etc., centers around the lower threshold which means much of the aviation economic information that they use has to be manipulated to fit their needs. This proposal of standardizing the threshold within the Department would save considerable resources and would eliminate much confusion in the air transportation industry. Most carriers, especially the newer ones, are familiar with FAA's requirements. This rulemaking is significant because it will achieve consistency in departmental treatment.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Jack Calloway, Chief, Regulations Division, Department of Transportation, Research and Special Programs Administration, Office of Aviation Information Management, DAI-1/Room 4125 Seventh Street, SW, Washington, DC 20590, 202 366-4383

RIN: 2137–AB16

2032. + HIGHWAY ROUTING STANDARDS FOR CERTAIN TYPES AND QUANTITIES OF HAZARDOUS MATERIALS

Significance: Agency Priority

Legal Authority: 49 USC 1804; 49 USC 1805

CFR Citation: 49 CFR 173.177; 49 CFR 397

Legal Deadline: None

Abstract: Currently, except for certain radioactive materials, DOT has not promulgated uniform, national standards for the highway routing of hazardous materials. The proposal would establish such standards and provide guidance to States and localities to minimize the promulgation of State and local routing requirements that are inconsistent with the Hazardous Materials Transportation Act. This rulemaking is significant because of the safety implications.

Timetable:

Action	Date	FR Cite
ANPRM	04/07/88	53 FR 11618
ANPRM Comment Period End	10/11/88	

Small Entities Affected: Undetermined

Government Levels Affected: Local, State, Federal

Additional Information: Docket No. HM-203. A public hearing was held on June 14, 1988, in Sacramento, California. Another public hearing is scheduled for September 15, 1988, in Washington, DC.

Agency Contact: Joseph S. Nalevanko, Department of Transportation, Research and Special Programs Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-4484

RIN: 2137–AD43

2033. REVIEW OF COMMUTER AIR TRAFFIC AND MARKET DATA REPORTING

Significance: Nonsignificant

Legal Authority: 49 USC 1324; 49 USC 1371; 49 USC 1374; 49 USC 1386

CFR Citation: 14 CFR 206

Legal Deadline: None

Abstract: Currently commuter air carriers providing scheduled passenger service file two quarterly traffic schedules. One schedule summarizes nine traffic elements while the other schedule provides the origination and destination for all the carriers' on-line passengers. The Department is considering proposing a new traffic and market data system for certificated and foreign air carriers. This system could be used for commuter air carriers, providing the Department with one automated traffic and market data system for all carriers. This system would be less burdensome for the commuter air carriers and be more efficient for the user.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Agency Contact: Jack Calloway, Chief, Regulations Division, Department of Transportation, Research and Special Programs Administration, DAI-1 Room 4125, 400 Seventh Street, SW, Washington, DC 20590, 202 366-4383

RIN: 2137–AB18

DOT—RSPA — Prerule Stage

2034. REVISION OF OPERATING PROCEDURES FOR MOTOR VEHICLES

Significance: Nonsignificant

Legal Authority: 49 USC 1803 to 1806

CFR Citation: 49 CFR 177

Legal Deadline: None

Abstract: Proposed simplification and recodification of the existing operating procedures for transportation of hazardous materials by motor vehicles as prescribed in Part 177. Development of driver training requirements (formerly Project 270-78).

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: Project 261-78

Agency Contact: D. Billings/W. Byrd, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-4488

RIN: 2137–AA07

2035. CONSOLIDATION AND REVISION OF REQUIREMENTS FOR THE CARRIAGE OF EXPLOSIVES BY VESSEL

Significance: Nonsignificant

Legal Authority: 49 USC 1803 to 1806

CFR Citation: 49 CFR 176

Legal Deadline: None

Abstract: Proposed consolidation and revision of requirements for the carriage of military and commercial explosives by vessel and adoption of United Nations scheme for classification and compatibility of explosives for the water mode.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: Project 279-78

Agency Contact: D. Billings/F. Thompson (USCG), Department of Transportation, Research and Special Programs Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-4488

RIN: 2137–AA10

2036. SPECIFICATION PACKAGES OF TYPE B AND FISSILE RADIOACTIVE MATERIALS

Significance: Nonsignificant

Legal Authority: 49 USC 1803 to 1806; 49 USC 1808

CFR Citation: 49 CFR 173

Legal Deadline: None

Abstract: The Department is considering addressing the possibility of continued use and needed modifications of certain radioactive materials package designs.

Timetable:

Action	Date	FR Cite
ANPRM	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: Project 300-83.

Agency Contact: M. Wangler, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street, SW, Washington, DC 20590, [illegible]

RIN: 2137–AA36

2037. DOT SPECIFICATION 51 PORTABLE TANKS

Significance: Nonsignificant

Legal Authority: 49 USC 1803 to 1806

CFR Citation: 49 CFR 173

Legal Deadline: None

Abstract: The Department is considering revising the requirements for DOT Specification 51 Portable Tanks. Consideration will also be given to adopting certain provisions of the recommendations of the United Nations and the International Maritime Organization.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: Project 302-83.

Agency Contact: Helen L. Engrum, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street, SW, Washington, DC 20590, [illegible]

RIN: 2137–AA39

2038. TRANSPORTATION OF HAZARDOUS MATERIALS; MISCELLANEOUS AMENDMENTS

Significance: Nonsignificant

Legal Authority: 49 USC 1803 to 1806

CFR Citation: 49 CFR 171 to 178

Legal Deadline: None

Abstract: Nonsignificant regulations issued routinely and frequently as a part of an established body of technical requirements to keep those requirements operationally current. NPRM approximately every four months, with FR targeted approximately two months thereafter.

Timetable:

Action	Date	FR Cite
Periodic Update	03/19/85	50 FR 11048
NPRM	06/03/86	51 FR 19866

DOT—RSPA — Prerule Stage

Action	Date	FR Cite
NPRM Comment Period End	09/04/86	51 FR 27223
Periodic Update	04/20/87	52 FR 13094
Periodic Update - NPRM	10/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Analysis: Regulatory Evaluation 03/22/84 (49 FR 10780)

Additional Information: Docket No. HM-100.

Agency Contact: M. Morris, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-4488

RIN: 2137-AA44

2039. AIRLINE REVENUE/NONREVENUE, FIRST CLASS/COACH PASSENGERS: REVISED DEFINITIONS

Significance: Nonsignificant

Legal Authority: 49 USC 1324; 49 USC 1373

CFR Citation: 14 CFR 241

Legal Deadline: None

Abstract: The present definition of revenue and nonrevenue passengers for aviation reporting purposes is stated in terms of the exemptions for free and reduced-rate transportation in section 403(b) of the Federal Aviation Act of 1958. These definitions have become outmoded in the process of air-fare deregulation. In addition, first class and coach passengers are defined in terms of the type of fare paid with premium or standard fares being the benchmark for first class. With deregulation and the proliferation of new air fares in the marketplace, these definitions may also be outmoded. The DOT is considering several options for revising these definitions.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Jack Calloway, Chief, Regulations Division, Department of Transportation, Research and Special Programs Administration, Office of Aviation Information Management, DAI-1/Room 4125, 400 Seventh Street, SW, Washington, DC 20590, 202 366-4383

RIN: 2137-AB00

2040. SUBSIDIZED COMMUTER CARRIERS AND FOREIGN AIR CARRIERS: RECORDS AND RETENTION PERIODS

Significance: Nonsignificant

Legal Authority: 49 USC 1324; 49 USC 1371 to 1374; 49 USC 1377; 49 USC 1381; 49 USC 1386; 49 USC 1482

CFR Citation: 14 CFR 249

Legal Deadline: None

Abstract: This rule would require commuter air carriers receiving subsidy to retain certain records in support of their claims for subsidy; require foreign air carriers submitting traffic and market data to retain records in support of their submissions; modify or eliminate several of the records prescribed for retention by public charter operators and oversees operators. In addition, the proposal would transfer the record retention requirements contained in Part 374a to Part 249.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Jack Calloway, Chief, Regulations Division, Department of Transportation, Research and Special Programs Administration, Office of Aviation Information Management, DAI-1/Room 4125, 400 Seventh Street, SW, Washington, DC 20590, 202 366-4383

RIN: 2137-AB04

DEPARTMENT OF TRANSPORTATION (DOT)

Proposed Rule Stage

Research and Special Programs Administration (RSPA)

2041. + TRAINING FOR HAZARDOUS MATERIALS TRANSPORTATION

Significance: Regulatory Program

Legal Authority: 49 USC 1804

CFR Citation: 49 CFR 172

Legal Deadline: None

Abstract: This regulation proposes to establish detailed training requirements for persons involved with the transportation of hazardous materials. Establishing more detailed training requirements should diminish the number of hazardous materials transportation incidents which can be attributed to human error. At this time, the potential cost of establishing this program is unknown.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Analysis: Regulatory Evaluation 10/00/88

Additional Information: Docket No. HM-120F

Agency Contact: E. Mazzullo, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-4488

RIN: 2137-AB26

2042. + RECODIFICATION OF EXPLOSIVE REGULATIONS

Significance: Agency Priority

Legal Authority: 49 USC 1803 to 1808

CFR Citation: 49 CFR 172; 49 CFR 173

Legal Deadline: None

Abstract: Proposed consolidation and revision of the regulations on the classification and packaging of explosives, and the alignment of these

DOT—RSPA — Proposed Rule Stage

regulations with the recommendations of the United Nations Committee of Experts on the Transport of Dangerous Goods. This rulemaking is considered significant because of substantial public interest.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: Docket No. HM-161A

Agency Contact: Charles Ke/D. Billings, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-4488

RIN: 2137-AA03

2043. + GAS GATHERING LINE DEFINITION

Significance: Agency Priority

Legal Authority: 49 USC 1672; 49 USC 1804

CFR Citation: 49 CFR 192.3

Legal Deadline: None

Abstract: The existing definition of "gathering line" would be clearly defined to eliminate confusion in distinguishing these pipelines from transmission lines in rural areas. The costs should be minimal since the definition will conform to prevailing practices in government and industry. Action is significant because the definition is the subject of litigation.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: State, Federal

Additional Information: Suggested terminology is being coordinated with the Technical Pipeline Safety Standards Committee and State agencies in advance of a formal proposal for public comment.

Agency Contact: P. Cory, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-4561

RIN: 2137-AB15

2044. + PROPOSALS FOR PIPELINE SAFETY

Significance: Agency Priority

Legal Authority: 49 USC 1672; 49 USC 1804; 49 USC 2002

CFR Citation: 49 CFR 191; 49 CFR 192; 49 CFR 195

Legal Deadline: None

Abstract: Based on the numerous public comments and recommendations of the Department's two pipeline safety advisory committees, many of the proposals put forth in the ANPRM will be withdrawn. Those not withdrawn will be further evaluated in special studies or become the subject of separate rulemakings.

Timetable:

Action	Date	FR Cite
ANPRM	02/11/87	52 FR 4361
ANPRM Comment Period End	03/30/87	52 FR 4361
NPRM to be withdrawn	10/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: State, Federal

Agency Contact: B. Liebler, Office of Pipeline Safety, Department of Transportation, Research and Special Programs Administration, 400 7th Street, SW, Washington, DC 20590, 202 366-4560

RIN: 2137-AB27

2045. + HAZARDOUS MATERIALS IN INTRASTATE COMMERCE

Significance: Agency Priority

Legal Authority: 49 USC 1802 to 1808

CFR Citation: 49 CFR 171 to 179

Legal Deadline: None

Abstract: ANPRM invites comments on the need for, and possible consequences of, DOT extending the application of its Hazardous Materials Regulations to all intrastate transportation of hazardous materials in commerce. This rulemaking is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
ANPRM	06/29/87	52 FR 24195
Comment Period Extended to 11/29/87	09/21/87	52 FR 35464
ANPRM Comment Period End	09/28/87	
NPRM	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Local, State, Federal

Additional Information: Docket No. HM-220

Agency Contact: John Gale, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-4488

RIN: 2137-AE07

2046. + PIPELINE OPERATOR QUALIFICATIONS

Significance: Agency Priority

Legal Authority: 49 USC 1672; 49 USC 2002

CFR Citation: 49 CFR 192; 49 CFR 195

Legal Deadline: None

Abstract: Training and qualification standards would be proposed for personnel involved in the operation and maintenance of gas and hazardous liquid pipelines. Special consideration would be given to operators of small gas systems to alleviate the burden of compliance. This rulemaking is considered significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
ANPRM	03/23/87	52 FR 9189
ANPRM Comment Period End	05/07/87	52 FR 9189
NPRM	10/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: State, Federal

Analysis: Regulatory Evaluation 10/00/88

Agency Contact: A. Garnett, Department of Transportation, Research and Special Programs Administration,

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Proposed Rule Stage

400 Seventh Street, SW, Washington, DC [illegible]

RIN: 2137–AE36

2047. + OPERATION AND MAINTENANCE PROCEDURES FOR GAS PIPELINES

Significance: Agency Priority

Legal Authority: 49 USC 1672

CFR Citation: 49 CFR 192

Legal Deadline: None

Abstract: Adequate procedures for pipeline operation and maintenance, backed up by personnel training, have proven effective in minimizing the potential for accidents. Gas operators are required to have such procedures, but the existing requirements lack the clarity and specificity needed to assure a uniform, broad-based level of safety for all pipelines. Therefore, this proposal would clarify the existing requirements, make them more comprehensive, and, where appropriate, similar to the more detailed requirements applicable to the operation and maintenance of hazardous liquid pipelines. This is a significant action because of the need for adequate procedures to provide a basis for training and qualifying operator personnel.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State, Federal

Analysis: Regulatory Evaluation 10/00/88

Agency Contact: B. Liebler, Department of Transportation, Research and Special Programs Administration, 400 Seventh St., SW, Washington, DC [illegible]

RIN: 2137–AE44

1046. + PRESSURE TESTING EXISTING HAZARDOUS LIQUID PIPELINES

Significance: Agency Priority

Legal Authority: 49 USC 2002

CFR Citation: 49 CFR 195

Legal Deadline: None

Abstract: Recent accidents involving petroleum product pipelines demonstrate the potential for catastrophic losses if a large spill occurs in a populated area. Studies have shown that accidents attributable to hidden material or construction defects can be prevented by restricting operation to not more than 80 percent of a prior test or operating pressure. In this regard, significant results have been achieved by imposing such an operating restriction on those product pipelines that carry highly volatile liquids. This rule would extend this existing safety standard to all product pipelines. This rulemaking is significant because of substantial public interest in the safety implications.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: State, Federal

Analysis: Regulatory Evaluation 10/00/88

Agency Contact: A. Garnett, Department of Transportation, Research and Special Programs Administration, 400 Seventh St., SW, Washington, DC [illegible]

RIN: 2137–AB46

2049. + MAPS AND RECORDS OF PIPELINE LOCATION AND CHARACTERISTICS; NOTIFICATION OF STATE AGENCIES

Significance: Agency Priority

Legal Authority: 49 USC 1672; 49 USC [illegible]

CFR Citation: 49 CFR 192; 49 CFR 195

Legal Deadline: None

Abstract: Maintenance of appropriate information about pipelines is essential for emergency response, compliance with safety standards, and other purposes. As part of a continuing policy to adopt similar requirements for gas and hazardous liquid pipelines where appropriate for safety, this action proposes to equalize as far as possible the requirements that gas and liquid operators keep maps and records to show the location and other characteristics of pipelines. In addition, operators would be required to provide this information to State agencies upon request. This is a significant action because of Congressional and State concerns about the need for appropriate public officials to have pipeline information.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State, Federal

Analysis: Regulatory Evaluation 10/00/88

Additional Information: National Transportation Safety Board Recommendation P-87-34 and House Report 100-445 (Nov. 17, 1987) provide the bases for this action.

Agency Contact: B. Liebler, Department of Transportation, Research and Special Programs Administration, 400 Seventh St., SW, Washington, DC [illegible]

RIN: 2137–AB44

2050. DEFINITION OF A FLAMMABLE SOLID

Significance: Nonsignificant

Legal Authority: 49 USC 1803 to 1808

CFR Citation: 49 CFR 173

Legal Deadline: None

Abstract: This proposal involved new standards for classifying a material as a flammable solid. It is being incorporated into RIN 2138–AA01, Docket HM-181.

Timetable:

Action	Date	FR Cite
ANPRM	05/07/81	46 FR 25492
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: Formerly Docket HM-178.

Agency Contact: C. Ke, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street, SW, Washington, DC 20590, [illegible]

RIN: 2137–AA05

DOT—RSPA

Proposed Rule Stage

2051. PRIVATE CARRIERS LICENSED TO USE RADIOACTIVE MATERIALS

Significance: Nonsignificant

Legal Authority: 49 USC 1803 to 1808; 49 USC 1808

CFR Citation: 49 CFR 173; 49 CFR 177

Legal Deadline: None

Abstract: The Department intends to propose exceptions from the regulations for private carriers which are licensed to use radioactive materials in the course of their businesses.

Timetable:

Action	Date	FR Cite
NPRM	01/00/90	
NPRM Comment Period End	02/15/90	

Small Entities Affected: None

Government Levels Affected: Undetermined

Analysis: Regulatory Evaluation 01/00/90

Additional Information: Project 298-82.

Agency Contact: M. Wangler, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street, SW, Washington, DC [illegible]

RIN: 2137–AA25

2052. QUALITY ASSURANCE FOR RADIOACTIVE MATERIALS SHIPPERS

Significance: Nonsignificant

Legal Authority: 49 USC 1803 to 1808; 49 USC 1808

CFR Citation: 49 CFR 173

Legal Deadline: None

Abstract: The Department is considering this proposal to solicit comments on the desirability of establishing quality assurance program requirements for all shippers of radioactive materials.

Timetable:

Action	Date	FR Cite
NPRM	02/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: Project 231-80.

Agency Contact: M. Wangler, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street, SW, Washington, DC 20590, [illegible]

RIN: 2137–AA39

2053. SPECIFICATION 8W AND 8WA WELDED STEEL CYLINDERS

Significance: Nonsignificant

Legal Authority: 49 USC 1803; 49 USC 1804; 49 USC 1808

CFR Citation: 49 CFR 171; 49 CFR 173; 49 CFR 178

Legal Deadline: None

Abstract: Would eliminate existing Specifications 8 and 8AL and provide a consolidated specification for the manufacture of acetylene cylinders.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
NPRM Comment Period End	01/00/89	
Final Action	04/00/89	
Final Action Effective	07/00/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Analysis: Regulatory Evaluation 10/00/88

Additional Information: Docket No. HM-23.

Agency Contact: M. Morris, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street, SW, Washington, DC 20590, [illegible]

RIN: 2137–AA03

2054. CONSOLIDATION OF SPECIFICATIONS FOR HIGH-PRESSURE SEAMLESS CYLINDERS AND REWRITE OF 49 CFR 173.34

Significance: Nonsignificant

Legal Authority: 49 USC 1803 to 1808

CFR Citation: 49 CFR 172; 49 CFR 173

Legal Deadline: None

Abstract: The Department will propose revision of requalification requirements for cylinders and proposed consolidation and revision of the specifications for high-pressure seamless cylinders. (Project No. 123-71).

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: Formerly entitled Review: Consolidation of Specifications for High-Pressure Seamless Cylinders.

Agency Contact: Charles H. Hochman, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street, SW, Washington, DC 20590, [illegible]

RIN: 2137–AA02

2055. DELETION OF STANDARDS AFFECTING IRON AND COPPER PIPE AND OTHER MATERIALS

Significance: Nonsignificant

Legal Authority: 49 USC 1672; 49 USC 1804

CFR Citation: 49 CFR 192

Legal Deadline: None

Abstract: This action proposes to delete the existing incorporation by reference of various documents intended for use in the design of gas pipelines. The materials to which the documents pertain are no longer generally used for gas pipelines so that reference to the documents can be deleted without affecting safety.

Timetable:

Action	Date	FR Cite
ANPRM	06/04/87	52 FR 21067
ANPRM Comment Period End	09/03/87	52 FR 21067
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: State, Federal

Additional Information: Docket No. PS-95

Agency Contact: P. Cory, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street, SW, Washington, DC 20590, [illegible]

RIN: 2137–AE24

2056. ENFORCEMENT OF MOTOR CARRIER FINANCIAL RESPONSIBILITY REQUIREMENTS

Significance: Nonsignificant

Legal Authority: 49 USC 1803 to 1805; 49 USC 1808 to 1809; 49 USC 1655; 49 USC 1655(c); 49 USC 10927

CFR Citation: 49 CFR 171; 49 CFR 173; 49 CFR 387

Legal Deadline: None

Abstract: This notice solicits comments on the merits of a petition for rulemaking from the National Tank Truck Carriers proposing to amend the Hazardous Materials Regulations to require shippers of hazardous materials by highway, in cargo tanks, to obtain documentary proof that the motor carrier possesses the minimum level of financial responsibility required by 49 CFR Part 387.

Timetable:

Action	Date	FR Cite
ANPRM	05/20/87	52 FR 19116
ANPRM Comment Period End	08/18/87	

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: Docket No. HM-195

Agency Contact: Joseph S. Nalevanko, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-4488

RIN: 2137–AB35

2057. DETECTION AND REPAIR OF CRACKS, PITS, CORROSION, LINING FLAWS, THERMAL DETECTION FLAWS, AND OTHER DEFECTS OF TANK CAR TANKS

Significance: Nonsignificant

Legal Authority: 49 USC 1803; 49 USC 1804; 49 USC 1805; 49 USC 1806

CFR Citation: 49 CFR 173

Legal Deadline: None

Abstract: This rule would require tank-car owners and repair facilities to inspect for cracks and other defects after certain tank-car repairs to assure that no defects exist. A DOT Task Force assessed tank-car inspection and repair procedures and identified two major issues on which the ANPRM seeks comment: (1) the adequacy of crack detection and (2) the ability to repair detected cracks without collateral damage.

Timetable:

Action	Date	FR Cite
ANPRM	12/08/87	52 FR 46510
ANPRM Comment Period End	02/11/88	52 FR 46510
ANPRM Comment Period Extended to 05/13/88	02/18/88	53 FR 4862

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: M. Morris/P. Oleksyk(FRA), Department of Transportation, Research and Special Programs Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-4488

RIN: 2137–AB40

2058. FUMIGATION

Significance: Nonsignificant

Legal Authority: 49 USC 1803; 49 USC 1804; 49 USC 1805

CFR Citation: 49 CFR 172; 49 CFR 173; 49 CFR 174

Legal Deadline: None

Abstract: This proposal would revise the placarding requirements in the Hazardous Materials Regulations (HMR) to recognize the requirements of the Environmental Protection Agency (EPA) which address the placarding of commodities which have been fumigated. Those portions of the HMR which address the fumigation placard would be removed from the HMR to avoid duplication with EPA's requirements for placarding commodities which have been fumigated.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: E. Pritchard/D. Billings, Department of Transportation, Research and Special Programs Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-4488

RIN: 2137–AB41

2059. CONFORMING GAS AND LIQUID PIPELINE WELDING STANDARDS: FINAL PHASE

Significance: Nonsignificant

Legal Authority: 49 USC 1672; 49 USC 2002

CFR Citation: 49 CFR 192; 49 CFR 195

Legal Deadline: None

Abstract: As part of a continuing policy to adopt similar requirements for gas and hazardous liquid pipelines where appropriate for safety, this action would be the last of a series of rulemakings undertaken to conform the gas and liquid pipeline welding standards.

Timetable:

Action	Date	FR Cite
NPRM	04/00/89	

Small Entities Affected: None

Government Levels Affected: State, Federal

Agency Contact: A. Garnett, Department of Transportation, Research and Special Programs Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-2896

RIN: 2137–AB45

2060. GAS DETECTION AND MONITORING IN COMPRESSOR STATION BUILDINGS

Significance: Nonsignificant

Legal Authority: 49 USC 1672

CFR Citation: 49 CFR 192

Legal Deadline: None

Abstract: Leaking gas accumulating inside an inadequately ventilated compressor station building is a serious safety problem that has caused recent deaths and injuries. This rulemaking action explores the need for additional regulations to lessen this potential for harm. Installation of gas detection and alarm systems and more specific operation and maintenance procedures for compressor stations are the alternatives being considered.

Timetable:

Action	Date	FR Cite
ANPRM	04/04/88	53 FR 10906
ANPRM	06/03/88	53 FR 10906
Comment Period End		
NPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: State, Federal

Additional Information: National Transportation Safety Board Recommendation P-83-20 provides a basis for this action.

Agency Contact: B. Liebler, Department of Transportation, Research and Special Programs Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-4488

RIN: 2137–AB49

2061. DETERMINING THE EXTENT OF CORROSION ON EXPOSED GAS PIPELINES

Significance: Nonsignificant

Legal Authority: 49 USC 1672

CFR Citation: 49 CFR 192

Legal Deadline: None

Abstract: Corrosion is a major cause of gas and hazardous liquid pipeline accidents. A safety standard applicable to liquid pipelines requires operators to examine exposed pipe for evidence of external corrosion and, if harmful corrosion is found, to investigate further to determine the extent of the corrosion. As part of a continuing policy to adopt similar requirements for gas and liquid pipelines where appropriate for safety, this action proposes that exposed gas pipelines with evidence of harmful corrosion be investigated to determine the extent of the corrosion.

Timetable:

Action	Date	FR Cite
NPRM	04/00/89	

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State, Federal

Additional Information: National Transportation Safety Board Recommendation P-87-3 provides a basis for this action.

Agency Contact: B. Liebler, Department of Transportation, Research and Special Programs Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-4360

RIN: 2137–AB50

2062. DOT 3AL ALUMINUM CYLINDERS; SAFETY PROBLEMS

Significance: Nonsignificant

Legal Authority: 49 USC 1803; 49 USC 1804; 49 USC 1805; 49 USC 1806; 49 USC 1808

CFR Citation: 49 CFR 178

Legal Deadline: None

Abstract: Certain DOT 3AL cylinders made of aluminum alloy 6351 were discovered developing cracks during service and occasionally leaks developed resulting in loss of contents. This ANPRM is to alert and inform all persons possessing these cylinders of the problems, identify those cylinders at risk, and suggest steps to minimize risks. The ANPRM requests comments concerning ways to resolve the problems.

Timetable:

Action	Date	FR Cite
ANPRM	07/10/87	52 FR 26027
ANPRM Comment Period End	08/10/87	52 FR 26027
NPRM	07/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Analysis: Regulatory Evaluation 07/00/89

Agency Contact: C. Hockman, Department of Transportation, Research and Special Programs Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-4488

RIN: 2137–AB51

2063. ● OPERATION OF EXISTING RURAL AND OFFSHORE GAS PIPELINES AT STRESS LEVELS HIGHER THAN PERMITTED FOR NEW PIPELINES

Significance: Nonsignificant

Legal Authority: 49 USC 1672

CFR Citation: 49 CFR 192

Legal Deadline: None

Abstract: This NPRM will propose to eliminate the "grandfather clause" of the natural gas pipeline safety regulations that permits operation of an existing rural or offshore gas pipeline found to be in satisfactory condition at the highest actual operating pressure to which the segment was subjected during the five years preceding July 1, 1970, or, in the case of an offshore gathering line, July 1, 1976.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Analysis: Regulatory Evaluation 10/00/88

Agency Contact: Doug Chisholm, Chief, Research Unit, Department of Transportation, Research and Special Programs Administration, 400 Seventh St., S.W., Washington, D.C. 20590, 202 366-1649

RIN: 2137–AB52

2064. ● REVISION OF OPERATING REQUIREMENTS FOR RAIL CARRIAGE

Significance: Nonsignificant

Legal Authority: 49 USC 1803 to 1806

CFR Citation: 49 CFR 174

Legal Deadline: None

Abstract: The purpose of the rulemaking is to update and rewrite the regulations contained in 49 CFR Part 174 which govern the transportation of hazardous materials by rail.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Delmer Billings, Chief, Regulations Development Branch, Department of Transportation, Research and Special Programs Administration, 400 Seventh St., S.W., Washington, DC 20590, 202 366-4488

RIN: 2137–AB55

DOT—RSPA — Proposed Rule Stage

2065. ⊕ ETIOLOGIC AGENTS; PROPOSAL TO REMOVE THE 50 MILLILITER EXCEPTION

Significance: Nonsignificant

Legal Authority: 49 USC 1803 to 1806

CFR Citation: 49 CFR 173

Legal Deadline: None

Abstract: This rulemaking will propose to revise the definition of an etiologic agent, and remove the 50-milliliter-per-package exemption for such agents.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Analysis: Regulatory Evaluation 10/00/88

Agency Contact: Ann Boylan, Transportation Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh St., S.W., Washington, DC 20590, 202 366-4488

RIN: 2137-AB58

DEPARTMENT OF TRANSPORTATION (DOT) — Final Rule Stage

Research and Special Programs Administration (RSPA)

2064. + PERFORMANCE-ORIENTED PACKAGING STANDARDS

Significance: Regulatory Program

Legal Authority: 49 USC 1803; 49 USC 1804; 49 USC 1808

CFR Citation: 49 CFR 171; 49 CFR 172; 49 CFR 173; 49 CFR 178; 49 CFR 179; 49 CFR 180

Legal Deadline: None

Abstract: To develop performance-oriented packaging standards and hazardous material classification based on the United Nations Committee of Experts on the Transport of Dangerous Goods. Also includes former non-significant rulemakings entitled "Consolidation of Specifications and Establishment of Performance Standards for Specification Bags" (Docket No. HM-153), "Specifications for and use of Specification 17 Steel Drums" (Docket No. HM-182), and "Organic Peroxide Requirements" (Project 188-72). The rulemaking is significant because a large number of specifications for packaging in the Hazardous Materials Regulations would be affected by this project. To a large extent the complexity and mass of the present Hazardous Materials Regulations are due to the detailed specification-type packaging standards contained in these regulations. To replace these with standards based on the U.N. system would both simplify the present regulations and facilitate international trade.

Timetable:

Action	Date	FR Cite
ANPRM	04/15/82	47 FR 16288
Correction Document and Notice of Meeting	06/17/82	47 FR 26172
Extension of Comment Period to 01/13/83	09/15/82	47 FR 40816
ANPRM Comment Period End	01/13/83	47 FR 40816
NPRM	05/05/87	52 FR 16482
NPRM Comment Period extended to 02/26/88	06/08/87	52 FR 33906
Supplemental NPRM	11/06/87	52 FR 42772
NPRM Comment Period End	02/26/88	52 FR 33906
NPRM Comment Period extended to 05/25/88	04/14/88	53 FR 12442

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Undetermined

Analysis: Regulatory Flexibility Analysis; Regulatory Evaluation 05/05/87 (52 FR 16482)

Additional Information: Docket No. HM-181. A decision on whether to proceed with a final rule will be made following review and evaluation of comments to the docket. Comment period ended 5/25/88.

Agency Contact: E. Mazzullo, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-4488

RIN: 2137-AA01

2067. + COLLECTION OF SERVICE SEGMENT DATA AND CHARTER DATA FROM FOREIGN AIR CARRIERS

Significance: Regulatory Program

Legal Authority: 49 USC 1301; 49 USC 1374; 49 USC 1381; 49 USC 1386; 49 USC 1482

CFR Citation: 14 CFR 217; 14 CFR 241

Legal Deadline: None

Abstract: DOT has proposed a rule that would require submission to DOT of nonstop market data from foreign carriers providing scheduled service between their home countries and the United States. This information is needed to evaluate existing bilateral agreements and reciprocity between U.S. and foreign countries. In addition, international charter data currently collected from carriers would be incorporated with this reporting. This nonstop market data should replace much of the data collected by the Immigration and Naturalization Service (INS) on Form I-92. Although there will be some start-up costs, it is anticipated that over the long run there will be substantial savings for both the industry and the government. See 2137-AB01 for companion rule for U.S. air carriers.

Timetable:

Action	Date	FR Cite
NPRM	07/15/87	52 FR 26498
NPRM Comment Period End	09/14/87	
NPRM Comment Period extended to 10/14/87	09/15/87	52 FR 34889
Final Action	11/00/88	
Final Action Effective	01/00/89	

Small Entities Affected: None

DOT—RSPA — Final Rule Stage

Government Levels Affected: Federal

Sectors Affected: 45 Transportation by Air

Analysis: Regulatory Evaluation 07/15/87 (52 FR 26498)

Agency Contact: Jack Calloway, Chief, Regulations Division, Department of Transportation, Research and Special Programs Administration, Office of Aviation Information Management, DAI-1/Room 4125, 400 Seventh Street, SW, Washington, DC 20590, 202 366-4383

RIN: 2137-AA97

2068. + ALIGNMENT OF AIRLINE UNIFORM SYSTEM OF ACCOUNTS AND REPORTS WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES

Significance: Regulatory Program

Legal Authority: 49 USC 1324; 49 USC 1371; 49 USC 1377

CFR Citation: 14 CFR 241

Legal Deadline: None

Abstract: As part of the continuing effort to align the DOT's aviation accounting rules with generally accepted accounting principles, certain sections of the Uniform System of Accounts and Reports need to be deleted or amended. These changes would provide relief from the present requirements for most air carriers.

Timetable:

Action	Date	FR Cite
NPRM	03/24/88	53 FR 9653
NPRM Comment Period End	05/23/88	
Final Action	12/00/88	
Final Action Effective	01/01/89	

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 45 Transportation by Air

Analysis: Regulatory Evaluation 03/24/88 (53 FR 9653)

Agency Contact: Jack Calloway, Chief, Regulations Division, Department of Transportation, Research and Special Programs Administration, Office of Aviation Information Management, DAI-1/Room 4125, 400 Seventh Street, SW, Washington, DC 20590, 202 366-4383

RIN: 2137-AA00

2069. + COLLECTION OF SERVICE SEGMENT DATA AND CHARTER DATA FROM U.S. AIR CARRIERS

Significance: Regulatory Program

Legal Authority: 49 USC 1324; 49 USC 1371; 49 USC 1377; 49 USC 1387

CFR Citation: 14 CFR 241

Legal Deadline: None

Abstract: Large U.S. air carriers file detailed service segment data in ADP format for scheduled operations, while smaller carriers file a condensed version on a hardcopy form. Charter data is filed on another form. The Department has issued a rulemaking proposing to incorporate all three systems onto one automated data system by standardizing the reporting between scheduled and charter operations. Much of the data currently collected is proposed for elimination. Also, much of the data reported on the hardcopy Form 41 T-Schedules is proposed for elimination, since data for these schedules can be extracted from the automated system. Further, the foreign air carrier traffic and market reporting (2137-AA97) will be incorporated into this automated system providing a uniform traffic and market system for the Department.

Timetable:

Action	Date	FR Cite
NPRM	07/15/87	52 FR 26498
NPRM Comment Period extended to 10/14/87	09/15/87	52 FR 34889
Final Action Effective	01/01/88	
Final Action	11/00/88	

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 45 Transportation by Air

Analysis: Regulatory Evaluation 07/15/87 (52 FR 26498)

Agency Contact: Jack Calloway, Chief, Regulations Division, Department of Transportation, Research and Special Programs Administration, Office of Aviation Information Management, DAI-1/Room 4125, 400 Seventh Street, SW, Washington, DC 20590, 202 366-4383

RIN: 2137-AA01

2070. ⊕ + CONTROL OF DRUG USE IN NATURAL GAS, LIQUEFIED NATURAL GAS, AND HAZARDOUS-LIQUID PIPELINE OPERATIONS

Significance: Regulatory Program

Legal Authority: 49 USC 1672; 49 USC 2002

CFR Citation: 49 CFR 192; 49 CFR 193; 49 CFR 195

Legal Deadline: None

Abstract: The NPRM proposes to require operators of pipeline facilities, other than master meter systems, used for the transportation of natural gas or hazardous liquids, and operators who produce and store liquefied natural gas, to have a drug program for individuals who perform specific sensitive safety and security related functions.

Timetable:

Action	Date	FR Cite
NPRM	07/06/88	53 FR 25892
Notice of Public Hearing	07/14/88	53 FR 26815
Notice of Public Hearing	08/24/88	53 FR 32263
NPRM Comment Period End	09/06/88	53 FR 25892

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Local, State, Federal

Analysis: Regulatory Evaluation 07/06/88 (53 FR 25892)

Additional Information: Docket No. PS-102

Agency Contact: C. DeLeon, Assistant Director for Regulation, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street, S.W., Washington, DC 20590, 202 366-1649

RIN: 2137-AB54

2071. + REQUIREMENTS FOR CARGO TANKS

Significance: Agency Priority

Legal Authority: 49 USC 1803 to 1808

CFR Citation: 49 CFR 173; 49 CFR 177; 49 CFR 178

Legal Deadline: None

DOT—RSPA — Final Rule Stage

Abstract: The rule would modify cargo tank specifications in section 178.337-178.343 to improve clarity, quality control and safety and to provide for the manufacture of vacuum-loaded cargo tanks. It would also provide inspection, test, maintenance, repair, and requalification standards for cargo tanks. This rulemaking is being performed in conjunction with the FHWA. This rulemaking is considered significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
ANPRM	06/28/82	47 FR 27876
NPRM	09/17/85	50 FR 37767
Corrections and Clarifications	12/05/85	50 FR 49866
NPRM Comment Period End	01/22/86	
Final Action	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Analysis: Regulatory Evaluation 09/17/85 (50 FR 37767)

Additional Information: Docket Nos. HM-183, 183A.

Agency Contact: J. O'Steen/ J. Pena, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-4545

RIN: 2137-AA42

2072. + DATA COLLECTION AND REPORTING: HAZARDOUS MATERIALS INCIDENT REPORTS

Significance: Agency Priority

Legal Authority: 49 USC 1803; 49 USC 1804; 49 USC 1809

CFR Citation: 49 CFR 171

Legal Deadline: None

Abstract: The current regulations require reports of hazardous material incidents. The objective of this review is to determine if the current data requirements can be modified to reduce the burden on industry but still result in the collection of the information needed for the hazardous materials safety program. Although safety programs, such as the one covered by these regulations, require data in order to function properly, it is possible that the data collection can be made less burdensome. This rulemaking is significant because of substantial public interest due to safety implications.

Timetable:

Action	Date	FR Cite
ANPRM	03/16/84	49 FR 10042
NPRM	03/27/87	52 FR 9996
NPRM Comment Period End	07/29/87	
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Analysis: Regulatory Evaluation 03/27/87 (52 FR 9996)

Additional Information: Docket HM-36B.

Agency Contact: M. Morris, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-4488

RIN: 2137-AA51

2073. + COLLECTION OF FINANCIAL INFORMATION FROM THE COMMUTER AIR CARRIER INDUSTRY

Significance: Agency Priority

Legal Authority: 49 USC 1324; 49 USC 1371; 49 USC 1374; 49 USC 1386

CFR Citation: 14 CFR 298

Legal Deadline: None

Abstract: DOT is proposing to collect basic financial information from the commuter carriers providing scheduled passenger service. Data would be used for fitness reviews; various economic analyses such as trust-fund revenue generation; airport and airways development; econometric modeling and regulatory cost-benefit analysis to aid aviation policy and regulatory decisions; and FAA's allocation planning for its inspection resources. This rulemaking is considered significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	04/19/88	53 FR 12774
NPRM Comment Period End	06/20/88	53 FR 12774
Final Action	10/00/88	
Final Action Effective	01/01/89	

Small Entities Affected: None

Government Levels Affected: Federal

Analysis: Regulatory Evaluation 04/19/88 (53 FR 12774)

Agency Contact: Jack Calloway, Chief, Regulations Division, Department of Transportation, Research and Special Programs Administration, Office of Aviation Information Management, DAI-1/Room 4125, 400 Seventh Street, SW, Washington, DC 20590, 202 366-4383

RIN: 2137-AA06

2074. + NATURAL GAS AND HAZARDOUS LIQUID PIPELINE DAMAGE PREVENTION PROGRAM

Significance: Agency Priority

Legal Authority: 49 USC 2002(e)

CFR Citation: 49 CFR 196

Legal Deadline: None

Abstract: Each year a large percentage of hazardous liquid pipeline accidents are caused by excavation damage. Experience has shown that excavation accident rates diminish when operators participate in "one-call" damage prevention programs. The Federal gas pipeline safety regulations now require that gas operators participate in such programs. This action would apply a similar requirement to operators of hazardous liquid pipelines. This is a significant action because of the widespread interest in the use of "one-call" programs to prevent damage to buried pipelines.

Timetable:

Action	Date	FR Cite
NPRM	06/30/88	53 FR 24747
NPRM Comment Period End	08/29/88	53 FR 24747

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: State, Federal

Analysis: Regulatory Evaluation 06/30/88 (53 FR 24747)

Agency Contact: A. Garnett, Department of Transportation, Research and Special Programs Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-2896

RIN: 2137-AE47

DOT—RSPA — Final Rule Stage

2075. USE OF INTERESTED INSPECTORS FOR CYLINDER INSPECTIONS

Significance: Nonsignificant

Legal Authority: 49 USC 1803 to 1806

CFR Citation: 49 CFR 178

Legal Deadline: None

Abstract: Proposal would result in ending of permitting "interested" inspectors to perform inspections and testing of domestically manufactured low pressure gas cylinders.

Timetable:

Action	Date	FR Cite
NPRM	03/17/76	41 FR 1179

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: Docket No. HM-74A

Agency Contact: H. Mitchell, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-4488

RIN: 2137-AA06

2076. OXIDIZING MATERIALS DEFINITION, CRITERIA AND PROPOSED REGULATIONS

Significance: Nonsignificant

Legal Authority: 49 USC 1803 to 1806

CFR Citation: 49 CFR 173

Legal Deadline: None

Abstract: Development of new standards for classifying a material as an oxidizing material.This proposal is being incorporated into RIN 2137-AA01, Docket HM-181.

Timetable:

Action	Date	FR Cite
ANPRM	06/15/81	46 FR 31294
Consolidation Notice	10/00/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: Formerly Docket HM-179.

Agency Contact: M. Morris/C. Schulte, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-4488

RIN: 2137-AA11

2077. ODORIZATION OF LP GAS

Significance: Nonsignificant

Legal Authority: 49 USC 1803 to 1806

CFR Citation: 49 CFR 173

Legal Deadline: None

Abstract: NPRM solicited comments on the benefit of requiring LP gas to be odorized. Odorization would enhance its identification during transportation in commerce. Comments to the NPRM indicated that further study should be made before proceeding to a final rule.

Timetable:

Action	Date	FR Cite
NPRM	09/27/84	49 FR 38164

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 09/27/84 (49 FR 38164)

Additional Information: Docket No. HM-126E.

Agency Contact: H. Mitchell, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-4488

RIN: 2137-AA25

2078. MODIFICATIONS TO DOT SPECIFICATION 21PF-1 OVERPACKS

Significance: Nonsignificant

Legal Authority: 49 USC 176; 49 USC 1803; 49 USC 1804; 49 USC 1808

CFR Citation: 49 CFR 178

Legal Deadline: None

Abstract: This rulemaking responds to a Department of Energy request that DOT improve the water resistance of overpacks used in the transportation of enriched uranium hexafluoride.

Timetable:

Action	Date	FR Cite
NPRM	08/16/84	49 FR 32774
NPRM Comment Period End	09/12/84	
Final Action	11/00/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Analysis: Regulatory Evaluation 08/16/84 (49 FR 32774)

Additional Information: Docket No. HM-190.

Agency Contact: A.W. Carriker/J.A. Gale, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-4545

RIN: 2137-AA71

2079. LIMITATION ABOARD AIRCRAFT

Significance: Nonsignificant

Legal Authority: 49 USC 1803; 49 USC 1804; 49 USC 1807; 49 USC 1808

CFR Citation: 49 CFR 175

Legal Deadline: None

Abstract: This action proposes removal of the fifty-pound limit on the quantity that may be stowed in an inaccessible cargo location on passenger-carrying aircraft.

Timetable:

Action	Date	FR Cite
ANPRM	04/06/84	49 FR 13717
ANPRM Comment Period End	09/01/84	49 FR 13717
NPRM	02/13/85	50 FR 6013
NPRM Comment Period End	05/30/85	50 FR 6013

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Undetermined

Analysis: Regulatory Evaluation 02/13/85 (50 FR 6013)

Additional Information: Further action to be determined based on NPRM comments.

Agency Contact: Ann Boylan, Transportation Reg. Specialist, Department of Transportation, Research and Special Programs Administration, 400 7th Street, SW, Washington, DC 20590, 202 366-4488

RIN: 2137-AA86

2080. EMERGENCY RESPONSE COMMUNICATION STANDARDS

Significance: Nonsignificant

DOT—RSPA — Final Rule Stage

Legal Authority: 49 USC 1803; 49 USC 1804; 49 USC 1805; 49 USC 1808

CFR Citation: 49 CFR 172

Legal Deadline: None

Abstract: This proposal solicits comments on the potential benefits and consequences of requiring additional emergency response information on shipping papers and in vehicles when transporting hazardous materials.

Timetable:

Action	Date	FR Cite
ANPRM	03/16/84	49 FR 10048
Public Hearing held, Washington, D.C.	05/02/84	49 FR 10048
ANPRM Comment Period End	06/28/84	49 FR 10048
NPRM	06/30/87	52 FR 31466
NPRM Comment Period extended to 12/22/87	09/04/87	52 FR 33611
NPRM Comment Period End	09/21/87	52 FR 31466
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: Undetermined

Analysis: Regulatory Evaluation 06/30/87 (52 FR 31466)

Additional Information: HM-126C

Agency Contact: Helen L. Engrum, Department of Transportation, Research and Special Programs Administration, 400 7th Street, SW, Washington, DC 20590, 202 366-4488

RIN: 2137–AA88

2061. HAZARDOUS MATERIALS: URANIUM HEXAFLUORIDE

Significance: Nonsignificant

Legal Authority: 49 USC 1803; 49 USC 1804; 49 USC 1805; 49 USC 1808; 49 USC 1817; 49 USC 1808

CFR Citation: 49 CFR 171.7; 49 CFR 173.20

Legal Deadline: None

Abstract: RSPA proposes to amend the Hazardous Materials Regulations to permit the continued use of packagings that do not meet the requirements of the American National Standards Institute (ANSI) Standard N 14.1 - 1987, DOT Class 106 A multi-unit tank car tanks, and certain packagings not manufactured in accordance with ANSI N 14.1-87. These latter packagings will be required to be manufactured in accordance with an earlier edition of ANSI 14.1, or be manufactured and stamped in accordance with Section VIII, Division 1 of the ASME Code. RSPA has determined that these packagings, which have been used safely in the past, should be permitted to continue in use.

Timetable:

Action	Date	FR Cite
NPRM	04/11/86	51 FR 12529
NPRM Comment Period End	07/01/86	51 FR 12529
Interim Final Rule	11/18/86	51 FR 41631
Revision to Final Rule	12/24/86	51 FR 46674
Emergency Final Rule	03/12/87	52 FR 7581
NPRM New	07/06/87	52 FR 25342
Revision to Final Rule	07/06/87	52 FR 25340
Amended NPRM	04/06/88	53 FR 11320
Comment period ends	05/06/88	
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Analysis: Regulatory Evaluation 04/11/86 (51 FR 12529)

Additional Information: Docket No. HM-126V.

Agency Contact: M. Wangler, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-4545

RIN: 2137–AD10

2062. EXCEPTION FROM PRESSURE TESTING NON-WELDED TIE-IN JOINTS

Significance: Nonsignificant

Legal Authority: 49 USC 1672; 49 USC 1804

CFR Citation: 49 CFR 192.503(d)

Legal Deadline: None

Abstract: The current exception from pressure testing welded tie-in joints would be expanded to include all types of tie-in joints. This change would be consistent with the intent of the original rule and would have minimal cost impact.

Timetable:

Action	Date	FR Cite
NPRM	01/15/88	53 FR 1045
NPRM Comment Period End	02/29/88	53 FR 1045
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: State, Federal

Analysis: Regulatory Evaluation 01/15/88 (53 FR 1045)

Additional Information: Docket No. PS-90.

Agency Contact: B. Liebler, Department of Transportation, Research and Special Programs Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-4566

RIN: 2137–AB19

2063. CONFIRMATION OR REVISION OF MAXIMUM ALLOWABLE OPERATING PRESSURE; ALTERNATE METHOD

Significance: Nonsignificant

Legal Authority: 49 USC 1672; 49 USC 1804

CFR Citation: 49 CFR 192.611(a)

Legal Deadline: None

Abstract: This action proposes an alternate method for confirmation or revision of the maximum allowable operating pressure of pipelines previously tested to less than 90 percent of specified minimum yield strength. The alternate method would allow operators to establish a maximum allowable operating pressure in proportion to the level permitted for pipelines tested to 90 percent of specified minimum yield strength, or more, without retesting the pipeline. Considerable cost savings are expected.

Timetable:

Action	Date	FR Cite
NPRM	01/15/88	53 FR 1043
NPRM Comment Period End	03/15/88	53 FR 1043
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: State, Federal

Analysis: Regulatory Evaluation 01/15/88 (53 FR 1043)

DOT—RSPA — Final Rule Stage

Additional Information: Docket No. PS-87.

Agency Contact: B. Liebler, Department of Transportation, Research and Special Programs Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-4566

RIN: 2137–AB30

2064. REAR BUMPERS ON CARGO TANK TRUCKS

Significance: Nonsignificant

Legal Authority: 49 USC 1803 to 1808

CFR Citation: 49 CFR 171

Legal Deadline: None

Abstract: Proposes to provide a period of 36 months to allow operators of cargo tank trucks operated in combination with cargo tank full trailers to modify their front units by adding the required rear bumper.

This rulemaking is being performed in conjunction with the FHWA.

Timetable:

Action	Date	FR Cite
NPRM	08/08/86	51 FR 28605
NPRM Comment Period End	09/22/86	
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Analysis: Regulatory Evaluation 08/08/86 (51 FR 28605)

Additional Information: Docket No. HM-181B.

Agency Contact: James O'Steen/D. Billings, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-4545

RIN: 2137–AB54

2065. STANDARDS FOR CONSTRUCTION OF FIREWORKS AND NOVELTIES; APPROVAL FOR TRANSPORTATION

Significance: Nonsignificant

Legal Authority: 49 USC 1802 to 1808

CFR Citation: 49 CFR 171; 49 CFR 173

Legal Deadline: None

Abstract: Proposes to eliminate a requirement for examination of fireworks prior to their approval for transportation by the Director, Office of Hazardous Materials Transportation.

Timetable:

Action	Date	FR Cite
NPRM	02/12/88	53 FR 4348
NPRM Comment Period End	04/04/88	
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Analysis: Regulatory Evaluation 02/12/88 (53 FR 4348)

Additional Information: Formerly entitled Standards for Construction of Fireworks and Approval for Transportation.

Agency Contact: Hattie L. Mitchell, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-4315

RIN: 2137–AB35

2066. SHIPPERS: USE OF TANK-CAR TANKS WITH LOCALIZED THIN SPOTS

Significance: Nonsignificant

Legal Authority: 49 USC 1803; 49 USC 1804; 49 USC 1805; 49 USC 1808

CFR Citation: 49 CFR 173

Legal Deadline: None

Abstract: This notice proposes to allow the use of railroad tank-car tanks with shell thicknesses in localized areas of less than the minimum currently allowed. The rule would require that tank shells be measured under specific conditions to ensure that the results of repairs do not further decrease shell thickness or result in a reduction in the level of safety. Under the existing rule, owners are required to bring tanks into conformance or remove them from hazardous materials service. This proposal would allow the tank cars to conform to a less stringent standard thereby avoiding the substantial costs associated with complete restoration or purchase of a new tank car, while still ensuring an adequate level of safety.

Timetable:

Action	Date	FR Cite
NPRM	12/08/87	52 FR 46511
NPRM Comment Period End	02/11/88	52 FR 46511
SNPRM Comment Period Extended to 05/13/88	02/18/88	53 FR 4662
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Analysis: Regulatory Evaluation 12/08/87 (52 FR 46511)

Agency Contact: M. Morris/F. Oleszyk(FRA), Department of Transportation, Research and Special Programs Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-4488

RIN: 2137–AB30

DEPARTMENT OF TRANSPORTATION (DOT) — Completed Actions

Research and Special Programs Administration (RSPA)

2067. + CONFIDENTIALITY OF PARTS 241 AND 298 AIRLINE REPORTS

Significance: Regulatory Program

Legal Authority: 49 USC 1324; 49 USC 1373; 49 USC 1371; 49 USC 1374; 49 USC 1386

CFR Citation: 14 CFR 241; 14 CFR 298

Legal Deadline: None

Abstract: This rule would have considered whether some components of individual carrier's reports submitted under Parts 241 and 298 should be kept confidential and for what length of time. This rulemaking was terminated. Confidentiality issues will be addressed as appropriate in individual rulemakings.

Timetable:

Action	Date	FR Cite
Action Terminated	05/20/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Jack Calloway, Chief, Regulations Division, Department of Transportation, Research and Special Programs Administration, Office of Aviation Information Management, DAI-1/Room 4125, 400 Seventh Street, SW, Washington, DC 20590, 202 366-4383

RIN: 2137–AB05

2066. + REPORTING UNSAFE CONDITIONS ON GAS AND HAZARDOUS LIQUID PIPELINES AND AT LIQUEFIED NATURAL GAS FACILITIES

Significance: Regulatory Program

Legal Authority: 49 USC 1672(a); 49 USC 2002(a)

CFR Citation: 49 CFR 191; 49 CFR 192; 49 CFR 193; 49 CFR 195

Legal Deadline: Final, Statutory, October 22, 1987.

Abstract: Operators are required to report within five days of discovery any condition that could be an imminent danger or affect pipeline operational safety. The report will enable State and Federal agencies to investigate promptly.

Timetable:

Action	Date	FR Cite
NPRM	09/25/87	52 FR 36068
NPRM Comment Period End	11/09/87	52 FR 36068
Final Action	07/01/88	53 FR 24942
Correction Notice to Final Rule	07/13/88	53 FR 26560
Correction to Final Rule	08/08/88	53 FR 29800
Final Action Effective	09/29/88	

Small Entities Affected: None

Government Levels Affected: State, Federal

Analysis: Regulatory Evaluation 09/25/87 (52 FR 36068)

Additional Information: Docket PS-98

Agency Contact: L. Furrow, Department of Transportation, Research and Special Programs Administration, 400 Seventh St., SW, Washington, DC 20590, 202 366-2392

RIN: 2137–AB03

2086. MOLTEN SULFUR

Significance: Nonsignificant

Legal Authority: 49 USC 1803 to 1808

CFR Citation: 49 CFR 172; 49 CFR 173; 49 CFR 174; 49 CFR 177

Legal Deadline: None

Abstract: RSPA amended the Hazardous Materials Regulations (HMR) to regulate molten sulfur as an ORM-C material. This material is now subject to the hazard communication, general packaging, and incident reporting requirements contained in the HMR.

Timetable:

Action	Date	FR Cite
NPRM	11/21/86	51 FR 42114
NPRM Comment Period End	02/19/87	51 FR 42114
Final Action	05/13/88	53 FR 17158
Final Action Effective	01/02/89	53 FR 17158

Small Entities Affected: None

Government Levels Affected: Undetermined

Analysis: Regulatory Evaluation 11/21/86 (51 FR 42114)

Additional Information: Docket No. HM-198. While these amendments are effective on January 2, 1989, compliance is authorized as of June 13, 1988.

Agency Contact: Helen L. Engrum, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-4488

RIN: 2137–AB31

2090. STATE DESIGNATIONS OF ALTERNATIVE ROUTES FOR RADIOACTIVE MATERIALS TRANSPORTATION

Significance: Nonsignificant

Legal Authority: 49 USC 1804

CFR Citation: 49 CFR 177

Legal Deadline: None

Abstract: Final rule amends the Hazardous Materials Regulations to require that when a State routing agency designates an alternative route for the transportation of highway route controlled quantities of radioactive materials, the State must give written notice of such designations to RSPA. The creation of a repository for these designations will provide shippers, carriers, enforcement and emergency-response personnel, State agencies, local governments, and RSPA with definitive information concerning those alternative routes.

Timetable:

Action	Date	FR Cite
NPRM	07/16/87	52 FR 26928
NPRM Comment Period End	09/31/87	52 FR 26928
Final Action	05/12/88	53 FR 16990
Final Action Effective	09/09/88	53 FR 16990

Small Entities Affected: None

Government Levels Affected: State, Federal

Analysis: Regulatory Evaluation 07/16/87 (52 FR 26928)

Additional Information: Docket No. HM-184A.

Agency Contact: John Gale, Transportation Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-4488

RIN: 2137–AB32

2091. NOTIFICATION TO RSPA OF ROUTE PLANS FOR RADIOACTIVE MATERIALS TRANSPORTATION

Significance: Nonsignificant

Legal Authority: 49 USC 1804

CFR Citation: 49 CFR 173; 49 CFR 177

Legal Deadline: None

Abstract: Final rule requires carriers, rather than shippers, to give written notice to RSPA of route plans and other information relating to transportation of highway route controlled quantities of radioactive materials.

Timetable:

Action	Date	FR Cite
NPRM	07/16/87	52 FR 26932
NPRM Comment Period End	08/31/87	52 FR 26932
Final Action	05/12/88	53 FR 16991
Final Action Effective	07/11/88	53 FR 16991

Small Entities Affected: None

Government Levels Affected: Federal

Analysis: Regulatory Evaluation 07/16/87 (52 FR 26932)

Additional Information: Docket No. HM-184B.

Agency Contact: John Gale, Transportation Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-4488

RIN: 2137–AB33

DEPARTMENT OF TRANSPORTATION (DOT)

Maritime Administration (MarAd) Prerule Stage

2082. + PARTICIPATION BY VESSELS BUILT WITH CONSTRUCTION-DIFFERENTIAL SUBSIDY IN THE CARRIAGE OF OIL FROM ALASKA IN THE DOMESTIC TRADE

Significance: Agency Priority

Legal Authority: 46 USC 1114(b); 46 USC 1156

CFR Citation: 46 CFR 250

Legal Deadline: None

Abstract: This regulation now establishes conditions for MARAD approval of tanker vessels over 100,000 dwt built with CDS, for participation in the carriage of Alaskan oil from Alaska to the Panama Canal. MARAD is reassessing the need for this regulation in light of the experience in administering its provisions, its policy of allowing total repayment of CDS (46 CFR Part 276) and litigation challenging these policies. This rulemaking is significant due to substantial public interest.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Frances Olsen, Chief, Division of Trade Studies, Department of Transportation, Maritime Administration, 400 Seventh Street, SW, Room 8117, Washington, DC 20590, 202 366-2282

RIN: 2133–AA62

2083. ● + PROCEDURES GOVERNING THE EVALUATION OF BIDS FOR THE CARRIAGE OF PREFERRED CARGOES ON SUBSIDIZED VESSELS

Significance: Agency Priority

Legal Authority: 46 USC 1114(b)

CFR Citation: 46 CFR 381.8

Legal Deadline: None

Abstract: This action seeks to elicit public comment to assist in evaluating requests received from an operator and another Department that MARAD expand the scope of its procedures concerning evaluation of bids for the carriage of preference cargoes to apply to all types of preference cargo, specifically, including civilian purchased preference and military cargoes. Existing procedures apply only to bulk cargoes. This proceeding is considered significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
ANPRM	10/03/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Arthur S. Sforza, Director, Office of Ship Operating Assistance, Department of Transportation, Maritime Administration, 400 Seventh St. S.W. Washington, D.C. 20590, 202 366-2323

RIN: 2133–AA77

2084. REGULATIONS AND MINIMUM STANDARDS FOR STATE, TERRITORIAL, OR REGIONAL MARITIME ACADEMIES AND COLLEGES

Significance: Nonsignificant

Legal Authority: 46 USC 1295

CFR Citation: 46 CFR 310

Legal Deadline: None

Abstract: The Maritime Administration provides support to six State maritime schools for maritime education. The Federal support is outlined in agreements that have been executed between MARAD and the schools. The existing regulations will be revised to reflect changes in these agreements due to modifications in federal support.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: State, Federal

Sectors Affected: 441 Deep Sea Foreign Transportation of Freight; 442 Deep Sea Domestic Transportation of Freight; 443 Freight Transportation on the Great Lakes-St. Lawrence Seaway; 822 Colleges, Universities, Professional Schools, and Junior Colleges

Agency Contact: Arthur W. Friedberg, Director, Office of Maritime Labor & Training, Department of Transportation, Maritime Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-5721

RIN: 2133–AA57

2085. ● APPROVAL OF VESSEL CHARTERS TO NONCITIZENS

Significance: Nonsignificant

Legal Authority: 46 USC App 808; 46 USC App 839; 46 USC App 1114(b)

CFR Citation: 46 CFR 221.7

Legal Deadline: None

Abstract: MARAD has received a petition for rulemaking from an association representing oil-drilling contractors requesting that MARAD expand the scope of its general approval of charters to noncitizens (without obtaining prior MARAD approval) to include (1) intra-company charters of mobile offshore drilling units (MODUs) regardless of their duration; and (2) all bareboat charters and subcharters of MODUs to facilitate their employment in foreign business activities. MARAD will consider the need for such approvals as well as for other types of vessels.

DOT—MarAd — Prerule Stage

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Sectors Affected: 442 Deep Sea Domestic Transportation of Freight; 443 Freight Transportation on the Great Lakes-St. Lawrence Seaway; 448 Water Transportation of Passengers

Agency Contact: Jessie Fernandes, Vessel Transfer & Disposal Officer, Department of Transportation, Maritime Administration, 400 Seventh St., SW., Room 2112, Washington, DC 20590, 202 366-5111

RIN: 2133–AA73

DEPARTMENT OF TRANSPORTATION (DOT)

Proposed Rule Stage

Maritime Administration (MarAd)

2095. + OPERATING-DIFFERENTIAL SUBSIDY FOR BULK CARGO VESSELS ENGAGED IN WORLDWIDE SERVICES; EXCLUSION OF COMMERCIAL CARGOES RESERVED FOR U.S.-FLAG CARRIERS

Significance: Regulatory Program

Legal Authority: 46 USC 1114, (Appendix)

CFR Citation: 46 CFR 282

Legal Deadline: None

Abstract: The Maritime Administration (MARAD) has entered into operating-differential subsidy contracts (ODSA) with operators of bulk cargo vessels that provide for the subsidized carriage of commercial cargo in the oceanborne foreign commerce of the United States and between foreign ports. These ODSAs specifically exclude the carriage of statutory-preference cargoes, but are silent about the cargoes that, while not preference cargoes according to a district court decision that was affirmed by the Court of Appeals for the District of Columbia, are reserved to U.S.-flag carriers by agreement of a foreign country that is a recipient of United States foreign assistance, in the form of cash transfers or grants. MARAD intends to propose a rulemaking that states the policy of not paying ODS on these cargoes that are reserved to U.S.-flag vessels at premium rates and are not subject to foreign competition, based on the conclusion that these are not "commercial" cargoes within the contemplation of the ODSA provisions.

Timetable:

Action	Date	FR Cite
NPRM	10/03/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Edmond Fitzgerald, Director, Off. of Trade Analysis & Insurance, Department of Transportation, Maritime Administration, DOT/MARAD, 400 Seventh St., SW, Washington, DC 20590, 202 366-5468

RIN: 2133–AA60

2097. + CARGO PREFERENCE — IMPLEMENTATION OF P.L. 99-198

Significance: Agency Priority

Legal Authority: 46 USC 1241

CFR Citation: 46 CFR 381

Legal Deadline: None

Abstract: These amendments to the existing cargo-preference regulations would implement S1142 of P.L. 98-198, the Food Security Act of 1985, that clarifies the applicability of cargo-preference requirements to the shipment of U.S. agricultural products. Action is pending disposition of litigation in Fed. Dist. Ct. case (ED Wisc) involving allocation of Preference Cargoes to port ranges. This rulemaking is considered significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	10/15/86	

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 441 Deep Sea Foreign Transportation of Freight

Analysis: Draft Evaluation 10/15/86

Agency Contact: Lewis C. Paine, Director, Office of Market Development, Department of Transportation, Maritime Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-5617

RIN: 2133–AA55

2098. PROCEDURES FOR HEARINGS ON ODS APPLICATIONS FOR ADDITIONAL SERVICE

Significance: Nonsignificant

Legal Authority: 46 USC 1114(b)

CFR Citation: 46 CFR 206 (New)

Legal Deadline: None

Abstract: Regulations would establish procedures for hearings by the Maritime Subsidy Board on applications by subsidized operators to provide subsidized service in addition to that allowed by their ODS agreements. Hearings are required by section (605c), Merchant Marine Act 1936, as amended (46 App USC 1175(c)). This rulemaking will be more limited in scope than what was to be developed in previous NPRM – "Rules Of Practice and Procedures For Hearing In ODS Applications."

Timetable:

Action	Date	FR Cite
NPRM	08/25/78	44 FR 37003
NPRM Comment Period End	09/24/78	
SNPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Sectors Affected: 441 Deep Sea Foreign Transportation of Freight; 443 Freight Transportation on the Great Lakes-St. Lawrence Seaway

Agency Contact: Edmond J. Fitzgerald, Director, Office of Trade Analysis and Insurance, Department of Transportation, Maritime Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-2400

RIN: 2133–AA20

2099. REQUIREMENTS FOR CONDUCTING VESSEL SUBSIDY CONDITION SURVEYS AND FOR ACCOMPLISHING SUBSIDIZED VESSEL MAINTENANCE AND REPAIRS

Significance: Nonsignificant

Legal Authority: 46 USC 1114(b); 46 USC 1173

DOT—MarAd — Proposed Rule Stage

CFR Citation: 46 CFR 272

Legal Deadline: None

Abstract: MARAD is considering a proposal to amend its regulations concerning the requests for conducting condition surveys of subsidized vessels and accomplishing subsidized maintenance and repairs, in order to conform the regulations to reflect existing procedures of the agency and to advise the public of MARAD organizational changes.

Timetable:

Action	Date	FR Cite
NPRM	10/03/88	

Small Entities Affected: None

Government Levels Affected: None

Sectors Affected: 441 Deep Sea Foreign Transportation of Freight

Agency Contact: John J. Davis, Chief, Div. of Ship Management, Department of Transportation, Maritime Administration, DOT/MARAD, 400 Seventh St., SW, Washington, DC 20590, 202 366-5776

RIN: 2133–AA84

2100. CAPITAL CONSTRUCTION FUND – FEDERAL TAX AMENDMENTS

Significance: Nonsignificant

Legal Authority: 46 USC 1114(b)

CFR Citation: 46 CFR 390.371

Legal Deadline: None

Abstract: The Maritime Administration is amending its regulations concerning the Capital Construction Fund (CCF) to give effect to amendments in the Tax Reform Act of 1986 (P.L. 99-514) relative to the operation of a CCF.

Timetable:

Action	Date	FR Cite
NPRM	10/31/88	

Small Entities Affected: None

Government Levels Affected: None

Sectors Affected: 441 Deep Sea Foreign Transportation of Freight; 449 Services Incidental to Water Transportation; 443 Freight Transportation on the Great Lakes-St. Lawrence Seaway

Agency Contact: Joan E. McKeever, Chief, Div. of Capital Assets Management, Department of Transportation, Maritime Administration, DOT/MARAD, 400 Seventh St., SW, Washington, DC 20590, 202 366-1905

RIN: 2133–AA85

2101. CARGO PREFERENCE — U.S.-FLAG VESSELS; DEPARTMENT OF DEFENSE SPONSORED AND GENERATED OCEANBORNE CARGOES

Significance: Nonsignificant

Legal Authority: 46 USC 1241(b)

CFR Citation: 46 CFR 381

Legal Deadline: None

Abstract: MARAD is formalizing procedures that have been adopted by one or more agencies within the Department of Defense (DOD) to accomplish compliance with two cargo preference statutes that require that minimum specified percentages of oceanborne cargoes sponsored and generated by DOD be carried on privately owned U.S.-flag commercial vessels, and is making each of these procedures applicable to all DOD agencies, where appropriate. Most of these procedures are now contained in internal DOD documents.

Timetable:

Action	Date	FR Cite
NPRM	10/03/88	

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 441 Deep Sea Foreign Transportation of Freight; 443 Freight Transportation on the Great Lakes-St. Lawrence Seaway; 473 Arrangement of Transportation of Freight and Cargo; 971 National Security

Agency Contact: S. Thomas Romeo, Chief, Division of National Cargo, Department of Transportation, Maritime Administration, 400 Seventh Street SW (MAR-820), Room 7209, Washington, DC 20590, 202 366-4610

RIN: 2133–AA06

DEPARTMENT OF TRANSPORTATION (DOT)

Final Rule Stage

Maritime Administration (MarAd)

2102. + CARGO PREFERENCE, U.S.-FLAG VESSELS; DETERMINATION OF FAIR AND REASONABLE RATES FOR BULK VESSELS

Significance: Regulatory Program

Legal Authority: 46 USC 1241(b); 46 USC 1114(b)

CFR Citation: 46 CFR 382, (New)

Legal Deadline: None

Abstract: This regulation would require provision of rate and cost data to MARAD so it can determine fair and reasonable rates for carriage of preference cargo in bulk vessels at the request of concerned Federal agencies. MARAD would calculate guideline fair and reasonable rates using a methodology which would base those rates on a vessel's actual or constructed costs as determined from data submitted by the operator. It would establish requirements for submission of data on which the methodology would be based. This rulemaking is significant because it concerns a matter on which there is substantial public interest. It would clarify the meaning of a statutory term.

Timetable:

Action	Date	FR Cite
NPRM	08/08/85	50 FR 31735
NPRM Comment Period End	10/07/85	
SNPRM Supplemental	12/17/86	51 FR 45135
SNPRM Comments due by 8/12/88	06/28/88	53 FR 24324
Notice of Public Hearing	08/22/88	53 FR 31870
Final Action	10/03/88	

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 441 Deep Sea Foreign Transportation of Freight

Analysis: Supplemental Draft Evaluation 12/17/86 (51 FR 45135)

Additional Information: This rulemaking has split from an earlier rulemaking: Cargo Preference - U.S. Flag Vessels - Determination of Fair

DOT—MarAd — Final Rule Stage

and Reasonable Rates for Liners (RIN 2133-AA02). Cargo preference regulation was last revised in 1977 (46 CFR 381).

Agency Contact: Arthur B. Sforza, Director, Office of Ship Operating Assistance, Department of Transportation, Maritime Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-2323

RIN: 2133-AA43

2103. SUSPENSION OF ODS AGREEMENTS FOR ALL OR PORTION OF THE VESSELS INCLUDED THEREIN

Significance: Nonsignificant

Legal Authority: 46 USC 1184; 46 USC 1114(b); PL 97-35

CFR Citation: 46 CFR 295, (New)

Legal Deadline: None

Abstract: These regulations would implement Sec. 1803 of the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35), which adds a new Sec. 614 to the Merchant Marine Act, 1936 (46 App. U.S.C. 1184).

Timetable:

Action	Date	FR Cite
NPRM	08/18/83	48 FR 37449
To Be Withdrawn	10/11/88	

Small Entities Affected: None

Government Levels Affected: None

Sectors Affected: 441 Deep Sea Foreign Transportation of Freight

Additional Information: NPRM being withdrawn because the Maritime Subsidy Board final Opinion and Order in Docket S-764, that does not require CDS repayment for bulk vessels carrying preference cargoes, is a more attractive alternative for operators than ODS suspension that requires CDS repayment. Also, operator of only liner vessels to make election is in bankruptcy.

Agency Contact: Raymond Barberesi, Department of Transportation, Maritime Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-2258

RIN: 2133-AA17

2104. MARINE PROTECTION AND INDEMNITY INSURANCE INSTRUCTIONS UNDER GENERAL AGENCY AND BERTH AGENCY AGREEMENTS

Significance: Nonsignificant

Legal Authority: 46 USC 1114(b)

CFR Citation: 46 CFR 326

Legal Deadline: None

Abstract: These amendments would reflect existing Maritime Administration (MARAD) practices, office names and addresses concerning the handling of marine protection insurance (P&I) claims by Agents under Agreements with the United States, acting by and through the Director, National Shipping Authority in MARAD, with respect to vessels under MARAD control in the National Defense Reserve Fleet.

Timetable:

Action	Date	FR Cite
NPRM	05/14/86	51 FR 17659
NPRM Comment Period End	07/14/86	
Final Action	10/03/86	

Small Entities Affected: None

Government Levels Affected: None

Sectors Affected: 441 Deep Sea Foreign Transportation of Freight; 442 Deep Sea Domestic Transportation of Freight

Analysis: Regulatory Evaluation 05/14/86 (51 FR 17659)

Agency Contact: Edmond J. Fitzgerald, Director, Office of Trade Analysis & Insurance, Department of Transportation, Maritime Administration, 400 Seventh Street, SW, Room 8117, Washington, DC 20590, 202 366-2400

RIN: 2133-AA51

2105. GENERAL PROCEDURES FOR DETERMINING OPERATING DIFFERENTIAL SUBSIDY FOR LINER VESSELS

Significance: Nonsignificant

Legal Authority: 46 App USC 1114(b)

CFR Citation: 46 CFR 282

Legal Deadline: None

Abstract: The Maritime Administration (MARAD) proposes to amend the procedure for determining ODS for liner vessels operating in the foreign commerce of the United States. In determining rates for wage subsidy, MARAD proposes to use the U.S./foreign cost relationship at a point in time that is one year earlier than the date now used, and would also use a different and longer period as the basis for calculating the respective currency exchange rates.

Timetable:

Action	Date	FR Cite
NPRM	04/26/88	53 FR 14822
NPRM Comment Period End	06/27/88	
Final Action	10/03/88	

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 441 Deep Sea Foreign Transportation of Freight; 448 Water Transportation of Passengers

Analysis: Regulatory Evaluation 04/26/88 (53 FR 14822)

Agency Contact: Arthur Sforza, Director, Office of Ship Operating Assistance, Department of Transportation, Maritime Administration, DOT/MARAD (560) 400 Seventh Street, SW, Washington, DC 20590, 202 366-2323

RIN: 2133-AA07

2106. OPERATING-DIFFERENTIAL SUBSIDY FOR BULK CARGO VESSELS ENGAGED IN WORLDWIDE SERVICE

Significance: Nonsignificant

Legal Authority: 46 App. USC 1114(b)

CFR Citation: 46 CFR 252

Legal Deadline: None

Abstract: The Maritime Administration proposes to amend the procedure for determining ODS for bulk cargo vessels operating in the foreign commerce of the United States. In determining rates for wage subsidy, MARAD proposes to use the U.S./foreign cost relationship at a point in time that is one year earlier than the date now used, and would also use a different and longer period as the basis for calculating the respective currency exchange rates.

Timetable:

Action	Date	FR Cite
NPRM	04/26/88	53 FR 14821
NPRM Comment Period End	06/27/88	
Final Action	10/03/88	

DOT—MarAd — Final Rule Stage

Small Entities Affected: None

Government Levels Affected: None

Sectors Affected: 441 Deep Sea Foreign Transportation of Freight; 448 Water Transportation of Passengers

Analysis: Regulatory Evaluation 04/26/88 (53 FR 14821)

Agency Contact: Arthur Sforza, Director, Office of Ship Operating Assistance, Department of Transportation, Maritime Administration, DOT/MARAD (560) 400 Seventh Street, SW, Washington, DC 20590, 202 366-2323

RIN: 2133-AA18

DEPARTMENT OF TRANSPORTATION (DOT)

Maritime Administration (MarAd)

Completed Actions

2107. + APPROVAL OF MARINE HULL UNDERWRITERS

Significance: Agency Priority

Legal Authority: 46 USC 1114(b); 46 USC 1279(b)

CFR Citation: 46 CFR 298, (New)

Legal Deadline: None

Abstract: This final rule establishes MARAD's criteria for accepting an organization as an underwriter on any policy of insurance covering vessels under Title XI and Title VI programs or other MARAD administered aid programs. This rulemaking is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
ANPRM	10/11/85	50 FR 41531
ANPRM Comment Period End	11/12/85	50 FR 41531
Public meeting	04/17/86	
NPRM	10/16/87	52 FR 33481
NPRM Comment Period End	12/15/87	52 FR 33481
Comment Period extended to 01/15/88	12/17/87	52 FR 48077
Final Action	06/20/88	53 FR 23112
Final Action Effective	07/20/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Evaluation 06/20/88 (53 FR 23112)

Agency Contact: William B. Ebersold, Maritime Aids Specialist, Department of Transportation, Maritime Administration, 400 Seventh Street, SW, Room 8126, Washington, DC 20590, 202 366-0364

RIN: 2133-AA50

2108. + CARGO PREFERENCE, U.S.-FLAG VESSELS: EVALUATION OF BIDS FOR SUBSIDIZED LINER VESSELS

Significance: Agency Priority

Legal Authority: 46 USC 1241

CFR Citation: 46 CFR 381.8

Legal Deadline: None

Abstract: This regulation establishes procedures governing the evaluation by U.S. shipper agencies of bids from subsidized U.S.-flag-liner vessel operators for the carriage of open rated civilian and military preference cargoes. This rulemaking is considered significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	02/10/86	51 FR 5015
NPRM Comment Period End	04/11/86	
Final Action	06/28/88	53 FR 24270
Final Action Effective	07/28/88	

Small Entities Affected: None

Government Levels Affected: Federal

Analysis: Regulatory Evaluation 06/28/88 (53 FR 24270)

Additional Information: On 11/11/84, MARAD issued a final rule setting forth procedures governing the evaluation by shipper agencies of bids from U.S.-flag bulk vessel operators for the carriage of dry bulk preference cargoes.

Agency Contact: Arthur B. Sforza, Director, Office of Ship Operating Assistance, Department of Transportation, Maritime Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-2323

RIN: 2133-AA52

2109. STATISTICAL DATA FOR USE IN OPERATING-DIFFERENTIAL SUBSIDY (ODS) APPLICATION HEARINGS

Significance: Nonsignificant

Legal Authority: 46 USC 1175

CFR Citation: 46 CFR 207

Legal Deadline: None

Abstract: Rulemaking would have proposed procedures that would assist preparation of standard forecasts of liner cargo (if a Final Rule covering CDS procedures is issued) in which forecast procedures would be included. It is being terminated as no longer considered necessary to development of the principal rulemaking under consideration.

Timetable:

Action	Date	FR Cite
Action terminated	06/01/88	

Small Entities Affected: None

Government Levels Affected: None

Sectors Affected: 441 Deep Sea Foreign Transportation of Freight

Agency Contact: Edmond J. Fitzgerald, Director, Office of Trade Analysis and Insurance, Department of Transportation, Maritime Administration, 400 Seventh Street, SW, Washington, DC 20590, 202 366-2400

RIN: 2133-AA16

[FR Doc. 88-22738 Filed 10-21-88; 8:45 am]

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LIST OF PUBLIC LAWS

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523–6641. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202–275–[illegible]).

H.R. 2638/Pub. L. 100–478
To direct the Secretary of Agriculture to release certain

restrictions on a parcel of land located in Henderson, Tennessee. (Oct. 18, 1988; 102 Stat. 2489; 2 pages) Price: $1.00

H.R. 4354/Pub. L. 100-498

Windy Gap Mountain National Recreation and Wilderness Area Act. (Oct. 18, 1988; 102 Stat. 2491; 10 pages) Price: $1.00

H.R. 4368/Pub. L. 100-500

To designate the Sunderland National Salmon Station located in Sunderland, Massachusetts, as the "Richard Cronin National Salmon Station." (Oct. 18, 1988; 102 Stat. 2501; 1 page) Price: $1.00

H.R. 5391/Pub. L. 100-501

To provide the Secretary of the Air Force with authority to convey certain land. (Oct. 18, 1988; 102 Stat. 2502; 2 pages) Price: $1.00

H.J. Res. 402/Pub. L. 100-502

In support of the restriction of a free and independent Cambodia, the withdrawal of Vietnamese forces, and the protection of the Cambodian people from a return to power by the genocidal Khmer Rouge. (Oct. 18, 1988; 102 Stat. 2504; 3 pages) Price: $1.00

S. 496/Pub. L. 100-503

Computer Matching and Privacy Protection Act of 1988. (Oct. 18, 1988; 102 Stat. 2507; 8 pages) Price: $1.00

S. 904/Pub. L. 100-504

Inspector General Act Amendments of 1988. (Oct. 18, 1988; 102 Stat. 2515; 18 pages) Price: $1.00

S. 945/Pub. L. 100-505

Abandoned Infants Assistance Act of 1988. (Oct. 18, 1988; 102 Stat. 2533; 5 pages) Price: $1.00

S. 1626/Pub. L. 100-506

To keep secure the rights of intellectual property owners and licensees which come under the protection of title 11 of the United States Code, the bankruptcy code. (Oct. 18, 1988; 102 Stat. 2538; 3 pages) Price: $1.00

S. 1668/Pub. L. 100-507

To amend the Nuclear Waste Policy Act of 1982 with respect to the Office of the Nuclear Waste Negotiator and the Monitored Retrievable Storage Commission. (Oct. 18, 1988; 102 Stat. 2541; 1 page) Price: $1.00

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200–499	19.00	Oct. 1, 1987
500–End	10.00	Oct. 1, 1987
47 Parts:		
0–19	17.00	Oct. 1, 1987
20–39	21.00	Oct. 1, 1987
40–69	10.00	Oct. 1, 1987
70–79	17.00	Oct. 1, 1987
80–End	20.00	Oct. 1, 1987
48 Chapters:		
1 (Parts 1–51)	15.00	Oct. 1, 1987
1 (Parts 52–99)	16.00	Oct. 1, 1987
2 (Parts 201–251)	17.00	Oct. 1, 1987
2 (Parts 252–299)	15.00	Oct. 1, 1987
3–6	17.00	Oct. 1, 1987
7–14	24.00	Oct. 1, 1987
15–End	23.00	Oct. 1, 1987
49 Parts:		
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100–177	25.00	Oct. 1, 1987
178–199	19.00	Oct. 1, 1987
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400–999	22.00	Oct. 1, 1987
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50 Parts:		
1–199	16.00	Oct. 1, 1987
200–599	12.00	Oct. 1, 1987
600–End	14.00	Oct. 1, 1987
CFR Index and Findings Aids	28.00	Jan. 1, 1988
Complete 1988 CFR set	595.00	1988
Microfiche CFR Edition:		
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Complete set (one-time mailing)	115.00	1985
Subscription (mailed as issued)	185.00	1987
Subscription (mailed as issued)	185.00	1988
Individual copies	3.75	1988

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1987. The CFR volume issued January 1, 1987, should be retained.

[3] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1988. The CFR volume issued as of Apr. 1, 1980, should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1988. The CFR volume issued as of July 1, 1986, should be retained.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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10-24-88
Vol. 53 No. 205

federal register

Monday
October 24, 1988

Book 2 of 2 Books

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Pages 42215–42930

federal register

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Monday, October 24, 1988

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42610 Part XXVIII—National Archives and Records Administration
42616 Part XXIX—National Foundation on the Arts and the Humanities/National Endowment for the Arts
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42890 Part XLII—Veterans Administration

42716 Part XLIII—Department of Defense/General Services Administration/National Aeronautics and Space Administration

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42816 Part LIII—Federal Trade Commission

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42832 Part LV—National Credit Union Administration

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42846 Part LVII—Securities and Exchange Commission

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federal register

Monday
October 24, 1988

Part XV

Department of the Treasury

Semiannual Regulatory Agenda

DEPARTMENT OF THE TREASURY (TREAS)

DEPARTMENT OF THE TREASURY (TREAS)
Departmental Offices (DO)

DEPARTMENT OF THE TREASURY

31 CFR Subtitle A, Chs. I and II

Semiannual Agenda

AGENCY: Departmental Offices, Treasury.

ACTION: Semiannual agenda.

SUMMARY: This notice is given pursuant to the requirements of the "Regulatory Flexibility Act" (Pub. L. 96-354, September 19, 1980) and Executive Order 12291 ("Federal Regulation," February 17, 1981), which require the publication of a semiannual agenda of regulations. The semiannual agenda of the Department of the Treasury conforms to the Unified Agenda Format developed by the Regulatory Information Service Center (RISC).

FOR FURTHER INFORMATION CONTACT: For additional information about a specific Departmental Offices regulation, contact the "agency contact" listed in the specific regulatory action. For general information concerning the agenda, contact Richard S. Carro, Associate General Counsel, Room 1422, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, (202) 566-2558, not a toll-free call.

Dated: September 8, 1988.

Jennifer A. Sour,

Acting Executive Secretary.

Departmental Offices—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
2110	31 CFR 103 Proposed Amendments to the Bank Secrecy Act Regulations Regarding Reporting and Recordkeeping Requirements by Casinos	1505-AA10
2111	31 CFR 10 Due Diligence Standards With Respect to Persons Practicing Before the Internal Revenue Service	1505-AA17

Departmental Offices—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
2112	31 CFR 103 Proposed Amendments to the Bank Secrecy Act Regulations Regarding Recordkeeping Requirements by Casinos	1505-AA30

Departmental Offices—Completed Actions

Sequence Number	Title	Regulation Identifier Number
2113	17 CFR 400 Clarifying Amendments to Regulations Issued Under the Government Securities Act of 1986	1505-AA21
2114	31 CFR 103.25 Bank Secrecy Act; Transactions with Foreign Financial Agencies	1505-AA29

DEPARTMENT OF THE TREASURY (TREAS) — Proposed Rule Stage
Departmental Offices (DO)

2110. ● PROPOSED AMENDMENTS TO THE BANK SECRECY ACT REGULATIONS REGARDING REPORTING AND RECORDKEEPING REQUIREMENTS BY CASINOS

Legal Authority: 31 USC 5311 to 5322; 12 USC 1829b; 12 USC 1951 to 1959

CFR Citation: 31 CFR 103

Legal Deadline: None

Abstract: The proposed regulations contain 16 amendments to the Bank Secrecy Act regulations that are designed to respond to substantial noncompliance with the current regulations by casinos.

Timetable:

Action	Date	FR Cite
NPRM	08/18/88	53 FR 31370
NPRM Comment Period End	10/17/88	53 FR 31370
Final Action	11/00/88	

Small Entities Affected: None

TREAS—DO — Proposed Rule Stage

Government Levels Affected: None

Agency Contact: John M. Zoscak, Jr., Attorney-Advisor, Office of the Assistant General Counsel (Enforcement), Department of the Treasury, Departmental Offices, 1500 Pennsylvania Ave., NW, Room 2000, Washington, DC 20220, 202 566-2914

RIN: 1505-AA10

2111. DUE DILIGENCE STANDARDS WITH RESPECT TO PERSONS PRACTICING BEFORE THE INTERNAL REVENUE SERVICE

Legal Authority: 5 USC 301; 31 USC 330; 31 USC 321

CFR Citation: 31 CFR 10

Legal Deadline: None

Abstract: The proposed regulation would modify the current regulations governing practice before the Internal Revenue Service by clarifying the requirements relating to due diligence standards imposed on tax practitioners.

Timetable:

Action	Date	FR Cite
NPRM	08/14/86	51 FR 29113
Extend Public Comment Period to 11/13/86	08/27/86	51 FR 30510
NPRM Comment Period End	10/14/86	51 FR 29113
Extend public comment period to 02/13/87	11/06/86	51 FR 40340

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Leslie S. Shapiro, Director of Practice, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224, 202 535-8787

RIN: 1505-AA17

DEPARTMENT OF THE TREASURY (TREAS) — Final Rule Stage
Departmental Offices (DO)

2112. ● PROPOSED AMENDMENTS TO THE BANK SECRECY ACT REGULATIONS REGARDING RECORDKEEPING REQUIREMENTS BY CASINOS

Legal Authority: 31 USC 5313

CFR Citation: 31 CFR 103

Legal Deadline: None

Abstract: The proposed regulations would require that casinos otherwise subject to the regulations retain the records that they use for monitoring customers' gaming activities. The proposed regulations also would require casinos that input, retain, or store certain information on computer disk, tape, or other machine-readable media to retain such information in machine-readable form.

Timetable:

Action	Date	FR Cite
NPRM	04/07/88	53 FR 11513
NPRM Comment Period End	05/06/88	53 FR 11513
Final Action	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Amy G. Rudnick, Director, Office of Financial Enforcement, Department of the Treasury, Departmental Offices, 1500 Pennsylvania Ave., NW, Room 4320, Washington, DC 20220, 202 566-8822

RIN: 1505-AA30

DEPARTMENT OF THE TREASURY (TREAS) — Completed Actions
Departmental Offices (DO)

2113. ● CLARIFYING AMENDMENTS TO REGULATIONS ISSUED UNDER THE GOVERNMENT SECURITIES ACT OF 1986

Legal Authority: 15 USC 78o-5; 31 USC 3121; 31 USC 9110

CFR Citation: 17 CFR 400; 17 CFR 402 to 404; 17 CFR 450

Legal Deadline: None

Abstract: These regulations clarify regulations previously issued pursuant to the Government Securities Act of 1986. They resolve technical problems and omissions in the regulations, make conforming changes, and clarify the Department's intent with respect to certain provisions that have raised questions.

Timetable:

Action	Date	FR Cite
NPRM	03/15/88	53 FR 08598
NPRM Comment Period End	04/14/88	53 FR 08598
Final Action	08/01/88	53 FR 28978
Final Action Effective	08/01/88	53 FR 28978

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Anne Meister, Government Securities Specialist, Department of the Treasury, Departmental Offices, Bureau of the Public Debt, Room 209, 999 E Street, NW, Washington, DC 20239-0001, 202 376-4632

RIN: 1505-AA21

2114. BANK SECRECY ACT; TRANSACTIONS WITH FOREIGN FINANCIAL AGENCIES

Legal Authority: 12 USC 1829b; 12 USC 1951 to 1959; 31 USC 5311 to 5324

CFR Citation: 31 CFR 103.25

Legal Deadline: None

Abstract: The proposed amendments would increase the utility of reporting under the Bank Secrecy Act by authorizing the reporting of completed as well as future transactions and preventing financial institutions from

TREAS—DO

Completed Actions

informing customers or other parties of a reporting requirement imposed under the regulations.

Timetable:

Action	Date	FR Cite
NPRM	10/26/87	52 FR 39922
NPRM Comment Period End	12/28/87	52 FR 39922
Final Action	03/29/88	53 FR 10071
Final Action Effective	04/28/88	53 FR 10071

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Jonathan J. Rusch, Assistant to the Director, Office of Financial Enforcement, Department of the Treasury, Departmental Offices, Room 4320, Washington, DC 20220, 202 566-2516

RIN: 1505–AA38

[FR Doc. 88-21374 Filed 10-21-88; 8:45 am]

BILLING CODE 4810-25-T

DEPARTMENT OF THE TREASURY (TREAS)
Financial Management Service (FMS)

Fiscal Service

31 CFR Ch. II

Semiannual Agenda

AGENCY: Financial Management Service, Treasury.

ACTION: Semiannual agenda.

SUMMARY: This notice is given pursuant to the requirements of the "Regulatory Flexibility Act" (Pub. L. 96-354, September 19, 1980) and Executive Order 12291 ("Federal Regulation," February 17, 1981), which require publication of a semiannual agenda of regulations under development or review.

FOR FURTHER INFORMATION CONTACT: For additional information about a specific regulation contained in this agenda, contact the "agency contact" listed in the specific regulatory action.

SUPPLEMENTARY INFORMATION: The proposed regulations are not considered to be major regulations within the meaning of E.O. 12291 and will not have a significant impact on small entities within the meaning of the Regulatory Flexibility Act.

W. E. Douglas,
Commissioner.

Financial Management Service—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
2115	31 CFR 205 Revision of 31 CFR Part 205 (TDC No. 1075), Payments Between the Federal Government and Recipient Organizations	1510-AA03
2116	31 CFR 210, (Revision) Federal Payments through Financial Institutions by the Automated Clearing House Method	1510-AA09
2117	31 CFR 235 Time Limitation on Payment and Cancellation of Treasury Checks and Reclamation Actions and Claims	1510-AA11
2118	31 CFR 225, (Revision) Acceptance of Bonds, Notes, or Other Obligations Issued or Guaranteed by the United States as Security in Lieu of Surety or Sureties on Penal Bonds	1510-AA13

Financial Management Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
2119	31 CFR 203 Regulations Governing Compensation for Services Rendered	1510-AA14

Financial Management Service—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
2120	31 CFR 223, (Revision) Regulations Governing Surety Companies Doing Business with the United States	1510-AA12

DEPARTMENT OF THE TREASURY (TREAS)
Financial Management Service (FMS)

Prerule Stage

2115. REVISION OF 31 CFR PART 205 (TDC NO. 1075), PAYMENTS BETWEEN THE FEDERAL GOVERNMENT AND RECIPIENT ORGANIZATIONS

Significance: Agency Priority

Legal Authority: 31 USC 6503

CFR Citation: 31 CFR 205

Legal Deadline: None

Abstract: Revision of 31 CFR 205 will implement a new funding technique for Federal programs. The regulation would require a State to pay interest on Federal funds from the time they are deposited to the State's account until the time those funds are paid out to redeem checks or warrants or make payments by other means. This new "Checks Issued-Interest Remitted" technique was developed in response to statutes in some States that require that funds reside in a bank account prior to the issuance of checks. This revision also provides for the remittance of interest by the Federal Government if a State disburses its own funds for program purposes in accordance with Federal law, regulation or Federal/State agreement.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Additional Information: In addition, other cash management issues discussed by the State/Federal Cash Management Reform Task Force will be addressed in this regulation.

Agency Contact: Michael C. Salapka, Manager, Treasury Programs Branch, Department of the Treasury, Financial Management Service, 401 14th Street, SW, Room 420B, Washington, DC 20227, [illegible]

RIN: 1510–AA00

2116. FEDERAL PAYMENTS THROUGH FINANCIAL INSTITUTIONS BY THE AUTOMATED CLEARING HOUSE METHOD

Significance: Agency Priority

Legal Authority: 5 USC 5525; 12 USC 391; 31 USC 321

CFR Citation: 31 CFR 210, (Revision)

Legal Deadline: None

Abstract: Revision of 31 CFR Part 210 will clarify the breadth of payments governed by the regulations. These include non-benefit payments such as vendor payments, miscellaneous payments. Internal Revenue Service (IRS) tax refunds, savings bonds, grants and loans. It will also include the payment of discretionary allotments of net pay of Federal employees' salaries by DD/EFT. Electronic funds thus transferred through the Federal Reserve System eliminate the possibility of checks being lost, stolen, or forged. The Federal Government's operating efficiency will be improved, productivity will be increased, and the costs associated with the current methods will be reduced.

Timetable:

Action	Date	FR Cite
NPRM	07/27/88	53 FR 144
NPRM Comment Period End	09/26/88	
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Sheryl Morrow, Manager, Policy and Research Branch, Department of the Treasury, Financial Management Service, 401 14th Street, SW, Room 328, Washington, DC 20227, [illegible]

RIN: 1510–AA09

2117. TIME LIMITATION ON PAYMENT AND CANCELLATION OF TREASURY CHECKS AND RECLAMATION ACTIONS AND CLAIMS

Significance: Agency Priority

Legal Authority: PL 100-86, Sec 1005 Title X; 31 USC 3328; 31 USC 3334; 31 USC 3712(a)

CFR Citation: 31 CFR 235; 31 CFR 240; 31 CFR 245

Legal Deadline: Final, Statutory, October 1, 1989.
The Secretary of the Treasury, using his legal authority, extended the date the amendments shall become effective to 10/01/89. The notice of the extension appears at 53 FR 3584

Abstract: These regulations are required under PL 100-86, Sec 1005, and they will prescribe rules and procedures necessary in order to implement the time limitation on payment and cancellation of Treasury checks and reclamation actions and claims.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: David A. Ingold, Chief Counsel, Department of the Treasury, Financial Management Service, 401 14th Street, SW, Room 531, Washington, DC 20227, 202 287-0673

RIN: 1510–AA11

2118. ACCEPTANCE OF BONDS, NOTES, OR OTHER OBLIGATIONS ISSUED OR GUARANTEED BY THE UNITED STATES AS SECURITY IN LIEU OF SURETY OR SURETIES ON PENAL BONDS

Significance: Agency Priority

Legal Authority: 31 USC 9303

CFR Citation: 31 CFR 225, (Revision)

Legal Deadline: None

Abstract: The revision will address changes to definitions in the areas of authorized depositories and acceptable securities.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Terry Boyer, Manager, Surety Bond Branch, Department of the Treasury, Financial Management Service, 401 14th Street, SW, Room 259, Washington, DC, 20227, [illegible]

RIN: 1510–AA13

DEPARTMENT OF THE TREASURY (TREAS)
Financial Management Service (FMS)

Proposed Rule Stage

2119. ● REGULATIONS GOVERNING COMPENSATION FOR SERVICES RENDERED

Significance: Agency Priority

Legal Authority: 31 USC 3122; 31 USC 323

CFR Citation: 31 CFR 203

Legal Deadline: None

Abstract: Revision of 31 CFR 203 Part 203 will reduce the per item fees paid to depositaries for processing Federal tax deposits. The purpose of the revision is to implement a phased-in elimination of fees paid by the Federal Government associated with the processing of Federal tax deposits.

Timetable:

Action	Date	FR Cite
NPRM	03/01/89	
NPRM Comment Period End	04/01/89	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Michael C. Salapka, Manager, Treasury Programs Branch, Department of the Treasury, Financial Management Service, Room 420B, 401 14th Street, SW, Washington, DC 20227, [illegible]

RIN: 1510-AA14

DEPARTMENT OF THE TREASURY (TREAS)
Financial Management Service (FMS)

Final Rule Stage

2120. REGULATIONS GOVERNING SURETY COMPANIES DOING BUSINESS WITH THE UNITED STATES

Significance: Agency Priority

Legal Authority: 31 USC 9301 to 9308

CFR Citation: 31 CFR 223, (Revision)

Legal Deadline: None

Abstract: The revision makes editorial changes, and contains substantive changes to sections concerning business experience, collateral and reinsurance requirements. Substantive changes include: 1) a 3-year aging requirement in order to qualify for Treasury certification, 2) elimination of the alternative to use collateral for protecting excess risks, and 3) a requirement that all reinsurance on Federal bonds be placed with companies recognized by Treasury for reinsurance purposes. The proposed regulations provide provisions for exceptions to the aging and reinsurance regulations under certain circumstances. These regulations will help Treasury ensure that certified companies are capable of carrying out their surety contracts.

Timetable:

Action	Date	FR Cite
NPRM	06/05/87	52 FR 29039
NPRM Comment Period End	10/19/87	52 FR 37334
Final Action	11/30/88	
Final Action Effective	12/31/88	

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Terry Boyer, Manager, Surety Bond Branch, Department of the Treasury, Financial Management Service, 401 14th Street, SW, Room 259, Washington, DC 20227, [illegible]

RIN: 1510-AA12

[FR Doc. 88-21375 Filed 10-21-88; 8:45 am]

BILLING CODE 4810-35-T

DEPARTMENT OF THE TREASURY (TREAS)
Bureau of Alcohol, Tobacco and Firearms (BATF)

Bureau of Alcohol, Tobacco and Firearms

27 CFR Ch. I

[Notice No. 672]

Unified Agenda of Federal Regulations

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: General notice; Unified Agenda of Federal Regulations of regulatory projects under development, consideration, and review.

SUMMARY: Pursuant to section 5 of Executive Order 12291, entitled "Federal Regulations," ATF is publishing an agenda of proposed regulations that are expected to be issued and of proposed regulations that have been issued and an agenda of existing regulations that are being reviewed under the terms of the Executive Order, within the next six months. The latter agenda also lists regulatory projects identified for review pursuant to the ATF Regulatory Reform Program. Pursuant to section 3(a) of the Regulatory Flexibility Act (Pub. L. 96-354; 5 U.S.C. 610), ATF is also indicating whether a regulatory project is likely to have a significant economic impact upon a substantial number of small entities.

This general notice is designed to give the public adequate notice of the regulatory activities being contemplated by ATF.

The agenda is based on information available at the present time. The next Unified Agenda of Federal Regulations will be published in the **Federal Register** of April 1989.

FOR FURTHER INFORMATION CONTACT: For information about any particular regulatory project, contact the person listed in the subheading "Agency Contact," for the regulatory project.

For general information about this general notice, contact Lori Weine, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226; (202) 566-7626.

TREAS—BATF

Issuance

By Direction of the Secretary of the Treasury, this general notice reads as set forth below.

Dated: August 17, 1988.

Stephen E. Higgins,

Director.

Bureau of Alcohol, Tobacco and Firearms—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
2121	27 CFR 4 Recodification of 27 CFR Part 4	1512-AA77
2122	27 CFR 4.29 Grape Harvest Labeling for Wine	1512-AA31
2123	27 CFR 4 Labeling and Advertising of Wine, Distilled Spirits and Malt Beverages; Use of the Word Light (Lite)	1512-AA48
2124	27 CFR 4 Labeling and Advertising of Wine, Distilled Spirits and Malt Beverages; Appearance of Athletes and Depiction of Athletic Events	1512-AA50
2125	27 CFR 250 Recodification of 27 CFR Part 250 as 27 CFR Part 26	1512-AA69
2126	27 CFR 4.24 Non-Generic Designations of Grape Wine Having Geographical Significance	1512-AA71
2127	27 CFR 27 Recodification of 27 CFR Part 251 as 27 CFR Part 27	1512-AA72
2128	27 CFR 4.72 Standards of Fill for Wine and Distilled Spirits	1512-AA77
2129	27 CFR 5.36 Label Disclosure for Brandy Treated with Wood	1512-AA81
2130	27 CFR 285 27 CFR Part 285, Manufacture of Cigarette Papers and Tubes	1512-AA33

Bureau of Alcohol, Tobacco and Firearms—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
2131	27 CFR 19.11 Implementation of the "Wine Impact Bill"	1512-AA06
2132	27 CFR 9 American Viticultural Areas	1512-AA07
2133	27 CFR 5.22 Standard of Identity for Vodka	1512-AA18
2134	27 CFR 197 Nonbeverage Drawback	1512-AA30
2135	27 CFR 240.160 to 240.400 Recodification of Wine Regulations (Subparts A to O)	1512-AA42
2136	27 CFR 240 Materials and Processes for the Production and Treatment of Wine	1512-AA01
2137	27 CFR 4 Winegrape Varietal Designations	1512-AA67
2138	27 CFR 4.35 Winemaking Terminology	1512-AA70
2139	27 CFR 7 Use of Terms in the Labeling and Advertising of Malt Beverages Having an Alcohol Content of Less Than .5% by Volume	1512-AA79
2140	27 CFR 4.32 Labeling and Advertising of Wine, Distilled Spirits, and Malt Beverages; Disclosure of FD & C Yellow No. 6	1512-AA76
2141	27 CFR 55 Fireworks Regulations	1512-AA52
2142	27 CFR 270.11 Manufacturer's Identification on Tobacco Products Packages	1512-AA38

Bureau of Alcohol, Tobacco and Firearms—Completed Actions

Sequence Number	Title	Regulation Identifier Number
2143	27 CFR 25 Operation of a Retail Beer Dealership for on-premises consumption at a Brewery	1512-AA78
2144	27 CFR 72 Amendments to the Gun Control Act of 1968	1512-AA75
2145	27 CFR 178 Restrictions on Manufacture, Importation and Sale of Armor Piercing Ammunition	1512-AA73
2146	27 CFR 178 Simplified Recordkeeping for Low-volume Firearms Dealers	1512-AA80

DEPARTMENT OF THE TREASURY (TREAS)
Bureau of Alcohol, Tobacco and Firearms (BATF)

Proposed Rule Stage

ALCOHOL

2121. RECODIFICATION OF 27 CFR PART 4

Significance: Agency Priority

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 4

Legal Deadline: None

Abstract: To revise the wine labeling and advertising regulations; where applicable, to incorporate production regulations; and due to statutory amendments requested, may result in a legislative submission.

Timetable:

Action	Date	FR Cite
NPRM	06/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Additional Agency Contact: Ed Reisman

Agency Contact: James Hunt, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington DC 20226, 202 566-7626

RIN: 1512-AA17

2122. GRAPE HARVEST LABELING FOR WINE

Significance: Agency Priority

Legal Authority: 27 USC 205(e); 27 USC 205(f)

CFR Citation: 27 CFR 4.39

Legal Deadline: None

Abstract: Late harvest designations, based on the Brix (percent by weight) level of the grapes at harvest would indicate to consumers that the grapes used to produce the wine were left on the vine for express purpose of increasing the sugar content. The designations would indicate additional techniques and processes were used in the production of the wine.

Timetable:

Action	Date	FR Cite
NPRM	04/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: James Hunt, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington DC 20226, 202 566-7626

RIN: 1512-AA31

2123. LABELING AND ADVERTISING OF WINE, DISTILLED SPIRITS AND MALT BEVERAGES; USE OF THE WORD LIGHT (LITE)

Significance: Agency Priority

Legal Authority: 27 USC 205(e); 27 USC 205(f)

CFR Citation: 27 CFR 4; 27 CFR 5; 27 CFR 7

Legal Deadline: None

Abstract: "Light (Lite)" was addressed to a limited extent in Notice No. 362 (45 FR 83530). However, subsequent to its publication ATF was petitioned by the Center for Science in the Public Interest (CSPI), requesting mandatory caloric labeling on all alcohol beverages, as well as the establishment of upper limits on calories in products labeled as "light (lite)." Comments will be requested on CSPI's petition as well as other issues involving use of the term "light (lite)."

Timetable:

Action	Date	FR Cite
NPRM	05/12/88	51 FR 28626
NPRM Comment Period End	11/10/88	
NPRM Comment Period Reopened	11/14/88	51 FR 41355
NPRM Reopened Comment Period End	12/31/88	
NPRM	06/17/88	53 FR 22678
NPRM Comment Period End	08/15/88	
NPRM Comment Period Extended	08/16/88	53 FR 30648
NPRM Extended Comment Period End	11/15/88	
Final Action	06/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: James Ficaretta, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington DC 20226, 202 566-7626

RIN: 1512-AA48

2124. LABELING AND ADVERTISING OF WINE, DISTILLED SPIRITS AND MALT BEVERAGES; APPEARANCE OF ATHLETES AND DEPICTION OF ATHLETIC EVENTS

Significance: Agency Priority

Legal Authority: 27 USC 205(e); 27 USC 205(f)

CFR Citation: 27 CFR 4; 27 CFR 5; 27 CFR 7

Legal Deadline: None

Abstract: Discusses present policy on prohibition of active athletes and requests comments on whether the policy should be relaxed, retained, expanded to include all celebrities. On athletic events, comments are requested if the present prohibition should be expanded to include any athletic event, regardless of when the participants are shown consuming, or preparing to consume, alcohol beverages.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: James Ficaretta, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington DC 20226, 202 566-7626

RIN: 1512-AA30

2125. RECODIFICATION OF 27 CFR PART 250 AS 27 CFR PART 26

Significance: Agency Priority

Legal Authority: 26 USC 7851 to 7652; PL 85-859; 26 USC 5314; 26 USC 7805

CFR Citation: 27 CFR 250

Legal Deadline: None

Abstract: As part of the recodification of Part 250, we plan to simplify, consolidate and or eliminate as many sections of regulations as possible placing particular emphasis on reducing the number of recordkeeping requirements, forms, and customs responsibilities. Wherever possible, we plan to utilize a proprietor's commercial records in lieu of requiring the proprietor to submit public use forms. These changes to Part 250 should considerably reduce the burden hours on industry.

Timetable:

Action	Date	FR Cite
NPRM	04/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Richard Langford, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington DC 20226, 202 566-7531

RIN: 1512-AA69

2126. NON-GENERIC DESIGNATIONS OF GRAPE WINE HAVING GEOGRAPHICAL SIGNIFICANCE

Significance: Agency Priority

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 4.24

Legal Deadline: None

Abstract: This proposal expands the list of names officially recognized under 27 CFR Part 4, as being non-generic for the purposes of labeling and advertising of wine. This proposal is the result of petitions from numerous foreign countries for ATF recognition of non-generic wine designations which, in their view, denote distinctive national products. This proposal is also an outgrowth of one of the commitments made by the United States, in the Exchange of Letters of July 26, 1983 with the Commission of the European Communities, to work within the regulatory framework of 27 CFR Part 4, to prevent erosion of non-generic designations of geographic significance. For practical reasons it is being proposed that only "examples" of non-generic designations be listed in Part 4 while a complete list of all non-generic designations be listed in a new Part 12.

Timetable:

Action	Date	FR Cite
NPRM	04/12/88	53 FR 12024
NPRM Comment Period End	07/11/88	
NPRM Comment Period Extended	07/13/88	53 FR 26448
NPRM Extended Comment Period End	10/11/88	
Final Action	03/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: John Colossi, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington DC 20226, 202 535-8245

RIN: 1512-AA71

2127. RECODIFICATION OF 27 CFR PART 251 AS 27 CFR PART 27

Significance: Agency Priority

Legal Authority: 26 USC 7805

CFR Citation: 27 CFR 27; 27 CFR 251

Legal Deadline: None

Abstract: To update and clarify regulations relating to the importation of Distilled Spirits, Wine, and Beer and to incorporate related ATF Rulings into the regulations.

Timetable:

Action	Date	FR Cite
NPRM	05/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Robert Petrangelo, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington DC 20226, 202 566-7531

RIN: 1512-AA72

2128. STANDARDS OF FILL FOR WINE AND DISTILLED SPIRITS

Significance: Agency Priority

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 4.73; 27 CFR 5.47

Legal Deadline: None

Abstract: ATF is considering amending the standard of fill requirements for wine and distilled spirits. Based, in part, on a petition it has received, the Bureau wishes to gather information by inviting comments from the public and industry concerning the existing standards of fill.

Timetable:

Action	Date	FR Cite
ANPRM	06/24/87	52 FR 23805
ANPRM Comment Period Extended	08/14/87	52 FR 30390
ANPRM Comment Period End	09/21/87	
ANPRM Extended Comment Period End	10/23/87	
NPRM	05/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: James Ficaretta, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20226, 202 566-7626

RIN: 1512-AA77

2129. LABEL DISCLOSURE FOR BRANDY TREATED WITH WOOD

Significance: Agency Priority

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 5.36

Legal Deadline: None

Abstract: ATF is proposing to amend the regulations in 27 CFR Part 5 concerning the wording, and placement, of the disclosure statement for brandy treated with wood.

Timetable:

Action	Date	FR Cite
NPRM	05/24/88	53 FR 18574
NPRM Comment Period Extended	08/16/88	53 FR 30648
NPRM Comment Period End	08/22/88	
NPRM Extended Comment Period End	11/22/88	
Final Action	06/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: James Ficaretta, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue,

TREAS—BATF

Proposed Rule Stage

TREAS—BATF — Proposed Rule Stage

NW, Washington, DC 20226, 202 566-7626

RIN: 1512-AA01

TOBACCO PRODUCTS

2130. 27 CFR PART 285, MANUFACTURE OF CIGARETTE PAPERS AND TUBES

Significance: Agency Priority

Legal Authority: 26 USC 7805 (68A Stat 917)

CFR Citation: 27 CFR 285

Legal Deadline: None

Abstract: To reduce or eliminate administrative and recordkeeping burdens under 27 CFR Part 285.

Timetable:

Action	Date	FR Cite
ANPRM	06/01/84	
ANPRM Comment Period End	10/02/84	
NPRM	04/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Mary Wood, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington DC 20226, 202 566-7531

RIN: 1512-AA33

DEPARTMENT OF THE TREASURY (TREAS)
Bureau of Alcohol, Tobacco and Firearms (BATF)

Final Rule Stage

ALCOHOL

2131. IMPLEMENTATION OF THE "WINE IMPACT BILL"

Significance: Agency Priority

Legal Authority: 26 USC 5010

CFR Citation: 27 CFR 19.11; 27 CFR 19.37 to 19.40; 27 CFR 19.42; 27 CFR 19.240; 27 CFR 19.372; 27 CFR 19.402; 27 CFR 19.505; 27 CFR 19.560; 27 CFR 19.661; 27 CFR 19.748; 27 CFR 19.763; 27 CFR 19.764; 27 CFR 19.778 to 19.780; 27 CFR 170.661 to 170.691; 27 CFR 197.105; ...

Legal Deadline: None

Abstract: Restores the tax system which existed for distilled spirits products containing wine or alcoholic flavoring materials prior to the enactment of the Distilled Spirits Tax Revision Act of 1979; also permits spirits bottled for industrial purposes to be transferred in bond between distilled spirits plants.

Timetable:

Action	Date	FR Cite
NPRM	03/27/87	52 FR 9873
NPRM Comment Period End	06/25/87	
Final Action	02/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Richard Langford, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington DC 20226, 202 566-7531

RIN: 1512-AA06

2132. AMERICAN VITICULTURAL AREAS

Significance: Agency Priority

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: Establishes grape-growing regions as American viticultural areas for purposes of labeling and advertising of wine.

Timetable:

Cayuga Lake, NY (contact Jim Ficaretta)
- NPRM 09/16/87 (52 FR 34927)
- NPRM Comment Period End 10/16/87
- Final Action 03/25/88 (53 FR 9758)

Fredericksburg in the Texas Hill Country (contact R. White)
- NPRM 02/19/88 (53 FR 4998)
- NPRM Comment Period End 04/04/88
- Final Action 12/00/88

Middle Rio Grande Valley, NM (contact Ed Reisman)
- NPRM 05/26/87 (52 FR 19535)
- NPRM Comment Period End 06/25/87
- Final Action 02/02/88 (53 FR 2834)

Santa Clara Valley, CA (contact Ed Reisman)
- NPRM 02/04/88 (53 FR 3214)
- NPRM Comment Period End 03/07/88
- Final Action 02/00/89

Stags Leap District, CA (contact Jim Ficaretta)
- NPRM 02/11/87 (52 FR 4350)
- NPRM Comment Period End 04/13/87
- Final Action 12/30/88

Warren Hills, NJ (contact Steve Simon)
- NPRM 09/25/87 (52 FR 36432)
- NPRM Comment Period End 11/13/87
- Final Action 09/08/88 (53 FR 29674)

Western Connecticut Highlands, CT (contact Ed Reisman)
- NPRM 08/11/87 (52 FR 29700)
- NPRM Comment Period End 09/25/87
- Final Action 02/09/88 (53 FR 3745)

Wild Horse Valley, CA (contact Ed Reisman)
- NPRM 09/18/87 (52 FR 34824)
- NPRM Comment Period End 11/02/87
- Final Action 12/00/88

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: See supplemental timetable, American Viticultural Areas, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington DC 20226, 202 566-7626

RIN: 1512-AA07

2133. STANDARD OF IDENTITY FOR VODKA

Significance: Agency Priority

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 5.22

Legal Deadline: None

Abstract: Considers clarifying the standard of identity for vodka by revoking Revenue Ruling 56-96 which permits the use of small quantities of sugar or citric acid in vodka; or would propose a new class and type of vodka which contains trace amounts of sugar or citric acid.

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Timetable:

Action	Date	FR Cite
ANPRM	01/11/82	47 FR 1148
ANPRM Comment Period End	07/11/82	
NPRM	02/19/86	51 FR 6009
NPRM Comment Period End	05/20/86	
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: David Brokaw, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington DC 20226, 202 566-7626

RIN: 1512-AA10

2134. NONBEVERAGE DRAWBACK

Significance: Agency Priority

Legal Authority: 26 USC 5131 et seq

CFR Citation: 27 CFR 197

Legal Deadline: None

Abstract: To update, clarify, simplify, and recodify the regulations relating to drawback of tax on distilled spirits used in the manufacture of non-beverage products.

Timetable:

Action	Date	FR Cite
NPRM	07/29/87	52 FR 28286
NPRM Comment Period End	10/29/87	
Final Action	03/00/89	

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SMALL BUSINESSES COUNT: This regulation effects approximately 500 entities.

Agency Contact: Steve Simon, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington DC 20226, 202 566-7626

RIN: 1512-AA20

2135. RECODIFICATION OF WINE REGULATIONS (SUBPARTS A TO O)

Significance: Agency Priority

Legal Authority: 26 USC 7805

CFR Citation: 27 CFR 240.180 to 240.400

Legal Deadline: None

Abstract: To update, simplify, and clarify regulations relating to wine; and to incorporate ATF rulings into the Regulations.

Timetable:

Action	Date	FR Cite
NPRM	03/07/86	51 FR 6098
NPRM Comment Period End	07/07/86	
NPRM Comment Period Extended	07/08/86	51 FR 24719
NPRM Extended Comment Period End	12/31/86	
Final Action	03/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: James Hunt, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington DC 20226, 202 566-7626

RIN: 1512-AA42

2136. MATERIALS AND PROCESSES FOR THE PRODUCTION AND TREATMENT OF WINE

Significance: Agency Priority

Legal Authority: 27 USC 5382

CFR Citation: 27 CFR 240

Legal Deadline: None

Abstract: Updates, clarifies, and simplifies the regulations relating to the production and treatment of wine.

Timetable:

Action	Date	FR Cite
NPRM	09/24/84	49 FR 37527
NPRM Comment Period Extended	01/22/85	50 FR 2832
NPRM Comment Period End	01/23/85	
NPRM Extended Comment Period End	03/01/85	
Final Action	06/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: This was formerly part of RIN 1512-AA12 Materials and Processes for the Production and Treatment of Wine.

Agency Contact: Robert White, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington DC 20226, 202 566-7626

RIN: 1512-AA01

2137. WINEGRAPE VARIETAL DESIGNATIONS

Significance: Agency Priority

Legal Authority: 27 USC 205(e)

CFR Citation: 27 CFR 4

Legal Deadline: None

Abstract: This proposal would establish standardized lists of winegrape varietal names which may be used on domestic wine labels. In addition we are proposing a method by which new names may be added to the list. These standardized lists will assure more accurate and truthful identification of the wine.

Timetable:

Action	Date	FR Cite
NPRM	02/04/86	51 FR 4392
NPRM Comment Period End	04/07/86	
NPRM Comment Period Extended	04/08/86	51 FR 11944
NPRM Extended Comment Period End	07/07/86	
Final Action	06/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Charles Bacon, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington DC 20226, 202 566-7580

RIN: 1512-AA07

2138. WINEMAKING TERMINOLOGY

Significance: Agency Priority

Legal Authority: 27 USC 205(e)

CFR Citation: 27 CFR 4.35

Legal Deadline: None

Abstract: ATF is proposing to define words denoting winemaking operations

TREAS—BATF — Final Rule Stage

for use on wine labels in conjunction with the name and address of the bottler. This project partially fulfills the requirements of the court order in Wawkiewicz v. Department of the Treasury, 480 F. Supp. 739 (D.D.C. 1979), aff'd. in part, rev'd in part, 670 F.2d 200.

Timetable:

Action	Date	FR Cite
NPRM	05/29/86	51 FR 19361
NPRM Comment Period End	08/26/86	
Final Action	04/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: David Brokaw, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington DC 20226, 202 566-7626

RIN: 1512-AA70

2138. USE OF TERMS IN THE LABELING AND ADVERTISING OF MALT BEVERAGES HAVING AN ALCOHOL CONTENT OF LESS THAN .5% BY VOLUME

Significance: Agency Priority

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 7

Legal Deadline: None

Abstract: ATF is proposing to incorporate into the regulations two Rulings (Rev. Rul. 57-322 and ATF Rul. 85-11) regarding the use of the terms "Non-Alcoholic," "Alcohol-Free," "Near Beer," and "Cereal Beverage" in the labeling and advertising of Malt Beverages.

Timetable:

Action	Date	FR Cite
NPRM	10/30/86	51 FR 39686
NPRM Comment Period End	01/28/87	
Final Action	05/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Jim Ficaretta, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington DC 20226, 202 566-7626

RIN: 1512-AA73

2140. LABELING AND ADVERTISING OF WINE, DISTILLED SPIRITS, AND MALT BEVERAGES; DISCLOSURE OF FD & C YELLOW NO. 5

Significance: Agency Priority

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 4.32; 27 CFR 5.32; 27 CFR 7.22

Legal Deadline: None

Abstract: ATF is proposing to amend the regulations by requiring the mandatory disclosure of FD & C Yellow No. 5 on labels of alcoholic beverages, because of evidence indicating the possibility of allergic-type reactions to the color additive. As in the case of FD & C Yellow No. 5, which also requires label disclosure under existing regulations FD & C Yellow No. 6 is used infrequently in the production of alcoholic beverages being limited to mostly cocktails, liqueurs, and other specialty products.

Timetable:

Action	Date	FR Cite
NPRM	09/04/87	52 FR 33603
Final Action	05/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: James Ficaretta, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20226, 202 566-7626

RIN: 1512-AA76

FIREARMS

2141. FIREWORKS REGULATIONS

Significance: Agency Priority

Legal Authority: 18 USC 841-848

CFR Citation: 27 CFR 55

Legal Deadline: None

Abstract: Information gathering on safe handling of explosive materials in the fireworks industry is necessary due to accidental explosions causing death. Injuries and property damage have occurred at fireworks manufacturing and assembling plants. Damage has been in the millions of dollars and some regulatory changes are needed. This notice to gather information is to determine changes needed and potential costs.

Timetable:

Action	Date	FR Cite
General Notice	06/08/84	49 FR 23872
NPRM	07/20/88	53 FR 27452
NPRM Comment Period End	09/19/88	
Final Action	02/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Larry White, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington DC 20226, 202 566-7591

RIN: 1512-AA52

TOBACCO PRODUCTS

2142. MANUFACTURER'S IDENTIFICATION ON TOBACCO PRODUCTS PACKAGES

Significance: Agency Priority

Legal Authority: 26 USC 5723

CFR Citation: 27 CFR 270.11; 27 CFR 270.212; 27 CFR 275.163; 27 CFR 275.170; 27 CFR 275.172; 27 CFR 275.174; 27 CFR 290.11; 27 CFR 290.181; 27 CFR 290.183; 27 CFR 290.241 to 290.257; 27 CFR 296.42

Legal Deadline: None

Abstract: To liberalize requirements relating to manufacturer identification on tobacco products packages and to make other miscellaneous changes.

Timetable:

Action	Date	FR Cite
NPRM	01/12/87	52 FR 1207
NPRM Comment Period End	03/13/87	
Final Action	04/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Cliff Mullen, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington DC 20226, 202 566-7531

RIN: 1512-AA28

DEPARTMENT OF THE TREASURY (TREAS)
Bureau of Alcohol, Tobacco and Firearms (BATF) — Completed Actions

2143. OPERATION OF A RETAIL BEER DEALERSHIP FOR ON-PREMISES CONSUMPTION AT A BREWERY

Significance: Agency Priority

Legal Authority: 26 USC 5411

CFR Citation: 27 CFR 25

Legal Deadline: None

Abstract: ATF is proposing to establish criteria and procedures for operating a retail beer dealership for on-premises consumption at a brewery. This proposal is the result of a petition submitted by Mr. Bill Owens, proprietor of Buffalo Bill's Brewery, located in Hayward, CA.

Timetable:

Action	Date	FR Cite
NPRM	08/31/87	52 FR 32814
NPRM Comment Period End	10/30/87	
Final Action	03/16/88	53 FR 8626
Final Action Effective	04/15/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: John Linthicum, ATF Coordinator, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20226, 202 566-7626

RIN: 1512-AA78

2144. AMENDMENTS TO THE GUN CONTROL ACT OF 1968

Significance: Agency Priority

Legal Authority: PL 99-308; PL 99-360

CFR Citation: 27 CFR 72; 27 CFR 178; 27 CFR 179

Legal Deadline: None

Abstract: Implements changes required by Public Law 99-308 (Firearms Owners Protection Act of 1986), and amendments thereto (Public Law 99-360).

Timetable:

Action	Date	FR Cite
NPRM	10/29/86	51 FR 39635
Interim Final Rule	10/29/86	51 FR 39612
NPRM Comment Period End	01/27/87	
NPRM Comment Period Extended	01/28/87	52 FR 2665
NPRM Extended Comment Period End	02/27/87	
Final Action	03/31/88	53 FR 10480
Final Action Effective	05/02/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Dan Crowley, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington DC 20226, 202 566-7591

RIN: 1512-AA75

2145. RESTRICTIONS ON MANUFACTURE, IMPORTATION AND SALE OF ARMOR PIERCING AMMUNITION

Significance: Agency Priority

Legal Authority: 18 USC 926

CFR Citation: 27 CFR 178

Legal Deadline: None

Abstract: ATF is amending regulations to implement provisions of Public Law 99-408. The amended regulations will restrict the manufacture, importation and sale of armor piercing ammunition.

Timetable:

Action	Date	FR Cite
NPRM	01/16/87	52 FR 2053
Interim Final Rule	01/16/87	52 FR 2048
NPRM Comment Period End	04/16/87	
Final Action	03/31/88	53 FR 10480
Final Action Effective	05/02/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Daniel Crowley, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington DC 20226, 202 566-7591

RIN: 1512-AA79

2146. SIMPLIFIED RECORDKEEPING FOR LOW-VOLUME FIREARMS DEALERS

Significance: Agency Priority

Legal Authority: 18 USC 926

CFR Citation: 27 CFR 178

Legal Deadline: None

Abstract: ATF is proposing to simplify recordkeeping procedures for sales or other dispositions of firearms by low-volume dealers.

Timetable:

Action	Date	FR Cite
NPRM	02/12/87	52 FR 4509
NPRM Comment Period End	05/13/87	
Final Action	06/30/88	53 FR 24686
Final Action Effective	08/01/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Daniel Crowley, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20226, 202 566-7626

RIN: 1512-AA80

[FR Doc. 88-21376 Filed 10-21-88; 8:45 am]

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DEPARTMENT OF THE TREASURY (TREAS)
Comptroller of the Currency (OCC)

Comptroller of the Currency

12 CFR Ch. I

Semiannual Agenda of Regulatory Actions

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Semiannual agenda of regulations.

SUMMARY: As required by the Regulatory Flexibility Act and Executive Order 12291, the Office of the Comptroller of the Currency (Office) has prepared this semiannual agenda of its rules and regulations currently under review and scheduled for review. Regulatory actions taken since the publication of the Office's previous semiannual agenda on April 25, 1988 (53 FR 14192) are also included. It is expected that this semiannual agenda will enable the public to be more aware of, and allow it to more effectively participate in, the Office's regulatory activity.

ADDRESS: The mailing address for all contacts: Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, DC 20219.

FOR FURTHER INFORMATION CONTACT: For general information about this semiannual agenda, contact Nancy Lowther, Financial Analyst, Legislative and Regulatory Analysis Division, (202) 447-1177.

For additional information about a particular item on this semiannual agenda, contact the individual identified as the contact person.

SUPPLEMENTARY INFORMATION: The Office has determined that none of the rulemakings discussed in this semiannual agenda requires a regulatory flexibility analysis; all entries have been determined not to have a "significant impact on a substantial number of small entities," and therefore are not subject to the provisions of the Act. Additionally, none of the rules is a "major" rule as defined by Executive Order 12291. Executive Order 12291 defines a "major" rule as one likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Dated: August 16, 1988.

Robert L. Clarke,

Comptroller of the Currency.

Comptroller of the Currency—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
2147	12 CFR 9 Fiduciary Powers of National Banks and Collective Investment Funds	1557-AA04
2148	12 CFR 19 Rules of Practice and Procedure	1557-AA43
2149	12 CFR 4.18 Production of Documents and Testimony in Litigation Where the Comptroller or the Office is Not a Party	1557-AA57
2150	12 CFR 11, (New Subsection) Securities Exchange Act Disclosure Rules	1557-AA58
2151	12 CFR 16 Securities Offering Disclosure Rules	1557-AA60
2152	12 CFR 9 Fiduciary Powers of National Banks and Collective Investment Funds	1557-AA66
2153	12 CFR 4 Supervision of Bank Operations	1557-AA67
2154	12 CFR 5.33 Merger, Consolidation, Purchase and Assumption	1557-AA71
2155	12 CFR 32 Lending Limits	1557-AA72
2156	12 CFR 12 Recordkeeping and Confirmation Requirements for Securities Transactions	1557-AA75
2157	12 CFR 4 Description of Office, Procedures, Public Information	1557-AA77
2158	12 CFR 8 Assessment of Fees; National Banks; District of Columbia Banks	1557-AA79
2159	12 CFR 7.3400 Leasing of Personal Property	1557-AA80

Comptroller of the Currency—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
2160	12 CFR 3 Minimum Capital Ratios; Issuance of Directives	1557-AA81
2161	12 CFR 21 Minimum Security Devices and Procedures and Reports of Crimes and Suspected Crimes	1557-AA74
2162	12 CFR 1 Investment Securities Regulation	1557-AA78

TREAS—OCC

Comptroller of the Currency—Completed Actions

Sequence Number	Title	Regulation Identifier Number
2163	12 CFR 5 Rules, Policies, and Procedures for Corporate Activities	1557-AA00
2164	12 CFR 35 Agricultural Loan Loss Amortization	1557-AA73

DEPARTMENT OF THE TREASURY (TREAS) — Proposed Rule Stage
Comptroller of the Currency (OCC)

2147. FIDUCIARY POWERS OF NATIONAL BANKS AND COLLECTIVE INVESTMENT FUNDS

Legal Authority: Sec 1, 77 Stat 668; 12 USC 92a; 12 USC 481

CFR Citation: 12 CFR 9

Legal Deadline: None

Abstract: Comments in response to a prior rulemaking Final Rule Docket No. 80-16 (46 FR 71571) published October 29, 1980 included recommendations that additional amendments should be made to 12 CFR 9. The OCC believes that the issues raised by the commenters can best be addressed through a comprehensive review of its regulations concerning national bank fiduciary powers and collective investment funds. The OCC requested comments from the public as to the desirability and feasibility of a comprehensive review of its trust regulations pertaining to collective investment funds, including specific matters which should be addressed. In view of the favorable disposition of litigation impacting on the fiduciary powers of national banks and collective investment funds (Investment Company Institute v. Clarke, 789 F.2d 175 (2d Cir. 1986), cert. denied, 55 U.S.L.W. 3316 (U.S. Nov. 4, 1986); Investment Company Institute v. Conover, 790 F.2d 925 (D.C. Cir. 1986), cert. denied, 55 U.S.L.W. 3316 (U.S. Nov. 4, 1986); Investment Company Institute v. Clarke, 793 F.2d 220 (9th Cir. 1986), cert. denied, 55 U.S.L.W. 3316 (U.S. Nov. 4, 1986); Investment Company Institute v. Clarke, No.

Timetable:

Action	Date	FR Cite
ANPRM	06/25/82	47 FR 27833
ANPRM Comment Period End	09/23/82	47 FR 27833
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ABSTRACT CONTINUED: 88-3725 (W.D.N.C. August 25, 1988), appeal withdrawn by stipulation, Jan. 6, 1987), the project has been reactivated. The effect on small entities will be considered in the development of this rulemaking.

Agency Contact: Donald N. Lamson, Assistant Director, Department of the Treasury, Comptroller of the Currency, Securities & Corporate Practices Division, 490 L'Enfant Plaza East, SW, Washington, DC 20219, 202 447-1954

RIN: 1557-AA04

2148. RULES OF PRACTICE AND PROCEDURE

Legal Authority: 12 USC 1817(j); 12 USC 1818; 12 USC 1820; 15 USC 781(h); 15 USC 781(i); 15 USC 78o-4(c); 15 USC 78u; 15 USC 78w; 5 USC 554 to 557; PL 95-630; 12 USC 3102; 12 USC 3108(a)

CFR Citation: 12 CFR 19

Legal Deadline: None

Abstract: The proposed regulation will set forth amendments to the hearing rules for administrative hearings. The effect on small entities will be considered in the development of this rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	
NPRM Comment Period End	02/00/89	
Final Action	07/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ADDITIONAL AGENCY CONTACT: Brenda Curry, Senior Attorney, Legislative and Regulatory Analysis Division, (202) 447-1632, 490 L'Enfant Plaza East, SW, Washington, DC 20219.

Agency Contact: Robert L. Davis, Assistant Director, Department of the Treasury, Comptroller of the Currency, Enforcement and Compliance Division, 490 L'Enfant Plaza East, SW, Washington, DC 20219, 202 447-1818

RIN: 1557-AA43

2149. PRODUCTION OF DOCUMENTS AND TESTIMONY IN LITIGATION WHERE THE COMPTROLLER OR THE OFFICE IS NOT A PARTY

Legal Authority: 5 USC 301; 12 USC 481; 5 USC 552(b)(8)

CFR Citation: 12 CFR 4.18; 12 CFR 4.18(c); 12 CFR 7.6025(c); 12 CFR 4.18(a); 12 CFR 4.18(b)

Legal Deadline: None

Abstract: This rule governs the release by the OCC of confidential documents, especially reports of examination, and testimony for use in litigation in which the OCC is not a party. The OCC is considering changing the rule to spell out the exact requirements for a request for such release, and the situations under which release might be authorized. The effect on small entities will be considered in the development of this rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Lester N. Scall, Senior Trial Attorney, Department of the Treasury, Comptroller of the Currency, Litigation Division, 490 L'Enfant Plaza

East, SW, Washington, DC 20219, 202 447-1893

RIN: 1557–AA57

2150. SECURITIES EXCHANGE ACT DISCLOSURE RULES

Legal Authority: 15 USC 78

CFR Citation: 12 CFR 11, (New Subsection)

Legal Deadline: None

Abstract: The proposed rule would require that more detailed and meaningful information be provided to shareholders and the OCC concerning banks' loan portfolios, including loans to borrowers in foreign countries experiencing liquidity problems, other sources of income and exposure to risks. This will assist shareholders in evaluating proposals for mergers, consolidations, acquisitions and similar matters and will assist the OCC in administering and enforcing the Securities Exchange Act of 1934 as it applies to national banks. The OCC considered not proposing the additional amendments or proposing them as a general guide rather than a rule. However, the OCC determined it was appropriate to propose the additional requirements as amendments to Part 11 because the OCC believes the proposed requirements will help to clarify the types of disclosures which the OCC, shareholders and the public would consider material in analyzing various Exchange Act filings and statements. The proposed rule will also include amendments to update Part 11 to conform with recent amendments by the Securities and Exchange Commission to its Securities Exchange Act Disclosure Rules. The (CONT)

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ABSTRACT CONTINUED: effect on small entities will be considered in the development of this rulemaking.

Agency Contact: Michael C. Dugas, Attorney, Department of the Treasury, Comptroller of the Currency, Securities & Corporate Practices Division, 490 L'Enfant Plaza East, SW, Washington, DC 20219, 202 447-1954

RIN: 1557–AA58

2151. SECURITIES OFFERING DISCLOSURE RULES

Legal Authority: 12 USC 1818; 12 USC 93a

CFR Citation: 12 CFR 16

Legal Deadline: None

Abstract: This regulation contains the OCC's disclosure requirements for securities offerings by national banks. The OCC is considering revisions which would clarify the coverage of the rule, specify the OCC's enforcement authority in connection with the rule, liberalize nonpublic offering requirements, provide for more meaningful disclosure requirements in public offerings, revise financial information requirements to be more consistent with 12 CFR 11, and where practicable, incorporate by reference provisions of 12 CFR 11. The effect on small entities will be considered in the development of this rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	02/00/89	
NPRM Comment Period End	04/00/89	
Final Action	10/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Michael C. Dugas, Attorney, Department of the Treasury, Comptroller of the Currency, Securities & Corporate Practices Division, 490 L'Enfant Plaza East, SW, Washington, DC 20219, 202 447-1954

RIN: 1557–AA65

2152. FIDUCIARY POWERS OF NATIONAL BANKS AND COLLECTIVE INVESTMENT FUNDS

Legal Authority: 12 USC 92a

CFR Citation: 12 CFR 9

Legal Deadline: None

Abstract: The OCC proposes to amend this regulation to clarify the requirements concerning national bank fiduciary investment of uninvested or undistributed cash in fiduciary accounts. The effect on small entities will be considered in the development of this rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
NPRM Comment Period End	01/00/89	
Final Action	03/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: James F. E. Gillespie, Jr., Senior Attorney, Department of the Treasury, Comptroller of the Currency, Legal Advisory Services Division, 490 L' Enfant Plaza East, SW, Washington, DC 20219, 202 447-1880

RIN: 1557–AA07

2154. MERGER, CONSOLIDATION, PURCHASE AND ASSUMPTION

Legal Authority: 12 USC 93a; 12 USC 181; 12 USC 214a; 12 USC 215; 12 USC 215a; 12 USC 1828(c); 15 USC 78; 15 USC 781(i)

CFR Citation: 12 CFR 5.33; 12 CFR 11.330

Legal Deadline: None

Abstract: The OCC proposes to amend 12 CFR 5.33 to set forth the OCC's merger proxy statement filing requirements for banks that do not have a class of equity securities registered under the Securities Exchange Act of 1934 ("Exchange Act"), and to specify the disclosure that is required of such banks for various types of merger transactions. This action is expected to assist bank merger applicants in preparing their merger proxy materials, which are subject to OCC review and clearance pursuant to the OCC's merger procedures. The effect on small entities will be considered in development of this rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	01/00/89	
NPRM Comment Period End	03/00/89	
Final Action	05/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Laura Plaza, Attorney, Department of the Treasury, Comptroller of the Currency, Securities & Corporate Practices Division, 490 L'Enfant Plaza East, SW, Washington, DC 20219, 202 447-1954

RIN: 1557–AA71

2155. LENDING LIMITS

Legal Authority: 12 USC 84; 12 USC 93a

CFR Citation: 12 CFR 32

Legal Deadline: None

Abstract: The OCC is considering several amendments to the lending limits regulation to simplify, clarify and improve that regulation. A temporary rule on loan commitments has been issued. The effect on small entities will be considered in the development of this rulemaking.

Timetable:

Action	Date	FR Cite
Temporary rule effective	06/24/88	53 FR 23752
Temporary rule with request for comment	06/24/88	53 FR 23752
Temporary rule comment period end	09/22/88	53 FR 23752
NPRM	11/00/88	

Action	Date	FR Cite
NPRM Comment Period End	01/00/89	
Final Action	04/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: James F. E. Gillespie, Jr., Senior Attorney, Department of the Treasury, Comptroller of the Currency, Legal Advisory Services Division, 490 L'Enfant Plaza East, SW, Washington, DC 20219, 202 447-1880

RIN: 1557–AA72

2156. RECORDKEEPING AND CONFIRMATION REQUIREMENTS FOR SECURITIES TRANSACTIONS

Legal Authority: 12 USC 24; 12 USC 93a

CFR Citation: 12 CFR 12

Legal Deadline: None

Abstract: This rulemaking will update 12 CFR 12 in light of the final regulations issued July 24, 1987 (52 FR 27910) by the Department of the Treasury as required by the Government Securities Act of 1986. The effect on small entities will be considered in the development of this rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: John Kerr, National Bank Examiner, Department of the Treasury, Comptroller of the Currency, Investment Securities, 490 L'Enfant Plaza East, SW, Washington, DC 20219, 202 447-1981

RIN: 1557–AA75

2157. DESCRIPTION OF OFFICE, PROCEDURES, PUBLIC INFORMATION

Legal Authority: 5 USC 552; EO 12600

CFR Citation: 12 CFR 4

Legal Deadline: None

Abstract: This proposed regulation implements recent amendments to the Freedom of Information Act (FOIA). The amendments concern Exemption 7 of the FOIA (relating to law enforcement records) and the provisions of the FOIA concerning fees and fee waivers. In addition, the proposed regulation implements Executive Order 12600, which deals with predisclosure notification procedures for confidential commercial information. This proposed regulation also makes technical changes to the OCC's existing FOIA regulation. The proposed regulation, and the OCC's FOIA regulations in general, affect public disclosure of information by the OCC. The effect on small entities will be considered in the development of this rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
NPRM Comment Period End	01/00/89	
Final Action	04/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ADDITIONAL AGENCY CONTACT: Dean DeBuck, Freedom of Information Officer, (202) 447-1800, 490 L'Enfant Plaza East, SW, Washington, DC 20219.

Agency Contact: Sanford Brown, Attorney, Department of the Treasury, Comptroller of the Currency, Legal Advisory Services Division, 490 L'Enfant Plaza East, SW, Washington, DC 20219, 202 447-1920

RIN: 1557–AA77

2158. ◆ ASSESSMENT OF FEES; NATIONAL BANKS; DISTRICT OF COLUMBIA BANKS

Legal Authority: 12 USC 481; 12 USC 482; 12 USC 3102; 26 DC Code 102

CFR Citation: 12 CFR 8

Legal Deadline: None

Abstract: The OCC is proposing a 14 percent increase in its semiannual assessment schedule for national banks, District of Columbia banks and federally licensed branches and agencies of foreign banks. This action is necessary to avoid OCC revenue shortfalls. It is intended to ensure that OCC can continue to fulfill its statutory, regulatory and supervisory responsibilities. National bank fees will be raised only to the extent necessary to support OCC's increasing and evolving supervisory responsibilities. This proposed rule, if adopted as a final rule, will not have a significant economic impact on a substantial

TREAS—OCC — Proposed Rule Stage

number of small banks or other small entities.

Timetable:

Action	Date	FR Cite
NPRM	08/19/88	53 FR 31705
NPRM Correction	09/06/88	53 FR 34307
NPRM Comment Period End	09/19/88	
NPRM Extension of Public Comment Period	10/03/88	53 FR 38556
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ADDITIONAL AGENCY CONTACT: Roger Tufts, Associate Director, Economic and Policy Analysis Division, (202) 447-1924, 490 L'Enfant Plaza East, SW, Washington, DC 20219.

Agency Contact: Fern Fishman Rubin, Attorney, Department of the Treasury, Comptroller of the Currency, Legal Advisory Services Division, 490 L'Enfant Plaza East, SW, Washington, DC 20219, 202 447-1880

RIN: 1557–AA79

2158. ◆ LEASING OF PERSONAL PROPERTY

Legal Authority: 12 USC 93a

CFR Citation: 12 CFR 7.3400

Legal Deadline: None

Abstract: The proposed regulation will interpret new statutory lease financing authority provided to national banks by Section 106 of the Competitive Equality Banking Act of 1987, codified at 12 USC 24(10). The OCC is considering what prudential guidelines, if any, are needed, in order to ensure that national banks conduct this new activity safely. The effect on small entities will be considered in the development of this rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
NPRM Comment Period End	01/00/89	
Final Action	05/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Ellen C. Starr, Attorney, Department of the Treasury, Comptroller of the Currency, Legal Advisory Services Division, 490 L'Enfant Plaza East, SW, Washington, DC 20219, 202 447-1880

RIN: 1557–AA80

DEPARTMENT OF THE TREASURY (TREAS) — Final Rule Stage
Comptroller of the Currency (OCC)

2160. MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

Significance: Regulatory Program

Legal Authority: 12 USC 93a; 12 USC 161; 12 USC 1818; 12 USC 3907; 12 USC 3909

CFR Citation: 12 CFR 3

Legal Deadline: None

Abstract: The proposed guidelines provide for a common framework of capital adequacy measurement to remove a source of competitive inequality for banks operating internationally. However, the OCC believes the risk-based capital ratio is a useful tool for measuring capital adequacy at all national banks. The framework of measurement is mainly directed to the credit risk of balance sheet and off-balance sheet assets as they relate to bank capital. The effect on small entities will be considered in the development of this rulemaking.

Timetable:

Action	Date	FR Cite
ANPRM	03/27/86	51 FR 10602
ANPRM Comment Period End	06/25/86	51 FR 10602
NPRM	06/17/87	52 FR 23045
NPRM Comment Period End	08/17/87	52 FR 23045
NPRM	03/15/88	53 FR 8550
NPRM Public Comment Period	05/13/88	
Final Action	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ADDITIONAL AGENCY CONTACTS: Jennifer Kelly, National Bank Examiner, Commercial Activities Division, (202) 447-1164; Larry Winter, National Bank Examiner, Multinational and Regional Bank Analysis Division, (202) 447-1747; Katerina Simons, Financial Economist, Economic and Policy Analysis Division, (202) 447-1924; 490 L'Enfant Plaza East, SW, Washington, DC 20219.

Agency Contact: Sanford Brown, Attorney, Department of the Treasury, Comptroller of the Currency, Legal Advisory Services Division, 490 L'Enfant Plaza East, SW, Washington, DC 20219, 202 447-1880

RIN: 1557–AA81

2161. MINIMUM SECURITY DEVICES AND PROCEDURES AND REPORTS OF CRIMES AND SUSPECTED CRIMES

Legal Authority: 12 USC 93a; 12 USC 1818; 12 USC 1881 to 1884

CFR Citation: 12 CFR 21

Legal Deadline: None

Abstract: This regulation revises upward the reporting thresholds for reports of known or suspected crimes involving national banks. National banks are now required to report certain bank secrecy and money laundering transactions. This regulation will not have significant impact on a substantial number of small entities.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/11/88	53 FR 7881
Interim Final Rule Comment Period End	05/10/88	
Final Action	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Joel Miller, Attorney, Department of the Treasury, Comptroller of the Currency, Enforcement and Compliance Division, 490 L'Enfant Plaza East, SW, Washington, DC 20219, 202 447-1818

RIN: 1557–AA74

TREAS—OCC — Final Rule Stage

2162. INVESTMENT SECURITIES REGULATION

Legal Authority: PL 97-35, Sec 1342(a); 12 USC 24(7); PL 98-473, Title I

CFR Citation: 12 CFR 1

Legal Deadline: None

Abstract: The OCC is amending 12 CFR 1 to make two nonsubstantive changes in the regulation. The first change in the regulation incorporates the existing statutory authority of national banks to underwrite and deal in obligations of the African Development Bank and the Inter-American Investment Corporation. The second change deletes from the regulation an outdated and unnecessary provision describing procedures for banks to request OCC rulings. This final rule will not have a significant economic impact on a substantial number of small entities.

Timetable:

Action	Date	FR Cite
Final Action	11/00/88	
Final Action Effective	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ADDITIONAL AGENCY CONTACT: Owen Carney, Director, Investment Securities, (202) 447-1901, 490 L'Enfant Plaza East, SW, Washington, DC 20219

Agency Contact: Jonathan Rushdoony, Senior Attorney, Department of the Treasury, Comptroller of the Currency, Legal Advisory Services Division, 490 L'Enfant Plaza East, SW, Washington, DC 20219, 202 447-1880

RIN: 1557–AA78

DEPARTMENT OF THE TREASURY (TREAS) — Completed Actions
Comptroller of the Currency (OCC)

2163. RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

Significance: Agency Priority

Legal Authority: 12 USC 93a

CFR Citation: 12 CFR 5

Legal Deadline: None

Abstract: The OCC is engaged in a continuing review of its rules, policies, and procedures governing corporate activities. The OCC proposes to provide clarification of the OCC's ability to impose conditions on transactions between a bank and its subsidiaries; to add 12 CFR 5.36 to require notification to the OCC of certain equity investments which national banks are authorized by statute to make; to outline the responsibility of the applicants for accurate and complete filings; to centralize the OCC's distribution of forms; and to make several miscellaneous technical amendments. These proposals are expected to benefit the OCC by assisting the OCC in fulfilling its responsibility for maintaining the safety and soundness of national banks and the national banking system, and to improve OCC efficiency. The effect on small entities is considered in the development of each rulemaking. If adopted as final rules, the changes to Part 5 will not have a significant economic impact on a substantial number of small entities.

Timetable:

Action	Date	FR Cite
Final Action	05/24/88	53 FR 18545
Final Action Effective	06/23/88	53 FR 18545
Applicants' Responsibility	12/00/88	
Change in Bank Control	12/00/88	
Equity Investments	12/00/88	
Forms Distribution	12/00/88	
Operating Subsidiaries	12/00/88	
Technical Amendments	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ADDITIONAL AGENCY CONTACT: Sheila Ogilvie, National Bank Examiner/Senior Licensing Policy and Systems Analyst, Bank Organization and Structure Division, (202) 447-1184, 490 L'Enfant Plaza East, SW, Washington, DC 20219.

Agency Contact: Randall J. Miller, Director for Licensing Policy and Systems, Department of the Treasury, Comptroller of the Currency, Bank Organization & Structure Division, 490 L'Enfant Plaza East, SW, Washington, DC 20219, 202 447-1184

RIN: 1557–AA00

2164. AGRICULTURAL LOAN LOSS AMORTIZATION

Legal Authority: 12 USC 93a; Title VIII of the Competitive Equality Banking Act of 1987

CFR Citation: 12 CFR 35

Legal Deadline: Final, Statutory, November 9, 1987.

Abstract: This regulation implements Title VIII of the Competitive Equality Banking Act of 1987 which permits agricultural banks to amortize losses on qualified agricultural loans. The regulation describes the procedures and standards applicable to banks desiring to amortize losses under that statute. It also describes the manner in which such amortizations are to be done. This regulation will not have significant economic impact on a substantial number of small entities.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/02/87	52 FR 41959
Final Action	07/28/88	53 FR 28373
Final Action Effective	07/29/88	53 FR 28373

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ADDITIONAL AGENCY CONTACT: Lance Cantor, Analyst, Special Supervision, (202) 447-1719, 490 L'Enfant Plaza East, SW, Washington, DC 20219.

Agency Contact: Jon A. Nagy, National Bank Examiner, Department of the Treasury, Comptroller of the Currency, Commercial Activities Division, 490 L'Enfant Plaza East, SW, Washington, DC 20219, 202 447-1164

RIN: 1557–AA73

[FR Doc. 88-21377 Filed 10-21-88; 8:45 am]

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DEPARTMENT OF THE TREASURY (TREAS)
United States Customs Service (CUSTOMS)

Customs Service

19 CFR Ch. I

Semiannual Agenda

AGENCY: Customs Service, Treasury.

ACTION: Semiannual agenda.

SUMMARY: In response to Pub. L. 96-354, the "Regulatory Flexibility Act," and Executive Order 12291, "Federal Regulations," Customs has prepared and is publishing for public information a list of regulations either under development or under review.

FOR FURTHER INFORMATION CONTACT: For additional information regarding the substance of any particular regulatory project described in the agenda, please communicate with the person identified as the "Agency Contact." All agency contact persons are located at U.S. Customs Service Headquarters, the address of which is noted below. Comments or inquiries of a general nature about the agenda itself should be directed to Gertrude A. Bresnahan, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, Headquarters, U.S. Customs Service, Room 2119, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-8237).

SUPPLEMENTARY INFORMATION:

Background

Public Law 96-354, the "Regulatory Flexibility Act" (RFA) and Executive Order (E.O.) 12291 of February 17, 1981, "Federal Regulations," require semiannual publication, in April and October of each year, or an agenda of regulations which are "likely to have a significant economic impact on a substantial number of small entities" and "major" regulations, respectively. The RFA and E.O. 12291 also require agencies to include in their agendas currently effective rules which are under agency review. Customs agenda includes a brief abstract of each regulatory project ("project") being considered, an indication of whether the project will have an RFA impact, the section(s) of the Code of Federal Regulations affected, the legal authority for the action being taken, the name, title, and telephone number of an agency contact and, where applicable, an approximate timetable of completing action on any project for which Customs has published a notice of proposed rulemaking. In addition, the status of projects referred to in previously published agendas is shown. It has been determined that none of the projects listed as being under development meets the standards required of a "major" regulation provided in E.O. 12291.

General statutory authority for the development or review of regulations relating to Customs matters is found in section 301, title 5, United States Code (5 U.S.C. 301), and in sections 66 and 1624, title 19, United States Code (19 U.S.C. 66, 1624). When appropriate, additional specific statutory authority is indicated as the legal authority for the project.

Dated: August 17, 1988.

John E. Elkins,

Acting Director, Office of Regulations and Rulings.

United States Customs Service—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
2165	19 CFR 19 Customs Warehouses; Duty-Free Stores	1515-AA22

United States Customs Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
2166	19 CFR 134 Country of Origin Marking	1515-AA56
2167	19 CFR 113 Continuous Importation and Entry Bond Secured by Corporate Sureties	1515-AA60
2168	19 CFR 192 Exportation of Used Self-Propelled Vehicles	1515-AA65
2169	19 CFR 134 Country of Origin Marking of Jewelry	1515-AA66
2170	19 CFR 162 Highest Degree of Care and Diligence to Prevent Unmanifested Narcotics and Marijuana	1515-AA67

United States Customs Service—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
2171	19 CFR 4 Customs User Fees	1515-AA50
2172	19 CFR 141 Entry of Consolidated Shipments	1515-AA58
2173	19 CFR 4 Harbor Maintenance Fee	1515-AA57
2174	19 CFR 122.25 Air Ambulance Operators – Overflight Exemptions	1515-AA62
2175	19 CFR 4.7a Unique Bill of Lading	1515-AA63

TREAS—CUSTOMS

United States Customs Service—Final Rule Stage—Continued

Sequence Number	Title	Regulation Identifier Number
2176	19 CFR 128 Clearance of Cargo Carried by Express Consignment Operators or Carriers	1515-AA64

United States Customs Service—Completed Actions

Sequence Number	Title	Regulation Identifier Number
2177	19 CFR 6 Air Commerce Regulations	1515-AA47

DEPARTMENT OF THE TREASURY (TREAS)
United States Customs Service (CUSTOMS)

Prerule Stage

2165. CUSTOMS WAREHOUSES; DUTY-FREE STORES

Legal Authority: 19 USC 1556; 19 USC 1565; 19 USC 1623

CFR Citation: 19 CFR 19; 19 CFR 144

Legal Deadline: None

Abstract: Consideration of various actions in regard to administration of duty-free stores. Actions range from abolition of stores to their designation as class of bonded warehouse and/or increased regulation. Actions necessary due to need for increased efficiency of store administration by Customs and to address enforcement problems related to stores. Public comment requested on actions under consideration, as well as store operations in general. Work Plan 83-1 approved.

Timetable:

Action	Date	FR Cite
ANPRM	07/21/83	48 FR 33318
ANPRM Comment Period End	09/19/83	
Notice of Status Pending Congressional Action	07/07/86	51 FR 24535
	09/30/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: John R. Holl, Operation Officer, Department of the Treasury, United States Customs Service, Room 4414, 1301 Constitution Avenue, NW, Washington, DC 20229, 202 566-5354

RIN: 1515-AA22

DEPARTMENT OF THE TREASURY (TREAS)
United States Customs Service (CUSTOMS)

Proposed Rule Stage

2166. COUNTRY OF ORIGIN MARKING

Legal Authority: 5 USC 301; 19 USC 66; 19 USC 1202; 19 USC 1304; 19 USC 1624

CFR Citation: 19 CFR 134

Legal Deadline: None

Abstract: Amendment to the Customs Regulations relating to the requirement that every imported article of foreign origin, or its container, shall be legibly and conspicuously marked to indicate to an ultimate purchaser in the U.S., the English name of the country of origin of the article. Proposal would require that whenever the full or abbreviated name of a country or place other than the country of origin, or a symbol readily associated with a country or place other than the country of origin appears anywhere on a foreign article or its container, then the actual country of origin of the article must be marked on the article or its container in close proximity to each reference to the country or place not the country of origin, or a hang tag or sticker affixed to a highly conspicuous portion of the article.

Timetable:

Action	Date	FR Cite
NPRM in Treasury Review	02/22/88	
NPRM	01/15/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Lorrie Rodbart, Attorney, Department of the Treasury, United States Customs Service, Room 2212, 1301 Constitution Avenue, NW, Washington, DC 20229, 202 566-5765

RIN: 1515-AA58

2167. CONTINUOUS IMPORTATION AND ENTRY BOND SECURED BY CORPORATE SURETIES

Legal Authority: 19 USC 66; 19 USC 1484; 19 USC 1551; 19 USC 1565; 19 USC 1623; 19 USC 1624

CFR Citation: 19 CFR 113

Legal Deadline: None

Abstract: Amendment to the Customs Regulations to provide that a continuous importation and entry bond secured by a corporate surety may only be filed with Customs under cover of a letter signed by an authorized officer or agent of that surety. Such an amendment would protect the Government from unnecessary delays in receiving payment from sureties of an importer's liabilities, for which the surety is also responsible, when the surety denies liability because it claims to have no record of the bond upon which the demand is made.

Timetable:

Action	Date	FR Cite
NPRM	09/15/87	52 FR 35274
NPRM Comment Period End	11/17/87	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: William Lawlor, Attorney, Department of the Treasury, United States Customs Service, Room 2215, 1301 Constitution Avenue, NW, Washington, DC 20229, 202 566-5765

RIN: 1515-AA81

2166. ◆ EXPORTATION OF USED SELF-PROPELLED VEHICLES

Legal Authority: 19 USC 66; 19 USC 1624; 19 USC 1627; 19 USC 1627a; 19 USC 1646a

CFR Citation: 19 CFR 192

Legal Deadline: None

Abstract: An amendment to the Customs Regulations to add a new part concerning the exportation of used self-propelled vehicles. It sets forth the requirements for lawful exportation of such vehicles as well as the penalties and liabilities for attempted unlawful exportation. These regulations are necessary to implement certain provisions of the Motor Theft Law Enforcement Act of 1984 and the Trade and Tariff Act of 1984 dealing with the unlawful exportation of used self-propelled vehicles.

Timetable:

Action	Date	FR Cite
NPRM	03/17/87	52 FR 8303
NPRM Comment Period End	05/18/87	
NPRM Second	06/18/88	53 FR 31367
NPRM public comment period end	10/17/88	
Final Action	06/30/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: After consideration of the comments received in response to the previous notice proposing this change certain modifications were made. Accordingly, the document has been modified and is being republished to allow all affected persons an opportunity to submit comments before any final decisions are made.

Agency Contact: Louis Rezmo, Operations Officer, Department of the Treasury, United States Customs Service, Room 4144, 1301 Constitution Avenue, NW, Washington, DC 20229, 202 566-2160

RIN: 1515-AA85

2169. ◆ COUNTRY OF ORIGIN MARKING OF JEWELRY

Legal Authority: 5 USC 301; 19 USC 66; 19 USC 1202 (Gen. Hdnt.11); 19 USC 1304; 19 USC 1624; PL 100-418

CFR Citation: 19 CFR 134

Legal Deadline: None

Abstract: Amendment to the Customs Regulations relating to the country of origin marking of jewelry. More permanent methods of marking are proposed to avoid removal of country of origin identifications after importation, but before sale to consumers often for the purpose of deceptively representing the merchandise as made in the U.S. Previous methods permitting country of origin marking for jewelry using adhesive labels or string tags would be permitted under the proposed changes only where the size of the article does not permit more permanent marking methods. For other articles, the changes will require that jewelry be indelibly marked with the country of origin by cutting, die-sinking, engraving, stamping, or some other equally permanent methods, or with a similarly marked plastic or metal tag.

Timetable:

Action	Date	FR Cite
In Treasury review	09/16/88	
NPRM	10/15/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: A proposed interpretive rule was published on July 15, 1986 (51 FR 25674) soliciting comments on a proposal to require that all foreign-made Native American-style jewelry be indelibly marked with the country of origin by cutting, die-sinking, engraving or stamping. Numerous comments were received which generally were in favor of the proposal; most indicated that the proposal did not go far enough and many commenters thought that the change should extend to all jewelry. On August 23, 1988, Congress enacted Pub. L. 100-418, Omnibus Trade & Competitiveness Act of 1988, which among other things, requires the indelible and permanent marking on all imported Native American-style jewelry. Accordingly, we are revising our proposal to include jewelry in general, and the expanded proposal will have more general application.

Agency Contact: Lorrie Redbert, Attorney, Department of the Treasury, United States Customs Service, 1301 Constitution Ave., NW, Room 2104, Washington, DC 20229, 202 566-8765

RIN: 1515-AA66

2170. ◆ HIGHEST DEGREE OF CARE AND DILIGENCE TO PREVENT UNMANIFESTED NARCOTICS AND MARIJUANA

Significance: Agency Priority

Legal Authority: 19 USC 1584; 19 USC 1594; 19 USC 1595a; 21 USC 880; 21 USC 881; PL 99-570

CFR Citation: 19 CFR 162

Legal Deadline: None

Abstract: Amendment to the Customs Regulations relating to the liability of common carriers to penalties, seizure and forfeiture for unmanifested narcotic drugs or marijuana. The proposed changes would add to the regulations the statutory standard for the highest degree of care and diligence on the part of common carriers in preventing unmanifested drugs and marijuana. It also sets forth specific duties and procedures by which the standard is defined and against which compliance with the standard can be determined. These duties and procedures include such security measures as background investigations of employees, access restrictions to cargo areas, use of lighting in storage areas, and similar measures.

Timetable:

Action	Date	FR Cite
In Treasury Review	09/01/88	
NPRM	10/15/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Harriet D. Blank, Attorney, Department of the Treasury, United States Customs Service, Room 2131, 1301 Constitution Ave., NW, Washington, DC 20229, 202 566-5765

RIN: 1515-AA67

DEPARTMENT OF THE TREASURY (TREAS)
United States Customs Service (CUSTOMS)

Final Rule Stage

2171. CUSTOMS USER FEES

Legal Authority: 19 USC 66; 19 USC 1202; 19 USC 1624; 31 USC 9701; PL 99-272

CFR Citation: 19 CFR 4; 19 CFR 6; 19 CFR 24; 19 CFR 111; 19 CFR 123; 19 CFR 145

Legal Deadline: Final, Statutory, July 7, 1988.

Abstract: Amends Customs Regulations to provide for payment of specific fees to Customs for the processing of persons, aircraft, vehicles and merchandise arriving in the U.S. as well as for the payment of an annual fee by Customs brokers.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/11/86	51 FR 21152
Final Rule Pending internal decision	05/01/88	
Final Action	01/15/89	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Denise Crawford, Operations Officer, Department of the Treasury, United States Customs Service, Room 4133, 1301 Constitution Avenue, NW, Washington, DC 20229, 202 566-8435

RIN: 1515-AA50

2172. ENTRY OF CONSOLIDATED SHIPMENTS

Legal Authority: 19 USC 66; 19 USC 1448; 19 USC 1484; 19 USC 1624

CFR Citation: 19 CFR 141; 19 CFR 178

Legal Deadline: None

Abstract: Amendment to the Customs Regulations relating to entry procedures for consolidated shipments of imported merchandise. The amendment would ensure that if individual shipments of merchandise having various consignees are consolidated into a large shipment, the entry would not be made by a broker, or at a port of entry, designated by the consignee named in the master bill of lading or master air waybill if any individual bill of lading or individual air waybill within that shipment specifies a different broker, or port of entry, for making entry, or that entry will be made by the actual owner or purchaser.

Timetable:

Action	Date	FR Cite
NPRM	11/04/87	52 FR 42310
NPRM Comment Period End	02/18/88	53 FR 30
In Customs review	07/08/88	
Final Action	11/01/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: After consideration of the comments received in response to the previous notice proposing this change, and meetings with affected persons, it has been determined that many people did not understand the proposal. Accordingly, the document has been modified and it should be republished to allow all affected persons an opportunity to submit comments before any final decisions are made.

Agency Contact: William Rosoff, Attorney, Department of the Treasury, United States Customs Service, Room 2215, 1301 Constitution Avenue NW, Washington, DC 20229, 202 566-5856

RIN: 1515-AA36

2173. HARBOR MAINTENANCE FEE

Legal Authority: 5 USC 301; 19 USC 66; 19 USC 81a to 81u; 19 USC 1202; 19 USC 623; 19 USC 1624; 31 USC 9701; PL 99-272; PL 99-509; PL 99-662

CFR Citation: 19 CFR 4; 19 CFR 24; 19 CFR 148; 19 CFR 178

Legal Deadline: Final, Statutory, April 1, 1987.

Abstract: Amendments to the Customs Regulations to implement provisions of the Water Resources Development Act of 1986 which authorizes Customs to assess a harbor maintenance fee of 0.04 percent (.0004) on the value of commercial cargo loaded on or unloaded from a commercial vessel at a port unless specifically exempted from the fee. Proceeds of the fee are deposited in a trust fund for the U.S. Army Corps of Engineers to use for the improvement and maintenance of U.S. ports and harbors.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/30/87	52 FR 10198
Interim Final Rule Public Comment Period End	05/29/87	
Comments being analyzed	02/06/88	
Final Action	03/01/89	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Tracy Denning, Department of the Treasury, United States Customs Service, Room 4118, 1301 Constitution Ave., NW, Washington, DC 20229, 202 566-8361

RIN: 1515-AA37

TREAS—CUSTOMS — Final Rule Stage

2174. AIR AMBULANCE OPERATORS -- OVERFLIGHT EXEMPTIONS

Legal Authority: 5 USC 301; 19 USC 66; 19 USC 1202; 19 USC 1624; 49 USC 1474; 49 USC 1508

CFR Citation: 19 CFR 122.25

Legal Deadline: None

Abstract: Amendment to the Customs Regulations to ease restrictions on air ambulance flights.

Timetable:

Action	Date	FR Cite
TD in Customs Review	01/26/88	
Final Action	12/30/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Glenn Ross, Operations Officer, Department of the Treasury, United States Customs Service, Room 4416, 1301 Constitution Avenue, NW, Washington, DC 20229, 202 566-5867

RIN: 1515-AA52

2175. UNIQUE BILL OF LADING

Legal Authority: 5 USC 301; 19 USC 66; 19 USC 1624; 46 USC 3; 46 USC 91; 46 USC 2103

CFR Citation: 19 CFR 4.7a

Legal Deadline: None

Abstract: Amendment to the Customs Regulations to require that each bill of lading which accompanies a shipment of imported cargo carried by vessel possess a unique 12 character identifier. This identifier will serve to distinguish the particular bill of lading from other bills of lading issued by that carrier or issuer and from bills issued by others. The identifier is designed to enable Customs Automated Commercial System to more accurately track the progress of cargo from its arrival to its release.

Timetable:

Action	Date	FR Cite
NPRM	12/09/87	52 FR 46602
NPRM Comment Period End	02/08/88	
In Treasury Review	08/15/88	
Final Action	11/01/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Robin Landis, Operations Officer, Department of the Treasury, United States Customs Service, Room 4140, 1301 Constitution Avenue, NW, Washington, DC 20229, 202 566-8151

RIN: 1515-AA83

2176. ◆ CLEARANCE OF CARGO CARRIED BY EXPRESS CONSIGNMENT OPERATORS OR CARRIERS

Legal Authority: 19 USC 66; 19 USC 1202; 19 USC 1484; 19 USC 1498; 19 USC 1551; 19 USC 1555; 19 USC 1556; 19 USC 1565; 19 USC 1624

CFR Citation: 19 CFR 128

Legal Deadline: None

Abstract: Amendment to the Customs Regulations to set forth revised special informal entry procedures applicable to the entry and clearance of cargo carried by the various entities which comprise the express consignment industry and to further refine and expand upon the existing procedures which recognize the special needs of the growing express consignment industry. The member countries of the Customs Cooperation Council have recently examined the industry and associated issues and have adopted international guidelines which established various definitions, including the term "Express Consignment Operators or Carriers." The overwhelming growth of this industry requires Customs to provide more expedited clearance procedures. The amendments will promote uniform, fair and consistent treatment of the various courier and express air services, while at the same time better assuring the protection of the revenue in accord with all applicable laws and regulations.

Timetable:

Action	Date	FR Cite
NPRM	12/16/87	52 FR 47729
NPRM Comment Period End	02/16/88	
TD in Customs Review	08/16/88	
Final Action	11/15/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Vincent Danione, Operations Officer, Department of the Treasury, United States Customs Service, Room 4137, 1301 Constitution Avenue, NW, Washington, DC 20229, 202 566-5354

RIN: 1515-AA84

DEPARTMENT OF THE TREASURY (TREAS)
United States Customs Service (CUSTOMS) — Completed Actions

2177. AIR COMMERCE REGULATIONS

Legal Authority: 5 USC 301; 19 USC 66; 19 USC 1624; 19 USC 1644; 49 USC 1509

CFR Citation: 19 CFR 6

Legal Deadline: None

Abstract: Revises rules relating to the entry and clearance of aircraft and the transportation of persons and cargo by aircraft. Sets forth the general Customs requirements applicable to all air commerce.

Timetable:

Action	Date	FR Cite
NPRM	07/26/85	50 FR 30458
NPRM Comment Period End	10/24/85	
TD in Treasury Review	01/22/88	
Final Action T.D. 88-12	03/22/88	53 FR 9265
Final Action Effective	04/21/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Larry L. Burton, Attorney, Department of the Treasury, United States Customs Service, Room 2417, 1301 Constitution Avenue, NW, Washington, DC 20229, 202 566-5706

RIN: 1515-AA47

[FR Doc. 88-21378 Filed 10-21-88; 8:45 am]
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DEPARTMENT OF THE TREASURY (TREAS)
Internal Revenue Service (IRS)

Internal Revenue Service

26 CFR Ch. I

Improving Government Regulations; Semiannual Agenda of Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Semiannual agenda of regulations.

SUMMARY: This semiannual agenda lists the regulations that the Internal Revenue Service will be developing from October 1, 1988, through September 30, 1989. Determinations with respect to the agenda were made as of July 31, 1988. The purpose of this semiannual agenda is to give the public adequate notice of regulatory activities of the Internal Revenue Service.

FOR FURTHER INFORMATION CONTACT: Bob Boyer, Assistant Chief Counsel (Corporate), Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:CORP:T:R (202-566-3918), not a toll-free call.

SUPPLEMENTARY INFORMATION:

General

Section 5 of Executive Order 12291 and section 602 of the Regulatory Flexibility Act both require that a semiannual agenda of regulations under development and review be published in the **Federal Register**. The next semiannual agenda of the Internal Revenue Service will be published in the **Federal Register** in April of 1989.

Description

This Semiannual Agenda of Regulations lists all projects within the Internal Revenue Service (I.R.S.) as of July 31, 1988, for the development of regulations to appear in the Code of Federal Regulations. This agenda lists existing regulations under development by the Office of Associate Chief Counsel (Technical), the General Litigation Division and the Office of Associate Chief Counsel (International) of the Office of Chief Counsel, I.R.S. The following information is provided for each regulation project: The title; priority status; its effect, if any, on small entities and levels of government; the part of the Code of Federal Regulations affected; the legal authority for issuing the regulation; a brief description of the problem to be addressed in the regulation; and a timetable of action taken and to be taken. Under additional information there is provided the control number of the project within the Chief Counsel's Office, and the names and telephone numbers of the drafting and reviewing attorneys.

On October 1, 1988, the technical function of the Office of Chief Counsel reorganized in order to achieve greater mission integration in the formulation, implementation, and interpretation of the tax laws and regulations. As a result of this decision, four of the divisions previously constituting the technical function of the Office of Chief Counsel were abolished and realigned into four new organizations. These new organizations are: Assistant Chief Counsel (Corporate), Assistant Chief Counsel (Income Tax & Accounting), Assistant Chief Counsel (Financial Institutions & Products), and Assistant Chief Counsel (Passthroughs & Special Industries). Due to the abolition of the Legislation & Regulations Division because of the reorganization, a number of regulations projects in the former Legislation & Regulations Division were reassigned to various attorneys in the four newly-created organizations in the Office of Associate Chief Counsel (Technical). Please be aware that the current attorney assignments listed in this semiannual agenda may have changed due to the reorganization.

By direction of the Secretary of the Treasury.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Internal Revenue Service—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
2178	05 USC 0552 Statement of Procedural Rules--Miscellaneous Amendments	1545-AJ53
2179	26 USC 0042 To Clarify the Terms "Building" and "Placed in Service" for Purposes of Section 42	1545-AM09
2180	26 USC 0079 Update and Gender-neutralize Mortality Table used to Determine Permanent Group-term Life Insurance Benefits	1545-AK50
2181	26 USC 0119 (d) Income Tax--Tax Treatment of Faculty Housing	1545-AJ21
2182	26 USC 0130 Income Tax--Part 1 Personal Injury Liability Assignments	1545-AF29
2183	26 usc 0142 Exempt Bonds for Residential Rental Projects	1545-AM04
2184	26 USC 0168 Modification of ACRS	1545-AJ38
2185	26 USC 0263A (f) Capitalization of Certain Interest Expenses-- Notice of Proposed Rulemaking	1545-AM01
2186	26 USC 0267 (a) (3) Withholding on Accounts Payable to Related Parties	1545-AL97
2187	26 USC 0338 Certain Stock Purchases Treated as Asset Acquisitions-Foreign Implications	1545-AL86
2188	26 USC 0367 (e) Regulations under Section 367 (e)	1545-AL34
2189	26 USC 0367 (e) Regulations under Section 367 (e)	1545-AL35
2190	26 USC 0368 Income Tax--Temporary Regulations--Reorganizations Involving Financially Troubled Thrift Institutions	1545-AE26
2191	26 USC 0368 Income Tax--Cross-Reference-Reorganizations Involving Financially Troubled Thrift Institutions	1545-AE25
2192	26 USC 0453C Transitional Rules Relating to Indebtedness Treated as Payment on Installment Obligations	1545-AK04
2193	26 USC 0482 Section 482 Regulations	1545-AL89
2194	26 USC 0482 Section 482 Cost Sharing Regulations	1545-AM00
2195	26 USC 0834 Interest Deduction under Section 834(c)(5)	1545-AL07
2196	26 USC 0861 Income Tax - Interest and Dividends of 80-20 Companies	1545-AJ58

TREAS—IRS

Internal Revenue Service—Prerule Stage—Continued

Sequence Number	Title	Regulation Identifier Number
2197	26 USC 0872 (b) Income Tax - Reciprocal Exemptions for Certain Transportation Income	1545-AJ57
2198	26 USC 0876 Exclusion of Possession Source Income from Gross Income of Certain Individuals and Treatment of Corporations Organized in Guam, Samoa or CNMI	1545-AJ80
2199	26 USC 0897 (c) (3) FIRPA Cleanup	1545-AJ72
2200	26 USC 0901 Amendment of Section 1.901-2(e)(3)	1545-AJ90
2201	26 USC 0932 Coordination of U.S. and Virgin Islands Taxes	1545-AJ65
2202	26 USC 0932 Source Rules within the Virgin Islands	1545-AL40
2203	26 USC 0952 Subpart F - Use of Deficits	1545-AJ71
2204	26 USC 0967 Computation of a Branch's Taxable Income Taxation of Exchange Gain or Loss on Branch Remittances	1545-AM12
2205	26 USC 1441 Revised Withholding Tax Regulation to Modify "As soon as Practical" Requirements	1545-AL19
2206	26 USC 6700 Penalty for Promoting Abusive Tax Shelters	1545-AE96
2207	26 USC 6701 Penalty for Aiding and Abetting in the Understatement of Tax Liability	1545-AF01
2208	26 USC 7654 Cover Over of Income Taxes	1545-AL15
2209	26 USC 7702 Definition of Life Insurance Contract	1545-AL08
2210	26 USC 9999 Statement of Procedural Rules--Amendments to Statement of Procedural Rules--1991-1	1545-AO55

Internal Revenue Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
2211	26 USC 0001 Income Tax--Deduction for Bus Operating Authorities and Freight	1545-AJ18
2212	26 USC 0042 Low Income Housing Credit Recapture Rule	1545-AL12
2213	26 USC 0055 Income Tax--Alternative Minimum Tax	1545-AE80
2214	26 USC 0055 Alternative Minimum Tax for Individuals	1545-AJ85
2215	26 USC 0056 Income Tax--Inventory Adjustment for the Alternative Minimum Tax	1545-AL02
2216	26 USC 0057 Income Tax-Minimum Tax. Item of Tax Preference for Intangible Drilling Costs Incurred in Drilling Oil, Gas or Geothermal Wells	1545-AA34
2217	26 USC 0058 Tax Benefit Rule for Corporate Add-On Minimum Tax under the Internal Revenue Code of 1954	1545-AK20
2218	26 USC 0061 Taxation, Valuation, and Reporting of "Frequent Flyer" or Similar Bonus Payments	1545-AK02
2219	26 USC 0061 Amendment to the Regulations under Section 61 to Conform the Treatment of Bond Premium Income to the Consistent Yield Method	1545-AL92
2220	26 USC 0072 Loans Treated as Distributions	1545-AE41
2221	26 USC 0089 Nondiscrimination Rules for Non-Pension Employee Benefit Plans	1545-AI78
2222	26 USC 0103 To Provide Regulations Under Section 147 (b)--Relating to Limitation on Maturity of Private Activity Bonds	1545-AE88
2223	26 USC 0103 Regulations Relating to Federally Guaranteed Bonds	1545-AG84
2224	26 USC 0103 Definition of "Reissuance" Under Section 103	1545-AI65
2225	26 USC 0103A To Revise Definition of Areas of Chronic Economic Distress for Purposes of Mortgage Subsidy Bonds	1545-AG86
2226	26 USC 0108 Income Tax--Discharge of Indebtedness	1545-AM07
2227	26 USC 0111 Income Tax--Part 1--Income Tax Regulations Under Section 111 Relating to Inclusion of Tax Benefit Items	1545-AH17
2228	26 USC 0117 (d) Qualified Tuition Reductions	1545-AI13
2229	26 USC 0132 Income Tax--Prizes and Awards	1545-AJ19
2230	26 USC 0141 Definition of "Private Activity Bond", "Qualified Bond"	1545-AM01
2231	26 USC 0142 Tax-exempt Bonds for Residential Rental Projects	1545-AJ66
2232	26 USC 0144 Income tax--Student Loan Bonds	1545-AJ42
2233	26 USC 0145 Qualified 501 (c) (3) Bonds	1545-AJ39
2234	26 USC 0146 State Volume Cap for Tax-exempt Bonds	1545-AJ37
2235	26 USC 0148 Arbitrage Restrictions on Tax-exempt Bonds; Rebate Requirement	1545-AJ67
2236	26 USC 0148 General Revision of Arbitrage Regulations	1545-AL90
2237	26 USC 0149 Advance Refundings	1545-AL91
2238	26 USC 0162 Income Tax--To Provide Better Definitions in the Area of Political Advertising & Grassroots Lobbying	1545-AA79
2239	26 USC 0162 (g) Definition of Related Violation	1545-AK83
2240	26 USC 0163 Qualified Residence Interest	1545-AL87
2241	26 USC 0163 Prohibition on Foreign Targeting Obligations Backed by United States Government Securities	1545-AM19
2242	26 USC 0168 Income Tax--Normalization Requirement for Public Utility Property	1545-AA88
2243	26 USC 0170 Income Tax -- to Provide Regulations Relating to Contributions to Private Foundations	1545-AI28
2244	26 USC 0179 Election to Expense Certain Depreciable Assets	1545-AL74

TREAS—IRS

Internal Revenue Service—Proposed Rule Stage—Continued

Sequence Number	Title	Regulation Identifier Number
2245	26 USC 0183 Election to Postpone Determination with Respect to the Presumption That an Activity is Engaged in for Profit	1545-AK27
2246	26 USC 0195 Income Tax--To Add Provisions Relating to Start-Up Expenditures	1545-AI89
2247	26 USC 0245 Deduction for Dividends Received from Certain Foreign Corporations	1545-AL84
2248	26 USC 0246A Income Tax-Debt-Financed Portfolio Stock	1545-AH39
2249	26 USC 0263A Capitalization of Certain Pension, etc. Costs	1545-AI88
2250	26 USC 0263A (f) Temporary Regulation--Capitalization of Certain Interest Expenses	1545-AK03
2251	26 USC 0274 Income Tax--To Add Provisions Relating to Foreign Conventions (as Amended by Section 4 of Public Law 98-606)	1545-AB04
2252	26 USC 0280G Notice of Proposed Rulemaking Relating to Restrictions on Golden Parachute Payments	1545-AH49
2253	26 USC 0302 Waiver of Family Attribution by Entities	1545-AF13
2254	26 USC 0336 Certain Stock Sales and Distributions Treated as Asset Transfers	1545-AK29
2255	26 USC 0336 Cross-reference--Recognition of gain or loss on liquidating sales and distributions of property (TRA 1986; sections 631 to 633)	1545-AH88
2256	26 USC 0338 Income Tax -- Application of Installment Method of Reporting and Mandatory Application of MADSP Formula for Qualified Stock Purchases under Section 338 (h) (10)	1545-AK25
2257	26 USC 0338 Treatment of an Affiliated Group of Corporations as a Selling Consolidated Group for Purposes of Elective Recognition under Section 338 (h) (10)	1545-AK31
2258	26 USC 0367 Transfer of Intangibles Subject to Section 367 or 482 of the Code	1545-AJ97
2259	26 USC 0367 (b) Foreign Liquidations and Reorganizations (NPRM)	1545-AJ78
2260	26 USC 0368 Corporate Reorganization Amendments - Bankruptcy Tax Act of 1980	1545-AK33
2261	26 USC 0382 Income Tax--Limitation on Corporate Net Operating Loss Deduction	1545-AI99
2262	26 USC 0382 Computation of Section 382 Limitation	1545-AK27
2263	26 USC 0383 Special Limitations on Certain Credit and Loss Carryovers	1545-AK28
2264	26 USC 0401 Defined Benefit Plan Terminations and the Reversion of Assets	1545-AF81
2265	26 USC 0401 (a) (26) Income Tax - - Part 1--Additional Participation Requirements	1545-AK45
2266	26 USC 0401 (l) Income Tax -- Part 1-- Application of Nondiscrimination Rules to Integrated Plans	1545-AI86
2267	26 USC 0403 Nondiscrimination and other Rules Applicable to Section 403(b) Annuities	1545-AI90
2268	26 USC 0404 Income Tax--Employee Stock Ownership Plan Loan Payments	1545-AD77
2269	26 USC 0409 Income Tax--Requirements for Tax Credit Employee Stock Ownership Plans, Employee Plan Credit, and Defined Contribution Plan Voting Rights	1545-AD62
2270	26 USC 0409 Inc. Tax -- Part 1; Estate Tax -- Part 20, Employee Stock Ownership Plan Rules Affected by TRA 1986	1545-AJ07
2271	26 USC 0410 (b) Coverage Rules	1545-AK41
2272	26 USC 0412 Revising the Drafting of the Full Funding Limitation for Purposes of the Minimum Funding Requirement for Pension Plans	1545-AL58
2273	26 USC 0414 (r) Definition of Line of Business	1545-AL23
2274	26 USC 0419 Treatment of Funded Welfare Benefit Plans	1545-AG14
2275	26 USC 0442 Inc. Tax--Part 1--Amendment of section 1.442-1 to Provide Simplified Procedures for Changes of Annual Accounting Period by Certain Exempt Organizations	1545-AH09
2276	26 USC 0446 Blocked Income	1545-AL95
2277	26 USC 0453 Income Tax -- Gain or Loss on the Disposition of an Installment Obligation	1545-AD41
2278	26 USC 0453 Income Tax--Installment Sales Between Related Parties	1545-AD45
2279	26 USC 0453 Income Tax--Installment Sales Revision Act of 1980, Regulations Relating to Wrap-Around Mortgages	1545-AD46
2280	26 USC 0453 Income Tax Regulations--Part I. Installment Sales by Nontaxable Entities	1545-AF73
2281	26 USC 0453 Income Tax Regulations--Part 1--Special Rules Relating to Installment Obligations That Are Readily Tradable or Payable on Demand	1545-AQ27
2282	26 USC 0453C Certain Indebtedness Treated as Payments on Installment Obligations	1545-AM37
2283	26 USC 0457 Income Tax -- Deferred Compensation Plans of State and Local Governments and Tax-Exempt Organizations	1545-AI88
2284	26 USC 0460 Accounting for Long-term Contracts	1545-AJ28
2285	26 USC 0461 (h) Income Tax Regulations--The Economic Performance Requirement	1545-AK32
2286	26 USC 0465 Extension of the At-Risk Rules	1545-AF86
2287	26 USC 0465 Aggregation of Certain Activities for Purposes of the At-Risk Rules	1545-AI81
2288	26 USC 0465 Application of At-risk Limitations to the Holding of Real Property	1545-AK09
2289	26 USC 0467 Temporary Income Tax Regulations-Deferred Payments for Use of Property or Services	1545-AQ11
2290	26 USC 0469 (k) Limitations on Passive Activity Losses and Credits : Definition of activity	1545-AK62
2291	26 USC 0472 Inventory Computed by Use of Consumer or Producer Price Indexes	1545-AF05
2292	26 USC 0474 Simplified Dollar-value LIFO Method for Certain Small Businesses	1545-AH84
2293	26 USC 0514 Income Tax--Unrelated Trade or Business Income	1545-AE00
2294	26 USC 0585 Bad Debt Reserves of Financial Institutions	1545-AJ21
2295	26 USC 0585 Definition of "Small" Bank	1545-AL83
2296	26 USC 0595 Treatment of Foreclosed Property by Certain Creditors	1545-AF05

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2298	26 USC 0643 Property Distributed in Kind and Treatment of Multiple Trusts (Sec. 61 and 62 of The Tax Reform Act of 1984)	1545-AI06
2299	26 USC 0643 Clarification of Section 1.643 (a) (3) Relating to the Inclusion of Capital Gain in Distributable Net Income	1545-AI31
2300	26 USC 0672 Income Taxation of Trusts and Estates	1545-AJ20
2301	26 USC 0679 Income Tax–Procedure & Administration–Foreign Trusts Having U.S. Beneficiaries	1545-AI79
2302	26 USC 0704 To Provide Special Rules Concerning Related Party Loans in the Case of Partnership Allocations Attributable to Nonrecourse Debt	1545-AI85
2303	26 USC 0704 (c) Allocations of Income Gain, Loss, and Deduction with Respect to Property Contributed to a Partnership	1545-AG89
2304	26 USC 0706 Income Tax–Items Allocated to Portion of Year Partner Held Interest	1545-AB81
2305	26 USC 0707 Income Tax–Treatment of Payments to Partners Not Acting in Their Capacity as Partners	1545-AG83
2306	26 USC 0707 Amendment of Income Tax Regulations with Respect to Treatment of Disguised Sales by Partners	1545-AH22
2307	26 USC 0724 Contributions to a Partnership of Unrealized Receivables, Inventory Items or Capital Loss Property	1545-AG85
2308	26 USC 0752 Partner's Share of Partnership Liabilities	1545-AH26
2309	26 USC 0809 Imputed Earnings Rate for Mutual Life Insurance Companies	1545-AG63
2310	26 USC 0842 (b) Foreign Insurance Companies	1545-AL82
2311	26 USC 0846 Income Tax Regulations–Discounting of Unpaid Losses of Property and Casualty Insurance Companies	1545-AJ51
2312	26 USC 0860A Income Tax–Essential Issues Relating to Real Estate Mortgage Investment Conduits	1545-AJ35
2313	26 USC 0861 California Franchise Tax and Section 1.861-8 Allocation	1545-AM08
2314	26 USC 0863 Transportation Income Source Rules	1545-AJ55
2315	26 USC 0863 Proposed Income Tax Regulations under the Tax Reform Act of 1986 – Source of Income Rules for Income Derived from Space and Ocean Activities Including Telecommunications	1545-AJ84
2316	26 USC 0863 (a) Allocation of Gross Income Attributable to Interest Rate Swaps under Section 863 (a)	1545-AL25
2317	26 USC 0864 Allocation and Apportionment of Interest Expense and Certain Other Expenses	1545-AM20
2318	26 USC 0865 Source Rules for Personal Property Sales	1545-AJ83
2319	26 USC 0871 Employment Taxes–Application of Repeal of 30 Percent Withholding by Tax Reform Act of 1984	1545-AM30
2320	26 USC 0871 (i) Exemptions from Withholding of NRA's and Foreign Corporations	1545-AJ59
2321	26 USC 0882 Untimely Filing by Foreign Corporations	1545-AJ74
2322	26 USC 0882 Computation of Interest Expense Deduction	1545-AL84
2323	26 USC 0884 Branch Profits Tax (General Rule and Definitions) and 2nd Level Withholding Taxes	1545-AJ73
2324	26 USC 0897 Income Tax – Partnership Rules Regarding Taxation of Foreign Investment in United States Real Property Interests	1545-AL77
2325	26 USC 0902 Deemed Paid Credit under Sections 902 and 960 Determined on Accumulated Basis	1545-AL96
2326	26 USC 0904 (c) Carryback and Carryforward of Foreign Tax Credits	1545-AM18
2327	26 USC 0904 (f) Clarification of Treatment of Separate Limitation Losses	1545-AM11
2328	26 USC 0905 Treatment of Shareholders of Passive Foreign Investment Companies	1545-AC06
2329	26 USC 0907 Amendment of Regulations Under Section 907 of the Internal Revenue Code of 1954 to Conform Them to Section 211 of the Tax Equity and Fiscal Responsibility Act of 1982	1545-AE34
2330	26 USC 0936 (d) (4) CBI Investments of Section 936 Funds	1545-AL81
2331	26 USC 0936 (h) Amendment of Section 936(h) with Respect to Election of Product	1545-AK77
2332	26 USC 0953 (c) Insurance Income	1545-AJ70
2333	26 USC 0967 Profit and Loss Transition Rules	1545-AM13
2334	26 USC 0988 Section 988(d) - Integrated Hedging Rules for Foreign Exchange gain or loss	1545-AL15
2335	26 USC 0988 Taxation of Exchange Gain or Loss on Foreign Currency Denominated Transactions	1545-AL16
2336	26 USC 0994 DISC Regulations	1545-AM05
2337	26 USC 1031 Rules Relating to the Inapplicability of Section 1031 to Partnership Interests and the Limitation on the Period During Which Like Kind Exchanges May Be Made	1545-AH43
2338	26 USC 1059 Income Tax–Notice of Proposed Rulemaking - Amendment of Regulations Relating to Basis Reductions for Non-Taxed Portion of Extraordinary Dividends to Reflect TRA 1984	1545-AH41
2339	26 USC 1092 Income Tax–Tax Straddles	1545-AC21
2340	26 USC 1248 Income Tax–Gain from Sale or Exchange of Stock in Foreign Corporations	1545-AC31
2341	26 USC 1248 Gains from Certain Sales or Exchanges in Certain Foreign Corporations	1545-AL86
2342	26 USC 1253 Income Tax–To Clarify Tax Treatment of Transfers of Franchises, Trademarks, & Trade Names	1545-AC34
2343	26 USC 1256 (e) Hedging Exception to Mark-to-Market Rules for Section 1256 Contracts, Deferral of Certain Straddle Losses, and Wash-Sale and Short-Sale Principles Applicable to Certain Straddle Transactions	1545-AI59
2344	26 USC 1276 Disposition Gain Representing Accrued Market Discount Treated as Ordinary Income; Deferral of Interest Deduction Allocable to Accrued Market Discount	1545-AH83
2345	26 USC 1286 Income Tax-Treatment of Stripped Bonds and Stripped Coupon	1545-AH75
2346	26 USC 1361 Income Tax–Treatment of Obligations Which Purport to Represent Debt as a Second Class of Stock	1545-AC37

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2348	26 USC 1366 Income Tax–Pass-Thru of S Corporation Items to Shareholders	1545-AE05
2349	26 USC 1367 Income Tax–Rules Relating to Adjustment to Basis of Stock of Shareholders of S Corporation and to Determination of Basis of Property Distribution by Corporation	1545-AE84
2350	26 USC 1371 Income Tax–Application of Subchapter C Rules to S Corporations	1545-AE90
2351	26 USC 1374 Cross-reference–Application of Section 1374 Built-in Gain Tax to C Corporation's Electing S Corporation Status	1545-AK93
2352	26 USC 1377 Income Tax–Definitions and Special Rules Pertaining to S Corporation	1545-AE94
2353	26 USC 1446 Withholding Tax on Payments from Partnerships to Foreign Partners	1545-AL30
2354	26 USC 1492 Nontaxable Transfers under Section 1491	1545-AL98
2355	26 USC 1502 Investment Adjustments Under the Consolidated Return Regulations	1545-AC47
2356	26 USC 1502 Income Tax–Application of Section 465 At Risk Limitations to Members that Join in Filing Consolidated Returns	1545-AC98
2357	26 USC 1502 Income Tax–Deletion of the Requirement of Section 1.1502-47 (d) (12) (v) (C) That, In Applying Tacking Rule, Profitable and Loss Life Activities Not Be Seperated	1545-AI98
2358	26 USC 1502 Cross-reference–Consolidated return investment adjustments with respect to an acquired subsidiary's built-in gains or losses	1545-AK94
2359	26 USC 1502 Consolidated Returns	1545-AL44
2360	26 USC 1502 Revision of Section 1.1502-33	1545-AL80
2361	26 USC 1502 Adjustments Reflecting a Restructuring of a Consolidated Group	1545-AL82
2362	26 USC 1503 (d) Dual Resident Companies-Limitation on Consolidated Losses	1545-AM10
2363	26 USC 1504 Income Tax–Includibility in an Affiliated Group of Subsidiaries Formed to Comply with Foreign Laws	1545-AC09
2364	26 USC 1504 Income Tax – Amendment of Regulations Under Section 1504 (a) of the Code, as Amended by Section 60 of the Tax Reform Act of 1984, Defining "Affiliated Group"	1545-AH09
2365	26 USC 2001 Estate and Gift Taxes, Income Taxes-Unified Credit in Lieu of Exemptions, Unified Rate Schedule for Estate and Gift Taxes Situs of Foreign Partnerships for Estate Taxation	1545-AC90
2366	26 USC 2032 Estate Tax–Valuation of Certain Farm, etc. Real Property	1545-AC92
2367	26 USC 2663 Estate Tax-Generation-Skipping Transfer Tax	1545-AL76
2368	26 USC 3121 Amendment of the Employment Tax Regulations Under Code Section 3121 to Conform to Section 321 of the Social Security Amendments of 1983	1545-AF01
2369	26 USC 3306 Treatment of Certain Deferred Compensation and Salary Reduction Arrangements	1545-AF07
2370	26 USC 3405 Employment Tax–Withholding from Pensions, Annuities, and Other Deferred Income	1545-AE98
2371	26 USC 3405 (d) (13) Withholding on Certain Deferred Payments Outside the United States	1545-AL31
2372	26 USC 3406 To Provide Regulations Relating to Backup Withholding Under Section 3406	1545-AE80
2373	26 USC 4051 Excise Tax–Retailers Excise Taxes on Motor Vehicles	1545-AF61
2374	26 USC 4051 Temporary Regulation Excise Taxes on Heavy Trucks, Truck Trailers and Semitrailers, and Tractors Sold at Retail	1545-AF78
2375	26 USC 4101 Gasoline Excise Tax Bond Requirements	1545-AM32
2376	26 USC 4181 Revision of Section 48.4161-1(a)(2) of the Manufacturers and Retailers Excise Tax Regulations relating to the tax on firearm parts and accessories	1545-AL72
2377	26 USC 4611 Income Tax, Excise Tax, and Environmental Tax–Imposition of Taxes on Petroleum, Certain Chemicals, and Corporations and Additional Excise Taxes on Certain Fuels	1545-AJ20
2378	26 USC 4671 Tax on Certain Imported Substances	1545-AL73
2379	26 USC 4940 Income Tax–Excise Tax–Procedure and Administration–Various Private Foundation Provisions	1545-AG16
2380	26 USC 4980 Excise Tax – Part 54, Reversion of Qualified Plan Assets to Employer	1545-AH02
2381	26 USC 4991 Excise Tax–With Respect to the Definition of Taxable Crude Oil	1545-AD00
2382	26 USC 6011 Electronic Filing of Tax Returns	1545-AL01
2383	26 USC 6031 Nominee Reporting of Partnership Information	1545-AJ99
2384	26 USC 6033 Amendment of Section 1.6033-2 (g) (5) Relating to Returns by an Integrated Auxiliary of a Church	1545-AI52
2385	26 USC 6038A Information with Respect to Certain Foreign-Owned Corporations	1545-AJ50
2386	26 USC 6039D Returns, etc. on Certain Fringe Benefit Plans	1545-AI22
2387	26 USC 6039E Information Regarding Resident Status	1545-AJ89
2388	26 USC 6046A Income Tax Regulations relating to Returns as to Interests in Foreign Partnerships	1545-AK75
2389	26 USC 6047 Reporting of Plan Distributions	1545-AL54
2390	26 usc 6049 Income Tax–To Require Issuers of Certificates of Deposit to Furnish Issue Price to Brokers	1545-AC26
2391	26 USC 6050M Treatment of Net Capital Losses of Regulated Investment Companies and Real Estate Investment Trusts-Relationships between Chapter 44 Excise Taxes and Taxable Income	1545-AJ04
2392	26 USC 6081 Extension of Time to File for Taxpayers Traveling Outside the United States	1545-AM00
2393	26 usc 6103 Income Tax-Disclosure of Return Information to Officers and Employees of the Department of Commerce for Certain Statistical Purposes and Related Activities	1545-AM02
2394	26 USC 6166 Estate Tax–Procedure and Administration–Deferral and Installment Payment of Estate Tax	1545-AC25
2395	26 USC 6224 Statement of Procedural Rules to Provide Procedures for Partnership-Level Proceedings with Respect to Partnership Items	1545-AI08

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Sequence Number	Title	Regulation Identifier Number
2396	26 USC 6244 Determination of the Tax Treatment of Subchapter S Items at the Corporate Level	1545-AE98
2397	26 USC 6311 Procedure and Administration Regulations--Payment of Taxes by Check or Money Order and Liability of Financial Institutions for Unpaid Taxes	1545-AI24
2398	26 USC 6325 Procedure and Administration--Release of Liens, Notice Before Levy, Property Exempt from Levy Redemption of Levied Real Property and Amount of Damages in Case of Wrongful Levy	1545-AE82
2399	26 USC 6402 Procedure and Administration--Reduction of Tax Overpayments by Amount of Past-due Legally Enforceable Debt Owed to Federal Agency	1545-AK45
2400	26 USC 6416 Gasoline Excise Tax Definitions, Registration Requirements, and Section 6416 Procedures	1545-AL89
2401	26 USC 6601 Procedure and Administration Regulations--Extension of the Period for Assessment of Tax in Certain Circumstances	1545-AI23
2402	26 USC 6621 Essential Issues in Connection with Differential Interest Rates	1545-AK06
2403	26 USC 6659 Procedure & Administration--Addition to Tax in the Case of Valuation Overstatements and Understatements, and Increase in the Negligence Penalty	1545-AD39
2404	26 USC 6695 Use of Facsimile Signatures by Income Tax Return Preparers of Forms 1040, U.S. Fiduciary Income Tax Returns	1545-AL40
2405	26 USC 6867 Income Tax--Presumption of Jeopardy in the Case of Illegal Activity Cash	1545-AE30
2406	26 USC 7425 Forfeiture of Land Sales Contract With Respect to Discharge of Federal Tax Lien	1545-AK24
2407	26 USC 7425 Redemptions of Real Property Under IRC 7425 - Excess Expenses	1545-AL30
2408	26 USC 7609 Procedure and Administration - Suspension of Statutes of Limitations in Absence of Third-Party Recordkeeper Response to Summons	1545-AK72
2409	26 USC 7704 Certain Publicly Partnerships Treated as Corporations	1545-AL57
2410	42 USC 0664 Proposed Amendments to the Procedure and Administration Regulations under the Child Support Enforcement Amendments of 1984 Relating to the Reduction of Tax Overpayments by Amounts Etc.	1545-AH60

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Sequence Number	Title	Regulation Identifier Number
2411	26 USC 0025 To Provide Regulations Relating to Mortgage Credit Certificates	1545-AH08
2412	26 USC 0025 Income Tax--Information Reporting for Mortgage Credit Certificates	1545-AI38
2413	26 USC 0028 Credit for Clinical Testing Expenses for Certain Drugs for Rare Diseases or Conditions	1545-AF84
2414	26 USC 0032 Income Tax--Notice to Employees on Earned Income Credit	1545-AJ44
2415	26 USC 0042 Low-Income Housing Credit Allocation Rules and Information Reporting Requirements	1545-AJ60
2416	26 USC 0042 Clarification of Determination of Bad Debt Experience under Nonaccrual-experience Method of Accounting	1545-AK92
2417	26 USC 0042 Low-Income Housing Credit for Federally-Assisted Buildings acquired during 10-year period	1545-AL05
2418	26 USC 0044 Income Tax--Credit for Increasing Research Activities	1545-AA07
2419	26 USC 0047 Income Tax--Tax Treatment of Mass Assets for Investment Credit Purposes	1545-AA10
2420	26 USC 0047 Amendment of Income Tax Regulations Under Sections 47, 48 and 168 Relating to Basis Adjustment to Reflect Investment Tax Credit	1545-AF86
2421	26 USC 0048 Income Tax--Increase in Investment Tax Credit for Qualified Rehabilitation Expenditures	1545-AA12
2422	26 USC 0048 Income Tax--Special Rules Added by Sec 223(c) of Crude Oil Windfall Profit Tax Act 1980, Relating to Reduction of Credit Where Property is Financed by Subsidized ETC	1545-AA26
2423	26 USC 0056 Corporate Alternative Minimum Tax Book Income Adjustment	1545-AJ14
2424	26 USC 0056 Net Book Income Adjustment for U.S. Branches of Foreign Corporations	1545-AK23
2425	26 USC 0056 Income Tax--Inventory Adjustment for the Alternative Minimum Tax	1545-AL03
2426	26 USC 0056 Tax Benefit Rule for Corporate Add-On Minimum Tax under the Internal Revenue Code of 1954	1545-AK21
2427	26 USC 0061 Income Tax--Nonqualified Salary Reduction Agreements	1545-AA35
2428	26 USC 0061 Income Tax--Taxation of Fringe Benefits and Exclusions from Gross Income for Certain Fringe Benefits	1545-AH73
2429	26 USC 0067 2-Percent Floor on Miscellaneous Itemized Deductions	1545-AJ49
2430	26 USC 0071 Treatment of Transfer of Property between Spouses, Tax Treatment of Alimony and Separate Maintenance Payments, and Dependency Exemption in the Case of Child of Divorced Parents	1545-AH49
2431	26 USC 0101 (d) Income Tax Regulations--Mortality Tables to be Used to Determine Amount Held by Insurer with respect to a Beneficiary	1545-AK14
2432	26 USC 0103 Income Tax--Exemption for Industrial Development Bonds for Water Facilities	1545-AA40
2433	26 USC 0103 Income Tax--To Define the Term "Principal User of a Facility"	1545-AA56
2434	26 USC 0103 Income Tax--Mortgage Subsidy Bonds	1545-AA83
2435	26 USC 0103 To Provide Regulations Requiring Certain Debt Obligations To Be Issued in Registered Form	1545-AE18

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Sequence Number	Title	Regulation Identifier Number
2436	26 USC 0103 To Provide Regulations Under Section 103(k) and (l)-- Relating to Public Approval and Information Reporting Requirements for Private Activity Bonds	1545-AE24
2437	26 USC 0103 Regulations Relating to $40 Million Small Issue Limit on Tax-Exempt Bonds Per Taxpayer	1545-AH19
2438	26 USC 0103 Income Tax--To Clarify the Definition of Property Which is a Pollution Control Facility	1545-AK10
2439	26 USC 0103 (b) To Provide Regulations Relating to the Tax Exemption of Obligations to Finance Mixed-Use Residential Rental Property	1545-AH86
2440	26 USC 0117 Exclusion of Qualified Scholarships and Fellowships from Gross Income	1545-AJ87
2441	26 USC 0120 Income Tax--Prepaid Legal Expenses	1545-AD82
2442	26 USC 0125 Income Tax--Tax Treatment of Cafeteria Plans	1545-AD83
2443	26 USC 0126 Income Tax-Exclusion from Income of Certain Cost-Sharing Payments Under Government Programs	1545-AA73
2444	26 USC 0131 Income Tax--Part I Exclusion from Gross Income for Certain Foster Care Payments	1545-AF92
2445	26 USC 0148 Arbitrage Restrictions on Tax-exempt Bonds; Rebate Requirement	1545-AJ91
2446	26 USC 0149 Information Reporting for Tax-exempt Bonds	1545-AJ93
2447	26 USC 0162 (k) Continuation Coverage Requirements of Group Health Plans	1545-AW9
2448	26 USC 0163 Income Tax Regulations--Limitations on Deductions for Nonbusiness Interest	1545-AK17
2449	26 USC 0163 Registration Requirements with Respect to Certain Debt Obligations	1545-AM22
2450	26 USC 0163 Registration Requirements with Respect to Certain Debt Obligations	1545-AM23
2451	26 USC 0165 Income Tax Regulations--Tax Straddles Relating to Section 108 of the Tax Reform Act of 1984	1545-AG87
2452	26 USC 0168 Income Tax--Accelerated Cost Recovery System	1545-AA87
2453	26 USC 0168 Tax-Exempt Entity Leasing	1545-AH70
2454	26 USC 0170 Deductions in Excess of $5000 Claimed by a Subchapter C Corporation for Charitable Contributions of Certain Property	1545-AL89
2455	26 USC 0216 Provisions Relating to Cooperative Housing Corporations	1545-AJ96
2456	26 USC 0219 Individual Retirement Plans and Simplified Employee Pensions	1545-AD58
2457	26 USC 0219 Individual Retirement Plans, Simplified Employee Pensions, and Qualified Voluntary Employee Contributions	1545-AD66
2458	26 USC 0263A Capitalization and Inclusion in Inventory Costs of Certain Expenses	1545-AK08
2459	26 USC 0263A Practical Capacity	1545-AK56
2460	26 USC 0267 Regulations Under Section 267 of the Code to Reflect Section 174 of the Tax Reform Act of 1984 Relating to Losses, Expenses, and Interest in Transactions Between Related Taxpayers	1545-AG11
2461	26 USC 0269 Income Tax--Personal Service Corporations	1545-AF11
2462	26 USC 0274 Income Tax--Deductibility of Gifts by Employers	1545-AB06
2463	26 USC 0274 (d) Income Tax--Substantiation Requirements with Respect to Listed Property and Substantiation Requirements Relating to the Taxation of Fringe Benefits	1545-AJ40
2464	26 USC 0280A Income Tax--Deductions for Expenses Attributable to Business Use of Homes, Rental of Vacation Homes	1545-AB09
2465	26 USC 0280F Limitations on Amount of Depreciation and Investment Tax Credit for Luxury Automobiles and Certain Other Property	1545-AG89
2466	26 USC 0280F Leased Property under Section 280F	1545-AL43
2467	26 USC 0304 Affiliated Groups	1545-AL91
2468	26 USC 0336 Income Tax--Part 1 Temporary Regulations-Recognition of Gain or Loss Liquidating Sales and Distributions of Property (TRA 1986, sections 631 to 633)	1545-AJ01
2469	26 USC 0336 Certain Stock Sales and Distributions Treated as Asset Transfers	1545-AK30
2470	26 USC 0337 Application of General Utilities Repeal Regulatory Authority to RICs and REITs	1545-AL06
2471	26 USC 0337 Application of General Utilities Repeal Regulatory Authority to Certain Distributions under Section 355	1545-AM24
2472	26 USC 0338 Deemed Sale Price When Certain Stock Purchases Are Treated as Asset Acquisitions	1545-AF29
2473	26 USC 0338 Income Tax-Elections Under Section 338, as Added by Section 224 of the Tax Equity and Fiscal Responsibility Act of 1982 as Amended by the Technical Corrections Act of 1982	1545-AF36
2474	26 USC 0338 Regulations Under Section 338 (h) (10) as Added to the Code by Section 306 of the Technical Corrections Act of 1982, Relating to Special Elective Recognition of Gain or Loss	1545-AF88
2475	26 USC 0338 Income Tax--Application of Section 338 to Stock and Asset Acquisitions in the International Context	1545-AG13
2476	26 USC 0338 Questions and Answers Relating to Domestic Matters under Section 338 of the Internal Revenue Code of 1954 - Cross Reference to the Temporary Regulations	1545-AH66
2477	26 USC 0338 Statements of Election and Due Dates	1545-AI83
2478	26 USC 0338 Income Tax-Application of Installment Method of Reporting and Mandatory Application of MADSP Formula for Qualified Stock Purchases under Section 338 (h) (10)	1545-AJ07
2479	26 USC 0338 Treatment of an Affiliated Group of Corporations as a Selling Consolidated Group for Purposes of Elective Recognition under Section 338 (h) (10)	1545-AM32
2480	26 USC 0355 Income Tax--Distribution of Stock and Securities of a Controlled Corporation	1545-AD20
2481	26 USC 0358 Income Tax--Triangular Reorganizations, Basis and Other Consequences	1545-AH21
2482	26 USC 0367 Amendment of the Income Tax Regulations under Section 367 of the Code (transfers to foreign corporations) to Reflect Section 131 of the Tax Reform Act of 1984 (P.L. 98-369)	1545-AK74

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2483	26 USC 0367 (b) Income Tax--Part 1--Temporary-Whether Earnings and Profits Should be Allocated to an Acquiring CFC from an Acquired CFC Following a Non-Recognition Transaction	1545-AS32
2484	26 USC 0367 (b) Foreign Liquidations and Reorganizations (Temporary Regulations)	1545-AJ76
2485	26 USC 0368 Income Tax--Exchange Funds	1545-AB31
2486	26 USC 0382 Income Tax--Ownership Change	1545-AJ09
2487	26 USC 0382 Computation of Section 382 Limitation	1545-AK87
2488	26 USC 0382 Section 382 Limitation on Groups Filing Consolidated Returns	1545-AL36
2489	26 USC 0382 Allocation of a Loss Corporation's Income or Loss for the Taxable Year that Includes the Change Date Between the Periods Ending With and After the Change Date	1545-AL58
2490	26 USC 0383 Special Limitations on Certain Credit and Loss Carryovers	1545-AK28
2491	26 USC 0401 Income Tax--Refund of Mistaken Contributions	1545-AD66
2492	26 USC 0401 Income Tax--Required Distributions from Qualified Plans and Individual Retirement Accounts and Partial Rollovers of Individual Retirement Accounts	1545-AE85
2493	26 USC 0401 Notice, Election, and Consent Rules under the Retirement Equity Act of 1984	1545-AH60
2494	26 USC 0401 (k) Cash or Deferred Arrangements (Tax Reform Act of 1986)	1545-AI79
2495	26 USC 0401 (m) Nondiscrimination Requirements for Employer Matching Contributions and Employee Contributions	1545-AI80
2496	26 USC 0402 Income Tax--Treatment of Certain Lump Sum Distributions	1545-AD72
2497	26 USC 0404A Income Tax--Deduction for Certain Foreign Deferred Compensation Plans	1545-AD81
2498	26 USC 0408 Annual Information Reports by Trustees and Issuers of Individual Retirement Plans	1545-AF83
2499	26 USC 0411 Income Tax--Coordination of Vesting and Nondiscrimination Requirements for Qualified Plans	1545-AD83
2500	26 USC 0411 Survivor Benefits, Distribution Restrictions and Various Other Issues under the Retirement Equity Act of 1984	1545-AH01
2501	26 USC 0411 Inc. Tax -- Part 1 -- Benefit Accrual Beyond Normal Retirement Age	1545-AI85
2502	26 USC 0411 Income Tax - Part 1 - Minimum Vesting Standards	1545-AI86
2503	26 USC 0412 Income Tax--Excise Tax Regulations--Funding for Qualified Plans	1545-AD84
2504	26 USC 0414 Income Tax--Employees of an Affiliated Service Group	1545-AD90
2505	26 USC 0414 Income Tax Regulations--Affiliated Service Groups and Employee Leasing	1545-AE91
2506	26 USC 0414 Definition of "Highly Compensated Employee" and "Compensation"	1545-AI91
2507	26 USC 0417 Joint and Survivor Annuities	1545-AG72
2508	26 USC 0441 Taxable Years of Certain Entities	1545-AK03
2509	26 USC 0444 Election of Taxable Year Other Than Required Year By Partnerships, S Corporations and Personal Service Corporations	1545-AL86
2510	26 USC 0448 Limitation of the Use of the Cash Method of Accounting	1545-AJ02
2511	26 USC 0448 Nonaccrual-experience Method of Accounting-- Clarification of Amounts Determined to be Uncollectible	1545-AM33
2512	26 USC 0451 Accounting for Long-Term Contracts; Corporations Filing Consolidated Returns With a Contractor	1545-AI19
2513	26 USC 0453 Income Tax--General Rules Relating to Installment Sales	1545-AB43
2514	26 USC 0453 Income Tax--Installment Obligations Received from a Liquidating Corporation	1545-AB43
2515	26 USC 0453 Income Tax--Installment Obligations Received in Transactions in which Gain or Loss is Generally Not Recognized	1545-AB44
2516	26 USC 0453 Income Tax--Installment Method Reporting by Dealers in Personal Property	1545-AB47
2517	26 USC 0453 Transitional Rule Relating to Certain Installment Sales by Manufacturers to Dealers	1545-AL55
2518	26 USC 0453A Income Tax Regulations--Part 1. Installment Sale by Dealers in Personal Property	1545-AF71
2519	26 USC 0453C Certain Indebtedness Treated as Payment on Installment Obligations	1545-AJ27
2520	26 USC 0458 Income Tax--Exclusion from Gross Income with Respect to Magazines, Paperbacks, and Record Returns After Close of Taxable Year	1545-AB48
2521	26 USC 0461 (h) Temporary Income Tax Regulations--The Economic Performance Requirement	1545-AH33
2522	26 USC 0464 Income Tax--Limitation on Deductions in Case of Farming Syndicates	1545-AB51
2523	26 USC 0465 Income Tax--Determination of Amounts at Risk with Respect to Certain Activities	1545-AB52
2524	26 USC 0465 Aggregation of Certain Activities	1545-AI41
2525	26 USC 0469 Limitations on Passive Activity Losses and Credits	1545-AB26
2526	26 USC 0472 Income Tax--Three-Year Averaging for Increases in Inventory Value when Electing LIFO Method of Accounting	1545-AB55
2527	26 USC 0474 Simplified Dollar-value LIFO Method for Certain Small Businesses	1545-AK85
2528	26 USC 0501 Income Tax--Rules Clarifying the Regulations With Respect to the Computation of "Gross Income" of an Electric Cooperative	1545-AD99
2529	26 USC 0565 Consent Dividends	1545-AL88
2530	26 USC 0593 Income Tax--Limitation on Additions to Bank Loss Reserves	1545-AB66
2531	26 USC 0613A Income Tax--Supplementary Rules on Limitations on Percentage Depletion for Oil & Gas	1545-AB73
2532	26 USC 0613A Income Tax--To Conform to Sec 3 of the Act of 12/28/80	1545-AB74
2533	26 USC 0702 Income Tax - Application of Effective Date for New Rules Regarding Deductions for Meal, Travel, and Entertainment to Partnerships and S Corporations	1545-AK80
2534	26 USC 0706 (b) Taxable Years of Certain Partnerships	1545-AJ47

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Internal Revenue Service—Final Rule Stage—Continued

Sequence Number	Title	Regulation Identifier Number
2535	26 USC 0807 (d) Mortality and Morbidity Tables to be Used for Insurance Products for which there are not Applicable Commissioner's Tables	1545-AI84
2536	26 USC 0817 Income Tax Regulations-Diversification Requirements for Variable Annuity, Endowment, and Life Insurance Contracts	1545-AG70
2537	26 USC 0832 Treatment of Salvage and Reinsurance in Determining Losses of Property and Casualty Insurance Companies	1545-AK49
2538	26 USC 0846 Temporary Income Tax Regulations--Discounting of Unpaid Losses of Property and Casualty Insurance Companies	1545-AI96
2539	26 USC 0861 Apportionment of Expenses in the FSC and DISC Contexts	1545-AK76
2540	26 USC 0861 California Franchise Tax and Section 1.861-8 Allocation	1545-AM09
2541	26 USC 0863 (a) Allocation of Gross Income Attributable to Interest Rate Swaps under Section 863 (a)	1545-AL26
2542	26 USC 0864 Allocation and Apportionment of Interest Expense and Certain Other Expenses	1545-AM21
2543	26 USC 0864 (d) Treatment of Related Person Factoring Income; Certain Investments in United States Property; and Stock Redemptions Through Related Corporations	1545-AH85
2544	26 USC 0864 (e) Allocation and Apportionment of Expenses	1545-AL21
2545	26 USC 0865 Temporary Regulations for Source Rules for Personal Property Sales	1545-AL78
2546	26 USC 0871 Employment taxes--Application of Repeal of 30 Percent Withholding by Tax Reform Act of 1984	1545-AM29
2547	26 USC 0884 Branch Profits Tax (General Rule and Definitions) and Second Level Withholding Taxes (Temporary Regulations)	1545-AJ77
2548	26 USC 0892 Income of Foreign Governments and International Organizations	1545-AL93
2549	26 USC 0897 Income Tax--Partnership Rules Regarding Taxation of Foreign Investment in U.S. Real Property Interests	1545-AB98
2550	26 USC 0897 Notice of Proposed Rulemaking--Nonrecognition of Corporate Distributions and Reorganizations Under the Foreign Investment in Real Property Tax Act	1545-AK70
2551	26 USC 0904 (f) Clarification of Treatment of Separate Limitation Losses	1545-AL17
2552	26 USC 0905 Income Tax--Taxpayer's Obligation to File a Notice of Redetermination of Foreign Tax and Civil Penalties for Failure to File	1545-AC09
2553	26 USC 0924 FSC Transfer Pricing Rules, Distributions, Dividends Received, Deduction and Other Special Rules for FSC	1545-AI16
2554	26 USC 0936 Income Tax--Definition of Qualified Possession Source Investment Income for Purposes of Puerto Rico & Possession Tax Credit	1545-AC10
2555	26 USC 0954 Current Taxation of Foreign Oil Related Income of Controlled Foreign Corporations	1545-AE38
2556	26 USC 0954 Subpart F Definitions	1545-AM15
2557	26 USC 0985 Functional Currency	1545-AL24
2558	26 USC 0987 Profit and Loss Transition Rules	1545-AM14
2559	26 USC 0989 Definition of a Qualified Business Unit	1545-AM31
2560	26 USC 0989 (c) Transition Rule for Qualified Business Units Using a Net Worth Method of Accounting for Taxable Years Beginning Before January 1, 1987	1545-AL29
2561	26 USC 0995 Proposed Income Tax Regulations Under the Tax Reform Act of 1984 Relating to INTEREST CHARGE DISCs	1545-AG71
2562	26 USC 1058 Income Tax--Transfers of Securities Under Certain Agreements	1545-AC20
2563	26 USC 1059A Customs Limitation on Taxpayer's Basis in Property Imported from Related Persons	1545-AJ92
2564	26 USC 1060 Income Tax--Special Allocation Rules for Certain Asset Acquisitions	1545-AJ06
2565	26 USC 1092 (b) Income Tax Regulations Under the Tax Reform Act of 1984 Relating to Mixed Straddles	1545-AH59
2566	26 USC 1092 (b) Income Tax Regulations Under the Economic Recovery Tax Act of 1981 and the Tax Reform Act of 1984, Relating to Straddles	1545-AH60
2567	26 USC 1248 Gains from Certain Sales or Exchanges in Certain Foreign Corporations	1545-AL09
2568	26 USC 1254 Income Tax--Gain from Disposition of Interest in Oil or Gas Property	1545-AC35
2569	26 USC 1256 (e) Hedging Exception to Mark-to-Market Rules for Section 1256 Contracts, Deferral of Certain Straddle Losses, and Wash-Sale and Short-Sale Principles Applicable to Certain Straddle Transactions	1545-AI72
2570	26 USC 1275 Regulations Under Section 1271 Through 1275 Relating to Tax Treatment of Debt Instruments Having Original Issue Discount	1545-AH46
2571	26 USC 1295 Passive Foreign Investment Companies	1545-AI33
2572	26 USC 1361 Income Tax--Definition of S Corporation	1545-AD96
2573	26 USC 1374 Temporary Regulation--Application of Section 1374 Built-in Gain Tax to C Corporation's Electing S Corporation Status	1545-AK31
2574	26 USC 1378 Income Tax--Certain Elections Under the Subchapter S Revision Act of 1982	1545-AF72
2575	26 USC 1402 (e) Applications for Exemption from Self-employment Taxes for Ministers, etc	1545-AJ84
2576	26 USC 1441 Withholding on Items of Income Covered by an Income Tax Convention	1545-AH56
2577	26 USC 1446 Temporary Regulation on Withholding Tax on Payments from Partnerships to Foreign Partners	1545-AL32
2578	26 USC 1502 Income Tax--Credit & Deductions etc., for Consolidated Returns	1545-AC40
2579	26 USC 1502 Investment Adjustments Under the Consolidated Return Regulations	1545-AI58
2580	26 USC 1502 Temporary Regulations-Consolidated Return Investment Adjustments with respect to an Acquired Subsidiary's Built-in Gains or Losses	1545-AK95

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Sequence Number	Title	Regulation Identifier Number
2581	26 USC 1502 Consolidated Return Regulations; Adjustment on Disposition of Stock of Subsidiary	1545-AL58
2582	26 USC 1502 Adjustment Reflecting a Restructuring of a Consolidated Group	1545-AL61
2583	26 USC 1502 Amendment of Consolidated Return Regulations Regarding Deferral of Gain or Loss on Complete Liquidations	1545-AL63
2584	26 USC 1502 Amendment of Consolidated Return Regulations to Address Treatment of Certain Organizations Whose Tax-Exempt Status was Revoked by the 1986 Act	1545-AL64
2585	26 USC 1502 Consolidated Investment Credit	1545-AM35
2586	26 USC 1502 Treatment of Dividend Distributions after the Sale of a Subsidiary	1545-AM36
2587	26 USC 1503 (d) Dual Resident Companies Limitation on Consolidated Losses	1545-AL54
2588	26 USC 1504 Cross-reference--Alaska Native Corporations; Requirements for affiliation in order to file a consolidated return	1545-AK88
2589	26 USC 2036 Estate & Gift Taxes--Inclusion of Stock in Estate Where Decedent Retained Voting Rights	1545-AD83
2590	26 USC 2056 Estate and Gift Taxes--Increase in Limitations on Marital Deductions	1545-AC67
2591	26 USC 2653 (b) Estate Tax--Generation Skipping Transfer Tax	1545-AJ11
2592	26 USC 3121 Employment Tax--To Require Withholding of Social Security and Railroad Retirement Tax from Certain Payments of Sick Pay	1545-AC77
2593	26 USC 3406 Backup Withholding	1545-AL48
2594	26 USC 3406 Backup Withholding	1545-AL39
2595	26 USC 3508 Treatment of Real Estate Agents and Direct Sellers as Nonemployees for Employment Tax Purposes--Reporting Requirements with Respect to Direct Sellers	1545-AE62
2596	26 USC 4041 Election to Have Certain Diesel Fuel Taxes Imposed on Sales to Retailers	1545-AJ18
2597	26 USC 4051 Taxability of Converter Dollies	1545-AL71
2598	26 USC 4052 Excise Tax - Excise Tax on Heavy Trucks, Truck Trailers and Semitrailers, and Tractors	1545-AI51
2599	26 USC 4081 Excise Tax--Collection of Excise Tax Imposed on the Sale or Removal of Gasoline	1545-AJ09
2600	26 USC 4091 Excise Tax on Diesel Fuel	1545-AL43
2601	26 USC 4101 Gasoline Excise Tax Bond Requirements	1545-AL70
2602	26 USC 4911 Income Tax--Lobbying by Public Charities and Private Foundations	1545-AE02
2603	26 USC 4977 Excise Tax--Election to Aggregate Lines of Business for Purposes of Certain Fringe Benefit Exclusions	1545-AI83
2604	26 USC 4981 Excise Tax -- Excess Distributions from Qualified Retirement Plans	1545-AI81
2605	26 USC 4992 Excise Tax--Issues Arising Where Multiple Parties Share in Production, including Unitizations, Partnerships, Trusts and Estates	1545-AC94
2606	26 USC 4993 Excise Tax--Incremental Tertiary Oil	1545-AD04
2607	26 USC 4994 Excise Tax--Oil From a Stripper Well Property	1545-AD01
2608	26 USC 4995 Excise Tax--Definition of Property Under the Crude Oil Windfall Profit Tax Act 1980	1545-AD06
2609	26 USC 5881 Excise Tax on "greenmail"	1545-AL47
2610	26 USC 6011 Elimination of Form 941 Filing Requirement for Quarters in Which Seasonal Employers Pay No Wages	1545-AI58
2611	26 USC 6011 Excise Tax -- Part 54 -- Procedure and Administration-- Part 301 -- Filing of Returns for Payment of Pension Excise Tax on Reversions of Qualified Plan Assets	1545-AI83
2612	26 USC 6031 Income Tax-Amendments to Requirements for Return of Partnership Income	1545-AE40
2613	26 USC 6031 Nominee Reporting of Partnership Information	1545-AJ97
2614	26 USC 6045 Information Returns of Brokers	1545-AG02
2615	26 USC 6045 Information Returns of Brokers	1545-AG52
2616	26 USC 6045 Information Reporting on Real Estate Transactions	1545-AJ25
2617	26 USC 6045 Income Tax--Information Reporting on Real Estate Transactions	1545-AL06
2618	26 USC 6050J Final Regulations Relating to Reports of Foreclosures and Abandonments of Security Under the Tax Reform Act of 1984	1545-AG46
2619	26 USC 6050M Reporting Requirements Pertaining to Returns Relating to Persons Receiving Contracts from Federal Executive Agencies	1545-AJ05
2620	26 USC 6081 Notice of Proposed Rulemaking - Automatic Extension of Time To File Partnership Return of Income and Trust Income Tax Return	1545-AL36
2621	26 USC 6081 Extension of Time to File for Taxpayers Traveling Outside the United States	1545-AM07
2622	26 USC 6111 Proposed Regulations Under Sections 6111 and 6709, Relating to Tax Shelter Registration	1545-AG45
2623	26 USC 6157 Time and Manner of Making Quarterly Payments of the Railroad Unemployment Repayment Tax (TEFRA)	1545-AI60
2624	26 USC 6222 Miscellaneous Rules Relating to Consolidated Administrative and Judicial Proceedings to Determine the Tax Treatment of Partnership Items	1545-AE51
2625	26 USC 6241 Small S Corporation Exception and Definition of Subchapter S Item	1545-AJ98
2626	26 USC 6323 Electronic Filing of Notice of Federal Tax Lien	1545-AK96
2627	26 USC 6402 Proposed Regulations Under the Spending Reduction Act of 1984, Relating to Reduction of Tax Overpayments by the Amount of Past-Due Legally Enforceable Debt Owed to Federal Agency	1545-AG95
2628	26 USC 6402 Procedure and Administrative--Reduction of Tax Overpayments by Amount of Past Due Legally Enforceable Debt Owed to Federal Agency	1545-AK12

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Sequence Number	Title	Regulation Identifier Number
2629	26 USC 6402 Procedure and Administrations--Reduction of Tax Overpayments by Amount of Past-due Legally Enforceable Debt Owed to Federal Agency	1545-AL58
2630	26 USC 6404 (e) Procedure and Administration - Abatement of Interest	1545-AK71
2631	26 USC 6611 Procedure and Administration Regulations--Modifications of Interest Payments for Certain Periods	1545-AF10
2632	26 USC 6621 Procedure and Administration Regulations - Increased Rate of Interest on Substantial Underpayments Attributable to Certain Tax Motivated Transactions	1545-AG75
2633	26 USC 6655 To Provide Regulations Relating to Accelerated Payment of Estimated Taxes by Corporations	1545-AE27
2634	26 USC 6723 Penalty for Failure to Include Correct Information on Information Returns and Payee Statements	1545-AJ29
2635	26 USC 7103 (b) Procedure and Administration--Property Seized by the Internal Revenue Service under the Money Laundering Control Act of 1986	1545-AL04
2636	26 USC 7216 Amendment of Regulations to Permit Disclosure of Tax Return Information between Franchisees who Jointly Operate a Tax Service	1545-AH91
2637	26 USC 7502 Procedure and Administration--Amendment of Regulations Relating to the Timely Mailing of Returns, Taxes and Deposits	1545-AD42
2638	26 USC 7701 (b) Amendment of Procedure and Administration Regulations Under Section 7701(b) (Definition of Resident Aliens) to Reflect Section 138 of the Tax Reform Act of 1984 (P.L. 98-369)	1545-AH13
2639	26 USC 7805 Effective Dates and Other Questions Arising Under Employee Benefit Provisions of the Tax Reform Act of 1984	1545-AI21
2640	26 USC 7871 Indian Tribal Governments Treated as States for Certain Purposes	1545-AF77
2641	26 USC 7872 Regulations on Income Tax Under the Tax Reform Act of 1984, Relating to Below-Market Loans	1545-AH72
2642	26 USC 9999 Income Tax--Maritime Capital Construction Fund	1545-AD46

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Sequence Number	Title	Regulation Identifier Number
2643	26 USC 0041 Income Tax--The Investment Credit for Qualified Progress Expenditures	1545-AA13
2644	26 USC 0048 Income Tax--Definition of Films That Are "Topical or Otherwise Essentially Transitory in Nature"	1545-AA82
2645	26 USC 0056 Net Book Income Adjustment for U.S. Branches of Foreign Corporations	1545-AK62
2646	26 USC 0067 2-Percent Floor on Miscellaneous Itemized Deductions	1545-AJ48
2647	26 USC 0103 (c) Amendment of Regulations Relating to Arbitrage on Nonpurpose Obligations to Reflect Section 624 of TRA of 1984	1545-AH07
2648	26 USC 0141 Income tax--Definition of "Private Activity Bond"	1545-AJ34
2649	26 USC 0163 Temporary Employment Tax Regulations under the Dividend and Interest Tax Compliance Act of 1983	1545-AM24
2650	26 USC 0163 Registration Requirements with Respect to Certain Debt Obligations	1545-AM25
2651	26 USC 0163 Sanctions on Issues and Holders of Registration Required Obligations Not in Registered Form	1545-AM27
2652	26 USC 0168 Tax-exempt Entity Leasing	1545-AJ36
2653	26 USC 0170 Deductions in Excess of $5,000 Claimed for Certain Charitable Contributions of Property and Information Reporting by Donees Who Make Certain Dispositions of Donated Property	1545-AG26
2654	26 USC 0170 Final Regulations Relating to the Charitable Contributions Deduction in the Context of Bargain Sales	1545-AJ85
2655	26 USC 0219 Income Tax -- Part 1, Excise Tax -- Part 54, Individual Retirement Accounts after TRA '86	1545-AK47
2656	26 USC 0401 Certain Cash or Deferred Arrangements	1545-AD72
2657	26 USC 0401 (a) (4) Study of Need for Special Antidiscrimination Rules for Pension, Etc. Plans of State and Local Governments	1545-AK44
2658	26 USC 0410 Retirement Equity Act Changes to Participation, Vesting, etc. Rules	1545-AH03
2659	26 USC 0411 Rules Clarifying the Income Tax Regulations, Part 1, with Respect to Service Computation Under Pension, etc. Plans	1545-AE39
2660	26 USC 0411 Income Tax-Part I - Reduction of Accrued Benefits To Qualify for a Standard Termination of a Single Employer Defined Benefit Pension Plan	1545-AI46
2661	26 USC 0411 Income Tax-Part 1 - Reduction of Accrued Benefits To Qualify for a Standard Termination of a Single Employer Defined Benefit Pension Plan	1545-AK81
2662	26 USC 0412 Income Tax-Part 1 - Variance From Minimum Funding Standard	1545-AI55
2663	26 USC 0414 Income Tax--Definitions & Special Rules	1545-AB35
2664	26 USC 0414 Income Tax--Definitions and Special Rules; Service for Predecessor	1545-AD87
2665	26 USC 0414 (q) Definition of "Highly Compensated Employee" and "Compensation"	1545-AK40
2666	26 USC 0415 Limitations on Contributions and Benefits Under Qualified Plans	1545-AK42
2667	26 USC 0422A Income Tax--Creation & Treatment of Incentive Stock Options	1545-AB36
2668	26 USC 0444 Election of Taxable Years Other Than Required Taxable Year By Partnerships, S Corporations, and Personal Service Corporations	1545-AL46

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Sequence Number	Title	Regulation Identifier Number
2669	26 USC 0448 Clarification of Determination of Bad Debt Experience under Nonaccrual-experience Accounting Method	1545-AL39
2670	26 USC 0453 Transitional Rule Relating to Certain Installment Sales by Manufacturers to Dealers	1545-AL86
2671	26 USC 0468A Income Tax Regulations -- Special Rules Relating to Nuclear Decommissioning Costs	1545-AB01
2672	26 USC 0469 Limitations on Passive Activity Losses and Credits	1545-AK16
2673	26 USC 0702 Income Tax - Application of Effective Date for New Rules Regarding Deductions for Meal, Travel, and Entertainment to Partnerships and S Corporations	1545-AX05
2674	26 USC 0832 Treatment of Salvage and Reinsurance in Determining Losses of Property and Casualty Insurance Companies	1545-AL01
2675	26 USC 0856 Consent Dividends	1545-AL87
2676	26 USC 0864 (d) Treatment of Related Person Factoring, Certain Investments in United States Property, Stock Redemptions through Related Corporations	1545-AL78
2677	26 USC 0871 Income Tax--Original Issue Discount	1545-AB93
2678	26 USC 0871 Repeal of 30 Percent Withholding by the Tax Reform Act of 1984	1545-AG66
2679	26 USC 0871 Employment Taxes: Application of the Repeal of 30% Withholding by the Tax Reform Act of 1984 and of Information Reporting and Backup Withholding in Light of Such Repeal	1545-AH15
2680	26 USC 0871 Registration Requirements with Respect to Certain Debt Obligations	1545-AM26
2681	26 USC 0887 Four Percent Tax on Gross Transportation Income and ECI	1545-AJ80
2682	26 USC 0887 Imposition of Tax on Gross Transportation Income of Nonresident Aliens and Foreign Corporations	1545-AK76
2683	26 USC 0892 Income Tax--Income of Foreign Governments and of International Organizations	1545-AJ79
2684	26 USC 0897 Temporary Regulations--Nonrecognition of Corporate Distributions and Reorganizations Under the Foreign Investment in Real Property Tax Act	1545-AF17
2685	26 USC 0904 Income Tax--Recapture of Overall Foreign Losses	1545-AD06
2686	26 USC 0904 Separate Application of Section 904 with Respect to Certain Categories of Income	1545-AJ88
2687	26 USC 0904 (f) Section 904 (f) Transition Rule	1545-AM10
2688	26 USC 0905 (c) Foreign Tax Credit: Notification and Adjustment Due to Foreign Tax Redeterminations	1545-AM17
2689	26 USC 0954 Subpart F FPHC Definitions	1545-AJ81
2690	26 USC 0985 Functional Currency	1545-AL27
2691	26 USC 0989 Definition of a Qualified Business Unit	1545-AM26
2692	26 USC 0989 (c) Transition Rules for Qualified Business Units Using a Net Worth Method of Accounting for Taxable Years Beginning Before January 1, 1987	1545-AL26
2693	26 USC 1060 Income Tax--Special Allocation Rules for Certain Asset Acquisitions	1545-AJ55
2694	26 USC 1291 (d) (2) Passive Foreign Investment Companies	1545-AL76
2695	26 USC 1502 Consolidated Return Regulations; Adjustment on Disposition of Stock of Subsidiary	1545-AL45
2696	26 USC 1502 Amendment of Consolidated Return Regulations Regarding Deferral of Gain or Loss on Complete Liquidations	1545-AL52
2697	26 USC 2653 (b) Estate Tax--Generation Skipping Transfer Tax	1545-AJ12
2698	26 USC 4041 Election to have Certain Diesel Fuel Taxes Imposed on Sales to Retailers	1545-AL14
2699	26 USC 4052 Excise Tax - Excise Tax on Heavy Trucks, Truck Trailers and Semitrailers, and Tractors	1545-AI93
2700	26 USC 4481 Reduction of the Heavy Vehicle Use Tax for Foreign-based Trucks	1545-AH38
2701	26 USC 4943 Foundation Excise Tax-Excess Business Holdings	1545-AH49
2702	26 USC 4981 Excise Taxes Relating to Real Estate Investment Trusts and Regulated Investment Companies under the Tax Reform Act of 1986	1545-AJ62
2703	26 USC 4991 Excise Tax--Definition of Newly Discovered Oil	1545-AC96
2704	26 USC 6041 Amendment to the Regulations under Section 6041 to Exempt from Reporting Requirements Payments Made by Certain Non-profit Organizations as an Award to an Informer	1545-AL50
2705	26 USC 6050H Income Tax--Mortgage Interest Reporting	1545-AG93
2706	26 USC 6050M Reporting Requirements Pertaining to Returns Relating to Persons Receiving Contracts from Federal Executive Agencies	1545-AL73
2707	26 USC 6081 (a) Grant of Automatic Extension of Time to File Partnership and Trust Returns	1545-AL37
2708	26 USC 6302 To Require Financial Institutions to Deposit Estimated Tax on Trusts and Estates	1545-AK35
2709	26 USC 6323 Electronic Filing of Notice of Federal Tax Lien	1545-AL00

DEPARTMENT OF THE TREASURY (TREAS)
Internal Revenue Service (IRS)

Prerule Stage

2178. STATEMENT OF PROCEDURAL RULES--MISCELLANEOUS AMENDMENTS

Legal Authority: 5 USC 301; 5 USC 552

CFR Citation: 26 CFR 601; 26 CFR 602

Legal Deadline: None

Abstract: The document contains miscellaneous amendments to the Statement of Procedural Rules (SPR). The SPR sets forth the procedural rules of the Internal Revenue Service for all taxes administered by the Service as well as certain rules that apply to the Bureau of Alcohol, Tobacco and Firearms. Some amendments update the SPR to reflect changes in nomenclature. The other amendments are described in the order of the sections of the SPR being amended.

Timetable:

Action	Date	FR Cite
Statement of Procedural Rules	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-257-83.

Drafting author: George H. Bradley (202) 343-0231.

Reviewing attorneys: George H. Bradley (202) 343-0231 and Charles Whedbee (202) 566-3458.

Agency Contact: George H. Bradley, Staff Assistant, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, DC 20224, 202 343-0231

RIN: 1545-AJ53

2179. ● TO CLARIFY THE TERMS "BUILDING" AND "PLACED IN SERVICE" FOR PURPOSES OF SECTION 42

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 42 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation provides definition of the term "building", "placed in service", "eligible basis", etc.

Timetable:

Action	Date	FR Cite
ANPRM	12/01/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-43-84

Drafting attorney: Robert Beatson (202) 566-3459.

Reviewing attorney: Alice Bennett (202) 566-4473.

Treasury attorney: Susan Himes (202) 566-8527.

13 Income Tax

Agency Contact: Robert Beatson, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave. N.W., Washington, D.C. 20224, 202 566-3459

RIN: 1545-AM93

2180. UPDATE AND GENDER-NEUTRALIZE MORTALITY TABLE USED TO DETERMINE PERMANENT GROUP-TERM LIFE INSURANCE BENEFITS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 79 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The proposed regulations will update and gender-neutralize the mortality table used under section 79 to determine the value of permanent group-term life insurance benefits provided to employees.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-77-87

Drafting attorney: Bill Blagg (202) 566-3238.

Agency Contact: Bill Blagg, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3238

RIN: 1545-AK50

2181. INCOME TAX--TAX TREATMENT OF FACULTY HOUSING

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 119 (d) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations will provide rules relating to the definition of a "qualified appraisal". In addition, the regulations will set forth the time and manner in which the appraisal shall be reviewed and updated.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: None

Additional Information:

EE-74-88.

Drafting attorney: Richard Pavel (202) 566-3289.

Reviewing attorney: Jerry Holmes (202) 566-6000

Treasury attorney: Marjorie Roberts (202) 566-2565.

Agency Contact: Richard Pavel, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3289

RIN: 1545-AJ21

2182. INCOME TAX--PART I PERSONAL INJURY LIABILITY ASSIGNMENTS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 130 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation project will provide rules on the exclusion from gross income for amounts received for agreeing to the assignment of a liability to make periodic payments as damages on account of personal injury or sickness.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-42-83.

Drafting attorney: Bill Blagg (202) 566-3238.

Reviewing attorney: Cynthia Clark (202) 566-3336.

Agency Contact: Bill Blagg, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3288

RIN: 1545-AF39

2183. ● EXEMPT BONDS FOR RESIDENTIAL RENTAL PROJECTS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 142 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation provides rules concerning qualified residential rental projects.

Timetable:

Action	Date	FR Cite
ANPRM	12/01/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-55-86

Drafting attorney: Robert Beatson (202) 566-3459.

Reviewing attorney: Alice Bennett (202) 566-4173.

Treasury attorney: Elliot Stern (202) 566-3920.

13 Income Tax

Agency Contact: Robert Beatson, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3459

RIN: 1545-AM04

2184. MODIFICATION OF ACRS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 168 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation would provide rules concerning the accelerated cost recovery system

Timetable:

Action	Date	FR Cite
ANPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-88-86

Drafting attorney: Richard Blumenreich (202) 566-4336.

Reviewing attorney: Ada Rousso (202) 566-3287.

Treasury attorney: Ellen Aprill (202) 566-5453.

Agency Contact: Richard Blumenreich, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224, 202 566-4336

RIN: 1545-AJ38

2185. CAPITALIZATION OF CERTAIN INTEREST EXPENSES-- NOTICE OF PROPOSED RULEMAKING

Legal Authority: 26 USC 263A (f) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations will provide guidance concerning the capitalization of certain interest expenses and the allocation interest to property subject to the capitalization rules.

Timetable:

Action	Date	FR Cite
ANPRM	12/01/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-121-85

Drafting attorney: Katherine Lee Wambegans (202) 566-3288.

Reviewing attorney: John Fischer (202) 566-3394.

Treasury attorney: Thomas Evans (202) 566-3277.

Agency Contact: Katherine Lee Wambegans, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3288

RIN: 1545-AK01

2186. ● WITHHOLDING ON ACCOUNTS PAYABLE TO RELATED PARTIES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 267 (a) (3) Internal Revenue Code of 1986; 26 USC 163 (e) (3) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Withholding tax liability and deductibility of payments on accounts payable to related parties.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-360-88

Drafting attorney: Patricia A. Bray (202) 566-6045.

Reviewing attorney: Christine Halphen (202) 377-9493.

Treasury attorney: Unassigned.

13 Income Taxes.

Agency Contact: Patricia A. Bray, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-6045

RIN: 1545-AL07

2187. ● CERTAIN STOCK PURCHASES TREATED AS ASSET ACQUISITIONS-FOREIGN IMPLICATIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 338 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Finalize and simplify international section 338 regulations.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: INTL-013-86

Drafting attorney: Kenneth Allison (202) 566-6117.

Reviewing attorney: Benedetta Kissel (202) 566-3179.

Treasury attorney: Unassigned.

13 Income Taxes.

Agency Contact: Kenneth Allison, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-6457

RIN: 1545-AL05

2188. REGULATIONS UNDER SECTION 367 (E)

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 367(e) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Whether gain should be recognized under section 367 (e) (1) and (2) on the distribution of stock, securities or other property.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-752-87

Drafting attorney: Charles P. Besecky (202) 566-3319.

Reviewing attorney: Charles C. Saverude (202) 566-5791.

Treasury attorneys: Mary Bennett & David Crowe (202) 566-5791.

Agency Contact: Charles P. Besecky, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3319

RIN: 1545-AL34

2189. REGULATIONS UNDER SECTION 367 (E)

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 367 (e) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Proposal deals with whether gain should be recognized under section 367 (e) (1) and (2) on the distributor of stock, securities or other property.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-230-81.

Drafting attorney: Robert M. Casey (202) 566-3458.

Reviewing attorney: Robert J. Mason (202) 566-3463.

Agency Contact: Robert M. Casey, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington D.C. 20224, 202 566-3458

RIN: 1545-AB28

2191. INCOME TAX--CROSS-REFERENCE-REORGANIZATIONS INVOLVING FINANCIALLY TROUBLED THRIFT INSTITUTIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 368 Internal Revenue Code of 1986; 26 USC 382 Internal Revenue Code of 1986; 26 USC 597 Internal Revenue Code of 1986; 26 USC 381 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Provision would provide regulations dealing with reorganizations of financially troubled thrift institutions and with the tax consequences of financial assistance payments made to such an institution by a supervisory governmental agency, thereby giving the public needed guidance on how the Internal Revenue intends to interpret these issues.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-231-81.

Drafting attorney: Robert M. Casey (202) 566-3458.

Reviewing attorney: Robert J. Mason (202) 566-3463.

Agency Contact: Robert M. Casey, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545-AB29

2192. TRANSITIONAL RULES RELATING TO INDEBTEDNESS TREATED AS PAYMENT ON INSTALLMENT OBLIGATIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986

BEST COPY AVAILABLE

TREAS—IRS

Prerule Stage

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations will provide guidance to taxpayers in applying special rules concerning the treatment of certain installment obligations.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-20-87

Drafting attorney: William L. Blagg (202) 566-3338.

Reviewing attorney: Cynthia Clark (202) 566-3336.

Treasury attorney: Ellen Aprill (202) 566-3287.

Agency Contact: William L. Blagg, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3238

RIN: 1545-AX54

2193. ◆ SECTION 482 REGULATIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 482 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: To revise section 482 regulations per section 482 white paper.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-401-88

Drafting attorney: David Bower (202) 634-5404.

Reviewing attorney: Michael Patton (202) 287-4851.

Treasury attorney: unassigned.

13 Income Taxes.

Agency Contact: David Bower, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave. N.W., Washington, DC 20224, 202 634-5404

RIN: 1545-AL20

2194. ◆ SECTION 482 COST SHARING REGULATIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 482 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Transfer of intangibles between affiliates; intercompany pricing issues.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-372-86

Drafting attorney: Anne Shelburne (202) 634-5401.

Reviewing attorney: Michael Patton (202) 287-4851.

Treasury attorney: Mark Beams (202) 566-8275.

13 Income Taxes.

Agency Contact: Anne Shelburne, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 634-5404

RIN: 1545-AM00

2195. INTEREST DEDUCTION UNDER SECTION 834(C)(5)

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations clarify that in order to be deductible under section 834(c)(5), interest must relate to investment income.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-110-87

Drafting attorney: William Blagg (202) 566-3336.

Reviewing attorney: Cynthia Clark (202) 566-3336.

Treasury attorney: Don Rocap (202) 566-8277.

Income Taxes

Agency Contact: William L. Blagg, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3238

RIN: 1545-AL07

2196. INCOME TAX - INTEREST AND DIVIDENDS OF 80-20 COMPANIES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 861 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation would provide rules with respect to the sourcing of dividends and interest paid by so-called "80-20" companies, that is, companies with 80% or more foreign source income.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: INTL-850-86

Drafting attorney: Risa Lainoff (202) 566-6645.

Reviewing attorney: Christine Halphen (202) 566-6645.

Treasury attorney: Mary Bennett (202) 566-5982.

Agency Contact: Risa Lainoff, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-6645

RIN: 1545-AJ58

TREAS—IRS

Prerule Stage

2197. INCOME TAX - RECIPROCAL EXEMPTIONS FOR CERTAIN TRANSPORTATION INCOME

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 883 Internal Revenue Code of 1986; 26 USC 872 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation would provide rules with respect to whether a foreign country will be considered to grant a reciprocal Aircraft/Shipping exemption to U.S. corporations for purposes of section 883 of the Code, or to U.S. citizens for purposes of section 872 of the Code.

Timetable:

Action	Date	FR Cite
ANPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-945-86

Drafting attorney: Patricia A. Bray (202) 566-6645.

Reviewing attorney: Phyllis E. Marcus (202) 566-6645.

Treasury attorney: Mark Beams (202) 566-8275.

Agency Contact: Patricia A. Bray, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-6645

RIN: 1545-AJ57

2198. EXCLUSION OF POSSESSION SOURCE INCOME FROM GROSS INCOME OF CERTAIN INDIVIDUALS AND TREATMENT OF CORPORATIONS ORGANIZED IN GUAM, SAMOA OR CNMI

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 876 Internal Revenue Code of 1986; 26 USC 881 Internal Revenue Code of 1986; 26 USC 931 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The Tax Reform Act of 1986 eliminates the requirement that there be a mirrored system of taxation in Guam and the CNMI, and coordinates the tax system of these possessions and of American Samoa with the U.S. tax system. Guam the CNMI and American Samoa are granted full authority over their own local income tax systems, with respect to income of bona fide residents sourced within or effectively connected with the conduct of a trade or business within any of these possessions. This grant of authority is effective, however, only if and so long as an implementing agreement is in effect between the possession at issue and the United States which provides for elimination of double taxation, prevention of evasion or avoidance of U.S. tax exchange of information and other administrative matters. Regulations are needed to clarify who qualifies as a bona fide resident and to determine sourcing rules.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-264-88

Drafting attorney: Lilo A. Hester (202) 287-4851.

Reviewing attorney: Michael Patton (202) 287-4851.

Treasury attorney: Peter Barnes (202) 566-5315.

Agency Contact: Lilo A. Hester, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 950 L'Enfant Plaza South, S.W., Room 3319, Washington, D.C. 20024, 202 287-4851

RIN: 1545-AJ60

2199. FIRPA CLEANUP

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 897 Internal Revenue Code of 1986; 26 USC 1445 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Reporting requirements for 5 percent shareholders; equity kickers; establish securities market definition; other related issues.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Additional Information: INTL-715-87

Drafting attorney: James Sams (202) 634-5404.

Reviewing attorney: Robert Culbertson (202) 634-5404.

Treasury attorney: David Crowe (202) 566-3781.

13 Income taxes.

Agency Contact: James Sams, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 634-5404

RIN: 1545-AJ72

2200. AMENDMENT OF SECTION 1.901-2(E)(3)

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 901(i) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Proposal would provide rules to implement 1986 Tax Act amendment to Section 901 concerning certain tax subsidiaries used by foreign governments. Proposal will deny foreign tax credit to the extent that there is a subsidy.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-812-87

Drafting attorney: Charles P. Besecky (202) 566-3319.

Reviewing attorney: Charles C. Saverude (202) 566-6645.

Treasury attorney: David Crowe (202) 566-3781.

Agency Contact: Charles P. Besecky, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3319

RIN: 1545-AJ90

TREAS—IRS

Prerule Stage

2201. COORDINATION OF U.S. AND VIRGIN ISLANDS TAXES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Prior to the Tax Reform Act of 1986, inhabitants of the Virgin Islands satisfied their U.S. tax liability by filing a return with the Virgin Islands. The Tax Reform Act of 1986 repealed the inhabitant rule to correct an erroneous interpretation of its operation in connection with the Virgin Islands mirror code. Section 1274 of the Tax Reform Act of 1986 clarifies the filing obligations of individuals in the Virgin Islands. Bona fide residents of the Virgin Islands are required to file only one return with the Virgin Islands in which they report worldwide income and identify the sources of income from the Virgin Islands will be required to file two identical tax returns one with the US and one with the Virgin Islands and pay a pro rata amount of tax to each. Regulations are needed to clarify who qualifies as a bona fide resident. It is anticipated that the regulations will provide a facts and circumstances test for determining bona fide resident status. It is unknown what the operational costs will be.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-869-86

Drafting attorney: Grace Perez-Navarro (202) 287-4851.

Reviewing attorney: Michael Patton (202) 287-4851.

Treasury attorney: Peter Barnes (202) 566-5815.

Agency Contact: Grace Perez-Navarro, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 950 L'Enfant Plaza South, SW, Room 3319, Washington, D.C. 20024, 202 287-4851

RIN: 1545-AJ55

2202. SOURCE RULES WITHIN THE VIRGIN ISLANDS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will provide sourcing rules for the determination as to whether income is derived from sources within the Virgin Islands or the U.S. or is effectively connected with the conduct of a trade or business within the Virgin Islands or the U.S. To the extent possible, the rules will be similar to those set forth in IRC sections 861-865.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Additional Information: INTL-613-87

Drafting attorney: Grace Perez-Navarro (202) 287-4851.

Reviewing attorney: Michael Patton (202) 287-4851.

Treasury attorney: Peter Barnes (202) 566-5815.

13 Income Taxes

Agency Contact: Grace Perez-Navarro, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 950 L'Enfant Plaza South, S.W. Room 3319, Washington, D.C. 20024, 202 287-4851

RIN: 1545-AL49

2203. SUBPART F - USE OF DEFICITS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 952 Internal Revenue Code of 1986; 26 USC 954 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation will provide rules for determining the extent to which current year deficits in unrelated income categories or prior year deficits may reduce the amount included in the gross income of any U.S. shareholder under section 951(a)(1)(A)(i) for taxable years after 1986.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-985-86

Drafting attorney: David Rosenberg (202) 634-5406.

Reviewing attorney: Robert Katcher (202) 634-5406.

Treasury attorney: David Crowe (202) 566-5701.

13 Income Taxes.

Agency Contact: David Rosenberg, Attorney-Advisor, Department of the Treasury, Internal Revenue Service,

TREAS—IRS

Prerule Stage

1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 634-5406

RIN: 1545-AM12

2205. REVISED WITHHOLDING TAX REGULATION TO MODIFY "AS SOON AS PRACTICAL" REQUIREMENTS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 1441 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations will modify a requirement of Treas. Reg. section 1.1441-6(c) regarding the time for filing of Form 1001. Section 1.1441-6(a) provides that the withholding rate shall be reduced as may be provided by a treaty with any country. To secure a reduced treaty withholding rate, subsection (c) of the regulation requires the recipient of the income to file Form 1001 (ownership, exemptions, or reduced rate certificate) with the withholding agent. The regulation further provides that each such Form 1001 filed with any withholding agent shall be filed "as soon as practicable". The "as soon as practicable" requirement will be changed to a narrowed and more objective time period.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-665-87

Drafting attorney: Lilo A. Hester (202) 287-4851.

Reviewing attorney: Michael F. Patton (202) 287-4851.

Agency Contact: Lilo A. Hester, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 950 L'Enfant Plaza South, S.W., Room 3319, Washington, D.C. 20024, 202 286-4851

RIN: 1545-AL19

2206. PENALTY FOR PROMOTING ABUSIVE TAX SHELTERS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 6700 Internal Revenue Code of 1986

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: The regulations would provide rules and definitions relating to the penalty for promoting abusive tax shelters.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-273-82

Drafting attorney: Sharon Hall (202) 566-3235.

Agency Contact: Sharon Hall, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3235

RIN: 1545-AE99

2207. PENALTY FOR AIDING AND ABETTING IN THE UNDERSTATEMENT OF TAX LIABILITY

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 6701 Internal Revenue Code of 1986

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: Proposal will provide rules with respect to the penalty imposed on a person who aids and abets in the understatement of a third party's tax liability. The proposal also provides the standards which will subject one to the penalty.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-274-82

Drafting attorney: Sharon Hall (202) 566-3235.

Agency Contact: Sharon Hall, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3235

RIN: 1545-AF01

2208. COVER OVER OF INCOME TAXES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 7654 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations relate to section 7654 of the Internal Revenue Code of 1986 which generally provides that net income tax collections from individuals described in sections 931 or 932(c), plus earned income of federal personnel while bona fide residents of specified possession.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Additional Information: INTL-971-86

Drafting attorney: Lilo A. Hester (202) 287-4851.

Reviewing attorney: Michael F. Patton (202) 287-4851.

Treasury attorney: Peter Barnes (202) 566-5815.

Agency Contact: Lilo A. Hester, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 950 L'Enfant Plaza South, S.W., Room 3319, Washington, D.C. 20024, 202 287-4851

RIN: 1545-AL18

2209. DEFINITION OF LIFE INSURANCE CONTRACT

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 7702 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation will provide rules to define a life insurance contract.

Timetable:

Action	Date	FR Cite
ANPRM	12/30/88	

Small Entities Affected: None

Government Levels Affected: None

TREAS—IRS — Prerule Stage

Additional Information: LR-107-87

Drafting attorney: Katherine Lee Wambsgans (202) 566-3288.

Reviewing attorney: Cynthia Clark (202) 566-3288.

13 Income Taxes

Agency Contact: Katherine Lee Wambsgans, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3288

RIN: 1545–AL08

2210. STATEMENT OF PROCEDURAL RULES—AMENDMENTS TO STATEMENT OF PROCEDURAL RULES—TW01-1

Legal Authority: 5 USC 552; 5 USC 301

CFR Citation: 26 CFR 601

Legal Deadline: None

Abstract: Semi-annual update of the Statement of Procedural Rules.

Timetable:

Action	Date	FR Cite
Statement of Procedural Rules	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-154-81.

Paralegal Specialist: Carroll Field (202) 566-3935.

Reviewing attorney: Charles M. Whedbee (202) 566-3458.

Agency Contact: Carroll Field, Paralegal Specialist, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington D.C. 20224, 202 566-3935

RIN: 1545–AD58

DEPARTMENT OF THE TREASURY (TREAS) — Proposed Rule Stage
Internal Revenue Service (IRS)

2211. INCOME TAX—DEDUCTION FOR BUS OPERATING AUTHORITIES AND FREIGHT

Legal Authority: 26 USC 1 *et seq* Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations will provide rules allowing taxpayers an ordinary deduction ratably over a 60-month period for the adjusted basis of bus operating authorities and freight forwarders held or acquired on certain specified dates.

Timetable:

Action	Date	FR Cite
NPRM	07/01/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-110-88

Drafting attorney: Christopher Wilson (202) 566-3288.

Reviewing attorney: Ada Rousso (202) 566-3287.

Treasury attorney: Bryan Collins (202) 566-2173.

Agency Contact: Christopher J. Wilson, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-4336

RIN: 1545–AJ18

2212. LOW INCOME HOUSING CREDIT RECAPTURE RULE

Legal Authority: 26 USC 38 Internal Revenue Code of 1986; 26 USC 42 Internal Revenue Code of 1986; 26 USC 167 Internal Revenue Code of 1986; 26 USC 168 Internal Revenue Code of 1986; 26 USC 142(d) Internal Revenue Code of 1986; 26 USC 170 Internal Revenue Code of 1986; 26 USC 267(b) Internal Revenue Code of 1986; 26 USC 1274(d)(1) Internal Revenue Code of 1986; 26 USC 6621 Internal Revenue Code of 1986; 26 USC 6622 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations will provide guidance with respect to the recapture requirements of section 42(j)for the low-income housing credit. In addition, these regulations will clarify the types of housing that will qualify for the credit.

Timetable:

Action	Date	FR Cite
NPRM	10/02/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-116-87

Drafting attorney: Christopher J. Wilson (202) 566-3288.

Reviewing attorney: Ada S. Rousso (202) 566-3287.

Treasury attorney: Susan Hinwes (202) 566-6527.

Agency Contact: Christopher J. Wilson, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-4336

RIN: 1545–AL12

2213. INCOME TAX—ALTERNATIVE MINIMUM TAX

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 55 Internal Revenue Code of 1986; 26 USC 57 Internal Revenue Code of 1986; 26 USC 58 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The Regulations will provide rules for the computation of the alternative minimum tax and the computation of the credits that may be used to reduce that tax, as well as rules for determining the amount of tax preference for excluded dividends and interest, mining exploration and development costs, and circulation, research and experimental expenditures. The Regulations will also provide rules relating to the optional 10 year write off of certain tax preferences.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

TREAS—IRS — Proposed Rule Stage

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-215-82.

Drafting attorney: William A. Jackson (202) 566-3287.

Reviewing attorney: Ada Rousso (202) 566-3287.

Treasury attorneys: Ellen Aprill (202) 566-5453 and

Robert Scarborough (202) 566-4979.

Agency Contact: William A. Jackson, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3287

RIN: 1545–AE80

2214. ALTERNATIVE MINIMUM TAX FOR INDIVIDUALS

Significance: Regulatory Program

Legal Authority: 26 USC 55 Internal Revenue Code of 1986; 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This project will address issues relating to the alternative minimum tax for individuals. The issues addressed will include the adjustment to inventory to take into account alternative tax depreciation, determination of the preference amount for charitable contributions of appreciated property, and application of alternative tax adjustments in determining the alternative tax liability of a trust or estate.

Timetable:

Action	Date	FR Cite
NPRM	10/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-2-87

Drafting attorney: William A. Jackson (202) 566-3287.

Reviewing attorney: Ada Rousso (202) 566-3287.

Treasury attorneys: Ellen Aprill (202) 566-5453 and Robert Scarborough (202) 566-4979.

Agency Contact: William A. Jackson, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, DC 20224, 202 566-3287

RIN: 1545–AJ86

2215. INCOME TAX—INVENTORY ADJUSTMENT FOR THE ALTERNATIVE MINIMUM TAX

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 56 (a) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation provides guidance with respect to inventory adjustments for the alternative minimum tax.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-80-87

Drafting attorney: William Jackson (202) 566-3287.

Reviewing attorney: Ada Rousso (202) 566-3287.

Treasury attorney: Tom Evans (202) 566-5453.

Agency Contact: William Jackson, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC 20224, 202 566-3287

RIN: 1545–AL02

2216. INCOME TAX-MINIMUM TAX, ITEM OF TAX PREFERENCE FOR INTANGIBLE DRILLING COSTS INCURRED IN DRILLING OIL, GAS OR GEOTHERMAL WELLS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 57 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations will explain the application and determination of the tax preference item for intangible drilling costs which was added by the Tax Reform Act of 1976. The regulations will provide rules for determining a taxpayer's net income from oil and gas properties, rules for determining if a well is nonproductive and rules for determining the proper preference tax if a well proves to be nonproductive after the close of a taxable year for which a tax return has already been filed.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-202-78.

Drafting attorney: Ruth Hoffman (202) 566-3287.

Reviewing attorney: Ada S. Rousso (202) 566-3287.

Agency Contact: Ruth Hoffman, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3287

RIN: 1545–AA34

2217. TAX BENEFIT RULE FOR CORPORATE ADD-ON MINIMUM TAX UNDER THE INTERNAL REVENUE CODE OF 1954

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 58 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations provide rules for taking into account credit carryovers in applying the minimum tax benefit rule for corporations.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-56-87

Drafting attorney: William A. Jackson (202) 566-3287.

Reviewing attorney: Ada S. Rousso (202) 566-3287.

Treasury attorney: Ellen Aprill (202) 566-5453 and Robert Scarborough (202) 566-4979.

Agency Contact: William A. Jackson, Attorney, Department of the Treasury.

Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3287

RIN: 1545-AE20

2216. TAXATION, VALUATION, AND REPORTING OF "FREQUENT FLYER" OR SIMILAR BONUS PAYMENTS

Legal Authority: 26 USC 61 Internal Revenue Code of 1986; 26 USC 6041 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation will require information reporting with respect to "frequent flyer" or similar bonus payments in order to increase compliance. The regulation will also provide valuation rules to assist taxpayers in valuing the bonuses.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-79-86

Drafting attorney: Katherine Lee Wambsgans (202) 566-3288.

Reviewing attorney: Paul A. Francis (202) 566-3218.

Treasury attorney: Susan Scherbel (202) 535-0305.

Agency Contact: Katherine Lee Wambsgans, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3288

RIN: 1545-AK02

2219. ◆ AMENDMENT TO THE REGULATIONS UNDER SECTION 61 TO CONFORM THE TREATMENT OF BOND PREMIUM INCOME TO THE CONSISTENT YIELD METHOD

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will provide a method for determining how to include bond premium into income. The method is the constant yield method.

Timetable:

Action	Date	FR Cite
NPRM	10/02/86	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-70-86

Drafting attorney: Dave Selig (202) 566-4335.

Reviewing attorney: Alice Bennett (202) 566-4473.

Agency Contact: Dave Selig, Law Clerk, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave. N.W., Washington, D.C. 20224, 202 566-4336

RIN: 1545-AJ82

2220. LOANS TREATED AS DISTRIBUTIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 72 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation will provide guidance on the application of new rules for determining the income tax treatment to be accorded loans to participants or beneficiaries from qualified employer plans. The new loan rules are provided in new section 72(p) of the Internal Revenue Code of 1954.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-118-82.

Drafting attorney: Norman Dobbyns Hubbard (202) 566-3430.

Reviewing attorney: Michael A. Thrasher (202) 566-3861.

Agency Contact: Norman Dobbyns Hubbard, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3430

RIN: 1545-AE81

2221. NONDISCRIMINATION RULES FOR NON-PENSION EMPLOYEE BENEFIT PLANS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 89 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations will provide the following: an explanation of the eligibility, benefits and alternative tests contained in section 89; an explanation as to which plans are subject to section 89 requirements; and, rules concerning how the requirements will be applied in actual operation.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-130-86

Drafting attorney: Steven T. Miller (202) 566-3422.

Reviewing attorney: James L. Brokaw (202) 566-3422.

Agency Contact: Steven T. Miller, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3422

RIN: 1545-AI78

2222. TO PROVIDE REGULATIONS UNDER SECTION 147 (B)--RELATING TO LIMITATION ON MATURITY OF PRIVATE ACTIVITY BONDS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 103 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Rules will provide guidance with respect to computation of weighted average economic life and weighted average maturity. Rules limit the average length of the maturity of all private activity bonds (including qualified 501 (c) (3) bonds), other than mortgage revenue bonds and student loan bonds.

Timetable:

Action	Date	FR Cite
NPRM	06/30/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-220-82.

Drafting attorney: Richard G. Blumenreich (202) 566-4336.

Reviewing attorney: Alice Bennett (202) 566-4473.

Office of Tax Legislative Counsel reviewing attorney: Dana Trier (202) 566-5455.

Agency Contact: Richard G. Blumenreich, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-4336

RIN: 1545-AE89

2223. REGULATIONS RELATING TO FEDERALLY GUARANTEED BONDS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 149 (b) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations would provide guidance regarding the provisions enacted by the Tax Reform Act of 1984 which denies Federal income tax exemption for bonds issued by State or local governmental units if payments of principal or interest with respect to such bonds are directly or indirectly guaranteed by the Federal Government.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-155-84.

Drafting attorney: Susan E. Overlander (202) 566-3459.

Reviewing attorney: John M. Coulter, Jr. (202) 566-3740.

Office of Tax Legislative Counsel reviewing attorney: Elliott Stern (202) 566-2566.

Agency Contact: Susan E. Overlander, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3459

RIN: 1545-AC84

2224. DEFINITION OF "REISSUANCE" UNDER SECTION 103

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Proposed Regulations would provide guidance regarding whether changes in the terms of an outstanding obligation result in that obligation being treated as retired and reissued as a new obligation.

Timetable:

Action	Date	FR Cite
NPRM	12/31/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: LR-25-86.

Drafting attorney: Unassigned

Reviewing attorney: Gerald Rock (202) 566-6456.

Treasury attorney: Elliott Stern (202) 566-2566.

Agency Contact: Unassigned, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224, 202 566-6456

RIN: 1545-AI65

2225. TO REVISE DEFINITION OF AREAS OF CHRONIC ECONOMIC DISTRESS FOR PURPOSES OF MORTGAGE SUBSIDY BONDS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 143 Internal Revenue Code of 1986; 26 USC 103A Internal Revenue Code of 1986

CFR Citation: 26 CFR 1.103A-2

Legal Deadline: None

Abstract: The regulations will clarify the rules under section 103A relating to designations of areas of chronic economic distress. The regulations would provide objective tests to be used in analyzing requests for such designations.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-307-84.

Drafting attorney: Robert Beatson (202) 566-3456.

Reviewing attorney: John M. Coulter, Jr. (202) 566-3331.

Treasury attorney: Elliot Stern (202) 566-2520.

Agency Contact: Robert Beatson, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3459

RIN: 1545-AG88

2226. INCOME TAX--DISCHARGE OF INDEBTEDNESS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 108 Internal Revenue Code of 1986; 26 USC 1017 Internal Revenue Code of 1986; PL 96-589, Sec 2 Bankruptcy Tax Act 1980

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This proposal would provide rules relating to certain income from the discharge of indebtedness, including rules relating to the election to reduce the basis of assets in lieu of recognizing income.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: LR-87-84.

Drafting attorney: Robert M. Casey (202) 566-3458.

Reviewing attorney: Charles M. Whedbee (202) 566-3458.

Agency Contact: Robert M. Casey, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545-AA07

2227. INCOME TAX--PART 1--INCOME TAX REGULATIONS UNDER SECTION 111 RELATING TO INCLUSION OF TAX BENEFIT ITEMS

Legal Authority: 26 USC 111 Internal Revenue Code of 1986; 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will revise the rules for determining whether the recovery of an amount deducted in a prior taxable year must be included in income, to reflect changes in section 111 made by section 170 of the Tax Reform Act of 1984.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-305-84.

Drafting attorney: William A. Jackson (202) 566-3287.

Reviewing attorney: Paul A. Francis (202) 566-3318.

Agency Contact: William A. Jackson, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3287

RIN: 1545-AH17

2226. QUALIFIED TUITION REDUCTIONS

Significance: Regulatory Program

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 117 (d) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The proposed regulations contain rules explaining when qualified tuition reductions provided for education below the graduate level to an employee of an educational organization or to a person treated as an employee will be excluded from the employee's gross income. The proposed regulations include rules relating to tuition reductions which discriminate in favor of officers, owners or highly compensated employees and so are includible in income.

Timetable:

Action	Date	FR Cite
NPRM	06/30/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-35-85.

Drafting attorney: Ruth Hoffman (202) 566-3287.

Reviewing attorney: Gerald Rock (202) 566-3294.

Agency Contact: Ruth Hoffman, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3287

RIN: 1545-AH13

2229. INCOME TAX—PRIZES AND AWARDS

Legal Authority: 26 USC 74 Internal Revenue Code of 1986; 26 USC 132 Internal Revenue Code of 1986; 26 USC 170 Internal Revenue Code of 1986; 26 USC 274 Internal Revenue Code of 1986; 26 USC 6041 Internal Revenue Code of 1986; 26 USC 102 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations will incorporate changes with respect to the tax treatment of prizes and awards and certain employee achievement awards. They will provide guidance so that effective designations and transfers of awards may be accomplished as well as rules with respect to allowance of exclusions and deductions for awards given in an employment context.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-111-85.

Drafting attorney: Christopher J. Wilson (202) 566-4336.

Reviewing attorney: Fredric Grundeman (202) 566-3287.

Treasury attorney: Susan Himes (202) 566-3527.

Agency Contact: Christopher J. Wilson, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-4336

RIN: 1545-AJ19

2230. ● DEFINITION OF "PRIVATE ACTIVITY BOND", "QUALIFIED BOND"

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 141 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation provides a definition of the term "private activity bond".

Timetable:

Action	Date	FR Cite
NPRM	01/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-72-88

Drafting attorney: Dave Selig (202) 566-4336.

Reviewing attorney: Gerald Rock (202) 566-6458.

13 Income Tax

Agency Contact: Dave Selig, Law Clerk, Department of the Treasury, Internal Revenue Service, IIII Constitution Ave. N.W., Washington, D.C. 20224, 202 566-4336

RIN: 1545-AM01

2231. TAX-EXEMPT BONDS FOR RESIDENTIAL RENTAL PROJECTS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 142 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This project will provide regulations relating to tax-exempt bonds issued to provide qualified residential rental projects.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-89-88

Drafting attorney: Bob Beatson (202) 566-3439.

Reviewing attorney: Alice Bennett (202) 566-4473.

Treasury attorney: Elliott Stern (202) 566-2026.

Agency Contact: Bob Beatson, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, DC 20224, 202 566-3439

RIN: 1545-AJ66

2232. INCOME TAX—STUDENT LOAN BONDS

Significance: Regulatory Program

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 144 (b) Internal Revenue Code of 1986; 26 USC 103 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: To provide guidance to issuers of tax-exempt student loan bonds regarding quarterly with the rules relating to qualified student loan bonds.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-89-88.

Drafting attorney: Renay France (202) 566-3482.

Reviewing attorney: John M. Coulter (202) 566-3331.

Treasury attorney: Elliott Stern (202) 566-2566.

Agency Contact: Renay France, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224, 202 566-3458

RIN: 1545-AJ42

2233. QUALIFIED 501 (C) (3) BONDS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 145 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations would provide rules for qualified 501 (c) (3) bonds.

Timetable:

Action	Date	FR Cite
ANPRM	05/01/88	
NPRM	12/01/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-84-86.

Drafting attorney: Robert Beatson (202) 566-3439.

Reviewing attorney: Alice Bennett (202) 566-4473.

Treasury attorney: Elliot Stern (202) 566-2026.

Agency Contact: Robert Beatson, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224, 202 566-3439

RIN: 1545-AJ39

2234. STATE VOLUME CAP FOR TAX-EXEMPT BONDS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 146 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation would provide state volume cap rules for tax-exempt bonds.

Timetable:

Action	Date	FR Cite
ANPRM	04/01/88	
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-45-86

Drafting attorney: David Selig (202) 566-3297.

Reviewing attorney: Gerald Rock: (202) 566-3394.

Treasury attorney: Elliot Stern (202) 566-2026.

Agency Contact: David Selig, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224, 202 566-4336

RIN: 1545-AJ37

2235. ARBITRAGE RESTRICTIONS ON TAX-EXEMPT BONDS; REBATE REQUIREMENT

Significance: Regulatory Program

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 148 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This project will provide regulations relating to the requirement that arbitrage profits earned on tax-exempt bonds be paid to the United States.

Timetable:

Action	Date	FR Cite
NPRM	10/02/88	

Small Entities Affected: None

Government Levels Affected: Local, State

Additional Information: LR-01-86

Drafting attorney: unassigned

Reviewing attorney: Gerald Rock (202) 566-6456.

Treasury attorney: Elliott Stern (202) 566-2006.

Agency Contact: Unassigned, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, DC 20224, 202 566-6455

RIN: 1545-AJ67

2236. ● GENERAL REVISION OF ARBITRAGE REGULATIONS

Significance: Regulatory Program

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 148 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will provide rules regarding the arbitrage restrictions for tax-exempt bonds, other than the rebate requirement.

Timetable:

Action	Date	FR Cite
NPRM	12/31/89	

Small Entities Affected: None

Government Levels Affected: Local, State

Additional Information: LR-45-86

Drafting attorney: Unassigned

Reviewing attorney: Gerald W. Rock (202) 566-8456.

Treasury attorney: Elliot Stern (202) 566-2926.

Agency Contact: Unassigned, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3740

RIN: 1545-AL80

2237. ● ADVANCE REFUNDINGS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 149 (d) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will provide rules regarding advance refundings of certain private activity bonds and certain other bonds.

Timetable:

Action	Date	FR Cite
NPRM	08/30/89	

Small Entities Affected: None

Government Levels Affected: Local, State

Additional Information: LR-50-88

Drafting attorney: Unassigned.

Reviewing attorney: Gerald W. Rock (202) 566-8456.

Treasury attorney: Elliot Stern (202) 566-2926.

Agency Contact: Unassigned, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave. N.W., Washington, D.C. 20224, 202 566-3740

RIN: 1545-AL81

2238. INCOME TAX--TO PROVIDE BETTER DEFINITIONS IN THE AREA OF POLITICAL ADVERTISING & GRASSROOTS LOBBYING

Significance: Regulatory Program

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 162 Internal Revenue Code of 1986; 26 USC 4945 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation would provide better definitions in the area of political advertising and grassroots lobbying.

Timetable:

Action	Date	FR Cite
NPRM	06/30/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-100-77.

Drafting attorney: Stuart G. Wessler [202] 566-3297.

Reviewing attorney: David R. Haglund [202] 566-3287.

Office of Tax Legislative Counsel reviewing attorney: Ellen

Aprill (202) 566-5453.

Agency Contact: Stuart G. Wessler, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3287

RIN: 1545-AA79

2239. DEFINITION OF RELATED VIOLATION

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Regulations would amend the definition of "related violations" under section 162(g) of the Internal Revenue Code of 1986 in order to update such definition in light of subsequent events.

Timetable:

Action	Date	FR Cite
NPRM	12/31/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-27-87

Drafting attorney: Joel S. Rutstein (202) 566-3297.

Reviewing attorney: John S. Bromell (202) 566-3328.

Agency Contact: Joel S. Rutstein, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3297

RIN: 1545-AK83

2240. ● QUALIFIED RESIDENCE INTEREST

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations will provide guidance regarding the definition of qualified residence interest, including the definition of acquisition debt and guidance regarding the computation of the limitation.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-27-88

Drafting attorney: Sharon L. Hall (202) 566-3236.

Reviewing attorney: John Fischer (202) 566-3284.

Treasury attorney: Reed Shuldiner (202) 566-2178.

13 Income Tax

Agency Contact: Sharon L. Hall, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, Washington, D.C. 20224, 202 566-3236

RIN: 1545-AL87

2241. ● PROHIBITION ON FOREIGN TARGETING OBLIGATIONS BACKED BY UNITED STATES GOVERNMENT SECURITIES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 163 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Notice of proposed rulemaking providing that obligations backed by United States government securities may not be foreign targeted.

Timetable:

Action	Date	FR Cite
NPRM	10/31/88	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: INTL-670-86

Drafting attorney: Carl M. Cooper (202) 634-5400.

Reviewing attorney: Carol Doran Klein (202) 566-6419.

Treasury attorney: Peter Daub (202) 566-2504.

13 Income Taxes.

Agency Contact: Carl M. Cooper, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 634-5400

RIN: 1545-AM19

2242. INCOME TAX--NORMALIZATION REQUIREMENT FOR PUBLIC UTILITY PROPERTY

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 168 (e) (3) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The temporary regulations would provide guidance to public utilities relating to the transitional rules for the public utility normalization requirements of ACRS under section 168 (e) (3). Prior to ACRS some public utilities did not have to normalize in order to use accelerated depreciation. Under the transitional rule these utilities are given until January 1, 1963 to meet the normalization requirements of section 168 (e) (3).

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-264-81.

Drafting attorney: Paulette C. Galanko (202) 566-3288.

Office of Tax Legislative Counsel (Treasury) reviewing attorney: Thomas Evans (202) 566-8277.

Agency Contact: Paulette C. Galanko, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3288

RIN: 1545-AA68

2243. INCOME TAX -- TO PROVIDE REGULATIONS RELATING TO CONTRIBUTIONS TO PRIVATE FOUNDATIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations will provide rules relating to the percentage limitations for charitable contributions to private foundations. The regulations will also provide rules relating to "qualified appreciated stock" as that term is defined in section 170 (e) (5) of the Internal Revenue Code.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-231-84.

Drafting attorney: Stuart G. Wessler (202) 566-3297.

Reviewing attorney: Walter H. Woo (202) 566-3297.

Agency Contact: Stuart G. Wessler, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3287

RIN: 1545-AI09

2244. ● ELECTION TO EXPENSE CERTAIN DEPRECIABLE ASSETS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 179 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation will provide rules determining when a taxpayer's wages from employment will be considered income derived from the active conduct of a trade or business.

Timetable:

Action	Date	FR Cite
NPRM	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-53-88

Drafting attorney: Maurice B. Foley (202) 566-4336.

Reviewing attorney: Fred Grundeman (202) 566-3287.

Treasury attorney: Ellen Aprill (202) 566-5433.

Agency Contact: Maurice B. Foley, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-4336

RIN: 1545-AL74

2245. ELECTION TO POSTPONE DETERMINATION WITH RESPECT TO THE PRESUMPTION THAT AN ACTIVITY IS ENGAGED IN FOR PROFIT

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 183 (e) (3) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations will provide rules relating to the election to postpone the determination whether the section 183 (d) presumption applies until the activity has been conducted for five (or seven) years. The regulations will specify who can make the election and the time and manner of making the election.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-73-91.

Drafting attorney: James A. Orefice (202) 566-3238.

Reviewing attorney: Cynthia L. Clark (202) 566-3336.

Agency Contact: James A. Orefice, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave. N.W., Washington, D.C. 20224, 202 566-3238

RIN: 1545-AG37

2246. INCOME TAX--TO ADD PROVISIONS RELATING TO START-UP EXPENDITURES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 195 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations would provide guidance to taxpayers electing to amortize start-up expenditures relating to the creation or acquisition of an active trade or business.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: LR-36-81.

Drafting attorney: David R. Haglund (202) 566-3297.

Reviewing attorney: John Fischer (202) 566-3394.

Agency Contact: David R. Haglund, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3297

RIN: 1545-AB02

2247. ◆ DEDUCTION FOR DIVIDENDS RECEIVED FROM CERTAIN FOREIGN CORPORATIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 245 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Draft regulations under section 245 of the Code, incorporating changes made by the Tax Reform Act of 1986.

Timetable:

Action	Date	FR Cite
NPRM	01/01/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: INTL-043-86

Drafting attorney: Kenneth Allison (202) 566-6457.

Reviewing attorney: Charles Saverude (202) 377-9060.

Treasury attorney: Mark Beams (202) 566-3275.

13 Income Taxes.

Agency Contact: Kenneth Allison, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-6457

RIN: 1545-AL94

2248. INCOME TAX-DEBT-FINANCED PORTFOLIO STOCK

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 246A Internal Revenue Code of 1986; 26 USC 7701 (f) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Amendment of the regulations to interpret the rule contained in section 246A of the Internal Revenue Code of 1954 relating to the dividends received deduction where portfolio stock is debt financed.

Timetable:

Action	Date	FR Cite
NPRM	10/01/89	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: LR-261-84.

Drafting attorney: Patricia W. Pellervo (202) 566-3458.

Reviewing attorney: Robert J. Mason (202) 566-3463.

Agency Contact: Patricia W. Pellervo, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545-AH39

2249. CAPITALIZATION OF CERTAIN PENSION, ETC. COSTS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 263A Internal Revenue Code of 1986; 26 USC 460 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations will provide guidance relating to the requirement that certain costs of deferred compensation must be capitalized rather than deducted currently.

Timetable:

Action	Date	FR Cite
NPRM	04/01/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-56-78

Drafting attorney: Michael Garvey (202) 566-6212.

Treasury attorney: Harry Conaway (202) 566-6277.

Agency Contact: Michael Garvey, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-6212

RIN: 1545-AH82

2250. TEMPORARY REGULATION—CAPITALIZATION OF CERTAIN INTEREST EXPENSES

Significance: Regulatory Program

Legal Authority: 26 USC 263A(f) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations will provide guidance concerning the capitalization of certain interest expenses and the allocation of interest to property subject to the capitalization rules.

Timetable:

Action	Date	FR Cite
NPRM	12/01/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-120-86.

Drafting attorney: Katherine Lee Wambsgans (202) 566-3288.

Reviewing attorney: John Fischer (202) 566-3394.

Treasury attorney: Thomas Evans (202) 566-8277.

Agency Contact: Katherine Lee Wambsgans, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3288

RIN: 1545-AK03

2251. INCOME TAX—TO ADD PROVISIONS RELATING TO FOREIGN CONVENTIONS (AS AMENDED BY SECTION 4 OF PUBLIC LAW 98-606)

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 274 (h) Internal Revenue Code of 1986; PL 96-608, Sec 4; PL 97-424, Sec 543; PL 98-67, Sec 223

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations would provide rules to assist taxpayers in determining whether it is as reasonable to hold a convention, seminar, or similar meeting outside North America as within it, and thus whether expenses relating to attendance at the convention are deductible.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-114-81.

Drafting attorney: Christopher Wilson (202) 566-4336.

Reviewing attorney: John M. Fischer (202) 566-3394.

Treasury attorney: Susan Himes (202) 566-8527.

Agency Contact: Christopher Wilson, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-4336

RIN: 1545-AB04

2252. NOTICE OF PROPOSED RULEMAKING RELATING TO RESTRICTIONS ON GOLDEN PARACHUTE PAYMENTS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 280G Internal Revenue Code of 1986

CFR Citation: 26 CFR 280G

Legal Deadline: None

Abstract: These regulations will provide rules relating to restrictions on golden parachute payments. The regulations will provide guidance to taxpayers, who must comply with section 280G, by delineating the circumstances under which payments may be considered excess parachute payments.

Timetable:

Action	Date	FR Cite
NPRM	10/30/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-217-84.

Drafting attorney: Stuart Wessler (202) 566-3297.

Reviewing attorney: Sharon Galm (202) 566-3930.

Treasury attorney: Don Rocap (202) 566-8178.

Agency Contact: Stuart Wessler, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3297

RIN: 1545-AH88

2253. WAIVER OF FAMILY ATTRIBUTION BY ENTITIES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 302 (c) (2) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Proposal would interpret the definitions and special rule for waiver of family attribution by entities contained in section 302 (c) (2) of the Internal Revenue Code of 1954, which relates to the tax treatment of certain redemptions of corporate stock.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-180-82.

Drafting attorney: Robert M. Casey (202) 566-3458.

Reviewing attorney: Charles M. Whedbee (202) 566-3487.

Agency Contact: Robert M. Casey, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545-AF13

2254. CERTAIN STOCK SALES AND DISTRIBUTIONS TREATED AS ASSET TRANSFERS

Legal Authority: 26 USC 336 Internal Revenue Code of 1986; 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations would provide guidance for making an election under section 336 (e), and the consequences which result from making such an election.

Timetable:

Action	Date	FR Cite
NPRM	04/01/89	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: LR-51-87

Drafting attorney: Patricia W. Pellervo (202) 566-3458.

Reviewing attorney: Robert J. Mason (202) 566-3463.

Treasury attorney: Thomas Wessel (202) 566-4979.

Agency Contact: Patricia W. Pellervo, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545-AK29

2255. CROSS-REFERENCE—RECOGNITION OF GAIN OR LOSS ON LIQUIDATING SALES AND DISTRIBUTIONS OF PROPERTY (TRA 1986; SECTIONS 631 TO 633)

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 336 Internal Revenue Code of 1986; 26 USC 337 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Proposal would provide rules for the recognition of gain or loss on a corporations liquidating sales or distributions

Timetable:

Action	Date	FR Cite
NPRM	03/15/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information:

LR-79-87.

Drafting attorney: Mark S. Jennings (202) 566-3458.

Reviewing attorney: Robert J. Mason (202) 566-3463.

Agency Contact: Mark S. Jennings, Attorney, Department of the Treasury,

Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545-AK30

2254. INCOME TAX -- APPLICATION OF INSTALLMENT METHOD OF REPORTING AND MANDATORY APPLICATION OF MADSP FORMULA FOR QUALIFIED STOCK PURCHASES UNDER SECTION 338 (H) (10)

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 338 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations will provide guidance for utilization of the installment method of reporting and will require the use of the MADSP formula in a qualified stock purchase to which section 338 (h) (10) applies.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-75-87.

Drafting attorney: Judith C. Winkler (202) 566-3458.

Reviewing attorney: Robert J. Mason (202) 566-3463.

Treasury attorney: Jud Kelly (202) 535-0060.

Agency Contact: Judith C. Winkler, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545-AK25

2257. TREATMENT OF AN AFFILIATED GROUP OF CORPORATIONS AS A SELLING CONSOLIDATED GROUP FOR PURPOSES OF ELECTIVE RECOGNITION UNDER SECTION 338 (H) (10)

Legal Authority: 26 USC 338 Internal Revenue Code of 1986; 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations would provide the guidance for making elections under section 338 (h) (10) when the selling group is an affiliated group of corporations which does not file a consolidated federal income tax return, and the consequences of making such an election.

Timetable:

Action	Date	FR Cite
NPRM	06/00/89	
NPRM Comment Period End	09/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-50-87

Drafting attorney: Judith C. Winkler (202) 566-3458.

Reviewing attorney: Robert J. Mason (202) 566-3463.

Treasury attorney: Jud Kelly (202) 535-0060.

Agency Contact: Judith C. Winkler, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545-AK31

2258. TRANSFER OF INTANGIBLES SUBJECT TO SECTION 367 OR 482 OF THE CODE

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Prior to the Reform Act of 1986, U.S. taxpayers were able to shift income out of the U.S. by transferring intangibles to Section 936 possessions corporations, contributing intangibles to related foreign corporations in Section 367 transactions or selling or licensing intangibles to related foreign parties at less than arm's-length prices and transactions subject to section 482. Valuing such transfers (at the time of transfer) has proven to be difficult and non-productive. The Reform Act of 1986 provides that payments to be received by the transferor of intangibles must be commensurate with the income from the intangible. Major issue - What portion of the income from the intangible will constitute "commensurate"? Provisions will raise large amounts of revenue.

Timetable:

Action	Date	FR Cite
NPRM	12/31/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-837-86

Drafting attorney: Bobby D. Burns (202) 287-4851.

Reviewing attorney: George Sellinger (202) 287-4851.

Treasury attorney: Mark Beams (202) 566-0247.

Agency Contact: Bobby D. Burns, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 950 L'Enfant Plaza South, S.W., Room 3319, Washington, D.C. 20024, 202 287-4851

RIN: 1545-AJ91

2259. FOREIGN LIQUIDATIONS AND REORGANIZATIONS (NPRM)

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 367(b)(2) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1; 26 CFR 7

Legal Deadline: None

Abstract: Proposal would provide guidance concerning requirements relating to certain exchanges involving a foreign corporation.

Timetable:

Action	Date	FR Cite
NPRM	12/01/88	

Small Entities Affected: None

Government Levels Affected: Federal

Additional Information: INTL-908-86

Drafting attorney: Richard Chewning (202) 566-3490.

Reviewing attorney: Bernard Bress (202) 566-6440.

Treasury attorney: David Crowe (202) 566-6761.

Agency Contact: Richard Chewning, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3490

RIN: 1545-AJ78

2260. CORPORATE REORGANIZATION AMENDMENTS - BANKRUPTCY TAX ACT OF 1980

Legal Authority: 26 USC 354 Internal Revenue Code of 1986; 26 USC 355 Internal Revenue Code of 1986; 26 USC 357 Internal Revenue Code of 1986; 26 USC 358 Internal Revenue Code of 1986; 26 USC 361 Internal Revenue Code of 1986; 26 USC 362 Internal Revenue Code of 1986; 26 USC 366 Internal Revenue Code of 1986; 26 USC 381 Internal Revenue Code of 1986; 26 USC 7701 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations would provide guidance with respect to amendments to the Internal Revenue Code by the Bankruptcy Tax Act of 1980. Dealing with bankruptcy and other insolvency reorganizations.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: LR-74-87.

Drafting attorney: Robert M. Casey (202) 566-3458.

Reviewing attorney: Robert J. Mason (202) 566-3463.

Agency Contact: Robert M. Casey, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545-AK33

2261. INCOME TAX--LIMITATION ON CORPORATE NET OPERATING LOSS DEDUCTION

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 382 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation will explain and illustrate the limitations provided under section 382 of the Internal Revenue Code of 1986 on a corporation's use of net operating loss carryovers.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: LR-102-85.

Drafting attorney: Keith Stanley (202) 566-3456.

Reviewing attorney: Charles M. Whedbee (202)566-3458.

Treasury attorney: Thomas Wessel (202) 566-2927.

Agency Contact: Keith Stanley, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545-AI09

2262. COMPUTATION OF SECTION 382 LIMITATION

Legal Authority: 26 USC 382 Internal Revenue Code of 1986; 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations would explain the manner and method of computing the section 382 limitation under circumstances when there are successive ownership changes, capital contributions, mergers and liquidations, and in instances when one corporation controls another corporation.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: LR-67-87

Drafting attorney: Keith E. Stanley (202) 566-3456.

Reviewing attorney: Robert J. Mason (202) 566-3463.

Treasury attorney: Thomas Wessel (202) 566-2928.

Agency Contact: Keith E. Stanley, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545-AK37

2263. SPECIAL LIMITATIONS ON CERTAIN CREDIT AND LOSS CARRYOVERS

Legal Authority: 26 USC 383 Internal Revenue Code of 1986; 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations would specify the manner and method on applying the special limitations on certain credit and loss carryovers under section 383.

Timetable:

Action	Date	FR Cite
NPRM	06/30/89	
NPRM Comment Period End	09/29/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-69-87

Drafting attorney: Thomas J. Kane (202) 566-9233.

Reviewing attorney: Charles M. Whedbee (202) 566-3458.

Treasury attorney: Thomas Wessel (202) 566-4979.

Agency Contact: Thomas J. Kane, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-9233

RIN: 1545-AK26

2264. DEFINED BENEFIT PLAN TERMINATIONS AND THE REVERSION OF ASSETS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 401 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations describe when, in fact, a defined benefit pension plan has been terminated so as to permit reversion to the employer of excess assets.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-105-81.

Drafting attorney: Steven T. Miller (202) 566-3422.

Reviewing attorney: James L. Brokaw (202) 566-4173.

Treasury attorney: Harry Conaway (202) 566-8277.

Agency Contact: Steven T. Miller, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3422

RIN: 1545-AI61

2265. INCOME TAX - - PART 1--ADDITIONAL PARTICIPATION REQUIREMENTS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 401(a)(26) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: NPRM, Statutory, February 1, 1988.
02/01/88 Deadline for final regulations

Abstract: The regulations set forth rules relating to minimum participation requirements.

Timetable:

Action	Date	FR Cite
NPRM	11/01/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-44-87

Drafting attorney: Nancy J. Marks (202) 566-3938.

Reviewing attorney: Richard J. Wickersham (202) 566-4621.

Agency Contact: Nancy J. Marks, Technical Assistant, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue N.W., Washington, D.C. 20224, 202 566-3948

RIN: 1545-AK40

2266. INCOME TAX -- PART 1--APPLICATION OF NONDISCRIMINATION RULES TO INTEGRATED PLANS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 401 (l) Internal Revenue Code of 1986; 26 USC 401 (a) (5) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: NPRM, Statutory, February 1, 1988.
Final regulations are required to be issued by February 1, 1988.

Abstract: The regulations would provide rules with regard to the application of the nondiscrimination rules to integrated plans.

Timetable:

Action	Date	FR Cite
NPRM	10/02/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-159-88

Drafting attorney: Michael Garvey (202) 566-6211.

Reviewing attorney: Richard J. Wickersham (202) 566-4621.

Treasury attorney: Paul Strella (202) 566-8277.

Agency Contact: Michael Garvey, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-6212

RIN: 1545-AI81

2267. NONDISCRIMINATION AND OTHER RULES APPLICABLE TO SECTION 403(B) ANNUITIES

Legal Authority: 26 USC 403 (b) (10) Internal Revenue Code of 1986; 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: NPRM, Statutory, February 1, 1988.

Abstract: The regulations will provide guidance regarding the nondiscrimination and other rules applicable to tax- sheltered section 403(b) annuities.

Timetable:

Action	Date	FR Cite
NPRM	12/30/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-182-86

Drafting attorney: Sylvia F. Hunt (202) 566-3644.

Reviewing attorney: Nancy J. Marks (202) 566-3422.

Treasury attorney: Priscilla Ryan (202) 566-3435.

Agency Contact: Sylvia F. Hunt, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3644

RIN: 1545-AI80

2268. INCOME TAX--EMPLOYEE STOCK OWNERSHIP PLAN LOAN PAYMENTS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 404 (a) (9) Internal Revenue Code of 1986; 26 USC 415 (c) (6) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations would provide guidance relating to the deduction limitations when employer contributions to an employee stock ownership plan are used to repay the principal and interest of an exempt loan that was made to the employee stock ownership plan.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-151-81.

Drafting attorney: Michael Gompertz (202) 566-3459.

Reviewing attorney: Michael A. Thrasher (202) 566-3961.

Agency Contact: Michael Gompertz, Technical Assistant, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3459

RIN: 1545-AD77

2269. INCOME TAX--REQUIREMENTS FOR TAX CREDIT EMPLOYEE STOCK OWNERSHIP PLANS, EMPLOYEE PLAN CREDIT, AND DEFINED CONTRIBUTION PLAN VOTING RIGHTS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 409 Internal Revenue Code of 1986; 26 USC 48 Internal Revenue Code of 1986; 26 USC 401 Internal Revenue Code of 1986; 26 USC 6699 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations provide rules for electing the employee plan credit under section 48 of the Internal Revenue Code, establishing a tax credit employee stock ownership plan under section 409 of the Internal Revenue Code and providing voting rights to participants of certain defined contribution plans under section 401(a)(22) of the Internal Revenue Code. Further, the regulations provide guidance for determining the applicability of and calculating the assessable penalties relating to tax credit employee stock ownership plans under section 6699 of the Internal Revenue Code. The regulations reorganize and modify the current regulations which are based on section 301(d), (e), and (f) of the Tax Reduction Act of 1975, and provide a single set of rules that would apply to tax credit employee stock ownership plans established under the provisions of the Tax Reduction Act of 1975 and the 1978 Revenue Act.

Timetable:

Action	Date	FR Cite
NPRM	01/31/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: EE-49-80.

Drafting attorney: John T. Ricotta (202) 566-3459.

Reviewing attorney: Michael A. Thrasher (202) 566-3961.

Office of Tax Legislative Counsel (Treasury) reviewing attorney: Harry Conaway (202) 566-8277.

Agency Contact: John T. Ricotta, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3459

RIN: 1545-AD82

2270. INC. TAX -- PART 1; ESTATE TAX -- PART 20, EMPLOYEE STOCK OWNERSHIP PLAN RULES AFFECTED BY TRA 1986

Legal Authority: 26 USC 409 Internal Revenue Code of 1986; 26 USC 401 (a) (28) Internal Revenue Code of 1986; 26 USC 401 (a) (23) Internal Revenue Code of 1986; 26 USC 133 Internal Revenue Code of 1986; 26 USC 404 (k) Internal Revenue Code of 1986; 26 USC 2057 Internal Revenue Code of 1986; 26 USC 1042 Internal Revenue Code of 1986; 26 USC 2210 Internal Revenue Code of 1986; 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1; 26 CFR 20

Legal Deadline: None

Abstract: The proposed regulations would set forth requirements for the tax qualification of ESOPs and for various ESOP tax incentives.

Timetable:

Action	Date	FR Cite
NPRM	01/31/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: EE-154-86

Drafting attorney: John Ricotta (202) 566-3456.

Reviewing attorney: Michael Thrasher (202) 566-3651.

Treasury attorney: Harry Conaway (202) 566-8277.

Agency Contact: John Ricotta, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3459

RIN: 1545-AI87

2271. COVERAGE RULES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 410(b) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: NPRM, Statutory, February 1, 1988.

Abstract: Rules relating to minimum coverage requirements.

Timetable:

Action	Date	FR Cite
NPRM	11/01/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-128-86

Drafting attorney: Nancy J. Marks (202) 566-3938.

Reviewing attorney: Richard J. Wickersham (202) 566-4621.

Office of Tax Legislative Counsel (Treasury) reviewing attorney Harry J. Conaway (202) 566-8277.

Agency Contact: Nancy J. Marks, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue N.W., Washington, D.C. 20224, 202 566-3938

RIN: 1545-AK41

2272. ● REVISING THE DRAFTING OF THE FULL FUNDING LIMITATION FOR PURPOSES OF THE MINIMUM FUNDING REQUIREMENT FOR PENSION PLANS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 412 (c) (7) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: NPRM, Statutory, August 5, 1988.

Abstract: This project will interpret the new interpret the new definition of full funding for purposes of limitations that amount of deductible contribution permitted to be made to pension plans

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-82-88

Drafting attorney: Heather Wiseman (202) 566-6824

Reviewing attorney: Richard Wickersham (202) 566-4621.

Treasury attorney: Harry Conaway (202) 566-8277.

Agency Contact: Heather Wiseman, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-6824

RIN: 1545-AL53

2273. DEFINITION OF LINE OF BUSINESS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 414 (r) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: NPRM, Statutory, February 1, 1988.

Abstract: Internal Revenue Code section 414 (r) defines line of business

for purposes of applying the coverage requirements under section 410 (b) and the nondiscrimination requirements for certain employee benefit plans under section 89.

Timetable:

Action	Date	FR Cite
Hearing	10/13/87	
NPRM	12/31/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-144-87

Drafting attorney: Rhonda G. Migdail (202) 566-6850.

Reviewing attorney: Richard Wickersham (202) 566-4821.

Treasury attorney: Priscilla Ryan (202) 566-5435.

Agency Contact: Rhonda G. Migdail, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-6850

RIN: 1545-AL23

2274. TREATMENT OF FUNDED WELFARE BENEFIT PLANS

Legal Authority: 26 USC 419 Internal Revenue Code of 1986; 26 USC 419A Internal Revenue Code of 1986; 26 USC 1239 (d) Internal Revenue Code of 1986; 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations will provide guidance concerning the treatment of contributions made by an employer to a welfare benefit plan.

Timetable:

Action	Date	FR Cite
NPRM	03/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-90-84.

Drafting attorney: Mark Schwimmer (202) 566-3774.

Reviewing attorney: Colene Mason (202) 566-4741.

Treasury attorney: Harry Conaway (202) 566-8277.

Agency Contact: Mark Schwimmer, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, DC 20224, 202 566-3774

RIN: 1545-AG14

2275. INC. TAX—PART 1—AMENDMENT OF SECTION 1.442-1 TO PROVIDE SIMPLIFIED PROCEDURES FOR CHANGES OF ANNUAL ACCOUNTING PERIOD BY CERTAIN EXEMPT ORGANIZATIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 442 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Revenue Procedure 85-58 provides change of accounting period approval procedures for exempt organizations. It substantially simplifies the former procedures in Revenue Procedure 76-9. The regulations under section 1.442-1 will be amended to reflect Revenue Procedure 85-58.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-00-86.

Drafting attorney: Suzanne K. Tank (202) 566-3430.

Reviewing attorney: Paul G. Accettura (202) 566-3544.

Office of Tax Legislative Counsel (Treasury) reviewing attorney: Suzanne Ross McDowell (202) 566-8278

Agency Contact: Suzanne K. Tank, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224, 202 566-3430

RIN: 1545-AJ36

2276. ● BLOCKED INCOME

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Computation of income subject to currency or exchange restrictions.

Timetable:

Action	Date	FR Cite
NPRM	11/30/88	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: INTL-595-86

Drafting attorney: Charles T. Plambeck (202) 634-5406.

Reviewing attorney: Robert A. Katcher (202) 634-5406.

Treasury attorney: Peter Barnes (202) 566-5812.

13 Income Taxes.

Agency Contact: Charles T. Plambeck, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 634-5406

RIN: 1545-AL85

2277. INCOME TAX — GAIN OR LOSS ON THE DISPOSITION OF AN INSTALLMENT OBLIGATION

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 453B Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Proposal would provide rules for reporting gain or loss upon the disposition of an installment obligation.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: LR-105-81.

Drafting attorney: Michael J. Grace (202) 566-3288.

Reviewing attorney: Cynthia L. Clark (202) 566-3336.

Office of Tax Legislative Counsel (Treasury) reviewing attorney: Marc Levy (202) 535-6965.

Agency Contact: Michael J. Grace, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3288

RIN: 1545-AJ41

2278. INCOME TAX—INSTALLMENT SALES BETWEEN RELATED PARTIES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 453 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Proposal would provide rules for reporting installment sales between related parties.

Timetable:

Action	Date	FR Cite
NPRM	12/01/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-2-81.

Drafting attorney: Arthur E. Davis III (202) 566-3238.

Agency Contact: Arthur E. Davis III, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3238

RIN: 1545-AB45

2279. INCOME TAX—INSTALLMENT SALES REVISION ACT OF 1980, REGULATIONS RELATING TO WRAP-AROUND MORTGAGES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 453 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Proposal would provide regulations for reporting sales of property under a wrap-around mortgage arrangement.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: LR-147-82.

Drafting attorney: Paulette C. Galanko (202) 566-3288.

Office of Tax Legislative Counsel (Treasury) reviewing attorney: Ellen Aprill (202) 566-5953.

Agency Contact: Paulette C. Galanko, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3288

RIN: 1545-AB60

2280. INCOME TAX REGULATIONS—PART I, INSTALLMENT SALES BY NONTAXABLE ENTITIES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 453 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This project will provide rules relating to installment sales by nontaxable entities and the election provision by foreign personal holding companies.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: LR-143-83.

Drafting attorney: Michael J. Grace (202) 566-3288.

Reviewing attorney: Cynthia L. Clark (202) 566-3336.

Agency Contact: Michael J. Grace, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3288

RIN: 1545-AB73

2281. INCOME TAX REGULATIONS—PART 1—SPECIAL RULES RELATING TO INSTALLMENT OBLIGATIONS THAT ARE READILY TRADABLE OR PAYABLE ON DEMAND

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 453 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations will provide rules relating to installment obligations that are readily tradable or payable on demand.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: LR-54-84.

Drafting attorney: Michael J. Grace (202) 566-3288.

Reviewing attorney: Cynthia L. Clark (202) 566-3336.

Agency Contact: Michael J. Grace, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3288

RIN: 1545-AC87

2282. ● CERTAIN INDEBTEDNESS TREATED AS PAYMENTS ON INSTALLMENT OBLIGATIONS

Legal Authority: 26 USC 7805S Internal Revenue Code of 1986; 26 USC 453C Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation will provide rules for treating certain indebtedness as payment on installment obligations.

Timetable:

Action	Date	FR Cite
NPRM	10/02/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-62-88

Drafting attorney: William Blagg (202) 566-3238.

Reviewing attorney: Cynthia Clark (202) 566-3336.

Treasury attorney: Marc Levy (202) 566-4002.

13 Income Tax

Agency Contact: William Blagg, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3238

RIN: 1545-AM37

2283. INCOME TAX — DEFERRED COMPENSATION PLANS OF STATE AND LOCAL GOVERNMENTS AND TAX-EXEMPT ORGANIZATIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 457 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

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Abstract: Internal Revenue Code section 457 provides an exclusion from gross income, in the case of a participant in an eligible deferred compensation plan, for any amounts deferred under the plan and any income attributable to the amounts attributable to the amounts so deferred.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-165-86

Drafting attorney: Mary F. Eure (202) 566-3060.

Reviewing attorney: A. Thomas Brisendine (202) 566-3060.

Treasury attorney: Harry Conaway (202) 566-8277.

Agency Contact: Mary F. Eure, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3060

RIN: 1545-AI80

2244. ACCOUNTING FOR LONG-TERM CONTRACTS

Significance: Regulatory Program

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 460 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations will provide rules relating to accounting for costs incurred in the performance of long-term contracts.

Timetable:

Action	Date	FR Cite
NPRM	12/31/88	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: LR-130-85

Drafting attorney: Paulette C. Galanko (202) 566-3288.

Reviewing attorney: John M. Fischer (202) 566-3394.

Treasury attorney: Robert Scarborough (202) 566-4979.

Agency Contact: Paulette C. Galanko, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue N.W., Washington, D.C. 20224, 202 566-3288

RIN: 1545-AJ28

2245. INCOME TAX REGULATIONS—THE ECONOMIC PERFORMANCE REQUIREMENT

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 461 (h) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations will provide guidance relating to when economic performance occurs with respect to a liability and how the recurring item exception applies.

Timetable:

Action	Date	FR Cite
NPRM	11/22/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-258-84.

Drafting attorney: Bill Blagg (202) 566-3238.

Reviewing attorney: Cynthia Clark (202) 566-3336.

Treasury attorney: Kathleen Ferrell (202) 566-5453.

Agency Contact: Bill Blagg, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3238

RIN: 1545-AH52

2286. EXTENSION OF THE AT-RISK RULES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 465 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations would provide guidance to taxpayers with respect to the extension of the at-risk rules to all activities other than the holding of real property. The regulations would also provide guidance with respect to the exception to the at-risk rules for closely-held corporations actively engaged in equipment leasing, and the recapture provision.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-192-76.

Drafting attorney: Michael J. Grace (202) 566-3288.

Reviewing attorney: Cynthia L. Clark (202) 566-3336.

Treasury attorney: John H. Parcell (202) 535-6965.

Agency Contact: Michael J. Grace, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3288

RIN: 1545-AF86

2287. AGGREGATION OF CERTAIN ACTIVITIES FOR PURPOSES OF THE AT-RISK RULES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 465 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The Regulation will provide rules for aggregating certain activities for purposes of applying the at-risk rules under section 465. In general, the at-risk rules limit the amount of loss deductible in a taxable year with respect to an activity to the amount the taxpayer is at risk in the activity. The aggregation rules will apply to taxable years beginning after December 31, 1987.

Timetable:

Action	Date	FR Cite
NPRM	12/01/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-108-85.

Drafting attorney: Arthur E. Davis (202) 566-3236.

Reviewing attorney: Cynthia L. Clark (202) 566-3336.

Treasury attorney: John H. Parcell (202) 535-6965.

Agency Contact: Arthur E. Davis III, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3236

RIN: 1545-AI02

2288. APPLICATION OF AT-RISK LIMITATIONS TO THE HOLDING OF REAL PROPERTY

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 465 Internal Revenue Code of 1986; 26 USC 752 Internal Revenue Code of 1986; 26 USC 46 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations will explain the application of the at risk limitations to the activity of holding real property and the exception for qualified nonrecourse financing.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-124-86.

Drafting attorney: Michael J. Grace (202) 566-3288.

Reviewing attorney: Cynthia L. Clark (202) 566-3336.

Treasury attorney: John H. Parcell (202) 535-6965.

Agency Contact: Michael J. Grace, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3288

RIN: 1545-AK08

2289. TEMPORARY INCOME TAX REGULATIONS-DEFERRED PAYMENTS FOR USE OF PROPERTY OR SERVICES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 467 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1T

Legal Deadline: None

Abstract: The regulations will provide rules to the accrual of rents for the use of tangible property (and interest on rent that accrues but is not paid) under a section 467 rental agreement. A section 467 rental agreement will be defined. Certain tax avoidance transactions will be defined. Rules will be provided for the recapture of prior understated inclusions. Comparable rules for services will be provided.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-292-84.

Drafting attorney: Sharon L. Hall (202) 566-3238.

Treasury attorney: Reed Shuldiner (202) 566-2175.

Agency Contact: Sharon L. Hall, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3238

RIN: 1545-AG81

2290. LIMITATIONS ON PASSIVE ACTIVITY LOSSES AND CREDITS; DEFINITION OF ACTIVITY

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 469(k) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1.469-0T; 26 CFR 1.469-1T; 26 CFR 1.469-2T; 26 CFR 1.469-3T; 26 CFR 1.469-4T; 26 CFR 1.469-5T; 26 CFR 1.469-11T

Legal Deadline: None

Abstract: Pursuant to the grant of regulatory authority in section 469(k), the regulations will define "activity".

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-45-87

Drafting attorney: Michael J. Grace (202) 566-3288.

Reviewing attorney: Michael J. Grace (202) 566-3288.

Treasury attorney: John H. Parcell (202) 535-6965.

13 Income Taxes

Agency Contact: Michael J. Grace, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3288

RIN: 1545-AK65

2291. INVENTORY COMPUTED BY USE OF CONSUMER OR PRODUCER PRICE INDEXES

Legal Authority: 26 USC 472 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The proposed regulations would provide examples and further clarification of the existing regulations.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-87-83.

Drafting attorney: Arthur E. Davis (202) 566-3238.

Reviewing attorney: Cynthia Clark (202) 566-3336.

Agency Contact: Arthur E. Davis III, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3236

RIN: 1545-AP65

2292. SIMPLIFIED DOLLAR-VALUE LIFO METHOD FOR CERTAIN SMALL BUSINESSES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 474 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations would provide guidance to certain small businesses that are eligible to elect a simplified dollar- value LIFO method of inventory valuation. This method requires the use of published government indexes.

Timetable:

Action	Date	FR Cite
NPRM	11/01/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-31-87

Drafting attorney: Arthur E. Davis III (202) 566-3236.

Reviewing attorney: Cynthia L. Clark (202) 566-3236.

Treasury accountant-advisor: Marc Levy (202) 535-0085.

Agency Contact: Arthur E. Davis III, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3236

RIN: 1545-AK84

2293. INCOME TAX—UNRELATED TRADE OR BUSINESS INCOME

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 512 (a) Internal Revenue Code of 1986; 26 USC 514 (c) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation will address the issue of what constitutes real property acquired by a qualified trust. The guidance provided on this issue will determine the scope of the exception under 26 USC 514(c)(9) for such acquisitions from the term acquisition indebtedness. Under 26 USC 514, the existence of such indebtedness on income producing property gives rise to unrelated debt-financed taxable income. The regulation will also address the issue of the proper allocation method to determine fixed indirect expenses connected with the unrelated trade or business use of an exempt organization's property.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-27-81.

Drafting attorney: Monica Rosenbaum (202) 566-3422.

Reviewing attorney: James L. Brokaw (202) 566-4173.

Agency Contact: Monica Rosenbaum, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3422

RIN: 1545-AE00

2294. BAD DEBT RESERVES OF FINANCIAL INSTITUTIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 585 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This document will provide proposed regulations that relate to the repeal of the bad debt reserve for large banks.

Timetable:

Action	Date	FR Cite
NPRM	12/31/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information:

LR-81-86.

Drafting attorney: Susan E. Overlander (202) 566-3458.

Reviewing attorney: Sharon Galm (202) 566-3830.

Agency Contact: Susan E. Overlander, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224, 202 566-3458

RIN: 1545-AJ31

2295. ◆ DEFINITION OF "SMALL" BANK

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Regulation will address issues applicable to international banks in recapturing bad debt reserves as required by the Tax Reform Act.

Timetable:

Action	Date	FR Cite
NPRM	12/31/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-977-86

Drafting attorney: Charles T. Plambeck (202) 634-5400.

Reviewing attorney: Carolyn M. Dupuy (202) 634-5406.

Treasury attorney: Unassigned.

15 Income Taxes.

Agency Contact: Charles T. Plambeck, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-5468

RIN: 1545-AL83

2296. TREATMENT OF FORECLOSED PROPERTY BY CERTAIN CREDITORS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 585 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Proposed regulation would amend the existing regulations relating to the treatment of amounts realized and expended with respect to property securing loans which have been foreclosed on by certain banks.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-83-82.

Drafting attorney: Susan E. Overlander (202) 566-3458.

Reviewing attorney: Alice M. Bennett (202) 566-4474.

Agency Contact: Susan E. Overlander, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545-AF50

2297. INCOME TAX—RESTORATION OF DEPLETION DEDUCTIONS ON BONUS AND ADVANCED ROYALTIES IN CERTAIN CASES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 612 Internal Revenue Code of 1986; 26 USC 613 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations would provide rules relating to the restoration of depletion deductions on bonuses and advanced royalties and the deferment of the exclusion of advanced royalties from gross income from the property.

Timetable:

Action	Date	FR Cite
NPRM	06/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-114-88.

Drafting attorney: Walter H. Woo (202) 566-3297.

Reviewing attorney: John B. Bromell (202) 566-3120.

Office of Tax Legislative Counsel (Treasury) reviewing attorney: Bryan Collins (202) 566-2175.

Agency Contact: Walter H. Woo, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3297

RIN: 1545-AB88

2298. PROPERTY DISTRIBUTED IN KIND AND TREATMENT OF MULTIPLE TRUSTS (SEC. 81 AND 82 OF THE TAX REFORM ACT OF 1984)

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 643 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations will provide rules relating to the tax consequences when property is distributed in kind from a trust or estate, including rules specifying what gain is recognized upon distribution, who recognizes such gain, and what the basis of the distributed property is in the hands of the distributee. The regulations also explain election rules available to the distributing trust or estate. The regulations also explain rules under which certain multiple trusts will be treated as a single trust.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-34-85.

Drafting attorney: Lauren G. Shaw (202) 566-3287.

Reviewing attorney: Ada S. Rousso (202) 566-3287.

Agency Contact: Lauren G. Shaw, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3287

RIN: 1545-AI08

2299. CLARIFICATION OF SECTION 1.643 (A) (3) RELATING TO THE INCLUSION OF CAPITAL GAIN IN DISTRIBUTABLE NET INCOME

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 643 (a) (3) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The proposed regulation will revise rules specifying when capital gains will be included in distributable net income.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-144-85.

Drafting attorney: Lauren G. Shaw (202) 566-3287.

Reviewing attorney: Ada S. Rousso (202) 566-3287.

Agency Contact: Lauren G. Shaw, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3287

RIN: 1545-AI31

2300. INCOME TAXATION OF TRUSTS AND ESTATES

Legal Authority: 26 USC 645 Internal Revenue Code of 1986; 26 USC 672 Internal Revenue Code of 1986; 26 USC 673 Internal Revenue Code of 1986; 26 USC 6654 (k) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations will provide rules regarding taxable years of trusts and estates, taxation of grantor trusts, and payment of estimated tax by trusts.

Timetable:

Action	Date	FR Cite
NPRM	07/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information:

LR-109-86.

Drafting attorney: Maurice B. Foley (202) 566-4330.

Reviewing attorney: Fred Grundeman (202) 566-3287.

Treasury attorney: Susan Himes (202) 566-8527.

Agency Contact: Maurice B. Foley, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-4330

RIN: 1545-AJ20

2301. INCOME TAX—PROCEDURE & ADMINISTRATION—FOREIGN TRUSTS HAVING U.S. BENEFICIARIES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 679 Internal Revenue Code of 1986; 26 USC 678 (b) Internal Revenue Code of 1986; 26 USC 643 (a) Internal Revenue Code of 1986; 26 USC 643 (c) (6) (C) Internal Revenue Code of 1986; 26 USC 643 (c) (6) (D) Internal Revenue Code of 1986; 26 USC 643 (d) Internal Revenue Code of 1986; 26 USC 6048 Internal Revenue Code of 1986; 26 USC 6677 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1; 26 CFR 301

Legal Deadline: None

Abstract: These regulations will provide to what extent a grantor of a foreign trust with United States beneficiaries will be treated as an owner of that trust, and thus taxed currently on the trust's income.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-187-76.

Drafting attorney: Fred E. Grundeman (202) 566-3287.

Reviewing attorney: Ada S. Rousso (202) 566-3287.

Agency Contact: Fred E. Grundeman, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3287

RIN: 1545–AB79

2302. TO PROVIDE SPECIAL RULES CONCERNING RELATED PARTY LOANS IN THE CASE OF PARTNERSHIP ALLOCATIONS ATTRIBUTABLE TO NONRECOURSE DEBT

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This project will provide regulations relating to loans made to a partnership by a person related to a partner of the partnership.

Timetable:

Action	Date	FR Cite
NPRM	12/31/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-30-86.

Drafting attorney: Robert E. Shaw (202) 566-3287.

Reviewing attorney: John B. Bromell (202) 566-3328.

Treasury attorney: Greg Marich (202) 566-3927.

Agency Contact: Robert E. Shaw, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., NW, Washington, DC 20224, 202 566-3287

RIN: 1545–AI66

2303. ALLOCATIONS OF INCOME GAIN, LOSS, AND DEDUCTION WITH RESPECT TO PROPERTY CONTRIBUTED TO A PARTNERSHIP

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations will provide rules and examples relating to the requirement to allocate income, gain, loss, and deduction so as to take into account the variation between the basis of the property and its fair market value at the time of contribution.

Timetable:

Action	Date	FR Cite
NPRM	12/31/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-154-84.

Drafting attorney: Robert E. Shaw (202) 566-3287.

Reviewing attorney: John B. Bromell (202) 566-3328.

Treasury attorney: Greg Marich (202) 566-4079.

Agency Contact: Robert E. Shaw, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3287

RIN: 1545–AC08

2304. INCOME TAX—ITEMS ALLOCATED TO PORTION OF YEAR PARTNER HELD INTEREST

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 706 (d) Internal Revenue Code of 1986; 26 USC 704 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations would provide the methods to be used for allocating partnership items to partners whenever a partner's interest varies during the partnership taxable year.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-255-78.

Drafting attorney: Robert E. Shaw (202) 566-3287.

Reviewing attorney: Paul A. Francis (202) 566-3930.

Treasury attorney: Greg Marich (202)566-3927.

Agency Contact: Robert E. Shaw, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3287

RIN: 1545–AB91

2305. INCOME TAX—TREATMENT OF PAYMENTS TO PARTNERS NOT ACTING IN THEIR CAPACITY AS PARTNERS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 707 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations will provide guidance to taxpayers relating to the treatment of certain allocations and distributions to partners for services and transfers of property where the partner is not acting in his capacity as a partner.

Timetable:

Action	Date	FR Cite
NPRM	10/31/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-234-84.

Drafting attorney: David R. Haglund (202) 566-3297.

Reviewing attorney: John B. Bromell (202) 566-3328.

Treasury attorney: Greg Marich (202) 566-4079.

Agency Contact: David R. Haglund, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3297

RIN: 1545–AG03

2306. AMENDMENT OF INCOME TAX REGULATIONS WITH RESPECT TO TREATMENT OF DISGUISED SALES BY PARTNERS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 707 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations will provide rules for determining when partnership transactions are to be treated as disguised sales.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-163-84.

Drafting attorney: David R. Haglund (202) 566-3297.

Reviewing attorney: John B. Bromell (202) 566-3297.

Office of Tax Legislative Counsel (Treasury) reviewing Treasury attorney: Greg Marich (202) 566-4079.

Agency Contact: David R. Haglund, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3297

RIN: 1545–AH22

2307. CONTRIBUTIONS TO A PARTNERSHIP OF UNREALIZED RECEIVABLES, INVENTORY ITEMS OR CAPITAL LOSS PROPERTY

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 724 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation will provide rules for determining the character of gain or loss upon the disposition by a partnership of unrealized receivables, inventory items or capital loss property contributed to the partnership by a partner.

Timetable:

Action	Date	FR Cite
NPRM	12/15/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-232-84.

Drafting attorney: Beverly A. Baughman (202) 566-3297.

Reviewing attorney: Walter H. Woo (202) 566-3287.

Agency Contact: Beverly A. Baughman, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3297

RIN: 1545–AG85

2308. PARTNER'S SHARE OF PARTNERSHIP LIABILITIES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; PL 98-369, Sec 79 Tax Reform Act of 1984

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations revise the Income Tax Regulations under section 752 of the Internal Revenue Code of 1954 to conform such regulations to changes in the law with respect to a partner's share of partnership liabilities.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-225-84.

Drafting attorney: Robert E. Shaw (202) 566-3297.

Reviewing attorney: Dianna Miosi (202) 566-3297.

Treasury attorney: Greg Marich (202) 566-3927.

Agency Contact: Robert E. Shaw, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3297

RIN: 1545–AH28

2309. IMPUTED EARNINGS RATE FOR MUTUAL LIFE INSURANCE COMPANIES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 809 (d) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations will provide guidance to mutual life insurance companies regarding the computation of the imputed earnings rate.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-159-84.

Drafting attorney: Sharon L. Hall (202) 566-3238.

Agency Contact: Sharon L. Hall, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3238

RIN: 1545–AG83

2310. ● FOREIGN INSURANCE COMPANIES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 842 Internal Revenue Code of 1986; 26 USC 864(c)(4) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Regulation will prescribe rules for determining income effectively connected with the conduct of an insurance business in the United States.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: INTL-924-86

Drafting attorney: Philip L. Garlett (202) 566-6845.

Reviewing attorney: Christine Halphen (202) 377-9493.

Treasury attorney: Peter Barnes (202) 566-5015.

13 Income Taxes.

Agency Contact: Philip L. Garlett, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-6845

RIN: 1545–AL62

2311. INCOME TAX REGULATIONS—DISCOUNTING OF UNPAID LOSSES OF PROPERTY AND CASUALTY INSURANCE COMPANIES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 846 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations will provide rules relating to the discounting of unpaid losses of property and casualty insurance companies. It is anticipated that the regulations will provide guidance with respect to the treatment of salvage and subrogation and the use of a company's loss payment pattern.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-136-86.

Drafting attorney: Bill Blagg (202) 566-3336.

Reviewing attorney: Cynthia Clark (202) 566-3130.

Agency Contact: Bill Blagg, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, DC 20224, 202 566-3236

RIN: 1545–AJ51

2312. INCOME TAX—ESSENTIAL ISSUES RELATING TO REAL ESTATE MORTGAGE INVESTMENT CONDUITS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 860G Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Regulations will provide guidance on real estate mortgage investment conduits, a new entity established to clarify the tax treatment of investment in real estate mortgages and mortgage backed securities.

Timetable:

Action	Date	FR Cite
NPRM	12/31/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-88-86.

Drafting attorney: Laura Ann M. Lauritzen (202) 566-3458.

Reviewing attorney: Susan T. Baker (202) 566-3294.

Treasury attorney: Reed Shuldiner (202) 566-2175.

Agency Contact: Laura Ann M. Lauritzen, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224, 202 566-6456

RIN: 1545–AJ25

2313. ◆ CALIFORNIA FRANCHISE TAX AND SECTION 1.861-8 ALLOCATION

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 861 Internal Revenue Code of 1986; 26 USC 862 Internal Revenue Code of 1986; 26 USC 863 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Clarification of allocation of definition for state income and franchise taxes. Provides guidance in situations not addressed by current examples in regulations.

Timetable:

Action	Date	FR Cite
NPRM	10/31/88	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: INTL-041-88

Drafting attorney: David F. Chan (202) 634-5404.

Reviewing attorney: T. Timothy Tuerff (202) 566-5820.

Treasury attorney: Peter Barnes (202) 566-5810.

13 Income Taxes.

Agency Contact: David F. Chan, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 634-5404

RIN: 1545–AM08

2314. TRANSPORTATION INCOME SOURCE RULES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 863 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations will provide rules relating to the source of income attributable to transportation which begins or ends in the United States.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-947-86

Drafting attorney: Christine E. Arquit (202) 566-6845.

Reviewing attorney: Phyllis Marcus (202) 566-6845.

Treasury attorney: Mark Beams (202) 566-8275.

Agency Contact: Christine Arquit, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-6845

RIN: 1545–AJ68

2315. PROPOSED INCOME TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1986 -- SOURCE OF INCOME RULES FOR INCOME DERIVED FROM SPACE AND OCEAN ACTIVITIES INCLUDING TELECOMMUNICATIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 863(d) Internal Revenue Code of 1986; 26 USC 863(e) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation will provide guidance relating to determining the source of income derived from space, and certain ocean activities (excluding mining within the continental shelf.) The regulation will also provide guidance on determining the source of income derived from international telecommunications activities.

Timetable:

Action	Date	FR Cite
NPRM	12/31/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-773-87

Drafting attorney: Charles T. Plambeck (202) 634-5406.

Reviewing attorney: Bob Katcher (202) 634-5400.

Treasury attorney: Peter Daub (202) 566-3961.

13 Income Taxes

Agency Contact: Charles T. Plambeck, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 634-5406

RIN: 1545–AL25

2317. ◆ ALLOCATION AND APPORTIONMENT OF INTEREST EXPENSE AND CERTAIN OTHER EXPENSES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 864 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Notice of proposed rulemaking by cross-reference to temporary regulations providing rules for affiliated group allocation and apportionment of expenses other than interest that are not traceable to specific income producing activities or property of corporations.

2318. ALLOCATION OF GROSS INCOME ATTRIBUTABLE TO INTEREST RATE SWAPS UNDER SECTION 863 (A)

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 863 (a) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This project provides source rules for income and expense attributable to interest rate swap agreements. Interest rate swap agreements are basically agreements used to hedge agreement interest rate fluctuation.

Timetable:

Action	Date	FR Cite
NPRM	10/31/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-773-87

Drafting attorney: Charles T. Plambeck (202) 634-5406.

Reviewing attorney: Bob Katcher (202) 634-5400.

Treasury attorney: Peter Daub (202) 566-3961.

13 Income Taxes

Agency Contact: Charles T. Plambeck, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 634-5406

RIN: 1545–AL25

2317. ◆ ALLOCATION AND APPORTIONMENT OF INTEREST EXPENSE AND CERTAIN OTHER EXPENSES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 864 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Notice of proposed rulemaking by cross-reference to temporary regulations providing rules for affiliated group allocation and apportionment of expenses other than interest that are not traceable to specific income producing activities or property of corporations.

Timetable:

Action	Date	FR Cite
NPRM	10/31/88	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: INTL-913-86

Drafting attorney: Carl M. Cooper (202) 634-5405.

Reviewing attorney: Charles Saverude (202) 377-9060.

Treasury attorney: Mark Beams (202) 566-2964.

13 Income Taxes.

Agency Contact: Carl M. Cooper, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 634-5406

RIN: 1545–AM20

2316. SOURCE RULES FOR PERSONAL PROPERTY SALES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 865 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation will provide rules for determining the source of income from sales of personal property. The regulation will set forth rules for sales by U.S. residents and non-residents and specify special rules for depreciable personal property, intangibles, sales connected with an office or other fixed place of business, and sales of a foreign affiliate by a U.S. corporation.

Timetable:

Action	Date	FR Cite
NPRM	10/31/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-946-86

Drafting attorney: Carol P. Tello (202) 634-5404.

Reviewing attorney: Robert E. Culbertson (202) 634-5404.

Treasury attorney: Mary Bennett (202) 566-2964.

Agency Contact: Carol P. Tello, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 634-5406

RIN: 1545–AJ83

2319. ◆ EMPLOYMENT TAXES—APPLICATION OF REPEAL OF 30 PERCENT WITHHOLDING BY TAX REFORM ACT OF 1986

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 871 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1; 26 CFR 354

Legal Deadline: None

Abstract: Notice of proposed rulemaking by cross-reference to temporary regulations providing rules enforcing the exclusion from portfolio interest treatment of interest received by certain related parties.

Timetable:

Action	Date	FR Cite
NPRM	12/31/88	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: INTL-820-87

Drafting attorney: Carl M. Cooper (202) 634-5405.

Reviewing attorney: Carol Doran Klein (202) 566-6419.

Treasury attorney: Peter Daub (202) 566-2964.

13 Employment taxes.

Agency Contact: Carl M. Cooper, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 634-5406

RIN: 1545–AM30

2320. EXEMPTIONS FROM WITHHOLDING OF NRA'S AND FOREIGN CORPORATIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 871(i) Internal Revenue Code of 1986; 26 USC 881(d) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Implement regulations concerning exemptions from withholding of non-resident aliens and foreign corporations under sections 871(i) and 881(d) of the Code. Specifically, the proposed regulation

will address the individual or corporation that meets the 80 percent foreign business requirements for active foreign business income.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-951-86

Drafting attorney: Rise M. Leinoff (202) 566-6645.

Reviewing attorney: Christine Halphen (202) 566-6645.

Treasury attorney: Mary Bennett (202) 566-5992.

Agency Contact: Rise M. Leinoff, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-6645

RIN: 1545-AJ59

2321. UNTIMELY FILING BY FOREIGN CORPORATIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Proposal would provide rules regarding deductibility of expenses by a foreign corporation that does not file a timely tax return.

Timetable:

Action	Date	FR Cite
NPRM	12/01/88	

Small Entities Affected: None

Government Levels Affected: Federal

Additional Information: INTL-76-86

Drafting attorney: Richard Chewning (202) 566-3456.

Reviewing attorney: Bernard Dreas (202) 566-6460.

Treasury attorney: Unassigned.

Agency Contact: Richard Chewning, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3456

RIN: 1545-AJ74

2322. ◆ COMPUTATION OF INTEREST EXPENSE DEDUCTION

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 882 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation will revise the rules for the computation of the interest expense deduction of a foreign corporation.

Timetable:

Action	Date	FR Cite
NPRM	11/30/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-309-88

Drafting attorney: Charles T. Plambeck (202) 566-3456.

Reviewing attorney: Robert A. Ketcher (202) 634-5438.

Treasury attorney: Chinoon Lee (202) 566-4979.

13 Income Taxes.

Agency Contact: Charles T. Plambeck, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C., 202 634-5486

RIN: 1545-AL84

2323. BRANCH PROFITS TAX (GENERAL RULE AND DEFINITIONS) AND 2ND LEVEL WITHHOLDING TAXES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 884 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations will provide guidance on the calculation of the branch profits tax. The regulations will provide rules for the treatment of interest allocable to effectively connected income.

Timetable:

Action	Date	FR Cite
NPRM	03/31/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-864-87

Drafting attorney: Richard M. Elliott (202) 566-3457.

Reviewing attorney: Benedetta A. Kissel (202) 566-3170.

Treasury attorney: Peter Daub (202) 566-5791.

Agency Contact: Richard M. Elliott, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3457

RIN: 1545-AJ73

2324. ◆ INCOME TAX – PARTNERSHIP RULES REGARDING TAXATION OF FOREIGN INVESTMENT IN UNITED STATES REAL PROPERTY INTERESTS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 897(g) Internal Revenue Code of 1986; 26 USC 897(e)(2) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: To provide rules for foreign partners disposing of an interest in a partnership holding United States real property interests, to determine the amount of gain or loss from such disposition for purposes of section 897(a).

Timetable:

Action	Date	FR Cite
NPRM	12/31/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: INTL-334-88

Drafting attorney: James Sams (202) 634-5404.

Reviewing attorney: Robert Culbertson (202) 634-5404.

Treasury attorney: David Crowe (202) 566-5701.

13 Income taxes.

Agency Contact: James Sams, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 634-5404

RIN: 1545-AL77

2325. ◆ DEEMED PAID CREDIT UNDER SECTIONS 902 AND 960 DETERMINED ON ACCUMULATED BASIS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 902 (c)(7) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation will modify the existing regulations to reflect changes in the computation of the indirect credit under the 1986 Act. The regulations will incorporate a pooling mechanism (rather than year-by-year) and will also reflect the separate basket computations under section 904(d).

Timetable:

Action	Date	FR Cite
NPRM	12/31/88	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: INTL-813-86

Drafting attorney: Kenneth Wood (202) 566-6276.

Reviewing attorney: Carol Doran Klein (202) 566-6419.

Treasury attorney: Peter Barnes (202) 566-5815.

13 Income Taxes.

Agency Contact: Kenneth Wood, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-6276

RIN: 1545-AL26

2326. ◆ CARRYBACK AND CARRYFORWARD OF FOREIGN TAX CREDITS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations will provide rules regarding the carryback and carryforward of excess foreign tax credits under the provisions of the Internal Revenue Code of 1986.

Timetable:

Action	Date	FR Cite
NPRM	12/31/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-845-86

Drafting attorney: Eli J. Dicker (202) 566-3490.

Reviewing attorney: Carol Doran Klein (202) 566-6419.

Treasury attorney: Peter Daub (202) 566-2954.

13 Income Taxes.

Agency Contact: Eli J. Dicker, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3490

RIN: 1545-AM18

2327. ◆ CLARIFICATION OF TREATMENT OF SEPARATE LIMITATION LOSSES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Section 1203 of the Tax Reform Act of 1986 amends section 904 (f) by adding paragraph (5) at the end thereof which requires that foreign source losses with respect to any income category first offset a taxpayer's other foreign source income before such losses offset the taxpayer's U.S. source income. The regulation will provide rules for the allocation of foreign source losses.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-370-88

Drafting attorney: Willard W. Yates (202) 566-3696.

Reviewing attorney: Carol Doran Klein (202) 566-6419.

Treasury attorney: Peter Barnes (202) 566-5815.

13 Income Taxes.

Agency Contact: Willard Yates, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3696

RIN: 1545-AM11

2328. TREATMENT OF SHAREHOLDERS OF PASSIVE FOREIGN INVESTMENT COMPANIES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation relates to the treatment of shareholders of passive foreign investment companies.

Timetable:

Action	Date	FR Cite
NPRM	12/31/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-696-87

Drafting attorney: Gayle Novig (202) 634-5401.

Reviewing attorney: T. Timothy Tuerff (202) 566-3456.

Treasury attorney: Mary Bennett (202) 566-5992.

Agency Contact: Gayle Novig, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 634-5884

RIN: 1545-AC06

2329. AMENDMENT OF REGULATIONS UNDER SECTION 907 OF THE INTERNAL REVENUE CODE OF 1954 TO CONFORM THEM TO SECTION 211 OF THE TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 907 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Proposal would amend the regulations under section 907 of the Internal Revenue Code of 1954, relating to the foreign tax credit for taxes on oil and gas income, to conform them to section 211 of the Tax Equity and Fiscal Responsibility Act of 1982.

TREAS—IRS

Proposed Rule Stage

Timetable:

Action	Date	FR Cite
NPRM	12/01/88	

Small Entities Affected: None

Government Levels Affected: Federal

Additional Information: INTL-132-86.

Drafting attorney: Richard Chewning (202) 566-3493.

Reviewing attorney: Charles C. Saverude (202) 566-6645.

Treasury attorney: Peter Barnes (202) 566-6273.

Agency Contact: Richard Chewning, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3493

RIN: 1545-AE34

2330. ◆ CBI INVESTMENTS OF SECTION 936 FUNDS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 936(d)(4) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Will define investments made in qualified Caribbean Basin countries that give rise to interests or dividends available for the section 936 credit.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: INTL-355-86

Drafting attorney: W. Edward Williams (202) 287-6851.

Reviewing attorney: Christine Halphen (202) 377-9483.

Treasury attorney: Chisoon Lee (202) 343-0247.

Income Taxes.

Agency Contact: W. Edward Williams, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 950 L'Enfant Plaza South, S.W., Washington, D.C. 20024, 202 287-6851

RIN: 1545-AL81

2331. AMENDMENT OF SECTION 936(H) WITH RESPECT TO ELECTION OF PRODUCT

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 936 (h) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation would require that once a product election was made it could not be amended.

Timetable:

Action	Date	FR Cite
NPRM	12/31/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-450-87

Drafting attorney: Philip Garlett (202) 566-6345.

Reviewing attorney: Christine Halphen (202) 377-9483.

Treasury attorney: Mary Bennett (202) 566-5092.

Agency Contact: Philip Garlett, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-6345

RIN: 1545-AK77

2332. INSURANCE INCOME

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 953(c) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation defines related person insurance income; sets forth rules exceptions certain foreign corporations from section 953 (a), and sets forth rules regarding the amount of related person insurance income to be included in gross income. In addition, the regulation defines insurance income under section 953 (a), prescribes rules of allocation and apportionment of deductions, and prescribes rules for the interaction of subchapter L and subchapter N.

Timetable:

Action	Date	FR Cite
NPRM	12/31/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-836-86

Drafting attorney: Philip L. Garlett (202) 566-6645.

Reviewing attorney: T. Timothy Tuerff (202 566-5696.

Treasury attorney: Peter Barnes (202) 566-3815

Agency Contact: Philip L. Garlett, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-6345

RIN: 1545-AJ70

2333. ◆ PROFIT AND LOSS TRANSITION RULES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 987 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This project provides transition rules for those foreign branches of United States entities who used a profit and loss method of accounting prior to the enactment of the Tax Reform Act of 1986.

Timetable:

Action	Date	FR Cite
NPRM	12/31/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: INTL-355-86

Drafting attorney: David Rosenberg (202) 634-5405.

Reviewing attorney: Robert Katcher (202) 634-5405.

Treasury attorney: David Crowe (202) 566-5791.

13 Income Taxes.

Agency Contact: David Rosenberg, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 634-5405

RIN: 1545-AM13

TREAS—IRS

Proposed Rule Stage

2334. SECTION 988(D) - INTEGRATED HEDGING RULES FOR FOREIGN EXCHANGE GAIN OR LOSS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 988 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This project will provide rules regarding fully hedged and partially hedged nonfunctional currency denominated transactions.

Timetable:

Action	Date	FR Cite
NPRM	12/01/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-706-86

Drafting attorney: Jeffrey Dorfman (202) 634-5406.

Reviewing attorney: Alice Neff (202) 566-6645.

Treasury attorney: David Crowe (202) 566-5791.

13 Income Taxes

Agency Contact: Jeffrey Dorfman, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 634-5406

RIN: 1545-AL16

2335. ◆ DISC REGULATIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Conforming DISC regulations to FSC regulations.

Timetable:

Action	Date	FR Cite
NPRM	12/30/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-104-88

Drafting attorney: Peter J. Hanley (202) 566-3498.

Reviewing attorney: Richard L. Chewning (202) 566-6384.

Treasury attorney: Mark Beams (202) 566-6275.

13 Income Taxes.

Agency Contact: Peter J. Hanley, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3498

RIN: 1545-AM05

2336. TAXATION OF EXCHANGE GAIN OR LOSS ON FOREIGN CURRENCY DENOMINATED TRANSACTIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 988 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This project provides rules regarding the determination of gain or loss realized on section 988 transactions. Rules regarding the source and character of such gain or loss are also provided. The project also contains a definitional section which defines section 988 transactions, among other items.

Timetable:

Action	Date	FR Cite
NPRM	12/31/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

2337. RULES RELATING TO THE INAPPLICABILITY OF SECTION 1031 TO PARTNERSHIP INTERESTS AND THE LIMITATION ON THE PERIOD DURING WHICH LIKE KIND EXCHANGES MAY BE MADE

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will provide guidance with respect to changes made to section 1031 by the Tax Reform Act of 1984 including the inapplicability of section 1031 to partnership interests and the limitation on the period during which like kind exchanges may be made.

Timetable:

Action	Date	FR Cite
NPRM	07/06/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-237-84.

Drafting attorney: Joyce S. Hendricks (202) 566-3297.

Reviewing attorney: Walter H. Woo (202) 566-3297.

Treasury attorney: Robert Scarborough (202) 566-4979.

Agency Contact: Joyce S. Hendricks, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3297

RIN: 1545-AH43

2338. INCOME TAX--NOTICE OF PROPOSED RULEMAKING - AMENDMENT OF REGULATIONS RELATING TO BASIS REDUCTIONS FOR NON-TAXED PORTION OF EXTRAORDINARY DIVIDENDS TO REFLECT TRA 1984

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 1059 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Amendment of the regulations to interpret the rule contained in section 1059 of the Internal Revenue Code of 1954 relating to the non-taxed portion of extraordinary dividends. The regulations will explain what dividends are extraordinary, the operations of the required basis reduction, the application of the holding period rule in section 246 (c), etc.

Timetable:

Action	Date	FR Cite
NPRM	10/01/89	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: LR-260-84.

Drafting attorney: Patricia W. Pellervo (202) 566-3459.

Reviewing attorney: Robert J. Mason (202) 566-3470.

Treasury attorney: Don Rocap (202) 566-8278.

Agency Contact: Patricia W. Pellervo, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, [illegible]

RIN: 1545-AH41

2339. INCOME TAX--TAX STRADDLES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 1092 Internal Revenue Code of 1986; 26 USC 6653 Internal Revenue Code of 1986; 26 USC 263 (g) Internal Revenue Code of 1986; 26 USC 1256 Internal Revenue Code of 1986; 26 USC 1212 Internal Revenue Code of 1986; 26 USC 1236 Internal Revenue Code of 1986; 26 USC 1234A Internal Revenue Code of 1986; 26 USC 1232 Internal Revenue Code of 1986; 26 USC 1221 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations will provide the rules under Title 5 of the Economic Recovery Tax Act of 1981 for tax straddles. These regulations will affect the tax treatment of regulated futures contracts, forward contracts, and positions in commodities.

Timetable:

Action	Date	FR Cite
NPRM	10/00/90	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-187-81.

Drafting attorney: Timothy J. McKenna (202) 566-3287.

Reviewing attorney: John M. Fischer (202) 566-3394.

Treasury attorney: Kathleen Ferrell (202) 566-3288.

Agency Contact: Timothy J. McKenna, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3287

RIN: 1545-AC21

2340. INCOME TAX--GAIN FROM SALE OR EXCHANGE OF STOCK IN FOREIGN CORPORATIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 1248 Internal Revenue Code of 1986; 26 USC 781 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations would amend existing regulations with respect to the section 1248 amount attributable to stock of lower tier subsidiaries and stock in less developed country corporations. The regulations would also provide rules for determining the section 1248 amount due to certain dispositions on which gain is not recognized. The regulations would also expand the foreign tax credit available with respect to the section 1248 amount attributable to third-tier subsidiaries.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: None

Additional Information: INTL-42-86

Drafting attorney: David A. Juster (202) 566-6324.

Reviewing attorney: Carol Doran Klein (202) 566-6419.

Draft of notice in International Tax Counsel for review.

Agency Contact: David A. Juster, Attorney CC:INTL:Br3, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-6324

RIN: 1545-AC51

2341. ◆ GAINS FROM CERTAIN SALES OR EXCHANGES IN CERTAIN FOREIGN CORPORATIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Cross-reference notice of proposed rulemaking to amend regulations under section 1248 to partially suspend the application of section 1248(e) and to limit the application of section 1248(f) to those situations in which gain is not recognized.

Timetable:

Action	Date	FR Cite
NPRM	01/01/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: INTL-918-87

Drafting attorney: David Bergkuist (202) 566-6457.

Reviewing attorney: Charles Saverude (202) 377-9280.

Treasury attorney: unassigned.

13 Income Taxes.

Agency Contact: David Bergkuist, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-6457

RIN: 1545-AL88

2342. INCOME TAX--TO CLARIFY TAX TREATMENT OF TRANSFERS OF FRANCHISES, TRADEMARKS, & TRADE NAMES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 1253 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation would clarify the tax treatment of the transfer of a franchise trademark, or trade name under section 1253 of the Internal Revenue Code of 1954. It would also provide guidance regarding how to allocate the basis among the portions of the sale proceeds which are treated as arising from the sale of a capital asset and other portions which are ordinary income.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-183-81.

Drafting attorney: Susan E. Overlander (202) 566-3459.

Reviewing attorney: John M. Coulter, Jr. (202) 566-3740.

Agency Contact: Susan E. Overlander, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3459

RIN: 1545-AC34

2343. HEDGING EXCEPTION TO MARK-TO-MARKET RULES FOR SECTION 1256 CONTRACTS, DEFERRAL OF CERTAIN STRADDLE LOSSES, AND WASH-SALE AND SHORT-SALE PRINCIPLES APPLICABLE TO CERTAIN STRADDLE TRANSACTIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 1256 (e) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations will provide rules relating to the hedging transaction exception for section 1256 contracts and straddles.

Timetable:

Action	Date	FR Cite
NPRM	10/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-11-86.

Drafting attorney: Timothy J. McKenna (202) 566-3287.

Reviewing attorney: John M. Fischer (202) 566-3394.

Treasury attorney: Kathleen Ferrell (202) 566-2825.

13 Income Tax

Agency Contact: Timothy J. McKenna, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., NW, Washington, DC 20224, 202 566-3287

RIN: 1545-AI59

2344. DISPOSITION GAIN REPRESENTING ACCRUED MARKET DISCOUNT TREATED AS ORDINARY INCOME; DEFERRAL OF INTEREST DEDUCTION ALLOCABLE TO ACCRUED MARKET DISCOUNT

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 1276 Internal Revenue Code of 1986; 26 USC 1278 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations will provide rules relating to the Treatment of Gain Realized on the Disposition of any Market Discount Bond as Ordinary Income. These regulations will also prescribe the extent to which a deduction for interest allocable to accrued market discount is deferred.

Timetable:

Action	Date	FR Cite
NPRM	12/31/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-21-85.

Drafting attorney: Laura Ann M. Lauritzen (202) 566-3458.

Reviewing attorney: Susan T. Baker (202) 566-3294.

Treasury attorney: Reed Shuldiner (202) 566-2175.

Agency Contact: Laura Ann M. Lauritzen, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C.20224, 202 566-3458

RIN: 1545-AH82

2345. INCOME TAX-TREATMENT OF STRIPPED BONDS AND STRIPPED COUPON

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 1286 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations will provide rules relating to the tax treatment of stripped bonds and stripped coupons purchased after July 1, 1982. In particular, guidance will be given as to the proper method for allocation of basis and purchase price.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-10-86.

Drafting attorney: Unassigned.

Reviewing attorney: John A. Fischer (202) 566-3394.

Office of Tax Legislative Counsel reviewing attorney: Reed Shuldiner (202) 535-8983.

Agency Contact: Unassigned, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3288

RIN: 1545-AH75

2346. INCOME TAX--TREATMENT OF OBLIGATIONS WHICH PURPORT TO REPRESENT DEBT AS A SECOND CLASS OF STOCK

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 1361 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations would provide guidance to shareholders and debt instrument holders who must comply with the law relating to subchapter S corporations. The regulations will provide rules relating to whether or not a subchapter S corporation has more than one class of stock.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: LR-4-73.

Drafting attorney: David R. Haglund (202) 566-3297.

Reviewing attorney: Walter H. Woo (202) 566-3297.

Office of Tax Legislative Counsel (Treasury) reviewing attorney: Bryan Collins (202) 566-2175.

Agency Contact: David R. Haglund, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3297

RIN: 1545-AC37

2347. AMENDMENT OF INCOME TAX REGULATIONS UNDER CODE SECTIONS 1362 AND 1363 RELATING TO THE ELECTION, REVOCATION, AND TERMINATION OF AN S CORPORATION

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 1362

Internal Revenue Code of 1986; 26 USC 1362 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations would provide guidelines for electing, revoking and terminating S corporation status.

Timetable:

Action	Date	FR Cite
NPRM	10/30/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-280-82.

Drafting attorney: Stuart G. Wessler (202) 566-3297,

Reviewing attorney: Walter H. Woo (202) 566-3297,

Treasury attorney: Bryan Collins (202) 566-8277.

Agency Contact: Stuart G. Wessler, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3297

RIN: 1545-AE39

2348. INCOME TAX--PASS-THRU OF S CORPORATION ITEMS TO SHAREHOLDERS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 1366 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations would provide rules relating to the tax treatment of income and loss items passed through to the shareholders.

Timetable:

Action	Date	FR Cite
NPRM	01/02/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-201-82.

Drafting attorney: Stuart G. Wessler (202) 566-3297,

Reviewing attorney: Walter H. Woo (202) 566-3297,

Office of Tax Legislative Counsel (Treasury) reviewing

attorney: Bryan Collins (202) 566-8277.

Agency Contact: Stuart G. Wessler, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3297

RIN: 1545-AE85

2349. INCOME TAX--RULES RELATING TO ADJUSTMENT TO BASIS OF STOCK OF SHAREHOLDERS OF S CORPORATION AND TO DETERMINATION OF BASIS OF PROPERTY DISTRIBUTION BY CORPORATION

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 1367 Internal Revenue Code of 1986; 26 USC 1368 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The proposed regulations would provide rules for adjusting the basis of stock of a shareholder in an S corporation and rules for determining the treatment of property distributions by an S corporation.

Timetable:

Action	Date	FR Cite
NPRM	01/02/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-264-82.

Drafting attorney: Stuart G. Wessler (202) 566-3297,

Reviewing attorney: Walter H. Woo (202) 566-3297.

Office of Tax Legislative Counsel (Treasury) reviewing attorney: Bryan Collins (202) 566-2175.

Agency Contact: Stuart G. Wessler, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3297

RIN: 1545-AE28

2350. INCOME TAX--APPLICATION OF SUBCHAPTER C RULES TO S CORPORATIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 1371 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The proposal would amend the regulations under section 1371 to changes made by the subchapter S Revision Act of 1982 relating to the application of subchapter C rules to S corporations and other technical amendments under sections 2, 5, and 6 of the Act. The regulation would provide the public with guidance to comply with the Act.

Timetable:

Action	Date	FR Cite
NPRM	12/31/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-265-82.

Drafting attorney: Joel S. Rutstein (202) 566-3297.

Reviewing attorney: John B. Bromell (202) 566-3126.

Office of Tax Legislative Counsel (Treasury) reviewing attorney: Bryan Collins (202) 566-2175.

Agency Contact: Joel S. Rutstein, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3297

RIN: 1545-AE80

2351. CROSS-REFERENCE--APPLICATION OF SECTION 1374 BUILT-IN GAIN TAX TO C CORPORATION'S ELECTING S CORPORATION STATUS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 1374 Internal Revenue Code of 1986; 26 USC 337 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Proposal will provide rules relating to the section 1374 built-in gains tax to C corporations electing S corporation status.

Timetable:

Action	Date	FR Cite
NPRM	11/12/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information:

LR-35-87.

Drafting attorney: Mark S. Jennings (202) 566-3458.

Reviewing attorney: Robert J. Mason (202) 566-3403.

Agency Contact: Mark S. Jennings, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545-AE35

2352. INCOME TAX--DEFINITIONS AND SPECIAL RULES PERTAINING TO S CORPORATION

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 1377 Internal Revenue Code of 1986; 26 USC 1379 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Regulations would define and interpret special rules contained in Sections 1377 and 1379 of the Internal Revenue Code of 1986, the thereby giving guidance to the public on how the Internal Revenue Service intends to interpret those sections.

Timetable:

Action	Date	FR Cite
NPRM	01/02/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-268-82.

Drafting attorney: Stuart G. Wessler (202) 566-3297.

Reviewing attorney: Walter H. Woo (202) 566-3297.

Office of Tax Legislative Counsel Reviewing attorney:

Bryan P. Collins (202) 566-8277.

Agency Contact: Stuart G. Wessler, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3297

RIN: 1545-AE94

2353. WITHHOLDING TAX ON PAYMENTS FROM PARTNERSHIPS TO FOREIGN PARTNERS

Significance: Agency Priority

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 1446 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation explains when withholding is required under section 1446, how and when the amounts withheld are to be reported and paid over to the Internal Revenue Service, and when the taxpayer is to credit the tax withheld against its U.S. income tax liability or apply for a refund. The notice will be published simultaneously with, and will cross-reference to, temporary regulations dealing with these matters [INTL-938-86]. No significant policy issues are involved.

Timetable:

Action	Date	FR Cite
NPRM	01/31/89	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: INTL-930-86

Drafting attorney: David Chan (202) 634-5404.

Reviewing attorney: Robert E.Culbertson, Jr. (202) 634-5404.

Treasury attorney: David Crowe (202) 566-5791.

13 Income Taxes

Agency Contact: David F. Chan, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 634-5404

RIN: 1545-AL30

2354. NONTAXABLE TRANSFERS UNDER SECTION 1491

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 1492 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The purpose of the regulation is to exempt transfers of property to foreign partnerships from the excise tax imposed by section 1491, on the condition that gain attributable to the property at the time of transfer is taxed to the transferor when subsequently disposed of by the foreign transferee partnership. The regulations will set forth the necessary conditions and exceptions to the exemption.

Timetable:

Action	Date	FR Cite
NPRM	12/29/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: INTL-280-88

Drafting attorney: Elizabeth Karzon (202) 566-3160.

Reviewing attorney: Charles Besecky (202) 566-3319.

Treasury attorney: Unassigned.

13 Income Taxes.

Agency Contact: Elizabeth Karzon, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3160

RIN: 1545-AL26

2355. INVESTMENT ADJUSTMENTS UNDER THE CONSOLIDATED RETURN REGULATIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 1502 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Provision would amend the consolidated return investment adjustment rules by changing the computation of earnings and profits where section 312 (k), (l), (m), or (n) applies.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-223-81.

Drafting attorney: Judith C. Winkler (202) 566-3458.

Reviewing attorney: John Broadbent (202) 566-3458.

Agency Contact: Judith C. Winkler, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545-AC47

2356. INCOME TAX—APPLICATION OF SECTION 465 AT RISK LIMITATIONS TO MEMBERS THAT JOIN IN FILING CONSOLIDATED RETURNS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 1502 Internal Revenue Code of 1986; 26 USC 465 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Provision would amend the consolidated returns regulations to provide rules applying the at-risk limitations of section 465 of the Internal Revenue Code of 1954 to affiliated groups filing consolidated returns, thereby giving the public needed guidance as to how these rules apply to such groups.

Timetable:

Action	Date	FR Cite
NPRM	08/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-75-79.

Drafting attorney: Keith E. Stanley (202) 566-3458.

Reviewing attorney: Charles M. Wheelbee (202) 566-3458.

Treasury attorney: Bryan Collins (202) 566-2175.

Agency Contact: Keith E. Stanley, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545-AC26

2357. INCOME TAX—DELETION OF THE REQUIREMENT OF SECTION 1.1502-47 (D) (12) (V) (C) THAT, IN APPLYING TACKING RULE, PROFITABLE AND LOSS LIFE ACTIVITIES NOT BE SEPARATED

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 1502 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation will prospectively delete the requirement of section 1.1502-47 (d) (12) (v) (C) relating to the restriction on the separation of profitable activities from loss activities in applying the tacking rule to life insurance companies.

Timetable:

Action	Date	FR Cite
NPRM	08/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-137-86

Drafting attorney: Keith Stanley (202) 566-3458.

Reviewing attorney: Charles M. Wheelbee (202) 566-3458.

Treasury attorney: Don Roeap (202) 566-3278.

Agency Contact: Keith E. Stanley, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545-AD61

2358. CROSS-REFERENCE—CONSOLIDATED RETURN INVESTMENT ADJUSTMENTS WITH RESPECT TO AN ACQUIRED SUBSIDIARY'S BUILT-IN GAINS OR LOSSES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 1502 Internal Revenue Code of 1986; 26 USC 337 (d) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Proposal will prevent the consolidated return investment adjustments from reflecting the recognized built-in gains or losses of assets acquired in certain corporation acquisitions.

Timetable:

Action	Date	FR Cite
NPRM	12/31/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information:

LR-178-87

Drafting attorney: Mark S. Jennings (202) 566-3458.

Reviewing attorney: John Broadbent (202) 566-3458.

Agency Contact: Mark S. Jennings, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545-AE36

2359. CONSOLIDATED RETURNS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 1502 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation provides revisions of consolidated return regulations under sections 1.1502-14 and 1.1502-31.

Timetable:

Action	Date	FR Cite
NPRM	10/01/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-6-85

Drafting attorney: Patricia Pellervo (202) 566-3458.

Reviewing attorney: Charles Wheelbee (202) 566-3458.

13 Income Taxes

Agency Contact: Patricia Pellervo, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545-AL44

2360. ◆ REVISION OF SECTION 1.1502-35

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 1502 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will provide new rules for determining earnings and profits of each member of the consolidated group.

Timetable:

Action	Date	FR Cite
NPTIM	12/31/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-69-88

Drafting attorney: Judith Winkler (202) 566-3458.

Reviewing attorney: John Broadbent (202) 566-3458.

Treasury attorney: Thomas Wessel (202) 566-2927 and Bryan Collins (202) 566-2175.

13 Income Tax

Agency Contact: Judith Winkler, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545-AL60

2361. ◆ ADJUSTMENTS REFLECTING A RESTRUCTURING OF A CONSOLIDATED GROUP

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 1502 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation provides rules for determining the basis and the earnings and profits of members of a consolidated group following certain changes in the structure of the group where the group remains in existence. This regulation also provides for alternative agents of the group if the common parent ceases to be the common parent.

Timetable:

Action	Date	FR Cite
NPRM	12/31/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-69-88

Drafting attorney: Judith Winkler (202) 566-3458.

Reviewing attorney: John Broadbent (202) 566-3458.

Treasury attorney: Thomas Wessel (202) 566-2927 and Bryan Collins (202) 566-2175.

13 Income Tax

Agency Contact: Judith Winkler, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545-AL62

2362. ◆ DUAL RESIDENT COMPANIES-LIMITATION ON CONSOLIDATED LOSSES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 1503 (d) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: If a United States corporation is subject to a foreign country's tax on worldwide income, or on a residence basis as opposed to a source basis, any taxable loss it incurs cannot reduce the taxable income of any other member of a United States affiliated group for any other taxable year. Where a corporation is subject to foreign tax on a residence basis, then for United States tax purposes, its loss will be of available to offset.

Timetable:

Action	Date	FR Cite
NPRM	12/31/88	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: INTL-399-88

Drafting attorney: Riea M. Lainoff (202) 566-6845.

Reviewing attorney: Christine Halphen (202) 377-9493.

Treasury attorney: David Crowe (202) 566-5721.

13 Income Taxes.

Agency Contact: Riea M. Lainoff, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-6845

RIN: 1545-AM16

2363. INCOME TAX—INCLUDIBILITY IN AN AFFILIATED GROUP OF SUBSIDIARIES FORMED TO COMPLY WITH FOREIGN LAWS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 1504 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations would provide rules relating to an election to treat a foreign subsidiary of a United States corporation as a domestic corporation if the subsidiary is formed in a contiguous country to comply with foreign law.

Timetable:

Action	Date	FR Cite
NPRM	12/31/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: INTL-0130-88

Drafting attorney: Riea M. Lainoff (202) 566-6845.

Reviewing attorney: Phyllis Marcus (202) 566-6845.

Agency Contact: Riea Lainoff, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-6845

RIN: 1545-AC58

2364. INCOME TAX — AMENDMENT OF REGULATIONS UNDER SECTION 1504 (A) OF THE CODE, AS AMENDED BY SECTION 66 OF THE TAX REFORM ACT OF 1984, DEFINING "AFFILIATED GROUP"

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 1504 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations will provide rules defining "affiliated group" for purposes of subtitle A of the Code.

Timetable:

Action	Date	FR Cite
NPRM	04/01/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-152-84.

Drafting attorney: Patricia W. Pellervo (202) 566-3458.

Reviewing attorney: Robert J. Mason (202) 566-3463.

Office of Tax Legislative Counsel (Treasury) reviewing attorney: Bryan Collins (202) 566-2175.

Agency Contact: Patricia W. Pellervo, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545-AH38

2365. ESTATE AND GIFT TAXES, INCOME TAXES-UNIFIED CREDIT IN LIEU OF EXEMPTIONS, UNIFIED RATE SCHEDULE FOR ESTATE AND GIFT TAXES SITUS OF FOREIGN PARTNERSHIPS FOR ESTATE TAXATION

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 2001 Internal Revenue Code of 1986; 26 USC 2010 Internal Revenue Code of 1986; 26 USC 2011 Internal Revenue Code of 1986; 26 USC 2012 (a) Internal Revenue Code of 1986; 26 USC 2012 (c) Internal Revenue Code of 1986; 26 USC 2013 (b) Internal Revenue Code of 1986; 26 USC 2013 (c) (1) Internal Revenue Code of 1986; 26 USC 2014 (b) (2) Internal Revenue Code of 1986; 26 USC 2035 Internal Revenue Code of 1986; 26 USC 2036 (a) Internal Revenue Code of 1986; 26 USC 2044 Internal Revenue Code of 1986; 26 USC 2102 Internal Revenue Code of 1986; 26 USC 2104 Internal Revenue Code of 1986; 26 USC 2160 Internal Revenue Code of 1986

CFR Citation: 26 CFR 20; 26 CFR 25; 26 CFR 1

Legal Deadline: None

Abstract: The unified rate schedule for estate and gift taxes and unified credit in lieu of exemptions will be implemented by the regulation. The regulations also relate to the estate tax consequences of transfers made within three years of death. In addition, the regulations clarify the situs test of foreign partnerships for purposes of the estate taxation of nonresident alien decedents. The regulations also provide rules relating to charitable remainder trusts.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-213-76.

Drafting attorney: Ruth Hoffman (202) 566-3287.

Reviewing attorney: Fred E. Grundeman (202) 566-3287.

Agency Contact: Ruth Hoffman, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington D.C. 20224, 202 566-3287

RIN: 1545-AC08

2366. ESTATE TAX--VALUATION OF CERTAIN FARM, ETC. REAL PROPERTY

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 2032A Internal Revenue Code of 1986; 26 USC 2013 (j) Internal Revenue Code of 1986; 26 USC 1016 (c) Internal Revenue Code of 1986; 26 USC 1040 Internal Revenue Code of 1986

CFR Citation: 26 CFR 20; 26 CFR 1

Legal Deadline: None

Abstract: Special use valuation of certain farm and closely held business real property is available to qualifying estates. The regulation will contain definitions and rules relating to the various requirements which an estate must satisfy and will provide rules governing the imposition and payment of the "additional estate tax" should a qualified heir fail to meet the post-death requirements.

Timetable:

Action	Date	FR Cite
NPRM	07/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-209-81.

Drafting attorney: Fred E. Grundeman (202) 566-3287.

Reviewing attorney: Ada S. Rousso (202) 566-3287.

Office of the Tax Legislative Counsel (Treasury) reviewing attorney: Susan Hinos (202) 566-8527.

Agency Contact: Fred E. Grundeman, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3287

RIN: 1545-AC82

2367. ● ESTATE TAX-GENERATION-SKIPPING TRANSFER TAX

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 2663 Internal Revenue Code of 1986

CFR Citation: 26 CFR 20

Legal Deadline: None

Abstract: The regulations will provide rules relating to certain definitions, the allocation of the transferor's GST exemption, and the determination of inclusion ratios.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-73-88

Drafting attorney: Maurice Foley (202) 566-4836.

Reviewing attorney: Fred Grundeman (202) 566-3287.

Treasury attorney: Susan Hinos (202) 566-8527.

13 Estate and Gift Tax

Agency Contact: Maurice B. Foley, Attorney, Department of the Treasury, Internal Revenue Service, 1111 ConstitutionAvenue, N.W., Washington, D.C. 20224, 202 566-4836

RIN: 1545-AL75

2368. AMENDMENT OF THE EMPLOYMENT TAX REGULATIONS UNDER CODE SECTION 3121 TO CONFORM TO SECTION 321 OF THE SOCIAL SECURITY AMENDMENTS OF 1983

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 3121 Internal Revenue Code of 1986

CFR Citation: 26 CFR 36

Legal Deadline: None

Abstract: The regulation would provide guidance to taxpayers with respect to agreements entered into under section 3121 of the Internal Revenue Code of 1954 as that Section was amended by section 321 of the Social Security Amendments of 1983.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-58-85.

Drafting attorney: Patricia McDermott (202) 566-8151.

Reviewing attorney: Jerry Holmes (202) 566-8650.

Agency Contact: Patricia McDermott, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-8650

RIN: 1545-AF01

2369. TREATMENT OF CERTAIN DEFERRED COMPENSATION AND SALARY REDUCTION ARRANGEMENTS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 6302 (c) Internal Revenue Code of 1986

CFR Citation: 26 CFR 31

Legal Deadline: None

Abstract: Proposal would provide rules concerning the treatment of certain deferred compensation and salary reduction arrangements under section 3121 (v) and section 3306 (r) of the Internal Revenue Code of 1954, thereby giving needed guidance to the public on how the Internal Revenue Service intends to interpret those sections of the Code.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-142-87.

Drafting attorney: Norman Dobynes Hubbard (202) 566-3430.

Reviewing attorney: Michael A. Thresher (202) 566-3651.

Agency Contact: Norman Dobynes Hubbard, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3430

RIN: 1545-AP97

2370. EMPLOYMENT TAX.-WITHHOLDING FROM PENSIONS, ANNUITIES, AND OTHER DEFERRED INCOME

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 3405 Internal Revenue Code of 1986; 26 USC 6047 (e) Internal Revenue Code of 1986

CFR Citation: 26 CFR 35

Legal Deadline: None

Abstract: Proposed regulations would clarify and amend the temporary regulations relating to withholding from pensions, annuities, and other deferred income.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-118-82.

Drafting attorney: Gregory Stull (202) 566-4760.

Reviewing attorney: Richard J. Wickersham (202) 566-4621.

Treasury attorney: Harry Conaway (202) 566-8277.

Agency Contact: Gregory Stull, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-4760

RIN: 1545-AE05

2371. WITHHOLDING ON CERTAIN DEFERRED PAYMENTS OUTSIDE THE UNITED STATES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 3405 (d) (13) Internal Revenue Code of 1986

CFR Citation: 26 CFR 35

Legal Deadline: None

Abstract: The regulation will provide questions and answers dealing with circumstances under which an election for no withholding on employer deferred compensation plan payments may not be made.

Timetable:

Action	Date	FR Cite
NPRM	12/31/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-050-85.

Drafting attorney: Gerald H. Parshall, Jr. (202) 287-4851.

Reviewing attorney: Michael F. Patton (202) 287-4851.

Treasury attorney: P. Ann Fisher (202) 566-4979.

Agency Contact: Gerald H. Parshall, Jr., Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 950 L'Enfant Plaza South, S.W., Room 3319, Washington, D.C. 20024, 202 287-4851

RIN: 1545-AL31

2372. TO PROVIDE REGULATIONS RELATING TO BACKUP WITHHOLDING UNDER SECTION 3406

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 3406 Internal Revenue Code of 1986

CFR Citation: 26 CFR 31

Legal Deadline: None

Abstract: The regulations will provide that a tax equal to 20 percent of any reportable payment is required to be withheld if certain conditions exist. With respect to reportable interest or dividends, backup withholding applies if (1) no number is provided in the manner required, (2) the Service notifies the payor that the payee's taxpayer identification number is not correct, (3) the payee is subject to backup withholding due to a notified payee underreporting, and (4) the payee fails to certify when required that he or she is not subject to backup withholding due to notified payee underreporting. With respect to other reportable payments (such as rents, royalties, nonemployee compensation, broker transactions, or barter exchanges), backup withholding applies if (1) no taxpayer identification number is provided, or (2) the Service notifies the payor that the payee's taxpayer identification number is not correct.

Timetable:

Action	Date	FR Cite
NPRM	12/30/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-224-82.

Drafting attorney: Remey France (202) 566-3450.

Reviewing attorney: John M. Coulter, Jr. (202) 566-3351.

Treasury attorney: Susan Hinos (202) 566-3527.

Agency Contact: Remey France, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3450

RIN: 1545-AL37

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2373. EXCISE TAX—RETAILERS EXCISE TAXES ON MOTOR VEHICLES

Legal Authority: 26 USC 4052 Internal Revenue Code of 1986; 26 USC 4061 Internal Revenue Code of 1986; 26 USC 4063 Internal Revenue Code of 1986

CFR Citation: 26 CFR 48

Legal Deadline: None

Abstract: The regulations will provide guidance as to what kinds of vehicles are taxable and how the tax is computed.

Timetable:

Action	Date	FR Cite
NPRM	04/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-31-83.

Drafting attorney: Maurice B. Foley (202) 566-4336.

Reviewing attorney: Ada Rousso (202) 566-3287.

Treasury attorney: Ellen Aprill (202) 566-5453.

Agency Contact: Maurice B. Foley, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-4336

RIN: 1545-AF61

2374. TEMPORARY REGULATION EXCISE TAXES ON HEAVY TRUCKS, TRUCK TRAILERS AND SEMITRAILERS, AND TRACTORS SOLD AT RETAIL

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 4061 Internal Revenue Code of 1986; 26 USC 4062 Internal Revenue Code of 1986; 26 USC 4063 Internal Revenue Code of 1986

CFR Citation: 26 CFR 145

Legal Deadline: None

Abstract: The regulations will provide guidance to dealers in paying tax on the sale of heavy trucks, trailers, and tractors.

Timetable:

Action	Date	FR Cite
Temporary Regulation	04/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-145-83.

Drafting attorney: Maurice B. Foley (202) 566-4336.

Reviewing attorney: Ada Rousso (202) 566-3287.

Treasury attorney: Ellen Aprill (202) 566-5453.

Agency Contact: Maurice B. Foley, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-4336

RIN: 1545-AF79

2375. ● GASOLINE EXCISE TAX BOND REQUIREMENTS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 4101 Internal Revenue Code of 1986; 26 USC 4081 Internal Revenue Code of 1986

CFR Citation: 26 CFR 48

Legal Deadline: None

Abstract: These regulations will provide rules relating to the bond requirement under section 4101 as it pertains to gasoline excise tax.

Timetable:

Action	Date	FR Cite
NPRM	10/02/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-77-86

Drafting attorney: Timothy McKenna (202) 566-3287.

Reviewing attorney: Ada Rousso (202) 566-3287.

Treasury attorney: Robert Scarborough (202) 566-4979.

These regulations are from part of 1545-AJ09, relating to bond requirements, as part of the registration and bond requirements.

13 Excise Tax

Agency Contact: Timothy McKenna, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Consitution Ave., N.W., Washington, D.C. 20224, 202 566-3287

RIN: 1545-AM32

2376. ● REVISION OF SECTION 48.4181-1(A)(2) OF THE MANUFACTURERS AND RETAILERS EXCISE TAX REGULATIONS RELATING TO THE TAX ON FIREARM PARTS AND ACCESSORIES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 48

Legal Deadline: None

Abstract: The regulation will clarify the meaning of the terms "complete firearm" and "parts or accessories of firearms"

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-69-88

Drafting attorney: Donald Fidlow (202) 566-3505.

Reviewing attorney: Richard Kocak (202) 566-3308 and Ada Rousso (202) 566-4336

13 Excise Tax

Agency Contact: Donald Fidlow, Tax Law Specialist, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3505

RIN: 1545-AL71

2377. INCOME TAX, EXCISE TAX, AND ENVIRONMENTAL TAX—IMPOSITION OF TAXES ON PETROLEUM, CERTAIN CHEMICALS, AND CORPORATIONS AND ADDITIONAL EXCISE TAXES ON CERTAIN FUELS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 59A Internal Revenue Code of 1986; 26 USC 4041 Internal Revenue Code of 1986; 26 USC 4042 Internal Revenue Code of 1986; 26 USC 4081 Internal Revenue Code of 1986; 26 USC 4611 Internal Revenue Code of 1986; 26 USC 4612 Internal Revenue Code of 1986; 26 USC 4661 Internal Revenue Code of 1986; 26 USC 4662 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1; 26 CFR 48; 26 CFR 52

Legal Deadline: None

Abstract: The regulations will provide rules for the computation of the environmental taxes on petroleum, certain chemicals, and additional excise taxes on certain fuels. The regulations will also provide rules for the computation of the environmental tax imposed on the modified alternative minimum taxable income of corporations.

Timetable:

Action	Date	FR Cite
NPRM	06/01/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information:

LR-138-85.

Drafting attorney: Ruth Hoffman (202) 566-3287.

Reviewing attorney: William A. Jackson (202) 566-3287.

Treasury attorney: Kathleen Ferrell (202) 566-2175.

Agency Contact: Ruth Hoffman, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3287

RIN: 1545-AJ23

2378. ● TAX ON CERTAIN IMPORTED SUBSTANCES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 4671 Internal Revenue Code of 1986

CFR Citation: 26 CFR 52

Legal Deadline: None

Abstract: The regulations will provide rules for the computation of the environmental tax on certain imported chemical substances.

Timetable:

Action	Date	FR Cite
NPRM	02/15/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-71-88

Drafting attorney: Ruth Hoffman (202) 566-3287.

Reviewing attorney: William Jackson (202) 566-3287.

Treasury attorney: Kathleen Ferrell (202) 566-2599.

13 Excise Tax

Agency Contact: Ruth Hoffman, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3287

RIN: 1545-AJ73

2379. INCOME TAX—EXCISE TAX—PROCEDURE AND ADMINISTRATION—VARIOUS PRIVATE FOUNDATION PROVISIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 4940 Internal Revenue Code of 1986; 26 USC 4941 Internal Revenue Code of 1986; 26 USC 4942 Internal Revenue Code of 1986; 26 USC 4943 Internal Revenue Code of 1986; 26 USC 4945 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1; 26 CFR 53

Legal Deadline: None

Abstract: These regulations will amend existing rules to reflect changes made by the Tax Reform Act of 1984 relating to the excise taxes on private foundations.

Timetable:

Action	Date	FR Cite
NPRM	06/30/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-70-84.

Drafting attorney: V. A. Moore (202) 566-3422.

Reviewing attorney: James L. Brokaw (202) 566-4173.

Agency Contact: V. A. Moore, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3422

RIN: 1545-AG18

2380. EXCISE TAX — PART 54, REVERSION OF QUALIFIED PLAN ASSETS TO EMPLOYER

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 4980 Internal Revenue Code of 1986; PL 99-514, Sec 1132

CFR Citation: 26 CFR 54

Legal Deadline: None

Abstract: The regulations would provide guidance regarding the excise tax on reversions of qualified plan assets imposed by section 4980 of the Internal Revenue Code of 1986.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-105-88

Drafting attorney: Suzanne K. Tank (202) 566-6212.

Reviewing attorney: James L. Brokaw (202) 566-4173.

Office of Tax Legislative Counsel (Treasury) reviewing attorney: Harry J. Conaway (202) 566-6277.

Agency Contact: Vernon S. Carter, Tax Law Specialist, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-6212

RIN: 1545-AL82

2381. EXCISE TAX—WITH RESPECT TO THE DEFINITION OF TAXABLE CRUDE OIL.

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 4991 Internal Revenue Code of 1986

CFR Citation: 26 CFR 49

Legal Deadline: None

Abstract: These regulations would provide rules relating to the definitions of crude oil, condensate, and tar sand for purposes of the windfall profit tax. These definitions are important because only crude oil is subject to the windfall profit tax.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: LR-229-81.

Drafting attorney: David R. Haglund (202) 566-3287.

Reviewing attorney: John B. Brennell (202) 566-3509.

Office of Tax Legislative Counsel (Treasury) reviewing attorney: Bryan Collins (202) 566-2175.

Agency Contact: David R. Haglund, Attorney, Department of the Treasury, Internal Revenue Service, 1111

Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3297

RIN: 1545-AD00

2382. ELECTRONIC FILING OF TAX RETURNS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 6011 Internal Revenue Code of 1986

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: The regulations will provide guidance and standards to taxpayers governing the electronic filing of individual income tax returns.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-21-87

Drafting attorney: Lauren G. Shaw (202) 566-3287.

Reviewing attorney: Gerald Rock (202) 566-6456.

Treasury attorney: Patricia McClanahan (202) 566-2026.

Agency Contact: Lauren G. Shaw, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3287

RIN: 1545-AL01

2383. NOMINEE REPORTING OF PARTNERSHIP INFORMATION

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 6031 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations will provide rules relating to nominee reporting of partnership interest which such nominee holds for another person. The regulations will provide the information that the nominee is required to provide and will also provide the manner in which this information is to be reported to the partnership.

Timetable:

Action	Date	FR Cite
NPRM	10/30/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-156-86.

Drafting attorney: Stuart G. Wessler (202) 566-3297.

Reviewing attorney: Walter H. Woo (202) 566-3297.

Office of Tax Legislative Counsel Reviewing attorney: Greg Marich (202) 566-4979.

Agency Contact: Stuart G. Wessler, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3297

RIN: 1545-AJ98

2384. AMENDMENT OF SECTION 1.6033-2 (G) (5) RELATING TO RETURNS BY AN INTEGRATED AUXILIARY OF A CHURCH

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; PL 91-172, Sec 101 (d) (1) Tax Reform Act of 1969

CFR Citation: 26 CFR 1.6033-2(g)

Legal Deadline: None

Abstract: These regulations will revise the definition of integrated auxiliary of a church in Section 1.6033-2 (g) (5) of the Treasury Regulations to be consistent with Rev. Proc. 86-23, 1986-1 CB 564.

Timetable:

Action	Date	FR Cite
NPRM	01/01/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-41-86.

Drafting attorney: V.A. Moore (202) 566-3422.

Reviewing attorney: Paul Accettura (202) 566-3422.

Agency Contact: V.A. Moore, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3422

RIN: 1545-AI52

2385. INFORMATION WITH RESPECT TO CERTAIN FOREIGN-OWNED CORPORATIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Prior to the Tax Reform Act of 1986 foreign controlled foreign corporations doing business in the US and foreign controlled US corporations are required to report transactions with related foreign corporations. The 86 Act requires such entities to report transactions with all related foreign parties, whether or not corporations. The Act also provides a new definition for the term related parties, and requires information necessary to carry out the installment sales rules, as amended by such Act, to also be reported.

Timetable:

Action	Date	FR Cite
NPRM	12/31/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-958-86

Drafting attorney: Charles A. Ray (202) 287-4851.

Reviewing attorney: Michael F. Patton (202) 287-4851.

Treasury attorney: Stephen Shay (202) 566-3065.

Agency Contact: Charles A. Ray, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 950 L'Enfant Plaza South, S.W., Room 3319, Washington, D.C. 20024, 202 287-4851

RIN: 1545-AJ56

2386. RETURNS, ETC. ON CERTAIN FRINGE BENEFIT PLANS

Legal Authority: 26 USC 6039D Internal Revenue Code of 1986; 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: The regulations will provide guidance concerning a return required by specified fringe benefit plans.

Timetable:

Action	Date	FR Cite
NPRM	12/30/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-117-84.

Drafting attorney: Sylvia F. Hunt (202) 566-3544.

Reviewing attorney: Harry Beker (202) 566-3430.

Treasury attorney: Priscilla Ryan (202) 566-5453.

Agency Contact: Sylvia F. Hunt, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3544

RIN: 1545-AE22

2387. INFORMATION REGARDING RESIDENT STATUS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 6039E Internal Revenue Code of 1986

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: The regulation will prescribe the information to be gathered by the State Department and Immigration and Naturalization Service on Passport and Green card applicants and the penalties to be imposed on such applicants if they do not supply the information.

Timetable:

Action	Date	FR Cite
NPRM	12/31/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-879-86

Drafting attorney: Gerald H. Parshall, Jr. (202) 287-4851.

Reviewing attorney: Michael F. Patton (202) 287-4851.

Treasury attorney: P. Ann Fisher (202) 566-4979.

Agency Contact: Gerald H. Parshall, Jr., Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 950 L'Enfant Plaza South, S.W., Room 3319, Washington, D.C. 20024, 202 287-4851

RIN: 1545-AJ93

2388. INCOME TAX REGULATIONS RELATING TO RETURNS AS TO INTERESTS IN FOREIGN PARTNERSHIPS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 6046A Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations would give guidance for determining which United States persons who acquire, dispose of or change their interests in foreign partnerships must report their activities. Additionally, guidance would be given as to how, when and where such persons must report and what information they must supply.

Timetable:

Action	Date	FR Cite
NPRM	12/31/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-879-86

Drafting attorney: Charles A. Ray (202) 287-4851.

Reviewing attorney: George M. Sellinger (202) 287-4851.

Treasury attorney: Mark Beams (202) 566-6992.

Agency Contact: Charles A. Ray, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 950 L'Enfant Plaza South, S.W., Washington, D.C. 20024, 202 287-4851

RIN: 1545-AK75

2389. [illegible] REPORTING OF PLAN DISTRIBUTIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 6047 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1; 26 CFR 301

Legal Deadline: None

Abstract: Legislative changes require that increased numbers of retirees and plan participants must make complex calculations of the taxable amount of distributions they receive from qualified plans. The regulations will require the payor of a qualified plan distribution (or the plan administrator) to calculate the taxable amount and to report it on the appropriate information return.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-20-88

Drafting attorney: Gregory J. Stull (202) 566-4740.

Reviewing attorney: Richard J. Wickersham (202) 566-4621.

Agency Contact: Gregory J. Stull, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-4740

RIN: 1545-AL54

2390. INCOME TAX—TO REQUIRE ISSUERS OF CERTIFICATES OF DEPOSIT TO FURNISH ISSUE PRICE TO BROKERS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Proposed regulations would amend existing regulations to require issuers to furnish the issue price to brokers.

Timetable:

Action	Date	FR Cite
NPRM	12/31/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-61-87

Drafting attorney: Laura Ann M. Lauritzen (202) 566-3458.

Reviewing attorney: Susan Baker (202) 566-3294.

Agency Contact: Laura Ann M. Lauritzen, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545-AK36

2381. TREATMENT OF NET CAPITAL LOSSES OF REGULATED INVESTMENT COMPANIES AND REAL ESTATE INVESTMENT TRUSTS-RELATIONSHIPS BETWEEN CHAPTER 44 EXCISE TAXES AND TAXABLE INCOME

Legal Authority: 26 USC 852(b)(3) Internal Revenue Code of 1986; 26 USC 857(b)(3) Internal Revenue Code of 1986; 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation would establish rules pertaining to the relationship and effect of net capital losses of RICs and REITs attributable to transactions after the cut-off date for capital transactions and the taxable income of the entity for the subsequent taxable year.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: LR-115-86.

Drafting attorney: Robert M. Casey (202) 566-3458.

Reviewing attorney: Charles M. Whedbee (202) 566-3458.

Treasury attorney: Don Rocap (202) 566-3276.

Agency Contact: Robert M. Casey, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545-AJ06

2382. ◆ EXTENSION OF TIME TO FILE FOR TAXPAYERS TRAVELING OUTSIDE THE UNITED STATES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1; 26 CFR 602

Legal Deadline: None

Abstract: Notice by cross-reference to temporary regulations under section 6081 of the Code relating to extension of time to file income tax returns.

Timetable:

Action	Date	FR Cite
NPRM	10/02/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: INTL-461-87

Drafting attorney: Peter J. Hanley (202) 566-3491.

Reviewing attorney: Carol Doran Klein (202) 566-6419.

Treasury attorney: Unassigned.

13 Income Taxes.

Agency Contact: Peter J. Hanley, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3469

RIN: 1545-AM30

2383. ◆ INCOME TAX-DISCLOSURE OF RETURN INFORMATION TO OFFICERS AND EMPLOYEES OF THE DEPARTMENT OF COMMERCE FOR CERTAIN STATISTICAL PURPOSES AND RELATED ACTIVITIES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 6103 (j) Internal Revenue Code of 1986

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: Proposed regulation would disclose to the Bureau of the Census additional tax return information needed to help them determine whether an individual who itemizes is over 65.

Timetable:

Action	Date	FR Cite
NPRM	12/31/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-42-88

Drafting attorney: David E. White (202) 566-3294.

Reviewing attorney: Alice Bennett (202) 566-6173.

13 Procedure and Information

Agency Contact: David E. White, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave. N.W., Washington, D.C. 20224, 202 566-3294

RIN: 1545-AM02

2384. ESTATE TAX—PROCEDURE AND ADMINISTRATION—DEFERRAL AND INSTALLMENT PAYMENT OF ESTATE TAX

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 6166 Internal Revenue Code of 1986; 26 USC 6161 Internal Revenue Code of 1986; 26 USC 6151 Internal Revenue Code of 1986

CFR Citation: 26 CFR 20; 26 CFR 301

Legal Deadline: None

Abstract: The regulations will provide guidance to executors wishing to extend the time for payment of estate tax where the estate contains an interest in a closely held business. The regulations will provide rules in determining what qualifies as an interest in a closely held business. In addition, the regulations will explain when the installment privileges allowed by section 6166 will be terminated.

Timetable:

Action	Date	FR Cite
NPRM	10/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-210-76.

Drafting attorney: Maurice B. Foley (202) 566-4356.

Reviewing attorney: Fred K. Grandeman (202) 566-3287.

Treasury attorney: Susan Himes (202) 566-3527.

Agency Contact: Maurice B. Foley, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-4356

RIN: 1545-AD23

2385. STATEMENT OF PROCEDURAL RULES TO PROVIDE PROCEDURES FOR PARTNERSHIP-LEVEL PROCEEDINGS WITH RESPECT TO PARTNERSHIP ITEMS

Legal Authority: 5 USC 3011 Internal Revenue Code of 1986; 5 USC 6111 Internal Revenue Code of 1986

CFR Citation: 26 CFR 601

Legal Deadline: None

Abstract: The amendment of the Statement of Procedural Rules will provide procedures for partnership-level proceedings with respect to partnership items.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-237-82.

Drafting attorney: Robert E. Shaw (202) 566-3297.

Reviewing attorney: Paul A. Francis (202) 566-3218.

Agency Contact: Robert E. Shaw, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3297

RIN: 1545-AI08

2386. DETERMINATION OF THE TAX TREATMENT OF SUBCHAPTER S ITEMS AT THE CORPORATE LEVEL

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 6242 Internal Revenue Code of 1986; 26 USC 6243 Internal Revenue Code of 1986; 26 USC 6244 Internal Revenue Code of 1986; 26 USC 6233 Internal Revenue Code of 1986

CFR Citation: 26 CFR 301; 26 CFR 51

Legal Deadline: None

Abstract: Proposed regulations would provide new rules for determining the tax treatment of any subchapter S item at the corporate level. Regulations would provide rules similar to rules for determining the tax treatment of partnership items.

Timetable:

Action	Date	FR Cite
NPRM	12/31/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-268-82.

Drafting attorney: Stuart G. Wessler (202) 566-3297.

Reviewing attorney: Walter H. Woo (202) 566-3297.

Office of Tax Legislative Counsel Reviewing attorney: Bryan Collins (202) 566-8277.

Agency Contact: Stuart G. Wessler, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3297

RIN: 1545-AE08

2387. PROCEDURE AND ADMINISTRATION REGULATIONS—PAYMENT OF TAXES BY CHECK OR MONEY ORDER AND LIABILITY OF FINANCIAL INSTITUTIONS FOR UNPAID TAXES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 6311 Internal Revenue Code of 1986

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: The regulations will describe the circumstances under which taxpayers may pay taxes by check, money order or other guaranteed draft and the circumstances under which financial institutions on which such instruments are drawn may be liable for unpaid taxes.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Additional Information: GL-549-87.

Drafting attorney: Nancy Olszewski (202) 566-4014.

Reviewing attorney: Robert Miller (202) 566-3362.

Agency Contact: Nancy Olszewski, Senior Attorney (Tax), Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-4014

RIN: 1545-AL24

2388. PROCEDURE AND ADMINISTRATION—RELEASE OF LIENS, NOTICE BEFORE LEVY, PROPERTY EXEMPT FROM LEVY REDEMPTION OF LEVIED REAL PROPERTY AND AMOUNT OF DAMAGES IN CASE OF WRONGFUL LEVY

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 6325 Internal Revenue Code of 1986; 26 USC 6331 Internal Revenue Code of 1986; 26 USC 6334 Internal Revenue Code of 1986; 26 USC 6337 Internal Revenue Code of 1986; 26 USC 7426 Internal Revenue Code of 1986

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: The regulation will provide guidance in obtaining the issuance of a certificate of release of a notice of Federal tax lien. The regulation will revise existing regulations relating to the size of the exemption from levy available for certain property. The proposed regulation also increases the length of post-sale redemption period currently specified in the regulations. The proposed regulations provide rules for service employees administering the Code for providing notice of intention to levy upon the property of a delinquent taxpayer. The proposed regulations increase the amount of damages allowed where property has been levied wrongfully.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: GL-547-87.

Drafting attorney: Kevin B. Connelly (202) 566-3975.

Reviewing attorney: Robert A. Miller (202) 566-3362.

Agency Contact: Kevin B. Connelly, Senior Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3975

RIN: 1545-AE82

2389. PROCEDURE AND ADMINISTRATION—REDUCTION OF TAX OVERPAYMENTS BY AMOUNT OF PAST-DUE LEGALLY ENFORCEABLE DEBT OWED TO FEDERAL AGENCY

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 31 USC 3720A

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: These regulations will amend regulations published September 30, 1985. The regulations will provide a new effective date for those regulations.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-17-88

Drafting attorney: Sharon L. Hall (202) 566-3256.

Reviewing attorney: David Dickinson (202) 566-3455.

Treasury attorney: Barksdale Penick (202) 535-0904.

13 Procedure and Administration

Agency Contact: Sharon L. Hall, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue N.W., Washington, D.C. 20224, 202 566-3256

RIN: 1545-AK48

3400. ◆ GASOLINE EXCISE TAX DEFINITIONS, REGISTRATION REQUIREMENTS, AND SECTION 6416 PROCEDURES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 4081 Internal Revenue Code of 1986; 26 USC 6416 Internal Revenue Code of 1986

CFR Citation: 26 CFR 48

Legal Deadline: None

Abstract: These regulations will provide rules relating to the gasoline excise tax definition of trader, registration verification procedures required for tax-free or reduced rate of tax transfers of gasoline, and additional requirements under section 6416 claims.

Timetable:

Action	Date	FR Cite
NPRM	12/01/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-11-88

Drafting attorney: Tim McKenna (202) 566-3287.

Reviewing attorney: Ada S. Rousso (202) 566-3287.

Treasury attorney: Robert Scarborough (202) 566-6079.

13 Excise Tax

Agency Contact: Timothy J. McKenna, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3267

RIN: 1545-AL06

3401. PROCEDURE AND ADMINISTRATION REGULATIONS—EXTENSION OF THE PERIOD FOR ASSESSMENT OF TAX IN CERTAIN CIRCUMSTANCES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 6501 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations will describe circumstances under which the normal three-year period for the assessment and collection of tax may be extended.

Timetable:

Action	Date	FR Cite
NPRM	06/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: LR-162-85.

Drafting attorney: Michael J. Grace (202) 566-3256.

Reviewing attorney: Cynthia L. Clark (202) 566-3336.

Agency Contact: Michael J. Grace, Attorney/Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3256

RIN: 1545-AI25

3402. ESSENTIAL ISSUES IN CONNECTION WITH DIFFERENTIAL INTEREST RATES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 6621 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations will explain the computation of interest on underpayments and overpayments of tax, including the extent to which underpayments and overpayments will be offset in computing interest.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: LR-123-86

Drafting attorney: Michael J. Grace (202)566-3256.

Reviewing attorney: Cynthia L. Clark (202) 566-3336.

Agency Contact: Michael J. Grace, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3256

RIN: 1545-AK26

3403. PROCEDURE & ADMINISTRATION—ADDITION TO TAX IN THE CASE OF VALUATION OVERSTATEMENTS AND UNDERSTATEMENTS, AND INCREASE IN THE NEGLIGENCE PENALTY

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 6659 Internal Revenue Code of 1986; 26 USC 6653 Internal Revenue Code of 1986; 26 USC 6660 Internal Revenue Code of 1986

CFR Citation: 26 CFR 301; 26 CFR 1

Legal Deadline: None

Abstract: The regulations would provide rules and definitions with respect to the addition to tax in the case of valuation overstatements and understatements, including rules for computing the portion of an underpayment that is attributable to a valuation overstatement or understatement. The regulations would also provide rules with respect to the increase in the negligence and fraud penalties.

Timetable:

Action	Date	FR Cite
NPRM	06/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: LR-272-81.

Drafting attorney: Michael J. Grace (202) 566-3256.

Reviewing attorney: Michael J. Grace (202) 566-3256.

Agency Contact: Michael J. Grace, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3256

RIN: 1545-AD39

3404. ◆ USE OF FACSIMILE SIGNATURES BY INCOME TAX RETURN PREPARERS OF FORMS 1041, U.S. FIDUCIARY INCOME TAX RETURNS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 6695 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1.6695-1 (b)

Legal Deadline: None

Abstract: Section 1.6695-1 (b) currently requires that, with one exception, income tax return preparers must manually sign returns or claims for refund signed by them. The exception does allow preparers of returns and refund claims for nonresident aliens to use facsimile signatures under certain circumstances. Section 645 (a) of the Internal Revenue Code, added by section 1403 (a) of the Tax Reform Act of 1986, requires trusts, with certain limited exceptions, to use a calendar taxable year. The calendar year requirement means that, instead of being able to spread their duty to sign trust returns over the entire course of a year, preparers must now sign all trust returns before April 15 in order to present them to clients for timely filing. To alleviate this hardship, we are examining the advisability of permitting income tax return preparers of Forms 1041, U.S. Fiduciary Income Tax Returns, to use facsimile signatures and under what conditions such use would be permitted and appropriate.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Additional Information:

GL-236-85

Drafting attorney: Nancy Olszewski (202) 566-4014.

Reviewing attorney: Robert A. Miller (202) 566-3362.

13 Procedure and Administration

Agency Contact: Nancy Olszewski, Senior Attorney (Tax), Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-4014

RIN: 1545-AL40

3405. INCOME TAX—PRESUMPTION OF JEOPARDY IN THE CASE OF ILLEGAL ACTIVITY CASH

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 6867 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations would provide guidance for applying the presumptions that an amount of cash in excess of ten thousand dollars without an acknowledged owner (1) represents gross income to a single individual, (2) is taxable at a rate of fifty percent, and (3) that collection of the tax is in jeopardy for the purposes of sections 6851 and 6861.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Additional Information: GL-348-87.

Drafting attorney: John C. Isaacs (202) 566-3287.

Reviewing attorney: Robert A. Miller (202) 566-3362.

Agency Contact: John C. Isaacs, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3257

RIN: 1545-AE30

3406. FORFEITURE OF LAND SALES CONTRACT WITH RESPECT TO DISCHARGE OF FEDERAL TAX LIEN

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: The regulation will address the issue of when a land sales contract is considered to be forfeited for Federal tax purposes. It may be necessary, in so doing, to provide a definition or other guidelines as to what constitutes a land sales contract for purposes of this provision.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Additional Information: GL-357-87

Drafting attorney: Michael W. Cogan (202) 566-3441.

Reviewing attorney: Robert A. Miller (202) 566-3362.

Treasury attorney: Patricia McClanahan (202) 566-3928.

Agency Contact: Michael W. Cogan, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3441

RIN: 1545-AK29

3407. REDEMPTIONS OF REAL PROPERTY UNDER IRC 7425 - EXCESS EXPENSES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 7425 Internal Revenue Code of 1986

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: Section 301.7425-4(b)(3)(ii), which deals with excess expenses incurred by a purchaser of property after a foreclosure sale and before redemption, provides that the Service may request a written itemized statement from the purchaser regarding excess expenses with 15 days, it shall be presumed that no excess expenses are payable. However, even after the 15-day period expires, a payment for excess expenses shall be made after the redemption within a reasonable time following the verification by the district director of a written itemized statement submitted by the purchaser. There is no specific time frame set for the purchaser to submit his claim after the redemption and after the expiration of the 15-day period. We are examining the feasibility of establishing a 30-day time limit within which a final claim for excess expenses must be submitted by the purchaser after the sale of the property. This will eliminate claims for reimbursement of expenses that may be submitted after redemption and sale of the property, where the liens were fully

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satisfied and released, and all surplus funds returned to the taxpayer.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Additional Information: GL-520-87

Drafting attorney: Barton J. Use (202) 566-3975.

Reviewing attorney: Robert A. Miller (202) 566-3562.

13 Procedure and Administration

Agency Contact: Barton J. Use, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., NW, Washington, D.C. 20224, 202 566-3975

RIN: 1545–AL20

2406. PROCEDURE AND ADMINISTRATION - SUSPENSION OF STATUES OF LIMITATIONS IN ABSENCE OF THIRD-PARTY RECORDKEEPER RESPONSE TO SUMMONS

Legal Authority: 26 USC 7605 Internal Revenue Code of 1986

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: The regulations will provide guidance to taxpayers with regard to the changes made to section 7609 by the Tax Reform Act of 1986. Under those changes, statutes of limitations are suspended in certain cases in which a summons is served to a third-party recordkeeper and in which there is no resolution of the third- party recordkeeper's response to the summons.

Timetable:

Action	Date	FR Cite
NPRM	03/01/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: GL-521-87

Drafting attorney: Mitchel S. Hyman (202) 566-3620.

Reviewing attorney: Robert A. Miller (202) 566-3562.

Agency Contact: Mitchel S. Hyman, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3620

RIN: 1545–AK72

2409. © CERTAIN PUBLICLY PARTNERSHIPS TREATED AS CORPORATIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 7704 Internal Revenue Code of 1986

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: The regulations provide rules relating to the classification of publicly traded partnerships.

Timetable:

Action	Date	FR Cite
NPRM	06/30/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-13-88

Drafting attorney: Stuart G. Wessler (202) 566-3297.

Reviewing attorney: Dianna Miosi (202) 566-3297.

Office of Tax Legislative Counsel Reviewing attorney: Barksdale Penick (202) 566-3064.

13 Procedure and Administration

Agency Contact: Stuart G. Wessler, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3297

RIN: 1545–AL57

2410. PROPOSED AMENDMENTS TO THE PROCEDURE AND ADMINISTRATION REGULATIONS UNDER THE CHILD SUPPORT ENFORCEMENT AMENDMENTS OF 1984 RELATING TO THE REDUCTION OF TAX OVERPAYMENTS BY AMOUNTS ETC

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 42 USC 664

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: These proposed regulations provide rules relating to the reduction of a taxpayer's overpayment of tax (i.e. tax refund) by the amount of any past due support which a State has agreed to collect under section 454 (6) of the Social Security Act. The regulations explain the steps a State must take to have a tax overpayment reduced by an amount of past-due support.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-55-85.

Drafting attorney: Sharon L. Hall (202) 566-3256.

Reviewing attorney: David Dickinson (202) 566-0555.

TITLE CONT: of Past-Due Support Owed.

Agency Contact: Sharon L. Hall, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3256

RIN: 1545–AH09

DEPARTMENT OF THE TREASURY (TREAS) — **Final Rule Stage**

Internal Revenue Service (IRS)

2411. TO PROVIDE REGULATIONS RELATING TO MORTGAGE CREDIT CERTIFICATES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 25 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1.25-1 to 1.25-6T; 26 CFR 1.6709-1

Legal Deadline: None

Abstract: The regulations will provide guidance on the issuance of mortgage credit certificates rules. Guidance will be provided with respect to the various eligibility requirements that mortgagors must satisfy as well as the various program requirements that issuers must satisfy.

Timetable:

Action	Date	FR Cite
NPRM	05/05/85	50 FR 18953
NPRM Comment Period End	07/08/85	50 FR 19363
Hearing	08/14/85	
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-345-84.

Drafting attorney: Robert Beatson (202) 566-3459.

Reviewing attorney: John M. Coulter, Jr. (202) 566-3331.

Treasury attorney: Elliot Stern (202) 566-2920.

Agency Contact: Robert Beatson, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3459

RIN: 1545–AH05

2412. INCOME TAX—INFORMATION REPORTING FOR MORTGAGE CREDIT CERTIFICATES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 25 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations would provide guidance to issuers of mortgage credit certificates relating to the information to be collected with respect to each recipient of a mortgage credit certificate. The regulations will also provide guidance regarding the time and manner of filing this information with the Internal Revenue Service.

Timetable:

Action	Date	FR Cite
NPRM	05/05/85	50 FR 18972
NPRM Comment Period End	11/04/85	
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-114-85.

Drafting attorney: Robert Beatson (202) 566-3459.

Reviewing attorney: John M. Coulter (202) 566-3331.

Treasury attorney Elliot Stern (202) 566-2926.

Agency Contact: Robert Beatson, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3459

RIN: 1545–AI30

2413. CREDIT FOR CLINICAL TESTING EXPENSES FOR CERTAIN DRUGS FOR RARE DISEASES OR CONDITIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 28 Internal Revenue Code of 1986; 26 USC 280C Internal Revenue Code of 1986

CFR Citation: 26 CFR 1; 26 CFR 602

Legal Deadline: None

Abstract: These regulations will amend the Income Tax Regulations to conform the regulations to sections 28 and 280C of the Internal Revenue Code of 1986, relating to the credit for clinical testing expenses for rare diseases or conditions. The regulations will provide the public with the guidance needed to comply with the law and will affect taxpayers seeking to obtain the credit.

Timetable:

Action	Date	FR Cite
NPRM	04/25/88	53 FR 13600
NPRM Comment Period End	06/24/88	53 FR 13600
Final Action	11/01/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-55-83.

Drafting attorney: Stuart G. Wessler (202) 566-3297.

Reviewing attorney: John B. Bromell (202) 566-3125.

Office of Tax Legislative Counsel Reviewing attorney: Susan Himes (202) 566-6527.

Agency Contact: Stuart G. Wessler, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3297

RIN: 1545–AF04

2414. INCOME TAX—NOTICE TO EMPLOYEES OR EARNED INCOME CREDIT

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; PL 99-514.; 26 USC 6051 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations would provide the procedures necessary to implement the statutory requirement that employers noting certain employees whose wages are not subject to income tax withholding that they may be eligible for the refundable earned income credit.

Timetable:

Action	Date	FR Cite
NPRM	06/11/87	52 FR 22345
NPRM Comment Period End	08/10/87	
Final Action	11/30/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-05-86

Drafting attorney: Joel S. Rutstein (202) 566-3297.

Reviewing attorney: John B. Bromell (202) 566-3297.

Agency Contact: Joel S. Rutstein, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3297

RIN: 1545–AJ64

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2415. LOW-INCOME HOUSING CREDIT ALLOCATION RULES AND INFORMATION REPORTING REQUIREMENTS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 42 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations provide low-income housing credit allocation and reporting rules.

Timetable:

Action	Date	FR Cite
NPRM	06/22/87	52 FR 23471
NPRM Comment Period End	09/21/87	52 FR 23471
Hearing	11/09/87	
Final Action	12/01/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-93-86

Drafting attorney: Robert Beatson (202) 566-3439.

Reviewing attorney: John Coulter (202) 566-3331.

Treasury attorney: Susan Himes (202) 566-8527.

Agency Contact: Robert Beatson, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, DC 20224, 202 566-3439

RIN: 1545-AJ85

2416. CLARIFICATION OF DETERMINATION OF BAD DEBT EXPERIENCE UNDER NONACCRUAL-EXPERIENCE METHOD OF ACCOUNTING

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 448 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This NPRM cross-references to temporary regulations clarifying the determination of bad debt experience under the nonaccrual-experience method of accounting under IRC section 448(d)(5).

Timetable:

Action	Date	FR Cite
NPRM	11/03/87	52 FR 42116
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: LR-82-87

Drafting attorney: Robert Beatson (202) 566-3459.

Reviewing attorney: John Coulter (202) 566-4475.

Agency Contact: Katherine Lee Wambeganz, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3288

RIN: 1545-AK02

2417. LOW-INCOME HOUSING CREDIT FOR FEDERALLY-ASSISTED BUILDINGS ACQUIRED DURING 10-YEAR PERIOD

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 42 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation provides rules for Federally-assisted buildings acquired during a 10-year period.

Timetable:

Action	Date	FR Cite
NPRM	11/03/87	52 FR 42098
Hearing	03/17/88	
Final Action	12/01/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-82-87

Drafting attorney: Robert Beatson (202) 566-3459.

Reviewing attorney: John M. Coulter (202) 566-3331.

Treasury attorney: Susan Himes (202) 566-8527.

Agency Contact: Robert Beatson, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3459

RIN: 1545-AL65

2418. INCOME TAX--CREDIT FOR INCREASING RESEARCH ACTIVITIES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 30 Internal Revenue Code of 1954

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations will provide the extent to which taxpayers will be entitled to an income tax credit for increases in certain research activity.

Timetable:

Action	Date	FR Cite
NPRM	01/21/83	48 FR 2790
NPRM Comment Period End	03/18/83	
Hearing	04/19/83	
Final Action	10/31/88	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: LR-256-81.

Drafting attorney: David R. Haglund (202) 566-3297.

Reviewing attorney: John Fischer (202) 566-3394.

Office of Tax Legislative Counsel (Treasury) reviewing attorney: Susan Himes (202) 566-8527.

Agency Contact: David R. Haglund, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3297

RIN: 1545-AA07

2419. INCOME TAX--TAX TREATMENT OF MASS ASSETS FOR INVESTMENT CREDIT PURPOSES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 38 Internal Revenue Code of 1986; 26 USC 48 Internal Revenue Code of 1986; 26 USC 47 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Proposal would clarify the investment tax credit recapture treatment of mass assets thereby giving needed guidance to the public on how the Internal Revenue Service intends to interpret this area.

Timetable:

Action	Date	FR Cite
NPRM	12/20/85	50 FR 51674
Final Action	12/29/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-82-73.

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Drafting attorney: Mark S. Jennings (202) 566-3458.

Reviewing attorney: Robert J. Mason (202) 566-3453.

Agency Contact: Mark S. Jennings, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545-AA10

2420. AMENDMENT OF INCOME TAX REGULATIONS UNDER SECTIONS 47, 48 AND 196 RELATING TO BASIS ADJUSTMENT TO REFLECT INVESTMENT TAX CREDIT

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 47 Internal Revenue Code of 1986; 26 USC 48 Internal Revenue Code of 1986; 26 USC 196 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The proposed regulations would provide rules concerning a basis adjustment in the case of the investment tax credit.

Timetable:

Action	Date	FR Cite
NPRM	09/21/87	52 FR 35436
NPRM Comment Period End	11/20/87	
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: LR-183-82.

Drafting attorney: David R. Haglund (202) 566-3297.

Reviewing attorney: Walter H. Woo (202) 566-3297.

Agency Contact: David R. Haglund, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3297

RIN: 1545-AF06

2421. INCOME TAX--INCREASE IN INVESTMENT TAX CREDIT FOR QUALIFIED REHABILITATION EXPENDITURES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 48 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations provide rules and definitions relating to terms such as qualified rehabilitated expenditures, qualified rehabilitated building, substantial rehabilitation and certified historic structure.

Timetable:

Action	Date	FR Cite
NPRM	08/28/85	50 FR 26794
NPRM Comment Period End	09/27/85	
Hearing	11/15/85	
Final Action	11/01/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-256-81.

Drafting attorney: Stuart G. Wessler (202) 566-3297.

Reviewing attorney: Walter H. Woo (202) 566-3297.

Office of Tax Legislative Counsel (Treasury) reviewing attorney: Susan Himes (202) 566-8527.

Agency Contact: Stuart G. Wessler, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3297

RIN: 1545-AA12

2422. INCOME TAX--SPECIAL RULES ADDED BY SEC 223(C) OF CRUDE OIL WINDFALL PROFIT TAX ACT 1980, RELATING TO REDUCTION OF CREDIT WHERE PROPERTY IS FINANCED BY SUBSIDIZED ETC

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 48 (l) Internal Revenue Code of 1986; PL 96-223, Sec 223 (c)

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations will provide that subsidized energy financing and proceeds of exempt industrial development bonds used to finance a facility reduce the qualified investment in the energy property contained in that facility for purposes of determining the amount of the energy tax credit.

Timetable:

Action	Date	FR Cite
NPRM	01/26/82	47 FR 03559
NPRM Comment Period End	03/20/82	47 FR 03559
Hearing	06/03/82	
Final Action	12/29/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-170-80.

Drafting attorney: Mark S. Jennings (202) 566-3458.

Reviewing attorney: Robert J. Mason (202) 566-3453.

Agency Contact: Mark S. Jennings, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545-AA26

2423. CORPORATE ALTERNATIVE MINIMUM TAX BOOK INCOME ADJUSTMENT

Legal Authority: 26 USC 55 Internal Revenue Code of 1986; 26 USC 56(c)(1) Internal Revenue Code of 1986; 26 USC 56(f) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations will describe rules for the computation of the alternative minimum net book income adjustment imposed on corporations.

Timetable:

Action	Date	FR Cite
NPRM	04/27/87	52 FR 15339
NPRM Comment Period End	06/29/87	
Final Action	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-107-86.

Drafting attorney: Timothy J. McKenna (202) 566-3287.

Reviewing attorney: Ada S. Rousso (202) 566-3287.

Treasury attorney: Mark Levy (202) 535-6966.

Agency Contact: Timothy J. McKenna, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3287

RIN: 1545-AJ14

2424. NET BOOK INCOME ADJUSTMENT FOR U.S. BRANCHES OF FOREIGN CORPORATIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 55 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations will provide rules for computing the alternative minimum tax net book income adjustment of a foreign corporation engaged in a trade or business in the United States.

Timetable:

Action	Date	FR Cite
NPRM	04/28/88	53 FR 15234
Final Action	10/02/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-55-87

Drafting attorney: Timothy J. McKenna (202) 566-3287.

Reviewing attorney: Ada S. Rousso (202) 566-3287.

Treasury attorney: Mark Levy (202) 535-0906.

International Tax Counsel Reviewing attorney: Peter Daub (202) 566-5791.

Agency Contact: Timothy J. McKenna, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3287

RIN: 1545-AK23

2425. INCOME TAX—INVENTORY ADJUSTMENT FOR THE ALTERNATIVE MINIMUM TAX

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 56 (a) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation provides guidance with respect to inventory adjustment for the alternative minimum tax.

Timetable:

Action	Date	FR Cite
Temporary Regulation	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-84-87

Drafting attorney: William Jackson (202) 566-3287.

Reviewing attorney: Ada Rousso (202) 566-3287.

Treasury attorney: Tom Evans (202) 566-3453.

Agency Contact: William Jackson, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC 20224, 202 566-3287

RIN: 1545-AL03

2426. TAX BENEFIT RULE FOR CORPORATE ADD-ON MINIMUM TAX UNDER THE INTERNAL REVENUE CODE OF 1954

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 56 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations provide rules for taking into account credit carryovers in applying the minimum tax benefit rule for corporations.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-22-87

Drafting attorney: William A. Jackson (202) 566-3287.

Reviewing attorney: Ada S. Rousso (202) 566-3287.

Treasury attorney: Ellen Aprill (202) 566-6453 and Robert Scarborough (202) 566-4070.

Agency Contact: William A. Jackson, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3287

RIN: 1545-AK21

2427. INCOME TAX—NONQUALIFIED SALARY REDUCTION AGREEMENTS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 61 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation would provide guidance regarding the tax treatment of nonqualified deferred compensation arrangements established by tax exempt charitable organizations such as non-profit hospitals for their employees.

Timetable:

Action	Date	FR Cite
NPRM	02/03/78	43 FR 4936
Final Action Effective	09/06/78	
NPRM Comment Period End	04/04/78	43 FR 4936
Hearing	06/14/78	
News release issued for comment	06/11/79	
Hearing	11/27/79	
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-194-77.

Drafting attorney: John A. Tolleris (202) 566-3289.

Reviewing attorney: John M. Coulter, Jr. (202) 566-3331.

Office of Tax Legislative Counsel (Treasury) reviewing attorney: Harry Conaway (202) 566-8277.

Agency Contact: John A. Tolleris, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3289

RIN: 1545-AA35

2428. INCOME TAX—TAXATION OF FRINGE BENEFITS AND EXCLUSIONS FROM GROSS INCOME FOR CERTAIN FRINGE BENEFITS

Legal Authority: 26 USC 61 Internal Revenue Code of 1986; 26 USC 132 Internal Revenue Code of 1986; 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Regulations will provide guidance on the taxation and valuation of fringe benefits. The regulations will also address the requirements for certain fringe benefit exclusions, including nondiscrimination and line of business restrictions.

Timetable:

Action	Date	FR Cite
Hearing	04/16/86	50 FR 7072
NPRM Comment Period End	02/21/86	50 FR 52333
Hearing	03/03/86	51 FR 2898
Hearing	04/29/86	51 FR 8517
NPRM	12/23/86	50 FR 52333
Interim Final Rule	12/23/86	50 FR 52281
Final Action	01/01/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-61-86

Drafting attorney: Rhonda G. Migdail (202) 566-6650.

Reviewing attorney: Jerry Holmes (202) 566-6650.

Treasury attorney: Priscilla Ryan (202) 566-3453.

Agency Contact: Rhonda G. Migdail, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224, 202 566-6650

RIN: 1545-AI73

2429. 2-PERCENT FLOOR ON MISCELLANEOUS ITEMIZED DEDUCTIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 67 (c) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations would provide guidance regarding the miscellaneous itemized deductions that are subject to the 2-percent floor and provide expense allocation rules for regulated investment companies and REMICs.

Timetable:

Action	Date	FR Cite
NPRM	03/28/88	53 FR 9951
Final Action	04/01/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-87-86.

Drafting attorney: Beverly A. Baughman (202) 566-3297.

Reviewing attorneys: John B. Bromell (202) 566-3328, Charles M Whedbee (202) 566-3458, Susan T. Baker (202) 566-1294.

Treasury attorney: Don Rocap (202) 566-8277.

Agency Contact: Beverly A. Baughman, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3297

RIN: 1545-AJ49

2430. TREATMENT OF TRANSFER OF PROPERTY BETWEEN SPOUSES, TAX TREATMENT OF ALIMONY AND SEPARATE MAINTENANCE PAYMENTS, AND DEPENDENCY EXEMPTION IN THE CASE OF CHILD OF DIVORCED PARENTS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 71 Internal Revenue Code of 1986; 26 USC 215 Internal Revenue Code of 1986; 26 USC 1041 Internal Revenue Code of 1986; 26 USC 152 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations will provide guidance to assist taxpayers in determining whether alimony and separate maintenance payments are deductible from income by the payor and includible in income by the payee, whether property transferred between spouses or between spouses incident to divorce has a carryover basis and whether the custodial or noncustodial parent is entitled to the dependency exemption.

Timetable:

Action	Date	FR Cite
NPRM	08/31/84	49 FR 34451
NPRM Comment Period End	10/20/84	49 FR 34526
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-150-84.

Drafting attorney: Lauren G. Shaw (202) 566-3287.

Reviewing attorney: Ada S. Rousso (202) 566-3287.

Treasury attorney: Don Rocap (202) 566-8278.

Agency Contact: Lauren G. Shaw, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3287

RIN: 1545-AH49

2431. INCOME TAX REGULATIONS—MORTALITY TABLES TO BE USED TO DETERMINE AMOUNT HELD BY INSURER WITH RESPECT TO A BENEFICIARY

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 101 (d)(2)(B)(ii) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations will prescribe the mortality table to be used to determine the amount held by an insurer with respect to a beneficiary of a life insurance contract.

Timetable:

Action	Date	FR Cite
NPRM	09/21/87	52 FR 35447
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-115-86

Drafting attorney: Katherine Wambsgans (202) 566-3288.

Reviewing attorney: Sharon L. Hall (202) 566-3238.

Treasury attorney: Don Rocap (202) 566-8277.

Agency Contact: Sharon L. Hall, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3238

RIN: 1545-AK14

2432. INCOME TAX—EXEMPTION FOR INDUSTRIAL DEVELOPMENT BONDS FOR WATER FACILITIES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 142 (e) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation would provide guidance to determine the rules under

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which facilities for furnishing water to members of the general public can be financed with tax-exempt industrial development bonds under section 142 (e) of the Internal Revenue Code of 1986.

Timetable:

Action	Date	FR Cite
Final Action Effective	11/07/78	
NPRM	08/22/84	49 FR 33283
NPRM Comment Period End	10/22/84	49 FR 33283
Hearing	01/30/85	
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-100-78.

Drafting attorney: John A. Tolleris (202) 566-6280.

Reviewing attorney: John M. Coulter, Jr. (202) 566-3331.

Office of Tax Legislative Counsel reviewing attorney: Elliot Stern (202) 566-2926.

Agency Contact: John A. Tolleris, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-6280

RIN: 1545-AA48

3433. INCOME TAX—TO DEFINE THE TERM "PRINCIPAL USER OF A FACILITY"

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 144 (a) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation would define the meaning of the term "principal user of a facility" for purposes of applying the limitation set by the Internal Revenue Code upon the permissible size of a small issue of tax-exempt industrial development bonds, as diminished by certain other capital expenditures. This regulation would help identify other facilities the capital expenditures from which must be taken into account in determining whether that issue exceeds the small issue limitation.

Timetable:

Action	Date	FR Cite
NPRM	02/21/86	51 FR 6274
NPRM Comment Period End	04/22/86	51 FR 6274
Hearing	06/04/86	51 FR 6273
Final Action Effective	06/23/86	
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-50-74.

Drafting attorney: Dave Selig (202) 566-4336.

Reviewing attorney: John M. Coulter, Jr. (202) 566-3740.

Office of Tax Legislative Counsel reviewing attorney: Elliot Stern (202) 566-2926.

Agency Contact: Dave Selig, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-4336

RIN: 1545-AA50

3434. INCOME TAX—MORTGAGE SUBSIDY BONDS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 103 Internal Revenue Code of 1954

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations would provide rules which interpret the provisions of section 103a, relating to Mortgage Subsidy Bonds. Mortgage Subsidy Bonds are any obligations a significant portion of the proceeds of which are used to provide financing for owner-occupied residences.

Timetable:

Action	Date	FR Cite
NPRM - Previous	07/01/81	46 FR 34348
Hearing	11/09/81	
NPRM	11/10/81	46 FR 55513
NPRM Comment Period End	01/09/82	46 FR 55513
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-10-81.

Drafting attorney: Robert Beatson (202) 566-3458.

Reviewing attorney: John M. Coulter, Jr. (202) 566-3331.

Treasury attorney: Elliot Stern (202) 566-2926.

Agency Contact: Robert Beatson, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545-AA52

3435. TO PROVIDE REGULATIONS REQUIRING CERTAIN DEBT OBLIGATIONS TO BE ISSUED IN REGISTERED FORM

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 149 (a) Internal Revenue Code of 1986; 26 USC 163 (f) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The rules will provide that certain debt obligations issued after December 31, 1982, must be in registered form. The rules will provide examples of certain obligations that are not subject to the registration requirements. The sanctions for not issuing an obligation in registered form are the denial of an interest deduction, loss of capital gains treatment, loss of an earnings and profits adjustment, and loss of tax-exempt interest status.

Timetable:

Action	Date	FR Cite
NPRM	11/15/82	47 FR 51414
NPRM Comment Period End	01/14/83	47 FR 51414
Hearing	01/25/83	47 FR 51413
Final Action	00/00/00	
Final Action Effective	00/00/00	

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Local, State, Federal

Additional Information: LR-253-82.

Drafting attorney: Robert Beatson (202) 566-3458.

Reviewing attorney: John M. Coulter, Jr. (202) 566-3331.

Treasury attorney: Elliot Stern (202) 566-2926.

Agency Contact: Robert Beatson, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545-AA62

3436. TO PROVIDE REGULATIONS UNDER SECTION 103(K) AND (L)—RELATING TO PUBLIC APPROVAL AND INFORMATION REPORTING REQUIREMENTS FOR PRIVATE ACTIVITY BONDS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 103 Internal Revenue Code of 1954

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The proposal will clarify the information reporting requirements with respect to private activity bonds. Industrial development bonds must be publicly approved--failure to fulfill this requirement results in loss of tax exemption for the interest on these bonds. Issuers of student loan bonds, charitable use bonds and industrial development bonds are required to supply certain information to the Internal Revenue Service. Failure to comply with this requirement will result in the loss of tax exemption for the bond's interest.

Timetable:

Action	Date	FR Cite
NPRM	05/11/83	48 FR 21166
NPRM Comment Period End	07/11/83	48 FR 21166
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-221-82.

Drafting attorney: Robert Beatson (202) 566-3458.

Reviewing attorney: John M. Coulter, Jr. (202) 566-3331.

Treasury attorney: Elliot Stern (202) 566-2926.

Agency Contact: Robert Beatson, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545-AE24

3437. REGULATIONS RELATING TO $40 MILLION SMALL ISSUE LIMIT ON TAX-EXEMPT BONDS PER TAXPAYER

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 144 (a) (10) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations would provide guidance regarding the provision enacted by the Tax Reform Act of 1984 which generally denies Federal income tax exemption for a small issue of development bonds if any of its beneficiaries receives the benefits of more than $40 million of prior outstanding industrial development bonds allocated to itself, including its allocated portion of the small issue in question. These regulations would also provide guidance regarding how the proceeds of an issue of industrial development bonds are to be allocated among its beneficiaries.

Timetable:

Action	Date	FR Cite
NPRM	02/21/86	51 FR 6270
NPRM Comment Period End	04/22/86	51 FR 6270
Hearing	06/04/86	51 FR 6273
Final Action Effective	06/23/86	
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-157-84.

Drafting attorney: Dave Selig (202) 566-4336.

Reviewing attorney: John M. Coulter, Jr. (202) 566-3740.

Office of Tax Legislative Counsel reviewing attorney: Elliott Stern(202) 566-2926.

Agency Contact: Dave Selig, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-4336

RIN: 1545-AH16

3438. INCOME TAX--TO CLARIFY THE DEFINITION OF PROPERTY WHICH IS A POLLUTION CONTROL FACILITY

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 103 (b) Internal Revenue Code of 1954

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations will define the term "air or water pollution control facilities". The regulations will further determine the portion of the cost of such facilities that may be financed with tax-exempt industrial development bonds, whenever the facilities also serve certain other purposes.

Timetable:

Action	Date	FR Cite
NPRM	08/20/75	40 FR 36371
Hearing	11/21/75	
NPRM Comment Period End	11/26/75	40 FR 36371
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-9-75.

Drafting attorney: Robert Beatson (202) 566-3458.

Reviewing attorney: John M. Coulter, Jr. (202) 566-3331.

Agency Contact: Robert Beatson, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, DC 20224, 202 566-3458

RIN: 1545-AK19

3439. TO PROVIDE REGULATIONS RELATING TO THE TAX EXEMPTION OF OBLIGATIONS TO FINANCE MIXED-USE RESIDENTIAL RENTAL PROPERTY

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1.103-8

Legal Deadline: None

Abstract: The regulations will clarify the rule relating to obligations to provide residential rented property. The regulations will make clear that a residential rental project can consist in part of non-residential rental property.

TREAS—IRS

Final Rule Stage

Timetable:

Action	Date	FR Cite
NPRM	10/07/85	50 FR 46303
NPRM Comment Period End	01/05/86	
Hearing	02/10/86	51 FR 1392
Final Action	12/31/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-230-84.

Drafting attorney: Bob Beatson (202) [illegible].

Reviewing attorney: John M. Coulter (202) 566-3331.

Treasury attorney: Elliot Stern (202) [illegible].

Agency Contact: Bob Beatson, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. [illegible]

RIN: 1545–AH08

2440. EXCLUSION OF QUALIFIED SCHOLARSHIPS AND FELLOWSHIPS FROM GROSS INCOME

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 6041 (a) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Regulations will provide rules relating to the exclusion of certain amounts received as a qualified scholarship. Regulations will also provide rules relating to withholding from certain payments and return of information requirements.

Timetable:

Action	Date	FR Cite
NPRM	06/09/88	53 FR 21688
Final Action	03/01/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-3-87

Drafting attorney: Ruth Hoffman (202) 566-3287.

Reviewing attorney: Ada S. Rousso (202) 566-3287.

Treasury attorney: Kathleen Ferrell [illegible]

Agency Contact: Ruth Hoffman, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution, N.W., Washington, DC [illegible]

RIN: 1545–AJ87

2441. INCOME TAX–PREPAID LEGAL EXPENSES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 120 Internal Revenue Code of 1986; 26 USC 501 (c) (20) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations would provide rules relating to the establishment and operation of a qualified group legal services plan. Employer contributions to, and benefits provided under, a qualified plan are excluded from an employee's gross income.

Timetable:

Action	Date	FR Cite
NPRM	04/29/80	45 FR 28360
NPRM Comment Period End	06/30/80	45 FR 28360
Hearing	09/04/80	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-5-78.

Drafting attorney: Monice Rosenbaum (202) 566-3422.

Reviewing attorney: Jonathan P. Marget (202) 566-3651.

Agency Contact: Monice Rosenbaum, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution, N.W., Washington, D.C. [illegible]

RIN: 1545–AD62

2442. INCOME TAX–TAX TREATMENT OF CAFETERIA PLANS

Significance: Regulatory Program

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 125 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations establish rules for the tax treatment of cafeteria plans meeting certain nondiscrimination standards. A cafeteria plan permits participating employees to select the particular fringe benefits desired from a package of employer-provided benefits which include statutory nontaxable benefits and cash.

Timetable:

Action	Date	FR Cite
NPRM	12/31/84	49 FR 50733
NPRM Comment Period End	01/30/85	
Hearing	03/11/85	
Final Action	12/31/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-15-76.

Drafting attorney: Harry Beker (202) 566-3430.

Reviewing attorney: Michael A. Thrasher (202) 566-3561.

Office of Tax Legislative Counsel (Treasury) reviewing attorney: Harry Conaway (202) 566-8277.

Agency Contact: Harry Beker, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. [illegible]

RIN: 1545–AD63

2443. INCOME TAX-EXCLUSION FROM INCOME OF CERTAIN COST-SHARING PAYMENTS UNDER GOVERNMENT PROGRAMS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 126 Internal Revenue Code of 1986; 26 USC 1255 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation will provide rules on the exclusion from income of certain cost sharing payments and on the amount recaptured when the property improved with government payments is sold within a certain specified period of time.

Timetable:

Action	Date	FR Cite
NPRM	05/21/81	46 FR 27723
NPRM Comment Period End	07/20/81	46 FR 27723
Hearing	12/01/81	46 FR 58808
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

TREAS—IRS

Final Rule Stage

Additional Information: LR-222-78.

Drafting attorney: Katherine Lee Wambsgans (202) 566-3288.

Reviewing attorney: Ewan D. Purkiss (202) 566-3238.

Agency Contact: Katherine Lee Wambsgans, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3288

RIN: 1545–AA73

2444. INCOME TAX–PART I EXCLUSION FROM GROSS INCOME FOR CERTAIN FOSTER CARE PAYMENTS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 131 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation project will explain what foster child care payments may be excluded from the gross income of a foster parent.

Timetable:

Action	Date	FR Cite
NPRM	02/01/85	50 FR 4702
NPRM Comment Period End	04/02/85	50 FR 4702
Hearing	06/25/85	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-83-83.

Drafting attorney: Sharon L. Hall (202) [illegible]

Reviewing attorney: Cynthia L. Clark (202) 566-3336.

Agency Contact: Sharon L. Hall, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3256

RIN: 1545–AF32

2445. ARBITRAGE RESTRICTIONS ON TAX-EXEMPT BONDS; REBATE REQUIREMENT

Significance: Regulatory Program

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 148 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This project will provide rules relating to the arbitrage rebate requirements for tax-exempt bonds.

Timetable:

Action	Date	FR Cite
Temporary Regulation	11/00/88	

Small Entities Affected: None

Government Levels Affected: Local, State

Additional Information: LR-90-86

Drafting attorney: Unassigned.

Reviewing attorney: Gerald Rock (202) 566-6456.

Treasury attorney: Elliott Stern (202) 566-2506.

Agency Contact: Unassigned, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, DC 20224, 202 566-6456

RIN: 1545–AJ61

2446. INFORMATION REPORTING FOR TAX-EXEMPT BONDS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 149 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation would provide information reporting rules for tax-exempt bonds.

Timetable:

Action	Date	FR Cite
Hearing	06/26/86	
NPRM	03/11/87	52 FR 7408
NPRM Comment Period End	05/11/87	52 FR 7408
Final Action Effective	12/01/88	

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Local, State, Federal

Additional Information: LR-169-86

Drafting attorney: Robert Beatson (202) 566-3459.

Reviewing attorney: John Coulter (202) [illegible]

Treasury attorney: Elliot Stern (202) 566-2026.

Agency Contact: Robert Beatson, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, DC 20224, [illegible]

RIN: 1545–AJ63

2447. CONTINUATION COVERAGE REQUIREMENTS OF GROUP HEALTH PLANS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 106 (b) Internal Revenue Code of 1986; 26 USC 162 (i) (2) Internal Revenue Code of 1986; 26 USC 162 (k) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations will provide guidance relating to the requirement that a group health plan provide continuation coverage to individuals who would otherwise lose coverage as a result of certain events.

Timetable:

Action	Date	FR Cite
NPRM	06/15/87	52 FR 22716
NPRM Comment Period End	08/14/87	52 FR 22716
Hearing	11/04/87	
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-143-86

Drafting attorney: Mark Schwimmer (202) 566-3774.

Review attorney: Colene Mason (202) 566-4741.

Treasury attorney: Priscilla Ryan (202) 566-3453.

Agency Contact: Mark Schwimmer, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3774

RIN: 1545–AI93

2448. INCOME TAX REGULATIONS–LIMITATIONS ON DEDUCTIONS FOR NONBUSINESS INTEREST

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 163 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations will provide guidance relating to the disallowance of a deduction for personal interest, including guidance regarding the definitions of qualified residence, qualified residence interest and qualified indebtedness.

Timetable:

Action	Date	FR Cite
NPRM	12/22/87	52 FR 48452
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-137-86

Drafting attorney: Sharon L. Hall (202) 566-3235.

Reviewing attorney: John Fischer (202) 566-3284.

Treasury attorney: Reed Shuldiner (202) 566-3175.

Agency Contact: Sharon L. Hall, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3238

RIN: 1545-AK17

2449. ◆ REGISTRATION REQUIREMENTS WITH RESPECT TO CERTAIN DEBT OBLIGATIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 163 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Rules regarding deductibility of interest on pass-through certificates when certificates are held by nominees.

Timetable:

Action	Date	FR Cite
NPRM	05/19/88	53 FR 17960
Final Action	08/30/89	

Small Entities Affected: Undetermined

Government Levels Affected: Local, State, Federal

Additional Information: INTL-005-87

Drafting attorney: Carl M. Cooper (202) 634-5406.

Reviewing attorney: Carol Doran Klein (202) 566-6419.

Treasury attorney: Peter Daub (202) 566-3964.

13 Income Taxes.

Agency Contact: Carl M. Cooper, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 634-5406

RIN: 1545-AM22

2450. ◆ REGISTRATION REQUIREMENTS WITH RESPECT TO CERTAIN DEBT OBLIGATIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 163 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Publication of section 1.163-5T inadvertently deleted 12/19/86, dealing with deductibility of interest on pass-through certificates.

Timetable:

Action	Date	FR Cite
NPRM	05/19/88	53 FR 17959
Final Action	12/31/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-090-86

Drafting attorney: Carl M. Cooper (202) 634-5406.

Reviewing attorney: Carol Doran Klein (202) 566-6419.

Treasury attorney: Peter Daub (202) 566-3964.

13 Income Taxes.

Agency Contact: Carl M. Cooper, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 634-5406

RIN: 1545-AM23

2451. INCOME TAX REGULATIONS—TAX STRADDLES RELATING TO SECTION 108 OF THE TAX REFORM ACT OF 1984

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 165 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations will provide rules under section 108 of the Tax Reform Act of 1984 and section 1808 (d) of the Tax Reform Act of 1986, relating to the treatment of certain losses on straddles entered into before the effective date of the Economic Recovery Tax Act of 1981.

Timetable:

Action	Date	FR Cite
NPRM	08/23/84	49 FR 33458
NPRM Comment Period End	10/22/84	49 FR 33458
Hearing	11/29/84	
Final Action	10/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-147-84.

Drafting attorney: Timothy J. McKenna (202) 566-3287

Reviewing attorney: John Fischer (202) 566-3284.

Treasury attorney: Kathleen Ferrell (202) 566-2175.

Agency Contact: Timothy J. McKenna, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3287

RIN: 1545-AG87

2452. INCOME TAX—ACCELERATED COST RECOVERY SYSTEM

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 168 Internal Revenue Code of 1986; 26 USC 179 Internal Revenue Code of 1986; 26 USC 1245 Internal Revenue Code of 1986; 26 USC 453 Internal Revenue Code of 1986; 26 USC 167 Internal Revenue Code of 1986; 26 USC 1250 Internal Revenue Code of 1986; 26 USC 57 (a) (12) Internal Revenue Code of 1986; 26 USC 312 (k) Internal Revenue Code of 1986; 26 USC 172 (b) Internal Revenue Code of 1986; 26 USC 612 (b) Internal Revenue Code of 1986; 26 USC 46 (b) Internal Revenue Code of 1986; 26 USC 53 (c) Internal Revenue Code of 1986; 26 USC 381 (c) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: To provide regulations under section 168 and accompanying provisions clarifying the operation of the new accelerated cost recovery scheme. This new cost recovery system generally applies to property placed in service after December 31, 1980. Generally, section 168 applies to "recovery property" which is defined as tangible property of a character subject to the allowance for depreciation which is used in a trade or business, or held for the production of income.

Timetable:

Action	Date	FR Cite
NPRM	02/16/84	49 FR 5940
NPRM Comment Period End	05/16/84	49 FR 5940
Hearing held	05/21/84	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-165-81.

Drafting attorney: Ada S. Rousso (202) 566-3287.

Reviewing attorney: John M. Coulter (202) 566-4473.

Treasury attorney: Ellen Aprill (202) 566-5453.

Agency Contact: Ada S. Rousso, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3287

RIN: 1545-AA67

2453. TAX-EXEMPT ENTITY LEASING

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 168 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations provide rules concerning tax-exempt entity leasing and service contracts.

Timetable:

Action	Date	FR Cite
NPRM	07/02/85	50 FR 27297
NPRM Comment Period End	09/03/85	50 FR 27297
Hearing	11/25/85	
Final Action	12/01/88	

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Local, State, Federal

Additional Information: LR-31-85.

Drafting attorney: Robert Beatson (202) 566-3459.

Reviewing attorney: John Tolleris (202) 566-3294.

Treasury attorney: Kathleen Ferrell (202) 566-5453.

Agency Contact: Robert Beatson, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3459

RIN: 1545-AH70

2454. DEDUCTIONS IN EXCESS OF $1000 CLAIMED BY A SUBCHAPTER C CORPORATION FOR CHARITABLE CONTRIBUTIONS OF CERTAIN PROPERTY

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 170 (a) (1) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations will provide substantiation requirements with which subchapter C corporations must comply in order to take deductions for charitable contributions of certain property.

Timetable:

Action	Date	FR Cite
NPRM	05/05/88	53 FR 16156
Final Action	12/15/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-53-87

Drafting attorney: Beverly A. Baughman (202) 566-3297.

Revising attorney: John B. Bromell (202) 566-3326.

Treasury attorney: A.L. Spitzer (202) 566-5711.

13 Income Tax

Agency Contact: Beverly A. Baughman, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3297

RIN: 1545-AL05

2455. PROVISIONS RELATING TO COOPERATIVE HOUSING CORPORATIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 216 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations provide rules for determining a tenant-stockholder's proportionate share of taxes or interest in the case where the cooperative housing corporation has made the election provided in section 216 (b) (3) (B) of the Code. These regulations also provide rules for determining whether a deduction claimed by a tenant-stockholder should be disallowed as more proper allocable to the corporation's capital account.

Timetable:

Action	Date	FR Cite
NPRM	05/27/88	53 FR 19312
Final Action	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-113-87

Drafting attorney: Joel S. Rutstein (202) 566-3297.

Reviewing attorney: Walter H. Woo (202) 566-3297.

Agency Contact: Joel S. Rutstein, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3297

RIN: 1545-AJ98

2456. INDIVIDUAL RETIREMENT PLANS AND SIMPLIFIED EMPLOYEE PENSIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 62 Internal Revenue Code of 1986; 26 USC 219 Internal Revenue Code of 1986; 26 USC 220 Internal Revenue Code of 1986; 26 USC 404 (h) Internal Revenue Code of 1986; 26 USC 408 Internal Revenue Code of 1986; 26 USC 409 Internal Revenue Code of 1986; 26 USC 2503 Internal Revenue Code of 1986; 26 USC 3121 Internal Revenue Code of 1986; 26 USC 3306 Internal Revenue Code of 1986; 26 USC 4973 Internal Revenue Code of 1986; 26 USC 4974 Internal Revenue Code of 1986; 26 USC 6693 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1; 26 CFR 25; 26 CFR 31; 26 CFR 54; 26 CFR 301

Legal Deadline: None

Abstract: The regulations set forth rules for sponsors of and participants in individual retirement plans, spousal individual retirement plans, and simplified employee pensions.

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TREAS—IRS

Final Rule Stage

Timetable:

Action	Date	FR Cite
NPRM	07/14/81	46 FR 36196
NPRM Comment Period End	09/14/81	46 FR 36196
Final Action	12/31/86	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-7-78.

Drafting attorney: William D. Gibbs (202) 566-3060.

Reviewing attorney: Richard J. Wickersham (202) 566-4621.

Office of Tax Legislative Counsel (Treasury) reviewing attorney: Harry Conaway (202) 566-8278.

Agency Contact: William D. Gibbs, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3060

RIN: 1545-AD56

2457. INDIVIDUAL RETIREMENT PLANS, SIMPLIFIED EMPLOYEE PENSIONS, AND QUALIFIED VOLUNTARY EMPLOYEE CONTRIBUTIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 219 Internal Revenue Code of 1986; 26 USC 408 Internal Revenue Code of 1986; 26 USC 409 Internal Revenue Code of 1986; 26 USC 415 Internal Revenue Code of 1986; 26 USC 2039 Internal Revenue Code of 1986; 26 USC 2517 Internal Revenue Code of 1986; 26 USC 6652 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1; 26 CFR 20; 26 CFR 25; 26 CFR 301

Legal Deadline: None

Abstract: These regulations set forth rules for individual retirement plans, simplified employee pensions, and qualified voluntary employee contributions after amendment of the Internal Revenue Code of 1954 by the Economic Recovery Tax Act of 1981.

Timetable:

Action	Date	FR Cite
NPRM	01/23/84	49 FR 2794
NPRM Comment Period End	03/23/84	49 FR 2794
Final Action	12/31/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-148-81.

Drafting attorney: William D. Gibbs (202) 566-3060.

Reviewing attorney: Richard J. Wickersham (202) 566-4621.

Office of Tax Legislative Counsel (Treasury) reviewing attorney: Harry Conaway (202) 566-8277.

Agency Contact: William D. Gibbs, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3060

RIN: 1545-AD68

2458. CAPITALIZATION AND INCLUSION IN INVENTORY COSTS OF CERTAIN EXPENSES

Significance: Regulatory Program

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 263A Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations will provide rules relating to the costs incurred in the production and acquisition of property for resale in a trade or business or activity conducted for profit.

Timetable:

Action	Date	FR Cite
NPRM	03/31/87	52 FR 10118
NPRM Comment Period End	05/29/87	
Hearing	12/07/87	
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: LR-168-86.

Drafting attorney: Paulette C. Galanko (202) 566-3288.

Reviewing attorney: John M. Fischer (202) 566-3394.

Treasury attorney: Thomas Evans (202) 566-8277.

Agency Contact: Paulette C. Galanko, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3288

RIN: 1545-AK05

2459. PRACTICAL CAPACITY

Legal Authority: 26 USC 263A Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The proposed regulations provide guidance on specific issues relating to when section 263A applies and whether certain accounting principles are permitted in accounting for the costs of property produced or property acquired for resales.

Timetable:

Action	Date	FR Cite
NPRM	08/07/87	52 FR 29391
NPRM Comment Period End	10/06/87	
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: LR-73-87

Drafting attorney: Paulette C. Galanko (202) 566-3288.

Reviewing attorney: John M. Fischer (202) 566-3394.

Treasury attorney: Thomas Evans (202) 566-8277.

Agency Contact: Paulette Galanko, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3288

RIN: 1545-AK56

2460. REGULATIONS UNDER SECTION 267 OF THE CODE TO REFLECT SECTION 174 OF THE TAX REFORM ACT OF 1984 RELATING TO LOSSES, EXPENSES, AND INTEREST IN TRANSACTIONS BETWEEN RELATED TAXPAYERS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 267 Internal Revenue Code of 1986; 26 USC 706 Internal Revenue Code of 1986; 26 USC 1502 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation deals with changes in section 267 arising from section 174 of the Tax Reform Act of 1984. It deals with the matching of payor deductions and payee income items in the case of expenses and interest where the accrual method

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payor and the cash method payee are related persons. The regulation also deals with the deferral and restoration of loss on the sale or exchange of property from one member of a controlled group of corporations to another member.

Timetable:

Action	Date	FR Cite
NPRM	11/30/84	49 FR 47048
NPRM Comment Period End	01/29/85	49 FR 47048
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-153-84.

Drafting attorney: Keith E. Stanley (202) 566-3458.

Reviewing attorney: Charles M. Whedbee (202) 566-3458.

Agency Contact: Keith E. Stanley, Attorneys, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545-AG11

2461. INCOME TAX—PERSONAL SERVICE CORPORATIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 269A Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Proposal will provide rules for determining when the Internal Revenue Service may reallocate income or tax benefits between a personal service corporation and its employee-owners.

Timetable:

Action	Date	FR Cite
NPRM	03/31/83	48 FR 13436
NPRM Comment Period End	05/31/83	48 FR 13436
Hearing	07/19/83	
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-188-82.

Drafting attorney: Katherine Lee Wambsgans (202) 566-3288.

Reviewing attorney: John M. Fischer (202) 566-3394.

Agency Contact: Katherine Lee Wambsgans, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3288

RIN: 1545-AP11

2462. INCOME TAX—DEDUCTIBILITY OF GIFTS BY EMPLOYERS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 274 (b) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations would reflect the modification by the Economic Recovery Tax Act of 1981 of the third exception to the term "gift" (i.e., the exception within certain dollar limitations for awards of tangible personal property). The regulations would define the term "qualified plan award." The regulations would clarify the existing regulations under section 274 (b) of the Internal Revenue Code of 1954 by excluding from the term "tangible personal property" any award of cash, or of a gift certificate, or of a right to choose among 5 or more different items.

Timetable:

Action	Date	FR Cite
NPRM	12/16/82	47 FR 56367
NPRM Comment Period End	02/14/83	47 FR 56367
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-232-81.

Drafting attorney: Christopher Wilson (202) 566-4336.

Reviewing attorney: John B. Bromell (202) 566-3328.

Treasury attorney: Susan Himes (202) 566-8527.

Agency Contact: Christopher Wilson, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3297

RIN: 1545-AE06

2463. INCOME TAX—SUBSTANTIATION REQUIREMENTS WITH RESPECT TO LISTED PROPERTY AND SUBSTANTIATION REQUIREMENTS RELATING TO THE TAXATION OF FRINGE BENEFITS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations will set forth the requirements to substantiate any deduction or credit for certain business-related expenses with adequate records or sufficient evidence corroborating a taxpayer's own statement.

Timetable:

Action	Date	FR Cite
NPRM	11/06/85	50 FR 46006
NPRM Comment Period End	01/06/86	50 FR 46006
Hearing	03/04/86	51 FR 02898
Final Action	12/31/86	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-140-85.

Drafting attorney: Joel Rutstein (202) 566-3297.

Reviewing attorney: Sharon Gelm (202) 566-3935.

Agency Contact: Joel Rutstein, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224, 202 566-3297

RIN: 1545-AJ40

2464. INCOME TAX—DEDUCTIONS FOR EXPENSES ATTRIBUTABLE TO BUSINESS USE OF HOMES, RENTAL OF VACATION HOMES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 280A Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations would provide rules for determining the deductibility of expenses incurred in connection with the business use, or rental to others, of a dwelling unit. The regulations provide rules for determining when the taxpayer uses a dwelling unit for personal use or when use by another person of the unit is

treated as personal use of the unit by the taxpayer.

Timetable:

Action	Date	FR Cite
NPRM	07/21/83	48 FR 33328
NPRM Comment Period End	09/21/83	
Hearing	10/04/83	
Final Action	02/01/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-331-76.

Drafting attorney: Joel S. Rutstein (202) 566-3297.

Reviewing attorney: Paul Francis (202) 566-3288.

Agency Contact: Joel S. Rutstein, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, [illegible]

RIN: 1545-AB09

2465. LIMITATIONS ON AMOUNT OF DEPRECIATION AND INVESTMENT TAX CREDIT FOR LUXURY AUTOMOBILES AND CERTAIN OTHER PROPERTY

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 280F Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations will clarify the rules limiting the investment tax credit and cost recovery deductions allowable with respect to passenger automobiles and certain other "listed property."

Timetable:

Action	Date	FR Cite
NPRM	10/24/84	49 FR 42743
NPRM Comment Period End	12/24/84	49 FR 42743
Second Hearing	03/04/86	51 FR 2898
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-145-84.

Drafting attorney: Susan E. Overlander (202) 566-3458.

Reviewing attorney: Alice M. Bennett (202) 566-3473.

Treasury attorney: Marjorie Roberts (202) 566-3565.

Agency Contact: Susan E. Overlander, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, [illegible]

RIN: 1545-AG09

2466. LEASED PROPERTY UNDER SECTION 280F

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 280F Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation provides inclusion amounts for listed property leased after December 31, 1986.

Timetable:

Action	Date	FR Cite
Temporary Regulation	12/31/86	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-1-86

Drafting attorney: Joel Rutstein (202) 566-3297.

Reviewing attorney: Sharon Galm (202) 566-3930.

Treasury attorney: John Parcell (202) 535-[illegible]

13 Income Taxes

Agency Contact: Joel Rutstein, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, [illegible]

RIN: 1545-AL42

2467. AFFILIATED GROUPS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 304 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation provides proper adjustments to stock bases and earnings and profits of members of an affiliated group in section 304 (a) transfers of intragroup stock.

Timetable:

Action	Date	FR Cite
Temporary Regulation	12/30/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-1-86

Drafting attorney: Mark Jennings (202) 566-3456.

Reviewing attorney: Robert J. Mason (202) 566-3463.

13 Income Taxes

Agency Contact: Mark Jennings, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, [illegible]

RIN: 1545-AL41

2468. INCOME TAX—PART 1 TEMPORARY REGULATIONS-RECOGNITION OF GAIN OR LOSS LIQUIDATING SALES AND DISTRIBUTIONS OF PROPERTY (TRA 1986, SECTIONS 631 TO 633)

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 336 Internal Revenue Code of 1986; 26 USC 337 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Regulations would provide rules for the recognition of gain or loss on a corporation's liquidation sales or distributions.

Timetable:

Action	Date	FR Cite
Temporary Regulation	03/15/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-117-86.

Drafting attorney: Mark S. Jennings (202) 566-3456.

Reviewing attorney: Robert J. Mason (202) 566-3463.

Agency Contact: Mark S. Jennings, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, [illegible]

RIN: 1545-AJ01

2469. CERTAIN STOCK SALES AND DISTRIBUTIONS TREATED AS ASSET TRANSFERS

Legal Authority: 26 USC 336 Internal Revenue Code of 1986; 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations would provide guidance for making an election under section 336 (e) and the consequences which result from making such an election

Timetable:

Action	Date	FR Cite
Temporary Regulation	04/01/89	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: LR-51-87

Drafting attorney: Patricia W. Pellervo (202) 566-3458.

Reviewing attorney: Robert J. Mason (202) 566-3463.

Treasury attorney: Thomas Wessel (202) 566-4979.

Agency Contact: Patricia W. Pellervo, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, [illegible]

RIN: 1545-AK30

2470. ◆ APPLICATION OF GENERAL UTILITIES REPEAL REGULATORY AUTHORITY TO RICS AND REITS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 337 (d) Internal Revenue Code 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulations project is one of several dealing with the implementation of the repeal of the General Utilities doctrine by section 631 of the Tax Reform Act of 1986. This project deals with the regulations necessary to ensure the repeal is implemented with respect to RICs and REITs.

Timetable:

Action	Date	FR Cite
Temporary Regulation	12/31/88	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: LR-15-88

Drafting attorney: Robert M. Casey (202) 566-3458.

Reviewing attorney: Charles M. Whedbee (202) 566-3458.

13 Income Tax, Normal Taxes and Surtaxes, RICs and REITs

Agency Contact: Robert M. Casey, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, [illegible]

RIN: 1545-AL65

2471. ◆ APPLICATION OF GENERAL UTILITIES REPEAL REGULATORY AUTHORITY TO CERTAIN DISTRIBUTIONS UNDER SECTION 355

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 337 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations are intended to cause the recognition of net gain by the distributing corporation ("parent") upon the distribution of the stock and securities of a controlled corporation ("subsidiary") in a transaction to which section 355 applies when the distribution is part of a transaction that is made with a gain avoidance purpose and within two years of the distribution a person acquires control of the parent or the subsidiary.

Timetable:

Action	Date	FR Cite
Temporary Regulation	12/31/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-73-88

Drafting attorney: Robert Casey (202) 566-3458.

Reviewing attorney: Charles Whedbee (202) 566-3458.

Treasury attorney: Thomas Wessel (202) 566-2927.

13 Income tax

Agency Contact: Robert Casey, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, [illegible]

RIN: 1545-AM34

2472. DEEMED SALE PRICE WHEN CERTAIN STOCK PURCHASES ARE TREATED AS ASSET ACQUISITIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 338 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Proposal will prescribe rules for computing the basis of stock purchased in certain stock acquisitions and for allocating this basis among the assets of the corporation whose stock was thus acquired.

Timetable:

Action	Date	FR Cite
NPRM	07/01/86	51 FR 23790
NPRM Comment Period End	09/02/86	
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-101-82.

Drafting attorney: Patricia W. Pellervo (202) 566-3458.

Reviewing attorney: Charles M. Whedbee (202) 566-3458.

Office of Tax Legislative Counsel reviewing attorney: Thomas Wessel (202) 566-3458.

Agency Contact: Patricia W. Pellervo, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, [illegible]

RIN: 1545-AH29

2473. INCOME TAX-ELECTIONS UNDER SECTION 338, AS ADDED BY SECTION 224 OF THE TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982 AS AMENDED BY THE TECHNICAL CORRECTIONS ACT OF 1982

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 338 Internal Revenue Code of 1986; PL 97-248, Sec 224; PL 97-448, Sec 306

CFR Citation: 26 CFR 1

Legal Deadline: None

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Abstract: This regulation will provide rules for making elections under section 338, which permits certain stock purchases to be treated as asset acquisitions.

Timetable:

Action	Date	FR Cite
NPRM	09/06/84	49 FR 35144
NPRM Comment Period End	11/05/84	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-20-83.

Drafting attorney: Patricia W. Pellervo [redacted]

Reviewing attorney: Robert J. Mason [redacted]

Treasury attorney: Thomas F. Wessel [redacted]

Agency Contact: Patricia W. Pellervo, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, [redacted]

RIN: 1545-AF38

2474. REGULATIONS UNDER SECTION 338 (H) (10) AS ADDED TO THE CODE BY SECTION 306 OF THE TECHNICAL CORRECTIONS ACT OF 1982, RELATING TO SPECIAL ELECTIVE RECOGNITION OF GAIN OR LOSS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 338 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Proposal would interpret the rules of section 338 (h) (10) under which a special election can be made so that target recognizes gain or loss on the deemed sale of its assets. The proposal is necessary so that affected taxpayers can make election under the provision.

Timetable:

Action	Date	FR Cite
NPRM	01/08/86	51 FR 763
NPRM Comment Period End	03/10/86	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-218-83.

Drafting attorney: Patricia W. Pellervo [redacted]

Reviewing attorney: Robert J. Mason (202) 566-3463.

Office of Tax Legislative Counsel reviewing attorney: Thomas Wessel (202) 566-2927.

Agency Contact: Patricia W. Pellervo, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, [redacted]

RIN: 1545-AF93

2475. INCOME TAX-APPLICATION OF SECTION 338 TO STOCK AND ASSET ACQUISITIONS IN THE INTERNATIONAL CONTEXT

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 338 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations will provide rules relating to section 338 as it applies to stock and asset acquisitions in the international context.

Timetable:

Action	Date	FR Cite
NPRM	02/12/86	51 FR 5208
NPRM Comment Period End	04/14/86	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-35-84.

Drafting attorney: Ken Allison (202) 566-6457.

Reviewing attorney: Benedetta Kissel (202) 566-3179.

Agency Contact: Ken Allison, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C., [redacted]

RIN: 1545-AG13

2476. QUESTIONS AND ANSWERS RELATING TO DOMESTIC MATTERS UNDER SECTION 338 OF THE INTERNAL REVENUE CODE OF 1954 - CROSS REFERENCE TO THE TEMPORARY REGULATIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 338 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations provide guidance on a broad range of issues under section 338.

Timetable:

Action	Date	FR Cite
NPRM	08/24/85	50 FR 16430

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-33-85.

Drafting attorney: Patricia W. Pellervo [redacted]

Reviewing attorney: Robert J. Mason (202) 566-3463.

Treasury attorney: Thomas F. Wessel [redacted]

Agency Contact: Patricia W. Pellervo, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. [redacted]

RIN: 1545-AH88

2477. STATEMENTS OF ELECTION AND DUE DATES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 338 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The proposed regulations provide guidance to taxpayers who make express elections under section 338 pursuant to the extended July 15, 1986, filing deadline where the statute of limitations in the target's taxable year which includes the acquisition date has expired prior to July 15, 1986, or will expire shortly thereafter.

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Timetable:

Action	Date	FR Cite
NPRM	05/16/86	51 FR 17980
NPRM Comment Period End	07/15/86	51 FR 17980

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-8-86.

Drafting attorney: Patricia W. Pellervo (202) 566-3458.

Reviewing attorney: Robert J. Mason (202) 566-3463.

Treasury attorney: Thomas Wessel (202) 566-4979.

Agency Contact: Patricia W. Pellervo, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue N.W., Washington, D.C. 20224, [redacted]

RIN: 1545-AI53

2478. INCOME TAX-APPLICATION OF INSTALLMENT METHOD OF REPORTING AND MANDATORY APPLICATION OF MADSP FORMULA FOR QUALIFIED STOCK PURCHASES UNDER SECTION 338 (H) (10)

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 338 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations will provide guidance for utilization of the installment method of reporting and will require the use of the MADSP formula in a qualified stock purchase to which section 338 (h) (10) applies.

Timetable:

Action	Date	FR Cite
Temporary Regulation	06/09/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-75-86

Drafting attorney: Judith C. Winkler (202) 566-3458.

Reviewing attorney: Robert J. Mason (202) 566-3463.

Treasury attorney: Jud Kelly (202) 535-6960.

Agency Contact: Judith C. Winkler, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, [redacted]

RIN: 1545-AJ07

2479. TREATMENT OF AN AFFILIATED GROUP OF CORPORATIONS AS A SELLING CONSOLIDATED GROUP FOR PURPOSES OF ELECTIVE RECOGNITION UNDER SECTION 338 (H) (10)

Legal Authority: 26 USC 338 Internal Revenue Code of 1986; 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations would provide the guidance for making elections under section 338 (h) (10) when the selling group is an affiliated group of corporations which does not file a consolidated federal income tax return, and the consequences of making such an election.

Timetable:

Action	Date	FR Cite
Temporary Regulation	06/09/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-49-87

Drafting attorney: Judith C. Winkler (202) 566-3458.

Reviewing attorney: Robert J. Mason (202) 566-3463.

Treasury attorney: Judge Kelley (202) 535-6960.

Agency Contact: Judith C. Winkler, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, [redacted]

RIN: 1545-AK32

2480. INCOME TAX—DISTRIBUTION OF STOCK AND SECURITIES OF A CONTROLLED CORPORATION

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 355 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The proposal relates to the income tax treatment of the distribution of stock and securities of a controlled corporation.

Timetable:

Action	Date	FR Cite
NPRM	01/21/77	42 FR 3666
NPRM Comment Period End	03/22/77	42 FR 3666
Final Action	10/15/88	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: LR-036-70

Drafting attorney: Patricia W. Pellervo (202) 566-3458.

Reviewing attorney: Charles M. Whedbee (202) 566-3458.

Treasury attorney: Bryan Collins (202) [redacted]

Agency Contact: Patricia W. Pellervo, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. [redacted]

RIN: 1545-AB20

2481. INCOME TAX—TRIANGULAR REORGANIZATIONS, BASIS AND OTHER CONSEQUENCES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 368 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations would provide rules relating to basis of stock of a corporation acquiring property in exchange for stock of a corporation in control of the acquiring corporation.

Timetable:

Action	Date	FR Cite
NPRM	01/02/81	46 FR 112
NPRM Comment Period End	03/03/81	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-093-71.

Drafting attorney: Keith E. Stanley (202) 566-3458.

Reviewing attorney: Robert J. Mason (202) 566-3463.

Office of Tax Legislative Counsel (Treasury) reviewing attorney: Thomas Evans (202) 566-5453.

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Agency Contact: Keith E. Stanley, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545-AE21

2482. AMENDMENT OF THE INCOME TAX REGULATIONS UNDER SECTION 367 OF THE CODE (TRANSFERS TO FOREIGN CORPORATIONS) TO REFLECT SECTION 131 OF THE TAX REFORM ACT OF 1984 (P.L. 98-369)

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 367 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The Income Tax Regulations under section 367 will be amended to reflect the changes made to that section by the Tax Reform Act of 1984. Section 367 now provides generally that a foreign corporations will not be considered to be a corporation, for purposes of certain nonrecognition provisions of the Code, upon the transfer of property to such corporation by a U.S. person. The statute provides certain exceptions to that rule, exemptions to those exceptions, and special rules applicable to certain specified transfers. The regulations will provide guidance concerning the applicability of the general rule and its exceptions and special rules, including guidance concerning transfers of assets for use in the active conduct of a trade or business, stock transfers, transfers of intangible assets, and transfers of branch operations that have operated at a loss.

Timetable:

Action	Date	FR Cite
Final Action	01/01/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-810-86

Drafting attorney: Steven Lipschutz (202) 566-3312.

Reviewing attorney: Charles Saverude (202) 566-6065.

Treasury attorney: Mary Bennet (202) 566-3301.

Agency Contact: Steven Lipschutz, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3310

RIN: 1545-AK74

2483. INCOME TAX--PART 1--TEMPORARY-WHETHER EARNINGS AND PROFITS SHOULD BE ALLOCATED TO AN ACQUIRING CFC FROM AN ACQUIRED CFC FOLLOWING A NON-RECOGNITION TRANSACTION

Legal Authority: 26 USC 7805 Internal Revenue Code of 1954; 26 USC 367 (b) Internal Revenue Code of 1954

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Should earnings and profits be allocated to an acquiring CFC from an acquired CFC following a transaction which qualified for non-recognition treatment.

Timetable:

Action	Date	FR Cite
Temporary Regulation	02/01/89	

Small Entities Affected: None

Government Levels Affected: Federal

Additional Information: INTL-78-86.

Drafting attorney: Richard Chewning (202) 566-3361.

Reviewing attorney: Bernard Bress (202) 566-6440.

Treasury attorney: David Crowe (202) 566-6701.

Agency Contact: Richard Chewning, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Room 4109, Washington, D.C. 20224, 202 566-6384

RIN: 1545-AH12

2484. FOREIGN LIQUIDATIONS AND REORGANIZATIONS (TEMPORARY REGULATIONS)

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 367(b)(2) Internal Revenue Code of 1986

CFR Citation: 26 CFR 7

Legal Deadline: None

Abstract: Temporary regulations would provide guidance concerning requirements relating to certain exchanges involving a foreign corporation.

Timetable:

Action	Date	FR Cite
Temporary Regulation	12/01/88	

Small Entities Affected: None

Government Levels Affected: Federal

Additional Information: INTL-991-86

Drafting attorney: Richard Chewning (202) 566-3361.

Reviewing attorney: Bernard Bress (202) 566-6440.

Treasury attorney: David Crowe (202) 566-3781.

Agency Contact: Richard Chewning, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3459

RIN: 1545-AJ76

2485. INCOME TAX--EXCHANGE FUNDS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 368 (a) (2) (F) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations would provide rules relating to reorganizations of undiversified investment companies.

Timetable:

Action	Date	FR Cite
NPRM	01/07/81	46 FR 1744
NPRM Comment Period End	03/08/81	46 FR 1744

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: LR-135-76.

Drafting attorney: Robert M. Casey (202) 566-3458.

Reviewing attorney: Robert J. Mason (202) 566-3463.

Agency Contact: Robert M. Casey, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545-AH21

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2486. INCOME TAX--OWNERSHIP CHANGE

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 382 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation will provide guidance on what constitutes "ownership change" under section 382 of the Internal Revenue Code of 1986 (generally, an "ownership change" is a shift in loss corporation stock ownership (after which the corporation's net operating loss carryovers are limited).

Timetable:

Action	Date	FR Cite
NPRM	08/11/87	52 FR 29704
NPRM Comment Period End	10/13/87	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-101-86.

Drafting attorney: Keith E. Stanley (202) 566-3458.

Reviewing attorney: Charles M. Whedbee (202) 566-3458.

Treasury attorney: Thomas Wessel (202) 566-2928.

Agency Contact: Keith Stanley, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545-AJ00

2487. COMPUTATION OF SECTION 382 LIMITATION

Legal Authority: 26 USC 382 Internal Revenue Code of 1986; 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations would explain the manner and method of computing the section 382 limitation under circumstances when there are successive ownership changes, capital contributions, mergers liquidations, and in instances when one corporation controls another corporation.

Timetable:

Action	Date	FR Cite
Temporary Regulation	03/10/89	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information:

LR-66-87.

Drafting attorney: Keith E. Stanley (202) 566-3458.

Reviewing attorney: Robert J. Mason (202) 566-3463.

Treasury attorney: Thomas Wessel (202) 566-2928.

Agency Contact: Keith E. Stanley, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545-AK57

2488. SECTION 382 LIMITATION ON GROUPS FILING CONSOLIDATED RETURNS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 382 Internal Revenue Code of 1986; 26 USC 1502 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This temporary regulation provides rules for computation of the section 382 limitation by groups filing consolidated returns.

Timetable:

Action	Date	FR Cite
Temporary Regulation	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-132-87

Drafting attorney: John Broadbent (202) 566-3458.

Reviewing attorney: Robert J. Mason (202) 566-3463.

Treasury attorney: Thomas Wessel (202) 566-2927.

Income Taxes

Agency Contact: John Broadbent, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545-AL36

2489. ● ALLOCATION OF A LOSS CORPORATION'S INCOME OR LOSS FOR THE TAXABLE YEAR THAT INCLUDES THE CHANGE DATE BETWEEN THE PERIODS ENDING WITH AND AFTER THE CHANGE DATE

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 382 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Except as provided in regulations, sections 382 (b) (3) (A) and (d) (1) of the Internal Revenue Code of 1986 provide for a ratable allocation of income or net operating loss, respectively, for the taxable year that includes the change date. Notice 87-79, 1987-2 C.B. 387, states that regulations will, in certain cases, provide taxpayers with an election to allocate income and loss between the periods ending with and after the change date on the basis of a closing of their books as of the change date (rather than on the basis of a ratable allocation). The notice also states that the regulations, in appropriate circumstances, will permit income that is realized after the date, but is properly attributable to the period ending with the change date, to be allocated to the pre-change period. The purpose of this regulation project is to provide guidance in the areas suggested by the notice and in related areas.

Timetable:

Action	Date	FR Cite
Temporary Regulation	06/01/89	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: LR-66-88

Drafting attorney: Keith E. Stanley (202) 566-3458.

Reviewing attorney: Charles M. Whedbee (202) 566-3458.

Treasury attorney: Thomas Wessel (202) 566-2927.

13 Income Tax

Agency Contact: Keith E. Stanley, Attorney, Department of the Treasury,

Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545-AI58

2480. SPECIAL LIMITATIONS ON CERTAIN CREDIT AND LOSS CARRYOVERS

Legal Authority: 26 USC 383 Internal Revenue Code of 1986; 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations would specify the manner and method on applying the special limitations on certain credit and loss carryovers under section 383.

Timetable:

Action	Date	FR Cite
Temporary Regulation	06/30/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-56-87

Drafting attorney: Thomas J. Kane (202) 566-3288.

Reviewing attorney: Charles M. Whedbee (202) 566-3458.

Treasury attorney: Thomas Wessel (202) 566-4079.

Agency Contact: Thomas J. Kane, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3288

RIN: 1545-AK28

2481. INCOME TAX--REFUND OF MISTAKEN CONTRIBUTIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 401 (a) (2) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations describe those circumstances under which an employer contribution or withdrawal liability payment to a multiemployer pension plan may be refunded due to a mistake of law or fact.

Timetable:

Action	Date	FR Cite
NPRM	03/11/83	48 FR 10374
NPRM Comment Period End	05/10/83	48 FR 10374
Final Action	01/31/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: EE-133-80.

Drafting attorney: John T. Ricotta (202) 566-3458.

Reviewing attorney: Michael A. Thrasher (202) 566-3561.

Office of Tax Legislative Counsel (Treasury) reviewing attorney: Harry Conaway (202) 566-8277.

Agency Contact: John T. Ricotta, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545-AD66

2482. INCOME TAX--REQUIRED DISTRIBUTIONS FROM QUALIFIED PLANS AND INDIVIDUAL RETIREMENT ACCOUNTS AND PARTIAL ROLLOVERS OF INDIVIDUAL RETIREMENT ACCOUNTS

Legal Authority: 26 USC 408 (a) (6) Internal Revenue Code of 1986; 26 USC 401 (a) (9) Internal Revenue Code of 1986; 26 USC 408 (b) (3) Internal Revenue Code of 1986; 26 USC 408 (d) (3) (C) Internal Revenue Code of 1986; 26 USC 219 (d) (4) Internal Revenue Code of 1986; 26 USC 403 (b) (10) Internal Revenue Code of 1986; 26 USC 4974 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This project will revise the Income Tax Regulations to incorporate the changes made in the law by the Tax Equity and Fiscal Responsibility Act of 1982 and the Tax Reform Act of 1984, and Income Tax Reform Act of 1986 concerning the required distributions from qualified plans, individual retirement accounts and 403(b) annuities and custodial accounts.

Timetable:

Action	Date	FR Cite
NPRM	07/27/87	52 FR 28070
HEARING	12/04/87	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-113-88.

Drafting attorney: Marjorie Hoffman (202) 566-3450.

Reviewing attorney: Richard J. Wickersham (202) 566-3250.

Office of Tax Legislative Counsel (Treasury) reviewing attorney: Harry Conaway (202) 566-8277.

Agency Contact: Marjorie Hoffman, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3450

RIN: 1545-AE05

2483. NOTICE, ELECTION, AND CONSENT RULES UNDER THE RETIREMENT EQUITY ACT OF 1984

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1; 26 CFR 602

Legal Deadline: None

Abstract: The regulations would provide rules relating to notices, elections and consents required under the Retirement Equity Act of 1984.

Timetable:

Action	Date	FR Cite
NPRM	07/19/85	50 FR 29436
NPRM Comment Period End	09/17/85	50 FR 29436
Final Action	10/31/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-35-85.

Drafting attorney: William D. Gibbs (202) 566-3060

Reviewing attorney: Richard J. Wickersham (202) 566-4621.

Office of Tax Legislative Counsel (Treasury) reviewing attorney: Harry Conaway (202) 566-8277.

This is included in the Regulatory Program of the United States under overall RIN 1545-AH71.

Agency Contact: William D. Gibbs, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3060

RIN: 1545-AI00

2484. CASH ON DEFERRED ARRANGEMENTS (TAX REFORM ACT OF 1986)

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 401 (k) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: NPRM, Statutory, January 31, 1988.

Abstract: These regulations will provide rules relating to cash or deferred arrangements brought about because of the amendment of section 401 (k) by the Tax Reform Act of 1986.

Timetable:

Action	Date	FR Cite
NPRM	06/06/88	53 FR 29719
Final Action	12/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-153-86

Drafting attorney: William D. Gibbs (202) 566-3060.

Reviewing attorney: Mary E. Oppenheimer (202) 566-6628.

Treasury attorney: Harry J. Conaway (202) 566-8277.

Agency Contact: William D. Gibbs, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3060

RIN: 1545-AI79

2485. NONDISCRIMINATION REQUIREMENTS FOR EMPLOYER MATCHING CONTRIBUTIONS AND EMPLOYEE CONTRIBUTIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 401 (m) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1; 26 CFR 54

Legal Deadline: NPRM, Statutory, January 31, 1988.

Abstract: These regulations will provide rules relating to nondiscrimination requirements for employer matching contributions and employee contributions. The regulations will also provide rules on computing the excise tax on excess contributions made under a cash or deferred arrangement and on excess aggregate contributions.

Timetable:

Action	Date	FR Cite
NPRM	06/06/88	53 FR 29719
Final Action	12/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-160-86

Drafting attorney: William D. Gibbs (202) 566-3408.

Reviewing attorney: Mary E. Oppenheimer (202) 566-6628.

Treasury attorney: Harry J. Conaway (202) 566-8277.

Agency Contact: William D. Gibbs, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3060

RIN: 1545-AI80

2486. INCOME TAX--TREATMENT OF CERTAIN LUMP SUM DISTRIBUTIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 402 (a) (2) Internal Revenue Code of 1986; 26 USC 402 (e) Internal Revenue Code of 1986; 26 USC 403 (a) (2) (A) (iii) Internal Revenue Code of 1986; 26 USC 411 (d) (1) Internal Revenue Code of 1986; PL 93-406, Sec 2005 Employee Retirement Income Security Act; PL 94-455, Sec 1512 Tax Reform Act of 1976

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Regulations will provide definitions and other guidance relating to income tax treatment of certain distributions from qualified employee plans.

Timetable:

Action	Date	FR Cite
NPRM	04/30/75	40 FR 18798
Corrected NPRM	05/23/75	40 FR 22548
NPRM Comment Period End	06/16/75	40 FR 18798
Notice of Hearing	07/03/75	40 FR 28102
Hearing	08/12/75	
NPRM - Additional Comment Period Until	07/30/79	44 FR 31228
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-14-78.

Drafting attorney: Marjorie Hoffman (202) 566-3430.

Reviewing attorney: Richard J. Wickersham (202) 566-3250.

Office of Tax Legislative Counsel (Treasury) reviewing attorney: Harry Conaway (202) 566-8277.

Agency Contact: Marjorie Hoffman, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3450

RIN: 1545-AD73

2487. INCOME TAX--DEDUCTION FOR CERTAIN FOREIGN DEFERRED COMPENSATION PLANS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 404A Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations would provide guidance relating to the limitations on deductions and adjustments to earnings and profits (or accumulated profits) with respect to certain foreign deferred compensation plans.

Timetable:

Action	Date	FR Cite
NPRM	04/08/85	50 FR 13821
NPRM Comment Period End	06/07/85	50 FR 13821
Hearing	09/20/85	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-14-81.

Drafting attorney: Norman D. Hubbard (202) 566-3430.

Reviewing attorney: Michael A. Thrasher (202) 566-3961.

Agency Contact: Norman D. Hubbard, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3430

RIN: 1545-AD81

2488. ANNUAL INFORMATION REPORTS BY TRUSTEES AND ISSUERS OF INDIVIDUAL RETIREMENT PLANS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 408

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Internal Revenue Code of 1986; PL 98-369, Sec 147

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: On June 28, 1983, the Internal Revenue Service issued news release IR-83-88 requiring new information reporting by trustees of individual retirement accounts and issuers of individual retirement annuities (including accounts and annuities that are simplified employee pensions). Form 5498, Individual Retirement Arrangement Information, was prescribed in the news release as the information return to be used for this purpose. This regulation project will amend the regulations under section 408 to conform them to the reporting requirements announced in the news release. In addition, section 147 of the Tax Reform Act of 1984 amended section 408 (i) of the Code to require that contributions be identified as to the taxable year to which they apply. This amendment will be included in this regulation period.

Timetable:

Action	Date	FR Cite
NPRM	11/16/84	49 FR 45450
NPRM Comment Period End	01/15/85	49 FR 45450
Final Action	12/31/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-65-83.

Drafting attorney: William Gibbs (202) 566-3060.

Reviewing attorney: Richard J. Wickersham (202) 566-4621.

Office of Tax Legislative Counsel (Treasury) reviewing attorney: Harry J. Conaway (202) 566-6277.

Agency Contact: William D. Gibbs, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3060

RIN: 1545-AF61

2486. INCOME TAX--COORDINATION OF VESTING AND NONDISCRIMINATION REQUIREMENTS FOR QUALIFIED PLANS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 411 (d) (1) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This project was developed to prescribe rules for determining if the vesting schedule of a qualified plan discriminates in favor of employees who are officers, shareholders, or highly compensated.

Timetable:

Action	Date	FR Cite
NPRM	04/09/80	45 FR 24201
Partial Revised Notice	06/12/80	45 FR 39669
Hearing	07/10/80	45 FR 29306
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-164-78.

Drafting attorney: Marjorie Hoffman (202) 566-3456.

Reviewing attorney: Richard J. Wickersham (202) 566-3150.

Office of Tax Legislative Counsel (Treasury) reviewing attorney: Harry Conaway (202) 566-6277.

Agency Contact: Marjorie Hoffman, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3456

RIN: 1545-AD84

2500. SURVIVOR BENEFITS, DISTRIBUTION RESTRICTIONS AND VARIOUS OTHER ISSUES UNDER THE RETIREMENT EQUITY ACT OF 1984

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations will provide rules relating to the effective dates, transitional rules, restrictions on distributions from employee plans and other issues arising under the Retirement Equity Act of 1984.

Timetable:

Action	Date	FR Cite
NPRM	07/19/85	50 FR 29436
NPRM Comment Period End	09/17/85	50 FR 29436
Final Action	10/31/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-3-85

Drafting attorney: William D. Gibbs (202) 566-3060.

Reviewing attorney: Richard J. Wickersham (202) 566-4621.

Office of Tax Legislative Counsel (Treasury) reviewing attorney: Harry J. Conaway (202) 566-6277.

This is included in the Regulatory Program of the United States under overall RIN 1545-AH71.

Agency Contact: William D. Gibbs, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3060

RIN: 1545-AH51

2501. INC. TAX -- PART 1 -- BENEFIT ACCRUAL BEYOND NORMAL RETIREMENT AGE

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 411 (b) (1) (H) Internal Revenue Code of 1986; 26 USC 411 (b) (2) Internal Revenue Code of 1986; 26 USC 410 (a) (2) Internal Revenue Code of 1986; 26 USC 411 (a) (8) (B) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: Final, Statutory, February 1, 1988.
Final regulations are required to be issued by February 1, 1988.

Abstract: The regulations would provide rules with regard to benefit accruals after attainment of normal retirement age and maximum age conditions on participating in certain type of plans.

Timetable:

Action	Date	FR Cite
NPRM	04/11/88	53 FR 11876
Final Action	06/01/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-181-86

Drafting attorney: Michael Garvey (202) 566-6212

Reviewing attorney: Richard J. Wickersham (202) 566-4621

Treasury attorney: Paul Streifa (202) 566-6277

Agency Contact: Michael Garvey, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-6212

RIN: 1545-AD00

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2502. INCOME TAX - PART 1 - MINIMUM VESTING STANDARDS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 410 Internal Revenue Code of 1986; PL 99-514, Sec 1113 Tax Reform Act of 1986; PL 99-514, Sec 1141 Tax Reform Act of 1986; 26 USC 411 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: Final, Statutory, February 1, 1988.
Deadline set by Section 1141 of PL 99-514 "Tax Reform Act of 1986"

Abstract: These regulations will amend existing rules to reflect changes made by section 1113 of the Tax Reform Act of 1986, relating to minimum vesting standards and participation standards.

Timetable:

Action	Date	FR Cite
NPRM	01/06/88	53 FR 261
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-167-86

Drafting attorney: V.A. Moore (202) 566-3425.

Reviewing attorney: James Brokaw (202) 566-4173.

Treasury attorney: Harry Conaway (202) 566-6277.

Cross-Reference to EE-73-87

Agency Contact: V. A. Moore, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3425

RIN: 1545-AI68

2503. INCOME TAX--EXCISE TAX REGULATIONS--FUNDING FOR QUALIFIED PLANS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 412 Internal Revenue Code of 1986; 26 USC 413 (b) Internal Revenue Code of 1986; PL 93-406, Sec 1013

CFR Citation: 26 CFR 1; 26 CFR 54

Legal Deadline: None

Abstract: The regulations would provide guidance relating to the minimum funding requirements for employee pension benefit plans, and to excise taxes for failure to meet the minimum funding standards.

Timetable:

Action	Date	FR Cite
NPRM	12/01/82	47 FR 54093
NPRM Comment Period End	01/31/83	47 FR 54093
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-99-78.

Drafting attorney: Steven T. Miller (202) 566-3422.

Reviewing attorney: Richard J. Wickersham (202) 566-4621.

Office of Tax Legislative Counsel (Treasury) reviewing attorney: Harry Conaway (202) 566-6277.

Agency Contact: Steven T. Miller, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3425

RIN: 1545-AD84

2504. INCOME TAX--EMPLOYEES OF AN AFFILIATED SERVICE GROUP

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 414 (m) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations would provide rules with regard to the aggregation of employees of certain organizations for purposes of certain pension requirements.

Timetable:

Action	Date	FR Cite
NPRM	02/26/83	48 FR 8293
NPRM Comment Period End	04/25/83	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-3-83.

Drafting attorney: Michael Garvey (202) 566-6212.

Reviewing attorney: Richard J. Wickersham (202) 566-4621.

Office of Tax Legislative Counsel (Treasury) reviewing attorney: Harry J. Conaway (202) 566-6277.

Agency Contact: Michael Garvey, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-6212

RIN: 1545-AD00

2505. INCOME TAX REGULATIONS--AFFILIATED SERVICE GROUPS AND EMPLOYEE LEASING

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 414 (n) Internal Revenue Code of 1986; 26 USC 414 (m) (5) Internal Revenue Code of 1986; 26 USC 414 (o) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations will provide rules regarding the treatment of certain leased employees. In addition, the regulations will provide guidance regarding the aggregation of certain management companies as affiliated service groups.

Timetable:

Action	Date	FR Cite
NPRM	08/27/87	52 FR 32502
NPRM Comment Period End	10/26/87	
Hearing	12/02/87	52 FR 45835
Hearing	02/25/88	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-111-82.

Drafting attorney: Michael Garvey (202) 566-6212.

Reviewing attorney: Richard J. Wickersham (202) 566-4621.

Office of Tax Legislative Counsel reviewing attorney: Harry Conaway (202) 566-6277.

Agency Contact: Michael Garvey, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-6212

RIN: 1545-AE01

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2504. DEFINITION OF "HIGHLY COMPENSATED EMPLOYEE" AND "COMPENSATION"

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; PL 99-514, Sec 1114 Tax Reform Act of 1986; PL 99-514, Sec 1115 Tax Reform Act of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations provide rules relating to the definitions of "highly compensation contained in subsections 414(q) and (s) of The Tax Reform Act of 1986.

Timetable:

Action	Date	FR Cite
NPRM	02/19/88	53 FR 4999
Final Action	12/31/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-128-86

Drafting attorney: Nancy J. Marks (202) 566-3935.

Reviewing attorney: Richard J. Wickersham (202) 566-4621.

Office of Legislative Counsel (Treasury reviewing attorneys: Harry S. Conaway (202) 566-6277.

Cross Reference to EE-74-87

Agency Contact: Nancy J. Marks, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3935

RIN: 1545-AH01

2507. JOINT AND SURVIVOR ANNUITIES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 417 Internal Revenue Code of 1986; 26 USC 401 (a) (11) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations will provide rules on how plans which intend to qualify under section 401 can comply with the qualified joint and survivor annuity rules added to the Code by the Retirement Equity Act of 1984. The regulations will deal with which plans must provide survivor annuities, in what forms the survivor annuities may be paid, the notice and election procedures for survivor annuities and restrictions on a plan's ability to cash out a participant and spouse.

Timetable:

Action	Date	FR Cite
NPRM	10/22/82	47 FR 47600
Final Action	10/31/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-94-84.

Drafting attorney: William D. Gibbs (202) 566-3060.

Reviewing attorney: Richard J. Wickersham (202) 566-4621.

Treasury attorney: Harry J. Conaway (202) 566-6277.

NPRM published under EE-52-78; contents of file transferred to EE-94-84.

Agency Contact: William D. Gibbs, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3060

RIN: 1545-AG72

2508. TAXABLE YEARS OF CERTAIN ENTITIES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 441 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations would provide guidance to S corporations, personal service corporations and partnerships, that must conform their taxable years, in general, to the taxable year of their owners.

Timetable:

Action	Date	FR Cite
NPRM	12/23/87	52 FR 48546
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-43-87

Drafting attorney: Arthur E. Davis III (202) 566-3236.

Reviewing attorney: Cynthia Clark (202) 566-3236.

Treasury accountant-advisor: Marc Levy (202) 535-6966.

Agency Contact: Arthur E. Davis III, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3236

RIN: 1545-AK53

2509. ● ELECTION OF TAXABLE YEAR OTHER THAN REQUIRED YEAR BY PARTNERSHIPS, S CORPORATIONS AND PERSONAL SERVICE CORPORATIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 444 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation provides guidance with respect to elections of taxable years other than the required taxable year by partnerships, S corporations and personal service corporations.

Timetable:

Action	Date	FR Cite
NPRM	05/27/88	53 FR 19715
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-53-88

Drafting attorney: Arthur Davis (202) 566-3236.

Reviewing attorney: Cynthia Clark (202) 566-3133.

Treasury accountant-advisor: Marc Levy (202) 535-6966.

13 Income taxes

Agency Contact: Arthur Davis, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, Washington, D.C. 20224, 202 566-3236

RIN: 1545-AL58

2510. LIMITATION OF THE USE OF THE CASH METHOD OF ACCOUNTING

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 448 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations would provide guidance to certain C Corporations, partnerships with a corporate partner and tax shelters prohibited from using the cash method of accounting.

Timetable:

Action	Date	FR Cite
NPRM	06/16/87	52 FR 22796
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-122-86.

Drafting attorney: Katherine L. Wambsgans (202) 566-3288.

Reviewing attorney: Cynthia Clark (202) 566-3330.

Treasury attorney: Thomas Evans (202) 566-3277.

Agency Contact: Katherine L. Wambsgans, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, DC 20224, 202 566-3288

RIN: 1545-AJ52

2511. ● NONACCRUAL-EXPERIENCE METHOD OF ACCOUNTING—CLARIFICATION OF AMOUNTS DETERMINED TO BE UNCOLLECTIBLE

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 448 (d) (5) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation project will clarify amounts determined to be uncollectible with respect to the nonaccrual-experience method of accounting under section 448 (d) (5).

Timetable:

Action	Date	FR Cite
Temporary Regulation	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-79-88

Drafting attorney: Katherine Wambsgans (202) 566-3288.

Reviewing attorney: Cynthia Clark (202) 566-3288.

Treasury attorney: Thomas Evans (202) 566-8277.

13 Income Tax

Agency Contact: Katherine Wambsgans, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3288

RIN: 1545-AM35

2512. ACCOUNTING FOR LONG-TERM CONTRACTS; CORPORATIONS FILING CONSOLIDATED RETURNS WITH A CONTRACTOR

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation provides rules for the manufacturer of components and subassemblies reasonably expected to be incorporated in the subject matter of an extended period long-term contract in the case of members of a consolidated group.

Timetable:

Action	Date	FR Cite
NPRM	01/06/86	51 FR 3
NPRM Comment Period End	03/07/86	51 FR 3
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: LR-121-85.

Drafting attorney: Paulette C. Galanko (202) 566-3288.

Reviewing attorney: John M. Fischer (202) 566-3394.

Office of Tax Legislative Counsel (Treasury) reviewing attorney: Thomas Evans (202) 566-4902.

Agency Contact: Paulette C. Galanko, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3288

RIN: 1545-AI19

2513. INCOME TAX-GENERAL RULES RELATING TO INSTALLMENT SALES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 453 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Treasury decision will provide general rules and rules for reporting contingent installment obligations.

Timetable:

Action	Date	FR Cite
NPRM	02/04/81	46 FR 10749
NPRM Comment Period End	04/06/81	46 FR 10749
Hearing	10/01/81	46 FR 40774
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-175-80.

Drafting attorney: Unassigned.

Reviewing attorney: Cynthia Clark (202) 566-3235.

Treasury attorney: Ellen Aprill (202) 566-2567.

Agency Contact: Unassigned, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3288

RIN: 1545-AB43

2514. INCOME TAX—INSTALLMENT OBLIGATIONS RECEIVED FROM A LIQUIDATING CORPORATION

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 453 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Proposal would provide rules for reporting gain in respect of installment obligations received as liquidating distributions from corporations under a plan of complete liquidation.

Timetable:

Action	Date	FR Cite
NPRM	01/13/84	49 FR 1742
NPRM Comment Period End	03/16/84	49 FR 1742
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-104-80.

Drafting attorney: Paulette C. Galanko (202) 566-3288.

Office of Tax Legislative Counsel (Treasury) reviewing attorney: Ellen Aprill (202) 566-5453.

Agency Contact: Paulette C. Galanko, Attorney, Department of the Treasury, Internal Revenue Service, 1111

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RIN: 1545-AH43

2515. INCOME TAX—INSTALLMENT OBLIGATIONS RECEIVED IN TRANSACTIONS IN WHICH GAIN OR LOSS IS GENERALLY NOT RECOGNIZED

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 453 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Proposal would provide rules for reporting installment obligations that are received as boot in certain exchanges in which gain is not generally recognized.

Timetable:

Action	Date	FR Cite
NPRM	05/03/84	49 FR 18866
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: LR-190-80.

Drafting attorney: Paulette C. Galanko (202) 566-3288.

Office of Tax Legislative Counsel (Treasury) reviewing attorney: Ellen Aprill (202) 566-5453.

Agency Contact: Paulette C. Galanko, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3288

RIN: 1545-AB44

2516. INCOME TAX—INSTALLMENT METHOD REPORTING BY DEALERS IN PERSONAL PROPERTY

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 453A Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Proposal would provide rules for installment method reporting by dealers in personal property.

Timetable:

Action	Date	FR Cite
NPRM	07/28/86	51 FR 26909
NPRM Comment Period End	09/29/86	
Final Action	12/01/88	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: LR-146-81.

Drafting attorney: Paulette C. Galanko (202) 566-3288.

Office of Tax Legislative Counsel (Treasury) reviewing attorney: Ellen Aprill (202) 566-5453.

Agency Contact: Paulette C. Galanko, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3288

RIN: 1545-AB47

2517. ◆ TRANSITIONAL RULE RELATING TO CERTAIN INSTALLMENT SALES BY MANUFACTURERS TO DEALERS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations provide guidance with respect to an exception from the general rules applicable to installment sales.

Timetable:

Action	Date	FR Cite
NPRM	07/12/88	53 FR 26279
Final Action	07/20/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-51-88

Drafting attorney: William L. Blagg (202) 566-3238.

Reviewing attorney: Cynthia L. Clark (202) 566-3288.

Treasury attorney: Marc Levy (202) 566-4902.

13 Income Taxes

Agency Contact: William L. Blagg, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3238

RIN: 1545-AL55

2518. INCOME TAX REGULATIONS—PART 1, INSTALLMENT SALE BY DEALERS IN PERSONAL PROPERTY

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 453A Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This project will provide rules relating to sales by dealers of personal property on the installment plan.

Timetable:

Action	Date	FR Cite
NPRM	07/28/86	51 FR 26903
NPRM Comment Period End	09/26/86	51 FR 26903
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: LR-141-83.

Drafting attorney: Paulette C. Galanko (202) 566-3288.

Office of Tax Legislative Counsel reviewing attorney: Ellen Aprill (202) 566-5453.

Agency Contact: Paulette C. Galanko, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3288

RIN: 1545-AJ71

2519. CERTAIN INDEBTEDNESS TREATED AS PAYMENT ON INSTALLMENT OBLIGATIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 453C Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations would provide guidance with respect to the requirement that certain indebtedness of a taxpayer be treated as a payment on certain installment obligations held by the taxpayer.

Timetable:

Action	Date	FR Cite
Temporary Regulation	10/02/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-93-86

Drafting attorney: William L. Blagg (202) 566-3238.

Reviewing attorney: Cynthia Clark (202) 566-3288.

Treasury attorney: Ellen Aprill (202) 566-2565.

Agency Contact: William L. Blagg, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3238

RIN: 1545-AJ27

2520. INCOME TAX—EXCLUSION FROM GROSS INCOME WITH RESPECT TO MAGAZINES, PAPERBACKS, AND RECORD RETURNS AFTER CLOSE OF TAXABLE YEAR

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 458 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation will provide rules on the exclusion from gross income of income attributable to the sale of magazines, paperbacks, or records that are returned.

Timetable:

Action	Date	FR Cite
NPRM	08/31/84	49 FR 34520
Final Action	12/31/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-155-76.

Drafting attorney: Katherine Lee Wambegans (202) 566-3288.

Agency Contact: Katherine Lee Wambegans, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3288

RIN: 1545-AB46

2521. TEMPORARY INCOME TAX REGULATIONS—THE ECONOMIC PERFORMANCE REQUIREMENT

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 461 (h) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations will provide guidance relating to when economic performance occurs with respect to a liability and how the recurring item exception applies.

Timetable:

Action	Date	FR Cite
Temporary Regulation	11/22/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-257-84.

Drafting attorney: Bill Blagg (202) 566-3238.

Reviewing attorney: Cynthia Clark (202) 566-3288.

Agency Contact: Bill Blagg, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3238

RIN: 1545-AH83

2522. INCOME TAX—LIMITATION ON DEDUCTIONS IN CASE OF FARMING SYNDICATES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 464 Internal Revenue Code of 1986; 26 USC 278 (b) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations would provide that enterprises which qualify as farming syndicates must deduct expenses for feed, seed fertilizer, etcetera, only when used or consumed and to capitalize certain cost of poultry. Furthermore, farming syndicates are to capitalize certain expenses of groves, orchards and vineyards to the extent such expenses are incurred before the grove, orchard or vineyard becomes productive.

Timetable:

Action	Date	FR Cite
NPRM	11/15/83	48 FR 51936
NPRM Comment Period End	01/16/84	48 FR 51936
Hearing	03/08/84	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-144-79.

Drafting attorney: Unassigned.

Reviewing attorney: Cynthia C. Clark (202) 566-3336.

Office of Tax Legislative Counsel (Treasury) reviewing attorney: Thomas Evans (202) 566-8277.

Agency Contact: Unassigned, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3288

RIN: 1545-AB51

2523. INCOME TAX—DETERMINATION OF AMOUNTS AT RISK WITH RESPECT TO CERTAIN ACTIVITIES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 465 Internal Revenue Code of 1986; PL 94-455, Sec 204 Tax Reform Act of 1976

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations would provide guidance to taxpayers for purposes of determining the amount the taxpayer is at risk in certain activities. This guidance is necessary because a taxpayer's deductions are limited to the amount the taxpayer is at risk in the activity. This at risk limit applies to most activities except the holding of real property and certain equipment leasing by closely-held corporations.

Timetable:

Action	Date	FR Cite
NPRM	08/05/79	44 FR 32235
NPRM Comment Period End	08/06/79	44 FR 32235
Hearing	09/27/79	44 FR 49701
Final Action	12/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-150-78.

Drafting attorney: Michael J. Grace (202) 566-3288.

Reviewing attorney: Cynthia L. Clark (202) 566-3336.

Treasury attorney: John H. Parcell (202) 535-0755.

Agency Contact: Michael J. Grace, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3288

RIN: 1545-AB52

2524. AGGREGATION OF CERTAIN ACTIVITIES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 465 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This temporary regulation will provide rules for aggregating certain activities for purposes of applying the at-risk rules under section 465. In general, the at-risk rules limit the amount of loss deductible in a taxable year with respect to an activity to the amount the taxpayer is at risk in the activity.

Timetable:

Action	Date	FR Cite
Temporary Regulation	12/01/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-135-85.

Drafting attorney: Arthur E. Davis III (202) 566-3238.

Reviewing attorney: Cynthia L. Clark (202) 566-3328.

Treasury attorney: John H. Parcell (202) 535-0953.

Agency Contact: Arthur E. Davis III, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3238

RIN: 1545-AJ41

2525. LIMITATIONS ON PASSIVE ACTIVITY LOSSES AND CREDITS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 469 (k) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

As an alternative to a no-rule position on this issue, the Service could publish a revenue procedure that contains the terms and conditions of a plan that must be.

Abstract: The proposed regulations address essential issues in connection with passive activity losses and credits.

Timetable:

Action	Date	FR Cite
NPRM	02/25/88	53 FR 5733
Hearing	06/28/88	
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-14-88

Drafting attorney: Michael Grace (202) 566-3285.

Reviewing attorney: Michael Grace (202) 566-3285.

Treasury attorney: John H. Parcell(202) 535-0953.

13 Income Tax

Agency Contact: Michael J. Grace, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave. N.W., Washington, D.C. 20224, 202 566-3285

RIN: 1545-AB28

2526. INCOME TAX--THREE-YEAR AVERAGING FOR INCREASES IN INVENTORY VALUE WHEN ELECTING LIFO METHOD OF ACCOUNTING

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 472 (d) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations would provide for three-year averaging for increases in inventory value when electing the LIFO method of accounting.

Timetable:

Action	Date	FR Cite
NPRM	02/10/83	48 FR 6134
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-254-81.

Drafting attorney: Arthur E. Davis III (202) 566-3238.

Agency Contact: Arthur E. Davis III, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3238

RIN: 1545-AE55

2527. SIMPLIFIED DOLLAR-VALUE LIFO METHOD FOR CERTAIN SMALL BUSINESSES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 6474 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations would provide guidance to certain small businesses that are eligible to elect a simplified dollar- value LIFO method of inventory valuation. This method requires the use of published government indexes.

Timetable:

Action	Date	FR Cite
Temporary Regulation	11/01/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-30-87

Drafting attorney: Arthur E. Davis III(202) 566-3238.

Reviewing attorney: Cynthia L. Clark (202) 566-3328.

Treasury accountant-advisor: Marc Levy (202) 535-0966.

Agency Contact: Arthur E. Davis III, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3238

RIN: 1545-AK05

2528. INCOME TAX--RULES CLARIFYING THE REGULATIONS WITH RESPECT TO THE COMPUTATION OF "GROSS INCOME" OF AN ELECTRIC COOPERATIVE

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 501 (c) (12) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations would provide that electric cooperatives would take into account costs of goods sold when determining income under the 85 percent member-income test.

Timetable:

Action	Date	FR Cite
NPRM	01/10/84	49 FR 1244
NPRM Comment Period End	03/12/84	49 FR 1244

Action	Date	FR Cite
Hearingheld 5/31/84	03/26/84	49 FR 1186
Final Action	12/31/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-17-81.

Drafting attorney: William D. Gibbs (202) 566-3430.

Reviewing attorney: Richard J. Wickersham (202) 566-3250.

Agency Contact: William D. Gibbs, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3430

RIN: 1545-AD99

2529. ® CONSENT DIVIDENDS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Cross-reference notice of proposed rulemaking concerning rules relating to section 565 to limit the availability of consent dividend procedure of section 565 to only those entities entitled to a dividend paid deduction under section 561.

Timetable:

Action	Date	FR Cite
NPRM	12/15/87	52 FR 47609
Final Action	01/01/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: INTL-313-87

Drafting attorney: David Bergkuist (202) 566-6457.

Reviewing attorney: T. Timothy Tuerff (202) 566-5886.

Treasury attorney: Mark Beams (202) 566-6275.

13 Income Taxes.

Agency Contact: David Bergkuist, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-6457

RIN: 1545-AL86

2530. INCOME TAX--LIMITATION ON ADDITIONS TO BANK LOSS RESERVES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 585 Internal Revenue Code of 1986; PL 97-34, Sec 273

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations would impose a requirement of a minimum addition to bad debt reserves of mutual savings banks in order to conform the treatment of these institutions to financial institutions described in section 585.

Timetable:

Action	Date	FR Cite
NPRM	12/19/83	48 FR 56083
NPRM Comment Period End	02/17/84	48 FR 56083
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-152-79.

Drafting attorney: Susan E. Overlander (202) 566-3458.

Reviewing attorney: Alice M. Bennett (202) 566-4473.

Agency Contact: Susan E. Overlander, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545-AD86

2531. INCOME TAX--SUPPLEMENTARY RULES ON LIMITATIONS ON PERCENTAGE DEPLETION FOR OIL & GAS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 613 (a) Internal Revenue Code of 1986; 26 USC 703 (a) Internal Revenue Code of 1986; 26 USC 705 (a) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations would clarify the circumstances under which percentage depletion will be available in the case of oil and gas wells.

Timetable:

Action	Date	FR Cite
NPRM	05/13/77	42 FR 24279
Hearing	08/31/78	
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-165-75.

Drafting attorney: Walter H. Woo (202) 566-3297.

Reviewing attorney: John B. Bromell (202) 566-3328.

Office of Tax Legislative Counsel (Treasury) reviewing attorney: Bryan Collins (202) 566-2175.

Agency Contact: Walter H. Woo, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3297

RIN: 1545-AB73

2532. INCOME TAX--TO CONFORM TO SEC 3 OF THE ACT OF 12/28/80

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 613A (c) (10) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation would provide guidance to taxpayers using the section 613A(c)(10) exception to the transfer rules under section 613A(c)(9). In general section 613A(c)(9) disallows percentage depletion to the transferee of proven oil or gas property. Section 613A(c)(10) relates to the transfer of qualified property by an individual to a qualified transferee corporation solely in exchange for stock.

Timetable:

Action	Date	FR Cite
NPRM	10/03/84	49 FR 39076
NPRM Comment Period End	12/03/84	49 FR 39076
Hearing	02/15/85	
Final Action	07/21/89	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: LR-55-81.

Drafting attorney: David R. Haglund (202) 566-3297.

Reviewing attorney: Walter H. Woo (202) 566-3297.

TREAS—IRS — Final Rule Stage

Office of Tax Legislative Counsel (Treasury) reviewing attorney: Bryan Collins (202) 566-2175.

Agency Contact: David R. Hagland, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3287

RIN: 1545-AB74

2531. INCOME TAX - APPLICATION OF EFFECTIVE DATE FOR NEW RULES REGARDING DEDUCTIONS FOR MEAL, TRAVEL, AND ENTERTAINMENT TO PARTNERSHIPS AND S CORPORATIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 702 Internal Revenue Code of 1986; 26 USC 1366 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations will provide guidance to taxpayers relating to the effective date for new rules regarding deductions for meals, travel, and entertainment to partnerships and S corporations.

Timetable:

Action	Date	FR Cite
NPRM	03/02/88	53 FR 6570
Final Action	10/31/88	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: LR-39-87

Drafting attorney: David R. Hagland (202) 566-3287.

Reviewing attorney: Walter Woo (202) 566-3297.

Office of Tax Legislative Counsel attorney: Marjorie Roberts (202) 566-3305.

Agency Contact: David R. Hagland, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3287

RIN: 1545-AI30

2534. TAXABLE YEARS OF CERTAIN PARTNERSHIPS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 706 (b) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations will provide rules for determining the appropriate taxable year for certain partnerships.

Timetable:

Action	Date	FR Cite
NPRM	12/29/87	52 FR 49030
Final Action	12/15/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-101-86.

Drafting attorney: Beverly A. Baughman (202) 566-3287.

Reviewing attorney: Walter H. Woo (202) 566-3297.

Treasury attorney: J. Richard Harvey (202) 566-3802.

Agency Contact: Beverly A. Baughman, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3287

RIN: 1545-AJ47

2535. MORTALITY AND MORBIDITY TABLES TO BE USED FOR INSURANCE PRODUCTS FOR WHICH THERE ARE NOT APPLICABLE COMMISSIONER'S TABLES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 807 (d) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This project will provide rules relating to the mortality and morbidity tables to be used in computing reserves for life insurance contracts for which there are no applicable Commissioner's standard tables.

Timetable:

Action	Date	FR Cite
NPRM	01/05/87	52 FR 3083
NPRM Comment Period End	03/03/87	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-71-86.

Drafting attorney: Sharon Hall (202) 566-3238.

Treasury attorney: Don Rocap (202) 566-8277.

Agency Contact: Sharon L. Hall, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3238

RIN: 1545-AK04

2536. INCOME TAX REGULATIONS-DIVERSIFICATION REQUIREMENTS FOR VARIABLE ANNUITY, ENDOWMENT, AND LIFE INSURANCE CONTRACTS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 817 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations will provide diversification requirements for variable annuity, endowment, and life insurance contracts. The testing of diversification for various periods and applicable effective dates.

Timetable:

Action	Date	FR Cite
NPRM	09/15/86	51 FR 32684
NPRM Comment Period End	11/14/86	51 FR 32684
Hearing	07/01/87	
Final Action	10/20/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-256-84.

Drafting attorney: Sharon L. Hall (202) 566-3238.

Reviewing attorney: Cynthia Clark (202) 566-3336.

Treasury attorney: Donald Rocap (202) 566-8277.

Agency Contact: Sharon L. Hall, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3238

RIN: 1545-AG70

2537. TREATMENT OF SALVAGE AND REINSURANCE IN DETERMINING LOSSES OF PROPERTY AND CASUALTY INSURANCE COMPANIES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 832 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

TREAS—IRS — Final Rule Stage

Abstract: The regulations will provide rules relating to the treatment of salvage and reinsurance recoverable in determining the paid and unpaid losses of property and casualty insurance companies.

Timetable:

Action	Date	FR Cite
NPRM	01/05/88	53 FR 153
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-83-87

Drafting attorney: Bill Blagg (202) 566-3238.

Reviewing attorney: Cynthia Clark (202) 566-3336.

Treasury attorney: Don Rocap (202) 566-8277.

Agency Contact: Bill Blagg, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, DC 20224, 202 566-3238

RIN: 1545-AK49

2538. TEMPORARY INCOME TAX REGULATIONS--DISCOUNTING OF UNPAID LOSSES OF PROPERTY AND CASUALTY INSURANCE COMPANIES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 846 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations will provide rules relating to the discounting of unpaid losses by property and casualty insurance companies. It is anticipated that the regulations will provide guidance with respect to the treatment of salvage and subrogation and the use of company's loss payment pattern.

Timetable:

Action	Date	FR Cite
Temporary Regulation	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-138-86.

Drafting attorney: Bill Blagg (202) 566-3238.

Reviewing attorney: Cynthia Clark (202) 566-3336.

Treasury attorney: Don Rocap (202) 566-8277.

Agency Contact: Bill Blagg, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, DC 20224, 202 566-3238

RIN: 1545-AK50

2539. APPORTIONMENT OF EXPENSES IN THE FSC AND DISC CONTEXTS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Proposal would provide guidance on how expenses in the DISC and FSC contexts will be apportioned.

Timetable:

Action	Date	FR Cite
NPRM	05/17/88	53 FR 17473
Final Action	12/01/88	

Small Entities Affected: None

Government Levels Affected: Federal

Additional Information: INTL-038-86

Drafting attorney: Richard Chewning (202) 566-3490.

Reviewing attorney: T. Timothy Tuerff (202) 566-9050.

Treasury attorney: Mark Beams (202) 566-8275.

Agency Contact: Richard Chewning, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3490

RIN: 1545-AK78

2540. ● CALIFORNIA FRANCHISE TAX AND SECTION 1.861-8 ALLOCATION

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 861 Internal Revenue Code of 1986; 26 USC 862 Internal Revenue Code of 1986; 26 USC 863 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Clarification of allocation of deduction for state income and franchise taxes. Provides guidance in situations not addressed by current examples in regulations.

Timetable:

Action	Date	FR Cite
Temporary Regulation	10/31/88	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: INTL-978-87

Drafting attorney: David F. Chan (202) 634-5011.

Reviewing attorney: T. Timothy Tuerff (202) 566-3491.

Treasury attorney: Peter Barnes (202) 566-3815.

13 Income Taxes.

Agency Contact: David F. Chan, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 634-5084

RIN: 1545-AM50

2541. ALLOCATION OF GROSS INCOME ATTRIBUTABLE TO INTEREST RATE SWAPS UNDER SECTION 863 (A)

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 863 (a) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This project provides source rules for income and expenses attributable to interest rate swap agreements. Interest rate swap agreements are basically agreements used to hedge against interest rate fluctuation.

Timetable:

Action	Date	FR Cite
Temporary Regulation	10/31/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-987-86

Drafting attorney: Charles T. Plambeck (202) 634-5406.

Reviewing attorney: Bob Katcher (20) 634-5406.

Treasury attorney: Peter Daub (202) 566-[illegible].

13 Income Taxes

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TREAS—IRS

Final Rule Stage

Agency Contact: Charles T. Plambeck, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 634-5486

RIN: 1545–AL26

2542. ◆ ALLOCATION AND APPORTIONMENT OF INTEREST EXPENSE AND CERTAIN OTHER EXPENSES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 864 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Temporary regulations providing rules for affiliated group allocation and apportionment of expenses other than interest that are not traceable to specific income producing activities or property of corporation.

Timetable:

Action	Date	FR Cite
Temporary regulation	10/30/88	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: INTL-876-86

Drafting attorney: Carl M. Cooper (202) 634-5400.

Reviewing attorney: Charles Saverude (202) 377-9060.

Treasury attorney: Mark Beams (202) 566-3564.

13 Income Taxes.

Agency Contact: Carl M. Cooper, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 634-5486

RIN: 1545–AM21

2543. TREATMENT OF RELATED PERSON FACTORING INCOME; CERTAIN INVESTMENTS IN UNITED STATES PROPERTY; AND STOCK REDEMPTIONS THROUGH RELATED CORPORATIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 864 (d) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations will provide rules relating to the treatment of income derived by foreign corporations from factoring the receivables of related persons.

Timetable:

Action	Date	FR Cite
NPRM	06/14/88	53 FR 22186
NPRM Comment Period End	08/15/88	53 FR 22186
Final Action	12/31/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-48-86.

Drafting attorney: Barbara Felker and Risa Lainoff (202) 634-5406 and (202) 566-6645.

Reviewing attorney: Phyllis Marcus (202) 566-6045.

Treasury attorney: Peter Daub (202) 566-2564.

Agency Contact: Barbara Allen Felker, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 634-5486

RIN: 1545–AH86

2544. ALLOCATION AND APPORTIONMENT OF EXPENSES

Significance: Regulatory Program

Legal Authority: 26 USC 861 (b) Internal Revenue Code of 1986; 26 USC 863 (b) Internal Revenue Code of 1986; 26 USC 864 (e) Internal Revenue Code of 1986; 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations provide rules relating to the allocation and apportionment of expenses, including interest expense for purposes of the foreign tax credit rules and other international tax provisions.

Timetable:

Action	Date	FR Cite
NPRM	09/11/87	52 FR 4580
NPRM Comment Period End	10/26/87	
Hearing	11/13/87	
Final Action	10/02/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-935-86

Drafting attorney: David Merrick (202) 566-6275.

Reviewing attorney: Charles Saverude (202) 377-9060.

Treasury attorney: Mark Beams (202) 566-6275.

13 Income Tax

Agency Contact: David Merrick, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-6276

RIN: 1545–AL21

2545. ◆ TEMPORARY REGULATIONS FOR SOURCE RULES FOR PERSONAL PROPERTY SALES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 865 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will provide temporary rules for determining the source of income from sales of personal property until final regulations may be promulgated.

Timetable:

Action	Date	FR Cite
Temporary regulation	10/31/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-356-88

Drafting attorney: Carol P. Tello (202) 634-5404.

Reviewing attorney: Robert E. Culbertson (202) 634-5404.

Treasury attorney: Mary Bennett (202) 566-2964.

13 Income Taxes.

Agency Contact: Carol P. Tello, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave. N.W., Washington, D.C. 20224, 202 634-5404

RIN: 1545–AL78

TREAS—IRS

Final Rule Stage

2546. ◆ EMPLOYMENT TAXES—APPLICATION OF REPEAL OF 30 PERCENT WITHHOLDING BY TAX REFORM ACT OF 1984

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 871 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1; 26 CFR 35a

Legal Deadline: None

Abstract: Temporary regulations providing rules enforcing the exclusion from portfolio interest of interest received by certain related parties.

Timetable:

Action	Date	FR Cite
Temporary regulation	12/31/88	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: INTL-921-87

Drafting attorney: Carl M. Cooper (202) 634-5404.

Reviewing attorney: Carol Doran Klein (202) 566-6419.

Treasury attorney: Peter Daub (202) 566-2564.

13 Employment Taxes.

Agency Contact: Carl M. Cooper, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitutuion Ave., N.W., Washington, D.C. 20224, 202 634-5486

RIN: 1545–AM29

2547. BRANCH PROFITS TAX (GENERAL RULE AND DEFINITIONS) AND SECOND LEVEL WITHHOLDING TAXES (TEMPORARY REGULATIONS)

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 884 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations will provide guidance on the calculation of the branch profits tax. The regulations will provide rules for the treatment of interest allocable to effectively connected income.

Timetable:

Action	Date	FR Cite
Temporary Regulation	08/31/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-879-86

Drafting attorney: Richard M. Elliott (202) 566-6457.

Reviewing attorney: Benedetta A. Kissel (202) 566-3179.

Treasury attorney: Peter Daub (202) 566-5791.

Agency Contact: Richard M. Elliott, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-6457

RIN: 1545–AJ77

2548. ◆ INCOME OF FOREIGN GOVERNMENTS AND INTERNATIONAL ORGANIZATIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 892 (c) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Notice of Proposed Rulemaking by Cross-reference to temporary regulations regarding the taxation of income of foreign governments and international organizations.

Timetable:

Action	Date	FR Cite
NPRM	06/27/88	53 FR 24100
NPRM Comment Period End	08/26/88	53 FR 24100
Final Action	06/01/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: INTL-265-86

Drafting attorney: David A. Juster (202) 566-6354.

Reviewing attorney: Bernard T. Bress (202) 566-6440.

Treasury attorney: Peter Daub (202) 566-2564.

13 Income Taxes.

Agency Contact: David A. Juster, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-6384

RIN: 1545–AL93

2549. INCOME TAX—PARTNERSHIP RULES REGARDING TAXATION OF FOREIGN INVESTMENT IN U.S. REAL PROPERTY INTERESTS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 897 (e) (2) Internal Revenue Code of 1986; 26 USC 897 (g) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation would provide rules for foreign partners to compute gain or loss on the sale or disposition of United States real property interests upon the sale of a partnership interest or a distribution in liquidation of a partnership interest.

Timetable:

Action	Date	FR Cite
Temporary Regulation	12/31/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-65-88

Drafting attorney: James Sams (202) 634-5404.

Reviewing attorney: Robert Culbertson (202) 634-5404.

Treasury attorney: David Crowe (202) 566-3791.

Agency Contact: James Sams, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 634-5404

RIN: 1545–AB98

2550. NOTICE OF PROPOSED RULEMAKING—NONRECOGNITION OF CORPORATE DISTRIBUTIONS AND REORGANIZATIONS UNDER THE FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 897 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Proposal would provide rules concerning the effect of certain distributions including dividends, redemptions, distributions pursuant to reorganizations, and liquidations on corporations and their shareholders

under the Foreign Investment in Real Property Tax Act. Proposal would also provide rules for determining the extent to which nonrecognition would apply to certain transfers of real property interests and the extent to which certain reorganizations will be treated as sales of property at fair market value.

Timetable:

Action	Date	FR Cite
NPRM	05/05/88	53 FR 15233
Final Action	01/31/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-401-87

Drafting attorney: Charles P. Besecky (202) 566-3319.

Reviewing attorney: Charles C. Saverude (202) 566-6008.

Treasury attorney: David Crowe (202) 566-6845.

Agency Contact: Charles P. Besecky, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3319

RIN: 1545-AE79

2551. CLARIFICATION OF TREATMENT OF SEPARATE LIMITATION LOSSES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; PL 99-514, Sec 1203

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Section 1233 of the Tax Reform Act of 1986 amends section 904 (f) by adding paragraph (5) at the end thereof which requires that foreign source losses with respect to any income category first offset the taxpayer's other foreign source income subject to a separate limitation for the taxable year on a proportionate basis before such losses offset the taxpayer's U.S. source income. Accordingly, the regulation will provide rules for the allocation of foreign source losses incurred in taxable years beginning before the effective date of the Tax Reform Act of 1986.

Timetable:

Action	Date	FR Cite
NPRM	05/17/88	53 FR 17472
Final Action	01/01/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: INTL-932-86

Drafting attorney: Willard W. Yates (202) 566-3805.

Reviewing attorney: Carol Doran-Klein (202) 566-6419.

Treasury attorney: Peter Barnes (202) 566-5815.

13 Income Taxes

Agency Contact: Willard W. Yates, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C., 202 566-3806

RIN: 1545-AL17

2552. INCOME TAX--TAXPAYER'S OBLIGATION TO FILE A NOTICE OF REDETERMINATION OF FOREIGN TAX AND CIVIL PENALTIES FOR FAILURE TO FILE

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 905 (c) Internal Revenue Code of 1986; 26 USC 6689 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1; 26 CFR 301; 26 CFR 602

Legal Deadline: None

Abstract: The regulations will establish procedures for taxpayers by which they must notify the Service of a change in foreign tax liability for a taxable year for which they claimed the foreign tax credit. The regulations provide special rules for redetermining the taxpayer's United States tax liability when the dollar value of the foreign currency fluctuates between the time for which the foreign tax credit is originally claimed and the time for which the foreign tax credit is redetermined. In addition, the regulations set forth deadlines for compliance with the notification requirements.

Timetable:

Action	Date	FR Cite
NPRM	05/23/88	53 FR 23659
Final Action	01/30/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-61-86

Drafting attorney: Eli J. Dicker (202) 566-3480.

Reviewing attorney: Carol Doran Klein (202) 566-6419.

Treasury attorney: David Crowe (202) 566-6791.

Agency Contact: Eli J. Dicker, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Room 5531, Washington, D.C. 20224, 202 566-6364

RIN: 1545-AC09

2553. FSC TRANSFER PRICING RULES, DISTRIBUTIONS, DIVIDENDS RECEIVED, DEDUCTION AND OTHER SPECIAL RULES FOR FSC

Significance: Regulatory Program

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 925 (b) (1) Internal Revenue Code of 1986; 26 USC 925 (b) (2) Internal Revenue Code of 1986; 26 USC 927 (d) (2) (B) Internal Revenue Code of 1986; 26 USC 927 (e) (1) to 927 (e) (2) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Proposal would provide rules for Application of the FSC Transfer Pricing Rules, Distributions, Dividends Received Deductions and Other Special FSC provisions.

Timetable:

Action	Date	FR Cite
NPRM	03/03/87	52 FR 6467
NPRM Comment Period End	05/02/87	52 FR 6467
Hearing	01/19/88	
Final Action	04/01/89	

Small Entities Affected: None

Government Levels Affected: Federal

Additional Information: INTL-155-86.

Drafting attorney: Richard Chewning (202) 566-3491.

Reviewing attorney: Carol Doran Klein (202) 566-3289.

Treasury attorney: D. Crowe (202) 566-6275.

Agency Contact: Richard Chewning, Attorney - Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3489

RIN: 1545-AH16

2554. INCOME TAX--DEFINITION OF QUALIFIED POSSESSION SOURCE INVESTMENT INCOME FOR PURPOSES OF PUERTO RICO & POSSESSION TAX CREDIT

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 936 (d) (2) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation would provide rules with respect to what constitutes qualified possession source investment income for purposes of the Puerto Rico and possession tax credit.

Timetable:

Action	Date	FR Cite
NPRM	01/21/86	51 FR 2726
Temporary Regulation	12/31/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-44-86

Drafting attorney: Philip L. Garlett (202) 566-6845.

Reviewing attorney: Christine Halphen (202) 377-9493.

Treasury attorney: Mary Bennett (202) 566-5815.

Agency Contact: Philip L. Garlett, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-6845

RIN: 1545-AC10

2555. CURRENT TAXATION OF FOREIGN OIL RELATED INCOME OF CONTROLLED FOREIGN CORPORATIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 954 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Proposal would define and interpret when foreign oil related income will be subject to current taxation under section 954 of the Internal Revenue Code of 1954. Changes to the applicable law were made by section 212 of the Tax Equity and Fiscal Responsibility Act of 1982.

Timetable:

Action	Date	FR Cite
NPRM	08/27/87	52 FR 32308
NPRM Comment Period End	10/26/87	
Final Action	12/01/88	

Small Entities Affected: None

Government Levels Affected: Federal

Additional Information: INTL-57-86.

Drafting attorney: Richard Chewning (202) 566-3490.

Reviewing attorney: Charles C. Saverude (202) 566-6845.

Treasury attorney: Peter Barnes (202) 566-5275.

Agency Contact: Richard Chewning, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3490

RIN: 1545-AE38

2556. ● SUBPART F DEFINITIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 954 Internal Revenue Code of 1986; 26 USC 957 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Definition of FPHC income. Particular issues include income equivalent to interest of property which does not give rise to income.

Timetable:

Action	Date	FR Cite
NPRM	07/21/88	53 FR 27532
Final Action	12/31/88	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: INTL-302-86

Drafting attorney: Rise M. Lainoff (202) 566-6645.

Reviewing attorney: Phyllis Marcus (202) 566-6645.

Treasury attorney: Peter Daub (202) 566-2804.

13 Income Taxes.

Agency Contact: Rise M. Lainoff, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-6645

RIN: 1545-AM15

2557. FUNCTIONAL CURRENCY

Legal Authority: 26 USC 7805 Internal Revenue Code Of 1986; 26 USC 985 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This project provides rules for determining the currency an entity will compute gain or loss. If the entity is a foreign entity, it may be allowed to compute its gain or loss in a foreign currency and translate the net amount of such gain or loss into U.S. dollars.

Timetable:

Action	Date	FR Cite
NPRM	06/03/88	53 FR 20337
Final Action	12/31/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-963-86

Drafting attorney: David Rosenberg (202) 634-5406.

Reviewing attorney: Bob Katcher (202) 634-5406.

Treasury attorney: David Crowe (202) 566-5791.

13 Income Taxes

Agency Contact: David Rosenberg, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 634-5406

RIN: 1545-AL38

2558. ● PROFIT AND LOSS TRANSITION RULES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 787 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This project provides transition rules for those foreign branches of United States entities who used a profit and loss method of accounting prior to the enactment of the Tax Reform Act of 1986.

Timetable:

Action	Date	FR Cite
Temporary regulation	12/31/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: INTL-382-88

Drafting attorney: David Rosenberg (202) 634-5406.

Reviewing attorney: Robert Katcher (202) 634-5406.

Treasury attorney: David Crowe (202) 634-5791.

13 Income Taxes.

Agency Contact: David Rosenberg, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 634-5406

RIN: 1545-AM14

2559. ◆ DEFINITION OF A QUALIFIED BUSINESS UNIT

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 989 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Certain foreign operations of a United States person or foreign corporation may have a functional currency other than the United States dollar if such operations satisfy the requirements for a qualified business unit.

Timetable:

Action	Date	FR Cite
NPRM	06/06/88	53 FR 20650
Final Action	12/31/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-963-86

Drafting attorney: Carl M. Cooper (202) 634-5406.

Reviewing attorney: Robert Katcher (202) 634-5406.

Treasury attorney: David Crowe (202) 566-5791.

13 Income taxes.

Agency Contact: Carl M. Cooper, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 634-5406

RIN: 1545-AM21

2560. TRANSITION RULE FOR QUALIFIED BUSINESS UNITS USING A NET WORTH METHOD OF ACCOUNTING FOR TAXABLE YEARS BEGINNING BEFORE JANUARY 1, 1987

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 989 (c) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This project provides transition rules for those foreign branches of United States entities who used a net worth method of accounting prior to the enactment of the Tax Reform Act of 1986. Under the Act, foreign branches must now account for their operations under the profit and loss method as set forth in section 987 of the Code.

Timetable:

Action	Date	FR Cite
NPRM	06/06/88	53 FR 20651
Final Action	12/31/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-964-86

Drafting attorney: David Rosenberg (202) 634-5406.

Reviewing attorney: P. Ann Fisher (202) 566-6079.

Treasury attorney: David Crowe (202) 566-3791.

13 Income Taxes

Agency Contact: David Rosenberg, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 634-5406

RIN: 1545-AL20

2561. PROPOSED INCOME TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1984 RELATING TO INTEREST CHARGE DISCS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 995 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The Regulations will provide guidance relating to the Interest Charge imposed on DISC shareholders for taxable years ending after 1984. The regulations will explain how the Deemed Distribution is computed and how the Interest Charge is computed.

Timetable:

Action	Date	FR Cite
NPRM	02/02/87	52 FR 3256
Final Action	12/31/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-943-86

Drafting attorney: Joseph M. Rosenthal (202) 566-5872.

Reviewing attorney: Jacob Feldman (202) 566-3289.

Treasury attorney: Jane Saroody (202) 566-3170.

Agency Contact: Joseph M. Rosenthal, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3672

RIN: 1545-AG71

2562. INCOME TAX—TRANSFERS OF SECURITIES UNDER CERTAIN AGREEMENTS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 1058 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations would provide that so long as the provisions of section 1058 and these regulations are met, the lender will neither recognize gain or loss on the transfer of securities nor upon the return of identical securities.

Timetable:

Action	Date	FR Cite
NPRM	07/26/83	48 FR 33912
NPRM Comment Period End	09/26/83	48 FR 33912
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-162-78.

Drafting attorney: Arthur E. Davis III (202) 566-3238.

Reviewing attorney: Cynthia L. Clark (202) 566-3336.

Agency Contact: Arthur E. Davis III, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3238

RIN: 1545-AC20

2563. CUSTOMS LIMITATION ON TAXPAYER'S BASIS IN PROPERTY IMPORTED FROM RELATED PERSONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Prior to the Tax Reform Act of 1986 importers could claim a transfer price for customs purposes that was too low to be consistent with the price they claim for income tax purposes. Section 1248 of the Tax Reform Act of 1986 addressed this problem by enacting Section 1059A of the Internal Revenue Code, under which importers cannot claim a transfer price for income tax purposes that is higher than would be consistent with the value they claim for customs purposes. Regulations will be needed to provide rules for coordinating customs and tax valuation principles. It is anticipated that as a result of Section 1059A of the Internal Revenue Code, some taxpayers will claim higher transfer prices for customs purposes. No estimate has been made of the revenue.

Timetable:

Action	Date	FR Cite
NPRM	09/03/87	52 FR 33427
NPRM Comment Period End	11/02/87	
Final Action	11/01/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-960-86

Drafting attorney: W. Edward Williams (202) 287-4851.

Reviewing attorney: George Sellinger (202) 287-4851.

Treasury attorney: Stephen Shay (202) 566-5045.

Agency Contact: W. Edward Williams, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 950 L'Enfant Plaza South, S.W., Room 3319, Washington, D.C. 20024, 202 287-4851

RIN: 1545-AJ92

2564. INCOME TAX—SPECIAL ALLOCATION RULES FOR CERTAIN ASSET ACQUISITIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 1060 Internal Revenue Code of 1986; 26 USC 755 Internal Revenue Code of 1986; 26 USC 338 Internal Revenue Code of 1986; 26 USC 167 Internal Revenue Code of 1986; 26 USC 1031 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will explain and illustrate the application of the residual method of allocation to the purchase price in certain asset acquisitions. It will also provide certain informational reporting requirements.

Timetable:

Action	Date	FR Cite
NPRM	07/18/88	53 FR 27053
Final Action	12/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-119-86.

Drafting attorney: Judith C. Winkler (202) 566-3458.

Reviewing attorneys: Patricia W. Pellervo (202) 566-3458 and Charles Whedbee (202) 566-3458.

Treasury attorney: Kathleen Ferrell (202) 566-2175.

Agency Contact: Judith C. Winkler, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545-AJ06

2565. INCOME TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1984 RELATING TO MIXED STRADDLES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 1092 (b) (1) Internal Revenue Code of 1986; 26 USC 1092 (b) (2) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations will provide rules relating to mixed straddles. The regulations will explain the application of the straddle-by-straddle identification rules of mixed straddles and the establishment of mixed straddle accounts.

Timetable:

Action	Date	FR Cite
NPRM	01/24/85	50 FR 3351
NPRM Comment Period End	03/25/85	50 FR 3351
Hearing	05/02/85	
Final Action	10/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-250-84

Drafting attorney: Timothy J. McKenna (202) 566-3287.

Reviewing attorney: John M. Fischer (202) 566-3394.

Treasury attorney: Kathleen Ferrell (202) 566-2175.

Agency Contact: Timothy J. McKenna, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3287

RIN: 1545-AH89

2566. INCOME TAX REGULATIONS UNDER THE ECONOMIC RECOVERY TAX ACT OF 1981 AND THE TAX REFORM ACT OF 1984, RELATING TO STRADDLES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 1092 (b) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations will provide rules relating to tax straddles. The regulations will explain the general loss deferral rule under section 1092, and the application of rules similar to section 1091 and 1233 to straddles.

Timetable:

Action	Date	FR Cite
NPRM	01/24/85	50 FR 3352
NPRM Comment Period End	03/25/85	50 FR 3352
Hearing	05/02/85	
Final Action	10/00/89	

Small Entities Affected: None

TREAS—IRS Final Rule Stage

Government Levels Affected: None

Additional Information: LR-207-84.

Drafting attorney: Timothy J. McKenna (202) 566-3287.

Reviewing attorney: John M. Fischer (202) 566-3394.

Treasury attorney: Kathleen Ferrell (202) 566-2175.

Agency Contact: Timothy J. McKenna, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3287

RIN: 1545-AH00

2567. ® GAINS FROM CERTAIN SALES OR EXCHANGES IN CERTAIN FOREIGN CORPORATIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Temporary regulations that amend the regulations under section 1248 to partially suspend the application of section 1248(e) and to limit the application of section 1248(f) to those situations in which gain is not required.

Timetable:

Action	Date	FR Cite
Temporary regulation	01/01/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: INTL-039-87

Drafting attorney: David Bergkuist (202) 566-6457.

Reviewing attorney: Charles Severude (202) 377-9591.

Treasury attorney: Unassigned.

11 Income Taxes.

Agency Contact: David Bergkuist, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-6457

RIN: 1545-AL69

2568. INCOME TAX--GAIN FROM DISPOSITION OF INTEREST IN OIL OR GAS PROPERTY

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 1254 Internal Revenue Code of 1986; 26 USC 751 Internal Revenue Code of 1986; PL 94-455, Sec 205 Tax Reform Act of 1976; PL 94-455, Sec 1901 Tax Reform Act of 1976; PL 95-618, Sec 402 Energy Tax Act of 1978

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations will determine the tax treatment of gain from the disposition of certain oil, gas, or geothermal property to determine how much of the gain from the disposition is subject to recapture under section 1254 and accorded ordinary income treatment. The regulations also will define intangible drilling and development costs, disposition, and oil, gas and geothermal property for purposes of section 1254.

Timetable:

Action	Date	FR Cite
NPRM	08/11/80	45 FR 39512
NPRM Comment Period End	08/11/80	45 FR 39512
Hearing	09/09/80	
Final Action	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-276-76.

Drafting attorney: Robert Beatson (202) 566-3450.

Reviewing attorney: John M. Coulter, Jr. (202) 566-3331.

Treasury attorney: Barksdale Penick (202) 535-0904.

Agency Contact: Robert Beatson, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3450

RIN: 1545-AC38

2569. HEDGING EXCEPTION TO MARK-TO-MARKET RULES FOR SECTION 1256 CONTRACTS, DEFERRAL OF CERTAIN STRADDLE LOSSES, AND WASH-SALE AND SHORT-SALE PRINCIPLES APPLICABLE TO CERTAIN STRADDLE TRANSACTIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 1256 (e) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations will provide rules relating to the hedging transaction exception for section 1256 contracts and straddles.

Timetable:

Action	Date	FR Cite
Temporary Regulation	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-10-85.

Drafting attorney: Timothy J. McKenna (202) 566-3287.

Reviewing attorney: John M. Fischer (202) 566-3394.

Treasury attorney: Kathleen Ferrell (202) 566-2028.

Agency Contact: Timothy J. McKenna, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., NW, Washington, DC 20224, 202 566-3287

RIN: 1545-AJ72

2570. REGULATIONS UNDER SECTION 1271 THROUGH 1275 RELATING TO TAX TREATMENT OF DEBT INSTRUMENTS HAVING ORIGINAL ISSUE DISCOUNT

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 1275 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Regulations would provide guidance as to computation of amount to be included in income by holders and amount to be deducted by issuers of certain bonds issued after July 1, 1982. With respect to these bonds, original issue discount is computer based on constant interest annual. Guidance is also provided as to the computation of original issue discount in special circumstances where the bond contains a variable interest rate, where put and call options are present, and in other circumstances.

Timetable:

Action	Date	FR Cite
NPRM	05/09/86	51 FR 12022
Hearing	11/17/86	51 FR 24162
Final Action	12/31/88	

Small Entities Affected: None

Government Levels Affected: None

TREAS—IRS Final Rule Stage

Additional Information: LR-110-84.

Drafting attorney: Laura Ann M. Lauritzen (202) 566-3458.

Reviewing attorney: Susan T. Baker (202) 566-3294.

Treasury attorney: Reed Shuldiner (202)-566-2175.

Agency Contact: Laura Ann M. Lauritzen, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545-AH46

2571. PASSIVE FOREIGN INVESTMENT COMPANIES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 1295 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Provide guidance to passive foreign investment companies and their shareholders that are United States about the time, manner and other requirements for making certain elections.

Timetable:

Action	Date	FR Cite
NPRM	05/05/86	51 FR 16731
Final Action	12/31/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-941-86

Drafting attorney: Gayle Novig (202) 634-5924.

Reviewing attorney: T. Timothy Tuerff (202) 566-5906.

Treasury attorney: Mary Bennett (202) 566-5992.

Income taxes.

Agency Contact: Gayle Novig, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 634-5404

RIN: 1545-AI33

2572. INCOME TAX--DEFINITION OF S CORPORATION

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 1361 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations would address the following matters: (1) the number of permitted shareholders of a small business corporation, (2) the types of trusts that are permitted to be shareholders of a small business corporation, (3) whether shares are permitted to be owned as a split interest and (4) the rules relating to corporations that are ineligible to be an S corporation.

Timetable:

Action	Date	FR Cite
NPRM	10/07/87	51 FR 35659
NPRM Comment Period End	12/06/87	
Final Action	12/31/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-262-82.

Drafting attorney: Joel S. Rutstein (202) 566-3297.

Reviewing attorney: Walter H. Woo (202) 566-3297.

Office of Tax Legislative Counsel (Treasury) reviewing attorney: Bryan Collins (202) 566-2175.

Agency Contact: Joel S. Rutstein, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3297

RIN: 1545-AE28

2573. TEMPORARY REGULATION--APPLICATION OF SECTION 1374 BUILT-IN GAIN TAX TO C CORPORATION'S ELECTING S CORPORATION STATUS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 1374 Internal Revenue Code of 1986; 26 USC 337 (d) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Regulations will provide ruling relating to the section 1374 built-in gains tax to C corporations electing S corporation status

Timetable:

Action	Date	FR Cite
Temporary Regulation	11/12/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information:

LR-6-87.

Drafting attorney: Mark S. Jennings (202) 566-3458.

Reviewing attorney: Robert J. Mason (202) 566-3463.

Agency Contact: Mark S. Jennings, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545-AK01

2574. INCOME TAX--CERTAIN ELECTIONS UNDER THE SUBCHAPTER S REVISION ACT OF 1982

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 1361 Internal Revenue Code of 1986; 26 USC 1362 Internal Revenue Code of 1986; 26 USC 1377 Internal Revenue Code of 1986; 26 USC 1378 Internal Revenue Code of 1986; 26 USC 1379 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations relate to the time and manner of making certain elections, consents, and refusals under the Subchapter S Revision Act of 1982 and to the taxable year which a corporation may select in order to make the election to be an S corporation.

Timetable:

Action	Date	FR Cite
NPRM	01/26/83	48 FR 03637
NPRM Comment Period End	03/28/83	48 FR 03637

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-1-83.

Drafting attorney: Walter H. Woo (202) 566-3297.

Reviewing attorney: Walter H. Woo (202) 566-3297.

Office of Tax Legislative Counsel (Treasury) reviewing attorney: Bryan Collins (202) 566-2175.

Agency Contact: Walter H. Woo, Attorney, Department of the Treasury, Internal Revenue Service, 1111

Constitution Ave., N.W., Washington, D.C. 20224, [illegible]

RIN: 1545-AF91

2575. APPLICATIONS FOR EXEMPTION FROM SELF-EMPLOYMENT TAXES FOR MINISTERS, ETC

Legal Authority: 26 USC 1402 (e) Internal Revenue Code of 1986; 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will provide guidance with respect to applications for exemption from self-employment taxes under section 1402 (e) for ministers, members of a religious order and Christian Science practitioners.

Timetable:

Action	Date	FR Cite
NPRM	04/15/87	52 FR 12194
NPRM Comment Period End	06/15/87	52 FR 12194
Final Action	12/31/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-154-86

Drafting attorney: Robert E. Shaw (202) 566-3287.

Reviewing attorney: John Bromell (202) 566-3287.

Treasury attorney: Harry Conaway (202) 566-3277.

Agency Contact: Robert E. Shaw, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, DC 20224, [illegible]

RIN: 1545-AJ94

2576. WITHHOLDING ON ITEMS OF INCOME COVERED BY AN INCOME TAX CONVENTION

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1; 26 CFR 301

Legal Deadline: None

Abstract: These regulations relate to the withholding on certain items of income subject to a reduced rate of, or exemption from, U.S. tax under an income tax convention to which the United States is a party. These regulations would amend the existing regulations to provide a certification requirement for obtaining reduced rates of, or exemption from, U.S. withholding tax on payments of fixed or determinable annual or periodical income and certain other income.

Timetable:

Action	Date	FR Cite
NPRM	09/10/84	49 FR 35511
NPRM Comment Period End	11/09/84	49 FR 35511
Final Action	12/31/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-41-85

Drafting attorney: Lilo A. Hester (202) 566-5562.

Reviewing attorney: Michael F. Patton (202) 566-5562.

Treasury attorney: Peter Daub (202) 566-3811.

Agency Contact: Lilo Alfreida Hester, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 950 L'Enfant Plaza South, S.W., Suite 3319, Washington, DC 20024, 202 287-4951

RIN: 1545-AH86

2577. TEMPORARY REGULATION ON WITHHOLDING TAX ON PAYMENTS FROM PARTNERSHIPS TO FOREIGN PARTNERS

Significance: Agency Priority

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 1446 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation explains when withholding is required under section 1446, how and when the amounts withheld are to be reported and paid over to the Internal Revenue Service, and when the taxpayer is to credit the tax withheld against its U.S. income tax liability or apply for a refund significant policy issues tax involved.

Timetable:

Action	Date	FR Cite
Temporary Regulation	01/31/89	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: INTL-038-86

Drafting attorney: David F.Chan (202) 634-5404.

Reviewing attorney: Robert E. Culbertson, Jr. (202) 634-5401.

Treasury attorney: David Crowe (202) 566-3701.

13 Income Taxes

Agency Contact: David F. Chan, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attn: CC:INTL, Room 3042, 202 634-5404

RIN: 1545-AL52

2578. INCOME TAX—CREDIT & DEDUCTIONS ETC., FOR CONSOLIDATED RETURNS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 1502 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Provision would amend the consolidated returns regulations to clarify, among other things, the rules relating to net operating loss carrybacks of a member of an affiliated group filing consolidated returns to a year in which the member was not in existence, thereby giving the public needed guidance on what the rule is in that situation.

Timetable:

Action	Date	FR Cite
NPRM	07/31/84	49 FR 30528
NPRM Comment Period End	10/01/84	
Hearing	12/10/84	
Final Action	12/31/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-97-79.

Drafting attorney: Judith C. Winkler (202) 566-3456.

Reviewing attorney: Robert J. Mason (202) 566-3463.

Office of Tax Legislative Counsel (Treasury) reviewing attorney: Thomas Wessel (202) 566-2928.

Agency Contact: Judith C. Winkler, Attorney, Department of the Treasury, Internal Revenue Service, 1111

Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545-AC48

2579. INVESTMENT ADJUSTMENTS UNDER THE CONSOLIDATED RETURN REGULATIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 1502 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Provision would amend the consolidated return investment adjustment rules by changing the computation of earnings and profits where section 312 (k), (l), (m), or (n) applies.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-15-81.

Drafting attorney: Judith C. Winkler (202) 566-3458.

Reviewing attorney: John Broadbent (202) 566-3458.

Agency Contact: Judith C. Winkler, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224, 202 566-3458

RIN: 1545-AI36

2580. TEMPORARY REGULATIONS-CONSOLIDATED RETURN INVESTMENT ADJUSTMENTS WITH RESPECT TO AN ACQUIRED SUBSIDIARY'S BUILT-IN GAINS OR LOSSES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 1502 Internal Revenue Code of 1986; 26 USC 337 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Regulations will prevent the consolidated return investment adjustments from reflecting the recognized built-in gains or losses of assets acquired in certain corporate acquisitions.

Timetable:

Action	Date	FR Cite
Temporary Regulation	12/30/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information:

LR-4-87.

Drafting attorney: Mark S. Jennings (202) 566-3458.

Reviewing attorney: John Broadbent (202) 566-3458.

Agency Contact: Mark S. Jennings, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545-AK95

2581. ● CONSOLIDATED RETURN REGULATIONS; ADJUSTMENT ON DISPOSITION OF STOCK OF SUBSIDIARY

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 1502 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation provides revision of section 1.1502-32 to alleviate the problems that occur when a subsidiary is deconsolidated and the consent dividend election is not available to the consolidated group.

Timetable:

Action	Date	FR Cite
NPRM	03/14/88	53 FR 8773
NPRM Comment Period End	05/13/88	53 FR 8773
Final Action	12/30/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-23-86

Drafting attorney: Judith Winkler (202) 566-3458.

Reviewing attorney: John Broadbent (202) 566-3458.

Treasury attorney: Bryan Collins (202) 566-2175 and Thomas Wessel (202) 566-2927.

13 Income Tax

Agency Contact: Judith Winkler, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545-AL52

2582. ● ADJUSTMENT REFLECTING A RESTRUCTURING OF A CONSOLIDATED GROUP

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 1502 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation provides rules for determining the basis and the earnings and profits of members of a consolidated group following certain changes in the structure of the group, where the group remains in existence. This regulation also provides for alternative agents of the group if the common parent ceases to be the common parent.

Timetable:

Action	Date	FR Cite
Temporary Regulation	12/30/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-12-88

Drafting attorney: Judith Winkler (202) 566-3458.

Reviewing attorney: John Broadbent (202) 566-3458.

Treasury attorney: Thomas Wessel (202) 566-2927 and Bryan Collins (202) 566-2175.

13 Income Tax

Agency Contact: Judith Winkler, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545-AL61

2583. ● AMENDMENT OF CONSOLIDATED RETURN REGULATIONS REGARDING DEFERRAL OF GAIN OR LOSS ON COMPLETE LIQUIDATIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 1502 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

TREAS—IRS

Final Rule Stage

Abstract: The regulations will provide guidance relating to the treatment of gain recognized upon complete liquidations of corporations in a consolidated group.

Timetable:

Action	Date	FR Cite
NPRM	04/18/88	53 FR 12705
NPRM Comment Period End	06/17/88	53 FR 12705
Final Action	10/01/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-47-88

Drafting attorney: Patricia W. Pellervo (202) 566-3458.

Reviewing attorney: Charles M. Whedbee (202) 566-3458.

Treasury attorney: Thomas Wessel (202) 566-3275.

13 Income Tax

Agency Contact: Patricia W. Pellervo, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545-AI53

2284. ● AMENDMENT OF CONSOLIDATED RETURN REGULATIONS TO ADDRESS TREATMENT OF CERTAIN ORGANIZATIONS WHOSE TAX-EXEMPT STATUS WAS REVOKED BY THE TRA86 ACT

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 1502 Internal Revenue Code of 1986; 26 USC 833 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations will specify the consolidated return ramifications of the revocation of the tax-exempt status of certain organizations by section 833 of the Tax Reform Act of 1986.

Timetable:

Action	Date	FR Cite
Temporary Regulation	12/31/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-87-86

Drafting attorney: Patricia W. Pellervo (202) 566-3458.

Reviewing attorney: Robert J. Mason (202) 566-3403.

13 Income Tax

Agency Contact: Patricia W. Pellervo, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545-AL84

2285. ● CONSOLIDATED INVESTMENT CREDIT

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 1502 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1.1502-3 (f) (2)

Legal Deadline: None

Abstract: Section 47 (a) (1) of the Internal Revenue Code and the regulations thereunder provide the general rule that if section 38 property is disposed of there shall be recapture of investment credit. Section 1.1502-3 (f) (2) provides an exception to that rule for the transfer of section 38 property between members of an affiliated group; such a transfer will not cause a disposition within the meaning of section 47 (a) (1). This exception is premised on treating the affiliated group, for investment tax credit purposes, as a single entity that continues to own the property after the transfer. Such a premise is not justified, and the exception does not apply, if at the time of the transfer there is an intent that the property subsequently leave the group in a transaction described in section 1.1502-13 (f). See Rev. Rul. 82-20, 1982-1 CB 6. In such a case, recapture is appropriate. The regulation will amend section 1.1502-3 (f) (2) to make this explicit.

Timetable:

Action	Date	FR Cite
Temporary Regulation	12/31/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-85-88

Drafting attorney: Claire Toth (202) 566-3354.

Reviewing attorney: John Broadbent (202) 566-3458.

13 Income tax

Agency Contact: Claire Toth, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3354

RIN: 1545-AM35

2286. ● TREATMENT OF DIVIDEND DISTRIBUTIONS AFTER THE SALE OF A SUBSIDIARY

Legal Authority: 26 USC 7805 Internal Revenue Code of1986; 26 USC 1502 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1.1502-32(T)

Legal Deadline: None

Abstract: When a subsidiary declares a dividend while a member of a consolidated group, but pays the dividend after disaffiliation from the consolidated group, the basis of the subsidiary's stock is not reduced by the amount of the dividend. The problem is caused by a difference in timing of the two events in (payment of dividend and declaration of dividend) and its effect on earnings and profits and basis. This regulation will alleviate the problem by providing that basis of the subsidiary's stock will be reduced when the subsidiary declares a dividend.

Timetable:

Action	Date	FR Cite
Temporary Regulation	12/31/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-81-88

Drafting attorney: Judith Winkler (202) 566-3456.

Reviewing attorney: John Broadbent (202) 566-3458.

Treasury attorney: Bryan Collins (202) 566-2175.

13 Income tax

Agency Contact: Judith Winkler, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545-AM36

TREAS—IRS

Final Rule Stage

2287. DUAL RESIDENT COMPANIES LIMITATION ON CONSOLIDATED LOSSES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 1503(d) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: If a U.S. Corporation is subject to a foreign country's tax on worldwide income, or on a residence basis as opposed to a source basis, any taxable loss it incurs cannot reduce the taxable income of any other member of a U.S. affiliated group for any other taxable year. Where a corporation is subject to foreign tax on a residence basis, then for U.S. purposes, its loss will be available to offset income of that corporation in other years, but not income of another U.S. Corporation. Regulations may exempt a U.S. corporation from this rule to the extent that its losses do not offset the income of foreign corporations for foreign tax purposes.

Timetable:

Action	Date	FR Cite
Temporary Regulation	12/31/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-961-86

Drafting attorney: Ries M. Lainoff (202) 566-6645.

Reviewing attorney: Christine Halphen (202) 566-6645.

Treasury attorney: David Crowe (202) 566-8275.

Agency Contact: Ries Lainoff, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-6645

RIN: 1545-AJ54

2288. CROSS-REFERENCE—ALASKA NATIVE CORPORATIONS; REQUIREMENTS FOR AFFILIATION IN ORDER TO FILE A CONSOLIDATED RETURN

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 1504 Internal Revenue Code of 1986; 26 USC 1502 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Proposal will provide rules relating to the affiliated requirements of Alaska Native Corporations with certain other corporations in order to file a consolidated return.

Timetable:

Action	Date	FR Cite
NPRM	03/18/87	52 FR 8471
Final Action	12/29/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information:

LR-23-87.

Drafting attorney: Mark S. Jennings (202) 566-3458.

Reviewing attorney: John Broadbent (202) 566-3458.

Agency Contact: Mark S. Jennings, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545-AK86

2289. ESTATE & GIFT TAXES—INCLUSION OF STOCK IN ESTATE WHERE DECEDENT RETAINED VOTING RIGHTS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 2036 (a) Internal Revenue Code of 1986

CFR Citation: 26 CFR 20

Legal Deadline: None

Abstract: These regulations will provide the extent to which the retention of voting rights by a transferor of stock will require that the value of that stock be included in the transferor's gross estate.

Timetable:

Action	Date	FR Cite
NPRM	06/03/83	48 FR 35143
NPRM Comment Period End	11/03/83	48 FR 35143
Final Action	12/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-141-76.

Drafting attorney: Fred E. Grundeman (202) 566-3287.

Reviewing attorney: Ada S. Rousso (202) 566-3287.

Office of Tax Legislative Counsel (Treasury) reviewing attorney: Susan Himes (202) 566-8527.

Agency Contact: Fred E. Grundeman, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3287

RIN: 1545-AC83

2290. ESTATE AND GIFT TAXES—INCREASE IN LIMITATIONS ON MARITAL DEDUCTIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 2012 Internal Revenue Code of 1986; 26 USC 2014 Internal Revenue Code of 1986; 26 USC 2055 Internal Revenue Code of 1986; 26 USC 2056 Internal Revenue Code of 1986; 26 USC 2207A Internal Revenue Code of 1986; 26 USC 2519 Internal Revenue Code of 1986; 26 USC 2523 Internal Revenue Code of 1986; 26 USC 6019 Internal Revenue Code of 1986

CFR Citation: 26 CFR 20; 26 CFR 25

Legal Deadline: None

Abstract: These regulations will clarify the estate and gift tax treatment of transfers of property between spouses. They will provide how an executor may elect to treat certain property as qualified terminable interest property, in which case the imposition of transfer taxes will be delayed until the latter of (1) the surviving spouse's disposition of an interest in the property or (2) the surviving spouse's death.

Timetable:

Action	Date	FR Cite
NPRM	05/21/84	49 FR 21350
NPRM Comment Period End	07/20/84	49 FR 21350
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-211-76.

Drafting attorney: Christopher J. Wilson (202) 566-4336.

Reviewing attorney: Fredric E. Grundeman (202) 566-3287.

Office of Tax Legislative Counsel (Treasury) reviewing attorney: Susan Himes (202) 566-8527.

Agency Contact: Christopher J. Wilson, Attorney-Advisor, Department of the

TREAS—IRS

Final Rule Stage

Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-4336

RIN: 1545-AC87

2581. ESTATE TAX—GENERATION SKIPPING TRANSFER TAX

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 2663 Internal Revenue Code of 1986; 26 USC 2662 Internal Revenue Code of 1986; 26 USC 2663 Internal Revenue Code of 1986

CFR Citation: 26 CFR 26; 26 CFR 26a

Legal Deadline: None

Abstract: The regulations will provide rules relating to the effective date provisions, return requirements, definitions, and certain special rules for the tax on generation skipping transfers.

Timetable:

Action	Date	FR Cite
NPRM	03/15/88	53 FR 8469
Final Action	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information:

LR-128-86.

Drafting attorney: Maurice B. Foley (202) 566-6336.

Reviewing attorney: Fred E. Grundeman (312) 886-3267.

Treasury attorney: Susan Himes (202) 566-8527.

Agency Contact: Maurice B. Foley, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-4336

RIN: 1545-AJ11

2582. EMPLOYMENT TAX—TO REQUIRE WITHHOLDING OF SOCIAL SECURITY AND RAILROAD RETIREMENT TAX FROM CERTAIN PAYMENTS OF SICK PAY

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 3121 Internal Revenue Code of 1986; 26 USC 3231 Internal Revenue Code of 1986; PL 97-123, Sec 3

CFR Citation: 20 CFR 31

Legal Deadline: None

Abstract: The regulations will provide guidance to third parties paying sick pay which is subject to social security or railroad retirement tax, employees receiving the sick pay, and employers of the employees.

Timetable:

Action	Date	FR Cite
Final Action Effective	01/01/82	
NPRM	07/06/82	47 FR 29266
NPRM Comment Period End	09/06/82	
Final Action	10/02/86	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-23-82.

Drafting attorney: Renay France (202) 566-3459.

Reviewing attorney: John M. Coulter, Jr. (202) 566-3331.

Treasury attorney: Paul Strella (202) 535-0065.

Agency Contact: Renay France, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3459

RIN: 1545-AC77

2583. BACKUP WITHHOLDING

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 3406 Internal Revenue Code of 1986

CFR Citation: 26 CFR 35a

Legal Deadline: None

Abstract: This regulation clarifies certain requirements under section 35a.3406-1 regarding backup withholding due to incorrect TIN.

Timetable:

Action	Date	FR Cite
Temporary Regulation	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-8-88

Drafting attorney: Renay France (202) 566-3459.

Reviewing attorney: John Coulter (202) 566-3331.

Treasury attorney: Susan Himes (202) 566-8527.

13 Income Taxes

Agency Contact: Renay France, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3459

RIN: 1545-AL46

2584. ◆ BACKUP WITHHOLDING

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1; 26 CFR 31; 26 CFR 35a

Legal Deadline: None

Abstract: This regulation relates to the requirement that certain payments must be reported to the Internal Revenue Service and that in certain instances 20% of a reportable payment must be deducted and withheld under section 3406 of the Internal Revenue Code.

Timetable:

Action	Date	FR Cite
NPRM	02/29/88	53 FR 05891
Final Action	12/31/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-052-88

Drafting attorney: Teresa B. Hughes (202) 634-5400.

Reviewing attorney: Charles Saverude (202) 377-9060.

Treasury attorney: Unassigned.

13 Income Taxes.

Agency Contact: Teresa B. Hughes, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 634-5486

RIN: 1545-AL92

2585. TREATMENT OF REAL ESTATE AGENTS AND DIRECT SELLERS AS NONEMPLOYEES FOR EMPLOYMENT TAX PURPOSES—REPORTING REQUIREMENTS WITH RESPECT TO DIRECT SELLERS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 3508 Internal Revenue Code of 1986; 26 USC 6041A Internal Revenue Code of 1986

CFR Citation: 26 CFR 1; 26 CFR 31

Legal Deadline: None

Abstract: The proposed regulations would provide rules for the treatment of real estate agents and direct sellers as independent contractors for employment tax purposes. The proposed rules would also provide guidance for the reporting requirements of sales to direct sellers. The proposed rules would also provide guidance for computing certain employer liability for employment taxes.

Timetable:

Action	Date	FR Cite
NPRM	01/07/86	51 FR 619
NPRM Comment Period End	03/10/86	51 FR 619
Hearing	06/18/86	
Final Action	12/31/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-37-85.

Drafting attorney: Alfred Kelley (202) 566-6244.

Reviewing attorney: Jerry Holmes (202) 566-6050.

Treasury attorney: Harry Conaway (202) 566-8277.

Agency Contact: Alfred Kelley, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-6244

RIN: 1545-AE82

2586. ELECTION TO HAVE CERTAIN DIESEL FUEL TAXES IMPOSED ON SALES TO RETAILERS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 4041 Internal Revenue Code of 1986

CFR Citation: 26 CFR 48

Legal Deadline: None

Abstract: The regulations will provide guidance to assist diesel fuel retailers in making an election to have the diesel fuel excise tax collected by the wholesaler at the time the liquid is sold to the retailer.

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Final Rule Stage

Timetable:

Action	Date	FR Cite
NPRM	03/01/88	53 FR 6524
NPRM Comment Period End	05/02/88	53 FR 6524
Final Action	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information:

LR-114-86.

Drafting attorney: Lauren G. Shaw (202) 566-3287.

Reviewing attorney: William Jackson (202) 566-3287.

Treasury attorney: Ellen Aprill (202) 566-2585.

Agency Contact: Lauren G. Shaw, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3287

RIN: 1545-AJ13

2587. ◆ TAXABILITY OF CONVERTER DOLLIES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 145.4051

Legal Deadline: None

Abstract: The regulation will address whether converter dollies for truck semitrailers are subject to tax under section 4051 of the Code.

Timetable:

Action	Date	FR Cite
Temporary Regulation	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-59-88

Drafting attorney: Theodore Margopulos (202) 566-3582.

Reviewing attorney: Richard Kocak (202) 566-3398 and Ada Rousso (202) 566-3267.

13 Excise Tax

Agency Contact: Theodore N. Margopulos, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3582

RIN: 1545-AL71

2588. EXCISE TAX - EXCISE TAX ON HEAVY TRUCKS, TRUCK TRAILERS AND SEMITRAILERS, AND TRACTORS

Legal Authority: 26 USC 4052 Internal Revenue Code of 1986

CFR Citation: 26 CFR 48

Legal Deadline: None

Abstract: These regulations will clarify the definition of first retail sale.

Timetable:

Action	Date	FR Cite
NPRM	05/12/88	53 FR 16882
Final Action	02/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-17-88.

Drafting attorney: Maurice B. Foley (202) 566-4336.

Reviewing attorney: Ada Rousso (202) 566-3287.

Treasury attorney: Ellen Aprill (202) 566-2585.

Agency Contact: Maurice B. Foley, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-4336

RIN: 1545-AL51

2589. EXCISE TAX—COLLECTION OF EXCISE TAX IMPOSED ON THE SALE OR REMOVAL OF GASOLINE

Significance: Regulatory Program

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 4081 Internal Revenue Code of 1986; 26 USC 4082 Internal Revenue Code of 1986; 26 USC 4101 Internal Revenue Code of 1986

CFR Citation: 26 CFR 48

Legal Deadline: None

Abstract: The regulations will provide rules relating to excise tax imposed on the sale or removal of gasoline. The regulations will also provide procedural requirements for any required registration and bonding, and obtaining applicable refunds or credits relating to the excise tax.

Timetable:

Action	Date	FR Cite
NPRM	11/18/87	52 FR 44141
Hearing	01/05/88	
Final Action	03/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information:

LR-115-86.

Drafting attorney: Timothy J. McKenna (202) 566-3287.

Reviewing attorney: Ada S. Rousso (202) 566-3287.

Treasury attorney: Robert Scarborough (202) 566-4079.

Agency Contact: Timothy J. McKenna, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3287

RIN: 1545-AJ09

2601. EXCISE TAX ON DIESEL FUEL

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 4091 to 4093 Internal Revenue Code of 1986

CFR Citation: 26 CFR 48

Legal Deadline: None

Abstract: This regulation provides guidance on the collection of diesel fuel excise tax under the Revenue Act of 1987.

Timetable:

Action	Date	FR Cite
Temporary Regulation	10/02/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-3-88

Drafting attorney: Lauren Shaw (202) 566-3287.

Reviewing attorney: William Jackson (202) 566-3287.

Treasury attorney: Ellen Aprill (202) 566-5451.

13 Excise Taxes

Agency Contact: Lauren Shaw, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3287

RIN: 1545-AL45

2601. ● GASOLINE EXCISE TAX BOND REQUIREMENTS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 4101 Internal Revenue Code of 1986

CFR Citation: 26 CFR 48

Legal Deadline: None

Abstract: These regulations will provide rules relating to the bond requirements under section 4101 as it pertains to gasoline excise tax.

Timetable:

Action	Date	FR Cite
Temporary regulation	10/02/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-60-86

Drafting attorney: Tim McKenna(202) 566-3287.

Reviewing attorney: Ada S. Rousso(202) 566-3287.

Treasury attorney: Robert Scarborough (202) 566-4079.

These regulations are from part of 1545-AJ09, relating to bond, as part of the registration and bond requirements.

13 Excise Tax

Agency Contact: Timothy J. McKenna, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3287

RIN: 1545-AL70

2602. INCOME TAX–LOBBYING BY PUBLIC CHARITIES AND PRIVATE FOUNDATIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 501 (h) Internal Revenue Code of 1986; 26 USC 504 Internal Revenue Code of 1986; 26 USC 4911 Internal Revenue Code of 1986; 26 USC 170 (f) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1; 26 CFR 53; 26 CFR 56

Legal Deadline: None

Abstract: The regulations will provide rules applicable to tax exempt organizations described in section 501(c)(3) that elect to have the provisions of section 501(h) and 4911 apply to their lobbying expenditures, and will also apply to lobbying expenditures by private foundations.

Timetable:

Action	Date	FR Cite
NPRM	11/05/86	51 FR 40211
NPRM Comment Period End	04/03/87	52 FR 802
Hearing	05/11/87	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-184-78.

Drafting attorney: Jerome P. Walsh Skelly (202) 566-3422.

Reviewing attorney: Paul G. Accettura (202) 566-3554.

Agency Contact: Jerome P. Walsh Skelly, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue., N.W., Washington, D.C. 20224, 202 566-3422

RIN: 1545-AJ02

2603. EXCISE TAX–ELECTION TO AGGREGATE LINES OF BUSINESS FOR PURPOSES OF CERTAIN FRINGE BENEFIT EXCLUSIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 4977 Internal Revenue Code of 1986

CFR Citation: 26 CFR 54

Legal Deadline: None

Abstract: Regulations will provide guidance in the manner of making an election under section 4977. The regulations will also provide rules concerning the requirements for making a section 4977 election.

Timetable:

Action	Date	FR Cite
NPRM	01/07/85	50 FR 836
NPRM Comment Period End	03/08/85	
Hearing See additional information	04/16/85	50 FR 7072
Final Action	03/01/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-138-87

Drafting attorney: Rhonda G. Migdail (202) 566-9450.

Reviewing attorney: Jerry Holmes (202) 566-8650.

Treasury attorney: Priscilla Ryan (202) 566-5453.

Proposed and temporary regulations under section 4977 were published together with other fringe benefits regulations (LR-216-84) and the subject of public hearings. Additional section 4977 regulations will be provided exclusively in this project.

Agency Contact: Rhonda G. Migdail, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224, 202 566-9450

RIN: 1545-AI03

2604. EXCISE TAX – EXCESS DISTRIBUTIONS FROM QUALIFIED RETIREMENT PLANS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 4981A Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations will provide rules for determining the amount of the excise tax on excess distributions from qualified retirement plans.

Timetable:

Action	Date	FR Cite
NPRM	12/10/87	52 FR 46782
NPRM Comment Period End	02/08/88	52 FR 46782
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-162-86

Drafting attorney: Marjorie Hoffman (202) 566-3430.

Reviewing attorney: Richard J. Wickersham (202) 566-3250.

Treasury attorneys: Paul Strella/Harry Conaway (202) 566-8277.

Agency Contact: Marjorie Hoffman, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3430

RIN: 1545-AI71

2605. EXCISE TAX–ISSUES ARISING WHERE MULTIPLE PARTIES SHARE IN PRODUCTION, INCLUDING UNITIZATIONS, PARTNERSHIPS, TRUSTS AND ESTATES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 4986 to 4998 Internal Revenue Code of 1986

CFR Citation: 26 CFR 51

Legal Deadline: None

Abstract: These regulations would provide rules relating to production from a unitized property of imputed stripper well crude oil, imputed heavy crude oil, and imputed newly discovered crude oil for purposes of the windfall profit tax. The regulations would provide rules for determining the amount of imputed oil and rules for allocating the imputed oil among the producers of the unitized property.

Timetable:

Action	Date	FR Cite
NPRM	09/30/88	51 FR 34653
NPRM Comment Period End	12/01/88	
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: LR-225-81.

Drafting attorney: David R. Haglund (202) 566-3297.

Reviewing attorney: John B. Bromell (202) 566-3328.

Treasury attorney: Bryan Collins (202) 566-2175.

Agency Contact: David R. Haglund, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3297

RIN: 1545-AC94

2606. EXCISE TAX–INCREMENTAL TERTIARY OIL

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 4993 Internal Revenue Code of 1986

CFR Citation: 26 CFR 51

Legal Deadline: None

Abstract: The regulations would clarify the rules relating to incremental tertiary oil. The regulations provide procedural rules for requesting approval from the Service of tertiary recovery methods which are not already approved under Department of Energy regulations. The regulations also define "project beginning date" and "tertiary injectant".

Timetable:

Action	Date	FR Cite
NPRM	09/10/84	49 FR 35517
NPRM Comment Period End	11/09/84	49 FR 35517
Hearing	07/26/85	
Final Action	12/15/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-57-85.

Drafting attorney: Beverly A. Baughman (202) 566-3297.

Reviewing attorney: John B. Bromell (202) 566-3328.

Agency Contact: Beverly A. Baughman, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3297

RIN: 1545-AD34

2607. EXCISE TAX–OIL FROM A STRIPPER WELL PROPERTY

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 4991 Internal Revenue Code of 1986; 26 USC 4992 Internal Revenue Code of 1986; 26 USC 4994 Internal Revenue Code of 1986

CFR Citation: 26 CFR 51

Legal Deadline: None

Abstract: The proposed regulations provide rules and definitions relating to oil from a stripper well property for purposes of tier 2 oil and exempt stripper well oil.

Timetable:

Action	Date	FR Cite
NPRM	01/20/83	48 FR 2552
NPRM Comment Period End	03/20/83	48 FR 2552
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: LR-217-81.

Drafting attorney: David R. Haglund (202) 566-3297.

Reviewing attorney: Walter H. Woo (202) 566-3297.

Office of Tax Legislative Counsel (Treasury) reviewing attorney: Bryan Collins (202) 566-2175.

Agency Contact: David R. Haglund, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3297

RIN: 1545–AD01

2606. EXCISE TAX—DEFINITION OF PROPERTY UNDER THE CRUDE OIL WINDFALL PROFIT TAX ACT 1988

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 4998 Internal Revenue Code of 1986

CFR Citation: 26 CFR 61

Legal Deadline: None

Abstract: These proposed regulations would provide rules relating to the definition of "property" for purposes of the crude oil windfall profit tax. These regulations are important because the rate of tax depends, in part, on the characteristics of the property from which the crude oil is produced.

Timetable:

Action	Date	FR Cite
NPRM	09/25/86	51 FR 34095
NPRM Comment Period End	11/24/86	51 FR 34095
Hearing	02/25/87	
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-34-82.

Drafting attorney: David R. Haglund (202) 566-3297.

Reviewing attorney: John B. Bromell (202) 566-3328.

Office of Tax Legislative Counsel (Treasury) reviewing attorney: Bryan Collins (202) 566-2175.

Agency Contact: David A. Haglund, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3297

RIN: 1545–AD08

2609. EXCISE TAX ON "GREENMAIL"

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 5881 Internal Revenue Code of 1986

CFR Citation: 26 CFR 46

Legal Deadline: None

Abstract: This regulation provides a 50-percent excise tax on any gain realized by a person who receives "greenmail".

Timetable:

Action	Date	FR Cite
Temporary Regulation	12/31/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-7-88

Drafting attorney: Robert Casey (202) 566-3458.

Reviewing attorney: Charles Whedbee (202) 566-3458.

Treasury attorney: J. Judge Kelley (202) 566-8278.

Excise Taxes

Agency Contact: Robert Casey, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545–AL47

2610. ELIMINATION OF FORM 941 FILING REQUIREMENT FOR QUARTERS IN WHICH SEASONAL EMPLOYERS PAY NO WAGES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 31

Legal Deadline: None

Abstract: Regulations would direct the public to the instructions to Form 941 to find exceptions to the filing requirements of the form for seasonal and intermittent employers with respect to quarters in which no wages were paid.

Timetable:

Action	Date	FR Cite
Final Action	12/31/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-57-86.

Drafting attorney: Joel S. Rutstein (202) 566-3297.

Reviewing attorney: John B. Bromell (202) 566-3328.

Agency Contact: Joel S. Rutstein, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., NW, Washington, DC 20224, 202 566-3297

RIN: 1545–AL56

2611. EXCISE TAX – PART 54 – PROCEDURE AND ADMINISTRATION– PART 301 – FILING OF RETURNS FOR PAYMENT OF PENSION EXCISE TAX ON REVERSIONS OF QUALIFIED PLAN ASSETS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 4980 Internal Revenue Code of 1986

CFR Citation: 26 CFR 54; 26 CFR 602

Legal Deadline: None

Abstract: The regulations would provide guidance regarding the payment of the excise tax by employers receiving reversions of qualified plan assets imposed by section 4980 of the Internal Revenue Code of 1986.

Timetable:

Action	Date	FR Cite
NPRM	04/02/87	52 FR 10583
NPRM Comment Period End	06/01/87	52 FR 10583
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-101-86

Drafting attorney: Suzanne K. Tank (202) 566-3430.

Reviewing attorney: James L. Brokaw (202) 566-4173.

Office of Tax Legislative Counsel (Treasury) reviewing attorney: Harry J. Conaway (202) 566-8277.

Agency Contact: Suzanne K. Tank, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3430

RIN: 1545–AI83

2612. INCOME TAX-AMENDMENTS TO REQUIREMENTS FOR RETURN OF PARTNERSHIP INCOME

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 6031 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations would provide guidelines for determining when and what information a partnership must provide to its partners. The regulations also provide guidelines for determining what foreign partnerships must file information returns.

Timetable:

Action	Date	FR Cite
NPRM	01/23/86	51 FR 3075
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-196-82.

Drafting attorney: Joyce S. Hendricks (202) 566-3297.

Reviewing attorney: John B. Bromell (202) 566-3297.

Treasury attorney: Mary Bennett (202) 566-3813.

Agency Contact: Joyce S. Hendricks, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3297

RIN: 1545–AE40

2613. NOMINEE REPORTING OF PARTNERSHIP INFORMATION

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 6031 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These temporary regulations will provide rules relating to nominee reporting of partnership interest which such nominee hold s for another person. The regulations will provide the information that the nominee is required to provide and will also provide the manner in which this information is to be reported to the partnership.

Timetable:

Action	Date	FR Cite
Temporary Regulation		
Temporary Regulation	10/30/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-153-88.

Drafting attorney: Stuart G. Wessler (202) 566-3297.

Reviewing attorney: Walter H. Woo (202) 566-3297.

Office of Tax Legislative Counsel Reviewing attorney: Greg Marich (202) 566-4970.

Agency Contact: Stuart G. Wessler, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3297

RIN: 1545–AJ87

2614. INFORMATION RETURNS OF BROKERS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 6045 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations in this project clarify the definition of the term "commodity" for purposes of broker reporting. Rules are provided for determining whether personal property (including gold and silver) is a commodity. Generally, the term "commodity" is defined as personal property that is deliverable in satisfaction of a regulated futures contract, certain specified personal property that the secretary determines is to be treated as a commodity or any form or quality of or any interest in such personal property. The term "commodity" does not include a security, regulated futures contract, forward contract, or a form of tangible personal property if the gross proceeds from its sale exceed by more than 15 percent its value as a commodity. The rules proposed include alternative methods (the "exact" and "approximate" methods) of tangible personal property valuation.

Timetable:

Action	Date	FR Cite
NPRM	01/05/84	49 FR 646
NPRM Comment Period End	03/05/84	49 FR 646
Hearing	03/28/84	49 FR 645
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-201-83.

Drafting attorney: Arthur E. Davis III (202) 566-3238.

Treasury attorney: Susan Himes (202) 566-3127.

Agency Contact: Arthur E. Davis III, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3238

RIN: 1545–AG52

2615. INFORMATION RETURNS OF BROKERS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 6045 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations provide a special rule for broker reporting with respect to transactions made through a cash on delivery account (COD). In addition, these regulations make technical corrections to the list of recipients exempted from coverage under the reporting requirement, and expand the class of brokers which qualify for the multiple broker rule.

Timetable:

Action	Date	FR Cite
NPRM	05/29/84	49 FR 22343
NPRM Comment Period End	07/30/84	49 FR 22343
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-82-84.

Drafting attorney: Arthur E. Davis III (202) 566-3238.

Treasury attorney: Susan Himes (202) 566-3127.

Agency Contact: Arthur E. Davis III, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3238

RIN: 1545–AG52

2616. INFORMATION REPORTING ON REAL ESTATE TRANSACTIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 6045 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation proposed to adopt as final rules relating to the reporting of real estate transactions.

Timetable:

Action	Date	FR Cite
NPRM	04/03/87	52 FR 10774
Hearing	07/22/87	52 FR 23308
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-83-86.

Drafting attorney: Arthur E. Davis III (202) 566-3234.

Office of Tax Legislative Counsel (Treasury) reviewing attorney:

Agency Contact: Arthur E. Davis III, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, DC 20224, 202 566-3234

RIN: 1545-AJ25

2617. INCOME TAX-INFORMATION REPORTING ON REAL ESTATE TRANSACTIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 6045 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation would propose additional rules relating to the reporting of real estate transactions.

Timetable:

Action	Date	FR Cite
Temporary regulation	11/01/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information:

LR-130-87

Drafting attorney: Arthur E. Davis III (202) 566-3234.

Reviewing attorney: Cynthia Clark (202) 566-3336.

13 Income taxes

Agency Contact: Arthur E. Davis III, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3234

RIN: 1545-AL06

2618. FINAL REGULATIONS RELATING TO REPORTS OF FORECLOSURES AND ABANDONMENTS OF SECURITY UNDER THE TAX REFORM ACT OF 1984

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 6050J Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations proposed rules relating to information reporting of foreclosures, abandonments, and other acquisitions of property securing indebtedness, including the persons and property subject to the reporting requirement and the information required to be reported, and when a person has reason to know that property has been abandoned.

Timetable:

Action	Date	FR Cite
NPRM	08/31/84	49 FR 34518
NPRM Comment Period End	10/31/84	49 FR 34518
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-101-84.

Drafting attorney: Arthur E. Davis III (202) 566-3238.

Agency Contact: Arthur E. Davis III, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3238

RIN: 1545-AG46

2619. REPORTING REQUIREMENTS PERTAINING TO RETURNS RELATING TO PERSONS RECEIVING CONTRACTS FROM FEDERAL EXECUTIVE AGENCIES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 6050M Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation would provide guidance to the heads of Federal executive agencies for purposes of complying with information and reporting requirements prescribed by section 6050M.

Timetable:

Action	Date	FR Cite
NPRM	07/29/88	53 FR 28669
Final Action	11/00/88	

Small Entities Affected: None

Government Levels Affected: Federal

Additional Information: LR-123-86

Drafting attorney: Keith E. Stanley (202) 566-3452.

Reviewing attorney: Charles M. Whedbee (202) 566-3458.

Treasury attorney: Judge J. Kelley (202) 566-6990.

Agency Contact: Keith E. Stanley, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545-AJ06

2620. NOTICE OF PROPOSED RULEMAKING - AUTOMATIC EXTENSION OF TIME TO FILE PARTNERSHIP RETURN OF INCOME AND TRUST INCOME TAX RETURN

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Automatic Extension of Time to File Partnership Return of Income and Trust Income Tax Return.

Timetable:

Action	Date	FR Cite
NPRM	04/05/88	53 FR 11103
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-28-88

Drafting attorney: James A. Orefice (202) 566-3238.

Reviewing attorney: Cynthia L. Clark (202) 566-3336.

Treasury attorney: Greg Marich (202) 566-3453.

13 Income Taxes

Agency Contact: James A. Orefice, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W.,

Washington, D.C. 20224, Attn: CC:LR:T, 202 566-3238

RIN: 1545-AL50

2621. • EXTENSION OF TIME TO FILE FOR TAXPAYERS TRAVELING OUTSIDE THE UNITED STATES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1; 26 CFR 602

Legal Deadline: None

Abstract: Regulations to repeal extension of time to file income tax returns for taxpayers traveling outside the United States and Puerto Rico.

Timetable:

Action	Date	FR Cite
Temporary Regulation	10/02/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: INTL-287-88

Drafting attorney: Peter J. Hanley (202) 566-3409.

Reviewing attorney: Carol Doran Klein (202) 566-6419.

Treasury attorney: Unassigned.

13 Income Taxes.

Agency Contact: Peter J. Hanley, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3409

RIN: 1545-AX87

2622. PROPOSED REGULATIONS UNDER SECTIONS 6111 AND 6709, RELATING TO TAX SHELTER REGISTRATION

Significance: Regulatory Program

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 6111 Internal Revenue Code of 1986

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: This project will provide rules explaining what investments are tax shelters that must be registered with the Internal Revenue Service. The project will also provide rules relating to the persons required to register tax shelters and to the furnishing of tax shelter registration numbers to investors in tax shelters.

Timetable:

Action	Date	FR Cite
NPRM	08/15/84	49 FR 32726
NPRM Comment Period End	10/15/84	49 FR 32726
Hearing held	01/17/85	
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: LR-142-84.

Drafting attorney: Paulette Galanko (202) 566-3288.

Reviewing attorney: Cynthia Clark (202) 566-3336.

Agency Contact: Paulette C. Galanko, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3288

RIN: 1545-AG45

2623. TIME AND MANNER OF MAKING QUARTERLY PAYMENTS OF THE RAILROAD UNEMPLOYMENT REPAYMENT TAX (NPRM)

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 6157 Internal Revenue Code of 1986; 26 USC 6011 Internal Revenue Code of 1986; 26 USC 6071 Internal Revenue Code of 1986; 26 USC 6302 Internal Revenue Code of 1986

CFR Citation: 26 CFR 31

Legal Deadline: None

Abstract: The regulations will provide rules with respect to the time and manner of making quarterly payments of the railroad repayment tax.

Timetable:

Action	Date	FR Cite
NPRM	11/05/86	
NPRM Comment Period End	01/05/87	
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-12-86

Drafting attorney: John B. Bromell (202) 566-3297.

Reviewing attorney: John B. Bromell (202) 566-3328.

Treasury attorney: Susan Scherbel (202) 535-9083.

Duplicate of RIN 1545-AI73

Agency Contact: John B. Bromell, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3297

RIN: 1545-AI80

2624. MISCELLANEOUS RULES RELATING TO CONSOLIDATED ADMINISTRATIVE AND JUDICIAL PROCEEDINGS TO DETERMINE THE TAX TREATMENT OF PARTNERSHIP ITEMS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 6222 Internal Revenue Code of 1986; 26 USC 6223 Internal Revenue Code of 1986; 26 USC 6224 Internal Revenue Code of 1986; 26 USC 6227 Internal Revenue Code of 1986; 26 USC 6230 Internal Revenue Code of 1986; 26 USC 6231 Internal Revenue Code of 1986

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: The proposed regulations would set forth miscellaneous procedural rules for consolidated administrative and judicial proceedings to determine the tax treatment of partnership items. The regulations would provide guidance for various elections under these new procedures and for filing requests for an administrative adjustment.

Timetable:

Action	Date	FR Cite
NPRM	04/18/86	51 FR 13231
NPRM Comment Period End	06/17/86	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-205-82

Drafting attorney: Robert E. Shaw (202) 566-3287.

Reviewing attorney: Dianna Miosi (202) 566-3287.

Treasury attorney: Greg Marich (202) 566-3287.

Agency Contact: Robert E. Shaw, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3287

RIN: 1545-AE51

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TREAS—IRS

Final Rule Stage

2625. SMALL S CORPORATION EXCEPTION AND DEFINITION OF SUBCHAPTER S ITEM

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 6241 Internal Revenue Code of 1986; 26 USC 6245 Internal Revenue Code of 1986

CFR Citation: 26 CFR 301; 26 CFR 602; 26 CFR 61

Legal Deadline: None

Abstract: These regulations will provide a small S corporation exception to the unified corporate audit procedures of subchapter D of chapter 63 of the Internal Revenue Code. These regulations also will define subchapter S items for purposes of the income tax and windfall profit tax.

Timetable:

Action	Date	FR Cite
NPRM	01/30/87	52 FR 3027
NPRM Comment Period End	03/31/87	
Final Action	12/31/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-74-86.

Drafting attorney: Stuart G. Wessler [202] 566-3297.

Reviewing attorney: Walter H. Woo [202] 566-3297.

Office of Tax Legislative Counsel Reviewing attorney: Bryan P. Collins (202) 566-8277.

Agency Contact: Stuart G. Wessler, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3297

RIN: 1545-AJ09

2626. ELECTRONIC FILING OF NOTICE OF FEDERAL TAX LIEN

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 6323 Internal Revenue Code of 1986

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: The regulation clarifies that the term "Form 668" as used in section 6323 (f) (3) of the Code includes a notice of federal tax lien filed by the use of an electronic or magnetic medium where the law of the state in which a notice of Federal tax lien is filed permits such method of filing.

Timetable:

Action	Date	FR Cite
NPRM	02/23/88	53 FR 5276
NPRM Comment Period End	04/25/88	53 FR 5276
Final Action	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-39-87

Drafting attorney: Lauren G. Shaw (202) 566-3287.

Reviewing attorney: Ada S. Rousso (202) 566-3287.

Treasury attorney: Patricia McClanahan (202) 566-3935.

Agency Contact: Lauren G. Shaw, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3287

RIN: 1545-AK96

2627. PROPOSED REGULATIONS UNDER THE SPENDING REDUCTION ACT OF 1984, RELATING TO REDUCTION OF TAX OVERPAYMENTS BY THE AMOUNT OF PAST-DUE LEGALLY ENFORCEABLE DEBT OWED TO FEDERAL AGENCY

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 31 USC 3720A

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: These proposed regulations will provide rules relating to the reduction of a taxpayer's overpayment of tax (i.e., tax refund) by the amount of any past-due legally enforceable debt owed to a federal agency by the taxpayer. The regulations explain which debts qualify for offset, and the steps a federal agency must make to refer a debt to the Internal Revenue Service.

Timetable:

Action	Date	FR Cite
NPRM	09/30/85	50 FR 39713
NPRM Comment Period End	11/30/85	50 FR 39713
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-281-84.

Drafting attorney: Sharon L. Hall (202) 566-3235.

Reviewing attorney: David Dickinson [202] 566-6655.

Agency Contact: Sharon L. Hall, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington D.C. 20224, 202 566-3238

RIN: 1545-AG86

2628. PROCEDURE AND ADMINISTRATIVE--REDUCTION OF TAX OVERPAYMENTS BY AMOUNT OF PAST DUE LEGALLY ENFORCEABLE DEBT OWED TO FEDERAL AGENCY

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 31 USC 3720A Internal Revenue Code of 1986

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: These regulations will amend proposed regulations published September 30, 1985 relating to the reduction of a taxpayer's overpayment of tax by the amount of past-due legally enforceable debt owed to a federal agency by the taxpayer.

Timetable:

Action	Date	FR Cite
NPRM	05/13/87	52 FR 17949
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-72-86

Drafting attorney: Sharon L. Hall (202) 566-3238.

Reviewing attorney: David Dickinson [202] 566-3935.

Agency Contact: Sharon L. Hall, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington D.C. 20224, 202 566-3238

RIN: 1545-AG86

2629. ◆ PROCEDURE AND ADMINISTRATIONS--REDUCTION OF TAX OVERPAYMENTS BY AMOUNT OF PAST-DUE LEGALLY ENFORCEABLE DEBT OWED TO FEDERAL AGENCY

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 31 USC 3720A

CFR Citation: 26 CFR 301

Legal Deadline: None

TREAS—IRS

Final Rule Stage

Abstract: These regulations will amend regulations published September 30, 1985. The regulations will provide a new effective date for those regulations.

Timetable:

Action	Date	FR Cite
Temporary Regulation	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-41-88

Drafting attorney: Sharon L. Hall (202) 566-3238.

Reviewing attorney: David Dickinson (202) 566-6655.

Treasury attorney: Barksdale Penick (202) 535-6964.

13 Procedure and Administration

Agency Contact: Sharon L. Hall, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, Washington, D.C. 20224, 202 566-3238

RIN: 1545-AL68

2630. PROCEDURE AND ADMINISTRATION - ABATEMENT OF INTEREST

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: The regulations will provide guidance on the definition of ministerial act.

Timetable:

Action	Date	FR Cite
NPRM	09/13/87	52 FR 30177
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-54-87

Drafting attorney: Sharon L. Hall (202) 566-3130.

Reviewing attorney: Cynthia Clark (202) 566-3130.

Agency Contact: Sharon L. Hall, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3238

RIN: 1545-AK71

2631. PROCEDURE AND ADMINISTRATION REGULATIONS--MODIFICATIONS OF INTEREST PAYMENTS FOR CERTAIN PERIODS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 6611 Internal Revenue Code of 1986; 26 USC 6601 Internal Revenue Code of 1986

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: The regulation would provide rules for determining the period during which interest accrues on an underpayment or an overpayment of tax as provided in sections 6601 and 6611 of the Internal Revenue Code of 1954. The period would be determined, in part, by the dates the return and the claim for refund are filed and by whether they were filed in a way that they can be processed.

Timetable:

Action	Date	FR Cite
NPRM	10/09/84	49 FR 39566
NPRM Comment Period End	12/10/84	
Final Action	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: LR-240-82.

Drafting attorney: Michael J. Grace (202) 566-3288.

Reviewing attorney: Cynthia L. Clark (202) 566-3336.

Agency Contact: Michael J. Grace, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3288

RIN: 1545-AF10

2632. PROCEDURE AND ADMINISTRATION REGULATIONS - INCREASED RATE OF INTEREST ON SUBSTANTIAL UNDERPAYMENTS ATTRIBUTABLE TO CERTAIN TAX MOTIVATED TRANSACTIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 6621 Internal Revenue Code of 1986

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: The regulations provide guidance to taxpayers subject to the increased rate of interest on substantial underpayments attributable to certain tax motivated transactions. The regulations define tax motivated transaction and accounting methods that may result in a substantial distortion of income. The regulations also provide rules for determining the amount of a tax motivated underpayment and the accrual of interest at the increased rate.

Timetable:

Action	Date	FR Cite
NPRM	12/26/84	49 FR 50406
NPRM Comment Period End	02/26/85	49 FR 50406
Final Action	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: LR-181-84.

Drafting attorney: Michael J. Grace (202) 566-3288.

Reviewing attorney: Cynthia L. Clark (202) 566-3336.

Agency Contact: Michael J. Grace, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3288

RIN: 1545-AG75

2633. TO PROVIDE REGULATIONS RELATING TO ACCELERATED PAYMENT OF ESTIMATED TAXES BY CORPORATIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 6655 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Rules will provide for acceleration of estimated payments by corporations, new seasonal income exception, and clarify the annualization rules. The amount of estimated tax payments required for all corporations is increased from 80 to 90 percent of current year's tax liability.

Timetable:

Action	Date	FR Cite
NPRM	03/26/84	49 FR 11186
Hearing	06/25/84	
Final Action	12/30/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-328-82.

Drafting attorney: Renay France (202) 566-3428.

Reviewing attorney: John M. Coulter, Jr. (202) 566-3331.

Agency Contact: Renay France, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3429

RIN: 1545–AE37

2634. PENALTY FOR FAILURE TO INCLUDE CORRECT INFORMATION ON INFORMATION RETURNS AND PAYEE STATEMENTS

Legal Authority: 26 USC 6723 Internal Revenue Code of 1986

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: The regulations provide guidance on the penalty for failing to provide correct information on information returns and payee statements

Timetable:

Action	Date	FR Cite
NPRM	09/10/87	52 FR 34358
Next Action Undetermined		

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information:

LR-142-86.

Drafting attorney: Renay France (202) 566-3429.

Reviewing attorney: Sharon Gelm (202) 566-3970.

Agency Contact: Renay France, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC 20224, 202 566-3429

RIN: 1545–AJ28

2635. PROCEDURE AND ADMINISTRATION--PROPERTY SEIZED BY THE INTERNAL REVENUE SERVICE UNDER THE MONEY LAUNDERING CONTROL ACT OF 1986

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 7103 (b) Internal Revenue Code of 1986

CFR Citation: 26 CFR 403

Legal Deadline: None

Abstract: This regulation provides guidance with respect to property seized by the Internal Revenue Service under the Money Laundering Control Act of 1986.

Timetable:

Action	Date	FR Cite
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-3-88.

Drafting attorney: David Haglund (202) 566-3297.

Agency Contact: David Haglund, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC 20224, 202 566-3297

RIN: 1545–AL04

2636. AMENDMENT OF REGULATIONS TO PERMIT DISCLOSURE OF TAX RETURN INFORMATION BETWEEN FRANCHISEES WHO JOINTLY OPERATE A TAX SERVICE

Legal Authority: 26 USC 7216 Internal Revenue Code of 1986; 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Proposal would allow disclosure of tax return information by tax return preparers for the purpose of monitoring quality of return preparation.

Timetable:

Action	Date	FR Cite
NPRM	11/10/85	50 FR 47563
NPRM Comment Period End	12/19/85	
Next Action Undetermined		

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: LR-3-85.

Drafting attorney: Robert M. Casey (202) 566-3458.

Reviewing attorney: Robert J. Mason (202) 566-3461.

Agency Contact: Robert M. Casey, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545–AL91

2637. PROCEDURE AND ADMINISTRATION--AMENDMENT OF REGULATIONS RELATING TO THE TIMELY MAILING OF RETURNS, TAXES AND DEPOSITS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 7502 Internal Revenue Code of 1986

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: The regulations would amend existing regulations, relating to the timely mailing of documents, to provide for the timely mailing of returns, taxes and deposits.

Timetable:

Action	Date	FR Cite
NPRM	12/11/79	44 FR 71430
NPRM Comment Period End	02/11/80	44 FR 71430
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-1408.

Drafting attorney: Katherine Wambsgans (202) 566-3288.

Reviewing attorney: Cynthia L. Clark (202) 566-3336.

Office of Tax Legislative Counsel (Treasury) reviewing attorney: unassigned.

Agency Contact: Katherine Lee Wambsgans, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3288

RIN: 1545–AD42

2638. AMENDMENT OF PROCEDURE AND ADMINISTRATION REGULATIONS UNDER SECTION 7701(B) (DEFINITION OF RESIDENT ALIENS) TO REFLECT SECTION 138 OF THE TAX REFORM ACT OF 1984 (P.L. 98-369)

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 7701 (b) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1; 26 CFR 31; 20 CFR 301

Legal Deadline: None

Abstract: These regulations provide rules for determining whether an alien individual is a resident or a nonresident alien of the United States.

Timetable:

Action	Date	FR Cite
NPRM	09/10/87	52 FR 34230
NPRM Comment Period End	11/10/87	52 FR 34230
Hearing	06/15/88	
Final Action	12/31/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: INTL-35-86.

Drafting attorney: Peter Hanley (202) 566-3456.

Reviewing attorney: Carol Doran Klein (202) 566-6415.

Treasury attorney: P. Ann Fisher (202) 566-4439.

Agency Contact: Peter J. Hanley, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3456

RIN: 1545–AH13

2639. EFFECTIVE DATES AND OTHER QUESTIONS ARISING UNDER EMPLOYEE BENEFIT PROVISIONS OF THE TAX REFORM ACT OF 1984

Legal Authority: PL 98-369, Sec 511 to 561

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will provide proposed rules relating to effective dates and other questions arising under the employee benefit provisions of the Tax Reform Act of 1984.

Timetable:

Action	Date	FR Cite
NPRM	02/04/86	51 FR 4391
Hearing	06/26/86	51 FR 15916
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: EE-96-85.

Drafting attorney: John T. Ricotta (202) 566-3489.

Reviewing attorney: Michael A. Thrasher (202) 566-3561.

Treasury attorney: Harry Conaway (202) 566-6277.

Agency Contact: John T. Ricotta, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3456

RIN: 1545–AI21

2640. INDIAN TRIBAL GOVERNMENTS TREATED AS STATES FOR CERTAIN PURPOSES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 7701 Internal Revenue Code of 1986; 26 USC 7871 Internal Revenue Code of 1986

CFR Citation: 20 CFR 301

Legal Deadline: None

Abstract: The regulations would provide guidance to certain Indian tribal governments as to their treatment as States under designated sections of the Internal Revenue Code of 1954.

Timetable:

Action	Date	FR Cite
NPRM	05/07/84	49 FR 19329
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-221-83.

Drafting attorney: Sharon L. Hall (202) 566-3238.

Reviewing attorney: Cynthia L. Clark (202) 566-3336.

Office of Tax Legislative Counsel: Elliot Stern (202) 566-2926.

Agency Contact: Sharon L. Hall, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3238

RIN: 1545–AF77

2641. REGULATIONS ON INCOME TAX UNDER THE TAX REFORM ACT OF 1984, RELATING TO BELOW-MARKET LOANS

Significance: Regulatory Program

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 7872 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations provide guidance to taxpayers who enter into certain below-market interest rate loan transactions. The regulations explain what type of transactions are treated as loans and what type of loans are subject to the provisions of section 7872. If the loan is subject to section 7872, the below-market loan will be recharacterized as an arm's length market-interest rate loan coupled with a payment by the lender to the borrower in an amount generally equal to the amount of imputed interest. The regulations provide rules for determining the amount and the character of the imputed transfers.

Timetable:

Action	Date	FR Cite
NPRM	08/20/85	50 FR 33553
NPRM Comment Period End	10/20/85	50 FR 33553
Hearing	01/09/86	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-185-84.

Drafting attorney: Sharon L. Hall (202) 566-3235.

Reviewing attorney: John Fischer (202) 566-3364.

Agency Contact: Sharon L. Hall, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3238

RIN: 1545–AH72

2642. INCOME TAX--MARITIME CAPITAL CONSTRUCTION FUND

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 46 USC 1177 Merchant Marine Act of 1936; 26 USC 7518 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The proposal would provide rules for the income tax treatment with respect to capital construction funds for certain vessels.

Timetable:

Action	Date	FR Cite
NPRM	01/29/76	41 FR 04260
NPRM Comment Period End	03/29/76	41 FR 04260
Hearing	07/07/76	

TREAS—IRS — Final Rule Stage

Next Action Undetermined
Small Entities Affected: Undetermined
Government Levels Affected: None
Additional Information: LR-149-75.

Drafting attorney: Robert M. Casey (202) 566-3458.

Reviewing attorney: Robert J. Mason (202) 566-3463.

Agency Contact: Robert M. Casey, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington D.C. 20224, 202 566-3458

RIN: 1545-AD48

DEPARTMENT OF THE TREASURY (TREAS) — Completed Actions
Internal Revenue Service (IRS)

2543. INCOME TAX–THE INVESTMENT CREDIT FOR QUALIFIED PROGRESS EXPENDITURES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 46 Internal Revenue Code of 1986; 26 USC 47 Internal Revenue Code of 1986; 26 USC 48 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The proposed regulations add a new section to provide rules for claiming the investment credit for qualified progress expenditures.

Timetable:

Action	Date	FR Cite
NPRM	01/30/79	44 FR 05910
NPRM Comment Period End	04/01/79	44 FR 05910
Hearing	06/27/79	
Final Action T.D. 8183	03/02/88	53 FR 6614

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-73-75.

Drafting attorney: Robert Casey (202) 566-3458.

Reviewing attorney: Charles M. Whedbee (202) 566-3458.

Treasury attorney: Don Rocap (202) 566-8277.

Agency Contact: Robert Casey, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545-AA13

2544. INCOME TAX–DEFINITION OF FILMS THAT ARE "TOPICAL OR OTHERWISE ESSENTIALLY TRANSITORY IN NATURE"

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 48 (k) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The proposed regulations more specifically define what movie and television films and videotapes qualify for the investment credit.

Timetable:

Action	Date	FR Cite
NPRM	06/03/82	47 FR 24142
NPRM Comment Period End	08/02/82	47 FR 24142
Final Action T.D.8195	04/18/88	53 FR 12677

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-143-80.

Drafting attorney: David R. Haglund (202) 566-3297.

Reviewing attorney: John B. Bromell (202) 566-3328.

Office of Tax Legislative Counsel (Treasury) reviewing attorney: Susan Himes (202) 566-8527.

Agency Contact: David R. Haglund, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3297

RIN: 1545-AA22

2545. NET BOOK INCOME ADJUSTMENT FOR U.S. BRANCHES OF FOREIGN CORPORATIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 56 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations will provide rules for computing the alternative minimum tax net book income adjustment of a foreign corporation engaged in a trade or business in the United States.

Timetable:

Action	Date	FR Cite
Final Action T.D.8195	04/28/88	53 FR 15200

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-64-87

Drafting attorney: Timothy J. McKenna (202) 566-3287.

Reviewing attorney: Ada S. Rousso (202) 566-3287.

Treasury attorney: Mark Levy (202) 535-8036.

International Tax Counsel Reviewing Attorney: Peter Daub (202) 566-5791.

Agency Contact: Timothy J. McKenna, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3287

RIN: 1545-AK22

2546. 2-PERCENT FLOOR ON MISCELLANEOUS ITEMIZED DEDUCTIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 67 (c) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations would provide guidance regarding the miscellaneous itemized deductions that are subject to the 2-percent floor and provide expense allocation rules for regulated investment companies and REMICs.

Timetable:

Action	Date	FR Cite
Final Action T.D.8189	03/29/88	53 FR 9870

Small Entities Affected: None

Government Levels Affected: None

TREAS—IRS — Completed Actions

Additional Information: LR-36-86.

Drafting attorney: Beverly A. Baughman (202) 566-3297.

Reviewing attorneys: John B. Bromell (202) 566-3328 and Charles M. Whedbee (202) 566-3458.

Treasury attorney: Don Rocap (202) 566-8277.

Agency Contact: Beverly A. Baughman, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave.,N.W., Washington, D.C. 20224, 202 566-3297

RIN: 1545-AJ48

2547. AMENDMENT OF REGULATIONS RELATING TO ARBITRAGE ON NONPURPOSE OBLIGATIONS TO REFLECT SECTION 624 OF TRA OF 1984

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 103 (c) (6) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations will provide rules relating to arbitrage on nonpurpose investments with respect to industrial development bonds. Rules will be the limitation on nonpurpose investments and the rebate requirement.

Timetable:

Action	Date	FR Cite
NPRM	01/07/85	50 FR 00837
NPRM Comment Period End	03/08/85	50 FR 00837
Closed without regulations	07/25/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-192-84.

Drafting attorney: Howard Gensler (202) 566-3456.

Reviewing attorney: Gerald Rock (202) 566-6455.

Treasury attorney: Elliott Stern (202) 566-3266.

Agency Contact: Howard Gensler, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3456

RIN: 1545-AH07

2548. INCOME TAX–DEFINITION OF "PRIVATE ACTIVITY BOND"

Significance: Regulatory Program

Legal Authority: 26 USC 141 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation would provide guidance regarding the definition of private activity bonds", issued by State or local governmental units, which are generally taxable unless a specific exception applies to such bond issue. The Tax Reform Act of 1986 made significant revisions regarding this subject matter.

Timetable:

Action	Date	FR Cite
Closed without regulations	04/20/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-87-86.

Drafting attorney: John A. Tolleris (202) 566-3500.

Reviewing attorney: John M. Coulter, Jr. (202) 566-3740.

Office of Tax Legislative Counsel attorney: Elliot Stern (202) 566-3926.

Agency Contact: John A. Tolleris, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224, 202 566-3500

RIN: 1545-AJ34

2549. TEMPORARY EMPLOYMENT TAX REGULATIONS UNDER THE DIVIDEND AND INTEREST TAX COMPLIANCE ACT OF 1983

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 163 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1; 26 CFR 35a

Legal Deadline: None

Abstract: Temporary regulations republishing section 1.163-5T, inadvertently deleted on 12/19/86, dealing with deductibility of interest paid on pass-through certificates.

Timetable:

Action	Date	FR Cite
Final Action T.D. 8202	05/19/88	53 FR 17927

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-634-87

Drafting attorney: Carl M. Cooper (202) 634-5406.

Reviewing attorney: Carol Doran Klein (202) 566-6419.

Treasury attorney: Peter Daub (202) 566-3264.

13 Income Taxes.

Agency Contact: Carl M. Cooper, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 634-5406

RIN: 1545-AM18

2550. REGISTRATION REQUIREMENTS WITH RESPECT TO CERTAIN DEBT OBLIGATIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 163 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Final regulations making technical corrections to section 1.163-5(c).

Timetable:

Action	Date	FR Cite
Final Action T.D. 8203	05/19/88	53 FR 17926

Small Entities Affected: None

Government Levels Affected: None

Additional Information: INTL-635-87

Drafting attorney: Carl M. Cooper (202) 634-5406.

Reviewing attorney: Carol Doran Klein (202) 566-6419.

Treasury attorney: Peter Daub (202) 566-3264.

Final regulation to correct INTL-50-86.

13 Income Taxes.

Agency Contact: Carl M. Cooper, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 634-5406

RIN: 1545-AM25

2651. ◆ SANCTIONS ON ISSUES AND HOLDERS OF REGISTRATION REQUIRED OBLIGATIONS NOT IN REGISTERED FORM

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 163 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Rules for determining whether an issuer may claim an interest deduction for interest paid on an obligation in bearer form that is otherwise a registration required obligation because the issuer satisfies the foreign targeting requirement of section 163(f)(2)(B).

Timetable:

Action	Date	FR Cite
Final Action T.D. 8110	12/19/86	51 FR 45453

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Additional Information: INTL-060-86

Drafting attorney: Carl M. Cooper (202) 566-6420.

Reviewing attorney: Carol Doran Klein (202) 566-6419.

Treasury attorney: Peter Daub (202) 566-3564.

13 Income Taxes.

Agency Contact: Carl M. Cooper, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 634-5406

RIN: 1545-AM17

2652. TAX-EXEMPT ENTITY LEASING

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 168 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The proposed regulations provide rules concerning tax-exempt entity leasing and service contracts.

Timetable:

Action	Date	FR Cite
Closed without regulations	03/31/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-109-86

Drafting attorney: Robert Beatson (202) 566-3459.

Reviewing attorney: John Tolleris (202) 566-3294.

Treasury attorney: Kathleen Ferrell (202) 566-5453.

Agency Contact: Robert Beatson, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224, 202 566-3459

RIN: 1545-AJ36

2653. DEDUCTIONS IN EXCESS OF $5,000 CLAIMED FOR CERTAIN CHARITABLE CONTRIBUTIONS OF PROPERTY AND INFORMATION REPORTING BY DONEES WHO MAKE CERTAIN DISPOSITIONS OF DONATED PROPERTY

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 170 (a) (1) Internal Revenue Code of 1986; 26 USC 6050L Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations will provide rules relating to deductions for charitable contributions. The regulations provide that deductions for certain charitable contributions made by an individual, closely held corporations, personal service corporation, partnership, or S corporation shall not be allowed unless the donor obtains a qualified appraisal and attaches an appraisal summary to the donor's return on which the deduction is first claimed. Additionally, the regulations require the donee of certain charitable deduction property to make an information return.

Timetable:

Action	Date	FR Cite
NPRM	12/31/84	49 FR 50740
NPRM Comment Period End	03/01/85	49 FR 50740
Hearing	06/28/85	
Final Action T.D.8192	05/05/88	53 FR 16076

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-200-84.

Drafting attorney: Beverly A. Baughman (202) 566-3297.

Reviewing attorney: John B. Bromell (202) 566-3326.

Treasury attorney: A.L. Spitzer (202) 566-3811.

Agency Contact: Beverly A. Baughman, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3297

RIN: 1545-AG86

2654. FINAL REGULATIONS RELATING TO THE CHARITABLE CONTRIBUTIONS DEDUCTION IN THE CONTEXT OF BARGAIN SALES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations provide that a charitable contribution deduction will be disallowed if the amount of the contribution is less than the amount of gain that would have been recognized had the contributed portion of the property been sold by the donor of its fair market value at the time of the sale or exchange.

Timetable:

Action	Date	FR Cite
Final Action T.D.8176	02/25/88	53 FR 5568

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-7-87

Drafting attorney: Joel S. Rutstein (202) 566-3297.

Reviewing attorney: David R. Haglund (202) 566-3297.

Agency Contact: Joel S. Rutstein, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, DC 20224, 202 566-3297

RIN: 1545-AJ85

2655. INCOME TAX -- PART 1, EXCISE TAX -- PART 54, INDIVIDUAL RETIREMENT ACCOUNTS AFTER TRA '86

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 219 Internal Revenue Code of 1986; 26 USC 408 Internal Revenue Code of 1986; 26 USC 72 Internal Revenue Code of 1986;

26 USC 6693 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1; 26 CFR 25; 26 CFR 31; 26 CFR 54; 26 CFR 301

Legal Deadline: None

Abstract: The regulations set forth rules for sponsors of and participants in individual retirement plans and spousal individual retirement plans.

Timetable:

Action	Date	FR Cite
Closed without regulations	06/22/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-36-87

Drafting attorney: William Gibbs (202) 566-3060.

Review attorney: Richard J. Wickersham (202) 566-4621.

Agency Contact: William Gibbs, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue N.W., Washington, D.C. 20224, 202 566-3060

RIN: 1545-AK47

2656. CERTAIN CASH OR DEFERRED ARRANGEMENTS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 401 (k) Internal Revenue Code of 1986; 26 USC 402 (a) (8) Internal Revenue Code of 1986; PL 95-600, Sec 135 Revenue Act of 1978

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Regulation will provide definitions and interpretations governing qualified cash or deferred arrangements described in section 401(k) of the Internal Revenue Code of 1054.

Timetable:

Action	Date	FR Cite
NPRM	11/10/81	46 FR 55544
NPRM Comment Period End	02/15/82	47 FR 00988
Hearing	04/20/82	
Final Action - T.D. 8217	08/08/88	53 FR 29653

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-109-78.

Drafting attorney: William D. Gibbs (202) 566-3060.

Reviewing attorney: Mary E. Oppenheimer (202) 566-6628.

Office of Tax Legislative Counsel (Treasury) reviewing attorney: Harry Conaway (202) 566-8277.

Agency Contact: William D. Gibbs, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3060

RIN: 1545-AD72

2657. STUDY OF NEED FOR SPECIAL ANTIDISCRIMINATION RULES FOR PENSION, ETC. PLANS OF STATE AND LOCAL GOVERNMENTS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 401(a)(4) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Study of need for rules relating to antidiscrimination for state and local government plans.

Timetable:

Action	Date	FR Cite
Closed without regulations	06/01/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-81-87

Drafting attorney: Mary E. Brennan (202) 566-3430.

Reviewing attorney: Richard J. Wickersham (202) 566-3250.

Agency Contact: Mary Brennan, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue N.W., Washington, D.C. 20224, 202 566-3430

RIN: 1545-AK44

2658. RETIREMENT EQUITY ACT CHANGES TO PARTICIPATION, VESTING, ETC. RULES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; PL 98-397, Sec 301 Retirement Equity Act of 1984

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations provide rules relating to amendments to section 401(a)(25), 402(f), 410, 411, 6057(e), and 6652(j) of the Code, enacted by the Retirement Equity Act of 1984. The regulations will apply changes in the participation and vesting rules to plans that use the elapsed time method of service counting, and to class-year plans. In addition, the rules provide a sample notice that may be used to satisfy section 402(f). Rules governing reductions in accrued benefits will also be provided.

Timetable:

Action	Date	FR Cite
NPRM	01/30/86	51 FR 3798
NPRMDocument published is only a portion of total NPRM project	01/30/86	51 FR 03798
Hearing	05/22/86	51 FR 12340
Final Action T.D. 8212	07/11/88	53 FR 26050

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-65-84.

Drafting attorney: Nancy J. Marks (202) 566-3003.

Reviewing attorney: Richard J. Wickersham (202) 566-3250.

Office of Tax Legislative Counsel (Treasury) reviewing attorney: Harry J. Conaway (202) 566-8277.

Agency Contact: Nancy J. Marks, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3003

RIN: 1545-AH01

2659. RULES CLARIFYING THE INCOME TAX REGULATIONS, PART 1, WITH RESPECT TO SERVICE COMPUTATION UNDER PENSION, ETC. PLANS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 410 Internal Revenue Code of 1986; 26 USC 411 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This project was undertaken in order to clarify permissible methods of crediting service by qualified plans for purposes of vesting and participation.

TREAS—IRS

Completed Actions

Timetable:

Action	Date	FR Cite
Closed without regulations	06/22/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-61-82.

Drafting attorney: Nancy J. Marks (202) 566-3903.

Reviewing attorney: Richard J. Wickersham (202) 566-3250.

Office of Tax Legislative Counsel (Treasury) reviewing attorney: Harry Conaway (202) 566-8277.

Agency Contact: Nancy J. Marks, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, [illegible]

RIN: 1545-AE29

2660. INCOME TAX-PART I - REDUCTION OF ACCRUED BENEFITS TO QUALIFY FOR A STANDARD TERMINATION OF A SINGLE EMPLOYER DEFINED BENEFIT PENSION PLAN

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations would provide guidelines for reducing accrued benefits for certain key employees in order to qualify for a standard termination of a single-employer defined benefit pension plan.

Timetable:

Action	Date	FR Cite
Closed without regulations	06/01/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-46-86.

Drafting attorney: Mary E. Brennan (202) 566-3913.

Reviewing attorney: Mary Oppenheimer (202) 566-3544.

Cross-referenced with temporary regulations ER-47-86.

Agency Contact: Mary E. Brennan, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue N.W., Washington, D.C. 20224, [illegible]

RIN: 1545-AE40

2661. INCOME TAX-PART 1 - REDUCTION OF ACCRUED BENEFITS TO QUALIFY FOR A STANDARD TERMINATION OF A SINGLE EMPLOYER DEFINED BENEFIT PENSION PLAN

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations would provide temporary guidelines for reducing benefits for certain key employees in order to qualify for a standard termination of a single-employer defined benefit pension plan.

Timetable:

Action	Date	FR Cite
Closed without regulations	06/01/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-47-86.

Drafting attorney: Mary E. Brennan (202) 566-3903.

Reviewing attorney: Mary Oppenheimer (202) 566-3544.

Cross-referenced with NPRM EE-46-86.

Agency Contact: Mary E. Brennan, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue N.W., Washington, D.C. 20224, [illegible]

RIN: 1545-AJ45

2662. INCOME TAX-PART 1 - VARIANCE FROM MINIMUM FUNDING STANDARD

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The proposed regulations would supersede Rev. Proc. 83-41 and prescribe a standard waiver application form.

Timetable:

Action	Date	FR Cite
Closed without regulations	06/01/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-42-86.

Drafting attorney: Mary E. Brennan (202) 566-3903.

Reviewing attorney: Jonathan Marget (202) 566-3651.

Agency Contact: Mary Brennan, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224, [illegible]

RIN: 1545-AJ15

2663. INCOME TAX--DEFINITIONS & SPECIAL RULES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 414 (b) Internal Revenue Code of 1986; 26 USC 414 (c) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations relate to the definition of controlled groups of corporations and businesses under common control for purposes of certain provisions of the Employee Retirement Income Security Act of 1974 and pension related provisions of the Internal Revenue Code.

Timetable:

Action	Date	FR Cite
NPRM	11/05/75	40 FR 51467
NPRM Comment Period End	01/04/76	40 FR 51467
Final Action T.D. 8179	03/02/88	53 FR 6803

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-209-74.

Drafting attorney: Patricia Fellervo (202) 566-3458.

Reviewing attorney: Charles M. Whedbee (202) 566-3458.

Treasury attorney: Don Rocap (202) 566-8277.

Agency Contact: Patricia Fellervo, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, [illegible]

RIN: 1545-AB36

TREAS—IRS

Completed Actions

2664. INCOME TAX--DEFINITIONS AND SPECIAL RULES; SERVICE FOR PREDECESSOR

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 414 (a) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Regulation will provide guidance to employers maintaining plans on when service with a predecessor employer must or may be treated as service under their plan.

Timetable:

Action	Date	FR Cite
Closed without regulations	06/01/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-22-75.

Drafting attorney: Marjorie Hoffman (202) 566-3430.

Reviewing attorney: Richard J. Wickersham (202) 566-3250.

Office of Tax Legislative Counsel (Treasury) reviewing attorney: Harry Conaway (202) 566-8277.

Agency Contact: Marjorie Hoffman, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, [illegible]

RIN: 1545-AD87

2665. DEFINITION OF "HIGHLY COMPENSATED EMPLOYEE" AND "COMPENSATION"

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 414(q) Internal Revenue Code of 1986; 26 USC 414(s) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: Final, Statutory, February 1, 1988.

Abstract: Provisions relating to the scope and meaning of the terms "highly compensated employee" and "compensation".

Timetable:

Action	Date	FR Cite
Final Action T.D. 8173	02/19/88	53 FR 4965

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-74-87

Drafting attorney: Nancy J. Marks (202) 566-3903.

Reviewing attorney: Richard J. Wickersham (202) 566-3250.

Office of Tax Legislative Counsel (Treasury) reviewing attorney: Harry Conaway (202) 566-8277.

Cross Reference to EE-129-86

Agency Contact: Nancy J. Marks, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue N.W., Washington, D.C. 202 [illegible]

RIN: 1545-AK49

2666. LIMITATIONS ON CONTRIBUTIONS AND BENEFITS UNDER QUALIFIED PLANS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 0415 Internal Revenue Code of 1986; 26 USC 401 (a) (17) Internal Revenue Code of 1986; 26 USC 404 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations will address changes to limitations on contributions and benefits under qualified plans, a limit on the annual compensation which may be taken into account, special treatment of certain medical benefit accounts, retirement savings for church employees, and special rules for disabled participants. A special rule applies to participants with less than ten years of participation.

Timetable:

Action	Date	FR Cite
Closed without regulations	06/01/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-25-87

Drafting attorney: Monice Rosenbaum (202) 566-3422.

Reviewing attorney: Richard J. Wickersham (202) 566-3250.

Treasury attorney: Harry J. Conaway (202) 566-8277.

Agency Contact: Monice Rosenbaum, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue N.W., Washington, D.C. 20224, [illegible]

RIN: 1545-AK42

2667. INCOME TAX--CREATION & TREATMENT OF INCENTIVE STOCK OPTIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 422A Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations would provide guidance for taxpayers who either grant or receive incentive stock options. The grant of an incentive stock option to an employee by an employer will not be a taxable event. At the time such option is exercised by the employee no amount of the spread between the fair market value of the stock at exercise and the option price will be included in the employee's gross income. When the stock acquired through the exercise of the option is sold, the entire gain will be treated as capital gain and not ordinary income if certain holding period and employment relationship requirements are met.

Timetable:

Action	Date	FR Cite
NPRM	02/07/84	49 FR 4504
NPRM Comment Period End	04/09/84	49 FR 4504
Hearing	06/21/84	49 FR 17040
Closed without regulations	07/07/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-279-81.

Drafting attorney: Michael J. Grace (202) 566-3288.

Reviewing attorney: Michael J. Grace (202) 566-3288.

Treasury attorney: John H. Parcell (202) [illegible]

Agency Contact: Michael J. Grace, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, [illegible]

RIN: 1545-AE06

2668. ELECTION OF TAXABLE YEARS OTHER THAN REQUIRED TAXABLE YEAR BY PARTNERSHIPS, S CORPORATIONS, AND PERSONAL SERVICE CORPORATIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 444 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation provides guidance with respect to elections of taxable years other than required taxable years.

Timetable:

Action	Date	FR Cite
Final Action T.D. 8205	05/27/88	53 FR 19688

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-6-88

Drafting attorney: Arthur Davis (202) 566-3238.

Reviewing attorney: Cynthia Clark (202) 566-3288.

Treasury accountant-advisor: Marc Levy (202) 535-6666.

13 Income Taxes

Agency Contact: Arthur Davis, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3238

RIN: 1545-AL46

2669. CLARIFICATION OF DETERMINATION OF BAD DEBT EXPERIENCE UNDER NONACCRUAL-EXPERIENCE ACCOUNTING METHOD

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 448 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This temporary regulation provides a clarification of determining the bad debt experience under nonaccrual-experience accounting methods.

Timetable:

Action	Date	FR Cite
Final Action T.D. 8194	04/15/88	53 FR 12513

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-133-87

Drafting attorney: Katherine Lee Wambsgans (202) 566-3288.

Reviewing attorney: Cynthia L. Clark (202) 566-3288.

Treasury attorney: Thomas Evans (202) 566-6277.

13 Income Taxes

Agency Contact: Katherine Lee Wambsgans, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3288

RIN: 1545-AL70

2670. ◈ TRANSITIONAL RULE RELATING TO CERTAIN INSTALLMENT SALES BY MANUFACTURERS TO DEALERS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations provide guidance with respect to an exception from the general rules applicable to installment sales.

Timetable:

Action	Date	FR Cite
Final Action T.D. 8213	07/12/88	53 FR 26243

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-18-88

Drafting attorney: William L. Blagg (202) 566-3238.

Reviewing attorney: Cynthia L. Clark (202) 566-3288.

Treasury attorney: Marc Levy (202) 566-4002.

13 Income Tax

Agency Contact: William L. Blagg, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3238

RIN: 1545-AL34

2671. INCOME TAX REGULATIONS – SPECIAL RULES RELATING TO NUCLEAR DECOMMISSIONING COSTS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 468A Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations will provide rules relating to the Federal income tax treatment of nuclear power plant decommissioning costs. The regulations will provide guidance with respect to the manner of making the election, the determination of the amount to be deducted, and the qualification requirements for the nuclear decommissioning fund.

Timetable:

Action	Date	FR Cite
NPRM	07/10/86	51 FR 25070
NPRM Comment Period End	09/08/86	51 FR 25070
Final Action T.D. 8184	03/03/88	53 FR 6900
Final Action Effective	03/03/88	53 FR 6900

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-16-85.

Drafting attorney: Bill Blagg (202) 566-3238.

Treasury attorney: Kathleen Ferrell (202) 566-2928.

Agency Contact: William L. Blagg, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3238

RIN: 1545-AJ01

2672. LIMITATIONS ON PASSIVE ACTIVITY LOSSES AND CREDITS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 469 (k) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1.469-0T; 26 CFR 1.469-1T; 26 CFR 1.469-2T; 26 CFR 1.469-3T; 26 CFR 1.469-5T; 26 CFR 1.469-11T

Legal Deadline: None

Abstract: The regulations provide guidance to taxpayers on the most essential issues in connection with the computation of a taxpayer's passive activity loss and passive activity credit.

Timetable:

Action	Date	FR Cite
Final Action T.D. 8175	02/25/88	53 FR 5686

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-126-86

Drafting attorney: Michael J.Grace (202) 566-3288.

Reviewing attorney: Michael J. Grace (202) 566-3288.

Treasury attorney: John H. Parcell (202) 535-6605.

Income Tax

Agency Contact: Michael J. Grace, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, DC 20224, 202 566-3288

RIN: 1545-AK18

2673. INCOME TAX – APPLICATION OF EFFECTIVE DATE FOR NEW RULES REGARDING DEDUCTIONS FOR MEAL, TRAVEL, AND ENTERTAINMENT TO PARTNERSHIPS AND S CORPORATIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 702 Internal Revenue Code of 1986; 26 USC 1366 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations will provide guidance to taxpayers relating to the effective date for new rules regarding deductions for meal, travel and entertainment to partnerships and S corporations.

Timetable:

Action	Date	FR Cite
Final Action T.D.8192	03/02/88	53 FR 6802

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: LR-30-87

Drafting attorney: David R. Haglund (202) 566-3297.

Reviewing attorney: Walter H. Woo (202) 566-3297.

Agency Contact: David R. Haglund, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3297

RIN: 1545-AK05

2674. ◈ TREATMENT OF SALVAGE AND REINSURANCE IN DETERMINING LOSSES OF PROPERTY AND CASUALTY INSURANCE COMPANIES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 832 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation will provide rules relating to the treatment of salvage and reinsurance recoverable in determining the paid and unpaid losses of property and casualty insurance companies.

Timetable:

Action	Date	FR Cite
Final Action T.D. 8171	01/05/88	53 FR 117

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-64-87

Drafting attorney: Bill Blagg (202) 566-3238.

Reviewing attorney: Cynthia Clark (202) 566-3288.

Treasury attorney: Don Rocap (202) 566-8278.

13 Income Tax

Agency Contact: Bill Blagg, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave, N.W., Washington, D.C. 20224, 202 566-3238

RIN: 1545-AL31

2675. ◈ CONSENT DIVIDENDS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Temporary regulations under section 565 to limit the availability of consent dividend procedure of section 565 to only those entities entitled to a dividend paid deduction under section 561.

Timetable:

Action	Date	FR Cite
Final Action T.D. 8166	12/15/87	52 FR 47554

Small Entities Affected: None

Government Levels Affected: None

Additional Information: INTL-313-87

Drafting attorney: David Bergkuist (202) 566-0417.

Reviewing attorney: T. Timothy Tuerff (202) 566-5896.

Treasury attorney: Mark Beams (202) 566-6275.

Income Taxes.

Agency Contact: David Bergkuist, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave. N.W., Washington, D.C. 20224, 202 566-6457

RIN: 1545-AL87

2676. ◈ TREATMENT OF RELATED PERSON FACTORING, CERTAIN INVESTMENTS IN UNITED STATES PROPERTY, STOCK REDEMPTIONS THROUGH RELATED CORPORATIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 864 (d) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These temporary and final regulations provide rules relating to the treatment of income derived by foreign corporations from factoring the receivables of related persons, as well as changes to regulations relating to the determination of the amount of earnings of a controlled foreign corporation invested in United States property and redemptions of stock through the use of related persons.

Timetable:

Action	Date	FR Cite
Final Action T.D. 8209	06/14/88	53 FR 22163

Small Entities Affected: None

Government Levels Affected: None

Additional Information: INTL-323-86

Drafting attorney: Barbara A. Felker (202) 634-5406 and Ries Lainoff (202) 566-6645.

Reviewing attorney: Phyllis Marcus (202) 566-6645.

Treasury attorney: Peter Daub (202) 566-2954.

13 Income Taxes.

Agency Contact: Barbara Allen Felker, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave. N.W., Washington, D.C. 20224, 202 634-5466

RIN: 1545–AL70

2677. INCOME TAX—ORIGINAL ISSUE DISCOUNT

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 871 Internal Revenue Code of 1986; 26 USC 881 Internal Revenue Code of 1986; 26 USC 1441 Internal Revenue Code of 1986; 26 USC 1442 Internal Revenue Code of 1986; 26 USC 3401 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1; 26 CFR 31

Legal Deadline: None

Abstract: The regulations would provide rules with respect to the taxation of original issue discount on bonds and obligations held by nonresident alien individuals and foreign corporations. The regulations would also provide guidance to withholding agents for withholding tax on original issue discount on such bonds and obligations.

Timetable:

Action	Date	FR Cite
NPRM	07/12/76	41 FR 28517
NPRM Comment Period End	09/09/76	41 FR 28517
Hearing	11/18/76	
Closed without regulations	07/28/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-237-86

Drafting attorney: Theresa E. Bearman (202) 566-3407.

Reviewing attorney: Robert A. Katcher (202) 566-3407.

Agency Contact: Theresa E. Bearman, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, DC 20224, 202 566-3407

RIN: 1545–AH63

2678. REPEAL OF 30 PERCENT WITHHOLDING BY THE TAX REFORM ACT OF 1984

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 871 Internal Revenue Code of 1986; 26 USC 881 Internal Revenue Code of 1986; 26 USC 1441 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations will provide rules relating to the definition of portfolio interest, the certifications required in the case of obligations that are issued in registered form, and related matters.

Timetable:

Action	Date	FR Cite
Closed without regulations	06/30/88	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: INTL-39-86

Drafting attorney: Carl Cooper (202) 566-3358.

Reviewing attorney: Carol Doran Klein (202) 566-6419.

Treasury attorney: Peter Daub (202) 566-5791.

Agency Contact: Carl Cooper, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3358

RIN: 1545–AG66

2679. EMPLOYMENT TAXES: APPLICATION OF THE REPEAL OF 30% WITHHOLDING BY THE TAX REFORM ACT OF 1984 AND OF INFORMATION REPORTING AND BACKUP WITHHOLDING IN LIGHT OF SUCH REPEAL

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 871 Internal Revenue Code of 1986; 26 USC 881 Internal Revenue Code of 1986; 26 USC 1441 Internal Revenue Code of 1986; 26 USC 1442 Internal Revenue Code of 1986; 26 USC 3406 Internal Revenue Code of 1986; 26 USC 6041 Internal Revenue Code of 1986; 26 USC 6045 Internal Revenue Code of 1986; 26 USC 6049 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations provide rules relating to the repeal of 30 percent withholding by the Tax Reform Act of 1984 and to the application of information reporting and backup withholding in light of such repeal.

Timetable:

Action	Date	FR Cite
NPRM	12/19/86	51 FR 45484
Closed. See INTL-50-86	07/27/88	
INTL-53-86		
Hearing 01/26/86 (49 FR 47870)		

Small Entities Affected: None

Government Levels Affected: None

Additional Information: INTL-53-86.

Drafting attorney: Carl Cooper (202) 376-3358.

Reviewing attorney: Carol Doran Klein (202) 566-6419.

Treasury attorney: Peter Daub (202) 566-5791.

Agency Contact: Carl Cooper, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Room 4109, Washington, D.C. 20224, 202 566-3358

RIN: 1545–AH15

2680. ● REGISTRATION REQUIREMENTS WITH RESPECT TO CERTAIN DEBT OBLIGATIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 871 Internal Revenue Code of 1986; 26 USC 881 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Regulations to enforce the exclusion from portfolio interest treatment of interest received by certain related parties.

Timetable:

Action	Date	FR Cite
Final Action T.D. 8111	12/19/86	51 FR 45461

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: INTL-950-86

Drafting attorney: Carl M. Cooper (202) 634-5406.

Reviewing attorney: Carol Doran Klein (202) 566-6419.

Treasury attorney: Peter Daub (202) 566-2954.

13 Income Taxes.

Agency Contact: Carl M. Cooper, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 634-5466

RIN: 1545–AM25

2681. FOUR PERCENT TAX ON GROSS TRANSPORTATION INCOME AND ECI

Significance: Agency Priority

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 887 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Four percent tax in gross transportation income. The regulation will address the circumstances in which persons must pay a transportation on tax on a gross basis, and the circumstances in which they have effectively connected transportation income so that they must file a tax return and pay the tax on a net basis.

Timetable:

Action	Date	FR Cite
Closed without regulations	05/24/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-940-86

Drafting attorney: David L. Paul (202) 566-3289.

Reviewing attorney: John F. Dean (202) 566-3289.

Treasury attorney: Peter Daub (202) 566-5791.

Agency Contact: David L. Paul, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3289

RIN: 1545–AJ69

2682. IMPOSITION OF TAX ON GROSS TRANSPORTATION INCOME OF NONRESIDENT ALIENS AND FOREIGN CORPORATIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 887 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will provide rules for implementing the four percent tax on gross transportation income of nonresident aliens and foreign corporations.

Timetable:

Action	Date	FR Cite
Closed without regulations	05/24/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-940-86

Drafting attorney: Patricia Bray (202) 566-6645.

Reviewing attorney: Jacob Feldman [illegible]

Treasury attorney: Mark Beams (202) 566-5275.

Agency Contact: Patricia A. Bray, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C., 202 566-6645

RIN: 1545–AK79

2683. INCOME TAX—INCOME OF FOREIGN GOVERNMENTS AND OF INTERNATIONAL ORGANIZATIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 892(c) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations will provide rules governing the taxation of income of foreign governments and international organizations.

Timetable:

Action	Date	FR Cite
Final Action T.D. 8211	06/27/88	53 FR 24060

Small Entities Affected: None

Government Levels Affected: None

Additional Information: INTL-950-86

Drafting attorney: David A. Juster (202) 566-6384.

Reviewing attorney: Bernard T. Bress (202) 566-6440.

Office of International Tax Counsel (Treasury) Reviewing attorney: Peter Daub (202) 566-2964.

Agency Contact: David A. Juster, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-6384

RIN: 1545–AJ79

2684. TEMPORARY REGULATIONS—NONRECOGNITION OF CORPORATE DISTRIBUTIONS AND REORGANIZATIONS UNDER THE FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 897 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Regulations would provide rules concerning the effect of certain distributions, including dividends, redemptions, distributions pursuant to reorganizations, and liquidations on corporations and their shareholders under the Foreign Investment in Real Property Tax Act. Regulations would also provide rules for determining the extent to which nonrecognition would apply to certain transfers of real property interests and the extent to which certain reorganizations will be treated as sales of property at fair market value.

Timetable:

Action	Date	FR Cite
Final Action T.D. 8198	05/05/88	53 FR 16214

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-30-85.

Drafting attorney: Charles P. Besecky (202) 566-3519.

Reviewing attorney: Charles C. Ravenale (202) 566-6443.

Treasury attorney: David Crowe (202) 566-5791.

Agency Contact: Charles P. Besecky, Attorney-Advisor, Department of the

Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3319

RIN: 1545-AF17

2645. INCOME TAX—RECAPTURE OF OVERALL FOREIGN LOSSES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 904 (f) Internal Revenue Code of 1986; PL 97-248, Sec 211

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations would provide rules for determining the amount of and recapturing overall foreign losses. An overall foreign loss under any one of the separate limitations on the foreign tax credit may offset the taxpayer's United States tax on United States source income in the year of the loss. The recapture rules provide that a portion of the taxpayer's foreign taxable income under the same limitation in subsequent years is to be recharacterized as United States source income, thereby reducing the taxpayer's foreign tax credit and preventing a double tax benefit from the loss.

Timetable:

Action	Date	FR Cite
NPRM	01/24/86	51 FR 3193
Hearing	06/05/86	51 FR 11323
Final Action T.D. 8153	06/25/87	52 FR 31992

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-47-86

Drafting attorney: Carolyn M. DuPuy (202) 634-5406.

Reviewing attorney: Jacob Feldman (202) 566-3289.

Treasury attorney: Peter Barnes (202) 566-5815.

Agency Contact: Carolyn M. DuPuy, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 634-5406

RIN: 1545-AC36

2646. SEPARATE APPLICATION OF SECTION 904 WITH RESPECT TO CERTAIN CATEGORIES OF INCOME

Significance: Regulatory Program

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 904 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation will provide rules for determining the separate application of the foreign tax credit limitation with respect to certain categories of income. The regulation will define the separate limitations, provide operational rules for determining the separate limitations (including look-through rules) and provide certain transition rules.

Timetable:

Action	Date	FR Cite
NPRM	08/26/87	52 FR 32242
NPRM Comment Period End	10/26/87	52 FR 32242
Hearing	11/12/87	
Final Action T.D. 8214	07/18/88	53 FR 27008

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-931-86

Drafting attorney: Carolyn Dupuy (202) 634-5406.

Reviewing attorney: Carol Doran Klein (202) 566-6419.

Treasury attorney: Peter Daub (202) 566-3964.

Agency Contact: Carolyn M. Dupuy, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 634-5406

RIN: 1545-AJ69

2647. ● SECTION 904 (F) TRANSITION RULE

Legal Authority: 26 USC 7805 Internal Revenue Code of 1909

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The Tax Reform Act of 1986 changed the order in which foreign source losses offset U.S. source and foreign source income of a taxpayer. Transition rules are necessary to set forth the treatment in years following the effective date of the tax reform act of foreign source losses incurred before the effective date.

Timetable:

Action	Date	FR Cite
Final Action T.D. 8201	05/17/88	53 FR 17461

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-275-88

Drafting attorney: Willard W. Yates (202) 566-3896.

Reviewing attorney: Carol Doran Klein (202) 566-6419.

Treasury attorney: Peter Barnes (202) 566-5815.

13 Income Taxes.

Agency Contact: Willard Yates, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3896

RIN: 1545-AM10

2648. ● FOREIGN TAX CREDIT: NOTIFICATION AND ADJUSTMENT DUE TO FOREIGN TAX REDETERMINATIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 905 (c) Internal Revenue Code of 1986; 26 USC 989 (c) (4) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1; 26 CFR 301; 26 CFR 602

Legal Deadline: None

Abstract: The regulations relate to a taxpayer's obligation under section 905(c) of the Internal Revenue Code of 1986 to file a notice of a foreign tax redetermination or to make an adjustment to the taxpayer's pools of earnings and profits and foreign taxes, as the case may be, and the civil penalty for failure to file that notice or to make such adjustment.

Timetable:

Action	Date	FR Cite
Final Action T.D. 8210	06/23/88	53 FR 23611

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-279-88

Drafting attorney: Eli J. Dicker (202) 566-3490.

Reviewing attorney: Carol Doran Klein (202) 566-6419.

Treasury attorney: David Crowe (202) 566-5781.

13 Income Taxes.

Agency Contact: Eli J. Dicker, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3490

RIN: 1545-AM17

2649. SUBPART F FPHC DEFINITIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 954 Internal Revenue Code of 1986; 26 USC 957 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Definition of FPHC income. Particular issues include the definition of income equivalent to interest, of property which does not give rise to income.

Timetable:

Action	Date	FR Cite
Final Action T.D. 8216	07/21/88	53 FR 27489

Small Entities Affected: None

Government Levels Affected: None

Additional Information: INTL-953-86

Drafting attorney: Rica M. Lainoff (202) 566-6045.

Reviewing attorney: Phyllis Marcus (202) 566-3289.

Treasury attorney: Peter Daub (202) 566-6781.

Agency Contact: Rica M. Lainoff, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-6845

RIN: 1545-AJ61

2650. FUNCTIONAL CURRENCY

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 985 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This project provides rules for determining the currency an entity is a foreign entity it may be allowed to compute its gain or loss in foreign currency and translate the net amount of such gain or loss into U.S. dollars.

Timetable:

Action	Date	FR Cite
Final Action T.D. 8208	06/03/88	53 FR 20308

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-982-86

Drafting attorney: David Rosenberg (202) 634-5406.

Reviewing attorney: Bob Katcher (202) 634-5405.

Treasury attorney: David Crowe (202) 566-5781.

Agency Contact: David Rosenberg, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 634-5406

RIN: 1545-AL27

2651. ● DEFINITION OF A QUALIFIED BUSINESS UNIT

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 989 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Temporary regulations relating to certain foreign operations of a United States person or foreign corporation having a functional currency other than the United States dollar if such operations satisfy the requirements for a qualified business unit.

Timetable:

Action	Date	FR Cite
Final Action T.D. 8206	06/06/88	53 FR 20612

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-983-86

Drafting attorney: Carl M. Cooper (202) 634-5406.

Reviewing attorney: Robert Katcher (202) 634-5406.

Treasury attorney: David Crowe (202) 566-5791.

13 Income Taxes.

Agency Contact: Carl M. Cooper, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 634-5406

RIN: 1545-AM25

2652. TRANSITION RULES FOR QUALIFIED BUSINESS UNITS USING A NET WORTH METHOD OF ACCOUNTING FOR TAXABLE YEARS BEGINNING BEFORE JANUARY 1, 1987

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 989 (c) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This project provides transition rules for those foreign branches of United States entities who used a net worth method of accounting prior to the enactment of the Tax Reform Act of 1986. Under the Act foreign branches must now account for their operations under the profit and loss method as set forth in section 987 of the Code.

Timetable:

Action	Date	FR Cite
Final Action T.D. 8207	06/06/88	53 FR 20614

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: INTL-984-86

Drafting attorney: David Rosenberg (202) 634-5406.

Reviewing attorney: P. Ann Fisher (202) 566-4970.

Treasury attorney: David Crowe (202) 566-5791.

13 Income Taxes

Agency Contact: David Rosenberg, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 634-5406

RIN: 1545-AL28

2653. INCOME TAX—SPECIAL ALLOCATION RULES FOR CERTAIN ASSET ACQUISITIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 1060 Internal Revenue Code of 1986; 26 USC

755 Internal Revenue Code of 1986; 26 USC 338 Internal Revenue Code of 1986; 26 USC 197 Internal Revenue Code of 1986; 26 USC 1071 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will explain and illustrate the application of the residual method of allocation to the purchase price in certain asset acquisitions. It will also provide certain information reporting requirements.

Timetable:

Action	Date	FR Cite
Final Action - T.D. 8215	07/19/88	53 FR 27035

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-116-86.

Drafting attorney: Judith C. Winkler [202] 566-3458.

Reviewing attorney: Charles M. Whedbee (202) 566-3458.

Treasury attorney: Kathleen Ferrell (202) 566-2175.

Agency Contact: Judith C. Winkler, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545–AJ08

2684. ◆ PASSIVE FOREIGN INVESTMENT COMPANIES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 1291 Internal Revenue Code of 1986; 26 USC 1294 Internal Revenue Code of 1986; 26 USC 1295 Internal Revenue Code of 1986; 26 USC 1297 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Temporary regulations that provide guidance to passive foreign investment companies and their shareholders that are United States persons about the time, manner and other requirements for making certain elections.

Timetable:

Action	Date	FR Cite
Final Action T.D. 8178	03/02/88	53 FR 06770

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: INTL-005-87

Drafting attorney: Gayle Novig (202) 634-5084.

Reviewing attorney: T. Timothy Tuerff (202) 566-5988.

Treasury attorney: Mary Bennett (202) 566-5972.

13 Income taxes.

Agency Contact: Gayle Novig, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 634-5084

RIN: 1545–AL76

2685. CONSOLIDATED RETURN REGULATIONS; ADJUSTMENT ON DISPOSITION OF STOCK OF SUBSIDIARY

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 1502 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation provides revisions of section1.1502-32 to alleviate the problems that occur when a subsidiary is deconsolidated and the consent dividend election is not available to the consolidated group.

Timetable:

Action	Date	FR Cite
Final Action T.D. 8156	03/17/88	53 FR 8747

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-5-88

Drafting attorney: Judith Winkler (202) 566-3458.

Reviewing attorney: John Broadbent [202] 566-3458.

13 Income Taxes

Agency Contact: Judith Winkler, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545–AL45

2686. ◆ AMENDMENT OF CONSOLIDATED RETURN REGULATIONS REGARDING DEFERRAL OF GAIN OR LOSS ON COMPLETE LIQUIDATIONS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 1502 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Recent amendments of the Internal Revenue Code result in some corporations recognizing gain upon complete liquidation. This project addresses the treatment of such gain upon liquidations within consolidated groups.

Timetable:

Action	Date	FR Cite
Final Action T.D. 8196	04/18/88	53 FR 12678

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-44-86

Drafting attorney: Patricia Pellervo (202) 566-3458.

Reviewing attorney: Charles M. Whedbee (202) 566-3458.

Treasury attorney: Thomas Wessel (202) 566-2928.

13 Income Tax

Agency Contact: Patricia Pellervo, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545–AL83

2687. ESTATE TAX–GENERATION SKIPPING TRANSFER TAX

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 2653 (b) Internal Revenue Code of 1986; 26 USC 2662 Internal Revenue Code of 1986; 26 USC 2663 Internal Revenue Code of 1986

CFR Citation: 26 CFR 26; 26 CFR 26a

Legal Deadline: None

Abstract: The regulations will provide rules relating to the effective date provisions, return requirements, definitions, and certain special rules for the tax on generation-skipping transfers.

Timetable:

Action	Date	FR Cite
Final Action T.D. 8187	03/15/88	53 FR 8441

Small Entities Affected: None

Government Levels Affected: None

Additional Information:

LR-127-86.

Drafting attorney: Maurice B. Foley (202) 566-4336.

Reviewing attorney: Fred E. Grundeman (202) 566-3287.

Treasury attorney: Susan Himes (202) 566-3527.

Agency Contact: Maurice B. Foley, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-4336

RIN: 1545–AJ12

2689. ELECTION TO HAVE CERTAIN DIESEL FUEL TAXES IMPOSED ON SALES TO RETAILERS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 4041 Internal Revenue Code of 1986

CFR Citation: 26 CFR 48

Legal Deadline: None

Abstract: The regulations will provide guidance to assist diesel fuel retailers in making an election to have the diesel fuel excise tax collected by the wholesaler at the time the liquid is sold to the retailer.

Timetable:

Action	Date	FR Cite
Final Action T.D. 8181	03/01/88	53 FR 6518

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-117-87

Drafting attorney: Lauren G. Shaw (202) 566-3287.

Reviewing attorney: William A. Jackson (202) 566-3287.

Treasury attorney: Ellen Aprill (202) 566-5455.

Excise Taxes

Agency Contact: Lauren G. Shaw, Attorney - Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, DC 20006, 202 566-3287

RIN: 1545–AL14

2699. EXCISE TAX - EXCISE TAX ON HEAVY TRUCKS, TRUCK TRAILERS AND SEMITRAILERS, AND TRACTORS

Legal Authority: 26 USC 4052 Internal Revenue Code of 1986

CFR Citation: 26 CFR 145

Legal Deadline: None

Abstract: These regulations will define the term "first retail sale" and provide rules relating to the determination if the retail sales price where the tax is paid by the manufacturer and where a long-term lease is treated as a taxable sale.

Timetable:

Action	Date	FR Cite
Final Action - T.D. 8200	05/12/88	53 FR 16867

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-1-86.

Drafting attorney: Maurice B. Foley (202) 566-4336.

Reviewing attorney: Ada Rousso (202) 566-3287.

Treasury attorney: Ellen Aprill (202) 566-2565.

Agency Contact: Maurice B. Foley, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., NW, Washington, DC 20224, 202 566-4336

RIN: 1545–AI62

2700. REDUCTION OF THE HEAVY VEHICLE USE TAX FOR FOREIGN-BASED TRUCKS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 4481 Internal Revenue Code of 1986

CFR Citation: 26 CFR 41

Legal Deadline: None

Abstract: This project will address how the heavy vehicle use tax will be imposed on foreign-based trucks at a reduced rate and what proof of payment of the tax must be presented upon entry into the United States.

Timetable:

Action	Date	FR Cite
NPRM	09/04/87	52 FR 33602
Final Action T.D. 8177	03/02/88	53 FR 6825

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-22-87

Drafting attorney: William A. Jackson (202) 566-3287.

Reviewing attorney: Ada Rousso (202) 566-3287.

Treasury attorney: Ellen Aprill (202) 566-2565.

Agency Contact: William A. Jackson, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3287

RIN: 1545–AK98

2701. FOUNDATION EXCISE TAX-EXCESS BUSINESS HOLDINGS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 4943 Internal Revenue Code of 1986; PL 91-172, Sec 101 Tax Reform Act of 1969; PL 98-369, Sec 307 Tax Reform Act of 1984; PL 98-369, Sec 306; PL 98-369, Sec 309; PL 98-369, Sec 310; PL 98-369, Sec 314

CFR Citation: 26 CFR 53

Legal Deadline: None

Abstract: Amendments to conform regulations to provisions enacted by the Tax Reform Act of 1984.

Timetable:

Action	Date	FR Cite
Closed without regulations	06/20/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: EE-76-84.

Drafting attorney: Marjorie Hoffman (202) 566-3430.

Reviewing attorney: Richard J. Wickersham (202) 566-3250.

Agency Contact: Marjorie Hoffman, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3430

RIN: 1545–AG49

2702. EXCISE TAXES RELATING TO REAL ESTATE INVESTMENT TRUSTS AND REGULATED INVESTMENT COMPANIES UNDER THE TAX REFORM ACT OF 1986

Legal Authority: 26 USC 4961 Internal Revenue Code of 1986; 26 USC 4962 Internal Revenue Code of 1986; 26 USC 6011 Internal Revenue Code of 1986; 26 USC 6091 Internal Revenue Code of 1986; 26 USC 6151 Internal Revenue Code of 1986; 26 USC 7805 Internal Revenue Code of 1986

CFR Citation: 26 CFR 55

Legal Deadline: None

Abstract: The regulation would provide guidance pertaining to the excise taxes relating to real estate investment trusts and regulated investment companies under the Tax Reform Act of 1986.

Timetable:

Action	Date	FR Cite
ANPRM	09/01/87	
NPRM	09/09/87	52 FR 33953
ANPRM Comment Period End	10/30/87	
NPRM Comment Period End	11/09/87	52 FR 33953
Final Action T.D. 8180	03/01/88	53 FR 6146

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-104-86.

Drafting attorney: Robert M. Casey (202) 566-3458.

Reviewing attorney: Charles M. Whedbee (202) 566-3458.

Treasury attorney: Don Rocap (202) 566-3278.

Agency Contact: Robert M. Casey, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545–AJ02

2703. EXCISE TAX–DEFINITION OF NEWLY DISCOVERED OIL.

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 4997 Internal Revenue Code of 1986; 26 USC 4991 Internal Revenue Code of 1986; 26 USC 4996 Internal Revenue Code of 1986

CFR Citation: 26 CFR 51

Legal Deadline: None

Abstract: The regulations would provide guidance on the requirements for the qualification of crude oil as newly discovered oil, as well as a definition of production in "commercial quantities" that affects the net income limitation on windfall profit and the exemption for Alaskan oil.

Timetable:

Action	Date	FR Cite
NPRM	11/05/82	47 FR 50308
NPRM Comment Period End	01/04/83	47 FR 50308
Final Action T.D. 8186	03/02/88	53 FR 6626

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-224-81.

Drafting attorney: David R. Haglund (202) 566-3297.

Reviewing attorney: John B. Bromell (202) 566-3328.

Office of Tax Legislative Counsel (Treasury) reviewing attorney: Bryan Collins (202) 566-2175.

Agency Contact: David R. Haglund, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3297

RIN: 1545–AC56

2704. @ AMENDMENT TO THE REGULATIONS UNDER SECTION 6041 TO EXEMPT FROM REPORTING REQUIREMENTS PAYMENTS MADE BY CERTAIN NON-PROFIT ORGANIZATIONS AS AN AWARD TO AN INFORMER

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 6041 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will exempt certain 501 (c) (3) organizations from the reporting requirements of section 6041 when paying rewards to informers.

Timetable:

Action	Date	FR Cite
Final Action T.D. 8193	04/13/88	53 FR 12149

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: LR-119-87

Drafting attorney: Dave Selig (202) 566-4336.

Reviewing attorney: John Coulter (202) 566-3131.

13 Income Tax

Agency Contact: Dave Selig, Law Clerk, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-4336

RIN: 1545–AL56

2705. INCOME TAX–MORTGAGE INTEREST REPORTING

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 6001I Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations propose rules relating to information reporting of mortgage interest received in a trade or business from individuals, including the persons and interest subject to the reporting requirements.

Timetable:

Action	Date	FR Cite
NPRM	08/20/85	50 FR 33551
NPRM Comment Period End	10/21/85	50 FR 33551
Hearing	01/07/86	50 FR 48674
Final Action T.D. 8191	04/12/88	53 FR 12000

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-214-84.

Drafting attorney: James A. Orefice (202) 566-3238.

Reviewing attorney: Cynthia L. Clark (202) 566-3336.

Treasury attorney: Reed Shuldiner (202) 566-2175.

Agency Contact: James A. Orefice, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, 202 566-3238

RIN: 1545–AG93

2706. REPORTING REQUIREMENTS PERTAINING TO RETURNS RELATING TO PERSONS RECEIVING CONTRACTS FROM FEDERAL EXECUTIVE AGENCIES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 6050M Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation would provide guidance to the heads of Federal executive agencies for purposes of complying with information and reporting requirements prescribed by section 6050M

Timetable:

Action	Date	FR Cite
Closed without regulations	06/13/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-161-86

Drafting attorney: Keith E. Stanley (202) 566-3458

Reviewing attorney: Charles M. Whedbee (202) 566-3458

13 Information Returns

Agency Contact: Keith E. Stanley, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3458

RIN: 1545–AL33

2707. GRANT OF AUTOMATIC EXTENSION OF TIME TO FILE PARTNERSHIP AND TRUST RETURNS

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 6081 (a) Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This temporary regulation grants an automatic extension of time for taxpayers who file partnership and trust returns.

Timetable:

Action	Date	FR Cite
Final Action T.D. 8190	04/05/88	53 FR 11066

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-131-87

Drafting attorney: James A. Orefice (202) 566-3238.

Reviewing attorney: Cynthia L. Clark (202) 566-3336.

13 Income Taxes

Agency Contact: James A. Orefice, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3238

RIN: 1545–AL37

2708. TO REQUIRE FINANCIAL INSTITUTIONS TO DEPOSIT ESTIMATED TAX ON TRUSTS AND ESTATES

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 25 USC 6302 Internal Revenue Code of 1986

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The proposed regulations would require certain financial institutions to make through the Federal Tax Deposit system quarterly estimated income tax payments with respect to certain trusts and estates.

Timetable:

Action	Date	FR Cite
NPRM	11/18/87	52 FR 44139
NPRM Comment Period End	01/04/88	52 FR 44140
Final Action T.D. 8182	04/12/88	53 FR 12006

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-81-87

Drafting attorney: John A. Tolleris (202) 566-6384.

Reviewing attorney: John M. Coulter, Jr. (202) 566-3331.

Agency Contact: John A. Tolleris, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D. C. 20224, 202 566-6384

RIN: 1545–AK35

2709. ELECTRONIC FILING OF NOTICE OF FEDERAL TAX LIEN

Legal Authority: 26 USC 7805 Internal Revenue Code of 1986; 26 USC 6323 Internal Revenue Code of 1986

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: The regulation clarifies that the term "Form 668" as used in section 6323 (f) (3) of the Code includes a notice of magnetic medium where the law of the state in which a notice of Federal tax lien is filed permits such method of filing.

Timetable:

Action	Date	FR Cite
Final Action T.D. 8174	02/23/88	53 FR 5269

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LR-18-87

Drafting attorney: Lauren G. Shaw (202) 566-3287.

Reviewing attorney: Ada S. Rousso (202) 566-3287.

Treasury attorney: Patricia McClanahan (202) 566-2926.

Agency Contact: Lauren G. Shaw, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202 566-3287

RIN: 1545–AL00

[FR Doc. 88-21379 Filed 10-21-88; 8:45 am]

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Part XVI

ACTION

Semiannual Regulatory Agenda

ACTION (ACTION)

ACTION

45 CFR Ch. XII

Executive Order 12291, Federal Regulation, Semiannual Agenda of Regulations

AGENCY: ACTION.

ACTION: Publication of semiannual agenda.

SUMMARY: This agenda announces the regulations that ACTION will have under development, revision or review during the next year. The purpose for publishing this agenda is to give notice of any regulatory activity by the Agency in order to provide the public an opportunity to participate in the rulemaking process.

FOR FURTHER INFORMATION CONTACT: The public is encouraged to contact the Agency official listed for the particular agenda item. For other information concerning ACTION regulations or this semiannual agenda, contact Stewart A. Davis, Acting General Counsel, ACTION, 806 Connecticut Avenue, NW., Washington, DC 20525, (202) 634-9333.

SUPPLEMENTARY INFORMATION: In accordance with Executive Order 12291, Federal Regulation, and the Regulatory Flexibility Act (5 U.S.C. 605), executive agencies are required to publish in the **Federal Register** semiannual regulatory agendas in April and October of each year.

ACTION has determined that the regulations under consideration will not impose compliance costs or reporting burdens on the public; and that the regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, no Regulatory Analysis is required under 5 U.S.C. 602.

DATED: September 9, 1988.

Donna M. Alvarado,

Director.

ACTION (ACTION) — Prerule Stage

2710. NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

Legal Authority: 42 USC 2000(d)(1); 42 USC 5057; 42 USC 5060

CFR Citation: 45 CFR 1203

Legal Deadline: None

Abstract: In accordance with 42 USC 2000(d)(1) ACTION will promulgate regulations implementing provisions of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, as amended, and Section 417 of the Domestic Volunteer Service Act of 1973, as amended, which prohibit discrimination on the basis of race, color, national origin, religion or sex, in federally assisted programs. Relevant provisions of existing ACTION Title VI regulations will be subsumed into this new regulation.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Jeanne D. McCamley, Acting Director, Equal Opportunity Staff, Office of Compliance, ACTION, 806 Connecticut Ave., NW, Washington, DC [illegible]

RIN: 3001-AA08

2711. ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN ACTION PROGRAMS

Legal Authority: 29 USC 794; 42 USC 5057; 42 USC 5060

CFR Citation: None

Legal Deadline: None

Abstract: In accordance with Section 504 of the Rehabilitation Act of 1973, as amended (29 USC 794), ACTION will promulgate implementing regulations which prohibit discrimination on the basis of handicap in federally conducted programs and activities. ACTION regulations prohibiting discrimination on the basis of handicap in federally assisted programs are contained in 45 CFR 1232.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Jeanne D. McCamley, Acting Director, Equal Opportunity Staff, Office of Compliance, ACTION, 806 Connecticut Ave., NW, Washington, DC 20525, 202 634-9812

RIN: 3001-AA07

2712. INSPECTION AND COPYING OF RECORDS: RULES FOR COMPLIANCE WITH PUBLIC INFORMATION ACT

Legal Authority: 5 USC 552; 42 USC 4951

CFR Citation: 45 CFR 1215

Legal Deadline: None

Abstract: In accordance with the Freedom of Information Act (5 USC 522), the Agency is updating its regulation concerning the release of Agency information.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Lowell Gesebach, Director, Planning, Budget and Management Division, ACTION, 806 Conn. Ave., NW, Washington, DC 20525, 202 634-9157

RIN: 3001-AA09

2713. NONDISCRIMINATION ON THE BASIS OF AGE IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL ASSISTANCE FROM ACTION

Legal Authority: 42 USC 6101; 42 USC 4951

CFR Citation: 45 CFR 1221

ACTION — Prerule Stage

Legal Deadline: None

Abstract: In accordance with 42 USC 6101 and 42 USC 4951 ACTION will promulgate regulations implementing provisions of the Age Discrimination Act of 1975, as amended, and Section 417 of the Domestic Volunteer Service Act of 1973, as amended, which prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Jeanne D. McCamley, Acting Director, Equal Opportunity Staff, Office of Compliance, ACTION, 806 Conn. Ave., NW, Washington, DC 20525, 202 634-9312

RIN: 3001-AA10

ACTION (ACTION) — Completed Actions

2714. NONPROCUREMENT DEBARMENT AND SUSPENSION

CFR Citation: 45 CFR 1229

Completed:

Reason	Date	FR Cite
Final Action	05/26/88	53 FR 19161
Final Action Effective	10/01/88	

Small Entities Affected: None

Government Levels Affected: Local, State

Agency Contact: Margaret McHale 202 634-9150

RIN: 3001-AA14

[FR Doc. 88-21380 Filed 10-21-88; 8:45 am]

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Part XVII

Advisory Council on Historic Preservation

Semiannual Regulatory Agenda

ADVISORY COUNCIL ON HISTORIC PRESERVATION (ACHP)

ADVISORY COUNCIL ON HISTORIC PRESERVATION

36 CFR Part 810

Unified Agenda of Federal Regulations

AGENCY: Advisory Council on Historic Preservation (ACHP).

ACTION: Publication of agenda.

SUMMARY: The following ACHP regulation is scheduled for development from October 1988 through September 1989. It is submitted herein for publication in the Unified Agenda of Federal Regulations, EO 12291.

FOR FURTHER INFORMATION CONTACT: See person listed below for specific information.

Advisory Council on Historic Preservation.

Robert D. Bush,

Executive Director.

ADVISORY COUNCIL ON HISTORIC PRESERVATION (ACHP) — Proposed Rule Stage

2715. ● FREEDOM OF INFORMATION ACT REGULATIONS

Legal Authority: 16 USC 470 Nat. Historic Preservation Act of 1966, as amended

CFR Citation: 36 CFR 810.5

Legal Deadline: None

Abstract: The regulation will increase the fees charged to requesters of information to better reflect the cost to the Government of locating and copying the documents requested. Copying charges would be increased from $0.10 to $0.13 per page; fees for searches by professional staff from $2.00 to $4.65 per quarter hour; and fees for searches by clerical staff from $1.00 to $2.30 per quarter hour. The regulation would thus impose a "user's fee" to users of the Government FOIA system which is more consistent with other agencies' fees.

Timetable:

Action	Date	FR Cite
NPRM	01/00/89	
NPRM Comment Period End	02/00/89	
Final Action	03/00/89	

Small Entities Affected: None

Government Levels Affected: None

Public Compliance Cost: Initial Cost: $0; Yearly Recurring Cost: $0

Sectors Affected: None

Agency Contact: Katherine Emma Seffer, Associate General Counsel, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW #809, Washington, DC 20004, 202 786-0503

RIN: 3010-AA03

[FR Doc. 88-23809 Filed 10-21-88; 8:45 am]

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Part XVIII

Agency for International Development

Semiannual Regulatory Agenda

VOL 53 ISS 205 OCT 24 1988 UMI

AGENCY FOR INTERNATIONAL DEVELOPMENT (AID)

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

22 CFR Ch. II

Federal Regulations; Agency Regulatory Agenda Semiannual Summary

AGENCY: Agency for International Development, IDCA.

ACTION: Agency regulations agenda.

SUMMARY: The Agency for International Development (AID) is publishing this agenda as required by section 5(a) of Executive Order 12291, Federal Regulation (46 FR 13193, February 19, 1981) and by the Regulatory Flexibility Act (Pub. L. 96-354, September 30, 1980). This agenda reports the status of those regulations currently under review and gives AID's plan for the issuance of proposed regulations during the next twelve months. It is expected that the information provided in this agenda will enable the public to be more aware of and more effectively participate in AID's rulemaking process.

FOR FURTHER INFORMATION CONTACT:

General: For further information on the agenda or the review list, in general, contact: Mr. Fred D. Allen, Office of Information Resources Management, Agency for International Development, Washington, DC 20523, Telephone (703) 875-1571.

Specific: For further information about any particular item on the agenda, contact the individual listed as the contact for that item.

Regulatory Flexibility Act (RFA)

The Agency does not have any rulemaking activity that falls within the requirements of RFA and does not anticipate any during the next reporting period.

Dated: August 25, 1988.

R. T. Rollis, Jr.,

Assistant to the Administrator for Management.

AGENCY FOR INTERNATIONAL DEVELOPMENT (AID) — Proposed Rule Stage

2716. DONATION OF AGRICULTURAL COMMODITIES/PRODUCTS TO ASSIST NEEDY PERSONS OVERSEAS (416 PROGRAM)

Legal Authority: 7 USC 1431; PL 97-253, Sec 110

CFR Citation: 22 CFR 210, (New)

Legal Deadline: None

Abstract: This regulation sets forth provisions of the Agency for International Development (AID), acting as an agent for the USDA/Commodity Credit Corporation (CCC), to carry out part of the responsibilities for selecting, approving, administering and implementing the Section 416 program of the Agricultural Act of 1949, as amended. This program will assist needy persons overseas and reduce surplus stocks of dairy and wheat products in CCC inventory. The donation of commodities under this new authority will be coordinated with, but not replace, assistance provided under the Agricultural Trade Development and Assistance Act of 1954, as amended, PL 83-480. The Agency is not considering any alternatives for addressing the problem. There are some minor costs in administering the regulation. The potential benefits will go to needy persons overseas.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/24/84	49 FR 22024

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Jessie C. Vogler, Program Officer, Agency for International Development, Office of Food for Peace, Bureau for Food for Peace and Voluntary Assistance, Washington, DC 20523, 703 235-9128

RIN: 0412-AA05

2717. TRANSFER OF FOOD COMMODITIES FOR USE IN DISASTER RELIEF AND ECONOMIC DEVELOPMENT AND OTHER ASSISTANCE

Legal Authority: 7 USC 1705; 7 USC 1721 to 1723; 7 USC 1693

CFR Citation: 22 CFR 211

Legal Deadline: None

Abstract: This regulation prescribes the terms and conditions governing the transfer of agricultural commodities to foreign governments, U.S. voluntary agencies, or intergovernmental organizations. The regulation is being reviewed to assess its current procedures and requirements with an intent to improve its effectiveness and efficiency. There will be internal administrative and operational costs. There are potential benefits to aid-receiving countries.

Timetable:

Action	Date	FR Cite
Begin Review	12/15/83	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Jessie C. Vogler, Program Officer, Agency for International Development, Office of Food for Peace, Bureau For Food for Peace and Voluntary Assistance, Washington, DC 20523, 703 235-9128

RIN: 0412-AA06

AGENCY FOR INTERNATIONAL DEVELOPMENT (AID) — Completed Actions

2715. NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE AGENCY FOR INTERNATIONAL DEVELOPMENT — EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Legal Authority: 22 USC 2381

CFR Citation: 22 CFR 209

Legal Deadline: None

Abstract: The regulation will address the problem of discrimination on the basis of race, color, or national origin in any program or activity receiving assistance from the Agency for International Development. The regulation provides that no person in the United States on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of or be subjected to discrimination under any program or activity receiving Federal financial assistance from AID. The regulation provides procedures for 1) assuring that such discrimination does not occur and 2) effecting compliance. The Agency is not considering any alternatives for addressing the problem. There will be some minor costs in administering the regulation; there are potential benefits to individuals who might otherwise be discriminated against.

Timetable:

Action	Date	FR Cite
Withdrawn	08/24/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Leticia Peoples, Equal Opportunity Officer, Agency for International Development, Office of Equal Opportunity Programs (EOP), Room 1224 SA - 1, Washington, DC 20523, 202 663-1548

RIN: 0412-AA01

2716. NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITTING FROM FEDERAL FINANCIAL ASSISTANCE

Legal Authority: 20 USC 1681 to 1683; 20 USC 1686

CFR Citation: 22 CFR 219, (New)

Legal Deadline: None

Abstract: This regulation will address the problem of discrimination on the basis of sex in education programs and activities receiving or benefitting from financial assistance from the Agency for International Development. The regulation is intended to implement Title IX of the Education Amendments of 1972, as amended. The regulation provides procedures for 1) assuring that such discrimination does not occur and 2) effecting compliance. The Agency is not considering any alternatives for addressing the problem. There will be some minor costs in administering the regulation; there are potential benefits to individuals who might otherwise be discriminated against.

Timetable:

Action	Date	FR Cite
Withdrawn	08/24/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Leticia Peoples, Equal Opportunity Officer, Agency for International Development, Office of Equal Opportunity Programs (EOP), Room 1224 SA - 1, Washington, DC 20523, 202 663-1548

RIN: 0412-AA04

[FR Doc. 88-20065 Filed 10-21-88; 8:45 am]

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Part XIX

Architectural and Transportation Barriers Compliance Board

Semiannual Regulatory Agenda

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD (ATBCB)

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Ch. XI

Unified Agenda of Federal Regulations

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Submission of Unified Agenda of Federal Regulations.

SUMMARY: The Architectural and Transportation Barriers Compliance Board submits the following agenda of proposed regulatory activities which may be conducted by the agency during the next 12 months. This regulatory agenda may be revised and/or refined by the agency during the coming months as a result of action taken by the Board. In addition to any regulatory actions, the Board may also consider issuing advisory standards and/or policy statements as part of its statutory responsibilities. When appropriate, these standards and policies will also be published in the Federal Register.

ADDRESS: U.S. Architectural and Transportation Barriers Compliance Board, 1111 18th Street, NW., Suite 501, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: For information concerning Board regulations and proposed actions, contact Mr. Mark W. Smith, General Attorney, 202/653-7834 (voice or TDD).

William J. Tamayo,

Chairperson, Architectural and Transportation Barriers Compliance Board.

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD (ATBCB) — Final Rule Stage

2720. MINIMUM GUIDELINES AND REQUIREMENTS FOR ACCESSIBLE DESIGN

Significance: Agency Priority

Legal Authority: 29 USC 792(b)(7) Rehabilitation Act of 1973, as amended

CFR Citation: 36 CFR 1196

Legal Deadline: None

Abstract: Specific provisions of the ATBCB Minimum Guidelines and Requirements for Accessible Design have been reserved until sufficient research information and/or field experience is obtained. At present the ATBCB is reviewing comments on the proposed rule to add provisions for leased facilities. In a separate notice of proposed rulemaking, the Board will propose the incorporation of certain technical specifications (including detectable warnings and signage) of the Uniform Federal Accessibility Standards and American National Standards Institute A117.1 (1986) standard into the ATBCB Minimum Guidelines and Requirements for Accessible Design.

Timetable:

Action	Date	FR Cite
ANSI/UFAS Technical Specifications		
NPRM	06/16/87	(52 FR 34950)
NPRM Comment Period End	11/16/87	
Leased Facilities		
NPRM	02/11/87	(52 FR 4352)
NPRM Public Comment Period End	01/13/87	
Final Action	09/14/88	(53 FR 35507)
UFAS Technical Specifications		
Final Action ANSI	10/00/88	

Small Entities Affected: None

Government Levels Affected: Federal

Additional Information: Phone number of agency contact is voice or TDD.

Agency Contact: Mark W. Smith, General Attorney, Architectural and Transportation Barriers Compliance Board, 1111 18th Street, NW, Suite 500, Washington, DC 20036, 202 653-7834

RIN: 3014-AA00

2721. PRACTICE AND PROCEDURES FOR COMPLIANCE HEARINGS

Legal Authority: 29 USC 794 Rehabilitation Act of 1973, as amended

CFR Citation: 36 CFR 1150

Legal Deadline: None

Abstract: The current regulation sets forth procedures to ensure compliance with standards issued under the Architectural Barriers Act of 1968, PL 90-480, as amended, 42 USC 4151 et seq. The Board has published an interim rule revising this regulation to provide a 180-day period for informally resolving complaints in place of the previous 90-day period. This interim rule is expected to be published as a final rule.

Timetable:

Action	Date	FR Cite
Interim Final Rule with Request for Comment	05/22/86	51 FR 18788
Interim Final Rule Comment Period End	07/21/86	
NPRM	12/23/87	52 FR 48646
NPRM Comment Period End	02/22/88	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Nicholas Chiarkas, General Counsel, Architectural and Transportation Barriers Compliance Board, 1111 18th Street, NW, Washington, DC 20036, 202 653-7834

RIN: 3014-AA01

2722. INFORMATION AVAILABILITY: PROCEDURES (36 CFR 1120)

Legal Authority: 5 USC 552

CFR Citation: 36 CFR 1120, (Revision)

Legal Deadline: Final, Statutory, April 25, 1987.

Abstract: This interim final rule amends the ATBCB's regulations to establish a schedule and system for collecting fees to recover certain direct costs associated with responding to Freedom of Information Act (FOIA) requests as required by the Freedom of Information Reform Act of 1986.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/10/87	52 FR 43193
Final Action Effective	12/00/88	

Small Entities Affected: None

ATBCB — Final Rule Stage

Government Levels Affected: Undetermined

Agency Contact: Mark W. Smith, General Attorney, Architectural and Transportation Barriers Compliance Board, 1111 18th Street, NW, Washington, DC 20036, 202 653-7834

RIN: 3014-AA04

[FR Doc. 88-20686 Filed 10-21-88; 8:45 am]

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Part XX

Commission on Civil Rights

Semiannual Regulatory Agenda

VOL 53 ISS 205 OC 24 1988 UMI

COMMISSION ON CIVIL RIGHTS (CCR)

COMMISSION ON CIVIL RIGHTS

45 CFR Ch. VII

Semiannual Agenda of Regulations

AGENCY: Commission on Civil Rights.

ACTION: Publication of semiannual agenda.

SUMMARY: This agenda announces the regulations the U.S. Commission on Civil Rights will have under development during the 12-month period from October 1, 1988 through September 30, 1989. The purpose for publishing this agenda is to give notice of any regulatory activity by the Commission in order to allow the public an opportunity to participate in the rulemaking process.

FOR FURTHER INFORMATION CONTACT:

General: For further information on the agenda in general, contact: William H. Gillers, Solicitor, U.S. Commission on Civil Rights, 1121 Vermont Ave., NW., Room 606, Washington, DC 20425, (202) 376-8514.

Specific: For further information about any particular item on the agenda, contact the individual listed under that item.

SUPPLEMENTARY INFORMATION: In accordance with Executive Order 12291, Federal Regulation, and the Regulatory Flexibility Act (5 U.S.C. 605), executive agencies are required to publish in the Federal Register semiannual regulatory agendas in April and October of each year.

The regulations being considered by the Commission are not "major" rules within the meaning of E.O. 12291 and no Regulatory Impact Analysis is required. The Commission has determined that the regulations under consideration will not impose compliance costs or reporting burdens on the public; nor will the regulations have a significant economic impact on a substantial number of small entities. Accordingly, no Regulatory Analysis is required.

William H. Gillers,

Solicitor.

COMMISSION ON CIVIL RIGHTS (CCR) — Proposed Rule Stage

2723. IMPLEMENTATION OF FREEDOM OF INFORMATION REFORM ACT

Significance: Agency Priority

Legal Authority: 42 USC 1975 to 1975f; 5 USC 552

CFR Citation: 45 CFR 704.1, (Revision)

Legal Deadline: Final, Statutory, April 25, 1987.

Abstract: The regulation implements the 1986 statutory amendments to the Freedom of Information Act (FOIA) (5 USC 552). The revised provisions modify the terms of exemption 7 and also establish new procedures regarding the charging and waiving of fees pursuant to a FOIA request.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
NPRM Comment Period End	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: William H. Gillers, Solicitor, Commission on Civil Rights, 1121 Vermont Avenue, NW, Room 606, Washington, DC 20425, 202 376-8514

RIN: 3095-AA00

COMMISSION ON CIVIL RIGHTS (CCR) — Final Rule Stage

2724. IMPLEMENTATION OF REHABILITATION ACT OF 1973, PART 504-HANDICAPPED DISCRIMINATION PROHIBITION

Legal Authority: 29 USC 794

CFR Citation: 45 CFR 707

Legal Deadline: None

Abstract: The proposed regulation provides for the implementation of Section 504 of the Rehabilitation Act of 1973, as amended (29 USC 794), which prohibits discrimination on the basis of handicap, as it applies to programs or activities conducted by the Commission.

Timetable:

Action	Date	FR Cite
NPRM	06/16/88	53 FR 22534
NPRM Comment Period End	08/15/88	
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: William J. Howard, General Counsel, Commission on Civil Rights, 1121 Vermont Avenue, NW, Room 600, Washington, DC 20425, 202 376-8351

RIN: 3095-AA01

[FR Doc. 88-21000 Filed 10-21-88; 8:45am]

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Part XXI

Environmental Protection Agency

Semiannual Regulatory Agenda

VOL 53 ISS 205 OCT 24 1988 UMI

ENVIRONMENTAL PROTECTION AGENCY (EPA)

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[FRL-3440-3]

Regulatory Agenda

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA revises and issues the Regulatory Agenda semiannually, and it appears in the **Federal Register** each April and October. It provides specific information on the status of regulations that are under development, revision, and review at the Agency. The agenda is published to keep interested parties informed of the progress of EPA regulations.

ADDRESSES: If you want to be on the mailing list for future agendas, please call or write to Bridgette Dent, Regulation Management Branch, EPA, PM-223, Washington, DC 20460, (202) 382-5475.

If you have any suggestions for improving this publication, or need general information about the agenda, please call or write to Angela Suber, Regulation Management Branch, EPA, PM-223, Washington, DC 20460, (202) 382-7205.

FOR FURTHER INFORMATION CONTACT: For specific information on any item in the agenda, please contact the person listed with each entry.

SUPPLEMENTARY INFORMATION:

Statutes Covered in the Agenda

Asbestos Hazard Emergency Response Act (AHERA)
Atomic Energy Act (AEA)
Clean Air Act (CAA)
Clean Water Act (CWA)
Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)
Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)
Federal Food, Drug, and Cosmetics Act (FFDCA)
Hazardous and Solid Waste Amendments (HSWA)
Marine Protection, Research, and Sanctuaries Act (MPRSA)
Resource Conservation and Recovery Act (RCRA)
Safe Drinking Water Act (SDWA)
Superfund Amendments and Reauthorization Act (SARA)
Toxic Substances Control Act (TSCA)
Water Quality Act of 1987 (WQA)
General - Other Acts (including grant and procurement regulations that cut across several program areas)

Organization of the Agenda

The agenda is organized by statute, and in several cases it combines regulations with differing statutory authorities that have closely related subject matter. For example, the Asbestos-in-Schools Inspection, Abatement, and Disposal regulation is written under AHERA, but appears with regulations under TSCA.

Within each statutory listing, the regulations are ordered numerically, by section number of the authorizing legislation. For example, all RCRA regulations under section 3001 appear before those under section 3004.

Within each statutory area the entries are further divided into four categories: (1) Prerule Stage; (2) Proposed Rule Stage; (3) Final Rule Stage; and (4) Completed Actions (regulations that EPA is deleting from the agenda because the Agency has completed, withdrawn, or postponed them indefinitely). Detailed information on each of these sections is presented below.

Appendix A includes a list of abbreviations of terms used in this document.

I. Prerulemakings

Prerulemaking actions include activities intended to determine whether or how to initiate rulemaking. These activities include anything that influences or leads to rulemaking, such as advance notices of proposed rulemaking, significant studies or analyses of the possible need for regulatory action, requests for public comment on the need for regulatory action, or important pre-regulatory policy proposals.

This section also includes existing EPA regulations that are now under review. The purpose of such reviews is to determine whether the Agency should revise the rule, rescind it, or leave it unchanged. When finished, the Agency will list these reviews in the completed section of the agenda. If EPA decides to revise or rescind the regulation, the action will appear in the proposed rule section of the next agenda, which will state the timetable for completing the revision or rescission.

For each regulation under review, the agenda provides the title, a short abstract, legal authority, CFR reference, any analysis EPA is preparing, contact person, and the schedule for completing the review. It also indicates the "review authority," which may be different from the regulation's statutory authority. EPA reviews regulations under various mandates, and some reviews satisfy more than one of these mandates. The principal mandates are:

Executive Order 12498 which is intended to establish annually the Administration's Regulatory Program. It defines priority activities that federal departments and agencies will work on during the upcoming year. Its purpose is to minimize duplication and conflict among regulatory activities and enhance public understanding of the Administration's regulatory objectives.

Executive Order 12291 which establishes the general policy that federal departments and agencies should review their regulations to ensure that the costs of the regulations are justified by the benefits of the regulation.

The Regulatory Flexibility Act (RFA) which requires that federal departments and agencies review existing regulations that have a significant economic impact on a substantial number of small entities, including small businesses, small organizations, and small governments, at least once every ten years. EPA invites public comment regarding RFA issues on the list of regulations EPA is reviewing.

Reviews EPA has targeted under the RFA are identified in the "Small Entities Affected" category. This year the agenda also identifies the type of entity affected (businesses or governmental jurisdictions and organizations). Also identified is whether the regulatory action affects State, Local, or Federal governments. These changes will enable organizations representing local governments to make greater use of the agenda.

When the Agency completes reviews of regulations with a significant impact on small entities, the agenda entry includes an abstract that announces the Agency's decision of whether to revise, rescind, or leave the regulation unchanged. This announcement

complies with the RFA and EPA's July 16, 1981 plan (46 FR 36930) for reviewing regulations under the Act.

The Paperwork Reduction Act (PRA) which requires federal departments and agencies to review their information collection activities to assure that they need and will use the information and manage it efficiently. They must also ensure that the information to be collected is of high quality, appropriate for its intended use, and does not already exist at EPA or at some other federal agency. In addition, the PRA requires agencies to review the cost of collecting the information, so that it will be held to a minimum for both the respondent and the agencies.

II. Proposed and Final Rules

EPA generally lists regulations in this category of the agenda once they are within a year of proposal or final action. Very important regulations under development will usually appear even if the scheduled publication dates are more than a year away.

Proposed and final rules appear as: (a) Actions that will create new CFR parts, subparts, or subsections; or (b) actions that revise or amend already existing CFR parts, subparts, or subsections. The word "revision" will appear in parentheses after the title of each regulation undergoing revision. All regulations appearing in the agenda for the first time are marked with bullets (•).

This section includes all "significant" EPA regulations. Some are priority regulations under development that are subject to Executive Order 12498; or the Agency has designated for priority development or revision. These regulations are also subject to certain provisions of EO 12291, RFA, and PRA.

However, the listings exclude: (a) Specialized categories of actions (such as EPA approvals of State plans and other actions that do not apply nationally); and (b) routine actions (such as pesticide tolerances and minor amendments to existing rules).

For each proposed and final regulation, the agenda includes:

- Title
- Priority classification (if applicable)
- Legal authority
- CFR reference
- Legal deadline (if applicable)
- Short abstract
- Timetable of existing and scheduled actions
- Reference to small entity impacts (yes, no, or undetermined)
- Additional information (includes the FTS phone number for the Agency contact, the Start Action Request (SAR) number, which is assigned to the regulation for internal tracking purposes, and any other information that is not included in the abstract)
- Agency contact
- Analysis section (if the Agency is preparing a Regulatory Impact Analysis (RIA) and/or an RFA)

III. Completed Actions

These are actions that appeared in the last agenda, which EPA is deleting because they are completed or are no longer under consideration. Information on these regulations and reviews of regulations is less detailed than for those that are still under consideration. Generally, entries include: (1) An explanation of why the Agency is deleting the regulation from the agenda, or (2) the publication date and **Federal Register** citation of the final rule.

Robert H. Wayland, III,

Deputy Assistant Administrator for Policy, Planning and Evaluation.

Appendix A -- (Abbreviations)

ANPRM - Advance Notice of Proposed Rulemaking
BAT - Best Available Technology
BCT - Best Conventional Technology
BOD - Biochemical Oxygen Demand
BPT - Best Practicable Technology
CA - Cooperative Agreements
CAG - Carcinogenic Assessment Group
CBOD - Carbonaceous Biochemical Oxygen Demand
CEQ - Council on Environmental Quality
CFR - Code of Federal Regulations
DOE - Department of Energy
EAF - Electric Arc Furnaces
FR - Federal Register
FTS - Federal Telecommunications System
HDE - Heavy-Duty Engine
HDT - Heavy-Duty Truck
HDV - Heavy-Duty Vehicle
ICS - Intermittent Control System
LDT - Light-Duty Truck
LDV - Light-Duty Vehicle
MCL - Maximum Contaminant Level
MCLG - Maximum Contaminant Level Goals
NEPA - National Environmental Policy Act
NESHAPS - National Emission Standards for Hazardous Air Pollutants
NPDES - National Pollutant Discharge Elimination System
NPDWR - National Primary Drinking Water Regulations
NPRM - Notice of Proposed Rulemaking
NRDC - Natural Resources Defense Council
NSO - Nonferrous Smelter Orders
NSPS - New Source Performance Standards
OAQPS - Office of Air Quality Planning and Standards
OPP - Office of Pesticide Programs
OPTS - Office of Pesticides and Toxic Substances
OSHA - Occupational Safety and Health Administration
PCB - Polychlorinated Biphenyls
POTW - Publicly Owned Treatment Works
PSD - Prevention of Significant Deterioration
PSES - Pretreatment Standards for Existing Sources
PSNS - Pretreatment Standards for New Sources
RFA - Regulatory Flexibility Act
RIA - Regulatory Impact Analysis
RIN - Regulation Identifier Number
RMCL - Recommended Maximum Contaminant Level
SAR - Start Action Request
SIC - Standard Industrial Code
SSC - State Superfund Contract
TSS - Total Suspended Solids
UIC - Underground Injection Control
USC - United States Code
VOC - Volatile Organic Chemicals

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
2725	SAR No. 2444. Food Additive Regulations Concerning Pesticide Residues: Procedural Regulations	[illegible]
2726	SAR No. 2351. Restricted Use Classification for Groundwater Contaminating Pesticides	[illegible]

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Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)—Proposed Rule Stage—Continued

Sequence Number	Title	Regulation Identifier Number
2727	SAR No. 2567. Registration Data Requirements for Pesticide Product Performance and Companion Pesticide Assessment Guidelines (Revision)	2070-AB62
2728	SAR No. 2337. Sale of Restricted Use Pesticides to Noncertified Persons	2070-AB46
2729	SAR No. 2446. Regulations on Certification of Pesticide Applicators (Revision)	2070-AB75
2730	SAR No. 2406. Pesticide Applicator Certification Fees for EPA Administered Programs	2070-AB76
2731	SAR No. 2445. Amendments to Experimental Use Permits Rules for Certain Microbial Pesticides (Revision)	2070-AB77
2732	SAR No.2659 Guidelines on Disposal and Storage of Pesticides (Revision)	2070-AB95
2733	SAR No. 2639 Child-Resistant Packaging Regulations (Revision)	2070-AB96

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
2734	SAR No. 2280. Labeling Requirements for Pesticides and Devices (Revision)	2070-AB45
2735	SAR No. 1703. FIFRA Good Laboratory Practice Standards (Revision)	2070-AB55
2736	SAR No. 2336. Reporting Requirements for Risk/Benefits Information	2070-AB50
2737	SAR No. 2314. Advertising of Unregistered Pesticides, Unregistered Uses of Registered Pesticides and FIFRA 24(c) Registrations	2070-AB47
2738	SAR No. 2554. Policy on Advertising Claims Made for Registered Products	2070-AB58
2739	SAR No. 1640. Worker Protection Standards for Agricultural Pesticides (Revision)	2070-AA49

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)—Completed Actions

Sequence Number	Title	Regulation Identifier Number
2740	SAR No. 1964. Comprehensive Revision of Pesticide Registration and Classification Procedures (Revision)	2070-AA56
2741	SAR No. 2317. Restricted Use Classification for Certain Active Ingredients Used in Termiticides	2070-AB53
2742	SAR No. 1747. Registration of Pesticide Producing Establishments (Revision)	2070-AA04
2743	SAR No. 2013. User Charges for Pesticide Registrations	2070-AB52

Toxic Substances Control Act (TSCA)—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
2744	SAR No. 2555. Toxic Chemical "Peak Release" Reporting Rule (Revision)	2070-AB66
2745	Decisions on Test Rules: Proposed Rules	2070-AB07
2746	SAR No. 2563. SARA Section 110 Chemicals Generic Test Rule	2070-AB84
2747	SAR No. 1923. Follow-up Rules on Existing Chemicals	2070-AA58
2748	SAR No. 1976. Follow-up Rules on Non-5(e) New Chemicals	2070-AA59
2749	Chemical Specific Significant New Use Rules to Extend Provisions of Section 5(e) Orders	2070-AB27
2750	SAR No. 2247. Generic Significant New Use Rule for Acrylate Compounds	2070-AB56
2751	Rulemaking Concerning Certain Microbial Products ("Biotechnology")	2070-AB61
2752	SAR No. 2561. Proposal to Exempt Certain Microorganisms from PMN Requirements under TSCA 5(h)(4)	2070-AB69
2753	SAR No. 2146. Regulatory Investigation of Formaldehyde	2070-AB14
2754	SAR No. 2284. Regulatory Investigation of Chlorinated Solvents	2070-AB41
2755	SAR No. 2297. PCB Spill Cleanup Recordkeeping Rule	2070-AB45
2756	SAR No. 2580. Procedures and Criteria for Termination of Polychlorinated Biphenyl Disposal Permits	2070-AB81

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Toxic Substances Control Act (TSCA)—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
2757	SAR No. 2245. Negotiated Consent/Procedural Test Rule (Revision)	[illegible]
2758	SAR No. 1886. TSCA Good Laboratory Practice Standards (Revision)	2070-AB65
2759	Decision on Test Rules: Final Rules	2070-AB94
2760	SAR No. 2375. Procedural Rule for Expedited New Chemical Follow-up	2070-AB67
2761	SAR No. 2150. Polychlorinated Biphenyls (PCBs): Applications for Exemptions from the Ban on Manufacturing, Processing, and Distribution	2070-AB20
2762	SAR No. 2296. Action Concerning Commercial and Industrial Use of Asbestos	2070-AB29
2763	SAR No. 2550. PCB Notification and Manifesting Rule	2070-AB68
2764	SAR No. 2178. Section 8 (a) Preliminary Assessment Information Rules	[illegible]
2765	SAR No. 1139. Section 8(d) Health and Safety Data Reporting Rules	2070-AB11
2766	SAR No. 2129. TSCA Section 8(a) Comprehensive Assessment Information Rule (CAIR)	2070-AB13

Toxic Substances Control Act (TSCA)—Completed Actions

Sequence Number	Title	Regulation Identifier Number
2767	SAR No. 2549. Asbestos-Containing Materials in Schools; Transport and Disposal Rule (Revision)	2070-AB67
2768	SAR No. 2250. General Regulations on Significant New Use Rules (SNURs) (Revision)	2070-AB26
2769	SAR No. 2562. Recodification of TSCA CFR Section 721	2070-AB85
2770	SAR No. 2149. Nitrosamines in Metalworking Fluids	2070-AB09
2771	SAR No. 2244. Polychlorinated Biphenyls (PCBs): Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Exclusions and Use Authorizations (Revision)	2070-AB25
2772	SAR No. 2447. PCBs in Electrical Transformers (Revision)	2070-AB74
2773	SAR No. 2324. User Fees for Processing PMNs	2070-AB54

Clean Water Act (CWA)—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
2774	SAR No. 1649. Effluent Guidelines for Offshore Oil and Gas Extraction Industry (Revision)	2040-AA12
2775	SAR No. 1427. Effluent Guidelines for Pharmaceuticals	2040-AA13
2776	SAR No. 2585. Effluent Guidelines for Nonferrous Metals Manufacturing (Phase II) (Revisions)	2040-AB31
2777	SAR No. 2473. Effluent Guidelines for Pesticides Chemicals	2040-AB32
2778	SAR No. 1410 Effluent Guidelines for Pulp, Paper and Paperboard	2040-AB50
2779	SAR No. 2475. NPDES, Permits for Dredged or Fill Material, and Water Quality Standards – Revision for Indian Tribes	2040-AB35
2780	SAR No. 2493. NPDES Regulatory Revisions	2040-AB39
2781	SAR No. 2525. Interpretation of Provisions of Section 304(1) of the CWA	2040-AB48
2782	SAR No. 2580. Procedural Rules for Class I Administrative Penalty Proceedings under the CWA	2040-AB49
2783	SAR No. 2587. Revisions to Regulations for Modification of Secondary Treatment Requirements for Municipal Discharge into Marine Waters	2040-AB28
2784	SAR No. 2617 Estuary Program Grant Regulation	2040-AB54
2785	SAR No. 2200. NPDES Regulations: Stormwater Application Requirements (Revision)	2040-AA78
2786	SAR No. 2304. Future Effluent Guidelines – Standards Initiatives	2040-AA90
2787	SAR No. 2501. NPDES Permit Application Form 2C, Standard Form A, and Short Form A (Revision)	2040-AB37
2788	SAR No. 2122. Sewage Sludge Use and Disposal Regulations	2040-AA74
2789	SAR No. 2515. Citizen Suit Notice Regulation under the CWA	2040-AB50
2790	SAR No. 2189. Comprehensive Revisions to Ocean Dumping Regulations	2040-AA78
2791	SAR No. 2301 Ocean Incineration Site Evaluation, Solicitation, and Designation	2040-AB29
2792	SAR No. 2342. EPA Administered Programs: The National Pollutant Discharge Elimination System for Existing and New Sources: Proposals to Implement the Recommendations of the Domestic Sewage Study	2040-AA80

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Clean Water Act (CWA)—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
2793	SAR No. 2300. Guidelines for Classifying Ground Water under the EPA Ground Water Protection Strategy	2040-AA85
2794	SAR No. 1982. Secondary Treatment/Percent Removal Requirements for Combined Sewer Systems	2040-AB13
2795	SAR No. 2163. National Pollutant Discharge Elimination System Sewage Sludge Permit Regulations; State Sludge Management Program Requirements	2040-AA73
2796	SAR No. 2479. Water Quality Planning and Management Grants for Indian Tribes	2040-AB35
2797	SAR No. 1722. Simplifying Construction Grants Regulations (Revision)	2040-AA70
2798	SAR No. 2585. Comprehensive Construction Grant Regulation Revision	2040-AB26
2799	SAR No. 2600. Effluent Guidelines for Nonferrous Metals Forming (Revision)	2040-AB30
2800	SAR No. 1438. Effluent Guidelines for Aluminum Forming (Revision)	2040-AB52
2801	SAR No. 2212. General Pretreatment Regulations: Response to PIRT (Revision)	2040-AA81
2802	SAR No. 2140. Ocean Incineration Regulation (Revision)	2040-AA72
2803	SAR No. 2581. Underground Injection Control Program: Hazardous Waste Disposal Injection Restrictions; Effective Dates and Capacity Variances for Selected First Third Wastes	2040-AB47

Clean Water Act (CWA)—Completed Actions

Sequence Number	Title	Regulation Identifier Number
2804	SAR No. 1425. Effluent Guidelines for Gum and Wood (Revision)	2040-AA17
2805	SAR No. 2564. Effluent Guidelines for Ore Mining and Dressing (Placer Mining)	2040-AA85
2806	SAR No. 1410. Effluent Guidelines for Nonferrous Metals: (Phase I) (Revision)	2040-AA96
2807	SAR No. 2285. Definition of "Waters of the United States"	2040-AB01
2808	SAR No. 1973. Section 404 State Program Regulations (Revision)	2030-AA00

Atomic Energy Act (AEA)—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
2809	SAR No.2590 Environmental Standards for the Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes	2060-AC30
2810	SAR No. 1727. Environmental Protection Standards for Low-Level Radioactive Waste	2060-AA24
2811	SAR No. 2073. Residual Radioactivity	2060-AB31

Atomic Energy Act (AEA)—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
2812	SAR No. 1162. Transuranium Elements	2060-AA01
2813	SAR No. 1525. Radiofrequency Radiation Guidance	2060-AA62
2814	SAR No. 1166. Groundwater Protection Standards for Inactive Uranium Tailing Sites	2060-AC03

Safe Drinking Water Act (SDWA)—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
2815	SAR No. 2488. Revision to Public Water System Supervision (PWSS) State Primacy Requirements	2040-AB26
2816	SAR No. 2426. Revisions to the Safe Drinking Water Act's Underground Injection Control Regulations	2040-AB27
2817	SAR No. 1755. National Primary Drinking Water Regulations: Synthetic Organic Chemicals and Inorganic Chemicals, Monitoring for Unregulated Contaminants (Phase II, 40 Contaminants)	2040-AA55

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Safe Drinking Water Act (SDWA)—Proposed Rule Stage—Continued

Sequence Number	Title	Regulation Identifier Number
2818	SAR No. 2281. National Primary Drinking Water Regulation: Radionuclides	2040-AA84
2819	SAR No. 2340. National Primary Drinking Water Regulations: Disinfection, Disinfectants and Disinfection By-Products (Revision)	2040-AA97
2820	SAR No. 2630. National Primary Drinking Water Regulations: Inorganic and Organic Compounds (Phase V/25 Contaminants)	2040-AB11
2821	SAR No. 2361 Public Water Supply Supervision Program Administrative Enforcement Implementation Procedures	2040-AB07

Safe Drinking Water Act (SDWA)—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
2822	SAR No. 2211. Underground Injection Control Program: Hazardous Waste Disposal Injection Restrictions; Amendments To Technical Requirements for Class I Hazardous Waste Injection Wells	2040-AB03
2823	SAR No. 2440. Indian Rule for the Wellhead Protection Program and Sole Source Aquifer Demonstration Program	2040-AB18
2824	SAR No. 2376. Criteria for Filtration and Disinfection of Surface Water and Primary Drinking Water Regulations for Microbiological Contaminants	2040-AB24
2825	SAR No. 2610 National Primary Drinking Water Regulations: Lead and Copper	2040-AB51
2826	SAR No. 2191. Underground Injection Control Program on Indian Lands	2040-AA76
2827	SAR No. 2383. SDWA Indian Primacy Regulations	2040-AB04
2828	SAR No. 2378. Public Water System Supervision Program: Ban on Lead in Plumbing	2040-AB05
2829	SAR No. 2405. Criteria for Identifying Critical Aquifer Protection Areas	2040-AB23

Noise Control Act (NCA)—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
2830	SAR No. 2046. Withdrawal of Products from the Agency's Reports Identifying Major Noise Sources and Withdrawal of Proposed Rules	2060-AB04

Resource Conservation and Recovery Act (RCRA)—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
2831	SAR No. 2434. Management of Used Oil	2050-AC17
2832	SAR No. 2572. Determination on Wastes from Combustion of Coal by Electric Utility Power Plants	2050-AC53

Resource Conservation and Recovery Act (RCRA)—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
2833	SAR No. 2634 Oil Pollution Prevention Regulation	2050-AC62
2834	SAR No. 2332. Mandatory Inspections of Hazardous Waste Management Facilities	2050-AB59
2835	SAR No. 2622 Hazardous Waste Management System, Amendment to Subpart C Rulemaking Petitions, use of Groundwater Data in Delisting Decisions	2050-AC65
2836	SAR No. 2527. New Requirements for State Hazardous Waste Programs	2050-AC61
2837	SAR No. 2524. Re-Migration Variance for Restricted Hazardous Waste Land Disposal	2050-AC60
2838	SAR No. 2174 Identification and Listing of Hazardous Wastes - Wood Preserving and Surface Protection Waste	2050-AC59
2839	SAR No. 2494. Municipal Waste Combustor Ash Management	2050-AC24

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Resource Conservation and Recovery Act (RCRA)—Proposed Rule Stage—Continued

Sequence Number	Title	Regulation Identifier Number
2840	SAR No. 2507. Test Methods for Evaluating Solid Waste (Manual SW846) Incorporation by Reference and Mandatory Good Laboratory Practices	2050-AC32
2841	SAR No. 2068. Sampling and Analysis Methods for Waste Testing	2050-AA82
2842	SAR No.2568 Air Toxicity Characteristic for Hazardous Waste	2050-AC23
2843	SAR No. 2482. Concentration-Based Relisting of Wastes from Chlorinated Aliphatics	2050-AC30
2844	SAR No. 2483. Concentration-Based Relisting of Wastes from Explosives, Inorganic Chemicals, and Iron and Steel Industries	2050-AC31
2845	SAR No. 2571. Determination on Solid Waste from Selected Metallic Ore Processing Operations	2050-AC54
2846	SAR No. 2635 Exclusions for Waste Generated On-Board Ships (Revision)	2050-AC91
2847	SAR No. 2078. Burning of Hazardous Waste in Boilers and Industrial Furnaces	2050-AA72
2848	SAR No. 2060. Liners and Leak Detection for Hazardous Waste Land Disposal Units	2050-AA76
2849	SAR No. 2303. Location Standards for Hazardous Waste Facilities	2050-AB87
2850	SAR No. 2390. Corrective Action for Solid Waste Management Units (SWMUs) at Hazardous Waste Management Facilities	2050-AB90
2851	SAR No. 2391. Landfill, Surface Impoundment, and Waste Pile Closures for Hazardous Waste Management Facilities	2050-AB91
2852	SAR No. 2453. Emission Controls for Hazardous Waste Incinerators	2050-AB90
2853	SAR No. 2461. Land Disposal Restrictions for Soil and Debris Containing Hazardous Wastes	2050-AC03
2854	SAR No. 2439. Permitting Experimental Facilities Conducting Hazardous Waste Research	2050-AC04
2855	SAR No. 2503. Corrective Action for Releases to Ground Water from Regulated Hazardous Waste Units	2050-AC26
2856	SAR No. 2522. Land Disposal Restriction for Second Third of Scheduled Wastes	2050-AC55
2857	SAR No. 2570 Modification of the Definition of Wastewater Treatment Unit	2050-AC86
2858	SAR No. 2435. List (Phase 2) of Hazardous Constituents for Ground Water Monitoring	2050-AC05
2859	SAR No. 2158. Compliance Monitoring and Enforcement Requirements for State Hazardous Waste Management Programs	2050-AB01
2860	SAR No. 2389. Mining Waste Management Under RCRA Subtitle D	2050-AB77
2861	SAR No. 2611 Guideline for Procurement of Insulation Products Containing Recovered Materials	2050-AC89
2862	SAR No. 2465. Underground Storage Tanks Containing Hazardous Substances- Financial Responsibility Requirements	2050-AC15
2863	SAR No. 2642 Underground Storage Tanks Containing Petroleum - Financial Responsibility Requirements: Financial Test for Self Insurance for Local Government Entities	2050-AC87
2864	SAR No. 2643 Implementation of Title III on Indian Lands	2050-AC64

Resource Conservation and Recovery Act (RCRA)—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
2865	SAR No. 2226. Identification and Listing of Hazardous Wastes - Petroleum Refinery Primary Treatment Sludge	2050-AB70
2866	SAR No. 2157 For further information contact the RCRA/Superfund Identification and Listing of Hazardous Waste - Methyl Bromide	2050-AC60
2867	SAR No. 2575 RCRA Definition of Solid Waste (Revision)	2050-AC85
2868	SAR No. 2224. Solid Waste Disposal Facility Criteria	2050-AB21
2869	SAR No. 2396. Changes to Interim Status and Permitted Facilities for Hazardous Waste Management; Procedures for Post-Closure Permitting	2050-AC23
2870	SAR No. 2510. Guideline for Federal Procurement for Retread Tires	2050-AC52
2871	SAR No. 2062. Identification of Hazardous Wastes by Toxicity Characteristic and Listing of Additional Organic Toxicants	2050-AA76
2872	SAR No. 2207. Disposal of Containerized Liquids in Hazardous Waste Landfills	2050-AB17
2873	SAR No. 2277. Ground-Water Monitoring at Hazardous Waste Facilities	2050-AB20
2874	SAR No. 2467. Delay in the Closure Period for Hazardous Waste Management Facilities	2050-AB71
2875	SAR No. 2388. Double Liner and Leachate Collection Systems for Hazardous Waste Land Disposal Units	2050-AB76
2876	SAR No. 2436. Statistical Methods for Evaluating Ground Water Monitoring Data from Hazardous Waste Facilities	2050-AB92
2877	SAR No. 2460. Liability Requirements for Hazardous Waste Facilities - Other Instruments	2050-AC19
2878	SAR No. 1905. Permit Modifications for Hazardous Waste Management Facilities	2050-AC22
2879	SAR No. 2397. Permitting Mobile Hazardous Waste Treatment Units and Delisting Hazardous Wastes	2050-AC20
2880	SAR No. 2544. Trial Burns for Existing Hazardous Waste Incinerators	2050-AC50
2881	SAR No. 2255. Underground Storage Tanks Containing Petroleum - Financial Responsibility Requirements	2050-AB89
2882	SAR No. 2641 Underground Storage Tanks Containing Petroleum-Financial Responsibility Requirements; Suspension of Enforcement Procedures	2050-AC63

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Resource Conservation and Recovery Act (RCRA)—Final Rule Stage—Continued

Sequence Number	Title	Regulation Identifier Number
2883	SAR No. 2234. Underground Storage Tanks - State Program Approval	2050-AB31

Resource Conservation and Recovery Act (RCRA)—Completed Actions

Sequence Number	Title	Regulation Identifier Number
2884	SAR No. 2449. Determination on Wastes from the Exploration, Development or Production of Crude Oil, Natural Gas, and Geothermal Energy	2050-AC26
2885	SAR No. 2452. Land Disposal Restrictions for First Third of Scheduled Wastes	2050-AC13
2886	SAR No. 2257. Guidelines for Content in Re-refined Oil Procured by the Federal Government	2050-AB53
2887	SAR No. 2433. Minimum Recovered Materials Content in Paper and Paper Products Procured by the Federal Government	2050-AC16
2888	SAR No. 2262, 2221, and 2256. Underground Storage Tanks - Technical Requirements	2050-AB19

Clean Air Act (CAA)—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
2889	SAR No. 1920. NAAQS: Ozone(Review)	2060-AA96
2890	SAR No. 1004. NAAQS: Nitrogen Dioxide (Review)	2060-AC38
2891	SAR No. 1001. NAAQS: Carbon Monoxide (Review)	2060-AC07
2892	SAR No. 1910. NSPS: Organic Solvent Degreasing	2060-AA12
2893	SAR No. 1119. NSPS: Perchloroethylene Dry Cleaning	2060-AA14
2894	SAR No. 1905. NSPS: Organic Solvent Degreasing (111d)	2060-AA30
2895	SAR No. 2367. NSPS: Coal Preparation Plants (Review)	2060-AB54
2896	SAR No. 2430. NSPS: Asphalt Processing and Asphalt Roofing Manufacturing Plants(Review)	2060-AC21
2897	SAR No. 2161. Decisions on Regulating Various Air Pollutants	2060-AB58
2898	SAR No. 1909. NESHAP:Cadmium	2060-AB62
2899	SAR No. 2301. NESHAP: Perchloroethylene Dry Cleaning	2060-AC27
2900	SAR No. 1905. NESHAP: Organic Solvent Degreasing	2060-AC31
2901	SAR No. 2214. Fuel and Fuel Additives: Gasoline Lead Content (Revision)	2060-AB60
2902	SAR No. 2305. Fuel and Fuel Additives: Health and Emissions Effects Testing	2060-AC10

Clean Air Act (CAA)—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
2903	SAR No. 1919. NAAQS: Lead (Review)	2060-AA95
2904	SAR No. 2577. NAAQS: Fine Particulate Matter	2060-AC32
2905	SAR No. 2428. Federal Promulgation of State Implementation Plan to Protect Visibility	2060-AB52
2906	SAR No. 2608 New Source Review Requirements -- CMA Exhibit B	2060-AC54
2907	SAR No. 2164. NSPS: SOCMI Reactor Processes	2060-AB55
2908	SAR No. 2239. NSPS: Small Boilers	2060-AB61
2909	SAR No. 2424. NSPS: Municipal Waste Combustors	2060-AC36
2910	SAR No. 2535. NSPS: Municipal Landfills	2060-AC42
2911	SAR No. 1686. NESHAP: Coke Oven Emissions from Coke Oven Charging, Door Leaks, and Topside Leaks on Wet-Coal-Charged Batteries	2060-AA48
2912	SAR No. 1714. NESHAP: Asbestos (Revision)	2060-AB51
2913	SAR No. 2161. NESHAP:Chromium	2060-AB63
2914	SAR No. 2366. NESHAP: Chromium--Industrial Cooling Towers	2060-AC12
2915	SAR No. 2366. NESHAP: Chromium--Electroplating	2060-AC14
2916	SAR No. 2363. NESHAP: Hazardous Organics	2060-AC19
2917	SAR No. 2484 NESHAP: Ethylene Oxide from Commercial Sterilization	2060-AC28

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Clean Air Act (CAA)—Proposed Rule Stage—Continued

Sequence Number	Title	Regulation Identifier Number
2918	SAR No. 2558. NESHAP: Benzene Reconsideration	2060-AC41
2919	SAR No. 2547. NESHAP: Radionuclides	2060-AC47
2920	SAR No. 2557. Guideline on Air Quality Models (Revision)	2060-AC43
2921	SAR No. 2481. PSD Increments for PM10	2060-AC33
2922	SAR No. 2267. Hydrocarbon Standards for Light-Duty Trucks (Revision)	2060-AB85
2923	SAR No. 2384. Decision on Air Pollution Regulatory Strategies for the Gasoline Marketing Industry	2060-AC04
2924	SAR No. 1315. Trading and Banking of Heavy-duty Engine NOx and PM Emission Credits	2060-AC05
2925	SAR No. 2373. Test Procedures for Trap-Equipped Diesel Vehicles and Engines	2060-AC08
2926	SAR No. 2431. Nonconformance Penalties for 1991 through 1994 Model Year Emission Standards for Heavy-Duty Vehicles and Engines	2060-AC39
2927	SAR No. 2136. Emission Performance Warranty Regulations (Revision)	2060-AB53
2928	SAR No. 2637 Alternative Test Procedures for the Voluntary Aftermarket Part Certification Program	2060-AC50
2929	SAR No. 2638 Motor Vehicle Emissions Performance Warranty Short Tests	2060-AC51
2930	SAR No. 2366. Diesel Fuel Quality standards	2060-AC11
2931	SAR No. 2629 General Requirements for Determination of Gasoline Metal Content	2060-AC52
2932	SAR No. 2604 Fuel and Fuel Additives: Enforcement of Section 211(f)(4) Waivers	2060-AC53
2933	SAR No. 2240. Treatment, Storage, and Disposal Facility Area Source Air Emissions - RCRA Standards	2060-AB94

Clean Air Act (CAA)—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
2934	SAR No. 5440 State Implementation Plans: Attainment Status Designations	2060-AC56
2935	SAR No. 1002. NAAQS: Sulfur Oxides (Revision)	2060-AA61
2936	SAR No. 1845. New Source Review Requirements – CMA Exhibit A	2060-AA88
2937	SAR No. 2266 New Source Review Requirements – Surface Coal Mines and Fugitive Emissions	2060-AC40
2938	SAR No. 1518. NSPS: SOCMI Air Oxidation Process	2060-AA30
2939	SAR No. 1723. NSPS: Distillation Operations	2060-AA35
2940	SAR No. 1736. NSPS: Petroleum Refinery, FCC Regenerators	2060-AA36
2941	SAR No. 1691. NSPS: Polymer and Resin Manufacture	2060-AA37
2942	SAR No. 2628. NSPS: Sewage Treatment Plants (Revision)	2060-AB05
2943	SAR No. 2544. NSPS: Automobile and Light-Duty Truck Coating Operations (Revision)	2060-AB22
2944	SAR No. 2283. NSPS: Fossil Fuel-Fired Steam Generators (Revision)	2060-AB29
2945	SAR No. 2186. NSPS: Cement Plants (Revision)	2060-AB36
2946	SAR No. 2227. NSPS: Polymeric Coating of Supporting Substrates	2060-AB67
2947	SAR No. 1698. NSPS: VOC Emissions from Petroleum Refinery Wastewater Systems	2060-AB81
2948	SAR No. 1828. NSPS: Magnetic Tape Manufacturing	2060-AB88
2949	SAR No. 2556. State Implementation Plans: Approval of Post -1987 Ozone and Carbon Monoxide Plan Revisions for Areas Not Attaining the National Ambient Air Quality Standards NAAQS	2060-AB96
2950	SAR No. 2386. NESHAP: Chromium–Comfort Cooling Towers	2060-AC13
2951	SAR No. 2543. Rural Fugitive Dust Policy for PM10	2060-AC44
2952	SAR No. 2421. PSD Regulations for NOx	2060-AC24
2953	SAR No. 2112. Emission Standards and Test Procedures for Methanol-Fueled New Motor Vehicles	2060-AB38
2954	SAR No. 2316. Control of Excess Evaporative Emissions/Fuel Volatility	2060-AB89
2955	SAR No. 2416. Particulate Emission Standards for Certain 1987 and Later Model Year Light-Duty Diesel Trucks (Revision)	2060-AC16
2956	SAR No. 2143. Small-Volume Manufacturers Certification Procedure (Revision)	2060-AB54
2957	SAR No. 2385 Amendments to Selective Enforcement Auditing Regulations	2060-AC34
2958	SAR No. 2145. Voluntary Aftermarket Parts Certification Regulations (Revision)	2060-AB56

Clean Air Act (CAA)—Completed Actions

Sequence Number	Title	Regulation Identifier Number
2959	SAR No. 2430. NSPS: Asphalt Processing and Asphalt Roofing Manufacturing Plants	2060-AC23
2960	SAR No. 1685. NESHAPS: Benzene in Coke Oven By-Product Plants	2060-AA42
2961	SAR No. 2372. Stratospheric Ozone Protection Strategy	2060-AC09

EPA

Clean Air Act (CAA)—Completed Actions—Continued

Sequence Number	Title	Regulation Identifier Number
2962	SAR No. 2215. Fuel and Fuel Additives: Preventative Action Program to Prevent Self-Serve Fuel Switching	2060-AB59

Superfund (CERCLA)—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
2963	SAR No. 2336. Designation of Extremely Hazardous Substances as CERCLA Hazardous Substances	2050-AB62
2964	SAR No. 2429. Reportable Quantities (RQs) for Substances on the Extremely Hazardous Substances List	2050-AC14
2965	SAR No. 2538. Procedures for Planning and Implementing Off-Site Response Actions	2050-AC25
2966	SAR No. 2400. National Oil and Hazardous Substances Pollution Contingency Plan (NCP)	2050-AA75
2967	SAR No. 2566. Hazard Ranking System for Uncontrolled Hazardous Substance Releases	2050-AB73
2968	SAR No. 5432. National Priorities List for Uncontrolled Hazardous Waste Sites - Federal Facility Sites	2050-AC67
2969	SAR No. 2564. Response Claims Procedures for the Hazardous Substances Superfund	2050-AA95
2970	SAR No. 2498. Administrative Hearing Procedure for Superfund Claims	2050-AC26
2971	SAR No. 2427. Worker Protection Standards for Hazardous Waste Operations and Emergency Response	2050-AC12
2972	SAR No. 2844 Emergency and Hazardous Chemical Inventory Forms and Community Right-to-Know Reporting Requirements-- Threshold Amendment	2050-AC34
2973	SAR No. 2511. Administrative Hearing Procedures for Class I Civil Penalties under CERCLA and the Emergency Planning Community Right to Know Act	2050-AC37
2974	SAR No. 2615 Prior Notice of Citizen Suits Under CERCLA and the Emergency Planning and Community Right-to-know Act	2050-AC70

Superfund (CERCLA)—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
2975	SAR No. 2411. Reporting Continuous Releases of Hazardous Substances	2050-AA98
2976	SAR No. 2104. Reportable Quantities for Releases of Potential Carcinogens and Other Hazardous Substances	2050-AA80
2977	SAR No. 2335. Reportable Quantities (RQs) for Releases of Radionuclides	2050-AB60
2978	SAR No. 2394. Reporting Exemptions for Federally Permitted Releases of Hazardous Substances	2050-AB82
2979	SAR No. 5358. National Priorities List for Uncontrolled Hazardous Waste Sites - Update 7	2050-AC15
2980	SAR No. 5433. National Priorities List (NPL) for Uncontrolled Hazardous Wastes Sites - Update 5	2050-AC45
2981	SAR No. 5434. National Priorities List (NPL) for Uncontrolled Hazardous Wastes Sites - Update 6	2050-AC47
2982	SAR No. 5357. National Priorities List for Uncontrolled Hazardous Waste Sites - RCRA Sites	2050-AC48
2983	SAR No. 2455. Arbitration Procedures for Small Superfund Cost Recovery Claims	2050-AC36
2984	SAR No. 2495. Citizen Awards for Information on Criminal Violations under Superfund	2050-AC38
2985	SAR No. 2401. Technical Assistance Grants to Groups at National Priority List (NPL) Sites	2050-AC10
2986	SAR No. 2464. Reporting Hazardous Substances Activity When Transferring Federal Real Property	2050-AC00
2987	SAR No. 2409. Reimbursement of Local Governments for Emergency Response to Hazardous Substance Releases	2050-AC11
2988	SAR NO. 2512 Administrative Hearing Procedures for Class II Penalties under CERCLA and Emergency Planning and Community Right to Know Act	2050-AC39

Superfund (CERCLA)—Completed Actions

Sequence Number	Title	Regulation Identifier Number
2989	SAR No. 2459. Reportable Quantities for Releases of Lead Methyl Isocyanate (MIC); Delisting of Ammonium Thiosulfate	2050-AC21
2990	SAR NO. 2419 Trade Secret Claims for Emergency Planning and Community Right-to-Know Information; Trade Secret Disclosures to Health Professionals	2050-AC27

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General—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
2991	SAR No. 2551. Environmental Protection Agency Acquisition Regulation (EPAAR); Submission of General Financial and Organizational Information, and Purchasing System Information by Offerors	2030-AA06
2992	SAR No. 2553. Contracting for Expert Services under the Superfund Amendment and Reauthorization Act (SARA) of 1986	2030-AA07
2993	SAR No. 5452 Evaluation Procedure for Award of Fixed Price Contracts for Commercial Supplies and Services	2030-AA09
2994	SAR No. 5451 Contractor Compliance with Information Resources Management Directives	2030-AA10
2995	SAR No. 5450 Miscellaneous Delegations from the Contracting Authority	2030-AA11
2996	SAR No. 5449 Implementation of Federal Acquisition Regulation Coverage on Ratification of Unauthorized Commitments	2030-AA12
2997	SAR No. 5445 Implementation of Federal Acquisition Regulation Coverage on Prompt Payment	2030-AA13
2998	SAR No. 2196. Denial or Restriction of Disposal Sites (Revision)	2040-AB20
2999	SAR No. 2195. Confidentiality Regulations: Special Rules Governing Certain Information Under FIFRA (Revision)	2020-AA06

General—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
3000	SAR No. 2562. Amending EPA Acquisition Regulation Rules Regarding Disclosure and Use of Information in Proposals	2030-AA08
3001	SAR No. 2218. Nondiscrimination on the Basis of Age in Programs Receiving Financial Assistant from the EPA (Revision)	2060-AA09
3002	SAR No. 2476. Cooperative Agreements and Superfund State Contracts for Superfund Response Actions	2010-AA11
3003	SAR No. 2307. Notice Requirements for Citizen Suits under the SDWA	2020-AA10

General—Completed Actions

Sequence Number	Title	Regulation Identifier Number
3004	SAR No. 2410. Program Fraud Civil Remedies	2020-AA11
3005	SAR No. 1825. Regulations for the Federal Claims Collection Act	2020-AA01

ENVIRONMENTAL PROTECTION AGENCY (EPA) —Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)

Proposed Rule Stage

2725. FOOD ADDITIVE REGULATIONS CONCERNING PESTICIDE RESIDUES: PROCEDURAL REGULATIONS

Significance: Regulatory Program

Legal Authority: 21 USC 346a/FFDCA 408; 21 USC 348/FFDCA 409

CFR Citation: 40 CFR 180

Legal Deadline: None

Abstract: This regulation will set forth procedures for which food additive tolerances, required by section 409 of the Federal Food, Drug and Cosmetic Act (FFDCA), may be established, modified or revoked. It may include revisions to FIFRA section 3 and FFDCA section 408 regulations to make them consistent with the new regulations.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: SAR No. 2444.

FTS:8-557-7700

Agency Contact: Rosalind L. Gross, Environmental Protection Agency, Pesticides and Toxic Substances, (TS-767C), Washington, DC 20460, 703 557-7700

RIN: 2070-AB78

2726. RESTRICTED USE CLASSIFICATION FOR GROUNDWATER CONTAMINATING PESTICIDES

Significance: Regulatory Program

Legal Authority: 7 USC 136a /FIFRA 3; 7 USC 136d /FIFRA 6; 7 USC 136w /FIFRA 25

CFR Citation: 40 CFR 152.17

Legal Deadline: None

Abstract: This rule will provide a scheme for identifying pesticides which may pose an unacceptable hazard because of the potential to leach into groundwater. The Agency will propose criteria for classifying such pesticides for restricted use. Restricted use pesticides generally may be applied only by state certified applicators.

Timetable:

Action	Date	FR Cite
NPRM	02/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: SAR No. 2351.

FTS: 8-557-3942

Agency Contact: David Alexander, Environmental Protection Agency, Pesticides and Toxic Substances, (TS-767C), Washington, DC 20460, 703 557-3942

RIN: 2070-AB80

2727. REGISTRATION DATA REQUIREMENTS FOR PESTICIDE PRODUCT PERFORMANCE AND COMPANION PESTICIDE ASSESSMENT GUIDELINES (REVISION)

Legal Authority: 7 USC 136a /FIFRA 3; 7 USC 136w/FIFRA 25

CFR Citation: 40 CFR 158.640

Legal Deadline: None

Abstract: The objective in revising the regulations is to make explicit the Agency's requirement of pesticide producers to submit quantitative data on the yield/quality enhancing performance of their pesticides as compared to alternative pesticides. These data will improve the quality and timeliness of benefit analyses the Agency uses in making risk/benefit decisions to regulate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The companion revised guidelines will provide protocols and methodologies for conducting the studies necessary to produce acceptable comparative performance data. Registrants might experience very minor cost increases to register pesticide products. The benefit would be substantial in the form of better and more uniform data on pesticide product performance, for use by Agency analysts and others.

Timetable:

Action	Date	FR Cite
NPRM	11/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: SAR No. 2337.

FTS:8-557-3691

Agency Contact: Bernard A. Schneider, Environmental Protection Agency, Pesticides and Toxic Substances, (TS-768C), Washington, DC 20460, 703 557-3691

RIN: 2070-AB82

2728. SALE OF RESTRICTED USE PESTICIDES TO NONCERTIFIED PERSONS

Legal Authority: 7 USC 136b /FIFRA 4; 7 USC 136j /FIFRA 12; 7 USC 136w /FIFRA 25

CFR Citation: 40 CFR 162

Legal Deadline: None

Abstract: This action is intended to develop regulations to allow the sale of restricted use pesticides to persons who are not certified under special circumstances as set forth by Congress in 1978. Regulatory development will be coordinated with the review of state plans under FIFRA Section 4 to determine both need and compatibility with State authorities and programs.

Timetable:

Action	Date	FR Cite
NPRM	02/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: SAR No. 2337.

FTS: 8-475-9582

Agency Contact: Robert Bielarski, Environmental Protection Agency, Pesticides and Toxic Substances, (TS-788), Washington, D.C. 20460, 202 475-9582

RIN: 2070-AB48

2729. REGULATIONS ON CERTIFICATION OF PESTICIDE APPLICATORS (REVISION)

Legal Authority: 7 USC 136a /FIFRA 4; 7 USC 136b /FIFRA 4; 7 USC 136w /FIFRA 25

CFR Citation: 40 CFR 171

Legal Deadline: None

Abstract: This action is intended to revise existing regulations on certification of pesticide applicators. The current standards and requirements may need to be updated to clarify definitions and to reflect changes in technology and current needs in State programs.

Timetable:

Action	Date	FR Cite
NPRM	06/00/89	

Small Entities Affected: Organizations

Government Levels Affected: State

Additional Information: SAR No. 2445.

FTS:382-9580

Agency Contact: John MacDonald, Environmental Protection Agency, Pesticides and Toxic Substances, (TS-788), Washington, DC 20460, 202 382-9580

RIN: 2070-AB75

2730. PESTICIDE APPLICATOR CERTIFICATION FEES FOR EPA ADMINISTERED PROGRAMS

Legal Authority: 31 USC 9701/FIFRA 4

CFR Citation: 40 CFR 171.12

Legal Deadline: None

Abstract: This rule is intended to implement a program for assessing fees for certification and training of commercial and private applicators who apply restricted use pesticides. Fees will be collected in States with Federally-administered pesticide certification and training programs, and will cover the costs of administering such programs.

Timetable:

Action	Date	FR Cite
NPRM	06/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: SAR No. 2408.

FTS:8-475-9580

Agency Contact: John MacDonald, Environmental Protection Agency, Pesticides and Toxic Substances, (TS-

EPA—FIFRA — Proposed Rule Stage

788), Washington, DC 20460, 202 475-3580

RIN: 2070–AE76

3721. AMENDMENTS TO EXPERIMENTAL USE PERMITS RULES FOR CERTAIN MICROBIAL PESTICIDES (REVISION)

Significance: Regulatory Program

Legal Authority: 7 USC 136 /FIFRA 4

CFR Citation: 40 CFR 172

Legal Deadline: None

Abstract: This proposed revision will amend the existing regulations (40 CFR 172) pertaining to Experimental Use Permits (EUPs) to incorporate the policies set forth by the Office of Science and Technology Policy, which were published in the Federal Register on June 26, 1986 (51 FR 23313). The existing regulations presumes prospective registrants are exempt from the requirement of obtain obtaining an EUP if they propose to conduct tests which will involve less than 10 acres of land and less than one surface acre of water. The proposed revision would require prior notification if tests are to involve genetically altered or certain nonindigenous microbial pesticides. The proposed rule will also describe data required to be submitted at the time of notification so that the Agency may determine whether an EUP will be required.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: SAR No. 2445.

FTS:8-557-8196

Agency Contact: Henry Jacoby, Environmental Protection Agency, Pesticides and Toxic Substances, (TS-769C), Washington, DC 20460, 703 557-8196

RIN: 2070–AH77

2732. ◆ GUIDELINES ON DISPOSAL AND STORAGE OF PESTICIDES (REVISION)

Legal Authority: 7 USC 136q/FIFRA 19

CFR Citation: 40 CFR 165

Legal Deadline: None

Abstract: EPA's Office of Pesticide Programs is updating the Guidelines on Disposal and Storage of Pesticides to make them consistent with current regulations and technology. The Office of Pesticide Programs is also adding interpretive guidance on compliance with RCRA regulations on hazardous waste as they may apply to the disposal and storage of pesticides.

Timetable:

Action	Date	FR Cite
NPRM	03/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: SAR No.2659

FTS:8-557-7547

Agency Contact: Raymond F. Krueger, Environmental Protection Agency, Pesticides and Toxic Substances, (TS-769C), Washington, DC 20460, 703 557-7347

RIN: 2070–AB25

2733. ◆ CHILD-RESISTANT PACKAGING REGULATIONS (REVISION)

Legal Authority: 7 USC 136/FIFRA 25

CFR Citation: 40 CFR 157; 16 CFR 1700.15; 16 CFR 1700.20

Legal Deadline: None

CPSC projects 9/89 as a publish date for their regulations. EPA regulations should be concurrent with CPSC.

Abstract: These regulations will revise current Child Resistant Packaging regulations (CRP) to be consistent with 6 CRP protocol testing revisions the CPSC is proposing for its CRP regulations. Also, these regulations will discuss the implementation of these changes in terms of pesticide registrations.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
Final Action	00/00/00	

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: SAR No. 2639

FTS: 8-557-7700

Agency Contact: Rosalind L. Gross, Environmental Protection Agency, Pesticides and Toxic Substances, (TS-769C), Washington, DC 20460, 703 557-7700

RIN: 2070–AB26

ENVIRONMENTAL PROTECTION AGENCY (EPA) —Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) — Final Rule Stage

3734. LABELING REQUIREMENTS FOR PESTICIDES AND DEVICES (REVISION)

Significance: Regulatory Program

Legal Authority: 7 USC 136a /FIFRA 3; 7 USC 136d /FIFRA 6; 7 USC 136w /FIFRA 25

CFR Citation: 40 CFR 156; 40 CFR 157

Legal Deadline: None

Abstract: This regulation will revise and expand the labeling requirements for pesticide products and devices. The revisions will provide for pesticide producers a comprehensive description of pesticide labeling requirements, and will result in better quality pesticide labeling for users.

Timetable:

Action	Date	FR Cite
NPRM	09/26/84	49 FR 37958
Final Action	06/00/89	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Impact Analysis

Additional Information: SAR No. 2289.

FTS: 8-557-0044.

Agency Contact: Joan Frane, Environmental Protection Agency, Pesticides and Toxic Substances, (TS-767C), Washington, DC 20460, 703 557-0854

RIN: 2070–AB48

EPA—FIFRA — Final Rule Stage

2735. FIFRA GOOD LABORATORY PRACTICE STANDARDS (REVISION)

Legal Authority: 7 USC 136a /FIFRA 3; 7 USC 136w /FIFRA 25; 21 USC 346a; 21 USC 348; 21 USC 371

CFR Citation: 40 CFR 160

Legal Deadline: None

Abstract: This action will expand the scope of the FIFRA Good Laboratory Practices (GLPs) to include 1) additional types of testing not covered by the current 40 CFR 160 and certain changes from the recent FDA GLP regulation amendments. Specifically, environmental fate, certain other chemistry tests, ecological effects and efficacy (as required by 40 CFR 158.160) are among the types of tests to be added.

Timetable:

Action	Date	FR Cite
NPRM	12/26/87	52 FR 48920
Final Action	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: SAR No. 1703.

FTS:8-382-7825

Agency Contact: Dan Helfgott, Environmental Protection Agency, Pesticides and Toxic Substances, (EN-342), Washington, DC 20460, 202 382-7825

RIN: 2070–AB66

2736. REPORTING REQUIREMENTS FOR RISK/BENEFITS INFORMATION

Legal Authority: 7 USC 136d/FIFRA 6

CFR Citation: 40 CFR 153

Legal Deadline: None

Abstract: FIFRA Section 6(a)(2) requires that registrants report to EPA additional factual information regarding unreasonable adverse effects of their products. In September 1985, EPA revised its 1979 section 6(a)(2) enforcement policy by publishing a notice which expanded upon the types of factual information which must be reported and established uniform timeframes for compliance. In response to comments received on this notice, the Agency is revising it to clarify the types of information which registrants must report to EPA.

Timetable:

Action	Date
Enforcement Policy	
Final Action	07/12/79 (44 FR 40716)
Interpretive Rule	
Final Action	08/23/78 (43 FR 37611)
Rule and Policy Statement	
Final Action	09/20/85 (50 FR 38115)
Final Action	10/00/88

Small Entities Affected: None

Government Levels Affected: None

Additional Information: SAR No. 2338.

FTS: 8-557-3942

Agency Contact: David Alexander, Environmental Protection Agency, Pesticides and Toxic Substances, (TS-767C), Washington, D.C. 20460, 703 557-3942

RIN: 2070–AB50

2737. ADVERTISING OF UNREGISTERED PESTICIDES, UNREGISTERED USES OF REGISTERED PESTICIDES AND FIFRA 24(C) REGISTRATIONS

Legal Authority: 7 USC 136j /FIFRA 12; 7 USC 136w /FIFRA 25

CFR Citation: 40 CFR 153.12; 40 CFR 166.7

Legal Deadline: None

Abstract: EPA is proposing to treat as unlawful under FIFRA section 12 or restrict the advertising of certain uses of pesticides authorized for experimental use, emergency use, and special local needs. The proposed policy will also address advertising of other unregistered pesticides and pesticide use patterns. This policy is intended to prevent misuse of pesticides which could cause unreasonable adverse effects on humans or the environment.

Timetable:

Action	Date
Interpretive Rulemaking	
Final Action	10/00/88
Policy Statement	
NPRM	07/03/86 (51 FR 24393)

Small Entities Affected: None

Government Levels Affected: None

Additional Information: SAR No. 2314.

FTS: 8-557-9097

Agency Contact: Franklin Gee, Environmental Protection Agency, Pesticides and Toxic Substances, (TS-767C), Washington, D.C. 20460, 703 557-9068

RIN: 2070–AB47

2738. POLICY ON ADVERTISING CLAIMS MADE FOR REGISTERED PRODUCTS

Legal Authority: 7 USC 136j /FIFRA 12

CFR Citation: 40 CFR 153

Legal Deadline: None

Abstract: This rule interprets FIFRA section 12(a)(1)(B) which provides for the regulation of claims made when advertising registered pesticide products. The rule will establish standards for acceptable advertising claims with respect to claims made about the safety of the product.

Timetable:

Action	Date	FR Cite
Final Action	02/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: SAR No. 2554.

FTS:8-557-7749

Agency Contact: Vivian Frazier, Environmental Protection Agency, Pesticides and Toxic Substances, (TS-767C), 703 557-7749

RIN: 2070–AB68

2739. WORKER PROTECTION STANDARDS FOR AGRICULTURAL PESTICIDES (REVISION)

Significance: Regulatory Program

Legal Authority: 7 USC 136a /FIFRA 3; 7 USC 136d /FIFRA 6; 7 USC 136w /FIFRA 25

CFR Citation: 40 CFR 156; 40 CFR 170

Legal Deadline: None

Abstract: The Worker Protection Standards for Agricultural Pesticides will be revised to reflect new and developing requirements for the registration, reregistration and use of pesticides. The current standards need to be revised in order to increase the scope of coverage, update the provisions, clarify definitions and responsibilities, and improve implementation, compliance, and enforcement.

EPA—FIFRA — Final Rule Stage

Timetable:

Action	Date	FR Cite
ANPRM	05/13/94	49 FR 20305
NPRM	07/08/88	53 FR 25970
Final Action	03/00/89	

Small Entities Affected: Organizations

Government Levels Affected: State

Analysis: Regulatory Impact Analysis; Regulatory Flexibility Analysis

Additional Information: SAR No. 1040.

FTS: 8-557-7666.

Agency Contact: Patricia Breslin, Environmental Protection Agency, Pesticides and Toxic Substances, (TS-757C), Washington, DC 20460, 703 557-7666

RIN: 2070-AA49

ENVIRONMENTAL PROTECTION AGENCY (EPA) —Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) — Completed Actions

2740. COMPREHENSIVE REVISION OF PESTICIDE REGISTRATION AND CLASSIFICATION PROCEDURES (REVISION)

Significance: Regulatory Program

CFR Citation: 40 CFR 162

Completed:

Reason	Date	FR Cite
Final Action	05/04/88	53 FR 15952

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Joan Frane 703 557-0944

RIN: 2070-AA56

2741. RESTRICTED USE CLASSIFICATION FOR CERTAIN ACTIVE INGREDIENTS USED IN TERMITICIDES

CFR Citation: 40 CFR 162.31

Completed:

Reason	Date	FR Cite
Withdrawn	08/12/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: James Roelofs 703 557-0954

RIN: 2070-AB53

2742. REGISTRATION OF PESTICIDE PRODUCING ESTABLISHMENTS (REVISION)

CFR Citation: 40 CFR 167

Completed:

Reason	Date	FR Cite
Final Action	09/08/88	53 FR 35056

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: David [illegible] 202 382-7825

RIN: 2070-AA84

2743. USER CHARGES FOR PESTICIDE REGISTRATIONS

Significance: Regulatory Program

CFR Citation: 40 CFR 172

Completed:

Reason	Date	FR Cite
Final Action	05/26/88	53 FR 19106

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Ken Weisel 703 557-1138

RIN: 2070-AB52

ENVIRONMENTAL PROTECTION AGENCY (EPA) —Toxic Substances Control Act (TSCA) — Proposed Rule Stage

2744. TOXIC CHEMICAL "PEAK RELEASE" REPORTING RULE (REVISION)

Legal Authority: 42 USC 11013 /SARA 313

CFR Citation: 40 CFR 372

Legal Deadline: None

Abstract: This action proposes to add a "peak release" reporting element to the Toxic Chemical Release Inventory Reporting Form. Reporting of releases is of annual aggregate releases to all environmental media. The proposal addresses this issue of obtaining a more specific indication of this frequency and/or duration of releases in order to better assess risks to health and the environment.

Timetable:

Action	Date	FR Cite
NPRM	06/00/89	
Final Action	00/00/00	

Small Entities Affected: Businesses, Organizations

Government Levels Affected: Undetermined

Additional Information: SAR No. 2150.

FTS:8-382-3667

Agency Contact: Michael Shapiro, Environmental Protection Agency, Pesticides and Toxic Substances, (TS-779), Washington, DC 20460, 202 382-3667

RIN: 2070-AB56

2745. DECISIONS ON TEST RULES: PROPOSED RULES

Legal Authority: 15 USC 2603 / TSCA 4

CFR Citation: 40 CFR 799

Legal Deadline: Other, Statutory. 12-month statutory deadline for ITC-designated chemicals

Abstract: The following table lists chemicals for which EPA will initiate rulemaking to require testing, obtain testing through negotiated consent orders, or publish a notice which provides the reasons for not doing so. The list includes chemicals which have been designated for priority testing consideration by the Interagency Testing Committee as well as those chemicals (i.e., recommended and non-designated chemicals) for which the 12-month statutory requirement does not apply. The list also includes chemicals or categories of chemicals which have been identified for testing consideration by other EPA program offices and through EPA review processes.

EPA—TSCA — Proposed Rule Stage

Timetable:

Acid Blue 40 (ITC List 21) (SAR 5385)
NPRM 04/00/89
Acid Blue 45 (ITC Set 21) (SAR 5386)
NPRM 04/00/89
Acrylates (SAR 5368)
NPRM 12/00/89
Anthraquinone Dyes (SAR 5367)
NPRM 12/00/89
Aryl Phosphates (ITC List 2) (SAR 5369)
NPRM 12/00/89
Aryl Phosphates (ITC List 2)(SAR 5369)
ANPRM 12/29/83 (48 FR 57452)
C.I. Disperse Blue 79 (ITC List 19)(SAR 5370)
NPRM 12/00/89
Commercial Hexane (ITC List 16) (SAR 5389)
NPRM 12/00/89
Crotonaldehyde (ITC List 22) (SAR 5454)
NPRM 12/00/89
Didecacyl Phenyl Phosphate (ITC List 17) (SAR 5371)
NPRM 10/00/88
Disperse Blue 56 (ITC List 21) (SAR 5387)
NPRM 04/00/89
Disperse Red 60 (ITC List 21) (SAR 5388)
NPRM 04/00/89
Ethoxylated Quaternary Ammonium Compounds (SAR 5455)
NPRM 12/00/89
Ethylbenzene (ITC List 20) (SAR 5373)
NPRM 00/00/00
Glycidols (ITC List 3) (SAR 5375)
ANPRM 12/30/83 (48 FR 57562)
NPRM 10/00/89
Hexamethylene Diisocyanate (ITC List 23)(SAR 5453)
NPRM 12/00/88
Imidazolium Quaternary Ammonium Compounds (SAR 5456)
NPRM 12/00/89
Isopropanol (ITC List 15) (SAR 5376)
NPRM 03/16/88 (53 FR 8638)
Methyl Ethyl Ketoxime (ITC List 19) (SAR 5377)
NPRM 10/00/88
Methylolurea (ITC List 12)
NPRM 12/01/88
Methylolurea (ITC List 12) (SAR 5379)
ANPRM 05/21/84 (49 FR 21371)
Nonylphenol (SAR 5382)
NPRM 09/00/89
Oleyamine (Pharmacokinetics)(ITC List 13) (SAR 5381)
NPRM 10/00/88
1,1,1-Trichloroethane (muta/neuro) (ITC List 2) (SAR 5394)
NPRM 01/00/89

Small Entities Affected: None

Government Levels Affected: None

Additional Information: SEE SAR NUMBER LISTED NEXT TO EACH ACTION

FTS: 8-475-8130.

The following rules were deleted from the NPRM list of Test Rules: Environmental Monitoring Test Rule (SAR 5372); Ethylene Glycol Ethers Category (SAR 5374); Phenylenediamines (SAR 5382) (completed NPRM 1/14/88); Tributyl Phosphate (SAR 5383).

Agency Contact: Richard Troast, Environmental Protection Agency, Pesticides and Toxic Substances, (TS-778), Washington, DC 20460, 202 475-8130

RIN: 2070-AB07

2746. BARA SECTION 110 CHEMICALS GENERIC TEST RULE

Significance: Regulatory Program

Legal Authority: 15 USC 2603 / TSCA 4

CFR Citation: 40 CFR 700

Legal Deadline: None

Abstract: The regulation will set forth the policies and procedures to be used in using the TSCA Section 4 testing authority to obtain toxicity and chemical fate testing to fill certain data needs identified in toxicity profiles of chemicals prepared pursuant to Section 110 of the Superfund Amendments and Reauthorization Act.

Timetable:

Action	Date	FR Cite
NPRM	06/00/89	
Final Action	04/00/90	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: SAR No. 2363.

FTS:8-475-8130

Agency Contact: Richard Troast, Environmental Protection Agency, Pesticides and Toxic Substances, (TS-778), Washington, DC 20460, 202 475-8130

RIN: 2070-AB84

2747. FOLLOW-UP RULES ON EXISTING CHEMICALS

Legal Authority: 15 USC 2604 / TSCA 5; 15 USC 2607 / TSCA 8

CFR Citation: 40 CFR 704; 40 CFR 721

Legal Deadline: None

Abstract: EPA has instituted a program to monitor the commercial development of existing chemicals of concern and/or to gather information to support risk assessments on such chemicals. As these chemicals are identified, EPA will initiate rulemakings under TSCA section 5 and/or 8 to require reporting by the manufacturers, importers and/or processors of these chemicals. Individual proposed or final rules will be published on at least the chemicals listed below.

Timetable:

Ethylenediaminetetra (Methylenephosphonic Acid) and its Salts
NPRM 11/00/89
Pentabromoethylbenzene
NPRM 12/00/89
Trichlorobutylene Oxide
Final Action 10/27/87 (52 FR 41296)
1-Chloro-2-bromoethane
NPRM 09/04/87 (52 FR 33606)
Final Action 02/02/88 (53 FR 2842)
2-Chloro-2-methylbenzenamine
NPRM 10/00/88
4-Chloro-2-methylbenzenamine hydrochloride
NPRM 10/00/88
4-Chloro-2-methylbenzenamine
NPRM 10/00/88

Small Entities Affected: None

Government Levels Affected: None

Additional Information: SAR No. 1825.

FTS: 8-382-3540

Agency Contact: Barbara Ostrow, Environmental Protection Agency, Pesticides and Toxic Substances, (TS-778), Washington, DC 20460, 202 382-3540

RIN: 2070-AA58

2748. FOLLOW-UP RULES ON NON-5(E) NEW CHEMICALS

Legal Authority: 15 USC 2604 / TSCA 5; 15 USC 2607 / TSCA 8

CFR Citation: 40 CFR 704; 40 CFR 721

Legal Deadline: None

Abstract: EPA has instituted a program to follow the commercial development of selected new chemicals that have completed premanufacture notice review. EPA will issue rules on new chemicals of concern as they are identified to require follow-up reporting under TSCA Section 5 or 8, by the manufacturers and processors of the chemicals.

Timetable:

Alkyl, Sulfonic Acid, Ammonium Salt (84-1084)
NPRM 06/17/86 (51 FR 21999)
Final Action 09/00/89

Dihydrophenyl Azo-2,4-Diamino-5-Methoxybenzene Derivative
NPRM 10/23/81 (46 FR 42982)
Final Action 09/00/89

Diphenyl-2,4,6-Trimethylbenzoyl Phosphine Oxide (87-1888)
NPRM 01/00/89
Final Action 00/00/00

1-Dycarximine-N-Decyl-N-Methyl-N-Oxide (86-1048)
NPRM 12/08/87 (52 FR 46496)
Final Action 02/00/89

Small Entities Affected: None

Government Levels Affected: None

Additional Information: SAR No. 1870.

FTS: 8-382-3771.

Agency Contact: John Bowser, Environmental Protection Agency, Pesticides and Toxic Substances, (TS-794), Washington, D.C. 20460, 202 382-3771

RIN: 2070-AA59

2748. CHEMICAL SPECIFIC SIGNIFICANT NEW USE RULES TO EXTEND PROVISIONS OF SECTION 5(E) ORDERS

Legal Authority: 15 USC 2604 /TSCA 5

CFR Citation: 40 CFR 721

Legal Deadline: None

Abstract: When the Agency determines that in the absence of adequate safety data, the uncontrolled manufacture, import, processing, distribution, use or disposal of a PMN substance may present an unreasonable risk, it may issue a proposed order under section 5(e) to limit the aforementioned activities. However, section 5(e) orders apply only to the PMN submitter. Once the substance is placed on the TSCA chemical inventory, other persons are free to manufacture, import, or process the substance without controls. Therefore, EPA by rule, designates manufacture, import, or processing of the substances for use without the specified controls as a significant new use. These SNURs ensure that the original submitter is not at a competitive disadvantage and that no unconsidered activities will occur without an opportunity for prior Agency review.

Timetable:

(84-574) (see additional information for title) (SAR 5407)
NPRM 08/25/86 (50 FR 34502)
Final Action 08/00/89

(85-1178) (see additional information for title) (SAR 5408)
NPRM 05/00/89
Final Action 00/00/00

(85-544) (see additional information for title) (SAR 5409)
NPRM 05/00/89
Final Action 00/00/00

(85-564) (see additional information for title) (SAR 5409)
NPRM 05/00/89
Final Action 00/00/00

(85-703) (see additional information for title) (SAR 5409)
NPRM 05/29/86 (51 FR 22831)
Final Action 05/00/89

Alkyl Aryl Phosphine (83-1023) (SAR 5413)
NPRM 09/20/84 (49 FR 36880)
Final Action 05/00/89

Alkyl Glycoether Acrylic Acid Derivative (84-27) (SAR 5414)
NPRM 12/24/84 (49 FR 49906)
Final Action 06/00/89

Brominated Aryl Alkyl Ether, Ethylated Amine (SAR 5418)
NPRM (83-926/934/939/910) 06/29/84 (49 FR 38303)
Final Action 06/00/89

Certain Acrylate and Methacrylate Chemicals (SAR 5415)
NPRM 03/27/85 (50 FR 12046)
Final Action 06/00/89

Certain Acrylate Chemicals (84-341-344) (SAR 5417)
NPRM 04/04/86 (51 FR 11691)
Final Action 05/00/89

Ethylenemonoxy a-Methyl-Bicarbonate (84-1042) (SAR 5416)
NPRM 03/24/86 (51 FR 10027)
Final Action 06/00/89

N,N,N'N'-Tetrakis (oxiranylmethyl) (SAR 5420)
NPRM (84-7) 01/13/86 (51 FR 1396)
Final Action 05/00/89

Polyol Polyacrylate (85-710) (SAR 5419)
NPRM 06/00/89

Substituted Benzene, Halogenated (85-613) (SAR 5421)
NPRM 05/00/89

Substituted Benzene, Halogenated (84-850 and 84-794) (SAR 5422)
NPRM 03/18/86 (51 FR 9224)
Final Action 06/00/89

Substituted Bromobiophene (83-769) (SAR 5423)
NPRM 08/22/84 (49 FR 33310)
Final Action 06/00/89

Substituted Methylpyridine (83-237)(SAR 5424)
NPRM 02/06/84 (49 FR 4390)
Final Action 06/00/89

Substituted Polyester Resin (85-365)(SAR 5425)
NPRM 00/00/00

Substituted Tetrafluoro Alkenes (84-106/109/107) (SAR 5426)
NPRM 03/21/85 (50 FR 11384)
Final Action 06/00/89

2-Butenedioic Acid(2), (85-543) (SAR 5427)
NPRM 00/00/00

2-Propenoic Acid-3-(Dimethylamino)-2,2-Dimethyl-Propyl (SAR 5428)
NPRM 00/00/00

2-Propenoic Acid, (85-548) (SAR 5429)
NPRM 00/00/00

2-Propenoic Acid, 2,3,5-Trimethylcyclohexylester (SAR 5430)
NPRM 00/00/00

Small Entities Affected: None

Government Levels Affected: None

Additional Information: SEE SAR NUMBER LISTED NEXT TO EACH ACTION

FTS:8-382-3771.

(85-1178) Alcohols, C1-4, ethers with Polyethylent-polypropylene glycol mono (2-aminopropyl) ether, polymer with maleic anhydride and trimethylolpropane triacrylate

(85-564) Isocyanic acid, polymethylene-polyphenylene ester, polymer with 1,1-methylenebis ;4-isocyanatobenzene; 2-hydroxyethyl acrylate-blocked

(85-703) Poly 2-hydroelectric melamine, polymers with 5-isocyana te 1-isocyanatomethyl-1,3,3-trimethylcyclohexane 2-hydroxyethyl acrylate-blocked

(84-274) Poly(oxy-1,4-butanediyl)-alpha-(1-oxo-2-propenyl) -omega-{[1-oxo-2-propenyl)-oxy)

(85-544) 2-Propenoic Acid, 2-Methyl-7,7,9-Trimethyl-4,13-dioxo- 3,14-Dioxo-t,12-Diazahexadecane,1,16-Diyl Ester

Agency Contact: John Bowser, Environmental Protection Agency, Pesticides and Toxic Substances, (TS-794), Washington, DC 20460, 202 382-3771

RIN: 2070-AB27

2750. GENERIC SIGNIFICANT NEW USE RULE FOR ACRYLATE COMPOUNDS

Legal Authority: 15 USC 2604 /TSCA 5

CFR Citation: 40 CFR 721

Legal Deadline: None

Abstract: The generic acrylate significant new use rule may require any person who proposes to manufacture, import, or process an acrylate/methacrylate subject to the category definition contained within the proposed rule to notify EPA at least 90 days in advance of the initiation of a significant new use. The significant new use rule will apply to a subset of acrylates and methacrylates added to the inventory after the effective date of the rule. It will no longer be necessary to issue routine 5(e) orders or chemical specific SNURs for those acrylates covered by the rule.

Timetable:

Action	Date	FR Cite
NPRM	06/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: SAR No. 2247.

FTS: 8-382-3771

Agency Contact: John Bowser, Environmental Protection Agency, Pesticides and Toxic Substances, (TS-794), Washington, D.C. 20460, 202 382-3771

RIN: 2070-AB56

2751. RULEMAKING CONCERNING CERTAIN MICROBIAL PRODUCTS ("BIOTECHNOLOGY")

Significance: Regulatory Program

Legal Authority: 15 USC 2604 /TSCA 5; 15 USC 2607 /TSCA 8

CFR Citation: 40 CFR 704; 40 CFR 720; 40 CFR 721

Legal Deadline: None

Abstract: Under the authority of the Toxic Substances Control Act, the agency is proposing two separate regulatory actions for manufacturers, importers, and processors of certain microbial products of biotechnology. Under section 5, the Agency is proposing to amend its definition of "small quantities solely for research and development" contained in the Premanufacture Notification (PMN) Rule, thereby requiring persons to submit notices prior to testing new microorganisms in the environment. This amendment will require reporting for new microorganisms and will establish a special notification mechanism for experimental releases of microorganisms. EPA also is proposing significant new use notification requirements under section 5(a)(2), which would ensure that EPA will receive for review, notices of large scale releases of other microorganisms developed for significant new uses, and will review small-scale environmental releases, possibly with assistance from environmental biosafety committees (EBCs), peer review committees to be sponsored by researchers and accredited by EPA. In addition, the Agency may be proposing (SEE ABSTRACT CONTENUED UNDER THE ADDITIONAL INFORMATION SECTION)

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Analysis: Regulatory Impact Analysis

Additional Information: ABSTRACT CONT: section 8(a) reporting requirements for persons who are using microorganisms in the environment. The primary objective of these actions is to ensure uses of microorganisms in the environment do not affect human health and the environment in unforeseen and possible harmful ways.

SAR No. 2325 (SNUR for Certain Biotech Products); 2326 (PMN for Certain Biotech Products); 2327 (8(a) for Certain Biotech Products)

FTS:8-382-3856

Agency Contact: Ron Evans, Environmental Protection Agency, Pesticides and Toxic Substances, (TS-794), Washington, DC 20460, 202 382-3856

RIN: 2070-AB01

2752. PROPOSAL TO EXEMPT CERTAIN MICROORGANISMS FROM PMN REQUIREMENTS UNDER TSCA 5(H)(4)

Significance: Regulatory Program

Legal Authority: 15 USC 1504/TSCA 5

CFR Citation: 40 CFR 723

Legal Deadline: None

Abstract: Under the authority of the Toxic Substances Control Act, the Agency will propose to exempt from review new microorganisms used in certain closed and contained systems. The Agency considers it a priority to exempt from consideration organisms that can be shown to meet the statutory requirements under section 5(h)(4) of TSCA. To meet those requirements, it must be shown that the substances will not present unreasonable risks. EPA is considering public comment received and other evidence concerning use of microorganisms in closed systems and other controlled environments to determine whether those categories satisfy the requirements of section 5(h)(4) of TSCA.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	
Final Action	00/00/00	

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Undetermined

Additional Information: SAR No. 2301.

FTS:8-382-3650

Agency Contact: Ron Evans, Environmental Protection Agency, Pesticides and Toxic Substances, (TS-794), Washington, DC 20460, 202 382-3856

RIN: 2070-AJ05

2753. REGULATORY INVESTIGATION OF FORMALDEHYDE

Significance: Regulatory Program

Legal Authority: 15 USC 2605 / TSCA 6; 15 USC 2608 / TSCA 9

CFR Citation: 40 CFR 704

Legal Deadline: None

Abstract: As described in the Federal Register on May 23, 1984, the Agency has been investigating regulatory options for the reduction of three categories of exposure to formaldehyde: 1) residents exposed to formaldehyde emissions from wood products used in the construction of manufactured homes; 2) similarly exposed residents of conventional homes; 3) apparel manufacture employees exposed to formaldehyde released from treated fabrics. Because OSHA proposed a standard in December 1985 that applies to all occupational exposure, EPA has terminated its investigation with respect to apparel manufacturing employees. Investigation of risks from exposure to formaldehyde emissions from wood products is being conducted in consultation with HUD and CPSC. This investigation may lead to the initiation of various control alternatives, including section 9 referral to other agencies and/ or section 6 regulations.

EPA—TSCA — Proposed Rule Stage

Timetable:

Action	Date	FR Cite
ANPRM	05/23/84	49 FR 21870
Section 9(d) and Notice of Termination for Apparel Workers	03/19/86	51 FR 9468
Section 9 Report, NPRM, or Statement of No Unreasonable Risk Regarding Wood Products	09/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Analysis: Regulatory Impact Analysis

Additional Information: SAR No. 2248.

FTS: 8-382-7134.

Agency Contact: George Semeniuk, Environmental Protection Agency, Pesticides and Toxic Substances, (TS-794), Washington, DC 20460, 202 382-2886

RIN: 2070-AD14

2754. REGULATORY INVESTIGATION OF CHLORINATED SOLVENTS

Significance: Regulatory Program

Legal Authority: 15 USC 2605 / TSCA 6; 15 USC 2609 / TSCA 9

CFR Citation: 40 CFR 754

Legal Deadline: None

Abstract: EPA, in consultation with the Consumer Product Safety Commission, Occupational Safety and Health Administration, and Food and Drug Administration, is developing a comprehensive and integrated strategy for a regulatory investigation of methylene chloride and five other chlorinated solvents. In some cases, these chlorinated solvents are competitive and can be easily substituted for each other in a number of uses. The integrated effort is being conducted to reach general agreement on the risks associated with the solvents and to avoid ineffective risk management actions that may occur due to solvent switching or pollutant transfer among media which could be caused by piecemeal regulation. Data are being gathered for six solvents (methylene chloride, perchloroethylene, trichloroethylene, methyl chloroform, carbon tetrachloride, and CFC-113) and their potential substitutes. This regulatory investigation is focused on three major use categories: metal cleaning, paint stripping, and aerosol application. The investigation will determine whether coordinated regulatory controls are needed to eliminate or reduce exposure to these solvents.

Timetable:

Action	Date	FR Cite
ANPRM	10/17/85	50 FR 42037
(Solid Cleaning) NPRM	08/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Analysis: Regulatory Impact Analysis

Additional Information: SAR No. 2284.

FTS: 8-382-3945.

Agency Contact: Larry Denny, Environmental Protection Agency, Pesticides and Toxic Substances, (TS-794), Washington, DC 20460, 202 382-3777

RIN: 2070-AB41

2755. PCB SPILL CLEANUP RECORDKEEPING RULE

Legal Authority: 15 USC 2605(e)(1)(A) / TSCA 6(e)

CFR Citation: 40 CFR 761

Legal Deadline: None

Abstract: This regulation will require parties responsible for PCB spill clean up to maintain records of the cleanup. The information required to be included in the records will likely be the same as that required in the PCB spills cleanup policy. The recordkeeping requirements will facilitate verification of PCB spill cleanup.

Timetable:

Action	Date	FR Cite
Policy Statement	04/02/87	52 FR 10688
NPRM	09/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: SAR No. 2287.

FTS: 382-3666.

Agency Contact: Martin Halper, Environmental Protection Agency, Pesticides and Toxic Substances, (TS-798), Washington, DC 20460, 202 382-3666

RIN: 2070-AD45

2756. PROCEDURES AND CRITERIA FOR TERMINATION OF POLYCHLORINATED BIPHENYL DISPOSAL PERMITS

Legal Authority: 15 USC 2605/TSCA 6; 5 USC 558 et seq

CFR Citation: 40 CFR 761

Legal Deadline: None

Abstract: Under section 6(e) of TSCA, the Agency is considering establishing uniform procedures and criteria for the revocation of TSCA disposal permits. The regulation would establish uniform revocation procedures and criteria and thereby ensure consistency in permit revocation proceedings.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
Final Action	09/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: SAR No. 2288.

FTS: 8-382-3666

Agency Contact: Martin Halper, Environmental Protection Agency, Pesticides and Toxic Substances, (TS-798), Washington, DC 20460, 202 382-3666

RIN: 2070-AB51

ENVIRONMENTAL PROTECTION AGENCY (EPA) —Toxic Substances Control Act (TSCA) — Final Rule Stage

2757. NEGOTIATED CONSENT/PROCEDURAL TEST RULE (REVISION)

Legal Authority: 15 USC 2603/TSCA 4

CFR Citation: 40 CFR 790

Legal Deadline: None

Abstract: This amends the test rule development and exemptions procedural rule published October 10, 1984 (49 FR 39776) to allow for rulemaking to be conducted in a single phase (i.e., a proposed rule and a final rule covering both the effects for which testing is necessary and the testing methodology) and adds consent orders as a means of obtaining test data required under Section 4 of TSCA. In addition, this rule will simplify the procedures governing the development and implementation of testing requirements under 2-phase rulemaking, and amend the current procedures governing modification of test standards and schedules for tests required under test rules and testing consent agreements.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/17/85	50 FR 20652
Interim Final Rule	06/30/86	51 FR 23706
Interim Final Rule (Technical Modification)	01/00/89	
Final Action	06/00/90	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: SAR No. 2245.

FTS: 8-475-8130.

Agency Contact: Richard Troast, Environmental Protection Agency, Pesticides and Toxic Substances, (TS-778), Washington, DC 20460, 202 475-8130

RIN: 2070-AB30

2758. TSCA GOOD LABORATORY PRACTICE STANDARDS (REVISION)

Legal Authority: 15 USC 2603 /TSCA 4

CFR Citation: 40 CFR 792

Legal Deadline: None

Abstract: This action would expand the scope of the existing rule to include: 1) additional types of testing not covered by the current 40 CFR 792, 2) TSCA section 4 consent agreements, 3) certain changes in the FDA GLP regulation amendment.

Timetable:

Action	Date	FR Cite
NPRM	12/28/87	52 FR 48933
Final Action	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: SAR No. 1926.

FTS: 8-382-7625

Agency Contact: Dan Helfgott, Environmental Protection Agency, Pesticides and Toxic Substances, (EN-342), Washington, DC 20460, 202 382-7625

RIN: 2070-AB88

2759. DECISION ON TEST RULES: FINAL RULES

Legal Authority: 15 USC 2603 /TSCA 4

CFR Citation: 40 CFR 799

Legal Deadline: None

Abstract: The following table lists chemicals for which EPA has issued proposed test rules and will take final action under TSCA section 4. The Agency defines final action as promulgation of a test rule or withdrawal of a proposed test rule. (See also Decisions on Test Rules: Proposed Rules under RIN: 2070-AB07.)

Timetable:

Action	Date	FR Cite
Alkyl Phthalates (Enviro)(ITC List 1)(SAR 5365) Final Action	08/00/88	
Anilines (ITC List 4) (SAR 5384) ANPRM	01/02/84	49 FR 108
Final Action	09/00/88	
Cumene (ITC List 15) (SAR 5390) NPRM	05/15/87	52 FR 7854
Final Action	07/27/88	53 FR 28195
Cyclohexane (ITC List 18) (SAR 5391) NPRM	05/20/87	52 FR 19096
Cyclohexane(ITC List 18) (SAR 5391) Final Action	08/00/88	
Diethylene glycol butyl ether acrylate (ITC List 13) (SAR 5382) ANPRM	11/19/84	49 FR 45606
NPRM	04/04/86	51 FR 27680
Final Action	02/26/88	53 FR 5932
Hexafluoropropylene Oxide (ITC List 2) (SAR 5395) Final Action	04/00/89	
Hexafluoropropylene Oxide (ITC List 2) (SAR 5395) NPRM	12/30/83	48 FR 57686
Isopropanol (ITC List 19) (SAR 5376) NPRM	03/18/86	53 FR 8638
Final Action	00/00/00	
Mercaptobenzenethiazole (ITC List 15) (SAR 5396) NPRM	11/06/87	52 FR 53160
Final Action	10/00/88	
Methyltert-butyl ether (ITC List 19)(SAR 5378) Final Action	03/31/88	53 FR 10391
Octamethylcyclotetrasiloxane (ITC List 15) (SAR 5386) NPRM	10/30/85	50 FR 45123
Final Action	09/00/88	
Oleylamine (Test Standards) (ITC List 13) (SAR 5389) NPRM	08/24/87	52 FR 31962
Final Action	12/00/88	
OSW Generic Test Rule (SAR 5400) NPRM	05/29/87	52 FR 20336
Final Action	06/15/88	53 FR 22300
Pentabromoethylbenzene (ITC List 15) (SAR 5401) NPRM	11/13/85	50 FR 46785
Final Action	04/00/89	
Phenylenediamines (ITC List 6) (SAR 5382) NPRM	01/06/86	51 FR 472
NPRM	01/14/88	53 FR 913
Final Action	12/00/88	
Tributyl Phosphate (ITC List 19) (SAR 5383) Final Action	12/00/89	
Triethylene glycol monomethyl, monoethyl (SAR 5403) NPRM	05/15/86	51 FR 17883
Final Action	00/00/00	
Vinylidene Chloride (SAR 5400) NPRM	08/12/86	51 FR 28640
Final Action	00/00/00	
2,6 Di-tert-butylphenol (ITC List 19)(SAR 5394) NPRM	09/25/87	52 FR 23682
Final Action	04/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: SEE SAR NUMBER LISTED NEXT TO EACH ACTION

FTS: 8-475-8130

Agency Contact: Richard Troast, Environmental Protection Agency, Pesticides and Toxic Substances, (TS-778), Washington, DC 20460, 202 475-8130

RIN: 2070-AB34

2760. PROCEDURAL RULE FOR EXPEDITED NEW CHEMICAL FOLLOW-UP

Significance: Regulatory Program

Legal Authority: 15 USC 2604 /TSCA 5

CFR Citation: 40 CFR 721

Legal Deadline: None

Abstract: This rulemaking would establish criteria and procedures by which certain chemicals could be administratively added to or withdrawn

from a list of chemicals subject to section 5(a)(2) of TSCA. This would reduce the time and resources required to regulate individual chemicals under the new chemical follow-up program. This rulemaking would also establish reporting requirements under sections 8(a) and 8(d) for manufacturers and processors of certain chemicals that meet the criteria mentioned above.

Timetable:

Action	Date	FR Cite
NPRM	04/29/87	52 FR 15894
Final Action	11/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: SAR No. 2170.

FTS:8-382-3771

Agency Contact: John Bowser, Environmental Protection Agency, Pesticides and Toxic Substances, TS-794, Washington, DC 20460, 202 382-3771

RIN: 2070-AB67

2761. POLYCHLORINATED BIPHENYLS (PCBS); APPLICATIONS FOR EXEMPTIONS FROM THE BAN ON MANUFACTURING, PROCESSING, AND DISTRIBUTION

Legal Authority: 5 USC 556 / TSCA 6(e)(3)(B)

CFR Citation: 40 CFR 761

Legal Deadline: None

Abstract: Section 6(e)(3)(b) of TSCA provides that the Administrator may grant, by rule, exemptions from the prohibitions on the manufacture, processing and distribution in commerce of PCBs upon finding (1) that granting the exemption will not pose an unreasonable risk of injury to health or the environment, and (2) that good faith efforts have been made to develop a PCB substitute which does not pose an unreasonable risk of injury to health or the environment.

Timetable:

Action	Date	FR Cite
NPRM	06/24/88	53 FR 23926
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: SAR No. 2150.

FTS:8-382-3866

Agency Contact: Martin Halper, Environmental Protection Agency, Pesticides and Toxic Substances, (TS-798), Washington, DC 20460, 202 382-3866

RIN: 2070-AB30

2762. ACTION CONCERNING COMMERCIAL AND INDUSTRIAL USE OF ASBESTOS

Significance: Regulatory Program

Legal Authority: 15 USC 2605 / TSCA 6

CFR Citation: 40 CFR 763

Legal Deadline: None

Abstract: Asbestos is a known human carcinogen. Persons are exposed to asbestos from releases to the environment during all phases of the lifecycle of asbestos products. Because of the serious risk presented to many people from exposure to asbestos during the lifecycle of asbestos products, EPA has proposed a rule under Section 6 of TSCA to ban certain asbestos products for which substitutes are currently available and to phase out all or most asbestos mining and importation over 10 years.

Timetable:

Action	Date	FR Cite
ANPRM	10/17/79	44 FR 60057
NPRM	01/29/88	51 FR 3738
Final Action	01/00/89	

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Local, State, Federal

Analysis: Regulatory Impact Analysis; Regulatory Flexibility Analysis

Additional Information: SAR No. 2290.

FTS: 382-3012.

Agency Contact: John Rigby, Environmental Protection Agency, Pesticides and Toxic Substances, (TS-794), Washington, DC 20460, 202 382-3962

RIN: 2070-AB29

2763. PCB NOTIFICATION AND MANIFESTING RULE

Significance: Regulatory Program

Legal Authority: 15 USC 2605/TSCA 6; 15 USC 2607/TSCA 8

CFR Citation: 40 CFR 761

Legal Deadline: None

Abstract: Under the authority of TSCA, EPA is considering rulemaking which would require that all PCB wastes be manifested for disposal. The purposes of the regulation would be 1) to obtain information about handlers and storers of PCB wastes; and 2) to track shipment of wastes containing PCBs. The rulemaking will also consider imposing new requirements on commercial storers of PCB wastes.

Timetable:

Action	Date	FR Cite
NPRM	09/26/88	53 FR 37436
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Additional Information: SAR No. 2550.

FTS:8-382-3856

Agency Contact: Martin Halper, Environmental Protection Agency, Pesticides and Toxic Substances, (TS-798), Washington, DC 20460, 202 382-3866

RIN: 2070-AB83

2764. SECTION 8 (A) PRELIMINARY ASSESSMENT INFORMATION RULES

Legal Authority: 15 USC 2607a / TSCA 8(a)

CFR Citation: 40 CFR 712

Legal Deadline: None

Abstract: These rules add chemicals to the list of chemicals and designated mixtures subject to the requirements of the TSCA Section 8(a) Preliminary Assessment Information Rule (40 CFR Part 712). These chemicals are identified by OTS, other EPA offices, and other Agencies, as well as chemicals recommended by the Interagency Testing Committee (ITC) on the TSCA Section 4(e) priority list. Manufacturers and importers are required to submit exposure-related data (EPA Form No. 7710-35) on the chemicals. These data will be used to monitor the levels of production, import and/or processing of these substances and the avenues of human and environmental exposure to these substances. It will also support risk assessment and test rule decisions.

Timetable:

OAOPS/OTS Chemicals PAIR	
NPRM	05/14/87 (52 FR 18245)
Final Action	03/31/88 (53 FR 10367)
Pesticide Inerts	
NPRM	05/14/87 (52 FR 18245)
Final Action	00/00/00
22nd ITC List Chemicals	
Final Action	05/20/88 (53 FR 18196)
23rd ITC List Chemicals	
Final Action	11/00/88

Small Entities Affected: None

Government Levels Affected: Federal

Additional Information: SAR No. 2178.

FTS: 8-382-3938.

Agency Contact: Barbara Ostrow, Environmental Protection Agency, Pesticides and Toxic Substances, (TS-778), Washington, DC 20640, 202 382-3938

RIN: 2070-AB08

2765. SECTION 8(D) HEALTH AND SAFETY DATA REPORTING RULES

Legal Authority: 15 USC 2607(d)/TSCA 8(d)

CFR Citation: 40 CFR 716

Legal Deadline: None

Abstract: These rules add chemicals to the list of chemicals and mixtures subject to the requirements of the TSCA Section 8(d) Health and Safety Data Reporting Rule. These chemicals are identified by OTS, other EPA offices, other Agencies, as well as chemicals recommended by the Interagency Testing committee (ITC) on the TSCA Section 4(e) Priority List. Manufacturers, importers, and processors of listed substances must submit unpublished health and safety data on those listed substances.

Timetable:

Health and Safety Data Reporting Period Terminations	
Final Action	10/00/88
Pesticide Inerts	
NPRM	05/14/87 (52 FR 18245)
Final Action	00/00/00
22nd ITC List Chemicals	
Final Action	05/20/88 (53 FR 18196)
23rd ITC List Chemicals	
Final Action	11/00/88

Small Entities Affected: None

Government Levels Affected: None

Additional Information: SAR No. 1130.

FTS: 8-382-3938.

Agency Contact: Barbara Ostrow, Environmental Protection Agency, Pesticides and Toxic Substances, (TS-778), Washington, DC 20460, 202 382-3938

RIN: 2070-AB11

2766. TSCA SECTION 8(A) COMPREHENSIVE ASSESSMENT INFORMATION RULE (CAIR)

Significance: Regulatory Program

Legal Authority: 15 USC 2607(a) / TSCA 8(a)

CFR Citation: 40 CFR 712

Legal Deadline: None

Abstract: This rule will contain a comprehensive list of questions for industry reporting which will provide necessary information to complete chemical assessments. Each time EPA needs information on a chemical, the Agency will amend the rule to add the chemical. Not all questions will be selected for each chemical added to the rule; only the most relevant questions will be selected for each chemical. The information obtained by this rule will be used by EPA and other Federal Agencies to support assessments of and rulemaking on chemical substances.

Timetable:

Action	Date	FR Cite
NPRM	10/07/88	51 FR 35762
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: Federal

Additional Information: SAR No. 2129.

FTS: 8-382-3938.

Agency Contact: Barbara Ostrow, Environmental Protection Agency, Pesticides and Toxic Substances, (TS-778), Washington, DC 20460, 202 382-3938

RIN: 2070-AB13

ENVIRONMENTAL PROTECTION AGENCY (EPA) —Toxic Substances Control Act (TSCA) — Completed Actions

2757. ASBESTOS-CONTAINING MATERIALS IN SCHOOLS; TRANSPORT AND DISPOSAL RULE (REVISION)

CFR Citation: 40 CFR 763

Completed:

Reason	Date	FR Cite
Withdrawn Rule will be included in upcoming Asbestos NESHAP.	08/25/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Stephen Schaaaaann 202 382-3949

RIN: 2070-AB37

2768. GENERAL REGULATIONS ON SIGNIFICANT NEW USE RULES (SNURS) (REVISION)

CFR Citation: 40 CFR 721

Completed:

Reason	Date	FR Cite
Final Action	07/27/88	53 FR 28354

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: John Bowser/Andrew Cherry 202 382-3771

RIN: 2070-AB28

2769. RECODIFICATION OF TSCA CFR SECTION 721

CFR Citation: 40 CFR 721

Completed:

Reason	Date	FR Cite
Final Action	02/02/88	53 FR 2845

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: John Bowser 202 382-3771

RIN: 2070-AB05

2770. NITROSAMINES IN METALWORKING FLUIDS

Significance: Regulatory Program

CFR Citation: 40 CFR 747

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EPA—TSCA

Completed Actions

Completed:

Reason	Date	FR Cite
Withdrawn Project transferred to OSHA's Hazard Communication Program.	08/25/88	

Small Entities Affected: Organizations

Government Levels Affected: Undetermined

Agency Contact: Joseph DeSantis 202 382-3965

RIN: 2070-AB30

3771. POLYCHLORINATED BIPHENYLS (PCBS); MANUFACTURING, PROCESSING, DISTRIBUTION IN COMMERCE, AND USE PROHIBITIONS; EXCLUSIONS AND USE AUTHORIZATIONS (REVISION)

CFR Citation: 40 CFR 761

Completed:

Reason	Date	FR Cite
Final Action	08/27/88	53 FR 34206

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Martin Halper 202 382-3966

RIN: 2070-AB15

3772. PCBS IN ELECTRICAL TRANSFORMERS (REVISION)

CFR Citation: 40 CFR 761

Completed:

Reason	Date	FR Cite
Final Action	07/19/88	52 FR 27322

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Martin Halper 202 382-3966

RIN: 2070-AB31

3773. USER FEES FOR PROCESSING PMNS

Significance: Regulatory Program

CFR Citation: 40 CFR 700

Completed:

Reason	Date	FR Cite
Final Action	08/17/88	53 FR 31248

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Joseph A. DeSantis 202 382-3965

RIN: 2070-AB54

ENVIRONMENTAL PROTECTION AGENCY (EPA) —Clean Water Act (CWA)

Proposed Rule Stage

2774. EFFLUENT GUIDELINES FOR OFFSHORE OIL AND GAS EXTRACTION INDUSTRY (REVISION)

Significance: Regulatory Program

Legal Authority: 33 USC 1311 / CWA 301; 33 USC 1314 / CWA 304; 33 USC 1316 / CWA 306; 33 USC 1317 / CWA 307; 33 USC 1361 / CWA 501

CFR Citation: 40 CFR 435

Legal Deadline: None

Abstract: The Agency will promulgate BAT, BCT and NSPS regulations for drilling fluids and drill cuttings waste streams from offshore oil and gas extraction facilities to limit discharges of pollutants from the offshore segment of the oil and gas extraction point source category.

Timetable:

Action	Date	FR Cite
NPRM	08/26/85	50 FR 34592
NOTICE	11/13/86	50 FR 46794
NOTICE	12/31/85	50 FR 53348
NOTICE	10/00/88	
Final Action	03/00/89	
BCT Reproposal NOTICE 12/00/88		

Small Entities Affected: None

Government Levels Affected: State

Analysis: Regulatory Impact Analysis; Regulatory Flexibility Analysis

Additional Information: SAR No. 1048.

Agency Contact: Dennis Ruddy, Environmental Protection Agency, Water, (WH-552), Washington, DC 20460, 202 382-7131

RIN: 2040-AA12

2775. EFFLUENT GUIDELINES FOR PHARMACEUTICALS

Legal Authority: 33 USC 1311 / CWA 301; 33 USC 1314 / CWA 304; 33 USC 1316 / CWA 306; 33 USC 1317 / CWA 307; 33 USC 1361 / CWA 501

CFR Citation: 40 CFR 439

Legal Deadline: None

Abstract: The Agency has not decided to issue NSPS regulations to control the discharge of conventional pollutants from new source direct dischargers in the pharmaceuticals industry. The Agency will finalize BAT and NSPS regulations to control the discharge of the nonconventional pollutant, COD, but no decision has been made when to begin regulation procedures.

Timetable:

Action	Date	FR Cite
NPRM	11/26/82	47 FR 53584
NPRM NSPS	10/27/83	48 FR 49832
Final Action	10/27/83	48 FR 49808
NOTICE	11/01/83	48 FR 50322
NOTICE	01/10/84	49 FR 1190
NPRM BCT Cost	03/09/84	49 FR 8967
NOTICE	04/26/84	49 FR 17976
NOTICE New Data	07/02/84	49 FR 27145
NOTICE	01/31/85	50 FR 4513
NOTICE	05/01/85	50 FR 18486
NOTICE New Data	09/09/85	50 FR 36638
NPRM (BCT)	00/00/00	

Final Action 12/16/86 (51 FR 45094)

Small Entities Affected: None

Government Levels Affected: Undetermined

Analysis: Regulatory Impact Analysis; Regulatory Flexibility Analysis

Additional Information: SAR No. 1427.

FTS:8-382-7182.

Agency Contact: Frank Hund, Environmental Protection Agency.

EPA—CWA

Proposed Rule Stage

Water, (WH-552), Washington, DC 20460, 202 382-7182

RIN: 2040-AA13

2776. EFFLUENT GUIDELINES FOR NONFERROUS METALS MANUFACTURING (PHASE II) (REVISIONS)

Legal Authority: 33 USC 1311 / CWA 301; 33 USC 1314 / CWA 304; 33 USC 1316 / CWA 306; 33 USC 1317 / CWA 307; 33 USC 1361 / CWA 501

CFR Citation: 40 CFR 421

Legal Deadline: None

Abstract: The Agency will propose and promulgate amendments to the regulation previously promulgated on September 20, 1985 (50 FR 38276). These amendments are in response to settlements with six petitioners and will affect six subcategories, primary beryllium subcategory, primary molybdenum and rhenium subcategory, second molybdenum and vanadium subcategory, secondary precious metals subcategory and secondary tungsten and cobalt subcategory. The amendments will revise BPT, BAT, NSPS, and standards for pretreatment to limit the discharge of pollutants from these subcategories.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	
Final Action	12/00/89	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Additional Information: SAR No. 2561.

FTS:8-382-7120

Agency Contact: Ernst P. Hall, Environmental Protection Agency, Water, (WH-552), Washington, DC 20460, 202 382-7126

RIN: 2040-AB31

2777. EFFLUENT GUIDELINES FOR PESTICIDES CHEMICALS

Legal Authority: 33 USC 1311 / CWA 301; 33 USC 1314 / CWA 304; 33 USC 1316 / CWA 306; 33 USC 1317 / CWA 307; 33 USC 1361 / CWA 501

CFR Citation: 40 CFR 455

Legal Deadline: NPRM, Statutory, December 1988. Final, Statutory, September 1991.

Abstract: On October 4, 1985 the EPA promulgated a final regulation establishing BAT, NSPS, PSES, PSNS for the pesticide industry under the Clean Water Act. On July 25, 1986 the final regulation was remanded to the EPA by the Eleventh Circuit Court of Appeals in response to a joint motion filed by the Agency and other parties to litigation challenging the regulation. EPA removed the BAT, NSPS, PSNS, and PSES pesticide regulation from the Code of Federal Regulations at the direction of the Court, and informed the public that the regulation is no longer effective (December 15, 1986; 51 FR 44911). The Agency intends to establish new effluent limitation guidelines and standards for the pesticide manufacturers and formulators/packagers industry in a future rulemaking. The BCT limitations published on April 25, 1978 and September 28, 1978, are still effective.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Analysis: Regulatory Impact Analysis; Regulatory Flexibility Analysis

Additional Information: SAR No. 2473.

FTS:8-382-7156

Agency Contact: Thomas Fielding, Environmental Protection Agency, Water, (WH-552), Washington, DC 20460, 202 382-7158

RIN: 2040-AB32

2778. ● EFFLUENT GUIDELINES FOR PULP, PAPER AND PAPERBOARD

Legal Authority: 33 USC 1311 /CWA 301; 33 USC 1314 /CWA 304; 33 USC 1316 /CWA 306; 33 USC 1317 /CWA 307; 33 USC 1361 /CWA 501

CFR Citation: 40 CFR 431

Legal Deadline: None

Abstract: The Agency will review existing BAT, PSES, PSNS, and NSPS regulations to ensure control of discharges of toxic, conventional and nonconventional pollutants from existing and new source dischargers in the pulp, paper, and paperboard industry.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Additional Information: SAR No. 1810

FTS:8-382-7184

Agency Contact: Wendy Smith, Environmental Protection Agency, Water, (WH-552), Washington, DC 20460, 202 382-7184

RIN: 2040-AB33

2779. NPDES, PERMITS FOR DREDGED OR FILL MATERIAL, AND WATER QUALITY STANDARDS – REVISION FOR INDIAN TRIBES

Significance: Regulatory Program

Legal Authority: 33 USC 1251 /CWA 518; 33 USC 1313; 33 USC 1342; 33 USC 1344; 33 USC 1378

CFR Citation: 40 CFR 122; 40 CFR 123; 40 CFR 124; 40 CFR 131; 40 CFR 230; 40 CFR 231; 40 CFR 232; 40 CFR 233

Legal Deadline: Final, Statutory, August 3, 1988.

Abstract: These rules will establish standards and procedures for treatment of Indian Tribes as States for section 303, 402, and 404. The revised water quality standards regulation will also incorporate a mechanism to resolve unreasonable consequences if Indian tribes and States adopt differing water quality standards for common bodies of water.

Timetable:

Action	Date	FR Cite
NPRM	05/00/89	
Final Action	12/00/89	

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: Local, State

Additional Information: SAR No. 2475

FTS:8-475-7315

Agency Contact: Kent Ballentine, Environmental Protection Agency, Water, (WH-585), Washington, DC 20460, 202 475-7315

RIN: 2040-AB36

2780. NPDES REGULATORY REVISIONS

Legal Authority: 33 USC 1251 /CWA 303

CFR Citation: 40 CFR 122; 40 CFR 123

Legal Deadline: None

Abstract: This action will revise the NPDES Regulations pursuant to requirements contained in the 1987 Water Quality Act. In addition, several other changes will be made to clarify existing requirements and policies. These revisions will not encompass requirements mandated by Section 406 (sewage sludge) of the 1987 Water Quality Act.

Timetable:

Action	Date	FR Cite
NPRM	08/00/89	
Final Action	01/00/90	

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: SAR No. 2433.

FTS:8-475-9524

Agency Contact: Dave Greenbury, Environmental Protection Agency, Water, (EN-336), Washington, DC 20460, 202 475-9524

RIN: 2040-AB26

2781. INTERPRETATION OF PROVISIONS OF SECTION 304(1) OF THE CWA

Legal Authority: 33 USC 1251 /CWA 304(1)

CFR Citation: 40 CFR 122; 40 CFR 123; 40 CFR 130

Legal Deadline: None

Abstract: This proposed rule will provide the Agency's regulatory interpretation of four provisions of section 304(1) of the Clean Water Act. It will clarify the nature of an individual control strategy under section 304(1) and the use of existing data by States to develop initial lists of waters. Further, it will describe the EPA approval/disapproval process for lists submitted in fulfillment of the requirements of section 304(1). Finally, it will establish the initial subdivision of lists and individual control strategies by the statutory deadline of February 4, 1988, as a first phase of an ongoing identification and permitting process called for under the water quality provisions of the Clean Water Act.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: SAR No. 2525.

FTS:8-475-7718

Agency Contact: Paul Connor, Environmental Protection Agency, Water, EN-336, Washington, DC 20460, 202 475-7718

RIN: 2040-AB46

2782. PROCEDURAL RULES FOR CLASS I ADMINISTRATIVE PENALTY PROCEEDINGS UNDER THE CWA

Legal Authority: 33 USC 1363 /CWA 309(g)

CFR Citation: 40 CFR 128

Legal Deadline: None

Abstract: This rulemaking will convert EPA's Class I CWA administrative penalty procedures from the status of guidance to a final rule. Procedures for the assessment of Class I administrative penalties (maximum penalty of $25,000 with less than APA procedures) were issued as guidance in August 1987. The Agency will propose that guidance in identical form for public comment after internal review.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Guidance		
Final Action	08/17/87	(52 FR 30730)

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: SAR No. 2500.

FTS:8-475-9187

Agency Contact: Elyse M. DiBiagio-Weed, Environmental Protection Agency, Water, LE-134W, Washington, DC 20460, 202 475-9187

RIN: 2040-AB49

2783. REVISIONS TO REGULATIONS FOR MODIFICATION OF SECONDARY TREATMENT REQUIREMENTS FOR MUNICIPAL DISCHARGE INTO MARINE WATERS

Legal Authority: 33 USC 1311(h)/CWA 301(h)

CFR Citation: 40 CFR 125

Legal Deadline: None

Abstract: The revisions to the regulations primarily are intended to respond to statutory changes made to sec. 301(h) of the Clean Water Act (33 USC 1311(h)), which governs secondary treatment waivers for municipal discharges into marine waters. The statutory changes to be addressed include, among other things, new requirements for minimum treatment levels and additional requirements for pretreatment programs for certain waiver applicants. In addition, the Agency is considering revising the regulations to address more specifically procedures and requirements for the renewal of secondary treatment waivers. The revised regulations will affect only the limited number of municipal treatment plants which met the 1982 statutory deadline for applying for a secondary treatment waiver.

Timetable:

Action	Date	FR Cite
NPRM	03/00/89	
Final Action	10/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: SAR No. 2587.

FTS:8-475-7134

Agency Contact: Barry Burgan, Environmental Protection Agency, Water, (WH-556F), Washington, DC 20460, 202 475-7134

RIN: 2040-AB29

2784. ● ESTUARY PROGRAM GRANT REGULATION

Legal Authority: 33 USC 1330 /CWA 320(g)

CFR Citation: 40 CFR 35

Legal Deadline: None

Abstract: This action modifies 40 CFR Part 35 to add specific requirements for grants under the National Estuary Program. These modifications specify the conditions that a grant applicant must meet to receive grant funding under the Program. Current regulations do not include specific restrictions for funds granted under the National Estuary Program.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	02/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: SAR No. 2517

FTS:8-475-7378

Agency Contact: Thomas M. Armitage, Environmental Protection Agency, Water, (WH-556), Washington, DC 20460, 202 475-7378

RIN: 2040-AB54

2785. NPDES REGULATIONS: STORMWATER APPLICATION REQUIREMENTS (REVISION)

Legal Authority: 33 USC 1342 /CWA 402

CFR Citation: 40 CFR 122

Legal Deadline: Final, Statutory, February 4, 1989.

Abstract: These revisions to the NPDES permit program application requirements for stormwater discharges will reflect the 1987 amendments to the Clean Water Act and will address the deadline for application submission as a result of the recently-rescinded September 1984 stormwater regulations.

Timetable:

Action	Date	FR Cite
Deadline Extension		
Final Action	02/12/88	(53 FR 4157)
Final Application Requirements		
Final Action	00/00/00	
Reproposed Application Requirements		
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: SAR No. 2500.

FTS: 8-475-9537.

Agency Contact: Kevin Weiss, Environmental Protection Agency, Water, (EN-336), Washington, DC 20460, 202 475-9537

RIN: 2040-AA/N

2786. FUTURE EFFLUENT GUIDELINES – STANDARDS INITIATIVES

Significance: Regulatory Program

Legal Authority: 33 USC 1251 /CWA 402, 301, 304, 306, 307, 501

CFR Citation: 40 CFR 400

Legal Deadline: None

Abstract: EPA will review existing effluent guidelines and promulgate new effluent guidelines to implement section 304(m) of the CWA, as amended by the 1987 Water Quality Act (Public Law 100-4). Existing industrial categories or subcategories for which BAT effluent limitations and guidelines and NSPS have already been promulgated that EPA is currently reviewing as potential candidates for revised guidelines include: Copper Forming (40 CFR 468); Timber Products Processing (40 CFR 429); Textile Manufacturing (40 CFR 410); Pharmaceuticals Manufacturing (40 CFR 414, 416) (reserved priority pollutants and nonconventional pollutants). EPA will as needed, revise the list of candidates. Moreover, if and when EPA decides to initiate rulemaking for any of the candidates, it will identify the industrial point source in subsequent Federal Register notices pursuant to section 304m. Industrial point source categories and subcategories discharging toxic and nonconventional pollutants for which BAT effluent guidelines and NSPS have not been promulgated are also under review by EPA, pursuant to section 304(m)(a)(B), as potential candidates for BAT effluent guidelines and NSPS. Most of these

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Analysis: Regulatory Impact Analysis; Regulatory Flexibility Analysis

Additional Information: SAR No. 2304.

FTS: 8-382-7120.

ABSTRACT CONTINUED candidates were selected for review because of the Domestic Sewage Study (Report to Congress on the Discharge of Hazardous Wastes to Publicly Owned Treatment Works, U.S. EPA, Office of Water Regulations and Standards, EPA 530-SW-86-004, February 1986, prepared by EPA pursuant to the mandate of section 3018(a) of RCRA to evaluate the impact of RCRA hazardous wastes discharged to POTWs). The industrial candidates currently being examined are: hazardous waste treaters; solvent recyclers; machinery manufacturing and rebuilding; transportation; paint manufacture and formulation (40 CFR 446); industrial laundries; hospitals (40 CFR 460); waste oil refiners; drum reconditioners; and the onshore and coastal subcategories of oil and gas extraction (40 CFR 435). If the Agency decides that rulemaking is appropriate for these industrial point source candidates, it will publish schedules in the Federal Register.

Agency Contact: Tom O'Farrell, Environmental Protection Agency, Water, (WH-552), Washington, DC [illegible], 202 382-7120

RIN: 2040-AA80

2787. NPDES PERMIT APPLICATION FORM 2C, STANDARD FORM A, AND SHORT FORM A (REVISION)

Legal Authority: 33 USC 1342/CWA 402

CFR Citation: 40 CFR 122.21(j)

Legal Deadline: None

Abstract: This action will revise the current NPDES Permit Application Form 2C (industrial), Standard Form A (municipal), and Short Form A (municipal) to reflect amendments to the Clean Water Act and changes in program requirements and emphasis. The new application forms will replace the old versions and enable permit writers to obtain more pertinent information regarding expected discharges and the environmental impact of proposed operations.

Timetable:

Action	Date	FR Cite
Municipal forms		
NPRM	03/00/90	

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: SAR No. 2501.

FTS:8-475-9817

Agency Contact: William A. Collins, Environmental Protection Agency,

EPA—CWA — Proposed Rule Stage

Water, (EN-336), Washington, DC 20460, 202 475-8517

RIN: 2040-AB39

2788. SEWAGE SLUDGE USE AND DISPOSAL REGULATIONS

Significance: Regulatory Program

Legal Authority: 33 USC 1345 / CWA 405

CFR Citation: 40 CFR 503

Legal Deadline: NPRM, Statutory, November 30, 1988. Final, Statutory, August 31, 1987.

Abstract: The Agency plans to provide technical criteria and management practices by issuing technical sludge regulations under Section 405 of the Clean Water Act as amended by the Water Quality Act of 1987. These regulations will address: distribution and marketing, application of sludge to lands which are used for food and non-food chain crops, ocean disposal, incineration and landfilling. Inorganic and organic pollutants are currently being evaluated for the various reuse and disposal options.

Timetable:

Action	Date	FR Cite
NPRM	04/00/89	
Final Action	10/00/91	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Analysis: Regulatory Impact Analysis

Additional Information: SAN No. 2102.

FTS: 8-382-7142

Agency Contact: William Diamond, Environmental Protection Agency, Water, (WH-551), Washington, DC 20460, 202 382-7142

RIN: 2040-AA74

2789. CITIZEN SUIT NOTICE REGULATION UNDER THE CWA

Legal Authority: 33 USC 1365 /CWA 505

CFR Citation: 40 CFR 135

Legal Deadline: None

Abstract: This regulation will specify on whom the copies of CWA citizen suit complaints and consent decrees should be served, the manner of service, and the addresses of such persons. This rule will amend existing 40 CFR 135.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: SAN No. 2315.

FTS: 8-382-2949

Agency Contact: David Drelich, Environmental Protection Agency, Water, LE-134W, Washington, DC 20460, 202 382-2949

RIN: 2040-AB58

2790. COMPREHENSIVE REVISIONS TO OCEAN DUMPING REGULATIONS

Significance: Regulatory Program

Legal Authority: 33 USC 1401 et seq /MPRSA

CFR Citation: 40 CFR 220 to 229

Legal Deadline: None

Abstract: These amendments are necessary to clarify the existing regulations, incorporate program experience, and respond to statutory amendments and the results of two lawsuits. Those lawsuits are the City of New York decision (543 F. Supp.1084), which involved the consideration of the need for ocean dumping and availability and impacts of land-based alternatives, and NWF v. Costle decision (629 F. 2d 118), which involved dredged material issues. Among other things, the statutory amendments to be addressed in the Regulatory Revisions include provisions applicable to emergency and research permits, use of sewage sludge sites off the New York/New Jersey coastline, and the ocean disposal of low-level radioactive waste.

Timetable:

Action	Date	FR Cite
NPRM	10/20/88	
Final Action	11/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: SAN No. 2180.

FTS: 8-475-7126

Agency Contact: Darrell Brown, Environmental Protection Agency, Water, (WH-556F), Washington, DC 20460, 202 475-7166

RIN: 2040-AA78

2791. OCEAN INCINERATION SITE EVALUATION, SOLICITATION, AND DESIGNATION

Legal Authority: 33 USC 1401 /MPRSA

CFR Citation: 40 CFR 228; 40 CFR 224

Legal Deadline: None

Abstract: This action is a finalization of a portion of the ocean incineration regulation, which was proposed on February 28, 1985. This rule provides specific criteria for evaluating candidate sites, selecting specific sites and establishes the procedures for designating and listing sites for use after issuance of and under the terms of an ocean incineration permit. Designation of sites is a prerequisite to issuance of a permit for use of a site. Promulgation of this rule will allow the Agency to begin the lengthy process of site evaluation, selection and designation.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: SAN No. 2301

FTS: 8-475-7180

NOTE: The Agency has indefinitely suspended all activities relating to the development of a regulatory program governing the incineration of liquid wastes at sea.

Agency Contact: Darrell Brown, Environmental Protection Agency, Water, (WH-556F), Washington, DC 20460, 202 382-7166

RIN: 2040-AB28

2792. EPA ADMINISTERED PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM FOR EXISTING AND NEW SOURCES; PROPOSALS TO IMPLEMENT THE RECOMMENDATIONS OF THE DOMESTIC SEWAGE STUDY

Significance: Regulatory Program

Legal Authority: 42 USC 6939 / RCRA 3018; 33 USC 1317 /CWA 307; 33 USC 1342 /CWA 402

EPA—CWA — Proposed Rule Stage

CFR Citation: 40 CFR 403

Legal Deadline: Final, Statutory, August 1987.

Abstract: The Agency plans to prepare proposed changes to the General Pretreatment Regulations that address: specific and general discharge prohibitions; controls on spills and batch dischargers and dischargers by liquid waste haulers; industrial user notification requirements; and local limits. These changes will be responsive to the recommendations of the Domestic Sewage Study submitted to Congress February 8, 1986 and are to improve the control of hazardous wastes discharged through sewers to publicly-owned treatment works.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: SAN No. 2342.

FTS: 8-475-9534.

Agency Contact: Marilyn Goode, Environmental Protection Agency, Water, (EN-336), Washington, DC 20460, 202 475-8534

RIN: 2040-AA59

ENVIRONMENTAL PROTECTION AGENCY (EPA) —Clean Water Act (CWA) — Final Rule Stage

2783. GUIDELINES FOR CLASSIFYING GROUND WATER UNDER THE EPA GROUND WATER PROTECTION STRATEGY

Significance: Regulatory Program

Legal Authority: Clean Water Act

CFR Citation: 40 CFR Not applicable

Legal Deadline: None

Abstract: In August 1984, EPA issued a Ground water Protection Strategy to provide objectives to guide the Agency's efforts to protect ground water. One of the major goals announced in the strategy was to achieve greater consistency in decisionmaking among the many EPA programs in protecting ground water. The strategy also indicated that EPA would consider the value and vulnerability of ground water in developing protection and cleanup approaches. The classification guidelines implement these goals by providing technical information that will be useful in the evaluation of the vulnerability and value of a particular ground water unit, and by detailing a classification system that can be incorporated as a factor in program decision-making. Both could lead to greater consistency in decisions and assist in the identification of the most valuable and vulnerable ground waters, so that they receive appropriate attention. The agency will finalize the guidelines based on public comments received.

Timetable:

Action	Date	FR Cite
Draft Guidelines	12/03/86	51 FR 43864
Final Guidelines	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: SAN No. 2331.

FTS: 8-382-7077.

Agency Contact: Marian Mlay, Environmental Protection Agency, Water, Environmental Protection Agency, Office of Ground Water Protection, (WH-550G), 202 382-7077

RIN: 2040-AA65

2784. SECONDARY TREATMENT/PERCENT REMOVAL REQUIREMENTS FOR COMBINED SEWER SYSTEMS

Legal Authority: 33 USC 1311(b)(1)(B) /CWA 301(b)(1)(B); 33 USC 1314(d)(1) /CWA 304(d)(1)

CFR Citation: 40 CFR 133

Legal Deadline: None

Abstract: In this amendment the Agency will provide a mechanism for permit adjustments for treatment plants served by Combined Sewer Systems similar to that which was recently promulgated (June 3, 1985) for separate sewer systems. The existing regulation requires 85% removal of BOD5 and suspended solids (85% for equivalent treatment) from treatment plants served by combined sewers during dry weather flow conditions. Problems exist in meeting these requirements when plants experience less concentrated influents.

Timetable:

Action	Date	FR Cite
NPRM	09/17/87	52 FR 35210
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: SAN No. 1812.

FTS: 8-382-7371.

Agency Contact: Randy Revetta, Environmental Protection Agency, Water, (WH-595), Washington, DC 20460, 202 382-7370

RIN: 2040-AB13

2785. NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM SEWAGE SLUDGE PERMIT REGULATIONS; STATE SLUDGE MANAGEMENT PROGRAM REQUIREMENTS

Significance: Regulatory Program

Legal Authority: 33 USC 1251(b) /CWA 101(b); 33 USC 1285(j) /CWA 205(j); 33 USC 1313(e) /CWA 303(e); 33 USC 1317(b) /CWA 307(b); 33 USC 1318 /CWA 308; 33 USC 1345 /CWA 405; 33 USC 1361(a) /CWA 501(a); 33 USC 1370 /CWA 510; 42 USC 6905(b) /RCRA 1006(b); 42 USC 6907 /RCRA 1008; 42 USC 6912(a) /RCRA 2002(a); 42 USC 6944 /RCRA 4004; 42 USC 6945 /RCRA 4005; 42 USC 7410 /CAA 110; 42 USC 7411 /CAA 111

CFR Citation: 40 CFR 122; 40 CFR 123; 40 CFR 124; 40 CFR 501

Legal Deadline: Final, Statutory, December 15, 1988. 12/15/86 for state program approval procedures (Water Quality Act of 1987).

Abstract: The agency proposed requiring States to develop and obtain approval for sludge management programs. Included in the proposal were: 1) program approval procedures; and 2) the elements of an approvable

EPA—CWA

Final Rule Stage

State program, including compliance monitoring and enforcement provisions in 1986. THis 1986 reproposal reflects new requirements of the Water Quality Act of 1987.

Timetable:

Action	Date	FR Cite
NPRM	02/04/86	51 FR 4458
Reproposal	03/09/88	53 FR 7642
Final Action	04/00/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: SAR No. 2163.

FTS:8-475-9520

Agency Contact: Marika Kirkpatrick, Environmental Protection Agency, Water, (EN-336), Washington, DC 20460, 202 475-9529

RIN: 2040-AA73

2794. WATER QUALITY PLANNING AND MANAGEMENT GRANTS FOR INDIAN TRIBES

Significance: Regulatory Program

Legal Authority: 42 USC 1324 /CWA 114

CFR Citation: 40 CFR 35; 40 CFR 130

Legal Deadline: Final, Statutory, August 4, 1988.

Abstract: This regulation will enable Indian Tribes to be treated as states for the following programs: Water Pollution Control Program Grants (Section 106), Water Quality Management Planning Grants Section 205(j), Clean Lakes Implementation Grants (Section 314) and Nonpoint Source Implementation Grants (Section 319). This action is required by the Water Quality Act of 1987.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/00/88	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: SAR No. 2479.

FTS:8-382-5371

Agency Contact: Patricia Morris, Environmental Protection Agency, Water, (WH-586), Washington, DC 20460, 202 382-5371

RIN: 2040-AB35

2797. SIMPLIFYING CONSTRUCTION GRANTS REGULATIONS (REVISION)

Legal Authority: 33 USC 1281/CWA 201

CFR Citation: 40 CFR 35

Legal Deadline: None

Abstract: A revised interim final regulation describing allowable and unallowable costs for construction grant projects was published February 17, 1984. The Agency is revising that action as a final rule.

Timetable:

Action	Date	FR Cite
NPRM - Previous	11/06/81	46 FR 55220
NPRM	05/12/82	47 FR 20470
Interim Final Rule	05/12/82	47 FR 20450
Interim Final Rule Revised	02/17/84	49 FR 6224
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Local, State, Federal

Additional Information: SAR No. 1722.

Docket No. C-81-5.

FTS: 8-382-7250

Agency Contact: Geoffrey Cooper, Environmental Protection Agency, Water, (WH-546), Washington, DC 20460, 202 382-7287

RIN: 2040-AA76

2798. COMPREHENSIVE CONSTRUCTION GRANT REGULATION REVISION

Legal Authority: 33 USC 1281 / CWA 201; CWA 518; CWA Title VI

CFR Citation: 40 CFR 35

Legal Deadline: Final, Statutory, August 5, 1988.
Deadline applies to treatment of Indian Tribes as States.

Abstract: This regulation will amend existing regulations to implement the Water Quality Act of 1987. That Act amended the construction grants program, provided for grants to Indian Tribes under a national set-aside.

Timetable:

Action	Date	FR Cite
Final Action	03/00/89	
Final Action Effective	05/00/89	
Interim Final Rule	00/00/00	

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: SAR No. 1585.

FTS:8-382-2287

Agency Contact: Geoffrey Cooper, Environmental Protection Agency, Water, WH-546, Washington, DC 20460, 202 382-2287

RIN: 2040-AB25

2799. EFFLUENT GUIDELINES FOR NONFERROUS METALS FORMING (REVISION)

Legal Authority: 33 USC 1311 / CWA 301; 33 USC 1341 / CWA 304; 33 USC 1310 / CWA 308; 33 USC 1317 / CWA 307; 33 USC 1361 / CWA 501

CFR Citation: 40 CFR 471

Legal Deadline: None

Abstract: The Agency will promulgate amendments to the final regulation published August 23, 1985 (50 FR 34242). As part of the implementation of a settlement agreement, the Agency published proposed amendments to two subcategories in the nonferrous metals forming point source category (June 9, 1988; 53 FR 21776). The amendments affect facilities that conduct tube reducing operations in the nickel and cobalt forming subcategory (Subpart C) and in the zirconium and hafnium forming subcategory (Subpart I). These final amendments will revise BPT, BAT, NSPS, and pretreatment standards in the nickel-cobalt and zirconium-hafnium subcategories.

Timetable:

Action	Date	FR Cite
NPRM	03/06/84	49 FR 8112
NPRM Comment Period End	08/23/85	50 FR 34242
Proposed Amendments	06/09/88	53 FR 21776
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Additional Information: SAR No. 2600.

EPA—CWA

Final Rule Stage

FTS: 8-382-7126

Agency Contact: George M. Jett, Environmental Protection Agency, Water, (WH-552), Washington, DC 20460, 202 382-7126

RIN: 2040-AB30

2800. ⊕ EFFLUENT GUIDELINES FOR ALUMINUM FORMING (REVISION)

Legal Authority: 33 USC 1311 /CWA 301; 33 USC 1314 /CWA 304; 33 USC 1316 /CWA 306; 33 USC 1317 /CWA 307; 33 USC 1361 /CWA 501

CFR Citation: 40 CFR 467

Legal Deadline: None

Abstract: In response to a settlement agreement (4/1/85), the Agency has proposed and is developing final amendments to regulations which limit the discharge of pollutants to United States waters and publicly owned treatment works.

Timetable:

Action	Date	FR Cite
NPRM	03/19/86	51 FR 9618
Final Action	10/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Local, State, Federal

Additional Information: SAR No. 1438

FTS:8-382-7126

Agency Contact: George M. Jett, Environmental Protection Agency, Water, (WH-552), Washington, DC 20460, 202 382-7126

RIN: 2040-AB62

2801. GENERAL PRETREATMENT REGULATIONS: RESPONSE TO PIRT (REVISION)

Significance: Regulatory Program

Legal Authority: 33 USC 1317 /CWA 307

CFR Citation: 40 CFR 403

Legal Deadline: None

Abstract: Revisions to the General Pretreatment Regulations were proposed to address final recommendations of the Pretreatment Implementation Review Task Force (PIRT) and the need for other adjustments to the regulations. The purpose of the rule will be to clarify reporting and compliance monitoring requirements, add flexibility for cities implementing the program and improve procedures for local and state program approval.

Timetable:

Action	Date	FR Cite
NPRM	06/12/86	51 FR 21454
Final Action	00/00/00	
Extension of comment period Notice 08/21/86 (51 FR 29950)		

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: SAR No. 2212.

FTS: 8-475-7054.

Agency Contact: George Utting, Environmental Protection Agency, Water, (EN-336), Washington, DC 20460, 202 475-8328

RIN: 2040-AA81

2802. OCEAN INCINERATION REGULATION (REVISION)

Significance: Regulatory Program

Legal Authority: 33 USC 1401 /MPRSA

CFR Citation: 40 CFR 220; 40 CFR 227; 40 CFR 228; 40 CFR 234

Legal Deadline: None

Abstract: The Agency has indefinitely suspended all activities relating to the development of a regulatory program governing the incineration of liquid wastes at sea.

Timetable:

Action	Date	FR Cite
NPRM	02/28/85	50 FR 8222
Final Action indefinitely suspended	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: SAR No. 2140.

FTS:8-475-7186

Agency Contact: Darrell Brown, Environmental Protection Agency, Water, (WH-556F), Washington, DC 20460, 202 475-7186

RIN: 2040-AA72

2803. UNDERGROUND INJECTION CONTROL PROGRAM: HAZARDOUS WASTE DISPOSAL INJECTION RESTRICTIONS; EFFECTIVE DATES AND CAPACITY VARIANCES FOR SELECTED FIRST THIRD WASTES

Significance: Regulatory Program

Legal Authority: 42 USC 6924 /RCRA 3004

CFR Citation: 40 CFR 148

Legal Deadline: Final, Statutory, August 8, 1988.

Abstract: The Agency is required to prohibit injection of hazardous wastes under sections 3004(f) and (g) by specified deadlines unless (1) the facility demonstrates no migration through a petition or (2) the facility treats the waste to specified levels which reduce the threat to human health. The Administrator may grant variances for up to two years where treatment capacity is unavailable. This rule proposes effective dates for selected first thirds wastes. It also proposes to grant capacity variances for those wastes and extends the statutory prohibitions for two years.

Timetable:

Action	Date	FR Cite
NPRM	04/26/88	53 FR 14892
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: State, Federal

Additional Information: SAR No. 2370.

FTS:8-382-5398

Agency Contact: John Atcheson, Environmental Protection Agency, Water, WH-550, Washington, DC 20460, 202 382-5598

RIN: 2040-AB47

ENVIRONMENTAL PROTECTION AGENCY (EPA) —Clean Water Act (CWA)

Completed Actions

2904. EFFLUENT GUIDELINES FOR GUM AND WOOD (REVISION)

CFR Citation: 40 CFR 454

Completed:

Reason	Date	FR Cite
Withdrawn	06/26/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Richard E. Williams 202 382-7186

RIN: 2040-AA17

2905. EFFLUENT GUIDELINES FOR ORE MINING AND DRESSING (PLACER MINING)

Significance: Regulatory Program

CFR Citation: 40 CFR 144.103; 40 CFR 144.104; 40 CFR 440.142; 40 CFR 440.144; 40 CFR 440.143; 40 CFR 440.145

Completed:

Reason	Date	FR Cite
Final Action	05/24/88	53 FR 18784

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Undetermined

Agency Contact: Willis E. Umholtz 202 382-7191

RIN: 2040-AA25

2906. EFFLUENT GUIDELINES FOR NONFERROUS METALS: (PHASE I) (REVISION)

CFR Citation: 40 CFR 421

Completed:

Reason	Date	FR Cite
Final Action	01/21/88	53 FR 1704

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Ernest P. Hall 202 382-7126

RIN: 2040-AA98

2907. DEFINITION OF "WATERS OF THE UNITED STATES"

CFR Citation: 40 CFR 122.2

Completed:

Reason	Date	FR Cite
Withdrawn	08/26/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Dave Greenburg 202 475-8524

RIN: 2040-AB01

2908. SECTION 404 STATE PROGRAM REGULATIONS (REVISION)

Significance: Regulatory Program

CFR Citation: 40 CFR 124; 40 CFR 232; 40 CFR 233

Completed:

Reason	Date	FR Cite
Final Action	06/06/88	53 FR 20764

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Lori Williams 202 382-7043

RIN: 2040-AA00

ENVIRONMENTAL PROTECTION AGENCY (EPA) —Atomic Energy Act (AEA)

Proposed Rule Stage

2809. ENVIRONMENTAL STANDARDS FOR THE MANAGEMENT AND DISPOSAL OF SPENT NUCLEAR FUEL, HIGH-LEVEL AND TRANSURANIC RADIOACTIVE WASTES

Legal Authority: 42 USC 2201/AEA 161

CFR Citation: 40 CFR 191

Legal Deadline: None

Abstract: On August 15, 1985, the Agency promulgated generally applicable environmental standards for the management and disposal of spent nuclear fuel, high-level and transuranic radioactive wastes. These Standards applied to management and disposal of such materials generated by activities under the jurisdiction of the Department of Energy or regulated by the Nuclear Regulatory Commission. They established limits for the release of radioactive materials to the environment. Subsequent to promulgation of this rule, several petitions for review were filed and consolidated in the U.S. Court of Appeals for the First Circuit. As of September 23, 1987 the Court vacated and remanded Subpart B of the Standards to the Agency for revision consistent with its ruling.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: Federal

Additional Information: SAR No.2590

FTS:8-475-9633

Agency Contact: Daniel Egan, Environmental Protection Agency, Air and Radiation, ANR-460, Washington, DC 20460, 202 475-9633

RIN: 2060-AC30

2810. ENVIRONMENTAL PROTECTION STANDARDS FOR LOW-LEVEL RADIOACTIVE WASTE

Significance: Regulatory Program

Legal Authority: 42 USC 2201/ARA 274/Reorganization Plan 3 of 1970/TSCA

CFR Citation: 40 CFR 193

Legal Deadline: None

Abstract: The Agency intends to set generally applicable standards for the management and disposal of low-level radioactive wastes, possibly to include some natural and accelerator produced radioactive wastes. The Agency is considering criteria for declaring certain wastes as below regulatory concern as part of this activity.

Timetable:

Action	Date	FR Cite
ANPRM	08/31/83	48 FR 39563
NPRM	11/00/88	

EPA—AEA

Proposed Rule Stage

Action	Date	FR Cite
Final Action	06/00/91	

Small Entities Affected: Undetermined

Government Levels Affected: State, Federal

Additional Information: SAR No. 1727.

FTS:8-475-9533.

Agency Contact: James M. Gruhlke, Environmental Protection Agency, Air and Radiation, (ANR-460), Washington, DC 20460, 202 475-9533

RIN: 2060-AA04

2811. RESIDUAL RADIOACTIVITY

Significance: Regulatory Program

Legal Authority: 42 USC 2201/AEA 161; 42 USC 2021/AEA 272

CFR Citation: 40 CFR 194

Legal Deadline: None

Abstract: The Agency is determining what standards and/or guidance is needed to control radiation exposure levels to the public from residual radioactivity after cleanup of sites and facilities where radionuclides were used and where unrestricted use will be allowed. This action may also control radiation exposure levels to the general public from materials contaminated with radionuclides which will be recycled into general commerce.

Timetable:

Action	Date	FR Cite
ANPRM	06/18/86	51 FR 22284
NPRM	10/00/90	
Final Action	10/00/92	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Analysis: Regulatory Impact Analysis

Additional Information: SAR No. 2272.

FTS: 8-475-9533.

Agency Contact: John L. Russell, Environmental Protection Agency, Air and Radiation, ANR-460, Washington, DC 20460, 202 475-9533

RIN: 2060-AB31

ENVIRONMENTAL PROTECTION AGENCY (EPA) —Atomic Energy Act (AEA)

Final Rule Stage

2812. TRANSURANIUM ELEMENTS

Legal Authority: 42 USC 2021(h) /AEA 274(h) /Reorganization Plan No. 3 of 1970

CFR Citation: Not applicable

Legal Deadline: None

Abstract: This action provides Interim recommendations to Federal Agencies to establish dose rate limits for people exposed to transuranium elements in the general environment.

Timetable:

Action	Date	FR Cite
NPRM	11/30/77	42 FR 60956
Interim Final Rule	00/00/00	

Small Entities Affected: None

Government Levels Affected: Federal

Additional Information: SAR No. 1702.

FTS:8-475-9533.

Agency Contact: Allan Richardson, Environmental Protection Agency, Air and Radiation, (ANR-460), Washington, DC 20460, 202 475-9620

RIN: 2060-AA01

2813. RADIOFREQUENCY RADIATION GUIDANCE

Significance: Regulatory Program

Legal Authority: 42 USC 2021(h) /ARA 274(h) /Reorganization Plan No. 3 of 1970

CFR Citation: Not applicable

Legal Deadline: None

Abstract: This guidance will serve to limit exposure of the general public to radiofrequency (RF) radiation, which may pose a potential health risk. The Agency is considering four alternative approaches to RF radiation guidance, three of which are regulatory and one nonregulatory. Upon Presidential approval of EPA guidance (to federal agencies in the formulation of radiation exposure standards), the pertinent agencies are responsible for implementation.

Timetable:

Action	Date	FR Cite
ANPRM	12/23/82	47 FR 57338
NPRM	07/30/86	51 FR 27318
Final Action	07/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Additional Information: SAR No. 1525.

FTS: 8-475-9525.

Background Information Reports: a) Biological Effects of Radiofrequency Radiation, b) the Radiofrequency Radiation Environment, c) Analysis of the Radiofrequency Fields Produced by Broadcast Antennas, and d) Analysis of Economic Impact of Federal Radiation Protection Guidance (to Limit Exposure of the Public to Radiofrequency Radiation).

Agency Contact: David E. Janes, Environmental Protection Agency, Air and Radiation, (ANR-461), Washington, DC 20460, 202 475-9620

RIN: 2060-AA01

2814. GROUNDWATER PROTECTION STANDARDS FOR INACTIVE URANIUM TAILING SITES

Significance: Regulatory Program

Legal Authority: 42 USC 2022(a) /AEA 275(a)

CFR Citation: 40 CFR 192

Legal Deadline: None

Abstract: The Tenth Circuit Court of Appeals has remanded the ground water standards as 40 CFR 192.20(a)(2) and (3). The new standards will replace these remanded standards.

Timetable:

Action	Date	FR Cite
NPRM	09/24/87	52 FR 36000
Final Action	04/00/89	

Small Entities Affected: None

Government Levels Affected: Federal

Additional Information: SAR No. 1100.

FTS:8-475-9620

Agency Contact: Kurt Feldmann, Environmental Protection Agency, Air and Radiation, ANR-460, 202 475-9620

RIN: 2060-AC09

ENVIRONMENTAL PROTECTION AGENCY (EPA) —Safe Drinking Water Act (SDWA)

Proposed Rule Stage

2315. REVISION TO PUBLIC WATER SYSTEM SUPERVISION (PWSS) STATE PRIMACY REQUIREMENTS

Legal Authority: 42 USC 300 /SDWA 1417

CFR Citation: 40 CFR 142

Legal Deadline: None

Abstract: This action will set requirements, application procedures, and administrative process for submission of State program revisions for EPA review and approval and revise the existing primacy regulations which currently apply only to the process for initial primacy.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	06/00/89	

Small Entities Affected: None

Government Levels Affected: State, Federal

Additional Information: SAR No. 2469.

FTS:8-382-5522

Agency Contact: Carl Reeverts, Environmental Protection Agency, Water, WH-550-E, Washington, DC 20460, [illegible]

RIN: 2040-AB28

2316. REVISIONS TO THE SAFE DRINKING WATER ACT'S UNDERGROUND INJECTION CONTROL REGULATIONS

Legal Authority: 42 USC 300j-4 /SDWA 1445; 42 USC 300h-1 /SDWA 1422

CFR Citation: 40 CFR 144; 40 CFR 146

Legal Deadline: None

Abstract: These amendments to the UIC Program clarify the intent of the regulations covering authorization-by-rule requirements at 40 CFR Part 144, Subpart C. These new provisions will clarify how existing injection wells become authorized by rule and when injection is prohibited for failure to comply with authorization- by-rule requirements. EPA will also propose amendments to the noncompliance and program reporting requirements at 40 CFR 144.8; to the mechanical integrity requirements at 40 CFR 144.28(f) and 144.51(p). EPA will also propose definitions for the terms "convert" and "conversion" to help clarify when a well changes status from one well classification to another. Finally, a new regulation will codify SDWA 1445(a)(1) as it applies to the UIC program.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
Final Action	09/00/89	

Small Entities Affected: None

Government Levels Affected: State, Federal

Additional Information: SAR No. 2420.

FTS:8-382-5530

Agency Contact: Francoise Brasier, Environmental Protection Agency, Water, (WH-550E), Washington, DC 20460, [illegible]

RIN: 2040-AB27

2317. NATIONAL PRIMARY DRINKING WATER REGULATIONS: SYNTHETIC ORGANIC CHEMICALS AND INORGANIC CHEMICALS, MONITORING FOR UNREGULATED CONTAMINANTS (PHASE II, 40 CONTAMINANTS)

Significance: Regulatory Program

Legal Authority: 42 USC 300 / SDWA 1412

CFR Citation: 40 CFR 141

Legal Deadline: Final, Statutory, June 19, 1988.

Abstract: EPA is reproposing maximum contaminant level goals (MCLGs) and proposing National Primary Drinking Water Regulations (NPDWRs) for about 40 synthetic organic chemicals and inorganic chemicals. The NPDWRs consist of proposed maximum contaminants level (MCLs), as well as proposed monitoring, reporting, and public notification requirements for these contaminants. This action proposes the best available technology (BAT) upon which the MCLs are based and BAT for the purposes of issuing variances and exemptions to public water systems. In addition to the NPDWRs for the synthetic organic chemicals and inorganic chemicals, the notice proposes monitoring requirements for other synthetic organic chemicals which are not regulated by NPDWRs or proposed for regulation in this notice.

Timetable:

Action	Date	FR Cite
ANPRM	10/05/83	48 FR 45502
NPRM	11/13/85	50 FR 46936
NPRM MCLs	12/01/88	
Final Action	12/00/89	

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State, Federal

Analysis: Regulatory Impact Analysis; Regulatory Flexibility Analysis

Additional Information: SAR No. 1755.

FTS:8-382-7575.

Agency Contact: Joseph Cotruvo, Environmental Protection Agency, Water, (WH-550), Washington, DC 20460, 202 382-7575

RIN: 2040-AA05

2318. NATIONAL PRIMARY DRINKING WATER REGULATION: RADIONUCLIDES

Significance: Regulatory Program

Legal Authority: 42 USC 300 /SDWA 1412

CFR Citation: 40 CFR 141

Legal Deadline: Final, Statutory, August 19, 1989.

Abstract: EPA will propose Maximum Contaminant Levels Goals (MCLGs) and Primary Drinking Water Standards for radionuclides in drinking water. These radionuclides include radium, uranium, radon, gross alpha, and gross beta and photon emitters.

Timetable:

Action	Date	FR Cite
ANPRM	10/05/83	48 FR 45502
ANPRM	09/30/86	51 FR 34836
NPRM	03/00/89	
Final Action	03/00/90	

Small Entities Affected: Undetermined

Government Levels Affected: State, Federal

Analysis: Regulatory Impact Analysis

Additional Information: SAR No. 2331.

FTS: 8-382-7575.

Agency Contact: Joseph Cotruvo, Environmental Protection Agency, Water, (WH-550-D), Washington, DC 20460, 202 382-7575

RIN: 2040-AA04

2319. NATIONAL PRIMARY DRINKING WATER REGULATIONS: DISINFECTION, DISINFECTANTS AND DISINFECTION BY-PRODUCTS (REVISION)

Significance: Regulatory Program

Legal Authority: 42 USC 300 /SDWA 1412

CFR Citation: 40 CFR 141

Legal Deadline: Final, Statutory, June 19, 1989.
This deadline applies only to the disinfection requirements.

Abstract: EPA will propose that all public water systems use disinfection treatment processes; variance criteria will be developed. The Agency will propose MCLGs and MCLs for disinfectants and disinfection by-products.

Timetable:

Action	Date	FR Cite
NPRM	09/00/90	
Final Action	09/00/91	

Small Entities Affected: Undetermined

Government Levels Affected: Local, State, Federal

Analysis: Regulatory Impact Analysis

Additional Information: SAR No. 2340.

FTS: 8-382-7575

Agency Contact: Joseph A. Cotruvo, Environmental Protection Agency, Water, WH-550D, [illegible]

RIN: 2040-AA07

2320. NATIONAL PRIMARY DRINKING WATER REGULATIONS: INORGANIC AND ORGANIC COMPOUNDS (PHASE V/25 CONTAMINANTS)

Legal Authority: 42 USC 300 /SDWA 1412

CFR Citation: 40 CFR 141

Legal Deadline: NPRM, Statutory, June 19, 1989.

Abstract: This rule will set MCLGs and NPDWRs for about 25 inorganic and organic chemicals specified in the SDWA.

Timetable:

Action	Date	FR Cite
ANPRM	10/05/83	48 FR 45502
ANPRM	11/13/85	50 FR 46936
Comment Period End		
MCLs		
NPRM 05/00/89		
Final Action 05/20/90		

Small Entities Affected: Undetermined

Government Levels Affected: State, Federal

Analysis: Regulatory Impact Analysis

Additional Information: SAR No. 2330.

FTS:8-382-7575

Agency Contact: Joseph Cotruvo, Environmental Protection Agency, Water, (WH-550D), Washington, DC 20460, 202 382-7575

RIN: 2040-AB11

2321. PUBLIC WATER SUPPLY SUPERVISION PROGRAM ADMINISTRATIVE ENFORCEMENT IMPLEMENTATION PROCEDURES

Legal Authority: 42 USC 300 / SDWA 1414

CFR Citation: 40 CFR 144; 40 CFR 148

Legal Deadline: None

Abstract: EPA is required to promulgate regulations to describe procedures for the notice and opportunity for public hearing, and conference with primacy States concerning administrative orders under Section 1414(g) of the Safe Drinking Water Act. The Agency will also amend 40 CFR Part 22 to include PWS penalty assessments.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	
Final Action	11/00/89	

Small Entities Affected: None

Government Levels Affected: Federal

Additional Information: SAR No. 2501

FTS:8-382-5558

Agency Contact: Don Olson, Environmental Protection Agency, Water, WH-550, Washington, DC 20460, 202 382-5558

RIN: 2040-AB07

ENVIRONMENTAL PROTECTION AGENCY (EPA) —Safe Drinking Water Act (SDWA)

Final Rule Stage

2322. UNDERGROUND INJECTION CONTROL PROGRAM; HAZARDOUS WASTE DISPOSAL INJECTION RESTRICTIONS; AMENDMENTS TO TECHNICAL REQUIREMENTS FOR CLASS I HAZARDOUS WASTE INJECTION WELLS

Significance: Regulatory Program

Legal Authority: 42 USC 6924 /RCRA 3004(f) and (g)

CFR Citation: 40 CFR 124; 40 CFR 144; 40 CFR 146; 40 CFR 148

Legal Deadline: Final, Statutory, August 1988.

Abstract: This action proposes to amend the regulations governing the underground injection of hazardous wastes in two major areas. Additions to Part 146 propose to impose stricter standards on the construction and operating requirements applicable to owners and operators of Class I wells. New Part 148 would codify EPA's regulatory framework for implementing the land disposal restrictions for injection wells under sections 3004(f) and (g) of RCRA. Amendments to Parts 124 and 144 modify administrative procedures that are applicable to Class I wells.

Timetable:

Action	Date	FR Cite
NPRM	08/27/87	52 FR 32446
Final Action	07/26/88	53 FR 28118
California List and 1st Sixth of 1st Third		
Final Action 10/00/88		
2nd Sixth of 1st Third		
Final Action 11/00/88		
2nd Third		
Final Action 06/00/89		
3rd Third		
Final Action 06/00/90		

Small Entities Affected: None

Government Levels Affected: State, Federal

Analysis: Regulatory Impact Analysis

EPA—SDWA

Final Rule Stage

Additional Information: SAR No. 2211.

FTS:8-382-5506

Agency Contact: John Atcheson, Environmental Protection Agency, Water, WH-550-A, 202 382-5506

RIN: 2040-AB03

2823. INDIAN RULE FOR THE WELLHEAD PROTECTION PROGRAM AND SOLE SOURCE AQUIFER DEMONSTRATION PROGRAM

Significance: Regulatory Program

Legal Authority: 42 USC 300j-11/SDWA 1451

CFR Citation: 40 CFR 35

Legal Deadline: Final, Statutory, December 19, 1987.

Abstract: The Safe Drinking Water Act Amendments of 1986 authorize the EPA Administrator to treat Indian tribes as States, where appropriate. EPA is to issue associated regulations by eighteen months after the date of enactment (signed June 19, 1986). The Indian rule for the Wellhead Protection and Sole Source Aquifer Demonstration Programs will allow eligible Indian tribes to apply for and receive grants under these two programs, in the same manner as States.

Timetable:

Action	Date	FR Cite
NPRM	12/09/87	52 FR 46712
Final Action	11/00/88	

Small Entities Affected: None

Government Levels Affected: Local, Federal

Additional Information: SAR No. 2440.

FTS:8-382-7077

Agency Contact: Marian Mlay, Environmental Protection Agency, Water, Office of Ground Water Protection, (WH-550G), Washington, DC 20460, 202 382-7077

RIN: 2040-AB16

2824. CRITERIA FOR FILTRATION AND DISINFECTION OF SURFACE WATER AND PRIMARY DRINKING WATER REGULATIONS FOR MICROBIOLOGICAL CONTAMINANTS

Significance: Regulatory Program

Legal Authority: 42 USC 300 /SDWA 1412

CFR Citation: 40 CFR 141

Legal Deadline: Final, Statutory, December 19, 1987.

Abstract: EPA plans to establish regulations specifying criteria that States will use to determine which surface water systems will be required to install filtration. The regulations will also address performance criteria for filtration systems. The criteria will include disinfection requirements. The regulations will constitute NPDWRs for Giardia, viruses, and other pathogens. The Agency will also set MCLGs for certain microbiological contaminants.

Timetable:

Action	Date	FR Cite
ANPRM	10/06/83	48 FR 45502
NPRM	11/03/87	52 FR 42178
Notice of Additional Regulatory Options	05/06/86	53 FR 16345
Final Action	06/00/89	

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State, Federal

Analysis: Regulatory Impact Analysis; Regulatory Flexibility Analysis

Additional Information: SAR No. 2378.

FTS:8-382-7375.

Agency Contact: Joseph Cotruvo, Environmental Protection Agency, Water, WH-550-D, 202 382-7375

RIN: 2040-AB24

2825. NATIONAL PRIMARY DRINKING WATER REGULATIONS: LEAD AND COPPER

Significance: Regulatory Program

Legal Authority: 42 USC 300 /SDWA 1412

CFR Citation: 40 CFR Not yet determined

Legal Deadline: Final, Statutory, June 19, 1989.

Abstract: This rule will set MCLGs and MCL/Monitoring requirements for naturally occurring lead and copper as specified in the SDWA. this rule will also establish a treatment technique requirement for corrosion.

Timetable:

Action	Date	FR Cite
ANPRM	10/06/83	48 FR 45502
NPRM MCLG	11/13/85	50 FR 46936
NPRM MCLGs/MCLs & Treatment Technique	08/18/88	53 FR 31516
Final Action	01/00/89	

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State, Federal

Additional Information: SAR No. 2510

FTS:8-382-5506

Agency Contact: Joanne Briskin, Lead Task Force, Environmental Protection Agency, Water, 401 M Street, SW, Washington, DC 20460, 202 382-5506

RIN: 2040-AB51

2826. UNDERGROUND INJECTION CONTROL PROGRAM ON INDIAN LANDS

Significance: Regulatory Program

Legal Authority: 42 USC 300 /SDWA 1422

CFR Citation: 40 CFR 147

Legal Deadline: Final, Statutory, March 19, 1987.

Abstract: EPA is required to prescribe an Underground Injection Control (UIC) Program in States that do not have an approved UIC program. In addition, all Indian lands not under the jurisdiction of an approved State program must be covered by a Federal program. The program is to take into consideration the unique conditions and [illegible] Tribal concerns for each nation.

Timetable:

Action	Date	FR Cite
NPRM	05/11/87	52 FR 17684
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Additional Information: SAR No. 2121.

FTS: 8-382-5558

Agency Contact: Donald M. Olson, Environmental Protection Agency,

EPA—SDWA

Final Rule Stage

Water, (WH-550), Washington, DC 20460, 202 382-5558

RIN: 2040-AA76

2827. SDWA INDIAN PRIMACY REGULATIONS

Significance: Regulatory Program

Legal Authority: 42 USC 300h-1/SDWA 1422; 42 USC 300j-11/SDWA 1451

CFR Citation: 40 CFR 35; 40 CFR 141; 40 CFR 142; 40 CFR 143; 40 CFR 144; 40 CFR 145; 40 CFR 146

Legal Deadline: Final, Statutory, December 19, 1987.

Abstract: EPA is required to promulgate final regulations, specifying conditions under which Indian Tribes may be treated as States, be delegated primacy enforcement authorities, and receive grants for both the Underground Injection Control and the Public Water System Supervision programs.

Timetable:

Action	Date	FR Cite
NPRM	07/27/87	52 FR 28112
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: SAR No. 2383.

FTS:8-382-5555

Agency Contact: Al Havinga, Environmental Protection Agency, Water, Office of Drinking Water, WH-550D, 202 382-5552

RIN: 2040-AB04

2828. PUBLIC WATER SYSTEM SUPERVISION PROGRAM: BAN ON LEAD IN PLUMBING

Legal Authority: 42 USC 300 /SDWA 1422

CFR Citation: 40 CFR 141; 40 CFR 142

Legal Deadline: Other, Statutory, June 19, 1988.
For Final Guidance

Abstract: EPA has promulgated new public notification requirements regarding lead contamination of drinking water to implement section 1417(a)(2) of the Safe Drinking Water Act (SDWA). The new public notification requirements for lead require public water systems to identify and provide notice to persons who may be affected by lead contamination in their drinking water, where such contamination results from the use of lead in the construction materials of the distribution system. Section 1417(b) provides that the lead public notification requirements in section 1417(a)(2) shall be enforced in all States as of June 19, 1988. EPA is authorized to withhold up to five percent of a State's section 1443(a) public water system supervision program grant if the Agency determines that the State is not enforcing the prohibition and public notice requirements for lead. The existing grant regulations, specifically 40 CFR Part 35, do not need to be changed to accommodate this withholding. EPA will publish a guidance document that will implement this part of the SDWA as soon as it is available.

Timetable:

Action	Date	FR Cite
DRAFT GUIDANCE	04/03/88	
FINAL GUIDANCE	10/00/88	

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Local, State, Federal

Additional Information: SAR No. 2378.

FTS:8-382-5322

Agency Contact: Carl Reeverts, Environmental Protection Agency, Water, (WH-550), Washington, DC 20460, 202 382-5322

RIN: 2040-AB15

2829. CRITERIA FOR IDENTIFYING CRITICAL AQUIFER PROTECTION AREAS

Significance: Regulatory Program

Legal Authority: 42 USC 300h-6 /SDWA 1451

CFR Citation: 40 CFR 149.1

Legal Deadline: Final, Statutory, June 19, 1987.

Abstract: Section 1427 of the SDWA amendments of 1986 requires EPA to develop a rule to establish criteria for identifying Critical Aquifer Protection Areas (CAPA) within designated sole source aquifers. The amendments authorize EPA to establish grant programs to fund demonstration programs by State or local governments to protect groundwater within CAPAs.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/19/87	52 FR 23962
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: SAR No. 2382.

FTS:8-382-7077

Agency Contact: Marian Mlay, Environmental Protection Agency, Water, (WH-550G), Washington, DC 20460, 202 382-7077

RIN: 2040-AB23

ENVIRONMENTAL PROTECTION AGENCY (EPA) —Noise Control Act (NCA)

Final Rule Stage

2530. WITHDRAWAL OF PRODUCTS FROM THE AGENCY'S REPORTS IDENTIFYING MAJOR NOISE SOURCES AND WITHDRAWAL OF PROPOSED RULES

Legal Authority: 42 USC 4904(b)(1) / NCA 5(b)(1); 42 USC 4905(a)(1)/ NCA 6(a)(1)

CFR Citation: 40 CFR Not yet determined

Legal Deadline: None

Abstract: This action withdraws certain products from the Agency's report identifying major noise sources issued under authority of Section 5(b)(1) of the Noise Control Act of 1972. These products are: Truck Transport Refrigeration Units, Power Lawn Mowers, Pavement Breakers, Rock Drills, Wheel and Crawler Tractors and Buses. This action also withdraws proposed noise regulations for Wheel and Crawler Tractors, and Buses, issued under the authority of Section 6(a)(1) of the Act.

Timetable:

Action	Date	FR Cite
NPRM	12/01/82	47 FR 54106
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: Federal

Additional Information: SAR No. 2566.

FTS:8-382-4996

No CFR parts pertain. This action withdraws proposals which were not codified.

Agency Contact: K.E. Feith, Environmental Protection Agency, Air and Radiation, (ANR-443), 202 382-4996

RIN: 2060-AE54

ENVIRONMENTAL PROTECTION AGENCY (EPA) —Resource Conservation and Recovery Act (RCRA)

Prerule Stage

2531. MANAGEMENT OF USED OIL

Significance: Regulatory Program

Legal Authority: 42 USC 6921 /RCRA 3001; 42 USC 6925 /RCRA 3005; 42 USC 6930 /RCRA 3010; 42 USC 6935 /RCRA 3014

CFR Citation: 40 CFR 260; 40 CFR 261; 40 CFR 266; 40 CFR 270; 40 CFR 271

Legal Deadline: None

Abstract: EPA has determined not to list recycled oil as a hazardous waste. Furthermore, the 11/19/86 notice 51 FR 41900 delineates the Agency's intention to pursue different strategies to control used oil that is to be recycled and use oil bound for disposal. Used oil bound for disposal may be regulated under a RCRA disposal listing and/or under the CWA. The 11/19/86 notice states that although some controls on recycling may be promulgated in the interim, comprehensive recycling management rules including standards applicable to the combustion of used oil, will not be issued until EPA determines specifically how to regulate used oil bound for disposal. The Agency does not have a more specific schedule for issuing the used oil disposal listing for the recycling regulations.

Timetable:

Action	Date
Regulatory Determination Notice	00/00/00

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Local, State, Federal

Analysis: Regulatory Impact Analysis; Regulatory Flexibility Analysis

Additional Information: SAR No. 3434.

FTS:8-382-7917

Docket No. 3014

Contact James R. Berlow for management standards (OS-322)

Contact Robert Dellinger for listing decision (OS-332)

Agency Contact: James Berlow, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-322), Washington, DC 20460, 202 382-7917

RIN: 2050-AC17

2532. DETERMINATION ON WASTES FROM COMBUSTION OF COAL BY ELECTRIC UTILITY POWER PLANTS

Significance: Regulatory Program

Legal Authority: 42 USC 6921 /RCRA 3001; 42 USC 6982 /RCRA 3002

CFR Citation: 40 CFR Not yet determined

Legal Deadline: None

Abstract: EPA conducted a study of fly ash waste, bottom ash waste, slag waste, flue gas emission control waste and other wastes generated by the combustion of coal by electric utility power plants. The study was in response to Section 8002(n) of RCRA and culminated in a Report to Congress on March 8, 1988. EPA must determine within six months after submitting the report, holding public hearings, and allowing for public comment whether to regulate any of these wastes under Subtitle C of RCRA.

Timetable:

Action	Date
Regulatory Determination Notice	10/00/88

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: SAR No. 2572.

FTS:8-382-3008

Agency Contact: Dan Derkics, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-323), 202 382-3008

RIN: 2050-AC53

ENVIRONMENTAL PROTECTION AGENCY (EPA) —Resource Conservation and Recovery Act (RCRA)

Proposed Rule Stage

2533. ◆ OIL POLLUTION PREVENTION REGULATION

Significance: Agency Priority

Legal Authority: 33 USC 1251 /CWA 311(j)(1)(c)

CFR Citation: 40 CFR 112

Legal Deadline: None

Abstract: Following a major oil spill with substantial environmental impacts, an interagency task force reviewed the adequacy of regulations concerning the prevention and control of oil spills. The task force recommended a significant upgrade to the Oil Pollution Prevention Regulation and an inventory of the regulated community. Because of the need for rapid upgrade of the regulation and the time required to inventory the regulated industry, a two phased regulatory approach is being pursued. In Phase I, widely accepted industry practices that are currently recommended practices in the regulation will be changed to required practices. Also, to facilitate an inventory of facilities subject to the regulation, a provision will be added requiring facilities to notify EPA of their existence. The Phase II regulatory effort will address other recommended modifications. The costs of the regulation will be compliance costs for the minority of facilities not complying with basic industry practices contained in the guidelines section of the current regulation. PARAGRAPH CONTINUED IN ADDITIONAL INFORMATION

Timetable:

Action	Date	FR Cite
NPRM	06/00/89	
Final Action	12/00/89	

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Local, State, Federal

Additional Information: SAR No. 2634

FTS:8-382-4130

The benefits of the regulation are expected to be a reduction in the loss of oil and oil products that might otherwise be spilled, a reduction in cleanup costs and a reduction in adverse effects to human health and the environment from spilled oil.

Agency Contact: John M. Cunningham, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-210), Washington, DC 20460, 202 382-4130

RIN: 2050-AC62

2534. MANDATORY INSPECTIONS OF HAZARDOUS WASTE MANAGEMENT FACILITIES

Legal Authority: 42 USC 6925 / RCRA 3007

CFR Citation: Not yet determined

Legal Deadline: None

Abstract: This action establishes requirements for mandatory inspections of treatment, storage, and disposal facilities for hazardous waste. The regulation establishes the manner, frequency, recordkeeping, and reporting of the inspections.

Timetable:

Action	Date	FR Cite
NPRM	02/00/89	
Final Action	08/00/89	

Small Entities Affected: None

Government Levels Affected: Federal

Additional Information: SAR No. 2532.

FTS: 8-475-8315

Agency Contact: Tim Kasten, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-520), Washington, D.C. 20460, 202 475-8360

RIN: 2050-AE50

2535. ◆ HAZARDOUS WASTE MANAGEMENT SYSTEM, AMENDMENT TO SUBPART C RULEMAKING PETITIONS, USE OF GROUNDWATER DATA IN DELISTING DECISIONS

Legal Authority: 42 USC 6903 /RCRA 1004; 42 USC 6912 /RCRA 2002; 42 USC 6921 /RCRA 3001; 42 USC 6926 /RCRA 3006

CFR Citation: 40 CFR 260.22

Legal Deadline: None

Abstract: This amendment will require those who submit delisting petitions for hazardous wastes to provide ground water monitoring data as part of their petition the amended regulations will clarify the Agency's authority to consider the impact of a petitioned waste on ground water and deny a petition based on ground water contamination. EPA is seeking this amendment to clarify its authority to request and consider such data in delisting decisions.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
Final Action	06/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: SAR No. 2532

FTS:8-382-4538

Agency Contact: Robert Kayser, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-343), Washington, DC 20460, 202 382-4538

RIN: 2050-AC85

2536. NEW REQUIREMENTS FOR STATE HAZARDOUS WASTE PROGRAMS

Legal Authority: 42 USC 6905 /RCRA 1006; 42 USC 6912 /RCRA 2002; 42 USC 6926 /RCRA 3006

CFR Citation: 40 CFR 271

Legal Deadline: None

Abstract: EPA's authority to require capable implementation of a State's hazardous waste management program as a prerequisite to authorization will be codified. The current consistency requirements may be revised to provide specific guidance on inconsistent state actions taken without adequate health or environmental rationales. The Agency will streamline authorization and withdrawal procedures.

Timetable:

Action	Date	FR Cite
NPRM	03/00/89	
Final Action	09/00/90	

Small Entities Affected: None

Government Levels Affected: State, Federal

Additional Information: SAR No. 2527.

FTS:8-382-2233

Agency Contact: Lillian Begus, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-342), 202 382-2233

RIN: 2050-AC51

2837. NO-MIGRATION VARIANCE FOR RESTRICTED HAZARDOUS WASTE LAND DISPOSAL

Significance: Regulatory Program

Legal Authority: 42 USC 6905 /RCRA 1008; 42 USC 6912(a) /RCRA 2002(a); 42 USC 6921 /RCRA 3001; 42 USC 6924 /RCRA 3004

CFR Citation: 40 CFR 268

Legal Deadline: None

Abstract: The Agency will propose a regulation that interprets the statutory requirements for making a "no-migration" demonstration that would allow the land disposal of untreated hazardous waste that has been restricted from land disposal under 40 CFR 268. The regulation will define such terms as "no-migration," "responsible degree of certainty," "hazardous constituent," and various pathways by which waste can migrate and the environmental media of concern.

Timetable:

Action	Date	FR Cite
NPRM	04/00/89	
Final Action	04/00/90	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: SAN No. 2524.

FTS:8-382-4676

Agency Contact: Glen R. Galan, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-321), Washington, DC 20460, 202 382-4676

RIN: 2050-AC26

2838. IDENTIFICATION AND LISTING OF HAZARDOUS WASTES - WOOD PRESERVING AND SURFACE PROTECTION WASTE

Significance: Agency Priority

Legal Authority: 42 USC 6905/RCRA 1008; 42 USC 6912(a)/RCRA 2002(a); 42 USC 6921/RCRA 3001; 42 USC 6922/RCRA 3002

CFR Citation: 40 CFR 261

Legal Deadline: Other, Statutory, November 8, 1985.
November 8, 1985 for those wastes containing dioxins.

Abstract: These actions announce EPA's decision whether or not to list a waste as hazardous under RCRA. If a waste is listed as hazardous it will be subject to those requirements contained in 40 CFR Parts 262-266 and Parts 270, 271 and 124.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	
Final Action	05/00/90	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: SAR No. 2174

FTS:8-475-8551

Agency Contact: Ed Abrams, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-332), Washington, DC 20460, 202 475-8551

RIN: 2050-AC29

2839. MUNICIPAL WASTE COMBUSTOR ASH MANAGEMENT

Significance: Regulatory Program

Legal Authority: 42 USC 6907 /RCRA 1008; 42 USC 6944 /RCRA 4004; 42 USC 6949 /RCRA 4010

CFR Citation: 40 CFR Not yet determined

Legal Deadline: None

Abstract: Based on preliminary data, EPA has determined a need to develop a management scheme for handling and disposing of municipal waste combustor ash. The Agency is considering various options for addressing concerns over fugitive dust emissions and groundwater contamination. [Pending legislation on this issue may affect Agency program plans.]

Timetable:

Action	Date	FR Cite
NPRM	11/00/89	
Final Action	11/00/90	

Small Entities Affected: Undetermined

Government Levels Affected: Local

Analysis: Regulatory Impact Analysis; Regulatory Flexibility Analysis

Additional Information: SAR No. 2494.

FTS:8-382-4497

Agency Contact: Susan O'Keefe, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-323), 202 382-4497

RIN: 2050-AC28

2840. TEST METHODS FOR EVALUATING SOLID WASTE (MANUAL SW846) INCORPORATION BY REFERENCE AND MANDATORY GOOD LABORATORY PRACTICES

Legal Authority: 42 USC 6912 /RCRA 2002

CFR Citation: 40 CFR 261

Legal Deadline: None

Abstract: This action proposes to update testing methods in the RCRA testing regulations to: a) permit persons to use the latest (3rd) edition of Test Methods for Evaluating Solid Waste (SW-846); and b) require that all testing conducted in support of the RCRA regulatory program follow minimum good laboratory practices and quality assurance procedures.

Timetable:

Action	Date	FR Cite
NPRM	01/00/89	
Final Action	10/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: SAR No. 2507.

FTS:8-382-4781

Agency Contact: Charles Sellers, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-331), Washington, DC 20460, 202 382-3282

RIN: 2050-AC32

2841. SAMPLING AND ANALYSIS METHODS FOR WASTE TESTING

Legal Authority: 42 USC 6921 to 6925 / RCRA 3001 to 3005; 42 USC 6912 / RCRA 2002

CFR Citation: 40 CFR 261

Legal Deadline: None

Abstract: This action deals with annual updates to the RCRA manual of approved test methods (Test Methods for Evaluating Solid Waste, SW-846). It adds additional approved methods and modifies the existing methods to reflect the latest available performance data.

Timetable:

Action	Date	FR Cite
NPRM	01/00/89	
Final Action	12/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: SAR No. 2508.

FTS:8-382-4761

Agency Contact: Charles Sellers, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-331), Washington, DC 20460, 202 382-3282

RIN: 2050-AA82

2842. AIR TOXICITY CHARACTERISTIC FOR HAZARDOUS WASTE

Significance: Regulatory Program

Legal Authority: 42 USC 6921 /RCRA 3001

CFR Citation: 40 CFR 261

Legal Deadline: None

Abstract: EPA will develop test procedures to predict the release of volatile organic compounds from wastes. These procedures will be coupled with specific threshold concentrations that are derived from considerations of human health effects as well as persistence in the environment and the ability of compounds to be transported from the disposal site. Wastes exceeding the specific threshold will be considered hazardous. Evaluations may be performed by the generator, treater, etc.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Local, State, Federal

Analysis: Regulatory Impact Analysis; Regulatory Flexibility Analysis

Additional Information: SAR No.2588

FTS:8-475-8551

Agency Contact: David Topping, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-332), Washington, DC 20460, 202 382-7737

RIN: 2050-AC25

2843. CONCENTRATION-BASED RELISTING OF WASTES FROM CHLORINATED ALIPHATICS

Legal Authority: 42 USC 6921 /RCRA 3001

CFR Citation: 40 CFR 261

Legal Deadline: None

Abstract: This action exempts from regulation any currently listed wastes that are not hazardous because the hazardous constituents are present at levels lower than the concentration levels established by this rule.

Timetable:

Action	Date	FR Cite
NPRM	04/00/89	
Final Action	01/00/90	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: SAR No. 2462.

FTS:8-382-4785

Agency Contact: Ron Josephson, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-332), Washington, DC 20460, 202 382-4795

RIN: 2050-AC30

2844. CONCENTRATION-BASED RELISTING OF WASTES FROM EXPLOSIVES, INORGANIC CHEMICALS, AND IRON AND STEEL INDUSTRIES

Legal Authority: 42 USC 6921 /RCRA 3001

CFR Citation: 40 CFR 261

Legal Deadline: None

Abstract: This action exempts from regulation any currently listed wastes that are not hazardous because the hazardous constituents are present at levels lower than the concentration levels established by this rule.

Timetable:

Action	Date	FR Cite
NPRM	07/00/89	
Final Action	07/00/90	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: SAR No. 2463.

FTS:8-475-8551

Agency Contact: Denny Cruz, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-332), Washington, DC 20460, 202 475-8551

RIN: 2050-AC31

2845. DETERMINATION ON SOLID WASTE FROM SELECTED METALLIC ORE PROCESSING OPERATIONS

Legal Authority: 42 USC 6921 /RCRA 3001; 42 USC 6982 /RCRA 8002

CFR Citation: 40 CFR Not yet determined

Legal Deadline: NPRM, Statutory, October 15, 1988. Final, Statutory, February 15, 1989. Other, Statutory, January 30, 1990.
Regulatory Determination Notice due 01/30/90

Abstract: EPA is presently developing a list of "high-volume, low- hazard" ore processing wastes for study under Section 8002(p) of RCRA, in response to an opinion of the U.S. Court of Appeals for the D.C. Circuit (EDF v. EPA, No. 86-1584, July 29, 1988). EPA will then conduct a Section 8002 study of those processing wastes excluded from Subtitle C regulation by the "Bevill Amendment" [3001 (b)(3)(A) RCRA]. The study will culminate in a Report to COngress in July 1989. RCRA Section 3001(b)(3) requires the Agency, after public hearings and public comment, to determine within six months of submitting the report, whether to regulate any of these wastes under RCRA Subtitle C.

Timetable:

Action	Date	FR Cite
Final Action	02/00/89	
List of Exempted Wastes		
NPRM	10/00/88	
Regulatory Determination		
NOTICE	01/00/90	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: SAR No. 2571.

FTS:8-382-3668

Agency Contact: Dan Derkics, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-

323), Washington, DC 20460, 202 382-3088

RIN: 2050-AC54

2846. ● EXCLUSIONS FOR WASTE GENERATED ON-BOARD SHIPS (REVISION)

Legal Authority: 42 USC 6921 /RCRA 3001; 42 USC 6922 /RCRA 3002

CFR Citation: 40 CFR 261.4(c)

Legal Deadline: None

Abstract: This proposed rule would amend an exemption in 40 CFR 261.4(c) which is currently limited to product or raw material vessels, so that it will apply to all vessels. The result of this change would be that all vessel operators, both product and non-product, would be regulated the same. In both cases, hazardous wastes generated on-board ships would not be subject to the RCRA regulations for storage, manifesting, etc., until the waste is removed from the ship. The discharge of any wastes while underway is governed by regulations issued under the provision of the Clean Water Act, Rivers and Harbors Act, Refuse Act, CERCLA/SARA, and others.

Timetable:

Action	Date	FR Cite
NPRM	06/00/89	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: State, Federal

Additional Information: SAR No. 2035

FTS:475-9715

Agency Contact: Steve Cochran, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-332), Washington, DC 20460, 202 475-9715

RIN: 2050-AC01

2847. BURNING OF HAZARDOUS WASTE IN BOILERS AND INDUSTRIAL FURNACES

Significance: Regulatory Program

Legal Authority: 42 USC 6924 / RCRA 3004; 42 USC 6925/RCRA 3005

CFR Citation: 40 CFR 260

Legal Deadline: None

Abstract: Burning of hazardous waste in boilers for the purpose of heat recovery is currently exempt from regulation under RCRA. The Hazardous and Solid Waste Amendments of 1984 require the Agency to develop technical standards for the burning of hazardous waste fuels. This regulation will establish standards for controlling emissions of organic compounds, metals, and hydrogen chloride from boilers and industrial furnaces that burn hazardous waste for any purpose, including energy recovery, material recovery, or destruction.

Timetable:

Action	Date	FR Cite
NPRM	05/06/87	52 FR 16982
NPRM (Supplement)	11/00/88	
Final Action	07/00/89	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Analysis: Regulatory Impact Analysis

Additional Information: SAR No. 2278.

FTS:8-382-7920.

Contains previous RIN 2050-AA29.

Agency Contact: Dwight Hlustick, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-322), Washington, DC 20460, 202 382-7926

RIN: 2050-AA72

2848. LINERS AND LEAK DETECTION FOR HAZARDOUS WASTE LAND DISPOSAL UNITS

Significance: Regulatory Program

Legal Authority: 42 USC 6924 / RCRA 3004; 42 USC 6925 / RCRA 3005

CFR Citation: 40 CFR 264; 40 CFR 265; 40 CFR 268; 40 CFR 270; 40 CFR 271

Legal Deadline: NPRM, Statutory, May 8, 1987.

Abstract: EPA has proposed these regulations under the authority of section 3004(a) and 3004(o)(4) of the Resource Conservation and Recovery Act. The regulations would require: 1) new landfills, surface impoundments, waste piles, and land treatment units for the treatment, storage, or disposal of hazardous wastes to utilize an approved leak detection system; 2) double liners and leachate collection systems for waste piles, and certain landfills and surface impoundments; and 3) development of a construction quality assurance program for certain landfills and surface impoundments, as well as final covers at land treatment units. EPA originally proposed this rule on May 29, 1987 (52 FR 20218); the Agency will repropose the rule.

Timetable:

Action	Date	FR Cite
NPRM	05/29/87	52 FR 20218
NPRM (Reproposal)	11/00/88	
Final Action	10/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Analysis: Regulatory Impact Analysis

Additional Information: SAR No. 2060.

FTS:8-382-4652.

Includes previous RINs 2050-AA21, 2050-AA50, and 2050-AA52.

Agency Contact: Lee Otte, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-321), Washington, DC 20460, 202 382-4654

RIN: 2050-AA76

2849. LOCATION STANDARDS FOR HAZARDOUS WASTE FACILITIES

Significance: Regulatory Program

Legal Authority: 42 USC 6924 /RCRA 3004

CFR Citation: 40 CFR 264; 40 CFR 265; 40 CFR 270

Legal Deadline: None

Abstract: Section 3004(o)(7) of RCRA authorizes EPA to promulgate standards for the location of hazardous waste treatment, storage, and disposal facilities. Two existing location standards (floodplain and seismic restrictions) at 40 CFR Part 264.18 will be amended based on new data and information. Additional standards will specify other criteria for the acceptable location of new, expanding, and existing treatment, storage and disposal facilities in a variety of sensitive environments (e.g., unstable terrains, wetlands).

Timetable:

Action	Date	FR Cite
NPRM	04/00/89	
Final Action	09/00/90	

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State, Federal

Additional Information: SAR No. 2301.

FTS:8-382-4670.

Agency Contact: Glen R. Galen, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-321), Washington, DC 20460, 202 382-4678

RIN: 2050-AB67

2850. CORRECTIVE ACTION FOR SOLID WASTE MANAGEMENT UNITS (SWMUS) AT HAZARDOUS WASTE MANAGEMENT FACILITIES

Significance: Regulatory Program

Legal Authority: 42 USC 6924 / RCRA 3004(u), 3004(v)

CFR Citation: 40 CFR 264; 40 CFR 270

Legal Deadline: None

Abstract: These regulations set forth the technical and procedural requirements for conducting corrective action to clean up significant releases to air, surface water, ground water and soil at solid waste management units (SWMUs) at operating, closed, or closing RCRA facilities. The regulations will be used to define the structure of the program, and the requirements for implementing remedial action, remedy selection and corrective measures. Currently, the permitting agencies must make case-by-case decisions on action.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
Final Action	12/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: SAR No. 2330.

FTS:8-382-4497

Agency Contact: David Fagan, Environmental Protection Agency, Solid Waste and Emergency Response, OS-341, 202 382-4497

RIN: 2050-AB80

2851. LANDFILL, SURFACE IMPOUNDMENT, AND WASTE PILE CLOSURES FOR HAZARDOUS WASTE MANAGEMENT FACILITIES

Significance: Regulatory Program

Legal Authority: 42 USC 6924 /RCRA 3004

CFR Citation: 40 CFR 264; 40 CFR 265; 40 CFR 270

Legal Deadline: None

Abstract: These regulations will provide alternate closure options for EPA and authorized states to establish closure and post-closure requirements on a site-specific basis. The regulations address waste and site characteristics, potential pathways of hazardous constituent migration, and health effects. These rules allow for cover systems to be designed base on unique site and waste characteristics. EPA originally proposed this rule on March 19, 1987 (52 FR 8712); the Agency will repropose the rule.

Timetable:

Action	Date	FR Cite
NPRM (Reproposal)	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: SAR No. 2301.

FTS:8-475-8800

Agency Contact: Les Otte, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-321), Washington, DC 20460, 202 475-8800

RIN: 2050-AB81

2852. EMISSION CONTROLS FOR HAZARDOUS WASTE INCINERATORS

Significance: Regulatory Program

Legal Authority: 42 USC 6924 / RCRA 3004; 42 USC 6925/RCRA 9005

CFR Citation: 40 CFR 264

Legal Deadline: None

Abstract: The incinerator standards of Subpart O of Part 264 will be strengthened by proposed additional controls on emissions of metals and residual organic compounds.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	07/00/89	

Small Entities Affected: None

Government Levels Affected: State, Federal

Analysis: Regulatory Impact Analysis

Additional Information: SAR No. 2451.

FTS:8-382-7935

Agency Contact: Mary Cunningham, Environmental Protection Agency, Solid Waste and Emergency Response, OS-322, Washington DC 20460, 202 382-7935

RIN: 2050-AB90

2853. LAND DISPOSAL RESTRICTIONS FOR SOIL AND DEBRIS CONTAINING HAZARDOUS WASTES

Legal Authority: 42 USC 6924 /RCRA 3004

CFR Citation: 40 CFR 268

Legal Deadline: Final, Statutory, January 15, 1988.

Abstract: The Agency is investigating the need to set separate treatment standards for soil and debris containing hazardous wastes. By statute, these wastes do not become subject to the Land Disposal Restrictions Rule (51 FR 40572 and 52 FR 25760) for Solvents and Dioxins (RCRA 3004(e)) and the California List (RCRA 3004(d)) until 11/8/88. If necessary, the Agency will further subcategorize the waste streams to provide separate treatment standards applicable to such wastes.

Timetable:

Action	Date	FR Cite
NPRM	12/00/90	
Final Action	10/00/91	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Analysis: Regulatory Impact Analysis

Additional Information: SAR No. 1401.

FTS:8-382-4770

Agency Contact: Stephen Weil, Environmental Protection Agency, Solid Waste and Emergency Response, OS-333, Washington, DC 20460, 202 382-4770

RIN: 2050-AC03

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2854. PERMITTING EXPERIMENTAL FACILITIES CONDUCTING HAZARDOUS WASTE RESEARCH

Legal Authority: 42 USC 6924 / RCRA 3004; 42 USC 6925 / RCRA 3005

CFR Citation: 40 CFR 264; 40 CFR 270

Legal Deadline: None

Abstract: This proposal will establish special permitting procedures for experimental facilities conducting research and development on the storage, treatment, or disposal of hazardous waste. The regulations would allow experimental facilities considerable flexibility in operating according to an approved research plan, without requiring frequent permit modifications as details of the research changed.

Timetable:

Action	Date	FR Cite
NPRM	05/00/89	
Final Action	05/00/90	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: SAR No. 2429.

FTS:8-382-4758

Agency Contact: Barbara Foster, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-341), 202 382-4761

RIN: 2050-AC04

2855. CORRECTIVE ACTION FOR RELEASES TO GROUND WATER FROM REGULATED HAZARDOUS WASTE UNITS

Legal Authority: 42 USC 6924 /RCRA 3004

CFR Citation: 40 CFR 264; 40 CFR 270

Legal Deadline: None

Abstract: These regulations will amend the technical and procedural requirements for conducting corrective action to clean up significant releases to ground water from regulated hazardous waste units at operating, closed, or closing RCRA facilities. The regulations will be used to amend the structure of the program and the requirements for implementing remedial action, remedy selection and corrective measures. The requirements for regulated units will be amended to conform to the corrective action requirements for solid waste management units.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
Final Action	08/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: SAR No. 2522.

FTS:8-382-4770

Agency Contact: Stephen Wall, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-333), Washington, DC 20460, 202 382-4770

RIN: 2050-AC25

2856. LAND DISPOSAL RESTRICTION FOR SECOND THIRD OF SCHEDULED WASTES

Legal Authority: 42 USC 6924(g) /RCRA 3004(g); 42 USC 6924(h) /RCRA 3004(h); 42 USC 6924(j) /RCRA 3004(j); 42 USC 6924(k) /RCRA 3004(k); 42 USC 6924(m) /RCRA 3004(m)

CFR Citation: 40 CFR 268

Legal Deadline: None

Abstract: This rule will establish land disposal restrictions for the second third of scheduled hazardous wastes and promulgate treatment standards for these waste streams as required by sections 3004(g) and 3004(m) of RCRA. The schedule was published on May 28, 1986 (51 FR 19300).

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
Final Action	08/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: SAR No. 2522.

FTS:8-382-4770

Agency Contact: Stephen Wall, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-333), Washington, DC 20460, 202 382-4770

RIN: 2050-AC25

2857. ◆ MODIFICATION OF THE DEFINITION OF WASTEWATER TREATMENT UNIT

Legal Authority: 42 USC 6924 /RCRA 3004

CFR Citation: 40 CFR 260; 40 CFR 270

Legal Deadline: None

Abstract: Currently, wastewater treatment units and elementary neutralization units are exempt from the requirements in 40 CFR Parts 264, and 265 (see 45FR76074, November 17, 1980). This action will amend the regulations to explain more clearly that thermal treatment units, except sludge dryers, are not exempt from regulation under the "wastewater treatment unit exclusion." It was never EPA's intention that thermal treatment units be exempt from regulation. Rather, specific regulations have been developed for these devices.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: SAR No. 2370

FTS:8-382-2150

Agency Contact: David Tamkin, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-322), Washington, DC 20460, 202 382-2209

RIN: 2050-AC00

2858. LIST (PHASE 2) OF HAZARDOUS CONSTITUENTS FOR GROUND WATER MONITORING

Legal Authority: 42 USC 3251 / RCRA 3004

CFR Citation: 40 CFR 264; 40 CFR 270

Legal Deadline: None

Abstract: The Appendix IX of 40 CFR Part 264 is a list of hazardous constituents presently referenced in 40 CFR Part 264 for use in ground water monitoring. This proposed amendment would make minor revisions to Appendix IX and create a new list for the first part (Detection Monitoring) of the ground water monitoring program. This proposal would also include a more detailed discussion of the appropriate monitoring techniques than currently exists in the regulations.

Timetable:

Action	Date	FR Cite
NPRM	01/00/89	
Final Action	01/00/90	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: SAR No. 2435.

FTS: 382-4854

Agency Contact: Jerry Garman, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-321), Washington DC 20460, 202 382-4854

RIN: 2050-AC05

2859. COMPLIANCE MONITORING AND ENFORCEMENT REQUIREMENTS FOR STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

Legal Authority: 49 USC 6926 / RCRA 3006

CFR Citation: 40 CFR 271.15; 40 CFR 271.16

Legal Deadline: None

Abstract: Regulations governing State Authorization requirements for compliance monitoring and enforcement actions will be revised to reflect the Hazardous and Solid Waste Amendments of 1984. EPA will consider other changes such as requirement for states to have administrative penalty authority.

Timetable:

Action	Date	FR Cite
NPRM	02/00/89	
Final Action	08/00/89	

Small Entities Affected: None

Government Levels Affected: State

Additional Information: SAR No. 2158.

FTS: 8-475-7787.

Agency Contact: David Levenstein, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-520), Washington, DC 20460, 202 475-9325

RIN: 2050-AB01

2860. MINING WASTE MANAGEMENT UNDER RCRA SUBTITLE D

Significance: Regulatory Program

Legal Authority: 42 USC 6941 to 6949 /RCRA 4001-4009

CFR Citation: 40 CFR Not yet determined

Legal Deadline: None

Abstract: Based on the first mining waste Report to Congress submitted 12/31/85, comments on the report, and other available information, EPA has determined that regulation of wastes from the extraction and benefication of ores and minerals under Subtitle C of the Resource Conservation and Recovery Act (RCRA) is not warranted at this time (51 FR 24496). Instead, EPA plans to develop a program for mining waste under Subtitle D of RCRA, working with the States to determine the specific nature of their current mining waste activities and their future plans to administer such programs. EPA will propose a set of criteria for the proper disposal of mining wastes under RCRA Subtitle D authority. EPA will also work with other Federal agencies (e.g., DOI, USGS) to avoid duplication in regulatory efforts.

Timetable:

Action	Date	FR Cite
NPRM	10/00/89	
Final Action	02/00/91	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: SAR No. 2359.

FTS: 8-382-3006

Agency Contact: Dan Derkics, Environmental Protection Agency, Solid Waste and Emergency Response, OS-323, Washington, DC 20460, 202 382-3006

RIN: 2050-AB72

2861. ◆ GUIDELINE FOR PROCUREMENT OF INSULATION PRODUCTS CONTAINING RECOVERED MATERIALS

Legal Authority: 42 USC 6962/RCRA 6002(e)

CFR Citation: 40 CFR 248

Legal Deadline: Other, Judicial. Consent decree requires submission of NPRM to Federal Register no later than 7/27/88 and Final Rule by 2/8/89.

Abstract: The Guideline Implements Section 6002(e) of RCRA, which requires EPA to designate items which can be produced with recovered materials and to prepare guidelines to assist procurement agencies in complying with the requirements of Section 6002. Once EPA has designated an item, Section 6002 requires that any procuring agency using appropriated Federal Funds to procure that item must purchase such items containing the highest percentage of recovered materials practicable. The guideline designates building insulation products as products for which the procurement requirements of RCRA Section 6002 apply. The guideline also contains recommendations for implementing these procurement requirements.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	02/00/89	

Small Entities Affected: [illegible]

Government Levels Affected: Local, State, Federal

Analysis: Regulatory Impact Analysis; Regulatory Flexibility Analysis

Additional Information: SAR No. 2011

FTS:8-382-4502

Agency Contact: William Sanjour, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-330), Washington, DC 20460, 202 382-4502

RIN: 2050-AC09

2862. UNDERGROUND STORAGE TANKS CONTAINING HAZARDOUS SUBSTANCES- FINANCIAL RESPONSIBILITY REQUIREMENTS

Significance: Regulatory Program

Legal Authority: 42 USC 6991 /RCRA 9003

CFR Citation: 40 CFR 280

Legal Deadline: Final, Statutory, August 8, 1988.

Abstract: This regulation will establish, under Subtitle I of RCRA (as amended by SARA), requirements for demonstrating financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by releases from underground storage tanks (USTs) containing hazardous substances. An ANPRM was published to help gather data (e.g., frequency of releases from such USTs, costs of corrective action and third-party damages, and the regulated

community's financial condition and use of financial assurance mechanisms) needed for the development of a proposed rule.

Timetable:

Action	Date	FR Cite
ANPRM	02/19/88	53 FR 5018
NPRM	09/00/89	
Final Action	09/00/90	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: SAN No. 2465.

FTS:8-382-7000

Agency Contact: Sammy K. Ng, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-410), Washington, DC 20460, 202 382-7900

RIN: 2050-AC15

2363. ● UNDERGROUND STORAGE TANKS CONTAINING PETROLEUM - FINANCIAL RESPONSIBILITY REQUIREMENTS: FINANCIAL TEST FOR SELF INSURANCE FOR LOCAL GOVERNMENT ENTITIES

Legal Authority: 42 USC 6991(b) /RCRA 9003

CFR Citation: 40 CFR 280

Legal Deadline: None

Abstract: These regulations will establish a simple financial test that local governments can use for the purpose of self insuring for taking corrective action and compensating third parties for bodily injury and property damage as required by the Financial Responsibility Requirements promulgated in September 1988.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	
Final Action	09/00/89	

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Local

Additional Information: SAN No. 2042

FTS:8-382-7900

Agency Contact: Sammy K. Ng, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-410), Washington, DC 20460, 202 382-7900

RIN: 2050-AC57

2364. ● IMPLEMENTATION OF TITLE III ON INDIAN LANDS

Legal Authority: 42 USC 11013 /Title III; 42 USC 11028 /Title III

CFR Citation: 40 CFR 355; 40 CFR 370; 40 CFR 372

Legal Deadline: None

Abstract: Title III of SARA does not specifically address implementation on Indian lands. This regulation will identify Indian Tribes as appropriate implementing authority and will clarify to whom facilities in Indian Country should report under the statute. It is not clear whether States have authority to enforce on Indian Lands. Treating tribes as states will result in universal implementation of the law, and will represent a new burden for tribes which they may not be equipped to handle. For this reason, we are proposing that tribes may enter into cooperative agreements with states or other tribes to share the burden.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
Final Action	05/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: SAN No. 2043

FTS:8-382-7912

Agency Contact: Kathleen Bishop, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-120), Washington, DC 20460, 202 382-7912

RIN: 2050-AC04

ENVIRONMENTAL PROTECTION AGENCY (EPA) —Resource Conservation and Recovery Act (RCRA) — Final Rule Stage

2365. IDENTIFICATION AND LISTING OF HAZARDOUS WASTES - PETROLEUM REFINERY PRIMARY TREATMENT SLUDGE

Significance: Regulatory Program

Legal Authority: 42 USC 6905/RCRA 1006; 42 USC 6912(a)/RCRA 2002(a); 42 USC 6921/RCRA 3001; 42 USC 6922/RCRA 3002

CFR Citation: 40 CFR 261

Legal Deadline: None

Abstract: These actions announce EPA's decision whether or not to list a waste as hazardous under RCRA. If a waste is listed as hazardous it will be subject to these requirements contained in 40 CFR Parts 262-266 and Parts 270, 271 and 124.

Timetable:

Action	Date	FR Cite
NPRM	11/12/80	45 FR 74883
NPRM	11/12/80	45 FR 74885
NOTICE	02/11/85	50 FR 5927
NOTICE	04/19/88	53 FR 12652
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: SAR No. 2236.

RCRA/Superfund Hotline (800-424-9346); in Metropolitan Area (382-3000)

Agency Contact: Ben Smith, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-332), Washington, DC 20460, 202 382-4791

RIN: 2050-AE70

2366. IDENTIFICATION AND LISTING OF HAZARDOUS WASTE - METHYL BROMIDE

Significance: Agency Priority

Legal Authority: 42 USC 6905/RCRA 1006; 42 USC 6912(a)/RCRA 2002(a); 42 USC 6921/RCRA 3001; 42 USC 6922/RCRA 3002

CFR Citation: 40 CFR 261

Legal Deadline: None

Abstract: These actions announce EPA's decision whether or not to list a waste as hazardous under RCRA. If a waste is listed as hazardous it will be subject to those requirements contained

in 40 CFR Parts 262-266 and Parts 270, 271 and 124.

Timetable:

Action	Date	FR Cite
NPRM	04/25/85	50 FR 16432
Final Action	09/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: SAN No. 2157 For further information contact the RCRA/Superfund Hotline (800-424-9346); in the Metropolitan Area (202-382-3000)

Agency Contact: RCRA/Superfund Hotline, Environmental Protection Agency, Solid Waste and Emergency Response, Washington, DC 20460, 202 382-3000

RIN: 2050-AC00

2367. ● RCRA DEFINITION OF SOLID WASTE (REVISION)

Legal Authority: 42 USC 6905 /RCRA 1006; 42 USC 6912 /RCRA 2002; 42 USC 6921 /RCRA 3001; 42 USC 6922 /RCRA 3002

CFR Citation: 40 CFR 261

Legal Deadline: None

Abstract: This regulation will provide: (1) the Agency's interpretation of a court opinion, concerning the Agency's authority in regulating certain recycled hazardous secondary materials and (2) amendments to the rules required by the court's opinion.

Timetable:

Action	Date	FR Cite
NPRM	01/08/88	53 FR 519
Final Action	00/00/00	

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: SAR No. 2575

FTS:8-475-8551

Agency Contact: Mike Petruska, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-332), Washington, DC 20460, 202 475-8551

RIN: 2050-AC08

2368. SOLID WASTE DISPOSAL FACILITY CRITERIA

Significance: Regulatory Program

Legal Authority: 42 USC 6907a / RCRA 1008a; 42 USC 6944 / RCRA 4004; 42 USC 6949 / RCRA 4010

CFR Citation: 40 CFR 257; 40 CFR 258

Legal Deadline: NPRM, Statutory, March 31, 1988.

Abstract: The Hazardous and Solid Waste Amendments of 1984 (HSWA) require EPA, by March 31, 1987, to revise the subtitle D criteria for facilities that may receive hazardous household wastes or hazardous wastes from small quantity generators. In response to this statutory mandate, EPA is revising the subtitle D criteria for municipal landfills. At a minimum these criteria must include ground-water monitoring requirements, location standards, and corrective action requirements.

Timetable:

Action	Date	FR Cite
NPRM	08/30/88	53 FR 33314
Final Action	12/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Local, State

Analysis: Regulatory Impact Analysis

Additional Information: SAR No. 2224.

FTS-382-4490

Agency Contact: Susan O'Keefe, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-323), Washington, DC, 202 382-4489

RIN: 2050-AE21

2369. CHANGES TO INTERIM STATUS AND PERMITTED FACILITIES FOR HAZARDOUS WASTE MANAGEMENT; PROCEDURES FOR POST-CLOSURE PERMITTING

Legal Authority: 42 USC 6912(a) /RCRA 2002(a); 42 USC 6924 /RCRA 3004; 42 USC 6925 /RCRA 3005; 42 USC 6926 /RCRA 3006

CFR Citation: 40 CFR 265; 40 CFR 270; 40 CFR 271

Legal Deadline: None

Abstract: These regulations will: (1) facilitate modifications at interim status facilities that are necessary to respond to RCRA requirements, and (2) allow the Agency to deny permits for the active life of a facility while a permit decision with respect to the post-closure period remains pending. The portion of the proposed rule dealing with permit modifications is addressed in the permit modifications rulemaking (see RIN 2050-AC22).

Timetable:

Action	Date	FR Cite
NPRM	08/14/87	52 FR 30570
Final Action	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: SAR No. 2268.

FTS:8-382-4751

Agency Contact: Barbara Foster, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-342), Washington, DC 20460, 202 382-4751

RIN: 2050-AC29

2370. GUIDELINE FOR FEDERAL PROCUREMENT FOR RETREAD TIRES

Legal Authority: 42 USC 6912(a) /RCRA 2002(a); 42 USC 6962 /RCRA 6002

CFR Citation: 40 CFR 253

Legal Deadline: None

Abstract: This action implements Section 6002(e) of RCRA, as amended, which requires EPA (1) to designate items which can be produced with recovered materials and (2) to prepare guidelines to assist procuring agencies in complying with the requirements of Section 6002. Once EPA has designated a procurement item, Section 6002 requires that any procuring agency using appropriated Federal funds to procure that item must purchase such items containing the highest percentage of recovered materials practicable.

Timetable:

Action	Date	FR Cite
NPRM	05/02/88	53 FR 15624
Final Action	11/00/88	

Small Entities Affected: Businesses

Government Levels Affected: Local, State, Federal

Additional Information: SAR No. 2510.

FTS:8-382-4502

Agency Contact: William Sanjour, Environmental Protection Agency, Solid

Waste and Emergency Response, (OS-330), [illegible]

RIN: 2050-AC52

2871. IDENTIFICATION OF HAZARDOUS WASTES BY TOXICITY CHARACTERISTIC AND LISTING OF ADDITIONAL ORGANIC TOXICANTS

Significance: Regulatory Program

Legal Authority: 42 USC 6921 / RCRA 3001

CFR Citation: 40 CFR 261

Legal Deadline: Final, Statutory, March 8, 1987.
November 8, 1986 for adding additional characteristics; March 8, 1987 for revising the extraction procedure.

Abstract: The EPA is proposing to amend its hazardous waste identification regulations by introducing a new extraction procedure to be used in the Toxicity Characteristic and by expanding the Toxicity Characteristic to include approximately 38 additional organic toxicants. EPA originally proposed this rule on June 13, 1986 (51 FR 21648).

Timetable:

Action	Date	FR Cite
NPRM	05/19/88	53 FR 18024
Final Action	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Analysis: Regulatory Impact Analysis; Regulatory Flexibility Analysis

Additional Information: SAR No. 2002.

FTS-8-382-4704.

Agency Contact: John Goodrich-Mahoney, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-332), Washington, DC [illegible]

RIN: 2050-AA78

2872. DISPOSAL OF CONTAINERIZED LIQUIDS IN HAZARDOUS WASTE LANDFILLS

Legal Authority: 42 USC 6924(c) / RCRA 3004(c)

CFR Citation: 40 CFR 260; 40 CFR 264; 40 CFR 265; 40 CFR 271

Legal Deadline: Final, Statutory, February 8, 1988.

Abstract: The Agency has proposed these regulations under the Hazardous and Solid Waste Amendment of 1984. The regulation will 1) minimize the placement of containers holding liquid hazardous waste and free liquids in hazardous waste landfills, 2) minimize the presence of free liquids in containers holding hazardous waste to be disposed of in landfills and 3) prohibit the use of absorbents that biodegrade or release liquids when compressed.

Timetable:

Action	Date	FR Cite
NPRM	12/24/86	51 FR 46824
Notice of Availability of Supplemental Information	06/24/87	52 FR 23695
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: SAR No. 2307.

FTS:8-475-8660

Agency Contact: Les Otte, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-321), Washington, DC 20460, 202 475-8660

RIN: 2050-AH12

2873. GROUND-WATER MONITORING AT HAZARDOUS WASTE FACILITIES

Significance: Regulatory Program

Legal Authority: 42 USC 6924 /RCRA 3004

CFR Citation: 40 CFR 264; 40 CFR 270

Legal Deadline: None

Abstract: This action will change the Subpart F ground-water monitoring regulations. The following is a summary of the major changes:

o allow use of site-specific data on contaminant fate and transport for ground-water monitoring variances;

o allow flexibility in well installation requirements when access to waste management boundary is difficult;

o clarify the definition of waste management area and provide flexibility in determining the appropriate monitoring or response programs for individual areas;

o allow flexibility in schedules for submittal of information upon approval by the Regional Administrator (R.A.);

o base the requirement for ground-water flow rate and direction determinations upon site-specific fluctuations in water levels;

o clarify the R.A.'s authority to require monitoring of any flow pathway in the uppermost aquifer and unsaturated zone;

o authority to designate supplemental monitoring wells when justified by complicated monitoring situations; and (see additional information for completion of abstract.)

Timetable:

Action	Date	FR Cite
NPRM	07/26/88	53 FR 28160
Final Action	07/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: SAR No. 2277.

FTS-382-7371

o allow a return to detection or compliance monitoring as appropriate;

o add quality assurance and quality control requirements for ground-water monitoring devices and methods

Agency Contact: Joe Abe, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-321), Washington, DC 20460, 202 382-4654

RIN: 2050-AB20

2874. DELAY IN THE CLOSURE PERIOD FOR HAZARDOUS WASTE MANAGEMENT FACILITIES

Legal Authority: 42 USC 6924 /RCRA 3004; 42 USC 6925 /RCRA 3005

CFR Citation: 40 CFR 264; 40 CFR 265

Legal Deadline: None

Abstract: The current regulations require that closure of a hazardous waste unit begin after the final receipt of hazardous wastes. The proposed rule will identify the circumstances under which a unit that ceases to receive hazardous wastes may continue to accept non-hazardous wastes. Amendments will identify conditions for the subsequent use of a unit for non-hazardous waste management and coordination with other closure activities of a hazardous waste

management facility. Portions of the closure requirements (Subpart G) will be amended in both parts 264 and 265. These changes will increase the flexibility in the current regulations.

Timetable:

Action	Date	FR Cite
NPRM	06/06/88	53 FR 20738
Final Action	11/00/88	

Small Entities Affected: None

Government Levels Affected: State, Federal

Additional Information: SAR No. 2487.

FTS: 8-475-8725

Agency Contact: Sharon Frey, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-341), Washington, DC 20460, 202 475-8725

RIN: 2050-AH71

2875. DOUBLE LINER AND LEACHATE COLLECTION SYSTEMS FOR HAZARDOUS WASTE LAND DISPOSAL UNITS

Significance: Regulatory Program

Legal Authority: 42 USC 6924(o) /RCRA 3004(o)

CFR Citation: 40 CFR 264; 40 CFR 265; 40 CFR 260; 40 CFR 270; 40 CFR 144

Legal Deadline: Final, Statutory, November 1988.

Abstract: This rule establishes minimum technology requirements (e.g., double liners and leachate collection systems) for new hazardous waste landfills and surface impoundments, as well as lateral expansions and replacements to existing landfills and surface impoundments. This rule will establish standards for these systems enabling unit owners and operators to design and construct systems that will protect human health and the environment.

Timetable:

Action	Date	FR Cite
NPRM	03/28/86	51 FR 10706
Notice of Availability of Information	04/17/87	52 FR 12566
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: SAR No. 2388.

FTS: 8-382-4694

Agency Contact: Ken Skahn, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-321), Washington, DC 20460, 202 382-4654

RIN: [illegible]

2876. STATISTICAL METHODS FOR EVALUATING GROUND WATER MONITORING DATA FROM HAZARDOUS WASTE FACILITIES

Significance: Regulatory Program

Legal Authority: 42 USC 6924 / RCRA 3004

CFR Citation: 40 CFR 264

Legal Deadline: None

Abstract: EPA promulgated regulations for detecting contamination of ground water at hazardous waste land disposal facilities under RCRA. The statistical methods and sampling procedures required in 40 CFR Part 264, Subpart F for evaluating ground water monitoring data have been shown to be inappropriate. EPA proposed amendments to these rules on August 24, 1987, and is now finalizing the revisions.

Timetable:

Action	Date	FR Cite
ANPRM	08/20/86	51 FR 29812
NPRM	08/24/87	52 FR 31948
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: SAR No. 2430.

FTS:8-475-7240

Agency Contact: Jim Brown, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-321), Washington, DC 20460, 202 475-7240

RIN: 2050-AB92

2877. LIABILITY REQUIREMENTS FOR HAZARDOUS WASTE FACILITIES - OTHER INSTRUMENTS

Legal Authority: 42 USC 6901 /RCRA 3004

CFR Citation: 40 CFR 264; 40 CFR 265

Legal Deadline: None

Abstract: The Agency is finalizing revisions to the financial responsibility requirements for liability coverage for third- party bodily injury and property damage resulting from accidental occurrences at hazardous waste treatment, storage, and disposal facilities. The revisions are intended to allow greater flexibility in the types of financial instruments that can be used by hazardous waste facility owners and operators who may have encountered difficulties in obtaining insurance or the limited number of other possible instruments to meet liability coverage requirements. Other instruments, such corporate guarantees, surety bonds, trust funds, and letters of credit, are being authorized through this rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	08/25/85	50 FR 33902
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: SAR No. 2400.

FTS:8-382-4780

Agency Contact: Carlos Lago, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-341), Washington, DC 20460, 202 382-[illegible]

RIN: [illegible]

2878. PERMIT MODIFICATIONS FOR HAZARDOUS WASTE MANAGEMENT FACILITIES

Significance: Regulatory Program

Legal Authority: 42 USC 6925 /RCRA 3004 and 3005

CFR Citation: 40 CFR 270

Legal Deadline: None

Abstract: This regulation will amend RCRA procedures (codified at 40 CFR 270.41 and 270.42) for modifying hazardous waste management permits. The rulemaking provides EPA, authorized states, and permittees more flexibility in modifying permits, particularly where modifications will increase public and environmental protection or facilitate compliance with new regulations. At the same time, the regulation will provide for improved public participation in the permit modifications. The proposed rule was developed through regulatory negotiation with representatives of EPA, the states, industry, and public

interest groups. RIN 2050-AA37 has been combined with this action.

Timetable:

Action	Date	FR Cite
NPRM	09/23/87	52 FR 35838
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: SAR No. 1805.

FTS 8-382-2223

Agency Contact: Frank McAlister, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-341), Washington, DC 20460, 202 382-2223

RIN: 2050-AC22

2878. PERMITTING MOBILE HAZARDOUS WASTE TREATMENT UNITS AND DELISTING HAZARDOUS WASTES

Significance: Regulatory Program

Legal Authority: 42 USC 6905 /RCRA 3005

CFR Citation: 40 CFR 260; 40 CFR 265; 40 CFR 270

Legal Deadline: None

Abstract: This action responds to a petition submitted to EPA by the Hazardous Waste Treatment Council (HWTC). It will establish state-wide permitting procedures for mobile hazardous waste treatment units and will modify hazardous waste delisting procedures, so that hazardous waste treatment residues could be delisted as part of the permitting process. In addition, the petition response solicited comment on HWTC's request that EPA exempt certain treatment technologies from the requirements for hazardous waste management.

Timetable:

Action	Date	FR Cite
NPRM	06/03/87	52 FR 20914
Final Action	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: SAR No. 2307.

FTS 8-382-2223

Agency Contact: Frank McAlister, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-341), Washington, DC 20460, 202 382-2223

RIN: 2050-AC20

2880. TRIAL BURNS FOR EXISTING HAZARDOUS WASTE INCINERATORS

Legal Authority: 42 USC 6905 /RCRA 3005; 42 USC 6912 /RCRA 3002; 42 USC 6927 /RCRA 3007; 42 USC 6974 /RCRA 7004

CFR Citation: 40 CFR 270.62(d)

Legal Deadline: None

Abstract: This rule will clarify the requirements of 40 CFR 270.62(d) which describes procedures for permitting existing hazardous waste incinerator facilities under RCRA. EPA will require submission of trial burn data prior to permit issuance.

Timetable:

Action	Date	FR Cite
NPRM	06/21/88	53 FR 23342
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: SAR No. 2544.

FTS 8-382-4775

Agency Contact: David Dellarco, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-343), Washington, DC 20460, 202 382-4775

RIN: 2050-AC50

2881. UNDERGROUND STORAGE TANKS CONTAINING PETROLEUM - FINANCIAL RESPONSIBILITY REQUIREMENTS

Significance: Regulatory Program

Legal Authority: 42 USC 6991(b) /RCRA 9003

CFR Citation: 40 CFR 280

Legal Deadline: None

Abstract: This regulation will establish, under Subtitle I of RCRA, requirements for owners and operators to demonstrate financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank containing petroleum. These requirements are applicable to all owners and operators, excluding Federal and State entities. The Agency has proposed aggregate levels of coverage for multiple tanks and will allow a variety of mechanisms to provide evidence of financial responsibility.

Timetable:

Action	Date	FR Cite
NPRM	04/17/87	52 FR 12786
Final Action	10/00/88	

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Local

Analysis: Regulatory Impact Analysis

Additional Information: SAR No. 2235.

FTS:8-382-7903

Agency Contact: Sammy Ng, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-410), Washington, DC 20460, 202 382-7903

RIN: 2050-AB51

2882. @ UNDERGROUND STORAGE TANKS CONTAINING PETROLEUM-FINANCIAL RESPONSIBILITY REQUIREMENTS; SUSPENSION OF ENFORCEMENT PROCEDURES

Legal Authority: 42 USC 6991(b) /RCRA 9003

CFR Citation: 40 CFR 280

Legal Deadline: None

Abstract: This regulation will establish final procedures for suspension of enforcement from the "Financial Responsibility Requirements," which is expected to be published in the Fall, 1988.

Timetable:

Action	Date	FR Cite
NPRM	04/17/87	52 FR 12786
Final Action	07/00/89	

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Local

Additional Information: SAR No. 2541

FTS:8-382-7903

This action was split from RIN:2050-AB51

Agency Contact: Sammy K. Ng, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-410), Washington, DC 20460, 202 382-7903

RIN: 2050-AC60

2883. UNDERGROUND STORAGE TANKS - STATE PROGRAM APPROVAL

Legal Authority: 42 USC 6991(c) /RCRA 9004

CFR Citation: 40 CFR 281

Legal Deadline: None

Abstract: The Hazardous and Solid Waste Amendments of 1984 (HSWA) allow EPA to approve State underground storage tank programs to operate in lieu of the Federal program. This rule will establish the requirements for States to apply for the EPA approval of such State programs.

Timetable:

Action	Date	FR Cite
NPRM	04/17/87	52 FR 12853
Final Action	10/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: State

Additional Information: SAR No. 2234.

FTS: 382-9724

Agency Contact: Gwen Gebhard, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-410), Washington, DC 20460, 202 475-9724

RIN: 2050-AB21

ENVIRONMENTAL PROTECTION AGENCY (EPA) —Resource Conservation and Recovery Act (RCRA) Completed Actions

2884. DETERMINATION ON WASTES FROM THE EXPLORATION, DEVELOPMENT OR PRODUCTION OF CRUDE OIL, NATURAL GAS, AND GEOTHERMAL ENERGY

Significance: Regulatory Program

CFR Citation: 40 CFR Not yet determined

Completed:

Reason	Date	FR Cite
Final Action	07/06/88	53 FR 25446

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Dan Derkics 202 382-3808

RIN: 2050-AC26

2885. LAND DISPOSAL RESTRICTIONS FOR FIRST THIRD OF SCHEDULED WASTES

CFR Citation: 40 CFR 268

Completed:

Reason	Date	FR Cite
Final Action	08/17/88	53 FR 17578

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Stephen Weil 202 382-4770

RIN: 2050-AC13

2886. GUIDELINES FOR CONTENT IN RE-REFINED OIL PROCURED BY THE FEDERAL GOVERNMENT

CFR Citation: 40 CFR Not yet determined

Completed:

Reason	Date	FR Cite
Final Action	08/30/88	53 FR 24699

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: William Sanjour 202 382-4502

RIN: 2050-AB53

2887. MINIMUM RECOVERED MATERIALS CONTENT IN PAPER AND PAPER PRODUCTS PROCURED BY THE FEDERAL GOVERNMENT

CFR Citation: 40 CFR 250

Completed:

Reason	Date	FR Cite
Final Action	09/23/88	53 FR 37062
Final Action Effective	12/22/88	

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Local, State, Federal

Agency Contact: David O'Brien 202 382-7815

RIN: 2050-AB19

ENVIRONMENTAL PROTECTION AGENCY (EPA) —Clean Air Act (CAA) Prerule Stage

2869. NAAQS: OZONE(REVIEW)

Significance: Regulatory Program

Legal Authority: 42 USC 7408 / CAA 108; 42 USC 7409 / CAA 109

CFR Citation: 40 CFR 50.9

Legal Deadline: Final, Statutory, December 31, 1980.
Statutory. Reviews due by December 31, 1980 and at 5-year intervals thereafter.

Abstract: EPA is reassessing health and welfare information which has become available since the last revision of the standard. In order to retain a unified regulatory review package in light of the emerging data base on health and

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welfare effects associated with longer-term averaging times, EPA is continuing the standard review until such information is published and reviewed in an addendum to the criteria document. The major issue is whether the new information will indicate that new standards with longer-term averaging times are required to protect public health and welfare.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
Complete review of criteria document addendum and staff paper NOTICE 04/00/90		

Small Entities Affected: Undetermined

Government Levels Affected: Local, State, Federal

Analysis: Regulatory Impact Analysis

Additional Information: SAR No. 1920.

FTS: 8-629-[illegible]

Agency Contact: Bruce Jordan, Environmental Protection Agency, Air and Radiation, (MD-15), Research Triangle Park, NC 27711, 919 541-5564

RIN: 2060-AA95

2890. NAAQS: NITROGEN DIOXIDE (REVIEW)

Significance: Regulatory Program

Legal Authority: 42 USC 7408 / CAA 108; 42 USC 7409 / CAA 109

CFR Citation: 40 CFR 50.11

Legal Deadline: Final, Statutory, December 31, 1980.
Statutory. Reviews by December 31, 1980 and at 5-year intervals thereafter.

Abstract: EPA is reviewing the health and welfare information that has become available since the last review of the NO2 NAAQS was completed in June 1985. The Agency will revise the standard if needed to protect the public health and welfare.

Timetable:

Action	Date	FR Cite
Complete review of criteria document and staff paper	02/00/91	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Analysis: Regulatory Impact Analysis

Additional Information: SAR No. 1994.

FTS: 8-629-5509

Agency Contact: Bruce C. Jordan, Environmental Protection Agency, Air and Radiation, (MD-15, Research Triangle Park, N.C. 27711, 919 541-5565

RIN: 2060-AC06

2891. NAAQS: CARBON MONOXIDE (REVIEW)

Significance: Regulatory Program

Legal Authority: 42 USC 7408 / CAA 108; 42 USC 7409 / CAA 109

CFR Citation: 40 CFR 50.8

Legal Deadline: Final, Statutory, December 31, 1980.
Statutory. Review by December 31, 1980 and at 5-year intervals thereafter.

Abstract: EPA is reviewing the health and welfare information that has become available since the last review of the CO NAAQS was completed in September 1985. The Agency will revise the standard if needed to protect the public health and welfare.

Timetable:

Action	Date	FR Cite
Complete review of criteria document and staff paper	09/00/90	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Analysis: Regulatory Impact Analysis

Additional Information: SAR No. 1001.

FTS: 8-629-5550

Agency Contact: Bruce C. Jordan, Environmental Protection Agency, Air and Radiation, MD-15, Research Triangle Park, NC 27711, 919 541-5565

RIN: 2060-AC07

2892. NSPS: ORGANIC SOLVENT DEGREASING

Legal Authority: 42 USC 7411 /CAA 111

CFR Citation: 40 CFR 60,Subpart JJ

Legal Deadline: Final, Statutory, August 1982.

Abstract: An NSPS was proposed for this source category in 1980. Subsequently, in 1987, the Agency solicited public participation in information gathering in preparation for a decision on whether to regulate this source category under the NESHAP program, the NSPS program or both. That regulatory decision has been delayed pending a decision on how to respond to the court's decision on vinyl chloride (see benzene reconsideration). This action could affect any manufacturing operations that employ organic solvent cleaners to remove grease and oils from parts prior to assembly.

Timetable:

Action	Date	FR Cite
NPRM	05/11/88	53 FR 16700
NOTICE -- notification of public participation	08/10/87	52 FR 29548
NOTICE -- decision on whether to regulate	00/00/00	

Small Entities Affected: Businesses

Government Levels Affected: Local, State, Federal

Analysis: Regulatory Flexibility Analysis

Additional Information: SAR No. 1010.

Docket No. OAQPS 78-12.

FTS:8-629-5568.

Agency Contact: Doug Bell, Environmental Protection Agency, Air and Radiation, (MD-13), Research Triangle Park, NC 27711, 919 541-5588

RIN: 2060-AA12

2893. NSPS: PERCHLOROETHYLENE DRY CLEANING

Legal Authority: 42 USC 7411 /CAA 111

CFR Citation: 40 CFR 60,Subpart OO

Legal Deadline: Final, Statutory, August 1982.

Abstract: Some new issues have arisen, and EPA is deciding whether to go forward with this rule. The potential regulations would apply to all types of machines and could also address auxiliary equipment and safe workplace practices. The emissions reduction techniques that would be considered would be carbon absorbers or refrigerated condensers.

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Timetable:

Action	Date	FR Cite
NPRM	11/25/80	45 FR 78174
Decision on whether to regulate NOTICE 00/00/00		

Small Entities Affected: Businesses

Government Levels Affected: Local, State, Federal

Additional Information: SAR No. 1119.

Docket No. A-79-30.

FTS:8-629-5568.

Agency Contact: Doug Bell, Environmental Protection Agency, Air and Radiation, (MD-13), Research Triangle Park, NC 27711, 919 541-5588

RIN: 2060-AA14

2894. NSPS: ORGANIC SOLVENT DEGREASING (111D)

Legal Authority: 42 USC 7411 / CAA 111

CFR Citation: 40 CFR 60

Legal Deadline: None

Abstract: An NSPS was proposed for this source category in 1980. Section 111(d) of the CAA provides a mechanism by which EPA can require states to develop emissions standards for existing sources for certain source categories for which NSPS standards have been developed. Subsequently, in 1987, the Agency solicited public participation in information gathering in preparation for a decision on whether to regulate this source category under the NESHAP program, the NSPS program or both. That regulatory decision has been delayed pending a decision on how to respond to the court's decision on vinyl chloride (see benzene reconsideration). This action could impact any manufacturing operations that employs organic solvent cleaners to remove grease and oils from parts prior to assembly.

Timetable:

Action	Date	FR Cite
Decision on whether to regulate NOTICE 00/00/00		

Small Entities Affected: Businesses

Government Levels Affected: Local, State, Federal

Analysis: Regulatory Flexibility Analysis

Additional Information: SAR No. 1925.

FTS:8-629-5624.

Agency Contact: Doug Bell, Environmental Protection Agency, Air and Radiation, (MD-13), Research Triangle Park, NC 27711, 919 541-5588

RIN: 2060-AA33

2895. NSPS: COAL PREPARATION PLANTS (REVIEW)

Legal Authority: 42 USC 7411 /CAA 111

CFR Citation: 40 CFR 60

Legal Deadline: Other, Statutory. The Agency is required to review this regulation every 4 years.

Abstract: EPA is reviewing the standard to determine if revisions are warranted. The review will assess performance and costs of emission control systems at coal preparations plants as well as the experience of the industry and control agencies in implementing the standard. EPA will issue a notice in the Federal Register announcing the results of its review.

Timetable:

Action	Date	FR Cite
Begin Review	02/11/[illegible]	
End Review	07/30/[illegible]	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Additional Information: SAR No. 2307.

FTS: 8-629-5601.

Agency Contact: Al Vervaert, Environmental Protection Agency, Air and Radiation, MD-13, Research Triangle Park, NC 27711, 919 541-5602

RIN: 2060-AH04

2896. NSPS: ASPHALT PROCESSING AND ASPHALT ROOFING MANUFACTURING PLANTS(REVIEW)

Legal Authority: 42 USC 7411/CAA 111

CFR Citation: 40 CFR 60

Legal Deadline: None

Abstract: EPA is reviewing this NSPS to determine whether revisions are warranted. The review will assess performance and costs of asphalt processing an asphalt roofing manufacturing plant control systems as well as the experience of the industry and control agencies in implementing the standard. EPA will announce the results of its review in the Federal Register.

Timetable:

Action	Date	FR Cite
Begin Review	06/00/88	
End Review	07/00/89	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Additional Information: SAR No. 2430.

FTS:8-629-5425.

Agency Contact: Kenneth Durkee, Chief, Standards Documentation Section, Environmental Protection Agency, Air and Radiation, (MD-13), Research Triangle Park, NC 27711, 919 541-5425

RIN: 2060-AC21

2897. DECISIONS ON REGULATING VARIOUS AIR POLLUTANTS

Significance: Regulatory Program

Legal Authority: 42 USC 7411/CAA 112

CFR Citation: 40 CFR Not yet determined

Legal Deadline: None

Abstract: The Agency is reviewing the health effects, sources, emissions to the ambient air, and the public exposure of the pollutants listed below. The Agency will publish decisions regarding whether these pollutants should be controlled as specified air pollutants under the Clean Air Act or under other regulatory mechanisms in order to protect the public health.

Timetable:

Action	Date	FR Cite
Acetaldehyde — Decision on Regulation	01/00/89	
Ethyl Chloride — Decision on Regulation	10/00/88	
Naphthalene — Decision on Regulation	03/21/88	(53 FR 9138)
Propylene — Decision on Regulation	10/00/88	
Propylene Oxide — Decision on Regulation	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Local, State, Federal

Additional Information: SAR No. 2181.

FTS:8-629-5646

Agency Contact: Robert G. Kellam, Environmental Protection Agency, Air

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and Radiation, MD-13, Research Triangle Park, NC 27711, 919 541-5646

RIN: 2060-AB56

2896. NESHAP-CADMIUM

Significance: Regulatory Program

Legal Authority: 42 USC 7412 /CAA 112

CFR Citation: 40 CFR 61

Legal Deadline: None

Abstract: EPA issued a notice of intent to list cadmium under Section 112 (50 FR 42960). EPA is investigating the need for regulation of cadmium and techniques to control the emissions from identified source categories. If EPA decides that emission standards are warranted, cadmium will be listed under section 112, and EPA will propose standards.

Timetable:

Action	Date	FR Cite
Decision on Regulation	11/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Local, State, Federal

Additional Information: SAR No. 1880.

FTS: 8-629-5602

Agency Contact: Al Vervaert, Environmental Protection Agency, Air and Radiation, (MD-13), Research Triangle Park, NC 27711, 919 541-5602

RIN: 2060-AB61

2899. NESHAP: PERCHLOROETHYLENE DRY CLEANING

Legal Authority: 42 USC 7412 / CAA 112

CFR Citation: 40 CFR 61

Legal Deadline: None

Abstract: In 1985, the Agency published a notice of intent to list perchloroethylene under Section 112. A decision on whether to regulate this source category under the NESHAP program has been delayed pending a decision on how to respond to the court's decision on the Vinyl Chloride NESHAP (see benzene reconsideration). The potential NESHAP regulations would apply to all types of machines and could also address auxiliary equipment and safe workplace practices.

Timetable:

Action	Date	FR Cite
NOTICE — intent to list	12/26/85	50 FR 52960
NOTICE — decision on whether to regulate	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Local, State, Federal

Additional Information: SAR No. 2360.

FTS: 8-629-5608

Agency Contact: Robert E. Roosmalel, Environmental Protection Agency, Air and Radiation, MD-13, Research Triangle Park, NC 27711, 919 541-5608

RIN: 2060-AC27

2900. NESHAP: ORGANIC SOLVENT DEGREASING

Legal Authority: 42 USC 7412 / CAA 112

CFR Citation: 40 CFR 61

Legal Deadline: None

Abstract: An NSPS was proposed for this source category in 1980. Subsequently, in 1987, the Agency solicited public participation in information gathering in preparation for a decision on whether to regulate this source category under the NESHAP program, the NSPS program or both. That regulatory decision has been delayed pending a decision on how to respond to the court's decision on the Vinyl Chloride NESHAP (see benzene reconsideration). The potential NESHAP regulations would apply to organic solvent cleaners (degreasers) and would control emissions of perchloroethylene, methylene chloride, and trichlorethylene from new and existing sources. The emissions reduction techniques that would be considered would be combinations of add-on controls, hardware and improved operating practices.

Timetable:

Action	Date	FR Cite
NOTICE — solicitation of public participation	08/17/87	52 FR 29548
NOTICE — decision on whether to regulate	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Federal, Federal

Additional Information: SAR No. 1603.

FTS: 8-629-5608

Agency Contact: Robert E. Roosmalel, Environmental Protection Agency, Air and Radiation, (MD-13), Research Triangle Park, NC 27711, 919 541-5608

RIN: 2060-AC21

2901. FUEL AND FUEL ADDITIVES: GASOLINE LEAD CONTENT (REVISION)

Significance: Regulatory Program

Legal Authority: 42 USC 7545 /CAA 211; 42 USC 7601(a) /CAA 301(a)

CFR Citation: 40 CFR 80

Legal Deadline: None
No deadline for final rulemaking. Report to Congress and the President due 10/28/88.

Abstract: EPA is examining information relevant to a ban on the use of lead in gasoline. The Agency is considering a set of alternatives ranging from no regulatory action to a ban. The Agency recently completed a cooperative study with the U.S. Department of Agriculture to assess the effects of a lead ban on farm equipment. A repost to the President and Congress has been prepared and is under final Agency review.

Timetable:

Action	Date	FR Cite
NPRM	03/07/85	50 FR 9386
Announcement of findings and recommendations		
NOTICE	10/00/88	

Small Entities Affected: Businesses

Government Levels Affected: Federal

Analysis: Regulatory Impact Analysis; Regulatory Flexibility Analysis

Additional Information: SAR No. 2234.

FTS: 8-382-2653.

Agency Contact: Richard Kozlowski, Environmental Protection Agency, Air and Radiation, (EN-397F), Washington, DC 20460, 202 382-2653

RIN: 2060-AB00

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2902. FUEL AND FUEL ADDITIVES: HEALTH AND EMISSIONS EFFECTS TESTING

Legal Authority: 42 USC 7545(e) / CAA 211(e)

CFR Citation: 40 CFR 79; 40 CFR 80

Legal Deadline: Final, Statutory, August 7, 1978.

Abstract: The CAA requires that testing protocols be developed to address at a minimum, the possible carcinogenic, mutagenic, and teratogenic effects of fuels and fuel additives as well as their effect on emissions and emission control devices. This action would implement protocols for such testing, which would have to be performed prior to: 1) fuel or additive registration, and 2) introduction of the fuel or additive into the marketplace. Fuels and additives already registered or on sale would also have to undergo testing, as provided for by the CAA.

Timetable:

Action	Date	FR Cite
ANPRM	10/00/90	

Small Entities Affected: None

Government Levels Affected: Federal

Analysis: Regulatory Flexibility Analysis

Additional Information: SAR No. 2360.

FTS: 8-374-8409

Agency Contact: Glenn Passavant, Environmental Protection Agency, Air and Radiation, 2565 Plymouth Road, Ann Arbor, MI 48105, 313 668-2435

RIN: 2060-AC10

ENVIRONMENTAL PROTECTION AGENCY (EPA) —Clean Air Act (CAA) — Proposed Rule Stage

2903. NAAQS: LEAD (REVIEW)

Significance: Regulatory Program

Legal Authority: 42 USC 7408 / CAA 108; 42 USC 7409 / CAA 109

CFR Citation: 40 CFR 50.12

Legal Deadline: Final, Statutory, December 31, 1980.
Statutory, Reviews due by December 31, 1980 and at 5-year intervals.

Abstract: EPA is reassessing the health and welfare information that has become available since the promulgation of the standard. A staff paper is in preparation for review by the Clean Air Scientific Advisory Committee (CASAC).

Timetable:

Action	Date	FR Cite
CASAC Review	02/00/89	
NPRM	03/00/90	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Analysis: Regulatory Impact Analysis

Additional Information: SAR No. 1919.

FTS: 8-629-5625.

Agency Contact: Bruce Jordan, Environmental Protection Agency, Air and Radiation, (MD-15), Research Triangle Park, NC 27711, 919 541-5656

RIN: 2060-AA85

2904. NAAQS: FINE PARTICULATE MATTER

Significance: Regulatory Program

Legal Authority: 42 USC 7408 /CAA 108; 42 USC 7409 /CAA 109

CFR Citation: 40 CFR 50.7

Legal Deadline: None

Abstract: On July 1, 1987, EPA issued an ANPRM soliciting public comment on the development of a new secondary (welfare-based) NAAQS for fine particles (those particles less than 2.5 micrometers in aerodynamic diameter). This action represents a continuation of the review process for the secondary standards for particulate matter discussed by the Agency on March 20, 1984 (49 FR 10408). The principal welfare effect to be addressed by such a standard is impairment of visibility. Once a decision on whether and how to proceed is reached, a schedule for further action will be developed.

Timetable:

Action	Date	FR Cite
ANPRM	07/01/87	52 FR 24670
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Analysis: Regulatory Impact Analysis

Additional Information: SAR No. 2577.

FTS: 8-629-5650

Agency Contact: Bruce C. Jordan, Environmental Protection Agency, Air and Radiation, MD-15, Research Triangle Park, NC 27711, 919 541-5656

RIN: 2060-AC32

2905. FEDERAL PROMULGATION OF STATE IMPLEMENTATION PLAN TO PROTECT VISIBILITY

Significance: Regulatory Program

Legal Authority: 42 USC 7410 /CAA 110; 42 USC 7491 /CAA 169A

CFR Citation: 40 CFR 52

Legal Deadline: NPRM, Judicial, August 11, 1988.

Abstract: Section 169A of the CAA requires that State Implementation Plans (SIPs) contain provisions to remedy existing and prevent future visibility impairment in certain national parks and wilderness areas. In 1980, EPA promulgated guideline regulations for States to follow in developing their SIP revisions (40 CFR 51.300-307). Many States failed to submit adequate visibility SIPs and EPA was sued to force the Agency to promulgate SIPs for such States. EPA entered into a consent decree under which it promulgated SIPs implementing most of the requirements of the visibility regulations in States that have not submitted adequate SIPs. Under the consent decree, EPA has until August 31, 1988 to propose regulations to deal with existing visibility impairment in four States.

Timetable:

Action	Date	FR Cite
NPRM	03/12/87	52 FR 7802
Final Action	11/24/87	52 FR 45132
NPRM Remedying Existing Impairment	10/00/88	

Action	Date	FR Cite
Final Action Remedying Existing Impairment	04/00/89	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Additional Information: SAR No. 2628.

FTS:8-629-5634

Agency Contact: Thompson G. Pace, Environmental Protection Agency, Air and Radiation, (MD-15), Research Triangle Park, NC 27711, 919 541-5634

RIN: 2060-AB62

2906. ◆ NEW SOURCE REVIEW REQUIREMENTS — CMA EXHIBIT B

Legal Authority: 42 USC 7410 /CAA 110

CFR Citation: 40 CFR 51; 40 CFR 52

Legal Deadline: None

Abstract: This action would revise EPA's new source requirements for new major stationary sources in PSD and nonattainment areas. EPA is taking this action to implement a settlement agreement with Chemical Manufacturer's Association (CMA) and other parties who challenged the regulation amendments promulgated on August 7, 1980. This action covers the issues in Exhibit B of the agreement.

Timetable:

Action	Date	FR Cite
NPRM	09/00/89	
Final Action	11/00/89	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Additional Information: SAR No. 2615

FTS:8-629-5562

Agency Contact: Gary McCutchen, Environmental Protection Agency, Air and Radiation, (MD-15), Research Triangle Park, NC, 27711, 919 541-5562

RIN: 2060-AC54

2907. NSPS: SOCMI REACTOR PROCESSES

Legal Authority: 42 USC 7411 / CAA 111

CFR Citation: 40 CFR 60

Legal Deadline: None

Abstract: The scope of the Synthetic Organic Chemical Manufacturing Industry (SOCMI) reactor processes includes all reactor processes (other than air oxidation reactor processes) used to manufacture 173 synthetic organic chemicals produced in quantities of at least 100 million lb/yr. These large-volume chemicals account for about 90 percent of the total domestic chemical production from the SOCMI.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Additional Information: SAR No. 2154.

FTS:8-629-5568.

Agency Contact: Doug Bell, Environmental Protection Agency, Air and Radiation, MD-13, Research Triangle Park, NC 27711, 919 541-5566

RIN: 2060-AB55

2908. NSPS: SMALL BOILERS

Legal Authority: 42 USC 7411 /CAA 111

CFR Citation: 40 CFR 60

Legal Deadline: NPRM, Judicial, June 1, 1989. Final, Judicial, September 1, 1990.

Abstract: The purpose of this action is to develop new source performance standards for small industrial-commercial-institutional boilers with heat input capacities of 100 million Btu/hr or less.

Timetable:

Action	Date	FR Cite
NPRM	06/00/89	
Final Action	09/00/90	

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Local, State, Federal

Analysis: Regulatory Flexibility Analysis

Additional Information: SAR No. 2238.

FTS:8-629-5565

Agency Contact: Kenneth Durkee, Environmental Protection Agency, Air and Radiation, (MD-13), Research Triangle Park, NC 27711, 919 541-5566

RIN: 2060-AB56

2909. NSPS: MUNICIPAL WASTE COMBUSTORS

Legal Authority: 42 USC 7411 / CAA 111

CFR Citation: 40 CFR 60

Legal Deadline: None

Abstract: The EPA has completed a preliminary assessment of air emissions from municipal waste combustors (MWC). Based on this assessment, EPA has concluded that MWC emissions may reasonably be anticipated to contribute to the endangerment of public health and welfare. As a result, EPA issued a notice in the Federal Register (52 FR 25399) that announces its intent to regulate emissions from new and modified MWC under Section 111(b). Pollutants to be regulated will include one or more designated pollutants (pollutants not regulated under Sections 108-110 or 112) thus invoking Section 111(d) which will require States to develop additional emissions standards for existing MWC based on EPA guidelines.

Timetable:

Action	Date	FR Cite
ANPRM	07/07/87	52 FR 25399
ANPRM Comment Period End	10/06/87	52 FR 37335
NPRM	11/00/89	
NPRM Comment Period End	01/00/90	
Final Action	12/00/90	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Additional Information: SAR No. 2424.

FTS:8-629-5603

Agency Contact: Alfred E. Vervaert, Environmental Protection Agency, Air and Radiation, MD-13, Research Triangle Park, NC 2771, 919 541-5602

RIN: 2060-AC28

2910. NSPS: MUNICIPAL LANDFILLS

Significance: Agency Priority

Legal Authority: 42 USC 7411/CAA 111

CFR Citation: 40 CFR 60

Legal Deadline: None

Abstract: This rule will regulate emissions from new and modified municipal landfills under Section 111(b). Pollutants to be regulated will include one or more designated pollutants (pollutants not regulated under Section 108 - 110 or 112 of the Act) thus invoking Section 111(d). Section 111(d) will require States to develop emission standards for existing landfills based on EPA guidelines.

Timetable:

Action	Date	FR Cite
NPRM	11/00/89	
Final Action	12/00/90	

Small Entities Affected: Undetermined

Government Levels Affected: Local, State, Federal

Additional Information: SAR No. 2535.

FTS:8-629-5672

Agency Contact: James F. Durham, Environmental Protection Agency, Air and Radiation, Air and Radiation, (MD-13), Research Triangle Park, NC 27711, 919 541-5672

RIN: 2060-AC42

2911. NESHAP: COKE OVEN EMISSIONS FROM COKE OVEN CHARGING, DOOR LEAKS, AND TOPSIDE LEAKS ON WET-COAL-CHARGED BATTERIES

Significance: Regulatory Program

Legal Authority: 42 USC 7412 / CAA 112

CFR Citation: 40 CFR 61 G

Legal Deadline: NPRM, Statutory, March 1985.

Abstract: This regulation would control emissions of coke oven emissions, which have been designated as hazardous under section 112. It would require improved maintenance and operation to limit visible emissions from wet-coal-charged coke oven batteries. The standards may apply to charging and leaks from doors, lids, or offtakes for all existing or new sources. A supplemental proposal will be published to reevaluate the standard consistent with the court decision on vinyl chloride. The schedule has been delayed pending a decision on how to respond to a court decision on the Vinyl Chloride NESHAP (see benzene reconsideration).

Timetable:

Action	Date	FR Cite
NPRM	04/23/87	52 FR 13586
Final Action (Supplemental) NPRM	00/00/00 01/00/90	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Additional Information: SAR No. 1980.

Docket No. A-79-15.

FTS:8-629-5568.

Agency Contact: Doug Bell, Environmental Protection Agency, Air and Radiation, (MD-13), Research Triangle Park, NC 27711, 919 541-5566

RIN: 2060-AA46

2912. NESHAP: ASBESTOS (REVISION)

Legal Authority: 42 USC 7412 / CAA 112

CFR Citation: 40 CFR 61, Subpart M

Legal Deadline: None

Abstract: The Agency is considering revising the asbestos NESHAP standard to require the addition of monitoring requirements for asbestos mills, asbestos manufacturing operations and asbestos waste disposal operations. EPA is also considering revising the demolition and renovation standard to require specific recordkeeping and reporting requirements designed to help improve compliance of these sources, which is currently believed to be low. The schedule has been delayed pending a decision on how to respond to the court decision on the Vinyl Chloride NESHAP (see benzene reconsideration).

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Local, State, Federal

Additional Information: SAR No. 1714.

FTS 8-629-5625.

Agency Contact: Gilbert Wood, Environmental Protection Agency, Air and Radiation, (MD-13), Research Triangle Park, NC 27711, 919 541-5625

RIN: 2060-AB51

2913. NESHAP: CHROMIUM

Legal Authority: 42 USC 7412 /CAA 112

CFR Citation: 40 CFR 61

Legal Deadline: None

Abstract: EPA issued a notice of intent to list total chromium or hexavalent chromium under Section 112 (50 FR 24317). EPA is further assessing the public health risks of chromium compounds. Also, EPA is investigating emissions of chromium and techniques that are available to control the emissions from 11 identified source categories. If EPA decides that emission standards are warranted, chromium or hexavalent chromium will be listed under Section 112, and EPA will propose standards. Agency actions on industrial comfort cooling towers and chromium electroplating are described separately in the agenda.

Timetable:

Action	Date	FR Cite
NPRM — decision on whether to regulate	11/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Local, State, Federal

Additional Information: SAR No. 2181.

FTS: 8-629-5599

Agency Contact: James Crowder, Environmental Protection Agency, Air and Radiation, (MD-13), Research Triangle Park, NC 27711, 919 541-5588

RIN: 2060-AB63

2914. NESHAP: CHROMIUM—INDUSTRIAL COOLING TOWERS

Significance: Regulatory Program

Legal Authority: 42 USC 7412 / CAA 112

CFR Citation: 40 CFR 61

Legal Deadline: None

Abstract: EPA issued a notice of intent to list total chromium or hexavalent chromium under Section 112 (50 FR 24317). EPA is further assessing the public health risks of chromium compounds. Preliminary assessment performed by EPA has identified industrial process cooling towers as a source category for which the proposal of national emission standards may be warranted. If EPA decides, based on

these investigations, that emissions standards are warranted, chromium or hexavalent chromium will be listed under Section 112 and EPA will propose standards.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
Final Action	03/00/91	

Small Entities Affected: Undetermined

Government Levels Affected: Local, State, Federal

Additional Information: SAR No. 2385.

FTS:8-629-5602

Agency Contact: Al Vervaert, Environmental Protection Agency, Air and Radiation, MD-13, 919 541-5602

RIN: 2060-AC12

2915. NESHAP: CHROMIUM—ELECTROPLATING

Significance: Regulatory Program

Legal Authority: 42 USC 7412 / CAA 112

CFR Citation: 40 CFR 61

Legal Deadline: None

Abstract: EPA issued a notice of intent to list chromium or hexavalent chromium under Section 112 (50 FR 24317). EPA is further assessing the public health risks of chromium compounds. A preliminary assessment performed by EPA has identified chromium electroplating as a source category which emits significant quantities of chromium to the atmosphere and for which the proposal of national emission standards may be warranted. If EPA decides, based on these investigations, that emission standards are warranted, chromium or hexavalent chromium will be listed under Section 112, and standards will be proposed.

Timetable:

Action	Date	FR Cite
NPRM	01/00/90	
Final Action	03/00/91	

Small Entities Affected: Undetermined

Government Levels Affected: Local, State, Federal

Additional Information: SAR No. 2386.

FTS:8-629-5602.

Agency Contact: Al Vervaert, Environmental Protection Agency, Air and Radiation, MD-13, 919 541-5602

RIN: 2060-AC14

2916. NESHAP: HAZARDOUS ORGANICS

Significance: Regulatory Program

Legal Authority: 42 USC 7412/CAA 112

CFR Citation: 40 CFR 61

Legal Deadline: None

Abstract: This potential regulation would control emissions of 1,3-butadiene, ethylene oxide, ethylene dichloride, chloroform, carbon tetrachloride, perchloroethylene, trichloroethylene, and methylene chloride, as hazardous pollutants under Section 112. The potential regulation would cover the production categories and some use categories for these eight pollutants. It would require installation of combustion devices to control process vents and an inspection and monitoring program to control leaks from pumps and valves. The schedule has been delayed pending a decision on how to respond to the court decision on the Vinyl Chloride NESHAP (see benzene reconsideration).

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Local, State, Federal

Additional Information: SAR No. 2383.

FTS:8-629-5578

Agency Contact: Doug Bell, Environmental Protection Agency, Air and Radiation, (MD-13), Research Triangle Park, NC 27711, 919 541-5578

RIN: 2060-AC19

2917. NESHAP: ETHYLENE OXIDE FROM COMMERCIAL STERILIZATION

Legal Authority: 42 USC 7412 / CAA 112

CFR Citation: 40 CFR 61

Legal Deadline: None

Abstract: This potential standard would control ethylene oxide emissions from sterilization chambers. The emission reduction being considered would require add-on controls for sterilizers. The schedule has been delayed pending decision on how to respond to the court decision on the Vinyl Chloride NESHAP (see benzene reconsideration).

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Local, State, Federal

Additional Information: SAR No. 2404

FTS:8-629-5500

Agency Contact: Robert E. Rosensteel, Environmental Protection Agency, Air and Radiation, MD-13, Research Triangle Park, NC 27711, 919 541-5500

RIN: 2060-AC25

2918. NESHAP: BENZENE RECONSIDERATION

Significance: Regulatory Program

Legal Authority: 42 USC 7412/CAA 112

CFR Citation: 40 CFR 61

Legal Deadline: NPRM, Judicial, June 1988. Final, Judicial, December 1988. Since the June, 1988 proposal date was extended to July 20, the final action will most likely be extended.

Abstract: In June 1984, the Agency promulgated a NESHAP for benzene equipment leaks and withdrew proposed NESHAPS for benzene emissions from maleic anhydride plants, ethylbenzene/styrene plants, and benzene storage tanks (49 FR 23478). This action will reevaluate the three withdrawn proposals and the benzene fugitive NESHAP, along with coke oven by-product emission, consistent with the recent court decision on the vinyl chloride NESHAP.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Local, State, Federal

Additional Information: SAR No. 2556.

FTS:8-629-5625

Agency Contact: Gilbert Wood, Environmental Protection Agency, Air and Radiation, Air and Radiation, (MD-13), Research Triangle Park, NC 27711, 919 541-5625

RIN: 2060-AC41

2919. NESHAP: RADIONUCLIDES

Significance: Regulatory Program

Legal Authority: 42 USC 7401/CAA 112

CFR Citation: 40 CFR 61

Legal Deadline: NPRM, Judicial, February 28, 1989. Final, Judicial, August 31, 1989.
U.S. Court of Appeals for the D.C. Circuit has granted EPA's motion to remand radionuclides NESHAPs and decisions not to regulate.

Abstract: EPA addressed the risks to individuals and to populations due to radionuclide emissions to air in rulemaking decisions issued in 1985. Following the Vinyl Chloride decision, EPA requested a voluntary reward from the D.C. Circuit to reconsider its decisions in light of the court's opinion. This action is taken under the authority of Section 112 of the Clean Air Act. Reconsideration will include the following source categories: Department of Commission, Elemental Phosphorous plants, Radon-222 emissions from licensed uranium mill tailings, Coal-fired boilers, uranium fuel cycle facilities, inactive uranium mill tailings, high-level radioactive waste, and phosphogypsum piles. Alternatives the Agency is considering are either the promulgation of emission standards or work practices or a decision not to regulate. These actions will consider the risks due to radionuclides emitted to air from all significant sources (see also benzene reconsideration).

Timetable:

Action	Date	FR Cite
NPRM	02/00/89	
Final Action	08/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Local, State, Federal

Additional Information: SAR No. 2547.

FTS:8-475-8610

Agency Contact: Terrence A. McLaughlin, Environmental Protection Agency, Air and Radiation, (ANR-460), Washington, DC 20460, 202 475-8610

RIN: 2060-AC47

2920. GUIDELINE ON AIR QUALITY MODELS (REVISION)

Legal Authority: 42 USC 2475(e)/CAA 165(e)

CFR Citation: 40 CFR 51.24(l); 40 CFR 52.21(m)

Legal Deadline: None

Abstract: In response to Section 320 of the Clean Air Act, EPA plan to hold the Fourth Conference on Air Quality Modeling in October 1988. Based on input provided to the Agency at or closely following this Conference, the need for additional revisions to EPA's Guideline on Air Quality Models will be evaluated. If appropriate, a NPRM will be developed.

Timetable:

Action	Date	FR Cite
NPRM	09/00/89	
Final Action	12/00/89	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Additional Information: SAR No. 2557.

FTS:8-625-5561

Agency Contact: Joseph Tikvart, Environmental Protection Agency, Air and Radiation, (MD-14), Research Triangle Park, NC 27711, 919 541-5561

RIN: 2060-AC43

2921. PSD INCREMENTS FOR PM10

Significance: Regulatory Program

Legal Authority: 42 USC 7476/CAA 166

CFR Citation: 40 CFR 52.21; 40 CFR 51.166

Legal Deadline: Final, Statutory, July 1, 1989.

Abstract: The purpose of this action is to prevent significant deterioration of air quality as measured by the new indicator for particulate matter, PM10. The existing PSD program has particulate matter increments based on the original TSP indicator. The EPA has now promulgated a PM10 NAAQS to replace the original TSP-based particulate matter NAAQS. Therefore, EPA is preparing to revise the PSD program by promulgating PM10 increments in accordance with section 166 of the Clean Air Act.

Timetable:

Action	Date	FR Cite
NPRM	03/00/89	
Final Action	03/00/90	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Additional Information: SAR No. 2401.

FTS:8-629-5563

Agency Contact: Daniel DeRoeck, Environmental Protection Agency, Air and Radiation, MD-15, Research Triangle Park, NC 27711, 919 541-5563

RIN: 2060-AC32

2922. HYDROCARBON STANDARDS FOR LIGHT-DUTY TRUCKS (REVISION)

Significance: Regulatory Program

Legal Authority: 42 USC 7521 / CAA 202

CFR Citation: 40 CFR 86

Legal Deadline: None

Abstract: Through this action, EPA will consider the establishment of more stringent hydrocarbon emission standards for light-duty trucks based upon the belief that very cost-effective hydrocarbon control is available from these vehicles. The new standards for lighter light-duty trucks would be no more stringent than the existing passenger car standard and an equivalently stringent standard for heavier light-duty trucks. In the ANPRM, EPA also requested comments on the possibility of tighter carbon monoxide standards for light-duty trucks.

Timetable:

Action	Date	FR Cite
ANPRM	09/08/86	51 FR 32032
NPRM	03/00/89	

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAR No. 2397.

FTS: 8-374-4496.

Agency Contact: J. Anderson, Environmental Protection Agency, Air and Radiation, 2565 Plymouth Road, Ann Arbor, MI 48105, 313 668-4496

RIN: 2060-AE85

2923. DECISION ON AIR POLLUTION REGULATORY STRATEGIES FOR THE GASOLINE MARKETING INDUSTRY

Significance: Regulatory Program

Legal Authority: 42 USC 7521 / CAA 202; 42 USC 7525 / CAA 206

CFR Citation: 40 CFR 86

Legal Deadline: None

Abstract: Evaporative hydrocarbons emitted during vehicle refueling contribute to the failure of many urban areas to attain the National Ambient Air Quality Standard for ozone. Through this action, if deemed feasible and desirable, EPA will control emissions at the time of refueling.

Timetable:

Action	Date	FR Cite
NPRM	06/19/87	52 FR 31162
Supplemental NPRM	12/00/88	
Final Action	01/00/90	

Small Entities Affected: None

Government Levels Affected: Federal

Analysis: Regulatory Impact Analysis

Additional Information: SAR No. 2384.

FTS:8-374-8279

Agency Contact: Phil Carlson, Environmental Protection Agency, Air and Radiation, Environmental Protection Agency, 2565 Plymouth Rd., Ann Arbor, MI 48105, 313 668-4279

RIN: 2060-AC24

2924. TRADING AND BANKING OF HEAVY-DUTY ENGINE NOX AND PM EMISSION CREDITS

Significance: Regulatory Program

Legal Authority: 42 USC 7521 / CAA 202

CFR Citation: 40 CFR 86

Legal Deadline: None

Abstract: In March 1985 the EPA promulgated NOx and PM emission standards for heavy-duty vehicles and engines. The rulemaking included a provision for emissions averaging for the final stages of standard implementation in order to mitigate the economic impact of the stringent standards. EPA realized that the averaging mechanism could provide more benefits to manufacturers with a broader product line. In order to address this issue, EPA included in the final package a provision to study the potential for mitigating this uneven distribution of benefits through an emissions credit trading program. The study was expanded to include the concept of 'banking' emissions credit. The study has been completed and made available to the public and a technical workshop was held in January 1987. EPA is analyzing the comments received from the public and from the workshop.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: Federal

Additional Information: SAR No. 1313.

FTS: 8-374-8408

Agency Contact: Gham Passavant, Environmental Protection Agency, Air and Radiation, 2565 Plymouth Road, Ann Arbor, MI 48105, 313 668-4488

RIN: 2060-AC06

2925. TEST PROCEDURES FOR TRAP-EQUIPPED DIESEL VEHICLES AND ENGINES

Legal Authority: 42 USC 7525 / CAA 206

CFR Citation: 40 CFR 86

Legal Deadline: None

Abstract: The particulate standards for 1991 and later model year heavy-duty diesel engines may require the use of trap-oxidizers for some vehicles and engines. The existing test procedures do not expressly describe how to deal with emissions and fuel economy effects during trap regeneration. If it turns out that trap oxidizers are necessary to comply with the 1991 particulate standards, the Agency will develop an appropriate test procedure.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: Federal

Additional Information: SAR No. 2573.

FTS: 8-374-8496

Agency Contact: John Anderson, Environmental Protection Agency, Air and Radiation, 2565 Plymouth Road, Ann Arbor, MI 48105, 313 668-4488

RIN: 2060-AC08

2926. NONCONFORMANCE PENALTIES FOR 1991 THROUGH 1994 MODEL YEAR EMISSION STANDARDS FOR HEAVY-DUTY VEHICLES AND ENGINES

Legal Authority: 42 USC 7524 /CAA 206

CFR Citation: 40 CFR 86

Legal Deadline: None

Abstract: This action will address the availability of nonconformance penalties (NCPs) and specific upper limits and penalty rates for 1991 through 1994 model year emission standards for heavy-duty vehicles and engines. The availability of NCPs will allow a manufacturer, whose vehicles or engines fail to conform with certain applicable emission standards, but which do not exceed a designated upper limit, to be issued a certificate of conformity upon payment of a monetary penalty. This rule is the third phase of NCP rulemaking. The first, published August 30, 1985 established generic aspects of NCPs. The second, published December 31, 1985, addressed NCPs applicable to 1987 through 1990 model years.

Timetable:

Action	Date	FR Cite
NPRM	03/00/89	

Small Entities Affected: None

Government Levels Affected: Federal

Additional Information: SAR No. 2431.

FTS:8-382-2535.

Agency Contact: Richard Baisi, Environmental Protection Agency, Air and Radiation, (EN-340-F), Washington, DC 20460, 202 382-2535

RIN: 2060-AC39

2927. EMISSION PERFORMANCE WARRANTY REGULATIONS (REVISION)

Legal Authority: 42 USC 7541(b) / CAA 207(b)

CFR Citation: 40 CFR 85

Legal Deadline: None

Abstract: This rulemaking will address the issue of establishing: (1) test procedures and standards for heavy-duty gasoline vehicles, (2) new standards for light-duty vehicles and light-duty trucks, and (3) alternative dynamometer loadings for the loaded short tests. These amendments are appropriate so that owners of heavy-duty vehicles will have emissions warranty protection and additional owners of light-duty vehicles and trucks will be entitled to warranty protection.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: Federal

Additional Information: SAR No. 2136.

FTS: 8-374-8416.

Agency Contact: Jane Armstrong, Environmental Protection Agency, Air and Radiation, 2625 Plymouth Road, Ann Arbor, MI 48105, 313 668-4416

RIN: 2060-AB53

2928. ◆ ALTERNATIVE TEST PROCEDURES FOR THE VOLUNTARY AFTERMARKET PART CERTIFICATION PROGRAM

Legal Authority: 42 USC 7541 /CAA 207

CFR Citation: 40 CFR 85

Legal Deadline: None

Abstract: This action would consider an alternative testing procedure to be used in the voluntary aftermarket parts certification program for certifying aftermarket parts. Currently only the full Federal Test Procedure is an acceptable test procedure for this program.

Timetable:

Action	Date	FR Cite
NPRM	01/00/89	
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: SAR No. 2037

FTS:8-374-4316

Agency Contact: Michael Sabourin, Environmental Protection Agency, Air and Radiation, 2565 Plymouth Road, Ann Arbor, MI 48105, 313 668-4316

RIN: 2060-AC29

2929. ◆ MOTOR VEHICLE EMISSIONS PERFORMANCE WARRANTY SHORT TESTS

Legal Authority: 42 USC 7541 /CAA 207

CFR Citation: 40 CFR 85

Legal Deadline: None

Abstract: This action will consider allowing alternative dynamometer specifications for an existing loaded-mode short test approved for use in State and local inspection/maintenance programs in conjunction with the federal emissions performance warranty regulations. The alternative specifications the Agency is considering would allow lower loading, perhaps varying by engine size. Such a change could improve overall test effectiveness for identifying excess in-use emissions and correlation with the Federal Test Procedure.

Timetable:

Action	Date	FR Cite
NPRM	11/00/89	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: SAR No. 2036

FTS:8-374-4471

Agency Contact: Jane Armstrong, Environmental Protection Agency, Air and Radiation, Emission Control Technology Division, 2565 Plymouth Rd, Ann Arbor, MI 48105, 313 668-4471

RIN: 2060-AC51

2930. DIESEL FUEL QUALITY STANDARDS

Significance: Regulatory Program

Legal Authority: 42 USC 7545 / CAA 211

CFR Citation: 40 CFR 79; 40 CFR 80

Legal Deadline: None

Abstract: Trap oxidizers, the use of which may be required to meet future heavy-duty diesel particulate standards, may require the use of low sulfur diesel fuels. In promulgating the particulate standard, EPA promised to examine the potential need for low-sulfur fuel. In particular, fuel sulfur and aromatics content have been shown to have a direct effect on particulate emissions. This action will consider the costs and benefits of improving diesel fuel quality.

Timetable:

Action	Date	FR Cite
NPRM	07/00/89	

Small Entities Affected: None

Government Levels Affected: Federal

Analysis: Regulatory Impact Analysis; Regulatory Flexibility Analysis

Additional Information: SAR No. 2369.

FTS:8-374-8339

Agency Contact: Richard Rykowski, Environmental Protection Agency, Air and Radiation, 2565 Plymouth Road, Ann Arbor, MI 48105, 313 668-4339

RIN: 2060-AC11

2931. ◆ GENERAL REQUIREMENTS FOR DETERMINATION OF GASOLINE METAL CONTENT

Legal Authority: 42 USC 7545 /CAA 211; 42 USC 7601 /CAA 301

CFR Citation: 40 CFR 80

Legal Deadline: None

Abstract: This action will add a new method(s) to a previously promulgated set of testing procedures for the determination of lead (and perhaps other metals) content in gasoline. Such action would provide flexibility to both government and private laboratories in analyzing gasoline samples.

Timetable:

Action	Date	FR Cite
NPRM	01/00/89	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: SAR No. 2029

FTS:8-374-8841

Agency Contact: David Korotn, Environmental Protection Agency, Air and Radiation, (EN-397F), Washington, DC 20460, 202 475-8841

RIN: 2060-AC32

2932. ◆ FUEL AND FUEL ADDITIVES: ENFORCEMENT OF SECTION 211(F)(4) WAIVERS

Legal Authority: 42 USC 7545 /CAA 211; 42 USC 7601 /CAA 301

CFR Citation: 40 CFR 80

Legal Deadline: None

Abstract: The purpose of this action is to establish regulations under sections

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211(c) and 211(f) of the CAA for the enforcement of prohibitions against certain fuel and fuel additives not complying with CAA requirements. The regulations will also formalize the procedures for reviewing applications from manufacturers of fuel and fuel additives for waivers of the provisions of paragraphs (1), (2), and (3) of section 211(f), which the Agency may grant pursuant to section 211(f)(4).

Timetable:

Action	Date	FR Cite
NPRM	08/00/89	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: SAR No. 2604

FTS:8-374-8572

Agency Contact: Nancy Firl, Environmental Protection Agency, Air and Radiation, (EN-387F), Washington, DC 20460, 202 475-8572

RIN: 2060-AC53

2933. TREATMENT, STORAGE, AND DISPOSAL FACILITY AREA SOURCE AIR EMISSIONS - RCRA STANDARDS

Significance: Regulatory Program

Legal Authority: 42 USC 6924/RCRA 3004, 3007

CFR Citation: 40 CFR 264, Subparts I in N

Legal Deadline: None

Abstract: The purpose of this action is to investigate the magnitude of the area non-combustion source air emissions from hazardous waste treatment, storage, and disposal facilities and to develop standards for monitoring and control as needed. Area sources include surface impoundments, landfills, waste piles, land treatment operations and waste water treatment facilities. Pollutants to be considered by such standards would include volatile organic compounds, particulate matter, specific toxic substances, or a combination of these. The mandate for standards development under RCRA is to protect human health and the environment.

Timetable:

Action	Date	FR Cite
NPRM	08/00/89	
Final Action	12/00/90	

Small Entities Affected: Undetermined

Government Levels Affected: State, Federal

Additional Information: SAR No. 2340.

FTS:8-629-5672.

Agency Contact: James F. Durham, Environmental Protection Agency, Air and Radiation, (MD-13), Research Triangle Park, NC 27711, 919 541-5572

RIN: 2060-AB94

ENVIRONMENTAL PROTECTION AGENCY (EPA) —Clean Air Act (CAA) — Final Rule Stage

2934. ◆ STATE IMPLEMENTATION PLANS: ATTAINMENT STATUS DESIGNATIONS

Significance: Agency Priority

Legal Authority: 42 USC 7501-7508 /CAA 101-108

CFR Citation: 40 CFR 81

Legal Deadline: NPRM, Statutory, August 31, 1988.

Abstract: On June 6, 1988 (53 FR 20722), the EPA, as directed by the Mitchell-Conte Amendment of December 22, 1987 (contained in the continuing resolution of 1987, Pub. L. 100-202), proposed to designate as nonattainment under the CAA those areas throughout the nation that have not attained the NAAQS for either ozone or carbon monoxide (CO). EPA proposed to designate as nonattainment those areas currently codified as attainment or unclassified, and to renew the designations for areas currently codified as nonattainment. The notice also proposed for public comment 3 interpretations of the regulatory consequences of these nonattainment designations under the Mitchell-Conte amendment.

Timetable:

Action	Date	FR Cite
NPRM	06/06/88	53 FR 20722
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Additional Information: SAR No. 5449

FTS:8-629-5517

Agency Contact: Brock Nicholson, Environmental Protection Agency, Air and Radiation, (MD-15), Research Triangle Park, NC 27711, 919 541-5517

RIN: 2060-AC56

2935. NAAQS: SULFUR OXIDES (REVISION)

Significance: Regulatory Program

Legal Authority: 42 USC 7409 /CAA 109

CFR Citation: 40 CFR 50.4; 40 CFR 50.5

Legal Deadline: Other, Statutory, December 31, 1980.
Reviews due by December 31, 1980 and at 5-year intervals thereafter.

Abstract: EPA has reviewed the scientific criteria used as a basis for establishing ambient air quality standards for sulfur oxides. The Agency will revise the standards if and as appropriate to protect public health and welfare. On April 28, 1988, EPA announced its proposed decision not to revise the current standards. The notice also solicited comment on the alternative of adding a new 1-hour standard and certain other revisions.

Timetable:

Action	Date	FR Cite
ANPRM	10/02/79	44 FR 56730
NPRM	04/28/88	53 FR 14926
Final Action	11/00/89	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Analysis: Regulatory Impact Analysis

Additional Information: SAR No. 1002.

Docket No. OAQPS-79-7.

FTS:8-629-5656.

Agency Contact: Bruce Jordan, Environmental Protection Agency, Air and Radiation, (MD-15), Research Triangle Park, NC 27711, 919 541-5656

RIN: 2060-AA51

EPA—CAA — Final Rule Stage

2936. NEW SOURCE REVIEW REQUIREMENTS – CMA EXHIBIT A

Significance: Regulatory Program

Legal Authority: 42 USC 7410/CAA 110

CFR Citation: 40 CFR 51; 40 CFR 52

Legal Deadline: None

Abstract: This action would revise EPA's new source requirements for new major stationary sources in PSD and Nonattainment areas. EPA is taking this action to implement a settlement agreement with Chemical Manufacturer's Association and other parties who challenged the regulation amendments promulgated on August 7, 1980. The schedule below covers the issues included in Exhibit A of the Agreement; a separate rulemaking is underway for Exhibit B issues.

Timetable:

Action	Date	FR Cite
NPRM	08/25/83	48 FR 38742
Final Action	12/00/88	
Final Action		
New Source Review 10/00/88		
Surface Coal Mines 10/00/88		
NPRM		
New Source Review 08/25/83 (48 FR 38742)		
Surface Coal Mines 10/24/84 (48 FR 43211)		

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Additional Information: SAR No. 1845.

FTS:8-629-5592.

Agency Contact: Gary McCutchen, Environmental Protection Agency, Air and Radiation, MD-15, Research Triangle Park, NC 27711, 919 541-5592

RIN: 2060-AA68

2937. ◆ NEW SOURCE REVIEW REQUIREMENTS – SURFACE COAL MINES AND FUGITIVE EMISSIONS

Significance: Regulatory Program

Legal Authority: 42 USC 7410 /CAA 110; 42 USC 7470-7479 /CAA 160-169

CFR Citation: 40 CFR 52.21; 40 CFR 51.166; 40 CFR 52.24; 40 CFR Appendix S

Legal Deadline: None

Abstract: The various EPA regulations that govern new construction under the CAA generally apply to "major" new stationary sources of air pollution and "major" modifications of existing sources. They require fugitive emissions to be included in threshold applicability determinations of whether a new source is "major," but only for 30 categories of sources. The purpose of this action is to determine if surface coals mines should be added to the existing list of 30 categories. A companion action will respond to a petition on the more general issue of including fugitive emissions in NSR applicability determinations.

Timetable:

Action	Date	FR Cite
NPRM	10/26/84	49 FR 43211
Final Action	06/00/89	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Additional Information: SAR No. 2298

FTS:8-629-5374

Agency Contact: William Lamason, Environmental Protection Agency, Air and Radiation, (MD-15), Research Triangle Park, NC 27711, 919 541-5374

RIN: 2060-AC01

2938. NSPS: SOCMI AIR OXIDATION PROCESS

Legal Authority: 42 USC 7411 / CAA 111

CFR Citation: 40 CFR 60, Subpart III

Legal Deadline: None

Abstract: This regulation will control emissions of volatile organic compounds from the manufacture of synthetic organic chemicals via air oxidation processes.

Timetable:

Action	Date	FR Cite
NPRM	10/21/83	48 FR 48932
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Additional Information: SAR No. 1818.

FTS:8-629-5578.

Agency Contact: Doug Bell, Environmental Protection Agency, Air and Radiation, (MD-13), Research Triangle Park, NC 27711, 919 541-5580

RIN: 2060-AA39

2939. NSPS: DISTILLATION OPERATIONS

Legal Authority: 42 USC 7411 / CAA 111

CFR Citation: 40 CFR 60

Legal Deadline: None

Abstract: This regulation will control emissions of volatile organic compounds from new, modified, and reconstructed distillation facilities at petroleum refineries and synthetic organic chemical plants.

Timetable:

Action	Date	FR Cite
NPRM	12/30/83	48 FR 57536
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Additional Information: SAR No. 1733.

FTS:8-629-5588.

Agency Contact: Doug Bell, Environmental Protection Agency, Air and Radiation, (MD-13), Research Triangle Park, NC 27711, 919 541-5588

RIN: 2060-AA35

2940. NSPS: PETROLEUM REFINERY, FCC REGENERATORS

Legal Authority: 42 USC 7411 / CAA 111

CFR Citation: 40 CFR 60

Legal Deadline: None

Abstract: This standard will require control of sulfur dioxide from fluidized catalytic cracking units.

Timetable:

Action	Date	FR Cite
NPRM	11/08/85	50 FR 46464
Final Action	02/00/89	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Additional Information: SAR No. 1730.

FTS:8-629-5625.

Agency Contact: Gilbert Wood, Environmental Protection Agency, Air and Radiation, (MD-13), Research Triangle Park, NC 27711, 919 541-5625

RIN: 2060-AA36

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2941. NSPS: POLYMER AND RESIN MANUFACTURE

Legal Authority: 42 USC 7411 / CAA 111

CFR Citation: 40 CFR 60

Legal Deadline: Final, Statutory, August 1982.

Abstract: This rule will control volatile organic compound (VOC) emissions in exhaust streams from polymerization processes in the manufacture of organic polymers and resins.

Timetable:

Action	Date	FR Cite
NPRM	09/30/87	52 FR 36678
Final Action	08/00/89	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Sectors Affected: Multiple

Additional Information: SAR No. 1881.

Docket No. A-82-19.

FTS:8-629-5578.

Agency Contact: Gilbert Wood, Environmental Protection Agency, Air and Radiation, (MD-13), Research Triangle Park, NC 27711, 919 541-5578

RIN: 2060-AA37

2942. NSPS: SEWAGE TREATMENT PLANTS (REVISION)

Legal Authority: 42 USC 7411 / CAA 111

CFR Citation: 40 CFR 60

Legal Deadline: None

Abstract: EPA has reviewed this standard and determined that revisions to the monitoring, recordkeeping and reporting requirements are warranted. The review assessed the performance and cost of control systems as well as experience in implementing the existing standard. EPA has issued a notice in the Federal Register announcing the results of its review and proposing revisions to the monitoring, recordkeeping and reporting requirements (51 FR 13424).

Timetable:

Action	Date	FR Cite
NPRM	04/18/86	51 FR 43424
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Additional Information: SAR No. 2039.

FTS: 8-629-5602.

Agency Contact: Al Vervaert, Environmental Protection Agency, Air and Radiation, MD-13, Research Triangle Park, NC 27711, 919 541-0902

RIN: 2060-AD05

2943. NSPS: AUTOMOBILE AND LIGHT-DUTY TRUCK COATING OPERATIONS (REVISION)

Legal Authority: 42 USC 7411 / CAA 111

CFR Citation: 40 CFR 60

Legal Deadline: None

Abstract: EPA is revising the NSPS for automobile and light-duty truck coating operations which was promulgated in December 1980 to reflect additional operational data of the best demonstrated prime coat system. This revision of the standard does not reflect a change in the basis of the prime coat standard, but a better understanding of the performance of the prime coat system upon which the standard was originally based.

Timetable:

Action	Date	FR Cite
NPRM	07/29/82	47 FR 32743
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Additional Information: SAR No. 2044.

FTS: 8-629-5625.

Agency Contact: Gilbert Wood, Environmental Protection Agency, Air and Radiation, MD-13, Research Triangle Park, NC 27711, 919 541-5625

RIN: 2060-AB22

2944. NSPS: FOSSIL FUEL-FIRED STEAM GENERATORS (REVISION)

Legal Authority: 42 USC 7411 / CAA 111; 42 USC 7601(a)

CFR Citation: 40 CFR 60

Legal Deadline: None

Abstract: These revisions to the existing NSPS for large fossil fuel-fired steam generators would establish sulfur dioxide compliance, emission monitoring, and reporting requirements on a 30-day rolling average basis.

Timetable:

Action	Date	FR Cite
NPRM	10/21/83	48 FR 48960
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Local, State, Federal

Analysis: Regulatory Impact Analysis

Additional Information: SAR No. 2033.

FTS: 8-629-5251.

Agency Contact: Fred Porter, Environmental Protection Agency, Air and Radiation, MD-13, Research Triangle Park, NC 27711, 919 541-5251

RIN: 2060-AB39

2945. NSPS: CEMENT PLANTS (REVISION)

Legal Authority: 42 USC 7411 /CAA 111; 42 USC 7414 /CAA 114

CFR Citation: 40 CFR 60

Legal Deadline: None

Abstract: EPA has completed a four-year review of this NSPS. As a result, the Agency intends to revise the monitoring requirements associated with the standard to require installation of continuous opacity monitors on all kilns and clinker coolers subject to the standards after.

Timetable:

Action	Date	FR Cite
NPRM	09/10/85	50 FR 36956
Final Action	02/00/89	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Additional Information: SAR No. 2186.

FTS: 8-629-5368

Agency Contact: Doug Bell, Environmental Protection Agency, Air and Radiation, (MD-13), Research Triangle Park, NC 27711, 919 541-5568

RIN: 2060-AB36

2946. NSPS: POLYMERIC COATING OF SUPPORTING SUBSTRATES

Legal Authority: 42 USC 7411 /CAA 111

CFR Citation: 40 CFR 60

Legal Deadline: None

Abstract: This regulation would limit volatile organic compounds emissions from new, modified, and reconstructed plants that coat polymeric compounds onto supporting substrates.

Timetable:

Action	Date	FR Cite
ANPRM	08/17/84	49 FR 32868
NPRM	04/30/87	52 FR 15906
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Additional Information: SAR No. 2237.

FTS:8-629-5565.

Agency Contact: Doug Bell, Environmental Protection Agency, Air and Radiation, (MD-13), Environmental Protection Agency, Research Triangle Park, NC 27711, 919 541-5568

RIN: 2060-AB67

2947. NSPS: VOC EMISSIONS FROM PETROLEUM REFINERY WASTEWATER SYSTEMS

Legal Authority: 42 USC 7411 /CAA 111

CFR Citation: 40 CFR 60

Legal Deadline: None

Abstract: This regulation is intended to limit emissions of volatile compounds from new, modified, and reconstructed refinery wastewater systems.

Timetable:

Action	Date	FR Cite
NPRM	05/04/87	52 FR 16334
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Additional Information: SAR No. 1900.

FTS: 8-629-5625.

Agency Contact: Gilbert Wood, Environmental Protection Agency, Air and Radiation, (MD-13), Research Triangle Park, NC 27711, 919 541-5625

RIN: 2060-AB81

2948. NSPS: MAGNETIC TAPE MANUFACTURING

Legal Authority: 42 USC 7411 / CAA 111

CFR Citation: 40 CFR 60

Legal Deadline: None

Abstract: This regulation is intended to limit emissions of volatile organic compounds from new, modified, and reconstructed magnetic tape manufacturing lines.

Timetable:

Action	Date	FR Cite
NPRM	01/22/86	51 FR 2996
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Additional Information: SAR No. 1926.

FTS: 8-629-5625.

Agency Contact: Gilbert Wood, Environmental Protection Agency, Air and Radiation, (MD-13), Research Triangle Park, NC 27711, 919 541-5625

RIN: 2060-AB86

2949. STATE IMPLEMENTATION PLANS: APPROVAL OF POST -1987 OZONE AND CARBON MONOXIDE PLAN REVISIONS FOR AREAS NOT ATTAINING THE NATIONAL AMBIENT AIR QUALITY STANDARDS NAAQS

Significance: Regulatory Program

Legal Authority: 42 USC 7401 et seq/CAA

CFR Citation: 40 CFR Not applicable

Legal Deadline: None

Abstract: The EPA is developing a program to address the likelihood that many areas in the country will not attain the national ambient air quality standards (NAAQS) for ozone and carbon monoxide (CO) by December 31, 1987, the latest date for attainment expressly identified in the Clean Air Act. This notice describes EPA's views about how EPA should interpret the Act so as to bring those areas into attainment, the reasons for that interpretation, and the concrete steps EPA intends to take to implement that interpretation soon and in the long term. The final policy will be an advance notice of how EPA intends, in subsequent rulemakings, to judge the adequacy of State efforts to plan for attainment of the ozone and CO standards.

Timetable:

Action	Date	FR Cite
NPRM	11/24/87	52 FR 45044
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Additional Information: SAR No. 2509.

FTS:8-629-5517

Agency Contact: Brock Nicholson, Environmental Protection Agency, Air and Radiation, MD-15, Research Triangle Park, NC 27711, 919 541-5517

RIN: 2060-AB98

2950. NESHAP: CHROMIUM-COMFORT COOLING TOWERS

Significance: Regulatory Program

Legal Authority: 15 USC 2605; 15 USC 2607

CFR Citation: 40 CFR 749

Legal Deadline: None

Abstract: EPA issued a notice of intent to list total chromium or hexavalent chromium under Section 112 (50 FR 24317). EPA is further assessing the public health risks of chromium compounds and investigating emissions of chromium and techniques that are available to control the emissions from identified source categories. Because emissions from cooling towers using chromium chemicals in the recirculating water are predominantly hexavalent. EPA has decided that emissions standards are warranted, and standards have been proposed under Section 6 of TSCA.

Timetable:

Action	Date	FR Cite
Notice of Solicitation	09/15/86	51 FR 32668
NPRM	03/29/88	53 FR 10205
Final Action	08/00/89	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Additional Information: SAR No. 2265.

FTS:8-629-5625

Agency Contact: Gilbert Wood, Environmental Protection Agency, Air and Radiation, MD-13, 919 541-5625

RIN: 2060-AC18

2951. RURAL FUGITIVE DUST POLICY FOR PM10

Significance: Regulatory Program

Legal Authority: 42 USC 7401 /et. seq CAA

CFR Citation: 40 CFR 50; 40 CFR 52

Legal Deadline: None

Abstract: Since 1977, EPA has allowed States with rural fugitive dust areas (RFDAs) to discount fugitive dust in developing and enforcing a State Implementation Plan(SIP) for attainment and maintenance of the NAAQS for particulate matter (PM). On July 1, 1987, EPA promulgated revisions to its particulate matter National Ambient Air Quality Standards (NAAQS), 52 FR 24634. In this notice, EPA also solicited comments on alternatives for SIP requirements for RFDAs and on the adequacy of the definitions which are used in identifying RFDAs, and the importance of protecting annual versus 24-hour NAAQS (52 FR 24716). The EPA will issue its decision after considering public comments on the alternatives. The EPA will continue its existing fugitive policy and apply it to implementation of the revised particulate standard until a decision is made.

Timetable:

Action	Date	FR Cite
NPRM	07/01/87	52 FR 24716
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Additional Information: SAR No. 2343.

FTS: 629-5534

Agency Contact: Thompson G. Pace, Environmental Protection Agency, Air and Radiation, (MD-15), Research Triangle Park, NC 27711, 919 541-5534

RIN: 2060-AC44

2952. PSD REGULATIONS FOR NOX

Significance: Regulatory Program

Legal Authority: 42 USC 7476 /CAA 166

CFR Citation: 40 CFR 51; 40 CFR 52

Legal Deadline: Final, Judicial, October 9, 1988.

Abstract: In March 1986, the Sierra Club, et al., filed suit against EPA for not promulgating regulations pursuant to section 166 of the Clean Air Act for nitrogen oxides (NOx). The court decision issued by the District Court for the Northern District of California on April 1, 1987, requires the EPA to propose regulations by February 9, 1988, and promulgate regulations by October 9, 1988.

Timetable:

Action	Date	FR Cite
NPRM	02/08/88	53 FR 3698
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Additional Information: SAR No. 2421.

FTS: 8-541-5592

Agency Contact: Gary McCutchen, Environmental Protection Agency, Air and Radiation, MD-15, Research Triangle Park, NC 27711, 919 541-5592

RIN: 2060-AC24

2953. EMISSION STANDARDS AND TEST PROCEDURES FOR METHANOL-FUELED NEW MOTOR VEHICLES

Significance: Regulatory Program

Legal Authority: 42 USC 7521 / CAA 202

CFR Citation: 40 CFR 86

Legal Deadline: None

Abstract: This rule will develop emission standards and test procedures applicable to methanol-fueled light-duty vehicles, light-duty trucks, heavy-duty engines, and motorcycles. Current regulations apply only to gasoline-fueled and diesel-powered vehicles. The lack of regulations is a hindrance to the development of methanol-fueled vehicles.

Timetable:

Action	Date	FR Cite
ANPRM	04/10/84	49 FR 14244
NPRM	08/29/86	51 FR 30984
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: Federal

Additional Information: SAR No. 2112.

FTS: 8-374-8227.

Agency Contact: Mike Gold, Environmental Protection Agency, Air and Radiation, 2565 Plymouth Road, Ann Arbor, MI 48105, 313 668-4227

RIN: 2060-AH28

2954. CONTROL OF EXCESS EVAPORATIVE EMISSIONS/FUEL VOLATILITY

Significance: Regulatory Program

Legal Authority: 42 USC 7521 /CAA 202; 42 USC 7525 /CAA 206; 42 USC 7545 /CAA 211; 42 USC 7601 /CAA 301(a)

CFR Citation: 40 CFR 86

Legal Deadline: None

Abstract: In-use motor vehicle evaporative hydrocarbon emissions greatly exceed their applicable EPA emissions standards. A major reason is that the volatility of commercial gasoline is substantially greater than that of the certification test fuel specified by EPA. This rule will consider options to deal with this problem including control of commercial fuel volatility and a change to certification test fuel volatility.

Timetable:

Action	Date	FR Cite
NPRM	08/19/87	52 FR 31274
Final Action	01/00/90	

Small Entities Affected: None

Government Levels Affected: Federal

Analysis: Regulatory Impact Analysis

Additional Information: SAR No. 2318.

FTS: 8-374-8339

Agency Contact: Richard A. Rykowski, Environmental Protection Agency, Air and Radiation, 2565 Plymouth Road, Ann Arbor, Michigan 48105, 313 668-4339

RIN: 2060-AB89

2955. PARTICULATE EMISSION STANDARDS FOR CERTAIN 1987 AND LATER MODEL YEAR LIGHT-DUTY DIESEL TRUCKS (REVISION)

Legal Authority: 42 USC 7521/CAA 202; 42 USC 7525/CAA 206; 42 USC 7601/CAA 301

CFR Citation: 40 CFR 86

Legal Deadline: None

Abstract: EPA is considering revising the particulate emission standards for light-duty diesel trucks with a loaded vehicle weight equal to or greater than 3751 pounds. The standard would be relaxed for the 1987-1990 model years, allowing manufacturers to devote their resources to developing particulate trap oxidizer technology. Then in 1991, the standard would be tightened to 0.13 grams per mile which is twice as stringent as the current applicable standard.

Timetable:

Action	Date	FR Cite
NPRM	06/14/87	52 FR 21075
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: Federal

Additional Information: SAR No. 2416.

FTS: 8-382-2525

Agency Contact: David Robertson, Environmental Protection Agency, Air and Radiation, (EN-340F), Washington, DC 20460, 202 382-2525

RIN: 2060-AC18

2956. SMALL-VOLUME MANUFACTURERS CERTIFICATION PROCEDURE (REVISION)

Legal Authority: 42 USC 7525 / CAA 206

CFR Citation: 40 CFR 86

Legal Deadline: None

Abstract: This action will result in amended rules to provide for certification of emissions compliance by small-volume manufacturers, including commercial importers importing vehicles into the United States. By a separate action, EPA has revised its rules for nonconforming vehicle importation. This action is appropriate to improve the certification regulations and assure compliance with the exhaust emission standards. Current rules for small-volume manufacturers were not specifically intended to apply to conversion of previously manufactured but uncertified configurations. However, increasingly large numbers of manufacturers who import vehicles for resale have applied for EPA certification as an alternative to individual vehicle importation. This will primarily impact businesses involved in importing motor vehicles. The likely impact of these changes will be increased costs to these businesses.

Timetable:

Action	Date	FR Cite
NPRM	03/09/88	53 FR 7676
Final Action	06/00/89	

Small Entities Affected: None

Government Levels Affected: Federal

Analysis: Regulatory Impact Analysis; Regulatory Flexibility Analysis

Additional Information: SAR No. 2143.

FTS: 8-374-8444.

Agency Contact: Charlie Cole, Environmental Protection Agency, Air and Radiation, 2625 Plymouth Road, Ann Arbor, MI 48105, 313 668-4444

RIN: 2060-AB54

2957. AMENDMENTS TO SELECTIVE ENFORCEMENT AUDITING REGULATIONS

Legal Authority: 42 USC 7525(b)/CAA 206; 42 USC 7542(a)/CAA 211; 42 USC 7601(a)/CAA 208

CFR Citation: 40 CFR 86

Legal Deadline: None

Abstract: These amendments would delete the mandatory reporting of manufacturers' internal quality assurance emission test data. Prior to promulgation of this requirement in 1980, many manufacturers voluntarily submitted their internal quality assurance data. The deletion of this requirement is not expected to affect the SEA program, especially since many manufacturers will continue to provide the data voluntarily.

Timetable:

Action	Date	FR Cite
NPRM	08/01/87	52 FR 33060
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: Federal

Additional Information: SAR No. 2385

FTS: 8-382-4164

Agency Contact: Stephen Sinkez, Environmental Protection Agency, Air and Radiation, EN-340-F, 401 M St., SW, Washington, DC 20460, 202 382-4164

RIN: 2060-AC34

2958. VOLUNTARY AFTERMARKET PARTS CERTIFICATION REGULATIONS (REVISION)

Legal Authority: 42 USC 7541(b) /CAA 207(b)

CFR Citation: 40 CFR 85

Legal Deadline: None

Abstract: The U.S. Court of Appeals for the D.C. Circuit has directed EPA to amend the aftermarket parts certification regulations. There were four specific areas which the Court directed EPA to revisit. EPA was directed to develop better procedures for determining adequate grounds for manufacturer denial of a warranty claim; reconsider inclusion of specialty parts into the certification system; improve the procedure for resolution of warranty cost claims by vehicle manufacturers'against certified parts manufacturers; and labeling for certified parts.

Timetable:

Action	Date	FR Cite
NPRM	01/09/87	52 FR 924
Final Action	03/00/89	

Small Entities Affected: Businesses

Government Levels Affected: Federal

Analysis: Regulatory Flexibility Analysis

Additional Information: SAR No. 2146.

FTS: 8-374-8316

Agency Contact: Mike Sabourin, Environmental Protection Agency, Air and Radiation, 2565 Plymouth Road, Ann Arbor, MI 48105, 313 668-4316

RIN: 2060-AB58

ENVIRONMENTAL PROTECTION AGENCY (EPA) —Clean Air Act (CAA)

Completed Actions

2956. NSPS: ASPHALT PROCESSING AND ASPHALT ROOFING MANUFACTURING PLANTS

CFR Citation: 40 CFR 60

Completed:

Reason	Date	FR Cite
Withdrawn Same as RIN:2060-AC21	08/26/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Kenneth Durkee 919 541-5595

RIN: 2060-AC20

2960. NESHAPS: BENZENE IN COKE OVEN BY-PRODUCT PLANTS

Significance: Regulatory Program

CFR Citation: 40 CFR 61

Completed:

Reason	Date	FR Cite
Withdrawn	08/26/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Eileen Claussen 202 382-7407

RIN: 2060-AC09

2961. STRATOSPHERIC OZONE PROTECTION STRATEGY

Significance: Regulatory Program

CFR Citation: 40 CFR Not yet determined

Completed:

Reason	Date	FR Cite
Final Action	08/12/88	53 FR 30566

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Gilbert Wood 919 541-5525

RIN: 2060-AA42

2962. FUEL AND FUEL ADDITIVES: PREVENTATIVE ACTION PROGRAM TO PREVENT SELF-SERVE FUEL SWITCHING

CFR Citation: 40 CFR 80.22; 40 CFR 80.23

Completed:

Reason	Date	FR Cite
Withdrawn	08/26/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Richard Kozlowski 202 382-2633

RIN: 2060-AD09

ENVIRONMENTAL PROTECTION AGENCY (EPA) —Superfund (CERCLA)

Proposed Rule Stage

2963. DESIGNATION OF EXTREMELY HAZARDOUS SUBSTANCES AS CERCLA HAZARDOUS SUBSTANCES

Significance: Regulatory Program

Legal Authority: 42 USC 9602 /CERCLA 102

CFR Citation: 40 CFR 302

Legal Deadline: None

Abstract: This rule may propose to designate 232 non-CERCLA extremely hazardous substances (EHS), as defined in Section 302 of SARA Title III, as hazardous substances pursuant to Section 102 of CERCLA. Currently, only releases of those EHSs that are also CERCLA hazardous substances are required to be reported to the National Response Center under CERCLA Section 103. Upon designation, potential confusion concerning the different SARA Title III and CERCLA requirements might be reduced by ensuring consistent procedures for reporting releases of all EHSs.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
Final Action	03/00/89	

Small Entities Affected: None

Government Levels Affected: Federal

Additional Information: SAR No. 2536

RCRA/Superfund Hotline (800-424-9346); in Metropolitan Area (202-382-3000)

Agency Contact: Gerain H. Perry, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-210), Washington, D.C. 20460, 202 382-5660

RIN: 2050-AB62

2964. REPORTABLE QUANTITIES (RQS) FOR SUBSTANCES ON THE EXTREMELY HAZARDOUS SUBSTANCES LIST

Significance: Regulatory Program

Legal Authority: 42 USC 11002 / SARA 302; 42 USC 9602 /CERCLA 102

CFR Citation: 40 CFR 302

Legal Deadline: None

Abstract: This action will adjust the reportable quantities (RQs) for232 substances on the Extremely Hazardous Substances List, which EPA has proposed for designation as CERCLA hazardous substances. These RQ adjustments will reduce unnecessary reporting of releases to local, State, and Federal officials.

Timetable:

Action	Date	FR Cite
NPRM	03/00/89	
Final Action	03/00/90	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Additional Information: SAR No. 2429.

FTS:8-382-5660

Agency Contact: Gerain H. Perry, Environmental Protection Agency, Solid Waste and Emergency Response, OS-210, Washington, DC 20460, 202 382-5660

RIN: 2050-AC14

2965. PROCEDURES FOR PLANNING AND IMPLEMENTING OFF-SITE RESPONSE ACTIONS

Significance: Regulatory Program

Legal Authority: 42 USC 9604(c)/CERCLA 104(c); 42 USC 9621(d)(3)/CERCLA 121(d)(3); 33 USC 1321(c)(2)/CWA 311(c)(2)

CFR Citation: 40 CFR 300

Legal Deadline: None

Abstract: This rule interprets and codifies (1) the requirements of Section 121(d)(3) of the Comprehensive Emergency Response, Compensation, and Liability Act (CERCLA) as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) and (2) the revised off-site policy directive (November 13, 1987). Section 121(d)(3) and the directive describe procedures that must be observed when a response action funded under CERCLA or using a CERCLA authority involves off-site transfer of CERCLA wastes Section 121(d)(3) of SARA specifies that wastes from removal or remedial actions under CERCLA: 1) only be transferred to facilities that are in compliance with Sections 3004 and 3005 of the Resource Conservation and Recovery Act (RCRA), other applicable Federal laws and State laws, and 2) only be transferred to units at hazardous waste land disposal facilities that are not leaking and where releases from other (non-receiving) units at the facility are under a corrective action program.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	01/00/89	

Small Entities Affected: None

Government Levels Affected: State, Federal

Analysis: Regulatory Impact Analysis

Additional Information: SAR No. 2538.

FTS:8-382-4805

Agency Contact: Steve Heare, Acting Director, RCRA Enforcement Division, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-520), 202 382-4808

RIN: 2050-AC35

2966. NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN (NCP)

Significance: Regulatory Program

Legal Authority: 33 USC 1321 / CWA 311; 42 USC 9605 / CERCLA 105

CFR Citation: 40 CFR 300

Legal Deadline: NPRM, Statutory, April 17, 1988.

Abstract: The National Contingency Plan (NCP) is the primary regulation directing government and responsible party response to and cleanup of discharges of oil, and releases of hazardous substances, pollutants and contaminants. The Superfund Amendments and Reauthorization Act of 1986 mandated that the NCP be revised within 18 months of the date of enactment to incorporate statutory changes.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
Final Action	11/00/89	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Additional Information: SAR No. 2400.

FTS:8-382-2182

Agency Contact: Arthur Weissman, Environmental Protection Agency, Solid Waste and Emergency Response, OS-240, Washington, DC 20460, 202 382-2182

RIN: 2050-AA73

2967. HAZARD RANKING SYSTEM FOR UNCONTROLLED HAZARDOUS SUBSTANCE RELEASES

Significance: Regulatory Program

Legal Authority: 42 USC 9605(a)(8)(A) / CERCLA 105(a)(8)(A); 42 USC 9605(c) / CERCLA 105(C); 42 USC 9618/CERCLA 118; 42 USC 9625/CERCLA 125

CFR Citation: 40 CFR 300

Legal Deadline: NPRM, Statutory, April 17, 1988.

Abstract: This action revises the Hazard Ranking System (HRS) which is Appendix A of the National Contingency Plan. The HRS is a system for determining the relative severity of risks among releases of hazardous substances. The HRS is the primary mechanism for establishing the National Priorities List under CERCLA. CERCLA requires that the HRS be amended to assure, to the extent feasible, that it accurately assesses relative risk to public health and the environment. CERCLA specifically requires that the HRS take into consideration natural resource damages that may affect the human food chain as well as potential air contamination. The HRS must also appropriately assess human health risks associated with contamination of surface waters for drinking or recreation.

Timetable:

Action	Date	FR Cite
ANPRM	04/09/87	52 FR 11513
NPRM	11/00/88	
Final Action	10/00/89	

Small Entities Affected: None

Government Levels Affected: State, Federal

Additional Information: SAR No. 2566.

FTS: 8-382-4804

Agency Contact: Steve Caldwell, Environmental Protection Agency, Solid Waste and Emergency Response, OS-220, Washington, DC 20460, 202 382-4804

RIN: 2050-AB73

2968. NATIONAL PRIORITIES LIST FOR UNCONTROLLED HAZARDOUS WASTE SITES - FEDERAL FACILITY SITES

Significance: Regulatory Program

Legal Authority: 42 USC 9605/CERCLA 105; 42 USC 9620/CERCLA 120

CFR Citation: 40 CFR 300.66

Legal Deadline: Other, Statutory. Annual Update.

Abstract: This action revises the National Priorities List (NPL) for uncontrolled hazardous waste sites in the National Contingency Plan (NCP). CERCLA requires that the NPL be revised at least annually. Periodic revisions will allow EPA to include sites on the NPL with known or threatened hazardous substances releases and to delete sites that have been cleaned up. EPA uses the Hazard Ranking System (HRS) to evaluate the sites. The Agency will propose Federal facility sites. See the related actions in the proposed and final rule sections of this Agenda.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	06/00/89	

Small Entities Affected: None

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Government Levels Affected: None

Additional Information: SAN No. 3422.

FTS:8-382-3412

Agency Contact: Sandra J. Crystall, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-230), Washington, DC 20460, 202 382-3412

RIN: 2050-AC57

2969. RESPONSE CLAIMS PROCEDURES FOR THE HAZARDOUS SUBSTANCES SUPERFUND

Legal Authority: 42 USC 9612 / CERCLA 112

CFR Citation: 40 CFR 307

Legal Deadline: None

Abstract: This action prescribes the forms and procedures for persons other than the Government to recover response costs incurred in carrying out the National Contingency Plan.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	05/00/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Analysis: Regulatory Impact Analysis

Additional Information: SAN No. 2264.

FTS: 8-382-4645.

Agency Contact: William O. Ross, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-220), Washington, DC 20460, 202 382-4645

RIN: 2050-AA56

2970. ADMINISTRATIVE HEARING PROCEDURE FOR SUPERFUND CLAIMS

Legal Authority: 42 USC 9612(b) /CERCLA 112(b)

CFR Citation: 40 CFR 305

Legal Deadline: None

Abstract: Section 112(b)(2) of CERCLA as amended, provides that a person who has made a claim against the Superfund and is dissatisfied with the award by EPA may request an administrative hearing. Such hearings shall be before an administrative law judge. The purpose of this rule would be to establish procedures for conducting administrative hearings. The procedures of this rule would replace the Arbitration procedures, formerly codified at 40 CFR Part 305, revoked as a result of the amendments to section 112.

Timetable:

Action	Date	FR Cite
NPRM	01/00/89	
Final Action	07/00/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: SAN No. 2459.

FTS:8-382-4645

Agency Contact: William O. Ross, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-220), Washington, DC 20460, 202 382-4645

RIN: 2050-AC26

2971. WORKER PROTECTION STANDARDS FOR HAZARDOUS WASTE OPERATIONS AND EMERGENCY RESPONSE

Legal Authority: 42 USC 9620(f) /SARA Sec 126(f)

CFR Citation: 40 CFR Not yet determined

Legal Deadline: Other, Statutory. 90 days after the Department of Labor promulgates standards.

Abstract: The Superfund Amendments and Reauthorization Act of 1986 (SARA) required the Secretary of Labor, within one year of the date of enactment, to promulgate standards for the health and safety protection of employees engaged in hazardous waste operations. SARA requires the Administrator of EPA to promulgate identical standards applicable to employees of State and Local governments in each State (currently 30) that does not have in effect an approved State Plan under Section 18 of the Occupational Safety and Health Act of 1970.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	01/00/89	

Small Entities Affected: None

Government Levels Affected: Local, State

Additional Information: SAN No. 3427.

FTS:8-382-6741

Agency Contact: Rodney Turpin, Environmental Protection Agency, Solid Waste and Emergency Response, 202 321-6741

RIN: 2050-AC12

2972. EMERGENCY AND HAZARDOUS CHEMICAL INVENTORY FORMS AND COMMUNITY RIGHT-TO-KNOW REPORTING REQUIREMENTS—THRESHOLD AMENDMENT

Significance: Regulatory Program

Legal Authority: 42 USC 11011(b)/SARA 311(b); 42 USC 11012(b)/SARA 312(b)

CFR Citation: 40 CFR 370

Legal Deadline: None

Abstract: Under Title III of SARA, EPA has authority to establish thresholds below which facilities do not have to report. In the rule published on October 15, 1987, EPA set reporting thresholds for the first two years of reporting. At the same time, the Agency made a commitment to further evaluate the appropriate level for a permanent threshold.

Timetable:

Action	Date	FR Cite
NPRM	01/00/89	
Final Action	09/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Analysis: Regulatory Impact Analysis; Regulatory Flexibility Analysis

Additional Information: SAR No. 2344

FTS:8-472-8353

Agency Contact: Kathleen Brody, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-120), Washington, DC 20460, 202 472-8353

RIN: 2050-AC34

2973. ADMINISTRATIVE HEARING PROCEDURES FOR CLASS I CIVIL PENALTIES UNDER CERCLA AND THE EMERGENCY PLANNING COMMUNITY RIGHT TO KNOW ACT

Legal Authority: 42 USC 9609/SARA 325

CFR Citation: 40 CFR Not yet determined

Legal Deadline: None

Abstract: The purpose of the rulemaking is to propose regulations which will govern the conduct of administrative hearings for (1) Class I penalties to be assessed under SARA Section 325(b), and (2) other similar penalties assessed under SARA Section 325(d). The action is expected to have negligible economic impact on consumers industries, or governmental agencies, but will provide the benefit of uniform procedures for assessing penalties.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	02/00/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: SAR No. 2911.

FTS:8-475-8437

Agency Contact: Sandra Connors, Environmental Protection Agency, Solid Waste and Emergency Response, OECM, Waste Division, Washington, DC 20460, 202 382-3110

RIN: 2050-AC37

2974. ◆ PRIOR NOTICE OF CITIZEN SUITS UNDER CERCLA AND THE EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT

Legal Authority: 42 USC 9659/SARA 326; 42 USC 11048/CERCLA 310

CFR Citation: 40 CFR 310; 40 CFR 326

Legal Deadline: None

Abstract: These regulations are promulgated under Section 326 of Title III of SARA and Section 310 of CERCLA. They govern the notice required to be given 60 days prior to the filing of a citizen suit.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: SAR No. 2815

FTS:8-382-3109

Agency Contact: Belinda Holmes, Environmental Protection Agency, Solid Waste and Emergency Response, OECM, Washington, DC 20460, 202 382-3109

RIN: 2050-AC70

ENVIRONMENTAL PROTECTION AGENCY (EPA) —Superfund (CERCLA)

Final Rule Stage

2975. REPORTING CONTINUOUS RELEASES OF HAZARDOUS SUBSTANCES

Significance: Regulatory Program

Legal Authority: 42 USC 9602 / CERCLA 102

CFR Citation: 40 CFR 302; 40 CFR 355

Legal Deadline: None

Abstract: The purpose of this action is to clarify the reduced reporting requirements pursuant to Section 103(f)(2) of CERCLA for facilities that have continuous and stable releases of hazardous substances in amounts at or above their reportable quantities.

Timetable:

Action	Date	FR Cite
NPRM	04/19/88	53 FR 12866
Final Action	05/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: SAR No. 3411.

For further information contact the RCRA/Superfund Hotline (800-424-9346); in Metropolitan Area (202-382-3000)

Agency Contact: Hubert Watters, Environmental Protection Agency, Solid Waste and Emergency Response, OS-210, Washington, DC 20460, 202 382-2463

RIN: 2050-AA46

2976. REPORTABLE QUANTITIES FOR RELEASES OF POTENTIAL CARCINOGENS AND OTHER HAZARDOUS SUBSTANCES

Significance: Regulatory Program

Legal Authority: 42 USC 9602 / CERCLA 102; 33 USC 1321 / CWA 311; 33 USC 1361/CWA 501(a); E.O. No. 11735

CFR Citation: 40 CFR 117; 40 CFR 302

Legal Deadline: NPRM, Statutory, December 31, 1988. Final, Statutory, April 30, 1988.

Abstract: In March 1987 the Agency proposed adjusting, where appropriate, the statutory reportable quantities (RQs) for 273 of the hazardous substances identified in Section 101(14) of CERCLA, as amended. Most (268) of these substances were evaluated for potential carcinogenicity. SARA 202 amends CERCLA 306 to require the Department of Transportation (DOT) to list and regulate as hazardous materials all CERCLA hazardous substances. These regulations require that when these materials are shipped in quantities equal to or greater than their RQs, they be identified as hazardous substances on shipping papers and package markings. DOT promulgated this rule with an effective date of July 1, 1987. The DOT has received several inquiries concerning six frequently transported CERCLA hazardous substances that had their RQs proposed to be adjusted upward in the March 18, 1987 rule. EPA has decided to expedite the final RQ adjustments for these six substances to relieve the regulatory burden on industry. In addition, in this final rule EPA will promulgate the RQs for lead and five lead compounds that were proposed in March 2, 1988 (53 FR 6762).

Timetable:

Action	Date	FR Cite
NPRM	03/16/87	52 FR 8349
Final Action for six substances	10/00/88	

Action	Date	FR Cite
Final Action for 257 substances	11/00/88	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Additional Information: SAR No. 2104.

For further information contact the RCRA/Superfund Hotline (800-424-9346); in Metropolitan D.C. (382-3000).

Agency Contact: Ivette O. Vega, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-210), Washington, DC 20460, 202 382-3000

RIN: 2050–AA80

2977. REPORTABLE QUANTITIES (RQS) FOR RELEASES OF RADIONUCLIDES

Significance: Regulatory Program

Legal Authority: 42 USC 9602 /CERCLA 102; 33 USC 1321/CWA 311; 33 USC 1361/CWA 501(a)

CFR Citation: 40 CFR 302

Legal Deadline: NPRM, Statutory, December 31, 1986. Final, Statutory, April 30, 1988.

Abstract: EPA is adjusting the statutory one-pound reportable quantity (RQ) for radionuclides pursuant to Section 102 of CERCLA. Radionuclides consist of approximately 1,500 radioactive isotopes whose release represents differing degrees of potential harm to human health and the environment. The Agency has proposed individual adjusted RQs for 757 radionuclides, and an RQ of one curie for all of the remaining radionuclides.

Timetable:

Action	Date	FR Cite
NPRM	03/16/87	52 FR 8172
Final Action	11/00/88	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Additional Information: SAR No. 2335.

For further information contact the RCRA/Superfund Hotline (800-424-9346); in Metropolitan Area (202-382-3000)

Agency Contact: Pamela Harris, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-210), Washington, D.C. 20460, 202 475-9814

RIN: 2050–AB80

2978. REPORTING EXEMPTIONS FOR FEDERALLY PERMITTED RELEASES OF HAZARDOUS SUBSTANCES

Significance: Regulatory Program

Legal Authority: 42 USC 9602 /CERCLA 102

CFR Citation: 40 CFR 117; 40 CFR 302; 40 CFR 355

Legal Deadline: None

Abstract: In the May 25, 1983 NPRM (48 FR 23552) that proposed to adjust certain reportable quantities (RQs) for releases of hazardous substances, EPA explained the Agency's interpretation of each of the types of releases exempted by the definition of "federally permitted release" in Section 101(10) of CERCLA. Because of the amount of time that has passed and additional analysis undertaken since that NPRM, this action reproposes regulations to clarify the statutory language in Section 101(10) of CERCLA.

Timetable:

Action	Date	FR Cite
NPRM	07/19/88	53 FR 27288
Final Action	08/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: SAR No. 2354.

RCRA/Superfund Hotline 800-424-9346, in Washington DC 202-382-3000

Agency Contact: Hubert Walters, Environmental Protection Agency, Solid Waste and Emergency Response, OS-210, 202 382-2444

RIN: 2050–AB82

2979. NATIONAL PRIORITIES LIST FOR UNCONTROLLED HAZARDOUS WASTE SITES - UPDATE 7

Significance: Regulatory Program

Legal Authority: 42 USC 9605 /CERCLA 105; 42 USC 9620 /CERCLA 120

CFR Citation: 40 CFR 300.66

Legal Deadline: Other, Statutory. Annual Update.

Abstract: This action revises the National Priorities List (NPL) for uncontrolled hazardous waste sites in the National Contingency Plan (NCP). CERCLA requires that the NPL be revised at least annually. Periodic revisions will allow EPA to include sites on the NPL with known or threatened hazardous substances releases and to delete sites that have been cleaned up. EPA uses the Hazard Ranking System (HRS) to evaluate the sites.See the related actions in the proposed and final rule sections of this Agenda.

Timetable:

Action	Date	FR Cite
NPRM	06/24/88	53 FR 23968
Final Action	08/00/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: SAR No. 2356.

FTS:8-382-3412

Agency Contact: Sandra J. Crystall, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-230), Washington, DC 20460, 202 382-3412

RIN: 2050–AC16

2980. NATIONAL PRIORITIES LIST (NPL) FOR UNCONTROLLED HAZARDOUS WASTES SITES - UPDATE 6

Significance: Regulatory Program

Legal Authority: 42 USC 9605(a)(8)(B)/CERCLA 105(a)(8)(B); 42 USC 9620(d)(2)/CERCLA 120(d)(2)

CFR Citation: 40 CFR 300.66

Legal Deadline: Other, Statutory. Annual Update.

Abstract: This action revises the National Priorities List (NPL) for uncontrolled hazardous waste sites in the National Contingency Plan (NCP). CERCLA requires that the NPL be revised at least annually. Periodic revisions will allow EPA to include sites on the NPL with known or threatened hazardous substances releases and to delete sites that have been cleaned up. EPA uses the Hazard Ranking System (HRS) to evaluate the sites. The Agency will promulgate Update 6. See the related actions in the proposed and final rule sections of the Agenda.

Timetable:

Action	Date	FR Cite
NPRM	06/10/86	51 FR 21099
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: SAR No. 5433.

FTS:8-382-3412

Agency Contact: Sandra J. Crystall, Environmental Protection Agency, Solid Waste and Emergency Response, Environmental Protection Agency, Solid Waste and Emergency Response (OS-230), Washington, DC 20460, 202 382-3412

RIN: 2050–AC45

2981. NATIONAL PRIORITIES LIST (NPL) FOR UNCONTROLLED HAZARDOUS WASTES SITES - UPDATE 8

Significance: Regulatory Program

Legal Authority: 42 USC 9605(a)(8)(B)/CERCLA 105(a)(8)(B); 42 USC 9620(d)(2)/CERCLA 120(d)(2)

CFR Citation: 40 CFR 300.66

Legal Deadline: Other, Statutory. Annual Update

Abstract: This action revises the National Priorities List (NPL) for uncontrolled hazardous waste sites in the National Contingency Plan (NCP). CERCLA requires that the NPL be revised at least annually. Periodic revisions will allow EPA to include sites on the NPL with known or threatened hazardous substances releases an and to delete sites that have been cleaned up. EPA uses the Hazard Ranking System (HRS) to evaluate the sites. The Agency will propose RCRA sites. See the related actions in the proposed and final rules sections of this Agenda.

Timetable:

Action	Date	FR Cite
NPRM	01/22/87	52 FR 2492
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: SAR No. 5434.

FTS:8-382-3412

Agency Contact: Sandra J. Crystall, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-230), Washington, DC 20460, 202 382-3412

RIN: 2050–AC47

2982. NATIONAL PRIORITIES LIST FOR UNCONTROLLED HAZARDOUS WASTE SITES - RCRA SITES

Significance: Regulatory Program

Legal Authority: 42 USC 9605/CERCLA 105; 42 USC 9620/CERCLA 120

CFR Citation: 40 CFR 300.66

Legal Deadline: Other, Statutory. Annual Update

Abstract: This action revises the National Priorities List (NPL) for uncontrolled hazardous waste sites in the National Contingency Plan (NCP). CERCLA requires that the NPL be revised at least annually. Periodic revisions will allow EPA to include sites on the NPL with known or threatened hazardous substances releases and to delete sites that have been cleaned up. EPA uses the Hazard Ranking System (HRS) to evaluate the sites. The Agency will promulgate Update 6. See the related actions in the proposed and final rule sections of this Agenda.

Timetable:

Action	Date	FR Cite
NPRM	06/24/88	53 FR 23978
Final Action	08/00/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: SAR No. 5357.

FTS:8-382-3412

Agency Contact: Suzanne Wells, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-230), Washington, DC 20460, 202 475-9701

RIN: 2050–AC48

2983. ARBITRATION PROCEDURES FOR SMALL SUPERFUND COST RECOVERY CLAIMS

Legal Authority: 42 USC 9607(a)/CERCLA 107(a); 42 USC 9622(h)/SARA 122(h)

CFR Citation: 40 CFR 304

Legal Deadline: None

Abstract: This regulation will establish and govern the procedures for arbitration of small CERCLA 107(a) cost recovery claims pursuant to the authority granted EPA by SARA 122(h)(2). The regulation will provide a voluntary procedure by which EPA and PRPs at a site may agree to submit a cost recovery claim for resolution by arbitration. Arbitration may be used only when the total response costs for the facility concerned do not exceed $500,000, excluding interest. Arbitration is an alternative dispute resolution technique that should provide a quicker and less costly method of case resolution than traditional litigation and negotiations.

Timetable:

Action	Date	FR Cite
NPRM	06/04/88	53 FR 20428
Final Action	03/00/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: SAR No. 2458.

FTS:8-382-3077

Agency Contact: Janice Linett, Attorney/Advisor, Environmental Protection Agency, Solid Waste and Emergency Response, Environmental Protection Agency, Office of Enforcement and Compliance, Monitoring LE-134S, Wash. DC 20460, 202 382-3077

RIN: 2050–AC26

2984. CITIZEN AWARDS FOR INFORMATION ON CRIMINAL VIOLATIONS UNDER SUPERFUND

Legal Authority: 42 USC 6909(d)/CERCLA 109(d)

CFR Citation: 40 CFR 303

Legal Deadline: None

Abstract: This regulation is being promulgated in response to the requirements established by Section 109(c) of the Superfund Amendments and Reauthorization Act (SARA), codified as CERCLA Section 109(d). This statutory provision authorizes the President to pay an award of up to $10,000 to any individual for information leading to the successful prosecution of any person for a criminal violation of the Comprehensive Environmental Response,

Compensation, and Liability Act (CERCLA), as amended. Section 109(d) also requires the President to prescribe by regulation criteria for such an award. On January 23, 1987 by Executive Order No. 12580, the President delegated to the Administrator of EPA the authority to promulgate the within regulation, and thereafter to carry out the Section 109(d) award program. This regulation is being promulgated on an interim-final basis in order to permit the more expeditious protection of the public health and the environment, as directed by Congress for this provision of SARA.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/05/88	53 FR 16096
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: SAR No. 2405.

FTS:8-475-0528

Agency Contact: Keith Onsdorff, Senior Attorney - Advisor, Environmental Protection Agency, Solid Waste and Emergency Response, Environmental Protection Agency, 401 M Street SW LE-134, Washington, DC 20460, 202 475-8556

RIN: 2050-AC26

2945. TECHNICAL ASSISTANCE GRANTS TO GROUPS AT NATIONAL PRIORITY LIST (NPL) SITES

Legal Authority: 42 USC 9617 / SARA 117

CFR Citation: 40 CFR 35

Legal Deadline: None

Abstract: Superfund Amendments and Reauthorization Act 1986 requires that EPA develop grant regulations for technical assistance for citizen groups. Under Section 117(e) groups of individuals may apply for the technical assistance grants only at NPL sites. The grants are limited to $50,000 per site. This limit may be waived.

Timetable:

Action	Date	FR Cite
ANPRM	06/10/87	52 FR 22244
Interim Final Rule	03/24/88	53 FR 9736
Final Action	06/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: SAR No. 2401.

FTS:8-382-2460

Agency Contact: Daphne Gemmill, Environmental Protection Agency, Solid Waste and Emergency Response, OS-220, Washington DC 20460, 202 382-2460

RIN: 2050-AC10

2946. REPORTING HAZARDOUS SUBSTANCES ACTIVITY WHEN TRANSFERRING FEDERAL REAL PROPERTY

Legal Authority: 42 USC 9601/SARA 120

CFR Citation: 40 CFR 373

Legal Deadline: Final, Statutory, April 17, 1988.

Abstract: Section 120(h) of SARA requires that EPA, in consultation with the General Services Administration, promulgate rules which will require the disclosure of the type and quantity of any hazardous substances that have been stored, released or disposed of on federally owned land when such land is sold or otherwise transferred from the federal domain. This section of SARA also requires that: (1) the agencies holding such land provide, at the time of transfer, a covenant warranting that all remedial actions necessary for protection of human health and the environment have been taken; and (2) any additional action found to be necessary after the transfer will be undertaken by the U.S. EPA is not required to develop rules concerning these latter requirements.

Timetable:

Action	Date	FR Cite
NPRM	01/13/88	53 FR 850
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: Federal

Additional Information: SAR No. 2464.

FTS:8-382-5047

Agency Contact: Sherry Sterling, Environmental Protection Agency, Solid Waste and Emergency Response, (OS-510), Washington, DC 20460, 202 382-3846

RIN: 2050-AC28

2947. REIMBURSEMENT OF LOCAL GOVERNMENTS FOR EMERGENCY RESPONSE TO HAZARDOUS SUBSTANCE RELEASES

Legal Authority: 42 USC 9623 / SARA 123; 42 USC 9611(c)(11)

CFR Citation: 40 CFR 310

Legal Deadline: Final, Statutory, October 17, 1987.

Abstract: This provision authorizes reimbursement of local governments for costs incurred in providing temporary emergency measures in response to releases of hazardous substances. Reimbursement is limited to $25,000 per incident and is not intended to supplant local funds normally provided for response.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/21/87	52 FR 39366
Final Action	10/00/89	

Small Entities Affected: None

Government Levels Affected: Local

Additional Information: SAR No. 2409.

FTS:8-382-5382

Agency Contact: Karen Z. Burgan, Environmental Protection Agency, Solid Waste and Emergency Response, OS-210, Washington DC 20460, 202 382-5382

RIN: 2050-AC11

2948. ADMINISTRATIVE HEARING PROCEDURES FOR CLASS II PENALTIES UNDER CERCLA AND EMERGENCY PLANNING AND COMMUNITY RIGHT TO KNOW ACT

Legal Authority: 42 USC 9609/SARA 325

CFR Citation: 40 CFR 22

Legal Deadline: None

Abstract: This rule will govern the conduct of administrative hearings for (1) Class II penalties to be assessed under SARA Section 325(b) and (2) other similar penalties assessed under SARA Section 325(c). The rule provides the procedures for these penalty assessments. The action is expected to have negligible economic impact on consumers, industries, or governmental agencies, but will provide the benefit of uniform procedures for assessing penalties.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/00/88	
Final Action	02/00/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: SAR NO. 2512

FTS:8-475-0457

Agency Contact: Sandra Connors, Environmental Protection Agency, Solid Waste and Emergency Response, OECM, Waste Division, Washington, DC 20460, 202 382-2158

RIN: 2050-AC29

ENVIRONMENTAL PROTECTION AGENCY (EPA) —Superfund (CERCLA) — Completed Actions

2939. REPORTABLE QUANTITIES FOR RELEASES OF LEAD METHYL ISOCYANATE (MIC); DELISTING OF AMMONIUM THIOSULFATE

Significance: Regulatory Program

CFR Citation: 40 CFR 117; 40 CFR 302; 40 CFR 116

Completed:

Reason	Date	FR Cite
Withdrawn Merged into RIN 2050-AA80 (SAR 2104)	08/26/88	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Gerain H. Perry 202 382-3828

RIN: 2050-AC21

2950. TRADE SECRET CLAIMS FOR EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW INFORMATION; TRADE SECRET DISCLOSURES TO HEALTH PROFESSIONALS

CFR Citation: 40 CFR 350

Completed:

Reason	Date	FR Cite
Final Action	07/29/88	53 FR 28772

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Beverly Horn 202 382-5499

RIN: 2050-AC27

ENVIRONMENTAL PROTECTION AGENCY (EPA) —General — Proposed Rule Stage

2291. ENVIRONMENTAL PROTECTION AGENCY ACQUISITION REGULATION (EPAAR); SUBMISSION OF GENERAL FINANCIAL AND ORGANIZATIONAL INFORMATION, AND PURCHASING SYSTEM INFORMATION BY OFFERORS

Legal Authority: EPAAR

CFR Citation: 48 CFR 1515; 48 CFR 1552

Legal Deadline: None

Abstract: General financial and organizational information is only required from offerors in the competitive range. This information does not include information on the offerors purchasing systems. The proposed rule will require that all offerors provide general financial and organizational information, which includes purchasing system information.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: SAR No. 2551.

FTS:8-382-5028

PL 98-577 Sec. 302

Agency Contact: Edward N. Chambers, Environmental Protection Agency, Administration and Resource Management, PM-214F, 202 382-5028

RIN: 2030-AA06

2292. CONTRACTING FOR EXPERT SERVICES UNDER THE SUPERFUND AMENDMENT AND REAUTHORIZATION ACT (SARA) OF 1986

Legal Authority: 42 USC 9623/SARA 123

CFR Citation: 48 CFR 1505; 48 CFR 1535

Legal Deadline: None

Abstract: The SARA of 1986 authorizes the use of other than competitive procedures when contracting for expert services. These services will be used in preparing or prosecuting a civil or criminal action under the Act. The rule will amend the EPA Acquisition to provide procedures for implementing the provisions of the Act.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: SAR No. 2553.

FTS:8-475-7024

Agency Contact: Ed Murphy, Contract Analyst, Environmental Protection Agency, Administration and Resource Management, Procurement and Contracts Mgt. Division, (PM-214-F), Washington, DC 20460, 202 382-5934

RIN: 2030-AA07

EPA—GENERAL — Proposed Rule Stage

2992. ◆ EVALUATION PROCEDURE FOR AWARD OF FIXED PRICE CONTRACTS FOR COMMERCIAL SUPPLIES AND SERVICES

Legal Authority: EPAAR

CFR Citation: 48 CFR 1515; 48 CFR 1552

Legal Deadline: None

Abstract: The rule will result in the addition of an evaluation procedure to EPA Aquisition Regulation for making award of certain fixed price contracts for commercial supplies or services the procedure will provide for award to the lowest price offeror whose technical proposal meets the minimum needs of the government.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: SAR No. 5452

FTS:8-382-5035

Agency Contact: Eleanor Neament, Environmental Protection Agency, Administration and Resource Management, (PM-214F), Washington, DC 20460, 202 382-5035

RIN: 2030-AA09

2994. ◆ CONTRACTOR COMPLIANCE WITH INFORMATION RESOURCES MANAGEMENT DIRECTIVES

Legal Authority: EPAAR

CFR Citation: 48 CFR 1510; 48 CFR 1352

Legal Deadline: None

Abstract: This rule will require contractor compliance with Agency directives for contracts involving information resources management. Examples of such contracts include the acquisition or modification of a computer program, data communications, and ADP or word processor equipment or services.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: SAR No. 5451

FTS:8-382-5028

P.L. 98-377, Sec. 302

Agency Contact: Edward Chambers, Environmental Protection Agency, Administration and Resource Management, (PM-214F), Washington, DC 20460, 202 382-5028

RIN: 2030-AA10

2995. ◆ MISCELLANEOUS DELEGATIONS FROM THE CONTRACTING AUTHORITY

Legal Authority: EPAAR

CFR Citation: 48 CFR 1501; 48 CFR 1503; 48 CFR 1506; 48 CFR 1514; 48 CFR 1515; 48 CFR 1516; 48 CFR 1517; 48 CFR 1522; 48 CFR 1530; 48 CFR 1531; 48 CFR 1532; 48 CFR 1536; 48 CFR 1545

Legal Deadline: None

Abstract: This rule will amend the EPA Aquisition Regulations to reflect delegations made by the head of contracting activity to other aquisition officials for the exercise of various authorities in the acquisition process. Examples include source selection, approval of termination settlements, and approval of award fee plans.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: SAR No. 5450

FTS:8-382-5028

P.L. 98-377, Section 302

Agency Contact: Edward Chambers, Environmental Protection Agency, Administration and Resource Management, (PM-214F), Washington, DC 20460, 202 382-5028

RIN: 2030-AA11

2996. ◆ IMPLEMENTATION OF FEDERAL ACQUISITION REGULATION COVERAGE ON RATIFICATION OF UNAUTHORIZED COMMITMENTS

Legal Authority: EPAAR

CFR Citation: 48 CFR 1501

Legal Deadline: None

Abstract: Federal Acquisition Circular 84-33, dated February 8, 1988 amended the Federal Acquisition Regulation to provide coverage on ratification of unauthorized commitments. This rule will delete duplicative FAR information in the EPA Acquisition Regulation, and implement policies and procedures unique to EPA.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: SAR No. 5449

FTS:8-382-5028

Agency Contact: Eleanor Neament, Environmental Protection Agency, Administration and Resource Management, (PM-214F), Washington, DC 20460, 202 382-5035

RIN: 2030-AA12

2997. ◆ IMPLEMENTATION OF FEDERAL ACQUISITION REGULATION COVERAGE ON PROMPT PAYMENT

Legal Authority: EPAAR

CFR Citation: 48 CFR 1532; 48 CFR 1552

Legal Deadline: None

Abstract: Federal Acquisition Circular 84-33, dated February 8, 1988 amended Federal Acquisition Regulations to implement OMB Circular A-125 on prompt payment. This rule will delete existing EPA Acquisition Regulations on prompt payment that is duplicative of the FAR.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: SAR No. 5445

FTS:8-475-8790

P.L. 98-377, Section 302

Agency Contact: Joseph Nemargut, Environmental Protection Agency, Administration and Resource Management, (PM-214F), Washington, DC 20460, 202 475-8790

RIN: 2030-AA13

EPA—GENERAL — Proposed Rule Stage

2998. DENIAL OR RESTRICTION OF DISPOSAL SITES (REVISION)

Significance: Regulatory Program

Legal Authority: 33 USC 1344 /CWA 404(c)

CFR Citation: 40 CFR 231

Legal Deadline: None

Abstract: This action will revise EPA's existing 404(c) regulations, in effect since October 8, 1979. It will amend the procedures to be used when EPA is considering the use of Section 404(c) of the CWA to prevent the discharge of dredged or fill material into a defined area of the waters of the United States. Section 404(c) gives the Administrator authority to prohibit or withdraw the specification of a site as a disposal site or to deny or restrict use of a disposal site. The revisions will reflect our experiences to date under Section 404(c), and more clearly address use of 404(c) in advance of a specific proposed discharge.

Timetable:

Action	Date	FR Cite
NPRM	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: SAR No. 2195

FTS: 8-475-7799

Agency Contact: Gregory Peck, Environmental Protection Agency, Water, (A-104F), Washington, DC 20460, 202 475-7799

RIN: 2040-AB20

2999. CONFIDENTIALITY REGULATIONS; SPECIAL RULES GOVERNING CERTAIN INFORMATION UNDER FIFRA (REVISION)

Legal Authority: 5 USC 552 / Freedom of Information Act ; 7 USC 136h / FIFRA 10

CFR Citation: 40 CFR 2.307

Legal Deadline: None

Abstract: This action would make changes in EPA's procedures for handling business information under FIFRA to reflect amendments to Section 10 of the Act. It would also clarify existing regulations on the treatment of confidential business information under FIFRA.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	04/00/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: SAR No. 2196

FTS: 8-382-5460

Agency Contact: Jane Roemer, Environmental Protection Agency, General Counsel and Enforcement Counsel, (LE-132G), Washington, DC 20460, 202 382-5460

RIN: 2020-AA08

ENVIRONMENTAL PROTECTION AGENCY (EPA) —General — Final Rule Stage

3000. AMENDING EPA ACQUISITION REGULATION RULES REGARDING DISCLOSURE AND USE OF INFORMATION IN PROPOSALS

Legal Authority: EPAAR

CFR Citation: 48 CFR 1515

Legal Deadline: None

Abstract: The Federal Acquisition Regulation (FAR) gives federal agencies, including EPA, the authority to use alternate procedures to release proposals outside the Government for evaluation. The authority, however, must appear in agency acquisition regulations implementing the FAR. The effect of this action is to amend the EPA Acquisition Regulation to permit the use of alternate procedures appearing at FAR 15.413-2.

Timetable:

Action	Date	FR Cite
NPRM	05/18/88	53 FR 17578
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: SAR No. 2552.

FTS:8-475-7204

Agency Contact: Joseph Nemargut, Environmental Protection Agency, Administration and Resource Management, (PM-214F), Washington, DC 20460, 202 475-8790

RIN: 2030-AA06

3001. NONDISCRIMINATION ON THE BASIS OF AGE IN PROGRAMS RECEIVING FINANCIAL ASSISTANT FROM THE EPA (REVISION)

Legal Authority: 42 USC 6101 /Age Discrimination Act of 1979

CFR Citation: 40 CFR 7

Legal Deadline: None

Abstract: This action is necessary to add age as a basis for nondiscrimination to EPA's Federally-Assisted Nondiscrimination Regulation.

Timetable:

Action	Date	FR Cite
NPRM	01/01/81	46 FR 2306
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: SAR No. 2218

FTS: 8-382-4507

Agency Contact: Nereid Maxey, Environmental Protection Agency, Office of the Administrator, Office of Civil Rights, (A-105), Washington, DC 20460, 202 382-4507

RIN: 2090-AA09

3002. COOPERATIVE AGREEMENTS AND SUPERFUND STATE CONTRACTS FOR SUPERFUND RESPONSE ACTIONS

Legal Authority: 42 USC 9601 /CERCLA 104(c)

CFR Citation: 40 CFR 306

Legal Deadline: None

Abstract: Under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), as amended, there are provisions for recovering clean-up costs from responsible parties. In order for the cost recovery provisions to be effective, recipients of Superfund Assistance Agreements must adhere to strict management practices in all aspects of administering the Agreement. Therefore,

EPA—GENERAL — Final Rule Stage

EPA will issue this regulation to set forth all administrative requirements for Superfund Assistance Agreements.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: SAN No. 2478.

FTS:8-382-5768

Agency Contact: Richard Johnson, Environmental Protection Agency, Policy Planning and Evaluation, (PM-216), Washington, DC 20460, 202 382-5296

RIN: 2010-AA11

3003. NOTICE REQUIREMENTS FOR CITIZEN SUITS UNDER THE SDWA

Legal Authority: 42 USC 300j-8 /SDWA 1449

CFR Citation: 40 CFR 135

Legal Deadline: None

Abstract: These regulations will specify on whom the notice of intent to file suit should be served, the manner of service, where such service should be sent, and the contents of the notice. These regulations are similar to those implementing the notice provisions of the Clean Water Act (CWA) and the Resource Conservation and Recovery Act (RCRA).

Timetable:

Action	Date	FR Cite
NPRM	09/15/88	51 FR 29436
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: SAN No. 2307.

FTS:8-382-7700

Agency Contact: Randy Hill, Environmental Protection Agency, General Counsel and Enforcement Counsel, (LE-132W), Washington, D.C. 20460, 202 382-7700

RIN: 2020-AA10

ENVIRONMENTAL PROTECTION AGENCY (EPA) —General — Completed Actions

3004. PROGRAM FRAUD CIVIL REMEDIES

CFR Citation: 40 CFR 27

Completed:

Reason	Date	FR Cite
Final Action	04/27/88	53 FR 15182

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Maria Diamond 202 475-8060

RIN: 2120-AA11

3005. REGULATIONS FOR THE FEDERAL CLAIMS COLLECTION ACT

CFR Citation: 40 CFR 13

Completed:

Reason	Date	FR Cite
Final Action	09/23/88	53 FR 37270
Final Action Effective	10/24/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Ray Spears 202 382-4548

RIN: 2020-AA01

[FR Doc. 88-22739 Filed 10-21-88; 8:45 am]

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federal register

Monday
October 24, 1988

Part XXII

Equal Employment Opportunity Commission

Semiannual Regulatory Agenda

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Ch. XIV

Semiannual Regulatory Agenda

AGENCY: Equal Employment Opportunity Commission.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Equal Employment Opportunity Commission is publishing its Semiannual Regulatory Agenda pursuant to Executive Order No. 12291, 3 CFR Part 127 (1981 Compilation) and the Regulatory Flexibility Act, 5 U.S.C. Chapter 6. The agenda contains all regulations which are scheduled for review or development during the next twelve months.

FOR FURTHER INFORMATION CONTACT: Irene L. Hill, Assistant Legal Counsel for Coordination, Office of the Legal Counsel, Equal Employment Opportunity Commission, 2401 "E" Street, NW., Washington, DC 20507; telephone (202) 634-7581.

SUPPLEMENTARY INFORMATION: The Commission identified thirteen current and projected rulemakings for inclusion in the agenda. Two of the listings have been published as ANPRMS. Two have been published as NPRMS. Six of the listings are currently under development or review by Commission staff. One is currently under review by the Commission. Two listings have been published as final regulations.

Signed in Washington, DC, this 26th day of August, 1988.

For the Commission.

Clarence Thomas,

Chairman, Equal Employment Opportunity Commission.

Prerule Stage

Sequence Number	Title	Regulation Identifier Number
3006	Equal Employment in the Federal Government; Processing of Complaints Filed under the Equal Pay Act	3046-AA16
3007	Early Retirement Plans	3046-AA36
3008	Possible Revisions to Interpretations Relating to Benefits Under Employee Benefit Plans	3046-AA37

Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
[illegible]	Uniform Guidelines on Employee Selection Procedures	3046-AA00
3010	Equal Employment Opportunity in the Federal Government; Individual and Class EEO Complaints Processing	3046-AA11
3011	Procedures for Administrative Exemptions under Section 9 of the Age Discrimination in Employment Act	3046-AA22
3012	Equal Employment Opportunity in the Federal Government: Handicap	3046-AA23
3013	Uniform Guidelines on Employee Selection Procedures	3046-AA24

Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
3014	Coordination of Federal Equal Employment Opportunity Programs	3046-AA10
3015	Enforcement of Nondiscrimination on the Basis of Handicap in Equal Employment Opportunity Commission Programs	3046-AA30
3016	Pension Accruals and Contributions Under ADEA	3046-AA31

Completed Actions

Sequence Number	Title	Regulation Identifier Number
3017	Equal Employment Opportunity in the Federal Government; Mixed Case Complaints	3046-AA14
3018	Interpretative Bulletin on Employee Benefit Plans	3046-AA18

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC) — Prerule Stage

3006. EQUAL EMPLOYMENT IN THE FEDERAL GOVERNMENT; PROCESSING OF COMPLAINTS FILED UNDER THE EQUAL PAY ACT

Legal Authority: 29 USC 206(d) et seq Equal Pay Act of 1963; 29 USC 204(f) Fair Labor Standards Act of 1938, as amended; 29 USC 206(d) Fair Labor Standards Act of 1938, as amended

CFR Citation: 29 CFR 1613

Legal Deadline: None

Abstract: Development of procedural regulations for processing Federal sector complaints filed under the Equal Pay Act. Under development.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Nicholas M. Inzeo, Assistant Legal Counsel, Legal Services, Office of Legal Counsel, Equal Employment Opportunity Commission, 202 634-6592

RIN: 3046-AA16

3007. ● EARLY RETIREMENT PLANS

Legal Authority: 29 USC 628

CFR Citation: 29 CFR Not yet determined

Legal Deadline: None

Abstract: The ADEA prohibits discrimination on the basis of age with respect to an employee's compensation, terms, conditions, or privileges of employment. In light of recent amendments to the ADEA and several cases dealing with early retirement, questions have arisen regarding the legality of early retirement plans in general and of specific plans. Since the use of early retirement has expanded greatly in recent years, the Commission deems it appropriate to consider the issuance of regulatory guidance in the area. The ANPRM seeks comment on issues such as voluntariness, plan structuring and eligibility to participate.

Timetable:

Action	Date	FR Cite
ANPRM	07/15/88	53 FR 26789
ANPRM Comment Period End	10/13/88	
Next Action Undetermined		

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Joseph N. Cleary, Assistant Legal Counsel, Office of Legal Counsel, Equal Employment Opportunity Commission, 202 634-7643

RIN: 3046-AA36

3008. ● POSSIBLE REVISIONS TO INTERPRETATIONS RELATING TO BENEFITS UNDER EMPLOYEE BENEFIT PLANS

Legal Authority: 29 USC 628

CFR Citation: 29 CFR 1625.10

Legal Deadline: None

Abstract: The current interpretive regulations at 29 CFR 1625.10 were framed in 1979. Since that time the ADEA has been amended in a manner that necessitates considering revisions to the regulations, for example, the addition of sec. 4(g) to the Act and the lifting of the age 70 cap. Accordingly, the Commission is requesting public comment to determine whether revisions are necessary and, if so, the nature and scope of any such revision.

Timetable:

Action	Date	FR Cite
ANPRM	07/15/88	53 FR 26788
ANPRM Comment Period End	10/13/88	
Next Action Undetermined		

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Joseph N. Cleary, Assistant Legal Counsel, Office of Legal Counsel, Equal Employment Opportunity Commission, 202 634-7643

RIN: 3046-AA37

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC) — Proposed Rule Stage

3009. UNIFORM GUIDELINES ON EMPLOYEE SELECTION PROCEDURES

Significance: Agency Priority

Legal Authority: 42 USC 2000e et seq Title VII of the Civil Rights Act of 1964

CFR Citation: 29 CFR 1607

Legal Deadline: None

Abstract: UGESP Recordkeeping Provisions. On March 15, 1983, the Commission voted to review those portions of the recordkeeping provisions of the Guidelines which relate to the maintenance of data necessary to determine adverse impact. Pursuant to that vote, the Commission published in the Federal Register a notice seeking public comment in general and on several specific questions about UGESP recordkeeping. 48 Fed. Reg. 34766 (Aug. 1, 1983). Approximately 45 comments were received. The Commission is currently reviewing the comments and is considering further action. On June 12, 1984, the Commission voted to prepare an NPRM concerning certain UGESP recordkeeping requirements. Prior to publication for comment, co-signatories to UGESP will engage in discussion of recommended changes and other affected agencies will be consulted under EO 12067.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: This is included in the Regulatory Program of the United States under the overall RIN 3046-AA24.

Agency Contact: Nicholas Inzeo, Assistant Legal Counsel, Legal Services, Office of Legal Counsel, Equal

EEOC — Proposed Rule Stage

Employment Opportunity Commission, 202 634-6592

RIN: 3046-AA01

3010. EQUAL EMPLOYMENT OPPORTUNITY IN THE FEDERAL GOVERNMENT; INDIVIDUAL AND CLASS EEO COMPLAINTS PROCESSING

Significance: Agency Priority

Legal Authority: 42 USC 2000e-16 Title VII of the Civil Rights Act; 29 USC 701 Rehabilitation Act of 1973, as amended; 29 USC 621 et seq Age Discrimination in Employment Act

CFR Citation: 29 CFR 1614. (Proposed)

Legal Deadline: None

Abstract: Comprehensive revision of regulations for processing individual and class EEO complaints in the Federal sector. Under development.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Nicholas Inzeo, Assistant Legal Counsel, Legal Services, Office of Legal Counsel, Equal Employment Opportunity Commission, 202 634-6592

RIN: 3046-AA11

3011. PROCEDURES FOR ADMINISTRATIVE EXEMPTIONS UNDER SECTION 9 OF THE AGE DISCRIMINATION IN EMPLOYMENT ACT

Legal Authority: 29 USC 628 Age Discrimination in Employment Act

CFR Citation: 29 CFR 1627.15

Legal Deadline: None

Abstract: The purpose of the proposed amendment to 29 CFR 1627.15 is to give those covered by the ADEA more specific information about what they should do if they wish to seek an exemption from any or all of the ADEA's prohibitions. The advantage is that the establishment of a specific procedure will facilitate the processing of exemption requests.

Timetable:

Action	Date	FR Cite
Submission of Staff Recommendations to Commission	03/13/84	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Joseph N. Cleary, Assistant Legal Counsel, Office of Legal Counsel, Equal Employment Opportunity Commission, 202 634-7643

RIN: 3046-AA21

3012. EQUAL EMPLOYMENT OPPORTUNITY IN THE FEDERAL GOVERNMENT; HANDICAP

Significance: Regulatory Program

Legal Authority: 29 USC 701 et seq Rehabilitation Act of 1973, as amended

CFR Citation: 29 CFR 1613.701 et seq

Legal Deadline: None

Abstract: The Commission is considering alternative ways of resolving various interpretative issues involving the definition of handicapped persons used in its section 501 regulations. One alternative would be to amend the definitions in the regulation itself. The purpose of these revisions would be to clarify the scope of the definitions.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Richard D. Komer, Legal Counsel, Equal Employment Opportunity Commission, 202 634-6600

RIN: 3046-AA23

3013. UNIFORM GUIDELINES ON EMPLOYEE SELECTION PROCEDURES

Significance: Regulatory Program

Legal Authority: 42 USC 2000e et seq Title VII of the Civil Rights Act of 1964

CFR Citation: 29 CFR 1607

Legal Deadline: None

Abstract: On March 15, 1983, the Commission voted to review the recordkeeping portions of the Guidelines. During that review process, several questions arose which pertained to the substantive, non-recordkeeping provisions of the Guidelines. Consequently, the Commission decided to review the substantive portions of the Guidelines. The major substantive areas under review are: 1) the purpose of the Guidelines and whether there is still a need for the Guidelines; 2) the theory of adverse impact and the method of determining when such impact is significant; and 3) how to establish test validity. When the review is completed, the Commission will decide whether any regulatory revisions are needed.

Timetable:

Action	Date	FR Cite
Begin Review	10/01/84	
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: This action resulted from splitting previous entry RIN 3046-AA00, Uniform Guidelines on Employee Selection Procedures.

It is included in the Regulatory Program of the United States under overall RIN 3145-AA25.

Agency Contact: Philip Lyons, Special Assistant to the Chairman, Office of the Chairman, Equal Employment Opportunity Commission, 202 634-6799

RIN: 3046-AA24

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC) — Final Rule Stage

3014. COORDINATION OF FEDERAL EQUAL EMPLOYMENT OPPORTUNITY PROGRAMS

Legal Authority: EO 12067 Sec 1-303; EO 12067 Sec 1-304

CFR Citation: 29 CFR 1690

Legal Deadline: None

Abstract: These amendments to 29 CFR 1690 will implement an agreement reached by EEOC and the Department of Justice with the Office of Management and Budget which clarified the sequence to be followed when agencies are required to seek prepublication clearance of equal employment opportunity rules from EEOC under EO 12067, DOJ under EO 12250, and from OMB under EO 12291 and the Paperwork Reduction Act. In addition to clearance by the EEOC under EO 12067, equal employment opportunity rules issued under Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, as amended, or any other provision of Federal statutory law which prohibits discrimination under any program or activity receiving Federal financial assistance, require clearance from DOJ under EO 12250.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Elizabeth M. Thornton, Associate Legal Counsel, Coordination and Guidance Services, Office of Legal Counsel, Equal Employment Opportunity Commission, 202 634-7643

RIN: 3046-AA10

3015. ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN EQUAL EMPLOYMENT OPPORTUNITY COMMISSION PROGRAMS

Significance: Agency Priority

Legal Authority: 29 USC 794

CFR Citation: 29 CFR 1615. (Proposed)

Legal Deadline: None

Abstract: This proposed regulation provides for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, as it applies to programs or activities conducted by the Equal Employment Opportunity Commission.

Timetable:

Action	Date	FR Cite
NPRM	11/05/87	52 FR 42450
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Elizabeth M. Thornton, Associate Legal Counsel, Coordination & Guidance Services, Office of Legal Counsel, Equal Employment Opportunity Commission, 202 634-7643

RIN: 3046-AA50

3016. PENSION ACCRUALS AND CONTRIBUTIONS UNDER ADEA

Significance: Agency Priority

Legal Authority: 29 USC 628 The Age Discrimination in Employment Act of 1967; PL 99-509, Sec 9204

CFR Citation: 29 CFR 1625.10

Legal Deadline: Final, Statutory, February 1, 1988.
Rule will be completed when the Department of the Treasury completes its regulatory review.

Abstract: Regulations, as may be necessary, to carry out congressional enactments regarding pension accruals and contributions under ADEA.

Timetable:

Action	Date	FR Cite
NPRM	11/27/87	52 FR 45360
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Joseph N. Cleary, Assistant Legal Counsel, Office of Legal Counsel, Equal Employment Opportunity Commission, 202 634-7643

RIN: 3046-AA31

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC) — Completed Actions

3017. EQUAL EMPLOYMENT OPPORTUNITY IN THE FEDERAL GOVERNMENT; MIXED CASE COMPLAINTS

CFR Citation: 29 CFR 1613

Completed:

Reason	Date	FR Cite
Final Action	10/30/87	52 FR 41920
Final Action Effective	11/30/87	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Nicholas Inzeo 202 634-6592

RIN: 3046-AA14

3018. INTERPRETATIVE BULLETIN ON EMPLOYEE BENEFIT PLANS

Significance: Agency Priority

CFR Citation: 29 CFR 1625.10

Completed:

Reason	Date	FR Cite
Final Action	06/01/88	53 FR 27360
Final Action Effective	07/20/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Joseph N. Cleary 202 634-7643

RIN: 3046-AA18

[FR Doc. 88-20867 Filed 10-21-88; 8:45 am]

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Part XXIII

Federal Emergency Management Agency

Semiannual Regulatory Agenda

FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Ch. I

Semiannual Agenda

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Semiannual agenda.

SUMMARY: Pursuant to section 5 of Executive Order 12291 ("Federal Regulations") the Federal Emergency Management Agency is publishing its semiannual agenda for FEMA. The agenda lists regulations that will be under development or review during the period October 1, 1988 to September 30, 1989.

ADDRESS: Rules Docket Clerk, Office of General Counsel, Room 840, 500 C Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: For general information, contact Susan Kantor Bank, Office of General Counsel, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3972. For additional information about a specific regulation, contact the person listed as the contact point in the agenda.

SUPPLEMENTARY INFORMATION: Executive Order 12291, "Federal Regulations," directs each Executive agency to adopt procedures to improve existing and future regulations. Publication of an agenda of significant regulations is called for at least semiannually in order to give the public adequate notice of agency rulemaking activities; also publication of a regulatory flexibility agenda concerning rules likely to have a significant impact on a substantial number of small entities must be published in accordance with 5 U.S.C. 601 *et seq.*

In fulfillment of requirements imposed by the Executive Order and 5 U.S.C. 601 *et seq.*, this agenda describes current and projected regulations, and regulations which will be under review during the period April 1, 1988 to March 31, 1989. This agenda also contains information on regulations on which action was completed since the last FEMA semiannual agenda published April 25, 1988 at 53 FR 14416.

Public comment on the agenda, including that by State and local governments, is invited and should be submitted to the Rules Docket Clerk.

The agenda is not limited to major or significant rules and contains as much information as possible concerning all FEMA regulations to be published in the next 12 months except for routine flood elevation determinations, listing of eligible communities under the National Flood Insurance Program, listing of suspended communities and similar designations, and organizational and management matters.

Dated: August 24, 1988.

George W. Watson,

Acting General Counsel.

Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
3019	Nondiscrimination in Federally-Assisted Programs	3067-AA00
3020	Individual and Family Grant Program Changes	3067-AA84
3021	Review and Approval of State and Local Emergency Response Plans	3067-AA76
3022	Radiological Emergency Planning and Preparedness	3067-AA77
3023	Permanent Relocation Assistance	3067-AA84
3024	Flood Insurance Rating System Changes	3067-AA98
3025	Criteria for Hurricane Preparedness Assistance to State and Local Governments	3067-AB11
3026	Disaster Assistance: Subpart J (General Insurance Requirements); Subpart K (Flood Insurance Requirements)	3067-AB26
3027	Individual and Family Grant Program; State Plans	3067-AB29
3028	Testimony, Production or Disclosure of Information by FEMA Employees	3067-AB30
3029	Collection of Debts by the Government Under the Debt Collection Act of 1982	3067-AB31
3030	National Flood Insurance Program Changes	3067-AB32
3031	Federal Crime Insurance Program Rate Increase	3067-AB33

Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
3032	Temporary Relocation Assistance - Superfund	3067-AA72
3033	Disaster Preparedness Assistance	3067-AB05
3034	Civil Defense: State and Local Emergency Management Assistance Program (EMA)	3067-AB14
3035	Nondiscrimination in Federally Assisted Programs on the Basis of Age	3067-AB18
3036	Comprehensive Cooperative Agreement (CCA) Policies, Procedures, and Associated Programs	3067-AB18
3037	National Flood Insurance Program Payment of Flood Insurance for Structures on Land Subject to Imminent Collapse or Subsidence	3067-AB23
3038	National Flood Insurance Program Elevation Requirements for Manufactured Homes	3067-AB25

FEMA

Completed Actions

Sequence Number	Title	Regulation Identifier Number
3039	Nondiscrimination on the Basis of Handicap in FEMA	3067-AA42
3040	Community Disaster Loans	3067-AA95
3041	National Flood Insurance Program Redefinition of Coastal High Hazard Area	3067-AB08
3042	National Flood Insurance Program Changes	3067-AB09
3043	Changes in National Flood Insurance Program Commissions to Insurance Agents	3067-AB10
3044	Flood Insurance Subsidized Rate Change	3067-AB12
3045	Changes in NFIP Regulations for Write-Your-Own Program	3067-AB17
3046	National Flood Insurance Program Elevated Building Coverage	3067-AB24
3047	Individual and Family Grant Programs	3067-AB28
3048	Federal Crime Insurance Rate Increases	3067-AB27

FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) — Proposed Rule Stage

3019. NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS

Legal Authority: 42 USC 2000d-1; 29 USC 794; 20 USC 1682; 42 USC 6103; 42 USC 5151; Reorganization Plan No. 3 of 1978; EO 12127; EO 12148

CFR Citation: 44 CFR 7

Legal Deadline: None

Abstract: This rule effectuates for FEMA the nondiscrimination requirements of Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, and Section 311 of the Disaster Relief Act of 1974. A draft regulation is undergoing interagency review. The notice of proposed rulemaking will be issued as soon as interagency clearances are obtained.

Timetable:

Action	Date	FR Cite
NPRM	05/01/89	
NPRM Comment Period End	07/01/89	
Interim Final Rule	10/01/89	
ANPRM	00/00/00	
ANPRM Comment Period End	00/00/00	

Small Entities Affected: None

Government Levels Affected: Local, State

Agency Contact: John R. Curran, Sr., Director, Office of Personnel & Equal Opportunity, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, 202 646-3982

RIN: 3067-AA00

3020. ● INDIVIDUAL AND FAMILY GRANT PROGRAM CHANGES

Legal Authority: 42 USC 5178

CFR Citation: 44 CFR 205.54

Legal Deadline: None

Abstract: The following revisions to the regulations are being considered: establishing a group flood insurance policy for all IFG recipients for each flood declaration; reduce the application period for IFG assistance; change references to obsolete forms; reduce the amount of applicant recordkeeping required by States; revise the formula for calculating State administrative costs; and include guidance on current IG audit report procedures.

Timetable:

Action	Date	FR Cite
NPRM	03/01/89	
NPRM Comment Period End	05/15/89	
Interim Final Rule	12/15/89	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Donna M. Dannels, Emergency Management Specialist, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, 202 646-3982

RIN: 3067-AA84

3021. REVIEW AND APPROVAL OF STATE AND LOCAL EMERGENCY RESPONSE PLANS

Legal Authority: 50 USC app. 225g; EO 12148

CFR Citation: 44 CFR 350

Legal Deadline: None

Abstract: Updates existing regulation governing policies and procedures for review and approval of State and local emergency plans and preparedness for the offsite effects of a radiological emergency which might occur at a commercial nuclear power plant.

Timetable:

Action	Date	FR Cite
NPRM	10/31/88	
NPRM Comment Period End	12/30/88	

Small Entities Affected: None

Government Levels Affected: Local, State

Agency Contact: Marshall Sanders, Chief, Program Development Branch, State and Local Programs Directorate, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, 202 646-3131

RIN: 3067-AA79

3022. RADIOLOGICAL EMERGENCY PLANNING AND PREPAREDNESS

Legal Authority: EO 12148; EO 12241

CFR Citation: 44 CFR 351

Legal Deadline: None

Abstract: Updates regulations which set out Federal Agency roles and assigns tasks regarding Federal assistance to States and local governments in their radiological emergency planning and preparedness activities connected with radiological accidents at commercial nuclear power plants.

Timetable:

Action	Date	FR Cite
NPRM	11/30/88	
NPRM Comment Period End	02/28/89	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Marshall Sanders, Chief, Program Development Branch, State & Local Programs Directorate, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, 202 646-4131

RIN: 3067–AA77

3023. PERMANENT RELOCATION ASSISTANCE

Significance: Regulatory Program

Legal Authority: 42 USC 9601 et seq

CFR Citation: 44 CFR 321

Legal Deadline: None

Abstract: This part prescribes the policies to be followed by the Federal Emergency Management Agency or any State or local government when implementing permanent relocation under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended.

Timetable:

Action	Date	FR Cite
NPRM	10/01/88	
NPRM Comment Period End	12/01/88	
Final Action	01/15/89	
Final Action Effective	02/15/89	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Charles D. Robinson, Chief, Superfund & Relocation Assistance Br., Disaster Assistance Program, SLPS, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, 202 646-3686

RIN: 3067–AA84

3024. FLOOD INSURANCE RATING SYSTEM CHANGES

Significance: Regulatory Program

Legal Authority: 42 USC 4001 et seq; EO 12127

CFR Citation: 44 CFR 61

Legal Deadline: None

Abstract: National Flood Insurance Program premium rating system changes under consideration include a community rating system and a system to use revised FIRMs producing higher rates for existing policyholders, subject to a rate cap. The community rating system would be designed to recognize circumstances within local communities that mitigate or exacerbate the flooding risk, such as the inaction of a community in addressing flood problems or the performance of a community that goes beyond minimum NFIP floodplain management requirements. The use of revised FIRMs for existing policyholders would replace the current practice of allowing premium rates for such policyholders to be based on the map in existence at the time of construction so long as the construction met the requirements at that time.

Timetable:

Action	Date	FR Cite
ANPRM	07/01/87	52 FR 24482
ANPRM Comment Period End	09/31/87	
NPRM	12/01/89	
NPRM Comment Period End	01/30/90	
Final Action	05/30/90	
Final Action Effective	10/01/90	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Francis V. Reilly, Deputy Administrator, FIA, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, 202 646-2781

RIN: 3067–AA98

3025. CRITERIA FOR HURRICANE PREPAREDNESS ASSISTANCE TO STATE AND LOCAL GOVERNMENTS

Significance: Agency Priority

Legal Authority: 42 USC 5131; 50 USC App. 2251 to 2297; EO 12148; EO 12381

CFR Citation: 44 CFR 302

Legal Deadline: None

Abstract: Under PL 93-288, the Federal Emergency Management Agency provides financial and technical assistance to States and local governments in their hurricane preparedness planning. Except for some instances, FEMA has provided 100 percent funding to designated States that have high risk hurricane hazard areas for the development of population preparedness and property protection studies. This proposed rulemaking will establish a plan for having States share the cost of these activities. These changes to 44 CFR 300.6 will affect only the hurricane preparedness portion of this rule; the earthquake hazards reduction portion will be revised in a separate concurrent rulemaking effort.

Timetable:

Action	Date	FR Cite
NPRM	11/01/88	
NPRM Comment Period End	01/15/89	

Small Entities Affected: None

Government Levels Affected: Local, State

Agency Contact: Richard Krimm, Assistant Associate Director, Office of Natural & Technological Hazards Programs, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, 202 646-2871

RIN: 3067–AB11

3026. DISASTER ASSISTANCE: SUBPART J (GENERAL INSURANCE REQUIREMENTS); SUBPART K (FLOOD INSURANCE REQUIREMENTS)

Significance: Regulatory Program

Legal Authority: 42 USC 5154; 42 USC 4001

CFR Citation: 44 CFR 205, Subpart J; 44 CFR 205, Subpart K

Legal Deadline: None

Abstract: To change the rules for general hazard insurance and flood insurance which are required as a condition for receiving Federal assistance under the Disaster Relief Act of 1974, PL 93-288.

Timetable:

Action	Date	FR Cite
ANPRM	11/27/87	52 FR 45365
ANPRM Comment Period End	01/26/88	52 FR 45365
NPRM	00/00/00	
NPRM Comment Period End	00/00/00	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: Local, State

Agency Contact: Alex Burns, Program Officer, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, 202 646-3670

RIN: 3067–AB25

3027. ● INDIVIDUAL AND FAMILY GRANT PROGRAM; STATE PLANS

Significance: Regulatory Program

Legal Authority: 42 USC 5178

CFR Citation: 44 CFR 205.54

Legal Deadline: None

Abstract: A revision is being proposed to clarify and simplify State planning for the IFG program.

Timetable:

Action	Date	FR Cite
ANPRM	10/21/87	52 FR 39249
ANPRM Comment Period End	12/21/87	
NPRM	11/01/88	
NPRM Comment Period End	01/15/89	
Final Action	05/30/89	
Final Action Effective	06/30/89	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Agnes C. Mawcak, Emergency Management Specialist, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, 202 646-3680

RIN: 3067–AB29

3028. ● TESTIMONY, PRODUCTION OR DISCLOSURE OF INFORMATION BY FEMA EMPLOYEES

Legal Authority: 5 USC 301; 5 USC 552

CFR Citation: 44 CFR 5

Legal Deadline: None

Abstract: FEMA regulations governing the production and disclosure of records and information contained in materials generated, developed or held by FEMA will be amended to include guidelines for testimony of employees in response to subpoenas or other official demands. In recent years FEMA employees have been increasingly called upon to provide official testimony in disputes between private litigants. This housekeeping regulation will provide orderly procedures for response to such demands.

Timetable:

Action	Date	FR Cite
NPRM	11/30/88	
NPRM Comment Period End	01/30/89	
Final Action	02/15/89	
Final Action Effective	03/15/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Susan Kantor Bank, Associate General Counsel, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, 202 646-3973

RIN: 3067–AB30

3029. ● COLLECTION OF DEBTS BY THE GOVERNMENT UNDER THE DEBT COLLECTION ACT OF 1982

Legal Authority: 31 USC 3701 et seq

CFR Citation: 44 CFR 11.30; 44 CFR 205.54(k)(1)

Legal Deadline: None

Abstract: Provides procedures by which the Federal Emergency Management Agency collects debts owed by States, units of local government, and private entities. The revisions to this regulation change the limits of debt collection officers to terminate, suspend or compromise debts. The revisions would increase the period in which States and local governments could pay debts and not be charged interest from 30 to 90 days.

Timetable:

Action	Date	FR Cite
NPRM	09/15/88	
NPRM Comment Period End	10/15/88	
Final Action	12/15/88	
Final Action Effective	01/01/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Richard S. Buck, Program Specialist, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, 202 646-4081

RIN: 3067–AB31

3030. ● NATIONAL FLOOD INSURANCE PROGRAM CHANGES

Legal Authority: 42 USC 4001 et seq; EO 12127

CFR Citation: 44 CFR 59; 44 CFR 65; 44 CFR 72

Legal Deadline: None

Abstract: Possible changes to the National Flood Insurance Program regulations include minor modifications to the definitions of the terms "substantial improvement" and "new construction", providing for mapping on the basis of future conditions, clarifying the use of alternative hydraulic or hydrologic methodologies in requests for map revisions, specifying requirements for requests for map revisions for alluvial fan areas, and adjustment of the labor rate charged for processing requests for conditional approval of map changes.

Timetable:

Action	Date	FR Cite
NPRM	02/15/89	
NPRM Comment Period End	04/15/89	
Final Action	08/15/89	
Final Action Effective	10/01/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Charles M. Piazzo, Chief, Regulations & Underwriting Division, Federal Insurance Administration, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, 202 646-3432

RIN: 3067–AB32

FEMA — Proposed Rule Stage

3031. ● FEDERAL CRIME INSURANCE PROGRAM RATE INCREASE

Legal Authority: 12 USC 1749 bbb et seq; EO 12127

CFR Citation: 44 CFR 83

Legal Deadline: None

Abstract: A Federal Crime Insurance Program premium rate increase is planned.

Timetable:

Action	Date	FR Cite
NPRM	11/15/88	
NPRM Comment Period End	01/14/89	
Final Action	04/15/89	
Final Action Effective	05/15/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Robert J. DeHensel, Chief, Urban Property Insurance Operations, Federal Insurance Administration, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, 202 646-3440

RIN: 3067–AE03

FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) — Final Rule Stage

3022. TEMPORARY RELOCATION ASSISTANCE - SUPERFUND

Legal Authority: 42 USC 9601 et seq

CFR Citation: 44 CFR 320

Legal Deadline: None

Abstract: This part prescribes policy and program guidance to be followed when implementing temporary relocation assistance under the Comprehensive Environmental Response, Compensation and Liability Act, 1980 (CERCLA) Superfund.

Timetable:

Action	Date	FR Cite
NPRM	06/10/86	51 FR 20995
NPRM Comment Period End	08/11/86	
Begin Review	10/01/86	
End Review	04/30/87	
Final Action	10/01/88	
Final Action Effective	11/01/88	

Small Entities Affected: None

Government Levels Affected: Local, State

Agency Contact: Karen Forbes, Emergency Management Specialist, Federal Emergency Management Agency, Room 701, 500 C Street, SW, Washington, DC 20472, 202 646-3667

RIN: 3067–AA71

3033. DISASTER PREPAREDNESS ASSISTANCE

Legal Authority: 42 USC 5121 et seq; Reorganization Plan No. 3 of 1978; EO 12148

CFR Citation: 44 CFR 300

Legal Deadline: None

Abstract: This regulation revises and makes technical corrections to the regulations governing assistance under Title II of the Disaster Relief Act of 1974.

Timetable:

Action	Date	FR Cite
NPRM	07/14/86	53 FR 26746
NPRM Comment Period End	09/12/88	
Final Action	10/15/88	
Final Action Effective	11/15/88	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Gregory S. Jones, Emergency Management Specialist, Federal Emergency Management Agency, Off. of Disaster Assistance Programs, State & Local Programs Directorate, 500 C Street, SW, Washington, DC 20472, 202 646-3668

RIN: 3067–AB05

3034. CIVIL DEFENSE: STATE AND LOCAL EMERGENCY MANAGEMENT ASSISTANCE PROGRAM (EMA)

Legal Authority: 50 USC app 2253; Reorganization Plan No. 3 of 1978; EO 12148

CFR Citation: 44 CFR 302, (Revision)

Legal Deadline: None

Abstract: Changes within existing regulation to delete one allocation formula factor.

Timetable:

Action	Date	FR Cite
NPRM	08/26/87	52 FR 32140
NPRM Comment Period End	10/26/87	52 FR 32140
Interim Final Rule	10/01/88	

Small Entities Affected: None

Government Levels Affected: Local, State

Agency Contact: John McKay, Chief, Emergency Management Systems Development Division, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, 202 646-4253

RIN: 3067–AB14

3035. NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS ON THE BASIS OF AGE

Legal Authority: 42 USC 6103

CFR Citation: 44 CFR 7, Subpart E

Legal Deadline: None

Abstract: This rule effectuates for FEMA the nondiscrimination requirements of the Age Discrimination Act of 1975.

Timetable:

Action	Date	FR Cite
NPRM	01/14/88	53 FR 922
NPRM Comment Period End	03/14/88	53 FR 922
Final Action	01/15/89	
Final Action Effective	03/15/89	

Small Entities Affected: None

Government Levels Affected: Local, State

Agency Contact: Alan Clive, Equal Employment Manager, Federal Emergency Management Agency, 500 C

FEMA — Final Rule Stage

Street, SW, Washington, DC 20472, 202 646-3537

RIN: 3067–AB18

3036. COMPREHENSIVE COOPERATIVE AGREEMENT (CCA) POLICIES, PROCEDURES, AND ASSOCIATED PROGRAMS

Legal Authority: 50 USC 2286; 50 USC 2251; 42 USC 5121; 42 USC 5151; 42 USC 7701; 42 USC 4001; PL 95-224; PL 96-295; PL 99-498; PL 93-288; PL 95-124; PL 90-488; PL 93-234; PL 90-577; EO 12148

CFR Citation: 44 CFR 305; 44 CFR 302; 44 CFR 300; 44 CFR 301; 5 CFR 900

Legal Deadline: None

Abstract: The comprehensive aspect of the CCA process itself was not created by legislation or even by regulation; Presidential emphasis on grants consolidation and FEMA policy on integrating programs created the CCA. The cooperative agreement aspect of the CCA process is based on PL 95-224, the Federal Grant and Cooperative Agreement Act of 1977. Cooperative agreements are used when stimulating a public purpose (the multiple programs delivered in each CCA are aimed at stimulating public purposes, primarily civil defense). The Federal Civil Defense Act of 1950, as amended, authorizes the major portion of CCA programs and assistance dollars, and is therefore the major legislative authority underpinning the CCA process. Various Civil Preparedness Guides, primarily CPG 1-38 and CPG 1-3 address the CCA process and associated programs. However, a regulation would provide complete notice to States and interested parties and complete the policy and procedural requirements identified by the Office of General Counsel. Specific quantitative estimates cannot be cited.

Timetable:

Action	Date	FR Cite
ANPRM	04/15/88	
ANPRM Comment Period End	06/15/88	
Interim Final Rule	09/01/88	
Interim Final Rule Public comment period end	10/01/88	

Small Entities Affected: None

Government Levels Affected: Local, State

Agency Contact: Nancy J. Holt, Program Analyst, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, 202 646-3585

RIN: 3067–AB16

3037. NATIONAL FLOOD INSURANCE PROGRAM PAYMENT OF FLOOD INSURANCE FOR STRUCTURES ON LAND SUBJECT TO IMMINENT COLLAPSE OR SUBSIDENCE

Legal Authority: 42 USC 4001 et seq; EO 12127

CFR Citation: 44 CFR 59; 44 CFR 60; 44 CFR 61; 44 CFR 62

Legal Deadline: None

Abstract: Section 544 of the Housing and Community Development Act of 1987 provides a new benefit to National Flood Insurance Program Policyholders: Payment for demolition or relocation of an insured structure if it is located "along the shore of a lake or other body of water and is certified by appropriate State and local land use authority to be subject to imminent collapse or subsidence as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels." FEMA plans to commission an investigation through the National Academy of Sciences (expected to take approximately 15 months) to provide a basis for regulations defining "imminent collapse" certification criteria and erosion zone management measures. In the meantime, FEMA is considering issuing interim administrative regulations dealing with other aspects of providing new benefits.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/01/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Donald F. Collins, Assistant Administrator, Federal Insurance Administration, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, 202 646-3419

RIN: 3067–AB23

3038. NATIONAL FLOOD INSURANCE PROGRAM ELEVATION REQUIREMENTS FOR MANUFACTURED HOMES

Legal Authority: 42 USC 4001 et seq; EO 12127

CFR Citation: 44 CFR 59; 44 CFR 60

Legal Deadline: None

Abstract: Revisions to National Flood Insurance Program regulations regarding the elevation of manufactured homes placed in existing mobile home parks and subdivisions in special flood hazard areas that were effective October 1, 1986, were suspended effective June 30, 1987. There are three possible options: (1) lifting the suspension so that the October 1, 1986, revisions go back into effect; (2) continuing the suspension indefinitely; or (3) making some revisions different from the October 1, 1986 revisions.

Timetable:

Action	Date	FR Cite
NPRM	09/31/88	
NPRM Comment Period End	07/30/88	
Final Action	07/01/89	
Final Action Effective	08/01/89	

Small Entities Affected: None

Government Levels Affected: Local

Agency Contact: Michael F. Robinson, Chief, Program Policy & Compliance Div., Federal Insurance Administration, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, 202 646-3717

RIN: 3067–AB25

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3039. NONDISCRIMINATION ON THE BASIS OF HANDICAP IN FEMA

CFR Citation: 44 CFR 16

Completed:

Reason	Date	FR Cite
Final Action	07/08/88	53 FR 25872
Final Action Effective	08/08/88	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: John R. Curran, Sr. [illegible]

RIN: 3067–AA42

3040. COMMUNITY DISASTER LOANS

CFR Citation: 44 CFR 205, Subpart F

Completed:

Reason	Date	FR Cite
Final Action	04/18/88	53 FR 12661
Final Action Effective	05/18/88	

Small Entities Affected: None

Government Levels Affected: Local, State

Agency Contact: Gene Morath 202 646-3663

RIN: 3067–AA35

3041. NATIONAL FLOOD INSURANCE PROGRAM REDEFINITION OF COASTAL HIGH HAZARD AREA

Significance: Regulatory Program

CFR Citation: 44 CFR 59

Completed:

Reason	Date	FR Cite
Final Action	05/06/88	53 FR 16269
Final Action Effective	10/01/88	

Small Entities Affected: None

Government Levels Affected: Local, State

Agency Contact: Brian R. Mrazik 202 646-2768

RIN: 3067–AB08

3042. NATIONAL FLOOD INSURANCE PROGRAM CHANGES

CFR Citation: 44 CFR 59; 44 CFR 61; 44 CFR 72

Completed:

Reason	Date	FR Cite
Final Action	05/06/88	53 FR 16269
Final Action Effective	10/01/88	

Small Entities Affected: None

Government Levels Affected: Local

Agency Contact: Donald L. Collins 202 646-3419

RIN: 3067–AB09

3043. CHANGES IN NATIONAL FLOOD INSURANCE PROGRAM COMMISSIONS TO INSURANCE AGENTS

CFR Citation: 44 CFR 62

Completed:

Reason	Date	FR Cite
Final Action	04/26/88	53 FR 15219
Final Action Effective	10/01/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Donald L. Collins 202 646-3419

RIN: 3067–AB10

3044. FLOOD INSURANCE SUBSIDIZED RATE CHANGE

Significance: Regulatory Program

CFR Citation: 44 CFR 61

Completed:

Reason	Date	FR Cite
Final Action	06/09/88	53 FR 23629
Final Action Effective	09/01/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Howard Leikin 202 646-2784

RIN: 3067–AB12

3045. CHANGES IN NFIP REGULATIONS FOR WRITE-YOUR-OWN PROGRAM

CFR Citation: 44 CFR 61; 44 CFR 62

Completed:

Reason	Date	FR Cite
Final Action	04/26/88	53 FR 15208
Final Action Effective	10/01/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Donald L. Collins 202 646-3419

RIN: 3067–AB17

3046. NATIONAL FLOOD INSURANCE PROGRAM ELEVATED BUILDING COVERAGE

CFR Citation: 44 CFR 61

Completed:

Reason	Date	FR Cite
Final Action	07/26/88	53 FR 27969
Final Action Effective	10/01/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Donald L. Collins 202 646-3419

RIN: 3067–AB24

3047. INDIVIDUAL AND FAMILY GRANT PROGRAMS

Significance: Regulatory Program

CFR Citation: 44 CFR 205.54

Completed:

Reason	Date	FR Cite
No action expected in next 12 months	08/26/88	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Agnes C. Mravcak 202 646-3880

RIN: 3067–AB26

3048. FEDERAL CRIME INSURANCE RATE INCREASES

CFR Citation: 44 CFR 80; 44 CFR 82; 44 CFR 83

Completed:

Reason	Date	FR Cite
Final Action	04/06/88	53 FR 11275
Final Action Effective	05/01/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Robert J. DeHenzel 202 646-3448

RIN: 3067–AB27

[FR Doc. 88-20668 Filed 10-21-88; 8:45 am]

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federal register

Monday
October 24, 1988

Part XXIV

Federal Mediation and Conciliation Service

Semiannual Regulatory Agenda

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FEDERAL MEDIATION AND CONCILIATION SERVICE (FMCS)

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR Ch. XII

Unified Agenda of Federal Regulations

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Semiannual agenda required by the Regulatory Flexibility Act of 1980.

SUMMARY: The Federal Mediation and Conciliation Service is redrafting one regulation subject to the Regulatory Flexibility Act during the six month period from October 1988 to April 1989. That regulation is Arbitration Policy and Practice.

FOR FURTHER INFORMATION CONTACT: Daniel P. Dozier, Legal Counsel, Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, DC 20427, (202) 653-5305.

Dated: September 9, 1988.

Kay McMurray,

Director.

FEDERAL MEDIATION AND CONCILIATION SERVICE (FMCS) — Final Rule Stage

3049. REVIEW OF EXISTING ARBITRATION REGULATION

Significance: Agency Priority

Legal Authority: 29 USC 172; 5 USC 552; 29 USC 173

CFR Citation: 29 CFR 1404

Legal Deadline: None

Abstract: The Federal Mediation and Conciliation Service is in the process of redrafting its existing Arbitration Services regulation at 29 CFR 1404. The Service has completed its initial draft and is presently analyzing comments received. A final rule will be published soon.

Timetable:

Action	Date	FR Cite
NPRM	04/20/88	53 FR 12952
NPRM Comment Period End	05/20/88	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Daniel P. Dozier, Counsel, Federal Mediation and Conciliation Service, 2100 K Street, NW, Washington, DC 20427, 202 653-5305

[FR Doc. 88-21361 Filed 10-21-88; 8:45 am]

Monday
October 24, 1988

Part XXV

General Services Administration

Semiannual Regulatory Agenda

federal register

GENERAL SERVICES ADMINISTRATION (GSA)

GENERAL SERVICES ADMINISTRATION

41 CFR Chs. 101, 105, and 201

48 CFR Ch. 5

Unified Agenda of Federal Regulations

AGENCY: General Services Administration.

ACTION: Semiannual agenda.

SUMMARY: This agenda announces the proposed regulatory actions that GSA plans for the next 12 months and those actions that were completed since April 1988. This agenda was developed under the guidelines in OMB Bulletin 88-15, dated June 24, 1988. GSA's purpose in publishing this agenda is to allow interested persons an opportunity to participate in the rulemaking process.

FOR FURTHER INFORMATION CONTACT: Rodney P. Lantier, Chief, Directives and Correspondence Management Branch (202) 566-0666.

SUPPLEMENTARY INFORMATION: None of the regulations will have an effect on small businesses or other entities. None of the regulations listed are considered major under Executive Order 12291, Federal Regulations.

Dated: August 26, 1988.

John Alderson,

Acting Administrator of General Services.

Prerule Stage

Sequence Number	Title	Regulation Identifier Number
3050	Federal Property Management Regulations; Annual Real Property Inventories	3090-AC74

Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
3051	Contract Closeout Procedures (GSAR 5-96)	3090-AC67
3052	Federal Property Management Regulations; Revises the Reporting Requirements for Real Property	3090-AB31
3053	Update of Governmentwide Telecommunications Policies and Regulations	3090-AB06
3054	Establishment of Policies and Procedures for Federal Agencies' Management of Electronic Recordkeeping, Project 86.83A	3090-AC54
3055	FIRMR Improvement Project	3090-AD04
3056	Restructuring and Simplification of Federal Information Resources Management Standards	3090-AD21
3057	Enforcement of Nondiscrimination on the Basis of Handicap in Federally Conducted Programs	3090-AC48
3058	Nondiscrimination on the Basis of Race, Color, National Origin, and where applicable, sex	3090-AC49

Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
3059	General Services Administration Acquisition Regulation Change Subpart 46.7	3090-AB62
3060	General Services Administration Acquisition Regulation, Change Receipt of Proposals and Quotations	3090-AB63
3061	Miscellaneous Changes on the Acquisition of Leasehold Interests in Real Property (GSAR 5-155)	3090-AC59
3062	Multiple Award Schedule Program (GSAR 5-38A)	3090-AC61
3063	Multiyear Contracts and Contracts with Options (GSAR 5-106)	3090-AC66
3064	Small Business Subcontracting Plans (GSAR 5-122)	3090-AC69
3065	General Services Administration Acquisition Regulation (GSAR) Proposed Rule, Utility Contracts, GSAR Case 5-65	3090-AD10
3066	Revision of Public Voucher for Transportation Charges, Standard Form 1113	3090-AB89
3067	National Defense Stockpile Disposal Regulations	3090-AA40
3068	Reporting of Excess Real Property - Asbestos	3090-AD05
3069	Responsibility of disposal agency; disposals to public agencies	3090-AD26
3070	Donation of Abandoned and Forfeited Personal Property	3090-AA24
3071	Utilization, Donation, Sale, Abandonment or Destruction of Hazardous Materials	3090-AA42
3072	Revision of Standard Form 1170, Redemption of Unused Tickets	3090-AD13
3073	Use of EDI within the Dept. of Defense as an alternative to Government Bills of Lading for procuring freight transportation services for the Government	3090-AD27
3074	Revision of ADPE Reutilization Policies and Procedures including instructions for SF 120, Project 86.14A	3090-AC25
3075	Office Equipment Accessibility for the Handicapped	3090-AD32
3076	Implementation of Title VIII, Paperwork Reduction Reauthorization Act of 1986, P.L. 99-500 Regarding Automatic Data Processing Equipment	3090-AD03

GSA

Final Rule Stage—Continued

Sequence Number	Title	Regulation Identifier Number
3077	Mandatory Federal Telecommunications Systems (FTS) 2000 Network (FIRMR Interim Rule 1)	3090-AD20
3078	Information Resources Management Reviews Codification Amendment for FIRMR Temporary Regulation 10	3090-AD22

Completed Actions

Sequence Number	Title	Regulation Identifier Number
3079	Supply Sources and Related Programs	3090-AA69
3080	General Services Administration Acquisition Regulation (GSAR) Miscellaneous Changes, Change 51 (GSAR 5-83)	3090-AB90
3081	Buy American Act - Construction Materials Change 53 (GSAR 5-131)	3090-AC37
3082	Federal Procurement Data System (FPDS) Reporting Requirements (GSAR 5-113)	3090-AC94
3083	General Services Administration Acquisition Regulation (GSAR) Acquisition Circular, AC-87-4, Increase in Thresholds for Contracting Office Warrant Program & Imprest Funds Trans	3090-AD11
3084	General Services Administration Acquisition Regulation, Use of SF-30 for Additional Awards to an Offeror Under a Single Contract Change 55 (GSAR 5-180)	3090-AD23
3085	General Services Administration Acquisition Regulation (GSAR), Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era, Change 54, (GSAR 5-210)	3090-AD24
3086	General Services Administration Acquisition Regulation (GSAR) Trade Agreements Act Threshold, Change 52 (GSAR 5-209)	3090-AD25
3087	General Services Administration Acquisition Regulation Acquisition Circular AC-88-1, Prompt Payment and Ratification of Unauthorized Commitments, GSAR 5-208A	3090-AD28
3088	Audit Procedures for Commercial Bills of Lading- Cost-Reimbursement-Type Contracts	3090-AC20
3089	Donation of Personal Property	3090-AA23
3090	Acquisition and Use of Excess Personal Property	3090-AA30
3091	Utilization, Donation, and Disposal of Foreign Gifts and Decorations	3090-AC88
3092	Prepayment Transportation Audit Procedures	3090-AC22
3093	Change to Federal Travel Regulations (FTR), FPMR 101-7, FPMR A-40 Supplement 27	3090-AC83
3094	Revision of Standard Form 1169, U.S. Government Transportation Request	3090-AD12
3095	Removal of the Federal Travel Regulations from the Federal Property Management Regulations System	3090-AD18

GENERAL SERVICES ADMINISTRATION (GSA) — Prerule Stage

PUBLIC BUILDINGS SERVICE

3050. FEDERAL PROPERTY MANAGEMENT REGULATIONS; ANNUAL REAL PROPERTY INVENTORIES

Legal Authority: EO 12411

CFR Citation: 41 CFR 101-3

Legal Deadline: None

Abstract: This regulation will be reviewed and updated in light of the governmentwide space reduction and utilization improvement initiatives mandated in Executive Order 12411--Government Work Space Management Reform--and FPMR Temporary Regulation D-73-- Quality Workplace Environment.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Agency Contact: Judy Maretta, Director, Governmentwide Policy Div., General Services Administration, GSA Office of Governmentwide Real Property, Policy and Oversight (PG), Washington, DC 20405, 202 566-0567

RIN: 3090-AC74

GENERAL SERVICES ADMINISTRATION (GSA) — Proposed Rule Stage

ACQUISITION POLICY

3051. CONTRACT CLOSEOUT PROCEDURES (GSAR 5-96)

Legal Authority: 40 USC 486(c)

CFR Citation: 48 CFR 504

Legal Deadline: None

Abstract: The General Services Administration Acquisition Regulations (GSAR) will be amended to implement one of the recommendations resulting from a Federal Procurement Reform study under Executive Order 12352 by providing agency procedures in Part 504.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Marjorie Ashby, Management Analyst, General Services Administration, GSA Acquisition Policy and Regulations, 18th & F Streets, NW, Washington, DC 20405, 202 523-3822

RIN: 3090-AC87

OFFICE OF THE COMPTROLLER

3052. FEDERAL PROPERTY MANAGEMENT REGULATIONS; REVISES THE REPORTING REQUIREMENTS FOR REAL PROPERTY

Legal Authority: EO 12411

CFR Citation: 41 CFR 101-3

Legal Deadline: None

Abstract: This regulation revises FPMR 101-3 with changes and additions to the data elements currently collected as part of the World-Wide Real Property Inventory System. It also displays the revised forms to be used when supplying this information. These changes are necessary to monitor governmentwide space reduction initiatives mandated by Executive Order 12411 - Government Work Space Management Reforms and Temporary Regulation D-70-Work Space Management Plans.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Bobby Daniel, Accounting Specialists, General Services Administration, GSA Office of Governmentwide Real Property, Policy and Oversight(PG), Washington, DC 20405, 202 566-1438

RIN: 3090-AE31

OFFICE OF INFORMATION RESOURCES MANAGEMENT

3053. UPDATE OF GOVERNMENTWIDE TELECOMMUNICATIONS POLICIES AND REGULATIONS

Significance: Agency Priority

Legal Authority: 40 USC 486(c); 40 USC 751(f)

CFR Citation: 41 CFR 201-21; 41 CFR 201-23; 41 CFR 201-38; 41 CFR 201-39; 41 CFR 201-41

Legal Deadline: None

Abstract: This project revises FIRMR Provisions relating to Federal Telecommunications acquisition and management. It will include changes brought about by the Federal Communications Commission Computer II inquiry and the divestiture of AT&T. This regulation will update GSA policies and provisions impacting Governmentwide telecommunication management and will specifically address the need for requirements definition and analysis for local and intercity service. It will revise "major change" requirements and state what GSA needs from agencies if GSA is expected to provide services or if GSA is reviewing service for individual agency acquisitions. All obsolete provisions will be eliminated.

Timetable:

Action	Date	FR Cite
NPRM	09/23/87	52 FR 35736
NPRM Comment Period End	11/23/87	52 FR 35736
NPRM FIRMR Amendment	12/00/88	
Final Action Effective	06/00/89	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: John F. Stewart, Supervisory Communications Specialist, General Services Administration, Regulations Branch (KMPR), Information Resources Management Service, Washington, DC 20405, 202 566-0194

RIN: 3090-AD26

3054. ESTABLISHMENT OF POLICIES AND PROCEDURES FOR FEDERAL AGENCIES' MANAGEMENT OF ELECTRONIC RECORDKEEPING, PROJECT 88.03A

Legal Authority: 40 USC 486(f); 40 USC 751(f)

CFR Citation: 41 CFR 201-22; 41 CFR 201-45

Legal Deadline: None

Abstract: This project establishes a new Subpart 201-45.2 in the FIRMR to establish governmentwide policies and procedures for the management of electronic recordkeeping. Specifically responsibilities for the creation, maintenance, use, and disposition of electronic records will be prescribed.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
NPRM Comment Period End	12/00/88	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Carolyn A. Thomas, Program Analyst, General Services Administration, Regulations Branch (KMPR), Information Resources Management Service, Washington, DC 20405, 202 566-0194

RIN: 3090-AC54

3055. FIRMR IMPROVEMENT PROJECT

Significance: Regulatory Program

Legal Authority: 40 USC 486(c); 40 USC 751(f)

CFR Citation: 41 CFR 201

Legal Deadline: None

Abstract: In response to recommendations by users of the FIRMR to revise the regulation to make it more readable and useful, GSA plans to restructure the FIRMR during the next few years. This restructuring will include: the separation of policies and procedures, the separation of contracting from management and use provisions, the reorganization of FIRMR contracting provisions for consistency with the Federal Acquisition Regulations, and the reorganization of the FIRMR's management and use provisions into a life cycle format. As the final draft of each subchapter is completed, GSA will seek public comment on the subchapter through a notice of proposed rulemaking. Subchapter E, which deals with acquisition, will be completed first and, if possible, issued as a final rule before publication of the entire FIRMR. An advanced notice of proposed rulemaking describing the project was published in the Federal Register in January 1988. The next planned action is a notice of proposed rulemaking for revised FIRMR Part 39. This action will consolidate all FIRMR contracting policies and procedures for acquiring ADP and telecommunications resources into a single part, consistent with the FAR.

Timetable:

Action	Date	FR Cite
ANPRM	01/11/88	53 FR 620
ANPRM Comment Period End	03/11/88	53 FR 620
NPRM	10/00/88	
Final Action Effective	12/00/89	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: David Mullins, Chief, Policy Branch, General Services Administration, GSA, IRMS/KMPR, Washington, D.C. 20405, 202 535-7462

RIN: 3090-AD04

3056. ● RESTRUCTURING AND SIMPLIFICATION OF FEDERAL INFORMATION RESOURCES MANAGEMENT STANDARDS

Legal Authority: 40 USC 486(c); 40 USC 751(f)

CFR Citation: 41 CFR 201-6; 41 CFR 201-13; 41 CFR 201-39

Legal Deadline: None

Abstract: This project revises the FIRMR to simplify provisions on the use and implementation of Federal automatic data processing and telecommunications standards. It results in major changes in the regulatory coverage and presentation of FIRMR provisions on standards. The intent is to remove redundant and nonregulatory provisions from the FIRMR that may be found in other agency issuances and to reorganize provisions, consistent with the FAR so that users may more readily locate standards provisions relevant to their particular need.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Mary Anderson/Margaret Truntich, Computer Specialist/Chief, Reg. Branch, General Services Administration, Regulations Branch (KMPR), 18th and F St., Washington, DC 20405, 202 566-0194

RIN: 3090-AD21

OFFICE OF ORGANIZATION AND PERSONNEL

3057. ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN FEDERALLY CONDUCTED PROGRAMS

Legal Authority: PL 95-602, Sec 119

CFR Citation: 41 CFR 105-8

Legal Deadline: None

Abstract: The General Services Administration proposes this regulation to implement the above cited laws. These statutes prohibit discrimination on the basis of handicap as it applies to any programs or activities conducted by GSA.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: Federal

Additional Information: This proposed rule has been circulated internally and externally for comments. Comments have been received from the Equal Employment Opportunity Commission. We are still waiting for the Department of Justice's approval and comment on the regulation. Employment Opportunity Commission. The Department of Justice's comments on regulation with respect to GSA's role as the Federal Government landlord have been received. Comments regarding the program portion of the regulation have not been received. Comments regarding the program portion of the regulation were received on June 4, 1987 from the Department of Justice (DOJ). Reconciling of comments with Public Building Services and DOJ is presently occurring.

Agency Contact: Thomas E. Henderson, Equal Employment Specialist (CTC), General Services Administration, General Services Administration, 18th and F Streets, NW, Washington, DC 20405, 202 566-1368

RIN: 3090-AC46

3058. NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, AND WHERE APPLICABLE, SEX

Legal Authority: 40 USC 476; 42 USC 2000d-1; 20 USC 1681

CFR Citation: 41 CFR 101-8.2

Legal Deadline: None

Abstract: The General Services Administration proposes this regulation to implement all of the above cited Federal laws. These statutes prohibit discrimination, in whole or in part, so that no person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program activity receiving Federal assistance from the General Services Administration. In addition, the objectives of the regulation are to streamline certain administrative procedural requirements by consolidating prohibitions of discrimination into one regulation and to make requirements clear and convenient for applicants and recipients to comply with, as well as making the regulation manageable for GSA to administer.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: Federal

GSA — Proposed Rule Stage

Agency Contact: Thomas E. Henderson, FEO Specialist, General Services Administration, General Services Administration, 18th and F Streets, NW, Washington, DC 20405, 202 566-1288

RIN: 3090-AC4s

GENERAL SERVICES ADMINISTRATION (GSA) — Final Rule Stage

ACQUISITION POLICY

3058. GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION CHANGE SUBPART 46.7

Legal Authority: 40 USC 486(c) Sec. 205(c), 63 Stat. 390

CFR Citation: 48 CFR 546

Legal Deadline: None

Abstract: GSA to issue a GSAR amendment to implement and supplement the FAR Subpart 46.7 by providing agency policies and procedures on the use of Warranties.

Timetable:

Action	Date	FR Cite
Final Action	01/00/89	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Marjorie Ashby, Management Analyst, General Services Administration, GSA Acquisition Policy and Regulations, 18th & F Sts., NW Room 4026, Washington, DC 20405, 202 523-3822

RIN: 3090-AB2[illegible]

3060. GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION, CHANGE RECEIPT OF PROPOSALS AND QUOTATIONS

Legal Authority: 40 USC 486(c) Sec. 205(c), 63 Stat. 390

CFR Citation: 48 CFR 515; 48 CFR 552

Legal Deadline: None

Abstract: GSA to issue a GSAR amendment which will (1) revise Section 515.411, Receipt of Proposals and Quotations, to require the use of the appropriate Business Service Center for receipt and safeguarding of proposals or quotations (except small purchases) unless an exemption is obtained; (2) amend Part 515 to establish a special Late Proposals provision for Multiple Award Federal Supply Schedules that will preclude an offeror from adding additional items to an offer after the time set for submission of offer; and (3) revise clause 552.210-78, Charges for Packaging and Packing.

Timetable:

Action	Date	FR Cite
NPRM	08/17/87	52 FR 30804
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Marjorie Ashby, Management Analyst Analyst, General Services Administration, GSA Acquisition Policy and Regulations, 18th & F Sts., NW Room 4026, Washington, DC 20405, 202 523-3822

RIN: 3090-AB62

3061. MISCELLANEOUS CHANGES ON THE ACQUISITION OF LEASEHOLD INTERESTS IN REAL PROPERTY (GSAR 5-125)

Legal Authority: 40 USC 486(c)

CFR Citation: 48 CFR 570

Legal Deadline: None

Abstract: The General Services Administration Acquisition Regulation (GSAR) will be amended to codify in the regulation the revised contract clauses approved for use in lease contracts.

Timetable:

Action	Date	FR Cite
Final Action	01/00/89	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Marjorie Ashby, Management Analyst, General Services Administration, GSA Acquisition Policy and Regulations, 18th & F Streets, NW, Washington, DC 20405, 202 523-3822

RIN: 3090-AC59

3062. MULTIPLE AWARD SCHEDULE PROGRAM (GSAR 5-30A)

Legal Authority: 40 USC 486(c)

CFR Citation: 48 CFR 515; 48 CFR 538; 48 CFR 552

Legal Deadline: None

Abstract: The General Services Administration Acquisition Regulation will be amended to revise Section 515.804-5 to add instructions on claiming and granting exemptions to the requirement for submission on cost or pricing data in the multiple award schedule (MAS) contracting process; to add Section 515.804-70 to provide the format of the discount schedule and marketing data sheets to be used in MAS solicitations; to add Part 538 to provide procedures on the GSA schedule contracting process; and to add Section 552.238-70 to provide text of the price reductions clause to be used in certain MAS solicitations and contracts.

Timetable:

Action	Date	FR Cite
NPRM	08/12/88	51 FR 31344
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Marjorie Ashby, Management Analyst, General Services Administration, GSA Acquisition Policy and Regulations, 18th & F Streets, NW, Washington, DC 20405, 202 523-3822

RIN: 3090-AC21

3063. MULTIYEAR CONTRACTS AND CONTRACTS WITH OPTIONS (GSAR 5-106)

Legal Authority: 40 USC 486(c)

CFR Citation: 48 CFR 517

Legal Deadline: None

Abstract: The General Services Administration Acquisition Regulation (GSAR) will be amended to incorporate the deviation from FAR 52.217-1, Limitations of Price and Contractor Qualifications and FAR 52.217-2, Cancellation of Items; and to consider the applicability of FAR Part 17 to Federal Supply Service multiyear contracts and contracts with options.

Timetable:

Action	Date	FR Cite
Final Action	01/00/89	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Marjorie Ashby, Management Analyst, General Services Administration, GSA Acquisition Policy and Regulations, 18th & F Streets, NW, Washington, DC 20405, 202 523-3822

RIN: 3090-AC26

GSA — Final Rule Stage

3064. SMALL BUSINESS SUBCONTRACTING PLANS (GSAR 5-122)

Legal Authority: 40 USC 486(c)

CFR Citation: 48 CFR 501; 48 CFR 519

Legal Deadline: None

Abstract: The General Services Administration Acquisition Regulation (GSAR) will be amended to include information and instructions regarding various types and need for subcontracting plans; and to insert a reference to reflect the applicability of Subpart 519.7 to leases of real property in Section 501.103(b).

Timetable:

Action	Date	FR Cite
Final Action	01/00/89	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Marjorie Ashby, Management Analyst, General Services Administration, GSA Acquisition Policy and Regulations, 18th & F Streets, NW, Washington, DC 20405, 202 523-3822

RIN: 3090-AC09

3065. GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION (GSAR) PROPOSED RULE, UTILITY CONTRACTS, GSAR CASE 5-65

Legal Authority: 40 USC 486(c)

CFR Citation: 48 CFR 508; 48 CFR 513

Legal Deadline: None

Abstract: This proposed General Services Administration Acquisition Regulation will revise Part 508 to clarify the Federal Acquisition Regulation definition of utility services, to prescribe policies governing the acquisition of utility services, to prescribe procedures for precontract review for utility contracts, to provide for annual rate reviews, to provide for use of GSA forms for acquiring utility services; and to revise Part 553 to illustrate GSA Forms 1533, Utilities Contract; 1683, Negotiated Electric Utility Contract, and 1684, Technical Provisions (Electric Utility Contract).

Timetable:

Action	Date	FR Cite
NPRM	12/24/87	52 FR 48729
Final Action	10/15/88	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Marjorie Ashby, Management Analyst, General Services Administration, GSA, Off. of GSA Aquisition Policy and Regs., 18th & F Streets, NW 20405, Washington, D.C., 202 523-3822

RIN: 3090-AD10

OFFICE OF THE COMPTROLLER

3066. REVISION OF PUBLIC VOUCHER FOR TRANSPORTATION CHARGES, STANDARD FORM 1113

Legal Authority: 31 USC 3726; 40 USC 486(c)

CFR Citation: 41 CFR 101-41

Legal Deadline: None

Abstract: This rule revises Public Voucher for Transportation Charges, Standard Form 1113, to eliminate various information blocks because certain agency fiscal control numbers are no longer required. This change will reduce the amount of time agencies spend in processing these documents.

Timetable:

Action	Date	FR Cite
Final Action	10/15/88	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Gracie Jones, Transportation Specialist, General Services Administration, Regulations and Procedures Section (FWCP/R), Washington, DC 20405, 202 786-3667

RIN: 3090-AB00

FEDERAL PROPERTY RESOURCES SERVICE

3067. NATIONAL DEFENSE STOCKPILE DISPOSAL REGULATIONS

Legal Authority: 50 USC 98; EO 12155

CFR Citation: 41 CFR 101-14.4

Legal Deadline: None

Abstract: These regulations indicate the procedures for disposing of strategic and critical materials that are excess to National Defense Stockpile needs and have been authorized for disposal by Congress, pursuant to the Stock Piling Act of 1979 50 USC 98 et seq. These regulations will be responsive to public sector, intergovernment and intragovernment comments reflecting on the lack of published regulations governing GSA's stockpile disposal policies and procedures.

Timetable:

Action	Date	FR Cite
Final Action	06/30/88	
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: Federal

Public Compliance Cost: Initial Cost: $0; Yearly Recurring Cost: $0; Base Year for Dollar Estimates: 1983

Agency Contact: J. Wayne Kulig, Assistant Commissioner, General Services Administration, Office of National Defense Stockpile (DN), Washington, DC 20405, 202 535-7671

RIN: 3090-AA40

3068. REPORTING OF EXCESS REAL PROPERTY - ASBESTOS

Legal Authority: 40 USC 483(b)

CFR Citation: 41 CFR 101-47.202-2

Legal Deadline: None

Abstract: 41 CFR 101-47.200, 41 CFR 101-47.202-2, 41 CFR 101-47.202-7, 41 CFR 101-47.304-5, and 41 CFR 101-47.304-47.304-13 are to be amended to require that specific information concerning asbestos contamination be included in all reports of excess real property.

Timetable:

Action	Date	FR Cite
ANPRM	02/17/88	53 FR 4672
NPRM	02/17/88	53 FR 4672

GSA — Final Rule Stage

Action	Date	FR Cite
Final Action Effective	10/15/88	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Agency Contact: Marjorie L. Lomax, Director, Policy and Planning Division (DRP), General Services Administration, 18th & F Streets, NW, Washington, D.C. 20405, 202 [illegible]

RIN: 3090-AD08

3068. ● RESPONSIBILITY OF DISPOSAL AGENCY; DISPOSALS TO PUBLIC AGENCIES

Legal Authority: 40 USC 484

CFR Citation: 41 CFR 101-47.308-2

Legal Deadline: None

Abstract: 41 CFR 101-47.308-2 generally requires that notice of Federal real property surplus determinations be given to non-Federal public agencies except when particular real property has an estimated fair market value of less than $1,000. A temporary regulation is to be issued to provide that no notice of surplus determination need be given when the affected property has an estimated fair market value of less than $15,000 unless the disposal agency has reason to believe that an eligible public agency may be interested in acquiring the property.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/15/88	

Small Entities Affected: Undetermined

Government Levels Affected: Local, State, Federal

Agency Contact: Marjorie L. Lomax, Director, Policy and Planning Division (DRP), General Services Administration, 18th & F Streets, Washington, DC 20405, 202 [illegible]

RIN: 3090-AI28

FEDERAL SUPPLY AND SERVICES

3070. DONATION OF ABANDONED AND FORFEITED PERSONAL PROPERTY

Legal Authority: 20 USC 5095(a)

CFR Citation: 41 CFR 101-45.2

Legal Deadline: None

Abstract: This rule would emphasize that all forfeited distilled spirits, wine, or malt beverages donated to eleemosynary institutions are to be used only by their inpatients for medicinal purposes. Allegations of misuse of these donated spirits have created a need for this regulation.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Stanley M. Duda, Director, General Services Administration, Property Management Division (FBP), Washington, DC 20406, 703 557-1240

RIN: 3090-AA24

3071. UTILIZATION, DONATION, SALE, ABANDONMENT OR DESTRUCTION OF HAZARDOUS MATERIALS

Legal Authority: 40 USC 486(c)

CFR Citation: 41 CFR 101-43; 41 CFR 101-44; 41 CFR 101-45; 41 CFR 101-46; 41 CFR 101-48; 41 CFR 101-49

Legal Deadline: None

Abstract: Revisions and additions to existing rules are proposed to establish a separate regulatory section concerning the utilization, donation, sale, abandonment or destruction of hazardous materials.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Federal

Additional Information: Proposals are to be circulated among Federal agencies on an information basis before rulemaking consideration.

Agency Contact: Mr. Stanley M. Duda, Director, General Services Administration, Property Management Division (FBP), Washington, DC 20406, 703 557-1240

RIN: 3090-AA42

3072. REVISION OF STANDARD FORM 1170, REDEMPTION OF UNUSED TICKETS

Legal Authority: 31 USC 3720; 40 USC 486(c)

CFR Citation: 41 CFR 101

Legal Deadline: None

Abstract: The current Standard Form (SF) 1170, Redemption of Unused Tickets, format is not suitable for automated preparation. This rule proposes to make the SF 1170 available in electronic data processing (EDP) format to facilitate form preparation on either a typewriter or an automated printer.

Timetable:

Action	Date	FR Cite
NPRM	08/01/88	53 FR 19946

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Carolyn West, Transportation Specialist, General Services Administration, GSA/FWCP/R, 18th & F Streets, NW, Washington, D.C., 202 [illegible]

RIN: 3090-AD13

3073. ● USE OF EDI WITHIN THE DEPT. OF DEFENSE AS AN ALTERNATIVE TO GOVERNMENT BILLS OF LADING FOR PROCURING FREIGHT TRANSPORTATION SERVICES FOR THE GOVERNMENT

Legal Authority: 31 USC 3726; 40 USC 486(c)

CFR Citation: 41 CFR 101

Legal Deadline: None

Abstract: This temporary regulation modifies Federal Property Management Regulations by permitting the Department of Defense to immediately implement Electronic Data Interchange (EDI) to document and provide for carrier billings for freight transportation services in an electronic environment as an alternative to the Government Bill of Lading (SF 1103).

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/01/88	

Small Entities Affected: None

Government Levels Affected: None

GSA — Final Rule Stage

Agency Contact: John Sandford, Chief, Regulations, Procedures, and Review, Branch (FWCP), General Services Administration, 18th & F Streets, NW, Washington, DC 20405, 202 [illegible]

RIN: 3090-AD27

OFFICE OF INFORMATION RESOURCES MANAGEMENT

3074. REVISION OF ADPE REUTILIZATION POLICIES AND PROCEDURES INCLUDING INSTRUCTIONS FOR SF 120, PROJECT 86.14A

Significance: Agency Priority

Legal Authority: 40 USC 486(c); 40 USC 751(f)

CFR Citation: 41 CFR 201 to 33

Legal Deadline: None

Abstract: This regulation delegates to agencies authority and responsibility for interagency screening of excess and exchange/sale ADPE with an original acquisition cost (OAC) below $1,000,000. A recent analysis of the ADPE reported to GSA for interagency reuse during the last two years revealed that there is a minimum amount of savings to be realized for the reuse of ADPE with an OAC under $1,000,000. Additionally, these savings are further reduced when the costs of nationwide interagency screening are considered.

Timetable:

Action	Date	FR Cite
NPRM	04/07/88	53 FR 11518
NPRM Comment Period End	05/09/88	
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Mary Anderson/Margaret Trumbich, Computer Specialist/Chief, Reg. Branch, General Services Administration, Regulations Branch (KMPR), Information Resources Management Service, Washington DC 20405, 202 [illegible]

RIN: 3090-AC25

3075. OFFICE EQUIPMENT ACCESSIBILITY FOR THE HANDICAPPED

Significance: Regulatory Program

Legal Authority: 40 USC 486(c); 40 USC 751(f)

CFR Citation: 41 CFR 201

Legal Deadline: None

Abstract: The Rehabilitation Act of 1973, as amended (P.L. 99-506), directs GSA to adopt Governmentwide guidelines on electronic equipment accessibility. GSA will issue a informational FIRMR bulletin describing procedures agencies should follow in acquiring equipment for employees with disabilities and the types of equipment or strategies that can be used to make this technology more useable by disabled employees. This project will result in regulatory changes to the FIRMR to reflect special procedures managers must follow to ensure equipment accessibility for the disabled.

Timetable:

Action	Date	FR Cite
NPRM	07/14/88	53 FR 26610
NPRM Comment Period End	08/15/88	
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Mary Anderson/Margaret Trumbich, Computer Specialist/Chief, Regulations Brch, General Services Administration, GSA, IRMS/KMPR, Washington, D.C. 20405, 202 566-0194

RIN: 3090-AD02

3076. IMPLEMENTATION OF TITLE VIII, PAPERWORK REDUCTION REAUTHORIZATION ACT OF 1986, P.L. 99-500 REGARDING AUTOMATIC DATA PROCESSING EQUIPMENT

Significance: Regulatory Program

Legal Authority: 40 USC 486(c); 40 USC 751(f)

CFR Citation: 41 CFR 201-1; 41 CFR 201-2; 41 CFR 201-23; 41 CFR 201-24

Legal Deadline: None

Abstract: This regulation implements certain selected portions of the Paperwork Reduction Reauthorization Act of 1986. Among the other changes, it clarifies the applicability of the FIRMR to the management acquisition, and use of various information resources by Federal agencies. The amendment prescribes FIRMR policies and procedures for use in determining whether any particular procurement must be conducted under GSA's exclusive procurement authority. It also streamlines the Delegations Program by establishing uniform procedures, uniform blanket delegations of procurement authority, Agency Procurement Requests for all ADP and telecommunications resources.

Timetable:

Action	Date	FR Cite
NPRM	08/15/86	53 FR 30706
NPRM Comment Period End	09/21/88	
Final Action	01/00/89	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: William Loy/Margaret Trumbich, Procurement Analyst/Chief, Regulation Branch, General Services Administration, GSA, IRMS/KMPR, Washington, D.C. 20405, 202 [illegible]

RIN: 3090-AD09

3077. ● MANDATORY FEDERAL TELECOMMUNICATIONS SYSTEMS (FTS) 2000 NETWORK (FIRMR INTERIM RULE 1)

Significance: Agency Priority

Legal Authority: 40 USC 486(c); 40 USC 751(f)

CFR Citation: 41 CFR 201-1; 41 CFR 201-41

Legal Deadline: None

Abstract: FIRMR Interim Rule 1 is intended to implement the FTS 2000 network provisions contained in the Conference Report to Pub. L. 100-202, dated December 22, 1987. Specifically, the rule provides for mandatory use of the FTS 2000 system when switched voice service is available on that network. Written exceptions to the application of the rule are required beginning October 1, 1988, for procurement planning purposes. Previous regulatory exclusions prescribed in FIRMR 201-1.103(c) are voided. GSA will review and update existing exclusionary agreements with concerned agencies at their request

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/29/88	53 FR 28638

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GSA

Final Rule Stage

Action	Date	FR Cite
Interim Final Rule Public Comment Period End	09/29/88	
Interim Final Rule Effective Date	10/01/88	

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: William B. Loy, Procurement Analyst, General Services Administration, Regulations Branch (KMPR), 18th & F Sts., Washington, DC 20405, 202 566-8154

RIN: 3090-AD20

3078. ◉ INFORMATION RESOURCES MANAGEMENT REVIEWS CODIFICATION AMENDMENT FOR FIRMR TEMPORARY REGULATION 10

Significance: Regulatory Program

Legal Authority: 40 USC 486(c); 40 USC 751(f)

CFR Citation: 41 CFR 201-19

Legal Deadline: None

Abstract: This project revises the FIRMR by codifying and certifying certain provisions contained in FIRMR Temporary Regulation 10 regarding the Federal Information Resources Management Reviews Program (triennial reviews). Temporary Regulation 10 describes the policies and procedures for GSA - Federal agencies to follow in carrying out their information resources management review responsibilities under the Paperwork Reduction Act. It also established GSA as the primary agency for collecting, assessing, and reporting on information resources management review results to OMB. This amendment will codify those Governmentwide policies and mandatory procedures for triennial reviews in the FIRMR.

Timetable:

Action	Date	FR Cite
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Carolyn Thomas, Regulatory Analyst, General Services Administration, Regulations Branch (KMPR), 18th & F Streets, Washington, DC 20405, 202 566-8104

RIN: 3090-AD22

GENERAL SERVICES ADMINISTRATION (GSA)

Completed Actions

3079. SUPPLY SOURCES AND RELATED PROGRAMS

CFR Citation: 41 CFR 101-20

Completed:

Reason	Date	FR Cite
Withdrawn	07/31/88	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Robert A. Risner 703 557-1256

RIN: 3090-AA09

3080. GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION (GSAR) MISCELLANEOUS CHANGES, CHANGE 51 (GSAR 5-93)

CFR Citation: 48 CFR 501

Completed:

Reason	Date	FR Cite
Final Action	01/05/88	53 FR 130
Final Action Effective	01/22/88	53 FR 130

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Marjorie Ashby 202 523-3822

RIN: 3090-AD86

3081. BUY AMERICAN ACT - CONSTRUCTION MATERIALS CHANGE 53 (GSAR 5-131)

CFR Citation: 48 CFR 525; 48 CFR 552

Completed:

Reason	Date	FR Cite
Final Action	03/24/88	53 FR 9629
Final Action Effective	03/31/88	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Marjorie Ashby 202 523-3822

RIN: 3090-AC37

3082. FEDERAL PROCUREMENT DATA SYSTEM (FPDS) REPORTING REQUIREMENTS (GSAR 5-113)

CFR Citation: 48 CFR 504; 48 CFR 553

Completed:

Reason	Date	FR Cite
Withdrawn	07/15/88	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Marjorie Ashby 202 523-3822

RIN: 3090-AC58

3083. GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION (GSAR) ACQUISITION CIRCULAR, AC-87-4, INCREASE IN THRESHOLDS FOR CONTRACTING OFFICE WARRANT PROGRAM & IMPREST FUNDS TRANS

CFR Citation: 48 CFR 501; 48 CFR 513

Completed:

Reason	Date	FR Cite
Final Action	01/05/88	53 FR 132
Final Action Effective	01/23/88	53 FR 132

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Marjorie Ashby 202 523-3822

RIN: 3090-AD11

3084. ◉ GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION, USE OF SF-30 FOR ADDITIONAL AWARDS TO AN OFFEROR UNDER A SINGLE CONTRACT CHANGE 55 (GSAR 5-100)

Legal Authority: 40 USC 486(c)

CFR Citation: 48 CFR 514; 48 CFR 515

Legal Deadline: None

Abstract: General Services Administration Acquisition Regulation (GSAR) was amended to add sections 514.407-1 and 515.414 to prescribe the Standard Form 30, Amendment of Solicitation/Modification of Contract, for use in making additional awards to an offeror under a single solicitation and to provide the regulatory authority for such awards.

Timetable:

Action	Date	FR Cite
NPRM	01/26/88	53 FR 2515
NPRM Comment Period End	02/29/88	53 FR 2515
Final Action	05/19/88	53 FR 17949
Final Action Effective	05/27/88	53 FR 17949

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marjorie Ashby, Management Analyst, General Services Administration, GSA (VP), 18th & F Streets, NW, Washington, DC 20405, 202 523-3822

RIN: 3090-AD23

GSA

Completed Actions

3085. ◉ GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION (GSAR), EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA, CHANGE 54, (GSAR 5-210)

Legal Authority: 40 USC 486(c)

CFR Citation: 48 CFR 552

Legal Deadline: None

Abstract: The General Services Administration Acquisition Regulation (GSAR) was amended to revise the matrixes in sections 552.230-70 and 552.370 to add a reference to the FAR clause at 52.222-37, Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era. In addition, the reference to the FAR clause at 52.222-28, Equal Opportunity Preaward Clearance of Subcontracts, was deleted from the matrix at 552.370. Acquisition Circular AC-87-2 was canceled.

Timetable:

Action	Date	FR Cite
Final Action	05/19/88	53 FR 17949
Final Action Effective	05/27/88	53 FR 17949

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marjorie Ashby, Management Analyst, General Services Administration, GSA (VP), 18th & F Streets, NW, Washington, DC 20405, 202 523-3822

RIN: 3090-AD24

3086. ◉ GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION (GSAR) TRADE AGREEMENTS ACT THRESHOLD, CHANGE 52 (GSAR 5-209)

Legal Authority: 40 USC 486(c)

CFR Citation: 48 CFR 525; 48 CFR 553

Legal Deadline: None

Abstract: The General Services Administration Acquisition Regulation was amended to revise section 525.402 to reflect the new threshold for procurements subject to the Trade Agreements Act and to reflect current organization titles; section 553-370-3503 is revised to illustrate the December 1987 edition of the GSA Form 3503, Representations and Certifications and section 553-370-3521 is revised to illustrate the December 1987 edition of the GSA Form 3521, Blanket Purchase Agreement.

Timetable:

Action	Date	FR Cite
Final Action	02/12/88	53 FR 4169
Final Action Effective	02/14/88	53 FR 4169

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marjorie Ashby, Management Analyst, General Services Administration, GSA (VP), 18th & F Streets, NW, Washington, DC 20405, 202 523-3822

RIN: 3090-AD25

3087. ◉ GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION ACQUISITION CIRCULAR AC-88-1, PROMPT PAYMENT AND RATIFICATION OF UNAUTHORIZED COMMITMENTS, GSAR 5-208A

Legal Authority: 40 USC 486(c)

CFR Citation: 48 CFR 501; 48 CFR 532; 48 CFR 552

Legal Deadline: None

Abstract: This Acquisition Circular temporarily amended Parts 501, 532 and 552 of the General Services Administration Acquisition Regulation to implement and supplement the Federal Acquisition Regulation (FAR) requirements on the ratification of unauthorized commitments; to add material to prescribe constructive acceptance or approval periods for recurring building services, supplies and other nonpersonal services, construction, architect-engineer and other professional services; to add and prescribe a Payments by Electronic Funds Transfer clause for use in solicitations and contracts when payments may be made by GSA and other agencies; to add and prescribe a Prompt Payment clause for Acquisition of leasehold interests in real property; and to make other miscellaneous changes for clarity.

Timetable:

Action	Date	FR Cite
Final Action	03/08/88	53 FR 7365
Final Action Effective	05/06/88	53 FR 7365

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marjorie Ashby, Managment Analyst, General Services Administration, GSA (VP), 18th & F Streets, Washington, DC 20405, 202 523-3822

RIN: 3090-AD26

3088. AUDIT PROCEDURES FOR COMMERCIAL BILLS OF LADING-COST-REIMBURSEMENT-TYPE CONTRACTS

CFR Citation: 41 CFR 101-41

Completed:

Reason	Date	FR Cite
Final Action	05/12/88	53 FR 16876

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Carolyn F. West 202 786-3025

RIN: 3090-AC20

3089. DONATION OF PERSONAL PROPERTY

CFR Citation: 41 CFR 101-44.000; 41 CFR 101-44.001; 41 CFR 101-44.105; 41 CFR 101-44.108; 41 CFR 101-44.108; 41 CFR 101-44.112; 41 CFR 101-44.118; 41 CFR 101-44.120; 41 CFR 101-44.200; 41 CFR 101-44.204; 41 CFR 101-44.205; 41 CFR 101-44.207; 41 CFR 101-44.208; 41

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CFR 101-44.4701; 41 CFR 101-44.4901-123; ...

Completed:

Reason	Date	FR Cite
Final Action	05/05/88	53 FR 16089

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Stanley M. Duda 703 557-1249

RIN: 3090-AA23

3090. ACQUISITION AND USE OF EXCESS PERSONAL PROPERTY

CFR Citation: 41 CFR 101-43

Completed:

Reason	Date	FR Cite
Final Action	05/05/88	
Final Action Effective	05/05/88	53 FR 16089

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Mr. Stanley M. Duda 703 557-1249

RIN: 3090-AA30

3091. UTILIZATION, DONATION, AND DISPOSAL OF FOREIGN GIFTS AND DECORATIONS

CFR Citation: 41 CFR 101-49

Completed:

Reason	Date	FR Cite
Final Action	04/19/88	
Final Action Effective	04/19/88	53 FR 12766

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Audrey E. Rish 703 557-1253

RIN: 3090-AC28

3092. PREPAYMENT TRANSPORTATION AUDIT PROCEDURES

CFR Citation: 41 CFR 101

Completed:

Reason	Date	FR Cite
Final Action	07/05/88	53 FR 25162

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: John W. Sandfort 202 786-3005

RIN: 3090-AC32

3093. CHANGE TO FEDERAL TRAVEL REGULATIONS (FTR), FPMR 101-7, FPMR A-40 SUPPLEMENT 27

CFR Citation: 41 CFR 101-7

Completed:

Reason	Date	FR Cite
Final Action	05/12/88	53 FR 16899

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Audrey E. Rish 703 557-1253

RIN: 3090-AC33

3094. REVISION OF STANDARD FORM 1169, U.S. GOVERNMENT TRANSPORTATION REQUEST

CFR Citation: 41 CFR 101

Completed:

Reason	Date	FR Cite
Canceled because rulemaking action not necessary	07/27/88	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Carolyn West 202 786-3005

RIN: 3090-AD12

3095. REMOVAL OF THE FEDERAL TRAVEL REGULATIONS FROM THE FEDERAL PROPERTY MANAGEMENT REGULATIONS SYSTEM

CFR Citation: 41 CFR 101-7

Completed:

Reason	Date	FR Cite
Final Action	06/29/88	53 FR 24449

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Audrey Rish 202 557-7525

RIN: 3090-AD19

[FR Doc. 88-20689 Filed 10-21-88; 8:45 am]

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federal register

Monday
October 24, 1988

Part XXVI

Merit Systems Protection Board

Semiannual Regulatory Agenda

MERIT SYSTEMS PROTECTION BOARD (MSPB)

MERIT SYSTEMS PROTECTION BOARD

5 CFR Ch. II

Regulatory Agenda

AGENCY: Merit Systems Protection Board.

ACTION: Semiannual agenda of regulations.

SUMMARY: The following Merit Systems Protection Board (MSPB) regulations are scheduled for review or development from October 1988 through September 1989. They are submitted herein for publication in the Unified Agenda of Federal Regulations, E.O. 12291. Regulatory action may not be limited to the items listed.

FOR FURTHER INFORMATION CONTACT: Paul D. Mahoney, Assistant to the Executive Director for Management, [202] 653-(900).

Dated: August 17, 1988.

Merit Systems Protection Board.

Daniel R. Levinson,

Chairman.

MERIT SYSTEMS PROTECTION BOARD (MSPB) — Prerule Stage

3086. PART 1205 - PRIVACY ACT

Legal Authority: 5 USC 552a Privacy Act

CFR Citation: 5 CFR 1205

Legal Deadline: None

Abstract: Pursuant to 5 USC 552a(f), the Board is required to promulgate regulations pursuant to notice and receipt of public comment establishing procedures for responding to individual requests for access to records covered by the Privacy Act; for the amendment of records covered by the Act and for appeals of adverse rulings on such requests; and for fees to be charged for copying requested records. Such regulations were issued in 44 FR 43448, July 24, 1979. The Board proposes to review these regulations to ensure that they are easily understood by all persons. If indicated by the review, the Board plans to publish these regulations in "plain English."

Timetable:

Action	Date	FR Cite
Begin Review	09/00/87	
End Review	12/00/88	
Republish in "plain English"	04/00/89	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Michael H. Hoxie, Director, Information Services Division, Merit Systems Protection Board, 1120 Vermont Ave., NW, Washington, DC 20419, [illegible]

RIN: 3124-AA08

3087. PART 1200 - OPEN MEETINGS

Legal Authority: 5 USC 552b Government in the Sunshine Act

CFR Citation: 5 CFR 1205

Legal Deadline: None

Abstract: Pursuant to 5 USC 552b, the Board is required to promulgate regulations, pursuant to notice and receipt of public comment, establishing procedures by which it will conduct open meetings. Such regulations were issued in 44 FR 43448, July 24, 1979. The Board proposes to review these regulations to ensure that they are easily understood by all persons. If indicated by the review, the Board plans to publish these regulations in "plain English."

Timetable:

Action	Date	FR Cite
Begin Review	10/00/87	
End Review	12/00/88	
Republish in "plain English"	04/00/89	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Michael H. Hoxie, Director, Information Services Division, Merit Systems Protection Board, 1120 Vermont Ave., NW, Washington, DC 20419, 202 653-7200

RIN: 3124-AA06

3096. PART 1203 - HEARING PROCEDURES FOR ORIGINAL JURISDICTION CASES

Legal Authority: 5 USC 1205(a)(4); 5 USC 1205(e); 5 USC 1205(g)

CFR Citation: 5 CFR 1203.1 to 1203.18

Legal Deadline: None

Abstract: The Board proposes to review the regulations in this part to ensure that these regulations are easily understood by all persons. If indicated by the review, the Board plans to republish these regulations in "plain English."

Timetable:

Action	Date	FR Cite
Begin Review	10/00/87	
End Review	12/00/88	
Publish regulations in "plain English"	04/00/89	

Small Entities Affected: None

Government Levels Affected: Federal

Public Compliance Cost: Initial Cost: $0; Yearly Recurring Cost: $0

Sectors Affected: None

Agency Contact: Paul D. Mahoney, Assistant to the Executive Director for Management, Merit Systems Protection Board, 1120 Vermont Avenue, NW, Washington, DC 20419, 202 653-8900

RIN: 3124-AA07

3090. PART 1204 - FREEDOM OF INFORMATION ACT

Legal Authority: 5 USC 552

CFR Citation: 5 CFR 1204.1 to 1204.22

Legal Deadline: None

Abstract: The Board issued interim final regulations in 52 FR 28123, July 28, 1987. The interim regulations became final regulations on December 1, 1987, in 52 FR 45597. The Board proposes to monitor these regulations carefully to ensure that they are easily understood. If indicated by the review, the Board plans to rewrite them in "plain English."

MSPB — Prerule Stage

Timetable:

Action	Date	FR Cite
Begin Review	06/00/87	
End Review	12/00/88	
Republish in "plain English"	04/00/89	

Small Entities Affected: None

Government Levels Affected: Federal

Public Compliance Cost: Initial Cost: $0; Yearly Recurring Cost: $0

Sectors Affected: None

Agency Contact: Michael H. Hoxie, Director, Information Services Division, Merit Systems Protection Board, 1120 Vermont Avenue, NW, Washington, DC 20419, 202 653-7200

RIN: 3124-AA08

3100. PART 1207 - ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS CONDUCTED BY THE MERIT SYSTEMS PROTECTION BOARD

Legal Authority: 29 USC 791

CFR Citation: 5 CFR 1207.1 to 1207.99

Legal Deadline: None

Abstract: The Board published final regulations in 53 FR 25880, July 8, 1988. The Board plans to monitor those regulations carefully to ensure that they are easily understood. If indicated by the review, the Board plans to rewrite them in "plain English."

Timetable:

Action	Date	FR Cite
Begin Review	07/00/88	
End Review	12/00/88	
Publish regulations in "plain English"	04/00/89	

Small Entities Affected: None

Government Levels Affected: Federal

Public Compliance Cost: Initial Cost: $0; Yearly Recurring Cost: $0

Sectors Affected: None

Agency Contact: Robert U. Hernandez, Director, Equal Employment Division, Merit Systems Protection Board, 1120 Vermont Avenue, NW, Washington, DC 20419, 202 653-8189

RIN: 3124-AA09

3101. PART 1201 - PRACTICES AND PROCEDURES

Legal Authority: 5 USC 1205; 5 USC 7701

CFR Citation: 5 CFR 1201.1 to 1201.199

Legal Deadline: None

Abstract: The Board proposes to review the regulations in this part to ensure that these regulations are easily understood by all persons appearing before the Board. If indicated by the review, the Board plans to republish these regulations in "plain English."

Timetable:

Action	Date	FR Cite
Begin Review	10/00/87	
End Review	12/00/88	
Publish regulations in "plain English"	04/00/89	

Small Entities Affected: None

Government Levels Affected: Federal

Public Compliance Cost: Initial Cost: $0; Yearly Recurring Cost: $0

Sectors Affected: None

Agency Contact: Paul D. Mahoney, Assistant to the Executive Director for Management, Merit Systems Protection Board, 1120 Vermont Avenue, NW, Washington, DC 20419, 202 653-8900

RIN: 3124-AA10

MERIT SYSTEMS PROTECTION BOARD (MSPB) — Completed Actions

3102. PART 1207 - ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS CONDUCTED BY THE MERIT SYSTEMS PROTECTION BOARD

CFR Citation: 5 CFR 1207.1 to 1207.99, (New)

Completed:

Reason	Date	FR Cite
Final Action	07/06/88	53 FR 25880
Final Action Effective	07/06/88	53 FR 25880

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Robert U. Hernandez 202 653-8180

RIN: 3124-AA01

3103. PART 1200 - BOARD ORGANIZATION

CFR Citation: 5 CFR 1200

Completed:

Reason	Date	FR Cite
Final Action	09/16/88	53 FR 22465
Final Action Effective	09/16/88	53 FR 22465

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Paul D. Mahoney 202 653-8900

RIN: 3124-AA04

[FR Doc. 88-20670 Filed 10-21-88; 8:45 am]

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Part XXVII

National Aeronautics and Space Administration

Semiannual Regulatory Agenda

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (NASA)

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Ch. V

Regulatory Agenda

AGENCY: National Aeronautics and Space Administration.

ACTION: Regulatory agenda.

SUMMARY: This regulatory agenda describes the proposed regulations being considered for development or amendment by NASA, the need and legal basis for the actions being considered, the name and telephone number of a knowledgeable official, whether a regulatory analysis is required, and the status of regulations previously reported.

ADDRESS: Director, General Management Division (Code NPN), Office of Management, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Margaret M. Herring, 202/453-2922.

SUPPLEMENTARY INFORMATION: OMB Bulletin No. 88-15, "Unified Agenda of Federal Regulations for October 1988," Executive Order 12291, "Federal Regulation," and NASA Management Instruction 1410.10E, "Federal Register: Delegation of Authority and Requirements for Publication of NASA Documents," require a regulatory agenda of proposed regulations under development and review be published in the **Federal Register** each April and October.

John F. Duggan,
Director, General Management Division.

Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
3104	General Provisions Regarding Flight of Reimbursable Payloads Aboard the Space Shuttle	2700-AA14
3105	Space Transportation System; Mementos Aboard Space Shuttle Flights	2700-AA15
3106	Space Transportation System; Nonscientific Payloads	2700-AA19
3107	Space Transportation System; Reimbursement for Shuttle Services Provided to Non-U.S. Government Users; Reimbursement for Shuttle Services Provided to Civil U.S. Government Users and Foreign Etc	2700-AA45
3108	Delegation of Authority of Certain Civil Rights Functions to the Department of Health, Education, and Welfare	2700-AA47
3109	Payload Specialists for NASA or NASA Related Payloads	2700-AA52
3110	Extraterrestrial Exposure	2700-AA53
3111	Policy Concerning Data Obtained from Space Science Flight Investigations	2700-AA54
3112	Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving or Benefiting from Assistance by NASA	2700-AA55
3113	Freedom of Information Act Submitter Notice	2700-AA74
3114	National Space Grant College and Fellowship Program	2700-AA75
3115	Policy On The Protection Of Human Subjects	2700-AA76
3116	Care and Use of Animals in the Conduct of NASA Activities	2700-AA78

Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
3117	Space Transportation System; Insurance and Indemnification of NASA Space Vehicle Users	2700-AA00
3118	Space Transportation System; Reimbursement for Spacelab Services	2700-AA01
3119	NASA Information Security Program	2700-AA05
3120	Delegation of Authority to Make Determinations in Original Classification Matters	2700-AA06
3121	Inspection of Persons and Personal Effects on NASA Property	2700-AA20
3122	Tracking and Data Relay Satellite System (TDRSS); Use and Reimbursement Policy for Non-U.S. Government Users	2700-AA29
3123	Emergency Personnel Security Adjudication and Procedures	2700-AA31
3124	Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs	2700-AA32
3125	Source Evaluation Board Manual	2700-AA39
3126	Nondiscrimination in Federally-Assisted Programs of NASA	2700-AA50
3127	Duty-Free Entry of Space Articles	2700-AA62
3128	NASA Information Security Program Committee	2700-AA64

NASA

Completed Actions

Sequence Number	Title	Regulation Identifier Number
3129	Major System Acquisitions	2700-AA38
3130	Broad Agency Announcements	2700-AA85
3131	Statement of Organization and General Information	2700-AA72
3132	Enforcement of Nondiscrimination on the Basis of Handicap in Federally Conducted Programs	2700-AA77
3133	Plant Clearance Costs	2700-AA79

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (NASA) — Proposed Rule Stage

3104. GENERAL PROVISIONS REGARDING FLIGHT OF REIMBURSABLE PAYLOADS ABOARD THE SPACE SHUTTLE

Legal Authority: 42 USC 2473

CFR Citation: 14 CFR 1214, "Subpart 1"

Legal Deadline: None

Abstract: Sets forth the general provisions regarding flight of reimbursable payloads aboard the NASA Space Shuttle. Incorporates pricing principles for the Second Phase of STS operations.

Timetable:

Action	Date	FR Cite
NPRM	10/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: RIN = 2700-AA13 merged with RIN = 2700-AA14.

Agency Contact: Lowell E. Primm, Office of Space Flight, Code MC, National Aeronautics and Space Administration, NASA Headquarters, Washington, DC 20546, 202 453-1911

RIN: 2700-AA14

3105. SPACE TRANSPORTATION SYSTEM; MEMENTOS ABOARD SPACE SHUTTLE FLIGHTS

Legal Authority: 42 USC 2473

CFR Citation: 14 CFR 1214, "Subpart 6"

Legal Deadline: None

Abstract: Clarifies policy on carrying mementos aboard Space Shuttle flights and use of both official flight kits and personal preference kits.

Timetable:

Action	Date	FR Cite
NPRM	10/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Lowell E. Primm, Office of Space Flight, Code MC, National Aeronautics and Space Administration, NASA Headquarters, Washington, DC 20546, 202 453-1911

RIN: 2700-AA15

3106. SPACE TRANSPORTATION SYSTEM; NONSCIENTIFIC PAYLOADS

Legal Authority: 42 USC 2473

CFR Citation: 14 CFR 1214 "Subpart 16"

Legal Deadline: None

Abstract: Sets forth the policy on the services provided by NASA for the launch of nonscientific payloads aboard the Space Shuttle.

Timetable:

Action	Date	FR Cite
NPRM	04/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Kenneth Pedersen, Office of External Relations, Code X, National Aeronautics and Space Administration, NASA Headquarters, Washington, DC 20546, 202 453-8365

RIN: 2700-AA19

3107. SPACE TRANSPORTATION SYSTEM; REIMBURSEMENT FOR SHUTTLE SERVICES PROVIDED TO NON-U.S. GOVERNMENT USERS; REIMBURSEMENT FOR SHUTTLE SERVICES PROVIDED TO CIVIL U.S. GOVERNMENT USERS AND FOREIGN ETC

Legal Authority: PL 85-568, Sec 203; 42 USC 2473; PL 87-624, Sec 201(b); 47 USC 721(b)

CFR Citation: 14 CFR 1214, "Subpart 1"; 14 CFR 1214, "Subpart 2"

Legal Deadline: None

Abstract: This revision will incorporate provisions for scheduled shared-flight retrieval service and for equitable charging for use of the downweight capability of the shuttle.

Timetable:

Action	Date	FR Cite
NPRM	09/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: TITLE CONT: Users Who Have Made Substantial Investment in the STS Program

Agency Contact: Lowell E. Primm, Office of Space Flight, Code MC, National Aeronautics and Space Administration, NASA Headquarters, Washington, DC 20546, 202 453-1911

RIN: 2700-AA45

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3108. DELEGATION OF AUTHORITY OF CERTAIN CIVIL RIGHTS FUNCTIONS TO THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Legal Authority: 42 USC 2473(b)(1); 42 USC 2473(b)(3); 42 USC 2473(b)(5); 42 USC 2473(b)(6); 42 USC 2473(b)(14)

CFR Citation: 14 CFR 1204.508

Legal Deadline: None

Abstract: Amends existing NASA regulation to reflect changes in the Federal sector and to include new civil rights laws enacted since the original regulation was published.

Timetable:

Action	Date	FR Cite
NPRM	04/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Lewin S. Warren, Office of Equal Opportunity Programs, Code U, National Aeronautics and Space Administration, NASA Headquarters, Washington, DC 20546, 202 453-2165

RIN: 2700-AA47

3109. PAYLOAD SPECIALISTS FOR NASA OR NASA RELATED PAYLOADS

Legal Authority: PL 85-568, Sec 203; 42 USC 2473 72 Stat 429 as amended; PL 87-624, Sec 201(b); 47 USC 721(b) 76 Stat 421

CFR Citation: 14 CFR 1214, "Subpart 3"

Legal Deadline: None

Abstract: Revises existing regulation to reflect current practices.

Timetable:

Action	Date	FR Cite
NPRM	10/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Willis H. Shapley, Office of the Administrator, Code ADA, National Aeronautics and Space Administration, NASA Headquarters, Washington, DC 20546, 202 453-1022

RIN: 2700-AA52

3110. EXTRATERRESTRIAL EXPOSURE

Legal Authority: 42 USC 2455; 42 USC 2456; 42 USC 2473; 18 USC 799

CFR Citation: 14 CFR 1211

Legal Deadline: None

Abstract: Revision updates the existing regulation to conform to current agency practices.

Timetable:

Action	Date	FR Cite
NPRM	10/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Stephan W. Fogleman, Office of Space Science and Applications, Code EB, National Aeronautics and Space Administration, NASA Headquarters, Washington, DC 20546, 202 453-1536

RIN: 2700-AA53

3111. POLICY CONCERNING DATA OBTAINED FROM SPACE SCIENCE FLIGHT INVESTIGATIONS

Legal Authority: 42 USC 2454

CFR Citation: 14 CFR 1205, "Subpart 1"

Legal Deadline: None

Abstract: Amends regulation to reflect current agency practices.

Timetable:

Action	Date	FR Cite
NPRM	04/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Anthony J. Villasenor, Office of Space Science and Applications, Code EC, National Aeronautics and Space Administration, NASA Headquarters, Washington, DC 20546, 202 453-2134

RIN: 2700-AA54

3112. NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITING FROM ASSISTANCE BY NASA

Legal Authority: 20 USC 1681 et seq

CFR Citation: 14 CFR 1253

Legal Deadline: None

Abstract: This regulation proposes to establish for NASA a set of rules prohibiting sex discrimination in educational programs or activities receiving financial assistance from NASA. Under authority provided by the Education Amendments of 1974, this regulation seeks to ensure that no person in the United States shall, on the basis of sex, be excluded from participation in, be denied benefit of, or otherwise be subject to discrimination under any program or activity receiving Federal financial assistance from NASA.

Timetable:

Action	Date	FR Cite
NPRM	04/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Lewin S. Warren, Office of Equal Opportunity Program, Code U, National Aeronautics and Space Administration, NASA Headquarters, Washington, DC 20546, 202 453-2183

RIN: 2700-AA69

3113. FREEDOM OF INFORMATION ACT SUBMITTER NOTICE

Legal Authority: 5 USC 552(a)(3)(B); EO 12600

CFR Citation: 14 CFR 1206

Legal Deadline: None

Abstract: Formalizes current NASA policy and procedure in providing notice of request pursuant to the Freedom of Information Act to submitters of commercial information, implementing EO 12600.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Pamela J. vonSoosten, Office of General Counsel, Code GK, National Aeronautics and Space Administration, NASA Headquarters, Washington, DC 20546, 202 453-2436

RIN: 2700-AA74

3114. NATIONAL SPACE GRANT COLLEGE AND FELLOWSHIP PROGRAM

Legal Authority: PL 100-147

CFR Citation: 14 CFR 1259

Legal Deadline: None

Abstract: Formalizes and expands upon NASA's policy and procedures for implementing the National Space Grant College and Fellowship Program.

Timetable:

Action	Date	FR Cite
NPRM	04/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Elaine Schwartz, University Programs Branch, Code XEU, National Aeronautics and Space Administration, NASA Headquarters, Washington, DC 20546, 202 453-8344

RIN: 2700-AA75

3115. POLICY ON THE PROTECTION OF HUMAN SUBJECTS

Legal Authority: 42 USC 2451

CFR Citation: 14 CFR 1230

Legal Deadline: None

Abstract: NASA will be one of a few Federal Agencies to adopt a Model Federal Policy for the Protection of Human Subjects which was prepared by the Office of Science and Technology Policy. This NPRM will implement a Model Federal Policy for the Protection of Human subjects of research conducted, supported or regulated by NASA.

Timetable:

Action	Date	FR Cite
NPRM	04/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Dr. Arnauld E. Nicogossian, National Aeronautics and Space Administration, Life Sciences Division, Code EB, Office of Space Science and Applications, Washington, DC 20546, 202 453-2320

RIN: 2700-AA76

3116. ◆ CARE AND USE OF ANIMALS IN THE CONDUCT OF NASA ACTIVITIES

Legal Authority: 42 USC 2451; PL 89-544, as amended; 7 USC 2131; 39 USC 3001; PL 99-158, Sec 495

CFR Citation: 14 CFR 1232

Legal Deadline: None

Abstract: This proposed rule establishes the policy, implementation procedures, and management authority and responsibility for the care and use of vertebrate animals in the conduct of NASA activities.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Thora Halstead, Office of Space Science and Applications, Code EB, National Aeronautics and Space Administration, NASA Headquarters, Washington, DC [illegible], 202 453-1527

RIN: 2700-AA78

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (NASA) — Final Rule Stage

3117. SPACE TRANSPORTATION SYSTEM; INSURANCE AND INDEMNIFICATION OF NASA SPACE VEHICLE USERS

Legal Authority: PL 85-568, Sec 203; 42 USC 2473 Sec 308 of the Space Act as amended; 42 USC 2458(b)

CFR Citation: 14 CFR 1214, "Subpart 13"

Legal Deadline: None

Abstract: Describes the policy on when users of the Space Transportation System must obtain financial protection against third-party claims and the conditions under which NASA will provide insurance or indemnification of users. Comments on the proposed rule were received from several individuals.

Timetable:

Action	Date	FR Cite
NPRM	11/10/80	45 FR 74499
Final Action	08/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Robert J. Wojtal, Office of General Counsel, Code GK, National Aeronautics and Space Administration, NASA Headquarters, Washington, DC 20546, 202 453-2446

RIN: 2700-AA00

3118. SPACE TRANSPORTATION SYSTEM; REIMBURSEMENT FOR SPACELAB SERVICES

Legal Authority: 42 USC 2473

CFR Citation: 14 CFR 1214, "Subpart 8"

Legal Deadline: None

Abstract: Describes the policy for Spacelab services provided by NASA to users during the Second Phase of STS operations.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/30/85	50 FR 30807
Final Action	08/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Lowell E. Primm, Office of Space Flight, Code MC, National Aeronautics and Space Administration, NASA Headquarters, Washington, DC 20546, 202 453-1911

RIN: 2700-AA01

3119. ◆ NASA INFORMATION SECURITY PROGRAM

Legal Authority: 42 USC 2451 et seq; EO 12356

CFR Citation: 14 CFR 1203, "Subpart 2(f)(g)"

Legal Deadline: None

Abstract: NASA is revising its Information Security Program rule to reflect the current organizational position titles and word changes for clarity. Since this action is internal and administrative in nature and does not affect the existing regulations, notice and public comment are not required.

NASA

Final Rule Stage

Timetable:

Action	Date	FR Cite
Final Action	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Erwin V. Minter, NASA Security Office, Code NIS, National Aeronautics and Space Administration, NASA Headquarters, Washington, DC 20546, 202 453-2853

RIN: 2700-AA05

3120. ◆ DELEGATION OF AUTHORITY TO MAKE DETERMINATIONS IN ORIGINAL CLASSIFICATION MATTERS

Legal Authority: 42 USC 2451 et seq; EO 12356

CFR Citation: 14 CFR 1203, "Subpart H"

Legal Deadline: None

Abstract: NASA is revising its Delegation of Authority to Make Determinations in Original Classification Matters to add the Associate Administrator for Safety, Reliability, Maintainability, and Quality Assurance, and makes organizational title changes to designated officials. Since this action is internal and administrative in nature and does not affect the existing regulations, notice and public comment are not required.

Timetable:

Action	Date	FR Cite
Final Action	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Erwin V. Minter, NASA Security Office, Code NIS, National Aeronautics and Space Administration, NASA Headquarters, Washington, DC 20546, 202 453-2853

RIN: 2700-AA06

3121. ◆ INSPECTION OF PERSONS AND PERSONAL EFFECTS ON NASA PROPERTY

Legal Authority: 42 USC 2455(a)

CFR Citation: 14 CFR 1204, "Subpart 15"

Legal Deadline: None

Abstract: NASA is revising its Inspection of Persons and Personal Effects on NASA Property to reflect organizational title changes. Since this action is editorial in nature, notice and public comment are not required.

Timetable:

Action	Date	FR Cite
Final Action	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Erwin V. Minter, NASA Security Office, Code NIS, National Aeronautics and Space Administration, NASA Headquarters, Washington, DC 20546, 202 453-2853

RIN: 2700-AA07

3122. TRACKING AND DATA RELAY SATELLITE SYSTEM (TDRSS); USE AND REIMBURSEMENT POLICY FOR NON-U.S. GOVERNMENT USERS

Legal Authority: PL 85-568 Sec 203; 42 USC 2473

CFR Citation: 14 CFR 1215

Legal Deadline: None

Abstract: Annual revision of Appendix A to reflect each Calendar Year rate change for TDRSS services.

Timetable:

Action	Date	FR Cite
Final Action for CY 1989 Rate Change	07/12/88	53 FR 26235
Final Action for CY 1990 Rate Change	07/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Eugene Ferrick, Office of Space Operations, Code T, National Aeronautics and Space Administration, NASA Headquarters, Washington, DC 20546, 202 453-2843

RIN: 2700-AA29

3123. EMERGENCY PERSONNEL SECURITY ADJUDICATION AND PROCEDURES

Legal Authority: 42 USC 2451 et seq.; 5 USC 552 A; 5 USC 5596; EO 10450; EO 12356; 5 USC 7312; 5 USC 7531 TO 7533

CFR Citation: 14 CFR 1203, "Subpart J"

Legal Deadline: None

Abstract: 14 CFR Part 1203 is amended by adding this new Subpart J, "Emergency Personnel Security Adjudication and Procedures." This proposed rule sets forth NASA's personnel security adjudication policy and procedures. The intended effect of this proposed rule is to inform individuals of the procedures within NASA with respect to those individuals whose employment with NASA may not be clearly consistent with the interests of national security.

Timetable:

Action	Date	FR Cite
NPRM	01/22/87	52 FR 2545
Final Action	06/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Jerome Verba, NASA Security Office, Code NIS, National Aeronautics and Space Administration, NASA Headquarters, Washington, DC 20546, 202 453-2846

RIN: 2700-AA31

3124. UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY-ASSISTED PROGRAMS

Legal Authority: 42 USC 4601 Note

CFR Citation: 14 CFR 1206

Legal Deadline: None

Abstract: Designates Department of Transportation (DOT) as lead agency in implementation of Uniform Act.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/17/87	52 FR 48017
Final Action	06/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Gitta G. Haber, Facilities Management Office, Code NXG, National Aeronautics and Space Administration, NASA Headquarters, Washington, DC 20546, 202 453-1968

RIN: 2700-AA32

3125. SOURCE EVALUATION BOARD MANUAL

Legal Authority: 42 USC 2473(c)(1)

CFR Citation: 48 CFR 00

Legal Deadline: None

Abstract: Revise and update procedures for conduct of Source Evaluation Boards.

NASA

Final Rule Stage

Timetable:

Action	Date	FR Cite
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: David S. Sudduth, Office of Procurement, Code HS, National Aeronautics and Space Administration, NASA Headquarters, Washington, DC 20546, 202 453-8852

RIN: 2700-AA39

3126. NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF NASA

Legal Authority: Title VI of the Civil Rights Act of 1964 as amended; Section 504 of the Rehabilitation Act of 1973, as amended; Age Discrimination Act of 1975; EO 12250

CFR Citation: 14 CFR 1250

Legal Deadline: None

Abstract: NASA is revising 14 CFR Part 1250, "Nondiscrimination in Federally-Assisted Programs of NASA," to reflect changes in the NASA organization and processes through which this regulation is implemented. The purpose of this Part is to effectuate the provisions of Title VI of the Civil Rights Act of 1964, as amended.

Timetable:

Action	Date	FR Cite
Final Action	04/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Lewis S. Warren, Office of Equal Opportunity Programs, Code U, National Aeronautics and Space Administration, NASA Headquarters, Washington, DC 20546, 202 453-2163

RIN: 2700-AA50

3127. DUTY-FREE ENTRY OF SPACE ARTICLES

Legal Authority: PL 98-573 Sec 124; PL 97-446 Sec 116 and Sec 156; 19 USC 1202 note

CFR Citation: 14 CFR 1214, "Subpart 15"

Legal Deadline: None

Abstract: Amending 14 CFR Subpart 1214.15 to reflect the changes on the duty-free entry of communication satellites imposed by PL 98-573.

Timetable:

Action	Date	FR Cite
Final Action	07/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Robert J. Wojtal, Office of General Counsel, Code GK, National Aeronautics and Space Administration, NASA Headquarters, Washington, DC 20546, 202 453-2448

RIN: 2700-AA62

3128. ◆ NASA INFORMATION SECURITY PROGRAM COMMITTEE

Legal Authority: 42 USC 2451 et seq; EO 12356

CFR Citation: 14 CFR 1203, "Subpart I"

Legal Deadline: None

Abstract: NASA is revising its NASA Information Security Program Committee to reflect organizational title changes; adds the Associate Administrator for Safety, Reliability, Maintainability and Quality Assurance to the membership; designates the Director, NASA Security Office as the Chairperson and the Senior Security Specialist as the Executive Secretary. Since this action is internal and administrative in nature and does not affect the existing regulations, notice and public comment are not required.

Timetable:

Action	Date	FR Cite
Final Action	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Erwin V. Minter, NASA Security Office, Code NIS, National Aeronautics and Space Administration, NASA Headquarters, Washington, DC 20546, 202 453-2853

RIN: 2700-AA04

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (NASA)

Completed Actions

3129. MAJOR SYSTEM ACQUISITIONS

CFR Citation: 48 CFR 00

Completed:

Reason	Date	FR Cite
Withdrawn Nonexisting regulation.	08/05/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: John E. Horvath 202 453-2060

RIN: 2700-AA38

3130. BROAD AGENCY ANNOUNCEMENTS

CFR Citation: 48 CFR 00

Completed:

Reason	Date	FR Cite
Final Action	08/29/88	53 FR 32902

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: W. A. Greene 202 453-8823

RIN: 2700-AA03

3131. ◆ STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

Legal Authority: 5 USC 552, as amended

CFR Citation: 14 CFR 1201

Legal Deadline: None

Abstract: NASA is revising its Statement of Organization and General Information to reflect its current organizational structure. Since this action is editorial in nature, notice and public comment procedures are not required.

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Completed Actions

Timetable:

Action	Date	FR Cite
Final Rule	08/30/88	53 FR 33110
Final Action	08/30/88	53 FR 33110
Final Action Effective	08/30/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret M. Herring, Office of General Management, Code NPN-1, National Aeronautics and Space Administration, NASA Headquarters, Washington, DC 20546, 202 453-2922

RIN: 2700-AA72

3132. ● ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN FEDERALLY CONDUCTED PROGRAMS

Legal Authority: 29 USC 794

CFR Citation: 14 CFR 1251, "Subpart S"

Legal Deadline: None

Abstract: The purpose of this rule is to provide for the enforcement of nondiscrimination against qualified individuals with handicaps and sets forth standards for what constitutes discrimination.

Timetable:

Action	Date	FR Cite
Final Action	07/08/88	53 FR 25872

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Lynda Sampson, Office of Equal Opportunity Programs, Code U, National Aeronautics and Space Administration, NASA Headquarters, Washington, DC 20546, 202 453-2177

RIN: 2700-AA77

3133. ● PLANT CLEARANCE COSTS

Legal Authority: 42 USC 2475(c)(1)

CFR Citation: 48 CFR 1845; 48 CFR 1852

Legal Deadline: None

Abstract: Miscellaneous revisions to regulations regarding Government property.

Timetable:

Action	Date	FR Cite
Final Action	09/15/87	52 FR 34790

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: W. A. Greene, Office of Procurement, Code HP, National Aeronautics and Space Administration, NASA Headquarters, Washington, DC 20546, 202 453-8823

RIN: 2700-AA70

[FR Doc. 88-20815 Filed 10-21-88; 8:45 am]

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Part XXVIII

National Archives and Records Administration

Semiannual Regulatory Agenda

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION (NARA)

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Ch. XII

Unified Agenda of Federal Regulations

AGENCY: National Archives and Records Administration.

ACTION: Semiannual agenda.

SUMMARY: This agenda announces the proposed regulatory actions that the National Archives and Records Administration (NARA) plans for the next 12 months and those actions that have been completed since April 1988. This agenda was developed under the guidelines in OMB Bulletin No. 88-15, dated June 24, 1988. NARA's purpose in publishing this agenda is to allow interested persons an opportunity to have more comprehensive documentation of NARA's regulatory plans and to provide a systematic means of monitoring regulatory activity in NARA. None of the regulations listed in the agenda are considered major under Executive Order 12291, Federal Regulation.

FOR FURTHER INFORMATION CONTACT: John A. Constance, Chief, Information Management and Directives Branch, (202) 523-3214.

Dated: August 26, 1988.

Claudine J. Weiher,

Acting Archivist of the United States.

Prerule Stage

Sequence Number	Title	Regulation Identifier Number
3134	Transfers to the National Personnel Records Center	3095-AA15
3135	Procedures for Transfers to Federal Records Centers	3095-AA41

Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
3136	Membership on State Historical Records Advisory Boards	3095-AA20
3137	Restrictions on Access to Archival Records	3095-AA21
3138	Micrographics Records Management	3095-AA22
3139	Uniform Administrative Requirements for Grants and Cooperative Agreements	3095-AA23
3140	NARA Implementation of Presidential Records Act	3095-AA24
3141	NARA Standards of Conduct	3095-AA25
3142	Electronic Records Management	3095-AA29
3143	Loans of Original Records for Exhibition Purposes	3095-AA37
3144	Transfer of Records to the National Archives	3095-AA42

Completed Actions

Sequence Number	Title	Regulation Identifier Number
3145	Transfers to the National Personnel Records Center	3095-AA15
3146	Enforcement Nondiscrimination on the Basis of Handicap in Federally-conducted Programs	3095-AA35
3147	Implementation of Government-wide Nonprocurement Debarment and Suspension System	3095-AA36

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION (NARA) — Prerule Stage

3134. TRANSFERS TO THE NATIONAL PERSONNEL RECORDS CENTER

Legal Authority: 44 USC 3101

CFR Citation: 36 CFR 1228.154

Legal Deadline: None

Abstract: Consideration is being given to acceptance of individual earnings and pay cards and comprehensive payrolls in microfiche or computer output microfilm format only.

Timetable:

Action	Date	FR Cite
Begin Review	10/00/88	
End Review	03/00/89	

Small Entities Affected: None

NARA — Prerule Stage

Government Levels Affected: Federal

Agency Contact: Gregory A. Pomicter, Dir., Field Operations Division (NCF), National Archives and Records Administration, Washington, DC 20408, 202 663-8388

RIN: 3095-AA15

3135. ● PROCEDURES FOR TRANSFERS TO FEDERAL RECORDS CENTERS

Legal Authority: 44 USC 3101

CFR Citation: 36 CFR 1228.152

Legal Deadline: None

Abstract: In accordance with 36 CFR 1228.152(f), the physical transfer of records to a records center must be made within 90 days after the agency receives the annotated copy of Standard Form 135, Records Transmittal and Receipt. Consideration is being given to extending the time period to 120 days for receipt of shipments from offices outside the continental United States.

Timetable:

Action	Date	FR Cite
Begin Review	10/00/88	
End Review	01/00/89	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Gregory A. Pomicter, Dir., Field Operations Division (NCF), National Archives and Records Administration, Washington DC 20408, 202 663-8388

RIN: 3095-AA41

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION (NARA) — Proposed Rule Stage

3136. MEMBERSHIP ON STATE HISTORICAL RECORDS ADVISORY BOARDS

Legal Authority: 44 USC 2505

CFR Citation: 36 CFR 1206

Legal Deadline: None

Abstract: This regulation will restructure the State Historical Records Advisory Boards and redefine their functions in the grant review process.

Timetable:

Action	Date	FR Cite
NPRM	02/00/89	
NPRM Comment Period End	03/00/89	
Final Action	05/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Trudy H. Peterson, Assistant Archivist, Office of National Archives, National Archives and Records Administration, Washington, DC 20408, 202 523-3189

RIN: 3095-AA21

3137. RESTRICTIONS ON ACCESS TO ARCHIVAL RECORDS

Legal Authority: 44 USC 2108(a); 44 USC 2104(a)

CFR Citation: 36 CFR 1256.40

Legal Deadline: None

Abstract: This rule will add specific agency restrictions on the use of certain accessioned archival records. The restrictions will be in conformity with the Freedom of Information Act.

Timetable:

Action	Date	FR Cite
NPRM	03/00/89	
NPRM Comment Period End	04/00/89	
Final Action	05/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: State

Agency Contact: Nancy Sahli, Acting Dir., Records Program (NP), National Archives and Records Administration, Washington, DC 20408, 202 523-3388

RIN: 3095-AA20

3138. MICROGRAPHICS RECORDS MANAGEMENT

Legal Authority: 44 USC 2907; 44 USC 3302; 44 USC 3312

CFR Citation: 36 CFR 1230

Legal Deadline: None

Abstract: This rule will update existing regulations on micrographics records management to correct references to Federal and industry micrographics standards.

Timetable:

Action	Date	FR Cite
NPRM	04/00/89	
NPRM Comment Period End	05/00/89	
Final Action	08/00/89	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Adrienne C. Thomas, Deputy Assistant Archivist, for Management and Administration, National Archives and Records Administration, Washington, DC 20408, 202 523-3621

RIN: 3095-AA22

3139. ● UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS

Legal Authority: 44 USC 2104; 44 USC 2504

CFR Citation: 36 CFR 1207

Legal Deadline: None

Abstract: This action proposes a common rule updating and replacing agencies' implementation of OMB Circular A-110 with a single, government-wide common rule establishing consistency and uniformity among Federal agencies in the administration of grants and cooperative agreements to institutions of higher education, hospitals, other nonprofit organizations, and commercial or for-profit entities. This result is achieved by amending the common rule issued by the agencies on March 11, 1988, to similarly update and replace implementation of OMB Circular A-102. The provisions of the common rule are largely drawn from the existing departmental rules issued by the several agencies which in the past developed a single, comprehensive rule implementing the circulars. This proposed common rule contains fiscal and administrative requirements applicable to grantees.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
NPRM Comment Period End	12/00/88	

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Local, State, Federal

Agency Contact: Adrienne C. Thomas, Deputy Assistant Archivist, for Management and Administration, National Archives and Records Administration, Washington, D.C. 20408, 202 535-3621

RIN: 3095–AA23

3140. NARA IMPLEMENTATION OF PRESIDENTIAL RECORDS ACT

Legal Authority: 44 USC 2206

CFR Citation: 36 CFR 1270

Legal Deadline: None

Abstract: 44 USC 2206 requires that the Archivist promulgate regulations to carry out the Presidential Records Act. The law requires that the regulations provide for:

1. advance public notice of intention to dispose of valueless records;

2. notice to the former President of impending opening of otherwise restrictable records in response to judicial process, a request from the incumbent President, or request from Congress;

3. notice to the former President when disclosure of documents may adversely affect any rights or privileges he may have; and

4. establishment of procedures for consultation between the Archivist and appropriate Federal agencies regarding Presidential records which may be restricted as investigatory records compiled for law enforcement purposes.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
NPRM Comment Period End	00/00/00	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Gary Brooks, General Counsel, National Archives and Records Administration, Washington, DC 20408, 202 523-3618

RIN: 3095–AA24

3141. NARA STANDARDS OF CONDUCT

Legal Authority: 44 USC 2104(a)

CFR Citation: 36 CFR 1254

Legal Deadline: None

Abstract: These regulations will establish standards of conduct for NARA employees.

Timetable:

Action	Date	FR Cite
NPRM	04/00/89	
NPRM Comment Period End	06/00/89	
Final Action	06/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Gary Brooks, Designed Agency Ethics Official, National Archives and Records Administration, Washington, DC 20408, 202 523-3618

RIN: 3095–AA13

3142. ELECTRONIC RECORDS MANAGEMENT

Legal Authority: 44 USC 2904; 44 USC 3102

CFR Citation: 36 CFR 1234

Legal Deadline: None

Abstract: Federal agencies increasingly are recording their policies and authorities electronically. The proposed regulation will provide comprehensive standards for the creation, maintenance, use and disposition of electronic records.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
NPRM Comment Period End	00/00/00	
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Agency Contact: Mary Ann Wallace, Director, Agency Services Division (NIA), National Archives and Records Administration, Washington, DC 20408, 202 724-1458

RIN: 3095–AA29

3143. LOANS OF ORIGINAL RECORDS FOR EXHIBITION PURPOSES

Legal Authority: 44 USC 2104a; 44 USC 2109

CFR Citation: 36 CFR 1254

Legal Deadline: None

Abstract: To make the permanently valuable records of the U.S. Government more widely available, NARA may lend for exhibition purposes, original records (in sufficiently good condition to withstand the rigors of exhibition) to qualified institutions that will provide care for the borrowed items in accordance with NARA's minimum loan requirements and any additional requirements that are deemed appropriate for particular records. NARA's loan requirements are necessary to ensure that the exhibition of records from its holdings does not conflict with its responsibility for the preservation of those records. This regulation will make NARA's minimum loan requirements for security, environmental conditions, lighting, handling, and advance notice more conveniently available to potential borrowers. Since loan requests are reviewed in accordance with established administrative procedures and are subject to existing requirements, no additional costs will be involved.

Timetable:

Action	Date	FR Cite
NPRM	02/00/89	
NPRM Comment Period End	03/00/89	
Final Action	06/00/89	

Small Entities Affected: Governmental Jurisdictions, Organizations

Government Levels Affected: Local, State, Federal

Agency Contact: Adrienne C. Thomas, Deputy Assistant Archivist, for Management and Administration, National Archives and Records Administration, Washington, DC 20408, 202 523-3621

RIN: 3095–AA37

3144. ● TRANSFER OF RECORDS TO THE NATIONAL ARCHIVES

Legal Authority: 44 USC Chapter 21; 44 USC Chapter 29; 44 USC Chapter 31

CFR Citation: 36 CFR 1228.150

Legal Deadline: None

Abstract: Under 44 U.S.C. 2107, the Archivist of the United States may direct and effect the transfer to the National Archives of the United States of permanently valuable records of a Federal agency that are more than 30 years old, unless the head of the agency which has custody of them certifies in writing to the Archivist that they must be retained in the agency for use in the conduct of the agency's regular current business. The rule specifies what information must be contained in the written certification and provides criteria to assist agencies in making an informed determination whether their permanently valuable records over 30 years old are needed for current business in agency space. The rule also clarifies procedures for removing statutory and other restrictions from records transferred to the National Archives.

Timetable:

Action	Date	FR Cite
NPRM	09/02/88	53 FR 34131
NPRM Comment Period End	10/03/88	
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Adrienne C. Thomas, Deputy Assistant Archivist, for Management & Administration, National Archives and Records Administration, Washington, DC 20408, 202 523-3621

RIN: 3095–AA41

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION (NARA) — Completed Actions

3145. TRANSFERS TO THE NATIONAL PERSONNEL RECORDS CENTER

CFR Citation: 36 CFR 1228

Completed:

Reason	Date	FR Cite
Final Action	04/25/88	53 FR 13407
Final Action Effective	04/25/88	53 FR 13407

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Gregory A. Pomicter 202 653-8368

RIN: 3095–AA16

3146. ENFORCEMENT NONDISCRIMINATION ON THE BASIS OF HANDICAP IN FEDERALLY-CONDUCTED PROGRAMS

CFR Citation: 36 CFR 1228

Completed:

Reason	Date	FR Cite
Final Action	07/08/88	53 FR 25872
Final Action Effective	09/06/88	53 FR 25872

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Adrienne C. Thomas 202 523-3621

RIN: 3095–AA35

3147. IMPLEMENTATION OF GOVERNMENT-WIDE NONPROCUREMENT DEBARMENT AND SUSPENSION SYSTEM

CFR Citation: 36 CFR 1209

Completed:

Reason	Date	FR Cite
Final Action	05/26/88	36 FR 1209
Final Action Effective	10/01/88	36 FR 1209

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Local, State

Agency Contact: Adrienne C. Thomas 202 523-3621

RIN: 3095–AA56

[FR Doc. 88-20671 Filed 10-21-88; 8:45 am]

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Part XXIX

National Endowment for the Arts

Semiannual Regulatory Agenda

VOL 53 ISS 205 OCT 24 1988 UMI

NATIONAL ENDOWMENT FOR THE ARTS (NEA)

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

45 CFR Ch. XI

Semiannual Agenda of Regulations

AGENCY: National Endowment for the Arts.

ACTION: Publication of the semiannual agenda.

SUMMARY: Pursuant to Executive Order 12291 and the Regulatory Flexibility Act (5 U.S.C. 605), the National Endowment for the Arts publishes this regulatory agenda describing agency regulations under development or review.

FOR FURTHER INFORMATION CONTACT: Mr. Frederic R. Kellogg, General Counsel, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 or call (202) 682-5418.

Peter J. Basso,

Deputy Chairman for Management, National Endowment for the Arts.

NATIONAL ENDOWMENT FOR THE ARTS (NEA) — Proposed Rule Stage

3148. COLLECTION OF CLAIMS

Significance: Agency Priority

Legal Authority: PL 97-365; 31 USC 3711; 31 USC 3716 to 3718; 5 USC 5514; 5 USC 552a

CFR Citation: 45 CFR 1150

Legal Deadline: None

Abstract: The proposed rule amends the National Endowment for the Arts regulation for collecting debts. Principally, the amendments implement the Debt Collection Act of 1982 (PL 97-365), which amended the Federal Claims Collection Act of 1966 (31 USC 3711, 3716-3718) to authorize among other things, charging of interest penalties and administrative costs, and the use of administrative offset, private collection agencies and credit agencies by the government. The amendments also implement government-wide regulations issued by the Department of Justice and the General Accounting Office (49 FR 8889) and Office of Personnel Management (49 FR 27470).

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	
NPRM Comment Period End	02/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Frederic R. Kellogg, General Counsel, National Endowment for the Arts, Office of the General Counsel, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202 682-5418

RIN: 3135-AA01

3149. NONDISCRIMINATION ON THE BASIS OF AGE

Significance: Agency Priority

Legal Authority: 42 USC 6101 et seq

CFR Citation: 45 CFR 1154

Legal Deadline: None

Abstract: This rule prohibits discrimination on the basis of age in programs and activities receiving assistance from the National Endowment for the Arts. These regulations are proposed pursuant to the requirements of the Age Discrimination Act and consistent with the general government-wide regulations issued by the Department of Health and Human Services.

Timetable:

Action	Date	FR Cite
NPRM	10/02/79	44 FR 56725
NPRM Comment Period End	11/15/79	44 FR 56725

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Frederic R. Kellogg, General Counsel, National Endowment for the Arts, Office of the General Counsel, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202 682-5418

RIN: 3135-AA01

3150. CLAIMS COLLECTION: SALARY OFFSET

Legal Authority: 5 USC 5514; EO 11609 (redesignated EO 12107); 5 CFR 550, Subpart K

CFR Citation: Not yet determined

Legal Deadline: None

Abstract: This regulation provides procedures for the collection by administrative offset of a Federal employee's salary without his/her consent to satisfy certain debts owed to the Federal Government. The regulation outlines certain procedural protections that must be accorded to an employee prior to commencing offset.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Murray R. Welsh, Director, Administrative Services Division, National Endowment for the Arts, 1100 Pennsylvania Ave., NW, Washington, DC 20506, 202 682-5401

RIN: 3135-AA04

[FR Doc. 88-20672 Filed 10-21-88; 8:45 am]

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Part XXX

National Endowment for the Humanities

Semiannual Regulatory Agenda

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NATIONAL ENDOWMENT FOR THE HUMANITIES (NEH)

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

45 CFR Ch. XI

Unified Agenda of Regulations

AGENCY: National Endowment for the Humanities.

ACTION: Publication of the unified agenda of regulations.

SUMMARY: Pursuant to the Regulatory Flexibility Act, Pub. L. 96-354, and Executive Order 12291, "Federal Regulations," dated February 17, 1981, the National Endowment for the Humanities is required to publish in April and October of each year an agenda of proposed regulations that the Endowment has issued or expects to issue and current rules that are under agency review.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen J. McCleary, Deputy General Counsel, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; 202/786-0322.

Lynne V. Cheney,
Chairman.

NATIONAL ENDOWMENT FOR THE HUMANITIES (NEH) — Completed Actions

3151. NONPROCUREMENT DEBARMENT AND SUSPENSION

CFR Citation: 45 CFR 1169

Completed:

Reason	Date	FR Cite
Final Action	05/26/88	53 FR 19161
Final Action Effective	10/01/88	53 FR 19161

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Stephen J. McCleary 202 786-0322

RIN: 3136-AA06

[FR Doc. 88-21001 Filed 10-21-88; 8:45 am]
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Part XXXI

National Science Foundation

Semiannual Regulatory Agenda

NATIONAL SCIENCE FOUNDATION (NSF)

NATIONAL SCIENCE FOUNDATION

45 CFR Ch. VI

Federal Regulation; Semiannual Regulations Agenda

AGENCY: National Science Foundation.

ACTION: Publication of semiannual regulations agenda.

SUMMARY: The National Science Foundation (NSF) publishes its semiannual agenda of regulations under development or review as required by Executive Order 12291, Federal Regulation (46 FR 13193, February 17, 1981). This agenda has been prepared in accordance with OMB Bulletin No. 88-15, Unified Agenda of Federal Regulations.

FOR FURTHER INFORMATION CONTACT: For additional information regarding any particular regulatory action contained in the agenda, contact the individual identified as the contact person in the agenda. Comments or inquiries of a general nature about the agenda should be directed to Sukari S. Smith, Office of the General Counsel, National Science Foundation, Washington, DC 20550, (202) 357-9435.

Dated: August 16, 1988.

Sukari S. Smith,

Regulatory Contact.

NATIONAL SCIENCE FOUNDATION (NSF) — Proposed Rule Stage

3152. AMENDMENTS/ADDITIONS TO 45 CFR 670 - CONSERVATION OF ANTARCTIC ANIMALS AND PLANTS ENTITLED "ENFORCEMENT AND HEARING PROCEDURES" (SUBPART K)

Significance: Agency Priority

Legal Authority: 42 USC 1870; 16 USC 2405; 16 USC 2407; 16 USC 2408; 16 USC 2409; 16 USC 2411

CFR Citation: 45 CFR 670.50 (New); 45 CFR 670.60 (New)

Legal Deadline: None

Abstract: This action will amend this regulation by adding a new Subpart K (45 CFR 670.50 et seq), entitled "Enforcement and Hearing Procedures."

The Antarctic Conservation Act of 1978 prohibits certain acts in the Antarctic, such as the taking of any native mammal or native bird without a valid permit. The new subpart will establish hearing procedures for adjudicating administrative complaints alleging violations of the Act, elaborate and clarify the elements of a violation, and specific other procedures necessary for the enforcement of the Antarctic Conservation Act of 1978.

Timetable:

Action	Date	FR Cite
NPRM	09/30/88	
NPRM Comment Period End	11/30/88	
Final Action	12/31/88	
Final Action Effective	12/31/88	
Public Hearing	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Public Compliance Cost: Initial Cost: $0; Yearly Recurring Cost: $0

Agency Contact: Robert M. Andersen, Deputy General Counsel, National Science Foundation, 1800 G Street, NW, Washington, DC 20550, 202 357-9435

RIN: 3145-AA12

NATIONAL SCIENCE FOUNDATION (NSF) — Final Rule Stage

3153. ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN NATIONAL SCIENCE FOUNDATION

Legal Authority: 29 USC 794; PL 95-602, Sec 504

CFR Citation: 45 CFR 606, (New); 45 CFR 86

Legal Deadline: None

Abstract: This regulation provides for the enforcement of Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, as it applies to programs or activities conducted by the National Science Foundation. Potential costs are not known. Any benefits derived will be to ensure that the handicapped will not be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity conducted by the National Science Foundation.

Timetable:

Action	Date	FR Cite
NPRM	04/04/88	53 FR 10696
NPRM Comment Period End	06/03/88	
Final Action	10/30/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Brenda Brush, Director, Office of Equal Opportunity, National Science Foundation, 1800 G Street, NW, Washington, DC 20550, 202 357-9619

RIN: 3145-AA05

3154. PATENTS

Legal Authority: 42 USC 1870(a) The Natl. Sci. Found. Act of 1950, as amended; 35 USC 200 et seq The Bayh-Dole Act, as amended

CFR Citation: 45 CFR 650

Legal Deadline: None

Abstract: The Bayh-Dole Act (34 USC 200 et seq) was amended by Title V of PL 98-620 (98 Stat. 3364, 3368). The Department of Commerce has prepared a government-wide implementing regulation. The Foundation's Patents regulation (45 CFR 650) conforms to it. Because the revision to the NSF patents regulation will merely echo a government-wide regulation on which the public will have had an opportunity to comment, the Foundation expects that the revision will be published as a final rule. No additional costs will be imposed on the public as a result of the revision.

Timetable:

Action	Date	FR Cite
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: The notable changes to be made in the revision of the NSF patents regulation will be: elimination of restrictions on the licensing of NSF-supported inventions by nonprofit organizations, including universities; modification of the criteria and procedures for determining that "exceptional circumstances" warrant restricting a grantee's right to retain principal patent rights to its employees' NSF-supported inventions; and elimination of the Foundation's authority to waive the government license and "march-in" rights in awards not subject to the Bayh-Dole Act. All these changes are required by amendments to the Bayh-Dole Act.

Agency Contact: John Chester, Intellectual Property Attorney, National Science Foundation, Office of the General Counsel, Room 501, Washington, DC 20550, 202 357-9435

RIN: 3145-AA27

NATIONAL SCIENCE FOUNDATION (NSF) — Completed Actions

3155. EFFECTUATION OF TITLE IX OF THE EDUCATION AMENDMENTS OF 1982 (SEX DISCRIMINATION)

CFR Citation: 45 CFR 620, (New)

Completed:

Reason	Date	FR Cite
Withdrawn	08/08/88	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Brenda Brush 202 357-9619

RIN: 3145-AA06

3156. NONPROCUREMENT DEBARMENT AND SUSPENSION

CFR Citation: 45 CFR 620

Completed:

Reason	Date	FR Cite
Final Action	05/26/88	53 FR 19161
Final Action Effective	10/01/88	

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: Arthur J. Kusinski 202 357-9435

RIN: 3145-AA31

3157. UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

CFR Citation: 45 CFR 602

Completed:

Reason	Date	FR Cite
Final Action	03/11/88	53 FR 8034
Final Action Effective	10/01/88	

Small Entities Affected: None

Government Levels Affected: Local, State

Agency Contact: Sharon Graham 202 357-7880

RIN: 3145-AA13

[FR Doc. 88-20873 Filed 10-21-88; 8:45 am]

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Part XXXII

Office of Management and Budget

Semiannual Regulatory Agenda

OFFICE OF MANAGEMENT AND BUDGET (OMB)

OFFICE OF MANAGEMENT AND BUDGET

5 CFR Ch. III

Federal Regulations: OMB Directives Included in the Semiannual Agenda of Upcoming Activities

AGENCY: Office of Management and Budget.

ACTION: Publication of semiannual agenda.

SUMMARY: The Office of Management and Budget (OMB) is publishing its semiannual agenda of upcoming activities on OMB Circulars and Office of Federal Procurement Policy Letters (OFPP Policy Letters). This action is in accordance with OMB's internal procedures for implementing Executive Order No. 12291. OMB directives are issued under authority derived from several sources including: Subtitles I, II, and V of Title 31, United States Code, Executive Order No. 11541, and other specific authority as cited. The agenda includes actions on issuances which are not regulations, but which are of public interest.

OMB Circulars and OFPP Policy Letters are directives that communicate significant government-wide policy of a continuing nature. For purposes of this agenda, we have included Circulars and Policy Letters which are designed to implement, interpret, or prescribe law or policy, or describe the procedure or practice requirements of an agency. Excluded are directives that outline procedures to be followed in connection with the President's budget and legislative programs, and directives that affect only the internal functions, management, or personnel of Federal agencies.

FOR FURTHER INFORMATION CONTACT: See agency person listed for each entry in the agenda, c/o Office of Management and Budget, Washington, DC 20503. On the overall agenda, contact Darrell A. Johnson (202/395-7250) at the above address.

Darrell A. Johnson,

Assistant Director for Administration.

Prerule Stage

Sequence Number	Title	Regulation Identifier Number
3158	Policies on Government Publications (Circular No. A-3)	0348-AA77
3159	Policy Governing Charges for Rental Quarters and Other Facilities (Circular No. A-45)	0348-AA65
3160	Major System Acquisitions (Circular No. A-109)	0348-AA12
3161	Management of Federal Audiovisual Activities (Circular No. A-114)	0348-AA84
3162	Prompt Payment(Circular A-125)	0348-AA67
3163	Policies on Management of Federal Information Resources (Circular No. A-130)	0348-AA78

Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
3164	Writing and Administering Performance Work Statements (Part II of Supplement to Circular No. A-76)	0348-AA34
3165	Performance of Commercial Activities (Circular No. A-76)	0348-AA45
3166	Cost Principles for State and Local Governments (Circular No. A-87)	0348-AA83
3167	Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations (Circular No. A-110)	0348-AA69

Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
3168	Federal Government User Charges Policy (Circular No. A-25)	0348-AA41
3169	Indirect Cost Rates, Audit, and Audit Followup at Educational Institutions (Circular A-88)	0348-AA59
3170	Statistical Policy Directives	0348-AA43

OMB

Completed Actions

Sequence Number	Title	Regulation Identifier Number
3171	Board of Contract Appeals - Position Allocation Pursuant to Public Law 95-563 (OFPP Policy Letter 79-2, Supplement No. 1)	0348-AA16
3172	Controlling Paperwork Burden on the Public: Regulatory Changes Reflecting Amendments to the Paperwork Reduction Act	0348-AA71

OFFICE OF MANAGEMENT AND BUDGET (OMB)

Prerule Stage

3158. POLICIES ON GOVERNMENT PUBLICATIONS (CIRCULAR NO. A-3)

Significance: Agency Priority

Legal Authority: 44 USC 1108

CFR Citation: None

Legal Deadline: None

Abstract: OMB Circular No. A-3, Government Publications, last revised in May 1985, prescribes policies and procedures for approving funding for government periodicals to fulfill the requirements of 44 USC 1108, and for reporting periodicals and non-recurring publications. This Circular is under review. OMB will consider modifications reflecting current policies on electronic dissemination of information.

Timetable:

Action	Date	FR Cite
Begin Review	01/04/88	
End Review	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: J. Timothy Sprehe, Statistician, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, 202 395-4814

RIN: 0348-AA77

3159. ◆ POLICY GOVERNING CHARGES FOR RENTAL QUARTERS AND OTHER FACILITIES (CIRCULAR NO. A-45)

Legal Authority: 5 USC 5911 (F); EO 11609 (Section 9)

CFR Citation: None

Legal Deadline: None

Abstract: OMB Circular A-45 was issued to provide policy guidance regarding charges for rental quarters and other Government facilities. OMB is reviewing this circular pursuant to the provisions of paragraph 9 of the circular, dated March 28, 1984.

Timetable:

Action	Date	FR Cite
Begin Review	07/01/88	
End Review	12/31/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Richard A. Ong, Deputy Associate Administrator, Office of Management and Budget, Office of Federal Procurement Policy, Washington, D.C. 20503, 202 395-6810

RIN: 0348-AA65

3160. MAJOR SYSTEM ACQUISITIONS (CIRCULAR NO. A-109)

Legal Authority: PL 93-400; See preamble

CFR Citation: None

Legal Deadline: None

Abstract: Some agencies report difficulty working under the Circular. A review, in light of experience gained, is warranted with a goal of revision and simplification while maintaining the current general policy thrust of A-109.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Robert Cooper, Procurement Analyst, Office of Management and Budget, Office of Federal Procurement Policy, Washington, D.C. 20503, 202 395-3300

RIN: 0348-AA12

3161. ◆ MANAGEMENT OF FEDERAL AUDIOVISUAL ACTIVITIES (CIRCULAR NO. A-114)

Legal Authority: Budget and Accounting Act of 1950

CFR Citation: None

Legal Deadline: None

Abstract: OMB Circular A-114 was issued to produce policies governing the consolidation, use, and management of federal audiovisual resources. OMB is reviewing this circular pursuant to the Sunset Review Provision of the circular as revised on March 30, 1985.

Timetable:

Action	Date	FR Cite
Begin Review	10/01/88	
End Review	10/01/89	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Agency Contact: Donna Fossum, Deputy Associate Administrator, Office of Management and Budget, Office of Federal Procurement Policy, Washington, D.C. 20503, 202 395-3300

RIN: 0348-AA84

3162. PROMPT PAYMENT(CIRCULAR A-125)

Legal Authority: 31 USC 65 et seq; 41 USC 401 et seq; 31 USC 3901 et seq; See preamble

CFR Citation: None

OMB — Prerule Stage

Legal Deadline: None

Abstract: The Office of Management and Budget is considering proposing amendments to Circular A-125.

Timetable:

Action	Date	FR Cite
Begin Review	01/01/88	
End Review	06/30/88	
Proposal to Revise Circular	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Suzanne Duval, Management Analyst, Office of Management and Budget, Financial Management Division, Credit and Cash Management Branch, Washington, D.C. 20503, 202 395-6197

RIN: 0348-AA57

3163. POLICIES ON MANAGEMENT OF FEDERAL INFORMATION RESOURCES (CIRCULAR NO. A-130)

Significance: Agency Priority

Legal Authority: 44 USC 35; 5 USC 552a; 40 USC 759; 40 USC 487; 31 USC 11

CFR Citation: None

Legal Deadline: None

Abstract: OMB Circular No. A-130, Management of Federal Information Resources, issued December 12, 1985, establishes policy for the management of Federal information resources, and provides certain procedural and analytic guidelines for implementing specific aspects of these policies. OMB is reviewing the Circular for consistency with the Computer Security Act of 1987 (PL 100-235), for policies on electronic collection and dissemination of information, and for certain technical adjustments.

Timetable:

Action	Date	FR Cite
Begin Review	01/04/88	
End Review	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: J. Timothy Sprehe, Statistician, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, 202 395-6816

RIN: 0348-AA76

OFFICE OF MANAGEMENT AND BUDGET (OMB) — Proposed Rule Stage

3164. WRITING AND ADMINISTERING PERFORMANCE WORK STATEMENTS (PART II OF SUPPLEMENT TO CIRCULAR NO. A-76)

Legal Authority: 31 USC 501 et seq; 41 USC 401 et seq

CFR Citation: None

Legal Deadline: None

Abstract: This document describes a systematic means for developing Performance Work Statements and Quality Assurance Surveillance plans for Government management of commercial activities. It also includes procedures for contracting personnel who develop, review, award, and administer service contracts.

Timetable:

Action	Date	FR Cite
Draft for Public Comment	11/01/88	
Final Action	03/01/89	
Final Action Effective	04/01/89	

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: David L. Muzio, Deputy Associate Administrator for Policy Development, Office of Management and Budget, Office of Federal Procurement Policy, Washington, D.C. 20503, 202 395-3380

RIN: 0348-AA34

3165. PERFORMANCE OF COMMERCIAL ACTIVITIES (CIRCULAR NO. A-76)

Legal Authority: 31 USC 501 et seq; 41 USC 401 et seq

CFR Citation: None

Legal Deadline: None

Abstract: OMB Circular No. A-76, last revised in August 1983, sets forth the policy of acquiring commercial products and services from the private sector, and provides guidance on the development of performance work statements and on comparing the cost of Government performance with contractor performance. This Circular is currently under revision to incorporate changes required by Executive Order 12615, and to provide more management flexibility to directly contract certain functions.

Timetable:

Action	Date	FR Cite
Draft for Public Comment	11/01/88	
Final Action	03/01/89	
Final Action Effective	04/01/89	

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: David L. Muzio, Deputy Associate Administrator for Policy Development, Office of Federal Procurement Policy, Washington, D.C. 20503, 202 395-3380

RIN: 0348-AA45

3166. COST PRINCIPLES FOR STATE AND LOCAL GOVERNMENTS (CIRCULAR NO. A-87)

Legal Authority: 64 Stat 832

CFR Citation: None

Legal Deadline: None

Abstract: This review will develop proposed changes to update the Circular.

Timetable:

Action	Date	FR Cite
Draft Circular Published for Public Comment	10/15/88	
Circular to be Issued	12/31/88	

Small Entities Affected: None

Government Levels Affected: None

OMB — Proposed Rule Stage

Agency Contact: Jimmie D. Brown, Chief, Financial Systems and Policy Branch, Office of Management and Budget, Financial Management Division, Washington, DC 20503, 202 395-3993

RIN: 0348-AA83

3167. UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NONPROFIT ORGANIZATIONS (CIRCULAR NO. A-110)

Significance: Regulatory Program

Legal Authority: 31 USC 65 et seq; 41 USC 401 et seq; See preamble

CFR Citation: None

Legal Deadline: None

Abstract: An OMB and HHS-chaired task force will review the current requirements of Circular A-110, compare them with the final Circular A-102 and government-wide common rule published in the Federal Register March 11,1988, determine the need for changes to restore uniformity, and propose a revised Circular A-110 and common rule for public comment.

Timetable:

Action	Date	FR Cite
Begin Review	06/15/87	
Invitation for Comments	06/24/87	52 FR 23729
Proposed Circular	11/30/88	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Jonathan D. Breul, Management Analyst, Office of Management and Budget, Financial Management Division, Washington, DC 20503, 202 395-3830

RIN: 0348-AA59

OFFICE OF MANAGEMENT AND BUDGET (OMB) — Final Rule Stage

3168. FEDERAL GOVERNMENT USER CHARGES POLICY (CIRCULAR NO. A-25)

Legal Authority: Title V of Independent Offices Appropriations Act of 1952; 31 USC 9701

CFR Citation: None

Legal Deadline: None

Abstract: General policies for Federal agencies on administering user charges and formulating legislative proposals regarding user charges are set forth in OMB Circular No. A-25. Public comments have been received on a revised draft of the Circular. They are currently being considered.

Timetable:

Action	Date	FR Cite
Draft Published for Comment	07/01/87	52 FR 24890
Public Comment Period End	08/01/87	
Final Publication	00/00/00	

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Local, State, Federal

Agency Contact: Joel Friedman, Financial Economist, Office of Management and Budget, Budget Review Division, Fiscal Analysis Branch, Washington, D.C. 20503, 202 395-4574

RIN: 0348-AA41

3169. INDIRECT COST RATES, AUDIT, AND AUDIT FOLLOWUP AT EDUCATIONAL INSTITUTIONS (CIRCULAR A-88)

Legal Authority: 31 USC 65 et seq; 41 USC 401 et seq; See preamble

CFR Citation: None

Legal Deadline: None

Abstract: The review will develop proposed changes to the Circular needed to call for "single audit" of universities.

Timetable:

Action	Date	FR Cite
Published in the Federal Register for Public Comment	11/06/85	50 FR 46244
Publish Revised Proposal for Comment	09/30/88	
Circular to be Issued	12/31/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Current policy for independent audits of universities is contained in Circular A-110 "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations." The proposed revision will be merged with current policy for Federal audits of universities contained in Circular A-88.

Agency Contact: Jimmie D. Brown, Chief, Financial Systems and Policy Branch, Office of Management and Budget, Financial Management Division, Washington, D.C. 20503, 202 395-6823

RIN: 0348-AA08

3170. STATISTICAL POLICY DIRECTIVES

Legal Authority: 31 USC 1104 Budget & Accounting Procedures Act 1950 (Sec 103); PL 96-511 Paperwork Reduction Act of 1980; See preamble

CFR Citation: None

Legal Deadline: None

Abstract: The Directives give general policies for gathering, compiling, analyzing, publishing, and disseminating statistical information by the agencies in the Executive Branch of the Federal Government. A draft Circular was issued for public comment on January 20, 1988. The public comment period was subsequently extended to July 15, 1988. The final Circular is planned for issuance in October 1988.

Timetable:

Action	Date	FR Cite
Draft Circular for Public Comment	01/20/88	53 FR 1542
Final Circular	07/00/89	

Small Entities Affected: None

Government Levels Affected: None

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OMB — Final Rule Stage

Agency Contact: Suzann K. Evinger, Statistical Policy Analyst, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503, 202 395-3868

RIN: 0348-AA43

OFFICE OF MANAGEMENT AND BUDGET (OMB) — Completed Actions

3171. BOARD OF CONTRACT APPEALS - POSITION ALLOCATION PURSUANT TO PUBLIC LAW 95-563 (OFPP POLICY LETTER 79-2, SUPPLEMENT NO. 1)

Legal Authority: 41 USC 401 et seq; See preamble

CFR Citation: None

Legal Deadline: None

Abstract: The action has been withdrawn and will be rescheduled after OFPP makes preliminary determination as to need for reallocation.

Timetable:

Action	Date	FR Cite
Begin Review	03/01/88	
Withdrawn	07/01/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Allen Brown, Acting Associate Administrator for Procurement Law and Legislation, Office of Management and Budget, Office of Federal Procurement Policy, Washington, D.C. 20503, 202 395-3300

RIN: 0348-AA15

3172. CONTROLLING PAPERWORK BURDEN ON THE PUBLIC: REGULATORY CHANGES REFLECTING AMENDMENTS TO THE PAPERWORK REDUCTION ACT

Legal Authority: 44 USC 3516

CFR Citation: 5 CFR 1320

Legal Deadline: None

Abstract: The recently enacted Paperwork Reduction Reauthorization Act of 1986 amended the Paperwork Reduction Act of 1980. The Office of Management and Budget amended its existing paperwork clearance rules to reflect this legislative change and otherwise to improve the management of Federal paperwork.

Timetable:

Action	Date	FR Cite
NPRM	07/23/87	52 FR 27768
NPRM Comment Period End	09/21/87	
Final Action	05/10/88	53 FR 16618
Final Action Effective	06/09/88	

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Local, State, Federal

Agency Contact: Jefferson B. Hill, Chief, Commerce and Lands Branch, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503, 202 395-3176

RIN: 0348-AA71

[FR Doc. 88-20074 Filed 10-21-88; 8:45 am]
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federal register

Monday
October 24, 1988

Part XXXIII

Office of Personnel Management

Semiannual Regulatory Agenda

OFFICE OF PERSONNEL MANAGEMENT (OPM)

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Ch. I

Regulatory Agenda

AGENCY: Office of Personnel Management.

ACTION: Semiannual agenda of regulations.

SUMMARY: The following Office of Personnel Management regulations are scheduled for development or review from October 1, 1988, through September 30, 1989. This agenda carries out OPM's responsibilities to publish a semiannual agenda under EO 12291, Federal Regulation, and the Regulatory Flexibility Act (5 U.S.C. chapter 6). This publication in the **Federal Register** does not impose a binding obligation on the Office of Personnel Management with regard to any specific item on the agenda. Regulatory action in addition to the items listed is not precluded.

FOR FURTHER INFORMATION CONTACT: JoAnn G. Blackler, (202) 653-7252.

U.S. Office of Personnel Management.

[redacted] Horner,

Director.

Prerule Stage

Sequence Number	Title	Regulation Identifier Number
3173	Executive Assignment System	3206-AD03
3174	Executive and Management Development	3206-AC12
3175	Suitability -- Suitability Disqualification/Rating Actions	3206-AC19
3176	Personnel Security and Related Programs	3206-AC21
3177	Investigations	3206-AB92

Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
3178	Organization of the Government for Personnel Management; Personnel Management in Agencies	3206-AA66
3179	Performance Management System	3206-AD22
3180	Employment (General); Time-in-Grade Restrictions	3206-AC01
3181	Employment in the Senior Executive Service	3206-AC81
3182	Training	3206-AD06
3183	Reduction in Grade and Removal Based on Unacceptable Performance	3206-AB21
3184	Pay Under the General Schedule	3206-AD44
3185	Prevailing Rate Systems	3206-AC82
3186	Grade and Pay Retention	3206-AD45
3187	Pay Administration (General); Severance Pay	3206-AC41
3188	Pay Administration under the FLSA: Compliance	3206-AA40
3189	Political Activity of Federal Employees	3206-AA47
3190	Retirement; Credit and Deposits for Military Service	3206-AB73
3191	Retirement; CSRS Offset Service	3206-AD58
3192	Retirement; Disability Retirement	3206-AB77
3193	Retirement; Recovery of Annuity Overpayments	3206-AB78
3194	Retirement; FERS Cost-of-Living Adjustments	3206-AD62
3195	Federal Employees' Group Life Insurance; Annual Rates of Pay for Employees Who Work Less Than Full Time	3206-AD50
3196	Federal Employees Group Life Insurance	3206-AB80
3197	Federal Employees Health Benefits Program; Technical Corrections	3206-AB83
3198	Federal Employees Health Benefits for Former Spouses of CIA and Foreign Service Employees	3206-AD28
3199	Federal Employees Health Benefits Program/Withdrawal of Carrier and Plan Approval	3206-AD37
3200	Definition of Medicare Eligible Individuals	3206-AD49
3201	Federal Employees Health Benefits Program (FEHBP) Enrollment Process for Federal Employees' Retirement System (FERS) Minimum Retirement Annuity Eligibles	3206-AD53
3202	Miscellaneous Federal Employees Health Benefits Program (FEHBP) Amendments	3206-AD55
3203	Conversion Privilege for Family Members Who Lose Coverage Under the Federal Employees Health Benefits Program (FEHBP)	3206-AD56
3204	Federal Employees Health Benefits Program; Continuation of Enrollment and Discontinued Plan Enrollment Changes	3206-AB88
3205	Federal Employees Health Benefits Program; Reenrollment of Certain Annuitants	3206-AD23
3206	Federal Employees Health Benefits Program (FEHBP) Plan Advertising in Violation of FEHBP Contract Provisions	3206-AD36
3207	OPM Procurement Regulations	3206-AB28

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Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
3208	Availability of Official Information	3206-AD05
3209	Employment (General); Employment Practices	3206-AB41
3210	Appointment, Reassignment, Transfer, and Reinstatement in the Senior Executive Service	3206-AA09
3211	Appointment, Reassignment, Transfer and Reinstatement in the Senior Executive Service (SES Career Appointment by Reinstatement)	3206-AA11
3212	General Recruitment/Placement Principles	3206-AC07
3213	Promotion and Internal Placement	3206-AA85
3214	Qualifications Requirements (Medical)	3206-AA91
3215	Removal from the Senior Executive Service; Guaranteed Placement in Other Personnel Systems	3206-AA21
3216	Removal from the Senior Executive Service; Guaranteed Placement in Other Personnel Systems	3206-AA25
3217	Pay and Performance Under the Senior Executive Service	3206-AB28
3218	Prevailing Rate Systems	3206-AC59
3219	Pay Administration (General); Back Pay	3206-AD18
3220	Pay Administration (General); Overtime Pay Computation	3206-AD06
3221	Pay Administration Under the Fair Labor Standards Act	3206-AD40
3222	Allowances and Differentials; Cost of Living Allowance and Post Differential--Nonforeign Areas	3206-AB34
3223	Absence and Leave; Coverage of D.C. Government Employees	3206-AC47
3224	Absence and Leave; Temporary Leave Transfer Program	3206-AD41
3225	Absence and Leave; Restoration of Annual Leave	3206-AD42
3226	Executive Personnel Financial Disclosure Requirements	3206-AA93
3227	Post Employment Conflict of Interest; 1987 Designation of Certain Positions and Agencies	3206-AD04
3228	Retirement; Processing Court Orders for Apportionment of Civil Service Retirement System Annuity and Competing Claims for Survivor Benefits	3206-AC83
3229	Retirement; Implementing Regulations for Civil Service Retirement Spouse Equity Act of 1984	3206-AB75
3230	Retirement; Implementing Regulations for Civil Service Retirement Spouse Equity Act of 1984	3206-AD46
3231	Retirement; Deposits for Military Service	3206-AD32
3232	Retirement; Court Orders Affecting Retirement	3206-AD64
3233	Retirement; Alternative Form of Annuity	3206-AD35
3234	Retirement; Crediting Personal Service Contract Service	3206-AD59
3235	Retirement; Federal Employees' Retirement System Act of 1986	3206-AC94
3236	Retirement; Federal Employees' Retirement System Act of 1986	3206-AD65
3237	Retirement; FERS--Annual Pay Computation for Less than Full-Time Employees	3206-AD63
3238	Retirement; Reemployment of Annuitants	3206-AD60
3239	Retirement; FERS Disability Benefits	3206-AD61
3240	Federal Employees' Group Life Insurance: Premium Reduction for Basic Life Insurance Coverage Continued During Retirement	3206-AD54
3241	Continuation of Health and Life Insurance Coverage During Retirement	3206-AD34
3242	Letter of Credit Access to Federal Employees Health Benefits Program (FEHBP) Carrier Reserves	3206-AD52
3243	Computer Security Training	3206-AD43
3244	Letter of Credit Access to Federal Employees Health Benefits Program (FEHBP) Carrier Reserves	3206-AD51

Completed Actions

Sequence Number	Title	Regulation Identifier Number
3245	Excepted Service -- Schedule B Authority to Appoint and Convert Cooperative Education Students	3206-AD20
3246	Performance Management System; Recordkeeping	3206-AB27
3247	Procedures for Selecting Candidates for Appointment	3206-AD16
3248	Productivity Gainsharing	3206-AC71
3249	Special Salary Rates for Recruitment and Retention	3206-AD38
3250	Pay Under the General Schedule; Prevailing Rate Systems; Grade and Pay Retention	3206-AC96
3251	Processing Garnishment Orders for Child Support and/or Alimony	3206-AB42
3252	Employee Responsibilities and Conduct	3206-AB66
3253	Post Employment Conflict of Interest	3206-AB12
3254	Adverse Actions	3206-AC23
3255	Retirement; Underdeductions of Retirement Contributions	3206-AC96
3256	Retirement; Credit for Service; Food Service Employees of the House of Representatives May Retain CSRS or FERS	3206-AD14
3257	Retirement; Credit for Service; Employees Who Transfer to Airports Authority	3206-AD15
3258	Continuation of Federal Employees' Group Life Insurance Coverage During Military Service	3206-AD10

OPM

Completed Actions—Continued

Sequence Number	Title	Regulation Identifier Number
[illegible]	Continuation of Federal Employees Health Benefits and Federal Employees Group Life Insurance Coverage under FERS	3206-AD11
3260	Credit for CHAMPUS Coverage for the Purpose of Continuing an FEHB Enrollment During Retirement	3206-AD26
3261	Federal Employees Health Benefits Program; Registration and Enrollment	3206-AB87
3262	Federal Employees Health Benefits Program; Continuation of Coverage During Military Service	3206-AD24
3263	Federal Employees Health Benefits Program; Continuation of Coverage During Military Service	3206-AD57
[illegible]	Federal Employees Health Benefits Program; Medically Underserved Areas	3206-AD46
3265	Federal Employees Health Benefits Program; Medically Underserved Areas for 1988	3206-AD47

OFFICE OF PERSONNEL MANAGEMENT (OPM)

Prerule Stage

3172. EXECUTIVE ASSIGNMENT SYSTEM

Legal Authority: 5 USC 1302; 5 USC 3301; 5 USC 3302; 5 USC 3324; EO 10577

CFR Citation: 5 CFR 305

Legal Deadline: None

Abstract: Review of regulations on executive assignment system (GS-16/18). Regulations need to be reviewed in light of the establishment of the Senior Executive Service, which incorporated most GS-16/18 positions, and delegations to agencies under the CSRA.

Timetable:

Action	Date	FR Cite
Begin Review	01/01/85	
End Review	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Neal Harwood, Personnel Management Specialist, Office of Personnel Management, Office of Executive Personnel, Office of Executive Administration, 1900 E St., NW; Washington, DC 20415, 202 632-4466

RIN: 3206-AC09

3174. EXECUTIVE AND MANAGEMENT DEVELOPMENT

Legal Authority: 5 USC 3397

CFR Citation: 5 CFR 412, Subparts A and E

Legal Deadline: None

Abstract: Review of executive and management development program authority for possible reconstructing.

Timetable:

Action	Date	FR Cite
Begin Review	02/15/89	
End Review	09/30/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Harold Segal, Chief, Policy and Oversight Branch, Office of Personnel Management, Training and Investigations Group, 1121 Vermont Avenue, NW; P.O. Box 7230, Washington, D.C. 20044, 202 632-5574

RIN: 3206-AC12

3175. SUITABILITY -- SUITABILITY DISQUALIFICATION/RATING ACTIONS

Legal Authority: 5 USC 3301; 5 USC 3302; 5 USC 7301; EO 10577; EO 11222

CFR Citation: 5 CFR 731, Subparts B and C

Legal Deadline: None

Abstract: Comprehensive review of suitability standards. Current revision of personnel security program by Presidential task force will likely result in the need for conforming changes in personnel suitability standards.

Timetable:

Action	Date	FR Cite
Begin Review	11/01/85	
End Review	01/01/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Frances A. Sclafani, Associate Director, Training and Investigations Group, Office of Personnel Management, 1900 E Street, NW, Washington, DC 20415, 202 632-4426

RIN: 3206-AC19

3176. PERSONNEL SECURITY AND RELATED PROGRAMS

Legal Authority: 5 USC 3301; 5 USC 3302; 5 USC 7312; 50 USC 403; EO 10450; EO 10577

CFR Citation: 5 CFR 732

Legal Deadline: None

Abstract: Comprehensive review of security standards. Current revision of personnel security program by Presidential task force will likely result in the need for conforming changes in personnel security standards.

Timetable:

Action	Date	FR Cite
Begin Review	11/01/85	
End Review	01/01/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Frances A. Sclafani, Associate Director, Training and Investigations Group, Office of Personnel Management, 1900 E Street, NW, Washington, DC 20415, 202 632-4426

RIN: 3206-AC21

OPM

Prerule Stage

3177. INVESTIGATIONS

Legal Authority: PL 93-579; 5 USC 552a

CFR Citation: 5 CFR 736

Legal Deadline: None

Abstract: Review of Governmentwide background investigations standards. Current revision of personnel security program by Presidential task force will likely result in the need for conforming changes in personnel investigations standards.

Timetable:

Action	Date	FR Cite
Begin Review	11/01/85	
End Review	01/01/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Frances A. Sclafani, Associate Director, Training and Investigations Group, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415, 202 632-4426

RIN: 3206-AB82

OFFICE OF PERSONNEL MANAGEMENT (OPM)

Proposed Rule Stage

3178. ORGANIZATION OF THE GOVERNMENT FOR PERSONNEL MANAGEMENT; PERSONNEL MANAGEMENT IN AGENCIES

Legal Authority: 5 USC 1104; 5 USC 1302; 5 USC 3301; 5 USC 3302; EO 10577

CFR Citation: 5 CFR 230; 5 CFR 250

Legal Deadline: None

Abstract: Deletes Part 230 and transfers its regulations to Part 250, to maintain parallel structure with 5 U.S.C. Combines material formerly in Part 230 with regulations now found in Part 250 to present all regulations on agencies' authorities for personnel management in a single part of the Code of Federal Regulations. Changes improve the technical integrity of the CFR by eliminating redundancies and improving the efficiency of OPM's regulations. No change in the coverage or substance of affected regulations.

Timetable:

Action	Date	FR Cite
NPRM	05/20/83	48 FR 22728
NPRM	05/30/89	
Final Action	11/30/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Bruce Oland, Chief, Program Development Division, Office of Personnel Management, Agency Compliance and Evaluation, Personnel Systems and Oversight Group, 1900 E St., NW; Washington, DC 20415, 202 632-4466

RIN: 3206-AA66

3179. PERFORMANCE MANAGEMENT SYSTEM

Significance: Regulatory Program

Legal Authority: 5 USC Ch 43; 5 USC Ch 45; 5 USC Ch 53; 5 USC Ch 54; 5 USC 552; EO 12107; 5 USC 1103; 5 USC 1104; 5 USC 1302; 5 CFR 7.2; EO 9830

CFR Citation: 5 CFR 293; 5 CFR 430

Legal Deadline: None

Abstract: Revises requirements for the Performance Management Systems for General Schedule, Prevailing Rate, and SES employees. Regulations will be streamlined to eliminate impediments to management flexibility while still assuring pay-for-performance systems. The section on filing and transfer of performance records contains a technical change that would bring the OPF subpart into conformance with the EPF subpart, indicating that performance ratings of record, and the performance plans on which they are based, may be filed in either the OPF or the EPF.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	
Final Action	02/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: C. Frank Carrick, Chief, Performance Management Division, Office of Personnel Management, Office of Pay and Performance, Personnel Systems and Oversight Group, 1900 E St., NW; Washington, DC 20415, 202 632-7630

RIN: 3206-AD22

3180. EMPLOYMENT (GENERAL); TIME-IN-GRADE RESTRICTIONS

Legal Authority: 5 USC 3301; 5 USC 3302

CFR Citation: 5 CFR 300, Subpart F

Legal Deadline: None

Abstract: Regulations based on review of time-in-grade restrictions. Regulations will address inconsistencies and clarify certain provisions.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Donald L. Holum, Assistant Director, Office of Staffing Policy and Operations, Office of Personnel Management, Career Entry Group, 1900 E Street, NW, Washington, D.C. 20415, 202 632-4717

RIN: 3206-AC01

3181. EMPLOYMENT IN THE SENIOR EXECUTIVE SERVICE

Significance: Regulatory Program

Legal Authority: 5 USC 3392; 5 USC 3393; 5 USC 3394; 5 USC 3397; 5 USC, 1302; 5 USC 3595; 5 USC 3596; 5 USC 5383; 5 USC 5385; 5 USC 7543

CFR Citation: 5 CFR 317; 5 CFR 359; 5 CFR 430; 5 CFR 534; 5 CFR 752

Legal Deadline: None

Abstract: This is a Regulatory Program entry that combines RINs 3206-AA09, 3206-AA21, 3206-AA23, 3206-AB29, and 3206-AA50.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/31/79	44 FR 44815
Interim Final Rule	12/05/80	45 FR 80468
NPRM	07/22/88	53 FR 27695
NPRM	08/08/88	53 FR 29685
NPRM	08/10/88	53 FR 30081
Analyze comments	11/00/88	
Final Action	12/00/88	

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Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Kirke Harper, Director, Office of Executive Personnel, Office of Executive Administration, Office of Personnel Management, 1900 E St., N.W., Washington, DC 20415, 202 632-4486

RIN: 3206-AC31

3182. TRAINING

Legal Authority: 5 USC 4118

CFR Citation: 5 CFR 410

Legal Deadline: None

Abstract: Revision of training regulations to remove obsolete or unessential reporting requirements and remove or modify any other outmoded regulation.

Timetable:

Action	Date	FR Cite
NPRM	11/15/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Harold Segal, Chief, Policy and Oversight Branch, Office of Personnel Management, Training and Investigations Group, 1121 Vermont Avenue, NW; P.O. Box 7230, Washington, DC 20044, 202 632-5574

RIN: 3206-AD06

3183. REDUCTION IN GRADE AND REMOVAL BASED ON UNACCEPTABLE PERFORMANCE

Legal Authority: 5 USC 4303; 5 USC 4305

CFR Citation: 5 CFR 432

Legal Deadline: None

Abstract: Proposed regulations would clarify the procedures agencies must follow in removing or reducing in-grade employees whose performance is unacceptable. These changes are necessary due to changing legal requirements brought about by court decisions and OPM interpretations of 5 U.S.C. chapter 43 requirements.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tim Dirks, Chief, Employee Relations Division, Office of Personnel Management, Personnel Systems and Oversight Group, 1900 E Street, NW, Washington, DC 20415, 202 653-8551

RIN: 3206-AI21

3184. ● PAY UNDER THE GENERAL SCHEDULE

Legal Authority: 5 USC 5334(a); 5 USC 5338

CFR Citation: 5 CFR 531

Legal Deadline: None

Abstract: Under current regulations, Federal agencies must request prior OPM approval to use a special rate as an employee's "highest previous rate" upon reassignment to another position. The proposed regulations would revise the "highest previous rate" provisions of the regulations to remove this requirement and to clarify an agency's authority to establish an employee's rate of basic pay upon promotion, demotion, reassignment, transfer, reemployment, or change in type of appointment.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Robert Gatewood, Pay and Benefits Specialist, Office of Personnel Management, Office of Pay and Performance, Personnel Systems and Oversight Group, 1900 E Street, NW., Washington, DC 20415, 202 632-5958

RIN: 3206-AD44

3185. PREVAILING RATE SYSTEMS

Significance: Regulatory Program

Legal Authority: 5 USC 5343; 5 USC 5346

CFR Citation: 5 CFR 532

Legal Deadline: None

Abstract: Proposed rule changes would revise Monroney regulations so that only non-Department of Defense Federal Wage System positions would be covered. Legislation has removed DOD employees from Monroney.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Jack Pokoyk, Chief, Wage Systems Division, Office of Personnel Management, Personnel Systems and Oversight Group, 1900 E St., NW; Washington, DC 20415, 202 632-7830

RIN: 3206-AC82

3186. ● GRADE AND PAY RETENTION

Legal Authority: 5 USC 5365

CFR Citation: 5 CFR 536

Legal Deadline: None

Abstract: Proposed regulations would provide for the application of current pay retention rules when a Federal prevailing rate (wage) schedule is reduced as a result of a decline in the local private sector economy.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	03/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Jan Karicher, Pay and Benefits Specialist, Office of Personnel Management, Office of Pay and Performance, Personnel Systems and Oversight Group, 1900 E Street, NW., Washington, DC 20415, 202 632-5958

RIN: 3206-AD45

3187. PAY ADMINISTRATION (GENERAL); SEVERANCE PAY

Legal Authority: 5 USC 5595; EO 11228

CFR Citation: 5 CFR 550, Subpart G

Legal Deadline: None

Abstract: Proposed regulations would make eligibility for involuntary retirement and severance pay parallel, since the same circumstances give rise to both. Proposed regulations also would clarify severance pay coverage for certain employees serving under time-limited appointments.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Jan Karicher, Pay and Benefits Specialist, Office of Personnel Management, Office of Pay and Performance, Personnel Systems and Oversight Group, 1900 E St., NW; Washington, DC 20415, 202 632-5958

RIN: 3206-AC81

3188. PAY ADMINISTRATION UNDER THE FLSA: COMPLIANCE

Legal Authority: 29 USC 204(f); 5 USC 1103(a)(5)

CFR Citation: 5 CFR 551, Subpart F

Legal Deadline: None

Abstract: Proposed new regulation covering the FLSA Compliance Program and simplifying the FLSA claims handling process.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Jack Tapping, Personnel Management Specialist, Office of Personnel Management, Personnel and Systems and Oversight Group, Agency Compliance and Evaluation, 1900 E St., NW, Washington, DC 20415, 202 632-4530

RIN: 3206-AA40

3189. POLITICAL ACTIVITY OF FEDERAL EMPLOYEES

Legal Authority: 5 USC 1308; 5 USC 3301; 5 USC 3302; 5 USC 7301; 5 USC 7321 to 7325; 5 USC 7327; 42 USC 2723; EO 10577 3 CFR, 1954-1958 Comp. p. 218; 5 USC 7701 et seq; EO 12107

CFR Citation: 5 CFR 733

Legal Deadline: None

Abstract: Prescribes (1) regulations under the Hatch Act and related provisions of law that restrict the political activity of Federal employees; (2) definitional and structural revisions; and (3) possible addition and/or recision of partial exceptions by the Director for municipalities or political subdivisions.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: JoAnn Chabot, Attorney, Office of Personnel Management, Office of the General Counsel, 1900 E St., NW, Room 7538, Washington, DC 20415, 202 632-5830

RIN: 3206-AA47

3190. RETIREMENT; CREDIT AND DEPOSITS FOR MILITARY SERVICE

Legal Authority: PL 97-253, Sec 306(b); PL 98-94, Sec 1257; PL 98-369, Sec 2205

CFR Citation: 5 CFR 831, Subparts C and U

Legal Deadline: None

Abstract: Public Laws 97-253, 98-94, and 98-369 amend the provisions of the retirement law that deal with crediting military service and making deposits for military service. Proposed regulations would revise the affected regulations to implement these laws.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	04/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Patricia Rochester, Paralegal Specialist, Office of Personnel Management, Office of Retirement and Insurance Policy, Retirement and Insurance Group, 1900 E St., N.W., Washington, D.C. 20415, 202 632-4682

RIN: 3206-AB73

3191. ● RETIREMENT; CSRS OFFSET SERVICE

Legal Authority: 5 USC 8347

CFR Citation: 5 CFR 831, Subpart J

Legal Deadline: None

Abstract: The Federal Employees' Retirement System Act of 1986 provided that certain employees would continue to be covered by both the Civil Service Retirement System and social security. Their CSRS deductions are offset by social security taxes (FICA), and, when they retire, their CSRS benefits are offset by the value of this service in their social security benefits. The regulations will implement this provision of law.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	
Final Action	06/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Gay Gardner, Paralegal Specialist, Office of Personnel Management, Office of Retirement and Insurance Policy, Retirement and Insurance Group, 1900 E Street, NW., Washington, DC 20415, 202 632-4682

RIN: 3206-AD58

3192. RETIREMENT; DISABILITY RETIREMENT

Legal Authority: 5 USC 8347

CFR Citation: 5 CFR 831, Subpart L

Legal Deadline: None

Abstract: Comprehensive revision of disability retirement regulations to clarify (1) OPM'S authority to find a disability annuitant recovered from a disability when the annuitant is reemployed in the Federal service in a position equivalent in grade to the one from which he or she retired, and (2) the rules used to determine whether a disability annuitant has been restored to earning capacity.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
Final Action	05/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Gay Gardner, Paralegal Specialist, Office of Personnel Management, Office of Retirement and Insurance Policy, Retirement and Insurance Group, 1900 E St., NW; Washington, DC 20415, 202 632-4682

RIN: 3206-AH77

3193. RETIREMENT; RECOVERY OF ANNUITY OVERPAYMENTS

Legal Authority: 5 USC 8347

CFR Citation: 5 CFR 831, Subpart M

Legal Deadline: None

Abstract: Proposed regulations to add further guidelines on debt collection

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activities under the Debt Collection Act of 1982. Current regulations need to be expanded to (1) exclude collections made by Treasury under 31 CFR 210.10 from OPM procedures for recovery of debts, and (2) add provisions for collecting debts due the Civil Service Retirement Fund from a deceased debtor.

Timetable:

Action	Date	FR Cite
NPRM	04/00/89	
Final Action	10/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Patricia A. Rochester, Paralegal Specialist, Office of Personnel Management, Office of Retirement and Insurance Policy, Retirement and Insurance Group, 1900 E St., N.W.; Washington, D.C. 20415, 202 632-4682

RIN: 3206-AE78

3194. ◆ RETIREMENT; FERS COST-OF-LIVING ADJUSTMENTS

Legal Authority: 5 USC 8461

CFR Citation: 5 CFR 841, Subpart G

Legal Deadline: None

Abstract: The Federal Employees' Retirement System Act of 1986 provides basic rules for adding cost-of-living adjustment (COLA's) to annuities of FERS retirees and their survivors. These regulations implement and clarify these provisions.

Timetable:

Action	Date	FR Cite
NPRM	02/00/89	
Final Action	10/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Harold L. Siegelman, Paralegal Specialist, Office of Personnel Management, Office of Retirement and Insurance Policy, Retirement and Insurance Group, 1900 E Street, NW., Washington, DC 20415, 202 632-4682

RIN: 3206-AD61

3195. ◆ FEDERAL EMPLOYEES' GROUP LIFE INSURANCE; ANNUAL RATES OF PAY FOR EMPLOYEES WHO WORK LESS THAN FULL TIME

Legal Authority: 5 USC 8716

CFR Citation: 5 CFR 870, Subpart C

Legal Deadline: None

Abstract: Regulations to establish a new method of arriving at annual rates of pay for life insurance purposes for employees on less than full-time schedules.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Bill Smith, Pay and Benefits Specialist, Office of Personnel Management, Office of Retirement and Insurance Policy, Retirement and Insurance Group, 1900 E Street, NW., Washington, DC 20415, 202 632-4634

RIN: 3206-AD60

3196. FEDERAL EMPLOYEES GROUP LIFE INSURANCE

Legal Authority: 5 USC 8716

CFR Citation: 5 CFR 870; 5 CFR 871; 5 CFR 872; 5 CFR 873

Legal Deadline: None

Abstract: Technical and conforming amendments to bring current regulations up to date by correcting reference errors, deleting obsolete provisions, etc.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Bonnie Rose, Pay and Benefits Specialist, Office of Personnel Management, Office of Retirement and Insurance Policy, Retirement and Insurance Group, 1900 E St., NW; Washington, D.C. 20415, 202 632-4634

RIN: 3206-AD50

3197. FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM; TECHNICAL CORRECTIONS

Legal Authority: 5 USC 8913

CFR Citation: 5 CFR 890

Legal Deadline: None

Abstract: Technical and conforming amendments to bring current regulations up to date by correcting errors, deleting obsolete provisions, etc.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Barbara Myers, Pay and Benefits Specialist, Office of Personnel Management, Office of Retirement and Insurance Policy, Retirement and Insurance Group, 1900 E St., NW; Washington, DC 20415, 202 632-4634

RIN: 3206-AD53

3198. FEDERAL EMPLOYEES HEALTH BENEFITS FOR FORMER SPOUSES OF CIA AND FOREIGN SERVICE EMPLOYEES

Legal Authority: 5 USC 8913

CFR Citation: 5 CFR 890

Legal Deadline: None

Abstract: Regulations to implement Sections 302 and 303 of the Intelligence Authorization Act of 1988 and Sections 831 and 832 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, by describing the conditions under which certain former spouses of Central Intelligence Agency and Foreign Service employees, and former spouses of former employees of those agencies, previously omitted from spouse equity legislation may enroll in the Federal Employees Health Benefits (FEHB) Program.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	02/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Mary Ann Mercer, Pay and Benefits Specialist, Office of Personnel Management, Office of Retirement and Insurance Policy, Retirement and Insurance Group, 1900 E St., NW; Washington, DC 20415, 202 632-4634

RIN: 3206-AD28

3199. FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM/WITHDRAWAL OF CARRIER AND PLAN APPROVAL

Legal Authority: 5 USC 8913

CFR Citation: 5 CFR 890

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Legal Deadline: None

Abstract: Regulations to clarify OPM's minimum standards for a health plan's or carrier's participation in FEHB and OPM's right to withdraw approval, with due process.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	03/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Mary Ann Mercer, Pay and Benefits Specialist, Office of Personnel Management, Office of Retirement and Insurance Policy, Retirement and Insurance Group, 1900 E St., NW., Washington, DC 20415, 202 632-4634

RIN: 3206-AD37

3200. ◆ DEFINITION OF MEDICARE ELIGIBLE INDIVIDUALS

Legal Authority: PL 100-360

CFR Citation: 5 CFR 890

Legal Deadline: None

Abstract: Regulations to define "Medicare eligible individual" for purposes of implementation of Section 422, Rate Reduction for Medicare Eligible Federal Annuitants, of P.L. 100-360, the Medicare Catastrophic Coverage Act of 1988. The effective date is January 1, 1990.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret C. Randall, Pay and Benefits Specialist, Office of Personnel Management, Office of Retirement and Insurance Policy, Retirement and Insurance Group, 1900 E Street NW., Washington, DC 20415, 202 632-4634

RIN: 3206-AD40

3201. ◆ FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM (FEHBP) ENROLLMENT PROCESS FOR FEDERAL EMPLOYEES' RETIREMENT SYSTEM (FERS) MINIMUM RETIREMENT ANNUITY ELIGIBLES

Legal Authority: 5 USC 8913

CFR Citation: 5 CFR 890

Legal Deadline: None

Abstract: Regulations to clarify FEHBP enrollment process and "immediate annuity" for individuals eligible for FERS Minimum Retirement Annuity.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
Final Action	03/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: MaryAnn Mercer, Pay and Benefits Specialist, Office of Personnel Management, Office of Retirement and Insurance Policy, Retirement and Insurance Group, 1900 E Street, NW., Washington, DC 20415, 202 632-4634

RIN: 3206-AD55

3202. ◆ MISCELLANEOUS FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM (FEHBP) AMENDMENTS

Legal Authority: 5 USC 8913

CFR Citation: 5 CFR 890

Legal Deadline: None

Abstract: Regulations to establish earlier effective date of coverage for former spouses; to clarify the treatment of former spouse health benefits if former spouse is or becomes a Federal employee or is covered under the Federal enrollment of another; and to clarify the current provision on continued coverage while confined in a hospital at the time of change of plan.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	02/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Mary Ann Mercer, Pay and Benefits Specialist, Office of Personnel Management, Office of Retirement and Insurance Policy, Retirement and Insurance Group, 1900 E Street, NW., Washington, DC 20415, 202 632-4634

RIN: 3206-AD56

3203. ◆ CONVERSION PRIVILEGE FOR FAMILY MEMBERS WHO LOSE COVERAGE UNDER THE FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM (FEHBP)

Legal Authority: 5 USC 8913

CFR Citation: 5 CFR 890

Legal Deadline: None

Abstract: Regulations to clarify current practice giving conversion privilege to family members who lose coverage under the FEHBP when an employee or annuitant changes from family to self only enrollment.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
Final Action	04/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Mary Ann Mercer, Pay and Benefits Specialist, Office of Personnel Management, Office of Retirement and Insurance Policy, Retirement and Insurance Group, 1900 E Street, NW., Washington, DC 20415, 202 632-4634

RIN: 3206-AD55

3204. FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM; CONTINUATION OF ENROLLMENT AND DISCONTINUED PLAN ENROLLMENT CHANGES

Legal Authority: 5 USC 8913

CFR Citation: 5 CFR 890, Subpart C

Legal Deadline: None

Abstract: Regulations to reflect established OPM practice of (1) allowing surviving family members to continue FEHBP participation under multiple enrollments in split-award survivor annuity cases; and (2) setting an alternative time and effective date for a change of enrollment when a one-option health benefits plan is discontinued at the end of the contract period.

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Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Bill Smith, Pay and Benefits Specialist, Office of Personnel Management, Office of Retirement and Insurance Policy, Retirement and Insurance Group, 1900 E St., NW; Washington, DC 20415, 202 632-4634

RIN: 3206-AI66

3206. FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM; REENROLLMENT OF CERTAIN ANNUITANTS

Legal Authority: 5 USC 8913

CFR Citation: 5 CFR 890, Subpart C

Legal Deadline: None

Abstract: Regulations to permit reenrollment of annuitants who cancelled FEHB enrollment to enroll in a Health Maintenance Organization or Competitive Medical Plan under a Medicare risk contract and need to return to FEHB coverage.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Bill Smith, Pay and Benefits Specialist, Office of Personnel Management, Office of Retirement and Insurance Policy, Retirement and Insurance Group, 1900 E St., NW; Washington, DC 20415, 202 632-4634

RIN: 3206-AD23

3208. FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM (FEHBP) PLAN ADVERTISING IN VIOLATION OF FEHBP CONTRACT PROVISIONS

Legal Authority: 5 USC 8913; 40 USC 486(c)

CFR Citation: 48 CFR Ch 16

Legal Deadline: None

Abstract: Regulations to require any plan that violates the advertising provisions in its Federal Employees Health Benefits Program contract to correct the violation in the media that the advertising occurred.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	03/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Mary Ann Mercer, Pay & Benefits Specialist, Office of Personnel Management, Office of Retirement and Insurance Policy, Retirement and Insurance Group, 1900 E St., NW., Washington, DC 20415, 202 632-4634

RIN: 3206-AD36

3207. OPM PROCUREMENT REGULATIONS

Legal Authority: 48 CFR Chapter 1

CFR Citation: 48 CFR 17

Legal Deadline: None

Abstract: Regulations to implement and supplement the Federal Acquisition Regulations (FAR). The FAR were effective April 1, 1984.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Robert Lawshe, Chief, Acquisition Division, Office of Personnel Management, Administration Group, 1900 E Street, NW, Washington, DC 20415, 202 632-5476

RIN: 3206-AB26

OFFICE OF PERSONNEL MANAGEMENT (OPM) — Final Rule Stage

3206. AVAILABILITY OF OFFICIAL INFORMATION

Legal Authority: 5 USC 552

CFR Citation: 5 CFR 294

Legal Deadline: None

Abstract: Revisions in response to (a) comments received on interim final rule; (b) fee waiver policy guidance from the Department of Justice; (c) the requirements of E.O. 12600 regarding confidential commercial information.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/22/87	52 FR 13215
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: C. Ronald Trueworthy, Chief, Reports and Forms Management Branch, Office of Information Management, Office of Personnel Management, Administration Group, 1900 E Street, NW; Room 6410, Washington, DC 20415, 202 632-6261

RIN: 3206-AD05

3209. EMPLOYMENT (GENERAL); EMPLOYMENT PRACTICES

Legal Authority: 5 USC 3301; 5 USC 3302; 5 USC 3304

CFR Citation: 5 CFR 300

Legal Deadline: None

Abstract: Clarification of the policy and appeal procedures used in developing and implementing employment practices in the recruitment, [illegible] and selection of individuals for appointments and promotion within the competitive service. The proposed amendments would remove a non-statutory appeal procedure which was created to provide a simple, streamlined administrative review procedure but which has, instead, become a time-consuming, convoluted process. Additionally, the proposed changes would avoid a duplicative enforcement procedure currently subject to review by OPM and MSPB, which is, more properly, within the sole jurisdiction of the EEOC.

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Timetable:

Action	Date	FR Cite
EEOC Coordination	04/01/88	
NPRM	06/20/88	53 FR 23123
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: James S. Green, Associate General Counsel, Office of Personnel Management, Office of the General Counsel, 1900 E Street, NW, Washington, DC 20415, 202 632-5667

RIN: 3206-AB41

3210. APPOINTMENT, REASSIGNMENT, TRANSFER, AND REINSTATEMENT IN THE SENIOR EXECUTIVE SERVICE

Legal Authority: 5 USC 3392; 5 USC 3393; 5 USC 3394; 5 USC 3397

CFR Citation: 5 CFR 317

Legal Deadline: None

Abstract: Proposed regulations to govern appointment actions in the SES, including establishment of qualifications standards, agency recruitment and selection procedures for career appointments, operations of OPM Qualifications Review Boards, and completion of the one-year probationary period for career appointees. Regulations are intended to set forth basic staffing requirements to assure compliance with merit system provisions and to implement staffing provisions of Pub. L. 98-615, November 8, 1984.

Timetable:

Action	Date	FR Cite
NPRM	07/22/88	53 FR 27695
Final Action	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Regulatory Program RIN 3206-AC81 combines this item with RINs 3206-AA21, 3206-AA23, 3206-AB29, and 3206-AA50.

Agency Contact: Neal Harwood, Personnel Management Specialist, Office of Personnel Management, Office of Executive Personnel, Office of Executive Administration, 1900 E St., NW; Washington, DC 20415, 202 632-4486

RIN: 3206-AA50

3211. APPOINTMENT, REASSIGNMENT, TRANSFER AND REINSTATEMENT IN THE SENIOR EXECUTIVE SERVICE (SES CAREER APPOINTMENT BY REINSTATEMENT)

Legal Authority: 5 USC 3593

CFR Citation: 5 CFR 317, Subpart G

Legal Deadline: None

Abstract: Proposed regulations on reinstatement to an SES career appointment following (a) voluntary separation from SES, or (b) separation from a Presidential appointment of a former SES career appointee. These reinstatements are authorized by law. The regulations set the procedures for implementing the law.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/05/80	45 FR 80481
NPRM	07/22/88	53 FR 27695
Final Action	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Neal Harwood, Personnel Management Specialist, Office of Personnel Management, Office of Executive Personnel, Office of Executive Administration, 1900 E St., NW; Washington, DC 20415, 202 632-4486

RIN: 3206-AA11

3212. GENERAL RECRUITMENT/PLACEMENT PRINCIPLES

Legal Authority: 5 USC 1302; 5 USC 3302; 5 USC 3318; 5 USC 8151

CFR Citation: 5 CFR 330; 5 CFR 351

Legal Deadline: None

Abstract: Proposed regulations based on review of Reemployment Priority List and Displaced Employee Program authorities. Regulations would focus on the need to provide assistance to employees in cutbacks.

Timetable:

Action	Date	FR Cite
NPRM	01/07/88	53 FR 408
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Donald L. Holum, Assistant Director, Office of Staffing Policy and Operations, Office of Personnel Management, Career Entry Group, 1900 E Street, NW, Washington, D.C. 20415, 202 632-5817

RIN: 3206-AC07

3213. PROMOTION AND INTERNAL PLACEMENT

Significance: Regulatory Program

Legal Authority: 5 USC 3301; 5 USC 3302

CFR Citation: 5 CFR 335

Legal Deadline: None

Abstract: Proposed regulations to revise the Federal Merit Promotion Program to strengthen management rights, and clarify important concepts.

Timetable:

Action	Date	FR Cite
NPRM	11/07/80	51 FR 40405
Analyze comments	03/26/87	
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Raleigh M. Neville, Personnel Staffing Specialist, Office of Personnel Management, Staffing Policy Division, Career Entry Group, 1900 E Street, NW, Washington, DC 20415, 202 632-6817

RIN: 3206-AA90

3214. QUALIFICATIONS REQUIREMENTS (MEDICAL)

Legal Authority: 5 USC 3301; 5 USC 3304; 5 USC 3312

CFR Citation: 5 CFR 339

Legal Deadline: None

Abstract: Proposed regulations to clarify procedures for establishing physical requirements for jobs and for documenting and processing disabilities.

Timetable:

Action	Date	FR Cite
NPRM	03/21/88	53 FR 9121
Analyze comments	07/01/88	
Final Action	12/00/88	

OPM — Final Rule Stage

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Raleigh Neville, Personnel Staffing Specialist, Office of Personnel Management, Staffing Policy Division, Career Entry Group, 1900 E Street, NW, Washington, DC 20415, 202 [illegible]

RIN: 3206-AA91

3216. REMOVAL FROM THE SENIOR EXECUTIVE SERVICE; GUARANTEED PLACEMENT IN OTHER PERSONNEL SYSTEMS

Legal Authority: 5 USC 1302; 5 USC [illegible]; 5 USC 3595

CFR Citation: 5 CFR 359

Legal Deadline: None

Abstract: Proposed regulations on (1) the removal of SES career appointees during probation or for less than fully successful executive performance, (2) the removal of other than career appointees, (3) placement rights in other personnel systems of certain SES career appointees. These actions are authorized by law. The regulations establish procedures for implementing previous law and the new Pub. L. 98-615, November 8, 1984.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/31/79	44 FR 44615
NPRM	08/10/88	53 FR 30061
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Regulatory Program RIN 3206-AC81 combines this item with RINs 3206-AA39, 3206-AA23, 3206-AB29, and 3206-AA60.

Agency Contact: Neal Harwood, Personnel Management Specialist, Office of Personnel Management, Office of Executive Personnel, Office of Executive Administration, 1900 E St., NW; Washington, DC 20415, 202 632-4626

RIN: 3206-AA21

3216. REMOVAL FROM THE SENIOR EXECUTIVE SERVICE; GUARANTEED PLACEMENT IN OTHER PERSONNEL SYSTEMS

Legal Authority: 5 USC 3595; 5 USC 3596

CFR Citation: 5 CFR 359

Legal Deadline: None

Abstract: Proposed regulations to add a new subpart to implement Pub. L. 97-35, August 13, 1981, as amended by Pub.L. 97-348, October 15, 1982, and Pub. L. 98-615, November 8, 1984, which added provisions to Title 5 to govern SES reduction-in-force actions affecting career executives. Regulations are needed to cover certain areas not in the law, such as notification to employees and retention of records, and to implement the provisions in the law dealing with OPM's responsibility to help place career executives identified for reduction in force and with "fallback" rights following a RIF.

Timetable:

Action	Date	FR Cite
NPRM	08/10/88	53 FR 30061
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Regulatory Program RIN 3206-AC81 combines this item with RINs 3206-AA39, 3206-AA21, 3206-AB29, and 3206-AA60.

Agency Contact: Neal Harwood, Personnel Management Specialist, Office of Personnel Management, Office of Executive Personnel, Office of Executive Administration, 1900 E St., NW; Washington, DC 20415, 202 632-4626

RIN: 3206-AA23

3217. PAY AND PERFORMANCE UNDER THE SENIOR EXECUTIVE SERVICE

Legal Authority: 5 USC 4311; 5 USC 4312; 5 USC 4313; 5 USC 4314; 5 USC 4315; 5 USC [illegible]; 5 USC 5385

CFR Citation: 5 CFR 430, Subpart C; 5 CFR 534, Subpart D

Legal Deadline: None

Abstract: Proposed regulations on establishing performance appraisal systems and setting individual basic pay under the SES. Performance regulations would provide agencies greater flexibility in determining when to end their annual SES appraisal periods and how many summary rating levels to establish. Pay regulations would clarify the intent and application of 5 U.S.C. 5383(a) on changes in SES pay rates and implement provisions in Pub. L. 98-615, November 8, 1984, on aggregate compensation.

Timetable:

Action	Date	FR Cite
NPRM	08/05/85	53 FR 29681
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Regulatory Program RIN 3206-AC81 combines this item with RINs 3206-AA39, 3206-AA23, and 3206-AA60.

Agency Contact: Neal Harwood, Personnel Management Specialist, Office of Personnel Management, Office of Executive Personnel, Office of Executive Administration, 1900 E St., NW; Washington, DC 20415, 202 632-4626

RIN: 3206-AB29

3218. PREVAILING RATE SYSTEMS

Legal Authority: 5 USC 5343; 5 USC 5346

CFR Citation: 5 CFR 532

Legal Deadline: None

Abstract: Proposed rule changes would revise Monroney regulations to limit the use of private sector specialized industry data obtained outside a wage area in setting pay rates for positions in that area.

Timetable:

Action	Date	FR Cite
NPRM	10/05/85	50 FR 40978
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Jack Pokoyk, Chief, Wage Systems Division, Office of Personnel Management, Personnel Systems and Oversight Group, 1900 E St., NW; Washington, DC 20415, 202 [illegible]

RIN: 3206-AC20

3219. PAY ADMINISTRATION (GENERAL); BACK PAY

Significance: Regulatory Program

Legal Authority: 5 USC 5596

CFR Citation: 5 CFR 550

Legal Deadline: None

OPM — Final Rule Stage

Abstract: Public Law 100-202 amended 5 U.S.C. 5596 to provide for the payment of interest in all back pay cases. The interim regulations would establish procedures for implementing this change in law.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/20/88	53 FR 18071
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: John Cahill, Pay and Benefits Specialist, Office of Personnel Management, Office of Pay and Performance Management, Personnel Systems and Oversight Group, 1900 E St., NW., Washington, DC 20415, 202 632-5858

RIN: 3206-AE29

3220. PAY ADMINISTRATION (GENERAL); OVERTIME PAY COMPUTATION

Legal Authority: 5 USC 5548

CFR Citation: 5 CFR 550, Subpart A

Legal Deadline: None

Abstract: Final regulations would clearly distinguish between overtime work in excess of 8 hours in a day outside the basic 40-hour workweek and overtime work in excess of 8 hours in a day within the basic 40-hour workweek. This change would correct a recent Comptroller General decision that results in an improper payment for overtime work for employees on unusual work schedules.

Timetable:

Action	Date	FR Cite
NPRM	06/12/87	52 FR 17762
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Edward L. Magee, Pay and Benefits Specialist, Office of Personnel Management, Office of Pay and Performance, Personnel Systems and Oversight Group, 1900 E St., NW; Washington, DC 20415, 202 632-5866

RIN: 3206-AC06

3221. PAY ADMINISTRATION UNDER THE FAIR LABOR STANDARDS ACT

Legal Authority: 29 USC 204(f)

CFR Citation: 5 CFR [illegible]

Legal Deadline: None

Abstract: As a result of a recent decision of the Court of Appeals for the Federal Circuit in the case of Lanehart v. Horner, it is necessary to revise the regulations on pay administration under the Fair Labor Standards Act so as to consider periods of paid absence as "hours of work" for certain employees.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/16/87	52 FR 47667
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: James E. Matteson, Pay and Benefits Specialist, Office of Personnel Management, Office of Pay and Performance Management, Personnel Systems and Oversight Group, 1900 E St., NW., Washington, DC 20415, 202 [illegible]

RIN: 3206-AD40

3222. ALLOWANCES AND DIFFERENTIALS; COST OF LIVING ALLOWANCE AND POST DIFFERENTIAL--NONFOREIGN AREAS

Legal Authority: 5 USC 5941; EO 10000

CFR Citation: 5 CFR 591, Subpart B

Legal Deadline: None

Abstract: Comprehensive revision of regulations to reflect revised methodology used to establish nonforeign cost-of-living allowances. (See Alaniz v. Office of Personnel Management, 728 F. 2d 1460 (Fed. Cir. 1984).)

Timetable:

Action	Date	FR Cite
NPRM	10/21/85	50 FR 42531
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Allan Hearne, Pay Specialist, Office of Pay and Performance, Office of Personnel Management, Personnel Systems and Oversight Group, 1900 E Street, NW, Washington, DC 20415, 202 632-7184

RIN: 3206-AE24

3223. ABSENCE AND LEAVE; COVERAGE OF D.C. GOVERNMENT EMPLOYEES

Legal Authority: 5 USC 6311; DC Law 2-139, as amended

CFR Citation: 5 CFR 630

Legal Deadline: None

Abstract: Current regulations contain obsolete references to certain D.C. government employees who are no longer covered by chapter 63 of title 5 of the United States Code. Final regulations would delete these obsolete references.

Timetable:

Action	Date	FR Cite
NPRM	02/27/85	50 FR 7922
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Frank Derby, Pay and Benefits Specialist, Office of Personnel Management, Office of Pay and Performance, Personnel Systems and Oversight Group, 1900 E St., NW; Washington, DC 20415, 202 632-5866

RIN: 3206-AC47

3224. ABSENCE AND LEAVE; TEMPORARY LEAVE TRANSFER PROGRAM

Significance: Regulatory Program

Legal Authority: 5 USC 6311; PL 100-202

CFR Citation: 5 CFR 630

Legal Deadline: None

Abstract: Public Law 100-202 authorized the Office of Personnel Management to establish a program under which Federal employees may transfer annual leave to other employees who need such leave because of a "personal emergency." The regulations establish the administrative procedures for Federal agencies to permit the transfer of annual leave for this purpose. The statutory authority for this program expires at the end of FY 88. Further action is dependent upon whether continuing or permanent authorization is enacted.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/08/88	53 FR 7225
Expires	08/30/89	
(Pending Legislation)		
Next Action 11/00/88		

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Martha Hodin, Pay and Benefits Specialist, Office of Personnel Management, Office of Pay and Performance Management, Personnel Systems and Oversight Group, 1900 E St., NW., Washington, DC 20415, 202 632-0958

RIN: 3206-AD41

3225. ABSENCE AND LEAVE; RESTORATION OF ANNUAL LEAVE

Legal Authority: 5 USC 6311

CFR Citation: 5 CFR 630

Legal Deadline: None

Abstract: As part of a continuing effort to simplify and deregulate the Federal personnel system, the proposed regulations would permit the head of each agency to delegate to an appropriate administrative level within the agency the responsibility for determining that an exigency of the public business has prevented an employee from using annual leave that otherwise would be subject to forfeiture under 5 U.S.C. 6304.

Timetable:

Action	Date	FR Cite
NPRM	05/10/88	53 FR 16554
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: James E. Matteson, Pay and Benefits Specialist, Office of Personnel Management, Office of Pay and Performance Management, Personnel Systems and Oversight Group, 1900 E St., NW., Washington, DC 20415, 202 632-5558

RIN: 3206-AD42

3226. EXECUTIVE PERSONNEL FINANCIAL DISCLOSURE REQUIREMENTS

Significance: Regulatory Program

Legal Authority: 5 USC App 207(e); PL 95-521

CFR Citation: 5 CFR 735

Legal Deadline: None

Abstract: Proposed new regulation to supersede portions of 5 CFR Part 735 dealing with confidential financial disclosure for grades below GS-16.

Timetable:

Action	Date	FR Cite
NPRM	12/02/86	51 FR 43359
Analyze comments	05/31/87	
Final Action	11/15/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Jane Ley, Staff Attorney, Office of Government Ethics, Office of Personnel Management, P.O. Box 14108, Washington, DC 20044, 202 632-7642

RIN: 3209-AA03

3227. POST EMPLOYMENT CONFLICT OF INTEREST; 1987 DESIGNATION OF CERTAIN POSITIONS AND AGENCIES

Legal Authority: 18 USC 207(b)(1)(c); PL 95-521

CFR Citation: 5 CFR 737

Legal Deadline: None

Abstract: Final regulation to meet the annual requirement to designate senior employees (for CY 1987) who are subject to the conflict-of-interest provisions of the Ethics in Government Act.

Timetable:

Action	Date	FR Cite
Final Action	12/05/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Karen Buvard/Bob Flynn, Staff Attorney/Management Analyst, Office of Personnel Management, Office of Government Ethics, P.O. Box 14108, Washington, DC 20044, 202 632-7642

RIN: 3206-AD04

3228. RETIREMENT; PROCESSING COURT ORDERS FOR APPORTIONMENT OF CIVIL SERVICE RETIREMENT SYSTEM ANNUITY AND COMPETING CLAIMS FOR SURVIVOR BENEFITS

Legal Authority: 5 USC 8347

CFR Citation: 5 CFR 831, Subparts A and Q

Legal Deadline: None

Abstract: Regulations to establish streamlined procedures for handling court orders for apportionment of civil service retirement annuity and competing claims for survivor benefits.

Timetable:

Action	Date	FR Cite
NPRM	12/30/86	51 FR 47021
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Patricia A. Rochester, Paralegal Specialist, Office of Personnel Management, Office of Retirement and Insurance Policy, Retirement and Insurance Group, 1900 E St., NW; Washington, DC 20415, 202 632-4662

RIN: 3206-AC93

3229. RETIREMENT; IMPLEMENTING REGULATIONS FOR CIVIL SERVICE RETIREMENT SPOUSE EQUITY ACT OF 1984

Legal Authority: 5 USC 8347; PL 98-615

CFR Citation: 5 CFR 831, Subparts F, and T

Legal Deadline: None

Abstract: The Civil Service Retirement Spouse Equity Act of 1984 includes provisions for new benefits available to former spouses of deceased Federal employees and provisions governing survivor benefits for current spouses. These regulations are necessary to implement the Act.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/13/85	50 FR 20064
Interim Final Rule -- Revised	09/06/86	51 FR 31927
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Patricia Rochester, Paralegal Specialist, Retirement and Insurance Group, Office of Personnel Management, 1900 E Street, NW, Washington, DC 20415, 202 632-4662

RIN: 3206-AE74

3230. ● RETIREMENT; IMPLEMENTING REGULATIONS FOR CIVIL SERVICE RETIREMENT SPOUSE EQUITY ACT OF 1984

Legal Authority: 5 USC 8347; PL 98-615

CFR Citation: 5 CFR 831, Subpart Q

Legal Deadline: None

Abstract: The Civil Service Retirement Spouse Equity Act of 1984 includes provisions for new benefits available to former spouses of deceased Federal employees and provisions governing survivor benefits for current spouses. These regulations are necessary to implement the Act.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/13/85	50 FR 20064
Interim Final Rule	09/06/86	51 FR 31927
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Patricia Rochester, Paralegal Specialist, Office of Personnel Management, Retirement and Insurance Group, 1900 E Street, NW, Washington, DC 20415, 202 653-6883

RIN: 3206-AD48

3231. RETIREMENT; DEPOSITS FOR MILITARY SERVICE

Legal Authority: 5 USC 8347

CFR Citation: 5 CFR 831, Subpart U

Legal Deadline: None

Abstract: Final regulations to extend eligibility to make deposits for military service to separated individuals who were prevented from making a timely deposit due to administrative error or misinformation.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/16/84	49 FR 20631
Final Action	04/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Patricia Rochester, Paralegal Specialist, Office of Personnel Management, Office of Retirement and Insurance Policy, Retirement and Insurance Group, 1900 E St., NW; Washington, DC 20415, 202 632-4662

RIN: 3206-AB15

3232. ● RETIREMENT; COURT ORDERS AFFECTING RETIREMENT

Legal Authority: 5 USC 8347; 5 USC 8461

CFR Citation: 5 CFR 831; 5 CFR 841

Legal Deadline: None

Abstract: These regulations implement sections 8341(h)(4) and 8445(d) of Title 5, United States Code, that prohibit the modification of State court orders relating to survivor annuities after the retirement or death of the employee.

Timetable:

Action	Date	FR Cite
NPRM	08/02/88	53 FR 29057
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Harold L. Siegelman, Paralegal Specialist, Office of Personnel Management, Office of Retirement and Insurance Policy, Retirement and Insurance Group, 1900 E Street, NW., Washington, DC 20415, 202 632-4662

RIN: 3206-AD64

3233. RETIREMENT; ALTERNATIVE FORM OF ANNUITY

Legal Authority: 5 USC 8347; 5 USC 8417

CFR Citation: 5 CFR 831; 5 CFR 842

Legal Deadline: None

Abstract: Regulations to implement section 6001 of Public Law 100-203 providing for partial deferral of lump sum payments for retirees who elect an alternative form of annuity.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/08/88	53 FR 11633
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Robert M. Rosenblatt, Paralegal Specialist, Office of Personnel Management, Office of Retirement and Insurance Policy, Retirement and Insurance Group, 1900 E St., NW., Washington, DC 20415, 202 632-4662

RIN: 3206-AD66

3234. ● RETIREMENT, CREDITING PERSONAL SERVICE CONTRACT SERVICE

Legal Authority: 5 USC 8347

CFR Citation: 5 CFR 831; 5 CFR 842

Legal Deadline: None

Abstract: Public Law 100-238, enacted January 8, 1988, provides qualifying employees and annuitants with an opportunity to credit certain service performed under the auspices of a personal services contract with a Federal agency. These regulations will implement this provision of law.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/00/88	
Final Action	04/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Eugene R. Littleford, Paralegal Specialist, Office of Personnel Management, Office of Retirement and Insurance Policy, Retirement and Insurance Group, 1900 E St., NW., Washington, DC 20415, 202 632-4662

RIN: 3206-AD36

3235. RETIREMENT; FEDERAL EMPLOYEES' RETIREMENT SYSTEM ACT OF 1986

Legal Authority: 5 USC 8347

CFR Citation: 5 CFR 842; 5 CFR 846

Legal Deadline: None
New system took effect January 1, 1987.

Abstract: Final regulations to implement the statutory provision for a new Federal Employees' Retirement System and conforming changes to the current Civil Service Retirement System.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/31/86	51 FR 47185
Interim Final Rule	01/16/87	52 FR 2058
Interim Final Rule	02/11/87	52 FR 4472
Final Action	09/00/88	

OPM — Final Rule Stage

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Robert M. Rosenblatt, Paralegal Specialist, Office of Personnel Management, Office of Retirement and Insurance Policy, Retirement and Insurance Group, 1900 E St., NW; Washington, DC 20415, 202 632-5580

RIN: 3206-AC94

3236. ● RETIREMENT; FEDERAL EMPLOYEES' RETIREMENT SYSTEM ACT OF 1986

Legal Authority: 5 USC 8347

CFR Citation: 5 CFR 841

Legal Deadline: None

Abstract: Final regulations to implement the statutory provision for a new Federal Employees' Retirement System and conforming changes to the current Civil Service Retirement System.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/11/87	52 FR 4472
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Harold L. Siegelman, Paralegal Specialist, Office of Personnel Management, Office of Retirement and Insurance Policy, Retirement and Insurance Group, 1900 E Street, NW., Washington, DC 20415, 202 632-5580

RIN: 3206-AD65

3237. ● RETIREMENT; FERS--ANNUAL PAY COMPUTATION FOR LESS THAN FULL-TIME EMPLOYEES

Legal Authority: 5 USC 8461

CFR Citation: 5 CFR 841; 5 CFR 843

Legal Deadline: None

Abstract: These regulations provide a methodology for computing the amount of the basic employee death benefit under the Federal Employees' Retirement System (FERS) Act of 1986 for employees whose tour of duty is less than full time.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/10/88	53 FR 16535
Final Action	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Harold L. Siegelman, Paralegal Specialist, Office of Personnel Management, Office of Retirement and Insurance Policy, Retirement and Insurance Group, 1900 E Street, NW., Washington, DC 20415, 202 632-5580

RIN: 3206-AD63

3238. ● RETIREMENT; REEMPLOYMENT OF ANNUITANTS

Legal Authority: 5 USC 8461

CFR Citation: 5 CFR 841, Subpart K; 5 CFR 845

Legal Deadline: None

Abstract: Public Law 100-238, enacted January 8, 1988, amended the Federal Employees' Retirement System Act provisions concerning reemployment of FERS annuitants and CSRS annuitants who transfer to FERS. These regulations implement this provision of law.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/88	
Final Action	06/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Eugene E. Littleford, Paralegal Specialist, Office of Personnel Management, Office of Retirement and Insurance Policy, Retirement and Insurance Group, 1900 E Street, NW., Washington, DC 20415, 202 632-4682

RIN: 3206-AD60

3239. ● RETIREMENT; FERS DISABILITY BENEFITS

Legal Authority: 5 USC 8461

CFR Citation: 5 CFR 844

Legal Deadline: None

Abstract: These regulations implement Subchapter V of chapter 84, the Federal Employees' Retirement System Act disability provisions.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/31/88	53 FR 33433
Final Action	06/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Gay Gardner, Paralegal Specialist, Office of Personnel Management, Office of Retirement and Insurance Policy, Retirement and Insurance Group, 1900 E Street, NW., Washington, DC 20425, 202 632-4682

RIN: 3206-AD61

3240. ● FEDERAL EMPLOYEES' GROUP LIFE INSURANCE: PREMIUM REDUCTION FOR BASIC LIFE INSURANCE COVERAGE CONTINUED DURING RETIREMENT

Legal Authority: 5 USC 8716

CFR Citation: 5 CFR 870, Subpart D

Legal Deadline: None

Abstract: Regulations to reflect reductions in the premium rates for the three levels of post-retirement Basic Life coverage.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Bill Smith, Pay and Benefits Specialist, Office of Personnel Management, Office of Retirement and Insurance Policy, Retirement and Insurance Group, 1900 E St., NW., Washington, DC 20415, 202 632-4634

RIN: 3206-AD64

3241. CONTINUATION OF HEALTH AND LIFE INSURANCE COVERAGE DURING RETIREMENT

Legal Authority: 5 USC 8716; 5 USC 8913

CFR Citation: 5 CFR 870; 5 CFR 890

Legal Deadline: None

Abstract: Regulations to specify that the minimum participation requirements set forth in the FEHB and FEGLI laws for continuing either health benefits or life insurance during retirement must be met as of the commencing date of the affected individual's annuity.

Timetable:

Action	Date	FR Cite
NPRM	02/29/88	53 FR 5984
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

OPM — Final Rule Stage

Agency Contact: Bill Smith, Pay and Benefits Specialist, Office of Personnel Management, Office of Retirement and Insurance Policy, Retirement and Insurance Group, 1900 E St., NW., Washington, DC 20415, 202 632-4634

RIN: 3206-AD34

3242. ● LETTER OF CREDIT ACCESS TO FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM (FEHBP) CARRIER RESERVES

Legal Authority: 5 USC 8913

CFR Citation: 5 CFR 890

Legal Deadline: None

Abstract: Regulations to authorize the use of letters of credit for FEHBP Carrier Reserves.

Timetable:

Action	Date	FR Cite
NPRM	09/06/88	53 FR 34305
Final Action	12/15/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Mary Ann Mercer, Pay and Benefits Specialist, Office of Personnel Management, Office of Retirement and Insurance Policy, Retirement and Insurance Group, 1900 E Street, NW., Washington, DC 20415, 202 632-4634

RIN: 3206-AD62

3243. COMPUTER SECURITY TRAINING

Legal Authority: PL 100-235

CFR Citation: 5 CFR 930, Subpart C

Legal Deadline: Final, Statutory, July 16, 1988.

Abstract: Regulations for government-wide training requirement in computer security.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/13/88	53 FR 26562
Final Action	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Harold Segal, Chief, Policy and Oversight Branch, Training and Investigations Group, Office of Personnel Management, 1121 Vermont Ave., NW., P.O. Box 7230, Washington, DC 20044, 202 632-5574

RIN: 3206-AD43

3244. ● LETTER OF CREDIT ACCESS TO FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM (FEHBP) CARRIER RESERVES

Legal Authority: 5 USC 8913; 40 USC 486 (c)

CFR Citation: 48 CFR 16

Legal Deadline: None

Abstract: Regulations to authorize the use of letters of credit for FEHBP Carrier Reserves.

Timetable:

Action	Date	FR Cite
NPRM	09/06/88	53 FR 34320
Final Action	12/15/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Mary Ann Mercer, Pay and Benefits Specialist, Office of Personnel Management, Office of Retirement and Insurance Policy, Retirement and Insurance Group, 1900 E Street, NW., Washington, DC 20415, 202 632-4634

RIN: 3206-AD51

OFFICE OF PERSONNEL MANAGEMENT (OPM) — Completed Actions

3245. EXCEPTED SERVICE -- SCHEDULE B AUTHORITY TO APPOINT AND CONVERT COOPERATIVE EDUCATION STUDENTS

Significance: Regulatory Program

CFR Citation: 5 CFR 213.3202

Completed:

Reason	Date	FR Cite
Final Action	04/29/88	53 FR 15353
Final Action Effective	04/29/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Ken Bates 202 632-6466

RIN: 3206-AD30

3246. PERFORMANCE MANAGEMENT SYSTEM; RECORDKEEPING

CFR Citation: 5 CFR 293

Completed:

Reason	Date	FR Cite
Withdrawn Combined with RIN 3206-AD22.	07/28/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: C. Frank Carrick 202 632-7630

RIN: 3206-AB27

3247. PROCEDURES FOR SELECTING CANDIDATES FOR APPOINTMENT

CFR Citation: 5 CFR 302; 5 CFR 333

Completed:

Reason	Date	FR Cite
Final Action	09/13/88	53 FR 35291
Final Action Effective	10/13/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tracy Spencer 202 632-6817

RIN: 3206-AD18

3248. PRODUCTIVITY GAINSHARING

Significance: Regulatory Program

CFR Citation: 5 CFR 451

Completed:

Reason	Date	FR Cite
Withdrawn Adequate authority exists. FPM guidance to follow.	07/29/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: James F. Hallings 202 653-5835

RIN: 3206-AC71

3248. SPECIAL SALARY RATES FOR RECRUITMENT AND RETENTION

Significance: Regulatory Program

CFR Citation: 5 CFR 530

Completed:

Reason	Date	FR Cite
Withdrawn	07/29/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Clarence Mathews 202 632-4614

RIN: 3206-AD36

3250. PAY UNDER THE GENERAL SCHEDULE; PREVAILING RATE SYSTEMS; GRADE AND PAY RETENTION

CFR Citation: 5 CFR 531; 5 CFR 532; 5 CFR 536

Completed:

Reason	Date	FR Cite
Withdrawn	07/29/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Jan Kaichar 202 632-5858

RIN: 3206-AC26

3251. PROCESSING GARNISHMENT ORDERS FOR CHILD SUPPORT AND/OR ALIMONY

CFR Citation: 5 CFR 581

Completed:

Reason	Date	FR Cite
Final Action	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Murray Meeker 202 632-5980

RIN: 3206-AD42

3252. EMPLOYEE RESPONSIBILITIES AND CONDUCT

CFR Citation: 5 CFR 735

Completed:

Reason	Date	FR Cite
Withdrawn	07/25/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Jane Lay 202 632-7642

RIN: 3206-AD06

3253. POST EMPLOYMENT CONFLICT OF INTEREST

CFR Citation: 5 CFR 737

Completed:

Reason	Date	FR Cite
Withdrawn	07/25/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Jane Lay 202 632-7642

RIN: 3206-AD13

3254. ADVERSE ACTIONS

CFR Citation: 5 CFR 752

Completed:

Reason	Date	FR Cite
Final Action	06/09/88	53 FR 21610
Final Action Effective	07/11/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tim Dirks 202 653-8951

RIN: 3206-AC23

3255. RETIREMENT; UNDERDEDUCTIONS OF RETIREMENT CONTRIBUTIONS

CFR Citation: 5 CFR 831, Subpart A

Completed:

Reason	Date	FR Cite
Final Action	09/13/88	53 FR 35294
Final Action Effective	10/13/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Patricia Rochester 202 632-4682

RIN: 3206-AC06

3256. RETIREMENT; CREDIT FOR SERVICE; FOOD SERVICE EMPLOYEES OF THE HOUSE OF REPRESENTATIVES MAY RETAIN CSRS OR FERS

CFR Citation: 5 CFR 831, Subpart B

Completed:

Reason	Date	FR Cite
Final Action	03/29/88	53 FR 10055
Final Action Effective	04/28/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Harold Siegelman 202 632-4682

RIN: 3206-AD14

3257. RETIREMENT; CREDIT FOR SERVICE; EMPLOYEES WHO TRANSFER TO AIRPORTS AUTHORITY

CFR Citation: 5 CFR 831, Subpart C

Completed:

Reason	Date	FR Cite
Final Action	03/29/88	53 FR 10055
Final Action Effective	04/28/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Harold Siegelman 202 632-4682

RIN: 3206-AD15

3258. CONTINUATION OF FEDERAL EMPLOYEES' GROUP LIFE INSURANCE COVERAGE DURING MILITARY SERVICE

CFR Citation: 5 CFR 870

Completed:

Reason	Date	FR Cite
Final Action	05/31/88	53 FR 19743
Final Action Effective	06/30/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret Randall 202 632-4634

RIN: 3206-AD10

3259. CONTINUATION OF FEDERAL EMPLOYEES HEALTH BENEFITS AND FEDERAL EMPLOYEES GROUP LIFE INSURANCE COVERAGE UNDER FERS

CFR Citation: 5 CFR 890; 5 CFR 870

Completed:

Reason	Date	FR Cite
Final Action	06/25/88	53 FR 32367
Final Action Effective	01/01/87	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Mary Ann Mercer 202 632-4634

RIN: 3206-AD11

3260. CREDIT FOR CHAMPUS COVERAGE FOR THE PURPOSE OF CONTINUING AN FEHB ENROLLMENT DURING RETIREMENT

CFR Citation: 5 CFR 890

Completed:

Reason	Date	FR Cite
Withdrawn	07/15/88	53 FR 26781

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Bill Smith 202 632-4634

RIN: 3206-AD30

3261. FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM; REGISTRATION AND ENROLLMENT

CFR Citation: 5 CFR 890, Subpart C

Completed:

Reason	Date	FR Cite
Final Action	04/29/88	53 FR 15354
Final Action Effective	05/31/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Barbara Myers 202 632-4634

RIN: 3206-AD07

3262. FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM; CONTINUATION OF COVERAGE DURING MILITARY SERVICE

CFR Citation: 5 CFR 890, Subpart C

Completed:

Reason	Date	FR Cite
Final Action	06/25/88	53 FR 32368
Final Action Effective	09/26/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Bob MacKinnon 202 632-4634

RIN: 3206-AD24

3263. ◆ FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM; CONTINUATION OF COVERAGE DURING MILITARY SERVICE

Legal Authority: 5 USC 8913

CFR Citation: 5 CFR 890, Subpart C

Legal Deadline: None

Abstract: Regulations to permit employees who enter military service on active duty or active duty for training to continue their FEHBP coverage for up to one year.

Timetable:

Action	Date	FR Cite
NPRM	03/10/88	53 FR 7763
Final Action	06/25/88	53 FR 32368
Final Action Effective	09/26/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Bob MacKinnon, Pay and Benefits Specialist, Office of Personnel Management, Office of Retirement and Insurance Policy, Retirement and Insurance Group, 1900 E Street, NW., Washington, DC 20415, 202 632-5584

RIN: 3206-AD27

3264. ◆ FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM; MEDICALLY UNDERSERVED AREAS

Legal Authority: 5 USC 8913

CFR Citation: 5 CFR 890, Subpart G

Legal Deadline: None

Abstract: Regulations to finalize interim regulations published January 14, 1988 announcing which states qualify as Medically Underserved Areas under the FEHB Program effective January 1, 1988.

Timetable:

Action	Date	FR Cite
Final Action Effective	01/01/88	
Interim Final Rule	01/14/88	53 FR 880
Final Action	08/02/88	53 FR 28997

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Barbara Myers, Pay and Benefits Specialist, Office of Personnel Management, Office of Retirement and Insurance Policy, Retirement and Insurance Group, 1900 E St., NW; Washington, DC 20415, 202 632-4634

RIN: 3206-AD47

Abstract: Regulations to specify (1) how OPM determines which states qualify as Medically Underserved Areas under the FEHB Program and (2) how and when OPM will announce the results of its determination.

Timetable:

Action	Date	FR Cite
NPRM	01/14/88	53 FR 898
Final Action	07/26/88	53 FR 28366
Final Action Effective	08/29/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Barbara Myers, Pay and Benefits Specialist, Office of Personnel Management, Office of Retirement and Insurance Policy, Retirement and Insurance Group, 1900 E St., NW; Washington, DC 20415, 202 632-4634

RIN: 3206-AD46

[FR Doc. 88-21002 Filed 10-21-88; 8:45 am]

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Part XXXIV

Panama Canal Commission

Semiannual Regulatory Agenda

PANAMA CANAL COMMISSION (PANAMA)

PANAMA CANAL COMMISSION

36 CFR Ch. I

Unified Agenda of Federal Regulations

AGENCY: Panama Canal Commission.

ACTION: Publication of semiannual agenda of regulations.

SUMMARY: The purpose of this agenda is to report the proposed rulemaking activities of the Panama Canal Commission. This information will allow the public to participate in the rulemaking process.

FOR FURTHER INFORMATION CONTACT: For information about a particular regulatory project, contact the person listed in the subheading "Agency Contact" for that project. For general information, contact Michael Rhode, Jr., Assistant to the Chairman and Secretary, Panama Canal Commission, 2000 L Street, NW., Suite 550, Washington, DC 20036-4996, (202) 634-6441 TDD; or John L. Haines, Jr., Esquire, General Counsel, Panama Canal Commission, APO Miami 34011-5000.

SUPPLEMENTARY INFORMATION: Executive Order 12291, Federal Regulation, and the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* require that executive agencies publish in the Federal Register a semiannual notice of regulations which are under development or review or for which action has been completed. The Panama Canal Commission agenda contains certain regulations which are limited in public impact, but they are included to increase public awareness of Commission activities and to allow for increased public participation in the agency's regulatory review and development process. This agenda was prepared under the guidelines established by OMB Bulletin No. 88-16.

Dated: August 30, 1988.

Michael Rhode, Jr.,

Assistant to the Chairman and Secretary, Panama Canal Commission.

PANAMA CANAL COMMISSION (PANAMA) — Prerule Stage

3266. TOLLS FOR USE OF CANAL

Significance: Agency Priority

Legal Authority: PL 96-70, Sec 1601

CFR Citation: 35 CFR 133, (Revision)

Legal Deadline: None

Abstract: Due to operating cost increases, including inflation, since the last toll rate increase (March 1983), the Panama Canal Commission is currently considering increasing the rates of tolls charged vessels transiting the Canal. An approximate 9% increase may be proposed effective in FY 1990 to achieve the Commission's regulatory requirement to recover from users all costs of operating and maintaining the waterway.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Michael Rhode, Jr., Secretary, Panama Canal Commission, 2000 L Street NW, Suite 550, Washington, DC 20036-4996, 202 634-6441

RIN: 3207-AA14

3267. TOLLS FOR USE OF CANAL RULES FOR MEASUREMENT OF VESSELS

Significance: Agency Priority

Legal Authority: PL 96-70, Sec 1601

CFR Citation: 35 CFR 133.32; 35 CFR 133.34; 35 CFR 135.285(a); 35 CFR 115.552

Legal Deadline: None

Abstract: The proposed changes correct authority to issue Panama Canal Tonnage Certificate (no financial impact); eliminate the "125 percent of engine room as measured" limitation for ballast rate (negligible negative impact on canal revenues); increase size limitation on manholes to water ballast spaces from 30 to 34 inch diameter, to align our rules with I.M.O's (small negative impact on canal revenues); allow deductible items located in the engine room to be deducted as part of engine room rather than separately, to streamline the method by which propulsion power deduction is determined (negligible impact on canal revenues).

These changes will not impact on most vessels already measured for Panama Canal tonnages. Vessels that qualify for increased deductions may choose to be remeasured.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Michael Rhode, Jr., Secretary, Panama Canal Commission, 2000 L Street NW, Suite 550, Washington, DC 20036-4996, 202 634-6441

RIN: 3207-AA17

3268. INSPECTION AND REGISTRATION OF VESSELS

Significance: Agency Priority

Legal Authority: 22 USC 3811; EO 12215; 44 USC 3501

CFR Citation: 35 CFR 121.2, (Revision); 35 CFR 121.3, (Revision); 35 CFR 121.41, (Revision); 35 CFR 121.43, (Revision); 35 CFR 121.45, (Revision); 35 CFR 121.47, (Revision); 35 CFR 121.58(a)(b), (Revision); 35 CFR 121.63, (Revision); 35 CFR 121.65(a)(b), (Revision); 35 CFR 121.66, (Revision); 35 CFR 121.67, (Revision); 35 CFR 121.68, (Revision); 35 CFR 121.69, (Revision); 35 CFR 121.70, (Revision); 35 CFR 121.71, (Revision); ...

Legal Deadline: None

Abstract: The Panama Canal Commission proposes to make procedural changes to bring its regulations into conformity with internal reorganization which changed units responsible for inspection and registration of vessels and to bring vessel equipment requirements into compliance with International Regulations for Preventing Collisions at Sea, 1972.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Capt. William V. Clark, II, Assistant to Marine Director, (Marine Safety), Panama Canal Commission, Marine Bureau, APO Miami, FL 34011-5000, 282 634-6441

RIN: 3207-AA18

PANAMA — Prerule Stage

3269. DANGEROUS CARGOES RADIO COMMUNICATION

Significance: Agency Priority

Legal Authority: 22 USC 3811; EO 12215

CFR Citation: 35 CFR 113.3(a), (Revision); 35 CFR 113.4(a), (Revision); 35 CFR 113.5, (Revision); 35 CFR 113.21, (Revision); 35 CFR 113.22, (Revision); 35 CFR 113.28(a), (Revision); 35 CFR 113.29(b), (Revision); 35 CFR 113.29(c), (Revision); 35 CFR 113.42, (Revision); 35 CFR 113.43(c), (Revision); 35 CFR 113.45, (Revision); 35 CFR 113.49(b)(c), (Revision); 35 CFR 113.50(c)(e)(1)(2), (Revision); 35 CFR 123.4(a), (Revision)

Legal Deadline: None

Abstract: The Panama Canal Commission proposes to amend its regulations to make minor technical changes and clarifications.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Capt. William V. Clark II, Assistant to Marine Director, (Marine Safety), Panama Canal Commission, Marine Bureau, APO Miami, FL 34011-5000, 282 634-6441

RIN: 3207-AA19

3270. ARRIVING AND DEPARTING VESSELS: VARIOUS COMMUNICATION, DOCUMENTATION, SANITATION AND ADMEASUREMENT REQUIREMENTS

Significance: Agency Priority

Legal Authority: 22 USC 3811

CFR Citation: 35 CFR 101.10(e), (Revision); 35 CFR 101.10(f), (Revision)

Legal Deadline: None

Abstract: The purpose of the proposed changes is to make minor technical corrections by requiring that cargo manifests and loading plans show international Maritime Organization Division in addition to class.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Capt. William V. Clark II, Assistant to Marine Director, (Marine Safety), Panama Canal Commission, Marine Bureau, APO Miami, FL 34011-5000, 282 634-6441

RIN: 3207-AA20

PANAMA CANAL COMMISSION (PANAMA) — Proposed Rule Stage

3271. PANAMA CANAL COMMISSION ACQUISITION REGULATION

Significance: Agency Priority

Legal Authority: 40 USC 486(c)

CFR Citation: 48 CFR Chapter 35, (New)

Legal Deadline: None

Abstract: The Panama Canal Commission proposes to issue the Panama Canal Commission Acquisition Regulation (PAR) as Chapter 35 of Title 48 Code of Federal Regulations. The proposed PAR implements and supplements the Federal Acquisition Regulation (FAR), which is the primary acquisition regulation that governs the contracting process of all executive agencies or otherwise controls the relationship between such agencies and their contracts or prospective contractors. This action is necessary to provide regulatory coverage pertinent to Commission acquisitions that is not otherwise provided in the FAR.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: R. D. Morgan, Procurement Executive, Panama Canal Commission, APO Miami 34011-5000, 282 634-6441

RIN: 3207-AA16

3272. EMPLOYEE RESPONSIBILITIES AND CONDUCT

Legal Authority: 22 USC 3622

CFR Citation: 35 CFR 255, (Revision)

Legal Deadline: None

Abstract: The Panama Canal Commission proposes to amend its regulations to implement the Ethics in Government Act, the Commission's Code of Conduct as approved by its Board of Directors, and supplementary regulations that clarify certain provisions of the Code of Conduct.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Thomas C. Duty, Chief, Administrative Services Division, Panama Canal Commission, APO Miami 34011-5000, 282 634-6441

RIN: 3207-AA15

PANAMA CANAL COMMISSION (PANAMA) — Completed Actions

3272. CLASSIFIED INFORMATION

CFR Citation: 35 CFR 80, (Revision)

Completed:

Reason	Date	FR Cite
Final Action	03/11/88	53 FR 7804
Final Action Effective	05/11/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Thomas C. Duty 202 634-6441

RIN: 3207–AA01

3274. IMPLEMENTATION OF THE FOI REFORM ACT OF 1986 AND REVISIONS TO THE FEE SCHEDULE OF THE FOIA

CFR Citation: 35 CFR 9A, (Revision)

Completed:

Reason	Date	FR Cite
Final Action	05/06/88	53 FR 16256
Final Action Effective	05/06/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Thomas C. Duty 202 634-6441

RIN: 3207–AA13

[FR Doc. 88-20675 Filed 10-21-88; 8:45 am]

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Part XXXV

Peace Corps

Semiannual Regulatory Agenda

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PEACE CORPS (PEACE)

PEACE CORPS

22 CFR Ch. III

Executive Order 12291, Federal Regulations, Semiannual Agenda of Regulations

AGENCY: Peace Corps.

ACTION: Publication of semiannual agenda.

SUMMARY: This agenda announces the regulations the Peace Corps will have under development during the 12-month period from October 1, 1988 through September 30, 1989. The purpose for publishing this agenda is to give notice of any regulatory activity by the Agency in order to allow the public an opportunity to participate in the rulemaking process.

FOR FURTHER INFORMATION CONTACT: The public is encouraged to contact the Agency official listed for the particular agenda item. For other information concerning Peace Corps' regulations or this semiannual agenda, contact Robert Martin, Associate General Counsel, Peace Corps, 806 Connecticut Avenue, NW., Washington, DC 20526, (202) 254-3114.

SUPPLEMENTARY INFORMATION: In accordance with Executive Order 12291, Federal Regulations, and the Regulatory Flexibility Act (5 U.S.C. 605) executive agencies are required to publish in the Federal Register semiannual regulatory agendas in April and October of each year.

The regulations being considered by Peace Corps are not "major" rules within the meaning of E.O. 12291 and no Regulatory Impact Analysis is required. Peace Corps has determined that the regulations under consideration will not impose compliance costs or reporting burdens on the public; and that the regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, no Regulatory Analysis is required under 5 U.S.C. 602.

Margaret H. Thorne,
Associate Director for Management.

PEACE CORPS (PEACE) — Proposed Rule Stage

3275. EMPLOYEE DISCRIMINATION COMPLAINT PROCEDURE

Legal Authority: 42 USC 2000e-16 Title VII of the Civil Rights Act; 29 USC 701 Rehabilitation Act of 1973, as amended; 29 USC 621 et seq Age Discrimination in Employment Act

CFR Citation: 22 CFR 306

Legal Deadline: None

Abstract: Comprehensive regulations for processing individual and class EEO complaints of Peace Corps employees. Under development.

Timetable:

Action	Date	FR Cite
NPRM	07/00/89	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Sharon L. Solomon, Assistant Director for Equal Opportunity, Peace Corps, 806 Connecticut Avenue, NW, Washington, DC 20526, 202 254-8328

RIN: 0420-AA01

3276. VOLUNTEER DISCRIMINATION COMPLAINT PROCEDURES

Legal Authority: 42 USC 2000e-16 Title VII of the Civil Rights Act; 29 USC 701 Rehabilitation Act of 1973, as amended; 29 USC 621 et seq Age Discrimination in Employment Act

CFR Citation: 22 CFR 308

Legal Deadline: None

Abstract: Comprehensive regulations for processing individual and class EEO complaints of Peace Corps Volunteers. Under development.

Timetable:

Action	Date	FR Cite
NPRM	07/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Sharon L. Solomon, Assistant Director for Equal Opportunity, Peace Corps, 806 Connecticut Avenue, NW, Room M-1107, Washington, DC 20526, 202 254-8328

RIN: 0420-AA02

3277. IMPLEMENTATION OF REHABILITATION ACT OF 1973, PART 504 - HANDICAPPED DISCRIMINATION PROHIBITION

Legal Authority: 29 USC 794

CFR Citation: 22 CFR 311

Legal Deadline: None

Abstract: The regulation implements section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) which prohibits discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the Postal Service.

Timetable:

Action	Date	FR Cite
NPRM	10/31/88	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: John Scales, General Counsel, Peace Corps, 806 Connecticut Avenue, NW, Room M-1207, Washington, DC 20526, 202 254-3114

RIN: 0420-AA03

[FR Doc. 88-22740 Filed 10-21-88; 8:45 am]

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Monday
October 24, 1988

Part XXXVI

Pennsylvania Avenue Development Corporation

Semiannual Regulatory Agenda

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION (PADC)

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

36 CFR Ch. IX

Unified Agenda of Federal Regulations

AGENCY: Pennsylvania Avenue Development Corporation.

ACTION: Unified Agenda of Federal Regulations.

SUMMARY: This document sets forth the Pennsylvania Avenue Development Corporation's regulatory agenda issued under Executive Order 12291 and the Regulatory Flexibility Act. The Agenda lists regulations currently under rulemaking review that PADC expects to have as a final rule during the next twelve months.

FOR FURTHER INFORMATION CONTACT: Talbot J. Nicholas II, Attorney, Office of the General Counsel, Pennsylvania Avenue Development Corporation, Suite 1229 North, 1331 Pennsylvania Avenue, NW., Washington, DC 20004; (202) 724-9068.

Dated: July 12, 1988.

M. J. Brodie,

Executive Director, Pennsylvania Avenue Development Corporation.

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION (PADC) — Prerule Stage

3278. PROCEDURES AND UNIFORM STANDARDS FOR PUBLIC USE OF PARKS AND PLAZAS

Legal Authority: 40 USC 875(5)

CFR Citation: 36 CFR 912

Legal Deadline: None

Abstract: The Pennsylvania Avenue Development Corporation (PADC) has received an increasing number of requests for public use of parks and plazas within the Pennsylvania Avenue Development Area. The proposed regulations would ensure equality of opportunity for use of PADC parks and plazas while protecting public property, safety, and tranquility.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Madeleine B. Schaller, Deputy General Counsel, Pennsylvania Avenue Development Corporation, Suite 1220 North, 1331 Pennsylvania Avenue, NW, Washington, DC 20004, 202 724-9068

RIN: 3208-AA01

3279. DEVELOPMENT POLICIES AND PROCEDURES

Legal Authority: 40 USC 875(5)

CFR Citation: 36 CFR 911. (New)

Legal Deadline: None

Abstract: The Corporation is studying ways to apply past experience to update its Development Policies and Procedures.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Agency Contact: Madeleine B. Schaller, Deputy General Counsel, Pennsylvania Avenue Development Corporation, 1331 Pennsylvania Avenue, NW, Suite 1220 North, Washington, DC 20004, 202 724-9068

RIN: 3208-AA02

[FR Doc. 88-20678 Filed 10-21-88; 8:45 am]

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Part XXXVII

Pension Benefit Guaranty Corporation

Semiannual Regulatory Agenda

PENSION BENEFIT GUARANTY CORPORATION (PBGC)

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Ch. XXVI

Agenda of Regulations Under Development

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Agenda of regulations.

SUMMARY: This document sets forth the Pension Benefit Guaranty Corporation's regulatory agenda issued under Executive Order 12291 and the Regulatory Flexibility Act. The agenda lists regulations that are currently under development or that PBGC expects to have under development during the next twelve months. The effect of this agenda is to advise the public of PBGC's current and future regulatory activities.

ADDRESS: Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: For further information on the agenda in general, contact J. Ronald Goldstein, Attorney, Office of the General Counsel, 202-778-8850. For information about a specific regulation project listed on the agenda, contact the person designated in the agenda for that regulation.

SUPPLEMENTARY INFORMATION: Under the President's Order on Federal Regulation, Executive Order 12291, 46 FR 13193, each agency is required to publish in April and October an agenda of regulations currently or soon to be under development. The Executive Order requires that the agenda also include those currently effective regulations that are being reviewed by the agency pursuant to the Executive Order. The Regulatory Flexibility Act, Pub. L. 96-354, 5 U.S.C. 601, has a similar agenda requirement. Under that law, the agenda must list any regulation that is likely to have a significant economic impact on a substantial number of small entities.

The Office of Management and Budget has issued guidelines (OMB Bulletin No. 88-15) prescribing the form and content of the regulatory agenda. Under those guidelines, the agenda must list all regulatory activities being conducted or reviewed in the next twelve months and provide certain specified information on each regulation. All of the items on this agenda are current or projected rulemakings.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

PENSION BENEFIT GUARANTY CORPORATION (PBGC) — Proposed Rule Stage

3280. TRANSFERS FROM MULTIEMPLOYER PLANS TO SINGLE-EMPLOYER PLANS

Legal Authority: 29 USC 1302(b)(3); 29 USC 1412; 29 USC 1414

CFR Citation: 29 CFR 2676

Legal Deadline: None

Abstract: Sections 4232 and 4234 of ERISA prescribe rules governing the transfer of liabilities and assets from a multiemployer plan to a single-employer plan and prohibit certain transfers unless approved by PBGC. The regulation will establish procedures for requesting and criteria for PBGC approval of transfers which require approval and guidelines for satisfying the statutory requirements pertaining to other transfers. The regulation will also establish standards for the PBGC's waiver of a multiemployer plan's contingent liability arising from the transfer of unfunded vested benefits to a single-employer plan.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Publication of this proposed regulation was delayed because of the need to revise the portions dealing with waiver of a multiemployer plan's contingent liability to reflect certain changes in related statutory provisions made by the Single-Employer Pension Plan Amendments Act of 1986. Work on this rule was subsequently deferred because the enactment of SEPPAA and the 1987 Pension Protection Act amendments required that staff be reassigned to work on higher priority regulations necessitated by those laws.

Agency Contact: Mr. John Foster, Attorney, Pension Benefit Guaranty Corporation, Office of the General Counsel, (22500), 2020 K St., NW, Washington, DC 20006, 202 778-8859

RIN: 1212-AA20

3281. PLAN RULES FOR REDUCTION OR WAIVER OF COMPLETE WITHDRAWAL LIABILITY

Significance: Regulatory Program

Legal Authority: 29 USC 1302(b)(3); 29 USC 1387(b)

CFR Citation: 29 CFR 2647 (Amendment)

Legal Deadline: None

Abstract: Under section 4207(a) of ERISA, the PBGC has issued a regulation (29 CFR Part 2647) providing for the reduction or waiver of an employer's liability for complete withdrawal upon the employer's resumption of participation under the plan from which it withdrew. The statute also requires the PBGC to prescribe procedures and standards under which multiemployer plans may adopt their own rules abating complete withdrawal liability upon an employer's return to the plan (section 4207(b)).

The purpose of letting plans adopt their own abatement rules is obvious: a specific rule adopted by a plan may well work better under the facts and circumstances of that particular plan than the broad rules adopted by the PBGC. This regulation will permit a plan to fashion the rules it needs to encourage the return of withdrawn employers, while at the same time protecting the plan from the loss of withdrawal liability payments without a compensating resumption of contributions to the plan by a formerly withdrawn employer. The PBGC is unable to (cont)

Timetable:

Action	Date	FR Cite
NPRM	01/00/89	
NPRM Comment Period End	03/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ABSTRACT CONT: quantify the benefits and costs of this regulation because it cannot predict how many plans will exercise the authority conferred by this regulation.

Agency Contact: Mr. John Foster, Attorney, Pension Benefit Guaranty Corporation, Office of the General Counsel, (22500), 2020 K St., NW, Washington, DC 20006, 202 778-8859

RIN: 1212-AA36

3282. ALLOCATING UNFUNDED VESTED BENEFITS: FULLY FUNDED PLANS

Legal Authority: 29 USC 1302(b)(3); 29 USC 1341(c)

CFR Citation: 29 CFR 2642

Legal Deadline: None

Abstract: In a notice published in the FEDERAL REGISTER on December 31, 1986 (51 FR 47342), the PBGC issued its interpretation that ERISA section 4211 does not permit the assessment of withdrawal liability against an employer by a multiemployer plan that had no unfunded vested benefits as of the end of the plan year preceding the employer's withdrawal. This interpretation raises certain questions as to the proper manner of applying the allocation methods prescribed in section 4211(b) and (c)(2) by a plan that at one time was fully funded, but is no longer. The PBGC plans to issue a proposed amendment to its regulation on allocating unfunded vested benefits dealing with this issue.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	
NPRM Comment Period End	02/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Ms. Deborah Murphy, Attorney, Pension Benefit Guaranty Corporation, Office of the General Counsel, (22500), 2020 K St., NW, Washington, DC 20006, 202 778-8850

RIN: 1212-AA31

3283. PAYMENT OF BENEFITS IN PBGC-TRUSTEED PLANS

Legal Authority: 29 USC 1302(b)(3); 29 USC 1322; 29 USC 1342

CFR Citation: 29 CFR 2604

Legal Deadline: None

Abstract: When the PBGC assumes trusteeship of a terminated pension plan pursuant to sections 4041 and 4042 of ERISA, it pays benefits to participants pursuant to plan provisions and section 4022 of ERISA. This regulation will contain rules and policies relating to the payment of such benefits. The regulation will enable the PBGC to process and administer PBGC-trusteed plans more efficiently with resultant cost savings. It also will reduce costs to the public and the PBGC by providing payment rules, thereby reducing the number of requests for administrative review.

Timetable:

Action	Date	FR Cite
NPRM	02/00/89	
NPRM Comment Period End	04/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Mrs. Renee R. Hubbard, Special Counsel, Pension Benefit Guaranty Corporation, Office of the General Counsel, (22500), 2020 K St., NW, Washington, DC 20006, 202 778-8850

RIN: 1212-AA32

3284. EMPLOYER LIABILITY FOR WITHDRAWALS FROM AND TERMINATIONS OF SINGLE-EMPLOYER PLANS: INTEREST RATE

Legal Authority: 29 USC 1302(b); 29 USC 1362 to 1364; 29 USC 1367 to 1368

CFR Citation: 29 CFR 2622

Legal Deadline: None

Abstract: The PBGC's employer liability regulation incorporates by reference the interest rate charged under section 6601 of the Internal Revenue Code as the interest rate charged, or credited, on late payments, or overpayments, of employer liability. The Tax Reform Act of 1986 significantly changed the way in which the section 6601 rate is established and creates two interest rates: one for underpayments and another, lower rate for overpayments. Because of these changes, the PBGC plans to conduct a new rulemaking proceeding to determine whether it should continue to use the section 6601 interest rates under the employer liability regulation or whether it should adopt a new rate(s) for this purpose.

Timetable:

Action	Date	FR Cite
NPRM	03/00/89	
NPRM Comment Period End	05/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Ms. Theresa Cleary, Attorney, Pension Benefit Guaranty Corporation, Office of the General Counsel, (22500), 2020 K St., NW, Washington, DC 20006, 202 778-8850

RIN: 1212-AA48

3285. PAYMENT OF PREMIUMS

Significance: Regulatory Program

Legal Authority: 29 USC 1302(b)(3); 29 USC 1306; 29 USC 1307; PL 100-203, Sec 9331

CFR Citation: 29 CFR 2610

Legal Deadline: None

Abstract: The Pension Protection Act substantially altered the rules pertaining to single-employer plan premiums that are paid to the PBGC. Under the Act, there is a flat per capita charge (increased from that under prior law) plus a new variable rate charge tied to the value of a plan's unfunded vested benefits. The new premium rules are effective for plan years beginning after December 31, 1987.

On June 30, 1988, the PBGC issued an interim regulation implementing these rules. Because of the need to issue the regulation quickly to provide guidance for 1988 premium payments, the PBGC did not solicit public comment before issuing the regulation. For the same reason, the interim regulation did not address certain relevant, but secondary, issues pertaining to the new rules. Therefore, on October 5, 1988, the PBGC issued a notice of proposed rulemaking in order to permit public comment on the interim regulation. The NPRM also addressed problems or

PBGC — Proposed Rule Stage

questions raised by the public in response to the interim regulation. The PBGC hopes to issue the final regulation early in 1989 so that it will govern the 1989 (and subsequent) (cont)

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/30/88	53 FR 24906
NPRM	10/05/88	53 FR 39200
NPRM Comment Period End	12/05/88	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: (ABSTRACT CONT) premium payment years.

Agency Contact: Mr. Harold Ashner, Attorney, Pension Benefit Guaranty Corporation, Office of the General Counsel, (22500), 2020 K St., NW, Washington, D.C. 20006, 202 778-8820

RIN: 1212-AA53

3266. ◆ PAYMENTS BY PBGC OF UNFUNDED NONGUARANTEED BENEFITS

Significance: Regulatory Program

Legal Authority: PL 100-203, Sec 4022(b)(3)

CFR Citation: 29 CFR Not yet determined

Legal Deadline: None

Abstract:

The Pension Protection Act repealed ERISA section 4049 and 4062(c). Those provisions established new employer liability to plan participants and beneficiaries in the event of a distress termination or involuntary termination by the PBGC of a plan without sufficient assets to pay all benefit commitments; the section 4049 trust was the vehicle for collecting and distributing these liability amounts. This system proved flawed in several respects, however, and Congress therefore created a new scheme by which to channel employer liability recoveries to plan participants and beneficiaries, amended ERISA section 4022(c).

Under section 4022(c), participants no longer have a direct claim for employer liability. Instead, the PBGC's claim covers both its shortfall (unfunded guaranteed benefits) and participants' losses (unfunded benefit liabilities in excess of guaranteed benefits). In turn, the PBGC is to pay a portion of its employer liability recovery to participants and beneficiaries. The amount to be paid is based on the PBGC "recovery ratio" (as defined in amended sec. 4022(c)(3)).(cont)

Timetable:

Action	Date	FR Cite
NPRM	05/00/89	
NPRM Comment Period End	07/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information:

This new statutory rule contains several ambiguities and also leaves to the PBGC the development of specific rules and procedures necessary to make this system work. The regulation will, for example, contain rules on how the PBGC will value its employer liability recoveries for purposes of computing the recovery ratio, whether the allocation of amounts payable under this provision will be done as part of the regular section 4044 asset allocation, and whether the PBGC will pay these benefits by increasing the amount of annuity payments it is making to participants or making lump sum payments.

Agency Contact: J. Ronald Goldstein, Senior Counsel, Pension Benefit Guaranty Corporation, Office of the General Counsel, (22500), 2020 K St., NW, Washington, DC 20006, 202 778-8850

RIN: 1212-AA54

3267. RETIREMENT EQUITY ACT AMENDMENTS - VALUATION OF PLAN BENEFITS

Significance: Regulatory Program

Legal Authority: 29 USC 1302(b)(3); 29 USC 1341

CFR Citation: 29 CFR 2619

Legal Deadline: None

Abstract: The Retirement Equity Act of 1984 ("REA") requires plans to provide certain benefits, prohibits the elimination of benefit options and certain early retirement benefits and retirement- type subsidies, and mandates the range of interest rates that may be used in calculating the amount of a non-consensual lump sum benefit. The Tax Reform Act of 1986 ("TRA '86") slightly modified the interest rate restrictions and extended them to the calculation of all lump sum benefits.

These rules necessitate several amendments to the PBGC's valuation of benefits regulation (29 CFR Part 2619). The major changes will address the rules on determining the form of benefit to be valued on plan termination and the interest rate rules for lump sum payments in standard terminations.

Because the valuation of benefits is an essential part of the plan termination process, the PBGC plans to issue these amendments both as a notice of proposed rulemaking and as an interim final rule at or about the same time it issues the final distress termination and standard termination regulations. (cont)

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	
Interim Final Rule	12/00/88	
NPRM Comment Period End	02/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Ms. Deborah Murphy, Attorney, Pension Benefit Guaranty Corporation, Office of the General Counsel, (22500), 2020 K St., NW, Washington, DC 20006, 202 778-8824

RIN: 1212-AA55

PENSION BENEFIT GUARANTY CORPORATION (PBGC) — Final Rule Stage

3268. RULES UNDER SECTIONS 4041A AND 4281 FOR PLANS TERMINATED BY MASS WITHDRAWAL

Legal Authority: 29 USC 1302(b)(3) ERISA; 29 USC 1341A ERISA; 29 USC 1441 ERISA

CFR Citation: 29 CFR 2675

Legal Deadline: None

Abstract: Section 4041A of ERISA provides rules with respect to the termination of multiemployer plans and the payment of benefits under those plans. Under section 4041A(f)(2), PBGC is authorized to prescribe rules for the administration of those plans that are appropriate to protect the interests of plan participants and beneficiaries or to prevent unreasonable loss to the insurance system. Under section 4281(b), the plan sponsor of a plan that has terminated by mass withdrawal is required annually to determine the value of the plan's nonforfeitable benefits and assets. If the value of the benefits exceeds the value of the assets, the sponsor must amend the plan to eliminate benefits not eligible for PBGC's guarantee under section 4022A(b), to the extent necessary to insure that the plan assets are sufficient to pay all nonforfeitable benefits. This determination of sufficiency is to be made in accordance with rules prescribed by PBGC. This regulation would establish the rules for administering plans that have terminated by mass withdrawal, including the rules for determining sufficiency in the circumstances described above. The primary purpose (cont)

Timetable:

Action	Date	FR Cite
NPRM	07/07/86	51 FR 24536
NPRM Comment Period End	09/05/86	
Final Action	10/00/88	
Final Action Effective	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ABSTRACT CONT: and benefit of this regulation will be to establish rules that encourage the efficient administration of these plans. By thus helping to preserve plan assets, these rules will, in the first instance, benefit plan participants and beneficiaries and secondarily, the multiemployer insurance system and premium payers. PBGC lacks adequate data to be able to quantify these benefits.

Agency Contact: J. Ronald Goldstein, Senior Counsel, Pension Benefit Guaranty Corporation, Office of the General Counsel, (22500), 2020 K St., NW, Washington, DC 20006, 202 778-8850

RIN: 1212-AA19

3269. REDUCTION OR WAIVER OF PARTIAL WITHDRAWAL LIABILITY

Significance: Regulatory Program

Legal Authority: 29 USC 1302(b)(3); 29 USC 1388(e)(3)

CFR Citation: 29 CFR 2646

Legal Deadline: None

Abstract: Section 4208 of ERISA provides for the reduction or elimination under certain circumstances of an employer's partial withdrawal liability arising from a 70 percent reduction in contribution base units. That section also authorizes the PBGC to prescribe rules for the reduction or elimination of partial withdrawal liability under other conditions. The regulation will provide for the abatement of partial withdrawal liability arising from the cessation of the obligation to contribute under a collective bargaining agreement or with respect to a facility. Section 4208 also requires the PBGC to issue a regulation under which a multiemployer plan may adopt rules for the reduction or elimination of partial withdrawal liability. This regulation will allow plans to ease the statutory partial withdrawal liability rules where, for example, the rules are harmful to the plan because they discourage an employer from increasing its participation under the plan, or where the statutory rules create administrative burdens which outweigh the protections afforded by the rules.

Timetable:

Action	Date	FR Cite
NPRM	06/05/87	52 FR 21319
NPRM Comment Period End	08/04/87	
Final Action	11/00/88	
Final Action Effective	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Ms. Debra Bisco, Attorney, Pension Benefit Guaranty Corporation, Office of the General Counsel, (22500), 2020 K St., NW, Washington, DC 20006, 202 778-8824

RIN: 1212-AA22

3270. ADJUSTMENT OF WITHDRAWAL LIABILITY FOR A WITHDRAWAL SUBSEQUENT TO A PARTIAL WITHDRAWAL

Significance: Regulatory Program

Legal Authority: 29 USC 1302(b)(3); 29 USC 1386(b)

CFR Citation: 29 CFR 2649

Legal Deadline: None

Abstract: Under section 4206(b) of ERISA, if an employer partially or completely withdraws from a multiemployer plan subsequent to an earlier partial withdrawal from that plan, the employer's liability for the second withdrawal must be reduced by the amount of its liability for the earlier partial withdrawal. The purpose of this credit is to avoid plans double-charging employers for the same unfunded liabilities. Section 4206(b) also requires the PBGC to prescribe regulations adjusting this credit to ensure that the employer's liability for its second withdrawal properly reflects the employer's share of liability with respect to the plan.

The need for this adjustment to the credit can be seen from the following example. In a plan that uses the rolling-5 allocation method, an employer's withdrawal liability is based on its last five years' participation in the plan. If an employer's second withdrawal occurs more than five years after its partial withdrawal, the liability for the second withdrawal is based solely on plan participation subsequent to the partial (cont)

Timetable:

Action	Date	FR Cite
NPRM	10/06/87	52 FR 37329
NPRM Comment Period End	12/07/87	
Final Action	11/00/88	
Final Action Effective	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ABSTRACT CONT: withdrawal. Thus, there is no double-charging with respect to the old

liabilities and no reason to give the employer a credit against its liability for the second withdrawal. However, without this regulation, the employer would get that credit under the statute. There are many other possible situations in which the employer's credit should similarly be reduced in order to ensure equitable treatment of the withdrawing employer vis-a-vis the other employers still contributing to the plan.

This regulation will result in some shifting of liabilities among employers contributing to a multiemployer plan. An employer that has another withdrawal following a partial withdrawal may incur greater liability for the second withdrawal because of the reduction in the credit for the prior partial withdrawal. However, this increase in liability would reduce the unfunded vested benefits allocable to other employers that withdraw thereafter. In the aggregate, the regulation will impose no new costs.

Agency Contact: Ms. Debra Dixon, Attorney, Pension Benefit Guaranty Corporation, Office of the General Counsel, (22500), 2020 K St., NW, Washington, DC 20006, 202 778-8824

RIN: 1212-AA37

2291. DETERMINATION OF WITHDRAWAL LIABILITY FOLLOWING A MERGER

Significance: Regulatory Program

Legal Authority: 29 USC 1302(b)(3); 29 USC 1391(f)

CFR Citation: 29 CFR 2641 (Amendment)

Legal Deadline: None

Abstract: The merger of two multiemployer plans creates a problem as to how the successor plan's unfunded vested benefits are to be allocated in order to determine withdrawal liability for post-merger withdrawals. Frequently, the two plans will have been using different allocation methods prior to the merger. Even if they were using the same method, if they had different plan years, that would create different allocations.

For this reason, section 4211(f) of ERISA requires the PBGC to issue regulations prescribing rules for the post-merger allocation of unfunded vested benefits. The PBGC proposes to establish rules that parallel the statutory allocation methods: i.e., there would be a presumptive allocation method that would apply to plans unless they chose otherwise, and plans would be permitted to adopt certain modifications in this presumptive method without the PBGC's approval and other more significant modifications with the PBGC's approval. (cont)

Timetable:

Action	Date	FR Cite
NPRM	11/09/87	52 FR 43062
NPRM Comment Period End	01/08/88	
Final Action	12/00/88	
Final Action Effective	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ABSTRACT CONT: This regulation will remove a significant impediment to multiemployer plan mergers by eliminating employers' concern and confusion over how their withdrawal liability would be calculated after a merger. Plan mergers are generally to be encouraged since a larger plan is typically a stronger plan because of its broader contribution base, and because portability of benefits is increased. This regulation will impose no new costs.

Agency Contact: Mr. John Foster, Attorney, Pension Benefit Guaranty Corporation, Office of the General Counsel, (22500), 2020 K St., NW, Washington, DC 20006, 202 778-8809

RIN: 1212-AA36

3292. DISTRESS TERMINATIONS OF SINGLE-EMPLOYER PLANS

Significance: Regulatory Program

Legal Authority: PL 99-272, Sec 11002; PL 99-272, Sec 11009; PL 100-203, Sec 9312(c) to 9312(d); PL 100-203, Sec 9313(b) to 9313(c); PL 100-203, Sec 9314(a)

CFR Citation: 29 CFR 2616

Legal Deadline: None

Abstract: The Single-Employer Pension Plan Amendments Act of 1986 substantially revised ERISA section 4041 dealing with the voluntary termination of single-employer pension plans. Under amended section 4041, a plan may voluntarily terminate only if the termination satisfies the statutory conditions for a standard or distress termination. These rules were further modified by the 1987 Pension Protection Act, which increased the benefits that must be provided, or for which the employer maintaining the plan is liable, upon plan termination. Thus, under current law, unless a plan has sufficient assets to satisfy all plan benefit liabilities, it may voluntarily terminate only in a "distress" termination; i.e., a termination in which the plan sponsor and all members of its controlled group are able to demonstrate either such financial hardship or unduly burdensome pension costs that, as a practical matter, they are unable to continue to maintain the plan. CONT.

Timetable:

Action	Date	FR Cite
NPRM	09/02/87	52 FR 33314
NPRM Comment Period End	11/02/87	
Final Action	12/00/88	
Final Action Effective	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ABSTRACT CONT:

The statutory rules and procedures for distress terminations are substantially different from the prior rules and procedures for terminating insufficient plans. Therefore, it is necessary to revise the PBGC's plan termination regulations to reflect these new rules and procedures. This regulation covering distress terminations and a companion rule covering standard terminations (to be codified in Part 2617) will replace the PBGC's principal termination regulations on notices of intent to terminate and termination of sufficient plans (existing Parts 2616 and 2617).

Although the notice of proposed rulemaking for this regulation was issued prior to enactment of the Pension Protection Act, the final rule will reflect the relevant statutory changes from that Act.

Agency Contact: J. Ronald Goldstein, Senior Counsel, Pension Benefit Guaranty Corporation, Office of the General Counsel, (22500), 2020 K St., NW, Washington, DC 20006, 202 778-8850

RIN: 1212-AA41

3293. STANDARD TERMINATIONS OF SINGLE-EMPLOYER PLANS

Significance: Regulatory Program

Legal Authority: PL 99-272, Sec 11007; PL 99-272, Sec 11008; PL 100-203, Sec 9311; PL 100-203, Sec 9313(a); PL 100-203, Sec 9313(c); PL 100-203, Sec 9314(a)

CFR Citation: 29 CFR 2617

Legal Deadline: None

Abstract: Under ERISA Section 4041, as amended by the Single-Employer Pension Plan Amendments Act of 1986 and the Pension Protection Act, absent a showing of financial hardship or unduly burdensome pension costs that would satisfy the requirements for a distress termination, a single-employer plan may be voluntarily terminated only if it is sufficient for all benefit liabilities (i.e., all benefits provided under the plan on the termination date, whether or not vested). This is referred to as a "standard" termination. SEPPAA also modified many of the termination rules and procedures that applied under prior law, both to increase the protections afforded plan participants and beneficiaries and to simplify and expedite the PBGC's processing of these sufficient plan terminations. It is, therefore, necessary to promulgate this new regulation implementing the new rules and procedures for standard terminations. This regulation and its companion regulation covering distress terminations (to be codified in Part 2616) will replace the PBGC's principal termination regulations on notices of intent to terminate and termination of sufficient plans (existing Parts 2616 and 2617) (CONT)

Timetable:

Action	Date	FR Cite
NPRM	09/02/87	52 FR 33318
NPRM Comment Period End	11/02/87	
Final Action	12/00/88	
Final Action Effective	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ABSTRACT CONT:

Although the notice of proposed rulemaking for this regulation was issued prior to enactment of the Pension Protection Act, the final rule will reflect the relevant statutory changes from that Act.

Agency Contact: J. Ronald Goldstein, Senior Counsel, Pension Benefit Guaranty Corporation, Office of the General Counsel, (22500), 2020 K St., NW, Washington, DC 20006, 202 778-8850

RIN: 1212-AA47

3294. MISCELLANEOUS SEPPAA AMENDMENTS

Significance: Regulatory Program

Legal Authority: 29 USC 1302(b); 29 USC 1322; 29 USC 1343; 29 USC 1344; 29 USC 1362 to 1364; 29 USC 1367 to 1368; PL 99-272, Sec 11008 to 11011; PL 99-272, Sec 11016; PL 100-203, Sec 9311 to 9314; PL 100-203, Sec 9331

CFR Citation: 29 CFR 2600; 29 CFR 2615; 29 CFR 2622; 29 CFR 2623

Legal Deadline: None

Abstract: The Single-Employer Pension Plan Amendments Act of 1986 ("SEPPAA") and the Pension Protection Act ("PPA") made several changes in Title IV rules and procedures that affect and, in some cases, override portions of several PBGC regulations. For this reason, these regulations - administrative review of agency decisions, benefit reductions in terminated plans, reportable events and employer liability - must be amended to conform them to the current law. For example, because SEPPAA altered the determinations that the PBGC may make with respect to voluntary plan terminations, the list in 29 CFR 2606.1(b) of determinations subject to agency review must be amended.

Similarly, SEPPAA contained, for distress terminations, specific benefit cutback rules. These rules differ somewhat from those set forth in 29 CFR Part 2623 and, therefore, conforming amendments to Part 2623 are required. SEPPAA and the PPA significantly changed the rules on employer liability to the PBGC in distress and involuntary terminations. Now, an employer is liable to the PBGC for the total plan underfunding. (CONT)

Timetable:

Action	Date	FR Cite
Final Action	03/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ABSTRACT CONT: i.e., for all unfunded benefit liabilities. Further, the 30 percent of net worth limitation is now relevant only in determining the amount subject to PBGC's statutory lien and the status of PBGC's claim in bankruptcy. The employer liability regulation needs to be amended to reflect these changes.

Agency Contact: Mr. Stephen Schreiber, Attorney, Pension Benefit Guaranty Corporation, Office of the General Counsel, (22500), 2020 K St., NW, Washington, DC 20006, 202 778-8824

RIN: 1212-AA50

[FR Doc. 88-20677 Filed 10-21-88; 8:45 am]

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Part XXXVIII

Railroad Retirement Board

Semiannual Regulatory Agenda

RAILROAD RETIREMENT BOARD (RRB)

RAILROAD RETIREMENT BOARD

20 CFR Ch. II

Semiannual Agenda of Regulations Under Development or Review

AGENCY: Railroad Retirement Board.

ACTION: Agenda of regulations under development or review.

SUMMARY: This agenda contains lists of regulations that the Board is developing or proposes to develop in the next twelve months, and regulations that are scheduled to be reviewed in that period.

ADDRESS: 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Steven A. Bartholow, Deputy General Counsel, Railroad Retirement Board, (312) 751-4935 (FTS 386-4935).

SUPPLEMENTARY INFORMATION: Regulations that are routine in nature or pertain solely to internal agency management have not been included in the agenda. Current regulations that are proposed to be modified based on a completed review of the regulations are listed in the agenda.

Dated: August 26, 1988.
By Authority of the Board.
Beatrice Ekweki,
Secretary to the Board.

Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
3295	Part 220 Determining Disability	3220-AA01
3296	Annuity Beginning and Ending Dates	3220-AA13
3297	Evidence Required for Payment	3220-AA14
3298	Eligibility for an Annuity	3220-AA15
3299	Application for Annuity or Lump Sum	3220-AA16
3300	Recovery of Overpayments	3220-AA44
3301	Sickness Benefits	3220-AA45
3302	Employers Under the Railroad Retirement Act; Employers Under the Railroad Unemployment Insurance Act	3220-AA51
3303	Employees Under the Railroad Retirement Act	3220-AA52
3304	Employment Relation	3220-AA53
3305	General Administration	3220-AA56
3306	Family Relationships	3220-AA57
3307	Computing Employee, Spouse, and Divorced Spouse Annuities	3220-AA58
3308	Survivor Annuity Computations	3220-AA59
3309	Social Security Overall Minimum	3220-AA60
3310	Reduction and Non-Payment of Annuities by Reason of Work	3220-AA61
3311	Paying Social Security Benefits	3220-AA62
3312	Medicare	3220-AA64
3313	Available for Work	3220-AA65
3314	Exhaustion of Rights to Benefits	3220-AA67
3315	Remuneration	3220-AA66

Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
3316	Primary Insurance Amount Determinations	3220-AA02
3317	Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Railroad Retirement Board	3220-AA22
3318	Recovery of Debts Owed to the United States Government by Employees	3220-AA19
3319	Employee Representative	3220-AA36

Completed Actions

Sequence Number	Title	Regulation Identifier Number
3320	Railroad Employers Reports and Responsibilities	3220-AA25
3321	Creditable Railroad Service	3220-AA26
3322	Creditable Railroad Compensation	3220-AA27
3325	Transfer, Assignment, or Waiver of Payments	3220-AA43

RRB

Completed Actions—Continued

Sequence Number	Title	Regulation Identifier Number
3324	Incompetence	3220-AA63

RAILROAD RETIREMENT BOARD (RRB) — Proposed Rule Stage

3295. PART 220 DETERMINING DISABILITY

Significance: Regulatory Program

Legal Authority: 45 USC 231f(b)(5)

CFR Citation: 20 CFR 220

Legal Deadline: None

Abstract: The Board's regulations with respect to disability determinations have not been updated for several years and they are, in certain respects, obsolete. When revised, this regulation should ease the administration of disability benefits and result in greater consistency in disability determinations.

Timetable:

Action	Date	FR Cite
NPRM	02/00/89	

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: None

Agency Contact: Grace Koester, Regulations Project Director, Railroad Retirement Board, Bureau of Hearings and Appeals, 844 Rush Street, Chicago, IL 60611, 312 751-4783

RIN: 3220-AA01

3296. ANNUITY BEGINNING AND ENDING DATES

Legal Authority: 45 USC 231f(b)(5)

CFR Citation: 20 CFR 216

Legal Deadline: None

Abstract: Part 216 is being revised to incorporate changes required as a result of amendments to the Railroad Retirement Act of 1974 made by the Omnibus Budget Reconciliation Act of 1981 and the Railroad Retirement Solvency Act of 1983.

Timetable:

Action	Date	FR Cite
NPRM	03/00/89	

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: None

Agency Contact: Thomas W. Sadler, General Attorney, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, IL 60611, 312 751-4513

RIN: 3220-AA13

3297. EVIDENCE REQUIRED FOR PAYMENT

Legal Authority: 45 USC 231f(b)(5)

CFR Citation: 20 CFR 219

Legal Deadline: None

Abstract: Part 219 is being revised to incorporate changes required as a result of amendments to the Railroad Retirement Act of 1974 made by the Omnibus Budget Reconciliation Act of 1981 and the Railroad Retirement Solvency Act of 1983.

Timetable:

Action	Date	FR Cite
NPRM	02/00/89	

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: None

Agency Contact: Thomas W. Sadler, General Attorney, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, IL 60611, 312 751-4513

RIN: 3220-AA14

3298. ELIGIBILITY FOR AN ANNUITY

Legal Authority: 45 USC 231f(b)(5)

CFR Citation: 20 CFR 218

Legal Deadline: None

Abstract: Part 218 is being revised to incorporate changes required as a result of amendments to the Railroad Retirement Act of 1974 made by the Omnibus Budget Reconciliation Act of 1981 and the Railroad Retirement Solvency Act of 1983.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: None

Agency Contact: Thomas W. Sadler, General Attorney, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, IL 60611, 312 751-4513

RIN: 3220-AA15

3299. APPLICATION FOR ANNUITY OR LUMP SUM

Legal Authority: 45 USC 231f(b)(5)

CFR Citation: 20 CFR 217

Legal Deadline: None

Abstract: Part 217 is being revised to incorporate changes required as a result of amendments to the Railroad Retirement Act of 1974 made by the Omnibus Budget Reconciliation Act of 1981 and the Railroad Retirement Solvency Act of 1983.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: None

Agency Contact: Thomas W. Sadler, General Attorney, Bureau of Law,

Railroad Retirement Board, 844 Rush Street, Chicago, IL 60611, 312 751-4513

RIN: 3220-AA18

3300. RECOVERY OF OVERPAYMENTS

Legal Authority: 45 USC 231f

CFR Citation: 20 CFR 255

Legal Deadline: None

Abstract: Part 255 is being revised to clarify when and how erroneous payments under the Railroad Retirement Act must be recovered. (Previously titled Erroneous Payments.)

Timetable:

Action	Date	FR Cite
NPRM	02/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Thomas W. Sadler, General Attorney, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, IL 60611, 312 751-4513

RIN: 3220-AA44

3301. SICKNESS BENEFITS

Legal Authority: 45 USC 362; 45 USC 363

CFR Citation: 20 CFR 335

Legal Deadline: None

Abstract: Part 335 will be amended to delete obsolete provisions and to simplify and clarify the language of that part.

Timetable:

Action	Date	FR Cite
NPRM	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Walter Witkovich, Regulations and Legal Specialist, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, IL 60611, 312 751-4750

RIN: 3220-AA45

3302. EMPLOYERS UNDER THE RAILROAD RETIREMENT ACT; EMPLOYERS UNDER THE RAILROAD UNEMPLOYMENT INSURANCE ACT

Legal Authority: 45 USC 231f; 45 USC 362(l)

CFR Citation: 20 CFR 202; 20 CFR 301

Legal Deadline: None

Abstract: The Board's regulations with respect to employer status have not been updated in recent years and may, in some respects, be obsolete. Parts 202 and 301 will be amended to conform them to current law, delete obsolete provisions, and to simplify and clarify the language of these parts.

Timetable:

Action	Date	FR Cite
NPRM	06/00/89	

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 40 Railroad Transportation

Agency Contact: Thomas W. Sadler, General Attorney, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, IL 60611, 312 751-4513

RIN: 3220-AA51

3303. EMPLOYEES UNDER THE RAILROAD RETIREMENT ACT

Legal Authority: 45 USC 231f; 45 USC 362(l)

CFR Citation: 20 CFR 203

Legal Deadline: None

Abstract: The Board's regulations with respect to employee status have not been updated in recent years and may, in some respects, be obsolete. Part 203 will be amended to conform it to current law, delete obsolete provisions, and to simplify and clarify the language of this part.

Timetable:

Action	Date	FR Cite
NPRM	02/00/89	

Small Entities Affected: None

Government Levels Affected: State, Federal

Sectors Affected: 40 Railroad Transportation

Agency Contact: Thomas W. Sadler, General Attorney, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, IL 60611, 312 751-4513

RIN: 3220-AA52

3304. EMPLOYMENT RELATION

Legal Authority: 45 USC 231f

CFR Citation: 20 CFR 204

Legal Deadline: None

Abstract: The Board's regulations with respect to Employment Relation have not been updated in recent years and may, in some respects, be obsolete. Part 204 will be amended to conform it to current law, delete obsolete provisions, and to simplify and clarify the language of this part.

Timetable:

Action	Date	FR Cite
NPRM	09/14/88	53 FR 35515
NPRM Comment Period End	10/14/88	

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 40 Railroad Transportation

Agency Contact: Thomas W. Sadler, General Attorney, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, IL 60611, 312 751-4513

RIN: 3220-AA53

3305. GENERAL ADMINISTRATION

Legal Authority: 45 USC 231f(b)(5)

CFR Citation: 20 CFR 200; 20 CFR 262

Legal Deadline: None

Abstract: The Railroad Retirement Board (Board) proposes to amend 20 CFR Part 200 to move sections of Part 262 into Part 200 to place these regulations more appropriately under General Administration.

Timetable:

Action	Date	FR Cite
NPRM	02/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Thomas W. Sadler, General Attorney, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, IL 60611, 312 751-4513

RIN: 3220-AA56

3306. FAMILY RELATIONSHIPS

Legal Authority: 45 USC 231f(b)(5)

CFR Citation: 20 CFR 222

Legal Deadline: None

Abstract: The Railroad Retirement Board (Board) proposes to add 20 CFR Part 222 to define any family relationship requirements needed to establish eligibility and entitlement for any monthly annuity or lump-sum payment under the Railroad Retirement Act of 1974.

Timetable:

Action	Date	FR Cite
NPRM	03/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Thomas W. Sadler, General Attorney, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, IL 60611, 312 751-4513

RIN: 3220-AA57

3307. COMPUTING EMPLOYEE, SPOUSE, AND DIVORCED SPOUSE ANNUITIES

Legal Authority: 45 USC 231f(b)(5)

CFR Citation: 20 CFR 220

Legal Deadline: None

Abstract: The Railroad Retirement Board's regulations on the computation of employee, spouse, and divorced spouse annuities must be updated to conform to the Railroad Retirement Act of 1974 and to amendments to the Act made by the Omnibus Budget Reconciliation Act of 1981 and the Railroad Solvency Act of 1983.

Timetable:

Action	Date	FR Cite
NPRM	06/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Thomas W. Sadler, General Attorney, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, IL 60611, 312 751-4513

RIN: 3220-AA58

3308. SURVIVOR ANNUITY COMPUTATIONS

Legal Authority: 45 USC 231f(f)(5)

CFR Citation: 20 CFR 228

Legal Deadline: None

Abstract: The Railroad Retirement Board (Board) proposes to add 20 CFR Part 228 to describe how survivor annuities are computed in accordance with the Railroad Retirement Act of 1974, and amendments to that Act made in 1981 and 1983.

Timetable:

Action	Date	FR Cite
NPRM	07/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Thomas W. Sadler, General Attorney, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, IL 60611, 312 751-4513

RIN: 3220-AA59

3309. SOCIAL SECURITY OVERALL MINIMUM

Legal Authority: 45 USC 231f(b)(5)

CFR Citation: 20 CFR 229

Legal Deadline: None

Abstract: The Railroad Retirement Board (Board) proposes to add 20 CFR Part 229 to describe when the social security overall minimum annuity computation applies and how it is computed for retirement annuities under the Railroad Retirement Act of 1974.

Timetable:

Action	Date	FR Cite
NPRM	08/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Thomas W. Sadler, General Attorney, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, IL 60611, 312 751-4513

RIN: 3220-AA60

3310. REDUCTION AND NON-PAYMENT OF ANNUITIES BY REASON OF WORK

Legal Authority: 45 USC 231f(b)(5)

CFR Citation: 20 CFR 230

Legal Deadline: None

Abstract: The Railroad Retirement Board (Board) proposes to amend 20 CFR Part 230 to explain how annuity deductions on account of work are assessed in accordance with current law.

Timetable:

Action	Date	FR Cite
NPRM	07/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Thomas W. Sadler, General Attorney, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, IL 60611, 312 751-4513

RIN: 3220-AA61

3311. PAYING SOCIAL SECURITY BENEFITS

Legal Authority: 45 USC 231f(b)(5)

CFR Citation: 20 CFR 235

Legal Deadline: None

Abstract: The Railroad Retirement Board (Board) proposes to add 20 CFR Part 235 to describe when and to whom the Board pays social security benefits as required by the Railroad Retirement Act of 1974.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Thomas W. Sadler, General Attorney, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, IL 60611, 312 751-4513

RIN: 3220-AA62

3312. ● MEDICARE

Legal Authority: 45 USC 231f(d)

CFR Citation: 20 CFR 238

Legal Deadline: None

Abstract: The Board proposes to add this part to explain its role in the administration of medicare benefits to qualified railroad retirement beneficiaries.

Timetable:

Action	Date	FR Cite
NPRM	06/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Thomas W. Sadler, General Attorney, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, 312 751-4513

RIN: 3220-AA64

3313. ● AVAILABLE FOR WORK

Legal Authority: 45 USC 362(b)

CFR Citation: 20 CFR 327

Legal Deadline: None

RRB — Proposed Rule Stage

Abstract: This proposed rule will amplify the meaning of "available for work" under the Railroad Unemployment Insurance Act in light of recent legal opinions.

Timetable:

Action	Date	FR Cite
NPRM	06/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Thomas W. Sadler, General Attorney, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, 312 751-4513

RIN: 3220-AA46

3314. ● EXHAUSTION OF RIGHTS TO BENEFITS

Legal Authority: 45 USC 362(l)

CFR Citation: 20 CFR 335

Legal Deadline: None

Abstract: This proposed amendment will remove obsolete provisions and clarify the meaning of the term extended benefit period as provided for in section 2(c) of the Railroad Unemployment Insurance Act.

Timetable:

Action	Date	FR Cite
NPRM	06/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Thomas W. Sadler, General Attorney, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, 312 751-4513

RIN: 3220-AA47

3315. ● REMUNERATION

Legal Authority: 45 USC 362(l)

CFR Citation: 20 CFR 322

Legal Deadline: None

Abstract: The Railroad Retirement Board proposes to amend Part 322 of its regulations under the Railroad Unemployment Insurance Act to remove obsolete language and to clarify the meaning of remuneration in light of recent legal opinions.

Timetable:

Action	Date	FR Cite
NPRM	06/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Thomas W. Sadler, General Attorney, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, 312 751-4513

RIN: 3220-AA66

RAILROAD RETIREMENT BOARD (RRB) — Final Rule Stage

3316. PRIMARY INSURANCE AMOUNT DETERMINATIONS

Legal Authority: 45 USC 231f(b)(5)

CFR Citation: 20 CFR 225

Legal Deadline: None

Abstract: The computation of benefits under the Railroad Retirement Act of 1974 is quite complex and is not easily understood by beneficiaries. This proposed regulation would explain primary insurance amount determinations in a manner that will enable claimants and beneficiaries to more easily understand this phase of benefit computations.

Timetable:

Action	Date	FR Cite
NPRM	08/07/83	48 FR 40360
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: None

Agency Contact: Thomas W. Sadler, General Attorney, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, IL 60611, 312 751-4513

RIN: 3220-AA08

3317. ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE RAILROAD RETIREMENT BOARD

Legal Authority: 29 USC 791; 29 USC 792; 29 USC 794 Rehabilitation Act of 1973; 42 USC 4151 to 4157; EO 12007; EO 12250; PL 95-602, Sec 119

CFR Citation: 20 CFR 385; 28 CFR 41; 28 CFR 41.3(f); 28 CFR 41.5(b)(2); 28 CFR 41.31; 28 CFR 41.32; 28 CFR 41.51; 28 CFR 41.56 to 41.58; 29 CFR 1613; 41 CFR 101-19.600 to 101-19.607

Legal Deadline: None

Abstract: This regulation provides for the enforcement of Section 504 of the Rehabilitation Act of 1973, as amended (29 USC 794), which prohibits discrimination on the basis of handicap, as it applies to programs or activities conducted by the Railroad Retirement Board.

Timetable:

Action	Date	FR Cite
NPRM	12/15/87	52 FR 47601
NPRM Comment Period End	02/16/88	52 FR 47601
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: None

Additional Information: The CFR citation was changed from 364 to 385. Part 364 was used to develop a regulation covering Use of Penalty Mail to Assist in the Location and Recovery of Missing Children. 52 FR 527, 01/07/87.

Agency Contact: Michael C. Litt, General Attorney, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, IL 60611, 312 751-4929

RIN: 3220-AA22

3318. RECOVERY OF DEBTS OWED TO THE UNITED STATES GOVERNMENT BY EMPLOYEES

Legal Authority: 5 USC 5514(b)(1)

CFR Citation: 20 CFR 341

Legal Deadline: None

Abstract: The Railroad Retirement Board is proposing regulations to provide for the administration of its authority under the Debt Collection Act of 1982, 5 USC 5514, to recover debts owed to the United States by installment collections from the current pay account of Federal employees.

RRB — Final Rule Stage

Timetable:

Action	Date	FR Cite
NPRM	01/05/88	53 FR 143
NPRM Comment Period End	05/04/88	53 FR 143
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Thomas W. Sadler, General Attorney, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, IL 60611, 312 751-4513

RIN: 3220-AA40

3319. EMPLOYEE REPRESENTATIVE

Legal Authority: 45 USC 231f; 45 USC 362(l)

CFR Citation: 20 CFR 205

Legal Deadline: None

Abstract: The Board's regulations with respect to Employee Representative have not been updated in recent years and may, in some respects, be obsolete. Part 205 will be amended to conform it to current law, delete obsolete provisions, and to simplify and clarify the language of this part.

Timetable:

Action	Date	FR Cite
NPRM	06/02/88	53 FR 20136
NPRM Comment Period End	08/01/88	53 FR 20136
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 40 Railroad Transportation

Agency Contact: Thomas W. Sadler, General Attorney, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, IL 60611, 312 751-4513

RIN: 3220-AA48

RAILROAD RETIREMENT BOARD (RRB) — Completed Actions

3320. RAILROAD EMPLOYERS REPORTS AND RESPONSIBILITIES

CFR Citation: 20 CFR 209

Completed:

Reason	Date	FR Cite
Final Action	05/16/88	53 FR 17182
Final Action Effective	05/16/88	53 FR 17182

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Ann T. Alden 312 751-3369

RIN: 3220-AA25

3321. CREDITABLE RAILROAD SERVICE

CFR Citation: 20 CFR 210

Completed:

Reason	Date	FR Cite
Final Action	05/16/88	53 FR 17182
Final Action Effective	05/16/88	53 FR 17182

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Ann T. Alden 312 751-3369

RIN: 3220-AA26

3322. CREDITABLE RAILROAD COMPENSATION

CFR Citation: 20 CFR 211

Completed:

Reason	Date	FR Cite
Final Action	05/16/88	53 FR 17182
Final Action Effective	05/16/88	53 FR 17182

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Ann T. Alden 312 751-3369

RIN: 3220-AA27

3323. TRANSFER, ASSIGNMENT, OR WAIVER OF PAYMENTS

CFR Citation: 20 CFR 243; 20 CFR 295; 20 CFR 262.5; 20 CFR 350

Completed:

Reason	Date	FR Cite
Final Action	09/15/88	53 FR 35806
Final Action Effective	09/15/88	

Small Entities Affected: None

Government Levels Affected: State, Federal

Agency Contact: Michael C. Litt 312 751-4929

RIN: 3220-AA43

3324. INCOMPETENCE

CFR Citation: 20 CFR 285

Completed:

Reason	Date	FR Cite
Withdrawn No action contemplated in this agenda period.	08/16/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Thomas W. Sadler 312 751-4513

RIN: 3220-AA48

[FR Doc. 88-20878 Filed 10-21-88; 8:45 am]

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Monday
October 24, 1988

Part XXXIX

Selective Service System

Semiannual Regulatory Agenda

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SELECTIVE SERVICE SYSTEM (SSS)

SELECTIVE SERVICE SYSTEM

32 CFR Ch. XVI

Regulatory Agenda

AGENCY: Selective Service System.

ACTION: Regulatory agenda.

SUMMARY: The purpose of this agenda is to report the proposed rulemaking activities of the Selective Service System that might affect the processing of registrants under the Military Selective Service Act (50 U.S.C. App. 451 *et seq.*). This information will allow the public to participate in the System's decision-making at an early stage.

FOR FURTHER INFORMATION CONTACT: Henry N. Williams, General Counsel, Selective Service System, Washington, DC 20435, telephone (202) 724-1167.

SUPPLEMENTARY INFORMATION: The agenda is published in accord with the requirements of E.O. 12291. Selective Service Regulations appear in 32 CFR Chapter XVI.

Dated: August 6, 1988.

Samuel K. Lessey Jr.,

Director of Selective Service.

SELECTIVE SERVICE SYSTEM (SSS)

Prerule Stage

3235. SELECTIVE SERVICE REGULATIONS

Legal Authority: 50 USC App. 451 et seq Military Selective Service Act

CFR Citation: 32 CFR Chapter XVI

Legal Deadline: None

Abstract: Various sections of 32 CFR Chapter XVI will be revised to increase clarity of expression or change procedures for registrant processing.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Henry N. Williams, General Counsel, Selective Service System, 1023 31st Street, NW, Washington, DC 20435, 202 724-1167

RIN: 3240-AA01

[FR Doc. 88-21362 Filed 10-21-88; 8:45 am]

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federal register

Monday
October 24, 1988

Part XL

Small Business Administration

Semiannual Regulatory Agenda

SMALL BUSINESS ADMINISTRATION (SBA)

SMALL BUSINESS ADMINISTRATION

13 CFR Ch. I

Improving Government Regulations; Semiannual Agenda

AGENCY: Small Business Administration.

ACTION: Publication of the semiannual agenda of regulations under review or development by the Small Business Administration.

SUMMARY: This is SBA's 19th semiannual agenda of regulations. Although not a regulatory agency, SBA has attempted to draft agendas that meet both the criteria and the spirit of the regulatory review process. This agenda is published pursuant to Executive Order 12291 and the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, Pub. L. 96-354, effective January 1, 198 .

FOR FURTHER INFORMATION CONTACT: For further information on agenda items, the public is encouraged to contact the individual Agency official listed for the particular item.

For information concerning SBA overall Regulatory Review and Development Program or for general semiannual agenda questions, contact Martin D. Teckler, Deputy General Counsel, Small Business Administration, 1441 L Street, NW., Washington, DC 20416, 202/653-6644.

SUPPLEMENTARY INFORMATION: The SBA agenda will contain many regulations which are limited in public impact. They are included to increase public knowledge of all SBA regulatory activities and allow for increased public participation in the review and development process.

Public comments on SBA's previous agendas have been general, and all have been positive. None were directed at specific contents, nor were any changes suggested or recommended.

The agenda format has four parts. Part I, Pre-Rulemakings, includes investigations and reviews to be conducted prior to deciding whether or not to propose a rule or rule change. Part II, Proposed Rules, includes rules which will be proposed during the six-month period covered by the agenda. Part III, Final Rules, includes proposed rules which will be finalized during the period covered by the agenda. Part IV, Completed Actions, includes regulations completed or withdrawn, and reviews completed since the preceding agenda.

Publication of this agenda does not impose any binding obligation on SBA with regard to any specific item in the agenda. Additional regulatory action not listed in the agenda is not precluded.

Dated: August 26, 1988.

James Abdnor,

Administrator.

Prerule Stage

Sequence Number	Title	Regulation Identifier Number
3326	Size Standards: Timber Industry	3245-AB34
3327	Small Business Size Standards: Hazards Waste Treatment	3245-AB53
3328	Small Business Size Standards: Naval Architecture and Marine Engineering	3245-AB54
3329	Small Business Size Standards: Refuse Systems and Surveying and Mapping	3245-AB61

Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
3330	Small Business Investment Company Regulations: Compliance Audits	3245-AB07
3331	Minority Small Business	3245-AB26
3332	Small Business Investment Companies	3245-AB29
3333	Small Business Lending Companies	3245-AB30
3334	Minority Small Business and Capital Ownership Development Assistance	3245-AB31
3335	Small Business Institutes - Counseling Fees	3245-AB32
3336	Loans to State and Local Development Companies	3245-AB35
3337	Nondiscrimination in Federally-Assisted Programs	3245-AB36
3338	Nondiscrimination in Financial Assistance Programs	3245-AB37
3339	User Fees for SBA Programs	3245-AB44
3340	Small Business Size Standards: Residual Size Standards	3245-AB57
3341	Procurement: Subcontracting Limitations	3245-AB62
3342	Uniform Administrative Requirements for Grants and Cooperative Agreements; Proposed Revision of Circular A-110	3245-AB67
3343	Revision of Rules on Advanced Payments, Business Development Expense and Contracts	3245-AB68
3344	Accrual of Interest Payable by SBA in Secondary Market	3245-AB69
3345	Size Standard for Refuse and Garbage Collection Services	3245-AB70
3346	Business Loans, Fees	3245-AB71
3347	Disaster Loans	3245-AB74

SBA

Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
3348	Certificate of Competency	3245-AA74
3349	Size Standards, Export Trading Companies	3245-AA88
3350	Regulations Applying Small Business Size Standards	3245-AA94
3351	Size Standard: Real Estate Agents	3245-AA96
3352	Small Business Investment Companies	3245-AD11
3353	Small Business Development Centers	3245-AD17
3354	Program Fraud Civil Remedies Regulations	3245-AD27
3355	Small Business Size Standards for Construction	3245-AB38
3356	Small Business Size Standards: Nonmanufacturers	3245-AD50
3357	Small Business Size Standards: Aircraft, Guided Missiles, and Space Vehicle Research and Development	3245-AB58
3358	Small Disadvantaged Business Status Appeals Procedures	3245-AB65
3359	Small Business Size Standards: Size Standard for Commodity Contracts Brokers and Dealers	3245-AB72
3360	Small Business Size Standards for Surveying and Mapping Services	3245-AB75

Completed Actions

Sequence Number	Title	Regulation Identifier Number
3361	Surety Bond Guarantee Regulations	3245-AA20
3362	Civil Rights Compliance: Discrimination on the Basis of Handicap	3245-AA21
3363	Size Standards; Travel Agencies	3245-AA58
3364	Loans to State and Local Development Companies	3245-AB10
3365	Small Business Size Standards; Modification of Size Standards to Make Existing Size Standards Compatible with New Standard Industrial Classification System (SIC)	3245-AB19
3366	Definition of Small Business for Dredging	3245-AB23
3367	Business Loans; Small Business Lending Companies	3245-AD40
3368	Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; Proposed Revision of Circular A-102	3245-AB41
3369	Business Loan Policy	3245-AB48
3370	Small Business Size Standards: Ship Hull Cleaning	3245-AD56
3371	Small Business Size Standards: Mobile and Modular Building	3245-AB56
3372	Revolving Line of Credit	3245-AB66
3373	Conflict of Interest	3245-AD73

SMALL BUSINESS ADMINISTRATION (SBA) — Prerule Stage

3326. SIZE STANDARDS: TIMBER INDUSTRY

Legal Authority: 15 USC 634(b)(6)

CFR Citation: 13 CFR 121

Legal Deadline: None

Abstract: Study related to natural resources sales program to determine whether rule change is needed.

Timetable:

Action	Date	FR Cite
Begin Review	10/15/87	
End Review	10/30/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Gary Jackson, Director, Size Standards Staff, Small Business Administration, 1441 L Street, N.W., Room 601, Washington, D.C. 20416, 202 653-6373

RIN: 3245-AB34

3327. SMALL BUSINESS SIZE STANDARDS: HAZARDS WASTE TREATMENT

Legal Authority: 15 USC 634(b)(6)

CFR Citation: 13 CFR 121

Legal Deadline: None

Abstract: Study of hazardous waste treatment industry.

Timetable:

Action	Date	FR Cite
Begin Review	09/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Gary Jackson, Director, Size Standards Staff, Small Business Administration, 1441 L Street, N.W., Washington, DC 20416, 202 653-6373

RIN: 3245-AD53

SBA — Prerule Stage

3326. SMALL BUSINESS SIZE STANDARDS: NAVAL ARCHITECTURE AND MARINE ENGINEERING

Legal Authority: 15 USC 634(b)(6)

CFR Citation: 13 CFR 121

Legal Deadline: None

Abstract: Study of Naval architecture and Marine engineering for size standards purposes.

Timetable:

Action	Date	FR Cite
Begin Review	09/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Gary Jackson, Director, Size Standards Staff, Small Business Administration, 1441 L Street, N.W., Room 601, Washington, DC 20416, [redacted]

RIN: 3245-AE54

3329. SMALL BUSINESS SIZE STANDARDS: REFUSE SYSTEMS AND SURVEYING AND MAPPING

Legal Authority: 15 USC 634(b)(6)

CFR Citation: 13 CFR 121

Legal Deadline: None

Abstract: Review of refuse systems and surveying and mapping industries for size standard purposes.

Timetable:

Action	Date	FR Cite
Begin Review	04/01/96	
End Review	02/01/99	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Gary Jackson, Director, Size Standards Staff, Small Business Administration, 1441 L Street, N.W., Room 601, Washington, DC 20416, [redacted]

RIN: 3245-AE01

SMALL BUSINESS ADMINISTRATION (SBA) — Proposed Rule Stage

3324. SMALL BUSINESS INVESTMENT COMPANY REGULATIONS: COMPLIANCE AUDITS

Legal Authority: 15 USC 687(b)

CFR Citation: 13 CFR 107

Legal Deadline: None

Abstract: Establishment of new system of periodic compliance audits of small business investment companies by independent certified public accountants.

Timetable:

Action	Date	FR Cite
NPRM	04/00/89	
NPRM Comment Period End	06/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Daniel Peyser, Counsel to the Inspector General, Small Business Administration, 1441 L Street, NW, Room 1018, Washington, DC 20416, [redacted]

RIN: 3245-AE07

3331. MINORITY SMALL BUSINESS

Legal Authority: 15 USC 634(b)(6)

CFR Citation: 13 CFR 124

Legal Deadline: None

Abstract: Regulations governing the participation of Indian tribes in the Section 8(a) program.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
NPRM Comment Period End	12/00/88	

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Joseph Mentor, Acting Associate Administrator, Minority, Small Business/Capital Ownership Development, Small Business Administration, 1441 L Street, N.W., Room 602, Washington, D.C. 20416, [redacted]

RIN: 3245-AE26

3332. SMALL BUSINESS INVESTMENT COMPANIES

Legal Authority: 15 USC 634(b)(6)

CFR Citation: 13 CFR 107

Legal Deadline: None

Abstract: Major revision to Part 107 of title 13 governing Small Business Investment Companies. The regulation will cover changes to ownership or control of a licensee, definition of private capital, deposits and investments of idle funds, other permissible financing, leverage for Section 301(d) SBICs, definition of small business concern , control of small concern, operational requirements, cost of money, funds to licensee, conflicts of interest provisions, redemptions, commitments, the purchase, sale or guarantee of securities evidencing leverage, and the filing of SBA Form 468.

Timetable:

Action	Date	FR Cite
NPRM	04/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Joseph L. Newell, Director, Office of Investment, Small Business Administration, 1441 L Street,N.W., Room 608, Washington, DC 20416, [redacted]

RIN: 3245-AE29

3333. SMALL BUSINESS LENDING COMPANIES

Legal Authority: 15 USC 634(b)(6)

CFR Citation: 13 CFR 120.302

Legal Deadline: None

Abstract: Cancellation of participation authority of Small Business Lending Companies that have not been active for five years or more.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Jean P. LaFonta, Acting Director, Office of Financial Institutions, Small Business Administration, 1441 L Street, N.W., Room 804, Washington, DC 20416, [redacted]

RIN: 3245-AB30

SBA — Proposed Rule Stage

3334. MINORITY SMALL BUSINESS AND CAPITAL OWNERSHIP DEVELOPMENT ASSISTANCE

Legal Authority: 15 USC 634(b)(6)

CFR Citation: 13 CFR 124

Legal Deadline: None

Abstract: Technical corrections and substantive changes to provisions on 8(a) program eligibility.

Timetable:

Action	Date	FR Cite
NPRM	03/00/89	
NPRM Comment Period End	05/00/89	

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Francisco Marrero, Director, Office of Program Eligibility/, MSB/COD, Small Business Administration, 1441 L Street, N.W., Room 602, Washington, D.C. 20416, [redacted]

RIN: 3245-AB31

3335. SMALL BUSINESS INSTITUTES - COUNSELING FEES

Legal Authority: 15 USC 634(b)(6)

CFR Citation: 13 CFR 129

Legal Deadline: None

Abstract: User fees for training conducted by SBA cosponsors under Section 8(b)(1) of the Small Business Act for training (management and/or technical), and for training and counseling provided by Small Business Institutes.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Businesses, Organizations

Government Levels Affected: Federal

Additional Information: The Small Business Administration is prohibited under the FY 88 Continuing Resolution on Appropriations, PL 100-202, from using appropriated funds to establish or increase user fees. Therefore, no action will be taken on this rule at this time. Future actions will depend upon FY 89 Appropriations legislation.

Agency Contact: John Cox, Associate Administrator for Business, Development, Small Business Administration, 1441 L Street, N.W., Room 317, Washington, D.C. 20416, [redacted]

RIN: 3245-AB32

3336. LOANS TO STATE AND LOCAL DEVELOPMENT COMPANIES

Legal Authority: 15 USC 634(b)(6)

CFR Citation: 13 CFR 108

Legal Deadline: None

Abstract: Complete revision of the Section 502 local development company rules.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: Businesses, Organizations

Government Levels Affected: Federal

Agency Contact: LeAnn Oliver, Financial Analyst, Small Business Administration, 1441 L Street, N.W., Room 720, Washington, D.C. 20416, [redacted]

RIN: 3245-AB35

3337. NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS

Legal Authority: 15 USC 634(b)(6); 42 USC 2000d-1

CFR Citation: 13 CFR 112

Legal Deadline: None

Abstract: Technical amendment to SBA's current regulation to clarify that if recipients of assistance under any of SBA's programs are found to have discriminated, SBA is authorized to take certain actions such as withholding further assistance.

Timetable:

Action	Date	FR Cite
NPRM	03/00/89	

Small Entities Affected: Businesses, Organizations

Government Levels Affected: Federal

Agency Contact: George Robinson, Director, Equal Employment Opportunity & Compliance, Small Business Administration, 1441 L Street, N.W., Room 501, Washington, D.C. [redacted]

RIN: 3245-AB37

3338. NONDISCRIMINATION IN FINANCIAL ASSISTANCE PROGRAMS

Legal Authority: 15 USC 634(b)(6); PL 85-536; 15 USC 633; 15 USC 634; 15 USC 687; 15 USC 1691; 20 USC 1681, et seq.; 29 USC 794

CFR Citation: 13 CFR 113

Legal Deadline: None

Abstract: Technical amendment to SBA's current regulation to clarify that if a beneficiary of one of SBA's financial assistance programs is found to have discriminated, SBA is authorized to take certain actions such as withholding further assistance or accelerating a loan.

Timetable:

Action	Date	FR Cite
NPRM	03/00/89	

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: George Robinson, Director, Equal Employment Opportunity & Compliance, Small Business Administration, 1441 L Street, N.W., Room 501, Washington, D.C. [redacted]

RIN: 3245-AB36

3339. USER FEES FOR SBA PROGRAMS

Legal Authority: 15 USC 687(c); 15 USC 687d; 15 USC 687g; 15 USC 694a; 15 USC 684b; 5 USC App. 1; 15 USC 632(a); 15 USC 634(b)(6); 15 USC 637(a); 15 USC 631; 15 USC 637(b); 15 USC 636(i); 15 USC 636(j); PL 93-113

CFR Citation: 13 CFR 101; 13 CFR 107; 13 CFR 115; 13 CFR 121; 13 CFR 124; 13 CFR 125; 13 CFR 129

Legal Deadline: None

Abstract: Establishment or modification of user fees for the following: use of SBA's Office of Advocacy database, guaranty of debentures issued by Small Business Investment Companies, guaranty of surety bonds, appeals of size determinations and and standard industrial classification code designations, application to the Minority Small Business (Section 8(a)) Program, training sponsored by the Service Corps of Retired Executives

SBA — Proposed Rule Stage

[SCORE], SBA's Office of Women's Business Ownership, and SBA's Office of Veterans Affairs, counseling by Small Business Institutes and application for a Certificate of Competency.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Federal

Additional Information: The Small Business Administration is prohibited under the FY 88 Continuing Resolution on Appropriations, PL 100-202, from using appropriated funds to establish or increase user fees. Therefore, no action will be taken on this rule at this time. Future actions will depend upon FY 89 Appropriations legislation.

Agency Contact: Ramona Powell, Attorney Adviser, Small Business Administration, 1441 L Street, N.W., Room 722, Washington, DC 20416, 202 653-6457

RIN: 3245-AB44

3340. SMALL BUSINESS SIZE STANDARDS: REVENUE SIZE STANDARDS

Legal Authority: 15 USC 632(a); 15 USC 634(b)(6)

CFR Citation: 13 CFR 121

Legal Deadline: None

Abstract: Establishes size standard for industries for which no size standard has been previously established.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Gary Jackson, Director, Size Standards Staff, Small Business Administration, 1441 L Street, N.W., Room 601, Washington, DC 20416, 202 653-6373

RIN: 3245-AB57

3341. PROCUREMENT: SUBCONTRACTING LIMITATIONS

Legal Authority: PL 99-591; PL 99-661; 15 USC 634(b)(6)

CFR Citation: 13 CFR 125

Legal Deadline: None

Abstract: Guidelines for application of subcontracting limitations imposed by Public Laws 99-591 and 99-661.

Timetable:

Action	Date	FR Cite
NPRM	01/00/89	
NPRM Comment Period End	03/00/89	

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Monika E. Harrison, Associate Administrator for Procurement Assistance, Small Business Administration, 1441 L Street, N.W., Room 600, Washington, DC 20416, 202 653-6635

RIN: 3245-AB82

3342. ◆ UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS; PROPOSED REVISION OF CIRCULAR A-110

Legal Authority: 15 USC 634(b)(6)

CFR Citation: 13 CFR 143

Legal Deadline: None

Abstract: This regulation establishes a uniform administrative rule for the SBA's grants and cooperative agreements.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
NPRM Comment Period End	12/00/88	

Small Entities Affected: Businesses, Organizations

Government Levels Affected: Local, State, Federal

Agency Contact: Patricia R. Forbes, Chief Counsel for Legislation, Small Business Administration, 1441 L Street, N.W., Room 722, Washington, DC 20416, 202 653-6379

RIN: 3245-AB07

3343. ◆ REVISION OF RULES ON ADVANCED PAYMENTS, BUSINESS DEVELOPMENT EXPENSE AND CONTRACTS

Legal Authority: 15 USC 637(a)

CFR Citation: 13 CFR 124

Legal Deadline: None

Abstract: Revision of sections on Advanced Payments, Business Development Expense and Contracts. Technical changes and clarifications. Possible substantive changes to section on subcontracting limitations.

Timetable:

Action	Date	FR Cite
NPRM	03/00/89	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Joseph Mahan, Acting Associate Administrator for Minority, Small Business/Capital Ownership Development, Small Business Administration, 1441 L Street, N.W., Room 602, Washington, DC 20416, 202 653-6467

RIN: 3245-AB08

3344. ◆ ACCRUAL OF INTEREST PAYABLE BY SBA IN SECONDARY MARKET

Legal Authority: 15 USC 634(f); 15 USC 634(g); 15 USC 634(h); 15 USC 634(b)(6); 15 USC 636(a)

CFR Citation: 13 CFR 120

Legal Deadline: None

Abstract: SBA Form 1088, Secondary Participation Guaranty and Certification Agreement, has been revised. Included therein are changes fixing the interest calculation to be made in the event a borrower defaults and SBA is called on to honor its guaranty. The net effect of the change would be to guarantee the SBA's obligation in paying accrued interest. The regulation would spell out the rules and procedures contained in the revised form.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	
NPRM Comment Period End	01/00/89	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Alan S. Mandel, Assistant Deputy Associate Administrator, for Financial Assistance, Small Business Administration, 1441 L Street, N.W., Room 804, Washington, DC 20416, 202 653-6586

RIN: 3245-AB09

SBA — Proposed Rule Stage

3345. ◆ SIZE STANDARD FOR REFUSE AND GARBAGE COLLECTION SERVICES

Significance: Regulatory Program

Legal Authority: 15 USC 632(a); 15 USC 634(b)(6); PL 99-591; PL 99-661

CFR Citation: 13 CFR 121

Legal Deadline: None

Abstract: Establishment of size standard of $1.5 million for refuse and garbage collection services within Standard Industrial Classification (SIC) Codes 4212 (Local Trucking Without Storage) and 4953 (Refuse Systems) in compliance with PL 99-591 and PL 99-661 which direct the SBA to revise its size standards for refuse systems and related services if the total dollar value of small business set-aside and section 8(a) program awards for these activities exceed 30 per cent of the dollar value of overall Federal procurements for these activities.

Timetable:

Action	Date	FR Cite
NPRM	06/15/88	53 FR 30691
Correction	06/28/88	53 FR 32821
NPRM Comment Period End	10/14/88	53 FR 36990
Final Action	11/00/88	

Small Entities Affected: Businesses, Organizations

Government Levels Affected: Federal

Agency Contact: Monika E. Harrison, Chairperson, Size Policy Board, Small Business Administration, 1441 L Street, N.W., Room 600, Washington, DC 20416, 202 653-6635

RIN: 3245-AB70

3346. ◆ BUSINESS LOANS, FEES

Legal Authority: 15 USC 634(b)(6); 15 USC 636(a)

CFR Citation: 13 CFR 120.104-2(e)

Legal Deadline: None

Abstract: A lender or associate will be permitted to charge an applicant for an SBA loan reasonable fees for packaging and/or other services. SBA will not ordinarily review such fees but it will investigate if an applicant complains.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
NPRM Comment Period End	12/00/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Charles R. Hertzberg, Deputy Associate Administrator for, Financial Assistance, Small Business Administration, 1441 L Street, N.W., Room 804-D, Washington, DC 20416, 202 653-6574

RIN: 3245-AB71

3347. ◆ DISASTER LOANS

Legal Authority: 15 USC 634(b)(6); 15 USC 636(b); 15 USC 636(c); 15 USC 636(f); PL 98-270, Title III; PL 99-272, Sec 18006

CFR Citation: 13 CFR 123

Legal Deadline: None

Abstract: Amend disaster loan regulation by authorizing SBA to establish a flexible repayment schedule during the first two years of a disaster loan, reflecting the borrower's ability to pay. Rule would also harmonize SBA's disaster loan making authority with the Federal Emergency Management Administration's (FEMA) standard flood insurance policy.

Timetable:

Action	Date	FR Cite
NPRM	08/08/88	53 FR 29691
NPRM Comment Period End	10/07/88	
Final Action	12/00/88	

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: Bernard Kulik, Deputy Associate Administrator for, Disaster Assistance, Small Business Administration, 1441 L Street, N.W., Room 820, Washington, DC 20416, 202 653-6879

RIN: 3245-AB74

SMALL BUSINESS ADMINISTRATION (SBA) — Final Rule Stage

3348. CERTIFICATE OF COMPETENCY

Legal Authority: 15 USC 634(b)(6)

CFR Citation: 13 CFR 125.5

Legal Deadline: None

Abstract: Overall revision to Certificate of Competency regulations.

Timetable:

Action	Date	FR Cite
NPRM	06/13/88	53 FR 22015
NPRM Comment Period End	08/12/88	
Final Action	12/00/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Robert Moffitt, Deputy Associate Administrator for, Procurement Assistance, Small Business Administration, 1441 L Street, NW, Room 626, Washington, DC 20416, 202 653-6582

RIN: 3245-AA74

3349. SIZE STANDARDS, EXPORT TRADING COMPANIES

Significance: Regulatory Program

Legal Authority: 15 USC 634(b)(6); 15 USC 632

CFR Citation: 13 CFR 121

Legal Deadline: None

Abstract: Propose size standard for Export Trading Companies.

Timetable:

Action	Date	FR Cite
NPRM	06/07/88	53 FR 20857
NPRM Comment Period End	08/06/88	
Final Action	01/00/89	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Gary Jackson, Director, Size Standards Staff, Small Business Administration, 1441 L Street,

SBA — Final Rule Stage

NW, Washington, DC 20416, 202 653-6373

RIN: 3245-AA80

3350. REGULATIONS APPLYING SMALL BUSINESS SIZE STANDARDS

Significance: Regulatory Program

Legal Authority: 15 USC 632(a)

CFR Citation: 13 CFR 121

Legal Deadline: None

Abstract: Revision of substantive rules governing compliance with small business size standards.

Timetable:

Action	Date	FR Cite
NPRM	08/31/87	52 FR 32870
NPRM Comment Period End	10/30/87	
Final Action	12/00/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: David R. Kohler, Associate General Counsel, Small Business Administration, 1441 L Street, NW, Room 700, Washington, DC 20416, 202 653-6485

RIN: 3245-AA80

3351. SIZE STANDARD: REAL ESTATE AGENTS

Significance: Regulatory Program

Legal Authority: 15 USC 634(b)(6)

CFR Citation: 13 CFR 121

Legal Deadline: None

Abstract: Establishing a size standard for the real estate agents industry for the first time.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/03/85	50 FR 27418
Final Action	01/00/89	

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Gary Jackson, Director, Size Standards Staff, Small Business Administration, 1441 L Street, NW, Room 601, Washington, DC 20416, 202 653-6373

RIN: 3245-AA88

3352. SMALL BUSINESS INVESTMENT COMPANIES

Significance: Agency Priority

Legal Authority: 15 USC 320

CFR Citation: 13 CFR 107

Legal Deadline: Other, Statutory, June 7, 1988.

Abstract: Establishment of mechanism for selling to the public certificates of interest backed by pools of SBIC guaranteed debentures and of a system of registration of such sales.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/12/86	51 FR 21484
Final Action	04/00/89	

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Robert G. Lineberry, Deputy Associate Administrator/Investment, Small Business Administration, 1441 L Street, NW, Room 808, Washington, DC 20416, 202 653-6548

RIN: 3245-AB12

3353. SMALL BUSINESS DEVELOPMENT CENTERS

Significance: Agency Priority

Legal Authority: PL 98-302; PL 98-395

CFR Citation: 13 CFR 129

Legal Deadline: None

Abstract: Comprehensive regulations governing the Small Business Development Center Program.

Timetable:

Action	Date	FR Cite
NPRM	10/23/86	51 FR 37580
Comment period extended to 1/21/87	11/24/86	51 FR 42255
NPRM Comment Period End	12/22/86	

Next Action Undetermined

Small Entities Affected: Businesses, Organizations

Government Levels Affected: Federal

Additional Information: The Fiscal Year (FY) 1988 Continuing Resolution on Appropriations prohibits the Small Business Administration from using appropriated funds to adopt or implement any rules or regulations for the Small Business Development Center program. Therefore, no action will be taken on this rule at this time. Future actions will depend upon FY 89 Appropriations legislation.

Agency Contact: Janice Wolf, Deputy Associate Administrator for Business Development, Small Business Administration, 1441 L Street, NW, Room 317, Washington, DC 20416, 202 653-6768

RIN: 3245-AB17

3354. PROGRAM FRAUD CIVIL REMEDIES REGULATIONS

Legal Authority: PL 99-501, Sec 6103

CFR Citation: 13 CFR 141

Legal Deadline: NPRM, Statutory, April 21, 1987.

Abstract: Regulations implementing the Program Fraud Civil Remedies Act

Timetable:

Action	Date	FR Cite
NPRM	05/21/87	52 FR 19156
NPRM Comment Period End	06/22/87	52 FR 19156
Final Action	11/00/88	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Patricia R. Forbes, Chief Counsel for Legislation, Small Business Administration, 1441 L Street, N.W., Room 722, Washington, D.C. 20416, 202 653-6573

RIN: 3245-AB27

3355. SMALL BUSINESS SIZE STANDARDS FOR CONSTRUCTION

Significance: Regulatory Program

Legal Authority: PL 99-591; PL 99-661

CFR Citation: 13 CFR 121

Legal Deadline: None

Abstract: Rule to amend size standards for the construction industry division (except heavy construction, not elsewhere classified, and dredging). Size standard amendments and subcontracting limitations are made pursuant to requirements in PL 99-591 and PL 99-661.

SBA — Final Rule Stage

Timetable:

Action	Date	FR Cite
ANPRM	03/17/87	52 FR 08261
ANPRM Comment Period End	04/16/87	52 FR 08261
NPRM	12/17/87	52 FR 47937
NPRM Comment Period End	02/16/88	
Final Action	10/00/88	
Final Action Effective	10/00/88	

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Gene VanArsdale, Director, Office of Procurement Policy and Liaison, Small Business Administration, 1441 L Street, N.W., Room 600, Washington, D.C. 20416, 202 653-6588

RIN: 3245-AB38

3356. SMALL BUSINESS SIZE STANDARDS: NONMANUFACTURERS

Significance: Agency Priority

Legal Authority: 15 USC 632(a); 15 USC 634(b)(6)

CFR Citation: 13 CFR 121

Legal Deadline: None

Abstract: Establishes size standard for nonmanufacturers.

Timetable:

Action	Date	FR Cite
NPRM	04/26/88	53 FR 15232
NPRM Comment Period End	05/[illegible]/88	
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Gary Jackson, Director, Size Standards Staff, Small Business Administration, 1441 L Street, N.W., Room 601, Washington, DC 20416, 202 653-6373

RIN: 3245-AB50

3357. SMALL BUSINESS SIZE STANDARDS: AIRCRAFT, GUIDED MISSILES, AND SPACE VEHICLE RESEARCH AND DEVELOPMENT

Significance: Agency Priority

Legal Authority: 15 USC 632(a); 15 USC 634(b)(6)

CFR Citation: 13 CFR 121

Legal Deadline: None

Abstract: Establishes small business size standard for aircraft, guided missiles and space vehicles.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/30/88	53 FR 10244
Final Action	10/[illegible]/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Gary Jackson, Director, Size Standards Staff, Small Business Administration, 1441 L Street, N.W., Room 601, Washington, DC 20416, 202 653-6373

RIN: 3245-AB58

3358. SMALL DISADVANTAGED BUSINESS STATUS APPEALS PROCEDURES

Significance: Agency Priority

Legal Authority: 15 USC 634(b)(6); PL 99-88, Sec 1207(a)

CFR Citation: 13 CFR 121

Legal Deadline: None

Abstract: Procedural rules to be used whenever SBA is asked to make a determination concerning disadvantaged status of a small business concern.

Timetable:

Action	Date	FR Cite
NPRM	06/06/88	53 FR 21482
NPRM Comment Period End	07/06/88	
Final Action	10/00/88	

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Joseph Montes, Acting, Associate Administrator for Minority Small, Business & Capital Ownership Development, Small Business Administration, 1441 L Street, N.W., Room 602, Washington, DC 20416, 202 653-6407

RIN: 3245-AB63

3359. ◆ SMALL BUSINESS SIZE STANDARDS: SIZE STANDARD FOR COMMODITY CONTRACTS BROKERS AND DEALERS

Significance: Regulatory Program

Legal Authority: 15 USC 632(a); 15 USC 634(b)(6)

CFR Citation: 13 CFR 121

Legal Deadline: None

Abstract: Establishment of size standard of $3.5 million annual receipts for commodity contracts brokers and dealers. Standard Industrial Classification (SIC) Code 6221, for which no size standard exists at present.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/[illegible]/88	53 FR 29870
Final Action	02/00/89	

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Gary M. Jackson, Director, Size Standards Staff, Small Business Administration, 1441 L Street, N.W., Room 601, Washington, DC 20416, 202 653-6373

RIN: 3245-AB72

3360. ◆ SMALL BUSINESS SIZE STANDARDS FOR SURVEYING AND MAPPING SERVICES

Significance: Regulatory Program

Legal Authority: 15 USC 632(a); 15 USC 634(b)(6); PL 99-591, Sec 921; PL 99-661, Sec 921

CFR Citation: 13 CFR 121

Legal Deadline: None

Abstract: Review of size standards for surveying and mapping services pursuant to the National Defense Authorization Act of 1987 (PL 99-661). Purpose of the review is to ensure that small business set-aside plus 8(a) contracts together account for no more than approximately 30 percent of the total value of Federal contracts for each industry covered by the legislation. Adjustment of the size standard for both surveying and mapping services in Standard Industrial Classification (SIC) Code 8713 to $.75 million in gross annual receipts.

Timetable:

Action	Date	FR Cite
NPRM	08/15/88	53 FR 30689
NPRM Comment Period End	09/14/88	
Final Action	11/00/88	

Small Entities Affected: Businesses

Government Levels Affected: Federal

SBA — Final Rule Stage

Agency Contact: Gary M. Jackson, Director, Size Standards Staff, Small Business Administration, 1441 L Street, N.W., Room 601, Washington, DC 20416, 202 653-6373

RIN: 3245-AE75

SMALL BUSINESS ADMINISTRATION (SBA) — Completed Actions

3261. SURETY BOND GUARANTEE REGULATIONS

Legal Authority: 15 USC 634(b)(6); 15 USC 694b(d)

CFR Citation: 13 CFR 115

Legal Deadline: None

Abstract: Revision of the existing regulations for SBA's Surety Bond Guarantee Program. These changes will allow SBA to vary the percentage of its guarantee depending upon SBA's experience with the surety company requesting the guarantee. It also makes the fee which SBA charges for its guarantee negotiable.

Timetable:

Action	Date	FR Cite
ANPRM	08/19/83	48 FR 37658
ANPRM Comment Period End	10/19/83	
NPRM	08/21/85	50 FR 33766
NPRM Comment Period End	10/21/85	
Final Action	06/24/88	53 FR 32195
Technical correction	09/08/88	53 FR 34872
Final Action Effective	10/24/88	

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Howard F. Huegel, Director, Office of Special Guarantees, Small Business Administration, 4040 N. Fairfax Drive, Arlington, VA 22203, 703 235-2900

RIN: 3245-AA20

3262. CIVIL RIGHTS COMPLIANCE: DISCRIMINATION ON THE BASIS OF HANDICAP

Legal Authority: 42 USC 2000d-1

CFR Citation: 13 CFR 136

Legal Deadline: None

Abstract: Prohibition of discrimination in SBA programs on the basis of handicap.

Timetable:

Action	Date	FR Cite
NPRM	07/02/84	49 FR 27184
NPRM Comment Period End	10/31/84	
Final Action	05/31/88	53 FR 19752
Final Action Effective	07/15/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: George H. Robinson, Director, Small Business Administration, Office of EEO&C, 1441 L Street, NW, Washington, DC 20416, 202 653-6000

RIN: 3245-AA21

3263. SIZE STANDARDS; TRAVEL AGENCIES

Significance: Regulatory Program

Legal Authority: 15 USC 632; 15 USC 634(b)(6)

CFR Citation: 13 CFR 121

Legal Deadline: None

Abstract: Review of Size Standards necessitated by GSA awards of travel contracts resulted in decision to modify proposed standard.

Timetable:

Action	Date	FR Cite
NPRM	07/30/86	51 FR 27192
NPRM Comment Period End	09/29/86	
Final Action	05/25/88	53 FR 18820
Final Action; correction	06/08/88	53 FR 21547
Final Action Effective	06/24/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Gary Jackson, Director, Size Standards Staff, Small Business Administration, 1441 L Street, NW, Room 601, Washington, DC 20416, 202 653-6373

RIN: 3245-AA58

3264. LOANS TO STATE AND LOCAL DEVELOPMENT COMPANIES

Significance: Agency Priority

Legal Authority: PL 99-272, Sec 18008

CFR Citation: 13 CFR 108

Legal Deadline: None

Abstract: Rules for conducting a two year pilot program through which debentures guaranteed under section 503 of the Small Business Investment Act and interests in pools of debentures issued under section 504 of that Act are sold to investors through public sale or private placement.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/23/87	52 FR 27672
Interim Final Rule	07/23/87	52 FR 27672
Final Action	03/30/88	53 FR 10242
Final Action Effective	03/30/88	

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: LeAnn Oliver, Financial Analyst, Small Business Administration, 1441 L Street, NW, Room 720, Washington, DC 20416, 202 653-6416

RIN: 3245-AB10

3265. SMALL BUSINESS SIZE STANDARDS; MODIFICATION OF SIZE STANDARDS TO MAKE EXISTING SIZE STANDARDS COMPATIBLE WITH NEW STANDARD INDUSTRIAL CLASSIFICATION SYSTEM (SIC)

Significance: Regulatory Program

Legal Authority: 15 USC 637(a); 15 USC 634(b)(6)

CFR Citation: 13 CFR 121

Legal Deadline: None
This deadline was created by OMB's publication of comprehensive changes to the Standard Industrial Classification Code System, effective 1/1/87.

SBA — Completed Actions

Abstract: The SBA is modifying its size standards to conform with the newly revised SIC system which has been revised by the Office of Management and Budget effective January 1, 1987.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/06/87	52 FR 397
Final Action	05/25/88	53 FR 18821
Final Action Effective	07/01/88	
Final Action; correction	07/13/88	53 FR 26426

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Gary Jackson, Director, Size Standards Staff, Small Business Administration, 1441 L Street, N.W., Room 601, Washington, D.C. 20416, 202 653-6373

RIN: 3245-AE19

3266. DEFINITION OF SMALL BUSINESS FOR DREDGING

Significance: Regulatory Program

Legal Authority: 15 USC 632(a); 15 USC 634(b)(6)

CFR Citation: 13 CFR 121

Legal Deadline: Other, Judicial, November 3, 1988.
This change is in response to an order from the District Court for the District of Columbia which set aside the current dredging size standard ($13.5 million) but left in place the previous size

Abstract: To clarify for the public and others who use SBA size standards that as of November 3, 1988, the applicable size standard for the dredging industry will be $9.5 million average annual receipts. To raise size standard to $13.5 million for all future dredging contracts.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/08/86	51 FR 44036
Begin Review	10/15/87	
End Review	04/15/88	
Final Action	08/25/88	53 FR 32370
Final Action Effective	09/15/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Final rule raising size standard to $13.5 million.

Agency Contact: Gary Jackson, Director, Size Standards Staff, Small Business Administration, 1441 L Street, N.W., Room 601, Washington, D.C. 20416, 202 653-6373

RIN: 3245-AE23

3267. BUSINESS LOANS; SMALL BUSINESS LENDING COMPANIES

Legal Authority: 15 USC 634(b)(6)

CFR Citation: 13 CFR 120

Legal Deadline: None

Abstract: This proposed rule change would treat a Small Business Lending Company (SBLC) as other lenders which participate with the Small Business Administration in making SBA guaranteed loans. It would also clarify that an SBLC could participate in the secondary market and could assemble pools comprised of SBA guaranteed portions of loans made by others as well as pools of loans it has generated.

Timetable:

Action	Date	FR Cite
NPRM	05/21/87	52 FR 19155
NPRM Comment Period End	06/22/87	52 FR 19155
Withdrawn	08/15/88	
Final Action	10/00/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Jean P. LaForce, Acting Director, Office of Financial Institutions, Small Business Administration, 1441 L Street, N.W., Room 800, Washington, D.C. 20416, 202 653-2586

RIN: 3245-AD40

3268. UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS; PROPOSED REVISION OF CIRCULAR A-102

Legal Authority: 15 USC 634(b)(6)

CFR Citation: 13 CFR 143

Legal Deadline: None

Abstract: The regulation establishes a uniform administrative rule for the Small Business Administration's cooperative agreements and State grants.

Timetable:

Action	Date	FR Cite
NPRM	06/09/87	52 FR 21824
NPRM Comment Period End	08/10/87	52 FR 21820
Final Action	03/11/88	53 FR 8034
Final Action Effective	10/01/88	

Small Entities Affected: None

Government Levels Affected: Local, State, Federal

Agency Contact: Patricia R. Forbes, Chief Counsel for Legislation, Small Business Administration, 1441 L Street, N.W., Room 722, Washington, D.C. 20416, 202 653-6373

RIN: 3245-AE41

3269. BUSINESS LOAN POLICY

Significance: Regulatory Program

Legal Authority: 15 USC 634(b)(6); 15 USC 636(a); 15 USC 636(h)

CFR Citation: 13 CFR 120

Legal Deadline: None

Abstract: Would permit SBA to suspend or revoke privilege of lenders, brokers, dealers and registered holders to sell or otherwise deal in section 7(a) secondary market loan or pool certificates for significant violations of secondary market rules and regulations and for certain other offenses. Would also clarify disclosure requirements and modify requirements for pool assembler eligibility.

Timetable:

Action	Date	FR Cite
NPRM	11/04/87	52 FR 42305
NPRM Comment Period End	12/04/87	52 FR 42305
Final Action	03/08/88	53 FR 7343
Final Action Effective	03/08/88	

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Alan S. Mandel, Assistant Deputy Associate Administrator, for Financial Assistance, Small Business Administration, 1441 L Street, N.W., Room 804, 202 653-6696

RIN: 3245-AD46

3270. SMALL BUSINESS SIZE STANDARDS: SHIP HULL CLEANING

Legal Authority: 15 USC 634(b)(6)

SBA — Completed Actions

CFR Citation: 13 CFR 121

Legal Deadline: None

Abstract: Review Ship Hull Cleaning Industry for Size Standards purposes.

Timetable:

Action	Date	FR Cite
Begin Review	01/15/88	
Withdrawn (discontinued study	04/01/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Gary Jackson, Director, Size Standards Staff, Small Business Administration, 1441 L Street, N.W., Room 601, Washington, DC 20416, 202 653-6373

RIN: 3245-AI36

3371. SMALL BUSINESS SIZE STANDARDS: MOBILE AND MODULAR BUILDING

Legal Authority: 15 USC 634(b)(6)

CFR Citation: 13 CFR 121

Legal Deadline: None

Abstract: Review of mobile and modular building industry for size standards purposes.

Timetable:

Action	Date	FR Cite
Begin Review	01/15/88	
Withdrawn. Discontinued study	04/01/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Gary Jackson, Director, Size Standards Staff, Small Business Administration, 1441 L Street, N.W., Room 601, Washington, DC 20416, 202 653-6373

RIN: 3245-AI37

3372. REVOLVING LINE OF CREDIT

Significance: Regulatory Program

Legal Authority: 15 USC 634(b)(6)

CFR Citation: 13 CFR 120

Legal Deadline: None

Abstract: Rule would establish a pilot program for the creation of an SBA-guaranteed revolving line of credit.

Timetable:

Action	Date	FR Cite
Withdrawn	05/01/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Charles R. Hertzberg, Deputy Associate Administrator, Financial Assistance Division, Small Business Administration, 1441 L Street, N.W., Room 804, Washington, DC 20416, 202 653-6574

RIN: 3245-AI05

3373. ● CONFLICT OF INTEREST

Legal Authority: 15 USC 634; EO 11222

CFR Citation: 13 CFR 105

Legal Deadline: None

Abstract: Proposed changes to SBA's Standards of Conduct regulations in accordance with a Government-wide policy regarding exceptions to the prohibition of acceptance of food and refreshments by Executive Branch employees from prohibited sources. Rule provides that SBA employees may accept food and refreshments under certain limited specified circumstances.

Timetable:

Action	Date	FR Cite
NPRM	06/30/88	53 FR 24727
NPRM Comment Period End	08/01/88	
Final Action	10/04/88	53 FR 38941
Final Action Effective	10/04/88	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Michael F. Kinkead, Alternate Agency Ethics Official, Small Business Administration, 1441 L Street, N.W., Room 722, Washington, DC 20416, 202 653-6581

RIN: 3245-AI73

[FR Doc. 88-21003 Filed 10-21-88; 8:45 am]

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federal register

Monday
October 24, 1988

Part XLI

Tennessee Valley Authority

Semiannual Regulatory Agenda

TENNESSEE VALLEY AUTHORITY (TVA)

TENNESSEE VALLEY AUTHORITY

18 CFR Ch. XIII

Regulatory Agenda

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Regulatory agenda.

SUMMARY: As a nonregulatory agency, TVA originates very few regulations. However, TVA has two regulations under development and also has published a notice of intent with regard to a third regulation. TVA is therefore publishing a regulatory agenda in voluntary compliance with Executive Order No. 12291.

FOR FURTHER INFORMATION CONTACT: For further information please contact the persons listed.

W. F. Willis,

Executive Vice President and Chief Operating Officer.

TENNESSEE VALLEY AUTHORITY (TVA) — Proposed Rule Stage

3374. PROTECTION OF ARCHAEOLOGICAL RESOURCES

Legal Authority: 16 USC 470aa to 470ll

CFR Citation: 18 CFR 1312

Legal Deadline: None

Abstract: The planned regulations will implement provisions of the Archaeological Resources Protection Act of 1979 by providing protection of archaeological resources on public lands in TVA custody and control. TVA will seek to protect such resources through permits authorizing excavation or removal of resources, through civil penalties for unauthorized excavation or removal, through preservation of archaeological resource collections and data, and through assuring confidentiality of information about resources when disclosure would threaten the resources. The planned regulations will supplement existing uniform regulations by assigning specific responsibilities within TVA.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Maxwell D. Ramsey, Manager, Cultural Resources, Tennessee Valley Authority, 238 Natural Resources Building, Norris, TN 37828, 615 632-1888

RIN: 3316-AA02

3375. ALTERNATIVE PROGRAM FOR SHARING PATENT-RELATED INCOME

Legal Authority: 15 USC 3710, amended by PL 99-502

CFR Citation: 18 CFR Not yet determined

Legal Deadline: Final, Statutory, October 1988.
The royalty-sharing program under the statute must be implemented if the alternative program has not been implemented by October 1988; however, the statute does not preclude (cont)

Abstract: Pursuant to new section 14 of the Stevenson-Wydler Act, TVA has elected to promulgate regulations providing for an alternative program for sharing royalties and other patent-related income with its employee-inventors.

Timetable:

Action	Date	FR Cite
ANPRM	01/14/87	52 FR 1469
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LEGAL DEADLINE CONT: implementations of an alternative program at a later date.

Agency Contact: H. Brown Wright, Program Manager (Technology Commercialization), Tennessee Valley Authority, 400 West Summit Hill Drive, EP D45 C-K, Knoxville, TN 37902, 615 632-2871

RIN: 3315-AA05

3376. NONDISCRIMINATION ON THE BASIS OF SEX IN FEDERALLY ASSISTED EDUCATIONAL PROGRAMS

Legal Authority: 20 USC 1682; 16 USC 831 to 831dd

CFR Citation: 18 CFR Not yet determined

Legal Deadline: None

Abstract: This regulation implements 20 USC 1681 which assures nondiscrimination on the basis of sex in educational programs or activities receiving financial assistance from Federal agencies.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Freddie L. Hogan, Supervisor, Contracts and Community Assistance Section, Tennessee Valley Authority, 49 E&D Building, Muscle Shoals, AL 35660, 615 632-2865

RIN: 3316-AA13

[FR Doc. 88-21004 Filed 10-21-88; 8:45 am]
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federal register

Monday
October 24, 1988

Part XLII

Veterans Administration

Semiannual Regulatory Agenda

VETERANS ADMINISTRATION (VA)

VETERANS ADMINISTRATION

38 CFR Ch. I

Agenda of Federal Regulations

AGENCY: Veterans Administration.

ACTION: Publication of agenda of regulations.

SUMMARY: This agenda announces the regulations that the Veterans Administration will have under review, development, or revision during the 12-month period from October 1988 to October 1989. The purpose in publishing this Agency's regulatory development activities is to allow all interested persons the opportunity to participate in the rulemaking process.

ADDRESSES: Interested persons are invited to comment on the regulations listed in the agenda by contacting the individual agency contact listed for each regulation, or by writing to: Paperwork Management and Regulations Service (731), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: 38 CFR: M'Liz McLendon, (202) 233-3770; 48 CFR, Chapter 8: Sunny Huff, (202) 233-4240.

SUPPLEMENTARY INFORMATION:
Executive Order 12291, Federal Regulation, and the Regulatory Flexibility Act (Pub. L. 98-354) require that executive agencies publish in the **Federal Register** in April and October of each year an agenda of regulations under development and review.

The Veterans Administration has no regulations considered major under the terms of Executive Order 12291; however, all of this Agency's proposed rules and current rules under review, except those considered to be internal agency policy management or routine regulations, have been listed in accordance with section 5(a) of the Executive Order.

This agenda incorporates those categories of information required pursuant to 5 U.S.C. 602(a) and 610(c) of the Regulatory Flexibility Act.

This agenda has been prepared in accordance with OMB Bulletin 88-15.

Dated: August 22, 1988.
By direction of the Administrator.

Linda M. Combs,
Acting Associate Deputy Administrator for Management.

Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
3377	Disposition of Veteran's Personal Funds and Effects on Facility upon Death, or Discharge, or Unauthorized Absence, and of Funds and Effects Found on Facility	2900-AB61
3378	Confidential Quality Assurance Program Records and Documents	2900-AC27
3379	Veterans Administration Health Professional Scholarship Program	2900-AC66
3380	Contract Medical Care	2900-AC89
3381	Transportation of Claimants and Beneficiaries	2900-AC70
3382	Grants to States for State Extended Care Facilities	2900-AD16
3383	Expanded Eligibility for 30-40 Percent Service-Connected Veterans	2900-AD41
3384	Eligibility for Dental Care for Former POWs	2900-AD43
3385	Recreation Facilities to be Considered VA Facilities	2900-AD44
3386	Treatment of U.S. Veterans Who Are Not U.S. Citizens	2900-AD45
3387	Increasing the Domiciliary Income Limitation	2900-AD46
3388	Providing Emergency Hospital Care to Community Nursing Home Patients	2900-AD47
3389	Operation of Child Care Centers at VA Facilities	2900-AD48
3390	Nondiscrimination Against Alcohol and Drug Abusers and Persons Infected with the HIV	2900-AD49
3391	Employee Fiduciaries	2900-AB50
3392	Claims Based on Exposure to Ionizing Radiation or Dioxin	2900-AB64
3393	1. Veterans Services Officer to Select and Appoint or Recommend for Appointment the Person or Legal Entity to Receive Veterans Administration Benefits in a Fiduciary Capacity 2. Direct Payment	2900-AB75
3394	1. Payment to the Wife or Husband of an Incompetent Veteran 2. Legal Custodian	2900-AB76
3395	Computation of Entitlement Under Chapter 31	2900-AC08
3396	Providing an Initial Evaluation for a Veteran not Residing in a State	2900-AC46
3397	Veterans Education; Federal Equal Opportunity Laws	2900-AC52
3398	Extension of Time Limit for Claims	2900-AC61
3399	Compliance with Civil Rights Provisions	2900-AC72
3400	Training Outside of State Under 38 CFR 21.130	2900-AC73
3401	Veterans Education; Amendments Needed to Implement Pub. L. 99-576	2900-AC76
3402	Suspension of Individual Employees of Manufactured Home Dealers	2900-AC93
3403	Loans to Purchase Manufactured Homes	2900-AC85
3404	VA Home Loan Credit Standards; New SAH Grant	2900-AC90
3405	Veterans Education; Effect of Internal VA Reorganization	2900-AD04
3406	Definition of Fraud	2900-AD19
3407	Due Process	2900-AD27
3408	Placing Use of the Vocational Rehabilitation Panel on a Discretionary Basis	2900-AD29
3409	Assumption of VA Guaranteed Loans	2900-AD30
3410	Processing of VA Appraisals by Designated Lenders	2900-AD31
3411	Qualification Requirements for VA Fee Appraisers	2900-AD32
3412	Requirements for Nonsupervised Automatic Lenders	2900-AD33

VA

Proposed Rule Stage—Continued

Sequence Number	Title	Regulation Identifier Number
3413	Allowable Fees and Charges for VA Guaranteed Loans	2900-AD34
3414	Full Disclosure of Beneficiary's Income and Assets	2900-AD35
3415	Payment of Guaranty Claims	2900-AD36
3416	Evidence Suitable to Establish Dependents	2900-AD52
3417	Diseases Subject to Presumptive Service-Connection	2900-AD51
3418	Veterans Education; Due Process Following Loss of Dependent	2900-AD58
3419	Basic Eligibility Determinations: Education	2900-AD60
3420	Veterans Education; Determination of Training Time During Nonstandard Terms	2900-AD61
3421	Veterans Education; Restrictions on Making VEAP Payments to Servicepersons	2900-AD62
3422	Veterans Education; Veterans Employment, Training and Counseling Amendments of 1988	2900-AD63
3423	Veterans Special Life Insurance--Premiums	2900-AD64
3424	Optional Settlements on Insurance--Calculations	2900-AD65
3425	Reservists Education; Veterans' Benefits and Services Act of 1988 and the Montgomery GI Bill	2900-AD66
3426	Veterans Education; Veterans' Benefits and Services Act of 1988 and the Vietnam Era GI Bill	2900-AD69
3427	Definition of Former Prisoner of War	2900-AD71
3428	Appeals Regulations and Rules of Practice; Cutoff Date for Acceptance of Evidence	2900-AD14
3429	Equal Access to Justice; Procedural Rules	2900-AC23
3430	Committee on Waivers and Compromises	2900-AD50
3431	Nondiscrimination on the Basis of Sex Under Federally Assisted Education Programs and Activities	2900-AB91
3432	Nondiscrimination on the Basis of Handicap in Federally Assisted Programs and Activities	2900-AB87
3433	Inventions by Employees of VA, Authority Delegations	2900-AD21
3434	Indemnification of Veterans Administration Employees	2900-AD70
3435	Protection of Archaeological Resources	2900-AC26
3436	Predisclosure of Confidential Commercial Information	2900-AD06

Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
3437	Community Residential Care	2900-AB32
3438	Automobile Allowance and Adaptive Equipment Eligibility; Devices to Overcome the Handicap of Deafness	2900-AD09
3439	Employment Services for Certain Eligible Veterans	2900-AD68
3440	1. Apportionment of Benefits to Dependents 2. Payment of Cost of Veteran's Maintenance in Institution 3. Recommendation for Payment	2900-AC10
3441	Use of Educational Assistance Benefits as a Part of a Vocational Rehabilitation Program	2900-AC41
3442	Systemic Diseases, et al	2900-AC57
3443	Extension of the Independent Living Services Program	2900-AC82
3444	Veterans Education; Increase in Rates Payable in the EATP	2900-AD55
3445	Determination of Service-Connection for Impaired Hearing	2900-AD54
3446	Veterans Education; Waiver of the 85-15 Percent Ratio Requirement	2900-AD56
3447	Veterans Education; Forfeiture of Education Benefits	2900-AD57
3448	Veterans Education; Payments During Breaks in Enrollment	2900-AD59
3449	Acquisition Regulations Relating to Cost Comparisons	2900-AC37
3450	Veterans Administration Acquisition Regulation - Consulting Service	2900-AC86
3451	Acquisition Regulations; Construction Contracting Procedures	2900-AC87
3452	Appeals Regulations and Rules of Practice- Status of Legal Interns, Law Students and Paralegals	2900-AC11
3453	Appeals Regulations and Rules of Practice - Hearing Date	2900-AC88
3454	Effect of General Counsel Opinions	2900-AB22
3455	Recognition of Organizations, Representatives, Agents, and Attorneys	2900-AC89
3456	Claims Under the Federal Tort Claims Act	2900-AD15
3457	Uniform Relocation Assistance Act for Real Property Acquisition and Federally Assisted Programs	2900-AD07
3458	Release of VA Lists of Names and Addresses and Penalty Procedures for Unauthorized Use	2900-AD03

VA

Completed Actions

Sequence Number	Title	Regulation Identifier Number
3459	Use of Community Nursing Home Facilities	2900-AB21
3460	Reservists Education; New Education Program for Members of the Selected Reserve	2900-AB69
3461	Investments by Legal Custodians	2900-AH77
3462	1. Veterans Services Officer's Action When Veteran's Estate Equals or Exceeds $1,500 2. Determination of Value of Estate; 38 USC 3203(a)(1)	2900-AB76
3463	Amendment of Forfeiture Regulations	2900-AC01
3464	Collection of Late Fees and Interest Penalties for VA Funding Fees	2900-AC03
3465	Increased Coverage for Servicemen's and Veteran's Group Life Insurance	2900-AC06
3466	Use of Credit Reports for Refinancing and Rescheduling of VA-Guaranteed Loans and Claim Submissions	2900-AC10
3467	Procedural Due Process	2900-AC54
3468	Evaluations for Diplopia (Double Vision)	2900-AC58
3469	Vocational Rehabilitation Panel	2900-AC75
3470	Veterans Education; Amendments to VEAP Required by the Veterans Benefits Improvement and Health Care Authorization Act of 1988	2900-AC81
3471	Improvements in Veterans' Benefits	2900-AC99
3472	Homeless Claimants	2900-AD00
3473	Loan Guaranty: Increase in Maximum Allowable Amount the VA Will Reimburse a Loan Holder for Legal Services Incurred in Terminating a Loan	2900-AD01
3474	Veterans Education; Revision of Delimiting Dates	2900-AD02
3475	Veterans Education; Homeless Claimants	2900-AD21
3476	Veterans Education; Clarification of Administrative Error	2900-AD22
3477	Veterans Education; Clarification of Mitigating Circumstances	2900-AD24
3478	Homeless Claimants for Vocational Rehabilitation	2900-AD28
3479	Servicemen's Group Life Insurance and Veteran's Group Life Insurance--Applications	2900-AD66
3480	Active Military Service Certified as Such Under Section 401 of Pub. L. 95-202	2900-AD67
3481	Enforcement of Nondiscrimination on the Basis of Handicap in VA Programs	2900-AA67
3482	Standards Implementing the Program Fraud Civil Remedies Act	2900-AC92
3483	Nonprocurement Debarment and Suspension	2900-AD06
3484	Parking Fees at VA Medical Facilities	2900-AD05

VETERANS ADMINISTRATION (VA)

Proposed Rule Stage

DEPARTMENT OF MEDICINE AND SURGERY

3377. DISPOSITION OF VETERAN'S PERSONAL FUNDS AND EFFECTS ON FACILITY UPON DEATH, OR DISCHARGE, OR UNAUTHORIZED ABSENCE, AND OF FUNDS AND EFFECTS FOUND ON FACILITY

Legal Authority: 38 USC 210(c)

CFR Citation: 38 CFR 12.0 to 12.24

Legal Deadline: None

Abstract: Section 208 of Public Law 94-581 provides that unclaimed property or funds and effects left by a dependent or survivor of a veteran receiving medical care at a VA facility as a CHAMPVA beneficiary will be disposed of in the same or similar manner as such property left by a veteran. Also, estates of dependents or survivors of a veteran who dies intestate and without legal heirs while a patient in any VA facility or any hospital, while being furnished care or treatment therein by the VA will escheat to the U.S. Government. Some of these regulations have not been updated since 1948, therefore, editorial changes will be made which will not affect policy.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Paul Tryhus, Chief, Policies and Procedures Division, Medical Administration Service, Veterans Administration, Department of Medicine & Surgery (136F), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-3584

RIN: 2900-AB91

3378. CONFIDENTIAL QUALITY ASSURANCE PROGRAM RECORDS AND DOCUMENTS

Legal Authority: 38 USC 3305; 38 USC 4151; 38 USC 4152

CFR Citation: 38 CFR 17.500 to 17.510

Legal Deadline: None

Abstract: Final regulations implementing 38 USC 3305 were made effective Oct. 22, 1982. Those regulations govern the VA's QA (quality assurance) program activities and records and documents which are made confidential and privileged. Sec. 3305 prohibits the VA from designating any QA program activity, for the purpose of confidentiality, unless such activity has been specified in regulation. Pub. L. 99-166 amends 38 USC 4151 and 4152 to require that QA program activities include and evaluation of the quality of surgical care in DM&S, as evidenced by outcome measures of mortality and morbidity; a report to Congress indicating deficiencies in the quality of care is required. 38 USC 3305 was amended to clarify that aggregate statistical data is not to be made confidential provided individuals are not identified. The existing regulations do not include a description of the VA Medical District Initiated Peer Review Organization (MEDIPRO) program which is an integral element of the quality assurance program. No alternatives are being considered. There are no potential costs to the action. The benefits would be in the form of programmatic improvements.

Timetable:

Action	Date	FR Cite
NPRM	10/01/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Robert Lubran, Health System Specialist, Veterans Administration, Department of Medicine and Surgery (10Q), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-3115

RIN: 2900-AC27

3379. VETERANS ADMINISTRATION HEALTH PROFESSIONAL SCHOLARSHIP PROGRAM

Significance: Regulatory Program

Legal Authority: 38 USC 4301 to 4336

CFR Citation: 38 CFR 17.600

Legal Deadline: None

Abstract: Current regulations set forth requirements for awarding scholarships to students receiving academic training in the disciplines of medicine, osteopathy, and nursing, and if needed by the VA, students in other specified health care disciplines. Regulations are being amended to include requirements for awarding scholarships to students in disciplines currently specified as well as to students in other health care disciplines. Proposed regulations also revise selection of participants to indicate priority for individuals entering final year of training, and revise length of service obligation for full-time student participants to be one year for each year or part of a year individual was provided an award.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
Final Action	01/01/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Charlotte Beason, Ed.D., Director, Health Professional Scholarship, Program, Veterans Administration, Department of Medicine & Surgery (14N), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-3580

RIN: 2900-AC85

3380. CONTRACT MEDICAL CARE

Significance: Regulatory Program

Legal Authority: PL 99-576

CFR Citation: 38 CFR 17.50b; 38 CFR 17.57

Legal Deadline: None

Abstract: The VA and the Department of Health and Human Services will be proposing to amend applicable regulations to permit the VA to pay for authorized or private hospital care in amounts based on the rates allowed by Medicare under the prospective payment system. This step will help ensure that payments made by the VA are consistent with those made by the largest Federal health care program for similar services in the community.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	
Final Action	05/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Paul Tryhus, Chief, Policies and Procedures Division, Medical Administration Service, Veterans Administration, Department of Medicine & Surgery (136F), 810 Vermont Avenue NW, Washington, DC 20420, 202 233-2584

RIN: 2900-AC89

3381. ◆ TRANSPORTATION OF CLAIMANTS AND BENEFICIARIES

Legal Authority: PL 100-322

CFR Citation: 38 CFR 17.100

Legal Deadline: None

Abstract: These proposed regulations will implement Section 108 of Pub. L. 100-322 which provides that the Administrator of Veterans Affairs shall make payments for travel during the fiscal year for examination, treatment or care for which the person is eligible or in connection with vocational rehabilitation provided pursuant to Chapter 31 of Title 38 USC.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
Final Action	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Paul C. Tryhus, Chief, Policies and Procedures Division, Medical Administration Service, Veterans Administration, Department of Medicine and Surgery (136F), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-2584

RIN: 2900-AC76

3382. GRANTS TO STATES FOR STATE EXTENDED CARE FACILITIES

Legal Authority: 38 USC 5031 to 5037; PL 100-322

CFR Citation: 38 CFR 17.170 to 17.177

Legal Deadline: None

Abstract: Pub. L. 100-322 changed the date of the priority list for applications from July 1 to August 15. The deadline for applications is August 1. Also, the Administrator of Veterans Affairs is provided authority to conditionally award construction grants. If a state does not complete requirements within 90 days after conditional approval, funds will be deobligated. These proposed regulations will implement that change. Construction standards in 38 CFR 17.177 are being totally reformatted, revised and updated. The veteran population in 38 CFR 17.171 Appendix A is being updated to reflect the current information. Additionally, provisions are being established to handle large grant requests where one project may exceed the annual appropriation. Requests for projects exceeding one-half the annual appropriation will receive lower priority on the list and may be partially funded if funds are available and the project ranks high enough on the priority list for Federal funds.

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VA

Proposed Rule Stage

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Timetable:

Action	Date	FR Cite
NPRM	12/31/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: F. Brent Baker, Chief, State Home Construction Grants, Ofc of Geriatrics and Extended Care, Veterans Administration, Department of Medicine and Surgery (182C), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-3679

RIN: 2900–AD16

3383. ◆ EXPANDED ELIGIBILITY FOR 30-40 PERCENT SERVICE-CONNECTED VETERANS

Legal Authority: PL 100-322

CFR Citation: 38 CFR 17.50

Legal Deadline: None

Abstract: The proposed regulations will implement the provisions in Section 101 of Pub. L. 100-322 which provides that outpatient medical services on an ambulatory or outpatient basis shall be furnished to a specified group of veterans in preparation for hospital admission or to obviate the need for hospital admission.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
Final Action	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Paul Tryhus, Chief, Policies and Procedures Division, Medical Administration Service, Veterans Administration, Department of Medicine and Surgery (136F), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-3594

RIN: 2900–AD41

3384. ◆ ELIGIBILITY FOR DENTAL CARE FOR FORMER POWS

Legal Authority: PL 100-322

CFR Citation: 38 CFR 17.123(d)

Legal Deadline: None

Abstract: These proposed regulations implement Section 106 of Pub. L. 100-322 which provides that outpatient dental services and treatment and related dental appliances, shall be furnished for a dental condition or disability from which a veteran, who is a former POW and who was detained or interned for a period of not less than 90 days, is suffering.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
Final Action	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Paul Tryhus, Chief, Policies and Procedures Division, Medical Administration Service, Veterans Administration, Department of Medicine and Surgery (136F), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-3594

RIN: 2900–AD43

3385. ◆ RECREATION FACILITIES TO BE CONSIDERED VA FACILITIES

Legal Authority: PL 100-322

CFR Citation: 38 CFR 17.30(w)

Legal Deadline: None

Abstract: The proposed regulations amend the definition of VA facilities as required by Pub. L. 100-322 to include public or private facilities at which the Administrator of Veterans Affairs provides recreational activities for patients receiving hospital, nursing home or domiciliary care.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
Final Action	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Paul Tryhus, Chief, Policies and Procedures Division, Medical Administration Service, Veterans Administration, Department of Medicine and Surgery (136F), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-3594

RIN: 2900–AD44

3386. ◆ TREATMENT OF U.S. VETERANS WHO ARE NOT U.S. CITIZENS

Legal Authority: PL 100-322

CFR Citation: 38 CFR 17.36

Legal Deadline: None

Abstract: The proposed regulations implement Section 102 of Pub. L. 100-322 which provides that a veteran residing in Canada, who is eligible for hospital care and medical services, is provided such care and services for a service-connected condition or as a part of a rehabilitation program under Chapter 31 of Title 38 USC.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
Final Action	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Paul Tryhus, Chief, Policies and Procedures Division, Medical Administration Service, Veterans Administration, Department of Medicine and Surgery (136F), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-3594

RIN: 2900–AD45

3387. ◆ INCREASING THE DOMICILIARY INCOME LIMITATION

Legal Authority: PL 100-322

CFR Citation: 38 CFR 17.47; 38 CFR 17.48

Legal Deadline: None

Abstract: The proposed regulations implement Section 102 of Pub. L. 100-322 which provides that domiciliary care may be provided to veterans whose incomes do not exceed the maximum applicable rate of pension for a veteran in need of regular aid and attendance.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
Final Action	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Paul Tryhus, Chief, Policies and Procedures Division, Medical Administration Service, Veterans Administration, Department of Medicine and Surgery (136F), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-3594

RIN: 2900–AD46

3388. ◆ PROVIDING EMERGENCY HOSPITAL CARE TO COMMUNITY NURSING HOME PATIENTS

Legal Authority: PL 100-322

CFR Citation: 38 CFR 17.50(3)

Legal Deadline: None

Abstract: These proposed regulations implement Section 104 of Pub. L. 100-322 which provides that hospital care for the treatment of medical emergencies is authorized for veterans receiving care in a community nursing home until such time as the veteran can be safely transferred to a VA facility.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Paul Tryhus, Chief, Policies and Procedures Division, Medical Administration Service, Veterans Administration, Department of Medicine and Surgery (136F), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-3594

RIN: 2900–AD47

3389. ◆ OPERATION OF CHILD CARE CENTERS AT VA FACILITIES

Legal Authority: PL 100-322, Sec 412

CFR Citation: 38 CFR 17.162 (New)

Legal Deadline: None

Abstract: Section 412 of Pub. L. 100-322 authorizes the Veterans Canteen Service to operate child care centers at VA facilities. The centers will be established based on the demand for care and to the extent that such operation is practical and in the best interest of the VA. The centers will be available for the children of VA employees and, to the extent space is available, the children of other Federal and VA-affiliated employees. Also, these centers should provide an incentive for VA personnel recruitment. The proposed regulations will prescribe the requirements and standards for the operation of VA child care centers.

Timetable:

Action	Date	FR Cite
NPRM	03/31/89	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Brenda L. Jenkins, Administrative Dietitian, Veterans Canteen Service, Veterans Administration, Department of Medicine and Surgery (133B), 810 Vermont Avenue, NW, Washington, DC 20420, 202 376-6189

RIN: 2900–AD48

3390. ◆ NONDISCRIMINATION AGAINST ALCOHOL AND DRUG ABUSERS AND PERSONS INFECTED WITH THE HIV

Legal Authority: 38 USC 4133; PL 100-322, Sec 122

CFR Citation: 38 CFR 17.48(k)

Legal Deadline: None

Abstract: This regulation is being amended to comply with Pub. L. 100-322, section 121, which prohibits the discrimination in admission or treatment in any VA health care facility, of veterans who are eligible for treatment and who are alcohol or drug abusers or are infected with human immunodeficiency virus.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Paul Tryhus, Chief, Policies and Procedures Division, Veterans Administration, Department of Medicine and Surgery (136F), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-3594

RIN: 2900–AD49

DEPARTMENT OF VETERANS BENEFITS

3391. EMPLOYEE FIDUCIARIES

Legal Authority: 38 USC 210

CFR Citation: 38 CFR 0.735-21

Legal Deadline: None

Abstract: The existing regulation falls under the general rules of conduct for employees. The intended change will bar most employees from becoming fiduciaries for beneficiaries of VA benefits and establish an exemption to the bar under a limited number of circumstances such as when the employee is a close relative.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: William B. Saliski, Jr., Program Analyst, Veterans Administration, Department of Veterans Benefits (273), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-3661

RIN: 2900–AB90

3392. ◆ CLAIMS BASED ON EXPOSURE TO IONIZING RADIATION OR DIOXIN

Legal Authority: PL 98-542

CFR Citation: 38 CFR 3.311a; 38 CFR 3.311b

Legal Deadline: None

Abstract: These amendments expand the list of radiogenic diseases and modify certain manifestation periods for radiation-related cancers. Minor technical clarifications are also included.

Timetable:

Action	Date	FR Cite
NPRM	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Robert M. White, Chief, Regulations Staff, Veterans Administration, Department of Veterans Benefits (211B), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-3005

RIN: 2900–AB84

3393. 1. VETERANS SERVICES OFFICER TO SELECT AND APPOINT OR RECOMMEND FOR APPOINTMENT THE PERSON OR LEGAL ENTITY TO RECEIVE VETERANS ADMINISTRATION BENEFITS IN A FIDUCIARY CAPACITY 2. DIRECT PAYMENT

Legal Authority: 38 USC 3202(a)

CFR Citation: 38 CFR 13.55; 38 CFR 13.56

Legal Deadline: None

Abstract: 38 CFR 13.55 authorizes the VSO to select and appoint a fiduciary and defines the types of payees authorized to receive payments in fiduciary cases. The intended change updates the authority language to more closely reflect changes to 38 USC 3202; removes gender specific terminology and reference to mental illness; and, further clarifies the types of payees available for selection.

38 CFR 13.56 defines classes of beneficiaries who may be paid directly. The intended change clarifies the conditions for direct payment.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: William B. Sallaki, Jr., Program Analyst, Veterans Administration, Department of Veterans Benefits (273), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-2691

RIN: 2900-AB75

3394. 1. PAYMENT TO THE WIFE OR HUSBAND OF AN INCOMPETENT VETERAN 2. LEGAL CUSTODIAN

Legal Authority: 38 USC 3202

CFR Citation: 38 CFR 13.57; 38 CFR 13.58

Legal Deadline: None

Abstract: 38 CFR 13.57 specifies types of VA benefits that may be paid to spouse payee. The intended change broadens the class of payments to include VA insurance.

38 CFR 13.58 explains in part duties expected of a legal custodian. The intended change will clarify the custodian's authority to purchase a burial agreement for the incompetent beneficiary.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: William B. Sallaki, Jr., Program Analyst, Veterans Administration, Department of Veterans Benefits (273), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-2691

RIN: 2900-AB76

3396. COMPUTATION OF ENTITLEMENT UNDER CHAPTER 31

Legal Authority: 38 USC 1505

CFR Citation: 38 CFR Not yet determined

Legal Deadline: None

Abstract: To establish a specific method for determining entitlement changes under chapter 31. In view of the number of education and training programs now authorized under title 38, a specific statement of chapter 31 policy for determining entitlement changes is needed.

Timetable:

Action	Date	FR Cite
NPRM	02/01/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Morris Triestman, Rehabilitation Consultant, Policy and Program Development, Veterans Administration, Department of Veterans Benefits (226), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-2866

RIN: 2900-AC06

3396. PROVIDING AN INITIAL EVALUATION FOR A VETERAN NOT RESIDING IN A STATE

Legal Authority: 38 USC 111; 38 USC 1508

CFR Citation: 38 CFR 21.100; 38 CFR 21.370

Legal Deadline: None

Abstract: An initial evaluation is provided each veteran requesting assistance under the vocational rehabilitation program. The purpose of the initial evaluation is to determine eligibility and entitlement to vocational rehabilitation and plan a program of vocational rehabilitation for eligible veterans. The initial evaluation is provided by VA counseling psychologists in the United States. Since interpersonal discussion is the essence of counseling, providing an initial evaluation to a veteran residing overseas by a VA counselor located in this country poses logistical and other problems. We are proposing that current regulations be amended to allow for greater flexibility in providing initial evaluations to veterans not residing in a state, including those veterans residing overseas. The alternatives to the present system include, but are not limited to contracting with qualified counseling staff located in the area in which the veteran resides, to conduct a part of the evaluation. All decisions as to eligibility for services would continue to be made by VA staff.

Timetable:

Action	Date	FR Cite
NPRM	03/01/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Morris Triestman, Rehabilitation Consultant, Policy and Program Development, Veterans Administration, Department of Veterans Benefits (226), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-2866

RIN: 2900-AC46

3397. VETERANS EDUCATION; FEDERAL EQUAL OPPORTUNITY LAWS

Legal Authority: 42 USC 2000d; 20 USC 1681; 29 USC 794; 42 USC 6101

CFR Citation: 38 CFR 21.4300; 38 CFR 21.4301; 38 CFR 21.4302; 38 CFR 21.4304; 38 CFR 21.4305; 38 CFR 21.4306; 38 CFR 21.4307; 38 CFR 21.4135

Legal Deadline: None

Abstract: The VA is proposing to rescind several regulations. These regulations concern the implementation of Title VI, Civil Rights Act of 1964 in the education programs which the VA administers. The regulations either conflict with or repeat unnecessarily other regulations which deal with the implementation of that Act. Rescinding these regulations will eliminate any confusion in the public's perception of the way the VA is implementing this Act.

Timetable:

Action	Date	FR Cite
NPRM	03/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: June C. Schaeffer, Assistant Director for Educational Policy, Veterans Administration, Department of Veterans Benefits (225), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-2092

RIN: 2900-AC52

3356. EXTENSION OF TIME LIMIT FOR CLAIMS

Legal Authority: 38 USC 3013

CFR Citation: 38 CFR 21.32

Legal Deadline: None

Abstract: Under current rules a veteran's request for assistance under the vocational rehabilitation program may be adversely affected if the veteran fails to timely provide information requested by the VA even if the VA did not inform the veteran of the time limits for providing the information requested. The VA is proposing to change these rules to extend the period during which evidence may be submitted if the VA did not inform the veteran of the time limits for submitting the requested information.

Timetable:

Action	Date	FR Cite
NPRM	12/01/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Morris Triestman, Rehabilitation Consultant, Policy and Program Development, Veterans Administration, Department of Veterans Benefits (226), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-2866

RIN: 2900-AC61

3395. COMPLIANCE WITH CIVIL RIGHTS PROVISIONS

Legal Authority: 38 USC 1515

CFR Citation: 38 CFR 21.324

Legal Deadline: None

Abstract: Compliance with civil rights provisions require that payment of benefits to veterans be terminated upon a finding that a veteran is attending a facility which has been found in non-compliance with applicable provisions of Part 18, Nondiscrimination in Federally Assisted Programs of the Veterans Administration. We propose to amend 38 CFR 21.324 to reflect this new requirement. This proposed regulatory amendment includes the provisions of RIN 2900-AC40, which was withdrawn from the Agenda.

Timetable:

Action	Date	FR Cite
NPRM	02/01/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: 2900-AC40, Reduction or Termination Dates of Subsistence Allowance, has been merged with this RIN.

Agency Contact: Morris Triestman, Rehabilitation Consultant, Policy and Program Development, Veterans Administration, Department of Veterans Benefits (226), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-2866

RIN: 2900-AC72

3400. TRAINING OUTSIDE OF STATE UNDER 38 CFR 21.130

Legal Authority: 38 USC 1514

CFR Citation: 38 CFR 21.130

Legal Deadline: None

Abstract: The provision of training outside a state is subject to certain limitations not applicable to training pursued within the United States. The VA is proposing to amend these provisions in the case of veterans who wish to become employed outside the United States. The purpose of the change is to help assure that vocational rehabilitation services lead to suitable employment given the special problems inherent in providing vocational rehabilitation programs outside the United States.

Timetable:

Action	Date	FR Cite
NPRM	01/01/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Morris Triestman, Rehabilitation Consultant, Policy and Program Development, Veterans Administration, Department of Veterans Benefits (226), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-2866

RIN: 2900-AC73

3401. VETERANS EDUCATION; AMENDMENTS NEEDED TO IMPLEMENT PUB. L. 99-576

Legal Authority: PL 99-576

CFR Citation: 38 CFR 21.1022; 38 CFR 21.3022; 38 CFR 21.3046; 38 CFR 21.4022; 38 CFR 21.4100; 38 CFR 21.4101; 38 CFR 21.4102; 38 CFR 21.4104; 38 CFR 21.4136; 38 CFR 21.4137; 38 CFR 21.4138; 38 CFR 21.4230; 38 CFR 21.4231; 38 CFR 21.4232; 38 CFR 21.4233; ...

Legal Deadline: None

Abstract: The Veterans' Benefits Improvement and Health-Care Authorization Act of 1988 contains several provisions which affect the administration of Dependents' Educational Assistance and benefits provided under the Vietnam Era GI Bill. The most important provisions include a change to the way in which the VA must measure certain courses which do not lead to a standard college degree; a change in the way the eligibility period is determined for some spouses eligible to receive Dependents' Educational Assistance; and a change to the provision governing receipt of benefits under the Vietnam Era GI Bill and other education programs administered by the VA.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: June C. Schaeffer, Assistant Director for Educational Policy, Veterans Administration, Department of Veterans Benefits (225), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-2092

RIN: 2900-AC76

3402. SUSPENSION OF INDIVIDUAL EMPLOYEES OF MANUFACTURED HOME DEALERS

Legal Authority: 38 USC 210(c); 38 USC 1803(c)(1); 38 USC 1819(g)

CFR Citation: 38 CFR 36.4215

Legal Deadline: None

Abstract: Present regulations authorize the Administrator to refuse to guarantee loans to purchase manufactured homes from dealers determined by the Administrator to have engaged in contracts of sale or methods or

practices which are unfair or prejudicial to veteran purchasers. It is proposed to amend this regulation to also authorize suspension of individual employees of manufactured home dealers who engage in unfair or prejudicial practices.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: George D. Moerman, Assistant Director for Loan Policy, Veterans Administration, Department of Veterans Benefits (264), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-3042

RIN: 2900-AC32

3403. LOANS TO PURCHASE MANUFACTURED HOMES

Legal Authority: 38 USC 210(c); 38 USC 1803(c)(1); 38 USC 1819(g)

CFR Citation: 38 CFR 36.4202; 38 CFR 36.4204; 38 CFR 36.4222; 38 CFR 36.4232; 38 CFR 36.4253

Legal Deadline: None

Abstract: A number of regulatory changes will be proposed for the VA manufactured home loan program. VA would conform to HUD's practices on certifications, invoicing and volume rebates. Lenders would be permitted to file claims upon receipt of VA's resale price and thereafter retain the profit or loss which results from subsequent sale of the home. Broader insurance coverage would be required to cover missing items at repossession. Actual freight costs would be allowed in the invoice, and the amounts and items which could be included in the loan would be revised.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: George D. Moerman, Assistant Director for Loan Policy, Veterans Administration, Department of Veterans Benefits (264), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-3042

RIN: 2900-AC26

3404. VA HOME LOAN CREDIT STANDARDS; NEW SAH GRANT

Legal Authority: 38 USC 210(c); 38 USC 1803(c)(1); 38 USC 1819(g); PL 99-576

CFR Citation: 38 CFR 4200 et seq.; 38 CFR 4300 et seq.; 38 CFR 4400 et seq.

Legal Deadline: None

Abstract: Regulations will be amended to implement the requirements of Public Law 99-576. The new law adds a new specially adapted housing grant purpose and requires that VA home loan credit standards be in regulatory form.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: George D. Moerman, Assistant Director for Loan Policy, Veterans Administration, Department of Veterans Benefits (264), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-3042

RIN: 2900-AC30

3405. VETERANS EDUCATION; EFFECT OF INTERNAL VA REORGANIZATION

Legal Authority: 38 USC 212

CFR Citation: 38 CFR 2.78; 38 CFR 2.80; 38 CFR 2.81; 38 CFR 2.82; 38 CFR 2.98; 38 CFR 21.74; 38 CFR 21.98; 38 CFR 21.100; 38 CFR 21.162; 38 CFR 21.222; 38 CFR 21.254; 38 CFR 21.256; 38 CFR 21.258; 38 CFR 21.292; 38 CFR 21.382; ...

Legal Deadline: None

Abstract: The Vocational Rehabilitation and Counseling Service and the Education Service within the Department of Veterans Benefits of the VA have been merged. Many regulations make specific reference to either the Director, Education Service or the Director, Vocational Rehabilitation and Counseling. The amended regulations will replace all references to the Director, Education Service, and the Director, Vocational Rehabilitation and Counseling Service, with reference to the Director, Vocational Rehabilitation and Education Service.

Timetable:

Action	Date	FR Cite
NPRM	03/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: June C. Schaeffer, Assistant Director for Educational Policy, Veterans Administration, Department of Veterans Benefits (225), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-3082

RIN: 2900-AD04

3406. DEFINITION OF FRAUD

Legal Authority: 38 USC 210(c)

CFR Citation: 38 CFR 3.1

Legal Deadline: None

Abstract: The definition of fraud, except for forfeiture purposes, is being placed in the general definitions section and includes acts of omission as well as acts of commission. This action will allow a finding of fraud in certain cases where a beneficiary receives or retains benefits based on a knowing failure to provide necessary information. This is a new proposal based on comments the agency received on its original proposal under RIN 2900-AC01.

Timetable:

Action	Date	FR Cite
NPRM	11/01/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Robert M. White, Chief, Regulations Staff, Veterans Administration, Department of Veterans Benefits (211B), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-3005

RIN: 2900-AD10

3407. DUE PROCESS

Legal Authority: 38 USC 210(c)

CFR Citation: 38 CFR 21.420

Legal Deadline: None

Abstract: The VA is proposing to bring procedures for informing veterans of changes in payments for dependents into conformity with the decision of the courts. Under the proposed change, the VA will provide 60 days advance notice if the veteran loses benefits being paid for a dependent in certain cases.

Timetable:

Action	Date	FR Cite
NPRM	12/01/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Morris Triestman, Rehabilitation Consultant, Veterans Administration, Department of Veterans Benefits (228), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-3686

RIN: 2900-AD27

3408. PLACING USE OF THE VOCATIONAL REHABILITATION PANEL ON A DISCRETIONARY BASIS

Legal Authority: 38 USC 1504(a); 38 USC 1505(a); 38 USC 1506(a); 38 USC 1520

CFR Citation: 38 CFR 21.62; 38 CFR 21.74; 38 CFR 21.76; 38 CFR 21.52; 38 CFR 21.53

Legal Deadline: None

Abstract: Under current provisions, use of the Vocational Rehabilitation Panel is required in certain instances. The role of the Panel is to assist in helping seriously disabled veterans successfully pursue a rehabilitation program. The requirement for consultation was a sound policy when the vocational rehabilitation program was substantially revised and broadened in 1980. As staff have gained experience with the new policies which resulted from the revision of the rehabilitation program in 1980, the need for consultation in every case has decreased. Current field experience indicates that placing use of the Panel on a discretionary basis is in the interest of the veteran and the government.

Timetable:

Action	Date	FR Cite
NPRM	02/01/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Morris Triestman, Rehabilitation Consultant, Veterans Administration, Department of Veterans Benefits (228), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-3686

RIN: 2900-AD29

3409. ASSUMPTION OF VA GUARANTEED LOANS

Legal Authority: 38 USC 210(c); 38 USC 1802(b); PL 100-198

CFR Citation: 38 CFR 36.4300; 38 CFR 36.4200

Legal Deadline: None

Abstract: Pub. L. 100-198 requires that assumers of VA loans committed to on or after March 1, 1988, meet certain criteria, including credit underwriting, before the assumption may take place. The proposed regulations will place the requirements of the law into regulatory form and will, as required by the law, set timeliness standards for processing assumed loans and the maximum that may be charged for the processing.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Leonard A. Levy, Acting Assistant Director for Loan, Management, Veterans Administration, Department of Veterans Benefits (261), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-3668

RIN: 2900-AD30

3410. PROCESSING OF VA APPRAISALS BY DESIGNATED LENDERS

Legal Authority: 38 USC 210(c); PL 100-198; 38 USC 1810; 38 USC 1810(b)(5); 38 USC 1831

CFR Citation: 38 CFR 36.4300

Legal Deadline: None

Abstract: Pub. L. 100-198 requires the publication of regulations authorizing certain lenders to process appraisals on VA guaranteed loans. Such lenders will determine the value of the property, based on an appraisal by an appraiser selected by the VA, without VA's approval or review of the appraisal. The regulations will set the criteria for being a designated lender and the procedures to follow.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Walter Burke, Assistant Director for Construction, and Valuation, Veterans Administration, Department of Veterans Benefits (262), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-3691

RIN: 2900-AD31

3411. QUALIFICATION REQUIREMENTS FOR VA FEE APPRAISERS

Legal Authority: 38 USC 210(c); 38 USC 1831; PL 100-198

CFR Citation: 38 CFR 36.4338

Legal Deadline: None

Abstract: Pub. L. 100-198 requires that certain standards for being designated as a VA fee appraiser be published in regulatory form. The standards are to include the successful completion of a written test, submission of a sample appraisal, certification of an appropriate number of years of experience as an appraiser, and submission of recommendations from other appraisers. In the past, such requirements have been published in administrative issues other than regulations.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Walter Burke, Assistant Director for Construction, and Valuation, Veterans Administration, Department of Veterans Benefits (262), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-3691

RIN: 2900-AD32

3412. REQUIREMENTS FOR NONSUPERVISED AUTOMATIC LENDERS

Legal Authority: 38 USC 210(c); 38 USC 1802(d)

CFR Citation: 38 CFR 36.4300; 38 CFR 36.4300

Legal Deadline: None

Abstract: The VA may grant lenders the authority to process loans on the automatic basis if they meet requirements set by the VA. Currently, these requirements are published in administrative issues with release to program participants. The proposed

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regulations will place the requirements in regulatory form to ensure proper notice. The requirements will include minimums for such items as working capital, experience of the firm and/or principal officers and its underwriters. These regulations will apply to lenders such as mortgage bankers who are not already under supervision by State or Federal entities.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: George D. Moerman, Assistant Director for Loan Policy, Veterans Administration, Department of Veterans Benefits (264), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-3042

RIN: 2900-AD33

3413. ALLOWABLE FEES AND CHARGES FOR VA GUARANTEED LOANS

Legal Authority: 38 USC 210(c); 38 USC 1803(c)

CFR Citation: 38 CFR 36.4312; 38 CFR 36.4254

Legal Deadline: None

Abstract: VA regulations allow the veteran obtaining a VA guaranteed loan to pay the lender making the loan a one percent origination fee (one percent) to cover the processing of the loan. Any other discount points required by the lender are to be paid by someone other than the veteran except in those cases where it is specifically allowed, such as refinancing loans. This regulation would clarify the instances in which a veteran may or may not pay discount points. This regulation change would also clarify that discount points may not be paid by the veteran (except when specifically allowed) to anyone, including the lender, seller or other concerned party.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: George D. Moerman, Assistant Director for Loan Policy, Veterans Administration, Department of Veterans Benefits (264), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-3042

RIN: 2900-AD34

3414. FULL DISCLOSURE OF BENEFICIARY'S INCOME AND ASSETS

Legal Authority: PL 99-576, Sec 505

CFR Citation: 38 CFR Not yet determined

Legal Deadline: None

Abstract: Federally appointed fiduciaries are not required, except under very specific circumstances, to divulge non-VA income and assets that the fiduciary may be holding on behalf of incompetent VA beneficiaries. It is difficult to determine whether the fiduciary is using the beneficiary's VA assets appropriately unless placed in the context of total income and assets available. The purpose of this regulation is to lessen the potential for fraud, waste and abuse.

Timetable:

Action	Date	FR Cite
NPRM	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: William Salleki, Jr., Program Analyst, Veterans Administration, Department of Veterans Benefits (273), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-2691

RIN: 2900-AD35

3415. PAYMENT OF GUARANTY CLAIMS

Significance: Regulatory Program

Legal Authority: 38 USC 210(c); 38 USC 1803(c)(1); PL 100-198

CFR Citation: 38 CFR 36.4319; 38 CFR 36.4320; 38 CFR 36.4321

Legal Deadline: None

Abstract: Regulations will be amended to implement the new requirements for payment of claims. Under the new formulas, VA will exclude from the guaranty claim payment the interest which accrues during periods of forbearance granted at VA's request, and when the veteran files for bankruptcy. As a result, we expect that a number of cases which would result in the lender being required to dispose of the property will instead result in VA acquiring the property and paying a smaller claim. The adjustment in a VA-requested forbearance or bankruptcy situation will only be made if doing so will result in VA offering to acquire the property when the property would otherwise not be acquired by the VA. In cases where VA is at fault for the delay in foreclosure, for example, a failure to provide bidding instructions in a timely manner, VA will also exclude from the calculation as to whether or not VA will acquire the property interest which accrues during the period of delay, but will allow such interest in the computation of the guaranty claim.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	
Final Action	05/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Leonard A. Levy, Acting Assistant Director for Loan Management, Veterans Administration, Department of Veterans Benefits (261), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-3033

RIN: 2900-AD39

3416. ◆ EVIDENCE SUITABLE TO ESTABLISH DEPENDENTS

Legal Authority: 38 USC 210(c)

CFR Citation: 38 CFR 3.204

Legal Deadline: None

Abstract: This amendment will permit certain civilian employees of the Department of Defense to certify the authenticity of photocopies of documents needed to prove birth, death, marriage and relationship for VA purposes.

Timetable:

Action	Date	FR Cite
NPRM	09/21/88	53 FR 36586
NPRM Comment Period End	10/21/88	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Robert M. White, Chief, Regulations Staff, Veterans Administration, Department of Veterans Benefits (211B), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-3005

RIN: 2900-AD52

3417. ◆ DISEASES SUBJECT TO PRESUMPTIVE SERVICE-CONNECTION

Legal Authority: PL 100-321; PL 100-322

CFR Citation: 38 CFR 3.309; 38 CFR 3.312

Legal Deadline: None

Abstract: These amendments provide for presumptive service-connection for systemic lupus erythematosus arising within 1 year of discharge for peripheral neuropathy, irritable bowel syndrome and peptic ulcer disease arising in former POWs and for 13 specific cancers arising in certain radiation-exposed veterans. A bar to benefits under section 156 of Pub. L. 97-377 is also removed.

Timetable:

Action	Date	FR Cite
NPRM	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Robert M. White, Chief, Regulations Staff, Veterans Administration, Department of Veterans Benefits (211B), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-3005

RIN: 2900-AD51

3418. ◆ VETERANS EDUCATION; DUE PROCESS FOLLOWING LOSS OF DEPENDENT

Legal Authority: 38 USC 3012 to 3013

CFR Citation: 38 CFR 21.4132

Legal Deadline: None

Abstract: The VA is considering a veteran's due process rights when the VA is considering reduction of the veteran's educational assistance allowance because the VA has received evidence that the veteran has lost a dependent. This proposal will bring the rights granted such a veteran into agreement with the rights a veteran has when he or she is receiving disability compensation or pension and the VA receives evidence that the veteran has lost a dependent. The effect of this proposal will be to improve and more clearly define procedural due process rights.

Timetable:

Action	Date	FR Cite
NPRM	10/01/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: June C. Schaeffer, Assistant Director for Educational Policy, and Program Administration, Veterans Administration, Department of Veterans Benefits (225), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-2092

RIN: 2900-AD56

3419. ◆ BASIC ELIGIBILITY DETERMINATIONS: EDUCATION

Legal Authority: 38 USC 1411(a); 38 USC 1412(b); 38 USC 1602; 38 USC 1652(a)

CFR Citation: 38 CFR 3.315

Legal Deadline: None

Abstract: The VA has a regulation which provides authority and guidelines for making a service-connected discharge determination needed to determine eligibility for VA benefits. The VA is considering amending the regulation to add a rule for deciding when such a determination must be made for a veteran who has applied for benefits under the Montgomery GI Bill - Active Duty.

Timetable:

Action	Date	FR Cite
NPRM	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: June C. Schaeffer, Assistant Director for Educational Policy, and Program Administration, Veterans Administration, Department of Veterans Benefits (225), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-2092

RIN: 2900-AD50

3420. ◆ VETERANS EDUCATION; DETERMINATION OF TRAINING TIME DURING NONSTANDARD TERMS

Legal Authority: 38 USC 1788(b)

CFR Citation: 38 CFR 21.4272

Legal Deadline: None

Abstract: The law states the number of credit hours in which a veteran must be enrolled in order to be considered a full-time student during a standard term for VA purposes. It does not contain a similar statement for terms which are shorter than standard. The VA has provided for measurement for these accelerated terms through regulation. The VA is considering amendment of that regulation to state how vacation periods are to be considered in measuring enrollments in accelerated terms.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: June C. Schaeffer, Assistant Director for Educational Policy, and Program Administration, Veterans Administration, Department of Veterans Benefits (225), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-2092

RIN: 2900-AD01

3421. ◆ VETERANS EDUCATION; RESTRICTIONS ON MAKING VEAP PAYMENTS TO SERVICEPERSONS

Legal Authority: 38 USC 1621; 38 USC 1631

CFR Citation: 38 CFR 21.5134

Legal Deadline: None

Abstract: The law requires that generally, an individual must contribute to the Post-Vietnam Education Assistance Program (VEAP) fund for 12 months in order to receive educational assistance. So as to encourage participation by servicemembers, the VA has permitted a servicemember who meets all the other eligibility requirements to receive educational assistance after he or she has completed 3 months of contributions to the fund or has made a lump-sum payment which is the equivalent of the least 3 months' contributions to the fund. In order to comply with the law it has been the VA's policy to require these servicemembers to establish a continuing allotment so that they eventually will contribute to the fund for 12 months. However, the regulation which mentions the 3 months' contributions does not mention the 12 months' participation requirement. This

has led to instances where servicemembers who have been paid educational assistance, never participated for 12 months. The VA wishes to amend the regulation to correct this.

Timetable:

Action	Date	FR Cite
NPRM	03/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: June C. Schaeffer, Assistant Director for Educational Policy and Program Administration, Veterans Administration, Department of Veterans Benefits (225), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-2092

RIN: 2900-AD62

3422. ◉ VETERANS EDUCATION; VETERANS EMPLOYMENT, TRAINING AND COUNSELING AMENDMENTS OF 1988

Legal Authority: PL 100-322

CFR Citation: 38 CFR 21.4150-4155; 38 CFR 21.4812; 38 CFR 21.4822; 38 CFR 21.4034; 38 CFR 21.4632

Legal Deadline: None

Abstract: The Veterans' Employment, Training and Counseling Amendments of 1988 contains provisions which affect the relationship the VA and the State approving agencies have with each other. It contains other provisions which affect the Veterans' Job Training Act. The pertinent regulations must be revised so that they implement the new law.

Timetable:

Action	Date	FR Cite
NPRM	03/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: June C. Schaeffer, Assistant Director for Educational Policy and Program Administration, Veterans Administration, Department of Veterans Benefits (225), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-2092

RIN: 2900-AD64

3423. ◉ VETERANS SPECIAL LIFE INSURANCE--PREMIUMS

Legal Authority: 38 USC 708

CFR Citation: 38 CFR 8.3; 38 CFR 8.85; 38 CFR 8.113

Legal Deadline: None

Abstract: Veterans Special Life Insurance (VSLI) "RS" term policies can be renewed an indefinite number of times. Because of this feature, some insureds have retained this temporary form of protection to meet permanent insurance needs. The problem with this is that at the advanced ages, term insurance premium rates increase significantly and as a result can become financially burdensome. In order to help lessen this burden, regulations are being amended to reflect that premiums for "RS" term policyholders are to be capped at the renewal age 70 premium rate. Funding for "RS" term capping will come exclusively from funds contributed by "RS" term policyholders.

Timetable:

Action	Date	FR Cite
NPRM	03/31/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Paul F. Koons, Assistant Director for Insurance, Veterans Administration, Department of Veterans Benefits (29), P.O. Box 8079, Philadelphia, PA 19101, 215 951-5360

RIN: 2900-AD64

3424. ◉ OPTIONAL SETTLEMENTS ON INSURANCE--CALCULATIONS

Legal Authority: 38 USC 706

CFR Citation: 38 CFR 6.69(a); 38 CFR 8.80; 38 CFR 8.80(c); 38 CFR 8.81; 38 CFR 8.82(a)

Legal Deadline: None

Abstract: The VA currently pay annuities to approximately 150,000 individuals under all of its insurance programs. Of these, almost 1,500 are calculated using male/female differentiated mortality tables. Gender-differentiated mortality tables provide for lower monthly payments to female annuitants. Under this proposal, we will discontinue using female annuity tables and all new annuity awards will be based on existing male tables. All currently running female annuity payments will be raised to the male annuity payment amount, on a prospective basis.

Timetable:

Action	Date	FR Cite
NPRM	03/31/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Paul F. Koons, Assistant Director for Insurance, Veterans Administration, Department of Veterans Benefits (29), P.O. Box 8079, Philadelphia, PA 19101, 215 951-5360

RIN: 2900-AD65

3425. ◉ RESERVISTS EDUCATION; VETERANS' BENEFITS AND SERVICES ACT OF 1988 AND THE MONTGOMERY GI BILL

Legal Authority: 10 USC 2136(b); 38 USC 1788

CFR Citation: 38 CFR 21.7672

Legal Deadline: None

Abstract: The Veterans Benefits and Services Act of 1988 contains a provision which changes the method of measuring laboratory sessions for the purpose of paying educational benefits. The definition of standard class session is also changed. This proposal will bring the pertinent regulation governing the Montgomery GI Bill into agreement with the law.

Timetable:

Action	Date	FR Cite
NPRM	03/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: June C. Schaeffer, Assistant Director for Educational Policy, and Program Administration, Veterans Administration, Department of Veterans Benefits (225), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-2092

RIN: 2900-AD68

3426. ◉ VETERANS EDUCATION; VETERANS' BENEFITS AND SERVICES ACT OF 1988 AND THE VIETNAM ERA GI BILL

Legal Authority: PL 100-322

CFR Citation: 38 CFR 21.4300; 38 CFR 21.4270

Legal Deadline: None

Abstract: The Veterans Benefits and Services Act of 1988 contains a provision which changes the method of measuring laboratory sessions for the purpose of paying educational benefits. The definition of standard class session is also changed. The VA must bring the pertinent regulations into agreement with the law.

Timetable:

Action	Date	FR Cite
NPRM	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: June C. Schaeffer, Assistant Director for Educational Policy and Program Administration, Veterans Administration, Department of Veterans Benefits (225), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-2092

RIN: 2900-AD69

3427. ◉ DEFINITION OF FORMER PRISONER OF WAR

Legal Authority: PL 100-322

CFR Citation: 38 CFR 3.1(y)

Legal Deadline: None

Abstract: This amendment gives the VA the authority to make determinations on prisoner of war status for persons interned during wartime by neutral or allied governments. This expands the class of persons eligible to be declared former prisoners of war.

Timetable:

Action	Date	FR Cite
NPRM	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Robert M. White, Chief, Regulations Service, Veterans Administration, Department of Veterans Benefits (211B), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-3005

RIN: 2900-AD71

BOARD OF VETERANS APPEALS

3428. APPEALS REGULATIONS AND RULES OF PRACTICE; CUTOFF DATE FOR ACCEPTANCE OF EVIDENCE

Legal Authority: 38 USC 4004; 38 USC 4005

CFR Citation: 38 CFR 19.174

Legal Deadline: None

Abstract: This regulation will be amended to specify a cutoff date for the acceptance of additional evidence, requests for hearings or changes of representation once an appeal is transferred to the Board of Veterans Appeals.

Timetable:

Action	Date	FR Cite
NPRM	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Jan Donsbach, Special Legal Assistant, Veterans Administration, Board of Veterans Appeals (01C), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-2976

RIN: 2900-AD14

BOARD OF CONTRACT APPEALS/CONTRACT APPEALS BOARD

3429. EQUAL ACCESS TO JUSTICE; PROCEDURAL RULES

Legal Authority: 5 USC 504 The Equal Access to Justice Act; PL 99-80

CFR Citation: 38 CFR 1.790

Legal Deadline: None

Abstract: The Equal Access to Justice Act provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to appeals before the Board of Contract Appeals. An eligible party may receive an award when it prevails over the Government's position was substantially justified or special circumstances make an award unjust. This document describes the standards for eligibility and the procedures for application and processing by the Board.

Timetable:

Action	Date	FR Cite
NPRM	04/00/89	
Final Action	00/00/00	

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal

Agency Contact: Sally Pfund, Legal Assistant, Board of Contract Appeals (09), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, 202 275-8436

RIN: 2900-AC30

OFFICE OF BUDGET AND FINANCE

3430. ◉ COMMITTEE ON WAIVERS AND COMPROMISES

Legal Authority: 38 USC 3102

CFR Citation: 38 CFR 1.955

Legal Deadline: None

Abstract: Currently, a panel of a Committee on Waivers and Compromises is composed of either one, three, or five members. A one-member panel is used for waiver requests on debts of $1,000 or less. The proposed revision will permit one panel member for debts of $20,000 or less and two or three-member panels for debts in excess of $20,000. We believe that this proposed revision will provide the most efficient use of Committee members.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Peter Mulhern, Special Assistant, Veterans Administration, Ofc of Budget and Finance (047F5), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-3465

RIN: 2900-AE50

VA — Proposed Rule Stage

OFFICE OF EQUAL OPPORTUNITY

3431. NONDISCRIMINATION ON THE BASIS OF SEX UNDER FEDERALLY ASSISTED EDUCATION PROGRAMS AND ACTIVITIES

Significance: Regulatory Program

Legal Authority: 20 USC 1681 et seq; 38 USC 210(a); EO 12250; EO 12067

CFR Citation: 38 CFR 18

Legal Deadline: None

Abstract: To establish standards and procedures for enforcing Title IX of the Education Amendments of 1972 in educational programs and activities receiving Federal financial assistance from the VA. Title IX prohibits discrimination on the basis of sex. There are no alternatives to the issuance of the regulations. Participants, potential participants and the public in general will benefit from Federally assisted programs provided free from prohibited discrimination based on sex.

This originally appeared as a proposed rule in the Federal Register of April 25, 1979 (44 FR 24320). Because of the extended time frame due to internal agency consultation with the Department of Justice, the VA is planning to repropose these regulations.

Timetable:

Action	Date	FR Cite
NPRM	10/01/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Rodney J. Cash, Equal Opportunity Specialist, Veterans Administration, Office of Equal Opportunity (08A), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-2150

RIN: 2900-AE01

3432. NONDISCRIMINATION ON THE BASIS OF HANDICAP IN FEDERALLY ASSISTED PROGRAMS AND ACTIVITIES

Legal Authority: 29 USC 794

CFR Citation: 38 CFR 18.423(c); 38 CFR 18.401 to 18.461, App A

Legal Deadline: None

Abstract: To incorporate a reference to the Uniform Federal Accessibility Standards (UFAS) and update the list of Federal financial assistance programs administered by the VA. The existing regulations require that new construction and alteration of facilities be made in an accessible manner. The regulations provide that new construction or alteration of facilities in conformance with the American National Standard Specifications for Making Building and Facilities Accessible to, and Useable by, the Physically Handicapped (ANSI A117.1-1961 (R 1971)) shall constitute compliance with the accessibility requirements for new construction and alteration of facilities. The proposed revision will replace the current standard with the UFAS, published under the Architectural Barriers Act of 1968. Because some facilities subject to the accessibility requirements of section 504 of the Rehabilitation Act of 1973 are also subject to the accessibility requirements of the Architectural Barriers Act, this proposal would eliminate any potential conflict between standards enforced under the two statutes.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Rodney J. Cash, Equal Opportunity Specialist, Veterans Administration, Office of Equal Opportunity (08A), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-2150

RIN: 2900-AE07

OFFICE OF THE GENERAL COUNSEL

3433. ● INVENTIONS BY EMPLOYEES OF VA, AUTHORITY DELEGATIONS

Legal Authority: 15 USC 3710a; EO 10096

CFR Citation: 38 CFR 1.653, (Revision); 38 CFR 2.83, (Revision)

Legal Deadline: None

Abstract: The amendments to the two regulations cited will delegate authority from the Office of General Counsel (which has the authority, on behalf of the Administrator of Veterans Affairs, to act on all matters pertaining to patents and inventions) to directors of VA medical centers to enter into cooperative research and development agreements (CRDAs) under the Federal Technology Transfer Act of 1986 (15 USC 3710 et. seq.) and EO 12591. EO 12591 provides heads of Federal agencies to delegate the authority to enter into CRDAs to directors of Federal laboratories. Each VA medical center is considered a laboratory as defined in the Act. The delegation will effectuate the purposes of the Act, comply with the Executive Order, and promote cooperative medical research between the VA and the public sector.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Diana M. Rhea, Deputy Assistant General Counsel, Veterans Administration, Office of the General Counsel (024B), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-3451

RIN: 2900-AD51

3434. ● INDEMNIFICATION OF VETERANS ADMINISTRATION EMPLOYEES

Legal Authority: 38 USC 210(c)

CFR Citation: 38 CFR 14

Legal Deadline: None

Abstract: This amendment permits the VA to use Agency funds to indemnify employees who suffer adverse money judgments or personal damage claims as the result of official acts. It also provides that attorneys assisting in either authorized Agency representations or the recommending of such employees to the Department of Justice for representation have an attorney-client relationship with respect to the attorney-client privilege. This amendment addresses the proliferation of lawsuits against VA employees in recent years. It is expected to relieve the potential for intimidation among employees who may hesitate to act in the public interest for fear of a lawsuit with personal liability.

Timetable:

Action	Date	FR Cite
NPRM	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

VA — Proposed Rule Stage

Agency Contact: James Adams, Deputy Assistant General Counsel, Veterans Administration, Office of the General Counsel (023A), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-3000

RIN: 2900-AD70

OFFICE OF FACILITIES

3435. PROTECTION OF ARCHAEOLOGICAL RESOURCES

Legal Authority: 16 USC 470ii Archaeological Resources Protection Act

CFR Citation: 38 CFR 27

Legal Deadline: None

Abstract: The Act requires that Federal land managers promulgate rules and regulations consistent with Uniform Regulations as may be appropriate to carry out his/her function and authorities under the Act to protect archaeological resources on Federal lands. This rule making will enable the VA to protect archaeological resources on VA-managed public lands by issuing permits for authorized excavations and/or removal of archaeological resources, by imposing civil penalties for unauthorized excavation, removal, alteration, damage or defacement of archaeological resources, by providing for the preservation of archaeological collections and data, and by ensuring confidentiality of information about archaeological resources when disclosure would threaten the [illegible].

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Sectors Affected: None

Agency Contact: Gloria Weingarber, Acting Historic Preservation Officer, Office of Facilities (086B), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-3447

RIN: 2900-AC28

OFFICE OF INFORMATION MANAGEMENT AND STATISTICS

3436. PREDISCLOSURE OF CONFIDENTIAL COMMERCIAL INFORMATION

Legal Authority: 5 USC 552(b)(4); EO 12600

CFR Citation: 38 CFR 1.554

Legal Deadline: None

Abstract: Executive Order 12600, Predisclosure Notification Procedures for Confidential Commercial Information, establishes certain mandatory and uniform procedures for handling Freedom of Information Act (FOIA) requests for records which may contain confidential commercial information, protected by FOIA exemption (5 U.S.C. 552(b)(4)). The Executive Order requires the notification and designation procedures be established in agency regulations. Accordingly, the revision to 38 CFR 1.554 will comply with the requirements of the Executive Order.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Donald R. Howell, Management Analyst, Veterans Administration, Ofc of Information Mgmt and Statistics (733), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-4243

RIN: 2900-AD09

VETERANS ADMINISTRATION (VA) — Final Rule Stage

DEPARTMENT OF MEDICINE AND SURGERY

3437. COMMUNITY RESIDENTIAL CARE

Legal Authority: 38 USC 630

CFR Citation: 38 CFR 17.51h to 17.51q

Legal Deadline: None

Abstract: These regulations will clarify the legal status of the Community Residential Care program, setting standards and criteria for health and safety, facility resources, guidelines for costs of care, conditions under which the agency may cease referrals to non-complying facilities.

Timetable:

Action	Date	FR Cite
NPRM	03/25/88	53 FR 9778
NPRM Comment Period End	04/25/88	53 FR 9778
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: James R. Kelly, Chief, Community Care Programs, Veterans Administration, Department of Medicine & Surgery (161), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-3662

RIN: 2900-AB32

3438. AUTOMOBILE ALLOWANCE AND ADAPTIVE EQUIPMENT ELIGIBILITY; DEVICES TO OVERCOME THE HANDICAP OF DEAFNESS

Legal Authority: 38 USC 1901; 38 USC 1902; 38 USC 1903; 38 USC 617(b)

CFR Citation: 38 CFR 3.807; 38 CFR 3.808; 38 CFR 17.115d; 38 CFR 17.119

Legal Deadline: None

Abstract: This proposal would amend the VA adjudication and medical regulations concerning the automobile allowance and adaptive equipment eligibility for certain severely disabled individuals. These amendments are necessary to implement provisions of law and to properly divide regulatory responsibility for these programs consistent with agency organizational and functional alignments. The effect of

these amendments will be to extend automobile adaptive equipment eligibility for certain severely disabled persons, more clearly define program responsibility, and more accurately describe prerequisites for obtaining devices for assisting in overcoming the handicap of deafness (including telecaptioning television decoders).

Timetable:

Action	Date	FR Cite
NPRM	07/26/88	53 FR 28020
NPRM Comment Period End	09/19/88	53 FR 28020
Final Action	12/01/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Frederick Downs, (121)(for Part 17); Robert M. White (211B) (for Part 3), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-3011

RIN: 2900-AD06

DEPARTMENT OF VETERANS BENEFITS

3439. EMPLOYMENT SERVICES FOR CERTAIN ELIGIBLE VETERANS

Legal Authority: 38 USC 1501; 38 USC 1502; 38 USC 1505(b); 38 USC 1516; 38 USC 1517

CFR Citation: 38 CFR 21.47; 38 CFR 21.51; 38 CFR 21.73; 38 CFR 21.250

Legal Deadline: None

Abstract: The VA has determined that employment assistance may be provided a veteran eligible for chapter 31, if the veteran though trained and qualified for suitable employment, has an employment handicap that prevents him or her from obtaining such employment, even if he or she is not a prior participant in a vocational rehabilitation program. It has previously been held that eligibility for employment services was limited to veterans who were current or prior participants under chapter 31.

Timetable:

Action	Date	FR Cite
NPRM	02/02/88	53 FR 2855
NPRM Comment Period End	03/03/88	53 FR 2855
Final Action	12/01/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Morris Triestman, Rehabilitation Consultant, Policy and Program Development, Veterans Administration, Department of Veterans Benefits (228), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-2866

RIN: 2900-AB60

3440. 1. APPORTIONMENT OF BENEFITS TO DEPENDENTS 2. PAYMENT OF COST OF VETERAN'S MAINTENANCE IN INSTITUTION 3. RECOMMENDATION FOR PAYMENT

Legal Authority: 38 USC 210; 38 USC 3202; 38 USC 3203; PL 98-543, Sec 402

CFR Citation: 38 CFR 13.70; 38 CFR 13.71; 38 CFR 13.74

Legal Deadline: None

Abstract: 38 CFR 13.70 defines the conditions under which the Veterans Services Officer may recommend an apportionment of benefits to dependents. The proposed amendment will clarify these conditions. The amendment will also remove a reference to mental illness as the sole criteria for a rating of incompetency.

38 CFR 13.71 is to be amended to make clear that the signing of an institutional award agreement does not waive an institution's right to claim payments under 38 USC 641. This action is the result of an unpublished General Counsel opinion.

38 CFR 13.74 is based on the provisions of 38 USC Sec. 3203(b) (1)(A); however, where the law refers to more than one type of institutional care, the regulation refers only to instances of hospitalization. This would seem to preclude application of the regulation when veterans are in State run nursing homes or other institutions operated by the United States or a political subdivision. The VA, therefore, proposes to correct this defect by substituting the terms "institution" and "institutionalization" where appropriate.

Timetable:

Action	Date	FR Cite
NPRM	01/05/87	52 FR 300
NPRM Comment Period End	02/05/87	52 FR 300
Final Action	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Morris Triestman, Rehabilitation Consultant, Policy and Program Development, Veterans Administration, Department of Veterans Benefits (228), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-2866

RIN: 2900-AB60

3441. USE OF EDUCATIONAL ASSISTANCE BENEFITS AS A PART OF A VOCATIONAL REHABILITATION PROGRAM

Legal Authority: 38 USC 1508(f)

CFR Citation: 38 CFR 21.32; 38 CFR 21.284

Legal Deadline: None

Abstract: A veteran eligible for assistance under the vocational rehabilitation program (chapter 31, Title 38 USC) and under the all volunteer force educational assistance program (chapter 30, Title 38 USC) may elect to pursue a program of education under chapter 30 as a part of a vocational rehabilitation program under chapter 31. A veteran making such an election would only receive benefits otherwise payable under chapter 30.

Timetable:

Action	Date	FR Cite
NPRM	08/11/88	53 FR 30314
NPRM Comment Period End	09/12/88	53 FR 30314
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Morris Triestman, Rehabilitation Consultant, Policy and Program Development, Veterans Administration, Department of Veterans Benefits (228), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-2866

RIN: 2900-AC41

3442. SYSTEMIC DISEASES, ET AL

Legal Authority: 38 USC 355

CFR Citation: 38 CFR 4.16; 38 CFR 4.29; 38 CFR 4.30; 38 CFR 4.88a

Legal Deadline: None

Abstract: These changes clarify temporary total disability awards based on hospitalization, unemployability ratings in psychiatric cases, and provide new schedules for rating

numerous systemic diseases including acquired immune deficiency syndrome (AIDS).

Timetable:

Action	Date	FR Cite
NPRM	05/20/88	53 FR 18099
NPRM Comment Period End	06/20/88	53 FR 18099
Final Action	12/01/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Robert M. White, Chief, Regulations Staff, Veterans Administration, Department of Veterans Benefits (211B), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-3005

RIN: 2900-AC57

3443. EXTENSION OF THE INDEPENDENT LIVING SERVICES PROGRAM

Legal Authority: 38 USC 1520; PL 99-576

CFR Citation: 38 CFR 21.160; 38 CFR 21.162; 38 CFR 21.294

Legal Deadline: None

Abstract: The program of independent living services has been extended through FY 89. The current rules governing this program are amended to incorporate the statutory extension of the program, and make other changes to simplify and improve program administration. These proposed changes reflect, in part, reductions in reporting requirements previously required under the law.

Timetable:

Action	Date	FR Cite
NPRM	03/21/88	53 FR 9125
NPRM Comment Period End	04/19/88	53 FR 9125
Final Action	12/01/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Morris Triestman, Rehabilitation Consultant, Policy and Program Development, Veterans Administration, Department of Veterans Benefits (228), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-2866

RIN: 2900-AC52

3444. VETERANS EDUCATION; INCREASE IN RATES PAYABLE IN THE EATP

Legal Authority: 10 USC 2143; 10 USC 2144

CFR Citation: 38 CFR 21.5632; 38 CFR 21.5633

Legal Deadline: None

Abstract: The law provides that rates of subsistence allowance and educational assistance payable under the Educational Assistance Test Program shall be adjusted annually based upon the average actual cost of attendance at public institutions of higher education in the 12-month period since the rates were last adjusted. After consultation with the Department of Education, the Department of Defense has concluded that these rates should be increased by 6 percent for the 1987-88 school year. Accordingly, the VA will propose amending the regulations dealing with these rates.

Timetable:

Action	Date	FR Cite
NPRM	05/12/88	53 FR 16884
NPRM Comment Period End	06/10/88	53 FR 16884
Final Action	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: June C. Schaeffer, Assistant Director for Educational Policy, and Program Administration, Veterans Administration, Department of Veterans Benefits (225), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-3262

RIN: 2900-AD23

3445. ● DETERMINATION OF SERVICE-CONNECTION FOR IMPAIRED HEARING

Legal Authority: 38 USC 210(c)

CFR Citation: 38 CFR 3.385

Legal Deadline: None

Abstract: This amendment defines the term "hearing within normal limits" and precludes service-connection for impaired hearing when that definition is satisfied.

Timetable:

Action	Date	FR Cite
NPRM	08/26/88	53 FR 32627
NPRM Comment Period End	09/26/88	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Robert M. White, Chief, Regulations Staff, Veterans Administration, Department of Veterans Benefits (211B), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-3005

RIN: 2900-AD54

3446. ● VETERANS EDUCATION; WAIVER OF THE 85-15 PERCENT RATIO REQUIREMENT

Legal Authority: 38 USC 1673(d)

CFR Citation: 38 CFR 21.4201

Legal Deadline: None

Abstract: Generally, the law and the Code of Federal Regulations prohibit the VA from approving new enrollments under many of the education programs which the VA administers when the VA finds that 85 percent or more of the students enrolled are having all or part of their tuition, fees, or other charges paid to or for them by the educational institution or the VA. There is provision for waiver of this requirement. However, the pertinent regulation is not clear as to who has the the authority to grant this waiver. The amended regulation will correct this.

Timetable:

Action	Date	FR Cite
NPRM	07/21/88	53 FR 27533
NPRM Comment Period End	08/22/88	53 FR 27533
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: June C. Schaeffer, Assistant Director for Educational Policy, and Program Administration, Veterans Administration, Department of Veterans Benefits (225), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-3262

RIN: 2900-AD44

3447. ◆ VETERANS EDUCATION; FORFEITURE OF EDUCATION BENEFITS

Legal Authority: 38 USC 3503; 38 USC 3504; 38 USC 3505

CFR Citation: 38 CFR 21.4007

Legal Deadline: None

Abstract: A veteran can forfeit his or her education benefits by engaging in subversive activities or, in limited circumstances, committing fraud or treasonable acts. The regulation concerning forfeiture of education benefits indicates that forfeiture is governed by various VA regulations. However, the regulations which are referenced do not deal with forfeiture. This proposal will correct this error.

Timetable:

Action	Date	FR Cite
NPRM	07/18/88	53 FR 27054
NPRM Comment Period End	08/17/88	53 FR 27054
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: June C. Schaeffer, Assistant Director for Education Policy and, Program Administration, Veterans Administration, Department of Veterans Benefits (225), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-2092

RIN: 2900-AD37

3448. ◆ VETERANS EDUCATION; PAYMENTS DURING BREAKS IN ENROLLMENT

Legal Authority: 38 USC 1434; 38 USC 1780(a)

CFR Citation: 38 CFR 21.4203; 38 CFR 21.4205; 38 CFR 21.7130; 38 CFR 21.7140

Legal Deadline: None

Abstract: The VA may make payments of educational assistance allowance to veterans and eligible persons under the various GI Bills during breaks within a certified period of enrollment when the break results from a school closing based upon an order of the President or due to an emergency situation. The Directors of VA Regional Offices have been delegated the authority to determine when these payments should be made. In the interest of administrative efficiency the VA is considering permitting other VA employees to make these determinations during some school closings.

Timetable:

Action	Date	FR Cite
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: June C. Schaeffer, Assistant Director for Educational Policy and Program Administration, Veterans Administration, Department of Veterans Benefits (225), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-2092

RIN: 2900-AD50

OFFICE OF ACQUISITION AND MATERIEL MANAGEMENT

3449. ACQUISITION REGULATIONS RELATING TO COST COMPARISONS

Legal Authority: 38 USC 210; 40 USC 486c

CFR Citation: 48 CFR 807, (Revision); 48 CFR 852, (Revision)

Legal Deadline: None

Abstract: This proposed VA Acquisition Regulation provides coverage regarding contracting aspects of OMB Circular A-76 cost comparison.

Timetable:

Action	Date	FR Cite
NPRM	02/22/88	53 FR 5201
NPRM Comment Period End	03/23/88	53 FR 5201
Final Action	10/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Chris A. Figg, Chief, Acquisition Policy Staff, Veterans Administration, Ofc of Acquisition and Materiel Mgmt (93), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-3784

RIN: 2900-AC37

3450. VETERANS ADMINISTRATION ACQUISITION REGULATION - CONSULTING SERVICE

Legal Authority: 38 USC 210; 40 USC 486c

CFR Citation: 48 CFR 837

Legal Deadline: None

Abstract: This Veterans Administration regulation provides coverage regarding contracting aspects of OMB Circular A-120 consulting services.

Timetable:

Action	Date	FR Cite
Final Action	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Chris Figg, Chief, Acquisition Policy Staff, Veterans Administration, Ofc of Acquisition and Materiel Mgmt (93), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-3784

RIN: 2900-AC36

3451. ACQUISITION REGULATIONS; CONSTRUCTION CONTRACTING PROCEDURES

Legal Authority: 38 USC 210; 40 USC 486c

CFR Citation: 48 CFR 836; 48 CFR 852

Legal Deadline: None

Abstract: This proposed Veterans Administration regulation will update and clarify construction contracting procedures and clauses.

Timetable:

Action	Date	FR Cite
NPRM	01/21/88	53 FR 1630
NPRM Comment Period End	02/22/88	53 FR 1630
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marsha J. Grogan, Acquisition Policy Staff, Veterans Administration, Ofc of Acquisition and Materiel Mgmt (93), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-3784

RIN: 2900-AC87

BOARD OF VETERANS APPEALS

3452. APPEALS REGULATIONS AND RULES OF PRACTICE- STATUS OF LEGAL INTERNS, LAW STUDENTS AND PARALEGALS

Legal Authority: 38 USC 3401; 38 USC 3404; 38 USC 4005(b)(2)

CFR Citation: 38 CFR 19.152, (Revision)

Legal Deadline: None

Abstract: The regulation will be amended to clarify the status of attorneys to be employed by service organizations and to allow legal interns, law students and paralegals to work with these attorneys who are presenting appeals in any capacity.

Timetable:

Action	Date	FR Cite
NPRM	06/06/88	53 FR 20653
NPRM Comment Period End	07/07/88	53 FR 20653
Final Action	01/01/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Jan Donsbach, Special (Legal) Assistant, Veterans Administration, Board of Veterans Appeals (01C), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-2978

RIN: 2900-AC11

3453. APPEALS REGULATIONS AND RULES OF PRACTICE - HEARING DATE

Legal Authority: 38 USC 4002; 38 USC 4005A

CFR Citation: 38 CFR 19.159, (Revision)

Legal Deadline: None

Abstract: This regulation will be revised to provide an appellant or representative a 60-day period in which to reschedule a hearing date. The revision will remedy scheduling conflicts created by multiple requests for a change of hearing date from the same appellant and/or representative, without abridging the appellant's right to due process.

Timetable:

Action	Date	FR Cite
NPRM	06/06/88	53 FR 20653
NPRM Comment Period End	07/07/88	53 FR 20653
Final Action	01/01/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Jan Donsbach, Special (Legal) Assistant, Veterans Administration, Board of Veterans Appeals (01C), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-2978

RIN: 2900-AC38

OFFICE OF THE GENERAL COUNSEL

3454. EFFECT OF GENERAL COUNSEL OPINIONS

Legal Authority: 38 USC 210(c)(1); 38 USC 4004(c)

CFR Citation: 38 CFR 14.507; 38 CFR 2.6; 38 CFR 3.101

Legal Deadline: None

Abstract: This regulation would clarify the effect of General Counsel opinions with respect to binding and precedential legal interpretations. No alternatives are being considered. The change will assist VA personnel in understanding the effect of General Counsel opinions. It will benefit the public by enhancing the accessibility of General Counsel opinions.

Timetable:

Action	Date	FR Cite
NPRM	03/15/88	53 FR 8471
NPRM Comment Period End	04/14/88	53 FR 8471
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Andrew J. Mullen, Deputy Assistant General Counsel, Veterans Administration, Office of the General Counsel (022A), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-2440

RIN: 2900-AH28

3455. RECOGNITION OF ORGANIZATIONS, REPRESENTATIVES, AGENTS, AND ATTORNEYS

Legal Authority: 38 USC 210(c)(1); 38 USC 3401 to 3404

CFR Citation: 38 CFR 14.627 to 14.637

Legal Deadline: None

Abstract: This proposal includes definitions; requirements for recognition of organizations by the VA; requirements for recognition of representatives, agents, and attorneys; powers of attorney; use of paralegals, law clerks, and law students; and requirements for space and office facilities.

Timetable:

Action	Date	FR Cite
NPRM	03/18/87	52 FR 8472
NPRM Comment Period End	04/17/87	52 FR 8472
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Andrew J. Mullen, Deputy Assistant General Counsel, Veterans Administration, Office of the General Counsel (022A), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-2440

RIN: 2900-AC09

3456. CLAIMS UNDER THE FEDERAL TORT CLAIMS ACT

Legal Authority: 28 USC 2671 to 2680; PL 100-322, Sec 203

CFR Citation: 38 CFR 14.600 to 14.610; 38 CFR 2.6

Legal Deadline: None

Abstract: This proposal updates VA regulations prescribing procedures for the filing, consideration, and disposition of administrative tort claims under the Federal Tort Claims Act. No alternatives are being considered. The changes will assist the public and VA personnel in understanding VA procedures and modifications in the law as a result of judicial decisions and legislation. As such, and in accordance with 38 CFR 1.12, a notice of proposed rulemaking will not be published for this proposed change in regulations.

Timetable:

Action	Date	FR Cite
Final Action	01/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: E. Douglas Bradshaw, Jr., Deputy Assistant General Counsel, Veterans Administration, Office of the General Counsel (021B), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-2153

RIN: 2900-AD15

VA — Final Rule Stage

OFFICE OF FACILITIES

3457. UNIFORM RELOCATION ASSISTANCE ACT FOR REAL PROPERTY ACQUISITION AND FEDERALLY ASSISTED PROGRAMS

Legal Authority: 42 USC 4601; PL 100-17

CFR Citation: 38 CFR 25

Legal Deadline: Final, Statutory, April 2, 1989.

Abstract: The Uniform Relocation Assistance Act Amendments of 1987, established a governmentwide single rule to be published at a single location in the Code of Federal Regulations. The VA is one of 17 Federal agencies that has its own rule currently located in 38 CFR Part 25. The VA is taking part in the common rule to provide for the single rule goal. On December 17, 1987, an interim final rule was published to provide a transition from the existing governmentwide rule and to provide a means for Federal programs to implement the explicit, nondiscretionary provisions of the 1987 amendments.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/17/87	52 FR 48022
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Alan Meurer, Special Programs Officer, Office of Facilities (061A), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-3366

RIN: 2900-AD17

OFFICE OF INFORMATION MANAGEMENT AND STATISTICS

3458. RELEASE OF VA LISTS OF NAMES AND ADDRESSES AND PENALTY PROCEDURES FOR UNAUTHORIZED USE

Legal Authority: 38 USC 3301(f)

CFR Citation: 38 CFR 1.519

Legal Deadline: None

Abstract: The VA is amending the existing regulations concerning VA lists of names and addresses and is also proposing administrative procedures to use when these lists are used for purposes not authorized by law. This action results from the need to amend the regulations to reflect current procedures, organizational changes, and concern expressed by veterans and some service organizations regarding unsolicited mail. The proposed regulatory amendments will allow the VA to enforce its statutory duty to protect the privacy of information concerning veterans and their dependents, establish procedures to suspend recipients who misuse VA name and address lists of veterans/dependents, and give advance notice to recipients of what constitutes an authorized/unauthorized use of veterans/ dependents names and address lists, thereby protecting the due process rights of any recipient before penalties are enforced.

Timetable:

Action	Date	FR Cite
NPRM	03/19/87	52 FR 8624
NPRM Comment Period End	04/20/87	52 FR 8624
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: LeVerne Butler, Management Analyst, Veterans Administration, Ofc of Information Mgmt & Statistics (723B), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-2545

RIN: 2900-AC83

VETERANS ADMINISTRATION (VA) — Completed Actions

3459. USE OF COMMUNITY NURSING HOME FACILITIES

CFR Citation: 38 CFR 17.51a

Completed:

Reason	Date	FR Cite
Final Action	04/21/88	53 FR 13120
Final Action Effective	05/23/88	53 FR 13120

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: James R. Kelly 202 233-3012

RIN: 2900-AH21

3460. RESERVISTS EDUCATION; NEW EDUCATION PROGRAM FOR MEMBERS OF THE SELECTED RESERVE

CFR Citation: 38 CFR 21

Completed:

Reason	Date	FR Cite
Final Action	09/06/88	53 FR 34739
Final Action Effective	10/19/84	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: June C. Schaeffer 202 233-2092

RIN: 2900-AB59

3461. INVESTMENTS BY LEGAL CUSTODIANS

CFR Citation: 38 CFR 13.103

Completed:

Reason	Date	FR Cite
Withdrawn Combined with RIN 2900-AB78.	06/06/88	53 FR 20618

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: William B. Saliski, Jr. 202 233-3951

RIN: 2900-AB77

3462. 1. VETERANS SERVICES OFFICER'S ACTION WHEN VETERAN'S ESTATE EQUALS OR EXCEEDS $1,500 2. DETERMINATION OF VALUE OF ESTATE; 38 USC 3203(D)(1)

CFR Citation: 38 CFR 13.108; 38 CFR 13.109

VA — Completed Actions

Completed:

Reason	Date	FR Cite
Final Action	06/06/88	53 FR 20613
Final Action Effective	07/06/88	53 FR 20613

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: William B. Saliski, Jr. 202 233-3951

RIN: 2900-AI78

3463. AMENDMENT OF FORFEITURE REGULATIONS

CFR Citation: 38 CFR 3.901; 38 CFR 3.902; 38 CFR 3.904; 38 CFR 3.905

Completed:

Reason	Date	FR Cite
Final Action	05/19/88	53 FR 17933
Final Action Effective	06/20/88	53 FR 17933

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Robert M. White 202 233-3005

RIN: 2900-AC01

3464. COLLECTION OF LATE FEES AND INTEREST PENALTIES FOR VA FUNDING FEES

CFR Citation: 38 CFR 36.4254; 38 CFR 36.4312

Completed:

Reason	Date	FR Cite
Final Action	07/18/88	53 FR 27047
Final Action Effective	08/17/88	53 FR 27047

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: George D. Moerman 202 233-3042

RIN: 2900-AC03

3465. INCREASED COVERAGE FOR SERVICEMEN'S AND VETERAN'S GROUP LIFE INSURANCE

CFR Citation: 38 CFR 9.1 to 9.8, (Revision); 38 CFR 9.16, (Revision); 38 CFR 9.22, (Revision); 38 CFR 9.27, (Revision); 38 CFR 9.36, (Revision)

Completed:

Reason	Date	FR Cite
Final Action	05/16/88	53 FR 17698

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Paul F. Koons 215 951-5360

RIN: 2900-AC36

3466. USE OF CREDIT REPORTS FOR REFINANCING AND RESCHEDULING OF VA-GUARANTEED LOANS AND CLAIM SUBMISSIONS

CFR Citation: 38 CFR 36.4300; 38 CFR 36.4300

Completed:

Reason	Date	FR Cite
Final Action	09/06/88	53 FR 34292
Final Action Effective	10/06/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: George D. Moerman 202 233-3042

RIN: 2900-AC19

3467. PROCEDURAL DUE PROCESS

CFR Citation: 38 CFR 3.103; 38 CFR 3.105; 38 CFR 3.109; 38 CFR 3.110; 38 CFR 3.114

Completed:

Reason	Date	FR Cite
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Robert M. White 202 233-3005

RIN: 2900-AC54

3468. EVALUATIONS FOR DIPLOPIA (DOUBLE VISION)

CFR Citation: 38 CFR 4.77; 38 CFR 4.88a

Completed:

Reason	Date	FR Cite
Final Action	08/11/88	53 FR 30261
Final Action Effective	09/12/88	53 FR 30261

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Robert M. White 202 233-3005

RIN: 2900-AC58

3469. VOCATIONAL REHABILITATION PANEL

CFR Citation: 38 CFR 21.52; 38 CFR 21.53; 38 CFR 21.198

Completed:

Reason	Date	FR Cite
Final Action	08/26/88	53 FR 32619
Final Action Effective	09/26/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Morris Triestman 202 233-2886

RIN: 2900-AC71

3470. VETERANS EDUCATION; AMENDMENTS TO VEAP REQUIRED BY THE VETERANS BENEFITS IMPROVEMENT AND HEALTH CARE AUTHORIZATION ACT OF 1986

CFR Citation: 38 CFR 21.5021; 38 CFR 21.5030; 38 CFR 21.5041; 38 CFR 21.5052; 38 CFR 21.5064; 38 CFR 21.5100; 38 CFR 21.5131; 38 CFR 21.5138; 38 CFR 21.5022; 38 CFR 21.5040; 38 CFR 21.5042; 38 CFR 21.5054; 38 CFR 21.5072; 38 CFR 21.5132; 38 CFR 21.5146

Completed:

Reason	Date	FR Cite
Final Action	09/07/88	53 FR 34494
Final Action Effective	10/39/88	

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: June Schaeffer 202 233-2092

RIN: 2900-AC01

3471. IMPROVEMENTS IN VETERANS' BENEFITS

CFR Citation: 38 CFR 3.22; 38 CFR 3.23; 38 CFR 3.271; 38 CFR 3.272; 38 CFR 3.309; 38 CFR 3.342; 38 CFR 3.343; 38 CFR 3.383; 38 CFR 3.384; 38 CFR 3.501; 38 CFR 3.557; 38 CFR 3.800; 38 CFR 3.809a

Completed:

Reason	Date	FR Cite
Final Action	06/21/88	53 FR 23234
Final Action Effective	10/26/88	53 FR 23234

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Robert M. White 202 233-3005

RIN: 2900-AC99

3472. HOMELESS CLAIMANTS

CFR Citation: 38 CFR 1.710

Completed:

Reason	Date	FR Cite
Final Action	06/17/88	53 FR 22652
Final Action Effective	10/01/88	53 FR 22652

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Robert M. White 202 233-3005

RIN: 2900-AD00

3473. LOAN GUARANTY: INCREASE IN MAXIMUM ALLOWABLE AMOUNT THE VA WILL REIMBURSE A LOAN HOLDER FOR LEGAL SERVICES INCURRED IN TERMINATING A LOAN

CFR Citation: 38 CFR 36.4276(b); 38 CFR 36.4313(b)

Completed:

Reason	Date	FR Cite
Final Action	07/18/88	53 FR 27046
Final Action Effective	08/17/88	53 FR 27046

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Leonard A. Levy 202 233-3668

RIN: 2900-AD01

3474. VETERANS EDUCATION; REVISION OF DELIMITING DATES

CFR Citation: 38 CFR 21.1042

Completed:

Reason	Date	FR Cite
Final Action	05/27/88	53 FR 19298
Final Action Effective	05/05/88	53 FR 19298

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: June C. Schaeffer 202 233-2092

RIN: 2900-AD02

3475. VETERANS EDUCATION; HOMELESS CLAIMANTS

CFR Citation: 38 CFR 21.1032; 38 CFR 21.4139

Completed:

Reason	Date	FR Cite
Withdrawn Combined with RIN 2900-AD05.	06/07/88	53 FR 22652

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: June C. Schaeffer 202 233-2092

RIN: 2900-AD21

3476. VETERANS EDUCATION; CLARIFICATION OF ADMINISTRATIVE ERROR

CFR Citation: 38 CFR 21.4135

Completed:

Reason	Date	FR Cite
Final Action	05/17/88	53 FR 17466
Final Action Effective	04/25/88	53 FR 17466

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: June C. Schaeffer 202 233-2092

RIN: 2900-AD22

3477. VETERANS EDUCATION; CLARIFICATION OF MITIGATING CIRCUMSTANCES

CFR Citation: 38 CFR 21.4136; 38 CFR 21.4137

Completed:

Reason	Date	FR Cite
Final Action	06/01/88	53 FR 20683
Final Action Effective	07/11/88	53 FR 20683

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: June C. Schaeffer 202 233-2092

RIN: 2900-AD24

3478. HOMELESS CLAIMANTS FOR VOCATIONAL REHABILITATION

CFR Citation: 38 CFR 21.33

Completed:

Reason	Date	FR Cite
Withdrawn Combined with RIN 2900-AD00.	06/07/88	53 FR 22652

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Morris Triestman 202 233-2836

RIN: 2900-AD25

3479. ◆ SERVICEMEN'S GROUP LIFE INSURANCE AND VETERAN'S GROUP LIFE INSURANCE--APPLICATIONS

Legal Authority: PL 99-166; 38 USC 777

CFR Citation: 38 CFR 9.3(f)

Legal Deadline: None

Abstract: This action was originally included in RIN 2900-AC26 as a final rule. The VA subsequently determined that it should be removed from the original package and resubmitted as a proposed rule. Pub. L. 99-166 provided in part that members of the Individual Ready Reserves (IRR) and the Inactive National Guard (ING) are eligible to be issued Veterans Group Life Insurance (VGLI) coverage. This rule merely establishes procedures by which members of the IRR and ING may apply for VGLI.

Timetable:

Action	Date	FR Cite
NPRM	05/17/88	53 FR 17476
NPRM Comment Period End	06/17/88	53 FR 17476
Final Action	09/28/88	53 FR 37757
Final Action Effective	09/28/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Paul F. Koons, Assistant Director for Insurance, Veterans Administration, Department of Veterans Benefits (29), P.O. Box 8079, Philadelphia, PA 19101, 215 951-5360

RIN: 2900-AD76

3480. ◆ ACTIVE MILITARY SERVICE CERTIFIED AS SUCH UNDER SECTION 401 OF PUB. L. 95-202

Legal Authority: PL 95-202, Sec 401

CFR Citation: 38 CFR 3.7(x)(15)

Legal Deadline: None

Abstract: The VA is amending its regulations concerning persons who are included as having served on active duty. This results from a decision by the Secretary of the Air Force that service of members of the group known as American Merchant Marines in Oceangoing Service during the Armed Conflict, December 7, 1941, to August 15, 1945, constitutes active military service for the purpose of all laws administered by the VA. This action by the VA confers veteran status for VA benefit purposes on former members of that group who were discharged under honorable conditions.

Timetable:

Action	Date	FR Cite
Final Action Effective	01/19/88	53 FR 16875
Final Action	05/12/88	53 FR 16785

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Robert M. White, Chief, Regulations Staff, Veterans Administration, Department of Veterans Benefits (211B), 810 Vermont Avenue, NW, Washington, DC 20420, 202 233-3005

RIN: 2900-AD87

3481. ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN VA PROGRAMS

CFR Citation: 38 CFR 15

Completed:

Reason	Date	FR Cite
Final Action	07/01/88	53 FR 25684
Final Action Effective	08/05/88	53 FR 25684

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Rodney J. Cash 202 233-2150

RIN: 2900-AA87

3482. STANDARDS IMPLEMENTING THE PROGRAM FRAUD CIVIL REMEDIES ACT

CFR Citation: 38 CFR 42

Completed:

Reason	Date	FR Cite
Final Action	05/11/88	53 FR 16704
Final Action Effective	05/11/88	53 FR 16704

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: Audley Hendricks 202 233-3871

RIN: 2900-AC82

3483. NONPROCUREMENT DEBARMENT AND SUSPENSION

CFR Citation: 38 CFR 44.100 to 44.505

Completed:

Reason	Date	FR Cite
Final Action	05/26/88	53 FR 19194
Final Action Effective	10/01/88	53 FR 19161

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: C. G. Verenes 202 233-2973

RIN: 2900-AD06

3484. PARKING FEES AT VA MEDICAL FACILITIES

CFR Citation: 38 CFR 1.300 to 1.303

Completed:

Reason	Date	FR Cite
Final Action	07/07/88	53 FR 25489
Final Action Effective	07/07/88	53 FR 25489

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Donald E. Johnson 202 233-3028

RIN: 2900-AD05

[FR Doc. 88-20679 Filed 10-21-88; 8:45 am]

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Part XLIII

Department of Defense
General Services Administration
National Aeronautics and Space Administration

Federal Acquisition Regulation;
Semiannual Regulatory Agenda

DEPARTMENT OF DEFENSE/GENERAL SERVICES ADMINISTRATION NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (FAR)

DEPARTMENT OF DEFENSE/GENERAL SERVICES ADMINISTRATION/NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Ch. 1

Semiannual Agenda

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Semiannual agenda.

SUMMARY: This agenda provides summary descriptions of regulations being developed by the Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council, in compliance with Executive Order 12291, Federal Regulation. This agenda is being published to allow interested persons an opportunity to participate in the rulemaking process.

The FAR Secretariat has attempted to list all regulations pending at the time of publication, except for minor and routine or repetitive actions, however, unanticipated requirements may result in the issuance of regulations that are not included in this agenda. There is no legal significance to the omission of an item from this listing. Also, the dates shown for the steps of each action are estimated and are not commitments to act on or by the dates shown.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, (202) 523-4755.

SUPPLEMENTARY INFORMATION: DOD, GSA, and NASA, under their several statutory authorities, jointly issue and maintain the Federal Acquisition Regulation (FAR) and prescribe the FAR system. Revisions to the FAR are made through periodic issuance of Federal Acquisition Circulars (FAC's). None of the regulations listed in this agenda are considered major under Executive Order 12291, Federal Regulation.

Dated: August 25, 1988.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
3485	Amendment to Federal Acquisition Regulation (FAR Case 87-43)	9000-AC06

Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
3486	Federal Acquisition Regulation (FAR) - Federal Acquisition Circular 84-16(FAR Case 85-32)	9000-AA00
3487	Federal Acquisition Regulation (FAR) - Federal Acquisition Circular 84-9	9000-AA01
3488	Federal Acquisition Regulation (FAR) - Federal Acquisition Circular 84-11(FAR Case 85-36)	9000-AA02
3489	Amendment to Federal Acquisition Regulation (FAR Case 84-45)	9000-AA29
3490	Amendment to Federal Acquisition Regulation (FAR Case 85-16)	9000-AA35
3491	Amendment to Federal Acquisition Regulation (FAR Cases 86-12 and 88-35)	9000-AA07
3492	Amendment to Federal Acquisition Regulation (FAR Case 86-33)	9000-AB18
3493	Amendment to Federal Acquisition Regulation (FAR Case 86-51)	9000-AB37
3494	Amendment to Federal Acquisition Regulation (FAR Case 86-58)	9000-AB44
3495	Amendment to Federal Acquisition Regulation (FAR Case 86-67)	9000-AB54
3496	Amendment to Federal Acquisition Regulation (FAR Case 86-69)	9000-AB55
3497	Amendment to Federal Acquisition Regulation (FAR Case 87-13)	9000-AB73
3498	Amendment to Federal Acquisition Regulation (FAR Case 87-24)	9000-AB83
3499	Amendment to Federal Acquisition Regulation (FAR Case 87-25)	9000-AB84
3500	Amendment to Federal Acquisition Regulation (FAR Case 87-33)	9000-AB88
3501	Amendment to Federal Acquisition Regulation (FAR Case 87-34)	9000-AB97
3502	Amendment to Federal Acquisition Regulation (FAR Case 87-36)	9000-AB99
3503	Amendment to Federal Acquisition Regulation (FAR Case 87-37)	9000-AC00
3504	Amendment to Federal Acquisition Regulation (FAR Case 87-39)	9000-AC02
3505	Amendment to Federal Acquisition Regulation (FAR Case 87-41)	9000-AC04
3506	Amendment to Federal Acquisition Regulation (FAR Case 87-42)	9000-AC05
3507	Amendment to Federal Acquisition Regulation (FAR Case 87-50)	9000-AC13
[redacted]	Amendment to Federal Acquisition Regulation (FAR Case 87-51)	9000-AC14
3509	Amendment to Federal Acquisition Regulation (FAR Case 87-54)	9000-AC17
3510	Amendment to Federal Acquisition Regulation (FAR Case 88-6)	9000-AC19
3511	Amendment to Federal Acquisition Regulation (FAR Case 88-7)	9000-AC20
3512	Amendment to Federal Acquisition Regulation (FAR Case 88-9)	9000-AC22
3513	Amendment to Federal Acquisition Regulation (FAR Case 88-10)	9000-AC23
3514	Amendment to Federal Acquisition Regulation (FAR Case 88-15)	9000-AC28

FAR

Final Rule Stage—Continued

Sequence Number	Title	Regulation Identifier Number
3515	Amendment to Federal Acquisition Regulation (FAR Case 88-16)	9000-AC29
3516	Amendment to Federal Acquisition Regulation (FAR Case 88-17)	9000-AC30
3517	Amendment to Federal Acquisition Regulation (FAR Case 88-19)	9000-AC32
3518	Amendment to Federal Acquisition Regulation (FAR Case 88-21)	9000-AC34
3519	Amendment to Federal Acquisition Regulation (FAR Case 88-22)	9000-AC35
3520	Amendment to Federal Acquisition Regulation (FAR Case 88-25)	9000-AC37
3521	Amendment to Federal Acquisition Regulation (FAR Case 88-26)	9000-AC38
3522	Amendment to Federal Acquisition Regulation (FAR Case 88-27)	9000-AC39
3523	Amendment to Federal Acquisition Regulation (FAR Case 88-28)	9000-AC40
3524	Amendment to Federal Acquisition Regulation (FAR Case 88-29)	9000-AC41
3525	Amendment to Federal Acquisition Regulation (FAR Case 88-30)	9001-AC42
3526	Amendment to Federal Acquisition Regulation (FAR Case 88-31)	9000-AC43
3527	Amendment to Federal Acquisition Regulation (FAR Case 88-32)	9000-AC44
3528	Amendment to Federal Acquisition Regulation (FAR Case 88-34)	9000-AC45
3529	Amendment to Federal Acquisition Regulation (FAR Case 88-24)	9000-AC46

Completed Actions

Sequence Number	Title	Regulation Identifier Number
3530	Amendment to Federal Acquisition Regulation (FAR Case 84-53)	9000-AA24
3531	Federal Acquisition Regulation (FAR) FAR Case 85-63	9000-AA48
3532	Federal Acquisition Regulation (FAR) - FAR Case 85-32	9000-AA06
3533	Federal Acquisition Regulation (FAR) - FAR Case 85-43	9000-AA09
3534	Federal Acquisition Regulation (FAR) - FAR Case 85-47	9000-AA73
3535	Amendment to Federal Acquisition Regulation (FAR Case 86-16)	9000-AB03
3536	Amendment to Federal Acquisition Regulation (FAR Case 86-23)	9000-AB26
3537	Amendment to Federal Acquisition Regulation (FAR Case 86-24)	9000-AB06
3538	Amendment to Federal Acquisition Regulation (FAR Case 86-32)	9000-AB17
3539	Amendment to Federal Acquisition Regulation (FAR Case 86-34)	9000-AB19
3540	Amendment to Federal Acquisition Regulation (FAR Case 86-35)	9000-AB29
3541	Amendment to Federal Acquisition Regulation (FAR Case 86-54)	9000-AB40
3542	Amendment to Federal Acquisition Regulation (FAR Case 86-64)	9000-AB50
3543	Amendment to Federal Acquisition Regulation (FAR Case 86-68)	9000-AB53
3544	Amendment to Federal Acquisition Regulation (FAR Case 86-52)	9000-AB60
3545	Amendment to Federal Acquisition Regulation (FAR Case 86-57)	9000-AB61
3546	Amendment to Federal Acquisition Regulation (FAR Case 87-14)	9000-AB74
3547	Amendment to Federal Acquisition Regulation (FAR Case 87-15)	9000-AB75
3548	Amendment to Federal Acquisition Regulation (FAR Case 87-16)	9000-AB76
3549	Amendment to Federal Acquisition Regulation (FAR Case 87-12)	9000-AB78
3550	Amendment to Federal Acquisition Regulation (FAR Case 87-18)	9000-AB80
3551	Amendment to Federal Acquisition Regulation (FAR Case 87-19)	9000-AB81
3552	Amendment to Federal Acquisition Regulation (FAR Case 87-22)	9000-AB82
3553	Amendment to Federal Acquisition Regulation (FAR Case 87-45)	9000-AC08
3554	Amendment to Federal Acquisition Regulation (FAR Case 87-47)	9000-AC10
3555	Amendment to Federal Acquisition Regulation (FAR Case 87-48)	9000-AC11
3556	Amendment to Federal Acquisition Regulation (FAR Case 87-49)	9000-AC12
3557	Amendment to Federal Acquisition Regulation (FAR Case 87-52)	9000-AC15
3558	Amendment to Federal Acquisition Regulation (FAR Case 87-53)	9000-AC16
3559	Amendment to Federal Acquisition Regulation (FAR Case 88-8)	9000-AC21
3560	Amendment to Federal Acquisition Regulation (FAR Case 88-11)	9000-AC24
3561	Amendment to Federal Acquisition Regulation (FAR Case 88-12)	9000-AC25
3562	Amendment to Federal Acquisition Regulation (FAR Case 88-13)	9000-AC26
3563	Amendment to Federal Acquisition Regulation (FAR Case 88-14)	9000-AC27
3564	Amendment to Federal Acquisition Regulation (FAR Case 88-18)	9000-AC31
3565	Amendment to Federal Acquisition Regulation (FAR Case 88-20)	9000-AC33
3566	Amendment to Federal Acquisition Regulation (FAR Case 88-23)	9000-AC36

DEPARTMENT OF DEFENSE/GENERAL SERVICES ADMINISTRATION/NATIONAL AERONAUTICS AND SPACE

Proposed Rule Stage

ADMINISTRATION (FAR)

3485. AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 87-43)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 30; 48 CFR 31

Legal Deadline: None

Abstract: To invite comments concerning the development of changes to the FAR on the allowability of costs incident to mergers and other business combinations.

Timetable:

Action	Date	FR Cite
ANPRM	10/28/87	52 FR 41474
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AC09

DEPARTMENT OF DEFENSE/GENERAL SERVICES ADMINISTRATION/NATIONAL AERONAUTICS AND SPACE

Final Rule Stage

ADMINISTRATION (FAR)

3486. FEDERAL ACQUISITION REGULATION (FAR) - FEDERAL ACQUISITION CIRCULAR 84-10(FAR CASE 85-32)

Legal Authority: 40 USC 486(c); 42 USC 2473(c); 10 USC Chapter 137

CFR Citation: 48 CFR 7; 48 CFR 15; 48 CFR 19; 48 CFR 34; 48 CFR 52

Legal Deadline: Final, Statutory, May 1, 1988.

Abstract: (1) Implement Sec. 1213 of Pub. L. 98-525 and Sec. 201 of Pub. L. 98-577 by (a) requiring that the contracting officer, prior to contracting, review the acquisition history of the supplies or services and the description of the supplies, and (b) specifying new requirements applicable to planning for the solicitation of a major system production contract; (2) Implement Sec. 1245 of Pub. L. 98-525 and Sec. 301 of Pub. L. 98-577 by specifying that offerors/contractors (a) are required to distribute costs within contracts on a basis that ensures that unit prices of supplies are in proportion to the item's base cost, (b) may be required to identify supplies that they will not manufacture or to which they will not contribute significant value, and (c) are required to flow the requirement down to subcontractors; (3) Implement Sec. 1216 of Pub. L. 98-525 and Sec. 204 of Pub. L. 98-577 by requiring offerors/contractors in certain acquisitions to certify that the prices offered for those items of supply that the contractor offers for sale to the public are no higher than any lower price charged to any other customer during the preceding 60 days, or submit a written justification for any (cont)

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/03/85	50 FR 27580
Final Action FAR Case 85-23, Small Business Subcontracting Policy	07/29/86	51 FR 27114
Final Action FAR Case 85-35, Integrity of Unit Prices	07/29/86	51 FR 27114
Final Action FAR Case 85-11, Definition of Major System	07/29/86	51 FR 27114
Final Action FAR Case 85-30, Planning for Future Competition	07/29/86	51 FR 27114
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: ABSTRACT CONT: differences; (4) Implement Sec. 402 of Pub. L. 98-577 by (a) widening the area where subcontracting possibilities are considered to exist, (b) further specifying the types of acquisitions that are to be considered for contracting and subcontracting with small and small disadvantaged business concerns, and (c) stating the policy of the United States that its prime contractors establish procedures to ensure timely payments to small and small disadvantaged subcontractors; and (5) Implement Sec. 1211 of Pub. L. 98-525 and Sec. 102 of Pub. L. 98-577 by specifying a definition of "major system."

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AA00

3487. FEDERAL ACQUISITION REGULATION (FAR) - FEDERAL ACQUISITION CIRCULAR 84-9

Legal Authority: 40 USC 486(c); 42 USC 2473(c); 10 USC Chapter 137

CFR Citation: 48 CFR 12; 48 CFR 33; 48 CFR 52

Legal Deadline: None

Abstract: To revise the FAR to comply with revised Department of Justice advice concerning the General Accounting Office (GAO) "stay" provisions in 31 U.S.C. 3553(c) and (d) and the GAO "damages" provision in 31 U.S.C. 3554(c) regarding payment of costs of filing and pursuing a protest and preparing the bid and proposal.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/30/85	50 FR 39660
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AA01

FAR

Final Rule Stage

3485. FEDERAL ACQUISITION REGULATION (FAR) - FEDERAL ACQUISITION CIRCULAR 84-11(FAR CASE 85-38)

Legal Authority: 40 USC 486(c); 42 USC 2473(c); 10 USC Chapter 137

CFR Citation: 48 CFR 3; 48 CFR 7; 48 CFR 9; 48 CFR 14; 48 CFR 15; 48 CFR 52

Legal Deadline: Final, Statutory, May 1, 1988.

Abstract: To revise the FAR to (1) Prohibit contractors and subcontractors from asserting or agreeing to unreasonable restrictions on direct sales by subcontractors to the Government; (2) Prescribe policies, procedures, and a solicitation provision for gathering and using information from offerors to assist the Government in planning the most advantageous quantities in which supplies should be purchased; and (3) Prescribe policies, procedures, and a solicitation provision regarding the establishment and enforcement of qualification requirements for sources and products.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/30/85	50 FR 35474
Final Action FAR Case 85-37 Unreasonable Restrictions on Subcontractor Sales	07/29/86	51 FR 27114
Final Action FAR Case 85-36 Economic Order Quantities	08/12/87	52 FR 30074
Final Action	00/00/00	

FAR Case 85-36 merged into FAR Case 86-67

Final Action 06/06/88

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AA02

3488. AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 84-45)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 3

Legal Deadline: None

Abstract: Amend the Federal Acquisition Regulation to implement OFPP Letter 84-1 on Federally Funded Research and Development Centers.

Timetable:

Action	Date	FR Cite
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Steets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AA28

3490. AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 85-16)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 14; 48 CFR 52

Legal Deadline: None

Abstract: Amend the Federal Acquisition Regulation to provide guidance under the rules of sealed bidding with respect to acceptable evidence in establishing the date of mailing of a late bid.

Timetable:

Action	Date	FR Cite
NPRM	03/22/85	50 FR 11522
NPRM Comment Period End	05/21/85	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AA15

3491. AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASES 86-12 AND 86-36)

Legal Authority: 40 USC 486(c); 42 USC 2473(c); 10 USC Chapter 137

CFR Citation: 48 CFR 53

Legal Deadline: None

Abstract: To amend the Federal Acquisition Regulation to revise Standard Form 1417 to (1) eliminate unnecessary delays in securing solicitation documents by requiring construction contractors to obtain a certified check or cashiers check, and (2) require inclusion of the contractor's telephone number on the SF 1417.

Timetable:

Action	Date	FR Cite
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AA27

3492. AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 86-33)

Legal Authority: 40 USC 486(c); 42 USC 2473(c); 10 USC Chapter 137

CFR Citation: 48 CFR 46; 48 CFR 52

Legal Deadline: None

Abstract: To amend the Federal Acquisition Regulation to incorporate changes to provide improved value engineering coverage, as well as those changes necessitated by OMB Circular A-131, Value Engineering.

Timetable:

Action	Date	FR Cite
NPRM	09/02/86	51 FR 31197
NPRM Comment Period End	12/02/86	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AA16

3493. AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 86-51)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 14; 48 CFR 15; 48 CFR 32; 48 CFR 52

Legal Deadline: None

FAR — Final Rule Stage

Abstract: To amend the FAR regarding penalties charged under DOD contracts for submission of defective cost or pricing data and interest charged from the date of overpayment on all Government contracts in defective pricing cases.

Timetable:

Action	Date	FR Cite
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AB27

3494. AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 86-58)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 52

Legal Deadline: None

Abstract: To amend the FAR to (1) clarify service of protest requirements and (2) provide for designation of officials or locations where an information copy of the protest must be delivered.

Timetable:

Action	Date	FR Cite
NPRM	11/25/86	51 FR 42805
NPRM Comment Period End	01/26/87	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AB44

3495. AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 86-57)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 9; 48 CFR 52

Legal Deadline: None

Abstract: To amend the FAR to clarify what constitutes a "qualification requirement" and to whom or what it applies.

Timetable:

Action	Date	FR Cite
NPRM	02/09/87	52 FR 4062
NPRM Comment Period End	04/10/87	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AB54

3496. AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 86-58)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 15; 48 CFR 31; 48 CFR 52

Legal Deadline: None

Abstract: To amend the FAR to include more specific regulatory coverage concerning the termination of overfunded defined benefit pension plans and the resultant employer withdrawal of excess pension fund assets.

Timetable:

Action	Date	FR Cite
NPRM	02/09/87	52 FR 4084
NPRM Comment Period End	04/10/87	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AB55

3497. AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 87-12)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 5; 48 CFR 13; 48 CFR 19; 48 CFR 52

Legal Deadline: Final, Statutory, April 15, 1987.

Abstract: To amend the Federal Acquisition Regulation to (1) raise the threshold for publicizing proposed acquisitions, other than sole source acquisitions, from $10,000 to $25,000, (2) require posting of notices of solicitations expected to exceed $10,000 but not to exceed $25,000, and (3) raise the limitation for small business, small purchase set-asides from $10,000 to $25,000.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/09/87	52 FR 21685
Comment Period End	08/10/87	52 FR 21685
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AB73

3498. AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 87-24)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 9; 48 CFR 44; 48 CFR 52

Legal Deadline: None

Abstract: To amend the Federal Acquisition Regulation concerning debarment and suspension procedures.

Timetable:

Action	Date	FR Cite
NPRM	07/31/87	52 FR 28642
NPRM Comment Period End	09/29/87	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AB83

FAR — Final Rule Stage

3499. AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 87-25)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 47; 48 CFR 52

Legal Deadline: None

Abstract: To amend the Federal Acquisition Regulation concerning guaranteed maximum shipping weights and dimensions.

Timetable:

Action	Date	FR Cite
NPRM	08/21/87	52 FR 31722
NPRM Comment Period End	10/20/87	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AB84

3500. AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 87-33)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 31

Legal Deadline: None

Abstract: To amend the Federal Acquisition Regulation to delete certain language affecting severance pay.

Timetable:

Action	Date	FR Cite
NPRM	09/17/87	52 FR 35191
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AB88

3501. AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 87-34)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 28; 48 CFR 52

Legal Deadline: None

Abstract: To amend the FAR to implement agency agreements with the State of New Mexico that provide for use of "Nontangible Transaction Certificates" by Government cost reimbursement contractors when they purchase tangible property.

Timetable:

Action	Date	FR Cite
NPRM	09/24/87	52 FR 35896
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AB87

3502. AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 87-36)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 45

Legal Deadline: None

Abstract: To amend the FAR to require that a contractor's system of record maintenance be sufficient to adequately control Government property and, as a minimum, be equivalent to the contractor's system for maintaining its own property.

Timetable:

Action	Date	FR Cite
NPRM	10/07/87	52 FR 37395
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AB90

3503. AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 87-37)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 14; 48 CFR 15; 48 CFR 52; 48 CFR 53

Legal Deadline: None

Abstract: To amend the FAR to provide a simplified contract format and allow annual submission of contractor's representations and certifications.

Timetable:

Action	Date	FR Cite
NPRM	10/27/87	52 FR 41390
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AC00

3504. AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 87-38)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 14; 48 CFR 19; 48 CFR 52

Legal Deadline: None

Abstract: To amend the FAR to implement amendments made to sections 8 and 15 of the Small Business Act by section 921, Pub. L. 99-661. The revisions (i) adopt the statutory prohibition against award of set-aside and 8(a) contracts at a price exceeding fair market price; (ii) require that a fair proportion of Government contracts within each industrial category be awarded to small business concerns; and (iii) implement statutory restrictions concerning the extent of subcontracting permitted under set-aside and 8(a) contracts.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/14/87	52 FR 38160
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

FAR

Final Rule Stage

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, [illegible]

RIN: 9000–AC02

3505. AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 87-41)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 53

Legal Deadline: None

Abstract: To amend the FAR to prescribe and illustrate the latest edition of Standard Form 1408, Abstract of Offers, and Standard Form 1408A, Abstract of Offers-Continuation Sheet.

Timetable:

Action	Date	FR Cite
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, [illegible]

RIN: 9000–AC04

3506. AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 87-42)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 5

Legal Deadline: None

Abstract: To amend the FAR to make optional the synopsizing of advance notices of interest in research and development fields, and to clarify the purpose of such notices.

Timetable:

Action	Date	FR Cite
NPRM	11/05/87	52 FR 42519
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, [illegible]

RIN: 9000–AC05

3507. AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 87-50)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 7; 48 CFR 10

Legal Deadline: None

Abstract: To amend the FAR to include Governmentwide policies and procedures regarding the use of acquisition streamlining efforts to more efficiently and effectively use resources to develop, produce, or display quality systems.

Timetable:

Action	Date	FR Cite
NPRM	01/04/88	53 FR 100
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, [illegible]

RIN: 9000–AC13

3508. AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 87-51)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 26; 48 CFR 37; 48 CFR 52

Legal Deadline: None

Abstract: To amend the FAR to prescribe uniform procedures regarding nonpersonal services contracts for health care services.

Timetable:

Action	Date	FR Cite
NPRM	01/27/88	53 FR 2464
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, [illegible]

RIN: 9000–AC14

3509. AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 87-54)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 32; 48 CFR 33

Legal Deadline: None

Abstract: To amend the FAR to clarify the policy of the Government concerning demands for payment of contract debts owed to the Government.

Timetable:

Action	Date	FR Cite
NPRM	01/28/88	53 FR 2577
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, [illegible]

RIN: 9000–AC17

3510. ● AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 88-9)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 17; 48 CFR 37; 48 CFR 52

Legal Deadline: None

Abstract: To amend the FAR to clarify procedures applicable when converting an acquisition from sealed bidding to negotiation.

Timetable:

Action	Date	FR Cite
NPRM	02/09/88	53 FR 3814
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, [illegible]

RIN: 9000–AC19

FAR

Final Rule Stage

3511. ● AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 88-7)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 14; 48 CFR 15

Legal Deadline: None

Abstract: To amend the FAR to permit contracting offices an option provision which enables the Government to require continued performance of any services within the limits and at the rate specified in a contract.

Timetable:

Action	Date	FR Cite
NPRM	02/09/88	53 FR 3814
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, [illegible]

RIN: 9000–AC21

3512. ● AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 88-8)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 19; 48 CFR 52

Legal Deadline: None

Abstract: To amend the FAR to specify that the subcontracting plans for contracts containing options that meet the required threshold for requiring such plans must separately address both the basic and option quantities.

Timetable:

Action	Date	FR Cite
NPRM	02/26/88	53 FR 5928
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, [illegible]

RIN: 9000–AC22

3513. ● AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 88-10)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 1; 48 CFR 5; 48 CFR 22; 48 CFR 52

Legal Deadline: None

Abstract: To amend the FAR to incorporate the implementation of the Department of Labor regulations regarding the Service Contract Act.

Timetable:

Action	Date	FR Cite
NPRM	02/22/88	53 FR 5926
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, [illegible]

RIN: 9000–AC23

3514. ● AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 88-15)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 32

Legal Deadline: None

Abstract: To amend the FAR to allow the contracting officer the authority to limit progress payments on first article work by a stated dollar amount or percentage.

Timetable:

Action	Date	FR Cite
NPRM	03/16/88	53 FR 8734
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, [illegible]

RIN: 9000–AC25

3515. ● AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 88-16)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 14

Legal Deadline: None

Abstract: To amend the FAR to clarify the obligation of the contracting officer to disclose all appropriate information when requesting additional evidence to support a contractor's bid when there is a basis to believe that the bid might contain a mistake.

Timetable:

Action	Date	FR Cite
NPRM	03/16/88	53 FR 8734
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, [illegible]

RIN: 9000–AC26

3516. ● AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 88-17)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 22; 48 CFR 52

Legal Deadline: None

Abstract: To amend the FAR to implement procurement restrictions contained in Section 109, Pub. L. 100-202 (The FY 1988 Continuing Resolution on Appropriations). The restrictions prohibit any funds appropriated for FY 88 by Pub. L. 100-202 or any other law to be obligated or expended on any contract for construction, alteration, or repair of any public building or public work with any contractor or subcontractor of a foreign country or any supplier of products of a foreign country that is identified by the United States Trade Representative (USTR).

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/12/88	53 FR 12126
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AC30

3517. ⊕ AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 88-19)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 4

Legal Deadline: None

Abstract: To amend the FAR to extend the record retention period for contractors who submit late annual indirect cost rate proposals and clarify the meaning of "record" to include computer input data.

Timetable:

Action	Date	FR Cite
NPRM	08/17/88	53 FR 23105
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AC32

3518. ⊕ AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 88-21)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 43; 48 CFR 47; 48 CFR 52

Legal Deadline: None

Abstract: To amend the FAR to delete the clause at 52.247-27, Contract Not Affected by Oral Agreement, and its prescription at 47.207-5(b); and to add optional clause 52.243-8, Authorities and Limitations, and its corresponding prescription at 43.108(b).

Timetable:

Action	Date	FR Cite
NPRM	04/08/88	53 FR 11795
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AC34

3519. ⊕ AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 88-17)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 52

Legal Deadline: None

Abstract: To amend the FAR to require that, if a contractor or subcontractor, obtains a reduction of its U.S. income tax liability because of foreign tax credits under the IRS, the amount of the reduction shall be credited back to the U.S. Government at the time the foreign tax credit is given.

Timetable:

Action	Date	FR Cite
NPRM	04/14/88	53 FR 12501
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AC36

3520. ⊕ AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 88-25)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 14; 48 CFR 36; 48 CFR 53

Legal Deadline: None

Abstract: To amend the FAR to revise SF 1419, Abstract of Offers--Construction, to make the form more functional when recording offers from seven or more offerors and/or recording offers when the construction contract solicitation requires individual offers on 14 or more line items.

Timetable:

Action	Date	FR Cite
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AC37

3521. ⊕ AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 88-26)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 15

Legal Deadline: None

Abstract: To amend the FAR to consolidate and amplify requirements dealing with subcontract pricing.

Timetable:

Action	Date	FR Cite
NPRM	07/07/88	53 FR 25572
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AC38

3522. ⊕ AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 88-27)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 9

Legal Deadline: None

Abstract: To amend the FAR to eliminate redundant portions of the text already stated in FAR 22.608-2.

Timetable:

Action	Date	FR Cite
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AC39

3523. ⊕ AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 88-28)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 47

Legal Deadline: None

Abstract: To amend the FAR to remind contracting officers that the terms and conditions contained in FAR Subpart 47.3 are applicable to fixed-price contracts, and are only to be used as a guide for cost-reimbursement contracts.

Timetable:

Action	Date	FR Cite
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AC40

3524. ⊕ AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 88-29)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 42; 48 CFR 52

Legal Deadline: None

Abstract: To amend the FAR to require contractors to provide advance notice of shipment for categories of material requiring preparation by the consignee for safety and security consideration.

Timetable:

Action	Date	FR Cite
NPRM	07/01/88	53 FR 25102
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AC41

3525. ⊕ AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 88-30)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 45

Legal Deadline: None

Abstract: To amend the FAR to clarify FAR plant clearance policies and procedures.

Timetable:

Action	Date	FR Cite
NPRM	07/01/88	53 FR 25084
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AC42

3526. ⊕ AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 88-31)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 5; 48 CFR 14; 48 CFR 15; 48 CFR 17; 48 CFR 25

Legal Deadline: Final, Statutory, February 14, 1988.

Abstract: To amend the FAR to incorporate changes necessitated by a major renegotiation of the Government Procurement Code by the U.S. Trade Representative.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/20/88	53 FR 27460
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AC43

3527. ⊕ AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 88-32)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 33

Legal Deadline: None

Abstract: To amend the FAR to reflect changes to the regulations governing bid protests to the GAO. The revisions would allow the protestor to file a request for documents it believes relevant to the protest, and to provide for two types of conferences, one on the merits of the protest and a fact-finding conference.

Timetable:

Action	Date	FR Cite
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AC44

3528. ⊕ AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 88-34)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 13

Legal Deadline: None

Abstract: To amend the FAR to allow annual review of BPA files by the ordering officer to ensure procedural compliance with the FAR on a random sample basis instead of a semiannual review.

Timetable:

Action	Date	FR Cite
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat),

FAR — Final Rule Stage

18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AC45

3529. ◆ AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 88-24)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 36

Legal Deadline: None

Abstract: To amend the FAR to clarify the requirement to obtain certified cost or pricing data for negotiated construction contracts.

Timetable:

Action	Date	FR Cite
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AC46

DEPARTMENT OF DEFENSE/GENERAL SERVICES ADMINISTRATION/NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (FAR) — Completed Actions

3530. AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 84-53)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 21

Legal Deadline: None

Abstract: Amend the Federal Acquisition Regulation to bring the FAR into conformance with section 8(b)(7) of the Small Business Act with the award of a contract to a small business pending final determination of its eligibility for award under the Walsh-Healey Public Contracts Act.

Timetable:

Action	Date	FR Cite
Withdrawn	07/20/88	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AA24

3531. FEDERAL ACQUISITION REGULATION (FAR) FAR CASE 85-03

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 31

Legal Deadline: Final, Statutory, April 7, 1988.

Abstract: Amend the FAR to provide that any cost made specifically unallowable under FAR 31.205, Selected costs, cannot be allowed under any other section of FAR Subpart 31.2.

Contracts with Commercial Organizations.

Timetable:

Action	Date	FR Cite
NPRM	04/30/87	52 FR 15864
NPRM Comment Period End	06/29/87	
Final Action	05/18/88	53 FR 17854

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS - FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AA49

3532. FEDERAL ACQUISITION REGULATION (FAR) - FAR CASE 85-32

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 15; 48 CFR 52

Legal Deadline: Final, Statutory, October 18, 1988 (Public Law 99-500) May 1, 1988 (Public Law 99-577)

Abstract: Amend the FAR to implement Sec. 926 of Public Law 99-500 and Sec. 204 of Public Law 99-577, by requiring offerors in certain noncompetitive acquisitions to certify that prices offered for spare or repair parts that the contractor offers for sale to the public are no higher than the lowest commercial price at which such parts were sold during the most recent regular monthly, quarterly, or other period (but not less than 30 days) in duration for which sales data are reasonably available, or submit a written justification for any differences.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/03/85	50 FR 27560
Withdrawn – also reported in RIN 9000-AA00	09/12/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS - FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AA56

3533. FEDERAL ACQUISITION REGULATION (FAR) - FAR CASE 85-43

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 47; 48 CFR 52

Legal Deadline: None

Abstract: Amend the FAR to alleviate inequities in contract clauses regarding FOB origin.

Timetable:

Action	Date	FR Cite
NPRM	11/22/85	50 FR 48332
NPRM Comment Period End	01/21/86	
Final Action	05/18/88	53 FR 17864

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS - FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AA73

FAR — Completed Actions

3534. FEDERAL ACQUISITION REGULATION (FAR) - FAR CASE 85-47

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 27; 48 CFR 52

Legal Deadline: Final, Statutory, November 1, 1988.

Abstract: Amend the FAR to implement Pub L 98-525 and Pub L 98-577 concerning the validation of restrictive markings on technical data delivered by a contractor to the Government. Issue was addressed in FAC 84-27 (52 FR 18140).

Timetable:

Action	Date	FR Cite
NPRM	10/03/85	50 FR 40416
NPRM Comment Period End	01/09/86	50 FR 45442
Withdrawn	07/11/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS - FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AA89

3535. AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 86-18)

Legal Authority: 40 USC 486(c); 42 USC 2473(c); 10 USC Chapter 137

CFR Citation: 48 CFR 8

Legal Deadline: None

Abstract: To amend the Federal Acquisition Regulation to clarify Federal Prison Industries' priority status in the acquisition of services.

Timetable:

Action	Date	FR Cite
NPRM	06/12/86	51 FR 21496
NPRM Comment Period End	08/11/86	
Withdrawn	03/24/88	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AB09

3536. AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 86-23)

Legal Authority: 40 USC 486(c); 42 USC 2473(c); 10 USC Chapter 137

CFR Citation: 48 CFR 13; 48 CFR 19; 48 CFR 20; 48 CFR 52

Legal Deadline: None

Abstract: To amend the Federal Acquisition Regulation to provide for the use of small purchase procedures in awarding set-aside contracts between $10,000 and $25,000.

Timetable:

Action	Date	FR Cite
NPRM	08/26/86	51 FR 23396
NPRM Comment Period End	07/28/86	
Withdrawn	04/05/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AB06

3537. AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 86-24)

Legal Authority: 40 USC 486(c); 42 USC 2473(c); 10 USC Chapter 137

CFR Citation: 48 CFR 19; 48 CFR 52

Legal Deadline: None

Abstract: To amend the Federal Acquisition Regulation to clarify in the small business set-aside notice that an acquisition is to be made only from a small business concern furnishing a product manufactured in the U.S., its territories, or possessions, Puerto Rico, or the Trust Territory of the Pacific Islands.

Timetable:

Action	Date	FR Cite
NPRM	07/29/86	51 FR 27129
NPRM Comment Period End	09/29/86	
Interim Final Rule	07/20/88	53 FR 27460

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AB09

3538. AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 86-32)

Legal Authority: 40 USC 486(c); 42 USC 2473(c); 10 USC Chapter 137

CFR Citation: 48 CFR 12; 48 CFR 52

Legal Deadline: None

Abstract: To amend the Federal Acquisition Regulation to ensure that the contracting officer and the authorized representative have access to all the data which impacts contract price.

Timetable:

Action	Date	FR Cite
NPRM	06/26/86	51 FR 23396
Final Action	05/18/88	53 FR 17854

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AB17

3539. AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 86-34)

Legal Authority: 40 USC 486(c); 42 USC 2473(c); 10 USC Chapter 137

CFR Citation: 48 CFR 30

Legal Deadline: None

Abstract: To amend the Federal Acquisition Regulation to delete the requirement to use state rates in discounting certain self-insured losses to present value.

Timetable:

Action	Date	FR Cite
NPRM	07/08/88	51 FR 24788
NPRM Comment Period End	09/06/88	
Final Action	07/20/88	53 FR 27460

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AH19

3540. AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 86-36)

Legal Authority: 40 USC 486(c); 42 USC 2473(c); 10 USC Chapter 137

CFR Citation: 48 CFR 30

Legal Deadline: None

Abstract: To amend the Federal Acquisition Regulation to increase the minimum acquisition cost criterion for capitalization purposes from $1,000 to $1,500.

Timetable:

Action	Date	FR Cite
NPRM	07/09/88	51 FR 24971
NPRM Comment Period End	09/07/88	
Final Action	07/20/88	53 FR 27460

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AH25

3541. AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 86-54)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 15

Legal Deadline: None

Abstract: To amend the FAR to permit the use of letter requests for proposals for sole source acquisitions.

Timetable:

Action	Date	FR Cite
NPRM	10/15/86	51 FR 36777
NPRM Comment Period End	12/15/86	
Final Action	06/16/88	53 FR 17854

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AB40

3542. AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 86-64)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 13

Legal Deadline: None

Abstract: To amend the FAR to implement OMB Circular A-125 and EO 12352, Task Group 5, Module 7, regarding Fast Pay procedures.

Timetable:

Action	Date	FR Cite
NPRM	12/09/86	51 FR 44410
NPRM Comment Period End	02/09/87	
Final Action	07/20/88	53 FR 27460

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AB50

3543. AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 86-58)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 45; 48 CFR 52

Legal Deadline: None

Abstract: To amend the FAR to provide a clearer statement of what constitutes special versus general purpose test equipment.

Timetable:

Action	Date	FR Cite
NPRM	02/05/87	52 FR 4006
NPRM Comment Period End	04/10/87	
Final Action	07/20/88	53 FR 27460

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AB53

3544. AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 86-52)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 17; 48 CFR 52

Legal Deadline: None

Abstract: To amend the FAR to clarify when agencies should evaluate offers for option quantities in awarding the basic contract and when exercise of an option will satisfy the requirements of full and open competition contained in Part 6 of the FAR.

Timetable:

Action	Date	FR Cite
NPRM	10/28/86	51 FR 39456
NPRM Comment Period End	12/29/86	
Final Action	05/18/88	53 FR 17854

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AB69

3545. AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 86-57)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 7

Legal Deadline: None

Abstract: To amend the FAR to require contracting officers to address in acquisition plans how subcontract competition will be sought, promoted, and sustained throughout an acquisition.

Timetable:

Action	Date	FR Cite
NPRM	10/28/86	51 FR 39456
NPRM Comment Period End	12/29/86	
Final Action	05/18/88	53 FR 17854

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AB61

3546. AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 87-14)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 6

Legal Deadline: Final, Statutory, April 16, 1987.

Abstract: To amend the Federal Acquisition Regulation to expand the authority for DoD and NASA to contract without providing for full and open competition if the supplies or services being contracted for are available from only one or a limited number of responsible sources.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/09/87	52 FR 21685
Comment Period End	08/10/87	52 FR 21685
Final Action	05/18/88	53 FR 17854

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AB74

3547. AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 87-15)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 15

Legal Deadline: Final, Statutory, April 16, 1987.

Abstract: To amend the FAR requirements regarding the prevention of unit price distortions and identification of supplies that offerors will not manufacture, so that for DoD and NASA, they no longer will apply to commercial items where the price is based on an established catalog or market price.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/09/87	52 FR 21685
Comment Period End	08/10/87	52 FR 21685
Final Action	07/20/88	53 FR 27460

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AB75

3548. AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 87-16)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 15; 48 CFR 52

Legal Deadline: Final, Statutory, April 16, 1987.

Abstract: To amend the FAR to require contracting officers to use quality as well as cost or price as an evaluation factor in procurements.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/09/87	52 FR 21685
Comment Period End	08/10/87	52 FR 21685
Final Action	07/20/88	53 FR 27460

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AB78

3549. AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 87-12)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 5; 48 CFR 6; 48 CFR 35

Legal Deadline: None

Abstract: To amend the Federal Acquisition Regulation pertaining to research and development contracting procedures.

Timetable:

Action	Date	FR Cite
NPRM	05/06/87	52 FR 17280
NPRM Comment Period End	07/06/87	
Final Action	07/20/88	53 FR 27460

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AB79

3550. AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 87-18)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 31

Legal Deadline: None

Abstract: To amend the Federal Acquisition Regulation to clarify allowability policy concerning trade, business, technical and professional activity costs.

Timetable:

Action	Date	FR Cite
NPRM	05/13/87	52 FR 18158
NPRM Comment Period End	07/13/87	
Final Action	07/20/88	53 FR 27460

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AB80

3551. AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 87-15)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 31

Legal Deadline: None

Abstract: To amend the Federal Acquisition Regulation to clarify the allowability of extraordinary compensation and certain organization costs incurred in connection with mergers and other business combinations.

Timetable:

Action	Date	FR Cite
NPRM	05/13/87	52 FR 18156
NPRM Comment Period End	07/13/87	
Final Action	04/01/88	53 FR 10828

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AB01

3552. AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 87-22)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 15; 48 CFR 52

Legal Deadline: None

Abstract: To amend the Federal Acquisition Regulation to incorporate amendments to the Truth in Negotiations Act required by Section 952 of the Defense Acquisition Improvement Act of 1986 (Pub. L. 99-500).

Timetable:

Action	Date	FR Cite
NPRM	07/14/87	52 FR 26446
NPRM Comment Period End	09/14/87	
Final Action	04/01/88	53 FR 10828

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AB02

3553. AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 87-45)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 31

Legal Deadline: None

Abstract: To amend the FAR to make allowable reasonable costs incurred to promote American aerospace exports at domestic and international exhibits.

Timetable:

Action	Date	FR Cite
NPRM	12/03/87	52 FR 46043
Final Action	04/12/88	53 FR 12128

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AC08

3554. AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 87-47)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 14

Legal Deadline: None

Abstract: To amend the FAR to clarify the existing coverage concerning delegation of authority to make determinations allowing withdrawal of bids.

Timetable:

Action	Date	FR Cite
Final Action	05/18/88	53 FR 17854

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AC10

3555. AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 87-48)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 7

Legal Deadline: None

Abstract: To amend the FAR to change the basis for making a cost comparison study from the $100,000 dollar threshold to the threshold of 10 full-time equivalents as defined and prescribed in OMB Circular A-76.

Timetable:

Action	Date	FR Cite
Final Action	05/18/88	53 FR 17854

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AC11

3556. AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 87-49)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 13

Legal Deadline: None

Abstract: To amend the FAR to provide for a determinable delivery date vice a definite calendar date for purchase orders.

Timetable:

Action	Date	FR Cite
Final Action	05/18/88	53 FR 17854

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AC12

3557. AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 87-52)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 14; 48 CFR 15; 48 CFR 52

Legal Deadline: None

Abstract: To amend the FAR to eliminate conflicting instructions regarding the proper Uniform Contract Format location for provisions and clauses incorporated by reference.

Timetable:

Action	Date	FR Cite
Final Action	05/18/88	53 FR 17854

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AC15

3558. AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 87-53)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 52

Legal Deadline: None

Abstract: To amend the FAR to eliminate GSA's Business Service Centers' addresses, telephone numbers, and areas of service which frequently require updating.

Timetable:

Action	Date	FR Cite
Final Action	05/18/88	53 FR 17854

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AC16

3559. ◎ AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 88-8)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 42

Legal Deadline: None

Abstract: To amend the FAR to state that the CAO will (1) consult with the contractor (instead of coordinate) and (2) consult with the cognizant audit office to determine whether information, adequate to fulfill a prospective visitor's request, has recently been reviewed by or is available within the Government. If so, the CAO will discourage the visit and refer the prospective visitor to the Government office where such information is located.

Timetable:

Action	Date	FR Cite
Final Action	05/18/88	53 FR 17854

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AC21

3560. ◎ AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 88-11)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 19

Legal Deadline: None

Abstract: To amend the FAR to delete coverage requiring contracting officers, under certain conditions, to release the names and addresses of those offerors expected to respond to a small business set-aside.

Timetable:

Action	Date	FR Cite
Final Action	05/18/88	53 FR 17854

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AC24

3561. ◎ AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 88-12)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 5

Legal Deadline: None

Abstract: To amend the FAR to require preparation and transmittal of a synopsis in a format which will eliminate retyping of notices transmitted from agency procurement offices to the Commerce Business Daily.

Timetable:

Action	Date	FR Cite
Final Action	05/18/88	53 FR 17854

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AC25

3562. ◎ AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 88-13)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 9; 48 CFR 19

Legal Deadline: None

Abstract: To amend the FAR to clarify the requirements at Section 8(d)(4)(c) of the Small Business Act that the prospective contractor's compliance with subcontracting plans submitted on previous contracts be considered as a factor in determining contractor responsibility for future awards involving subcontracting plans; and to improve coordination and better define responsibilities of contracting officers and contract administration offices associated with administration of subcontracting plans.

Timetable:

Action	Date	FR Cite
Final Action	07/20/88	53 FR 27460

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, 202 523-4755

RIN: 9000-AC26

3565. ◆ AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 88-14)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 42

Legal Deadline: None

Abstract: To amend the FAR to provide that parcel post eligible shipments for overseas delivery be sent directly from the source to the user through the APO or FPO (military post office activity) without the unnecessary documentation and cost of first sending the shipments to the military or water terminal.

Timetable:

Action	Date	FR Cite
Final Action	07/20/88	53 FR 27460

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, [redacted]

RIN: 9000-AC27

3564. ◆ AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 88-18)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 47; 48 CFR 52

Legal Deadline: None

Abstract: To amend the FAR to clarify that the clause at 52.247-63, Preference for U.S.-Flag Air Carriers, should be included in contracts whenever international air transportation of Government-owned property may occur under the contract and not just when such transportation is required under the contract.

Timetable:

Action	Date	FR Cite
Final Action	07/20/88	53 FR 27460

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, [redacted]

RIN: 9000-AC31

3566. ◆ AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 88-20)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 22; 48 CFR 53

Legal Deadline: None

Abstract: To amend the FAR to eliminate the need to submit a SF 99 to the Department of Labor whenever a SF 279 is not sent to the Federal Procurement Data System.

Timetable:

Action	Date	FR Cite
Final Action	07/20/88	53 FR 27460

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, [redacted]

RIN: 9000-AC23

3568. ◆ AMENDMENT TO FEDERAL ACQUISITION REGULATION (FAR CASE 88-23)

Legal Authority: 40 USC 486(c); 10 USC Chapter 137; 42 USC 2473(c)

CFR Citation: 48 CFR 23

Legal Deadline: None

Abstract: To amend the FAR to clarify that the exemptions listed in FAR 23.104 apply only to firms having facilities listed by the EPA, at 40 CFR Part 15, as violating facilities under the Clean Air and Clean Water Acts.

Timetable:

Action	Date	FR Cite
Final Action	07/20/88	53 FR 27460

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret A. Willis, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (VRS-FAR Secretariat), 18th & F Streets, NW, Washington, DC 20405, [redacted]

RIN: 9000-AC35

[FR Doc. 88-20660 Filed 10-21-88; 8:45 am]

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Monday
October 24, 1988

Part XLIV

Commodity Futures Trading Commission

Semiannual Regulatory Agenda

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VOL 53 ISS 205 OCT 24 1988 UMI

COMMODITY FUTURES TRADING COMMISSION (CFTC)

COMMODITY FUTURES TRADING COMMISSION

17 CFR Ch. I

Regulatory Flexibility Agenda

AGENCY: Commodity Futures Trading Commission.

ACTION: Publication of regulatory flexibility agenda.

SUMMARY: The Commodity Futures Trading Commission, in accordance with the requirements of the Regulatory Flexibility Act, is publishing a semiannual agenda of significant rules which the Commission expects to propose or promulgate over the next year. The Commission welcomes comments from small entities and others on the agenda.

ADDRESS: Comments should be sent to: Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 (202) 254-6090.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* ("RFA"), sets forth a number of requirements for agency rulemaking. Among other things, the RFA requires that:

(a) During the months of October and April of each year, each agency shall publish in the **Federal Register** a regulatory flexibility agenda which shall contain:

(1) A brief description of the subject area of any rule which the agency expects to propose or promulgate which is likely to have a significant economic impact on a substantial number of small entities;

(2) A summary of the nature of any such rule under consideration for each subject area listed in the agenda pursuant to paragraph (1), the objectives and legal basis for the issuance of the rule, and an approximate schedule for completing action on any rule for which the agency has issued a general notice of proposed rulemaking; and

(3) The name and telephone number of an agency official knowledgeable concerning the items listed in paragraph (1).

5 U.S.C. 602(a). Accordingly, the Commission has prepared an agenda of significant rules which it presently expects may be considered during the course of the next year, irrespective of their potential impact on small entities.[1] In addition, the agenda lists rulemaking actions which have been completed since the April 1988 agenda was prepared.

The Commission's agenda represents its best estimate of significant rules which will be considered over the next twelve months.[2] In this regard, section 602(d) of the RFA, 5 U.S.C. 602(d), provides: "Nothing in [section 602] precludes an agency from considering or acting on any matter not included in a regulatory flexibility agenda or requires an agency to consider or act on any matter listed in such agenda."

The Commission is publishing its October 1988 Regulatory Flexibility Agenda as part of the Unified Agenda of Federal Regulations. The Unified Agenda of Federal Regulations is coordinated by the Office of Management and Budget pursuant to Executive Order 12291. While participation by executive agencies in the Agenda is mandatory, independent agencies, such as the Commission, participate in the Unified Agenda on a voluntary basis.

The Commission's October 1988 Regulatory Flexibility Agenda is set forth below.

Issued in Washington, DC on September 8, 1988, by the Commission.

Jean A. Webb,

Secretary of the Commission.

Prerule Stage

Sequence Number	Title	Regulation Identifier Number
3567	Recordkeeping and The Exchange of Futures for Cash Commodities or of Futures in Connection with Cash Commodity Transactions	3038-AA62

Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
3568	Rules Relating to Commission Review of National Futures Association Decisions in Disciplinary, Membership Denial, Registration and Member Responsibility Actions	3038-AA57

[1] The Commission has published its definition of small entity to be used by the Commission in connection with rulemaking proceedings. 47 FR 18618 (April 30, 1982). Pursuant to those definitions, the Commission is not required to list many of the agenda items contained in this regulatory flexibility agenda. *See* 5 U.S.C. 602(a)(1). Moreover, the Commission has previously certified, pursuant to section 605 of the RFA, 5 U.S.C. 605, that certain items contained in this agenda will not have a significant economic impact on a substantial number of small entities. Accordingly, listing of an event in this regulatory flexibility agenda should not, in any event, be taken as a determination that a rule, when proposed or promulgated, will in fact require a regulatory flexibility analysis. However, the Commission hopes that the publication of an agenda which includes significant rules, regardless of their potential impact on small entities, may serve the public generally by providing an early and meaningful opportunity to participate in and comment on the formulation of new or revised regulations.

[2] In addition to publishing the regulatory flexibility agenda, the Commission also makes available to the public, on a monthly basis, a calendar listing rules that the Commission intends to consider that month.

CFTC

Proposed Rule Stage—Continued

Sequence Number	Title	Regulation Identifier Number
3569	Regulation of Hybrid and Related Instruments	3038-AA58

Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
3570	Regulations Permitting the Grant, Offer and Sale of Options on Physical Commodities (Dealer Options)	3038-AA23
3571	Minimum Financial and Related Reporting Requirements for Futures Commission Merchants	3038-AA10

Completed Actions

Sequence Number	Title	Regulation Identifier Number
3572	Exemption From Speculative Position Limits For Positions Which Have A Common Owner But Are Independently Controlled	3038-AA59
3573	Exemption from Federal Speculative Position Limits for Certain Spread Positions	3038-AA60
3574	Exchange Recordkeeping Regarding Clearing Organizations' Trade Registers	3038-AA61

COMMODITY FUTURES TRADING COMMISSION (CFTC)

Prerule Stage

3567. ● RECORDKEEPING AND THE EXCHANGE OF FUTURES FOR CASH COMMODITIES OR OF FUTURES IN CONNECTION WITH CASH COMMODITY TRANSACTIONS

Legal Authority: 7 USC 6; 7 USC 6c(a); 7 USC 6g; 7 USC 7; 7 USC 7a; 7 USC 12; 7 USC 12(a)(5)

CFR Citation: 17 CFR 1.35 (a)(2)

Legal Deadline: None

Abstract: The proposed regulation is necessary to ensure proper monitoring of exchanges of futures for physicals. The regulation would require records of customer cash transactions underlying EFPs which are now difficult to access to be routinely retained and provided to the contract market or the Commission upon request. The records would be used to monitor and ensure the bonafides of EFPs. The proposed regulation will constitute the least burdensome method of achieving the Commission's goal of monitoring EFPs.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: Firm

Government Levels Affected: None

Agency Contact: Patricia C. Apfelbaum, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW, Washington, DC 20581, 202 254-8955

RIN: 3038-AA62

COMMODITY FUTURES TRADING COMMISSION (CFTC) — Proposed Rule Stage

3564. RULES RELATING TO COMMISSION REVIEW OF NATIONAL FUTURES ASSOCIATION DECISIONS IN DISCIPLINARY, MEMBERSHIP DENIAL, REGISTRATION AND MEMBER RESPONSIBILITY ACTIONS

Legal Authority: 7 USC 21(h); 7 USC 21(i); 7 USC 21(o)(2); 7 USC 12a(5); 7 USC 4a

CFR Citation: 17 CFR 3; 17 CFR 171

Legal Deadline: None

Abstract: The Commission proposes to adopt rules establishing standards and procedures for Commission review of decisions of registered futures associations such as the National Futures Association ("NFA"). The Commission is proposing specific standards of review for decisions by NFA in four types of actions - disciplinary actions, membership denial actions, registration actions and member responsibility actions. The proposed rules would establish a common procedure for seeking review and a stay of a final decision by NFA in disciplinary, membership denial and registrations actions. The proposed rules would also establish a procedure for seeking review of and a stay of decisions by NFA in a member responsibility action. In proposing these rules, the Commission seeks to promulgate standards for review that will permit NFA to exercise its expertise and independent judgment in the proceedings subject to these rules while providing a person aggrieved by the result of NFA's action an effective means to obtain relief from prejudicial errors in NFA's determination. The Commission also seeks to establish an appellate process that is comprehensive, balanced, efficient and fair.

Timetable:

Action	Date	FR Cite
NPRM	10/10/88	
NPRM Comment Period End	11/14/88	
Final Action	12/14/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Laura Richards, Deputy Chief, Options Section, Office of General Counsel, Commodity Futures Trading Commission, 2033 K St. N.W., Washington, D.C. 20581, 202 254-7110

RIN: 3038-AA57

3568. REGULATION OF HYBRID AND RELATED INSTRUMENTS

Legal Authority: 7 USC 2; 7 USC 6c; 7 USC 12a

CFR Citation: 17 CFR 34

Legal Deadline: None

Abstract: The Commodity Futures Trading Commission staff has received inquiries concerning the applicability of the Commodity Exchange Act and Commission regulations to instruments that appear to possess, in varying combinations, characteristics of forward contracts, futures contracts, option contracts, debt instruments, bank deposits, and other interests. In an advance notice of proposed rulemaking, the Commission has sought comments concerning a proposed regulatory framework that would clarify the status of such instruments and permit, by exemption and subject to certain conditions, specified hybrid option instruments to be traded other than on a designated contract market. The Commission has also sought comments concerning a proposed no-action position with respect to certain commercial commodity contracts.

Timetable:

Action	Date	FR Cite
ANPRM	12/11/87	52 FR 47022
ANPRM Comment Period End	04/11/88	
NPRM	10/15/88	
NPRM Comment Period End	11/30/88	
Final Action	01/10/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Susan C. Ervin, Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street N.W., Washington, D.C. 20581, 202 254-9955

RIN: 3038-AA56

COMMODITY FUTURES TRADING COMMISSION (CFTC) — Final Rule Stage

3570. REGULATIONS PERMITTING THE GRANT, OFFER AND SALE OF OPTIONS ON PHYSICAL COMMODITIES (DEALER OPTIONS)

Legal Authority: 7 USC 6c(b); 7 USC 6c(d); 7 USC 12(a)(5)

CFR Citation: 17 CFR 1; 17 CFR 3; 17 CFR 32

Legal Deadline: None

Abstract: Congress has directed the Commission to issue regulations permitting grantors and futures commission merchants to grant, offer and sell so-called "dealer options" on certain physical commodities subject to certain conditions specified by statute and such other uniform and reasonable requirements as the Commission may prescribe. At present, the only persons who may lawfully grant dealer options are United States domiciles who, on May 1, 1978, were in the business of buying, selling, producing or otherwise using that commodity. The Commission has reproposed rules, principally concerning registration of dealer option grantors, requirements for the segregation of customer funds, disclosure to customers and prospective customers, and minimum financial requirements. The Commission intends to re-evaluate the proposed rules in light of regulatory changes that have occurred since 1950.

Timetable:

Action	Date	FR Cite
NPRM	12/20/78	43 FR 59396
NPRM	04/27/81	46 FR 23469
ANPRM	03/18/85	50 FR 10788

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Sectors Affected: Multiple

Agency Contact: Robert H. Rosenfeld, Esquire, Commodity Futures Trading Commission, Division of Trading and

CFTC — Final Rule Stage

Markets, 2033 K Street, NW, Washington, DC 20581, 202 254-9955

RIN: 3038-AA03

3571. MINIMUM FINANCIAL AND RELATED REPORTING REQUIREMENTS FOR FUTURES COMMISSION MERCHANTS

Legal Authority: 7 USC 6c; 7 USC 6f; 7 USC 6g; 7 USC 12a

CFR Citation: 17 CFR 1.12; 17 CFR 1.17

Legal Deadline: None

Abstract: The Commission adopted two amendments to its minimum financial and related requirements for futures commission merchants (FCMs). One amendment will preserve the one-day grace period for debit/ deficit accounts unless the account had been in debit/deficit status on the previous business day and the previous day's debit or deficit was not timely satisfied in its entirety by the deposit of new funds. The second amendment is an enhancement of the financial early warning system which requires an FCM to notify its designated self-regulatory organization and the Commission immediately when it determines that an account it is carrying is undermargined by an amount which exceeds its adjusted net capital. The Commission also reproposed a rule to clarify the requirements for and treatment of a guaranteed account.

Timetable:

Action	Date	FR Cite
NPRM	06/25/80	45 FR 42633
NPRM	12/01/80	45 FR 79488
NPRM	06/05/85	50 FR 31912
NPRM	07/29/87	52 FR 28281
NPRM Comment Period End	09/28/87	52 FR 28281
Final Action	09/30/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Two final rules published 7/29/87, 52 FR 28246 and 52 FR 28248. Effective date: 8/28/87. Guaranteed account rule reproposed on 7/29/87, 52 FR 28281.

Agency Contact: Lawrence Patent or Gary Miller, Assoc. Chief Counsel and Asst. Chief Acct., Commodity Futures Trading Commission, Division of Trading and Markets, 2033 K Street, NW, Washington, DC 20581, 202 254-9955

RIN: 3038-AA10

COMMODITY FUTURES TRADING COMMISSION (CFTC) — Completed Actions

3572. ● EXEMPTION FROM SPECULATIVE POSITION LIMITS FOR POSITIONS WHICH HAVE A COMMON OWNER BUT ARE INDEPENDENTLY CONTROLLED

Legal Authority: 7 USC 6a; 7 USC 12(a)(5)

CFR Citation: 17 CFR 150

Legal Deadline: None

Abstract: The Commodity Futures Trading Commission has long established and enforced speculative position limits for futures contracts on various agricultural commodities. The Commission recently revised Federal speculative position limits with respect to both the structure and level of such limits. 52 FR 38914 (October 20, 1987). The Commission at that time noted that the remaining portion of its reexamination of speculative position limits would involve issues relating to aggregation policy. In this regard the Commission recently proposed rule amendments providing an exemption from speculative position limits for positions which have a common owner but are independently controlled. In particular, the proposed rules provide for a case-by-case determination regarding applications for exemptions for independent account controllers from speculative position limits.

Timetable:

Action	Date	FR Cite
NPRM	04/22/88	53 FR 13290
NPRM Comment Period End	07/21/88	
Final Action	09/30/88	
Final Action Effective	10/30/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Paul M. Architzel, Chief Counsel, Division of Economid Analysis, Commodity Futures Trading Commission, 2033 K Street NW, Washington, DC 20581, 202 254-8630

RIN: 3038-AA59

3573. ● EXEMPTION FROM FEDERAL SPECULATIVE POSITION LIMITS FOR CERTAIN SPREAD POSITIONS

Legal Authority: 7 USC 6a; 7 USC 12(a)(5)

CFR Citation: 17 CFR 150

Legal Deadline: None

Abstract: The Commission has long established and enforced speculative position limits for futures contracts and various agricultural commodities. The Commission recently revised Federal speculative position limits with respect to both the structure and level of such limits. 52 FR 38914 (October 20, 1987). Recently the Commission received a petition for rulemaking to restore an exemption from speculative position limits for futures positions which are spread against other futures positions. In addition, the Commission has noted the need for a technical modification of its rules concerning futures/options spreads. Accordingly, the Commission is proposing rules to exempt or provide higher limits for certain futures spread positions and to clarify that futures/options spreads may exceed the futures speculative position limits only where the position is outside the spot month.

Timetable:

Action	Date	FR Cite
NPRM	06/22/88	53 FR 23411
NPRM Comment Period End	07/22/88	
Final Action	09/30/88	
Final Action Effective	10/30/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading

Commission, 2033 K Street NW, Washington, DC 20581, 202 254-8000

RIN: 3038-AA60

3674. ● EXCHANGE RECORDKEEPING REGARDING CLEARING ORGANIZATIONS' TRADE REGISTERS

Legal Authority: 7 USC 4a(j); 7 USC 6c; 7 USC 6g; 7 USC 7; 7 USC 7a; 7 USC 12(a)(5)

CFR Citation: 17 CFR 1.3

Legal Deadline: None

Abstract: The Commission requires exchange clearing organizations to maintain a record regarding transactions on the exchange in futures and options contracts. As part of that requirement, each clearing organization's trade register must include for each futures or option transaction a customer-type indicator. In light the the Commission's routine surveillance needs, as well as the increased number of special studies undertaken by the Commission regarding the trading of stock index futures and options on such futures contracts, the Commission is proposing to expand the required reporting of customer-type indicators to include two specified categories of trades in those contracts, specifically index arbitrage and substitution transactions. Although the Commission's existing reporting systems have worked well, the Commission believes that the proposed enhancement to exchange audit trail systems will greatly facilitate the compilation of accurate information concerning the execution times of trades involving index arbitrage and substitution transactions on an even more accurate and timely basis without necessitating numerous special calls for information.

Timetable:

Action	Date	FR Cite
NPRM	06/01/88	53 FR 21490
NPRM Comment Period End	08/12/88	53 FR 26447
Final Action	09/30/88	
Final Action Effective	11/30/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW, Washington, DC 20581, 202 254-8000

RIN: 3038-AA61

[FR Doc. 88-21006 Filed 10-21-88; 8:45 am]

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Monday
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Part XLV

Consumer Product Safety Commission

Semiannual Regulatory Agenda

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CONSUMER PRODUCT SAFETY COMMISSION (CPSC)

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Ch. II

Regulatory Flexibility Act; Semiannual Regulatory Flexibility and Unified Agendas

AGENCY: Consumer Product Safety Commission.

ACTION: Publication of regulatory flexibility and unified agendas.

SUMMARY: The Regulatory Flexibility Act (RFA) requires each Federal agency to publish twice each year a regulatory flexibility agenda listing the rules expected to be proposed or promulgated which are likely to have a significant economic impact on a substantial number of small entities, including small businesses, small organizations, and small governmental units. In this document, the Commission publishes its semiannual regulatory flexibility agenda.

Additionally, although not required to do so, the Commission has elected to comply voluntarily with those provisions of Executive Order 12291 which require executive agencies to publish an agenda of regulatory actions expected to be under development or review by the agency during the succeeding 12 months and which further provide that such an agenda may be combined with an agency's regulatory flexibility agenda published in accordance with the RFA.

DATE: The Commission welcomes comments on each subject area of the agenda, particularly from small entities. Written comments concerning the agenda should be received in the Office of the Secretary by December 31, 1988.

ADDRESS: Comments on the regulatory flexibility agenda should be sent to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 492-6800, and should be titled "Regulatory Flexibility Agenda."

FOR FURTHER INFORMATION CONTACT: For further information on the agenda in general, contact: Allen F. Brauninger, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 492-6980. For further information regarding a particular item on the agenda, consult the individual listed in the column headed "Contact" for that particular item.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act, 5 U.S.C. 601-612, contains several provisions intended to reduce unnecessary and disproportionate regulatory requirements on small businesses, small governmental organizations, and other small entities. Section 602 of the Act, 5 U.S.C. 602, requires each agency to publish twice each year a regulatory flexibility agenda containing a brief description of the subject area of any rule expected to be proposed or promulgated which is likely to have a "significant economic impact" on a "substantial number" of small entities. The agency must also provide a summary of the nature of the rule, the objectives and legal basis for the rule, and a schedule for acting on each rule for which the agency has issued a notice of proposed rulemaking. The Regulatory Flexibility Agenda shall also contain the name and address of the agency official knowledgeable about the items listed. Further, agencies are required to provide notice of their agendas to small entities and to solicit their comments by direct notification or by inclusion in publications likely to be obtained by such entities.

In addition, President Reagan's Executive Order 12291 requires executive agencies to publish, twice each year, a regulatory agenda of proposed regulations under development or current regulations under review and further states that such an agenda may be combined with an agenda published under the RFA. While the Commission, as an independent regulatory agency, is not required to follow Executive Order 12291, the Commission is complying voluntarily with those provisions concerning publication of a regulatory agenda.

The regulatory flexibility agenda published below lists, for a 12-month period, the regulatory activities expected to be under development or review. These include all such activities, not only those which may have a significant economic impact on a substantial number of small entities.

The agenda contains a brief description and summary of each regulatory activity, including the objectives and legal basis for each; an approximate schedule of target dates, subject to revision, for the development or completion of each activity; and the name and telephone number of a knowledgeable agency official concerning particular items on the agenda. All agency contacts have the same address: Consumer Product Safety Commission, Washington, DC 20207.

Dated: September 22, 1988.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Prerule Stage

Sequence Number	Title	Regulation Identifier Number
3575	Rule review	3041-AA20
3576	Requirements for the special packaging of household substances; revision of test protocol for child resistant packaging	3041-AA22
3577	Rule review	3041-AA24
3578	Rule review	3041-AA25
3579	All-Terrain Vehicles	3041-AA53
3580	Petition HP 87-1 requesting a ban of certain household products containing more than 0.01 percent tremolite	3041-AA63
3581	Petition CP 87-1 requesting development of a product safety rule for kerosene heaters and requiring a label to warn against flare-up	3041-AA66
3582	Requirements to make cigarette lighters child resistant	3041-AA73

CPSC

Prerule Stage—Continued

Sequence Number	Title	Regulation Identifier Number
3583	Petition CP 87-5 requesting a warning label on hot air paint removal tools	3041-AA75
3584	Method for identifying toys and other articles intended for children under 3 years of age which present choking, aspiration, or ingestion hazards because of small parts	3041-AA76
3585	Petition PP 88-1 Requesting That Certain Medroxyprogesterone Acetate Tablets be Exempted From Poison Prevention Packaging Act Requirements for Child-Resistant Packaging	3041-AA77

Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
3586	Petition HP 84-1. Petition to request amendment to the regulations on electrical toys to exempt electronic video games	3041-AA41
3587	Household substances containing methylene chloride; status as hazardous substances; proposed rule	3041-AA19
3588	Poison Prevention Packaging Act Requirements for Certain Effervescent Acetaminophen Tablets, Proposed Amendment of Exemption	3041-AA69
3589	Poison Prevention Packaging Act Requirements for Certain Unflavored Aspirin in Powder Form, Proposed Amendment of Exemption	3041-AA70
3590	Poison Prevention Packaging Act Requirements for Certain Medroxyprogesterone Acetate Tablets, Proposed Amendment of Exemption	3041-AA71

Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
3591	Possible standard or ban to address injuries to children caused by children playing with lawn darts	3041-AA72
3592	Poison Prevention Packaging Act requirements for certain conjugated estrogens, proposed amendment of exemption	3041-AA74

Completed Actions

Sequence Number	Title	Regulation Identifier Number
3593	Petition HP 85-1. Petition requesting ban of household products containing methylene chloride	3041-AA52
3594	Petition CP 86-2 requesting a consumer product safety standard for bunk beds	3041-AA66
3596	Petition PP 87-2 requesting that certain effervescent acetaminophen tablets be exempted from Poison Prevention Packaging Act regulations requiring child-resistant packaging	3041-AA68
3596	Petition PP 87-4 requesting that certain unflavored aspirin in powder form be exempted from Poison Prevention Packaging Act regulations requiring child-resistant packaging	3041-AA70
3597	Petition PP 87-3 requesting that certain medroxyprogesterone acetate tablets be exempted from Poison Prevention Packaging Act regulations requiring child-resistant packaging	3041-AA71

CONSUMER PRODUCT SAFETY COMMISSION (CPSC)

Prerule Stage

3575. RULE REVIEW

Legal Authority: 5 USC 610 Regulatory Flexibility Act; 15 USC 1193 Flammable Fabrics Act; 15 USC 1194 Flammable Fabrics Act; 15 USC 2079 Consumer Product Safety Act

CFR Citation: 16 CFR 1608; 16 CFR 1610; 16 CFR 1611; 16 CFR 1615; 16 CFR 1616; 16 CFR 1630; 16 CFR 1631; 16 CFR 1632

Legal Deadline: Other, Statutory. December 31, 1990.

CPSC — Prerule Stage

Abstract: On February 2, 1984, the Commission published a Federal Register notice listing eight (8) rules and standards issued under the Flammable Fabrics Act and soliciting comments on those rules. The Commission will review these rules under the provisions of the Regulatory Flexibility Act to determine if the rules should be revoked, amended, or continued in effect without change. The staff expects to submit a draft report on the economic impact of these rules on small businesses by December 31, 1988, for consideration by the Commission.

Timetable:

Action	Date	FR Cite
Notice to solicit comments	02/02/84	49 FR 4103
Public Comment Period Ends	04/02/84	49 FR 4103
End Review	12/31/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Allen Brauninger, Attorney, Consumer Product Safety Commission, Office of General Counsel, Washington, DC 20207, 301 492-6980

RIN: 3041-AA80

3578. REQUIREMENTS FOR THE SPECIAL PACKAGING OF HOUSEHOLD SUBSTANCES; REVISION OF TEST PROTOCOL FOR CHILD RESISTANT PACKAGING

Legal Authority: 15 USC 1472 Poison Prevention Packaging Act; 15 USC 1473 Poison Prevention Packaging Act

CFR Citation: 16 CFR 1700.20

Legal Deadline: None

Abstract: On January 19, 1983, the Commission published an Advance Notice of Proposed Rulemaking soliciting comments on ways to amend the existing requirements for child-resistant packaging to improve the effectiveness and efficiency of these requirements. In June, 1985, the Commission staff completed testing to determine the feasibility of using some of the alternate procedures for evaluation of child-resistant packaging described in the ANPR. In August 1987, the Commission considered the comments received in response to the ANPR and the staff's recommendations regarding revision of existing requirements for child-resistant packaging. The Commission directed the staff to prepare draft proposals to amend the test protocols used to evaluate the effectiveness of child-resistant packaging. The staff is preparing a briefing package concerning specific revisions to the child test protocol and the adult test protocol. The staff anticipates that it will transmit the briefing package to the Commission in December 1988.

Timetable:

Action	Date	FR Cite
ANPRM	01/19/83	48 FR 2389
ANPRM Comment Period End	03/21/83	48 FR 2389
Staff sends briefing package to Commission	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Virginia A. White, Project Manager, Consumer Product Safety Commission, Office of Program Management and Budget, Washington, DC 20207, 301 492-6554

RIN: 3041-AA22

3577. RULE REVIEW

Legal Authority: 5 USC 610 Regulatory Flexibility Act; 15 USC 1471 Poison Prevention Packaging Act

CFR Citation: 16 CFR 1700; 16 CFR 1701; 16 CFR 1702; 16 CFR 1704

Legal Deadline: Other, Statutory, December 31, 1990.

Abstract: The Commission plans to publish a Federal Register notice listing four (4) rules and standards issued under the Poison Prevention Packaging Act and soliciting comments on those rules. The Commission will review these rules under the provisions of the Regulatory Flexibility Act to determine if the rules should be revoked, amended, or continued in effect without change.

Timetable:

Action	Date	FR Cite
Notice to solicit comments	04/00/89	
Public comment period ends	06/00/89	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Allen Brauninger, Attorney, Consumer Product Safety Commission, Office of General Counsel, Washington, DC 20207, 301 492-6980

RIN: 3041-AA24

3576. RULE REVIEW

Legal Authority: 5 USC 610 Regulatory Flexibility Act; 15 USC 1261 Federal Hazardous Substances Act

CFR Citation: 16 CFR 1500; 16 CFR 1501; 16 CFR 1505; 16 CFR 1507; 16 CFR 1508; 16 CFR 1509; 16 CFR 1510; 16 CFR 1511; 16 CFR 1512

Legal Deadline: Other, Statutory, December 31, 1990.

Abstract: On February 22, 1984, the Commission published a Federal Register notice listing nine (9) rules and standards issued under the Federal Hazardous Substances Act and soliciting comments on those rules. The Commission will review these rules under provisions of the Regulatory Flexibility Act to determine if the rules should be revoked, amended, or continued in effect without change.

Timetable:

Action	Date	FR Cite
Notice to solicit comments	02/22/84	49 FR 6504
Public comment period ends	04/23/84	49 FR 6504
End Review	11/00/89	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Allen Brauninger, Attorney, Consumer Product Safety Commission, Office of General Counsel, Washington, DC 20207, 301 492-6980

RIN: 3041-AA25

3575. ALL-TERRAIN VEHICLES

Significance: Agency Priority

Legal Authority: 15 USC 2051 et seq Consumer Product Safety Act; 15 USC 1262(f) Federal Hazardous Substances Act

CFR Citation: None

Legal Deadline: None

Abstract: On May 31, 1985, the Commission published an advance notice of proposed rulemaking (ANPR) to announce its preliminary determination that an unreasonable risk of injury may be associated with all-terrain vehicles. An all-terrain vehicle (ATV) is a three- or four-wheeled motorized machine, designed for off-road use, and intended to be ridden by one person. On December 18, 1986, the Commission directed its staff to: (1) continue to work with the industry to develop voluntary performance standards and do the technical work required to issue a NPRM, (2) prepare a letter to state governors, the Department of the Interior, and other appropriate federal agencies stressing the importance of ATV safety, (3) update the ATV safety alert and conduct Clearinghouse activities on ATV safety, (4) develop a program to provide all warnings necessary to advise consumers of the risks associated with ATVs and how to minimize them, (5) prepare a letter advising the Specialty Vehicle Institute of America (SVIA) of the Commission's displeasure at the progress to date in developing voluntary standards, and (6) prepare a letter asking that (cont.)

Timetable:

Action	Date	FR Cite
ANPRM	05/31/85	50 FR 23139
ANPRM Comment Period End	09/30/85	50 FR 31391
Staff to brief Commission	10/13/88	

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: ABSTRACT CONT. ATV manufacturers voluntarily cease marketing ATVs intended for use by children under 12 years of age. In accordance with a preliminary consent decree filed on December 30, 1987, with the U.S. District Court of the District of Columbia in U.S. v. American Honda Motor Co. et al. (Civil Action No. 87-3525 SS), the Commission has provided a draft of a proposed safety standard for ATVs to manufacturers. The final consent decree, approved on April 28, 1988, (Civil Act No. 87-3525 GAG) provides that manufacturers will attempt in good faith to reach agreement on a voluntary standard acceptable to the Commission within four months. On September 28, 1988, the manufacturers submitted a voluntary standard for the Commission's consideration.

Agency Contact: Carl Blechschmidt, Program Manager, Consumer Product Safety Commission, Office of Program Management and Budget, Washington, D. C. 20207, 301 492-6554

RIN: 3041-AA53

3580. PETITION HP 87-1 REQUESTING A BAN OF CERTAIN HOUSEHOLD PRODUCTS CONTAINING MORE THAN 0.01 PERCENT TREMOLITE

Legal Authority: 15 USC 1261(q)(1)(B) Federal Hazardous Substances Act; 5 USC 553(e) Administrative Procedure Act

CFR Citation: 16 CFR 1500

Legal Deadline: None

Abstract: On October 14, 1986, Mr. Mark Germine petitioned the Commission to ban: consumer products that contain limestone, including lawn and garden limestones, both granular and pulverized; sand products, including play sand; and consumer gravel products; if such products contain more than 0.01 percent of tremolite. Mr. Germine bases his request for a ban on a concern that tremolite in these products is carcinogenic and causes mesothelioma. The staff will prepare a briefing package for consideration by the Commission in deciding whether to grant or deny the petition. If the Commission grants the petition, it will begin a rulemaking proceeding under the Federal Hazardous Substances Act.

Timetable:

Action	Date	FR Cite
Staff sends briefing package to Commission	10/18/88	
Commission decision	10/28/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Sandra Eberle, Program Manager, Office of Program Management and Budget, Consumer Product Safety Commission, Washington, D.C. 20207, 301 492-6554

RIN: 3041-AA55

3581. PETITION CP 87-1 REQUESTING DEVELOPMENT OF A PRODUCT SAFETY RULE FOR KEROSENE HEATERS AND REQUIRING A LABEL TO WARN AGAINST FLARE-UP

Legal Authority: 5 USC 553(e) Administrative Procedure Act; 15 USC 2056 Consumer Product Safety Act; 15 USC 2058 Consumer Product Safety Act; 15 USC 2076 Consumer Product Safety Act

CFR Citation: None

Legal Deadline: None

Abstract: On September 19, 1988, the Commission received a petition from the National Kerosene Heater Association (NKHA). The association requested that the Commission initiate proceeding under the Consumer Product Safety Act to develop a kerosene heater rule containing requirements to limit nitrogen dioxide emissions of kerosene heaters and all of the requirements for kerosene heaters now contained in UL Standard 647. At about the same time, the International Association of Fire Chiefs (IAFC) requested the Commission to require the kerosene heater industry to provide notice and warning labels on all kerosene heaters sold in the United States alerting the consumer that unvented portable kerosene heaters are subject to spontaneous and uncontrollable flare-up with flames extending outside the cabinet. The staff briefed the Commission on the petition from NKHA and the request from IAFC in September 1988. If the Commission grants the petition from NKHA or the request from IAFC, it will begin a rulemaking proceeding under the Consumer Product Safety Act.

Timetable:

Action	Date	FR Cite
Staff briefs Commission	09/27/88	
Commission decision	10/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: L. James Sharman, Fire Programs Officer, Consumer Product Safety Commission, Office of Program Management and Budget, Washington, D.C. 20207, 301 492-6554

RIN: 3041-AA58

CPSC — Prerule Stage

3582. REQUIREMENTS TO MAKE CIGARETTE LIGHTERS CHILD RESISTANT

Legal Authority: 15 USC 2051 et seq Consumer Product Safety Act; 15 USC 1261 et seq Federal Hazardous Substances Act; 15 USC 1471 et seq Poison Prevention Packaging Act

CFR Citation: Not yet determined

Legal Deadline: None

Abstract: On March 3, 1988, the Commission published an Advance Notice of Proposed Rulemaking (ANPRM) to announce its preliminary determination that unreasonable risks of death and injury may be associated with cigarette lighters because they are not sufficiently resistant to operation by children. The Commission staff is analyzing comments received in response to the ANPRM. A test protocol using panels of children and adults is under development. The test protocol will be used to determine the child resistance of lighters now on the market and to evaluate lighter modifications reported to be more child resistant. A child resistant cigarette lighter standard will be developing using the test protocol as a basis.

Timetable:

Action	Date	FR Cite
ANPRM	03/03/88	53 FR 6833
ANPRM Comment Period End	05/02/88	53 FR 6833
Staff sends briefing package on NPRM to Commission	09/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: L. James Sharma, Fire Programs Officer, Consumer Product Safety Commission, Office of Program Management and Budget, Washington, D. C. 20207, 301 492-6554

RIN: 3041-AA73

3583. PETITION CP 87-6 REQUESTING A WARNING LABEL ON HOT AIR PAINT REMOVAL TOOLS

Legal Authority: 15 USC 2056 Consumer Product Safety Act; 15 USC 2076 Consumer Product Safety Act

CFR Citation: 16 CFR 1200; 16 CFR 1500

Legal Deadline: None

Abstract: On August 4, 1987, the Greater St. Louis Lead Poisoning Prevention Council petitioned the Commission to require manufacturers of all hot air paint removal tools to place a warning label on the tool that specifically warns the users of the dangers of lead fumes and lead dust when removing paint with this tool. The Council bases its request on reports of high blood lead levels in children and adults associated with the use of air paint removal tools in the rehabilitation of residences which have paint with high lead levels. The staff will prepare a briefing package for consideration by the Commission deciding whether to grant or deny the petition. If the Commission grants the petition, it will begin rulemaking under the Consumer Product Safety Act.

Timetable:

Action	Date	FR Cite
Staff sends briefing package to Commission	05/01/88	
Commission decision	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Sandra Eberle, Program Manager, Consumer Product Safety Commission, Office of Program Management and Budget, Washington, D. C. 20207, 301 492-6554

RIN: 3041-AA75

3584. METHOD FOR IDENTIFYING TOYS AND OTHER ARTICLES INTENDED FOR CHILDREN UNDER 3 YEARS OF AGE WHICH PRESENT CHOKING, ASPIRATION, OR INGESTION HAZARDS BECAUSE OF SMALL PARTS

Legal Authority: 15 USC 1281 to 1282 Federal Hazardous Substance Act

CFR Citation: 16 CFR 1501

Legal Deadline: None

Abstract: The Commission has a regulation applicable to toys and other articles intended for children under three years old that prescribes a test cylinder to determine if articles, or detachable parts of such articles, present a choking hazard to young children. Articles or components which fit within the test cylinder are banned. Although this regulation has been in effect for several years, choking incidents involving young children continue to occur. The Commission has established a project to gather information about the nature and causes of these incidents and to make recommendations for any additional measures needed to reduce injuries and deaths from such incidents, including modification of the small parts test cylinder. The Commission published an ANPRM on June 7, 1988, to solicit comments on ways to address choking hazards to young children, including specific modifications of the test cylinder requested in a petition from the Consumer Federal of America and the New York Attorney General's Office.

Timetable:

Action	Date	FR Cite
ANPRM	06/07/88	53 FR 20965
ANPRM Comment Period End	08/08/88	53 FR 20965

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Elaine A. Tyrrell, Project Manager, Consumer Product Safety Commission, Office of Program Management and Budget, Washington, D.C. 20207, 301 492-6554

RIN: 3041-AA76

3585. ⊕ PETITION PP 85-1 REQUESTING THAT CERTAIN MEDROXYPROGESTERONE ACETATE TABLETS BE EXEMPTED FROM POISON PREVENTION PACKAGING ACT REQUIREMENTS FOR CHILD-RESISTANT PACKAGING

Legal Authority: 5 USC 55(e) Administrative Procedure Act; 15 USC 1471 et seq Poison Prevention Packaging Act

CFR Citation: 16 CFR 1700.14

Legal Deadline: None

Abstract: By letter dated February 22, 1988, the Upjohn Company requested the Commission to exempt medroxyprogesterone acetate tables dispensed in packages containing not more than 300 milligrams of the drug from special packaging requirements for oral prescription drugs. The staff is

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preparing a briefing packaging on the petition for consideration by the Commission. If the Commission grants the petition, it will begin a rulemaking proceeding under the Poison Prevention Act.

Timetable:

Action	Date	FR Cite
Staff sends briefing package to Commission	11/15/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Virginia White, Project Manager, Consumer Product Safety Commission, Office of Program Management and Budget, Washington, DC 20207, 301 492-6554

RIN: 3041-AA77

CONSUMER PRODUCT SAFETY COMMISSION (CPSC) — Proposed Rule Stage

3586. PETITION HP 84-1, PETITION TO REQUEST AMENDMENT TO THE REGULATIONS ON ELECTRICAL TOYS TO EXEMPT ELECTRONIC VIDEO GAMES

Legal Authority: 15 USC 1261 Federal Hazardous Substances Act; 15 USC 1262 Federal Hazardous Substances Act

CFR Citation: 16 CFR 1505

Legal Deadline: None

Abstract: In correspondence dated December 21, 1983, the Consumer Electronic Group of the Electronic Industries Association petitioned the Commission to amend the regulation on electrical toys to exempt electronic video games from coverage. On August 22, 1988, the staff transmitted a briefing package to the Commission. The staff briefed the Commission September 14, 1988. The Commission granted the petition on September 27, 1988, and will publish a proposed exemption.

Timetable:

Action	Date	FR Cite
Commission decision	09/27/88	
Staff briefs Commission	09/00/88	
NPRM	11/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: David Thome, Program Manager, Consumer Product Safety Commission, Office of Program Management and Budget, Washington, DC 20207, 301 492-6554

RIN: 3041-AA41

3587. HOUSEHOLD SUBSTANCES CONTAINING METHYLENE CHLORIDE; STATUS AS HAZARDOUS SUBSTANCES; PROPOSED RULE

Legal Authority: 15 USC 1261 Federal Hazardous Substances Act; 15 USC 1262 Federal Hazardous Substances Act

CFR Citation: 16 CFR 1500.12(a)(2)

Legal Deadline: None

Abstract: On August 20, 1986, the Commission proposed a rule to declare that household products containing methylene chloride are hazardous substances under the Federal Hazardous Substances Act. These products include some paint strippers and spray paints. The Commission's concern arises from animal tests showing that methylene chloride is a carcinogen by inhalation and studies indicating a significant human exposure as a result of reasonably foreseeable use of products containing methylene chloride. The initiation of this rulemaking proceeding granted one part of a petition (HP 85-1) from the Consumer Federation of America. The staff provided an analysis of the comments on the proposed rule to the Commission in June 1987. In August 1987, the Commission determined that there was insufficient controversy over the status of methylene chloride as a hazardous substance; therefore, the Commission suspended the rulemaking and issued a statement of enforcement policy stating the Commission's view that household products that contain methylene chloride and that expose consumers to significant levels of methylene chloride are (cont.)

Timetable:

Action	Date	FR Cite
NPRM	08/20/86	51 FR 29776
NPRM Comment Period End	10/20/86	51 FR 29776
Policy published	09/14/87	52 FR 34698

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ABSTRACT CONT: subject to the FHSA's labeling requirements.

Agency Contact: Sandra Eberle, Program Manager, Consumer Product Safety Commission, Office of Program Management and Budget, Washington, D.C. 20207, 301 492-6554

RIN: 3041-AA10

3588. ⊕ POISON PREVENTION PACKAGING ACT REQUIREMENTS FOR CERTAIN EFFERVESCENT ACETAMINOPHEN TABLETS, PROPOSED AMENDMENT OF EXEMPTION

Legal Authority: 5 USC 553 Administrative Procedure Act;; 15 USC 1471 et seq Poison Prevention Packaging Act

CFR Citation: 16 CFR 1700.14

Legal Deadline: None

Abstract: On June 22, 1988, the Commission granted a petition which requested amendment of a regulation which exempts certain effervescent acetaminophen tablets from special packaging requirements. The Commission directed the staff to prepare a draft Federal Register notice to propose an amendment of that regulation to increase the acetaminophen content of tablets exempted from requirements for child-resistant packaging from less than ten percent to not more than 15 percent. The Commission expects to publish a notice of proposed rulemaking in October 1988.

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Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
NPRM Comment Period End	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Virginia White, Project Manager, Consumer Product Safety Commission, Office of Program Management and Budget, Washington, DC 20207, 301 492-6554

RIN: 3041-AA69

3589. ◉ POISON PREVENTION PACKAGING ACT REQUIREMENTS FOR CERTAIN UNFLAVORED ASPIRIN IN POWDER FORM, PROPOSED AMENDMENT OF EXEMPTION

Legal Authority: 5 USC 553 Administrative Procedure Act;; 15 USC 1471 et seq Poison Prevention Packaging Act

CFR Citation: 16 CFR 1700.14

Legal Deadline: None

Abstract: On June 22, 1988, the Commission a petition requesting amendment of a regulation which exempts certain unflavored aspirin preparation in powder form from requirements for special packaging. The Commission directed the staff to prepare a draft Federal Register notice to propose an amendment of that regulation to exempt unflavored aspirin in powder form dispensed in unit doses containing not more than 15.4 grains of aspirin per unit dose from requirements for child-resistant packaging. The Commission expects to publish a notice of proposed rulemaking in October 1988.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
NPRM Comment Period End	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Virginia White, Project Manager, Consumer Product Safety Commission, Office of Program Management and Budget, Washington, DC 20207, 301 492-6554

RIN: 3041-AA70

3590. ◉ POISON PREVENTION PACKAGING ACT REQUIREMENTS FOR CERTAIN MEDROXYPROGESTERONE ACETATE TABLETS, PROPOSED AMENDMENT OF EXEMPTION

Legal Authority: 5 USC 553 Administrative Procedure Act; 15 USC 1471 et seq Poison Prevention Packaging Act

CFR Citation: 16 CFR 1700.14

Legal Deadline: None

Abstract: On June 22, 1988, the Commission granted a petition which requested amendment of a regulation exempting certain medroxyprogesterone acetate tablets from special packaging requirements. The Commission directed the staff to prepare a draft Federal Register notice to propose an amendment of that regulation to exempt medroxyprogesterone acetate tablets dispensed in mnemonic packages containing no more than 100 milligrams of the drug from requirements for child-resistant packaging. The Commission expects to publish a notice of proposed rulemaking in October 1988.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
NPRM Comment Period End	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Virginia White, Project Manager, Consumer Product Safety Commission, Office of Program Management and Budget, Washington, DC 20207, 301 492-6554

RIN: 3041-AA71

CONSUMER PRODUCT SAFETY COMMISSION (CPSC) — Final Rule Stage

3591. POSSIBLE STANDARD OR BAN TO ADDRESS INJURIES TO CHILDREN CAUSED BY CHILDREN PLAYING WITH LAWN DARTS

Legal Authority: 15 USC 1261 to 1262 Federal Hazardous Substances Act; 15 USC 2056 to 2058 Consumer Product Safety Act

CFR Citation: 16 CFR 1500.18(a)(4); 16 CFR 1500.86(a)(3); 16 CFR 1306

Legal Deadline: None

Abstract: Lawn darts are devices intended to be used outdoors by being thrown upward and striking the ground point first. Lawn darts intended for use by children are banned by a regulation issued under the Federal Hazardous Substances Act. However, and exemption to this rule allows the sale of lawn darts which are labeled with warnings that they are not toys and should not be used by children, are accompanied with instructions for safe use, and are not sold in toy stores or store departments which deal primarily in toys or other children's articles. Despite these restrictions, children continue to suffer serious injuries and deaths while playing with lawn darts. On October 20, 1987, the Commission published an ANPR which set forth several regulatory options to address risks of death and injury to children associated with lawn darts and solicited comments and information or issues raised by the ANPR. After considering comments received in response to the ANPR and other available information, on July 29, 1988, the Commission proposed a rule to ban all lawn darts having the potential to cause skull puncture injuries.

Timetable:

Action	Date	FR Cite
ANPRM	10/20/87	52 FR 38935
ANPRM Comment Period End	12/21/87	52 FR 38935
NPRM	07/29/88	53 FR 28657
NPRM Comment Period End	09/29/88	53 FR 28657
Staff sends briefing package on final rule to Commission	09/30/88	

CPSC — Final Rule Stage

Action	Date	FR Cite
Commission decision	00/00/00	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: David Thome, Program Manager, Office of Program Management and Budget, Consumer Product Safety Commission, Washington, DC 20207, 301 492-6554

RIN: 3041-AA72

3592. POISON PREVENTION PACKAGING ACT REQUIREMENTS FOR CERTAIN CONJUGATED ESTROGENS, PROPOSED AMENDMENT OF EXEMPTION

Legal Authority: 5 USC 553 Administrative Procedure Act; 15 USC 1471 et seq Poison Prevention Packaging Act

CFR Citation: 16 CFR 1700.14

Legal Deadline: None

Abstract: On December 22, 1987, the Commission proposed to amend a regulation which exempts conjugated estrogen tablets in certain mnemonic packages from requirements for child-resistant packaging. The proposed amendment would increase the amount of the drug allowed in each non-child-resistant package from 26.5 milligrams to 32 milligrams. The staff sent a briefing package and a draft of a final rule to the Commission in September 1988. On September 27, 1988, the Commission voted to issue the exemption.

Timetable:

Action	Date	FR Cite
NPRM	12/22/87	52 FR 48452
NPRM Comment Period End	02/22/88	52 FR 48452
Commission decision	09/27/88	
Staff briefing package to Commission	09/00/88	
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Virginia White, Project Manager, Consumer Product Safety Commission, Office of Program Management and Budget, Washington, D. C. 20207, 301 492-6554

RIN: 3041-AA74

CONSUMER PRODUCT SAFETY COMMISSION (CPSC) — Completed Actions

3593. PETITION HP 85-1, PETITION REQUESTING BAN OF HOUSEHOLD PRODUCTS CONTAINING METHYLENE CHLORIDE

CFR Citation: 16 CFR 1500

Completed:

Reason	Date	FR Cite
Final Action Petition Denied 06/15/88	06/15/88	
Final Action Effective	06/15/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Sandra Eberle 301 492-6554

RIN: 3041-AA58

3594. PETITION CP 86-2 REQUESTING A CONSUMER PRODUCT SAFETY STANDARD FOR BUNK BEDS

CFR Citation: Not yet determined

Completed:

Reason	Date	FR Cite
Final Action - petition denied	07/21/88	
Final Action Effective	07/21/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Elaine Tyrrell 301 492-6554

RIN: 3041-AA66

3595. PETITION PP 87-2 REQUESTING THAT CERTAIN EFFERVESCENT ACETAMINOPHEN TABLETS BE EXEMPTED FROM POISON PREVENTION PACKAGING ACT REGULATIONS REQUIRING CHILD-RESISTANT PACKAGING

CFR Citation: 16 CFR 1700.14

Completed:

Reason	Date	FR Cite
Final Action - petition granted	06/22/88	
Final Action Effective	06/22/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Virginia White 301 492-6554

RIN: 3041-AA69

3596. PETITION PP 87-4 REQUESTING THAT CERTAIN UNFLAVORED ASPIRIN IN POWDER FORM BE EXEMPTED FROM POISON PREVENTION PACKAGING ACT REGULATIONS REQUIRING CHILD-RESISTANT PACKAGING

CFR Citation: 16 CFR 1700.14

Completed:

Reason	Date	FR Cite
Final Action - petition granted	06/22/88	
Final Action Effective	06/22/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Virginia White 301 492-6554

RIN: 3041-AA70

3597. PETITION PP 87-3 REQUESTING THAT CERTAIN MEDROXYPROGESTERONE ACETATE TABLETS BE EXEMPTED FROM POISON PREVENTION PACKAGING ACT REGULATIONS REQUIRING CHILD-RESISTANT PACKAGING

CFR Citation: 16 CFR 1700.14

CPSC — Completed Actions

Completed:		
Reason	Date	FR Cite
Final Action - petition granted	06/22/88	

Reason	Date	FR Cite
Final Action Effective	06/22/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Virginia White 301 492-6554

RIN: 3041-AA71

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Part XLVI

Farm Credit Administration

Semiannual Regulatory Agenda

FARM CREDIT ADMINISTRATION (FCA)

FARM CREDIT ADMINISTRATION

12 CFR Ch. VI

Unified Agenda of Federal Regulations

AGENCY: Farm Credit Administration.

ACTION: Department Unified Agenda of Regulations and review list.

SUMMARY: The Farm Credit Administration (FCA), as an independent regulatory agency in voluntary compliance with Executive Order 12291, sets forth the following agenda of regulations which it will have under development and review during the period of October 1988 through April 1989.

FOR FURTHER INFORMATION CONTACT: Cindy R. Nicholson, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), contains several provisions intended to reduce unnecessary and disproportionate regulatory requirements on small entities. Farm Credit Administration regulations which apply to Farm Credit System banks and associations do not and will not have a substantial impact on small entities. None of the entities regulated by the FCA fall within the definition of small entities in the Regulatory Flexibility Act. While many associations through which banks lend are smaller in size than their banks, they are not independently operated, as they are closely supervised by the banks, which must approve most of their operating policies. The associations rely exclusively on their supervising banks for their source of funds. Furthermore, the associations do not compete with each other since, as with their supervising banks, each serves only a particular geographic area.

While FCA is an independent agency exempt from Executive Order 12291, we believe that participating in this joint publication will further the public interest by including FCA in a single source of information concerning current and projected rulemaking and reviews of existing regulations.

Dated: August 26, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

Prerule Stage

Sequence Number	Title	Regulation Identifier Number
3598	RELEASING INFORMATION; EXAMINATIONS AND INVESTIGATIONS; GENERAL PROVISIONS; Releasing Information	3052-AA05
3599	Eligibility to Borrow – Banks for Cooperatives	3052-AA94
3600	Secondary Market	3052-AA96
3601	Debt Collection Act	3052-AB02

Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
3602	Organization: Director Compensation	3052-AA09
3603	REGULATORY ACCOUNTING PRACTICES	3052-AA82
3604	FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS; Capital Adequacy Related	3052-AA88
3605	ORGANIZATION; Receiver	3052-AA92
3606	FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS; Funding Corporation	3052-AA97

Completed Actions

Sequence Number	Title	Regulation Identifier Number
3607	ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE FARM CREDIT ADMINISTRATION; Handicap	3052-AA67
3608	FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS; GENERAL PROVISIONS; Capital Adequacy	3052-AA79
3609	PERSONNEL ADMINISTRATION; Simultaneous Service	3052-AA81
3610	ORGANIZATION; Capital Corporation	3052-AA87
3611	ORGANIZATION; EXAMINATIONS; Examinations	3052-AA89
3612	Collateral Issues	3052-AA91
3613	ORGANIZATION AND FUNCTIONS; FCA Organization	3052-AA93

FCA

Completed Actions—Continued

Sequence Number	Title	Regulation Identifier Number
3614	Federal Land Bank Lending Authorities	3052-AA85
3615	Assistance Corporation	3052-AA98
3616	ORGANIZATION; PERSONNEL ADMINISTRATION; GENERAL PROVISIONS; DISCLOSURE TO SHAREHOLDERS; Mergers	3052-AB00
3617	DISCLOSURE TO SHAREHOLDERS; Disclosure	3052-AB01
3618	GENERAL PROVISIONS; Member Insurance	3052-AB03
3619	LOAN POLICIES AND OPERATIONS; FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS; GENERAL PROVISIONS; Borrower Rights	3052-AB04
3620	RULES OF PRACTICE AND PROCEDURE; PRACTICE BEFORE THE FARM CREDIT ADMINISTRATION; Civil Money Penalties	3052-AB05

FARM CREDIT ADMINISTRATION (FCA) — Prerule Stage

3598. RELEASING INFORMATION; EXAMINATIONS AND INVESTIGATIONS; GENERAL PROVISIONS; RELEASING INFORMATION

Legal Authority: PL 92-181; PL 99-205; 12 USC 2252(a)(10)

CFR Citation: 12 CFR 602; 12 CFR 617; 12 CFR 618

Legal Deadline: None

Abstract: Clarify existing policies and procedures with respect to the release of information and/or documents obtained in or resulting from the conduct of official business by employees of the Farm Credit Administration and the Farm Credit System.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ADDITIONAL AGENCY CONTACT: Cindy R. Nicholson, Paralegal Specialist, Office of General Counsel, Farm Credit Administration 1501 Farm Credit Drive, McLean, Virginia 22102-5090 (703) 883-4020

Agency Contact: Monica Michelizzi, Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, 703 883-4020

RIN: 3052–AA05

3599. ELIGIBILITY TO BORROW – BANKS FOR COOPERATIVES

Legal Authority: PL 92-181; PL 100-233

CFR Citation: 12 CFR Not yet determined

Legal Deadline: None

Abstract: Revise due to Agricultural Credit Act of 1987

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ADDITIONAL AGENCY CONTACT: Cindy R. Nicholson, Paralegal Specialist, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090 (703) 883-4020

Agency Contact: Dennis Carpenter, Senior Credit Specialist, Financial Analysis & Standards Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, 703 883-4498

RIN: 3052–AA94

3600. SECONDARY MARKET

Legal Authority: PL 92-181; PL 100-233

CFR Citation: 12 CFR Not yet determined

Legal Deadline: None

Abstract: Implement Agricultural Credit Act of 1987

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ADDITIONAL AGENCY CONTACT: Cindy R. Nicholson, Paralegal Specialist, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090 (703) 883-4020

Agency Contact: George Irwin, Assistant Deputy Director, Office of Analysis & Supervision, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, 703 883-4198

RIN: 3052–AA96

3601. DEBT COLLECTION ACT

Legal Authority: 12 USC 2252(a)(10)

CFR Citation: 12 CFR Not yet determined

Legal Deadline: None

Abstract: GAO and Justice have issued standards for issuance of regulations

FCA — Prerule Stage

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ADDITIONAL AGENCY CONTACT: Cindy R. Nicholson, Paralegal Specialist, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090 (703) 883-4020

Agency Contact: Rob Brammer, Chief, Budget & Accounting Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, 703 883-4132

RIN: 3033-AI03

FARM CREDIT ADMINISTRATION (FCA) — Proposed Rule Stage

3015. ORGANIZATION: DIRECTOR COMPENSATION

Legal Authority: PL 92-181; PL 96-592; 12 USC 2211; 12 USC 2252(a)(10); PL 99-205

CFR Citation: 12 CFR 611.1020(d)

Legal Deadline: None

Abstract: Agricultural Credit Act of 1987 requires revision to FCA regulations to ensure the rights of shareholders to obtain a copy of the district board policy regarding compensation of district directors and also to inspect and copy the supporting records.

Timetable:

Action	Date	FR Cite
NPRM	11/09/87	52 FR 43081
NPRM Comment Period End	01/08/88	52 FR 43081

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ADDITIONAL AGENCY CONTACT: Cindy R. Nicholson, Paralegal Specialist, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090 (703) 883-4020

Agency Contact: Dennis Carpenter, Senior Credit Specialist, Financial Analysis & Standards Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, 703 883-4498

RIN: 3052-AA09

3503. ◆ REGULATORY ACCOUNTING PRACTICES

Legal Authority: 12 USC 2001; 12 USC 2013; 12 USC 2073; 12 USC 2093; 12 USC 2122; 12 USC 2159; 12 USC 2252; 12 USC 2254

CFR Citation: 12 CFR 624

Legal Deadline: None

Abstract: Utilization of regulatory accounting practices by Farm Credit System institutions.

Timetable:

Action	Date	FR Cite
NPRM	05/12/88	53 FR 16965
NPRM Comment Period End	06/13/88	53 FR 16965

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ADDITIONAL AGENCY CONTACT: Cindy R. Nicholson, Paralegal Specialist, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090 (703) 883-4020

Agency Contact: Thomas Dalton, Staff Accountant, Accounting and Corporate Affairs, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, 703 883-4498

RIN: 3033-AA32

3504. FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS; CAPITAL ADEQUACY RELATED

Legal Authority: 12 USC 2154; 12 USC 2243; 12 USC 2252; 12 USC 2278b; 12 USC 2278b-6

CFR Citation: 12 CFR 615

Legal Deadline: None

Abstract: Revisions to various regulations relating to capital adequacy and minimal capital requirements for Farm Credit System institutions.

Timetable:

Action	Date	FR Cite
ANPRM	02/17/88	53 FR 4642
ANPRM Comment Period End	03/01/88	53 FR 4642
NPRM	09/02/88	53 FR 34109
NPRM Comment Period End	09/16/88	53 FR 34109

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ADDITIONAL AGENCY CONTACT: Cindy R. Nicholson, Paralegal Specialist, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090 (703) 883-4020

Agency Contact: William Dunn, Chief, Financial Analysis & Standards Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, 703 883-4498

RIN: 3052-AA58

3505. ORGANIZATION; RECEIVER

Legal Authority: 12 USC 2011; 12 USC 2031; 12 USC 2071; 12 USC 2091; 12 USC 2121; 12 USC 2182; 12 USC 2183; 12 USC 2243; 12 USC 2244; 12 USC 2250; 12 USC 2252; PL 100-233, Sec 412

CFR Citation: 12 CFR 611

Legal Deadline: None

Abstract: Revise due to Agricultural Credit Act of 1987

Timetable:

Action	Date	FR Cite
NPRM	05/12/88	53 FR 16934
Interim Final Rule	05/24/88	53 FR 18610
NPRM Comment Period End	06/13/88	53 FR 16934

Next Action Undetermined

FCA — Proposed Rule Stage

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ADDITIONAL AGENCY CONTACT: Cindy R. Nicholson, Paralegal Specialist, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090 703-883-4020

Agency Contact: Eldon Stoehr, Field Division A Chief, Office of Examinations, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, 703 883-4251

RIN: 3052-AA02

3506. FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS; FUNDING CORPORATION

Legal Authority: 12 USC 2154; 12 USC 2160; 12 USC 2202(b); 12 USC 2243; 12 USC 2252; 12 USC 2278b-6; PL 100-233, Sec 301(a)

CFR Citation: 12 CFR 615

Legal Deadline: None

Abstract: Implement Agricultural Credit Act of 1987

Timetable:

Action	Date	FR Cite
NPRM	05/12/88	53 FR 16963
NPRM Comment Period End	06/13/88	53 FR 16963
Funding Corporation Resolicitation of Comments	10/05/88	53 FR 39099

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ADDITIONAL AGENCY CONTACT: Cindy R. Nicholson, Paralegal Specialist, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090 (703) 883-4020

Agency Contact: Alan Glenn, Credit Examiner, Special Examination Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, 703 883-4225

RIN: 3033-AA37

FARM CREDIT ADMINISTRATION (FCA) — Completed Actions

3047. ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE FARM CREDIT ADMINISTRATION; HANDICAP

CFR Citation: 12 CFR 606

Completed:

Reason	Date	FR Cite
Final Action	06/01/88	53 FR 19834
Final Action Effective	07/06/88	53 FR 25481

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Nancy E. Lynch 703 883-4020

RIN: 3052-AA67

3508. FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS; GENERAL PROVISIONS; CAPITAL ADEQUACY

CFR Citation: 12 CFR 615; 12 CFR 618

Completed:

Reason	Date	FR Cite
Final Action	10/06/88	53 FR 39229

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: William Dunn 703 883-4498

RIN: 3052-AA79

3509. ◆ PERSONNEL ADMINISTRATION; SIMULTANEOUS SERVICE

Legal Authority: 12 USC 2243; 12 USC 2252

CFR Citation: 12 CFR 612

Legal Deadline: None

Abstract: Regulation which would prohibit an individual from serving simultaneously as an employee of a Farm Credit System bank and the System association it supervises.

Timetable:

Action	Date	FR Cite
NPRM	04/07/87	52 FR 11080
NPRM Comment Period End	06/05/87	52 FR 11080
Final Action	06/14/88	53 FR 22134
Final Action Effective	01/01/89	53 FR 22134

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ADDITIONAL AGENCY CONTACT: Cindy R. Nicholson, Paralegal Specialist, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090 (703) 883-4020

Agency Contact: Dorothy J. Acosta, Senior Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, 703 883-4020

RIN: 3052-AA61

3510. ORGANIZATION; CAPITAL CORPORATION

CFR Citation: 12 CFR 611

Completed:

Reason	Date	FR Cite
Final Action	04/13/88	53 FR 12140
Final Action Effective	04/13/88	53 FR 12140

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Gary Norton 703 883-4020

RIN: 3052-AA57

3511. ORGANIZATION; EXAMINATIONS; EXAMINATIONS

CFR Citation: 12 CFR 611; 12 CFR 617

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Completed:

Reason	Date	FR Cite
Final Action	07/19/88	53 FR 27155
Final Action Effective	09/13/88	53 FR 35303

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Steve Smith 703 883-4172

RIN: 3052-AA80

3612. COLLATERAL ISSUES

CFR Citation: 12 CFR Not yet determined

Completed:

Reason	Date	FR Cite
Withdrawn COMBINED WITH RIN AA87	05/12/88	53 FR 16882

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Alan Glenn 703 883-4225

RIN: 3052-AA81

3613. ORGANIZATION AND FUNCTIONS; FCA ORGANIZATION

CFR Citation: 12 CFR 600

Completed:

Reason	Date	FR Cite
Final Action	05/11/88	53 FR 16883
Final Action Effective	06/11/88	53 FR 16883

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Charles Rew 703 883-4135

RIN: 3052-AA83

3614. FEDERAL LAND BANK LENDING AUTHORITIES

CFR Citation: 12 CFR Not yet determined

Completed:

Reason	Date	FR Cite
Withdrawn COMBINED WITH RIN AA94	07/23/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Dennis Carpenter 703 883-4498

RIN: 3052-AA85

3615. ASSISTANCE CORPORATION

CFR Citation: 12 CFR Not yet determined

Completed:

Reason	Date	FR Cite
Withdrawn COMBINED WITH RIN AA97	05/12/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Alan Glenn 703 883-4225

RIN: 3052-AA86

3616. ORGANIZATION; PERSONNEL ADMINISTRATION; GENERAL PROVISIONS; DISCLOSURE TO SHAREHOLDERS; MERGERS

CFR Citation: 12 CFR 611; 12 CFR 612; 12 CFR 618; 12 CFR 620

Completed:

Reason	Date	FR Cite
Final Action	10/05/88	53 FR 39079
Final Action Effective	10/05/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: James Thiee 703 883-4475

RIN: 3052-AB00

3617. DISCLOSURE TO SHAREHOLDERS; DISCLOSURE

CFR Citation: 12 CFR 620

Completed:

Reason	Date	FR Cite
Final Action	05/11/88	53 FR 16897
Final Action Effective	06/13/88	53 FR 21986

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Dorothy Acosta 703 883-4020

RIN: 3052-AB01

3618. GENERAL PROVISIONS; MEMBER INSURANCE

CFR Citation: 12 CFR 618

Completed:

Reason	Date	FR Cite
Final Action	09/13/88	53 FR 35303

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Dennis Carpenter 703 883-4498

RIN: 3052-AB03

3619. LOAN POLICIES AND OPERATIONS; FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS; GENERAL PROVISIONS; BORROWER RIGHTS

CFR Citation: 12 CFR 614; 12 CFR 615; 12 CFR 618

Completed:

Reason	Date	FR Cite
Final Action	09/14/88	53 FR 35427

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Andrea Call 703 883-4020

RIN: 3052-AB04

3620. RULES OF PRACTICE AND PROCEDURE; PRACTICE BEFORE THE FARM CREDIT ADMINISTRATION; CIVIL MONEY PENALTIES

CFR Citation: 12 CFR 622; 12 CFR 623

Completed:

Reason	Date	FR Cite
Final Action	07/19/88	53 FR 27284
Final Action Effective	09/13/88	53 FR 35306

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Kathleen Eyer 703 883-4455

RIN: 3052-AB05

[FR Doc. 88-20881 Filed 10-21-88; 8:45 am]

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federal register

Monday
October 24, 1988

Part XLVII

Federal Communications Commission

Semiannual Regulatory Agenda

FEDERAL COMMUNICATIONS COMMISSION (FCC)

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

Unified Agenda of Federal Regulations; October 1988

AGENCY: Federal Communications Commission.

ACTION: Publication of the Unified Agenda of Federal Regulations.

SUMMARY: Twice a year, the Commission publishes a list in the Unified Agenda of those major items and other significant proceedings under development or review that pertain to the Regulatory Flexibility Act. The agenda also provides the CFR Citations and Legal Authorities which govern these proceedings. The Regulatory Flexibility Act (94 Stat. 1167; 5 U.S.C. 605) includes notations on the applicability of the Regulatory Flexibility Act to each item.

The Unified Agenda is published in the Federal Register in April and October of each year.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tenecia Moncrief, Office of Managing Director, (202) 632-3906.

SUPPLEMENTARY INFORMATION:

Unified Agenda of Major and Other Significant Proceedings.

The Commission encourages public participation in the FCC rulemaking process. To help keep the public informed of significant rulemaking proceedings, the Commission has prepared an agenda of important proceedings now in progress. OMB publishes the Unified Agenda in the Federal Register in April and October of each year.

The following terms may be helpful in understanding the status of the proceedings included in this report:

A Docket Number - is assigned to a proceeding if the Commission has issued either a Notice of Proposed Rulemaking or a Notice of Inquiry in regard to the matter under consideration. Since January 1, 1978, the Commission has used docket numbers which consist of the last two digits of the calendar year in which the docket was established plus a sequential number which begins at 1 with the first docket initiated during a calendar year (e.g., Docket 80-1 or Docket 83-1). The abbreviation for the responsible Bureau usually precedes the docket number, as in "CC Docket 79-164." When a docket number consists of only five digits (e.g., Docket 29622), this indicates that the docket was established before January 1, 1978.

Notice of Inquiry (NOI) - issued by the Commission when it is seeking information on a broad subject or trying to generate ideas on a given topic. A comment period is specified during which all interested parties may submit comments.

Notice of Proposed Rulemaking (NPRM) - issued by the Commission when it is proposing a specific change to the FCC Rules and Regulations. Before any changes are actually made, interested parties may submit written comments on the proposals.

Memorandum Opinion and Order (MO&O) - issued by the Commission to deny a petition for rulemaking, conclude an inquiry, modify a decision, or deny a petition for reconsideration of a decision.

Rulemaking (RM) Number - assigned to a proceeding after the appropriate Bureau/Office has reviewed a petition for rulemaking, but before the Commission has taken action on the petition.

Report & Order (R&O) - issued by the Commission to state a new or amended rule or state that the FCC Rules will not be changed.

H. Walker Feaster,

Acting Secretary, Federal Communications Commission.

COMMON CARRIER BUREAU—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
3621	Jurisdictional Separations Procedures: Central Office Equipment Category 3, Local Switching Equipment	3060-AE06

COMMON CARRIER BUREAU—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
3622	Jurisdictional Separations	3060-AD93
[illegible]	Deregulation of Certain Basic Services	3060-AE02
3624	Regulatory Policies and International Telecommunications: Notice of Inquiry and Proposed Rulemaking	3060-AE03
3625	Jurisdictional Separation Procedures: Central Office Equipment (Circuit Equipment) and Cable and Wire Facilities	3060-AE14
3626	Policy and Rules concerning Rates for Dominant Carriers, CC Docket No. 87-313	3060-AE36
3627	Access to Telecommunications Equipment and Services by the Hearing Impaired and Other Disabled Persons	3060-AE39
[illegible]	Telephone Company Cable Television Cross-Ownership Rules Sections 63.54-63.58	3060-AE40

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COMMON CARRIER BUREAU—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
3629	Satellite Communications	3060-AD70
3630	Jurisdictional separations procedures: Reconsideration of the decision to exclude access revenues from the allocation of marketing expenses	3060-AE07

COMMON CARRIER BUREAU—Completed Actions

Sequence Number	Title	Regulation Identifier Number
3631	Cellular Radio Licensing Procedures for Small Markets	3060-AD58
3632	In the Matter of Revision of Part 21 of the Commission's Rules, CC Docket No. 86-128	3060-AD71
3633	Application of Access Charges with regard to Providers of Enhanced Services	3060-AE01
3634	Jurisdictional Separations Procedures: Petitions for Reconsideration of Items in Order Reflected in the New Part 36 Separation Manual	3060-AE05

OFFICE OF ENGINEERING AND TECHNOLOGY—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
3635	900 MHz G/NG Fixed	3060-AD55

OFFICE OF ENGINEERING AND TECHNOLOGY—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
3636	Public Safety National Plan	[illegible]-AD63
3637	LTTS Reallocation	3060-AD67
3638	Part 15 Review (Auditory Assistance and Igguiton Petitions to be Disposed of Concurrent with this Action)	3060-AD68
3639	EIA Petition for Extension of Time for 46/49 MHz	3060-AD95
3640	Alternative Type Acceptance Procedure	3060-AD96
3641	Verification of Parts 73, 74, and Devices	3060-AE00
3642	Scanning Receiver Labelling	3060-AE19
3643	Proposal to Create a New Air-to-Ground Public Switched Telephone Network (PTSN) Interconnected Service	3060-AE36
3644	Part 15 Measurement Procedures	3060-AE37

OFFICE OF ENGINEERING AND TECHNOLOGY—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
3645	216 - 225 MHz Allocations	3060-AC91
3646	Cellular Flexibility	3060-AE18

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OFFICE OF ENGINEERING AND TECHNOLOGY—Completed Actions

Sequence Number	Title	Regulation Identifier Number
3647	DORCMA/SEIA-REMOTE CONTROL/SECURITY DEVICES	3060-AC96
3648	900 MHz Reserve Reconsideration	3060-AD91
3649	EIA Petition for Cordless Telephone Allocation at 900 MHz	3060-AD97

FIELD OPERATIONS BUREAU—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
3650	In the matter of an Automatic Transmitter Identification System (ATIS) for Radio Transmitting Equipment (Gen. Doc. [illegible])	3060-AE25

MASS MEDIA BUREAU—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
3651	Non-Stock Entities	3060-AE31

MASS MEDIA BUREAU—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
3652	Section 73.37(e): Petition for Reconsideration	3060-AD63
3653	Broadcast EEO: Reconsideration	3060-AD73
3654	FM Technical Clean-up: Reconsideration	3060-AD74
3655	Radio Multiple Ownership & Cross Ownership Rules	3060-AD78
3656	Satellite Television Stations	3060-AD79
3657	Radio Reading Services	3060-AD80
3658	Daytimers Issues	3060-AD85
3659	AM Expanded Band: Domestic	3060-AD92
3660	Wireless Cameras	3060-AE10
3661	FM Translators: Moody Bible	3060-AE11
3662	FM/TV Directional Antenna	3060-AE12
3663	Channels 14/69 Interference: NOI/NPRM	3060-AE13
3664	FM Translators: NOI/NPRM	3060-AE23
3665	Advanced Television Systems	3060-AE24
3666	Competitive Renewal	3060-AE27
3667	AM: Skywave Propagation	3060-AE28
3668	AM: Ground Propagation: FNOI/FNPRM	3060-AE29
3669	FM Class C3 and Class A FM Upgrade Petitions	3060-AE30
3670	TV Networks Rules: Two-year Rule	3060-AE32
3671	Premature Construction	3060-AE33
3672	Cable System Definition	3060-AE34
3673	AM: Enhanced Nighttime Operation	3060-AE35

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MASS MEDIA BUREAU—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
3674	Technical Deregulation: Part 73: TV	3060-AD66

MASS MEDIA BUREAU—Completed Actions

Sequence Number	Title	Regulation Identifier Number
3675	Foreign Clears: Ct. Remand: Minority Preference	3060-AD72
3676	Main Studio Location	3060-AD75
3677	Noncommercial Broadcast: Issues-Programs Lists	3060-AD76

MASS MEDIA BUREAU—Completed Actions

Sequence Number	Title	Regulation Identifier Number
3678	Amendment of Parts 73 and 76 of the Commission's Rules relating to program exclusivity in the cable and broadcast industries	3060-AE36

PRIVATE RADIO BUREAU—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
3679	Wireline Common Carriers - Operation of SMRS	3060-AD54
3680	Multiple Address Systems	3060-AE07
3681	Amend Part 80 to preclude accidental or intentional off- frequency operation of externally controlled synthesized radio transmitters	3060-AE41
3682	Subpart M&S Reconsideration	3060-AE42

PRIVATE RADIO BUREAU—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
3683	Part 90 Review - Subparts M&S incl. ASNA pet., Subpart S Wait List	3060-AD69

PRIVATE RADIO BUREAU—Completed Actions

Sequence Number	Title	Regulation Identifier Number
3684	Revision and reorganization of Aviation rules (Part 87)	3060-AE17
3685	Special Emergency Radio Private Carriers	3060-AE19
3686	Multiple Address Systems	3060-AE20
3687	Revision and reorganization of Aviation Rules (Pt. 87)	3060-AE21

FEDERAL COMMUNICATIONS COMMISSION (FCC) —COMMON CARRIER BUREAU

Prerule Stage

3621. JURISDICTIONAL SEPARATIONS PROCEDURES: CENTRAL OFFICE EQUIPMENT CATEGORY 3, LOCAL SWITCHING EQUIPMENT

Significance: Agency Priority

Legal Authority: 47 USC 221(c); 47 USC 410; 47 USC 410

CFR Citation: 47 CFR 36

Legal Deadline: None

Abstract: With the issuance of this Order inviting comments and requests for Data we are seeking further comments on the development of other relative use allocators, including Switched Minutes of Use (SMOU) to allocate Central Office Equipment investment included in the Local Switching Equipment Category in the Part 36 Separations Manual.

Timetable:

Action	Date	FR Cite
Order Inviting Comments	05/07/86	51 FR 21000
Recommended Decision and Order (Joint Board)	04/08/87	52 FR 16354
R&O	06/01/87	52 FR 17228
Order Inviting Comments	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: State, Federal

Additional Information: CC Docket 80-286

Agency Contact: Michael Wilson, Chief, Cost Analysis Branch, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554, 202 632-7500

RIN: 3060-AE06

FEDERAL COMMUNICATIONS COMMISSION (FCC) —COMMON CARRIER BUREAU

Proposed Rule Stage

3622. JURISDICTIONAL SEPARATIONS

Significance: Agency Priority

Legal Authority: 47 USC 410; 47 USC 154(i); 47 USC 154(j); 47 USC 201 to 205; 47 USC 218

CFR Citation: 47 CFR 36; 47 CFR 69

Legal Deadline: None

Abstract: This proceeding concerns the allocation between the state and federal jurisdictions of the costs of special access lines (including those used with WATS service) that carry both interstate and intrastate traffic.

Timetable:

Action	Date	FR Cite
NPRM	06/01/88	
Joint Board Recommended Decision	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Claudia Pabo, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C., 202 632-4947

RIN: 3060-AD03

3623. DEREGULATION OF CERTAIN BASIC SERVICES

Significance: Agency Priority

Legal Authority: 47 USC 151; 47 USC 154(i); 47 USC 154(j); 47 USC 201; 47 USC 202; 47 USC 203; 47 USC 204; 47 USC 205; 47 USC 218; 47 USC 220; 47 USC 303(g); 47 USC 303(r); 47 USC 403; 47 USC 404; 5 USC 553

CFR Citation: 47 CFR 1.48; 47 CFR 1.49; 47 CFR 1.419

Legal Deadline: None

Abstract: Proposed reduction of regulation for certain basic services offered by dominant carriers based on a service-by-service analysis of competition. Contract services and packet switched services are targeted for such potential deregulation.

Timetable:

Action	Date	FR Cite
NPRM	01/09/87	
NPRM Comment Period End	04/15/87	
R&O	12/00/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: CC Docket 85-421

Agency Contact: Kelly Cameron, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554, 202 632-4947

RIN: 3060-AE02

3624. REGULATORY POLICIES AND INTERNATIONAL TELECOMMUNICATIONS: NOTICE OF INQUIRY AND PROPOSED RULEMAKING

Significance: Agency Priority

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 201 to 205; 47 USC 214; 47 USC 218 to 222; 47 USC 301; 47 USC 302

CFR Citation: 47 CFR 63.01; 47 CFR 63.701; 47 CFR 63.228; 47 CFR 63.703; 47 CFR 63.10; 47 CFR 63.702; 47 CFR 68.01; 47 CFR 68.01

Legal Deadline: None

Abstract: The Report and Order adopted certain information gathering measures designed to increase the Commission's knowledge of the extent of participation in the U.S market by foreign companies and service providers. Four petitions for reconsideration were filed in response to the Report and Order and will be dealt with in an upcoming order.

Timetable:

Action	Date	FR Cite
NPRM	01/30/87	
NPRM Comment Period End	05/22/87	
R&O	03/25/88	
MO&O reconsideration of R&O	12/00/88	

Small Entities Affected: Businesses

Government Levels Affected: None

FCC—CCB

Proposed Rule Stage

Agency Contact: William J. Kirsch, Deputy Asst. Bureau Chief/International, Federal Communications Commission, 1919 M Street, N.W. Room 544, Washington, D.C. 20554, 202 632-6847

RIN: 3060-AE03

3625. JURISDICTIONAL SEPARATION PROCEDURES: CENTRAL OFFICE EQUIPMENT (CIRCUIT EQUIPMENT) AND CABLE AND WIRE FACILITIES

Significance: Agency Priority

Legal Authority: 47 USC 221(c); 47 USC 403; 47 USC 410

CFR Citation: 47 CFR 36; 47 CFR 69

Legal Deadline: None

Abstract: With the issuance of this Order inviting comments and requests for data, we are seeking information concerning the jurisdictional separations separations treatment of investment in Cable and Wire Facilities and in Circuit Equipment.

Timetable:

Action	Date	FR Cite
Order Inviting Comments	05/07/86	51 FR 21000
R&O	05/01/87	52 FR 17228
Order Inviting comments	10/15/87	52 FR 43208

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: CC Docket No. 78-72 CC Docket No. 80-286 CC Docket No. 86-297

Agency Contact: Michael Wilson, Chief, Cost Analysis Branch, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554, 202 632-7500

RIN: 3060-AE14

3626. ◆ POLICY AND RULES CONCERNING RATES FOR DOMINANT CARRIERS, CC DOCKET NO. 87-313

Significance: Agency Priority

Legal Authority: 47 USC 154(j); 47 USC 154(i); 47 USC 201; 47 USC 202; 47 USC 203; 47 USC 204; 47 USC 205; 47 USC 303(r); 47 USC 403; 47 USC 553

CFR Citation: 47 CFR 1.773; 47 CFR 61.3; 47 CFR 61.32; 47 CFR 61.33; 47 CFR 61.38; 47 CFR 61.39; 47 CFR 61.41; 47 CFR 61.42; 47 CFR 61.43; 47 CFR 61.44; 47 CFR 61.45; 47 CFR 61.47; 47 CFR 61.58; 47 CFR 61.46; 47 CFR 65.1; ...

Legal Deadline: None

Abstract: The Commission has issued a specific plan for implementing a proposed change in regulation of the rates of dominant carriers which would replace the current rate-of-return regulatory model with one that directly limits rates by means of price caps. The plan applies to dominant carriers other than Comsat and Alascom. The Commission reaffirms its tentative finding that the price cap method of regulation will promote efficiency and innovation and benefit consumers more effectively than rate-of-return regulation

Timetable:

Action	Date	FR Cite
NPRM	08/21/87	52 FR 33982
NPRM Comment Period End	02/17/88	
Further Notice of Proposed Ruling	05/23/88	53 FR 22350
FNPRM Public Comment Period End	09/26/88	53 FR 22358
Order	12/00/88	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: John Cimko, Chief, Tariff Division, Federal Communications Commission, 202 632-6387

RIN: 3060-AE36

3627. ◆ ACCESS TO TELECOMMUNICATIONS EQUIPMENT AND SERVICES BY THE HEARING IMPAIRED AND OTHER DISABLED PERSONS

Significance: Agency Priority

Legal Authority: 47 USC 151; 47 USC 154(i)

CFR Citation: 47 CFR 68.112(c)

Legal Deadline: None

Abstract: Proceeding designed to determine whether disabled persons have reasonable access to telecommunications services and equipment. FCC proposes to expand definition of essential telephones to require card-operated telephones to be Hearing Aid Compatible as well as telephones located in common areas in a hearing impaired employee's workplace. In addition, the FCC will consider the feasibility of implementing an Interstate Relay System for users of telecommunications devices for the deaf.

Timetable:

Action	Date	FR Cite
NPRM	03/29/88	
Further NPRM	12/00/88	
Final Action	05/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Robert James, Electronics Engineer, Federal Communications Commission, 202 634-1831

RIN: 3060-AE39

3628. ◆ TELEPHONE COMPANY CABLE TELEVISION CROSS-OWNERSHIP RULES SECTIONS 63.54-63.58

Significance: Agency Priority

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 201; 47 USC 202; 47 USC 203; 47 USC 204; 47 USC 205; 47 USC 215; 47 USC 218; 47 USC 220; 47 USC 309(e) to 309(h); 47 USC 313; 47 USC 405; 47 USC 412; 47 USC 522

CFR Citation: 47 CFR 63.54; 47 CFR 63.55; 47 CFR 63.56

Legal Deadline: None

Abstract: This proceeding addresses the restrictions which prohibit telephone companies from providing cable television service within their telephone service areas. In this proceeding, the FCC seeks comment on its proposal to eliminate the restrictions. Based on the record developed the FCC may recommend to Congress legislative changes to increase telephone company participation in the provision of cable television service within their telephone service areas.

Timetable:

Action	Date	FR Cite
NOI adopted 07/16/87	07/16/87	52 FR 34818
Further NOI and NPRM	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

FCC—CCB — Proposed Rule Stage

Agency Contact: Patrick J. Donovan, Attorney, Federal Communications Commission, [illegible]
RIN: [illegible]-AE80

FEDERAL COMMUNICATIONS COMMISSION (FCC) —COMMON CARRIER BUREAU

Final Rule Stage

3629. SATELLITE COMMUNICATIONS

Significance: Agency Priority

Legal Authority: 47 USC 303; 47 USC 503

CFR Citation: 47 CFR 25

Legal Deadline: None

Abstract: The Commission seeks to develop a record & to solicit comments on the proposed rules. These proposed rules are designed to implement recommendations made by the joint industry/government Advisory Committee on 2 degree satellite spacing; and they will codify basic applications requirements for satellite services. The proposed rules would apply to all entities including small entities who seek authorization under Part 25 of the Commission's rules to construct and operate Fixed-Satellite communications facilities. The proposed rules would establish operational and technical procedures designed to alleviate adjacent satellite interference and may increase the reporting and cost burdens on all satellite licensees. The rules codifying basic applications requirements are codifications of existing policies. Will impose no additional burdens, and may, in fact, reduce the burden by eliminating several current requirements. In order to be effective, these rules must apply to all licensees and thus there is no significant alternative.

Timetable:

Action	Date	FR Cite
ANPRM	09/01/87	52 FR 6175
ANPRM Comment Period End	11/01/87	
Final Action	12/00/89	
Final Action Effective	02/00/90	

Small Entities Affected: Businesses

Government Levels Affected: Local, State, Federal

Agency Contact: Rosalee Gorman or Fern Jarmulnek, Staff Attorneys, Federal Communications Commission, 2025 M Street, N.W., Room 6324, Washington, D.C. 20554, 202 634-1834

RIN: 3060-AD70

3630. JURISDICTIONAL SEPARATIONS PROCEDURES: RECONSIDERATION OF THE DECISION TO EXCLUDE ACCESS REVENUES FROM THE ALLOCATION OF MARKETING EXPENSES

Significance: Agency Priority

Legal Authority: 47 USC 221(c); 47 USC 403; 47 USC 410

CFR Citation: 47 CFR 36; 47 CFR 69

Legal Deadline: None

Abstract: With the issuance of this order we are addressing the petitions for reconsideration filed by parties urging the FCC to reconsider its decision to exclude access revenues from the allocation factor for marketing expenses. We also are initiating a further proceeding to re-examine the separations treatment of marketing expenses.

Timetable:

Action	Date	FR Cite
Order inviting Comments	05/07/86	51 FR 21000
Recommended Decision and Order (RD&O) (Joint Board)	04/08/87	52 FR 15354
R&O	05/01/87	52 FR 17228
MO&O (Recon. & Supp. NPRM)	08/18/87	52 FR 32937
R&O (Joint Board)	04/01/88	
Order inviting comments and request	05/17/88	
Final Action	04/01/89	
Final Action Effective	01/01/90	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: CC Docket 78-72 CC Docket 80-286 CC Docket 86-297

Agency Contact: Michael Wilson, Chief, Cost Analysis Branch, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554, 202 632-7500

RIN: 3060-AE07

FEDERAL COMMUNICATIONS COMMISSION (FCC) —COMMON CARRIER BUREAU

Completed Actions

3631. CELLULAR RADIO LICENSING PROCEDURES FOR SMALL MARKETS

Significance: Agency Priority

CFR Citation: 47 CFR 22.900

Completed:

Reason	Date	FR Cite
Final Action - Fourth Report and Order adopted 06/15/88	06/15/88	53 FR 18562
Final Action Effective	06/16/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: David Siehl 202 632-6450

RIN: 3060-AD36

FCC—CCB — Completed Actions

3632. IN THE MATTER OF REVISION OF PART 21 OF THE COMMISSION'S RULES, CC DOCKET NO. 86-126

Significance: Agency Priority

CFR Citation: 47 CFR 21

Completed:

Reason	Date	FR Cite
Final Action - MO&O	10/09/87	52 FR 37775
Final Action Effective	11/09/87	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Geraldine A. Matise 202 634-1841

RIN: 3060-AD71

3633. APPLICATION OF ACCESS CHARGES WITH REGARD TO PROVIDERS OF ENHANCED SERVICES

Significance: Agency Priority

CFR Citation: 47 CFR 69.2; 47 CFR 69.5; 47 CFR 69.105; 47 CFR 69.106; 47 CFR 69.107; 47 CFR 69.108; 47 CFR 69.111; 47 CFR 69.112

Completed:

Reason	Date	FR Cite
Final Action - Order terminates docket on 4/27/88	04/27/88	53 FR 16301
Final Action Effective	04/27/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Ruth Milkman 202 632-6363

RIN: 3060-AE01

3634. JURISDICTIONAL SEPARATIONS PROCEDURES: PETITIONS FOR RECONSIDERATION OF ITEMS IN ORDER REFLECTED IN THE NEW PART 36 SEPARATION MANUAL

Significance: Agency Priority

CFR Citation: 47 CFR 36

Completed:

Reason	Date	FR Cite
Final Action - Final Report and Order effective 5/1/87	05/01/87	
Final Action Effective	05/01/87	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Michael Wilson 202 632-7500

RIN: 3060-AE05

FEDERAL COMMUNICATIONS COMMISSION (FCC) —OFFICE OF ENGINEERING AND TECHNOLOGY

Prerule Stage

3635. 900 MHZ G/NG FIXED

Significance: Agency Priority

Legal Authority: 47 USC 303

CFR Citation: 47 CFR 2; 47 CFR 74; 47 CFR 94

Legal Deadline: None

Abstract: Development of operating rules and sharing arrangement for use of the 902-905 and 941-943 MHz bands for G/NG fixed services.

Timetable:

Action	Date	FR Cite
NPRM	11/25/86	
NPRM Comment Period End	11/02/87	
R&O	12/00/88	

Small Entities Affected: Businesses, Organizations

Government Levels Affected: Federal

Additional Information: [illegible]

Agency Contact: Rodney Small, Federal Communications Commission, 2025 M St., NW, Rm. 7332, Washington, DC 20554, 202 653-8118

RIN: 3060-AD05

FEDERAL COMMUNICATIONS COMMISSION (FCC) —OFFICE OF ENGINEERING AND TECHNOLOGY

Proposed Rule Stage

3636. PUBLIC SAFETY NATIONAL PLAN

Significance: Agency Priority

Legal Authority: 47 USC 4(i); 47 USC 303(r)

CFR Citation: 47 CFR 90

Legal Deadline: None

Abstract: Development and implementation of a Public Safety National Plan and amendment of Part 90 to establish service rules and technical standards for use of the 821-824/866-869 MHz bands by the Public Safety Services.

Timetable:

Action	Date	FR Cite
NPRM	05/15/87	
R&O	01/00/89	
MO&O	12/00/89	

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Local, State

Additional Information: 87-112

Agency Contact: Fred Thomas, Federal Communications Commission, 2025 M Street, N.W., Room 7130, Washington, D.C. 20554, 202 653-8112

RIN: [illegible]-AD90

3637. LTTS REALLOCATION

Significance: Agency Priority

Legal Authority: 47 USC 4(i); 47 USC 303(r)

CFR Citation: 47 CFR 2; 47 CFR 74

Legal Deadline: None

Abstract: Reallocation of the Local Television Transmission Service (LTTS) from the 11.7-12.2 GHz band to the 14.2-

FCC—OET — Proposed Rule Stage

14.4 GHz band. This reallocation is designed to permit improved frequency sharing between the LTTS and the fixed-satellite services.

Timetable:

Action	Date	FR Cite
NPRM	07/06/87	
R&O	12/00/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: 87-136

Agency Contact: Ray LaForge, Federal Communications Commission, 2025 M Street, N.W., Room 7328, Washington, D.C. 20554, 202 653-8117

RIN: 3060-AD87

3636. PART 15 REVIEW (AUDITORY ASSISTANCE AND KOGULTON PETITIONS TO BE DISPOSED OF CONCURRENT WITH THIS ACTION)

Significance: Agency Priority

Legal Authority: 47 USC 301; 47 USC 302; 47 USC 303; 47 USC 4(i)

CFR Citation: 47 CFR 15

Legal Deadline: None

Abstract: A comprehensive revision of Part 15 which proposes to allow marketing and use of a greater variety of devices, and to reduce the regulatory burden on the public.

Timetable:

Action	Date	FR Cite
NPRM	10/02/87	
NPRM Comment Period End	05/00/88	
R&O	12/00/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Docket 87-389

Agency Contact: John Reed, Federal Communications Commission, 2025 M Street, N.W., Room 7122, Washington, D.C. 20554, 202 653-7313

RIN: 3060-AD88

3639. EIA PETITION FOR EXTENSION OF TIME FOR 46/49 MHZ

Significance: Agency Priority

Legal Authority: 47 USC 301

CFR Citation: 47 CFR 15

Legal Deadline: None

Abstract: The Electronic Industry Association has requested an extension of time from February 1989 to February 1994 to continue manufacture of cordless telephones on government frequencies at 46/49 MHz under Part 15.

Timetable:

Action	Date	FR Cite
MO&O	12/00/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: RM-5326

Agency Contact: Julie Knapp, Federal Communications Commission, 2025 M Street, N.W., Washington, D.C. 20554, 202 653-8116

RIN: 3060-AD65

3640. ALTERNATIVE TYPE ACCEPTANCE PROCEDURE

Significance: Agency Priority

Legal Authority: 47 USC 4(i); 47 USC 303(r)

CFR Citation: 47 CFR 2; 47 CFR 22; 47 CFR 90

Legal Deadline: None

Abstract: That proceeding in Docket No. 85-171 proposed a new technique that would allow maximum flexibility in getting innovative new equipment designs into the marketplace. This proposal will be a new approach to solve some of the technical and administrative problems identified in Docket 85-171.

Timetable:

Action	Date	FR Cite
NPRM	02/25/88	
NPRM Comment Period End	02/25/88	
R&O	02/00/89	

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: 85-171

Agency Contact: Ken Nichols, Federal Communications Commission, 7435 Oakland Mills Road, Guilford, MD 21045, 301 725-1585

RIN: 3060-AD89

3641. VERIFICATION OF PARTS 73, 74, AND DEVICES

Significance: Agency Priority

Legal Authority: 47 USC 302; 47 USC 303

CFR Citation: 47 CFR 73; 47 CFR 74; 47 CFR 76

Legal Deadline: None

Abstract: Proposal for relaxation of the rules to change the equipment authorization procedure for certain devices subject to Parts 73, 74, and 76 from notification to the less burdensome verification procedure.

Timetable:

Action	Date	FR Cite
NPRM	09/30/87	
NPRM Comment Period End	02/01/88	
R&O	12/30/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: George Harenberg, Federal Communications Commission, 2025 M Street, N.W., Washington, D.C. 20554, 202 653-8187

RIN: 3060-AE00

3642. SCANNING RECEIVER LABELLING

Significance: Agency Priority

Legal Authority: 47 USC 301; 47 USC 302; 47 USC 303; 47 USC 4(i)

CFR Citation: 47 CFR 15

Legal Deadline: None

Abstract: Consideration of a petition requesting changes to Part 15 to require scanner manufacturers to label their receivers to alert users that it is not legal to listen to certain transmissions taking place on specified bands.

Timetable:

Action	Date	FR Cite
NPRM	06/01/88	
NPRM Comment Period End	08/14/88	
R&O	03/00/89	

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: RM-5636

Agency Contact: Paul Marrangoni, Federal Communications Commission, 2025 M St., N.W. Rm. 7336, Washington, D.C. 20554, 202 653-8107

RIN: 3060-AE16

FCC—OET — Proposed Rule Stage

3643. ◆ PROPOSAL TO CREATE A NEW AIR-TO-GROUND PUBLIC SWITCHED TELEPHONE NETWORK (PTSN) INTERCONNECTED SERVICE

Significance: Agency Priority

Legal Authority: 47 USC 303

CFR Citation: 47 CFR 2; 47 CFR 22; 47 CFR 90

Legal Deadline: None

Abstract: The Commission proposes to amend Parts 2 and 22 and/or Parts 2 and 90 of its rules to permit use of four megahertz of reserve spectrum at 849/851/894-896 MHz for an air-to-ground telephone service. This action also proposes licensing policies and technical guidelines for the air-to-ground service.

Timetable:

Action	Date	FR Cite
NPRM	04/27/88	
NPRM Comment Period End	04/27/88	
R&O	12/00/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Rodney Small, Federal Communications Commission, 202 653-8116

RIN: 3060-AE36

3644. ◆ PART 15 MEASUREMENT PROCEDURES

Significance: Agency Priority

Legal Authority: 47 USC 302

CFR Citation: 47 CFR 15

Legal Deadline: None

Abstract: Proposal to revise the Commission's Measurement Procedure (MP-4) recommended for testing of computing devices, based on the Part 15 revision in Docket No. 87-389, and on a proposal by CBEMA to revise the MP.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Art Wall, Federal Communications Commission, 202 725-1585

RIN: 3060-AE37

FEDERAL COMMUNICATIONS COMMISSION (FCC) —OFFICE OF ENGINEERING AND TECHNOLOGY

Final Rule Stage

3645. 216 - 225 MHZ ALLOCATIONS

Significance: Agency Priority

Legal Authority: 47 USC 303

CFR Citation: 47 CFR 2

Legal Deadline: None

Abstract: Proceeding to reallocate frequencies in the 216 - 225 MHz band including reallocation of 220 - 225 MHz from amateur to Land Mobile Services.

Timetable:

Action	Date	FR Cite
NPRM	12/31/84	
NPRM Comment Period End	12/12/87	
R&O	12/00/88	

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Additional Information: Gen. 87-14

Agency Contact: Fred Thomas, Federal Communications Commission, 2025 M St., N.W., Rm. 7320, Washington, D.C. 20554, 202 653-8112

RIN: 3060-AC91

3646. CELLULAR FLEXIBILITY

Significance: Agency Priority

Legal Authority: 47 USC 303

CFR Citation: 47 CFR 22

Legal Deadline: None

Abstract: Proceeding will investigate approach to relax technical standards for new cellular spectrum at 800 MHZ in order to provide flexibility to licensees for implementation of new technologies and new service offerings.

Timetable:

Action	Date	FR Cite
NPRM	08/00/87	
NPRM Comment Period End	10/15/87	
R&O	12/00/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: 84-1231

Agency Contact: Julius Knapp, Federal Communications Commission, 2025 M Street, N.W., Washington, D.C. 20554, 202 653-8108

RIN: 3060-AE15

FEDERAL COMMUNICATIONS COMMISSION (FCC) —OFFICE OF ENGINEERING AND TECHNOLOGY

Completed Actions

3647. DORCHA/SEIA-REMOTE CONTROL/SECURITY DEVICES

Significance: Agency Priority

CFR Citation: 47 CFR 15.201 to 215

Completed:

Reason	Date	FR Cite
Final Action - R&O adopted 3/25/8	03/25/88	
Final Action Effective	03/25/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: John Reed 202 653-7313

RIN: 3060-AC26

3648. 900 MHZ RESERVE RECONSIDERATION

Significance: Agency Priority

CFR Citation: 47 CFR 2

Completed:

Reason	Date	FR Cite
Final Action - Petitions Dismissed	10/06/87	

FCC—OET

Completed Actions

Reason	Date	FR Cite
Final Action Effective	10/09/87	

Small Entities Affected: Businesses, Organizations

Government Levels Affected: Local, State

Agency Contact: Julie Knapp 202 653-8166

RIN: 3060-AD91

3649. EIA PETITION FOR CORDLESS TELEPHONE ALLOCATION AT 900 MHZ

Significance: Agency Priority

CFR Citation: 47 CFR 2

Completed:

Reason	Date	FR Cite
Final Action - Petition Dismissed	12/10/87	

Reason	Date	FR Cite
Final Action Effective	12/10/87	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Julie Knapp 202 653-8166

RIN: 3060-AD97

FEDERAL COMMUNICATIONS COMMISSION (FCC) —FIELD OPERATIONS BUREAU

Proposed Rule Stage

3650. ◆ IN THE MATTER OF AN AUTOMATIC TRANSMITTER IDENTIFICATION SYSTEM (ATIS) FOR RADIO TRANSMITTING EQUIPMENT (GEN. DOC. #85-337)

Significance: Agency Priority

Legal Authority: 47 USC 154(i); 47 USC 154(j); 47 USC 302; 47 USC 303; 47 USC 403

CFR Citation: 47 CFR 25

Legal Deadline: NPRM, Statutory, October 20, 1988. Other, Statutory, September 14, 1987.
Further Notice of Proposed Rulemaking

Abstract: This proceeding looks to establish a means by which radio emissions might be encoded with a distinct automatically transmitted identifier to benefit orderly management of the radio spectrum by identifying the source of radio frequency interference to other radio signals. For video satellite uplink stations regulated under Part 25 of the Commission's rules, it proposes rules regarding such identifiers. There are no significant alternatives being considered that are consistent with stated objectives. Every operator of a satellite video uplink would be required to purchase and operate a device to insert identification on all transmissions. Approximately 1,000 stations would be involved. Each encoder would cost under $2000. Operating upkeep expenses should be minimal.

Timetable:

Action	Date	FR Cite
NPRM	09/07/86	51 FR 32223
Further NPRM	07/09/87	52 FR 26536
R&O	12/00/88	

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Local, State, Federal

Agency Contact: John Hudak, Chief, Signal Analysis Branch, Federal Communications Commission, Enforcement Division, Room 744, 1919 M St., N.W., Washington, D.C. 20554, 202 632-6977

RIN: 3060-AE25

FEDERAL COMMUNICATIONS COMMISSION (FCC) —MASS MEDIA BUREAU

Prerule Stage

3651. ◆ NON-STOCK ENTITIES

Significance: Agency Priority

Legal Authority: 47 USC 154

CFR Citation: 47 CFR 73

Legal Deadline: None

Abstract: The Commission will consider a Notice of Inquiry concerning Commission treatment of corporations and other organizational structures that are not traditional commercial corporations.

Timetable:

Action	Date	FR Cite
NOI	12/01/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Marilyn Mohrman-Gillis, Federal Communications Commission, 202 632-7792

RIN: 3060-AE21

FEDERAL COMMUNICATIONS COMMISSION (FCC) —MASS MEDIA BUREAU

Proposed Rule Stage

3652. SECTION 73.37(E); PETITION FOR RECONSIDERATION

Legal Authority: 47 USC 307

CFR Citation: 47 CFR 73.37(e)

Abstract: On October 31, 1985, the Commission adopted a Report and Order deleting the non-technical AM application acceptance criteria in Section 73.37(e) of the Commission's Rules. Reconsideration Requested.

FCC—MMB

Proposed Rule Stage

Timetable:

Action	Date	FR Cite
NPRM	02/13/85	
R&O	10/31/85	
MO&O	12/00/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: mm-677 NPRM mm-85-39 R&O

Agency Contact: Jonathan David, Federal Communications Commission, 202 632-6855

RIN: 3060-AD83

3653. BROADCAST EEO: RECONSIDERATION

Significance: Agency Priority

Legal Authority: 47 USC 154; 47 USC 303

CFR Citation: 47 CFR 73.2080

Abstract: The Commission has adopted new Equal Employment Opportunity (EEO) rules and reporting requirements for broadcasters that emphasize a licensee's overall EEO efforts rather than the numerical composition of its workforce. Reconsideration requested.

Timetable:

Action	Date	FR Cite
NPRM	10/31/86	
R&O	04/16/87	
MO&O	12/00/88	

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Local, State

Additional Information: mmb-298 NPRM mm-85-350 FNPRM

Agency Contact: Marcia Glauberman, Federal Communications Commission, 202 632-6302

RIN: 3060-AD73

3654. FM TECHNICAL CLEAN-UP; RECONSIDERATION

Significance: Agency Priority

Legal Authority: 47 USC 154; 47 USC 303

CFR Citation: 47 CFR 73.211; 47 CFR 73.208; 47 CFR 73.207; 47 CFR 73.213

Legal Deadline: None

Abstract: The Commission granted one petition and denied another petition for reconsideration of earlier amendments to Part 73 of its FM technician rules.

Timetable:

Action	Date	FR Cite
NPRM	04/01/88	
R&O	09/19/87	
MO&O	12/00/88	

Small Entities Affected: Governmental Jurisdictions, Organizations

Government Levels Affected: Local, State

Additional Information: Associated Items mmb-311 NPRM, mm-86-144(a)

Agency Contact: Jay Jackson, Federal Communications Commission, 202 632-9660

RIN: 3060-AD74

3655. RADIO MULTIPLE OWNERSHIP & CROSS OWNERSHIP RULES

Significance: Agency Priority

Legal Authority: 47 USC 154; 47 USC 303

CFR Citation: 47 CFR 73.3555

Abstract: The Commission has proposed to relax a portion of the "duopoly" rule as it applies to AM and FM station ownership. The Commission also has proposed to relax a section of the one-to-a-market" rule to permit combinations of AM, FM, and UHF television stations in the top fifty markets. Under the proposed rule, common ownership of radio-television combinations would be considered on a case-by-case basis.

Timetable:

Action	Date	FR Cite
NPRM	01/15/87	
NPRM Comment Period End	01/15/87	
R&O	12/31/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: mmb-414 NPRM

Agency Contact: Andrew J. Rhodes, Federal Communications Commission, 202 632-7792

RIN: 3060-AD78

3656. SATELLITE TELEVISION STATIONS

Significance: Agency Priority

Legal Authority: 47 USC 154; 47 USC 303

CFR Citation: 47 CFR 73.614

Abstract: Report and Order to establish policy with respect to television satellite stations.

Timetable:

Action	Date	FR Cite
NPRM	01/15/87	
NPRM Comment Period End	01/15/87	
R&O	12/31/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: mmb-421 NPRM

Agency Contact: Scott Roberts, Federal Communications Commission, 202 632-6302

RIN: 3060-AD79

3657. RADIO READING SERVICES

Significance: Agency Priority

Legal Authority: 47 USC 154; 47 USC 303; 47 USC 403

CFR Citation: 47 CFR 73.593

Abstract: On 1/16/87 the Commission adopted a Notice of Inquiry seeking comments on appropriate costs to be imposed by non-commercial educational radio stations for radio reading services for the visually impaired. The Commission will consider issuance of a policy statement regarding this matter.

Timetable:

Action	Date	FR Cite
NPRM	01/16/87	
NPRM Comment Period End	01/16/87	
Policy Statement	12/00/88	

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Local, State

Additional Information: RM-5434(PRII) RM-5509 NOI

Agency Contact: Vicki Aseevers, Federal Communications Commission, 202 632-7792

RIN: 3060-AD80

3654. DAYTIMERS ISSUES

Significance: Agency Priority

Legal Authority: 47 USC 303; 47 USC 307(b)

CFR Citation: 47 CFR 73.21

Abstract: Further Notice of Proposed Rulemaking to explore implications of authorizing nighttime operation by AM daytime-only stations on U.S. clear channels.

Timetable:

Action	Date	FR Cite
NPRM	04/29/87	
R&O	11/18/87	
FNPRM	12/00/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Louis Stephens, Federal Communications Commission, 202 632-9660

RIN: 3060-AD85

3655. AM EXPANDED BAND: DOMESTIC

Significance: Agency Priority

Legal Authority: 47 USC 154; 47 USC 303

CFR Citation: 47 CFR 73

Legal Deadline: None

Abstract: Inquiry into domestic issues resulting from expansion of the Am broadcasting band.

Timetable:

Action	Date	FR Cite
FNOI	02/25/88	
NPRM	12/31/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Freda Thydes, Federal Communications Commission, 2025 M Street, N.W., Washington, D.C. 20554, 202 632-9782

RIN: 3060-AD82

3660. WIRELESS CAMERAS

Significance: Agency Priority

Legal Authority: 47 USC 303

CFR Citation: 47 CFR 74.602; 47 CFR 74.604; 47 CFR 74.636; 47 CFR 74.637; 47 CFR 74.652

Abstract: Proposal to permit low power wireless cameras to operate on vacant UHF and VHF TV channels.

Timetable:

Action	Date	FR Cite
NPRM	05/04/87	
FNPRM	05/04/87	
R&O	12/00/88	

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Local, State

Additional Information: MM-85-30(a)

Agency Contact: Hank Van Deusen, Federal Communications Commission, 2025 M Street, N.W., Washington, D.C. 20554, 202 653-8660

RIN: 3060-AE10

3661. FM TRANSLATORS: MOODY BIBLE

Significance: Agency Priority

Legal Authority: 47 USC 303

CFR Citation: 47 CFR 74.1231

Abstract: This proceeding addresses the possible use of satellite and microwave facilities to deliver signals to noncommercial FM translators that are owned and operated by parties other than their primary station.

Timetable:

Action	Date	FR Cite
NPRM	03/24/88	
R&O	12/31/88	

Small Entities Affected: Governmental Jurisdictions, Organizations

Government Levels Affected: Local, State

Additional Information: mmb-311 RM-5219

Agency Contact: Eugenia E. Hall, Federal Communications Commission, 2025 M Street, N.W., Washington, D.C. 20554, 202 632-6302

RIN: 3060-AE11

3662. FM/TV DIRECTIONAL ANTENNA

Significance: Agency Priority

Legal Authority: 47 USC 303

CFR Citation: 47 CFR 73.316; 47 CFR 73.211

Abstract: Proposal to permit the use of directional FM antennas to provide greater flexibility in the selection of transmitter sites. This flexibility is intended as an assignment tool, not an allocation tool.

Timetable:

Action	Date	FR Cite
NPRM	03/25/88	
R&O	12/31/88	

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Local, State

Agency Contact: Bernard Gorden, Federal Communications Commission, 2025 M Street, N.W., Washington, D.C. 20554, 202 632-6302

RIN: 3060-AE12

3663. CHANNELS 14/69 INTERFERENCE: NOI/NPRM

Significance: Agency Priority

Legal Authority: 47 USC 154; 47 USC 304

CFR Citation: 47 CFR 73

Legal Deadline: None

Abstract: In the Report and Order the Commission will consider spacing criteria for TV applicants for channel 14 or 69 in order to protect adjacent band land mobile operations. The Further Notice would propose rules to permit flexible use of channels 14 and 69.

Timetable:

Action	Date	FR Cite
NOI/NPRM	10/20/87	
FNPRM/R&O	12/31/88	

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Local, State

Agency Contact: Louis Whitsett, Federal Communications Commission, 2025 M Street, N.W., Washington, D.C. 20554, 202 632-7792

RIN: 3060-AE13

3664. FM TRANSLATORS: NOI/NPRM

Significance: Agency Priority

Legal Authority: 47 USC 303

CFR Citation: 47 CFR 74.1202; 47 CFR 74.1203; 47 CFR 74.1231; 47 CFR 74.1232; 47 CFR 74.1235

Abstract: This proceeding will provide a comprehensive reexamination of the Commission's FM translator rules.

Timetable:

Action	Date	FR Cite
NPRM	03/24/88	
NPRM Comment Period End	03/24/88	
R&O	12/31/88	

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Local, State

Agency Contact: Marcia Glauberman, Federal Communications Commission, 202 632-6302

RIN: 3060-AE23

3665. ADVANCED TELEVISION SYSTEMS

Significance: Agency Priority

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 303

CFR Citation: 47 CFR 73

Abstract: This is a wide ranging proceeding into advanced TV systems, including: systems now under development, compatibility with existing TV systems, and the public interest implications for TV broadcast service in the United States.

Timetable:

Action	Date	FR Cite
NOI	07/15/87	
FNOI	12/01/88	

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Local, State

Additional Information: RM-5811 NOI

Agency Contact: Steven Kaminer, Federal Communications Commission, 202 632-3414

RIN: 3060-AE24

3666. ● COMPARATIVE RENEWAL

Significance: Agency Priority

Legal Authority: 47 USC 154(i); 47 USC 308(b)

CFR Citation: 47 CFR 1.411

Legal Deadline: None

Abstract: This proceeding contemplates revised standards for use in comparative hearings between incumbent commercial radio and TV licensees seeking renewal of their licenses and competing applicants.

Timetable:

Action	Date	FR Cite
FNOI	06/23/88	
Policy Statement	03/31/89	

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: Andrew Rhodes, Federal Communications Commission, 202 632-7792

RIN: 3060-AE27

3667. ● AM: SKYWAVE PROPAGATION

Significance: Agency Priority

Legal Authority: 47 USC 154; 47 USC 303

CFR Citation: 47 CFR 73.190

Legal Deadline: None

Abstract: Proposal to improve the skywave propagation model utilized by the Commission.

Timetable:

Action	Date	FR Cite
NOI	07/15/87	
NPRM	12/01/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Larry Olson, Federal Communications Commission, 202 254-3394

RIN: 3060-AE25

3668. ● AM: GROUND PROPAGATION: FNOI/FNPRM

Significance: Agency Priority

Legal Authority: 47 USC 154; 47 USC 303

CFR Citation: 47 CFR 73.183; 47 CFR 73.184

Legal Deadline: None

Abstract: The Commission will consider proposals to refine its rules for calculating groundwave field strength contours.

Timetable:

Action	Date	FR Cite
NOI	07/15/87	
NPRM	12/01/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Larry Olson, Federal Communications Commission, 202 254-3394

RIN: 3060-AE26

3669. ● FM CLASS C3 AND CLASS A FM UPGRADE PETITIONS

Significance: Agency Priority

Legal Authority: 47 USC 303

CFR Citation: 47 CFR 73.207; 47 CFR 73.211; 47 CFR 73.212

Legal Deadline: None

Abstract: Proposal to raise maximum power for Class A FM stations to 6kW from 3 kW, and to establish for FM stations in Zone II a new Class C3 (25 kW, 100m. HAAT) to close gap between upgrade Class A (6 kW, 100m.) and Class C2 (50 kW, 150m.)

Timetable:

Action	Date	FR Cite
R&O	12/31/88	

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Local, State

Agency Contact: Jay Jackson, Federal Communications Commission, 202 632-9660

RIN: 3060-AE30

3670. ● TV NETWORKS RULES: TWO-YEAR RULE

Significance: Agency Priority

Legal Authority: 47 USC 303; 47 USC 308; 47 USC 309; 47 USC 403

CFR Citation: 47 CFR 73.658

Legal Deadline: None

Abstract: The Commission will examine the possibility of eliminating the two-year cap on affiliates contract with network on grounds that this rule

is no longer necessary due to changed market conditions and actually inhibit competition.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Linda Blair, Federal Communications Commission, 202 632-7792

RIN: 3060-AE22

3671. ● PREMATURE CONSTRUCTION

Significance: Agency Priority

Legal Authority: 47 USC 154

CFR Citation: 47 CFR 73

Legal Deadline: None

Abstract: The Commission will consider a proposal to prohibit applicants for construction permits to commence constructions before the permits are issued by the Commission.

Timetable:

Action	Date	FR Cite
NPRM	12/01/88	

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Local, State

Agency Contact: Fawn Wilderson, Federal Communications Commission, 202 632-7792

RIN: 3060-AE33

3672. ● CABLE SYSTEM DEFINITION

Significance: Agency Priority

Legal Authority: 47 USC 303; 47 USC 522(6)(B)

CFR Citation: 47 CFR 76.5

Legal Deadline: None

Abstract: The Commission will seek comment on the need for clarification or amendment of the Commission's definition or its interpretation of the definition, of a cable television system in view of a recent Federal District Court decision construing the statutory definition of a cable system in the Cable Act of 1984.

Timetable:

Action	Date	FR Cite
NPRM	12/01/88	

Small Entities Affected: Businesses

Government Levels Affected: Local, State

Agency Contact: Barrett Brick, Federal Communications Commission, 202 254-3467

RIN: 3060-AE34

3673. ● AM: ENHANCED NIGHTTIME OPERATION

Significance: Agency Priority

Legal Authority: 47 USC 154; 47 USC 303

CFR Citation: 47 CFR 154

Legal Deadline: None

Abstract: Proposal for nighttime operation by daytime only AM radio stations.

Timetable:

Action	Date	FR Cite
NPRM	12/01/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Freda Thyden, Federal Communications Commission, 202 254-5991

RIN: 3060-AE35

FEDERAL COMMUNICATIONS COMMISSION (FCC) —MASS MEDIA BUREAU

Final Rule Stage

3674. TECHNICAL DEREGULATION: PART 73: TV

Legal Authority: 47 USC 154; 47 USC 303

CFR Citation: 47 CFR 73.685; 47 CFR 73.668; 47 CFR 73.691; 47 CFR 73.698; 47 CFR 73.699

Abstract: The Commission has proposed various changes in the technical and operational requirements of Subpart E of Part 73 of the Rules, to delete any regulations that are unduly burdensome, outdated or unneeded.

Timetable:

Action	Date	FR Cite
NPRM Comment Period End	03/09/88	
R&O	12/00/88	

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Local, State

Agency Contact: Bernard Gorden, Federal Communications Commission, 202 632-6990

RIN: 3060-AD30

FEDERAL COMMUNICATIONS COMMISSION (FCC) —MASS MEDIA BUREAU

Completed Actions

3675. FOREIGN CLEARS: CT. REMAND: MINORITY PREFERENCE

Significance: Agency Priority

CFR Citation: 47 CFR 73.3571

Completed:

Reason	Date	FR Cite
Final Action - R&O adopted	04/06/88	
Final Action Effective	04/06/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Vicki Assevero 202 632-7792

RIN: 3060-AD72

3676. MAIN STUDIO LOCATION

Significance: Agency Priority

CFR Citation: 47 CFR 73.1125; 47 CFR 74.1130

Completed:

Reason	Date	FR Cite
Final Action - MO&O adopted	07/11/88	
Final Action Effective	07/11/88	

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Local, State

Agency Contact: Eileen Huggard 202 632-7792

RIN: 3060-AD75

3677. NONCOMMERCIAL BROADCAST: ISSUES-PROGRAMS LISTS

Significance: Agency Priority

CFR Citation: 47 CFR 73.3527

Completed:

Reason	Date	FR Cite
Final Action - R&O adopted	02/16/88	
Final Action Effective	02/16/88	

Small Entities Affected: Governmental Jurisdictions, Organizations

Government Levels Affected: Local, State

Agency Contact: Vickie Assevero 202 632-7792

RIN: 3060-AD76

FEDERAL COMMUNICATIONS COMMISSION (FCC) —MASS MEDIA BUREAU

Completed Actions

3678. ● AMENDMENT OF PARTS 73 AND 76 OF THE COMMISSION'S RULES RELATING TO PROGRAM EXCLUSIVITY IN THE CABLE AND BROADCAST INDUSTRIES

Significance: Agency Priority

Legal Authority: 47 USC 154; 47 USC 303

CFR Citation: 47 CFR 73; 47 CFR 76

Legal Deadline: None

Abstract: This final rule permits, but does not require, local broadcasters to acquire and enforce exclusive rights to video programming. It provides over-the-air broadcasters an ability to acquire exclusive programming rights that are comparable to that are available to other distributors.

Timetable:

Action	Date	FR Cite
NPRM	02/01/87	
NPRM Comment Period End	09/22/87	
Final Action Final Rule amendments for Parts 73 and 76 are complete.	07/15/88	
Final Action Effective	08/26/88	

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Undetermined

Agency Contact: Dr. Kenneth Gordon, Senior Economist, Federal Communications Commission, Room 822, 1919 M St., N.W., Washington, D.C. 20554, 202 653-5940

RIN: 3060-AE16

FEDERAL COMMUNICATIONS COMMISSION (FCC) —PRIVATE RADIO BUREAU

Proposed Rule Stage

3679. WIRELINE COMMON CARRIERS - OPERATION OF SMRS

Legal Authority: 47 USC 154(i); 47 USC 303(r)

CFR Citation: 47 CFR 90.603

Legal Deadline: None

Abstract: The FCC has proposed amending Subparts M & S of Part 90 of its rules governing private land mobile radio to permit wireline common carriers to be eligible to apply for a license in the Specialized Mobile Radio Service.

Timetable:

Action	Date	FR Cite
NPRM	01/03/86	51 FR 2910
NPRM Comment Period End	07/03/86	
R&O	12/00/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Gay Ludington, Federal Communications Commission, 202 634-2443

RIN: 3060-AD54

3680. MULTIPLE ADDRESS SYSTEMS

Significance: Agency Priority

Legal Authority: 47 USC 154(i); 47 USC 303(r)

CFR Citation: 47 CFR 94

Legal Deadline: None

Abstract: The FCC has modified the rules and policies governing 900 MHz multiple address system (MAS) operations. A number of rule sections were revised and clarified.

FCC—PRB

Proposed Rule Stage

Timetable:

Action	Date	FR Cite
NPRM	01/15/87	52 FR 4161
NPRM Comment Period End	04/07/87	
R&O	02/25/88	53 FR 11855
MO&O	12/00/88	

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: Local, State

Agency Contact: Herb Zeiler/Molly Nichols, Federal Communications Commission, 2025 M Street, N.W., Washington, D.C. 20554, 202 634-2443

RIN: 3060-AE09

3681. ◆ AMEND PART 80 TO PRECLUDE ACCIDENTAL OR INTENTIONAL OFF- FREQUENCY OPERATION OF EXTERNALLY CONTROLLED SYNTHESIZED RADIO TRANSMITTERS

Significance: Agency Priority

Legal Authority: 47 USC 154(i); 47 USC 303(r)

CFR Citation: 46 CFR 80

Legal Deadline: None

Abstract: The FCC has proposed on its own motion to restrict the operation of VHF ship radio transmitters with external programming and selection capability.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: W. Berges, Federal Communications Commission, 202 632-7175

RIN: 3060-AE41

3682. ◆ SUBPART M&S RECONSIDERATION

Significance: Agency Priority

Legal Authority: 47 USC 154(i)

CFR Citation: 47 CFR 90

Legal Deadline: None

Abstract: The FCC amended its rules applicable to communications entrepreneurs who operate SMR stations. Loading standards, waiting list procedures and eligibility requirements were affected.

Timetable:

Action	Date	FR Cite
NPRM	10/18/86	51 FR 45025
R&O	02/15/88	53 FR 12154
MO&O	12/00/88	

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: Federal

Agency Contact: Irene Bleiweiss, Federal Communications Commission, 202 634-2443

RIN: 3060-AE42

FEDERAL COMMUNICATIONS COMMISSION (FCC) —PRIVATE RADIO BUREAU

Final Rule Stage

3683. PART 90 REVIEW - SUBPARTS M&S INCL. ASNA PET., SUBPART S WAIT LIST

Significance: Agency Priority

Legal Authority: 47 USC 154(i); 47 USC 303(r)

CFR Citation: 47 CFR 90.364; 47 CFR 90.627

Abstract: NPRM proposes to permit greater flexibility and enhanced service options for SMR licensees and end users. Includes proposals regarding loading standards, waiting list procedures and eligibility requirements.

Timetable:

Action	Date	FR Cite
ANPRM	10/18/86	51 FR 45025
ANPRM Comment Period End	02/20/87	
NPRM	04/00/87	
R&O	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Nia Cresham, Federal Communications Commission, 202 634-2443

RIN: 3060-AD59

FEDERAL COMMUNICATIONS COMMISSION (FCC) —PRIVATE RADIO BUREAU

Completed Actions

3684. REVISION AND REORGANIZATION OF AVIATION RULES (PART 87)

Significance: Agency Priority

CFR Citation: 47 CFR 87

Completed:

Reason	Date	FR Cite
Final Action - R&O adopted 8/23/88	08/23/88	53 FR 28940
Final Action Effective	08/01/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: M. Casaitis 202 632-7175

RIN: 3060-AE08

3685. SPECIAL EMERGENCY RADIO PRIVATE CARRIERS

Significance: Agency Priority

CFR Citation: 47 CFR 90.35

FCC—PRB

Completed Actions

Completed:

Reason	Date	FR Cite
Final Action - R&O adopted 5/18/88	05/18/88	53 FR 25607
Final Action Effective	05/18/88	

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Local, State

Agency Contact: Irene Bleiweiss 202 634-2443

RIN: 3060-AE19

3686. MULTIPLE ADDRESS SYSTEMS

Significance: Agency Priority

CFR Citation: 47 CFR 94

Completed:

Reason	Date	FR Cite
Duplicate RIN - this RIN is a duplicate of RIN 3060-AE09	10/01/88	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Herb Zeiler 202 634-2443

RIN: 3060-AE20

3687. REVISION AND REORGANIZATION OF AVIATION RULES (PT. 87)

Significance: Agency Priority

CFR Citation: 47 CFR 87

Completed:

Reason	Date	FR Cite
Duplicate of RIN 3060-AE08	10/01/88	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: M. Casaitis 202 632-7175

RIN: 3060-AE21

[FR Doc. 88-21383 Filed 10-21-88; 8:45 am]

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Part XLVIII

Federal Deposit Insurance Corporation

Semiannual Regulatory Agenda

FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC)

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Ch. III

Semiannual Agenda of Regulations

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Publication of semiannual agenda of regulations.

SUMMARY: The Federal Deposit Insurance Corporation ("FDIC") is hereby publishing items for the October 1988 Regulatory Agenda. The agenda contains information about FDIC's current and projected rulemakings, existing regulations under review, and completed rulemakings.

FOR FURTHER INFORMATION CONTACT: Persons identified under regulations listed in the agenda. The address for all FDIC staff identified in the agenda is Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: Twice each year, the FDIC publishes an agenda of regulations to inform the public of its regulatory actions and to enhance public participation in the rulemaking process. Publication of the agenda is in accordance with both the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and the FDIC statement of policy entitled "Development and Review of FDIC Rules and Regulations" (44 FR 31007, May 30, 1979; 44 FR 32353, June 6, 1979; 44 FR 76858, December 28, 1979; 49 FR 7288, February 28, 1984).

The FDIC amends its regulations under the general rulemaking authority prescribed in section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819) and under specific authority granted by the Act and other statutes.

Interested persons may petition the FDIC for the issuance, amendment or repeal of any regulation by submitting a written petition to the Executive Secretary, Federal Deposit Insurance Corporation, Washington, DC 20429. Petitioners should include complete and concise statements of their interest in the subject matter and reasons why the petitions should be granted.

Dated: August 28, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

Prerule Stage

Sequence Number	Title		Regulation Identifier Number
3688	12 CFR 309	Disclosure of Information	3064-AA65
3689	12 CFR 311	Rules Governing Public Observation of Meetings of the Corporation's Board of Directors	3064-AA66
3690	12 CFR 330	Clarification and Definition of Deposit Insurance Coverage	3064-AA68

Proposed Rule Stage

Sequence Number	Title		Regulation Identifier Number
3691	12 CFR 346	Foreign Banks	3064-AA78
3692	12 CFR 344	Securities Recordkeeping and Confirmations	3064-AA50
3693	12 CFR 335	Securities of Insured Nonmember Banks	3064-AA45
3694	12 CFR 303	Applications, Requests, Submittals, Delegations of Authority, and Notices of Acquisition of Control	3064-AA90

Final Rule Stage

Sequence Number	Title		Regulation Identifier Number
3695	12 CFR 308	Rules of Practice and Procedures	3064-AA84
3696	12 CFR 303	Delegations of Authority to Act on Applications	3064-AA84
3697	12 CFR 336	Employee Responsibilities and Conduct	3064-AA07
3698	12 CFR 325	Capital; Risk-Based Capital Guidelines	3064-AA37

FDIC

Completed Actions

Sequence Number	Title		Regulation Identifier Number
3699	12 CFR 338	Fair Housing	3064-AA61
3700	12 CFR 326	Minimum Security Devices and Procedures and Bank Secrecy Act Compliance	3064-AA77
3701	12 CFR 324	Agricultural Loan Loss Amortization	3064-AA67
3702	12 CFR 346	Foreign Banks; Country Exposures Concentration	3064-AA89

FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC) — Prerule Stage

3688. DISCLOSURE OF INFORMATION

Legal Authority: 5 USC 552; 12 USC 1819

CFR Citation: 12 CFR 309

Legal Deadline: None

Abstract: Part 309 sets forth the basic policies of the FDIC regarding the information it maintains and the procedures for obtaining access to such information.

This regulation has been selected for review under the FDIC's Regulation Review Program.

Timetable:

Action	Date	FR Cite
End Review	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: James R. Dudine, Chief, Special Activities Section, Division of Bank Supervision, Federal Deposit Insurance Corporation, Washington, DC 20429, 202 898-6750

RIN: 3064-AA65

3689. RULES GOVERNING PUBLIC OBSERVATION OF MEETINGS OF THE CORPORATION'S BOARD OF DIRECTORS

Legal Authority: 5 USC 552b; 12 USC 1819

CFR Citation: 12 CFR 311

Legal Deadline: None

Abstract: Part 311 implements the policy of the "Government in the Sunshine Act," section 552b of Title 5, United States Code, which is to provide the public with as much information as possible regarding the decision-making processes of certain Federal agencies, including the FDIC, while preserving the rights of individuals and the ability of the agency to carry out its responsibilities.

This regulation has been selected for review under the FDIC's Regulation Review Program.

Timetable:

Action	Date	FR Cite
End Review	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, Washington, DC 20429, 202 898-3813

RIN: 3064-AA66

3690. CLARIFICATION AND DEFINITION OF DEPOSIT INSURANCE COVERAGE

Legal Authority: 12 USC 1813; 12 USC 1817; 12 USC 1821; 12 USC 1822

CFR Citation: 12 CFR 330

Legal Deadline: None

Abstract: Part 330 provides for the determination by the FDIC of the insured depositors of an insured bank and the amount of their insured deposit accounts. It sets forth the rules for determining the insurance coverage of deposit accounts maintained by depositors.

This regulation has been selected for review under the FDIC's Regulation Review Program.

Timetable:

Action	Date	FR Cite
End Review	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: J. William Via, Jr., Counsel, Legal Division, Federal Deposit Insurance Corporation, Washington, DC 20429, 202 898-3733

RIN: 3064-AA68

FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC) — Proposed Rule Stage

3691. FOREIGN BANKS

Legal Authority: 12 USC 1815; 12 USC 1817; 12 USC 1819; 12 USC 1820; 12 USC 3103; 12 USC 3104; 12 USC 3108

CFR Citation: 12 CFR 346

Legal Deadline: None

Abstract: The FDIC is preparing for public comment revisions to Part 346 of its rules and regulations which sets out the rules governing FDIC-insured branches of foreign banks. The rules relate to: policy regarding the operation of insured and noninsured branches by

a foreign bank; pledge of assets; and asset maintenance. The revised Part 346 is a result of the review conducted under FDIC's Regulation Review Program.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Charles V. Collier, Assistant Director, Division of Bank Supervision, Federal Deposit Insurance Corporation, Washington, DC 20429, 202 898-6859

RIN: 3064-AA79

3092. SECURITIES RECORDKEEPING AND CONFIRMATIONS

Legal Authority: 12 USC 1817; 12 USC 1818; 12 USC 1819

CFR Citation: 12 CFR 344

Legal Deadline: None

Abstract: The FDIC expects to propose an amendment to 12 CFR Part 344, which governs an insured nonmember bank's recordkeeping and confirmation requirements for securities transactions. The proposed amendment would expand an existing exception under Part 344 for low activity. The exception would be increased to allow banks which effect an average of fewer than 1,000 securities transactions per year to be exempt from certain recordkeeping and written policymaking requirements. The current "low-activity" threshold is 200 transactions per year. The amendment is needed to eliminate unnecessary paperwork burden and is intended to reduce the impact of FDIC's regulation on insured nonmember banks that engage in a low number of securities transactions per year.

Timetable:

Action	Date	FR Cite
NPRM	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: John F. Harvey, Chief, Review Unit, Division of Bank Supervision, Federal Deposit Insurance Corporation, Washington, DC 20429, 202 898-6762

RIN: 3064-AA70

3093. SECURITIES OF INSURED NONMEMBER BANKS

Legal Authority: 12 USC 1819 Federal Deposit Insurance Act; 15 USC 78l(i) Securities Exchange Act of 1934

CFR Citation: 12 CFR 335

Legal Deadline: None

Abstract: The Securities Exchange Act of 1934 requires the FDIC to issue regulations substantially similar to regulations of the Securities and Exchange Commission, or publish reasons for not doing so. The staff is currently preparing such conforming amendments for public comment based on recent rulemaking actions by the Commission.

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Lawrence H. Pierce, Securities Activities Officer, Division of Bank Supervision, Federal Deposit Insurance Corporation, Washington, DC [illegible]

RIN: 3064-AA65

3094. APPLICATIONS, REQUESTS, SUBMITTALS, DELEGATIONS OF AUTHORITY, AND NOTICES OF ACQUISITION OF CONTROL

Legal Authority: 12 USC 1817(j)(13); 12 USC 1819; PL 99-570, Sec 1280

CFR Citation: 12 CFR 303

Legal Deadline: None

Abstract: The FDIC is preparing for public comment amendments to section 303.4 of Part 303 of its regulations to implement certain amendments to the Change in Bank Control Act of 1986. Under the planned proposal, the FDIC may waive the newspaper publication or comment solicitation requirements of the regulation, or may act on a proposed change in control prior to the expiration of the comment period. The planned proposal also provides that the FDIC may shorten the public comment period to a period of not less than 10 days.

Timetable:

Action	Date	FR Cite
NPRM	09/20/88	53 FR 36464
NPRM Comment Period End	11/21/88	
Final Action	02/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Katharine H. Haygood, Senior Attorney, Legal Division, Federal Deposit Insurance Corporation, Washington, DC 20429, 202 898-3732

RIN: 3064-AA80

FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC) — Final Rule Stage

3095. RULES OF PRACTICE AND PROCEDURES

Legal Authority: 5 USC 504; 12 USC 1819; 12 USC 1972; 15 USC 78w

CFR Citation: 12 CFR 308

Legal Deadline: None

Abstract: The FDIC is preparing final revisions to Part 308 of FDIC's rules and regulations which governs the conduct of administrative proceedings before the FDIC. The changes will include a reorganization of existing sections of Part 308, revisions of some sections that existed previously, and the addition of new sections. The purpose of the revised regulation is to secure a just, orderly, and speedy determination of administrative proceedings before the FDIC. The revised Part 308 is a result of the review conducted under FDIC's Regulation Review Program.

Timetable:

Action	Date	FR Cite
NPRM	02/24/88	53 FR 5092
NPRM Comment Period End	04/25/88	
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Nancy Alger, Attorney, Legal Division, Federal Deposit Insurance Corporation, Washington, DC 20429, 202 898-3729

RIN: 3064-AA84

3096. ◆ DELEGATIONS OF AUTHORITY TO ACT ON APPLICATIONS

Legal Authority: 12 USC 1815; 12 USC 1816; 12 USC 1817; 12 USC 1818; 12 USC 1819; 12 USC 1828; 12 USC 1829; 15 USC 1607

CFR Citation: 12 CFR 303

Legal Deadline: None

Abstract: The FDIC is preparing final amendments to Part 303 of its rules and regulations to clarify and, in some cases, to modify the delegations of authority for acting on a variety of applications (e.g., mergers, branches, relocations, deposit insurance, trust and banking powers, change in control, and management interlocks). The amendments do not alter any rights or obligations of any person, bank, or other applicant.

Timetable:

Action	Date	FR Cite
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Ken A. Quincy, Chief, Applications Section, Division of Bank Supervision, Federal Deposit Insurance Corporation, Washington, DC 20429, 202 898-6753

RIN: 3064-AA86

3097. ◆ EMPLOYEE RESPONSIBILITIES AND CONDUCT

Legal Authority: 12 USC 1819; EO 11222; EO 12565

CFR Citation: 12 CFR 336

Legal Deadline: None

Abstract: The FDIC has issued for public comment a revision of Part 336 of its rules and regulations which governs the standards of ethical and other conduct of FDIC employees. Significant changes include identifying certain employees subject to reporting requirements and credit restrictions by position description series code; clarifying the permissible conditions of acceptance of food, refreshments, entertainment, and mementos; modifying existing credit restrictions with regard to credit cards; and other matters.

Timetable:

Action	Date	FR Cite
NPRM	07/12/88	53 FR 26262
NPRM Comment Period End	09/12/88	
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Katherine A. Corigliano, Ethics Program Manager, Office of the Executive Secretary, Federal Deposit Insurance Corporation, Washington, DC 20429, 202 898-7272

RIN: 3064-AA87

3098. ◆ CAPITAL; RISK-BASED CAPITAL GUIDELINES

Legal Authority: 12 USC 1815; 12 USC 1816; 12 USC 1818; 12 USC 1819; 12 USC 1828; 12 USC 3907; 12 USC 3909

CFR Citation: 12 CFR 325

Legal Deadline: None

Abstract: The FDIC has issued for public comment a proposal to amend Part 325 of its rules and regulations by adding an appendix to Part 325 regarding a statement of policy on risk-based capital that would apply to all insured state nonmember banks. The risk-based capital framework reflected in the proposed policy statement was developed jointly with representatives from the Federal Reserve System and the Office of the Comptroller of the Currency. It is largely based on the December 10, 1987, consultative paper prepared by the Basle Committee on Banking Regulations and Supervisory Practices.

Timetable:

Action	Date	FR Cite
Notice of Proposed Guidelines	03/15/88	53 FR 8550
Proposed Guidelines Comment Period End	05/13/88	
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Stephen G. Pfeifer, Examination Specialist, Division of Bank Supervision, Federal Deposit Insurance Corporation, Washington, DC 20429, 202 898-6894

RIN: 3064-AA37

FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC) — Completed Actions

3028. FAIR HOUSING

Legal Authority: 12 USC 1817; 12 USC 1818; 12 USC 1819; 12 USC 1820; 15 USC 1691 et seq; 42 USC 3605; 42 USC 3608

CFR Citation: 12 CFR 338

Legal Deadline: None

Abstract: The FDIC is preparing final amendments to its fair housing regulation, 12 CFR Part 338, which applies to insured state nonmember banks. The amendments would eliminate home-equity loans, as well as home improvement, maintenance and repair loans from the data-gathering requirement. Accordingly, the data-gathering requirement would then only apply to home purchase, construction and refinancing loans. The FDIC believes that the amendments would reduce the paperwork burden on the banking industry without impairing enforcement of fair housing lending laws.

Timetable:

Action	Date	FR Cite
NPRM	08/18/87	52 FR 30928
NPRM Comment Period End	10/19/87	
Final Action	09/16/88	53 FR 35831
Final Action Effective	09/15/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Patricia A. McCormick, Fair Lending Analyst, Office of Consumer Affairs, Federal Deposit Insurance Corporation, Washington, DC 20429, 202 898-3538

RIN: 3064-AA81

3700. ◆ MINIMUM SECURITY DEVICES AND PROCEDURES AND BANK SECRECY ACT COMPLIANCE

Legal Authority: 12 USC 1813; 12 USC 1815; 12 USC 1817; 12 USC 1818; 12 USC 1819; 12 USC 1881 to 1883; 31 USC 5311 to 5324

CFR Citation: 12 CFR 329

Legal Deadline: None

Abstract: The FDIC amended Part 326 of its Rules and Regulations covering minimum security devices and procedures and Bank Secrecy Act compliance. Among other things, the amendment reduces the overall recordkeeping burden by eliminating the requirement that insured nonmember banks retain a record identifying the law enforcement official consulted on security matters. However, the consultation continues to be mandated.

Other technical changes were made to the regulation. The term "insured nonmember bank" has been substituted for the term "insured state nonmember bank" whenever the latter term previously appeared in Part 326. This was done to clarify the applicability of all sections of Part 326 to insured branches of foreign banks.

Timetable:

Action	Date	FR Cite
Final Action	05/19/88	53 FR 17916
Final Action Effective	06/19/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: R. Eugene Seitz, Review Examiner, Division of Bank Supervision, Federal Deposit Insurance Corporation, Washington, DC 20429, 202 898-6788

RIN: 3064-AA77

3701. AGRICULTURAL LOAN LOSS AMORTIZATION

Legal Authority: 12 USC 1823(j); 12 USC 1819

CFR Citation: 12 CFR 324

Legal Deadline: Final, Statutory, November 9, 1987. Other, Statutory, November 9, 1987.

Abstract: The FDIC adopted a final rule which establishes eligibility requirements and application procedures for FDIC-insured state nonmember banks in distressed agricultural regions of the country desiring to amortize farm loan losses.

Timetable:

Action	Date	FR Cite
Interim Rule	11/02/87	52 FR 41966
Interim Rule Effective	11/09/87	
Final Action Effective	11/09/87	
Interim Rule Comment Period End	01/06/88	
Final Action	06/14/88	53 FR 22130

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: William C. Crothers, Examination Specialist, Division of Bank Supervision, Federal Deposit Insurance Corporation, Washington, DC 20429, 202 898-6998

RIN: 3064-AA87

3702. ◆ FOREIGN BANKS; COUNTRY EXPOSURES CONCENTRATION

Legal Authority: 12 USC 1815; 12 USC 1817; 12 USC 1819; 12 USC 1820; 12 USC 3103; 12 USC 3104; 12 USC 3108

CFR Citation: 12 CFR 346

Legal Deadline: None

Abstract: In a December 1987 amendment (52 FR 49156, December 30, 1987), section 346.23 of the FDIC Rules and Regulations was amended to specify that country exposures by insured branches of foreign banks operating as such on November 19, 1984, must be within prescribed limits by June 14, 1988. The Board of Directors has extended the time for compliance with these limits to December 31, 1988.

Timetable:

Action	Date	FR Cite
Final Action	06/13/88	53 FR 21986
Final Action Effective	06/13/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Charles V. Collier, Assistant Director, Division of Bank Supervision, Federal Deposit Insurance Corporation, Washington, DC 20429, 202 898-6859

RIN: 3064-AA89

[FR Doc. 88-23982 Filed 10-21-88; 8:45 am]

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federal register

Monday
October 24, 1988

Part XLIX

Federal Energy Regulatory Commission

Semiannual Regulatory Agenda

FEDERAL ENERGY REGULATORY COMMISSION (FERC)

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Ch. I

Semiannual Regulatory Agenda

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Semiannual regulatory agenda.

SUMMARY: In response to Office of Management and Budget Bulletin No. 88-15, the Federal Energy Regulatory Commission voluntarily submits information about rulemakings under development. Of the 20 rulemakings listed, 13 are current and projected rulemakings and 7 are completed actions.

DATES: The dates provided represent goals, not commitments, and may be revised due to shifts in workload, changes in priorities, or extensive public comments. See various dates listed for each specific rulemaking.

ADDRESS: Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Person listed for each specific rulemaking.

Lois D. Cashell,

Acting Secretary.

FEDERAL ENERGY REGULATORY COMMISSION (FERC) — Proposed Rule Stage

3703. FEES FOR HYDROPOWER PROJECTS

Legal Authority: 31 USC 9701 Independent Offices Appropriations Act; 16 USC 803 Federal Power Act; 42 USC 7101 to 7352 DOE Organization Act; EO 12009

CFR Citation: 18 CFR 381

Legal Deadline: None

Abstract: The rulemaking would establish a fee for services performed by the Commission under the Federal Power Act for hydropower projects. The rule would cover permits, licenses and exemptions. Docket No. RM83-33-000.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Barry M. Smoler, Assistant General Counsel, Rulemaking and Environmental Law, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, 202 357-8567

RIN: 1902-AA48

3704. STANDARDS OF CONDUCT

Significance: Agency Priority

Legal Authority: EO 11222

CFR Citation: 18 CFR 3c

Legal Deadline: None

Abstract: This rulemaking proceeding would update and revise the Commission's Standards of Conduct for employees and Commissioners. Docket No. RM88-9-000.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Barry M. Smoler, Assistant General Counsel, Rulemaking and Environmental Law, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, 202 357-8567

RIN: 1902-AB01

3705. OPTIONAL PROCEDURES FOR NATURAL GAS PIPELINE CERTIFICATES

Significance: Agency Priority

Legal Authority: 15 USC 717f

CFR Citation: 18 CFR 157

Legal Deadline: None

Abstract: The rulemaking will consider revision of the Commission's regulations, codified at 18 C.F.R. Part 157, Subpart E, governing optional procedures to obtain a certificate for transportation and sale of natural gas facilities under Section 7 of the Natural Gas Act. Docket No. RM86-11-000.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Barry M. Smoler, Assistant General Counsel, Rulemaking and Environmental Law, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, 202 357-8567

RIN: 1902-AB03

3706. ● BROKERING OF INTERSTATE NATURAL GAS PIPELINE CAPACITY

Significance: Agency Priority

Legal Authority: 15 USC 717 to 717w (1982) Natural Gas Act; 15 USC 3301 to 3432 (1982) Natural Gas Policy Act of 1978; 42 USC 7101 to 7352 (1982) Dept. of Energy Organ. Act; EO 12009, 3 CFR 1978 Comp., p.142; 4 USC 551 to 557 (1982) Administrative Procedures Act; 31 USC 9701 (1982) Independent Offices Approp. Act; 16 USC 791a to 825r (1982) Federal Power Act; 16 USC 2601 to 2645 (1982) Public Utilities Reg. Pol. Act; 49 USC 1 to 27 (1982) Interstate Commerce Act

CFR Citation: 18 CFR 284; 18 CFR 385

Legal Deadline: None

Abstract: Under this notice of proposed rulemaking, the Commission is proposing to allow holders of firm transportation rights on an interstate natural gas pipeline to sell or assign (broker) those rights. Rights to the pipeline's system storage could also be brokered to the extent that these rights are subject to Secs. 284.8 and 284.9 of the Commission's regulations. Docket No. RM86-13-000

Timetable:

Action	Date	FR Cite
NPRM	04/27/88	53 FR 15061
NPRM Comment Period End	05/19/88	53 FR 15061

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Additional Information: The date for filing reply comments was September 16, 1988.

Agency Contact: Barry M. Smoler, Assistant General Counsel, Rulemaking and Environmental Law, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, 202 357-8567

RIN: 1902-AB06

3707. ● REGULATIONS GOVERNING THE PUBLIC UTILITIES REGULATORY POLICIES ACT OF 1978

Significance: Agency Priority

Legal Authority: 42 USC 7101 to 7352 (1982) Dept. of Energy Organ. Act; EO 12009, 3 CFR 1978, Comp., p. 142; 31 USC 9701 (1982) Independent Offices Approp. Act; 16 USC 791a to 825r (1982) Federal Power Act; 16 USC 2601 to 2645 (1982) Public Util. Regulatory Pol. Act

CFR Citation: 18 CFR 292

Legal Deadline: None

Abstract: Under this notice of proposed rulemaking, the Commission is proposing to amend its regulations governing the implementation of Title II of the Public Utility Regulatory Policies Act of 1978 (PURPA). This rule addresses problems with the criteria and procedures under Section 201 of PURPA by which qualifying small power production and cogeneration facilities can obtain PURPA benefits. Docket No. RM88-17-000.

Timetable:

Action	Date	FR Cite
NPRM	07/29/88	53 FR 31021
NPRM Comment Period End	10/27/88	53 FR 31021

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Public hearing will commence November 16, 1988 and reply comments are due November 28, 1988.

Agency Contact: Barry M. Smoler, Assistant General Counsel, Rulemaking and Environmental Law, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, 202 357-8567

RIN: 1902-AB07

3708. ● 5-YEAR TAKE-OR-PAY MAKE-UP PROVISIONS IN NATURAL GAS PRODUCER-PIPELINE CONTRACTS

Significance: Agency Priority

Legal Authority: 15 USC 717 to 717w (1982) Natural Gas Act; 42 USC 7101 to 7352 (1982) Dept. of Energy Organ. Act; EO 12009 (1978) 3 CFR Part 142; 31 USC 9701 (1970) Independent Offices Approp. Act

CFR Citation: 18 CFR 154

Legal Deadline: None

Abstract: This notice of proposed rulemaking eliminates the requirement in the Commission's regulations that a gas purchase contract between an independent natural gas producer and an interstate natural gas pipeline must allow the pipeline a minimum 5-year make-up period in which to take gas for which payment has already been made. The Commission believes that this requirement, established in 1967, may no longer be necessary in light of current efforts by pipelines and producers to resolve take-or-pay issues and to enter into market-responsive contracts for future gas supplies. Docket No. RM88-20-000.

Timetable:

Action	Date	FR Cite
NPRM	07/14/88	53 FR 27704
NPRM Comment Period End	09/15/88	53 FR 27704

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Barry M. Smoler, Assistant General Counsel, Rulemaking and Environmental Law, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, 202 357-8567

RIN: 1902-AB08

FEDERAL ENERGY REGULATORY COMMISSION (FERC) — Final Rule Stage

3709. CALCULATION OF CASH WORKING CAPITAL ALLOWANCE FOR PUBLIC UTILITIES

Legal Authority: 16 USC 791a to 828c

CFR Citation: 18 CFR 35

Legal Deadline: None

Abstract: The proposed rule would provide that the cash working capital requirements of a public utility that files an electric rate schedule will be presumed to be zero dollars, and thus will not affect the utility's rate base, unless the utility shows there is a significant difference between the time it pays certain current operating expenses and the time it receives revenues from ratepayers. The proposed rule would establish a threshold standard that must be met to support a cash working capital adjustment to a utility's rate base, the expense elements to be considered in calculating cash working capital adjustments to rate base, and criteria applicable to studies submitted in support of a request for an adjustment to rate base. Docket No. RM84-9-000.

Timetable:

Action	Date	FR Cite
NPRM	04/05/84	49 FR 14364
NPRM Comment Period End	06/04/84	
Final Action	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Barry M. Smoler, Assistant General Counsel, Rulemaking and Environmental Law, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, 202 357-8567

RIN: 1902-AA33

3710. REGULATION OF NATURAL GAS PIPELINES AFTER PARTIAL WELLHEAD DECONTROL

Significance: Agency Priority

Legal Authority: 42 USC 7102 to 7352 (1982); EO 12009 3 CFR 1978 Comp., p.142; 5 USC 551 to 557 (1982); 15 USC 717 to 717w (1982); 16 USC 791 to 828c (1982); 15 USC 3301 to 3402 (1982); 16 USC 2601 to 2645 (1982)

CFR Citation: 18 CFR 2; 18 CFR 284.10; 18 CFR 284.8; 18 CFR 284.9; 18 CFR 2.104; 18 CFR 2.105

Legal Deadline: None

Abstract: Order No. 500 is an interim rule that readopted the regulations promulgated in Order No. 436 with one addition and one deletion. Order No. 500 added a requirement that producers submit an offer of take-or-pay credits to an open access pipeline in order to make the pipeline's gas eligible for transportation (unless the pipeline and producer agree to a different arrangement); it deleted the customers' contract demand reduction option. Order No. 500 also adopted a policy on passthrough mechanisms for take-or-pay buyout and buydown costs and on gas inventory charges. Order Nos. 500-A, 500-B, 500-C and 500-D made changes to the crediting provisions and extended certain deadlines. Rehearing of the Order No. 500 interim rule was denied in Order No. 500-E. Docket No. RM87-34-000.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/07/87	52 FR 30334
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: See Order Explaining Crediting (Oct. 16, 1987) and Order Nos. 500-A, 500-B, 500-C, 500-D and 500-E for more details.

Agency Contact: Susan J. Court, Associate General Counsel, Gas and Oil, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, 202 357-8448

RIN: 1902-AA87

3711. REGULATIONS GOVERNING BIDDING PROGRAMS

Significance: Agency Priority

Legal Authority: 42 USC 7101 to 7352 (1982); EO 12009 3 CFR 142 (1978); 31 USC 9701 (1982); 16 USC 7919 to 8252 (1982); 16 USC 2601 to 2645 (1982)

CFR Citation: 18 CFR 35; 18 CFR 293

Legal Deadline: None

Abstract: The Commission proposed to adopt regulations authorizing state regulatory authorities and nonregulated electric utilities to implement bidding procedures as a means of establishing rates for power purchases from qualifying facilities (QFs) under section 210 of PURPA. Docket No. RM88-5-000.

Timetable:

Action	Date	FR Cite
NPRM	03/16/88	53 FR 9323
NPRM Comment Period End	06/14/88	53 FR 9323
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: The date for filing reply comments was September 14, 1988.

Agency Contact: Barry M. Smoler, Assistant General Counsel, Rulemaking and Environmental Law, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, 202 357-5397

RIN: 1902-AA96

3712. REGULATIONS GOVERNING INDEPENDENT POWER PRODUCERS

Significance: Agency Priority

Legal Authority: PL 99-508, Sec 3401; 42 USC 7101 to 7352 (1982); EO 12009 3 CFR (1978) Comp., p. 142; 5 USC 551 to 557 (1982); 15 USC 717 to 717w (1982); 16 USC 791a to 828c (1982); 15 USC 3301 to 3432 (1982); 16 USC 2601 to 2645 (1982); 49 USC 1 to 27 (1976)

CFR Citation: 18 CFR 35; 18 CFR 382

Legal Deadline: None

Abstract: The Commission proposed to streamline regulation of a class of non-traditional utility suppliers, called independent power producers (IPPS). The proposed regulations would: (1) authorize rates for IPPS to be determined through competition or rate negotiation subject to a price cap, thereby freeing IPPS from cost-based ratemaking while ensuring that rates fall within a zone of reasonableness; (2) authorize IPPs to file rate schedules without having to provide extensive cost support; (3) exempt IPPS from cost-related accounting, reporting and recordkeeping requirements; (4) streamline the corporate and financial regulation of IPPS; (5) provide the blanket prior authorizations to engage in certain corporate activities; and (6) adopt and advance certification procedures to qualify as an IPP. Docket No. RM88-4-000.

Timetable:

Action	Date	FR Cite
NPRM	03/16/88	53 FR 9331
NPRM Comment Period End	06/14/88	53 FR 9331
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: The date for filing reply comments was September 14, 1988.

Agency Contact: Barry M. Smoler, Assistant General Counsel, Rulemaking and Environmental Law, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, 202 357-5397

RIN: 1902-AA98

3713. ADMINISTRATIVE DETERMINATION OF FULL AVOIDED COSTS, SALES OF POWER TO QUALIFYING FACILITIES AND INTERCONNECTION FACILITIES

Significance: Agency Priority

Legal Authority: PL 99-495; 42 USC 7101 to 7352 (1982); EO 12009 3 CFR (1978) Comp., p. 142; 31 USC 9701 (1982); 16 USC 791a to 825r (1982); 16 USC 2601 to 2645 (1982)

CFR Citation: 18 CFR 292

Legal Deadline: None

Abstract: The Commission is proposing to amend its regulations governing purchases and sales of electricity between electric utilities and qualifying cogeneration facilities and qualifying small power production facilities (QFs). Docket No. RM 88-6-000.

Timetable:

Action	Date	FR Cite
NPRM	03/16/88	53 FR 9327
NPRM Comment Period End	06/16/88	53 FR 9327
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: The date for filing reply comments was September 14, 1988.

Agency Contact: Barry M. Smoler, Assistant General Counsel, Rulemaking and Environmental Law, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, 202 357-5397

RIN: 1902-AA99

Capitol Street, NE, Washington, DC 20426, 202 357-5397

RIN: 1902-AB00

3714. RELICENSING REGULATIONS UNDER THE FEDERAL POWER ACT

Significance: Agency Priority

Legal Authority: 16 USC 791a to 825r; 16 USC 2601 to 2645; 42 USC 7101 to 7352; EO 12009 3 CFR 142 (1978)

CFR Citation: 18 CFR 4; 18 CFR 16

Legal Deadline: None

Abstract: In this notice of proposed rulemaking, the Commission proposes to revise its regulations governing the relicensing of hydroelectric power projects. The proposed changes include revised requirements for an application for a new license, a process for pre-filing consultation with resource agencies, a new standard and factors for evaluating a relicensing application for a nonpower license, a minor license, and an exemption from licensing upon expiration of an existing license and would provide for acceleration of a license expiration date and site access for competing applicants. The proposal implements in part changes made to the Federal Power Act by the Electric Consumers Protection Act of 1986. Docket No. RM87-33-000.

Timetable:

Action	Date	FR Cite
NPRM	05/24/88	53 FR 21844
NPRM Comment Period End	09/08/88	53 FR 21844
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Barry M. Smoler, Assistant General Counsel, Rulemaking and Environmental Law, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, 202 357-5397

RIN: 1902-AB02

3715. ● REGULATIONS UNDER SECTION 5 OF THE OUTER CONTINENTAL SHELF LANDS ACT (OCSLA) GOVERNING TRANSPORTATION OF NATURAL GAS ON THE OUTER CONTINENTAL SHELF

Significance: Agency Priority

Legal Authority: 15 USC 717 to 717w (1982) Natural Gas Act; 15 USC 3301 to 3432 (1982) Natural Gas Policy Act of 1978; 43 USC 1331 to 1356 (1982) Outer Contin. Shelf Lands Act; EO 12009, 3 CFR 1978 Comp., p. 142

CFR Citation: 18 CFR 284

Legal Deadline: None

Abstract: The Commission issued a notice of proposed rulemaking to implement the Commission's interpretation of section 5 of the Outer Continental Shelf Lands Act. This rulemaking would require all jurisdictional interstate natural gas pipelines operating on the Outer Continental Shelf to have a blanket certificate under Subpart G of Part 284 of the Commission's regulations, which authorize the transportation of natural gas on behalf of others on an open and nondiscriminatory basis. Docket No. RM88-15-000.

Timetable:

Action	Date	FR Cite
NPRM	04/01/88	53 FR 14923
NPRM Comment Period End	06/20/88	53 FR 14923
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Barry M. Smoler, Assistant General Counsel, Rulemaking and Environmental Law, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, 202 357-5397

RIN: 1902-AB00

FEDERAL ENERGY REGULATORY COMMISSION (FERC) — Completed Actions

3716. HYDROELECTRIC APPLICANTS SEEKING BENEFITS UNDER THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978 ON PROJECTS LOCATED AT A NEW DAM OR DIVERSION

Significance: Agency Priority

CFR Citation: 18 CFR 4; 18 CFR 292; 18 CFR 375

Completed:

Reason	Date	FR Cite
Final Action	07/11/88	53 FR 26992
Final Action Effective	09/16/88	53 FR 26992

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Barry M. Smoler 202 357-5397

RIN: 1902-AA78

3717. INFORMATION TO BE MADE AVAILABLE BY HYDROELECTRIC LICENSEES UNDER SECTION 4(A) OF THE ELECTRIC CONSUMERS PROTECTION ACT OF 1986

Significance: Agency Priority

CFR Citation: 18 CFR 16

Completed:

Reason	Date	FR Cite
Final Action Order No. 496	05/04/88	53 FR 15804
Final Action Effective	06/03/88	53 FR 15804

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Barry M. Smoler 202 357-5397

RIN: 1902-AA00

3718. INQUIRY INTO ALLEGED ANTICOMPETITIVE PRACTICES RELATING TO MARKETING AFFILIATES OF INTERSTATE PIPELINES

Significance: Agency Priority

CFR Citation: 18 CFR 161; 18 CFR 250; 18 CFR 284

Completed:

Reason	Date	FR Cite
Final Action Order No. 497	06/01/88	53 FR 22139
Final Action Effective	07/14/88	53 FR 22139

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Barry M. Smoler 202 357-5397

RIN: 1902-AA80

FERC — Completed Actions

3719. NATURAL GAS DATA COLLECTION SYSTEM

Significance: Agency Priority

CFR Citation: 18 CFR 154; 18 CFR 157; 18 CFR 260; 18 CFR 284; 18 CFR 385; 18 CFR 388

Completed:

Reason	Date	FR Cite
Final Action Order No. 493	04/27/88	53 FR 15023
Final Action Effective	05/10/88	53 FR 16262

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Barry M. Smoler 202 357-5567

RIN: 1902-AA94

3720. PROCEDURES FOR THE ASSESSMENT OF CIVIL PENALTIES UNDER SECTION 31 OF THE FEDERAL POWER ACT

Significance: Agency Priority

CFR Citation: 18 CFR 385

Completed:

Reason	Date	FR Cite
Final Action	08/17/88	53 FR 32035
Final Action Effective	10/24/88	53 FR 32035

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Barry M. Smoler 202 357-5567

RIN: 1902-AA86

3721. IMPLEMENTATION OF SECTION 8 OF THE ELECTRIC CONSUMER PROTECTION ACT OF 1986; HYDROELECTRIC APPLICANTS WITH NEW DAM OR DIVERSION PROJECTS SEEKING BENEFITS UNDER PURPA (1978)

Significance: Agency Priority

CFR Citation: 18 CFR 4; 18 CFR 292; 18 CFR 375

Completed:

Reason	Date	FR Cite
Final Action	07/11/88	53 FR 26092
Final Action Effective	09/16/88	53 FR 26092

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Barry M. Smoler 202 357-5567

RIN: 1903-AB04

3722. FILING FEES UNDER INDEPENDENT OFFICES APPROPRIATIONS ACT OF 1952

Significance: Agency Priority

CFR Citation: 18 CFR 3; 18 CFR 4; 18 CFR 157; 18 CFR 292; 18 CFR 375; 18 CFR 381; 18 CFR 388

Completed:

Reason	Date	FR Cite
Final Action Order No. 494	04/06/88	53 FR 15374
Final Action Effective	05/31/88	53 FR 15374

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Barry M. Smoler 202 357-5567

RIN: 1903-AB05

[FR Doc. 88-23983 Filed 10-21-88; 8:45 am]

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Monday
October 24, 1988

Part L

Federal Home Loan Bank Board

Semiannual Regulatory Agenda

VOL 53 ISS 205 OCT 24 1988 UMI

FEDERAL HOME LOAN BANK BOARD (FHLBB)

FEDERAL HOME LOAN BANK BOARD

12 CFR Ch. V

[No. 88-853]

Agenda of Federal Regulations

AGENCY: Federal Home Loan Bank Board.

ACTION: Publication of agenda items.

SUMMARY: The Federal Home Loan Bank Board is hereby publishing items for the "October Unified Agenda of Federal Regulations."

ADDRESS: Information Services Division, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT: See persons listed below for specific agenda items.

Dated: August 29, 1988.
By the Federal Home Loan Bank Board.
Nadine Y. Washington,
Assistant Secretary.

FEDERAL HOME LOAN BANK BOARD (FHLBB) — Proposed Rule Stage

3723. ● RULES OF PRACTICE AND PROCEDURE

Significance: Agency Priority

Legal Authority: 12 USC 1730; 12 USC 1464; 12 USC 1730g; 12 USC 1730a; PL 99-570; PL 99-630

CFR Citation: 12 CFR 509; 12 CFR 512

Legal Deadline: None

Abstract: The Bank Board is proposing revisions to 12 CFR Parts 509 and 512 respectively, its regulations governing rules of practice and procedure in adjudicatory proceedings. The proposed revisions to Part 509 would streamline prehearing procedures with a view toward expediting the proceedings, clarify the authority of Administrative Law judges appointed to conduct the proceedings, and add several new provisions. The proposed revisions to Part 512 would be of a clarifying and technical nature and would update several provisions of the rules relating to the conduct of investigative and formal examination proceedings.

There are no alternatives that would be less burdensome than the proposed amendments in addressing the concerns expressed above.

The potential costs and benefits of the proposed regulations on the industry have not been quantified.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Flexibility Analysis

Agency Contact: Gary A. Gregenheimer, Senior Attorney, Office of Enforcement, Federal Home Loan Bank Board, 1735 Eye Street, N.W., Washington D.C. 20552, 202 653-2612

RIN: 3069-AA64

3724. ● READMISSION OF FEDERAL HOME LOAN BANK MEMBERS TERMINATING THEIR STATUS AS INSURED INSTITUTIONS

Significance: Agency Priority

Legal Authority: 12 USC 1730(i); PL 99-595; 12 USC 1428(i)

CFR Citation: 12 CFR 523

Legal Deadline: None

Abstract: The Bank Board is proposing to amend its regulations governing applications for membership in the Federal Home Loan Bank ("FHLBank") System by institutions that have been removed from membership under the National Housing Act by virtue of the termination of Federal Savings and Loan Insurance Corporation ("FSLIC") insurance of their accounts. Specifically, the proposal would amend Part 523 of the Boards Rules and Regulations for the Federal Home Loan Bank System, to provide that an FHLBank member that terminates its status as an FSLIC-insured institution and is thereby removed from FHLBank membership (as well as any other member whose membership is terminated pursuant to section 6(i) of the Federal Home Loan Bank Act), may be readmitted as a member only after the expiration of a five year period following its departure from the FHLBank System.

There are no alternatives that would be less burdensome than the proposal in addressing the concerns expressed above.

The potential costs and benefits of the proposed regulation on the industry have not been quantified.

Timetable:

Action	Date	FR Cite
NPRM	08/15/88	53 FR 30686
NPRM Comment Period End	10/14/88	53 FR 30686
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Flexibility Analysis

Agency Contact: John A. Buchanan, Deputy Director for Industry Structure, Corporate and Securities Division, Federal Home Loan Bank Board, 1700 G Street N.W., Washington, DC 20552, 202 377-6963

RIN: 3069-AA66

FEDERAL HOME LOAN BANK BOARD (FHLBB) — Final Rule Stage

3725. CONSERVATORS AND RECEIVERS

Legal Authority: 12 USC 1464; 12 USC 1724(d); 12 USC 1729; PL 99-120, Sec 6

CFR Citation: 12 CFR 547; 12 CFR 548; 12 CFR 549; 12 CFR 563.8-3, (proposed new section); 12 CFR 563.39(a); 12 CFR 569a; 12 CFR 569b, (proposed new Part); 12 CFR 569c, (proposed new Part)

Legal Deadline: None

Abstract: The Board is proposing extensive revisions to its regulations governing the conservatorship and receivership of associations chartered by the Board or the accounts of which that are insured by the Federal Savings and Loan Insurance Corporation. The Board will unify the appointment of receiver procedures for state and federal institutions; adopt procedures for appointment of receivers under section 406(c)(1)(B) of the National Housing Act; and address the priorities in liquidation and participation interests in liquidation, which are absent from or inadequately covered in the present regulations. The Board is also proposing that its regulations cover topics such as the effect of the receivership appointment on executory contracts, employment agreements, certain "Golden Parachute" agreements, participation agreements, repurchase agreements, and on agreements relating to secured and unsecured borrowings by an insured institution, including agreements providing for prepayment or default penalties. The proposed regulations provide for new rules of general applicability in the areas previously mentioned, clarify existing provisions, and reorganize and recodify all the (cont)

Timetable:

Action	Date	FR Cite
NPRM	11/08/85	50 FR 46970
NPRM Publication of Board Action	11/27/85	50 FR 48970
NPRM Comment Period End	01/22/86	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ABSTRACT CONT: regulations governing conservatorships and receiverships.

There are no alternatives being considered by the Board in lieu of the proposed regulation that would have less impact on small institutions, consistent with the intended result, than the concerns expressed in the supplementary information to the proposed rule and the existing statutory requirements concerning receiverships and conservatorships.

The potential costs and benefits of the proposed regulation on the industry have not been quantified.

On July 5, 1988, the Board promulgated as a final rule certain portions of this proposed rule.(53 F.R.25129) The final rule establishes a priority structure for unsecured claims applicable to all FSLIC receiverships under a new Part 569c of Title 12 of the Code of Federal Regulations.

Agency Contact: Lawrence W. Hayes, Deputy General Counsel for FSLIC, O.G.C., Federal Home Loan Bank Board, 1700 G St. NW, Washington, DC 20552, 202 377-6438

RIN: 3069-AA07

3726. CORPORATE GOVERNANCE, PARTS III AND IV

Legal Authority: 12 USC 1464; 12 USC 2909

CFR Citation: 12 CFR 501.12, (new section); 12 CFR 543.10-5; 12 CFR 544.9-2, (new section); 12 CFR 544.10-5; 12 CFR 545.2; 12 CFR 545.3; 12 CFR 545.12; 12 CFR 545.21; 12 CFR 454.32; 12 CFR 545.33; 12 CFR 545.34; 12 CFR 545.48; 12 CFR 545.74; 12 CFR 545.91; 12 CFR 545.95; ...

Legal Deadline: None

Abstract: The Bank Board is proposing extensive revisions to its regulations regarding the corporate governance of Federal associations in order to update and clarify these regulations. Due to the magnitude of the revisions, the Bank Board has presented the proposal in parts, issued separately for public comment. The proposed regulations would reorganize portions of Subchapter C (the regulations for federally chartered associations) and amend and add sections to provide a more cohesive and complete body of rules for the corporate governance of Federal associations. Part I, previously proposed, would provide definitions and rules for the organization and incorporation of Federal associations. Part II, also previously proposed, would contain provisions regarding the corporate structure and governing processes for Federal stock associations and Federal mutual associations. Part III proposes revisions to the rules governing operations of and charter conversion from and to Federal associations. Part IV proposes provisions regarding conservatorships, receiverships, trust powers, miscellaneous provisions, Board rulings, and statements of policy. The (cont)

Timetable:

Action	Date	FR Cite
NPRM	07/09/87	52 FR 25870
NPRM Comment Period End	02/01/88	52 FR 42116
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Flexibility Analysis

Additional Information: CFR citation (cont'd) 12 CFR 545.114, 12 CFR 545.121, 12 CFR 545.123, 12 CFR 545.131, 12 CFR 546.1, 12 CFR 546.2, 12 CFR 546.3, 12 CFR 546.4, 12 CFR 546.5, 12 CFR 546.6, 12 CFR 546.7, 12 CFR 546.8, 12 CFR 546.9, 12 CFR 546.10, 12 CFR 546.11, and 12 CFR 551.

Abstract Cont: proposed rule would apply equally to all insured institutions.

There are no alternatives that would be less burdensome than the proposal in addressing the concerns expressed above.

The potential costs and benefits of the proposed regulation on the industry have not been quantified.

Agency Contact: Kathleen M. Ulrich, Staff Attorney, Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW, Washington, DC 20552, 202 377-7049

RIN: 3069-AA25

3727. ACCOUNTING POLICY RELATING TO ACQUISITION, DEVELOPMENT AND CONSTRUCTION LOANS

Legal Authority: Notice to Practitioners on ADC Loans, CPA Letter, Feb 10, 1986

CFR Citation: 12 CFR 571.1'

Legal Deadline: None

Abstract: The Bank Board proposed to amend its statement of accounting policy relating to acquisition, development and construction ("ADC")

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loans used by all institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation ("FSLIC") or affiliates thereof when preparing reports or financial statements for filing with the Bank Board or the FSLIC. The amendments relate to the recent "Notice to Practitioners" issued by the American Institute of Certified Public Accountants, which superseded two prior notices issued in November 1983 and November 1984, and to the public position regarding the effective date of the recent notice taken by the Chief Accountant of the Securities and Exchange Commission. By proposing this amendment to its statement of policy, the Bank Board is adhering to its policy that insured institutions are expected to apply the guidance of the accounting profession for determining whether a transaction characterized as an ADC loan is in fact a loan or whether, in substance, it is a real estate investment or a joint venture. The proposed rule would apply equally to all insured institutions. (cont)

Timetable:

Action	Date	FR Cite
NPRM	05/13/87	52 FR 7487
NPRM Comment Period End	06/12/87	52 FR 7487
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Flexibility Analysis

Additional Information:

There are no alternatives that would be less burdensome than the proposed rule in addressing the concerns expressed above.

The potential costs and benefits of the proposed regulation on the industry have not been quantified.

Agency Contact: Deborah Dakin, Regulatory Counsel, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW, Washington, DC 20552, 202 377-6445

RIN: 3068-AA27

3726. INSURANCE TERMINATION PROVISIONS

Legal Authority: 12 USC 1464; 12 USC 1727; 12 USC 1730

CFR Citation: 12 CFR 525

Legal Deadline: None

Abstract: The Bank Board is reviewing a number of issues relating to the extent to which institutions insured by the Federal Savings and Loan Insurance Corporation ("FSLIC") that terminate their insured status in connection with transfers by operation of law must pay a final insurance premium to the FSLIC. As part of its review, the Bank Board is soliciting public comment to ascertain whether to issue a proposal in this area. On October 7, 1986, the Bank Board adopted a clarifying amendment to the definition of "transfers" set forth in its statement of policy regarding mergers and transfers of assets. (12 CFR 571.5(a)). However, as the clarification indicates, the interpretation did not specifically address the separate issues of whether an insured institution undertaking a transfer of assets and liabilities by operation of law in which the surviving entity is not FSLIC-insured must pay a final insurance premium to the FSLIC, and if so, the amount of such payment. The Bank Board has been reviewing this so-called "exit premium" issue on an ongoing basis and as yet has made no final determination with respect to this matter.

Timetable:

Action	Date	FR Cite
ANPRM	05/18/87	52 FR 17408
ANPRM Comment Period End	07/07/87	52 FR 17408
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ABSTRACT CONT: In view of the continued importance of this issue as it relates to the financial condition of the FSLIC insurance fund, the Bank Board is hereby soliciting public comment on this subject.

Since the proposal is only an advance notice of proposed rulemaking, the potential costs and benefits of a proposed regulation on the industry have not been quantified.

Agency Contact: John A. Buckman, Assistant Deputy Director, Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW, Washington, DC 20552, 202 377-6923

RIN: 3068-AA26

3725. INDEMNIFICATION OF DIRECTORS, OFFICERS AND EMPLOYEES OF FEDERAL HOME LOAN BANKS

Legal Authority: 5 USC 553

CFR Citation: 12 CFR 522.72

Legal Deadline: None

Abstract: The Bank Board is proposing to amend its regulations governing the indemnification of directors, officers, and employees of the Federal Home Loan Banks ("FHL Banks"). This amendment would clarify that expenses incurred by FHL Bank directors, officers, and employees in connection with litigation are to be reimbursed as they are incurred, but that, by majority vote of its board of directors, a FHL Bank could require repayment of expenses that it finds to have been beyond the scope of the Bank Board's indemnification regulation. The proposal applies only to directors, officers, and employees of the FHL Banks, none of which falls within the definition of a "small financial institution" given by the Small Business Administration.

There are no alternatives that would be less burdensome than the proposal in addressing the concerns expressed above.

The potential costs and benefits of the proposal on the industry have not been quantified.

Timetable:

Action	Date	FR Cite
NPRM	04/16/87	52 FR 12425
NPRM Comment Period End	06/15/87	52 FR 12425
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Flexibility Analysis

Agency Contact: Jean Van Burg, Attorney, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW, Washington, DC 20552, 202 377-7033

RIN: 3068-AA20

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3730. ⊕ ASSESSMENT AND ADJUSTMENT OF ADDITIONAL PREMIUMS

Significance: Agency Priority

Legal Authority: 12 USC 1727

CFR Citation: 12 CFR 563.15; 12 CFR 563.16

Legal Deadline: None

Abstract: The Bank Board is proposing to amend its Insurance Regulations by adding a new regulation regarding the assessment of additional insurance premiums against institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation.("FSLIC") The proposal would implement by regulation the FSLIC's authority to assess additional insurance premiums and would provide for an adjustment of such premiums based on insured institutions' capital levels. In the Board's view, it is important to base the amount of additional insurance premiums assessed on the amount of capital held by an insured institution because capital provides the most effective buffer against loss and risk to the FSLIC fund.The primary purpose of the proposal is to offer insured institutions an incentive to raise capital.

There are no alternatives that would be less burdensome than the proposal in addressing the concerns expressed above.

Timetable:

Action	Date	FR Cite
NPRM	04/21/88	53 FR 13131
NPRM Comment Period End	06/06/88	53 FR 13131
Final Action	00/00/00	

Small Entities Affected: Businesses

Government Levels Affected: None

Analysis: Regulatory Flexibility Analysis

Agency Contact: Richard Schwartz, Staff Attorney, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552, 202 377-6907

RIN: 3068-AA00

3731. ⊕ PREAPPROVED SECURITIES BROKERAGE SERVICE CORPORATION ACTIVITIES

Significance: Agency Priority

Legal Authority: 12 USC 1464; 12 USC 1425a; 12 USC 1725 to 1728; 12 USC 1730

CFR Citation: 12 CFR 545.74

Legal Deadline: None

Abstract: The Board is proposing to adopt amendments to 12 CFR 545.74, its service corporation regulations, by inserting a new paragraph 545.74(c)(4) "security brokerage activities" and renumbering subsequent paragraphs. The purpose to the proposed amendments is to enable service corporations to commence certain types of securities brokerage activities, without preparing an application and obtaining individual Board approval. The amendments designate certain types of securities brokerage activities as preapproved service corporation activities.

Other alternatives, such as the present rules, may tend to prolong the waiting period for permission to engage in brokerage activities. More liberal provisions may raise questions of statutory authority.

The potential costs and benefits of the proposed regulation on the industry have not been quantified.

Timetable:

Action	Date	FR Cite
NPRM	05/05/88	53 FR 16148
NPRM Comment Period End	06/06/88	53 FR 16148
Final Action	00/00/00	

Small Entities Affected: Businesses

Government Levels Affected: None

Analysis: Regulatory Flexibility Analysis

Agency Contact: Dean V. Shahinian, Deputy Director for Corporate Activities, Corporate and Securities Division, Federal Home Loan Bank Board, 1700 G street, N.W., Washington, D.C. 20552, 202 377-7289

RIN: 3068-AA01

3732. ⊕ INVESTMENT PORTFOLIO POLICY AND ACCOUNTING GUIDELINES

Significance: Agency Priority

Legal Authority: 12 USC 1730; 12 USC 1464; 12 USC 1725 to 1728; 15 USC 78c

CFR Citation: 12 CFR 571.19; 12 CFR 583c

Legal Deadline: None

Abstract: The Board is proposing to amend its regulations governing institutions insured by the Federal Savings and Loan Insurance Corporation by adopting a statement of policy and by amending its rules to clarify that insured institutions must account for securities held for investment sale and/or trading in accordance with generally acceptable accounting procedures ("GAAP"). The proposed policy statement requires an insured institution's board of directors to document and monitor its investment in policy and strategies; discuss the appropriate documentation of investment decisions; summarize GAAP applicable to securities held for investment,sale, and/or trading; and offer guidance on the application of GAAP by insured institutions in determining when securities should be accounted for as a security held for trading. The Board's intent is to provide guidance and clarifications to insured institutions on the accounting for and classification of investment in securities within the confines of existing accounting literature.

Timetable:

Action	Date	FR Cite
NPRM	06/21/88	53 FR 23247
NPRM Comment Period End	08/22/88	53 FR 23247
Final Action	00/00/00	

Small Entities Affected: Businesses

Government Levels Affected: None

Analysis: Regulatory Flexibility Analysis

Agency Contact: Julie A. Gerschick, Professional Accounting Fellow, Office of Regulatory Activities, Federal Home Loan Bank Board, 801 17th Street, N.W., Washington, D.C. 20006, 202 331-4583

RIN: 3068-AA02

3733. ⊕ TRANSACTIONS WITH AFFILIATES

Significance: Agency Priority

Legal Authority: 12 USC 1730a; 12 USC 1425a; 12 USC 1462; 12 USC 1724; PL 100-86

CFR Citation: 12 CFR 563d

Legal Deadline: None

Abstract: The Bank Board is proposing to amend its regulations pertaining to transactions between institutions whose accounts are insured by the Federal

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Savings and Loan Insurance Corporation and affiliates of those institutions. The proposed amendments (1) define and clarify the applicability of the limitations and prohibitions specified in sections 23A and 23B of the Federal Reserve Act and (2) clarify the applicability of the limitations and prohibitions specified in the Board's regulations existing prior to the Competitive Equality Banking Act (CEBA). The proposed amendments are intended to further the Congressional intent codified in CEBA by providing parity between a bank and a thrift holding company with respect to the treatment of transactions between the subsidiary depository institution and its affiliates engaged in activities permissible for a bank holding company under the Bank Holding Company Act and the regulations thereunder.

There are no alternatives that would be less burdensome than the proposed rule in addressing the concerns expressed above.

The potential costs and benefits of the regulation on(con't)

Timetable:

Action	Date	FR Cite
NPRM	06/10/88	53 FR 21836
NPRM Comment Period End	08/09/88	53 FR 21836
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Flexibility Analysis

Additional Information: the industry have not been quantified.

Agency Contact: Steven J. Gray, Attorney, Corporate and Securities Division, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington DC 20552, 202 377-7128

RIN: 3068-AA05

FEDERAL HOME LOAN BANK BOARD (FHLBB) — Completed Actions

3734. LOANS TO ONE BORROWER

Legal Authority: 12 USC 1421 to 1420; 12 USC 1464(c); 12 USC 1724 to 1730

CFR Citation: 12 CFR 563.9-3

Legal Deadline: None

Abstract: The Bank Board proposes to amend its regulation pertaining to loans to one borrower in a number of ways, most significantly to reduce the amount of aggregate loans to one borrower that may be made by an institution the accounts of which are insured by the FSLIC. The proposal is intended to reduce risk to insured institutions and the FSLIC without depriving institutions of appropriate operational flexibility. To this end, the Board invites comment on all aspects of the proposal.

The Bank Board is soliciting comment on possible alternatives to the rule as proposed in addressing the concerns expressed above.

The potential costs and benefits of the proposed regulation on the industry have not been quantified.

The proposed rule would apply equally to all insured institutions.

Timetable:

Action	Date	FR Cite
NPRM	09/15/86	51 FR 30225
NPRM Publication of Board Action	09/25/86	51 FR 30225
NPRM Comment Period End	10/24/86	51 FR 30225
Withdrawn	04/21/88	53 FR 13133
Final Action	00/00/00	

Small Entities Affected: Businesses

Government Levels Affected: None

Analysis: Regulatory Flexibility Analysis

Additional Information: Pursuant to the adopted regulatory review procedures, Board Resolution No. 88-269, (4/21/88), the Bank Board has withdrawn the Loans to One Borrower proposed regulation adopted by the Board on August 15, 1986, 51 FR 30225.

Agency Contact: Daniel G. Lonergan, Deputy Director, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW, Washington, DC 20552, 202 377-6458

RIN: 3068-AA19

3735. REGULATORY CAPITAL REQUIREMENTS OF INSURED INSTITUTIONS

Legal Authority: 12 USC 1726

CFR Citation: 12 CFR 563.13

Legal Deadline: None

Abstract: The Bank Board is amending its regulation setting the regulatory capital requirements for institutions insured by the Federal Savings and Loan Insurance Corporation by changing the method of computing the annual calculation of industry profits basing it on the median return on all assets of all insured institutions. The rule would apply equally to all insured institutions.

There are no alternatives that would be less burdensome than the rule in addressing the concerns expressed above.

The potential costs and benefits of the regulation on the industry have not been quantified.

Timetable:

Action	Date	FR Cite
NPRM	06/25/87	52 FR 23845
NPRM Comment Period End	08/24/87	52 FR 23845
Final Action	04/06/88	53 FR 11243
Final Action Effective	04/29/88	53 FR 11243

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Flexibility Analysis

Agency Contact: Deborah Dakin, Regulatory Counsel, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW, Washington, DC 20552, 202 377-6445

RIN: 3068-AA22

3736. SETTLEMENT OF INSURANCE

Legal Authority: 12 USC 1724 to 1730g

CFR Citation: 12 CFR 564.2; 12 CFR 564.9

Legal Deadline: None

FHLBB — Completed Actions

Abstract: The Bank Board has amended its regulations pertaining to the settlement of insurance by deleting the requirement that each co-owner of a joint account must personally execute a signature card for the account in order for the account to be separately insured. The Bank Board believes the present rule has caused hardship to depositors and added to the recordkeeping burden on institutions without appreciably reducing the risks of fraudulent claims of entitlement to separate joint account insurance coverage. The Bank Board amendments also consolidate provisions of its regulations governing joint accounts, clarify the provisions affecting joint accounts established by intermediaries and revise the appendix and examples illustrating joint account insurance coverage.

There are no alternatives that would be less burdensome than the rule in addressing the concerns described above.

The potential costs and benefits of the regulation on the industry have not been quantified.

Timetable:

Action	Date	FR Cite
NPRM	07/10/87	52 FR 26017
NPRM Comment Period End	09/08/87	52 FR 26017
Final Action	03/14/88	53 FR 8169

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Flexibility Analysis

Agency Contact: Deborah Dakin, Regulatory Counsel, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW, Washington, DC 20552, 202 377-6445

RIN: 3068-AA23

3737. BANK SECRECY ACT COMPLIANCE PROCEDURES

Legal Authority: 31 CFR 103; 12 USC 1464; 12 USC 1730; PL 99-570, Sec 1359; 31 USC 5311 to 5322

CFR Citation: 12 CFR 563.17-7

Legal Deadline: NPRM, Statutory, April 27, 1987.
Section 1359 of the Anti-Drug Abuse Act of 1986, Pub.L.No. 99-570, required establishment of a Bank Secrecy Act compliance program by April 27, 1987.

Abstract: The Bank Board is proposing to amend for purposes of clarification, its recently adopted regulation which requires insured institutions to establish and maintain procedures to assure and monitor compliance with the requirements of the Bank Secrecy Act ("BSA"), including the Currency and Foreign Transactions Reporting Act and the implementing regulations of the U.S. Department of the Treasury, 31 CFR Part 103. The proposed rule sets forth in greater detail the elements required to be in a BSA compliance program, in particular, the requirements of BSA compliance testing and continuing education. The proposed rule would apply equally to all insured institutions.

The proposed rule for BSA compliance programs establishes a minimum system for verifying and encouraging compliance with the BSA in accordance with Congressional concern. Alternatively, the Bank Board could have required an in-depth audit of insured institutions' compliance by independent auditors. The Bank Board believes that such an alternative would have been less flexible and more restrictive for insured institutions. (cont)

Timetable:

Action	Date	FR Cite
NPRM	05/18/87	52 FR 17406
NPRM Comment Period End	07/07/87	52 FR 17406
Withdrawn	04/21/88	53 FR 13133
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Flexibility Analysis

Additional Information: 9. Abstract Cont:

The potential costs and benefits of the proposed regulation on the industry have not been quantified.

Pursuant to the adopted regulatory review procedures Board Resolution No. 88-269,(4/21/88) the Bank Board has withdrawn the Bank Secrecy Act Compliance Procedures adopted by the Board on April 30, 1987. 52 FR 17406 (May 8, 1987).

Agency Contact: C. Dawn Causey, Attorney, Office of Enforcement, Federal Home Loan Bank Board, 1735 I Street, NW, Washington, DC 20006, 202 653-2624

RIN: 3068-AA24

3738. ADJUSTABLE-RATE MORTGAGE HOME LOAN DISCLOSURES

Legal Authority: 12 USC 1724 to 1730; 12 USC 3801 et seq; 12 CFR 226.17; 12 CFR 226.19

CFR Citation: 12 CFR 545.33; 12 CFR 563.8-8

Legal Deadline: None

Abstract: The Bank Board final amendments to its regulations regarding the disclosures and notices that lenders must give to borrowers concerning adjustable-rate mortgage ("ARM") home loans. The new rule changes the timing for the ARM disclosures and simplifies disclosures concerning the ARM program(s) being offered to the consumer but continues to use the ARM's handbook. The revision clarifies the Bank Board's regulation and implements the uniform disclosure of ARMs recommended by the Federal Financial Institutions Examination Council on August 12, 1986. The changes are being made in conjunction with the Board of Governors of the Federal Reserve System. A provision referencing the maximum interest rate cap requirement of the Competitive Equality Banking Act of 1987 is also included.

There are no alternatives that would be less burdensome than the rule in addressing the concerns expressed above.

The potential costs and benefits of the regulation on the industry have not been quantified.

Timetable:

Action	Date	FR Cite
NPRM	02/05/87	52 FR 3665
NPRM Comment Period End	03/09/87	52 FR 3665
Final Action Optional Compliance until October 1,1988.	05/23/88	53 FR 18262
Final Action Effective	05/23/88	53 FR 18262

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Flexibility Analysis

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FHLBB — Completed Actions

Agency Contact: Stephen D. Johnson, Attorney/Advisor, Division of Consumer and Civil Rights, Office of Community Investment, Federal Home Loan Bank Board, 1700 G Street, NW, Washington, DC 20552, 202 [illegible]

RIN: 3064-AA28

3739. ISSUANCE AND FORM OF STOCK BY FEDERAL HOME LOAN BANKS

Legal Authority: 12 USC 1428

CFR Citation: 12 CFR 522.10

Legal Deadline: None

Abstract: The Bank Board is adopting final amendments to its regulations to authorize the capital stock of the Federal Home Loan Bank ("Bank") to be represented in uncertificated, i.e. book entry form. Currently, the Regulations provide for Bank Stock to be issued in certificated form only, but on the basis of an earlier legal opinion by the Board's Office of General Counsel, some Banks are now issuing uncertificated stock. The amendment would clarify a Bank's authority both to issue uncertificated stock or convert certificated stock to book entry form. No Bank that converts to a book entry system will be required to issue stock in certificated form.

The potential costs and benefits of the proposed regulation on the industry have not been quantified.

Timetable:

Action	Date	FR Cite
NPRM	08/05/87	52 FR 29030
NPRM Comment Period End	10/05/87	52 FR 29030
Final Action	05/23/88	53 FR 18261
Final Action Effective	07/22/88	53 FR 18261

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Flexibility Analysis

Agency Contact: Richard L. Little, Associate General Counsel, Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, N. W. 20552, [illegible] 377-6467

RIN: 3064-AA40

3740. AVAILABILITY AND CHARACTER OF RECORDS

Legal Authority: 5 USC 552; 12 USC 552; 12 USC 1421 et seq; 12 USC 1725; PL 99-570

CFR Citation: 12 CFR 505.4

Legal Deadline: None

Abstract:

The Bank Board proposed to amend its public access to information regulations on fees and fee waivers in order to comply with the Freedom of Information Reform Act of 1986 ("FOI Reform Act"). The Bank Board's regulations are issued in conformance with Office of Management and Budget ("OMB") guidelines and schedule of fees. Pursuant to the FOI Reform Act and the final OMB guidelines, the Bank Board proposes to set fees to recover the full direct costs incurred by the Bank Board in searching for, reviewing, and duplicating documents in response to FOIA requests. New fees are established for manual search, computer search, and review of records. In compliance with the FOI Reform Act, requesters are classified into four categories for the purposes of making fee assessments; commercial use requesters; educational and noncommercial scientific institution requesters; representatives of the news media; and all other requesters.

There are no alternatives that would be less burdensome than the proposed rule in addressing the concerns expressed above.

The potential costs and benefits of the proposed regulation

Timetable:

Action	Date	FR Cite
NPRM	11/27/87	52 FR 45346
NPRM Comment Period End	12/28/87	52 FR 45346
Final Action	05/05/88	53 FR 16054
Final Action Effective	05/05/88	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Flexibility Analysis

Additional Information:

ABSTRACT CONT:

on the industry have not been quantified.

Agency Contact: William Van Lenten, Assistant General Counsel, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, N. W., Washington, D. C. 20552, 202 377-6778

RIN: 3064-AA51

3741. ◆ TRANSACTIONS WITH AFFILIATES OF SUBSIDIARY INSURED INSTITUTIONS

Legal Authority: PL 100-86; 12 USC 1730a; 12 USC 1843(c); 12 USC 371c

CFR Citation: 12 CFR 563.41; 12 CFR 563.43

Legal Deadline: None

Abstract: The Bank Board is proposing to amend its regulations pertaining to transactions between institutions whose accounts are insured by the Federal Savings and Loan Insurance Corporation and affiliates of those insured institutions. The proposed amendments provide, in effect, that the conflict of interest provisions of the Board's regulations will not be applicable to transactions between holding company subsidiary insured institutions and their affiliates (other than natural persons that are controlling shareholders). The proposed rule would apply to all insured institutions.

There are no alternatives that would be less burdensome than the proposal in addressing the concerns above.

Timetable:

Action	Date	FR Cite
NPRM	04/28/88	53 FR 15230
NPRM Comment Period End	06/13/88	53 FR 15230
Final Action	08/19/88	53 FR 31699
Final Action Effective	09/19/88	53 FR 31699

Small Entities Affected: Businesses

Government Levels Affected: None

Analysis: Regulatory Flexibility Analysis

Agency Contact: Steven J. Gray, Attorney, Corporate and Securities Division, Federal Home Loan Bank Board, 1700 G Street N.W., Washington, D.C. 20006, 202 377-7506

RIN: 3064-AA56

FHLBB — Completed Actions

3742. ◆ OVER-THE-COUNTER FINANCIAL OPTIONS TRANSACTIONS; ACCOUNTING FOR FINANCIAL OPTIONS

Significance: Agency Priority

Legal Authority: 12 USC 1421; 12 USC 1425; 12 USC 1437; 12 USC 1462; 12 USC 1464; 12 USC 1724; 12 USC 1730a

CFR Citation: 12 CFR 563.17

Legal Deadline: None

Abstract: The Bank Board is amending its regulations pertaining to financial option transactions by institutions whose accounts are insured by the Federal Savings and Loan Insurance Corporation. Specifically, the Board is amending its regulations to allow insured institutions to engage in over-the-counter ("OTC") financial option transactions with certain types of counterparties in addition to primary dealers in government securities. The amendments are intended to allow insured institutions to use more effectively the authority previously granted to them to engage in OTC option transactions. These amendments will allow smaller institutions greater access to the OTC options market than permitted under the present laws.

There are no alternatives that would be less burdensome than the amendments in addressing the concerns expressed above.

Timetable:

Action	Date	FR Cite
NPRM	12/31/85	50 FR 53336
NPRM Comment Period End	03/03/86	50 FR 53336
Final Action	07/22/88	53 FR 27667
Final Action Effective	08/22/88	53 FR 27667

Small Entities Affected: Businesses

Government Levels Affected: None

Analysis: Regulatory Flexibility Analysis

Agency Contact: Robert J. Pomeranz, Senior Policy Analyst, Office of Policy and Economic Research, Federal Home Loan Bank Board, 1700 G Street N.W., Washington, D.C. 20552, 202 377-6780

RIN: 3068-AA63

3743. ◆ CONSERVATORS AND RECEIVERS; PRIORITY OF CLAIMS

Significance: Agency Priority

Legal Authority: 12 USC 1464; 12 USC 1729; PL 90-389; PL 97-320; 12 USC 1725

CFR Citation: 12 CFR 569c.11

Legal Deadline: None

Abstract: The Bank Board is promulgating as a final rule certain portions of the Proposed Receivership and Conservatorship Regulations that were published in the Federal Register of November 27, 1985. This final rule adopts 569c.11 of the Proposed Receivership Regulations (with certain technical modifications to accord with the administration of recent Federal Savings and Loan Insurance Corporation ("FSLIC") receiverships), thereby establishing a priority structure for unsecured claims applicable to all FSLIC receiverships under a new Part 569c of Title 12 of the Code of Federal Regulations. This priority of claims structure replaces the provisions for priorities of unsecured claims in 12 CFR 549.5-1(b) and 569a.7.

There are no alternatives that would be less burdensome than the regulation in addressing the concerns expressed above.

The potential costs and benefits of the regulation on the industry have not been quantified.

Timetable:

Action	Date	FR Cite
NPRM	11/27/85	50 FR 48970
Final Action	07/05/88	53 FR 25129
Final Action Effective	08/04/88	53 FR 25129

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Flexibility Analysis

Agency Contact: Lawrence W. Hayes, Deputy General Counsel, FSLIC, Office of General Counsel, Federal Home Loan Bank Board, 202 377-6428

RIN: 3068-AA58

3744. ◆ CONSERVATORS AND RECEIVERS; PRIORITY OF CLAIMS; DEPOSITOR PRIORITY

Significance: Agency Priority

Legal Authority: 12 USC 1464(d); 12 USC 1729(c); PL 90-389; 12 USC 1729(b)

CFR Citation: 12 CFR 569c.11

Legal Deadline: None

Abstract: The Bank Board is promulgating as a final rule a revision to its receivership regulations at 12 CFR 569a.11(a)(6) to establish a priority for withdrawable deposits and accounts, including those of the Federal Savings and Loan Insurance Corporation ("FSLIC") as subrogee or transferee, over unsecured claims of general creditors in receiverships of federally chartered associations or savings banks in states that provide such a priority for depositors in State-chartered savings and loan associations.

In a final rule published in the Federal Register of July 5, 1988, the Board promulgated certain portions of the Proposed Receivership and Conservatorship Regulations that were published in the Federal Register of November 27, 1985. The final rule established a priority structure for unsecured claims applicable to all FSLIC receiverships under new Part 569c of Title 12 of the Code of Federal Regulations. Section 569c.11(a)(6) of that rule recognized State law priorities with respect to depositors for State-chartered institutions, including a provision in that section for depositor priority over claims of unsecured general creditors for FSLIC-insured institutions chartered by (con't)

Timetable:

Action	Date	FR Cite
NPRM	07/05/88	53 FR 30665
NPRM Comment Period End	08/15/88	53 FR 30665
Final Action	08/15/88	53 FR 30665
Final Action Effective	08/15/88	53 FR 30665

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Flexibility Analysis

Additional Information: Many States with depositor preference legislation. This rule amends section 569.11 to recognize a depositor priority for deposits registered at offices of federally chartered institutions located in States with depositor preference legislation.

There are no alternatives that would be less burdensome than the regulation in addressing the concerns expressed above.

The potential costs and benefits of the regulation on the industry have not been quantified.

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FHLBB — Completed Actions

Agency Contact: Lawrence W. Hayes, Deputy General Counsel for FSLIC, Federal Home Loan Bank Board, 1700 G Street N.W., Washington, DC 20552, 202 377-6428

RIN: 3069–AA69

[FR Doc. 88-20884 Filed 10-21-88; 8:45 am]

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Monday
October 24, 1988

Part LI

Federal Maritime Commission

Semiannual Regulatory Agenda

FEDERAL MARITIME COMMISSION (FMC)

FEDERAL MARITIME COMMISSION

46 CFR Ch. IV

Unified Regulatory Agenda

AGENCY: Federal Maritime Commission.

ACTION: Unified Agenda of Federal Regulations.

SUMMARY: Pursuant to section 5 of EO 12291 and the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Commission anticipates having under consideration during the period from October 1, 1988 to September 30, 1989 actions in the areas listed below.

FOR FURTHER INFORMATION CONTACT: For further information concerning Commission rulemaking proceedings or the status of any matter listed below, contact: Joseph C. Polking, Secretary, 1100 L Street, NW., Washington, DC 20573, (202) 523-5725.

SUPPLEMENTARY INFORMATION: Section 602 of the Regulatory Flexibility Act (5 U.S.C. 602) requires the publication of an agenda of items for which regulatory agencies may propose or promulgate a rule which is likely to have a significant economic impact on a substantial number of small entities. Section 5 of Executive Order 12291 also requires executive agencies to publish a regulatory agenda; the Commission voluntarily complies with this section.

The agendas include information on regulatory activities being conducted or reviewed during the succeeding 12 months by the Commission.

The following is the Commission's Unified Regulatory Agenda. The agenda does not necessarily include all petitions for rulemakings which are under staff review.

In addition, the Commission maintains a compilation of the status of pending rulemaking proceedings and a listing of rules that have become final since the publication of the most recent regulatory agenda. This will be made available to the public, including the press and interested persons.

Joseph C. Polking,
Secretary.

Prerule Stage

Sequence Number	Title	Regulation Identifier Number
3745	Costs of Proceedings	3072-AA46
3746	Automated Tariff Filing	3072-AA61
3747	Index of Documents for Agreements	3072-AA64
3748	User Fees to Recover Agency Costs	3072-AA70
3749	Independent Action - Miscellaneous Provisions	3072-AA83
3750	Rates Cleared Subject to Refiling	3072-AA86
3751	Financial Reports of Vessel Operating Common Carriers by Water in the Domestic Offshore Trades	3072-AA93
3752	Service Contract Provisions; Most Favored Shippers and Liquidated Damages Clauses	3072-AA95
3753	Foreign-to-Foreign Agreements; Exemption	3072-AB03
3754	Cancellation of Tariffs for Failure to Either File Anti-Rebate Certifications or Publish Appropriate Notices in Tariffs	3072-AB09

Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
3755	Practices of Ocean Common Carriers Regarding Effective Date of Rate Changes - Docket No. 88-18	3072-AB04

Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
3756	Service Contract Regulation Amendment to Permit Correction of Clerical or Administrative Errors in Essential Terms--Docket No. 88-16	3072-AB08
3757	Interpretive Rule that Carriers or Conferences May Not Require Production of Justice Department Business Review Letter as Part of Service Contract Negotiation Process with Shippers Association	3072-AB10

FMC

Completed Actions

Sequence Number	Title	Regulation Identifier Number
3758	Public Information - Freedom of Information Act	3072-AA12
3759	Information Required for Section 18 Study	3072-AA50
3760	Independent Action - Miscellaneous Provisions	3072-AA83
3761	Information Form for Agreements: Miscellaneous Amendments	3072-AA55
3762	Common and Contract Carriage - Miscellaneous Provision	3072-AA03
3763	Tariff Publication of Free Time and Detention Charges Applicable to Carrier Equipment Interchanged With Shippers or Their Agents (Docket 85-19)	3072-AA73
3764	Financial Responsibility of Passenger Vessel Operators for Non-Performance	3072-AA76
3765	Practices of Common Carriers Regarding Payment of Inland Divisions Petition for Rulemaking	3072-AA96
3766	Service Contracts - Most Favored Shipper and Liquidated Damages Provisions - Petition for Rulemaking	3072-AB00
3767	Section 16 Exemption of Agreement Between or Among Parent or Its Subsidiaries	3072-AB06
3768	Truck Detention Charges at West Coast Ports	3072-AB07
3769	Deletion of Requirements for Joinder of Conferences in Special Docket Applications and Other Changes to the Rules of Practice and Procedure -- Docket No. 88-10	3072-AB11
3770	Designation of Officer to Receive Petitions for Review of Commission Orders -- Docket No. 88-12	3072-AB12

FEDERAL MARITIME COMMISSION (FMC)

Prerule Stage

3745. COSTS OF PROCEEDINGS

Significance: Agency Priority

Legal Authority: 5 USC 553; 46 USC app 1716; 46 USC app 1717(a)(4)

CFR Citation: 46 CFR 502

Legal Deadline: Other, Statutory. September 20, 1989.

Abstract: Section 18(a)(4) of the Shipping Act requires the Commission to collect and analyze data concerning the impact of the Act on the costs of major types of regulatory proceedings before the Commission. This action will provide the regulations needed to obtain this information.

Timetable:

Action	Date	FR Cite
End Review	06/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW, Washington, DC 20573, 202 523-5725

RIN: 3072-AA46

3746. AUTOMATED TARIFF FILING

Significance: Agency Priority

Legal Authority: 5 USC 553; 46 USC app 816; 46 USC app 817; 46 USC app 841a; 46 USC app 1707; 46 USC app 1708; 46 USC app 1715; 46 USC app 1716; 46 USC app 1717

CFR Citation: 46 CFR 515; 46 CFR 550; 46 CFR 580

Legal Deadline: None

Abstract: The Commission is considering the development of a fully automated system whereby tariff matters can be made available to the public and to the Commission through automatic data processing in order to reduce paperwork and other burdens. An Industry Advisory Committee is assisting the Commission in the project.

Timetable:

Action	Date	FR Cite
Begin Review	09/01/84	
Notice of Intent to form Advisory Committee	04/12/85	50 FR 14453
Notice of Second Meeting	05/19/86	51 FR 18376
Notice of Third Meeting	10/21/86	51 FR 37347
Notice of Inquiry on System Functionality	12/22/87	52 FR 48504
Further Notice	06/13/88	53 FR 22048
End Review	01/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW, Washington, DC 20573, 202 523-5725

RIN: 3072-AA61

3747. INDEX OF DOCUMENTS FOR AGREEMENTS

Legal Authority: 5 USC 553; 46 USC app 1703 to 1708; 46 USC app 1709; 46 USC app 1712; 46 USC app 1714; 46 USC app 1716; 46 USC app 1717

CFR Citation: 46 CFR 572.704

Legal Deadline: None

Abstract: Section 572.704 of Title 46 Code of Federal Regulations requires agreement parties who are required to file minutes to maintain an index of certain reports, studies and documents used for certain decisions, and to file such an index quarterly with the Commission. This requirement is being considered along with requirements to file minutes and other reports and with record retention provisions.

Timetable:

Action	Date	FR Cite
Begin Review	01/25/85	
End Review	05/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

FMC — Prerule Stage

Agency Contact: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW, Washington, DC 20573, 202 523-5725

RIN: 3072-AA64

3748. USER FEES TO RECOVER AGENCY COSTS

Significance: Agency Priority

Legal Authority: 5 USC 552 to 553

CFR Citation: 46 CFR 503.43

Legal Deadline: None

Abstract: The Commission is reviewing existing fees for services in order to determine whether they are adequate to recover costs.

Timetable:

Action	Date	FR Cite
Begin Review	01/25/85	
End Review	05/01/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW, Washington, DC 20573, 202 523-5725

RIN: 3072-AA70

3749. INDEPENDENT ACTION - MISCELLANEOUS PROVISIONS

Legal Authority: 5 USC 553; 46 USC app 1701 to 1707; 46 USC app 1709 to 1710; 46 USC app 1712; 46 USC app 1714 to 1717; 46 USC app 1718

CFR Citation: 46 CFR 572; 46 CFR 580

Legal Deadline: None

Abstract: Review would attempt to analyze certain conference practices to ensure that they do not unduly inhibit the right of individual members to take independent action as provided by the Shipping Act of 1984.

Timetable:

Action	Date	FR Cite
Begin Review	01/10/88	
End Review	06/01/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW, Washington, DC 20573, 202 523-5725

RIN: 3072-AA83

3750. RATES QUOTED SUBJECT TO BOOKING

Legal Authority: 5 USC 553; 46 USC app 812; 46 USC app 814 to 815; 46 USC app 817(a); 46 USC app 820; 46 USC app 833a; 46 USC app 841a; 46 USC app 843 to 847; 46 USC app 1702 to 1705; 46 USC app 1707; 46 USC app 1709; 46 USC app 1712; 46 USC app 1714 to 1716; 46 USC app 1718

CFR Citation: 46 CFR 550; 46 CFR 580

Legal Deadline: None

Abstract: Review would determine the necessity of regulations governing the parties of quoting rates subject to booking. Related to FMC Spec. Dkt. 1343.

Timetable:

Action	Date	FR Cite
Begin Review	02/14/86	
End Review	05/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW, Washington, DC 20573, 202 523-5725

RIN: 3072-AA86

3751. FINANCIAL REPORTS OF VESSEL OPERATING COMMON CARRIERS BY WATER IN THE DOMESTIC OFFSHORE TRADES

Legal Authority: 5 USC 553; 46 USC app 817(a); 46 USC app 820; 46 USC app 841a; 46 USC app 843; 46 USC app 844; 46 USC app 845a; 46 USC app 847

CFR Citation: 46 CFR 522

Legal Deadline: None

Abstract: Current rule providing for domestic rate-making and justification methodology is being reviewed to determine if requirements can be made less stringent.

Timetable:

Action	Date	FR Cite
Begin Review	01/20/88	
End Review	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW, Washington, DC 20573, 202 523-5725

RIN: 3072-AA93

3752. SERVICE CONTRACT PROVISIONS; MOST FAVORED SHIPPERS AND LIQUIDATED DAMAGES CLAUSES

Legal Authority: 5 USC 553; 46 USC app 1707(c)

CFR Citation: 46 CFR 580

Legal Deadline: None

Abstract: The Commission is reviewing the service contract regulations to determine the legality of permitting clauses involving liquidated damages or most favored shippers. Docket No. 88-7

Timetable:

Action	Date	FR Cite
Petition for rulemaking	01/22/87	52 FR 2443
Begin Review	01/22/87	52 FR 2443
Extend time for comments	02/11/87	52 FR 4364
NPRM	03/17/88	53 FR 8775
NPRM Comment Period End	05/02/88	53 FR 8775
End Review	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW, Washington, DC 20573, 202 523-5725

RIN: 3072-AA96

3753. FOREIGN-TO-FOREIGN AGREEMENTS; EXEMPTION

Significance: Agency Priority

Legal Authority: 5 USC 553; 46 USC app 1701 to 1707; 46 USC app 1710; 46 USC app 1712; 46 USC app 1714 to 1717

CFR Citation: 46 CFR 572

Legal Deadline: None

Abstract: The action would exempt certain foreign-to-foreign agreements on contiguous trades from notice, waiting period, and information requirements of the Shipping Act of 1984. Docket No. 87-34.

FMC — Prerule Stage

Timetable:

Action	Date	FR Cite
NPRM	12/08/87	52 FR 46501
NPRM Comment Period End	02/08/88	52 FR 46501
Final Action	09/00/88	
End Review	06/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW, Washington, DC 20573, 202 523-5725

RIN: 3072-AB03

3754. ● CANCELLATION OF TARIFFS FOR FAILURE TO EITHER FILE ANTI-REBATE CERTIFICATIONS OR PUBLISH APPROPRIATE NOTICES IN TARIFFS

Significance: Agency Priority

Legal Authority: 5 USC 553; 46 USC app 1707, 1709, 1714, 1716

CFR Citation: 46 CFR 580; 46 CFR 582

Legal Deadline: None

Abstract: Rule would minimize noncompliance with the requirements to file Anti-Rebate Certifications (46 CFR 582) and to publish anti-rebate provisions in tariffs (46 CFR 580.5(c)(2)).

Timetable:

Action	Date	FR Cite
Begin Review	12/27/87	
End Review	01/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW, Washington, DC 20573, 202 523-5725

RIN: 3072-AB05

FEDERAL MARITIME COMMISSION (FMC) — Proposed Rule Stage

3755. PRACTICES OF OCEAN COMMON CARRIERS REGARDING EFFECTIVE DATE OF RATE CHANGES - DOCKET NO. 88-19

Significance: Agency Priority

Legal Authority: 5 USC 553; 46 USC app 1707

CFR Citation: 46 CFR 580

Legal Deadline: None

Abstract: Requested rule would state that tariff rates and rules may not be applicable to cargo that is received by the carrier or its agent prior to the effective date of the tariff provision.

Timetable:

Action	Date	FR Cite
Petition for Rulemaking	12/30/87	52 FR 49205
End Review	06/01/88	
NPRM	08/30/88	53 FR 33153
NPRM Comment Period End	10/14/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW, Washington, DC 20573, 202 523-5725

RIN: 3072-AB04

FEDERAL MARITIME COMMISSION (FMC) — Final Rule Stage

3756. ● SERVICE CONTRACT REGULATION AMENDMENT TO PERMIT CORRECTION OF CLERICAL OR ADMINISTRATIVE ERRORS IN ESSENTIAL TERMS--DOCKET NO. 88-15

Significance: Agency Priority

Legal Authority: 5 USC 553; 46 USC app 1702, 1706, 1707, 1709, 1712, 1714, 1715, 1716, 1718

CFR Citation: 46 CFR 581.7(a)

Legal Deadline: None

Abstract: Rule would amend Service Contract regulation to permit correction of clerical or administrative errors in essential terms.

Timetable:

Action	Date	FR Cite
NPRM	06/24/88	53 FR 23776
NPRM Comment Period End	08/24/88	53 FR 26091
Final Action	06/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW, Washington, DC 20573, 202 523-5725

RIN: 3072-AB06

3757. ● INTERPRETIVE RULE THAT CARRIERS OR CONFERENCES MAY NOT REQUIRE PRODUCTION OF JUSTICE DEPARTMENT BUSINESS REVIEW LETTER AS PART OF SERVICE CONTRACT NEGOTIATION PROCESS WITH SHIPPERS ASSOCIATION

Significance: Agency Priority

Legal Authority: 5 USC 553; 46 USC app 1706, 1707, 1709 and 1716

CFR Citation: 46 CFR 571, (New)

Legal Deadline: None

Abstract: Docket No. 88-17. Rule is intended to help eliminate unnecessary impediments to the operation of shippers associations and the negotiation of service contracts.

FMC — Final Rule Stage

Timetable:

Action	Date	FR Cite
NPRM	07/19/88	53 FR 27178
NPRM Comment Period End	09/19/88	53 FR 27178
Final Action	06/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW, Washington, DC 20573, 202 523-5725

RIN: 3072-AB10

FEDERAL MARITIME COMMISSION (FMC) — Completed Actions

3758. PUBLIC INFORMATION - FREEDOM OF INFORMATION ACT

Legal Authority: 5 USC 552(b)(4); 46 USC app 841(a)

CFR Citation: 46 CFR 503

Legal Deadline: None

Abstract: Amendments to current rules governing treatment of FOIA requests will provide for notification to filers of "business confidential" information to permit responses before a decision to release or not to release information requested under the Act.

Timetable:

Action	Date	FR Cite
Withdrawn Rule Unnecessary	06/01/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW, Washington, DC 20573, 202 523-5725

RIN: 3072-AA12

3759. INFORMATION REQUIRED FOR SECTION 18 STUDY

Significance: Agency Priority

Legal Authority: 5 USC 553; 46 USC app 1714; 46 USC app 1716; 46 USC app 1717(a)

CFR Citation: 46 CFR (New)

Legal Deadline: Other, Statutory, September 20, 1989.
Legal deadline applies to information to be compiled, not necessarily by a rulemaking.

Abstract: Section 18(a) of the Shipping Act of 1984 requires the Commission to collect information concerning the impact of the Act upon the international ocean shipping industry for a period of 5 years ending on March 20, 1989. To the extent such data are not available, this review will consider Commission rules or orders to develop such information from the regulated industry.

Timetable:

Action	Date	FR Cite
Begin Review	09/01/84	
Withdrawn Rule Unnecessary	06/01/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW, Washington, DC 20573, 202 523-5725

RIN: 3072-AA50

3760. INDEPENDENT ACTION - MISCELLANEOUS PROVISIONS

Legal Authority: 46 USC 553; 46 USC app 1704; 46 USC app 1709; 46 USC app 1718

CFR Citation: 46 CFR 572

Legal Deadline: None

Abstract: Section 5(b)(8) of the Shipping Act of 1984 requires that conference members be allowed to take independent rate action under certain conditions. The Commission is considering a rule to require accurate reporting and to clarify other situations with regard to this statutory right.

Timetable:

Action	Date	FR Cite
Begin Review	01/25/85	
Withdrawn Rule Unnecessary	06/01/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW, Washington, DC 20573, 202 523-5725

RIN: 3072-AA53

3761. INFORMATION FORM FOR AGREEMENTS; MISCELLANEOUS AMENDMENTS

Legal Authority: 5 USC 553; 46 USC app 1703 to 1705; 46 USC app 1716

CFR Citation: 46 CFR 572.405; 46 CFR 572, Appendix A

Legal Deadline: None

Abstract: The information form that must accompany certain types of agreements filed under 46 CFR Part 572 may need to be amended to ensure Commission jurisdiction and to show the affiliates of the filing parties.

Timetable:

Action	Date	FR Cite
Begin Review	01/25/85	
Withdrawn Rule Unnecessary	06/01/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW, Washington, DC 20573, 202 523-5725

RIN: 3072-AA51

3762. COMMON AND CONTRACT CARRIAGE - MISCELLANEOUS PROVISION

Legal Authority: 5 USC 553; 46 USC app 801; 46 USC app 841a; 46 USC app 1702; 46 USC app 1716

CFR Citation: 46 CFR 510; 46 CFR 515; 46 CFR 520; 46 CFR 550; 46 CFR 552; 46 CFR 553; 46 CFR 560; 46 CFR 572; 46 CFR 580

Legal Deadline: None

FMC — Completed Actions

Abstract: This review will attempt to clarify the status of common carriers vis-a-vis contract carriers and provide reasonable regulations for operations by common carriers subject to the shipping statutes.

Timetable:

Action	Date	FR Cite
Begin Review	01/25/85	
Withdrawn Rule Unnecessary	04/15/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW, Washington, DC 20573, 202 523-5725

RIN: 3072-AA01

3763. TARIFF PUBLICATION OF FREE TIME AND DETENTION CHARGES APPLICABLE TO CARRIER EQUIPMENT INTERCHANGED WITH SHIPPERS OR THEIR AGENTS (DOCKET 85-19)

Legal Authority: 5 USC 553; 46 USC app 817(a); 46 USC app 841a; 46 USC app 844; 46 USC app 1707; 46 USC app 1708; 46 USC app 1709; 46 USC app 1716

CFR Citation: 46 CFR 580.5; 46 CFR 580.5; 46 CFR 580.7

Legal Deadline: None

Abstract: Docket 85-19 - Clarification of requirement that terms and conditions, including free time and detention, governing use of carrier-provided equipment by shippers or their agents be published in tariffs and service contracts. (Formal Rulemaking)

Timetable:

Action	Date	FR Cite
NPRM	08/08/85	50 FR 32097
NPRM Comment Period End	09/23/85	50 FR 32097
Final Action Effective Date Stayed	02/26/88	53 FR 5770

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW, Washington, DC 20573, 202 523-5725

RIN: 3072-AA75

3764. FINANCIAL RESPONSIBILITY OF PASSENGER VESSEL OPERATORS FOR NON-PERFORMANCE

Legal Authority: 5 USC 553; 46 USC app 817e; 46 USC app 841a; 46 USC app 1718

CFR Citation: 46 CFR 540

Legal Deadline: None

Abstract: Review would attempt to develop a formula for the amount of bond required to ensure financial responsibility of passenger vessel operators for non-performance.

Timetable:

Action	Date	FR Cite
Begin Review	01/10/86	
Withdrawn - Rule Unnecessary	06/22/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW, Washington, DC 20573, 202 523-5725

RIN: 3072-AA76

3765. PRACTICES OF COMMON CARRIERS REGARDING PAYMENT OF INLAND DIVISIONS PETITION FOR RULEMAKING

Significance: Agency Priority

Legal Authority: 5 USC 553; 46 USC app 1709; 46 USC app 1716

CFR Citation: 46 CFR Chapter IV

Legal Deadline: None

Abstract: This petition for rulemaking seeks a requirement that ocean common carriers timely pay over inland divisions to surface carriers participating in through movements.

Timetable:

Action	Date	FR Cite
Notice of Filing of Petition for Rulemaking	06/25/87	52 FR 23890
Final Action - Petition Denied	06/06/88	
Final Action Effective	06/06/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW, Washington, DC 20573, 202 523-5725

RIN: 3072-AA09

3766. SERVICE CONTRACTS - MOST FAVORED SHIPPER AND LIQUIDATED DAMAGES PROVISIONS - PETITION FOR RULEMAKING

Significance: Agency Priority

Legal Authority: 5 USC 553; 46 USC app 1707; 46 USC app 1716

CFR Citation: 46 CFR 581

Legal Deadline: None

Abstract: This petition for rulemaking seeks a regulation prohibiting most favored shipper clauses and de minimis liquidated damage clauses in service contracts.

Timetable:

Action	Date	FR Cite
Notice of Filing of Petition for Rulemaking	01/22/87	52 FR 2443
Extend Time for Comments to 02/27/87	02/11/87	52 FR 4384
Withdrawn Identical To RIN 3072-AA26	06/17/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW, Washington, DC 20573, 202 523-5725

RIN: 3072-AB01

3767. SECTION 16 EXEMPTION OF AGREEMENT BETWEEN OR AMONG PARENT OR ITS SUBSIDIARIES

Significance: Agency Priority

Legal Authority: 5 USC 553; 46 USC app 1715

CFR Citation: 46 CFR 572.301

Legal Deadline: None

Abstract: Requested action would exempt agreements by, between, or among ocean common carriers or marine terminal operators and their subsidiaries. Docket No. 88-8

Timetable:

Action	Date	FR Cite
Petition for Rulemaking	12/27/87	52 FR 48879

FMC — Completed Actions

Action	Date	FR Cite
Enlargement of Scope	01/26/88	53 FR 2537
Final Action	04/05/88	53 FR 11072
Final Action Effective	04/05/88	53 FR 11072
End Review	06/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW, Washington, DC 20573, 202 523-5725

RIN: 3072-AB06

3768. TRUCK DETENTION CHARGES AT WEST COAST PORTS

Significance: Agency Priority

Legal Authority: 5 USC 553; 46 USC app 816; 46 USC app 841a; 46 USC app 1709; 46 USC app 1716

CFR Citation: 46 CFR 550

Legal Deadline: None

Abstract: Requested action would set truck detention charges at the ports of Los Angeles, Long Beach, San Francisco, Oakland and San Diego, California.

Timetable:

Action	Date	FR Cite
Petition for Rulemaking	11/30/87	52 FR 45499
Enlargement of time for comments to February 22, 1988	12/29/87	52 FR 49086
Further Enlargement to March 7, 1988	02/19/88	53 FR 5041
Second Petition for Rulemaking	03/18/88	53 FR 8976
Final Action	07/18/88	
Petitions Denied		
Final Action Effective	07/18/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L St., NW, Washington, DC 20573, 202 523-5725

RIN: 3072-AB07

3769. ⊕ DELETION OF REQUIREMENTS FOR JOINDER OF CONFERENCES IN SPECIAL DOCKET APPLICATIONS AND OTHER CHANGES TO THE RULES OF PRACTICE AND PROCEDURE – DOCKET NO. 88-10

Significance: Agency Priority

Legal Authority: 5 USC 553; 46 USC app 1716(a)

CFR Citation: 46 CFR 502.92; 46 CFR 502 Ex No. 1 to Subpart K

Legal Deadline: None

Abstract: The action also clarifies language regarding designation of the appropriate tariff for notice purposes.

Timetable:

Action	Date	FR Cite
NPRM	04/14/88	53 FR 12440
NPRM Comment Period End	05/16/88	53 FR 12440
Final Action	07/25/88	53 FR 27858
Final Action Effective	08/24/88	53 FR 27858

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW, Washington, DC 20573, 202 523-5725

RIN: 3072-AB11

3770. ⊕ DESIGNATION OF OFFICER TO RECEIVE PETITIONS FOR REVIEW OF COMMISSION ORDERS – DOCKET NO. 88-12

Significance: Agency Priority

Legal Authority: 5 USC 553; 28 USC 2112(a)(2)

CFR Citation: 46 CFR 502.2

Legal Deadline: Final, Statutory, July 6, 1988.

Abstract: The "race to the courthouse" amendment to 28 USC 2112(a)(2) requires each agency to designate the Office and the officer who must receive petitions for review. This rule designates the Commission's Office of General Counsel and General Counsel, respectively.

Timetable:

Action	Date	FR Cite
Final Action	04/22/88	53 FR 13270
Final Action Effective	04/22/88	53 FR 13270

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW, Washington, DC 20573, 202 523-5740

RIN: 3072-AB12

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Monday
October 24, 1988

Part LII

Federal Reserve System

Semiannual Regulatory Agenda

FEDERAL RESERVE SYSTEM (FRS)

FEDERAL RESERVE SYSTEM

12 CFR Ch. II

Notice of Semiannual Regulatory Flexibility Agenda

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Semiannual agenda.

SUMMARY: The Board is issuing this Agenda under the Regulatory Flexibility Act and the Board's Statement of Policy Regarding Expanded Rulemaking Procedures. The Board anticipates having under consideration regulatory matters as indicated below during the period from October 1, 1988 through April 1, 1989. The next Semiannual Agenda will be published in April 1989.

DATE: Comments about the form or content of the Agenda may be submitted any time during the next six months.

ADDRESS: Comments should be addressed to William W. Wiles, Secretary of the Board, Board of Governors of the Federal Reserve System, Washington, DC 20551.

FOR FURTHER INFORMATION CONTACT: A staff contact for each item is indicated with the regulatory description below.

SUPPLEMENTARY INFORMATION: The Board is publishing its October 1988 Agenda as part of the October 1988 Unified Agenda of Federal Regulations, which is coordinated by the Office of Management and Budget under Executive Order 12291. Participation by the Board in the Unified Agenda is on a voluntary basis.

The Board's Agenda is divided into three sections. The first, Proposed Rule Stage, reports on matters the Board may consider for public comment during the next six months. The second section, Final Rule Stage, reports on matters that have been proposed and are under Board consideration. A third section, Completed Actions, reports on regulatory matters the Board has completed or is not expected to consider further.

A dot (●) preceding an entry indicates a new matter that was not a part of the Board's previous Agenda, and which the Board has not completed.

Barbara R. Lowrey,

Associate Secretary of the Board.

Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
3771	Regulation: E - Electronic Fund Transfers	7100-AA77
3772	Regulation: K - International Banking Operations	7100-AA67
3773	Regulation: K - International Banking Operations	7100-AA92
3774	Regulation: P - Minimum Security Devices and Procedures for Federal Reserve Banks and State Member Banks	7100-AA69
3775	Regulation: T - Credit by Brokers and Dealers	7100-AA72
3776	Regulation: T - Credit by Brokers and Dealers	7100-AA93
3777	Regulation: Y - Bank Holding Companies and Change in Bank Control	7100-AA41
3778	Proposals for Long-Term Improvement to the Check Collection System (Docket Number: R-0622)	7100-AA94
3779	Private Sector Presentment (Docket Number: R-0631)	7100-AA96

Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
3780	Regulation: D - Reserve Requirements of Depository Institutions (Docket Number: R-0571)	7105-AA62
3781	Regulation: H - Membership of State Banking Institutions in the Federal Reserve System (Docket Number: R-0636)	7100-AA88
3782	Regulation: K - International Banking Operations (Docket Number: R-0550)	7100-AA58
3783	Regulation: Q - Interest on Deposits (Docket Number: R-0514)	7100-AA56
3784	Regulation: Y - Bank Holding Companies and Change in Bank Control (Docket Number: R-0537)	7100-AA52
3785	Regulation: Y - Bank Holding Companies and Change in Bank Control and Regulation H - Membership of State Banking Institutions (Docket Number: R-0616)	7100-AA86
3786	Regulation: Y - Bank Holding Companies and Change in Bank Control (Docket Number: R-0614)	7100-AA89
3787	Regulation: Y - Bank Holding Companies and Change in Bank Control (Docket Number: R-0637)	7100-AA87
3788	Regulation: Z - Truth in Lending (Docket Number: R-0625)	7100-AA81
3789	Regulation: CC - Availability of Funds and Collection of Checks (Docket Number: R-0639)	7100-AA95
3790	Further Proposals to Reduce Risks on Large-Dollar Wire Transfer Systems (Docket Number: R-0592)	7100-AA78

FRS

Completed Actions

Sequence Number	Title	Regulation Identifier Number
3761	Regulation: C - Home Mortgage Disclosure (Docket Number: R-0636)	7100-AA85
3762	Regulation: H - Membership of State Banking Institutions in the Federal Reserve System	7100-AA88
3763	Regulation: T - Credit by Brokers and Dealers (Docket Number: R-0633)	7100-AA91
3764	Regulation: Y - Bank Holding Companies and Change in Bank Control (Docket Number: R-0628)	7100-AA90
3765	Regulation: CC - Availability of Funds and Collection of Checks and Regulation J - Collection of Checks and Other Items and Transfers of Funds (Docket Number: R-0620)	7100-AA80
3766	Rules Regarding Availability of Information (Docket Number: R-0601)	7100-AA73

FEDERAL RESERVE SYSTEM (FRS)

Proposed Rule Stage

3771. REGULATION: E - ELECTRONIC FUND TRANSFERS

Legal Authority: 15 USC 1693 et seq Electronic Fund Transfer Act

CFR Citation: 12 CFR 205

Legal Deadline: None

Abstract: During the next six months, the Board will conduct a review of Regulation E, which implements the Electronic Fund Transfer Act, and establishes the basic rights, liabilities, and responsibilities of consumers who use electronic fund transfer services and of financial institutions that offer these services (whether or not these institutions hold the consumer's account). The review will consider whether any provisions of the regulation are in need of updating and whether any substantive changes are necessary because of technological developments. The Board will also consider whether to make any legislative recommendations for statutory changes.

Public comment will be requested on any regulatory proposals that may be developed following the review. It is not anticipated that the revisions would have a significant economic impact on a substantial number of small banks.

Timetable:

Action	Date	FR Cite
Board will consider revisions to Regulation E during the next six months	04/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Dolores S. Smith, Assistant Director, Federal Reserve System, Division of Consumer and Community Affairs, 202 452-3412

RIN: 7100-AA77

3772. REGULATION: K - INTERNATIONAL BANKING OPERATIONS

Legal Authority: 12 USC 601 et seq

CFR Citation: 12 CFR 211

Legal Deadline: None

Abstract: The Board will consider an amendment to its regulation governing the establishment of foreign operating subsidiaries by member banks. The amendment would eliminate the requirement in section 211.3(b)(9) of Regulation K that a member bank's operating subsidiary be established only where required by local law or regulation. The revision is intended to promote the efficiency of member banks' foreign operations. Because the revision would remove a restriction, it is not anticipated that comment will be requested.

The proposal would not have a significant economic impact on a substantial number of small businesses because it affects only U.S. banks operating abroad.

Timetable:

Action	Date	FR Cite
Final Action by	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Kathleen O'Day, Senior Counsel, Federal Reserve System, Legal Division, 202 452-3786

RIN: 7100-AA67

3773. ● REGULATION: K - INTERNATIONAL BANKING OPERATIONS

Legal Authority: 12 USC 1843 (c)(13); 12 USC 601 to 604a; 12 USC 611 to 631

CFR Citation: 12 CFR 211

Legal Deadline: None

Abstract: The Board will consider whether to publish for public comment a proposed amendment to Regulation K to permit U.S. banking organizations to engage in a broader range of activities abroad. Specifically, the Board will consider whether U.S. banking organizations should be permitted to underwrite, distribute, and deal in equity securities outside the United States in excess of the current restriction in Regulation K, which prohibits a subsidiary of a U.S. banking organization from making an underwriting commitment for shares of an issuer in excess of: (i) $2 million, or (ii) 20 percent of the capital and surplus of the issuer's voting shares, unless covered by binding commitments from subunderwriters or other purchasers.

In addition, the Board will consider whether the purchases of shares of companies held in trading accounts should continue to be subject to the investment procedures set out in Regulation K at 12 CFR 211.5(c).

It is not expected that the proposal would have a significant economic impact on a substantial number of

small businesses, because it applies to U.S. banking organizations involved (cont)

Timetable:

Action	Date	FR Cite
Board may consider an amendment to Regulation K	04/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ABSTRACT CONT: in international securities activities.

Agency Contact: Kathleen O'Day, Senior Counsel, Federal Reserve System, Legal Division, 202 452-3788

RIN: 7100-AA82

3774. REGULATION: P - MINIMUM SECURITY DEVICES AND PROCEDURES FOR FEDERAL RESERVE BANKS AND STATE MEMBER BANKS

Legal Authority: 12 USC 1881 to 1884

CFR Citation: 12 CFR 216

Legal Deadline: None

Abstract: During the next six months, the Board will conduct a zero-based review of Regulation P, which implements the Bank Protection Act of 1968, and establishes minimum security standards for Federal Reserve Banks and for State member banks. The review will consider whether any provisions of the regulation are outdated and whether any substantive changes are necessary because of new technological developments. The regulation will also be reorganized and revised for simplicity and clarity. Public comment will be requested following the zero-based review. It is not anticipated that the revised regulation will have a significant economic impact on a substantial number of small banks.

Timetable:

Action	Date	FR Cite
Board will consider revisions to Regulation P	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Barbara Lowrey, Associate Secretary, Federal Reserve System, Office of the Secretary, 202 452-3788

RIN: 7100-AA89

3775. REGULATION: T - CREDIT BY BROKERS AND DEALERS

Legal Authority: 15 USC 78g Securities Exchange Act of 1934, as amended; 15 USC 78w Securities Exchange Act of 1934, as amended

CFR Citation: 12 CFR 220

Legal Deadline: None

Abstract: During the next four months the Board may consider proposing amendments to Regulation T to accommodate settlement and clearance of foreign securities in accounts covered by Regulation T. A request has been made that amendments be proposed because of the growing internationalization of the securities markets. It is not anticipated that any proposals in this area would affect a significant portion of the overall lending activities of a substantial number of small firms.

Timetable:

Action	Date	FR Cite
Board may review a proposal to amend Regulation T	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Laura Homer, Securities Credit Officer, Federal Reserve System, Div. of Banking Supervision and Regulation, 202 452-2781

RIN: 7100-AA72

3776. ◉ REGULATION: T - CREDIT BY BROKERS AND DEALERS

Legal Authority: 15 USC 78g Securities Exchange Act of 1934, as amended; 15 USC 78w Securities Exchange Act of 1934, as amended

CFR Citation: 12 CFR 220

Legal Deadline: None

Abstract: Several national securities exchanges have proposed trading new stock-index-related products, often called "index participations." Because these products may not fit the existing categories of securities in Regulation T, it is expected that the Board will address the marginability of these products at broker-dealers.

It is not anticipated that this proposal will affect a significant portion of the overall lending activities of a substantial number of small firms.

Timetable:

Action	Date	FR Cite
Board may address marginability of new exchange-traded products under Regulation T	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Laura Homer, Securities Credit Officer, Federal Reserve System, Div. of Banking Supervision and Regulation, 202 452-2781

RIN: 7100-AA93

3777. REGULATION: Y - BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

Legal Authority: 12 USC 1843 Bank Holding Company Act; 12 USC 1844(b) Bank Holding Company Act

CFR Citation: 12 CFR 225

Legal Deadline: None

Abstract: A provision of Regulation Y permits a State bank subsidiary of a bank holding company to engage through a nonbank subsidiary in any activity that is permissible under State law for the bank subsidiary itself, subject to the same limits as if the bank engages in the activity directly. (A similar rule applies to national bank subsidiaries regarding activities permissible for such banks under Federal law.) The Board received comments on this provision in connection with its general request for comments in May 1983 regarding the proposed revision of Regulation Y. Some of the commenters challenged the Board's authority to issue this provision, although it has been part of Regulation Y since 1971. In taking final action on the revision of Regulation Y, the Board deferred consideration of the comments on this provision and allowed the existing rule to remain in effect in the interim (49 FR 794, January 5, 1984).

The Board will review this provision of the regulation in connection with the Board's rulemaking regarding real estate investment activities (see Docket Number R-0537 and R-0616).

A determination to reverse the rule could have an (cont)

Timetable:

Action	Date	FR Cite
Board requested comments	05/25/83	48 FR 23620
Board allows existing rule to remain in effect	01/05/84	49 FR 794
Further action indefinite	04/00/89	

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: ABSTRACT CONT: adverse impact on many small banks that are subsidiaries of holding companies because they might be required to restructure their nonbanking activities or to take other action. ◉In light of pending legislative proposals in this area, the Board does not intend to take action at the present time.

Agency Contact: J. Virgil Mattingly, Deputy General Counsel, Legal Division, Federal Reserve System, 202 452-3430

RIN: 7100-AA81

3778. ◉ PROPOSALS FOR LONG-TERM IMPROVEMENT TO THE CHECK COLLECTION SYSTEM (DOCKET NUMBER: R-0632)

Legal Authority: 12 USC 4001 et seq

CFR Citation: None

Legal Deadline: None

Abstract: In December 1987, the Board published for comment several proposals that have the potential to improve the check collection system (52 FR 47112, December 11, 1987). They are, however, long-term proposals that are not likely to be implemented in the immediate future. They include bar-code indorsements, digitized image processing of checks, electronic clearing zones, and an electronic clearing house.

If these were to be introduced, they would likely have a significant economic impact on a substantial number of small banks and small entities including State and local governments that use their services.

The Board will review the public comments and take further action within the next twelve months.

Timetable:

Action	Date	FR Cite
Board issued proposals for comment	12/11/87	52 FR 47112
Board may take further action	12/00/89	

Small Entities Affected: Businesses

Government Levels Affected: Local, State

Agency Contact: Steven O. App, Manager, Federal Reserve System, Div. of Federal Reserve Bank Operations, 202 452-3798

RIN: 7100-AA84

3779. ◉ PRIVATE SECTOR PRESENTMENT (DOCKET NUMBER: R-0631)

Legal Authority: 12 USC 4008(c)

CFR Citation: None

Legal Deadline: None

Abstract: In April 1988, the Board requested comment on whether it should require paying banks to pay for checks presented by private sector collecting banks before 2:00 p.m. in same-day funds and without imposing presentment fees (53 FR 11911, April 11, 1988). The purpose of such a regulation would be to speed the forward collection of checks by requiring paying banks to accept checks without charging a fee later in the day, thus increasing the number of checks that can be collected that day. It would give private sector collecting banks the same rights vis-a-vis paying banks as the Federal Reserve Banks now have.

The Board has not yet made a specific proposal to amend its regulation in this regard. Rather, it is merely requesting comment on the idea of same-day payment in private sector presentments. If such a regulation were to be adopted, small entities that might be affected include small banks and State and local governments.

The Board will review the public comments and determine whether to propose specific regulations.

Timetable:

Action	Date	FR Cite
Board requests comment	04/11/88	53 FR 11911
Board extends comment period to December 1, 1988	07/21/88	53 FR 27565
Board will review further	04/00/89	

Small Entities Affected: Businesses

Government Levels Affected: Local, State

Agency Contact: Louise L. Roseman, Assistant Director, Federal Reserve System, Div. of Federal Reserve Bank Operations, 202 452-2789

RIN: 7100-AA95

FEDERAL RESERVE SYSTEM (FRS)

Final Rule Stage

3780. REGULATION: D - RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (DOCKET NUMBER: R-0571)

Legal Authority: 12 USC 248(k); 12 USC 461(a)

CFR Citation: 12 CFR 204

Legal Deadline: None

Abstract: In May 1986, the Board issued for comment rules to clarify the definition of "deposit" in Regulation D to include the interest or liability associated with a borrowing in the form of certain sales of assets and related transactions by a depository institution (51 FR 16855, May 7, 1986). These transactions include a sale of assets that involves a full guarantee by the institution that, in effect, substitutes the institution's credit standing for that of the ultimate borrower and in which the institution retains the risk of borrower default after the asset is sold.

Further, the regulation currently treats obligations of an affiliate as deposits of the depository institution to the extent

the proceeds are provided to the depository institution. The Board proposes to exclude proceeds received from a sale of assets without recourse to the affiliate. The proposal also would clarify the application of Regulation D to certain of these transactions involving organizations effectively controlled by the depository institution even though not formally affiliated. Finally, the proposal would (CONT)

Timetable:

Action	Date	FR Cite
Board proposed revisions to Regulation D	05/07/86	51 FR 16855
Comment period extended	07/10/86	51 FR 25069
Further Board action by	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ABSTRACT CONT: clarify how the Board measures the "maturity" of an obligation for the purposes of Regulation D. The proposal requests comment on any alternatives that the public believes may be preferable to the Board's proposed amendments. Suggested alternatives will be considered when comments are analyzed.

The proposed rule would apply to all depository institutions. It is not anticipated that the proposal will have a negative impact on the ability of small depository institutions to attract deposits.

The Board will review the comments and take further action within the next two months.

Agency Contact: John Harry Jorgenson, Senior Attorney, Federal Reserve System, Legal Division, 202 452-3778

RIN: 7100-AA82

3781. REGULATION: H - MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (DOCKET NUMBER: R-0436)

Legal Authority: 12 USC 248; 12 USC 321 to 338; 12 USC 486; 12 USC 1814; 12 USC 3907; 12 USC 3909

CFR Citation: 12 CFR 208.17

Legal Deadline: None

Abstract: In June 1988, the Board issued for comment an amendment to Regulation H designed to facilitate the fullest possible dissemination of publicly available information regarding the condition of state member banks (53 FR 19308, June 3, 1988). The amendment would require such banks to make available upon request their year-end reports of condition or other suitable documents describing their condition.

The proposal is not likely to have a significant economic impact on a substantial number of small banks since it would impose no new reporting requirements, but simply require banks to make existing documents available to members of the public.

The Board will review the public comments and take further action within the next two months.

Timetable:

Action	Date	FR Cite
Proposal regulation issued for public comment	06/03/88	53 FR 19308
Further Board action by	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Stephen L. Siciliano, Special Assistant to the General Counsel, Federal Reserve System, Legal Division, 202 452-3920

RIN: 7100-AA86

3782. REGULATION: K - INTERNATIONAL BANKING OPERATIONS (DOCKET NUMBER: R-0550)

Legal Authority: 12 USC 611 et seq

CFR Citation: 12 CFR 211

Legal Deadline: None

Abstract: In August 1985, the Board published for comment proposed regulations that would restrict lending by an Edge Corporation to its affiliates where the Edge Corporation is not subject to the restrictions of Section 23A of the Federal Reserve Act (12 USC 371c) because it is not owned by a U.S. insured bank (50 FR 35238, August 30, 1985). In taking this action, the Board noted the increasing number of owners of Edge Corporations that are not subject to Federal banking supervision and the potential adverse effects that might result from such affiliations, such as the impairment of the Edge's ability to act as an impartial arbiter of credit. The Board requested comment on the effect of the proposal on existing Edge Corporations, especially those owned by foreign banks and whether any exemptions from the restrictions are appropriate.

It is not expected that the proposal would have a significant economic impact on a substantial number of small businesses, because it applies only to organizations involved in international banking. (CONT)

Timetable:

Action	Date	FR Cite
Board proposed revisions to Regulation K	08/30/85	50 FR 35238
Further Board action by	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ABSTRACT CONT: The Board will review the comments and take further action within the next two months.

Agency Contact: Kathleen O'Day, Senior Counsel, Federal Reserve System, Legal Division, 202 452-3786

RIN: 7100-AA58

3783. REGULATION: Q - INTEREST ON DEPOSITS (DOCKET NUMBER: R-0514)

Legal Authority: 12 USC 371b

CFR Citation: 12 CFR 217

Legal Deadline: None

Abstract: In January 1986, the Board issued for comment proposals to clarify, update, and simplify the advertising provisions of Regulation Q (51 FR 1379, January 13, 1986). The revisions incorporate and supersede the proposals of March 1984 concerning advertising of split-rate deposits and IRA/Keogh (HR 10) Plan accounts. The proposal is not expected to have a significant adverse effect on small banks.

The Board will review the comments and is expected to take further action within the next four months.

It is also anticipated that the Board will consider at that time various options with regard to providing written disclosures to consumers about their accounts.

Timetable:

Action	Date	FR Cite
Board proposed revisions	01/13/86	51 FR 1379
Further Board action by	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Patrick J. McDivitt, Attorney, Federal Reserve System, Legal Division, 202 452-3818

RIN: 7100-AA56

3784. REGULATION: Y - BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (DOCKET NUMBER: R-0537)

Legal Authority: 12 USC 1841 Bank Holding Company Act; 12 USC 221 Federal Reserve Act; 12 USC 3901 International Lending Supervision Act of 1983

CFR Citation: 12 CFR 225

Legal Deadline: None

Abstract: In December 1986, the Board requested public comment on a proposal to permit bank holding companies to engage in real estate investment activities within certain limits (52 FR 543, January 7, 1987). The proposed limits are designed to ensure that conduct of the activity does not result in unsafe or unsound practices, unfair competition, conflicts of interest or other adverse effects.

The Board requested public comment on a number of specific items, including whether real estate investment activities may be deemed to be closely related to banking and a proper incident thereto for purposes of Section 4(c)(8) of the Bank Holding Company Act; whether the proposed limits on the size, scope, and manner in which the activity would be conducted are appropriate; whether nonbank companies owned by holding company banks should be prohibited from conducting these activities; and whether the Board should establish special capital requirements for bank holding companies that control banks directly engaged in these activities.

The proposal, if adopted, would permit bank holding (CONT)

Timetable:

Action	Date	FR Cite
ANPRM	01/31/85	50 FR 4519
Board issues proposal for public comment	01/07/87	52 FR 543
Further Board action indefinite	04/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ABSTRACT CONT: companies to engage in limited real estate investment activities that bank holding companies are not now permitted to conduct and would not impose more burdensome requirements on bank holding companies than are currently applicable. Moreover, the proposal includes provisions designed to permit small bank holding companies to participate meaningfully in the proposed activities. The proposal does not impose any limitations on the direct real estate investment activities of holding company banks. (See Docket Number R-0616, for additional information on proposed real estate investment limitations.)

In light of pending legislative proposals in this area, the Board does not intend to take action at the present time.

Agency Contact: J. Virgil Mattingly, Deputy General Counsel, Federal Reserve System, Legal Division, 202 452-3430

RIN: 7100-AA52

3785. REGULATION: Y - BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL AND REGULATION H - MEMBERSHIP OF STATE BANKING INSTITUTIONS (DOCKET NUMBER: R-0616)

Legal Authority: 12 USC 1843 (c)(8); 12 USC 371c; 12 USC 3901

CFR Citation: 12 CFR 225.13(b)(1); 12 CFR 225, Appendix; 12 CFR 208.14

Legal Deadline: None

Abstract: In November 1987, the Board requested comment on whether, in evaluating proposals submitted under section 3 of the Bank Holding Company Act, the Board should consider the impact of real estate activities of the bank to be acquired by the bank holding company on the financial condition of the bank and bank holding company, and, where appropriate, should prohibit banks and savings banks that are acquired by bank holding companies from directly engaging in real estate investment and development activities (52 FR 42301, November 4, 1987).

The Board also requested comment on whether member banks that are not in a bank holding company should be made subject to the interaffiliate lending restrictions of section 23A of the Federal Reserve Act in their dealings with real estate investment and development subsidiaries of the bank.

Finally, the Board requested comment on whether the Board should impose special capital requirements on real estate subsidiaries of banks in a bank holding company, under the Board's authority in the International Lending Supervision Act. These three proposals supplement the Board's earlier (CONT)

Timetable:

Action	Date	FR Cite
Board requested public comment	11/04/87	52 FR 42301
Further Board action indefinite	04/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ABSTRACT CONT: request for comment in December 1986 regarding whether the Board should permit bank holding companies to engage in real estate investment activities.

This proposal is not expected to have a significant economic impact on small companies because the Board believes that very few small banks are currently engaged in real estate investment and development activities, and bank holding companies are not generally permitted to engage in these activities.

In light of pending legislative proposals in this area, the Board does not intend to take action at the present time.

Agency Contact: Scott G. Alvarez, Senior Counsel, Federal Reserve System, Legal Division, 202 452-3583

RIN: 7100-AA88

3786. REGULATION: Y - BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (DOCKET NUMBER: R-0614)

Legal Authority: 12 USC 1843 (c)(8)

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FRS — Final Rule Stage

CFR Citation: 12 CFR 225.25 (b)(9)

Legal Deadline: None

Abstract: In September 1987, the Board requested public comment on whether the Board should authorize bank holding companies to acquire thrift institutions as a general matter under section 4(c)(8) of the Bank Holding Company Act (52 FR 36041, September 25, 1987). The Board currently permits bank holding companies to acquire thrift institutions only if the thrift is failing or has failed, and the acquisiton is likely to result in revitalization of the thrift.

The Board has requested comment on whether changes in the economic and regulatory environment, in particular, the expansion of the powers of thrifts and the growth in state initiatives authorizing interstate banking, justify revisions of the Board's policy and the authorization of thrift acquisitions by bank holding companies. The Board also requested comment on what, if any, conditions the Board should impose on bank holding companies seeking to acquire thrifts.

The Board's proposal, if adopted, is not expected to impose a substantial economic burden on small bank holding companies because this action, if taken, would permit all bank (CONT)

Timetable:

Action	Date	FR Cite
Board requested public comment	09/25/87	52 FR 36041
Further Board action indefinite	04/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ABSTRACT CONT: holding companies to acquire thrift institutions, and would not impose different requirements on companies based on their size.

In light of pending legislative proposals in this area, the Board does not intend to take action at the present time.

Agency Contact: Michael J. O'Rourke, Senior Attorney, Federal Reserve System, Legal Division, 202 452-3288

RIN: 7100-AA62

3787. REGULATION: Y - BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (DOCKET NUMBER: R-0637)

Legal Authority: 12 USC 1843

CFR Citation: 12 CFR 225

Legal Deadline: None

Abstract: In June 1988, the Board proposed for comment amendments to Regulation Y to implement the limitations on grandfathered nonbank banks and industrial banks set forth in the Competitive Equality Banking Act of 1987 (CEBA) (53 FR 21462, June 1, 1988). The limitations in CEBA on nonbank banks include restrictions on new activities, joint-marketing with affiliates, annual growth, and overdrafts. Only the overdraft restriction applies to industrial banks.

The overdraft restriction requires nonbank banks and industrial banks to keep records of their affiliates' transactions in order to measure overdrafts. Because the overdraft restriction is required by CEBA, small entities cannot be exempted from this recordkeeping requirement.

An informal hearing on the public comments was held on July 29, 1988. Further Board action is expected within the next six months.

Timetable:

Action	Date	FR Cite
Board requested public comment	06/01/88	53 FR 21462
Further Board action by	04/00/89	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Elaine Boutilier, Senior Attorney, Federal Reserve System, Legal Division, 202 452-2418

RIN: 7100-AA57

3788. REGULATION: Z - TRUTH IN LENDING (DOCKET NUMBER: R-0625)

Legal Authority: 15 USC 1604, as amended, Truth in Lending Act

CFR Citation: 12 CFR 226

Legal Deadline: None

Abstract: In December 1987, the Board published a proposal to amend Regulation Z to require additional disclosures for home equity lines of credit (52 FR 48702, December 24, 1987).

The disclosures would apply to home equity transactions secured by a consumer's principal dwelling and would be provided much earlier in the credit-granting process. Most of the public comments supported additional disclosure requirements but raised substantive questions about several aspects of the proposal.

In response to the comments, a revised draft was developed and circulated to those who commented on the December proposal. The revised draft is similar to the December proposal in requiring creditors to give more information about the terms and conditions of a home equity plan. In the case of variable rate plans, more information about the variable rate feature as well as an historical table showing the effects of index changes on interest rates over a fifteen-year period also would be provided.

Creditors also would have to give consumers a brochure that describes home equity loans.

The revised draft, however, differs from the December (cont)

Timetable:

Action	Date	FR Cite
Board proposed amendment	12/24/87	52 FR 48702
Further Board action indefinite	04/00/89	

Small Entities Affected: Businesses

Government Levels Affected: State

Additional Information: ABSTRACT CONT: proposal concerning the timing, content, and format of the disclosures that must be provided. The changes respond to both technical and substantive questions raised by the commenters.

If the Board adopts the revised proposal, small institutions engaged in home equity lending could incur additional expenses, including costs to revise and reprint disclosure forms and to acquire and distribute the home equity brochures.

Before adopting any final amendments to its rule, the Board would consider appropriate steps to minimize the burdens and costs of compliance. Although the revised proposal is ready for final action, the Board is delaying action because of legislation pending in Congress that would impose additional disclosure requirements and substantive restrictions on home equity loans.

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Agency Contact: Sharon Bowman, Attorney, Federal Reserve System, Division of Consumer and Community Affairs, 202 452-3667

RIN: 7100-AA81

3789. ◆ REGULATION: CC - AVAILABILITY OF FUNDS AND COLLECTION OF CHECKS (DOCKET NUMBER: R-0639)

Legal Authority: 12 USC 4001 et seq

CFR Citation: 12 CFR 229.51

Legal Deadline: None

Abstract: In June 1988, the Board issued for comment a proposed amendment to Regulation CC that would prohibit banks from issuing teller's checks unless a depositary bank located in the same check processing region as the issuing bank would normally receive credit for the check as early as credit for a check drawn on the issuing bank (53 FR 24093, June 27, 1988). The purpose of the amendment is to address the problems connected with certain delayed disbursement practices.

The rule will affect all banks regardless of size. It is not expected that the proposal will impose significant costs on small banks other than the costs of changing paying banks and purchasing new check stock for those banks that do not currently meet the equivalent availability standards.

The Board will review the public comments and take further action within the next three months.

Timetable:

Action	Date	FR Cite
Board requested comment on a proposed amendment to Regulation CC	06/27/88	53 FR 24093
Further Board action by	11/00/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Louise L. Roseman, Assistant Director, Federal Reserve System, Div. of Federal Reserve Bank Operations, 202 452-2789

RIN: 7100-AA85

3790. FURTHER PROPOSALS TO REDUCE RISKS ON LARGE-DOLLAR WIRE TRANSFER SYSTEMS (DOCKET NUMBER: R-0592)

Legal Authority: 12 USC 221 et seq

CFR Citation: None

Legal Deadline: None

Abstract: In December 1986, the Board requested comment on several proposals that would refine its policy statement on payment system risk (51 FR 45042, December 16, 1986). The proposals included modifying automated clearing house transactions to reduce risks (R-0591) and various proposals to charge a fee for daylight overdrafts as a way of reducing risks associated with them (R-0592). It is not expected that these actions will have a significant economic impact on a substantial number of small entities, because small entities do not usually participate in large-dollar wire transfer systems. In December 1987, following review of public comments, the Board approved changes in the automated clearing house mechanism to reduce risk (52 FR 49086, December 29, 1987). Action on pricing of daylight overdrafts (Docket No. R-0592) is expected in the Fall of 1988.

Further, the Board will be conducting a zero-based review of its risk reduction policy during 1988.

Timetable:

Action	Date	FR Cite
Board requested comment	12/16/86	51 FR 45042
Board adopted proposal in part	12/29/87	52 FR 49086
Further Board action by	11/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Edward C. Ettin, Deputy Director, Federal Reserve System, Division of Research and Statistics, 202 452-2366

RIN: 7100-AA76

FEDERAL RESERVE SYSTEM (FRS) — Completed Actions

3791. REGULATION: C - HOME MORTGAGE DISCLOSURE (DOCKET NUMBER: R-0625)

Legal Authority: 12 USC 2804, Home Mortgage Disclosure Act of 1975

CFR Citation: 12 CFR 203

Legal Deadline: None

Abstract: In May 1988, the Board proposed for public comment amendments to Regulation C to implement Title V, section 565 of the Housing and Community Development Act of 1987 (53 FR 17061, May 13, 1988). Section 565 amends the Home Mortgage Disclosure Act to bring within its coverage mortgage banking subsidiaries of bank holding companies and savings and loan holding companies, as well as savings and loan service corporations. The regulatory amendments implement this expansion in coverage and clarify and simplify the regulation where necessary.

Following review of public comments, the Board, in August, adopted the amendments with minor revisions (53 FR 31663, August 19, 1988). It is not anticipated that the amendments will have a significant economic impact on a substantial number of small institutions.

Timetable:

Action	Date	FR Cite
Board proposed amendments for public comment	05/13/88	53 FR 17061
Board adopted amendments	08/19/88	53 FR 31663

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: John Wood, Senior Attorney, Federal Reserve System, Division of Consumer and Community Affairs, 202 452-3412

RIN: 7100-AA83

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3792. REGULATION H - MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM

Legal Authority: 12 USC 321

CFR Citation: 12 CFR 208.6(e)

Legal Deadline: None

Abstract: The last Semi-Annual Agenda included a possible amendment to Regulation H designed to provide a decrease of approximately 20,000 burden hours in paperwork, as requested by the Office of Management and Budget. The regulation would be amended to raise the exemption from various record-keeping requirements in Regulation H for securities transactions, conducted by banks, from 200 to 1,000 transactions per year for customers over the prior three-calendar-year period, exclusive of transactions in U.S. Government and Federal agency obligations. This action would diminish burdens on smaller state member banks; therefore, the amendment would have no adverse effect on small banks. It is not expected that the Board will consider this matter during the next six months.

Timetable:

Action	Date	FR Cite
Action on this aspect of Regulation H is not expected during the next six months	08/09/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Robert S. Plotkin, Assistant Director, Federal Reserve System, Div. of Banking Supervision and Regulation, 202 452-2782

RIN: 7100-AA58

3793. REGULATION T - CREDIT BY BROKERS AND DEALERS (DOCKET NUMBER: R-0552)

Legal Authority: 15 USC 78g Securities Exchange Act of 1934, as amended; 15 USC 78w Securities Exchange Act of 1934, as amended

CFR Citation: 12 CFR 220

Legal Deadline: None

Abstract: In April 1988, the Board requested comment on whether it should amend the definition of "OTC margin bond" in Regulation T to permit marginability of foreign sovereign debt securities. Following review of public comments, the Board approved the amendment on August 10, 1988, in substantially the form proposed (53 FR 30550, August 16, 1988).

It is not anticipated that this proposal will affect a significant portion of the overall lending activities of a substantial number of small firms.

Timetable:

Action	Date	FR Cite
Board requested comment	04/20/88	53 FR 14812
Board adopted amendment	08/10/88	53 FR 30550

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Laura Homer, Securities Credit Officer, Federal Reserve System, Div. of Banking Supervision and Regulation, 202 452-2781

RIN: 7100-AA50

3794. REGULATION Y - BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (DOCKET NUMBER: R-0628)

Legal Authority: 12 USC 3907; 12 USC 3901 International Lending Supervision Act of 1983

CFR Citation: 12 CFR 225, Appendix A

Legal Deadline: None

Abstract: In January 1988, the Board proposed to amend its Capital Adequacy Guidelines by adding a risk-based capital measure to supplement existing ratios of primary and total capital to total assets. Based in part on comments received in response to that earlier proposal the Board, in conjunction with the other Federal bank regulatory agencies and the central bank governors of the Group of Ten countries, published a revised capital proposal in December 1987, which would establish minimum risk-based capital standards applicable to commercial banking organizations in twelve major industrial countries.

In January 1988, the Board requested public comment on this revised proposal and, in particular, on how it should be applied to member banks of the Federal Reserve System and to bank holding companies.

The proposed risk-based capital framework consists of a revised definition of capital, a system for assigning assets and off-balance sheet items to risk categories, and a schedule for establishing minimum risk-based capital ratios (7.25 percent by year-end 1988, and 8.0 percent by year-end 1992). The (CONT)

Timetable:

Action	Date	FR Cite
Board requested comment	01/31/86	51 FR 3976
Board requests comment on revised proposal	08/24/87	52 FR 9304
Board requested comment on revised proposal	10/15/87	52 FR 8549
Board approved guidelines in principle	08/03/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ABSTRACT CONT: proposal also provides for transitional arrangements and a phase-in period to facilitate adoption and implementation of the measure.

This proposal has been designed to take account of those practices which have been engaged in primarily by larger banking organizations. Moreover, the major parts of the proposal have been structured to apply generally only to bank holding companies with assets of $150 million or more. Consequently, the proposal is not likely to have a significant economic impact on smaller banking organizations.

On August 3, 1988, the Board approved in principle revisions to the guidelines, based in part on the comments received on the initial proposal, as well as on additional discussions with the other central bank authorities. In connection with the above determinations, the Board has decided to study further the possible effect of any voting rights offered with a security on the percentage caps assigned to certain classes of securities within the risk-based capital framework.

Agency Contact: Michael J. O'Rourke, Senior Attorney, Federal Reserve System, Legal Division, 202 452-3268

RIN: 7100-AA56

3795. REGULATION CC - AVAILABILITY OF FUNDS AND COLLECTION OF CHECKS AND REGULATION J - COLLECTION OF CHECKS AND OTHER ITEMS AND TRANSFERS OF FUNDS (DOCKET NUMBER: R-0629)

Legal Authority: 12 USC 4001 et seq

CFR Citation: 12 CFR 229; 12 CFR 210

Legal Deadline: Final, Statutory, September 1, 1988.

Abstract: In December 1987, the Board proposed for public comment a new rule, Regulation CC, to implement the Expedited Funds Availability Act (52 FR 47112, December 11, 1987). The proposal set out the requirements that banks and other depository institutions make funds deposited into accounts available according to specified time schedules and that institutions disclose their funds availability policies to their customers. The proposed regulation also establishes rules to speed the return of unpaid checks. The Board also proposed to amend its existing Regulation J, which governs the collection of checks by Federal Reserve Banks, to conform to the new regulation. The proposed Regulation CC and the amendments to Regulation J would apply to all depository institutions, regardless of size, except that small institutions that do not hold transaction accounts would be exempt from the availability, disclosure, and payment of interest requirements.

In a related action (Docket Number R-0621), the Board requested comment on new Federal Reserve Bank services to assist institutions in complying with the new regulations. (CONT)

Timetable:

Action	Date	FR Cite
Board proposed new rule	12/11/87	52 FR 47112
Board adopted new Regulation CC	05/27/88	53 FR 19372
Board adopted the amendments to Regulation J	06/13/88	53 FR 21983

Small Entities Affected: Businesses

Government Levels Affected: State

Additional Information: ABSTRACT CONT: In May 1988 the Board adopted the proposed Regulation CC and in June the proposed amendments to Regulation J (53 FR 19372, May 27, 1988, and 53 FR 21983, June 13, 1988) to take effect on September 1, 1988.

In addition, in August 1988, the Board adopted an interim rule in response to a court decision that changed the definition of "paying bank," made conforming amendments to other portions of the regulation, and made changes to the disclosure rules. The Board requested comment on the interim rule (Docket No. R-0643) and expects to adopt a final rule in October 1988.

Agency Contact: Joseph R. Alexander, Senior Attorney, Federal Reserve System, Legal Division, 202 452-2480

RIN: 7100-AA60

3796. RULES REGARDING AVAILABILITY OF INFORMATION (DOCKET NUMBER: R-0501)

Legal Authority: 5 USC 552; 12 USC 248(i); 12 USC 248(e)

CFR Citation: 12 CFR 261

Legal Deadline: None

Abstract: The Board's Rules Regarding Availability of Information are intended in part to fulfill the requirement of section 552 of Title 5 of the United States Code that every Federal agency publish in the Federal Register its procedures as to how the public may obtain information, make submittals or requests, and obtain decisions; information on how the agency's functions are channeled and determined; and descriptions of forms available and the places where they may be obtained.

The revision, issued for public comment in April 1987 and adopted in June 1988, reorganizes the rules into appropriate subparts, and clarifies the procedures for requesting access to documents and information, the processing and disposition of such requests, and the procedures regarding the discretionary release of confidential information (53 FR 20812, June 1, 1988). The revision is not expected to have a significant economic impact on a substantial number of small entities that would be subject to the regulation.

Timetable:

Action	Date	FR Cite
Board requested comment	04/23/87	52 FR 13458
Board issued final rule	06/01/88	53 FR 20812

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Stephen L. Siciliano, Special Assistant to the General Counsel, Federal Reserve System, Legal Division, 202 452-3526

RIN: 7100-AA73

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Federal Trade Commission

Semiannual Regulatory Agenda

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FEDERAL TRADE COMMISSION (FTC)

FEDERAL TRADE COMMISSION

16 CFR Ch. I

Semiannual Regulatory Agenda

AGENCY: Federal Trade Commission.

ACTION: Semiannual regulatory agenda.

SUMMARY: The following agenda of Commission proceedings is published in accordance with section 22(d)(1) of the Federal Trade Commission Act, 15 U.S.C. 57b-3(d)(1), and section 610(c) of the Regulatory Flexibility Act, 5 U.S.C. 610(c). Each projected event reflects the FTC staff's assessment of events that it expects will occur in the listed proceedings during the coming year. No Commission determination on the need for or the substance of a trade regulation rule or any other procedural option should be inferred from the projected events included in this agenda.

Several agenda items concern proceedings that may affect a substantial number of small businesses as that term is used in the Regulatory Flexibility Act. Whether any such proceeding will result in a rule which is likely to have a significant economic impact on such entities depends upon final Commission determinations on the need for and the substance of a trade regulation rule.

Except for notice of completed actions, the information in this agenda represents the judgment of Commission staff, based upon information now available. These views should not be regarded as a final staff position, nor should they be attributed to the Commission itself. The Commission will address the issues presented on the rulemaking record in the final consideration of each proceeding.

Agenda items include the projected timing of certain future actions. In most instances the dates of future events are listed by month, not a specific day. Further details may be obtained from the agency contact responsible for a particular proceeding. Discovery of new information, change of circumstances, or changes in the law may alter the information set forth in this agenda.

FOR FURTHER INFORMATION CONTACT: Further details may be obtained from the agency contact responsible for a particular proceeding.

By direction of the Commission.

Donald S. Clark,

Secretary.

Prerule Stage

Sequence Number	Title	Regulation Identifier Number
3797	Cooling-Off Period for Door-to-Door Sales	3084-AA18
3798	Mail Order Merchandise	3084-AA19
3799	Informal Dispute Settlement Procedures	3084-AA30

Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
3800	Review of the Funeral Industry Practices Rule	3084-AA05
3801	Amendment to Trade Regulation Rule Concerning Preservation of Consumers Claims and Defenses ("Holder-in-Due Course Rule")	3084-AA08
3802	Review of the Premerger Notification Rules and Report Form	3084-AA23
3803	Games of Chance in the Food Retailing and Gasoline Industries Rule	3084-AA24

Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
3804	Ophthalmic Practice Rules	3084-AA03
3805	Retail Food Store Advertising and Marketing Practices	3084-AA17
3806	Appliance Labeling Rule – Energy Policy and Conservation Act	3084-AA26

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Completed Actions

Sequence Number	Title	Regulation Identifier Number
3807	Proprietary Vocational and Home Study Schools	3084-AA11
3808	Review of Content Disclosure Requirements for Textile, Wool, and Fur Products	3084-AA25
3809	Fair Packaging and Labeling Rules	3084-AA36

FEDERAL TRADE COMMISSION (FTC)

Prerule Stage

3797. COOLING-OFF PERIOD FOR DOOR-TO-DOOR SALES

Legal Authority: 15 USC 41 et seq Federal Trade Commission Act

CFR Citation: 16 CFR 429

Abstract: The rule states that sellers of consumer goods or services with a purchase price of $25.00 or more who sell away from their place of business must furnish to the buyer certain information regarding the buyer's right to cancel sales within three business days and must give the buyer a full refund of any down payment upon the buyer's cancellation. The rule requires a seller to furnish the buyer with a complete receipt or copy of a contract, along with a notice informing the buyer of the right to cancel the transaction, and to furnish the buyer with a completed Notice of Cancellation. The rule is intended to benefit consumers by permitting them to reflect on their purchase and the terms of any contract, to compare the purchase with offerings of other sellers, and to ascertain the accuracy of any representations made. The resulting costs to sellers include the costs associated with cancellation (processing cancelled orders, returning downpayments, retrieving delivered goods, and returning traded-in merchandise) and the additional cost of printing the required cancellation notices. Since the rule affects all door-to-door sellers, it may have a significant economic effect on a (cont)

Timetable:

Action	Date	FR Cite
Begin Reg Flex Act Review	03/03/83	48 FR 9032
NPRM	06/10/87	52 FR 29539
End Reg Flex Review	06/12/87	52 FR 29507
Commission Consideration of Staff Recommendations	11/00/88	
Final Action	02/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: ABSTRACT CONT: substantial number of small entities. The Commission has completed its review of the rule in accordance with Section 610 of the Regulatory Flexibility Act. Staff has explored non-substantive changes in the notices required by the rule. Staff also has studied possible exemptions for sales of automobiles at public auctions and sales of arts and crafts at fairs. The Commission has issued an NPRM soliciting comment on changes in the notice requirement and possible exemptions from the rule. The staff has completed its review of the public comments and has forwarded its recommendations to the Commission, which will consider them in late 1988.

Agency Contact: Lewis Franke, Federal Trade Commission, Division of Enforcement, Bureau of Consumer Protection, Washington, DC 20580, 202 326-3000

RIN: 3084-AA15

3798. MAIL ORDER MERCHANDISE

Legal Authority: 15 USC 41 et seq Federal Trade Commission Act

CFR Citation: 16 CFR 435

Abstract: The Commission's rule concerning mail order merchandise was promulgated on October 22, 1975. The rule requires mail order sellers to possess a reasonable basis for any claims made concerning shipping date or, in the absence of any specifically stated date, to ship the ordered merchandise within thirty (30) days of receipt of an order. In the event of delays in shipment, the rule establishes notification procedures whereby buyers have the option either to agree to the delay or to cancel the order and receive a prompt refund. The Commission's rule is designed to address a number of significant consumer problems described on the record of the rulemaking proceeding, including failure to deliver ordered merchandise, unexplained delays in delivery, failure to make prompt (or any) refunds upon cancellation of an order, and inability to obtain responses to inquiries about pending orders. The rule enables consumers to obtain ordered merchandise within a reasonable time period or, if delays occur, to cancel the order and obtain a prompt refund, so that losses due to undelivered merchandise, delays, and inadequate or nonexistent refunds can be avoided. By subjecting sellers (cont)

Timetable:

Action	Date	FR Cite
Rule Promulgated	10/22/75	40 FR 49492
Begin Reg Flex Act Review	10/20/83	
End Reg Flex Review	06/10/86	51 FR 20991
Commission Consideration of Staff Recommendations (if appropriate)	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: ABSTRACT CONT: who solicit orders they cannot fill within a reasonable time to the risk

FTC — Prerule Stage

of cancellation, the rule may provide competitive benefits, since buyers may shift their business to more efficient merchants. Costs relating to the rule may include the cost of establishing a system for monitoring and recording orders, deliveries, delays, cancellations, consents to delays, and refunds; the costs of complying with the rule's notification requirements regarding delays (printing, postage, etc.); the cost of processing refunds; and additional inventory costs. Pursuant to Sec. 610 of the Regulatory Flexibility Act, the Commission has reviewed this rule and determined that it has not had a significant economic impact on a substantial number of small entities. In addition, the staff is considering whether the rule should be amended to cover orders placed by telephone or other electronic means. Whether changes to the rule will be proposed will not be determined until the staff's review has been completed.

Agency Contact: Raymond L. Rhine, Federal Trade Commission, Division of Enforcement, Bureau of Consumer Protection, Washington, DC 20580, 202 326-2973

RIN: 3084-AA19

3799. INFORMAL DISPUTE SETTLEMENT PROCEDURES

Legal Authority: 15 USC 2309; 15 USC 2310(a)(2) Magnuson-Moss Warranty--FTC Improvements Act

CFR Citation: 16 CFR 703

Abstract: The Magnuson-Moss Warranty Act, enacted on January 4, 1975, requires that the Federal Trade Commission promulgate a rule prescribing the minimum requirements for any informal dispute settlement procedure which is incorporated into the terms of a written warranty subject to the Act. Because warrantors are not required to incorporate such procedures into warranties, the rule applies only to warrantors who choose to do so. The present rule sets forth detailed procedural, recordkeeping, and reporting requirements for dispute settlement mechanisms designed to insure their fairness. To assess whether any changes are needed, the Commission conducted a regulatory negotiation process in which an advisory committee was charged to recommend to the Commission revisions to the rule that would facilitate the Congressional (cont)

Timetable:

Action	Date	FR Cite
Promulgation of Original Rule	12/31/75	
Initial Notice of Intent to Form Advisory Committee	02/12/86	51 FR 5205
Convene Advisory Committee	09/23/86	
Facilitator Report to Commission	12/10/87	
Commission Consideration of Petition to Amend Rule	11/00/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: ABSTRACT CONT: objective of encouraging warrantors to establish and participate in informal dispute settlement mechanisms. The committee met for the last time on June 17, 1987, and failed to reach a consensus on rule revisions. The Commission and its staff will continue to monitor the impact of the current informal dispute settlement procedures rule. On April 11, 1988, the FTC received a petition from the Motor Vehicle Manufacturers Association and the Automobile Importers Association to amend this rule in order to preempt certain state "lemon" laws. The Commission will consider this petition and take appropriate action.

Agency Contact: Gary Laden, Federal Trade Commission, Division of Marketing Practices, Federal Trade Commission, Washington, DC 20580, 202 326-3115

RIN: 3084-AA30

FEDERAL TRADE COMMISSION (FTC) — Proposed Rule Stage

3800. REVIEW OF THE FUNERAL INDUSTRY PRACTICES RULE

Legal Authority: 15 USC 45; 15 USC 46(g); 15 USC 57(a)

CFR Citation: 16 CFR 453

Abstract: The funeral industry practices rule, which became effective on April 30, 1984, seeks to increase consumer access to accurate information about prices and legal requirements prior to and at the time of purchase of funeral goods and services. The Rule: (1) requires funeral directors to provide consumers with itemized pre-sale disclosures; (2) prohibits misrepresentation of legal and cemetery requirements and the preservative or protective value of embalming, caskets, and vaults; (3) prohibits funeral directors from requiring a casket for cremations, or any other tie-in arrangements; (4) prohibits funeral directors from charging for goods and services not specifically ordered, such as embalming, unless required by law; and (5) requires funeral directors to give, on request, price information over the telephone. The Rule provides that no later than four years after its effective date, the Commission will begin a rulemaking to determine whether the Rule should be amended or terminated. The Commission has issued the Notice of Proposed Rulemaking and scheduled the other stages of that proceeding.

Timetable:

Action	Date	FR Cite
Rule Promulgated	09/24/82	47 FR 42260
ANPRM	12/09/87	52 FR 46706
NPRM	05/31/88	53 FR 19864
Hearings Begin	11/00/88	
Hearings End	01/00/89	
Final Action	11/00/89	
Effective Date		
Prohibitions	01/01/84	
Affirmative Requirements	04/30/84	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Raouf M. Abdullah, Federal Trade Commission, Division of Service Industry Practices, Bureau of

FTC — Proposed Rule Stage

Consumer Protection, Washington, D.C. 20580, 202 326-3224

RIN: 3084-AA05

3801. AMENDMENT TO TRADE REGULATION RULE CONCERNING PRESERVATION OF CONSUMERS CLAIMS AND DEFENSES ("HOLDER-IN-DUE COURSE RULE")

Legal Authority: 15 USC 45 Federal Trade Commission Act; 15 USC 57(a) Federal Trade Commission Act

CFR Citation: 16 CFR 433

Abstract: The objective of the proposed amendment is to ensure that a purchaser's duty to pay is not separated from sellers' duty to perform when consumer sales are financed by third party creditors or purchase money lenders. The original rule requires sellers to ensure that credit contracts used in consumer installment sales and purchase money loans contain a provision that makes any holder of the contract subject to all legal claims and defenses related to the sale transaction which the buyer may have against the seller. The proposed amendment would extend to creditors the obligation to ensure that credit contracts contain the required provision. Benefits from the proposed amendments may include improvement in the retail market due to increased scrutiny by creditors of the sellers with whom they do business and availability to consumers of additional claims and defenses against creditors. Some creditors may have increased costs associated with screening contracts and monitoring the reputations of retailers with whom they deal. Alternatives considered by the Commission include: rejection of the amendment; postponement of decision pending additional information on (cont)

Timetable:

Action	Date	FR Cite
Notice of Proposed Amendment	11/18/75	40 FR 53530
Rule & Statement of Basis & Purpose	11/18/75	40 FR 53506
Final Notice of Proposed Amendment	02/05/76	41 FR 5305
Guidelines on TRR	05/14/76	41 FR 20022
Statement of Enforcement Policy	08/16/76	41 FR 34594
Open End Consumer Credit Contracts	09/16/77	42 FR 46509
Presiding Officer's Report	02/16/78	43 FR 6810
Staff Report	11/24/78	43 FR 54950
Tentative Cmsn Approval and Request for Comment	11/15/79	44 FR 65771
Commission Consideration of Staff Recommendations	12/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: ABSTRACT CONT: compliance with the original rule; adoption of the amendment extending the rule to creditors and also making additional technical amendments. The amendment would shift some compliance costs from small businesses to creditors that control the contract form. Otherwise, because the existing rule already applies to retail sellers, the amendment should have no appreciable effect on other small businesses.

Agency Contact: Jonathan D. Jerison, Federal Trade Commission, Division of Credit Practices, Bureau of Consumer Protection, Washington, DC 20580, 202 326-3223

RIN: 3084-AA06

3802. REVIEW OF THE PREMERGER NOTIFICATION RULES AND REPORT FORM

Significance: Agency Priority

Legal Authority: 15 USC 18a Clayton Act

CFR Citation: 16 CFR 801; 16 CFR 802; 16 CFR 803; 16 CFR 803, (Apendix)

Abstract: The Premerger Notification Rules and the Antitrust Improvements Act Notification and Report Form were adopted pursuant to Section 7A of the Clayton Act. Section 7A requires firms of a certain size contemplating mergers or acquisitions of a specified size to file notification with the Federal Trade Commission (FTC) and the Department of Justice (DOJ) and to wait a designated period before consummating the transaction. It also requires the FTC, with the concurrence of the Assistant Attorney General for Antitrust, to promulgate rules requiring that notification be in a form and contain information necessary to enable the FTC and DOJ to determine whether the proposed acquisition may, if consummated, violate the antitrust laws. These rules are continually reviewed in order to improve the program's effectiveness and reduce the paperwork burden on the business community. In November 1988, the Commission may propose to amend these rules to exempt the acquisition of small percentages of an issuer's voting securities and two alternative amendments that would provide other special treatment for acquisitions of small percentages of voting securities. (cont)

Timetable:

Action	Date	FR Cite
Begin Review	09/30/81	
NPRM -- De Minimis Exemption	11/00/88	
Final Action -- De Minimis Exemption	02/00/89	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ABSTRACT CONT: in fiscal year 1989 the Commission expects to take final action on these proposals.

Agency Contact: Roberta S. Baruch, Deputy Assistant Director, Federal Trade Commission, Bureau of Competition, Washington, DC 20580, 202 326-3300

RIN: 3084-AA23

3803. GAMES OF CHANCE IN THE FOOD RETAILING AND GASOLINE INDUSTRIES RULE

Legal Authority: 15 USC 45 Federal Trade Commission Act; 15 USC 57(a) Federal Trade Commission Act

CFR Citation: 16 CFR 419

Abstract: The Commission's trade regulation rule concerning games of chance became effective on October 17, 1988. The rule establishes requirements for food and gasoline retailers in conducting and advertising games of chance by requiring disclosure of odds-

of-ordering and price information in broadcast and print advertisements, as well as in point of sale information. In January, 1988, the Commission granted a temporary partial exemption to allow supermarkets and gas stations to advertise their games on radio and television without disclosing full information on prizes and odds-of-winning. In addition, the Commission also published an advance notice of proposed rulemaking on whether to make the broadcast exemption permanent. Finally, the Commission has proposed to reduce the recordkeeping requirements of the rule from three years to one year in keeping with the goals of the Paperwork Reduction Act, and requested public comment on other possible areas where amendments to the rule may be appropriate. The rule benefits consumers by allowing contestants to enter games of chance with full knowledge of all material information to enable equal competition for (cont)

Timetable:

Action	Date	FR Cite
Promulgation of Original Rule	09/19/69	34 FR 13302
ANPRM	01/04/83	48 FR 265
Temporary Partial Exemption	01/10/83	48 FR 1046
NPRM	07/07/88	53 FR 25503
Staff Report	02/28/89	
Presiding Officer Report	03/31/89	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: ABSTRACT CONT: prizes. The major costs to industry are the possible burdens of the electronic media disclosure and recordkeeping provisions of the rule, both of which have been reconsidered. The Commission issued an NPRM on July 7, 1988 to consider amendments that would reduce the burden of the rule's recordkeeping and disclosure requirements.

Agency Contact: John M. Mandeshall, Federal Trade Commission, Cleveland Regional Office, Suite 500- Mall Building, 118 St. Clair Ave, Cleveland, Ohio 44114, 216 522-4207

RIN: 3084-AA24

FEDERAL TRADE COMMISSION (FTC) — Final Rule Stage

3004. OPHTHALMIC PRACTICE RULES

Legal Authority: 15 USC 45 Federal Trade Commission Act; 15 USC 57(a) Federal Trade Commission Act

CFR Citation: 16 CFR 456, (Revision)

Abstract: In January, 1985, The Commission Published an NPRM seeking public comment on a proposed trade regulation rule that would have the effect of suspending certain state-imposed restrictions on the forms of practice and other business aspects of the delivery of eye care to consumers. The hearings have been completed and the reports required by the Commission's rules have been submitted. On February 10, 1988, the Commission voted to promulgate a trade regulation rule that would prohibit certain state restrictions on optometrists' commercial practices. The rule would remove four state restrictions, including those that ban optometrists from having offices in shopping centers. The Commission also voted to continue requiring eye doctors to give consumers their eyeglass prescriptions automatically. The recommended rule would also prohibit the following state restrictions: (1) limitations on the number of branch offices that optometrists may own or operate; (2) prohibitions on the practice of optometry in commercial locations, such as shopping malls; (3) prohibitions on employer-employee or other affiliations between optometrists and persons who are not (cont)

Timetable:

Action	Date	FR Cite
ANPRM	12/01/80	45 FR 79823
ANPRM Comment Period End	02/02/81	
NPRM	01/04/85	50 FR 588
NPRM Comment Period End	04/09/85	
Staff Report	11/17/86	51 FR 43217
Presiding Officer Report	11/28/86	51 FR 43217
Oral Presentations to the Commission	01/29/88	
Commission Decision to Issue Amended Rule	02/10/88	
Final Rule Published	11/00/88	
Final Rule Effective	05/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Local, State

Additional Information: ABSTRACT CONT: optometrists; and (4) prohibitions on the use of trade names by optometrists. The Commission directed the staff to prepare final rule language and a statement of basis and purpose as soon as possible for final issuance.

Agency Contact: Renate Kimbrell, Federal Trade Commission, Division of Service Industry Practices, Bureau of Consumer Protection, Washington, DC 20580, 202 326-3267

RIN: 3084-AA08

3005. RETAIL FOOD STORE ADVERTISING AND MARKETING PRACTICES

Legal Authority: 15 USC 41 et seq Federal Trade Commission Act

CFR Citation: 16 CFR 424

Abstract: The Commission's Rule on Retail Food Store Advertising and Marketing Practices states that it is a violation of Section 5 of the Federal Trade Commission Act for grocery stores to advertise products at a particular price unless such products are in stock and conspicuously and readily available for sale at the advertised price during the effective period of the advertisement. If a store runs out of advertised products, it is in violation of the rule even if the store noted the limitations on availability in its advertisement and even if the store provides rainchecks or substitute items. The rule is intended to benefit consumers by ensuring that advertised items are available, that advertising-induced purchasing trips are not fruitless, and that store prices accurately reflect the prices appearing in the ads. The rule may cause costs to be incurred in maintaining sufficient inventory to meet anticipated demand, and costs associated with the monitoring of price changes, changing marked prices, training employees to comply with the rule and keeping records to prove compliance. (cont)

Timetable:

Action	Date	FR Cite
ANPRM	12/10/84	49 FR 48059
ANPRM Comment Period End	02/08/85	
NPRM	10/24/85	50 FR 43224
NPRM Comment Period End	01/24/86	
Commission Decision to Amend the Rule	04/21/88	
Final Action	12/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ABSTRACT CONT: The rule may also discourage the advertising of certain kinds of products, such as perishables or goods that are available to the store only in limited supply. The staff concluded from a careful review of the rule's effects that the costs the rule imposes on consumers in the form of higher grocery prices significantly exceeds its benefits. On April 21, 1988, the Commission decided to modify the rule so that a store could comply by clearly and adequately disclosing in its advertisements that there are limitations on availability, or by offering rainchecks or substitute items if supplies ran out. The Commission expects to publish a final rule as amended with a statement of basis and purpose before the end of 1988.

Agency Contact: Walter Gross, Federal Trade Commission, Division of Service Industry Practices, Bureau of Consumer Protection, Washington, DC 20580, 202 326-3318

RIN: 3084-AA17

3006. APPLIANCE LABELING RULE – ENERGY POLICY AND CONSERVATION ACT

Legal Authority: 42 USC 6294 National Energy Conservation Policy Act; PL 94-163 Energy Policy and Conservation Act, Sec 324, 1975

CFR Citation: 16 CFR 305

Abstract: The Energy Policy and Conservation Act (EPCA) required the Commission to consider labeling rules for the disclosure of energy information, based on standard test procedures prescribed by the Department of Energy, for at least 13 categories of major household appliances. The Commission adopted a labeling rule for seven appliance categories: (1) refrigerators and refrigerator- freezers; (2) freezers; (3) dishwashers; (4) clothes washers; (5) water heaters; (6) room air conditioners; and (7) furnaces. The Commission exempted five other categories of appliances. In 1987, the Commission amended the rule to include central air conditioners and heat pumps and to include two new types of furnace under the rule's coverage. The provisions took effect on June 7, 1988. Since the Commission's rule implements the requirements of EPCA, most of the costs imposed on industry members may not be attributable to the rule. The rule applies mainly to manufacturers of household appliances but does impose some burdens on distributors and retailers. Some of those entities may be small businesses under section 610 of the Regulatory Flexibility Act. Therefore, the Commission (cont)

Timetable:

Action	Date	FR Cite
Begin Reg Flex Act Review	04/08/85	50 FR 13620
End Reg Flex Review	06/13/88	53 FR 22106
NPRM (comprehensive review)	06/13/88	53 FR 22022
Final Action (comprehensive review)	12/00/88	
NPRM (Fluorescent Light Ballasts)	01/00/89	
Final Action (Ballasts)	07/01/89	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: ABSTRACT CONT: has reviewed the rule to determine whether it has had a significant economic effect on a substantial number of small entities. The Commission has terminated that review and has begun another rulemaking to consider several amendments that would make the rule's energy usage disclosure scheme more efficient for consumers and business. The Commission has estimated that the proposals will reduce the paperwork burden of compliance by 5 percent. Recent amendments to EPCA require the Commission to issue a rule prescribing labeling requirements for fluorescent light ballasts (transformers).

Agency Contact: James Mills, Federal Trade Commission, Division of Enforcement, Bureau of Consumer Protection, Washington, DC 20580, 202 326-3035

RIN: 3084-AA25

FEDERAL TRADE COMMISSION (FTC) — Completed Actions

3007. PROPRIETARY VOCATIONAL AND HOME STUDY SCHOOLS

Legal Authority: 15 USC 45 Federal Trade Commission Act; 15 USC 57(a) Federal Trade Commission Act

CFR Citation: 16 CFR 438, (New)

Abstract: In 1979, the Second Circuit Court of Appeals set aside the rule as originally issued by the Commission, citing problems with some of the remedies that the rule provided to purchasers of proprietary vocational training. Late in 1987, the Staff forwarded recommendations as to how the Commission should respond to the Court's decision. Alternatives include terminating the rule or issuing a revised rule. Alternatives to rulemaking include case-by-case enforcement, and FTC intervention before other state and federal agencies having jurisdiction over vocational schools to prevent deceptive practices. After an extensive review of the proceeding, the Commission concluded that the rule should be withdrawn and the proceeding ended due to the age of the record and the fact that the Department of Education had informally proposed

new regulations applicable to all schools participating in the Guaranteed Student Loan Program addressing the same issues. Two members of the Commission also cited as a basis for the decision their belief that the record was inadequate to support the rule. Commissioner Strenio dissented from the decision (cont)

Timetable:

Action	Date	FR Cite
NPRM	08/15/74	39 FR 29585
Final Action previously published	12/18/78	43 FR 59706
Rule set aside & remanded by Court	12/13/79	
New Staff Recommendations published	07/10/81	46 FR 36588
Issues Final Rule	05/00/89	
Withdrawn	06/05/89	53 FR 25402

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: ABSTRACT CONT: to terminate the rule with a separate statement.

Agency Contact: Walter Gross, Federal Trade Commission, Division of Service Industry Practices, Bureau of Consumer Protection, Washington, DC 20580, 202 326-3220

RIN: 3084-AA11

3085. REVIEW OF CONTENT DISCLOSURE REQUIREMENTS FOR TEXTILE, WOOL, AND FUR PRODUCTS

Legal Authority: 15 USC 68b(d); 15 USC 70j; 15 USC 69f(b)

CFR Citation: 16 CFR 300, (Wool); 16 CFR 301, (Fur); 16 CFR 303, (Textile)

Abstract: The Wool Products Labeling Act of 1939 Requires all wool products to bear a label showing the percentage of wool, recycled wool, and non-wool fibers contained in the product and the name of the manufacturer or other distributor. The Textile Fiber Products Identification Act requires each household textile product to bear a label showing the percentage of each fiber contained in the product, using the appropriate generic name for the fiber, and the name of the manufacturer or distributor. Advertisements for textile products must also show the required information if any mention of fiber content is made. Both acts require disclosure of country of origin. The Fur Products Labeling Act requires that all furs and fur products be labeled, invoiced, and advertised to show the true name of the animal that produced the fur, whether the fur is used, dyed, or imported, and the name of the manufacturer or distributor. The three acts, as well as the Commission's rules implementing them, apply to manufacturers, distributors, and retailers of textile, wool, and fur products. (cont)

Timetable:

Action	Date	FR Cite
Begin Review	10/30/86	
NPRM -- Recordkeeping	02/29/88	53 FR 5986
Final Action -- Recordkeeping	08/18/88	53 FR 31311
Final Action Effective	09/19/88	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: ABSTRACT CONT: The Commission has adopted amendments to the information collection requirements contained in the several regulations under the three acts to reduce the burden of accomplishing the statutory objectives. The recordkeeping and disclosure requirements have been clarified and the paperwork burden estimates have been reduced by about 16%.

Agency Contact: James Mills, Federal Trade Commission, 202 326-3035

RIN: 3084-AA29

3089. FAIR PACKAGING AND LABELING RULES

Legal Authority: 15 USC 1333

CFR Citation: 16 CFR 500

Legal Deadline: None

Abstract: The Fair Packaging and Labeling Act, 15 USC 1453-1455, was passed in 1966 to eliminate consumer confusion and deception and to enable consumers to obtain accurate information as to the quantity of package contents and to facilitate value comparisons. The FTC has enforcement responsibility over package disclosures placed on "consumer commodities" as defined in the FPLA. The Commission has reviewed its rules implementing the FPLA in accordance with the Regulatory Flexibility Act. At the end of that review, the Commission concluded that the record contained insufficient evidence that the FPLA rules had had a significant economic impact on a substantial number of small entities.

Timetable:

Action	Date	FR Cite
Begin Reg Flex Review	12/24/87	52 FR 48716
End Reg Flex Review	05/07/88	53 FR 20834

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: James Mills, Federal Trade Commission, Division of Enforcement, Bureau of Consumer Protection, Washington, D.C. 20580, 202 326-3035

RIN: 3084-AA36

[FR Doc. 88-27306 Filed 10-21-88; 8:45 am]

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federal register

Monday
October 24, 1988

Part LIV

Interstate Commerce Commission

Semiannual Regulatory Agenda

INTERSTATE COMMERCE COMMISSION (ICC)

INTERSTATE COMMERCE COMMISSION

49 CFR Ch. X

[Ex Parte No. 430 (Sub-No. 19)]

Semiannual Regulatory Agenda

AGENCY: Interstate Commerce Commission.

ACTION: Notice of semiannual regulatory agenda to be part of a Unified Agenda of Federal Regulations.

SUMMARY: Pursuant to OMB Bulletin No. 88-15, issued under section 6(b) of E.O. 12291 to implement the provisions of section 5 of the Executive Order concerning Regulatory Agendas, the Commission is publishing an agenda of (1) current and projected rulemakings, and (2) existing regulations being reviewed to determine whether to propose modifications through rulemaking. Listed below are the regulatory actions to be developed or reviewed during the next 12 months. Following each rule identified is a brief description of the rule including its purpose and legal basis.

FOR FURTHER INFORMATION CONTACT: A contact person is identified for each of the rules listed below.

SUPPLEMENTARY INFORMATION: A list of proceedings appears below containing information about subject areas in which the Commission is currently conducting rulemaking proceedings or may institute such proceedings in the near future. It also contains information about existing regulations being reviewed to determine whether to propose modifications through rulemaking.

The agenda also identifies regulations likely to have a significant economic impact on a substantial number of "small entities." Accordingly, this information will satisfy the requirements of section 602 of the Regulatory Flexibility Act, 5 U.S.C. 602.

Finally, this agenda will comprise part of a Unified Agenda of Federal Regulations compiled by the Office of Management and Budget which is to be published in a single issue of the **Federal Register** in October 1988. The purpose of the Unified Agenda is to provide the public with more comprehensive documentation of the Federal government's current regulatory plans, and to provide a systematic means of monitoring regulatory activity in each agency.

This notice is issued pursuant to 49 U.S.C. 10321 and 5 U.S.C. 553.

Decided: August 5, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Noreta R. McGee,
Secretary.

INTERSTATE COMMERCE COMMISSION (ICC) — Prerule Stage

3810. REVIEW OF CAR-HIRE REGULATION, EX PARTE NO. 334 (SUB-NO. 6)

Legal Authority: 49 USC 10321; 49 USC 10706; 49 USC 10734; 49 USC 11122; 5 USC 553

CFR Citation: 49 CFR 1033; 49 CFR 1039

Legal Deadline: None

Abstract: The Commission is considering whether regulation of railroad car-hire charges (except charges for boxcars) should be retained, modified, or eliminated.

Timetable:

Action	Date	FR Cite
ANPRM	04/29/85	50 FR 16724
ANPRM Comment Period End	06/28/85	50 FR 27031
Supplemental Comment Period	02/07/86	50 FR 52972
Comments under Internal Review	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: This proceeding embraces the proposals and record developed in Zone of Reasonableness for Car-Hire Charges, Ex Parte No. 334 (Sub-No. 5), RIN 3120-AA13. In a related proceeding, Ex Parte No. 334 (Sub-No. 7), Suspension of Car-Hire Updates, all further updates of car-hire charges have been suspended pending completion of Review of Car-Hire Regulation, Ex Parte No. 334 (Sub-No. 6). Notice of suspension appeared at 51 FR 283 on 01/03/86.

Agency Contact: Joseph H. Dettmar, Deputy Director, Rail Section, Interstate Commerce Commission, Room 2144, Washington, DC 20423, 202 275-7245

RIN: 3120-AA13

3811. EXEMPTION OF DEMURRAGE FROM REGULATION, EX PARTE NO. 462

Significance: Agency Priority

Legal Authority: 49 USC 10505; 49 USC 10750; 49 USC 11121 to 11122; 5 USC 553

CFR Citation: 49 CFR 1033

Legal Deadline: None

Abstract: The Commission is considering whether to exempt in whole or in part rail demurrage from regulation.

Timetable:

Action	Date	FR Cite
ANPRM	12/18/85	50 FR 51565
ANPRM Comment Period End	01/17/86	50 FR 51565
Extension of Public Comment Period	01/21/86	51 FR 2740
Comment Period End	03/18/86	51 FR 2740
Internal Review of Comments	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Joseph H. Dettmar, Deputy Director, Rail Section, Interstate Commerce Commission, Room 2144, Washington, DC 20423, 202 275-7245

RIN: 3120-AB16

ICC — Prerule Stage

3812. ● RAIL ABANDONMENTS; USE OF RIGHTS-OF-WAY AS TRAILS; SUPPLEMENTAL TRAILS ACT PROCEDURES, EX PARTE NO. 274 (SUB-NO. 13)

Significance: Agency Priority

Legal Authority: 11 USC 1170; 16 USC 1247(d); 49 USC 10321; 49 USC 10362; 49 USC 10505; 49 USC 10903 et seq; 5 USC 553; 5 USC 559

CFR Citation: 49 CFR 1152

Legal Deadline: None

Abstract: The Commission has reopened this proceeding at the request of the National Association of Reversionary Property Owners to consider whether the rules implementing section 1247(d) of the National Trails System Act should be amended to require: (1) Railroads and trail groups to report to the Commission on the outcome of negotiations to transfer railroad rights-of-way for interim trail use and rail banking purposes and (2) additional reporting if an interim trail use agreement is reached.

Timetable:

Action	Date	FR Cite
ANPRM	05/31/88	53 FR 19807
ANPRM Comment Period End	06/30/88	
Comments under review	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: The purpose of the proposal is to create a Commission record of who holds the present interest in rights-of-way that are the subject of interim trail use and rail banking certificates and notices under section 1247(d) so that persons holding reversionary interests in such rights-of-way can contact the Commission to find out who is responsible for maintenance and taxes and to protect property interests in the rights-of-way.

Agency Contact: Joseph H. Dettmar, Deputy Director, Rail Section, Interstate Commerce Commission, Room 2144, Washington, DC 20423, 202 275-7278

RIN: 3120-AB46

3813. CLASS EXEMPTION FOR RAIL CONSTRUCTION, EX PARTE NO. 282 (SUB-NO. 3)

Significance: Agency Priority

Legal Authority: 49 USC 10321; 49 USC 10505; 49 USC 10901; 5 USC 553; 5 USC 559; 5 USC 704

CFR Citation: 49 CFR 1150.35

Legal Deadline: None

Abstract: The Commission is considering whether to exempt from regulation all applications under 49 USC 10901 for construction and operation of new lines of railroad.

Timetable:

Action	Date	FR Cite
ANPRM	06/02/87	52 FR 20632
ANPRM Comment Period End	07/02/87	52 FR 20632
Comments under evaluation	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Joseph H. Dettmar, Deputy Director, Rail Section, Interstate Commerce Commission, Room 2144, Washington, DC 20423, 202 275-7278

RIN: 3120-AB50

INTERSTATE COMMERCE COMMISSION (ICC) — Proposed Rule Stage

3814. ADOPTION OF UNIFORM RAIL COSTING SYSTEM FOR DETERMINING VARIABLE COST FOR JURISDICTIONAL THRESHOLD AND SURCHARGE PURPOSES (URCS), EX PARTE NO. 431

Significance: Agency Priority

Legal Authority: 49 USC 10705(a); 49 USC 10708

CFR Citation: Not yet determined

Legal Deadline: None

Abstract: Develops new cost methodology applicable to the rail industry as mandated in the 1976 4-R Act and the 1980 Staggers Rail Act.

Timetable:

Action	Date	FR Cite
NPRM	01/31/83	48 FR 4562
NPRM Comment Period End	09/28/83	48 FR 25290
Decision to hold in abeyance until further notice	11/13/84	49 FR 45080
Draft notice of study being prepared	00/00/00	

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: Ex Parte No. 431 has been held in abeyance pending the development of cost accounting principles by the Railroad Accounting Principles Board. These principles were published on September 1, 1987, and included a recommendation that further research be performed into certain identified subject areas of the Uniform Railroad Costing System before the system is implemented. This is to be done within 18 months of the Board's report.

Agency Contact: William T. Bono, Chief, Section of Cost Development, Interstate Commerce Commission, 12th & Constitution Avenue, NW, Washington, DC 20423, 202 275-7364

RIN: 3120-AA63

3815. ELECTRONIC FILING OF TARIFFS, EX PARTE NO. 444

Legal Authority: 49 USC 10321; 49 USC 10762; 49 USC 10706; 49 USC "076"; " USC 553

CFR Citation: 49 CFR 1312

Legal Deadline: None

Abstract: Commission regulations require filing of tariffs in printed form. Regulations are proposed which will permit carriers to file tariffs electronically. Comments on proposed rules sought from interested parties.

Timetable:

Action	Date	FR Cite
ANPRM	03/08/83	48 FR 10661
ANPRM Comment Period End	06/22/83	
NPRM	10/22/87	52 FR 39549
NPRM Comment Period End	02/10/88	52 FR 39549
Replies to comment due	03/10/88	53 FR 5022
Comments under evaluation	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Charles E. Langyher, III, Chief, Section of Tariffs, Interstate Commerce Commission, Bureau of Traffic, Washington, DC 20423, 202 275-7730

RIN: 3120-AA30

3816. RAIL GENERAL EXEMPTION AUTHORITY - MISCELLANEOUS MANUFACTURED COMMODITIES, EX PARTE NO. 346 (SUB-NO. 24)

Legal Authority: 49 USC 10505

CFR Citation: 49 CFR 1039

Legal Deadline: None

Abstract: 49 USC 10505 requires that the Commission exempt from regulation the movement by rail of traffic for which it finds continued regulation no longer necessary to serve the Nation's transportation policy objectives and to protect shippers from abuse of market power by the railroads. In examining the transportation characteristics and markets of various commodities moving by rail, there appear to be many products for which sufficient competition exists among transportation alternatives so that regulation may no longer be necessary. Exemption of such commodities should provide increased rate and service flexibility for railroads to meet shippers' needs and to compete more effectively for the subject traffic. Anticipated benefits include lower rates and improved service, at a possible "cost" of increased price instability and competition to alternative transport firms.

Timetable:

Action	Date	FR Cite
NPRM	02/09/88	53 FR 3900
NPRM Comment Period End	05/13/88	53 FR 9672
Comments under review	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Robert Lundy, Economist, Interstate Commerce Commission, Washington, DC 20423, 202 275-7453

RIN: 3120-AB08

3817. PRACTICES OF MOTOR COMMON CARRIERS OF HOUSEHOLD GOODS (REVISION OF OPERATIONAL REGULATIONS), EX PARTE NO. MC-19 (SUB-NO. 36)

Legal Authority: 49 USC 11110

CFR Citation: 49 CFR 1056

Legal Deadline: None

Abstract: This proceeding involves a plenary review of the household goods regulations in which the Commission invites public comment and proposals which would minimize the regulatory burden on movers to the maximum extent consistent with the protection of individual shippers.

Timetable:

Action	Date	FR Cite
ANPRM	10/26/83	48 FR 49561
ANPRM Comment Period End	01/12/84	48 FR 49561
NPRM	03/00/89	
NPRM Comment Period End	04/00/89	

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Patricia M. Schulze, Transportation Industry Analyst, Interstate Commerce Commission, OCCA, Washington, DC 20423, 202 275-7841

RIN: 3120-AB17

3818. RATE GUIDELINES - NON-COAL PROCEEDINGS, EX PARTE NO. 347 (SUB NO. 2)

Significance: Agency Priority

Legal Authority: 49 USC 10301; 49 USC 10321; 49 USC 10328; 49 USC 10701a; 49 USC 10704; 49 USC 10707; 49 USC 11701; 5 USC 553

CFR Citation: None

Legal Deadline: None

Abstract: Proposal to adopt maximum rate reasonableness guidelines for captive non-coal commodities. Request for comments on alternative guidelines for small shippers including small coal shippers.

Timetable:

Action	Date	FR Cite
Notice of proposed policy stmt.	05/22/86	51 FR 18811
Notice of Intent to Participate due	06/02/86	
Comments due	07/21/86	
Begin Review	07/24/87	
End Review	09/30/87	
Comments under internal evaluation	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Richard H. Klem, Director, Bureau of Accounts, Interstate Commerce Commission, 12th & Constitution Ave., NW, Washington, DC 20423, 202 275-7569

RIN: 3120-AB11

3819. CLASS EXEMPTION FOR THE CONSTRUCTION OF CONNECTING TRACKS UNDER 49 USC 10901, EX PARTE NO. 392 (SUB-NO. 2)

Significance: Agency Priority

Legal Authority: 5 USC 553; 49 USC 10321; 49 USC 10901; 49 USC 10505

CFR Citation: 49 CFR 1150

Legal Deadline: None

Abstract: The Commission proposes to exempt from the prior approval requirements of 49 USC 10901, the construction of rail connecting tracks, except those construction projects that would result in a major market extension as defined at 49 CFR 1180.3(c).

Timetable:

Action	Date	FR Cite
NPRM	07/24/86	51 FR 26563
NPRM Comment Period End	08/25/86	
Internal review of comments	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Joseph H. Dettmar, Deputy Director, Rail Section, Interstate Commerce Commission, Washington, DC 20423, 202 275-7245

RIN: 3120-AB43

3820. COST RATIO FOR RECYCLABLES - COMPLIANCE PROCEDURES, EX PARTE NO. 394 (SUB-NO. 2)

Significance: Agency Priority

Legal Authority: 49 USC 10321; 49 USC 10731; 5 USC 553

CFR Citation: 49 CFR 1134; 49 CFR 1135; 49 CFR 1145

Legal Deadline: None

Abstract: The Commission is proposing rules that will establish procedures by which the Commission annually will (a) announce the revenue-to-variable cost ratio required by 49 USC 10731(e) to apply for the following calendar year; (b) monitor and take necessary action to ensure continued compliance by the railroads with 49 USC 10731(e); and (c) prohibit further rate increases, including those authorized under 49 USC 10707a(a)-(d), on recyclables having revenue/variable cost ratios in excess of the statutory cap level until such rates fall to below the cap level or the statutory cap level increases by Commission order.

Timetable:

Action	Date	FR Cite
ANPRM	06/16/86	51 FR 21780
Extension of time for filing comments on ANPRM; new date: 10/15/86	08/12/86	51 FR 28847
ANPRM Comment Period End	09/15/86	51 FR 21780
NPRM	04/23/87	52 FR 13462
NPRM Comment Period End	07/22/87	52 FR 13482
Comments under evaluation	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Joseph H. Dettmar, Deputy Director, Rail Section, Interstate Commerce Commission, Room 2144, Washington, DC 20423, 202 275-7245

RIN: 3120-AB47

3821. ENVIRONMENTAL DOCUMENTATION IN RAIL PROCEEDINGS, EX PARTE NO. 55 (SUB-NO. 22A)

Significance: Agency Priority

Legal Authority: 49 USC 10321; 49 USC 10505; 49 USC 10903 to 10906; 16 USC 1247(d); 42 USC 4332; 5 USC 553; 5 USC 559

CFR Citation: 49 CFR 1105

Legal Deadline: None

Abstract: The Commission is considering whether to modify its procedures to increase certain environmental notice periods and the information included in those notices. The modifications would also require service of environmental notices on designated parties, would substitute a revamped environmental notice for the former report requirement, and would reclassify some categories of actions for which environmental analyses are required.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Joseph H. Dettmar, Deputy Director, Rail Section, Interstate Commerce Commission, Room 2144, Washington, DC 20423, 202 275-7245

RIN: 3120-AB53

3822. ● CERTAIN INTERLOCKING DIRECTORATES; EXEMPTION, EX PARTE NO. 474

Significance: Agency Priority

Legal Authority: 49 USC 10321; 49 USC 11322; 49 USC 10506; 5 USC 553; 5 USC 559

CFR Citation: 49 CFR 1185

Legal Deadline: None

Abstract: The Commission proposes to exempt individuals from the prior approval requirements of 49 USC 11322(a) when they seek to assume positions as officers or directors of one rail carrier while holding the position of officer or director of another rail carrier, except where both carriers are Class I railroads.

Timetable:

Action	Date	FR Cite
NPRM	04/14/88	53 FR 12443
NPRM Comment Period End	05/16/88	
Comments under review	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Joseph H. Dettmar, Deputy Director, Rail Section, Interstate Commerce Commission, Room 2144, Washington, DC 20423, 202 275-7245

RIN: 3120-AB54

INTERSTATE COMMERCE COMMISSION (ICC) — Final Rule Stage

3823. REVISION OF ACCOUNTING AND REPORTING REQUIREMENTS FOR MOTOR CARRIERS OF PROPERTY, DOCKET NO. 38904

Significance: Agency Priority

Legal Authority: 49 USC 11142

CFR Citation: 49 CFR 1207; 49 CFR 1249

Legal Deadline: None

Abstract: This rule would eliminate all the Commission's accounting and reporting rules for Class I and II common and contract motor carriers of property.

Timetable:

Action	Date	FR Cite
NPRM	02/21/85	50 FR 7201
NPRM Comment Period End	04/08/85	
Final Action	03/31/87	52 FR 10382
Final Action Stayed	05/01/87	

ICC — Final Rule Stage

Action	Date	FR Cite
Action on Petition for Reconsideration	12/31/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Petitions filed on 38904 granted by the Commission; decision decided May 1, 1987, stayed pending administrative review.

Agency Contact: Andrew J. Lee, Assistant Chief, Interstate Commerce Commission, Section of Accounting and Reporting, 12th & Constitution Avenue, NW, Washington, DC 20423, 202 275-7510

RIN: 3120-AA84

INTERSTATE COMMERCE COMMISSION (ICC) — Completed Actions

3634. ● ELECTRONIC TRANSMISSION OF FREIGHT BILLS, EX PARTE NO. 406

Significance: Agency Priority

Legal Authority: 49 USC 10321; 5 USC 553

CFR Citation: 49 CFR 1035

Legal Deadline: None

Abstract: The Commission is clarifying its regulations governing rail carrier bills of lading to expressly authorize the use of electronic bills of lading (EBOL).

Timetable:

Action	Date	FR Cite
Final Action	06/07/88	53 FR 20853
Final Action Effective	06/07/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Joseph H. Dettmar, Deputy Director, Rail Section, Interstate Commerce Commission, Room 2144, Washington, DC 20423, 202 275-7276

RIN: 3120-AA48

3635. ● EX PARTE NO. 246 (SUB-NO. 6) -- REGULATIONS GOVERNING FEES FOR SERVICES PERFORMED IN CONNECTION WITH LICENSING AND RELATED SERVICES -- 1988 UPDATE

Significance: Agency Priority

Legal Authority: 5 USC 553; 31 USC 9707; 49 USC 10321

CFR Citation: 49 CFR 1002

Legal Deadline: None

Abstract: The Commission is required by the regulations in 49 CFR 1002.3 to update user fees annually. In this decision, the Commission is announcing the 1988 Fee Update, which is based on the revised update formula that was adopted in Ex Parte No. 246 (Sub-No. 5), Regulations Governing Fees for Services Performed in Connection With Licensing and Related Services -- 1987 Update, 4, I.C.C. 2nd -- 1987. Also, the Commission is proposing to increase various fees which were set at less than full cost in the 1984 major fee program revision.

Timetable:

Action	Date	FR Cite
NPRM	06/01/88	53 FR 19959
NPRM Comment Period End	07/01/88	53 FR 19959
Final Action	09/01/88	53 FR 33813
Final Action Effective	10/01/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Kathleen M. King, Assistant Secretary, Interstate Commerce Commission, 12th & Constitution Ave., NW, Washington, DC 20423, 202 275-7428

RIN: 3120-AB55

[FR Doc. 88-20687 Filed 10-21-88; 8:45 am]

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Monday
October 24, 1988

Part LV

National Credit Union Administration

Semiannual Regulatory Agenda

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NATIONAL CREDIT UNION ADMINISTRATION (NCUA)

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Ch. VII

Semiannual Agenda of Regulations

AGENCY: National Credit Union Administration ("NCUA").

ACTION: Semiannual agenda of regulations.

SUMMARY: Pursuant to its ongoing policy of reviewing regulations, NCUA is publishing a list of current and projected rulemaking, reviews of existing regulations, and completed actions as of June 30, 1988. NCUA will also include this agenda in the "Unified Agenda of Federal Regulations."

DATE: This information is current as of June 30, 1988.

ADDRESS: National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: For each regulation listed, the person(s) named in the listing, at the above address.

SUPPLEMENTARY INFORMATION: The purpose of this agenda is to enable credit unions and the public to follow regulatory development and review at NCUA and to enable interested parties to more effectively participate in that process. The agenda is divided into three parts: (1) Actions completed since the last agenda; (2) actions proposed but not completed; and (3) actions planned but not yet proposed to the NCUA Board. Interpretive Rulings and Policy Statements (IRPS) and Guidelines promulgated by NCUA are also included in the agenda.

The agenda is published pursuant to NCUA Interpretive Ruling and Policy Statement Number 87-2 ("Developing and Reviewing Government Regulations," 52 FR 35231, September 18, 1987). Executive Order No. 12291 does not require independent executive agencies such as NCUA to publish a regulatory agenda, but NCUA has voluntarily decided to do so by including this agenda in the Office of Management and Budget's next publication of its "Unified Agenda of Federal Regulations."

Approved by the NCUA Board on July 27, 1988.

Becky Baker,
Secretary of the Board.

Prerule Stage

Sequence Number	Title	Regulation Identifier Number
3626	FCU Ownership of Fixed Assets	3133-AA06
3627	Reserves	3133-AA12
3628	Treasury Tax and Loan Accounts	3133-AA16
3629	Nondiscrimination Requirements	3133-AA17
3630	Management Interlocks	3133-AA18
3631	Definitions	3133-AA47
3632	Loan Participation	3133-AA49
3633	Purchase, Sale and Pledge of Eligible Obligations	3133-AA50
3634	Federal Credit Unions Acting as Depositories and Financial Agents of the Government	3133-AA53
3635	Records Preservation Programs	3133-AA56
3636	Liquidation Manual	3133-AA65
3637	Share, Share Draft and Share Certificate Accounts	3133-AA82
3638	Liquidation Priorities and Adjudication of Claims	3133-AA84
3639	Investment and Deposit Activities	3133-AA87
3640	Federal Credit Union Field of Membership and Chartering Policy	3133-AA89
3641	Credit Union Service Contracts	3133-AA95
3642	Retirement Benefits for Employees of Federal Credit Unions	3133-AA96

Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
3643	Other Applications	3133-AA44
3644	Employee Responsibility and Conduct	3133-AA84
3645	Corporate Credit Unions	3133-AA88
3646	Regulation Required by the Competitive Equality Banking Act of 1987	3133-AA88

NCUA

Completed Actions

Sequence Number	Title	Regulation Identifier Number
3647	Refund of Interest	3133-AA36
3648	Rules of Board Procedure	3133-AA39
3649	Operational Procedures for Share Draft Programs; Federally Insured State Chartered Credit Unions	3133-AA42
3650	Share, Share Draft and Share Certificate Accounts	3133-AA45
3651	Compensation of Officials	3133-AA51
3652	Fees Paid by Federal Credit Unions	3133-AA57
3653	Mortgage-Backed Obligations	3133-AA73
3654	Fidelity Bond and Insurance Coverage for Federal Credit Unions	3133-AA79
3655	Regulations Required by the Competitive Equality Banking Act of 1987 ("CEBA")	3133-AA86
3656	Central Liquidity Facility	3133-AA90
3657	IRPS 88-1 Policy on Selection of Securities Dealers and Unsuitable Investment Practices	3133-AA91
3658	Loans to Members and Lines of Credit to Members; Investments and Deposits	3133-AA92
3659	Insurance Coverage – Appendix	3133-AA93
3660	Interest Rate Ceiling	3133-AA94

NATIONAL CREDIT UNION ADMINISTRATION (NCUA) — Prerule Stage

3626. ● FCU OWNERSHIP OF FIXED ASSETS

Legal Authority: 12 USC 1757(4)

CFR Citation: 12 CFR 701.36

Legal Deadline: None

Abstract: This section sets forth limitations on an FCU's ownership of fixed assets. It will be reviewed to determine if it needs to be amended, clarified, or simplified.

Timetable:

Action	Date	FR Cite
Staff review: Proposal to NCUA Board	10/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Gerald McClernon, National Credit Union Administration, Office of Examination & Insurance, 1776 G Street, NW, Washington, DC 20456, 202 357-1096

RIN: 3133-AA06

3627. RESERVES

Legal Authority: 12 USC 1762; 12 USC 1766; 12 USC 1789

CFR Citation: 12 CFR 702

Legal Deadline: None

Abstract: NCUA has asked for suggestions from the public on whether assets other than loans--primarily investments--should be provided for in reserves. No decision has been made on amending the regulations in this regard.

Timetable:

Action	Date	FR Cite
ANPRM	10/19/87	52 FR 38771
ANPRM Comment Period End	02/00/88	

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: ADDITIONAL AGENCY CONTACT: Michael Riley, Director, Office of Examination and Insurance, (202) 357-1096.

Agency Contact: Robert Fenner, General Counsel, National Credit Union Administration, Office of General Counsel, 1776 G Street, NW, Washington, DC 20456, 202 357-1030

RIN: 3133-AA12

3628. ● TREASURY TAX AND LOAN ACCOUNTS

Legal Authority: 12 USC 1757; 12 USC 1766; 12 USC 1767; 12 USC 1767; 12 USC 1789

CFR Citation: 12 CFR 701.37-1

Legal Deadline: None

Abstract: This section sets forth authority for serving as Treasury tax and loan depositories. Staff is reviewing it to determine if it needs to be updated or clarified.

Timetable:

Action	Date	FR Cite
Staff review: Proposal to NCUA Board	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Julie Tamaleris, Staff Attorney, National Credit Union Administration, Office of General Counsel, 1776 G Street, NW, Washington, DC 20456, 202 357-1030

RIN: 3133-AA16

3629. NONDISCRIMINATION REQUIREMENTS

Legal Authority: 12 USC 1757; 12 USC 1758; 12 USC 1766; 12 USC 1788; 12 USC 1789; 24 USC 3601 to 3610; 24 USC 1981; 15 USC 1601 et seq

CFR Citation: 12 CFR 701.31

Legal Deadline: None

Abstract: This regulation sets forth prohibitions against discrimination by Federal credit unions in making real estate related loans and appraisals. The regulation also sets forth guidelines for compliance with the Fair Housing Act

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and court decisions rendered thereunder.

Timetable:

Action	Date	FR Cite
Staff proposal to Board	10/00/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Hattie M. Ulan, Attorney, National Credit Union Administration, Office of General Counsel, 1776 G Street, NW, Washington, DC 20456, 202 357-1030

RIN: 3133-AA17

3630. ◎ MANAGEMENT INTERLOCKS

Legal Authority: 12 USC 3201

CFR Citation: 12 CFR 711

Legal Deadline: None

Abstract: This part sets forth provisions of the Depository Institution Management Interlocks Act. Staff is reviewing this part to determine if it should be simplified or otherwise amended.

Timetable:

Action	Date	FR Cite
Staff review: Proposal to Board	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Roy DeLoach, Staff Attorney, National Credit Union Administration, Office of General Counsel, 1776 G Street, NW, Washington, DC 20456, 202 357-1030

RIN: 3133-AA19

3631. DEFINITIONS

Legal Authority: 12 USC 1752(5); 12 USC 1757(6); 12 USC 1766(a)

CFR Citation: 12 CFR 700.1

Legal Deadline: None

Abstract: This section sets forth basic definitions applicable in all NCUA regulations. The definitions will be reviewed for need, accuracy and clarity.

Timetable:

Action	Date	FR Cite
Staff proposal to Board	03/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Hattie M. Ulan, Attorney, National Credit Union Administration, Office of General Counsel, 1776 G Street, NW, Washington, DC 20456, 202 357-1030

RIN: 3133-AA47

3632. LOAN PARTICIPATION

Legal Authority: 12 USC 1757; 12 USC 1766; 12 USC 1789

CFR Citation: 12 CFR 701.22

Legal Deadline: None

Abstract: This section sets forth definitions and requirements for Federal credit unions wishing to participate in making loans with other credit unions, credit organizations, or financial organizations. The regulation will be reviewed to determine if the power can be expanded and simplified.

Timetable:

Action	Date	FR Cite
Staff proposal to Board	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Julie Tamulevix, Staff Attorney, National Credit Union Administration, Office of General Counsel, 1776 G Street, NW, Washington, DC 20456, 202 357-1030

RIN: 3133-AA48

3633. PURCHASE, SALE AND PLEDGE OF ELIGIBLE OBLIGATIONS

Legal Authority: 12 USC 1757; 12 USC 1766; 12 USC 1789

CFR Citation: 12 CFR 701.23

Legal Deadline: None

Abstract: This section sets forth definitions and requirements for Federal credit unions that wish to purchase, sell, or pledge a loan or group of loans. The section will be reviewed to determine whether it is needed, and whether it can be simplified.

Timetable:

Action	Date	FR Cite
Staff proposal to Board	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Julie Tamulevix, Staff Attorney, National Credit Union Administration, Office of General Counsel, 1776 G Street, NW, Washington, DC 20456, 202 357-1030

RIN: 3133-AA50

3634. FEDERAL CREDIT UNIONS ACTING AS DEPOSITORIES AND FINANCIAL AGENTS OF THE GOVERNMENT

Legal Authority: 12 USC 1757; 12 USC 1766; 12 USC 1767; 12 USC 1787; 12 USC 1789

CFR Citation: 12 CFR 701.37-1

Legal Deadline: None

Abstract: This section sets out the authority for and requirements of Federal credit unions when they serve as depositories and financial agents of the United States Government. It also lists the functions credit unions may perform in this capacity.

Timetable:

Action	Date	FR Cite
Staff proposal to Board	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Julie Tamulevix, Staff Attorney, National Credit Union Administration, Office of General Counsel, 1776 G Street, NW, Washington, DC 20456, 202 357-1030

RIN: 3133-AA51

3635. RECORDS PRESERVATION PROGRAMS

Legal Authority: 12 USC 1766; 12 USC 1789

CFR Citation: 12 CFR 749

Legal Deadline: None

Abstract: This part mandates that Federal credit unions maintain a records preservation program. It sets forth program implementation procedures and also lists what records must be stored. Staff is reviewing this part to determine whether it can be deleted, updated, or simplified.

Timetable:

Action	Date	FR Cite
Staff proposal to Board	03/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Roy DeLoach, Staff Attorney, National Credit Union Administration, Office of General Counsel, 1776 G Street, NW, Washington, DC 20456, 202 357-1030

RIN: 3133-AA26

3639. LIQUIDATION MANUAL

Legal Authority: 12 USC 1766(a); 12 USC 1786; 12 USC 1789

CFR Citation: Not yet determined

Legal Deadline: None

Abstract: The present Involuntary Liquidation Manual is outdated. A new draft Involuntary Liquidation Manual has been written and is being circulated for comments within the Agency.

Timetable:

Action	Date	FR Cite
Staff draft manual to Board	03/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Timothy Hornbrook/Allan Meltzer, Director of Risk Management/Assistant General Counsel, National Credit Union Administration, Office of Examination and Insurance, 1776 G Street, NW, Washington, DC 20456, 202 357-1065

RIN: 3133-AA65

3637. SHARE, SHARE DRAFT AND SHARE CERTIFICATE ACCOUNTS

Legal Authority: 12 USC 1752; 12 USC 1757; 12 USC 1758; 12 USC 1766; 12 USC 1782; 12 USC 1789

CFR Citation: 12 CFR 701.35

Legal Deadline: None

Abstract: An FCU's payment of dividends on share, share draft and share certificate accounts is limited to available earnings and cannot be guaranteed in advance. In light of problems which NCUA has encountered with certain liquidated credit unions, staff is considering recommending to the Board that a statement to this effect be included in NCUA's share account regulations.

Timetable:

Action	Date	FR Cite
Staff proposal to Board	03/00/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Roy DeLoach, Staff Attorney, National Credit Union Administration, Office of General Counsel, 1776 G Street, NW, Washington, DC 20456, 202 357-1030

RIN: 3133-AA52

3638. LIQUIDATION PRIORITIES AND ADJUDICATION OF CLAIMS

Legal Authority: 12 USC 1787

CFR Citation: None

Legal Deadline: None

Abstract: Staff is studying two liquidation issues: priority of payout and the administrative procedure for adjudicating creditor claims.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Allan Meltzer, Assistant General Counsel, National Credit Union Administration, Office of General Counsel, 1776 G Street, NW, Washington, DC 20456, 202 357-1030

RIN: 3133-AA84

3639. INVESTMENT AND DEPOSIT ACTIVITIES

Legal Authority: 12 USC 1757; 12 USC 1766

CFR Citation: 12 CFR 703

Legal Deadline: None

Abstract: NCUA staff is undertaking a comprehensive review of FCU investment authority in light of changes in the marketplace, e.g., increased availability of mutual funds geared primarily toward FCU's new instruments based on permissible FCU investments, new investment structures, statutory expansions of FCU investment authority.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Timothy McCollum, Assistant General Counsel, National Credit Union Administration, Office of General Counsel, 1776 G Street, NW, Washington, DC 20456, 202 357-1030

RIN: 3133-AA87

3640. FEDERAL CREDIT UNION FIELD OF MEMBERSHIP AND CHARTERING POLICY

Legal Authority: 12 USC 1752; 12 USC 1753

CFR Citation: None

Legal Deadline: None

Abstract: The NCUA Board has issued two requests for public comment. Staff plans to present a status report to the Board in November 1988. A new chartering manual is expected in early 1989.

Timetable:

Action	Date	FR Cite
Begin Review	09/29/87	52 FR 36429
ANPRM	06/17/88	53 FR 22856
ANPRM Comment Period End	08/15/88	
Status report to the Board	11/00/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Hattie M. Ulan, Staff Attorney, National Credit Union Administration, Office of General Counsel, 1776 G Street, NW, Washington, DC 20456, 202 357-1030

RIN: 3133-AA88

3641. ◎ CREDIT UNION SERVICE CONTRACTS

Legal Authority: 12 USC 1766; 12 USC 1789

CFR Citation: 12 CFR 701.26

Legal Deadline: None

NCUA — Prerule Stage

Abstract: This section authorizes, subject to certain requirements, an FCU to enter into a contractual agreement with one or more credit unions or other organizations for the purpose of sharing, utilizing, renting, leasing, purchasing, selling, and/or joint ownership of fixed assets, or engaging in activities and/or services relating to the daily operations of credit unions. Staff will review this section to determine if it needs to be clarified or otherwise amended.

Timetable:

Action	Date	FR Cite
Staff review: Proposal to NCUA Board	03/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Roy DeLoach, Staff Attorney, National Credit Union Administration, Office of General Counsel, 1776 G Street, NW, Washington, DC 20456, 202 357-1030

RIN: 3133-AA85

3642. ◆ RETIREMENT BENEFITS FOR EMPLOYEES OF FEDERAL CREDIT UNIONS

Legal Authority: 12 USC 1766; 12 USC 1761b

CFR Citation: 12 CFR 701.19; 12 CFR 701.24

Legal Deadline: None

Abstract: Section 701.19 sets forth an FCU's authority to provide retirement benefits to employees and officers. Section 724 describes when an FCU can act as a trustee or custodian of pension plans. Staff is reviewing these sections to determine if they need to be updated or clarified.

Timetable:

Action	Date	FR Cite
Staff review: Proposal to NCUA	03/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Julie Tamulevix, Staff Attorney, National Credit Union Administration, Office of General Counsel, 1776 G Street, NW, Washington, DC 20456, 202 357-1030

RIN: 3133-AA56

NATIONAL CREDIT UNION ADMINISTRATION (NCUA) — Proposed Rule Stage

3643. OTHER APPLICATIONS

Legal Authority: 12 USC 1766(a)

CFR Citation: 12 CFR 701.6

Legal Deadline: None

Abstract: This section specifies the manner in which applications, requests, or submittals to NCUA, not addressed in other sections of the NCUA Regulations, are to be presented to the Agency. This section is being reviewed in conjunction with regulatory review of Part 700.

Timetable:

Action	Date	FR Cite
NPRM	12/11/87	52 FR 47014
NPRM Comment Period End	02/09/88	52 FR 47014
Staff proposal to Board	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Hattie Ulan, Staff Attorney, National Credit Union Administration, Office of General Counsel, 1776 G Street, NW, Washington, DC 20456, 202 357-1030

RIN: 3133-AA44

3644. EMPLOYEE RESPONSIBILITY AND CONDUCT

Legal Authority: EO 11222; 5 CFR 735.104; 12 USC 1766

CFR Citation: 12 CFR 702

Legal Deadline: None

Abstract: The primary purpose of this change would be to collect in one place the rules governing NCUA employees. Legal and regulatory requirements concerning NCUA employee ethics are currently found in Part 792 of the NCUA Regulations, the NCUA Examiner's Guide, the Office of Personnel Management's Regulations, and various Federal statutes. This rule would not affect credit unions.

Timetable:

Action	Date	FR Cite
NPRM	10/20/87	52 FR 38926
NPRM Comment Period End	12/21/87	52 FR 38926
Staff final rule to Board	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Additional Agency Contact: Rosemary Brady, Assistant Executive Director, Office of the Board (202) 357-1100.

Agency Contact: James J. Engel, Deputy General Counsel, National Credit Union Administration, Office of General Counsel, 1776 G Street, NW, Washington, DC 20456, 202 357-1030

RIN: 3133-AA64

3645. CORPORATE CREDIT UNIONS

Legal Authority: 12 USC 1762; 12 USC 1766(a); 12 USC 1781; 12 USC 1789

CFR Citation: 12 CFR 704

Legal Deadline: None

Abstract: This part sets forth special rules applicable to corporate credit unions. The NCUA Board has proposed several clarifying amendments.

Timetable:

Action	Date	FR Cite
NPRM	06/02/88	53 FR 20122
NPRM Comment Period End	08/01/88	
Staff proposal to Board	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Linda Groth, Corporate Credit Union Specialist, National Credit Union Administration.

NCUA — Proposed Rule Stage

1776 G Street, NW, Washington, DC 20456, 202 357-1045

RIN: 3133-AA58

3646. ◆ REGULATION REQUIRED BY THE COMPETITIVE EQUALITY BANKING ACT OF 1987

Legal Authority: 12 USC 1766; PL 100-86

CFR Citation: None

Legal Deadline: None

Abstract: CEBA amended FCU Act to permit the NCUA Board to allow second mortgage loans, home improvement loans, and loans to finance the purchase of a mobile home to have a maturity in excess of 15 years. Staff is reviewing this statutory change to determine if a change in the regulations is necessary.

Timetable:

Action	Date	FR Cite
Proposal to Board	10/00/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Gerry McClennon, National Credit Union Administration, 1776 G Street, NW, Washington, DC 20456, 202 357-1065

RIN: 3133-AA88

NATIONAL CREDIT UNION ADMINISTRATION (NCUA) — Completed Actions

3847. REFUND OF INTEREST

Legal Authority: 12 USC 1766(a); 12 USC 1761b(9)

CFR Citation: 12 CFR 701.24

Legal Deadline: None

Abstract: This section provides the framework on FCU's making interest payment refunds to members who paid interest on loans during a dividend period. The NCUA Board has issued a final rule simplifying and clarifying the regulation.

Timetable:

Action	Date	FR Cite
NPRM	02/19/88	53 FR 4996
NPRM Comment Period End	05/09/88	
Final Action	08/08/88	53 FR 29646
Final Action Effective	08/08/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Becky Baker, Board Secretary, National Credit Union Administration, 1776 G Street, NW, Washington, DC 20456, 202 357-1100

RIN: 3133-AA39

3848. OPERATIONAL PROCEDURES FOR SHARE DRAFT PROGRAMS; FEDERALLY INSURED STATE CHARTERED CREDIT UNIONS

Legal Authority: 12 USC 1766(a); 12 USC 1785(f)(1)

CFR Citation: 12 CFR 761

Legal Deadline: None

Abstract: The part provides the framework for federally insured State-chartered credit unions' offering share draft accounts. Since NCUA has virtually completely deregulated share draft programs, the NCUA repealed this provision as unnecessary.

Timetable:

Action	Date	FR Cite
NPRM	02/10/88	
NPRM Comment Period End	05/09/88	
Final Action	08/08/88	53 FR 29645

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Hattie M. Ulan, Staff Attorney, National Credit Union Administration, Office of General Counsel, 1776 G Street, NW, Washington, DC 20456, 202 357-1030

RIN: 3133-AA36

3849. RULES OF BOARD PROCEDURE

Legal Authority: 12 USC 1752a(d)

CFR Citation: 12 CFR 791

Legal Deadline: None

Abstract: The NCUA Board issued a final rule amending and simplifying the rules of Board procedure. The Board also transferred provisions regarding the issuance of NCUA Rules and Regulations and NCUA's compliance with the Sunshine Act from Part 790 to 791.

Timetable:

Action	Date	FR Cite
NPRM Comment Period End	02/08/87	
NPRM	12/09/87	52 FR 46601
Final Action	05/31/88	53 FR 19746
Final Action Effective	05/31/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Hattie M. Ulan, Staff Attorney, National Credit Union Administration, Office of General Counsel, 1776 G Street, NW, Washington, DC 20456, 202 357-1030

RIN: 3133-AA42

3850. ◆ SHARE, SHARE DRAFT AND SHARE CERTIFICATE ACCOUNTS

Legal Authority: 12 USC 1757(6)

CFR Citation: 12 CFR 701.35

Legal Deadline: None

Abstract: The NCUA Board made a technical change in Section 701.35 to clarify that FCUs must comply with all applicable Federal laws concerning the types of disclosures, fees, or charges, time for crediting of deposited funds, and other matters relating to share, share draft and share certificate accounts.

Timetable:

Action	Date	FR Cite
Final Action	05/31/88	53 FR 19747
Final Action Effective	05/31/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Roy DeLoach, Staff Attorney, National Credit Union Administration, Office of General

Counsel, 1776 G Street, NW, Washington, DC 20456, 202 357-1030

RIN: 3133-AA45

3851. COMPENSATION OF OFFICIALS

Legal Authority: 12 USC 1761; 12 USC 1761a; 12 USC 1766; 12 USC 1789

CFR Citation: 12 CFR 701.33

Legal Deadline: None

Abstract: NCUA Board issued a final amendment to this regulation setting forth guidelines on indemnification of FCU officials and employees.

Timetable:

Action	Date	FR Cite
NPRM	02/10/88	
NPRM Comment Period End	05/09/88	
Final Action	08/08/88	53 FR 29640
Final Action Effective	09/07/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Julie Tamulevis, Staff Attorney, National Credit Union Administration, Office of General Counsel, 1776 G Street, NW, Washington, DC 20456, 202 357-1030

RIN: 3133-AA51

3852. ◆ FEES PAID BY FEDERAL CREDIT UNIONS

Legal Authority: 12 USC 1766; 12 USC 1755

CFR Citation: 12 CFR 701.6

Legal Deadline: None

Abstract: The NCUA Board made a technical change to section 701.6 to conform the rule to a prior decision to assess its operational fees based on the Agency's fiscal year rather than the calendar year.

Timetable:

Action	Date	FR Cite
Final Action	05/31/88	53 FR 19747
Final Action Effective	05/31/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Roy DeLoach, Staff Attorney, National Credit Union Administration, Office of General Counsel, 1776 G Street, NW, Washington, DC 20456, 202 357-1030

RIN: 3133-AA57

3853. MORTGAGE-BACKED OBLIGATIONS

Legal Authority: 12 USC 1757(15); 12 USC 1766; 12 USC 1789

CFR Citation: 12 CFR 703; 12 CFR 701

Legal Deadline: None

Abstract: NCUA Board amended Parts 701 and 703 to permit FCU investment in privately-issued mortgage-related securities and certain mortgage notes pursuant to Section 107(15) of the FCU Act. The Board also issued Letter to Credit Unions 98 which sets forth guidelines on investment in mortgage-related securities.

Timetable:

Action	Date	FR Cite
ANPRM	07/27/87	52 FR 27994
NPRM	07/27/87	52 FR 27994
NPRM Comment Period End	09/18/87	52 FR 27994
Final Action	02/18/88	53 FR 4844
Final Action Effective	02/18/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: D. Michael Riley, Director, Office of Examination and Insurance, National Credit Union Administration, 1776 G Street, NW, Washington, DC 20456, 202 357-1065

RIN: 3133-AA73

3854. FIDELITY BOND AND INSURANCE COVERAGE FOR FEDERAL CREDIT UNIONS

Legal Authority: 12 USC 1761a; 12 USC 1761b; 12 USC 1766(a); 12 USC 1766(h); 12 USC 1789(A)(11)

CFR Citation: 12 CFR 701.20

Legal Deadline: None

Abstract: NCUA Board issued a final rule updating this section and conforming it to provisions of the Competitive Equality Banking Act of 1987.

Timetable:

Action	Date	FR Cite
NPRM	11/12/87	52 FR 43340
NPRM Comment Period End	01/08/88	52 FR 43340
Final Action	03/24/88	53 FR 9610
Final Action Effective	03/24/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Allen Meltzer, Assistant General Counsel, National Credit Union Administration, 1776 G Street, NW, Washington, DC 20456, 202 357-1030

RIN: 3133-AA79

3855. REGULATIONS REQUIRED BY THE COMPETITIVE EQUALITY BANKING ACT OF 1987 ("CEBA")

Legal Authority: 12 USC 1766(a); PL 100-86

CFR Citation: None

Legal Deadline: None

Abstract: NCUA Board issued a final rule amending Part 747 to conform it to changes made by CEBA to NCUA's prohibition, removal and suspension authority. Other CEBA issues are being reviewed by staff, including the authority to permit second mortgage and home improvement loans in excess of 15 years.

Timetable:

Action	Date	FR Cite
Final Action	09/05/88	53 FR 29446
Final Action Effective	09/05/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Timothy P. McCollum, Assistant General Counsel, National Credit Union Administration, Office of General Counsel, 1776 G Street, NW, Washington, DC 20456, 202 357-1030

RIN: 3133-AA86

3856. ◆ CENTRAL LIQUIDITY FACILITY

Legal Authority: 12 USC 1795

CFR Citation: 12 CFR 725

Legal Deadline: None

Abstract: The NCUA Board amended this regulation to include a definition of "liquid assets."

Timetable:

Action	Date	FR Cite
Final Action	06/16/88	53 FR 22471
Final Action Effective	06/16/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Floyd Lancaster, President, Central Liquidity Facility, National Credit Union Administration, 1776 G Street, NW, Washington, DC 20456, 202 357-1140

RIN: 3133-AA90

3857. ◆ IRPS 88-1 POLICY ON SELECTION OF SECURITIES DEALERS AND UNSUITABLE INVESTMENT PRACTICES

Legal Authority: 12 USC 1757(7); 12 USC 1757(8); 12 USC 1766(a); 12 USC 1789(a)(11)

CFR Citation: None

Legal Deadline: None

Abstract: The NCUA Board adopted, with minor modifications, the Federal Financial Institutions Examination Council supervisory policy entitled "Selection of Securities Dealers and Unsuitable Investment Practices."

Timetable:

Action	Date	FR Cite
Final Action	05/23/88	53 FR 18268
Final Action Effective	05/23/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Julie Tamulevis, Staff Attorney, National Credit Union Administration, Office of General Counsel, 1776 G Street, NW, Washington, DC 20456, 202 357-1030

RIN: 3133-AA81

3858. ◆ LOANS TO MEMBERS AND LINES OF CREDIT TO MEMBERS; INVESTMENTS AND DEPOSITS

Legal Authority: 12 USC 1757(5)

CFR Citation: 12 CFR 701; 12 CFR 703

Legal Deadline: None

Abstract: The NCUA Board approved an interim final rule permitting FCUs to purchase certain put options for the purpose of reducing the risk of loss from interest rate increases between the time an FCU makes an interest rate commitment to a member on a real estate loan and the time the loan is sold on the secondary market.

Timetable:

Action	Date	FR Cite
Final Action	05/31/88	53 FR 19748
Final Action Effective	05/31/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Timothy P. McCollum, Assistant General Counsel, National Credit Union Administration, Office of General Counsel, 1776 G Street, NW, Washington, DC 20456, 202 357-1030

RIN: 3133-AA92

3859. ◆ INSURANCE COVERAGE – APPENDIX

Legal Authority: 12 USC 1766; 12 USC 1781; 12 USC 1789

CFR Citation: 12 CFR 745

Legal Deadline: None

Abstract: The NCUA Board clarified explanatory language and revised examples of account insurance coverage contained in the Appendix to Part 745.

Timetable:

Action	Date	FR Cite
Final Action	05/16/88	53 FR 22472
Final Action Effective	06/16/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: James Engel, Deputy General Counsel, National Credit Union Administration, Office of General Counsel, 1776 G Street, NW, Washington, DC 20456, 202 357-1030

RIN: 3133-AA84

3860. ◆ INTEREST RATE CEILING

Legal Authority: 12 USC 1757

CFR Citation: 12 CFR 701.21

Legal Deadline: Final, Statutory, September 9, 1988.

Abstract: Board approved continuation of 18-percent Federal credit union ceiling for a period of September 10, 1988, to March 9, 1990.

Timetable:

Action	Date	FR Cite
Final Action	09/08/88	53 FR 29642
Final Action Effective	09/10/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Hattie Ulan, Staff Attorney, National Credit Union Administration, Office of General Counsel, 1776 G Street, NW, Washington, DC 20456, 202 357-1030

RIN: 3133-AA94

[FR Doc. 88-20666 Filed 10-21-88; 8:45 am]

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Semiannual Regulatory Agenda

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NUCLEAR REGULATORY COMMISSION (NRC)

NUCLEAR REGULATORY COMMISSION

10 CFR Ch. I

Regulatory Agenda

AGENCY: Nuclear Regulatory Commission.

ACTION: Semiannual publication of NRC regulatory agenda.

SUMMARY: The Nuclear Regulatory Commission (NRC) is publishing its semiannual Regulatory Agenda in accordance with Pub. L. 96-354, "the Regulatory Flexibility Act," and Executive Order 12291, "Federal Regulations." The agenda is a compilation of all rules on which the NRC has recently completed action or has proposed or is considering action. This issuance updates any action occurring on rules since publication of the last semiannual agenda on April 25, 1988 (53 FR 14692).

ADDRESSES: Comments on any rule in the agenda may be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Comments may also be hand delivered between 7:30 a.m. and 4:15 p.m. Comments received on rules for which the comment period has closed will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closure dates specified in the agenda.

The agenda and any comments received on any rule listed in the agenda are available for public inspection and copying at a cost of ten cents per page at the Nuclear Regulatory Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555. Single copies of the NRC quarterly agenda can be purchased from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082. Customers may call (202) 275-2060 or (202) 275-2171.

FOR FURTHER INFORMATION CONTACT: For further information concerning NRC rulemaking procedures or the status of any rule listed in this agenda, contact Juanita Beeson, Chief, Rules Review and and Editorial Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492-8926. Persons outside the Washington, DC, metropolitan area may call toll-free: (800) 368-5642. For further information on the substantive content of any rule listed in the agenda, contact the individual listed under the heading "Agency Contact" for that rule.

SUPPLEMENTARY INFORMATION: Although publication of the agenda is only required semiannually in April and October, the NRC has chosen to update and publish its agenda each quarter. However, the information contained in this semiannual publication is updated to reflect any action which has occurred on rules since publication of the last NRC semiannual agenda on April 25, 1988 (53 FR 14692).

Within each group, the rules are ordered from the lowest to the highest part within Title 10 of the Code of Federal Regulations (Title 10) and when more than one rule appears under the same part, the rules are arranged within that part according to the date of most recent publication. If a rule contains changes to more than one Title 10 part, the rule is listed under the lowest affected part.

The information in this agenda has been updated through August 24, 1988. The date under the heading, "Timetable," for the next scheduled action is the date the rule is scheduled to be published in the **Federal Register**. The date is considered tentative and is not binding on the Commission or its staff. This regulatory agenda is intended to provide the public early notice and opportunity to participate in the NRC rulemaking process. However, the NRC may consider or act on any rulemaking even though it is not included in the regulatory agenda.

Rulemakings Approved by the Executive Director for Operations (EDO)

The Executive Director for Operations (EDO) initiated a procedure for the review of the regulations being prepared by staff offices that report to him to ensure that staff resources were being allocated to achieve most effectively NRC's regulatory priorities. This procedure requires EDO approval before staff resources may be expended on the development of any new rulemaking. Furthermore, all existing rules must receive EDO approval prior to the commitment of additional resources.

Rules that have received EDO approval to date are identified by the symbol (+) at the beginning of the title. As additional rules receive EDO approval, they will be identified in subsequent editions of this agenda.

The NRC agenda lists rulemaking actions. Of these, no rulemaking items are considered to be priority or major as defined in section 1(b) of Executive Order 12291.

Seven rules potentially will have a "significant economic impact on a substantial number of small entities" as defined in the Regulatory Flexibility Act.

Dated at Bethesda, Maryland, this 25th day of August 1988.

For the Nuclear Regulatory Commission.

John D. Phillips,

Acting Director, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management.

Prerule Stage

Sequence Number	Title	Regulation Identifier Number
3861	Radioactive Waste Below Regulatory Concern; Generic Rulemaking	3150-AC35

Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
3862	Transportation Regulations: Compatibility With the International Atomic Energy Agency (IAEA)	3150-AC41
3863	Night Firing Qualifications for Security Guards at Nuclear Power Plants	3150-AC26
3864	Enforcement of Nondiscrimination on the Basis of Handicap in Federal Assisted Programs	3150-AC64
3865	Revision of Definition of Meeting	3150-AC78
3866	Fitness For Duty Program	3150-AC81
3867	Comprehensive Quality Assurance in Medical Use and a Standard of Care	3150-AC42
3868	Medical Use of Byproduct Material: Training and Experience Criteria	3150-AC80
3869	Criteria for Licensing the Custody and Long-Term Care of Uranium Mill Tailings Sites	3150-AC58
3870	Elimination of Inconsistencies between NRC Regulations and EPA Standards	3150-AC63
3871	Regulation of Uranium Enrichment Facilities	3150-AC71
3872	Extension of Time for the Implementation of the Decontamination Priority and Relationship Provisions of Property Insurance Requirements	3150-AC84
3873	Debt Collection Procedures	3150-AC87
3874	Revised Rules of Practice for Domestic Licensing Proceedings	3150-AB66
3875	Availability of Official Records	3150-AC07
3876	Deletion of Part 11 Requirement for Renewal of "R" Clearances	3150-AC58
3877	Notification of Incidents	3150-AC91
3878	Licensees and Radiation Safety Requirements for Large Irradiators	3150-AC96
3879	Safety Related and Important to Safety in 10 CFR Part 50	3150-AB88
3880	Maintenance of Nuclear Power Plants	3150-AD00
3881	Pressurized Thermal Shock Rule	3150-AD01

Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
3882	Modifications to the NRC Hearing Process (Limited Interrogatories and Factual Basis for Contentions)	3150-AA05
3883	Licensing Requirements for the Storage of Spent Fuel and High- Level Radioactive Waste	3150-AB70
3884	NEPA Review Procedures or Geologic Repositories for High-Level Waste	3150-AC04
3885	Issuance or Amendment of Power Reactor License or Permit Following Initial Decision	3150-AC15
3886	Rules of Practice for Domestic Licensing Proceedings--Procedural Changes in Hearing Process	3150-AC22
3887	Standards for Protection Against Radiation	3150-AA39
3888	Emergency Preparedness for Fuel Cycle and Other Radioactive Materials Licensees	3150-AA41
3889	Safety Requirements for Industrial Radiographic Equipment	3150-AC12
3890	Basic Quality Assurance in Radiation Therapy	3150-AC65
3891	Acceptance Criteria for Emergency Core Cooling System (ECCS) for Light Water Nuclear Power Reactors	3150-AA44
3892	Alternative Methods for Leakage Rate Testing	3150-AC54
3893	Licensee Announcement of Inspectors	3150-AC73
3894	Licensee Action During National Security Emergency	3150-AC83
3895	Disposal of Radioactive Wastes	3150-AB89
3896	Criteria and Procedures for Emergency Access to Non-federal and Regional Low-Level Waste Disposal Facilities	3150-AC29
3897	Safeguards Requirements for Fuel Facilities Possessing Formula Quantities of Strategic Special Nuclear Material	3150-AC62
3898	Restrictions Against Ownership of Certain Security Interests by Members of Advisory Committee on Nuclear Waste; Gifts, Entertainment, and Favors	3150-AC92
3899	Relocation of NRC's Public Document Room; Other Minor Nomenclature Changes	3150-AC89
3900	Revision of Fee Schedule	3150-AC90
3901	Procedures Involving the Equal Access to Justice Act: Implementation	3150-AA81
3902	Proposed Revisions to the Criteria and Procedures for the Reporting of Defects and Noncompliance	3150-AA68
3903	Informal Hearing Procedures for Materials Licenses Proceedings	3150-AB93
3904	Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors	3150-AA86
3905	Degree Requirement for Senior Operators at Nuclear Power Plants	3150-AC26
3906	Equivalent Control Capacity for Standby Liquid Control Systems (SLCS)	3150-AC72
3907	Emergency Planning and Preparedness Requirements for Nuclear Power Plant Fuel Loading and Initial Low-Power Operations	3150-AC96
3908	Tables S-3 and S-4, Addition of Radon-222 and Technetium-99 Radiation Values, and Addition of Appendix B, "Table S-3 Explanatory Analysis"	3150-AA31
3909	Early Site Permits; Standard Design Certifications; and Combined Licenses for Nuclear Power Reactors	3150-AC91
3910	Criteria for an Extraordinary Nuclear Occurrence	3150-AB91
3911	Facility Form Nuclear Liability Insurance Policy; Miscellaneous Amendments	3150-AC82

NRC

Final Rule Stage—Continued

Sequence Number	Title	Regulation Identifier Number
3912	Negotiated Rulemaking on the Submission and Management of Records and Documents Related to the Licensing of a Geologic Repository for the Disposal of High Level Waste	3150-AC44
3913	Minor Amendments to Physical Protection Requirements	3150-AC95
3914	Disposal of Waste Oil by Incineration from Nuclear Power Plants	3150-AC14
3915	Storage of Spent Nuclear Fuel in NRC Approved Casks at Civilian Nuclear Power Reactor Sites	3150-AC76
3916	Reasserting NRC's Sole Authority for Approving Onsite Low-Level Waste Disposal in Agreement States	3150-AC57

Completed Actions

Sequence Number	Title	Regulation Identifier Number
3917	Revision to Ex Parte and Separation of Functions Rules Applicable to Formal Adjudicatory Proceedings	3150-AC16
3918	Retention Periods for Records	3150-AB43
3919	General Requirements for Decommissioning Nuclear Facilities	3150-AA49
3920	Control of Aerosols and Gases	3150-AC80
3921	Backfit Requirement for Senior Operators at Nuclear Power Plants	3150-AC83
3922	Revision of Telephone Numbers for Environmental Inquiries	3150-AC97
3923	Addresses for Personal Delivery of Communications	3150-AC84
3924	Access Authorization Fee Schedule for Licensee Personnel	3150-AC85
3925	+ Implementation of the Use of SF-86, "Questionnaire for Sensitive Positions"	3150-AC90
3926	Revision of Fee Schedule: Interim Rule	3150-AC96
3927	Station Blackout	3150-AB36
3928	Codes and Standards for Nuclear Power Plants	3150-AC29
3929	Residual Radioactive Contamination Limits for Decommissioning	3150-AC21
3930	Diagnostic Misadministration Report Form	3150-AC69
3931	Codes and Standards for Nuclear Power Plants (ASME code, 1986/1987 Addenda)	3150-AC93

NUCLEAR REGULATORY COMMISSION (NRC) — Prerule Stage

3861. RADIOACTIVE WASTE BELOW REGULATORY CONCERN; GENERIC RULEMAKING

Legal Authority: 42 USC 2201

CFR Citation: 10 CFR 2; 10 CFR 20

Legal Deadline: None

Abstract: The advance notice of proposed rulemaking sought comments on a proposal to amend NRC regulations to address disposal of radioactive wastes that contain sufficiently low quantities of radionuclides that their disposal does not need to be regulated as radioactive.

The NRC has already published a policy statement providing guidance for filing petitions for rulemaking to exempt individual waste streams (August 29, 1986; 51 FR 30839). It is believed that generic rulemaking could provide a more efficient and effective means of dealing with disposal of wastes below regulatory concern. Generic rulemaking would supplement the policy statement which was a response to Section 10 of the Low-Level Radioactive that Policy Amendment Act of 1985 (Pub. L. 99-240). The public will be asked to comment on 14 questions. The ANPRM requests public comment on several alternative approaches that the NRC could take. The evaluation of public comment together with the results from a proposed research contract will help to determine whether and how NRC should proceed on the matter.

Timetable:

Action	Date	FR Cite
ANPRM	12/02/86	51 FR 43367
ANPRM Comment Period End	03/02/87	51 FR 43367

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Stanley Neuder, Nuclear Regulatory Commission, Office of Nuclear Regulatory Research, Washington, DC 20555, 301 492-3737

RIN: 3150-AC25

NUCLEAR REGULATORY COMMISSION (NRC) — Proposed Rule Stage

3862. TRANSPORTATION REGULATIONS: COMPATIBILITY WITH THE INTERNATIONAL ATOMIC ENERGY AGENCY (IAEA)

Legal Authority: 42 USC 2073; 42 USC 2093; 42 USC 2111; 42 USC 2232; 42 USC 2233; 42 USC 2273; 42 USC 5842

CFR Citation: 10 CFR 71

Legal Deadline: None

Abstract: The proposed rule, would in conjunction with a corresponding rule change by the U.S. Department of Transportation, make the United States Federal regulations for the safe transportation of radioactive material consistent with those of the International Atomic Energy Agency (IAEA). The IAEA regulations can be found in IAEA Safety Series No. 6 "Regulations for the Safe Transport of Radioactive Material," 1985 Edition.

Consistency in transportation regulations throughout the world facilitates the free movement of radioactive materials between countries for medical, research, industrial, and nuclear fuel cycle purposes. Consistency of transportation regulations throughout the world also contributes to safety by concentrating the efforts of the world's experts on a single set of safety standards and guidance (those of the IAEA) from which individual countries can develop their domestic regulations. Perhaps as important, the accident experience of every country that bases it domestic regulations on those of the IAEA can be applied by every other country with consistent regulations to improve its safety program. The action will be handled as(cont)

Timetable:

Action	Date	FR Cite
NPRM	06/06/88	53 FR 21550
NPRM Comment Period End	10/06/88	
Final Action	06/30/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: ABSTRACT CONT: as a routine updating of NRC transportation regulations. There is no reasonable alternative to rulemaking action. These changes should result in a minimal increase in costs to affected licensees. Proposed changes to 10 CFR Part 71, based on current IAEA regulations, will be issued for public comments. The task will be scheduled over a 2-year interval ending January 1989 and will consume 2-3 staff years of effort, depending on the number and difficulty of conflicts to be resolved.

Agency Contact: Donald R. Hopkins, Nuclear Regulatory Commission, Office of Nuclear Regulatory Research, Washington, DC 20555, 301 492-3784

RIN: 3150-AC41

3863. ● NIGHT FIRING QUALIFICATIONS FOR SECURITY GUARDS AT NUCLEAR POWER PLANTS

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 73

Legal Deadline: None

Abstract: The proposed rule would ensure that security force effectiveness at nuclear power plants is not dependent on the time of day. Security guards currently are required to perform night firing for familiarization only. There is no requirement for standards to measure their effectiveness. The proposed rule would change that by requiring that security guards at nuclear power plants qualify for night firing. The only alternative to rulemaking is to retain the current status.

Part 73, Appendix B, Part IV, will be amended to require reactor security guards to qualify annually in an NRC-approved night firing course with their assigned weapons. The proposed amendment will standardize training and qualification in night firing and prepare power reactor guard forces to more effectively respond in the event of an incident occurring in limited lighting conditions. The cost to industry should be relatively modest since licensees already operate daylight firing training and qualification facilities and programs. The costs to NRC will also be minimal because it will only require minor licensing, inspection and other regulatory actions. There is no occupational exposure.

It is estimated that 0.4 staff-years of effort over 2 years by the NRC will be required for the rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	02/15/89	
Final Action	07/15/90	

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information:

Agency Contact: Dr. Sandra D. Frattali, Nuclear Regulatory Commission, Office of Nuclear Regulatory Research, Washington, DC 20555, 301 492-3773

RIN: 3150-AC58

3864. ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN FEDERAL ASSISTED PROGRAMS

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 4

Legal Deadline: None

Abstract: The proposed rule would amend regulations concerning the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, in Federally assisted programs or activities to include a cross reference to the Uniform Federal Accessibility Standards (UFAS). This action is necessary because some facilities subject to the new construction or alteration requirements under section 504 are also subject to the Architectural Barriers Act. Therefore, reference to UFAS by all government agencies would diminish the possibility that recipients of Federal financial assistance would face conflicting enforcement standards.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Edward E. Tucker, Nuclear Regulatory Commission, Office of Small and Disadvantaged Business, Utilization /Civil Rights, 301 492-7697

RIN: 3150-AC84

3865. REVISION OF DEFINITION OF MEETING

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 9

Legal Deadline: None

Abstract: The proposed rule would return the definition of "meeting" to its pre-1985 wording. The proposal is based on a study of comments submitted on an interim final rule published on May 21, 1985 (50 FR 20892), and the 1987 recommendations and report of the American Bar Association (ABA). Since the pre-1985 wording of the definition of meeting is fully adequate to permit the types of non-Sunshine Act discussions that the NRC believes would be useful, the proposal calls for the NRC to reinstitute its pre-1985 definition of meeting, with the intention of conducting its non-Sunshine Act discussions in accordance with the guidelines recommended by the ABA.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Peter Crane, Nuclear Regulatory Commission, Office of the General Counsel, Washington, DC 20555, 301 492-1634

RIN: 3150-AC78

3000. ◆ FITNESS FOR DUTY PROGRAM

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 26

Legal Deadline: None

Abstract: The proposed rule would create a new part to the Commission's regulations to require licensees authorized to operate nuclear power reactors to implement a fitness for duty program that will provide reasonable assurance that activities associated with nuclear power plant operations are carried out in an environment that is free from the effects of alcohol and drug abuse. The proposed rule provides for basic fitness for duty program elements such as the development of written policy and procedures, provisions for the training of supervisors and employees, standards for drug testing requirements for employee assistance programs, management actions, and appeal procedures.

The proposed rule represents the culmination of several years of effort in developing a fitness for duty program. On August 5, 1982, the Commission published a proposed rule (47 FR 27921). On December 1, 1987, the Commission was briefed on the experiences gained to date under the policy statement and on the status of implementation. The Commission then

Timetable:

Action	Date	FR Cite
NPRM	10/00/88	
Final Action	10/00/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: requested the staff to prepare a new proposed rule.

The estimated incremental cost to industry is between $160.7 million and $243.3 million for the life of the current plants. NRC costs to review and oversee implementation and operation of the programs will involve 6 staff persons for a cost between $4 million and $6 million for a 25-year period.

Agency Contact: Loren L. Bush, Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Washington, DC 20555, 301 492-0944

RIN: 3150-AC31

3967. COMPREHENSIVE QUALITY ASSURANCE IN MEDICAL USE AND A STANDARD OF CARE

Legal Authority: 42 USC 2111; 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 35

Legal Deadline: None

Abstract: The Nuclear Regulatory Commission is considering whether to amend its regulations to require a comprehensive quality assurance program for medical licensees using byproduct materials. The purpose of this rulemaking action is to address each source of error that can lead to a misadministration. An advance notice of proposed rulemaking was published to request public comment on the extent to which, in addition to the basic quality assurance steps (being addressed by another rulemaking action, entitled "Basic Quality Assurance in Radiation Therapy"), a more comprehensive quality assurance requirement is needed and invites advice and recommendations on about 20 questions that will have to be addressed in the rulemaking process.

Timetable:

Action	Date	FR Cite
ANPRM	10/02/87	52 FR 36948
ANPRM Comment Period End	12/31/87	52 FR 36949

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Anthony Tse, Nuclear Regulatory Commission, Office of Nuclear Regulatory Research, Washington, DC 20555, 301 492-3797

RIN: 3150-AC42

3968. ◆ MEDICAL USE OF BYPRODUCT MATERIAL: TRAINING AND EXPERIENCE CRITERIA

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 35

Legal Deadline: None

Abstract: The Commission is considering whether its training and experience criteria for individuals involved in medical use of byproduct material need to be revised. Rulemaking may be needed to reduce the change of misadministrations. The Commission may proceed with rulemaking, assist in the development of national voluntary training standards, or issue a policy statement recommending increased licensee attention to training. If the Commission proceeds with rulemaking, the NRC could publish criteria in its regulations or recognize medical specialty certificates. The NRC is not able to project costs or benefits at this time, and has requested cost/benefit comments in an Advance Notice of Proposed Rulemaking published May 25, 1988. The NRC staff will analyze the comments received before recommending whether regulatory action is necessary.

Timetable:

Action	Date	FR Cite
ANPRM	05/25/88	53 FR 18845
ANPRM Comment Period End	08/24/88	53 FR 18845

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Norman L. McElroy, Nuclear Regulatory Commission, Office of Nuclear Material Safety and, Safeguards, Washington, DC 20555, 301 492-3417

RIN: 3150-AC96

3969. CRITERIA FOR LICENSING THE CUSTODY AND LONG-TERM CARE OF URANIUM MILL TAILINGS SITES

Legal Authority: 42 USC 5841; 42 USC 5842; 42 USC 5846

CFR Citation: 10 CFR 40

Legal Deadline: None

Abstract: The proposed rule would provide a procedure to license a custodian for the post-closure, long-term control of uranium mill tailings sites required by the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA). This amendment would establish a general license for custody and long-term care of uranium mill tailings by the Department of Energy, other designated Federal agencies, or States when applicable. The general license would be formulated so that it would become effective for a particular site when (1) NRC concurs in the DOE determination that the site has been properly constructed and (2) a surveillance and maintenance plan that meets the requirements of the general license has been received by NRC. No impact to the public or industry is expected as a result of this proposed action.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Mark Haisfield, Nuclear Regulatory Commission, Office of Nuclear Regulatory Research, Washington, DC 20555, 301 492-3877

RIN: 3150-AC56

3870. ELIMINATION OF INCONSISTENCIES BETWEEN NRC REGULATIONS AND EPA STANDARDS

Legal Authority: 42 USC 10101

CFR Citation: 10 CFR 60

Legal Deadline: None

Abstract: The Nuclear Waste Policy Act of 1982 (NWPA) directs NRC to promulgate criteria for the licensing of high-level waste (HLW) geologic repositories. Section 121(c) of this act states that these criteria must be consistent with standards to be developed by EPA for the disposal of HLW in deep geologic repositories. The proposed rule is needed in order to eliminate several inconsistencies with the EPA standards, thus fulfilling the statutory requirement.

Because the NWPA directs NRC to eliminate inconsistencies between Part 60 and the EPA standard, the alternatives to the proposed action are limited by statute.

The public, industry, and NRC will benefit from eliminating inconsistencies in Federal HLW regulations. NRC resources needed would be several staff years but will not include contract resources.

Because the Federal Court invalidated the EPA standards, action on this rule, which is in response to the EPA standards, is undetermined.

Timetable:

Action	Date	FR Cite
NPRM	06/19/86	51 FR 22286
NPRM Comment Period End	08/18/86	51 FR 22286

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Frank Costanzi/Clark Prichard, Nuclear Regulatory Commission, Office of Nuclear Regulatory Research, Washington, DC 20555, 301 492-3818

RIN: 3150-AC03

3871. REGULATION OF URANIUM ENRICHMENT FACILITIES

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 76

Legal Deadline: None

Abstract: The Nuclear Regulatory Commission is considering an amendment to its regulations to create a new part that would pertain to uranium enrichment facilities. The construction and operation of these facilities are currently licensed under the NRC regulations for other production and utilization facilities (e.g., nuclear power plants) in 10 CFR Part 50. The advance notice of proposed rulemaking seeks comments on whether a separate set of regulations for uranium licensing is desirable.

Timetable:

Action	Date	FR Cite
ANPRM	04/22/88	53 FR 13266
ANPRM Comment Period End	07/21/88	
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Arthur T. Clark, Nuclear Regulatory Commission, Office of Nuclear Material Safety and, Safeguards, Washington, DC 20555, 301 492-4265

RIN: 3150-AC71

3872. ◆ EXTENSION OF TIME FOR THE IMPLEMENTATION OF THE DECONTAMINATION PRIORITY AND RELATIONSHIP PROVISIONS OF PROPERTY INSURANCE REQUIREMENTS

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 50

Legal Deadline: None

Abstract: The Nuclear Regulatory Commission proposes to amend the implementation schedule or the decontamination priority and trusteeship provisions of its property insurance regulations continued in 10 CFR 50.54(w)(5)(i) to change the effective date from October 4, 1988 to April 1, 1990. This delay in implementation is necessary because the insurers that offer property insurance for power reactors have informed the Commission that they will be unable to include the decontamination priority and trusteeship provisions in their policies within the time currently provided by 10 CFR 50.54(w). Concurrently, the

extension of the effective date of the rule will allow the NRC to consider recently submitted petitions for rulemaking that propose changes to improve the efficacy of the NRC's decontamination priority and trust provisions.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Robert S. Wood, Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Washington, DC 20555, 301 492-1280

RIN: 3150-AC94

3673. ● DEBT COLLECTION PROCEDURES

Legal Authority: 31 USC 3711; 31 USC 3717; 31 USC 3718; 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 15

Legal Deadline: None

Abstract: The proposed rule would amend the regulations concerning the procedures that the NRC uses to collect the debts which are owed to it. The proposed amendments are necessary to conform NRC regulations to the amended procedures contained in the Federal Claims Collection Standards issued by the General Accounting Office and the U.S. Department of Justice. The proposed action is intended to allow the NRC to further improve its collection of debts due to the United States. Because the proposed regulation is necessary to implement the Debt Collection Act of 1982, there is no suitable alternative to rulemaking for this action.

Timetable:

Action	Date	FR Cite
NPRM	10/00/89	
Final Action	11/00/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Graham D. Johnson, Nuclear Regulatory Commission, Office of Administration and Resources Management, Washington, DC 20555, 301 [illegible]

RIN: 3150-AC87

3674. REVISED RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

Legal Authority: 42 USC 2201; 42 USC 2231; 42 USC 2241; 42 USC 5841; 5 USC 552

CFR Citation: 10 CFR 0; 10 CFR 1; 10 CFR 2; 10 CFR 9; 10 CFR 50

Legal Deadline: None

Abstract: The Nuclear Regulatory Commission has deferred further consideration of this proposal which would have revised the Commissions's procedural rules governing the conduct of all adjudicatory proceedings, with the exception of export licensing proceedings. The proposed rule would comprehensively restate current practice, retitle the hearing office, and revise and reorganize the statement of the Commission's procedural rules to reflect current practice. The changes in this proposed rule would enable the Commission to render decisions in a more timely fashion and reduce the burden and expense to the parties participating in the proceedings.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: B. Paul Cotter, Jr., Nuclear Regulatory Commission, Atomic Safety and Licensing Board Panel, Washington, DC 20555, 301 492-7707

RIN: 3150-AB66

3675. AVAILABILITY OF OFFICIAL RECORDS

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 2

Legal Deadline: None

Abstract: The proposed amendment would conform the NRC's regulations pertaining to the availability of official records to existing case law and agency practice. The amendment would reaffirm that the terms of 10 CFR 2.790(c) provide submitters of information a qualified right to have their information returned upon request. This amendment informs the public of three exceptions to the right to withdraw, pursuant to 10 CFR 2.790(c) of the NRC's regulations, information submitted in a rulemaking proceeding that subsequently forms the basis for the final rule, information which has been made available to an advisory committee or was received at an advisory committee meeting, and information that is subject to a pending Freedom of Information Act request.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Edward C. Shomaker, Nuclear Regulatory Commission, Office of the General Counsel, Washington, DC 20555, 301 [illegible]

RIN: 3150-AC07

3676. DELETION OF PART 11 REQUIREMENT FOR RENEWAL OF "R" CLEARANCES

Legal Authority: 42 USC 2201(i); 42 USC 5841

CFR Citation: 10 CFR 11

Legal Deadline: None

Abstract: The current regulations require licensees to renew "R" clearances every 5 years. This level of clearance corresponds to the "L" clearances used by NRC and DOE that do not require renewal. Because of this equivalence, the renewal requirement for the "R" level licensee clearance is deemed unnecessary. This rulemaking would delete that requirement from Part 11. The timetable for this rule has been placed on hold pending publication of Executive Order 10450, "Security Requirements for Government Employees."

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Sandra D. Frattali, Nuclear Regulatory Commission, Office of Nuclear Regulatory Research, Washington, DC 20555, 301 492-3773

RIN: 3150-AC58

3677. ● NOTIFICATION OF INCIDENTS

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 20

Legal Deadline: None

Abstract: The proposed rule would amend regulations concerning the notification of incidents involving byproduct, source, or special nuclear material possessed by a licensee. The proposed rule would clarify licensee reporting requirements for events involving byproduct, source, or special nuclear material that result in the loss of operation or damage to property. The proposed rule would also define the term "immediate" in the context of time. The proposed action is necessary because the NRC is not being notified of all incidents that occur involving byproduct, source, or special nuclear material possessed by the licensee. The proposed rule is intended to clarify that the notification requirements apply to all licensees subject to the standards for protection against radiation. Because the proposed amendments are needed to clarify an existing regulation, no alternative to rulemaking is acceptable. The proposed amendments are not expected to have any economic impact on NRC or its licensees.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Joseph J. Mate, Nuclear Regulatory Commission, Office of Nuclear Regulatory Research, Washington, DC 20555, 301 492-3785

RIN: 3150-AC21

3678. ● LICENSEES AND RADIATION SAFETY REQUIREMENTS FOR LARGE IRRADIATORS

Legal Authority: 42 USC 2073; 42 USC 2093; 42 USC 2111; 42 USC 2232; 42 USC 2233; 42 USC 2273; 42 USC 5842

CFR Citation: 10 CFR 036

Legal Deadline: None

Abstract: The Nuclear Regulatory Commission is developing regulations to specify radiation safety requirements and license requirements for the use of licensed radioactive materials in large irradiators. Irradiators use gamma radiation to irradiate products to change their characteristics in some way. The requirements would apply to large panoramic irradiators (those in which the radioactive sources and the material being irradiated are in a room that is accessible to personnel while the source is shielded) and certain large self-contained irradiators in which the source always remains under water. The rule would not cover small self-contained irradiators, instrument calibrators, medical uses of sealed sources (such as teletherapy), or non-destructive testing (such as industrial radiography).

The alternative to a regulation is continuing to license irradiators on a case-by-case basis using license conditions. The formalization would make the NRC's requirements better understood and possibly speed the licensing of irradiators. Development of the rule will require 2 staff-years.

Timetable:

Action	Date	FR Cite
NPRM	08/05/89	
Final Action	05/05/90	

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Stephen A. McGuire, Nuclear Regulatory Commission, Office of Nuclear Regulatory Research, Washington, DC 20555, 301 492-3757

RIN: 3150-AC98

3679. SAFETY RELATED AND IMPORTANT TO SAFETY IN 10 CFR PART 50

Legal Authority: 42 USC 5841; 42 USC 5842; 42 USC 5846

CFR Citation: 10 CFR 50

Legal Deadline: None

Abstract: The Nuclear Regulatory Commission proposes to clarify its regulations on the use of the terms "important to safety" and "safety related" by adding definitions of these two terms and of "facility licensing documents" to 10 CFR Part 50 and by discussing how these definitions will be applied in NRC licensing reviews. Significant issues concerning the meaning of these terms as they are used in this part have arisen in Commission licensing proceedings. This proposed rule would define these terms and clarify the nature and extent of their effect on quality assurance requirements, thereby resolving these issues.

Rulemaking was chosen as the method of resolving this issue as a result of the Commission's directive to resolve the issue by rulemaking contained in the Shoreham licensing decision (CLI-84-8, 19 NRC 1323, June 5, 1984).

A position paper requesting approval of the staff proposed definitions and additional guidance from the Commission was signed by the EDO on May 23, 1988. In addition to rulemaking, the position paper discusses the alternative of the Commission(cont)

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: ABSTRACT CONT: issuing a policy statement concerning the definitions and their usage.

Since the proposed rule is only clarifying existing requirements, their is no impact on the public or the industry as a result of this rulemaking. It is anticipated that the NRC will expend 3.2 to 4.4 staff years in developing the final rule over a two year period. The manpower and time frame will depend upon guidance from the Commission regarding the extent to which 10 CFR usage of the terms is to be consistent, i.e., 10 CFR Part 50 only or all of 10 CFR. The timetable for this rule is on hold based on a decision by the Commissio[illegible]

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NRC — Proposed Rule Stage

Agency Contact: Jerry N. Wilson, Nuclear Regulatory Commission, Office of Nuclear Regulatory Research, Washington, DC 20555, 301 492-3729

RIN: 3150-AE88

3680. ◆ MAINTENANCE OF NUCLEAR POWER PLANTS

Legal Authority: 42 USC 5841; 42 USC 5842

CFR Citation: 10 CFR 050

Legal Deadline: None

Abstract: The proposed rule would provide functional requirements for the maintenance of nuclear power plants and allow industry initiatives to develop the details of maintenance programs to meet such requirements. The proposed rule would apply to all components, systems and structures of nuclear power plants and wold be applicable to existing and future plants. The proposed rule would also require each licensee to develop, implement and maintain a maintenance program, and to formally commit to follow the program.

The scope of maintenance activities addressed in the rule will be within the framework of the Commission's Policy Statement on Maintenance of Nuclear Power Plants which was issued on March 23, 1988 (53 FR 9430).

It is estimated that about 3 staff-years of effort and $600,000 for contract services will be required to process the final rule.

Timetable:

Action	Date	FR Cite
NPRM	11/07/88	
Final Action	12/30/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Moni Dey, Nuclear Regulatory Commission, Office of Nuclear Regulatory Research, Washington, DC 20555, 301 492-3739

RIN: 3150-AD09

3681. ◆ PRESSURIZED THERMAL SHOCK RULE

Legal Authority: 42 USC 2133; 42 USC 2134; 42 USC 5841

CFR Citation: 10 CFR 050

Legal Deadline: None

Abstract: The Pressurized Thermal Shock (PTS) Rule, published July 23, 1985, established a screening criterion, a limit on the degree of radiation embrittlement of PWR reactor vessel beltline materials beyond which operation cannot continue without additional plant-specific analysis. The rule prescribes how to calculate the degree of embrittlement as a function of the copper and nickel contents of the controlling material and the neutron fluence. The proposed amendment revises the calculative procedure to be consistent with that given in Revision 2 of the Regulatory Guide 1.99. The guide provides an updated correlation of embrittlement data, which received CRGR approval for publication in final form on December 9, 1987.

The need to amend the PTS rule to be consistent with the guide became apparent when it was found that some medium-cooper, high-nickel materials embrittlement is worse now than predicted using the PTS rule. A number of PWR's will reach the screening criterion sooner than previously thought, and three plants will need to make plant-specific analyses (cont)

Timetable:

Action	Date	FR Cite
NPRM	02/01/89	
Final Action	03/01/90	

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: in the next 10 years. Therefore, a high priority is being given to this effort.

An unacceptable alternative to this amendment from the safety standpoint is to leave the present PTS rule in place. The staff's plant-by-plant analyses found four plants whose reference temperatures are 52 to 68 degrees F higher than previously thought, based on the present rule. This is beyond the uncertainties that were felt to exist when the proposed rule was published. Another unacceptable alternative that has been evaluated is to change the calculative procedure for the reference temperature and also change the screening criterion. Failure probabilities for the most critical accident scenarios in three plants, when recalculated using the new embrittlement estimates, were somewhat lower, but were quite dependent on the plant configuration and the scenario chosen. Furthermore, the screening criterion was based on a variety of considerations besides the probabilistic analysis. Reopening the question of where to set the screening criterion was not considered productive because of plant-to-plant differences.

Agency Contact: Pryor N. Randall, Nuclear Regulatory Commission, Office of Nuclear Regulatory Research, Washington, DC 20555, 301 492-3842

RIN: 3150-AD61

NUCLEAR REGULATORY COMMISSION (NRC) — Final Rule Stage

3682. MODIFICATIONS TO THE NRC HEARING PROCESS (LIMITED INTERROGATORIES AND FACTUAL BASIS FOR CONTENTIONS)

Legal Authority: 42 USC 2239

CFR Citation: 10 CFR 2

Legal Deadline: None

Abstract: The proposed rule would expedite conduct of NRC adjudicatory proceedings by requiring intervenors in formal NRC hearings to set forth the facts on which contentions are based and the sources or documents used to establish those facts and limit the number of interrogatories that a party may file in an NRC proceeding. The proposed rule would expedite the hearing process by, among other things, requiring intervenors to set forth at the outset the facts upon which their contention is based and the supporting documentation to give other parties early notice of intervenor's case so as to afford opportunity for early dismissal of contentions where there is no factual dispute. Expediting the hearing process should ultimately provide cost savings to all participants in the process. The content of this rule is being considered as part of the regulatory reform rulemaking package.

NRC — Final Rule Stage

Timetable:

Action	Date	FR Cite
NPRM	06/06/81	46 FR 30349
Final Action	05/01/85	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Karen D. Cyr, Nuclear Regulatory Commission, Office of the General Counsel, Washington, DC 20555, 301 492-1637

RIN: 3150-AA05

3683. LICENSING REQUIREMENTS FOR THE STORAGE OF SPENT FUEL AND HIGH- LEVEL RADIOACTIVE WASTE

Legal Authority: 42 USC 2021; 42 USC 2071; 42 USC 2073; 42 USC 2077; 42 USC 2093; 42 USC 2095; 42 USC 2099; 42 USC 2111; 42 USC 2201; 42 USC 2232; 42 USC 2233; 42 USC 2234; 42 USC 2236; 42 USC 2237; 42 USC 2282

CFR Citation: 10 CFR 2; 10 CFR 19; 10 CFR 20; 10 CFR 21; 10 CFR 51; 10 CFR 70; 10 CFR 72; 10 CFR 73; 10 CFR 75; 10 CFR 150

Legal Deadline: None

Abstract: The proposed rule would revise existing regulations to establish specific licensing requirements for the storage of spent nuclear fuel and high-level radioactive waste in a monitored retrievable storage installation (MRS). This revision is intended to ensure that the Commission has in place the appropriate regulations to fulfill the requirements contained in the Nuclear Waste Policy Act of 1982 concerning the licensing of facilities which could be part of the MRS program.

Paragraph (d) of Section 141 of the NWPA requires that any monitored retrievable storage installation pursuant to Section 141 be licensed by the Commission. The Commission could await further development of the MRS option before proposing its MRS rules. However, this approach could result in unnecessary delay in reviewing a license application if Congress authorizes construction of an MRS.

There is no appropriate alternative to rulemaking, the vehicle used by NRC to establish its licensing procedures.

Timetable:

Action	Date	FR Cite
NPRM	05/27/86	51 FR 19106
NPRM Comment Period End	08/25/86	51 FR 21650
Final Action	10/31/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information:

The basic requirements for storage of spent fuel in an independent spent fuel storage installation currently codified in 10 CFR Part 72 are not being changed, thus no incremental impact on NRC, industry, or the health and safety of the public is anticipated.

Agency Contact: Keith Steyer/Charles Nilsen, Nuclear Regulatory Commission, Office of Nuclear Regulatory Research, Washington, DC 20555, 301 492-3824

RIN: 3150-AE70

3684. NEPA REVIEW PROCEDURES OR GEOLOGIC REPOSITORIES FOR HIGH-LEVEL WASTE

Legal Authority: 42 USC 10101

CFR Citation: 10 CFR 02; 10 CFR 51; 10 CFR 60

Legal Deadline: None

Abstract: The proposed rule would provide procedures for performing an environmental review of High Level Waste (HLW) geologic repositories. Part 51 contains no provisions for the environmental review of a license application for a HLW repository. The Nuclear Waste Policy Act of 1982 established requirements for environmental reviews which are at variance with the environmental reviews that the NRC performs in licensing other types of nuclear facilities. This issue must be addressed in order to avoid delay in the U.S. HLW Program. The proposed rule would benefit the public, industry, and NRC by clarifying licensing procedures, thus avoiding case determinations and and possible litigation during HLW geologic repository licensing. Minor revisions to Part 60 will be necessary to conform to the environmental requirements of the NWPA.

Timetable:

Action	Date	FR Cite
NPRM	05/05/[illegible]	[illegible] FR 16131
NPRM Comment Period End	08/[illegible]	
Final Action	05/15/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: James R. Wolf, Nuclear Regulatory Commission, Office of the General Counsel, Washington, DC 20555, 301 492-1641

RIN: 3150-AC01

3685. ISSUANCE OR AMENDMENT OF POWER REACTOR LICENSE OR PERMIT FOLLOWING INITIAL DECISION

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 2

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's "immediate effectiveness" regulation that specifies when an initial adjudicatory decision authorizing the issuance or amendment of a license or permit becomes effective. The proposed rule would (1) remove the existing provision governing the effectiveness of initial decisions regarding power reactor construction permits and (2) revise the Commission's existing practice regarding "effectiveness reviews" for full-power operating licenses. The proposed rule also would delete language in the existing regulation emanating from Three Mile Island-related regulatory policies, for which action has now been completed.

The proposed rule would supersede two prior proposed rules entitled "Possible Amendments to 'Immediate Effectiveness' Rules," published May 22, 1980 (45 FR 43279), and "Commission Review Procedures for Power Reactor Construction Permits; Immediate Effectiveness Rule," published October 25, 1982 (47 FR 47280).

Timetable:

Action	Date	FR Cite
NPRM	02/04/87	51 FR 3442
NPRM Comment Period End	05/06/87	51 FR 11475
Final Action	10/03/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Paul Bollwerk, Nuclear Regulatory Commission, Office of the General Counsel, Washington, DC 20555, 301 492-1474

RIN: 3150-AC15

3886. RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS--PROCEDURAL CHANGES IN HEARING PROCESS

Legal Authority: 42 USC 2201; 42 USC 2231; 42 USC 2241; 42 USC 5841

CFR Citation: 10 CFR 2

Legal Deadline: None

Abstract: The Nuclear Regulatory Commission (NRC) is considering amendments to its rules of practice which address the following aspects of the hearing process: admission of contentions, discovery against NRC staff, use of cross examination plans, timing of motions for summary disposition and limitations on matters and issues that may be included in proposed findings of fact or conclusions of law, or in an appellate brief submitted by a person who does not have the burden of proof or who has only a limited interest in the proceeding. These proposals were initially developed by the Regulatory Reform Task Force and published for public comment, together with a number of other proposals, as suggestions for procedural changes in the licensing of nuclear power plants. (49 FR 14696; April 12, 1984). The Commission has decided not to proceed with the April 1984 proposals, except to the extent that they were included in this proposed rule. Therefore, the April 1984 proposals have been deleted from the regulatory agenda.

The NRC is also considering related amendments on the process of intervention that were developed by former Commissioner (cont)

Timetable:

Action	Date	FR Cite
NPRM	07/03/86	51 FR 24356
NPRM Comment Period End	10/17/86	51 FR 31340
Final Action	10/03/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: ABSTRACT CONT: Assistine. The staff is analyzing public comments received on the proposals and expects to forward a recommendation for the Commission's consideration.

Agency Contact: Karen D. Cyr, Nuclear Regulatory Commission, Office of the General Counsel, Washington, DC 20555, 301 492-1627

RIN: 3150-AC22

3887. STANDARDS FOR PROTECTION AGAINST RADIATION

Legal Authority: 42 USC 2073; 42 USC 2093; 42 USC 2095; 42 USC 2111; 42 USC 2133; 42 USC 2134; 42 USC 2201; 42 USC 5273; 42 USC 5841; 42 USC 5842

CFR Citation: 10 CFR 20

Legal Deadline: None

Abstract: Radiation protection philosophy and technology have changed markedly since the present Part 20 was promulgated nearly thirty years ago. Since Part 20 contains the NRC standards for protection against radiation that are used by all licensees and affects exposures of workers and members of the public, it should be the most basic of the NRC regulations. However, because the present Part 20 has become outdated, most radiation protection actions occur through licensing actions independent of Part 20. A complete revision is necessary to provide better assurance of protection against radiation; establish a clear health protection basis for the limits; reflect current information on health risk, dosimetry, and radiation protection practices and experience; provide NRC with a health protection base from which it may consider other regulatory actions taken to protect public health; be consistent with recommendations of world authorities (ICRP); and apply these standards to all licensees in a consistent manner.

Alternatives to the complete revision considered were no action

Timetable:

Action	Date	FR Cite
ANPRM	03/20/80	45 FR 18023
ANPRM Comment Period End	06/18/80	45 FR 18023
NPRM	12/20/85	50 FR 51992
NPRM Comment Period End	10/31/86	
Final Action	10/14/88	

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Undetermined

Additional Information: ABSTRACT CONT: delay for further guidance, and partial revision of the standards. These were rejected as ignoring scientific advancements, being unresponsive to international and national guidance, and correcting only some of the recognized problems with the present Part 20.

Benefits would include updating the regulations which reflect contemporary scientific knowledge and radiation protection philosophy, implementing regulations that reflect the ICRP risk-based rationale, reducing lifetime doses to individuals receiving the highest exposures, implementing provisions for summation of doses from internal and external exposures, providing clearly identified dose limits for the public, providing an understandable health-risk base for protection, and placing constraints on collective dose evaluations at levels where risks are trifles.

Initial estimates of the cost of implementing the revision is about $33 million for all NRC and Agreement State licensees in the initial year and about $8 million in each subsequent year.

Agency Contact: Harold Peterson, Nuclear Regulatory Commission, Office of Nuclear Regulatory Research, Washington, DC 20555, 301 492-3738

RIN: 3150-AA38

3888. EMERGENCY PREPAREDNESS FOR FUEL CYCLE AND OTHER RADIOACTIVE MATERIALS LICENSEES

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 30; 10 CFR 40; 10 CFR 70

Legal Deadline: None

Abstract: The proposed rule would require about 30 fuel cycle and other radioactive materials licensees to submit an emergency plan that would,

among other actions, require the notification of local authorities in case of an accident and that the licensee recommend protective actions for the public. The proposed rule is intended to further protect the public from accidental exposure to radiation. The affected licensees are those whose possession limits indicate the potential for an accident that could deliver a radiation dose offsite exceeding one rem effective dose equivalent or 5 rems to the thyroid or could cause a soluble uranium inhalation of 2 milligrams (a chemical toxicity hazard).

Currently, the proposed requirements are, for the most part, required by order. However, the Commission decided that a regulation was needed for the long term. The cost of the rule to licensees was estimated to be between $26,000 and $73,000 per year per licensee. The cost to NRC is estimated to be $4,000 per year per licensee. The NRC will expend about 2 staff-years of effort to promulgate the rule.

Timetable:

Action	Date	FR Cite
ANPRM	06/03/81	46 FR 29712
ANPRM Comment Period End	08/03/81	46 FR 29712
NPRM	04/20/87	52 FR 12921
NPRM Comment Period End	07/20/87	52 FR 12921
Final Action	10/31/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Analysis: Regulatory Impact Analysis

Agency Contact: Michael Jamgochian, Nuclear Regulatory Commission, Office of Nuclear Regulatory Research, Washington, DC 20555, 301 492-3918

RIN: 3150-AA41

3889. SAFETY REQUIREMENTS FOR INDUSTRIAL RADIOGRAPHIC EQUIPMENT

Legal Authority: 42 USC 2111; 42 USC 2201; 42 USC 2232; 42 USC 2233

CFR Citation: 10 CFR 34

Legal Deadline: None

Abstract: The proposed rule would amend the present regulations to establish performance standards for industrial radiography exposure devices. Overexposures of radiographers (and occasionally the general public) are more than double that of other radiation workers and have been a concern to the NRC for some time. Approximately 25-35% of the radiography overexposures are associated with equipment malfunction. The issue of safety requirements for these devices is a primary concern since the devices use relatively high intensity, high energy gamma-ray emitting sources with the potential for serious overexposures. Although a consensus standard for radiographic exposure devices was published in 1981 (American National Standard N432), it is not clear that all manufacturers are adopting the standard.

The alternatives considered were to take no action at this time, amend the regulations to require performance standards for radiographic devices plus a requirement for radiographers to wear alarm dosimeters and simultaneously issue a regulatory guide endorsing the consensus standard, supplemented by such other performance standards deemed necessary, and incorporate (cont)

Timetable:

Action	Date	FR Cite
NPRM	03/15/88	53 FR 8460
NPRM Comment Period End	06/16/88	53 FR 18096
Final Action	04/17/89	

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Undetermined

Additional Information: ABSTRACT CONT: the consensus standard by reference in the regulations supplemented by such other performance standards as deemed necessary, plus a requirement for radiographers to wear alarm dosimeters.

The proposed rule would require licensees to modify radiographic devices to meet the performance standards through design changes and quality control procedures. Costs of incorporating the proposed changes are estimated to be a one-time cost of $1,625 per licensee to purchase alarm dosimeters and $850 annually for replacement of devices and alarm dosimeters, annual calibration of dosimeters, and annual maintenance costs. Determination of the benefits to be derived from the proposed rule are difficult to determine on a monetary basis, but the potential hazards that might be averted include radiation sickness, injury, and even death. NRC resources required for processing this rule to final publication are estimated to be 0.4 person-years.

Agency Contact: Donald O. Nellis, Nuclear Regulatory Commission, Office of Nuclear Regulatory Research, Washington, DC 20555, 301 492-3628

RIN: 3150-AC12

3890. BASIC QUALITY ASSURANCE IN RADIATION THERAPY

Legal Authority: 42 USC 2111; 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 35

Legal Deadline: None

Abstract: The Nuclear Regulatory Commission is proposing to amend its regulations concerning the medical use of byproduct material. The proposed amendments would require its medical licensees to implement certain quality assurance steps that would reduce the chance of therapy misadministrations. The proposed action is necessary to provide for improved patient safety and serve as a basis for enforcement action in case of a therapy misadministration. The proposed amendment, which is intended to reduce the potential for and severity of therapy misadministrations would primarily affect hospitals, clinics, and individual physicians.

Timetable:

Action	Date	FR Cite
NPRM	10/02/87	52 FR 36942
NPRM Comment Period End	12/01/87	52 FR 36942
Final Action	10/03/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Anthony Tse, Nuclear Regulatory Commission, Office of Nuclear Regulatory Research, Washington, DC 20555, 301 492-3787

RIN: 3150-AC56

3891. ACCEPTANCE CRITERIA FOR EMERGENCY CORE COOLING SYSTEM (ECCS) FOR LIGHT WATER NUCLEAR POWER REACTORS

Legal Authority: 42 USC 2132; 42 USC 2133; 42 USC 2134; 42 USC 2201; 42 USC 2232; 42 USC 2233; 42 USC 2236; 42 USC

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2239; 42 USC 2282; 42 USC 5841; 42 USC 5842; 42 USC 5846

CFR Citation: 10 CFR 50

Legal Deadline: None

Abstract: The proposed rule would amend regulations concerning acceptance criteria for emergency core cooling systems (ECCS) by allowing the use of realistic methods to demonstrate that an ECCS would protect the nuclear reactor core during a loss-of-coolant accident. This action is proposed because research has shown that calculations performed under current requirements greatly underestimate the ability of the ECCS to protect the core. This restricts the operation of some nuclear reactors unnecessarily and increases the costs of generating electricity. The proposed rule would allow use of the best information currently available to demonstrate that the ECCS would protect the reactor core during a loss-of-coolant accident.

Use of the realistic evaluation model may result in up to a 5 percent power upgrade for some plants. The present value of energy replacement cost savings resulting from a potential upgrade has been estimated to range between $5 and $127 million, depending on the location and age of a specific plant.

The proposed rule would apply to all applicants for and (cont)

Timetable:

Action	Date	FR Cite
ANPRM	12/06/78	43 FR 57157
ANPRM Comment Period End	02/05/79	43 FR 57157
NPRM	03/03/87	52 FR 6334
NPRM Comment Period End	07/17/87	52 FR 6334
Final Action	10/03/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: holders of construction permits for light-water reactors. If they choose, holders of operator licenses could utilize the proposed rule.

Because the proposed rule represents a significant change in a regulatory requirement, the staff prepared and issued on May 15, 1987, a summary of ECCS research performed over the last 10 years This guide provides a definition of what constitutes an that identifies the technical basis for the proposed rule. A regulatory guide was also prepared and issued on April 2, 1987. This guide provides a definition of what constitutes an acceptable best estimate model and acceptable methods of performing the uncertainty evaluation. The estimated cost to the NRC of this rulemaking is 2 to 3 staff-years and $200,000 of contractor support.

Agency Contact: Harry Tovmassian, Nuclear Regulatory Commission, Office of Nuclear Regulatory Research, Washington, DC 20555, 301 492-3588

RIN: 3150-AA44

3892. ALTERNATIVE METHODS FOR LEAKAGE RATE TESTING

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 50

Legal Deadline: None

Abstract: The Nuclear Regulatory Commission proposes a limited amendment to its regulations to clarify a question of interpretation in regard to leakage testing of containments of light-water cooled nuclear power plants. This proposed amendment would explicitly permit the continued use of a statistical data analysis technique that the NRC has considered to be an acceptable method of calculating containment leakage rates. Rulemaking is the only acceptable alternative for resolving this issue because the regulations specify the methods the NRC finds acceptable for calculation leakage rates. Because the proposed rule would simply make another method of calculating leakage rates available to the industry, no economic impact will probably result from this action.

Timetable:

Action	Date	FR Cite
NPRM	02/29/88	53 FR 5965
NPRM Comment Period End	05/30/88	
Final Action	11/15/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: E. Gunter Arndt, Nuclear Regulatory Commission, Office of Nuclear Regulatory Research, Washington, DC 20555, 301 492-3945

RIN: 3150-AC54

3893. LICENSEE ANNOUNCEMENT OF INSPECTORS

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 50

Legal Deadline: None

Abstract: The Nuclear Regulatory Commission is amending its regulations to ensure that the presence of NRC inspectors on power reactor sites is not announced to licensee and contractor personnel without the expressed request to do so by the inspector. This change will allow the NRC inspector, who is badged at the facility, to observe ongoing activities as they are being performed without licensee or contractor personnel having advanced notice of the inspection.

Timetable:

Action	Date	FR Cite
NPRM	03/18/88	53 FR 9024
NPRM Comment Period End	04/18/88	53 FR 9024
Final Action	10/03/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: George Barber, Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Washington, DC 20555, 301 492-1266

RIN: 3150-AC73

3894. ◆ LICENSEE ACTION DURING NATIONAL SECURITY EMERGENCY

Legal Authority: 42 USC 5841; 42 USC 5842; 42 USC 5846

CFR Citation: 10 CFR 50

Legal Deadline: None

Abstract: The proposed rule would allow a licensee during a national security emergency to deviate from a license condition or a technical specification. The Commission previously has granted authority to nuclear power reactor licensees to take reasonable action that departs from a license condition or a technical specification in an emergency when the action is immediately necessary to protect the public health and safety and no action consistent with license conditions and technical specifications that can provide adequate or equivalent protection is immediately apparent. This proposed rule will provide the same flexibility to licensees, but for the purpose of attaining national security objectives during a declared national emergency due to nuclear war or natural disaster.

The proposed rule change does not significantly impact state and local governments, health, safety, and the environment; or costs to licensees.

Timetable:

Action	Date	FR Cite
NPRM	07/19/88	53 FR 27174
NPRM Comment Period End	08/18/88	53 FR 27174
Final Action	02/00/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Joan Aron, Nuclear Regulatory Commission, Office of Assessment and Evaluation of, Operational Data, Washington, DC 20555, 301 492-9881

RIN: 3150-AC25

3895. DISPOSAL OF RADIOACTIVE WASTES

Legal Authority: 42 USC 10101

CFR Citation: 10 CFR 61

Legal Deadline: None

Abstract: The Commission instructed the staff to analyze the need to revise the definition of high-level radioactive waste (HLW) in Part 60 to conform with the definition in the Nuclear Waste Policy Act (NWPA). An ANPRM was published on February 27, 1987 (52 FR 5992), which recommended a revision based either wholly or partially on concentrations of radionuclides in the waste. After assessing the public comments on the ANPRM, and also taking into account recent information, the staff is now recommending against any revision of the definition of HLW. Instead, amendments to Part 61 are being recommended that would require geologic repository disposal of all above-Class C low-level radioactive waste (LLW) unless an alternative has been approved by the Commission. This would accomplish the objective of establishing suitable disposal requirements for radioactive waste with a minimal impact on cost burdens. Alternatives are (1) revise the definition of HLW so that additional above-Class C LLW is reclassified as HLW; or (2) make no change in the system of waste classification or required waste disposal options. (cont)

Timetable:

Action	Date	FR Cite
ANPRM	02/27/87	52 FR 5992
ANPRM Comment Period End	06/29/87	52 FR 16403
NPRM	05/16/88	53 FR 17709
NPRM Comment Period End	07/18/88	53 FR 17709
Final Action	04/30/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information:

The public and industry would benefit from this clarification of waste disposal options for above Class C LLW. NRC staff time for preparing this rulemaking is estimated to be two-staff years.

Agency Contact: Clark Prichard/Frank Costanzi, Nuclear Regulatory Commission, Office of Nuclear Regulatory Research, Washington, DC 20555, 301 492-3827

RIN: 3150-AB89

3896. CRITERIA AND PROCEDURES FOR EMERGENCY ACCESS TO NON-FEDERAL AND REGIONAL LOW-LEVEL WASTE DISPOSAL FACILITIES

Legal Authority: 42 USC 2021

CFR Citation: 10 CFR 61

Legal Deadline: None

Abstract: The proposed rule would establish procedures and criteria for fulfilling NRC's responsibilities associated with action on requests by low-level radioactive waste generators, or State officials on behalf of those generators, for emergency access to operating non-Federal or regional low level radioactive waste disposal facilities under Section 6 of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (LLRWPAA). Section 6 of the LLRWPAA authorizes the NRC to grant emergency access to any non-Federal low-level waste disposal facility, if necessary, to eliminate the immediate and serious threat to the public health and safety of the common defense and security, provided the threat cannot be mitigated by any alternative.

Timetable:

Action	Date	FR Cite
NPRM	12/15/87	52 FR 47578
NPRM Comment Period End	02/12/88	52 FR 47578
Final Action	11/15/88	

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Undetermined

Agency Contact: Janet Lambert, Nuclear Regulatory Commission, Office of Nuclear Regulatory Research, Washington, DC 20555, 301 492-3857

RIN: 3150-AC24

3897. SAFEGUARDS REQUIREMENTS FOR FUEL FACILITIES POSSESSING FORMULA QUANTITIES OF STRATEGIC SPECIAL NUCLEAR MATERIAL

Legal Authority: 42 USC 2073; 42 USC 2167; 41 USC 2201; 42 USC 5841; 42 USC 5844

CFR Citation: 10 CFR 73

Legal Deadline: None

Abstract: In a staff requirements memorandum dated June 8, 1987, the Commission directed the staff to publish a proposed rule within 120 days that would implement improved safeguards requirements based on the findings of a review team that compared DOE and NRC safeguards programs (SECY 87-28; CNSI). Primary focus is in the following areas: (1) security system performance evaluations, (2) night firing qualifications for guards, (3) 100 percent entrance searches, (4) armed guards at material access area control points, (5) two protected area fences, and (6) revision of the design basis threat.

Timetable:

Action	Date	FR Cite
NPRM	12/31/87	52 FR 49418
NPRM Comment Period End	03/30/88	52 FR 49418
Final Action	10/30/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Dr. Sandra D. Frattali, Nuclear Regulatory Commission, Office

of Nuclear Regulatory Research, Washington, DC 20555, 301 492-3773

RIN: 3150-AC23

3898. ◆ RESTRICTIONS AGAINST OWNERSHIP OF CERTAIN SECURITY INTERESTS BY MEMBERS OF ADVISORY COMMITTEE ON NUCLEAR WASTE; GIFTS, ENTERTAINMENT, AND FAVORS

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 0

Legal Deadline: None

Abstract: The Nuclear Regulatory Commission is amending its regulations governing the ownership by NRC employees of stocks, bonds, and other security interests in companies that fall within any one of five reactor-related or fuel cycle-licensed categories. This amendment will add to the group of affected employees those special Government employees who serve as members of the Advisory Committee on Nuclear Waste. The Commission is also amending its regulations on acceptance of gifts, entertainment, and favors to permit acceptance of travel expenses from an otherwise prohibited source when proffered in connection with a job interview and to permit acceptance of food and refreshments at widely-attended events sponsored by certain groups whose membership is composed of prohibited sources.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Susan Fonner, Nuclear Regulatory Commission, Office of the General Counsel, Washington, DC 20555, 301 [illegible]

RIN: 3150-AC22

3899. ◆ RELOCATION OF NRC'S PUBLIC DOCUMENT ROOM; OTHER MINOR NOMENCLATURE CHANGES

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 1; 10 CFR 2; 10 CFR 7; 10 CFR 9; 10 CFR 15; 10 CFR 19; 10 CFR 20; 10 CFR 21; 10 CFR 30; 10 CFR 35; 10 CFR 40; 10 CFR 50; 10 CFR 51; 10 CFR 55; 10 CFR 56; ...

Legal Deadline: None

Abstract: The Nuclear Regulatory Commission is amending its regulations to indicate that its Public Document Room has moved to a new location in the District of Columbia. The hours remain unchanged: 7:45 a.m. to 4:15 p.m. weekdays. These amendments are being made to inform NRC licensees and members of the public of this relocation. This rule also makes minor changes in NRC organization nomenclature to reflect new internal organizational titles.

Timetable:

Action	Date	FR Cite
Final Action	09/30/88	
Final Action Effective	10/03/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Dennis H. Grimsley, Nuclear Regulatory Commission, Office of Administration and Resources, Management, Washington, DC 20555, 301 [illegible]

RIN: 3150-AC29

3900. ◆ REVISION OF FEE SCHEDULE

Legal Authority: 31 USC 9701; 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 170; 10 CFR 171

Legal Deadline: None

Abstract: The proposed rule would revise the fees charged for licensing services provided by the NRC and charged to persons who operate nuclear power reactors. The proposed amendments would (1) remove fee ceilings, increase the amount charged for a license application, and revise the flat fees set out in part 170; (2) revise the hourly rate for NRC professional time spent providing various regulatory services; (3) increase the ceiling on annual charges; (4) add a deadline for filing exemptions to 10 CFR 171.11; and (5) include monies from the Department of Energy High-Level Waste Fund. Because the proposed regulation is necessary to implement the most recent fee legislation enacted by Congress, there is no suitable alternative to rulemaking for these actions. All applicants and licensees that are currently subject to fees collections under the current regulations would be affected by the proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	06/27/88	53 FR 24077
NPRM Comment Period End	07/27/88	
Final Action	10/01/88	

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: C. James Holloway, Jr., Nuclear Regulatory Commission, Office of Administration and Resources, Management, Washington, DC, 301 492-7381

RIN: 3150-AC00

3901. PROCEDURES INVOLVING THE EQUAL ACCESS TO JUSTICE ACT: IMPLEMENTATION

Legal Authority: 5 USC 504

CFR Citation: 10 CFR 1; 10 CFR 2

Legal Deadline: None

Abstract: The proposed rule would implement the Equal Access to Justice Act (EAJA) by providing for the payment of fees and expenses to certain eligible individuals and businesses that prevail in agency adjudications when the agency's position is determined not to have been substantially justified. This proposed regulation is modeled after rules issued by the Administrative Conference of the United States (ACUS) and have been modified to conform to NRC's established rules of practice. The proposed rule would further the EAJA's intent to develop government-wide, "uniform" agency regulations and would describe NRC procedures and requirements for the filing and disposition of EAJA applications. A draft final rule was sent to the Commission in June 1982, but Commission action was suspended pending a decision by the Comptroller General on the availability of funds to pay awards to intervenor parties. This issue was also the subject of litigation in Business and Professional People for the Public Interest v. NRC, 793 F. 2d 1380 (D.C. Cir. 1986). This litigation is being evaluated to determine what if any changes may be necessary in the proposed rule. (cont)

Timetable:

Action	Date	FR Cite
NPRM	10/28/81	46 FR 53189
NPRM Comment Period End	11/28/81	46 FR 53189

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: ABSTRACT CONT:

Additionally, in August 1985, the President signed into law an enactment renewing the EAJA after its expiration under a statutory sunset requirement. This legislation, Pub. L. No. 99-80 revises the EAJA, and these revisions are being evaluated to determine whether further conforming changes may be necessary in the proposed rule.

Agency Contact: Paul Bollwerk, Nuclear Regulatory Commission, Office of the General Counsel, Washington, DC 20555, 301 [illegible]

RIN: 3150-AA01

3902. PROPOSED REVISIONS TO THE CRITERIA AND PROCEDURES FOR THE REPORTING OF DEFECTS AND NONCOMPLIANCE

Legal Authority: 42 USC 2201; 42 USC 2282; 42 USC 5841; 42 USC 5846

CFR Citation: 10 CFR 21; 10 CFR 50

Legal Deadline: None

Abstract: This proposed rule would amend Part 21 and sec. 50.55(e), both of which require the reporting of safety defects by licensees. In addition, Part 21 requires reporting by non-licensees. This proposed amendment was prompted by TMI Action Plan Task II, J.4, and NRC staff experience with Part 21 and section 50.55 (e) reporting. The main objectives of the rulemaking effort are: (1) elimination of duplicate evaluation and reporting of safety defects; (2) consistent threshold for safety defect reporting in Part 21 and section 50.55(e); (3) establishment of consistent and uniform content of reporting under Part 21 and section 50.55 (e) and (4) establishment of time limits within which a defect must be evaluated and reported.

Approximately 500 reports are submitted to the Commission annually under Part 21. Approximately 1500 reports are submitted to the Commission annually under section 50.55 (e). These reports identify both plant-specific and generic safety concerns for further NRC regulatory action. Under current rules, these reports have formed the basis for NRC issuance of numerous NRC information notices and bulletins. (cont)

Timetable:

Action	Date	FR Cite
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: ABSTRACT CONT:

Alternatives to this rulemaking approach which were considered, varied from establishment of a single rule for all reporting of safety defects and operating reactors events to maintaining status quo for defect reporting. All alternatives were rejected since they would not substantially improve the current safety defect reporting situation.

Current costs of reporting under Part 21 and section 50.55 (e) are estimated at $10.43 million annually for industry and 1.08 million annually for NRC evaluations. It is anticipated that the industry reporting burden should be reduced by $1.6 million; while NRC burden should remain the same. Additional industry burden, though minimal, is anticipated in the area of reissuing procedures for reporting and record keeping.

The Commission disapproved this proposed rule on 10/20/86 and provided direction to the staff to revise the proposed rulemaking.

Agency Contact: William R. Jones, Nuclear Regulatory Commission, Office of Analysis and Evaluation of, Operational Data, Washington, DC 20555, 301 492-4442

RIN: 3150-AA39

3903. INFORMAL HEARING PROCEDURES FOR MATERIALS LICENSES PROCEEDINGS

Legal Authority: 42 USC 2201; 42 USC 2111

CFR Citation: 10 CFR 2

Legal Deadline: None

Abstract: This proposed rule, being prepared at Commission direction, would provide comprehensive treatment of hearing procedures to be implemented by the Commission for materials licensing proceedings. In addition, the proposed rule would encompass the objective of the proposed rule, "Jurisdiction of Adjudicatory Boards," identified as 3150-AA53, which has been deleted from OMB's Unified Agenda. There are no reasonable alternatives to rulemaking for implementing these informal hearing procedures. The procedures are expected to reduce the economic burden imposed on a participant in a proceeding.

Timetable:

Action	Date	FR Cite
NPRM	05/29/87	52 FR 20089
NPRM Comment Period End	08/26/87	52 FR 27821
Final Action	10/03/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Paul Bollwerk, Nuclear Regulatory Commission, Office of the General Counsel, Washington, DC 20555, 301 492-1634

RIN: 3150-AB83

3904. PRIMARY REACTOR CONTAINMENT LEAKAGE TESTING FOR WATER-COOLED POWER REACTORS

Legal Authority: 42 USC 2133; 42 USC 2134; 42 USC 5841

CFR Citation: 10 CFR 50

Legal Deadline: None

Abstract: The proposed rule would update and revise the 1973 criteria for preoperational and periodic pressure testing for leakage of primary containment boundaries of water-cooled power reactors. Problems have developed in application and interpretation of the existing rule. These result from changes in testing technology, test criteria, and a relevant national standard that needs to be recognized.

The revision is urgently needed to resolve continuing conflicts between licensees and NRC inspectors over interpretations, current regulatory practice that is no longer being reflected accurately by the existing rule,

and endorsement in the existing regulation of an obsolete national standard that was replaced in 1981.

The benefits anticipated include elimination of inconsistencies and obsolete requirements and the addition of greater usefulness and a higher confidence in the leak-tight integrity of containment system boundaries under post-loss-of-coolant accident conditions. The majority of the effort needed by NRC to issue the rule has already been expended. (cont)

Timetable:

Action	Date	FR Cite
NPRM	10/29/86	51 FR 39538
NPRM Comment Period End	04/24/87	52 FR 2416
Final Action	02/15/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: ABSTRACT CONT:

A detailed analysis of costs, benefits, and occupational exposures is available in the NRC Public Document Room, and indicates possible savings to industry of $14 million to $300 million and an increase in occupational exposure of less than 1 percent per year per plant due to increased testing.

Agency Contact: Gunter Arndt, Nuclear Regulatory Commission, Office of Nuclear Regulatory Research, Washington, DC 20555, 301 492-3845

RIN: 3150-AA56

3905. DEGREE REQUIREMENT FOR SENIOR OPERATORS AT NUCLEAR POWER PLANTS

Legal Authority: 42 USC 2201

CFR Citation: 10 CFR 50; 10 CFR 55

Legal Deadline: None

Abstract: The Commission is considering an amendment to its regulations to require that applicants for a senior operator license of a nuclear power plant hold a baccalaureate degree in engineering or physical science from an accredited institution four years after date of this rule. Other baccalaureate degrees from an accredited institution may be accepted on a case-by-case basis. This contemplated rulemaking action is due to a Commission decision to levels of engineering and accident management expertise on shift. enhance the levels of engineering and accident management expertise on shift.

The Commission will also issue policy statement concurrently with this rule related to utility implementation of an accredited degree program for reactor operators.

Timetable:

Action	Date	FR Cite
ANPRM	05/31/86	51 FR 19561
ANPRM Comment Period End	09/29/86	
NPRM	09/30/88	
Final Action	10/31/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Morton Fleishman, Nuclear Regulatory Commission, Office of Nuclear Regulatory Research, Washington, DC 20555, 301 492-3794

RIN: 3150-AC26

3906. EQUIVALENT CONTROL CAPACITY FOR STANDBY LIQUID CONTROL SYSTEMS (SLCS)

Legal Authority: 42 USC 2138

CFR Citation: 10 CFR 50

Legal Deadline: None

Abstract: The proposed rule would clarify the Commission's regulations pertaining to boiling water reactors (BWR). The current regulations require that all boiling water reactors must have a standby liquid control system (SLCS) with a minimum flow capacity and boron content equivalent in control capacity to 86 gallons per minute (gpm) of 13 weight percent of sodium pentaborate solution. In January 1986, a generic letter was issued to all appropriate licensees that provided clarification of the phrase "equivalent in control capacity" contained in section 50.62 (c) (4). This letter provided the basis for the flow and weight percent of sodium pentaborate decahydrate requirements and described how equivalency could be achieved for smaller plants. The NRC staff considers the contents of the generic letter to be technically correct and desired that this position be established in the regulations.

This proposed rule would clarify a Commission regulation; thus no other procedure is appropriate. The technical proposals in the rule were analyzed for safety as part of the original rulemaking procedure, although they were not specifically mentioned. (cont)

Timetable:

Action	Date	FR Cite
NPRM	09/30/86	
Final Action	12/30/86	

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: This rule will not adversely affect the health and safety of the public.

Agency Contact: William K. Pearson, Nuclear Regulatory Commission, Office of Nuclear Regulatory Research, Washington, DC 20555, 301 492-3764

RIN: 3150-AC72

3907. ◆ EMERGENCY PLANNING AND PREPAREDNESS REQUIREMENTS FOR NUCLEAR POWER PLANT FUEL LOADING AND INITIAL LOW-POWER OPERATIONS

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 50

Legal Deadline: None

Abstract: The Nuclear Regulatory Commission proposes to amend its regulations to establish more clearly what emergency planning and preparedness requirements are needed for fuel loading and low-power operation of nuclear power plants. current rules provide for a finding prior to fuel loading and low-power on the licensee's plans and state of preparedness for dealing with accidents that could affect persons onsite. Current rules also provide that no finding regarding the planning or preparedness of offsite agencies for dealing with accidents that could affect persons offsite is required at this stage. The Commission is not proposing to change these aspects of the current rules. However, practice under the current rule has been to consider also, as part of review of licensees' plans, certain offsite elements of those plans that seem unnecessary for low-power operation in view of the low degree of risk posed to offsite persons by fuel loading and low-power operation (up to 5 percent of rated power). It is the purpose of this proposed rulemaking to consider whether this practice should be discontinued or modified. Specifically, the (cont)

Timetable:

Action	Date	FR Cite
NPRM	05/09/86	53 FR 16435
NPRM Comment Period End	08/23/86	53 FR 19930
Final Action	10/03/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: Commission is considering amending Section 50.47(d) to include, as prerequisites for low-power operation, seven standards with offsite aspects that are believed to be appropriate for fuel loading and low-power operation. The capability for prompt notification of the surrounding populace (as distinct from the capacity to keep offsite emergency planning agencies informed promptly of plant accidents) is not included in the rule as a requirement for fuel loading and low-power operations. Nothing in this proposed rule is intended to change the emergency planning standards that must be satisfied before operations are at full power.

Agency Contact: Michael Jamgochian, Nuclear Regulatory Commission, Office of Nuclear Regulatory Research, Washington, DC, 301 492-3918

RIN: 3150-AC98

3908. TABLES S-3 AND S-4, ADDITION OF RADON-222 AND TECHNETIUM-99 RADIATION VALUES, AND ADDITION OF APPENDIX B, "TABLE S-3 EXPLANATORY ANALYSIS"

Legal Authority: 42 USC 2011; 42 USC 2201; 42 USC 4321; 42 USC 5841; 42 USC 5842

CFR Citation: 10 CFR 51

Legal Deadline: None

Abstract: The proposed rule provides a narrative explanation of the numerical values established in Table S-3, "Table of Uranium Fuel Cycle Environmental Data," that appears in the Commission's environmental protection regulations. The proposed rule describes the basis for the values contained in Table S-3, the significance of the uranium fuel cycle data in the table, and the conditions governing the use of the table. The proposed rule amends Section 51.52 to modify the enrichment value of U-235 and the maximum level of average fuel irradiation. The narrative explanation also addresses important fuel cycle impacts and the cumulative impacts of the nuclear fuel cycle for the whole nuclear power industry so that it may be possible to consider these impacts generically rather than repeatedly in individual licensing proceedings, thus reducing litigation time and costs for both NRC and applicants.

The proposed rule regarding revision of Section 51.51 and the addition of Appendix B was published for public review and comment on March 4, 1981 (46 FR 15154). The final rulemaking was deferred pending the outcome of a suit (Natural Resources

Timetable:

Action	Date	FR Cite
NPRM	03/04/81	46 FR 15154
NPRM Comment Period End	05/04/81	46 FR 15154
Final Action	02/28/90	

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: Defense Council, et al. v. NRC, No. 7401486) in the U.S. Circuit Court of Appeals (D.C. Circuit) decision of April 27, 1982, invalidated the entire Table S-3 rule. The Supreme Court reversed this decision on June 6, 1983.

The proposed rule to provide a narrative explanation for Table S-3 has been revised to reflect new developments and the passage of time while the rulemaking was deferred. Final action on the Table S-3 rule was held in abeyance until new values for radon-222 and technetium-99 could be added to the table and covered in the narrative explanation. The rule is being reissued as a proposed rule because the scope has been extended to include radiation values for radon-222 and technetium-99 and the narrative explanation has been extensively revised from that published on March 4, 1981 (46 FR 15154).

The staff's estimate is that the completion of a final Table S-3 rule covering the new values for radon-222 and technetium-99 and the revised narrative explanation will be completed in 1989.

Agency Contact: Stanley Turel, Nuclear Regulatory Commission, Office of Nuclear Regulatory Research, Washington, DC 20555, 301 492-3739

RIN: 3150-AA31

3909. EARLY SITE PERMITS; STANDARD DESIGN CERTIFICATIONS; AND COMBINED LICENSES FOR NUCLEAR POWER REACTORS

Legal Authority: 42 USC 2133; 42 USC 2201; 42 USC 2232; 42 USC 2233; 42 USC 2239; 42 USC 2282; 42 USC 5841; 42 USC 5846

CFR Citation: 10 CFR 52

Legal Deadline: None

Abstract: The Nuclear Regulatory Commission is considering adding a new part to its regulations to improve the reactor licensing process. The proposed rule would provide for the issuance of early site permits, standard design certifications, and combine construction permits and conditional operating licenses for nuclear power reactors. These procedural reforms are intended to improve the quality, effectiveness, and efficiency of nuclear power plant licensing without detracting from protection of the public health and safety or the public's ability to participate in the licensing process. They are designed to implement as much of the Commission's proposed "Nuclear Power Plant Standardization and Licensing Act of 1987" as is permissible under its existing statutory authority. The proposed legislation is based on an earlier proposal that was developed by the Commission's Regulatory Reform Task Force. If licensing reform legislation is ultimately enacted, the rules can be modified to implement that legislation fully.

Timetable:

Action	Date	FR Cite
NPRM	09/00/88	
Final Action	12/30/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: This proposed rule is currently before the Commission.

Agency Contact: Steven Crockett, Nuclear Regulatory Commission, Office of the General Counsel, Washington, DC 20555, 301 492-8189

RIN: 3150-AC81

3910. CRITERIA FOR AN EXTRAORDINARY NUCLEAR OCCURRENCE

Legal Authority: 42 USC 2201; 42 USC 2210; 42 USC 5841; 42 USC 5842

CFR Citation: 10 CFR 140

Legal Deadline: None

Abstract: The final rule will revise the Extraordinary Nuclear Occurrence (ENO) criteria to eliminate the problems that were encountered in the Three Mile Island ENO determination. It is desirable to get revised criteria in place in the event they are needed.

There are no alternatives to this rulemaking since the current ENO criteria are already embodied in Subpart E of 10 CFR Part 140. The only way to modify these criteria, as this rule seeks to do is through rulemaking.

There is no safety impact on public health or safety. The ENO criteria provide legal waivers of defenses. Industry (insurers and utilities) claims that a reduction in the ENO criteria could cause increases in insurance premiums. The final rule would also be responsive to PRM-140-1.

It is estimated that approximately 1 staff year of NRC time will be required to process the final rule. No contract funding is anticipated.

Timetable:

Action	Date	FR Cite
NPRM	04/09/85	50 FR 13978
NPRM Comment Period End	09/06/85	50 FR 13978
Final Action	01/30/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Harold Peterson, Nuclear Regulatory Commission, Office of Nuclear Regulatory Research, Washington, DC 20555, 301 492-3736

RIN: 3150-AB01

3911. ◆ FACILITY FORM NUCLEAR LIABILITY INSURANCE POLICY; MISCELLANEOUS AMENDMENTS

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 140

Legal Deadline: None

Abstract: The proposed rule would amend its regulations to make several minor changes in the Facility Form nuclear liability insurance policy furnished as evidence of financial protection. The two nuclear insurance pools have submitted endorsements to the Facility Form policy that make available a single insurance policy to cover onsite worker claims. This new Master Worker Policy reflects different rating and underwriting treatment than is utilized in the Facility Form policy. The supplementary insurance provided by the new policy enhances protection to the public since payments under its provisions for routine claims by onsite nuclear workers will not reduce the financial protection for the public under the primary and secondary nuclear liability insurance policies provided as evidence of financial protection under the Price-Anderson Act.

Timetable:

Action	Date	FR Cite
NPRM	04/27/88	53 FR 15049
NPRM Comment Period End	05/27/88	53 FR 15049

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Ira Dinitz, Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Washington, DC 20555, 301 492-1288

RIN: 3150-AC82

3912. NEGOTIATED RULEMAKING ON THE SUBMISSION AND MANAGEMENT OF RECORDS AND DOCUMENTS RELATED TO THE LICENSING OF A GEOLOGIC REPOSITORY FOR THE DISPOSAL OF HIGH LEVEL WASTE

Legal Authority: 42 USC 10101

CFR Citation: 10 CFR 2; 10 CFR 60

Legal Deadline: None

Abstract: The Nuclear Waste Policy Act (NWPA) provides three years for the NRC to reach a decision on construction authorization for a high level waste repository. In order for the NRC to be able to make its decision within the allotted time, ready access to all pertinent records must be assured to all parties in the licensing proceeding. The DOE has committed to develop an electronic information management system to be used for the licensing proceeding. The NRC staff intends to use the process of negotiated rulemaking to develop a proposed rule that would revise the Commission's discovery procedure and motion practice in 10 CFR Part 2 for the high level waste licensing proceeding. This rule would require the DOE license application and all supporting records to be provided in a standardized electronic format. All parties to the licensing proceeding would be required to submit all relevant data to this system. In turn all parties would have access to the data base.

Resource estimates currently under development.

Timetable:

Action	Date	FR Cite
NPRM	09/00/88	
Final Action	12/31/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Francis Cameron, Nuclear Regulatory Commission, Office of General Counsel, Washington, DC 20555, 301 492-1632

RIN: 3150-AC44

3913. ◆ MINOR AMENDMENTS TO PHYSICAL PROTECTION REQUIREMENTS

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 002; 10 CFR 070; 10 CFR 072; 10 CFR 073; 10 CFR 075

Legal Deadline: None

Abstract: The Safeguards Interoffice Review Group (SIRG) of the NRC has been conducting a systematic review of the agency's safeguards regulations and guidance documents. This review has identified areas in the regulations that are out of date, susceptible to differing interpretations, or in need of clarification. In addition, the staff has identified other areas in the regulations where minor changes are warranted. In response to these efforts, specific amendments to the regulations are being proposed. The proposed changes would (1) limit the use of the 100 rems per hour at 3 feet dose exemption to a reduction of no more than one physical protection category and not allow a drop below the lowest category, (2) add definitions for common terms not currently defined by frequent use, (3) delete action dates that no longer apply, (4) correct outdated terms and

cross references, (5) clarify wording that is susceptible to differing interpretations, (6) correct typographical errors, and (7) make other minor changes. (cont)

Timetable:

Action	Date	FR Cite
Final Action	04/04/89	
NPRM	05/00/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: The alternative to rulemaking would be to allow the status quo to continue. Except for the change in the impact of a high radiation field on physical protection requirements, these minor amendments affect the public, industry, and the NRC only in so far as they make the regulations easier to understand, implement, and enforce. Limiting the use of the 100 rem per hour at 3 feet dose exemption to a reduction of no more than one physical protection category, and not allowing a drop below the lowest category, could affect two non-power reactor licensees. It is estimated that 0.4 staff-years of NRC effort over 2 years will be required for the rulemaking. This is a low priority rulemaking.

Agency Contact: Stan Dolins, Nuclear Regulatory Commission, Office of Nuclear Regulatory Research, Washington, DC 20555, 301 492-3743

RIN: 3150-AC26

3914. DISPOSAL OF WASTE OIL BY INCINERATION FROM NUCLEAR POWER PLANTS

Legal Authority: 42 USC 2201; 42 USC 2167; 42 USC 2073

CFR Citation: 10 CFR 20

Legal Deadline: None

Abstract: The proposed rule, which is being initiated in partial response to a petition filed by Edison Electric Institute and Utility Nuclear Waste Management Group (PRM-20-15, dated July 31, 1984), would amend NRC regulations to allow onsite incineration of waste oil at nuclear power plants subject to specified conditions. Currently, the only approved disposal method for low-level, radioactively contaminated waste oil from nuclear power plants involves absorption or solidification, transportation to, and burial at a licensed disposal site. There is a clear need to allow, for very low activity level wastes, the use of alternative disposal methods which are more cost effective from a radiological health and safety standpoint and which conserve the limited disposal capacity of low-level waste burial sites.

Increased savings to both the public and the industry could thereby be achieved without imposing additional risk to the public health and safety. There would be an estimated industry-wide economic savings of approximately $3million to $12 million per year if such a rule (cont)

Timetable:

Action	Date	FR Cite
NPRM	03/00/89	
Final Action	07/10/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: ABSTRACT CONT: were promulgated.

Alternatives to this rulemaking action are to maintain the status quo or to wait until the Environmental Protection Agency develops standards on acceptable levels of radioactivity which may be released to the environment on an unrestricted basis. It is estimated that approximately 1-2 person years of NRC staff time will be required to process this rule.

Agency Contact: Catherine R. Mattsen, Nuclear Regulatory Commission, Office of Nuclear Regulatory Research, Washington, DC 20555, 301 492-3838

RIN: 3150-AC14

3915. STORAGE OF SPENT NUCLEAR FUEL IN NRC APPROVED CASKS AT CIVILIAN NUCLEAR POWER REACTOR SITES

Legal Authority: 42 USC 10153; 42 USC 10198

CFR Citation: 10 CFR 72; 10 CFR 73; 10 CFR 74; 10 CFR 170

Legal Deadline: None

Abstract: The proposed rule is in response to the Nuclear Waste Policy Act (NWPA) section 218 (a) which states in part, that the Secretary of DOE shall establish a demonstration program, in cooperation with the private sector, for dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the Commission may, by rule, approve for use at sites of civilian nuclear power reactors. The NWPA also requires that the NRC establish procedures for the licensing of any technology approved by the Commission under section 218(a) for use at the site of any civilian nuclear power reactor.

The staff anticipates a significant increase in the demand for use of dry spent fuel storage casks starting in the early 1990s, thus processing of this proposed rule would be timely. NRC resource requirements are anticipated to be about two staff years.

Timetable:

Action	Date	FR Cite
NPRM	09/00/88	
Interim Final Rule	07/31/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: William R. Pearson, Nuclear Regulatory Commission, Office of Nuclear Regulatory Research, Washington, DC 20555, 301 492-3784

RIN: 3150-AC78

3916. REASSERTING NRC'S SOLE AUTHORITY FOR APPROVING ONSITE LOW-LEVEL WASTE DISPOSAL IN AGREEMENT STATES

Legal Authority: 42 USC 2201; 42 USC 2021; 42 USC 5841

CFR Citation: 10 CFR 150

Legal Deadline: None

Abstract: This rulemaking would establish NRC's sole authority for approving onsite disposal of low-level waste at all NRC licensed reactors and at Part 70 fuel cycle facilities. There is a need to amend section 150.15 to authorize one agency (NRC) to regulate all onsite disposal of low-level waste in order to provide a more comprehensive regulatory review of all onsite waste management activities and to avoid unnecessary duplication of effort. Uniform review by the NRC will provide for greater assurance that the radioactive material will not present a health hazard at a later date after the site is decommissioned.

NRC — Final Rule Stage

Timetable:

Action	Date	FR Cite
NPRM	09/00/89	
Final Action	06/30/89	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: John Stewart, Nuclear Regulatory Commission, Office of Nuclear Regulatory Research, Washington, DC 20555, 301 492-3818

RIN: 3150-AC37

NUCLEAR REGULATORY COMMISSION (NRC) — Completed Actions

3017. REVISION TO EX PARTE AND SEPARATION OF FUNCTIONS RULES APPLICABLE TO FORMAL ADJUDICATORY PROCEEDINGS

Legal Authority: 5 USC 554 (d); 5 USC 557(d)

CFR Citation: 10 CFR 0; 10 CFR 2

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's regulations dealing with ex parte communications and separation of adjudicatory and nonadjudicatory functions in formal adjudicatory proceedings by updating the agency's rules of practice and incorporating requirements imposed by the Government in the Sunshine Act. Changes are proposed in both the form and the substance of the existing rules to clarify their meaning and to aid agency adjudicatory officials in maintaining effective communication with NRC staff personnel and persons outside the agency while at the same time ensuring that proceedings will be conducted fairly and impartially. This proposed rule supersedes a prior proposed rule entitled, "Ex Parte Communications and Separation of Adjudicatory and Non Adjudicatory Functions," (3150-AA00) published March 7, 1979 (44 FR 12428).

Timetable:

Action	Date	FR Cite
NPRM	03/26/86	51 FR 10393
NPRM Comment Period End	06/26/86	51 FR 19067
Final Action	03/31/88	53 FR 10360
Final Action Effective	04/29/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Paul Bollwerk, Nuclear Regulatory Commission, Office of the General Counsel, Washington, DC 20555, 202 634-3224

RIN: 3150-AC18

3018. RETENTION PERIODS FOR RECORDS

Legal Authority: 42 USC 2201

CFR Citation: 10 CFR 4; 10 CFR 11; 10 CFR 21; 10 CFR 25; 10 CFR 30; 10 CFR 31; 10 CFR 32; 10 CFR 34; 10 CFR 35; 10 CFR 40; 10 CFR 50; 10 CFR 60; 10 CFR 61; 10 CFR 70; 10 CFR 71; ...

Legal Deadline: None

Abstract: The Nuclear Regulatory Commission is amending its regulations to establish a definite retention period for each record that an NRC application or licensee for a materials or facility license is required to maintain. This action is necessary to comply with the Office of Management and Budget requirement that a specific retention period be identified for each record. The final rule also establishes a uniform standard acceptable to the NRC for the condition of a record throughout each specified retention period. This action is expected to reduce the overall recordkeeping burden for NRC applicants and licensees by use of uniform and specific retention periods for each recordkeeping requirement.

Timetable:

Action	Date	FR Cite
Final Action	05/27/88	53 FR 19240
Final Action Effective	07/26/88	53 FR 19240

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: ABSTRACT CONT:

Agency Contact: Brenda Jo. Shelton, Nuclear Regulatory Commission, Office of Administration and Resources, Management, Washington, DC 20555, 301 492-8132

RIN: 3150-AB43

3019. GENERAL REQUIREMENTS FOR DECOMMISSIONING NUCLEAR FACILITIES

Legal Authority: 42 USC 2201

CFR Citation: 10 CFR 30; 10 CFR 40; 10 CFR 50; 10 CFR 51; 10 CFR 70; 10 CFR 72

Legal Deadline: Final, Statutory, July 27, 1988.
Part C, Part U (proposed)

Abstract: The Nuclear Regulatory Commission is amending its regulations to set forth technical and financial criteria for decommissioning licensed nuclear facilities. The amended regulations address decommissioning planning needs, timing, funding methods, and environmental review requirements. The intent of the amendments is to assure that decommissioning of all licensed facilities will be accomplished in a safe and timely manner and that adequate licensee funds will be available for this purpose. The final rule also contains a response to a petition for rulemaking (PRM-50-22), concerning decommissioning financial assurance initially filed by the Public Interest Research Group (PIRG), et al., on July 5, 1977.

Timetable:

Action	Date	FR Cite
ANPRM	03/13/78	43 FR 10370
NPRM	02/11/85	50 FR 5600
NPRM Comment Period End	07/12/85	50 FR 23025
Final Action	06/27/88	53 FR 24018
Final Action Effective	07/27/88	53 FR 24018

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Undetermined

Agency Contact: Keith G. Steyer/Frank Cardile, Nuclear Regulatory Commission, Office of Nuclear

NRC — Completed Actions

Regulatory Research, Washington, DC 20555, 301 492-3824

RIN: 3150-AA40

3020. CONTROL OF AEROSOLS AND GASES

Legal Authority: 42 USC 2111; 42 USC 2201; 42 USC 2232; 42 USC 2233; 42 USC 5841

CFR Citation: 10 CFR 35

Legal Deadline: None

Abstract: The proposed rule is in response to PRM-35-6 which requests that the Commission remove the requirements in Part 35 that radioactive aerosols be administered in rooms that are at negative pressure relative to surrounding rooms. The petitioner states that the imposition of the negative room pressure requirement could have an adverse impact on the delivery of health care to certain patients with pulmonary disease and that this requirement is unnecessary to protect workers and public health and safety. The staff agrees and has developed a proposed rule change to remove the negative room pressure requirement for aerosols.

Timetable:

Action	Date	FR Cite
Final Action	07/22/88	53 FR 27665
Final Action Effective	08/22/88	53 FR 27665

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Alan Roecklein, Nuclear Regulatory Commission, Office of Nuclear Regulatory Research, Washington, DC 20555, 301 492-3749

RIN: 3150-AC60

3021. BACKFIT REQUIREMENT FOR SENIOR OPERATORS AT NUCLEAR POWER PLANTS

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 50

Legal Deadline: None

Abstract: The Nuclear Regulatory Commission has revised its regulations concerning the backfitting of nuclear power plants. This rulemaking action is necessary to bring the existing backfitting rule into unambiguous conformance with the decision of the United States Court of Appeals for the District of Columbia in the Union of Concerned Scientist, et al. v. U.S. Nuclear Regulatory Commission (Nos. 85-1757 and 86-1219 (August 4, 1987)). The rulemaking is intended to clarify when economic factors may be considered in making a decision as to whether a backfit requirement is imposed on a nuclear power plant.

Timetable:

Action	Date	FR Cite
Final Action	06/06/88	53 FR 20603
Final Action Effective	07/06/88	53 FR 20603

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Steven F. Crockett, Nuclear Regulatory Commission, Office of the General Counsel, Washington, DC 20555, 301 492-1690

RIN: 3150-AC83

3022. ● REVISION OF TELEPHONE NUMBERS FOR ENVIRONMENTAL INQUIRIES

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 051

Legal Deadline: None

Abstract: The final rule will amend the NRC's regulations to indicate the revision of five telephone numbers that will enable prospective applicants or petitioners to consult with members of the NRC's staff. These amendments are required because of the assignment of new telephone numbers in conjunction with the recent consolidation of approximately one-half of the NRC's headquarters staff to its new location in Rockville, Maryland. These amendments are being made to inform NRC licensees and members of the public of the new telephone numbers.

Timetable:

Action	Date	FR Cite
Final Action	04/25/88	53 FR 13399
Final Action Effective	04/25/88	53 FR 13399

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Dennis H. Grimsley, Nuclear Regulatory Commission, Office of Administration and Resources Management, Washington, DC 20555, 301 492-7211

RIN: 3150-AC97

3023. ● ADDRESSES FOR PERSONAL DELIVERY OF COMMUNICATIONS

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 001; 10 CFR 110; 10 CFR 171

Legal Deadline: None

Abstract: The final rule will amend the NRC's regulations to indicate an additional address for the personal delivery of communications. This action is being taken because of the relocation of the NRC's Commission-level offices to the agency's new headquarters office building in Rockville, Maryland. The amendments will inform NRC licensees and members of the public of the new addresses.

Timetable:

Action	Date	FR Cite
Final Action	05/19/88	53 FR 17915
Final Action Effective	05/19/88	53 FR 17915

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Dennis H. Grimsley, Nuclear Regulatory Commission, Office of Administration and Resources, Management, Washington, DC, 301 492-7211

RIN: 3150-AC84

3024. ● ACCESS AUTHORIZATION FEE SCHEDULE FOR LICENSEE PERSONNEL

Legal Authority: 31 USC 9071; 42 USC 2165; 42 USC 2201

CFR Citation: 10 CFR 11; 10 CFR 25

Legal Deadline: None

Abstract: The final rule amends the Commission's regulation to revise the fees charged for background investigations of licensee personnel who require access to National Security Information and Restricted Data and access to control over special nuclear material. The revision is needed to comply with current regulations which state that NRC will publish fee adjustments concurrent with notification of any changes in the rate charged the NRC by the Office of

Personnel Management for conducting the investigations.

Timetable:

Action	Date	FR Cite
Final Action	06/13/88	53 FR 21979
Final Action Effective	06/13/88	53 FR 21979

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Duane G. Kidd, Nuclear Regulatory Commission, Office of Administration and Resources, Management, Washington, DC 20555, 301 492-4124

RIN: 3150-AC05

3925. ◆ IMPLEMENTATION OF THE USE OF SF-86, "QUESTIONNAIRE FOR SENSITIVE POSITIONS"

Legal Authority: 42 USC 2165; 42 USC 2201; 42 USC 2273; 42 USC 5841

CFR Citation: 10 CFR 11; 10 CFR 25

Legal Deadline: None

Abstract: The final rule will change the forms required to request an NRC personnel security clearance or material access authorization for NRC licensees and others when an Office of Personnel Management (OPM) background investigation is necessary.

The final amendments are necessary because as of September 16, 1988, OPM will accept only the Standard Form (SF) 86, "Questionnaire for Sensitive Positions" as the basis for their background investigations. The exception to the use of SF-86 held by NRC (for use of the NRC Form-1, "Personnel Security Questionnaire") is being discontinued. Therefore, there is no reasonable alternative to rulemaking. This rule will have a negligible effect on the general public. NRC resources required for processing this rule through final publication are estimated to be 120 staff hours.

Timetable:

Action	Date	FR Cite
Final Action	05/16/88	53 FR 30629
Final Action Effective	05/15/88	53 FR 30629

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Cynthia G. Harbaugh, Nuclear Regulatory Commission, Office of Administration and Resources, Management, Washington, DC 20555, 301 492-4138

RIN: 3150-AC30

3926. ◆ REVISION OF FEE SCHEDULE; INTERIM RULE

Legal Authority: 42 USC 2201(w); 42 USC 5841

CFR Citation: 10 CFR 171

Legal Deadline: None

Abstract: The interim final rule amends the Commission's regulations concerning the annual charges for licensed power reactors, on an interim basis, for the 1988 Fiscal Year. The interim rule raises the ceiling on the collection of annual fees to an amount that will approximate, but not be less than, 45 percent of the Commission's budget. This action is necessary to provide for the timely collection of fees as required by recently enacted legislation. The increase of 12 percent will be apportioned among the licensed power reactors in the same manner as under the current fee schedule regulations.

Timetable:

Action	Date	FR Cite
Final Action	06/12/88	53 FR 22403
Final Action Effective	06/12/88	53 FR 22403

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Lee Hiller, Nuclear Regulatory Commission, Office of Administration and Resources, Management, Washington, DC, 301 492-7351

RIN: 3150-AC26

3927. STATION BLACKOUT

Legal Authority: 42 USC 2133; 42 USC 2134; 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 50

Legal Deadline: None

Abstract: The NRC is amending its regulations to require that light water cooled nuclear power plants be capable of withstanding a total loss of alternating current (AC) electrical power, called station blackout, for a specified duration and maintaining reactor core cooling during that period. This requirement is based on information developed under the Commission's study of Unresolved Safety Issue A-44, "Station Blackout." The amendment is intended to provide further assurance that a loss of both offsite power and onsite emergency AC power systems will not adversely affect the public health and safety.

Timetable:

Action	Date	FR Cite
Final Action	05/21/88	53 FR 21203
Final Action Effective	07/21/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: ABSTRACT CONT:

Agency Contact: Alan Rubin/A.W. Serkiz, Nuclear Regulatory Commission, Office of Nuclear Regulatory Research, Washington, DC 20555, 301 492-3868

RIN: 3150-AD36

3928. CODES AND STANDARDS FOR NUCLEAR POWER PLANTS

Legal Authority: 42 USC 5841; 42 USC 5842; 42 USC 5846

CFR Citation: 10 CFR 50

Legal Deadline: None

Abstract: The final rule will incorporate by reference the Winter 1984 Addenda, Summer 1985 Addenda, Winter 1985 Addenda, and 1986 Edition of Section III, Division 1, of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code), and the Winter 1983 Addenda, Summer 1984 Addenda, Winter 1984 Addenda, Summer 1985 Addenda, Winter 1985 Addenda, and 1986 Edition of Section XI, Division 1 of the ASME Code. A limitation is placed on the use of paragraph IWB-3640 as contained in the Winter 1982 Addenda and Winter 1984 Addenda of Section XI, Division 1. This limitation requires that for certain types of welds, IWB-3640 be used as modified by the Winter 1985 Addenda. This amendment recognizes certain improvements made to Section XI in the area of class 2 piping examinations. The sections of the ASME Code being incorporated provide rules for the construction of light-water-cooled nuclear power plant components and specify requirements for inservice inspection of those components. This final rule will permit the use of improved methods for construction and inservice inspection of nuclear power plants.

Timetable:

Action	Date	FR Cite
NPRM	06/26/87	52 FR 24015
NPRM Comment Period End	08/25/87	52 FR 24015
Final Action	05/05/88	53 FR 16051
Final Action Effective	05/05/88	53 FR 16051

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Gilbert C. Millman, Nuclear Regulatory Commission, Office of Nuclear Regulatory Research, Washington, DC 20555, 301 492-3872

RIN: 3150-AC29

3929. RESIDUAL RADIOACTIVE CONTAMINATION LIMITS FOR DECOMMISSIONING

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 20

Legal Deadline: None

Abstract: The proposed rule would have established residual radioactive contamination limits (including induced and other volumetric radioactivity as well as removable and fixed surface contamination) which must be met before structures and lands can be released for unrestrictive use. Structures and lands with residual radioactive contamination below these limits would be eligible for release without regulatory restrictions from a radioactivity standpoint.

The issue in this proposed rule will be incorporated into a policy statement. The policy statement is scheduled to be released October 1988.

Timetable:

Action	Date	FR Cite
Withdrawn	04/06/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Dr. Stan Neuder, Nuclear Regulatory Commission, Office of Nuclear Regulatory Research, Washington, DC 20555, 301 492-3737

RIN: 3150-AC21

3930. DIAGNOSTIC MISADMINISTRATION REPORT FORM

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 35

Legal Deadline: None

Abstract: The final rule amends the regulations governing the medical use of byproduct material to specify the form that is to be used by NRC medical licensees to report diagnostic misadministrations. The rule is intended to inform licensees that the form contemplated in the revision to these regulations (see the Federal Register of October 16, 1986; 51 FR 36932) has been developed and is now available for use.

Timetable:

Action	Date	FR Cite
Final Action	06/09/88	53 FR 21627
Final Action Effective	06/09/88	53 FR 21627

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Norman L. McElroy, Nuclear Regulatory Commission, Office of Nuclear Materials Safety and, Safeguards, Washington, DC 20555, 301 492-3417

RIN: 3150-AC09

3931. ◆ CODES AND STANDARDS FOR NUCLEAR POWER PLANTS (ASME CODE, 1986/1987 ADDENDA)

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 50

Legal Deadline: None

Abstract: The proposed rule would incorporate by reference the 1986 Addenda and 1987 Addenda to the 1986 Edition of Section III, Division 1, and Section XI, Division 1, of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code). The ASME Code provides rules for the construction of light-water-reactor nuclear power plant components in Section III, Division 1, and provides rules for the inservice inspection and inservice testing of those components in Section XI, Division 1.

The proposed rule would update the existing reference to the ASME Code and would thereby permit the use of improved methods for the construction, inservice inspection, and inservice testing of nuclear power plant components. Incorporating by reference the latest addenda of the ASME Code would save applicants/licensees and the NRC staff both time and effort by providing uniform detailed criteria against which the staff could review any single submission.

This action will be handled as a routine updating of (cont)

Timetable:

Action	Date	FR Cite
Final Action	05/05/88	53 FR 16051
NPRM	05/14/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Additional Information: Section 50.55a of the NRC regulations. There is no reasonable alternative to rulemaking action. The proposed amendment will be issued for public comment. The task to develop and publish the proposed amendment is schedule for a period of 7.5 months with an estimated staff effort of 400 p-hrs. This is a priority A rulemaking.

Agency Contact: Gilbert C. Millman, Nuclear Regulatory Commission, Office of Nuclear Regulatory Research, Washington, DC 20555, 301 492-3872

RIN: 3150-AC30

[FR Doc. 88-20689 Filed 10-21-88; 8:45 am]
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Part LVII

Securities and Exchange Commission

Semiannual Regulatory Agenda

SECURITIES AND EXCHANGE COMMISSION (SEC)

SECURITIES AND EXCHANGE COMMISSION

17 CFR Ch. II

[Release Nos. 33-6794, 34-26011, 35-24702, 39-2179, IC-16631, IA-1137; File No. S7-18-88]

Regulatory Flexibility Agenda and Rules Scheduled for Review

AGENCY: Securities and Exchange Commission.

ACTION: Publication of regulatory flexibility agenda and rules scheduled for review.

SUMMARY: The Securities and Exchange Commission is today publishing an agenda of its open and anticipated rulemaking actions, pursuant to Chapter Six of the Administrative Procedure Act and Office of Management and Budget Bulletin 88-15. The agenda is a general announcement to the public intended to provide advance notice of rulemaking actions which may have a significant economic impact on a substantial number of small entities. The Commission invites questions and public comment on individual agenda entries.

DATE: Public Comments are due by December 31, 1988.

ADDRESSES: Persons wishing to submit written views should file three copies with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Room 6184, Stop 6-9, Washington, DC 20549. All submissions should refer to File No. S7-18-88, and will be available for public inspection at the Commission's Public Reference Room, Room 1026, at the same address.

FOR FURTHER INFORMATION CONTACT: William J. Atkinson, Office of Economic Analysis, Securities and Exchange Commission, 450 5th Street, NW., Room 9200, Stop 9-1, Washington, DC 20549 (202-272-7100). Additional names of persons to contact are identified with each entry.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act ("RFA") (Pub. L. No. 96-354, 94 Stat. 1164 [September 19, 1980]) requires each federal agency during April and October of each year to publish in the **Federal Register** a regulatory flexibility agenda identifying rules which the agency expects to propose or adopt which are likely to have a significant economic impact on a substantial number of small entities (the "significant impact criterion").[1]

The RFA also requires the Commission to publish a plan for the periodic review of all rules issued by the agency which have or will have a significant economic impact on a substantial number of small entities.[2] The Commission published such a plan in 1981.[3] The plan provides for the review of all rules in effect on January 1, 1981 within ten years of that date and for the review of all rules adopted thereafter within ten years of their adoption as final rules. The RFA further requires publication each year of a list of those rules which are to be reviewed during the succeeding twelve months.[4]

The Commission's continuing review of its rules, begun before the effective date of the statute [January 1, 1981], extends beyond the requirements of the RFA. Consequently, some rules listed in this part of the agenda may not be subject to RFA review requirements.

The Commission is identifying them here in order to inform the public of its intention to review them. The agenda also identifies the rulemaking actions which have been completed (or withdrawn) since the last RFA release was approved by the Commission on March 1, 1988.[5]

The statute specifically provides that the agenda does not preclude the Commission from considering or acting on any matter not included, nor is the Commission required to consider or act on any matter which is included.[6] Furthermore, the inclusion of a rule in the Commission's agenda reflects only the staff's preliminary judgment that the rule, if adopted or as it exists, may have a significant economic impact on a substantial number of small entities.[7] This preliminary judgment may be changed upon further analysis. The Commission's entries to the October 1988 Unified Agenda of Federal Regulations are listed below. The Commission's agenda includes new entries as well as items carried over from the April 1988 publication. New entries are marked with a bullet. Copies of this preamble and a list of the entries (which includes next action dates and identifies a staff contact) are available from the Commission's Office of Public Affairs (Room 1015). The agenda also is available for inspection and copying in the Public Reference Room (Room 1026) (File S7-18-88), as noted above.

The Commission invites public comment on the individual entries in its regulatory agenda.

Dated: August 19, 1988.

By the Commission.

Jonathan G. Katz,

Secretary.

Prerule Stage

Sequence Number	Title	Regulation Identifier Number
3932	17 CFR 210.9-03(7)(e) Financial Statement Disclosure by Bank Holding Companies About Loans to Related Parties	3235-AB45
3933	17 CFR 229 Report of Management's Responsibilities	3235-AD29
3934	17 CFR 210 Request for timely review of quarterly financial information	3235-AD31
3935	17 CFR 240. 3a12-10 Exemption of Sales of Certain Interests and Participations Issued in Connection with H.R. 10 Plans from Section 15(a)	3235-AC16

[1] 5 U.S.C. 602(a).
[2] 5 U.S.C. 610(a).
[3] Securities Act Release No. 6382 (June 24, 1981) [46 FR 31225].
[4] 5 U.S.C. 610(c).
[5] Securities Act Release No. 6757 (April 26, 1988) [53 FR 14714].
[6] 5 U.S.C. 602(d).
[7] The agenda relies on the definitions of the term "small entity" for purposes of the RFA which were adopted by the Commission for the various categories of regulated entities. *See* Securities Act Release No. 6380 (January 28, 1982) [47 FR 5215].

SEC

Prerule Stage—Continued

Sequence Number	Title	Regulation Identifier Number
3936	17 CFR 240. 17Ad-8 Rule 17Ad-8 of the Securities Exchange Act	3235-AC25
3937	17 CFR 240. 15c2-10 Rule 15c2-10	3235-AC94
3938	17 CFR 12d3-1 Proposed Amendments to Rule 12d3-1 under the Investment Company Act of 1940	3235-AD19
3939	17 CFR 270.36a-1 Proposed Rule 36a-1 under the Investment Company Act the ("ICA")	3235-AD33
3940	17 CFR 275.203(b)(1) -1 Exemption from Registration Under the Advisers Act for certain Smaller Investment Advisers	3235-AD38

Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
3941	17 CFR 229 Amendments to Regulation S-K Regarding changes in Accountants; Acceleration of the timing for filing forms 8-K relating to changes in Accountants and Resignations of Directors	3235-AD30
3942	17 CFR 210 Technical Amendments to Regulation S-X	3235-AD32
3943	17 CFR 240.16a-1 to 240.16a-11 Reports of Directors, Officers and Principal Stockholders	3235-AB14
3944	17 CFR 239.16b Form S-8 Registration Statement under the Securities Act of 1933	3235-AB79
3945	00 CFR Not yet determined Rulemaking for Operational Edgar System	3235-AC48
3946	17 CFR 230. Rule 153 Definition of preceded by a prospectus as used in Section 5(b)(2) in relation to certain transactions	3235-AC61
3947	17 CFR 210 Facilitation of Multinational Securities Offerings	3235-AC64
3948	17 CFR 230.144A Proposed Rule for Limited Resales of Securities	3235-AC65
3949	17 CFR 230 Classification of Small Issuers for Reporting Purposes	3235-AC66
3950	17 CFR 270.3a-7 Two-Tier Real Estate Companies	3235-AC24
3951	17 CFR 270.17f-5 Rule 17f-5 under the Investment Company Act of 1940	3235-AC85
3952	17 CFR 229.303 Management's Discussion and Analysis of Financial Condition and Operations	3235-AD03
3953	17 CFR 230.144 Section 16(a) Compliance	3235-AD04
3954	17 CFR 240.13d-1 Regulation 13D-G	3235-AD09
3955	17 CFR 230.134 Communications not Deemed a Prospectus	3235-AD22
3956	17 CFR 240 Disclosure of Block Repurchases by an Issue or Affiliate	3235-AD25
3957	17 CFR 240.10b-21 Proposed Rule 10b-21 of the Securities Exchange Act of 1934 - Short Sales in Connection with a Public Offering	3235-AC26
3958	17 CFR 240.14a Shareholder Lists	3235-AD41
3959	17 CFR 240.14a-102 Disclosure of Significant Equity Participants in Control Transactions	3235-AD42
3960	17 CFR 230.112 Lock-Box Rules	3235-AD43
3961	17 CFR 801. Rule 801	3235-AD44
3962	17 CFR 230.180 Amendment to Rule 180 – Exemption from Registration of Certain Interests and Participations in Certain H.R. 10 Plans	3235-AA05
3963	17 CFR 270.11a-3 Proposed Rules 11a-3 and 11c-1 Under the Investment Company Act	3235-AA14
3964	00 CFR Not yet determined Mutual Fund Governance	3235-AA44
3965	17 CFR 270.17j-1 Rule 17j-1 under the Investment Company Act of 1940	3235-AA68
3966	17 CFR 240.14a-1 to 240.14a-102 Revision of Investment Company Proxy Rules	3235-AA69
3967	17 CFR 239.14 Prospectus Simplification Amendments to Form N-2	3235-AB40
3968	17 CFR 275.206 (3)-3 Method for Compliance with Section 206(3) of the Investment Advisers Act of 1940 with respect to Certain Transactions	3235-AB74
3969	17 CFR 270.3a-6 Proposed Rule 3a-6 under the Investment Company Act(the "ICA")	3235-AC03
3970	17 CFR 275.206 (4)-1 Advertising by Investment Advisers	3235-AC09
3971	17 CFR 270.12b-1 Proposed amendments to Rules 12b-1 and 17d-3 under the Investment Company Act of 1940, and to Item 7 of Form N-1A under the Securities Act of 1933	3235-AC11
3972	17 CFR 270.10f-3 Exemption of Acquisition of Securities During the Existence of Underwriting Syndicate	3235-AC28
3973	17 CFR 270. 12d3-2 Proposed Rule 12d3-2under the Investment Company Act	3235-AC36
3974	00 CFR Not yet determined Advertising by Unit Investment Trusts	3235-AC70
3975	17 CFR 270.6c-10 Proposed Rule 6c-10 under the Investment Company Act of 1940	3235-AD18
3976	17 CFR 230.139a Information that Broker-Dealers may Disseminate about Investment Companies	3235-AD20
3977	17 CFR 275. Revisions to the registration and the annual supplement forms used by Investment Advisers	3235-AD21
3978	17 CFR 239.17a Variable Annuity Fee Table	3235-AD36
3979	17 CFR 250.17 Diversification by Exempt Holding Companies	3235-AD39

SEC

Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
3980	17 CFR 210.5-02 Proposals Regarding Industry Segment and Other Interim Financial Reporting Matters, Management's Discussion and Analysis, and Off Balance Sheet Financing Disclosures	3235-AB15
3981	17 CFR 240.13e-2 Acquisitions of Substantial Amounts of Securities and Related Activities during and following a Tender Offer for those Securities	3235-AA50
3982	17 CFR 210 Independent Accountants - Mandatory Peer Review	3235-AC79
3983	17 CFR 230.433 Prospectus delivery requirements in firm commitment underwritten offerings of securities made for cash (Rule 433)	3235-AC80
3984	17 CFR 240.12b-25 Reporting Requirements for Change in Fiscal Year End	3235-AD05
3985	17 CFR 230.901-906 Regulation S - Rules governing offers and Sales made outside the United States without Registration under the Securities Act of 1933	3235-AD23
3986	17 CFR 230.485 Automatically Effective Post -Effective Amendments for Acquisitions by Certain limited Partnerships	3235-AD24
3987	17 CFR 240.15a-6 Exemption of certain foreign brokers or dealers	3235-AD27
3988	17 CFR 215. Regulation D	3235-AD45
3989	17 CFR 270.3a-4 Proposed Rule 3a-4 -- Individualized Investment Management Services	3235-AA12
3990	17 CFR 270.17g-1 Proposed Amendment to Rule 17g-1 Under the Investment Company Act	3235-AA16
3991	17 CFR 239.16 Simplification of Registration Statements Filed by Unit Investment Trusts	3235-AA47
3992	17 CFR 270.24f-3 Registration Under The Securities Act of 1933 of an Indefinite Number of Certain Investment Company Securities	3235-AC10
3993	17 CFR 230.134 Disclosure of Security Ratings in Registration Statements of Money Market Funds	3235-AC24
3994	17 CFR 274.11A N-1A Technical Amendments	3235-AC25
3995	17 CFR 270.17f-6 Custody of Investment Company Assets with Registered Futures Commission Merchants	3225-AD34
3996	17 CFR 270.17f-1 Forms for Filings by accountants	3235-AD37

Completed Actions

Sequence Number	Title	Regulation Identifier Number
3997	17 CFR 210 Request for Comments on "Opinion Shopping"	3235-AC02
3998	17 CFR 210 Proposed Additions to Rules and Guide for Disclosures concerning Reserves for Unpaid Claims and Claim Adjustment Expenses of Property - Casualty Underwriters	3235-AC44
3999	17 CFR 240.14a-1 Facilitating Shareholder Communications	3235-AC81
4000	17 CFR 230.701 Rules 701, 702, 703 and Form 701	3235-AC82
4001	17 CFR 230.501 Regulation D	3235-AC83
4002	17 CFR 240.14a-1 Facilitating Shareholder Communications	3235-AD07
4003	17 CFR 229.401 Elimination of Filing Requirements for Preliminary Proxy Material Under Certain Circumstances; Rule 14a-8 Shareholder Proposals	3235-AD08
4004	17 CFR 200.81 Publication of Interpretative and No-Action Letters and Other Written Communications	3235-AD10
4005	17 CFR 240.19c-4 Voting Rights Listing Standards - Disenfranchisement Rule, Rule 19c-4	3235-AD26
4006	17 CFR 240.15Bc7-1 Rule 15Bc7-1 of the Securities Exchange Act of 1934 ("Exchange Act")	3235-AD51
4007	17 CFR 240.17a-5 Rule 17a-5 of the Securities Exchange Act of 1934	3235-AD52
4008	17 CFR 239.18 Form S-11, For Registration under the Securities Act of 1933 of Securities of Certain Real Estate Companies	3235-AD40
4009	17 CFR 230.174 Rule 174 Amendment - Prospectus Delivery During Quiet Period	3235-AC34
4010	17 CFR 275.204-2(a) Revision of Certain Investment Adviser Recordkeeping Rules	3235-AC97
4011	17 CFR 270.10f-2 Rule 10f-2 Under the Investment Company Act of 1940-- "Exercise of warrants or rights received on portfolio."	3235-AD26
4012	17 CFR 270.19a-1 Rule 19a-1 Under the Investment Company Act of 1940-- "Written statement to accompany dividend payments by management companies."	3235-AD35
4013	17 CFR 270.19b-1 Rule 19b-1 Under the Investment Company Act of 1940 -- "Frequently of distribution of capital gains."	3235-AD45
4014	17 CFR 270.23c-2 Rule 23c - 2 Under the Investment Company Act of 1940 -- "Call and redemption of securities issued by registered closed-end companies	3235-AD47
4015	17 CFR 270.24e-1 Rule 24e-1 Under the Investment Company Act of 1940--"Filing of certain prospectus as post-effective amendments to registration statements under the Securities Act of 1933"	3235-AD48
4016	17 CFR 270.24b-1 Rules 24b-1, 24b-2, and 24b-3 Under the Investment Company Act of 1940, rules relating to the filing of sales literature with the Commission to comply with Section 24(b) of the Act	3235-AD49
4017	17 CFR 270.24e-2 Rule 24e-2 Under the Investment Company Act of 1940-- "Computation of Fee."	3235-AD50

SECURITIES AND EXCHANGE COMMISSION (SEC) Prerule Stage

Accounting Rules

3932. FINANCIAL STATEMENT DISCLOSURE BY BANK HOLDING COMPANIES ABOUT LOANS TO RELATED PARTIES

Legal Authority: 15 USC 77f; 15 USC 77g; 15 USC 77h; 15 USC 77j; 15 USC 77s(a); 15 USC 77a (25); 15 USC 77a (26); 15 USC 78l; 15 USC 78m; 15 USC 78n; 15 USC 78o(d); 15 USC 78w(a)

CFR Citation: 17 CFR 210.9-03(7)(e)

Legal Deadline: None

Abstract: The staff is considering whether to recommend that the Commission propose amendments to its rules in Article 9 of Regulations S-X requiring disclosure by bank holding companies about loans to related parties. Assertions have been made that accumulation of the required information may be unreasonably costly.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Jeffrey Jones, Professional Accounting Fellow, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549, 202 272-2130

RIN: 3235-AB45

3933. ◆ REPORT OF MANAGEMENT'S RESPONSIBILITIES

Legal Authority: 15 USC 77f; 15 USC 77g; 15 USC 77h; 15 USC 77i; 15 USC 77a(a); 15 USC 77aa (25) and (26); 15 USC 78l; 15 USC 78n; 15 USC 78o (d); 15 USC 78w (a); 15 USC 79c (b); 15 USC 79n; 15 USC 79t (a); 15 USC 80a-8; 15 USC 80a-29

CFR Citation: 17 CFR 229; 17 CFR 240; 17 CFR 249; 17 CFR 270; 17 CFR 274

Legal Deadline: None

Abstract: The Commission has proposed rules to require registrants to include a report of management's responsibilities in Forms 10-K and N-SAR and annual reports to security holders. The management report would contain a description or statement of management's responsibilities for the preparation of the registrant's financial statements and other financial information and for establishing and maintaining a system of internal control directly related to financial reporting, with management's assessment of the effectiveness of the registrant's internal control system.

Timetable:

Action	Date	FR Cite
ANPRM	10/30/88	
Final Action	01/31/89	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: John W. Albert, Assistant Chief Accountant, Securities and Exchange Commission, Office of the Chief Accountant, 450 5th Street, N.W., Washington, D.C. 20549, 202 272-2130

RIN: 3235-AD29

3934. ◆ REQUEST FOR TIMELY REVIEW OF QUARTERLY FINANCIAL INFORMATION

Legal Authority: 15 USC 77f; 15 USC 77g; 15 USC 77h; 15 USC 77j; 15 USC 77s (a); 15 USC 77aa (25) and (26); 15 USC 78l; 15 USC 78n; 15 USC 78o (d); 15 USC 78w (a); 15 USC 79c (b); 15 USC 79n; 15 USC 79t (a); 15 USC 80a-8; 15 USC 80a-29

CFR Citation: 17 CFR 210; 17 CFR 229

Legal Deadline: None

Abstract: The Commission has stated that if intents to issue a concept release soliciting comments on the costs and benefits of requiring independent public accountants to review quarterly financial data of all public companies before it is released to the public. The staff is preparing such a release.

Timetable:

Action	Date	FR Cite
ANPRM	12/31/88	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Jack C. Parsons, Professional Accounting Fellow, Securities and Exchange Commission, Office of the Chief Accountant, 450 5th Street, N.W., Washington, D.C. 20549, 202 272-2130

RIN: 3235-AD21

Securities Markets and Securities Industry Rules

3935. EXEMPTION OF SALES OF CERTAIN INTERESTS AND PARTICIPATIONS ISSUED IN CONNECTION WITH H.R. 10 PLANS FROM SECTION 15(A)

Legal Authority: 15 USC 78c(a)(12); 15 USC 78o; 15 USC 78w; 15 USC 77c(a)(12); 15 USC 77s(a)

CFR Citation: 17 CFR 240. 3a12-10; 17 CFR 230.180

Legal Deadline: None

Abstract: The proposed rule would specify certain conditions under which persons engaged in the sale of interests and participation issued in connection with certain tax-qualified retirement plans ("H.R.10" or "Keogh" plans) would not be required to register as broker-dealers under Section 15(a) of the Securities Exchange Act of 1934. In 1981, the Commission adopted Rule 180 under the Securities Act of 1933 exempting from the registration requirements of that Act interests and participations issued in connection with H.R. 10 plans. The proposed rule provides a parallel exemption from broker-dealer registration for sales of such interests and participations in H.R. 10 plans. As an alternative the staff could consider granting no-action or exemptive requests on a case-by-case basis. However, such procedure would be inefficient and needlessly expensive for both the public and the Commission staff. In addition, the Commission is proposing to amend Rule 180 to clarify that, under paragraph (a)(3)(ii) of that Rule, the employer only needs to obtain investment advice prior to the investment of plan assets. This proposal codifies a previous staff position.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Susan J. Walters, Branch Chief, Legal Interpretations, Securities and Exchange Commission, Division of Market Regulation, 450 5th

SEC — Prerule Stage

Street, N.W., Washington, D.C. 20549, 202 272-2417

RIN: 3235-AC16

3936. RULE 17Ad-6 OF THE SECURITIES EXCHANGE ACT

Legal Authority: 15 USC 17b; 15 USC 78q-1; 15 USC 78w(a)

CFR Citation: 17 CFR 240.17Ad-6

Legal Deadline: None

Abstract: Rule 17Ad-6 requires a registered clearing agency, at the request of an issuer, to provide the issuer with a "securities position listing." A securities position listing is a list of the clearing agency's participants on whose behalf the clearing agency holds the issuer's securities as well as participants' positions as of a specified date. The Rule farther provides that the clearing agency may charge a reasonable fee for providing the list.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Thomas C. Etter, Jr., Attorney, Securities and Exchange Commission, Division of Market Regulation, 450 Fifth Street, N.W., Washington, DC 20549, 202 272-2782

RIN: 3235-AC29

3937. RULE 15C3-10

Legal Authority: 15 USC 78b; 15 USC 78k-1; 15 USC 78o(c)(1); 15 USC 78o(c)(2); 15 USC 78w(a)

CFR Citation: 17 CFR 240.15c3-10

Legal Deadline: None

Abstract: The Division of Market Regulation is preparing a draft release that would solicit comment on a rule that would govern the operation of proprietary securities trading systems that are not operated as facilities of a national securities association or exchange.

Timetable:

Action	Date	FR Cite
NPRM Comment Period End	10/30/87	
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: William M. Harler, Attorney, Securities and Exchange Commission, Division of Market Regulation, 450 Fifth St., N.W., Washington, D.C. 20549, 202 272-2414

RIN: 3235-AC24

Investment Management Rules

3938. PROPOSED AMENDMENTS TO RULE 12D3-1 UNDER THE INVESTMENT COMPANY ACT OF 1940

Legal Authority: 15 USC 80a-6(c); 15 USC 80a-37

CFR Citation: 17 CFR 12d3-1

Legal Deadline: None

Abstract: The Commission is considering whether to propose amendments to Rule 12d3-1 under the Investment Company Act of 1940, which provides exemptive relief from the Act's prohibition against investment company acquisitions of securities issued by persons engaged in certain securities-related businesses. If adopted, the proposed amendments would expand the exemptive relief provided by the rule to permit, under certain conditions, investment companies to acquire equity securities issued by persons organized outside the United States that are engaged in securities related businesses.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Brian P. Kindelan, Special Counsel, Securities and Exchange Commission, Division of Investment Management, 450 5th Street, N.W., Washington, D. C. 20549, 202 272-2048

RIN: 3235-AD19

3939. ◆ PROPOSED RULE 36A-1 UNDER THE INVESTMENT COMPANY ACT THE ("ICA")

Legal Authority: 15 USC 80a-37(a)

CFR Citation: 17 CFR 270.36a-1

Legal Deadline: None

Abstract: The Commission is considering whether to propose a rule that would require non-resident directors of registered management investment companies to designate a resident agent for service of process in any action before the Commission or in any appropriate court of the United States with respect to any action arising under the provisions of the securities acts.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Wendy B. Flack, Attorney, Securities and Exchange Commission, Division of Investment Management, 450 5th Street, N.W., Washington, D.C. 20549, 202 272-2048

RIN: 3235-AD33

3940. ◆ EXEMPTION FROM REGISTRATION UNDER THE ADVISERS ACT FOR CERTAIN SMALLER INVESTMENT ADVISERS

Legal Authority: 15 USC 80b-8A

CFR Citation: 17 CFR 275.203(b)(1) -1; 17 CFR 275.203(b)(3) -2

Legal Deadline: None

Abstract: Commission staff have been considering draft rule proposals to exempt smaller investment advisers from most federal adviser regulation, other than the antifraud provisions, if the advisers are registered in all states in which they do business. The purpose of the exemptions would be to place primary regulatory responsibility for certain smaller investment advisers with states that actively regulate advisers. The draft rule proposals, which include both an interstate and an intrastate exemption, would determine eligibility for the exemptions by reference to the size of the adviser's business; whether the adviser has custody of client funds or securities; and whether the adviser is registered as an adviser in the state or states in which it does business. The draft rule proposals are expected to have a significant impact on a substantial

SEC — Prerule Stage

number of small entities. Since the draft rule proposals are still in a developmental stage and have not yet been proposed by the Commission, any attendant costs are unknown. However, they are expected to be slight, if any, due to

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: ABSTRACT (con't) the deregulatory nature of the draft proposals.

Agency Contact: Dorothy M. Donohue, Attorney, Securities and Exchange Commission, Division of Investment Management, 450 5th Street, N.W., Washington, D.C. 20549, 202 272-2107

RIN: 3235-AD35

SECURITIES AND EXCHANGE COMMISSION (SEC) — Proposed Rule Stage

Accounting Rules

3941. ◆ AMENDMENTS TO REGULATION S-K REGARDING CHANGES IN ACCOUNTANTS; ACCELERATION OF THE TIMING FOR FILING FORMS 8-K RELATING TO CHANGES IN ACCOUNTANTS AND RESIGNATIONS OF DIRECTORS

Legal Authority: 15 USC 77f; 15 USC 77G; 15 USC 77h; 15 USC 77j; 15 USC 77s (a); 15 USC 77aa (25) and (26); 15 USC 78l; 15 USC 78n; 15 USC 78o(d); 15 USC 78w (a); 15 USC 79c (b); 15 USC 79n; 15 USC 79t (a); 15 USC 80a-8; 15 USC 80a-29

CFR Citation: 17 CFR 229; 17 CFR 249

Legal Deadline: None

Abstract: The Commission has proposed rules to reduce the time period for a registrant to file a Form S-K announcing a change in its certifying accountant or the resignation of a director from fifteen to five calendar days. It has also proposed amendments to Regulation S-K relating to a change in a registrant's certifying accountant to (1) reduce the time period from thirty to ten calendar days for the filing of the former accountant's letter as an exhibit to the report or registration statement announcing the change in accountants (2) require the registrant to file any such letter within two days of receipt, and (3) permit the former accountant to provide an interim letter to the registrant, which must also be filed by the registrant within two days of receipt.

Timetable:

Action	Date	FR Cite
NPRM	04/12/88	53 FR 12948
NPRM Comment Period End	10/30/88	53 FR 12948
Final Action	12/31/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: John M. Riley, Staff Accountant, Securities and Exchange Commission, Office of the Chief Accountant, 450 5th Street, N.W., Washington, D.C. 20549, 202 272-2130

RIN: 3235-AD30

3942. ◆ TECHNICAL AMENDMENTS TO REGULATION S-X

Legal Authority: 15 USC 77f; 15 USC 77g; 15 USC 77h; 15 USC 77j; 15 USC 77s (a); 15 USC 77aa (25) and (26); 15 USC 78l; 15 USC 78n; 15 USC 78o (d); 15 USC 78w (a); 15 USC 79 (c) (b); 15 USC 79n; 15 USC 79 (t)a; 15 USC 80a-8; 15 USC 80a-29

CFR Citation: 17 CFR 210

Legal Deadline: None

Abstract: The staff is considering whether to recommend that the Commission propose amendments to Regulation S-X to conform that regulation to recently adopted changes in generally accepted accounting principles and generally accepted auditing standards.

Timetable:

Action	Date	FR Cite
NPRM	10/28/88	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Teresa Iannaconi, Staff Accountant, Securities and Exchange Commission, Office of the Chief Accountant, 450 5th Street, N.W., Washington, D.C. 20549, 202 272-2130

RIN: 3235-AD32

Disclosure Rules

3943. REPORTS OF DIRECTORS, OFFICERS AND PRINCIPAL STOCKHOLDERS

Legal Authority: 15 USC 78m(d); 15 USC 78p(a); 15 USC 78p(b); 15 USC 78p(c); 15 USC 78p(e); 15 USC 78w(a)

CFR Citation: 17 CFR 240.16a-1 to 240.16a-11; 17 CFR 240.16b-1 to 240.16b-11; 17 CFR 240.16c-1 to 240.16c-3; 17 CFR 240.16e-1; 17 CFR 240.13d-3; 17 CFR 240.14d-1; 17 CFR 229.403; 17 CFR 249.103; 17 CFR 249.104; 17 CFR 240.12h-2

Legal Deadline: None

Abstract: The Commission will review the existing rules and reporting forms intended to implement the provisions of Section 16 of the Securities Exchange Act. Section 16 seeks to deter misuse of inside information by imposing certain periodic and transactional reporting requirements on the officers, directors and principal beneficial shareholders of companies registered under that Act as well as certain limitations on equity transactions by those persons. Over the years the Commission has adopted a number of rules to clarify the applicability of Section 16's requirements to particular circumstances. The Commission will examine their current suitability in light of the purposes of the statute.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: ABSTRACT CONT: The Commission believes that

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these actions will result in savings to persons subject to these provisions with no reduction in investor protection. This initiative is a consolidation of five projects that were previously listed separately in the October 1983 agenda.

Agency Contact: Brian J. Lane, Special Counsel, Office of Disclosure Policy, Securities and Exchange Commission, Division of Corporation Finance, 450 5th Street, N.W., Washington, DC 20549, 202 272-2589

RIN: 3235-AE14

3944. FORM S-8 REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

Legal Authority: 15 USC 77f; 15 USC 77g; 15 USC 77j; 15 USC 77s(a); 15 USC 78l; 15 USC 78m; 15 USC 78n; 15 USC 78w(a)

CFR Citation: 17 CFR 239.16b

Legal Deadline: None

Abstract: The Commission will consider whether to revise the disclosure requirements under the federal securities laws relating to registration under the Securities Act of 1933 of securities to be offered to employees of an issuer pursuant to certain plans. Such registration currently is made on Form S-8 (17 CFR 239.16b). The Commission staff is developing proposals in this area and considering alternative approaches to the problem of reducing burdens while ensuring the availability of sufficient information to employees, particularly where they already have access to much of the required information under ERISA. In the context of this rulemaking, Form S-8 will be fully reviewed for purposes of the Regulatory Flexibility Act.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Larisa Dobriansky, Special Counsel, Office of Disclosure Policy, Securities and Exchange Commission, Division of Corporation Finance, 450 5th Street, N.W., Washington, D.C. 20549, 202 272-2589

RIN: 3235-AH79

3945. RULEMAKING FOR OPERATIONAL EDGAR SYSTEM

Significance: Agency Priority

Legal Authority: 15 USC 77a to 77aa; 15 USC 78a to 78ii; 15 USC 79 to 79z-6; 15 USC 77aaa to 77bbb; 15 USC 80a-1 to 80a-52

CFR Citation: Not yet determined

Legal Deadline: None

Abstract: This rulemaking encompasses the changes necessary to mandate and accommodate electronic filing in the operational Edgar system, as well as to update the rules to take advantage of the efficiencies of electronic filing and processing.

Timetable:

Action	Date	FR Cite
ANPRM	07/02/86	51 FR 24155
ANPRM Comment Period End	09/05/86	
NPRM	11/30/88	
NPRM Comment Period End	01/31/89	
Final Action	04/30/89	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Sarah A. Miller, Special Counsel, Office of Disclosure Policy, Securities and Exchange Commission, Division of Corporation Finance, 450 5th Street, N.W., Washington, D.C. 20549, 202 272-2589

RIN: 3235-AC46

3946. RULE 153 DEFINITION OF PRECEDED BY A PROSPECTUS AS USED IN SECTION 5(B)(2) IN RELATION TO CERTAIN TRANSACTIONS

Legal Authority: 15 USC 77e

CFR Citation: 17 CFR 230.

Legal Deadline: None

Abstract: The prospectus delivery requirement for certain transactions effectuated on a national securities exchange may be satisfied by delivery to the exchange. The Commission will consider whether this procedure should be available for certain transactions on the NASDAQ Inter Dealer Quotation System.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: John Reynolds, Special Counsel, Office of Small Business Policy, Securities and Exchange Commission, Division of Corporation Finance, 450 5th Street, N.W., Washington, D.C. 20549, 202 272-2644

RIN: 3235-AC01

3947. FACILITATION OF MULTINATIONAL SECURITIES OFFERINGS

Legal Authority: 15 USC 77e; 15 USC 77f; 15 USC 77g; 15 USC 77j; 15 USC 77s(a); 15 USC 77ddd; 15 USC 77eee; 15 USC 77fff; 15 USC 78c(b); 15 USC 78j; 15 USC 78l; 15 USC 78m; 15 USC 78w; 15 USC 78x

CFR Citation: 17 CFR 210; 17 CFR 230; 17 CFR 239; 17 CFR 240; 17 CFR 249; 17 CFR 260

Legal Deadline: None

Abstract: In order to facilitate simultaneous multinational securities offerings among, initially, the United States, Canada and the United Kingdom, appropriate criteria are being sought to reconcile differences in disclosure standards, financial statement requirements and distribution systems. The Commission issued a concept release in February 1985 addressing numerous regulatory issues raised by multinational offerings. At that time, the Commission published for comment two conceptual approaches to facilitating such offerings--a "common prospectus" approach and a "reciprocal" approach. The Commission's staff is currently in the process of developing the reciprocal prospectus approach, which involves reciprocal recognition and use of home country disclosure documents. It is likely that initially the proposal will focus on debt offerings of certain issuers, limited rights offerings and exchange offers.

Timetable:

Action	Date	FR Cite
ANPRM	02/28/85	50 FR 9281
ANPRM Comment Period End	07/15/85	

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Samuel Wolff, Special Counsel, Office of International Corporate Finance, Securities and Exchange Commission, Division of Corporation Finance, 450 5th Street, N.W., Washington, D.C. 20549, 202 272-2248

RIN: 3235-AC84

3948. PROPOSED RULE FOR LIMITED RESALES OF SECURITIES

Legal Authority: 15 USC 77d (1); 15 USC 77d (3); 15 USC 77s(a)

CFR Citation: 17 CFR 230.144A

Legal Deadline: None

Abstract: The staff is considering whether to recommend that the Commission publish for comment two alternative versions of proposed new rule that would provide a safe harbor exemption from the registration requirements of the Securities Act of 1933 for resales of securities to institutional investors if certain conditions are met. The first version would require that the issuer of such securities be a reporting company, while the second version would be available for resales of securities, of reporting or non-reporting companies, if certain conditions are met.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Samuel Wolff, Special Counsel, Office of Chief Counsel, Securities and Exchange Commission, Division of Corporation Finance, 450 5th Street, N.W., Washington, D.C. 20549, 202 272-2248

RIN: 3235-AC05

3949. CLASSIFICATION OF SMALL ISSUERS FOR REPORTING PURPOSES

Legal Authority: 15 USC 78l; 15 USC 78m

CFR Citation: 17 CFR 230; 17 CFR 240; 17 CFR 244; 17 CFR 249

Legal Deadline: None

Abstract: Other appropriate criteria are being sought to establish the threshold level for companies to enter into the Securities Exchange Act of 1934 reporting system, which would complement or be substituted for the present size criteria of 500 shareholders and total assets of $5 million.

Timetable:

Action	Date	FR Cite
ANPRM	07/08/86	51 FR 25369
ANPRM Comment Period End	09/29/86	
NPRM	11/01/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Richard K. Wulff, Chief, Office of Small Business Policy, Securities and Exchange Commission, Division of Corporation Finance, 450 5th Street, N.W., Washington, D.C. 20549, 202 272-2644

RIN: 3235-AC86

3950. TWO-TIER REAL ESTATE COMPANIES

Legal Authority: 15 USC 80a-6(c)

CFR Citation: 17 CFR 270.3a-7; 17 CFR 270.6c-11

Legal Deadline: None

Abstract: The regulation will be designed to codify numerous exemptions from the provisions of the Investment Company Act of 1940 ("Act") granted to two-tier real estate limited partnerships. Exemptions from the Act pursuant to Section 6(c) of the Act have generally been granted where: 1) the two-tier partnership invests in limited partnerships engaged in the development and building of housing for low and moderate income persons; 2) the limited partnership interests are sold only to suitable investors; and 3) requirements for fair dealing by the general partner of the issuer with the limited partners of the issuer are included in the basic organizational documents of the partnership. The regulation will reduce the number of exemptive relief applications received by the Office of Investment Company Regulation requesting exemptions for two-tier real estate limited partnerships.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Brian P. Kindelan, Special Counsel, Securities and Exchange Commission, Division of Investment Management, 450 5th Street, N.W., Washington, D.C. 20549, 202 272-2048

RIN: 3235-AC94

3951. RULE 17f-5 UNDER THE INVESTMENT COMPANY ACT OF 1940

Legal Authority: 15 USC 80a-17(f); 15 USC 80a-6(c); 15 USC 80a-37(a)

CFR Citation: 17 CFR 270.17f-5

Legal Deadline: None

Abstract: Rule 17f-5 permits U.S. registered investment Companies to maintain certain Securities and other assets in the custody of an "Eligible Foreign Custodian," as that term is defined in the rule. In response to comments that the present definition of Eligible Foreign Custodian and other provisions of the rule are too restrictive, the Commission is considering whether to propose amendments to the rule.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Rochelle G. Kauffman, Staff Attorney, Securities and Exchange Commission, Division of Investment Management, 450 5th Street, N.W., Washington, D.C. 20549, 202 272-2048

RIN: 3235-AC85

3952. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND OPERATIONS

Legal Authority: 15 USC 78w(a)

CFR Citation: 17 CFR 229.303

Legal Deadline: None

Abstract: The Commission has solicited public comment on issues relating to Management's Discussion and Analysis of Financial Condition and Operations as required by Item 303 of Regulation S-K. This requirement is the subject of recommendations from members of the accounting profession calling for a more specific approach to requiring disclosure of business risks and uncertainties, as well as additional board of director scrutiny and independent auditor association with these disclosures. The Commission will review comments received to determine whether future rulemaking is appropriate.

Timetable:

Action	Date	FR Cite
ANPRM	04/24/87	52 FR 13715
ANPRM Comment Period End	06/23/87	

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Brian J. Lane, Special Counsel, Office of Disclosure Policy, Securities and Exchange Commission, Division of Corporation Finance, 450 5th Street, N.W., Washington, D. C. 20549, 202 272-2589

RIN: 3235-AD03

3953. SECTION 16(A) COMPLIANCE

Legal Authority: 15 USC 78p

CFR Citation: 17 CFR 230.144; 17 CFR 239.300; 17 CFR 240.16a-1; 17 CFR 249.103; 17 CFR 249.104; 17 CFR 249.308a; 17 CFR 249.310

Legal Deadline: None

Abstract: The Commission has perceived substantial non-compliance with Section 16(a) of the Securities Exchange Act of 1934. To address the problem, the Commission is considering proposing rules to insure that required information is disclosed, either by the reporting person or the registered companies.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: David A. Sirignano, Chief, Office of Tender Offers, Securities and Exchange Commission, Division of Corporation Finance, 450 5th Street, N.W., Washington, D.C. 20549, 202 272-2587

RIN: 3235-AD09

3955. COMMUNICATIONS NOT DEEMED A PROSPECTUS

Legal Authority: 15 USC 77b; 15 USC 77j

CFR Citation: 17 CFR 230.134

Legal Deadline: None

Abstract: The Commission will consider proposing amendments to Rule 134 of the Commission's rules and regulations under the Securities Act of 1933 that would permit direct participation programs such as state limited partnerships to include additional information in their Rule 134 tombstone advertisements.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: William E. Morley, Chief Counsel, Securities and Exchange Commission, Division of Corporation Finance, 450 5th Street, N.W., Washington, D.C. 20549, 202 272-2573

RIN: 3235-AD22

3956. DISCLOSURE OF BLOCK REPURCHASES BY AN ISSUE OR AFFILIATE

Legal Authority: 15 USC 78m; 15 USC 78w(a)

CFR Citation: 17 CFR 240; 17 CFR 249

Legal Deadline: None

Abstract: The staff is developing proposals to require either pre - or post transactional disclosure of issuer or affiliate repurchases of securities of the issuer over a certain threshold percentage. The staff has yet to determine the appropriate percentage level.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Sarah Miller, Special Counsel, Office of Disclosure Policy, Securities and Exchange Commission, Division of Corporation Finance, 450 5th Street, N.W., Washington, D.C. 20549, 202 272-2589

RIN: 3235-AD23

Securities Markets and Securities Industry Rules

3957. PROPOSED RULE 10B-21 OF THE SECURITIES EXCHANGE ACT OF 1934 - SHORT SALES IN CONNECTION WITH A PUBLIC OFFERING

Legal Authority: 15 USC 78b; 15 USC 78c; 15 USC 78i(a)(6); 15 USC 78j(a); 15 USC 78j(b); 15 USC 78o(c); 15 USC 78w(a); 15 USC 78dd(a)

CFR Citation: 17 CFR 240.10b-21

Legal Deadline: None

Abstract: Proposed Rule 10b-21 would prohibit a person who effects short sales of an equity security during the period between the filing of a registration statement relating to the same class of equity securities and the commencement of the public offering of such equity securities from covering such short sales with securities purchased from an underwriter or broker or dealer participating in the public offering of such equity securities. The proposed rule is designed to prevent manipulative short selling by market participants in anticipation of underwritten public offerings.

Timetable:

Action	Date	FR Cite
NPRM	05/20/87	52 FR 102
NPRM Comment Period End	07/27/87	

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Nancy J. Burke, Branch Chief, Securities and Exchange Commission, Division of Market Regulation, 450 Fifth St., N.W., Washington, D.C. 20549, 202 272-2880

RIN: 3235-AC96

3958. ● SHAREHOLDER LISTS

Legal Authority: 15 USC 78n; 15 USC 78w(a)

CFR Citation: 17 CFR 240.14a; 17 CFR 240.14d

Legal Deadline: None

Abstract: The Commission staff is developing proposals to amend the proxy and tender offer rules to give a security holder the right, under specified circumstances, to obtain a list of the names, addresses and securities positions of certain of the registrant's shareholders.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Barbara J. Green, Attorney Fellow, Office of Disclosure Policy, Securities and Exchange Commission, Division of Corporation Finance, 450 5th Street, N.W., Washington, D.C. 20549, 202 272-2589

RIN: 3235-AD41

3959. ● DISCLOSURE OF SIGNIFICANT EQUITY PARTICIPANTS IN CONTROL TRANSACTIONS

Legal Authority: 15 USC 78c(b); 15 USC 78m(d); 15 USC 78n; 15 USC 78v

CFR Citation: 17 CFR 240.14a-102; 17 CFR 240.13d-101; 17 CFR 240.13e-100; 17 CFR 240.14d-100

Legal Deadline: None

Abstract: The Commission staff is developing proposals that would require disclosure of a person with a significant equity interest in an entity affecting a control transaction.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Richard E. Baltz, Special Counsel, Office of Tender Offers, Securities and Exchange Commission, Division of Corporation Finance, 450 5th Street, N.W., Washington, D.C. 20549, 202 272-2587

RIN: 3235-AD42

3960. ● LOCK-BOX RULES

Legal Authority: 15 USC 77s(a); 15 USC 78w(a)

CFR Citation: 17 CFR 230.112; 17 CFR 230.

Legal Deadline: None

Abstract: The Commission staff is developing proposals that would address procedures regarding payment of fees to the lock-boxes designated at 17 CFR 202.3a with respect to 1933 Act filings and 1934 Act change of control transactional filings.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Anne M. Krauskopf, Special Counsel, Office of Chief Counsel, Securities and Exchange Commission, Division of Corporation Finance, 450 5th Street, N.W., Washington, D.C. 20549, 202 272-2573

RIN: 3235-AD43

3961. ● RULE 801

Significance: Agency Priority

Legal Authority: 15 USC 77c(b); 15 USC 77s

CFR Citation: 17 CFR 801.

Legal Deadline: None

Abstract: The Commission staff is developing proposals that would provide an exemption from the registration requirements of the Securities Act of 1933 for certain rights offerings to the existing securityholders of non-reporting issuers.

Timetable:

Action	Date	FR Cite
NPRM	11/01/88	

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Johnathan Gottlieb, Attorney Fellow, Office of Small Business Policy, Securities and Exchange Commission, Division of Corporation Finance, 450 5th Street, N.W., Washington, D.C. 20549, 202 272-2644

RIN: 3235-AD44

Investment Management Rules

3962. AMENDMENT TO RULE 180 -- EXEMPTION FROM REGISTRATION OF CERTAIN INTERESTS AND PARTICIPATIONS IN CERTAIN H.R. 10 PLANS

Legal Authority: 15 USC 77c(a)(2); 15 USC 77s(a)

CFR Citation: 17 CFR 230.180

Legal Deadline: None

Abstract: Rule 180 provides an exemption from the registration requirements of the Securities Act for interests and participations issued in connection with certain qualified H.R. 10 plans. In order for interests in funding media issued to plans established by financially inexperienced employers to qualify for the rule's exemption, the rule, as adopted, requires those employers to obtain financial advice from an independent expert prior to adopting the H.R. 10 plan. Among other things, the Commission is considering proposing an amendment to Rule 180 that would codify a present "no-action" position regarding the situation where a financially unsophisticated employer has already established a plan for its employees without obtaining advice from an independent expert, and intends either to change the funding medium or add another funding medium to the choices already available to employees. The issuer of the funding medium in such a case would be in compliance with the rule if the issuer has reasonable grounds to believe and, after having made reasonable inquiry, does believe, that an independent financial expert reviewed the funding medium prior to the investment of the (cont)

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: ABSTRACT CONT: plan's assets in that funding medium. The type of amendment being considered would impose no additional compliance cost, and would increase the flexibility of existing plans and the number of investment choices available to participating employees.

Agency Contact: Brian P. Kindelan, Special Counsel, Securities and Exchange Commission, Division of Investment Management, 450 Fifth Street, N. W. (Stop 5-2), Washington, DC 20549, 202 272-2048

RIN: 3235-AA08

3963. PROPOSED RULES 11A-3 AND 11C-1 UNDER THE INVESTMENT COMPANY ACT

Legal Authority: 15 USC 80a-6(c); 15 USC 80a-11(a); 15 USC 80a-37

CFR Citation: 17 CFR 270.11a-3; 17 CFR 270.11c-1

Legal Deadline: None

Abstract: The proposed rules would exempt certain persons from the requirements of Section 11(a) of the Investment Company Act. That section prohibits any registered open-end investment company and its principal underwriter from making an offer to a shareholder to exchange his security for another security on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms have been submitted to and approved by the Commission or comply with rules the Commission may prescribe. Section 11(c) states in part that the terms of any offer of exchange involving the securities of registered unit investment trusts must also be submitted to and approved by the Commission or comply with rules the Commission may prescribe. Proposed rule 11a-3 would permit a mutual fund or its principal underwriter to make certain exchange offers to its own shareholders or to shareholders of another fund in the same family of funds. Proposed rule 11c-1 would permit a unit investment trust or its sponsor to make certain exchange offers to unit holders of the same series or another series of the same trust or to unit holders of another unit investment trust

Timetable:

Action	Date	FR Cite
NPRM	12/23/86	51 FR 47260
NPRM Comment Period End	03/31/87	

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Analysis: Regulatory Flexibility Analysis

Additional Information: ABSTRACT CONT: having the same sponsor. By codifying standards for a variety of exchanges, these proposed rules are intended to significantly reduce the number of exemptive applications filed with the Commission under Section 11.

Agency Contact: Brian P. Kindelan, Special Counsel, Securities and Exchange Commission, Division of Investment Management, 450 5th Street, NW (Stop 5-2), Washington, DC 20549, 202 272-2048

RIN: 3235-AA14

3964. MUTUAL FUND GOVERNANCE

Legal Authority: 15 USC 80a-6(c); 15 USC 80a-37

CFR Citation: Not yet determined

Legal Deadline: None

Abstract: On December 10, 1962, the Commission issued an advance concept release (Investment Company Act Release No. 12888, (47 FR 56509)) soliciting public comment on whether the Commission should propose rules or recommend legislation which would provide for an alternative form of mutual fund governance. Specifically, this release requests comment on whether mutual funds should be exempted from shareholder voting and/or director requirements under the Investment Company Act of 1940 (the "Act") and, if so, whether conditions could be fashioned which would adequately insure against loss of investor protection. Although such changes might be effected through rulemaking, the Commission has indicated that, in its preliminary judgment, changes of this magnitude should be effected through legislative rather than administrative action. Since the costs and benefits of providing for an alternative scheme of mutual fund governance cannot be estimated at the present time, the release solicits specific comment on the costs and benefits which would result from such changes. Extension of comment period until April 18, 1963 was announced in Investment Company Act Release No. 13012 (cont)

Timetable:

Action	Date	FR Cite
ANPRM	12/10/82	47 FR 56509
Extended Comment Period to 4/18/83	02/07/83	48 FR 6354
ANPRM Comment Period End	04/18/83	48 FR 6354

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: ABSTRACT CONT: (February 7, 1983) 48 FR 6354.

Agency Contact: Brian P. Kindelan, Special Counsel, Securities and Exchange Commission, Division of Investment Management, 450 5th Street, NW (Stop 5-2), Washington, DC 20549, 202 272-2048

RIN: 3235-AA44

3965. RULE 17J-1 UNDER THE INVESTMENT COMPANY ACT OF 1940

Legal Authority: 15 USC 80a-17(j); 15 USC 80a-37(a)

CFR Citation: 17 CFR 270.17j-1

Legal Deadline: None

Abstract: Rule 17j-1 requires every access person of a registered investment company, or of an investment adviser of or principal underwriter for the investment company to report to the investment company certain of his securities transactions. The Commission is considering whether to propose an amendment to this rule which would reduce the reporting requirement for investment company directors who are interested persons with respect to the investment company by reason of their affiliation with a registered broker-dealer. Members of the industry have characterized these reporting requirements as unnecessarily burdensome in some instances. Any such rule amendment would have the effect of lessening the reporting requirements currently imposed by the rule. As a result, the staff believes that the costs, which should be insignificant, of complying with any amendment would be significantly less than the benefits it would provide. The Commission is also considering whether to amend Rule 12 j-1 to define specified acts as fraudulent, deceptive or manipulative or to require certain minimum standards to be set forth on a company's code of ethics. (con't)

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Ann P. Glickman, Special Counsel, Securities and Exchange Commission, Division of Investment Management, 450 5th Street, N.W. (Stop 5-2), Washington, D.C. 20549, 202 272-2042

RIN: 3235-AA58

3966. REVISION OF INVESTMENT COMPANY PROXY RULES

Legal Authority: 15 USC 78n; 15 USC 78w; 15 USC 80a-20; 15 USC 80a-37

CFR Citation: 17 CFR 240.14a-1 to 240.14a-102; 17 CFR 240.14b-1; 17 CFR 240.14c-1 to 240.14c-101; 17 CFR 270.20a-1; 17 CFR 270.20a-2; 17 CFR 270.20a-3

Legal Deadline: None

Abstract: Absent an exception, every solicitation of a proxy, authorization or consent in respect of any security with respect to which a registered investment company is the issuer, is subject to rules adopted pursuant to the Securities Exchange Act of 1934 and the Investment Company Act of 1940 concerning solicitations of proxies. Solicitations to which the rules apply may not commence unless each person solicited is furnished or has previously been furnished with a proxy statement containing specified information prepared in accordance with certain rules and the material has been filed with the Commission. The existing proxy rules were adopted in piecemeal fashion and have been the subject of frequent changes. This has led to certain duplicative and, in certain cases, complex requirements. To the extent that a proxy statement contains repetitive material or is overly complicated and difficult to read, it may not effectively perform its intended function of communicating meaningful information to security holders in order that they may make informed voting decisions. In order to update the proxy regulations and, in doing so, improve the (cont)

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: ABSTRACT CONT: readability of proxy statements and eliminate unnecessary disclosure costs, the Commission has commenced a comprehensive review of the proxy regulations as they relate to investment companies. There does not currently exist a basis upon which to quantify the reduced costs and burdens of such action on those registrants affected. Since the action will apply to all registered investment companies soliciting proxies, unless the solicitation is excepted, the Action is expected to have a significant impact on a substantial number of small entities. However, the contemplated revisions are still in the developmental stage and have not yet been formally proposed by the Commission. Thus, the extent of the revision actually proposed and the attendant reductions in costs and burdens are as yet largely unknown, but are anticipated to be significant.

Agency Contact: Dorothy M. Donohue, Attorney, Securities and Exchange Commission, Division of Investment Management, 450 5th Street, NW (Stop 5-2), Washington, DC 20549, 202 272-7317

RIN: 3235-AA59

3967. PROSPECTUS SIMPLIFICATION AMENDMENTS TO FORM N-2

Legal Authority: 15 USC 80a-8 Investment Company; 15 USC 77g Securities Act; 15 USC 77j Securities Act

CFR Citation: 17 CFR 239.14; 17 CFR 274.11a-1

Legal Deadline: None

Abstract: Form N-2 is the registration statement form under the Investment Company Act of 1940 and the Securities Act of 1933 for closed-end management investment companies other than small business investment companies and companies which issue periodic payment plan certificates or which are

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SEC — Proposed Rule Stage

sponsors or depositors of companies issuing such certificates. Included within the registration statement are the companies' prospectuses used in offering their securities to the public. The Commission believes a simplified prospectus is necessary because current prospectuses have become too cumbersome for the average investor to understand and because current requirements result in the disclosure of much information that is not necessarily material to an investment decision. Simplification will, therefore, make disclosure easier for investors to understand and reduce the costs and burdens of of preparing and distributing prospectuses. Accordingly, the Commission is proposing a new form N-2A that most likely would be structured as a three-part form, one part of which would be a new simplified prospectus. There does not currently exist (cont)

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: ABSTRACT CONT: a basis upon which to quantify the reduced costs and burdens of such action on those registrants affected. The contemplated amendments are still in the developmental stage and have not yet been formally proposed by the Commission. Thus, the extent of the simplification of investment companies' prospectuses actually proposed and the attendant reductions in costs and burdens are as yet largely unknown, but are expected to reduce the cost of registration for both the industry and government.

Agency Contact: Debra J. Kertzman, Attorney, Securities and Exchange Commission, 450 5th Street, NW (Stop 5-2), Washington, DC 20549, 202 272-2107

RIN: 3235-AH40

3968. METHOD FOR COMPLIANCE WITH SECTION 206(3) OF THE INVESTMENT ADVISERS ACT OF 1940 WITH RESPECT TO CERTAIN TRANSACTIONS

Legal Authority: 15 USC 80b-11(a)

CFR Citation: 17 CFR 275.206 (3)-3

Legal Deadline: None

Abstract: Section 206(3) of the Investment Advisers Act of 1940 makes it unlawful for any investment adviser, by use of the mail or any means or instrumentality of interstate commerce, directly or indirectly, knowingly to effect a securities transaction (a) with a client while acting as principal or (b) for a client while acting as broker for a person other than such client, without disclosing in writing to such client before the completion of the transaction the capacity on which he is acting and obtaining the consent of the client to the transaction. The Commission is considering whether to propose a rule that would provide a nonexclusive method for compliance with the provisions of Section 206(3) of the Investment Advisers Act of 1940 in connection with purchases of securities from an underwriting syndicate for an advisory client under specified conditions. Because the proposed rule is still in the developmental stages, its potential effect on small entities and its potential costs and benefits as a whole are unknown at this time.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: John McGuire, Attorney, Securities and Exchange Commission, Investment Management, 450 5th Street, N.W. (Stop 5-2), Washington, D.C. 20549, 202 272-2107

RIN: 3235-AB74

3969. PROPOSED RULE 3A-6 UNDER THE INVESTMENT COMPANY ACT(THE "ICA")

Legal Authority: 15 USC 80a-6(c); 15 USC 80a-37(a)

CFR Citation: 17 CFR 270.3a-6

Legal Deadline: None

Abstract: The Commission is considering whether to propose a rule that would provide exemptive relief from all provisions of the ICA to limited purpose finance subsidiaries that own or hold mortgage-backed securities. This would obviate the necessity of these subsidiaries filing applications for exemptive relief.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Robert E. Plaze, Special Counsel, Securities and Exchange Commission, Division of Investment Management, 450 5th Street, N.W. (Stop 5-2), Washington, D.C. 20549, 202 272-2088

RIN: 3235-AC28

3970. ADVERTISING BY INVESTMENT ADVISERS

Legal Authority: 15 USC 80b-6 (4)

CFR Citation: 17 CFR 275.206 (4)-1

Legal Deadline: None

Abstract: Rule 206(4)-1 contains a wide range of restrictions on advertising by investment advisers including prohibitions on the use of testimonials. The rule was adopted in 1962 and has not been revised since. The Commission is considering whether to amend the rule in a manner which would permit greater flexibility to investment advisers in their advertising and protect the investing public from potential abuse. Because the proposed amendments to the rule are still in the developmental stages, the potential effect on small entities and its potential costs and benefits as a whole are uncertain at this time.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Brian P. Kindelan, Special Counsel, Securities and Exchange Commission, Division of Investment Management, 450 5th Street, N.W. (Stop 5-2), Washington, D.C. 20549, 202 272-2048

RIN: 3235-AC09

SEC — Proposed Rule Stage

3971. PROPOSED AMENDMENTS TO RULES 12B-1 AND 17D-2 UNDER THE INVESTMENT COMPANY ACT OF 1940, AND TO ITEM 7 OF FORM N-1A UNDER THE SECURITIES ACT OF 1933

Legal Authority: 15 USC 80a-12(b); 15 USC 80a-17(d); 15 USC 80a-39; 15 USC 77a, et seq.

CFR Citation: 17 CFR 270.12b-1; 17 CFR 270.17d-3; 17 CFR 239.15A

Legal Deadline: None

Abstract: The Commission has proposed for comment amendments to Rule 12b-1 under the Investment Company Act to redefine the circumstances under which investment companies may finance distribution of fund assets. The Commission has also proposed amendments to Rule 17d-3 to allow affiliated investment companies to jointly finance distribution activities under certain conditions. Finally, the Commission has proposed amendments to Form N-1A which would require an additional disclosure to be made regarding the amount of payments under distribution plans.

Timetable:

Action	Date	FR Cite
ANPRM	01/29/86	51 FR 4386
ANPRM Comment Period End	04/07/86	51 FR 4386

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Ann M. Glickman, Special Counsel, Securities and Exchange Commission, Division of Investment Management, 450 Fifth Street, NW (Stop 5-2), Washington, DC 20549, 202 272-2068

RIN: 3235-AC23

3972. EXEMPTION OF ACQUISITION OF SECURITIES DURING THE EXISTENCE OF UNDERWRITING SYNDICATE

Legal Authority: 15 USC 80a-10(f); 15 USC 80a-37(a); 15 USC 80a-6(c)

CFR Citation: 17 CFR 270.10f-3

Legal Deadline: None

Abstract: The conditions in existing Rule 10f-3, which allow purchases from affiliated underwriters during the existence of an underwriting syndicate, may no longer be appropriate in today's financial markets. The Commission is investigating possible alternative provisions and soliciting comment on these alternatives.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Rochelle G. Kauffman, Staff Attorney, Securities and Exchange Commission, Division of Investment Management, 450 5th Street, N.W. (Stop 5-2), Washington, D.C. 20549, 202 272-2048

RIN: 3235-AC11

3973. PROPOSED RULE 12D3-2UNDER THE INVESTMENT COMPANY ACT

Legal Authority: 15 USC 80a-6(c); 15 USC 80a-37

CFR Citation: 17 CFR 270. 12d3-2

Legal Deadline: None

Abstract: The Commission is considering whether to propose a rule that would set forth the conditions under which registered investment companies may engage in repurchase agreement transactions with persons engaged in securities related businesses.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Brian Kindelan, Attorney, Securities and Exchange Commission, Division of Investment Management, 450 Fifth Street, N.W. (Stop 5-2), Washington, DC 20549, 202 272-2048

RIN: 3235-AC26

3974. ADVERTISING BY UNIT INVESTMENT TRUSTS

Legal Authority: 15 USC 77j; 15 USC 77s; 15 USC 80a-37(a)

CFR Citation: Not yet determined

Legal Deadline: None

Abstract: Currently unit investment trusts advertise their performance by means of an "estimated current return" which shows estimated cash flow. However, because there is no uniform method of computing the estimated current return, they cannot be compared by prospective investors. This rulemaking project will endeavor to create such a uniform method. A uniform method of computation will permit investors to make more informed investment decisions by enabling them to compare the performance of different trusts.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Diane C. Blizzard, Securities and Exchange Commission, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549, 202 272-2107

RIN: 3235-AC70

3975. PROPOSED RULE 6C-10 UNDER THE INVESTMENT COMPANY ACT OF 1940

Legal Authority: 15 USC 80a-6(c); 15 USC 80a-22(c); 15 USC 80a-37; 15 USC 80a-39

CFR Citation: 17 CFR 270.6c-10

Legal Deadline: None

Abstract: The Commission will consider whether to propose rule 6c-10 under the act to allow Investment Companies to charge deferred sales loads including contingent deferred sales loads under certain conditions. These actions would eliminate the need for Investment Companies to file applications for exemptive relief to impose deferred loads.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

SEC — Proposed Rule Stage

Additional Information: Proposed rule 6c-10 was formerly included with the proposed amendments to rules 12b-1 and 17d-3 under the Investment Company Act. Proposed rule 6c-10 has been split from that entry to comprise a separate item on the agenda.

Agency Contact: Rachelle G. Kauffman, Staff Attorney, Securities and Exchange Commission, Division of Investment Management, 450 5th Street, N.W., Washington, D. C. 20549, 202 272-2048

RIN: 3235-AD18

3976. INFORMATION THAT BROKER-DEALERS MAY DISSEMINATE ABOUT INVESTMENT COMPANIES

Legal Authority: 15 USC 77f(a)

CFR Citation: 17 CFR 230.139a

Legal Deadline: None

Abstract: The Commission is considering proposing a rule that would provide a safe harbor under Section 5 of the Securities Act of 1933 for certain broker-dealer publications that contain information about investment companies.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Diane C. Blizzard, Attorney, Securities and Exchange Commission, Division of Investment Management, 450 5th Street, N.W., Washington, D.C. 20549, 202 272-2107

RIN: 3235-AD20

3977. REVISIONS TO THE REGISTRATION AND THE ANNUAL SUPPLEMENT FORMS USED BY INVESTMENT ADVISERS

Legal Authority: 15 USC 78o(b)(1); 15 USC 78w(a); 15 USC 80b-3; 15 USC 80b-4; 15 USC 80b-6A; 15 USC 80b-11; 15 USC 80b-1

CFR Citation: 17 CFR 275.; 17 CFR 279.

Legal Deadline: None

Abstract: The Commission is considering a proposal that would revise the Amendment and updating requirements and procedures for an advisers registration form and annual report. The Commission would propose such revisions in order to facilitate the review of investment adviser registration forms and resolve certain administrative difficulties.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: John McGuire, Attorney, Securities and Exchange Commission, Division of Investment Management, 450 5th Street, N.W., Washington, D.C. 20549, 202 272-2107

RIN: 3235-AD21

3978. ◆ VARIABLE ANNUITY FEE TABLE

Legal Authority: 15 USC 77g; 15 USC 77j; 15 USC 77s; 15 USC 80a-8(b); 15 USC 80a-37a

CFR Citation: 17 CFR 239.17a; 17 CFR 274.11b; 17 CFR 239.17b; 17 CFR 274.11c; 17 CFR 239.15A; 17 CFR 274.11A

Legal Deadline: None

Abstract: The Commission is proposing to consolidate the expense data in a tabular presentation near the front of variable annuity prospectuses. The proposal is intended to improve the quality of expense disclosure in variable annuity prospectuses. The Commission is also eliminating a similar fee table requirement for management investment companies offering shares exclusively to separate accounts issuing variable annuity contracts.

Timetable:

Action	Date	FR Cite
NPRM	10/20/88	
Final Action	01/30/89	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: John McGuire, Staff Attorney, Securities and Exchange Commission, Division of Investment Management, 450 5th Street, N.W., Washington, D.C. 20549, 202 272-2107

RIN: 3235-AD36

3979. ◆ DIVERSIFICATION BY EXEMPT HOLDING COMPANIES

Legal Authority: 15 USC 79c(a)(1); 15 USC 79t(a)

CFR Citation: 17 CFR 250.17; 17 CFR 250.2; 17 CFR 259.402

Legal Deadline: None

Abstract: Proposed Rule 17 clarifies under what conditions diversification into non-utility enterprises would not be deemed detrimental to the public interest or the interest of investors or consumers within the meaning of the "unless and except" clause of S3(a)(1) of the Public Utility Holding Company Act of 1935. The rule would provide two alternative "safe harbors". A companion proposed amendment to rule 2 under the Act would require after three years from the proposal date, claims of exemption under rule 2, in order to be effective, would require that the claimant meet one of the safe harbor provisions of rule 17. Also proposed is an amendment to Form U-3A-2, the statement filed annually by holding companies claiming exemptions under rule 2, that would request information necessary to determine whether a rule 2 claim of exemption by an intrastate holding company was meritorious in light of the requirement added to rule 2. These proposals could significantly increase regulatory compliance costs for those intrastate public utility holding companies that have operations,or that intend to do so. The proposals could require such a company to forego acquisition of an unrelated non-utility

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ABSTRACT (con't) interest or to divest such an interest previously acquired; or alternatively, to seek enactment by the legislature in its states of organization of a unified comprehensive utility holding company statute that addresses diversification activities.

Agency Contact: William C. Weeden, Assistant Director, Securities and Exchange Commission, Division of Investment Management, 450 5th Street, N.W., Washington, D.C. 20549, 202 272-7083

RIN: 3235-AD30

SEC — Proposed Rule Stage

SECURITIES AND EXCHANGE COMMISSION (SEC) — Final Rule Stage

Accounting Rules

3980. PROPOSALS REGARDING INDUSTRY SEGMENT AND OTHER INTERIM FINANCIAL REPORTING MATTERS, MANAGEMENT'S DISCUSSION AND ANALYSIS, AND OFF BALANCE SHEET FINANCING DISCLOSURES

Legal Authority: 15 USC 77f; 15 USC 77g; 15 USC 77s; 15 USC 77j; 15 USC 77aa(a); 15 USC 77aa (25) to 77aa(28); 15 USC 78l; 15 USC 78m; 15 USC 78o(d); 15 USC 78w(a); 15 USC 79e(b); 15 USC 79n; 15 USC 79t(a); 15 USC 80a-8; 15 USC 80-29

CFR Citation: 17 CFR 210.5-02; 17 CFR 210.10-01; 17 CFR 210.11-02; 17 CFR 228.303

Legal Deadline: None

Abstract: The Commission proposed amendments to require (1) presentation of certain industry segment information for interim periods; (2) a discussion of reportable segments in management's discussion and analysis; and (3) modifications of other miscellaneous interim reporting requirements. The release also provides advance notice of possible future rulemaking regarding (1) additional segment reporting disclosures and (2) uniform disclosure of off balance sheet financing arrangements. The proposals are designed to enhance analysis of financial information. They may entail some new recordkeeping but any such costs have not been determined. The Commission's interim reporting rules will be reviewed as a part of this action.

Timetable:

Action	Date	FR Cite
NPRM	02/15/84	49 FR 6737
NPRM Comment Period End	05/15/84	

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: This entry replaces the following three entries from the October 1983 agenda. RIN 3235-AA52 – Off Balance Sheet Obligations. RIN 3235-AA54 – Segment Information. RIN 3235-AA55 – Quarterly Financial Reporting.

Agency Contact: John W. Albert, Assistant Chief Accountant, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549, 202 272-2130

RIN: 3235-AB15

Disclosure Rules

3981. ACQUISITIONS OF SUBSTANTIAL AMOUNTS OF SECURITIES AND RELATED ACTIVITIES DURING AND FOLLOWING A TENDER OFFER FOR THOSE SECURITIES

Legal Authority: 15 USC 78c(b); 15 USC 78m(e); 15 USC 78n(d); 15 USC 78w(a); 15 USC 78o(c); 15 USC 78t(b)

CFR Citation: 17 CFR 240.13e-2; 17 CFR 240.14d-11

Legal Deadline: None

Abstract: The Commission is proposing Rules 13e-2 and 14d-11 that would require that, subject to certain exceptions, purchases, offers to purchase, arrangements or understandings to purchase and solicitations of offers to sell securities undertaken during and shortly after a tender offer that would increase any person's ownership of the class of securities subject to the tender offer by 10% or more of the class be made in compliance with the statutory provisions and rules applicable to tender offers. The proposed rules would apply to all persons from the formal commencement of a tender offer until 10 business days after the scheduled expiration date. A proposed rule, also, would subject a bidder to the same requirements from the time it commenced a tender offer by public announcement until it either formally commenced a tender offer by some other means or 30 business days after it made a subsequent public announcement (cont)

Timetable:

Action	Date	FR Cite
ANPRM	07/31/86	51 FR 28096
ANPRM Comment Period End	12/01/86	
NPRM	10/01/87	52 FR 37492
NPRM Comment Period End	12/07/87	

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: ABSTRACT CONT:stating that it had determined not to continue with the tender offer.

Agency Contact: David A. Sirignano, Chief, Office of Tender Offers, Securities and Exchange Commission, Division of Corporation Finance, 450 5th Street, N.W., Washington, DC 20549, 202 272-2807

RIN: 3235-AA85

3982. INDEPENDENT ACCOUNTANTS - MANDATORY PEER REVIEW

Legal Authority: 15 USC 77f; 15 USC 77g; 15 USC 77h; 15 USC 77j; 15 USC 77s(a); 15 USC 77aa (25) to 77aa(28); 15 USC 78l; 15 USC 78m; 15 USC 78o(d); 15 USC 78w(a); 15 USC 79e(b); 15 USC 79n; 15 USC 79t(a); 15 USC 80a-8; 15 USC 80a-29

CFR Citation: 17 CFR 210

Legal Deadline: None

Abstract: The Commission has proposed amendments to its rules that would require accountants' reports included in Commission filings be signed by an independent accountant who has undergone a peer review of its accounting and audit practice within the past three years.

Timetable:

Action	Date	FR Cite
NPRM	04/01/87	52 FR 11665
NPRM Comment Period End	06/01/87	52 FR 11665
Final Action	12/31/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Robert Burns, Chief Counsel, Securities and Exchange Commission, Office of the Chief Accountant, 450 5th Street, N.W., Washington, D.C. 20549, 202 272-2130

RIN: 3235-AC79

3983. PROSPECTUS DELIVERY REQUIREMENTS IN FIRM COMMITMENT UNDERWRITTEN OFFERINGS OF SECURITIES MADE FOR CASH (RULE 433)

Legal Authority: 15 USC 77b (10); 15 USC 77s(a); 15 USC 77j(a)(4); 15 USC 77j(d)

CFR Citation: 17 CFR 230.433

Legal Deadline: None

Abstract: The Commission proposed two alternative versions of a new Rule 433 that would provide a safe harbor from the requirement to deliver a final prospectus prior to or contemporaneously with a confirmation of sale in a firm commitment offering of securities for cash. Both proposals would permit, if all conditions of the rule are satisfied, the sending of a final prospectus no later than five business days after a confirmation of sale is sent to an investor in such an offering.

Timetable:

Action	Date	FR Cite
NPRM	09/08/87	52 FR 29206
NPRM Comment Period End	10/05/87	

Next Action Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Sarah A. Miller, Special Counsel, Office of Disclosure Policy, Securities and Exchange Commission, Division of Corporation Finance, 450 5th Street, N.W., Washington, D.C. 20549, 202 272-2589

RIN: 3235-AC80

3984. REPORTING REQUIREMENTS FOR CHANGE IN FISCAL YEAR END

Legal Authority: 15 USC 77g; 15 USC 77s(a); 15 USC 78m; 15 USC 78n; 15 USC 78o(d); 15 USC 78w(a); 15 USC 80a-8; 15 USC 80a-29; 15 USC 80a-37

CFR Citation: 17 CFR 240.12b-15; 17 CFR 240.13a-10; 17 CFR 240.13a-13; 17 CFR 240.14a-3; 17 CFR 240.15d-10; 17 CFR 240.15d-13; 17 CFR 249.308; 17 CFR 249.310; 17 CFR 249.308a; 17 CFR 249.322; 17 CFR 210.3-12; 17 CFR 270.8b-10; 17 CFR 270. 30b1-2; 17 CFR 274.101

Legal Deadline: None

Abstract: The Commission is proposing amendments to Regulations 13A and 15D under the Securities Exchange Act of 1934 that would revise the reporting and filing requirements for an issuer that changes its fiscal year end and for a successor issuer with a different fiscal year end from its predecessor. The Commission also is proposing amendments to Form 8-K to require reporting of a change in fiscal year and a new Rule 30b1-3 under the Investment Company Act of 1940 to govern the reporting requirements for investment companies that change their fiscal year end. The proposed amendments are intended to update and clarify the requirements for companies that change their fiscal year end. In addition, the Commission is proposing a new account accounting Rule 3-06 and other amendments to the accounting and proxy rules relating to financial reporting. Amendments to the quarterly reporting rules are proposed to modify the period covered in a new registrant's first quarterly report.

Timetable:

Action	Date	FR Cite
NPRM	06/02/88	53 FR 21670
NPRM Comment Period End	08/08/88	

Next Action Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Barbara J. Green, Attorney Fellow, Office of Disclosure Policy, Securities and Exchange Commission, Division of Corporation Finance, 450 5th Street, N.W., Washington, D.C. 20549, 202 272-2589

RIN: 3235-AD03

3985. REGULATION S - RULES GOVERNING OFFERS AND SALES MADE OUTSIDE THE UNITED STATES WITHOUT REGISTRATION UNDER THE SECURITIES ACT OF 1933

Legal Authority: 15 USC 77b; 15 USC 77d; 15 USC 77s

CFR Citation: 17 CFR 230.901-905

Legal Deadline: None

Abstract: The extraterritorial reach of Section 5 of the Securities Act of 1933 has become of critical importance with the development of major markets abroad and the growth of transnational investment. As a result of these developments, the Commission has published for comment proposed Regulations intended to clarify the extraterritorial application of the registration provisions of the Securities Act of 1933. The Regulation would provide generally that any offer or sale that occurs outside the United States is not subject to Section 5.

Timetable:

Action	Date	FR Cite
NPRM	06/10/88	53 FR 53226
NPRM Comment Period End	09/15/88	

Next Action Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Samuel Wolff, Special Counsel, Office of International Corporate Finance, Securities and Exchange Commission, Division of Corporation Finance, 450 5th Street, N.W., Washington, D.C. 20549, 202 272-2248

RIN: 3235-AD23

3986. AUTOMATICALLY EFFECTIVE POST -EFFECTIVE AMENDMENTS FOR ACQUISITIONS BY CERTAIN LIMITED PARTNERSHIPS

Significance: Agency Priority

Legal Authority: 15 USC 77b(c); 15 USC 77s; 15 USC 77g; 15 USC 77h; 15 USC 77j; 15 USC 77o

CFR Citation: 17 CFR 230.485; 17 CFR 230.424; 17 CFR 229.424; 17 CFR 229.801(c); 17 CFR 230.406

Legal Deadline: None

Abstract: The Commission is proposing for comment two alternative forms of a new Rule 485 that would provide for the automatic effectiveness of post-effective amendments filed by limited partnerships during the distribution period, provided that such amendments relate to significant acquisitions and contain required financial statements, financial information and textual information.

Timetable:

Action	Date	FR Cite
NPRM	07/06/88	53 FR 26718
NPRM Comment Period End	09/12/88	

Next Action Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Sarah Miller, Special Counsel, Office of Disclosure Policy, Securities and Exchange Commission, Division of Corporation Finance, 450 5th Street, N.W., Washington, D.C. 20549, 202 272-2589

RIN: 3235-AD24

3987. ● EXEMPTION OF CERTAIN FOREIGN BROKERS OR DEALERS

Significance: Agency Priority

Legal Authority: 15 USC 78c; 15 USC 78j; 15 USC 78o; 15 USC 78q; 15 USC 78w; 15 USC 78dd

CFR Citation: 17 CFR 240.15a-6

Legal Deadline: None

Abstract: Proposed Rule 15a-6 is the Commission's response to the cross-border activities of foreign broker-dealer registration requirements. The proposed rule would exempt from these requirements foreign entities that engage in securities transactions with certain non-U.S. persons, or with specified U.S. institutional investors under certain limited conditions. The staff believes that this alternative is superior to relying on the interpretive process, since the internationalization of the world's securities markets has increased greatly the number of requests for interpretive advice received by the staff. The Commission believes that, to the extent that the proposed rule, if adopted, would impose any costs on registered broker-dealer affiliates of eligible foreign broker-dealers of have a competitive effect on other domestic broker-dealers, those costs are not significant and would not impact on a substantial number of small domestic broker-dealers; also, the exemption under the rule would be limited to foreign broker-dealers, which need not be considered under 5 USC 603.

Timetable:

Action	Date	FR Cite
NPRM	06/14/88	53 FR 23645
NPRM Comment Period End	09/15/88	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: John Polanis, Jr., Attorney, Office of ChiefCounsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street N.W., Mail Stop 5-1, Washington, D.C. 20549, 202 272-2848

RIN: 3235-AD27

Securities Markets and Securities Industry Rules

3988. ● REGULATION D

Significance: Agency Priority

Legal Authority: 15 USC 77b (15); 15 USC 77c(b); 15 USC 77d (2); 15 USC 77s

CFR Citation: 17 CFR 215.; 17 CFR 501.; 50 CFR 502.; 17 CFR 507.; 17 CFR 508.

Legal Deadline: None

Abstract: The Commission is proposing revisions to Regulation D that would add certain governmental employee benefit plans to the lists of accredited investors. Certain conditions to the Regulation D exemptions would be eliminated. A disqualification provision would preclude the future use of Regulation D by issuers found to have violated the filing requirements of the Regulation. Finally, insignificant deviations from the technical requirements of the Regulation would not cause the loss of the Regulation D exemption if there had been a good faith and reasonable attempt to comply with the Regulation.

Timetable:

Action	Date	FR Cite
NPRM	03/10/88	53 FR 7870
NPRM Comment Period End	06/13/88	
Final Action	11/01/88	

Small Entities Affected: Businesses

Government Levels Affected: Local

Agency Contact: John Reynolds, Special Counsel, Office of Small Business Policy, Securities and Exchange Commission, Division of Corporation Finance, 450 5th Street, N.W., Washington, D.C. 20549, 202 272-2644

RIN: 3235-AD45

Investment Management Rules

3989. PROPOSED RULE 3A-4 -- INDIVIDUALIZED INVESTMENT MANAGEMENT SERVICES

Legal Authority: 15 USC 80a-6(c); 15 USC 80a-37(a)

CFR Citation: 17 CFR 270.3a-4

Legal Deadline: None

Abstract: In Investment Company Act Release No. 11391 (October 10, 1980) (45 FR 69479) the Commission proposed for public comment Rule 3a-4, which would deem investment management services providing their clients with individualized treatment not to be investment companies for purposes of the Act. The rule provides a "safe harbor" for any investment manager providing its clients with treatment based on the needs and goals of each client. Under such circumstances, regulation of investment management services under the Act appears unnecessary. The proposed rule was intended to clarify the Commission's position on the question of "mini-accounts" by providing a safe harbor for certain investment management services and thereby provide some certainty to the public. The Commission does not expect any final action taken on the proposal to significantly affect the cost of providing investment management services. The public comment letters on the proposal have been reviewed and alternatives for final action are being considered.

Timetable:

Action	Date	FR Cite
NPRM	10/10/80	45 FR 69479
NPRM Comment Period End	01/31/81	45 FR 69479

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: NPRM is Release No. IC-11391 (10/10/80)

Agency Contact: Brian P. Kindelan, Special Counsel, Securities and Exchange Commission, Division of Investment Management, 450 5th Street, NW (Stop 5-2), Washington, DC 20549, 202 272-2068

RIN: 3235-AA12

3990. PROPOSED AMENDMENT TO RULE 17g-1 UNDER THE INVESTMENT COMPANY ACT

Legal Authority: 15 USC 80a-6(c); 15 USC 80a-17(g); 15 USC 80a-37(a)

CFR Citation: 17 CFR 270.17g-1

Legal Deadline: None

Abstract: The Commission is considering whether to adopt an amendment to Rule 17g-1 under the Investment Company Act. The amendment was proposed for public comment in Investment Company Act Release No. 11193 (June 2, 1980) (45 FR 39407). Rule 17g-1 requires every registered investment company to provide and maintain a bond against larceny and embezzlement covering officers and employees of the company. In some circumstances, the officers and employees of a company's depositor, trustee, investment adviser or other manager and various affiliates of such persons, because they have access to the company's assets, function as officers and employees of the investment company. The proposed amendment to the rule would clarify the scope of the rule by explicitly requiring the bonding of such persons. The principal cost associated with this rule would be the cost of a bond. That cost would vary according to the persons required to be bonded by the rule. In this regard, before adopting any amendment to the rule, the Commission will carefully consider what persons should be bonded to protect investors adequately, weighing the benefits of the protection against the cost of a bond.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Ann M. Glickman, Special Counsel, Securities and Exchange Commission, Division of Investment Management, 450 5th Street, NW (Stop 5-2), Washington, DC 20549, 202 272-3062

RIN: 3235-AA16

3991. SIMPLIFICATION OF REGISTRATION STATEMENTS FILED BY UNIT INVESTMENT TRUSTS

Legal Authority: 15 USC 80a-8; 15 USC 77g; 15 USC 77j

CFR Citation: 17 CFR 239.16; 17 CFR 274.12

Legal Deadline: None

Abstract: On March 9, 1987, the Commission reproposed for public comment Form N-7, a new form for registering unit investment trusts("UITS") and their securities under the Investment Company Act of 1940 and the Securities Act of 1933. Form N-7 was originally proposed by the Commission on May 14, 1985. Adoption of Form N-7 would (i) codify the disclosure requirements for UITS into one form; (ii) codify the disclosure standards that have been developed for UITS; and (iii) shorten and simplify the prospectus used in connection with the sale of units in both the initial offering and in the secondary market maintained by the sponsor. As reproposed, a one-part prospectus originally proposed, but the prospectus would retain a series specific part and a generic part. The requirement for audited financial statements would be eliminated under certain circumstances. The requirement that registrants include certain third party financial statements in the registration statement would be extended to insurers as well as guarantors of portfolio securities of the trust under the reproposal.

Timetable:

Action	Date	FR Cite
NPRM	05/23/85	
NPRM Comment Period End	12/31/87	50 FR 21262

Next Action Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: ABSTRACT CONT:

Agency Contact: Diane C. Blizzard, Attorney, Securities and Exchange Commission, Division of Investment Management, 450 5th Street, NW (Stop 5-2), Washington, DC 20549, 202 272-3049

RIN: 3235-AA47

3992. REGISTRATION UNDER THE SECURITIES ACT OF 1933 OF AN INDEFINITE NUMBER OF CERTAIN INVESTMENT COMPANY SECURITIES

Legal Authority: 15 USC 80a-37; 15 USC 80a-24

CFR Citation: 17 CFR 270.24f-3

Legal Deadline: None

Abstract: On March 9, 1987, the Commission published for public comment a new rule 24f-3 under the Investment Company Act of 1940 that would simplify filing requirements under section 24(f) of the Investment Company Act by allowing a unit investment trust to register an indefinite number of securities solely for secondary market purposes and to pay no registration fee on secondary market sales. The Commission is considering whether to adopt such amendments.

Timetable:

Action	Date	FR Cite
NPRM	05/15/87	
Final Action	12/31/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Diane C. Blizzard, Attorney, Securities and Exchange Commission, Division of Investment Management, 450 5th Street, N.W. (Stop 5-2), Washington, D.C. 20549, 202 272-2107

RIN: 3235-AC10

3993. DISCLOSURE OF SECURITY RATINGS IN REGISTRATION STATEMENTS OF MONEY MARKET FUNDS

Legal Authority: 15 USC 77(g); 15 USC 77(i); 15 USC 77(s) (a)

CFR Citation: 17 CFR 230.134; 17 CFR 230.436; 17 CFR 230.482

Legal Deadline: None

Abstract: The Commission proposed amendments to Rules 134, 436, and 482 under the Securities Act of 1933 on March 14, 1988. The amendments would, if adopted, permit certain investment companies to use in their statutory and omitting prospectuses security ratings assigned by a nationally recognized statistical rating organization (NRSRO) without first obtaining the NRSRO'S consent to being named pursuant to Section 7 of the Securities Act. The Commission is now considering whether to adopt such amendments.

Timetable:

Action	Date	FR Cite
NPRM Comment Period End	05/16/88	51 FR 9838

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Robert E. Plaze, Special Counsel, Securities and Exchange Commission, Division of Investment Management, 450 Fifth Street, N.W. (Stop 5-2), Washington, D.C. 20549, 202 272-2107

RIN: 3235-AC24

3994. N-1A TECHNICAL AMENDMENTS

Legal Authority: 15 USC 80a-8(b)

CFR Citation: 17 CFR 274.11A

Legal Deadline: None

Abstract: The Commission is considering several modifications to Form N-1A including: reducing the number of copies to be filed with the Commission; conforming the language of Form N-1A with Forms N-3 and N-4; and clarifying many of the current disclosure requirements.

Timetable:

Action	Date	FR Cite

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: John McGuire, Staff Attorney, Securities and Exchange Commission, Division of Investment Management, 450 Fifth street, N. W., Washington, DC 20549, 202 272-2107

RIN: 3235-AC25

3995. ● CUSTODY OF INVESTMENT COMPANY ASSETS WITH REGISTERED FUTURES COMMISSION MERCHANTS

Legal Authority: 15 USC 80a-37

CFR Citation: 17 CFR 270.17f-6

Legal Deadline: None

Abstract: The Division of Investment Management is considering recommending rulemaking to permit registered investment companies to maintain initial margin and excess variation margin in the custody of certain futures commission merchants if appropriate conditions can be developed to ensure the safety and integrity of the assets thus maintained.

Timetable:

Action	Date	FR Cite
Interim / Final Rule	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Elizabeth T. Tsai, Special Counsel, Securities and Exchange Commission, Division of Investment Management, 450 5th Street, N.W., Washington, D.C. 20549, 202 272-2107

RIN: 3235-AD27

3996. ● FORMS FOR FILINGS BY ACCOUNTANTS

Legal Authority: 15 USC 80a-17(f); 15 USC 80b-6

CFR Citation: 17 CFR 270.17f-1; 17 CFR 270.17f-2; 17 CFR 270.206 (4)-2

Legal Deadline: None

Abstract: The Commission is proposing three new forms to serve as cover sheets to examination certificates filed by accountants in compliance with rules 17f-1(b)(4) and 17f-2(f) under the Investment Company Act of 1940 and rule 206(4)-2(a)(5) under the Investment Advisers Act of 1940. These forms, and related rule amendments, are intended to ensure that examination certificates are properly filed and thus easily accessible. Because the forms are only cover sheets for documents currently required to be filed, there would be no significant cost or burden for compliance.

Timetable:

Action	Date	FR Cite
NPRM	07/20/88	
Final Action	10/00/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: John McGuire, Staff Attorney, Securities and Exchange Commission, Division of Investment Management, 450 5th Street, N.W., Washington, D.C. 20549, 202 272-2107

RIN: 3235-AD27

SECURITIES AND EXCHANGE COMMISSION (SEC) — Completed Actions

3987. REQUEST FOR COMMENTS ON "OPINION SHOPPING"

CFR Citation: 17 CFR 210; 17 CFR 249

Completed:

Reason	Date	FR Cite
Final Action	04/12/88	53 FR 12924
Final Action Effective	05/20/88	53 FR 12924

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Robert E. Burns 202 272-2130

RIN: 3235-AC02

3986. PROPOSED ADDITIONS TO RULES AND GUIDE FOR DISCLOSURES CONCERNING RESERVES FOR UNPAID CLAIMS AND CLAIM ADJUSTMENT EXPENSES OF PROPERTY - CASUALTY UNDERWRITERS

CFR Citation: 17 CFR 210

Completed:

Reason	Date	FR Cite
Withdrawn	07/14/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Jeffrey C. Jones 202 272-2130

RIN: 3235–AC44

3999. FACILITATING SHAREHOLDER COMMUNICATIONS

CFR Citation: 17 CFR 240.14a-1; 17 CFR 240.14a-13; 17 CFR 240.14b-1; 17 CFR 240.14b-2; 17 CFR 240.14c-1; 17 CFR 240.14c-7

Completed:

Reason	Date	FR Cite
Final Action	04/27/88	53 FR 16399
Final Action Effective	06/01/88	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Sarah A. Miller 202 272-2589

RIN: 3235–AC81

4000. RULES 701, 702, 703 AND FORM 701

CFR Citation: 17 CFR 230.701; 17 CFR 230.702; 17 CFR 230.703; 17 CFR 230.701

Completed:

Reason	Date	FR Cite
Final Action	04/14/88	53 FR 12918
Final Action Effective	05/20/88	

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: John Reynolds 202 272-2644

RIN: 3235–AC82

4001. REGULATION D

Significance: Agency Priority

CFR Citation: 17 CFR 230.501; 17 CFR 230.502; 17 CFR 230.503; 17 CFR 230.504; 17 CFR 230.505; 17 CFR 230.506

Completed:

Reason	Date	FR Cite
Final Action	03/10/88	53 FR 7866
Final Action Effective	04/11/88	

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: John Reynolds 202 272-2644

RIN: 3235–AC83

4002. FACILITATING SHAREHOLDER COMMUNICATIONS

CFR Citation: 17 CFR 240.14a-1; 17 CFR 240.14a-13; 17 CFR 240.14b-1; 17 CFR 240.14b-2; 17 CFR 240.14c-1; 17 CFR 240.14c-7

Completed:

Reason	Date	FR Cite
Final Action	04/27/88	53 FR 16399

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Sarah A. Miller 202 272-2589

RIN: 3235–AC81

4003. ELIMINATION OF FILING REQUIREMENTS FOR PRELIMINARY PROXY MATERIAL UNDER CERTAIN CIRCUMSTANCES; RULE 14A-6 SHAREHOLDER PROPOSALS

CFR Citation: 17 CFR 229.401; 17 CFR 240.14a-3; 17 CFR 240.14a-6; 17 CFR 240.14a-8; 17 CFR 240.14a-101; 17 CFR 240.14c-3; 17 CFR 240.14c-5; 17 CFR 240.14c-101; 17 CFR 270.20a-1

Completed:

Reason	Date	FR Cite
Final Action	12/21/87	52 FR 48977
Final Action Effective	02/01/88	

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Barbara J. Green 202 272-2589

RIN: 3235–AD08

4004. PUBLICATION OF INTERPRETATIVE AND NO-ACTION LETTERS AND OTHER WRITTEN COMMUNICATIONS

CFR Citation: 17 CFR 200.81

Completed:

Reason	Date	FR Cite
Final Action	04/07/88	53 FR 12412

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Michael G. Hyatte 202 272-2573

RIN: 3235–AD10

4005. ● VOTING RIGHTS LISTING STANDARDS - DISENFRANCHISEMENT RULE, RULE 19C-4

Significance: Agency Priority

Legal Authority: 15 USC 78s (c); 15 USC 78n (a); 15 USC 78n (b); 15 USC 78f (d) (5); 15 USC 78o-3 (b) (6); 15 USC 78k-1

CFR Citation: 17 CFR 240.19c-4

Legal Deadline: None

Abstract: Rule 19c-4 is the Commission's response to the disenfranchisement and existing shareholders as a result of corporate action which would have the effect of nullifying, restricting or disparately reducing the per share voting rights of the existing shareholders. Such a diminution on limitation of voting rights is inconsistent with the investor protection and fair corporate suffrage policies embodied in Sections 6(b)(5), 15A(b)(6) and 14 of the Securities Exchange Act of 1934. Rule 19c-4 will enhance investor protection by preventing shareholders from being disenfranchised of their voting rights. The Rule is not intended to prohibit the adoption of disparate voting plans; it is only intended to prevent adoption of such plans under circumstances that would disenfranchise existing shareholders. The Commission believes the costs of such a limitation do not outweigh the benefits derived from protecting shareholders from potential disenfranchisement. Under the Rule a range of capital raising techniques will still be available to issuers, no issuer will be denied the ability to raise additional equity capital.

Timetable:

Action	Date	FR Cite
NPRM	06/24/87	52 FR 23665
NPRM Comment Period End	07/15/87	
Final Action Approved by the Commission	07/07/88	53 FR 26376

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Sharon Itkin, Attorney, Branch of Exchange Regulation, Securities and Exchange Commission, Division of Market Regulation, 450 Fifth Street N.W., Mail Stop 5-1, Washington, D.C. 20549, 202 272-2451

RIN: 3235–AD28

4006. ● RULE 15BC7-1 OF THE SECURITIES EXCHANGE ACT OF 1934 ("EXCHANGE ACT")

Legal Authority: 15 USC 78o-4; 15 USC 78q; 15 USC 78w(a)

CFR Citation: 17 CFR 240.15Bc7-1

Legal Deadline: None

Abstract: Rule 15Bc7-1 requires the Commission to make available to the Municipal Securities Rulemaking Board (MSRB)copies of any report of examination of a municipal securities dealer made by the Commission or furnished to it by an appropriate regulatory agency or registered securities association (i.e., the NASD). Because compliance with MSRB rules is enforced by appropriate regulatory agencies and the NASD, rather than the MSRB, the rule is intended to ensure that the MSRB has access to relevant information about compliance with its rules. The rule contains certain safeguards to maintain the confidentiality of the information made available to the MSRB.

Timetable:

Action	Date	FR Cite
Final Action	07/29/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Beth E. Mastro, Branch Chief, Securities and Exchange Commission, Division of Market Regulation, 450 5th Street, N. W., Washington, D. C. 20549, 202 272-2857

RIN: 3235–AD51

4007. ● RULE 17A-5 OF THE SECURITIES EXCHANGE ACT OF 1934

Legal Authority: 15 USC 78q; 15 USC 78w; 15 USC 78o

CFR Citation: 17 CFR 240.17a-5

Legal Deadline: None

Abstract: Section 17(a)(1) of the Securities Exchange Act of 1934, 15 U.S.C. s78q, provides that the securities and Exchange Commission shall prescribe by rule the records to be kept and the reports to be made and disseminated by broker-dealers. Under that section, the Commission has adopted Rule 17a-5, which is the basic reporting rule for broker-dealers. It requires the filing of Form X-17A-5, the Financial and Operational Combined Uniform Single ("FOCUS")Report and other necessary information. The FOCUS Report was designed to eliminate all of the overlapping regulatory reports required by various self-regulatory groups and the Commission and to reduce reporting burdens as much as possible. Rule 17a-5 should be continued without change.

Timetable:

Action	Date	FR Cite
Final Action	07/25/88	

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Arvind K. Lal, Staff Attorney, Securities and Exchange Commission, Division of Market Regulation, 450 5th Street, N. W., Washington, D. C. 20549, 202 272-2782

RIN: 3235–AD52

4008. ● FORM S-11, FOR REGISTRATION UNDER THE SECURITIES ACT OF 1933 OF SECURITIES OF CERTAIN REAL ESTATE COMPANIES

Legal Authority: 15 USC 77f; 15 USC 77g; 15 USC 77s

CFR Citation: 17 CFR 239.18

Legal Deadline: None

Abstract: Form S-11 is to be used for registration under the Securities Act of 1933 of Securities issued by real estate investment trusts or issuers whose business is primarily that of acquiring and holding for investment real estate or interests in other issuers whose business is primarily that of acquiring and holding real estate or interests in real estate for investment.

Timetable:

Action	Date	FR Cite
End Review	07/27/88	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Sarah A. Miller, Special Counsel, Securities and Exchange Commission, Division of Corporation Finance, 450 5th Street, N.W., Washington, D. C. 20549, 202 272-2589

RIN: 3235–AD40

4009. RULE 174 AMENDMENT - PROSPECTUS DELIVERY DURING QUIET PERIOD

CFR Citation: 17 CFR 230.174

Completed:

Reason	Date	FR Cite
Final Action	04/11/88	53 FR 11841
Final Action Effective	04/11/88	53 FR 11841

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Larisa Dobriansky 202 272-2589

RIN: 3235–AC34

4010. REVISION OF CERTAIN INVESTMENT ADVISER RECORDKEEPING RULES

CFR Citation: 17 CFR 275.204-2(a); 17 CFR 275.204-2(e)

Completed:

Reason	Date	FR Cite
Final Action	07/28/88	53 FR 32033
Final Action Effective	07/28/88	52 FR 23287

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Dorothy M. Donohue 202 272-2107

RIN: 3235–AC97

4011. ● RULE 10F-2 UNDER THE INVESTMENT COMPANY ACT OF 1940— "EXERCISE OF WARRANTS OR RIGHTS RECEIVED ON PORTFOLIO."

Legal Authority: 15 USC 80a-10

CFR Citation: 17 CFR 270.10f-2

Legal Deadline: None

Abstract: Section 10(f) of the Investment Company Act prohibits a registered investment company from purchasing securities during the existence of an underwriting or selling syndicated in such securities, if any principal underwriting or selling syndicate in such securities, if any principal underwriter of the issue is an officer or a director or is otherwise affiliated with the investment company. An exception is provided in the case of issues as to which the investment company is itself a principal underwriter and the Commission is authorized to grant further exemptions by rule or order. Rule 10f-2 exempts from Section 10(f) the purchase of securities pursuant to the exercises of warrants or rights provided they were offered or granted on the same basis to all stockholders and they do not exceed 5% of the total amount of warrants or rights issued.

Timetable:

Action	Date	FR Cite
Final Action	08/01/88	
Begin Review	08/01/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Carolyn A. Miller, Senior Financial Analyst, Securities and Exchange Commission, Division of Investment Management, 450 5th Street, N.W., Washington, D.C. 20549, 202 272-2762

RIN: 3235–AD28

4012. ● RULE 19A-1 UNDER THE INVESTMENT COMPANY ACT OF 1940— "WRITTEN STATEMENT TO ACCOMPANY DIVIDEND PAYMENTS BY MANAGEMENT COMPANIES."

Legal Authority: 15 USC 80a-19(a); 15 USC 80a-37(a)

CFR Citation: 17 CFR 270.19a-1

Legal Deadline: None

Abstract: Section 19 of the Investment Company Act of 1940 makes it unlawful for any registered investment company to pay any dividend, or to make any distribution in the nature of a dividend payment, wholly or partly from any source other than (1) such company's accumulated undistributed net income, determined in accordance with good accounting practice and not including profits or losses realized from the sale of securities or other properties, or (2) such company's net income so determined for the current or preceding fiscal year, unless such payment is accompanied by a written statement adequately disclosing the source or sources of such payment. The Commission is empowered under Section 19 to prescribe the form of such written statement. The rule specifies the information which must be included in the statement.

Timetable:

Action	Date	FR Cite
Final Action	08/01/88	
Begin Review	08/01/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Carolyn A. Miller, Senior Financial Analyst, Securities and Exchange Commission, Division of Investment Management, 450 5th Street, N.W., Washington, D.C. 20549, 202 272-2762

RIN: 3235–AD35

4013. ● RULE 19B-1 UNDER THE INVESTMENT COMPANY ACT OF 1940 — "FREQUENTLY OF DISTRIBUTION OF CAPITAL GAINS."

Legal Authority: 15 USC 80a-6(c); 15 USC 80a-19(a) and (b); 15 USC 80a-37(a)

CFR Citation: 17 CFR 270.19b-1

Legal Deadline: None

Abstract: Section 19(b) of the Investment Company Act of 1940 ("Act") was added by the Investment Company Amendments Act of 1970, Public Law 91-547 ("1970 Act") [84 Stat. 1422], effective December 14, 1971, to make it unlawful, in contravention of such rules as the Commission may adopt, for any registered investment company to distribute long-term capital gains more often than once every twelve months. The section was added to relieve managers from pressure to realize such gains on a frequent and regular basis, mitigate improper sales practices related to the distribution of such gains, and eliminate the administrative expenses attending quarterly or semi-annual capital gains distributions. Rule 19b-1 implements Section 19(b) by limiting distribution with respect to the long-term capital gains realized by the company during any one taxable year, with certain exceptions.

Timetable:

Action	Date	FR Cite
Final Action	08/01/88	
Begin Review	08/01/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Carolyn A. Miller, Senior Financial Analyst, Securities and Exchange Commission, Division of Investment Management, 450 5th Street, N.W., Washington, D.C. 20549, 202 272-2762

RIN: 3235–AD46

4014. ● RULE 23C - 2 UNDER THE INVESTMENT COMPANY ACT OF 1940 – "CALL AND REDEMPTION OF SECURITIES ISSUED BY REGISTERED CLOSED-END COMPANIES

Legal Authority: 15 USC 80a-23; 15 USC 80a-37(a)

CFR Citation: 17 CFR 270.23c-2

Legal Deadline: None

Abstract: Section 23(c) of the Investment Company Act of 1940 makes it unlawful for any registered closed-end investment company to purchase any securities of any class of which it is the issuer except under certain enumerated circumstances or under such other circumstances as the Commission may permit by rules and regulations or orders. The Commission adopted Rule 23c-2 to permit a registered closed-end company to call or redeem securities of which it is the issuer and to specify the conditions under which it may do so.

Timetable:

Action	Date	FR Cite
Final Action	08/01/88	
Begin Review	08/01/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Carolyn A. Miller, Senior Financial Analyst, Securities and Exchange Commission, Division of Investment Management, 450 5th Street, N. W., Washington, D. C. 20549, 202 272-2762

RIN: 3235–AD47

4015. ● RULE 24E-1 UNDER THE INVESTMENT COMPANY ACT OF 1940–"FILING OF CERTAIN PROSPECTUS AS POST-EFFECTIVE AMENDMENTS TO REGISTRATION STATEMENTS UNDER THE SECURITIES ACT OF 1933"

Legal Authority: 15 USC 80q-24

CFR Citation: 17 CFR 270.24e-1

Legal Deadline: None

Abstract: Section 24(e)(3) of the Investment Company Act of 1940 ("Act"), which was added by Public Law No. 577, 83rd, Congress, requires requires that a prospectus relating to a security issued by a face-amount certificate company or a redeemable security issued by an open-end management investment company or unit investment trust "which varies for the purposes of subsection (a)(3) of Section 10 of the Securities Act of 1933 from the latest prospectus filed as a part of the registration statement" must be requirements of Section 10 of the 1933 Act, except to the extent the Commission otherwise provides by rules and regulations. Some questions arose as to the scope of the above quoted language of Section 24(e)(3). The Commission believes that this language refers to a prospectus which is prepared for the purpose of providing more current information, in compliance with that Section because the information therein is no longer sufficiently current to meet the statutory requirements; however, prospectus as a post-effective amendment to the registration statement.

Timetable:

Action	Date	FR Cite
Final Action	08/01/88	
Begin Review	08/01/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: the Commission adopted Rule 24(e)(3) does not require the filing of every changed

Agency Contact: Carolyn A. Miller, Senior Financial Analyst, Securities and Exchange Commission, Division of Investment Management, 450 5th Street, N. W., Washington, D. C., 202 272-2762

RIN: 3235–AD48

4016. ● RULES 24B-1, 24B-2, AND 24B-3 UNDER THE INVESTMENT COMPANY ACT OF 1940, RULES RELATING TO THE FILING OF SALES LITERATURE WITH THE COMMISSION TO COMPLY WITH SECTION 24(B) OF THE ACT

Legal Authority: 15 USC 80a-37

CFR Citation: 17 CFR 270.24b-1; 17 CFR 270.24b-2; 17 CFR 270.24b-3

Legal Deadline: None

Abstract: Rule 24b-1 was adopted to clarify certain terms used in Section 24(b) of the Investment Company Act of 1940. Rule 24b-2 was adopted to identify documents filed to comply comply with Section 24(b). Before its adoption, investment companies tended to forward a variety of documents without properly indicating the purpose for which they were filing such materials. Rule 24b-3 was adopted to relieve investment companies which file their sales literature and ads with the National Association of Securities Dealers of their obligation to file the same materials with the Commission. Most investment company sales literature originates from firms which belong to the NASD. NASD members must file sales literature, including investment company sales literature, for NASD review under the NASD Rules of Fair Practice. The NASD reviews each piece of sales literature it receives for compliance with its rules and the Commission's rules.

Timetable:

Action	Date	FR Cite
Final Action	08/01/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Carolyn A. Miller, Senior Financial Analyst, Securities and Exchange Commission, Division of Investment Management, 450 5th Street, N. W., Washington, D. C. 20549, 202 272-2762

RIN: 3235–AD49

4017. ● RULE 24E-2 UNDER THE INVESTMENT COMPANY ACT OF 1940— "COMPUTATION OF FEE."

Legal Authority: 15 USC 80a-24; 15 USC 80a-8(c)

CFR Citation: 17 CFR 270.24e-2

Legal Deadline: None

Abstract: Section 24(e)(1) of the Investment Company Act of 1940 ("Act"), provides that registration statements under the Securities Act of 1933 (15 U.S.C. 77a-77aa) ("1933 Act") relating to securities of certain investment companies, including open-end management companies, may be amended after their effective dates so as to increase the securities specified therein as proposed to be offered. Most open-end management companies offer their shares on a continuous basis, and almost all of those companies making such a continuous offering use the procedure permitted by Section 24(e)(1) of the Act to increase, from time to time, the number of registered shares being offered. Rule 24e-2 provides an optional method for calculation of registration fees by open-end investment companies registering additional shares by requiring fees only for those shares being registered in excess of the number of shares redeemed or repurchased.

Timetable:

Action	Date	FR Cite
Final Action	08/01/88	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Carolyn A. Miller, Senior Financial Analyst, Securities and Exchange Commission, Division of Investment Management, 450 5th Street, N. W., Washington, D. C. 20549, 202 272-2762

RIN: 3235–AD50

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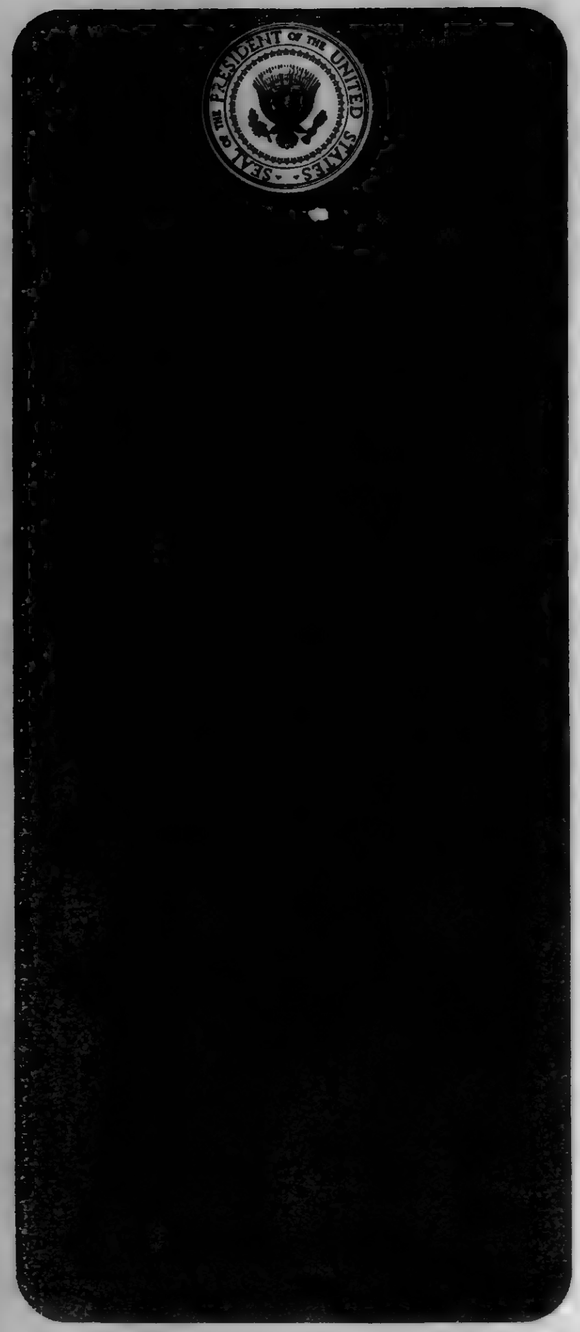
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Briefing on How To Use the Federal Register—
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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Presidential Documents

Title 3—

The President

Proclamation 5886 of October 21, 1988

National Chester F. Carlson Recognition Day, 1988

By the President of the United States of America

A Proclamation

Saturday, October 22, is the 50th anniversary of Chester F. Carlson's invention of xerographic printing, which has transformed our ability to copy documents quickly. By inventing and developing this process, Carlson did much to increase productivity and efficiency throughout society and to make information more readily available. The profound and enduring achievements of this second-generation American exemplify our national spirit of ingenuity and opportunity, and we can all gladly celebrate them.

Carlson studied physics and law and became fascinated with finding a solution to the need for speedy and inexpensive copies of information. He applied his knowledge of electrophotography to the challenge and created xerography. His genius sparked an indispensable industry in which American businesses, both large and small, are world leaders. This outstanding American inventor continued to serve his country and humanity by supporting and encouraging the activities of many colleges and universities, charities, and causes through the years.

The United States Postal Service is issuing a commemorative stamp in honor of Chester F. Carlson as part of the "Great American" series, and it is in the same spirit that all of us pause for a day of national recognition for him.

The Congress, by House Joint Resolution 629, has designated October 22, 1988, as "National Chester F. Carlson Recognition Day" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim October 22, 1988, as National Chester F. Carlson Recognition Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of October, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-24813
Filed 10-24-88; 10:43 am]
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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 630

Absence and Leave

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing a final rule concerning the administrative level at which exigencies of the public business may be declared for purposes of restoring forfeited annual leave to Federal employees under 5 U.S.C. 6304. These regulations are being issued as part of a continuing effort to simplify and deregulate the Federal personnel system.

EFFECTIVE DATE: November 25, 1988.

FOR FURTHER INFORMATION CONTACT: James E. Matteson, (202) 632–5056.

SUPPLEMENTARY INFORMATION: On May 10, 1988, the Office of Personnel Management (OPM) published a proposed rule with request for comments in the **Federal Register** (53 FR 16554) in response to a recommendation by the Federal Personnel Director's Productivity Task Force. The purpose of the proposed rule was to simplify the process of determining when forfeited annual leave may be restored by permitting the head of an agency to designate the administrative level at which exigencies of the public business may be declared for this purpose.

The comment period on the proposed rule ended July 11, 1988. OPM received comments from one Federal agency and one Federal employee union. Both the agency and the union expressed support for the proposed regulation.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this rule will not have a significant impact on a substantial number of small entities because it will affect only Federal employees and agencies.

List of Subjects in 5 CFR Part 630

Government employees, Employee benefit plan.

U.S. Office of Personnel Management.
[illegible]
Director.

Accordingly, OPM amends 5 CFR Part 630 as follows:

PART 630—ABSENCE AND LEAVE

1. The authority citation for Part 630 continues to read as follows:

Authority: 5 U.S.C. 6311; 630.303 also issued under 5 U.S.C. 6133(a); 630.501 and Subpart F also issued under E.O. 11228; Subpart G also issued under 5 U.S.C. 6305; Subpart H issued under 5 U.S.C. 6326; Subpart I also issued under Pub. L. 100–102 and 100–204.

2. Section 630.305 is revised to read as follows:

§ 630.305 Designating agency official to approve exigencies.

Before annual leave may be restored under 5 U.S.C. 6304, the determination that an exigency is of major importance and that therefore annual leave may not be used by employees to avoid forfeiture must be made by the head of the agency or someone designated to act for him or her on this matter. Except where made by the head of the agency, the determination may not be made by any official whose leave would be affected by the decision.

[FR Doc. 88–24531 Filed 10–24–88; 8:45 am]
BILLING CODE 6325–01–M

5 CFR Parts 831 and 842

Retirement—Credit for Service

AGENCY: Office of Personnel Management.

ACTION: Interim regulations with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations implementing section 110 of Pub. L. 100–238, enacted January 8, 1988, to provide qualifying employees and annuitants with an opportunity to credit certain service performed under the auspices of a personal service contract with a Federal agency.

DATES: Interim regulations are effective January 8, 1988. Comments must be received on or before December 27, 1988.

ADDRESS: Send comments to Reginald M. Jones, Jr., Assistant Director for Retirement and Insurance Policy, Office of Personnel Management, P.O. Box 864, Washington, DC 20044; or deliver to OPM, Room 4351, 1900 E Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Eugene R. Littleford, (202) 632–4682.

SUPPLEMENTARY INFORMATION: On October 6, 1986, in the case of *Horner* v. *Acosta*, 803 F.2d 687, the United States Court of Appeals for the Federal Circuit ruled that service with the Federal Government without an appointment was not creditable under the Civil Service Retirement System (CSRS) (subchapter III of chapter 83 of title 5, United States Code).

The court further ruled that service under contract (contract service) was only creditable if the employing agency exercised an explicit statutory authority to make an appointment by contract. The definition of "employee" under the Federal Employees Retirement System (FERS) (chapter 84 of title 5, United States Code) incorporates through reference the CSRS definition of "employee"; accordingly, service with the Federal Government without an appointment is not creditable under FERS.

However, due to erroneous guidance in the Federal Personnel Manual, some agencies employed individuals under contract (without an appointment) with the expectation that the service would later be creditable for civil service retirement purposes. Section 110 of Pub. L. 100–238 was enacted as a means of crediting contract service under CSRS and FERS when the employing agency intended that the service be creditable for retirement purposes.

These interim regulations delete subparagraph (a)(5) of § 831.201, which erroneously implied that contract service with an agency that has no statutory authority to appoint by

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contract is creditable service under CSRS and may be subject to retirement deductions. Also, these interim regulations provide instructions on how qualifying employees and annuitants may apply for CSRS or FERS credit under the authority of section 110 of Pub. L. 100–238.

Section Analysis

1. Sections 831.309(a) and 842.309(a). These paragraphs affirm the rule of law established by the Federal Circuit in *Acosta, supra,* that contract service with a Federal agency is only creditable for retirement purposes if the employing agency exercised an explicit statutory authority to appoint by contract.

2. Sections 831.309(b)(1) and 842.309(b)(1). These subparagraphs implement the basic provisions of section 110 of Pub. L. 100–238. Individuals who were either (i) employees covered by CSRS or FERS on January 8, 1988, (ii) CSRS annuitants who retired on an immediate or deferred annuity, the commencing date of which was after January 23, 1980 and before January 8, 1988, or (iii) survivor annuitants receiving annuity based on the death of a CSRS annuitant who retired after January 23, 1980 and before January 8, 1988, may receive retirement credit for services performed under a personal service contract before November 5, 1985. These classes of potential beneficiaries are specifically established by subsections (a)(1) and (b)(1)(B) of section 110. An employee, former employee, annuitant or survivor not explicitly included in the above-described classes is not entitled to retirement credit for service performed under a personal service contract.

The non-creditability of personal service contract service performed on or after November 5, 1985 is established by subsection (a)(1)(A) of section 110.

3. Sections 831.309(b)(2) and 842.309(b)(2). These subparagraphs reiterate the prohibitions to credit itemized in subsection (a)(3) of section 110. Service under these kinds of contracts cannot be credited for retirement purposes: contracts with the U.S. Agency for International Development after September 4, 1961; contracts with the Peace Corps; contracts where the individual's service may be terminated by a person other than the individual or the Government (this excludes employees of a Government contractor from receiving credit under section 110); contracts for a single transaction; and contracts under which services are paid for in a single payment.

4. Sections 831.309(c)(1) and 842.309(c)(1). These subparagraphs establish that each application for credit for contract service must be made on the designated form. CSRS applicants must use the Standard Form 2803. The Standard Form 2803, *Application to Make Deposit or Redeposit,* is the form uniformly used to make claim for service credit prior to retirement under CSRS. Due to its ready accessibility (the form is available at the personnel offices of Federal agencies around the world), OPM has chosen to utilize the form for claims under section 110, also. FERS applicants must use Standard Form 3108, *Application to Make Service Credit Payment for Civilian Service,* which is the FERS equivalent to the Standard Form 2803. Applications must be filed on or before January 8, 1990. An application will not be accepted (for the purposes of further processing or tolling the 2-year statute of limitations established by Pub. L. 100–238) if it is not made on the designated form.

5. Sections 831.309(c)(2) and 842.309(c)(2). These subparagraphs specify where an application will be filed. An individual who was an employee on January 8, 1988 who wishes to apply for retirement service credit for service under a personal service contract must file the application with the agency with which (s)he is employed on the date (s)he applies. If (s)he is not employed by the Federal Government on the date (s)he applies, then the application must be filed with the Federal agency with which (s)he was last employed in a position covered by CSRS or FERS. The rationale for this requirement is that, considering the short 2-year period involved, the (last) employing agency is generally the authority most qualified to certify that the individual (applicant) was employed in a position covered by CSRS or FERS on January 8, 1988.

6. Section 831.309(c)(3). This subparagraph requires that an individual who was an annuitant retired under CSRS before January 8, 1988 and after January 23, 1980, and who wishes to apply for retirement service credit for service under a personal service contract, must file the application with OPM. The rationale for this requirement is that OPM, as the agency responsible for administering CSRS, is the agency most qualified to certify that the individual (applicant) was retired within the above-stated time period. A survivor annuitant receiving annuity based on the death of an annuitant described above must also apply to OPM.

7. Sections 831.309(c)(4) and 842.309(3). These subparagraphs specify the information the applicant will provide in connection with the application. The CSRS applicant will complete Part A of the Standard Form 2803. Part A requests the applicant to provide (1) identifying information, such as name(s), date of birth, social security number (when applicable), name and location of current (or last) employing agency, and title of current (last) position; (2) information (dates and location) regarding claimed personal service contract service; (3) address information; and (4) signature. The FERS applicant will complete Part A of the Standard Form 3108, which requests information similar to that requested by Part A of the Standard Form 2803. To constitute a valid claim, the information provided must sufficiently identify the individual and the service claimed.

8. Sections 831.309(d)(1) and 842.309(d)(1). These subparagraphs require the agency receiving the application, when such application is timely and correctly filed under the provisions of § 831.309(c) and § 842.309(c), to examine its records to determine whether the applicant meets the service or retirement requirements of § 831.309(b)(1) or § 842.309(b)(1). When the applicant does meet those requirements the agency will, for the CSRS applicant, complete Schedule 1 of Part B of the Standard Form 2803, or for the FERS applicant, items 1 through 3b of Part B of the Standard Form 3108. These portions of the forms request the agency to specify all periods of service covered by retirement deductions. For the purposes of an application under either § 831.309(c) or § 842.309(c), it will be sufficient for the agency to certify the period of employment (covering January 8, 1988) which establishes entitlement to apply for credit for contract service. When the CSRS applicant is an annuitant, and OPM is the appropriate receiving agency, OPM will enter into Schedule 1 the date the annuitant retired and the annuitant's claim number. If the receiving agency is also the agency with which contract service is claimed, the agency will then act in accordance with the procedures specified in § 831.309(d)(2) or § 842.309(d)(2). Otherwise, the receiving agency will forward the application to the agency with which contract service is claimed. When the employee or annuitant claims contract service with more than one agency, the receiving agency will forward a copy of the application to each agency with which contract service is claimed. In the case where the applicant does not meet the service or retirement requirements specified in § 831.309(b)(1) or § 842.309(b)(1) or has not filed within the time limit specified in § 831.309(c)(1) or § 842.309(c)(1), whichever is applicable, the receiving agency will deny the application by a letter to the applicant's address as shown on the application, offering the applicant a right to reconsideration under 5 CFR 831.109 or 841.308. The application, with a copy of the denial letter, will be forwarded to OPM. The applicant will have 30 days to request reconsideration. The address for CSRS reconsideration requests is: Office of Personnel Management, Employee Service and Records Center, Reconsideration Staff—Contract Service, P.O. Box 107, Boyers, Pennsylvania 16020.

The address for FERS reconsideration requests is: Office of Personnel Management, Federal Employees Retirement System, P.O. Box 884, Washington, DC 20044.

9. Sections 831.309(d)(2) and 842.309(d)(2). These subparagraphs describe the procedures which the agency with which personal service contract service is claimed will follow in certifying the creditability of the contract service claimed.

Clauses (i) of each subparagraph specify that the head of the agency, or his or her designee, will examine the agency's records and the applicant's submissions to determine, first, the beginning and ending dates of the period(s) of contract service claimed, and the rates of pay, and second, whether the agency intended through the contract(s) that the applicant be considered as having been appointed to a position in which the applicant would be subject to subchapter III of chapter 83 of title 5, United States Code. The head of the agency will then certify his or her findings to OPM and provide the applicant with a copy of certification.

Clauses (ii) of each subparagraph specify the language to be used in an affirmative certification; clauses (iii) of each subparagraph the language of a negative certification. The phraseology comes directly from section 110 of Pub. L. 100–238, as does the authority of the head of the agency to make such certification. Since OPM cannot question the certification of the head of the agency, it would be inappropriate for OPM to attempt to paraphrase the language or define its meaning. The certification authority cannot be delegated to a lower-level agency official.

Clauses (iv) of each subparagraph authorize the Associate Director for Retirement and Insurance, OPM, to act as head of the agency when the agency with which contract service is claimed has been abolished or otherwise does not exist. This will provide an opportunity for individuals who claim contract service with extinct agencies to receive credit for such service. The same procedure will be followed with regard to claims for contract service on the staff of a former President of the United States.

Clauses (v) of each subparagraph exclude from judicial or administrative review the decision of the head of the agency whether or not to affirmatively certify an applicant's contract service as creditable. This merely reiterates the statutory provision contained in subsection (a)(2)(B) of section 110 of Pub. L. 100–238.

10. Sections 831.309(e)(1) and 842.309(e)(1). These subparagraphs authorize OPM, once an application properly and affirmatively certified under the provisions of § 831.309(d) (1) and (2), or § 842.309(d) (1) and (2), is received by OPM, to notify the applicant of the amount of deposit due for the contract service certified as creditable.

The amount of the deposit for contract service creditable as CSRS service will be computed in accordance with the provisions of section 8334(c) of title 5, United States Code, as specified by paragraph (a)(1) of section 110 of Pub. L. 100–238. Interest will be computed on the deposit in accordance with section 8334(e) of title 5, United States Code. In relation to deposits for periods of contract service prior to October 1, 1982, this means the provisions of section 8334(e) which were superseded by the language of Pub. L. 97–253, enacted September 8, 1982, and which provided for interest accrual at the rate of 4 percent per annum prior to January 1, 1940, and 3 percent per annum thereafter, will apply. Under the provisions of section 110, deposit must be made for each period of contract service before it can be credited in the computation of annuity.

The amount of the deposit for contract service creditable as FERS service will be computed in accordance with 5 CFR 842.305. The deposit will be billed at 1.3 percent of the pay contract service, plus interest.

11. Sections 831.309(e)(2) and 842.309(e)(2). These subparagraphs specify the time limitations for payment of deposit when the applicant was an employee on January 8, 1988. Generally, a deposit must be paid in full to OPM prior to authorization of the "first regular monthly payment" on any claim for retirement or death benefits. "First regular monthly payment" is defined at 5 CFR 831.603 as "the first annuity check payable on a recurring basis after OPM has adjudicated the regular rate of annuity payable * * *." The purpose of this provision is to assure that retirement benefits are final when adjudicated. However, to assure that each applicant has ample opportunity to pay the deposit, deposits will also be timely if paid in full 60 days (90 days for individuals who reside outside the continental United States) from the date the applicant receives the notice of amount of deposit from OPM, even if this date is after the date the first regular monthly payment is authorized. Payments are considered paid when received by OPM.

12. Section 831.309(e)(3). This subparagraph specifies the time limit for payment of deposit when the applicant retired after January 23, 1980 and before January 8, 1988. Paragraph (b)(1) of section 110 of Pub. L. 100–238 requires that the deposit be paid within 2 years of the date of enactment, i.e., on or before January 8, 1990. However, since applications must also be accepted until the same date, it will be impossible to notify some individuals of the amount of the deposit until after the statutory deadline for payment. OPM cannot conclude that the Congress intended an individual's rights to expire because of an unavoidable administrative delay. In order to resolve this problem in an equitable manner, an applicant will be permitted to make the deposit on or before January 8, 1990 or on or before the date 60 days (90 days for applicants residing outside the continental United States) from the date OPM notifies the individual of the amount of deposit, whichever date is later.

13. Sections 831.309(e)(4) and 842.309(e)(3). These subparagraphs provide that an individual's right to credit contract service under paragraphs 831.309(b) or 842.309(b) expires if the deposit is not paid within the time limit specified in §§ 831.309(e)(2), 831.309(e)(3), or 842.309(e)(2), whichever applies.

14. Section 831.309(f). This paragraph provides that any increase in annuity (or survivor annuity) resulting from service credited under § 831.309(b) will be effective on the commencing date of annuity or February 1, 1988, whichever date is later. This is in accordance with paragraph (b)(2) of section 110 of Pub. L. 100-238.

15. Sections 831.309(g)(1) and 842.309(f)(1). These subparagraphs place the burden of proof on the applicant.

16. Sections 831.309(g)(2) and 842.309(f)(2). These subparagraphs clarify that the status of agency documents, and their releasability to the applicant or any other individual, is not affected by the enactment of Pub. L. 100–238 or the promulgation of these regulations. An agency's refusal to release a document or record because of privileged or exempt status, or an

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agency's inability to produce a document because of routine disposal, does not create a presumption in favor of the individual in regards to the alleged contents of the document or record.

Waiver of Notice of Proposed Rulemaking

Under 5 U.S.C. 553 (b)(3)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these regulations effective in less than 30 days. Publication of proposed rulemaking would be impractical. The provisions being implemented were effective January 8, 1988. These regulations are needed immediately to administer the new provisions.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that within the scope of the Regulatory Flexibility Act, these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal employees retirees and survivors.

List of Subjects in 5 CFR Parts 831 and 842

Administrative practice and procedure, Air traffic controllers, Claims, Firefighters, Government employees, Law enforcement officers, Pensions, Retirement, Survivors.

Office of Personnel Management.
Constance Horner,
Director.

Accordingly, Title 5 of the Code of Federal Regulations is amended as set forth below:

PART 831—RETIREMENT

Subpart B—Coverage

1. The authority citation for Subpart B of Part 831 continues to read as follows:

Authority: 5 U.S.C. 8347.

§ 831.201 Exclusions from retirement coverage.

2. Paragraph (a)(5) of § 831.201 is removed and paragraphs (a) (6) through (18) of § 831.201 are redesignated as (a) (5) through (17).

Subpart C—Credit for Service

3. The authority citation for Subpart C of Part 831 continues to read as follows:

Authority: 5. U.S.C. 8347.

4. Section 831.309 is added to read as follows:

§ 831.309 Contract service.

(a) *Generally.* Contract service with the United States will only be included in the computation of, or used to establish title to, an annuity under subchapter III of chapter 83 of title 5, United States Code, if the employing agency exercised an explicit statutory authority to appoint an individual into the civil service by contract.

(b) *Exception.* (1) Service performed for the United States under a personal service contract between the individual and an agency of the United States before November 5, 1985, by an individual who was an employee on January 8, 1988, and at that time subject to retirement deductions under subchapter III of chapter 83 of title 5, United States Code, and service under a personal service contract before November 5, 1985 by an individual who established title to and commenced receiving an annuity after January 23, 1980, and before January 9, 1988, shall be included in the computation of, and used to establish title to, an annuity under subchapter III of chapter 83 of title 5, United States Code, but only if all the conditions and requirements of paragraphs (c), (d) and (e) of this section are fulfilled.

(2) Paragraph (b)(1) of this section does not apply to service performed under—

(i) A contract for which any appropriations, allocations, or funds were used under section 636(a)(3) of the Foreign Assistance Act of 1961;

(ii) A contract entered into under section 10(a)(5) of the Peace Corps Act;

(iii) A contract under which the services of an individual may be terminated by a person other than the individual or the Government; or

(iv) A contract for a single transaction or a contract under which services are paid for in a single payment.

(c) *Application.* (1) Credit for service under a personal service contract under paragraph (b)(1) of this section may not be allowed unless application for such service is made on a Standard Form 2803 and the application is received by the appropriate agency on or before January 8, 1990.

(2) An individual who was an employee on January 8, 1988, must make application to either the current employing agency or, in the case of a separated employee, the last employing agency.

(3) An individual who was retired prior to January 8, 1988, or an individual who is receiving a survivor annuity based on the death of an individual who retired prior to January 8, 1988, must make application to OPM.

(4) The applicant must complete Part A of Standard Form 2803, listing all contract service claimed.

(d) *Certification.* (1) When an application has been received on or before January 8, 1990 by the agency designated to receive the application under paragraph (c) of this section, the receiving agency will examine its records to determine if the applicant meets the service or retirement requirements stated in paragraph (b)(1) of this section. If the applicant does not so qualify, or if the application has not been filed with the receiving agency within the time limits described in paragraph (c) of this section, the receiving agency will reject the application in a letter to the applicant and inform the applicant of the right to reconsideration by OPM under the provisions of § 831.109 of this part. An agency denial letter is deemed to be OPM's initial decision under the provisions of § 831.109 of this part. If the applicant does so qualify, and the application has been filed in a timely manner, the receiving agency will complete Schedule 1 of Part B of Standard Form 2803 and forward the Standard Form 2803 to the head of the agency with which service is claimed.

(2)(i) on receipt of the Standard Form 2803 from the receiving agency, the head of the agency with which contract service is claimed will review, or will cause to be reviewed, both the agency's records and the applicant's submissions, to determine the length and pay of the contract service claimed, and whether the agency had intended through the contract(s) that the applicant be considered as having been appointed to a position in which the applicant would be subject to subchapter III of chapter 83 of title 5, United States Code, and will certify to OPM his or her findings on the above matters. The applicant will be provided with a copy of certification.

(ii) An affirmative certification of the head of the agency with which contract service is claimed shall be in the following form: "I, (Name), (Title of Office), have reviewed the records related to the personal service contract service of (Name of Applicant) from (Beginning Date of Contract Service) to (Ending Date of Contract Service) at a rate of pay of $ (U.S. Dollars) per (Time Period) [Show multiple dates and rates of pay when applicable] and conclude that (Name of Agency) intended through the contracts that (Name of Applicant) be considered as having been appointed to a position in which (s)he would have been subject to subchapter III of chapter 83 of title 5, United States Code, and that the service is not excluded from retirement credit under the provisions of 5 CFR 831.309(b)(2)."

(iii) A negative certification of the head of the agency with which contract service is claimed shall be in the following form: "I, (Name), (Title of Office), have reviewed the records related to the claimed personal service contract service of (Name of Applicant) from (Beginning Date of Claimed Service) to (Ending Date of Claimed Service) and CANNOT conclude that (Name of Agency) intended that (Name of Applicant) be considered as having been appointed to a position in which (s)he would have been subject to subchapter III of chapter 83 of title 5, United States Code, and/or conclude that the service is excluded from retirement credit unter the provisions of 5 CFR 831.309(b)(2)."

(iv) When the agency with which the applicant claims contract service has been abolished, or for some other reason does not exist, the Associate Director shall act in place of the head of the agency. When the service under contract claimed by the applicant was on the staff of a President of the United States whose term of office has since expired, the Associate Director shall act in place of the former President.

(v) A decision by the head of the agency with which contract service is claimed, or a decision of the Associate Director when acting as the agency head under paragraph (d)(2)(iv) of this section, concerning whether or not to make an affirmative certification under this paragraph in any particular instance shall be at the sole discretion of the agency head, and shall not be subject to administrative or judicial review.

(e) *Deposit.* (1) On receipt of an application properly and affirmatively certified in accordance with the provisions of paragraph (d)(2) of this section, OPM shall notify the applicant of the amount of deposit due. The deposit will be computed in accordance with the provisions of 5 U.S.C. 8334(c).

(2) When the applicant was an employee on January 8, 1988, the full amount of the deposit must be received by OPM prior to authorization of the "first regular monthly payment" (as that term is defined at 5 CFR 831.603) payable on any claim for retirement or death benefits under subchapter III of chapter 83 of title 5, United States Code, or on or before the date 60 days (90 days for applicants residing outside the continental United States) after the date OPM notifies the applicant of the amount of the deposit, whichever is later.

(3) When the applicant was an annuitant on January 8, 1988, or an individual receiving a survivor annuity based on the death of an individual who was an annuitant on January 8, 1988, the deposit must be received by OPM on or before January 8, 1990, or on or before the date 60 days (90 days for applicants residing outside the continental United States) after the date OPM notifies the applicant of the amount of the deposit, whichever date is later.

(4) No service shall be credited under the provisions of paragraph (b) of this section unless the deposit is received by OPM within the time limits described in this paragraph.

(f) *Accrual of annuity.* An annuity increase based on service credited under this section begins to accrue on February 1, 1988, or on the commencing date of the annuity, whichever is later.

(g) *Burden of proof.* (1) The burden of proof to show entitlement to credit for service under this section lies with the applicant.

(2) No provision of this section imposes upon the United States, the head of any agency of the United States, any employee of the United States, or any person generally, an obligation to produce or release any document or record which is not otherwise subject to production or release, and the failure of the applicant to obtain access to any document or record does not create a presumption in favor of the applicant in regard to the alleged contents of the document or record.

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

Subpart C—Credit for Service

5. The authority citation for Subpart C of Part 842 continues to read as follows:

Authority: 5 U.S.C. 8461(g).

6. Section 842.309 is added to read as follows:

§ 842.309 Contract service.

(a) *Generally.* Contract service with the United States will only be included in the computation of, or used to establish title to, an annuity under chapter 84 of title 5, United States Code, if the employing agency exercised an explicit statutory authority to appoint an individual into the civil service by contract.

(b) *Exception.* (1) Service performed for the United States under a personal service contract between the individual and an agency of the United States before November 5, 1985 by an individual who was an employee on January 8, 1988, and at that time subject to retirement deductions under either subchapter III of chapter 83 or chapter 84 of title 5, United States Code, shall be included in determining title to and in the computation of an annuity under Chapter 84 of title 5, United States Code, but only if all the conditions and requirements of paragraphs (c), (d) and (e) of this section are fulfilled.

(2) Paragraph (b)(1) of this section does not apply to service performed under—

(i) A contract for which any appropriations, allocations, or funds were used under section 636(a)(3) of the Foreign Assistance Act of 1961;

(ii) A contract entered into under section 10(a)(5) of the Peace Corps Act;

(iii) A contract under which the services of an individual may be terminated by a person other than the individual or the Government; or

(iv) A contract for a single transaction or a contract under which services are paid for in a single payment.

(c) *Application.* (1) Credit for service under a personal service contract under paragraph (b)(1) of this section may not be allowed unless application for such service is made on a Standard Form 3108 and the application is received by the agency described in paragraph (c)(2) of this section on or before January 8, 1990.

(2) An individual must make application to either the current employing agency or, in the case of a separated employee, the last employing agency.

(3) The applicant must complete Part A of Standard Form 3108, listing all contract service claimed.

(d) *Certification.* (1) When an application has been received on or before January 8, 1990 by the agency designated to receive the application under paragraph (c)(2) of this section, the receiving agency will examine its records to determine if the applicant meets the service requirements stated in paragraph (b)(1) of this section. If the applicant does not so qualify, or if the application has not been filed with the receiving agency within the time limits described in paragraph (c) of this section, the receiving agency will reject the application in a letter to the applicant and inform the applicant of the right to reconsideration by OPM under the provisions of § 841.306 of Part 841. An agency denial letter is deemed to be OPM's initial decision under the provisions of § 841.306. If the applicant does so qualify, and the application has been filed in a timely manner, the receiving agency will complete items 1 through 3b of Part B of Standard Form

item and forward the Standard Form 3106 to the head of the agency with which service is claimed.

(2)(i) On receipt of the Standard Form 3106 from the receiving agency, the head of the agency with which contract service is claimed will reviewed, or will cause to be review, both the agency's records and the applicant's submissions, to determine the length and pay of the contract service claimed, and whether the agency had intended through the contract(s) that the applicant be considered as having been appointed to a position in which the applicant would be subject to subchapter III of chapter 83 of title 5, United States Code, and will certify to OPM his or her findings on the above matters. The applicant will be provided with a copy of the certification.

(ii) An affirmative certification of the head of the agency with which contract service is claimed shall be in the following form: "I, (Name), (Title of Office), have reviewed the records related to the personal service contract service of (Name of Applicant) from (Beginning Date of Contract Service) to (Ending Date of Contract Service) at a rate of pay of $ (U.S. Dollars) per (Time Period) [Show multiple dates and rates of pay when applicable] and conclude that (Name of Agency) intended through the contracts that (Name of Applicant) be considered as having been appointed to a position in which (s)he would have been subject to subchapter III of chapter 83 of title 5, United States Code, and that the service is not excluded from retirement credit under the provisions of 5 CFR 842.309(b)(2)."

(iii) A negative certificate of the head of the agency with which contract service is claimed shall be in the following form: "I, (Name), (Title of Office), have reviewed the records related to the claimed personal service contract service of (Name of Applicant) from (Beginning Date of Claimed Service) to (Ending Date of Claimed Service) and CANNOT conclude that (Name of Agency) intended that (Name of Applicant) be considered as having been appointed to a position in which (s)he would have been subject to subchapter III of chapter 83 of title 5, United States Code, and/or conclude that the service is excluded from retirement credit under the provisions of 5 CFR 842.309(b)(2)."

(iv) When the agency with which the applicant claims contract service has been abolished, or for some other reason does not exist, the Associate Director shall act in place of the head of the agency. When the service under contract claimed by the applicant was on the staff of a President of the United States whose term of office has since expired, the Associate Director shall act in place of the former President.

(v) A decision by the head of the agency with which contract service is claimed, or a decision of the Associate Director when acting as the agency head under paragraph (v)(2)(iv) of this section, concerning whether or not to make an affirmative certification under this paragraph in any particular instance shall be at the sole discretion of the agency head, and shall not be subject to administrative or judicial review.

(e) *Deposit.* (1) On receipt of an application properly and affirmatively certified in accordance with the provisions of paragraph (d)(2) of this section, OPM shall notify the applicant of the amount of deposit due. If the service is credited as CSRS service, the deposit will be computed in accordance with the provisions of 5 U.S.C. 8334(c). If the service is credited as FERS service, the deposit will be computed in accordance with the provisions of 5 CFR 842.308(d).

(2) The full amount of the deposit must be received by OPM prior to authorization of the "first regular monthly payment" (as that term is defined at 5 CFR 831.603) payable on any claim for retirement or death benefits under chapter 84 of title 5, United States Code, or, on or before the date 60 days (90 days for applicants residing outside the continental United States) after the date OPM notifies the applicant of the amount of the deposit, whichever date is later.

(3) No service shall be credited under the provisions of paragraph (b) of this section unless the deposit is received by OPM within the time limits described in this paragraph.

(f) *Burden of proof.* (1) The burden of proof to show entitlement to credit for service under this section lies with the applicant.

(2) No provisions of this section imposes upon the United States, the head of any agency of the United States, any employee of the United States, or any person generally, an obligation to produce or release any document or record which is not otherwise subject to production or release, and the failure of the applicant to obtain access to any document or record does not create a presumption in favor of the applicant in regard to the alleged contents of the document or record.

[FR Doc. 88-24532 Filed 10-24-88; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Rural Telephone Bank

7 CFR Part 1610

Determination of the 1988 Fiscal Year Interest Rate on Rural Telephone Bank Loans

AGENCY: Rural Telephone Bank, USDA.

ACTION: Notice of 1988 fiscal year interest rate determination.

SUMMARY: In accordance with 7 CFR 1610.10, the Rural Telephone Bank's Fiscal Year 1988 cost of money rate has been established at 5.00%. Except for loans approved from October 1, 1987 through December 21, 1987 where borrowers elected to remain at interest rates set at loan aproval, all loan advances made from December 22, 1987 through September 30, 1988 under Bank loans approved on or after October 1, 1987 shall bear interest at the rate of 5.00%.

The calculation of the Bank's cost of money rate for Fiscal Year 1988 is provided in Table 1. Since the calculated rate (4.98%) is less than the minimum rate allowed under 7 U.S.C. 948(b)(3)(A) the cost of money rate is set at the minimum rate of 5.00%. The methodology required to calculate the cost of money rate is established in 7 CFR 1610.10(c).

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Chief, Loans and Management Branch, Telecommunications Staff Division, Rural Electrification Administration, Room 2250, South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone number (202) 382-9550.

SUPPLEMENTARY INFORMATION: The cost of money rate methodology develops a weighted average rate for the Bank's cost of money by considering total fiscal year loan advances; the excess of fiscal year loan advances over amounts received in the fiscal year from issuances of Class A, B, and C stocks, debentures and other obligations; and the costs to the Bank of obtaining funds from these sources. During Fiscal Year 1988, the Bank paid the following dividends: the dividend on Class A stock was 2.00% as established in amended section 406(c) of the Rural Electrification Act; no dividends were payable on Class B stock as specified in 7 CFR 1610.10(c); and the dividend on Class C stock was established by the Bank at 8.5%.

The total amount received by the Bank in Fiscal Year 1988 from the issuances of Class A stock was $28,710,000. Total advances for the purchase of Class B stock and cash purchases for Class B stock were $10,394,950. Rescissions of loan funds advanced for Class B stock amounted to $1,592,799. Thus, the amount received by the Bank from the issuance of Class B stock, per 7 CFR 1610.10(c), was $8,802,151 ($10,394,950—$1,592,799). The total amount received by the Bank in Fiscal Year 1988 from the issuance of Class C stock was $16,976.

The Bank did not issue debentures or any other obligations during Fiscal Year 1988. Subsequently, no cost was incurred related to the issuance of debentures subject to 7 U.S.C. 948(b)(3)(D).

The excess of Fiscal Year 1988 loan advances over amounts received from issuance of Class A, B, and C stocks and debentures and other obligations amounted to $82,167,226. The cost associated with this excess is the historical cost of money rate as defined in 7 U.S.C. 948(b)(3)(D)(v). The calculation of the Bank's historical cost of money rate is provided in Table 2. The methodology required to perform this calculation is described in 7 CFR 1610.10(c). The cost of money rates for fiscal year 1974 through 1987 are defined in section 406(b) of the RE Act, as amended by Pub. L. 100-203, and are listed in 7 CFR 1610.10(c) and Table 2 herein.

Harold V. Hunter,

Governor.

October 20, 1988.

TABLE 1.—RURAL TELEPHONE BANK FY 1988 COST OF MONEY RATE

Source of bank funds	Amount	Cost rate	Amount X cost rate	(Amount X rate)/Advances (percent)
FY 1988 Issuance of Class A Stock	$28,710,000	2.00	$574,200	0.480
FY 1988 Issuance of Class B Stock	8,802,151	8.00	1,449	.001
FY 1988 Issuance of Class C Stock	16,976	8.50		.000
FY 1988 Issuance of Debentures and Other Obligations				4.495
Excess of Total Advances Over 1988 Issuances	82,167,226	6.55	$5,381,611	
Total FY 1988 Advances	119,696,353			
Calculated Cost of Money Rate				4.98
Minimum Cost Rate Allowable				5.00

TABLE 2.—RURAL TELEPHONE BANK HISTORICAL COST OF MONEY

Fiscal year	Bank cost of money (percent)	Bank loan advances	Advances X Cost rate	(Advances X Cost rate)/Total advances (percent)
1974	5.01	$111,032,874	$5,562,251	0.38
1975	5.85	130,883,197	7,643,797	.50
1976	5.33	99,915,008	5,323,473	.35
1977	3.08	80,007,425	4,845,371	.33
1978	5.97	142,297,180	8,357,845	.54
1979	5.81	139,540,067	7,741,578	.50
1980	6.10	198,844,206	10,199,662	.65
1981	8.48	148,589,372	14,057,501	.91
1982	8.39	112,232,127	9,416,276	.61
1983	8.25	65,402,836	6,539,958	.43
1984	8.55	90,469,548	5,924,511	.38
1985	5.00	72,580,364	3,629,178	.24
1986	5.00	71,852,363	3,592,618	.23
1987	5.00	51,974,926	2,598,747	.17
Total Advances		1,539,369,753		
Cost of Money Rate				6.55

[FR Doc. 88-24656 Filed 10-24-88; 8:45 am]

BILLING CODE 6325-15-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Licensee Announcements of Inspectors

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to ensure that the presence of NRC inspectors on nuclear power reactor sites is not widely communicated or broadcast to licensee and contractor personnel without the expressed request to do so by the inspector. This change will allow the NRC inspectors, badged at the facility, to observe ongoing activities as they are being performed without advanced notification of the inspection to licensee and contractor

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personnel. There is a need for this change because of the possible altering of attention and performance levels of a licensee and/or its contractors when the licensee is aware of NRC surveillance. Past occurrences where site and/or contractor personnel have been notified of NRC's presence on site have heightened concern in this area.

EFFECTIVE DATE: October 25, 1988.

FOR FURTHER INFORMATION CONTACT: George Barber, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492–1234.

SUPPLEMENTARY INFORMATION:

I. Background

By clarifying the meaning and intent of 10 CFR 50.70(b)(3), this final rule should ensure that NRC inspectors will be granted immediate and unannounced access to licensee facilities so as to provide the inspector with unfettered access equivalent to that provided a regular plant employee following proper identification and compliance with applicable access control procedures. This rule provides that no access control measures or other means may be employed by the licensee or its contractors to intentionally give notice to other persons of the arrival and presence of an NRC inspector at a facility, unless the licensee is specifically requested to do so by the NRC inspector. There have been instances in the past at several facilities that compromised the ability of properly badged NRC inspectors to inspect and access, on an unannounced basis, activities related to the license or construction permit when licensee employees or contractor employees informed others at the facility of the presence of the NRC inspectors. This change to 10 CFR 50.70 is to clarify that NRC inspectors, badged at the facility, have immediate, unescorted access to ongoing activities as these activities are being performed without advanced notification of the inspection. This is especially important during non-normal business hours when operating personnel might assume NRC inspectors would not be on site.

II. Summary of Comments

On March 18, 1988, the Commission published in the **Federal Register** (53 FR 8924) a notice of proposed rulemaking on "Licensee Announcement of Inspectors." The Commission invited the public to comment on the proposed rule and received six letters of comment by April 18, 1988 (the specified closing date for public comments). After April 18, 1988, 26 additional letters of comments were received. All 32 letters of comments were considered in NRC's review of this final rule. The comments are discussed below.

Comment. A majority of the commenters believed the rule was unnecessary and characterized it as being too broad and vague. They asserted that it: was redundant with current regulations; would lead to unfair and impractical enforcement; be impossible to implement; inhibit inspector assistance by plant personnel; limit the ability of facility management to perform their safety functions; promote lying among the facility staff; require formal training and recordkeeping; and indicates a distrust of licensees.

NRC Response. NRC does not agree with the comments, but to ensure that the intent of the rule is clear and focused, adds the following clarification of the rule. The intent of this rule is to prevent site and contractor personnel from widespread dissemination or broadcasting the presence of an NRC inspector. Broadcasting, as used here, is defined as unsolicited one-way communications. Implementing or enforcing this rule should be no more difficult than implementing or enforcing any rule that involves personnel performance.

Adopting this rule does not indicate a predisposition on the part of the NRC that licensees are not acting properly. It is human nature for an individual to be more conscious of his or her performance when the individual realizes he or she is being observed. The NRC inspection program evaluates licensee performance on the basis of a sampling of its activities. It is critical that the sampling portion of the licensee's activities that are relied upon for this evaluation be representative of its overall activities. Therefore, the rule is more prophylactic than proscriptive, although it does carry enforcement sanctions should it be violated. Recognizing the possibility of inadvertent communication of an inspector's presence, the NRC expects to reserve enforcement action for significant intentional violations of the rule. An honest response by an employee to an innocent inquiry that he/she just saw an NRC inspector is not within the proscriptive perimeter of the rule. Therefore, an employee would not be required to lie, in response to a question, about the presence of an NRC inspector. Based on this discussion, formalized training will not be necessary, and NRC Form 3 need not be modified to reflect this requirement.

The NRC does not agree that this rule will prevent management from performing its safety functions. It should be noted the rule does not affect software security systems which monitor the presence of persons in certain areas. Such systems should provide the licensee with needed information on space occupancy in the case of an emergency or evacuation. For those licensees who have these systems in place, or will put them in place, the rule does not affect such systems. If a licensee were, however, to design or modify these systems (or use them) for the purpose of monitoring the NRC inspector's movements in order to alert other plant personnel of the inspector's whereabouts, those actions would violate the rule.

In sum, the licensee is prohibited from taking affirmative action which would compromise the NRC inspector's mission of gaining unfettered access to the plant and its various areas of interest to the inspector.

Comment. Some commenters expressed a concern that the rule could raise Constitutional questions under the First and Fourth Amendments.

NRC Response. As discussed above, the purpose of the rule is to enhance the credibility of the inspection process. Inspections are specifically authorized under section 161o of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(o). The regulation is narrowly drawn to achieve a legitimate governmental interest (effective NRC inspections) without infringing on an individual's right to express ideas and opinions on any subject. Thus, the regulation does not impermissively intrude upon freedom of speech protected by the First Amendment to the Constitution.

The regulation does not raise any significant Fourth Amendment considerations. The Atomic Energy Act creates a pervasive regulatory scheme that puts licensees on clear notice that they will be subject to inspection, and the granting of a license is conditioned on consent to reasonable inspections. Thus, NRC inspections of licensees' premises, activities and records do not require a warrant under the Fourth Amendment. United States Nuclear Regulatory Commission vs Radiation Technology, Inc., 519 F. Supp. 1266, 1288–91 (D.N.J. 1981); Union Electric Co. (Callaway Plant, Units 1 & 2), ALAB–527, 9 NRC 126, 139–41 (1979). The new regulation is a reasonable exercise of the Commission's inspection authority. Inspectors will continue to identify themselves and comply with other reasonable access control measures and, as always, inspections will be conducted for purposes authorized under the Atomic Energy Act and the Energy Reorganization Act. The regulation does not run afoul of the Fourth Amendment to the Constitution.

Comment. A number of commenters suggested that the rule be implemented only by written request of the NRC inspector.

NRC Response. NRC rejects the suggestion. With this suggested modification, the rule would only apply to those individuals who had been given notice of the NRC inspector's presence on site. If implemented, this suggestion would defeat the intent of the rule.

Environmental Impact: Categorical Exclusion

The NRC has determined that this change is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

The final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget approval number 3150–0011.

Regulatory Analysis

This final rule will have no significant impact on state and local governments and geographical regions. It may have a significant impact on health, safety, and the environment, but only in the sense of preventing adverse impacts on health, safety, and the environment through more effective inspections. The rule will make it clear that NRC inspectors are to have a realistic picture of the actual conditions at a site during the inspection process and, therefore, be better able to identify potentially dangerous conditions and/or practices for corrective action and to ensure that licensees comply with laws, regulations, and orders administered by the NRC. This constitutes the regulatory analysis for this final rule.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this final rule does not have a significant economic impact on a substantial number of small entities. The final rule applies only to licensees authorized to construct or operate nuclear power reactors, who are not small business entities within the meaning of the act or implementing regulations. Therefore, a regulatory flexibility analysis has not been prepared.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does apply to this final rule. The backfit analysis for announcement of inspectors rule in accordance with each of the factors specified in 10 CFR 50.109(a)(4)(ii)(c) is as follows:

(1) This rule provides that no means may be employed by the licensee or its contractors to intentionally give notice to other persons of the arrival and presence of a NRC inspector at a facility, unless the licensee is specifically requested to do so by the NRC inspector.

(2) The licensee will have to communicate the requirements of this rule to its personnel and to contractor personnel working at its site.

(3) The purpose of this rule is to enhance the credibility of the inspection process. By requiring that the presence of NRC inspectors (either resident or off site) is not announced, the NRC, public and licensees will have more confidence that the activities inspectors are witnessing are representative of licensee performance. Ensuring that NRC inspectors are witnessing representative licensee performance could substantially increase the likelihood that NRC inspectors will discover unsafe or potentially unsafe practices, bring about corrective actions and thereby lower the risk of accidents occurring which could lead to the accidental off-site release of radioactive material.

It is not possible, without before and after data, to quantitatively evaluate the benefits of implementing this rule. Still, a recent significant enforcement action concerning licensee employee's inattention to duty demonstrates the premise advanced in the above paragraph. In this enforcement action, over 30 licensee personnel, both management and staff were cited for inattention to duty. The primary concern was sleeping on watch. It is not difficult to envision accidents that could occur because of this type of licensee performance.

Coupling inattention to duty with equipment failure adds a new dimension to the risk of accidents occurring which could lead to the off-site release of radioactive material. In the enforcement action mentioned above, had the licensee announced the presence of the NRC inspector, the inattention to duty would have gone unnoticed. It should be noted that the licensee facility where this incident occurred did, on one past occasion, announce the presence of NRC inspectors.

(4) Not appropriate. There is no radiological exposure of facility employees resulting from the rule's implementation.

(5) Very minor costs are associated with the rule's implementation. There are no training requirements or record keeping requirements associated with this rule. The only cost to the licensee would be communicating this rule to its employees and contractors.

(6) Not appropriate. There is no potential safety impact of changes in plant or operational complexity associated with this rule.

(7) Not appropriate. There is no resource burden on the NRC from the implementation of this rule.

(8) Not appropriate. There is no potential impact of differences in facility type, design or age on the relevancy and practicality of the proposed backfit.

(9) The proposed backfit is final.

Conclusion

Based on the above analysis, the Commission concludes that there is a substantial increase in the overall protection of the public health and safety or the common defense and security to be derived from this backfit and that the direct and indirect costs of implementation for facilities are justified in view of this increased protection.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is to adopt the following amendment to 10 CFR Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 68 Stat. 936, 937, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244 as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131,

2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Section 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a, and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273): §§ 50.10 (a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161(b), 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10 (b) and (c), and 50.54 are issued under sec. 161(i), 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.9, 50.55(e), 50.59(b), 50.70, 50.71, 50.72, 50.73 and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 50.70, paragraph (b)(4) is added to read as follows:

§ 50.70 Inspections.

* * * * *

(b) * * *

(4) The licensee or construction permit holder (nuclear power reactor only) shall ensure that the arrival and presence of an NRC inspector, who has been properly authorized facility access as described in paragraph (b)(3) of this section, is not announced or otherwise communicated by its employees or contractors to other persons at the facility unless specifically requested by the NRC inspector.

Dated at Rockville, MD, this 13th day of October, 1988.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 88–24809 Filed 10–24–88; 8:45 am]

BILLING CODE 7590–01–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 704

Corporate Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: Pursuant to the Regulatory Review program of NCUA, Part 704 (Corporate Credit Union) has been reviewed. The minor amendments to the section are primarily clarification language in three areas: (1) 704.2 includes a definition of "average daily assets" in the regulation, (2) 704.3 clarifies which items may be excluded from assets before the reserve transfer is computed, and (3) 704.5 specifies that the annual CPA audit be an opinion audit.

EFFECTIVE DATE: October 25, 1988.

ADDRESS: National Credit Union Administration, 1776 G Street NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: D. Michael Riley, Director, Office of Examination and Insurance, or Linda Groth, Corporate Credit Union Specialist at the above address or telephone: (202) 357–1065.

SUPPLEMENTARY INFORMATION:

Background

Part 704 of NCUA Rules and Regulations, Corporate Credit Unions, has been revised as a part of the Agency's continuing program of review of regulations and as a result of provisions in the Garn-St Germain Act which amended section 120(a) of the Federal Credit Union Act to permit the NCUA Board to differentiate the functions of corporate central Federal credit unions from natural person credit unions through the issuance of rules or orders of the Board. Part 704 was promulgated in 1977 to define a corporate credit union (herein referred to as a corporate) and to establish a reserve account for corporate credit unions. The regulation was revised in 1979 and again in 1984 to provide additional requirements pertaining to operations of corporate credit unions.

Public Comment

The NCUA Board issued a proposed rule on May 20, 1988 (see 53 FR 20122, (June 2, 1988)). The Board received 15 comments in response to the proposal to amend Part 704. Of the 15 comments, 7 were from Federally chartered corporates, 4 from state-chartered Federally insured corporates, 1 from a state-chartered non-insured corporate, 1 from a state credit union supervisor, 1 from a natural person Federal credit union and 1 from a trade association. A discussion of the comments received on the proposed amendments follows:

A. Proposal to Amend § 704.2 To Include a Definition of "Average Daily Assets" in the Regulation

Six of the commenters addressed the first proposal. Those who commented favored the change. The Board is adding paragraph (d) to § 704.2 to include the definition of average daily assets for reserve computation purposes in the regulation itself. Corporate credit unions may elect either of two methods of calculating average daily assets. This is not a new requirement. The definition was formerly included only in the preamble to the regulation.

B. Proposal To Amend § 704.3 To Clarify Items That May Be Excluded from the Assets Prior to the Reserve Transfer Computation

This section concerns establishment and maintenance of a corporate reserve against loan and certain investment losses. A total of 14 comments were received addressing this proposal. Eleven commenters concurred with the change in § 704.3 which clarifies the items that may be excluded from the assets prior to the reserve transfer computation.

Two commenters believe the exclusion of reverse repurchase transactions only through US Central Credit Union is too narrowly defined. One commenter stated that they are "extremely concerned as to the preferential status which this exemption grants to transactions through US Central Credit Union." Both agreed that reverse repurchase transactions through US Central should be excluded but that the regulation should be expanded to exclude other matched arbitrage transactions that inflate the balance sheet. One corporate urged NCUA to amend the regulations to exempt from the definition of assets, those assets involved in matched repurchase transactions with members of the corporate when the corporate executes the reverse repurchase transaction directly in the marketplace. This corporate also urged NCUA to reduce the corporate reserve burden by permitting a reduction in average daily assets as defined in the regulation by the amount of corporate-owned government securities involved in reverse repurchase transactions. The other corporate expressed the opinion that all matched reverse repurchase agreements with broker dealers "which have a primary dealer status with the Federal Reserve Board and are in compliance with the Federal Reserve's Capital Adequacy Guidelines for U.S. Government Security Dealers" be excluded from average daily assets when computing reserve requirements.

Reverse repurchase transactions on behalf of the members of a corporate using the US Central corporate network program have been given a previous exemption because the corporates act primarily in an administrative capacity to forward securities to US Central Credit Union; the principal risks and primary benefits are shared by US Central Credit Union and the natural person credit unions. NCUA does not intend this specific exemption to become a precedent for all reverse repurchase transactions and believes that these financing arrangements can and do involve factors that should be subject to standard reserve requirements.

Two other concerns were mentioned regarding Section 704.3(b). The first is that all reserve levels stated in the regulation should be based on the total of the Corporate Reserve and all undivided earnings. Section 704.3(b) (1) and (2) both state that the reserve requirement is based upon the credit union's "Corporate Reserve and undivided earnings" as a percentage of assets. The other concern is that NCUA should place a cap on reserve transfers when the ratio of the Corporate Reserve and undivided earnings to assets is 4 percent. This is implied in the regulation because no transfer is required when the credit union's Corporate Reserve and undivided earnings is 4 percent or greater.

C. Proposal To Amend § 704.5 To Specify That the Annual CPA Audit Be an Opinion Audit

The NCUA Board's third proposed change was to Section 704.5 and was designed to clarify the intent of the required annual audit for corporate credit unions. All of the 6 commenters responding to this proposal favored the intent of the change although one commenter suggested that the wording could be clearer so as not to leave any question in the accounting profession concerning the requirement. That commenter suggested a minor change with wording specific to the accounting profession. While the suggested wording may have merit, the Board believes that the intent is clear with the wording of the proposed regulation.

One commenter elaborated on § 704.5 by suggesting that, since a CPA audit would allow NCUA to place a greater amount of reliance on the financial statements taken as a whole, a supervisory fee credit should be given for the cost of the certified audit, or a separate operating fee schedule should be developed for corporate credit unions which recognizes their role as "banker's banks". This section of the regulation does not cover the supervision fees charged to a credit union. While there may be some overlap in an audit and an examination, the purposes are clearly different. All Federal credit unions are required to have an annual audit in addition to the annual supervisory examination; one does not exclude or reduce the fee of the other.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board certifies that the final rule will not have a significant economic impact on a substantial number of small credit unions because all corporate credit unions have assets of at least $1,000,000. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

This final rule makes no changes to collection requirements, therefore, it need not be sent to the Office of Management and Budget for approval.

Executive Order 12612

Section 704.3 of the final regulation (corporate reserve requirements) is applicable to corporate Federally insured state chartered credit unions (Corporate FISCU's). This is not a new requirement. Corporate FISCU's must reserve according to § 704.3 only if their state law requires lower reserves or allows for charges to reserves other than loan and investment losses provided by § 704.3. NCUA has imposed this requirement on Corporate FISCU's as a condition of National Credit Union Share Insurance Fund Coverage. The Provision has previously been subject to public notice and comment.

List of Subjects in 12 CFR Part 704

Corporate Credit Unions.

By the National Credit Union Administration Board on October 13, 1988.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA revises 12 CFR Part 704 as follows:

PART 704—CORPORATE CREDIT UNIONS

704.1 Scope.
704.2 Definitions.
704.3 Corporate reserve.
704.4 Representation.
704.5 Annual audit.
704.6 Programs and services.
704.7 Prepayment penalties.

Authority: 12 U.S.C. 1762, 1766(a), 1781 and 1789.

§ 704.1 Scope.

This part establishes certain special rules applying to Corporate Federal credit unions and grants certain additional authorities to such credit unions. Section 704.3—Corporate Reserve—has applicability to both Corporate Federal credit unions and federally insured state-chartered corporate credit unions.

§ 704.2 Definitions.

(a) "Corporate Federal credit union" means a Federal credit union (1) that is operated primarily for the purpose of serving other credit unions and (2) whose total dollar amount of outstanding loans to member credit unions plus shares issued to member credit unions equals or exceeds 75 per centum of its total outstanding loans plus shares.

(b) For purposes of § 704.3, a federally insured state-chartered credit union shall be deemed a federally insured state-chartered corporate credit union when its total dollar amount of outstanding loans to member credit unions plus shares and deposits issued to member credit unions equals or exceeds 75 per centum of its total outstanding loans plus shares and deposits.

(c) "Undivided earnings" means all forms of retained earnings except Corporate Reserves (or regular or statutory reserves, as applicable) and, except for valuation allowances established to meet full and fair disclosure requirements of § 702.3.

(d) "Average daily assets" means the daily average of assets calculated on the basis of assets at the beginning and end of the period or, if available, on assets at the close of each day in the period.

§ 704.3 Corporate reserve.

(a) This section concerns the establishment and maintenance of a corporate reserve against loan losses and certain investment losses. For Corporate Federal credit unions, this section applies in lieu of § 702.2 of NCUA's regulations (12 CFR 702.2). For federally insured state-chartered corporate credit unions, this section applies to the extent that applicable State law and regulations (1) require the transfer of a lesser amount to reserves for loan and investment losses than this section or (2) allow charges to reserves for other than loan and investment losses as permitted by this section.

(b) At the end of each dividend cycle and prior to paying a dividend (or, at the option of the credit union, on a monthly basis if dividends are paid more frequently than monthly), sums shall be set aside in a Corporate Reserve in accordance with the following schedule: (1) When the credit union's Corporate Reserve and undivided earnings are less than 2 percent of assets, less Central Liquidity Facility (CLF) stock subscriptions and reverse repurchase transactions through U.S. Central Credit Union, at the end of the transfer period, the credit union shall set aside an amount equal to .0015 times the credit

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union's average daily assets for the transfer period times the number of days in the transfer period divided by 365. (2) When the Corporate Reserve and undivided earnings are equal to or greater than 2 percent but less than 4 percent of assets, less CLF stock subscriptions and reverse repurchase transactions through U.S. Central Credit Union, the credit union shall set aside an amount equal to .0010 times the credit union's average daily assets for the transfer period times the number of days in the transfer period divided by 365.

(c) Charges may be made to the Corporate Reserve for loan losses and for investment losses caused by factors other than trading losses or market fluctuations. No other charges shall be made except as may be authorized in writing by the NCUA Board or its designee. Charges shall be made in accordance with full and fair disclosure requirements as described in the Accounting Manual for Federal Credit Unions.

§ 704.4 Representation.

An organizational member (i.e., a member other than a natural person) of a Corporate Federal credit union may appoint one of its members or officials as a representative to the corporate credit union. The representative shall be empowered to attend meetings, to vote and to stand for election on behalf of the member. No individual may serve as the representative of more than one organizational member in the same Corporate Federal credit union.

§ 704.5 Annual audit.

(a) The supervisory committee of a Corporate Federal credit union shall cause an annual opinion audit to be made by an independent, duly licensed CPA and shall submit the audit report to the board of directors. A summary of the audit report shall be submitted to the membership at the next annual meeting.

(b) A copy of the audit report shall be submitted to the appropriate regional office of the National Credit Union Administration within 30 days after receipt by the board of directors.

§ 704.6 Programs and services.

Pursuant to section 120(a) of the Federal Credit Union Act [12 U.S.C 1766(a)], and subject to other applicable provisions of law, regulation, bylaws, and any order, of the NCUA Board, a Corporate Federal credit union may provide, to its members, services involving investments, liquidity management, payment systems and correspondent services.

§ 704.7 Prepayment Penalties.

If provided for in the loan contract, a Corporate Federal credit union is authorized to assess prepayment penalties on loans made at fixed rates and for specified maturities to member credit unions or other organizations.

[FR Doc. 88-24602 Filed 10-24-88; 8:45 am]

BILLING CODE 7535-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Rel. Nos. 33-6804; 34-26191; 35-24728, IC-16590; FR-23]

Public Availability of Correspondence About Accountants' Independence

AGENCY: Securities and Exchange Commission.

ACTION: Interpretation.

SUMMARY: The Commission announces its policy to make each letter requesting the staff's views on an accountant's independence together with the staff's response thereto available for public inspection and copying as soon as practical after the staff response is sent or given to the requesting party, unless confidential treatment is granted.

EFFECTIVE DATE: November 25, 1988.

FOR FURTHER INFORMATION CONTACT: John Riley or Robert Burns, (202) 272-2130, Office of the Chief Accountant, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission's Office of the Chief Accountant responds to requests for its views on whether particular relationships between a registrant and its affiliates and an accountant may prevent the accountant from being considered independent for the purpose of auditing financial statements filed with the Commission by such persons.

In Financial Reporting Release No. 4 ("FRR 4"),[1] it was announced that:

> The Commission has determined to make publicly available pursuant to 17 CFR 200.81 the letters that request its staff's views on the impact on accountants' independence of particular sets of circumstances and the staff's responses thereto. Letters of request dated after November 30, 1982, and the staff's responses thereto, will be included in a public file and will be available at the Commission's Public Reference Room for public inspection and copying 30 days after the staff has given or sent the response to the person requesting it. Any request that the public availability to the letters be delayed beyond the 30 day period must be made pursuant to 17 CFR 200.81(b).
>
> Such a public file has been maintained in accordance with this policy.
>
> At the time FRR 4 was issued, 17 CFR 200.81 provided by publication of certain interpretive and no-action letters 30 days after the staff's response was sent or given to the requesting party. The references to "30 days" in FRR 4 therefore were derived from, and consistent with, 17 CFR 200.81. This section, however, was amended recently to make no-action and certain interpretive letters available to the public as soon as practical after a staff response is sent or given to a requesting party.[2] The Commission intends to keep its policy concerning the release of independence letters consistent with the policy for the release of interpretive and no-action positions as expressed in 17 CFR 200.81. Accordingly, each letter requesting the staff's views on an accountant's independence together with the staff's response to such a request will be made available for public inspection and copying as soon as practical after the staff's response is sent or given to the requesting party, unless temporary confidential treatment has been granted.
>
> As indicated in the above quote from FRR 4, requests for temporary confidential treatment for independence letters have been processed in accordance with the provisions of 17 CFR 200.81(b). This policy will be continued. Under the circumstances and conditions set forth in 17 CFR 200.81(b), as amended, confidential treatment therefore may be granted for this correspondence for a period of up to 120 days from the date the staff's response has been sent or given to the requesting party.[3]

By the Commission.

Jonathan G. Katz,

Secretary.

October 17, 1988.

[FR Doc. 88-24566 Filed 10-24-88; 8:45 am]

BILLING CODE 8010-01-M

[1] Financial Reporting Release No. 4 [October 14, 1982] [47 FR 47237].

[2] Securities Act Release No. 6793 [August 10, 1988] [53 FR 32804]; Securities Act Release No. 6794 [April 7, 1988] [53 FR 12412].

[3] Securities Act Release No. 6794, supra.

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 173

Competitive Information Certificate and Profit Reduction Clause

AGENCY: Office of the Under Secretary of Defense (Acquisition), Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: This final rule establishes a Competitive Information Certificate and Profit Reduction Clause to be required in connection with competitively awarded new contracts when such additional protection for the Government is deemed prudent in light of the ongoing investigation of procurement practices known as Operation "Ill Wind." This rule requires contracting officers to obtain from certain prospective contractors a certification that the contractor has not improperly obtained certain sensitive information in connection with the contract award, and to include in contracts with such contractors a clause authorizing the Secretary of Defense to recoup or reduce their profit on the contract if the certification is later determined to be false or inaccurate, or upon conviction of an individual or entity of certain criminal offenses related to or in connection with award of the contract. This rule should enable the Government reasonably to ensure the integrity of future contract awards pending resolution of the "Ill Wind" investigation, and should provide the Government a range of post-award remedies adequate to assure protection of the national interest.

EFFECTIVE DATE: September 16, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Alfred Volkman, Director, Contract Policy Administration, Office of the Deputy Assistant Secretary of Defense (Procurement)/CPA, Pentagon, Room 3C836, Washington, DC 20301-5000, (202) 697-0695.

SUPPLEMENTARY INFORMATION:

Background

On July 15, 1988 the Under Secretary of Defense (Acquisition) and the General Counsel of the Department of Defense, who had been designated by the Secretary of Defense to coordinate Department of Defense activity related to operation "Ill Wind" issued a memorandum directing the implementation of procedures to identify and resolve potential problems prior to award of new contracts that could be affected by activity subject to the "Ill Wind" investigation. These procedures were published as an interim rule on July 29, 1988, at 53 FR 28636. Public comment was requested by August 29, 1988.

Response to Public Comments

The Department received comments on the proposed rule from seven individual defense contractors, three industry associations, and a professional association. The responses generally agreed with the need to ensure the highest standard of integrity and ethics in the procurement process. However, the majority of responses did not agree with either the proposed language of the application of the rule to the list of contractors.

The following summarizes the major comments and suggestions received and the Department's responses. The final rule reflects full consideration of all comments received.

General Comments

Several respondents asserted that publication of the list of suspect contractors and implementation of the interim rule without notice to affected companies and without an opportunity for a hearing constituted a denial of due process. The Department disagrees. The requirements of the interim rule were properly implemented pursuant to a determination by the Under Secretary of Defense (Acquisition) that urgent and compelling circumstances required prior to public notice and comment.

One respondent requested that the interim rule be modified to apply only to those companies found, after appropriate notice and hearing, to have violated applicable defense procurement laws or regulations. The Department considers that the final rule appropriately balances the need to protect the integrity of its procurement system with the legitimate interest of its contractors.

One respondent commented that the interim rule would place on a few contractors the almost impossible burden of policing Departmental decisions to disseminate information. The Department believes that contractors, as well as the Government, bear a responsibility to ensure that sensitive procurement information is not improperly obtained. The final rule is one initiative in what must be a joint effort. It defines specific categories of information which are readily identifiable, and is capable of implementation without undue administrative burden.

One respondent contended that the interim rule violates the Federal Acquisition Regulation in that bidders are entitled to be evaluated fairly and impartially and solely on the factors specified in the applicable solicitation, and that the rule imposes new and extra-legal considerations and obligations for award to listed contractors. The comment misperceives the nature of the rule. Improper receipt of sensitive procurement information, under existing law, may warrant disqualification of the contractor from further participation in the competitive process or other action by the Government. The Government has broad authority to ensure the integrity of the procurement process, and this authority amply warrants the inquiry required prior to award under the rule.

Section by Section Comments

Section 173.1 Scope.

List of Contractors From Whom Certification Is Required

Many of the respondents were concerned that the "List of Contractors From Whom Certification is Required," (herein referred to as "the List"), was compiled without adequate justification and with no clear standards for inclusion. Without such standards, a contractor would not be able to determine when and if it will be placed on the List and subject to the rule's requirements. The final rule adequately prescribes the standard for inclusion on the List. Moreover, contractors on the List are specifically notified of its requirements with respect to each solicitation or award to which the rule applies.

Several respondents also contended that publication of the List amounted to violation of the listed contractors' constitutional rights to be free of governmental defamation and stigmatization without due process of law. However, publication of the List serves only to notify contracting officers of the contractors who will be required to certify. It neither states nor implies any misconduct by the contractor in connection with the particular solicitation. Rather, the final rule represents the least restrictive alternative sufficient to satisfy the Department's compelling interest in assuring the integrity of procurements during the pendency of the "Ill Wind" investigation.

Another respondent contended that the listing presumed a finding of nonresponsibility which was arbitrary and capricious and a violation of the Administrative Procedures Act and the Fifth Amendment. This contention is simply erroneous. Listing requires only that a certificate be executed in

connection with certain contract awards, and is no bar to award of a contract.

Two respondents suggested that the certification requirement, if retained, be applicable to all DOD contractors in the interest of ensuring fairness and integrity in the contracting process and to place the same administrative burden on all prospective DOD contractors. Both the interim rule and final rule represent a narrowly tailored solution to assure the integrity of the procurement system during the ongoing "Ill Wind" investigation, and are correspondingly limited. Whether broader application of the rule's requirements would be appropriate or beneficial cannot yet be determined.

One respondent asked that guidance be included in the rule as to how a company can be removed from the List, such as by demonstrating its responsibility to conduct any competitive intelligence gathering activities in a lawful and ethical manner. The final rule precribes that a listed contractor may submit information in support of a request to remove the firm or specified component from the list.

One respondent contended that the rule amounted to a violation of the Competition in Contracting Act in that the sixteen listed contractors would be precluded from competing for future Government contracts given the burdensome nature of complying with the regulations. On the basis of experience under the interim rule, the agency finds no evidence to support this contention.

One respondent stated that since the rule applied to sixteen listed contractors only, it violated the bill of attainder clause of the Constitution. The agency finds this contention specious. Neither the interim nor the final rule impose punishment upon the listed contractors.

Application

Almost all respondents were concerned that the rule could be read to apply to all contract actions for more than $100,000 and requested that sole source procurements, contract modifications, and/or the exercise of options be specifically excluded from the requirement. The final rule applies only to competitively awarded new prime contracts for more than $100,000. It does not apply to subcontracts, or to noncompetitive contract actions.

Several respondents also requested guidance as to when the certificate would be required to be submitted, with one recommending that only offerors remaining within the competitive range be required to submit a certificate, and another recommending that the certificate be required as a responsibility matter, prior to award, so as not to enter into consideration as part of the source selection. The final rule prescribes that the Competitive Information Certificate, where required, be obtained prior to award. Whether it should be required prior to source selection will depend upon the circumstances of the individual procurement, and is left to the sound discretion of the contracting officer unless constrained by policy of the Military Department concerned. In any event, the requirement to provide a certificate is not an evaluation factor to be considered as part of the source selection.

One respondent requested that the regulation preclude applying the requirement to prior contracts. The final rule applies only to competitively awarded new contracts. Nothing in the final rule, however, affects the broad authority of the Government to inquire into the circumstances of an award when appropriate.

One respondent commented that the $100,000 threshold was too low given the administrative burden involved and suggested a threshold of $1 million. The agency believes that the final rule appropriately balances the need to ensure the integrity of procurements with the burden upon the affected contractors and the Government.

Subcontractor Certification

The final rule deletes the requirement to obtain certifications from subcontractors as a condition of Government consent to subcontracts with subcontractors identified on the list.

Section 173.2 Certificate of Contractor Business Integrity and Ethics.

The Certificate as a Whole

Several respondents commented that the certificate is superfluous in light of the existing statutory and regulatory provisions that already cover the illegal or improper conduct the Government seeks to prevent. However, the Department has determined that the certificate is necessary under the circumstances of the "Ill Wind" investigation to provide the Government reasonable assurance prior to award that certain contract awards are not tainted by improper receipt of sensitive procurement information.

One respondent requested that the regulations provide that information submitted pursuant to the certificate requirement, designated by the contractor to be confidential or proprietary, be treated as such. The Department determined that any such information so marked and submitted should be evaluated and safeguarded under existing law and regulation of general applicability.

Paragraph (a)(1)(i) of this section

One respondent stated that while the rule did not in specific terms require certificates from non-listed subcontractors, the necessity for a listed prime contractor to ensure that no source selection information had been obtained at any subcontract tier directly or indirectly practically mandates subcontractor certificates at present. One respondent recommended that DOD make clear that proper due diligence submission by a listed prime contractor under section 173.2(a)(3) need not include certifications by non-listed subcontractors. Although the interim and final rule require the contractor to disclose and describe the nature of its internal review when executing a Competitive Information Certificate, subcontractor certification is not required. The Department considers that listed contractors are in the best position to determine the level of assurance required as to the conduct of their subcontractors.

Paragraph (a)(1)(ii) of This Section

Most of the respondents contended that the certificate was unconstitutionally vague in the terms "source selection information", "officially made available by the contracting officer" or "information that was generally available to the public." Although the Department determined that these terms afforded reasonable notice to listed contractors, the final rule substitutes terms which will similarly protect the Government's interests and facilitate compliance.

Many respondents stated that the definition of "source selection information" included information that was readily available to DOD contractors, and bore no relation to existing law or DOD practice. The final rule clarifies the intent of the interim rule by requiring disclosure of information under circumstances where its receipt by the contractor was clearly improper under existing law and regulation.

One respondent objected to the fact that oral communication from the Government also had to be reported, as this unfairly made contractors responsible for the actions of the Government. The final rule retains the requirement that oral as well as written communications be disclosed, but clarifies the intent of the interim rule so as to ensure fair notice to contractors of such communications which are subject to disclosure.

One respondent recommended that the definition of source selection information be clarified or restated to apply only to information obtained after that process had commenced and before award. The final rule clarifies the intent of the interim rule to apply to information obtained prior to award. The intent of the balance of this recommendation is accommodated by clarifications in the final rule of which information, if received, must be disclosed.

Several respondents objected to the interim rule on the ground that no regulation currently makes the contracting officer the sole channel for dissemination of information or says that the contracting officer may only provide information officially, and recommended that the language be rewritten to permit authorized representatives of the Government, or members of Congress or the judiciary to release information. The final rule generally does not require disclosure of information where its release by a Government employee would not violate law or regulation.

Several respondents also contended that subparagraph (a)(ii) of the interim rule would require disclosure of information DOD is routinely permitted to disseminate to contractors, such as classified and for official use only documents. The final rule exempts from disclosure such information if the contractor reasonably believes it was made generally available to prospective offerors.

Paragraph (a)(2) of this section

One respondent commented that the requirements of this part of the interim rule are nearly identical to the Certificate of Independent Pricing currently required under FAR sections 3.103–1 and 52.203–2 and that there is no rational basis for requiring additional certification from listed contractors. The Department disagrees. The Competitive Information Certificate as promulgated in the final rule retains this language. Although the substantive requirement is substantially similar to that of FAR sections 3.103–1 and 52.203–2, the final rule is different in that it requires the contractor to describe the internal review upon which the certification is based. This is necessary in order to provide reasonable assurance of the integrity of the procurement prior to award in the context of the ongoing "Ill Wind" investigation.

Two respondents asked for specific language in the regulation permitting joint ventures and teaming arrangements. Neither the interim nor the final rule is intended to alter the treatment of joint ventures and teaming arrangements under prior law and regulation, except to the extent that a listed contractor may, where appropriate, be required to comply with the final rule with respect to its participation in a joint venture or teaming arrangement.

Paragraph (a)(3) of this section

Two respondents complained that the requirement to describe the steps taken to make the certifications required in the earlier paragraphs was unnecessary, unduly burdensome and intrusive as it forced the contractor to disclose its internal methodologies and processes for reaching a decision, imposed unnecessary costs, record keeping and reporting requirements, and interfered with the contractor's attorney-client and work product privileges. The Department has retained this requirement in the final rule finding it necessary to provide the Government reasonable assurance of the integrity of procurements to which it applies prior to award, under the circumstances of the ongoing "Ill Wind" investigation.

Paragraph (d) of this section

One respondent claimed that the certification requirement fails to take into account the working realities of large businesses in that a corporate president could not have detailed knowledge of each and every contractual offer made to the Government. The final rule, like the interim rule, requires that the offeror certify upon information and belief, and describe the interim review upon which the certification is based. The Department considers that contractors must share in the burden of ensuring the integrity of the procurement process, and that they may reasonably be expected to maintain controls over market intelligence activities sufficient to enable a determination as to ability to comply with the final rule.

One respondent recommended that the regulation allow the most senior corporate official having responsibility over that part of the corporate organization engaged in making the offer execute the certification. The Department determined to continue the requirement that the Competitive Information Certificate be executed by the corporate president or his or her designee not more than one level below the corporate president. The agency considers that this allows appropriate delegation in most corporate organizations, while assuring that certification remains a responsibility of senior management.

Section 173.3 Profit Recapture Clause.

Many of the respondents contended that the profit recapture clause in the interim rule would impose a severe penalty on the listed contractors and was not a valid enforceable liquidated damages provision. The Department disagrees. The final rule provides for recoupment of the contractor's anticipated profits when a person or business entity is convicted of certain offenses in connection with or related to award of the contract, or when the Competitive Information Certificate executed prior to award is found to be materially incomplete or inaccurate. The final rule also permits the Secretary of Defense, or his designee, to reduce the contract price in certain circumstances by a lesser amount upon good cause shown. These provisions embody the common sense principle that a contractor should not profit from illegal or improper conduct committed on its behalf, and are not punitive.

Several respondents commented that the clause as written was fatally flawed in that it violated the constitutional principle of the separation of powers, as well as several provisions of the Constitution, among them the Ex Post Facto Clause; Due Process Clause; and the First Amendment. The agency considers these objections to be without merit.

Several respondents also commented that the clause was superfluous in that it is either cumulative to the sanctions Congress has already prescribed or sets forth new sanctions for conduct that may not be illegal. The Department disagrees. The interim and final rules provide the Government an additional remedy for misconduct which prevents profit from illegal or improper conduct, but enables the Government to obtain the benefit of contract performance.

Several respondents stated that the clause was beyond DOD authority to impose as it was not expressly sanctioned by authorizing statutes. The Department disagrees, and considers that both the interim and final rule in this regard are well within the broad authority of the Government to ensure the integrity of its procurements.

One respondent objected to the fact that profit recapture would be automatic upon conviction of one of the enumerated criminal offenses, with no opportunity to present objections either before or after the profit reduction is made. The clause set forth in the revised

rule makes clear that the contractor will have an opportunity to submit information and argue in opposition to a proposed reduction.

One respondent recommended that the rule be revised so that no penalty would be incurred after the Government has decided to make award following submittal of the certificate. The final rule clarifies the intent of the interim rule by authorizing profit recapture or reduction only upon conviction of certain offenses, or upon a finding that the Competitive Information Certificate submitted prior to award was materially false or inaccurate.

One respondent suggested that in the event of a material falsity in the certificate, the Government might in lieu of termination or cancellation of a contract reduce the contract price thereof by the amount of the Government's actual damages. The Department considered that such an approach would not sufficiently protect the Government's interests in situations where, despite the contractor's best knowledge and belief, the Competitive Information Certificate submitted prior to award is subsequently shown to have been materially inaccurate. The Department also considers that it is consistent with the rule's purpose to recover anticipated profit attributable to illegal or improper conduct, rather than requiring the Government to determine actual damages on a case-by-case basis. The final rule does afford contractors an opportunity to show good cause why the contract price should be reduced by less than the amount of anticipated profit where the Secretary of Defense has determined to recapture profit based upon material falsity or inaccuracy in the Competitive Information Certificate submitted prior to award.

Summary of the Final Rule

The Department believes the requirements set forth in the final rule are necessary, given the Department's continuing need to acquire supplies and services pending the outcome of the "Ill Wind" investigation. A properly completed Competitive Information Certificate should provide the Department with necessary documentation to determine whether certain contract awards were tainted by improper receipt of sensitive procurement information prior to award. If it is later determined, after award, that the certificate was materially false or inaccurate, or that various criminal statutes had been violated in connection with or related to the obtaining of the contract, the profit reduction clause will allow the Government to recoup any profit associated with the performance of the contract. Thus the final rule provides an equitable procedure minimally disruptive to the competitive process, yet which adequately protects the integrity of the Department's procurement system.

The intent of this rule is to minimize the disruption of the Department's competitive acquisition of supplies and services during the the "Ill Wind" investigation, while protecting the Government's compelling interest in the integrity of the procurement process. The Department believes that the final rule meets this objective.

Paperwork Reduction Act

The requirement for the certificate and any information required to be furnished in connection with the certificate relates to the ongoing investigation into the activities of certain Department employees, contractors, and consultants. The Department recognizes that these requirements may impose certain costs and an administrative burden on those offerors required to provide the certificate and any associated information. However, these requirements are necessary to ensure that the interests of the United States are protected in connection with the award of contracts that may be involved in the investigation. The investigation is a criminal investigation. As a result of this investigation, the Department of Defense has taken certain administrative actions and additional administrative actions are likely. Accordingly, as provided in section 3518 of Title 44, United States Code, the Paperwork Reduction Act does not apply to this requirement for the furnishing of information. An OMB control number is not necessary.

Regulatory Flexibility Act

The Regulatory Act, section 603 of Title 5 United States Code, is not applicable because this rule will not have significant economic impact on a substantial number of small entities. Only businesses who are listed are required to provide certification; none are small businesses. Any administrative burden associated with completing the documentation is necessary to protect the Government's compelling interest in the integrity of the procurement process.

List of Subjects in 32 CFR Part 173

Armed Forces; Government procurement.

Accordingly, 32 CFR Part 173 is revised as follows:

PART 173—COMPETITIVE INFORMATION CERTIFICATE AND PROFIT REDUCTION CLAUSE

Sec.
173.1 Scope.
173.2 Competitive Information Certification
173.3 Profit Reduction Clause.

Appendix—List of contractors from whom certification is required.

Authority: 10 U.S.C. 2202.

§ 173.1 Scope.

(a) The purpose of the Competitive Information Certificate is to provide the Contracting Officer sufficient information and assurance to support award of a contract in those circumstances where certification is required.

(b) Although a Competitive Information Certificate provides reasonable assurance to the Government, the possibility remains that even a diligent internal review by the contractor may fail to identify illegal or improper actions. The purpose of the Profit Reduction Clause is to ensure effective protection of the Government's interest in making contract awards when a Competitive Information Certification is required. The Profit Reduction Clause is required in all competitively awarded new contracts over $100,000 when a Competitive Information Certificate is required prior to award.

§ 172.2 Competitive Information Certification.

(a) The Competitive Information Certificate is required prior to award of all competitively awarded new contracts of a value exceeding $100,000 to contractors subject to the requirement.

(1) Corporate activities required to provide the Certificate are corporations or corporate divisions which have been the subject of search warrants, or as to which other official information indicates such certification should be required, and their subsidiaries and affiliates. A list of contractors from whom certification is required is maintained and published as required under authority of the Department of Defense Procurement Task Force.

(2) The requirement to provide the Certificate may be further limited to certain divisions or subsidiaries, contracts or programs upon the basis of official information, furnished by the contractor or otherwise, sufficient to establish to the satisfaction of the Department of Defense that the investigation is so limited. Such information may include copies of search warrants, subpoenas and affidavits from corporate officials concerning the scope and conduct of the investigation. The sufficiency of such information is solely within the discretion of the Department of Defense.

(3) Contractors from whom certification in certain instances is required will be relieved of the certification requirement when the Department of Defense determines that information developed in the "Ill Wind" investigation has been resolved in such a manner that certification is no longer required to protect the interests of the Government.

(4) A Certificate will not be required prior to the exercise of options or noncompetitive award of contracts. This does not limit in any manner the Government's ability to inquire into, or require information concerning, the circumstances surrounding an underlying competitive award.

(b) With respect to information disclosed under paragraph (1) of the Certificate, the offeror must attach to the Certificate a written statement detailing what information was obtained, and how, when, and from whom it was obtained. This information shall be evaluated at the levels prescribed by the contracting component to determine whether award of the contract should be made to the offeror. If during this review it is determined that the offeror may have obtained an unfair competitive advantage from the information and that there is no other reason for denying award to the offeror, the reviewing authority shall consider whether action may be taken to neutralize the potential unfair competitive advantage. Any decision to deny award to an offeror based upon information disclosed in the Certificate shall be reviewed and approved by the Service Acquisition Executive.

(c) This certificate and any accompanying statements required, must be executed by the offeror's corporate president or his designee at no more than one level below the president's level.

(d) If a contractor from whom certification is required is uncertain as to whether competitive information otherwise required to be disclosed was generally available to offerors, the uncertainty should be resolved by disclosure.

(e) Contracting Officers may continue to accept Certificates of Business Ethics and Integrity complying with the interim rule in lieu of Competitive Information Certificates.

(f) The Competitive Information Certificate shall be in the following form:

Competitive Information Certificate

(1) (Name of the offeror) certifies, to the best of its knowledge and belief, that

(i) With the exception of any information described in an attachment to this certificate, and any information the offeror reasonably believes was made generally available to prospective offerors, the offeror has not knowingly obtained, directly or indirectly from the Government, any written information or oral extract or account thereof relating to this solicitation which was

(A) Submitted to the Government by offerors or potential offerors in response to the Government's solicitation for bid or proposal;

(B) Marked by an offeror or potential offeror to indicate the information was submitted to the Government subject to an assertion of privilege against disclosure;

(C) Marked or otherwise identified by the Government pursuant to law or regulation as classified, source selection sensitive, or for official use only; or

(D) The disclosure of which to the offeror or potential offeror by a Government employee would, under the circumstances, otherwise violate law or regulation.

(ii) The offeror named above

(A) Determined the prices in its offer independently, without, for the purpose of restricting competition, any consultation, communications, or agreement, directly or indirectly, with any other offeror or competitor relating to (1) those prices, (2) the intention to submit an offer, or (3), the methods or factors used to calculate the prices offered;

(B) Has not knowingly disclosed the prices in its offer, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law;

(C) Has not attempted to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

(iii) The offeror has attached an accurate description of the internal review forming the basis for the certifications provided herein.

Corporate President or Designee.

§ 173.3 Profit Reduction Clause.

The following profit reduction clause is required in all competitively awarded new contracts over $100,000 when a Competitive Information Certificate is required prior to award.

Profit Reduction for Illegal or Improper Activity

(a) The government, at its election, may reduce the contract price by the amount of any anticipated profit determined as set forth in paragraph (b) of this section; if

(1) A person or business entity is convicted for violating 18 U.S.C. 201–224 (bribery, graft, and conflicts of interest), 18 U.S.C. 371 (conspiracy), 18 U.S.C. 641 (theft of public money, property, or records), 18 U.S.C. 1001 (false statements), 18 U.S.C. 1341 (fraud), 18 U.S.C. 1343 (fraud by wire) for any act in connection with or related to the obtaining of this contract; or

(2) The Secretary of Defense, or his designee, determines that the Competitive Information Certificate submitted by the offeror in connection with award of this contract

(i) Was materially false at the time it was filed; or

(ii) Notwithstanding the offeror's best knowledge and belief, was materially incomplete or inaccurate.

Prior to making such a determination, the Secretary or his designee, shall provide to the contractor a written statement of the action being considered and the basis therefor. The contractor shall have not less than 30 calendar days after receipt to submit in person, in writing, or through a representative, information and argument in opposition to the proposed reduction. The Secretary or his designee may, upon good cause shown, determine to reduce the contract price by less than the amount of any profit determined under paragraph (b) of this section.

(b) The amount of anticipated profits referred to in § 173.3(a) shall be:

(1) In the case of a cost-plus-fixed-fee contract, the amount of the fee specified in the contract at the time of award;

(2) In the case of fixed-price-incentive-profit or cost-plus-incentive-fee contract, the amount of the target profit or fee specified in the contract at the time of award; or

(3) In the case of a firm-fixed-price contract, the amount of anticipated profit determined by the contracting officer, after notice to the contractor and opportunity to comment, from records or documents in existence prior to the date of the award of the contract.

(c) The rights and remedies of the government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

Appendix—List of Contractors for Whom Certification Is Required

Armtec, Incorporated, 410 Highway 19 South, Palatka, FL 32077

Cubic Corporation, 9333 Balboa Avenue, San Diego, CA 92123 as to contracts originating in the following division:

Cubic Defense Systems, Incorporated, San Diego, CA
Executive Resource Associates, 2011 Crystal Drive, Suite 813, Arlington, VA 22202
Hazeltine Corporation, 500 Commack Road, Commack, NY 11725 and all divisions and subsidiaries as follows:
Hazeltine Corporation, Electro-Acoustic Division, 115 Bay State Drive, Braintree, MA 02184
Hazeltine Corporation, Government Systems & Products Division, Cuba Hill Road, Greenlawn, NY 11740
Hazeltine Research, Incorporated, 166 Industrial Drive, Elmhurst, IL 60126
Kane Paper Corporation, 2365 Milburn Avenue, Baldwin, NY 11510
Litton Data Systems, Incorporated, 8000 Woodley Ave., Van Nuys, CA 91408
Loral Defense Systems Akron, 1210 Massillon Rd., Akron, OH 44315
McDonnel Douglas Corporation, Banshee Rd., P.O. Box 516, St. Louis, MO 63166 as to contracts originating in the following division:
McDonnell Aircraft Company, St. Louis, MO
Northrop Corporation, Ventura Division, 1515 Rancho Conejo Boulevard, Newbury Park, CA 91320
Teledyne Electronics, 649 Lawrence Drive, Newbury Park, CA 91320
Unisys Corporation, One Unisys Place, Detroit, MI 48232, as to contracts originating in the following divisions or subsidiaries:
Unisys Corporation, Defense Systems Division, 3333 Pilot Knob Road, Eagan, MN
Unisys Corporation, Defense Systems Division, Neil Armstrong Boulevard, Eagan, MN
Unisys Shipboard & Ground Systems Group, Marquis Avenue, Great Neck, NY 11020
United Technologies Corporation, UT Bldg., Hartford, CT 06101 as to contracts originating in the following divisions or subsidiaries:
Norden Systems, Incorporated
Pratt & Whitney
Varian Associates, Incorporated, 611 Hansen Way, Palo Alto, CA as to contracts originating in the following division:
*Continental Electronics Manufacturing Company, Dallas, TX
Whittaker Corporation (Lee Telecommunications Corporation (LTC), Route 1, Farmington, AR 72730)
Zubier Enterprises, 6201 Pine Street, Harrisburg, PA.

L.M. Bynum,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

October 20, 1988.

[FR Doc. 88-24628 Filed 10-24-88; 8:45 am]

BILLING CODE 3810-01-M

*Firm suspended as of July 6, 1988.

VETERANS ADMINISTRATION

38 CFR Part 36

Loan Guaranty; Decrease in Amount of Time VA Will Allow Loan Holder To Begin Terminating Defaulted Loans

AGENCY: Veterans Administration.

ACTION: Final regulatory amendment; correction.

SUMMARY: The Veterans Administration (VA) is amending its loan guaranty regulations to correct previously published information concerning regulations to decrease the amount of time allowed a loan holder to begin termination proceedings on a defaulted VA guaranteed loan after being notified to do so by the VA.

EFFECTIVE DATE: March 21, 1988.

FOR FURTHER INFORMATION CONTACT: C.G. Verenes, Acting Chief, Directives Management Division (731), Paperwork Management and Regulations Service, 202-389-4244.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 19, 1988 (53 FR 4977-78), the Veterans Administration (VA) amended its loan guaranty regulations (38 CFR Part 36) to decrease the amount of time allowed a loan holder to begin termination proceedings on a defaulted VA guaranteed loan after being notified to do so by the VA. In that final regulation, the first sentence in § 36.4319(f) was amended; however, the new text should have replaced the first two sentences in that paragraph. The VA hereby corrects that error.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing, Loan programs—housing and community development, Loan programs—Veterans, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Veterans.

Dated: October 18, 1988.

C.G. Verenes,

Acting Chief, Directives Management Division.

38 CFR Part 36, Loan Guaranty, is amended as follows:

PART 36—[AMENDED]

1. The authority citation for §§ 36.4300 through 36.4375 continues to read:

Authority: Secs. 36.3400 through 36.4375 issued under 72 stat. 1114 (38 U.S.C. 210).

2. In § 36.4319, paragraph (f) is revised to read as follows:

§ 36.4319 Legal proceedings.

* * * * *

(f) If following a default the holder does not begin appropriate action within 30 days after requested in writing by the Administrator to do so, or does not prosecute such action with reasonable diligence, the Administrator may at his or her option intervene in, or begin and prosecute to completion any action or proceeding, in his or her name or in the name of the holder, which the Administrator deems necessary or appropriate, and may fix a date beyond which no further charges may be included in the computation of the guaranty claim or an insured loss. The Administrator shall pay, in advance if necessary, any court costs or other expenses incurred by the Administrator or properly taxed against the Administrator in any such action to which the Administrator is a party, but may charge the same, and also a reasonable amount for legal services, against the guaranteed or insured indebtedness, or the proceeds of the same of the security to the same extent as the holder (see § 36.4313 of this part), or otherwise collect from the holder any such expenses incurred by the Administrator because of the neglect or failure of the holder to take or complete proper action. The rights and remedies herein reserved are without prejudice to any other rights, remedies, or defenses, in law or in equity, available to the Administrator.

* * * * *

[FR Doc. 88-24554 Filed 10-24-88; 8:45 am]

BILLING CODE 8320-01-M

NATIONAL SCIENCE FOUNDATION

45 CFR Part 613

Administrative Regulations; Amendment of Privacy Act Regulations/Exemption of System of Records

AGENCY: National Science Foundation.

ACTION: Final rule.

SUMMARY: The National Science Foundation (NSF) is amending 45 CFR 613.6(a) to apply exemption 5 U.S.C. 552a(k)(5) of the Privacy Act to investigatory material involving applicants for Federal contracts (including grants and cooperative agreements). In addition, the NSF is exempting a new Privacy Act system of records from subsection (d) of the Privacy Act, 5 U.S.C. 552a. This system is NSF-50, "Principal Investigator/Proposal File and Associated Records."

It includes the investigatory records maintained by NSF when proposals are submitted to the agency and subsequent evaluations of the applicants and their proposals are obtained. The exemption is needed to protect the identity of persons supplying evaluations of NSF applicants and their proposals. Notice of the amendment and exemption, inviting public comment, was published as a proposed rule in the **Federal Register** on July 14, 1988 (53 FR 26611). The one comment received is discussed below.

EFFECTIVE DATE: October 25, 1988.

FOR FURTHER INFORMATION CONTACT: Lawrence Rudolph, Assistant General Counsel, Office of General Counsel, National Science Foundation, 1800 G Street NW., Washington, DC 20550; (202) 357-9435.

SUPPLEMENTARY INFORMATION: One comment was received in response to NSF's proposed rule amending the agency's Privacy Act regulations. It was filed by the Public Citizen Litigation Group (PCLG) on behalf of Public Citizen, a public interest organization concerned with the implementation of the Privacy Act, and Mr. Jon Kalb, an individual scientist.

PCLG suggests that some clarification of the proposed rule and preceding preamble is necessary. Specifically, PCLG asserts that NSF should summarize "the affirmative rights" that result from the creation of a new system of records, rather than emphasize the "narrow exemption created by the proposed rule" and applied to that system. The proposed rule, however, was never intended to describe the general rights and obligations of an individual or agency under the Privacy Act. The Privacy Act statute, OMB's Guidelines and Responsibilities set forth at 40 FR 28948 (1975), and NSF's own regulations detail those rights and obligations, and the new system of records was fully explained in a corresponding **Federal Register** notice. It would be superfluous to repeat or describe those rights or obligations here. Nor does the proposed rule "create" an exemption. It merely applies to a new system of records a specific exemption delineated in the Privacy Act.

PCLG also seeks some explanation regarding application of the exemption, since the exemption language does not specifically mention federal grants or awards. As acknowledged by PCLG, however, 5 U.S.C. 552a(k)(5) expressly allows agencies to exempt from disclosure "material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, [and] *Federal contracts* * * *." (emphasis added). This exemption is simply being applied to material used in the agency's evaluation of all of its Federal contracts, including grants and cooperative agreements entered into between the agency and applicants. There is nothing in the statutory language of the exemption or its legislative history which suggests that the Federal contracts entered into by NSF, including grants and cooperative agreements, are outside the scope of this exemption.

Finally, PCLG is concerned that a broad reading of the preamble and rule, as proposed, would allow the agency to withhold entire documents which contain the name of a confidential source, not just that portion of a document which identifies the confidential source. This concern is unfounded. As correctly noted by PCLG, the exemption applied in the proposed rule only allows the agency to withhold materials "to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence * * *" 5 U.S.C. 552a(k)(5). The exemption is specifically referenced in the rule itself and, given the express language of the exemption, we believe its limited application is self-evident. Nevertheless, we will reiterate below the preamble to this rule, noting that the exemption applies only to that portion of records which reveals the identity of references of fellowship applicants or reviewers of applicants for Federal contracts (including grants and cooperative agreements). Under the circumstances, therefore, no further revision to the language of the rule itself is necessary.

Section 613.6(a) of NSF's Privacy Act regulations, 45 CFR Part 613, presently exempts from disclosure any material which would identify persons supplying references for various types of NSF fellowships. This exemption, effective September 27, 1975, was necessary to maintain the confidentiality of fellowship references so that evaluations continue to be given with complete candor. For identical reasons NSF is applying the same exemption, 5 U.S.C. 552a(k)(5), to any material which would identify persons supplying evaluations of NSF applicants for Federal contracts (including grants and cooperative agreements) and their proposals. Only that portion of the material which reveals the identity of a source who furnished information to the Government under an express promise of confidentiality will be withheld pursuant to this exemption.

The new system of records subject to this exemption is NSF-50, "Principal Investigator/Proposal File and Associated Records." It contains the name of the principal investigator, the proposal and its identifying number, supporting data from the academic institution or other applicant, proposal evaluations from peer reviewers, a review record, financial data, and other related material. The provision of the Privacy Act from which the system is to be exempted is 5 U.S.C. 552a(d). Notice of this system was published in the **Federal Register** on July 14, 1988 (53 FR 26691).

Under the criteria set forth in Executive Order No. 12291, this rule has been determined not to be a "major rule" requiring a regulatory impact analysis. In addition, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, it is hereby stated that the order will not have "a significant economic impact on a substantial number of small entities."

List of Subjects in 45 CFR Part 613

Privacy.

Pursuant to the authority granted by 5 U.S.C. 552a(f), NSF is amending 45 CFR Part 613 by revising § 613.6(a) as set forth below.

Robert M. Anderson,

Deputy General Counsel.

Dated: October 20, 1988.

PART 613—[AMENDED]

1. The authority for Part 613 continues to read as follows:

Authority: 5 U.S.C. 552a(f).

2. Section 613.6 is amended by revising paragraph (a) as follows:

§ 613.6 Exemptions.

(a) *Fellowships and other support.* Pursuant to 5 U.S.C. 552a(k)(5), the Foundation hereby exempts from the application of 5 U.S.C. 552a(d) any materials which would disclose the identity of references of fellowship applicants or reviewers of applicants for Federal contracts (including grants and cooperative agreements) contained in any of the following systems of records: (1) Fellowship and Traineeship Filing System, (2) Applicants to Committee on the Challenges of Modern Society Fellowship Program (NATO), and (3) Principal Investigator/Proposal File and Associated Records.

* * * * *

[FR Doc. 88-24679 Filed 10-24-88; 8:45 am]

BILLING CODE 7555-01-M

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-459; RM-5736]

Radio Broadcasting Services; Garapan, Saipan

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 258C to Garapan, Saipan, at coordinates North Latitude 15-10-44 and East Longitude 145-45-00, as a third FM service at the request of Serafin M. Dela Cruz. With this action, this proceeding is terminated.

DATES: Effective December 2, 1988; the window period for filing applications on Channel 258C will open on December 5, 1988, and close on January 3, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-459, adopted September 14, 1988, and released October 18, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, in the entry Garapan, Saipan, Channel 258C is added.

Federal Communications Commission.

Steve Eastman,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-24637 Filed 10-24-88; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 53, No. 206
Tuesday, October 25, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Loans to Members and Lines of Credit to Members

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comments.

SUMMARY: Section 702 of the Competitive Equality Banking Act of 1987 (CEBA) amended the Federal Credit Union (FCU) Act to give the NCUA Board the authority to set the maturity limits for second mortgage and home improvement loans to Federal credit union members at "up to 15 years or any longer term which the Board may allow." Prior to that, the limit was 15 years. The Board requests comment on whether it should grant FCUs the authority to establish maturity limits at a term longer than 15 years for second mortgage and home improvement loans, and if so, what maximum term of maturity should be set?

DATE: Comments must be received on or before January 23, 1989.

ADDRESS: Send comments to Becky Baker, Secretary, NCUA Board, National Credit Union Administration, 1776 G Street, NW. Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: D. Michael Riley, NCUA, Director, Office of Examination and Insurance, 1776 G Street, NW., Washington, DC 20456, telephone: (202) 357-1065 or Roy DeLoach, NCUA, Office of General Counsel, 1776 G Street, NW., Washington, DC 20456, telephone: (202) 357-1600.

SUPPLEMENTARY INFORMATION: Currently, § 701.21(f) of the National Credit Union Administration Rules and Regulations [12 CFR 701.21(f)] states that: "Notwithstanding the general 12-year maturity limit on loans to members, a Federal credit union may make loans secured' by a residential dwelling which is the residence of the member-borrower 'and for a loan' to finance the repair, alteration, or improvement of a residential dwelling which is the residence of the member-borrower."

This regulatory provisions is based on section 107(5)(A)(ii) of the FCU Act (12 U.S.C. 1757(5)(A)(ii)), which until recently contained a 15-year limit. Section 702 of CEBA amended the FCU Act to allow the NCUA Board, by regulation, to authorize longer maturities. Congressional intent expressed in the legislative history to CEBA, was ([1987]) U.S. Code Cong. & Ad. News, 653-54):

To help consumer/members with the dilemma that sometimes occurs at the term completion of a second mortgage or home improvement loan. Currently, because of market interest rate fluctations near the end of the loan, members are confronted with either a balloon payment or higher monthly payments in order to pay off the loan by the end of the current 15-year term. This section authorizes NCUA to extend the term of such loans to permit more level loan payouts.

The NCUA Board requests comment on whether it should exercise its regulatory authority to allow longer maturities on second mortgage and home improvement loans.

By the National Credit Union Administration Board on October 12, 1988.

Becky Baker,

Secretary of the Board.

[FR Doc. 88-24604 Filed 10-24-88; 8:45 am]

BILLING CODE 7535-01-M

12 CFR Part 701

Federal Credit Union Ownership of Fixed Assets

AGENCY: National Credit Union Administration.

ACTION: Proposed revisions to regulation.

SUMMARY: The NCUA Board is proposing to revise § 701.36 (Federal Credit Union Ownership of Fixed Assets) of its Rules and Regulations. The proposal, which is intended to clarify the regulation and set forth its application to corporate credit unions, results from NCUA's policy to periodically review each of its regulations.

DATE: Comments must be received on or before January 23, 1989.

ADDRESS: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: D. Michael Riley, Director, Office of Examination and Insurance or Gerald M. McClernon, Program Officer, Office of Examination and Insurance, NCUA, at the above address, or telephone: (202) 357-1065.

SUPPLEMENTARY INFORMATION:

Background

Section 701.36 of the NCUA Rules and Regulations currently requires any Federal credit union having aggregate assets of $1 million or more to obtain written approval of the NCUA when its total investment in fixed assets will exceed 5 percent of its shares and retained earnings. The rule requires those Federal credit unions to submit such reports and statements as may be required by the NCUA regional director in support of its request. The NCUA Board, in its recent review of the regulation, has determined minor adjustments are necessary to clarify the rule and is seeking comment on the adjustments and on the necessity of having the rule more reasonably apply to corporate Federal credit unions.

The following section by section analysis describes the proposed changes to the regulation. The NCUA Board requests comment on the proposed changes and any other suggested modifications to the regulation.

Section by Section Analysis

Proposed Section 701.36(a)

This section has not been modified and states that a Federal credit union's investment in fixed assets shall be limited as described in this chapter.

Section 701.36(b) Definitions

Paragraphs (1), (2), (3), (5), (6), (7), and (8) have not been changed. The term defined in those sections include premises, furniture, fixtures and equipment, the meaning of fixed assets, abandoned premises, immediate family members, shares, and senior management employees. Paragraph (4), which defines investments in fixed assets, is comprised of 5 sections of which (i), (ii) and (v) dealing with investment in real property intended for use as premises, leasehold improvement

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on premises, and investment in furniture, fixtures and equipment have not been changed. Section (iii) has been changed to clarify that aggregate lease payments include payments on both capital leases and operating leases. Section (iv) has been changed to clarify that loans and investments to credit union service organizations holding fixed assets used by the Federal credit union are to be included in total fixed assets.

Section 701.36(c) Limitations for Investment in Fixed Assets

Paragraphs (1), (2), (3), and (4) have not been changed. These paragraphs specify Federal credit unions with assets of $1 million or more must obtain approval of NCUA prior to acquiring fixed assets, if the aggregate of all such investments exceeds 5 percent of shares and retained earnings. Reporting requirements for investments in fixed assets in excess of the specified limit, as well as limits for future acquisitions are outlined. The requirement for submission or requests to the NCUA regional office having jurisdiction as well as the requirement for the regional office to respond in writing and the timeliness of its action on the matter are outlined. Paragraph (5) has been deleted. This paragraph was outdated and applied to Federal credit unions with assets between $1 million and $2 million that had fixed assets in excess of 5 percent as of December 31, 1984, and firm commitments to acquire fixed assets. Time limits relative to those investments have long since elapsed.

In addition, the NCUA Board seeks commitment from the public concerning the applicability of this section to corporate Federal credit unions. The necessity for having this rule reasonably apply to corporate Federal credit unions has been voiced from many areas. Because of the magnitude and volatility of a corporate credit union's total shares and retained earnings, the rule, as it is applied, generates significant safety and soundness concerns. A more reasonable approach might be to relate a corporate Federal credit union's fixed asset acquisition to a more stable area than total shares and retained earnings. This issue is not addressed in the language of the proposed regulation, but will be included if public comment leads the NCUA Board to conclude that such a provision is necessary.

Section 701.36(d) Premises

No changes were made to this section. Paragraph (1) of this section deals with acquisition of real property for expansion and the fact that it must be at least partially utilized within 3 years unless otherwise approved by the Administration. Paragraph (2) deals with the disposition of "abandoned premises" and documentation of same.

Section 701.36(e) Prohibited Transactions

Paragraphs (2) and (3) of this section have not been changed and prohibit a Federal credit union, (except for a short term informal lease agreement with a maturity less than one year), from acquiring or leasing premises from an employee directly involved in investment in fixed assets unless the board determines the involvement does not present a conflict of interest. Furthermore, all transactions with business associates or family members not specifically prohibited by this subsection must be conducted at arms length and in the best interest of the credit union. Paragraph (1), which prohibits the foregoing with respect to directors, members of the credit committee, and members of the supervisory committee has been changed to delete the word "official" because it is a redundant term and includes all those previously mentioned.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board certifies that the proposed rule, if made final, will not have a significant impact on a substantial number of small credit unions because the rule applies only to credit unions with assets of at least $1 million. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

This proposed rule makes no changes to collection requirements, therefore, it need not be sent to the Office of Management and Budget for approval.

Executive Order 12612

The action being considered does not affect state regulation of state-chartered credit unions.

List of Subjects in 12 CFR Part 701

Credit union, Fixed assets.

By the National Credit Union Administration Board on October 13, 1988.

Becky Baker,

Secretary of the Board.

Accordingly, the NCUA proposes to amend Part 701 as follows:

PART 701—[AMENDED]

1. The authority citation for Part 701 continues to read as follows:

Authority: 12 U.S.C. 1755, 1756, 1757, 1758, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789, and 1795.

Section 701.31 is also authorized by 15 U.S.C. 1601, *et seq.*, 42 U.S.C. 1981 and 42 U.S.C. 3601–3610.

2. Section 701.36 is proposed to be revised as follows:

§ 701.36 FCU ownership of fixed assets.

(a) A federal credit union's ownership in fixed assets shall be limited as described in this chapter.

(b) Definitions—As Used in This Section:

(1) Premises includes any office, branch office, suboffice, service center, parking lot, other facility, or real estate where the credit union transacts or will transact business.

(2) Furniture, Fixtures, and Equipment includes all office furnishings, office machines, computer hardware and software, automated terminals, heating and cooling equipment.

(3) Fixed Assets means premises and furniture, fixtures and equipment as these terms are defined above.

(4) Investments in fixed assets means:

(i) Any investment in real property (improved or unimproved) which is being used or is intended to be used as premises;

(ii) Any leasehold improvement on premises;

(iii) The aggregate of all capital and operating lease payments pursuant to lease agreements for fixed assets;

(iv) Any investment in the bonds, stock, debentures, or other obligations of a partnership or corporation, including any entity described in §701.27, holding any fixed assets used by the federal credit union and any loans to such partnership or corporation; or

(v) Any investment in furniture, fixtures and equipment.

(5) Abandoned premises means former federal credit union premises from the date of relocation to new quarters, and property originally acquired for future expansion for which such use is no longer contemplated.

(6) Immediate family member means a spouse or other family members living in the same household.

(7) Shares mean all savings (regular shares, share drafts, share certificates, other savings) and retained earnings means regular reserve, reserve for contingencies, supplemental reserves, reserve for losses and undivided earnings.

(8) Senior management employee means the credit union's chief executive officer (typically this individual holds the title of President or Treasurer Manager), any assistant chief executive officers (e.g., Assistant President, Vice President or Assistant Treasurer Manager) and the chief financial officer (Comptroller).

(c) Investment in fixed assets. (1) No federal credit union with $1,000,000 or more in assets, without the prior approval of the Administration, shall invest in fixed assets if the aggregate of all such investments exceeds 5 percent of shares and retained earnings.

(2) A federal credit union shall submit such statement and reports as the NCUA regional director may require in support of any investment in fixed assets in excess of the limit specified above.

(3) If the Administration determines that the proposal will not adversely affect the credit union, an aggregate dollar amount or percentage of assets will be approved for investment in fixed assets. Once such a limit has been approved, and unless otherwise specified by the regional director, a federal credit union may make future acquisitions of fixed assets, provided the aggregate of all such future investments in fixed assets does not exceed an additional 1 percent of the shares and retained earnings of the credit union over the amount approved.

(4) Federal credit unions shall submit their requests to the NCUA regional office having jurisdiction over the geographical area in which the credit union's main office is located. The regional office shall inform the requesting credit union, in writing, of the date the request was received. If the credit union does not receive notification of the action taken on its request within 45 calendar days of the date the request was received by the regional office, the credit union may proceed with its proposed investment in fixed assets.

(d) Premises. (1) When real property is acquired for future expansion, at least partial utilization should be accomplished within a reasonable period, which shall not exceed 3 years unless otherwise approved in writing by the Administration. After real property acquired for future expansion has been held for 1 year, a board resolution with definitive plans for utilization must be available for inspection by an NCUA examiner.

(2) A federal credit union shall endeavor to dispose of "abandoned premises" at a price sufficient to reimburse the federal credit union for its investment and costs of acquisition. Current documents must be maintained reflecting the federal credit union's continuing and diligent efforts to dispose of "abandoned premises." After "abandoned premises" have been on the federal credit union's books for 4 years, the property must be publicly advertised for sale. Disposition must occur through public or private sale within 5 years of abandonment, unless otherwise approved in writing by the Administration.

(e) Prohibited transactions. (1) With the exception of a short term informal lease agreement (maturity less than one year) no federal credit union may acquire or lease premises without the prior written approval of the Administration from any of the following:

(i) A director, member of the credit committee or supervisory committee, official, or senior management employee of the federal credit union, or immediate family member of any such individual.

(ii) A corporation in which any director, member of the credit union committee or supervisory committee, or senior management employee, or immediate family members of any such individual, is an officer or director, or has a stock interest of 10 percent or more.

(iii) A partnership in which any director, member of the credit union committee or supervisory committee, or senior management employee, or immediate family members of any such individual, is a general partner, or a limited partner with an interest of 10 percent or more.

(2) The prohibition contained in paragraph (e)(1) of this section also applies to any employee not otherwise covered if the employee is directly involved in investments in fixed assets unless the board of directors determines that the employee's involvement does not present a conflict of interest.

(3) All transactions with business associates or family members not specifically prohibited by this paragraph (e) of this section must be conducted at arm's length and in the interest of the credit union.

[FR Doc. 88-24829 Filed 10-24-88; 8:45 am]

BILLING CODE 7535-01-M

12 CFR Parts 701, 790, 792, and 795

Credit Unions

AGENCY: National Credit Union Administration ("NCUA")

ACTION: Proposed Amendments.

SUMMARY: Part 790 of NCUA's Rules and Regulations has, over the years, become a gathering place for regulations on NCUA internal procedures which do not fit neatly elsewhere. Moreover, the regulation has not kept pace with changes made in statutes underlying the subjects set forth—primarily the Freedom of Information Act and the Privacy Act—and in NCUA practice. The NCUA Board proposes to restructure the regulation to make it more easily comprehensible, and to update those portions which are no longer consistent with Federal law or NCUA practice.

DATE: Comments must be received by January 23, 1989.

ADDRESS: National Credit Union Administration, 1776 G Street N.W., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Hattie M. Ulan, Staff Attorney, Office of General Counsel, at the above address, or telephone (202) 357–1030.

SUPPLEMENTARY INFORMATION:

General

The NCUA Board, in accordance with its policy to review existing regulations every three years, has reviewed Part 790 of the NCUA Rules and Regulations ("Description of Office, Disclosure of Official Records, Availability of Information") and is proposing to restructure it into two separate Parts proposed Parts 790 and 792—and to make several amendments.

This restructuring will result in a more logical ordering of the regulations concerning NCUA operations and procedures. Proposed Part 790 contains information concerning NCUA organization and public requests for action by NCUA; current Part 791 contains the rules of NCUA Board procedure; and Proposed Part 792 contains provisions concerning requests for information under the Freedom of Information Act (proposed Subpart A), under the Privacy Act (proposed Subpart B), and by subpoena (proposed Subpart C), and concerning securities procedures to protect classified national security information. Current Part 792 ("Employee Responsibility and Conduct") is proposed to be redesignated as Part 795. The NCUA Board requests comment on the proposed restructuring of Part 790 and welcomes any further suggestions to clarify and simplify the regulation.

The title of Part 790 is changed in the proposed amendment. The current title of Part 790 is "Description of Office, Disclosure of Official Records, Availability of Information." It is proposed that the new title be "Description of NCUA; Requests for Agency Action" which matches the subjects covered. It is proposed that the title of Part 792 be "Requests for Information Under the Freedom of Information Act and the Privacy Act,

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and by Subpoena; Security Procedures for Classified Information." The Board is proposing to use the titles of the Acts rather than citations to them to make it simpler to determine what is contained in various parts of the Regulations.

Section-by-Section Analysis

PART 790—DESCRIPTION OF NCUA; REQUESTS FOR AGENCY ACTION

Section 790.1 Scope

This proposed section sets forth what is found in Part 790 of the regulations—the structural organization of the NCUA, and description of its offices and requests for Agency action.

Section 790.2 Central and Regional Organization and Applications

This section sets forth NCUA's organizational structure. The Freedom of Information Act ("FOIA") requires that a description of the agency's central and field organization be published in the Federal Register. *(See* section (a)(1)(A) of the FOIA, 5 U.S.C. 552(a)(1)(A).) This section was last amended in September, 1988. (*See* 51 FR 33588, September 22, 1986.)

Subsection 790.2(a)—General Organization—has not been materially changed.

Subsection 790.2(b)—Central Office—describes each of the offices within the Central Office. The parenthetical concerning the first two members of the NCUA Board in subsection 790.2(b)(1) is deleted as unnecessary. Subsections 790.2(b) (1)–(9) are substantially unchanged. Subsections 790.2(b) (10), (11), and (12) are new. They describe the Controller, Personnel, and Administrative Offices. The addition of these three subsections completes the description of NCUA's Central Office organization.

Subsection 790.2(c)—Regional Offices. Subsection 790.2(c)(1) sets forth a chart containing the addresses of each of the six NCUA Regional Offices and the states and territories within the jurisdiction of each of the Regional Offices. The Regional Office addresses have been updated in the proposed rule. Subsection 790.2(c)(2) describes the management of the Regional Offices. This description has been updated by the addition of a description of the associate regional director, a position added to the Regional Offices in 1987.

Subsections 790.2(d) (1)–(8) describe the NCUA Central Liquidity Facility ("CLF"). Subsection 790.2(d)(1) is entitled "General Organization." Three technical changes are made to this subsection. A citation of Pub. L. 95–630 is deleted as unnecessary. The citation in the United States Code for the Government Corporation Control Act is corrected. The term "central credit unions" is changed to "corporate credit unions" as that is the more appropriate term. Subsections 790.2(d)(2), (3), & (4) describe the Board of Directors, President, and Vice President for Credit of the CLF, respectively. These subsections are virtually unchanged. Subsection 790.2(d)(5) describes the CLF Vice President for Finance. The second sentence of the description states, in part, that this vice president directs CLF borrowings from the securities market. The CLF does not borrow from the securities market, hence, this reference has been deleted in the proposal. Subsection 790.2(d)(6) describing the CLF Treasurer is unchanged. Subsection 790.2(d)(7) describes the CLF Secretary (this position is filled by the Secretary of the NCUA Board). The last phrase of the second sentence stating the Secretary's duty of "maintaining all records of the Facility other than those of a financial nature" has been deleted since the Secretary does not carry out this function. Subsection 790.2(d)(8) ("Operational Assistance") has been deleted as redundant. This subsection repeats the portion of § 790.2(d)(1) that the Central and Regional Offices of the NCUA will provide services to the CLF on a cost reimbursable basis.

Section 790.3 Requests for Agency Action

Section 701.5 of the NCUA Regulations, entitled "Other Applications" describes how certain applications to the NCUA are made. In December of 1987, the NCUA Board proposed removing this section from the regulations. (*See* 52 FR 47014, Dec. 11, 1987.) The Board now believes that certain information in § 701.5 should remain in the Regulations. Section (a)(1)(A) of the FOIA (5 U.S.C. 552(a)(1)(A)) requires that agencies publish in the **Federal Register** the "methods whereby, the public may * * * make submittals or requests, or obtain decisions." The Board believes the information currently found in § 701.5 is more appropriate in Part 790 since Part 790 describes the offices to which requests for action should be sent. The Board has proposed to remove § 701.5 and to add a new § 790.3 containing some of the information currently found in § 701.5. The Board proposes to name this new section "Requests for Agency Action." Proposed § 790.3 also states that requests for which there is no form of application should be sent to the NCUA Office listed in this § 790.2 that could most appropriately respond. For most credit union requests, the most appropriate office will be the NCUA Regional Office where the credit union is located. When the appropriate Office cannot be determined, the request should be sent to NCUA's Office of Public and Congressional Affairs.

PART 792—PROCEDURES UNDER THE FREEDOM OF INFORMATION ACT, THE PRIVACY ACT, AND SUBPOENAS; SECURITY PROCEDURES FOR CLASSIFIED INFORMATION

Subpart A—The Freedom of Information Act

Section 792.1 Scope

This proposed section sets forth what is found in Subpart A of Part 792 of the regulations—production and disclosure under the Freedom of Information Act.

Section 792.2 Information Made Available to the Public and Requests for Such Information

This section of the proposal combines current §§ 790.3 and 790.8. Current § 790.3 entitled "Information Made Available to the Public" was last revised in February, 1975. (*See* 40 FR 8538, February 28, 1975.) Current Section 790.8 is entitled "Requests for Information and Determinations" and was last revised in December, 1981. (*See* 46 FR 62835, December 29, 1981.) "Determinations" has been deleted from the title since information on determinations is not found in this section, but rather in proposed § 792.6 entitled "Agency Determination." Combining these two sections will eliminate some confusion. Most of the information contained in proposed § 792.2 comes directly from the FOIA. Several modifications are made in the proposal to make this section consistent with current NCUA procedures.

Subsection 792.2(a) sets forth types of information that agencies must make available to the public for inspection and copying under the FOIA. Included are agency opinions and orders, statements of policy and interpretation that are not published in the **Federal Register**, and agency manuals affecting members of the public. *See* section (a)(2) of the FOIA (5 U.S.C. 552(a)(2)). Two technical changes are made to this subsection: A reference to the FOIA is substituted for the reference to the Administrative Procedure Act ("APA") (the FOIA is part of the APA); and the reference to § 790.6 of the NCUA Regulations is corrected to read § 792.2(f).

Subsection 792.2(b) explains that, pursuant to the FOIA, the NCUA may delete details from the information made available under § 792.2(a) if an unwarranted invasion of personal privacy would be prevented. *See* section (a)(2) of the FOIA (5 U.S.C. 552 (a)(2)). This section is unchanged in the proposal.

Subsection 792.2(c) sets forth the indices that the NCUA makes available to the public to identify publications, instructions, policy statements, the credit union directory, and information available under § 792.2(a). Such indices are required by the FOIA. *See* section (a)(2) of the FOIA (5 U.S.C. 552(a)(2)). Several technical changes are made to this subsection. The sentence referencing the NCUA Catalog is deleted since this catalog is no longer used. All NCUA publications, including manuals, booklets and the credit union directory, that are available to the public are now included on the NCUA Publications List. Documents listed on the Publications List are now only available from the NCUA; they are not available from the Government Printing Office. The appropriate changes have been made to the second sentence of this subsection. The fourth sentence of the current subsection states that: "Statements of policy are maintained in a "Directives Control Index." NCUA instructions, bulletins, certain internal manuals, and letters to credit unions are now included on the "Directives Control Index." The appropriate addition has been made to this sentence. The fifth sentence of the subsection ("A master list of Federal credit unions is maintained and available as provided in § 701.17.") has been deleted. All of the information contained in the master list is now available in NCUA's credit union directory. In addition, § 701.17 was deleted from the NCUA Regulations several years ago.

Subsection 792.2(d) sets forth when the materials referred to in subsection (a) may be relied upon. It repeats the requirements of the FOIA [*see* section (a)(2) (i) and (ii) of the FOIA (5 U.S.C. 552(a)(2) (i), (ii)], and is unchanged in this proposal.

Subsection 792.2(e) states that all other records that are not available under this section or published in the **Federal Register** shall be available for public disclosure for their cost unless exempted by the FOIA or other law. Such disclosure is required by section (a)(3) of the FOIA (5 U.S.C. 552(a)(3)). The FOIA exemptions are set forth in § 792.3 and the costs for records are set forth in § 792.5. Several technical changes are made to this subsection. The reference to the APA is changed to the FOIA and a reference to § 792.3 (the FOIA exemptions) is added. References to various sections of the regulation are corrected. Part of the second sentence of this subsection states that NCUA will make records available "to any person who agrees to pay the direct costs of searching and duplication as specified in * * *" The phrase "of searching and duplication" is deleted due to a change in the FOIA. According to the 1986 FOIA amendments and Office of Management and Budget guidelines, some requesters (commercial requesters) are charged for review of records as well as for search and duplication. Other requesters are given a certain amount of search time and duplication free of charge.

Additional requesters are not charged for search time and are given a certain amount of free duplication. The new fee schedule is fully explained in § 792.5.

Subsection 792.2(f) ("Information Centers") contains the information currently found in § 790.8(a). NCUA's Central Office and each of its Regional Offices serve as information centers.

Subsection 792.2(g) ("Methods of Request") contains much of the information currently found in § 790.8 (b) and (c). This section has been rewritten and divided into three paragraphs (§ 792.3(g) (1)–(3)) due to various changes in NCUA request procedures. Special reference to credit union master lists is no longer necessary since all of the information found in the master list now appears in the NCUA credit union directory. Description of the NCUA credit union directory is removed from this section and is now found in proposed § 792.2(c). The sentence referring to § 701.14 of the NCUA Rules and Regulations (current § 790.8(b)(3)) has been deleted since § 701.14 was deleted from the regulations several years ago.

Paragraph (g)(1) of § 792.2 states that requests for indices should be made to the NCUA's Office of Administration. The indices indicate how to obtain the documents listed therein. Paragraph (g)(2) of § 792.2 states that requests for all other records should be made to the appropriate Regional Office if one knows that the documents are located there. All other requests should be made to the FOIA Officer of the Office of Administration. Paragraph 792.3(g)(3) states that improperly addressed requests may defer the date from which time limitations described in § 792.6 will begin to run.

Section 792.3 Unpublished, Confidential and Privileged Information

This section was previously numbered 790.4. It lists and explains the exemptions from disclosure pursuant to the FOIA. It describes which records are not disclosed pursuant to such Act. The exemptions are found in Section (b) of the FOIA (5 U.S.C. 552(b)). This section was last revised in July of 1987 due to an amendment to Exemption 7 of the FOIA. *See* 52 FR 27985 (July 27, 1987). No significant changes are made to it in this proposed regulation.

Section 792.4 Release of Exempt Records

This section was previously numbered § 790.5. It was last revised in December, 1981. *See* 46 FR 62835 (December 29, 1981.) It addresses release of records exempt from disclosure under the FOIA. Disclosure is authorized in accordance with conditions set out under subsections 792.4(b) (1)–(3). Different conditions apply for release to credit unions, financial institutions, and state and Federal agencies (*see* § 792.4(b)(1)); to investigatory agencies (*see* § 792.4(b)(2)); and to other third parties (§ 792.4(b)(3)). This section remains virtually unchanged except for a deletion of a reference to §§ 790.3 and 790.4 in the first sentence of current § 790.5(a). These sections do not provide for exceptions to release of records.

Section 792.5 Fees for Document Search, Review, and Duplication; Waiver and Reduction of Fees

This section was previously numbered 790.7. It describes the charges for producing documents requested under the FOIA and any waivers to such charges. It was completely revised in July, 1987, due to the 1986 fee and fee waiver amendments to the FOIA and the 1987 fee guidelines issued by the Office of Management and Budget. *See* 5 U.S.C. 552(a)(4)(A); 52 FR 27985 (July 27, 1987). No significant changes are made to it in the proposal.

Section 792.6 Agency Determination

As noted above, the current § 790.8 ("Requests for Information and Determinations") has been combined with current § 790.3 in § 792.2 of this proposal. The numbering of current § 790.9 ("Agency Determination") is changed to § 792.6. This section was last revised in December, 1981. *See* 46 FR 62835 (December 29, 1981). The Section sets forth many of the requirements and conditions of the FOIA concerning NCUA's responding to FOIA requests and administrative and judicial appeals. *See* 5 U.S.C. 552(a) (4), (6)).

In current § 790.9(a)(1), the parenthetical reads "except legal public holidays." In current § 790.9(a)(2) the parenthetical reads "excepting Saturdays, Sundays, and legal public holidays." The language used in § 790.9(a)(2) comes directly from Section (a)(6)(A) of the FOIA (5 U.S.C.

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552(a)(6)(A)). The proposal makes the two parentheticals consistent with the language in the FOIA.

The NCUA official who formerly made the decision on administrative appeals of FOIA denials was the Director of the Office of Administration. Since the Director is also the FOI Officer who makes many of the original FOIA request determinations, the Director no longer makes the decision on administrative appeal. The General Counsel now makes those decisions. In § 792.6(a)(1) and 792.6 (c)(3), the references to the "Office of Administration" have been changed to the "Office of General Counsel." In § 792.6(c)(2), the reference to the Director of the Office of Administration" is changed to the "General Counsel."

Two additional technical changes are made to this section. First, in § 792.6(a)(2), the sentence explaining that requesters have 30 days to make an administrative appeal is moved up to become the second sentence of the subsection. This reordering of sentences makes the subsection clearer. Lastly, in § 792.6(c)(1), the two references to § 790.6 are deleted. These references are in error.

Section 797.7—Confidential Commercial Information

On June 23, 1987, the President issued Executive Order No. 12600, 52 FR 23781 (June 25, 1987). Under the Executive Order, all agencies subject to the FOIA must establish designation and notification procedures to be used for submitters of confidential commercial information and FOIA requests made for such information. The order requires that the procedures shall be established by regulation, after notice and public comment. NCUA has followed notification procedures for several years, but the procedures have never been formally incorporated into the Regulations. Proposed § 792.7 implements Executive Order 12600 and, for the most part, current NCUA policy. It does not impose any new requirements on credit unions. It sets forth procedures that NCUA must follow in its FOIA program. The section is based on a similar provision issued by the Department of Justice. The following analysis describes what is covered by each subsection of proposed § 792.7. All of the subsections are required by the Executive Order.

Subsection 792.7(a) Scope—This subsection states that all confidential commercial information provided to NCUA by a submitter when requested under the FOIA shall be disclosed in accordance with § 792.7, that is, in accordance with Executive Order 12600.

Subsection 792.7(b) Definitions—"Confidential commercial information" and "submitter" are defined. The definitions are taken from the Executive Order and are self-explanatory.

Subsection 797.7(c) Designation of confidential commercial information—This subsection states that submitters of information shall designate what they believe to be confidential commercial information as defined by § 792.7(b)(1).

Subsection 792.7(d) Notice to submitters—This subsection requires that NCUA give submitters notice of FOIA requests for its information when either the submitter has designated it as confidential commercial information or NCUA believes the information should be treated as such.

Subsection 792.7(e) Opportunity to object to disclosure—This section requires that NCUA give submitters a reasonable time, after the notice NCUA provides under § 792.7(d), to object to disclosure.

Section 792.7(f) Notice of intent to disclose—This section requires that NCUA give submitters notice that information they have objected to under § 792.7(e) will be disclosed. This notice gives the submitters the opportunity to file a reverse FOIA suit to prevent NCUA's disclosure.

Section 792.7(g) Notice of FOIA lawsuit—This section requires NCUA to give submitters notice when a lawsuit compelling disclosure of confidential commercial information they have submitted is filed.

Section 792.7(h) Exceptions to notice requirements—This section states that NCUA need not follow the notice requirements of § 792.7(d) under certain conditions. These are self-explanatory.

Subpart B—The Privacy Act

As noted above, Subpart B of Part 792 implements the Privacy Act of 1974 (5 U.S.C. 552a). NCUA's current Privacy Act regulation is found in Part 790, Subpart B. This regulation was issued by NCUA in final form in September, 1975 (*see* 40 FR 46276 (October 6, 1975)). The Privacy Act provides requirements for disclosure when an agency keeps systems of records containing personal information on individuals that can be accessed by a name or other identifying particular. There are also specific requirements set forth for agency publication of its systems of records in the Federal Register. NCUA published an updated Notice of Systems of Records in the **Federal Register** on September 20, 1988 (*see* 53 FR 37360). This proposed rule does not make major substantive changes to the regulation. The regulation is clarified and updated so that it is consistent with the current Privacy Act.

Section 792.20 Scope

This proposed section contains the information currently found in § 790.20(a). Section 790.20 is entitled "Purpose and scope." The title of the proposed section is changed to make it consistent with other sections of this Part. In addition to several grammatical changes made to this section, the reference to the Public Law number of the Privacy Act has been deleted as unnecessary and the word "personal" has been added before the word "information" in the second sentence. Current § 790.20(b), which addresses Privacy Act training, has been moved out of the scope section to another section (*see* proposed § 792.38), as it is inappropriate in the scope section.

Section 792.21 Definitions

The definitions section was previously found in § 790.21. The definitions are all taken from Section (a) of the Privacy Act (5 U.S.C. 552a(a)). The definition of "statistical record" found in section (a)(6) of the Privacy Act is not currently in our Regulations. The term is used in § 790.28(e) of the current regulations (§ 792.28(e) of this proposed rule). We have added the definition of "statistical record" as subsection 792.21(f) of our proposal. The definitions of "Administration" and "Board" currently found in § 790.21 (a) and (b) are deleted from this Section as unnecessary as they are defined elsewhere in the Regulations.

Section 792.22 Procedures for requests pertaining to individual records in a system of records

Section (d)(1) of the Privacy Act (5 U.S.C. 552a(d)(1)) requires, in part, that individuals be permitted to gain access to records or information therein pertaining to them within a system of records. Section 792.22 (currently 790.22) implements this provision of the Privacy Act. This section is virtually unchanged in the proposal.

Section 792.23 Times, Places, and Requirements for Identification of Individuals Making Requests and Identification of Records Requested

Section (f) of the Privacy Act (5 U.S.C. 552a(f)) requires that agencies promulgate rules defining times, places, and requirements for identifying individuals requesting information from a system and procedures for disclosure of such information. Subsections 792.23(a), (c) and (e) (currently § 790.23 (a), (c) and (e)) implement this provision.

These subsections are substantively unchanged in the proposal. Section (d)(1) of the Privacy Act (5 U.S.C. 552a(d)(1)) permits an individual to have a person accompany him to review records requested if the requesting individual furnishes a written statement authorizing the accompanying person. Section 792.23(d) implements such provision and has not been changed in the proposal. Section (h) of the Privacy Act addresses rights of legal guardians. Section 792.23(b) implements this section and is substantively unchanged in the proposal.

Section 792.24 Notice of Existence of Records, Access Decisions and Disclosure of Requested Information; Time Limits

This section is currently found at 790.24. As noted above, Section (f) of the Privacy Act (5 U.S.C. 552a(f)) requires the agencies promulgate rules establishing procedures for disclosure of records. Subsections 792.24(a) and (b) implement this provision of the Privacy Act. The second sentence of current § 790.24(a) is deleted as unnecessary. The last sentence, which deals with appeals, has been moved to proposed § 792.27(f) as it seems to fit more appropriately there. Section 792.24(c) states that individuals will not be allowed access to information compiled in anticipation of a civil action or proceeding pursuant to § (d)(5) of the Privacy Act or exempt from disclosure pursuant to Sections (j) or (k) of the Privacy Act (5 U.S.C. 552a(d)(5)(j), (k)). This subsection is substantively unchanged in the proposal.

Section 792.25 Special Procedures: Information Furnished by Other Agencies; Medical Records

This Section is currently found at § 90.25. Section 792.25(a) sets forth procedures for occasions when an individual requests records that were furnished to the NCUA by other Federal agencies. This issue is not specifically addressed in the Privacy Act; however, the provision implements the general disclosure procedure section addressed in section (f)(3) of the Privacy Act (5 U.S.C. 552a(f)(3)). The same section of the Privacy Act states that special procedures can be required for the disclosure of medical records. This provision is implemented by Section 792.25(b). This Section is substantively unchanged in the proposal.

Section 792.26 Requests for Correction or Amendment to Record, Administrative Review of Requests

Section (d)(2) of the Privacy Act (5 U.S.C. 552a(d)(2)) requires that agencies permit individuals to request amendment of records pertaining to them within certain time limitations. Section (f)(4) of the Privacy Act (5 U.S.C. 552a(f)(4)) requires agencies to promulgate rules establishing procedures for agencies to review requests to amend records. Section 792.26 (current § 790.26) implements these provisions. The second sentence of § 792.26(a) is deleted in the proposal as unnecessary. No other significant changes are made in this Section of the proposal.

Section 792.27 Appeal of Initial Adverse Determination

Section (f)(4) of the Privacy Act (5 U.S.C. 552(f)(4)) requires that an agency promulgate rules for appeal of an adverse agency determination on a request by an individual to amend that individual's record. Section (d)(3) of the Privacy Act (5 U.S.C. 552(d)(3)) requires that the agency permit an individual to file a concise statement setting forth the reasons for disagreement with the agency's adverse determination. Proposed § 792.27 (current § 790.27) implements these provisions of the Privacy Act. References to the Director of the Office of Administration and the Chairman have been changed to the General Counsel in this section as appeals of determinations will be made to the General Counsel, as is done in the case of appeals of FOIA determinations. Subsection (e) has been made a part of subsection (b). A new § 792.27(e) is added. This section addresses appeal of denial of access due to an exemption from the Privacy Act. This language currently appears in § 790.24(a) of the regulation. It fits more appropriately into this appeal section. Although there is no statutory right to an appeal within the Agency for denial of access due to an exemption, the appeal right has always been a part of NCUA's Privacy Act regulation.

Section 792.28 Disclosure of Records to Person Other Than the Individual to Whom It Pertains

This section sets forth when disclosures can be made without the prior consent of the individual to whom the information pertains. This section lists the information given in Section (b) of the Privacy Act (5 U.S.C. 552a(b)). Proposed § 792.28 (current § 790.28) has been updated to make it consistent with the current Privacy Act by making changes to § 792.28(f) concerning disclosure of records to the National Archives and by the addition of § 792.28(1) concerning disclosure of records to consumer reporting agencies.

Section 792.29 Accounting for Disclosure

Section (c) of the Privacy Act (5 U.S.C. 552a(c)) requires that agencies keep accountings of certain disclosures made. Proposed § 792.29 (current § 790.29) implements this requirement. The only change made is in proposed § 792.29(b) where "National Archives and Records Service" has been amended to read "National Archives and Records Administration." The Archives, which was previously part of the General Services Administration, is now a separate Agency.

Section 792.30 Requests for Accounting for Disclosures

Section (c) of the Privacy Act (5 U.S.C. 552a(c)) requires that agencies make accountings available to individuals named in the records disclosed at their request. Section 792.30 (current § 790.30) implements this provision. No changes are made to this section of the proposed regulation.

Proposed Deletion—Emergency Disclosures

Current Section 790.31 sets forth procedures for notification of individuals when records are disclosed under compelling circumstances affecting health or safety. Such disclosure is permitted pursuant to section (b)(8) of the Privacy Act (5 U.S.C. 552a(b)(8)) and is already addressed in proposed § 792.28(h) of this regulation. Section 792.28((h) requires, pursuant to the Privacy Act, that notification be transmitted to the last known address of the individual. The specific notification procedures set forth in § 790.31 are not required by the Privacy Act. Hence, this section is proposed to be deleted as repetitive.

Section 792.31 Collection of Information From Individuals; Information Forms

This section appears in the current regulation as § 790.32. Section (e) of the Privacy Act (5 U.S.C. 552a(e)) sets forth various requirements for agencies that maintain systems of records, including requirements that information collected be relevant to an agency function; that only certain records that describe an individual's exercise of rights guaranteed by the First Amendment can be maintained; and that certain disclosures be made to individuals supplying information. It requires further that agencies provide individuals supplying information with certain information on a separate form. These requirements are implemented by § 792.31(a), 792.31(b) (1)–(4), and

792.31(c). The last two sentences of § 790.32(c) are deleted in this proposal as no longer necessary. They deal with the timing of form revision and refer to distribution prior to September, 1975. A note to the Privacy Act (section 7 of Pub. L. 93–579) addresses an individual's disclosure of his social security number. Section 792.31(b)(5) implements this provision.

Section 792.32 Contracting for Operation of a System of Records

Section (m) of the Privacy Act (5 U.S.C. 552a(m)) allows an agency to contract out the operation of a system of records. It states that when the operation of a system is contracted out, the provisions of the Privacy Act continue to apply. Proposed § 792.32 (current § 790.33) implements this provision. The language in the proposed section is simplified.

Section 792.33 Fees

Section (f)(5) of the Privacy Act (5 U.S.C. 552a(f)(5)) allows an agency to establish fees to be charged to individuals for making copies of records, excluding cost of any search and review. Proposed § 792.33 (current § 790.34) implements this provision. The fee for copying one page is raised in the proposed section from $.10 to $.25 to reflect actual costs. The last phrase of § 790.34(a)(2) is deleted in the proposal. It states that individuals will be notified of all costs of copies in nondocument form (generally records from a computer source) before they are incurred. Section 790.34(b) requires that individuals be notified prior to fee charges of more than $25. Such notification seems sufficient for both document and nondocument copies.

Section 792.34—Exemptions

Sections (j) and (k) of the Privacy Act (5 U.S.C. 552a(j), (k)) authorize agencies to exempt certain systems of records from various provisions of the Privacy Act. Proposed § 792.34 (current § 790.35) implements this provision. Several changes are made in this proposed section to make it current with NCUA's recently-published Notice of Systems of Records. No substantive changes have been made in proposed § 792.34(a). Several grammatical changes are made to make this subsection easier to read. Subsection 792.34(b) lists the systems of records that are exempt. These systems are listed in § 790.35(b) and (c) of the current regulation. The current regulation lists the first exempt system as System NCUA–2. This system ("Employee Security Investigations Containing Adverse Information") is now System NCUA–1 and appears in proposed Section 792.34(b)(1). The second exempt system in the current regulation is System NCUA–17 ("Security Clearance Records Concerning NCUA Personnel Who Occupy Critical Sensitive Positions"). This system has not been maintained by the NCUA for the past several years. The information concerning it has been deleted in the proposed regulation. The third exempt system in the current regulation (§ 790.35(c)) is System NCUA–4 ("Investigative Reports Involving Possible Felonies and/or Violations of the Federal Credit Union Act"). This system is now System NCUA–15 and appears in § 792.34(b)(2). This system now includes information on violations of criminal statutes as well as the Federal Credit Union Act. The appropriate changes have been made in the proposed section. Proposed Section 792.34(c) (current § 790.35(d)) defines "confidential source." This definition is found in section (k)(2) of the Privacy Act (5 U.S.C. 552a(k)(2)). It is unchanged in the proposal.

Section 792.35 Security of Systems of Records

Section (e)(10) of the Privacy Act (5 U.S.C. 552a(e)(10)) requires that agencies establish safeguards to insure the security and confidentiality of systems of records. Proposed § 792.35 (current § 790.36) implements this section of the Privacy Act. The only change made in the proposal is that the last sentence of § 790.36(a), requiring that automated systems comply with security standards promulgated by the National Bureau of Standards, has been deleted as unnecessary. Such standards are not required by the Privacy Act.

Section 792.36 Use and Collection of Social Security Numbers

As noted above under proposed § 792.31, the provisions concerning disclosure of social security numbers are found in a note to the Privacy Act (*see* section 7 of Pub. L. 93–579). This proposed section (and current § 790.37) ensure that NCUA employees are aware of the provisions in the note to the Privacy Act affecting disclosure of social security numbers. The only change made in this section of the proposal is a deletion of the examples of NCUA Office Directors.

Section 792.37 Training and Employee Standards of Conduct With Regard to Privacy

Section (e) of the Privacy Act (5 U.S.C. 552a(e)) sets forth agency requirements for systems of records, including training of agency employees, maintenance, and disclosure of records. Section (c) requires that agencies keep accountings of disclosures. Sections (g) and (i) of the Privacy Act set forth the civil and criminal remedies for Privacy Act violations, respectively. Section (q) of the Privacy Act addresses the interplay between the Privacy Act and the Freedom of Information Act ("FOIA"). This proposed section implements various provisions of sections (e), (c) and (q), and informs agency employees of sections (g) and (i). The word "training" has been added to the title of this proposed Section. As noted above under proposed § 792.20, the information in current § 790.20(a) is moved to this section and is renumbered as § 792.37(a). It states that the Director of the Administrative Office will be responsible for training employees in the obligations imposed by the Privacy Act. No substantive changes are made to this subsection. Proposed § 792.37(b) (current § 790.38(a)) implements portions of section (e) and informs employees of sections (g) and (i) of the Privacy Act. Proposed § 792.37(c) (1)–(10) (current § 790.38(c) (1)–(10)) implement various provisions of sections (e), (c) and (q) of the Privacy Act. The only substantive change to these subsections is to § 792.37(c)(8). The FOIA (5 U.S.C. 552) has been added to this subsection as an Act under which disclosures can be made. This is due to a 1982 amendment to the Privacy Act that added the following provision as section (q)(2) to the Privacy Act: "No agency shall rely on any exemption in this section to withhold from an individual any record which is otherwise accessible to such individual under the provisions of section 552 of this title."

Subpart C—Subpoenas

This Subpart is currently § 790.6. It is moved in this proposal to the end of the FOIA and Privacy regulatory provisions so that it will be easier to locate.

This section was last revised in December, 1981. (*See* 46 FR 62835 (December 29, 1981). It sets forth policy on when NCUA is subject to requests for exempt material by legal process, particularly when and under what circumstances exempt information that is the subject of a subpoena will be released. Current § 790.6(a), (b) and (c) now appear as § 792.40, 792.41 and 792.42. Service of subpoena or other legal process requesting agency records shall be made upon the Office of General Counsel. The Office of General Counsel will provide advice to all agency personnel or third parties when agency records are sought from them. If the Office of General Counsel advises

not to produce the requested information, the party required to respond should decline to produce based on the advice of the Office of General Counsel. The section is necessary to protect NCUA's interest in the exempt material. It is substantively unchanged in the proposal.

Subpart D—Security Procedures for Classified Information

This section, § 790.11 in the current regulations, becomes Subpart D of Part 792 in the proposal.

Section 790.11 was issued in November, 1979, after the promulgation of Executive Order 12065. *See* 44 FR 65732 (November 15, 1979). The Executive Order set forth certain requirements and procedures to be followed when agencies classify and otherwise handle national security information. The section deals with internal agency procedures. A new Executive Order (Executive Order 12346, 47 FR 15557, April 2, 1982) was issued in 1982 replacing Executive Order 12065. Section 5.3 of Executive Order 12346 requires that:

[a]gencies that originate or handle classified information shall: * * * (b) promulgate implementing regulations. * * *

NCUA has in the past handled classified information, but has not done so recently. The Board invites comment on whether this regulation is any longer needed.

The proposed rule is similar to the current § 790.11. The numbering of proposed Subpart D is § 792.50 and 792.51. All references to Executive Order 12065 have been changed to Executive Order 12346. Current § 790.11(b)(2) states that the Director of the Office of Administration will handle all national security information. If the Director or Director's designee is unavailable, the documents will be handled by the FOIA Officer. If the FOIA Officer is unavailable, the documents will be handled by the Director of Personnel. Since the Director of the Administrative Office is the FOIA Officer, reference to the FOIA Officer is deleted in the proposal. If the Director of the Administrative Office or the designee is unavailable, the documents will be turned over to the Director of Personnel.

Section 790.11(b)(3), dealing with document reproduction, has been deleted in the proposal since this subject is not addressed in the new Executive Order. The reference to the Information Security Oversight Office Directive No. 1, Section IV F 5a in current § 790.11(b)(4) has been deleted since the directive is subject to change. Current § Section 790.11(b)(5) addresses employee education. The last sentence refers to future employees and is eliminated because it is redundant.

Regulatory Procedures

Since these proposed amendments impose requirements on the NCUA rather than on credit unions, submitters or requesters of information, the Regulatory Flexibility Act, the Paperwork Reduction Act and Executive Order 12612 ("Federalism") are inapplicable.

List of Subjects

12 CFR Part 790

Credit Unions, description, organization

12 CFR Part 792

Credit unions, Applications, Freedom of information, Fees, waivers, Subpoenas, Privacy, National security procedures.

By the National Credit Union Administration Board on October 13, 1988.

Becky Baker,

Secretary, NCUA Board.

Accordingly, NCUA proposes to revise its regulations as follows:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

§ 701.5 [Removed]

1. That § 701.5 be removed.

2. That Part 790 be revised to read as follows:

PART 790—DESCRIPTION OF NCUA; REQUESTS FOR AGENCY ACTION

Sec

790.1 Scope.

790.2—Central and Regional Office Organization.

790.3—Requests for Agency Action.

Authority: 12 U.S.C. 1766, 12 U.S.C. 1789, 12 U.S.C. 1795f, 5 U.S.C. 552.

§ 790.1 Scope.

This part contains a description of NCUA's organization and the procedures for public requests for action by the Agency. Part 790 pertains to the practices of the National Credit Union Administration only and does not apply to credit union operations.

§ 790.2 Central and Regional Office Organization.

(a) *General organization.* NCUA is composed of the NCUA Board with a Central Office in Washington, DC, six Regional Offices, and the NCUA Central Liquidity Facility.

(b) *Central Office.* The Central Office address is NCUA, 1776 G Street NW., Washington, DC 20456.

(1) The NCUA Board. NCUA is managed by its Board. The Board consists of three members appointed by the President, with the advice and consent of the Senate, for six-year terms. One Board member is designated by the President to be Chairman of the Board. A second member is designated by the Board to be Vice-Chairman. The Board also serves as the Board of Directors of the Central Liquidity Facility.

(2) Secretary of the Board. The Secretary of the Board is responsible for the secretarial functions of the National Credit Union Administration Board. The Secretary's responsibilities include preparing of agendas for meetings of the Board, preparing and maintaining the minutes for all official actions taken by the Board, and executing all documents adopted by the Board or under its direction. The Secretary also serves as the Secretary of the Central Liquidity Facility.

(3) Office of the Executive Director. The Executive Director translates NCUA Board policy decisions into workable programs, delegates responsibility for these programs to appropriate staff members, and coordinates the activities of the senior executive staff, which includes: the General Counsel; Internal Auditor; Chief Economist; the Regional Directors; and the Office Directors for Public and Congressional Affairs, for Examination and Insurance, and for Information Systems. Because of the nature of the attorney/client relationship between the Board and General Counsel, and because the Internal Auditor serves as the "eyes and ears" of the Board, these executives may be directed by the Board not to disclose discussions and/or assignments with anyone, including the Executive Director. The Executive Director is otherwise to be privy to all matters within senior executive staff's responsibility. The Executive Director is also responsible for managing the Personnel Office, the Controller's Office, and the Administrative Office.

(4) Office of Examination and Insurance. The Director of the Office of Examination and Insurance: formulates standards and procedures for examination and supervision of the community of federally-insured credit unions, and reports to the Board on the performance of the examination program; administers the National Credit Union Share Insurance Fund, and reports on its condition and performance, including the premiums

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invested, income earned, and assistance provided; serves as the Agency's expert on accounting principles and standards, on auditing standards, and on investments for credit unions, and represents NCUA at meetings with the AICPA, FFIEC and GAO; and collects data and provides statistical and economical reports and research papers on market trends affecting credit unions.

(5) Office of General Counsel. The General Counsel has overall responsibility for all legal matters affecting NCUA and for liaison with the Department of Justice. The General Counsel represents NCUA in all litigation and administrative hearings when such direct representation is permitted by law and, in other instances, assists the attorneys responsible for the conduct of such litigation. The General Counsel also provides NCUA with legal advice and opinions on all matters of law, and the public with interpretations of the Federal Credit Union Act, the NCUA Rules and Regulations, and other NCUA Board directives. The General Counsel has responsibility for the drafting, reviewing, and publication of all items which appear in the Federal Register, including rules, regulations, and notices required by law.

(6) Office of the Internal Auditor. The Internal Auditor is responsible for scheduling and conducting independent and objective audits of all NCUA programs and functions to uncover waste, fraud or abuse, and noncompliance with statutory and other requirements which the Board is responsible for carrying out or has established. The Internal Auditor also monitors corrective actions taken for deficiencies detailed in audit reports and conducts special investigations as directed by NCUA Board members or the Executive Director.

(7) Office of the Chief Economist. The Chief Economist is responsible for developing and conducting research projects in support of NCUA programs, and for preparing periodic reports on research activities for the information and use of agency staff, credit union officials, state credit union supervisory authorities, and other governmental and private groups.

(8) Office of Public and Congressional Affairs. The Director of the Office of Public and Congressional Affairs is responsible for maintaining NCUA's relationship with the public and the media; for liaison with the U.S. Congress, and with other Executive Branch agencies concerning legislative matters; and for the analysis and development of legislative proposals and public affairs programs.

(9) Office of Information Systems. The Director of the Office of Information Systems has responsibility for managing and operating NCUA's electronic data processing operations and for meeting the Agency's needs for automated systems and computing. The Director appraises and reviews analytical and statistical reporting systems for which the Office is responsible, and reports to the Board whether such systems meet Agency needs.

(10) Controller's Office. The Controller, as NCUA's chief financial officer, is in charge of budgetary, accounting and financial matters for the Agency. The Controller is responsible for submitting annual budget and staffing requests for approval by the NCUA Board, and, as required, by the Office of Management and Budget; for collecting from federally-insured credit unions the capitalization deposits required as a condition of deposit insurance, and, as determined by the Board, for collecting from Federal credit unions annual operating fees; for processing payroll, travel, and commercial account disbursements; and for preparing internal financial reports.

(11) Personnel Office. The Personnel Office is responsible for comprehensive personnel management, including developing programs for recruitment and placement, position classifications and management, employee-management relations, employee incentives and awards, and employee development and training.

(12) Office of Administration. The Director of the Office of Administration is responsible for managing the Agency's resources and providing NCUA's executive offices and Regional Directors with administrative services generally, including: agency security; information resources management; contracting and procurement; contract management; management of equipment and supplies; acquisition, layout and management of office space; records management; printing and graphics; and warehousing and distribution. The Director is also responsible, in conjunction with the Office of General Counsel, in carrying out the Agency's responsibilities under the Freedom of Information Act, the Privacy Act, and the Paperwork Reduction Act, and in directing Agency responses to reporting requirements.

(c) *Regional Offices.* (1) NCUA's programs are conducted through six regional offices:

Region No.	Area Within Region	Office Address
I	Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Puerto Rico, Rhode Island, Vermont, Virgin Islands.	9 Washington Square, Washington Avenue Extension, Albany, NY 12205.
II	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia	1776 G Street, NW., Suite 600, Washington, DC 20006.
III	Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee.	7000 Central Parkway, Suite 1600, Atlanta, GA 30328.
IV	Illinois, Indiana, Michigan, Missouri, Ohio, Wisconsin	300 Park Blvd., Suite 155, Itasca, IL 60143.
V	Arizona, Colorado, Iowa, Kansas, Minnesota, Nebraska, New Mexico, North Dakota, South Dakota, Oklahoma, Texas, Utah, Wyoming.	4807 Spicewood Spring Road, Stillhouse Canyon Building 5, Austin, TX 78759
VI	Alaska, American Samoa, California, Guam, Hawaii, Idaho, Montana, Nevada, Oregon, Washington	2300 Clayton Road, Suite 1350 Concord, CA 94520.

(2) A Regional Director is in charge of each Regional Office. The Regional Director manages NCUA's programs in the Region assigned in accordance with established policies. This person's duties include: directing chartering, insurance, examination, and supervision programs to promote and assure safety and soundness; managing regional resources to meet program objectives in the most economical and practical manner; and maintaining good public relations with public, private, and governmental organizations, Federal credit union officials, credit union organizations, and other groups which have an interest in credit union matters in the assigned Region. The Director maintains liaison and cooperation with other regional offices of Federal departments and agencies, state agencies, city and county officials, and other governmental units that affect credit unions. The Regional Director is aided by a Deputy Regional Director and an Associate Regional Director. Staff working in the Regional Office, with the exception of the Special Actions staff, report to the Deputy Regional Director. Each Region is divided into examiner districts, each assigned to a Supervisory Examiner; groups of examiners are directed by a Supervisory Examiner, each of whom in turn reports directly to the Associate Regional Director. Special Actions staff also report to the Associate Regional Director.

(d) NCUA Central Liquidity Facility ("CLF"). (1) General Organization. The CLF was created to improve general financial stability by providing funds to meet the liquidity needs of credit unions. It is a mixed ownership Government corporation under the Government Corporation Control Act (31 U.S.C. 9101, et seq.). The CLF's corporate headquarters is located at 1776 G Street, NW., Washington, DC 20456. NCUA's Central and Regional Offices provide services and information to the CLF on a cost reimbursable basis; depending upon need, employees of CLF may be assigned to the Regional Offices. The CLF is also assisted in its operations by corporate credit unions designated as "Agent Members," which provide CLF services to other credit unions lacking direct access to the CLF.

(2) Board of Directors. The CLF is managed by the NCUA Board, which acts as the CLF Board of Directors. The Chairman of the NCUA Board is the Chairman of the CLF Board of Directors. The CLF Board is assisted in managing the CLF by these officers, who are appointed by and are responsible to the CLF Board: President, Vice President for Credit, Vice President for Finance, Secretary, and Treasurer.

(3) President. The President is the chief executive officer of the CLF and works under the general supervision of the CLF Board. The President provides overall executive direction and guidance and is responsible for the ongoing management of the CLF. The President manages the CLF staff and their activities in the Central Office and the Regions; provides general supervision to the other officers of the CLF; and initiates and maintains working relationships with the credit union community, other Federal and state government authorities, and the banking and investment communities.

(4) Vice President for Credit. The Vice President for Credit is responsible for planning, implementing, and directing programs related to the CLF's lending policies, procedures and regulations. The Vice President for Credit has responsibility for directing CLF lending to regular members, agent members and agent group representatives, and for monitoring lending activities throughout the CLF to assure conformity with policies, procedures and regulations. The Vice President for Credit must also develop and maintain a working relationship with state supervisors, state insurance authorities, and Federal financial agencies.

(5) Vice President for Finance. The Vice President for Finance is responsible for planning, implementing, and directing borrowing and investment programs to finance CLF operations. The Vice President for Finance has responsibility for directing CLF borrowing from the Federal Financing Bank and other sources; for the CLF's investment of funds in the U.S. Government and agency securities; and for developing and maintaining working relationships with the investment and banking communities and Federal financial agencies.

(6) Treasurer. The Treasurer develops and manages the CLF's operational systems to monitor and report the use of the CLF's funds. The Treasurer establishes accounting policies and procedures for the CLF, and maintains working relationships with Agent members, state supervisors, state insurance corporations, and Federal financial agencies.

(7) Secretary. The Secretary of the NCUA Board serves as the Secretary of the CLF. The Secretary has responsibility for preparing the Board's agenda, giving all required notices, and keeping the minutes of the Board.

§ 790.3 Requests for Agency Action

Except as otherwise provided by NCUA regulation, all applications, requests, and submittals for Agency action shall be in writing and addressed to the appropriate Office described in § 790.2. This will usually be one of the Regional Offices. In instances where the appropriate Office cannot be determined, requests should be sent to the Office of Public and Congressional Affairs.

3. That Part 792 of the NCUA Regulations, entitled "NCUA Employee Responsibility and Conduct," be redesignated as Part 798 of the NCUA Regulations.

4. That Part 792—of the NCUA Regulations be added to read as follows:

PART 792—REQUESTS FOR INFORMATION UNDER THE FREEDOM OF INFORMATION ACT AND PRIVACY ACT, AND BY SUBPOENA; SECURITY PROCEDURES FOR CLASSIFIED INFORMATION

Subpart A—The Freedom of Information Act

Sec.
792.1 Scope.
792.2 Information made available to the public and request for such information.
792.3 Unpublished, confidential and privileged information.
792.4 Release of exempt records.
792.5 Fees for document search, review, and duplication; waiver and reduction of fees.
792.6 Agency determination.
792.7 Confidential commercial information.

Subpart B—The Privacy Act

792.20 Scope.
792.21 Definitions.
792.22 Procedures for requests pertaining to individual records in a system of records.
792.23 Times, places, and requirements for identification of individuals making requests and identification of records requested.
792.24 Notice of existence of records, access decisions and disclosure of requested information; time limits.
792.25 Special procedures: Information furnished by other agencies; medical records.
792.26 Requests for correction or amendment to record, administrative review of requests.
792.27 Appeal of initial determination.
792.28 Disclosure of record to person other than the individual to whom it pertains.
792.29 Accounting for disclosures.
792.30 Requests for accounting for disclosures.
792.31 Collection of information from individuals; information forms.
792.32 Contracting for the operation of a system of records.
792.33 Fees.
792.34 Exemptions.
792.35 Security of systems of records.
792.36 Use and collection of Social Security numbers.
792.37 Training and standards of conduct with regard to privacy.

Subpart C—Subpoenas

792.40 Service.
792.41 Advice to person served.
792.42 Appearance by person served.

Subpart D—Security Procedures for Classified Information

792.50 Program.
792.51 Procedures.

Authority: 12 U.S.C. 1766, 12 U.S.C. 1789, 12 U.S.C. 1795f, 5 U.S.C. 552, 5 U.S.C. 552a, Executive Orders 12600 and 12356.

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Subpart A—The Freedom of Information Act

792.1 Scope.

This Subpart sets forth the procedures for processing requests for information under the Freedom of Information Act ("FOIA") (5 U.S.C. 552).

§ 792.2 Information made available to the public and requests for such information.

(a) Except to the extent that the matters set forth herein relate to or contain information which is exempted from public disclosure under the FOIA as amended (5 U.S.C. 552) or are promptly published and copies are for sale, NCUA shall make available for public inspection and copying, upon request made in accordance with the provisions of § 792.2(g): (1) The final opinions, including concurring and dissenting opinions, and orders, made in the adjudication of cases; (2) those statements of policy and interpretations which have been adopted by NCUA and are not published in the **Federal Register**; and (3) administrative staff manuals and instructions to staff affecting a member of the public.

(b) To the extent required to prevent a clearly unwarranted invasion of personal privacy, NCUA may delete identifying details when an opinion, statement of policy, interpretation, or staff manual or instruction is made available or published. In each case, the justification for the deletion shall be fully explained in writing.

(c) NCUA also maintains current indices providing identifying information for the public for any matter referred to in paragraph (a) of this section issued, adopted, or promulgated after July 4, 1967. Manuals relating to general and technical information and booklets published by NCUA are listed on the "NCUA Publications List," which indicates those items available from the Agency. The Directory of Credit Unions, published by NCUA, is also available. A list of statements of policy, NCUA Instructions, Bulletins, Letters to Credit Unions and certain internal manuals are maintained on a "Directives Control Index." NCUA has determined that publication of the indices is unnecessary and impractical, but copies of indices will be provided on request at their duplication cost and are available for public inspection and copying. The listing of any material in any index is for the convenience of possible users of the materials and does not constitute a determination that all of the items listed will be disclosed or are subject to disclosure.

(d) The materials referred to in paragraph (a) of this section may be relied on, used, or cited as precedent by NCUA against a party, provided: (1) The materials have been indexed and either made available or published; or (2) the party has actual and timely notice of the materials' contents.

(e) Except with respect to records made available under this section or published in the **Federal Register**, or to the extent that records relate to or contain information which is exempt from public disclosure under the FOIA, NCUA, upon a request which reasonably describes records and is made in accordance with § 792.2(g), will make such records available to any person who agrees to pay the direct costs specified in § 792.5. A "reasonable description" is one which is sufficient to enable a professional employee of NCUA, who is familiar with the subject area of the request, to locate the record with a reasonable amount of effort.

(f) Information Centers. The Central Office and the Regional Offices are designated as Information Centers for the NCUA. The Freedom of Information Officer of the Administrative Office is responsible for the operation of the Information Center maintained at the Central Office. The Regional Directors are responsible for the operation of the Information Centers in their Regional Offices.

(g) *Methods of request.* (1) Indices. Requests for indices should be made to NCUA, Administrative Office, 1776 G Street, NW., Washington, DC 20456. The indices indicate how to obtain the documents listed therein.

(2) All other records. Requests for all other records made under § 792.3(e) should be addressed to the appropriate Regional Director. When the location of requested records is not known, or it is known that such records are located in the Central Office, the request should be addressed to the Freedom of Information Officer of the Administrative Office at the address noted in § 792.2(g)(1).

(3) Improper address. Failure to properly address a request may defer the effective date of receipt by NCUA for commencement of the time limitation stated in § 792.6(a)(1), to take account of the time reasonably required to forward the request to the appropriate office or employee.

§ 792.3 Unpublished, confidential and privileged information.

(a) All records of NCUA or any officer, employee, or agent thereof, are confidential, privileged and not subject to disclosure, except as otherwise provided in this Part, if such records are:

(1) Records specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to an Executive Order.

(2) Records related solely to NCUA internal personnel rules and practices. This exemption applies to internal rules or instructions which must be kept confidential in order to assure effective performance of the functions and activities for which NCUA is responsible and which do not materially affect members of the public. This exemption also applies to manuals and instructions to the extent that release of the information contained therein would permit circumvention of laws or regulations.

(3) Specifically exempted from disclosure by statute, where the statute either makes nondisclosure mandatory or establishes particular criteria for withholding information.

(4) Records which contain trade secrets and commercial or financial information which relate to the business, personal or financial affairs of any person or organization, are furnished to NCUA, and are confidential or privileged. This exemption includes, but is not limited to, various types of confidential sales and cost statistics, trade secrets, and names of key customers and personnel. Assurances of confidentiality given by staff are not binding on NCUA.

(5) Inter-agency or intra-agency memoranda or letters which would not be available by law to a private party in litigation with NCUA. This exemption preserves the existing freedom of NCUA officials and employees to engage in full and frank written or taped communications with each other and with officials and employees of other agencies. It includes, but is not limited to, inter-agency and intra-agency reports, memoranda, letters, correspondence, work papers, and minutes of meetings, as well as staff papers prepared for use within NCUA or in concert with other governmental agencies.

(6) Personnel, medical, and similar files (including financial files), the disclosure of which without written permission would constitute a clearly unwarranted invasion of personal privacy. Files exempt from disclosure include, but are not limited to: (A) The personnel records of the NCUA; (B) the personnel records voluntarily submitted by private parties in response to NCUA's requests for proposals; and (C) files containing reports, records or other material pertaining to individual cases in which disciplinary or other administrative action has been or may be taken.

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information: (A) Could reasonably be expected to interfere with enforcement proceedings; (B) would deprive a person of a right to a fair trial or an impartial adjudication; (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy; (D) could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation on or by an agency conducting a lawful national security intelligence investigation, information furnished by the confidential source; (E) would disclose techniques and procedures for law enforcement investigation or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or (F) could reasonably be expected to endanger the life or physical safety of any individual. This includes, but is not limited to, information relating to enforcement proceedings upon which NCUA has acted or will act in the future.

(8) Contained in or related to examination, operating or condition reports prepared by, or on behalf of, or for the use of NCUA or any agency responsible for the regulation or supervision of financial institutions. This includes all information, whether in formal or informal report form, the disclosure of which would harm the financial security of credit unions or would interfere with the relationship between NCUA and credit unions.

§ 792.4 Release of exempt records.

(a) Prohibition against disclosure. Except as provided in § 792.4(b), no officer, employee, or agent of NCUA or of any federally-insured credit union shall disclose or permit the disclosure of any exempt records of the Agency to any person other than those NCUA or credit union officers, employees, or agents properly entitled to such information for the performance of their official duties.

(b) Disclosure authorized. Exempt NCUA records may be disclosed only in accordance with the following conditions and requirements:

(1) Exempt records—Disclosure to credit unions, financial institutions and state and Federal agencies. The NCUA Board or any person designated by it in writing, in its sole discretion, may make available to certain governmental agencies and insured financial institutions copies of reports of examination and other documents, papers or information for their use, when necessary, in the performance of their official duties or functions. All reports, documents and papers made available pursuant to this paragraph shall remain the property of NCUA. No person, agency or employee shall disclose the reports or exempt records without NCUA's express written authorization.

(2) Exempt records—Disclosure to investigatory agencies. The NCUA Board, or any person designated by it in writing, in its discretion and in appropriate circumstances, may disclose to proper Federal or state authorities copies of exempt records pertaining to irregularities discovered in credit unions which may constitute either unsafe or unsound practices or violations of Federal or state civil or criminal law.

(3) Exempt records—Disclosure to third parties. The NCUA Board, or any person designated by it in writing, may disclose copies of exempt records to any third party where requested to do so in writing. The request shall: (i) Specify the record or records to which access is requested; and (ii) give the reasons for the request. Any NCUA employee authorized to disclose exempt NCUA records to third parties may disclose the records only upon determining that good cause exists for the disclosure. The designated NCUA official shall impose such terms and conditions as are deemed necessary to protect the confidential nature of the record, the financial integrity of any credit union or other organization or person to which the records relate, and the legitimate privacy interests of any individual named in such records.

§ 792.5 Fees for document search, review, and duplication; waiver and reduction of fees.

(a) *Definitions.* (1) "Direct costs" means those expenditures which NCUA actually incurs in searching for, duplicating and reviewing documents to respond to a FOIA request.

(2) "Search" means all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Searches may be done manually or by computer using existing programming.

(3) "Duplication" means the process of making a copy of a document needed to respond to a FOIA request.

(4) "Review" means: (A) the process of examining documents located in response to a request that is for a commercial use (see § 792.5(a)(5)) to determine whether any portion of a document located is permitted to be withheld; and (B) the process of preparing such documents for disclosure.

(5) "Commercial use request" means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(6) "Educational institution" means a preschool, an elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, and an institution of vocational education operating a program or programs of scholarly research.

(7) "Noncommercial scientific institution" means an institution: (A) That is not operated on a "commercial" basis as that term is used in § 792.5(a)(5); and (B) that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(8) "Representative of the news media" means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. Included within the meaning of "public" is the credit union community. The term "news" means information that is about current events or that would be of current interest to the public.

(b) *Fees to be charged.* NCUA will charge fees that recoup the full allowable direct costs it incurs. NCUA may contract with the private sector to locate, reproduce and/or disseminate records. Fees are subject to change as costs increase. In no case will NCUA contract out responsibilities which the FOIA requires it alone to discharge, such as determining the applicability of an exemption, or determining whether to waive or reduce fees.

(1) Manual searches and review—NCUA will charge fees at the following rates for manual searches for and review of records:

(A) If search/review is done by clerical staff, the hourly rate for GS–5, step 1, plus 16 percent of that rate to cover benefits;

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(B) If search/review is done by professional staff, the hourly rate for GS–13, step 1, plus 16 percent of that rate to cover benefits.

(2) Computer searches—NCUA will charge fees at the hourly rate for GS–13, step 1, plus 16 percent of that rate to cover benefits, plus the hourly cost of operating the computer for computer searches for records.

(3) Duplication of records—

(A) The per-page fee for paper copy reproduction of a document is $.25;

(B) The fee for documents generated by computer is the hourly fee for the computer operator, plus the cost of materials (computer paper, tapes, labels, etc.);

(C) If any other method of duplication is used, NCUA will charge the actual direct cost of duplicating the documents.

(4) Fees to exceed $25—If NCUA estimates that duplication and/or search fees are likely to exceed $25, it will notify the requester of the estimated amount of fees, unless the requester has indicated in advance willingness to pay fees as high as those anticipated. The requester will then have the opportunity to confer with NCUA personnel to reformulate the request to meet the person's needs at a lower cost.

(5) Other services—Complying with requests for special services is entirely at the discretion of NCUA. NCUA will recover the full costs of providing such services to the extent it elects to provide them.

(6) Restriction on assessing fees—NCUA will not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself.

(7) Waiving or reducing fees—NCUA shall waive or reduce fees under this section whenever disclosure of information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and is not primarily in the commercial interest of the requester.

(A) NCUA will make a determination of whether the public interest requirement above is met based on the following factors:

(i) The subject of the request: Whether the subject of the requested records concerns the operations or activities of the government;

(ii) The informative value of the information to be disclosed: Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to public understanding;

(iv) The significance of the contribution to the public understanding: Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities.

(B) If the public interest requirement is met, NCUA will make a determination on the commercial interest requirement based upon the following factors:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and if so

(ii) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(C) If the required public interest exists and the requester's commercial interest is not primary in comparison, NCUA will waive or reduce fees.

(c) *Categories of requesters.*

(1) Commercial use requesters—NCUA will assess commercial use requesters' fees which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial use requesters are not entitled to two hours of free search time or 100 free pages of reproduction of documents.

(2) Educational institution, noncommercial scientific institution, and requesters who are representatives of the news media—NCUA shall provide documents to requesters in this category for the cost of reproduction alone, excluding fees for the first 100 pages.

(3) All other requesters—NCUA shall charge requesters not included in either of the categories above fees which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without a fee.

(d) *Interest on unpaid fees.* NCUA may begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the bill was sent. Interest will be at the rate prescribed in section 3717 of Title 31 U.S.C., and will accrue from the date of the billing.

(e) *Fees for unsuccessful search and review.* NCUA may assess fees for time spent searching and reviewing, even if it fails to locate the records or if records located are determined to be exempt from disclosure.

(f) *Aggregating requests.* A requester may not file multiple requests, each seeking portions of a document or documents, solely in order to avoid payment of fees. If this is done, NCUA may aggregate any such requests and charge accordingly.

(g) *Advance payment of fees.* NCUA will require a requester to give an assurance of payment or an advance payment only when:

(1) NCUA estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250. NCUA will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requester with no history of payment; or

(2) A requester has previously failed to pay a fee charged in a timely fashion. NCUA may require the requester to pay the full amount owed, plus any applicable interest as provided in subsection 792.5(d) or demonstrate that he has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before NCUA begins to process a new request or a pending request from that requester.

(3) When NCUA acts under § 792.5(g)(1) or § 792.5(g) (2), the administrative time limits prescribed in § 792.6(a) will begin only after NCUA has received the fee payments described.

§ 792.6 Agency determination.

(a) Upon any request for records published in the **Federal Register**, or made available under § 792.2, NCUA will:

(1) Determine within 10 working days (excepting Saturdays, Sundays and legal public holidays) after the receipt of any such request whether, or the extent to which, to comply with such request; and will upon such determination notify the person making the request that any adverse determination is not a final agency action, and that such person may appeal any adverse determination to the Office of General Counsel;

(2) Make a determination with respect to any appeal within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. An appeal must be in writing and filed within 30 days from receipt of the initial determination (in cases of denials of an entire request), or from receipt of any records being made available pursuant to the initial determination (in cases of partial denials). If, on appeal, the denial of the request for records is in whole or in part upheld, the Office of General Counsel will notify the person making such request of the provisions for judicial review of that determination under the FOIA. In those cases where a request or appeal is not addressed to the proper official, the time limitations stated above will be computed from the receipt of the request or appeal by the proper official.

(b) In unusual circumstances as specified herein, the time limits prescribed in either paragraph (a)(1) or (a)(2) of this section may be extended by written notice to the person making such request, setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice will specify a date that would result in an extension for more than 10 working days. "Unusual circumstances" means:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which will be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the Agency having substantial subject-matter interest therein.

(c)(1) The appropriate Regional Director, the Freedom of Information Officer, or, in their absence, their designee, is responsible for making the initial determination on whether to grant or deny a request for information. This official may refer a request to a professional NCUA employee who is familiar with the subject area of the request. Other members of the NCUA's staff may aid the official by providing information, advice, recommending a decision, or implementing a decision, but no NCUA employee other than an authorized official may make the initial determination. Referral of a request by the official to an employee will not affect the time limitation imposed in paragraph (a)(1) of this section unless the request involves an unusual circumstance as provided in paragraph (b) of this section.

(2) The General Counsel is the official responsible for determining all appeals from initial determinations. In case of this person's absence, the appropriate officer acting in General Counsel's stead shall make the appellate determination, unless such officer was responsible for the initial determination, in which case the Vice-Chairman of the NCUA Board will make the appellate determination.

(3) All appeals should be addressed to the General Counsel in the Central Office and should be clearly identified as such on the envelope and in the letter of appeal by using the indicator "FOIA-APPEAL." Failure to address an appeal properly may delay commencement of the time limitation stated in paragraph (a)(2) of this section, to take account of the time reasonably required to forward the appeal to the Office of General Counsel.

(d) Any person making a request to NCUA for records published in the **Federal Register**, or made available. under § 792.2 shall be deemed to have exhausted administrative remedies with respect to such request if NCUA fails to comply with the applicable time limit provisions of this section. On complaint filed in the appropriate U.S. District Court, if the Government can show exceptional circumstances exist and that NCUA is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the Agency additional time to complete its review of the records. Upon any NCUA determination to comply with a request for records, the records will be made promptly available. Any notification of denial of any request for records under this section will set forth the names and titles or positions of each person responsible for the denial.

(e) In those cases where it is necessary to find and examine records before the legality or appropriateness of their disclosure can be determined, and where, after diligent effort, this has not been achieved within the required period, NCUA may advise the person making the request: that a determination to deny the request has been made because the records have not been found or examined; that this determination will be reconsidered when the search or examination is completed (and the time within which completion is expected); but that the person making the request may immediately file an administrative appeal.

§ 792.7 Confidential commercial information.

(a) Confidential commercial information provided to NCUA by a submitter shall be disclosed pursuant to a FOIA request in accordance with this Section.

(b) *Definitions* For purposes of this Section: (1) "Confidential commercial information"—means commercial or financial information provided to NCUA by a submitter that arguably is protected from disclosure under § 792.3(a)(4) because disclosure could reasonably be expected to cause substantial competitive harm.

(2) "Submitter"—means any person or entity who provides business information, directly or indirectly, to NCUA.

(c) Designation of business information—Submitters of business information shall use good faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, those portions of their submissions deemed to be protected from disclosure under § 792.3(a)(4). Such a designation shall expire ten years after the date of submission.

(d) Notice to submitters—NCUA shall provide a submitter with written notice of a FOIA request or administrative appeal encompassing designated business information when:

(1) The information has been designated in good faith by the submitter as confidential commercial information deemed protected from disclosure under § 792.3(a)(4); or

(2) NCUA has reason to believe that the information may be protected from disclosure under § 792.3(a)(4).

This notice will afford the submitter an opportunity to object to disclosure pursuant to paragraph (e) of this section. A copy of the notice shall also be provided to the FOIA requester.

(e) Opportunity to object to disclosure—Through the notice described in paragraph (d) of this Section, NCUA shall afford a submitter a reasonable period of time within which to provide a detailed written statement of any objection to disclosure. Such statement shall describe why the information is confidential commercial information and should not be disclosed.

(f) Notice of intent to disclose—Whenever NCUA decides to disclose confidential commercial information over the objection of a submitter, it shall forward to the submitter and to the requester, within a reasonable number of days prior to the specified disclosure date, a written notice which shall include:

(1) A statement of the reasons for which the submitter's disclosure objection was not sustained;

(2) A description of the information to be disclosed; and

(3) A specified disclosure date.

(g) Notice of lawsuit—If a requester brings suit seeking to compel disclosure of confidential commercial information.

NCUA shall promptly notify the submitter.

(b) Exceptions to notice requirements—The notice requirements of paragraph (d) of this section do not apply if:

(1) NCUA determines that the information should not be disclosed;

(2) The information lawfully has been published or has been officially made available to the public;

(3) Disclosure of the information is required by law; or

(4) The designation made by the submitter in accordance with paragraph (c) of this section appears obviously frivolous; except that, in such case, NCUA shall provide the submitter with written notice of any final administrative decision to disclose the information within a reasonable number of days prior to a specified disclosure date.

Subpart B—The Privacy Act

§ 792.20 Scope.

This Subpart governs requests made of NCUA under the Privacy Act (5 U.S.C. 552a). The regulation applies to all records maintained by NCUA which contain personal information about an individual and some means of identifying the individual, and which are contained in a system of records from which information may be retrieved by use of an identifying particular; sets forth procedures whereby individuals may seek and gain access to records concerning themselves and request amendments of those records; and sets forth requirements applicable to NCUA employees' maintaining, collecting, using, or disseminating such records.

§ 792.21 Definitions.

For purposes of this subpart:

(a) "Individual" means a citizen of the United States or an alien lawfully admitted for permanent residence.

(b) "Maintain" includes maintain, collect, use, or disseminate.

(c) "Record" means any item, collection, or grouping of information about an individual that is maintained by NCUA, and that contains the name, or an identifying number, symbol, or other identifying particular assigned to the individual.

(d) "System of records" means a group of any records under NCUA's control from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(e) "Routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

(f) "Statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of Title 13 of the United States Code.

§ 792.22 Procedures for requests pertaining to individual records in a system of records.

(a) An individual seeking notification of whether a system of records contains a record pertaining to that individual, or an individual seeking access to information or records pertaining to that individual which are available under the Privacy Act shall present a request to the NCUA official identified in the access procedure section of the "Notice of Systems of Records" published in the Federal Register which describes the system of records to which the individual's request relates. An individual who does not have access to the Federal Register and who is unable to determine the appropriate official to whom a request should be submitted may submit a request to the Director of the Administrative Office, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456, in which case the request will then be referred to the appropriate NCUA official and the date of receipt of the request will be determined as the date of receipt by the official.

(b) In addition to meeting the identification requirements set forth in § 792.23, an individual seeking notification or access, either in person or by mail, shall describe the nature of the record sought, the approximate dates covered by the record, and the system in which it is thought to be included, as described in the "Notice of Systems of Records" published in the Federal Register.

§ 792.23 Times, places, and requirements for identification of individuals making requests and identification of records requested.

(a) The following standards are applicable to an individual submitting requests either in person or by mail under § 792.22:

(1) If not personally known to the NCUA official responding to the request, an individual seeking access to records about that individual in person shall establish identity by the presentation of a single document bearing a photograph (such as a passport or identification badge) or by the presentation of two items of identification which do not bear a photograph but do bear both a name and address (such as a driver's license or credit card);

(2) An individual seeking access to records about that individual by mail may establish identity by a signature, address, date of birth, employee identification number if any, and one other identifier such as a photocopy of driver's license or other document. If less than all of this requisite identifying information is provided, the NCUA official responding to the request may require further identifying information prior to any notification or responsive disclosure.

(3) An individual seeking access to records about that individual by mail or in person, who cannot provide the required documentation or identification, may provide a notarized statement affirming identity and recognition of the penalties for false statements pursuant to 18 U.S.C. 1001.

(b) The parent or guardian of a minor or a person judicially determined to be incompetent shall, in addition to establishing identity of the minor or other person as required in paragraph (a) of this section, furnish a copy of a birth certificate showing parentage or a court order establishing guardianship.

(c) An individual may request by telephone notification of the existence of and access to records about that individual and contained in a system of records. In such a case, the NCUA official responding to the request shall require, for the purpose of comparison and verification of identity, at least two items of identifying information (such as date of birth, home address, social security number) already possessed by the NCUA. If the requisite identifying information is not provided, or otherwise at the discretion of the responsible NCUA official, an individual may be required to submit the request by mail or in person in accordance with paragraph (a) above.

(d) An individual seeking to review records about that individual may be accompanied by another person of their own choosing. In such cases, the individual seeking access shall be required ro furnish a written statement authorizing discussion of that individual's records in the accompanying person's presence.

(e) In addition to the requirements set forth in paragraphs (a), (b) and (c) of this section, the published "Notice of System of Records" for individual systems may include further requirements of identification where necessary to retrieve the individual records from the system.

§ 792.24 Notice of existence of records, access decisions and disclosure of requested information; time limits.

(a) The NCUA official identified in the record access procedure section of the "Notice of Systems of Records" and identified in accordance with § 792.22(a), by an individual seeking notification of, or access to, a record, shall be responsible: (1) For determining whether access is available under the Privacy Act; (2) for notifying the requesting individual of that determination; and (3) for providing access to information determined to be available. In the case of an individual access request made in person, information determined to be available shall be provided by allowing a personal review of the record or portion of a record containing the information requested and determined to be available, and the individual shall be allowed to have a copy of all or any portion of available information made in a form comprehensible to him. In the case of an individual access request made by mail, information determined to be available shall be provided by mail, unless the individual has requested otherwise.

(b) The following time limits shall be applicable to the required determinations, notification and provisions of access set forth in paragraph (a) of this Section:

(1) A request concerning a single system of records which does not require consultation with or requisition of records from another agency shall be responded to within 10 working days after receipt of the request;

(2) A request requiring requisition of records from or consultation with another agency shall be responded to within 10 working days after such requisition or resolution of the required consultation. Such required requisition or consultation shall be initiated within 10 working days after receipt of the request;

(3) If a request under paragraphs (b)(1) or (2) of this Section presents unusual difficulties in determining whether the records involved are exempt from disclosure, the Director of the Administrative Office may, upon written request of the official responsible for action upon the record request, extend the time period established by these regulations for an additional 15 working days.

(c) Nothing in this section shall be construed to allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding, or any information exempted from the access provisions of the Privacy Act.

§ 792.25 Special procedures: information furnished by other agencies; medical records.

(a) When a request for records or information from NCUA includes information furnished by other Federal agencies, the NCUA official responsible for action on the request shall consult with the appropriate agency prior to making a decision to disclose or refuse access to the record, but the decision whether to disclose the record shall be made in the first instance by the NCUA official.

(b) When an individual requests medical records concerning that individual, the NCUA official responsible for action on the request may advise the individual that the records will be provided only to a physician designated in writing by the individual. Upon receipt of the designation and upon proper verification of identity, the NCUA official shall permit the physician to review the records or to receive copies of the records by mail. The determination of which records should be made available directly to the individual and which records should not be disclosed directly because of possible harm to the individual shall be made by the NCUA official responsible for action on the request.

§ 792.26 Requests for correction or amendment to a record; administrative review of requests.

(a) An individual may request amendment of a record concerning that individual by addressing a request, either in person or by mail, to the NCUA official identified in the "contesting record procedures" section of the "Notice of Systems of Records" published in the Federal Register and describing the system of records which contains the record sought to be amended. The request must indicate the particular record involved, the nature of the correction sought, and the justification for the correction or amendment. Requests made by mail should be addressed to the responsible NCUA official at the address specified in the "Notice of Systems of Records" describing the system of records which contains the contested record. An individual who does not have access to the NCUA's "Notice of Systems of Records," and to whom the appropriate address is otherwise unavailable may submit a request to the Director of the Administrative Office, National Credit Union Administration, 1778 G Street NW., Washington, DC 20456, in which case the request will then be referred to the appropriate NCUA official. The date of receipt of the request will be determined as of the date of receipt by that official.

(b) Within 10 working days of receipt of the request, the appropriate NCUA official shall advise the individual that the request has been received. The appropriate NCUA official shall then promptly (under normal circumstances, not later than 30 working days after receipt of the request) advise the individual that the record is to be amended or corrected, or inform the individual of rejection of the request to amend the record, the reason for the rejection, and the procedures established by § 792.27 for the individual to request a review of that rejection.

§ 792.27 Appeal of initial determination

(a) A rejection, in whole or in part, of a request to amend or correct a record may be appealed to the General Counsel within 30 working days of receipt of notice of the rejection. Appeals shall be in writing, and shall set forth the specific item of information sought to be corrected and the documentation justifying the correction. Appeals shall be addressed to the Office of General Counsel, National Credit Union Administration, 1776 G Street NW., Washington, DC 20456. Appeals shall be decided within 30 working days of receipt unless the General Counsel, for good cause, extends such period for an additional 30 working days.

(b) Within the time limits set forth in paragraph (a) of this section, the General Counsel shall either advise the individual of a decision to amend or correct the record, or advise the individual of a determination that an amendment or correction is not warranted on the facts, in which case the individual shall be advised of the right to provide for the record a "Statement of Disagreement" and of the right to further appeal pursuant to the Privacy Act. For records under the jurisdiction of the Office of Personnel Management, appeals will be made pursuant to that agency's regulations.

(c) A statement of disagreement may be furnished by the individual. The statement must be sent, within 30 days of the date of receipt of the notice of General Counsel refusal to authorize correction, to the General Counsel, National Credit Union Administration, 1776 G Street NW., Washington, DC 20456. Upon receipt of a statement of disagreement in accordance with this section, the General Counsel shall take steps to ensure that the statement is included in the system of records containing the disputed item and that the original item is so marked to

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indicate that there is a statement of dispute and where, within the system of records, that statement may be found.

(d) When a record has been amended or corrected or a statement of disagreement has been furnished, the system manager for the system of records containing the record shall, within 30 days thereof, advise all prior recipients of information to which the amendment or statement of disagreement relates whose identity can be determined by an accounting made as required by the Privacy Act of 1974 or any other accounting previously made, of the amendment or statement of disagreement. When a statement of disagreement has been furnished, the system manager shall also provide any subsequent recipient of a disclosure containing information to which the statement relates with a copy of the statement and note the disputed portion of the information disclosed. A concise statement of the reasons for not making the requested amendment may also be provided if deemed appropriate.

(e) If access is denied because of an exemption, the individual shall be notified of the right to appeal that determination to the General Counsel within 180 days after receipt of the determination. Such an appeal shall be determined within 30 days.

§ 792.16 Disclosure of record to person other than the individual to whom it pertains.

No record or item of information concerning an individual which is contained in a system of records maintained by NCUA shall be disclosed by any means of communication to any person, or to another agency, without the prior written consent of the individual to whom the record or item of information pertains, unless the disclosure would be—

(a) To an employee of the NCUA who has need for the record in the performance of duty;

(b) Required by the Freedom of Information Act;

(c) For a routine use as described in the "Notice of Systems of Records," published in the Federal Register, which describes the system of records in which the record or item of information is contained;

(d) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13 of the United States Code;

(e) To a recipient who has provided the NCUA with advance adequate written assurance that the record or item will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(f) To the National Archives and Records Administration as a record or item which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;

(g) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to NCUA specifying the particular portion desired and the law enforcement activity for which the record or item is sought;

(h) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if, upon such disclosure, notification is transmitted to the last known address of such individual;

(i) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(j) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office; or

(k) Pursuant to the order of a court of competent jurisdiction; or

(l) To a consumer reporting agency in accordance with section 3711(f) of Title 31 of the United States Code (31 U.S.C. 3711(f)).

§ 792.19 Accounting for disclosures.

(a) Each system manager identified in the "Notice of Systems of Records" as published in the Federal Register for each system of records maintained by the NCUA, shall establish a system of accounting for all disclosures of information or records concerning individuals and contained in the system of records, made outside NCUA. Accounting procedures may be established in the least expensive and most convenient form that will permit the system manager to advise individuals, promptly upon request, of the persons or agencies to which records concerning them have been disclosed.

(b) Accounting records, at a minimum, shall include the information disclosed, the name and address of the person or agency to whom disclosure was made, and the date of disclosure. When records are transferred to the National Archives and Records Administration for storage in records centers, the accounting pertaining to those records shall be transferred with the records themselves.

(c) Any accounting made under this section shall be retained for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made.

§ 792.20 Requests for accounting for disclosures.

At the time of the request for access or correction or at any other time, an individual may request an accounting of disclosures made of the individual's record outside the NCUA. Request for accounting shall be directed to the system manager. Any available accounting, whether kept in accordance with the requirements of the Privacy Act or under procedures established prior to September 27, 1975, shall be made available to the individual, except that an accounting need not be made available if it relates to: (a) A disclosure made pursuant to the Freedom of Information Act (5 U.S.C. 552); (b) a disclosure made within the NCUA; (c) a disclosure made to a law enforcement agency pursuant to 5 U.S.C. 552a(b)(7); (d) a disclosure which has been exempted from the provisions of 5 U.S.C. 552a(c)(3) pursuant to 5 U.S.C. 552a (j) or (k).

§ 792.21 Collection of information from individuals; information forms.

(a) The system manager, as identified in the "Notice of Systems of Records" published in the Federal Register for each system of records maintained by the Administration, shall be responsible for reviewing all forms developed and used to collect information from or about individuals for incorporation into the system of records.

(b) The purpose of the review shall be to eliminate any requirement for information that is not relevant and necessary to carry out an NCUA function and to accomplish the following objectives:

(1) To ensure that no information concerning religion, political beliefs or activities, association memberships (other than those required for a professional license), or the exercise of other First Amendment rights is required to be disclosed unless such requirement of disclosure is expressly authorized by statute or is pertinent to and within the scope of any authorized law enforcement activity;

(2) To ensure that the form or accompanying statement makes clear to the individual which information by law must be disclosed and the authority for that requirement, and which information is voluntary;

(3) To ensure that the form or accompanying statement makes clear the principal purpose or purposes for which the information is being collected, and states concisely the routine uses that will be made of the information;

(4) To ensure that the form or accompanying statement clearly indicates to the individual the existing rights, benefits or privileges not to provide all or part of the requested information; and

(5) To ensure that any form requesting disclosure of a social security number, or an accompanying statement, clearly advises the individual of the statute or regulation requiring disclosure of the number, or clearly advises the individual that disclosure is voluntary and that no consequence will flow from a refusal to disclose it, and the uses that will be made of the number whether disclosed mandatorily or voluntarily.

(c) Any form which does not meet the objectives specified in the Privacy Act and this section shall be revised to conform thereto.

§ 792.22 Contracting for operation of a system of records.

(a) No NCUA component shall contract for the operation of a system of records by or on behalf of the Agency without the express approval of the NCUA Board.

(b) Any contract which is approved shall continue to ensure compliance with the requirements of the Privacy Act. The contracting component shall have the responsibility for ensuring that the contractor complies with the contract requirements relating to the Privacy Act.

§ 792.23 Fees.

(a) Fees pursuant to 5 U.S.C. 552a(f)(5) shall be assessed for actual copies of records provided to individuals on the following basis, unless the NCUA official determining access waives the fee because of the inability of the individual to pay or the cost of collecting the fee exceeds the fee:

(1) For actual copies of documents, 25 cents per page; and

(2) For copying information, if any, maintained in nondocument form, the direct cost to NCUA may be assessed.

(b) If it is determined that access fees chargeable under this section will amount to more than $25, and the individual has not indicated in advance willingness to pay fees as high as are anticipated, the individual shall be notified of the amount of the anticipated fees before copies are made, and the individual's access request shall not be considered to have been received until receipt by NCUA of written agreement to pay.

§ 792.24 Exemptions.

(a) NCUA maintains three systems of records which are exempted from some of the provisions of the Privacy Act. In paragraph (b) of this section, those systems of records are identified by System Name and System Number, as stated in the NCUA's "Notice of Systems of Records," published in the Federal Register. The provisions from which each system is exempted and the reasons therefor are also set forth.

(b)(1) System NCUA–1, entitled "Employee Security Investigations Containing Adverse Information," consists of adverse information about NCUA employees which has been obtained as a result of routine Office of Personnel Management Security Investigations. To the extent that NCUA maintains records in this system pursuant to Office of Personnel Management guidelines which require or may require retrieval of information by use of individual identifiers, those records are encompassed by and included in the Office of Personnel Management Government-Wide System of Records Number 4, entitled "Personnel Investigations Records," and thus are subject to the applicable specific exemptions promulgated by the Office of Personnel Management. Additionally, in order to ensure the protection of properly confidential sources, particularly as to those records which are not maintained pursuant to such Office of Personnel Management requirements, the records in these systems of records are exempted, pursuant to section k(5) of the Privacy Act (5 U.S.C. 552a(k)(5)), from section (d) of the Act (5 U.S.C. 552a(d)). To the extent that disclosure of a record would reveal the identity of a confidential source, NCUA need not grant access to that record by its subject. Information which would reveal a confidential source shall, however, whenever possible, be extracted or summarized in a manner which protects the source and the summary or extract shall be provided to the requesting individual.

(2) System NCUA–4, entitled "Investigative Reports Involving Possible Felonies and/or Violations of the Federal Credit Union Act," consists of a limited number of records about individuals suspected of involvement in felonies or infractions under the Federal Credit Union Act or criminal statutes. These records are maintained in an overall context of general investigative information concerning crimes against credit unions. To the extent that individually identifiable information is maintained, however, for purposes of protecting the security of any investigations by appropriate law enforcement authorities and promoting the successful prosecution of all actual criminal activity, the records in this system are exempted, pursuant to section k(2) of the Privacy Act (5 U.S.C. 552a(k)(2)), from sections (c)(3) and (d)). NCUA need not make an accounting of previous disclosures of a record in this system of records available to its subject, and NCUA need not grant access to any records in this system of records by their subject. Further, whenever individuals request records about themselves and maintained in this system of records, the NCUA shall, to the extent necessary to realize the above-stated purposes, neither confirm nor deny the existence of the records but shall advise the individuals only that no records available to them pursuant to the Privacy Act of 1974 have been identified. However, should review of the record reveal that the information contained therein has been used or is being used to deny the individuals any right, privilege or benefit for which they are eligible or to which they would otherwise be entitled under Federal law, the individuals shall be advised of the existence of the information and shall be provided the information, except to the extent disclosure would identify a confidential source. Information which would identify a confidential source shall, if possible, be extracted or summarized in a manner which protects the source and the summary or extract shall be provided to the requesting individual.

(c) For purposes of this section, a "confidential source" means a source who furnished information to the Government under an express promise that the identity of the source would remain confidential, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

§792.25 Security of systems of records.

(a) Each system manager, with the approval of the head of that Office, shall establish administrative and physical controls to insure the protection of a system of records from unauthorized access or disclosure and from physical damage or destruction. The controls instituted shall be proportional to the degree of sensitivity of the records, but at a minimum must insure: that records are enclosed in a manner to protect them from public view; that the area in which the records are stored is supervised during all business hours to

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prevent unauthorized personnel from entering the area or obtaining access to the records; and that the records are inaccessible during nonbusiness hours.

(b) Each system manager, with the approval of the head of that Office, shall adopt access restriction to insure that only those individuals within the agency who have a need to have access to the records for the performance of duty have access. Procedures shall also be adopted to prevent accidental access to or dissemination of records.

§ 792.36 Use and collection of Social Security numbers.

The head of each NCUA Office shall take such measures as are necessary to ensure that employees authorized to collect information from individuals are advised that individuals may not be required without statutory or regulatory authorization to furnish Social Security numbers, and that individuals who are requested to provide Social Security numbers voluntarily must be advised that furnishing the number is not required and that no penalty or denial of benefits will flow from the refusal to provide it.

§ 792.37 Training and employee standards of conduct with regard to privacy.

(a) The Director of the Administrative Office, with advice from the General Counsel, shall be responsible for training NCUA employees in the obligations imposed by the Privacy Act and this Subpart.

(b) The head of each NCUA Office shall be responsible for assuring that employees subject to that person's supervision are advised of the provisions of the Privacy Act, including the criminal penalties and civil liabilities provided therein, and that such employees are made aware of their responsibilities to protect the security of personal information, to assure its accuracy, relevance, timeliness, and completeness, to avoid unauthorized disclosure either orally or in writing, and to insure that no information system concerning individuals, no matter how small or specialized, is maintained without public notice.

(c) With respect to each system of records maintained by NCUA, Agency employees shall:

(1) Collect no information of a personal nature from individuals unless authorized to collect it to achieve a function or carry out an NCUA responsibility;

(2) Collect from individuals only that information which is necessary to NCUA functions or responsibilities;

(3) Collect information, wherever possible, directly from the individual to whom it relates;

(4) Inform individuals from whom information is collected of the authority for collection, the purposes thereof, the routine uses that will be made of the information, and the effects, both legal and practical of not furnishing the information;

(5) Not collect, maintain, use, or disseminate information concerning an individual's religious or political beliefs or activities or his membership in associations or organizations, unless (i) the individual has volunteered such information for his own benefit; (ii) the information is expressly authorized by statute to be collected, maintained, used, or disseminated; or (iii) activities involved are pertinent to and within the scope of an authorized investigation or adjudication.

(6) Advise their supervisors of the existence or contemplated development of any record system which retrieves information about individuals by individual identifier.

(7) Maintain an accounting, in the prescribed form, of all dissemination of personal information outside NCUA, whether made orally or in writing;

(8) Disseminate no information concerning individuals outside NCUA except when authorized by 5 U.S.C. 552a or pursuant to a routine use as set forth in the "routine use" section of the "Notice of Systems of Records" published in the **Federal Register**.

(9) Maintain and process information concerning individuals with care in order to ensure that no inadvertent disclosure of the information is made either within or outside NCUA; and

(10) Call to the attention of the proper NCUA authorities any information in a system maintained by NCUA which is not authorized to be maintained under the provisions of the Privacy Act, including information on First Amendment activities, information that is inaccurate, irrelevant or so incomplete as to risk unfairness to the individuals concerned.

(c) Heads of offices within NCUA shall, at least annually, review the record systems subject to their supervision to ensure compliance with the provisions of the Privacy Act.

Subpart C—Subpoenas

§ 792.40 Service

Any subpoena or other legal process requesting Agency records shall be served upon the General Counsel, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456, or upon the Regional Director of the NCUA Region where the legal action from which the legal process issued is pending.

§ 792.41 Advice to person served.

(a) If any NCUA officer, employee or agent is served with a subpoena, court order or other legal process requiring that person's attendance as a witness concerning written information or the production of documents that may not be disclosed under § 792.42, that person should promptly inform the Office of General Counsel of such service and of all relevant facts, including the nature of the documents and information sought in the subpoena and any facts and circumstances which may be of assistance to the Office of General Counsel in determining whether such documents or information should be produced.

(b) If any third party who is not an NCUA officer, employee or agent is served with a subpoena, court order or other legal process requiring that party to produce such records or to testify with respect to the requested records, such party should notify the Office of General Counsel in accordance with the procedures set forth in § 792.41(a).

§ 792.42 Appearance by person served.

Except by authorization of the Office of General Counsel to disclose the requested information, any NCUA officer, employee or agent (and any third party having custody of exempt records of the Administration) who is required to respond to the subpoena or other legal process shall attend at the time and place specified and shall respectfully decline to produce the documents and records or to disclose the information called for, basing his refusal upon this paragraph.

Subpart D—Security Procedures for Classified Information

§ 792.50 Program.

(a) The Director of the Administrative Office ("Director") is designated as the person responsible for implementation and oversight of NCUA's program for maintaining the security of confidential information regarding national defense and foreign relations. The Director receives questions, suggestions and complaints regarding all elements of this program. The Director is solely responsible for changes to the program and assures that the program is consistent with legal requirements.

(b) The Director is the Agency's official contact for declassification requests regardless of the point of origin of such requests. The Director is also responsible for assuring that requests submitted under the Freedom of Information Act are handled in accordance with that Act and other applicable law.

§ 792.51 Procedures.

(a) Mandatory review. All declassification requests made by a member of the public, by a government employee or by an agency shall be handled by the Director or the Director's designee. Under no circumstances shall the Director refuse to confirm the existence or nonexistence of a document under the Freedom of Information Act or the mandatory review provisions of other applicable law, unless the fact of its existence or nonexistence would itself be classifiable under applicable law. Although NCUA has no authority to classify or declassify information, it occasionally handles information classified by another agency. The Director shall refer all declassification requests to the agency that originally classified the information. The Director or the Director's designee shall notify the requesting person or agency that the request has been referred to the originating agency and that all further inquiries and appeals must be made directly to the other agency.

(b) Handling and safeguarding national security information. All information classified "Top Secret," "Secret," and "Confidential" shall be delivered to the Director or the Director's designee immediately upon receipt. The Director shall advise those who may come into possession of such information of the name of the current designee. If the Director is unavailable, the designee shall lock the documents, unopened, in the combination safe located in the Administrative Office. If the Director or the designee is unavailable to receive such documents, the documents shall be delivered to the Director of the Personnel Office who shall lock them, unopened, in the combination safe in the Personnel Office. Under no circumstances shall classified materials that cannot be delivered to the Director be stored other than in the two designated safes.

(c) Storage. All classified documents shall be stored in the combination safe located in the Director's Office, except as provided in paragraph (b) of this section. The combination shall be known only to the Director and the Director's designee holding the proper security clearance.

(d) Employee Education. The Director shall send a memo to every NCUA employee who (1) has a security clearance and (2) may handle classified materials. This memo shall describe NCUA procedures for handling, reproducing and storing classified documents. The Director shall require each such employee to review E.O. 12356.

(e) Agency Terminology. The National Credit Union Administration's Central Office shall use the terms "Top Secret," "Secret" or "Confidential" only in relation to materials classified for national security purposes.

[FR Doc. 88-24508 Filed 10-24-88; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Illinois Permanent Regulatory Program; Reopening and Extension of Public Comment Period on Proposed Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule; reopening and extension of public comment period.

SUMMARY: The Director of OSMRE is announcing the reopening and extension of the public comment period on the proposed definition of "valid existing rights" (VER) submitted by the State of Illinois as an amendment to its permanent regulatory program (hereinafter referred to as the Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment would replace the "good faith all permits" test and judicially determined "takings" test contained in the previous definition with an administratively determined "takings" test. The amendment is intended to simplify the VER determination process.

This notice sets forth the times and locations that the amendment is available for public inspection and the comment period during which interested persons may submit written comments.

DATES: Written comments must be received on or before 4:00 p.m. on November 9, 1988 to ensure consideration during the decision process.

ADDRESSES: Written comments and requests for a public meeting should be mailed or hand-delivered to Mr. James Fulton, Director, Springfield Field Office, Office of Surface Mining Reclamation and Enforcement at the address listed below.

Copies of the proposed amendment, the Illinois program, the administrative record on the Illinois program and all written comments received in response to this notice will be available for public review at the addresses listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m. excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendment by contacting OSMRE's Springfield Field Office.

Office of Surface Mining Reclamation and Enforcement, Springfield Field Office, 600 East Monroe Street, Room 20, Springfield, Illinois 62701, Telephone: (217) 492–4495

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, 1100 "L" Street, NW., Room 5215, Washington, DC 20240, Telephone: (202) 343–5492

Illinois Department of Mines and Minerals, Land Reclamation Division, 227 South Seventh Street, Suite 201, Springfield, Illinois 62701, Telephone: (217) 782–4970

FOR FURTHER INFORMATION CONTACT: Mr. James Fulton, Director, Springfield Field Office, Office of Surface Mining Reclamation and Enforcement, 600 East Monroe Street, Room 20, Springfield, Illinois 62701; Telephone: (217) 492–4495.

SUPPLEMENTARY INFORMATION:

I. Background on the Illinois Program
II. Submission and Review of Amendments
III. Procedures for Public Comment

I. Background on the Illinois Program

Information concerning the general background on the Illinois program submission and the approval process, as well as the Secretary's findings, the disposition of comments, and an explanation of the conditions of approval can be found in the June 1, 1982, **Federal Register** (47 FR 23858). Subsequent actions taken with regard to the conditions of approval and proposed program amendments can be found at 30 CFR 913.11, 913.15, 913.16, and 913.17.

II. Submission and Review of Amendments

By letter dated March 28, 1988 (Administrative Record No. IL–1028), Illinois proposed extensive revisions to virtually all the regulations contained within its program. OSMRE announced receipt of and solicited public comment on the proposed amendments by notice published in the **Federal Register** on May 9, 1988 (51 FR 23858).

By letter dated July 22, 1988 (Administrative Record No. IL–1038), OSMRE notified Illinois of certain areas in which the proposed amendments appeared to be less effective than the Federal regulations or in conflict with the decisions of the United States District Court for the District of

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Columbia in *In re: Permanent Surface Mining Regulation Litigation II* (Civil Action No. 79–1144, D.D.C. 1984 and 1985), hereinafter referred to as *In re: Permanent II*. Illinois subsequently revised and resubmitted the amendments on May 22, 1987 (Administrative Record No. IL–1029A). OSMRE announced the resubmission and reopened the public comment period by published notice in the **Federal Register** on June 29, 1987 (52 FR 24035). Extensive public comments were received in response to both notices; however, since no one requested a public hearing, none was held.

With minor exceptions, OSMRE approved these amendments on October 25, 1988. However, in the **Federal Register** decision notice published on that date, the Director temporarily deferred a decision on the proposed definition of VER in 62 IAC Part 1701 until further public comment could be sought on the additional information resulting from a meeting of Illinois, OSMRE and Interior officials on October 17, 1988. At that meeting the State advanced further rationale for approval of the definition (Administrative Record No. IL–1058).

Illinois proposes to revise the definition of valid existing rights in 62 IAC 1701.5 to resemble the language in the corresponding Federal definition at 30 CFR 761.5. However, on March 22, 1985, in *In re: Permanent II*, the U.S. District Court for the District of Columbia remanded portions of this definition to the Secretary because he had failed to provide the public with adequate notice and opportunity to comment on the revised provisions. The remanded portions of the definition include those provisions of paragraphs (a) and (d) which would authorize use of the "takings" test to determine whether a person possesses VER. Paragraph (c) was also remanded to the extent that it would expand VER under the "needed for and adjacent" test to include lands for which the claimant had not acquired the necessary property rights prior to August 3, 1977. For further explanation of these terms and the court's decision, see the preamble to the **Federal Register** notice suspending these portions of the Federal definition (51 FR 41954–41955, November 20, 1986).

The Illinois program as approved on June 1, 1982, contained provisions similar to those remanded by the Federal court. The approval of these provisions was subsequently upheld by the U.S. District Court for the Central District of Illinois (*Illinois South Program* v. *Watt*, C.A. 82–2229), based on the September 14, 1983, revisions to the Federal definition. However, the plaintiffs appealed this decision and on March 30, 1988, the U.S. Court of Appeals for the Seventh Circuit ruled that an approval based on a defective (remanded) Federal regulation cannot stand (*Illinois South Project* v. *Hodel*, C.A. 87–2366). the Appeals Court ordered the District Court to remand the approval of the Illinois VER definition to the Secretary for reconsideration under whatever regulation is currently in force. The District Court did so on June 22, 1988.

Therefore, the Director is requesting additional comment on whether the "takings" test can be approved as being no less effective than the "good faith all permits" test reinstated by OSMRE in the previously referenced November 20, 1986, suspension notice. The Director is also seeking comment on whether the definition as a whole is no less effective than the corresponding Federal definition.

III. Procedures for Public Comment

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is seeking comment on whether the definition of VER proposed by Ilinois fully satisfies the applicable program approval criteria of 30 CFR 732.15. If the definition is deemed adquate, it will become a permanent part of the Illinois program.

Written Comments

Written comments should be specific, pertain only to the proposed definition, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Springfield Field Office will not necessarily be considered in the final rulemaking.

Public Meeting

Persons wishing to meet with OSMRE representatives to discuss the proposed definition may request a meeting at the Springfield Field Office by contacting the person listed under **"FOR FURTHER INFORMATON CONTACT."** Any such meeting will be open to the public and, if possible, notice of the meeting will be posted in advance at the locations listed under **"ADDRESSES."** A written summary of each public meeting will be entered into the administrative record.

List of Subjects in 30 CFR Part 913

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Robert H. Gentile,

Acting Director, Office of Surface Mining Reclamation and Enforcement.

Date: October 20, 1988.

[FR Doc. 88-24651 Filed 10-24-88; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 946

Virginia Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule; reopening and extension of public comment period.

SUMMARY: OSMRE is announcing the reopening of the public comment period on proposed amendments to the Virginia permanent regulatory program (hereinafter referred to as the Virginia Program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendments, submitted by Virginia on April 6, 1988, (Administrative Record No. VA–680) address two amendments required by OSMRE (30 CFR 946.16 (d) and (e)) specifying that certain decisions of the Director of Virginia Department of Mines, Minerals and Energy are appealable under Virginia's Administrative Procedures Act. The proposed amendments also provide regulations that would allow operators who have forfeited a performance bond to reestablish eligibility for obtaining a permit to conduct surface coal mining operations. Other subjects addressed are protection of cultural and historic resources, modified standards for measuring the success of tree restocking on forestland, and variances from the requirement to restore the approximate original contour of certain mined lands where the approved post-mining land use in commercial forestry. The intent is to make these provisions consistent with the requirements of SMCRA.

OSMRE published a notice in the May 24, 1988, **Federal Register** (53 FR 18576–18578) announcing receipt of these amendments and inviting public comment on their adequacy. The public comment period ended on June 23, 1988. Review of the proposed amendments identified several apparent deficiencies. OSMRE identified these deficiencies in a letter to Virginia dated August 9, 1988 (Administrative Record No. VA–699).

On September 14, 1988 (Administrative Record No. VA–705), Virginia responded to OSMRE's letter of August 9, 1988, by submitting additional information pertaining to these proposals.

In view of the additional information submitted by Virginia, OSMRE is reopening the public comment period on the proposed amendments. This action is being taken to afford the public in opportunity to again review these proposals in light of the additional information provided by Virginia.

DATES: Written comments must be received on or before 4:00 p.m. on November 9, 1988. Comments received after that date will not necessarily be considered in the Director's decision to approve or disapprove these amendments.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. W. Russell Campbell, Acting Director, Big Stone Gap Field Office at the first address listed below.

Copies of the Virginia program, proposed amendments and all written comments received in response to this notice will be available for review at the locations listed below during normal business hours Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one single copy of the proposed amendment by contacting the OSMRE Big Stone Gap Field Office.

Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, P.O. Box 628, Powell Valley Square Shopping Center, Room 220, Route 23, Big Stone Gap, Virginia 24219, Telephone (703) 523–4303

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5315, 1100 "L" Street, NW., Washington, DC 20240, Telephone (202) 343–5492

Virginia Division of Mined Land Reclamation, P.O. Drawer U, 622 Powell Avenue, Big Stone Gap, Virginia 24219, Telephone (703) 523–2925

FOR FURTHER INFORMATION CONTACT: Mr. W. Russell Campbell, Acting Director, Big Stone Gap Field Office, Telephone (703) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior conditionally approved the Virginia regulatory program effective December 15, 1981. Information pertinent to the general background and revisions to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the December 14, 1981 **Federal Register** (46 FR 61085–61115). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 946.11, 30 CFR 946.12, 946.13, 946.15, and 30 CFR 946.16.

II. Discussion of Amendments

A discussion of the original proposed amendments is contained in the May 24, 1988, **Federal Register** (53 FR 18576–18578). The additional information submitted by Virginia on September 14, 1988 to modify or support the original proposal is discussed below.

1. Proposed regulation 480–03–19.800.52(a) has been modified by Virginia to include the provision that reinstatement shall not be available to applicants for reinstatement where the Division finds that the applicant controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of such nature and duration and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the Act.

2. Additional information has been provided for the Administrative Record to clarify Virginia's intent to apply the criteria of section 480–03–19.733.15 to the correction of outstanding violations and payment fees and penalties, including out-of-state violations, when considering applicant reinstatement. Additional information has also been provided to clarify how Virginia intends to address the obligations of the applicant regarding interest on unpaid penalties or fees, and the determination of whether outstanding violations or unpaid penalties or fees must be corrected or paid or in the process of being corrected or paid before reinstatement becomes effective.

3. As required by OSMRE (30 CFR 816.116(b)(3)(i) and 817.116(b)(3)(i)) Virginia has provided documentation of its consultation concerning tree stocking rates with Virginia's Commission of Game and Inland Fisheries.

4. Additional rationale has been provided by Virginia in support of its proposal to include commercial forestry as a form of commercial land use for which a variance from restoration to approximate original contour can be granted.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is now seeking comment on whether the amendments proposed by Virginia satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Virginia program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than the Big Stone Gap Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

IV. Procedural Determinations

1. Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 946

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: October 3, 1988.

Jeffrey D. Jarrett,

Acting Assistant Director, Eastern Field Operations.

[FR Doc. 88–24577 Filed 10–24–88; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 951

Closing of Public Comment Period; Crow Tribe Abandoned Mine Land Reclamation Plan; Abandoned Mine Land Reclamation Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule; closing public comment period.

SUMMARY: In 1982 The Crow Tribe submitted to OSMRE its proposed Abandoned Mine Land Reclamation Plan under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) (30 CFR Chapter 7 Subchapter R) as published in the Federal Register (FR) on June 30, 1982, 47 FR 28574–28604. OSMRE requested public comment on the adequacy of the Tribe's plan, 47 FR 21274–21276 (May 18, 1982) and has left the comment period open pending authorizing legislation. On July 11, 1987 legislation wa enacted authorizing the Crow, Hopi and Navajo Tribes to obtain abandoned mine land reclamation program without first having to obtain approval of a Tribal surface mining regulatory program. In response to the newly enacted legislation, on September 9, 1988, the Crow Tribe resubmitted a revised and updated Abandoned Mine Land Reclamation Plan. OSMRE is giving notice of its intent to close the period for comments on the Crow Tribe's Abandoned Mine Land Reclamation Plan.

DATES:

Written Comments: OSMRE will accept written comments on the proposed rule until 4:00 p.m. Mountain time November 25, 1988. Comments received after that date will not necessarily be considered in the decision process.

Public Hearing: A public hearing on the proposed Crow plan has been scheduled for 9:30 a.m. local time on November 14, 1988, in the conference room of the Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Room 2128, 100 East B Street, Casper, Wyoming 82601–1918. Any person interested in making an oral presentation at the hearing should contact Jerry R. Ennis, Field Office Director of the OSMRE Casper Field Office by 4:00 p.m. local time on November 9, 1988. If only three or fewer persons have so contacted Mr. Ennis, a meeting rather than a hearing may be held. A summary report of the meeting will be included in the Administrative Record.

ADDRESSES:

Written comments and requests for a hearing should be mailed to: Jerry R. Ennis, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 E. B Street, Room 2128, Casper, Wyoming 82601–1918. Copies of the Crow plan and administrative record of the Crow plan are available for public review and copying at the OSMRE Offices and the Crow Office listed below, Monday through Friday, from 9:00 a.m. to 4:00 p.m. excluding holidays. Each requestor may receive, free of charge, one copy of the proposed plan by contacting OSMRE's Casper Field Office.

Crow AML Agency:

Crow Tribal Council, Crow Office of Reclamation, P.O. Box 159, Crow Agency, Montana 59022

OSMRE's Field Office processing the plan:

Office of Surface Mining Reclamation and Enforcement, Casper Field Office, Room 2128, 100 East B Street, Casper, Wyoming 82601–1918

FOR FURTHER INFORMATION CONTACT: Mr. Larry C. Floyd, Supervisory AML Program Specialist at the Casper Field Office, (307) 261–5822.

SUPPLEMENTARY INFORMATION:

I. Background

In 1982, the Crow Tribe submitted to OSMRE its proposed Abandoned Mine Reclamation Plan under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Pub. L. 95–87. At that time OSMRE requested public comments on the adequacy of the proposed plan, 47 FR 21274–21276 (May 18, 1982). Following an internal review of the proposed plan and public comments, OSMRE met with the Crow Tribe to discuss certain revisions to its plan. In 1984, the Crow Tribe submitted a revised reclamation plan. Since OSMRE lacked authority under SMCRA to proceed further in the process for approving Tribal reclamation plans, OSMRE took no further action on the Crow Tribe's proposed plan. The public comment period, however, has remained open since 1984 pending authorizing legislation.

On July 11, 1987, the President signed the fiscal year 1987 supplemental appropriations bill which included authority for the Crow, Hopi, and Navajo Tribes to obtain abandoned mine land reclamation (AMLR) programs without first having to obtain approval of Tribal surface mining regulatory programs. In response to this legislation, OSMRE notified the Crow Tribe that it was now able to consider final action on the proposed plan. The Crow Tribe has submitted additional revisions to the plan. This notice announces that OSMRE is in the process of finalizing its review of the Crow AMLR plan, and that the public comments period will close November 25, 1988.

Title IV of the Surface Mining Control and Reclamation Act, Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, establishes an abandoned mine land program for the purposes of reclaiming and restoring land and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. Lands and water eligible for reclamation are those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State/Tribal or Federal law.

Title IV provides that if the Secretary determines that a State or Tribe has developed and submitted a program for reclamation of abandoned mines and has the ability and necessary State or Tribal legislation to implement the provisions of Title IV, the Secretary may approve the State or Tribal program and grant to the State or Tribe exclusive reponsibility and authority to implement the provisions of the approved program.

OSMRE has received a proposed AMLR plan from the Crow Tribe. The purpose of this submission is to determine both the intent and capability to assume responsibility for administering and conducting the provisions of SMCRA and OSMRE's Abandoned Mine Land Reclamation (AMLR) Program (30 CFR Chapter 7, Subchapter R) as published in the Federal Register (FR) on June 30, 1982, 47 FR 28574–28604.

This notice describes the nature of the proposed program and sets forth information concerning public participation in the Secretary's determination of whether or not the submitted plan may be approved. The public participation requirements for the consideration of a State or Tribal AMLR plan are found in 30 CFR 884.13 and 884.14. Additional information may be found under corresponding sections of the preamble to OSMRE's AMLR Program Final Rules as published in October 25, 1978 (43 FR 49932–49952).

The receipt of the Crow Tribe's plan is the first step in the process that will result in the establishment of a comprehensive program for the reclamation of abandoned mine lands on the Crow Tribal Lands.

By submitting a proposed plan, the Crow Tribe has indicated that it wishes to be primarily responsible for this

program. If the submission, as hereafter modified, is approved by the Secretary, the Crow Tribe will have primary responsibility for the reclamation of abandoned mine lands on Crow Tribal Lands.

The Department intends to continue to discuss the Crow Tribe's proposed plan with representatives of the Tribe throughout the review process. All contacts between OSMRE personnel and representatives of the Tribe will be conducted in accordance with OSMRE's guidelines on contacts with States published September 19, 1979 at 44 FR 54144.

II. Discussion of Proposed Plan

The Crow AMLR plan is designed to apply the provisions of Title IV of the Surface Mining Control and Reclamation Act (SMCRA) of 1977 to reclamation of abandoned mines on the Crow Tribal Lands. The plan includes: discussions of criteria for selecting and ranking proposed projects; standards for acquiring, managing, and disposing of land under the AMLR program; public participation policy; and descriptions of proposed projects. The existing environment on the Tribal lands is also described in the plan.

The following constitutes a summary of the contents of the Crow Tribe's Reclamation plan submission:

(a) Designation of authorized Tribal Agency to administer the program.

(b) Tribe's General Counsel's opinion that the designated Agency has the legal authority to operate the program in accordance with the requirements of Title IV of SMCRA, 30 CFR Chapter 7, Subchapter R, and the Tribal AMLR plan.

(c) Description of the policies and procedures to be followed in conducting the program including:

(1) Goals and objectives;

(2) Project ranking and selection procedures;

(3) Coordination with other reclamation programs;

(4) Land acquisition, management, and disposal;

(5) Reclamation on private land;

(6) Rights of entry; and

(7) Public participation in the program.

(d) Description of the administrative and management structure to be used in the program including:

(1) Description of the organization of the designated agency and its relationship to other organizations that will participate in the program;

(2) Personnel staffing policies;

(3) Purchasing and procurement systems and policies; and

(4) Description of the accounting system including specific procedures for operation of the reclamation fund.

(e) Description of the reclamation activities to be conducted under the Tribal AMLR plan discussing the known or suspected eligible lands and waters within the Tribal lands and including:

(1) a map showing the general location of known or suspected eligible lands and waters;

(2) a description of the problems occuring on these lands;

(3) how the plan proposes to address each of the problems;

(f) Description of the conditions prevailing on the different geographic areas of the Tribal lands where reclamation is planned, including:

(1) the economic base;

(2) significant aesthetic, historic or cultural, and recreational values; and

(3) endangered and threatened plants, fish, and wildlife and their habitat.

The Crow Tribal AMLR plan for Abandoned Mine Lands can be approved if:

1. The Secretary finds that the public has been given adequate notice and opportunity to comment, and the record does not reflect major unresolved controversies.

2. Views of other Federal agencies have been solicited and considered.

3. The Tribe has the legal authority, policies, and administrative structure to carry out the plan.

4. The plan meets all the requirements of the OSMRE AMLR Program provisions.

5. It is determined that the plan is in compliance with all applicable Tribal and Federal laws and regulations.

Date: October 19, 1988.

Robert E. Beloi,

Deputy Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 88-24578 Filed 10-24-88; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket No. AM503 OC; FRL 3462-3]

Proposed Approval of a Revision to the District of Columbia Implementation Plan: Reasonably Available Control Technology Regulations For Printing Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing approval of a new state regulation as a revision to the State Implementation Plan (SIP) for the District of Columbia. The purpose of this State regulation is to reduce volatile organic compound (VOC) emissions from a printing operation in the District's ozone nonattainment area. This action constitutes the implementation of Reasonably Available Control Technology (RACT) in the reduction of VOCs. This was a requirement of the District of Columbia's 1982 Ozone SIP, in order to receive an extension to achieve the ozone National Ambient Air Quality Standard (NAAQS) by December 31, 1987. EPA is proposing approval, as this SIP revision meets the requirements of the Clean Air Act and 40 CFR Part 51.

DATES: Comments must be received on or before November 25, 1988.

ADDRESSES: Comments may be mailed to David Arnold, Chief, Program Planning Section (3AM13), Environmental Protection Agency, 841 Chestnut Building, Philadelphia, PA 19107.

Copies of the documents relevant to this proposed action are available for public inspection during normal business hours at the locations listed below:

Mr. Don Wambsgans, Chief, Engineering Services Section, Environmental Control Division, 5010 Overlook Avenue, SW., Washington, DC 20032.

U.S. Environmental Protection Agency, Region III, Air Programs Branch, 841 Chestnut Building, Philadelphia, PA 19107.

FOR FURTHER INFORMATION CONTACT: Ms. Ivette Y. Alamo-Tirado at (215) 597–6863, of the EPA Region III address above. The commercial and FTS numbers are the same.

SUPPLEMENTARY INFORMATION:

Background

On January 11, 1985, the Mayor of the District of Columbia signed into law a major reorganization of the District's air pollution control regulations. As part of this reorganization, the District implemented a new regulation designed to reduce VOC emissions from a printing operation as part of their ozone control strategy (VOCs react in the presence of sunlight to form ozone in the lower atmosphere). The entire regulatory package was submitted to EPA on June 21, 1985, to be incorporated into the District's SIP. Because of the complexities of this package, the regulatory reform changes will be covered by another notice. This notice will only address the Reasonably Available Control Technology (RACT)

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regulation for a major printing operation in the District of Columbia.

As part of the control strategy for attainment of the National Ambient Air Quality Standard (NAAQS) for ozone, the District revised its SIP to require controls representing the application of RACT for stationary sources of VOCs. The District of Columbia was required to develop VOC emission controls in order to receive an extension for achieving the ozone NAAQS. Section 172 of the Clean Air Act allows EPA to grant extensions to those States which could not demonstrate attainment of the ozone standard by December 31, 1982, if the State revised its air pollution control program regulations. The revised program had to include RACT emission limits for various types of VOC sources located in nonattainment areas. Since the District could not demonstrate attainment by December 31, 1982, for achieving the ozone NAAQS, it requested and received an extension to December 31, 1987, for achieving the ozone NAAQS. This extension was granted on December 16, 1981, (See 46 FR 61254). One of the conditions for approval was that the District would develop RACT regulations for all sources that are covered by Control Technique Guidelines (CTG), and for major non-CTG sources. The only non-CTG source identified in the District is the U.S. Bureau of Engraving and Printing (BEP). The District, with the assistance of the BEP, developed regulations to reduce plant VOC emissions by at least 50% by December 31, 1987. The regulations require the control of fugitive press emissions by reducing the VOC content in ink solvents, wiping solutions and dampening solutions, and of pressdryer emissions by installing and operating afterburners. The BEP is the only facility of its kind in the nation, warranting the determination of a source-specific RACT standard. There are no other sources to which this regulation will apply in the District. Further information related to this regulation can be found in the Technical Support Document (TSD). This notice will address the District's non-CTG regulation for printing operations.

Regulatory Discussion

The revision that the District of Columbia submitted to EPA on June 21, 1985, includes the reorganization and updating of the existing regulations. Also, included in the District's submittal are new regulations for the control of VOC emissions from a printing operation that is not covered by EPA's Control Technique Guidelines. The new regulations can be found in section 710 (Engraving and Plate Printing) in Title 20 of the District of Colombia Municipal Regulations.

Under these provisions the District's control strategy requires:

1. Reductions in the percent content of VOC for inks, wiping solutions and dampening solutions. The percent reductions in VOC, the respective printing units and compliance time schedules are listed in Table 1.

2. Reductions of fugitive emissions by the use of inking cylinders or other techniques wherever possible.

3. A 90% VOC reduction from two heatset ovens through the use of a control device, except for water-based solvents.

4. All forms of intaglio printing to be in final compliance by December 31, 1987.

5. Provisions for an alternative VOC emission reduction system(s).

6. Reductions due to improved maintenance and operational practices.

7. Reductions due to improved storage and disposal practices.

As stated in item 5 above, the District's control strategy allows for alternative VOC emission reduction system(s) provided that:

(a) The system(s) is demonstrated to have at least equivalent results as those of this rule, in limiting emissions of VOC.

(b) The alternative system(s) shall be approved by the Mayor. EPA is proposing to approve this equivalency provision as an available *mechanism* under the SIP whereby alternative controls may be established. However EPA approval of this mechanism will *not* constitute pre-approval of any alternative requirements set under the provisions. Before any such alternative can become incorporated into the SIP and thereby federally enforceable, it must be submitted to EPA and finally approved as a SIP revision.

At the time of final approval EPA intends to exercise its authority through section 114 of the Clean Air Act to require BEP to obtain and maintain the information that EPA needs to determine whether the source is in violation of the federally approved state implementation plan (SIP). Because recordkeeping is essential to determining continuous compliance with emission standards, EPA will impose periodic recordkeeping requirements (e.g., 1 month per quarter). Information required will include the percentage VOC content (by weight) and will apply to the inks and solutions as contained in the storage wells (fountains) of the printing units. This information will have to be developed on a daily basis for the period covered. EPA encourages the District to require similar recordkeeping requirements under District law.

EPA's authority under section 114 is not subject to a requirement for notice and comment; however, any party may comment on EPA's intentions regarding the exercise of section 114 authority in this way in the same way as comments are required for other aspects of this proposed action as outlined in the procedures set forth in this notice.

Proposed Action

EPA is proposing to approve 20 DCMR section 710 as part of the District of Columbia's SIP. This regulation implements the required RACT control program for printing operations in the District. A more detailed description of EPA's evaluation of the above regulatory change is presented in the Technical Support Document (TSD) that is available for public inspection at the EPA located listed in the above addresses.

EPA is soliciting public comments on this notice and on issues relevant to today's proposed actions. Comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking process by submitting written comments to the EPA Regional office listed in the addresses section above.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of the Executive Order 12291.

List of Subjects in 40 CFR 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Date: August 2, 1988.

James M. Self,

Regional Administrator.

TABLE 1.

Type of printing unit	VOC content of ink shall not exceed this percent after Dec. 31 of the year stated				VOC content of wiping solution shall not exceed this percent after Dec. 31 of the year stated				VOC content of dampening solution shall not exceed this percent after Dec. 31 of the year stated			
	1984	1985	1986	1987	1984	1985	1986	1987	1984	1985	1986	1987
Heatset intaglio	40	35	32	30	100	100	1	1	1	1	1	1
Non-heatset paperwipe intaglio	5	5	5	5	1	1	1	1	1	1	1	1
Non-heatset cylinder-wipe intaglio	25	20	18	15	1	1	1	1	1	1	1	1
Offset Lithography:												
Heatset	40	40	40	40	1	1	1	1	30	30	17	15
Non-heatset	35	35	35	35	1	1	1	1	30	30	21	20
Letterset	40	40	40	40	1	1	1	1	1	1	1	1
Letterpress					1	1	1	1	1	1	1	1
Flexography					1	1	1	1	1	1	1	1
Screen					1	1	1	1	1	1	1	1

[1] Not applicable.

NOTES.—1. The percentage VOC content is by weight and applies to the inks and solutions as contained in the storage wells (fountains) of the printing unit. The VOC content does not include water.

2. The percentage VOC content shall be determined in accordance with Procedure B of test method ASTM D-2369-81; in lieu of testing the formulated inks and solutions, the individual components of the formulations may be tested and the VOC content of the formulations may be calculated there from.

3. The percentage water content shall be determined in accordance with test method ASTM D-3792-79 or test method ASTM D-4017-81.

Part 52 Chapter I, Title 40 of the Code of Federal Regulations is proposed to be amended as follows:

Subpart J—District of Columbia

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.470 is amended by adding paragraph (c)(28) to read as follows:

§52.470 Identification of plan.

* * * * *

(c) * * *

(28) Section 710 of Title 20 of the District of Columbia Regulations is approved on condition that all alternative controls under §716.8 (or exemptions granted) are subject to a public hearing and submitted to EPA as a SIP revision. Such provisions are not effective until approved as a SIP revision.

[FR Doc. 88-24116 Filed 10-24-88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-1-FRL-3467-1]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Reasonably Available Control Technology for Dow Chemical, U.S.A.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a proposed State Implementation Plan (SIP) revision submitted by the State of Connecticut. This revision establishes and requires the use of reasonably available control technology (RACT) for the control of volatile organic compound (VOC) emissions from Dow Chemical, U.S.A. in Gales Ferry, Connecticut. The intended effect of this action is to propose approval of a source-specific RACT determination made by the State in accordance with commitments made in its Ozone Attainment Plan approved by EPA on March 21, 1984 (49 FR 10542). This action is being taken in accordance with Section 110 of the Clean Air Act.

DATES: Comments must be received on or before November 25, 1988. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Management Division, EPA Region I, Room 2311, JFK Federal Bldg., Boston, MA 02203. Copies of Connecticut's submittal and EPA's Technical Support Document prepared for this revision are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2311, JFK Federal Bldg., Boston, MA 02203; and the Air Compliance Unit, Department of Environmental Protection, State Office Bldg., 165 Capitol Avenue, Hartford, CT 06106.

FOR FURTHER INFORMATION CONTACT: David B. Conroy, (617) 565–3252; FTS 835–3252.

SUPPLEMENTARY INFORMATION: On May 21, 1987 and August 13, 1987, the Connecticut Department of Environmental Protection (DEP) submitted a SIP revision to EPA for parallel-processing. This revision consists of a proposed State Order No. 8011 which defines VOC control requirements for Dow Chemical, U.S.A. in Gales Ferry, Connecticut. These control requirements constitute RACT for this facility as required by subsection 22a–174–20(ee), "Reasonably Available Control Technology for Large Sources," of Connecticut's Regulations for the Abatement of Air Pollution.

Under subsection 22a–174–2(ee), the DEP determines and imposes RACT on all stationary sources with potential VOC emissions of one hundred tons per year (TPY) or more that are not already subject to Connecticut's regulations developed pursuant to EPA's Control Techniques Guideline (CTG) documents. EPA approved this regulation on March 21, 1984 (49 FR 10542) as part of Connecticut's 1982 Ozone Attainment Plan. That approval was granted with the agreement that all source-specific RACT determinations made by the DEP would be submitted to EPA as source-specific SIP revisions.

Summary of SIP Revision

Dow manufactures a variety of polymers and a polymer-based expanded foam at its Gales Ferry facility. Dow's operation consists of four separate manufacturing processes that all have emissions of VOC. The four manufacturing processes are the Polystyrene Manufacturing Process, the Acrylonitrile-Butadiene-Styrene (ABS) Resin Manufacturing Process, the Styrene/Butadiene (SB) Latex Manufacturing Process, and the Styrofoam® Manufacturing Process. The State Order imposes various control requirements on each of the processes.

I. Polystyrene Manufacturing Process

The Polystyrene Manufacturing Process produces polystyrene resins from styrene monomer using a continuous, thermal polymerization process. This process is regulated under subsections 22a–174–20(x) and 22a–174–

20(y) of Connecticut's regulations entitled "Control of Volatile Organic Compound Leaks from Synthetic Organic Chemical & Polymer Manufacturing Equipment" and "Manufacture of Polystyrene Resins," respectively. These RACT regulations were adopted pursuant to two of EPA's Group III CTGs entitled "Control of Volatile Organic Compound Emissions from Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins (EPA–450/3–83–006)" and "Control of Volatile Organic Compound Leaks from Synthetic Organic Chemical and Polymer Manufacturing Equipment (EPA–450/3–83–006)."

The State Order requires Dow to demonstrate compliance with all of the provisions of subsections 22a–174–20(x) and 20(y) of Connecticut's regulations for this process. The State Order also imposes one additional requirement that is not contained in the two Connecticut regulations. It requires Dow to meet the CTG-recommended emission limit of 0.12 pounds of VOC per 1,000 pounds of product from all of the vents in the manufacturing process and not just the vents on the material recovery section as is required by Connecticut's polystyrene manufacturing regulation.

II. ABS Resin Manufacturing Process

The ABS Resin Manufacturing Process produces both polystyrene and ABS resins. The ABS resin is produced through the polymerization of acrylonitrile, polybutadiene rubber and styrene. The process is similar to the Polystyrene Manufacturing Process in that it also uses a continuous, thermal polymerization process. This process is also covered under the two Connecticut regulations adopted pursuant to EPA's Group III CTGs.

The State Order requires Dow to demonstrate the compliance with all of the provisions of subsections 22a–174–20(x) and 22a–174–20(y) of Connecticut's regulations. Additionally, as with the polystyrene operation, Dow is required to meet the CTG-recommended emission limit of 0.12 pounds of VOC per 1,000 pounds of product from all of the vents in the manufacturing process.

Further, the State Order requires Dow to adhere to hourly limitations on the emissions of acrylonitrile from two vents (the condenser vacuum vent and the extruder demister die exhaust vent) when this process produces the ABS resin. These limitations were developed pursuant to Section 22a–174–29 of Connecticut's regulations entitled "Hazardous Air Pollutants." The limitations that Dow will be required to meet are 0.198 pounds acrylonitrile per hour from the condenser vacuum vent and 0.199 pounds acrylonitrile per hour from the extruder demister die exhaust vent.

The ABS Resin Manufacturing Process at Dow is one of the acrylonitrile-emitting facilities that was evaluated under a pilot program described in the Federal Register on June 10, 1985 (50 FR 24319) in which the State and local air pollution control agencies were to analyze certain acrylonitrile emitting sources to determine if additional controls were warranted for the control of acrylonitrile as a toxic air pollutant. The requirements imposed on this process by the State Order represent, in part, the controls necessary for acrylonitrile under Connecticut's assessment of this pollutant in order to reduce the risk from exposure to this pollutant.

III. SB Latex Manufacturing Process

The SB Latex Manufacturing Process uses an emulsion medium to copolymerize styrene and butadiene. For this process, the State Order restates the requirements of a federally-enforceable new source review (NSR) permit that was issued to Dow by the Connecticut DEP in 1984. Dow was required to obtain the NSR permit when it undertook modifications to modernize and expand the capacity of the SB latex process. The NSR permit requires the installation of Best Available Control Technology (BACT) on the SB latex process; BACT has been defined as a refrigerated vapor recovery system on the butadiene storage sphere and a packed scrubber, with at least 91 percent efficiency, on the process equipment in the latex production facility.

IV. Styrofoam® Manufacturing Process

The Styrofoam® Manufacturing Process produces polystyrene foam. The process consists of mixing melted polystyrene with additives, injecting a blowing agent and extruding the material through a die where it expands and forms a rigid board. Historically, the blowing agent has consisted of both dichlorodifluoromethane (Freon 12) and methyl chloride, of which only methyl chloride is considered a VOC. Total usage of methyl chloride averaged approximately 740 tons per year for 1983 and 1984.

Dow has investigated the feasibility of installing add-on pollution control equipment to control the emissions from this process. However, since the majority of the VOC emissions are emitted as fugitives during the curing of the styrofoam®, Dow in its analysis of add-on control equipment found that add-on control equipment would be prohibitively expensive. Dow has submitted studies to the DEP which justify the infeasibility of add-on control equipment at its Gales Ferry plant. (Copies of those studies are included in the Technical Support Document prepared by EPA for this revision.)

Since add-on control equipment is believed to be infeasible at this point in time, the only remaining option for this process was the reduction and/or replacement of the VOC blowing agent. Dow has, for many years, been investigating the reduction and/or replacement of its present blowing agent in order to reduce VOC emissions. Although the use of most of the compounds investigated (including exempt VOCs, inert gases and chemical-decomposing blowing agents) has been found to be unsatisfactory for foam production, Dow has found that the replacement of the methly chloride blowing agent with a mixture of ethyl chloride and carbon dioxide results in an acceptable blowing agent with a corresponding reduction in VOC emissions. The substitution of the methyl chloride blowing agent has been found to be feasible for all but two of the products produced at the Gales Ferry plant. In recent years, these two products have accounted for approximately 12 percent of the total styrofoam® production at the plant.

As RACT, the State Order requires Dow to maintain an emission rate in terms of pounds VOC per one hundred pounds of polymer extruded for each product. The emission rate for each product represents the reduction from the historical emission rate that has been found to represent RACT for that product. The implementation of RACT on this process will result in approximately a twenty percent reduction in VOC usage.

The level of reduction which will be achieved at the proposed RACT level for this process is generally less than the level of reduction achieved by RACT for most VOC-emitting processes. However, EPA believes that the level of control being proposed for this process represents RACT at this point in time because Dow has demonstrated that no viable alternative control strategies exist which would result in greater reductions in VOC emissions.

EPA has reviewed the requirements of State Order No. 8011 and its compliance dates, and has determined that they constitute RACT for the four VOC-emitting processes at Dow Chemical U.S.A. in Gales Ferry.

EPA is proposing to approve DEP's proposed Order as a revision to the Connecticut SIP, and is soliciting public comments. These comments will be considered before taking final action. Interested parties may participate in the Federal Rulemaking procedure by submitting written comments to the EPA Regional Office listed in the ADDRESSES section of this notice.

This revision is being proposed under a procedure called parallel-processing, whereby EPA proposes rulemaking action concurrently with the State's procedures for amending its regulations. If the proposed revision is substantially changed, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made to the proposed revision, EPA will publish a final rulemaking notice. The final rulemaking action by EPA will occur only after the SIP revision has been adopted by the State of Connecticut and submitted for incorporation into the SIP.

Proposed Action

EPA is proposing to approve Connecticut's proposed State Order No. 8011 as a revision to the Connecticut SIP. The provisions of Connecticut's proposed State Order No. 8011 define and impose RACT for Dow Chemical, U.S.A. as required by subsection 22a–174–20(ee) of Connecticut's regulations.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

The Administrator's decision to approve or disapprove the plan revision will be based on whether it meets the requirements of section 110(a)(2)(A)–(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Dated October 9, 1987.

Editorial Note: This document was received at the Office of the Federal Register October 20, 1988.

Michael R. Deland,

Regional Administrator, Region I.

[FR Doc. 88–24594 Filed 10–24–88; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 180

[PP 8E3670/P469; FRL-3467-4]

Menthol; Proposed Exemptions From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that exemptions from the requirement of a tolerance be established for residues of the pesticidal chemical menthol in or on beeswax and honey. This proposal, which eliminates the need to establish a maximum permissible level for residues of menthol in or on the commodities, was requested in a petition submitted by the Interregional Research Project No. 4 (IR–4).

DATE: Comments, identified by the document control number [PP 8E3670/P469], must be received on or before November 9, 1988.

ADDRESS: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

In person, bring comment to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (TS–767C), Registration Division, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 716C, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)—557–2310.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition (PP) 8E3670 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project, and the Agricultural Experiment Stations of California, Indiana, Mississippi, and New Jersey and the U.S. Department of Agriculture.

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of exemptions from the requirement of a tolerance for menthol, *l*-menthol or [5-methyl-2-(1-methylethyl)-cyclohexanol], in or on beeswax and honey when used in over-wintering bee hives.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the exemption is sought.

Menthol will be applied to over-wintering bee hives during the period from late August to early December when there is no surplus honey flow and daytime temperatures are expected to reach at least 60 °F. Menthol is a crystalline natural product of peppermint grass, and the properties and characteristics of menthol are well documented in various compendia. Menthol and peppermint oil (50 percent menthol), as natural extractives, are generally recognized as safe (GRAS) for their intended use, within the meaning of section 409 of the Federal Food, Drug, and Cosmetic Act. As such, menthol is used in a variety of foods ranging from 35 parts per million in nonalcoholic beverages to 1,100 ppm in chewing gum. Many plants, particularly mint grasses, have a natural content of menthol in their pollen. Therefore, honey will normally include a finite level of menthol as residue during the honey-flow season. Residue data indicate a level of 1 ppm of menthol from honey taken from untreated hives because of the ubiquitous presence of the material in the environment of man, animals, and plants and not more than 5.0 ppm from the proposed use in over-wintering beehives.

Acceptable daily intake (ADI) and maximum permissible intake (MPI) considerations are not relevant to this petition. No enforcement actions are expected. Therefore, the requirement for an analytical method for enforcement purposes is not applicable to this

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exemption request. This is the first exemption from the requirement of a tolerance for this pesticidal chemical.

Based on the above information considered by the Agency, the exemption from the requirement of a tolerance established by amending 40 CFR Part 180 would protect the public health. Therefore, it is proposed that the exemption be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 15 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act. As provided for in the Administrative Procedure Act [5 U.S.C. 553(d)(3)], the comment period time is shortened to less than 30 days because of the necessity to expeditiously provide a means of early seasonal control of tracheal mites infesting bee hives.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 8E3670/P469]. All written comments filed in response to this petition will be available in the Public Docket and Freedom of Information Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: October 18, 1988.

Edwin F. Tinsworth,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. New § 180.1092 is added to Subpart D, to read as follows:

§ 180.1092 Menthol; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of the pesticidal chemical menthol in or on beeswax and honey when used in accordance with good agricultural practice in over-wintering bee hives.

[FR Doc. 88-24582 Filed 10-24-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Federal Insurance Administration

44 CFR Part 67

[Docket No. FEMA-6527]

Proposed Flood Elevation Determinations, Iowa; Correction

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed Rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 53 FR on June 9, 1988. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate Map for the City of Elliott, Montgomery County, Iowa.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the City of Elliott, Montgomery County, Iowa previously published at 53 FR on June 9, 1988, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 67.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
East Nishnabotna River	
Just upstream of State Highway 48	*1,070
About 2,800 feet upstream from State Highway 48	*1,071
Cox Creek	
About 0.38 mile upstream of mouth	*1,070
About 0.27 mile upstream of Burlington Northern railroad	*1,084
Tributary A	
Just upstream of of mouth	*1,070
Just upstream of Burlington Northern railroad	*1,075
Cox Creek Divergence	
At convergence	*1,073
At divergence	*1,082

Issued: October 19, 1988.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 88-24585 Filed 10-24-88; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6527]

Proposed Flood Elevation Determinations, Kentucky; Correction

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed Rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 53 FR on June 9, 1988. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate Map for the Unincorporated Areas of Knox County, Kentucky.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Unincorporated Areas of Knox County, Kentucky previously published at 53 FR on June 9, 1988, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 67.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
East Fork Lynn Camp Creek:	
At mouth	*1,071
Just downstream of Private Road (About 2100 feet upstream of Indian Creek Road)	*1,100
Lynn Camp Creek:	
At county boundary	*1,066
About 0.5 mile upstream of Back Street	*1,069
Cumberland River:	
About 2 miles downstream of confluence of Swanpond	*978
About 2 miles upstream of confluence of Ledger Branch	†995
Cumberland River High Flow Diversion Channel	
At confluence with Cumberland River	*950
At divergence with Cumberland River	†963
Richland Creek:	
Just downstream of School Street	*988
About 2,100 feet upstream of Old Railroad Grade Road	*998

Issued: October 19, 1988.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 88-24586 Filed 10-24-88; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-490, RM-6402]

Radio Broadcasting Services; Parker, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by KMDX–FM99, Inc., licensee of Station KMDX(FM), Channel 257A, Parker, Arizona, proposing the substitution of FM Channel 257C2 for Channel 257A and modification of its license accordingly, to provide that community with its first expanded coverage area FM service. The site coordinates for this proposal are 34–07–51 and 114–25–40.

DATES: Comments must be filed on or before December 12, 1988, and reply comments on or before December 27, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners counsel, as follows: Peter Tannenald, Esq., Arent, Fox, Kintner, Plotkin & Kahn, 1050 Conn. Ave., NW., Washington, DC 20036–5339.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–490 adopted September 28, 1988, and released October 19, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commissin consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-24639 Filed 10-24-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-495; RM-6421]

Radio Broadcasting Services; Montauk, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Nanette Markunas to allot Channel 235A to Montauk, New York, as the community's second local FM service. Channel 235A can be allotted to Montauk in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.9 kilometers (3.1 miles) southwest to avoid a short-spacing to Station WOCB–FM, Channel 235B, West Yarmough, Massachusetts. The coordinates for this allotment are North Latitude 41–01–00 and West Longitude 72–00–00. channel 235A could be allotted to Montauk without the imposition of a site restriction if the counterproposal of Joan Orr in MM docket 87–484, 2 FCC Rcd 6793 (1987) to substitute Channel 236B for Channel 235B at West Yarmouth and modify Station WOCB–FM's license accordingly is adopted. See Public Notice Report No. 1431, January 27, 1988.

DATES: Comments must be filed on or before December 9, 1988, and reply comments on or before December 27, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Nanette Markunas, Box 2576, Montauk, New York 11954 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–495, adopted September 28, 1988, and released October 18,1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also

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be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules government permissible *ex parte* contacts.

For information regarding filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-24640 Filed 10-24-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-496, RM-6346, RM-6488]

Radio Broadcasting Service; Boalsburg, Clearfield, Jersey Shore, Renovo, St. Marys, Tioga, PA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on two mutually exclusive petitions for rule making. Kenneth H. Breon, Jr. and John K. Hogg, Jr. d/b/a Covenant Broadcasting Company propose the substitution of Channel 227B1 for Channel 228A at Jersey Shore, PA, and the modification of its license for Station WJSA–FM to specify operation on the higher powered channel, the substitution of Channel 254A for Channel 228A at Renovo, PA, and the substitution of Channel 294A for Channel 227A at Tioga, PA. Alternatively, Olivia T. Rennekamp and Cary H. Simpson d/b/a The Elk-Cameron Broadcasting Company, propose the substitution of Channel 230B1 for Channel 232A at St. Marys, PA, and the modification of its license for Station WKBI–FM to specify operation on the higher powered channel, the substitution of Channel 229B1 for Channel 230B1 at Clearfield, PA, and the modification of Clearfield Broadcasters' license for Station WQYX(FM) to specify the alternate channel, the substitution of Channel 229A for Channel 225A at Boalsburg, PA, and the substitution of Channel 254A for Channel 228A at Renovo, PA.

DATES: Comments must be filed on or before December 9, 1988, and reply comments on or before December 27, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John K. Hogg, Jr., Covenant Broadcasting Company, 282 Allegheny Street, Jersey Shore, Pennsylvania 17740 (Petitioner for Jersey Shore) and Anne Thomas Paxson, Esq., Bechtel, Borsari, Cole & Paxson, 2101 L Street, NW., Suite 502, Washington, DC 20037 (Counsel to Elk-Cameron).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making and Order to Show Cause, MM Docket No. 88–496, adopted September 21, 1988, and released October 18, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Channel 227B1 can be allotted to Jersey Shore in compliance with the Commission's minimum distance separation requirements with a site restriction of 15.0 kilometers (9.3 miles) east to avoid a short-spacing to Station WWSE, Channel 227B, Jamestown, New York, and to the pending application of Station WMMR, Channel 227B, Philadelphia, Pennsylvania. The coordinates for this allotment are North Latitude 41–09–22 and West Longitude 77–05–17. Channel 234A can be allotted to Tioga and Channel 254A can be allotted to Renovo in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction and can be used at the sites specified in the pending applications. The coordinates for these allotments are North Latitude 41–54–36 and West Longitude 77–06–06 and North Latitude 41–10–30 and West Longitude 77–45–00, respectively. Channel 230B1 can be allotted to St. Marys in compliance with the Commission's minimum distance separation requirements and can be used at Station WKBI–FM's present site. The coordinates for this allotment are North Latitude 41–24–56 and West Longitude 78–33–56. Channel 226B1 can be allotted to Clearfield, PA, in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.8 kilometers (6.7 miles) southeast to avoid a short-spacing to Channel 230B1 at St. Marys. The coordinates for this allotment are North Latitude 40–58–30 and West Longitude 78–20–00. Channel 229A can be allotted to Boalsburg in compliance with the Commission's minimum distance separation requirements and can be used at the sites specified in the pending applications. The coordinates for this allotment are North Latitude 40–46–30 and West Longitude 77–47–24. Canadian concurrence in these allotments is required since the communities are located within 320 kilometers of the U.S.-Canadian border.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-24638 Filed 10-24-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-492, RM-6414]

Radio Broadcasting Services; Borger, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Fun Radio Group, Inc., licensee of Station KDXR(FM), Channel 282C, Borger, Texas, proposing the substitution of Channel 282C1 for Channel 282C and modification of its license to specify operation on the Class C1 channel. The substitution can be made from the site specified in the construction permit (BPH–860312IF) at coordinates 35–30–33 and 101–38–54, which is 28.3 kilometers (17.6 miles) southwest of the Borger.

DATES: Comments must be filed on or before December 12, 1988, and reply comments on or before December 27, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: J. Dominic Monahan, Esquire, Peter H. Doyle, Esquire, Dow, Lohnes & Albertson, 1255 23rd Street, NW., Washington, DC 20037 (Counsels for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–492, adopted September 28, 1988, and released October 19, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-24641 Filed 10-24-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

[Docket No. 81017-8217]

Snapper-Grouper Fishery of the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA proposes to implement Amendment 1 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). This proposed rule would prohibit the use of trawl nets in the snapper-grouper fishery in the exclusive economic zone (EEZ) between Cape Hatteras, North Carolina, and Cape Canaveral, Florida. NOAA also proposes to redefine the area south of Fowey Rocks Light, Florida, wherein fish traps may not be placed. The intended effect of this proposed rule is to prevent habitat damage and prevent the harvest of undersized fish, thereby ensuring the continued productivity of the snapper-grouper resource, and to clarify the regulations.

DATE: Written comments must be received on or before December 5, 1988.

ADDRESS: Copies of Amendment 1 and documents supporting this action may be obtained from and comments may be sent to: Rodney C. Dalton, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Rodney C. Dalton, 813–893–3722.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery is managed under the FMP, prepared by the South Atlantic Fishery Management Council (Council), and its implementing regulations at 50 CFR Part 646, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMP, implemented September 28, 1983 (48 FR 39463, August 3, 1983), addressed growth overfishing of a number of the major species in the fishery and controversy regarding certain harvest techniques. Minimum sizes were established for five of the major species, and limitations were imposed on the use of poisons, explosives, fish traps, and trawls in the fishery. A prohibition on use of roller trawls was considered in order to address concerns about trawl damage to live-bottom habitat and harvest of very small vermilion snapper. The prohibition was rejected because conclusive evidence of trawl-induced habitat damage was not available at that time. The FMP noted ongoing studies of the effects of trawls on live-bottom habitat and expressed the intent to address this issue via FMP amendment if evidence of significant damage was documented. Information is now availalble to document habitat damage resulting from use of bottom trawls in live-bottom areas.

Amendment 1 addresses the problems of habitat damage and trawl harvest of undersized fish by prohibiting the use of trawl gear in a directed snapper-grouper fishery between Cape Hatteras, North Carolina, and Cape Canaveral, Florida. A vessel possessing trawl gear and more than 200 pounds of fish in the snapper-grouper fishery (as listed in § 646.2) would be defined as a participant in a directed fishery. It would be a rebuttable presumption that a vessel possessing fish in the snapper-grouper fishery harvested those fish in the EEZ.

In addition to the prohibition of trawl gear, Amendment 1 updates the habitat section of the FMP and incorporates vessel safety considerations into the FMP.

Background

The FMP and supplemental habitat information in Amendment 1 confirm that live-bottom areas, characterized by low to moderate relief and presence of corals, sponges, and other sessile invertebrates, are the primary habitat for the major species in the snapper-grouper fishery. There is a limited amount of this habitat scattered irregularly over the continental shelf north of Cape Canaveral, Florida. The exact extent and distribution of these live-bottom areas is unknown. Current data suggest that 3 to 30 percent of the shelf contains suitable bottom for supporting the snapper-grouper fishery.

Experimental fishing cruises in the 1960's and 1970's established the feasibility of modifying trawls to harvest snapper-grouper species from live-bottom areas. Within the last 10 years, high-rise bottom trawls, often modified with large rollers to allow fishing over low-relief live-bottom areas, have been used to harvest species in the snapper-grouper fishery. Most vessels operating in this trawl fishery are converted shrimp vessels that target snapper-

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grouper during the closed season for shrimp, generally January through March or April. The principal fishing areas are the productive live-bottom areas. The number of vessels participating in this seasonal trawl fishery has varied from 21 in 1981 to 2 in 1986; 7 vessels operated in 1987 and 1988.

Initial emergence of the trawl fishery for snapper-grouper species resulted in concerns and complaints from recreational fishermen, environmental groups, and other commercial fishermen regarding damage to live-bottom areas and substantial harvests of extremely small (i.e., six to the pound) vermilion snapper. The Council was concerned about these issues but was unable to address the habitat issue directly, because conclusive evidence of habitat damage was not available at that time. However, a minimum mesh size of 4 inches was implemented in 1984 to minimize the harvest of vermilion snapper less than 12 inches total length. Because small vermilion snapper comprised the majority of the catch in the trawl fishery, most trawl vessels left the fishery soon after the mesh-size requirement became effective. This temporarily mitigated concerns about habitat damage resulting from the trawl fishery. By 1987, the number of trawl vessels began to increase again and concerns about habitat damage reemerged. Based on additional evidence regarding the effects of trawling on live-bottom habitat and the continuing harvest of small vermilion snapper, the Council concluded that the use of trawls in the snapper-grouper fishery should be prohibited.

Evidence of Habitat Damage

The Council reviewed available information regarding effects of trawling on live-bottom habitat. A study conducted off the coast of Georgia analyzed the effects of a single pass of a roller trawl through a hard-bottom, sponge and coral community. Damage to individuals of all target species (i.e., sponges, corals, and octocorals) was observed immediately after trawling. The amount of damage varied according to species, but only barrel sponges exhibited a statistically significant reduction in density. Twelve months after the trawling, regeneration of tissue was sufficient to have resealed off the tops of partially severed sponges and to have closed wounds on other sponges, but additional growth was limited; as indicated by some of the sponges being obviously shorter than before the trawling damage. The authors stressed, however that this damage resulted from a single pass of the trawls and that commercial fishing, with repeated trawling of the same area, would probably cause much greater damage to sponge and coral populations. The study further suggests that trawling without rollers, which are designed to allow the trawl to move over low-relief structures, would result in even more serious adverse impacts on bottom communities.

Information from research cruises further documents the effects of trawling on live-bottom habitat. Trawling conducted by a research vessel off the coasts of Georgia and South Carolina resulted in substantial removal of attached invertebrates. During 56 trawl tows made in live-bottom habitat, more than 5,000 pounds of sponges, soft corals, tunicates, bryozoans, and hydroids were collected, resulting in an average removal of over 90 pounds per tow. The scientific paper reporting these results emphasized that these figures only account for the bottom material entirely removed; the additional damage caused by the trawl doors, ground cables, and leg lines could not be determined. Numerous other cruise reports involving bottom trawling reference removal of sponges and corals, as well as damage to trawl gear used in live-bottom areas.

A study conducted in Australia provides an example of the potential long-term effects of bottom trawling in live-bottom habitats. This study compared trawl catches and the condition of bottom habitat in 1966, prior to the development of a commercial bottom trawl fishery, with data collected from the same area and time of year in 1982. Major changes observed were a conversion of areas with dense epibenthos (sponge, corals, hydroids, and gorgonians) to areas with sparse epibenthos and a resulting shift in catch composition from species associated with live-bottom (i.e., reef fishes) to species associated with open, sandy bottom. The data suggested that many species of fish are associated with particular types of bottom topography and invertebrate animals, such as sponges and soft corals. The study concluded that at moderate to low levels of fishing the main effect of trawling on abundance of bottom fishes is by alteration of the frequency and distribution of habitat types.

Based on the above information, the Council concluded that the trawl fishery for snapper-grouper in the South Atlantic is damaging the limited live-bottom habitat and is likely to have an adverse impact on the long-term viability of the snapper-grouper fishery. The Council's Habitat and Environmental Protection Policy declares the intent of the Council to protect, restore, and develop habitats upon which commercial and recreational marine fisheries depend, to increase their extent, and to improve their productive capacity for the benefit of present and future generations. The Council reviewed all relevant background information and concluded that continued habitat damage by trawl gear poses a significant risk to the long-term productivity of the snapper-grouper resource. Therefore, the Council is proposing to prohibit trawl gear in the snapper-grouper fishery in order to protect and restore habitats upon which commercial and recreational marine fisheries depend, as called for in recent amendments to the Magnuson Act and the Council's Habitat and Environmental Protection Policy.

Harvest of Undersized Vermilion Snapper

Vermilion snapper is one of the major species that is experiencing growth overfishing. The harvest of small vermilion snapper by the trawl fishery was discussed as a major problem in the original FMP. The FMP documented that the trawl fishery produced 83 percent of the commercial vermilion snapper landings in South Carolina and that 91 percent of these fish were significantly smaller than the desired 12-inch length. Numerous reports of substantial landings of trawl-caught vermilion snapper averaging one-sixth of a pound have been documented. Analysis in the FMP indicates that increasing the average size to 12 inches would increase yield by 34 percent.

The 4-inch mesh requirement implemented in September 1984 was designed to achieve a 12-inch average size for vermilion snapper, the principal component of the trawl fishery. The measure was effective initially, and trawl landings of vermilion snapper and the number of trawl vessels in the fishery declined significantly. This temporarily eased concerns about harvest of small fish and trawl damage to live-bottom habitat. However, in 1987 and 1988 the number of trawl vessels began increasing again. Confidential data available to the Council indicate that the 1988 trawl landings of vermilion snapper increased substantially and that the average size of fish was small. This apparent ineffectiveness of the 4-inch mesh requirement could be due to clogging of the meshes or possibly to illegal use of smaller-mesh liners in the trawl. Neither cause could be effectively resolved through enforcement of the existing regulation.

The Council believes that prohibition of the use of trawl gear in this fishery would minimize growth overfishing of vermilion snapper and increase potential yield from that species, in addition to protecting critical habitat. Vermilion snapper are harvested by commercial and recreational fishermen using hook-and-line gear; the average size and value per pound of these fish is consistently greater than that of trawl-caught vermilion snapper. In 1986, the average price per pound of hook-and-line caught vermilion snapper was $2.20, compared to $0.83 for trawl-caught fish. The Council has concluded that the losses resulting from prohibiting use of trawls would be exceeded by long-term benefits (i.e., increased yield and value) accruing to other traditional users of this resource.

The trawl prohibition is not applicable to waters north of Cape Hatteras because there is believed to be little, if any, live-bottom in this area due to different environmental and ecological conditions that exist north of Cape Hatteras. This prohibition is not applicable south of Cape Canaveral because fish trawling has not taken place within this area in the past, and the method of enforcing this regulation would unnecessarily impact the shrimp fishery in south Florida.

To provide effective enforcement of the prohibition on trawls in a directed snapper-grouper fishery between Cape Hatteras and Cape Canaveral, this proposed rule considers that a vessel with trawl gear and more than 200 pounds of fish in the snapper-grouper fishery aboard is in a directed snapper-grouper fishery. Further, it would be a rebuttable presumption that a vessel with more than 200 pounds of fish in the snapper-grouper fishery aboard harvested such fish in the EEZ. With this consideration and presumption, the prohibitions on trawls could be enforced dock-side instead of requiring expensive and relatively unavailable at-sea enforcement.

The Council evaluated the potential impacts of the 200-pound criterion on shrimp vessels that may occasionally land snapper-grouper as a result of a minor incidental catch or supplemental hook-and-line fishing. Landings data for North Carolina, South Carolina, and Georgia indicate that shrimp vessels do not land fish in the snapper-grouper fishery in excess of 200 pounds per trip. Information from Florida indicates that, from 1985 to 1987, in 8,380 shrimp trips, there were only three landings of snappers and groupers combined which were 200 pounds or more. The Council concluded that 200 pounds of fish in the snapper-grouper fishery per trip is a reasonable and realistic indicator of a directed snapper-grouper trawl fishery and is essential to the effectiveness of the management measure.

Catch statistics for North Carolina, South Carolina, and Georgia, supported by life history information on fish in the snapper-grouper fishery, indicate that more than 94 percent of fish in the snapper-grouper fishery are caught in the EEZ. Catch statistics for the east coast of Florida are less conclusive, since they include the entire east coast. North of Cape Canaveral, where the rebuttable presumption applies, a similarly high percentage is applicable. In any case, the catch by a trawler of more than 200 pounds of fish in the snapper-grouper fishery per trip from a State's waters between Cape Hatteras and Cape Canaveral is highly unlikely. The Council concluded that the rebuttable presumption is reasonable and realistic and that it is essential to the effectiveness of the management measure.

To ensure that trawlers surreptitiously targeting on fish in the snapper-grouper fishery cannot avoid detection dock-side by transferring at sea such fish in excess of 200 pounds, this rule proposes to prohibit the transfer at sea of fish in the snapper-grouper fishery from a trawler. Transfers at sea are not a customary practice in the fisheries from Cape Hatteras to Cape Canaveral, and the proposed prohibition of transfers should not cause any change in fishing practices.

Additional Changes

In addition to the regulatory changes associated with Amendment 1, NOAA proposes additional changes to correct and clarify the regulations. The purpose and scope section (§ 646.1) would be modified to express the scope of the regulations in the broadest terms consistent with the FMP. The scope of any general provision or management measure would be specified in that provision or measure. The defined term *Fish in the snapper-grouper species* would be revised to *Fish in the snapper-grouper fishery* to conform to the term used in the regulations. The gear limitations section (§ 646.22) would be reorganized for clarify and to specify the geographic applicability of each limitation. The prohibition on fish traps shoreward of the 100-foot contour south of Fowey Rocks Light, Florida, would be revised to resolve two problems that have arisen in the practical application of the prohibition.

First, there are two charted pockets of water less than 100 feet deep which lie close to, but outside, the continuous 100-foot contour. In these two areas, it is unclear how the prohibition of placing traps "shoreward" of the 100-foot contour is to be applied. The larger of these areas lies off Sand Key, Florida, just west of the Key West main ship channel. It is 10.2 nautical miles (nm) long, ranges from 0.25 to 0.8 nm wide, and is seperated from the continuous 100-foot contour by 0.1 to 0.4 nm. The smaller area is south-southwest of Halfmoon Shoal in the Florida Keys. It is less than 1.0 nm long by 0.2 nm wide and is no more than 0.1 nm from the continuous 100-foot contour.

The second problem results from the lack of a 100-foot contour line on the available chart of the Florida Keys between 82°40' W. and 83°00' W. longitudes. (The FMP and the regulations at 50 CFR Part 646 are not applicable west of 83°00' W. longitude or north of the Florida Keys.) Unlike the Coast Charts (1:80,000 scale) applicable to the rest of the Florida Keys and coastline, National Ocean Service (NOS) chart 11434 shows soundings and contours in fathoms, rather than feet.

To address these problems and clarfiy the regulations, NOAA proposes to prescribe the line shoreward of which traps may not be placed as the 100-foot contour, shown on NOS charts 11462, 11452, 11442, and 11439, that is closest to the shore and that is continuous along the coast and Florida Keys from off Fowey Rocks Light to 82°40' W. longitude. West of 82°40' W. longitude, traps would be prohibited north of a line running from 24°24.88' N. latitude, 82°40' W. longitude (the western terminus of the charted 100-foot contour) to 24°28.6' N. latitude, 83°00' W. longitude. This line roughly equates to depths of 100 feet, is simple to plot, and terminates at 83°00' W. longitude at the outermost limit of Florida's waters in the Gulf of Mexico off Loggerhead Key.

NOAA considers the proposed specification of the line shoreward of which traps may not be placed, described above, to be the least restrictive of the possible alternatives for addressing the problems. The proposal relieves a restriction, and its effects on fishing practices are expected to be minimal.

NOAA proposes other minor, technical changes to remove redundant language and correct references.

Analysis of Impacts

The prohibition of the use of trawl gear in the directed snapper-grouper fishery between Cape Hatteras and Cape Canaveral is not expected to result in a significant impact on a substantial number of small business entities in the

overall fishery. However, the initial effect on the relatively few vessels engged in the seasonal trawl fishery may be significant. The number of vessels in the trawl fishery is less than 1 percent of the total number of vessels in the snapper-grouper fishery. The number of trawl vessel speaked at 21 in 1980 and 1981; then varied between 14 and 18 from 1982 to 1984; declined to 2 in 1986; and increased to 7 in 1987 and 1988. Landings per vessel are not available, and much of the catch and value data on a State basis are confidential. However, total trawl landings and value peaked in 1981 at approximately 800,000 pounds and $800,000 and then declined steadily through 1986, when landings and value were less then 50,000 pounds and $50,000, respectively. Trawl production increased in 1988 to 104,825 pounds and $87,448, of which 70,061 pounds and $58,489 were derived from vermilion snapper.

Based on the seven vessels fishing in 1988 and the 1988 catch data, the prohibition would result in each vessel foregoing the harvest of 14,975 pounds of trawl-caught fish valued at $12,493. As previously noted, the primary source of revenue for these trawl vessels is the shrimp fishery; snapper-grouper trawling is supplemental during the 3 to 4-month closed shrimp season. The percent of total revenue derived from snapper-grouper trawling is not known precisely, but is believed to be relatively small. Further, the Council believes that the losses due to the trawl prohibition can be mitigated by these vessels using alternative gear (e.g., hook-and-line, longline, traps) to catch snapper-grouper species, or by participating in other fisheries, such as the calico scallop or sea scallop fisheries. The Council has concluded that the adverse impacts of the trawling prohibition on the relatively few affected vessels would be substantially exceeded by the benefits resulting from increased yield from the vermilion snapper resource and protection of habitat essential to the long-term viability of the snapper-grouper resource.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act, as amended by Pub. L. 99–659, requires the Secretary of Commerce (Secretary) to publish regulations proposed by a Council within 15 days of receipt of an FMP amendment and regulations. At this time, the Secretary has not determined that Amendment 1, which this proposed rule would implement, is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

The Under Secretary for Oceans and Atmosphere, NOAA, has initially determined that this proposed rule is not a "major rule" requiring the preparation of a regulatory impact analysis under E.O. 12291. This proposed rule, if adopted, is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Council prepared a regulatory impact review which concludes that this rule will have the economic effects discussed above. A copy of the review may be obtained at the address listed above.

This proposed rule is exempt from the procedures of E.O. 12291 under section 8(a)(2) of that order. It is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that order.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities for the following reasons. An estimated seven vessels (small entities) used trawls to fish for fish in the snapper-grouper fishery for approximately 3½ months during the last year. Those seven vessels, which would be adversely impacted by this proposed rule, constitute less that 1 percent of the commercial vessels in the snapper-grouper fishery. Those vessels' incomes from trawling for fish in the snapper-grouper fishery constitute a small portion of their total income. They can substitute other gear for trawls to fish for fish in the snapper-grouper fishery or their trawls may be used in other fisheries. As a reult, a regulatory flexibility analysis was not prepared.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of North Carolina, South Carolina and Florida. Georgia does not have an approved coastal zone management program. This determination has been submitted for review by responsible State agencies under Section 307 of the Coastal Zone Management Act.

The Council prepared an environmental assessment (EA) for this amendment that discusses the impact on the environment as a result of this rule. A copy of the EA may be obtained at the address listed above and comments on it are requested.

This proposed rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subject in 50 CFR Part 646

Fisheries, Fishing.

Dated: October 20, 1988.

William Matuszeski,

Executive Director.

For reasons set forth in the preamble, 50 CFR Part 646 is proposed to be amended as follows:

PART 646—SNAPPER-GROUPER FISHERY OF THE SOUTH ATLANTIC

1. The authority citation for Part 646 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 646.1, paragraph (b) is revised to read as follows:

§ 646.1 Purpose and scope.

* * * * *

(b) This part governs conservation and management of fish in the snapper-grouper fishery in the South Atlantic EEZ.

§ 646.2 [Amended]

3. In § 646.2, in the definition for *Black sea bass trap*, the phrase "fishes in the management unit" is removed and the phrase "fish in the snapper-grouper fishery" is added in its place; and in the term *Fish in the snapper-grouper species*, the word *species* is removed and the work *fishery* is added in its place.

§ 646.4 [Amended]

4. In § 646.4, in the first sentence, the phrase "for YPR analysis" is removed; and in the second sentence, the opening work "Those" is removed and the word "fishermen" in capitalized.

5. In § 646.6, in paragraph (b) the reference to "§ 646.20" is revised to read "§ 646.20(a)"; in paragraph (k) the reference to "§ 646.22(b)(5)" is revised to read "§ 646.22(b)(4)"; paragraphs (h) and (i) are revised and new paragraphs (o) and (p) are added to read as follows:

§ 646.6 Prohibitions.

* * * * *

(h) Fish with explosives or poisons, as specified in § 646.22(a).

(i) Fish with a fish trap, except as specified in § 646.22(b).

* * * * *

(o) Use trawl gear in a directed snapper-grouper fishery in the EEZ between Cape Hatteras, North Carolina, and Cape Canaveral, Florida, as specified in § 646.22(c)(1).

(p) Transfer at sea any fish in the snapper-grouper fishery from a vessel with trawl gear aboard to another vessel, or receive at sea any such fish, as specified in § 646.22(c)(2) and (3).

6. Section 646.22 is revised to read as follows:

§ 646.22 Gear limitations.

(a) *Explosives and poisons.* (1) Explosives (except explosives in powerheads) may not be used in the EEZ to fish for fish in the snapper-grouper fishery.

(2) Poisons may not be used in the EEZ to fish for fish in the snapper-grouper fishery except as authorized by permit under State or Federal law.

(b) *Fish traps.* (1) A fish trap in the EEZ is required to have on at least one side, excluding top and bottom, a panel or door with an opening equal to or larger than the interior axis of the trap's throat (funnel). The panel or door fasteners or hinges must be made of one of the following degradable materials:

(i) Untreated hemp, jute, or cotton string of 3/16-inch diameter or smaller;

(ii) Magnesium alloy, timed float releases (pop-up devices) or similar magnesium alloy fasteners; or

(iii) Ungalvanized or uncoated iron wire of 0.062-inch diameter or smaller.

(2) A fish trap in the EEZ must meet all of the following mesh-size requirements (examples of fish trap mesh configurations which meet the minimum requirements are shown in Figure 1):

(i) Two square inch minimum open mesh area;

(ii) One inch minimum length for shortest side;

(iii) Minimum distance of 1 inch between parallel sides of rectangular openings, and one and one-half (1.5) inches between parallel sides of mesh openings with more than four sides; and

(iv) One and nine tenths (1.9) inches minimum distance for diagonal measurement.

(3) A fish trap may not be placed in the South Atlantic EEZ south and west of 25°35.5' N. latitude (off Fowey Rocks Light, Florida) to 80°40' W. longitude shoreward of the 100-foot contour that is closest to the shore and continuous along the coast and Florida Keys, as shown on the latest editions of National Ocean Service charts 11462, 11452, 11442, and 11438. West of 80°40' W. longitude, traps may not be placed in the South Atlantic EEZ north of a line connecting 24°34.8' N. latitude, 82°40' W. longitude and 24°28.8' N. latitude, 83°00' W. longitude. A fish trap so placed will be considered unclaimed or abandoned property and may be disposed of in any appropriate manner by the Secretary (including an authorized officer).

(4) A buoy line attached to a fish trap possessed or fished shoreward of the outer boundary of the EEZ and south of 25°35.5' N. latitude must be a minimum of 125 feet in length.

(c) *Trawl gear.* (1) In the EEZ between Cape Hatteras, North Carolina (35°15' N. latitude) and Cape Canaveral, Florida (28°35.7' N. latitude—due east of the NASA Vehicle Assembly Building), the use of trawl gear in a directed snapper-grouper fishery is prohibited. A vessel with trawl gear and more than 200 pounds of fish in the snapper-grouper fishery. It is a rebuttable presumption that a vessel with more than 200 pounds of fish in the snapper-grouper fishery aboard harvested such fish in the EEZ.

(2) A vessel with trawl gear aboard may not transfer at sea any fish in the snapper-grouper fishery—

(i) Taken in the EEZ between Cape Hatteras and Cape Canaveral; or

(ii) In the EES between Cape Hatteras and Cape Canaveral, regardless of where such fish were taken.

(3) No vessel may receive at sea any fish in the snapper-grouper fishery from a vessel with trawl gear aboard, as specified in paragraph (c)(2) (i) and (ii) of this section.

[FR Doc. 88-24650 Filed 10-20-88; 4:43 pm]
BILLING CODE 3510-22-M

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Notices

Federal Register
Vol. 53, No. 206
Tuesday, October 25, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Use of Computers by Federal Agencies for the Filing and Releasing of Information

AGENCY: Administrative Conference of the United States.

ACTION: Proposed recommendation and notice of meeting.

SUMMARY: The Administrative Conference's Committee on Governmental Processes has under consideration a draft recommendation on the use of computers by federal agencies for filing of information with the agencies and for releasing information in the possession of the agencies. Copies of the complete text of the draft, and of supporting reports, are available to interested persons.

DATE: The committee will meet to discuss the recommendation on November 8, 1988.

FOR FURTHER INFORMATION CONTACT: David M. Pritzker, Office of the Chairman, Administrative Conference of the United States, 2120 L Street NW, Suite 500, Washington, DC 20037. Telephone: 202–254–7065. Comments may also be submitted to this address.

SUPPLEMENTARY INFORMATION: The Administrative Conference's Committee on Governmental Processes has under consideration a draft recommendation on the use of computers by federal agencies for filing of information with the agencies and for releasing of information in the possession of the agencies. The proposed recommendation is based in part on a draft report by Professor Henry H. Perritt, Jr., of Villanova University School of Law, and a supplementary report on the Community Right-to-Know Act by Professor Susan G. Hadden of the University of Texas. The draft recommendation is summarized in this notice. Copies of the full text of the draft recommendation and of the draft reports are available from the Office of the Chairman of the Administrative Conference, which will respond immediately to any such requests.

The Conference's Committee on Governmental Processes will meet on Tuesday, November 8, 1988, for further consideration of the draft recommendations in the light of any comments that may be received. The meeting will take place at 9:30 a.m., at the offices of Covington and Burling, 1201 Pennsylvania Avenue, NW, Washington, DC. At that time, the committee will decide whether to approve a draft recommendation for consideration by the Administrative Conference at its Plenary Session scheduled for December 8 and 9, 1988. Comments should be sent to the address given above.

This notice of a committee meeting is given pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463). Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman at least one day in advance. The committee chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

Summary of the Draft Recommendation

The draft recommendation is amended to guide agencies that keep and use information in electronic form, when electronic acquisition or release of the information from or to the public is necessary to the agency's mission or is required by the Freedom of Information Act. The recommendation addresses the following subjects:

- Federal agency obligations under the Freedom of Information Act with respect to information in electronic form;
- Principles for deciding which systems are desirable for electronic acquisition and release of federal agency data;
- Appropriate roles for the public and private sectors in electronic systems for acquisition or release of federal agency data;
- Factors to be considered in evaluating costs and benefits for decisions about federal electronic information systems;
- Monopoly over public information;
- Format of electronic information; and
- Electronic means of participation in rulemaking and adjudication.

Dated: October 21, 1988.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 88–24722 Filed 10–24–88; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: 1990 Decennial Census—Street and Shelter Night (S-Night).

Form Number: D–117.

Type of Request: New.

Burden: 498 hours.

Avg Hours Per Response: 5 minutes.

Needs and Uses: This form will be used to collect specific shelter information needed to count the homeless population during the 1990 decennial census. Census supervisors will use the data to plan assignments and prepare enumerators to enumerate homeless shelters.

Affected Public: State or local governments, Non-profit institutions.

Frequency: One-time.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Francine Picoult, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: October 20, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88–24650 Filed 10–24–88; 8:45 am]

BILLING CODE 3510–07–M

Commercial Space Advisory Committee; Closed Meeting

AGENCY: Office of the Associate Deputy Secretary.

SUMMARY: Pursuant to the Federal Register Notice of June 16, 1988, the Commercial Space Advisory Committee has been established to advise the Secretary of Commerce on matters of implementation and institutionalization of the National Space Policy and Commercial Space Initiative, as announced February 11, 1988, and to attempt to determine the most productive course to be taken by this country relating to its commercial space goals.

TIME AND PLACE: November 9, 1988 from 2:00 p.m. to 6:00 p.m. The meeting will take place in the Secretary's Conference Room, Suite 5842, U.S. Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Laura L. Boyle, Program Director, Office of Commercial Space Programs, U.S. Department of Commerce, Room 7084, Washington, D.C. 20230, Telephone: 202/377–8125.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration of the Department of Commerce, with the concurrence of the General Counsel, formally determined, pursuant to Section 10(d) of the Federal Advisory Committee Act, that the agenda items covered in the closed session may be exempt from the provisions of the act relating to open meetings and public participation therein because these items will be concerned with matters that are within the purview of 5 U.S.C. 552(c)(4), and (9)(B). The discussions are likely to disclose: privileged or confidential commercial information and premature disclosure of information which would be likely to significantly frustrate the implementation of proposed agency actions and confidential recommendations to be made to the President of the United States. (A copy of the determination is available for public inspection and copying in the Public Reading Room, Central Reference and Record Inspection Facility, Room 5317, Department of Commerce.)

Date: October 21, 1988.

Richard H. Endres,

Director, Office of Commercial Space Programs.

[FR Doc. 88–24767 Filed 10–21–88; 4:17 pm]

BILLING CODE 3510–HR–M

International Trade Administration

[A–401–064]

Certain Carton-Closing Staples and Staple Machines from Sweden; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of preliminary results of Antidumping Duty, Administrative Review.

SUMMARY: In response to requests by two respondents, the Department of Commerce initiated an administrative review of the antidumping duty order on certain carton-closing staples and staple machines from Sweden. One firm, Grytgols Bruks AB, withdrew its request for review. This review covers the remaining firm and the period December 1, 1985 through November 30, 1986. The review indicates the existence of dumping margins during the period for that firm.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: October 25, 1988.

FOR FURTHER INFORMATION CONTACT: Barbara Victor or Laurie A. Lucksinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5222/5255.

SUPPLEMENTARY INFORMATION:

Background

On December 18, 1987, the Department of Commerce ("the Department") published in the Federal Register (52 FR 9321) the final results of its last administrative review of the antidumping duty order on certain carton-closing staples and staple machines from Sweden (48 FR 38250, December 20, 1983). Two respondents requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published a notice of initiation on January 20, 1987 (52 FR 2123). One firm, Grytols Bruks AB, withdrew its request for review. The Department has now conducted that administrative review for the remaining firm in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of certain carton-closing staples in strip form and certain non-automatic carton-closing staple machines. Carton-closing staples are U-shaped wide crown fastening devices used to secure and close the flaps of corrugated paperboard cartons. They are commonly referred to as wide-crown staples and are available in either 50 or 60 piece sticks of 2,000 or 2,500 per box.

Staples are made of steel, most often copper coated or galvanized. Carton-closing wide crown staples differ from office, desk-type, and other industrial staples primarily in the width of the crown and wire dimensions. Carton-closing wide crown staples have crown widths of 1¼ inches or more. The wire cross-sectional dimensions vary from .037–.040 inches by .074–.092 inches.

Non-automatic wide crown carton-closing staple machines use the wide crown staples described above and can be divided into two categories, hand-held top closing staple machines and free-standing bottom closing machines.

Such staples and staple machines are currently classifiable under items 646.2000 and 662.2065, respectively, of the Tariff Schedules of the United States Annotated. These products are currently classifiable under item numbers 8305.20.00 and 8422.30.90 of the Harmonized System.

The review covers one manufacturer/exporter of certain carton-closing staples and staple machines from Sweden and the period December 1, 1985 through November 30, 1986.

United States Price

In calculating United States price, the Department used purchase price or exporter's sales price ("ESP"), both as defined in section 772 of the Tariff Act, as appropriate. Purchase price and ESP were based on the packed ex-factory, f.o.b., c.i.f., or delivered price to unrelated purchasers in the United States.

We made adjustments, where applicable, for ocean freight, U.S. and Swedish inland freight, marine insurance, brokerage fees, U.S. customs duties, and, in the case of ESP, selling expenses. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value, the Department used home market price, as defined in section 773 of the Tariff Act, since there were sufficient sales of such or similar merchandise in the home market.

Home market price was based on the packed, delivered price to unrelated purchasers in the home market. Where applicable, we made adjustments for discounts, and differences in credit expenses and packing. We made further adjustments for indirect selling expenses when ESP was the basis of U.S. price. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Josef Kihlberg AB:		
Staples	11/85–11/86	1.18
Staple Machines	12/85–11/86	1.52

Interested parties may request disclosure and/or an administrative protective order within 5 days after the date of publication of this notice and may request a hearing within 5 days of publication. Any hearing, if requested, will be held 35 days after the date of publication or the first workday thereafter. Prehearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed no later than 32 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for shipments by Josef Kihlberg AB. For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after November 30, 1986 and who is unrelated to Josef Kihlberg AB or any other previously reviewed firm, a cash deposit of 1.18 percent shall be required on shipments of staples and a cash deposit of 1.52 percent shall be required on shipments of staple machines. These deposit requirements are effective for all shipments of Swedish carton-closing staples and staple machines entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and section 353.53a of the Commerce Regulations (19 CFR 353.53a).

Date: October 19, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88-24647 Filed 10-24-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-405-071]

Viscose Rayon Staple Fiber from Finland; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of Antidumping Duty Administrative Review.

On August 5, 1988, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on viscose rayon staple fiber from Finland. The review covers Kemira Oy Sateri and the period March 1, 1987 through February 29, 1988.

We gave interested parties an opportunity to comment on our preliminary results. We received no comments. Based on our analysis, the final results are unchanged from those presented in the preliminary results of review.

EFFECTIVE DATE: October 25, 1988.

FOR FURTHER INFORMATION CONTACT: Barbara Victor or Laurie A. Lucksinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5222/5255.

SUPPLEMENTARY INFORMATION:

Background

In August 5, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 29508) the preliminary results of its administrative review of the antidumping finding on viscose rayon staple fiber from Finland (44 FR 17158, March 21, 1979). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of viscose rayon staple fiber, except solution dyed, in noncontinuous form, not carded, not combed and not otherwise processed, wholly of filaments (except laminated filaments and plexiform filaments), currently classifiable under items 309.4320 and 309.4325 of the Tariff Schedules of the United States Annotated. This product is currently classifiable under HS item numbers 5504.10.00 and 5504.90.00.

The review covers Kemira Oy Sateri and the period March 1, 1987 through February 29, 1988.

Final Results of Review

We invited interested parties to comment on the preliminary results. We received no comments. Based on our analysis, the final results are unchanged from those presented in the preliminary results of review, and we determine that no margin exists for Kemira Oy Sateri for the period March 1, 1987 through February 29, 1988.

The Department will issue appraisement instructions directly to the Customs Service. Further, as provided for in section 751(a)(1) of the Tariff Act, no cash deposit of estimated antidumping duties shall be required. This deposit requirement is effective for all shipments of Finnish viscose rayon staple fiber entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Date: October 19, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88-24648 Filed 10-24-88; 8:45 am]

BILLING CODE 3510-DS-M

[C-614-501]

Steel Wire from New Zealand; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of Countervailing Duty Administrative Review.

SUMMARY: On July 28, 1988, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on steel wire from New Zealand. We have now completed that review and determine the total bounty or grant for the period June 16, 1986 through June 30, 1986 to be 6.22 percent *ad valorem* and for the period July 1, 1986 through June 30, 1987 to be 3.60 percent *ad valorem*.

EFFECTIVE DATE: October 24, 1988.

FOR FURTHER INFORMATION CONTACT: Al Jemmott or Bernard Carreau, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On July 28, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 28428) the preliminary results of its administrative review of the countervailing duty order on steel wire from New Zealand (51 FR 31156, September 2, 1986). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of New Zealand galvanized carbon steel wire, round carbon steel wire coated or plated with zinc, 0.06 inch or more in diameter. Such merchandise is currently classifiable under Tariff Schedules of the United States Annotated item numbers 609.4135 and 609.4325 and Harmonized System item numbers 7217.12.50, 7217.22.10 and 7217.32.10.

The review covers the period June 16, 1986 through June 30, 1987 and 11 programs:

a. Export Performance Taxation Incentive;

b. Export Market Development Taxation Incentive;

c. Sales tax exemptions or refunds;

d. Export Suspensory Loan Scheme;

e. Export marketing assistance;

f. Export Programme Grants Scheme (EPGS)/Export Programme Suspensory Loan Scheme (EPSLS);

g. Preferential treatment to exporters in granting import licenses;

h. Research and development incentives;

i. Regional development investment incentives;

j. Special industrial development allowances;

k. Export and development financing from the Development Finance Corporation.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received written comments from one exporter, New Zealand Wire Industries Limited (NZWI).

Comment 1: NZWI contends that, although Hurricane Wire Products Limited, another exporter, stated in its response to the Department's questionnaire that it had received benefits under the Export Market Development Taxation Incentive (EMDTI), the New Zealand government advised the Department, on May 3, 1988, that Hurricane had in fact received no benefits under EMDTI. Since the Department received this information well before the publication of its notice of preliminary results (July 28, 1988), it should change Hurricane's benefit from this program to zero.

Department's Position: We received Hurricane's response to our questionnaire on May 13, 1988. The response indicated that Hurricane received benefits under EMDTI. Despite the later claims of the New Zealand government and NZWI that Hurricane did not receive EMDTI benefits, we did not receive a copy of the New Zealand government's letter, dated May 3, 1988 (advising us that Hurricane, in fact, had not received benefits under EMDTI) until September 13, 1988, well after publication of the preliminary results (July 28, 1988). Apparently, this letter was not filed with the Central Records Unit in Room B–099, as required by our regulations. *See* 19 CFR 355.34(a)(1) (1988). We cannot rely on the September 13 submission for several reasons. First, it would be unjust for us to consider a submission filed so late in the proceeding since we would deprive other parties an effective opportunity, to comment. *See Final Results of Antidumping Duty Administrative Review; Steel Jacks from Canada*, 52 FR 32957 (1987). Second, the New Zealand government's submission on September 13, 1988 was not received in time to permit proper analysis and verification of the information. *See* 19 CFR 355.39 (1988). As a result, we determine that we cannot rely on the May 3 letter but must rely on Hurricane's original submission.

Comment 2: NZWI contends that the Department erred by using Hurricane's expenditures for a fifteen-month period to calculate an annual benefit from the EMDTI program for cash deposit purposes. The Department should have ascertained Hurricane's actual expenses for fiscal year 1988.

Department's Position: We disagree. We did not use expenditures for a 15-month period. Rather, we prorated the 15-month figure to obtain an annual figure. We then prorated the annual figure according to the EMDTI tax rates in effect in fiscal year 1987. We allocated the result over Hurricane's fiscal year 1987 exports to obtain the benefit.

The cash deposit rate is based on the most recent information in the administrative record. The period for this review is June 16, 1986 through June 30, 1987. All of the information that we collected in this review concerns that period. We will obtain information for fiscal year 1988 in the next review, if one is requested.

Final Results of Review

After considering all of the comments received, we determine the total bounty or grant to be 6.22 percent *ad valorem* for the period June 16, 1986 through June 30, 1986, and 3.60 percent *ad valorem* for the period July 1, 1986 through June 30, 1987.

Therefore, the Department will instruct the Customs Service to assess countervailing duties of 6.22 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after June 16, 1986 and exported on or before June 30, 1986, and 3.60 percent of the f.o.b. invoice price on all shipments exported on or after July 1, 1986 and on or before June 30, 1987.

The Department will also instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 0.70 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1)

of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.10.

Jan W. Mares,

Assistant Secretary, Import Administration.

Date: October 6, 1988.

[FR Doc. 88-24569 Filed 10-24-88; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology

Malcolm Baldrige National Quality Award's Board of Overseers; Meeting

AGENCY: National Institute for Standards and Technology, DoC.

ACTION: Notice of public meeting with partially closed session.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that there will be a meeting of the Board of Overseers of the Malcolm Baldrige National Quality Award on Tuesday, November 15, 1988, from 8:30 a.m. to 5:00 p.m. The Board of Overseers is composed of nine members appointed by the Secretary of Commerce. The purpose of this meeting is to review the activities of the Malcolm Baldrige National Quality Award Program in order to assist the Board of Overseers in reporting to the Secretary of Commerce and Director of the National Institute of Standards and Technology as required by law.

DATES: The meeting will convene November 15, 1988, at 8:00 a.m. and adjourn at approximately 4:30 p.m. The open session of the meeting will commence at 10:30 a.m. and adjourn at 12:00 Noon.

ADDRESS: The meeting will be held in Room 1851, Department of Commerce, Herbert Hoover Building, 14th Street and Constitution Avenue, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Curt W. Reimann, Associate Director for Quality Programs, National Institute for Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975-2036.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on September 6, 1988, that the meeting of the Board of Overseers will be partially closed pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94-409. The meeting, which involves examination of records and discussion of Award applicant data, may be closed to the public in accordance with section 552b(c)(4) of Title 5, United States Code, since the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential.

Ernest Ambler,

Director.

Date: October 18, 1988.

[FR Doc. 88-24568 Filed 10-24-88; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by Michael Galgano From an Objection by the New York Department of State

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal.

On July 8, 1988, Michael Galgano (Appellant) filed a Notice of Appeal with the Secretary of Commerce under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, 16 U.S.C. 1456(c)(3)(A), and the Department of Commerce's implementing regulations, 15 CFR Part 930, Subpart H. The appeal is taken from an objection by the New York Department of State to the Appellant's consistency certification for 87-754 U.S. Army Corps of Engineers Permit Application No. 87-1351-L1 for his proposed construction of a timber bulkhead with backfill in Meyers Pond, Town of Southampton, Suffolk County, New York.

Appellant requested a stay of this proceeding. A six-month stay, which will automatically expire on March 25, 1989, or at the request of either party, whichever comes first, has been granted. The stay may be extended for good cause. If the appeal is perfected by the filing of Appellant's brief upon the expiration of the stay, public comments will be solicited in the **Federal Register** and a local newspaper.

FOR ADDITIONAL INFORMATION CONTACT: Margo E. Jackson, Attorney/Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue NW., Suite 603, Washington, DC 20235, (202) 673-5200.

Date: October 19, 1988.

B. Kent Burton,

Assistant Secretary for Oceans and Atmosphere.

[FR Doc. 88-24580 Filed 10-24-88; 8:45 am]

BILLING CODE 3510-08-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Taiwan

October 20, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 27, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-6791. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: The current limits for certain sublevels in Groups I and II are being adjusted, variously, for swing and special shift.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 53 FR 62, published on January 4, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 20, 1988.

Commissioner of Customs, Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 30, 1987 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on October 27, 1988, the directive of December 30, 1987 is being amended to adjust the limits for cotton and man-made fiber textile products in the following categories, as provided under the terms of the current bilateral agreement of November 18, 1982, as amended and extended:

Category	Adjusted 12-month limit [1]
Sublevels in Group I	
225/317/326	21,983,481 square yards.
369-L [2]	2,548,318 pounds.
611	1,265,165 square yards.
613/614/615/617	12,493,500 square yards.
619/620	12,895,452 square yards.
625/626/627/628/629	15,936,152 square yards.
670-H [3]	33,616,354 pounds.
670-L [4]	78,372,721 pounds.
Sublevels in Group II	
331	358,150 dozen pairs.
333/334	81,434 dozen.
335	88,676 dozen.
336/339	768,875 dozen.
340	758,848 dozen.
341	481,885 dozen.
342	211,942 dozen.
345	88,278 dozen.
347/348	1,089,088 dozen of which not more than 527,174 dozen shall be in Category 347 and not more than 845,536 dozen shall be in Category 348.
433	13,436 dozen.
443	50,436 numbers.
633/634/635	1,567,421 dozen of which not more than 1,046,606 dozen shall be in Categories 633/634 and not more than 755,927 dozen shall be in Category 635.
636	307,128 dozen.
638	2,013,796 dozen.
639	4,797,195 dozen.
640	3,403,855 dozen of which not more than 1,734,969 dozen shall be in Category 640-Y. [5]
641	755,218 dozen of which not more than 254,677 dozen shall be in Category 641-Y. [6]
642	877,987 dozen.
647	2,146,535 dozen.
648	3,216,960 dozen.
651	462,186 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.

[2] In Category 369-L, only TSUSA numbers 706.3210, 706.3620 and 706.4111.

[3] In Category 670-H, only TSUSA numbers 706.4125 and 706.3405.

[4] In Category 670-L, only TSUSA numbers 706.3415, 706.4130 and 706.4135.

[5] In Category 640-Y, only TSUSA numbers 381.3132, 381.3142, 381.3152, 381.9535, 381.9547, 381.9551 and 384.9306.

[6] In Category 641-Y only TSUSA numbers 384.2302, 384.2304, 384.2307, 384.9110 and 384.9120.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-24615 Filed 10-24-88; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Professional Evaluation, Department of Defense Dependents Schools; SD Form 778; and OMB Control Number 0704-0035.

Type of Request: Reinstatement.

Average Burden Hours/Minutes Per Response: 30 minutes.

Frequency of Response: On Occasion.

Number of Respondents: 11,000.

Annual Burden Hours: 5,500.

Annual Responses: 11,000.

Needs and Uses: Information provides means for evaluating the applicant's abilities and personal traits which may predict success in an overseas teaching assignment with the Department of Defense Overseas Dependents Schools.

Affected Public: Individuals or households.

Respondents Obligation: Mandatory.

OMB Desk Officer: Dr. J. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 204, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer Department of Defense.

October 19, 1988.

[FR Doc. 88-24575 Filed 10-24-88; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Voluntary Questionnaire, Department of Defense Dependents Schools; SD Form 779; and OMB Control Number 0704-0223.

Type of Request: Reinstatement.

Average Burden Hours/Minutes Per Response: 10 minutes.

Frequency of Response: On Occasion.

Number of Respondents: 5,500.

Annual Burden Hours: 917.

Annual Responses: 5,500

Needs and Uses: Responding to the questionnaire is voluntary. Information provides a means of evaluating the effectiveness of Federal EEO programs, including handicapped applicants, and DoDDS recruiting efforts.

Affected Public: Individuals or households.

Respondent's Obligation: Voluntary

OMB Desk Officer: Dr. J. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer Department of Defense.

October 19, 1988.

[FR Doc. 88-24576 Filed 10-24-88; 8:45 am]

BILLING CODE 3810-01-M

Record of Decision: Camp Ripley, MN

AGENCY: National Guard Bureau, DOD/Minnesota Department of Military Affairs.

ACTION: Record of Decision for Implementation of the Master Plan for Mission Expansion/Multiple

Construction at Camp Ripley, Minnesota.

SUMMARY: The National Guard Bureau and the Minnesota Department of Military Affairs decision is to implement the thirty-four actions which make up the Camp Ripley Master Plan. All thirty-four actions were examined and evaluated separately and cumulatively in the Environmental Impact Statement (EIS) in support of the Master Plan for Camp Ripley.

For the following actions, the present site alternative as described in the EIS is selected as the location for the Master Plan projects:

(1) Solid waste transfer station;
(2) Aerial gunnery range;
(3) Drop zone improvements; and
(4) Infantry squad battle course.

For the following actions, the alternative site alternative as described in the EIS is selected as the location for the Master Plan projects:

(1) Heating facilities;
(2) Petroleum, oil, and lubricant (POL) storage and dispensing facility;
(3) Armory;
(4) Combined support maintenance shop;
(5) Warehouse, C15;
(6) Warehouse, C16; and
(7) Demolition, land mine, and booby trap range.

The Regional Maintenance Training Site, Armory, and State Military Education Center will be consolidated into one location with other existing logistical support facilities in the southwest portion of the cantonment area. The remaining projects will be constructed at the locations proposed in the Camp Ripley Environmental Impact Statement.

SUPPLEMENTARY INFORMATION: In response to the emphasis that has been placed on successful and prompt integration of reserve and active armed forces in the event of a national emergency, the Minnesota Department of Military Affairs (DMA) has prepared a Master Plan for Mission Expansion/Multiple Construction at Camp Ripley, Minnesota. This plan provides for the continuation and development of Camp Ripley Army National Guard Training Site as required by the National Guard Bureau. The purpose of the Master Plan is to ensure effective use of the site and economical use of funding for development in an environmentally sound manner.

The implementation of the Master Plan actions will provide adequate logistical facilities throughout the cantonment area (the urban-like portion of the camp), range upgrades for the training area, educational facilities, and facilities to support additional aviation training. Implementation of the Master Plan actions will increase usage of the Training Site by approximately 4 percent or 17,000 mandays. This increased usage is attributed to the development of educational facilities. The decision to implement the Master Plan is preferable to the no action alternative since five of the proposed actions will have beneficial environmental impacts. The remaining twenty-nine actions were evaluated as having an insignificant impact or no known impact under the no action and action alternatives. Therefore, the decision to implement these actions was based on the need to improve the Camp facilities to meet training mission requirements and provide for operation of the Camp in an efficient and logistically preferable manner.

In the five environmentally preferable actions, the continued use of existing facilities or practices would cause significant adverse environmental impacts. These adverse impacts would be mitigated by the implementation of the proposed Master Plan:

(1) Flood damage to existing facilities would be mitigated by the installation of the proposed storm sewer system.

(2) Significant adverse impacts to air quality, water resources, and energy resources would be mitigated by construction of the petroleum, oil, and lubricant (POL) storage facility.

(3) The risk of significant ground water contamination would be mitigated by constructing a crash rescue burning pit with proper lining, fuel storage and recovery facilities.

(4) Violation of state solid waste management regulations would be averted by the construction of a properly sized and enclosed solid waste transfer station which would promote economical disposal of solid waste.

(5) The risk of significant ground water contamination would be mitigated by the proposed upgrades to the aerial gunnery range which would provide secondary containment for refueling areas.

In the EIS, alternatives to individual actions included: no action, present site, alternative site, and relocation. The no action alternative represented the continuation of existing conditions. The present site alternative was considered whenever facilities or activities for upgrade or construction were currently available at Camp Ripley. The alternative site pertains to an action if the pertinent facilities or activities were currently available at Camp Ripley and an alternative site within the Camp was possible. The relocation alternative meant relocating actions or activities at Camp Ripley from an off post location.

A Notice of Intent to prepare the joint National Guard Bureau/Minnesota DMA Environmental Impact Statement was published in the **Federal Register** on July 22, 1986, and in the Minnesota Environmental Quality Board (EQB) Monitor on July 14, 1986. The document was prepared in accordance with Title 40 Code of Federal Regulations (CFR) Part 1500, Minnesota Rules Chapter 4410, and Army Regulation 200-2 Environmental Effects of Army Actions.

A scoping meeting was held on July 31, 1986, with written comments being received until August 15, 1986. Concerns raised during the scoping process were addressed in the EIS and included effects on air quality, noise physical setting, natural resources, land use, waste disposal, water resources, cultural resources, and socioeconomic resources. The impacts associated with the proposed actions were addressed individually and cumulatively with respect to effects upon the environment.

A Notice of Availability of the Draft EIS was published in the March 16, 1988, **Federal Register** and in the March 21, 1988, EQB Monitor. A public meeting was held at Camp Ripley on April 12, 1988, to receive comments on the Draft EIS. Written comments were accepted between March 16, and May 2, 1988. The Final EIA was prepared in compliance with Federal and State laws, and included comments received at the public meeting, written comments, and the responses to those comments. A Notice of Availability of the Final EIS appeared in the **Federal Register** on September 2, 1988, and EQB Monitor on September 5, 1988.

The EIS process is not a substitute for the Federal, State, and local permitting and approval processes. When each action is implemented, it will be subject to the appropriate permits and approvals. Opportunities for public input will be provided as required by the standard permitting procedures. Separate detailed environmental documentation will be prepared and submitted for individual actions impacting wetlands on the National Wetlands Inventory. The use of the good construction practices outlined in the Draft EIS will be stipulated in construction contracts. The implementation of these construction practices will mitigate impacts from fugitive dust, erosion, or sedimentation. Asbestos will be disposed of according to Federal and State laws and regulations.

Camp Ripley will continue to implement Army programs which provide for the mitigation, monitoring, and management of environmental resources. These programs will include: the Installation Compatible Use Zone program for noise; the Integrated Training Area Management program; and Land Condition Trend Analysis program to preserve training lands; and a Natural Resources Management program.

The decision to implement the Camp Ripley Master Plan is warranted because the actions identified as environmentally preferred will be implemented and national security will be enhanced through more efficient operation and training at Camp Ripley with insignificant environmental impacts. The economic stability of the immediate area would be enhanced by the cumulative beneficial socioeconomic effect of the implementation of the Camp Ripley Master Plan.

The National Guard Bureau and the Minnesota Department of Military Affairs, by this Record of Decision, incorporate their commitment in the EIS to employ all practicable means to minimize the impacts of the implementation of the Camp Ripley Master Plan on the environment.

Eugene R. Andreotti,
Brigadier General, MN ANG, The Adjutant General, Minnesota.
William A. Naves, Jr.,
Brigadier General, GS Deputy Director, Army National Guard.

[FR Doc. 88-24613 Filed 10-24-88; 8:45 am]
BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Scoping Meetings for a Supplement to the Draft Environmental Impact Statement (EIS) for the Twin Falls (FERC No. 18), Milner (FERC No. 2899), Auger Falls (FERC No. 4797), and Star Falls (FERC No. 5797) Projects

October 20, 1988.

In accordance with the notice issued July 15, 1988, by the Federal Energy Regulatory Commission (FERC), the FERC staff will prepare a Supplement to the Draft EIS (Supplement) prior to issuing a final EIS. The Supplement will address only the new circumstances and information made available since the Draft EIS was issued and new staff alternatives which were described in public meetings held on August 16 1988, in Twin Falls, Idaho.

The FERC staff will hold scoping meetings to: (1) Present environmental issues to the public and experts familiar with the Snake River Projects which are currently expected to be covered in the Supplement; (2) receive input form the public and experts on the issues presented; (3) clarify the significance of issues; (4) identify additional issues which merit treatment in the Supplement; and (5) identify issues that do not merit treatment in the Supplement. Agencies and individuals with environmental expertise and concerns are encouraged to attend the meetings and assist FERC staff with the determination of issues to be addressed in the Supplement.

An issue that was not addressed in the Draft EIS is dam safety at Milner. The FERC staff met with the Applicant for the Milner Project on October 5, 1988, to discuss the nature an extent of the existing problems. This issue will be discussed in the scoping meetings.

Two scoping meetings will be held on November 2, 1988. A meeting will be held at the Holiday Inn, 3300 Vista Avenue, Boise, Idaho, from 8:00 a.m. to 12:00 noon. A meeting will also be held at the Holiday Inn, 1350 Blue Lakes Boulevard North, Twin Falls, Idaho, from 7:00 p.m. to 10:00 p.m. To assist the scoping meeting attendees in preparing for and participating in the session, the FERC staff has prepared the enclosed document entitled "Scoping Document Supplement". Copies of data, reports, or other documentation supporting positions taken by attendees regarding the scoping document supplement should be provided to the FERC staff during the scoping meetings. For further information, contact Kathleen Sherman at (202) 376-9527.

Scoping Document Supplement

Twin Falls Project, FERC No. 18-001
Milner Project, FERC No. 2899-003
Auger Falls Project, FERC No. 4797-001
Star Falls Project, FERC No. 5797-001

October 1988.

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1. Introduction

The staff of the Federal Energy Regulatory Commission (FERC) has determined that issuance of licenses for four proposed projects on the mainstem Snake River, the Twin Falls, Milner, Auger Falls, and Star Falls Projects, would constitute a major Federal action significantly affecting the quality of the human environment. The FERC staff, therefore, issued a Draft Environmental Impact Statement (DEIS) in November, 1987. Due to new circumstances, new information that became available after the DEIS was issued, and new staff alternatives, FERC issued a Notice of Intent to Prepare a Supplement to the DEIS (Supplement) on July 15, 1988. Public meetings were held in Twin Falls, Idaho on August 16, 1988, to discuss the new circumstances, information and staff alternatives. The Supplement will include only sections of the DEIS that have changed, and sections which will be added.

The FERC staff will not hold scoping meetings to: (1) Present to the public and experts familiar with the Snake River Projects environmental issues expected to be covered in the issues presented; (3) clarify the significance of issues; (4) identify additional issues that merit treatment in the Supplement; and (5) identify issues that do not merit treatment in the Supplement. Agencies and individuals with environmental expertise and concerns are encouraged to attend the meetings ands assist FERC staff with the determination of issues to be addressed in the Supplement.

2. Proposed Actions and Alternatives

2.1 Description of Proposed Actions

The locations of the four proposed projects are shows on Figure 1.

2.1.1 *Amended Star Falls Project*

—Changes in project configuration include: a larger and higher dam located upstream of the original diversion site (50-foot-high dam versus 20-foot-high weir); a powerhouse (1 MW unit) located at the dam; a buried penstock on the north side of the river instead of a canal on the south side of the river; a powerhouse (35.8 MW unit) located on the north side of the river instead of the south side and upstream of the original powerhouse site.

— The size of the reservoir would increase, with 5.2 miles of free-flowing river inundated instead of 3.5 miles with the original proposal.

— Access to the project would be provided by upgrading the existing road that leads to Star Falls from the north canyon rim, instead of constructing a new access road from the south canyon rim as originally proposed.

— Project operation would be changed from run-of-river (inflow equals outflow) to store-and-release during the irrigation season and run-of-river during the nonirrigation season; the applicant is also considering peaking operations for power generation during the nonirrigation season.

2.2 Supplemental Mitigative Measures Proposed by Applicants

Supplemental mitigative measures were proposed for the Milner Project and for the Twin Falls Project in filings dated March 31, 1988. Mitigative measures for the amended Star Falls Project are proposed in the draft amended application for license filed on September 9, 1988, which has also been provided to the agencies for their comments; the application for amendment to license is expected to be filed on November 17, 1988.

2.2.1 *Milner Project*

—Minimum flows for fisheries are proposed to be 58 cfs leakage from the dam during the irrigation season, with an additional 92 cfs during the nonirrigation season, for a total of 150 cfs.

—Upland wildlife habitat would be developed and donated to Idaho Department of Fish and Game.

—New proposals for recreation include: building an interpretive center with picnic facilities; building additional water ski dock(s) on Milner reservoir; further development of public facilities at a Bureau of Land Management Wildlife Habitat Management Area; building a kayak launch; and developing a communication network to quickly inform kayakers of flow conditions below Milner dam.

2.2.2 *Amended Star Falls Project*

—Minimum flows for fisheries in the bypassed reach are proposed to be 160 cfs during the irrigation season and 250 cfs during the nonirrigation season.

—Cofferdams, berms, check dams, and sediment ponds would be used to control erosion and sedimentation and protect water quality.

—Ramping rates would be used during reservoir drawdown and filling to reduce impacts on aquatic resources.

—An off-site mitigation area for aquatic, terrestrial, and recreational resources would be located on a 3/4-mile-long reach of Rock Creek located about 12 miles from Twin Falls.

—An on-site developed recreation area would include parking, toilets, picnic facilities, fire pits, campsites, and put-in facilities for whitewater boating.

—Releases from the dam would be provided for whitewater boating downstream of the powerhouse during the summer.

Interpretive signs would explain the historical significance of Star Falls and Caldrin Linn.

—A series of several viewpoints would be made along the inner canyon wall.

2.2.3 *Twin Falls Project*

—Release of flows over Twin Falls to enhance visual quality would be provided to coincide with periods of greatest recreational use of the project area.

—Two alternative plans have been proposed for flows to be released over Twin Falls; Plan A would provide 140 cfs during daylight hours on weekends and holidays all year, and Plan B would provide 140 cfs during daylight hours on weekends and holidays for September to March and provide 140 cfs daily during daylight hours from April to August.

—A small weir would be constructed at the top of the falls to direct the water over both sides of the falls, to create a similar visual impression from a flow of 140 cfs as is seen with flows of 300 and 500 cfs; the weir would not be visible to people viewing the falls.

2.3 Alternative Mitigative Measures Proposed by the Staff

2.3.1 *Target Flows*

—Target flows may be set for a variety of resources, including fisheries, water quality, visual quality, and recreation.

—The State Water Plan specifies zero flow below Milner dam, so in order to be consistent with this comprehensive plan, target flows in the bypassed reach of the Milner Project, can only be provided when there is water available in excess of irrigation needs.

—A target flow at the other projects would be equivalent to the minimum flow which would otherwise be recommended for the bypassed reach; all inflow must be released up to the target flows, which must be met or exceeded before a powerhouse at the bottom of a bypassed reach could be operated.

2.3.2 *Comprehensive Water Block (CWB)*

—The objective of the CWB is to provide water for target flows at the projects when it is available, so that irrigation needs would be met and consistency with the State Water Plan can be maintained.

—The CWB is the combined amount of water needed to provide target flows for mitigation of project-specific and cumulative impacts for all of the projects; the size of the CWB would vary with the number of projects that are licensed and constructed.

—Each project that is licensed and constructed would provide a subblock to the CWB; the size of individual subblocks would be different for each project since target flows would be based on what is needed to mitigate impacts at each specific project.

—The size of the CWB would vary from year to year depending on the amount of flow in the river and the availability of water in excess of irrigation needs.

—Licensees could potentially lease water for the CWB from the Water Supply Bank, described in Policy 4B of the State Water Plan, which also states that use of the Water Supply Bank created by Idaho Code 42–1762 shall be encouraged; water has been available for rental in all years since the bank began operation in 1979, and is expected to be available in sufficient quantities to meet the needs of the CWB in most if not all years in the future, based on current staff estimates.

—Target flows to be set for the projects will recognize the physical limitations of the system so that they will not interfere with irrigation operations or flood low-lying areas.

—Flows to be released for project-specific target flows could be accounted for when the water is released from American Falls reservoir, and measured below Milner dam.

—The CWB could be an accounting mechanism, for licensees to equitably share the responsibility for providing mitigative flows, since water which is released from American Falls reservoir would flow through all the proposed projects.

2.4 Alternatives to the Proposed Action

2.4.1 *Milner Project Staff Alternative*

—One or more small turbines would be installed at the dam in addition to the large turbine proposed for the powerhouse to be located 1.6 miles downstream of Milner dam.

2.4.2 *Auger Falls Staff Alternative*

—Penstocks leading from the proposed canal to the powerhouse, would be shifted towards the south side of the river and placed in a natural "niche" in the face of the cliffs in order to minimize blasting that would be needed to excavate the trenches for the penstocks; placing the penstocks along the existing road to the Rock Creek powerhouse and constructing the Auger Falls powerhouse next to the existing powerhouse will also be evaluated, as this would eliminate blasting of the cliffs.

—Access to the powerhouse would be from the end of the road leading to the existing Rock Creek powerhouse located on the Snake River near the south end of the cliffs, instead of constructing a new access road along the river and leading to the north end of the cliffs as originally proposed.

—The transmission line could be relocated to follow the existing Rock Creek transmission line and eliminate a river crossing for the Auger Falls transmission line.

3. Environmental Impact Issues

3.1 Project-Specific Issues

3.1.1 *Milner Project*

3.1.1.1 Erosion, Sedimentation, and Slope Stability

—A detailed site-specific plan is needed to control erosion, sedimentation, and slope stability, including temporary and permanent control measures.

3.1.1.2 Water Resources

—Development of a detailed water quality monitoring plan that would ensure compliance with state water quality standards of the Snake River, especially for water temperature and dissolved oxygen; the plan should have provisions to rapidly modify project operation to ensure maintenance of state water quality standards.

—Development of a monitoring plan to conduct tests for heavy metals and other toxic substances in any river sediments or other unconsolidated deposits that would be removed or otherwise distributed by dredging, constructing, or operating project facilities; and to safely remove and dispose of any toxic substances discovered.

—Historical changes in water quality of Milner Reservoir resulting from reductions in industrial and municipal waste load discharges and reductions in agricultural non-point discharges and the potential effects of project operation on water quality.

3.1.1.3 Fisheries Resources

—Development of the proposed fisheries mitigation and enhancement plan.

—Fish entrainment and measures to reduce it.

—Development of a ramping rate.

—Effects of decreased flows in the winter on icing conditions.

3.1.1.4 Recreation

—Public access to, and egress from, the river for whitewater boaters.

—Effects of scheduling flow releases for whitewater boaters at specific times during the early spring and fall when most desirable boating flows are available.

—Enhancement of recreational opportunities at Milner reservoir.

3.1.1.5 Visual Resources

—Visual effects of reduced flows throughout the bypassed reach on river recreationists.

—Visual effects of project facilities.

3.1.1.6 Cultural Resources

—Based on a cultural resources management plan developed and agreed to by the applicant and the Idaho State Historic Preservation Officer (SHPO), the impacts of the project on the historic Milner dam, a site listed on the National Register of Historic Places, are not adverse if the plan is implemented; the DEIS described the effect as adverse, so the Supplement will revise the cultural resources section to make reference to the plan, include the SHPO's statement of no adverse effect, and to include the rationale for the statement.

3.1.2 *Amended Star Falls Project*

3.1.2.1 Erosion, Sedimentation, and Slope Stability

—A detailed site-specific plan is needed to control erosion, sedimentation, and slope stability, including temporary and permanent control measures.

3.1.2.2 Water Resources

—Development of a detailed water quality monitoring plan that would ensure compliance with state water quality standards of the Snake River, especially for water temperature and dissolved oxygen; the plan should have provisions to rapidly modify project operation to ensure maintenance of state water quality standards.

—Historical changes in water quality of the Snake River resulting from reductions in industrial and municipal waste load discharges and reductions in agricultural non-point discharges and the potential effects of project operation on water quality.

3.1.2.3 Fisheries Resources

—Development of the proposed fisheries mitigation plan.

—Fish entrainment and measures to reduce it.

—Development of a ramping rate to protect the "critical habitat areas".

3.1.2.4 Vegetation and Wildlife Resources

—Elimination of most waterfowl nesting habitat within the project reach of the Snake River.

—Loss of winter habitat for pheasants and gray partridge.

—Loss of 27 acres of wetlands and 84 acres of mixed sagebrush and grassland.

—Development of a mitigation plan for riparian habitat and associated wildlife.

3.1.2.5 Recreation

—Effects of providing whitewater release flows to coincide with the time of day boaters put-in and take-out of the 14-mile-long Murtaugh reach located downstream of Star Falls.

—Access to the river for whitewater boaters that portage around or put-in immediately downstream of Star Falls.

—Effects of sudden increases in flow from peaking operation on safety of downstream recreationists.

—Potential increase in private and commercial summer whitewater boating opportunities in the Murtaugh Reach created by scheduled flow releases for boaters.

3.1.2.6 Visual Resources

—Visual effects of reduced flow over Star Falls.

—Visual effects of project facilities in contrast to the natural appearance of the area on recreationists.

3.1.2.7 Cultural Resources

—Impacts of the project on archeological and historic sites within the new impact areas of the project, and the cultural resources management plan to avoid or mitigate impacts, needs to be determined.

—Principal new impact areas are the proposed transmission line which is now in a different location than the original project configuration, and the areas along the project reservoir that are affected by the proposed increase in the pool elevation; a cultural resources survey should be conducted of these areas, and the impacts to several known archeological sites along the shoreline that may have been avoided or

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otherwise protected under the original proposal should be reassessed.

—Impacts to Star Falls, a historic natural feature listed in the National Register of Historic Places needs to be reassessed given the relocation of the project dam.

—Comments of the SHPO on Star Falls based on the new dam site location should be incorporated into the Supplement, to include a statement of effect (no effect, no adverse effect, or adverse effect); the effect was previously described as adverse in the DEIS and by the SHPO.

—A cultural resources management plan to avoid or mitigate impacts should be developed and agreed to by the applicant and the SHPO and incorporated into the Supplement.

3.1.3 *Twin Falls Project*

3.1.3.1 Water Resources

—Development of a detailed water quality monitoring plan that would ensure compliance with state water quality standards of the Snake River, especially for water temperature and dissolved oxygen; the plan should have provisions to rapidly modify project operation to ensure maintenance of state water quality standards.

—Historical changes in water quality of the Snake River resulting from reductions in industrial and municipal waste load discharges and reductions in agricultural non-point discharges and the potential effects of project operation on water quality.

3.1.3.2 Fisheries Resources

—Fish entrainment and measures to reduce it.

—Development of a ramping rate using site-specific information.

—Development of the habitat enhancement plan for Vinyard Creek.

3.1.3.3 Recreation

—Accommodation of any increased recreational use that occur as a result of increased viewing opportunities of the falls.

—Enhancement to viewing platform.

3.1.3.4 Visual Resources

—Visual effects of reduced flows over Twin Falls.

—Visual effects of project facilities.

3.1.3 *Auger Falls Project*

3.1.3.1 Erosion, Sedimentation, and Slope Stability

—A detailed site-specific plan is needed to control erosion, sedimentation, and slope stability, including temporary and permanent control measures.

3.1.3.2 Water Resources

—Development of a detailed water quality monitoring plan that would ensure compliance with state water quality standards of the Snake River, especially for water temperature and dissolved oxygen; the plan should have provisions to rapidly modify project operation to ensure maintenance of state water quality standards.

—Historical changes in water quality of the Snake River resulting from reductions in industrial and municipal waste load discharges and reductions in agricultural non-point discharges and the potential effects of project operation on water quality.

3.1.3.3 Fisheries Resources

—Fish entrainment and measures to reduce it.

—Development of a ramping rate using site-specific information.

—Fish passage at Auger Falls.

3.1.3.4 Vegetation and Wildlife Resources

—Development of additional mitigation for riparian habitat.

3.1.3.5 Recreation

—Utility of the proposed lengthy pedestrian access located away from the river, to enhance recreational opportunities at the project site.

3.1.3.6 Visual Resources

—Effects on the views of the canyon from important viewing locations along the canyon rim, especially in regard to the one-half mile setback requirements for a greenbelt.

—Visual effects of reduced flows over Auger Falls.

—Visual effects of project facilities on river recreationists.

3.2 Cumulative Impact Issues

3.2.1 Proposed Projects and Alternatives

—Reassessment of cumulative impacts on all resource areas, including new mitigative measures proposed by the applicants and the staff, for projects as proposed and staff alternatives.

4. Comprehensive Planning

4.1 Idaho State Water Resources PLan

4.1.1 Interim Protected Rivers

—Designates a portion of the Snake River within the study area as an interim protected river, pursuant to section 42–173H of the Idaho Code, which includes the Star Falls and Auger Falls project sites.

—The Milner Project is upstream of the designated reach; the Twin Falls Project is not affected because any designation of waterways as interim protected rivers or protected rivers does not affect the continued operation or relicense of existing hydropower projects.

4.2 Northwest Power Planning Council

4.2.1 Protected Areas

—A protected area within the reach of the Snake River that includes the four proposed projects begins at Vinyard Creek, which discharges into Twin Falls reservoir, and extends to the mouth of the Snake River.

—Designated protection is for wild resident fish habitat, wintering waterfowl, and bald eagles.

—The proposed Milner and Star Falls Projects are upstream of Vinyard Creek, and would not affect the protected area.

—The proposed Auger Falls Project is within the protected area.

—The proposed Twin Falls Project is exempt from the protected areas designation because it is located at an existing dam.

5. Information Requested

Federal, state, and local resource agencies and other interested groups and individuals are requested to forward to FERC, or present at the FERC scoping meetings, any information that they believe will assist the FERC staff in conducting an analysis of environmental impacts related to the Snake River hydroelectric projects or any of the alternatives identified.

a. information, data, or professional opinion that may contribute to defining the scope and identifying significant environmental issues;

b. identification of and information from any other EIS or similar study (previous, ongoing, or planned) relevant to the proposed projects and alternatives; and

c. existing information and data that would aid in the characterization of baseline physical/chemical, biological, and socioeconomic environments.

To be useful in preparation of the Supplement, the requested input should be received no later than December 31, 1988. Information can also be submitted prior to the scoping meetings. Address all communications to: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. All filings must clearly show the project names and number, (e.g., the Twin Falls Project, FERC No. 18–001; the Milner Project, FERC No. 2899–003; the Auger Falls Project, FERC No. 4797–001, and the Star Falls Project, FERC No. 5797–001) on the first page.

6. Proposed Outline for Supplement

Note: Section numbers are not consecutive, because they reflect the section numbers in the DEIS which are being changed as a result of new information since the DEIS was issued.

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Lois D. Cashell,
Secretary.
[FR Doc. 88–24631 Filed 10–24–88; 8:45 am]
BILLING CODE 6717–01–M

Office of the Secretary

Intention to Prepare an Environmental Impact Statement on Waste Management Activities at the Oak Ridge Reservation and to conduct a Public Scoping Meeting

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) on waste management activities at the DOE Oak Ridge Reservation (ORR) in Oak Ridge, Tennessee.

SUMMARY: The Department of Energy announces its intention to prepare an EIS in accordance with section 102(2)(C) of the National Environmental Policy Act (NEPA), as amended, to assess the potential environmental impacts of the proposed activities for managing several kinds of wastes generated at the ORR, and for the construction and operation of new radioactive waste management facilities at the ORR. The new facilities, which will differ in the type of waste they accept, are proposed to be used for treatment and storage of hazardous and mixed waste and for the disposal of solid low-level radioactive waste (LLW). The DOE proposes to initiate construction of interim LLW facilities in July 1990 and operation in September 1991. These interim facilities will be on a smaller scale than permanent facilities and will allow DOE to evaluate the effectiveness of several options for the treatment and disposal of wastes.

The proposed comprehensive waste management strategy will ensure the continuation of present operations while simultaneously initiating a technology development and demonstration program for treatment, storage and disposal of current and future wastes generated at the ORR. The proposed strategy includes the following components: (1) Waste stream identification and evaluation; (2) waste minimization; (3) on-site storage/treatment of Resource Conservation and

Recovery Act (RCRA) hazardous wastes and mixed wastes; (4) technology demonstrations; (5) delisting, detoxification and mobility reduction; and (6) waste disposal. Alternative waste management strategies and technologies will be evaluated, and will include, but not be limited to, alternatives for construction and operation of new waste management facilities.

Preparation of the EIS is intended to assure that potential environmental impacts associated with all aspects of the proposed action, including closure and institutional control of disposal sites, are documented and are factored into the decisionmaking with regard to the proposed project and facilities.

The DOE invites interested parties; officials, organizations and the public to submit comments or suggestions to be considered in defining the scope of the EIS. In addition, interested agencies, officials, organizations and the public are invited to participate in a scoping meeting to be held in Oak Ridge, Tennessee, on November 9, 1988, to assist DOE in identifying potentially significant environmental or other issues related to the development, construction and operation of the new waste disposal facilities. When the Draft EIS is completed, a Notice of Availability will be announced in the **Federal Register** and local news media, and comments will be solicited again from all interested parties. Comments on the Draft EIS will be considered in preparation of the Final EIS.

ADDRESS: Written comments or suggestions as to the scope of the Draft EIS and requests to speak at the scoping meeting may be submitted to W. Nelson Lingle, Program Manager, Research and Waste Management, U.S. Department of Energy, Post Office Box 2001, Oak Ridge, Tennessee 37831–8621; (615) 576–5580.

General information on the NEPA process as followed by DOE may be obtained from Carol Borgstrom, Director, Office of NEPA Project Assistance, U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585; (202) 586–4600.

DATES: To ensure that the full range of issues related to this proposal are addressed and all significant environmental issues are identified, comments and suggestions on the proposed scope of the EIS are invited from all interested parties. Written comments postmarked by November 23, 1988, will be considered in preparation of the Draft EIS. Comments postmarked after that date will be considered to the maximum extent practicable. Oral and written comments will be considered in preparation of the Draft EIS.

A scoping meeting will be held at the American Museum of Science and Energy, Oak Ridge, TN, on November 9, 1988. Requests to speak at the meeting should be received by November 1, 1988.

SUPPLEMENTARY INFORMATION:

Proposed Action

The proposed action is to select a comprehensive strategy for hazardous, mixed, and LLW on the ORR and to address, in detail, the disposal of LLW.

At present, most of the waste is reduced in volume and either put into interim storage until new, environmentally acceptable facilities are operational, or used to demonstrate disposal technology. The Low-Level Waste Disposal, Development and Demonstration (LLWDDD) Program has developed a performance-based disposal strategy that accounts for the existing environmental conditions on the ORR and considers the potential hazard of LLW to public health and safety. The proposed action is to construct and operate three separate types of radioactive waste disposal facilities on the ORR. The first facility would dispose of slightly contaminated radioactive waste in an industrial-type landfill (Class I) and will cause an effective whole-body dose equivalent of less than 10 mrem/yr at the time of facility closure. The second facility would be dedicated to LLW that would decay to levels not to exceed an effective whole-body dose equivalent of 10 mrem/yr by the end of a 100 year period of active institutional control (Class II). The third type of facility would dispose of long half-life radioactive wastes that may be treated to achieve the 10 mrem/yr effective whole-body dose equivalent at the time of facility closure (Class III). Engineered intruder protection for Class III facilities will reasonably assure that an inadvertent intruder would not be likely to receive exposures in excess of regulatory limits. Wastes not meeting the Class I, II, or III requirements for on-site disposal (Class IV) would be shipped to an off-site disposal facility.

Potential sites for radioactive waste disposal facilities have been reviewed and surveyed, and environmental characterization studies are underway for each. The sites are located in the Bear Creek Valley, Chestnut Ridge, and Melton Valley areas of the ORR. Each site is potentially useful for disposal for one or more classes of low-level waste.

In addition to LLW, hazardous and mixed wastes result from operations and remedial activities at the ORR. The primary goal of each installation's waste management program is to manage these waste streams in a cost-effective manner that affords protection of the human health and the environment. Although the proposed strategy calls for a concentrated effort in improving mixed waste management operations, many of the technologies implemented for mixed wastes also may be applicable to the RCRA hazardous waste. The main elements of the strategy for hazardous and mixed waste are minimization, characterization of waste stream, storage/treatment, delisting, detoxification, and mobility reduction and disposal.

Preliminary Identification of Alternatives

Alternatives that have been identified for consideration in the EIS are both general (for waste management strategy) and specific (for low-level waste). In general, the alternatives are:

- No action (continuation of the current waste management practices);
- New waste management disposal strategies, including:

(a) Shipment of all wastes generated on the ORR to another DOE waste disposal facility,

(b) Development of disposal facilities at a new DOE waste disposal site not on the ORR,

- Alternative treatment, storage, minimization strategies, technologies, and sites on the ORR; and
- Alternative combinations of the above.

For LLW, alternative sites, technologies, and facility designs are being considered. Alternative disposal sites on the ORR and off-site have been investigated and will be evaluated as part of the EIS. Several technologies to be considered included waste treatment, conditioning, packaging, and disposal technologies that would be applicable to the disposal of low-level radioactive waste generated on the ORR. Alternative facility designs have not been identified, but will be defined by DOE as the conceptual designs for the proposed facilities are developed.

Identification of Environmental Issues

The following issues have been identified for analysis in the Draft EIS. This list is presented to facilitate public comments on the scope of the EIS and is not intended to be all inclusive, nor a predetermination of impacts.

1. The potential for exposure of the public and workers to radiation during all phases of operation of the facilities and during off-site treatment;
2. The potential for exposure of the public to radiation during and following the institutional custodial care phase of monitoring such facilities;
3. The environmental, safety and health effects of credible accidents and radioactive releases;
4. The effectiveness of various waste management procedures in retaining radionuclides within the disposal unit;
5. The impact of disposal site operations on ground and surface waters; and
6. The cumulative impacts of all of the proposed waste management activities.

Comments and Public Scoping Meeting

All interested parties are invited to submit written comments or suggestions concerning the scope of issues that should be addressed in the Draft EIS and to attend a scoping meeting in which oral comments and suggestions will be received. Oral and written comments will be considered in preparation of the Draft EIS.

The DOE will establish procedures governing the conduct of the meeting. It will not be conducted as an evidentiary hearing, and those who choose to make oral presentations will not be subject to any cross-examination. The following procedures will be used to provide the DOE with as much pertinent information as possible, as many views as can be reasonably obtained, and to provide interested parties with equitable opportunity to express their views:

1. Those individuals desiring to make oral comments should mail their requests to Mr. W. Nelson Lingle at the above listed address. DOE reserves the right to arrange the times and schedules of presentations to be heard and to establish procedures governing the conduct of the meeting. By November 1, 1988, interested individuals and organizations should notify DOE in writing of their desire to speak. Those persons wishing to speak on behalf of an organization should identify their affiliation in their request. Also, persons who have not submitted a request to speak in advance may register to speak at the scoping meeting and will be called to present their comments, if time permits. To assure that all persons wishing to make presentations can be heard, a 5 minute limit for each individual has been established.
2. If, subsequent to the meeting, any person or organization desires to provide further information for the record, it must be submitted to Mr. Lingle at the address listed above and postmarked by November 23, 1988. Comments received after that date will be considered to the extent practicable.
3. A transcript of the meeting will be taken and made available for public review at the locations given below.

Those not desiring to submit comments or suggestions at this time, but who would like to receive a copy of the Draft EIS for review and comment when it is issued, should notify Mr. Lingle at the address listed above. When the Draft EIS is complete, its availability will be announced in the **Federal Register** and in the local news media, and comments will be solicited again.

Related NEPA Documentation

NEPA documents have been, or are being, prepared for other activities on the Oak Ridge Reservation that are related to, but not within the scope of the proposed action. These documents are:

1. U.S. Department of Energy, Final Environmental Impact Statement, Incineration Facility for Radioactively Contaminated Polychlorinated Biphenyl and Other Wastes, Oak Ridge Gaseous Diffusion Plant, Oak Ridge, TN, DOE/EIS–0084, 1982. U.S. Department of Energy, Washington, DC.
2. U.S. Department of Energy, Revised Final Environmental Assessment Y–12 RCRA Closure Initiation Projects, Oak Ridge, TN, DOE/EA–0362, June 1988. U.S. Department of Energy, Washington, DC.
3. U.S. Department of Energy, Draft Environmental Assessment of the Shipment of Oak Ridge National Laboratory's Contact-Handled Transuranic Waste to the Waste Isolation Pilot Plant, October 1987. U.S. Department of Energy, Washington, DC.

Copies of these and other documents referenced in this notice that are planned to be used in preparing this Draft EIS, along with other background information, will be available for public inspection at the following locations:

1. U.S. Department of Energy, Freedom of Information Reading Room, 1E–190, 1000 Independence Avenue SW., Washington, DC 20585.
2. Oak Ridge Federal Building Reading Room, 200 Administration Road, Oak Ridge, TN 37830.
3. Oak Ridge Public Library, Civic Center, Oak Ridge, TN 37716.
4. Clinton Public Library, 18 South Hicks Street, Clinton, TN 37716.
5. Kingston Public Library, Community Center, Kingston, TN 37763.

Issued at Washington, DC, October 18, 1988.

Ernest C. Baynard III,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 88–24570 Filed 10–24–88; 8:45 am]

BILLING CODE 6450–01–M

Environmental Impact Statement On Proposed Siting, Construction and Operation of New Production Reactor Capacity, Additional Information on the Public Scoping Process

AGENCY: Department of Energy (DOE).

ACTION: Amendment to notice of intent (NOI) to prepare an environmental impact statement (EIS).

SUMMARY: DOE amends the NOI previously published in the **Federal Register** (53 FR 36094, September 16, 1988) by: (1) Announcing an additional scoping meeting to be held near Pocatello, Idaho on November 18, 1988; (2) establishing deadlines for preregistering to speak at all public scoping meetings; (3) changing the DOE point of contact for requesting a copy of the draft EIS; and (4) clarifying the DOE proposal to analyze the environmental effects of each new production reactor (NPR) technology alternative "at 125% of expected tritium requirements." This amendment is intended to provide all interested parties with additional information on the DOE proposal and the EIS public scoping process to assure full and informed participation.

DATES: A additional public scoping meeting will be held at the following time and place new Pocatello, Idaho:

Date: November 18, 1988

Place: Little Tree Inn, 133 West Burnside, Chubbuck, Idaho

Times: 9 a.m.–5 p.m. and 7 p.m.–10 p.m.

For those persons who wish to make oral statements at one of the public scoping meetings, the deadlines for preregistration are as follows:

Meeting location date	Preregistration deadline	Sponsoring site
Twin Falls, ID/Nov. 10, 1988.	November 4, 1988.	Idaho.
Idaho Falls, ID/Nov. 14, 1988.	November 8, 1988.	Idaho.
Boise, ID/ Nov. 16, 1988.	November 10, 1988.	Idaho.
Chubbuck, ID/Nov. 18, 1988.	November 14, 1988.	Idaho.
Richland, WA/Nov. 29, 1988.	November 22, 1988.	Hanford.
Aiken, SC/ Nov. 29, 1988.	November 22, 1988.	Savannah River.
Spokane, WA/Dec. 1, 1988.	November 25, 1988.	Hanford & Idaho.
Augusta, GA/Dec. 1, 1988.	November 25, 1988.	Savannah River.

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Meeting location date	Preregistration deadline	Sponsoring site
Savannah, GA/Dec. 5, 1988.	November 25, 1988.	Savannah River.
Portland, OR/Dec. 6, 1988.	November 30, 1988.	Hanford.
Columbia, SC/Dec. 7, 1988.	December 1, 1988.	Savannah River.
Seattle, WA/Dec. 8, 1988.	December 2, 1988.	Hanford.

The end of the EIS public scoping period (December 15, 1988) remains unchanged. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Requests to speak at the public scoping meetings and written comments on the scope of the EIS should be submitted to:

Mr. Peter J. Dirkmaat (Idaho Site), U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, ID 83402, (208) 526–6668

or

Mr. Tom Bauman (Hanford Site), U.S. Department of Energy, Richland Operations Office, 823 Jadwin Avenue, Room 157, Richland, WA 99352, (509) 376–7501

or

Mr. S.R. Wright (Savannah River Site), U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, South Carolina 29802, (803) 725–3957

FOR FURTHER INFORMATION CONTACT: The person to contact to receive a copy of the draft EIS (when published) has been changed to:

Mr. Jim Davis, Director, Office of Environment, Office of New Production Reactor (DP–50), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20858, (202) 586–5966

SUPPLEMENTARY INFORMATION: On September 16, 1988, DOE published a NOI in the **Federal Register** announcing the Department's intent to prepare an EIS on the siting, construction and operation of NPR capacity. The NOI provided background information on the proposed action, reasonable alternatives, and a list of potential issues to be considered in preparation of the EIS. In the NOI, DOE invited all interested parties to submit written comments on the proposed scope of issues to be analyzed in the EIS and announced a schedule of public scoping meetings where persons may present oral comments on the scope of the EIS. Comments and suggestions received during the scoping period will be considered in preparing the draft EIS.

This amendment to the NOI announces the addition of a public scoping meeting near Pocatello, Idaho; establishes deadlines for preregistering to speak at all the scoping meetings; and changes the person to contact to receive a copy of the draft EIS. The establishment of the preregistration deadlines is intended to allow the Department sufficient time (three working days) to prepare and post the lists of preregistered speakers for each meeting location. Persons wishing to speak at the scoping meetings who do not register before these deadlines may still register at the door of a particular meeting and be given an opportunity to speak after all preregistered speakers have presented their comments, as time permits. Written and oral comments will be given equal weight in the scoping process.

This amendment also provides a clarification of the sentence in the NOI, which stated "For the purposes of the EIS analyses, all technologies will be analyzed at 125% of expected tritium requirements." For purposes of the EIS analysis, all alternative NPR technologies are to be conceptually designed to attain 100% of expected tritium requirements. However, DOE proposes that the EIS anaylysis of environmental effects will assume a margin of 25% over calculated source terms to provide a conservative bounding case for each reactor technology. This margin was selected to ensure that the environmental impacts analysis would allow a measure of conservatism for the uncertainty in source terms.

During EIS public scoping process, this proposal for bounding of potential environmental impacts is being further evaluated by the Department.

Signed in Washington, DC, this 18th day of October, 1988, for the United States Department of Energy.

Ernest C. Baynard III,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 88–24572 Filed 10–24–88; 8:45 am]

BILLING CODE 6450–01–M

Grants; National Geothermal Association

AGENCY: Department of Energy.

ACTION: Intent to negotiate a grant—National Geothermal Association, Grant No. DE–FG07–89ID12832.

SUMMARY: The NGA convene a seminar, with tours, to promote U.S. geothermal goods and services. The U.S. Department of Energy (DOE), Idaho Operations Office (ID), intends to negotiate on a noncompetitive basis with the National Geothermal Association (NGA)—P.O. Box 1350, Davis, CA 95617.

NGA will develop and convene, in conjunction with the California Energy Commission and other organizations, a two day seminar and two days of tours to promote the international sale of U.S. goods and services through the explanation and demonstration of U.S. geothermal small power plant technology to foreign national representatives. Support of the NGA in this task will promote the international sales of U.S. geothermal goods and services, continue to keep the U.S. the focal point for the export of U.S. goods and services to the international market, and help strengthen the U.S. leadership in geothermal development.

The anticipated amount of the Grant $5,000. NGA is obtaining support from other parties also to fund the total anticipated cost of $33,240. A Determination of Noncompetitive Financial Assistance (DNCFA) has been approved in accordance with DOE Financial Assistance Rules 10 CFR 600.7(b)(2)(i)(B) and (D); (B) the activity(ies) is (are) being or would be conducted by the applicant using its own resources or those donated or provided by third parties; however, DOE support of the activity would enhance the public benefits to be derived and DOE knows of no other entity which is conducting or planning to conduct such an activity(ies): (D) the applicant has exclusive domestic capability to perform the activity successfuly based upon unique equipment, proprietary data, technical expertise, or other such unique qualifications.

Public response may be addressed to the contract specialist below.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, Idaho 83402—T. Wade Hillebrant (208) 526–0547.

J. P. Andersen,

Acting Director, Contracts Management Division.

[FR Doc. 88–24571 Filed 10–24–88; 8:45 am]

BILLING CODE 6450–01–M

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement of United States and Canada on Civil Uses of Atomic Energy

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Canada concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following contract:

Contract Number: DE–SC05–88UE07158, for a short-term fixed commitment contract for the supply of 258.5 kilograms of uranium, enriched to 19.75 percent in the isotope uranium-235, to Atomic Energy of Canada, Ltd. (AECL). The material is to be fabricated at AECL into fuel ultimate for use in a research reactor in Choongam, the Republic of Korea, operated by the Korean Advanced Energy Research Institute.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sonner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: October 18, 1988.

David B. Waller,

Assistant Secretary of Energy, International Affairs and Energy Emergencies.

[FR Doc. 88–24660 Filed 10–24–88; 8:45 am]

BILLING CODE 6450–01–M

Proposed Subsequent Arrangement of United States and European Atomic Energy Community on Peaceful Uses of Atomic Energy

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Canada concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer:

RTD/CA(EU)–15, for the transfer of 500 grams of uranium enriched to 19.95 percent in the isotope uranium–235 from France to the Chalk River National Laboratories in Canada, for suitability tests for fuel element production for the NRU research reactor.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: October 18, 1988.

David B. Waller,

Assistant Secretary of Energy, International Affairs and Energy Emergencies.

[FR Doc. 88–24661 Filed 10–24–88; 8:45 am]

BILLING CODE 6450–01–M

Bonneville Power Administration

Availability of the Record of Decision to Construct, Operate, and Maintain the Third AC Intertie

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of availability of record of decision.

SUMMARY: The Bonneville Power Administration (BPA) has decided to construct, operate, and maintain the Third AC Intertie in the States of Washington and Oregon.

The Project will increase the capacity of the existing AC Intertie about 1600 megawatts (MW), from about 3200 MW to about 4800 MW through: (1) The signing of a technical agreement between BPA, Portland General Electric, and Pacific Power and Light (PP&L) with California parties; (2) the improvement of existing facilities in Washington and Oregon; (3) the exercise of a BPA option to acquire 50 percent of the incremental capacity of PP&L's existing Malin-Meridian line; (4) the building of a Southern Oregon substation; (5) the building of two 2-mile loop lines from the substation to BPA's existing Grizzly-Malin line and to PP&L's existing Malin-Meridian line; and (6) the building of 8 miles of 500-kV line from the new substation to the Oregon-California border to complete a link with the California-Oregon Transmission Project (COTP).

FOR FURTHER INFORMATION CONTACT: To request a copy of the Administrator's Record of Decision, please call one of BPA's toll-free document request lines: (800) 841–5867 for Oregon or (800) 624–9495 for other Western states.

For additional information, please contact Anthony R. Morrell, Assistant to the Administrator for Environment, at (503) 230–5136; or call the Public Involvement office in Portland at (503) 230–3478, toll-free (800) 452–8429 from Oregon outside of Portland, or toll-free (800) 547–6048 for Washington, Idaho, Montana, Utah, Nevada, Wyoming, and California. Information may also be obtained from:

Mr. George E. Guinnutt, Lower Columbia Area Manager, Suite 243, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503–230–4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503–687–6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59807, 406–329–3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98807, 509–662–4377, extension 379.

Mr. Terence G. Esvelt, Puget Sound Area Manager, 201 Queen Anne Avenue, Suite 400, Seattle, Washington 98109–1030, 206–442–4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–525–8125.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706.

Mr. Thomas H. Blankenship, Boise District Manager, Room 494, 550 West Fort Street, Boise, Idaho 83724, 208–334–9137.

SUPPLEMENTARY INFORMATION: The environmental impacts of construction and maintenance of the Project, and the physical impacts of operation of the Project itself (such as thermal plant operation and electrical effects) were addressed in Environmental Impact Statements and Records of Decision.

The physical impacts of construction were addressed in the COTP Environmental Impact Statement (EIS)/ Environmental Impact Report (EIR) (January 1988) produced by the Transmission Agency of Northern California and by the Western Area Power Administration, with BPA as a cooperating agency. The COTP Record of Decision (ROD) was published April 22, 1988. Operational impacts of the Third AC Project were addressed in the Intertie Development and Use Final EIS produced by BPA (April 1988). Environmental impacts of the 500–kV Malin-Meridian line were addressed in the Eugene-Medford Project EIS, produced by the Bureau of Land Management, with BPA as a cooperating agency (1983). The Eugene-Medford ROD was published December 15, 1984; DOE adopted the EIS and BPA published its own ROD on this project on Octoer 28, 1985.

The subject of this ROD is the decision for AC intertie owners in the Pacific Northwest (PNW) to take actions to enable successful operation of the COTP in order to expand the bidirectional capability of the PNW-Pacific Southwest (PSW) Intertie transmission system; to help serve California's need for economical power; to support the PNW desire to sell surplus power; and to maintain and increase reliability of the existing transmission system.

In making this decision, BPA considered the following factors: ability to meet the need, engineering performance, economic factors, public and institutional issues, and environmental effects. The environmental preferable alternative was selected.

Primary public concerns included accuracy of economic benefit projection; timing and size of the project; relative consideration of costs of environmental impacts and mitigation; power system effects (including potential for adverse impacts on resident and anadromous fish and on wildlife); BPA's reliance on fish bypass facilities planned by the U.S. Army Corps of Engineers (USACE) as mitigation for potential effects; visual impacts; and avoidance of interference with agricultural practices. These concerns were responded to in the various EISs and their respective RODs. These documents showed little environmental reason not to proceed with constructing, operating, and maintaining the Project, considering the planned installation of fish bypass facilities on dams by the USACE and the Mid-Columbia Public Utility Districts.

Issued in Portland, Oregon, on September 27, 1988.

James J. Jura,

Administrator.

[FR Doc. 88-24574 Filed 10-24-88; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 88-01-NG]

G.A.S. Orange Development, Inc.; Conditional Order Granting a Long-Term Authorization to Import Natural Gas From Canada and Granting Intervention

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of conditional order granting authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued a conditional order granting a long-term authorization to import natural gas from Canada to G.A.S. Orange Development, Inc. (G.A.S. Orange). The conditional order, issued in ERA Docket No. 88–01–NG, authorizes G.A.S. Orange to import up to 120,000,000 MMBtu's (approximately 120 Bcf) of Canadian natural gas over a 20-year term to fuel a cogeneration facility to be built in Syracuse, New York.

This order is conditioned on the subsequent review and acceptance of unfinished environmental documentation related to construction by Tennessee Gas Pipeline Company of new pipeline facilities required for delivery of the gas to the facility's tapline, the construction of the cogeneration facility and DOE's compliance with the National Environmental Policy Act requirements related to the issuance of a final order in this docket.

A copy of this conditional order is available for inspection and copying in the Natural Gas Division Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 18, 1988.

Anthony J. Como,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-24662 Filed 10-24-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP89-50-000, et al.]

Natural Gas Pipeline Co. of America et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Natural Gas Pipeline Company of America

[Docket No. CP89-50-000]

October 18, 1988.

Take notice that on October 13, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89–50–000 a request pursuant to §§ 157.205 and 284.223(2)(b) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport, on an interruptible basis, up to a maximum of 100,000 MMBtu equivalent of natural gas per day (plus any additional volumes accepted pursuant to the overrun provisions of Nation's Rate Schedule ITS) for TexPar Energy, Inc. (TexPar), a marketer of natural gas, under Natural's blanket certificate issued in Docket No. CP86–582–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

The proposed receipt points by Natural are located in Louisiana, Illinois, Texas, Oklahoma, New Mexico, Montana, Iowa, Arkansas, Kansas, Nebraska and Wyoming and the proposed delivery points are located in Illinois, Missouri, Nebraska, Louisiana, Iowa, Michigan, Texas, Oklahoma, Kansas and New Mexico.

It is stated that Natural commenced the transportation of natural gas for TexPar on August 4, 1988, at Docket No. ST89–148 for a 120-day period ending December 2, 1988, pursuant to § 284.223(a)(1) of the Commission's Regulations and an interruptible transportation service agreement dated May 10, 1988, as amended, May 19, 1988, and July 25, 1988, between TexPar and Natural. Natural proposes to continue this service in accordance with §§ 284.221 and 284.223(2)(b).

Natural states that TexPar has advised that the volume anticipated to be transported under the agreement on an average day is 25,000 MMBtu equivalent, and, based on that average day figure, the annual volume to be transported is 9,125,000 MMBtu equivalent. Natural states further that no new facilities are to be constructed.

Comment date: December 2, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. Northern Natural Gas Company, Division of Enron Corporation

[Docket No. CP88-688-000]

October 19, 1988.

Take notice that on September 30, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP88–688–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Energy Dynamics, Inc. (Energy Dynamics), a marketer of natural gas, under Northern's blanket certificate issued in Docket No. CP86–435–000, pursuant to section 7 of the Natural Gas Act, all as more fully met forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to transport on an interruptible basis up to 50,000 MMBtu of natural gas on a peak day, 37,500 MMBtu on an average day and 18,250,000 MMBtu on an annual basis for Energy Dynamics. It is stated that the transportation service would be effected using existing facilities and would not require any construction of additional facilities. It is explained that the service has commenced under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST88–5870.

Comment date: December 5, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89-28-000]

October 20, 1988.

Take notice that on October 7, 1988, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP89–28–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authority to provide interruptible transportation service for Sun Refining and Marketing Company (Sun) under Transco's blanket transportation certificate issued April 29, 1988, in Docket No. CP88–328–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transco states it will receive the gas at the Katy/Exxon Gas Plant in Waller County, Texas and deliver the gas at Marcus Hook, Delaware County, Pennsylvania.

Transco proposes to transport up to 20,000 dt of natural gas per peak day, 8,000 dt on an average day, or approximately 2,920,000 dt annually. Transco states that the transportation service commenced under the 120-day automatic authorization of § 284.223(a) of the Commission's Regulations on September 1, 1988, pursuant to a transportation agreement dated July 15, 1988. Transco notified the Commission of the commencement of the transportation service in Docket No. ST88–5843 on September 28, 1988.

Comment date: December 5, 1988, in accordance with Standard Paragraph G at the end of this notice.

4. Northern Natural Gas Company, a Division of Enron Corp.

[Docket No. CP88-872-000]

October 20, 1988.

Take notice that on September 29, 1988, Northern Natural Gas Company, a Division of Enron Corporation (Northern) 1400 Smith Street, Houston, Texas 77251–1188, filed in Docket No. CP88–872–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Enron Gas Marketing, Inc., under the certificate issued in Docket No. CP86–435–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern states that it proposes to transport up to 400,000 MMBtu of natural gas per day for Enron Gas Marketing, Inc., on a peak day, 300,000 MMBtu on an average day and 146,000,000 MMBtu annually, under Rate Schedule IT–1. This service was reported to the Commission in ST88–5451. Northern further states the construction of facilities will not be required to provide the proposed service.

Comment date: December 5, 1988, in accordance with Standard Paragraph G at the end of this notice.

5. United Gas Pipe Line Company

[Docket No. CP88-880-000]

October 20, 1988.

Take notice that on September 29, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP88–880–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of The Polaris Corporation (Polaris), a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United proposes to transport, on an interruptible basis, up to 20,600 MMBtu/day for Polaris from one (1) point of receipt in Caldwell Parish, Louisiana to one (1) delivery point in Ouachita Parish, Louisiana. United states that construction of facilities would not be required to provide the proposed service.

United further states that the estimated daily and annual quantities would be 20,600 MMBtu and 7,519,000 MMBtu respectively, and that service under § 284.223(a) commenced September 1, 1988, as reported in Docket No. ST88–5701.

Comment date: December 5, 1988, in accordance with Standard Paragraph G at the end of this notice.

6. Northern Natural Gas Company, Division of Enron Corporation

[Docket No. CP89-14-000]

October 20, 1988.

Take notice that on October 5, 1988, Northern Natural Gas Company, a Division of Enron Corporation (Northern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP89–14–000 an application pursuant to section 7(c) of the Natural Gas Act for authorization to sell additional volumes to its utility customer, Southern Union Gas Company (Southern Union), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that the authorization to sell additional volumes of natural gas to Southern Union is requested in order to serve the natural gas requirements of the community of McCamey, Texas.

Northern states further that the total service to Southern Union would not exceed 2,000 Mcf per day.

It is stated that no additional facilities are required to be constructed to effectuate the proposed services. It is further stated that the proposed service would not reduce or jeopardize any service to Northern's existing customers.

Comment date: November 10, 1988, in accordance with Standard Paragraph F at the end of this notice.

7. Natural Gas Pipeline Company

[Docket No. CP89-39-000]

October 20, 1988.

Take notice that on October 11, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-39-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new delivery point for sales of natural gas to its existing firm sales customer, CNG Transmission Corporation (CNG), under the blanket certificate issued in Docket No. CP82-413-000 on September 1, 1982, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application that is on file with the Commission and open to public inspection.

Tennessee states that pursuant to a request by CNG, it proposes to establish a new delivery point to better serve CNG's existing service area. It is stated that the new delivery point would be located near the town of Avon, New York, at a point near Tennessee's "200" Main Line Valve 234. It is further stated that the maximum daily quantity to be delivered to the new delivery point would be 4,400 dekatherms (dt) per day equivalent of natural gas, and that the sale would be made pursuant to an existing contract dated August 26, 1987. Tennessee states that the maximum daily quantity of gas that CNG may purchase under the contract is 631,200 dt and the maximum annual quantity is 230,388,000 dt. Furthermore, Tennessee states that the establishment of the new delivery point would not increase or decrease those maximum daily or annual contract quantities. It is explained that CNG would nominate the specific quantities of gas to be delivered at each delivery point (including the proposed delivery point) subject to the specified maximum daily and annual quantity limitations at each point.

Tennessee asserts that the establishment of the proposed new delivery point is not prohibited by Tennessee's currently effective tariff and that it has sufficient capacity to accomplish the deliveries at the proposed new delivery point without detriment or disadvantage to any of Tennessee's other customers. It is stated that the estimated total cost of the new delivery point is $108,000.

Comment date: December 5, 1988, in accordance with Standard Paragraph G at the end of this notice.

8. Southern Natural Gas Company

[Docket No. CP89-18-000]

October 20, 1988.

Take notice that on October 6, 1988, Southern Natural Gas Company (Southern), filed in Docket No. CP89-18-000 a request pursuant to the notice procedure in §§ 157.205 and 284.223(b) of the Commission's Regulations for authorization to transport gas on an interruptible basis for Sonat Marketing Company (SMC) under Southern's blanket certificate issued in Docket No. CP88-316-000, under section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern would perform the proposed transportation service for SMC, a marketer, pursuant to a service agreement dated July 22, 1988, under Southern's Rate Schedule IT. The service agreement is for a primary term of one month with successive terms of one month thereafter unless cancelled by either party. Southern proposes to transport on an interruptible basis 1,600 MMBtu of gas on a peak day, 841 MMBtu of gas on an average day, and 233,985 MMBtu of gas for SMC on an annual basis. Southern proposes to receive the gas at various receipt points in Louisiana, offshore Louisiana, Mississippi and Texas for delivery to an end-user in South Carolina. Southern asserts that no new facilities are required to implement the proposed service.

Southern commenced transportation of natural gas for SMC on August 1, 1988, as reported in Docket No. ST88-5818 pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's Regulations. Southern proposes to continue this transportation service in accordance with the provisions of §§ 284.221 and 284.223(b) of the Commission's Regulations.

Comment date: December 5, 1988, in accordance with Standard Paragraph G at the end of this notice.

9. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89-16-000]

October 20, 1988.

Take notice that on October 6, 1988, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP89-16-000 a request pursuant to §§ 157.205 and 284.223(b) of the Commission's Regulations under the Natural Gas Act for authorization to transport gas for Tejas Power Corporation (Tejas) under Transco's blanket certificate issued in CP85-375-000 under section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Transco states that it would perform the proposed transportation service for Tejas pursuant to a service agreement dated July 22, 1988. Transco also states that the total volume of gas to be transported for Tejas on a peak day will be 25,000 dt; on an average day will be 25,000 dt; and on an annual basis will be 9,125,000 dt.

Transco further states it will receive the gas at Crowley, Acadia Parish, Louisiana and deliver the gas at Philadelphia, Pennsylvania. The points of receipt and delivery pursuant to the service agreement are on file with the Commission.

Transco avers that the proposed service is currently being performed pursuant to the 120-day period of § 284.223(a)(1) of the Commission's Regulations. Transco also states that transportation service between Transco and Tejas commenced on August 25, 1988, as reported in Docket No. ST88-5757. Transco states that no new facilities will be constructed by Transco in order to provide this transportation service.

Transco states that there is no agency relationship under which a local distribution company or an affiliate of Tejas will receive gas on behalf of Tejas.

Transco states that it knows of no other applications that are related to this transaction.

Comment date: December 5, 1988, in accordance with Standard Paragraph G at the end of this notice.

10. United Gas Pipe Line Company

[Docket No. CP89-34-000]

October 20, 1988.

Take notice that on October 7, 1988, United Gas Pipe Line Company, P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-34-000, a request, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223), for authorization to provide an interruptible transportation service on behalf of Texaco Gas Marketing (Texaco), a marketer of natural gas, under United's blanket certificate issued on Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

United states that pursuant to amendments dated July 13, 1988, and August 22, 1988 to the Interruptible Gas Transportation Agreement T1-21-1606, dated May 6, 1988, it proposes to transport up to 103,000 MMBtu per day of natural gas for Texaco for a primary term expiring September 1, 1989, and shall continue month to month thereafter. United indicates that the transportation service will be performed wholly within the state of Louisiana.

United also states that no construction of facilities will be required to provide this transportation service.

United further states that the maximum day, average day, and annual gas delivered volumes would be approximately 103,000 MMBtu, 103,000 MMBtu and 37,595,000 MMBtu, respectively.

United advises that service under § 284.223(a) commenced September 1, 1988, as reported in Docket No. ST88-5831 (filed September 26, 1988).

Comment date: December 5, 1988, in accordance with Standard Paragraph G at the end of this notice.

11. Natural Gas Pipeline Company of America

[Docket No. CP89-44-000]

October 20, 1988.

Take notice that on October 12, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89-44-000 a request pursuant to §§ 157.205 and 284.223(2)(b) of the Commission's Regulations under the Natural Gas Act for authorization to transport gas for PSI, Inc. (PSI), a marketer of natural gas, under Natural's blanket certificate issued in Docket No. CP88-582-000 under section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Natural states that it would transport, on an interruptible basis, up to a maximum of 25,000 MMBtu of natural gas per day (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS, for PSI. Natural states that the receipt points would be located in Texas, offshore Texas, Louisiana, offshore Louisiana, Kansas, Oklahoma, Iowa, New Mexico, Illinois and Arkansas and the delivery point would be located in Illinois. Natural indicates that the total volume of gas to be transported for PSI on a peak day would be 25,000 MMBtu; on an average day would be 5,000 MMBtu; and an annual basis would be 1,825,000 MMBtu.

Natural indicates it would perform the proposed transportation service for PSI pursuant to a service agreement dated April 21, 1988, as amended August 2, 1988, between Natural and PSI.

Natural states that it commenced the transportation of natural gas for PSI on August 6, 1988, at Docket No. ST89-142-000 for a 120-day period ending December 4, 1988, pursuant to § 284.223(a)(1) of the Commission's Regulations. Natural states that it proposes to continue this service in accordance with §§ 284.221 and 284.223(2)(b). Natural states that no new facilities are proposed in order to provide this transportation service.

Natural also states that it is not aware of any agency relationship under which a local distribution company or an affiliate of PSI is to receive natural gas on behalf of PSI, and that it has no and is not aware of other applications that are related to this transaction.

Comment date: December 5, 1988, in accordance with Standard Paragraph G at the end of this notice.

12. Southern Natural Gas Company

[Docket No. CP89-20-000]

October 20, 1988.

Take notice that on October 6, 1988, Southern Natural Gas Company (Southern), filed in Docket No. CP89-20-000 a request pursuant to §§ 157.205 and 284.223(b) of the Commission's Regulations for authorization to transport gas on an interruptible basis for Rangeline Corporation (Rangeline) under Southern's blanket certificate issued in Docket No. CP88-316-000, under section 7 of te Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern would perform the proposed transportation service for Rangeline, a marketer, pursuant to a service agreement dated July 22, 1988, under Southern's Rate Schedule IT. Southern states that the service agreement is for a primary term of one month with successive terms of one month thereafter unless cancelled by either party. Southern proposes to transport on an interruptible basis 200 MMBtu of gas on a peak day, 116 MMBtu of gas on an average day, and 43,305 MMBtu of gas for Rangeline on an annual basis. Southern proposes to receive the gas at various receipt points in Louisiana and offshore Louisiana for delivery to an end-user in Alabama. Southern asserts that no new facilities are required to implement the proposed service.

Southern commenced transportation of natural gas for Rangeline on August 1, 1988, as reported in Docket No. ST88-5508 pursuant to the 120-day self-implementing provision of §284.223(a)(1) of the Commission's Regulations. Southern proposes to continue this transportation service in accordance with the provisions of §§ 284.221 and 284.223(b) of the Commission's Regulations.

Comment date: December 5, 1988, in accordance with Standard Paragraph G at the end of this notice.

13. United Gas Pipe Line Company

[Docket No. CP89-38-000]

October 20, 1988.

Take notice that on October 7, 1988, United Gas Pipe Line Company, P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-38-000, a request, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223), for authorization to provide an interruptible transportation service on behalf of Texaco Gas Marketing (Texaco), a marketer of natural gas, under United's blanket certificate issued on Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

United states that pursuant to amendments dated August 19, 1988, and August 25, 1988 to the Interruptible Gas Transportation Agreement T1-21-1723, dated July 14, 1988, it proposes to transport up to 206,000 MMBtu per day of natural gas for Texaco for a primary term of one month from the date of first delivery of gas and shall continue month to month thereafter. United states that it proposes to receive gas at several points located in Louisiana and Alabama and proposes to redeliver such gas to points located in the states of Florida, Mississippi, Alabama and Louisiana.

United also states that no construction of facilities will be required to provide this transportation service.

United further states that the maximum day, average day, and annual gas delivered would be approximately 206,000 MMBtu, 206,000 MMBtu, and 75,190,000 MMBtu, respectively.

United advises that service under § 284.223(a) commenced September 1, 1988, as reported in Docket No. ST88-5829 (filed September 26, 1988).

Comment date: December 5, 1988, in accordance with Standard Paragraph G at the end of the notice.

14. National Fuel Gas Supply Corporation

[Docket No. CP88-690-000]

October 20, 1988.

Take notice that on September 30, 1988, National Fuel Gas Supply Corporation (National), Ten Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP88-690-000 pursuant to sections 7(b) and 7(c) of the Natural Gas Act an application to authorize the continuation of transportation service, on an interruptible basis, in Docket Nos. CP86-63, CP87-59, CP88-47, and CP86-628, on behalf of Columbia Gas Transmission Corporation (Columbia), National Fuel Gas Distribution Corporation (Distribution), Transco Energy Marketing Company (TEMCO) and Pine-Roe Natural Gas Company (Pine-Roe) for an additional one-year period beginning January 1, 1989. Additionally, National requests authorizaton to transport gas on an interruptible basis on behalf of Distribution for the account of Sharon Steel Corporation (Sharon Steel), and on behalf of Highland Land & Minerals, Inc. (Highland), all as more fully set for in the application on file with the Commission and open to public inspection.

National proposes to transport up to 3,500 Mcf of natural gas per day on behalf of Columbia, 30 Mcf per day on behalf of Pine-Roe, 75,000 Mcf per day on behalf of TEMCO and in two separate arrangements, 51,615 Mcf and 6,000 Mcf of natural gas per day on behalf of Distribution. National also proposes for a one-year term beginning on January 1, 1989, to transport up to 30,000 Mcf of gas per day for Distribution on behalf of Sharon Steel, and up to 127 Mcf of natural gas per day on behalf of Highland.

National states that it would provide the transportation service through the use of existing facilities. National also states that it proposes to charge the rate presently authorized under National's Rate Schedule T-1 which is on file and approved by the Commission.

Comment date: November 23, 1988, in accordance with Standard Paragraph F at the end of this notice.

15. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89-7-000]

October 20, 1988.

Take notice that on October 3, 1988, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP89-7-000 an application pursuant to section 7(c) of the Natural Gas Act and to the order issued September 16, 1988, in Northeast U.S. Pipeline Projects, Docket No. CP87-451-000, *et al.*, and in accordance with the Associated PennEast Customer Group (APEC) for a certificate of public convenience and necessity authorizing the construction and operation of natural gas pipeline and related facilities and authorizing the transportation and storage of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco states that during the course of Commission-sponsored settlement conferences a consensus emerged among APEC, Transco, PennEast Gas Services Company, Texas Eastern Transmission Corporation, CNG Transmission Corporation, and Algonquin Gas Transmission Company and that they entered into a Memorandum of Understanding which ultimately lead to the filing of a settlement proposal on August 15, 1988 (APEC Settlement). Transco also states that the APEC Settlement provided that, upon Commission approval of the APEC Settlement, Transco would revise its application in Docket No. CP88-177-000 accordingly, to reflect a reduction in the facilities proposed in such docket by approximately 170 MMcf per day of capacity. Docket No. CP89-7-000 is thus filed to replace Docket No. CP88-177-000.

In this application, Transco proposes to provide a long-term, firm transportation service of up to the dekatherm equivalent of 125 MMcf of natural gas per day, on behalf of 4 local distribution companies (LDC's), 4 natural gas marketers (marketers), 2 cogeneration facilities (cogens) and 1 other, from the United States/Canadian border for delivery to the above mentioned customers in Transco's market area. Transco states that it has already received nominations for transportation service substantially in excess of the 125 MMcf dekatherms per day which would be offered. Transco further states that it would transport the gas in accordance with the individual transportation agreements in substantially the same form as Transco's *pro forma* Gas Transportation Agreement, a copy of which is included in the complete application. Transco states that it would charge, for the transportation service, a rate utilizing the modified-fixed- variable rate design methodology.

Transco also proposes to provide a storage service, for 6 LDC's, 3 marketers and 1 cogen, of up to 11 Bcf of storage capacity with a maximum daily delivery capability of 100 MMcf at the facilities of Penn-York Energy Corporation in Wharton County, Pennsyvlania. Transco states that it has already received nominations for storage demand that would require storage capacity in excess of the 11 Bcf that is being offered. Transco further states that although the proposed storage and transportation services are being offered as a joint project Transco would offer the storage and/or transportation service in an unbundled fashion. Transco would offer its potential customers the storage service under the proposed Rate Schedule SS-2.

To effectuate the proposed service, Transco proposes to construct 29.01 miles of pipeline loop in Monroe and Clinton Counties, Pennsylvania and in Middlesex and Gloucester Counties, New Jersey. Transco would also add 12,600 horsepower of compression at its existing Compression Station No. 515 in Luzerne County, Pennsylvania and 12,000 horsepower at a proposed Station No. 205 in Mercer County, Pennsylvania. Transco estimates the facility cost to be $71 million.

In addition, Transco states that it would construct, install, and operate additional transporation facilities for 290 MMcf per day in excess of the above proposed 225 MMcf per day. The service would supply the Northeast markets which are capable of receiving service through Transco's facilities to the extent that the Commission determines that the market need exists and that the public convenience and necessity would be served. Transco states that it has the capability to develop incremental transporation capacity to deliver a significant volume of natural gas from the Leidy Hub area to Northeast U.S. markets in a cost-effective manner. Transco submits that, as an applicant and active participant in the Commission's "open season" proceeding, it is proposing, in its instant application, to expand its Leidy Line and market area facilities to provide additional transportation capacity to serve such markets.

Comment date: November 10, 1988, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time alowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24655 Filed 10-24-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-248-021]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

October 20, 1988.

Take notice that ANR Pipeline Company ("ANR") on October 14, 1988 tendered for filing as a part of its FERC Gas Tariff Original Volume No. 1-A, certain listed tariff sheets.

ANR states that the above referenced tariff sheets are being filed in compliance with the Commission's order of September 29, 1988 in this docket.

ANR has requested that the Commission accept this filing, to become effective October 1, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Such protests or motions must be filed by Oct. 28, 1988. Protests will be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24632 Filed 10-24-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-187-007]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 20, 1988.

Take notice that Columbia Gas Transmission Corporation (Columbia) on October 17, 1988, tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective October 18, 1988:

Sixteenth Revised Sheet No. 16B
Sixth Revised Sheet No. 16B1
Sixth Revised Sheet No. 16B2

Columbia states that the foregoing tariff sheets relate to Columbia's previous filings in Docket No. RP88-187 in which Columbia established procedures to recover from its customers the take-or-pay and contract reformation costs billed to Columbia by its pipeline suppliers. Specifically, Columbia proposes to supplement its earlier filings to permit it to flow through additional take-or-pay and contract reformation costs to be billed to it by Panhandle Eastern Pipe Line Company (Panhandle) pursuant to Commission orders issued September 28, 1988 in Docket Nos. RP88-240-000 and RP88-241-000. Columbia also proposes to flow through, on an as-billed basis, certain take-or-pay costs billed to it by Tennessee Gas Pipeline Company (Tennessee) pursuant to Tennessee's settlement approved by the Commission on July 31, 1987 in Docket No. RP88-178-000, *et al.*

Copies of the filing were served upon Columbia's jurisdictional customers and interested state commissions and to each person designated on the official service list compiled by the Commission's Secretary in Docket No. RP85-177-WH.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 28, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24633 Filed 10-24-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA88-11-000]

Gator Hawk Gas Co.; Petition for Adjustment

October 19, 1988.

Take notice that on May 16, 1988, Gator Hawk Gas Company (Gator Hawk) filed a petition for adjustment pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA). Gator Hawk petitions for adjustment relief so it can avoid refunding the difference between the NGPA section 108 adjusted stripper well price it collected and the section 103 price that it should have collected for gas sold from the Bardin No. 1 and Bardin No. 6 wells located in Ouachita Parish, Louisiana. Gator Hawk's petition pertains to the period February 1, 1981 through December 6, 1981.

Gator Hawk states that on March 2, 1981, the State of Louisiana determined that the wells qualified for NGPA

section 108 stripper well status. It adds that after the application of a recognized enhanced recovery technique, the wells' production exceeded 60 Mcf per production day, thereby disqualifying them for section 108 status.

Gator Hawk states that it failed to file a notice of disqualifications and a petition for enhanced recovery determinations for the subject wells because of inadvertence. It also argues that the grant of its petition is consistent with Commission precedents. Further, Gator Hawk asserts that if adjustment relief is denied it will suffer and out-of-pocket loss, subjecting it to a special hardship, inequity, or an unfair distribution of burdens.

The procedures applicable to the conduct of this proceeding are set forth in Rule 1101–1117 (Subpart K) of the Commission's rules of practice and procedure. Any person desiring to participate in this proceeding must file a motion to intervene in accordance with Rule 1105. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register**.

Lois D. Cashell,

Secretary.

[FR Doc. 88–24629 Filed 10–24–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–242–001]

Granite State Gas Transmission, Inc.; Filing

October 20, 1988.

Take notice that on October 17, 1988 Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 01021, tendered for filing with the Commission the following tariff sheets in FERC Gas Tariff, First Revised Volume No. 1, for effectiveness on October 1, 1988:

Substitute Original Sheet No. 7–C
Substitute First Revised Sheet No. 86
First Revised Sheet No. 87
First Revised Sheet No. 88
Original Sheet No. 89

According to Granite State, the purpose of the instant filing is to comply with the Commission's order issued September 28, 1988 in this docket relating to the procedures pursuant to which Granite State will recover from its customers the fixed take-or-pay charges billed by Tennessee Gas Pipeline Company under the provisions of Order No. 500. Granite State requests and effective date of October 1, 1988.

Granite State further states that copies of its filing were served upon its customers, Bay State Gas Company and Northern Utilities, Inc., and the regulatory Commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 28, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–24634 Filed 10–24–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EP89–4–000]

Tennessee Gas Pipeline Co.; Filing

October 20, 1988.

Take notice that on August 29, 1988, Tennessee Gas Pipeline Company (Tennessee) tendered for filing the following revised tariff sheets in Second Revised Volume No. 1 of its FERC Gas Tariff to be effective Novembver 16, 1988:

Substitute Second Revised Sheet No. 109
Original Sheet No. 109A
Second Substitute Third Revised Sheet No. 115
Original Sheet No. 115A
Substitute Second Revised Sheet No. 205

Tennessee states that the purpose of this filing is designed to provide Tennessee's shippers additional flexibility in arranging the purchase of natural gas supplies that can be attached by Tennessee. In particular, the revised tariff sheets provide that Tennessee will construct pipeline facilities to attach gas supplies purchased by shippers. Unless otherwise agreed to, the shipper would be obligated to reimburse Tennessee for cost of constructing the facilities. In addition, Tennessee proposes to provide more flexibility in the determination of the quantities delivered at delivery points.

Tennesee states that copies of its filing are available for inspection at its principal place of business in the Tenneco Building, Houston, Texas and have been mailed to all affected customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 28, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–24635 Filed 10–24–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER88–252–000]

Gulf Power Co.; Filing

October 20, 1988.

Take notice that on August 29, 1988, Gulf Power Company (Gulf Power) tendered for filing a response to the Commission staff's July 15, 1988 deficiency letter regarding Gulf Power's March 7, 1988 filing of transmission service agreement between Gulf Power and Bay Resource Management, Inc. (BRMI). The response addresses certain cost support issues set forth in the deficiency letter.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests whould be filed on or before October 28, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–24654 Filed 10–24–88; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 6913–001]

Weber Basin Water Conservancy District; Availability of Environmental Assessment

October 20, 1988.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major license for the proposed West Gateway Hydroelectric Project and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 88–24630 Filed 10–24–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT85–1–000]

Williston Basin Interstate Pipeline Co.; Re-Notice of Proposed Changes in FERC Gas Tariff Pursuant to Order No. 497

October 20, 1988.

Take notice that on October 4, 1988, Williston Basin Interstate Pipeline Company tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Original Volume No. 1–B:

First Revised Sheet No. 2 First Revised Sheet No. 29 First
Revised Sheet No. 78 First Revised Sheet No. 101 First
Revised Sheet No. 164 First Revised Sheet No. 169 First
Revised Sheet Nos. 170–192 First Revised Sheet Nos. 193–224

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR §§ 385.214 and 385.211. All such motions or protests must be filed by October 27, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–24636 Filed 10–24–88; 8:45 am]

BILLING CODE 6717–01–M

Office of Conservation and Renewable Energy

[CAC–004]

Energy Conservation Program for Consumer Products; Petition for Waiver and Application for Interim Waiver of Central Air Conditioner Test Procedures From Airlex Industries, LTD.

AGENCY: Conservation and Renewable Energy Office, DOE.

ACTION: Petition for Waiver, Interim Waiver; Correction.

SUMMARY: On October 5, 1988 (53 FR 39130), DOE published a Petition for Waiver and Interim Waiver from the central air conditioner test procedures from the Airlex Industries, LTD (Airlex) of Hackensack, New Jersey. This document corrects the editorial errors and omissions in that notice. The corrections to be made are to change the case number designation to CAC–004 instead of CAL–004, the addition of the DOE letter to Mr. Marco Goldish of Airlex, and the Airlex requests for Interim Waiver and Petition for Waiver dated August 24, 1988.

Issued in Washington, DC October 14, 1988.

John R. Berg,

Acting Assistant Secretary, Conservation and Renewable Energy.

September 21, 1988.

Mr. Marco Goldish,
President, Airlex Industries, LTD., 216 Charles Street, Hackensack, NJ 07601

Dear Mr. Goldish: This is in response to your August 24, 1988, Application for Interim Waiver, from the Department of Energy (DOE) test procedures for central air conditioners when testing Airlex's ductless split system heat pumps model series ERA/S–RC/RH.

Pursuant to the Energy Policy and Conservation Act, as amended, the Department has prescribed test procedures to measure the energy consumption of certain major household appliances, including central air conditioners. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchase decisions. These test procedures appear in the Code of Federal Regulations at 10 CFR Part 430, Subpart B.

DOE amended the test procedure regulations on September 26, 1980 (45 FR 64108) and November 26, 1986 (51 FR 42823). These provisions allow the Assistant Secretary for Conservation and Renewable Energy to waive temporarily test procedures for a particular basic model when a petitoner shows that the basic model contains one or more design characteristics which prevent testing of the basic model according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inadequate comparative data. The 1986 amendments provide that an interim waiver from test procedure requirements will be granted by the Assistant Secretary for Conservation and Renewable Energy if it is determined that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. Paragraph 430.27.

The Department finds that the design of the Airlex model series ERA/S–RC/RN cannot be rated using the DOE test procedures. This is caused by a design feature which disengages the heat pump and switches to electric resistance heat when the outdoor temperature falls below 40°F. The absence of a defrost control system and the inability to operate the basic model for the low temperature test at 17°F and the frost accumultation test at 35°F makes rating the unit with the current test procedures impossible. For this reason DOE believes that the Airlex Petition for Waiver will be successful.

Airlex expressed economic hardship in its correspondence caused by the inability to import models already produced, its investment in inventory of materials on hand, and its outstanding orders. The DOE definiton of economic hardship for granting an interim waiver requires that the manufacturer demonstrate an adverse impact on the company caused by the inability to sell its product for the time required to process the petition for waiver. DOE believes that the information provided by Airlex satisfies the requirements of economic hardship.

Therefore, Airlex's Application for an Interim Waiver requesting relief from the DOE test procedures for its ERA/S–RC/RH series ductless split system heat pumps is granted.

This interim waiver shall remain in effect for 180 days form the date of issuance or until the Department of Energy issues a determination on Airlex's Petition for Waiver, whichever occurs first.

This interim waiver is based upon the presumed validity of the statements and

allegations submitted by the applicant. This interim waiver may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

Yours truly,

Donna R. Fitzpatrick,

Conservation and Renewable Energy.

August 24, 1988.

Assistant Secretary for Conservation and Renewable Energy, U.S. Departmental of Energy, Office of Conservation and Renewable Energy, Forrestal Building, 1000 Independence Avenue S.W., Washington, DC 20585

Att: Ms. Fitzpatric.

Subject: Petition for Waiver

Dear Ms. Fitzpatric: Airlex Industries, Ltd. is an American Corporation subsidiary of Electra [Israel] Ltd. engaged in the manufacture of PTAC units and ductless split system air conditioners and heat pump units. We have been manufacturing and selling this product in the U.S.A. for the past 5 years and all over the world since 1980.

In accordance with 10 CFR Part 430—Energy Conservation Program for consumer products we are requesting a waiver for the heating mode of our ductless split system heat pump units.

Models Waiver Requested for:

Heat Pump Models with Resistance Heat

ERA/S–9 RC/RH
ERA/S–12 RC/RH
ERA/S–15 RC/RH
ERA/S–20 RC/RH

The above models are designed to provide cooling or heating for individual rooms as opposed to larger type central systems designed to handle multiple rooms.

The Airlex heat pump models are designed in such a fashion that the cooling test can be conducted in accordance with the existing test procedure of the energy conservation program.

However, the heating operation of the above models is as follows:

a. Compressor operates to provide heating in a reverse cycle down to approximately 40 °F ambient temperature.

b. At 40 °F ambient outside the thermostat automatically de-energizes compressor circuit and activates electric heater circuit. Need for heating operation is controlled by indoor thermostat. (See copy of wiring diagram attached).

c. In accordance with our experience of 25 years, we do not use defrost control in these small units.

Airlex believes the design of our units in the heating mode make it impossible to perform or test them in accordance with 10 CFR Part 430.

Therefore, we require a waiver to the portion of the heating mode test procedure as follows:

a. Eliminate the 35 °F frost accumulation test because our compressor system is designed not to operate below 40 °F outside temperature.

b. Replace 17 °F ambient test with a higher temperature.

Manufacturers we know are marketing ductless mini-split systems are:

Sanyo
Mitsubishi
Daikin
Hupp/Typhon
Keeprite
Network
Tadiran

We have no knowledge of their control system.

As per above description, we would like to recommend a test procedure as follows:

1. All cooling tests to be performed as specified in the existing test procedure.

2. Regarding the heat pump reverse cycle, we propose our unit be tested on heating as follows:

Perform 62 °F high temperature test as presently specified in the code and perfrom low outdoor ambient heating test at 47 °F in lieu of the low temperature test at 17 °F.

Delete 35 °F frost accumulation test.

Retain the 47 °F cycle test or the option to use D.O.E. specified value for coefficient of degradition CD.

Calculations for HSPE will be performed using the existing equations in appendix M of part 430.

We recognize the test procedure is based on conditions stipulated for Region 4 for FTC. However, we desire to calculate facts sheets for the other regions (Not Region 4) illustrating the heating efficiency specifically for each region.

We would like to stress that we need this waiver because under the present law, we cannot test our existing units and from an economic point of view, we cannot supply to our customers the orders that we have on hand nor can we continue manufacture of the units with all the raw materials already purchased.

Thank you in advance for your assistance in implementing this waiver.

Your truly,

Marco Goldish,

President

August 24, 1988.

Assistant Secretary for Conservation and Renewable Energy, U.S. Departmental of Energy, Office of Conservation and Renewable Energy, Forrestal Building, 1000 Independence Avenue S.W., Washington, DC.

Attn: Ms. Fitzpatric.

Subject: Application for Interim Waiver

Dear Ms. Fitzpatric: Airlex Industries, Ltd. is an American Corporation subsidiary of Electra [Israel] Ltd. engaged in the manufacture of PTAC units and ductless split system air conditioners and heat pump units. We have been manufacturing and selling this product in the U.S.A. for the past 15 years and all over the world since 1980.

We are forwarding this interim waiver in reference to our ductless split system heat pump units:

Heat Pump Models with Resistance Heat

ERA/S–9 RC/RH
ERA/S–12RC/RH
ERA/S–15RC/RH
ERA/S–20RC/RH

We request this interim waiver to permit the exclusion of the need for testing for immediate relief, until approval of our petition of a waiver which will establish a test procedure for our units.

We would like to emphasize that without this interim waiver we cannot continue to operate our business and will suffer economic hardships for the following reasons:

(A) We currently have orders dating back to 1st and 2nd Qtrs. of 1988.

(B) We purchased material and components for above orders.

(C) We initiated production, manufactured 300 units and then stopped production in June pending resolution of FTC.

(D) We do not have any inventory left in our U.S. warehouses to complete these orders.

(E) We are suffering customer dissatisfaction and cost burden due to cancelled production schedules. In addition purchased production material in our plant, adds to our expenses.

Airlex believes the petition for waiver submitted to D.O.E. will grant an alternative test procedure and will include decision allowing Airlex to determine HSPF for our heat pump units.

The issuance of this interim waiver will allow Airlex to continue operating its business during the review process by D.O.E. to grant approval for our waiver.

Thank you in advance for your consideration and assistance to expeditiously process this interim waiver.

Yours truly,

Marco Goldish,

President.

[FR Doc. 88–24573 Filed 10–24–88 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Cases Filed Week of September 9 Through September 16, 1988

During the week of September 9 through September 16, 1988, applications for relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from an earlier list have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: October 18, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Sept. 9 through Sept. 16, 1988]

Date	Name and location of applicant	Case No.	Type of submission
Sept. 9, 1988	Economic Regulatory Administration, St. James, Louisiana.	KRZ–0086	Interlocutory. If granted: The Proposed Remedial Order issued to North American Petroleum Company and Mellon Energy Products Company (Case No. HRO–0197) would be modified to clarify that interest on any principal violation amount continue to accrue until such time as payment of principal and interest to the DOE is made.
Sept. 9, 1988	Enron Corporation, Washington, DC.	KEF–0116	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the July 27, 1988, Consent Order entered into with Enron Corporation.

REFUND APPLICATIONS RECEIVED

[Week of Sept. 9 through Sept. 16, 1988]

Date received	Name of refund proceeding/Name of refund applicant	Case No.
9/9/88	Howard Beaird	RF265–2763
9/9/88	Howard Beaird	RF265–2764
9/9/88	Crude Oil Refund	RF272–74870 thru RF272–74895
9/16/88 thru 9/16/88	EXXON Refund	RF307–5381 thru RF307–5439
9/9/88 thru 9/16/88	Atlantic Richfield refund	RF304–5013 thru RF304–5668
9/12/88	Osborne Gulf	RF300–10516
9/12/88	Earl's Friendly Gulf Service.	RF300–10517
9/12/88	George's Gulf	RF300–10518
9/12/88	Nolf's Gulf	RF300–10519
9/12/88	Gasland	RF300–10520
9/12/88	Cenla Gulf	RF300–10521
9/12/88	Williams Oil Company.	RF310–157
9/12/88	Ashland Oil Company	RF300–10523
9/12/88	Shell Oil Company	RF306–13
9/12/88	Defense Fuel Supply Center.	RF310–156
9/13/88	Willy Foreman, Jr.	RF300–10522
9/14/88	Haney Bros.	RF300–10524
9/14/88	D.H. Clark Oil Company.	RF310–158

[FR Doc. 88–24663 Filed 10–24–88; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Decision and Orders; Week of August 15 Through August 19, 1988

During the week of August 15 through August 19, 1988, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Excell, Inc., 8/19/88, KFA–0202

Excell, Inc., filed an Appeal from a denial by the Project Manager of the Strategic Petroleum Reserve Project Management Office (SPR) of a request for information that it had submitted under the Freedom of Information Act. In its Appeal, Excell challenged the withholding of one document under Exemption 5 of the FOIA. During the course of the Appeal before OHA, SPR determined that the document should have been withheld under Exemption 4, rather than Exemption 5. The challenge with respect to the Exemption 5 issue was therefore determined to be moot, and the Appeal was dismissed.

International Union of Operating Engineers Local 101, 8/19/88, KFA–0205, KFA–0207, KFA–0208

The International Union of Operating Engineers Local 101 filed three Appeals from denials of information by the Senior Information Officer of the Information, Publication and Planning Staff, and by the Deputy Director of the Office of Governmental and External Affairs, of the DOE's Albuquerque Operations Office. The Appellant had filed three FOIA requests with Albuquerque seeking access to the weekly certified payroll records submitted by three subcontractors for work performed at the Bendix Plant in Kansas City, Missouri. In their determinations, the Authorizing Officials released copies of all of the requested payroll records, but withheld the names and other identifying information of the employees involved. The Authorizing Officials determined that the privacy interests of the employees far outweighed any possible public interest to be served by release of the personal data to third parties. In considering the Appeals, the DOE determined that the release of the withheld information would constitute an invasion of the employees' privacy. The DOE noted that the Appellant failed to indicate why it was seeking the requested records, and that it did not state what public interest would be served by releasing the information. In view of the fact that there was no apparent or alleged public interest to balance against the serious invasion of personal privacy involved, the DOE denied the three Appeals.

Implementation of Special Refund Procedures

MCO Holdings/MGPC, 8/16/88, KEF–0111

The DOE issued a Final Decision and Order implementing Special Refund Procedures for the distribution of $715,420.46 pursuant to a consent order entered into between the DOE and MCO Holdings and its wholly owned subsidiary, McCullogh Gas Processing Corporation (MGPC). The DOE determined that these funds should be distributed to purchasers of MGPC natural gas liquids and natural gas liquid products from June 13, 1973 through the applicable date of decontrol. The decision established presumptions of injury for end-users, resellers whose claims are for $5,000 or less, and regulated firms. A 60 percent presumption of injury was established for medium range (5,000 to 50,000) claimants. The specific application procedures are set forth in the Decision.

Refund Applications

Getty Oil Company, K&K Oil Co., Inc., 8/19/88, RF265–1108

The DOE issued a Decision and Order concerning an Application for Refund filed by a firm that operated as a consignee agent of Getty motor gasoline during the consent order period. We

determined that the applicant demonstrated that it experienced a decline in its share for motor gasoline, and therefore was injured as a result of Getty's pricing practices. The total refund approved in this Decision is $14,716, representing $7,187 in principal and $7,531 in accrued interest.

Getty Oil Company, Stender Oil Company, 8/19/88, RF265-2622

The DOE issued a Decision and Order concerning an Application for Refund filed by a firm that operated as a consignee agent of Getty motor gasoline during the consent order period. We determined that the applicant demonstrated that it experienced a decline in its market share for motor gasoline, and therefore was injured as a result of Getty's pricing practices. The total refund approved in this Decision is $2,434 representing $1,189 in principal and $1,245 in accrued interest.

Getty Oil Company/Zitek Skelly Service, et al., 8/19/88, RF265-381, et al.

The DOE issued a Decision and Order concerning six Applications for Refund filed by resellers or retailers of products covered by a consent order that the DOE entered into with the Getty Oil Company. Each applicant submitted information indicating the volume of Getty gasoline, middle distillate or propane products purchased from Getty during the consent ordered period. In four claims, the applicants were eligible for a refund below the small claims threshold of $5,000. In the remaining three claims, the applicants elected to limit their claims to $5,000. The total amount of the refunds approved in the Decision and Order is $42,943, representing $20,989 in principal and $21,954 in accrued interest.

Howell Oil Company, 8/19/88, RF272-12965

The DOE issued a Decision and Order denying an application for a crude oil refund filed by the Howell Oil Company (Howell), which sold motor gasoline, middle distillates, oils, and naptha during the crude oil settlement period (August 19, 1973 through January 27, 1981). The DOE determined that Howell was ineligible to receive a refund because it failed to demonstrate that it was injured by the crude oil overcharges.

James Valley Co-op Union, 8/17/88, RF272-74825

The DOE issued a Supplemental Order to correct an error made in *Dale's Mobil Service*, 17 DOE ¶ ———, Nos. RF272-44164, *et al.* (July 21, 1988), in which we denied James Valley Co-op Union (JVCU) a refund. As an agricultural cooperative, JVCU is eligible for a refund if it certifies that it will pass through the refund to its customers. JVCU met this requirement, and therefore was granted a refund in the amount of $3,825.

Marathon Petroleum Company/Gas'N Save, 8/18/88, RF250-2462, RF250-2[illegible]

The DOE issued a Decision and Order concerning an Application for refund filed by Gas'n'Save in the Marathon Petroleum Company refund proceeding. Gas'n'Save, a retailer of Marathon products, submitted information attempting to establish that it was injured by Marathon's alleged overcharges and that it was therefore entitled to its full volumetric refund of $14,734. Upon reviewing the data filed by the firm, the DOE determined that the price comparison data used by Gas'n'Save applied to refinery and terminal prices, rather than to wholesale prices that the firm would have likely paid for the product. The DOE found that the prices Gas'n'Save paid Marathon were generally lower than average wholesale proces in the firm's market area. Accordingly, Gas'n'Save was granted a refund of 95 percent of its volumetric share or $5,157 plus $774 in interest.

Marathon Petroleum Co./Oakland County Gas & Oil Co., 8/16/88, RF250-2473, RF250-2774

This Decision and Order concerns Applications for Refund filed by the Oakland Gas and Oil Company in the Marathon Petroleum Company refund proceeding. The DOE found that the firm sustained a competitive injury as a result of Marathon's alleged overcharges. Oakland was granted a refund of $4,288 plus $643 in accrued interest.

Mobil Oil Corp./Bell Oil Company, R.F. Brennan Distributing, Inc., 8/17/88, RF225-9648, RF225-9659, RF225-9690, RF225-9803, RF225-9810, RF225-9811

The DOE issued a Decision and Order granting Applications for Refund filed by the Bell Oil Company and R.F. Brennan Distributing, Inc. in the Mobil Oil Corp. special refund proceeding. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). Each firm attempted to rebut the level-of-distribution presumptions for its purchases of Mobil motor gasoline. In support of its claim, each firm submitted cost banks that it approximated from firm-wide annual revenue data. The DOE concluded that these annual cost banks were an inadequate basis for rebutting the level-of-distribution presumptions. In the Mobil proceeding, however, an applicant that fails in its attempt to rebut the level-of-distribution presumptions is still eligible for a refund. Accordingly, Bell was granted a presumption-level refund of $5,000, in principal, and Brennan a refund of $2,075, in principal. The total amount of refunds granted was $8,635, representing $7,075 in principal and $1,760 in accrued interest.

Mobil Oil Corp./Don Foster Oil Company, 8/17/88, RF225-9884

The DOE issued a Decision and Order granting an Application for Refund filed by Don Foster Oil Co. in the Mobil Oil Corp. Special Refund Proceeding, *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). Foster, a reseller/retailer of refined petroleum products, attempted to rebut the level-of-distribution presumption for its purchases of Mobil motor gasoline. After examining the firm's cost banks and applying a three-part competitive disadvantage test, the DOE concluded that Foster should receive a full volumetric refund on its purchases. The total refund granted to Foster was $5,639, representing $4,516 in principal and $1,123 in accrued interest.

Mobil Oil Corp./Galchutt Oil Company, 8/19/88, RF225-9714, RF225-9715, RF225-9716

The DOE issued a Decision and Order regarding a refund application filed by the Galchutt Oil Company in the Mobil Oil Corporation special refund proceeding. In its application, Galchutt stated that it operated as an agricultural cooperative during the consent order period and requested that its entire claim be evaluated as if it acted as an end-user in its sales of Mobil product to both its members and nonmembers. To substantiate its request, Galchutt submitted a copy of its Articles of Incorporation which state that all profits of its cooperative be distributed equally to members and nonmembers. In this way, any refund received would be distributed to both groups. The DOE found that this unusual method of distributing a cooperative's profits to nonmembers as well as members constituted an exception to the general method of evaluating a cooperative's claim at the retailer's level of injury when there are sales to nonmembers. We therefore determined that Galchutt's entire claim be treated as purchases made by an end-user. In accordance with the procedures outlined in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985), Galchutt was granted a refund totalling $1,942 ($1,555 in principal plus $387 in accrued interest).

Mobil Oil Corporation/Marine Corps Exchange Service, 8/19/88, RF225-7753

The DOE issued a Decision and Order granting an Application for Refund filed by the Marine Corps Exchange Service (the Exchange in the Mobil Oil Corp. refund proceeding, *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). In its Application, the Exchange claimed that Mobil had improperly discontinued a discount it was required to provide to the Exchange under the Mandatory Petroleum Price Regulations. As a result, the Exchange stated that it had experienced an alleged injury of $.0439 per gallon on regular and unleaded motor gasoline purchased and an injury of $.0589 per gallon on premium motor gasoline purchased between April 1, 1974 and December 30, 1980. The DOE found that, having demonstrated that its discount had been discontinued, the Exchange had rebutted the volumetric presumption and had shown that it had experienced a disproportionate injury. The DOE also found that, because the Exchange was required to price its motor gasoline without regard to its purchase price, Mobil's pricing practices probably resulted in a loss of revenue for the Exchange during the relevant period. Based on these determinations, the DOE concluded that the Exchange was eligible to receive a refund of $2,872,024, representing $2,299,908 in principal plus $572,116 in interest.

Sysco Food System, 8/17/88, RF272-74808

The DOE issued a Supplemental Order to correct an error made in *Dale's Mobil Service*, 17 DOE ¶ ———, Nos. RF272-44164, *et al.* (July 21, 1988), in which the Sysco Food System (Sysco) was granted a refund as a reseller. However, Sysco was actually a food jobber and should be granted a refund in the amount of $987.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders:

Name	Case No.	Date	Number of [illegible] items	Total [illegible]
Allen May Farms, et al	RF272-[illegible]	[illegible]	166	$4,338
Betty Lou Sweeting, et al	RF272-[illegible]	[illegible]	[illegible]	4,124
Bianchi Brothers Inc. et al	RF272-[illegible]	[illegible]	183	3,483
Bob Abernathy et al	RF272-[illegible]	[illegible]	[illegible]	[illegible]
City of Mitchell et al	RF272-15801	[illegible]	132	[illegible]
Clyde Bartholomew, Jr., et al	RF272-[illegible]	[illegible]	109	5,435
Cook, Inc., et al	RF272-[illegible]	8/16/88	181	[illegible]
Eugene D. Gott, et al	RF272-4251	[illegible]	147	11,913
Farrell F. Beck, et al	RF272-[illegible]	[illegible]	[illegible]	[illegible]
Gerald D. Denton, et al	RF272-[illegible]	[illegible]	78	3,736
Gordon Petrik, et al	RF272-[illegible]	[illegible]	[illegible]	[illegible]
J.H. Phipps, et al	RF272-35200	[illegible]	[illegible]	[illegible]
Jerry A. Helsley, et al	RF272-35400	[illegible]	151	4,177
Junior Boyd, et al	RF272-[illegible]	[illegible]	111	[illegible]
Kenneth D. Sherer, et al	RF272-[illegible]	[illegible]	[illegible]	4,871
Lydell, Inc., et al	RF272-[illegible]	[illegible]	[illegible]	[illegible]
Nordic Construction, et al	RF272-[illegible]	[illegible]	137	7,475
O.D.O., Inc., et al	RF272-[illegible]	[illegible]	[illegible]	[illegible]
Richard D. Carson, et al	RF272-[illegible]	8/16/88	145	3,741
Richard Kretzer, et al	RF272-[illegible]	[illegible]	[illegible]	11,395
Roger Brocka, et al	RF272-[illegible]	[illegible]	[illegible]	[illegible]
Stephen E. Schroeder, et al	RF272-[illegible]	[illegible]	[illegible]	[illegible]
Wiggins Farms	RF272-[illegible]	[illegible]	159	[illegible]

Dismissals

The following submissions were dismissed:

Name	Case No.
Arnold Barfield	RF300-4047
Bonner's Gulf	RF300-101
Brantley's Gulf	RF300-4856
Century Furniture Co	RD272-9644
Cochran's Gulf Service	RF300-1426
Darch Bottle Gas and Appliance	RF[illegible]-157
E.G Abbott, L.P. Gas	RF300-1432
Frank Madonia	RF265-2231
Garvin J. Sloan	RF265-1964
	RF265-1965
Lenet Gulf Service	RF300-1583
Lockard Construction Co	RF272-60569
Moreno Paul Gulf Station	RF300-5495
Parrish Gulf Service	RF300-2674
R.J. (Pearl) Eggert	RF272-65180
Ramsey St. Gulf	RF300-1225
Rock Creek Gulf, Inc	RF300-564
Sam's Service Station	RF300-2486
South Lyon Community Schools	RF272-202

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

October 18, 1988.

[FR Doc. 88-24664 Filed 10-24-88; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of August 22 Through August 26, 1988

During the week of August 22 through 26, 1988, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Eugene S. Post, 8/22/88, KFA-0203

Eugene S. Post (Appellant) filed an Appeal from a denial by the Assistant Manager for Administration, Cavannah River Operations Office of a Request for Information which he had submitted

under the Freedom of Information Act. In considering the Appeal, the DOE found that the material at issue—the names and applications of unsuccessful applicants for two DOE positions, the names of the successful applicants on the applicant evaluation worksheets, and the DOE evaluator's names—were properly withheld under Exemptions 5 and 6. However, the DOE ordered the Assistant Manager to indicate to the Appellant which of the scores on the worksheet were those of the successful applicants. The most important issue considered in the Decision and Order involved the balancing of the public interest in releasing this material with the applicants' privacy interests.

Request for Exception

Le Paul Oil Company, 8/16/88, KEE-[illegible]

Le Paul Oil Company (Le Paul) filed a Statement of Objections to the Proposed Decision and Order (PDO) tentatively denying the firm's Application for Exception from the requirement to file Form EIA-782B, entitled, "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering the firm's Objections, the DOE found that Le Paul provided cruicial information to the nation as a certainty firm and did not have a burden significantly different from other reporting firms. Accordingly, the firm's application for exception relief was denied.

Refund Applications

Aminoil U.S.A. Inc., MGU Development Company, 8/22/88, RF139-86

The DOE issued a Decision and Order concerning an Application for Refund filed by MGU Development Company. The firm is seeking funds made available by Aminoil U.S.A., Inc., in a consent order with the Department of Energy. The procedures set forth to distribute the Aminoil funds contain a presumption that spot purchasers of Aminoil products were not injured by the alleged overcharges. Because MGU made only sporadic purchases from Aminoil, the Department requested that MGU rebut the spot purchaser presumption. The firm was unable to do so and, therefore, its claim was denied.

Aminoil U.S.A., Inc./Pennington LP Gas Company, 8/26/88, RF139-89

The DOE issued a Decision and Order concerning an Application for Refund filed by Pennington LP Gas Company (Pennington), a retailer/reseller of propane covered by a Consent Order that the DOE entered into with Aminoil U.S.A., Inc. Pennington claimed that it was entitled to a refund in excess of the volumetric amount because it was disproportionately overcharged as a result of improper freight charges. We concluded that no refund above the volumetric level is warranted in this proceeding. Based on the documentation submitted by Pennington substantiating that during the consent order period it maintained banks of unrecovered costs and purchase cost data that was compared with publicly available industry pricing data, we determined that Pennington suffered significant injury and that a refund of the full volumetric amount is appropriate. The total refund approved in this Decision is $297,550, representing $169,009.22 in principal and $128,540.78 in accrued interest.

Dorchester Gas Corporation/Southwest Gas Equipment Co. G.E. Stahl, 8/23/88, RF253-43, RF253-50

Southwest Gas Equipment Co. and G.E. Stahl each filed an Application for Refund in the Dorchester Gas Corporation refund proceeding. Their submissions established that they were regular purchasers of propane produced and supplied by Dorchester during the consent order period. Although their volumetric refund share exceeded $5,000, they elected to receive a refund under the administrative presumption rule. The DOE therefore granted each of them a refund of $5,000 plus accrued interest without requiring a proof of injury.

Dorchester Gas Corporation/Turpin Oil Company, 8/26/88, RF253-443

Turpin Oil Company filed an application for Refund in the Dorchester Gas Corporation refund proceeding. Turpin purchased propane produced by Dorchester from Phillips Petroleum Company during the consent order period. As an indirect purchaser, it is eligible for a refund to the extent that the direct purchaser passed through the alleged overcharges to its customers. In a Decision and Order issued to Phillips, the DOE granted Phillips a refund equal to 20.4358 percent of its volumetric share. *Dorchester Gas Corp./Phillips Petroleum Co.*, 16 DOE ¶ 85,400 (1987). Thus, the remaining 79.5642 percent of Phillips volumetric share is available for distribution to its downstream purchasers. On this basis, the DOE granted Turpin a refund of $3,823 plus interest, which equals its purchase volume multiplied by the applicable percentage of its volumetric share.

Everett R. Kneeland, et al., 8/24/88, RF272-14363, et al.

The DOE issued a Decision and Order denying thirteen Applications for Refund filed in connection with the Subpart V crude oil refund proceedings. Each applicant was either a reseller or retailer during the period August 19, 1973 through January 27, 1981. Because none of the applicants demonstrated that they were injured due to the crude oil overcharges, they were ineligible for a crude oil refund.

Fitts Farms, Inc., 8/26/88, RF272-12570

The DOE issued a Decision and Order in which it determined that Fitts Farms, Inc. had inadvertently been granted two refunds in the Subpart V Crude Oil refund proceedings. Accordingly, the DOE rescinded the refund granted to Fitts Farm in *Kenneth D. Sheru*, 17 DOE ¶ 85,705 (1988), and ordered the Controller's Office of the DOE not to distribute Fitts Farms' refund.

Getty Oil Company/Garvin J. Sloan, 8/22/88, RF 265-1963

The DOE issued a Decision and Order concerning an Application for Refund filed by a firm that operated as a consignee agent of Getty motor gasoline during the consent order period. We determined that the applicant demonstrated that it experienced a decline in its market share for motor gasoline and was, therefore, injured as a result of Getty's uncompetitive prices. The total refund approved in this Decision is $10,279 representing $5,019 in principal and $5,260 in accrued interest.

Getty Oil Company/Lawrence E. Collier, 8/22/88, RF265-2716

The DOE issued a Decision and Order concerning an Application for Refund filed by a firm that operated as a consignee agent of Getty motor gasoline during the consent order period. We determined that the applicant demonstrated that it experienced a decline in its market share for motor gasoline and was, therefore, injured as a result of Getty's uncompetitive prices. The total refund approved in this Decision is $2,277, representing $1,112 in principal and $1,165 in accrued interest.

Getty Oil Company Truckers Inn, Inc., Seward Propane, 8/25/88, RF265-2725, RF265-2726, RF265-2742

Truckers Inn, Inc. and Seward Propane Company filed Applications for Refund in which the applicants sought a portion of the fund obtained by the DOE through a Consent Order entered into with Getty Oil Company. The applicants submitted information indicating the volumes of Getty gasoline, middle distillate or propane purchased during the consent order period. Utilizing the procedures outlined in *Getty Oil Corp.*, 15 DOE ¶ 85,064 (1986), the applicants elected to use the presumptive levels of injury, forty percent for gasoline, fifty percent for middle distillate and sixty percent for propane. The total amount of the refund approved in the Decision and Order is $42,943.

Getty Oil Company/Weiler Oil Company, 8/23/88, RF265-0830, RF265-0831

The DOE issued a Decision and Order concerning two Applications for Refund filed by a firm that operated as a consignee agent of Getty motor gasoline during the consent order period. We determined that the applicant demonstrated that it experienced a decline in its market share for motor gasoline/middle distillates and was, therefore, injured as a result of Getty's uncompetitive prices. The total refund approved in this Decision is $1,128, representing $550 in principal and $576 in accrued interest.

Gulf Oil Corporation/Birmingham Auto Service, 8/22/88, RF80-279

The DOE issued a Decision and Order concerning an Application for Refund filed by Birmingham Auto Service. The firm is seeking funds made available by Gulf Oil Corporation in a consent order with the Department of Energy. The procedures set forth to distribute the Gulf funds state that an applicant must certify that it would not have been required to pass through to its customers a cost reduction equal to that of the refund requested. The firm has made this certification and has provided a monthly purchase volume schedule in support of its claim of less than $5,000 in principal. After reviewing the application and supporting data, the DOE has concluded that Birmingham should receive a refund of $1,386, representing $1,064 in principal and $322 in interest.

Jack Griggs, Inc., et al., 8/25/88, RF272-27828, et al.

DOE issued a Decision and Order and denying twelve Applications for Refund filed in connection with the Subpart V crude oil refund proceedings. Each applicant was either a reseller or a retailer during the period August 19, 1973 through January 27, 1981. Because none of the applicants demonstrated that they were injured due to the crude oil overcharges, they were ineligible for a crude oil refund.

Mack-Miller Candle Co., Inc., 8/26/88, RF272-12371

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Mack-Miller Candle Co., Inc. based on its purchases of residual fuel oil and paraffin during the period August 19, 1973 through January 27, 1981. Mack-Miller used the products in its manufacturing of ecclesiastical candles. The DOE found that the applicant had provided sufficient evidence of the volume of refined petroleum products that it purchased during the period August 19, 1973 through January 27, 1981. The DOE also found that paraffin is an eligible product upon which a crude oil refund claim may be based. As an end-user of petroleum products, the applicant was presumed to have been injured as a result of the crude oil overcharges. The refund granted was $533.

Marathon Petroleum Co./Bassett Oil & Equipment Co., 8/23/88, RF250-2454, RF250-2455

Bassett Oil and Equipment Company filed an Application for Refund in the Marathon Petroleum Co. refund proceeding. During the Marathon consent order period, Bassett purchased and resold gasoline supplied by Marathon. The DOE found Bassett sustained competitive disadvantage as a result of Marathon's alleged overcharges. On the basis of the claimant's purchase volume, the DOE granted Bassett a refund of $7,936 plus $1,190 accrued interest.

Marathon Petroleum Co./Brink's Incorporated, 8/26/88, RF250-2746

The DOE issued a Decision and Order concerning an Application for Refund filed by Brink's, Incorporated, an end-user of motor gasoline covered by a consent order that the DOE entered into with Marathon Petroleum Company. The Applicant's claim was estimated and based, in part, on indirect purchases. The DOE found the Applicant's estimation method to be reasonable and, since none of the applicant's indirect purchases came from firm that demonstrated the specific extent of its own injury, the DOE included the indirect purchases in the Applicant's allocable share. As an end-user, the Applicant was presumed injured by Marathon's alleged overcharges. The refund approved in this Decision is $274 in principal and $50 in interest.

Marathon Petroleum Co./Savings Oil Co., 8/25/88, RF250-2, RF250-3

Savings Oil Company filed a Motion for Reconsideration of a Decision and Order that the OHA issued on January 29, 1986. In that Decision, the DOE found that the firm had a negative cost bank at the end of 1979, indicating that it was able to recover all of the product purchase costs incurred prior to January 1, 1980. The DOE therefore limited refunds to Savings to the products that the firm purcahsed from Marathon after December 31, 1979. In its Motion for Reconsideration, Savings stated that it erroneously failed to accumulate its unrecouped product costs on a quarterly basis. It corrected the error and established that it had a cumulative banked costs at the end of each quarter greater than its refund claim. The firm also established that it sustained competitive injury as a result of Marathon's alleged overcharges. The DOE therefore granted Savings a refund of $13,652 plus interest, which, when added to the amount of refund granted in the January 19, 1988 Decision, is equal to the firm's volumetric share in the Marathon refund pool.

Marathon Petroleum Company/W.E. Jersey & Sons, Inc., 8/23/88, RF250-[illegible]

The DOE issued a Decision and Order concerning an Application for Refund filed by a purchaser of products covered by a consent order that the agency entered into with Marathon Petroleum Company. The Applicant purchased some product directly from Marathon, but purchased the remainder from Fleming Brothers Oil Company. The DOE determined that the Applicant's indirect purchases should be considered under the standards for direct purchases because Fleming never demonstrated a specific level of overcharge absorption. The Applicant's total refund request was smaller than the $5,000 small claims refund amount. The refund approved in this Decision is $430 in principal and $78 in interest.

Mobil Oil Corp., C.L. Wellington, Inc., Ridgeway Petroleum, Inc., 8/26/88, RF225-9018, RF225-9019, RF225-9020, RF225-9021, RF225-11048, RF225-9729, RF225-9730, RF225-9731

The DOE issued a Decision and Order granting Applications for Refund filed by C.L. Wellington, Inc. and Ridgeway Petroleum, Inc. in the Mobil Oil Corp. special refund proceeding. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). Each applicant attempted to rebut the level-of-distribution presumptions for its purchases of Mobil motor gasoline. In support of its claim, each applicant submitted cost banks that it approximated from firm-wide annual revenue data. The DOE concluded that such cost banks were an inadequate basis for rebutting the level-of-distribution presumptions. In the Mobil proceeding, however, an applicant that fails in its attempt to rebut the level-of-distribution presumptions is still eligible for refund under them. Accordingly, C.L. Wellington was granted a refund of $4,574, representing $3,663 in principal $911 in interest, and Ridgeway Petroleum was granted a refund of $9,409, representing $7,535 in principal

and $1,874 in interest. The total amount of refunds approved in the Decision was $13,983, representing $11,196 in principal and $2,785 in interest.

Mobil Oil Corp./John's Mobil, Chan Hi Kim, 8/24/88, RF225–4518, RF225–4519, RF225–4680

The DOE issued a Decision and Order in the Mobil Oil Corp. special refund proceeding concerning two applications filed by John's Mobil (John's) and Chan Hi Kim (Kim). Both applicants filed incomplete refund applications in the Mobil proceeding. DOE made numerous requests for additional information from both firms, but neither responded. Because John's and Kim failed to submit information required by the Mobil refund procedures, the two applications were denied. *Mobil Oil Corp.*, 13 DOE ¶ 85,326 (1985).

Mobil Oil Corp./Koch Refining Company, Commonwealth Propane Company, 8/23/88, RF225–7030, RF225–7031, RF225–10022

The DOE issued a Decision and Order in the Mobil Oil Corp. special refund proceeding concerning two refund applications filed by Koch Refining Company (Koch) and Commonwealth Propane Company (Commonwealth). Both applicants submitted purchase volume schedules showing sporadic and varied purchases. DOE tentatively concluded that both firms had purchased on the spot market and requested documentation from each to rebut the spot purchaser presumption. Neither firm was able to submit the necessary documentation. Accordingly, both claims were denied. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985).

Mobil Oil Corp./St. Louis Fuel & Supply Co., 8/22/88, RF225–10145

The DOE issued a Decision and Order in the Mobil Oil Corp. special refund proceeding concerning a refund applications filed by St Louis Fuel & Supply Co., Inc., (St. Louis), a reseller of Mobil middle distillates during the Mobil consent order period. St Louis' claim exceeded the $5,000 small claims presumption of injury level. Rather than submit documentation to demonstrate injury, St. Louis elected to limit its claim to $5,000. The DOE found that St. Louis was eligible to receive a total refund of $6,244 ($5,000 in principal plus $1,244 in interest) in accordance with the procedures outlined in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985).

National Car Rental, the Hertz Corp., Ryder Truck Rental, Inc., 8/25/88, RF272–15443, RF272–42811, RF272–73139

The DOE issued a Decision and Order denying three applications refund filed in connection with Subpart V crude oil refund proceedings. Each Applicant was a car rental and/or leasing agency during the period August 19, 1973 through January 27, 1981. The Applicants were considered resellers for the purposes of the crude oil Subpart V refund proceedings. Because none of the Applicants demonstrated that they were injured due to crude oil overcharges, they were ineligible for a crude oil refund.

Northern Service Centers Corp., et al., 8/23/88, RF272–43276, et al.

The DOE issued a Decision and Order denying eight Applications for Refund filed in connection with Supart V crude oil refund proceedings. Each Applicant was a reseller or retailer during the period August 19, 1973 through January 27, 1981. Because none of the applicants demonstrated that they were injured due to the crude oil overcharges, they were ineligible for a crude oil refund.

Royal Crown of Angelo, Inc., et al., Coca-Cola Bottling Company of Los Angeles, Mid-South Bottling Company, 8/25/88, RF272–162, et al., RF272–288 RF272–329

Seventeen domestic bottling companies filed Applications for Refund, based upon their purchases of a refined petroleum products during the period August 19, 1973 through January 27, 1981. The Applicants requested refunds from the crude oil monies currently available for disbursement by the Office of Hearings and Appeals (OHA) pursuant to OHA's authority under 10 CFR Part 205, Subpart V. On October 18, 1987, a group of thirty States and two Territories of the United States (collectively "the States") filed consolidated States' Objections and Motions for Discovery in two of the refund proceedings, involving Coca-Cola Bottling Co. of Los Angles (CCLA) and Mid-South Bottling Co. (Mid-South), in which the States opposed the receipt of any refund by those two firms and sought discovery of information in support of their opposition. In considering the Applications of the bottlers and the States' Objections and Motions for Discovery, the DOE determined that: (1) The seventeen bottlers were presumptively entitled to refunds as industrial and end-users of petroleum products outside of the petroleum industry and each applicant had certified the volume of petroleum products which it purchased during the price control period; (2) the states had failed to rebut the presumption of eligibility on the basis of the States' Objections with regard to CCLA and Mid-South; and (3) the States had failed to show that discovery with regard to the CCLA and Mid-South Applications was appropriate or that any additional information should be required of those firms. Accordingly, the Applications for Refund of the seventeen bottlers were granted, and the States' Objections and Motions for Discovery were dismissed.

Schlegel Tennessee, Inc., 8/26/88, RF272–7751

The DOE issued a Decision and order granting a refund from crude oil overcharge funds to Schlegal Tennessee, Inc., a producer and supplier of rubber weather stripping for autombiles. The DOE found that the applicant had provided sufficient evidence of the volume of refined petroleum products that it purchased during the period August 19, 1973, through January 27, 1981. The DOE also found that "process oil", a thin oil which is mixed with polymer and carbon black to form synthetic rubber, and "dust stop oil", a lubricant and cleaning agent used in rubber mills, are eligible products upon which a crude oil refund claim may be based. However, the DOE determined that "polymer' is not an eligible product since it is not directly refined from crude oil. Schlegel was determined to be an end-user of the products involved and was, therefore, found injured based upon the end-user presumption of injury. The refund granted in this Decision is $555.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders:

Name	Case No.	Date	Number of applications	Total refund
A.A. Sandru, et al	RF272–39300	8/2488	169	4,539
Alan V. Ochs, et al	RF272–39400	8/2488	183	3,528
Bill R. Woods, et al	RF272–39400	8/2488	184	4,356

Name	Case No.	Date	Number of applications	Total refund
Bob Carlyle, et al	RF272–39600	8/2488	145	4,524
Charles E. Fouts, et al	RF272–37800	8/2488	178	5,833
Durand Area Schools, et al	RF272–163	8/2488	51	31,376
Edward A. Byers, et al	RF272–40500	8/2488	188	3,740
Edward J. Suchla, et al	RF272–40600	8/2488	174	4,240
Frank & Edith Rossi, et al	RF272–6905	8/2488	88	3,208
Gary Karcher, et al	RF272–36400	8/2488	168	4,648
J.E. Rainey, et al	RF272–39800	8/2488	181	4,302
J.W. Millsaps, et al	RF272–37400	8/2288	188	4,280
Lake Villa C.C. School District, et al	RF272–39501	8/2288	147	3,893
Loren Bauman, et al	RF272–40601	8/2488	175	4,078
Norman Johnson, et al	RF272–39500	8/2488	197	4,370
Richard A. Schlaefke, et al	RF272–40400	8/2488	190	4,077
St. Clair County, et al	RF272–40501	8/2688	188	3,247
Trupp Ranch, et al	RF272–12700	8/2688	98	2,905
Village of Arlington Heights, et al	RF272–7942	8/2288	156	6,545
W.B. Crosby, et al	RF272–2900	8/2288	178	4,333

Dismissals

The following submissions were dismissed:

Name	Case No.
Alps Tire & Service Co	RF300–4345
Antares Shipping Co., Ltd	RF272–39580
Athens St. Gulf	RF300–537
B&L Gulf	RF300–840
Big "C" Supersite	RF300–1689
Bill's Gulf	RF300–74
Brown & Root USA, Inc	RF272–47214
Byron Gulf Station	RF300–425
Callee Oil Co	RF300–51
Chico's Gulf Service Station	RF300–663
City of New Orleans	RF272–74564
Clint's Gulf Service	RF300–5624
Crutcher Oil Co	RF300–6156
Donald E. Sation	RF272–72102
East Kentucky Explosives, Inc	RF272–74326
Eber's Gulf Service Station	RF300–3582
Faldk Gulf Service	RF300–3804
Farmer's Co-op Gin	RF272–73552
Gulf Wholesale	RF300–5277
Hale Distributing Co., Inc	RF272–69564
Hendrick's Oil Co	RF300–6196
Hentz Gulf Service	RF300–2196
Lawrence E. Collier	RF265–2717
Lawson Gulf Service	RF300–2461
M.O.C., Inc	RF300–1958
Master Gulf Service Station	RF300–4326
Mattox Dist. Co., Inc	RF300–6911
McGuire Gulf Station	RF300–5455
Pennridge School District	RF272–27373
Portland Public Schools	RF272–73609
Reid Memorial Hospital	RF272–21147
States	RF272–12249
Stender Oil Company	RF265–2623
Terry's Service Station	RF300–707
The Dallas Cherry Growers	RF272–73603
Toney's Gulf	RF300–7168
West's Gulf Service	RF300–3016
Woodlawn Gulf	RF300–3510

Copies of the full text of these decisions and orders are available in the Public Reference room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director Office of Hearings and Appeals.

October 18, 1988.

[FR Doc. 88–24685 Filed 10–24–88; 8:45 am]

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Issuance of Decisions and Orders; Week of September 12 Through September 16, 1988

During the week of September 12 through September 16, 1988, the decisions and orders summarized below were issued with respect to applications for refund filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Refund Applications

Atlantic Richfield Company/Desmond R. Johns Oil Company, 9/15/88, RF304–1

The DOE issued a Decision and Order concerning an Application for Refund filed by the Desmond R. Johns Oil Company in the Atlantic Richfield Company (ARCO) special refund proceeding. The application indicated that Johns was a consignee/agent of ARCO. Under the procedures for distributing ARCO funds, consignees are presumed not to have been injured by any alleged overcharges. Because the Johns application made no attempt to rebut this presumption, the DOE concluded that the firm was not injured and denied its Application for Refund.

Atlantic Richfield Company/Schock ARCO, 9/15/88, RF304–105

The DOE issued a Decision and Order concerning an Application for Refund filed by Schock ARCO in the Atlantic Richfield Company (ARCO) special refund proceeding. As a retailer claiming a refund of less than $5,000 in principal, Schock was presumed to have been injured by ARCO's alleged overcharges. After examining Schock's application and supporting documentation, the DOE determined that the firm should receive a refund of $5,206, representing $4,200 in principal and $1,006 in interest.

Bernard D. Gleespen, 9/16/88, RF272–74831

The DOE issued a Decision and Order granting a refund of $12 to Bernard D. Gleespen in the Subpart V crude oil overcharge refund proceeding. Since the order listed erroneous gallonage and refund figures for Gleespen, the DOE issued a Supplemental Order granting Gleespen an additional refund of $11.

City of Annapolis, 9/16/88, RF272–22241

The DOE issued a Decision and Order granting in part an Application for Refund filed by the City of Annapolis in connection with the Subpart V crude oil overcharge refund proceeding. Annapolis submitted a claim based on its purchases of gasoline and liquid asphalt. The DOE determined that Annapolis was ineligible for a refund because it did not purchase the refined petroleum product in its pure state, but rather purchased bituminous concrete, which is a mixture of liquid asphalt, rocks, gravel, and sand. With respect to the portion of Annapolis' claim based on gasoline purchases, the DOE determined that Annapolis was the end-user of that gasoline. Therefore Annapolis was determined to be eligible for its full allocable share of crude oil moneys with respect to the gasoline portion of its

claim. The refund granted in this Decision and Order is $217.

EXXON Corporation/Albert Burson et al., 9/13/88, RF307-2027, et al.

The DOE issued a Decision and Order concerning 16 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased refined petroleum products directly from Exxon and was either a reseller whose allocable share was less than $5,000 or an end-user of Exxon products and eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $8,627 ($7,685 principal plus $942 interest).

EXXON Corporation/Morton Parnell et al., 9/15/88, RF307-2115, et al.

The DOE issued a Decision and Order concerning 31 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased refined petroleum products directly from Exxon and was either a reseller whose allocable share was less than $5,000 or an end-user of Exxon products and therefore eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $11,771 ($10,432 principal, plus $1,348 interest).

Getty Oil Company/Hutcheson Oil Company, 9/12/88, RF285-2706, RF285-2707

The DOE issued a Decision and Order concerning two Applications for Refund filed by Hutcheson Oil Company, a reseller of motor gasoline and middle distillates covered by a Consent Order that the DOE entered into with Getty Oil Company. The DOE determined that Hucheson suffered a competitive disadvantage as result of its Getty purchases and therefore experienced a significant injury. Accordingly, the firm received a refund in the amount of its full volumetric share of $19,033, plus $19,943 in accured interest.

Getty Oil Company/James R. Todd, Jr., 9/15/88, RF285-2752

The DOE issued a Decision and Order concerning an Application for Refund filed by James R. Todd, Jr., a retailer of motor gasoline covered by a Consent Order that the DOE entered into with Getty Oil Company. The applicant submitted information indicating the volume of its Getty gasoline purchases and was eligible for refund below the $5,000 small claims threshold. The total refund approved in this Decision is $1,837, representing $896 in principal and $941 in accrued interest.

Getty Oil Company/Schlapia, Inc., 9/16/88, RF285-2637

The DOE issued a Decision and Order concerning an Application for Refund filed by Schlapia, Inc., and reseller of motor gasoline covered by a Consent Order that the DOE entered into with Getty Oil Company. The DOE determined that Schlapia experienced a competitive disadvantage and thereby suffered a signficant injury as a result of its Getty purchases. The firm received a refund in the amount of its full volumetric share, $12,347, plus $12,970 in accrued interest.

James Geray, 9/16/88, RF272-74830

The DOE issued a Decision and Order granting a refund of $6 to James Geray in the Subpart V crude oil refund proceeding. Since the order listed erroneous gallonage and refund figures for Geray, the DOE issued a Supplemental Order granting Geray an additional refund of $6.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders:

Name	Case No.	Date	Number of applications	Total refund
Fries Brothers, et al	RF272-10406	9/15/88	137	$16,430
Hardman County Highway Department et al	RF272-13494	9/12/88	33	7,578
Paul Zerbe et al	RF272-13758	9/12/88	22	5,125

Dismissals

The following submissions were dismissed:

Name	Case No.
City of Mesquite	RF300-7037, RF300-7038
Cochran Service Center	RF300-7704
Crowder's Gulf	RF300-7714
Davis Gulf Station	RF305-8
Hamlin's Gulf	RF305-165
Home Oil Company of Belton	RF255-1348
Nasser Service, Inc	RF300-7694
Peberto Grocery	RF300-7051
S. B. Chitna, Inc	RF265-1674
Schlapia, Inc	RF285-2521
Shipley & Son Gulf	RF300-6625
Smith's Bakery, Inc	RF272-65051
Sonny's Exxon	RF307-1800
Sylvan Hills Gulf	RF300-7732
Texas Instruments	RF272-58116
Tri-State Generation and Transmission Association, Inc.	RF272-53030

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

October 18, 1988.

George B. Breznay,

Director Office of Hearings and Appeals.

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Issuance of Decisions and Orders; Week of September 19 Through September 23, 1988

During the week of September 19 through September 23, 1988, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Arent, Fox Kintner, Plotkin & Kahn, 9/20/88, KFA-0211

The law firm of Arent, Fox, Kintner, Plotkin & Kahn filed an Appeal from a denial by the Bonneville Power Administration (BPA) of a Request for Information which the firm had submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that the BPA correctly withheld labor unit prices and prompt payment discounts in a service contract, pursuant to Exemption 4 of the FOIA. The DOE found that in the context of this contract, the release of this information could reveal confidential pricing strategy and profit information. The DOE further found that even if contractual terms were arrived at through arm's-length negotiations, the terms were still "obtained from a person" for the pruposes of Exemption 4. Finally, the DOE, in reliance on an opinion of the Comptroller General, determined that the Federal Acquisition Regulation does not apply to BPA and, therefore, does not require BPA to release unit prices.

Glen Milner, 9/23/88, KFA-0216

Mr. Glen Milner filed an Appeal from a denial by the Deputy Director, Office of Intergovernmental and External Affairs, Albuquerque Operations Office (the Authorizing Official) of a Request for Information which he had submitted under the Freedom of Information Act. Mr. Milner noted that only one page of a DOE technical manual was treated as responsive to his request, and argued that the entire document should have been released to him. In considering the Appeal, the DOE found that it was entirely reasonable for the Authorizing Official to have interpreted Mr. Milner's request in the manner that he did and to have restricted his analysis to the relevant page of the technical manual. The DOE upheld the Authorizing Official's determination with respect to that page and remanded the matter for a determination concerning the remainder of the document.

Remedial Orders

Tesoro Petroleum Corporation, 9/23/88, HRO-0143

The DOE issued a Remedial Order to Tesoro Petroleum Company (Tesoro). In the Remedial Order, the DOE found that during the months of October and November 1977, Tesoro violated the entitlements reporting regulations codified at 10 CFR 211.66 and 211.67 and the circumvention regulation set forth at 10 CFR 205.202. Specifically, the DOE found that Tesoro entered into a series of crude oil sales, processing and refined product transactions which permitted the firm to shift the reporting of large volumes of price-controlled crude oil from itself to a refiner which was excepted from 100 percent of its entitlement purchase obligations under the Entitlements Program. According to the DOE, Tesoro masterminded a scheme to circumvent the letter and spirit of the DOE regulations by using an excepted refiner as titleholder to the crude oil and interjecting unnecessary intermediaries into the crude oil distribution chain. The DOE determined that the scheme was designed to enable Tesoro to mask its exclusive physical control and possession of the crude oil and to exclude the crude oil from its crude oil runs to stills on its Refiners' Monthly Reports. By excluding the crude oil from its Refiners' Monthly Reports, Tesoro was able to circumvent the entitlements reporting regulations and concomitantly reap a profit at the expense of the Entitlements Program. The DOE ordered Tesoro to refund the sum, $2,869,779, plus interest, which represents the amount of profit Tesoro unjustly received as the result of its scheme to reduce its costs under the Entitlements Program.

Texas American Oil Corportion, 9/19/88, KRO-0260

Texas American Oil Corporation (Texas American) filed a Statement of Objections to a Proposed Remedial Order (PRO) that was issued to the firm by the economic Regulatory Administration (ERA) on September 30, 1986. In the PRO, the ERA alleged that in its Refiners' Monthly Reports during the period October 1978 through February 1977, Texas American's wholly-owned subsidiary, Texas American Petrochemicals, Inc. (TAPI), misreported certain crude oil subject to "processing agreements" and thereby received excessive small refiner bias (SRB) benefits under DOE's Entitlements Program, 10 CFR 211.66, in violation of 10 CFR 211.67(e)(2). In the alternative, the ERA alleged that TAPI's transactions involving that crude oil resulted in the circumvention or contravention of the Entitlements Program, in violation of 10 CFR 205.202. In considering Texas American's Statement of Objections, the DOE rejected Texas American's contentions that: (i) The ERA misapplied § 211.67(e)(2) to the processing agreements at issue, (ii) the enforcement proceeding was barred by the termination of the DOE's Entitlements Program and by the Stripper Well Settlement Agreement, and (iii) Texas American should not be held solely liable for restitution of the illicit entitlements benefits. Since the DOE sustained the § 211.67(e)(2) violations, the DOE found that it was unnecessary to address the alternative § 205.202 violation alleged by the ERA. Accordingly, the PRO was issued as a final Remedial Order, and Texas American was required to refund the full amount of excessive SRB benefits received, $330,261, plus interest.

Interlocutory Order

Lajet, Inc., 9/22/88, KRZ-0087

A Deputy Director of the Office of Hearings and Appeals issued a Special Report Order (SRO) to LaJet, Inc. (LaJet). The SRO directed the firm to provide the ERA with certain information and documentary support concerning: (1) The firm's ownership interests in various entities; (2) the flow of crude oil among LaJet's suppliers, LaJet, and Young Refining Company; and (3) the transfer of LaJet's stock to Flare Energy Corporation. The Deputy Director issued the SRO to LaJet during the pendency of a Proposed Remedial Order proceeding involving the firm because of the procedural posture of the enforcement action.

Implementation of Special Refund Proceeding

Murphy Oil Corporation, 9/19/88, KEF-0095

The DOE issued a Decision and Order implementing a plan for the distribution of $7,104,217.29 received pursuant to a Consent Order between Murphy Oil Corporation and the DOE that was finalized on February 9, 1987. The DOE determined that the consent order funds should be distributed to customers that purchased covered products from Murphy during the period March 6, 1973 through January 27, 1981. The specific information to be included in Applications for Refund is set forth in the Decision.

Refund Applications

Aminoil U.S.A., Inc./Glades Gas Company, 9/23/88, RF139-141

The DOE issued a Decision and Order concerning an Application for Refund filed by Glades Gas Company in the Aminoil U.S.A., Inc. special refund proceeding. The firm submitted cost banks and market price data which indicated that it was forced to absorb Aminoil's alleged overcharges. Therefore, the firm demonstrated that it was injured by Aminoil's alleged overcharges to the full extent of its volumetric allocations of the consent order fund. After examining the firm's application and supporting documentation, the DOE concluded that it should receive a refund totaling $100,609, representing $56,829 in principal and $43,780 in interest.

Aminoil U.S.A., Inc./Rural Gas Company et al., 9/23/88, RF139-69 et al.

The DOE issued a Decision and Order concerning Applications for Refund filed by Rural Gas Company, Ford Pinkerton Company and Don Loftis in the Aminoil U.S.A., Inc. special refund proceeding. The firms submitted cost banks and market price data which indicates that they were forced to absorb Aminoil's alleged overcharges. Therefore, the firms

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demonstrated that they were injured to the full extent of their volumetric allocations of the consent order fund by Amoco's alleged overcharges. In addition, Rural and Lolin demonstrated that there was a change in ownership from Rural to Lolin in the middle of the refund period, and that each is entitled to a refund for its respective portion of the consent order period. After examining the three Applications for Refund and supporting documentation, the DOE granted refunds totaling $170,225, representing $96,166 in principal and $74,067 in interest.

Andale Farmers Cooperative Co., 9/21/88, RF272-7218

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Andale Farmers Cooperative Co. (Andale) based on its documented purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Since Andale, an agricultural cooperative, established that it would distribute the refund to its members, the application was granted. The total amount of the refund approved in this Decision and Order is $4,338.

Arizona Electric Power Cooperative, 9/21/88, RF272-7288

On August 19, 1988, the DOE had issued a Decision and Order granting a refund of $7,281 to Arizona Electric Power Cooperative (Arizona Electric), Case No. RF272-6356, now designated RF272-74288. *See Roger Brocks*, 17 DOE ¶ 85,700 (1988). Arizona Electric's application is one of several subject to a stay of disbursement of funds, *see Pacific Gas & Electric Company*, 17 DOE ¶85,215 (1988). Accordingly, the DOE issued a Supplemental Order rescinding the refund granted to Arizona Electric.

Atlantic Richfield Company, Jubilee Oil Company Et Al., 9/21/88, FR304-309 Et Al.

The DOE issued a Decision and Order concerning twenty Applications for Refund filed by fifteen firms from a consent order fund made available by Atlantic Richfield Company. As resellers/retailers applying for small refunds or end-users these firms were presumed to have been injured. The DOE found that these firms should receive refunds totalling $21,985, representing $17,800 in principal and $4,185 in interest.

Coline Gasoline Corp./Pennsylvania, RM3–115; National Helium Corp./Pennsylvania, RM3–116; Pennsoil Company/Pennsylvania, RM10–117; Standard Oil Co. (Indiana)/Pennsylvania, 9/19/88, RM251–116

The DOE issued a Decision and Order approving the Motion for Modification filed by the Commonwealth of Pennsylvania in the Coline Gasoline Corp., National Helium Corp., Pennzoil Company and Standard Oil Co. (Indiana) refund proceedings. Pennsylvania requested permission to expand its oil furnace retrofit program for low-income households to all types of fuel-burning furnaces in such households. Funding for the expanded program would come from $3,889,699 previously approved in the above proceedings and $433,301 in interest that had accrued on these funds, for a total planned expenditure of $4,323,000. Though the expanded program would benefit low-income households that do not use refined petroleum products for heating, the DOE approved the program because of the likelihood that all low-income households were injured by petroleum product overcharges, regardless of how they were heated.

Eastern Oil Company, Robert South, 9/21/88, RF265–2

The DOE issued a Decision and Order granting an Application for Refund filed by Robert South in the Eastern Oil Company refund proceeding. *See Eastern Oil Co.*, 16 DOE ¶ 85,687 (1987). The applicant was a reseller of motor gasoline and elected to limit his claim to $5,000 by relying on the small claims presumption of injury. Accordingly, the applicant received a total refund of $5,722, representing $5,000 in principal and $722 in interest.

Exxon Corporation/Rex Garage, 9/19/88, FR307–300 Et Al.

The DOE issued a Decision and Order concerning 42 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and is either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. Each applicant is eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $24,570, representing $21,755 in principal plus $2,815 in interest.

Getty Oil Company, Chief Petroleum Company, 9/21/88, FR265–2657

The DOE issued a Decision and Order concerning an Application for Refund filed by Chief Petroleum Company (Chief), a reseller of motor gasoline covered by a Consent Order that the DOE entered into with Getty Oil Company. Chief submitted documentation substantiating that during the consent order period it maintained banks of unrecovered costs, and the DOE compared the firm's purchase data to publicly available industry pricing data. Under the competitive disadvantage methodology, the DOE determined that a refund to the applicant should be limited to $24,841 based on the gallons that the firm purchased at above market prices. The total refund approved in this Decision is $50,566, representing $24,841 in principal and $25,917 in interest.

Getty Oil Company/Flagship Fuel Stop, RF265–2726; Demers and Sons CITGO, RF265–2747; George's Getty, RF265–2753; Lyons Skelgas Co., 9/21/88, RF265–2754

The DOE issued a Decision and Order concerning four Applications for Refund by retailers or resellers of motor gasoline or middle distillates covered by a consent order that the DOE entered into with Getty Oil Company. Each applicant submitted information indicating the volume of Getty motor gasoline or middle distillates purchased during the consent order period. Under the procedures outlined in *Getty Oil Corp.*, 15 DOE ¶ 85,064 (1988), three applicants were eligible for a refund below the small claims threshold of $5,000. In the remaining claim, the applicant elected to limit his claim to $5,000. The total amount of the refunds approved in the Decision and Order is $16,782, representing $8,185 in principal and $8,597 in interest.

Getty Oil Company/Home Oil Company of Belton, 9/21/88, RF265–1347

The DOE issued a Decision and Order concerning an Application for Refund filed by Home Oil Company of Belton (Home), a reseller of motor gasoline covered by a Consent Order that the DOE entered into with Getty Oil Company. Home submitted a documentation substantiating that during the consent order period it maintained banks of unrecovered costs and the DOE compared the firm's purchase data to publicly available industry pricing data. Under the competitive disadvantage methodology, we determined that Home suffered significant injury and that a refund based on its net excess costs on the purchases of Getty motor gasoline is appropriate. The total refund approved in this Decision is $60,815, representing $29,658 in principal and $31,156 in interest.

Getty Oil Company/Howard Beaird, 9/21/88, RF265–2743, RF265–2745

On August 19, 1988 the DOE had issued a Decision and Order granting refunds to a number of parties, including Mr. Howard Beaird (Case Nos. RF265–2744 and RF265–2745). *See Getty Oil Co./Zitek Skelly Services*, 17 DOE ¶ 85,712 (1988). That Decision, however, incorrectly specified the payee of the refund. Accordingly, the Decision was amended to change the name of the payee from "Howard Beard, c/o Michael O'N. Barron, Attorney at Law" to "Howard Beaird/Skyline Truck Center *OR* Bassman, Mitchell & Alfano, Chartered".

Getty Oil Company/Schwarz Oil Company, 9/22/88, RF265–0551, RF265–0552

The DOE issued a Decision and Order concerning two Applications for Refund filed by Schwarz Oil Company (Schwarz), a reseller of motor gasoline and middle distillates covered by a Consent Order that the DOE entered into with Getty Oil Company. Schwartz submitted documentation substantiating that during the consent order period it maintained banks of unrecovered costs, and the DOE compared the firm's purchase data to publicly available industry pricing data. Under the competitive disadvantage methodology, the DOE determined that Schwarz suffered significant injury. Therefore, the DOE concluded that it was appropriate to grant Schwarz a refund of its full allocable volumetric share of $10,424 for motor gasoline and a limited refund of $500 for middle distillates. The total refund approved in this Decision is $22,399, representing $10,924 in principal and $11,475 in interest.

Lewis County Public Works Department, 9/23/88, RF272–11501

The DOE issued a Decision and Order granting an Application for Refund from crude oil overcharge funds based on the applicant's purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. To estimate its fuel purchase volume, the applicant used annual bid records, then demonstrated that these records provided a conservative estimate of actual consumption. The refund granted in this Decision is $1,750.

Standard Oil Co. (Indiana)/Oglala Sioux Tribe, 9/23/88, RM21–126, RM251–127

The DOE issued a Decision and Order approving the Motion for Modification filed by the Oglala Sioux Tribe in the Amoco I and II refund proceedings. The tribe requested a one-year extension of its deadline for submitting a post-plan report. The DOE found that an extension would allow the tribe to continue providing comprehensive energy audits.

Tower Oil Company, Kaplan Service Station, Inc., 9/23/88, RF272–29699, RF272–29807

The DOE issued a Decision and Order denying two Applications for Refund filed in the Subpart V crude oil refund proceedings. Each applicant purchased and resold refined petroleum products during the period August 19, 1973 through January 27, 1981. Because neither of the applicants demonstrated that it was injured due to the crude oil overcharges, neither was eligible for a crude oil refund.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders:

Name	Case No.	Date	No. of applications	Total refund
Edward J. McDaniel et al	RF272-8294	9/19/88	188	$11,654
Glenn Pomerenke et al	RF272-11400	9/19/88	152	9,526
Robert Dill et al	RF272-11680	9/19/88	40	955

Dismissals

The following submissions were dismissed:

Name	Case No.
A&D Service Station	RF300-6293
Bixs Service Station	RF300-6291
Chief Petroleum	RF265-0648
City of Greensboro	RF300-998
Dick's Exxon	RF307-271
Dillsburg Grain & Milling Co	RF300-6201
Don's Fairfield Exxon	RF307-267
Dorrill's Exxon	RF307-145
Durand Area Schools	RF272-42600
Farmers Coop Oil Co	RF272-67779
G.M.C. Delco-Remy Division	RF272-24129
George Yano	RF300-7052
Globe Industries	RF272-62987
Golten Marine Co., Inc	RF272-55778
Hamer's Gulf	RF300-5879
Hayes, Steakley, & Tobin, Inc	RF300-4834
Hoffman Oil Co., Inc	RF300-5790
Jackson County Board of Education.	RF300-4249
Madison County board of Education.	RF272-69812
McNabb Coal Co., Inc	RF300-5441
Morris Petroleum, Inc	RF300-5648
Ms. Priscilla M. Gray	KFA-0212
Rielck Coal & Oil Co	RF300-5191
Roy Dotson	RF272-52707
Spano Fuel Company, Inc	RF300-4455
Vernon Stoller	RF272-52778
3M Company	RF272-66542
Virdell Oil Co	RF300-4066

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

October 18, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 88–24667 Filed 10–24–88; 8:45 a.m.]

BILLING CODE 6450–01–M

Issuance of Decisions and Orders; Week of September 26 Through September 30, 1988

During the week of September 26 through September 30, 1988, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

William A. Hewgley, 9/27/88, KFA–0213

William A. Hewgley filed an Appeal from a partial denial by the Office of the Inspector General (IG) of a Request for Information which Mr. Hewgley had submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the Department of Energy (DOE) found that the name of a person allegedly contacted by the Central Intelligence Agency (CIA) through Mr. Hewgley was exempt from mandatory

disclosure pursuant to Exemption 6 of the FOIA. The DOE also found that the name of an IG employee who key punched material into a computer retrieval system was not exempt from disclosure under the FOIA. Important issues considered in the Decision and Order were: (i) The public interest in disclosure of the name of an individual who was allegedly contacted by the CIA versus that person's privacy interest in keeping such contacts secret, (ii) the substantial public interest in release of names of governmental employees performing ministerial tasks absent an important government interest, and (iii) the propriety of referring documents in DOE files to their originating federal agency for a FOIA determination.

Remedial Orders

Cities Service Oil and Gas Corp., 9/30/88, HRO-0285

Cities Service Oil and Gas Corporation (Cities) objected to a Proposed Remedial Order (PRO) that the DOE's Economic Regulatory Administration issued to the firm on March 25, 1985. In the PRO, the DOE found that Cities received consideration in 91 sales of price-controlled crude oil in excess of that permitted by 10 CFR 212.183(b). After considering the firm's objections, the DOE found that Cities used the artifice of matching purchase and sale contracts to disguise the excess consideration, which took the form of a discount in Cities' reciprocal purchase of exempt oil. The DOE rejected the firm's contention that its transactions fell within the "exchange exemption," 10 CFR 212.183. The DOE found that the exchange exemption did not apply because Cities' payment for the exempt crude oil did not reflect the value of that oil and because Cities' reciprocal transactions did not serve any of the historical and legitimate purposes of exchange which were to redistribute crude oil inventory with respect to quality, location, or time. Accordingly, the DOE issued a Remedial Order which requires Cities to refund $283.9 million plus interest.

Phoenix Petroleum Co., Steven B. Wyatt, 9/29/88, KRO-0190

Phoenix Petroleum Company and Steven B. Wyatt objected to a Proposed Remedial Order that was issued to them on September 12, 1985. In the PRO, the Economic Regulatory Administration found that Phoenix's crude oil reselling activities had violated the layering rule, 10 CFR 212.186, which prohibited crude oil resellers from applying a markup in any crude oil sales transaction in which they did not perform any historical and traditional crude oil reselling function.

In considering the objections, the DOE found that Phoenix's domestic crude oil resales violated the layering rule. The DOE rejected the argument that it lacked jurisdiction over Phoenix's transactions because they were alleged to be crude oil futures contracts. Moreover, the DOE found that even if Phoenix's transactions could be considered to be futures contracts, that would not deprive the DOE of jurisdiction over them. The DOE, however, agreed with the respondents that it did not have jurisdiction over two foreign sales of crude oil where there was no evidence that the crude oil ever entered the United States. In addition, the DOE determined that the overcharges alleged for January 1981 should be reduced to account for a portion of Phoenix's sales that may have taken place after crude oil was decontrolled on January 28. The DOE also held that the ERA had not convincingly matched Phoenix's purchases and sales. Under these circumstances, the DOE calculated Phoenix's refund liability to be the amount of the firm's gross profits from layered transactions.

Finally, the DOE found that Wyatt should be held personally liable for a portion of Phoenix's refund liability, because he was the person primarily responsible for negotiating the transactions in question and because he benefited substantially from the violations. The DOE determined, however, that on equitable grounds, he should not be held jointly and severally liable for Phoenix's entire refund liability, but his liability should be limited to the amount that he benefited from Phoenix's activities. This determination was based upon the fact that he was a junior officer and not an owner of Phoenix, and on the fact that he received only a small fraction of Phoenix's gross profits from the violations. As so modified, the PRO was issued as a final Order.

Refund Applications

Clarence J. Stallmann, 9/27/88, RF272–12618

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Clarence J. Stallmann based on his purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Stallmann used the products for various agricultural activities and determined his claim by estimating his consumption based on the total acres he farmed multiplied by the U.S. Department of Agriculture's (USDA) 23.8 gallons per acre average farm consumption figure. However, to this total Stallmann added gallonage estimates of propane used to dry corn and of motor oil and grease purchased for tractor use. Since the USDA estimate includes products utilized for tractor use and drying corn, the DOE denied the additional gallons, and approved the total based upon the USDA average farm consumption figure. As an end-user of petroleum products, the applicant was presumed to have been injured as a result of the crude oil overcharges. The refund granted was $8.

Exxon Corporation/ W.F. Parker Oil Company, Inc., Kilgore Oil Company, 9/30/88, RF307–1504, RF307–2296

The DOE issued a Decision and Order concerning Applications for Refund filed by W.F. Parker Oil Company, Inc. (Parker) and Kilgore Oil Company (Kilgore) in the Exxon Corporation special refund proceeding. Each firm purchased directly from Exxon and was a reseller of Exxon products. Each firm's allocable share exceeded $5,000. Instead of making an injury showing to receive its full allocable share, Parker and Kilgore each chose to elect the $5,000 threshold. Therefore, each firm was granted a refund of $5,647 (5,000 principal plus $647 interest).

Exxon Corporation/ Woodfield Fish & Oyster Company et al., 9/28/88, RF307–71 et al.

The DOE issued a Decision and Order concerning Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $5,586 ($4,945 principal plus $641 interest).

Getty Oil Company/Paul & Wayne's Inc., 9/27/88, RF265–3071, RF265–2798

The DOE issued a Decision and Order concerning two Applications for Refund filed by a retailer of motor gasoline and middle distillates covered by a consent order that the DOE entered into with Getty Oil Company. The applicant submitted information indicating the volume of Getty motor gasoline and middle distillates purchased from Getty. Under the procedures outlined in *Getty Oil Corp.* 15 DOE ¶ 85,064 (1986), the applicant elected to utilize the presumptive level of injury. The tota. amount of the refund approved in the Decision and Order is $14,154, representing $6,903 in principal and $7,251 in interest.

Getty Oil Company/Supreme Oil Company, 9/26/88, RF265–0636, RF265–0637

The DOE issued a Decision and Order concerning two Applications for Refund filed by Supreme Oil Company (Supreme), a reseller of motor gasoline and middle distillates covered by a Consent Order that the DOE entered into with Getty Oil Company. Supreme submitted documentation substantiating that during the consent order period it maintained banks of unrecovered increased product costs. Supreme also submitted purchase cost data for motor gasoline and middle distillates for the relevant period. Using the competitive disadvantage methodology, the DOE determined that Supreme's refund should be limited to the gallons of motor gasoline and middle distillates that the firm purchased at above market prices. The total refund approved in this Decision is $22,153, representing $10,797 in principal and $11,356 in accrued interest.

Gulf Oil Company/CEE Ell Enterprises, et al., 9/27/88, RF300–1155 et al.

The DOE issued a Decision and Order concerning 10 Applications for Refund filed in the Gulf Oil Corporation special refund proceeding. Each of the applicants demonstrated that it purchased less than 7,612,500 gallons of Gulf product during the consent order period. Therefore, under the small claims presumption, each applicant was found eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision, which includes both principal and interest, is $11,363.

Gulf Oil Corp./City of Richardson et al., 9/29/88, RF300–1222, et al.

The DOE issued a Decision and Order granting 10 Applications for Refund in the Gulf Oil Corporation refund proceeding. Each of the claimants demonstrated that it was a direct purchaser and end-user of Gulf covered products during the consent order period. Accordingly, the claimants were presumed to have been injured and received their full allocable share. The total amount of refunds granted in this Decision is $6,314, representing $5,569 in principal and $1,745 in interest.

Gulf Oil Company/Claude Bridges et al., 9/28/88, RF300–5803 et al.

The DOE issued a Decision and Order concerning 10 Applications for Refund filed in the Gulf Oil Company special refund processing. Each of the applicants demonstrated that it purchased less than 7,612,500 gallons of Gulf products during the consent order period. Therefore, under the small claims presumption, each applicant was found eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision, which includes both principal and interest, is $12,274.

Gulf Oil Company/William Mofford, et al., 9/29/88, RF300–1195, et al.

The DOE issued a Decision and Order concerning 11 Applications for Refund filed in the Gulf Oil Company special refund proceeding. Each of the Applicants demonstrated that it purchased less than 7,612,500 gallons of Gulf product during the consent order period. Therefore, under the small claims presumption, each applicant was found eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision, which includes both principal and interest, is $17,043.

Husky Oil Company/Sandhill Oil Company, Inc., 9/29/88, RF161–36

The DOE issued a Decision and Order concerning an Application for Refund filed by Sandhill Oil Company, Inc. (Sandhill) in the Husky Oil Company (Husky) special refund proceeding. Sandhill filed a claim for $1,471 based upon 2,348,547 gallons of motor gasoline and diesel fuel purchased from Husky during the firm's consent order period. Sandhill claimed an additional refund of $3,374 based upon the loss of a "prompt payment" discount Husky discontinued during a portion of the consent order period. With respect to the above-volumetric refund claim, Sandhill failed to demonstrate that it did not increase its prices to compensate for the loss of the discount. Without this information, the DOE could not determine that Sandhill was injured by the lost discount. However, the DOE determined that Sandhill should be granted a refund on a volumetric basis, since its claim was less than the $5,000 small claims threshold level established in *Husky Oil Co.*, 13 DOE ¶ 85,045 (1985). Accordingly, the applicant was granted a refund of $1,566, representing $1,071 in principal plus $495 in accrued interest.

Kenneth Veazie, 9/30/88, RF272–74940

The DOE issued a Decision and Order rescinding part of the prior Decision issued to Kenneth Veazie in the crude oil refund proceeding. On reexamination, the DOE determined that it misapplied the claimant's method of estimation of gallons claimed. The DOE increased the applicant's approved volume to 100,459 gallons. The refund granted in this Decision is $20.

Standard Oil Co. (Indiana)/North Carolina, 9/27/88, RM251–123

The DOE issued a Decision and Order approving the Motion for Modification filed by the State of North Carolina in the Standard Oil Co. (Indiana) Special Refund Proceeding. North Carolina requested permission to transfer $200,000 from a newspaper advertising campaign for a fuel oil furnace tune-up rebate program to a multimedia campaign for a home insulation program. The DOE approved the new program because it would reach more injured consumers than the original, and would provide substantial incentives to save energy costs in the future.

Tony Coller, 9/29/88, RF272–74860

The DOE issued a Decision and Order rescinding the crude oil refund approved for Tony Coller in the DOE's August 22, 1988 Decision and Order, *J.W. Millane, et al.* (Case No. RF272–37485). Mr. Coller had requested that the DOE rescind his refund.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decision and Orders:

Name	Case No.	Date	Number of applications	Total refund
Baker Farms Inc. et al	RF272-9400	9/30/88	131	$4,996
George F. Mahan et al	RF272-1200	9/29/88	24	777
Village of Arnold et al	RF272-11983	9/29/88	91	11,006

Dismissal

The following submissions were dismissed:

Name	Case No.
Carteret County Board of Education.	RF300-4274
College Gulf Station	RF305-7758
Consumers Cooperative Society	RF272-59129
County of Hanover	RF300-4811
Dallas County Schools	RF300-7869
First Maryland Bancorp	RF272-70858
Frank Quinta's Exxon I	RF307-220, RF307-221
Fritch's Exxon	RF307-174
Henry's Service Station	RF300-2954
Hedden Country Store	RF300-7054
Lindsey Oil Company	RF272-62858
Loney's Gulf	RF300-7944
Munie Oil Services, Inc.	RF300-676
Murphy Bateman Building Supplies	RF272-58094
Pacolla Road Exxon	RF307-646
Schwarz Oil Co	RF285-0553
Skidmore Service Station	RF300-2787
Sell's Texaco Service	RF272-10186
State of Missouri, Dept. of Natural Resources.	RF40-3708 RF225-13047
Tabbert Oil Company	RF300-8643
The Valley Line Company	RF308-1004
Tom's Bunker Hill Gulf	RF300-3649
Universal Motor Funds, Inc.	RF285-1353
West End Exxon	RF307-1786
Williams Gulf Service	RF300-12553

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Mangement: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,
Director, Office of Hearings and Appeals.
October 18, 1988.

[FR Doc 88-24668 Filed 10-24-88; 8:45 am]
BILLING CODE 6450-01-M

Proposed Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of $1,083,442 plus accrued interest obtained by the DOE under the terms of a consent order entered into with Amorient Petroleum Company, California. The OHA has tentatively determined that the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Cases, 51 FR 27899 (August 4, 1986).

DATES AND ADDRESS: Comments must be filed in duplicate within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should display a reference to case number KEF-0101.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-2860.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute funds obtained from Amorient Petroleum Company, California. The funds are being held in an interest-bearing account pending distribution by the DOE.

The DOE has tentatively determined to distributre these funds in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Cases, 51 FR 27899 (August 4, 1986). Under the Modified Policy, crude oil overcharges monies are divided among the state, the federal government, and injured purchasers of refined products. Under the plan we are proposing, refunds to the states would be distributed in proportion to each state's consumptiopn of petroleum products during the period of price controls. Refunds to eligible purchasers would be based on the number of gallons of petroleum products which they purchased and the extent to which they can demonstrate injury.

Applications for refund should not be filed at this time. Appropriate public notice will be given when the submisson of claims is authorized. Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to provide two copies of their submissions. Comments must be submitted within 30 days of publication of this notice in the **Federal Register** and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except Federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: October 17, 1988

George B. Breznay,
Director, Office of Hearings and Appeals.
October 17, 1988.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Amorient Petroleum Company, California.
Date of Filing: February 8, 1988.
Case Number: KEF-0101

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

The ERA has filed a Petition for the Implementation of Special Refund Procedures for funds obtained from Amorient Petroleum Company, California (Amorient) in the amount of $1,083,442 and remitted to the DOE pursuant to a July 8, 1985 Consent Order between the firm and the DOE, Consent Order number 04[illegible]Z. An additional $167,984 in interest has accrued on that amount as of August 31, 1988. This Proposed Decision and Order sets forth the OHA's plan to distribute these funds. Comments are solicited.

The general guidelines which the OHA may use to formulate and implement a plan to distribute refunds are set forth in 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981). We have considered the ERA's request to implement Subpart V procedures with respect to the money received from Amorient and have determined that such procedures are appropriate.

The Amorient Consent Order refers to the firm's sales of crude oil and refined petroleum products during the period from August 19, 1973 through January 27, 1981. However, after reviewing the ERA audit file concerning Amorient's pricing practices, we find that it is likely that the firm sold only crude oil during the Consent Order period.[1] We therefore propose to distribute the Amorient consent order funds in accordance with the refund procedures established in other crude oil proceedings. Before setting forth those procedures, we will first summarize the background of the DOE crude oil refund process.

I. Background

On July 28, 1986, the DOE issued a Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 Fed. Reg. 27899 (August 4, 1986) ("the MSRP"). The MSRP, issued as a result of a court-approved Settlement Agreement in *In Re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D. Kan.), provides that crude oil overcharge funds will be divided among the states, the federal government, and injured purchasers of refined petroleum products. Under the MSRP, up to 20 percent of these crude oil overcharge funds will be reserved initially to satisfy valid claims by injured purchasers of petroleum products. Eighty percent of the funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and federal government for indirect restitution.

The OHA has been applying the MSRP to all Subpart V proceedings involving alleged crude oil violations. *See* Order Implementing the MSRP, 51 F.R. 29689 (August 20, 1986). That Order provided a period of 30 days for the filing of any objections to the application of the MSRP, and solicited comments concerning the appropriate procedures to follow in processing refund applications in crude oil refund proceedings.

On April 10, 1987, the OHA issued a Notice analyzing the numerous comments which it received in response to the August 1986 Order. 52 F.R. 11737 (the April 1987 Notice). The Notice set forth generalized procedures and provided guidance to assist claimants that wish to file refund applications for crude oil monies under the Subpart V regulations. All applicants for refunds would be required to document their purchase volumes of petroleum products during the period of Federal crude oil price controls and to prove that they were injured by the alleged overcharges. The Notice indicated that end-users of petroleum products whose businesses are unrelated to the petroleum industry would be presumed to have absorbed the crude oil overcharges, and need not submit any further proof of injury to receive a refund. Finally, we stated that refunds would be calculated on the basis of a per gallon refund amount derived by dividing crude oil violation amounts by the total consumption of petroleum products in the United States during the period of price controls. The numerator would consist of crude oil overcharge monies that were in the DOE's escrow account at the time of the M.D.L. 378, settlement, or were subsequently deposited in the escrow account, and a portion of the funds in the M.D.L. 378 escrow at the time of the settlement.

The DOE has applied these procedures in numerous cases since the April 1987 Notice, *see, e.g., Shell Oil Co.*, 17 DOE ¶ 85,204 (1988) (*Shell Oil*), and *Ernest A. Allerkamp*, 17 DOE ¶ 85,079 (1988) (*Allerkamp*), and the procedures have been approved by the United States District Court for the District of Kansas. Various States had filed a Motion with that Court, claiming that the OHA violated the Stripper Well Settlement Agreement by employing presumptions of injury for end-users and by improperly calculating the refund amount to be used in those proceedings. On August 17, 1987, the Court issued an Opinion and Order denying the States' Motion in its entirety. The Court concluded that the Settlement Agreement "does not bar OHA from permitting claimants to employ reasonable presumptions in affirmatively demonstrating injury entitling them to a refund." *In Re: The Department of Energy Stripper Well Exemption Litigation*, 671 F. Supp. 1316, 1323 (D. Kan. 1987). The Court also ruled that, in calculating the per gallon volumetric refund amount, the OHA could utilize a portion of the M.D.L. 378 overcharge monies. The latter ruling was recently affirmed by the Temporary Emergency Court of Appeals. *In Re: The Department of Energy Stripper Well Exemption Litigation*, 3 Fed. Energy Guidelines ¶ 26,604 (Temp. Emer. Ct. App. 1988).

II. Proposed Refund Procedures

A. Refund Claims

We now propose to apply the procedures discussed in the April 1987 Notice to the crude oil Subpart V proceeding that is the subject of the present determination. As noted above, $1,083,442 in alleged crude oil violation amounts is covered by this Proposed Decision. We have decided to reserve initially the full 20 percent of the alleged crude oil violation amounts, or $216,688 plus interest for direct refunds to claimants, in order to ensure that sufficient funds will be available for refunds to injured parties. The amount of the reserve may be adjusted downward later if circumstances warrant.

The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used in Subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. *See Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986) (*Mountain Fuel.*) As in non-crude oil cases, applicants will be required to document their purchase volumes and to prove that they were injured as a result of the alleged violations. Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum products, whose businesses are unrelated to the petroleum industry, and who were not subject to the DOE price regulations are presumed to have absorbed rather than passed on alleged crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond volumes of product purchased during the period of crude oil price controls. *See A. Tarricone*, 15 DOE ¶ 85,495 at 88,893-96 (1987). Reseller and retailer claimants must submit detailed evidence of injury, and may not rely on the presumptions of injury utilized in refund cases involving refined petroleum products. *Id.* They can, however, use econometric evidence of the type employed in the OHA Report to the District Court in the Stripper Well Litigation, 6 Fed. Energy Guidelines ¶ 90,507 (June 19, 1985). Applicants who executed and submitted a valid waiver pursuant to one of the escrows established in the Settlement Agreement have waived their rights to apply for crude oil refunds under Subpart V. *See Boise Cascade Corp.*, 16 DOE ¶ 85,214 at 88,411, *reconsideration denied*, 16 DOE ¶ 85,494 (1987); *Sea-Land Service, Inc.*, 16 DOE ¶ 85,496 at 88,991 n.1 (1987).

Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the crude oil violation amount involved in this determination ($1,083,442) by the total consumption of petroleum products in the United States

[1] This finding in no way represents a determination on any of the factual or legal issues involved in the Amorient enforcement proceeding that was settled by the Consent Order. Rather, it represents our determination as to the most equitable and efficient method of treating the Amorient Consent Order funds for purposes of this Subpart V proceeding.

during the period of price controls (2,020,997,335,000 gallons). *See Mountain Fuel*, 14 DOE at 88,868. This approach reflects the fact that crude oil overcharges were spread equally throughout the country by the Entitlements Program.[2] This yields a volumetric refund amount of $0.000000536 per gallon for the proceeding involved in this determination. We propose to adopt a deadline of October 31, 1989 for refund applications submitted pursuant to this Decision. *See World Oil Corp.*, 17 DOE ¶ 85,858 (1988).

As we stated in previous Decisions, a crude oil refund applicant will be required to submit only one application for crude oil overcharge funds. *See Allerkamp*, 17 DOE at 88,178. Any party that has previously submitted a refund application in crude oil refund proceedings need not file another application. A deadline of June 30, 1988 was established for all first stage crude oil refund proceedings implemented pursuant to the MSRP up to and including *Shell Oil. See A. Tarricone, Inc.*, 16 DOE ¶ 85,681 (1987); *Allerkamp*, 17 DOE at 88,178; *Shell Oil*, 17 DOE at 88,408. Accordingly, any applicant that now files a refund application will be eligible to receive a refund based only on the volumetric amounts approved subsequent to that date in the second stage of disbursements. This volumetric refund amount will be increased as additional crude oil violation amounts are received in the future. Applicants may be required to submit additional information to document their refund claims for these future amounts. Notice of any additional amounts available in the future will be published in the **Federal Register**.

B. Payments to the States and Federal Government

Under the terms of the MSRP, we propose that the remaining 80 percent of the alleged crude oil violation amounts subject to this Proposed Decision, or $866,754 plus interest, be disbursed in equal shares to the states and federal government for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Settlement Agreement. These funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Settlement Agreement.

Before taking the actions we have proposed in this Decision, we intend to publicize our proposal and solicit comments on it. Comments regarding the tentative distribution process set forth in this Proposed Decision and Order should be filed with the OHA within 30 days of its publication in the **Federal Register**.

It is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Amorient Petroleum Company, California pursuant to the Consent Order executed July 8, 1985 will be distributed in accordance with the foregoing Decision.

[FR Doc. 88-24670 Filed 10-24-88; 8:45 am]

BILLING CODE 6450-01-M

[2] The Department of Energy established the Entitlements Program to equalize access to the benefits of crude oil price controls among all domestic refiners and their downstream customers. To accomplish this goal, refiners were required to make transfer payments among themselves through the purchase and sale of "entitlements." This balancing mechanism had the effect of evenly disbursing overcharges resulting from crude oil miscertifications throughout the domestic refining industry. *See Amber Refining Inc.*, 13 DOE ¶ 85,217 at 88,564 (1985).

Proposed Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of $34,720,020.90 plus accured interest, in alleged crude oil overcharge funds obtained from Wickett Refining Company (Case No. KEF–0099), Pennzoil Company (Case No. KEF–0104), Sun Company (Case No. KEF–0105), and Phillips Petroleum Company (Case No. KEF–0111). The OHA has tentatively determined that the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Cases, 51 FR 27899 (August 4, 1986).

DATE AND ADDRESS: Comments must be filed in duplicate within 30 days from the date of publication of this notice in the **Federal Register** and should be addressed to: Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should display a conspicuous reference to the appropriate consent order firm's case number.

FOR FURTHER INFORMATION CONTACT: Miss Darlene Gee, Staff Analyst, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6602.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice s hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth the procedures that the DOE has tentatively formulated to distribute crude oil overcharge funds obtained from Wickett Refining Company, Pennzoil Company, Sun Company, and Phillips Petroleum Company. The funds are being held in interest-bearing escrow accounts pending distribution by the DOE.

The DOE has tentatively decided to distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Cases, 51 FR 27899 (August 4, 1986). Under the Modified Policy, crude oil overcharge monies are divided among the states, the federal government, and injured purchasers of refined products. Under the plan we are proposing, refunds to te states would be distributed in proportion to each state's consumption of petroleum products during the period of price controls. Refunds to eligible purchasers would be based on the number of gallons of petroleum products which they purchased and the extent to which they can demonstrate injury.

Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments must be submitted within 30 days of publication of this notice in the **Federal Register** and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except Federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: October 17, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

October 17, 1988.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Names of Firms:
Wickett Refining Company
Pennzoil Company
Sun Company
Phillips Petroleum Company

Dates of Filing:
January 11, 1988
March 10, 1988
March 18, 1988
June 24, 1988

Case Numbers:
KEF-0099
KEF-0104
KEF-0105
KEF-0111

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

The ERA has filed four Petitions for the implementation of Special Refund Procedures for crude oil overcharge funds obtained from Wickett Refining Company, Pennzoil Company, Sun Company, and Phillips Petroleum Company. These four firms remitted a total of $34,720,020.90 to the DOE.[1] This Proposed Decision and Order sets forth the OHA's plan to distribute these funds. Comments are solicited.

The general guidelines which the OHA may use to formulate and implement a plan to distribute refunds are set forth in 10 C.F.R. Part 205, Subpart V. The Subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981). We have considered the ERA's requests to implement Subpart V procedures with respect to the monies received from the four firms listed above, and have determined that such procedures are appropriate.

I. Background

On July 28, 1986, the DOE issued a Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR. 27899 (August 4, 1986) (MSRP). The MSRP, issued as a result of a court-approved Settlement Agreement in *In Re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D. Kan.), provides that crude oil overcharge funds will be divided among the states, the federal government, and injured purchasers of refined petroleum products. Under the MSRP, up to 20 percent of these crude oil overcharge funds will be reserved initially to satisfy valid claims by injured purchasers of petroleum products. Eighty percent of the funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and federal government for indirect restitution.

The OHA has been applying the MSRP to all Subpart V proceedings involving alleged crude oil violations. *See* Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). That Order provided a period of 30 days for the filing of any objections to the application of the MSRP, and solicited comments concerning the appropriate procedures to follow in processing refund applications in crude oil refund proceedings.

On April 10, 1987, the OHA issued a Notice analyzing the numerous comments which it received in response to the August 1986 Order. 52 FR 11737 (April 10, 1987). The Notice set forth generalized procedures and provided guidance to assist claimants that wish to file refund applications for crude oil monies under the Subpart V regulations. All applications for refunds would be required to document their purchase volumes of petroleum products during the period of Federal crude oil price controls and to prove that they were injured by the alleged overcharges. The Notice indicated that end-users of petroleum products whose businesses are unrelated to the petroleum industry would be presumed to have absorbed the crude oil overcharges, and need not submit any further proof of injury to receive a refund. Finally, we stated that refunds would be calculated on the basis of a per-gallon refund amount derived by dividing crude oil violation amounts by the total consumption of petroleum products in the United States during the period of price controls. The numerator would consist of crude oil overcharge monies that were in the DOE's escrow account at the time of the M.D.L. 378 settlement, or were subsequently deposited in the escrow account, and a portion of the funds in the M.D.L. 378 escrow at the time of the settlement.

The DOE has applied these procedures in numerous cases since the April 1987 Notice, *see, e.g., Shell Oil Co.*, 17 DOE ¶ 85,204 (1988) (*Shell Oil*), *Ernest A. Alerkamp*, 17 DOE ¶ 85,079 (1988) (*Allerkamp*), and the procedures have been approved by the United States District Court for the District of Kansas. Various States had filed a Motion with that Court, claiming that the OHA violated the Settlement Agreement by employing presumptions of injury for end-users and by improperly calculating the refund amount to be used in those proceedings On August 17, 1987, the Court issued an Opinion and Order denying the States' Motion in its entirety. The Court concluded that the Settlement Agreement "does not bar OHA from permitting claimants to employ reasonable presumptions in affirmatively demonstrating injury entitling them to a refund." *In Re: The Department of Energy Stripper Well Exemption Litigation*, 671 F. Supp. 1318, 1323 (D. Kan. 1987). The Court also ruled that, as specified in the April 1987 Notice, the OHA could calculate refunds based on a portion of the M.D.L. 378 overcharges. The latter ruling was recently affirmed by the Temporary Emergency Court of Appeals. *In Re: The Department of Energy Stripper Well Exemption Litigation*, 855 F.2d 865 (Temp. Emer. Ct. App. 1988).

II. The Proposed Refund Procedures

A. Refund Claims

We now propose to apply the procedures discussed in the April 1987 Notice to the crude oil Subpart V proceedings that are the subject of the present determination. As noted above, $34,720,020.90 in alleged crude oil violation amounts is covered by this Proposed Decision. We have decided to reserve initially the full 20 percent of the alleged crude oil violation amounts, or $6,944,004.18 (plus interest) for direct refunds to claimants, in order to ensure that sufficient funds will be available for

[1] Wickett Refining Co. remitted $630,000 to the DOE pursuant to a June 9, 1987, Consent Order between Wickett and the DOE. Consent Order number NOOS901222; Pennzoil Company remitted $1,370,020.90 pursuant to a settlement approved on May 12, 1987, Consent Order Number NPNG00301Z; Sun Company remitted $2,500,000 pursuant to a Consent Order entered into on November 23, 1987, Consent Order Number CSNZ000002; and Phillips Petroleum Company remitted $30,000,000 pursuant to a settlement approved on April 4, 1988, Consent Order Number NPHI00001Z.

refunds to injured parties. The amount of the reserve may be adjusted downward later if circumstances warrant.

The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used in Subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. *See Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986) (*Mountain Fuel*). As in non-crude oil cases, applicants will be required to document their purchase volumes and to prove that they were injured as a result of the alleged violations. Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry, and who were not subject to the DOE price regulations are presumed to have absorbed rather than passed on alleged crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond proof of the volumes of products purchased during the period of crude oil price controls. *See A. Tarricone, Inc.*, 15 DOE ¶ 85,495 at 88,893–96 (1987). The end-user presumption of injury can be rebutted by the States if they provide evidence to show that the specific end-user in question was not injured by the crude oil overcharges. Reseller and reseller claimants must submit detailed evidence of injury, and may not rely on the presumptions of injury utilized in refund cases involving refined petroleum products *Id.* They can, however, use econometric evidence of the type employed in the OHA Report to the District Court in the Stripper Well Litigation, 6 Fed. Energy Guidelines ¶ 90,507 (June 19, 1985). Applicant who executed and submitted a valid waiver pursuant to one of the escrows established in the Settlement Agreement have waived their rights to apply for crude oil refunds under Subpart V. *See Boise Cascade Corp.*, 16 DOE ¶ 85,214 at 88,411 (1987), *reconsideration denied*, 16 DOE ¶ 85,494 (1987), *aff'd, In Re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D. Kan. December 7, 1987) (Opinion and Order); *Sea-Land Service, Inc.*, 16 DOE ¶ 85,406 at 88,902 n.1 (1987).

Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the crude oil violation amounts involved in this determination ($34,720,030.90) by the total consumption of petroleum products in the United States during the period of price controls (2,030,987,238,000 gallons). *See Mountain Fuel*, 14 DOE at 88,896. This approach reflects the fact that crude oil overcharges were spread equally throughout the country by the Entitlements Program.[2] This yields a volumetric refund amount of $0.00001716 per gallon for the four proceedings involved in this determination. We propose to adopt a deadline of October 31, 1988, for refund applications submitted pursuant to this Decision. *See World Oil Corp.*, 17 DOE ¶ 85,656 (1988).

As we stated in previous Decisions, a crude oil refund applicant will be required to submit only one application for crude oil overcharge funds. *See Allerkamp*, 17 DOE at 88,170. Any party that has previously submitted a refund application in crude oil refund proceedings need not file another application. A deadline of June 30, 1988, was established for all first stage crude oil refund proceedings implemented pursuant to the MSRP up to and including *Shell Oil. See A. Tarricone, Inc.*, 15 DOE at 88,338; *Allerkamp*, 17 DOE at 88,170; *Shell Oil*, 17 DOE at 88,468. Any applicant that files a refund application after that deadline will be eligible to receive a refund based only on the volumetric amounts approved subsequent to that date in the second stage of disbursements. This volumetric refund amount will be increased as additional crude oil violation amounts are received in the future. Applicants may be required to submit additional information to document their refund claims for these future amounts. Notice of any additional amounts available in the future will be published in the *Federal Register*.

B. Payments to the States and Federal Government

Under the terms of the MSRP, we propose that the remaining 60 percent of the alleged crude oil violation amounts subject to this Proposed Decision, or $27,776,016.72 plus interest, be disbursed in equal shares to the states and federal government for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Settlement Agreement. These funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Settlement Agreement.

Before taking the actions we have proposed in this Decision, we intend to publicize our proposal and solicit comments on it. Comments regarding the tentative distribution process set forth in this Proposed Decision and Order should be filed with the OHA within 30 days of its publication in the **Federal Register**.

It Is Therefore Ordered That:

The refund amounts remitted to the Department of Energy by Wickett Refining Company, Pennzoil Company, Sun Company, and Phillips Petroleum Company, pursuant to the Consent Orders executed respectively on June 9, 1987, May 12, 1987, November 23, 1987, and April 4, 1988, will be distributed in accordance with the foregoing Decision.

[FR Doc. 88-24571 Filed 10-24-88; 8:45 am]
BILLING CODE 6450-01-M

[2] The Department of Energy established the Entitlements Program to equalize access to the benefits of crude oil price controls among all domestic refiners and their downstream customers. To accomplish this goal, refiners were required to make transfer payments among themselves through the purchase and sale of "entitlements." This balancing mechanism had the effect of evenly disbursing overcharges resulting from crude oil misallocations throughout the domestic refining industry. *See* Amber Refining Inc., 13 DOE ¶ 85,217 at 88,584 (1985).

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3485-9]

Redesignation of Areas for Air Quality Planning Purposes; Missouri

AGENCY: Environmental Protection (EPA).

ACTION: Notice.

SUMMARY: This notice recognizes the current air quality conditions in the Kansas City, Missouri, area (Jackson County) relative to the carbon monoxide (CO) National Ambient Air Quality Standard (NAAQS). The current air quality status for the city of Kansas City is unclassified/attainment. Based upon current air quality measurements, the classification will remain unchanged. No violations of the air quality standard have been recorded in the area for the years 1984 to 1987.

EFFECTIVE DATE: This notice will become effective on October 25, 1988.

ADDRESSES: Copies of the state submittal are available for public inspection during normal business hours at the Environmental Protection Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Carol D. LeValley at (913) 236–2893; FTS 757–2893.

SUPPLEMENTARY INFORMATION: The 1977 Clean Air Act Amendments required,

pursuant to Section 107(d) of the Act, that EPA publish a list of air quality control regions, or portions thereof, reflecting their attainment, nonattainment, or unclassified status for all criterial pollutants. Subsequently, on March 3, 1978, EPA designated the Kansas City, Missouri (Jackson County) area as unclassified for CO meaning that there were not sufficient monitoring data available to support either an attainment or a nonattainment designation. At 40 CFR Part 81, Subpart C, the areas of the state which are attainment, nonattainment, or unclassified for one or more pollutants are identified. Unclassified and attainment designations are list under the same column in 40 CFR Part 81; therefore, there will be no changes made in § 81.326 (Remainder of State) except to inform the public by way of this notice.

The state submitted a request to EPA on April 4, 1988, to change the area from unclassified to attainment. The NAAQS for CO specified in 40 CFR 50.8 state that not more than once in a year will CO concentrations exceed either: (1) The maximum allowable eight-hour concentration of 9 parts per million (ppm) of air, or (2) the maximum allowable one-hour concentration of 35 ppm. Included with the state's request was an attainment demonstration document which includes three years of air quality data showing attainment of the NAAQS for CO in the Kansas City area. It also includes mobile source CO emissions modeling using MOBILE–3 to show the effects of the Federal Motor Vehicle Emission Control Program (FMVECP) in the Kansas City area, as well as point source CO emission inventory.

This document also shows that the total CO emissions in the Kansas City area have been reduced by about 16 percent from 1984 to 1987. The FMVECP should ensure that this reduction will continue as new vehicles replace older vehicles on the highways and, therefore, the Kansas City area should remain in attainment of the CO standards in the future.

Date: September 9, 1988.

Morris Kay,
Regional Administrator.

[FR Doc. 88–24595 Filed 10–24–88 8:45 am]
BILLING CODE 6560–50–M

[FRL-3485-8]

Announcement of Actions Taken Under NSPS/NESHAP/PSD Regulations; Iowa, Kansas, and Missouri

Notice is hereby given that the Environmental Protection Agency (EPA), Region VII, has taken the following actions under the federal prevention of significant deterioration of air quality (PSD) regulation, 40 CFR Part 52 (specifically, 40 CFR 52.21); the federal Standards of Performance for New Stationary Sources (a.k.a., New Source Performance Standards, NSPS) regulation, 40 CFR Part 60; and the federal National Emission Standards for Hazardous Air Pollutants (NESHAP) regulation, 40 CFR Part 61:

(A) The following PSD permits were revised:

University of Iowa, Iowa City, Iowa: The PSD permit was issued to the University on June 9, 1987, for Boiler 11. Certain different scenarios for operation of other boilers at the University in conjunction with Boiler 11 were approved in the permit. Scenario A restricted operating conditions when Boilers 5, 10, and 11 were operating simultaneously. The permit was revised to include Boiler 6 in Scenario A if Boiler 5 is not operating. Scenario A now applies to Boilers 5 or 6, 10, and 11. Scenario C, which applied to Boilers 6, 10, and 11, was deleted. All other provisions of the permit remain in effect unchanged. *Revision Issued:* January 19, 1988.

Archer Daniels Midland Company, Cedar Rapids, Iowa: The PSD permit was issued to the company on October 21, 1986, for two coal-fired circulating fluidized bed boilers, each with a maximum heat input of 551.5 million British thermal units per hour (MMBtu/hr). The permit set forth an emission limit for fluorides of 1.5 pounds per hour, 3-hour average. The permit was unclear as to whether the emission limit applied to the emissions from each boiler or from both boilers. The revision set forth an emission limit for fluorides of 0.75 pounds per hour, 3-hour average, for each boiler. All other provisions of the permit remain in effect unchanged. *Revision Issued:* February 25, 1988.

Iowa State University, Ames, Iowa: The PSD permit was issued to the University on December 15, 1986, for two coal-fired circulating fluidized bed boilers. The permit was revised to permit the combustion of low sulfur western coal in addition to Iowa coal. Limits were placed on the following pollutants from western coal: nitrogen oxides, sulfur dioxide, carbon monoxide, fluoride, lead, and beryllium. The continuous monitoring requirements in the permit were also revised to include nitrogen oxides, and oxygen or carbon dioxide. The owner/operator of the boilers must notify EPA whenever approved fuel supplies are changed. Combinations of the different fuels may be used only upon EPA approval. All other provisions of the permit remain in effect unchanged. *Revision Issued:* June 3, 1988.

KPL Gas Service, Topeka, Kansas: The PSD permit was issued to the company on March 30, 1978, for the Jeffrey Energy Center. On May 6, 1985, EPA granted the company a 3-year construction delay for Unit 4 thus allowing construction to be discontinued until January 1, 1988. On December 18, 1987, the company requested another 3-year construction delay period for proposed Unit 4. The request was denied. The subject PSD permit expired January 1, 1988. EPA chose to not re-issue the permit because of the length of time which has lapsed and the uncertainty of future construction of Unit 4. If the company wishes to resume construction on Unit 4, it must first obtain a valid PSD permit from the Kansas Department of Health and Environment. *Decision Issued:* April 26, 1988.

(B) The following decisions relating to NSPS applicability were issued:

Tower Rock Stone Company, Sainte Genevieve, Missouri: Upon review of information received from the source, EPA has determined that ten individual pieces of equipment at Tower Rock Stone's Ste. Genevieve plant are affected facilities under 40 CFR Part 60, Subpart 000, Standards of Performance for Nonmetallic Mineral Processing Plants. The affected facilities are listed as follows: Conveyors numbered 1, 2, 4, 5, 6, and 7; the 42" x 50" Baxter Jaw Crusher; the 5' x 20' A. C. Pan Feeder; the 6' x 26' A. C. Pan Feeder; and the 6' x 16' Pioneer Screen. Construction of these facilities, as per the definition in 40 CFR § 60.2, commenced after the August 31, 1983, applicability date of Subpart 000. This fixed plant has a capacity greater than the 25-ton per hour applicability level. *Decision Issued:* April 13, 1988.

University of Missouri-Columbia, Columbia, Missouri: The University commenced construction of a 260 million British thermal unit per hour (MMBtu/hr), circulating fluidized bed boiler subject 40 CFR Part 60, Subparts D and Db. Because the University commenced construction after the Subpart D applicability date and after the Subpart Db applicability date for the pollutant nitrogen oxides (NO_x) and particulates,

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the boiler is subject to two different Subparts. This boiler is subject to the particulate and NO_x standards of Subpart Db and the SO_2 standards in Subpart D. The boiler is not affected by the SO_2 standards of Subpart Db because the University commenced construction of the boiler before the SO_2 applicability date in Subpart Db. *Decision Issued:* December 16, 1987.

Leo Journagan Construction Co., Inc., Springfield, Missouri: Upon review of information received from the source, EPA has determined that 23 individual pieces of equipment at Journagan's Shell Rock Quarry in Shell Knob, Missouri are affected facilities under 40 CFR Part 60, Supart 000, Standards of Performance for Nonmetallic Mineral Processing Plants. The affected facilities are listed as follows: the primary and secondary crushers; the primary and secondary screens; five surge bins 13 conveyors; and an elevator. Construction of these facilities, as per the definition in 40 CFR § 60.2, commenced after the August 31, 1983, applicability date in Subpart 000. This fixed plant has a capacity greater than the 25-ton per hour applicability level. *Decision Issued:* September 23, 1987.

J.H. Berra Construction Co., Inc., Saint Louis, Missouri: Upon review of information received from the source, EPA has determined that six individual pieces of equipment at J.H. Berra's Riverview Quarry South in Antonia, Missouri, are affected facilities under 40 CFR Part 60, Subpart 000, Standards of Performance for Nonmetallic Mineral Processing Plants. The affected facilities are as follows: three storage bins and three conveyors. Construction of these facilities, as per the definition in 40 CFR 60.2, commenced after the August 31, 1983, applicability date in Subpart 000. This fixed plant has a capacity greater than the 25-ton per hour applicability level. *Decision Issued:* August 21, 1987.

(C) The following decisions relating to NESHAP approval requests were issued:

Washington University School of Medicine, Saint Louis, Missouri: The University was granted an approval to construct and operate a radionuclide installation at its power plant in St. Louis, Missouri. The boiler and incinerator at the installation are affected by the requirements of Subpart I of the NESHAP regulations, 40 CFR Part 61. The approval limited the usage of Hydrogen-3 at the facility to no more than 100 millicuries per year and Carbon-14 to no more than 20 millicuries per year. *Approval Issued:* August 23, 1988.

Gardner Asphalt Corporation, Kansas City, Kansas: Gardner Asphalt submitted applications to EPA on November 17, 1987, and January 11, 1988, for a determination of NESHAP regulation applicability and approval of the construction. It was determined that the plant is subject to NESHAP Subpart M. The company was granted an approval to construct and operate an asbestor manufacturing plant in Kansas City, Kansas. *Approval Issued:* March 7, 1988.

Under section 307(b)(1) of the Clean Air Act (the Act), judicial review of any of the above actions is available only by the filing of a petition for review in the appropriate U.S. Circuit Court of Appeals within sixty (60) dasys from the date of publication of today's notice. Under section 307(b)(2) of the Act, any requirements associated with the above actions may not be challenged later in civil or criminal proceedings that may be brought by the EPA to enforce the requirements. The above determinations do not relieve the applicable sources of their responsibilities under other federal, state, and local regulations.

For the above actions, the appropriate court is the U.S. Court of Appeals for the Eighth Circuit except for actions in Kansas. The Tenth Circuit of the U.S. Court of Appeals is the appropriate Court for actions in Kansas. A petition for review must be filed on or before December 27, 1988.

Copies of the above actions and related information are available for public inspection at the following location: U.S. Environmental Protection Agency, Region VII, Air and Toxics Division, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101. Interested individuals may also contact Mr. Charles W. Whitmore, Chief, Air Compliance Section, Air Branch, ARTX, or Edwin G. Buckner at 913/236-2866 (FTS: 757-2866).

Date: October 12, 1988.

Morris Kay,

Regional Administrator.

[FR Doc. 88-24586 Filed 10-24-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-140103; FRL-3467-4]

Access to Confidential Business Information by Westat, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Westat, Incorporated (WES) of Rockville, MD for access to information which has been submitted to EPA under sections 4, 6, 8, and 11 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St. SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: Under TSCA, EPA must determine whether the manufacture, processing, distribution in commerce, use, or disposal of certain chemical substances or mixtures may present an unreasonable risk of injury to human health or the environment. Existing chemical substances, i.e., those listed on the TSCA inventory, are evaluated by the Agency under sections 4, 6, 7, and 8 of TSCA. Under section 11 of TSCA, EPA can subpoena information and testimony of witnesses to carry out TSCA.

In accordance with 40 CFR 2.306(j), EPA has determined that WES will require access to CBI submitted to EPA under sections 4, 6, 8, and 11 of TSCA to perform successfully work specified under the contract. Access to TSCA CBI by WES under this contract is being announced for the first time. EPA is issuing this notice to inform all submitters of information under sections 4, 6, 8, and 11 of TSCA that EPA may provide WES access to these materials on a need-to-know basis.

Under contract no. 68-02-4283, WES, 1650 Research Boulevard, Rockville, MD, will assist the Office of Toxic Substances' Exposure Evaluation Division in its review of information concerning PCB contaminated shredder fluff including information submitted under subpoenas issued under TSCA section 11. All access to TSCA CBI under this contract will take place at EPA Headquarters and WES's facility. Upon completing review of the CBI materials, WES will return all transferred materials to EPA. Clearance for access to TSCA CBI under this contract is scheduled to expire on September 30, 1991.

WES has been authorized for access to TSCA CBI at its facility under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. EPA has approved the WES security plan, has performed the required inspection of its facility, and has found them to be in compliance with the requirements of the manual. WES personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: October 18, 1988.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 88-24591 Filed 10-24-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3467-2]

Extension of Comment Period; Proposed Issuance of a National Pollutant Discharge Elimination System Permit in the State of Florida

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of extension of public notice comment period.

SUMMARY: EPA Region IV published a notice on August 25, 1988 in 53 FR 32442 concerning the issuance of a National Pollutant Discharge Elimination System (NPDES) General Permit No. FLG040001 in the State of Florida. The proposed NPDES general permit contains effluent limitations, prohibitions, reporting requirements and other conditions applicable to facilities which discharge or propose to discharge treated groundwater and/or stormwater incidental to the groundwater cleanup operation contaminated by automotive gasoline, aviation and/or diesel fuels. During the 30-day comment period, Region IV received requests from the Florida Petroleum Council and the American Petroleum Institute to extend the public comment period or hold a public hearing since the proposed draft permit raised issues of potentially significant concern to the petroleum industry.

In light of these requests for an extension, the public comment period is being extended until the close of business day on November 15, 1988. All comments submitted from August 25, 1988 until the close of this extension will be considered in the formulation of a final determination regarding this permit. This extension is made under authority of 40 CFR 231.8.

FOR FURTHER INFORMATION CONTACT: Mr. Roosevelt Childress, Chief, South Area Permits Unit, Facilities Performance Branch, Water Management Division, U.S. Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia, 30365, (404) 347-3012.

Dated: October 18, 1988.

Gener G. Tidwell,

Regional Administrator.

[FR Doc. 88-24587 Filed 10-24-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

October 14, 1988.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507.

Copies of these submissions may be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., Suite 140, Washington, DC 20037, or telephone (202) 857-3815. Persons wishing to comment on an information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, telephone (202) 395-3785. Copies of these comments should also be sent to the Commission. For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632-7513.

OMB No.: 3060-0128

Title: Application for Private Land Mobile and General Mobile Radio Services

Action: Revision

Respondents: Individuals, State or local governments, Business, including small business, and Non-profit institutions

Frequency of Response: On occasion

Estimated Annual Burden: 142,294 Responses, 15 minutes to six hours each (average four hours)

Needs and Uses: Filing is required for a new or modified authorization. The data is used to determine the applicant's eligibility, and for rulemaking proceedings, enforcement purposes, maintaining the automated data base, and issuing the authorizations.

OMB No.: 3060-0112

Title: Supplemental Information 72-76 MHz Operational Fixed Stations

Action: Extension

Respondents: Individuals, State or local governments, Business, including small business, and Non-profit institutions

Frequency of Response: On occasion

Estimated Annual Burden: 300 Responses, 30 minutes each

Needs and Uses: Applicants for authorization and use of frequencies within the band 72-76 MHz must agree to take whatever action is necessary to eliminate any harmful interference to TV reception on Channels 4 and 5 caused by their operation. This supplemental data is collected from applicants in certain locations to determine if they meet the requirements for the authorization.

Federal Communications Commission.

Donna R. Searcy,

Federal Communications Commission.

[FR Doc. 88-24642 Filed 10-24-88; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearings; Lansing Community College et al.

I.

1. The Commission has before it the following groups of mutually exclusive applications for new FM stations:

Applicant, and City/State	File No.	MM Docket No.
A. Lansing Community College; DeWitt, Michigan.	BPED-870811MA	88-425
B. American Indian Broadcast Group, Inc.; Dewitt, Michigan.	BPH-870814MG	
C. Mid Michigan FM, Inc.; Dewitt, Michigan.	BPH-870814MR	
D. William E. Kuiper, Jr.; Dewitt, Michigan.	BPH-870814MT	
E. Great Lakes FM Limited Partnership; Dewitt, Michigan	BPH-870814MU	
F. DeWitt Radio Incorporated Dewitt, Michigan.	BPH-870811MV	

Issue Heading and Applicant

1. (See Appendix), B
2. Comparative, All Applicants
3. Ultimate, All Applicants

APPENDIX

Additional Issue Paragraph

1. To determine (a) the facts and circumstances surrounding the certification of B (Group)'s application by Mr. Jack Bursack and whether it was appropriately certified; and (b) in light of the evidence adduced under the foregoing issue, the impact upon B (Group)'s basic qualifications to be a broadcast licensee.

II.

Applicant, and City/State	File No.	MM Docket No.
A. Tuscola Broadcasting, Inc.; Dearborn, OH.	BPH-870[illegible]MA	88-422
B. Adams Broadcasting Corporation; Dearborn, OH.	BPH-870[illegible]MB	

Issue Heading and Applicants

1. Comparative, A, B
2. Ultimate, A, B

III.

Applicant, and City/State	File No.	MM Docket No.
A. William L. Zawila; San Joaquin, CA.	BPH-880711PJ	88-430
B. Susan Lundgorg; San Joaquin, CA.	BPH-880712TE	

Issue Heading and Applicants

1. Comparative, A, B
2. Ultimate, A, B

IV.

Applicant, and City/State	File No.	MM Docket No.
A. Swanton Radio Limited Partnership; Swanton, Ohio.	BPH-870827MT	88-432
B. Walsh Communications, Inc.; Swanton, Ohio.	BPH-870827MY	
C. Munn Corporation; Swanton, Ohio.	BPH-870827HQ	
D. Swan Creek Communications; Swanton, Ohio.	BPH-870827HJ	

Issue Heading and Applicants

1. Air Hazard, A
2. Comparative, A, B, C & D
3. Ultimate, A, B, C & D

V.

Applicant, and City/State	File No.	MM Docket No.
A. Matthew D. Markel and Paul G. Kriegler a/k/a M & K Communications; Bennington, NE.	BPH-871109MB	88-439
B. Nebraska Broadcast Limited Partnership; Bennington, NE.	BPH-871109MJ	
C. Greg Esquible; Bennington, NE.	BPH-871109MO	

Issue Heading and Applicant(s)

1. Ultimate, A, B & C
2. Comparative, A, B & C

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in consolidated proceedings upon the issues listed above for each proceeding. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used to signify whether the issue in question applies to that particular applicant.

3. Non-standardized issues in these proceedings, are set forth in an Appendix to this Notice. A copy of the complete HDO's in these proceedings are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-24643 Filed 10-24-88; 8:45 am]

BILLING CODE 6712-01-M

[Rept. No. CL-88-172]

Common Carrier Public Mobile Services Information; Dates and Filing Requirements Announced for Acceptance of Applications for Block 4 Cellular RSAs

September 29, 1988.

During the months of December 1988 and January 1989, applications for Block 4 cellular RSAs will be accepted for filing. Specific filing dates and markets appear on pages 5 and 6 of this notice.

All applications for these markets must be filed in Pittsburgh, Pennsylvania. Applications sent via U.S. Postal Service must be addressed as follows: Federal Communications Commission, Cellular Telephone—Market No. (Enter Market Number), P.O. Box 371995M, Pittsburgh, PA 15250-7995.

Applications shipped via common carrier or hand carried must be brought to the following address between the hours of 8:30 a.m. and 5:00 p.m.: Federal Communications Commission, Cellular Telephone Filing, Strip Commerce Center, 28th and Liberty Avenue Pittsburgh, PA 15222.

Directions to the Strip Commerce Center filing location appear on page 4 of this notice.

Note: If the number of applications filed in the previous block of RSAs is excessive, these dates may be modified. If this is necessary a new public notice will be issued.

Acceptance of Applications for Cellular RSAs in Block 4

December 7-9, 1988

New Jersey

550. New Jersey 1—Hunterdon
551. New Jersey 2—Ocean
552. New Jersey 3—Sussex

New York

559. New York 1—Jefferson
560. New York 2—Franklin
561. New York 3—Chautauqua
562. New York 4—Yates
563. New York 5—Otsego
564. New York 6—Columbia

Pennsylvania

612. Pennsylvania 1—Crawford
613. Pennsylvania 2—McKean
614. Pennsylvania 3—Potter
615. Pennsylvania 4—Bradford
616. Pennsylvania 5—Wayne
617. Pennsylvania 6—Lawrence
618. Pennsylvania 7—Jefferson
619. Pennsylvania 8—Union
620. Pennsylvania 9—Greene
621. Pennsylvania 10—Bedford
622. Pennsylvania 11—Huntingdon
623. Pennsylvania 12—Lebanon

Rhode Island

624. Rhode Island 1—Newport

December 14-16, 1988

Maryland

467. Maryland 1—Garrett
468. Maryland 2—Kent
469. Maryland 3—Frederick

West Virginia

701. West Virginia 1—Mason
702. West Virginia 2—Wetzel
703. West Virginia 3—Monongalia
704. West Virginia 4—Grant
705. West Virginia 5—Tucker
706. West Virginia 6—Lincoln
707. West Virginia 7—Raleigh

Virginia

661. Virginia 1—Lee
662. Virginia 2—Tazewell
663. Virginia 3—Giles
664. Virginia 4—Bedford
665. Virginia 5—Bath
666. Virginia 6—Highland
667. Virginia 7—Buckingham
668. Virginia 8—Amelia
669. Virginia 9—Greensville
690. Virginia 10—Frederick
691. Virginia 11—Madison
692. Virginia 12—Caroline

January 4-6, 1989

Delaware

359. Delaware 1—Kent

Michigan

472. Michigan 1—Gogebic
473. Michigan 2—Alger
474. Michigan 3—Emmet
475. Michigan 4—Cheboygan
476. Michigan 5—Manistee
477. Michigan 6—Roscommon
478. Michigan 7—Newaygo
479. Michigan 8—Allegan
480. Michigan 9—Cass
481. Michigan 10—Tuscola

Ohio

585. Ohio 1—Williams
586. Ohio 2—Sandusky
587. Ohio 3—Ashtabula
588. Ohio 4—Mercer
589. Ohio 5—Hancock
590. Ohio 6—Morrow
591. Ohio 7—Tuscarawas
592. Ohio 8—Clinton
593. Ohio 9—Ross
594. Ohio 10—Perry
595. Ohio 11—Columbiana

January 11-13, 1989

Connecticut

357. Connecticut 1—Litchfield
358. Connecticut 2—Windham

Kentucky

443. Kentucky 1—Fulton
444. Kentucky 2—Union
445. Kentucky 3—Meade
446. Kentucky 4—Spencer
447. Kentucky 5—Barren
448. Kentucky 6—Madison
449. Kentucky 7—Trimble
450. Kentucky 8—Mason
451. Kentucky 9—Elliott
452. Kentucky 10—Powell
453. Kentucky 11—Clay

Maine

463. Maine 1—Oxford
464. Maine 2—Somerset
465. Maine 3—Kennebec
466. Maine 4—Washington

Massachusetts

470. Massachusetts 1—Franklin
471. Massachusetts 2—Barnstable

New Hampshire

548. New Hampshire 1—Coos
549. New Hampshire 2—Carroll

Vermont

679. Vermont 1—Franklin
680. Vermont 2—Addison

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 88-24187 Filed 10-24-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Bradley County Financial Corp., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 10, 1988.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Bradley County Financial Corp.*, Cleveland, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Cleveland, Cleveland, Tennessee.

2. *First Santa Rosa Banc Shares, Inc.*, Milton, Florida; to become bank holding company by acquiring 100 percent of the voting shares of First National Bank of Santa Rosa County, Milton, Florida.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Dumas Bancshares, Inc.*, Dumas, Arkansas; to acquire at least 80 percent of the voting shares of First State Bank, Gould, Arkansas.

2. *Monticello Bankshares Inc.*, Monticello, Kentucky; to acquire at least 34.1 percent of the voting shares of Bank of Clinton County, Albany, Kentucky.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First Bank System, Inc.*, Minneapolis, Minnesota; to merge with Suburban Bancorporation, Inc., Eden Prairie, Minnesota, and thereby indirectly acquire Suburban National Bank, Eden Prairie, Minnesota.

2. *Winter Park Bancshares, Inc.*, Winter, Wisconsin; to acquire 98.82 percent of the voting shares of Owen-Curtiss Financial Corporation, Owen, Wisconsin, and thereby indirectly acquire 95.75 percent of the voting shares of Owen-Curtiss State Bank, Owen, Wisconsin; and 50 percent of the voting shares of Gilman Corporation, Gilman, Wisconsin, and thereby indirectly acquire 87 percent of the voting shares of State Bank of Gilman, Gilman, Wisconsin.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Kersey Bancorp, Inc.*, Kersey, Colorado; to acquire 94.5 percent of the voting shares of The Platteville State Bank, Platteville, Colorado.

E. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Vineyard National Bancorp*, Rancho Cucamonga, California; to become a bank holding company by acquiring 100 percent of the voting shares of Vineyard National Bank, Rancho Cucamonga, California.

Board of Governors of the Federal Reserve System, October 19, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-24537 Filed 10-24-88; 8:45 am]

BILLING CODE 6210-01-M

Chemical Banking Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank

holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 16, 1988.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Chemical Banking Corporation*, New York, New York; to acquire 100 percent of the voting shares of Horizon Bancorp, Morristown, New Jersey, and thereby indirectly acquire Horizon Bank, Morristown, New Jersey; Marine National Bank, Pleasantville, New Jersey; Princeton Bank, Princeton, New Jersey; and Horizon Trust Company, N.A., Morristown, New Jersey.

In connection with this application, Applicant also proposes to acquire Horizon Brokerage Services, Inc., and thereby engage in discount brokerage services pursuant to § 225.25(b)(15); and Horizon Trust Company of Florida, N.A., Boca Raton, Florida, and thereby engage in corporate trust operations and services pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 18, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-24538 Filed 10-24-88; 8:45 am]

BILLING CODE 6210-01-M

Comerica Inc.; Acquisition of Company Engaged in Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a) or (f) of the Board's Regulation Y (12 CFR 225.23(a) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 10, 1988.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Comerica Incorporated*, Detroit, Michigan; to engage *de novo* in providing employee benefits consulting services to other business organizations. This activity has been approved by Board Order. *Norstar Bancorp, Inc.*, 71 Fed. Res. Bull. 656 (1985).

Board of Governors of the Federal Reserve System, October 18, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-24539 Filed 10-24-88; 8:45 am]

BILLING CODE 6210-01-M

First Virginia Banks, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in section 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 10, 1988.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Virginia Banks, Inc.*, Falls Church, Virginia; to engage *de novo* through its subsidiary, First Virginia Life Insurance Company, Falls Church, Virginia, in acting as principal for insurance that is directly related to extensions of credit made by banking subsidiaries and which is limited to insuring the repayment of the outstanding balances due on the extensions of credit in the event of the death or disability of the debtor pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Citizens Financial Corporation, Inc.*, Liberal, Kansas; to engage *de novo* in direct lending activities under § 225.25(b)(1) of the Board's Regulation Y.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Coble Bankshares, Inc.*, Hewitt, Texas; to engage *de novo* through its subsidiary, Global Mortgage, Inc., Waco, Texas, in arranging mortgage loans for customers of financial institutions, including location of funding sources and processing of applications and other necessary documentation pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 18, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-24540 Filed 10-24-88; 8:45 am]

BILLING CODE 6210-01-M

Fleet/Norstar Financial Group, Inc. et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than November 10, 1988.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Fleet/Norstar Financial Group, Inc.*, Providence, Rhode Island; to acquire Brokers Securities, Inc., Norfolk, Virginia, and thereby engage in securities brokerage activities pursuant to § 225.25(b)(15) of the Board's Regulation Y. Comments on this application must be received by November 8, 1988.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City Missouri 64198:

1. *United Bancshares of Nebraska, Inc.*, Omaha, Nebraska; to acquire Fremont Computer Services, Inc., Omaha, Nebraska, and thereby engage in providing to others data processing and transmission services pursuant to § 225.25(b)(7) of the Board's Regulation Y.

C. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *U.S. Bancorp*, Portland, Oregon; to acquire State Financial Services, Inc., Bend, Oregon, and thereby engage in mortgage banking activities pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y. Comments on this application must be received by November 8, 1988.

2. *Western Community Bancorp, Inc.*, Corona, California to acquire S and S Finance Company, Orange, California, and thereby engage in consumer finance activities pursuant to § 225.25(b)(1)(i) and the sale of credit-related life, accident and health insurance pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 18, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-24541 Filed 10-24-88; 8:45 am]

BILLING CODE 6210-01-M

S. W. Grotenhuis; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 8, 1988.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *S. W. Grotenhuis*, Casey, Illinois; to acquire 45 percent; Audrey G. Kumley, Cedar Rapids, Iowa, to acquire 45 percent; and Lena M. Doran, Casey, Illinois, to acquire 10 percent of the voting shares of Green City Bancshares, Inc., Green City, Missouri, and thereby indirectly acquire Farmers Bank of Green City, Green City, Missouri.

Board of Governors of the Federal Reserve System, October 18, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-24542 Filed 10-24-88; 8:45 am]

BILLING CODE 6210-01-M

Herbert S. Kendrick, Jr.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

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The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 9, 1988.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Herbert S. Kendrick, Jr.*, Brownfield, Texas, to acquire 52.31 percent; Kirby McDaniel Kendrick Children's Irrevocable Trust, Dallas, Texas, to acquire 8.72 percent; and Sam K. Kendrick Testamentary Trust, Dallas, Texas, to acquire 26.15 percent of the voting shares of Bandera Bancshares, Inc., Bandera Texas, and thereby indirectly acquire Bandera Bank, Bandera, Texas. In conjunction with this notice, Sam K. Kendrick Testamentary Trust, Dallas, Texas, also proposes to acquire 25 percent of the voting shares of Pedernales Investment Corporation, Johnson City, Texas, and thereby indirectly acquire Johnson City Bank, Johnson City, Texas.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Richard W. Arendsee*, Rancho Santa Fe, California, together with the Kawa Irrevocable Trust, Rancho Santa Fe, California, of which he is trustee, and Wak Enterprises, Rancho Santa Fe, California, a California limited partnership of which he is a managing partner; to acquire 13.26 percent of the voting shares of Southwest Bancorp, Vista, California, and thereby indirectly acquire Southwest Bank, Vista, California, and Southwest Thrift and Loan Association, Escondido, California.

Board of Governors of the Federal Reserve System, October 19, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-24543 Filed 10-24-88; 8:45 am]

BILLING CODE 6210-01-M

The Long-Term Credit Bank of Japan et al; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 10, 1988.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Long-Term Credit Bank of Japan*, Tokyo, Japan; to engage *de novo* through its subsidiary, LTCB Capital Markets, Inc., in making, acquiring, and servicing loans or other extensions of credit, issuing letters of credit and accepting drafts for Company's account or for the account of others, pursuant to § 225.25(b)(1); and leasing personal property and real property and acting as agent, broker or adviser in leasing such property pursuant to § 225.25(b)(5) of the Board's Regulation Y.

B. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Guaranty Bancshares Corporation*, Shamokin, Pennsylvania; to engage *de novo* through its subsidiary, Guaranty Financial Corp., Philadelphia, Pennsylvania, in providing tax planning and preparation services to individuals, businesses and nonprofit organizations pursuant to 225.25(b)(21); and providing advice, and possible education courses and instructional materials, to consumer on individual financial management matters, including tax planning, retirement and estate planning, budget management, debt consolidation and bankruptcy, applying for mortgages and general investment management pursuant to § 225.25(b)(20) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 19, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-24544 Filed 10-24-88; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 3, 1988.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Ben M. Robertson*, and Mary E. Roberton, both of Maryville, Tennessee; to acquire an additional 8.3 percent of the voting shares of Twin Cities Financial Services, Inc., Maryville, Tennessee, and thereby indirectly acquire Citizens Bank of Blount County, Maryville, Tennessee, as result of a stock redemption.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Beatrice Gilmore*, Algona, Iowa; to acquire 14.36 percent of the voting shares of Mid-Iowa Bancshares, Co., Algona, Iowa, and thereby indirectly acquire Iowa State Bank, Algona, Iowa.

2. *Lincoln National Corporation*, Fort Wayne, Indiana; to acquire 24.9 percent of the voting shares of Lincoln Financial Corporation, Fort Wayne, Indiana, and thereby indirectly acquire Akron Exchange State Bank, Akron, Indiana; Angola State Bank, Angola, Indiana; The City National Bank of Aurburn, Auburn, Indiana; Farmers & Merchants Bank, Bluffton, Indiana; The First State Bank of Decatur, Decatur, Indiana; Lincoln National Bank and Trust Co., Fort Wayne, Indiana; Community State Bank in Huntington, Shipshewana, Indiana; Shipshewana State Bank, Shipshewana, Indiana; The First National Bank in Wabash, Wabash, Indiana; Heritage Bank, Berrien Springs, Michigan; The Bank of Three Oaks, Three Oaks, Michigan; Rush County National Bank, Rushville, Indiana; and The Peoples Bank & Trust Company, Van Wert, Ohio.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Eugene Allen*, Meridian, Texas, to acquire 18.77 percent; Ray J. Miller, Meridian, Texas, to acquire 14.75 percent; and Cecil Wimberly, Meridian, Texas, to acquire 14.75 percent of the voting shares of Bosque Corporation, Meridian, Texas, and thereby indirectly acquire Bosque County Bank of Meridian, Meridian, Texas.

Board of Governors of the Federal Reserve System, October 19, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-24545 Filed 10-24-88; 8:45 am]

BILLING CODE 6210-01-M

Sovran Financial Corp., et al; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 10, 1988.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Sovran Financial Corporation*, Norfolk, Virginia, and Sovran Financial Corporation/Central South, Nashville, Tennessee; to acquire 100 percent of the voting shares of First National Bank of Collierville, Collierville, Tennessee.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Collins Bankcorp, Inc.*, Collins, Wisconsin; to become a bank holding company by acquiring 80 percent of the voting shares of Collins State Bank, Collins, Wisconsin.

Board of Governors of the Federal Reserve System, October 19, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-24546 Filed 10-24-88; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Activities; Correction

This notice replaces the notice appearing Thursday, September 29, 1988, and corrects the title of the collection.

The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to approve a new information collection, Public Voucher for Transportation Charges, SF-1113.

AGENCY: Office of Transportation Audits, Federal Supply Service, GSA.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC, 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), F Street at 18th, NW; Washington, DC 20405.

Annual Reporting Burden: Although the number of firms responding is not known, approximately 2.5 million SF 1113's are filed per year, taking approximately 20,833 hours to complete. However, information provided on the SF 1113 is the same as that supplied to commercial clients using commercial freight bills. An analysis of 83 private industry vouchers revealed an average of 14 data elements per voucher. The SF 1113 has only 10 data elements. The Government supplies most of the information for the GBL. Therefore, the Government forms are less burdensome to industry than use of private industry vouchers.

Purpose: Standard Form (SF) 1113 is for use by carriers in billing charges for freight, express, or passenger transportation furnished to the U.S. Government.

FOR FURTHER INFORMATION CONTACT: Betty J. Brown, (202) 786-3011.

Copy of Proposal: Readers may obtain a copy of the proposal from the Information Collection Management Branch (CAIR), Room 3014, GS Bldg., Washington, DC 20405, or by telephoning 202-535-7074.

Dated: October 7, 1988.

Mary L. Cunningham,

Acting Director, Information Management Division (CAI).

[FR Doc. 88-24559 Filed 10-24-88; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HC (Centers for Disease Control) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772-67776, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 53 FR 7403, March 8, 1988) is amended to reflect the establishment of the Center for Chronic Disease Prevention and Health Promotion by merging the Center for Health Promotion and Education; the Division of Diabetes Control and the Preventive Health and Health Services Block Grant, Center for Prevention Services; and the Division of Chronic Disease Control, Center for Environmental Health and Injury Control.

Section HC-B, Organization and Functions, is hereby amended as follows:

1. Delete in its entirety the headings, mission statement, and functional statements for the Center for Health

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Promotion and Education (HCK) and substitute the following:

Center for Chronic Disease Prevention and Health Promotion (HCL)

Plans, directs, and coordinates a national program for the prevention of premature mortality, morbidity, and disability due to chronic illnesses and conditions and promotes the overall health of the population. In carrying out this mission, the Center: (1) Plans, directs, and conducts epidemiologic, behavorial, and laboratory investigations, technology translation, demonstrations, and programs directed toward the definition, prevention, and control of chronic diseases, promoting healthy behaviors and practices, and promotiong reproduction health in conjunction with State health agencies; (2) provides leadership in the development, evaluation, and dissemination of effective health promotion, school health education, and risk reduction programs; (3) plans, develops, and maintains systems of surveillance for chronic diseases and conditions, and behavioral and other risk factors; (4) conducts epidemiologic and behavioral investigations and demonstrations related to major personal health practices and behaviors, including tobacco use, nutrition, family planning, alcohol use, and exercise in conjunction with State health agencies; (5) plans, directs, and conducts epidemiologic and evaluative investigations related to issues of access, utilization, and quality of health services aimed at the prevention and control of chronic diseases and conditions and selected adverse reproductive outcomes; (6) serves as the primary focuse for assisting States and localities through grants, cooperative agreements, and other mechanisms, in establishing and maintaining chronic disease prevention and control and health promotion programs; (7) provides training and technical consultation and assistance to States and localities in planning, establishing, maintaining, and evaluating prevention and control strategies for selected chronic disease and health promotion activities; (8) plans, coordinates, and conducts laboratory activities related to selected chronic diseases with State and local health departments, other organizations, and other CDC programs; (9) provides technical consultation and assistance to other nations in the development and implementation of programs related to chronic disease prevention and control, health promotion, school health education, and selected adverse reproductive outcomes; (10) and in carrying out the above functions, collaborates as appropriate with other Centers and offices of CDC, other PHS agencies, domestic and international public health agencies, and voluntary and professional health organizations.

2. Under the heading *Center for Environmental Health and Injury Control (HCN)*, the item (1), delete the words "and chronic disease;" and in item (8), insert the word "selected" before "chronic disease;' and in item (9), delete the words "chronic diseases and."

3. Under the heading *Center for Prevention Services (HCM)*, change item (4) to read: (4) Serves as the primary focus for assisting States and localities, through grants and other mechanisms, in establishing and maintaining prevention and control programs directed toward health problems such as vaccine-preventable diseases, acquired immunodeficiency syndrome and other sexually transmitted diseases, dental disease, and tuberculosis.

Effective Date: October 19, 1988

Otis R. Bowen,

Secretary.

[FR Doc. 88-24084 Filed 10-24-88; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 88C-0238]

Ciba Vision Corp.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba Vision Corp. has filed a petition proposing that the color additive regulations be amended to provide for the safe use of C.I. Reactive Red 180 (5-(benzoylamino)-4-hydroxy-3-[[1-sulfo-6-[[2-(sulfoxy)ethyl]sulfonyl]-2-naphthalenyl]azo]-2,7-naphthalenedisulfonic acid, tetrasodium salt, CAS Reg. No. 98114-32-0) to color contact lenses.

FOR FURTHER INFORMATION CONTACT: Mary W. Lipien, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 706(d)(1), 74 Stat. 402-403 (21 U.S.C. 376(d)(1)), notice is given that a petition (CAP 7C0212) has been filed by Ciba Vision Corp., P.O. Box 105068, Atlanta, GA 30348, proposing that 21 CFR Part 73 of the color additive regulations be amended to provide for the safe use of C.I. Reactive Red 180 (5-(benzoylamino)-4-hydroxy-3-[[1-sulfo-6-[[2-(sulfoxy)ethyl]sulfonyl]-2-naphthalenyl]azo]-2,7-naphthalene-disulfonic acid, tetrasodium salt, CAS Reg. No. 98114-32-0) to color contact lenses.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: October 17, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-24620 Filed 10-24-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No 88F-0328]

Arakawa Chemical Industries, Ltd.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration [FDA] is announcing that Arakawa Chemical Industries, Ltd., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of aromatic petroleum hydrocarbon resin, hydrogenated, as a component of paper and paperboard intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 8B4072) has been filed by Arakawa Chemical Industries, Ltd., 1-21 Hiranomachi, Higashi-Ku, Osaka 541, Japan, proposing that § 176.170 Components of paper and paperboard in contact with aqueous and fatty foods (21 CFR 176.170) be amended to provide for the safe use of aromatic petroleum hydrocarbon resin, hydrogenated, as a component of paper and paperboard intended for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: October 17, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-24622 Filed 10-24-88; 8:45 am]

BILLING CODE 4160-01-M

notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: October 17, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-24621 Filed 10-24-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88F-0325]

DuPont Canada, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that DuPont Canada, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of triisopropanolamine as an optional adjuvant substance in the production of olefin polymers intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St., SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 8B4104) has been filed by DuPont Canada, Inc., c/o Keller and Heckman, 1152 17th St. NW., Washington, DC 20036, proposing that § 177.1520 Olefin polymers (21 CFR 177.1520) be amended to provide for the safe use of triisopropanolamine as an optional adjuvant substance in the production of olefin polymers intended for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: October 17, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-24622 Filed 10-24-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88F-0323]

ICI Americas, Inc.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a furture filing, of a petition (FAP 7B3306) proposing that the food additive regulations be amended to provide for the safe use of toluene diisocyanate as a condensate modifier in the preparation of a modified cross-linked polyester resin for use in the fabrication of articles intended for repeated use in contact with foods.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 16, 1988 (48 FR 11514), FDA published a notice that it had filed a petition (FAP 7B3306) from ICI Americas, Inc., Wilmington, DE 19897, that proposed to amend the food additive regulations to provide for the safe use of toluene diisocyanate as a condensate modifier in the preparation of a modified cross-linked polyester resin for use in the fabrication of articles intended for repeated use in contact with foods. ICI Americas, Inc., has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: October 17, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-24623 Filed 10-24-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88F-0333]

Sandoz AG; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Sandoz AG has filed a petition proposing that the food additive regulations be amended to include the use of di-*tert*-butylphenyl phosphonite condensation product with piphenyl as an antioxidant for 4-metylpentene-1 copolymers used in contact with food.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 8B4100) has been filed by Sandoz AG, CH-442, Basel, Switzerland, proposing that § 178.2010 Antioxidants and/or stabilizers for polymers (21 CFR 178.2010) be amended to include the use of di-*tert*-butylphenyl phosphonite condensation product with biphenyl as an antioxidant for 4-methylpentence-1 copolymers used in contact with food.

The potential environmental impact of this section is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated October 14, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-24624 Filed 10-24-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88F-0316]

Troy Chemical Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Troy Chemical Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 3-iodo-2-propynyl butyl carbamate as an antifungal preservative in adhesives for food contact applications.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF-336), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 8B4088) has been filed by the Troy Chemical Corp., One Avenue L, Newark, NJ 07105-3885, proposing that § 175.105 *Adhesives* (21 CFR 175.105) be amended to provide for the safe use of 3-iodo-2-propynyl butyl carbamate as an

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antifungal preservative in adhesives for food contact applications.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: October 7, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-24620 Filed 10-24-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88M-0282]

Behring Diagnostics, Inc.; Premarket Approval of the Enzygost® Anti-HBc Device

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Behring Diagnostics, Inc., Somerville, NJ, for premarket approval, under the Medical Device Amendments of 1976, of the Enzygost® anti-HBc device. After reviewing the recommendation of the Microbiology Devices Panel, FDA's Center for Biologics Evaluation and Research (CBER) notified the applicant, by letter of May 18, 1988, of the approval of the application.

DATE: Petitions for administrative review by November 25, 1988.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William Tyler, Center for Biologics Evaluation and Research (HFB-230), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301-443-3431.

SUPPLEMENTARY INFORMATION: On October 26, 1988, Behring Diagnostics, Inc., Somerville, NJ 08876, submitted to CBER an application for premarket approval of the Enzygost® anti-HBc device. This in-vitro diagnostic device is indicated for detection of total antibody to hepatitis B core antigen (anti-HBc) in human serum or plasma and is to be used as an aid in the diagnosis of ongoing or previous hepatitis B infection.

On February 8, 1988, the Microbiology Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. Subsequently, the regulatory responsibility for evaluation and approval of this device was transferred to CBER because the primary intended use of the device is for screening blood. On May 18, 1988, CBER approved the application by a letter to the applicant from the Director of the Center for Biologics Evaluation and Research.

A summary of the safety and effectiveness data on which CBER based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CBER—contact William Tyler (HFB-230), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CBER's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register.

If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before November 25, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10).

Dated: October 17, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-24627 Filed 10-24-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88M-0323]

Innovative Optics, Inc.; Premarket Approval of I.O.-18 (Kolfocon A) and I.O.-32 (Kolfocon B) Rigid Gas Permeable Contact Lenses (Clear and Tinted)

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Innovative Optics, Inc., Big Spring, TX, for premarket approval, under the Medical Device Amendments of 1976, of the I.O.-18 (kolfocon A) and I.O.-32 (kolfocon B) Rigid Gas Permeable Contact Lenses. The devices are to be manufactured under an agreement with Optacryl, Inc., Englewood, CO, which has authorized Innovative Optics, Inc., to incorporate information contained in its approved application for premarket approval for the Optacryl (polyacrylate-silicone) Rigid Gas Permeable Contact Lens (Clear and Tinted). FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of August 31, 1988, of the approval of the application.

DATE: Petitions for administrative review by November 25, 1988.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7249.

SUPPLEMENTARY INFORMATION: On March 28, 1988, Innovative Optics, Inc., Big Spring, TX 79720, submitted to CDRH an application for premarket approval of the I.O.-18 (kolfocon A) and I.O.-32 (kolfocon B) Rigid Gas Permeable Contact Lenses. The I.O.-18 lens is available as a clear lens or a lens tinted blue, green, gray, or violet. The I.O. -32 lens is available as a clear lens or a lens tinted blue or green. The lenses are indicated for daily wear for the correction of visual acuity in non-aphakic persons with nondiseased eyes that are myopic or hyperopic and may correct corneal astigmatism of up to 4.00 diopters (D). The lenses are to be disinfected using a chemical (not heat) disinfection system. The tinted I.O. -18 lens contains the color additives [phthalocyaninato(2-)] copper (21 CFR 74.3045) or D&C Green No. 6 (21 CFR 74-3206) for the blue lens; phthalocynanine green (21 CFR 73.3124) for the green lens; D&C Violet No. 2 (21 CFR 74.3602) for the violet lens; and D&C Violet No. 2 (21 CFR 74-3602) D&C Green No. 6 (21 CFR 74.3206), and 4-[(2, 4-dimethylphenyl)azo]-2,4-dihydro-5-methyl-2-phenyl-3H-pyrazol-3-one (21 CFR 73.3122) for the gray lens, in accordance with the color additive provisions as cited. The tinted I.O.-32 lens contains the color additives [phthalocyaninato(2-)] copper (21 CFR 74.3045) or D&C Green No. 6 (21 CFR 74.3206) for the blue lens and phthalocyanine green (21 CFR 73.3124) for the green lens, in accordance with the color additive provisions as cited. The application includes authorization from Optacryl, Inc., Englewood, CO 80110, to incorporate the information contained in its approved application for premarket approval and related supplements for the Optacryl (polyacrylate-silicone) Rigid Gas Permeable Contact Lens (Clear and Tinted) [Docket No. 83M-0312].

On March 16, 1983, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application from Optacryl, Inc. On August 31, 1988, CDRH approved the application from Innovative Optics, Inc., by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ-460), address above.

The labeling of the approved contact lenses states that the lens is to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only. The restrictive labeling needs to be updated periodically, however, in order to new lens solutions that CDRH approves for use with approved contact lenses made of polymers other than polymethylmethacrylate, to comply with the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. *et seq.*), and regulations thereunder, and with the Federal Trade Commission Act (15 U.S.C. 41-58), as amended. Accordingly, whenever CDRH publishes a notice in the FEDERAL REGISTER of approval of a new solution for use with an approved lens, each contact lens manufacturer or PMA holder shall correct its labeling to refer to the new solution at the next printing or at any other time CDRH prescribes by letter to the applicant.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register if FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before November 25, 1988, file with the Dockets Management Branch (address above) two copies of the petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m. Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: October 14, 1988.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 88-24625 Filed 10-24-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-88-1983]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as

described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 19, 1988.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Nehemiah Housing Opportunity Program (FR-2478)

Office: Housing

Description of the Need for the Information and Its Proposed Use: Under the Nehemiah Housing Opportunity Grants Program, HUD will select nonprofit corporations through a competitive process to administer loans to the applicable families. The families will use the loans to purchase homes that are constructed or substantially rehabilitated in accordance with a HUD-approved program.

Form Number: None

Respondents: Individuals or Households, State or Local Governments, and Non-Profit Institutions

Frequency of Submission: On Occasion

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Application	150		1		8		1,200
Recordkeeping	40		1		150		4,800

Total Estimated Burden Hours: 5,250

Status: New

Contact: Stephen A. Martin, HUD, (202) 755-6720; John Allison, OMB, (202) 395-6880

Date: October 17, 1988.

[FR Doc. 88-24678 Filed 10-24-88; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-013-09-4213-12]

Realty Action; Albuquerque District, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action on proposed land disposal.

SUMMARY: The following described lands and interests therein have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C 1716):

Santa Fe County

T. 16 N., R. 9 E., NMPM
Section 28: Lot 5.
T. 15 N., R. 8 E., NMPM
Section 9: NW¼NW¼.

The area described amounts to 42.77 acres.

The public land identified for disposal is located about five (5) miles north and ten (10) miles southwest of the City of Santa Fe. NM and has high value for residential development. Due to small size lack of access, the public land receives little public use.

The purposes of the exchanges are to acquire private lands offering high value for wildlife habitat and to assist the New Mexico National Guard in acquiring a parcel of land for their use. Disposal of the public land is consistant with BLM's approved resource management plan and will not affect any local or Federal planning.

SUPPLEMENTARY INFORMATION: The land to be transferred will be subject to:

1. All mineral deposits shall be reserved to the United States along with the right to prospect for, mine and remove such deposits under applicable law.

2. The right to construct ditches and canals across said lands under authority of the Act of August 30, 1890. (26 Stat. 391; U.S.C. 945).

3. All valid existing rights and reservations of record.

Publication of this notice segregates the public lands from all appropriations under the public land laws, including the mining laws but not mineral leasing laws. This segregation shall terminate upon issuance of patent or 2 years from the date of this publication, whichever occurs first.

For detailed information concerning the notice, contact Taos Resource Area Office, Plaze Montevideo Building, Cruz Alta Road, Taos, New Mexico, phone (505) 758-8851.

On or before December 9, 1988, interested parties may submit comments to the Albuquerque District Manager, 435 Montano NE., Albuquerque, New Mexico.

Richard Fagan,

District Manager.

October 14, 1988.

[FR Doc. 88-24680 Filed 10-24-88; 8:45 am]

BILLING CODE 4310-FB-M

[UT-050-09-4212-14; U-51901]

Realty Action; Noncompetitive Sale of Public Lands in Sevier County, UT

AGENCY: Bureau of Land Management, Richfield District.

ACTION: Notice of Realty Action; Noncompetitive sale of public lands in Sevier County, Utah.

SUMMARY: The following public lands have been examined and found suitable for direct sale under section 203 of the Federal Land Policy and Management Act of 1976 at not less than the appraised fair market value of $32,000.00. The lands will not be offered for sale until 60 days after date of publication of this notice.

Salt Lake Meridian, Utah

T. 22 S., R. 3 E.,
Sec. 33, NW¼NE¼;
Sec. 35, SW¼.
T. 23 S., R. 3 E.,
Sec. 3, SE¼NE¼, E½SE¼;
Sec. 10, E½NE¼, W½SE¼;
Sec. 11, NW¼.

Containing approximately 640 acres.

The public land described above is being offered by direct sale to Johnson Livestock Company. The public land has no legal or public access, is isolated, and is surounded by land owned by Johnson Livestock Company. The public land is difficult and uneconomic to manage as part of the public lands system and is not suitable for management by another Federal department or agency.

Publication of this notice in the Federal Register segregates the above described public lands from all forms of appropriation under the public land laws and the mining laws. This segregation will end upon issuance of a patent to the lands, upon publication in the Federal Register of a notice terminating the segregation, or 270 days from the date of publication of this notice, whichever comes first.

Beginning March 1, 1989, any land not sold by direct sale will be reoffered for sale to the general public by competitive bidding. Bids will be accepted on a continuing basis until the land is sold or the sale is cancelled. The sale will be held on the first and third Wednesday of each month. Competitive sale will be by sealed bid only. No bid will be accepted for less than the appraised fair market value. Sealed bids for the unsold land will be accepted from 7:45 a.m. until 4:30 p.m. at the Richfield District Office, Bureau of Land Management, 150 East 900 North, Richfield, Utah 84701, with bid openings at 2 p.m. on the sale days.

DATE: For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, Richfield District, at the address identified above. Any objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Terms and Conditions Applicable to the Sale: Any patent, when issued, will contain certain reservations to the United States and be subject to existing rights-of-way and other valid existing rights. These include, but are not limited to, the following:

1. All minerals, including oil and gas, shall be reserved to the United States together with the right to prospect for, mine and remove the minerals under applicable law and such regulations as the Secretary of the Interior may prescribe.

2. A right-of-way will be reserved to the United States for ditches and canals constructed under the authority of the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

3. Rights-of-way Serial Numbers SL-069862 and U-20182 for Federal Aid Highways, will be reserved to the United States.

4. The patent will be subject to the following valid existing rights of record:

a. Federal oil and gas leases U-58393 and U-52291.

b. Power transmission line right-of-way U-22141 and U-36469.

SUPPLEMENTARY INFORMATION: Detailed information concerning these valid existing rights and reservations, as well as specific procedures of the sale and planning and environmental documents are available for review at the Richfield District Office.

Date: October 17, 1988.

Jerry Goodman,

District Manager.

[FR Doc. 88-24558 Filed 10-24-88; 8:45 am]

BILLING CODE 4310-DQ-M

[ES-948-09-4520-13; (ES-039937, Group 48)]

Filing of Plat of Survey of Tract No. 37 in Section 24; Alabama

October 18, 1988.

1. The plat of the survey of Tract No. 37 in Section 24, Township 18 North, Range 18 East, St. Stephens Meridian, Alabama, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on December 1, 1988.

2. The survey was made at the request of the Bureau of Indian Affairs.

3. All inquiries or protests concerning the technical aspects of the survey must be sent to the Deputy States Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., December 1, 1988.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Lane J. Bouman,

Deputy State Director for Cadastral Survey, and Support Services.

[FR Doc. 88-24657 Filed 10-24-88; 8:45 am]

BILLING CODE 4310-GJ-M

[CA-940-08-4520-12; Group 796]

Plat of Survey

October 11, 1988.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Inyo County
T. 22 N., R. 44 E.

2. This plat representing the corrective resurvey of a portion of the subdivisional lines, and the corrective resurvey of a portion of the subdivision of sections 3 and 4, Township 22 South, Range 44 East, Mount Diablo Meridian, California, under Group No. 799 California, was accepted September 1, 1988. 3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Public Information Section.

[FR Doc. 88-24675 Filed 10-24-88; 8:45 am]

BILLING CODE 4310-GJ-M

[(CO-930-08-4214-10; COC-49967)]

Notice of Proposed Withdrawal; Opportunity for Public Meeting; Colorado

October 17, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to withdraw National Forest System land near Aspen, Colorado, for 50 years to protect recreational facilities and resource values at the Buttermilk Ski Area. This notice closes the land to location and entry under the mining laws for up to two years. The land remains open to mineral leasing and to Forest Service management.

DATE: Comments on this proposed withdrawal must be received on or before January 23, 1989.

ADDRESS: Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, (303) 236-1768.

SUPPLEMENTARY INFORMATION: On October 5, 1988, the Department of Agriculture, Forest Service, filed

application to withdrew the following described National Forest System land from location and entry under the mining laws, subject to valid existing rights:

White River National Forest

Sixth Principal Meridian

T. 10 S., R. 85 W.,
Sec. 4, lot 8;
Sec. 10, lots 13, 14, 15, 17, 18, 22, SE¼;
Sec. 15, lots 1, 2, 3, 4, N½NE¼, N½SW¼SW¼NE¼, N½SE¼NE¼, N½NW¼SE¼NE¼, N½N½NW¼SW¼;
Sec. 18, lots 1, 2, 3, 4, E½NW¼NE¼, NE¼NW¼SE¼, SW¼NE¼.

The area described aggregates approximately 867.61 acres of National Forest System land in Pitkin County, Colorado.

The purpose of this withdrawal is to protect recreational facilities and high resource values within the Buttermilk Ski Area.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with this proposal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with this proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on this proposed action must submit a written request to the Colorado State Director within 90 days of the date of publication of this notice. If the authorized officer determines that a meeting should be held, the meeting will be scheduled and conducted in accordance with the Bureau of Land Management Manual, Section 2351.16B.

This application will be processed in accordance with the regulations set forth in 43 CFR Part 2310.

For a period two years from the date of publication of this notice in the Federal Register, the land will be segregated from the mining laws as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. During this period the Forest Service will continue to allow those discretionary uses that do not conflict with the ski area permit and [illegible].

Gary A. McVicker,

Deputy State Director, Lands and Renewable [illegible].

[FR Doc. 88-24569 Filed 10-24-88; 8:45 am]
BILLING CODE 4310-JB-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 15, 1988. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by November 9, 1988.

Carol D. Shull,

Chief of Registration, National Register.

ALASKA

Juneau Borough-Census Area

Mayflower School, St. Ann's and Savikko Sts., Douglas, 88002534

HAWAII

Maui County

Wananalua Congregational Church, Hana Hwy. and Haoui St., Hana, 88002533

IOWA

Calhoun County

Marsh Rainbow Arch Bridge, Hwy. M37, Lake City vicinity, [illegible]

KENTUCKY

Boyd County

US Post Office—Ashland, 1645 Winchester Ave., Ashland, 88002617

Jefferson County

Bowman Field Historic District, Taylorsville Rd. and Frontier Resrv Blvd., Louisville, 88002619

Larue County

Hodgenville Commercial Historic District, Public Sq. and N. Lincoln Blvd., Hodgenville, [illegible]
Lincoln Boyhood Home, US 31E, 1 mi. S of Athertonville, Athertonville vicinity, 88002531

McCreary County

Sharna Administrative and Commercial District, Old US 27, Sharna, [illegible]

Obin County

Old Town Historic District, Roughly bounded by E. Union, Clay, E. Washington and Liberty Sts., Hartford, 88002535

Oldham County

Russell Court, Roughly bounded by Madison St., Chestnut St., E. Jefferson St., and Maple St., La Grange, 88002612

Todd County

Allensville Historic District, KY 102/Main St., Allensville, [illegible]

Trigg County

Cadiz Downtown Historic District, Roughly Main St. from Scott to Franklin Sts., Cadiz, 88002608

NORTH CAROLINA

Bahcom County

Humphrey—Williams Plantation, NC 211 between SR 1301 and SR 1782, Lambertsville vicinity, [illegible]

OHIO

Hamilton County

Lower Price Hill Historic District, Roughly bounded by W. 8th, State, Burns, and English St., Cincinnati, [illegible]

TENNESSEE

Davidson County

Westboro Apartments, 3101 West End Ave., Nashville, [illegible]

Fayette County

Bass—Morrell House, TN 208/Bryson Rd., Ardmore, 88002615

Hawkins County

Price Public Elementary School, Hanson and Spring Sts., Rogersville, [illegible]

Shelby County

Hein Park Historic District, Bounded by Charles Pl., Jackson Ave., Tresevant St., and N. Parkway Dr., Memphis, 88002613

Warren County

Philadelphia Church of Christ, Vervilla Rd., Vervilla, 88002597

TEXAS

Anderson County

Broyles, William and Caroline, House, 1305 S. Sycamore St., Palestine, 88002614

Cameron County

Brush, Samuel Wallace, House, 423 E. St. Charles St., Brownsville, [illegible]

Hemphill County

Richardson, Asher and Mary Isabella, House, US 83, Asherton, [illegible]

Llano County

Llano County Courthouse Historic Distric, Roughly bounded by the Llano River, Ford St., Sandstone St., and Berry St., Llano, [illegible]

Tom Green County

Angelo Heights Historic District (San Angelo MRA), Roughly bounded by Colorado St., the Concho River, Live Oak St., S. Bishop St., Twohig St., and S. Wahsington St., San Angelo, [illegible]
Aztec Cleaners and Laundry Building (San Angelo MRA), 119 S. Irving, San Angelo, 88002577
Beck, Frederick, Farm (San Angelo MRA), 1231 Culberson, San Angelo, 88002566
Blakeney, J.B., House (San Angelo MRA), 436 W. Twohig, San Angelo, [illegible]
Broome, C.A., House (San Angelo MRA), 123 S. David, San Angelo, 88002567
Brown, R. Wilbur, House (San Angelo MRA), 1004 Pecos, San Angelo, 88002586
Building at 113–119 E. Concho, (San Angelo MRA), 113–119 E. Concho, San Angelo, 88002564
Clayton House (San Angelo MRA), 1101 S. David, San Angelo, 88002570
Collyns House (San Angelo MRA), 315 W. Twohig, San Angelo, 88002597
Develin House (San Angelo MRA), 913 S. David, San Angelo, [illegible]
Eckert House (San Angelo MRA), 309 Kobertin, San Angelo, 88002578
Emmanuel Episcopal Church (San Angelo MRA), 3 S. Randolph, San Angelo, 88002590
First Presbyterian Church (San Angelo MRA), 32 W. Irvin, San Angelo, 88002604
Fisher, O.C., Federal Building (San Angelo MRA), 33 E. Twohig, San Angelo, 88002592
Greater St. Paul AME Church (San Angelo MRA), 215 W. 3rd St., San Angelo, 88002548
Hagelstein Commercial Building (San Angelo MRA), 618–620 S. Chadbourne, San Angelo, [illegible]
Hall, R.A., House (San Angelo MRA), 215 W. Twohig, San Angelo, 88002595
Henderson, S.L., House (San Angelo MRA), 1303 S. Park, San Angelo, 88002583
Holcomb-Blanton Print Shop (San Angelo MRA), 24 W. Beauregard, San Angelo, 88002254
House at 1017 S. David (San Angelo MRA), 1017 S. David, San Angelo, 88002569
House at 123 Allen (San Angelo MRA), 123 Allen, San Angelo, 88002801
House at 1325 S. David (San Angelo MRA), 1325 S. David, San Angelo, 88002571
House at 140 Allen (San Angelo MRA), 140 Allen, San Angelo, 88002550
House at 1621 N. Chadbourne (San Angelo MRA), 1621 N. Chadbourne, San Angelo, 88002559
House at 203 S. David (San Angelo MRA), 203 S. David, San Angelo, 88002803
House at 221 N. Magdalen (San Angelo MRA), 221 San Angelo, 88002579
House at 405 Preusser (San Angelo MRA), 405 Preusser, San Angelo, 88002586
House at 410 Summit (San Angelo MRA), 410 Summit, San Angelo, 88002591
House at 419 West Avenue C (San Angelo MRA), 419 West Ave. C, San Angelo, 88002544
House at 421 W. Twohig (San Angelo MRA), 421 W. Twohig, San Angelo, 88002596
House at 427 W. Towhig (San Angelo MRA), 427 W. Twohig, San Angelo, 88002599
House at 521 W. Highland Blvd. (San Angelo MRA), 521 W. Highland Blvd., San Angelo, 88002575
House at 715 Austin (San Angelo MRA), 715 Austin, San Angelo, 88002551
House at 731 Preusser (San Angelo MRA), 731 Preusser, San Angelo, 88002580
Household Furniture Co. (San Angelo MRA), 11 N. Chadbourne, San Angelo, 88002556
Iglesia Santa Maria (San Angelo MRA), 7 West Ave. N, San Angelo, 88002547
Lone Wolf Crossing Bridge (San Angelo MRA), Ave. K extension, E of Oakes, San Angelo, 88002546
Mason—Hughes House (San Angelo MRA), 1104 W. Beauregard, San Angelo, 88002557
Masonic Lodge 570 (San Angelo MRA), 130 S. Oakes, San Angelo, 88002580
McClelland, J.T. and Minnie, House (San Angelo MRA), 716 W. Highland, San Angelo, 88002576
Monogram Square (San Angelo MRA), 705 W. Concho, San Angelo, 88002602
Montgomery Ward Building (San Angelo MRA), 10 W. Beauregard, San Angelo, 88002553
Municipal Swimming Pool (San Angelo MRA), 18 East Ave. A, San Angelo, 880025434
Murrah House (San Angelo MRA), 212 W. Twohig, San Angelo, 88002594
Oakes Hotel Building (San Angelo MRA), 204 S. Oakes, San Angelo, 88002561
Princess Ice Cream Co. (San Angelo MRA), 217 W. Beauregard, San Angelo, 88002556
San Angelo City Hall (San Angelo MRA), City Hall Plaza, San Angelo, 88002563
San Angelo Telephone Company Building (San Angelo MRA), 14 W. Twohig, San Angelo, 88002593
Schneemann, William, House (San Angelo MRA), 724 Preusser St., San Angelo, 88002588
Shepperson House (San Angelo MRA), 716 Preusser, San Angelo, 88002587
Texas Highway Department Building, Warehouse and Motor Vehicle Division (San Angelo MRA), 100 Paint Rock Rd., San Angelo, 88002582
Tom Green County Courthouse (San Angelo MRA), 100 W. Beauregard, San Angelo, 88002555
Walsh, C.C., House (San Angelo MRA), 922 Pecos, San Angelo, 88002584
Wardlaw, Dr. Herbert A., House (San Angelo MRA), 233 W. Twohig, San Angelo, [illegible]
West Texas Utilities Office (San Angelo MRA), 15 E. Beauregard, San Angelo, 88002552
Westbrook, John C., House (San Angelo MRA), 600 West Ave. C, San Angelo, 88002545
Willeke, John and Anton, House (San Angelo MRA), 941 E. Harris, San Angelo, 88002573
Willeke, John, Jr., House (San Angelo MRA), 1005 E. Harris, San Angelo, 88002574
Willeke, John, Sr., House (San Angelo MRA), 931 E. Harris, San Angelo, 88002572
Woodward Dr. M. M., House (San Angelo MRA) 44 W. 25th St., San Angelo 88002540

WASHINGTON

Lincoln County

Fort Spokane Military Reserve, Rt. 25, Miles vicinity, 88002621

WYOMING

Albany County

First National Bank of Rock River, 131 Ave. C, Rock River, 88002532
Laramie Downtown Historic District, Roughly bounded by University Ave., 6th St., Grand Ave., 3rd St., Garfield Ave., and 1st Ave., Laramie, [illegible]

Natrona County

South Wolcott Street Historic District, Roughly bounded by S. Center St., E. Ninth St., S. Wolcott St., E. Seventh St., S Beech St., and E. Thirteenth St., Casper, 88002809

The following property is being considered for approval of a proposed move:

UTAH

[illegible] County

Sullivan James R. and Mary E., House, Mining Boom Era Houses, 146 Main, Park City [illegible]

The following properties are also being considered for listing in the National Register but were excluded from the list dated October 1, 1988:

VERMONT

Bennington County

Yester House, West Rd., Manchester 88002051

VIRGINIA

Cumberland County

Needham, VA 45, 1.4 mi. N of jct. with US [illegible], Farmville [illegible]

[FR Doc. 88-24652 Filed 10-24-88; 8:45 am]
BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Board for International Food and Agricultural Development; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the Ninetieth Meeting of the Board for International Food and Agricultural Development (BIFAD) on November 18, 1988.

The purposes of the Meeting are: (A) To Swear-in Paul Findley, (B) to hear presentations and reports on (1) Training Task Force, (2) Evaluation of Title XII, (3) JCARD plan for implementing Environmental and Natural Resources Task Force Recommendations and (C) to have the Board take action on (1) ICOP Proposal-U.S. Bilateral Assistance; 1990's and Beyond and (2) BIFAD Proposal- Title XII for the 90ies.

The November 18, 1988 Meeting will be held in the Department of State, Room 1048, 21st and Virginia Avenue, Washington, DC 20523. Any interested person may attend and may present oral statements in accordance with procedures established by the Board and to the extent the time available for the meeting permits.

Curtis Jackson, Bureau of Science and Technology, Office of University Relations, Agency for International Development is designated as A.I.D. Advisory Committee Representative at this Meeting. It is suggested taht those

desiring further information write to Dr. Jackson, in care of the Agency for International Development, Rm. 309, SA–16, Washington, DC 20523, or telephone him on (703) 235–8929.

Dated: October 11, 1988.

Lynn Pessen,

Executive Director, ICITAP.

[FR Doc. 88–24574 Filed 10–24–88; 8:45 am]

BILLING CODE 4710–01–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31342]

Soo Line Railroad Co. et al.; Exemptions for Joint Project for Relocation of a Line of Railroad and Trackage Rights

AGENCY: Interstate Commerce Commission.

ACTION: Revocation of Class Exemptions.

SUMMARY: In this proceeding, the Soo Line Railroad Company's (Soo) class exemptions under 49 CFR 1180.2(d) (5) and (7) are revoked pending compliance by Soo with the requirements of the Coastal Zone Management Act. Revoking the exemptions will preserve the status quo pending resolution of these environmental concerns.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245 or, Carl Bausch, (202) 275–0900. (TDD for hearing impaired service (202) 275–1721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275–1271.]

Decided: October 20, 1988.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–24725 Filed 10–24–88; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–6 (Sub–No. 299X)]

Burlington Northern Railroad Co.; Abandonment Exemption in Skagit County, WA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by Burlington Northern Railroad Company of 11.27 miles of rail line in Skagit County, WA, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on November 24, 1988. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by November 4, 1988, petitions to stay must be filed by November 9, 1988, and petitions for reconsideration must be filed by November 21, 1988. Requests for a public use condition must be filed by November 4, 1988.

ADDRESSES: Send pleadings referring to Docket No. AB–6 (Sub–No. 299X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Ethel A. Allen, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. [TDD for hearing-impaired: (202) 275–1721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing-impaired is available through TDD services, (202) 275–1721.]

Decided: October 18, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 88–24557 Filed 10–24–88; 8:45 am]

BILLING CODE 7035–01–M

[1] *See Exempt. of Rail Line Aband. or Discon.—Offers of Fin. Assist.*, 4 I.C.C.2d 164, served December 21, 1987, and final rules published in the Federal Register on December 22, 1987 (52 FR 48440–48446).

DEPARTMENT OF JUSTICE

Lodging of Operable Unit Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on October 17, 1988 a proposed Operable Unit Consent Decree in *United States of America v. Ford Motor Company* and *State of Michigan v. Ford Motor Company*, Civil Action No. 88–40378 was lodged with the United States District Court for the Eastern District of Michigan. The proposed Operable Unit Consent Decree concerns the performance by Ford of a source control remedial action at an area designated an operable unit at the Spolgelberg Landfill in Green Oak Township, Livingston County, Michigan. The proposed Operable Unit Consent Decree requires the defendant to conduct the source control remedial action at this portion of the larger site, to reimburse the United States Environmental Protection Agency and the State of Michigan for oversight costs incurred during the implementation of this remedial action and for past costs not inconsistent with the National Contingency Plan.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States of America v. Ford Motor Company* D.J. Ref. 90–11–3–235.

The proposed Operable Unit Consent Decree may be examined at the office of the United States Attorney, Eastern District of Michigan, 113 Federal Building, 600 Church Street, Flint, Michigan 48502, and at the Region V Office of the Environmental Protection Agency, 230 Dearborn Street, Chicago, IL 60604. Copies of the Operable Unit Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Operable Unit Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $18.20, (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–24562 Filed 10–24–88; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Occupational Safety and Health Administration
Construction Crane Rating Chart Limitation Instructions
Recordkeeping; On occasion
Business and other for-profit; Small business or organizations
19 respondents; 4550 total burden hours; 239 hours per response
Construction Crane rating Charts, assigned machine use limitations, and attachment capacity ratings are necessary for crane use by employers using a crane, regardless of user entity.
These documentations are used to prevent overloading, misuse and procedures that will cause employee injuries.

Occupational Safety and Health Administration
Construction Oxygen and Toxic Gas Test
Recordkeeping
Businesses or other for-profit: Small businesses or organizations
196 respondents; 703 burden hours; 3.6 average burden hours per response; 0 forms
The required information is needed when internal combustion engines exhaust into an enclosed space to assure that oxygen and toxic gas levels are properly controlled to eliminate employee exposure to a hazardous environment.

Extension

Employment Standards Administration
Notice of Final Payment or Suspension of Compensation Payments
1215–0024; LS–201
On occasion
Businesses or other for-profit
500 respondents; 8,500 total hours; .25 hrs. per response; 1 form
Report is used by insurance carriers and self-insured employers to report the payment of benefits under the Act.

Mine Safety and Health Administration
Record of All Certified and Qualified Persons
Quarterly
Businesses and other for profit; small businesses or organizations
5,585 responses; 5 minutes per response; 1,854 hours
Requires coal mine operators to maintain a list of all certified and qualified persons designated to perform duties under 30 CFR Parts 75 and 77.

Signed at Washington, DC, this 20th day of October, 1988.

Terry O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 88–24672 Filed 10–24–88; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

[Docket No. M–88–182–C]

West End Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

West End Coal Company, R.D. No. 1, Box 315–A, Ashland, Pennsylvania 17921 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Last Chance Slope (I.D. No. 36–07859) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Petitioner states that no such safety catch or device is available for the steeply pitching and undulating slopes with numerous curves and knuckles present in the main haulage slopes of this anthracite mine.

3. Petitioner further believes that if "makeshift" safety devices were installed they would be activated on knuckles and curves when no emergency existed and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety

connections securely fastened around the gunboat and to the hoisting rope, above the main connecting device. The hoisting ropes would have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 25, 1988. Copies of the petition are available for inspection at that address.

Dated: October 13, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-24673 Filed 10-24-88; 8:45 am]

BILLING CODE 4510-43-M

MONITORED RETRIEVABLE STORAGE REVIEW COMMISSION

Meeting; Monitored Retrievable Storage

ACTION: Notice of meeting.

SUMMARY: The Monitored Retrievable Storage Review Commission, pursuant to its authority under Subtitle A of Pub. L. 100-203, the Nuclear Waste Policy Amendments Act of 1987, will hold public hearings to obtain the views of the public on the need for a Monitored Retrievable Storage (MRS) facility as part of the nation's nuclear waste management system. This notice announces the dates and locations of the hearings, provides procedures for participating in the hearings, and lists some of the issues that participants may want to address in their remarks.

DATES: The dates, locations, and times of the hearings are:

—December 1, 1988 in Washington, DC at the Rayburn House Office Building, Room 2322, Independence Avenue between South Capitol Street and First Street SW., Washington, DC from 10:30 a.m. to 5:00 p.m.

—December 2, 1988 in Washington, DC at the Rayburn House Office Building, Room 2322, Independence Avenue between South Capitol Street and First Street SW., Washington, DC from 9:00 a.m. to 5:00 p.m.

—January 5, 1989 in Denver, Colorado at the Stouffer Concourse Hotel, 3801 Quebec Street, Denver, CO 80207, (303-399-7500) from 9:00 a.m. to 5:00 p.m.

—January 9, 1989 in San Francisco, California at the Cathedral Hill Hotel, 1101 Van Ness Avenue, San Francisco, CA 94109, (415-776-8200) from 9:00 a.m. to 5:00 p.m.

—January 17, 1989 in Atlanta, Georgia at the Westin Plaza, Peachtree and International Boulevard, Atlanta, GA 30343 (404-659-1400), from 9:00 a.m. to 5:00 p.m.

ADDRESSES: Requests to testify should be made in writing to Ms. Paula N. Alford, Director, External Affairs, MRS Commission, 1825 K Street NW., Suite 318, Washington, DC 20006. Requests to testify must be received:

—No later than November 17, 1988 for the December 1-2, 1988 hearing in Washington, DC;

—No later than December 15, 1988 for the January 5, 1989 hearing in Denver, Colorado;

—No later than December 22, 1988 for the January 9, 1989 hearing in San Francisco, California; and

—No later than January 5, 1989 for the January 17, 1989 hearing in Atlanta, Georgia.

Interested persons may submit written comments in lieu of testifying until February 17, 1989. An original and five copies should be submitted to Commissioners, Monitored Retrievable Storage Review Commission, 1825 K Street NW., Suite 318, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Ms. Paula N. Alford, Director, External Affairs, MRS Commission, 1825 K Street NW., Suite 318, Washington, DC 20006. (202) 653-5381.

SUPPLEMENTARY INFORMATION: The Monitored Retrievable Storage Review Commission was established by the Nuclear Waste Policy Amendments Act of 1987 (Pub. L. 100-203) and charged with the responsibility "to evaluate the need for a monitored retrievable storage facility as a part of the nation's nuclear waste management system." The Commission was directed to prepare a report to Congress by June 1, 1989. That date was subsequently extended to November 1, 1989. (Pub. L. 100-507).

In carrying out its mission, the Commission decided to study the work which has been done to date in this field and to hear from all interested persons who wish to make their views known to the Commission. To achieve this goal, the Commission held a series of public briefings in July, 1988 in which certain agencies and organizations involved with the issue of monitored retrievable storage participated. Subsequently, in August and September the Commission held additional briefings with the Department of Energy and the Nuclear Regulatory Commission, which were announced in the **Federal Register**.

The purpose of the hearings announced in this notice is to solicit the views of any interested persons on whether the Commission should recommend that a monitored retrievable storage facility for spent nuclear fuel be included as part of an integrated nuclear waste management program. It should be noted, however, that the Commission was not asked by the U.S. Congress and does not intend to address siting of an MRS. That will be the Department of Energy's (DOE) responsibility if the Congress decides to permit DOE to proceed with the MRS after receiving the Commission's recommendations.

The Commission encourages any interested person to make his or her views known during the public hearings either through attendance at a meeting or in writing. The Commissioners will consider the information received when it develops its recommendations and reports to Congress.

Requests to testify should be made in writing to Ms. Paula N. Alford, Director, External Affairs, MRS Commission, 1825 K Street NW., Suite 318, Washington, DC 20006. The written request should specify the following: name, title, organization and telephone number of the person who will be testifying; name, title, organization, and telephone number of the person to contact regarding the testimony if different from the presenter; length of time desired to present testimony; and city where testimony will be given. Requests to testify must be received:

—No later than November 17, 1988 for the December 1-2, 1988 hearing in Washington, D.C;

—No later than December 15, 1988 for the January 5, 1989 hearing in Denver, Colorado;

—No later than December 22, 1988 for the January 9, 1989 hearing in San Francisco, California; and

—No later than January 5, 1989 for the January 17, 1989 hearing in Atlanta, Georgia.

To accommodate all persons requesting to testify and to allow time for questions from the Commissioners, a time limit will be placed on scheduled oral presentations. The amount of time permitted for each oral presentation will depend on the number of requests that the Commission receives. Those testifying will be notified of time constraints following receipts of their written requests. Persons testifying are asked to provide five copies of their testimony and any accompanying slides or other documentation five days in advance of their presentation to the MRS Commission, 1825 K Street NW., Suite 318, Washington, DC 20006. Persons testifying are also asked to bring 75 copies at the time of their testimony.

In addition to oral presentations scheduled in advance, the Commission will provide time at each of the hearings to hear the views of interested persons on a first come, first served basis. Participants in this part of the hearing do not need to notify the Commission in advance of their plan to attend, but they will be required to appear between 9:00 am and 12:00 noon at the hearing location on the date of the hearing and sign up for a five minute time slot during the time allotted.

Participants during both parts of the hearing should be prepared to answer questions from the Commission. A transcript of the hearings will be made.

Issues

In the legislation creating the Monitored Retrievable Storage Review Commission, Congress directed the Commission to address a number of issues in its evaluation and recommendation to Congress on the need for an MRS. The Commission has since identified additional issues that should be considered in its evaluation. Some of these issues are set forth below to focus the discussions during the public hearings. Interested persons may wish to address them in their written statements or oral remarks but need not limit their comments to them.

1. Are there specific reasons why an MRS facility should or should not be built, assuming a suitable site can be found for the facility? Consider, for example:

—Need for the facility;

—Public health and safety;

—Environmental impacts;

—Safeguards/national security;

—Transportation issues such as public health, safety and environmental effects; routing; inspection, enforcement and emergency preparedness capabilities along the routes; and the possible need for new transportation facilities;

—Predictability and reliability of the national system for the disposal of radioactive waste;

—Potential effect of the MRS facility on repository design and construction; waste package design, fabrication and standardization; and waste preparation;

—Ability of the Secretary of the U.S. Department of Energy to fulfill contractual commitments to accept spent fuel for disposal; and

—Economic issues such as the costs of building and operating an MRS compared to the costs of continued storage of spent fuel at reactors, the cost of an MRS facility to electric utility ratepayers and taxpayers and the equitable distribution of such costs; the economic consequences of siting a MRS facility on the area in which an MRS might be located; and the advisability and possible methods of trying to mitigate economic and fiscal consequences in siting an MRS.

2. Some of the proposed MRS facility functions include serving as a hub for spent fuel transportation, temporary spent-fuel storage for up to 15,000 metric tons of heavy metal (MTHM), manufacturing concrete casks in which spent fuel would be stored, and preparing the spent fuel for disposal (including consolidating fuel rods and placing the fuel in the appropriate disposal containers). If an MRS facility were to be built and operated, what functions should be carried at the facility?

3. One alternative to an MRS facility is continued at-reactor storage. Are there other viable alternatives that should be considered? What are the advantages and disadvantages of the alternatives?

4. The 1987 Amendments to the National Waste Policy Act (NWPA) place the following restrictions on the site selection, construction, and operation of an MRS facility:

—Construction of the MRS may not begin until the NRC has issued a license for the construction of the repository.

—Construction of the MRS or acceptance of waste (i.e., spent fuel or high level waste) at the MRS is prohibited during such time as the repository license is revoked by the NRC or construction of the repository ceases.

—The total quantity of waste at the MRS cannot exceed 10,000 MTHM until the repository first accepts waste.

—The quantity of waste at the MRS may not, in any case, exceed 15,000 MTHM.

The principal purpose of the restrictions is to assure that the MRS facility does not become a *de facto* repository. Are the restrictions necessary if an MRS is built? Are they appropriate? Are they adequate? If an MRS is built, are there other ways to achieve the objective?

5. When considering whether to include an MRS facility in the national nuclear waste program, what weight should be given to subjective factors such as program predictability and reliability, program flexibility, and public confidence that the national nuclear waste program will be successful?

Sherwood C. Chu,

Acting Executive Director.

October 20, 1988.

[FR Doc. 88-24607 Filed 10-24-88; 8:45 am]

BILLING CODE 6820-SZ-M

[Docket No. 50-455]

NUCLEAR REGULATORY COMMISSION

Texas Utilities Electric Co. et al., Comanche Peak Steam Electric Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The Nuclear Regulatory Commission (the Commission or NRC) is considering the issuance of an extension to the latest construction completion date specified in Construction Permit No. CPPR-126 issued to Texas Utilities Electric Company (TU Electric), Texas Municipal Power Agency, Brazos Electric Power Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc. (Applicants) for the Comanche Peak Steam Electric Station (CPSES) Unit No. 1 (the facility) located on Applicants' site in Somervell County, Texas.

Environmental Assessment

Identification of Proposed Action

The proposed action would amend the construction permit by extending the latest construction completion date from August 1, 1988 to August 1, 1991. The proposed action is in response to Applicants' request dated June 6, 1988. Construction Permit No. CPPR-127 for the CPSES Unit No. 2 is not affected by this action.

The Need for the Proposed Action

The Applicants state in their request that the proposed action is needed so they can complete the intensive program of review and reinspection which was initiated in the fall of 1984 to provide evidence of the safe design and construction of the CPSES Units No. 1 and No. 2. The remedial program was undertaken by the Applicants to respond to issues raised by the NRC

Staff, the Atomic Safety and Licensing Board (ASLB), and other sources in the operating license proceeding. Although the operating license proceeding was dismissed on July 13, 1988,[1] the review and reinspection program must still be carried out prior to the CPSES licensing for operation. The Applicants have advised the NRC Staff that they anticipate completion of the remedial program for the CPSES Unit No. 1 before the proposed latest construction completion date, including reinspection efforts, development of essential documentation regarding the adequacy of facility design and construction, and necessary redesign, and modification of affected structures, systems, and components.

Environmental Impacts of the Proposed Action

The environmental impacts associated with construction of the Comanche Peak facility are associated with both units and have been previously evaluated and discussed in the NRC Staff's Final Environmental Statement (FES) related to the proposed CPSES Unit No. 1 and No. 2, issued in June 1974, which covered the construction of both units. One of the environmental impacts, groundwater withdrawal, is the subject of a construction permit condition and will be discussed further below.

Since the proposed action concerns the extension of the construction permit, the impacts involved are all non-radiological and are associated with continued construction. There are no new significant impacts associated with the proposed action. The reinspection and modifications required by the Applicants' remedial program are equivalent to those of a maintenance or repair program. All the remedial program activities will take place within the facility, will not result in impacts to previously undisturbed areas, and will not have any significant additional environmental impact. However, there are impacts that would continue during the completion of facility construction, including the reinspection and modification activities.

The FES identified four major environmental impacts due to the construction of both units. Three of the four major environmental construction impacts discussed in the FES have already occurred and are not affected by this proposed action:

—Construction-related activities have disturbed about 400 acres of rangeland and 3,226 acres of land have been used for the construction of Squaw Creek Reservoir.
—The initial set of transmission lines and the additional planned line as discussed in the FES are complete.
—Pipelines have been relocated and the railroad spur and diversion and return lines between Lake Granbury and Squaw Creek Reservoir have been completed.

The fouth major environmental impact addressed in the FES is the community impact which would continue with the extended construction of the facility. Continuing construction does not involve community impacts different from or significantly greater than those previously considered. However, the community will be impacted for a longer period of time than was previously considered as a result of the proposed action. Activities related to the remedial program have resulted in a temporary increase in the current combined site workforce to approximately 8000, being primarily engineering and technical personnel rather than construction workers. At the present time, this workforce is basically dedicated to completion of Unit No. 1 and its preparation for operation, with a small percentage of the workforce being devoted to Unit No. 2 activities. The increase is temporary as the Applicants expect the combined workforce to decline as the remedial program nears completion and Unit No. 1 approaches fuel loading (currently planned for June 1989). When Unit No. 1 construction is completed and Unit No. 2 construction is resumed, the workforce dedicated to Unit No. 2 activities is expected to be about 4500. However, the peak workforce for both Units No. 1 and No. 2 combined is not expected to exceed 8000. The Applicants state that about 85% of the current total workforce is contractors and consultants who do not live in the area and use only temporary quarters during the workweek. While the current workforce level has caused a temporary, increased demand for services in the community and increased traffic on local roads, there are no major impacts due to the arrival of workers' families and due to demands for services necessary to support permanent residents (for example, housing and schools).

Another environmental impact discussed in the FES is the continued withdrawal of groundwater, an impact which is the subject of a condition in the construction permit. Continued construction will not have a significant effect on groundwater withdrawal beyond that already considered, even though construction has extended over a longer period of time than the staff originally anticipated. The construction permits for the CPSES Units No. 1 and No. 2 limit groundwater usage for the site to 40 gpm on an annual average basis for the duration of construction. The groundwater usage for 1986 and 1987 has averaged less than half of this amount for the site. Most construction water is being supplied by treated water from the Squaw Creek Reservoir, thus reducing the amount of groundwater being used.

The original construction permits allowed an annual average groundwater withdrawal rate for the site not exceeding 250 gpm for a period of 5 years and then 30 gpm thereafter. In July 1982, the Applicants requested an amendment to the construction permits increasing the allowable annual average groundwater withdrawal rate from 30 gpm to 40 gpm until completion of construction. The increased limit of 40 gpm to 40 gpm until completion of construction. The increased limit of 40 gpm was established in Amendments No. 6, dated August 27, 1982, to Construction Permits CPPR–126 and CPPR–127 for the CPSES Units No. 1 and No. 2, respectively. The staff evaluation of the increased site limit was predicated on the latest of the CPSES construction completion dates existing at the time, i.e., August 1, 1987 for Unit No. 2 (per Order dated April 30, 1982), or 5 years.[2] The Applicants' present request to extent the latest construction completion date of Unit No. 1 for 3 years from August 1, 1988 until August 1, 1991 necessitates evaluating the impact of continuing to withdraw groundwater for an additional 3 years at the annual average rate of 40 gpm. The staff has assessed the impact of continued groundwater withdrawal at the CPSES site at an annual average rate of 40 gpm for 5 years in light of the Applicants' April 29, 1987 request, as amended on June 6, 1988, to extend the latest construction completion date of CPPR–127 for Unit No. 2 until August 1, 1992. Consequently, that assessment is repeated herein as it encompasses the period of time for which the Applicants have requested an extension of the Unit No. 1 construction permit.

[1] Based on the ASLB's consideration of a Joint Motion for Dismissal of Proceedings by the Applicants, Intervenor Citizens Association for Sound Energy, and the NRC Staff and a Joint Stipulation regarding conditions for dismissal, both filed on July 1, 1988, the ASLB issued a Memorandum and Order (Dismissing Proceedings) on July 13, 1988. This same order dismissed the construction permit amendment proceeding relating to the staff's 1986 granting of an extension to the CPSES Unit No. 1 construction permit following an untimely request for extension by the Applicants.

[2] At that time, the latest construction completion date for Unit No. 1 was August 1, 1988.

The Applicants are withdrawing water from the Twin Mountains aquifer which is a confined aquifer in the vicinity of the site. From a geologic crossection supplied by the Applicants, the Staff determined that the aquifer is about 200 feet thick, with its upper confining layer about 250 feet below the surface. The aquifer still has artesian pressure at the site, but this may change at the present yearly rate of aquifer decline.

The Staff used the Theis non-equilibrium equation in its previous impact assessment of groundwater withdrawal at the site and which is appropriate for this case as well. The non-equilibrium equation should be used only with unconfined aquifers; however, it is expected to give a conservative estidmate (over estimate) of drawdown in a confined artesian aquifer. Using the non-equilibrium equation, the staff calculated a drawdown of 2.8 feet at the nearest offsite well (8000 feet from the power block) for a constant pumping rate of 40 gpm over 5 years.

The Staff reviewed water level measurement data from 4 nearby observation wells for the period 1975 to 1987 and determined that even though there was a steady overall decline in water level for all wells, this decline could only partially be attributed to onsite pumping of groundwater. From this review of water level data, the staff could also determine that seasonal fluctuations in water level could be of the order of 3 to 10 feet.

In addition, it should be noted that the original staff impact evaluation for the construction permit was based on a five-year annual average withdrawal rate of 250 gpm or 6.57×10^9 gallons, followed by an annual average rate of 30 gpm until the end of construction, although this was subsequently amended to 40 gpm as discussed earlier. As of July 1, 1987, approximately 5.29×10^8 gallons of groundwater had actually been withdrawn. Five additional years of withdrawal at the rate of 40 gpm would add 1.05×10^8 gallons to the withdrawal, resulting in a total withdrawal of 6.34×10^9 gallons. Hence, total groundwater depletion of the aquifer is still less than that assumed in the original construction permit impact evaluation for the first 5 years of construction.

Based on its evaluation, the Staff has concluded that the calculated impact of continuing to withdraw groundwater at an annual average rate of 40 gpm for the site until August 1, 1991 [3] is negligible and does not result in any significant additional environmental impact. Further, the Staff's conclusion is substantiated by groundwater level data collected at the site during construction and periods of large water withdrawal.

Based on the foregoing, the NRC Staff has concluded that the proposed action would have no significant environmental impact. Since this action would only extend the period of construction activities described in the FES, it does not involve any different impacts or a significant change to those impacts described and analyzed in the original environmental impact statement. Consequently, an environmental impact statement addressing the proposed action is not required.

Alternatives Considered

The NRC Staff has considered that a possible alternative to the proposed action would be for the Commission to deny the request. If this alternative were executed, the Applicants would not be able to complete construction of the facility, resulting in the denial of the benefits to be derived from the production of electric power. This alternative would not eliminate the environmental impacts of construction which have already been incurred. If construction were not completed on Unit No. 1, the amount of site redress activities that could be undertaken to restore the area to its natural state would be minimal since both Unit No. 1 and Unit No. 2 are essentially complete. This slight environmental benefit would be much outweighed by the economic losses from denial of the use of a facility that is nearly complete. Therefore, the NRC Staff has rejected this alternative.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the FES.

Agencies and Persons Contacted

The NRC Staff reviewed the Applicants' request and applicable documents referenced therein that support this extension, as well as supplemental information provided. The NRC did not consult with other agencies or persons in preparing this assessment.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for this action. Based on the environmental assessment, the Commission concludes that this action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the Applicants' request for extension dated June 6, 1988, as well as the Applicants' request dated April 29, 1987 related to unit No. 2 (supplemented on July 22, September 9, and December 3, 1987 and on June 6, 1988), available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and the local public document room at Somervell County Public Library, Glen Rose, Texas 76043.

Dated at Rockville, Maryland, this 19th day of October 1988.

For the Nuclear Regulatory Commission.

Christopher I. Grimes,

Director, Comanche Peak Project Division, Office of Special Projects.

[FR Doc. 88-24610 Filed 10-24-88; 8:45 am]

BILLING CODE 7590-01-M

[3] In light of the Applicants' April 29, 1987 request, as amended on June 6, 1988 to extend the latest construction completions for CPPR–127, the Staff has previously determined that the impact of continuing to withdraw groundwater at an annual average rate of 40 gpm for the site until August 1, 1992 is negligible and does not result in any significant additional environmental impact.

[Docket No. 50-446]

Texas Utilities Electric Co. et al., Comanche Peak Steam Electric Station, Unit No. 2; Environmental Assessment and Finding of No Significant Impact

The Nuclear Regulatory Commission (the Commission or NRC) is considering the issuance of an extension to the latest construction completion date specified in Construction Permit No. CPPR–127 issued to Texas Utilities Electric Company (TU Electric), Texas Municipal Power Agency, Brazos Electric Power Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc. (Applicants) for the Comanche Peak Steam Electric Station (CPSES) Unit No. 2 (the facility) located on Applicants' site in Somervell County, Texas.

Environmental Assessment

Identification of Proposed Action

The proposed action would amend the construction permit by extending the latest construction completion date from August 1, 1987 to August 1, 1992. The proposed action is in response to Applicants' request dated April 29, 1987, as supplemented on July 22, September 9, and December 3, 1987 and on June 6, 1988. Construction Permit No. CPPR–127 for the CPSES Unit No. 1 is not affected by this action.

The Need for the Proposed Action

Although construction of Unit No. 2 is not yet fully completed and was temporarily suspended for about one

year beginning in April 1988, the Applicants must maintain the construction permit in effect since they have not announced termination of the plant. The Applicants state in their request that the proposed action is needed so they can complete the intensive program of review and reinspection which was initiated in the fall of 1984 to provide evidence of the safe design and construction of the CPSES Units No. 1 and No. 2. The temporary direction of resources since mid-1985 to activities under that remedial program to Unit No. 1 rather than to Unit No. 2 has caused delays which have contributed to the need for the extension of the latest construction completion date for Unit No. 2. The remedial program was undertaken by the Applicants to respond to issues raised by the NRC Staff, the Atomic Safety and Licensing Board (ASLB), and other sources in the operating license proceeding. Although the operating license proceeding was dismissed on July 13, 1988,[1] the review and reinspection program must still be carried out prior to the CPSES licensing for operation. The Applicants have advised the NRC Staff that they anticipate completion of the remedial program for the CPSES Unit No. 2 before the proposed latest construction completion date, including reinspection efforts, development of essential documentation regarding the adequacy of facility design and construction, and necessary redesign, and modification of affected structures, systems, and components.

Environmental Impacts of the Proposed Action:

The environmental impacts associated with construction of the Comanche Peak facility are associated with both units and have been previously evaluated and discussed in the NRC Staff's Final Environmental Statement (FES) related to the proposed CPSES Units No. 1 and No. 2, issued in June 1974, which covered the construction of both units. One of the environmental impacts, groundwater withdrawal, is the subject of a construction permit condition and will be discussed further below.

[1] Based on the ASLB's consideration of a Joint Motion for Dismissal of Proceedings by the Applicants, Intervenor (Citizens Association for Sound Energy), and the NRC Staff and a joint stipulation regarding conditions for dismissal, both filed on July 1, 1988, the ASLB issued a Memorandum and Order (Dismissing Proceedings) on July 13, 1988. This same order dismissed the construction permit amendment proceeding relating to the staff's 1986 granting of an extension to the CPSES Unit No. 1 construction permit following an untimely request for extension by the Applicants.

Since the proposed action concerns the extension of the construction permit, the impacts involved are all non-radiological and are associated with continued construction. There are no new significant impacts associated with the proposed action. The reinspection and modifications required by the Applicant's remedial program are equivalent to those of a maintenance or repair program. All the remedial program activities will take place within the facility, will not result in impacts to previously undisturbed areas, and will not have any significant additional environmental impact. However, there are impacts that would continue during the completion of facility construction, including the reinspection and modification activities.

The FES identified four major environmental impacts due to the construction of both units. Three of the four major environmental construction impacts discussed in the FES have already occurred and are not affected by this proposed action:

—Construction-related activities have disturbed about 407 acres of rangeland and 3,228 acres of land have been used for the construction of Squaw Creek Reservoir.
—The initial set of transmission lines and the additional planned line as discussed in the FES are complete.
—Pipelines have been relocated and the railroad spur and diversion and return lines between Lake Granbury and Squaw Creek Reservoir have been completed.

The fourth major environmental impact addressed in the FES is the community impact which would continue with the extended construction of the facility. Continuing construction does not involve community impacts different from or significantly greater than those previously considered. However, the community will be impacted for a longer period of time than was previously considered as a result of the proposed action. During early 1986, the combined peak construction workforce for the site was about 5300. Since then, activities related to the remedial program have resulted in the current combined workforce of approximately 6000, an increase of 2700 workers, being primarily engineering and technical personnel rather than construction workers. At the present time, this workforce is basically dedicated to completion of Unit No. 1 and its preparation for operation, with a small percentage of the workforce being devoted to Unit No. 2 activities. The increase is temporary as the Applicants expect the combined workforce to decline as the remedial program nears completion and Unit No. 1 approaches fuel loading (currently planned for June 1989). When Unit No. 1 construction is completed and Unit No. 2 construction is resumed, the workforce dedicated to Unit No. 2 activities may reach 4500, but the peak workforce for both Units No. 1 and No. 2 combined is not expected to exceed 8000. The Applicants state that about 85% of the current workforce is contractors and consultants who do not live in the area and use only temporary quarters. While the current workforce level has caused a temporary, increased demand for services in the community and increased traffic on local roads, there are no major impacts due to the arrival of workers' families and due to demands for services necessary to support permanent residents (for example, housing and schools).

Another environmental impact discussed in the FES is the continued withdrawal of groundwater, an impact which is the subject of a condition in the construction permit. Continued construction will not have a significant effect on groundwater withdrawal beyond that already considered, even though construction has extended over a longer period of time than the staff originally anticipated. The construction permits for the CPSES Units No. 1 and No. 2 limit groundwater usage for the site to 40 gpm on an annual average basis for the duration of construction. The groundwater usage for 1985, 1986, and 1987 has averaged less than half of this amount for the site. Most construction water is being supplied by treated water from the Squaw Creek Reservoir, thus reducing the amount of groundwater being used.

The original construction permits allowed an annual average groundwater withdrawal rate for the site not exceeding 250 gpm for a period of 5 years and then 30 gpm thereafter. In July 1982, the Applicants requested an amendment to the construction permits increasing the allowable annual average groundwater withdrawal rate from 30 gpm to 40 gpm until completion of construction. The increased limit of 40 gpm was established in Amendments No. 6, dated August 27, 1982, to Construction Permits CPPR-126 and CPPR-127 for the CPSES Units No. 1 and No. 2, respectively. The staff evaluation of the increased site limit was predicated, in part, on the latest of the construction completion dates existing at the time, i.e., August 1, 1987 for Unit No. 2 (per Order dated April 30, 1982), or 5 years. The Applicants' present request to extend the latest construction completion date of Unit No. 2 for 5 years necessitates evaluating the impact of continuing to withdraw groundwater for an additional 5 years at the annual average rate of 40 gpm.

The Applicants are withdrawing water from the Twin Mountains aquifer which is a confined aquifer in the vicinity of the site. From a geologic cross-section supplied by the Applicants, the Staff determined that the aquifer is about 200 feet thick, with its upper confining layer about 250 feet below the surface. The aquifer still has artesian pressure at the site, but this may change at the present yearly rate of aquifer decline.

The Staff used the Theis non-equilibrium equation in its previous impact assessment of groundwater withdrawal at a the site and which is appropriate for this case as well. The non-equilibrium equations should be used only with unconfined aquifers; however, it is expected to give a conservative estimate (over estimate) of drawdown in a confined artesian aquifer. Using the non-equilibrium equation, the staff calculated a drawdown of 2.8 feet at the nearest offsite well (8000 feet from the power block) for a constant pumping rate of 40 gpm over 5 years.

The Staff reviewed water level measurement data from 4 nearby observation wells for the period 1975 to 1987 and determined that even though there was a steady overall decline in water level for all wells, this decline could only partially be attributed to onsite pumping of groundwater. From this review of water level data, the staff could also determine that seasonal fluctuations in water level could be of the order of 3 to 10 feet.

In addition, it should be noted that the original staff impact evaluation for the construction permit was based on a five-year annual average withdrawal rate of 250 gmp or 657×10^6 gallons, followed by an annual average rate of 30 gpm until the end of construction, though this was subsequently amended to 40 gpm as discused earlier. As of July 1, 1987, approximately 5.29×10^9 gallons of groundwater had actually been withdrawn. Five additional years of withdrawal at the rate of 40 gpm would add 105×10^6 gallons to withdrawal, resulting in a total withdrawal of 6.34×10^9 gallons. Hence, total groundwater depletion of the aquifer is still less than that assumed in the original construction permit impact evaluation for the first 5 years of construction.

Based on its evaluation, the Staff has concluded that the calculated impact of continuing to withdraw groundwater at an annual average rate of 40 gpm for the site until August 1, 1992 is negligible and does result in any significant additional environmental impact. Further, the Staff's conclusion is substantiated by groundwater level data collected at the site during construction and periods of large water withdrawal.

Based on the foregoing, the NRC Staff has concluded that the proposed action would have no significant environmental impact. Since this action would only extend the period of construction activities described in the FES, it does not involve any different impacts or a significant change to those impacts described and analyzed in the original environmental impact statement. Consequently, an environmental impact statement addressing the proposed action is not required.

Alternatives Considered

The NRC Staff has considered that a possible alternative to the proposed action would be for the Commission to deny the request. If this alternative were executed, the Applicants would not be able to complete construction of the facility, resulting in the denial of the benefits to be derived from the production of electric power. This alternative would not eliminate the environmental impacts of construction which have already been incurred. If construction were not completed on the CPSES Unit No. 2, while construction continued on Unit No. 1, the amount of site redress activities that could be undertaken to restore some of the area to its natural state would be minimal. This slight environmental benefit would be much outweighed by the economic losses from denial of the use of a facility that is nearly complete. Therefore, the NRC Staff has rejected this alternative.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the FES.

Agencies and Persons Contacted

The NRC Staff reviewed the Applicants' request and applicable documents reference therein that support this extension, as well as supplemental information provided. The NRC did not consult with other agencies or persons in preparing this assessment.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for this action. Based on the environmental assessment, the Commission concludes that this action will not have a significant effect on the quality of the human environment.

For details with respect this action, see the Applicants' request for extension dated April 29, 1987, as supplemented on July 22, September 9, and December 3, 1987 and on June 6, 1988, available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and the local public document room at Somervell County Public Library, Glen Rose, Texas 76043.

Dated at Rockville, Maryland, this 17th day of October 1988.

For the Nuclear Regulatory Commission.

Christopher I. Grimes,

Director, Comanche Peak Project Division, Office of Special Projects.

[FR Doc. 88-24611 Filed 10-24-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-87]

Environmental Assessment and Finding of No Significant Impact Regarding Termination of Facility Operating License No. R-119; Westinghouse Electric Corp., Nuclear Training Reactor Facility

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an Order terminating Facility Operating License No. R-119 for the Westinghouse Electric Corporation Nuclear Training Reactor Facility located in Zion, Illinois, in accordance with the application dated July 8, 1987, as supplemented.

Environmental Assessment

Identification of Proposed Action

By application dated July 8, 1987 as supplemented, Westinghouse Electric Corporation requested authorization to decontaminate and dismantle its Nuclear Training Reactor Facility, to dispose of its component parts in accordance with the proposed dismantling plan, and to terminate Facility Operating License No. R-119. Following an "Order Authorizing Dismantling of Facility and Disposition of Commponent Parts," dated January 29, 1988, Westinghouse Electric Corporation completed the dismantlement and submitted a final survey report on April 11, 1988. Representatives of the Oak Ridge Associated Universities, (ORAU), under contract to NRC, conducted a survey of the facility on June 9 and 10, 1988. The survey is documented in an ORAU report "Confirmatory Radiological Survey of the Westinghouse Nuclear Training Reactor Facility Westinghouse Nuclear Training Center, Zion, Illinois," S. A. Wical, August 1988. Region III, in a

memorandum dated September 6, 1988, found that the ORAU report findings support the data developed in the licensee's final survey report.

Need for Proposed Action

In order to release the facility for unrestriced access and use, Facility Oerating License No. R-119 must be terminated.

Environmental Impact of License Termination

The Westinghouse Electric Corporation, indicates that the residual contamination and dose exposures comply with the criteria of Regulatory Guide 1.86, Table 1, which established acceptable residual surface contamination levels, and the exposure limit, established by the NRC staff, of 5 micro R/hr above ground at one meter. These measurements have been verified by the NRC. The NRC finds that since these criteria have been met there is no significant impact on the environment and the facility can be released for unrestricted use.

Alternatives to the Proposed Action

Since the reactor and component parts have been dismantled and disposed of in accordance with NRC regulations and guidelines, there is no alternative to termination of Facility Operating License No. R-110

Agencies and Persons Consulted

Personnel from the Radiological Site Assesment Program, Oak Ridge Associated Universities (an NRC contractor) assisted Region III in the conduct of the Termination Survey for the Westinghouse Electric Corporation Nuclear Training Reactor Facility.

Finding of No Significant Impact

The Commission has determined not to prepare an Environmental Impact Statement for the proposed action. Based on the foregoing Environmental Assessment, the Commission has concluded that the issuance of the Order will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the application for termination of Facility Operating License No. R-119, dated July 8, 1987, as supplemented. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland this 19th day of October 1988.

For the Nuclear Regulatory Commission.

Charles L. Miller,

Director, Standardization and Non-Power Reactor Project Directorate, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-24612 Filed 10-24-88; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Leona Martin, (202) 632-0728.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on September 27, 1988 (53 FR 187). Individual authorities established or revoked under Schedule A, B, or C between September 1, 1988, and September 30, 1988, appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedule A

No schedule A authorities were established or revoked during September.

Schedule B

No schedule B authorities were established or revoked during September.

Schedule C

Department of Agriculture

One Confidential Assistant to the Administrator for the Agricultural Marketing Service. Effective September 21, 1988.

Department of the Air Force

One Secretary (Stenography) to the Assistant to the Vice President for National Security Affairs. Effective September 9, 1988.

Department of Commerce

One Confidential Assistant to the Director, Executive Programs. Effective September 15, 1988.

One Congressional Liaison Officer to the Deputy Assistant Secretary for Congressional Affairs. Effective September 20, 1988.

One Confidential Assistant to the Secretary for Trade Information and Analysis. Effective September 21, 1988.

One Confidential Assistant to the Deputy Under Secretary for the U.S. Travel and Tourism Administration. Effective September 21, 1988.

One Confidential Assistant to the Assistant Secretary for Import Administration. Effective September 23, 1988.

One Special Assistant to the Assistant Secretary for Export Administration. Effective September 27, 1988.

One Special Assistant to the Assistant Secretary for Export Administration. Effective September 30, 1988.

Department of Defense

One private Secretary to the Principal Deputy Assistant Secretary of Defense. Effective September 27, 1988.

Department of Education

One Confidential Assistant to the Assistant Secretary's Senior Special Assistant for Scheduling and Briefing. Effective September 23, 1988.

One Special Assistant to the Deputy Under Secretary for Intergovernmental and Interagency Affairs. Effective September 30, 1988.

One Special Assistant to the Director for Intergovernmental Staff Affairs. Effective September 30, 1988.

Department of Energy

One Staff Assistant to the Assistant Secretary for Congressional Intergovernmental and Public Affairs. Effective September 2, 1988.

One Confidential Assistant to the Special Assistant to the Secretary. Effective September 30, 1988.

Department of Health and Human Services

One Confidential Staff Assistant to the Director for the Office of Community Services. Effective September 8, 1988.

One Special Assistant for Compliance and Legal Assistance to the Director for the Office of Family Assistance. Effective September 9, 1988.

One Special Assistant to the Director for the Office of Family Assistance. Effective September 20, 1988.

One Deputy Director to the Director for the Office of Prepaid Health Care. Effective September 21, 1988.

One Special Assistant to the Deputy Assistant for Legislation (Health). Effective September 21, 1988.

One Special Assistant to the Administrator for Health Care Financing Administration. Effective September 28, 1988.

Department of the Interior

One Confidential Assistant to the Executive Assistant to the Secretary. Effective September 27, 1988.

Department of Justice

One Confidential Assistant to the Director for Community Relations Service. Effective September 21, 1988.

One Confidential Assistant to the Director for Asylum Policy Review. Effective September 23, 1988.

Department of Labor

One Special Assistant to the Assistant Secretary for Employment and Training. Effective September 30, 1988.

Department of State

One Special Assistant to the Assistant Secretary for Bureau of Human Rights and Humanitarian Affairs. Effective September 19, 1988.

One Legislative Officer to the Assistant Secretary for the Office of Legislative Affairs. Effective September 21, 1988.

One Protocol Officer (Visits) to the Chief of Protocol. Effective September 23, 1988.

One Associate Director to the Deputy Assistant Secretary for Equal Employment Opportunity and Civil Rights. Effective September 23, 1988.

Department of Transportation

One Staff Assistant to the Federal Highway Administrator. Effective September 9, 1988.

One Special Assistant to the Director for the Office of Public Affairs. Effective September 16, 1988.

One Special Assistant to the Assistant Secretary for Public Affairs. Effective September 21, 1988.

One Staff Assistant to the Inspector General. Effective September 29, 1988.

Department of the Treasury

One Executive Assistant to the Secretary of the Treasury. Effective September 8, 1988.

One Assistant Director, Travel and Special Event Services to the Director for Special Operations Division. Effective September 8, 1988.

One Travel Assistant to the Deputy Assistant Secretary for Administration. Effective September 21, 1988.

Commission on Civil Rights

One Special Assistant to the Staff Director. Effective September 7, 1988.

Environmental Protection Agency

Two Staff Assistants to the Assistant Administrator for Administration and Resources Management. Effective September 30, 1988.

Farm Credit Administration

One Executive Assistant to the Member. Effective September 29, 1988.

General Services Administration

One Confidential Assistant to the Commissioner for Public Buildings Service. Effective September 8, 1988.

One Confidential Assistant to the Deputy Administrator. Effective September 23, 1988.

International Trade Commission

One Staff Assistant (Legal) to the Commissioner. Effective September 8, 1988.

National Endowment for the Arts

One Special Projects Coordinator (Development) to the Chairman. Effective September 9, 1988.

National Transportation Safety Board

One Special Assistant to a Member. Effective September 16, 1988.

Small Business Administration

One Assistant Administrator to the Administrator for Public Communications. Effective September 16, 1988.

Authority: 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954-1958 Comp., P. 218.

Constance Horner,

Director, U.S. Office of Personnel Management.

[FR Doc. 88-24533 Filed 10-24-88; 8:45 am]

BILLING CODE 6325-01-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

White House Science Council (WHSC); Meeting

The White House Science Council, the purpose of which is to advise the Director, Office of science and Technology Policy (OSTP), will meet on November 10 and 11, 1988 in Room 5104, New Executive Office Building, Washington, DC. The meeting will begin at 6:00 p.m. on November 10, recess and reconvene at 8:00 a.m. on November 11, 1988. Following is the proposed agenda for the meeting:

(1) Briefing of the council, by the Assistant Directors of OSTP, on the current activities of OSTP.

(2) Briefing of the Council by OSTP personnel and personnel of other agencies on proposed, ongoing and completed panel studies.

(3) Discussion of composition of panels to conduct studies.

The November 10 and 11 meetings will be closed to the public.

The briefings on the current activities of OSTP necessarily will involve discussion of material that is formally and properly classified in accordance with the provisions of Executive Order 12356 in the interest of national defense or for foreign policy reasons. This is also true for the briefing on panel studies. As well, a portion of both of these briefings will require discussion of internal personnel procedures of the Executive Office of the President and information which, if prematurely disclosed, would significantly frustrate the implementation of decisions made requiring agency action. These portions of the meeting will be closed to the public pursuant to 5 U.S.C. 552 b.(c) (1), (2), and (9)(B).

A portion of the discussion of panel composition will necessitate the disclosure of information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly this portion of the meeting will also be closed to the public, pursuant to 5 U.S.C. 552 b.(c)(6).

Barbara J. Ulsing,

Office of Science and Technology Policy.

October 19, 1988.

[FR Doc. 88-24598 Filed 10-24-88; 8:45 am]

BILLING CODE 3175-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

United States-Canada Free-Trade Agreement; Extension of Deadline for Applications of Individuals To Serve on Binational Dispute Settlement Panels for Review of Antidumping and Countervailing Duty Determinations

AGENCY: Office of the United States Trade Representative.

ACTION: Extension until November 14, 1988 of period for receipt of applications from candidates to serve on binational panels convened to review antidumping and countervailing duty matters under Chapter 19 of the United States-Canada Free-Trade Agreement.

In an October 5, 1988 Federal Register notice (53 FR 39186-89) the Office of the

United States Trade Representative (USTR) invited applications from, and nominations of, U.S. citizens wishing to be considered for inclusion on the roster of candidates eligible to be selected to serve on binational dispute settlement panels for the review of antidumping and countervailing duty matters under Chapter 19 of the United States-Canada Free-Trade Agreement. The notice stated that nominations were to be received by October 15, 1988 and applications by October 31, 1988. In order to provide more time for individuals to apply for inclusion on the roster of candidates, the period for receipt of applications has been extended to November 14, 1988. The period for receipt of nominations has not been extended.

FOR FURTHER INFORMATION CONTACT: Dorothy Baisban, Legal Assistant, Office of the General Counsel, at (202) 395-3432.

Judith H. Bello,
General Counsel.

[FR Doc. 88-24555 Filed 10-24-88; 8:45 am]
BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-26199; File No. SR-AMEX-88-22]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Exercise of the Major Market Index Option

On September 9, 1988, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change that would change the exercise feature of its options on the Major Market Index ("XMI") from American-style to European-style. This change would permit exercise of XMI options only at expiration.

The proposed rule change was noticed in Securities Exchange Act Release No. 26079 (September 15, 1988), 53 FR 36929. No comments were received on the proposed rule change.

Currently, XMI options are subject to American-style exercise. American-style exercise permits holders of put and call options to exercise their options on any Exchange business day up to and including the last trading day (expiration Friday). European-style exercise, however, permits exercise only on expiration Friday.

The Exchange believes the change to European-style exercise will make the XMI options more appealing to investors. Currently, premiums on the XMI options reflect the risk that a long option holder will exercise before expiration and the option writer will be assigned. Without this risk, the Exchange believes XMI premiums will be lower and therefore more attractive to investors. Moreover, the Exchange believes the change to European-style exercise provides added certainty for market participants.[3]

The Amex proposes to implement the change in exercise style on a perspective basis effective at the October 1988 expiration rollover. At that time, the January 1989 expiration series will be listed with European-style exercise, with the November and December 1988 American-style series still outstanding at this time. February and March European-style series will be added at subsequent expiration rollovers.[4] The Exchange will advise its membership via circulars and other communications of the change to the XMI's exercise feature and the method of phasing in new series.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6.[5] Specifically, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act because it is designed to facilitate transactions in XMI options by providing certainty to market participants, particularly hedgers, spreaders, and options writers, and by attracting investors through lower premiums. Moreover, the Amex has designed reasonable procedures to switch XMI options from American-Style to European-style without causing undue investor confusion.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR-AMEX-88-22) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Dated: October 19, 1988.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-24579 Filed 10-24-88; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. 34-26194; File No. SR-Amex-88-17]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc., Amending Arbitration Procedures

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 24, 1988, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amex is proposing to amend Exchange Rules 602, 618 and 619 pertaining to the number of arbitrators required, the amount of the filing fee to be retained by the Exchange if an arbitration is withdrawn or settled prior to commencement of the first hearing session, and the monetary limit in simplified arbitrations involving public customers.

The text of the proposed rule change is available for review at both the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below.

The Exchange has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Securities Industry Conference on Arbitration ("SICA") has recently approved amendments to procedures set forth in the Uniform Code of Arbitration pertaining to the number of arbitrators required, the retention by an SRO of a portion of the filing fee where an arbitration is withdrawn or settled before it has reached the hearing stage, and disputes eligible for resolution through simplified procedures. The proposed rule changes are intended to conform applicable Exchange rules to the modifications approved by SICA.

The amendment to Rule 602 would provide for a panel of no less than three (3) nor more than five (5) arbitrators required to hear a matter involving a public customer where the amount in controversy exceeds $10,000. Currently, only a panel of three arbitrators is required to hear a controversy, and the threshold amount in controversy is capped at $500,000. The modification would significantly simplify and expedite the arbitration process by limiting the potential for scheduling delays, and would lower costs connected with paperwork, duplication, mailing and honoraria.

The amendment to Rule 618 would increase from $25 to $100 the portion of the administrative filing fee to be retained by the Exchange if a matter submitted for arbitration is withdrawn or settled prior to the commencement of the first hearing session. The increase would help to further defray the expense of administering the arbitration forum and better distribute costs among those using it.

The amendment to Rule 619 would increase the limit on the size of claims involving public customers eligible for resolution pursuant to the Exchange's simplified arbitration procedures from $5,000 to $10,000, and would incorporate into the Rule a filing fee of $200 in cases where the amount in controversy is more than $5,000, but does not exceed $10,000. Arbitrations conducted pursuant to the simplified procedures require the appointment of just one arbitrator, and may be decided solely on the papers unless the claimant or the arbitrator requests a hearing. The amendment would enable more public customers to benefit from the advantages provided by this procedure in terms of the overall speed, efficiency and ease with which a dispute may be resolved.

(2) Basis

The proposed rule changes are consistent with section 6(b) of the Act in general and further the objectives of section 6(b)(5) in particular in that they are designed to promote just and equitable principles of trade and protect investors and the public interest by improving the administration of an impartial forum for the resolution of disputes relating to the securities industry.

Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule changes will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule changes

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission any any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the file number in the caption above and should be submitted by November 15, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

Dated: October 18, 1988.

[FR Doc. 88-24580 Filed 10-24-88; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. 34-26196; File No. SR-MSE-87-11]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Stock Exchange, Inc., Deleting Article III, Rule 6.01 in Its Entirety

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 3, 1987, the Midwest Stock Exchange, Inc. ("MSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Article III, Rule 6 of the Rules of the MSE is hereby amended as follows:

[Deletions Bracketed]

ARTICLE III

MEMBER CORPORATIONS

Officers, Directors and Principal Stockholders

Rule 6. No change in text.

[* * * Interpretations and Policies:]

[.01 Banks and Bank Holding Companies as Principal Stockholders.—At least until pending legal and legislative questions affecting such relationships are clarified, the Exchange will not approve a bank or bank holding company as a principal stockholder or parent firm of a member corporation.]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change.

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1988).

[3] Telephone conversation between Barbara D. Salmanson, Special Counsel, Amex, and Judith Poppalardo, Staff Attorney, SEC, on October 12, 1988.

[4] Amex and other exchanges currently trade options on broad-based and/or industry indexes with a European-style exercise feature. Accordingly, the proposed modification to the XMI exercise feature does not present any novel issues.

[5] 15 U.S.C. 78f (1982).

[6] 17 CFR 200.30-3(a)(12) (1988).

[1] On September 27, 1988, the Commission received a letter from the Amex amending the language of Amex Rules 602 and 619 under the proposal, in order to conform more closely with the recently approved amendments to the Uniform Code of Arbitration, as adopted by the Securities Industry Conference on Arbitration.

The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to delete Article III, Rule 6.01 in its entirety to conform the Rule to current MSE policy. Such policy allows a member corporation to be either partially or wholly owned by a bank or bank holding company. This policy resulted from recent changes to the restrictions placed on banks or bank holding companies in respect to ownership or broker/dealers. There are approximately ten (10) current Exchange members that have as a principal shareholder a bank or bank holding company.

The proposed rule change is consistent with section 6 of the Securities Exchange Act of 1934 in that it removes restrictions upon certain broker-dealers so that such broker-dealers may become members of the Exchange.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Stock Exchange, Incorporated does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approved the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the MSE. All submissions should refer to File No. SR-MSE-87-11 and should be submitted by November 15, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

Dated: October 18, 1988.

[FR Doc. 88-24561 Filed 10-24-88; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. 34-26196; File No. SR-MSE-88-7]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Stock Exchange, Incorporated Relating to the Automated Execution of "Stopped-Out-of-Range" Orders on a "Next Sale But No Better Than Last Sale" Basis

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 16, 1988 the Midwest Stock Exchange, Inc. ("MSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSE is proposing a sixty (60) day pilot program which changes the method in which "stopped-out-of-range" orders are executed on the Exchange Floor. The proposed rule change will provide automated execution of such orders on a "next sale, but no better than the last sale" basis. Presently these orders are processed on a manual basis. This change represents an enhancement to the Midwest Automated Execution System ("MAX").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of the basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, when an Exchange co-specialist receives a buy or sell order which if executed would create a new high or low price for the day, the orders are said to be "out-of-range"; and they are "stopped". These orders are then placed in the co-specialists open order file to be manually executed when conditions permit. The orders are then executed on a "next sale, but no better than the last sale basis."

The Exchange has determined that these "stopped out-of-range" orders could be handled more efficiently through the utilization of automated execution. The benefits from such automation are twofold: first, the customer is assured of execution of the order as soon as conditions warrant; and second, the co-specialist is not burdened by the need to constantly monitor and subsequently execute these orders manually. In periods of high volume, this procedure will assure timely execution of orders. Initially, only those orders of 399 shares or less will execute automatically. The following examples illustrate the manner in which "stopped, out-of-range" orders will execute:

—Where the market is ⅝ bid—⅞ offered, and the last sale was ½ occurring on an uptick, and where the high of the day is ⅞, a buy order is stopped.
—Where the next sale is ⅝, the order is filled at ½ (no better than the last sale).
—Where the next sale is ½, the order is filled is ½.
—Where the next sale is ⅝, the order is filled at ⅝ (next sale, but no better than the last sale.

This system enhancement is consistent with section 6(b)(5) of the Act in that it is intended to facilitate transactions in securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Stock Exchange, Incorporated does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 15, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

October 18, 1988.

[FR Doc. 88-24585 Filed 10-24-88; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34- 26212; File No. SR-NASD-88-28]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Establishment of a New Registration Category for Assistant Representative—Order Processing

Notice is hereby given that on September 29, 1988, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends Schedule C of the NASD By-Laws to add an additional category of registration, Assistant Representative—Order Processing. Upon effectiveness of the proposed amendment, the new text would be designated Part IV of Schedule C and existing Parts IV–IX would be redesignated Parts V–X, respectively. The following is the full text of the proposed rule change:

Schedule C

REGISTRATION OF ASSISTANT REPRESENTATIVES—ORDER PROCESSING

(1) Registration Requirements

(a) All Assistant Representatives—Order Processing Must be Registered—All persons associated with a member who are to function as Assistant Representatives—Order Processing shall be registered with the Corporation. Before their registrations can become effective, they shall pass a Qualification Examination for Assistant Representatives—Order Processing as specified by the Board of Governors.

(b) Definition of Assistant Representive—Order Processing—Persons associated with a member who accept unsolicited customer orders for submission for execution by the member are designated as Assistant Representatives—Order Processing.

(c) Requirement for Examination on Lapse of Registration—Any person whose most recent registration as an Assistant Representative—Order Processing has been terminated for a period of two (2) or more years immediately preceding the date of receipt by the Corporation of a new application shall be required to pass a Qualification Examination for Assistant Representative—Order Processing.

(2) Restrictions

(a) Prohibited Activities—An Assitant Representative—Order Processing may not solicit transactions or new accounts on behalf of the member, render investment advice, make recommendations to customers regarding the appropriateness of securities transactions, or effect transactions in securities markets on behalf of the member. Persons registered in this category may not be registered concurrently in any other capacity.

(b) Compensation—Members may only compensate Assistant Representatives—Order Processing on an hourly wage or salaried basis and may not in any way, directly or indirectly, relate their compensation to the number of size of transactions effected for customers. This provision shall not prohibit persons registered in this capacity from receiving bonuses or other compensation based on a member's profit sharing plan or similar arrangement.

(c) Supervision—The activities of Assistant Representatives—Order Processing may only be conducted at a business location of the member that is under the direct supervision of an appropriately registered principal.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, The Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below.

[1] The NASD originally submitted the proposed rule change on July 1, 1988 and an amendment on August 30, 1988.

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of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, The Proposed Rule Change

The NASD currently requires that persons who accept customer orders be registered as General Securities Representatives. The growth of discount brokerage operations in recent years has raised questions regarding the appropriateness of this requirement and the desirability of establishing a new category of registration more reflective of the actual job responsibilities of those whose function is limited to the acceptance of unsolicited customer orders. The proposed rule change would establish the category of Assistant Representative—Order Processing for those employees of NASD members whose activities are so limited.[2]

The proposed rule change is consistent with the provisions of Section 15A(g)(3) of the Securities Exchange Act of 1934, which provides for the establishment by the NASD of standards of training, experience, and competence for persons seeking to associate with a registered broker-dealer.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the establishment of a registered category for Assistant Representative—Order Processing imposes any burden on competition that is not necessary or appropriate in furtherance of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The NASD received 65 comment letters in response to the publication of an Assistant Representative—Order Processing proposal in Notice to Members 87–47. Of these, 46% favored the proposal and 66% opposed it. Those who favored it stated that the new category represented an appropriate level of examination and registration, and that it would neither lower industry qualification standards nor present significant supervisory burdens. Those who opposed the proposal expressed concern that the qualification standards would be lowered and/or the supervisory burden of monitoring the activities of Assistant Representatives would be substantial. The NASD Board of Governors considered all of the comments, made some modifications to the proposal, and approved the proposed rule change as set forth in this Notice of Proposed Rule Change. In light of the comments raised about the NASD's ability to monitor the use of this new category of registration, the NASD has proposed special procedures to monitor compliance with the restrictions of the proposed category.[3]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD.

All submissions should refer to file number SR-NASD-88-20 and should be submitted by November 15, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: October 19, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-24653 Filed 10-24-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-26197; File No. SR-PSE-88-14]

Self-Regulatory Organizations; Proposed Rule Change by the Pacific Stock Exchange Incorporated Relating to Revocation of a Market Maker Letter of Guarantee

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 3, 1988, the Pacific Stock Exchange Incorporated ("PSE" or the "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to amend Exchange Rule IV, section 77, paragraph (c), to reflect that a Letter of Guarantee is not considered revoked until a final letter of revocation (as opposed to an interim revocation) is filed, and to add Commentary .01, which requires that market makers subject to an interim revocation effect only closing transactions. (Brackets indicate language to be deleted, italic indicates new language.)

Rule VI

Letters of Guarantee

Section 77. (a) and (b) No change.

(c) "Revocation of Letter of Guarantee." A Letter of Guarantee filed with the Exchange shall remain in effect until a *final* written notice of revocation has been filed with the Exchange and posted on the bulletin board of the Exchange Options Trading Floor of the Exchange. If such *final* written notice has not been posted for at least one hour prior to the opening of trading on a particular business day, such revocation shall not become effective until the close of trading on such day. A *final* revocation shall in no way relieve a clearing member of responsibility for transactions guaranteed prior to the effective date of such *final* revocation.

Commentary:

.01 When an individual is subject to a written interim notice of revocation or has otherwise ceased to be a member of the Exchange and open positions remain in a Market Maker Account, held by such individual, closing transactions only may be effected for such account for the period between the effective date of the written interim notice of revocation or the date the individual otherwise ceases to be a member and the effective date of the final notice of revocation required by paragraph (c) of this section.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of this amendment is to clarify the obligations of individuals subject to a written interim notice of revocation or who have otherwise ceased to be members of the Exchange, but retain open positions in a market maker account. Paragraph (c) of Exchange Rule VI, section 77, is amended to reflect that a Letter of Guarantee is not considered revoked until a final letter of revocation (as opposed to an interim revocation) is filed. The proposed Commentary .01 provides that such individuals may only effect closing transactions in such accounts during the period between the effective date of a written interim notice of revocation or the date the individual ceased to be a member of the Exchange and the effective date of the final written notice of revocation.

The Exchange believes the proposed rule change is consistent with section 6(b)(5) of the Securities Exchange Act of 1934 ("the Act"), in that it will serve to protect investors and the public interest by more clearly communicating a market maker's obligation to effect only closing transactions when no longer a member of the Exchange.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 15, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 18, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-24582 Filed 10-24-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-26200; File No. SR-PSE-88-21]

Self-Regulatory Organizations; Pacific Stock Exchange Inc.; Order Approving Proposed Rule Change Relating to Options Charges

I. Introduction

On August 25, 1988, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Commission, pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder,[1] a proposed rule change that would adopt four options charges: The Market Maker Fee, the Market Maker Give-up Charge, the Stock Execution Fee, and the Independent Broker Fee.[2] The proposed rule change was noticed in Securities Exchange Act Release No. 26074, September 12, 1988, 53 FR 35534. No comments were received in response to the Commission's **Federal Register** notice of this proposal.

II. Description of Proposed Rule

As stated above, the proposed rule change would adopt four options charges proposed by PSE. First, the Exchange proposes a flat fee of $600.00 per month on all market makers. The Exchange states that the fee is intended to cover the cost of supporting the options trading system. Market makers without trading experience would be exempt from this fee for the first six months of their membership. Special members and market makers on a leave of absence would also be exempt. The proposed fee would be reviewed by the Exchange on a semi-annual basis.

Second, the PSE proposes a Market Maker Give-up Charge of $.075 on market maker business that is not effected by the market maker in person. The PSE states that this charge reflects, in part, the estimated time spent and costs incurred by the Exchange for the additional surveillance required to monitor these trades.

Third, the Exchange proposes a Stock Execution Fee, a flat monthly fee of $1,000 for each member firm that

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[1] 15 U.S.C. 78s(b) and 17 CFR 240 19b-4.

[2] The PSE's Market Maker Fee, Market Maker Give-up Charge, and Stock Execution Fee were originally approved by the Exchange and submitted to the Commission in File No. SR-PSE-88-11. Subsequently, the Stock Execution Fee was amended by the Exchange in File No. SR-PSE-88-16. In addition, that filing amended the Floor Broker Fee, previously adopted by the Exchange in SR-PSE-88-11, and changed it into the Independent Broker Fee. All four of these fees were deleted and then reinstated for a 60 day period by the Exchange in File No. SR-PSE-88-20. *See* discussion at p. 3, *infra*.

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[3] In a telephone conversation between Jacqueline D. Whelan, NASD and Katherine A. England, Branch Chief, OTC Branch, Division of Market Regulation, the NASD indicated to the Commission that the Association expects to file the exam relating to this category in January 1989.

[3] See letter from Jacqueline D. Whelan, NASD to Katherine England, SEC (August 29, 1988).

engages in a stock execution business or service on an agency basis.

Fourth, the PSE proposes an Independent Broker Fee of $.02 per contract side imposed only on transactions by independent brokers.

III. Discussion

As noted previously, three of the options fees in this proposed rule change, the Market Maker Fee, the Market Maker Give-up Charge, and the Stock Execution Fee, were originally adopted by the Exchange and submitted to the Commission in File No. SR-PSE-88-11.[3] Those fees became effective on filing with the Commission pursuant to section 19(b)(3)(A) of the Act and Rule 19b-4(e) thereunder. The Stock Execution Fee which was originally adopted by the PSE and submitted to the Commission in SR-PSE-88-11 imposed a fee of $.001 (1/10 cent) per share on all trades not executed on the PSE, with block trades of 50,000 shares or more capped at $50.[4] Subsequently, the Exchange filed another proposed rule change, File No. SR-PSE-88-16, that amended the Stock Execution Fee. The amended fee, which is the same fee submitted for permanent approval in the instant proposed rule change, is a flat monthly fee of $1,000 for each member firm that engages in a stock execution business or service on an agency basis. In addition to amending the Stock Execution Fee, SR-PSE-88-16 amended the Floor Broker Fee which also had been adopted in SR-PSE-88-11 and changed it into the fee that charged only independent brokers $.01 per contract side on transactions. The fee was renamed as the Independent Broker Fee. The amendments to fees adopted by the PSE and submitted in SR-PSE-88-16 were effective upon filing with the Commission.

The options charges proposed by this rule filing have been resubmitted for Commission consideration in response to a comment letter received by the Commission on August 18, 1988, ("August 18 Letter"), from George H. Van Hasselt, a PSE options market maker, objecting to three options fees (the Market Maker Fee, the Market Maker Give-up Charge, and the Stock Execution Fee) contained in SR-PSE-88-11. The August 18 Letter was accompanied by a petition objecting to the three specified fees signed by Mr. Van Hasselt and 45 other options market makers. In view of these objections, and at the request of the Commission, the PSE submitted on August 19, 1988, a proposed rule change, SR-PSE-88-20, that deleted four options fees—the Market Maker Fee, the Market Maker Give-up Charge, the Stock Execution Fee, and the Independent Broker Fee—and reinstated these fees for a sixty day period.[5] Concurrently, the PSE filed this proposed rule change, SR-PSE-88-21, requesting that the Commission grant permanent approval to the four options fees during the sixty day period that the fees would remain in effect under the terms of SR-PSE-88-20.

In his August 18 Letter, Mr. Van Hasselt contends that the Market Maker Fee, the Market Maker Give-up Charge and the Stock Execution Fee, as adopted by the Exchange in SR-PSE-88-11, unreasonably discriminate against market makers and create an unfair burden on competition. He asked that the Commission, pursuant to its authority under section 19(b)(3)(A) of the Act, abrogate those fees.

Specifically, Mr. Van Hasselt argues that the proposed $600 monthly fee for market makers unfairly discriminates against market makers. He contends that the PSE's statement that the fee is designed to cover the costs of supporting the market maker trading system is misleading and ambiguous. He asserts that the Exchange has not established any specific process for review of the fee, indicated any time limit for the duration of the fee, or proposed any specific process for review of the fee, and that the PSE has provided no estimate of the amounts that would be required to cover the targeted costs. Further, he argues that the undefined and indefinite nature of this charge is in sharp contrast with the fees charged equities specialists which are specifically designated to pay for the costs and further development of the Equities floor.

Mr. Van Hasselt alleges that the Market Maker Give-up Charge discriminates against market makers who choose to do business off the floor. He argues that the Exchange has not demonstrated that such off-floor transactions impose a greater expense to the Exchange and that the proposed fee imposes an additional burden on the market makers' ability to provide liquidity for floor brokers and the public.

Mr. Van Hasselt also argues that the proposed Market Maker Fee the Market Maker Give-up Charge, and the Stock Execution Fee, impose an unfair burden on competition which will adversely affect the public. He contends that these fees will impose higher transaction costs on market makers forcing them to limit themselves to conducting trades that will have a higher profit margin. Thus, he argues, market makers will be more reluctant to participate in marginal transactions because higher transaction costs will make them prohibitively expensive.

Finally, Mr. Van Hasselt contends that the Exchange, contrary to the statement in its rule filing that it had extensive input from floor members, made little effort to discuss the proposed fees with the general membership of the Options floor until after the fees had been enacted by the Board of Governors. He notes that although approximately 250 of the nearly 550 members of the PSE are market makers, only two of the 19 members of the PSE Board of Governors are market makers. Mr. Van Hasselt argues that under-representation of market makers on the PSE's Board may account for the disproportionate burden of general costs that are paid by market makers.

In the notice of the proposed rule change that was prepared by the PSE and published by the Commission in the Federal Register, the Exchange provided a detailed response to the allegations and arguments in Mr. Van Hasselt's August 18 Letter. In brief, the Exchange argues that it had extensive discussions with members and member organizations in developing the proposed fees and contends that the fees are both reasonable and necessary.

The PSE asserts that it went through an extensive process of consulting with and soliciting input from the Exchange's options members in the development of the options fees that were adopted by the Exchange and submitted to the Commission in SR-PSE-88-11. The PSE states that members were told at a general membership meeting on March 24, 1988, that additional capital would be required in order to meet the Exchange's operational, technology, and facilities needs. The PSE states that it informed members that the fees and charges that were contemplated would be designed to reflect the costs and value of services provided by the PSE, as well as the cost of new technology needed to underwrite future growth.

With regard to the options floor, the Exchange states that it established the Options Committee, composed of four options members along with the President and the Chief Financial Officer of the PSE. The Committee was charged with obtaining input on options fees from members and member organizations and with recommending various proposed fees to the PSE Board. According to the Exchange, after the PSE Board reviewed the Options Committee's recommendations a second member meeting was held on June 21, 1988, to discuss fees and charges that would be implemented. Those fees were then approved by the Exchange and filed with the Commission in SR-PSE-88-11.

With regard to Market Maker Fee, the Exchange states that the fee was intended to be a charge for services that were not covered by existing charges. Those services included maintenance of the order book and implementation of new technology such as the Pacific Option's Execution Transaction System ("POETS"). After assessing the cost of providing these and other services, the Exchange determined that a $600 Market Maker Fee was appropriate. The PSE argues that rather than this fee discriminating against market makers, as alleged in the August 18 Letter, the fee is intended to support the market system and to cover the costs of upgrading and implementing needed systems and operations. The Exchange also states that the concept of a flat fee rather than a transaction based charge was specifically recommended by the Options Members Organization.[6]

The PSE also disputes the allegation that the Market Maker Fee and the other proposed options fees were adopted by the Exchange as a result of under representation of options market makers on the PSE Board of Governors. The Exchange states that of the 16 members of the PSE Board (excluding the Chairman and the President), five are floor members while the PSE Constitution only requires two floor members. Of the five floor members on the Board of Governors, two are market makers. Three of the floor members on the Board are members from the options floor with one representative from each of the two equity trading floors. Moreover, the Exchange notes that the Options Committee, which recommended adoption of the proposed fees to the Board of Governors, has three options floor governors and one other options member. Two of the floor governors on the Committee were market makers, one of whom chaired the Committee. Further, the Exchange argues that while the Committee was aware that the recommended fees would impact market makers more heavily than other members they were also aware that market makers had contributed proportionately less to covering costs in the past.

Finally, the PSE points out that no written objections to this proposed fee were received by the Exchange and that the members who signed the petition objecting to the fee did not communicate their objections to the Options Committee.

Concerning Market Maker Give-up Charge, the Exchange disputes the allegation in the August 18 Letter that the charge will reduce liquidity and is an unfair burden on competition. The PSE argues that by charging market makers less for trades done in person, they will be more likely to execute trades in person and provide a follow-up market. The Exchange also argues that by providing an incentive to create a higher percentage of market makers in the trading crowd, it will increase competition in the crowd, facilitate order flow and liquidity, and better assure continuous, fair, and orderly markets.

With regard to the Stock Execution Fee, as discussed previously, the Exchange notes that the version of this fee filed in SR-PSE-88-11 and objected to in the August 18 Letter, a charge on stock executions made off the PSE of 1/10 cent per share with a cap of $50 for block trades of 50,000 shares or more, was amended in SR-PSE-88-16 and converted to a flat monthly fee of $1,000 for each member firm that engages in a stock execution business or service on an agency basis. The key argument raised in the August 18 Letter against the Stock Execution Fee, that it unfairly discriminates against a market maker who chooses to do business off the floor, does not apply to the newly amended version of the fee.

Further, the PSE rejects the allegation in the August 18 letter that implementation of the fee, in its amended form, would reduce liquidity or would discriminate against any type of member. Rather, the Exchange argues, the fee is solely designed to more equitably distribute floor costs among members utilizing PSE facilities.

The final fee proposed in this rule change, the Independent Broker Fee, was not addressed to in the August 18 Letter. As discussed above, this fee was originally adopted in SR-PSE-88-11 as a Floor Broker Fee. The fee was amended in SR-PSE-88-16 to apply only to independent broker transactions and was renamed. The Exchange states that this amended fee is the result of its effort to develop separate fees for institutional brokers and independent brokers based on the recognition that the two types of brokers utilize different Exchange services and facilities. Independent brokers are individual members who are not affiliated with any member firm and who conduct the majority of their business as floor brokers. The PSE states that although these brokers utilize Exchange facilities and services, no other charges are imposed on them. This contrasts with institutional brokers that do retail, correspondence retail, and institutional business. The PSE notes that institutional brokers are affected by other charges that were adopted and submitted to the Commission in SR-PSE-88-11 including booth fees and report charges.

The Commission has closely reviewed the fees in the proposed rule change, the objections raised to those fees in the August 18 Letter, and the response of the Exchange to those objections. The Commission has determined that the proposed fees are consistent with the requirements of the Act and, accordingly, should be approved. In particular, the Commission believes that the proposed fees are consistent with section 6(b)(4) of the Act in that they provide an equitable allocation of dues, fees, and other charges among members using the facilities of the PSE. Further, the Commission believes that the proposed fees are consistent with section 6(b)(5) of the Act in that they will enhance the Exchange's ability to facilitate transactions.

Concerning the comments on three of the proposed fees in the August 18 Letter, the Commission does not believe that the objections raised to the fees are valid. First, contrary to the allegations in the August 18 letter, the process of obtaining member input into the Exchange's procedure for development and adoption of the fees, as described by the PSE in its notice of the instant proposal, provided more than adequate opportunity for members to comment on fees considered by the Exchange. No comments were received that indicate that the process and procedures described by the Exchange in its notice were not in fact followed. Moreover, the PSE states that the objecting members did not raise objections to the proposed fees at any time during this process.

Second, it is clear that options members played a critical role in the Option Committee's development and recommendation of the proposed fees to the PSE Board of Governors for adoption. As stated by the PSE, options members composed the majority of the Committee and an options members was chairman of the Committee. In this regard, the Commission also finds no

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[3] See Securities Exchange Act Release No. 25807, July 28, 1988, 53 FR 28808.

[4] See Securities Exchange Act Release No. 25809, August 17, 1988, 53 FR 32315.

[5] The actions proposed in SR-PSE-88-20 were effective upon filing with the Commission under section 19(b)(3)(A) of the Act. See Securities Exchange Act Release No. 26073, September 12, 1988, 53 FR 35811.

[6] The Options Members Organization is an organization that represents a cross section of the PSE's options members and which studies the Exchange's operations.

basis to conclude that market makers are underrepresented on the PSE Board of Governors. As noted by the Exchange, there are five floor members on the PSE Board of Governors two of whom are options market makers. Article III, section 2(b), of the PSE Constitution only requires two floor members on the Exchange's Board.

Third, the Commission finds no basis to conclude that the proposed fees discriminate in any way against options market makers or options members. The proposed fees, as described by the Exchange, are specifically tailored to cover costs of market making operations or other specific services on the PSE options floor plus such additional costs for technology improvement as the Exchange has decided to implement. Moreover, the PSE has amended the Stock Execution Fee to eliminate the distinction between trades done on or off the PSE floor, and thus has removed the aspect of that fee objected to in the August 18 Letter.

Finally, the Commission does not agree with the allegations in the August 18 Letter that the proposed fees create an unfair burden on competition or that they will impair the liquidity of the PSE's market. The proposed options fees in SR–PSE–88–11 and SR–PSE–88–18 were part of an overall PSE fee proposal that adopted a comprehensive set of charges for the use of Exchange services and facilities for all PSE members. These fees were an effort by the PSE to develop a more equitable fee structure that would charge members only for the services and facilities they used. They replaced a more broadly based interim monthly fee, designed to meet the PSE's operational, technology and facilities needs, that was previously adopted by the Exchange and filed with the Commission in SR–PSE–88–01.[7] The Commission believes that the proposed options fees are a reasonable in that the Exchange will charge only for specific services and facilities used by the member. Although the August 18 Letter objected to the market maker charges as unduly burdensome, these fees do not appear to be so high as to impair PSE market makers from fulfilling their market marking obligations. Moreover, the August 18 Letter presented no specific evidence to demonstrate why these fees would be unnecessarily burdensome.

With regard to the proposed Independent Broker Fee, which was not discussed to in the August 18 Letter, the Commission believes that the proposed fee is reasonable in that it will charge independent brokers only for those Exchange services that they utilize. The Commission also notes that it did not receive any objections to the Independent Broker Fee either from the original Commission notice of its adoption in SR–PSE–88–16 or from the notice of the instant proposed rule change.

In conclusion, the charges proposed by the PSE appear reasonably designed to provide an equitable allocation of dues, fees, and other charges among members using the facilities of the PSE. In light of the lack of any evidence indicating that the charges are discriminatory or impose any burden on competition, the Commission will not disturb the PSE's business judgment in developing fees to defray its costs and expenses.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 18, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-24583 Filed 10-24-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26115; File No. SR-PHLX-88-33]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc.; Automated Options Market System

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on October 3, 1988, the Philadelphia Stock Exchange Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX, pursuant to Rule 19b–4, hereby submits as a proposed rule change its requests to enhance and extend its pilot on the Automated Options Market ("AUTOM") system. AUTOM is an electronic delivery system of small options orders to the PHLX trading floor.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

On March 31, 1988, the Commission filed an order granting accelerated approval of SR–PHLX–88–10, a proposed rule change establishing AUTOM on a pilot basis for 12 PHLX equity options until June 30, 1988.[1] On June 30, 1988, the Commission approved SR–PHLX–88–22 and authorized an expansion of AUTOM to 37 PHLX equity options and an extension of the pilot through December 31, 1988.[2] To date, even under the expanded pilot, the exchange has received insignificant order flow through AUTOM. The Exchange believes that this is due in part to the current pilot which only accepts market orders of five or fewer contracts in the near-term expiration month. Accordingly, the Exchange proposes to modify the existing 37 options pilot to make all pilot options' strikes and expiration months eligible to be handled by AUTOM and to increase the eligible order size for AUTOM to 10 contracts.[3] The Exchange believes that this modification will make AUTOM more competitive vis-a-vis similar systems currently being operated by other options exchanges.

In order to adequately assess the impact of these modifications on the pilot, the Exchange respectfully requests an extension of the modified AUTOM pilot until June 30, 1989.

[1] Securities Exchange Act Release No. 25540, 53 FR 11286.

[2] Securities Exchange Act Release No. 25908, 53 FR 25563.

[3] In this regard, the Exchange does not foresee any significant taxing of the Exchange's computer systems if the Commission approves the expansion of the pilot as proposed herein. In all other respects, the Exchange stands by its representations conveyed in letters to Howard Kramer, Assistant Director, Division, from Michael A. Flanegan, Senior Vice President, PHLX, dated March 23 and 28, 1988.

[7] *See* Securities Exchange Act Release No. 25917, April 20, 1988, 53 FR 13761.

In all other respects, the Exchange commits to operating the pilot as represented in SR–PHLX–88–10 and SR–PHLX–88–22.

Because the purpose of the development and implementation of AUTOM is to improve the efficiency of execution of transactions in PHLX equity options through the use of new data processing and communications techniques, the proposed rule change is consistent with section 11A(a)(1) (B) and (C)(i) of the Act. The proposal is also consistent with section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 15, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 18, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-24584 Filed 10-24-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 88-10-30; Docket No. 45728]

U.S.-Mexico Air Transportation Operations

AGENCY: Office of the Secretary, DOT.

ACTION: Order 88-10-30, U.S.-Mexico Route Authority, Final Order, Docket 45728 (53 FR 28745, July 29, 1988).

SUMMARY: By this order the Department finalizes, with certain modifications, the tentative procedures established in Show-Cause Order 88-7-43, July 26, 1988, for acting on authority requested by U.S. carriers pursuant to the recently amended U.S.-Mexico Air Transport Agreement. The final order also adopts in part the proposals of Northwest Airlines, Midway Airlines, Continental Airlines, the National Air Carrier Association (NACA), and Alaska Airlines in which they request modifications to the procedures proposed in the show-cause order or request additional information from the Department regarding dormancy and/or U.S.-Mexico market information. The final order also requests U.S. carriers holding certificate or exemption authority to serve U.S.-Mexico markets to file certain route/city-pair dormancy information. It further requests carriers to file currently valid illustrative service proposals and proposed start-up dates with respect to applications filed for U.S.-Mexico authority. In addition, the order directs interested parties to file responses to answers and competing applications filed pursuant to Orders 88-7-43 and 88-8-67 no later than October 28 (for exemption applications), and November 4 (for certificate applications). The order also addresses other related pleadings and issues resulting from the issuance of Show-Cause Order 88-7-43.

ADDITIONAL INFORMATION: Interested parties may obtain a service copy of the order by calling the Licensing Division, (202) 366-2337 or by writing to the U.S. Department of Transportation, Licensing Division, P-45, 400 Seventh Street SW., Washington, DC 20590.

Dated: October 19, 1988.

Gregory S. Dole,

Acting Assistant Secretary for Policy and International Affairs.

[FR Doc. 88-24569 Filed 10-24-88; 8:45 am]

BILLING CODE 4910-62-M

Coast Guard

[CGD-88-088]

National Boating Safety Advisory Council; Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the National Boating Safety Advisory Council to be held on Tuesday and Wednesday, November 15 & 16, 1988 at the Sheraton Hotel & Marina, 1 Bicentennial Park, New Bern, North Carolina, beginning at 9:00 a.m. and ending at 4:00 p.m. on both days. The agenda for the meeting will be as follows:

1. Introduction and Swearing-in of new Council Members.
2. Review of action taken at the 41st meeting of the Council.
3. Members' items.
4. Executive Director's report.
5. Consumer Education Subcommittee report.
6. Propeller Guard Subcommittee report.
7. Presentation of Marine Underwriters.
8. Presentation of vertical sector sidelights for unmanned barges.
9. Mandatory Education Subcommittee report.
10. Report of Boating Education Seminar in Louisiana.
11. Report of the Personal Flotation Device (PFD) Subcommittee.
12. Presentation of definition of "Passenger" on recreational boats.
13. Presentation by Accident Reporting Subcommittee.
14. Final report of Personal Flotation Device (PFD) pamphlet project.
15. Presentation of the work of Marine Surveyors.
16. Update on Commercial Towing.

17. Report of Universal Registration Subcommittee.

18. Report on the National Association of State Boating Law Administrators' (NASBLA) Conference.

19. Presentation on Visual Identification for public service vessels.

20. Remarks by Chief, Office of Navigation Safety and Waterway Services.

21. Reply to members' items.

22. Chairman's session.

Attendance is open to the interested public. With advance notice to the Chairman, members of the public may present oral statements at the meeting. Persons withing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Council at any time. Additional information may be obtained from Captain William S. Grisworld, Executive Director, National Boating Safety Advisory Council, U.S. Coast Guard, (G-NAB), Washingotn, DC 20593-0001, or by calling (202) 267-0997.

Issued in Washington, DC, October 17, 1988.

Robert T. Nelson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 88-24547 Filed 10-24-88; 8:45 am]

BILLING CODE 4910-14-M

[CGD-88-081]

National Boating Safety Advisory Council Subcommittee on Accident Reporting; Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the National Boating Safety Advisory Council's Subcommittee on Accident Reporting to be held on Monday, November 14, 1988 at the Sheraton Hotel & Marina, 1 Bicentennial Park, New Bern, North Carolina, beginning at 3:00 p.m. and ending at 5:00 p.m. The agenda for the meeting will be as follows:

1. Seek broad based input and discuss available information and potential new sources of data.

Attendance is open to the interested public. With advance notice to the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Council at any time. Additional information may be obtained from Captain William S. Griswold, Executive Director, National Boating Safety Advisory Council, U.S. Coast Guard (G-NAB), Washington, DC 20593-0001, or by calling (202) 267-0997.

Issued in Washington, DC, October 17, 1988.

Robert T. Nelson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 88-24546 Filed 10-25-88 8:45 am]

BILLING CODE 4910-14-M

[CGD-88-088]

National Boating Safety Advisory Council Subcommittee on Mandatory Education; Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the National Boating Safety Advisory Council's Subcommittee on Mandatory Education to be held on Monday, November 14, 1988 at the Sheraton Hotel & Marina, 1 Bicentennial Park, New Bern, North Carolina, beginning at 10:00 a.m. and ending at 4:00 p.m. The agenda for the meeting will be as follows:

1. Review materials and formulate a report and recommendation to the Council on mandatory education.

Attendance is open to the interested public. With advance notice to the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Council at any time. Additional information may be obtained from Captain William S. Griswold, Executive Director, National Boating Safety Advisory Council, U.S. Coast Guard, (G-NAB), Washington, DC 20593-0001, or by calling (202) 267-0997.

Issued in Washington, DC, October 17, 1988.

Robert T. Nelson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 88-24548 Filed 10-25-88 8:45 am]

BILLING CODE 4910-14-M

[CGD-88-082]

National Boating Safety Advisory Council Subcommittee on Personal Flotation Devices (PFDs); Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the National Boating Safety Advisory Council's Subcommittee on Personal Flotation Devices to be held on Monday, November 14, 1988 at the Sheraton Hotel & Marina, 1 Bicentennial Park, New Bern, North Carolina, beginning at 3:00 p.m. and ending at 5:00 p.m. The agenda for the meeting will be as follows:

1. Review materials and replies received from foreign administrations regarding wearing of PFDs and standards for PFDs.

Attendance is open to the interested public. With advance notice to the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Council at any time. Additional information may be obtained from Captain William S. Griswold, Executive Director, National Boating Safety Advisory Council, U.S. Coast Guard, (G-NAB), Washington, DC 20593-0001, or by calling (202) 267-0997.

Issued in Washington, DC, October 17, 1988.

Robert T. Nelson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 88-24550 Filed 10-24-88; 8:45 am]

BILLING CODE 4910-14-M

[CGD-88-089]

National Boating Safety Advisory Council Subcommittee on Propeller Guards; Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the National Boating Safety Advisory Council's Subcommittee on Propeller Guards to be held on Monday, November 14, 1988 at the Sheraton Hotel & Marina, 1 Bicentennial Park, New Bern, North Carolina, beginning at 9:00 a.m. and ending at 4:00 p.m. The agenda for the meeting will be as follows:

1. Discuss the pros and cons of Propeller Guards.

Attendance is open to the interested public. With advance notice to the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Council at any time. Additional information may be obtained from Captain William S. Griswold, Executive Director, National Boating Safety Advisory Council, U.S. Coast Guard, (G-NAB), Washington, DC 20593-0001, or by calling (202) 267-0997.

Issued in Washington, DC, October 17, 1988.

Robert T. Nelson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 88-24551 Filed 10-24-88 8:45 am]

BILLING CODE 4910-14-M

[CGD-88-087]

National Boating Safety Advisory Council Subcommittee on Universal Registration; Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the National Boating Safety Advisory Council's Subcommittee on Universal Registration to be held on Monday, November 14, 1988 at the Sheraton Hotel & Marina, 1 Bicentennial Park, New Bern, North Carolina, beginning at 3:00 p.m. and ending at 5:00 p.m. The agenda for the meeting will be as follows:

1. Review materials and formulate a report and recommendation to the Council on universal registration.

Attendance is open to the interested public. With advance notice to the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Council at any time. Additional information may be obtained from Captain William S. Griswold, Executive Director, National Boating Safety Advisory Council, U.S. Coast Guard, (G-NAB), Washington, DC 20593-0001, or by calling (202) 267-0997.

Issued in Washington, DC, October 17, 1988.

Robert T. Nelson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 88-24552 Filed 10-24-88; 8:45 am]

BILLING CODE 4910-14-M

National Highway Traffic Safety Administration

[Docket No. T84-01; Notice 17]

Final Passenger Motor Vehicle Theft Data for 1986

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Publication of final theft data for 1986.

SUMMARY: The Motor Vehicle Information and Cost Savings Act provides that NHTSA shall publish passenger motor vehicle theft data for review and comment "immediately upon enactment of this title, *and periodically thereafter.*" (Emphasis added). The periodic publication of these theft data does not have any effect on the obligations of regulated parties under the Cost Savings Act. These theft data for years after 1984 serve only to inform the public of the extent of the motor vehicle theft problem. NHTSA has previously published 1986 theft data for public review and comment. After evaluating those public comments, the agency has made some minor changes to the previously published 1986 data. This notice informs the public of those minor changes and of this agency's final calculations of 1986 theft data.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Kurtz, Office of Market Incentives, NHTSA, 400 Seventh Street SW., Washington, DC, 20590 (202 366-4801).

SUPPLEMENTARY INFORMATION: NHTSA has promulgated a Federal motor vehicle theft prevention standard at 49 CFR Part 541. This standard applies to cars that are in lines designated as "high theft lines." Whether or not a car line is a high theft line depends on the relationship of the line's actual or likely theft rate to the median theft rate for car lines in 1983 and 1984. Section 603(b)(3) of the Cost Savings Act (15 U.S.C. 2023(b)(3)) sets forth the steps NHTSA had to follow in making its determination of the median theft rate for 1983 and 1984. The agency followed those steps, published final theft data for the 1983 and 1984 car lines, and made a determination of the median theft rate for those years. *See* 50 FR 46666; November 12, 1985.

Section 603(b)(3) of the Cost Savings Act also provides that NHTSA shall "periodically" publish later calendar years' theft data for public review and comment. These publications of theft data for subsequent model years have no effect on the determination of whether a car line is or should be subject to the requirements of the theft prevention standard. The agency believes that the reason Congress directed it to periodically publish theft data for later years was to inform the public, particularly law enforcement groups, automobile manufacturers, and the Congress, of the extent of the vehicle theft problem and the impact, if any, on vehicle thefts of the Federal motor vehicle theft prevention standard.

To accomplish this purpose, NHTSA published for public review and comments the theft rates for 1986 on May 2, 1988 (53 FR 15610). NHTSA received three comments on the 1986 theft data, all of which were submitted by vehicle manufacturers.

Ford commented that the May 1988 publication did not include the theft rates of the 1986 Mercury Sable or Ford Taurus car lines. Ford is correct in that the Mercury Sable and Ford Taurus car lines were inadvertently not included in the 1986 theft rate listing. The 1986 theft rate listing has been corrected to include these two car lines.

General Motors (GM) informed the agency that it was appropriate in the past to report the Oldsmobile Delta 88 and Custom Cruiser car lines combined as one car line. But beginning with the 1986 model year, they are two separate car lines and should, therefore, be reported as separate entries. GM also informed the agency that the Buick LeSabre/Electra Estate Wagons are separate car lines from the Buick Electra and LeSabre. The LeSabre/Electra Estate Wagons are real wheel drive "B" cars and are available only as 4-door station wagons.

The 1986 theft rates have been edited to reflect all of GM's comments. The Oldsmobile Delta 88 and Oldsmobile Custom Cruiser are listed as separate car lines and the Buick LeSabre/Electra Estate Wagons are also listed as separate carlines. The Estate Wagon thefts were subtracted from the Buick LeSabre and Electra and the production figures remained the same as reported by the manufacturer.

Volkswagen of America, Inc., (Volkswagen) commented that the Audi Quattro car line was discontinued in the 1985 model year. However, the Audi 4000 and Audi 5000 each have a Quattro series that was continued in 1986. Therefore, the Audi Quattro thefts and production numbers should not be included in the theft rate listing as a separate car line, but with the appropriate Audi 4000 or 5000 car line. In addition, Volkswagen informed the agency that the Audi 4000/coupe production total in the theft rate list is 400 units less than the correct number reported in the final 1986 Corporate Average Fuel Economy report (CAFE).

The agency has corrected the theft rate listing to include the Audi Quattro thefts and production numbers with the appropriate Audi 4000 or Audi 5000 car line. The production number total for the Audi 4000/coupe has also been corrected to include the 400 units as reported in the final 1986 CAFE report. In reporting production figures for

developing theft rates, the agency uses the number in the mid-year CAFE reports that all manufacturers are required to provide to the agency. These reports are preliminary and are, therefore not as accurate as the final CAFE reports required to be submitted to the Environmental Protection Agency.

In addition to the above changes, the 1986 theft rate listing was also recalculated to reflect new theft data. Specifically, the May 2, 1988 Federal Register publication listed the Isuzu I-Mark with zero thefts and 31,201 cars produced. After intensive research, it was discovered that the vehicle identification number (VIN) decoding systems supplied by the National Automobile Theft Bureau and the Highway Loss Data Institute were inaccurate for the model year (MY) 1986 I-Mark. Corrections were made, and the theft data supplied by the National Crime Information Center (NCIC) were reevaluated. There were 141 thefts reported for the MY 1986 I-Mark in calendar year 1986, making the theft rate 4.5191. Additionally, the Suzuki Forsa listed zero thefts with 10,971 cars produced. Contact with the manufacturer provided the accurate VIN. This was applied to the NCIC data tape. Accordingly, the MY 1986 Suzuki Forsa had 76 thefts in calendar year 1986, making the theft rate 6.9274. Neither Isuzu or Suzuki questioned the zero thefts for their respective car lines.

The following list represents NHTSA's calculation of theft rates for all 1986 car lines. As noted above, this list is only intended to inform the public of 1986 motor vehicle theft experience, and does not have any effect on the obligations of regulated parties under the Cost Savings Act.

Authority: 15 U.S.C. 2023; delegation of authority at 49 CFR 1.50

Issued on October 20, 1988.

Diane K. Steed,

Administrator.

BILLING CODE [illegible]

MODEL YEAR 1986 THEFT RATES FOR
CARLINES PRODUCED IN CALENDAR YEAR 1986

	MANUFACTURER	MAKE/MODEL (LINE)	THEFTS 1986	PRODUCTION (MFGR'S) 1986	THEFT RATE (THEFTS/PRODUCT) (1986) (1,000's)
1	GENERAL MOTORS	CHEVROLET CAMARO	5,275	178,870	29.4907
2	GENERAL MOTORS	PONTIAC FIREBIRD	2,789	100,210	27.8316
3	GENERAL MOTORS	CHEVROLET MONTE CARLO	2,139	113,394	18.8634
4	GENERAL MOTORS	BUICK REGAL	1,257	87,064	14.4377
5	TOYOTA	MR2	485	34,084	14.2284
6	GENERAL MOTORS	PONTIAC GRAND PRIX	552	40,384	13.6681
7	GENERAL MOTORS	OLDSMOBILE CUTLASS SUPREME	2,788	208,367	13.3802
8	CHRYSLER CORP.	DODGE CONQUEST	33	2,791	11.8237
9	GENERAL MOTORS	PONTIAC FIERO	863	78,255	11.0288
10	GENERAL MOTORS	CHEVROLET CORVETTE	365	33,355	10.9429
11	MITSUBISHI	TREDIA	106	10,284	10.3096
12	HONDA	PRELUDE	301	30,280	9.9669
13	CHRYSLER CORP.	PLYMOUTH CONQUEST	25	2,653	9.4233
14	VOLKSWAGEN	CABRIOLET	116	12,400	9.3548
15	TOYOTA	COROLLA/COROLLA SPORT	1,616	179,269	9.0144
16	FERRARI	MONDIAL	2	364	8.0000
17	MITSUBISHI	STARION	44	5,532	7.9537
18	GENERAL MOTORS	PONTIAC GRAND AM	1,623	208,068	7.7992
19	NISSAN	300ZX	473	61,354	7.7094
20	GENERAL MOTORS	OLDSMOBILE 98 REGENCY	868	117,110	7.4118
21	MITSUBISHI	GALANT	125	16,969	7.3731
22	CHRYSLER CORP.	CHRYSLER EXECUTIVE SEDAN/LIMOUSINE	1	138	7.2464
23	GENERAL MOTORS	CADILLAC FLEETWOOD BROUGHAM (RWD)	342	47,466	7.2051
24	ROLLS-ROYCE/BENTLEY	CORNICHE/CONTINENTAL	1	140	7.1429
25	GENERAL MOTORS	CADILLAC DEVILLE/LIMO (FWD)	1,148	161,478	7.1093
26	MITSUBISHI	MIRAGE	190	27,204	6.9841
27	SUZUKI	FORSA	76	10,971	6.9274
28	FORD MOTOR CO.	LINCOLN TOWN CAR	759	112,964	6.7190
29	PORSCHE	911	50	7,456	6.7060
30	CHRYSLER CORP.	CHRYSLER FIFTH AVENUE/NEWPORT	508	78,417	6.4782
31	MAZDA	626	608	94,126	6.4594
32	CHRYSLER CORP.	DODGE 600	369	59,633	6.1870
33	FORD MOTOR CO.	FORD LTD	414	67,121	6.1660
34	MAZDA	323	487	79,565	6.1208
35	VOLKSWAGEN	SCIROCCO	61	10,122	6.0268
36	TOYOTA	CAMRY	936	157,469	5.9467
37	TOYOTA	CELICA	630	107,223	5.8754
38	CHRYSLER CORP.	DODGE LANCER	303	51,595	5.8727
39	GENERAL MOTORS	BUICK LESABRE/ELECTRA ESTATE WAGON	99	17,190	5.7592
40	FORD MOTOR CO.	FORD MUSTANG	1,136	198,925	5.7107
41	MITSUBISHI	CORDIA	48	8,146	5.8947
42	GENERAL MOTORS	CHEVROLET IMPALA/CAPRICE	1,159	210,758	5.5992
43	GENERAL MOTORS	BUICK SKYLARK/SOMERSET	711	130,316	5.4548
44	GENERAL MOTORS	PONTIAC BONNEVILLE	609	111,702	5.4520
45	FORD MOTOR CO.	MERCURY CAPRI	79	14,569	5.4225
46	FORD MOTOR CO.	FORD THUNDERBIRD	817	156,581	5.2177
47	GENERAL MOTORS	OLDSMOBILE CUSTOM CRUISER	103	19,774	5.2098
48	MERCEDES-BENZ	500SEL	45	8,695	5.1754

	MANUFACTURER	MAKE/MODEL (LINE)	THEFTS 1986	PRODUCTION (MFGR'S) 1986	THEFT RATE (THEFTS/PRODUCT) (1986) (1,000's)
49	CHRYSLER CORP.	DODGE DAYTONA	227	44,862	5.1518
50	NISSAN	SENTRA	703	138,838	5.0635
51	FORD MOTOR CO.	MERCURY COUGAR	651	130,019	5.0070
52	FORD MOTOR CO.	MERKUR XR4TI	67	13,353	4.9436
53	GENERAL MOTORS	CHEVROLET CHEVETTE	358	73,237	4.8882
54	GENERAL MOTORS	BUICK ELECTRA	551	112,808	4.8846
55	MAZDA	GLC	16	3,326	4.8106
56	MAZDA	RX-7	235	50,934	4.6147
57	GENERAL MOTORS	PONTIAC 6000	946	207,641	4.5555
58	ISUZU	I-MARK	141	31,201	4.5191
59	CHRYSLER CORP.	LEBARON GTS	329	73,143	4.4980
60	CHRYSLER CORP.	DODGE ARIES	432	97,429	4.4340
61	CHRYSLER CORP.	LASER	161	36,372	4.4265
62	CHRYSLER CORP.	PLYMOUTH HORIZON	219	49,578	4.4173
63	GENERAL MOTORS	PONTIAC BONNEVILLE	177	40,925	4.3250
64	MERCEDES-BENZ	380SL	48	11,111	4.3200
65	GENERAL MOTORS	PONTIAC PARISIENNE	313	72,525	4.3161
66	GENERAL MOTORS	CHEVROLET SPECTRUM	422	98,478	4.2853
67	TOYOTA	CELICA	199	46,668	4.2623
68	GENERAL MOTORS	PONTIAC 1000	91	21,687	4.1981
69	PORSCHE	928	11	2,627	4.1873
70	PORSCHE	944	68	16,308	4.1718
71	MERCEDES-BENZ	500SEC	7	1,687	4.1496
72	CHRYSLER CORP.	DODGE COLT/COLT VISTA	280	67,502	4.1480
73	NISSAN	200 SX	212	51,580	4.1101
74	CHRYSLER CORP.	DODGE OMNI	183	44,526	4.0875
75	GENERAL MOTORS	BUICK RIVIERA	85	21,294	3.9917
76	CHRYSLER CORP.	PLYMOUTH RELIANT	482	122,675	3.9291
77	CHRYSLER CORP.	PLYMOUTH TURISMO	125	32,150	3.8880
78	GENERAL MOTORS	CHEVROLET CAVALIER	1,471	396,623	3.7089
79	NISSAN	MAXIMA	257	69,681	3.6882
80	HONDA	ACCORD	540	147,090	3.6735
81	CHRYSLER CORP.	DODGE CHARGER	125	34,095	3.6662
82	FORD MOTOR CO.	MERCURY MARQUIS	93	25,817	3.6023
83	GENERAL MOTORS	OLDSMOBILE CUTLASS CIERA/CRUISER (FWD)	1,265	348,571	3.5717
84	GENERAL MOTORS	CADILLAC CIMARRON	86	24,354	3.5312
85	ALFA ROMEO	SPIDER VELOCE 2000	18	5,106	3.5253
86	CHRYSLER CORP.	CHRYSLER LEBARON/TOWN & COUNTRY	321	91,111	3.5232
87	GENERAL MOTORS	CHEVROLET NOVA	577	167,763	3.4394
88	HYUNDAI	EXCEL	429	127,183	3.3731
89	GENERAL MOTORS	CHEVROLET CELEBRITY	1,340	404,520	3.3620
90	BERTONE	X-1/9	7	2,096	3.3397
91	BMW	3.	185	55,570	3.3291
92	FORD MOTOR CO.	FORD ESCORT	1,342	404,123	3.3208
93	FORD MOTOR CO.	FORD TEMPO	779	235,417	3.3090
94	FORD MOTOR CO.	MERCURY TOPAZ	187	56,620	3.3027
95	AUDI	4000/COUPE/QUATTRO	81	26,532	3.2818
96	NISSAN	PULSAR	213	64,560	3.2993
97	FORD MOTOR CO.	MERCURY LYNX	248	76,589	3.2176

	MANUFACTURER	MAKE/MODEL (LINE)	THEFTS 1986	PRODUCTION (MFGR'S) 1986	THEFT RATE (THEFTS/PRODUCT) (1986) (1,000's)
98	AMC/RENAULT	ALLIANCE/ENCORE	252	78,470	3.2114
99	GENERAL MOTORS	BUICK CENTURY	823	257,822	3.2629
100	CHRYSLER CORP.	PLYMOUTH COLT/COLT VISTA	200	62,305	3.1997
101	GENERAL MOTORS	CHEVROLET SPRINT	211	66,298	3.1830
102	HONDA/ACURA	LEGEND	27	8,500	3.1765
103	CHRYSLER CORP.	PLYMOUTH GRAN FURY	28	8,864	3.1588
104	VOLKSWAGEN	JETTA	290	93,779	3.0926
105	ALFA ROMEO	GTV6	2	660	3.0303
106	CHRYSLER CORP.	PLYMOUTH CARAVELLE	104	34,545	3.0106
107	FORD MOTOR CO.	LINCOLN MARK VII	58	19,329	3.0007
108	VOLKSWAGEN	GOLF/GTI	197	66,039	2.9831
109	JAGUAR	XJ-S	15	5,070	2.9586
110	FORD MOTOR CO.	MERCURY GRAND MARQUIS	297	101,822	2.9169
111	FORD MOTOR CO.	FORD EXP	86	29,373	2.9281
112	GENERAL MOTORS	BUICK SKYHAWK	237	82,135	2.8848
113	CHRYSLER CORP.	CHRYSLER NEW YORKER	147	50,957	2.8848
114	LOTUS	ESPIRT	1	350	2.8571
115	TOYOTA	SUPRA	73	26,202	2.7860
116	SUBARU	SUBARU	160	59,940	2.6693
117	VOLKSWAGEN	QUANTUM	29	11,076	2.6187
118	MERCEDES-BENZ	190	53	20,459	2.5903
119	BMW	6.	6	2,323	2.5829
120	JAGUAR	XJ	46	17,898	2.5701
121	MERCEDES-BENZ	420SEL	37	14,840	2.4933
122	ISUZU	IMPULSE	36	14,457	2.4901
123	HONDA	CIVIC	522	232,000	2.4623
124	VOLVO	740/760	136	55,574	2.4472
125	PEUGEOT	505	31	13,211	2.3465
126	GENERAL MOTORS	OLDSMOBILE FIRENZA	87	37,672	2.3094
127	BMW	7.	14	6,060	2.3026
128	FORD MOTOR CO.	LINCOLN CONTINENTAL	42	18,271	2.2987
129	GENERAL MOTORS	CADILLAC ELDORADO	50	22,219	2.2666
130	GENERAL MOTORS	OLDSMOBILE TORONADO	34	15,102	2.2514
131	GENERAL MOTORS	OLDSMOBILE DELTA 88 ROYALE	487	219,131	2.2224
132	SAAB	900	85	39,085	2.1747
133	AUDI	5000S/QUATTRO	105	49,417	2.1248
134	MASERATI	BITURBO	2	973	2.0555
135	CHRYSLER CORP.	DODGE DIPLOMAT	34	16,585	2.0500
136	BMW	5.	41	21,000	1.9450
137	GENERAL MOTORS	BUICK LESABRE	171	89,174	1.9176
138	NISSAN	STANZA	99	52,300	1.8894
139	MERCEDES-BENZ	300D/E	43	23,186	1.8546
140	FORD MOTOR CO.	MERCURY SABLE	152	85,912	1.7693
141	GENERAL MOTORS	CADILLAC SEVILLE	36	21,106	1.7057
142	FORD MOTOR CO.	FORD TAURUS	368	219,032	1.6801
143	SAAB	9000	15	9,215	1.6278
144	FORD MOTOR CO.	FORD LTD CROWN VICTORIA	135	94,780	1.4244
145	VOLVO	DL/GL	82	59,700	1.3715
146	HONDA/ACURA	INTEGRA	30	24,000	1.2500

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	MANUFACTURER	MAKE/MODEL (LINE)	THEFTS 1986	PRODUCTION (MFGR'S) 1986	THEFT RATE (THEFTS/PRODUCT) (1986) (1,000's)
147	SUBARU	XT	51	44,288	1.1516
148	GENERAL MOTORS	OLDSMOBILE DELTA 8	128	135,587	0.9441
149	TOYOTA	TERCEL	74	83,749	0.8834
150	FERRARI	TESTAROSSA	0	250	0.0000
151	ROLLS-ROYCE/BENTLEY	SILVER SPIRIT/SILVER SPUR/MULSANNE	0	410	0.0000
152	ASTON MARTIN	SALOON/VANTAGE/VOLANTE	0	31	0.0000
153	MASERATI	QUATTROPORTE	0	73	0.0000
154	EXCALIBUR	PHAETON/ROADSTER	0	70	0.0000
155	ASTON MARTIN	LAGONDA	0	14	0.0000
156	ZIMMER	CLASSIC/ELEGANTE/CAMBRIOLET	0	170	0.0000
157	ROLLS-ROYCE/BENTLEY	CAMARGUE	0	46	0.0000
158	BITTER GMBH	BITTER SC	0	81	0.0000
159	FERRARI	328	0	600	0.0000
160	TVR	280I	0	225	0.0000

[FR Doc. 88-24668 Filed 10-24-88; 8:45 am]
BILLING CODE 4910-59-C

Sunshine Act Meetings

Federal Register
Vol. 53, No. 206
Tuesday, October 25, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

October 20, 1988.

TIME AND DATE: 10:00 a.m., Thursday, October 27, 1988.

PLACE: Room 600, 1730 K Street, N.W., Washington, DC.

STATUS: OPEN.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Helen Mining Company, Docket Nos. PENN 86-94-R, PENN 86-181. (Issues include consideration of whether a violation occurred as the result of the operator's unwarrantable failure.)

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 20 CFR § 2706.150(a)(3) and § 2706.160(e).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629, (202) 566-2673 for TDD Relay.

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 88-24770 Filed 10-21-88; 3:46 pm]
BILLING CODE 6735-01-M

UNITED STATES INSTITUTE OF PEACE

DATE: Thursday, and Friday, October 27, and 28, 1988.

TIME: 9:15 a.m. to 5:00 p.m.

PLACE: The United States Institute of Peace, 1550 M Street, NW., ground floor (conference room).

STATUS: Open session—9:15 a.m. to 12:30 p.m. (portions may be closed pursuant to subsection (c) of section 552(b) of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Pub. L. (98-525).

AGENDA: (TENTATIVE).

Meeting of the Board of Directors convened. Chairman's Report. President's Report. Committee Reports. Consideration of the minutes of the Twenty-sixth meeting. Consideration of grants application matters.

CONTACT: Ms. Olympia Diniak. Telephone (202) 457-1700.

Dated October 20, 1988.

Bernice J. Carney,
Administrative Officer, The United States Institute of Peace.

[FR Doc. 88-24606 Filed 10-21-88; 3:18 pm]
BILLING CODE 3155-01-M

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federal register

Tuesday
October 25, 1988

Part II

Environmental Protection Agency

40 CFR Part 147
Washington Department of Ecology; Underground Injection Control Program for Indian Lands; Notice of Denial

VOL 53 ISS 206 OCT 25 1988 UMI

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[FRL-3464-8]

Washington Department of Ecology; Underground Injection Control Program for Indian Lands

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of denial.

SUMMARY: The State of Washington has applied to EPA to administer a Safe Drinking Water Act (SDWA) Underground Injection Control (UIC) program covering all classes of injection wells on Indian lands. EPA has determined that the State's demonstration of jurisdiction is insufficient for EPA to approve the State of Washington's application to regulate UIC activities on Indian lands.

DATES: This notice shall become effective on November 25, 1988. In accordance with 40 CFR 23.7, this notice will be considered final action for purposes of judicial review at 1:00 p.m. Eastern Time on November 8, 1988.

FOR FURTHER INFORMATION CONTACT: Harold Scott, Environmental Protection Agency (WD–132), Region 10, 1200 Sixth Avenue, Seattle, Washington 98101. Phone (206) 442–1846 or FTS 399–1846.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

The UIC program seeks to protect as "underground sources of drinking water" (USDWs) aquifers capable of yielding a significant amount of water containing less than 10,000 mg/l of total dissolved solids. The SDWA, 42 U.S.C. 300f *et seq.*, authorizes EPA to regulate underground injection control activity on all lands in the United States, including Indian lands. The 1986 amendments to the SDWA sets forth the role of Tribes and EPA in implementing the UIC program on Indian lands. Section 1451 (added by the 1986 amendments) authorizes EPA to "treat Indian Tribes as States" if they meet certain statutory criteria. Tribes which satisfy the criteria for treatment as a State may then obtain primary enforcement authority over the UIC and Public Water Systems programs. EPA has already proposed regulations for treating Tribes as states under the SDWA programs (52 FR 28112; 52 FR 46712).

The 1986 amendments also added section 1422(e) to the Act, which directs EPA to promulgate a Federal UIC program for Indian lands where the Tribe has not yet assumed the program under section 1451 and where no other applicable program is in place. On May 11, 1987, EPA proposed direct implementation programs for Indian lands in all states where no program was in place, in compliance with section 1422(e) of the SDWA (52 FR 17684).

II. Washington's Application

The State of Washington submitted an application under section 1422 of the SDWA for the approval of an Underground Injection Control (UIC) program governing all classes of injection wells. On March 21, 1984 (49 FR 10555), EPA published notice of receipt of the application, requested public comments, and offered a public hearing on the State's application. On April 23, 1984, the Confederated Tribes of the Colville Reservation requested that the public comment period be extended. On May 25, 1984 (49 FR 22110), EPA issued a public notice to extend the public comment period to obtain additional information to assist the Agency in approving or disapproving Washington's assertion of authority over injection well activities on Indian lands. Three public hearings were held: two at Moses Lake, Washington on July 11–12, 1984, and one at Seattle, Washington, on July 13, 1984. Oral and written comments were made by several Indian Tribes. No comments were received from the State of Washington. On August 23, 1984, EPA delegated the UIC program to the Washington Department of Ecology except for Indian lands. (49 FR 31875). In the same **Federal Register** notice EPA stated that it would make a decision regarding Indian lands after further review.

On May 11, 1987, EPA proposed a Federal UIC program for Indian lands in the State of Washington (52 FR 17684). In the same notice EPA stated that it would make a final decision in the near future on the State of Washington's application to administer a UIC program on Indian lands. Washington did not submit any comments on EPA's **May 11, 1987 Federal Register** notice. Elsewhere in today's **Federal Register**, EPA is finalizing the May 11, 1987 proposal, including promulgation of a UIC Direct Implementation program for Indian lands in the State of Washington.

III. Today's Decision

Under 40 CFR 145.24(b), the burden is placed on the state to demonstrate jurisdiction over Indian lands. This section provides that "[w]hen a State seeks authority over activities on Indian lands, the statement shall contain an appropriate analysis of the State's authority." In the preamble to the rule including this section, EPA stated:

> Because states will lack jurisdiction in most instances to control activities on Indian lands * * * EPA will assume that a state lacks authority unless the state affirmatively asserts authority and supports its assertion with an analysis from the State Attorney General.

48 FR 39378 (1980).

EPA has reviewed the statement submitted by the State of Washington in support of the application of the Department of Ecology for delegation of the Underground Injection Control program under the Safe Drinking Water Act. After evaluation, EPA has concluded that the demonstration of jurisdiction in the Attorney General's statement is insufficient for EPA to formally authorize the State of Washington to regulate UIC activities on Indian lands.

A. Authorization To Regulate on Indian Lands Under the SDWA

The State asserts jurisdiction under the SDWA contending that section 1422 of the SDWA implicitly authorizes a state to regulate activities on Indian lands. The State argues that once EPA approves a state's program under the SDWA, that program applies to all persons conducting regulated activities within a state, including Indian lands. This is the same basis that the State of Washington provided to obtain jurisdiction over Indian lands as part of its application for interim authorization under the Resource Conservation and Recovery Act (RCRA). In the RCRA proceeding, EPA concluded that the State's submittal failed to meet the requirements of 40 CFR 271.7(b). EPA thus did not authorize Washington to administer the RCRA program on Indian lands (48 FR 34954 (1983)).

The State filed a petition for review of the RCRA decision in the United States Court of Appeals for the Ninth Circuit. See *Washington Department of Ecology* v. *EPA*, 752 F.2d 1465 (9th Cir. 1985). The court upheld EPA's decision that the State's demonstration of jurisdiction on Indian lands was insufficient under the EPA regulation. *Id.* The court noted that RCRA failed to delineate the implementation of hazardous waste regulations on Indian lands. The court, citing the Supreme Court decision in *Chevron* v. *NRDC*, 467 U.S. 837 (1984), noted that where a statute is silent, Congress has implicitly delegated policy-making authority to the Agency. The court then held that EPA's regulation interpreting RCRA not to grant the State jurisdiction over Indian lands was reasonable.

The requirements of 40 CFR 145.24 for SDWA primacy are identical to those required under RCRA. Thus, EPA must determine whether the language of the SDWA authorizes the State of Washington to regulate on Indian lands. EPA has concluded that the SDWA does not, by itself, constitute authorization for the State to regulate on Indian lands.

The argument that the SDWA authorizes state regulation on Indian lands is weaker than the same argument under RCRA. As discussed earlier, the 1986 amendments to the SDWA set forth the role of Tribes and the EPA in implementing the UIC program on Indian lands. The 1986 amendments reflect Congressional intent to promote tribal regulation of UIC activities on Indian lands with Federal approval. Thus, EPA disagrees with Washington's assertion that Federal approval of a state UIC program empowers the state to regulate UIC activities on a reservation. There is no explicit language in the SDWA to support that interpretation. Furthermore, such an interpretation would negate the apparent Congressional intent of the 1986 amendments.

B. Authorization To Regulate on Indian Lands Under State Law

1. Legal Structure

Washington asserts another basis for claiming jurisdiction over UIC activities on Indian lands. The State indicates that its laws are applicable throughout the geographic borders of the State, inlcuding Indian lands, even absent explicit authorization under the SDWA.

The Supreme Court in *White Mountain Apache Tribe* v. *Brocker* discussed the principles that determine whether a state civil regulatory statute is applicable within a reservation. 448 U.S. 136, 144–145 (1980). The Court concluded that the imposition of state motor carrier license and fuel taxes on two non-Indian corporations engaged in logging on Indian lands was preempted by a Federal program for regulating reservation timber.

In pertinent part, the Court stated that:

> [There are] two independent but related barriers to the assertion of state regulatory authority over tribal reservations and members. First, the exercise of such authority may be preempted by Federal law. Second, it may unlawfully infringe 'on the right of reservation Indians to make their own laws and to be ruled by them.' The two barriers are independent because either, standing alone, can be a sufficient basis for holding state law inapplicable to activity undertaken on the reservation or by tribal members * * * The tradition of Indian sovereignty over the reservation and tribal members must inform the determination whether the exercise of state authority has been preempted by operation of federal law. As we have repeatedly recognized, this tradition is reflected and encouraged in a number of Congressional enactments demonstrating a firm federal policy of promoting tribal self-sufficiency and economic development. Ambiguities in federal law have been construed generously in order to comport with these traditional notions of sovereignty and with the federal policy of encouraging tribal independence. 448 U.S. at 142–144 (citations omitted).

The principles of tribal sovereignty and self-detemination were affirmed by the Supreme Court in 1987. The Court found that those principles outweighed competing interests asserted by the State of California and by non-Indians. In *California* v. *Cabazon Band of Mission Indians*, 107 S.Ct. 1083 (1987), the Court recognized tribal authority to regulate activities on reservation lands in holding that California and Riverside County could not assert jurisdiction over bingo and gambling activities conducted by Indians on Indian land, even though the primary customers for the activities were non-Indians. The Court found that neither Pub. L. 83–280 nor the Organized Crime Control Act of 1970 (OCCA) authorized the State or county to impose gambling laws or ordinances on the reservation.

The State of Washington has the burden of showing that its authority under state law to regulate UIC activities is not preempted by Federal law, and that state regulation will not infringe tribal self-government. As the Supreme Court clearly stated in *Cabazon*,

> "[S]tate jurisdiction is pre-empted * * * if it interferes or is incompatible with federal and tribal interests reflected in federal laws unless the State interests at stake are sufficient to justify the assertion of state authority." The inquiry is to proceed in light of traditional notions of Indian self-government, including its "overriding goal" of encouraging tribal self-sufficiency and economic development.

Cabazon, 107 S.Ct. at 1092 (quoting *New Mexico* v. *Mescalero Apache Tribe*, 462 U.S. 324, 333–35 (1983)). Furthermore, tribal interests are accorded more weight when non-Indian conduct "threatens or has some direct effect on political integrity, the economic security, or the health or walfare of the tribe." *Montana* v. *United States*, 450 U.S. 544, 566 (1981).

2. Interest Analysis

The remainder of this notice applies these principles through an examination of the interests of the Federal, tribal, and state governments in the regulation of UIC activities on Indian lands.

a. Federal and Tribal interest. The United States Environmental Protection Agency supports a policy of tribal self-government in cooperation with the Federal government. In June, 1983, the Administrator of EPA directed the EPA Office of Federal Activities to assemble a study enabling EPA better to apply its environmental programs to Indian tribes and reservations. In July 1983, EPA released its study of *Administration of Environmental Programs on Indian Lands* ("EPA Indian Lands Study").

The EPA Indian Lands Study culminated in the release of an EPA Indian Policy and Implementation guidance in November 1984. The EPA Policy stated that the two principal EPA directives were to implement the Federal law on Indian reservations in a manner responsible to the particular legal and political status of tribes and to "ensure the close involvement of Tribal Governments in making decisions and managing programs for reservations (unless the State has an express grant of jurisdiction from Congress sufficient to support delegation to the State Government)." EPA Indian Policy, page 2.

EPA has carried out the policy of self-determination in administering the various environmental statutes. For example, EPA promulgated regulations under the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA") authorizing tribes to develop their own programs for certification of pesticide applicators at a time when the statute provided only that "states" could submit certification plans. *See* 40 CFR 171.10. Similarly, EPA delegated to Indian tribes the authority to classify their reservations under the Prevention of Significant Deterioration ("PSD") standards of the Clean Air Act, even though the Act did not specifically authorize such delegation. 40 CFR 52.21(g)(4). Congress subsequently amended both statutes expressly to permit tribal participation as set forth in the regulation.

The Federal interest in tribal management of environmental statutes is especially strong under the Safe Drinking Water Act, in light of the 1986 amendments (as discussed above). In authorizing EPA to treat qualifying Tribes as states for purposes of primary enforcement responsibility, Congress expressed a clear preference for tribal regulation of UIC activities on Indian lands.

The tribal governments support EPA's position regarding protection of the reservation environments. In EPA's public hearings on the State's assertion of UIC regulatory jurisdiction over

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Indian lands, numerous Tribes requested that EPA deny the State's application. The comments by Alan Moomaw, on behalf of the Confederated Tribes of the Colville Reservation, typify the comments submitted by Tribes on the State of Washington's application.

All lands within the Reservation regardless of ownership are to be regulated by EPA under Federal law. The need for unitary management of water sources on Indian reservations is without question, as the dangers posed by UIC activities to underground aquifers as well as to surface waters demand the imposition of a single comprehensive management scheme by EPA. This conclusion is grounded in the knowledge that actions taken on one parcel of land, no matter whether owned by an Indian or a non-Indian, can have an important environmental consequence on adjacent parcels on the reservation.

(Testimony by Alan Moomaw, Environmental Coordinator, Confederated Tribes of the Colville Reservation, July 11, 1984, at EPA Public Hearing on the State of Washington's application to regulate UIC activities on Indian lands.)

b. *State interest.* In its application for primary enforcement and supporting Attorney General's statement, the State of Washington failed to specify in any factual detail its interest in regulating UIC activities on Indian lands. The State merely cited general case law without any analysis or particularized inquiry into the reasons for asserting state jurisdiction over the UIC program. The State did not outline the impacts UIC activities on Indian lands might have off the Indian lands. *(Cf., Rice* v. *Rehner,* 463 U.S. 713 (1983)). Nor has the State shown why its interests would outweigh the strong Federal interest discussed above.

3. Conclusion

In conclusion, the State of Washington may not regulate UIC activities on Indian lands in lieu of the Federal government. As described above, a State must meet both prongs of a two-prong test to enforce its laws within Indian lands. Under the preemption test, a court examines the Federal, tribal, and state interests involved and determines whether state jurisdiction would interfere with Federal and tribal interests reflected in Federal law. Under the infringement test, a court examines whether the state action infringes on tribal self-government.

On balance, the Washington UIC primacy submission fails to satisfy the two-prong test, and thus, the State has failed to adequately demonstrate its jurisdiction. The Agency must deny the State's application to regulate injection activities on Indian lands.

IV. Supplementary Note

On May 11, 1987 (52 FR 17664), EPA proposed a Federal UIC program on Indian lands in the state of Washington. EPA proposed to bring the relatively few injection wells on these Indian lands under the standards for construction, operation, monitoring, reporting, and plugging contained in the generic Federal UIC program, as appropriate. At this time EPA is asking the tribal governments in the State of Washington to assist EPA in conducting an inventory of injection wells. Representatives are asked to contact Harold Scott at the above address and phone number.

List of Subjects in 40 CFR Part 147

Hazardous materials, Indians—lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply, Intergovernmental relations, Penalties, Confidential business information.

Dated: September 29, 1988.

Lee M. Thomas,

Administrator.

[FR Doc. 88-24120 Filed 10-24-88; 8:45 am]

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federal register

Tuesday
October 25, 1988

Part III

Environmental Protection Agency

40 CFR Part 147

Underground Injection Control Programs on Indian Lands; Final Rule

BEST COPY AVAILABLE

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[FRL-3311-1]

Underground Injection Control Programs on Indian Lands

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is today extending the Federal Underground Injection Control (UIC) program to most Indian lands not currently regulated under the authority of the Safe Drinking Water Act (SDWA) as mandated by the SDWA Amendments of 1986. EPA will bring the relatively few injection wells on these Indian lands under the standards for construction, operation, and plugging contained in the generic Federal program. Elsewhere in today's Federal Register, EPA is establishing different programs for the lands of the Navajo, Ute Mountain Ute and other Tribes in New Mexico and Oklahoma. Today's notice does not include procedures by which Indian Tribes may apply for primary enforcement responsibility. That issue will be addressed in a separate notice.

DATES: This rule will become effective on November 25, 1988. For the purposes of judicial review, this rule will be considered final agency action at 1:00 p.m. eastern time on November 8, 1988.

ADDRESSES: The supporting information for this proposal is available for inspection and copying in Room 1143 ET, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Donald M. Olson, Underground Injection Control Branch, State Programs Division, Office of Drinking Water, (202) 382-5558, at the above address.

SUPPLEMENTARY INFORMATION:

I. Introduction

This rule makes the Federal "generic" Underground Injection Control (UIC) program which is codified at 40 CFR Parts 124, 144 and 146, applicable to the Indian lands in the 41 States and territories listed below. The Agency received very few comments on the proposed rule, and it is being promulgated almost precisely as it was proposed. (The Agency's responses to the comments are incorporated into this preamble.)

II. Background

The Safe Drinking Water Act (SDWA) authorizes and obligates EPA to regulate underground injection activity on all lands in the United States, including Indian lands. (EPA has adopted the definition of "Indian country" found at 18 U.S.C. 1151, and set forth in full at 40 CFR 144.3, for the purpose of defining "Indian lands" for the Direct Implementation Underground Injection Control (UIC) program.)

Section 1421 of the SDWA directs EPA to set minimum standards and criteria for approval of State-developed programs. States may develop their own programs regulating their injection wells. EPA reviews the State programs and approves them pursuant to section 1422 or section 1425 of the SDWA if they meet the standards of section 1421. This is called granting primary enforcement responsibility. If a State does not submit a program or if a submitted program does not meet statutory and regulatory standards, the EPA directly administers a program for the State under the regulations codified in 40 CFR Parts 124, 144 and 146. This is referred to as "direct implementation." At the moment there are 34 full and 6 partial programs for which a State has primary enforcement responsibility. EPA promulgated the Federal program for the direct implementation jurisdictions in May and November of 1984. (49 FR 20138 and 49 FR 45292)

III. Indian Programs in States With Primary Enforcement Responsibility

Because States generally could not or did not assert jurisdiction over the Indian lands within their boundaries, Indian lands were not included in the State-administered UIC programs. The Indian Tribes themselves could not administer a UIC program under the jurisdiction of the SDWA until the 1986 Amendments gave them the authority to do so. Only the Federal EPA had the authority to administer a UIC program for most Indian lands, but there was disagreement about what type of program should be established. EPA announced four possibilities and solicited comments on them:

1. The current Federal UIC minimum requirements;
2. Requirements patterned after the approved program in the State where the Indian lands are located, to the extent consistent with EPA's authority under the SDWA;
3. A combination of the first two; or
4. A different program containing requirements that respond to the concerns of the affected Tribal government.

These options were discussed in detail in Federal Register notices on September 2, 1983 (48 FR 40100) and May 11, 1984 (49 FR 20340). Many of the industry commenters indicated a preference for the second option, a program consistent with the surrounding State. However, a State's legislative authority for its UIC program is often broader than EPA's authority under the SDWA and therefore, many State provisions could not be adopted by EPA for inclusion in a program on Indian lands. A hybrid program combining aspects of the State and Federal program would not provide consistency. The permittee would have to contend with provisions different from the State program and EPA would have to administer provisions not found in the generic Federal program. On balance, EPA prefers to maintain consistency within the Federal programs unless specific deviations are necessitated by local conditions or Tribal concerns. Tailoring a program requires a great deal of work with the Tribe, State, and other affected parties. EPA is open to future proposals for such tailoring. However, given the mandate of the 1986 SDWA Amendments to promulgate UIC programs for all Indian lands within 270 days from the date the Amendments were enacted, EPA believes extending the generic Federal program is the appropriate course of action at this time for most Indian lands.

Most Tribes have not actively sought special programs for the regulation of their wells. However, the Navajo, Ute Mountain Ute, and some other Indian Tribes in New Mexico and Oklahoma did pursue special UIC programs. EPA has worked with those Tribes to develop programs based upon the Federal UIC program, but containing some modifications and additions. Tailored programs for these Indian Tribes are published elsewhere in today's Federal Register (and conforming amendments to descriptions of programs for their respective surrounding States are included in this rule). Modified programs may be developed for other Indian lands in the future at the request of the Tribe.

The 1986 SDWA Amendments allow Indian Tribes to apply for and assume primary enforcement responsibility once EPA has promulgated regulations governing that process. The status of primary enforcement authority will give Indian Tribes additional opportunity for control and modification of the UIC program on their lands. Today's action does not preclude Tribes from applying for primary enforcement responsibility.

EPA is today extending the Federal UIC requirements to Indian lands in the following States which have primary enforcement responsibility for non-Indian lands:

Alabama	North Dakota
Arkansas	Ohio
Connecticut	Oregon
Delaware	Rhode Island
Florida	South Carolina
Georgia	Texas
Illinois	Utah
Louisiana	Vermont
Maine	Washington
Maryland	West Virginia
Massachusetts	Wyoming
Mississippi	Guam
Missouri	Commonwealth of the Northern Mariana Islands
New Hampshire	
New Jersey	
North Carolina	

District of Columbia	Virginia
Hawaii	Puerto Rico
Indiana	Virgin Islands
Kentucky	American Samoa
Pennsylvania	Trust Territory of the Pacific Islands
Tennessee	

(Note the difference in treatment of these States in the May 11, 1984 and November 15, 1984 preambles and those for which EPA clearly intended to include Indian lands.)

In some of these States Indian lands are being created where none existed before. For example, P.L. 100-89, August 18, 1987, recognized three Tribes in Texas for the first time. Therefore, EPA is today establishing UIC programs for any Indian lands which now exist or may exist in the future in these States. Also, Indian Tribes are seeking to acquire lands in some of these States which may have the effect of converting some State-regulated wells to Federal regulatory control. In the interest of consistency and to provide for future contingencies, it is appropriate to enact the programs covering all present and potential Indian lands now.

These rules have been under development for several years, but they will take effect 30 days after publication in the Federal Register. There is no retroactive application. A commenter was concerned that mechanical integrity tests for all wells on these Indian lands would be scheduled immediately because he mistakenly assumed that these wells on Indian lands would be tested on the same schedule as the wells covered by the original Direct Implementation program. The five year period within which all wells in the DI program must have an initial mechanical integrity test ends in 1988. Although all dates will be calculated from the effective date of this rule, it may be that wells on these Indian lands will be scheduled for mechanical integrity tests in fewer than 5 years. The five year period was chosen for the administrative convenience of EPA, and that of owners and operators because there were so many wells covered by the generic regulations. It should not take five years to test the relatively few wells on these Indian lands.

IV. Indian Programs for Direct Implementation States

Most Indian lands in the States with EPA-administered programs were included in those programs and thus already have operating UIC programs. The Seneca Indian lands in the direct implementation State of New York were not covered by the UIC program administered by EPA because the Seneca Tribe had expressed interest in having special regulations developed. However, recent contacts with the Tribe indicate that special UIC regulations are not currently a priority of the Tribe. Therefore, the Federal UIC program is today promulgated for the Seneca lands.

In eleven other Direct Implementation jurisdictions, no UIC program was previously promulgated because there did not appear to be any wells on the Indian lands, and in some cases no Indian lands at all.

V. Indian Land Program for the State of Washington

EPA is promulgating a Federally-administered generic program on Indian lands in the State of Washington, although the State of Washington asserted authority over Indian lands within the State as a part of its original application for primary enforcement authority. In a separate notice in today's Federal Register, EPA rejects the State's assertion. One Tribe in Washington, the Colville, requested and received a ban on all injection wells on the Colville Indian Reservation except for Class V wells. In their comments on the proposed rule, the Colville endorsed the language EPA used for the ban. The Tribe also strongly disputed the State's assertion of jurisdiction.

VI. Indian Land Program for the Wind River Reservation in the State of Wyoming

A. Mechanical Integrity Testing

Two commenters urged EPA to accept mechanical integrity tests (MITs) that were done on wells in the Wind River Reservation prior to the promulgation of this program. EPA has decided to accept well-documented MITs that meet EPA's standards as the initial MIT. Subsequent testing will be necessary before issuance of a permit, or within five years of the first test, whichever occurs first.

B. Aquifer Exemption

The SDWA protects all underground sources of drinking water, whether or not specifically designated as such. The regulations define "underground source of drinking water" very broadly as: an aquifer which supplies or has sufficient capacity to supply a public water system; and either currently supplies drinking water for human consumption, or contains less than 10,000 mg/l TDS; and is not an exempted aquifer. Under existing regulations, EPA may exempt from the UIC program aquifers which have the capacity to supply public water systems and contain less than 10,000 mg/l TDS if they do not now and could not in the future serve as a source for a public water supply for one of the reasons recognized in the regulations (40 CFR 146.4). Owners and operators of injection wells may inject into an exempted aquifer.

Some two hundred Class II wells, mostly enhanced recovery wells, are currently injecting into aquifers with less than 10,000 TDS on the Wind River Reservation in Wyoming.

There are currently eight separate oil and gas fields where injection is practiced on the Wind River Indian Reservation. The formations receiving injections are: the Darwin Sandstone (part of the Amsden); the Tensleep; the Crow Mountain (part of the Chugwater Group); the Phosphoria (also known as the Park City); the Muddy; the Nugget Sandstone; and the Frontier. The Tensleep, Phosphoria, Nugget and Frontier are the major aquifers associated with injection activity, while the Darwin, Muddy, and Crow Mountain are relatively minor water-bearing zones. Available data indicates that all of these aquifers contain water with less than 10,000 milligrams per liter of total dissolved solids and therefore meet the definition of underground sources of drinking water (USDWs).

Most of the aquifers in question serve as the injection zone for enhanced recovery wells, and by their nature, are hydrocarbon producing zones. EPA's research confirmed that the formations are not now used as sources of drinking water, and because of their hydrocarbon content are not expected to be used for these purposes in the future. The one salt water disposal well is a converted oil producing well, and there is an active producing well less than one-quarter mile away. The zone is part of a hydrocarbon-producing formation, thus eligible for exemption both because of the commercial producibility of the oil and because the residual oil so contaminated the water in the aquifer that it is impractical to render it fit for human consumption.

As a result, portions of these aquifers qualify for exempted aquifer status. The exemptions are approved as part of this

program, allowing injection operations to continue without disruption. The boundaries of the exempted aquifers are described in § 147.2564. The only comment concerning this exemption supported it.

Exemptions are being made for the entire oil and gas fields affected. This will allow for construction of additional Class II injection wells within the exempted areas without the need for future exemptions (although other program requirements, including permitting, must be met). However, the exemptions are limited to the intended injection formations, and to Class II injection.

These exemptions will become effective at the same time as the program: 30 days after publication in the Federal Register.

VII. Office of Management and Budget Review Regulatory Impact Analysis

The Administrator has determined that this is not a major regulation under the terms of E.O. 12291 and does not require a regulatory impact analysis. This proposal would extend to a very small number of wells the Federal regulations already judged not to be major, even when applied to all injection wells in the country. This regulation was submitted to OMB for review as required by Executive Order 12291.

Regulatory Flexibility Analysis

The original proposal for the generic Federal program concluded that the Federal UIC program would not have a significant impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 605(b)). The extension of those generic regulations to a very few owners and operators, of whom only some are "small entitites", will not change the original assessment. Accordingly, I certify that this regulation will not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 147

Indian lands, Underground injection.

Date: September 29, 1988.

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, Part 147 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 147—[AMENDED]

1. The authority citation for Part 147 is revised to read as follows:

Authority: 42 U.S.C. 300h; and 42 U.S.C. 6901 *et seq.*

2. 40 CFR Part 147, Subpart B—Alabama, is amended by revising the first sentence of § 147.50 introductory text to read as follows:

§ 147.50 State-administered program—Class II wells.

The UIC program for Class II wells in the State of Alabama, except those on Indian lands, is the program administered by the State Oil and Gas Board of Alabama, approved by EPA pursuant to section 1425 of the SDWA.

* * * * * *

3. Subpart B—Alabama is amended by revising the first sentence of the introductory text of § 147.51 to read as follows:

§ 147.51 State-administered program—Class I, III, IV, and V wells.

The UIC program for Class I, III, IV and V wells in the State of Alabama, except those on Indian lands, is the program administered by the Alabama Department of Environmental Management, approved by EPA pursuant to section 1422 of the SDWA.

* * * * * *

4. Subpart B—Alabama is amended by adding a new § 147.60 to read as follows:

§ 147.60 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Alabama is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Alabama is November 25, 1988.

5. Subpart C—Arizona is amended by revising § 147.151 to read as follows:

§ 147.151 EPA-administered program.

(a) *Contents.* The UIC program that applies to all injection activities in Arizona, including those on Indian lands, is administered by EPA. The UIC program for Navajo lands consists of the requirements contained in Subpart HHH of this Part. The program for all injection activity except that on Navajo Indian land consists of the UIC program requirements of 40 CFR Parts 124, 144, 146, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date for the UIC program in Arizona, except for the lands of the Navajo Indians, is June 25, 1984. The effective date for the UIC program on the lands of the Navajo is November 25, 1988.

6. Subpart E—Arkansas is amended by revising the first sentence of § 147.200 introductory text to read as follows:

§ 147.200 State-administered program—Class I, III, IV, and V wells.

The UIC program for Class I, III, IV and V wells in the State of Arkansas, except those wells on Indian lands, is the program administered by the Arkansas Department of Pollution Control and Ecology approved by EPA pursuant to section 1422 of the SDWA.

* * * * * *

7. Subpart E—Arkansas is amended by adding a new § 147.205 to read as follows:

§ 147.205 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Arkansas is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Arkansas is November 25, 1988.

8. Subpart H—Connecticut is amended by adding a new § 147.353 to read as follows:

§ 147.353 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Connecticut is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Connecticut is November 25, 1988.

9. Subpart I—Delaware is amended by adding a new § 147.403 to read as follows:

§ 147.403 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Delaware is administered by EPA. This program consists of the UIC program

requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Delaware is November 25, 1988.

10. Subpart J—District of Columbia is amended by revising § 147.451 to read as follows:

§ 147.451 EPA-administered program.

(a) *Contents.* The UIC program for the District of Columbia, including any Indian lands in the District, is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in the District of Columbia is November 25, 1988. The effective date for the UIC program in the rest of the District is June 25, 1984.

11. Subpart K—Florida is amended by revising the first sentence of the introductory text for § 147.500 to read as follows:

§ 147.500 State-administered program—Class I, III, IV and V wells.

The UIC program for Class I, III, IV, and V wells in the State of Florida, except for those on Indian lands is administered by the Florida Department of Environmental Regulations, approved by EPA pursuant to section 1422 of the SDWA. * * *

* * * * * *.

12. Subpart K—Florida is amended by revising § 147.501 to read as follows:

§ 147.501 EPA-administered program—Class II wells and Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands and for Class II wells on non-Indian lands in the State of Florida is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146 and the additional requirements set forth in the remainder of this subpart. Injection well owners and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date of the UIC program for Indian lands in Florida is November 25, 1988. The effective date for Class II wells on non-Indian lands is December 30, 1984.

13. Subpart L—Georgia is amended by adding a new § 147.553 to read as follows:

§ 147.553 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Georgia is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Georgia is November 25, 1988.

14. Subpart M—Hawaii is amended by revising § 147.601 to read as follows:

§ 147.601 EPA-administered program.

(a) *Contents.* The UIC program for the State of Hawaii, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Hawaii is November 25, 1988. The effective date for the UIC program for all other lands in Hawaii is December 30, 1984.

15. Subpart O—Illinois is amended by revising the first sentence of the introductory text for § 147.700 to read as follows:

§ 147.700 State-administered program—Class I, III, IV and V wells.

The UIC program for Class I, III, IV and V wells in the State of Illinois, except those on Indian lands, is the program administered by the Illinois Environmental Protection Agency, approved by EPA pursuant to section 1422 of the SDWA. * * *

* * * * * *

16. Subpart O—Illinois is amended by revising the first sentence of § 147.701 introductory text to read as follows:

§ 147.701 State-administered program—Class II wells.

The UIC program for Class II wells in the State of Illinois, except those on Indian lands, is the program administered by the Illinois Environmental Protection Agency, approved by EPA pursuant to section 1425 of the SDWA. * * *

* * * * * *

17. Subpart O—Illinois is amended by adding a new § 147.703 to read as follows:

§ 147.703 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for the State of Illinois on Indian lands in Illinois is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date for the UIC program for Indian lands is November 25, 1988.

18. Subpart P—Indiana is amended by revising § 147.751 to read as follows:

§ 147.751 EPA-administered program.

(a) *Contents.* The UIC program for the State of Indiana, including all Indian lands, is administered by EPA. The program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146 and the additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date for the UIC program on Indian lands is November 25, 1988. The effective date of the UIC program for the rest of Indiana is June 25, 1984.

19. Subpart S—Kentucky is amended by revising § 147.901 to read as follows:

§ 147.901 EPA-administered program.

(a) *Contents.* The UIC program for the Commonwealth of Kentucky, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144 and 146 and the additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date for the UIC program on Indian lands is November 25, 1988. The effective date for the UIC program in the remainder of Kentucky is June 25, 1984.

20. Subpart T—Louisiana is amended by adding a new § 147.951 to read as follows:

§ 147.951 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Louisiana is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146 and any additional

requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date of the UIC program for Indian lands in Louisiana is November 25, 1988.

21. Subpart U—Maine is amended by revising the first sentence of the introductory text of § 147.1000 to read as follows:

§ 147.1000 State-administered program.

The UIC program for all classes of wells in the State of Maine, except those on Indian lands, is the program administered by the Maine Department of Environmental Protection approved by EPA pursuant to section 1422 of the SDWA. * * *

* * * * *

22. Subpart U—Maine is amended by adding a new § 147.1001 to read as follows:

§ 147.1001 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Maine is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date of the UIC program for Indian lands in Maine is November 25, 1988.

23. Subpart V—Maryland is amended by adding a new § 147.1053 as follows:

§ 147.1053 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Maryland is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Maryland is November 25, 1988.

24. Subpart W—Massachusetts is amended by revising the first sentence of the introductory text of § 147.1100 to read as follows:

§ 147.1100 State-administered program.

The UIC program for all classes of wells in the State of Massachusetts, except those on Indian lands, is the program administered by the Massachusetts Department of Environmental Protection, approved by EPA pursuant to section 1422 of the SDWA. * * *

* * * * *

25. Subpart W—Massachusetts is amended by adding a new § 147.1101 to read as follows:

§ 147.1101 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Massachusetts is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Massachusetts is November 25, 1988.

26. Subpart Z—Mississippi is amended by revising the first sentence of § 147.1250 introductory text, to read as follows:

§ 147.1250 State-administered program—Class I, III, IV and V wells.

The UIC program for Class I, III, IV and V wells in the State of Mississippi, except those on Indian lands, is the program administered by the Mississippi Department of Natural Resources approved by EPA pursuant to section 1422 of the SDWA. * * *

* * * * *

27. Subpart Z—Mississippi is amended by revising § 147.1251 to read as follows:

§ 147.1251 EPA-administered program—Class II wells and Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands and for Class II wells on all lands in Mississippi is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date of the UIC program for Class II wells in Mississippi is December 30, 1984. The effective date for the UIC program on Indian lands is November 25, 1988.

28. Subpart AA—Missouri is amended by revising the first sentence of the introductory text of § 147.1300 to read as follows:

§ 147.1300 State-administered program.

The UIC program for all classes of wells in the State of Missouri, except those on Indian lands, is administered by the Missouri Department of Natural Resources, approved by EPA pursuant to section 1422 and 1425 of the SDWA. * * *

* * * * *

29. Subpart AA—Missouri is amended by adding a new § 147.1303 to read as follows:

§ 147.1303 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for the State of Missouri for all classes of wells on Indian lands is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146 and additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date for the UIC program for Indian lands is November 25, 1988.

30. Subpart DD—Nevada is amended by revising § 147.1451 and removing and reserving § 147.1452 as follows:

§ 147.1451 EPA administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Nevada is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective Dates.* The effective date of the UIC program for Indian lands in Nevada is June 25, 1984.

§ 147.1452 Aquifer exemptions. [Reserved]

31. Subpart EE—New Hampshire is amended by revising the first sentence of the introductory text of § 147.1500 to read as follows:

§ 147.1500 State-administered program.

The UIC program for all classes of wells in the State of New Hampshire, except those on Indian lands, is the program administered by the New Hampshire Water Supply and Pollution Control Commission, approved by EPA pursuant to section 1422 of the SDWA. * * *

* * * * *

32. Subpart EE—New Hampshire is amended by adding a new § 147.1501 to read as follows:

§ 147.1501 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in New Hampshire is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in New Hampshire is November 25, 1988.

33. Subpart FF—New Jersey is amended by revising the first sentence of the introductory text of § 147.1550 to read as follows:

§ 147.1550 State-administered program.

The UIC program for all classes of wells in the State of New Jersey, except those on Indian lands, is the program administered by the New Jersey Department of Environmental Protection, approved by EPA pursuant to section 1422 of the SDWA. * * *

* * * * *

34. Subpart FF—New Jersey is amended by adding a new § 147.1551 to read as follows:

§ 147.1551 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in New Jersey is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in New Jersey is November 25, 1988.

35. Subpart GG—New Mexico is amended by revising the first sentence of the introductory text of § 147.1600 to read as follows:

§ 147.1600 State-administered program—Class II wells.

The UIC program for Class II wells in the State of New Mexico, except for those on Indian lands, is the program administered by the New Mexico Energy and Minerals Department, Oil Conservation Division, approved by EPA pursuant to section 1425 of the SDWA. * * *

* * * * *

36. Subpart GG—New Mexico is amended by revising the first sentence of the introductory text of § 147.1601 to read as follows:

§ 147.1601 State-administered program—Class I, III, IV and V wells.

The UIC program for Class I, III, IV and V injection wells in the State of New Mexico, except for those on Indian lands, is the program administered by the New Mexico Water Quality Control Commission, the Environmental Improvement Division, and the Oil Conservation Division, approved by EPA pursuant to section 1422 of the SDWA. * * *

* * * * *

37. Subpart GG—New Mexico is amended by adding a new § 147.1603 to read as follows:

§ 147.1603 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in New Mexico is administered by EPA. The program consists of the requirements set forth at Subpart HHH of this part. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date for the UIC program on Indian lands in New Mexico is November 25, 1988.

38. Subpart HH—New York is amended by revising § 147.1651 to read as follows:

§ 147.1651 EPA-administered program.

(a) *Contents.* The UIC program for the State of New York, including all Indian lands, is administered by EPA. The program consists of the UIC program requirements in 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date of the UIC program for New York for all injection activities except those on lands of the Seneca Indian Tribe is June 25, 1989. The effective date for the UIC program for the lands of the Seneca Indian Tribe is November 25, 1988.

§ 107.1660 [Removed]

39. Subpart HH—New York is amended by removing § 147.1660.

40. Subpart II—North Carolina is amended by adding a new § 147.1703 to read as follows:

§ 147.1703 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in North Carolina is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in North Carolina is November 25, 1988.

41. Subpart JJ—North Dakota is amended by revising the first sentence of the introductory text of § 147.1750 as follows:

§ 147.1750 State-administered program—Class II wells.

The UIC program for Class II wells in the State of North Dakota, except those on Indian lands, is the program administered by the North Dakota Industrial Commission, approved by EPA pursuant to section 1425 of the SDWA. * * *

* * * * *

42. Subpart JJ—North Dakota is amended by adding text to § 147.1752 to read as follows:

§ 147.1752 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in North Dakota is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in North Dakota is November 25, 1988.

43. Subpart KK—Ohio is amended by revising the first sentence of the introductory text of § 147.1800 to read as follows:

§ 147.1800 State-administered program—Class II wells.

The UIC program for Class II wells in the State of Ohio, except for those on Indian lands, is the program administered by the Ohio Department of Natural Resources, approved by EPA pursuant to section 1425 of the SDWA. * * *

* * * * *

44. Subpart KK—Ohio is amended by adding a new § 147.1805 to read as follows:

§ 147.1805 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Ohio is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Ohio is November 25, 1988.

45. Subpart LL—Oklahoma is amended by revising the first sentence of the introductory text of § 147.1850 as follows:

§ 147.1850 State-administered program—Class I, III, IV and V wells.

The UIC program for Class I, III, IV, and V wells in the State of Oklahoma, except those on Indian lands, is the program administered by the Oklahoma State Department of Health, approved by EPA pursuant to SDWA section 1422. * * *

* * * * *

46. Subpart LL—Oklahoma is amended by revising the first sentence of the introductory text of § 147.1851 to read as follows:

§ 147.1851 State-administered program—Class II wells.

The UIC program for Class II wells in the State of Oklahoma, including the lands of the Five Civilized Tribes, but not including those on other Indian lands, is the program administered by the Oklahoma Corporation Commission approved by EPA pursuant to SDWA section 1425.

* * * * *

47. Subpart LL—Oklahoma is amended by revising § 147.1852 to read as follows:

§ 147.1852 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all wells on Indian lands in Oklahoma, except Class II wells on the lands of the Five Civilized Tribes, is administered by EPA. The UIC program for Class II wells on the Osage Mineral Reserve consists of the requirements set forth in Subpart GGG of this part. The UIC program for all other wells on Indian lands consists of the requirements set forth in Subpart III of this part. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date for UIC program for Class II wells on the Osage Mineral Reserve is December 30, 1984. The effective date for the UIC program for all other wells on Indian lands is November 25, 1988.

48. Subpart MM—Oregon is amended by revising the section heading and the first sentence of the introductory text of § 147.1900 to read as follows:

§ 147.1900 State-administered program.

The UIC program for all classes of wells in Oregon, except those on Indian lands, is administered by the Oregon Department of Environmental Quality, approved by EPA pursuant to section 1422 of the SDWA. * * *

* * * * *

49. Subpart MM—Oregon is amended by adding a new § 147.1901 to read as follows:

§ 147.1901 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Oregon is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Oregon is November 25, 1988.

50. Subpart NN—Pennsylvania is amended by revising § 147.1951 to read as follows:

§ 147.1951 EPA-administered program.

(a) *Contents.* The UIC program for the State of Pennsylvania, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and the additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date for the UIC program on Indian lands is November 25, 1988. The effective date for the UIC program for the rest of Pennsylvania is June 25, 1984.

51. Subpart OO—Rhode Island is amended by revising the first sentence of the introductory text of § 147.2000 to read as follows:

§ 147.2000 State-administered program.

The UIC program for all classes of wells in Rhode Island, except those on Indian lands, is the program administered by the Rhode Island Department of Environmental Management, approved by EPA pursuant to section 1422 of the SDWA. * * *

* * * * *

52. Subpart OO—Rhode Island is amended by adding a new § 147.2001 to read as follows:

§ 147.2001 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Rhode Island is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Rhode Island is November 25, 1988.

53. Subpart PP—South Carolina is amended by revising the section heading and the first sentence of the introductory text of § 147.2050 to read as follows:

§ 147.2050 State-administered program.

The UIC program for all classes of wells in the State of South Carolina, except for those on Indian lands, is the program administered by the South Carolina Department of Health and Environmental Control, approved by EPA pursuant to section 1422 of the SDWA. * * *

* * * * *

54. Subpart PP—South Carolina is amended by adding a new § 147.2051 to read as follows:

§ 147.2051 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in South Carolina is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in South Carolina is November 25, 1988.

55. Subpart RR—Tennessee is amended by revising § 147.2151 to read as follows:

§ 147.2151 EPA-administered program.

(a) *Contents.* The UIC program for the State of Tennessee, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146 and the additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* Effective date for the UIC program on Indian lands is November 25, 1988. The effective date for the UIC program for the rest of Tennessee is June 25, 1984.

56. Subpart SS—Texas is amended by revising the first sentence of § 147.2200 introductory text to read as follows:

§ 147.2200 State-administered program—Class I, III, IV, and V wells.

Requirements for Class I, III, IV, and V wells. The UIC program for Class I, III, IV, and V wells in the State of Texas, except for those wells on Indian lands, is the State-administered program approved by EPA pursuant to section 1422 of the SDWA. * * *

* * * * *

57. Subpart SS—Texas is amended by revising the first sentence of § 147.2201 introductory text to read as follows:

§ 147.2201 State-administered program—Class II wells.

The UIC program for Class II wells in the State of Texas, except for those wells on Indian lands, is the program administered by the Railroad Commission of Texas, approved by EPA pursuant to section 1425 of the SDWA. * * *

* * * * *

58. Subpart SS—Texas is amended by adding a new § 147.2205 to read as follows:

§ 147.2205 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Texas is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date for the Indian lands program for the State of Texas is November 25, 1988.

59. Subpart TT—Utah is amended by revising the first sentence of § 147.2250 introductory text to read as follows:

§ 147.2250 State-administered program—Class I, III, IV, and V wells.

The UIC program for Class I, III, IV, and V wells in the State of Utah, except those on Indian lands, are administered by the Utah Department of Health, Division of Environmental Health, approved by EPA pursuant to section 1422 of the SDWA. * * *

* * * * *

60. Subpart TT—Utah is amended by revising the first sentence of the introductory text of § 147.2251 to read as follows:

§ 147.2251 State-administered program—Class II wells.

The UIC program for Class II wells in the State of Utah, except those on Indian lands, is the program administered by the Utah Department of Natural Resources, Division of Oil, Gas, and Mining, approved by EPA pursuant to section 1425 of the SDWA. * * *

* * * * *

61. Subpart TT—Utah is amended by adding a new § 147.2253 to read as follows:

§ 147.2253 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Utah is administered by EPA. The program for wells on the lands of the Navajo and Ute Mountain Ute consists of the requirements set forth at Subpart HHH of this part. The program for all other wells on Indian lands consists of the UIC program requirements of 30 CFR Parts 124, 144, 146, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date for this program for all other Indian lands in Utah (as well as for the program of the Navajo and Ute Mountain Ute) is November 25, 1988.

62. Subpart UU—Vermont is amended by revising the section heading and the first sentence of the introductory text for § 147.2300 to read as follows:

§ 147.2300 State-administered program.

The UIC program for all classes of wells for the State of Vermont, except for those on Indian lands, is the program administered by the Vermont Department of Water Resources and Environmental Engineering approved by EPA pursuant to section 1422 of the SDWA. * * *

* * * * *

63. Subpart UU—Vermont is amended by adding a new § 147.2303 to read as follows:

§ 147.2303 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for Indian lands in Vermont is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Vermont is November 25, 1988.

64. Subpart VV—Virginia is amended by revising § 147.2351 to read as follows:

§ 147.2351 EPA-administered program.

(a) *Contents.* The UIC program for the State of Virginia, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR Part 124, 144 and 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date for the UIC program on Indian lands is November 25, 1988. The effective date for the UIC program for the remainder of Virginia is June 25, 1988.

65. Subpart WW—Washington is amended by adding a new § 147.2403 as follows:

§ 147.2403 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Washington is administered by EPA. This program, for all Indian lands except those of the Colville Tribe, consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date for the UIC program for Indian lands in Washington is November 25, 1988.

66. Subpart WW is amended by adding a new § 147.2404 to read as follows:

§ 147.2404 EPA-administered program—Colville Reservation.

(a) The UIC program for the Colville Indian Reservation consists of a prohibition of all Class I, II, III and IV injection wells and of a program administered by EPA for Class V wells. This program consists of the UIC program requirements of 40 CFR Part 124, 144 and 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and EPA shall comply with these requirements. The prohibition on Class I–IV wells is effective November 25, 1988. No owner or operator shall construct, operate, maintain, convert, or conduct any other injection activity thereafter using Class I–IV wells.

(b) Owners and operators of Class I, II, III or IV wells in existence on the effective date of the program shall cease injection immediately. Within 60 days of the effective date of the program, the owner or operator shall submit a plan and schedule for plugging and abandoning the well for the Director's approval. The owner or operator shall plug and abandon the well according to the approved plan and schedule.

67. Subpart XX—West Virginia is amended by adding a new § 147.2453 as follows:

§ 147.2453 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in West Virginia is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144 and 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and EPA shall comply with these requirements.

(b) *Effective date.* The effective date for the UIC program on Indian lands in West Virginia is November 25, 1988.

68. Subpart ZZ—Wyoming is amended by revising the first sentence of the introductory text of section § 147.2550 to read as follows:

§ 147.2550 State-administered program—Class I, III, IV and V wells.

The UIC program for Class I, III, IV and V wells in the State of Wyoming, except those on Indian lands is the program administered by the Wyoming Department of Environmental Quality approved by EPA pursuant to section 1422 of the SDWA. * * *

* * * * *

69. Subpart ZZ—Wyoming is amended by revising the first sentence of the introductory text of § 147.2551 to read as follows:

§ 147.2551 State-administered program—Class II wells.

The UIC program for Class II wells in the State of Wyoming, except those on Indian lands, is the program administered by the Wyoming Oil and Gas Conservation Commission, approved by EPA pursuant to section 1425 of the SDWA. * * *

* * * * *

70. Subpart ZZ—Wyoming is amended by adding a new § 147.2553 to read as follows:

§ 147.2553 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for Indian lands in Wyoming is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date for the UIC program on Indian lands in Wyoming is November 25, 1988.

71. Subpart ZZ—Wyoming is amended by adding a new § 147.2554 to read as follows:

§ 147.2554 Aquifer Exemptions.

In accordance with § 144.7(b) and § 146.4 of this chapter, those portions of aquifers currently being used for injection in connection with Class II (oil and gas) injection operations on the Wind River Reservation, which are described below, are hereby exempted for the purpose of Class II injection activity. This exemption applies only to the aquifers tabulated below, and includes those portions of the aquifers defined on the surface by an outer boundary of those quarter-quarter sections dissected by a line drawn parallel to, but one-quarter mile outside, the field boundary, and is restricted to extend no further than one-quarter mile outside the Reservation boundary. Maps showing the exact boundaries of the field may be consulted at the EPA's Region 8 Office, and at the EPA Headquarters in Washington, DC.

AREAS TO BE EXEMPTED FOR THE PURPOSE OF CLASS II INJECTION ON THE WIND RIVER RESERVATION

Formation	Approximate depth	Location
[illegible] Gulch Field		
Phosphoria	6,500–7,100	T3N, R1W—W/2 Sec. 4, Sec. 5, E/2 Sec. 6, NE/4 Sec. 8, W/2 Sec. 9. T4N, R1W—W/2 Sec. 29, E/2 Sec. 30, E/2 Sec. 31, Sec. 32.
Tensleep	6,900–7,600	T3N, R1W—W/2 Sec. 4, Sec. 5, E/2 Sec. 6, NE/4 Sec. 8, W/2 Sec. 9. T4N, R1W—W/2 Sec. 29, E/2 Sec. 30, E/2 Sec. 31, Sec. 32.
[illegible] Dome Field		
Tensleep	2,800–3,300	T2N, R1W—SW/4 Sec. 17, Sections 18, 19, 20, 29, NE/4 Sec. 30. T2N, R2W—E/2 Sec. 13, NE/4 Sec. 24.
Phosphoria	2,600–3,600	T2N, R1W—SW/4 Sec. 17, Sections 18, 19, 20, 29, NE/4 Sec. 30. T2N, R2W—E/2 Sec. 13, NE/4 Sec. 24.
Nugget	1,100–1,500	T2N, R1W—SW/4 Sec. 17, Sections 18, 19, 20, 29, NE/4 Sec. 30. T2N, R2W—E/2 Sec. 13, NE/4 Sec. 24.
Lander Field		
Phosphoria	1,100–3,800	T2S, R1E—Sections 12 and 13, E/2 Sec. 24, NE/4 Sec. 25. T2S, R2E—W/2 Sec. 18, W/2 Sec. 19, Sec. 30. T33N, R99W—Sec. 4.
NW [illegible] Field		
Crow Mountain and Cloverly	2,400–3,600	T6N, R3W—SE/4 Sec. 35, SW/4 Sec. 36. T5N, R3W—N/2 Sec. 1.
Circle Ridge Field		
Tensleep	1,500–1,800	T6N, R2W—Sec. 6, N/2 Sec. 7. T7N, R3W—SE/4 Sec. 36. T7N, R2W—SW/4 Sec. 31. T6N, R3W—E/2 Sec. 1.
Phosphoria	800–1,600	T7N, R3W—S/2 Sec. 36. T6N, R3W—NE/4 Sec. 1.
Amsden	700–1,200	T6N, R3W—Sec. 6.
[illegible] Lake Field		
Crow Mountain	3,500–3,700	T6N, R3W—SW/4 Sec. 26, NW/4 Sec. 27.

72. Subpart AAA—Guam is amended by revising the first sentence of the introductory text of § 147.2600 to read as follows:

§ 147.2600 State-administered program.

The UIC program for all classes of wells in the territory of Guam, except those on Indian lands, is the program administered by the Guam Environmental Protection Agency, approved by EPA pursuant to SDWA section 1422. * * *

* * * * *

73. Subpart AAA—Guam is amended by adding a new § 147.2601 to read as follows:

§ 147.2601 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for Indian lands in the territory of Guam is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with the requirements.

(b) *Effective date.* The effective date for the UIC program on Indian lands in the territory of Guam is November 25, 1988.

74. Subpart BBB—Puerto Rico is amended by revising § 147.2651 to read as follows:

§ 147.2651 EPA-administered program.

(a) *Contents.* The UIC program for Puerto Rico, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with the requirements.

(b) *Effective dates.* The effective date of the UIC program for non-Indian lands in Puerto Rico is December 30, 1984. The effective date of the UIC program on Indian lands in Puerto Rico is November 25, 1988.

75. Subpart CCC—Virgin Islands is amended by revising § 147.2701 to read as follows:

§ 147.2701 EPA-administered program.

(a) *Contents.* The UIC program for the Virgin Islands, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with the requirements.

(b) *Effective dates.* The effective date of the UIC program for non-Indian lands in the Virgin Islands is December 30, 1984. The effective date for Indian lands in the Virgin Islands is November 25, 1988.

76. Subpart DDD—American Samoa is amended by revising § 147.2751 to read as follows:

§ 147.2751 EPA-administered program.

(a) *Contents.* The UIC program for American Samoa, including Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with the requirements.

(b) *Effective dates.* The effective date for the UIC program on non-Indian lands is June 25, 1984. The effective date of the UIC program on Indian lands is November 25, 1988.

77. Subpart EEE—Commonwealth of the Northern Mariana Islands is amended by revising § 147.2801 to read as follows:

§ 147.2801 EPA-administered program.

(a) *Contents.* The UIC program for Indian lands in the Commonwealth of the Northern Mariana Islands is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with the requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands is November 25, 1988.

78. Subpart FFF—Trust Territory of the Pacific Islands is amended by revising § 147.2851 to read as follows:

§ 147.2851 EPA-administered program.

(a) *Contents.* The UIC program for the Trust Territory of the Pacific Islands, including Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply wih the requirements.

(b) *Effective dates.* The effective date of the UIC program for non-Indian lands of the Trust Territory of the Pacific Islands is June 25, 1984. The effective date for the Indian lands is November 25, 1988.

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Part IV

Environmental Protection Agency

40 CFR Part 147
Underground Injection Control Programs for Certain Indian Lands; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[FRL 3311-2]

Underground Injection Control Programs for Certain Indian Lands

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is promulgating Federally administered Underground Injection Control (UIC) programs for the Navajo Indian lands, Ute Mountain Ute Indian lands, and other Indian lands in New Mexico and Oklahoma as part of its mandate to regulate all underground injection activity in the United States. These programs are based on the Federal program, but contain some additions and modifications. Elsewhere in today's Federal Register, the Agency is promulgating Underground Injection Control programs for all other Indian lands not already covered by an applicable UIC program. Together these actions will regulate all injection wells on Indian lands in order to protect underground sources of drinking water. Today's notice does not contain procedures by which Indian Tribes may apply for primary enforcement responsibility. That issue will be addressed in a separate Federal Register notice.

DATES: This rule will become effective on November 25, 1988. For the purposes of judicial review, this rule will be considered final agency action at 1:00 p.m. eastern time on November 8, 1988.

ADDRESSES: The record is available for inspection in Room 1143ET in the Underground Injection Control Branch, State Programs Division, Office of Drinking Water (WH-550E) EPA, 401 M Street SW., Washington, DC 20460. (202) 382-5394.

FOR FURTHER INFORMATION CONTACT: Donald M. Olson, Underground Injection Control Branch, State Programs Division, Office of Drinking Water, EPA (WH-550E) 401 M Street SW., Washington, DC 20460. (202) 382-5558.

SUPPLEMENTARY INFORMATION:

I. Background

The Safe Drinking Water Act (SDWA) authorized EPA to regulate underground injection activity on all lands in the United States, including Indian lands. (EPA has adopted the definition of "Indian country" found at 18 U.S.C. 1151, as the definition of "Indian lands" for the Direct Implementation UIC program. It is set forth in full at 40 CFR 144.3). The 1986 Amendments to the SDWA specifically directed EPA to promulgate by March 1987 a Federal UIC program for all Indian lands not already covered by an applicable UIC program.

EPA has promulgated the "generic" Federal program contained in 40 CFR Parts 124, 144, and 146 for most Indian lands. All those not previously promulgated were promulgated today in a separate Federal Register notice. The "generic" Federal program is the same program that EPA administers on non-Indian lands in many States. A few Indian Tribes expressed interest in requirements that differ somewhat from the generic Federal requirements.

The SDWA and its regulations allow flexibility to respond to the unique conditions and needs of Indian Tribes, and EPA policy encourages such accommodation. The SDWA sets forth only very general criteria for establishing UIC programs. The SDWA directs the EPA to promulgate regulations establishing the minimum requirements for State UIC programs, and then to approve and promulgate individual programs for each State. The State programs must meet the requirements of EPA's regulations (except for State programs regulating Class II wells which are authorized under section 1425 of the SDWA), but need not be identical. Section 1421(b)(3) of the SDWA directs the Administrator to "permit or provide for consideration of varying geologic, hydrological, or historical conditions in different States and in different areas within a State." Most of the State programs for States which have primary enforcement responsibility do differ from the Federal program. Although the State programs for the States in which EPA administers the programs basically consist of the Federal generic regulations, many of them contain variations.

Section 1451(a)(1), added by the 1986 SDWA Amendments, authorized the Administrator to treat Indian Tribes as States under the SDWA. This provision is distinct from the authorization to delegate to Indian Tribes primary enforcement responsibility and to provide grant and contract assistance. Section 1451 goes on to say that where treatment of Tribes as identical to States is inappropriate or infeasible the Administrator may use other means for achieving the purpose of the provision. EPA believes that allowing some variation in a Tribe's UIC program to accomodate its geological and historic differences, while maintaining a program no less stringent than the generic program, would achieve the purpose of the 1986 Amendments.

The EPA Indian Policy, issued November 8, 1984, committed the Agency to deal with Indian Tribes on a government-to-government basis, to assist them in developing the capability to manage their own environmental programs and to give great weight to their concerns when designing programs for their lands. Application of this policy to the UIC program has been discussed in the preambles to several regulations and is partially codified at 40 CFR 144.2. (47 FR 17578, April 23, 1982; 48 FR 40100, September 2, 1983).

II. Development of This Rule

This rule has been under discussion for several years. In Federal Register notices on September 2, 1983 (48 FR 40100) and May 11, 1984 (49 FR 20340), EPA asked for comment on four options for UIC programs on Indian lands including: (1) Programs identical to the Federal generic rules, (2) programs similar to those in the State surrounding the Indian lands, (3) programs including a combination of Federal and State provisions, and (4) new programs reflecting the concerns of the Tribe. There was no agreement among the States, the industry, and the Indian Tribes about which was the best option. While most Indian Tribes appeared to be content with the Federal generic program, certain tribes had special concerns or provisions that they wanted incorporated into any UIC program on their lands. The Navajo, Ute Mountain Ute, and several of the Oklahoma Tribes pursued their preferences for tailored UIC program provisions during the next few years.

The passage of the 1986 Amendments to the SDWA accelerated the decision process. On May 11, 1987, EPA proposed to extend the Federal generic UIC program to most Indian lands. In a separate Federal Register notice on the same day, the Agency proposed somewhat different programs for the lands of the Navajo, the Ute Mountain Ute, other Tribes in New Mexico and the Indian lands in Oklahoma not already covered.

Five public hearings on the "tailored programs" were held in New Mexico, Arizona, and Oklahoma. Sixteen people commented on them either at the public hearings or in writing afterwards. The commenters generally approved of the scheme of adding some variations to the Federal generic program, but changes were suggested for some of the individual sections.

III. Scope

Today's rule consists of two tailored programs. One covers all wells on the Navajo Indian lands, wells on the lands of the Ute Mountain Ute (Class II wells only on Ute Mountain Ute lands in Colorado, and all wells on Ute Mountain Ute lands in Utah and New Mexico) and all wells on other Indian lands in New Mexico. The lands of the Navajo extend into the States of New Mexico, Utah, and Arizona, areas covered by EPA Regions VI, VIII and IX. The latest inventory of wells on Navajo Indian lands indicates there is a total of 704 Class II wells (458 in Utah, 241 in New Mexico, and 5 in Arizona), 87 Class III wells (all in New Mexico) and two Class V wells (both in New Mexico).

The Ute Mountain Ute lands extend into the States of New Mexico, Colorado and Utah, EPA Regions VI and VIII. There are 15 Class II wells on Ute Mountain Ute lands (12 in New Mexico and three in Colorado). EPA is already administering the generic Federal program for non-Class II wells on the lands of the Ute Mountain Ute in Colorado.

The remainder of the existing injection wells in New Mexico on Indian lands are three Class II wells on the Jicarilla Indian Reservation and three Class V wells on the Laguna Indian Reservation.

The second tailored program applies to all classes of wells on all Indian lands in Oklahoma, except for Class II wells on the Osage Mineral Reserve in Osage County and Class II wells on the lands of the Five Civilized Tribes (Choctaw, Cherokee, Chickasaw, Creek and Seminole). The Class II program for the Osage Mineral Reserve was promulgated on November 15, 1984, and may be found at 40 CFR 147 Subpart GGG. The Class II program on the lands of the Five Civilized Tribes was promulgated on December 2, 1981, as part of the State-administered program. (40 CFR 147, Subpart LL).

The latest inventory indicates that there are one Class I well and 194 Class II wells on the Indian lands in Oklahoma covered by this proposal. The wells are located on lands of 13 of the 33 tribes.

The UIC programs for most Indian lands outside the scope of this rule are identical to the Federal generic program, although a few programs ban some classes of injection wells. A notice of the promulgation of UIC programs for Indian lands in forty-one states and territories appears elsewhere in today's Federal Register. UIC programs on Indian lands in fourteen other states were previously promulgated. (52 FR 17660, May 11, 1987; 49 FR 45292, November 15, 1984; 49 FR 20138, May 11, 1984).

IV. Comments and Modifications to the Proposed Rule

EPA received relatively few comments on this proposed rule. Most of them concerned either the notice, mechanical integrity, or injection pressure provisions of the proposed rule. Comments on specific provisions and EPA's responses are incorporated into the section-by-section description which follows.

A. General Comments

EPA also received some general comments regarding the proposed rule. Two of the Indian commenters made general statements of support for the UIC programs which they believe will protect ground water. One of the Indian commenters also thanked EPA for informing and consulting his tribe as the proposal was developed. The Hopi Tribe emphasized its special situation, surrounded by the Navajo lands and sharing ownership of many resources with the Navajo. The Hopi had no suggestions for special provisions, but wanted to be sure that they would have an opportunity for future involvement. Finally, one of the States reiterated its preference for extending the State program to Indian lands. EPA continues to believe, as explained in the preamble to the proposed rule, that administering a State program would not be feasible. Some provisions of State UIC programs are dependent upon State authority. EPA would not have authority to enforce these provisions under the SDWA.

B. Jurisdiction Issues

Two commenters had questions about the definition of Indian lands and how EPA would set the jurisdictional boundaries for these programs. As mentioned above, the definition of Indian lands adopted for the UIC program is set forth in 40 CFR 144.3. Whatever definition is chosen, there will be disagreements about whether particular lands fall within the definition. An Indian tribe would probably object to a State exercising jurisdiction over lands it perceives as Indian lands, and a State would object to an Indian Tribe exercising authority over lands which it believes to be non-Indian lands. Thus, disputes could prevent both the State and the Indian tribe from exercising primary enforcement responsibility for a UIC program. In order to ensure regulation of injection wells and minimize any disruption, pending the resolution of jurisdictional disputes, EPA will implement the Federal UIC program for disputed lands.

The recently proposed EPA regulation to allow Indian Tribes to apply for primary enforcement authority under the SDWA does not define Indian lands over which the Tribe could exercise UIC authority. The proposed rule would allow neighboring governmental units to object to a Tribe's assertion of jurisdiction. When there is a conflicting claim, EPA will consult with the Department of the Interior and decide whether the Tribe has adequately demonstrated jurisdiction to administer a program under the SDWA. A Tribe may not proceed to the next step of applying for primary enforcement responsibility over a particular program until EPA has determined that the Tribe's jurisdictional showing is adequate.

This different approach is consistent with the different mandate for the primacy regulations. The primacy regulations allow for transfer of responsibility for the UIC (and other SDWA programs) under carefully delineated criteria specified in section 1451. On the other hand, the intent of the last sentence of section 1422(e) is to make sure that all Indian lands are covered by some UIC program. There will be cases in which a Tribe does not apply for primacy or cannot demonstrate its jurisdiction, but a State could not administer the UIC program on those lands. The EPA must administer the UIC programs for those lands.

One commenter wanted to be sure that jurisdictional decisions would be made ahead of time, as the program is being established, rather than on an ad-hoc basis later. Although this sounds sensible, it will not be possible. Advance decisions would delay the implementation of the program for an unacceptable amount of time. As described above, EPA will assume that lands described by the definition in 40 CFR 144.3 are Indian lands and will begin implementation of the UIC program on them. If disputed territory is later adjudged to be non-Indian lands, it will be deleted from the EPA Direct Implementation Indian land program and added either to the EPA (non-Indian land) DI program for that State or to the State program, as appropriate.

Another commenter suggested that for Class II wells, the definition of Indian lands be restricted to the reservation because that would be in line with other regulations of the oil and gas industry. As described above, EPA believes that restricting these regulations to the

reservations could result in unregulated wells on non-reservation Indian lands. The commenter went on to say that under the definition of Indian country "all a tribe has to do is buy a small parcel of land with a well on it and they will assume complete authority over an operation in which they have no interest." It appears that this commenter thought the regulations would confer primary enforcement responsibility on the Indian tribes, but that is covered under a separate set of regulations. Under this rule, the Federal EPA will regulate wells on whatever is considered Indian land. Furthermore, purchases of land by Indians or Indian tribes is not alone sufficient to make the land "Indian Country." If land owned by Indians is not held in trust or with restraints on alienation, it is no different than land owned by other persons. Thus, the State has authority over it and may implement its UIC program (assuming the State has been granted primacy). If ownership of mineral rights and the surface estate is split, and either is considered Indian lands, the Federal EPA will regulate the well under the Indian land program.

V. Program Contents—Provisions of the Navajo, Ute Mountain Ute, and New Mexico Indian Lands Program

The program for the Navajo, Ute Mountain Uts, and New Mexico Indian lands incorporates the Federal UIC program codified at 40 CFR Parts 124, 144 and 146 with certain additional requirements described below.

As more than one commenter pointed out, the proposed rule incorrectly listed the effective date of both tailored programs as June 10, 1987 (30 days after publication of the proposed rule). The effective date should have read "30 days after publication of the final rule in the Federal Register."

A. Public Notice of Permit Actions (§ 147.3002)

The proposed rule required actual, individual notification of intent to apply for a permit to landowners, tenants, and lease operators within one-half mile of the well, in addition to the notice to the affected Tribal government. Some oil industry commenters objected to the proposed notice requirement, particularly to tenants, saying that it was difficult and unnecessary. Both commenters thought it should be sufficient to notify the Tribal government. One commenter also thought the waiver provision was burdensome.

EPA has decided not to change the proposed notice requirement. Similar provisions are being implemented without undue difficulties in New Mexico and Oklahoma. Those commenting on proposed permit applications are frequently tenants and landowners. EPA believes that it is good practice to give notice to those actually on the land where new drilling is contemplated, and other kinds of notice may not be adequate in sparsely populated areas. Finally, if the requirement to give notice is too onerous in a particular situation, the permittee may apply for a waiver. The waiver may apply to an area rather than to a single permit.

Affected Tribal governments will be notified by owners or operators of an intent to apply for a permit. EPA will also provide to the affected Tribal governments all notices given to "affected States" under § 124.10(c) of this chapter.

A Bureau of Land Management (BLM) field office suggested that EPA notify local BLM and Bureau of Indian Affairs (BIA) offices of proposed permit actions at the same time as affected Tribal governments to facilitate review and processing. However, § 124.10(c)(1) already requires EPA to send notice of permit actions to federal agencies with jurisdiction over fish and wildlife resources and other "appropriate government authorities." BIA and BLM, which retain some jurisdiction over injection wells and the projects of which they are a part, constitute "appropriate governmental authorities." Thus, there is no need to establish by regulation additional notice for these federal agencies. EPA, BIA and BLM are developing Memoranda of Agreement covering mutual notice for these Indian lands.

The Navajo Tribe requested that it be notified of maximum injection pressures established for individual fields under the procedures of § 147.3008(b)(1). That paragraph requires the Director to provide opportunity for comment and public hearing according to the provisions of Part 124, Subpart A of this chapter before setting the field pressure, and informing the owners and operators in writing of the final decision. The Navajo wish to be apprised of the final decision. The Tribe will have been informed of the tentative decision under the procedures of Part 124 because affected Tribes will receive all notices sent to affected state governments whenever the procedures of Part 124 are used. EPA has no objection to providing notice of the final decision as well. Section 147.3008(b)(1) has been changed to add this notice.

B. Aquifer Exemptions (§ 147.3003(a))

The SDWA protects all underground sources of drinking water, whether or not specifically designated as such. The regulations define "underground source of drinking water" very broadly as: An aquifer which supplies or which contains a sufficient quantity of ground water to supply a public water system and either; currently supplies drinking water for human consumption, or contains less than 10,000 mg/l TDS; and which is not an exempted aquifer. Under existing regulations, EPA may exempt from the UIC program aquifers which have the capacity to supply public water systems and contain less than 10,000 mg/l TDS if they do not now and could not in the future serve as a source for a public water supply for one of the reasons recognized in the regulations (40 CFR 146.4). Owners and operators of injection wells may inject into an exempted aquifer.

EPA is aware that some Class II wells on the lands of the Navajo, particularly enhanced recovery wells, are injecting into aquifers with less than 10,000 TDS water. If the Agency had not designated them exempted aquifers under this rule, injection would have become illegal on the day the UIC program took effect. New wells may necessitate additional aquifer exemptions after program promulgation. Owners and operators may apply for them using established Agency procedures.

The exemptions included in this rule are limited to the injection formation only and to Class II wells. Some of the aquifers that EPA has exempted are at a great depth, an average of 5,400 feet. The aquifers in question serve as the injection zone for enhanced recovery wells, and by their nature, are hydrocarbon producing zones. EPA has investigated the aquifers and solicited comment on them, and has found that the formations are not now used as sources of drinking water, and because of their hydrocarbon content are not expected to be used for these purposes in the future. The exempted aquifers are listed in Appendix A.

The Agency received four comments on the aquifer exemption provisions. The first suggested that EPA modify its regulations so that an operator could inject produced fluids back into the formation from which they came without any conditions or necessity for exemptions. This comment is directed at a long-established part of the Federal UIC program on which comments are no longer timely. Furthermore, the requirement for exemptions is based on the statutory mandate to protect all aquifers which supply or can reasonably be expected to supply a public water system. EPA may only allow injection into a formation which has the capacity to supply a public water system upon a showing that there is some other reason why it would never be used for public water supplies; that it is not in fact an underground source of drinking water.

The second comment was from the Navajo Tribe who did not want EPA to exempt any aquifers until it had had a chance to comment. EPA's procedures require an opportunity for comment on requests for aquifer exemptions. The aquifer exemption requests received during the comment period on this proposal will be processed with separate notices of opportunity to comment after this rule becomes effective.

The Navajo also noted that the area around a well that is exempted is one-quarter mile while the area around a well which must be examined for abandoned and improperly completed wells is one-half mile, and suggested that they ought to be the same: Both one-half mile. The Agency believes that the cone of influence, the area in which pressure is changed by injection, is larger than the area which will actually receive the injected fluid. It is only necessary to exempt that portion which will be contaminated by injection fluid, not that part merely influenced by pressure. Thus, the Agency believes that it is appropriate to have a smaller area covered by the aquifer exemption.

Another industry commenter wanted the Agency to exempt aquifers within the areal extent of productive fields currently used for injection because it would allow operators to drill new wells in active areas without applying for permits. EPA points out that the premise of the suggestion is legally incorrect. Aquifer exemptions and permits are independent requirements. Even if the whole aquifer has been exempted, new injection wells require permits (with some exceptions). However, an owner or operator of a field which has been exempted may apply for an area permit under § 144.33. This permit allows new wells to be drilled without individual permits.

EPA chose to exempt only the area surrounding active wells because it believes that a restrictive policy is consistent with the SDWA. The SDWA presumes that aquifers are underground sources of drinking water, and the regulatory program should make the same presumption until someone demonstrates that a particular aquifer is not a USDW and that there is a reason to exempt it. As the preamble to the proposed rule stated, EPA will entertain requests for exempting whole fields. The commenter did not submit a request for its fields. EPA sees no reason to revise its policy, but will consider any request for aquifer exemptions submitted by this or any other owner or operator.

The same commenter also suggested that EPA should not rely on lists of exempted aquifers in the Regions, but should either publish them in the **Federal Register** or exempt all aquifers into which wells are currently injecting. EPA agrees that publication in the **Federal Register** will make it easier to check on the status of aquifers, and as the description of exempted aquifers turned out to be of a manageable length, the exempted portions of aquifers on these Indian lands are published as an appendix to today's rule. Minor exeptions granted in the future will not be published in the **Federal Register** because they are not considered substantial program revisions under § 145.32. (Minor exemptions are those associated with a single permit action or concerning an aquifer of more than 3000 TDS and related to a Class II, III or V well. See 48 FR 40108, Sept. 2, 1983). As is the case for all UIC programs, the Regional EPA offices will maintain a complete list of aquifer exemptions, both major and minor. Those desiring to ascertain the status of aquifers in the future should check with the Regional EPA offices as well as the CFR.

C. Aquifer Cleanup (§ 147.3003(b) and § 147.3011)

The generic Federal program requires owners and operators of Class III wells which inject in or through an exempted aquifer to demonstrate that the plugging and abandonment plan will protect underground sources of drinking water (USDWs). The Director of a UIC program must prescribe "aquifer clean-up and monitoring where he deems it necessary and feasible to ensure adequate protection of USDWs." (40 CFR 146.10(d)). This means that the mined area must be cleaned up to the extent necessary and feasible after cessation of mining so that contaminants from mining operations will not endanger the USDWs surrounding the exempted portion which had been mined.

Today's rule requires some clean-up and monitoring for Class III uranium projects located on these Indian lands and injecting in or through an exempted aquifer of 5,000 milligrams per liter (mg/l) total dissolved solids (TDS) or less, as needed to protect surrounding USDWs. The generic regulations at § 146.10(d) give the Director the discretion to prescribe aquifer clean up where he deems it necessary and feasible. The economic and technological feasibility of such clean-up for uranium mines has been demonstrated for the types of mining and geology likely to be covered by the program in projects in New Mexico and Texas. Although the rule requires some clean-up, the contaminants of concern and the actual level of clean-up and monitoring will be decided for each project and specified in its permit. The Director would continue to be able to use the discretion granted in § 146.10(d) in deciding whether to require clean-up and monitoring for other kinds of Class III projects and for uranium mining projects injecting in or through aquifers of 5,000–10,000 mg/l TDS.

The scarce water in this arid region is very valuable and justifies this higher level of protection, which has been specifically requested by the affected Tribes. All of the existing (though currently abandoned) Class III projects covered by this rule are located on Indian lands in New Mexico and New Mexico is the most likely location for new Class III wells. The New Mexico State UIC program requires levels of protection equivalent to those specified in this program.

Pre-injection formation water quality will be analyzed by the applicant for appropriate ground-water contaminants. The level of clean-up for each contaminant will be specified in the permit. It will be set as close as is feasible to the original conditions.

If a permittee finds, after reasonable attempts, that an approved clean-up plan has proven infeasible to achieve in practice, he may document for the Director the attempt and failure to achieve contaminant levels set in the permit standards and request a modification of the clean-up standards through the procedures in 40 CFR 144.39 and 144.6.

The permittee must submit a proposed schedule for clean-up to the Director for his approval at the time the permittee requests permission to plug and abandon the well (see § 146.34(c)). The owner or operator will continue clean-up and monitoring according to the clean-up schedule until notified by the Director that the conditions of his permit have been satisfied. The Director will base his decision on reports submitted by the operator and the results of water quality analyses. The permittee must notify the Director at least two weeks in advance of sampling dates and provide the opportunity for splitting samples with the Director.

EPA recommends to the Director the following procedure to determine when

sufficient clean-up has been achieved. After three consecutive sample sets (a "sample set" is one sample from each well designated in the permit) taken at a minimum of 30-day intervals, show that constituents from each well are at concentrations equal to or less than that required by the permit, the Director will allow the permittee to cease clean-up efforts. The permittee will be required to file with the Director a written report of the results of the analyses and a summary of clean-up efforts. After filing the report, sampling for all constituents listed in the permit would again be conducted at 30-day intervals for a minimum of three more sample sets and reported to the Director. (This makes a total of six sample sets.) The Director will determine within 120 days of receiving the sixth sample analysis whether or not clean-up has been achieved. Upon acknowledment in writing by the Director of final clean-up, the permittee may cease all monitoring and clean-up activities in the affected area.

One commenter suggested that EPA make clear that the level of contaminants in each well must meet the permit level, that they cannot be averaged. EPA has made that clarification.

D. Duration of Rule Authorization for Class I and III Wells (§ 147.3004, 3217(a))

Owners and operators of existing Class I and III wells must submit permit applications no later than 90 days after the program becomes effective. The generic Federal program contains a one-year deadline. The longer period was established for administrative reasons, as it was clearly impossible to process all of the Class I and III permits in all direct implementation programs in a shorter time. However, there is only one existing Class I well covered by this program and only three Class III projects. In addition, owners and operators have already gathered most of the information for related submissions to State agencies. Therefore, the shorter period for permit application should not be a burden to owners and operators or to EPA.

E. Additional Requirements for Wells Injecting Radioactive Waste (§ 147.3005 and § 147.3016)

Under the generic Federal program, wells which inject radioactive waste below the lowermost USDW are Class V wells and are not currently subject to specific technical standards (40 CFR 146.51). Today's rule continues to classify wells which inject radioactive waste as Class V, but requires them to comply with all permitting requirements pertaining to Class I wells (under the authority of § 144.25(a)(3)). Among other things, this rule requires owners and operators to obtain a permit before constructing a radioactive waste disposal well and to comply with Class I construction and operating standards and requirements. The Navajo Tribe specifically requested increased stringency for radioactive waste wells. Surrounding State UIC programs contain similar provisions.

The definition of "radioactive waste" contained in 40 CFR 144.3 is unchanged, and refers to any waste which contains radioactive materials in concentrations which exceed those listed in 10 CFR Part 20, Appendix B, Table II, Column 2. However, wells which inject high level and transuranic waste and spent nuclear fuel covered by 40 CFR Part 191 will continue to be covered by the general Class V regulations, and EPA will develop additional specific provisions should such a well be proposed.

EPA is not aware of any existing wells injecting radioactive wastes located on the Indian lands covered by this proposal. Any future radioactive waste disposal wells on Indian lands are expected to be associated with uranium mine sites.

F. Maximum Injection Pressure Limit for Rule-Authorized Class II Salt Water Disposal Wells (§ 147.3008(a))

Under the generic Federal regulations at 40 CFR 144.28(f)(3)(ii) and 40 CFR 146.23(a), the owner or operator is generally directed not to exceed whatever maximum pressure at the wellhead would assure that injection will not initiate new fractures or propagate existing fractures in the confining zone adjacent to the USDW.

Today's rule establishes a maximum surface injection pressure of 0.2 pounds per square inch (psi) for each foot of depth to the top of the injection zone for rule-authorized Class II salt water disposal wells on these Indian lands. This limit has been used for several years by the State of New Mexico and is considered by EPA to be a very conservative formula to prevent fracturing of the injection zone. For Class II wells in Utah, the maximum injection pressure allowed under the State-administered program is determined by the following equation: Maximum injection pressure = (.733 − .433 × specific gravity of injection fluid) × depth of injection. The equation for these Indian lands requires lower maximum injection pressures than the Utah program except where the TDS of the injected fluids exceed approximately 250,000 mg/l. Use of the formula will assure that maximum injection pressures do not exceed those currently in effect in the area, and because there is no necessity for calculation of fluid density or tubing frictional loss, it is easily administered by the regulatory agency and easily understood by the regulated community. Higher injection pressures may be granted under a permit, provided that the conditions of § 144.52(a)(3) are met.

One industry commenter suggested that EPA adopt for the Navajo lands the formula used by the State of Utah because most wells are in San Juan County, Utah, and because there is no evidence that Utah's formula will cause degradation of ground water. EPA believes that the formula it has chosen is appropriate for rule-authorized wells. The higher level of protection afforded through the use of this more conservative formula is warranted based on preliminary reports provided by the Utah Division of Oil, Gas, and Mining, which suggest there is an increasing salinity in an overlying USDW in the Aneth field. The EPA is cooperating with the State of Utah, Navajo Nation, and other federal agencies to develop a strategy to identify the actual pathways and sources of the increasing salinity and to determine if injection activities could be accentuating the problem. Lower injection pressures for rule-authorized wells are therefore deemed desirable at this time. Operators do have the flexibility to seek approval of higher injection pressures based on actual fracture pressure data when the relatively few existing saltwater disposal wells are permitted.

G. Maximum Injection Pressure for Enhanced Recovery and Hydrocarbon Storage Wells (§ 147.3008(b))

Owners or operators of enhanced recovery and hydrocarbon storage wells must submit formation specific maximum injection pressure values for fields or projects as they do in other Direct Implementation programs (see for example, § 147.1353 (Montana) or § 147.1664 (New York)). The Agency will then establish appropriate limits for formations or units based on these and other data. The establishment of such "field rules" for maximum injection pressure has been favored by EPA because fracture gradients may vary considerably within relatively small areas and usually cannot be accurately described by a single formula. Operators who wish to inject at a higher pressure than those set for the formation and field must demonstrate in writing to the Director that the higher pressure will not initiate new fractures, propagate existing fractures, or cause the movement of fluid into a USDW. After an opportunity for a public hearing and public comment, the Director may grant the request for higher pressure.

Two commenters objected to limitations on injection pressure saying that they were too restrictive, that wells had been successfully operated without them on the Navajo reservation for years, and that such restrictions could also reduce Federal and Indian royalties from oil and gas production. The SDWA mandates EPA to protect underground sources of drinking water, and the Agency is not persuaded by these arguments to depart from its long-established policies on injection pressure. This is not a new issue for the UIC program. The SDWA directs EPA not to impede injection of brine brought to the surface in connection with oil and gas production unless it is essential to prevent endangerment of underground sources of drinking water. EPA continues to be convinced that some limitation on injection pressure is essential to prevent fracturing zones adjacent to USDWs and creating avenues of migration for contaminants from the injection zone. EPA considered comments similar to this one when promulgating the 1984 Direct Implementation rule and the technical rationale for limiting injection pressure has not changed. The limitations on injection pressure in this program are identical to those in other direct implementation programs, and like those programs allows adjustments of the maximum pressure for each well and field.

If the owner of a salt-water disposal well believes that the formula is unnecessarily restrictive in his case, he can request a higher pressure through a permit application in compliance with § 144.52(a)(3). The Director sets individual field pressures for enhanced recovery and hydrocarbon storage wells after opportunity for comment and hearing. If an owner or operator is still dissatisfied, he may demonstrate to the Director in writing that a higher pressure will not violate the performance standard of § 144.28(f)(3)(ii) of this chapter. The Director may grant such a request for a higher pressure after notice and opportunities for public hearing.

H. Information To Be Considered in Permit Applications (§ 147.3007(b), § 147.3013, and § 147.3015)

Owners and operators must submit certain information with permit applications in addition to that in the minimum Federal requirements listed at 40 CFR 146.14(a) and 146.34(a). These additional requirements, which include information on expected pressure and fluid changes and sampling methodology, are consistent with the program of the State of New Mexico and allow for a more thorough evaluation of permit applications. A portion of this additional information, required for Class III wells, is a direct result of the aquifer clean-up requirement discussed above.

I. Criteria for Aquifer Exemptions (§ 147.3008)

Several criteria for granting aquifer exemptions under the generic Federal program are set forth in 40 CFR 146.4. Under this Indian lands program an aquifer can not be exempted solely on the grounds that "the total dissolved solids content of the ground water is more than 3,000 and less than 10,000 mg/l and it is not reasonably expected to supply a public water system." This criterion, contained in § 146.4(c), will not apply for the Indian lands covered by this rule, although aquifers could still be exempted on the other grounds in § 146.4.

In most parts of the country, waters above 3,000 mg/l TDS might not reasonably be expected to supply a public water system. However, in the arid and rural Southwest lands for which this program is promulgated such water is used and needed. The higher level of protection is consistent with the New Mexico State program and is desired by the Indian Tribes.

One commenter objected to deletion of the criterion noting that if the aquifer might be expected to supply a public water system that it would not meet the other part of the two part exemption criteria anyway. It is true that this deletion does not change the substantive law, but it does shift the assumptions and change EPA's process for approval. Under 40 CFR 144.7, a Director's request for an exemption based on the 3,000 TDS criterion in § 146.4(c) will become final 45 days after submission to the Administrator, if the Administrator does not disapprove. The deletion of the criterion for this Indian land program means that aquifers with more than 3,000 TDS will not receive the semi-automatic approval of § 144.7(b)(3)(ii). Instead the drinking water potential of the aquifer will be specifically examined and the exemption requests will receive a final review at the Headquarters level under the procedures of § 144.7(b)(3)(i).

J. Area of Review (§ 147.3009)

The Federal minimum requirements, at 40 CFR 146.6, specify that the Director may establish the area of review around an injection well either by setting a fixed radius, not less than one-quarter mile, or through the use of an appropriate formula to calculate the zone of endangering influence.

For these Indian lands EPA has adopted the area of review requirements currently used in the Utah and New Mexico programs. For Class II wells, the area of review is a fixed radius of one-half mile. For Class I and III wells, the area of review is a fixed radius of two and one-half miles. Alternatively, an applicant for a Class I or III permit may make either of two demonstrations. First, in suitable cases, he may present technical information to show that withdrawal from the injection zone exceeds injection and results in a net withdrawal from the injection horizon at all times. Second, with the approval of the Director, he may use a mathematical equation, such as the modified form of the Theis equation (set out in 40 CFR 146.6(a)(2)) to calculate a zone of endangering influence. If the applicant chooses to make use of the alternative demonstrations, he should also propose a specific area of review not less than one-quarter mile for the Director's consideration.

It might appear that the minimum one-quarter mile area of review for Class I and III wells affords less protection than the fixed radius of one-half mile for Class II wells. However, the smaller area of review for Class I and III wells will be approved only where both the net volume of injected fluids and the maximum injection pressures anticipated (which together define the zone of endangering influence) is much less than would be allowed under a one-half mile fixed radius. It is desirable to limit the zone of endangering influence because this reduces the land area in which there is potential for movement of fluids through unplugged wells.

The States of New Mexico and Utah use these area of review calculations because they are believed to be suitable to the local geologic and environmental conditions. EPA adopted them to satisfy the strong public desire to follow the surrounding State programs as closely as possible, and to give additional protection to the groundwater in this arid region.

K. Mechanical Integrity Tests (§ 147.3010)

The May 11, 1987, Federal Register notice proposed approval of radioactive tracer surveys for evaluating the absence of significant leaks under § 146.8(a)(2). Since then the Director of the Office of Drinking Water has approved use of radioactive tracer

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surveys for all UIC programs (52 FR 35324, September 18, 1987). The proposed Indian land provisions were based on a prior draft of that approval. Now that the draft has become final and applies to all UIC programs, there is no reason to publish separate provisions on radioactive tracer survey for Indian lands. Therefore, EPA has deleted provisions concerning radioactive tracer surveys from the final rule.

Two people commented on radioactive tracers in this program. A trade association supported use of radioactive tracers for demonstrations required by 40 CFR 146.8(a) paragraphs (1) and (2). It also suggested allowing use of radioactive tracer surveys instead of pressure tests to precede monitoring of the annulus. In fact, under EPA's current rules, a radioactive tracer survey could replace the combination of pressure test and annulus monitoring. The commenter also thought it unnecessary to obtain the approval of the Director before using the radioactive tracer survey and to do it in conjunction with another test. Under the current rules, the radioactive tracer would be sufficient, without a parallel test and without advance approval under certain geological conditions. The State of Utah objected to the requirement of a pressure test prior to annulus monitoring and the Director approval of a radioactive survey. As mentioned above, a radioactive survey without prior approval may now be used for a part I demonstration and, under certain conditions, for a part II demonstration. (Part I refers to the first part of the standard for demonstrating mechanical integrity in 40 CFR 146.8(a)(i): "no significant leak in the casing, tubing, or packer" and part II refers to the second part of the standard in 40 CFR 146.8(a)(2): "no significant fluid movement into an underground source of drinking water through vertical channels adjacent to the injection well bore.") Utah also objected to the requirement that a description of the MIT be submitted for EPA approval saying that it would delay permitting. The provision for Director approval had been intended to apply to the radioactive tracer surveys. Now that the Agency has established policy on the radioactive tracer surveys, advance approval is no longer necessary. Therefore, the requirement has been deleted from this final rule.

The State of Utah also opposed the requirement for all wells to pressure-test before monitoring the annulus because some wells are sufficiently pressured during completion and because it is irrelevant where there is no USDW to protect. If an owner or operator does not wish to do a pressure test, he may now perform a radioactive tracer survey instead. If there is no USDW, the owner or operator may request the Director to reduce or waive certain requirements under § 144.16.

L. Construction Requirements (§§ 147.3012, 147.3014)

Section 146.12(b) of the generic regulations requires all Class I wells to be cased and cemented to prevent the movement of fluids into or between underground sources of drinking water. As in other direct implementation programs, EPA is implementing the broad directive of the regulation by imposing specific cementing requirements appropriate to the local geologic conditions. Section 147.3012 requires that the entire casing-borehole annulus of Class I wells be cemented from bottom to surface, as the New Mexico State UIC program requires.

Class III operators will also have to provide a description of the radiological characteristics of the formation fluids, a necessary part of the plugging and abandonment plan that includes aquifer clean-up. Monitoring wells may be required by the Director (under the authority of § 144.52(a)(9)) for USDWs below the injection zone of Class III projects, in addition to those above the injection zone already required by EPA Federal regulations, if these USDWs may be affected by mining operations (§ 147.3014).

The Navajo commented that a complete radiological and chemical characterization should be required under both § 147.3014 and § 147.3015. This would be redundant because § 147.3015 applies to all Class III wells, existing as well as newly drilled.

VI. Program Contents—Provisions of the Program for Lands of Certain Oklahoma Indians

A. Introduction

EPA is today also promulgating a tailored UIC program covering lands of most Oklahoma Indian Tribes. Currently, the State of Oklahoma administers the approved UIC program for non-Indian lands and for Class II wells on the lands of the Five Civilized Tribes. 40 CFR 147.1850–147.1851 and 46 FR 58469 (Dec. 2, 1981). EPA administers the UIC program for Class II wells on the Osage Mineral Reserves. 40 CFR 147.1852. Today's rule establishes an EPA-administered program for all other Indian lands in Oklahoma including non-Class II wells on the lands of the Five Civilized Tribes and the Osage Mineral Reserve. There are at least 30 tribes in Oklahoma and currently over 200 wells not regulated under a UIC program on the lands of 13 of these tribes.

Like the program for the lands of the Navajo, Ute Mountain Ute, and New Mexico Tribes, the program for Indian lands in Oklahoma uses the generic Federal standards (40 CFR 124, 144 and 146) as a base and adds a few provisions which are similar to provisions in the State program. For a more detailed discussion of the background, development, and scope of this rule see sections I, II, and III above. A discussion of the scope and rationale of the requirements, comments made on them, and EPA's response appears below.

B. Notice (§ 147.3101)

Owners and operators and the Director of the program have public notice responsibilities beyond those in 40 CFR 124.10. An applicant must give notice of intent to apply for a permit to appropriate tribal governments. EPA will provide notice through newspaper publication and radio broadcast. These provisions are similar to those of the existing State program, and should help foster meaningful participation by Indian tribes.

EPA received comments objecting to the requirement for individual notice in the Oklahoma program also. For the reasons set out in section 2.A. above, EPA has decided to retain the notice requirement for the final rule. An industry commenter also objected to the 45-day notice for comment on draft permits for Class I and III wells, saying that Oklahoma and other States only require a 15-day notice. In fact, the 15-day notice period applies only to Class II wells. Oklahoma requires a 45-day comment period for Class I and III permits. EPA believes that the potential complexity of Class I and III well permits and the broader public interest in them justify the longer period.

C. Plugging and Abandonment (§ 147.3102, § 147.3104, § 147.3105 and § 147.3108)

EPA has adopted the Oklahoma approach for plugging and abandonment and associated reporting. The generic Federal standards do not specify detailed plugging requirements, but set forth the basic principle that plugging shall prevent movement of fluids either into or between underground sources of drinking water (40 CFR 146.10). However, the Class II wells in Oklahoma all have similar construction and are completed into a few similarly characterized strata, and EPA believes it is expedient to prescribe detailed plugging requirements in the regulations. This is consistent with the State program and the EPA-regulated program in Osage County, thereby maintaining consistency within Oklahoma. The similarity of the wells allows EPA to set financial responsibility requirements without detailed plugging plans. The abbreviated individual plugging and abandonment plans will not be required of Class II operators until the operator submits a notice of abandonment to the EPA. The notice of abandonment is due 45 days before planned abandonment.

The setting of cement plugs is detailed in this proposal. Cement plugs are required to seal and isolate the injection zone and the lowermost USDW. The space between the cement plugs must be filled with mud, and a cement plug is required at the surface. The cement plugs so placed will prevent any movement of fluid into or between USDWs. The plugging requirements will be made a permit condition in any permit. Finally, the 45-day notice of abandonment should allow sufficient time for EPA's review and evaluation because the detailed plugging specifications in the regulations restrict the amount of variation in the types of plans EPA will review.

The Oklahoma Corporation Commission (OCC) made two comments on the plugging provisions. It suggested that EPA emphasize that the specifications are minimums which can be increased if necessary, particularly the size of the cement plug. EPA has adopted this suggestion and inserted the phrase "at least" in several places in the plugging section. The OCC also recommended adding its definition of mud to the provision. EPA has adopted this suggestion also, and revised the final rule accordingly.

D. Fluid Seals (§ 147.3103)

Fluid seals will not be allowed as alternatives to packers for Class I wells on these Indian lands. This prohibition is already a requirement in the Oklahoma State program and is more stringent than the minimum Federal standards. Currently, there is only one Class I well on Indian lands in Oklahoma.

E. Mechanical Integrity Tests (MIT) (§ 147.3107)

Any monitoring of annulus pressure pursuant to § 146.8(b)(1) must be preceded by a pressure test. A positive gauge pressure must be maintained upon an annulus filled with liquid during such annulus pressure monitoring. Experience in Oklahoma and elsewhere shows that unless a positive pressure is continuously maintained on the annulus, the continued integrity of the well cannot be assumed from monitoring. Both initial pressure test and continued positive gauge pressure are current Agency guidance.

In addition, any pressure test conducted pursuant to § 146.8(b)(2) must be performed with a pressure on the casing/tubing annulus of at least 200 pounds per square inch (psi) unless otherwise specified by the Director. When such tests are conducted during well operation, a differential between the injection and annulus pressure of at least 100 psi must be maintained throughout the tubing length.

For monitoring of the relationship of injection pressure and injection flow rate in enhanced recovery wells pursuant to § 146.8(b)(3), the monitoring must be preceded by a pressure test conducted not more than 90 days prior to commencement of the monitoring. A pressure test prior to monitoring for the flow rate-volume relationship is consistent with current Agency guidance and with practice in the Osage UIC program.

A trade association made comments similar to those on the Navajo program, supporting the use of radioactive tracer surveys for demonstrations of both parts of the mechanical integrity definition in § 146.8(a). As discussed above, the approval of radioactive tracer surveys for the entire UIC program obviates need for provisions concerning radioactive tracer surveys in these Indian land programs. The trade association also said that pressure on the annulus would be destructive to many wells and that it is not necessary as a new study demonstrates that monitoring without pressure is technically sound. An owner or operator now has the option of conducting a radioactive tracer if he believes that a pressure test would be harmful.

Finally, existing Class I wells must have a valid mechanical integrity test conducted within 90 days of the date of the required application for a permit. EPA believes that a test should be run as close to the date of the application as possible. The operator must give the Director at least seven days prior-notice of the test so that an observer can be present. The seven-day period is shorter than the period currently in the Federal generic standards because there is only one existing Class I well on the Indian lands covered by this rule, which will not present a scheduling problem.

F. Other Comments on the Oklahoma Program

Some of the comments did not address any of the specific provisions. One industry commenter supported the proposal because he believed that placing his Class I well under Federal control will resolve reporting, monitoring and testing requirements and facilitate transfer of primary enforcement responsibility to the Osage Council, if he should apply for it.

A Tribe said that the program is long over-due and should significantly reduce further ground water contamination. The tribe also wanted to know whether EPA, BLM, or BIA would implement the program. It should be clear that although BIA and BLM have some jurisdiction over injection wells, under the SDWA it is EPA's responsibility to implement the UIC program protecting underground sources of drinking water. Memoranda of Agreement between the three Agencies should reduce conflicts and inconsistencies.

Another tribe asserted that it retains inherent authority to regulate activities affecting the natural resources in the tribal management area, and suggested that EPA insert a warning that the regulations may be superseded by provisions of tribal law. While Indian tribes may have authority to regulate injection activities, it must be exercised through the statutory framework of the Safe Drinking Water Act. Tribes may now apply for and receive primary enforcement responsibility for UIC and Public Water System programs. Procedures to do so will be promulgated shortly.

The same tribe asked EPA to insert a provision requiring delivery to the Tribe of documents submitted to EPA and BIA. These regulations will assure that the Tribe receives notice of intent to apply for a permit, draft permits, and any other information sent to affected States under 40 CFR 124.10(c). The Tribe also requested addition of a section directing local BIA and EPA officials to release information such as the amount of injection activities upon request or subpoena. It appears that the Tribe wishes to use this information to learn more about oil and gas production and mining on its reservation. Most of the information used in the UIC program is available to the public, and the Tribe can obtain it without a subpoena or a new regulatory directive. Of course, EPA cannot direct disposal of BIA documents.

VII. Office of Management and Budget Review

A. Regulatory Impact Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore requires a

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Regulatory Impact Analysis. EPA has determined that this proposed rule is not a "major" rule because it will not have an effect on the economy of $100 million or more, nor will it have a significant effect on competition, costs, or prices. For the most part this proposal would extend to a relatively small number of wells the Federal regulations already judged not to be major even when applied to all injection wells in the country.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

The original proposal for the generic Federal program concluded that the Federal program would not have a significant impact on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 605(b)). The extension of a program basically consisting of the Federal requirements to a limited number of owners and operators, of whom only some are "small entities" does not change the original assessment. Therefore, I certify that this rule will not have significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 147

Indian lands, Underground injection.

Date: September 29, 1988.

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, Part 147 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 147—[AMENDED]

1. The authority citation for Part 147 is revised to read as follows:

Authority: 42 U.S.C. 300h; and 42 U.S.C. [illegible] *et seq.*

2. Part 147 is amended by adding a new Subpart HHH as follows:

Subpart HHH—Lands of the Navajo, Ute Mountain Ute, and All Other New Mexico Tribes

Sec.
147.3000 EPA-administered program.
147.3001 Definition.
147.3002 Public notice of permit actions.
147.3003 Aquifer exemptions.
147.3004 Duration of rule authorization for existing Class I and III wells.
147.3005 Radioactive waste injection wells.
147.3006 Injection pressure for existing Class II wells authorized by rule.
147.3007 Application for a permit.
147.3008 Criteria for aquifer exemptions.
147.3009 Area of review.
147.3010 Mechanical integrity tests.
147.3011 Plugging and abandonment of Class III wells.
147.3012 Construction requirements for Class I wells.
147.3013 Information to be considered for Class I wells.
147.3014 Construction requirements for Class II wells.
147.3015 Information to be considered for Class III wells.
147.3016 Criteria and standards applicable to Class V wells:
Appendix A to Subpart HHH—Exempted Aquifers in New Mexico.

Subpart HHH—Lands of the Navajo, Ute Mountain Ute, and All Other New Mexico Tribes

§ 147.3000 EPA-administered program.

(a) *Contents.* The UIC program for the Indian lands of the Navajo, the Ute Mountain Ute (Class II wells only on Ute Mountain Ute lands in Colorado and all wells on Ute Mountain Ute lands in Utah and New Mexico), and all wells on other Indian lands in New Mexico is administered by EPA. (The term "Indian lands" is defined at 40 CFR 144.3.) The Navajo Indian lands are in the States of Arizona, New Mexico and Utah; and the Ute Mountain Ute lands are in Colorado, New Mexico and Utah. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146 and additional requirements set forth in the remainder of this subpart. The additions and modifications of this subpart apply only to the Indian lands described above. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date for the UIC program on these lands is November 25, 1988.

§ 147.3001 Definition.

Area of review. For the purposes of this subpart, area of review means the area surrounding an injection well or project area described according to the criteria set forth in § 147.3009 of this subpart.

§ 147.3002 Public notice of permit actions.

An applicant shall give public notice of his intention to apply for a permit as follows:

(a) Prior to submitting an application to the Director, the applicant shall give notice to each landowner, tenant, and operator of a producing lease within one-half mile of the well and to the affected Tribal Government. The notice shall include:

(1) Name and address of applicant;

(2) A brief description of the planned injection activities including well location, name and depth of the injection zone, maximum injection pressure and volume, and source and description of the fluid to be injected;

(3) Name, address, and phone number of the EPA contact person; and

(4) A statement that opportunity to comment will be announced to the public after EPA prepares a draft permit.

(b) In addition to the requirements of § 144.31(e) of this chapter, a permit applicant shall submit a description of the way the notice was given and the names and addresses of those to whom it was given.

(c) Upon written request and supporting documentation, the Director may waive the requirement in paragraph (a) of this section to give individual notice of intent to apply for permits in an area where it would be impractical. However, notice to the affected Tribal government shall not be waived.

(d) The Director shall also provide to the affected Tribal government all notices given to State governments under § 124.10(c) of this chapter.

§ 147.3003 Aquifer exemptions.

(a) *Aquifer exemptions in connection with Class II wells.* In accordance with § 144.7(b) and § 146.4 of this chapter, the portions of authorized injection zones into which existing Class II wells are currently injecting which are described in Appendix A are hereby exempted. The exempted aquifers are defined by a one-quarter mile radius from the existing injection well. The exemption includes the intended injection zone only and is solely for the purpose of Class II injection.

(b) *Class III wells.* In addition to the requirements of § 144.7(c)(1) of this chapter, an applicant for a uranium mining permit which necessitates an aquifer exemption shall submit a plugging and abandonment plan containing an aquifer cleanup plan, acceptable to the Director, describing the methods or techniques that will be used to meet the standards of § 147.3011. The cleanup plan shall include an analysis of pre-injection water quality for the constituents required by the Director. The Director shall consider the cleanup plan in addition to the other information required for permit applications under §§ 144.31(e) and 146.34 of this chapter.

§ 147.3004 Duration of rule authorization for existing Class I and III wells.

Notwithstanding § 144.21(a)(3)(i)(B) of this chapter, authorization by rule for existing Class I and III wells will expire 90 days after the effective date of this UIC program unless a complete permit application has been submitted to the Director.

§ 147.3005 Radioactive waste injection wells.

Notwithstanding §§ 144.24 and 146.51(b) of this chapter, owners and operators of wells used to dispose of radioactive waste (as defined in 10 CFR Part 20, Appendix B, Table II, but not including high level and transuranic waste and spent nuclear fuel covered by 40 CFR Part 191) shall comply with the permitting requirements pertaining to Class I wells in Parts 124, 144 and 146 of this chapter, as modified and supplemented by this subpart.

§ 147.3006 Injection pressure for existing Class II wells authorized by rule.

(a) *Rule-authorized Class II saltwater disposal wells.* In addition to the requirements of § 144.28(f)(3)(ii) of this chapter, the owner or operator shall, except during well stimulation, use an injection pressure measured at the wellhead that is not greater than the pressure calculated by using the following formula: $Pm = 0.2d$

where:

Pm = injection pressure at the wellhead in pounds per square inch

d = depth in feet to the top of the injection zone.

Owners and operators shall comply with this requirement no later than one year after the effective date of this program.

(b) *Rule-authorized Class II enhanced recovery and hydrocarbon storage wells.* (1) In addition to the requirements of § 144.28(f)(3)(ii) of this chapter, owners and operators shall use an injection pressure no greater than the pressure established by the Director for the field or formation in which the well is located. The Director shall establish such maximum pressure after notice (including notice to the affected Tribe), opportunity for comment, and opportunity for public hearing according to the provisions of Part 124, Subpart A, of this chapter, and shall inform owners and operators and the affected Tribe in writing of the applicable maximum pressure; or

(2) An owner or operator may inject at a pressure greater than that specified in paragraph (b)(1) of this section for the field or formation in which he is operating after demonstrating in writing to the satisfaction of the Director that such injection pressure will not violate the requirements of § 144.28(f)(3)(ii) of this chapter. The Director may grant such a request after notice (including notice to the affected Tribe), opportunity for comment and opportunity for a public hearing according to the provisions of Part 124, Subpart A of this chapter.

(3) Prior to the time that the Director establishes rules for maximum injection pressure under paragraph (b)(1) of this section the owner or operator shall:

(i) Limit injection pressure to a value which will not exceed the operating requirements of § 144.28(f)(3)(ii); and

(ii) Submit data acceptable to the Director which defines the fracture pressure of the formation in which injection is taking place. A single submission may be made on behalf of two or more operators conducting operations in the same field and formation, if the Director approves. The data shall be submitted to the Director within one year of the effective date of this program.

§ 147.3007 Application for a permit.

(a) Notwithstanding the requirements of § 144.31(c)(1) of this chapter, the owner or operator of an existing Class I or III well shall submit a complete permit application no later than 90 days after the effective date of the program.

(b) The topographic map (or other map if a topographic map is unavailable) required by § 144.31(e)(7) of this chapter, shall extend two miles from Class II wells, and 2½ miles from Class I and III wells. These maps will show all the information listed in paragraph 144.31(e)(7) within ½ mile for Class II wells and 2½ miles for Class I and III wells.

§ 147.3008 Criteria for aquifer exemptions.

The aquifer exemption criterion in § 146.4(c) of this chapter shall not be available for this program.

§ 147.3009 Area of review.

The area of review shall be defined as follows:

(a) *Class II wells.* The area of review for Class II permits and area permits shall be defined by a fixed radius as described in § 146.6(b) (1) and (2) of this chapter except that the radius shall be one-half mile.

(b) *Class I and III wells.* The area of review for Class I and III wells are well fields which may be either:

(1) An area defined by a radius two and one-half miles from the well or well field; or

(2) An area one-quarter mile from the well or well field where the well field production at the times exceeds injection to produce a net withdrawal; or

(3) A suitable distance, not less than one-quarter mile, proposed by the owner or operator and approved by the Director based upon a mathematical calculation such as that found in § 146.6(a)(2) of this chapter.

§§ 147.3010 Mechanical integrity tests.

The monitoring of annulus pressure listed in 146.8(b)(1) of this chapter will only be acceptable if preceded by a pressure test, using liquid or gas that clearly demonstrates that mechanical integrity exists at the time of the pressure test.

§ 147.3011 Plugging and abandonment of Class III wells.

To meet the requirements of paragraph 146.10 (d) of this chapter, owners and operators of Class III uranium projects underlying or in aquifers containing up to 5,000 mg/l TDS which have been exempted under § 146.4 of this chapter shall:

(a) Include in the required plugging and abandonment plan a plan for aquifer clean-up and monitoring which demonstrates adequate protection of surrounding USDWs.

(1) The Director shall include in each such permit for a Class III uranium project the concentrations of contaminants to which aquifers must be cleaned up in order to protect surrounding USDWs.

(2) The concentrations will be set as close as is feasible to the original conditions.

(b) When requesting permission to plug a well, owners and operators shall submit for the Director's approval a schedule for the proposed aquifer cleanup, in addition to the information required by § 146.34(c).

(c) Cleanup and monitoring shall be continued until the owner or operator certifies that no constituent listed in the permit exceeds the concentrations required by the permit, and the Director notifies the permittee in writing that cleanup activity may be terminated.

§ 147.3012 Construction requirements for Class I wells.

In addition to the cementing requirement of § 146.12(b) of this chapter, owners and operators of Class I wells shall, through circulation, cement all casing to the surface.

§ 147.3013 Information to be considered for Class I wells.

(a) In addition to the information listed in § 146.14(a) of this chapter, the Director shall consider the following prior to issuing any Class I permit:

(1) Expected pressure changes, native fluid displacement, and direction of movement of the injected fluid; and

(2) Methods to be used for sampling, and for measurement and calculation of flow.

(b) In addition to the information listed in § 146.14(b) of this chapter, the Director shall consider any information required under § 146.14(a) of this chapter (as supplemented by this subpart) that has been gathered during construction.

§ 147.3014 Construction requirements for Class III wells.

(a) In addition to the requirements of § 146.32(c)(3) of this chapter, radiological characteristics of the formation fluids shall be provided to the Director.

(b) In addition to the requirements of § 146.32(e) of this chapter, the Director may require monitoring wells to be completed into USDWs below the injection zone if those USDWs may be affected by mining operations.

§ 147.3015 Information to be considered by Class III wells.

(a) In addition to the requirements of § 146.34(a) of this chapter, the following information shall be considered by the Director:

(1) Proposed construction procedures, including a cementing and casing program, logging procedures, deviation checks, and a drilling, testing and coring program.

(2) Depth to the proposed injection zone, and a chemical, physical and radiological analysis of the ground water in the proposed injection zone sufficient to define pre-injection water quality as required for aquifer cleanup by § 147.3011 of this subpart.

(3) An aquifer cleanup plan if required by § 147.3003(b) of this subpart.

(4) Any additional information that may be necessary to demonstrate that cleanup will reduce the level of contaminants in the surrounding USDWs as close as feasible to the original conditions.

(b) In addition to the requirements of § 146.34(b) of this chapter, the Director shall consider any information required under § 146.34(a) of this chapter (as supplemented by this subpart) that has been gathered during construction.

§ 147.3016 Criteria and standards applicable to Class V wells.

In addition to the criteria and standards applicable to Class V wells set forth in Subpart F of Part 146 of this chapter, owners and operators of wells that do not fall within the Class IV category but that are used to dispose of radioactive wastes (as defined in 10 CFR Part 20, Appendix B, Table II, Column 2, but not including high level and transuranic wastes and spent nuclear fuel covered by 40 CFR Part 191) shall comply with all of the requirements applicable to Class I injection wells in 40 CFR Parts 124, 144 and 146 as supplemented by this subpart.

Appendix A to Subpart HHH—Exempted Aquifers in New Mexico

The areas described by a one-quarter mile radius around the following Class II wells in the listed formations are exempted for the purpose of Class II injection.

Sec.					Well No.
Amoco Oil & Gas Co.—Operator/Horseshoe Gallup—Field/Gallup—Formation					
SE/NE	5	T30N	R16W	1650'FNL 330'FEL	[illegible]
[illegible]	[illegible]	T31N	R16W	[illegible] 703'FWL	[illegible]
SE/SW	[illegible]	T31N	R16W	790'FSL [illegible]	167
NW/SE	33	T31N	R16W	1710'FSL 2340'FEL	199
SE/NW	35	T31N	R16W	[illegible] [illegible]	[illegible]
[illegible]	4	T30N	R16W	455'FNL 1435'FEL	219
[illegible]	[illegible]	T31N	R16W	1980'FSL [illegible]	[illegible]
NW/SE	27	T31N	R16W	1980'FSL 2080'FEL	194
SE/SE	[illegible]	T31N	R16W	[illegible] [illegible]	[illegible]
[illegible]	34	T31N	R16W	790'FNL 515'FWL	190
NW/NE	34	T31N	R16W	813'FNL [illegible]	[illegible]
NW/NE	2	T30N	R16W	720'FNL [illegible]	[illegible]
[illegible]	29	T31N	R16W	660'FNL 660'FWL	24
[illegible]	13	T31N	R17W	1975'FSL 670'FWL	77
NW/SE	[illegible]	T31N	R16W	1980'FSL 1980'FEL	22
SE/SW	[illegible]	T31N	R16W	660'FSL [illegible]	171
[illegible]	35	T31N	R16W	1980'FSL 660'FWL	205
SE/NW	30	T31N	R16W	[illegible] 2081'FWL	7
NW/NE	31	T31N	R16W	660'FNL 1650'FEL	17
NW/NE	4	T30N	R16W	330'FNL [illegible]	221
[illegible]	[illegible]	T31N	R16W	660'FNL 1967'FEL	26
SE/NE	34	T31N	R16W	[illegible] 645'FEL	194
SE/SE	31	T31N	R16W	640'FSL [illegible]	27
NE/SW	14	T31N	R17W	2290'FSL [illegible]	94
NE/NW	14	T31N	R17W	625'FNL [illegible]	99
[illegible]	10	T30N	R16W	1900'FNL 2080'FWL	271
SE/SE	[illegible]	T31N	R16W	560'FSL [illegible]	21
SE/NE	30	T31N	R16W	1650'FNL 660'FEL	10
[illegible]	29	T31N	R16W	2080'FNL [illegible]	27
NW/SE	25	T31N	R17W	1980'FSL 1650'FEL	122
SE/SW	32	T31N	R16W	660'FSL [illegible]	14
NW/SW	30	T31N	R16W	2021'FSL 742'FWL	19
SE/SW	13	T31N	R17W	[illegible] [illegible]	[illegible]
[illegible]	[illegible]	T31N	R16W	[illegible] 660'FWL	[illegible]
SE/SE	[illegible]	T31N	R16W	[illegible] 660'FEL	[illegible]
NW/SW	29	T31N	R16W	[illegible] 660'FWL	11
SE/NW	34	T31N	R16W	[illegible] 1650'FWL	[illegible]
SE/NW	[illegible]	T31N	R16W	[illegible] [illegible]	12
[illegible]	27	T31N	R16W	[illegible] 330'FWL	[illegible]
NE/SE	[illegible]	T31N	R17W	[illegible] 340'FEL	[illegible]
NW/SW	24	T31N	R17W	[illegible] 660'FSL	[illegible]
SE/NW	4	T30N	R16W	2066'FNL 1710'FWL	232
[illegible]	31	T31N	R16W	620'FNL 761'FWL	30
NW/SE	35	T31N	R16W	[illegible] [illegible]	207

Sec.					Well No.
SE/NE	[illegible]	T31N	R16W	[illegible] 417'FEL	20
NE/NW	[illegible]	T31N	R16W	[illegible] [illegible]	[illegible]
NE/NW	34	T31N	R16W	2140'FSL 735'FWL	201
SE/NW	3	T30N	R16W	2310'FNL [illegible]	[illegible]
SE/SW	[illegible]	T31N	R16W	[illegible] [illegible]	213
NW/NE	30	T31N	R16W	[illegible] 1980'FEL	[illegible]
SE/SW	26	T31N	R16W	[illegible] [illegible]	[illegible]
NW/SE	30	T31N	R16W	[illegible] 1980'FEL	[illegible]
SE/NW	9	T30N	R16W	[illegible] 2131'FWL	264
NW/SW	4	T30N	R16W	[illegible] [illegible]	242
NW/SW	2	T30N	R16W	[illegible] [illegible]	250
NW/NW	[illegible]	T31N	R16W	[illegible] [illegible]	[illegible]
NE/NE	15	T31N	R17W	660'FNL 660'FEL	67
NW/NE	[illegible]	T31N	R16W	[illegible] 1980'FEL	[illegible]
NW/SE	24	T31N	R17W	1875'FSL 1900'FEL	99
NW/NE	[illegible]	T31N	R16W	[illegible] 1980'FEL	148
NW/NW	19	T31N	R16W	[illegible] [illegible]	[illegible]
NW/SE	4	T30N	R16W	1820'FSL 2130'FEL	[illegible]
SE/SW	[illegible]	T31N	R16W	[illegible] [illegible]	115
NW/NE	[illegible]	T31N	R17W	[illegible] 1980'FEL	[illegible]
SE/SW	4	T30N	R16W	[illegible] [illegible]	253
NW/SW	19	T31N	R16W	[illegible] [illegible]	[illegible]
NW/SE	32	T31N	R16W	1950'FSL 1980'FEL	[illegible]
[illegible]	[illegible]	T31N	R16W	[illegible] [illegible]	184
SE/NE	[illegible]	T31N	R16W	[illegible] 417'FEL	[illegible]
SE/NW	[illegible]	T31N	R16W	1980'FNL 2023'FWL	[illegible]
NW/NW	32	T31N	R16W	[illegible] 660'FWL	[illegible]
SE/SW	[illegible]	T31N	R17W	[illegible] [illegible]	[illegible]
SE/NE	[illegible]	T31N	R16W	2105'FNL 940'FEL	[illegible]
NW/NE	35	T31N	R16W	[illegible] [illegible]	[illegible]
SE/SW	5	T31N	R16W	[illegible] 2310'FWL	[illegible]
NW/SE	28	T31N	R16W	[illegible] 1980'FEL	160
SE/SE	[illegible]	T31N	R16W	[illegible] 990'FEL	211
NW/NE	[illegible]	T31N	R16W	[illegible] [illegible]	128
SE/NW	27	T31N	R16W	[illegible] [illegible]	[illegible]
SE/SW	[illegible]	T31N	R16W	[illegible] [illegible]	[illegible]
NW/NW	[illegible]	T30N	R16W	526'FNL [illegible]	[illegible]
NE/SW	21	T31N	R16W	[illegible] [illegible]	143
NW/NE	24	T31N	R17W	409'FNL 1914'FEL	[illegible]
NW/SW	[illegible]	T31N	R16W	[illegible] [illegible]	[illegible]
SE/SE	34	T31N	R16W	[illegible] 810'FEL	215
SW/SE	21	T31N	R16W	[illegible] 1820'FEL	145
SE/SE	[illegible]	T31N	R16W	[illegible] [illegible]	173
NW/SW	3	T30N	R16W	[illegible] [illegible]	248
SE/SW	[illegible]	T31N	R16W	[illegible] [illegible]	111
SW/SE	14	T31N	R17W	[illegible] [illegible]	78
[illegible]	27	T31N	R16W	529'FNL [illegible]	150
SE/NW	31	T31N	R16W	1724'FNL [illegible]	[illegible]
NW/NE	[illegible]	T31N	R16W	[illegible] [illegible]	[illegible]
SE/NE	34	T31N	R17W	1988'FNL 702'FEL	93
NW/NW	5	T30N	R16W	[illegible] [illegible]	[illegible]
NW/SW	[illegible]	T31N	R16W	1740'FSL [illegible]	158
SE/NE	31	T31N	R16W	[illegible] 660'FEL	[illegible]
NW/NW	24	T31N	R17W	660'FNL 760'FWL	[illegible]
Energy Reserve Backup Inc.—Operator/Horseshoe Gallup—Field/Gallup—Formation					
SE/SE	5	T31N	R17W	660'FSL [illegible]	4
NE/SW	10	T30N	R16W	1970'FSL [illegible]	31
SE/NW	11	T30N	R16W	2090'FNL [illegible]	29
SE/SE	10	T30N	R16W	700'FSL 500'FEL	[illegible]
Solar Petroleum Inc.—Operator/Horseshoe—Field/Gallup—Formation					
SW/SE	11	T31N	R17W	736'FSL 2045'FEL	[illegible]
SE/NE	9	T31N	R17W	[illegible] [illegible]	[illegible]
NW/SE	8	T31N	R17W	[illegible] 1980'FEL	127
NE/NE	[illegible]	T31N	R17W	[illegible] 560'FEL	136
SE/SW	4	T31N	R17W	660'FSL [illegible]	[illegible]
SW/NW	11	T31N	R17W	[illegible] 660'FWL	206
NW/SW	4	T31N	R17W	[illegible] 660'FWL	[illegible]
SE/NW	4	T31N	R17W	[illegible] [illegible]	128
NW/NW	4	T31N	R17W	660'FNL [illegible]	101
SW/NE	10	T31N	R17W	[illegible] [illegible]	117
SW/NW	10	T31N	R17W	1980'FNL [illegible]	108
SW/SW	[illegible]	T31N	R17W	[illegible] [illegible]	114
SW/SE	3	T31N	R17W	[illegible] 2310'FEL	143
SE/NE	5	T31N	R17W	[illegible] 660'FEL	[illegible]
NE/NE	5	T31N	R17W	1650'FNL 1022'FEL	307
SE/SE	[illegible]	T31N	R17W	660'FSL [illegible]	140
NE/NW	10	T31N	R17W	662'FNL 1980'FWL	178
[illegible]	11	T31N	R17W	660'FSL 660'FWL	[illegible]

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	Sec.				Well No.
NW/SE	9	T31N	R17W	1980'FSL 1980'FEL	115
SW/SE	10	T31N	R17W	660'FSL 1980'FEL	114
NW/NE	3	T31N	R17W	660'FNL 1980'FEL	123
NE/SW	10	T31N	R17W	1980'FSL 1980'FWL	109
NE/SW	11	T31N	R17W	1980'FSL 1980'FWL	203
SE/NW	9	T31N	R17W	1980'FNL 1980'FWL	104
[illegible]	3	T31N	R17W	1980'FSL 660'FWL	102
[illegible]	3	T31N	R17W	550'FSL 660'FWL	110
[illegible]	3	T31N	R17W	550'FNL 660'FWL	105
SE/SE	4	T31N	R17W	660'FSL 660'FEL	124

WTR Oil Co.—Operator/Horseshoe Gallup—Field/Gallup—Formation

NE/SW	33	T32N	R17W	1980'FSL 1980'FWL	2

Arco Oil & Gas Co.—Operator/Many Rocks Gallup—Field/Gallup—Formation

[illegible]	7	T31N	R16W	660'FNL 660'FWL	2
SW/NE	17	T31N	R16W	1670'FNL 1780'FEL	21
NW/SE	17	T31N	R16W	1980'FSL 2150'FEL	23
SW/NE	7	T31N	R16W	2310'FNL 2310'FEL	6
NE/SW	8	T31N	R16W	1650'FSL 1650'FWL	12
NE/NW	17	T31N	R16W	660'FNL 2030'FWL	19
NE/NE	18	T31N	R16W	350'FNL 855'FEL	16
SE/SW	7	T31N	R16W	710'FSL 2180'FWL	13
SE/SE	17	T31N	R16W	660'FSL 660'FEL	26
NE/SW	17	T31N	R16W	2040'FSL 2010'FWL	22
SW/SW	6	T31N	R16W	530'FSL 330'FWL	1
[illegible]	17	T31N	R16W	2072'FNL 641'FWL	19
[illegible]	17	T31N	R16W	1967'FSL 981'FWL	8

James P. Woosley—Operator/Many Rocks Gallup—Field/Gallup—Formation

NW/NE	30	T32N	R17W	530'FNL 2110'FEL	13
SW/SW	27	T32N	R17W	660'FSL 990'FWL	1
SW/NW	17	T32N	R17W	2310'FWL 330'FWL	4
[illegible]	27	T32N	R17W	200'FWL 1360'FNL	11
NE/SW	27	T32N	R17W	1980'FSL 1980'FWL	6
NE/SE	28	T32N	R17W	2474'FSL 133'FEL	10
SW/SE	27	T32N	R17W	625'FNL 2002'FEL	5
NE/SE	28	T32N	R17W	1980'FSL 330'FEL	12

Solar Petroleum Inc.—Operator/Many Rocks Gallup—Field/Gallup—Formation

SE/NW	1	T31N	R17W	1980'FNL 1980'FWL	114
NW/NE	2	T31N	R17W	805'FNL 2447'FEL	215
SE/NE	2	T31N	R17W	1980'FNL 660'FEL	218
[illegible]	1	T31N	R17W	2310'FSL 990'FWL	223
SE/NE	12	T31N	R17W	1520'FNL 660'FEL	217

WTR Oil Co.—Operator/Many Rocks Gallup—Field/Gallup—Formation

[illegible]	26	T32N	R17W	810'FNL 510'FWL	11
SE/SE	30	T32N	R17W	500'FSL 990'FEL	5
SE/NE	34	T32N	R17W	775'FEL 1980'FNL	8
SE/NW	35	T32N	R16W	1980'FNL 1980'FWL	9
NW/SE	35	T32N	R17W	1980'FSL 1980'FEL	7

Chaco Oil Co.—Operator/Red Mtn Mesaverde—Field/Menefee—Formation

NE/NE	29	T20N	R9W	395'FNL 1265'FEL	6
SE/SW	20	T20N	R9W	1422'FEL 2430'FWL	17

Geo Engineering Inc.—Operator/Red Mtn Mesaverde—Field/Menefee—Formation

NW/NE	29	T20N	R9W	182'FNL 2135'FEL	55
NE/NE	29	T20N	R9W	228'FNL 1265'FEL	7
SE/NW	29	T20N	R9W	1344'FNL 2556'FWL	20
[illegible]	29	T20N	R9W	515'FNL 1620'FEL	8
NE/NW	29	T20N	R9W	834'FNL 2112'FWL	21
SW/SE	20	T20N	R9W	265'FSL 2150'FEL	36
NE/NE	29	T20N	R9W	87'FNL 1130'FEL	5
SE/SE	20	T20N	R9W	450'FSL 1145'FEL	24
SE/SE	20	T20N	R9W	980'FSL 1080'FEL	10
NW/NE	29	T20N	R9W	1115'FNL 2525'FEL	22
SE/SE	20	T20N	R9W	1080'FSL 850'FEL	12

Tesoro Petroleum Co.—Operator/S. Hospah Lower Sand—Field/Hospah—Formation

NW/SE	6	T17N	R8W	2310'FSL 2310'FEL	25
[illegible]	6	T17N	R8W	990'FSL 2310'FEL	24
[illegible]	6	T17N	R8W	51'FSL 227'FWL	18
[illegible]	6	T17N	R8W	51'FSL 2635'FWL	20

3. Part 147 is amended by adding a new Subpart III as follows:

Subpart III—Lands of Certain Oklahoma Indian Tribes

Sec.
147.3100 EPA-administered program.
147.3101 Public notice of permit actions.
147.3102 Plugging and abandonment plans.
147.3103 Fluid seals.
147.3104 Notice of abandonment.
147.3105 Plugging and abandonment report.
147.3106 Area of review.
147.3107 Mechanical integrity.
147.3108 Plugging Class I, II, and III wells.
147.3109 Timing of mechanical integrity test.

Subpart III—Lands of Certain Oklahoma Indian Tribes

§ 147.3100 EPA-administered program.

(a) *Contents.* The UIC program for the Indian lands in Oklahoma, except for that covering the Class II wells of the Five Civilized Tribes, is administered by EPA. The UIC program for all wells on Indian lands in Oklahoma, except Class II wells on the Osage Mineral Reserve (found at 40 CFR Part 147, Subpart GGG) and the Class II program for the Five Civilized Tribes consists of the requirements of 40 CFR Parts 124, 144, and 146 and additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date for the UIC program for all wells on Indian lands except Class II wells on the Osage Mineral Reserve and Class II wells on the lands of the Five Civilized Tribes is November 25, 1988.

§ 147.3101 Public notice of permit actions.

(a) In addition to the notice requirements of § 124.10 of this chapter, the Director shall provide to the affected Tribal government all notices given to an affected State government under § 124.10(c) of this chapter.

(b) *Class I and III wells.* In addition to the notice requirements of § 124.10 of this chapter:

(1) Owners and operators of Class I and III wells shall notify the affected Tribal government prior to submitting an application for a permit, shall publish such notice in at least two newspapers of general circulation in the area of the proposed well, and shall broadcast notice over at least one local radio station.

(2) The Director shall publish a notice of availability of a draft permit in at least two newspapers of general circulation in the area of the proposed well, and broadcast notice over at least one local radio station. The public notice shall allow at least 45 days for public comment.

(c) *Class II wells.* In addition to the notice requirements of § 124.10 of this chapter:

(1) Owners and operators of Class II wells shall give notice of application for a permit to the affected Tribal government prior to submitting the application to the Director.

(2) In addition to the public notice required for each action listed in § 124.10(a) of this chapter, the Director shall also publish notice in a daily or weekly newspaper of general circulation in the affected area for actions concerning Class II wells.

§ 147.3102 Plugging and abandonment plans.

In lieu of the requirements of § 144.28(c)(1) and (2)(i)–(iii) of this chapter, owners and operators of Class II wells shall comply with the plugging and abandonment provisions of § 147.3108 of this subpart.

§ 147.3103 Fluid seals.

Notwithstanding § 144.28(f)(2) and § 146.12(c) of this chapter, owners and operators shall not use a fluid seal as an alternative to a packer.

§ 147.3104 Notice of abandonment.

(a) In addition to the notice required by § 144.28(j)(2) of this chapter, the owner or operator shall at the same time submit plugging information in conformance with § 147.3108 of this subpart including:

(1) Type and number of plugs;

(2) Elevation of top and bottom of each plug;

(3) Method of plug placement; and

(4) Type, grade and quantity of cement to be used.

(b) In addition to the permit conditions specified in §§ 144.51 and 144.52 of this chapter, each owner and operator shall submit and each permit shall contain the following information (in conformance with 146.3108 of this subpart):

(1) Type and number of plugs;

(2) Elevation of top and bottom of each plug;

(3) Method of plug placement; and

(4) Type, grade and quantity of cement to be used.

§ 147.3105 Plugging and abandonment report.

(a) In lieu of the time periods for submitting a plugging report in § 144.28(k) of this chapter, owners and operators of Class I and III wells shall submit the report within 15 days of plugging the well and owners or operators of Class II wells within 30 days of plugging, or at the time of the next required operational report (whichever is less.) If the required operational report is due less than 15 days following completion of plugging, then the plugging report shall be submitted within 30 days for Class II wells and 15 days for Class I and III wells.

(b) In addition to the requirement of § 144.28(k)(1) of this chapter, owners and operators of Class II wells shall include a statement that the well was plugged in accordance with § 146.10 of this chapter and § 147.3109 of this subpart, and, if the actual plugging differed, specify the actual procedures used.

(c) The schedule upon which reports of plugging must be submitted are changed from those in § 144.51(o) to those specified in paragraph (a) of this section.

§ 147.3106 Area of review.

(a) When determining the area of review under § 146.6(b) of this chapter, the fixed radius shall be no less than one mile for Class I wells and one-half mile for Class II and III wells. In the case of an application for an area permit, determination of the area of review under § 146.6(b) shall be a fixed width of not less than one mile for the circumscribing area of Class I projects and one-half mile for the circumscribing area of Class II and III projects.

(b) However, in lieu of § 146.6(c) of this chapter, if the area of review is determined by a mathematical model pursuant to paragraph § 146.6(a) of this chapter, the permissible radius is the result of such calculation even if it is less than one mile for Class I wells and one-half for Class II and III wells.

§ 147.3107 Mechanical integrity.

(a) Monitoring of annulus pressure conducted pursuant to § 146.8(b)(1) shall be preceded by an initial pressure test. A positive gauge pressure on the casing/tubing annulus (filled with liquid) shall be maintained continuously. The pressure shall be monitored monthly.

(b) Pressure tests conducted pursuant to § 146.8(b)(2) of this chapter shall be performed with a pressure on the casing/tubing annulus of at least 200 p.s.i. unless otherwise specified by the Director. In addition, pressure tests conducted during well operation shall maintain an injection/annulus pressure differential of at least 100 p.s.i. throughout the tubing length.

(c) Monitoring of enhanced recovery wells conducted pursuant to § 146.8(b)(3), must be preceded by an initial pressure test that was conducted no more than 90 days prior to the commencement of monitoring.

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§ 147.3108 Plugging Class I, II, and III wells.

In addition to the requirements of § 146.10 of this chapter, owners and operators shall comply with the following when plugging a well:

(a) For Class I and III wells:

(1) The well shall be filled with mud from the bottom of the well to a point one hundred (100) feet below the top of the highest disposal or injection zone and then with a cement plug from there to at least one hundred (100) feet above the top of the disposal or injection zone.

(2) A cement plug shall also be set from a point at least fifty (50) feet below the shoe of the surface casing to a point at least five (5) feet above the top of the lowest USDW.

(3) A final cement plug shall extend from a point at least thirty feet below the ground surface to a point five (5) feet below the ground surface.

(4) All intervals between plugs shall be filled with mud.

(5) The top plug shall clearly show by permanent markings inscribed in the cement or on a steel plate embedded in the cement the well permit number and date of plugging.

(b) For Class II wells:

(1) The well shall be kept full of mud as casing is removed. No surface casing shall be removed without written approval from the Director.

(2) If surface casing is adequately set and cemented through all USDWs (set to at least 50 feet below the base of the USDW), a plug shall be set at least 50 feet below the shoe of the casing and extending at least 50 feet above the shoe of the casing; or

(3) If the surface casing and cementing is inadequate, the well bore shall be filled with cement from a point at least 50 feet below the base of the USDW to a point at least 50 feet above the shoe of the surface casing, and any additional plugs as required by the Director.

(4) In all cases, the top 20 feet of the well bore below 3 feet of ground surface shall be filled with cement. Surface casing shall be cut off 3 feet below ground surface and covered with a secure steel cap on top of the surface pipe. The remaining 3 feet shall be filled with dirt.

(5) Except as provided in sub-paragraph (b)(6) of this section, each producing or receiving formation shall be sealed off with at least a 50-foot cement plug placed at the base of the formation and at least a 50-foot cement plug placed at the top of the formation.

(6) The requirement in sub-paragraph (b)(5) of this section does not apply if the producing/receiving formation is already sealed off from the well bore with adequate casing and cementing behind casing, and casing is not to be removed, or the only openings from the producing/receiving formation into the well bore are perforations in the casing, and the annulus between the casing and the outer walls of the well is filled with cement for a distance of 50 feet above the top of the formation. When such conditions exist, a bridge plug capped with at least 10 feet of cement set at the top of the producing formation may be used.

(7) When specified by the Director, any uncased hole below the shoe of any casing to be left in the well shall be filled with cement to a depth of at least 50 feet below the casing shoe, or the bottom of the hole, and the casing above the shoe shall be filled with cement to at least 50 feet above the shoe of the casing. If the well has a screen or liner which is not to be removed, the well bore shall be filled with cement from the base of the screen or liner to at least 50 feet above the top of the screen or liner.

(8) All intervals between cement plugs in the well bore must be filled with mud.

(c) For the purposes of this section mud shall be defined as: mud of not less than thirty-six (36) viscosity (API Full Funnel Method) and a weight of not less than nine (9) pounds per gallon.

§ 147.3109 Timing of mechanical integrity test.

The demonstrations of mechanical integrity required by § 146.14(b)(2) of this chapter prior to approval for the operation of a Class I well shall, for an existing well, be conducted no more than 90 days prior to application for the permit and the results included in the permit application. The owner or operator shall notify the Director at least seven days in advance of the time and date of the test so that EPA observers may be present.

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October 25, 1988

Part V

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Illinois Permanent Regulatory Program; Action on Amendments; Final Rule

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Illinois Permanent Regulatory Program; Action on Amendments

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: The Director of OSMRE is announcing his decision on proposed amendments submitted by the State of Illinois as modifications to its permanent regulatory program (hereinafter referred to as the Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments, which the Director is largely approving, consist of numerous revisions to the regulations of the Illinois Department of Mines and Minerals (IDMM). The amendments are intended to achieve consistency with the corresponding Federal regulations and to incorporate additional flexibility provided by the revised Federal rules.

EFFECTIVE DATE: October 25, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. James Fulton, Director, Springfield Field Office, Office of Surface Mining Reclamation and Enforcement, 600 East Monroe Street, Room 20, Springfield, Illinois 62701; Telephone: (217) 492–4495.

SUPPLEMENTARY INFORMATION:

I. Background on the Illinois Program
II. Reasons for Amendments
III. Discussion of Amendments
IV. Director's Findings
V. Disposition of Agency and Public Comments
VI. Director's Decision
VII. Additional Determinations

I. Background on the Illinois Program

Information concerning the general background on the Illinois program submission and the approval process, as well as the Secretary's findings, the disposition of comments, and an explanation of the conditions of approval can be found in the June 1, 1982 Federal Register (47 FR 23858). Subsequent actions taken with regard to the conditions of approval and proposed program amendments can be found at 30 CFR 913.11, 913.15 and 913.16.

II. Reasons for Amendments

Federal Regulatory Reform

Between 1981 and 1983, OSMRE extensively revised the Federal regulations implementing SMCRA. While most of these revisions provided States with additional flexibility in meeting the requirements of SMCRA, others added new requirements. By letter dated May 21, 1985 (Administrative Record No. IL–1015), OSMRE informed Illinois of the specific State regulations in need of revision to be no less effective than the revised Federal regulations. This amendment package addresses these requirements.

Remand Order

On July 29, 1982, the Illinois South Project, Inc. (ISP) and nine other organizations challenged the June 1, 1982, decision of the Secretary of the Interior approving the Illinois program. On November 30, 1983, the U.S. District Court for the Central District of Illinois, at the request of the Secretary, remanded the case to the Secretary to review the issues raised by the plaintiffs (*Illinois South Project* v. *Watt*, Civil Action No. 82–2229). As a result of that review, the Secretary determined that the Illinois program was not fully consistent with Federal requirements. Consequently, by notice published in the April 5, 1984, Federal Register, the Director of OSMRE, pursuant to 30 CFR 732.17, notified Illinois of those program provisions in need of amendment (49 FR 13494). These requirements were codified at 30 CFR 913.16 (a) through (f). By amendment approved September 28, 1984 (49 FR 38284), Illinois satisfied the requirements of 30 CFR 913.16(b). This package contains provisions addressing the remaining requirements.

III. Discussion of Amendments

By letter dated March 28, 1986 (Administrative Record No. IL–1026), for the reasons discussed above, Illinois proposed extensive revisions to the regulations contained in its program. OSMRE announced receipt of and solicited public comment on the proposed amendments by notice published in the Federal Register on May 9, 1986 (51 FR 23858).

By letter dated July 22, 1986 (Administrative Record No. IL–1036), OSMRE notified Illinois of certain areas in which the proposed amendments appeared to be less effective than the Federal regulations or in conflict with the decisions of the United States District Court for the District of Columbia in *In re: Permanent Surface Mining Regulation Litigation II* (Civil Action No. 79–1144, D.D.C. 1984 and 1985), hereinafter referred to as *In re: Permanent II*. Illinois subsequently revised and resubmitted the amendments on May 22, 1987 (Administrative Record No. IL–1029A). OSMRE announced the resubmission in the Federal Register on June 26, 1987, and reopened the public comment period (52 FR 224035). Extensive public comments were received in response to both notices; however, since no one requested a public hearing none was held.

The amendments revise, add or repeal the following parts of Title 62, Chapter 1 of the Illinois Administrative Code (IAC): 1700–1701, 1705, 1760–1762, 1764, 1770–1780, 1782–1785, 1795, 1800–1801, 1805–1808, 1815–1819, 1834–1852, 1940, 1843 and 1845. These parts concern virtually all aspects of the Illinois program. The revisions are intended to address the concerns and requirements listed in OSMRE's letters of May 21, 1985, and July 22, 1986, and the requirements resulting from the remand order in *ISP* v. *Watt*, supra. The amendments also include revisions resulting from the extensive public comments received and they incorporate the additional flexibility made available in the revised Federal regulations.

Revised §§ 1816.111 through 1816.117 and Parts 1823 and 1825 were submitted as program amendments on May 30, 1985, and were approved by the Director on December 10, 1986 (51 FR 44454–44459). These revised sections and parts govern revegetation of areas disturbed by surface coal mining operations and establish reclamation requirements for prime farmland and high capability land.

IV. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendments submitted by Illinois on May 22, 1987. Only revisions of particular interest, such as those that address the requirements of OSMRE's May 21, 1985 regulatory reform letter and those required pursuant to the remand order in *ISP* v. *Watt*, are discussed below. Revisions not specifically discussed contain language identical or similar to the corresponding Federal rules, concerning nonsubstantive wording changes, provide for recodification of the rules, or have no Federal counterparts and are not inconsistent with other State or Federal requirements.

Many of the following findings use the term "similar to" when comparing the State rules with the corresponding Federal rules. For purposes of this notice, "similar to" means that the State rules incorporate requirements which are substantively identical to the Federal rules or which contain only minor differences no less effective than and having no adverse effect on the degree of environmental protection or public participation afforded by the analogous Federal requirements.

1. Part 1700—General

Revisions to this Part affect sections 1700.11—Applicability, 1700.12 Petitions to Initiate Rulemaking, 1700.13—Notice of Citizens Suits, 1700.14—Availability of Records, 1700.15—Computation of Time, 1700.16—Fees and Forfeitures, 1700.17—Administration, and 1700.18—Advisory Council on Reclamation. The first five sections are substantively identical to the corresponding Federal regulations at 30 CFR 700.11, 700.12, 700.13, 700.14, and 700.15, respectively.

In addition, paragraphs (c) through (e) of section 1700.11 contain provisions corresponding to 30 CFR 701.11. Illinois has updated and condensed these requirements, deleting provisions that are inapplicable or moot, but they remain substantively identical to the corresponding Federal provisions concerning the applicability of the permanent program rules and the standards applicable to existing structures, as modified by the November 27, 1979, suspension notice (44 FR 50942).

Sections 1700.16 and 1700.17 contain provisions pertaining to State accounting procedures and agency powers and duties, while section 1700.18 governs the composition, responsibilities and operation of the Surface Mining Advisory Council. None of these sections contain provisions inconsistent with SMCRA or other Federal requirements.

Therefore, the Director finds that the revised sections of 62 IAC Part 1700 are no less stringent than SMCRA and no less effective than the corresponding Federal regulations.

2. Part 1701—General Definitions

Pursuant to OSMRE's May 21, 1985 letter and other developments, Illinois revised a number of definitions in section 1701.5. The revised definitions are generally similar to the corresponding Federal definitions in 30 CFR 700.5, 701.5, 705.5, 761.5, 762.5, 800.5, 816.46 and 817.46. Therefore, with the exception of the definitions of "previously mined area" and "valid existing rights" discussed in Findings 2(b) and 2(c), the Director finds that they are no less effective than the Federal rules.

The most significant changes are discussed below:

(a) *Public building.* The definition of "public building" to include buildings leased by a governmental agency, as does 30 CFR 761.5.

(b) *Valid existing rights.* Illinois proposes to revise the definition of "valid existing rights" (VER) in 62 IAC 1701.5 to resemble the language in the corresponding Federal definition at 30 CFR 761.5. However, on March 22, 1985, in *In re: Permanent II*, the U.S. District Court for the District of Columbia remanded portions of this definition to the Secretary because he had failed to provide the public with adequate notice and opportunity to comment on the revised provisions. The remanded portions of the definition include those provisions of paragraphs (a) and (d) which would authorize use of the "takings" test to determine whether a person possesses VER. Paragraph (c) was also remanded to the extent that it would expand VER under the "needed for and adjacent" test to include lands for which the claimant had not acquired the necessary property rights prior to August 3, 1977. For further explanation of these terms and the court's decision, see the preamble to the Federal Register notice suspending these portions of the Federal definition (51 FR 41954–41955, November 20, 1986).

The Illinois program as approved on June 1, 1982, contained provisions similar to those remanded by the Federal court. The approval of these provisions was subsequently upheld by the U.S. District Court for the Central District of Illinois (*Illinois South Project* v. *Watt*, C.A. 82–2229), based on the September 14, 1983, revisions to the Federal definition. However, the plaintiffs appealed this decision and on March 30, 1988, the U.S. Court of Appeals for the Seventh Circuit ruled that an approval based on a defective (remanded) Federal regulation cannot stand (*Illinois South Project* v. *Hodel*, C.A. 87–2366). The Appeals Court ordered the District Court to remand the approval of the Illinois VER definition to the Secretary for reconsideration under whatever regulation is currently in force. The District Court did so on June 22, 1988.

In light of the order and opinion of the court in *ISP* v. *Hodel*, supra, the Director is temporarily deferring a decision on the proposed Illinois definition of VER and, by separate notice, is requesting additional comment on whether the "takings" test can be approved as being no less effective than the "good faith all permits" test reinstated by OSMRE in the previously referenced November 20, 1986, suspension notice.

(c) *Previously mined area.* Illinois proposed to add a definition of "previously mined area" to mean "land disturbed or affected by earlier coal mining operations that was not reclaimed in accordance with the requirements of 62 Ill. Adm. Code 1700–1850." The corresponding Federal rule at 30 CFR 701.5 defines this term as meaning "land previously mined on which there were no surface coal mining operations subject to the standards of [SMCRA]." The State program provisions referenced in the definition were not approved until June 1, 1982, well after the effective date of SMCRA (generally May 3, 1978). Also, the State definition does not distinguish between lands that were subject to regulation and those that were exempt. Therefore, the State definition would include a greater number of sites than would the Federal rule.

The Illinois definition resembles an earlier version of the Federal rule, which the U.S. District Court for the District of Columbia struck down as being inconsistent with SMCRA because it allowed less than complete highwall elimination in areas mined after SMCRA's reclamation standards took effect (*In re: Permanent II*, July 15, 1985). Since the Illinois definition is similarly used to determine when an operation is eligible for the lesser reclamation standards of 62 IAC 1816.106 and 1817.106, which include incomplete highwall elimination, the Director finds that the Illinois definition is less effective than the Federal rules and less stringent than SMCRA. Therefore, he is not approving the definition to the extent that it includes lands mined after the effective date of SMCRA, except for those lands mined under one of the exemptions provided by SMCRA.

(d) *Coal processing waste.* The definition of "coal processing waste" has been revised to mean earth materials which are separated and wasted from coal during cleaning, concentration or other processing or preparation. This definition is similar to and therefore no less effective than the Federal definition of this term in 30 CFR 701.5.

(e) *Coal preparation.* The definition of "coal processing or coal preparation" contained in 1701.5 has been revised to include chemical or physical processing and to delete reference to the removal of impurities. This definition is similar to and therefore no less effective than the Federal definition of "coal preparation" at 30 CFR 701.5.

(f) *Historic lands.* The revised definition of "historic lands" now includes scientific areas, as does 30 CFR 761.5.

(g) *Cumulative impact area.* Revised section 1701.5 now includes a definition for "cumulative impact area" which includes consideration of impacts from

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existing and proposed operations outside the permit area.

The definition is similar to and therefore no less effective than the Federal definition of this term at 30 CFR 701.5.

(b) *Intermittent stream.* As required under 30 CFR 913.16(a) pursuant to the November 30, 1983, remand order of the U.S. District Court for the Central District of Illinois in *ISP* v. *Watt* (40 FR 13494–13521, April 5, 1984), Illinois revised the definition of "intermittent stream" in 62 IAC 1701.5 to mean a reach of stream that drains a watershed of at least one square mile. The State's definition is similar to and therefore no less effective than the Federal definition at 30 CFR 701.5.

3. Part 1705—Restriction on Financial Interests of State Employees

Revisions to this part affect sections 1705.3—Objectives, 1705.4—Responsibility, 1705.8—Penalties, 1705.11—Who Shall File, 1705.13—When to File, 1705.15—Where to File, 1705.17—What to Report, 1705.18—Gifts and Gratuities, 1705.19—Resolving Prohibited Interests, and 1705.21—Appeals Procedures.

The Illinois regulations in 62 IAC Part 1705 are similar to the corresponding sections of 30 CFR Part 705, except that the State rules lack any provisions concerning members of multiple interest boards and commissions. State law currently provides for one such body, the State Advisory Council on Reclamation (Surface Mining Advisory Council). However, section 1.04(c) of the State Act and 62 IAC 1700.18(c) specify that the Council shall act solely as an advisory body and that its recommendations shall have no binding effect. Accordingly, the Council has no function or duty under SMCRA, as this term is defined in 30 CFR 706.5, and it is not subject to the requirements of 30 CFR Part 705.

Therefore, the Director finds that revised 62 IAC Part 1705 is consistent with 30 CFR Part 705. Should Illinois subsequently establish a multiple interest board with a function or duty under SMCRA, its members would be directly subject to 30 CFR Part 705 under the provisions of 30 CFR 705.1.

4. Part 1761—Areas Designated by Act of Congress

Revisions to this part affect section 1761.11—Areas Where Mining is Prohibited or Limited and section 1761.12—Procedures. Except as discussed below, these rules are similar to and therefore no less effective than the corresponding Federal rules at 30 CFR 761.11 and 761.12.

(a) *Wild and scenic study rivers.* Illinois has revised 62 IAC 1761.11(a) to include new language protecting study rivers designated under the Wild and Scenic Rivers Act. Like the corresponding Federal rule at 30 CFR 761.11(a) in effect prior to August 15, 1986, the Illinois rule limits this protection to a corridor extending not more than one-quarter mile from each bank for the length of the segment being studied. However, on July 15, 1985, in *In re: Permanent II*, the U.S. District Court for the District of Columbia found the Federal rule to be inconsistent with the regulations promulgated pursuant to the Wild and Scenic Rivers Act, which establish a minimum, rather than a maximum, corridor width of one-quarter mile for study rivers.

On July 16, 1986, OSMRE promulgated a revised version of 30 CFR 761.11(a), which provides that protection shall be afforded to study rivers for the full extent and width of the corridor established under the appropriate Federal guidelines (51 FR 25618). Therefore, the Illinois provision is less effective than the corresponding Federal rule. As there currently are no designated study rivers in Illinois, the Director, rather than disapproving this rule, is requiring that Illinois further amend 62 IAC 1761.11(a) to remove the width restriction on the protection afforded to study river corridors.

(b) Historic sites. On July 15, 1985, in *In re: Permanent II*, the U.S. District Court for the District of Columbia found the Federal rule at 30 CFR 761.11(c) to be inconsistent with section 522(e)(3) of SMCRA to the extent that the rule protected only publicly owned sites listed on the National Register of Historic Places (NRHP). The Illinois regulations at 62 IAC 1761.11(c) and 1761.12(e)(1) retain similar language and are, therefore, less stringent than SMCRA to the extent that they do not protect privately owned sites listed on the NRHP. Accordingly, the Director is disapproving the phrase "publicly owned" in these rules to the extent that it refers to places listed on the NRHP.

(c) Dwelling waivers. Pursuant to OSMRE's May 21, 1985, letter, Illinois revised 62 IAC 1761.12(d) to specify that written waivers for mining within 300 feet of dwellings must clarify that the owner and signator had the legal right to deny mining and knowingly waived that right. This language is similar to and therefore no less effective than that of the corresponding Federal rule at 30 CFR 761.12(e).

5. Part 1762—Criteria for Designating Areas as Unsuitable for Surface Coal Mining Operations

Revisions to this part affect section 1762.12—Additional Criteria and section 1762.14—Exploration of Land Designated as Unsuitable for Surface Coal Mining Operations. The Director finds the revised regulations to be similar to and therefore no less effective than the corresponding Federal rules at 30 CFR 762.12 and 762.14.

6. Part 1764—State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations

This part covers sections 1764.11—General Process Requirements, 1764.13—Petitions, 1764.15—Initial Processing Recordkeeping and Notification Requirements, 1764.17—Hearing Requirements, 1764.19—Decision, 1764.21—Data Base and Inventory System Requirements, 1764.23—Public Information, and 1764.25—Regulatory Authority Responsibility for Implementation.

As required pursuant to OSMRE's May 21, 1985 letter under 30 CFR 732.17, Illinois revised 1764.15(e) to eliminate the provisions allowing suspension of petition reviews.

The Director finds amended Part 1764 substantively identical to and therefore no less effective than 30 CFR Part 764.

7. Part 1772—Requirements for Coal Exploration

This Part covers Sections 1772.1—Scope and Purpose, 1772.11—Notice of Requirements for Exploration Removing 250 Tons of Coal or Less, 1772.12—Permit Requirements for Exploration Removing More than 250 Tons of Coal, 1772.13—Coal Exploration Compliance Duties, 1772.14—Requirements for Commercial Sale, and 1772.15—Public Availability of Information.

As required pursuant to OSMRE's May 21, 1985 letter under 30 CFR 732.17, Illinois made the following revisions involving coal exploration:

(a) New 1772.12(a) contains a provision consistent with 30 CFR 772.12(a) requiring an exploration permit for exploration removing more than 250 tons of coal or which will take place on lands designated as unsuitable for surface mining.

(b) New 1772.12(b)(7) contains a provision consistent with 30 CFR 772.12(b)(7) requiring that applications for exploration permits include a statement of why extraction of more than 250 tons of coal is necessary for exploration.

(c) New 1772.12(e)(1) contains a provision consistent with 30 CFR 772.12(e) requiring the regulatory authority to notify the applicant, appropriate government officials and other commenters on the application, in writing, of its decision on exploration applications.

(d) On June 9, 1987, the Secretary notified the State of Illinois of a change required as a result of recently approved Federal regulations. The change requires Illinois to add a provision at 1772.12(b)(8)(D) which would require that applications for exploration operations intending to remove more than 250 tons of coal include any additional information which the Department may require regarding known or unknown historic and archeological resources. On September 18, 1987, Illinois submitted proposed regulations to OSMRE to address the required change, and a final decision by OSMRE is forthcoming under a separate Federal Register notice.

The Director finds the Illinois regulations in new Part 1772 substantively identical to and therefore consistent with 30 CFR Part 772, with the exception noted in Finding 7(d).

8. Part 1773—Requirements for Permits and Permit Processing

This Part covers Sections 1773.1—Scope and Purpose, 1773.11—Requirements to Obtain Permits, 1773.12—Regulatory Coordination with Requirements Under Other Laws, 1773.13—Public Participation in Permit Processing, 1773.14—Opportunity for Public Hearing, 1773.15—Review of Permit Applications, 1773.17—Permit Conditions, and 1773.19—Permit Issuance and Right of Renewal.

As required pursuant to OSMRE's May 21, 1985 letter under 30 CFR 732.17, new Illinois Part 1773 corrected the following deficiencies:

(a) New 1773.12 requires coordination of the review and issuance of permits for surface coal mining and reclamation operations. Under the State rule, permit applications are submitted for review by the Interagency Committee and the Department must assure that comments and recommendations by the Committee address compliance with the applicable requirements of various Federal acts. The provisions are consistent with 30 CFR 773.12.

(b) New 1773.13(a) establishes provisions for filing and public notice for submission of administratively complete applications for permits, significant revisions and renewals. This provision is consistent with 30 CFR 773.13(a).

(c) New 1773.13(a)(1)(F) requires that the public notice indicate if the application includes a request for an experimental practice and identify the regulatory provisions for which a variance is requested. The provision is consistent with 30 CFR 773.13(a)(1)(vi).

(d) New 1773.13(d)(3) establishes provisions for confidentiality of certain information contained in applications. These provisions are consistent with confidentiality provisions contained in 30 CFR 773.13(d)(3).

(e) New 1773.15(c) requires compliance with all of Part 1785. This provision is consistent with 30 CFR 773.15(c). On June 9, 1987, the Secretary notified Illinois of a change required as a result of recently revised Federal regulations. The change added a new finding to the list of written findings at 30 CFR 773.15(c) which the regulatory authority must make prior to approving any permit application or application for a significant revision to a permit. This finding states that the regulatory authority has taken into account the effect of the proposed permitting action on properties listed on or eligible for listing on the National Register of Historic Places. It also states that this finding may be supported in part by inclusion of appropriate permit conditions or operation plan changes to protect historic resources, or a documented decision that no additional protective measures are necessary. On September 18, 1987, Illinois submitted proposed regulations to OSMRE to address the required change. A final decision by OSMRE is forthcoming under a separate Federal Register notice.

(f) New 1773.17(g) requires payment of reclamation fees consistent with 30 CFR 773.17(g).

The Director finds the Illinois regulations in new Part 1773 substantively identical to and therefore consistent with 30 CFR Part 773 except as noted in Finding 8(e).

9. Part 1774—Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights

This Part covers sections 1774.11—Department Review of Permits, 1774.13—Permit Revisions, 1774.15—Permit Renewals, 1775.17—Transfer, Assignment, or Sale of Permit Rights.

(a) New 1774.15(c)(1)(D) specifies that the State shall not approve a permit unless it finds that the operator has liability insurance. This provision is consistent with 30 CFR 774.15(c)(1)(iv).

(b) New 1774.17(e)(1) establishes that the State must notify the permittee, the successor, commenters and OSMRE of findings, consistent with 30 CFR 774.17(e)(1).

(c) New 1774.17(e)(2) requires the successor to permit rights to notify the State, consistent with 30 CFR 774.17(e)(2).

The Director finds the Illinois regulations in new Part 1774 substantively identical to and therefore consistent with 30 CFR Part 774.

10. Part 1775 Administrative and Judicial Review of Decisions

This part covers § 1775.1—Scope and Purpose, 1775.11—Administrative Hearing, and 1775.12—Judicial Review.

The Director finds the Illinois regulations in new Part 1775 substantively identical to and therefore consistent with 30 CFR Part 775.

11. Part 1777—General Content Requirements for Permit Applications

This Part covers Section 1777.11—Format and Contents, 1777.13—Reporting of Technical Data, 1777.4—Maps and Plans: General Requirements, 1777.15—Completeness, and 1777.17—Permit Fees.

The Director finds Illinois regulations in new Part 1777 substantively identical to and therefore consistent with 30 CFR Part 777.

12. Part 1778—Permit Applications: Minimum Requirements for Legal, Financial, Compliance and Related Information

This Part covers sections 1778.13—Identification of Interests, 1778.14—Violation Information, 1778.15—Right of Entry Information, 1778.16—Relationship to Areas Designated Unsuitable for Mining, 1778.17—Permit Term, 1778.18—Insurance, 1778.21—Proof of Publication, and 1778.22—Facilities or Structures Used in Common.

As required pursuant to OSMRE's May 21, 1985 letter under 30 CFR 732.17, Illinois made the following revisions:

(a) Revised 1778.13(e) now requires applications to include the name and address of each legal owner of the surface and mineral property to be mined and the names and addresses of owners of property contiguous to the permit. Paragraph 1778.13(e) is therefore consistent with 30 CFR 778.13 (e) and (f).

(b) Revised 1778.13(g) now requires applications to include the MSHA number for all structures requiring MSHA approval. Paragraph 1778.13(g) is therefore consistent with 30 CFR 778.13(g).

(c) Revised 1778.13(h) requires applications to include a statement of all lands, interest in lands, options, or pending bids or interests held or made by the applicant for land contiguous to the area described in the permit application. Paragraph 1778.13(h) is

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therefore consistent with 30 CFR 778.13(h).

(d) Revised 1778.14(c) requires a listing of notices of violations received by a subsidiary, affiliate or person controlled by or under common control with the applicant consistent with 30 CFR 778.14(c).

The Director finds the Illinois regulations in amended Part 1778 substantively similar to and therefore consistent with 30 CFR Part 778.

13. Part 1779—Surface Mining Permit Applications: Minimum Requirements for Information on Environmental Resources

This Part covers sections 1779.4—Responsibilities, 1779.5—Use of Existing Data, 1779.6—Use of Expert Opinion, 1779.11—General Requirements, 1779.12—General Environmental Resources Information, 1779.11—Vegetation Information, 1779.20—Fish and Wildlife Resources Information, 1779.21—Soil Resources Information, 1779.22—Land Use Information, 1779.24—Maps: General Requirements, and 1779.25—Cross Sections, Maps and Plans.

As required pursuant to OSMRE's May 21, 1985, letter under 30 CFR 732.17, Illinois made the following revisions to Part 1779:

(a) Historic properties. Revised 1779.12(b) and 1783.12(b) require that permit applications include information on properties eligible for listing on the National Register of Historic Places. However, as noted in the Director's letter of June 9, 1987, additional revisions are needed for these rules to be no less effective than 30 CFR 779.12(b) and 783.12(b). Illinois has submitted these revisions as a separate proposed amendment, which the Director is now processing in a separate rulemaking.

(b) Fish and wildlife. Revised 1779.20 and 1783.20 require that permit applications include the same fish and wildlife information as that required by 30 CFR 779.20 and 783.20 as they existed at the time of submission. However, on December 11, 1987 (52 FR 47352), these Federal rules were revised and combined with other sections. The Director will separately notify Illinois of the additional changes needed as a result of the December 11, 1987 revisions to the Federal rules.

Except as noted in Findings 13(a) and 13(b) above, the Director finds the Illinois regulations in amended Part 1779 identical to and therefore no less effective than those of 30 CFR Part 779.

14. Part 1780—Surface Mining Permit Application: Minimum Requirements for Reclamation and Operation Plan

Revisions to this Part affect sections 1780.4—Responsibilities; 1780.5—Use of Existing Data; 1780.6—Use of Expert Opinion; 1780.11—Operation Plan: General Requirements; 1780.12—Operation Plan: Existing Structures; 1780.13—Operation Plan: Blasting; 1780.14—Operation Plan: Maps and Plans; 1780.15—Air Pollution Control Plan; 1780.16—Fish and Wildlife Plan; 1780.18—Reclamation Plan: General Requirements; 1780.21—Hydrologic Information; 1780.22—Geologic Information; 1780.23—Reclamation Plan: Postmining Land Uses; 1780.25—Reclamation Plan: Ponds, Impoundments, Banks, Dams, and Embankments; 1780.27—Reclamation Plan: Surface Mining Near Underground Mining; 1780.29—Diversions; 1780.31—Protection of Public Parks and Historic Places; 1780.33—Relocation or Use of Public Roads; 1780.35—Disposal of Excess Spoil; 1780.37—Transportation Facilities; and 1780.38—Rehabilitation of Siltation Structures, Diversions, Impoundments, and Treatment Facilities.

As required pursuant to OSMRE's May 21, 1985, letter under 30 CFR 732.17, Illinois made the following revisions involving Parts 1780 and 1784:

(a) *Analytical methodology.* Revised 1780.21(a) and 1784.14(a) prescribe the methodology to be used when sampling and analyzing water quality. All water quality sampling and analyses performed to meet water monitoring requirements must be conducted according to methodology consistent with that set forth in 30 CFR 780.21 and 784.14.

(b) *Fish and wildlife.* Revised 1780.16 and 1784.21 require a fish and wildlife plan similar to that required by 30 CFR 780.16 and 784.21 before those Federal rules were revised on December 11, 1987. The Director will separately notify Illinois of the further changes needed as a result of the revised Federal rules promulgated on December 11, 1987 (52 FR 47352).

(c) *Surface water information.* Revised 1780.21(b)(2) and 1784.14(b)(2) require that the application include the name and ownership of surface water bodies, surface water quality information for the adjacent area, and baseline alkalinity information in a manner similar to and therefore no less effective than 30 CFR 780.21(b)(2) and 784.14(b)(2).

(d) *Supplemental hydrologic information.* Revised 1780.21(b)(3) and 1784.14(b)(3) provide that, if the determination of the probable hydrologic consequences (PHC) of mining indicates that adverse impacts to the hydrologic balance on or off the proposed permit area may occur, or if acid-forming or toxic material is present that may result in the contamination of groundwater or surface-water supplies, then supplemental information shall be provided. The revised State rules are identical to and therefore no less effective than 30 CFR 780.21(b)(3) and 784.14(b)(3).

(e) *Alternative water supplies.* Revised 1780.21(e) requires that the application include alternative water source information in cases where the PHC determination indicates that the proposed operation may result in contamination, diminution or interruption of underground or surface waters currently in use. The State rule is identical to and therefore no less effective than 30 CFR 780.21(e).

(f) *PHC determinations.* In revised 62 IAC 1780.21(f) and 1784.14(e), Illinois requires that each permit application contain a determination of the probable hydrologic consequences of mining on the proposed permit and adjacent areas, as do the Federal rules at 30 CFR 780.21(f) and 784.14(e). However, unlike the Federal rules, the State rules do not require that the determination be based on baseline data collected for the permit application or that it include certain specific findings. Nor do the Illinois regulations require that each application for a permit revision be reviewed to determine whether a new or updated determination is necessary. Therefore, the Director finds that the State rules are less effective than the Federal regulations, and he is requiring that Illinois further amend 62 IAC 1780.21(f) and 1784.14(e) to be no less effective than 30 CFR 780.21(f) and 784.14(e).

(g) *Permit revisions.* Revised 1780.21(g)(2) and 1784.14(f)(2) require applications for revisions to be reviewed to determine whether a new or updated assessment of cumulative hydrologic impacts is required. The revised rules are similar to and therefore no less effective than 30 CFR 780.21(g)(2) and 784.14(f)(2).

(h) *Hydrologic reclamation plan.* Revised 1780.21(h) and 1784.14(g) require that applications contain a hydrologic reclamation plan indicating how the relevant requirements of Parts 1816 and 1817 will be met, what measures will be taken to avoid acid or toxic drainage, and how the potential adverse hydrologic consequences identified in the PHC determination will be prevented or mitigated. The revised rules are identical to and therefore no less effective than 30 CFR 780.21(h) and 784.14(g).

(i) *Groundwater monitoring.* Revised 1780.21(i) and 1784.14(h) require that the application's groundwater monitoring plan provide for the monitoring of parameters that relate to the suitability of the groundwater for current and approved postmining land uses. The revised rules also require that monitoring data be submitted to the State every three months for each monitoring location. The revised rules are similar to and therefore no less effective than 30 CFR 780.21(i) and 784.14(h).

(j) *Surface-water monitoring.* Revised 1780.21(j) and 1784.14(i) require that the surface-water monitoring plan be based on the PHC determination and that the parameters monitored be related to the suitability of the surface water for the current and approved postmining land uses. The revised rules also specify certain parameters that must be monitored in all cases and require that point source discharges be monitored in accordance with 40 CFR Part 434. The revised rules are similar to and therefore no less effective than 30 CFR 780.21(j) and 784.14(i).

(k) *Geologic information* Revised 1780.22(b) and 1784.22(b) require that applications contain geologic information for areas adjacent to the permit area and include chemical analyses of each stratum down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined or any acquifer below the lowest coal seam to be mined which may be adversely impacted by mining. The revised rules are identical to and therefore no less effective than 30 CFR 780.22(b) and 784.22(b).

(l) *Air pollution control plan.* New 1780.15 and 1784.28 specify that applications shall contain air pollution control plans as required by 30 CFR 780.15(b) and 784.28. Illinois has elected not to require air quality monitoring. Since monitoring is an optional requirement under the Federal rules, its omission does not render the State rules less effective than the corresponding Federal rules.

Other than as noted in paragraphs (b) and (f) above, the Director finds that the Illinois regulations in amended Part 1780 are either similar to those of 30 CFR Part 780 or add additional clarifying or State-specific provisions, and that they are therefore no less effective than the Federal requirements.

15. Part 1783—Underground Mining Permit Applications: Minimum Requirements for Information on Environmental Resources

Revisions to this Part affect Sections 1783.4—Responsibilities, 1783.5—Use of Existing Data, 1783.6—Use of Expert Opinion, 1783.11—General Requirements, 1783.12—General Environmental Resources Information, 1783.14—Vegetation Information, 1783.20—Fish and Wildlife Resources Information, 1783.21—Soil Resources Information, 1783.22—Land Use Information, 1783.24—Maps: General Requirements, and 1783.25—Cross Sections, Maps and Plans.

These revisions are identical to those discussed in Finding 13 for Part 1779. Except as noted in Findings 13(a) and 13(b), the Director finds the Illinois regulations in amended Part 1783 to be similar to and therefore no less effective than 30 CFR Part 783. The State has also added certain clarifying and State-specific provisions which do not affect this finding.

16. Part 1784—Underground Mining Permit Applications: Minimum Requirements for Reclamation and Operation Plan

Revisions to this Part affect Sections 1784.4—Responsibilities; 1784.5—Use of Existing Data; 1784.6—Use of Expert Opinion; 1784.11—Operation Plan: General Requirements; 1784.12—Operation Plan: Existing Structures; 1784.13—Reclamation Plan: General Requirements; 1784.14—Hydrologic Information; 1784.15—Reclamation Plan: Postmining Land Uses; 1784.16—Reclamation Plan: Ponds, Impoundments, Banks, Dams and Embankments; 1784.17—Protection of Public Parks and Historic Places; 1784.18—Relocation or Use of Public Roads; 1784.19—Underground Development Waste; 1784.20—Subsidence Control Plan; 1784.21—Fish and Wildlife Plan; 1784.22—Geologic Information; 1784.23—Operation Plan: Maps and Plans; 1784.24—Transportation Facilities; 1784.25—Return of Coal Processing Waste to Abandoned Underground Workings; 1784.26—Air Pollution Control; 1784.27—Rehabilitation of Siltation Structures, Diversions, Impoundments and Treatment Facilities; 1784.29—Diversions; and 1784.200—Interpretive Rules Related to General Performance Standards.

Except as discussed below, the revisions to 62 IAC Part 1784 are identical to those made to 62 Part 1780, as discussed in Finding 14, and the revised rules are similar to the corresponding Federal rules in 30 CFR Part 784. Therefore, except as discussed in Findings 14(b) and 14(f), the Director finds revised 62 IAC Part 1784 to be no less effective than 30 CFR Part 784.

(a) *Subsidence control plans.* Revised 1784.20(b) requires subsidence control plans to include a map of underground workings describing the location and extent of areas in which planned subsidence mining methods will be used and which includes all areas where measures will be taken to prevent or minimize subsidence and subsidence-related damage. In addition, 1784.20(c) has been revised to require that subsidence control plans include a description of physical conditions, such as depth of cover, seam thickness, and lithology, which affect the likelihood or extent of subsidence and subsidence-related damage. The revised rules are similar to and therefore no less effective than 30 CFR 784.20 (b) and (c).

(b) *Subsidence monitoring.* Revised 1784.20(d)(5) requires the subsidence control plan for room-and-pillar operations to include information on any planned monitoring to determine the commencement and degree of subsidence so that other appropriate measures can be taken to prevent or reduce material damage. However, unlike the State rule, the Federal rule at 30 CFR 784.20(d) also requires this information for operations using planned subsidence methods. Since revised 1784.20(f) requires a description of measures to be taken in accordance with 1817.121(c) to mitigate or remedy any subsidence-related material damage, Illinois has indicated that this provision can be used to require monitoring if necessary. Therefore, the Director finds that revised 62 IAC 1784.20(d)(5) is no less effective than 30 CFR 784.20(d).

17. Part 1785—Requirements for Special Categories of Mining

Revisions to this Part affect Sections 1785.1—Scope, 1785.2—Objective, 1785.13—Experimental Practices Mining, 1785.14—Mountaintop Removal, 1785.15—Steep Slope Mining, 1785.16—Permits Incorporating Variances from Approximate Original Contour Restoration Requirements, 1785.17—Prime Farmlands, 1785.18—Variances for Delay in Contemporaneous Reclamation Requirement in Combined Surface and Underground Mining Activities, 1785.20 Augering, 1785.21—Coal Preparation Plants Not Located Within the Permit Area of a Mine, 1785.22—In Situ Processing Activities,1785.23—Minor Underground Mine Facilities Not at or Adjacent to the

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Processing or Preparation Facility or Area.

As required pursuant to OSMRE's May 21, 1985, letter under 30 CFR 732.17, Illinois made the following revisions involving Part 1785:

(a) Section 1785.13(e) has been revised to require that experimental practices granting variances from the special environmental protection performance standards applicable to prime farmlands be approved only after consultation with the Soil Conservation Service of the U.S. Department of Agriculture. The revised rule is similar to and therefore no less effective than 30 CFR 785.13(e).

(b) Revised 1785.13(g) requires review of experimental practices no less than every two and one half years consistent with 30 CFR 785.13(g).

(c) Revised 1785.17(b) now specifies the nature and type of reconnaissance inspections that must be made of the proposed permit area to determine whether or not prime farmland is present. 1785.17(b)(1) specifies that reconnaissance inspections shall be either a review of an existing soil survey for the proposed permit area or an onsite inspection of the proposed permit area. This specificity within the Illinois regulations as to the nature and extent of reconaissance inspections is consistent with 30 CFR 785.17(b)(1) which requires the regulatory authority to consult with the U.S. Soil Conservation Service to determine the nature and extent of each individual reconnaissance survey.

(d) Illinois regulations 1779.27 and 1783.27 have been repealed. Illinois regulations no longer provide for the regulatory authority to approve a negative determination of prime farmland on the basis of slope and other factors such as rocky surface and flooding. The repeal of 1779.27 and 1783.27 is consistent with 30 CFR 785.17.

(e) Revised 1785.17(c)(1)(B) now requires soil surveys to include a description of soil mapping units and a representative soil profile as determined by the SCS, including, but not limited to, soil horizon depths, pH, and range of soil densities within the permit area. The rule is therefore consistent with 30 CFR 785.17(c)(1)(ii).

(f) Revised 1785.17(c)(1)(B) now allows other representative soil profile descriptions from the locality to be used if their use is approved by the SCS State Conservationist. The rule is therefore consistent with 30 CFR 785.17(c)(1)(ii).

(g) Revised 1785.17(c)(1)(B) now also allows the Department to request the operator to provide information on other physical and chemical soil properties as needed to make a determination that the operator has the technological capability to restore the prime farmland. The rule is consistent with 30 CFR 785.17(c)(1)(ii).

(h) Resubmitted 1785.17 no longer exempts land not historically used as cropland, areas smaller than minimum size of soil map units and areas otherwise exempt from the prime farmland performance standards in 1823. Deletion of these exemptions from the prime farmland application requirements was required under 30 CFR 913.16(c) pursuant to the November 30, 1983 remand order in *Illinois South Project* v. *Watt*, supra.

The Director finds the Illinois regulations in amended Part 1785 similar to and therefore consistent with 30 CFR Part 785.

18. Part 1795—Small Operator Assistance

This part covers sections 1795.1—Scope and Purpose, 1795–3—Authority, 1795.4—Eligibility for Assistance, 1795–7—Filing for Assistance, 1795.8—Application Approval and Notice, 1795.9—Program Services and Data Requirements, 1795.10—Qualified Laboratories, and 1795.11—Assistance Funding.

As required pursuant to OSMRE's May 21, 1985 letter under 30 CFR 732.17, Illinois made the following revisions to Part 1795:

(a) Revised 1795.4 defines "Qualified Laboratory" consistent with the Federal definition contained in 30 CFR 795.3. In addition, under new 1795.10(a) the State-program administrator selects a qualified laboratory to make the determination and statement. Illinois provides for qualification and selection of laboratories, as is required by OSMRE.

(b) New 1795.6(b)(4) establishes that annual coal production for SOAP eligibility shall include all coal produced by operations owned by members of the applicant's family and relatives. The rule is therefore consistent with 30 CFR 795.6(a)(iv).

(c) Revised 1795.12(a)(3) now establishes the SOAP applicants shall reimburse the Department for the cost of the laboratory services if the permit is sold, transferred or assigned to another person and the transferee's annual production exceeds 100,000 tons. The provision is consistent with 30 CFR 795.12(a)(3).

(d) New 1795.6 (c) and (d) establish as a criterion for eligibility for assistance that the applicant is not restricted in any manner from receiving a permit under the permanent regulatory program. The provision is consistent with 30 CFR 795.6(a) (3) and (4).

The Director finds the Illinois regulations in amended Part 1795 similar to and therefore consistent with 30 CFR Part 795.

19. Part 1800—Bonding and Insurance Requirements for Surface Coal Mining and Reclamation Operations

This part covers sections 1800.1—Scope and Purpose, 1800.4—Department Responsibilities, 1800.5—Definitions, 1800.11—Requirement to File a Bond, 1800.12—Form of the Performance Bond, 1800.13—Period of Liability, 1800.14—Determination of Bond Amount, 1800.15—Adjustment of Amount, 1800.16—General Terms and Conditions of Bond, 1800.17—Bonding Requirements for Underground Coal Mines and Long-Term Coal-Related Surface Facilities and Structures, 1800.20—Surety Bonds, 1800.21—Collateral Bonds, 1800.30—Replacement of Bonds, 1800.40—Requirement to Release Performance Bonds, 1800.50—Forfeiture of Bonds, and 1800.60—Terms and Conditions for Liability Insurance.

Significant changes are discussed below:

(a) New 1800.4(e) establishes that operating without a bond is a violation of a condition upon which the permit was issued. Paragraph 1800.4(e) is therefore consistent with 30 CFR 800.4(g).

(B) New State rule 1800.5(b) establishes a definition for collateral bond which is consistent with the Federal definition in 30 CFR 800.5(b). The State rule does not allow real property to be posted as collateral bond; however, it is not required to do so under 30 CFR 800.4.

(c) New 1800.21(e) establishes that persons with an interest in collateral posted as bond, and who desire notification of actions pursuant to the bond, shall request the notification in writing to the Department at the time the collateral is offered. This provision is consistent with 30 CFR 800.21(f).

(d) New 1800.50(e)(1) provides that, in the event the amount forfeited is insufficient to pay for the full cost of reclamation, the operator shall be liable for remaining costs. Paragraph (e)(1) also allows the Department to complete or authorize completion of reclamation of the bonded area and to recover from the operator all costs of reclamation in excess of the amount forfeited. These provisions are consistent with 30 CFR 800.50(d)(1).

(e) New 1800.40(b)(1) provides that the Department may arrange with the permittee to allow access to the permit area, upon request, by any person with an interest in bond release for the purpose of gathering information relevant to the bond release proceeding. This provision is consistent with 30 CFR 800.40(b).

(f) *Standards for issuance of permits to persons who forfeit bond.* Illinois is adding a provision at 62 IAC 1800.50(f) to prohibit any person who forfeits a bond from receiving another permit unless that person makes full restitution of reclamation costs for the forfeited site, corrects all violations, pays all civil penalties, posts a cash bond for the new permit, and accepts personal liability for all future violations. Section 510(c) of SMCRA and 30 CFR 773.15(b) prohibit the unconditional issuance of permits to applicants with either outstanding violations or a demonstrated pattern of willful violations of a nature and duration resulting in such irreparable damage to the environment as to indicate an intent not to comply with program requirements. Otherwise, neither SMCRA nor the Federal regulations specify the conditions under which a person who forfeits bond may receive another permit. For this reason, and since 62 IAC 1773.15(b) contains provisions identical to those of 30 CFR 773.15(b) with which the State would also have to comply, the Director finds that Section 1800.50(f) is not inconsistent with any Federal requirement.

(g) *General.* This amendment consolidates the State's bonding and insurance requirements, which were previously located in Parts 1800 through 1808, into Part 1800; all other parts are being repealed. The revised rules include minimum requirements and procedures similar to those in the corresponding Federal rules at 30 CFR Part 800. In addition, the State has included additional safeguards and more specific procedural requirements throughout. Illinois has elected not to accept self-bonds, phased bonds, self-insurance or collateral bonds secured by real estate; it is not required to do so under 30 CFR 800.4, which grants States discretion in deciding what types of bond and insurance to accept. Therefore, the Director finds that revised 62 IAC Part 1800 is no less effective than the corresponding Federal rules in 30 CFR Part 80.

20. Part 1815—Permanent Program Performance Standards for Coal Exploration

Revisions to this Part affect sections 1815.1—Scope and Purpose, 1815.13—Required Documents, and 1815.15—Performance Standards for Coal Exploration. As required pursuant to OSMRE's May 21, 1985 letter under 30 CFR 732.17, Illinois revised 1815.15(a) to specify that habitats of unique or unusually high value for fish, wildlife and other related environmental values and critical habitats of threatened or endangered species identified pursuant to the Endangered Species Act shall not be disturbed during coal exploration. The revised Illinois regulations in amended Part 1815 are similar to and therefore no less effective than the corresponding Federal rules in 30 CFR Part 815.

21. Parts 1816 and 1817—Permanent Program Performance Standards for Surface Mining Activities and Underground Mining Operations

Revisions to these nearly identical parts affect all sections except 1816.45/1817.45 (general requirements for sediment control measures), 1816.47/1817.47 (discharge structures), 1816.59/1817.59 (coal recovery), 1817.99 (slides and other damage), 1816.111/1817.111 through 1816.116/1817.116 (revegetation), 1817.131 (temporary cessation of operations), 1816.150/1817.150 (roads), 1817.182 (minor underground mine facilities), and 1816.190/1817.190 (affected acreage map).

Except as noted in paragraphs (k) and (hh) below, the revised rules are similar to and therefore no less effective than the corresponding Federal rules in 30 CFR Parts 816 and 817. Illinois has also added several clarifying specifications to these rules, none of which alter their meaning or intent or adversely affect this finding.

As required pursuant to OSMRE's May 21, 1985 letter under 30 CFR 732.17, Illinois made the following revisions to Parts 1816 and 1817:

(a) Revised 1816.61(c) and 1817.61(d) require blast designs to be submitted for blasting operations that will be conducted within 1,000 feet of any building used as a dwelling, public building, school, church or institutional building or within 500 feet of an underground mine. These provisions are consistent with 30 CFR 816.61(d) and 817.61(d).

(b) Existing Illinois regulation 1850.13(c) provides that the blaster shall provide direction and on-the-job training to all non-certified blasting personnel under his supervision. Thus, existing 1850.13(c) is consistent with 30 CFR 816.61(c)(4)(ii) and 817.61(c)(4)(ii).

(c) Revised 1816.62(a) and 1817.62(a) establish that at least 30 days before initiation of blasting in a permit area, the operator shall notify, in writing, all residents or owners of structures located within one-half mile of the permit area how to request a pre-blast or condition survey. The State rule submitted on March 28, 1986, contained an exemption not in the Federal rules that such notification shall not be required for any structure where a survey has been previously requested by the present or previous resident or owner and the survey has been conducted by the permittee and copies of the survey have been provided to the owner or resident and the Department. Program amendments resubmitted on May 22, 1987, no longer contain the exemption. Therefore, the State's rules at 1816.62(a) and 1817.62(a) are consistent with 30 CFR 816.62(a) and 817.62(a).

(d) Revised 1816.62(d) and 1817.62(d) require that any surveys requested more than 10 days prior to the beginning of blasting as stated in the published schedule shall be completed by the operator before the start of blasting. These provisions are consistent with 30 CFR 816.62(e) and 817.62(e).

(e) New 1816.67(b) and 1817.67(b) establish airblast limits which are consistent with limits required under 30 CFR 816.67(b) and 817.67(b). The Illinois rules contain the exception provided in the Federal rules at 30 CFR 816.67(e)(2) and 817.67(e)(2), which provide that if a building owned by the person conducting surface mining activities is leased to another person, the lessee may sign a waiver relieving the operator from meeting airblast limits.

(f) New 1816.67 and 1817.67(b) do not require periodic monitoring of air blasts. 30 CFR 816.67(b)(2) and 817.67(b)(2) require the operator to conduct periodic monitoring to ensure compliance with airblast standards. In requiring periodic monitoring, OSMRE explained (46 FR 9796, March 8, 1983) that to ensure airblast levels are met the location of seismographic monitoring equipment may not be the critical or appropriate location for airblast monitoring. Wind, temperature, and overcast conditions can affect maximum airblast location. Therefore, the Federal rule includes a general provision for periodic airblast monitoring by the operator in which the locations and periods of such monitoring are left to the discretion of the operator and the regulatory authority. Illinois' revised 1780.13(b) requires the applicant to describe the proposed system for monitoring compliance with 1816.67 including the proposed locations for airblast monitoring equipment. This arrangement is acceptable since the Department can require proper placement of monitoring equipment.

(g) New 1816.67(c) and 1817.67(c) establish maximum ground vibration limits consistent with 30 CFR 816.67(d) and 817.67(d). The State provisions in 1816.67(e) include lesser peak particle velocity limits at the location of any dwelling, public building, school, church

or building. The provisions also are consistent with the Federal regulations for distances greater than 5,000 feet from the blast.

(h) New 1816.68(b) and 1817.68(b) require that air blast and ground vibration records be retained for a period of three years. Records must include the type of instrument, its sensitivity and calibration signal or certification of annual calibration, and the date and time of the recording. These provisions are similar to and therefore no less effective than 30 CFR 816.68(b) and 817.6(b).

(i) Revised 1816.102(a)(4) and 1817.102(a)(4) require that disturbed areas be backfilled and graded to minimize erosion and water pollution both on and off the site. This provision is identical to and therefore no less effective than 30 CFR 816.102(a)(4) and 817.102(a)(4).

(j) New 1817.121(g) requires all underground operators to submit, on or before March 1 of each year, three mine maps of underground workings to the Department. The State's rule establishes map format and content requirements which are similar to and therefore no less effective than those of 30 CFR 817.121(g).

(k) Revised 1816.97(b) and 1817.97(b) provide that no surface or underground mining activity shall be conducted which will jeopardize the continued existence of endangered or threatened species listed by the Secretary or which will result in the destruction or adverse modification of designated critical habitats of such species in violation of the Endangered Species Act. The Illinois rules also require the Department, upon notification by the operator of the presence of such species, to consult with appropriate State and Federal fish and wildlife agencies to determine whether and under what conditions operations may proceed. These provisions are consistent with 30 CFR 816.97(b) and 817.97(b) as they existed prior to December 11, 1987. On that date, to conform to the language of the Endangered Species Act, the Director promulgated revised rules that prohibit the conduct of activities which "would be likely to" (rather than "will") jeopardize the continued existence of such species or their critical habitats. Furthermore, the revised rules require the reporting of State-listed as well as Federally-listed species (54 FR 47352).

The Director is separately notifying Illinois of the additional changes needed as a result of the revisions to the Federal rules. In the interim, he expects that Illinois will implement its regulations in a manner consistent with the Federal Endangered Species Act, which remains applicable in all cases.

(l) Revised 1816.97(c) and 1817.97(c) specify that no surface or underground mining activity shall be conducted in a manner which would result in the unlawful taking of a bald or golden eagle. These rules also require that the operator promptly report any sightings of eagles. As revised, these rules are identical to and therefore no less effective than the corresponding Federal rules at 30 CFR 1816.97(c) and 1817.97(c).

(m) Revised 1816.83 and 1817.83 no longer allow the State to waive the requirement for subdrainage control on coal mine waste refuse piles. Sections 1816.83 and 1817.83 as revised are thus similar to and no less effective than the corresponding Federal rules at 30 CFR 816.83 and 817.83.

(n) New 1816.84(b)(1) and 1817.84(b)(1) specify that coal mine waste impounding structures may not be retained permanently. This provision is identical to and therefore no less effective than 30 CFR 816.84(b)(1) and 817.84(b)(1).

(o) New 1816.89(d) and 1817.89(d) require that hazardous materials be handled in accordance with the Federal Resource Conservation and Recovery Act. Although the corresponding OSMRE rules have been suspended, section 506(b) of SMCRA allows States to adopt provisions more stringent than their Federal counterparts. Furthermore, the rules merely acknowledge the existence and applicability of other Federal statutes and regulations. The State rules are therefore not inconsistent with any Federal requirement.

(p) Revised 1816.71(f) and 1817.71(f) require excess spoil to be transported and placed in a controlled manner in horizontal lifts not exceeding four feet in thickness. However, the rules also provide that the Department may approve a design which incorporates placement of excess spoil in horizontal lifts other than four feet in thickness when it is demonstrated by the operator and certified by a qualified registered professional engineer that the design will ensure the stability of the fill. These provisions are consistent with 30 CFR 816.71(e)(2) and 817.71(e)(2).

(q) Revised 1816.71(j) and 1817.71(j) require that a registered professional engineer or other qualified professional specialist under the direction of a registered professional engineer experienced in the construction of earth and rockfill embankments periodically inspect fills during construction. The State's rules at 1816.7171(j)(2) and 1817(j)(2) require the registered professional engineer to provide a certified report of each inspection. These provisions are consistent with 30 CFR 816.71(h) and 817.71(h).

(r) Revised 1816.71(j) (2), (3), (4) and (5) and 1817.71(j) (2), (3), (4) and (5) require the filing of certified reports on the drainage system and protective filters for certain fills. Such reports are to include color photographs taken during and after construction, but before the underdrains are covered with excess spoil. If the underdrain system is constructed in phases, each phase must be certified separately. Also where excess durable rock spoil is placed in single or multiple lifts such that the underdrain system is constructed simultaneously with excess spoil placement, color photographs are to be taken to the underdrain as the underdrain system is being formed. The photographs accompanying each certified report are to be taken in adequate size and number with enough terrain or other physical features of the site shown to provide a relative scale and to clearly identify the site. These provisions are consistent with 30 CFR 816.71(h)(3) and 817.71(h)(3).

(s) Revised 1816.71(b)(1) and 1817.71(b)(1) now require the fill to be designed using current, prudent engineering practices. In addition, a qualified registered professional engineer experienced in the design of earth and rock fills shall certify the design. These provisions are consistent with 30 CFR 816.71(b)(1) and 817.71(b)(1).

(t) Revised 1816.41(a) and 1817.41(a) require that all surface and underground mining activities be conducted to minimize disturbance of the hydrologic balance within the permit and adjacent areas and to prevent material damage to the hydrologic balance outside the permit area. These provisions are consistent with 30 CFR 816.41(a) and 817.41(a).

(u) Revised 1816.41(c)(2) and 1817.41(c)(2) require that, when the analysis of any ground water sample indicates non-compliance with the permit conditions, the operator promptly notify the Department. These provisions are consistent with 30 CFR 816.41(c)(2) and 817.41(c)(2).

(v) Revised 1816.41(f)(1)(A) and 1817.41(f)(1)(A) require drainage from acid- and toxic-forming materials into surface water and ground water to be avoided by identifying and burying and/or treating, when necessary, materials which may adversely affect water quality, or be detrimental to vegetation or to public health and safety if not buried and/or treated. These provisions are consistent with 30 CFR 816.41(f) and 817.41(f).

(w) Revised 1816.41(i) and 1817.41(h) govern discharges into underground mines and require a demonstration that the discharge will prevent material damage outside the permit area. These provisions are consistent with 30 CFR 816.41(i) and 817.41(h).

(x) Revised 1816.43(a)(1) and 1817.43(a)(1) require diversions to be designed to minimize adverse impacts to the hydrologic balance within the permit and adjacent areas, to prevent material damage outside the permit area and to assure the safety of the public. These provisions are consistent with 30 CFR 816.43 and 817.43.

(y) Revised 1816.43(b)(1) and 1817.43(b)(1) require the Department to approve diversions within the permit area after finding that the diversion will not adversely affect water quality and related environmental values under 1816.57 and 1817.57. These provisions are consistent with 30 CFR 816.43(b) and 817.43(b).

(z) Revised 1816.43(b)(5) and 1817.43(b)(5) require the design and construction of all stream channel diversions of perennial and intermittent streams to be certified by a qualified registered professional engineer. These provisions are consistent with 30 CFR 816.43(b)(4) and 817.43(b)(4).

(aa) Revised 1816.49(a)(1) and 1817.49(a)(1) require that temporary and premanent impoundments which meet the criteria of 30 CFR 77.216(a) comply with the requirements of 30 CFR 77.216 and State rules 1816.49 and 1817.49. The plan submitted to MSHA shall also be submitted to the Department as part of the permit application. These provisions are similar to and therefore no less effective than the corresponding Federal rules at 30 CFR 816.49 and 817.49.

(bb) Revised 1816.46(b)(5) and 1817.46(b)(5) require that siltation structures be maintained until removal is authorized by the Department and the disturbed area has been stabilized and revegetated. In no case shall structures be removed sooner than two years after the last augmented seeding. These provisions are similar to and therefore no less effective than the corresponding Federal rules at 30 CFR 816.46(b)(5) and 817.46(b)(5).

(cc) Revised 1816.49(a)(2) and 1817.49(a)(2) require the design of temporary and permanent impoundments to be certified by a qualified registered professional engineer experienced in the design and construction of impoundments, in accordance with 62 IAC 1780.25(a). These provisions are similar to and therefore no less effective than the corresponding Federal rules at CFR 816.46(a)(2) and 817.46(a)(2).

(dd) Revised 1816.49(a)(3) and 1817.49(a)(3) require that impoundments be designed and constructed to maintain a seismic safety factor of at least 1.2 and a minimum static safety factor of 1.5 for the normal pool under steady seepage saturation conditions. These factors of safety are identical to and therefore no less effective than those of 30 CFR 816.49(a)(3) and 817.49(a)(3).

(ee) Revised 1816.49(a)(10) (A), (B) and (C) and 1817.49(a)(10) (A), (B) and (C) require that impoundments be inspected by or under the direction of an experienced registered professional engineer regularly during construction, upon completion of construction, and at least yearly until removal of the structure or release of the performance bond. Illinois has also revised these rules to require that copies of the certified inspection reports be maintained at or near the minesite. These provisions are identical to and therefore no less effective than those of the corresponding Federal rules at 30 CFR 816.49(a)(10) and 817.49(a)(10).

(ff) Revised 1816.49(a)(12) and 1817.49(a)(12) establish procedures to be followed if any examination or inspection of an impoundment discloses that a potential hazard exists. These procedures are similar to and therefore no less effective than the corresponding emergency procedures specified at 30 CFR 816.49(a)(12) and 817.49(a)(12).

(gg) Revised 1816.49(b)(2) and 1817.49(b)(2) require the quality of water in permanent impoundments to be suitable for its intended use and meet water quality standards set forth in 1816.42 and 1817.42. These requirements are identical to and therefore no less effective than those of the corresponding Federal rules at 30 CFR 816.49(b)(2) and 817.49(b)(2).

(hh) Revised 1816.49(b)(9), 1817.49(b)(9), 1816.49(c) and 1817.49(c) require that impoundments not meeting the size criteria of 30 CFR 77.216(a) be constructed with a spillway that can safely discharge the runoff from, for permanent impoundments, the 50-year, 6-hour precipitation event, or for temporary impoundments, the 25-year, 6-hour precipitation event. The corresponding Federal rules at 30 CFR 816.49(b)(7) and 817.49(b)(7) require, at a minimum, use of the 50-year, 6-hour event for all permanent impoundment spillway structures, while 30 CFR 816.49(c)(2) and 817.49(c)(2) require, at a minimum, use of the 25-year, 6-hour event for all temporary impoundment spillway structures. Under the proposed Illinois rules, spillways for impoundments meeting the size criteria of 30 CFR 77.216(a) would be governed only by the provisions of 30 CFR 77.216, which does not contain similar spillway size requirements. Therefore, the Director finds that the proposed rules are less effective than the corresponding Federal rules and he is requiring that the State revise 1816.49 (b)(9) and (c) and 1817.49 (b)(9) and (c) to include specific spillway size requirements for all impoundments.

(ii) Revised 1816.95(a) and 1817.95(a) require that the exposed surface areas be protected and stabilized to control erosion and air pollution attendant to erosion. These provisions are identical to and therefore no less effective than the corresponding Federal rules at 30 CFR 816.95(a) and 817.95(a).

In addition to the preceding revisions addressing the concerns raised in OSMRE's letter of May 21, 1985, Illinois made the following revisions to comply with the remaining requirements of 30 CFR 913.16 resulting from the November 30, 1983 remand order in *Illinois South Project* v. *Watt*, supra:

(jj) Revised 1816.46 and 1817.46 include sedimentation pond and siltation structure design and performance standards similar to and no less effective than those of 30 CFR 816.46 and 817.46, thus satisfying the requirements of 30 CFR 913.16(d).

(kk) Revised 1816.62(a) and 1817.62(a) require that, at least 30 days before initiation of blasting within a permit area, the operator notify, in writing, all residents or owners of structures located within one-half mile of the permit area of their right to request a preblast survey and the procedures to do so. The revised rules are identical to and therefore no less effective than the corresponding Federal rules at 30 CFR 816.62(a) and 817.62(a). Illinois has thus complied with the requirements of 30 CFR 913.16(e).

(ll) Revised 1816.67(d) and 1817.67(d) specify that flyrock, including blasted material traveling in the air or along the ground, shall not be cast beyond the permit boundaries, beyond the area of regulated access, or more than one-half the distance to the nearest dwelling or other occupied structure. These provisions are similar to and no less effective than those of 30 CFR 816.67(d) and 817.67(d); they thus satisfy the requirements of 30 CFR 913.16(f).

22. Part 1819—Special Performance Standards for Auger Mining

This Part covers sections 1819.1–Scope, 1819.11–General, 1819.13–Coal Recovery, 1819.15–Hydrologic Balance, 1819.17–Subsidence Protection, 1819.19–Backfilling and Grading and 1819.21–Protection of Underground Mining.

As required pursuant to OSMRE's May 21, 1985 letter under 30 CFR 732.17,

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Illinois made the following revisions involving Part 1819:

(a) Rule 1819.11(c)(1), which had allowed auger holes discharging water containing toxic-forming or acid-forming material to be plugged or the discharge treated, has been deleted. New Illinois rule 1819.15(b)(1) requires sealing consistent with 30 CFR 819.15(b)(1).

(b) New Illinois rule 1819.17 now requires that auger mining be conducted in accordance with the requirements of 1817.121(a) and (c) and is no less effective than 30 CFR 819.17.

The Director finds the Illinois regulations is amended Part 1819 similar to and therefore consistent with 30 CFR Part 819.

23. Part 1824—Special Performance Standards: Mountaintop Removal

This Part covers sections 1824.1–Scope, 1824.2-Objective and 1824.11-Performance Standards.

The Director finds the Illinois regulations in amended Part 1824 similar to and therefore consistent with 30 CFR Part 824.

24. Part 1825—Special Performance Standards on High Capability Lands

This Part covers sections 1825.11–Special Requirements, 1825.12–Soil Removal, 1825.13-Soil Stockpiling and 1825.14–Soil Replacement.

The Director finds that the Illinois regulations in amended Part 1825 (for which there is no Federal counterpart) do not adversely affect other aspects of the program and are not inconsistent with SMCRA or the Federal regulations.

25. Part 1827—Special Performance Standards: Coal Preparation Plants Not Located Within the Permit Area of a Mine

This Part covers sections 1827.1–Scope, 1827.11–Applicability, and 1827.12-Performance Standards.

The Director finds the Illinois regulations in amended Part 1827 to be similar to and therefore consistent with 30 CFR Part 827.

26. Part 1828—Special Performance Standards: In Situ Processing

This Part covers sections 1828.1–Scope, 1828.3–Objectives, 1828.11–Performance Standards and 1828.12–Monitoring.

The Director finds the Illinois regulations in amended Part 1828 to be similar to and therefore consistent with 30 CFR Part 828.

27. Part 1840. Department Inspections

This Part covers sections 1840.1–Scope, 1840.3–Monitoring and Reporting, 1840.11–Inspections by the Department, 1840.12–Right of Entry, 1840.14–Availability of Records, 1840.15–Citizen's Requests for State Inspections, 1840.16–Review of Adequacy and Completeness of Inspections and 1840.17–Review of Decision Not to Inspect or Enforce.

As required pursuant to OSMRE's May 21, 1985 letter under 30 CFR 732.17, Illinois revised section 1840.14(b) to establish that copies of all records, reports, inspection materials or information obtained by the Department shall be available to the public in the area of mining until at least five years after expiration of the operation. Illinois rule 1840.14(b) is thus consistent with 30 CFR 840.14(b).

The Director finds the Illinois regulations in amended Part 1840 similar to and therefore consistent with 30 CFR Part 840.

28. Part 1843—State Enforcement

This Part covers sections 1843.11–Cessation Orders, 1843.12–Notices of Violations, 1843.13–Suspension or Revocation of Permits, 1843.14–Service of Notices of Violation, Cessation Orders and Show Cause Orders, 1843.15–Informal Public Hearing, 1843.16–Formal Review of Citations, 1843.17–Temporary Injunctive Relief, 1843.18–Inability to Comply, 1843.20–Intervention, 1843.21–Discovery, and 1843.22–Petitions for Award of Costs and Expenses Under section 525(e) of the Federal Act.

As required pursuant to OSMRE's May 21, 1985 letter under 30 CFR 732.17, Illinois, in 62 IAC 1843.11(a)(2), has added language requiring the issuance of a cessation order to any person conducting surface coal mining and reclamation operations without a valid surface coal mining permit. This new provision is similar to and therefore no less effective than the corresponding Federal rule at 30 CFR 843.11(a)(2).

The Director finds the Illinois regulations in amended 62 IAC Part 1843 to be consistent with the corresponding Federal rules at 30 CFR Part 843 in that the Illinois rules incorporate sanctions no less effective than those of 30 CFR 843.11, 843.12, and 843.13 and include similar procedural requirements.

29. Part 1845—Civil Penalties

Revisions to this part affect section 1845.11—How Assessments are Made, 1845.12—When Penalty Will be Assessed, 1845.13—Factors to be Considered in Assessing Civil Penalties, 1845.15—Assessment of Civil Penalties, 1845.18—Payment of Assessment; Hearing Request Deadline, 1845.19—Procedures for Hearing, and 1845.20—Final Assessment and Payment of Penalty.

Most revisions are editorial in nature or add specificity without altering the intent or meaning of the rules. The chief substantive change is the addition of specific penalty determination formulas, procedures and thresholds. This penalty determination method is based on the four factors required by section 518(a) of SMCRA (history of previous violations, seriousness of the violation, permittee negligence, and any demonstrated good faith in attempting to achieve rapid compliance) and incorporates all mandatory penalties established by SMCRA.

In addition, Illinois has revised 62 IAC 1745.17(b) to specify that failure to serve a proposed assessment within 30 days of issuance of the notice or order shall not be grounds for dismissal unless the person assessed proves actual prejudice as a result of the delay and makes timely objection to the delay. This provision is similar to and no less effective than 30 CFR 845.17(b)(2).

The Director finds that the Illinois regulations in amended Part 1845 incorporate penalties and sanctions no less stringent than those set forth under sections 518 and 521 of SMCRA and no less effective than the regulations in 30 CFR Part 845. Except for the lack of provisions for assessment conferences, which States need not include in their programs, the Illinois rules also contain the same or similar procedural requirements as the corresponding Federal rules, as required by the cited sections of SMCRA.

V. Disposition of Agency and Public Comments

As described in the section of this notice entitled "Discussion of Amendments," OSMRE twice solicited public comment on the proposed amendments. Also, as required under 30 CFR 732.17(h) (4) and (11), the Director solicited the views of the State Historic Preservation Officer and all Federal agencies with an actual or potential interest in the proposed amendments.

All comments received on the proposed regulations, both as originally submitted on March 28, 1986, and as resubmitted on May 22, 1987, are discussed below. Where different commenters provided similar comments, only one response has been provided.

Agency Comments

Note: Comments of the State Historic Preservation Officer are summarized and discussed under the "Public Comments" section (Comment Nos. 148–157).

1. The Environmental Protection Agency (EPA) commented that proposed section 1773.12, which lists the Federal laws with which mining permits must comply, does not mention several important environmental statutes, such as the Clean Water Act and the Clean Air Act. EPA states that these missing laws should be added to the list in section 1773.12.

Illinois rule 1773.12 requires coordination of the review and issuance of permits with the same list of Federal Acts and Executive Orders as contained in 30 CFR 773.12 and is therefore consistent. EPA's comment was considered by OSMRE in development of 30 CFR 773.12. At 48 FR 44357 (September 28, 1983), OSMRE stated that permit review should be coordinated with actions taken to comply with other Federal statutes. In the Illinois program, all Federal or State governmental agencies with applicable permit-issuing authority will be notified under State's 1773.13(a)(3)(A) and given opportunity to comment.

2. EPA commented that in proposed 1773.13 only persons who may be adversely impacted by the decision on the permit application may comment on the application but that 40 CFR 25.3 allows any person to comment on permit applications.

40 CFR Part 25 sets forth minimum requirements for public participation in activities under the Clean Water Act, the Resource Conservation and Recovery Act and the Safe Drinking Water Act. It is 30 CFR Part 773 which sets forth requirements for public participation in State regulatory programs under SMCRA. In this regard Illinois' 1773.13 allowing only persons who may be adversely impacted to comment is consistent with 30 CFR 773.13.

3. EPA commented that under proposed 1774.13(d)(5) incidental changes can include increases to the permit area in excess of 20 percent, possibly much higher and that potential adverse impacts to water resources can occur if the monitoring systems are not expanded and changes in permitted effluent limits are not made. EPA recommended a tighter definition of incidental boundary changes and stated that any change to the permitted area should result in a reevaluation of the monitoring networks and effluent limits as well as any other environmental impacts.

Section 511(a)(2) of SMCRA provides that the regulatory authority shall establish guidelines for a determination of the scale or extent of a revision request for which all permit application information requirements and procedures shall apply. 30 CFR 774.13 mandates that the regulatory authority establish guidelines for the scale or extent of revisions for which all permit application information requirements and procedures (including notice, public participation and notice of decision) shall apply. The Federal rule further states that these procedures shall apply, at a minimum, to all significant permit revisions.

30 CFR 774.13(d) establishes that any extensions to the area covered by the permit except incidental boundary revisions shall be made by application for a new permit. Thus the scale and extent of incidental boundary revisions is left to the State regulatory authority to incorporate into the State program. Illinois establishes the scale and extent in 1774.13(d). Changes which qualify as incidental boundary revisions under the Illinois rule must be applied for and reviewed by the Department. All potential adverse impacts to water and other resources must be considered and the Department must modify or expand monitoring systems and make changes to permitted effluent limits if appropriate and warranted by the additional area. Classification as an incidental boundary revision allows omission only of procedural requirements, not review and evaluation requirements.

4. EPA commented that proposed Illinois regulation 1780.15 dealing with air pollution control plans has been limited to 30 CFR 780.15(a)(2) and (b)(2) of the Federal regulations dealing solely with a plan for fugitive dust control practices as required under 30 CFR 816.95. EPA notes that no plan for monitoring air pollution is proposed. Resubmitted Illinois 1780.15 requires each application to contain a plan for fugitive dust control practices as required under 1816.95. The Federal rules for air pollution control plans require an air quality monitoring program for operations east of the 100th meridian only if so required by the regulatory authority. Since Illinois operations fall within this category, Illinois regulation 1780.15 is consistent with 30 CFR 780.15(b). Paragraph (a) of the Federal rule does not apply.

5. EPA noted that proposed Section 1784 describes a comprehensive monitoring program for both ground and surface waters but that the permittee should be required to submit a quality assurance plan covering the parameters to be monitored and the plan should be made part of the permit application. EPA also commented that the permittee should make available all monitoring data obtained from the permittee's monitoring activities. Resubmitted Illinois regulations 1784.14(h) and (i) dealing with ground water and surface water monitoring plans are consistent with Federal regulations 784.14(h) and (i).

6. EPA commented that the list of parameters which the permittee must monitor for surface water monitoring programs in proposed 1784.14(i)(2)(A) should only be a minimum list of parameters and the State should have the authority to require monitoring of additional pollutants, if necessary. Resubmitted 1784.14(i)(2)(A) is consistent with 30 CFR 784.14(i)(2)(i). Resubmitted 1784.14(i)(3) allows for additional monitoring requirements if it is determined the existing or proposed monitoring plan is not adequate to detect adverse impacts to the hydrologic balance.

7. EPA commented that proposed 1784.26, dealing with an air pollution control play for underground mining permits, significantly limits the Federal regulations dealing with fugitive dust control practices under 30 CFR Section 817.95. 30 CFR 784.26(a) provides that the application shall contain an air quality monitoring program if required by the regulatory authority. Illinois has chosen not to require an air quality monitoring program. Resubmitted 1784.26 does require a plan for fugitive dust control practices and is consistent with Federal regulations.

8. EPA commented that proposed 1817.41, dealing with groundwater protection, does not include 817.41(b)(2) of the Federal regulations. Part (b)(2) of 817.41 was suspended by OSMRE on February 21, 1985 (50 FR 7278) and removed on December 2, 1987 (52 FR 45920).

9. EPA commented that proposed 1817.46(b)(3), which deals with underground mining, refers to "surface" mining instead of "underground" mining. Resubmitted 1817.46(b)(3) uses the term "underground" instead of "surface".

10. EPA commented that definitions of many of the terms in the rules would be helpful. Examples of terms needing definition included "shadow area" and "adjacent area". Definitions are given in Section 1701.5 of Illinois' regulations. Both "shadow area" and "adjacent area" are defined in Section 1701.5.

11. The United States Fish and Wildlife Service (FWS) commented that the definition of adjacent area contained in the Illinois resubmitted regulation 1701.5 should be revised to read in part, "any water or surface land over which those activities are conducted or located". The suggestion would substitute the word "over" for "upon" in reference to underground mining

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activities. Because the term "affected area" as utilized by Illinois also includes surface areas for underground mines not over underground mining areas the substitution would not be appropriate.

12. The FWS pointed out that the Illinois definition of land use in resubmitted regulation 1701.5 could be read such that the reference to vegetation would infer that such vegetation would not affect the quality or value of various land uses. Illinois utilized the exact language of the Federal counterpart, 30 CFR 701.5, and therefore is consistent. It was further suggested by the FWS that the Illinois definition of "recreation" be expanded to include wildlife observation and hunting. The Illinois regulation includes other undeveloped recreational uses in which the suggested activities would be included and therefore is not inconsistent with the Federal regulations. The FWS also requested that the term "dedicated" be removed from the Illinois definition of fish and wildlife habitat. The Illinois definition is the same as the Federal definition and therefore is consistent.

13. The FWS requested that a definition of "subsidence" be added to the Illinois program because of the impact on surface land and water. Illinois has determined that it is not necessary to include a definition of this term. The protection of land and water is assured by other regulations in the Illinois program. The lack of a definition for "substance" is not inconsistent with Federal regulations.

14. The FWS commented that "threatened and endangered species" should be defined and the relationship between Federal and State listed and proposed species explained. OSMRE believes that the term "threatened and endangered species" is well defined by other Federal and State laws and regulations which are referenced by both Illinois and the Federal rules and therefore need not be included in the Illinois regulations.

The explanation of the relationship between Federal and State endangered species is contained in the Interagency Agreement between the regulatory authority and the Illinois Department of Conservation. This agreement is part of the approved State regulatory program.

15. The FWS asked that a definition of "wetlands" be included in the resubmitted Illinois regulations. The Federal regulations do not include this definition and therefore the lack of a wetland definition is not inconsistent with the Federal rules.

16. The FWS requested that endangered species determinations and cultural resource areas be added to resubmitted Illinois regulation 1761.11(b) relating to lands unsuitable for mining. Section 1761.11(c) references historical resources. Endangered species protection is provided by other sections of the Illinois program. The regulations as submitted are consistent with the Federal rules.

17. The FWS commented on resubmitted Illinois regulations 1761.15(a) and (b), which deal with the processing of lands unsuitable petitions. The concern was expressed that, unless there was an imminent threat or mining application on file, a petition would not be considered. The Illinois program provides that any petition which is deemed complete, is not frivolous and concerns an area with identified coal resources will be processed.

18. The FWS requested that resubmitted regulation 1772.12(b)(12) be revised to require identification of endangered species habitat in addition to critical habitat and cultural resources. The Federal counterpart, 30 CFR 772.12(b)(12), requires only critical habitat identification. The Illinois regulation is therefore consistent with the Federal rule. Cultural resources are required to be described in Illinois regulation 1772.12(b)(8) and need not be included in 1772.12(b)(12).

19. The FWS asked for clarification of Illinois regulation 1772.12(d)(2)(B) which requires that IDMM find in writing that the applicant for an exploration permit has demonstrated that the proposed operation will not jeopardize the continued existence of an endangered or threatened species or result in destruction or adverse modification of critical habitat. Resubmitted 1772.(d)(2)(B) is exactly the same as 30 CFR 772.12(d)(2)(ii) and is therefore consistent. No clarification is required.

20. The FWS requested that Executive Orders 11988 and 11990, the Clean Water Act and the Archeological Resources Protection Act of 1979 be added to Illinois section 1773.12, which concerns permit coordination. These laws are not specifically included in the Federal counterpart, 30 CFR 733.12, and are therefore not required in the State program, although the State must of course comply with any applicable provisions, as stated in the general language of Illinois rule 1773.12.

21. The FWS commented that resubmitted Illinois regulation 1773.15(c) requires the State to find in writing that the direct, indirect, and comulative impacts of the proposed permit action on fish and wildlife resources and their habitats and wetlands have been adequately and properly mitigated. Resubmitted 1773.15(c) contains the required finding of the Federal counterpart, 30 CFR 773.15(c); therefore, the suggested language is not required.

22. The FWS requested that insignificant revisions as described in resubmitted regulation 1774.13(b) be subject to Federal agency review to determine the effect on Federal laws, rules and regulations and that such revisions which impact Federal lands also be subject to Federal review. Consistent with Federal regulations, Illinois has provided guidelines as to the scale or extent of revisions for which all permit application information and requirements shall apply. Insignificant revisions by their definition do not require the review suggested. The Illinois regulation is consistent with the Federal rules.

23. The FWS requested that a requirement be added to resubmitted Part 1779 describing diversions. Part 1779 and the Federal counterpart, 30 CFR Part 779, define the minimum requirements for information on environmental resources including the location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drains and ditches within the proposed permit and adjacent areas. Information concerning diversions would be included in the required information. Resubmitted Part 1779 is consistent with 30 CFR Part 779.

24. The FWS commented that the fish and wildlife description required by resubmitted 1779.20 should discuss the conditions existing before the current conditions were changed to allow for mining (within the last five years). In addition, the FWS stated that that information, including a description of listed and proposed threatened or endangered species, should be the baseline for the plan developed under 1780.16. Resubmitted 1779.20 includes the information required by former 30 CFR 779.20. Any additional requirements, resulting from the December 11, 1987 revisions to the Federal rule will be addressed in a separate letter from the Director.

25. The FWS commented that land use information required by resubmitted 1779.22 should include wildlife habitat and recreational uses as well as agricultural aspects. Resubmitted 1779.22 is consistent with 30 CFR 779.22.

26. The FWS commented that maps submitted in accordance with 1779.24 should identify public lands, wetlands, natural areas and wildlife areas. Resubmitted 1779.24 is consistent with 30 CFR 779.24.

27. The FWS commented that the phrase "where practicable" in 1780.16(a)(1) is not appropriate. Resubmitted 1780.16(a)(1) is identical to

30 CFR 780.16(a)(1) and is therefore consistent.

28. The FWS commented that wetlands should be added to the list of water areas in 1779.25(a)(7). Resubmitted 1779.25(a)(7) is consistent with 30 CFR 779.25(a)(7).

29. The FWS commented that threatened or endangered species should be separated from 1780.16(b) as there are special requirements for these species and an endangered species permit may be required before work can be done. Resubmitted 1780.16(b) is consistent with the Federal counterpart.

30. The FWS commented that the term "enhancement" needs to be defined in 1780.16(a)(2). Use of the term "enhancement" in resubmitted 1780.16(a)(2) is identical to 30 CFR 780.16(a)(2) and is not inconsistent with the Federal regulations.

31. The FWS requested in relation to 1780.23 that all pre-mining land uses including wildlife habitat and recreation be considered. The FWS also stated that Federal laws, rules, policies, etc. should be considered in conjunction with State and local land use plans. Resubmitted 1780.23 is consistent with 30 CFR 780.23.

32. The FWS requested that wetlands and riparian habitat be added to the list of waters and adjacent areas in 1780.25. Resubmitted 1780.25 is consistent with 30 CFR 780.25.

33. The FWS suggested that the reference to "surface" coal mining operations in 1783.12(a) is confusing and noted that the section makes no mention of surface impacts from underground mining such as subsidence. Resubmitted 1783.12(a), dealing with general environmental resources information for underground mining permit applications, is consistent with 30 CFR 783.12(a). Additional information regarding subsidence is required by 1784.20.

34. The FWS commented that 1783.20(a) should include a description of areas expected to be impacted by subsidence. Resubmitted 1783.20(a) is consistent with 30 CFR 783.20(a).

35. The FWS requested in relation to 1783.20(a) that the Service be included in the review of mining on, under and adjacent to Federal lands and waters. Resubmitted 1783.20(c) requires the regulatory authority to consult with the Illinois Department of Conservation (IDOC). IDOC is obligated to consult and coordinate with the FWS on a routine basis about what is required in permit applications. Resubmitted 1783.20(c) is not inconsistent with 30 CFR 783.20(c).

36. The FWS commented that productivity for wildlife and recreation should be included in the information required by 1783.22(a)(2)(B). Resubmitted 1783.22(a)(2)(B) is identical to 30 CFR 783.22(a)(2)(ii).

37. The FWS commented that maps submitted in accordance with 1783.24 should identify public lands, wetlands, natural areas and wildlife areas. Resubmitted 1783.24 is consistent with 30 CFR 783.24.

38. The FWS commented that a requirement should be added to 1784.13 to discuss plans for fish and wildlife habitat. Resubmitted 1784.13 is consistent with counterpart 30 CFR 784.13.

39. The FWS commented in relation to 1784.16 that wetlands may be designed in the plan or may occur in time as some of the mentioned water bodies age. Resubmitted 1784.16 is not inconsistent with 30 CFR 784.16.

40. The FWS made numerous comments and suggestions concerning 1784.20(e). Resubmitted 1784.20(e) is identical to its counterpart at 30 CFR 784.20(e) and is therefore consistent with the Federal regulation.

41. The FWS made numerous comments and suggestions concerning 1784.23. Resubmitted 1784.23 is consistent with Federal counterpart 30 CFR 784.23.

42. The FWS commented in reference to 1785.13(b)(2) that wildlife and recreational use other than recreational facilities could be post-mining uses. Resubmitted 1785.13(b)(2) is identical to 30 CFR 785.13(b)(2).

43. The FWS commented in reference to 1785.14(c)(1) that wildlife and recreational use other than recreational facilities could be post-mining land uses. Resubmitted 1785.14(c)(1) is consistent with 30 CFR 785.14(c)(1).

44. The FWS commented in reference to 1785.16(a)(1) that wildlife and recreational use other than recreational facilities could be post-mining land uses. Resubmitted 1785.16(a)(1) is consistent with 30 CFR 785.16(a)(1).

45. The FWS commented that the map and aerial photographs required by 1785.23(c)(4) should show the location of fields and fences and the various types and sizes/ages of vegetation and recreational land uses. Current 1785.23(c)(4) is not being changed and therefore is not part of this rulemaking.

46. The FWS indicated that Sections 1816.116 and 1817.116, as referenced by Section 1800.13(a), were not included in the review document. The FWS also commented that a minimum five-year period of responsibility should be required for grasses and herbaceous vegetation, with a minimum of 50 years for woody vegetation. Amended Sections 1816.116 and 1817.116 were approved by OSMRE on December 10, 1986 (51 FR 44454). Resubmitted 1800.13(a) is consistent with Federal regulations.

47. The FWS commented in relation to 1815.15(a) that no threatened or endangered species or their habitats may be affected prior to consultation. Resubmitted 1815.15(a) is identical to 30 CFR 815.15(a).

48. The FWS commented in reference to 1815.15(f) that wetlands and their watersheds should not be affected and unavoidable impacts should be properly and adequately mitigated. Resubmitted 1815.15(f) is consistent with Federal regulation 30 CFR 815.15(f).

49. The FWS indicated that Parts 1816.111 through 1816.132 are shown in the Section 1816 index but not included in the review document. These sections are not part of this rulemaking.

50. The FWS made two comments in reference to 1816.43. First, the slopes of diversion banks should be at a grade that supports vegetation to control erosion and the regulation should be expanded to assure that operators design and maintain vegetated slopes that prevent soil erosion and pollution of receiving waters except for sedimentation/silt basins that keep sedimentation on-site. Second, any diversions of flows that affect wetlands shall be identified and described and provisions should be made to mitigate for adverse impacts. OSMRE has determined that resubmitted 1816.43 is virtually identical to the Federal counterpart at 30 CFR 816.43 and is therefore no less effective.

51. The FWS commented that it assumes that the retaining structures for the impoundments, ponds, etc. referred to in 1816.56 would have to comply with Federal safety requirements for such structures. Resubmitted 1816.56 is identical to 30 CFR 816.56.

52. The FWS commented in reference to 1816.71(a) that excess spoil should not be placed in wetlands and if no feasible and prudent alternatives to spoil placement in wetlands exist, the area to be affected should be fully described, and an adequate mitigation plan be included in the reclamation plan to assure restoration and maintenance of wetland habitat. Resubmitted 1816.71(a) is identical to 30 CFR 816.71(a).

53. The FWS commented on 1816.72 about loss of wildlife habitat in head of hollow fills. State Section 1816.72 is consistent with 30 CFR 816.72. Wildlife habitat is not discussed in the Federal section.

54. The FWS commented on 1816.83 on coal mine waste placed in wetlands and reducing the maximum final grade slopes to less than 50 percent. State

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section 1816.83 is consistent with 30 CFR 816.61.

55. The FWS commented on 1816.97(a) and (b) on adequate mitigation to fish and wildlife and their habitats in the reclamation plan. State rules 1816.97(a) and (b) are consistent with 30 CFR 816.97(a) and (b) in that the reclamation plan is not discussed.

56. The FWS commented on 1816.97(c) and (d) that all protected species should be listed not just eagles. State rules 1816.97(c) and (d) are consistent with 30 CFR 816.97(c) and (d), which specifically concern the protection of eagles.

57. The FWS commented that the words "wildlife habitat" should be added to the first sentence of 1816.97(f) and the second sentence should be deleted. State rule 1816.97(f) is consistent with 30 CFR 816.97(f).

58. The FWS commented that Sections 1817.111 through 1817.117 were not included in the rules submission. Sections 1817.111 through 1817.117 were not part of the submission package because they have not been revised.

59. The FWS commented on section 1817.43(a)(2)(C) on diversions must be designed to properly maintain a quality environment. State rule 1817.43(a)(2)(C) is consistent with 30 CFR 817.43(a)(2)(iii).

60. The FWS commented on section 1817.46(b)(6) on the need for vegetative standards for retained sediment ponds. State rule 1817.46(b)(6) is consistent with 30 CFR 817.46(b)(6), which contains no separate vegetative standards.

61. The FWS commented on section 1817.46(e)(1) on using regular water monitoring to show that an exemption from sediment control is permissible. State rule 1817.46(e)(1) granting sediment pond exemptions is consistent with 30 CFR 817.46(e)(1).

62. The FWS commented on section 1817.49 that structures such as dikes and dams should meet Federal safety standards. State rule 1817.49 is consistent with 30 CFR 817.49.

63. The FWS commented on section 1817.57 that consultation under Section 7 of the Threatened and Endangered Species Act may be necessary if a threatened or endangered species may be affected within a stream buffer zone. State section 1817.57 is consistent with 30 CFR 817.57.

64. The FWS commented on 1817.71 that excess spoil should not be placed in wetlands. State rule 1817.71 is consistent with 30 CFR 817.71.

65. The FWS commented on 1817.72 on loss of wildlife habitat in head of hollow fills. State section 1817.72 is consistent with 30 CFR 817.72.

66. The FWS referred to comments made on section 1816.73. No comments were made on Section 1816.73.

67. The FWS commented on section 1817.81 that waste should not be deposited in wetlands. State section 1817.81 is consistent with 30 CFR 817.81.

68. The FWS commented on section 1817.83 about coal mine waste placed in wetlands and reducing the maximum final grade slopes to less than 50 percent. State section 1817.83 is consistent with 30 CFR 817.83.

69. The FWS commented on 1817.97(a) and (b) on adequate mitigation to fish and wildlife and their habitats in the reclamation plan. State rules 1817.97(a) and (b) are consistent with 30 CFR 1817.97(a) and (b).

70. The FWS commented on 1817.97(c) and (d) that all protected species should be listed not just eagles. State rules 1817.97(c) and (d) are consistent with 30 CFR 817.97(c) and (d) which specifically concern the protection of eagles.

71. The FWS commented on 1817.97(f) that the words "wildlife habitat" should be added to the first sentence and the second sentence should be deleted. State rule 1817.97(f) is consistent with 30 CFR 817.97(f).

72. The FWS questioned 1817.121(c)(1) as to which agency is responsible for the determination of technical and economic feasibility. The agency that issues the permit would be the responsible agency. State rule 1817.121(c)(1) is consistent with the 30 CFR 817.121(c)(1).

73. The FWS commented on 1817.121(c)(2) that the need to protect the vegetative and productive capability of the land as well as the use of insurance may not adequately compensate the owner. State rule 1817.121(c)(2) is consistent with 30 CFR 817.121(c)(2). Vegetative and productive capability of the land is addressed in 1817.121(c)(1).

74. The FWS questioned if the State will provide OSMRE with an annual report under section 1840.2. There is no Federal rule comparable to 1840.2. This section gives the State authority to have the operator provide reports and data and is not inconsistent with the Federal regulations.

75. The FWS commented on section 1843.11 on a cessation order for learning of the presence of an endangered species and mining without a valid permit. State section 1843.11 is consistent with 30 CFR 843.11.

Public Comments

As an initial and general matter, ISP argued that, since Illinois made substantial changes between the first submission to OSMRE on March 28, 1986, and the resubmission on May 22, 1987, the State should have been required to reopen the comment period.

The Director finds that this comment is misdirected since OSMRE has no jurisdiction over procedural aspects of State rulemaking activities. OSMRE has fully complied with all Federal public participation requirements of 30 CFR 732.17 and the Administrative Procedure Act by opening a public comment period and providing an opportunity for a public hearing on each of the State submissions.

Summaries of all public comments received and the Director's responses to them appear below:

1. ISP stated that the Department's proposed definition of "cemetery" should be changed to read "cemetery means any area of land where human bodies are interred." In the regulation resubmitted on May 22, 1987, Illinois revised the definition as suggested.

2. ISP stated that the Department's proposed definition of "coal processing plant" must be revised to include coal crushing and sizing facilities. Illinois changed the term being defined to "coal preparation plant" and revised the definition to include the cleaning, concentrating, or other processing or preparation of coal. Illinois also deleted all references to the seperation of coal from its impurities. As revised, the Illinois definition is similar to and consistent with the Federal definition at 30 CFR 701.5.

3. ISP stated that Illinois must adopt a definition of "road" consistent with the corresponding Federal definition at 30 CFR 701.5. Illinois chose not to do so since the Federal definition has been suspended following its remand in *In re: Permanent Surface Mining Regulation Litigation (II)* (D.D.C., October 1, 1984). Illinois need not define this term in the absence of a Federal definition.

4. ISP claimed that the U.S. District Court for the District of Columbia struck down the "takings" test in the Federal definition of "valid existing rights" and that Illinois therefore must adopt a definition relying on a "mechanical" test. OSMRE notes that the court remanded the Federal definition of "valid existing rights" at 30 CFR 761.5 on procedural grounds without ruling on its consistency with SMCRA. Furthermore, in its March 30, 1988, decision in *ISP* v. *Hodel*, the U.S. Court of Appeals for the Seventh Circuit ruled that, while the Director could not approve a State rule based on the remanded Federal definition, it was not clear that reimposition of the mechanical test would automatically follow.

As discussed in finding 2(b), the Director is deferring a decision on the proposed Illinois definition and he is requesting additional comment on whether the takings test is no less effective than the mechanical tests.

5. ISP commented that Illinois must also amend 62 IAC 1761.11(c) to protect all places listed on the National Register of Historic Places, not just those that are publicly owned. As discussed in Finding 4(b), the Director is disapproving the language limiting protection of sites listed on the Register to those that are publicly owned.

6. ISP commented that the current language of 1761.12(c)(2) should not be amended since it then would be unclear how the public could learn that a mining operation is proposed to be conducted within 100 feet of a public road. OSMRE notes that resubmitted 1761.12(c)(2) now requires public notice in a newspaper of general circulation in the affected area, as does 30 CFR 761.12. The newspaper notice ensures that the public has adequate opportunity to become aware of proposed mining operations within 100 feet of a public road.

7. ISP stated that proposed 1764.15(a)(7), which refers to suspended petitions, should be deleted since proposed 1764.15(a)(3) does not provide for suspension of petitions. Illinois' resubmitted amendments do not include 764.15(a)(7).

8. ISP stated that proposed 1764.17(a)(1) should be amended to provide for cross-examination of expert witnesses only at public hearings for the designation of areas unsuitable for surface coal mining. OSMRE notes that the cross-examination provided for in 1764.17(a)(1) is acceptable since it is required by sections 7.03 and 8.09 of the State Act and was approved in the original approval of the State program and upheld on appeal in *ISP v. Hodel*, supra. As documented in the Administrative Record, the IDMM generally would not cross-examine lay witnesses.

9. ISP recommended that proposed 1764.19(b) which provides the Department with options in designating areas unsuitable for surface mining should be deleted. OSMRE notes that 1764.19(b) clearly establishes that the Department may decide to designate the petitioned land in whole or in part, not designate the petitioned land or to place conditions on future operations. The provision allowing for conditions is consistent with the discretion afforded by the Federal regulations.

10. ISP commented that the phrase "and which may substantially disturb the land surface" contained in proposed 1772.11(a) for coal exploration for less than 250 tons should be deleted. Revised 1772.11(a) as resubmitted by Illinois no longer contains the phrase.

11. ISP commented that the phrase "other specific description" contained in proposed 1772.11(b)(3) needs clarification. OSMRE notes that 30 CFR 772.11(b)(3) which requires the notice to include a narrative or map describing the exploration area was suspended insofar as it allows a notice to be submitted which does not include a narrative describing the exploration area (See 51 FR 41961, Nov. 20, 1986). OSMRE finds Illinois' requirement for other specific descriptions consistent with the suspension and the current Federal rules.

12. ISP stated that proposed 1773.13(a)(1)(D) establishing certain notice requirements should be expanded to identify the location where written requests for public hearings on applications may be submitted. Revised 1773.13(a)(1)(D) as resubmitted includes where to submit requests for public hearings.

13. ISP stated that proposed subsection 1774.13(b)(2)(iv) granting exceptions to significant revisions should be repealed since it goes beyond that allowed under section 511 of SMCRA. OSMRE disagrees and reaffirms its finding in the original program approval and pursuant to the Remand Order. 30 CFR 774.13(b)(2) and section 511(a)(2) of SMCRA provide that the regulatory authority (State) shall establish guidelines for determining the scale or extent of a revision request for which all permit application information requirements and procedures, including notice and hearings, shall apply. Illinois' exceptions in 1774.13(b)(2)(D) have not changed in this rulemaking and are consistent with the Federal rules.

14. ISP stated that proposed 1778.15(d), which allows attorney's statements to suffice for right of entry documents, should be expanded to cover the right to subside in the shadow area. Illinois has revised 1778.15(d) by clarifying that the attorney statement may cover the legal right to enter and commence surface coal mining and reclamation operations proposed in the application. This includes planned subsidence operations as made explicit in 1778.15(a).

15. ISP commented that the term "surface mining activities" as used in proposed 1778.16(c) needs to be defined. In resubmitted 1778.16(c), Illinois uses the term "surface coal mining operations," which is defined. OSMRE finds this term and definition identical to the term and definition in the Federal regulations at 30 CFR 701.5.

16. ISP stated that Illinois must include an air quality monitoring program to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices. Illinois states that 30 CFR 780.15(b) provides for an air quality monitoring program only if required by the regulatory authority. Illinois has opted to not require such programs. OSMRE agrees with Illinois that air quality monitoring programs under 30 CFR 780.15(b)(1) are left to the discretion of the regulatory authority.

17. ISP and EPA commented that 1780.21(f) and 1784.14(e) concerning determinations of probable hydrologic consequences must include the specific requirements of 30 CFR 780.21(f) (1), (2), (3) and (4) and 784.14(e) (1), (2), (3), and (4), respectively. OSMRE is requiring Illinois to revise 1780.21(f) and 1784.13(e) to be no less effective than the Federal rules. See Finding 14(f).

18. ISP commented that the first sentence in proposed 1780.21(i)(2) and 1784.14(h)(2) should be changed to show that there will not be adverse impacts anywhere within the cumulative hydrologic impact area. ISP points out that the Federal rule was remanded by Judge Flannery (*In Re: Permanent Surface Mining Regulations Litigation II*, C.A. No. 79–1144, D.D.C. 1984). OSMRE notes the language proposed by the State is not the same as that remanded by the Court. The State indicates in the Administrative Record that it will consider whether an impact is appreciable before waiving the requirement for ground water monitoring. OSMRE is approving the regulation but notes that the Department must not grant a waiver unless the aquifer does not significantly ensure the hydrologic balance within the cumulative impact area. Illinois also indicates it will promulgate a new rule on this subject, if necessary, after a new regulation is promulgated by OSMRE.

19. ISP commented that the phrase "to the extent information is available to identify tile drainage fields" should be deleted in proposed 1783.24(e) dealing with maps. Illinois deleted the phrase in its resubmitted 1783.24(e) so that drainage fields must be identified even when such information is not available.

20. ISP commented that the phrase "including surface and underground agricultural drainage systems" should be retained in Section 1784.20. ISP noted that surface and subsurface agricultural drainage systems should be included under all protections granted to structures. Resubmitted 1784.20 has been revised by Illinois to retain the phrase. Illinois stated that agricultural drainage systems, as structures, have

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always been afforded identification and protection.

21. ISP commented that current Subsection 1784.20(c) should be retained in addition to proposed Subsection 1784.20(c). ISP stated that Illinois should not delete the requirement that the applicant give a detailed description in its permit application of the measures to be taken to mitigate the effects of subsidence because people who are going to be undermined should be given the opportunity to comment on such plans.

Illinois, however, notes that in order for a permit applicant to satisfy the requirements of Subsection 1784.20(f), it is necessary to describe measures to be taken in accordance with Section 1817.12(c), which outlines mitigation measures that are required. In this regard Illinois states that the revised regulations do not differ from the requirements of the previous regulations. Both 1784.20(c) and 1784.20(f) are consistent with the Federal regulations and therefore acceptable.

22. ISP commented that current Subsection 1784.20(d) should be retained in addition to proposed Subsection 1784.20(d). ISP noted that operators will take measures to determine the amount of subsidence damage for which they are responsible before they begin correcting such damage and the public should be given opportunity to review and comment on these measures during the permit application review. A detailed description of such measures is not required by the Federal regulations. However, Illinois believes such measures are necessary in order to assure that mitigation is fully achieved, and 1784.20(f) now contains such a requirement. OSMRE finds that 1784.20(f) is consistent with the Federal regulations.

23. ISP commented that deleted Subsection 1784.20b(3)(A–D) should be retained. These subsections required descriptions of measures to be taken on the surface to prevent damage. OSMRE, however, notes that for areas of planned subsidence such descriptions of preventive measures are not required by the Federal regulations. Illinois regulations 1784.20 (e) and (f) pertaining to descriptions of anticipated subsidence and measures to be taken to mitigate or remedy the effects of subsidence are consistent with 30 CFR 784.20 (e) and (f).

24. ISP commented that 30 CFR 785.16, which the proposed Illinois rule mirrors, was remanded by the District Court in *In Re: Permanent, supra*. ISP noted that the court found that SMCRA only allows approximate original contour (AOC) variances for steep slope mining. Resubmitted Illinois rule 1785.16 now establishes that AOC variances can only be obtained for steep slope mountaintop removal mining. OSMRE finds 1785.16 consistent with the Federal regulations.

25. ISP commented that proposed 1785.17(a) should be revised to apply clearly to both surface mining and the surface effects of underground operations. Resubmitted Illinois rule 1785.17(a) clarifies that the rule applies to surface coal mining and reclamation operations, which include the surface effects of underground operations on prime farmlands and is therefore consistent with the 30 CFR 785.17(a).

26. ISP commented that proposed 1785.17(b)(1) pertaining to prime farmland reconnaissance inspections should be revised to require consultation with the U.S. Soil Conservation Service consistent with 30 CFR 785.17(b). Illinois added the requirement to resubmitted 1785.17(b)(1).

27. ISP commented that proposed and resubmitted 1800.11(b)(1) should be changed to require the bond to cover the entire permit area upon which the operator will initiate and conduct surface coal mining operations during the initial term of the permit. ISP's comment is based on the U.S. District Court's remand in *In Re: Permanent, supra* of the Federal rule at 30 CFR 800.11(b), which allowed bonding of increments smaller than the entire area to be mined within the initial term of the permit. OSMRE notes that the District Court's ruling was reversed by the U.S. Court of Appeals for the District of Columbia Circuit in an opinion dated January 29, 1988. The opinion stated that incremental and phased bonding, as allowed by 30 CFR 800.11(b) and 800.13(a)(2) are acceptable. Illinois 1800.11(b) is substantively identical to 30 CFR 800.11(b) and is therefore consistent.

28. ISP commented that Illinois regulation 1800.13(a)(2) allows operators to post a bond that would guarantee only specific phases of reclamation within the permit area and the U.S. District Court rejected such phased bonding. Resubmitted Illinois regulations no longer contain 1800.13(a)(2). However, as noted above, the U.S. Court of Appeals reversed the District Court with regard to phased bonding.

29. ISP commented that a provision should be added to 1800.15 requiring the Department to adjust the amount of bond required to be posted by the operator if material damage to the land or structures results from subsidence.

Illinois rule 1800.15 is virtually the same as, and no less effective than, 30 CFR 800.15 which establishes provision for the adjustment of the amount of bond. Therefore 1800.15 is consistent with 30 CFR 800.15.

30. ISP commented that proposed rule 1800.21 should be amended to include provision for real property to be posted as collateral bond. Illinois, however, notes that it is opposed to bonds which may require time and effort to convert to cash and has therefore not provided for real property collateral bonds. This is consistent with 30 CFR 800.21.

31. ISP commented that proposed 1800.50(a) dealing with forfeiture of bonds should be changed to require forfeiture of the bond for the entire permit area. The Federal counterpart allows for partial or incremental forfeiture and thus Illinois 1800.50(a) is consistent with 30 CFR 800.50(a).

32. ISP commented that proposed 1800.50(f) should be deleted since it allows operators who have forfeited bond to be issued future permits if the land for which the bond has been forfeited has been reclaimed without cost to the State. Illinois notes that section 6.07(e) of the State Act provides that any operator against whom forfeiture proceedings have been required shall not be issued a permit for further mining in Illinois unless he provides assurances satisfactory to the Department that such proceedings will not again become necessary. The assurances satisfactory to the Department are set forth in section 1800.50(f) of this regulation and as resubmitted now require all prior violations to the State Act attributable to the permit applicant to have been corrected. OSMRE finds this provision consistent with the Federal regulations.

33. ISP commented that proposed 1815.15(d) should be revised to require topsoil to be removed, stored and redistributed on areas disturbed by coal exploration activitites as necessary to assure successful revegetation. 30 CFR 815.15(d) requires topsoil to be removed, stored and redistributed as necessary to assure successful revegetation or as required by the regulatory authority. Illinois 1815.15(d) specifies removal unless the operator can demonstrate that topsoil will not be affected by excessive erosion, compaction and contamination. Illinois 1815.15(d) also specifies what must be demonstrated as required in 30 CFR 815.15(d) and is therefore consistent with the Federal rule.

34. ISP commented that 1816.22(a)(2) and 1817.22(a)(2) should be changed to require that, if topsoil is less than six inches thick, the operator shall remove a six-inch layer that includes the A horizon and the unconsolidated materials immediately below or the A horizon and all unconsolidated material if the total available is less than six inches and treat the mixture as topsoil. Resubmitted Illinois regulations 1816.22(a)(2) and 1817.22(a)(2) have been revised to require that at least six inches of top material be removed unless a substitute or supplement is approved. Revised 1816.22(a)(2) and 1817.22(a)(2) are thus consistent with and no less effective than the Federal regulations.

35. ISP commented that proposed rules 1816.22(a)(3) and 1817.22(a)(3) should be changed to read: "The Department may choose not to require the removal of topsoil for minor disturbances . . ." The suggested change would make the Illinois regulations identical to 30 CFR 816.22(a)(3) and 817.22(a)(3). Illinois has chosen to retain the proposed version which establishes that the Department will not require the removal of topsoil for minor disturbances. The Federal rules allow topsoil on areas of minor disturbances not to be saved. OSMRE finds the Illinois choice consistent with the Federal regulations.

36. ISPO commented that proposed 1816.22(a)(3)(B) and 1817.22(a)(3)(B) should be revised to include the phrase "and will not degrade the quality or limit the future use of the soil". Illinois has added the phrase to resubmitted 1816.22(a)(3)(B) and 1817.22(a)(3)(B).

37. ISP commented that 1816.22(a)(4) and 1817.22(a)(4) should be changed to require that all material to be removed shall be removed after the vegetative cover that would interfere with its use is cleared. Illinois rules are exactly the same as the Federal rules in this case and no change is necessary.

38. ISP commented that 1816.22(b) and 1817.22(b) governing topsoil substitutes should be revised to clarify that plans for topsoil substitutes or supplements must be considered significant revisions subject to the public review provision of 1773 and 1774. ISP also indicated that the former Illinois language at 1816.22(e) which is being repealed should be included to describe what proof will be required for the Department to approve a topsoil substitution plan. Resubmitted 1816.22(b) and 1817.22(b) have been revised to specify that, when the extent of area of topsoil substitute or supplement is less than ten percent of the permit area or 50 acres, whichever is less, and the land is not prime farmland, then the change can be considered an insignificant permit revision. The regulations now also specify that the demonstration shall be based on that required pursuant to 1774.13(b)(2) and 1784.13(b)(4). Thus resubmitted regulations are consistent with the Federal regulations.

39. ISP commented that proposed 1816.22(c)(2)(C) and 1817.22(c)(2)(C) governing protection of stockpiled materials should be revised by deleting or defining "or through other measures approved by the Department." ISP says the Department must provide the criteria it will use to evaluate other measures. In its resubmitted 1816.22(c)(2)(C) and 1817.22(c)(2)(C) Illinois has added the wording "equally effective in controlling erosion" to clarify that other measures will be judged compared to vegetation for controlling soil loss from stockpiles. Illinois stated that such examples might include heavy mulching, berms and chemical binders which also control soil loss. OSMRE finds 1816.22(c)(2)(C) and 1817.22(c)(2)(C) consistent with the Federal regulations.

40. ISP commented that proposed 1816.22(c)(3) and 1817.22(c)(3), which allow materials removed under paragraph (a)(1) to be temporarily distributed at an approved site, should be deleted. ISP acknowledged that the proposed regulations mirrored Federal regulations but claimed the practice was unproven. Illinois has regained the provision and explains in the Administrative Record that the regulations provide adequate consideration for trade-offs between long-term stockpiling and thinner activity managed distribution for agriculture. OSMRE finds the State provision consistent with Federal regulations.

41. ISP commented that proposed 1816.41(c)(1) and 1817.41(c)(1) pertaining to gound water monitoring should be changed to require additional monitoring. In resubmitted 1816.41(c)(1) and 1817.41(c)(1) Illinois has added "If unanticipated conditions develop, or if any approved operation or reclamation plan is modified or revised such that the current monitoring program would not detect possible adverse impacts to the hydrologic balance as a result of the change, then the Department shall require additional monitoring." Thus, Illinois has clarified when additional monitoring shall be required. These provisions are consistent with the Federal regulations.

42. ISP commented that proposed 1816.41(c)(2) and 1817.41(c)(2) should be revised to require that a water violation be reported in 24 hours instead of five days as proposed. Resubmitted 1816.41(c)(2) provides exactly the same reporting requirement as the Federal rule in this case and no change is necessary.

43. ISP commented that proposed 1816.41(e)(1) should be changed to read "* * * the Department shall require additional monitoring * * *"; and the word "neceessary"" should be deleted at the end of the subsection. Resubmitted 1816.41(e)(1) has incorporated these changes, which are consistent with the Federal regulations.

44. ISP commented that proposed 1816.41(e)(2) and 1817.41(e)(2) should be revised to require the reporting of a violation within 24 hours. Under 30 CFR 816.41(e)(2) and 817.41(e)(2), where the analysis of any surface water sample indicates non-compliance with the permit conditions, the operator shall promptly notify the regulatory authority. Illinois has retained five days for its time limit. The Department states that five days, which was the time in the existing regulations, has worked well. OSMRE finds the "within five days" requirements consistent with the Federal regulation which requires prompt notification.

45. ISP commented that proposed 1816.41(g) and 1817.41(g) should be changed to read "with prior approval of the Department, wells may be transferred to the surface owner of the lands where the well is located for future use." Resubmitted 1816.41(g) and 1817.41(g) have addressed this concern and are the same as 30 CFR 816.41(g) and 817.41(g).

46. ISP commented with regard to 1816.41(i)(1)(c) and 1817.41(h)(1)(c) that, if the Department is going to allow exemptions to pH and suspended solids limits, the language "* * * so long as they will not result in any adverse impacts to the hydrologic balance * * *" should be maintained at a minimum. ISP also commented the Department must adopt standards of proof that will be required for making a "no adverse impact" finding.

30 CFR 816.41(i)(1)(iii) allows pH and total suspended-solids limitations to be exceeded if approved by the regulatory authority. Resubmitted Illinois rules 1816.41(i)(1)(c) and 1817.41(h)(1)(c) allow these limitations to be exceeded as long as they will not result in any adverse impacts to the hydrologic balance. Thus the resubmitted rules are consistent with the Federal rules.

47. ISP commented that the scope of rules 1816.43(a)(3) and 1817.43(a)(3) must be clarified because the Illinois rules refer to restoration of permanent diversions or stream channels prior to removal of temporary diversions whereas 30 CFR 816.43(a)(3) and 817.43(a)(3) refer to restoration of permanent diversions or stream channels after removal of temporary

diversions. Resubmitted rules 1816.43(a)(3) and 1817.43(a)(3) use the word "prior" to emphasize that all permanent diversions or stream channels are to be established before removal of temporary structures, which is consistent with the Federal rules.

48. ISP commented that proposed rules 1816.43(a)(4)(A) and 1817.43(a)(4)(A) refer to existing 1816.72(b)(4) and its counterpart in 1817, which have been deleted in the proposed rules. Resubmitted rules 1816.43(a)(4)(A) and 1817.43(a)(4)(A) have deleted references to existing 1816.72(b)(4) and its counterpart in 1817 and they are consistent with the Federal rules.

49. ISP commented that proposed rules 1816.43(a)(5) and 1817.43(a)(5) must be changed to include protection from additional flooding outside the permit area or damage to crops and other vegetation because the purpose of the diversion standards is to prevent adverse impacts off-site as well as in the permit area. Language found in current sections 1816.43(h) and 1817.43(h) has been placed in section 1816.43(a)(5) and 1817.43(a)(5) in the resubmitted regulations. The language is specific in that the public health or environment may not be endangered. In addition, resubmitted regulations 1816.43(a)(1) and 1817.43(a)(1) require that diversions be designed to prevent material damage outside the permit area and resubmitted regulations 1816.43(a)(2) and 1817.43(a)(2) require that diversions protect against flooding and resultant damage to life and property. These regulations provide sufficient requirements to prevent adverse off-site impacts and they are consistent with Federal rules.

50. ISP commented that the phrase "and will not require maintenance" should be substituted for "will require infrequent maintenance" in proposed rules 1816.43(b)(4) and 1817.43(b)(4). Resubmitted rules 1816.43(b)(4) and 1817.43(b)(4) have deleted the phrase "will require infrequent maintenance" and require that the longitudinal profile of the stream, the channel, and the floodplain be designed and constructed to remain stable. OSMRE finds these changes to be consistent with the Federal rules.

51. ISP commented that proposed and resubmitted rules 1816.46(b)(7) and 1817.46(b)(8) should be deleted because they have no Federal counterpart and the proposed use of sediment ponds as an alternate post-mining land use violates the letter and intent of the Federal and State Acts and does not make good sense as a method for preventing soil erosion. OSMRE notes, however, that retention of sediment ponds can serve to enhance the post-mining environment by helping to prevent the contribution of additional suspended solids to receiving streams and by providing habitat for fish and wildlife adjacent to and in agricultural areas. OSMRE finds Sections 1816.46(b)(7) and 1817.46(b)(8) to be policy statements on retention of sediment ponds as permanent impoundments. As such, they are not inconsistent with the Federal rules.

52. ISP commented that the proposal to add a subsection to Section 1816.43(c) to exempt drainage ditches for pit pumpage, localized precipitation runoff, etc. cannot be adopted. The subsection was deleted and resubmitted Section 1816.43(c) contains no such exemption.

53. ISP commented that proposed Section 1816.46(h) has no Federal counterpart and should be deleted. Proposed section 1816.46(h) has been deleted from resubmitted Section 1816.46.

54. ISP commented that the phrase "not meeting the size or other qualifying criteria of 30 CFR 77.216(a)" should be deleted from proposed rules 1816.49(b)(9) and (c)(2) and 1817.49(b)(9) and (c)(2)". Inclusion of this phrase in the proposed and resubmitted Illinois regulations provides that permanent impoundments meeting the size criteria of 30 CFR 77.216(a) must meet spillway standards specified in the MSHA regulations. Since the MSHA standards are not as specific as these required under 30 CFR 816.49, Illinois must revise 1816.49 (b)(9) and (c)(2) and 1817.49 (b)(9) (c)(2). See finding 21(cc) above.

55. ISP commented that the phrase "not meeting the size or other qualifying criteria of 30 CFR 77.216(a) "should be deleted from proposed rules 1816.49(c)(2) and 1817.49(c)(2). Inclusion of this phrase in Sections 1816.49(c) and 1817.49(c) of the resubmitted rules directs the applicant's attention to the possibility that more stringent standards may have to be met than would otherwise apply. OSMRE finds inclusion of the subject phrase is not inconsistent with the Federal rules.

56. ISP stated that the following language should be deleted from proposed sections 1816.62(a) and 1817.62(a) governing pre-blasting surveys. "Such notification shall not be required for any structure where, in accordance with this section, a survey has been previously requested by the present or a previous resident or the present or a previous owner and the survey has been conducted by the permittee and copies of the survey report have been provided to the owner or resident and the Department".

Illinois' resubmitted regulations 1816.62(a) and 1817.62(a) are identical to the Federal counterparts at 816.62(a) and 817.62(a), which do not contain this language.

57. ISP commented that proposed Illinois regulations 1816.62(b) and 1817.62(b) should be changed so that persons desiring pre-blast surveys need notify either the regulatory authority or the operator and not both. Resubmitted regulations 1816.62(b) and 1817.63(b) have retained the requirement that both the regulatory authority and the operator be notified. This requirement helps to assure that requested surveys are conducted promptly and it is not inconsistent with the Federal rules.

58. ISP commented that the following language should be incorporated into section 1816.64(a) concerning blasting schedule limitations. "The area covered, timing and sequence of blasting as listed in the schedule, if such limitations are necessary and reasonable in order to protect public health and safety and welfare". This wording has been included in Illinois' resubmitted regulation 1816.64(a).

59. ISP commented that Illinois should incorporate a time requirement for mailing the blasting schedule to local governments and public utilities in proposed 1816.64(c)(2). The Federal counterpart at 816.64(b)(2) imposes no time requirement on mailing of the blasting schedules to local governments and public utilities.

60. ISP commented that the Department should retain the requirement that the blasting schedule in proposed 1816.64(c)(2 include information about people's right to a pre-blasting survey. Illinois resubmitted the rule consistent with its Federal counterpart.

61. ISP commented that proposed regulations 1816.67(b)(1) and 1817.67(b)(1) should be changed to require the written waiver to be submitted to the Department before blasting. Resubmitted 1816.67(b)(1) and 1817.67(b)(1) have been changed to be consistent with Federal counterparts 30 CFR 816.67(e)(2) and 817.67(e)(2).

62. ISP stated that rules 1816.67(c)(3) and 1817.67(c)(3) governing compliance with blasting limits should be changed to require that "the operator shall conduct periodic monitoring to assure compliance with the limits in this Section". Resubmitted Illinois rules 1816.67(c)(3) and 1817.67(c)(3) state that the Department may require an air blast measurement of any and all blasts, and may specify the location of such measurements. OSMRE finds this requirement allows for proper air blast

monitoring if it should become necessary. The same flexibility is not necessary with regard to changes in ground vibration monitoring from those specified in the permit application. The rules are consistent with Federal rules.

63. ISP commented that proposed regulations 1816.67(e) and 1817.67(e) should be rewritten to include the requirement that "Particle velocity shall be recorded in three mutually perpendicular directions. The maximum allowable peak particle velocity shall apply to each of the three measurements." By cross-referencing 1816.67(h) and 1817.67(h), resubmitted Illinois regulations 1816.67(e) and 1817.67(e) include this requirement and are consistent with Federal rules.

64. ISP commented that proposed regulations 1816.68(a)(3) and 1817.68(a)(3) should be changed to require the name, signature, and certification number of the blaster conducting the blast. Resubmitted regulations 1816.68(a)(3) and 1817.68(a)(3) are identical to Federal counterparts 816.68(c) and 817.68(c).

65. ISP commented that proposed regulations 1816.68(a) and 1817.68(a) concerning blasting records should include the items found at 30 CFR 816.68(e), weather conditions, and 816.68(n), mats or other protection used. Resubmitted regulations 1816.68(a) and 1817.68(a) require the inclusion of wind velocity and direction in blasting records. OSMRE finds the resubmitted Illinois regulations sufficient to determine compliance with the performance standards which Illinois blasters must meet. Therefore, the regulations as resubmitted are not inconsistent with Federal regulations.

66. ISP commented that proposed regulations 1816.133(a) and 1817.133(a) should be changed to read: "All affected land shall be restored in a timely manner to a condition * * *." Resubmitted regulations 1816.133(a) and 1817.133(a) state "all disturbed areas shall be restored in timely manner to a condition capable of supporting * * *." OSMRE finds the resubmitted rules consistent with the Federal regulations.

67. ISP commented that there is no provision under the Federal Act and rules for approving changes in the pre-mining capability and potential uses of land, except as higher or better uses under the alternative post-mining land provisions. If the proposed alternative is not a higher or better use, it cannot be approved. ISP therefore recommended that the proposed phrase allowing changes in the total acreage from one land use to another be deleted.

30 CFR 816.133(a) clearly allows premining to postmining land use changes, but specifies that premining capability must be restored or made higher or better. Illinois resubmitted 1816.133 which clearly requires all disturbed areas to be restored to a condition capable of supporting the uses which they were capable of supporting prior to any mining or higher or better uses. Thus, resubmitted 1816.133 is consistent with 30 CFR 816.133.

68. ISP commented that proposed regulations 1816.133 and 1817.133, concerning variances from approximate original contour, should be changed to add the language found at 30 CFR 816.133(d). The Federal requirement at 30 CFR 816.133(d) has been remanded in *In Re (II), supra*, and the requested changes are not necessary.

69. ISP commented that proposed regulation 1817.22(c)(2), concerning topsoil storage, should be modified by adding "and" at the end of (c)(2)(c). This change was adopted in resubmitted regulation 1817.22(c)(2)(c).

70. ISP commented that proposed regulation 1817.22(e) should be modified by adding 1817.117 to the list of revegetation requirements with which the covered ectivity must comply. Omission of Section 1817.117 was a typographical error. Illinois resubmitted 1817.22(e) to include 1817.117 in the list of revegetation requirements with which subsoil segregation must comply.

71. ISP stated that Illinois must define the term "underground mining and reclamation activities" used in establishing the scope of proposed regulation 1817.41(a). "Underground mining activities" and "reclamation" are defined in Section 1701.5 and carry the same meaning when used in 1817.41(a). Definition of these terms in 1817.41(a) would be redundant.

72. ISP commented that additional wording concerning groundwater protection should be added to proposed regulation 1817.41(b). OSMRE has removed 30 CFR 817.41(b)(2); therefore, the requested change in wording is not necessary for the Illinois regulation to be no less effective than the Federal counterpart.

73. ISP commented that proposed regulation 1817.64 should be changed to read the same as section 1816.64 concerning surface blasting. Illinois resubmitted regulation 1817.64 to be consistent with the Federal rule.

74. ISP commented that proposed regulation 1817.71(j)(1) should have the following wording added: "the report shall include appearances of instability, structural weakness and other hazardous conditions". Resubmitted 1817.71(j)(1) includes this language and OSMRE finds the regulation consistent with the Federal rule.

75. ISP submitted multiple comments supporting modification to the State's proposed 1817.122(c) governing the operator's responsibilities for correction of damages to structures and the land surface by planned subsidence. ISP strongly recommended that operators be required to submit written agreements with affected landowners prior to causing subsidence. The Federal regulations at 30 CFR 817.122 do not require such agreements. OSMRE finds the State's provisions at 187.122 for correction of material damage caused by subsidence to be consistent with the Federal regulations.

76. ISP commented that requirements for public notice contained in proposed 1817.122 governing subsidence control should be changed to specify more clearly the exact time that undermining is to occur and to specify the type of underwining that is planned. Resubmitted 1817.122 has been modified to require the notice to specify the type of mining to be employed. Illinois resubmitted 1817.122 consistent with 30 CFR 817.122 and no further specificity is necessary.

77. ISP submitted multiple comments suggesting modifications to changes proposed by Illinois to Part 1823, which established performance standards for operations on prime farmland. The regulations resubmitted by Illinois on May 22, 1987, no longer propose any change to Illinois' existing Part 1823. Therefore, existing Part 1823 is not subject to this rulemaking. OSMRE did approve certain amendments to Part 1823 on December 20, 1988 (51 FR 44454).

78. ISP stated that the wording of proposed regulation 1825.14(a) governing soil replacement on high capability lands should be changed. There is no Federal counterpart of Illinois' Part 1825 covering high capability lands. OSMRE finds the regulation is not inconsistent with the Federal Act or regulations.

79. ISP stated that the Department must substitute "coal processing plants" for "coal preparation plants" in Section 1827. Illinois has defined "coal preparation plant" in Section 1701.5; therefore this change is unnecessary. The revised Illinois definition is consistent with the Federal definition.

80. ISP stated that proposed Sections 1827.1 and 1827.11 must be rewritten to specify that they apply to all activities included in the definition, regardless of whether all of the activities or facilities included in the definition are located or conducted on that site. The Department's regulations include the same jurisdictional reach as their counterpart Federal regulations and are therefore consistent

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81. ISP stated that proposed regulation 1840.11(a) should be amended to include language requiring the Department to conduct partial inspections of inactive surface coal mining and reclamation operations. The Department changed section 1840.11(a) by adding the following language to the end of the first sentence: "and shall conduct partial inspections of each inactive surface coal mining and reclamation operation under its jurisdiction to ensure enforcement of the approved State program". The regulations, as amended, make the Department's provisions consistent with 30 CFR 843.11(a).

82. ISP stated that Illinois does not define "inactive surface coal mining and reclamation operations" and should adopt a counterpart to 30 CFR 840.11(f). The Department has adopted a subsection (f) to mirror the Federal counterpart at 30 CFR 840.11(f). Section 1840.11, as amended, is consistent with 30 CFR 840.11(f).

83. ISP stated that phrase "carried out during the enforcement of a State program" should be deleted from proposed rule 1843.12(a)(1). The resubmitted Illinois rule has deleted the particulars pertaining to the Federal role since the State lacks jurisdiction over Federal oversight enforcement activities.

84. ISP stated that the regulation 1843.13(a)(4)(A)(i) should be amended by replacing "enforcement of a State" with the phrase "the permanent regulatory" in order to enhance clarity. The State adopted this recommendation and section 1843.13(a)(4)(A)(i) was amended by replacing the words "enforcement of a State" with "the permanent regulatory". This is consistent with the Federal regulations.

85. ISP proposed that the following should be added to 1843.13(f): "(6) any party which intervenes in the proceeding must be informed of the date, time and place of the pre-hearing conference. Any party which intervenes must agree to any settlement in order for such a settlement to revoke a Show Cause Order."

ISP stated it is concerned that a settlement of a Show Cause Order may be reached without the participation and agreement of any intervenors.

As set forth in the administrative record, "an entity allowed to intervene would receive notice of the pre-hearing conference. If the intervenor desired to participate in the proceeding as a full party, assuming intervention was granted, its participation in the settlement process would occur as a matter of course." OSMRE finds this response to be appropriate and the Illinois rules no less effective than the federal rules.

86. ISP stated that proposed 1843.17 should be retained since its repeal would eliminate any requirement in the State program for operators to exhaust administrative remedies prior to seeking relief in State court.

Resubmitted section 1843.17 retains this requirement, which insures that the Illinois rule remains consistent with the Federal regulations.

87. ISP proposed that section 1845.13(b)(4)(B) be changed and that the language in brackets be deleted and replaced by the language in parentheses as follows: If the person to whom the notice or order [abates] (was issued takes extraordinary measures to abate) the violation in the shortest possible time and that abatement was achieved before the time set for abatement, up to [five hundred dollars ($500)] (two hundred dollars ($200)) shall be subtracted from the proposed penalty amount.

The Department is not required to model its "good faith" regulations after the Federal counterpart. The Department is, however, required to insure that an operator's good faith is determined pursuant to Section 518(a) of SMCRA. OSMRE finds that an operator's good faith under the Illinois regulation will be determined in accordance with Section 518(a) of SMCRA. No changes have been made.

88. ISP commented that the initially proposed 1700.15 appeared to be deleted from the resubmitted Illinois regulations and requested that it be reinstated. The lack of 1700.15 in the Illinois resubmittal means existing 1700.15 remains unamended and in effect.

89. ISP commented that the Illinois definition of "affected area" fails to make clear that the area above underground workings is included in this definition. The Illinois definition of affected area need not reference the area over the underground workings because of the shadow area concept. The performance standards at 1817.121 establish standards governing the repair and correction of damage to land and structures in the shadow area caused by subsidence which is consistent with the federal counterparts.

90. ISP requested that the shadow area or area over underground workings be included in the permit area. OSMRE has previously determined that the definition of permit area does not include surface areas above underground workings, which in Illinois is defined as the shadow area. The Illinois definition of permit area is therefore consistent with the Federal rules.

91. ISP commented that the Illinois definition of reclamation should not exclude subsidence control measures conducted in the shadow area to restore damaged land to pre-mining capability. Although there is a potential for subsidence-related damage in areas overlying the underground workings, there is no reclamation work required pursuant to 1816.22 and 1816.100 through 1816.116 (topsoiling, backfilling and grading and revegetation). Instead, consistent with the Federal regulations, 1817.121 requires repair and or correction of subsidence-related damages occurring in the shadow area.

92. ISP recommended that the current Illinois regulation 1762.12, additional criteria for lands unsuitable, be reinstated. The Federal counterpart 30 CFR 762.12 is a permissive regulation which provides that States may adopt additional criteria. Based upon the Federal rule, there is no need for Illinois to include this regulation in its program.

93. ISP commented that the proposed and resubmitted Illinois regulation 1764.15 fails to include the opportunity for public comment or a public hearing on the completeness of a lands unsuitable petition. The Federal rule at 30 CFR 764.15(b)(2) specifying that a regulatory authority may provide for such public participation in the completeness of a petition has been removed (52 FR 49322, December 30, 1987). Therefore, the comment is moot.

94. ISP commented that the requirement in resubmitted 1773.13(b)(1) that any person claiming to have an interest which is or may be adversely affected by a permit decision must identify the interest and how the decision will affect the interest should be deleted. OSMRE finds that this requirement is a reasonable addition to expedite the processing of comments and/or objections to permit applications. ISP further requested that, if OSMRE approved the rule as resubmitted, the Office answer several questions concerning how Illinois would respond to several different types of information submitted under this rule. OSMRE cannot predict what action Illinois might take on information submitted and therefore cannot respond to this request. The resubmitted Illinois regulation 1773.13(b)(1) is consistent with 30 CFR 773.13(b)(2), which explicitly establishes the "adversely affected interest" requirement for objections.

95. ISP also stated its concern about resubmitted Illinois regulation 1773.13(c), which requires a person requesting an informal conference to identify his interest and how the interest would be impacted by a permit decision. This regulation is not inconsistent with

the Federal counterpart which establishes the "adversely affected interest" requirement.

96. ISP commented the resubmitted Illinois regulation 1773.14(a), which requires that persons requesting public hearings identify their interest and how this interest would be impacted by a permit decision should be deleted. As with resubmitted Illinois regulations 1773.13(b)(1) and 1773.13(c), OSMRE believes the requirement is a reasonable addition which will expedite the processing of hearing requests and is consistent with the Federal regulations.

97. ISP requested that any change in direction or location of underground mining in an already approved shadow area not be considered an insignificant revision as proposed in resubmitted Illinois rule 1774.13(b)(2)(C). Federal regulations provide that the regulatory authority shall establish guidelines which define the scale or extent or revisions which shall be considered significant revisions. The resubmitted Illinois regulation which addresses underground mining direction and location was approved by OSMRE in the original approval of the State program and remains consistent with current Federal regulations.

98. ISP commented that extensions to shadow areas should not be considered insignificant permit revisions as proposed under Illinois resubmitted rule 1774.13(d). The Illinois regulation provides that only extensions to the shadow area which meet the requirements of an incidental boundary revision will be considered as insignificant. OSMRE finds the rule consistent with the Federal regulation.

99. ISP suggested that resubmitted Illinois regulation 1775.11(e)(4), which provides that an operator shall be allowed to continue operation under an existing permit while a permit decision appeal is pending, be changed to "may be allowed" as provided in the Federal regulation. The permissive language of the Federal rule allows Illinois to exercise this option, provided the operator has a valid permit. This is consistent with 30 CFR 775.11(b)(2)(iv).

100. ISP requested that resubmitted Illinois regulation 1778.15(a) be revised to require a notarized copy of the right-of-entry document rather than a description of the document as required by 30 CFR 778.15(a). The Illinois rule as proposed requires the same information as the Federal rule and therefore is consistent.

In addition, ISP suggested that the language in this rule be amended to require right-of-entry information for surface areas over underground mine workings when planned subsidence techniques are to be used. The Federal counterpart, 30 CFR 778.15(a), does not require right-of-entry information for areas above underground mining areas. Therefore, the Illinois regulation is consistent with the Federal rule.

101. ISP commented that resubmitted Illinois regulation 1779.20(c) fails to include Federal fish and wildlife management, conservation or land management agencies as agencies which will be consulted on fish and wildlife resource information. The approved Illinois program assigns this consultation responsibility to the Illinois Department of Conservation through an approved interagency agreement.

102. ISP requested that Indian burial grounds and other lands where bodies are interred be added to resubmitted Illinois regulations 1779.24(j). The Illinois rule requires that each public or private cemetery be shown on maps submitted with an application. The Illinois definition of cemetery includes any area where human bodies are interred. This would include Indian burial grounds or other areas where human bodies are interred. OSMRE finds the Illinois rule consistent with the Federal regulation.

103. ISP commented that resubmitted Illinois regulation 1780.23(a)(3) fails to include the Federal language requiring submission of all materials needed for approval of the alternative land use. Resubmitted Illinois regulation 1780.23(a)(3) states that, where a land use different from the premining land use is proposed, alternative post-mining land uses may be approved by the Department after consideration of the relationship of the intended uses to existing land use policies and plans and the comments of any owner of the surface and the land management agency having jurisdiction over the land. This requirement coupled with requirements in Illinois 1816.133 that also govern postmining land use are consistent with the Federal regulations governing postmining land use determinations.

104. ISP commented that resubmitted Illinois regulation 1784.13(b)(4) fails to include the provision in 30 CFR 784.13(b)(4) that allows the regulatory authority to acquire additional information relating to a request for a topsoil substitute material. Since the Federal provision is discretionary, Illinois is not required to incorporate it in its regulations; however, OSMRE interprets this omission as meaning that Illinois has general authority to request additional information where needed.

105. ISP recommended that the current Illinois regulation 1784.14(a) be reinstated. The resubmitted 1784.14 requires all information necessary to insure the protection of groundwater as required by the Federal regulations.

106. ISP recommended that proposed rules 1800.13(b) (3) and (4) be deleted. These rules were not included in the resubmitted Illinois regulations.

107. ISP expanded its comments on the proposed Illinois regulation 1800.15 when commenting on the resubmitted 1800.15. The original comments and the expansion of these comments addressed ISP's belief that bonds should be adjusted to reflect possible subsidence damage. Areas subject to subsidence, unless they are within a permit area, are not required to be bonded. Therefore, a bond adjustment requirement is not necessary to be consistent with the Federal regulations.

108. ISP commented that resubmitted 1815.15(d) should be revised to require topsoil to be removed, stored and redistributed on areas disturbed by coal exploration activities as necessary to assure successful revegetation. 30 CFR 815.15(d) requires topsoil to be removed, stored and redistributed as necessary to assure successful revegetation or as required by the regulatory authority. Illinois rule 1815.15(d) specifies removal unless the operator can demonstrate that topsoil will not be affected by excessive erosion, compaction and contamination. It also lists what must be shown as required in 30 CFR 815.15(d) and is therefore consistent with the Federal rule.

109. ISP supported resubmitted Illinois regulations 1816.22(b)(2) and 1817.22(b)(2), which provide guidance on how decisions will be made as to whether a request for a topsoil substitution is an insignificant or significant revision. ISP did object to the portion of the rule which automatically exempted non-prime farmland soils. As provided in 30 CFR 774.13(b)(2), the regulatory authority shall establish guidelines defining significant and insignificant revisions. The resubmitted Illinois regulations at 1816.22(b)(2) and 1817.22(b)(2) have established these guidelines in conformance with the Federal rules.

110. ISP commented that proposed Illinois regulation 1816.46(g) should be included in the resubmitted regulations. OMSRE notes that the inspection requirements contained in proposed 1816.46(g) appear in resubmitted Illinois regulation 1816.49(a)(10). Therefore, Illinois regulations 1816.46 and 1816.49(a) are consistent with the Federal regulations.

111. ISP recommended that proposed Illinois regulation 1816.49(a)(9), which addressed highwalls below water lines

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in impoundments, be included only for the limited purposes of impoundments on previously mined areas. The resubmitted regulations no longer contain the provision.

112. ISP requested that proposed Illinois regulation 1816.49(b)(7)(c) be reinstated. Resubmitted 1816.49(a)(7) requires that perimeter slopes be revegetated and current regulation 1816.116 requires successful revegetation prior to bond release. These regulations will insure that perimeter slopes will be properly vegetated and are thus no less effective than the Federal counterpart.

113. ISP commented that, because resubmitted Illinois regulations 1816.49(b)(9) and 1817.49(b)(9) contain the qualifying phrase "not meeting the size or other criteria of 30 CFR 77.216(a)," that certain impoundments will not meet required standards. Resubmitted Illinois regulations 1816.49(a)(1) and 1817.49(a)(1) require that those impoundments which do meet the size requirements of 30 CFR 77.216(a) utilize the standards in 30 CFR 77.216 which imposes a more general spillway design requirement than does 30 CFR 816.49(b)(7). Therefore, Illinois must revise 1816.49(b)(9) and (c)(2) and 1817.49(b)(9) and (c)(2) to cover all impoundments consistent with 30 CFR 816.49 and 817.49. See finding 22(cc).

114. ISP identified a typographical error in resubmitted 1816.67(e) and 1817.67(e) in which a qualifying "or" was omitted. Illinois has been notified of this omission and will correct the error. OSMRE is interpreting these rules to include the omitted language and thus finds the Illinois rule, as interpreted in this approval, no less effective than the Federal counterpart.

115. ISP identified an error in resubmitted Illinois regulations 1816.83(a)(3) and 1817.83(a)(3) which incorrectly referenced 1816.73(1)(2). The correct references are 1816.71(k)(1)(2) and 1817.71(k)(1)(2). The State has been notified of this error and will correct the references.

116. ISP commented that resubmitted Illinois regulation 1816.106(a)(1) would require permitting of reasonably available spoil from the previous mining operations only in the context of 30 CFR 816.106(a)(1), which makes it clear that all reasonably available spoil in the immediate vicinity should be included in the permit area. Resubmitted Illinois regulations require that all affected areas be permitted. Any spoil area to be utilized falls under the definition of affected area and would therefore be permitted under Illinois regulations.

117. ISP recommended that resubmitted Illinois regulation 1817.71(k) be revised to include language which makes it clear that coal processing waste cannot be disposed of in head of hollow or valley fills. The Illinois regulation is the same as 30 CFR 817.71(i), both of which allow disposal of coal mine waste in excess spoil fills under certain specified conditions.

118. ISP commented that the shadow area should be added to 1817.97(b) as an area from which an operator would be required to report any threatened or endangered species. The Federal regulations do not require such notification beyond the permit area. Therefore, the Illinois regulation is consistent with the Federal rules.

119. ISP objected to the inclusion of Soil Conservation Service soil compaction standards, which are only in the proposed stage of rulemaking, in resubmitted regulation 1825.14(e), which addresses high capability lands. Section 1825 is an Illinois regulation with no Federal counterpart. Therefore, Illinois may adopt any standard which does not conflict with a Federal regulation.

120. ISP commented that resubmitted Illinois regulation 1840.14(c)(2) restricts the mailing of records free of charge to a requester to documents ten pages or less in length.

The Federal rule at 30 CFR 840.14(c) specifies that the regulatory authority may comply with the availability of records requirement by either making such records available for inspection at a Federal, State or local government office in the county in which the mine is located or by supplying them to the requester by mail. Illinois complies with the first option by filing copies of records in the county courthouse. Therefore, if Illinois also wishes to supply copies by mail, it may do so under whatever conditions it wishes to establish.

121. ISP commented that resubmitted regulation 1843.12(a) would allow State inspectors to visit mine sites and not issue a violation on the grounds that the inspection was being conducted for purposes other than enforcement of the State program. As proposed and resubmitted, this rule has been revised to delete language in the existing program pertaining only to Federal oversight inspections; therefore, the Director finds ISP's allegation to be unfounded. The amended rule contains enforcement provisions consistent with those of 30 CFR 843.12.

122. Old Ben Coal Company ("Old Ben") provided extensive legal arguments objecting to resubmitted Illinois regulation 1817.121(c)(2), which provides for the repair of and/or compensation for subsidence damage to structures. In response, the Director notes that 30 CFR 817.121(c) requires that subsidence damage to structures be covered to the extent required under State law. Illinois has determined that structures are protected in Illinois and resubmitted Illinois regulation 1817.121(c)(2) reflects this determination. This requirement is consistent with the Federal regulations.

123. Old Ben commented that resubmitted regulation 1817.122, providing for a six-month subsidence notice would require information not required by Federal law or regulation. The Illinois regulation includes all of the information required by Federal regulations and is therefore consistent with these regulations.

124. Old Ben objected to the inclusion of "surface and underground agricultural drainage systems" to the introductory paragraph of resubmitted Illinois regulation 1784.20. The introductory paragraph of 1784.20 contains all of the information required by the Federal regulations and is therefore consistent with the Federal rules.

125. Old Ben recommended that resubmitted Illinois regulation 1784.20(f) be revised to include the phrase "to the extent required under State law". Because Illinois law provides for the protection of structures, this phrase, which is included in the Federal rule, is not needed.

126. Old Ben requested that the second sentence in resubmitted Illinois regulation 1817.22(a)(1) be deleted. It was Old Ben's opinion that this provision would require an operator to upgrade topsoil quality. The Illinois regulation is the same as 30 CFR 817.22(a)(ii) and is consistent with the Federal rule.

127. Old Ben commented that the language "* * * and the resulting soil medium is the best available in the area to support vegetation" contained in resubmitted Illinois regulation 1817.22(b)(1) is superfluous. This language is the same as the Federal regulation at 30 CFR 817.22(b).

128. Old Ben recommended that resubmitted Illinois regulation 1817.41(e)(2) requiring that surface water monitoring data be submitted to the regulatory authority be deleted in deference to the requirement to send the same data to the State Environmental Protection Agency. This Illinois requirement allows mine operators to fulfill the surface monitoring requirements of SMCRA with the submission of NPDES reports already required by other laws and therefore reduces duplication. The Illinois regulation is consistent with the Federal regulations.

129. Old Ben commented that the Illinois definition of siltation structure within resubmitted regulation 1817.46(a)(1) should be expanded to include the additional structures contained in the 1701.5 definition of siltation structures. Rule 1817.46(a)(1) covers other treatment facilities, which would include those additional structures recommended by Old Ben. The Illinois regulation is consistent with Federal rules without the suggested additional language.

130. Old Ben requested that resubmitted 1817.46(c)(2)(B) be revised to allow grass or earth lined single spillways if it can be shown that the spillway velocity will not contribute to erosion of the spillway. The Illinois regulation is the same as the Federal counterpart and is therefore acceptable as resubmitted.

131. Old Ben commented that resubmitted Illinois regulations 1817.49 (b)(7) and (b)(8) are not required by Federal regulations and should be deleted. This paragraph, which provides additional guidance on the design of impoundments, is not inconsistent with the Federal regulations and therefore is acceptable as resubmitted.

132. Old Ben objected to the inclusion in resubmitted Illinois regulation 1817.71(h) of language making terracing mandatory once a fill height exceeds 40 feet. 30 CFR 817.71(e)(3) provides that terraces may be constructed if required. Illinois has determined that terraces are required once the fill height reaches 40 feet. This requirement is not inconsistent with the Federal regulations.

133. Old Ben commented that resubmitted regulation 1817.100 contains the phrases "subsidence control" and "subsidence control efforts" which are not included in the comparable Federal rule. The Federal rule at 30 CFR 1817.100 references areas affected by surface impacts incident to an underground coal mine and requires the surface impacts of underground mines to be addressed as contemporaneously as other surface impacts. Therefore, the Illinois regulation is consistent with the Federal regulation.

134. Old Ben requested that "* * * except as specified in section 1773.11(b)(1)(C) * * *" be added to resubmitted 1700.11(c), which addresses applicability of the Illinois regulations. The Director finds that there is no conflict or inconsistency between the dates contained in the two cited State rules, and that there is no need or reason to adopt the suggested change.

135. Old Ben commented that resubmitted Illinois regulation 1761.11(e) goes beyond the Federal rule by prohibiting mining within 300 feet of dwellings under construction or contract at the time of public notice. The Director finds that the Illinois regulation is not inconsistent with the Federal rule by protecting additional present or planned structures.

136. Old Ben commented that resubmitted Illinois regulation 1764.15 fails to include language similar to that of 30 CFR 764.15 allowing the suspension of petitions to designate lands unsuitable if there is no real or foreseeable potential for surface coal mining operations in the area. These Federal provisions were suspended by the U.S. District Court in *In re: Permanent II, supra* and removed on December 30, 1987. Therefore, there is no basis for inclusion of similar language in the Illinois regulation.

137. Old Ben requested several changes in resubmitted Illinois regulation 1764.19 to remove the State's basis for conditioning future mining operations in all or part of an area subject to a lands unsuitable petition. The current Illinois regulation [1784.19(b)] also contains this conditioning clause, which was determined to be consistent with the same Federal regulations at the time of program approval. Therefore, the State regulation need not be changed.

138. Old Ben suggested that the Illinois definition of "valid existing rights" contained within resubmitted regulation 1701.5 be suspended until such time as OSMRE responds to the U.S. District Court's remand of the comparable Federal definition. As discussed in Finding 2(b), the Director is deferring a decision on the State definition.

139. Old Ben objected to resubmitted Illinois regulation 1773.11(b)(1)(C), which requires that mining operations under an initial program permit comply with 62 IAC Parts 1800 through 1850, the permanent program bonding and performance standards, on or after February 1, 1983. In response, the Director notes that Section 505(b) of SMCRA specifies that any State law or regulation which provides more stringent environmental controls and regulations than the Federal requirements shall not be construed as being inconsistent with those requirements.

140. Old Ben objected to resubmitted Illinois regulation 1774.15, which establishes a minimum of 180 days before expiration of a permit as the deadline for filing for renewal. The Federal rule at 30 CFR 774.15 provides that the application for renewal must be submitted at least 120 days prior to expiration. States are free to choose any length of time equal to or in excess of 120 days.

141. Old Ben requested deletion of the "shadow area" from resubmitted Illinois regulation 1778.15, which defines the area for which right-of-entry information is required. The resubmitted rule states that this information is not required for the shadow area if the surface estate will not be disturbed by surface facilities and related surface activities. The corresponding Federal rule at 30 CFR 778.15 requires right-of-entry information for the same areas as the Illinois rule. Therefore the resubmitted regulation is consistent with the Federal rule.

142. Old Ben objected to the inclusion of the shadow area in resubmitted Illinois regulation 1783.11. The Federal counterpart at 30 CFR 783.11 reference adjacent areas which may be affected or impacted by the proposed underground mining activities. The shadow area concept utilized by Illinois describes the surface area over underground mining operations and is consistent with the Federal regulation.

143. Old Ben commented that resubmitted Illinois regulation 1783.12 also included the shadow area as an area for which general environmental resources information must be provided. As stated in the previous response, the use by Illinois of the shadow area to describe the area above underground mining operations is an acceptable procedure and its use in the various informational requirements of the program is consistent with the Federal regulations.

144. Old Ben further objected to inclusion of the shadow area in resubmitted Illinois regulations 1783.22—Land Use Information and 1783.23—Maps: General Requirements. As stated in responses to prior Old Ben comments, use of the shadow area for the purpose of further defining the area for which information must be gathered for a surface coal mining and reclamation permit is consistent with the Federal regulations.

145. Old Ben pointed out that resubmitted Illinois regulation 1784.14(i)(3) requires submission to the regulatory authority of surface water monitoring reports required by the Illinois Environmental Protection Agency (IEPA), but that such reports are not required by the Federal analog. The Illinois regulation makes it clear that NPDES and other monitoring reports required by IEPA are considered a part of the monitoring system required pursuant to the surface mining permit. This procedure is consistent with the Federal requirement.

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145. Old Ben commented that resubmitted Illinois regulation 1843.11 contains additional language not specifically included in the Federal counterpart. The additional Illinois language is permitted under the Federal language in 30 CFR 843.11(a)(3), which allows the regulatory authority to impose affirmative obligations. As resubmitted, the Illinois regulation is consistent with the Federal counterpart.

147. The Association of Illinois Soil and Water Conservation Districts (AISWCD) submitted a large number of comments on the proposed Illinois regulations. With the following exceptions, the comments are similar to comments submitted by the Illinois South Project (ISP) and are addressed with those comments.

148. AISWCD commented that proposed Illinois regulation 1784.20 should include the phrase "including surface and underground agricultural drainage systems". The resubmitted Illinois regulations include this phrase.

149. The Illinois Historic Preservation Agency (IHPA) submitted numerous comments concerning Illinois regulations which address archeological and historic resources. On June 9, 1987, OSMRE notified the State of the changes required as a result of recently approved Federal regulations concerning historic resources. On September 18, 1987, Illinois submitted proposed regulations to OSMRE to address the required changes. IHPA, other agencies and the public have been provided opportunity to comment on these proposals. OSMRE will shortly announce its decision concerning these amendments.

150. IHPA commented that resubmitted Illinois regulation 1700.18(a), which describes the Surface Mining Advisory Council, fails to include a representative of the historic/cultural resources community. There is no Federal counterpart for this advisory council; therefore, there are no Federal requirements governing the makeup of this State Council.

151. IHPA requested clarification of the term "historic designation" as it is used in the resubmitted Illinois regulation 1701.5 definition of "historic lands". This definition is the same as the definition contained in Federal rule at 30 CFR 762.5. The Illinois rule as resubmitted is consistent with the Federal rule.

152. IHPA requested that the resubmitted Illinois definition of "person" contained in 1701.5 include the term "historic" as one of the values. The Illinois definition is the same as the Federal definition and therefore is consistent with 30 CFR 701.5.

153. IHPA commented that resubmitted Illinois regulation 1784.23(a) should exempt all archeological sites from public disclosure. The Illinois rules are identical to the Federal counterpart, 30 CFR 764.23(a), and therefore are consistent with the Federal regulations.

154. IHPA requested that the word "known" be dropped from resubmitted Illinois regulation 1772.12(b). The Illinois regulation is identical to the Federal rule and the request is therefore rejected. The remainder of IHPA comments on this section recommended the addition of the phrase "pursuant to the National Historic Preservation Act of 1966". OSMRE believes this to be redundant.

155. IHPA suggested adding "sites eligible for listing" to resubmitted Illinois regulation 1772.12(d)(2)(C). The regulation is identical to the Federal rule and therefore consistent.

156. IHPA commented on Illinois resubmitted regulation 1773.15(c), which concerns the written findings required for historic properties. The Director has notified the State that an additional revision is necessary. By letter dated September 18, 1987, IDMM submitted additional proposed regulations amending 1773.15(c) to require a written finding for historic properties.

157. IHPA requested that the word "known" be deleted from resubmitted Illinois regulation 1783.24(i). The use of the term "known" is consistent in each case with the Federal counterpart and is therefore approved.

VI. Director's Decision

Based on the above findings, the Director is approving the amendments to 62 IAC Parts 1700 to 1845, as submitted by Illinois on May 22, 1987, except for those provisions discussed in Findings 2(b), 2(c), and 4(b) concerning valid existing rights, previously mined areas and protection of privately owned sites listed on the National Register of Historic Places. As provided by 30 CFR 732.17(a) and (g), any provisions that are not approved by the Director may not be implemented as part of the Illinois program.

In addition, the Director is requiring that Illinois further amend its program as discussed below:

1. As discussed in Finding 14(f), Illinois must revise 62 IAC 1780.21(f) and 1784.14(e) or otherwise amend its program to require that the determination of probable hydrologic consequences include findings consistent with 30 CFR 780.21(f)(3) and 784.14(e)(3), that it be based on baseline data collected for the permit application, and that each application for a permit revision be reviewed by the regulatory authority to determine whether a new or updated determination is necessary.

2. As discussed in Finding 21(hh), Illinois must revise 62 IAC 1816.49(b)(9) and (c) and 1817.49(b)(9) and (c) or otherwise amend its program to include spillway size requirements for all impoundments consistent with 30 CFR 816.49(b)(7) and (c)(2) and 817.49(b)(7) and (c)(2).

3. As discussed in Finding 4(a), Illinois must further revise 62 IAC 1761.11(a) to include provisions concerning the protection of wild and scenic study river corridors that are no less effective than the Federal rule at 30 CFR 761.11(a).

The Federal rules at 30 CFR Part 913 are being amended to implement this decision. Since, as explained Findings 2(h), 17(h), 21(jj), 21(kk) and 21(ll), this amendment satisfies the requirements of 30 CFR 913.16(a) and (c) through (f), the Director is removing these provisions. However, nothing in this decision negates the need for Illinois to further revise its program in accordance with earlier notifications provided under 30 CFR 732.17(d). This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs to Federal standards without undue delay.

In accordance with 30 CFR 732.17(h)(11)(ii), the Director has, by letter dated July 18, 1987, obtained the concurrence of the U.S. EPA in the approval of the portions of these amendments pertaining to air and water quality standards promulgated under the Clean Air Act (42 U.S.C. 7401 et seq.) and the Clean Water Act (33 U.S.C. 1251 et seq.).

VII. Additional Determinations

Compliance With the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that, for purposes of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), this rule will not have a significant economic effect on a substantial number of small entities. This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 913

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: October 12, 1988.

Robert E. Boldt,

Deputy Director.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of the Federal Regulations is amended as set forth below:

PART 913—ILLINOIS

1. The authority citation for Part 913 continues to read as follows:

Authority: 30 U.S.C. 1201 et seq.

2. A new paragraph (i) is added to § 913.15 to read as follows:

§ 913.15 Approval of regulatory program amendments.

* * * * *

(i) The following amendment submitted to OSMRE by Illinois on March 28, 1986, as modified and resubmitted on May 22, 1987, is approved effective October 25, 1988 with the exceptions identified herein and in § 913.17: Revision, addition and repeal, as indicated, of the following parts of Chapter I of Title 62 of the Illinois Administrative Code:

Part 1700—General (revised)
Part 1701—General Definitions (revised), except:
(1) The definition of "valid existing rights" and
(2) The definition of "previously mined area" to the extent that it includes lands subject to the reclamation standards of SMCRA.
Part 1705—Restriction on Financial Interests of State Employees (revised)
Part 1760—General Areas Unsuitable for Mining (repealed)
Part 1761—Areas Designated by Act of Congress (revised), except for those provisions in 1761.11(c) and 1761.12(e)(1) excluding protection for privately owned sites listed on the National Register of Historic Places

Part 1762—Criteria for Designating Areas As Unsuitable for Surface Coal Mining Operations (revised)
Part 1764—State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations (revised)
Part 1770—General Requirements for Permit and Exploration Procedure Systems under Regulatory Programs (repealed)
Part 1771—General Requirements for Permits and Permit Applications (repealed)
Part 1772—Requirements for Coal Exploration (added)
Part 1773—Requirements for Permits and Permit Processing (added)
Part 1774—Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights (added)
Part 1775—Administrative and Judicial Review of Decisions (added)
Part 1776—General Requirements for Coal Exploration (repealed)
Part 1777—General Content Requirements for Permit Applications (added)
Part 1778—Permit Applications: Minimum Requirements for Legal, Financial, Compliance, and Related Information (revised)
Part 1779—Surface Mining Permit Applications: Minimum Requirements for Information on Environmental Resources (revised)
Part 1780—Surface Mining Permit Applications: Minimum Requirements for Reclamation and Operation Plan (revised)
Part 1782—Underground Mining Permit Applications: Minimum Requirements for Legal, Financial, Compliance and Related Information (repealed)
Part 1783—Underground Mining Permit Applications: Minimum Requirements for Information on Environmental Resources (revised)
Part 1784—Underground Mining Permit Applications: Minimum Requirements for Reclamation and Operation Plan (revised)
Part 1785—Requirements for Permits for Special Categories of Mining (revised)
Part 1786—Review, Public Participation and Approval and Disapproval of Permit Applications and Permit Terms and Conditions (repealed)
Part 1787—Administrative and Judicial Review of Decisions by Regulatory Authority on Permit Applications (repealed)
Part 1788—Permit Reviews, Revisions and Renewals and Transfer, Sale and Assignment of Rights Granted Under Permits (repealed)
Part 1795—Small Operator Assistance (revised)
Part 1800—Bonding and Insurance Requirements for Surface Coal Mining and Reclamation Operations (revised)
Part 1801—Bonding Requirements for Underground Coal Mines, Coal Processing Plants, Associated Structures, and Other Coal-Related Long-Term Facilities and Structures (repealed)
Part 1805—Amount and Duration of Performance Bond (repealed)
Part 1806—Form, Conditions and Terms of Performance Bonds and Liability Insurance (repealed)
Part 1807—Procedures, Criteria and Schedule for Release of Performance Bond (repealed)
Part 1808—Performance Bond Forfeiture Criteria and Procedures (repealed)
Part 1815—Permanent Program Performance Standards: Coal Exploration (revised)
Part 1816—Permanent Program Performance Standards: Surface Mining Activities (revised)
Part 1817—Permanent Program Performance Standards: Underground Mining Operations (revised)
Part 1818—Special Permanent Program Performance Standards: Concurrent Surface and Underground Mining (repealed)
Part 1819—Special Permanent Program Performance Standards: Auger Mining (revised)
Part 1824—Special Permanent Program Performance Standards: Mountaintop Removal (revised)
Part 1825—Special Permanent Program Performance Standards: Operations on High Capability Lands (revised)
Part 1826—Special Permanent Program Performance Standards: Operations on Steep Slopes (repealed)
Part 1827—Special Permanent Program Performance Standards: Coal Preparation Plants Not Located Within the Permit Area for a Mine (revised)
Part 1828—Special Permanent Program Performance Standards: In Situ Processing (revised)
Part 1840—Department Inspections (revised)
Part 1843—State Enforcement (revised)
Part 1845—Civil Penalties (revised)

3. Section 913.16 is revised to read as follows:

§ 913.16 Required regulatory program amendments.

(a) By June 30, 1989, Illinois shall submit for OSMRE approval an amendment to 62 IAC 1780.21(f) and 1784.14(e) or otherwise propose to amend its program to require that the determination of probable hydrologic consequences include specific findings no less effective than those of 30 CFR 780.21(f)(3) and 784.14(e)(3), that it be based on baseline data collected for the permit application and that each application for a permit revision be reviewed by the regulatory authority to determine whether a new or updated determination is necessary.

(b) By June 30, 1989, Illinois shall submit for OSMRE approval an amendment to 62 IAC 1816.49(b)(9) and (c) and 1817.49(b)(9) and (c) or otherwise propose to amend its program to extend the requirements specifying spillway sizes to all impoundments in a manner no less effective than 30 CFR 816.49(b)(7) and (c)(2) and 817.49(b)(7) and (c)(2).

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(c) By June 30, 1989, Illinois shall submit for OSMRE approval an amendment to 62 IAC 1761.11(a) to include provisions concerning protection of wild or scenic study river corridors that are no less effective than the Federal rules at 30 CFR 761.11(a).

4. Section 913.17 is added to read as follows:

§ 913.17 State regulatory program provisions and amendments disapproved.

(a) The proposed definition of "previously mined area" in 62 IAC 1701.5, as submitted by Illinois on May 22, 1987, is disapproved to the extent that it includes lands subject to the reclamation standards of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

(b) In 62 IAC 1761.11(c) and 1761.12(e)(1), as submitted by Illinois on May 22, 1987, the phrase "publicly owned" is disapproved to the extent that it modifies the term "places listed on the National Register of Historic Places" or an equivalent term.

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federal register

Tuesday
October 25, 1988

Part VI

Department of Commerce

International Trade Administration

Export Trade Certificate of Review; Notice

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: Department of Commerce.

ACTION: Notice of issuance of an Export Trade Certificate of Review, Application #88-00012.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to National Tooling and Machining Association. This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: Thomas H. Stillman, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15, CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, on or before November 25, 1988, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

1. Products

Products of the contract tooling and machining industry, including special tools, dies, jigs and fixtures (SIC 3544), machine tool accessories (SIC 3545), metalworking machinery not elsewhere classified (SIC 3549), special industry machinery not elsewhere classified (SIC 3559), industrial patterns (SIC 3565), general industrial machinery not elsewhere classified (SIC 3569), precision machined parts, and machinery, except electrical, not elsewhere classified (SIC 3599).

2. Services

Engineering, design, and related services related to Products and to turn-key contracts that substantially incorporate Products; servicing of Products; and training with respect to the use of Products.

3. Export Trade Facilitation Services (as they relate to the export of Products, Services, and Technology)

Consulting; international market research; marketing and trade promotion; trade show participation; insurance; legal assistance; transportation; trade documentation and freight forwarding; communication and processing of export orders; warehousing; foreign exchange; financing; and taking title to goods.

4. Technology Rights

Patents, trademarks, service marks, copyrights, trade secrets, know-how, and semiconductor mask works.

Export Markets

The Export Markets includes all parts of the world except the United States (the fifty States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. NTMA and/or one or more of its Members may: a. Engage in joint bidding or other joint selling arrangements for Products and/or Services in Export Markets and allocate sales resulting from such arrangements;

b. Establish export prices for sales of Products and/or Services by the Members in Export Markets, with each Member being free to deviate from such prices by whatever amount it sees fit;

c. Discuss and reach agreements relating to interface specifications and engineering requirements demanded by specific potential customers for Products for Export Markets;

d. With respect to Products and/or Services, refuse to quote prices for, or to market or sell in, Export Markets;

e. Provide and/or jointly negotiate for and purchase from Suppliers Export Trade Facilitation Services for Members;

f. Solicit non-member Suppliers to sell their products and/or Services or offer their Export Trade facilitation Services through the certified activities of NTMA and/or its Members;

g. Coordinate with respect to the installation and servicing of Products in Export Markets, including the establishment of joint warranty, service, and training centers in such markets;

h. License associated Technology Rights in conjunction with the sale of Products, but in all instances the terms of such licenses shall be determined solely by negotiations between the licensor Member and the export customer without coordination with NTMA or any other Member;

i. Engage in joint promotional activities, such as advertising and trade shows, aimed at developing existing or new Export Markets;

j. Bring together from time to time groups of Members to plan and discuss how to fulfill the technical Product, Service, and/or Technology requirements of specific export customers or Export Markets; and

k. Operate and establish jointly owned subsidiaries or other joint venture entities, owned exclusively by Members, to export Products to Export Markets, operate warranty, service, and training centers in Export Markets, and provide Export Trade Facilitation Services to Members.

2. NTMA and/or its Members may enter into agreements Wherein NTMA and/or one or more Members agree to act in certain countries or markets as the Members' exclusive or non-exclusive Export Intermediary for products and/or Services in that country or market. In such agreements, (i) NTMA or the Member(s) acting as an exclusive Export Intermediary may agree not to represent any other Supplier for sale in the relevant country or market, and (ii) Members may agree that they will export for sale in the relevant country or market only through NTMA or the Member(s) acting as exclusive Export Intermediary, and that they will not export independently to the relevant country or market, either directly or through any other Export Intermediary.

3. NTMA and/or its Members may exchange and discuss the following types of information: a. Information that is already generally available to the trade or public;

b. Information about sales and marketing efforts for Export Markets; activities and opportunities for sales of Products and Services in Export Markets; selling strategies for Export Markets; pricing in Export Markets; projected demands in Export Markets; customary terms of sale in Export Markets; the types of Products available from competitors for sale in particular Export Markets, and the prices for such Products; and customer specifications for Products in Export Markets;

c. Information about the export prices, quality, quantity, source, available capacity to produce, and delivery dates of Products available from Members for export, provided, however, that exchanges of information and discussions as to Product quantity, source, available capacity to produce Products, and delivery dates must be on a transaction-by-transaction basis only and shall relate solely to Products intended for or available for export;

d. Information about terms and conditions of contracts for sales in Export Markets to be considered and/or bid on by NTMA and its Members;

e. Information about joint bidding, selling, or servicing arrangements for Export Markets and allocation of sales resulting from such arrangements among the Members;

f. Information about expenses specific to exporting to and within Export Markets, including without limitation transportation, intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing, customs, duties, and taxes;

g. Information about U.S. and foreign legislation and regulations affecting sales in Export Markets; and

h. Information about NTMA's or its Members' export operations, including without limitation sales and distribution networks established by NTMA or its Members in Export Markets, and prior export sales by Members (including export price information).

4. NTMA may provide its Members or other Suppliers the benefit of any Export Trade Facilitation Services to facilitate the export of Products to Export Markets. This may be accomplished by NTMA itself, or by agreement with Members or other parties.

5. NTMA and/or its Members may meet to engage in the activities described in paragraphs one through four above.

6. NTMA and/or its Members may refuse to provide Export Trade Facilitation Services, or participation in the other activities described in paragraphs one through five above, to non-members.

7. NTMA and/or its Members may forward to the appropriate individual Member requests for information received from a foreign movement or its agent (including private pre-shipment inspection firms) concerning that Member's domestic or export activities (including prices and/or costs), and if such individual Member elects to respond, it shall respond directly to the requesting foreign government or its agent with respect to such information.

Definitions

1. "Export Intermediary" means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.

2. "Members" means those member companies of NTMA listed in Appendix A to this notice, which is incorporated herein by reference, and those member companies of NTMA subsequently incorporated in the Certificate pursuant to the amendment procedures set forth below.

New NTMA members, and current NTMA members not listed in Appendix A, may be incorporated in the Certificate through an abbreviated amendment procedure described below. An abbreviated amendment shall consist of a written notification to the Secretary of Commerce and the Attorney General identifying the NTMA members that desire to become a Member under the Certificate pursuant to the abbreviated amendment procedure, and certifying for each such NTMA member the number of its employees. Notice of the members so identified shall be published in the **Federal Register**. However, NTMA may withdraw one or more individual members from the application for the abbreviated amendment. If 30 days or more following publication in the **Federal Register**, the Secretary of Commerce, with the concurrence of the Attorney General, determines that the incorporation in the Certificate of these members through the abbreviated amendment procedure is consistent with the standards of the Act, the Secretary of Commerce shall amend the Certificate of Review to incorporate such members effective as of the date on which the application for amendment is deemed submitted. If the Secretary of Commerce does not within 60 days of publication in the **Federal Register** so amend the Certificate of Review, such amendment must be sought through the non-abbreviated amendment procedure.

3. "Supplier" means a person who produces, provides, or sells a Product, Service, Technology, and/or Export Trade Facilitation Services, whether a Member or non-member.

Date: October 19, 1988.

Thomas H. Stillman,

Director, Office of Export Trading Company Affairs Industries;

Appendix A

Members of Applicant

A & A Grinding Service & Mfg. Co.; A & A Machine Shop, Inc.; A & B Industries, Inc.; A & B Machine; A & B Machine Shop; A & B Tool & Manufacturing Corp.; A & E Manufacturing Corp.; A & E Tool & Die Company; A & H Machine & Tool Company; A & J Enterprises, Inc.; A & K Screw Machine, Inc.; A & M Aircraft; A & M Tool & Die Company, Inc.; A & S Tool & Die Company, Inc.; A to Z Tool & Machine Company; A A A Tool & Die Company, Inc.; A A Engineering Corporation; A A Precisioneering, Inc.; A B & S Tool & Die Company, Inc.; A B A Industries; A B A Tool & Die Company, Inc.; A B C Manufacturing; A B C O Tool & Die, Inc.; A B R Enterprises; A C Engineering; A C Machine & Manufacturing; A C Machine, Inc.; A C S Tool Company, Inc.; A C Tool & Machine Company; A E Cole Die & Engraving; A E Machine Works, Inc.; A F & G Tool & Die Company; A F C Tool Company, Inc.; A G A Precision, Inc.; A Hardiman Machine Company, Inc.; A I Network Corporation; A I P, Inc.; A J & L Tool & Die Company; A L Industries, Inc.; A M & T A M C Precision, Inc.; A M I Industries, Inc.; A M Industries, Inc.; A M Machine Company, Inc.; A M Precision Machining, Inc.; A P Products Company; A R Industries, Inc.; A S C Corporation; A T G, Inc.; A W S Industries, Inc.; A. C. Welding Company; A. F. Roberts, Inc.; A-G Tool & Die; A-Line Tool & Die; A-Quality Machine Products; A-Tron Corporation; A-W Engineering Company, Inc.; A-1 Tool Division (Division of Lovejoy Industries, Inc.); Abbott Machine & Tool, Inc.; Abbott Tool, Inc.; Ability Tool Company; Able Fabricating & Company; Abrams Airborne Manufacturing, Inc.; Absolute Manufacturing; Absolute Precision; Accon Inc.; Accraline, Inc.; Accro Tool Enterprises; Accu-Prompt Manufacturing; Accu-Roll, Inc.; Acco-Tech, Inc.; Accudynamics, Inc.; Accudyne Corporation; Accumet, Inc.; Accurate Grinding Corporation; Accurate Industrial Machining, Inc.; Accurate Machine & Tool Company; Accurate Machine Tool, Inc. (Division of G&S Machine Tool Co.); Accurate Machine, Inc.; Accurate Manufacturing Company; Accurate Manufacturing Company; Accurate Tool Steel, Inc.; Accurite Precision, Inc.; Accutronics, Inc.; Ace Machine Company, Inc.; Ace Precision Industries, Inc.; Ace Precision, Inc.; Ace Specialty Company, Inc.; Ace Tool & Machine, Inc.; Ace Tool & Manufacturing Co., Inc.; Acme Grinding Service, Inc.; Acme Grinding, Inc.; Acra Machine and Engineering, Inc.; Acraloc Corporation; Acro Industries, Inc.; Acro Tool & Die Company, Inc.; Acrodie, Inc.; Actco Tool & Manufacturing Company; Action Die & Tool Inc.; Action Tool & Die; Action Tool & Die Engineering; Active Tool Company; Acu Cut/ Pa, Inc.; Acucut, Inc.; Adams Engineering, Inc.; Adams Machine Shop; Adams Russell

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Electronics; Adams Tool & Engineering, Inc.; Adapto, Inc.—Arizona Division (Division of Adapto, Inc.); Adapto, Inc.; Adelmeyer Tool, Inc.; Adept Manufacturing, Inc.; Admar Mold & Engineering, Inc.; Admiral Engineering & Manufacturing; Adron Tool Corporation; Advance Gear & Machine Corp.; Advance Tool & Die Company; Advance Tool Company, Inc.; Advanced Machine Programming; Advanced Machine Service; Advanced Machine Works, Inc.; Advanced Machining Technology, Inc.; Advanced Mold & Tool; Advanced Mold Technology, Inc.; Advanced Products Company; Advanced Techniques Burring, Inc.; Advanced Technologies, Inc.; Advanced Tool & Design, Inc.; Advantage Mold & Design; Advent Tool & Mold Company; Aer-O-Dyne Manufacturing Company; Aerex Manufacturing, Inc.; Aero Components Company; Aero Gear, Inc.; Aero Manufacturers, Inc. (Division of Fleetwood Machine Products, Inc.); Aero Mechanical Engineering, Inc.; Aero Space Engineering, Inc.; Aero Spring & Manufacturing Co, Inc.; Aerodynamic Engineering, Inc.; Aerofab, Inc.; Aeromold Plastics, Inc.; Aerostar Aerospace Manufacturing; AeroSpace Metalmasters, Inc.; Aetna Machine Company; Aggressive Engineering Corp.; Agio Precision Industries, Inc.; Ahaus Tool Company, Inc.; Aide, Inc.; Aim Incorporated; Aimco Precision, Inc.; Aircraft Standards, Inc.; Aircraft Welding & Manufacturing; Airmis Manufacturing, Inc.; Ajax Tool, Inc.; Akromold, Inc.; Akron Steel Fabricators Company; Akron Tool & Die Company, Inc.; Al-Tech; Al's Tool & Die Enterprises; Alabama Tool Company, Inc.; Alart Tool & Die, Inc.; Albert Tool & Die Company, Inc.; Albertson & Hein, Inc.; Albion Machine & Tool Company; Albrecht Tool Die & Manufacturing; Alco Machine Corporation; Alco Manufacturing, Inc.; Aldan, Inc.; Alfa Foundry, Inc.; Alfa Machine & Tool Company, Inc.; Alfred Manufacturing Company; Alfro Custom Manufacturing; Alger Machine Company, Inc.; Alkron Manufacturing Corporation; All Five Tool Company, Inc.; All Mold, Inc.; All Tech Machine & Tool; All Tool Company; All Tools Company; All-Con Tool & Mold, Inc.; All-Pro Machine Company, Inc.; All-Tech Machine & Eng., Inc.; Allegheny Tool & Manufacturing Co.; Allen Aircraft Products, Inc.; Allen Precision Machining Company; Allen-Leonard Industries, Inc.; Alliance Carolina Tool & Mold (Division of Gleason Corporation); Allied Atlantic Industries, Inc.; Allied Mechanical Products; Allied Screw Products, Inc.; Allied Tool & Die Company; Allied Tool & Die Company; Allied Tool & Die, Inc.; Allied Tool & Machine Company; Allied Tools Of Texas; Allis Tool & Machine Corporation; Allmandinger, Inc.; Alloy Machine. & Tool Company, Inc.; Alloy Metal Products; Alloy Tool & Machine, Inc.; Alloy Tool and Engineering; Allstate Tool & Die, Inc.; Almar Mfg. & Engineering, Inc.; Alpa Centerless Products; Alpa Precision Machine Works; Alpha Tool & Machine Company; Alpine Manufacturing, Inc.; Alpine Tool & Die; Alton Products, Inc.; Alton Tool Company, Inc.; Alumni Tool & Die, Inc.; Alves Precision Engineered Products; Amalar; ; Ambox, Inc.; Ambritt Corporation; American Dies, Inc.; American E D M & Tooling, Inc.; American Engraving, Inc.; American Gear & Supply Co., Inc.; American Heller Corporation; American Machine & Gun Drilling, Inc.; American Machine & Supply, Inc.; American Metric Engineering, Inc.; American Micro Products, Inc.; American Mold & Engineering Company; American Mold Corporation; American Precision Machining, Inc.; American Production & Grinding; American Tool & Die; American Tool & Die, Inc.; American Tool & Die, Inc.; American Tool & Engineering Company; American Tool & Gage; American Tool Company; Ameritec Manufacturing Corporation; Ameritech Die & Mold, Inc.; Amherst Tool & Automation; Amity Mold Company; Amkay Machine Products; Amrein Machine Shop, Inc.; Anchor Tool & Die Company; Anco Tool & Die Company, Inc.; Ander Mel, Inc.; Anderson Automatics, Inc.; Anderson Machine; Anderson Machine & Tool; Anderson Precision, Inc.; Anderson Tool & Engineering Company; Andrews Machine Works; Angermeier Industries, Inc.; Animatics Corporation; Anoco Tool & Manufacturing Co., Inc.; Anoplate Corporation; Anro Metals Manufacturing; Anthony Machine; Apex Corporation; Apex Machine Tool Company, Inc.; Apex Tool & Manufacturing, Inc.; Apollo E.D.M. Company; Apollo Precision, Inc.; Apollo Tool Corporation; Aponte Tool & Manufacturing, Inc.; Applied Engineering, Inc.; Applied Machine Technologies, Inc.; Applied Mechanical Energy; Applied Tool & Die Company; Arco Industries, Inc.; Arco Metals Corporation; Aremco, Inc.; Argo Tool Corporation; Argus Manufacturing Company; Aries Industries;

Aries Tool, Inc.; Arizona Carbide Tools, Inc.; Arizona Custom Manufacturing; Arizona Plasma Welding; Arkansas Tool & Die; Arlington Machine & Tool Company; Arma Tool & Die Company, Inc.; Armin Tool & Manufacturing Co. Inc.; Armstrong Pattern & Mold Corp.; Armstrong Technology, Inc.; Arnold Gauge Company; Arro Tool & Die, Inc.; Arrow Grinding, Inc.; Arrow Precision Manufacturing Corp.; Arrow Tool & Gage Company; Arrow Tool, Inc.; Arrowsmith Tool & Die; Art Precision Metal Products, Inc.; Artel Tool Company; Arthur J. Evers Corporation; Artisan Tool & Die Corporation; Artvic, Inc.; Ash Machine Corporation; Asheboro Mold & Design, Inc.; Ashlin Associates, Inc.; Asmat, Inc.; Associated Design & Manufacturing; Associated Electro-Mechanics, Inc.; Associated Machine Company, Inc.; Associated Machine Technology; Associated Machinecraft Corporation; Associated Tool Company, Inc.; Astra Tool & Instrument, Corp.; Astro Machine Works Inc.; Atec Tool & Engineering; Atec, Inc.; Athens Industries; Athens Tool & Die, Inc.; Atkins Tool Company; Atlantic Aircraft Tool Company; Atlantic Alloys, Inc.; Atlantic Tool & Die Company; Atlas Die & Manufacturing Company; Atlas Machine & Supply, Inc.; Atlas Machine Company, Inc.; Atlas Machine, Inc.; Atlas Tool, Inc.; Atols Tool & Mold Corporation; Attra Industries, Inc.; Atwood Tool & Die, Inc.; Aul in the Family Tool & Die, Inc.; Austin Continental Industries, Inc.; Austin Dies, Inc.; Austin Precision Tool Company; Austinburg Machine, Inc.; Austro Mold, Inc.; Autodie Corporation; Automate Associates, Inc.; Automated Tool & Manufacturing; Automatic Precision Welding and Fabricating, Inc.; Automation Tool & Die, Inc.; Automation Tool Company; Autrey Steel & Machine; Avant Tool & Die, Inc.; Avion Tool Corporation; Avion Tool Manufacture; Axis Precision Industries; Ay Machine Tool & Die, Inc.; Ayers Gear & Machine; Azbill Tool & Die, Inc.; AM-Tec, Inc.; B & A Design; B & B Machine & Grinding Service; B & B Manufacturing Company; B & B Manufacturing Company; B & B Precision Tools, Inc.; B & B Precision, Inc.; B & B Tool & Die Company, Inc.; B & B Tool & Die, Inc.; B & B Tool Company; B & E Tool & Mfg. Co., Inc.; B & E Tool Company, Inc.; B & G Machine Company; B & G Machine Products; B & G Quality Machine & Tool; B & G Tool & Die Company, Inc.; B & H Machine, Inc.; B & H Tool & Machine Corporation; B & L Tool & Machine Company; B & R Gear Company; B & R Machine & Tool Corporation; B & T Tool & Die Company; B & W Tool & Die, Inc.; B & Z Manufacturing Company; B A K Precision Industries; B F Industries, Inc.; B G Instrument Corporation; B H

Aircraft Company, Inc.; B H Instrument Company, Inc.; B I K Corporation; B J Williams Co.; B T & M; B Z Engineering; B. Radtke & Sons, Inc.; B. T. C. Production; B-W Grinding Service, Inc.; Babbitt Bearing, Inc.; Bachman Machine Company, Inc.; Bachmann Precision Machine; Badger Tool & Die; Bahra Die & Stamping Company; Bailey Tool & Manufacturing Company; Bair Tool & Mold, Inc.; Baker Hill Industries, Inc.; Baker Machine & Tool; Ballard Machine Tool Service; Ballos Precision Machine; Banbury Precision; Banner Machine Company, Inc.; Banner Tool & Die, Inc.; Barco Manufacturing, Inc.; Barlag Tool; Barroncast, Inc.; Barton Tool Engineering; Basic Industries; Basic VI; Basil-Walker Tool Company, Inc.; Basilius Tool Co.; Bassett Tool & Machine; Bateman Manufacturing Co., Inc.; Baumann Engineering; Baumbach Machine, Inc.; Bawden Industries, Inc.; Bay Bar Products, Inc.; Bay City Boring & Machine; Bay Swiss Manufacturing Co., Inc.; Baytown Ace Machine Company, Inc.; Beacon Tool Company, Inc.; Beamco, Inc.; Beaulieu Tool & Die Co., Inc.; Beaver Tool & Machine Company; Bechdon Company, Inc.; Bechler Cams, Inc.; Becker, Inc.; Becksted Machine Shop; Beckwith Grinding, Inc.; Behrens Manufacturing, Inc.; Bel-Kur; Bel-Mar Products Corporation; Belgian Screw Machine Products, Inc.; Bell Engineering, Inc.; Bell Tool, Inc.; Ben-Mer Tool & Machine.; Benda Tool & Model Works; Bender Machine, Inc.; Bendon Gear & Machine; Bennett Tool & Die Company; Berg Tool & Machine Company, Inc.; Berkshire Industries, Inc.; Berlin Manufacturing Co. Inc.; Bernal Rotary Systems, Inc.; Bernhard Knust Company, Inc.; Bertram Tool & Machine Co., Inc.; Beryllium Manufacturing Company; Bess TESTLAB INC.; Best Industries, Inc.; Best Tool & Manufacturing Co., Inc.; Beta Machine & Tool Company; Biggs Tool & Die; Bilar Tool & Die Corporation; Billet Tool; Birmingham Benders Company; Blackburn Instrument Company; Blackhawk Metal Products, Inc.; Blacklick Machine Company, Inc.; Blanchard Grinding Service, Inc.; Blanchard Metals Processing Company; Blanda, Incorporated; Blandford Machine & Tool Co., Inc.; Blitz Tool & Die; Blue Chip Mold; Bob's Tool & Cutter Grinding, Inc.; Bodine Tool & Machine Company; Bogden Company; Boice Industrial; Bollinger Tool & Die, Inc.; Boos Products; Bordo Mold & Machine, Inc.; Boring Machine Corp.; Boring, Inc.; Bosma Machine & Tool Corporation; Boss Tool & Mfg.; Boston Centerless, Inc.; Bowen & Company, Inc.; Bowers Machine Co.; Bowes Machine, Inc.; Boyd Machine Company; Boyle, Inc.; BoMar Machine; Bra-Vor Tool & Die Company, Inc.; Bradenton Tool & Machine; Bradhart Products, Inc.; Bradley Service Company; Breeze's Precision Boring Company; Brettrager Manufacturing Company; Bridean Machine & Tool Co., Inc.; Brighton N C Machine Corporation; Brimfield Precision, Inc.; Brinkman Tool & Die, Inc.; Bristol Instrument Gears, Inc.; Broadway Mold & Tool, Inc.; Brodbeck Tool & Machine Company; Brogdon Tool & Die, Inc.; Bronner Manufacturing & Tool Co.; Brookfield Industries, Inc.; Brooklyn Scraping & Re-Machining, Inc.; Brown Industries, Inc.; Brown Manufacturing Company, Inc.; Brown Production, Inc.; Brown-Covey, Inc.; Bruce Machine & Tool Co., Inc.; Buchanan Products, Inc.; Buckeye Die & Engineering; Budney Company, Inc.; Budney Industries; Buehrle Engineering Company; Buena Park Tool & Engineering; Buerk Tool & Machine Corporation; Buiter Tool & Die, Inc.; Bulgrin Mold & Machine; Burch Machine, Inc.; Burckhardt America, Inc.; Burco Precision Products; Burger Engineering, Inc.; Burgess Brothers, Inc.; Burke Industries; Burke Manufacturing, Inc.; Burrowes Research Machining, Inc.; Burton Industries; Busler's Machine Company; Busy-Bee Tooling; Bylsma Tool, Inc.; C & C Machining Company; C & C Manufacturing Company; C & C Manufacturing Corporation; C & D Engineering Company; C & G Machine & Tool; C & J Industries; C & M Machine Products, Inc.; C & R Manufacturing, Inc.; C & S Machine Products; C and L Custom Tooling; C A C Tool Corporation; C A D Enterprises; C A R Enterprises, Inc.; C A Spalding Company; C B Enterprises; C B Gear & Machine, Inc.; C B Kaupp & Sons, Inc.; C B S Boring & Machine Co., Inc.; C B S Manufacturing Company, Inc.; C D M Tool & Manufacturing Co. Inc.; C H W Precision Machining, Inc.; C J Grinding, Inc.; C J R Manufacturing Company, Inc.; C J Winter Machine Works; C L Precision Machine & Tool Co.; C M Grinding, Inc.; C M Smillie & Company; C N C Engineering; C N C Precision; C N C Precision Machining, Inc.; C P M Division (Division of Columbus Standard, Inc.); C R B Manufacturing, Inc.; C R E Enterprises; C T D Machines, Inc.; C T M, Inc.; C V Tool Company, Inc.; C. A. P. Tool & Mfg. Co., Inc.; C. C. Tool & Engineering; C. G. Tech, Inc.; C. M. I. Product Development; C. M. R. Engineering; Cain Machine Company;

Cal-Disc Grinding Company; Cal-Matic, Inc.; Calcortec, Inc.; California Fineblanking Corporation; California Gundrilling, Inc.; California Reamer Company; Calx, Inc.; Cam Basic; Cambridge Special; Cambridge Tool & Die Corp.; Cambridge Tool & Manufacturing Co.; Camco Manufacturing, Inc.; Campbell Grinding & Machine, Inc.; Campbell Machinery, Inc.; Camtec, Inc.; Canan Mold, Inc.; Canto Tool Corporation; Capital Tool Company; Capitol Engineering Company; Capitol Technologies; Capitol Tool & Die Company; Capitol Tool & Die, Inc.; Car-Gor Tool & Die; Caran Precision Engineering & Manufacturing; Carbide Products Company; Cardinal Machine Company; Cardinal Machine Company, Inc.; Carius Tool Company, Inc.; Carl Machine Company, Inc.; Carl Rogers; Carl's Machine, Inc.; Carlin Machine Company, Inc.; Carlson Capital Manufacturing Co.; Carlson Tool & Manufacturing Corp.; Carlson-Rockford, Inc.; Carr Cylinder Company; Carr Lane Manufacturing Company; Carr Machine Company; Carr Tool & Machine Company, Inc.; Cascade Mold & Die, Inc.; Cass Screw Machine Products Company; Catalina Tool & Mold, Inc.; Caval Tool & Machine Company; Cedar CNC Machining, Inc.; Centaur Tool & Die, Inc.; Centennial Tool Manufacturing; Centennial Tool, Inc.; Center Line Machine Company; Center Line Tool; Centerline Precision Machining; Centerline Tool & Die Company; CenterLine Industries, Inc.; Centex Machining, Inc.; Central Machining Specialties, Inc.; Central States Machine Service; Central Tool Company, Inc.; Central Tool Works, Inc.; Centurion Manufacturing; Century Machine Company, Inc.; Century Mold Company, Inc.; Century Tool & Gage Company; Century Tool & Manufacturing Co.; Century Tool and Design, Inc.; Certified Aerospace; Certified Grinding & Machine, Inc.; Certified Industries, Inc.; Champion Tool & Die Company; Chapman Engineering, Inc.; Charian Machine & Manufacturing; Charles Meisner, Inc.; Charlotte Cutting Tool; Charlotte Machine Company; Charlton Engineering Corporation; Chase Machine Company, Inc.; Check-Mate Industries; Checker Machine, Inc.; Chelar Tool & Die, Inc.; Chesco Products; Chicago Mold Engineering, Inc.; Chippewa Tool & Manufacturing Co.; Chris Papas Precision Company; Christon Grinding Company; Christopher Tool & Manufacturing; Circle-K-Industries; City Machine Tool & Die Co., Inc.; Clarich Mold Corporation; Clark Manufacturing Company; Clark Metal Products Company; Clark-Henry Company, Inc.; Classic Die, Inc.; Classic Mold Design; Cleveland Metal Products; Cleveland Mold & Die, Inc.; Cleveland Punch & Die Company; Cliffdale

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Manufacturing Company; Clifford H. Jones, Inc.; Clifford Manufacturing Company; Clifton Automatic Screw; Cling's Machine And Stamping; Cloud Company; Co-Op Machine & Tool; Coast Cutters Company; Cobak Tool & Manufacturing Company; Coffey Associates; Coleman Corporation; Collins Instrument Company; Collins Machine & Tool; Colmar Corporation; Colonial Machine Company; Colorado Surface Grinding; Columbia Research & Development (Division of Ludlow Industries, Inc.); Columbia Screw Co., Inc.; Com-Tal Southwest, Inc.; Com-Tal, Inc.; Combined Metals Company; Comet Tool, Inc.; Command Corporation International; Commerce Grinding, Inc.; Commercial Kellering, Inc.; Commercial Machine, Inc.; Commercial Manufacturing Corp.; Commercial Tool & Die Company; Commonwealth Machine Co., Inc.; Commonwealth Technology; Compacting Tooling, Inc.; Companion Industries, Inc.; Competition Tooling, Inc.; Complex Tooling, Inc.; Component Engineers, Inc.; Composidie, Inc.; Composite Machine & Tool; Composite Mold Corporation; Compu Die, Inc.; Computer Wire EDM Corporation; Computerized Machining Services, Inc.; Concept Tool & Die Company; Conco Systems, Inc.; Condor Tool & Die; Coney Tool and Cutter Grinding; Conn Dee Industrial; Connecticut Jig Grinding, Inc.; Connecticut Tool & Manufacturing; Connell Tool Company; Connolly Tool & Machine Company; Conover Machine & Design, Inc.; Consolidated Mold & Manufacturing, Inc.; Conti Tool & Die Company; Continental Microwave and Tool Co., Inc.; Continental Mold & Tool, Inc.; Continental Precision, Inc.; Continental Tool & Machine; Continental Tool & Manufacturing, Inc.; Contour Mold, Inc.; Contract Products; Controlled Turning, Inc.; Converse, Inc.; Convex Mold, Inc.; Cook Manufacturing; Cook Tool & Die, Co.; Cooney Tool, Inc.; Copa Tool, Inc.; Cordell Machine Corporation; Coronado Machine, Inc.; Correa Machine & Tool Company, Inc.; Correll Manufacturing; Corrigan Manufacturing Co., Inc.; Country Machine & Tool, Inc.; Cox Machine Company, Inc.; Cox Tool Company, Inc.; Coy Machine Company; Craft Tool & Die Company, Inc.; Craftech E D M Company; Crafts Company, Inc.; Craftsman Tool & Mold Company; Cramers Precision Grinding, Inc.; Cranston Centerless Grinding; Crawford Tool & Die; Creative Machine Products; Creative Tool Company; Crest Manufacturing Company; Criterion Tool & Die; Cross Road Machine Shop; Crossland Machinery; Crown Mold & Machine, Inc.; Crown Tool & Die Company; Crownel Corporation; Crush Master Grinding Corporation; Crystal Die Mold, Inc.; Cumberland Tool & Die, Inc.; Curio Precision Tool & Machine; Cust-M-Thread Grinding; Custom Engineering, Inc.; Custom Etch Inc.; Custom jig Grinding, Inc.; Custom Machine, Inc.; Custom Machine, Inc.; Custom Machining, Inc.; Custom Metal Products Corporation; Custom Mold & Design; Custom Tool & Design, Inc.; Custom Tool & Die, Inc.; Custom Tool & Manufacturing Company; Cyme Tool Corporation; Cypress Tool & Die Company, Inc.; D & B Industries, Inc.; D & H Manufacturing Company; D & J Precision Machining, Inc.; D & L Tool, Inc.; D & M Products; D & S Manufacturing Corporation; D A K Tool Company, Inc.; D C Design, Inc.; D C Machine Shop; D F M Corporation; D M C International, Inc.; D M Machine Company, Inc.; D S Greene Company, Inc.; D S Machine; D S Manufacturing, Inc.; D. M. M. Manufacturing; D-K Manufacturing Corporation; D-S Machine Tool & Development; D-Velco; D/A Machine Products; Dadeks Machine Works Corporation; Daily Industrial Tools; Daley Design & Mfg., Inc.; Damen Tool & Engineering Co., Inc.; Danco Precision, Inc.; Danly Die Set; Danly Die Set Division (Division of Avondale Industries); Dap Tool & Mold Inc.; Dar Machine & Manufacturing, Inc.; Darotek, Inc.; Darr Industries, Inc.; Dass Machine, Inc.; Dauntless Molds, Inc.; David Barnes Company; David Engineering & Manufacturing; Dayton Drill Bushing Company; Dayton Progress Corporation; Dayton Reliable Tool; Dayton Tool Company, Inc.; Dayton Wireburn, Inc.; De Hoff Tool & Die Co., Inc.; De Long Manufacturing; Deck Brothers, Inc.; Deck Machine & Tool; Deep South Automotive, Inc.; Deephole Machine Company; Deeter's Tool & Manufacturing, Inc.; Degele Manufacturing, Inc.; Dekalb Tool & Die, Inc.; Del Packaging Inc.; Delaware Machinery & Tool Co., Inc.; Dellacor Company, Inc.; Delltronics, Inc.; Delp Corporation; Delta Machine & Tool; Delta Machining, Inc.; Delta Precision Tool & Instruments; Delta Systems, Inc.; Delta Tool & Die Company; Delta X Corporation; Deltec, Inc.; Delto Tool Company; Demaich Industries, Inc.; Demark Industries, Inc.; Demmer Corporation; Dempe Saw & Tool Company, Inc.; Denby Mold Company; Dependable Tool & Die; Dependable Tool & Manufacturing Co.; Desert Precision Mfg., Inc.; Design Tool & Machine Company; Designs For Tomorrow, Inc.; Deterling Company, Inc.; Detroit Tool Engineering Company; Detwiler Tool Company; Development Research & Tool;

Dexter Tool Company; Diamond Lake Tool; Diamond Machine Works, Inc.; Diamond Mold & Die, Inc.; Diamond Tool & Die Co., Inc.; Diamond Tool Products; Dickey & Son Machine & Tool; Die Cast Die & Mold, Inc.; Die Cast Dies, Inc.; Die Matic Corporation; Die Products, Inc.; Die Supply Corp.; Die Supply Corporation; Die-Matic, Inc.; Die-Mension Corporation; Die-Tech Manufacturing, Inc.; Die-Tron-Die-Cam, Inc.; Diecraft Corporation; Dieline Corporation; Diemakers, Inc.; Diemaster Tool & Mold; Diematics, Inc.; Dietooling (Division of Diemolding); Dietronic Stampings, Inc.; Dillon Industries, Inc.; Dimac Manufacturing Co., Inc.; Discovery Tool & Manufacturing; Ditool (Division Of Foundry Allied Industries); Diversified Engraving Stamp; Diversified Tool & Die; Diversified Tool Corporation; Diversified Tools, Inc.; Dixie Numerics, Inc.; Dixie Tool & Die, Inc.; Dixon Components, Inc.; Dollins Tool, Inc.; Donkra Manufacturing Company; Donlee Precision; Dot Machine & Tool Company; Double D Machine & Tool Company; Double Disc Grinding of Hauppauge, Inc.; Dowty's Machine Works, Inc.; Doyle Manufacturing, Inc.; Drake Engineering Co., Inc.; Drem Machine Company; Drilex Corporation; Du-Well Grinding Company, Inc.; Dugan Tool & Die Company; Duke Grinding, Inc.; Dulond Tool & Engineering, Inc.; Dun-Rite Industries, Inc.; Dura Metal Products Corporation; Durable Metal Products Company; Durivage Pattern Company; Duwest Tool & Die, Inc.; Dyko Tool Corporation; Dynacorp, Inc.; Dynamic Engineering, Inc.; Dynamic Enterprises, Inc.; Dynamic Machine & Fabricating; Dynamic Machine Works; Dynamic Metal Products; Dynamic Tool & Design, Inc.; Dynamic Tool & Die Company; Dynamic Tool and Die, Inc.; Dynasty Mold & Engineering, Inc.; Dysinger Tool & Die Company; E & C Manufacturing Company, Inc.; E & F Tool Company, Inc.; E A M, Inc.; E C M Of Florida; E C M Specialties, Inc.; E D I High-Tech Tooling & Machining; E D M Services, Inc.; E D M Wire-Cut Northwest, Inc.; E F Precision; E F S Fabrication, Inc.; E J Codd Company, Baltimore City; E K Machine Tool, Inc.; E M I Precision; E R C Concepts Company; E R I Division (Division of Babcock & Wilcox Company); E S L Corporation; E W Johnson Company, Inc.; E. D. M. Exotics; E-B Manufacturing Company, Inc.; E-Z Machine Corporation; Eagle Metalcraft, Inc.; Eagle Tool & Machine Company, Inc.; Eason & Waller Grinding Company; Eastern Tool & Die, Inc.; Eastern Tool &

Engineering Corp.; Eastford Tool & Die Co.; Ebway Corporation; Echo Precision Tooling Company; Eck & Eck Machine Company, Inc.; Eckel Manufacturing Company; Eckert Manufacturing Co., Inc.; Ecko Tool & Die, Inc.; Eclipse Mold, Inc.; Ed Fish Machine Company; Edco Tool & Die Company; Edel-Brown Tool & Die Company; Edgefield Fine Machining Company; Edgerton Machine & Gear, Inc.; Edinger Manufacturing, Inc.; Edmar Engineering Company; Edmunds Manufacturing Company; Edro Engineering, Inc.; Egli Machine Company, Inc.; Ehrhardt Tool & Machine Company; Elcom Corporation; Eighty-Six Tool Company; Eisen Gustav Tool & Die Works; Elbro Tool Company, Inc.; Elcam Tool & Die, Inc.; Elco Gear Corporation; Electra Form, Inc.; Electric Terminal Corporation; Electrical Discharge Machine; Electro Form Corporation; Electro Machine & Tool, Inc.; Electro Mold Company; Electro-Mechanical Products, Inc.; Electro-Methods, Inc.; Electrodie, Inc.; Electrol Manufacturing Company; Electronics Tool & Die; Electrotools, Inc.; Elger Tool and Machine Co., Inc.; Elgin Machine Corporation; Elite Tool Company, Inc.; Elizabeth Carbide Die Co., Inc.; Eljay Corporation; Elk Lake Tool Company; Elkhart Machine & Tool; Elliot Tool & Manufacturing Company; Elliott's Precision, Inc.; Ely Tool, Incorporated; Emblem Tool & Engineering Company; Emco Engineering; Emmert Welding & Manufacturing Inc.; Emory Machine & Tool Company; Empire Corporation; Empire Machine Shop, Inc.; Empire Manufacturing Corporation; Enbi Corporation; Engineered Metal Products Company; Enpro Systems, Inc.; Enterprise Tool & Die; Enterprise Tool & Die, Inc.; Ephrata Precision Parts, Inc.; Epic Manufacturing Company, Inc.; Erca Tool Die & Stamping Company; Erdle Manufacturing Company, Inc.; Erickson Tool & Machine Company; Ermco; Ernest Gaum, Inc.; Ervite Corporation; Esco, Inc.; Estee Mold & Die, Inc.; Esterle Mold & Machine Co.; Estul Tool & Manufacturing Co. Inc.; Etko Machine, Inc.; Euclid Diemakers, Inc.; Euclid Precision Grinding Co., Inc.; Evana Tool & Engineering, Inc.; Evans Tool & Die, Inc.; Evansville Tool & Die; Ever Fab, Inc.; Ever-Ready Tool, Inc.; Everett Pattern and Mfg., Inc.; Ewart-Ohlson Machine Company; Exact Cutting Service, Inc.; Exact Tool & Die, Inc.; Excel Foundry and Machine, Inc.; Excel Machine Company; Excel Machine Products, Inc.; Excel Manufacturing, Inc.; Excel Stamping & Manufacturing, Inc; Excel Tech Machine Repair & Scraping, Inc.; Excel Tool & Mfg.; Executive Mold Corporation; Expertise Components, Inc.; Expo Tool Company, Inc.; Extrusion Services, Inc.; Ezell Precision Tool Company; F & G Multi-slide, Inc.; F & G Tool & Die Company; F & M Machine Corporation; F & S Tool & Gauge Company; F C Machine Tool Design, Inc.; F D Contours; F D T Precision Machine Co., Inc.; F H Peterson Machine Corporation; F K Instrument Company, Inc.; F M Machine Company; F M S Industries, Inc.; F P Pia Tool & Manufacturing Co.; Fabian Machine & Tool; Fabmaster Industries, Inc.; Fabritek Company, Inc.; Fabro Engineering, Inc.; Fair Tool & Die Company; Fairbanks Machine & Tool; Fairfield Tool Company, Inc.; Fairview Machine Company, Inc.; Fairway Molds, Inc.; Faith Tool & Manufacturing, Inc.; Falcon Precision Machine Co.; Falicon Performance Eng.; Falls City Machine Technoloby; Falls Mold & Die, Inc.; Fame Tool & Manufacturing Company; Fargo Machine Company, Inc.; Farris Machine & Tool Company; Faustson Tool; Fay Tool & Die Company; Felton Machine Co., Inc.; Femmer Machine Company; Ferange Industries, Inc.; Ferrex Corporation; Ferriot Inc.; Fibreform Electronics; Fidelity Tool & Machine Co., Inc.; Field Equipment & Service Company; Figgins Machine Company; Finest Tool Company; Finish Line Manufacturing; Finntech, Inc.; Fischer Tool & Die Corporation; Fitzwater Engineering Corporation; Five Star Tool Company, Inc.; Flagg Steel Company; Flametech Corporation; Fleck Machine Company; Florida Aero Precision, Inc.; Fluke Metal Products, Inc.; Fordees Engineering; Formac Corporation; Formative Products; Formtech; Formtech Enterprises, Inc.; Forrest Machine, Inc.; Forster Tool & Die; Forsyth Engineering & Machine Corp.; Fort Custer Tool & Die, Inc.; Foster Machine & Manufacturing Co.; Four Star Precision Products, Inc.; Four-D Tool Company; Fox Valley Tool & Die, Inc.; France Special Tool; Franchino Mold & Engineering; Frank J. Stolitzka & Son, Inc.; Fre-Mar Industries, Inc.; Frederick's Machine Shop; Fredon Corporation; Fredon Development Industries Inc.; Fremont Plastic Molds, Ltd.; Frenz & Kellogg Tool Corporation; Friemark, Inc.; Fulton Tool Company, Inc.; Furno Co.; Futaba Corporation of America; Future Fabricators; Future Tool & Die Company, Inc.; Future Tool & Die, Inc.; Fyco Tool & Die, Inc.; Fyne Instrument Corporation; G & G Machine Technology's Inc.; G & G Tool Company, Inc.; G & H Jig Grinding, Inc.; G & H Precision Machining; G & J Machine Shop, Inc.; G & K Machine & Tool Company; G & L Machine, Inc.; G & L Machining, Inc.; G & M Precision, Ltd.; G & R Enterprises; G & R Precision Grinding; G & W Industries, Inc.;

G & W Tool & Die Company, Inc.; G & Z N/C Machining Company; G B F Enterprises, Inc.; G B Tool Company; G L B Precision, Inc.; G M A Tooling; G M Tool & Design, Inc.; G M Tool Corporation; G N R Plastic Co., Inc.; G P Precision Metal West; G P Tool Company; G S Precision, Inc.; G T G, Inc.; Gadsden Tool, Inc.; Gage-Line Sciences, Inc.; Galaxy Tool & Mold, Inc.; Galaxy Tool Corporation; Gales Manufacturing Corporation; Galger Engineering & Manufacturing Company; Galgon Industries, Inc.; Gamber Products Company, Inc.; Gar Incorporated; Garcia Associates; Garray Machine; Gasperak Mold & Engraving; Gatco, Inc.; Gauer Mold & Machine Company; Gem City Engineering Company; Gem Industries; Gemel Precision Tool Company, Inc.; Gemini Tool & Precision Machine; General Die & Engineering Corp.; General Engineering Company; General Machine & Tool; General Machine Products; General Machine Shop, Inc.; General Machine Works; General Tool & Die Company, Inc.; General Tool Company; Genesee Manufacturing Company, Inc.; Genesee Metal Stampings; Genesee Tool & Engineering, Inc.; Genuine Tool Company, Inc.; Geometric Manufacturing; George Welsch & Son Company; German Tool & Die, Inc.; Germantown Tool & Machine; Geyer Precision Machining Company; Gibbs Machine Company, Inc.; Gilbert Engineering Company; Gilbert Machine & Tool Company Inc.; Gilbert Tool & Die, Inc.; Gilkey Machine; Gill Tooling; Gillaspie Engineering & Mfg.; Gillette Machine & Tool Company; Girard Tool & Die; Glaze Tool & Engineering Company; Glebar Company, Inc.; Glendale Machine Company, Inc.; Glidden Machine & Tool, Inc.; Goebel Machine Service, Inc.; Goffs Industrial Aid Machining Inc.; Goguen Industries; Goldenwest Manufacturing, Inc.; Goosen Enterprises; Gordon Industries; Gottschall Tool & Die; Gougler Industries; Grand Engineering; Grand Island Precision; Grand Rapids Diecraft, Inc.; Granger Machine & Tool, Inc.; Graphic Equipment Manufacturing Company, Inc.; Graybills Tool & Die, Inc.; Great American Tool & Mfg. Co.; Great Lakes Grinding, Inc.; Green Creek Tool & Gage, Inc.; Greenwell Machine & Tool, Inc.; Gregg Tool & Die Company, Inc.; Gremco Machine & Tool; Griffin Tool, Inc.; Grind All Precision Tool; Grind Company, Inc.; Grind-All, Inc.; Grue-Ite Industries; Groth Equipment Corporation; Guill Tool & Engineering Co., Inc.; Gulf South Machine; Gurr

Enterprises Ltd.; H & H Machine Company; H & H Machine Company, Inc.; H & H Machine Shop Of Akron, Inc.; H & H Machined Products, Inc.; H & H Tool & Die Company; H & J Tool & Die Company; H & K Tool & Machine Company; H & M Screw Machine Products, Inc.; H & P Tool & Machine, Inc.; H & R Tool Works, Inc.; H & S Swansons' Tool Company; H & W Tool Company, Inc.; H B Machine, Inc.; H Brauning Company, Inc.; H Galow Company; H H Arnold Company, Inc.; H H H Machine Company; H H Mercer, Inc.; H M Dunn Company, Inc.; H M M Engineering Design Services; H P A S Inc.; H P Smith Spindle Corporation; H R Edgar Machining & Fabricating; H S & S Machine Tool Rebuilders; H S Die & Engineering, Inc.; H T B, Inc.; Haberman Machine; Hackett Precision Company; Haemer Tool & Die; Hahn & Clay; Haley Tool & Stamping, Inc.; Hallun Tooling, Inc.; Halpro, Inc.; Hamden Tool & Die Co., Inc.; Hamill Manufacturing Company; Hamilton Mold & Machine, Inc.; Hamilton Tool Company; Hamlin Steel Products, Inc.; Hamrill Manufacturing Company; Hammond and Harris; Hammond Tool, Inc.; Hancock Manufacturing Corporation; Handy Tool & Manufacturing Company, Inc.; Hans Rudolph, Inc.; Hanas Plastics, Inc.; Hansford Manufacturing Corporation; Hansen Mold; Hansen Precision Machine; Har-Lee Tool, Inc.; Hardy-Reed Tool; Harig Manufacturing Corporation; Harmon Machine Products; Harmony Industrial Corporation; Harrington Machine & Tool, Inc.; Hartford Aircraft Products, Inc.; Hartford Cutter Grinding, Inc.; Heserodt Machine & Tool, Inc.; Haskell Machine & Tool, Inc.; Haumiller Engineering Company; Hauser Machine Company, Inc.; Hawkins Machine Company, Inc.; Hawkinson Mold Engineering Company; Hayden Corporation; Hayden Precision Industries; Hayneck Metal and Machine, Inc.; Heatherington Machine Corporation; Hebert Machine Works; Hedalloy Die Corporation; Heilmann Tool & Manufacturing Co.; Helac Corporation; Helio, Inc.; Hellebusch Tool & Die, Inc.; Helm & Son Ltd.; Helmel Engineering Products, Inc.; Henes Stamping, Inc.; Henman Engineering & Machine, Inc.; Heritage Custom Fabricators, Inc.; Herr Precision Machining; Herrick & Cowell Company; Herzog Tool & Die Company, Inc.; Hess Die Mold, Inc.; Hess Engineering, Inc.; Hetrick Manufacturing, Inc.; Heyl Engraving, Inc.; Hi-Ridge Manufacturing, Inc.; Hi-Tech Industries, Inc.; Hi-Tech Manufacturing, Inc.; Hi-Tech Metal Cutting, Inc.; Hi-Tech Mold & Engineering, Inc.; Hi-Tech Mold & Tool, Inc.; Hiatt Metal Products Company; High Precision Machining Services; High-Tech Industries; Hill Aerospace & Defense; Hill Engineering, Inc.; Hilton Industries; Hilton Tool & Die Corporation; Hinshaw Tool & Die, Inc.; Hir-Trec Machine & Tool, Inc.; Hittle Machine & Tool Company; Hobson & Motner, Inc.; Hodge Tool Company, Inc.; Hoercher Industries, Inc.; Hoffstetter Tool & Die; Hofmann Tool & Die Corporation; Holden Machine Company, Inc.; Holland Engineering Company; Hollis Industries, Inc.; Holmes Manufacturing Corporation; Holyoke Machine Company; Homlo Die Supply, Inc.; Hone Lap Company, Inc.; Hopco; Hopkins Machine & Tool Company; Hoppe Tool Works, Inc.; Hopwood Tool & Die; Horton Machine Company; Houston Company; Houston Cutting Tools, Inc.; Houston Metal Cutting Company; Hovis Precision Products; Howell Bros. Machine & Tool; Howell Precision, Inc.; Howland Industries; Howland Machine Corporation; Hubbell Machine Company, Inc.; Hudgins Precision Manufacturing, Inc.; Hudson Machine Works, Inc.; Hugh Mathews Machine Works, Inc.; Hughes Fabrication; Hughes Manufacturing, Inc.; Humbolt Instrument Company; Hunt & Hunt, Inc.; Hunt Machine & Manufacturing Co.; Huron Machine Products, Inc.; Huron Tool & Cutter Grinding; Huron Tool & Engineering Company; Husky Cutter Grinding, Inc.; Hutchins Tool & Engineering Co.; Hydraulic House, Inc.; Hydrodyne Division Of FPA, Inc.; Hygrade Machine & Tool, Inc.; Hygrade Tool & Manufacturing Co.; Hyland Machine Company; Hytrol Manufacturing, Inc.; Hytron Manufacturing Company, Inc.; I E M, Ltd.; I T C Automation, Inc.; I T M, Inc.; I-Corp, Inc.; Ideal Engineering Corporation; Ideal Engineering, Inc.; Ideal Tool Company; Ilion Machine Products, Inc.; Imco, Inc.; Imperial Carbide, Inc.; Imperial Die & Manufacturing Co.; Imperial Machine & Tool Company; Imperial Machine & Tool, Inc.; Imperial Tool & Die; Imperial Tool & Manufacturing Co., Inc.; Impression Die & Tool; Independent Die & Manufacturing; Independent Tool & Manufacturing; Indian Springs Manufacturing Co., Inc.; Indiana Tool & Die; Industrial Bearings & Supply, Inc.; Industrial Chrome Specialties, Inc.; Industrial Custom Automatic Machine; Industrial Engineering, Inc.; Industrial Engravers, Inc.; Industrial Equipment Repair Co.; Industrial Form Grinding; Industrial Grinding, Inc.; Industrial Machine Company; Industrial Molds, Inc.; Industrial Park Rebuild; Industrial Precision Products, Inc.; Industrial Reclaim Services; Industrial Technics, Inc.; Industrial Tool & Die Co., Inc.; Industrial Tool & Machine Company; Industrial Tool, Die & Engineering, Inc.; Industrial Tool, Inc.; Industrial Tooling, Inc.; IndTool, Inc.; Injection Mold & Machine Company;

Inserx Tool & Die, Inc.; Innovation Machining Corporation; Innovative Concept Engineering & Manufacturing, Inc.; Innovative Systems Machine & Tool, Inc.; Innovative Tool; Instrumental Machine Products, Inc.; Integrated Machine Systems, Inc.; Inter-City Manufacturing, Inc.; Intracoastal Plastics, Inc.; Investment Mold Sales & Design; Irotas Manufacturing Company; Isimac Machine Company, Inc.; Istrouma Foundry & Machine Works; J & A Tool Company; J & B Tool; J & D Tool & Die, Inc.; J & F Machine Company; J & F Machine Company; J & H Deburring Company; J & J Machining; J & L EDM; J & M Grinding, Inc.; J & M Machine Products, Inc.; J & M Machine, Inc.; J & N Engineering, Inc.; J & R Boring & Machine; J & R Machine Company; J & W Grinding, Inc.; J & W Jolly, Inc.; J B Tool Die & Engineering, Inc.; J B Tool, Inc.; J B's Precision Industries, Inc.; J C B Precision Tool & Mold, Inc.; J C Barton Company; J C Parry & Sons Co, Inc.; J C Wilson Engineering Corporation; J D Kauffman Machine Shop; J D Tool & Engineering, Inc.; J F Fredericks Tool Company, Inc.; J G R Manufacturing Corporation; J G Tool & Die Co., Inc.; J Hacker, Inc.; J I Machine Company, Inc.; J K Tool & Die Design, Inc.; J L Belzner Corporation; J M B Machine & Tool Company, Inc.; J M Mold, Inc.; J M S Mold & Engineering Co., Inc.; J Myles Machine Company; J O K A Industries; J Ross Miller & Sons, Inc.; J Ryall Machine Works; J S Die & Mold, Inc.; J S S Tool & Die; J T Engineering, Inc.; J T Machine Company; J T Tool Company; J W Harwood Company; J W Tool & Die Company, Inc.; J. D. Morris Machine & Mfg., Inc.; J. E. S. Grinding, Inc.; J. P. Tool, Inc.; J.P. Tool Inc.; Jack Haines Company; Jack Stewart Kellering; Jackson & Heit Machine Company; Jackson Machine; Jaco Tool & Die, Inc.; Jaman Tool, Die & Machine Company; Jamar Tool, Inc.; James P. Chick Company; James Singh Precision Eng., Inc.; Jamestown Design & Machine; Jandi Machine & Tool; Janson Tool & Die Company; Jasco Tools, Inc.; Jaycraft Corporation; Jell Tool Company; Jemco, Inc.; Jenkins Machine, Inc.; Jenkins Precision Grinding Co.; Jennison Corporation; Jergens, Inc.; Jerpbak Bayless Company; Jerry Carroll Machining, Inc.; Jerry Tools, Inc.; Jet Die & Development Company; Jet Industries, Inc.; Jet Machine Works, Inc.; Jig

Grinding Service Company; Jigmasters Tool & Gauge; Jim Cook Company; Jimco, Inc.; Jirgens Modern Tool Corporation; Joburn Tool, Inc.; Joeal Tool Company, Inc.; John V Potero Company, Inc.; Johnson Controls, Inc.; Johnson Engineering Company; Johnson Precision Machine, Inc.; Johnson Precision Machining, Inc.; Johnson Precision Works, Inc.; Johnson Technology; Johnson Tool Company; Johnson's Machine & Tool, Inc.; Jomar Machining, Inc.; Jonaco Machine, Inc.; Jonco Tool Company; Jordan & Smith, Inc.; Jordan Machine Co, Inc.; Joss Tool & Manufacturing Co., Inc.; Joyce Engraving Company; Judd Industries, Inc.; Juell Machine Company, Inc.; Juklin Industries, Inc.; Jurman Metrics, Inc.; K & A Engineering Company; K & B Tool; K & E Instrument; K & B Mfg. Company; K & G Tool, Inc.; K & H Mold & Machine Division; K & K Grinding Company, Inc.; K & M Precision Machining, Inc.; K & R Machine Company, Inc.; K & S Tool & Die, Inc.; K & S Tool & Manufacturing Company, Inc.; K-N Mold, Inc.; K and M Machine Fabricating, Inc.; K A F—Tech Industries; K D Service Company, Inc.; K L C Enterprises, Inc.; K L Winter, Inc.; K Mold & Engineering, Inc.; K V, Inc.; K Y Industries, Inc.; K. Y. Rogers, Inc.; K-B-K Tool & Manufacturing, Inc.; Ka-Wood Gear & Machine Company; Kaan Engineering, Inc.; Kahre Brothers, Inc.; Kal Tool & Die Company, Inc.; Kamashian Engineering; Kamco Plastics, Inc.; Kapp Machine Company; Karg Corporation; Karman Tool & Plastic Manufacturing; Karsten Engineering; Kasco Metal Products Corporation; Kaufhold Machine Shop, Inc.; Kay's Precision Manufacturing Corp.; Kays Engineering; Kebco Mold & Design, Inc.; Keck-Schmidt Tool & Die; Keagan's Machine & Fabricating, Inc.; Keen Machine Company; Kelbros, Inc.; Kellems & Coe Tool Corporation; Keller Technology Corporation; Kelly Carbide Die Corporation; Kelm Manufacturing Company; Kelmar, Inc.; Ken Ras Tool Company, Inc.; Kendrick Tool & Engineering; Kenlee Precision Corporation; Kennedy & Bowden Machine Company; Kennedy Tool & Die Company; Kennick Mold & Die, Inc.; Kent Mold Engineering; Kentucky Machine & Tool Company; Kenwood Machine; Kenyon Specialties Co.; Kern Special Tools Company, Inc; Kerne Manufacturing Corporation; Kerstan Precision Company, Inc.; Key Products; Keyes Machine Works, Inc.; Keystone Machine, Inc.; Keystone Machine, Inc.; Keyway, Inc.; Kilgore Machine Company, Inc.; Kimberly Gear & Spline, Inc.; Kindex, Inc.; Kinetic Tool Company; King Machine, Inc.; Kirsop Industries; Klix Tool Corporation; Knight Machine & Tool; Knight Tool Company; Knowlton Manufacturing Company; Koch's Machine & Tool Company; Kolar Machine, Inc.; Komo Machine, Inc.; Koning Machine & Tool Company; Konrad Corporation; Koral Tool & Die Industries, Inc.; Kordenbrock Tool & Die Company; Kovacs Machine & Tool Company, Inc.; Kreichbaum Machine & Tool; Kremin, Inc.; Krimminger Machine Company; Krisalis Machining; Krizman, Inc.; Kroesen Tool Co., Inc.; Kruse Tool & Die, Inc.; Kuester Tool & Die Co., Inc.; Kurz & Son, Inc.; KENLAB; L & H Tool & Die, Inc.; L & J Tool & N C Machine; L & L Machine, Inc.; L & L Tool & Die; L & M Mold Corporation; L & M Precision Grinding Corp.; L & P Machine, Inc.; L & S Corporation; L A B Quality Machining; L B Machine & Manufacturing Company; L H Carbide Tool & Die Corp.; L J Mroz Design Service; L P I Corporation; L T L Company, Inc.; L. A. Simpson Machine Company; L-B-L Corporation; L-K Tool & Manufacturing, Inc.; Lab Threads & Gear Works, Inc.; Labco Welding, Inc.; Ladapa Die & Tool, Inc.; Lagonda Tool Company; Lakeland Mold, Inc.; Lakeland Tool & Engineering, Inc.; Lakeview Tooling, Inc.; Lakewood Engineering, Inc.; Lamar Industrial Plastics II; Lamb Machine & Tool Company; Lamb Technicon Corporation; Lamixa, Inc.; Lampin Corporation; Lamson Products Company; Lancaster Knives, Inc.; Lancaster Machine Shop; Lancaster Metal Products Company; Lancaster Mold, Inc.; Lancaster Tool & Machine, Inc.; Land Specialties Manufacturing Co.; Landry Specialty Welding, Inc.; Lane Punch Corporation; Lane Punch Corporation; Laneko Engineering Company; Laneko Precision Corporation; Laneko Roll Form, Inc.; Lange Precision Company; Lanlyn Instrument Company; Lanum Metal Products Company, Inc.; Lark Manufacturing Company, Inc.; Laser Fare, Ltd.; Laser Tool Company; Laserform; Lathe Tool Works, Inc.; Layke Tool & Manufacturing, Inc.; LaGrange Machine, Inc.; Lebal Industries, Inc.; Lebanon Tool Co.; Leblanc Grinding Company; Leblond Makino Machine Tool Company; Ledford Engineering Company, Inc.; Leech Tool & Die Works, Inc.; Leech, Incorporated; Leemax Mfg. Corp.; Lees Enterprise; Leese & Company, Inc.; Leicester Die & Tool, Inc.; Leidel Corporation; Lempco Industries, Inc.; Lenit Machine Company; Lentros Engineering, Inc.; Leonardi Manufacturing Co., Inc.; Letech Manufacturing, Inc.; Levic Plastics, Inc.; Levion Company, Inc.; Lewis Machine & Fabricating Company; Liberty Tool & Die Corporation; Libra Manufacturing Company; Ligi Tool & Engineering, Inc.; Limmco, Inc.; Linco Tool & Machine Company; Linco, Inc.; Link, Inc.; Linke Tool Die & Engineering Co., Inc.; Lloyd B. Cogswell Manufacturing Co.; Lloyd Company; Lloyd Tool & Manufacturing Corp.; Loedemeter Corporation; Lobart Company; Logan Machinists, Inc.;

Lomberdo Tool & Machine Company; Lombness Tool & Die Company, Inc.; Long-Stanton Manufacturing Company; Lonner Industries, Inc.; Look Precision, Inc.; Lorenzen's Tool & Dies, Inc.; Louis J. Hansen Enterprises, Inc.; Louis Vigh Tool & Die; Louisiana Engine Rebuilding Co.; Louisville Machine Mfg. Corporation; Loyal Machine Company, Inc.; Lucas Machine Co.; Lucas Machine Division; Luick Quality Gage & Tool; Lunar Industries, Inc.; Lunar Tool & Machinery Company; Lunar Tool & Mold, Inc.; Lunquist Tool & Manufacturing Corp.; Lynn Welding; Lynx, Inc.; Lyons Tool & Die Company; M & D Loe Manufacturing, Inc.; M & H Engineering Company, Inc.; M & H Precision; M & H Tool & Die, Inc.; M & J Grinding & Tool, Inc.; M & M Machine Company, Inc.; M & S Machine & Manufacturing Co.; M & S Welding Company, Inc.; M C General, Inc.; M D E, Inc.; M D F Tool Corporation; M D Machine Co., Inc.; M E P P Tool Company, Inc.; M G M Tool & Die, Inc.; M G W Precision Small Parts; M I Willett, Inc.; M T E, Inc.; M W Industries, Inc.; M-C Fabrication, Inc.; M-Tron Manufacturing Company, Inc.; Mac Law Tool & Aircraft; Mac Machine Company, Inc.; Machine Products Corporation; Machine Service Consultants; Machine Specialties Company; Machine Tool Specialists, Inc.; Machine Tooling, Inc.; Machinecraft, Inc.; Machinery Spare Parts & Supplies; Mackenzie Machine & Marine Works; Macneb Manufacturing, Inc.; Macor, Inc.; Maddox Metal Works, Inc.; Maddox Tool & Die Shop; Madgett Enterprises; Madison-Smith Machine and Tool Co.; Maeward, Inc.; Magdic Precision Tooling, Inc.; Maghielse Tool & Die Company; Magna Engineering; Magna Machine & Tool Company; Magna Standard Manufacturing, Inc.; Mahe Machine Tool Corporation; Main Mold, Inc.; Maine Machine Products; Major Precision Grinding, Inc.; Majestic Mold & Tool, Inc.; Majestic Tech; Majestic Tool & Engineering Co., Inc.; Major Tool & Die Division (Division of Means Stamping Industries, Inc.); Major Tool & Machine, Inc.; Mal Ber Manufacturing Company; Malley Corporation; Mamco Manufacturing Company; Manchester Tool & Die; Manco, Inc.; Manda Machine Company,

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Inc.; Manetek, Inc.; Maney Aircraft; Manheim Special Machine Shop; Manufacturers Tool & Die; Manufacturing Appraisal Company; Manufacturing Machine Corporation; Manufacturing Service Company; Mar-Mac Precision Corporation; Mar-Tech Industries, Inc.; Marco Manufacturing Company; Marcy Machine, Inc.; Mardon Enterprises, Inc.; Mardon Industries, Inc.; Mardon Tool & Die Company, Inc.; Marin Precision; Marini Tool & Die Company, Inc.; Mark Concepts, Inc.; Marlton Pike Precision; Marquardt Engineering, Inc.; Marquette Tool & Die Company; Mars Manufacturing Company, Inc.; Martco, Inc.; Martin Machine Company, Inc.; Martin Machine, Inc.; Martinelli Machine; Marton Tool & Die Company, Inc.; Masco Machine, Inc.; Massey Grinding Service, Inc.; Master Cutting & Engineering; Master Manufacturing Co.; Master Metal Engineering, Inc.; Master Precision Machining, Inc.; Master Precision Tool Corporation; Master Tool & Die, Inc.; Master Tool & Mold, Inc.; Mastercraft Mold, Inc.; Matrix Machine, Inc.; Matrix Tool, Inc.; Matthews Gauge, Inc.; Maudlin & Son Manufacturing Company, Inc.; Maurer Metalcraft, Inc.; Maxwell Bailer Corporation; May Industries, Inc.; May Tool & Die, Inc.; May Tool & Mold Company, Inc.; Maya Jig Grinding & Gage Company; Mayday Manufacturing Company; Mayfair Molded Products; Mayfield Machine Shop, Inc.; McAfee Tool & Die, Inc.; McBee Engineering, Inc.; McCormick/Bates Manufacturing; McGill Manufacturing Company; McKenna Industries, Inc.; McLinden Machine, Inc.; McNeal Enterprises, Inc.; McNeill Manufacturing Company; McPherson Implement, Inc.; McSwain Manufacturing Company; Meadville Plating Company, Inc.; Meadville Tool Grinding; Mechanical Associates, Inc.; Mechanical Products Manufacturing; Mechanized Enterprises, Inc.; Medved Tool & Die Company; Mefco, Inc.; Megacity Tool & Manufacturing Corp.; Meko Industries, Inc.; Melvin Tool & Die, Inc.; Menegay Machine & Tool Company; Mercer Machine & Tool Co., Inc.; Mercer Machine Company, Inc.; Mercury Tool & Manufacturing Co.; Mercury Tool & Mfg., Inc.; Meriden Manufacturing; Meridian Products Corporation; Merit Machinery, Inc.; Merkler Machine Works; Merlone Metal Spinning, Inc.; Meta-Meg Tool Corporation; Metal Forming & Coining; Metal Hana, Inc.; Metal Processors Inc.; Metal Products Mfg., Inc.; Metal-Tech, Inc.; Metallon, Inc.; Metco Manufacturing Company, Inc.; Metform Tool Corporation; Methods & Machining Services Co.; Metri-Tech Engineering, Inc.; Metric, Inc.; Metrix Manufacturing Company; Metro Manufacturing, Inc.; Metro Metal Products, Inc.; Metro Mold & Design, Inc.; Meyer Tool & Machine Company; Miami Valley Punch, Inc.; Michigan Plastics, Inc.; Micka Manufacturing Company; Micro Chrome & Lapping, Inc.; Micro Cut; Micro Diameters Company; Micro Diameters, Inc.; Micro Instrument Corporation; Micro Machine Shop; Micro Machining, Inc.; Micro Manufacturing Corp.; Micro Precision Company; Micro Punch & Die Company; Micro Stamping Corporation; Micro Surface Engineering, Inc.; Micro Tool & Manufacturing Company; Micro Tool Engineering, Inc.; Micro-Tech Production Machine Co.; Micro/Belmont Engineering; Micromet, Inc.; Micron Tool & Manufacturing, Inc.; Microtome Precision, Inc.; Mid West Mold; Mid-Central Manufacturing, Inc.; Mid-South Industries, Inc.; Mid-State Manufacturing, Inc.; Midland Precision Machining, Inc.; Midtown Manufacturing; Midville Tool & Die Company; Midway Mold, Inc.; Midwest Machine & Manufacturing Co.; Midwest Tool & Die Corporation; Midwest Tool & Engineering Company; Mikim Industries, Inc.; Mil-Craft Manufacturing, Inc.; Mil-O-Matic; Mil-Tech Machine, Inc.; Millard's Tooling & Grinding, Inc.; Millat Industries Corp.; Miller Machine & Design, Inc.; Miller Mold Company; Miller Precision, Inc.; Milrose Industries; Miltronics, Inc.; Milwaukee Punch Corporation; Milwaukee Slide and Spindle; Minco Tool & Mold Corporation; Minnotte Cleveland Corporation; Mission Tool & Manufacturing Co., Inc.; Mitchell Machine & Fabricating; Mitchell Machine & Tool Company; Mitchell Machine Works; Mitchum Schaefer, Inc.; Mittler Brothers Machine & Tool; Mo-Tech Corporation; Mod-Tech, Inc.; Model Die & Mold, Inc.; Model Machine Company, Inc.; Model Pattern Company, Inc.; Modern Industries; Modern Machine Company; Modern Machine, Inc.; Modern Manufacturing, Inc.; Modern Metal Manufacturing, Inc.; Modern Metalsmiths, Inc.; Modern Molds, Inc.; Modern Tools Division (Division of Libbey, Owens, Ford); Moehrle, Inc.; Mohawk Mold & Machine; Mold Systems Corporation; Moldcraft E D M; Monarch Valve Corporation; Monitor Mold & Tool Company; Monka Manufacturing Co., Inc.; Monroe Tool & Die Company; Monterey Precision, Inc.; Montgomery Brothers Machine Company, Inc.; Montgomery Tippett Corporation; Moon Cutter Company, Inc.; Moore Quality Tooling, Inc.; Moore Special Tool Company, Inc.; Morris Machine Company, Inc.; Morris Precision; Morton & Company, Inc.; Motor Machine Co., Inc.; Moulding Specialists, Inc.; Mountain Machine Services; Mountain States Automation; Mt. Penn Tool & Machine Co., Inc.; Muck Engineering, Inc.; Mueller Machine & Tool Company; Muesco, Mallay, Inc.; Multi-Tool, Inc.; Mun Manufacturing Company; Munn Engineering Company, Inc.; Mushro Machine & Tool; Mutual Precision, Inc.; Mutual Tool & Die, Inc.; Myers Industries; MAC Tool & Die, Inc.;

N B Enterprises; N C; N C S, Inc.; N E T & Die Company, Inc.; N K R Precision Manufacturing Co.; N L T Enterprises, Inc.; Namco Precision, Inc.; NanBil Wire Cut Company; Nardon Manufacturing Company, Inc.; Nash Machine Company, Inc.; Nashville Machine Company, Inc.; Natco Machine & Welding Co., Inc.; National Manufacturing Co., Inc.; National Molding Corporation; Nationwide Precision Products Corp.; Native Industries, Inc.; Neal Manufacturing, Inc.; Nefor Engineering & Mfg., Inc.; Nelms-Donham Machining, Inc.; Nelson Brothers & Strom Co., Inc.; Nelson Engineering; Nelson Engineering Company, Inc.; Nelson Precision Drilling Co., Inc.; Nelson Thread Grinding; Nerjan Development Company; New Age Manufacturing Co., Inc.; New Deal Tool & Machine (Division of NDT Industries, Inc.); New England Die Company, Inc.; New England Tool Company; New River Precision Machine Co.; New Stanton Machining & Tooling Inc.; New Ulm Precision Tool; New-Co Technologies; Newbrook Machine Corporation; Newington Manufacturing, Inc.; Newman Machine Company, Inc.; Newman Machine Works; Newman Stamping & Machine, Inc.; Newport Aeronautical Sales; Newport Controls, Inc.; Newport Tool & Die, Inc.; Niagara Punch & Die Corporation; Nicolson Cutter; Nieman Machine Company; Nifty Bar, Inc.; Nijon Tool Company, Inc.; Nitschke Tool & Die; Noble Tool Corporation; Norco Tool Grinding, Inc.; Nordon Tool & Mold Company; Nores Precision, Inc.; Norfil Manufacturing; Norfolk Specialties, Inc.; Norman Noble, Inc.; Normandy Metals, Inc.; Normike Industries, Inc.; Norris Precision Manufacturing; North Central Tool and Die; North Coast Grinding, Inc.; North Coast Machining; North Coast Tool & Mold Corporation; North Easton Machine Company; North Florida Tool Engineering, Inc.; North Star Design, Inc.; Northeast Manufacturing Co., Inc.; Northeast Tool & Manufacturing Co.; Northern Machine Tool Company; Northern Manufacturing & Engineering, Inc.; Northridge Precision Machining; Northwest Machine Works, Inc.; Northwest Machine, Inc.; Northwest Precision Tool, Inc.; Northwest Swiss-Matic, Inc.; Northwest Tool & Die Company; Norvs Molds; Nova Tool & Mold, Inc.; Novi Precision Products, Inc.; Numeric Machine Products; Numeric Machining Co., Inc.; Numerical Precision, Inc.; Numerical Precision, Inc.; Numerical Productions, Inc.; Nutmeg Precision Company; NuTec Tooling Systems, Inc.; O & S Machine & Tool Co., Inc.; O-A, Inc.; O A R Tool & Die, Inc.; O E M Industries, Inc.; O J Hanratty Machine; O K Dies, Inc.; O'Keefe Ceramics; Oakley Die & Mold Company, Inc.; Obars Machine & Tool Company; Oette Tool & Die Company; Ohio Gasket & Shim Company; Ohio Machine & Mold Company; Ohio Transitional Machine & Tool, Inc.; Ohlemacher Mold & Die; Ohler Manufacturing Company, Inc.; Ohlinger Industries, Inc.; Olazaba Enterprises; Olin Tool & Machine, Inc.; Olmsted Engineering Company; Omark Industries; Omega Tool & Die, Inc.; Omega Tool, Inc.; Omni Tool, Inc.; Omnitec Precision; Omnitool, Inc.; Onondaga Machine Company, Inc.; Orange Tool Company, Inc.; Orbit Mold Corporation; Orbit Tool & Die Corporation; Osborn Fabricators, Inc.; Osborn Products, Inc.; Osley & Whitney, Inc.; Osuch Tool & Die; OTMI, Inc.; P & A Tool & Die, Inc.; P & D Machine Company; P & J Tool Company, Inc.; P & K Tool & Production Company; P & M Quality Machining Co.; P & M Screw Machine Products; P & N Machine Company, Inc.; P & P Mold & Die; P & R Industries, Inc.; P C S Company; P K Tool & Manufacturing Company; P R B Metal Products, Inc.; P R Machine Works, Inc.; P T L Manufacturing, Inc.; P. M. I. Motion Technologies; Pace Precision Products, Inc.; Pacific Machine Works; Pacific Sky Supply, Inc.; Pacific Tool & Die, Inc.; Pact Manufacturing Company; Pahl Tool Services; Pak Devices, Inc.; Pal-Vin Machine, Inc.; Palma Tool & Die Company, Inc.; Palmer Custom Machinery Corp.; Palmer Manufacturing Company; Palo Verde Machine Products; Pan-O-Gray, Inc.; Pan-Tec, Inc.; Paragon Die & Engineering Company; Paragon Machine & Tool; Paragon Machine, Inc.; Parallax, Inc.; Paramount Die Mold, Inc.; Paramount Machine & Tool Corp.; Park Hill Machine, Inc.; Parker Plastics Corporation; Parkview Metal Products; Parm Tool & Die Company; Parr-Green Mold and Machine Co.; Parris Tool & Die Company; Parrish Machine Company, Inc.; Pasco Tool & Die, Inc.; Patco Machine & Fab, Inc.; Patell Industrial Machine Co., Inc.; Path Technologies; Patterson Gear & Machine; Paumier Company, Inc.; Pe-Ce Design; Peachtree Tooling Corporation; Peerless Precision, Inc.; Peerless Tool & Die Corporation; Pegasus Company, Inc.; Pego Corporation; Peko Precision Products; Pell Engineering, Inc.; Pellegrin Machine & Tool; Penco Precision; Pendleton Tool Company, Inc.; Penn State Tool & Die; Penn United Tech, Inc.; Penn-Erie Manufacturing, Inc.; Pennco Tool & Die, Inc.; Pennoyer-Dodge Company; Pennsylvania Crusher; Pennsylvania Tool & Gages, Inc.; Pentagon Die & Manufacturing, Inc.; Peraza Tool and Mold, Inc.; Perfect Mold Company, Inc.; Perfect-A-Tec Corporation; Perfection Mold & Machine Company; Perfection Tool & Mold; Perfection Tool & Mold; Perfecto Tool & Engineering Company; Performance Plastics East; Performance Unlimited, Inc.; Perry Tool & Research Company; Pesco Company; Petersen Precision Engineering Co.; Phase, Inc.; Phelps Tool & Die Company; Phil-Coin Machine & Tool Co., Inc.; Phillips Bros. Tool & Die, Inc.; Phinney Tool & Die Company; Phoenix Grinding; Phoenix Machining Corporation; Phoenix Manufacturing, Inc.; Phoenix Tool & Gage, Inc.; Pickard Cutter Grinding, Inc.; Piece-Maker Company; Piedmont Tool & Mfg. Co., Inc.; Pier Tool & Die, Inc.; Pierce Products, Inc.; Pinehurst Tool & Die; Pinnacle Engineering Company; Pinnacle Manufacturing Co., Inc.; Pinnacle Precision, Inc.; Pioneer Broach Company; Pioneer Machine Products; Pioneer Precision Grinding, Inc.; Pioneer Tool & Die Company; Pioneer Tool & Die, Inc.; Pioneer Tool Die & Machine; Pivot Punch Corporation; Pivot Punch-Zip Industrial Products; Plainfield Tool & Engineering, Inc.; Plainville Manufacturing Co., Inc.; Plainville Products Corporation; Plant 7 Machine & Tool; Plas Tool Company; Plasma Technology Incorporated; Plasma-Tec, Inc.; Plastic & Metal Forming; PlasTech Mold Company; Plaza Tool & Die Corporation; Pleasant Precision; Plesh Enterprises, Inc.; Pleune Technology; Pohland Enterprises, Inc.; Pol-Tek Industries, Ltd.; Poly Pro, Inc.; Polyphase Machine Company, Inc.; Polytec Products Corporation; Pompano Precision Products; Poplar Machine Co., Inc.; Port City Machine & Tool Company; Porter Precision Products; Posa-Cut Corporation; Powder Metallurgy Company; Powill Manufacturing & Engineering, Inc.; Practical Machine, Inc.; Practical Mechanics Inc.; Prather Engineering, Inc.; Pre-Mec Corporation; Presc Tool Company, Inc.; Precise Engineering Company; Precise Jig Grinding, Inc.; Precise Machine & Etching, Inc.; Precise Mold & Die, Inc.; Precise Plastic Products, Inc.; Precise Products Company; Precise Products Corporation; Precise Punch Products; Precise Tool & Engineering Company; Precision Aerospace Components, Inc.; Precision Aerospace Manufacturing, Inc.; Precision Balancing & Analyzing Co.; Precision Boring Company; Precision Broach Corporation; Precision Carbide Products; Precision Deburring Enterprises, Inc.; Precision Die & Stamping; Precision Drilling & Tapping; Precision E D M; Precision Electronic Metal; Precision Engineering & Mfg. Co.;

Precision Engraving & Machine Co.; Precision Fabricating, Inc.; Precision Fluid Power, Inc.; Precision Gage & Tool Company; Precision Gage, Inc.; Precision Grinding & Manufacturing; Precision Grinding, Inc.; Precision Grinding, Inc.; Precision Honing Corporation; Precision Identity Corporation; Precision Industries, Inc.; Precision Machine & Engineering, Inc.; Precision Machine & Tool Co., Inc.; Precision Machine & Welding; Precision Machine Company; Precision Machining Company; Precision Machining Company, Inc.; Precision Masters, Inc.; Precision Measuring Corp.; Precision Metal Works; Precision Metalcraft; Precision Mold & Engineering, Inc.; Precision Mold & Pattern; Precision Mold & Tool, Inc.; Precision Mold Base Corporation; Precision Mold Welding, Inc.; Precision Molds, Inc.; Precision Products of Tennessee; Precision Products, Inc.; Precision Small Parts, Inc.; Precision Specialties; Precision Spring & Stamping Corp.; Precision Stamping & Tool, Inc.; Precision Stampings, Inc.; Precision Technology Corp.; Precision Technology, Inc.; Precision Tool & Grinding, Inc.; Precision Tool & Manufacturing; Precision Tool & Mold; Precision Tool Company; Precision Tubedraw & Machining, Inc.; Preferred Die & Mold Corporation; Preferred Machine & Tool Products; Preferred Machining Corporation; Premium Plastic Machine, Inc.; Prestige Precision Products, Inc.; PreMAT, Inc.; Prime Engineering; Primeway Tool & Engineering Company; Prince Tool & Die Laboratory, Inc.; Prototype Industries, Inc.; Pro-Mold, Inc.; Pro-Tech Metal Specialties, Inc.; Pro-Tool Engineering; Process Equipment Company; Product Engineering Company; Production Metal Cutting, Inc.; Production Products; Production Tool & Die Company, Inc.; Producto Machine Company; Professional Instruments; Progage; Progress Design & Machine, Inc.; Progressive Die & Automation, Inc.; Progressive Die Company; Progressive Tool & Die; Progressive Tool & Die; Progressive Tool Company; Proper Cutter Sales & Service;

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Proper Mold & Engineering, Inc.; Prospect Mold & Die Company; Protista Company; Proto-Design, Inc.; Proto-Stamp Tool & Die, Inc.; Protonics Engineering Corp.; Prototype & Plastic Mold Co., Inc.; Prototype Model & Mold Corporation, Inc.; ProMold, Inc.; Pruden Tool & Die Company, Inc.; Punch Press Products, Inc.; Punchcraft Company (Division of Masco Industries, Inc.); Puritan Machine Company, Inc.; Putoma Corporation; Pylon Tool Corporation; Pyper Tool & Engineering; POFCO; Q M S Machining & Tool Corporation; Quabbin Industries, Inc.; Quality Circle Corporation; Quality Die & Machine Company; Quality Die & Mold Corporation; Quality Engineering Services, Inc.; Quality Grinding & Machining, Inc.; Quality Grinding Corporation; Quality Machine Company, Inc.; Quality Manufacturing Company; Quality Manufacturing, Inc.; Quality Mold & Die, Inc.; Quality Mold & Engineering, Inc.; Quality Plus, Inc.; Quality Precision Machine Works, Inc.; Quality Stamping Co., Inc.; Quality Tool & Die; Quality Tool & Die Company; Quality Tool & Die Inc.; Quality Tool Company; Quality Tool, Inc.; Qualontime Corporation; Qualtech Tool & Machine, Inc.; Quintile Industries, Inc.; R & C Mold Company, Inc.; R & D Custom Machine & Tool, Inc.; R & D Gage, Inc.; R & D Machine Company; R & D Machine Corporation; R & D Manufacturing; R & D Tool & Engineering; R & M Manufacturing Company; R & M Mold Manufacturing Co., Inc.; R & R Machine; R & R Tool & Die & Four Slide; R & R Tool & Machine, Inc.; R and R Machine Company; R A Industries; R A M Tool Company; R A Tool Company; R B S Tools, Inc.; R B Tool & Manufacturing Company; R Davis EDM, Inc.; R E A L Precision Grinding Company; R E A Precision Machine Co., Inc.; R F Cook Manufacturing Co.; R H Edrich Precision Corporation; R H Gibson Technologies; R H Harris Company; R I Carbide Tool Company; R J S Corporation; R J S Machine Products; R J S Manufacturing Corporation; R J Stuckel Company, Inc.; R M I; R Meschkat Precision Machining; R N D Limited; R O C Carbon Company; R S I Fabtec; R S Precision Industries, Inc.; R S Tool, Inc.; R Y Tool Company, Inc.; R. D. Hopkin Machine Corporation; R. K. Precision Company; R. L. Berry, Inc./Amic Division (Division of R.L. Berry, Inc.); R. W. Smith Company; R.E.F. Machine Company, Inc.; Radford Machine Works; Ras Tech; Rafferty Machine & Tool, Inc.; Rainbow Tool & Machine Co., Inc.; Raleo Engineering Company; Raloid Corporation; Ram Metal Products, Inc.; Ramo Stockert Products, Inc.; Ramsay Welding Research Co., Inc.; Ran-Bro Tool Company; Randolph Machine Company; Ranger Tool & Die Company; Ranoda Electronics; Rapid Die & Engineering; Rapid Grinding & Machine; Rapidac Machine Corporation; Raschke Engraving, Inc.; Ratnik Industries, Inc.; Raven Machine & Tool, Inc.; Ray Lee Cams & Machining, Inc.; Ray Machine, Inc.; Raybon Manufacturing Co, Inc.; Rayco Machine Company; Rayco Manufacturing; Ready Machine Tool & Die Corp.; Realco Tool & Die, Inc.; Rearc Engineering, Inc.; Reardon Machine Co., Inc.; Reber Machine & Tool Company; Red Line Base, Inc.; Reed City Tool & Die; Reed Instrument Company; Reel Tool Company; Regal Mold & Die, Inc.; Regener & Company; Rehrig Pacific Company; Reiam Company, Inc.; Reichert Stamping Company; Reid Industries, Inc.; Reidville Tool & Manufacturing Co., Inc.; Reitz Tool & Die Company, Inc.; Reitz Tool, Inc.; Reliable E D M Company; Reliable Machine Works; Reliable Sharpening Service, Inc.; Reliable Tool & Die, Inc.; Reliance Mold & Tool, Inc.; Reliant Tool, Inc.; Remmele Engineering, Inc.; Remtex, Inc.; Rennco Industries, Inc.; Reno Machine Company, Inc.; Repairtech International, Inc.; Republic Diesel Truck; Republic Tool & Manufacturing Co.; Reserve Industries Corporation; Reuther Mold & Manufacturing Co.; Rhode Island Precision Co., Inc.; Ricci Machine Corporation; Richard Manufacturing Company, Inc.; Richard O. 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S & L Metal Products Corporation; S & S Automation; S & S Industries; S & S Precision; S & S Precision; S C Manufacturing; S G S Tool Company; S K Industries; S L P Machine, Inc.; S S Industries; S T S Mold Builders, Inc.; S-Three Engineering, Inc.; Sac Tool & Die Shop, Inc.; Sage Machine & Fabricating; Sagehill Engineering, Inc.; Saginaw-Machine Systems, Inc.; Saginaw Products Corporation; Saginaw Tool & Die, Inc.; Sahuaro Precision Grinding Service, Inc.; Salisbury Special Tool; Samson Manufacturing Company; Samuel R. Parry Machine Company; Sandberg Machine & Engineering; Sanders Tool & Mould Company; Sanders Tool Company; Sanders' Tool & Machine Company; Sandor Tool Company, Inc.; Sandr, Inc.; Santa Clara Machining Company; Sargent Specialty & Machine Company; Satellite Aerospace, Inc.; Satellite Precision Company; Satellite Tool & Machine Co., Inc.; Sattler Machine Products, Inc.; Scan O Matic, Inc.; Schafer Gear Works, Inc.; Schaffer Grinding Company, Inc.; Schickling Tool & Engineering Co.; Schill Corporation; Schmiede Machine & Tool Corporation; Schneider & Marquard, Inc.; Schober's Machine & Engineering; Schroeder Tool & Die Corporation; Schucker-Deco Machine, Inc.; Schuetz Tool & Die, Inc.; Schulze Tool Company, Inc.; Schwab & Rieber; Schwartz Industries, Inc.; Schwerdtle Stamp Company; Scorpio Tool & Die, Inc.; Scott County Machine & Tool Co., Inc.; Screw Machine Tool Company; Sears Machine Company; Sebewaing Tool & Engineering Co.; Sectional Die Company; Seel Tool & Die, Inc.; Seico Precision Die, Inc.; Select Tool & Die Corporation; Service Tool & Die Company; Service Tool & Die, Inc.; Service Tool & Mfg. Co., Inc.; Servo Gear Engineering Co., Inc.; Sharp Grinding Company, Inc.; Shaw Industries, Inc.; Shear Tool, Inc.; Sheffield Progressive, Inc.; Shelby Engineering Company, Inc.; Shell Die Mold, Inc.; Shepherd Specialty Machine & Die; Sherman Corporation;

Sherman Tool & Design; Shield Tool & Engineering Co., Inc.; Shubin Tool & Manufacturing Co., Inc.; Sibley Machine & Foundry Corp.; Sibo Tool & Die Company; Sidney Machine Service, Inc.; Sidney Tool & Die, Inc.; Sierra Mold & Engineering Company; . Sifco Custom Machining Company; Signal Machine Company; Silverbrook Manufacturing Co., Inc.; Sintermet, Inc.; Sipco, Inc.; Skeeles Engineering, Inc.; Ski-Way Machine Products Company; Skill Tool & Die Corporation; Skillcraft Machine Tool Company; Skilltronics, Inc.; Skulsky, Inc.; Skyline Manufacturing Corporation; Skylock Industries, Inc.; Skylon Mold & Machining; Skyway Manufacturing Corporation; Skyway Precision Inc.; Slankers, Inc.; Slantco Machine & Tool; Smith Machine & Tool Company; Smith Tool & Die, Inc.; Smith-West; Smithfield Industries, Inc.; Snider Mold Company, Inc.; Solar Tool & Die, Inc.; Soma Engineering & Manufacturing, Inc.; Sonic Tool; South Bend Form Tool Company; South Eastern Machining, Inc.; South Shore Metal Products; South Shore Mold & Tooling Company; South Side Machine Works, Inc.; Southampton Manufacturing, Inc.; Southeast Tool & Machine Corp.; Southeastern Technology, Inc.; Southern Machine & Tool Company; Southern Numerics, Inc.; Southside Machine Company; Southwest Mold, Inc.; Space Craft Manufacturing Co., Inc.; Spaceonics Industries; Spark Technologies, Inc.; Sparro Machine Products, Inc.; Spartan Carbide, Inc.; Spartan Manufacturing Company; Spaulding Machine Co.; Spearhead Automated Systems, Inc.; Special Machine & Engineering, Inc.; Special Parts, Inc.; Special Tool & Engineering Corp.; Special Welding Services, Inc.; Specialty Machines, Inc.; Spectra Technology, Inc.; Spen-Tech Machine Engineering Corp.; Springdale Machine & Gear Company; Springfield Tool & Die, Inc.; Squaglia Manufacturing Company; Square Deal Tool & Die, Inc.; Square Tool & Die Corporation; St. George Machine Tool; St. Louis Tool & Mold; St. Mary Manufacturing Corporation; Stahl Specialty Company; Stamford Tool & Die (Division of Cognitronics Corporation); Stampco Metal Products; Standard Die Supply, Inc.; Standard Jig Boring Service, Inc.; Standler, Incorporated; Stanek Tool Corporation; Stanley Machining & Tool Corp.; Star Gauge; Star Machine Systems; Star Machine, Inc.; Star Precision Machining, Inc.; Star S Manufacturing; Star Tool & Manufacturing, Inc.; Starlite Tool & Die, Inc.; Starn Tool & Manufacturing Company; State Cutter Grinding Service Co., Inc.; State Welding & Fabricating, Inc.; Stauble Machine & Tool Company; Stearns Tool Company; Steel Engineering Company; Steel Products Corp Of Akron, Inc.; Stefco Precision, Inc.; Stenby Tool Company; Stephenson Diversified Cutter Grinding, Inc.; Sterling Engineering Corporation; Sterling Machine Company, Inc.; Sterling Tool Company; Stettnisch Tool & Die; Stevens Manufacturing Company, Inc.; Stevenson Machine Shop; Stewart Industries, Inc.; Stewart Manufacturing Company; Stieg Grinding Corporation; Stillion Industries; Stillwater Technologies, Inc.; Stines Machine; Stinson Machine & Manufacturing Inc.; Stinson Manufacturing Company; Stolle Precision Tool Company; Stone Mountain Machine & Die, Inc.; Stonebridge Corporation; Stoney Crest Regrind Service, Inc.; Stott Tool & Machine Company; Straton Tool & Die Company; Stricker Engineering; Stuart Industries, Inc.; Studwell, Inc.; Stugart Industries, Inc.; Stuhr Manufacturing Company; Sturgis Tool & Die, Inc.; Suburban Manufacturing Company; Suburban Mold & Plastic, Inc.; Suburban Tool & Die Company; Suburban Tool & Manufacturing Co., Inc.; Sullivan Machine Products, Inc.; Summit Engineering Company, Inc.; Summitt Tool & Manufacturing; Sumner Machine & Tool Company; Sun Polishing Company; Sun Up Wireforms, Inc.; Sunbelt Machine, Inc.; Sunbelt Plastics, Inc.; Sunbelt Tool & Die; Sunport Engineering Company; Superior Die & Engineering Company (Division of Krummen Corp.); Superior Die Set Corporation; Superior Die Tool Machine Company; Superior Engineering Company, Inc.; Superior Gear Box Company; Superior Jig, Inc.; Superior Machine & Tool Inc.; Superior Machine Products; Superior Mold Company; Superior Mold, Inc.; Superior Roll Forming Company; Superior Thread Rolling Company; Superior Tool & Die Company; Superior Tool & Die Company, Inc.; Superior Tool, Inc.; Superior Tool, Inc.; Supreme Machine & Manufacturing Inc; Supreme Machine Division; Supreme Machine Products, Inc.; Supreme Tool & Die, Inc.; Surface Manufacturing; Sussex Instrument Corporation; Sutco Manufacturing Company; Swenton Tool & Die Company; Swiss EDM Wirecut, Inc.; Swiss Specialties, Inc.; Swiss Tech; Swiss Wire E D M; Swissco, Inc.; Syn-Tech Mold, Inc.; Syst-A-Matic Tool & Design; Systems Machining Company; Szpak Manufacturing, Inc.; T-K & Associates, Inc.; T C I Aluminum; T D M Corporation; T E T Manufacturing Company, Inc.; T K Industries; T M F Tool Company; T M Machine & Tool; T M Tool Company, Inc.; T R A Industries, Inc.; T-M Manufacturing Corporation; Tade Industries; Tait Design & Machine Company; Tait Grinding Service, Inc.; Talan Machine & Tool, Inc.; Talbar, Inc.; Tana Corporation; Tangent Tool & Die Company; Tangent Tool & Mfg., Inc.; Tapco; Targhee Jig Grinding Company; Taurus Machine, Inc.; Taurus Tool & Engineering, Inc.; Tausz Machine Repair; Tavolacci Manufacturing Company; Taylor Smith, Inc.; Taylor Tool & Die Company, Inc.; Taylor Tool & Machine Company; Team Machine Tool Rebuilders Corporation; Tech Machine & Tool Company; Tech Mold & Tool Company; Tech Mold, Inc.; Tech Ridge, Inc.; Tech Tool & Mold, Inc.; Tech Tool, Inc.; Tech-Etch, Inc.; Techni-Mold & Engineering, Inc.; Techni-Products, Inc.; Technics 2000 Inc.; Technitool, Inc.; Technitri Corporation; Tedco, Inc.; Teledyne Efficient Industries; Tell Tool, Inc.; Tempcraft, Inc.; Temple Screw Machine Products, Inc.; Tempress, Inc.; Tenk Machine & Tool Company; Tennessee Metal Works, Inc.; Tennessee Precision, Inc.; Terrell Sales Corporation; Terrill Motor Machine, Inc.; Teston Machine Corporation; Tetco, Inc.; Teter Tool & Die, Inc.; Tex-Tool Company; Thaler Machine Company; The Adroit Company; The Slayman Company; The Ultimate Tool & Gage Company; The Will-Burt Company; Therm, Inc.; Thiel Tool & Engineering Co., Inc.; Thiemann Engineering & Manufacturing Company; Thomas Instrument & Machining Co.; Thomas Machine Works, Inc.; Thompson Gundrilling, Inc.; Thor Tool & Die Company; Three D Manufacturing Corporation; Three-Way Pattern, Inc.; Thurm-A-Matic; Tiburzi Machine & Tool Company; Tiger Enterprises, Inc.; Tiger Industries, Inc.; Tiller Tool & Die, Inc.; Tillman Tool Company, Inc.; Time Machine & Stamping, Inc.; Timna Manufacturing Company; Tinker Machining Company, Inc.; Tipco Punch, Inc.; Tipp Machine & Tool, Inc.; Tire Mold Services, Inc.; Tisza Industries, Inc.; Titan Enterprises, Inc.; Titan Tool Company, Inc.; Titan Tool, Inc.; Todd Industries, Inc.; Toledo Machine & Die Company; Tomco Die & Kellering Company; Tomken Tool & Engineering, Inc.; Tool & Die Specialties, Inc.; Tool & Die Systems, Inc.; Tool Craft Company, Inc.;

Tool Gauge & Machine Works, Inc.; Tool Mate Corporation; Tool North, Inc.; Tool Producers, Inc.; Tool Rite, Inc.; Tool Specialties Company; Tool Specialty Company; Tool Steel Products; Tool Technology, Inc.; Tool-Rite Industries; Toolcraft of Phoenix, Inc.; Toolcraft Products, Inc.; Toolcraft, Inc.; Toolex;

Toolex Manufacturing Corporation; Toolex, Inc.; Toolmatic Company; Tools Renewal Company; Top Tool & Die, Inc.; Top Tool Company; Toresco; Tottser Tool & Die Shop; Tower Tool & Engineering, Inc.; Tower Tool & Manufacturing Company, Inc.; Tracey Gear, Inc.; Tramco Mold, Inc.; Tree City Mold & Machine Company; Treffers Precision, Inc.; Tremont Tool & Gage, Inc.; Tresco Tool, Inc.; Trew-Craft Corporation; Tri City Tool; Tri City Tool & Die Company; Tri Craft, Inc.; Tri Kris Company, Inc.; Tri-City Machine Products, Inc.; Tri-City Tool & Die, Inc.; Tri-M-Mold, Inc.; Tri-Mech Industries, Inc.; Tri-R-Tool Company; Tri-State Precision, Inc.; Tri-State Tool & Saw, Inc.; Tri-Versal Mold & Manufacturing Co.; Tri-Wire, Inc.; Triad Tool & Die Company; Triangle Tool Company; Triangle Tool Company, Inc.; Triangle Tool Corporation; Tricon Machine & Tool, Inc.; Trident Tool Company, Inc.; Trimac Manufacturing, Inc.; Trimatek; Trimetric Specialties, Inc.; Trinity Tools, Inc.; Trio Precisioneering, Inc.; Trio Tool & Die, Inc.; Triple Point Manufacturing; Triple Quality Tool & Die, Inc.; Triple Tool & Mfg. Co.; Triplex Industries; Trisan Manufacturing, Inc.; Trotwood Corporation; Trowbridge Machine; Tru Cut Die Corp.; Tru Point Corporation; Tru Tool, Inc.; Tru-Circle Corporation; Tru-Die, Inc.; True Machine Company; True Position, Inc.; True Precision, Inc.; Trueline Tool & Machine, Inc.; Trust Technologies Corp.; Tschida Machine Works; Tucker Machine Company; Tucker Technology, Inc.; Tucson Numerical Machine, Inc.; Tujays Machine Works; Tura Machine Company; Turbo Machine & Tool, Inc.; Turcotte Manufacturing Co., Inc.; Turley Industries; Turners Machine Shop; Twin City Honing Company; Twin City Manufacturing Company; Twinbrook Tool & Mold Company; Twinco Manufacturing Company, Inc.; Twoson Tool Mfg. Company, Inc.; Tymar Machining; TAPCO; U M C, Inc.; U P Machine & Engineering Company; U S Carbide Company; U S Die & Mold Company, Inc.; U. S. Axle, Inc.; Ullieco Machining, Inc.; Ultimate Precision, Inc.; Ultra Cut, Inc.; Ultra Engraving & Machining; Ultra Precision, Inc.; Ultra Precision, Inc.; Ultra Tool & Die, Inc.; Ultra Tool & Manufacturing, Inc.; Ultra-Tech, Inc.; Ultramation, Inc.; Ultron Engineering; Unimach Manufacturing; Union Machine; Unique Instruments, Inc.; Unique Machine Company; Unique Tool & Die Company, Inc.; Unique Tool & Manufacturing; United Carbide Industries, Inc.; United Centerless Grinding; United Engineering Company; United Engineers, Inc.; United Industrial Technologies; United Machine & Tool Co., Inc.; United Skilled; United Tool & Die, Inc.; United Tool & Engineering Company; United Tool & Engineering, Inc.; Unittool Punch & Die Company; Universal Brixius; Universal Machine & Tool Works, Inc; Universal Machine Products; Universal Machine Rebuilders, Inc.; Universal Precision Products Co.; Universal Tool Company; Universal Tools & Manufacturing Co.; Utility Tool & Die Works; Utility Tool & Machine Company; V & M Tool Company, Inc.; V & S Die & Mold, Inc.; V. I. C. Machine Company; Vallee Burring Company, Inc.; Valley Jig Grinding, Inc.; Valley Machine Products, Inc.; Valley Machine Works, Inc.; Valley Manufacturing & Engineering Company; Valley Precision, Inc.; Valley Precision, Inc.; Valley Tool & Die, Inc.; Vals Tool & Die Corp.; Van Engineering; Van Reenen Tool & Die; Van-Am Tool & Engineering, Inc.; Van-Kno Tool & Manufacturing, Inc.; Vanderveer Industrial Plastics, Inc.; Vanguard Technology Corporation; Vanpro, Inc.; Vantage Mold & Tool Company; Variety Stamping Corporation; Variety Tool & Die, Inc.; Varispace Division; Vaughn Manufacturing Company, Inc.; Veit & Young, Inc.; Veldon Manufacturing, Inc.; Venango Machine Products, Inc.; Ventura Industries, Inc.; Venture Precision Machining Co.; Versa-Mil, Inc.; Versa-Tool Manufacturing, Inc.; Versatile Machine Company, Inc; Versatile Tool & Die; Vescio Threading Company; Vi-Tec Manufacturing; Victor Plastics, Inc.; Victory Machine Tools; Viking Tool & Engineering; Viking Tool & Gage, Inc.; Village Tool & Machine Company; Vim Systems, Inc.; Vimco; Visger Precision, Inc.; Vitco Nuclear Products, Inc.; Vitron Manufacturing, Inc.; Vobeda Machine & Tool Company; Vogform Tool & Die Company; Volkert Precision Technologies, Inc.; Volumatic, Inc.; Von Donen Precision, Inc.; Voshage Machine, Inc.; Voss Manufacturing, Inc.; Vulcan Engineering & Manufacturing.; Vulcan Forge & Machine Company; Vulcan Tool Corporation; Vulcan Tool of Iowa; W & H Stampings, Inc.; W B Tool & Die; W C Kirby & Son, Inc.; W D & J Machine & Engineering; W Derosier Mold & Machine; W G Strohwig Tool & Die, Inc.; W H jones & Son, Inc.; W J Snyder Gear Corporation, Inc.; W S Demoss & Son, Inc.; W T X Industries, Inc.; W Westhall & Son, Inc.; W. Dempt Company; Wacker Development, Inc.; Waggoner Brighton, Inc.; Wagner Engineering, Inc.; Walbrun Tool, Inc.; Walco Tool & Engineering Corp.; Walerko Tool & Engineering Corp.; Walker Tool & Die, Inc.; Walker Tool & Machine Company; Walteo Engineering, Inc.; Walter Tool & Mfg. Inc.; Waltz Brothers, Inc.; Walz Deburring Specialists, Inc.; Ward Manufacturing Company, Inc.; Washington Scientific Industries, Inc.; Wayne Smith Company; Weatherby Tool & Die, Inc.; Weatherford Tool & Die; Weaver Diversified Mfg., Inc.; Weaver Machine & Tool Company, Inc.; Webb Design Service; Webster Tool & Die, Inc.; Weco Metal Products; Wejco Instruments; Weld Lab; Weldex Sales, Inc.; Weldments of Florida; Weldun International; Well Built Manufacturing Company; Wells Machine Company, Inc.; Wemco Precision Tool; Werkema Machine Company, Inc.; Wes-Mar, Inc.; Wesco Machine, Inc.; Wess Plastic, Inc.; West Coast Industries, Inc.; West Engineering Company, Inc.; West Georgia Tool & Die, Inc.; West Hartford Tool & Die Company; West Haven Buckle Company; West Milton Precision Machine; West Point Foundry and Machine; West Tool & Manufacturing, Inc.; West Warwick Machine Company, Inc.; Westbrook Industries, Inc.; Westbrook Manufacturing, Inc.; Westco Manufacturing Co., Inc.; Wester Tool & Machine Company; Western Machine & Manufacturing; Western Machining, Inc.; Westfield Gage Company, Inc.; Westfield Tool & Die, Inc.; Westhoff Tool & Die Company; Westlake Tool & Die Manufacturing; Westwood Precision, Inc.; Wesval, Inc.; Wetmore Cutting Tools; Whip's Tool & Cutter Grinding; White Machine; White Machine, Inc.; Whitehead Tool & Die, Inc.; Wichita Tool Company; Wiegel Tool Works, Inc.; Wikstrom Machines, Inc.; Wilco Die Tool Machine Company; Wilco Industries, Inc.; Wilderness Mold, Inc.; Wilhite Industries, Inc.; Will-Mor Engineering Company, Inc.; Willard Machine Corporation; William Kanes Manufacturing Corp.; William Sopko & Sons Company, Inc.; Williams Machine Company, Inc.; Wilsey Tool Company, Inc.; Wilson Products, Inc.; Windsor Tool & Die, Inc.; Wingard & Company, Inc.; Wire Cut Company, Inc.; Wire Tech; Wire Tech E D M, Inc.; Wirecut E D M, Inc.; Wirecut Technologies; Wisconsin Drill Head Company; Wisconsin Engraving Company; Wisconsin Machine Shop, Inc.; Wisota Enterprises; Witte Machine Products, Inc.; Woldring & Associates; Wolfe & Swickard Machine Co., Inc.; Wolverine Bronze Company; Wolverine Tool Company; Woodhaven Telesis Corporation; Woodruff Corporation; Woody's Precision Grinding; Wright & Company; Wright Industries, Inc.; Wright-K Technology, Inc.; Wythe Precision Machine Co., Inc.; X L Tool & Machine Corporation; Xolox Corporation; Y Tec Manufacturing, Inc.; Yeoman Engineering, Inc.; York Machine Tool & Die Company; Yorktown Tool & Die Corporation; Youngers and Sons Manufacturing; Youngwood Electric Metals West; Z-R Laboratory; Zarlenga Industries, Inc.; Zims Manufacturing Company; Zip Tool & Die Company, Inc.; Zircon Precision Products, Inc.; Zovamax, Inc.; Zuelzke Tool & Engineering.

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Part VII

Department of Housing and Urban Development

Office of the Secretary

24 CFR Parts 200 and 206
Home Equity Conversion Mortgage Insurance Demonstration; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 203 and 206

[Docket No. R-88-1412; FR-2401]

Home Equity Conversion Mortgage Insurance Demonstration

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would add a new Part 206 to Title 24, Chapter II of the Code of Federal Regulations. The proposed rule implements section 417 of the Housing and Community Development Act of 1987 (Pub. L. 100-242) which added a new section 255 to the National Housing Act (Act). Section 255 authorizes the Secretary to carry out a demonstration program for insuring mortgages on the homes of elderly homeowners, enabling the homeowners to convert the equity in their homes into cash. A total of 2,500 mortgages may be insured under this demonstration up to September 30, 1991.

DATE: Comment due date: December 27, 1988.

ADDRESS: Interested persons are invited to submit comments regarding this proposed rule to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Comments should refer to the above docket number and date of publication. A copy of each comment will be available for public inspection during regular business hours at the above address.

The information collection requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. The public is invited to send comments on these requirements to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Department of Housing and Urban Development.

FOR FURTHER INFORMATION CONTACT: Judity V. May, Office of Economic Affairs, (202) 755-5420, Room 8218, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the Federal Register. Public reporting burden for the collection of information requirements contained in this rule are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, Other Matters. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., Room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

1. Purpose

Section 255 of the Act authorizes the Secretary to insure mortgages to assist elderly homeowners in converting the equity in their homes into cash. The demonstration is to be designed to meet the special needs of elderly homeowners by reducing the economic hardship of meeting health, housing and subsistence costs at a time of reduced income, through the insurance of home equity conversion mortgages to permit the conversion of a portion of accumulated equity into cash. The demonstration should also encourage and increase the involvement of mortgagees and other participants in the mortgage markets in the making and servicing of home equity conversion mortgages for elderly homeowners. The demonstration should produce data on the types of mortgages which best serve the interests of elderly homeowners, mortgagees and the Federal Government. With this data, determinations can be made on the appropriate scope and nature of HUD insurance in facilitating the use of equity conversion mortgages by the elderly.

The demonstration has been designed for homeowners 62 years of age or older who own their homes with little or no outstanding mortgage debt. It is anticipated that the homeowners who will participate in this demonstration will have substantial equity in their homes, but may have few other sources of income.

2. General Overview

Unlike traditional residential mortgages, loan proceeds in a home equity conversion mortgage are not paid to the mortgagor in one lump sum but are paid over an extended period, and the mortgagor repays the loan in one payment rather than through periodic payments. The home equity conversion mortgages to be insured under this demonstration also differ from traditional mortgages and some other types of home equity conversion mortgages in that they have neither a fixed maturity date nor a fixed mortgage amount. The Department proposes to insure several basic kinds of mortgages: (1) Tenure, (2) term, and (3) line of credit. These mortgages may bear interest at either a fixed or an adjustable rate. The Department also proposes to insure fixed rate tenure mortgages that provide for shared appreciation between the mortgagor and the mortgagee.

Tenure mortgages (§§ 206.19(a) and 206.21(a)) provide for monthly payments from the mortgagee to the mortgagor for as long as either the mortgagor occupies the home as a principal residence, or another event occurs that causes the mortgage to come due. Term mortgages (§§ 206.19(b) and 206.21(b)) provide for monthly payments from the mortgagee to the mortgagor for fixed periods agreed upon between the mortgagee and the mortgagor. When the period expires, the monthly payments cease, but the mortgage does not become due and payable until the mortgagor no longer occupies the home as a principal residence, or another event occurs that causes the mortgage to come due. Under a line of credit mortgage (§ 206.23), the mortgagor informs the mortgagee when a disbursement is desired, at times and in amounts of the mortgagor's choosing. When the line of credit is exhausted, the mortgage does not become due and payable until the mortgagor no longer occupies the home as a principal residence, or another event occurs that causes the mortgage to come due.

Section 255(j) of the Act provides that the Secretary may not insure a mortgage unless the mortgage documents contain provisions to prevent the elderly homeowner from being displaced from the home. The mortgagor could not be forced to sell the home to pay the mortgage as long as the mortgagor continued to occupy the home as a principal residence, subject to narrow exceptions requiring HUD consent, even though the mortgage principal balance, including accrued interest and mortgage insurance premiums (MIP), grows to

exceed the value of the property. The proposed rule at § 206.27(c) covers this point.

When the mortgage does come due, the mortgagee's recovery will be limited to the value of the home, as required by section 255(d)(7) of the Act. There will be no deficiency judgment taken against the mortgagor or the estate. The proposed rule at § 206.27(c) also covers this point.

If the mortgagee is unable to satisfy the mortgage debt from the net proceeds from the sale of the property, the mortgagee files a claim for the difference. The maximum claim amount which the mortgagee may obtain is limited by section 255(g) of the Act. The limit is the maximum dollar amount for a mortgage on a one-family residence that the Secretary is authorized to insure in a geographical area under section 203(b)(2) of the Act. At the present time, this amount ranges between $67,500 and $101,250 (and can be increased by 50% under section 214 of the Act for properties located in Guam, Hawaii and Alaska). This limit on claims is defined in § 206.3 as the "maximum FHA claim amount."

3. Mortgage Insurance Premium

The mortgagor will pay a mortgage insurance premium (MIP) to reduce the risk of loss in the event that the mortgage principal balance, including accrued interest and MIP, exceeds the value of the property at the time that the mortgage is due and payable. The mortgagee will collect the MIP from the mortgagor by adding it to the mortgage principal. The same MIP will be charged for all of the types of mortgages included in this demonstration. It will consist of an initial premium of two percent of the lesser of the appraised value of the property or the maximum FHA claim amount and an annual premium of one-half of one percent on the outstanding mortgage principal balance, including accrued interest and previous MIP. See § 206.105.

HUD has fixed the MIP so that, for every mortgage, the present value of the expected MIP equals the present value of the expected losses taking into account the life expectancy of the borrower and the possibilities for property appreciation or depreciation. By fixing the MIP, HUD has fixed the amount of risk that it estimates will be borne by HUD and private lenders. A technical explanation of the MIP and the model used to determine payments to mortgagors is provided in a technical explanation later in this preamble.

The MIP is estimated to cover all losses, whether these losses are borne by HUD or by private lenders. Consequently, at the time that a mortgage is closed, a mortgagee will have the opportunity to choose one of two options: (1) The assignment option, or (2) the coinsurance option. See § 206.107. Under the assignment option, all of the MIP collected by the mortgagee from the mortgagor is paid to HUD, and the mortgagee has the option of assigning a mortgage to HUD at the time that the mortgage principal balance, including accrued interest and MIP, equals the maximum FHA claim amount. The Act authorizes the assignment option, which ensures that mortgagees do not have to hold mortgages indefinitely without knowing the maximum term and amount and do not bear any risk of a loss in excess of the FHA claim payment. The coinsurance option provides an incentive to a mortgagee to forego assignment and bear the risk of a loss in excess of the FHA claim payment. Under the coinsurance option, the mortgagee foregoes the right to assign a mortgage to HUD, and it retains a portion of the periodic MIP to compensate for the share of risk borne. HUD will pay the mortgagee the difference between the mortgage principal amount, including accrued interest, MIP and certain adjustments, and the sales proceeds at the time that the mortgage is due and payable up to the maximum FHA claim amount. A mortgagee who elected the assignment option but decided not to exercise it could similarly file a claim at the time that a mortgage is due and payable. Mortgagees who forego assignment and mortgagees who elect the coinsurance option will bear the portion of the losses that exceed the maximum FHA claim amount.

4. Payments to Mortgagors

Payments to mortgagors will be determined using factors or a computer model provided by the Secretary. See § 206.28. Generally, monthly payments under tenure mortgages will be lower than those under term mortgages, and the aggregate monthly payments available under a term mortgage are comparable to the aggregate amount of payments available under a line of credit mortgage. Monthly payments under a shared appreciation tenure mortgage are expected to be higher than under a tenure mortgage without shared appreciation. After consultation with a housing counselor and a mortgagee, elderly homeowners can select the mortgage best suited to their needs.

Payments to mortgagors who choose a tenure mortgage will be based upon the age of the youngest mortgagor, the expected average mortgage interest rate, and the lesser of the appraised value of the property or the maximum FHA claim amount. The expected average mortgage interest rate is the fixed rate for a fixed rate mortgage and is the 15-year fixed rate for adjustable rate mortgages. The 15-year fixed rate is used because it is the market's best estimate of interest rates for a mortgage with this term, which is comparable to the likely term for a typical mortgage under this program. The expected average mortgage interest rate is used only for determining payments for tenure mortgages or the principal limit for term and line of credit mortgages. Actual interest accrues on the mortgage principal balance at the fixed or adjustable rate agreed upon between the mortgagee and mortgagor.

A principal limit is used to determine payments to mortgagors who choose term or line of credit mortgages. It is based on the age of the youngest mortgagor, the expected average mortgage interest rate, and the lesser of the appraised value of the property or the maximum FHA claim amount. Theoretically, the principal limit at origination is the maximum amount that a mortgagor could draw upfront under a line of credit if the mortgagor were to make no other draws, allowing for subsequent accrual of interest and MIP and the constraint that the present value of the expected mortgage insurance premium must equal the present value of the expected losses. Practically, the principal limit is the future value used by the mortgagor and mortgagee in selecting a fixed term for a term mortgage, and, when reduced by the outstanding mortgage principal balance, is the limit on the remaining draws that can be made under a line of credit mortgage.

5. Shared Appreciation Tenure Mortgages

To increase the payments available to mortgagors who choose a tenure mortgage, HUD will coinsure fixed rate shared appreciation tenure mortgages. See §§ 206.19(c) and 206.107(b). Mortgagees who offer shared appreciation tenure mortgages must also offer both fixed rate and adjustable rate tenure mortgages without shared appreciation. A mortgagee will be required to disclose to a mortgagor the mortgage interest rate and the monthly payments available to the mortgagor under all three options.

Monthly payments to the mortgagor under a tenure mortgage with shared appreciation will be determined in the same manner as payments under a tenure mortgage without shared

appreciation. As described above, monthly payments will be based on the age of the youngest mortgagor, the lesser of the appraised value of the property or the maximum FHA claim amount, and the mortgage interest rate. By offering a lower mortgage interest rate for tenure mortgages with shared appreciation, the mortgagee will be able to offer the mortgagor higher monthly payments in return for a share of the net appreciated value of the property at the time that the mortgage is due and payable, subject to an effective interest rate cap.

The percentage of net appreciated value to be paid to the mortgagee, known as the appreciation margin, cannot exceed 25 percent. If the mortgage principal balance at the time of sale is less than the appraised value of the property at the time of origination, the mortgagee's share of net appreciated value is calculated by subtracting the appraised value at origination from the adjusted sales proceeds (i.e., sales proceeds less sales costs and capital improvements costs incurred by the mortgagor, but excluding liens other than the insured mortgage) and multiplying by the appreciation margin. If the mortgage principal balance is greater than the appraised value at origination but less than the adjusted sales proceeds, the mortgagee's share of net appreciated value is calculated by subtracting the mortgage principal balance from the adjusted sales proceeds and multiplying by the appreciation margin. If the mortgage principal balance is greater than the adjusted sales proceeds, net appreciated value is zero.

The limits on the mortgagee's share of net appreciated value and the effective interest rate combine so that the mortgagee will receive a full 25 percent of appreciation for properties that appreciate at an annual rate of approximately three percent and will receive nearly the same dollar amount for properties that appreciate at a faster rate, but the mortgagee's risk of loss will decline as the rate of appreciation increases. The cap on the effective interest rate prevents windfall gains to mortgagees from rapid appreciation.

Shared appreciation tenure mortgages can only be insured under the coinsurance option. Mortgagees will receive a coinsurance premium and protection from losses up to the maximum FHA claim. Mortgagees may not file claims for loss of anticipated shared appreciation.

Effective interest rate means the mortgagee's share of net appreciated value plus interest accrued within the last 12 months of the mortgage divided by the sum of the payments made within those 12 months and the mortgage principal balance at the beginning of the 12-month period. The effective interest rate cannot exceed 20 percent.

6. Other Mortgage Origination Items

A. Issuing Reservations of Insurance Authority

A mortgagee must be a HUD approved mortgagee in order to participate in this program. HUD proposes to issue reservations of insurance authority to mortgagees who wish to originate mortgages under this demonstration. See § 206.11. A mortgagee may apply for a minimum of ten and a maximum of fifty reservations at one time. A mortgagee may receive fewer reservations than requested, at HUD's discretion. If the reservations are not used within six months, they expire and can be reissued to other applicant mortgagees. Reservations may be extended for an additional three month period of time if the mortgagee has an application pending and requests the extension. A mortgagee may apply for additional reservations after an issued reservation is used or expires. A mortgagee which intends to only purchase and hold mortgages insured under this part does not need to apply for reservations of insurance authority, but can participate as a holding mortgagee if it meets the existing HUD requirements as a HUD approved mortgagee.

HUD proposes to allow all types of HUD approved mortgagees to participate in the demonstration. Loan correspondents which do not hold insured mortgages will have to demonstrate, as part of their application for reservations of insurance authority, that they will be able to sell each mortgage that they originate to their sponsors. See § 206.11(e).

During the first six months of the demonstration, reservations will be allocated among the ten HUD Regions in proportion to each region's share of the Nation's elderly homeowners. After this six-month period, reservations will be available on a first come, first served basis. A mortgagee may receive fewer reservations than requested, at HUD's discretion. If the reservations are not used within six months, they expire and will be reallocated to other applicants.

HUD will publish a notice prior to publication of a final rule for this demonstration informing mortgagees how, when, and where to apply for reservations of insurance contract authority. The reservations will be available once the final rule is published. These early applications for reservations will assist HUD in establishing priorities among geographical areas for the training of housing counselors.

B. Counseling

Section 255(d)(2)(B) of the Act requires mortgagors to receive "adequate counseling by a third party (other than the lender)" as detailed in section 255(f). Section 206.41 of the proposed regulations explains the statutory requirements and lists items to be included in counseling.

HUD currently certifies housing counseling organizations to provide comprehensive counseling services, with an emphasis upon mortgage default and rent delinquency counseling. Currently, approximately 475 public and nonprofit entities are certified. These organizations are also authorized to provide home equity conversion counseling, but very little home equity counseling has been done to date.

HUD proposes to use the HUD housing counseling network as the basis for the counseling services which are required to be provided under this demonstration. It will also certify additonal organizations that specialize in home equity conversion mortgage counseling. One or two staffers from each new and existing counseling organization will receive training in home equity conversion counseling. Priority will be assigned to training counselors in those areas where mortagees intending to originate mortgages under this demonstration are located. As noted above, applications for reservations of insurance contract authority will be used in setting training priorities.

HUD proposes to work with Administration on Aging (AoA), a part of the Department of Health and Human Services, in involving State units on aging in identifying existing home equity conversion counseling organizations for certification by HUD, and in identifying State social services and alternative home equity conversion mechanisms which may obviate a mortgagor's need for an FHA-insured home equity conversion mortgage. Existing and new housing counseling organizations will be instructed to develop a working relationship with Area Agencies on Aging for assistance in identifying services for the elderly.

C. Mortgage Instruments

HUD has proposed a new approach to mortgage instruments for its single family mortgage insurance programs under which HUD would cease its practice of developing approved mortgage forms. 53 FR 25434 (July 6, 1988), requiring instead that mortgagees incorporate HUD-drafted uniform covenants into forms developed by mortgagees. HUD proposes to adopt this approach for this demonstration. A special set of uniform covenants will be prescribed. The Department also proposes to require a Loan Agreement which will contain details about disbursement of loan proceeds. The Department requests information regarding any State laws that impose requirements on note and mortgage documentation for home equity conversion mortgages, shared appreciation mortgages, and home equity line of credit mortgages which go beyond the requirements applicable to traditional residential notes and mortgages.

D. Building Standards, Repair, Lead-Based Paint Poisoning Prevention

In the Department's single family mortgage insurance programs, the property to be mortgaged is appraised to ensure that it will serve as adequate security for the mortgage. This aspect of mortgage insurece underwriting is especially important under the demonstration, as the principal and interest owed under the mortgage will increase, not decrease. Thus, it is imperative that eligible properties meet the property standards of the Secretary, see § 206.47. The Department proposes that mortgagees use existing HUD handbooks pertaining to building standards (HUD Handbook 4905.1) and appraisals (HUD Handbook 4154.1 and 4150.1). Properties that do not meet the property standards must be repaired in order to be eligible under this demonstration. The mortgage loan may be closed prior to the initiation of the repairs if the mortgagor and mortgagee enter into a repair loan agreement ensuring that repair funds included in the initial mortgage payment are properly used. The mortgagee will be responsible for supervising the repair work in order to ensure that the work is properly completed.

The Department recently published a final rule at 53 FR 20790 (June 6, 1988) implementing the amendments to the Lead-Based Paint Poisoning Prevention Act (LPPPA) which were contained in section 566 of the Housing and Community Development Act of 1987 (1987 Act). As this final rule is written, a property constructed prior to 1987 would have to meet LPPPA requirements prior to the endorsement of a mortgage for insurance. The provisions of the LPPPA rule, which is aimed at preventing lead poisoning in children, would prevent an elderly person for whom this demonstration is designed, but who does not have the funds available to abate the defective paint conditions, from obtaining an insured home equity conversion mortgage.

Section 566(e) of the 1987 Act contains exceptions to the amendments to the LPPPA. One of the exceptions provides that section 566 is not to be applicable to "housing for the elderly or handicapped, except for any dwelling in such housing in which any child who is less than seven years of age resides or is expected to reside." Mortgagors under the home equity conversion mortgage insurance demonstration are required by section 255 to be 62 years of age or older, and thus, this exception in the amendments to the LPPPA should usually be applicable. However, the Department recognizes that exceptions may occur, for example, where grandchildren reside with grandparents

In order to avoid the application of the LPPPA regulations to properties which are occupied only by elderly persons, HUD proposes at § 206.45(d) to exempt from the LPPPA regulations cases where the mortgagor certifies that no child who is less than seven years of age resides or is expected to reside in the dwelling. Thus, even if the property has a defective paint surface, treatment under the LPPPA regulations would not be required as the exception in section 566(e) of the LPPPA would apply. However, in the absence of a certification, treatment of a defective paint surface would be required for a pre-1978 property. HUD proposes to amend § 200.810 of the LPPPA regulations to provide that the abatement could be performed after the mortgage is endorsed for insurance. The repairs would be made in accordance with the proposed repair work provisions contained in § 206.47.

E. Loan Origination Fee

In § 206.31(a), the Department proposes to allow the mortgagee to charge a loan origination fee, but the Department would reserve the authority to establish limitations on the amount of such charge which could be financed as part of the mortgage. This approach to loan origination was proposed for most current single family programs at 53 FR 15406 (April 29, 1988). The preamble to that rule indicated that the Department expected to limit the amount of the charge which could be financed to 1% of the original principal balance, or 2½% of the portion of a mortgage attributable to repair or rehabilitation plus 1% on the rest of the original balance. HUD would consider establishing similar limits on the amount of the fee which could be financed for this program; although the 1% would be based on the lesser of the appraised value of the property or the maximum FHA claim amount.

Because of the nature of the mortgage, it is proposed that discount points may not be charged. Discount points are charged to adjust the coupon rate on a lump sum, fixed term payment to the current market rate of interest. They are calculated as a percentage of the lump sum payment to the mortgagor. Under a home equity conversion mortgage, there is no comparable lump sum payment, and, in fact, neither the mortgage principal amount nor the term of the mortgage is known in advance. Consequently, there is no basis for calculating an upfront lump sum adjustment to the mortgage interest rate. Mortgagees can accomplish the objective of discount points by setting the mortgage interest rate as close in time to the loan closing as is consistent with the requirements of disclosure.

F. Direct Endorsement

Because most mortgagees are unfamiliar with home equity conversion mortgages, HUD does not intend to permit the use of Direct Endorsement under this demonstration.

G. ARMs Disclosure

HUD proposes to accept compliance with the recently published disclosure requirements of the Federal Reserve Board for adjustable rate mortgages as a substitute for imposing its own disclosure requirements in the case of term and tenure mortgages. We are proposing this approach on the assumption that the Board will regard term and tenure mortgages as closed end credit. If the Board does not adopt this treatment, HUD will prescribe disclosure requirements similar to those appearing at 24 CFR 203.49(f). HUD may also adopt the Federal Reserve Board requirements for line of credit mortgages if the Board issues revised requirements for open end credit.

7. Mortgage Insurance Contract

Section 255(g) of the Act places a cap on the amount of the benefits of insurance. Under the statute, a claim for the insurance benefits may not exceed the maximum dollar amount established under section 203(b)(2) of the Act for a one-family residence. However, the statute is nearly silent as to the manner in which insurance claims are to be paid. Some properties securing mortgages insured under this demonstration may have an appraised value at the time of loan origination of less than the section 203(b)(2) amount. In such cases, HUD does not propose to pay a claim in excess of the appraised

value of the property at the time of loan origination. The proposed rule provides that the Department will pay a claim in an amount up to the lesser of the appraised value of the property or the maximum FHA claim amount at the time the mortgage loan was originated. See § 206.125(b).

HUD proposes a claims procedure whereby the mortgagee may file a claim under five different sets of circumstances, see § 206.123(a). When the mortgagor decides to sell the property or no longer occupies the property as a principal residence, the property is sold for the fair market value and the mortgagee indebtedness is paid from the proceeds of the sale, with any remainder being distributed to the mortgagor or his or her estate. If the fair market value of the property exceeds the indebtedness, the mortgagee would not file a claim and would notify HUD to cancel the mortgage insurance. See § 206.133. The mortgagor of the estate may be able to sell the property only for an amount which will not pay the outstanding indebtedness in full. In such cases, HUD proposes to permit the mortgagee to release the mortgage of record in order to facilitate the sale if an appraisal confirms that a higher sales price is not feasible. The insured mortgage could only be released where there are no junior liens outstanding on the property. The mortgagee will receive the proceeds from the sale, and will file a claim for the difference between the indebtedness and the sale proceeds, up to the maximum claim amount. See § 206.125(c).

If the mortgage becomes due and payable and is not paid, the mortgagee may initiate a foreclosure action. The mortgagee may delay foreclosure up to three months, or longer with HUD consent, without affecting its rights under the insurance contract.

Once the mortgagor receives notice that the mortgage is due and payable, the property is appraised to determine its value. The appraisal is necessary in order to determine the minimum amount the mortgagor or the estate can sell the property for, or the amount the mortgagee must bid at the foreclosure sale, the mortgagor or the estate may give the mortgagee a deed-in-lieu of foreclosure in consideration for the cancellation of the mortgage debt.

If the mortgage is foreclosed and the mortgagee is the successful bidder, or if the mortgagee acquires title via a deed-in-lieu of foreclosure, the mortgagee does *not* convey title to HUD for the payment of the insurance benefits. Instead, the mortgagee sells the property (see § 206.125(g)) and files its claim for the differences, if any, between the indebtedness and the proceeds from the sale. See § 206.129(d). If a party other than the mortgagee acquires title, the mortgagee applies the proceeds from the foreclosure sale to the indebtedness and files a claim for the remainder. See § 206.129(d).

In cases where the mortgagee fails to make the required payments under the mortgage, which HUD expects will be rare, the mortgagor would receive the payments from HUD (see § 206.121), and HUD would demand reimbursement from the mortgagee. If reimbursement is not made, the mortgagee could receive insurance benefits equal to the payments made to the mortgagor or on the mortgagor's behalf in exchange for assignment of the mortgage. The interest which had accrued under the mortgage would not be inclined in the claim for the insurance benefits.

5. Miscellaneous Items

A. Limitation on "value"

Section 255(d)(3) of the Act requires an insured mortgage to be secured by a dwelling with a "value not to exceed the maximum dollar amount established by the Secretary under section 203(b)(2) for a one-family residence. Section 203(b)(2) limits are normally applied to the mortgage principal, not the value of the dwelling. Although HUD could implement this provision by excluding homes with values of over $67,500 ($101,250 in the highest cost areas), this result would not match program objectives, which are to aid elderly homeowners who are "house rich, but cash poor."

HUD proposes to limit the benefits available from an insured mortgage by using the lesser of the appraised value of the property or the maximum FHA claim amount in computing monthly payments for tenure mortgages and the principal limit for term and line of credit mortgages. This approach would permit a borrower with a house worth more than the maximum FHA claim amount to participate in this demonstration, but would limit available payment amounts. Without being denied the benefits of this program, the borrower would be encouraged to seek out a conventional home equity conversion mortgage with higher payment amounts.

Because this approach is not supported by the wording of section 255(d)(3) considered in isolation (although it leads to a result compatible with section 255 considered as a whole), HUD consulted informally with Congressional and interest group representatives involved in development of the legislation and received indications that section 255(d)(3) was not intended to require complete exclusion of all homes valued over the section 203(b)(2) limits. HUD therefore has supported a technical amendment to section 255(d)(3) which deletes the reference to "value." This proposed rule is written on the assumption that the technical amendment will become law before a final rule takes effect.

Ancillary Contracts

Section 255(i)(1)(A) of the Act requires payment from HUD to the mortgagor under "ancillary contracts" when the party responsible for payment has defaulted. Section 255(i)(1)(B) makes a general reference to recovery by HUD from "any source." HUD is uncertain what these "ancillary contracts" from "any source" might be for, or with whom the mortgagor might contract for payments. The statute does not contain a definition, and the legislative history is silent on this point. For this initial demonstration program, due to its small size, HUD has chosen not to implement the portion of section 255 pertaining to ancillary contracts.

C. Handbooks, Mortgagee Letters, Notices

HUD will expect mortgagees to follow administrative policies generally applicable to its single family mortgage insurance programs as set forth in handbooks, mortgagee letters and notices, except for policies clearly inapplicable to home equity conversion mortgages or as otherwise advised by HUD.

D. Title Insurance

This demonstration will differ from other HUD single family programs in that title evidence will be required to be submitted with the application for mortgage insurance (§ 206.45(a)). Title evidence in the form of title insurance must also show the insured mortgage and the Secretary's mortgage (§ 206.27(c)) to be first and second liens, respectively. Because the mortgage principal amount continues to increase, unlike a regular mortgage, it is imperative that there be certainty if the insured mortgage becomes due and payable that the insured mortgage is a first lien.

Because home equity conversion mortgages differ from other mortgages, the Department specifically requests comment on whether mortgagee's title insurance will cover home equity conversion mortgages under this demonstration, and if so, what the maximum amount of insurance, if any, will be.

6. Technical Explanation of the Payment Model

A. Overview

FHA insurance on any of the three types of home equity conversion mortgages under this demonstration (tenure, term, or line of credit) provides protection to the mortgagee from collateral loss. Collateral loss is the amount by which the outstanding loan balance on the mortgage, including principal, accrued interest, and mortgage insurance premimum, may exceed the net value of the collateral at the time the mortgage becomes due and payable. Unlike an traditional mortgage for which collateral risk is greatest in the early years due to a declining loan balance over time, the home equity conversion mortgage has negligible collateral risk at the outset when the loan balance is small. Instead the collateral risk of a home equity conversion mortgage is greatest in the out years because the loan balance continues to grow as long as the mortgagor occupies the property. Collateral risk is reduced somewhat by the expectation of property appreciation over the years. The full appreciated value of the property (less selling expenses) would be available to satisfy the debt when the loan becomes due and payable. However, appreciation will not eliminate the risk of loss, because (1) future appreciation rates are uncertain, and (2) appreciation can be less than the rate of accrual of the loan balance. Should the mortgagor occupy the property for many years beyond his or her normal life expectancy at loan origination, the possibility of collateral loss becomes quite high on that loan. But as the likelihood of a mortgagor remaining in occupancy declines steadily with advancing age, the exposure to the high collateral risk declines as well. The payment model for FHA-insured home equity conversion mortgages provides a technique for analyzing this risk exposure, taking into account uncertain future rates of property appreciation and declining loan survivorship probabilities.

The FHA home equity conversion mortgage payment model applies a fundamental relationship between the mortgage insurance premium (MIP) collected and the expectation of future collateral losses to determine the maximum monthly payment amount that can be insured under a tenure mortgage. The same fundamental relationship is used to determine the maximum principal limit that can be insured under term and line of credit mortgages. The fundamental relationship requires that at the maximum monthly payment or maximum principal limit, the present discounted value of the expected MIP be equal to the present discounted value of the expected collateral losses. The expected MIP in this case refers to the total MIP paid by the mortgagor. The expected losses refer to total losses and not to claims which are capped in accordance with the proposed rule. The discussion of coinsurance below will address the coinsurance premium and the losses in excess of the maximum FHA claim amount.

B. Expected MIP

The scheduled total MIP (HUD's portion plus any coinsurance retained by the mortgagee) under the demonstration is two points up front on the lesser of the appraised value of the property or the maximum FHA claim amount plus 50 basis points annually on the outstanding loan balance. The up front portion is paid at loan closing and is certain to be collected. The 50 basis point annual premium is paid in the future and will be collected as scheduled only if the mortgage has not yet been terminated. Let ${}_1p_{x+t}$ be the probability that a mortgage originated by a borrower with initial age x is still in force t years from origination. Then the expected premium in year t is given by

$$E[MIP_t] = {}_1p_{x+t} * MIP_t,$$

where

MIP_t is the scheduled MIP in year t, and E[.] is the expected value operator.

Note that ${}_1p_x = 1$ because all loans are in force at origination, and ${}_1p_{100} = 0$ by assumption. (The latter assumes that all loans will be terminated by the time the borrower attains age 100.) The values ${}_1p_{x+t}$ are probabilities between 0 and 1. They resemble an actuarial life table for borrowers between the ages of x and 100. The probabilities are in fact smaller than actuarial survival probabilities to account for loan terminations due to move outs or refinancing rather than death of the mortgagor. The values actually used in the model are based upon the 1979–81 U.S. female mortality tables published by the Department of Health and Human Services, adjusted for move outs, and are interpolated to estimate monthly probabilities.

C. Expected Losses

The model estimates expected losses at each time t in the future as a function of the scheduled loan balance at time t and the conditional expected value of the collateral at time t, given that the value of the collateral is insufficient to pay off the debt. The scheduled balance is determined in a straight-forward manner. The conditional expected value of the collateral is computed based on the assumption that future house values can be modelled by a stochastic (geometric Brownian motion) process. Both will be described in more detail below.

The scheduled outstanding balance, B(t), begins at t=0 with an initial balance equal to the sum of the financed closing costs, up front MIP, and a third component which varies by type of mortgage. In the case of a tenure mortgage, the third component is equal to the initial payment (excluding financed closing costs), as defined in the proposed rule, plus the first monthly payment to the mortgagor. For term and line of credit mortgages, the third component is the maximum principal limit at origination. (Note that level monthly payments for term mortgages are calculated by a sinking fund formula to give the maximum principal limit at the end of the term. Term mortgages are, in effect, line of credit mortgages with equal monthly draws over the scheduled term.)

Subsequent values of B(t) in the model are calculated as the balance from the previous period, B(t−1), plus interest accrued at the expected average mortgage interest rate (as defined in the proposed rule), plus the monthly payment for month t, plus the scheduled MIP based on the 50 basis point annual rate applied to B(t−1). In the case of term and line of credit mortgages, the monthly payment is zero. This calculation is repeated until the outstanding principal balance has been calculated for all future values of t.

The following discussion of the estimation of future house value presents the model both intuitively and rigorously for readers of varied mathematical backgrounds. The basic property of a geometric Brownian motion process that is particularly well suited to modelling future house values is the treatment of the rate of appreciation as a random variable with certain characteristics. Starting from a point value equal to the appraised value at t=0, the rate of appreciation of the house over each small time interval (t−1,t) is treated as an independent, normally distributed random variable with constant mean m and variance σ^2. In the model, a mean of 0.04 (4 percent) and variance of 0.01 is assumed. These are expressed as annual rates, although the stochastic process has the same properties regardless of the size of the time intervals, provided the intervals are small relative to the average life of the loan, and the mean and variance are expressed in comparable time units. The process treats future appreciation rates as uncertain; yet, their assumed normal

distribution allows probabilities to be assigned to all possible values. This facilitates analysis of the likelihood of different possible outcomes.

Although the mean and variance of the process are constant over each small time interval (t−1,t), the cumulative appreciation rate over the interval (0,t) has a multivariate normal distribution with growing mean and variance of mt and $\sigma^2 t$, respectively. The distribution of the house values themselves over this same interval will be log-normal. The mean, or expected value, of the log-normal house price distribution at time t is given by:

$E[H(t)] = H(0) * \exp\{mt + 0.5\,\sigma^2 t\}$,

where

H(t) = house value at time t, and

exp(.) = the exponential function.

The expected value of the house given in equation (2) is the unconditional expected value. It represents the mean of the entire log-normal house price distribution at time t. The conditional expected value of the house, given that the value is less than the loan balance B(t), is similar in concept except that it represents the mean of only the left tail of the price distribution. It is the mean of the log-normal price distribution truncated at the value B(t). Thus the conditional expected value is always less than or equal to the unconditional expected value.

If a mortgage is terminated at time t, and if the value of the house is greater than B(t), there is no loss. If, on the other hand, the mortgage is terminated at time t, and the house value is less than B(t), there is a loss. The expected amount of the loss is the product of 1) the probability that the mortgage will terminate at time t, 2) the probability that the house value at time t is less than B(t), and 3) the difference between the outstanding balance, B(t), and the conditional expected value. A methodology for calculating each is presented below.

The calculation of the probability of termination of the mortgage at time t is analogous to the calculation of the probability of death from an actuarial life table. Let d_t denote the probability of termination at time t. Recall the definition of the loan survival probabilities 1_{x+t} from above. Then by definition

$d_t = 1_{x+t} - 1_{x+t+1}$.

The probability that the house price at time t will be less than a given value, B(t), can be determined as follows. Using the log-normality of the value distribution, one first computes the natural logarithm of B(t)/H(0). Call this number $B^*(t)$. Then one computes the area under the normal probability density function to the left of the value $B^*(t)$, using a mean and variance of mt and $\sigma^2 t$, respectively. This area represents the desired probability and is denoted z(t). It is calculated by numerical approximation of the following improper integral:

$$z(t) = G(t) * \int_{-\infty}^{B^*(t)} \exp[-0.5 * ((y - mt)/\sigma\sqrt{t})^2]\, dy, \quad (4)$$

where

$$G(t) = 1 / [\sqrt{2\pi} * \sigma\sqrt{t}] .$$

The conditional expected value at time t, given that the value is less than B(t), is the product of a factor F(t) and the unconditional expected value from expression (2). The factor F(t) is sensitive to the loan balance B(t), and it can take on values ranging from 0 to 1, depending on whether B(t) is very small or very large, respectively. To calculate F(t), one must evaluate a second improper integral:

$$F(t) = G(t) * \int_{-\infty}^{A(t)} \exp[-0.5 * (y - \sigma\sqrt{t})^2]\, dy, \quad (5)$$

where

$G(t) = 1 / [\sqrt{2\pi} * z(t)]$,

$A(t) = [B^*(t) - mt] / \sigma\sqrt{t}$,

$z(t) = \text{prob}[H(t) < B(t)]$, and

$B^*(t) = \ln[B(t)/H(0)]$.

The desired expression for the conditional expected value is

$$E[H(t) \mid H(t) < B(t)] = F(t) * E[H(t)], \quad (6)$$

where

E[H(t)] is defined in expression (2).

The expected loss at time t can now be expressed succinctly, using the notation developed above.

$$E[L_t] = d_x *_t z(t) * (B(t) - E[H(t) \mid H(t) < B(t)]). \quad (7)$$

D. Calculation of Payment Amount and Maximum Principal Limit

The fundamental relationship of the model requires the present discounted values of the expected MIP and of the expected losses to be equal at the time of origination. If the present value of the expected losses is less than the present value of the expected MIP, then a higher monthly payment for tenure mortgages or a higher maximum principal limit for term and line of credit mortgages can be supported by the given premium structure. If the present value of the expected losses is greater than the present value of the expected MIP, then a lower monthly payment or principal limit is indicated. The FHA mortgage payment model solves for the unique monthly payment amount or maximum principal limit that satisfies the fundamental relationship. The discount rate used for the calculation is the expected average mortgage interest rate as defined in the proposed rule less 100 basis points.

E. Coinsurance

Under the coinsurance option, it is possible for the loss on an FHA insured mortgage to exceed the lesser of the house value at origination or the maximum FHA claim amount. (Under the assignment option, this could happen only if the mortgagee chose not to assign the mortgage in accordance with the proposed rules governing assignment). Such losses in excess of the initial house value or the maximum FHA claim amount will be absorbed, or coinsured, by the mortgagee. In return, the mortgagee retains a portion of the total MIP collected as a coinsurance premium. The FHA mortgage payment model provides a method for estimating the coinsurance premium which is described below.

The total MIP paid by the mortgagor under either the coinsurance option or the assignment option is two points up front on the lesser of the appraised value of the property or the maximum FHA claim amount plus 50 basis points annually on the outstanding loan balance. The coinsurance premium retained by the mortgagee under the coinsurance option consists of a portion of the 50 basis point annual premium. The mortgagee does not retain a portion of the up front premium.

The model easily estimates the amount of coinsurance premium, expressed as a basis point annual rate applied to the outstanding loan balance. It requires only a small modification of the fundamental relationship used to determine the payments and maximum principal limits. Specifically, the present discounted value of the expected coinsurance premium must equal the present discounted value of the expected losses in excess of the maximum claim. Since the coinsurance premium is part of the total MIP, the retention of a coinsurance premium by the mortgagee does not affect the scheduled outstanding balance, B(t). Therefore, the expected coinsurance MIP at time t is calculated using equation (1), except that the scheduled total MIP at time t is replaced by the scheduled coinsurance MIP at time t. The scheduled coinsurance loss at time t is calculated using equation (7), except that the loan balance B(t) is replaced by the uninsured balance UB(t) defined as follows:

$UB(t) = \max\{0, B(t) - FHAMAX\}$,

where

FHAMAX = the lesser of the initial appraised value or the maximum FHA claim amount.

If the present value of the expected coinsurance losses is greater than the present value of the expected coinsurance MIP, then a higher coinsurance premium is indicated. If the expected losses are less than the expected premium, then a lower coinsurance premium is indicated. The FHA model solves for the unique coinsurance premium rate which equates the two. The discount rate used is the expected average mortgage interest rate as defined in the proposed rule less 100 basis points.

Other Matters

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk at the above address.

Under 5 U.S.C. 605(b), (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule implements a demonstration program for the insurance of no more than 2,500 mortgages over a short period of time. Participation in the demonstration is voluntary by both mortgagees and mortgagors.

This rule was listed in the Department's Semiannual Agenda of Regulations published on April 25, 1988 [53 FR 13854] under Executive Order 12291 and Regulatory Flexibility Act.

The Home Equity Conversion Mortgage Insurance Demonstration is not listed in the Catalog of Federal Domestic Assistance.

The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Sections 206.11, 206.15, 206.19, 206.21, 206.27, 206.41, 206.43, 206.45, 206.49, 206.121, 206.125, 206.127, 206.131, 206.133 and 206.203 of this proposed rule have been determined by the Department to contain collection of information requirements. Information on these requirements is provided as follows:

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TABULATION OF ANNUAL REPORTING BURDEN PROPOSED RULE—HOME EQUITY CONVERSION MORTGAGE INSURANCE DEMONSTRATION

Description of information collection	Section of 24 CFR affected	Number of respondents	Number of responses per respondents	Total annual responses	Hours per response	Total hours
Application for reservation of insurance authority	206.11	60	1	60	.5	25
Request for extension of a reservation	206.11(d)	25	1	25	.5	12.5
Purchase commitment by loan correspondent's sponsor	206.11(e)	5	1	5	1	5
Application for insurance (2502–0058, 2502–0111)	206.15	50	25	1,250	1	1,250
Certification of receipt of counseling	206.27(c), 206.41(c)	50	25	1,250	.05	62.5
Disclosure of shared appreciation mortgage terms and options	206.13(c)(4)	50	15	750	.5	375
Disclosure of new adjustable interest rate	206.21(e)	50	15	750	.1	75
Notification to Secretary of potential default conditions	206.27(c)(2)	50	1	50	.5	25
Report to mortgagor on line of credit balance	206.27(d)	50	10	500	.1	50
List of HUD-certified counseling organizations in mortgagor's area	206.41(b)	50	50	2,500	.05	125
Disclosure of mortgage terms and conditions	206.43(a)	50	25	1,250	.2	250
Written solicitation of procedures in event of mortgagee default	206.43(b)	50	25	1,250	.05	125
Provision of title evidence to the Secretary	206.45(a), 206.49(c)	50	25	1,250	.1	125
Certificate that no child under 7 lives in home with hazardous paint surfaces	206.45(d)	50	.1	5	.2	2.5
Claim of mortgage insurance benefits (2502–0328)	206.123(a), 206.127	50	.1	5	1	5
Notice to Secretary that a mortgage is due and payable	206.125(a)(1)	50	1	50	.1	5
Notice to Secretary to initiate an appraisal pursuant to a claim	206.125(b)	50	.1	5	.2	1.5
Notice to Secretary of foreclosure proceedings (2502–0347)	206.125(a)(3)	50	.01	.5	1	.5
Certification of condition of condominium upon assignment of mortgage	206.131(c)	50	.01	.5	1	.5
Notice pursuant to termination of insurance	206.133(d)	50	1	50	.2	10
Annual statement to mortgagor of mortgage activity during the year	206.203	50	25	1,250	.3	375
Adjustable rate line of credit disclosures	206.23(c)	50	10	500	.1	50
Mortgage provisions	206.27(b)	50	25	1,250	.05	62.5
Information to be provided by counselors to mortgagors	206.41(b)	100	50	5,000	1.5	7,500
Inspection of repairs by mortgagee	206.47(c)	50	1	50	.3	15
Amount of mortgage insurance premium	206.105	50	25	1,250	.01	12.5
Notification of mortgagor that mortgage is due and payable	206.125(a)(2)	50	.001	.05	.5	.025
Request to sell property at lower price	206.125(g)	50	.001	.05	.5	.025
Application for insurance benefits by mortgagee	206.123, 206.127	50	.001	.05	.5	.025
Notice of prepayment of line of credit mortgage	206.209(a)	10	1	10	.3	3
Total annual burden						10,548

List of Subjects

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Loan programs—housing and community development, Mortgage insurance, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Minimum property standards, Incorporation by reference.

24 CFR Part 206

Aged, Home equity conversion mortgages, Mortgage insurance.

Accordingly, 24 CFR Part 200 would be amended and a new 24 CFR Part 206 would be added, to read as follows:

PART 200—INTRODUCTION

1. The authority citation for 24 CFR Part 200 continues to read as follows:

Authority: Titles I and II, National Housing Act (12 U.S.C. 1701–1715z–20); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. A new paragraph (d) is proposed to be added to § 200.810 to read as follows:

§ 200.810 Single family insurance and coinsurance.

* * * * *

(d) *Home equity conversion mortgage insurance.* The requirements of this section, as modified by the following sentence, apply to a dwelling which is the subject of an application for mortgage insurance under section 255 of the National Housing Act (home equity conversion mortgage insurance) unless the mortgagor provides the certification described in § 206.45(d) of this chapter. The defective paint surface may be treated after the mortgage is endorsed for insurance, provided that the defective paint surface is treated as expeditiously as possible in accordance with the repair work provisions contained in § 206.47 of this chapter.

3. A new Part 206 is proposed to be added to Chapter II of 24 CFR to read as follows:

PART 206—HOME EQUITY CONVERSION MORTGAGE DEMONSTRATION

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206.1 Purpose.
206.3 Definitions.
206.5 Waivers.
206.7 Effect of amendments.
206.9 Limit on extent of program.

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206.13 Ineligible programs.
206.15 Application for insurance.

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206.45 Eligible properties.
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206.101 Sale, assignment and pledge of insured mortgages.

Mortgage Insurance Premiums

206.103 Payment of MIP.
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206.107 Mortgagee election of assignment or coinsurance option.
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206.113 Late charge and interest.
206.115 Pro rata payment of periodic MIP.

HUD Responsibility to Mortgagors

206.117 General.
206.119 Written explanation of payment to mortgagor.
206.121 Secretary authorized to make payments, obtain lien.

Claim Procedure

206.123 Claim procedures in general.
206.125 Acquisition and sale of the property.
206.127 Application for insurance benefits.
206.129 Payments of claim.

Condominiums

206.131 Contract rights and obligations for mortgages on individual dwelling units in a condominium.

Termination of Insurance Contract

206.133 Termination of insurance contract.

Subpart D—Servicing Responsibilities

206.201 Mortgage servicing generally, insurance.
206.203 Annual disclosure, providing information.
206.205 Election to use an escrow account.
206.207 Allowable charges and fees after endorsement.
206.209 Prepayment.

Authority: Secs. 211 and 255 of the National Housing Act (12 U.S.C. 1715b, 1715z–20); sec. 7(b), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General

§ 206.1 Purpose.

Section 417 of the Housing and Community Development Act of 1987 (Pub. L. 100–242) added a new section 255 to the National Housing Act (12 U.S.C. 1715z–20). Section 255 authorizes the Secretary to carry out a demonstration program for the insurance of home equity conversion mortgages for elderly homeowners. This demonstration program of mortgage insurance is designed:

(a) To meet the special needs of elderly homeowners by reducing the effect of the economic hardship caused by the increasing costs of meeting health, housing and subsistence needs at a time of reduced income, through the insurance of home equity conversion mortgages to permit the conversion of a portion of accumulated home equity into liquid assets;

(b) To encourage and increase involvement of mortgagees and participants in the mortgage markets in the making and servicing of home equity conversion mortgages for elderly homeowners; and

(c) To evaluate data to determine the need and demand among elderly homeowners for insured and uninsured home equity conversion mortgages, the types of home equity conversion mortgages that best serve the interests of elderly homeowner mortgagors, mortgagees and the Federal Government, and the appropriate scope and nature of participation by the Secretary in connection with home equity conversion mortgages for the elderly.

§ 206.3 Definitions.

As used in this part, the following terms shall have the meaning indicated.

"Assessment" means a special assessment by a public body or an assessment by a cooperative housing corporation or a condominium or homeowner association.

"Contract of insurance" means the agreement evidenced by the issuance of a mortgage insurance certificate, incorporating by reference Subpart C and the applicable provisions of the National Housing Act.

"Expected average mortgage interest rate" means the mortgage interest rate used to calculate monthly payments for tenure and term mortgages and maximum draws for line of credit mortgages. For fixed rate mortgages, it is the fixed mortgage interest rate. For adjustable rate mortgages, it is the expected average mortgage interest rate for the subsequent 15 years. The mortgagee's current 15-year fixed mortgage interest rate shall be used for this purpose or another comparable rate approved by the Secretary.

"Insured mortgage" means a mortgage which has been insured as evidenced by the issuance of a mortgage insurance certificate.

"Maximum FHA claim amount" means the maximum dollar amount for an area established by the Secretary for a one-family residence under section 203(b)(2) of the National Housing Act (as adjusted where applicable under section 214 of the National Housing Act).

"MIP" means the mortgage insurance premium paid by the mortgagee to the Secretary in consideration of the contract of insurance.

"Mortgage" means a first lien on real estate under the laws of the jurisdiction where the real estate is located. If the dwelling unit is in a cooperative housing development, the term "mortgage" means a first lien given to secure a loan for financing the purchase of a corporate certificate and the applicable occupancy certificate of a cooperative ownership housing corporation. If the dwelling unit is in a condominium, the term "mortgage" means a first lien covering a fee interest or eligible leasehold interest in a one-family unit is a condominium project, together with an undivided interest in the common areas and facilities serving the project, and such restricted common areas and facilities as may be designated. The term may refer both to a security instrument creating a lien, whether called a "mortgage," "deed of trust," "security deed," or another term used in a particular jurisdiction. The term "mortgage" also includes the credit instrument, or note, secured by the lien, and the loan agreement between the mortgagor and mortgagee.

"Mortgagee" means the original lender under a mortgage and any assign permitted by § 206.101.

"Mortgagor" means each original borrower under a mortgage. The term does not include successors or assigns of a borrower.

"Principal limit" means the maximum mortgage principal balance, including accured interest and MIP, that may be reached under a term mortgage or line of credit mortgage before payments to the mortgagor cease. It is calculated for each month that a mortgage could be outstanding using factors or a computer model provided by the Secretary. It is the maximum disbursement that could be received in any month under a line of credit mortgage, assuming that no other disbursements are received, taking into account the age of the youngest mortgagor, the expected average mortgage interest rate, and the lesser of the appraised value of the property or the maximum FHA claim amount. It is capped at the lesser of the initial appraised value of the property or the maximum FHA claim amount. It is used to calculate the fixed term and monthly payments for a term mortgage and maximum draws under a line of credit mortgage.

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"Principal residence" means the dwelling where the mortgagor maintains his or her permanent place of abode, and typically spends the majority of the calendar year. A person may have only one principal residence at any one time.

"Secretary" means the Secretary of Housing and Urban Development or his or her authorized representatives.

§ 206.5 Waivers.

The Secretary, in an individual case, may waive any requirement of Subpart B (except § 206.11(e)) not required by statute if the Secretary finds that application of such requirement would adversely affect achievement of the purposes of this demonstration program. Each such waiver shall be in writing and supported by a statement of the facts and grounds forming the basis for the waiver. The authority under this section may be delegated to the Assistant Secretary for Policy Development and Research or the Assistant Secretary for Housing-Federal Housing Commissioner, but shall not be delegated further.

§ 206.7 Effect of amendments.

The regulations in this part may be amended by the Secretary at any time and from time to time, in whole or in part, but amendments to Subparts B and C shall not adversely affect the interests of a mortgagee under the contract of insurance on any mortgage already insured, and shall not adversely affect the interests of a mortgagee on any mortgage to be insured on which the Secretary has made a commitment to insure. Such amendments shall not adversely affect the interests of a mortgagor in the case of a default by a mortgagee where HUD provides assistance to the mortgagor.

§ 206.8 Limit on extent of program.

(a) *Number of mortgages.* No more than 2500 mortgages may be insured under this part.

(b) *Date.* No mortgage may be insured under this part after September 30, 1991, except pursuant to a firm commitment issued on or before that date.

Subpart B—Eligibility Applications

§ 206.11 Application for reservation of insurance authority.

(a) *Definition.* A reservation of insurance authority is an assurance by the Secretary that the Secretary will be able to insure a mortgage which meets the requirements of this subpart.

(b) *Application.* Any mortgagee approved under Part 206 of this chapter, except an investing mortgagee approved under § 203.6 of this chapter, may apply for reservations of insurance authority for not less than 10 but not more than 50 mortgages. A mortgagee approved under §§ 203.3, 203.4, 203.6 or 203.7 of this chapter may purchase, hold and sell mortgages insured under this part without additional approval. A mortgagee may apply for additional reservations after its initial reservations are used or expire if reservations of insurance authority are available.

(c) *Approval.* If the application for the reservation is acceptable, the Secretary will then approve the request for the reservation if reservations of insurance authority are available. A mortgagee may not originate a mortgage under this part without first obtaining a reservation of insurance authority for the mortgage.

(d) *Expiration and extension.* A reservation of insurance authority will expire six months after the date of issue. The reservation shall be extended for an additional three month period for each mortgage for which the mortgagee has an application pending, pursuant to a written request for an extension by the mortgagee to the Secretary.

(e) *Requirements for approval—loan correspondents.* At the time of application for the reservation of insurance authority, a loan correspondent (as defined in § 203.5 of this chapter) shall provide evidence satisfactory to the Secretary that the mortgage to be insured under this part will be purchased by the loan correspondent's sponsor or sponsors which have been approved under this part. Such evidence shall include: (i) The name of each sponsor mortgagee approved under this part which will purchase the mortgages originated under this part, and (ii) a copy of each purchase agreement which obligates the sponsor mortgagee to purchase the mortgages originated under this part. The collective agreements must show that all the mortgages originated by the loan correspondent will be purchased if all insurance authority reserved by the loan correspondent under paragraph (c) of this section is used.

§ 206.13 Ineligible programs.

Mortgages originated through the Direct Endorsement or Coinsurance programs are not eligible for insurance under this part.

§ 206.15 Application for insurance.

(a) *Submission.* A mortgagee with a reservation of insurance authority may submit an application for insurance of a mortgage which is about to be executed.

(b) *Form.* The application must be made upon a form prescribed by the Secretary.

(c) *Insurance of mortgage.* The Secretary approves an application for mortgage insurance by issuing a commitment. The Secretary shall establish in the commitment the terms and conditions upon which the mortgage will be insured. The mortgagee, upon closing the mortgage, submits to the Secretary the commitment, the certificate received by each mortgagor from the counseling entity that the mortgagor has received counseling as required under § 206.41, satisfactory title evidence as required under § 206.45(a), the mortgagee's election of either the assignment or coinsurance option under § 206.107, and any other documentation required by the Secretary. If the mortgagee has complied with the terms and conditions of the commitment, the Secretary will issue a Mortgage Insurance Certificate. Mortgages insured under this part shall be obligations of the General Insurance Fund.

Eligible Mortgages

§ 206.17 Eligible mortgages.

(a) *Kinds of mortgages.* The kinds of mortgages eligible for insurance under this part are: Fixed rate tenure mortgages (§ 206.19(a)), fixed rate term mortgages (§ 206.19(b)), adjustable rate tenure mortgages (§ 206.21(a)), adjustable rate term mortgages (§ 206.21(b)), fixed rate line of credit mortgages (§ 206.23(a)), and adjustable rate line of credit mortgages (§ 206.23(a)). Mortgagees may originate one or more of these kinds of mortgages. A fixed rate tenure mortgage may also provide for shared appreciation (§ 206.19(c)), provided that the mortgagee also must offer fixed both rate tenure mortgages and adjustable rate tenure mortgages without shared appreciation.

(b) *Payments.* All payments to a mortgagor under all kinds of mortgages shall be made jointly to all mortgagors occupying the mortgaged property as their principal place of residence, except as otherwise provided by joint instruction of all mortgagors occupying the mortgaged property as their principal place of residence.

§ 206.19 Fixed rate mortgages.

(a) *Tenure mortgages.* A fixed rate tenure mortgage provides for equal monthly payments by the mortgagee to the mortgagor as long as the mortgagor occupies the mortgaged property as a principal residence until the mortgage is prepaid in full or becomes due and payable under § 206.27(c). Interest accrues at a fixed rate agreed upon by the mortgagor and the mortgagee. The interest and the MIP charged on the outstanding principal balance of the mortgage shall be added to the outstanding principal balance

periodically as provided in the mortgage.

(b) *Term mortgages.* A fixed rate term mortgage provides for equal monthly payments by the mortgagee to the mortgagor for a fixed term of years unless the mortgage is prepaid in full or becomes due and payable earlier under § 206.27(c). Although the payments to the mortgagor ceases at the end of the fixed term, repayment is deferred as long as the mortgagor occupies the mortgaged property as a principal residence until the mortgage is prepaid in full or becomes due and payable under § 206.27(c). Interest accrues at a fixed rate agreed upon by the mortgagee and the mortgagor, and continues to accrue after the monthly payments stop. The interest and the MIP charged on the outstanding principal balance of the mortgage shall be added to the outstanding principal balance periodically as provided in the mortgage.

(c) *Shared appreciation.* (1) A fixed rate tenure mortgage may also provide for sharing between the mortgagor and the mortgagee of the appreciation in the value of the property. At the time the mortgage comes due and payable or is prepaid in full, the mortgagor will pay an additional amount of interest equal to a percentage of the net appreciated value of the property during the life of the mortgage. The percentage of net appreciated value to be paid to the mortgagee, referred to as the appreciation margin, shall be no more than twenty-five percent, subject to an effective interest rate cap of no more than twenty percent.

(2) The mortgagee's share of net appreciated value is computed as follows: (i) If the mortgage principal balance at the time of sale is less than the appraised value of the property at the time of loan origination, the mortgagee's share is calculated by subtracting the appraised value at the time of loan origination from the adjusted sales proceeds (i.e., sales proceeds less sales costs and capital improvement costs incurred by the mortgagor, but excluding any liens) and multiplying by the appreciation margin.

(ii) If the mortgage principal balance is greater than the appraised value at origination but less than the adjusted sales proceeds, the mortgagee's share is calculated by subtracting the mortgage principal balance from the adjusted sales proceeds and multiplying by the appreciation margin.

(iii) If the mortgage principal balance is greater than the adjusted sales proceeds, the net appreciated value is zero.

(3) To determine the effective interest rate, the amount of interest which accrued in the twelve months prior to the sale of the property is added to the mortgagee's share of the net appreciated value. The sum of the mortgagee's share of the net appreciated value and the interest, when divided by the sum of the principal balance at the beginning of the twelve month period prior to sale plus the monthly payments to the mortgagor in the twelve months prior to the sale, shall not exceed an effective interest rate of twenty percent.

(4) In addition to any other disclosures required by this part, the mortgagee shall provide a disclosure to the mortgagor showing the maximum payment that would be owed due to shared appreciation which could result when the mortage becomes due and payable or the mortgage is prepaid in full. The mortgagee shall also disclose to the mortgagor the monthly payments and the interest rates which are applicable to fixed rate tenure mortgages, adjustable rate tenure mortgages, and shared appreciation tenure mortgages. The disclosure shall be made at the time of the initial loan application.

§ 206.21 Adjustable rate mortgages.

(a) *Tenure mortgages.* An adjustable rate tenure mortgage provides for equal monthly payments by the mortgagee to the mortgagor as long as the mortgagor occupies the mortgaged property as a principal residence until the mortgage is prepaid in full or becomes due and payable under § 206.27(c). Interest accrues at a rate initially agreed upon by the mortgagee and mortgagor, and adjusted as described in paragraph (d). The interest and the MIP charged on the outstanding principal balance of the mortgage shall be added to the outstanding principal balance periodically as provided in the mortgage.

(b) *Term mortgages.* An adjustable rate term mortgage provides for equal monthly payments from the mortgagee to the mortgagor for a fixed term of years unless the mortgage is prepaid in full or becomes due and payable earlier under § 206.27(c). Although the payments to the mortgagor cease at the end of the fixed term, repayment is deferred as long as the mortgagor occupies the mortgaged property as a principal residence until the mortgage is prepaid in full or becomes due and payable under § 206.27(c). Interest accrues at an interest rate initially agreed upon by the mortgagee and the mortgagor, and adjusted as described in paragraph (d). The interest and MIP charged on the outstanding principal of the mortgage may be added to the outstanding principal balance periodically as provided in the mortgage.

(c) *Shared appreciation.* Adjustable rate mortgages may not provide for shared appreciation.

(d) *Changes in interest rate.* The interest rate shall be adjusted as provided in § 203.49 (a), (c), and (e) of this chapter, except that the reference to "mortgagor's first debt service payment" in § 203.49(c) shall mean "mortgagee's first payment after the initial payment described in § 206.25(a)."

(e) *Disclosures.* (1) The mortgagee must provide a disclosure to the mortgagor at least 25 days before any adjustment to the interest rate. The disclosure must include the new mortgage interest rate and the current index interest rate value. (2) Compliance with the disclosure requirements of the Board of Governors of the Federal Reserve Board System in 12 CFR Part 226 shall be required and shall constitute compliance with this paragraph.

§ 206.23 Line of credit mortgages.

(a) *General.* A line of credit mortgage provides a line of credit to a mortgagor who may receive payments as long as the cumulative payments (less any partial prepayment of principal), plus the accrued interest and MIP are less than the principal limit. Repayment is deferred as long as the mortgagor occupies the mortgaged property as a principal residence until the mortgage is prepaid in full or becomes due and payable earlier under § 206.27(c). Interest accrues at a fixed or adjustable rate as agreed upon by the mortgagor and the mortgagee. Interest and the MIP charged on the outstanding principal of the mortgage shall be added to the outstanding principal balance periodically as provided in the mortgage.

(b) *Changes in interest rate.* For adjustable rate line of credit mortgages, the interest rate for subsequent draws on the line of credit shall be adjusted as provided in § 203.49 (a), (c) and (e) of this chapter, except that the reference to "mortgagor's first debt service payment" in § 203.49(c) shall mean "mortgagee's initial payment described in § 206.25(a)."

(c) *Disclosures.* For adjustable rate line of credit mortgages (1) The mortgagee must provide pre-loan disclosures as provided in § 203.49(f) (1), (2) and (3) of this chapter. (2) The mortgagee must provide a disclosure to the mortgagor at least 25 days before any adjustment to the interest rate. The

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disclosure must include the new mortgage interest rate and the current index interest rate value. (3) The Secretary may accept compliance with the applicable disclosure requirements of the Board of Governors of the Federal Reserve Board System in 12 CFR 226 as a substitute for compliance with all or part of this requirement.

(d) *Shared appreciation.* Line of credit mortgages may not provide for shared appreciation.

§ 206.25 Initial payment.

(a) *Initial payment.* A mortgage described in §§ 206.19 or 206.21 may provide for an initial payment in addition to the equal monthly payments. The initial payment shall not exceed an amount equal to the sum of fees and charges allowed under § 206.31; estimated costs of repairs needed to conform the dwelling to standards prescribed by the Secretary; and an additional amount agreed to by the mortgagor and mortgagee. The initial payment may be used to discharge any existing liens, or to make repairs, not to exceed ten percent of the lesser of the appraised value of the property or the maximum FHA claim amount.

(b) *Refinancing.* If reservations of authority are available, the mortgagor may refinance an existing mortgage insured under this part. Notwithstanding the provisions of paragraph (a) which limit the initial payment, the initial payment under the refinancing mortgage shall not exceed the amount necessary to pay the existing mortgage in full and fees and charges allowed under § 206.31.

§ 206.27 Mortgage provisions.

(a) *Form.* The mortgage shall be in a form meeting the requriements of the Secretary.

(b) *Provisions.* The mortgage shall explain how payments will be made to the mortgagor, how interest will be charged and when the mortgage will be due and payable. It shall also contain provisions on the following matters:

(1) Payments by the mortgagee shall be due on the first of each month, except for line of credit mortgages. A line of credit mortgage payment shall be due within five business days after the mortgagee has received a written request for payment by the mortgagor.

(2) The mortgagor shall maintain hazard insurance on the property in an amount acceptable to the Secretary.

(3) The mortgagor shall not participate in a real estate tax deferral program, if any liens created by the tax deferral are not subordinate to the insured mortgage and the second mortgage held by the Secretary. (See § 206.27(e)).

(4) A mortgage may be prepaid in full or in part in accordance with § 206.209.

(5) The mortgagor must keep the property in good repair, and cause any repairs required under § 206.47 to be completed upon a schedule acceptable to the Secretary.

(6) The mortgagor must pay assessments in a timely manner.

(7) If the mortgagor elects to have the mortgagee escrow funds for taxes, hazard insurance, ground rents, and assessments, the mortgage shall contain provisions governing escrow requirements. If the mortgagor does not elect to have the mortgagee escrow such funds, the mortgagor shall agree to pay these bills in a timely manner. The mortgagee shall reserve the right to cure the mortgagor's failure to pay such bills in a timely manner.

(8) The mortgagor shall be charged for the payment of MIP.

(9) The mortgagee shall pay a late charge to the mortgagor for any late payment. The charge shall be in an amount equal to 10 percent of the entire payment, including any portion paid into an escrow account.

(10) The mortgagor shall not be liable for any debt remaining after the sale of the mortgaged property or the payment of the insurance benefits. The mortgagee shall not be permitted to obtain a deficiency judgment against the mortgagor if the property is foreclosed.

(11) If the mortgage is assigned to the Secretary, the mortgagor shall not be liable for any difference between the insurance benefits paid to the mortgagee and the outstanding indebtedness, including accrued interest, owed by the mortgagor at the time of the assignment.

(12) If the mortgage includes shared appreciation, the mortgage shall provide for a cap on the net appreciated value and the effective interest rate that can be earned in the year in which the property is sold.

(13) The mortgagor or his/her personal representative agrees to allow appraisers onto the property in order to determine its fair market value for the purposes established under Subpart C.

(14) The mortgagor may convert a term mortgage to a line of credit mortgage.

(15) The cost of an appraisal under § 206.125(b) may be added to the principal balance of the mortgage.

(c) *Date the mortgage comes due and payable.* (1) The mortgage shall be due and payable if (i) a mortgagor occupying the property as a principal residence dies and no surviving mortgagor occupies the property as a principal residence, or (ii) a mortgagor conveys all of his or her title in the property and no other mortgagor retains title to the property in fee simple or on a leasehold interest as set forth in § 206.45(a).

(2) The mortgagee shall inform the Secretary of the occurrence of any of the following, and the mortgage shall be due and payable upon approval of the Secretary: (i) A mortgagor ceases to occupy the property as a principal residence for reasons other than death, or illness or other physical infirmity, and no other mortgagor occupies the property as a principal residence; (ii) a mortgagor fails to occupy the property for more than 12 months because of illness or other physical infirmity and no other mortgagor occupies the property as a principal residence; (iii) the property is in disrepair; or (iv) an obligation of the mortgagor under the mortgage is not performed.

(d) *Line of credit mortgages.* In addition to other provisions set forth in this section, a line of credit mortgage shall require the mortgagee to inform the mortgagor of the following when a payment is made:

(1) The cumulative principal balance, including accrued interest and mortgage insurance premiums;

(2) The principal limit for the current month; and

(3) The remaining amount available for payment (i.e., the difference between (1) and (2).

(e) *Second mortgage to Secretary.* A second mortgage to secure any payments by the Secretary as provided in § 206.121(c) must be given to the Secretary before the first mortgage is endorsed for insurance. The second mortgage shall be junior only to the insured mortgage and in a form meeting the requirements of the Secretary and shall be similar to the insured mortgage. The mortgagee shall pay all expenses of preparing and recording the second mortgage.

§ 206.29 Payments to the mortgagor.

(a) *Calculation of payments.*—(1) *Fixed rate and adjustable rate tenure mortgages.* Using the factors or computer model provided by the Secretary, the maximum monthly payment to a mortgagor shall be calculated based on the age of the youngest mortgagor, the expected average mortgage interest rate, any initial payment under § 206.25, and the lesser of the appraised value of the property or the maximum FHA claim amount.

(2) *Fixed rate and adjustable rate term mortgages.* Using the factors or computer model provided by the Secretary, the monthly payment to the mortgagor shall be calculated so that the sum of the following shall equal no more than the principal limit at the end of the fixed term of the mortgage:

(i) An initial payment under § 206.25,

(ii) All monthly payments due through the term of the mortgage,

(iii) All MIP due through the term of the mortgage, and

(iv) All interest on (i), (ii), and (iii) paid or accrued through the fixed term of the mortgage. The expected average mortgage interest rate shall be used for determining the principal limit.

(3) *Fixed rate and adjustable rate line of credit mortgages.* Under a line of credit mortgage, a mortgagor may obtain payments at times and in amounts determined by the mortgagor whenever the payments plus accrued interest and MIP (less any partial prepayment of principal) is less than the principal limit for the month in which the payment is drawn. No additional payments may be obtained once the principal limit is reached.

(b) *Cessation of payments.* Monthly payments under a tenure mortgage described in §§ 206.19(a) or 206.21(a) may be stopped and restarted at the mortgagor's request. The mortgagee may charge a fee of no more than $15 for each request.

(c) *Conversion.* (1) A mortgagor receiving monthly payments under a fixed rate or adjustable rate term mortgage may convert the mortgage to a line of credit mortgage. A fixed rate term mortgage may only be converted to a fixed rate line of credit mortgage. An adjustable rate term mortgage may only be converted to an adjustable rate line of credit mortgage.

(2) Upon the request by the mortgagor to convert the mortgage, the mortgagee shall inform the mortgagor of the current principal balance and the principal limit for the month in which the conversion is made. Mortgagees must emphasize to mortgagors who previously elected under § 206.205 to have the mortgagee escrow funds for payments as set forth in § 206.27(b)(7) that the mortgagors shall be responsible for making such payments under line of credit mortgages. The mortgagee shall refund to the mortgagor all sums held in escrow accounts pursuant to the mortgagor's election under § 206.205.

(d) *Mortgage amount continues to increase.* Notwithstanding the principal limit, the mortgage shall be due and payable only as provided in § 206.27(c). The amount owed under the mortgage, including accrued interest and MIP, shall continue to increase until the mortgage is either prepaid in full or becomes due and payable as provided in § 206.27(c).

(e) *No minimum mortgage principal.* A mortgagee shall not require, as a condition of providing a mortgage loan secured by a mortgage insured under this part, that the monthly payments under a term or tenure mortgage or draws under a line of credit mortgage of the mortgage exceed a minimum amount established by the mortgagee.

(f) *Start of payments.* For a tenure or term mortgage, the mortgagee shall start making the monthly payments to the mortgagor on the first day of the month after the execution of the mortgage.

§ 206.31 Allowable charges and fees.

The mortgagee may collect, either in cash at the tme of settlement or through an initial payment under the mortgage, the following charges and fees incurred in connection with the origination of the mortgage loan:

(a) *Loan origination fee.* A charge to compensate the mortgagee for expenses incurred in originating and closing the mortgage loan: *Provided,* that the Secretary may establish limitations on the amount of any such charge which can be included in the mortgage loan.

(b) *Other charges and fees.* Reasonable and customary amounts, but not more than the amount actually paid by the mortgagee, for any of the following items:

(1) Recording fees and recording taxes, or other charges incident to the recordation of the insured mortgage;

(2) Credit report;

(3) Survey, if required by the mortgagee or the mortgagor;

(4) Title examination;

(5) Mortgagee's title insurance;

(6) Fees paid to an appraiser approved by the Secretary for the initial appraisal of the property; and

(7) Such other charges as may be authorized by the Secretary.

Eligible Mortgagors

§ 206.33 Age of mortgagor.

The youngest mortgagor shall be 62 years of age or older at the time the mortgagee submits the application for insurance under § 206.15.

§ 206.35 Title held by mortgagor.

The mortgagor shall hold title to the entire property which is the security for the mortgage. If there are multiple mortgagors, all the mortgagors must collectively hold title to the entire property which is the security for the mortgage.

§ 206.37 Credit standing.

Each mortgagor must have a general credit standing satisfactory to the Secretary.

§ 206.39 Principal residence.

The mortgagor must occupy the dwelling as his or her principal place of residence. If there are multiple mortgagors, each mortgagor must occupy the dwelling as his or her principal place of residence.

§ 206.41 Counseling.

(a) *List provided.* At the time of the initial contact with the prospective mortgagor, the mortgagee shall give the mortgagor a list of the names and addresses of counselors which have been approved by the Secretary as responsible and able to provide the information described in paragraph (b). Each mortgagor must receive counseling.

(b) *Information to be provided.* Counselors shall discuss the following information with the mortgagor:

(1) Options other than a home equity conversion mortgage, including a mortgage insured under this part, that are available to the mortgagor, including other housing, social service, health, and financial options;

(2) Other home equity conversion options that are or may become available to the mortgagor, such as sale-leaseback financing, deferred payment loans, and property tax deferral;

(3) The financial implications of entering into a home equity conversion mortgage, including a mortgage insured under this part;

(4) A disclosure that a home equity conversion mortgage, including a mortgage insured under this part, may have tax consequences, affect eligibility for assistance under Federal and State programs, and have an impact on the estate and heirs of the homeowner, and

(5) Any other information the Secretary may require.

(c) *Certificate.* The counselor will provide each mortgagor with a certificate stating that the mortgagor has received counseling. Each mortgagor shall provide the mortgagee with a copy of the certificate.

§ 206.43 Disclosure.

(a) *Notice of rights and obligations.* At least ten days prior to the execution of the mortgage, the mortgagee shall provide each mortgagor with an unsigned copy of the mortgage. The mortgagee shall identify and explain to each mortgagor the principal provisions of the mortgage.

(b) *Written explanation of payment.* At the same time the mortgagor receives the information contained in paragraph (a), the mortgagee shall give to each mortgagor an unsigned, written explanation prepared by the Secretary of the procedures to be followed to

ensure that timely payments are made by the mortgagee. After the mortgage is executed and the mortgage insurance certificate is issued, the Secretary will provide a signed, written explanation of the procedures, pursuant to § 206.119.

Eligible Properties

§ 206.45 Eligible properties.

(a) *Title.* A mortgage must be on real estate held in fee simple, or on a leasehold having a remaining period of not less than 10 years beyond the date of the 100th birthday of the mortgagor or, if there are multiple mortgagors, the youngest mortgagor. The mortgagee shall submit to the Secretary with the application for insurance satisfactory title evidence showing the insured mortgage and the second mortgage to the Secretary (pursuant to § 206.27(e)) as valid first and second liens, respectively. The title evidence shall meet the requirements of § 203.385(b) of this chapter. The mortgagee shall pay for title evidence for the second mortgage.

(b) *Type of property.* The property shall include a dwelling designed principally as a one-family residence. The dwelling may be connected with other dwellings by a party wall or otherwise. A condominium unit or a unit in a cooperative housing development, designed for one-family occupancy, shall also be an eligible property.

(c) *Flood insurance and property location.* The provisions of § 203.16a of this chapter pertaining to flood insurance and § 203.40 of this chapter pertaining to the location of the property are also applicable to this Part 206.

(d) *Lead-based paint poisoning prevention.* If the appraiser of a dwelling constructed prior to 1978 finds defective paint surfaces, § 200.810(d) shall apply unless the mortgagor certifies that no child who is less than seven years of age resides or is expected to reside in the dwelling.

§ 206.47 Property standards; repair work.

(a) *Need for repairs.* Properties must meet the property standards of the Secretary in order to be eligible. Properties which do not meet the property standards must be repaired in order to ensure that the repaired property will serve as adequate security for the insured mortgage. The mortgagee shall exercise supervision over the repairs made to the property.

(b) *Assurance that repairs are made.* The mortgage loan may be closed before the repair work is started if the mortgagor and mortgagee enter into a repair loan agreement approved by the Secretary which governs advances made by the mortgagee during the repairs to the property.

(c) *Role of mortgagee.* The mortgagee shall cause an inspection of the property to be made at periodic intervals by an inspector approved by the Secretary in order to ensure that the work is satisfactory, and prior to the release of funds to the contractor performing the repairs. The mortgagee shall hold back a portion of the contract price attributable to the work done at each interval, and the total of the hold backs will be released after the final inspection and approval of the release of the mortgagee. The mortgagee shall ensure that all mechanics' and materialman's liens are released of record. A fee as established in § 206.31(a) may be charged by the mortgagee as compensation for administration of the repair loan agreement.

§ 206.49 Eligibility of mortgages involving dwelling unit in a cooperative housing development.

A mortgage involving a dwelling unit in a cooperative housing development which meets the requirements of this subpart, except as modified by this section, shall be eligible for insurance.

(a) *Definitions.* As used in connection with the insurance of mortgages under this part:

(1) "Corporation" means an organization which holds title to a cooperative housing development.

(2) "Corporate certificate" means such stock certificates, membership certificates, or other instruments which the laws of the jurisdictions in which the cooperative housing development is located require to evidence ownership of a specified interest in the corporation.

(3) "Occupancy certificate" means a written instrument provided by the corporation to each holder of a corporation certificates which grants an exclusive right of possession of a specific dwelling unit in the cooperative housing development.

(4) References in this part to a dwelling, residence or property which is sold, acquired or conveyed by any means (including foreclosure or deed in lieu of foreclosure) which is covered by a mortgage or subject to a lien shall be construed to include the corporate certificate together with the occupancy agreement, unless it is clear that a reference to the dwelling unit means the dwelling unit referenced in the occupancy certificate.

(b) *Eligibility of cooperative housing development mortgages.* The provisions of § 203.43c (c), (d), (e), and (1) of this chapter shall be applicable to mortgages that meet the requirements of this section, except that references to section 203(n) of the National Housing Act shall mean section 255 of the National Housing Act.

(c) *Adjustment for blanket mortgage.* In calculating the payments to the mortgagor under § 206.29, mortgagees must reduce the appraised value of the property by an amount equal to the portion of the unpaid balance of the blanket mortgage covering the cooperative development which is attributable to the dwelling unit the mortgagor is entitled to occupy as of the date the commitment is issued.

(d) *Title evidence.* The mortgagee shall submit title evidence, as required under § 206.45(a), showing (1) that the mortgagor has good and marketable title to the corporate certificate and the exclusive right of possession of the dwelling unit, and (2) that the insured mortgage and the second mortgage to the Secretary (pursuant to § 206.27(e)) are valid first and second liens, respectively.

§ 206.51 Eligibility of mortgages involving a dwelling unit in a condominium.

If the mortgage involves a dwelling unit in a condominium, the project in which the unit is located shall have been committed to a plan of condominium ownership by deed, or other recorded instrument, that is acceptable to the Secretary.

Subpart C—Contract Rights and Obligations Sale, Assignment and Pledge

§ 206.101 Sale, assignment and pledge of insured mortgages.

The provisions of §§ 203.430 through 203.435 of this chapter shall be applicable to mortgages eligible for insurance under this part.

Mortgage Insurance Premiums

§ 206.103 Payment of MIP.

The payment of any MIP under this subpart shall be made to the Secretary by the mortgagee either in cash or debentures at par plus accrued interest. The mortgagee shall pay the MIP to the Secretary until the contract of insurance is terminated.

§ 206.105 Amount of MIP.

(a) *Initial MIP.* The mortgagee shall pay to the Secretary an initial MIP of two percent of the lesser of the appraised value of the property or the maximum FHA claim amount.

(b) *Annual MIP.* After payment of the initial MIP, the mortgagee shall pay to the Secretary an annual MIP in an amount equal to one-half of one percent of the average outstanding mortgage

principal balance (including accrued interest and MIP) for the twelve-month period preceding each subsequent anniversary date of the closing of the mortgage.

§ 206.107 Mortgagee election of assignment or coinsurance option.

(a) *Election of option.* Before the mortgage is submitted for insurance endorsement, the mortgagee shall elect either the assignment option or the coinsurance option.

(1) Under the assignment option, the mortgagee shall have the option of assigning the mortgage to the Secretary at the time that the principal balance, including accrued interest and MIP, equals the lesser of the initial appraised value of the property or the maximum FHA claim amount, if the mortgagee is current in making the required payments under the mortgage to the mortgagor, the mortgagee is current in its payment of the MIP (and late charges and interest on the MIP, if any) to the Secretary, the mortgage is not due and payable under § 206.27(c)(1), and (i) the mortgagee has not informed the Secretary of an event described in § 206.27(c)(2), or (ii) the Secretary has been so informed but has denied approval for the mortgage to be due and payable. See § 206.123(a)(1). At the mortgagee's option, the mortgagee may forego assignment of the mortgage and file a claim under any of the circumstances described in § 206.123(a) (2)–(5).

(2) Under the coinsurance option, the mortgagee may not assign a mortgage to the Secretary unless the mortgagee fails to make payments (§ 206.123(a)(2)), but shall only be required to pay a reduced annual MIP to the Secretary. The mortgagee shall collect from the mortgagor the full amount of the annual MIP provided in § 206.105(b) but shall retain a portion of the annual MIP paid by the mortgagor as compensation for the default risk assumed by the mortgagee. The portion of the MIP to be retained by the mortgagee shall be determined by the Secretary as calculated in § 206.109. For a particular mortgage, the applicable portion shall be determined as of the date of the commitment. The mortgagee retains the right to file a claim under any of the circumstances described in § 206.123(a) (2)–(5).

(b) *No election.* Shared appreciation tenure mortgages shall be insured by the Secretary only under the coinsurance option.

§ 206.109 Amount of coinsurance premiums.

Using the factors or computer model provided by the Secretary, the amount of the coinsurance premium shall be determined for each mortgage based upon the age of the youngest mortgagor, the expected average mortgage interest rate, and the lesser of the appraised value of the property or the maximum FHA claim amount.

§ 206.111 Due date of MIP.

(a) *Initial MIP.* The mortgagee shall pay the initial MIP to the Secretary within fifteen days of closing and as a condition to the endorsement of the mortgagee for insurance.

(b) *Annual MIP.* For tenure and term mortgages, each annual MIP shall be due to the Secretary on the anniversary date of the closing of the mortgage. For line of credit mortgages, each annual MIP shall be due to the Secretary 30 days after the anniversary date of the closing of the mortgage.

§ 206.113 Late charge and interest.

(a) *Late charge.* Any MIP remitted to the Secretary after the payment date prescribed in § 206.111 shall include a late charge of four percent of the amount paid.

(b) *Interest.* In addition to any late charge provided in paragraph (a) of this section, the mortgagee shall pay interest on any MIP remitted to the Secretary more than 20 days after the payment dates prescribed in § 206.111. Such interest rate shall be paid at a rate set in conformity with the Treasury Fiscal Requirements Manual.

§ 206.115 Pro rata payment of periodic MIP.

(a) *Pro rata payment required.* If the insurance contract is terminated after the first year of the mortgage, the mortgagee shall pay a portion of the current annual MIP prorated from the due date of the last annual MIP to the date of termination.

(b) *Pro rata payment not required.* A pro rata payment of the MIP shall not be required if the insurance contract is terminated during the first year of the mortgage and before the first payment of the annual MIP is due.

HUD Responsibility to Mortgagors

§ 206.117 General.

The Secretary is required by statute to take any action necessary to provide a mortgagor with funds to which the mortgagor is entitled under the insured mortgage and which the mortgagor does not receive because of the default of the mortgagee. The Secretary will hold a second mortgage to secure repayment by the mortgagor, see § 206.27(e)

§ 206.119 Written explanation of payment to mortgagor.

When the mortgage is insured, the Secretary shall provide the mortgagor with a written explanation of procedures to ensure that all of the funds described in § 206.117 will be received by the mortgagor, or paid to a third party on behalf of the mortgagor. The explanation shall specify (a) the HUD office to contact in case of a late payment, and (b) the procedures which the mortgagor must follow to make a request for payment by the Secretary.

§ 206.121 Secretary authorized to make payments, obtain lien.

(a) *Investigation.* The Secretary will investigate all requests for payment by a mortgagor. If the Secretary determines that the mortgagee is unable or unwilling to make all payments required under the mortgage, including late charges, the Secretary shall pay such payments and late charges to the mortgagor.

(b) *Reimbursement or assignment.* The Secretary may demand that within 30 days the mortgagee reimburse the Secretary, with interest from the date of payment by the Secretary, or assign the insured mortgage to the Secretary. Interest shall be paid at a rate set in conformity with the Treasury Fiscal Requirements Manual. If the mortgagee complies with the demand by reimbursement, then the contract of insurance shall not be affected. If the mortgagee complies by assigning the mortgage for record within 30 days of the demand or such additional time as may be approved by the Secretary in writing, then the Secretary shall pay an insurance claim as provided in § 206.129(e)(3) and assume all responsibilities of the mortgagee under the mortgage.

If the mortgagee fails to comply with the demand within 30 days, or such additional time as the Secretary authorizes in writing, the contract of insurance will terminate as provided in § 206.133(c).

(c) *Second mortgage.* If the contract of insurance is terminated as provided in § 206.133(c), all payments to the mortgagor by the Secretary will be secured by the second mortgage required by § 206.27(e). Payments shall be due and payable at the time and in the amounts which would have been applicable for payments under the insured first mortgage. The Secretary shall notify the mortgagor if payments are made under the second mortgage. Acceptance of such payments by the mortgagor shall relieve the holder of the first mortgage of any further

responsibility to make payments to the mortgagor. The liability of the mortgagor under the first mortgage shall be limited to payments actually made by the mortgagee to or on behalf of the mortgagor (including MIP), and shall exclude accrued interest, whether or not it has been included in the mortgage principal, and share appreciation, if any.

Claim Procedure

§ 206.121 Claim procedures in general.

(a) *Claims.* Mortgagees may submit claims for the payment of the mortgage insurance benefits if:

(1) The conditions of § 206.107(a)(1) pertaining to the optional assignment of the mortgage by the mortgagee have been met and the mortgagee assigns the mortgage to the Secretary;

(2) The mortgagor is unable or unwilling to make the payments under the mortgage and assigns the mortgage to the Secretary pursuant to the Secretary's demand, as provided in § 206.121(b);

(3) The mortgagor sells the property for less than the mortgage debt and the mortgagee releases the mortgage of record to facilitate the sale, as provided in § 206.125(c);

(4) The mortgagee acquires title to the property by foreclosure or a deed in lieu of foreclosure and sells the property as provided in § 206.125(g), for an amount which does not satisfy the debt; or

(5) The mortgagee forecloses and a bidder other than the mortgagee purchases the property for an amount that is not sufficient to satisfy the debt, as provided in § 206.125(e).

(b) *Expanded definition of mortgagor.* The term "mortgagor" as used in this subpart shall have the same meaning as stated in § 206.3, except that in reference to a sale by the mortgagor, the term shall also mean the mortgagor's estate or personal representative.

§ 206.123 Acquisition and sale of the property.

(a) *Initial action by the mortgagee.* (1) The mortgagee shall notify the Secretary whenever the mortgage is due and payable under the conditions stated in § 206.27(c)(1) or one of the conditions stated in § 206.27(c)(2) has occurred.

(2) After notifying the Secretary, and receiving approval of the Secretary when needed, the mortgagee shall notify the mortgagor that the mortgage is due and payable. The mortgagee shall require the mortgagor to (i) pay the outstanding mortgage balance, including any accrued interest and MIP, in full; (ii) sell the property for at least the appraised value as determined under § 206.125(b), with the net proceeds of the sale to be applied toward the mortgage debt, with the surplus, if any going to the mortgagor; or (iii) provide the mortgagee with a deed in lieu of foreclosure. The mortgagor shall have 30 days in which to comply with the preceding sentence, or correct the matter which resulted in the mortgage coming due and payable, before a foreclosure proceeding is begun.

(3) Even after a foreclosure proceeding is begun, the mortgagee shall permit the mortgagor to correct the condition which resulted in the mortgage coming due and payable and to reinstate the mortgage, and the mortgage insurance shall continue in effect. If an appraisal under § 206.125(b) has been performed or foreclosure initiated, the cost incurred by the mortgagee shall be added to the mortgage debt. The mortgagee may refuse reinstatement by the mortgagor if:

(i) The mortgagee has accepted reinstatement of the mortgage within the past two years immediately preceding the current notification to the mortgagor that the mortgage is due and payable;

(ii) Reinstatement will preclude foreclosure if the mortgage becomes due and payable at a later date; or

(iii) Reinstatement will adversely affect the priority of the mortgage lien.

(b) *Appraisal.* The property shall be appraised at the time the mortgagor is sent the notice that the mortgage is due and payable, or if the mortgagor requests an appraisal in connection with a pending sale. The mortgagee shall notify the Secretary to cause an appraisal of the property to be made. The Secretary shall inform the mortgagee and the mortgagor in writing of the appraised value of the property. The appraisal shall be at the mortgagee's expense.

(c) *Sale by mortgagor.* Whether or not the mortgage is due and payable, the mortgagor may sell the property for at least the appraised value (determined under § 206.125(b)). If the mortgage is due and payable at the time the contract for sale is executed, the mortgagor may sell the property for up to five percent under the appraised value. The mortgagee shall satisfy the mortgage of record (and the Secretary will satisfy the mortgage required under § 206.27(e) of record) in order to facilitate the sale, provided that there are no junior liens of record (except the mortgage to secure payments by the Secretary under § 206.27(e)) and all the net proceeds from the sale are paid to the mortgagee.

(d) *Initiation of foreclosure.* (1) The mortgagee shall commence foreclosure of the mortgage within three months of giving notice to the mortgagor that the mortgage is due and payable, or within such additional time as may be approved by the Secretary.

(2) If the laws of the State in which the mortgaged property is situated do not permit the commencement of the foreclosure within three months from the date of the notice to the mortgagor that the notice is due and payable, the mortgagee shall commence foreclosure within three months after the expiration of the time during which such foreclosure is prohibited by such laws.

(3) The mortgagee shall give written notice to the Secretary within 30 days after the initiation of foreclosure proceedings of such initiation, and shall exercise reasonable diligence in prosecuting such proceedings to conclusion.

(4) The mortgagee shall bid at the foreclosure sale an amount equal to the appraised value of the property.

(e) *Other bidders at foreclosure sale.* If the party other than the mortgagee is the successful bidder at the foreclosure sale, the net proceeds of sale shall be applied to the mortgage debt.

(f) *Deed in lieu of foreclosure.* (1) In order to avoid delays and additional expense as a result of instituting and completing a foreclosure action, the mortgagee shall accept a deed in lieu of foreclosure from the mortgagor if the mortgagee is able to obtain good and marketable title from the mortgagor.

(2) In exchange for the executed and delivered deed, the mortgagee shall cancel the credit instrument and deliver it to the mortgagor and satisfy the mortgage of record.

(g) *Sale of the acquired property.* (1) Upon acquisition of the property by purchase at appraised value, foreclosure or deed in lieu of foreclosure, the mortgagee shall make diligent efforts to attempt to sell the property within six months from the date the mortgagee acquired the property. The mortgagee shall sell the property for an amount not less than the appraised value (as provided under paragraph (b) of this section) unless written permission is obtained from the Secretary authorizing a sale at a lower price.

(2) Repairs shall not exceed those required by local law or the requirements of the Secretary or the Administrator of the Veterans Administration if the sale of the property is financed with a mortgage insured by the Secretary or guaranteed, insured or taken by the Administrator.

(3) The provisions of §206.305(b) of this chapter shall be followed by the mortgagee to avoid conflicts of interest.

§206.127 Application for insurance benefits.

(a) *Mortgagee acquires title.* (1) The mortgagee shall apply for the payment of the insurance benefits within 15 days after the sale of the property by the mortgagee. Application shall be made by notifying the Secretary of the sale of the property, the sale price, and income and expenses incurred in connection with the acquisition, repair and sale of the property.

(2) If the property will not be sold within six months from the date the mortgagee acquired title, the mortgagee shall, at least 15 days prior to the expiration of the six month period, request the Secretary to cause another appraisal of the property to be made. Upon receipt of the appraisal, the mortgagee shall apply for the insurance benefits as provided in paragraph (a), substituting the appraised value for the sales price. The mortgagee shall bear the cost of the appraisal.

(b) *Party other than the mortgagee acquires title.* The mortgagee shall apply for the payment of the insurance benefits within 15 days after a party other than the mortgagee acquires title to the property. Application shall be made by notifying the Secretary of the sale of the property and the sale price.

(c) *Mortgagee assigns the mortgage.* The mortgagee shall file its claim for the payment of the insurance benefits within 15 days after the date the mortgage is assigned for record to the Secretary. The application for the payment of the insurance benefits shall include the items listed in §203.351(a) of this chapter and the certification required under §203.353 of this chapter.

§206.129 Payment of claim.

(a) *General.* If the claim for the payment of the insurance benefits is acceptable to the Secretary, payment shall be made in cash in the amount determined under this section.

(b) *Limit on claim amount.* In no case may the claim paid under this subpart exceed the lesser of the appraised value of the property at the time the mortgage was originated or the maximum FHA claim amount. The interest allowance as provided in subparagraphs (d)(2)(iii), (e)(2) and (f)(2) of this section, shall not be included in determining the limit on the claim amount.

(c) *Shared appreciation mortgages.* The term "accrued interest" as used in this section does not include interest attributable to the mortgagee's share of the appreciated value of the property.

(d) *Amount of payment—mortgagee acquires title or is unsuccessful bidder.* This paragraph describes the amount of payment if the mortgagee acquires title by purchase, foreclosure, or deed in lieu of foreclosure, or when a party other than the mortgagee is the successful bidder at the foreclosure sale.

(1) The amount of the claim shall be computed by (i) totalling the amount of principal, (including any accrued interest and MIP which have been added to the principal) and any accrued interest which has not been added to the principal as of the due date (defined in the following sentence), and allowances for items set forth in paragraph (d)(2) of this section, and (ii) subtracting from that total the amount for which the property was sold (or the appraised value determined under § 206.127(e)) and the items set forth in paragraph (d)(3) of this section.

"Due date" means the date when the mortgagee notifies the Secretary under § 206.27(c)(1) that the mortgage became due and payable, or, if applicable, the date the Secretary granted approval under § 206.27(c)(2) for the mortgage to become due and payable.

(2) The claim shall include the following items;

(i) Items listed in § 203.402 (a), (b), (c), (d), (e), (g) and (j) of this chapter, and § 204.322(*f*) of this chapter.

(ii) Foreclosure costs or costs of acquiring the property actually paid by the mortgagee and approved by the Secretary, in an amount not in excess of two-thirds of such costs or $75.00, whichever is the greater. Costs of acquiring the property otherwise than by foreclosure may include an additional amount not to exceed $200 paid to the mortgagor for the execution of the deed in lieu of foreclosure.

(iii) An amount equal to the interest allowance which would have been earned, from the due date to the date when payment of the claim is made, on the portion of the claim paid in cash, if such portion had been paid in debentures, except that when the mortgagee fails to meet any one of the applicable requirements of §§ 206.125 and 206.127 of this subpart within the specified time, and in a manner satisfactory to the Secretary (or within such further time as the Secretary may approve in writing), the interest allowance in such cash payment shall be computed only to the date on which the particular required action should have been taken or to which it was extended. The provisions of §§ 203.405 through 203.411 of this chapter pertaining to debentures are also applicable to this Part 206.

(iv) Costs of appraisal under §§ 206.125 and 206.127 if not otherwise included in the mortgage principal.

(3) There shall be deducted from the amount computed in (b)(1)(i):

(i) The items listed in § 203.403 of this chapter; and

(ii) Any adjustment for damage or neglect to the property pursuant to §§ 203.378 and 203.379 of this chapter.

(e) *Amount of payment—assigned mortgages.* This paragraph describes the amount of payment if the mortgagee assigns a mortgage to the Secretary under § 206.107(a)(1) or § 206.121(b).

(1) When a mortgagee assigns a mortgage which is eligible for assignment under § 206.107(a)(1). the amount of payment shall be computed by (i) totalling the lesser of the initial appraised value of the property or the FHA maximum claim amount, and subtracting from the total (ii) the items set forth in §203.404(b) of this chapter and any adjustments for damage or neglect to the property pursuant to §§ 203.378 and 203.379 of this chapter.

(2) The claim shall also include an amount equivalent to the interest allowance which would have been earned on the portion of the claim paid in cash from the date the mortgage was assigned to the Secretary to the date the claim is paid, except that if the mortgagee fails to meet any of the requirements of § 206.127(c), or § 206.131 if applicable, within the specified time and in a manner satisfactory to the Secretary (or within such further time as the Secretary may approve in writing), the interest allowance in the payment of the claim shall be computed only to the date on which the particular required action should have been taken or to which it was extended. The provisions of §§ 203.405 through 203.411 of this chapter pertaining to debentures are also applicable to this Part 206.

(3) When a mortgagee assigns a mortgage under § 206.121(b) after demand by the Secretary, the mortgagee will not receive the entire claim payment as contained in subparagraphs (e) (1) and (2). The amount of the claim shall be computed by (i) totalling the payments made by the mortgagee to the mortgagor or for the benefit of the mortgagor (including MIP), and (ii) subtracting from the total the items set forth in § 203.404(b) of this chapter and any adjustments for damage or neglect to the property pursuant to §§ 203.378 and 203.379 of this chapter.

The claim shall also be reduced by an amount determined by the Secretary to reimburse the Secretary for administrative expenses incurred in assuming the mortgagee's responsibility under the mortgagee, which may include expenses for staff time. If more than one mortgage is assigned to the Secretary.

the administrative expenses incurred for all the mortgages assigned shall be allocated among the mortgages as determined by the Secretary. The claim shall not include accrued interest whether or not it has been included in the mortgage principal.

(f) *Amount of payment-mortgagor sells the property.* This paragraph describes the amount of payment if the mortgagor sells the property to one other than the mortgagee for less than the mortgage debt, and the mortgagee releases the mortgage to facilitate the sale.

(1) The amount of the claim shall be computed by (i) totalling the amount of principal (including any accrued interest and MIP which have been added to the principal) and any accrued interest which has not been added to the principal on the date the deed is recorded, and allowances for items set forth in paragraphs (d)(2) (i) and (iv) as applicable, and (ii) subtracting from the total the net proceeds of the sale paid to the mortgagee and the items set forth in paragraph (d)(3) of this section.

(2) The claim shall also include an amount equivalent to the interest allowance which would have been earned from the date the deed is recorded to the date when payment of the claim is made, on the portion of the claim paid in cash, if such portion had been paid in debentures, except that when the mortgagee fails to meet any of the applicable requirements of §§ 203.125 and 203.127 within the specified time (or within such further time as the Secretary may approve in writing), and in a manner satisfactory to the Secretary, the interest allowance in such cash payment shall be computed only to the date on which the particular action should have been taken or to which it was extended. The provisions of §§ 203.405 through 203.411 of this chapter pertaining to debentures are also applicable to this Part 208.

Condominiums.

§ 208.131 Contract rights and obligations for mortgages on individual dwelling units in a condominium.

(a) *Additional requirements.* The requirements of this subpart shall be applicable to mortgages on individual dwelling units in a condominium, except as modified by this section.

(b) *References.* The term "property" as used in this subpart shall be construed to include the individual dwelling unit and the undivided interest in the common areas and facilities as may be designated.

(c) *Assignment of the mortgage.* If the mortgagee assigns the mortgage on the individual dwelling unit to the Secretary, the mortgagee shall certify:

(1) To any changes in the plan of apartment ownership including the administration of the property;

(2) That as of the date the assignment is filed for record, the family unit is assessed and subject to assessment for taxes pertaining only to that unit; and

(3) To the conditions of the property as of the date the assignment is filed for record. Section 234.275 of this chapter is incorporated by reference.

(d) *Condition of the multifamily structure.* The provisions of § 234.270 (a) and (b) of this chapter shall be applicable to mortgages involved under this part which are assigned to the Secretary.

Termination of Insurance Contract

§ 208.133 Termination of insurance contract.

(a) *Payment of the mortgage.* The contract of insurance shall be terminated if the mortgage is paid in full.

(b) *Acquisition of title.* If the mortgagee or a party other than the mortgagee acquires title at a foreclosure sale, or the mortgagee acquires title by a deed in lieu of foreclosure, and the mortgagee notifies the Secretary that a claim for the payment of the insurance benefits will not be presented, the contract of insurance shall be terminated.

(c) *Mortgagee fails to make payments.* If the mortgagee fails to make the payments to the mortgagor as required under the mortgage, and does not reimburse the Secretary or assign the mortgage to the Secretary within 30 days from the request by the Secretary for assignment or such additional time as the Secretary authorizes in writing, the contract of insurance shall automatically terminate.

(d) *Notice of termination.* The mortgagee shall give written notice to the Secretary within 15 days of the occurrence of an event under paragraphs (a) and (b) of this section. No contract of insurance shall be terminated under paragraphs (a) or (b) unless such notice is given.

(e) *Voluntary termination.* The mortgagor and the mortgagee may jointly request the Secretary to approve the voluntary termination of the mortgage insurance contract. Prior to approval, the Secretary shall make certain that the mortgagor is aware of the consequences which could arise out of the voluntary termination of the insurance contract. The provisions of § 203.295 of this chapter shall apply when a contract of insurance under this part is voluntarily terminated.

(f) *Effect of termination.* Upon termination of the contract of insurance, the obligation to pay any subsequent MIP shall cease and all rights of the mortgagor and mortgagee shall be terminated except as otherwise provided in this part.

Subpart D—Servicing Responsibilities

§ 208.201 Mortgage servicing generally; sanctions.

(a) *General.* This subpart identifies servicing practices that the Secretary considers acceptable mortgage servicing practices of lending institutions servicing mortgages insured by the Secretary. Failure to comply with this subpart shall not be a basis for denial of the insurance benefits, but a pattern of refusal or failure to comply will be cause for withdrawal of HUD's approval for a mortgagee.

(b) *Importance of timely payments.* The paramount servicing responsibility is the need to make timely payments in full as required by the mortgage. Any failure of a mortgagee to make all payments required by the mortgage in a timely manner will be grounds for administrative sanctions authorized by regulations, including 24 CFR Part 24 (Debarment, Suspension and Limited Denial of Participation), and 24 CFR Part 25 (Mortgagee Review Board).

(c) *Responsibility for servicing.* The provisions of § 203.502 of this chapter pertaining to the responsibility for servicing shall apply to mortgages insured under this part, except that references in that section to payments by a mortgagor shall mean payments to the mortgagor.

§ 208.203 Annual disclosure, providing information.

(a) *Annual disclosure.* The mortgagee shall provide to the mortgagor an annual statement regarding the activity of the mortgage for each calendar year. The statement shall summarize the total principal amount for the year which has been paid to the mortgagor under the mortgage (including the MIP paid to the Secretary and charged to the mortgagor), the total amount of interest paid or accrued for the year, and the total outstanding mortgage balance. If the mortgagor has elected to have the mortgagee escrow funds pursuant to § 208.205(a), the mortgagee shall include an accounting of all payments into and from the escrow account and the remaining balance of the account for the year. The statement shall be provided to the mortgagor no later than January 31 for each preceding year until the mortgage is paid in full by the mortgagor.

(b) *Information.* The provisions of § 203.508 (a) and (b) of this chapter shall also be applicable to mortgages insured under this part. The mortgagee, as part of the information required under § 203.508(b) of this chapter, shall provide the mortgagor with the name of the mortgagee's employee who has been specifically designated to respond to inquiries concerning mortgages insured under this part.

§ 208.205 Election to use an escrow account.

(a) *Election—tenure and term mortgages.* A mortgagor may elect to require the mortgagee to pay taxes, ground rents, flood and hazard insurance premiums, and assessments from monthly payments under the mortgage. This option shall not be applicable to mortgagors with line of credit mortgages. If the mortgagor elects payment by the mortgagee, the mortgagee shall establish one or more escrow accounts for payment of such items, and the amounts escrowed shall be deducted from monthly payments. If the mortgagor does not elect payment by the mortgagee, the mortgagor shall pay such items in a timely manner.

(b) *Mortgagee's responsibilities.* The provisions of § 203.550 (a), (b), and (c) of this chapter pertaining to escrow accounts shall also be applicable to mortgages insured under this part.

(c) *Mortgagor's failure to make payments.* If the mortgagor fails to make timely payments of taxes, ground rents, flood and hazard insurance premiums or assessments, and has not elected to have the mortgagee make the payments, the mortgagee may make the payment for the mortgagor and charge the mortgagor's account. If a pattern of missed payments occurs, the mortgagee may establish one or more escrow accounts for the mortgagor as if the mortgagor had made the election under this section.

(d) *Line of credit mortgages.* Mortgagors with line of credit mortgages shall pay taxes, ground rents, flood and hazard insurance premiums and assessments, in a timely manner. The mortgagee may make a payment for the mortgagor and charge the mortgagor's account if a payment is not made in a timely manner.

(e) *Escrow-assignment of mortgage to the Secretary.* If the mortgage is assigned to the Secretary under § 208.107(c)(1) or § 208.121(b), the Secretary may elect not to maintain an escrow account for the mortgagor and to require the mortgagor to pay taxes, ground rents, flood and hazard insurance premiums and assessments in a timely manner.

§ 208.207 Allowable charges and fees after endorsement.

The mortgagee may collect reasonable and customary charges and fees from the mortgagor after insurance endorsement by adding them to the mortgage debt, but only for items listed in § 203.552(a) (6), (9), (11), and (13) of this chapter, or as authorized by the Secretary under § 203.552(a)(12) of this chapter. The mortgagee may charge a fee for starting and stopping tenure mortgage payments under § 208.29(b).

§ 208.209 Prepayment.

(a) *No charge or penalty.* The mortgagor may prepay in full or in part a mortgage insured under this part without charge or penalty.

(b) *Tenure or term mortgage.* A tenure or a term mortgage may be prepaid at any time and the provisions of § 203.556 (a), (c), (d), and (e) of this chapter shall be followed in handling a prepayment of such a mortgage insured under this part, except that the term "installment due date" shall mean the date of payments to the mortgagor instead of payments by the mortgagor.

(c) *Line of credit mortgage.* A line of credit mortgage may be prepaid after giving two weeks notice to the mortgagee. If the mortgagee accepts the prepayment without two weeks notice, interest may be charged on the prepaid amount for a two-week period after the date of notice. Otherwise, no interest shall be charged on the prepaid amount after the date of prepayment.

Dated: September 21, 1988.

Samuel R. Pierce, Jr.,

Secretary.

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Part VIII

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34 CFR Part 212
Even Start Program; Notice of Proposed Rulemaking

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DEPARTMENT OF EDUCATION

34 CFR Part 212

Even Start Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Secretary of Education (Secretary) proposes regulations to govern the Even Start Program, which was authorized by the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, in amendments to the Elementary and Secondary Education Act of 1965. These regulations are intended to provide guidance to local educational agencies (LEAs) applying to the Secretary for funds under this program, and to establish procedures to govern implementation of the program if it changes from a direct grant program to a State-administered one, or *vice versa*.

DATES: Comments must be received on or before December 17, 1988.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Mary Jean LeTendre, Director, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue SW. (Room 2043, Mail Stop 6132), Washington, DC 20202.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Thomas W. Fagan, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue SW. (Room 2043, Mail Stop 6150), Washington, DC 20202, Phone (202) 732-[illegible].

SUPPLEMENTARY INFORMATION:

A. Background

The Even Start program grants funds to eligible LEAs for the Federal share of the cost of providing family-centered education projects to help parents become full partners in the education of their children, to assist children in reaching their full potential as learners, and to provide literacy training for their parents. Unlike the basic Chapter 1 program, which provides educational services to eligible children with a separate provision for parental involvement, the Even Start program provides simultaneous educational services to children and parents. This approach recognizes that, in some instances parents lack the learning skills needed to assist in early learning for their children. In Even Start, these parents will be instructed in basic skills and in how to become partners in the education of their children.

Even Start was enacted by Pub. L. 100-297 as Part B of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended, and provides that (1) in a fiscal year in which the appropriation for the Even Start program is less than $50 million, the program will be operated as a direct grant program, with the U.S. Department of Education (Department) making grants to LEAs; and (2) if the program appropriation equals or exceeds $50 million, the Department will allocate funds on a formula basis to States, which will then make grants to LEAs. In both cases, grants will be made to LEAs on a competitive basis.

The application requirements and selection criteria proposed in these regulations will apply when the Secretary makes direct grants; these provisions will not apply to States when they make grants to LEAs. States may adopt these provisions or develop their own requirements and procedures, consistent with the statutory provisions, for making grants to LEAs.

These regulations are necessary in part because the selection criteria set forth in the Even Start statute are not compatible with those in the Department's general regulations governing direct grant programs that do not have specific regulations (see 34 CFR 75.210). In addition, the statute directs the Secretary to establish criteria to govern the continuation of grant awards in fiscal years in which responsibility for making grants to LEAs transfers from the Department to the State educational agencies (SEAs), or *vice versa*. Accordingly, these regulations also include procedures for the Department and the SEAs to use in such transition years.

The provision in these proposed regulations listing other applicable regulations, § 212.5, does not include the usual reference to 34 CFR Part 75 (hearing procedures of the Education Appeal Board), because the Education Appeal Board will be superseded, with respect to filing new appeals, by the time the Even Start program is operating. In Pub. L. 100-297, Congress amended Part E of the General Education Provisions Act (GEPA), effective October 25, 1988, requiring the Secretary to establish an Office of Administrative Law Judges to replace the Education Appeal Board, and establishing new hearing procedures. 20 U.S.C. 1234-1234i. The Department plans to publish regulations implementing the amended Part E of GEPA as soon as possible, and those regulations, when final, will apply to the Even Start program. Section 212.5 of these regulations will then be amended to include a reference to the revised regulations under Part E.

B. Reservations of Funds

Set-aside of funds for migrant projects. The statute requires the Secretary to reserve 3 percent of the appropriated funds for use by the Office of Migrant Education to conduct programs consistent with Part B (the Even Start program). 20 U.S.C. 2743(a). The Department interprets this provision as applying to the program regardless of whether the Even Start appropriations equal or exceed $50 million. Regulations to govern the migrant set-aside will be issued separately.

Set-aside of funds for evaluation. The statute requires the Secretary to conduct an annual independent evaluation of Even Start programs and submit a report to Congress summarizing those evaluations. 20 U.S.C. 2748. To conduct these evaluations, the Secretary intends to reserve annually not more than two percent of appropriated funds. This reservation will apply both when the Secretary makes direct grants and when formula grants are made to the States. The reserved amount would be used to evaluate the migrant education programs as well as the basic statutory programs.

C. Significant Provisions

Eligible participants. The Even Start legislation states that, to be eligible to participate in the Even Start program, a child must reside in "a school attendance area" designated for participation in the Chapter 1 basic program. 20 U.S.C. 2745. This could be interpreted to include children who reside in nonparticipating and/or ineligible elementary schools attendance areas, but reside in participating secondary school attendance areas. The Even Start program is designed to provide early intervention for children who will enter Chapter 1 schools, to increase their potential for success as learners. The proposed regulations thus provide that an eligible child must reside in a designated "elementary school attendance area."

Section 1055(1) of the Act defines eligible parents as those eligible for participation in an adult basic education program under the Adult Education Act. Section 312 of the Adult Education Act contains the definition of an adult eligible for participation in an adult education program. That definition is as follows:

(1) The term "adult" means an individual who has attained 16 years of age or who is beyond the age of compulsory school attendance under State law, except, that for the purpose of section 313(b), the term "adult" means an individual 16 years of age or older.

(2) The term "adult education" means services or instruction below the college level for adults—

(A) Who are not enrolled in secondary school;

(B) Who lack sufficient mastery of basic educational skills to enable them to function effectively in society or who do not have a certificate of graduation from a school providing secondary education and who have not acheived an equivalent level of education;

(C) Who are not currently required to be enrolled in school; and

(D) Whose lack of mastery of basic skills results in an inability to speak, read, or write the English language which constitutes a substantial impairment of their ability to get or retain employment commensurate with their real ability, and thus are in need of programs to help eliminate such inability and raise the level of education of such individuals with a view to making them less likely to become dependent on others.

Continuation awards. The proposed regulations contain provisions concerning continuation awards for multi-year projects for fiscal years in which the granting agency changes between the Federal and State agencies. These provisions are designed to provide maximum flexibility to States when they operate the program, while maintaining continuity of local projects during the transition.

The regulations also contain a provision designed to enhance the accountability provisions of the statute and to encourage program improvement. The statute provides that, in making continuation awards, the Secretary or SEA reviews the progress being made by the grantee and may refuse to make an award if the grantee has not made sufficient progress towards meeting the objectives of the project. The regulations include a provision stating that, in lieu of discontinuing funding in that circumstance, the Secretary or SEA may approve revisions to the project, proposed by the grantee, if the revisions would enable the grantee to meet its project objectives.

In addition to provisions applying to both the Federal and State agencies, the regulations contain specific measures for the Secretary to follow in a fiscal year in which the appropriation is insufficient to fund fully all continuation awards. Specifically, the proposed regulations would require the Department first to reduce *pro rata* all continuation awards to not less than 75 percent of their approved amounts. If funds are insufficient to fund all projects at the 75 percent level, the Department would then evaluate the projects, applying the criteria in § 212.21, and fund projects at the 75 percent level in order of their scores until funds are exhausted. In applying the selection criteria, the Department would take into account information collected by the Department throughout the period of the project, including yearly progress reports, the application submitted in the first year, and revisions to that application.

The Department believes that reducing projects below 75 percent of their approved budgets would seriously impair them and make it difficult for grantees to carry out the required program elements. The procedure proposed in these regulations would set a floor below which no further reductions in budgets would be made. Therefore, in the event that funds are insufficient to support all grantees, those most worthy of continuation will be supported. States are free to adopt these procedures or to establish their own methods when they become granting agencies.

Selection criteria. The proposed regulations assign various weights to the statutory criteria to be used by the Secretary in selecting grantees, and add specific sub-elements to several of the criteria. The allocation of points among these criteria gives an advantage to those applications describing projects that are most likely to be successful in meeting the goals of the Even Start program (§ 212.21(a)—40 points), and that demonstrate the greatest degree of cooperation and coordination among relevant service providers (§ 212.21(c)—30 points.

One of the statutory selection criteria requires the Secretary to judge which proposed projects will serve the greatest percentage of eligible children and parents. This criterion is assigned 5 points. This relatively low total arises from a concern that the criterion, if heavily weighted, would provide an incentive to applicants to proposed large service projects. This could result in funding a small number of grantees, limiting the number of models to demonstrate the effectiveness of the Even Start concept, and restricting the ability of the Department to comply with the requirement of equitable geographic distribution in section 1057(c) of the Act.

In calculating the percentage, the regulations stipiate that only the number of eligible parents and children currently unserved by other similar family-centered projects be used as the basis of the calculation. Thus, an applicant will not be penalized if it or another entity is already providing Even Start-type services. This interpretation is in accordance with the intent of Congress that applicants build on and coordinate with existing programs.

In determining which children or parents are currently served by similar projects, LEAs should include only parents and children who are in projects that follow the Even Start approach. Thus, children enrolled in Head Start programs, or parents enrolled in adult basic education programs, who are not involved in the family-centered approach contained in Even Start, should be considered unserved. In determining which children and parents among those eligible will be served by the project, as opposed to those counted for this selection criterion, applicants must document that they have met the requirements of section 1056(c)(5) (A) and (B) of the Act. These provisions require that applicants provide services to those most in need and to special populations.

The proposed regulations also specify the method by which the Secretary will implement the statutory directive of ensuring an equitable geographic distribution of funds to LEAs and ensuring both urban and rural representation among grantees.

D. Contents of Application

An application to the Secretary under section 1052(a) of the Act for a new project grant must include the following:

(a) A description of the following project elements required by section 1054(b) of the Act:

(1) The identification and recruitment of eligible children.

(2) Screening and preparation of parents and children for participation, including testing, referral to necessary counseling, and related services.

(3) Design of projects and provision of support services (when unavailable from other sources) appropriate to the participants' work and other responsibilities, including—

(i) Scheduling and location of services to allow joint participation by parents and children;

(ii) Child care for the period that parents are involved in the project; and

(iii) Transportation for the purpose of enabling parents and their children to participate in the project.

(4) The establishment of instructional programs that promote adult literacy, training parents to support the educational growth of their children, and preparation of children for success in regular school programs.

(5) Provision of special training to enable staff to develop the skills necessary to work with parents and young children in the full range of instructional services offered through the project (including child care staff in programs enrolling children of participants on a space available basis).

(6) Provision of and monitoring of integrated instructional services to participating parents and children through home-based programs.

(7) Coordination of the project with other programs funded under Chapter 1 and any relevant programs under Chapter 2 of Title I of the Act, the Adult Education Act, the Education of the Handicapped Act, the Job Training Partnership Act, and with the Head Start program, volunteer literacy programs and other relevant programs.

(b) Documentation, as required by section 1056(b) of the Act, that the applicant has the qualified personnel required—

(1) To develop, administer, and implement an Even Start project; and

(2) To provide special training necessary to prepare staff for the project.

(c) A plan of operation for the project, as required by section 1056(c) of the Act, which includes—

(1) A description of the project goals;

(2) A description of the activities and services that will be provided under the project (including training and preparation of staff);

(3) A description of the population to be served and an estimate of the number of participants;

(4) If appropriate, a description of the collaborative efforts of the institutions of higher education, community-based organizations, the appropriate State educational agency, private elementary schools, or other appropriate nonprofit organizations in carrying out the project;

(5) A statement of the methods that will be used—

(i) To ensure that the project will serve those eligible participants most in need of the project's activities and services;

(ii) To provide services to special populations, such as individuals with limited English proficiency and individuals with handicaps; and

(iii) To encourage participants to remain in the project for a time sufficient to meet project goals; and

(6) A description of the methods by which the applicant will coordinate the project with programs under Chapter 1 and Chapter 2, where appropriate, of Title I of the Act, the Adult Education Act, the Job Training Partnership Act, and with Head Start programs, volunteer literacy programs, and other relevant programs.

(d) Information sufficient to demonstrate that the applicant will be able to provide additional funds required by section 1054(c) of the Act for the duration of the project.

(e) A certification that the application has held an open meeting regarding the application, as required by § 212.11.

(f) Additional requirements, consistent with the statute and these regulations, which the Secretary may include in the annual application package.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Executive Order 12606

The Secretary certifies that these proposed regulations have been reviewed in accordance with Executive Order 12606 and that they do not have a significant negative impact on family formation, maintenance, and general well-being. To the contrary, the Even Start program has the potential of providing significant advantages to the family. In funding family-centered education projects, the program may help the family perform its educational function, strengthen the stability of the family, and strengthen the role of parents in the education of their children.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these proposed regulations are small LEAs receiving Federal funds under this program. However, the regulations would not have a significant economic impact on the small LEAs affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

Section 212.21 contains information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of this section to the Office of Management and Budget for its review.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, Washington, DC 20503, Attention: James D. Houser.

Intergovernmental Review

When this program is administered by the Secretary as a direct grant program, it is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. The Secretary is particularly interested in views concerning the allocation of points among selection criteria and their sub-elements, and on the transition provisions for continuation awards.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 2049, 400 Maryland Avenue SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

List of Subjects in 34 CFR Part 212

Adult education, Education, Education of disadvantaged, Elementary and secondary education, Family, Family-centered education, Grant programs-education, Infants and children, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.212, the Even Start program.)

Dated: October 20, 1988.

Lauro F. Cavazos,
Secretary of Education.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by adding a new Part 212 to read as follows:

PART 212—EVEN START

Subpart A—General

Sec.
212.1 What is the Even Start program?
212.2 Who is eligible for a grant?
212.3 What activities may the Secretary or States fund?
212.4 What is the duration of a grant to an LEA?
212.5 What regulations apply?
212.6 What definitions apply?

Subpart B—How Does an LEA or Consortium of LEAs Apply for a Grant?

212.10 To whom does an LEA submit an application?
212.11 What requirements apply for submitting an application to the Secretary for a new grant?

Subpart C—How Does the Secretary Make a Grant?

New Grants

212.20 How does the Secretary evaluate an application for a new grant?
212.21 What selection criteria does the Secretary use in making new grants?
212.22 What additional factors does the Secretary consider in making new grants?
212.23 [Reserved]
212.24 [Reserved]

Continuation Awards

212.25 How does the Secretary make continuation awards if there are insufficient appropriations to fund all requests fully?
212.26 What actions may the Secretary or an SEA take if a grantee does not make sufficient progress toward meeting its project objectives?

Subpart D—[Reserved]

Subpart E—Transition Provisions

212.40 How are grants made in a fiscal year in which responsibility for making grants to applicants transfers between the Department and the SEAs?

Authority: 20 U.S.C. 2741–2749, unless otherwise noted.

Subpart A—General

§ 212.1 What is the Even Start program?

The Even Start program grants funds to eligible local educational agencies (LEAs) for the Federal share of the cost of providing family-centered education projects to help parents become full partners in the education of their children, to assist children in reaching their full potential as learners, and to provide literacy training for their parents.

(Authority: 20 U.S.C. 2744(a))

§ 212.2 Who is eligible for a grant?

(a) An applicant is eligible to receive assistance under the Even Start program if it is—

(1) An LEA that has within its geographic jurisdiction eligible participants, as defined in paragraph (b) of this section; or

(2) A consortium of LEAs, each of which has within its geographic jurisdiction eligible participants.

(b) An eligible participant is—

(1) A parent of a child described in paragraph (b)(2) of this section, if the parent is eligible for participation in an adult basic education program under the Adult Education Act, 20 U.S.C. 1201(a)(1) and (2);

(2) A child, aged 1 to 7, inclusive, of any eligible parent, who resides in an elementary school attendance area designated for participation in programs under Part A of Chapter 1 of Title I of the Act.

(Authority: 20 U.S.C. 2742(a), 2748)

§ 212.3 What activities may the Secretary or States fund?

The Secretary of each SEA, as the case may be, funds family-centered education projects that comply with section 1054 of the Act, and that include all of the program elements required by section 1054(b) of the Act.

(Authority: 20 U.S.C. 2744)

§ 212.4 What is the duration of a grant to an LEA?

No grant to an LEA may exceed four years in duration.

(Authority: 20 U.S.C. 2747(d))

§ 212.5 What regulations apply?

The following regulations apply to the Even Start program:

(a) If the Secretary makes direct grants to LEAs under section 1052(a) of the Act, the Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs), Part 77 (Definitions That Apply to Department Regulations), Part 79 (Intergovernmental Review of Department of Education Programs and Activities), and Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements for State and Local Governments).

(b) If the Secretary makes grants to States under section 1052(b) of the Act, the EDGAR in 34 CFR Part 76 (State-Administered Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements for State and Local Governments).

(c) The regulations in this Part 212.

(Authority: 20 U.S.C. 2831(a))

§ 212.6 What definitions apply?

(a) *Definitions in the Act.* The following terms used in this part are defined in section 1471 of the Act:

Elementary school
Equipment
Local educational agency
Parent
Secretary
State educational agency

(b) *Definitions in EDGAR.* The following terms used in this part are defined in:

(1) 34 CFR 77.1

Applicant
Application
Award
Department
Facilities
Fiscal year
Grant period
Project

(2) 34 CFR 80.3

Grant
Grantee

(c) *Other definitions.* The following definitions also apply to this part: "Act" means the Elementary and Secondary Education Act of 1965, as amended. "State" means any of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Authority: 20 U.S.C. 2742(c), 2831(a))

Subpart B—How Does an LEA or Consortium of LEAs Apply for a Grant?

§ 212.10 To whom does an LEA submit an application?

An applicant must submit an application to the Secretary under section 1052(a) of the Act, in the form required by the Secretary, or to the SEA under section 1052(b) of the Act, in the form required by the State, as the case may be.

(Authority: 20 U.S.C. 2746(a))

§ 212.11 What requirements apply for submitting an application to the Secretary for a new grant?

Before submitting an application to the Secretary for a new grant under section 1052(a) of the Act, an applicant shall—

(a) Give reasonable notice of the general public's opportunity to testify or

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otherwise comment at an open meeting regarding the subject matter of the application;

((b) Hold the open meeting; and

(c) Consider comments obtained at the meeting in developing the final application.

(Authority: 20 U.S.C. 2368)

Subpart C—How Does the Secretary Make a Grant?

New Grants

§ 212.20 How does the Secretary evaluate an application for a new grant?

(a) *Review panel.*

(1) The Secretary appoints a panel to review applications in accordance with section 1057 of the Act.

(2) In order for the applicant to be considered for a new grant, a majority of the panel members must agree, in accordance with section 1067(a)(5) of the Act, that the applicant has adequately demonstrated its ability to provide the additional funding required by section 1054(c) of the Act.

(3)(i) The panel evaluates an application for a new grant on the basis of the criteria in § 212.21.

(ii) The panel gives up to 100 points for these criteria.

(iii) The maximum possible score for each complete criterion in § 212.21 is indicated in parentheses.

(b) *Additional factors.* The Secretary then applies the additional consideration in § 212.22 to make grants.

(Authority: 20 U.S.C. 2747)

§ 212.21 What selection criteria does the Secretary use in making new grants?

The Secretary uses the following criteria to evaluate an application for a new grant:

(a) *Likelihood of success in meeting the Even Start goals* (40 total points). The Secretary reviews each application to determine the extent to which the project will provide a family-centered education program that includes activities to promote literacy of participating parents, train parents to support the educational growth of their children, and prepare children for success in regular school programs. In applying this criterion the Secretary determines the extent to which the project described in the application—

(1) Contains clear, attainable, measurable objectives against which the progress and success of the project will be measured (6 points);

(2) Includes appropriate activities, services, and timelines to achieve those objectives (7 points);

(3) Designates responsibilities to specific personnel who are qualified to administer and implement the project and to provide special training necessary to prepare staff for the program (3 points);

(4) Includes an effective plan to ensure proper and efficient administration of the project (5 points);

(5) Is based on sound research in the areas of early childhood education, adult literacy, and parenting education (5 points);

(6) Contains instructional and developmental activities appropriate to the level of the children to be served (5 points); and

(7) Provides for continuity of services to maintain progress by, for example, providing continuous services through the summer months (5 points).

(b) *Percentage of eligible children and parents to be served* (5 points).

The Secretary reviews each application to determine the total percentage of eligible children and parents that will be served under this project. This percentage is determined by dividing the number of parents and children to be served by this project by the total number of eligible parents and children who are not receiving similar family-centered services.

The Secretary gives points on the basis of that percentage, as follows:

Over 50%—5 points
40–49%—4 points
30–39%—3 points
20–29%—2 points
1–19%—1 point

(c) *Degree of cooperation and coordination* (30 total points). The Secretary reviews each application to determine the extent to which cooperation and coordination will take place in all phases of the program among a variety of relevant service providers, including those conducting programs listed in section 1054(b)(7) of the Act, 20 U.S.C. 2744(b)(7). The Secretary considers the extent to which—

(1) The applicant has made a survey of all relevant providers and is fully aware of similar and related services currently being provided to eligible children and adults (5 points);

(2) The applicant has, in planning the project, engaged various providers in discussions that have resulted in firm agreements for specific cooperative activities (10 points);

(3) The plan of operation includes specific provision for additional cooperative efforts with other service providers throughout the duration of the project (5 points); and

(4) Services offered by the applicant will build upon, but not duplicate, those currently being provided to project participants by the applicant or other service providers (10 points).

(d) *Reasonableness of budget* (10 points). The Secretary reviews each application to determine the extent to which the budget submitted for the entire cost of the project appears reasonable, given the scope of the project. The Secretary considers the extent to which—

(1) Costs are reasonable in relation to expected outcomes;

(2) The applicant will make use of currently available resources such as facilities and equipment; and

(3) The budget provides sufficient information to support the requested amount of funds.

(e) *Promise as a model* (15 total points). The Secretary reviews each application to determine the extent to which the proposed project shows promise in providing a model that may be transferred to other LEAs. The Secretary considers the extent to which—

(1) Evaluations of the project are likely to yield valid and reliable information concerning the impact of the project on participants, and an applicant's evaluation plan includes, where possible, comparisons with appropriate control groups (8 points);

(2) The general components of the project are readily understandable and transferable, and are based on research or models that have proven to be adaptable to various circumstances (7 points); and

(3) The applicant shows a willingness to serve as model and to disseminate detailed information about the project to the Department and to other LEAs (2 points).

(Authority: 20 U.S.C. 2747, 2831(a))

§ 212.22 What additional factors does the Secretary consider in making new grants?

(a) In addition to applying the criteria in § 212.21, the Secretary, in approving grants, ensures that—

(1) Each project builds on existing community resources in a cooperative effort to create a new range of services integrating early childhood education and adult education for parents into a unified program; and

(2)(i) Grants are made to LEAs that are representative of urban and rural regions of the United States.

(ii) Grant funds are distributed equitably among the States, among urban and rural areas of the United States, and among urban and rural areas of a State.

(b) In order to meet the requirements of paragraph (a)(2) of this section, the Secretary—

(1) Separates applications into categories of "urban" and "rural" on the basis of paragraph (c) of this section;

(2) In each category—

(i) Determines the highest scoring application from each State and places these applications in order of their scores; and

(ii) Places all remaining applications in order of their scores; and

(3) Funds equal numbers of projects in each category provided there are sufficient acceptable applications in each category, by—

(i) First funding acceptable applications from paragraph (b)(2)(i) of this section in order of their scores; and

(ii) Then funding acceptable applications under paragraph (b)(2)(ii) of this section in order of their scores.

(c) For the purpose of this section, urban LEAs are those within Standard Metropolitan Statistical Areas (SMSAs), as most recently designated by the United States Department of Commerce, Bureau of the Census, and rural LEAs are those outside the boundaries of SMSAs.

(d) To the extent that acceptable applications are received from the various States, the Secretary does not give grants to LEAs in one State in amounts that, in total, exceed the amount that the State would be allocated under section 1053(b) of the Act if appropriations for the Even Start program equals $50 million.

(Authority: 20 U.S.C. 2741, 2747(a)(6), (c), (d)(2))

§ 212.23 [Reserved]

§ 212.24 [Reserved]

Continuation Awards

§ 212.25 How does the Secretary make continuation awards if there are insufficient appropriations to fund all requests fully?

(a) If funds are insufficient for the Secretary to fund all continuation requests in the amounts at which each request would otherwise be funded ("approvable grant" amounts), the Secretary reduces the approvable grant awards for continuation requests on a *pro rata* basis.

(b) The Secretary does not reduce funding for a project for any fiscal year more than 25 percent below its approvable grant level, subject to paragraph (c) of this section.

(c) If funds are insufficient to fund all continuation awards at 75 percent of their approvable grant levels, the Secretary—

(1) Ranks all continuation requests based on the criteria in § 212.21 taking into account information collected throughout the project period, including yearly progress reports, the application submitted in the first year, and revisions to the application; and

(2) Funds continuation requests based on that rank ordering, at 75 percent of approvable grant levels until funds are exhausted.

(d) If the ranking procedure in paragraph (c) of this section does not result in the distribution of awards consistent with the requirements of § 212.22(a), the Secretary adjusts the selection process so as to meet those requirements.

(Authority: 20 U.S.C. 2831(a))

§ 212.26 What actions may the Secretary or an SEA take if a grantee does not make sufficient progress toward meeting its project objectives?

If the Secretary or an SEA finds, after the first, second, or third year of a project, that the grantee has not made sufficient progress toward meeting its project objectives, the Secretary or SEA may—

(a) Approve revisions to the project, proposed by the LEA, if those revisions would enable the grantee to meet its project objectives; or

(b) After affording the LEA notice and an opportunity for a hearing, refuse to make a continuation award to the LEA for the project.

(Authority: 20 U.S.C. 2747(d)(1))

Subpart D—[Reserved]

Subpart E—Transition Provisions

§ 212.40 How are grants made in a fiscal year in which responsibility for making grants to applicants transfers between the Department and the SEAs?

If the responsibility for administering the Even Start program transfers from the Department to the SEAs, or *vice versa*—

(a) The Secretary applies—

(1) 34 CFR 75.253 with the exception of 34 CFR 75.253(a)(2);

(2) § 212.20; and

(3) § 212.25, if necessary.

(b)(1) An SEA shall continue a project grant for the total original period of time for which the grant was made if, for each project—

(i) The grantee shows that it is making sufficient progress toward meeting the objectives of the projects;

(ii) The grantee meets applicable State requirements for continuation awards; and

(iii) Sufficient funds exist for the SEA to continue all project grants.

(2) For the project period, funds unobligated by a grantee in one project year remain with the grantee, and the SEA deducts from the subsequent year's continuation award an amount equal to the unobligated funds;

(3) After making continuation awards, the SEA shall use any remaining funds to make grants to new applicants; and

(c) The Federal share limitations contained in section 1054(c) of the Act are determined from the original year of the project grant award.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2747(d), 2831(a))

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H.R. 4196/Pub. L. 100-526

To designate the Federal building and United States courthouse located at 106 South Highland, Jackson, Tennessee, as the "Ed Jones Federal Building and United States Courthouse." (Oct. 20, 1988; 102 Stat. 2542; 1 page) Price: $1.00

S. 2563/Pub. L. 100-529

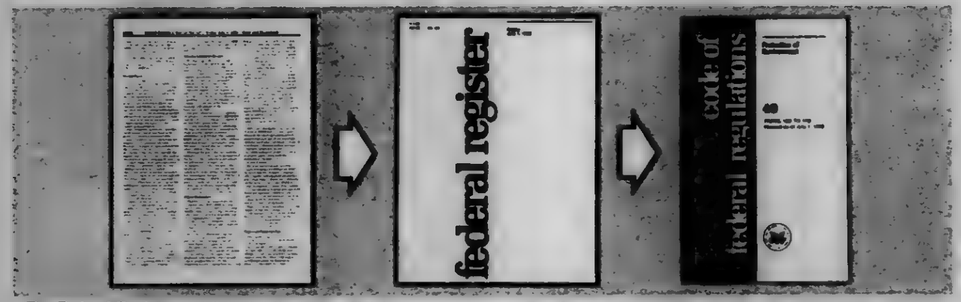
Protection and Advocacy for Mentally Ill Individuals Amendments Act of 1988. (Oct. 20, 1988; 102 Stat. 2543; 4 pages) Price: $1.00

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Presidential Documents

Title 3—

The President

Proclamation 5887 of October 22, 1988

Suspension of Entry as Nonimmigrants of Officers and Employees of the Nicaraguan Government

By the President of the United States of America

A Proclamation

In light of the current state of relations between the United States and Nicaragua, including the July 11, 1988, unjustified expulsion from Nicaragua of the United States Ambassador and seven other United States diplomats for pursuing legitimate diplomatic activities, the Nicaraguan government's refusal to allow the entry of United States diplomats to ensure the continued functioning of the U.S. embassy, and long-standing Nicaraguan government suppression of free expression and press and support of subversive activities throughout Central America, I have determined that it is in the interests of the United States to impose certain restrictions on entry into the United States of officers and employees of the Government of Nicaragua and the Sandinista National Liberation Front (hereinafter, the "FSLN").

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by the power vested in me by the Constitution and laws of the United States of America, including section 212(f) of the Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1182(f)), having found the unrestricted nonimmigrant entry of officers and employees of the Nicaraguan government and the FSLN, except as provided for in Sec. 2 of this Proclamation, to be detrimental to the interests of the United States, do hereby proclaim that:

Section 1. Entry of the following classes of Nicaraguan nationals as nonimmigrants is hereby suspended: (a) officers and employees of the Government of Nicaragua or FSLN holding diplomatic or official passports; and (b) individuals who, notwithstanding the type of passport that they hold, are considered by the Secretary of State or his designee to be officers or employees of the Government of Nicaragua or the FSLN.

Sec. 2. The suspension of entry as nonimmigrants set forth in Section 1 shall not apply to officers or employees of the Government of Nicaragua or the FSLN: (a) who are representatives to, or officers or employees of, organizations designated under the International Organizations Immunities Act (22 U.S.C. section 288) and members of their immediate families residing with them; or (b) in such other cases or categories of cases as may be designated from time to time by the Secretary of State or his designee.

Sec. 3. This Proclamation is effective immediately.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of October, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 274

[INS Number: 1851-88]

Revision of Regulations Regarding the Seizure and Forfeiture of Conveyances

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule revises the current regulations regarding conveyance seizures and forfeitures by the Immigration and Naturalization Service. It clarifies and amends the regulations to reflect changes in the authorizing statute, section 274(b) of the Immigration and Nationality Act (8 U.S.C. 1324(b)), and applicable provisions of regulations of the Department of Justice in 28 CFR Part 9. The effect of these revisions is to establish more uniformity in handling seizures and forfeitures of property within the Department of Justice.

DATE: This final rule is effective October 26, 1988, but shall apply only to seizures of conveyances occurring on or after the effective date.

FOR FURTHER INFORMATION CONTACT: David R. Yost, Assets Forfeiture Manager, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone (202) 633-2554.

SUPPLEMENTARY INFORMATION: The revisions in this final rule consist of many technical and grammatical changes to the current regulations to improve the organization and consistency of language as well as some substantive changes to conform with applicable statutory and regulatory changes. The following is a brief summarization of the significant changes.

In § 274.1 some additional terms are defined to clarify the meaning of the pertinent terms utilized throughout Part 274 which have caused or could cause misinterpretations. Most of the definitions have been clarified as a result of the experience gained from applying the regulations during the past five years.

Section 274.2 has been revised to provide authorization for any immigration officer to carry out the provisions of section 274(b) of the Immigration and Nationality Act (Act).

Section 274.5 has been revised to be consistent with section 274(b) by deleting the provision that the conveyance of an "innocent owner" is not subject to forfeiture. Concurrently, previous § 274.14, now § 274.15, regarding remission of forfeiture has been amended to permit owners to petition for remission of forfeiture. Additionally, § 274.5 has been revised to facilitate expeditious return of conveyances not subject to forfeiture or for which pursuing forfeiture is not in the best interest of justice without adversely impacting upon the enforcement of section 274(b) of the Act. Similarly, in regard to seeking relief from forfeiture a petition under the revised regulations (§§ 274.13–274.17) can be considered for either remission or mitigation of forfeiture.

Section 274.7 and paragraph 274.1(a) have been revised to establish more uniformity within the Department of Justice regarding the appraisal of seized property.

Sections 274.8 and 274.9 have been revised to provide for more information to the owner and any known lienholders of a seized conveyance about the seizure and procedures for processing a seized conveyance. The revisions, also, provide for more information in the published advertisement of the seizure.

Sections 274.10 and 274.12 have been revised to clarify the procedures for filing a claim and a bond to obtain commencement of judicial forfeiture proceedings for a seized conveyance.

Sections 274.14–274.17 have been reorganized and renumbered to provide procedural information on filing of petitions for relief from forfeiture in two sequential sections. These sections have, also, been revised to facilitate the processing of such petitions without adversely impacting upon enforcement.

Section 274.18 has been expanded to provide further specific guidance on remission of forfeiture in straw purchaser, leasehold, community property, and subrogee situations.

Section 274.19 has been expanded significantly to provide guidance on the handling of and the issuance of determinations on petitions for relief from forfeiture and to provide a procedure for reconsideration of a determination denying relief from forfeiture.

Section 274.21 has been deleted.

This final rule is not a rule within the meaning of either Executive Order 12291, Section 1(a), or the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This rule is interpretative and states agency policy, practice, and procedure for which notice of proposed rule making is not required under 5 U.S.C. 553(b). This rule contains information collection requirements which are exempt from The Paperwork Reduction Act requirements pursuant to the provisions of 5 CFR 1320.3(c).

List of Subjects in 8 CFR Part 274

Administrative practice and procedure, Seizures and forfeitures, Conveyances.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended by revising Part 274 to read as follows:

PART 274—SEIZURE AND FORFEITURE OF CONVEYANCES

Sec.

274.1 Definitions.
274.2 Officers authorized to seize conveyances.
274.3 Custody and duties of custodian.
274.4 Conveyances subject to seizure; termination of interest.
274.5 Return to owner of seized conveyance not subject to forfeiture; opportunity for personal interview.
274.6 Proof of property interest.
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274.9 Advertisement.
274.10 Judicial forfeiture proceedings upon claim and bond.
274.11 Administrative forfeiture.
274.12 Judicial forfeiture.
274.13 Petitions for relief from forfeiture; filing.
274.14 Time for filing petitions.
274.15 Remission.

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274.16 Mitigation.
274.17 Restoration of proceeds or appraised value.
274.18 Provisions applicable to particular situations.
274.19 Determinations on petitions; reconsideration.
274.20 Compromise of judicial forfeiture proceedings.

Authority: 8 U.S.C. 1103, 1324(b).

§ 274.1 Definitions.

The following definitions apply to the following terms in this part:

(a) The term "appraised value" means the estimated price at the time and place of seizure, if such or similar property were freely offered for sale.

(b) The term "beneficial owner" means a person who has dominion and control over a conveyance, as well as a property interest therein.

(c) The term "claimant" means any person who asserts a property interest in a seized or forfeited conveyance through a personal interview or by filing a claim and a bond or a petition for relief from forfeiture.

(d) The term "common carrier" means an express carrier, a freight forwarder, a motor common carrier, a rail carrier, a sleeping car carrier, and a water common carrier, as each of those terms is defined in 49 U.S.C. 10102; and an air carrier and a foreign air carrier, as each of those terms is defined in 49 U.S.C. [illegible].

(e) The term "consenting party or privy to the illegal act" means that the person knew of the illegal activity. A person shall be presumed to have knowledge of an illegal activity if the facts and circumstances are such that a person would reasonably be expected to know of the illegal activity.

(f) The term "conveyance" means a vessel, vehicle, or aircraft as used in section 274(b) of the Act. A trailer shall be considered a vehicle if it is being towed or readily capable of being towed. An immobilized house trailer which has been placed on permanent foundations, which is not readily mobile, is not a vehicle.

(g) The term "custodian" means the regional commissioner or the U.S. Marshals Service.

(h) The date of an action in conjunction with the term "filed" means the following:

(1) Date of receipt in the office specified in this part for filing, if filing is by personal delivery;

(2) Date of postmark, if filing is by mail to the office specified in this part for filing;

(3) Date five days prior to date of receipt in the office specified in this part for filing, if filing is by mail to the office specified in this part for filing and date of postmark is missing or illegible; or

(4) Date of receipt in the office specified in this part for filing, if filing is by mail to any other office.

(i) The term "lien" means an interest created by a conditional sales contract, mortgage, title retention contract, debt reduced to a judicial judgment upon which there has been an execution or an attachment against a conveyance, or other security interest in a conveyance. A lienholder is the holder of such an interest.

(j) The term "net equity" means the amount of monetary interest of a lienholder in a conveyance. Net equity is to be computed by determining the amount of unpaid principal and unpaid interest as of the date of seizure, and by adding to that amount the unpaid interest calculated from the date of seizure through the last full month prior to the date of the determination granting relief from forfeiture. The rate of interest to be used in this computation will be the annual percentage rate specified in the security agreement which is the basis of the interest of the lienholder. In this computation there shall be no allowances for unearned extended warranty, insurance, or service contract charges incurred after the date of seizure, nor allowances for dealer reserves, attorneys fees, or other similar charges.

(k) The term "owner" means a person who has the right to possess and use a conveyance to the exclusion of other persons. A person who has complied with the state formalities for a title or a registration for a conveyance is not the owner if such person does not have sufficient actual beneficial interest in the conveyance. In the consideration of a petition for relief from forfeiture the mere existence of a community property interest without proof of financial contribution to the purchase of a conveyance will not be deemed a property interest. Ownership is the interest that an owner has in a conveyance.

(l) The term "person" means an individual, partnership, corporation, joint business enterprise, or other entity capable of owning a conveyance.

(m) The term "petitioner" means a person filing a petition for relief from forfeiture of a seized conveyance.

(n) The term "property interest" means ownership, lien, or other legally cognizable interest in or legal entitlement to possession of a conveyance existing on the date of seizure of the conveyance. A person who has complied with the state formalities of a title or a registration for a conveyance may not have sufficient actual beneficial interest or other legally cognizable interest in a conveyance. In the consideration of a petition for relief from forfeiture the mere existence of a community property interest without proof of financial contribution to the purchase of a conveyance will not be deemed a property interest.

(o) The term "record" means an arrest for a related crime followed by a conviction, except that a single arrest and conviction and the expiration of any sentence imposed as a result of the conviction, all of which occurred more than ten years prior to the date a claimant acquired a property interest in the seized or forfeited conveyance, is not considered a record; *provided* that two convictions of related crimes shall always be considered a record regardless of when the convictions occurred; *and provided* that the regional commissioner may consider as constituting a record an arrest for a related crime or series of arrests for related crimes in which the charge or charges were subsequently dismissed for reasons other than acquittal or lack of evidence.

(p) The term "regional commissioner" means the Regional Commissioner of the Service for the region in which a conveyance is seized, or the designee of that Regional Commissioner.

(q) The term "related crime" means any crime similar in nature to or related to the illegal bringing in, harboring, transportation, entry, reentry, or importation of aliens.

(r) The term "reputation" means repute for related crimes with a law enforcement agency or among law enforcement officers or in the community generally, including any pertient neighborhood or other area.

(s) The term "seizure" means the act of taking a conveyance into the custody of the Service for the express purpose of considering forfeiture pursuant to section 274(b) of the Act and this part.

(t) The term "state" means any state or any like political division of any geographical territory defined in section 101(a)(38) of the Act as being part of the United States or any state or any like political division of any geographical territory of any other nation or territory, unless otherwise limited in this part.

(u) The term "sufficient actual beneficial interest" means the interest in a conveyance of a beneficial owner.

(v) The term "violator" means a person whose use of or actions with regard to a conveyance in violation of the law subjected the conveyance to seizure pursuant to section 274(b) of the Act and this part.

§ 274.2 Officers authorized to seize conveyances.

For the purpose of carrying out the provisions of section 274(b) of the Act and this part, any immigration officer is authorized and designated by the Commissioner to seize a conveyance.

§ 274.3 Custody and duties of custodian.

Any conveyance seized pursuant to section 274(b) of the Act and this part shall be stored in a location designated by the custodian. The custodian is to receive and maintain in storage all conveyances seized and all conveyances forfeited pursuant to section 274(b) of the Act and this part. After the custodian is notified that all proceedings, administrative or judicial, have been completed and that all petitions for relief from forfeiture have been finally adjudicated, a conveyance is available for disposition according to law. The custodian is authorized to dispose of any conveyances pursuant to section 274(b) of the Act and any other applicable statutes or regulations relative to disposal; and to perform other duties, not inconsistent with the provisions of the Act, regarding seized and forfeited conveyances and the proceeds of sales thereof, as are imposed on the U.S. Customs Service with respect to seizures under the Customs statutes, including the maintenance of appropriate records concerning the seizure and disposition of conveyances.

§ 274.4 Conveyances subject to seizure; termination of interest.

(a) Any conveyance which an immigration officer has probable cause to believe has been or is being used in the commission of a violation of section 274(a) of the Act is subject to seizure.

(b) Any property interest in a conveyance is automatically terminated as of the date of the seizure, if the conveyance is later declared forfeited. Any provision of any state law which recognizes a continuing property interest or right to reinstatement of a property interest in a conveyance has no effect after the date of the seizure of the conveyance, if the conveyance is later declared forfeited.

(c) The custodian is authorized to execute a document of title to convey ownership of a conveyance declared forfeited pursuant to section 274(b) of the Act and this part.

§ 274.5 Return to owner of seized conveyance not subject to forfeiture; opportunity for personal interview.

(a) The Service shall attempt with due diligence to ascertain the ownership of any conveyance seized pursuant to section 274(b) of the Act and this part, in order to determine whether the conveyance is subject to forfeiture.

(b) The following conveyances are not subject to forfeiture:

(1) A conveyance used by any person as a common carrier, unless it appears that the owner or other person in charge was a consenting party or privy to the illegal use of the conveyance; and

(2) A conveyance established by the owner to have been unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or of any state of the United States as defined in section 101(a)(38) of the Act.

(c) The owner of a seized conveyance shall be informed of the right to request a personal interview with an immigration officer and to present evidence to establish:

(1) That the conveyance was not subject to seizure; or

(2) That the conveyance is not subject to forfeiture; or

(3) That the conveyance was used in an act to which the owner was not privy, or did not consent, and the owner took all reasonable steps to prevent the illegal use of the conveyance.

If it is determined that the owner has established that paragraphs (c)(1) or (c)(2) of this section apply to the seized conveyance, that seized conveyance shall be returned to the owner as provided in paragraph (e) of this section; and if it is determined that the owner has established that paragraph (c)(3) of this section applies to the seized conveyance, that seized conveyance may be returned to the owner as provided in paragraph (d) of this section.

(d) At any time after seizure the regional commissioner may determine that it is in the best interests of justice not to pursue forfeiture of a seized conveyance which is otherwise subject to forfeiture. If such a determination is made, that seized conveyance shall be returned to the owner as provided in paragraph (e) of this section.

(e) The owner of a seized conveyance to be returned pursuant to paragraphs (c) or (d) of this section will be notified of the conditions of obtaining possession and that possession of the seized conveyance must be taken within 20 days of receipt of notice of the availability of the seized conveyance for return. If the owner has not complied with the conditions of obtaining possession and taken possession of the seized conveyance within that 20 day period, that seized conveyance shall be considered voluntarily abandoned to the United States, and the custodian shall dispose of that seized conveyance as provided in § 274.3 of this part. The conditions of obtaining possession of a seized conveyance available for return pursuant to paragraphs (c) and (d) of this section are as follows:

(1) If paragraph (c)(1) of this section applies to the seized conveyance, there shall be no conditions for obtaining possession;

(2) If paragraphs (c)(2), (c)(3), or (d) of this section apply to the seized conveyance, the owner shall pay all costs and expenses of seizure and shall execute an instrument holding the United States, its agents and employees, harmless from all claims which may result from the seizure and return of the seized conveyance.

(f) If a seized conveyance being returned to the owner pursuant to this section is the subject of judicial forfeiture proceedings, the regional commissioner shall notify the United States Attorney that a determination has been made that the seized conveyance is to be returned to the owner and request that the judicial forfeiture proceedings be terminated.

§ 274.6 Proof of property interest.

The burden of proof is on a claimant to establish that the asserted property interest in a seized conveyance existed on the date of seizure of that conveyance by submission of sufficient satisfactory original documentation or certified copies of the original documentation. If the claimant fails to present documentation showing compliance with required state formalities it will be presumed that a property interest in a seized conveyance did not exist on the date of seizure of that conveyance.

§ 274.7 Appraisal.

The regional commissioner shall determine the appraised value of a seized conveyance by consulting accepted reference guides to conveyance values or experts in conveyance values. If there is no market for a conveyance at the place of seizure, the value of the conveyance in the principal market nearest the place of seizure shall be considered.

§ 274.8 Notice to owner and lienholder of seizure.

Whenever a conveyance is seized, a notice must be given to the owner and any known lienholder notifying them of the seizure of the conveyance and its consideration for forfeiture. The notice must be accompanied by copies of this part, section 274 of the Act, and the proposed advertisement, if an advertisement is required pursuant to § 274.9 of this part. The owner shall be

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specifically informed of the provisions of §§ 274.5, 274.10, 274.13, 274.14, 274.15, 274.16, and 274.17 of this part.

§ 274.9 Advertisement.

(a) If the appraised value of a seized conveyance does not exceed $100,000, the regional commissioner shall cause an advertisement of the seizure to be published once a week for at least three successive weeks in a newspaper of general circulation in the federal judicial district in which the seizure occurred.

(b) The advertisement must:

(1) Describe the conveyance seized and indicate the identification number, if any;

(2) State the time and place of seizure;

(3) State that the seized conveyance is subject to forfeiture except as provided in § 274.5(b) of this part;

(4) State that the Service is considering forfeiture of the seized conveyance and sale or other disposal, if declared forfeited; and

(5) State that any prospective petitioners for relief from forfeiture should submit their petitions pursuant to §§ 274.13, 274.14, 274.15, 274.16, and 274.17 of this part within 20 days of publication of the advertisement.

§ 274.10 Judicial forfeiture proceedings upon claim and bond.

(a) Any person claiming ownership of a seized conveyance with an appraised value that does not exceed $100,000 may obtain judicial forfeiture proceedings in United States District Court by filing a claim and a bond as follows:

(1) The claim must set forth the basis of the claimed ownership and allege why the conveyance was not subject to seizure;

(2) The claim must be filed in the office specified in the notice and the advertisement as provided in § 274.8 and § 274.9 of this part within 20 days of the date of first publication of the advertisement;

(3) The claim must be accompanied by a bond in the amount of the lesser of $5,000 or ten percent of the appraised value of the seized conveyance, but in no event less than $250, in the form of cash or certified check; and

(4) If the bond is in the form of a check, it must be drawn payable to the Immigration and Naturalization Service.

The bond will be held by the custodian. The costs and expenses of the judicial forefeiture proceedings will be paid from the bond, following completion of the proceedings. Any balance remaining shall be returned to the claimant.

(b) The regional commissioner may waive the bond requirement in the manner provided in § 103.7(c)(1) of this chapter.

(c) The filing of a claim and a bond does not entitle the claimant to possession of the conveyance.

§ 274.11 Administrative forfeiture.

If the appraised value of a seized conveyance does not exceed $100,000, and a claim and a bond are not filed within 20 days of the date of first publication of the advertisement as provided in § 274.9 of this part, the regional commissioner may declare the seized conveyance forfeited. The regional commissioner shall execute the declaration of forfeiture. The custodian shall dispose of the forfeited conveyance as provided in § 274.3 of this part.

§ 274.12 Judicial forfeiture.

If the appraised value of a seized conveyance exceeds $100,000, or a claim and a bond have been filed for a seized conveyance with an appraised value that does not exceed $100,000 as provided in § 274.10(a) of this part, the regional commissioner shall transmit a copy of the advertisement as provided in § 274.9 of this part and a complete statement of the facts and circumstances surrounding the seizure to the United States Attorney for the federal judicial district in which the conveyance was seized for commencement of judicial forfeiture proceedings pursuant to section 274(b) of the Act and this part.

§ 274.13 Petitions for relief from forfeiture; filing.

(a) Any person having a property interest in any seized conveyance may file a petition for relief from forfeiture. A petition must comply with the provisions of this section and §§ 274.14, 274.15, 274.16, and 274.17 of this part and be filed with the regional commissioner if the seized conveyance has not been referred to a United States Attorney pursuant to § 274.12 of this part for the commencement of judicial forfeiture proceedings. If such a referral has occurred, a petition must comply with the provisions of 28 CFR 9.3 and be filed with the United States Attorney.

(b) A petition must be executed and sworn to by the petitioner or by duly authorized counsel for the petitioner upon information and belief.

(c) A petition must include the following:

(1) A complete description of the conveyance, including identification number, if any, and the date and place of seizure;

(2) A complete statement of the property interest in the seized conveyance asserted by the petitioner, which property interest must be established as provided in § 274.6 of this part; and

(3) The facts and circumstances, with satisfactory proof thereof, relied upon by the petitioner to justify relief from forfeiture.

(d) Filing of a petition does not extend the time for filing a claim and a bond.

(e) If a petition is received by or a petition without a determination issued thereon is in the possession of the regional commissioner which asserts a property interest in a seized conveyance which is the subject of a referral to a United States Attorney for commencement of judicial forfeiture proceedings, the regional commissioner shall transmit the petition and a recommendation thereon to the United States Attorney. The regional commissioner shall notify the petitioner of the transmittal. Upon receipt of such a petition, the United States Attorney shall forward a copy of the petition, the recommendation of the regional commissioner, and the recommendation of the United States Attorney to the Director, Asset Forfeiture Office, Criminal Division, Department of Justice.

§ 274.14 Time for filing petitions.

(a) Petitions for the reliefs of remission or mitigation of forfeiture should be filed within 30 days of the date of first publication of the advertisement as provided in § 274.9 of this part. After a seized conveyance has been declared forfeited and placed in official use, sold, or otherwise disposed of according to law, petitions for the reliefs of remission or mitigation of forfeiture shall not be accepted.

(b) Petitions for the relief of restoration of proceeds of sale or the appraised value of a seized and forfeited conveyance placed in official use or otherwise disposed of according to law must be filed within 90 days of the sale of the seized and forfeited conveyance or within 90 days that the seized and forfeited conveyance is placed in official use or otherwise disposed of according to law.

§ 274.15 Remission.

(a) The regional commissioner shall not grant remission of forfeiture unless the petitioner establishes:

(1) A property interest in the conveyance;

(2) That at no time did the petitioner have any knowledge or reason to believe that the conveyance was being or would be used in violation of the law, including satisfying any applicable provisions of § 274.16 of this part;

(3) That the petitioner had no knowledge of the particular violation which subjected the conveyance to seizure and forfeiture;

(4) That the petitioner had no knowledge that the owner nor anyone else using or able to use the conveyance had any record or reputation; had

(5) That the petitioner had taken all reasonable steps to prevent the illegal use of the conveyance.

(b) Remission of forfeiture can only be granted after a seized conveyance has been declared forfeited.

(c) Grant of remission of forfeiture must be conditioned upon:

(1) Payment to the custodian of all costs and expenses of the seizure and forfeiture; or, in the case of a lienholder-petitioner, payment of all costs and expenses of the seizure and forfeiture or the amount by which the appraised value exceeds the net equity of the lienholder-petitioner in the conveyance, whichever is greater;

(2) Execution of an instrument by the petitioner holding the United States, its agents and employees, harmless from all claims which may result from the grant of remission of forfeiture;

(3) Execution of an agreement by the petitioner that no property interest in the conveyance will be transferred to any violator; and

(4) Any other terms or conditions as the regional commissioner determines to be appropriate, including a provision for liquidated damages to guarantee compliance with any of the provisions of the agreement or terms and conditions of the remission of forfeiture.

(d) The following provisions apply only to an owner-petitioner that is granted remission of forfeiture:

(1) Within 20 days after receipt of the determination, that owner-petitioner shall comply with the conditions of remission and take possession of the forfeited conveyance; and

(2) If that owner-petitioner does not comply with the provisions of paragraph (d)(1) of this section, the forfeited conveyance shall be placed in official use, sold, or otherwise disposed of by the custodian as provided in § 274.3 of this part. The proceeds of a sale of the forfeited conveyance shall be applied first to all costs and expenses of the seizure, forfeiture, and sale and any remaining balance shall be paid to that owner-petitioner. If the forfeited conveyance is placed in official use or otherwise disposed of, that owner-petitioner shall be paid an amount equal to the appraised value of the conveyance minus all costs and expenses of the seizure, forfeiture, and disposal.

(e) The following provisions apply only to a lienholder-petitioner that is granted remission of forfeiture:

(1) That lienholder-petitioner shall receive payment of the net equity of that lienholder-petitioner, if the forfeited conveyance is placed in official use or otherwise disposed of according to law; or either possession of the forfeited conveyance, or a monetary amount not to exceed the net equity of that lienholder-petitioner from a sale of the forfeited conveyance;

(2) Within 20 days after receipt of the determination, that lienholder-petitioner shall comply with the conditions of remission and take possession of the forfeited conveyance; and

(3) If that lienholder-petitioner does not comply with the provisions of paragraph (e)(2) of this section, the forfeited conveyance shall be placed in official use, sold, or otherwise disposed of by the custodian as provided in § 274.3 of this part. The proceeds of a sale shall be applied first to all costs and expenses of the seizure, forfeiture, and sale and any remaining balance not exceeding the net equity of that lienholder-petitioner shall be paid to that lienholder-petitioner. If the forfeited conveyance is placed in official use or otherwise disposed of, that lienholder-petitioner shall be paid the net equity of that lienholder-petitioner minus all costs and expenses of the seizure, forfeiture, and disposal.

§ 274.16 Mitigation.

(a) The regional commissioner may grant mitigation of forfeiture of a seized conveyance to a petitioner, including a violator. To be eligible for the relief of mitigation of forfeiture, a petitioner must establish that transfer of ownership of the forfeited conveyance to the petitioner promotes the interests of justice and does not diminish the deterrent effect of section 274(b) of the Act.

(b) A grant of mitigation of forfeiture shall be in the form of a monetary penalty imposed upon the petitioner in addition to any other amounts chargeable as a condition to the grant of the relief of remission of forfeiture. This penalty is considered as an item of cost payable by the petitioner.

(c) Mitigation of forfeiture can only be granted after a seized conveyance has been declared forfeited.

(d) A grant of mitigation of forfeiture must be conditioned upon:

(1) Execution of an instrument by the petitioner holding the United States, its agents and employees, harmless from all claims which may result from the grant of mitigation of forfeiture;

(2) Execution of an agreement that no property interest in the conveyance will be transferred to any violator, or any other violator if the petitioner is a violator; and

(3) Any other terms or conditions as the regional commissioner determines to be appropriate, including a provision for liquidated damages to guarantee compliance with any provisions of the agreement or terms and conditions of the mitigation of forfeiture.

(e) The following provisions apply only to an owner-petitioner that is granted mitigation of forfeiture:

(1) Within 20 days after receipt of the determination, that owner-petitioner shall comply with the conditions of mitigation and take possession of the forfeited conveyance; and

(2) If that owner-petitioner does not comply with the provisions of paragraph (e)(1) of this section, the forfeited conveyance shall be placed in official use, sold, or otherwise disposed of by the custodian under § 274.3 of this part. The proceeds of a sale of the forfeited conveyance shall be applied first to all costs and expenses of the seizure, forfeiture, and sale and any remaining balance shall be paid to that owner-petitioner. If the forfeited conveyance is placed in official use or otherwise disposed of, that owner-petitioner shall be paid an amount equal to the appraised value of the conveyance minus all costs and expenses of the seizure, forfeiture, and disposal.

(f) The following provisions apply only to a lienholder-petitioner that is granted mitigation of forfeiture:

(1) That lienholder-petitioner shall receive payment of the net equity of that lienholder-petitioner, if the forfeited conveyance is retained for official use; or either possession of the forfeited conveyance, or a monetary amount not to exceed the net equity of that lienholder-petitioner from the sale of the forfeited conveyance;

(2) Within 20 days after receipt of the determination, that lienholder-petitioner shall comply with the conditions of mitigation and take possession of the forfeited conveyance; and

(3) If the lienholder-petitioner does not comply with the provisions of paragraph (f)(2) of this section, the forfeited conveyance shall be placed in official use, sold, or otherwise disposed of by the custodian as provided in § 274.3 of this part. The proceeds of a sale shall be applied first to all costs and expenses of the seizure, forfeiture, and sale and any remaining balance not exceeding the net equity of that lienholder-petitioner shall

be paid to that lienholder-petitioner. If the forfeited conveyance is placed in official use or otherwise disposed of, that lienholder-petitioner shall be paid the net equity of that lienholder-petitioner minus all costs and expenses of the seizure, forfeiture, and disposal.

§ 274.17 Restoration of proceeds or appraised value.

(a) The regional commissioner shall not grant restoration of proceeds of sale or the appraised value of a conveyance placed in official use or otherwise disposed of according to law unless the petitioner establishes that the petitioner:

(1) Did not know of the seizure prior to the declaration of forfeiture;

(2) Was in such circumstances as prevented the petitioner from knowing thereof; and

(3) Would otherwise have been granted the relief of remission of forfeiture.

(b) A grant of restoration of proceeds of sale or the appraised value of a conveyance placed in official use or otherwise disposed of according to law must be conditioned upon:

(1) Execution of an instrument by the petitioner holding the United States, its agents and employees, harmless from all claims which may result from the grant of restoration of proceeds of sale or the appraised value of a conveyance placed in official use or otherwise disposed of according to law; and

(2) Any other terms or conditions as the regional commissioner determines to be appropriate.

§ 274.18 Provisions applicable to particular situations.

(a) A straw purchaser is a person who purchases in his own name a conveyance for another person, the real purchaser, who has a record or reputation. A lienholder-petitioner that knows, or has reason to believe, that a purchaser of a conveyance is a straw purchaser, must satisfy the requirements of § 274.15(a) of this part as to both the straw purchaser and the real purchaser to be eligible for a grant of remission of forfeiture. This provision applies where money is borrowed on the security of property held in the name of the straw purchaser for the real purchaser.

(b) A petitioner engaged in the business of leasing conveyances must satisfy the requirements of § 274.15(a) of this part as to all lessees and sublessees or other persons having any interest under a lease of the subject conveyance on the date of seizure of that conveyance to be eligible for a grant of remission of forfeiture.

(c) In the consideration of a petition for relief from forfeiture the mere existence of a community property interest without proof of financial contribution to the purchase of a conveyance will not be deemed to have been a property interest in a seized and forfeited conveyance.

(d) A petitioner that submits a petition for remission of forfeiture as a subrogee must satisfy the requirements of § 274.15(a) of this part as to all prior possessors of the subrogated interest in the seized and forfeited conveyance to be eligible for a grant of remission of forfeiture.

§ 274.19 Determinations on petitions; reconsideration.

(a) Upon consideration of a petition for relief from forfeiture and all of the facts and circumstances surrounding the seizure of a conveyance, the regional commissioner shall issue a written determination. In making that determination the regional commissioner shall presume that the evidence is sufficient to support forfeiture of the conveyance. No hearing shall be held on any petitions for relief from forfeiture under this part.

(b) The regional commissioner may deny relief from forfeiture when there are unusual circumstances regarding a seizure which provide reasonable grounds for concluding that remission or mitigation of the forfeiture would be contrary to the interests of justice and would diminish the deterrent effect of section 274(b) of the Act, even if the petitioner has satisfactorily established compliance with the administrative conditions applicable to and eligibility for relief from forfeiture.

(c) Relief from forfeiture shall not be granted to any petitioner who has a subordinate property interest to another petitioner until the petition of the petitioner with the superior property interest has been finally adjudicated nor until any claim or petition of the owner has been finally adjudicated.

(d) The determination on a petition shall set forth either the conditions upon which relief has been granted and the procedures for obtaining possession of the forfeited conveyance or other relief granted; or the reasons for denial of relief from forfeiture and the procedures for requesting reconsideration. The determination on a petition shall be mailed to the petitioner or duly authorized counsel of the petitioner.

(e) Any request for reconsideration of a denial of relief from forfeiture must be submitted to the regional commissioner within 10 days of receipt of the determination on the petition. Such request for reconsideration can only be based on evidence recently developed or not previously considered.

(f) Only one request for reconsideration of a denial of relief from forfeiture shall be considered.

§ 274.20 Compromise of judicial forfeiture proceedings.

Judicial forfeiture proceedings commenced pursuant to section 274(b) of the Act and this part may be compromised by the United States Attorney only with the concurrence of the Director, Asset Forfeiture Office, Criminal Division, Department of Justice. In evaluating a compromise, the United States Attorney shall consider the probabilities for successfully prosecuting the judicial forfeiture proceedings and the terms of the compromise offer. The United States Attorney shall consult with the regional commissioner before recommending a compromise.

Dated: May 5, 1988.

Alan C. Nelson,

Commissioner, Immigration and Naturalization Service.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM88-7-000]

Transcontinental Gas Pipe Line Corporation (Transco); List of First Sellers With Asserted Contractual Authority to Collect Delivery Allowances; Compression Allowances and Protest Procedures Under the Natural Gas Policy Act

Issued October 20, 1988.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Publication lists of first sellers with asserted contractual authority to collect delivery allowances.

SUMMARY: In Order No. 472, 52 FR 21560 (June 9, 1987), the Federal Energy Regulatory Commission amended its regulations to provide parties an opportunity to protest allowances for the delivery of natural gas which were heretofore presumed authorized by "area rate" clauses in gas sales contracts. Order No. 472 amended 18 CFR 271.1104(h) to require all interstate pipelines to provide a listing of those producers that have claimed an entitlement to delivery allowances pursuant to an "area rate" clause. The interstate pipelines were required to indicate whether they concurred in the producers' claim for delivery allowances.

Transco's listing of its contracts was submitted on July 8, 1988. List I sets forth those contracts which Transco contends do not contain contractual authorization for producers to collect delivery allowances. List II sets forth contracts which Transco agrees do contain contractual authority for producers to collect delivery allowances. List III sets forth contracts containing area rate provisions which authorize payment of delivery allowances. However, Transco states that the "expressly authorized" test for contractual authorization contained in § 271.1104(c)(4)(i) of the Commission's regulations also require that the governing contract provide that the seller agree to provide the specified production-related service. The contracts set forth on List III are contracts which provide for delivery of gas at the wellhead. Therefore, according to Transco, the sellers under those contracts have not agreed to provide delivery service and are not contractually entitled to collect delivery allowances.

DATE: Any protest must be filed by January 24, 1989.

ADDRESS: An original and 14 copies of each protest must be filed with Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Edward G. Gingold, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8114.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357-8997. The full text of this list of first sellers who have asserted contractual authority to collect delivery allowances pursuant to § 271.1104 of the Commission's Regulations is available on CIPS for 10 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

List I.—Transcontinental Gas Pipeline Corp. (TGPL) Producer Contracts Which Do Not Contain Contractual Authorization for Delivery Allowances Under Federal Energy Regulatory Commission Order No. 94-A

Producer	TGPL Contract	
	Number	Date
Anadarko	00086	6/22/83
Elf Aquitaine	00087	6/22/83
Centennial Royalty Co., et al	[illegible]	4/2/57
Tenna Oil Co	06233	7/[illegible]/80
Fina Oil & Chemical Co	06390	6/7/71
Texaco, Inc	06821	2/19/80
Texaco, Inc	06958	5/5/80
Ogle Production Corp	61077	2/11/81
Lee Brothers Oil Co., et al	61105	4/1/81
Sun Exploration & Prod. Co	61106	4/1/81
Cities Service Co	61176	8/28/81
Sun Exploration & Prod. Co	61180	9/14/81
Amoco Production Co	61300	8/25/81

List II.—Transcontinental Gas Pipeline Corp. (TGPL) Producer Contracts Which Do Contain Contractual Authorization for Delivery Allowances Under Federal Energy Regulatory Commission Order No. 94-A

Producer	TGPL Contract	
	Number	Date
Petrofia Delaware	00005	8/[illegible]/76
Cities Service O&G	00006	8/9/76
Do	00007	8/10/76
Fina Oil & Gas, Inc	00008	8/[illegible]/76
Texaco Prod., Inc	00009	8/10/76
Getty Oil Co	00010	8/10/76
Texaco Prod., Inc	00010	8/10/76
Cities Service O&G	00011	8/16/76
Do	00011	8/16/76
Getty Oil Co	00013	8/19/76
Texaco Prod., Inc	00013	8/19/76
Getty Oil Co	00014	8/25/76
Texaco Prod., Inc	00014	8/25/76
Getty Oil Co	00017	8/31/76
Texaco Prod., Inc	00017	8/31/76
Do	00018	8/31/76
Arco Oil & Gas Co	00018	11/4/76
Sun Expl. & Prod	00020	5/19/77
La Land & Expl. Co	00021	10/7/77
Lloxy Holdings, Inc	00021	10/7/77
American Petr. Co. Tx	00022	3/30/78
Fina O&G Co	00022	3/30/78
Amoco Prod. Co	00023	6/14/78
Arco Oil & Gas Co	00024	6/24/78
Mesa Oper. Ltd. Part	00025	7/17/78
Petro Lewis Corp	00026	5/16/78
Amoco Prod. Co	00027	8/11/78

List II.—Transcontinental Gas Pipeline Corp. (TGPL) Producer Contracts Which Do Contain Contractual Authorization for Delivery Allowances Under Federal Energy Regulatory Commission Order No. 94-A—Continued

Producer	TGPL Contract	
	Number	Date
Cities Service O&G	00028	8/25/78
Oxy Petr., Inc	00028	8/25/78
Canadian OCC of Calif	00031	8/31/78
Sun Expl. & Prod	00030	10/6/78
Cities Service O&G	00032	11/13/78
Oxy Petr., Inc	00032	11/13/78
Texaco Prod., Inc	00033	2/14/79
Cities Service O&G	00035	4/[illegible]/79
La Land & Expl. Co	00037	5/5/79
Lloxy Holdings, Inc	00037	5/5/79
La Land & Expl. Co	00038	6/13/79
Cities Service O&G	00039	5/[illegible]/79
Oxy Petr., Inc	00039	5/15/79
Canadian OCC of Calif	00040	5/10/79
Petro Lewis Corp	00041	7/13/79
Amoco Prod. Co	00042	8/10/79
Do	00043	8/10/79
Petro Lewis Corp	00044	7/31/79
Cities Service O&G	00045	8/1/79
Do	00047	8/3/79
Arco Oil & Gas Co	00048	10/24/79
Conoco, Inc	00049	10/24/79
Getty Oil Co	00050	9/1/79
Texaco Prod., Inc	00050	9/1/79
Arco Oil & Gas Co	00052	8/5/80
Denison Mines (US)	00053	11/11/80
Arco Oil & Gas Co	00054	8/17/81
Conoco, Inc	00054	8/17/81
Arco Oil & Gas Co	00055	8/17/81
Wilshire Oil Co. of Tx	00057	2/16/82
Texaco, Inc	00058	5/19/82
Arco Oil & Gas Co	00059	5/14/82
Texaco Prod., Inc	00060	7/[illegible]/82
Cities Service O&G	00061	9/20/82
Petro Lewis Corp	00063	12/22/82
La Land & Expl. Co	00064	3/30/83
Lloxy Holdings, Inc	00064	3/30/83
Mobil Oil Expl. & Prod	00065	8/12/57
Marathon Oil Co	00066	4/30/48
Sun Expl. & Prod	00066	4/30/48
Do	00071	8/29/57
Phillips Petr. Co	06080	8/29/56
Union Expl. Part., Ltd	06080	8/29/56
Phillips Petr. Co	06081	11/10/56
SPG Expl. Corp	06100	12/19/56
Arco Oil & Gas Co	06113	5/[illegible]/57
Enstar Petr. Co	06117	9/18/57
Fluor O&G Corp	06117	9/18/57
Mosbacher, Robt	06131	8/30/57
Chevron USA, Inc	06141	12/20/57
Enstar Petr. Co	06141	12/20/57
Lyco Acquisition 1983	06141	12/20/57
Moses, Lucine M	06141	12/20/57
Mullins, Betsy M	06141	12/20/57
Quasco O&G Co	06141	12/20/57
Petro Lewis Funds, Inc	06141	12/20/57
Phillips Petr. Co	06141	12/23/57
Tenneco Oil Co	06141	12/23/57
Texas Ranger, Inc	06141	12/20/57
TXP Opr. Co	06141	12/20/57
Union Texas Petr. Corp	06150	1/7/58
Exxon Corp	06155	2/11/58
Do	06156	2/11/58
Union Oil Co. of Calif	06161	12/27/57
Kerr McGee Corp	06172	11/14/58
Amoco Prod. Co	06173	11/14/58
Phillips Oil Co	06174	11/14/58
Orlando-Sol Ptr	06191	3/23/59
Union Texas Petr., Corp	06193	8/[illegible]/58

LIST II.—TRANSCONTINENTAL GAS PIPE-LINE CORP. (TGPL) PRODUCER CONTRACTS WHICH DO CONTAIN CONTRACTUAL AUTHORIZATION FOR DELIVERY ALLOWANCES UNDER FEDERAL ENERGY REGULATORY COMMISSION ORDER NO. 94-A—Continued

Producer	TGPL Contract	
	Number	Date
Exxon Corp	06212	10/15/59
Arco Oil & Gas Co	06213	10/15/59
Gulf Oil Corp	06213	10/15/59
Arco Oil & Gas Co	06214	9/5/59
Tenna Oil Co	06233	7/28/60
Union Expl. Part., Ltd	06240	7/21/60
Amoco Prod. Co	06241	7/28/60
BHP Petr. Americas, Inc	06243	7/30/60
CNG Prod. Co	06243	7/30/60
Odeco O&G Co	06243	7/30/60
Shore Oil Corp	06243	7/30/60
TXO Opr. Co	06243	7/30/60
Chevron USA, Inc	06256	4/4/61
Gulf Oil Corp	06256	4/4/61
Mobil Oil Expl. & Prod	06257	4/17/61
Exxon Corp	06260	6/19/61
North Central Oil	06262	9/1/61
Sohio Pet. Co	06262	9/1/61
Amoco Prod. Co	06271	1/16/62
Union Oil Co. of Calif	06271	1/16/62
Amoco Prod. Co	06281	10/21/64
Union Expl. Part., Ltd	06281	10/21/64
Mobil Oil Expl. & Prod	06282	1/26/65
Conoco, Inc	06283	2/1/65
Chevron USA, Inc	06285	1/20/65
Walter O&G Corp	06286	7/7/65
Chevron USA, Inc	06288	8/11/65
Mosbacher, Robt	06288	8/11/65
Calco Pet. Corp	06295	1/19/67
Case Pomeroy Oil Corp	06295	1/19/67
Fairmont Oil Corp	06295	1/19/67
Kerr McGee Corp	06295	1/19/67
Chevron USA, Inc	06297	6/1/67
Sun Expl. & Prod	06304	10/3/67
Amerada Hess Corp	06305	10/3/67
American Prod. Part III	06305	10/3/67
American Prod. Part IV	06305	10/3/67
Amenplor Corp	06305	10/3/67
Aminoil USA, Inc	06305	10/3/67
La Land & Expl. Co	06305	10/3/67
Phillips Petr. Co	06306	10/3/67
Phillips Petr. Co	06306	8/31/67
Union Oil Co. of Calif	06307	11/09/67
Eugene Shoal Oil Co	06313	2/27/69
Union Expl. Part., Ltd	06313	2/27/69
Eugene Shoal Oil Co	06319	2/27/69
Marathon Oil Co	06319	2/26/69
Union Expl. Part., Ltd	06319	2/27/69
BHP Pet. Americas, Inc	06320	3/28/68
CNG Prod. Co	06320	3/28/68
Energy Reserves Group	06320	3/28/68
Odeco O&G Co	06320	3/28/68
Shore Oil Corp	06320	3/28/68
TXP Opr. Co	06320	3/28/68
Chevron USA, Inc	06321	3/13/68
Amoco Prod. Co	06324	3/3/69
Do	06325	3/3/69
Alliance Oper. Corp	06326	3/3/69
Amoco Prod. Co	06327	3/3/69
Do	06331	11/8/68
Aminoil USA, Inc	06332	10/4/68
Cabot Petr. Corp	06332	10/4/68
El Aguilera, Inc	06332	10/4/68
Fairmont Oil Corp	06332	10/4/68
Kerr McGee Corp	06332	10/4/68
Murphy Oil Corp	06332	10/4/68
Odeco O&G Co	06332	10/4/68
Phillips Petr. Co	06332	10/4/68
Sun Expl. & Prod	06332	10/4/68

LIST II.—TRANSCONTINENTAL GAS PIPE-LINE CORP. (TGPL) PRODUCER CONTRACTS WHICH DO CONTAIN CONTRACTUAL AUTHORIZATION FOR DELIVERY ALLOWANCES UNDER FEDERAL ENERGY REGULATORY COMMISSION ORDER NO. 94-A—Continued

Producer	TGPL Contract	
	Number	Date
Union Expl. Part., Ltd	06334	12/2/68
Union Oil Co. of Calif	06334	12/2/68
Cabot Petr. Corp	06335	3/14/68
Fairmont Oil Corp	06335	3/14/68
Kerr McGee Corp	06336	3/14/68
Sun Expl. & Prod	06336	3/14/68
Cabot Petr. Corp	06337	3/17/68
Case Pomeroy Oil Corp	06337	3/17/68
Fairmont Oil Corp	06337	3/17/68
Kerr McGee Corp	06337	3/17/68
Mobil Oil Expl. & Prod	06339	3/31/68
Chevron USA, Inc	06340	4/08/69
Mobil Oil Expl. & Prod	06341	4/15/68
Trailour Oil Co	06345	8/15/68
Amoco Prod. Co	06351	8/22/69
Phillips Petr. Co	06354	11/17/69
Texaco, Inc	06355	12/8/69
Do	06356	12/8/69
Aminoil USA, Inc	06356	12/15/69
Ell Aquitaine, Inc	06356	12/15/69
Murphy Oil Corp	06356	12/15/69
Odeco O&G Co	06356	12/15/69
Pelto Oil Co	06356	12/15/69
Phillips Petr. Co	06356	12/15/69
Sun Expl. & Prod	06356	12/15/69
Do	06360	12/17/69
CNG Prod. Co	06363	12/31/69
Murphy Oil Corp	06363	12/31/69
Odeco O&G Co	06363	12/31/69
Phillips Petr. Co	06371	8/15/70
Texaco Prod., Inc	06373	8/7/70
Do	06375	9/1/70
Sun Expl. & Prod	06376	9/1/70
Chem Service O&G	06377	9/2/70
Kamlok, Inc	06381	11/25/70
Chem Service O&G	06386	5/17/71
Texaco Prod. O&G	06392	7/12/71
Knob Hill O&G Corp	06393	8/02/71
TXP Opr. Co	06393	8/2/71
Enstar Petr. Co	06394	8/2/71
104 Cameron Corp	06394	8/2/71
Chevron USA, Inc	06395	7/29/71
Arco Oil & Gas Co	06399	9/1/71
C&K Petr., Inc	06410	4/20/72
Enstar Petr. Co	06410	4/20/72
Been, John A	06434	1/15/73
Conwest Energy Corp	06434	1/15/73
Crutcher, Albert B. Jr	06434	1/15/73
Dorchester Expl., Inc	06434	1/15/73
Enstar Petr. Co	06434	1/15/73
Furth Oil Co	06434	1/15/73
Houstoun, Evelyn N	06434	1/15/73
Lemmon, Mark L	06434	1/15/73
Mclean Stewart Invest	06434	1/15/73
Mitchell Energy Corp	06434	1/15/73
Owen, William R	06434	1/15/73
Price, Joe D	06434	1/15/73
Shepherd, R.A., Jr	06434	1/15/73
Tufts, J.D. II	06434	1/15/73
Union Texas Petr. Corp	06434	1/15/73
Willoughby, R.E.	06434	1/15/73
Zapata Expl. Co	06434	1/15/73
Arco Oil & Gas Co	06436	1/15/73
Anadarko Petr. Corp	06440	8/25/73
Anderko Prod. Co	06440	9/20/73
Shell Offshore, Inc	06443	3/22/74
American Petr. Co. Tx	06444	3/20/74
Southland Royalty Co	06449	8/15/74
Texaco, Inc	06452	8/15/74

LIST II.—TRANSCONTINENTAL GAS PIPE-LINE CORP. (TGPL) PRODUCER CONTRACTS WHICH DO CONTAIN CONTRACTUAL AUTHORIZATION FOR DELIVERY ALLOWANCES UNDER FEDERAL ENERGY REGULATORY COMMISSION ORDER NO. 94-A—Continued

Producer	TGPL Contract	
	Number	Date
Arco Oil & Gas Co	06470	11/7/74
BHP Petr. Co	06470	11/7/74
Castle, Inc	06470	11/7/74
Conoco, Inc	06470	11/7/74
Cory, Kenneth W	06470	11/7/74
Grampian Co. Ltd	06470	11/7/74
Marathon Oil Co	06470	11/7/74
Mobil Prod. Tx & NM	06470	11/7/74
Sun Expl. & Prod	06470	11/7/74
Texaco Prod., Inc	06470	11/7/74
Wintergreen Energy	06470	11/7/74
Mosbacher, Robt	06476	5/1/75
Arco Oil & Gas Co	06478	6/24/75
Brown, George H. Ptr	06486	7/8/75
Phillips Oil Co	06489	8/22/75
Phillips Petr. Co	06489	8/22/75
Coastal O&G Corp	06490	12/10/75
Semedan Oil Corp	06491	12/10/75
Arco Oil & Gas Co	06496	1/7/76
Huffco Petr. Corp	06502	2/10/76
Jerry Chambers Expls. Co	06502	2/10/76
Fina Oil & Gas, Inc	06503	7/15/76
Petrolina Delaware	06503	7/15/76
Mobil Oil Expl. & Prod	06504	7/29/76
Phillips Petr. Inc	06505	8/11/76
Paine W-Geodyn Ptr. IB	06506	9/3/76
Paine W-Geodyn Ptr. IC	06506	9/3/76
Paine W-Geodyn Ptr. IB	06506	9/3/76
Paine W-Geodyn Ptr. IC	06506	9/3/76
Phillips Oil Co	06510	9/3/76
Newmont Oil Co	06511	9/1/76
Shell Offshore, Inc	06511	9/1/76
TXP Opr. Co	06514	9/1/76
Eason Oil Co	06515	9/1/76
Southland Royalty Co	06516	9/1/76
Newmont Oil Co	06520	9/23/76
McMoran-Freeport Oil	06521	9/1/76
Amoco Prod. Co	06526	11/8/76
Union Texas Petr. Corp	06528	11/23/76
Phillips Petr. Co	06530	12/2/76
Texaco Prod. Inc	06535	1/26/77
TXP. Opr Co	06560	7/29/77
Mobil Oil Expl. & Prod	06563	8/25/77
Do	06564	8/25/77
Linder Energy Co	06573	10/26/77
Louisiana General Oil co	06573	10/25/77
Moody, C.W. Jr	06575	8/11/77
Mosbacher, Robt	06576	8/11/77
Nicklos O&G Co	06576	8/11/77
Scott, C.J	06576	8/11/77
Warnco O&G Co	06576	8/11/77
TXP Opr. Co	06577	11/16/77
Mobil Prod. TX & NM	06578	12/5/77
Mosbacher, Robt	06580	8/16/77
Mobil Prod. TX & NM	06582	12/16/77
Enstar Petr. Co	06585	12/16/77
Moses, Lannie M	06585	12/16/77
Mullins, Betsy N	06585	12/16/77
Oliseo O&G Co	06585	12/15/77
Petro Lewis Funds, Inc	06585	12/15/77
Texas Ranger, Inc	06585	12/15/77
Mobil Prod. TX & NM	06586	12/19/77
Do	06589	12/31/77
Shell Offshore, Inc	06590	1/9/78
Texaco, Inc	06593	1/25/78
TXP Opr. Co	06595	2/9/78
Texaco, Inc	06597	1/25/78
Shell Offshore, Inc	06603	3/3/78
Do	06604	3/3/78

LIST II.—TRANSCONTINENTAL GAS PIPE-LINE CORP. (TGPL) PRODUCER CONTRACTS WHICH DO CONTAIN CONTRACTUAL AUTHORIZATION FOR DELIVERY ALLOWANCES UNDER FEDERAL ENERGY REGULATORY COMMISSION ORDER NO. 94-A—Continued

Producer	TGPL Contract	
	Number	Date
TXP Opr. Co	06600	3/2/78
Do	06606	3/2/78
Shell Offshore, Inc	06608	3/10/78
Conoco, Inc	06610	3/17/78
Shell Offshore, Inc	06610	3/17/78
Chevron USA, Inc	06614	5/12/78
TXP Opr. Co	06615	5/15/78
Union Expl. Part., Ltd	06616	5/16/78
Do	06618	5/16/78
La Land & Expl. Co	06618	5/16/78
Union Expl. Part., Ltd	06618	5/16/78
La Land & Expl. Co	06620	5/16/78
Union Expl. Part., Ltd	06620	5/16/78
Odeco O&G Co	06624	5/17/78
TXP Opr. Co	06625	5/25/78
Petro Lewis Funds, Inc	06626	5/26/78
Do	06627	5/26/78
Do	06633	7/16/78
Mobil Oil Expl. & Prod	06640	8/10/78
Newmont Oil Co	06643	8/15/78
Mobil Prod TX & NM	06644	8/11/78
Amoco Prod. Co	06649	8/7/78
Coastal O&G Corp	06652	9/19/78
Mesa Petro. Co	06652	9/19/78
McMoran-Freeport Oil	06654	10/14/78
Unidel Oil Corp	06655	10/24/78
Chevron USA, Inc	06659	9/21/78
Texaco, Inc	06661	9/27/78
Mobil Prod. TX & NM	06664	9/27/78
Koch Industries, Inc	06667	10/4/78
Santa Fe-Andover Oil	06667	10/4/78
Phillips Petr. Co	06668	10/16/78
Mosbacher, Robt	06671	10/13/78
King Ranch, Inc	06674	9/10/78
Phillips Petr. Co	06675	10/20/78
Ocean O&G Co	06677	11/1/78
Do	06677	11/1/78
Phillips Petr. Co	06686	11/16/78
TXP Opr. Co	06694	12/4/78
Chevron USA, Inc	06695	11/28/78
Partnership Prop. Co	06697	12/12/78
Do	06700	12/18/78
TXP Opr. Co	06701	10/20/78
Cenergy Expl. Co	06705	12/1/78
Mobil Prod. TX & NM	06722	1/5/79
Kerr McGee Corp	06733	1/29/79
Mobil Oil Expl. & Prod	06726	1/8/79
Mosbacher, Robt	06729	2/14/79
Pend Oreille O&G Co	06729	2/14/79
TXP Opr. Co	06729	2/14/79
Exxon Corp	06730	2/22/79
FMP Opr. Co	06733	2/21/79
Mesa Petr. Co	06734	2/6/79
TXP Opr. Co	06743	3/20/79
La Land & Expl. Co	06746	3/22/79
Wintergreen Energy	06746	3/22/79
Pennzoil Co	06748	3/23/79
Do	06750	3/23/79
FMP Opr. Co	06753	3/20/79
Mesa Oper. Ltd. Part	06753	3/20/79
Mosbacher, Robt	06755	2/28/79
Hassie Hunt Expl. Co	06757	4/11/79
Mesa Oper. Ltd. Part	06758	3/20/79
Murchison, Gertrude Est	06762	5/2/79
Sun Expl. & Prod	06763	4/11/79
Shell Offshore, Inc	06765	3/20/79
Do	06771	5/9/79
Case Pomeroy Oil Corp	06774	5/17/79
Diamond Shamrock Oil	06774	5/17/79

LIST II.—TRANSCONTINENTAL GAS PIPE-LINE CORP. (TGPL) PRODUCER CONTRACTS WHICH DO CONTAIN CONTRACTUAL AUTHORIZATION FOR DELIVERY ALLOWANCES UNDER FEDERAL ENERGY REGULATORY COMMISSION ORDER NO. 94-A—Continued

Producer	TGPL Contract	
	Number	Date
Fairmont Oil Corp	06774	5/17/79
FMP Opr. Co	06774	5/17/79
Norse Petr. US, Inc	06774	5/17/79
Texaco Prod., Inc	06774	5/17/79
TXP Opr. Co	06774	5/17/79
Cities Service O&G	06777	4/20/79
Exxon Corp	06781	5/29/79
Phillips Petr. Co	06783	6/1/79
Koch Industries, Inc	06784	6/1/79
Cities Service O&G	06785	4/19/79
Cay Petr., Inc	06785	4/19/79
Mosbacher, Robt	06789	3/29/79
Marathon Oil Co	06791	6/5/79
Canadian OCC of Calif	06794	4/19/79
NRM Op. Co	06795	6/29/79
TXP Opr.	06795	6/29/79
Mobil Oil Expl. & Prod	06797	6/4/79
Taylor Energy Co	06798	6/15/79
Do	06799	6/15/79
Petro Lewis Funds, Inc	06801	6/21/79
Do	06802	6/21/79
Phillips Petr. Co	06803	6/26/79
Mobil Prod. TX & NM	0685	6/21/79
Amerada Hess Corp	06808	6/15/79
Do	06809	6/15/79
FMP Opr. Co	06810	6/25/79
Petro Lewis Funds, Inc	06813	7/17/79
Do	06814	7/17/79
De	06815	7/16/79
Do	06820	7/19/79
Union Texas Petr. Corp	06821	6/1/79
TXP Opr. Co	06822	6/29/79
Cenergy Expl. Co	06824	8/1/79
Transcontinental Oil	06827	8/3/79
Amerada Hess Corp	06829	8/10/79
Do	06830	8/10/79
Samedan Oil Corp	06839	8/20/79
La Land & Expl. Co	06840	8/23/79
Llowy Holdings, Inc	06840	8/29/79
Petro Lewis Funds, Inc	06843	8/30/79
Do	06844	8/29/79
Do	06845	8/29/79
Do	06846	8/30/79
Chevron USA, Inc	06847	8/24/79
FPCO O&G Co	06857	9/17/79
Shell Offshore, Inc	06857	9/17/79
Getty Oil Co	06858	9/18/79
Texaco Prod., Inc	06859	9/18/79
Mobil Expl. & Prod. NA	06868	10/1/79
Phillips Petr. Co	06869	10/4/79
TXP Opr. Co	06871	10/10/79
Do	06873	10/11/79
Amoco Prod., Co	06875	6/29/79
TXP Opr. Co	06877	9/19/79
Enron O&G Co	06878	11/6/79
Oil Participations	06881	11/13/79
Llowy Holdings, Inc	06885	11/30/79
Mobil Oil Expl. & Prod	06890	10/1/79
Mosbacher, Robt	06896	12/31/79
TXP Opr. Co	06896	12/31/79
Amoco Prod. Co	06909	1/22/80
Texaco, Inc	06910	1/22/80
Houston Oil & Mineral	06911	12/4/79
Diamond Shamrock Oil	06914	1/17/80
FMP Opr. Co	06914	1/17/80
Norse Petr. US, Inc	06914	1/17/80
Texaco Prod., Inc	06914	1/17/80
TXP Opr. Co	06914	1/17/80

LIST II.—TRANSCONTINENTAL GAS PIPE-LINE CORP. (TGPL) PRODUCER CONTRACTS WHICH DO CONTAIN CONTRACTUAL AUTHORIZATION FOR DELIVERY ALLOWANCES UNDER FEDERAL ENERGY REGULATORY COMMISSION ORDER NO. 94-A—Continued

Producer	TGPL Contract	
	Number	Date
Texaco, Inc	06915	1/25/80
Do	06917	1/25/80
Wintergreen Energy	06918	1/21/80
Petro Resources, Inc	06919	1/21/80
Mesa Oper Ltd. Part	06922	12/3/79
TXP Opr. Co	06924	2/20/80
Do	06926	3/4/80
Mesa Oper. Ltd. Part	06930	3/5/80
S&S A Gen. Ptr	06931	1/29/80
Diamond Shamrock Oil	06932	3/13/80
North Central Oil	06939	3/19/80
TXP Opr. Co	06949	4/14/80
Do	06950	4/13/80
Do	06953	4/24/80
FMP Opr. Co	06956	4/24/80
TXP Opr. Co	06960	5/5/80
Do	06961	5/5/80
Mobil Expl. & Prod. NA	06967	5/8/80
Superior Oil Co	06967	5/8/80
Amoco Prod Co	06975	8/15/80
BHP Petr. Americas, Inc	06977	6/19/80
Mobil Expl. & Prod., NA	06981	7/14/80
Sonat Expl. Co	06982	7/18/80
Shell Offshore, Inc	06984	7/28/80
Do	06989	7/28/80
Cox, Edwin L	06995	7/31/80
Trust 12	06996	7/31/80
Arco Oil & Gas Co	06999	8/5/80
Pioneer Prod. Co	61000	8/21/80
TXP Opr. Co	61005	8/18/80
Do	61006	8/18/80
Do	61016	8/21/80
Chevron USA, Inc	61018	7/27/80
Transcontinental Oil	61018	7/27/80
Conoco, Inc	61020	8/1/80
Enserch Expl. Inc	61024	7/31/80
Chevron USA, Inc	61025	10/29/80
Southland Royalty Co	61026	11/4/80
EMP Opr. Co	61026	11/7/80
TXP Opr. Co	61032	11/7/80
Mesa Oper. Ltd. Part	61033	11/4/80
Shell Offshore, Inc	61033	11/4/80
TXP Opr. Co	61034	11/4/80
Shell Western E&P	61035	10/29/80
Kerr McGee Corp	61036	11/18/80
Texaco Prod., Inc	61041	12/1/80
Kerr McGee Corp	61043	12/1/80
Do	61044	11/26/80
Shell Offshore, Inc	61046	12/1/80
Mesa Oper. Ltd. Part	61047	12/10/80
Do	61048	12/15/80
Do	61049	12/15/80
Mesa Petr. Co	61050	12/15/80
Diamond Shamrock Oil	61052	12/23/80
Union Expl. Part. Ltd	61054	12/31/80
Shell Offshore, Inc	61055	12/15/80
Case Pomeroy Oil Corp	61057	12/31/80
Aminoil USA, Inc	61058	1/9/81
Phillips Petr. Co	61059	1/9/80
Fairmont Oil Corp	61061	12/31/80
Shell Offshore, Inc	61065	12/31/80
Phillips Petr. Co	61066	1/23/81
Sohio Petr. Co	61067	1/21/81
Pelto Oil Co	61068	2/3/81
Odeco O&G Co	61074	1/31/81
Case Pomeroy Oil Corp	61074	2/11/81
Fairmont Oil Corp	61075	2/11/81
Phillips Oil Co	61076	12/15/80
Phillips Petr. Co	61076	12/15/80

LIST II.—TRANSCONTINENTAL GAS PIPE-LINE CORP. (TGPL) PRODUCER CONTRACTS WHICH DO CONTAIN CONTRACTUAL AUTHORIZATION FOR DELIVERY ALLOWANCES UNDER FEDERAL ENERGY REGULATORY COMMISSION ORDER NO. 94-A—Continued

Producer	TGPL Contract	
	Number	Date
Aminoil USA, Inc.	61080	2/20/81
Phillips Petr. Co	[illegible]	2/25/81
FMP Opr. Co	[illegible]	3/1/81
Do	61086	3/1/81
Do	[illegible]	3/1/81
Do	[illegible]	3/1/81
Murphy Oil Corp.	[illegible]	3/5/81
Ocean O&G Co	[illegible]	3/6/81
Odeco O&G Co	[illegible]	3/5/81
Cities Service [illegible]	[illegible]	3/17/81
Texaco, Inc.	61094	3/2/81
Amoco Prod., Co	[illegible]	3/1/81
Phillips Oil Co	[illegible]	3/25/81
Mobil Oil Expl. & Prod.	61104	4/15/81
HNG Oil Co	[illegible]	4/1/81
Getty Oil Co	[illegible]	4/22/81
Do	61111	4/22/81
ANR Prod. Co	61115	5/11/81
Kerr McGee Corp	61117	[illegible]
Amerada Hess Corp.	[illegible]	[illegible]
Sun Expl. & Prod	[illegible]	[illegible]
Conoco, Inc	[illegible]	[illegible]
Orlando-Soi Ptr	[illegible]	4/21/81
Mobil Prod. TX & NM	[illegible]	7/1/81
Arco Oil & Gas Co	[illegible]	[illegible]
Sohio Petr. Co	61138	7/14/81
Arco Oil & Gas Co	[illegible]	[illegible]
Do	[illegible]	5/19/81
Do	61147	6/24/81
Shell Western E&P	[illegible]	7/1/81
Mobil Oil Expl. & Prod.	[illegible]	7/15/81
Do	61151	7/15/81
Do	[illegible]	7/15/81
Do	[illegible]	7/15/81
Do	[illegible]	7/15/81
TXP Opr. Co	[illegible]	8/11/81
Newmont Oil Co	[illegible]	[illegible]
Do	61167	9/2/81
Do	[illegible]	9/2/81
Do	[illegible]	9/15/81
Conoco, Inc	[illegible]	9/1/81
ANR Prod., Co	61171	[illegible]
Petro Prod., Co	61171	[illegible]
TXP Opr. Co	61171	[illegible]
Newmont Oil Co	[illegible]	9/2/81
Shell Offshore, Inc.	[illegible]	8/26/81
Essex Offshore, Inc.	61177	8/21/81
Felmont Oil Corp	[illegible]	8/21/81
Sun Expl. & Prod	[illegible]	[illegible]
Mobil Prod., TX & NM	[illegible]	4/1/81
Superior Oil Co	[illegible]	[illegible]
Mobil Expl. & Prod. NA	[illegible]	10/5/81
Samedan Oil Corp	[illegible]	[illegible]
Superior Oil Co	61190	10/5/81
Coastal O&G Corp	[illegible]	9/[illegible]/81
Mesa Oper. Ltd. Part.	[illegible]	10/13/81
Arco Oil & Gas Co	[illegible]	[illegible]
Decalta Intl. Corp.	[illegible]	[illegible]
Mobil Prod., TX & NM	61202	[illegible]
Phillips Petr. Co	[illegible]	[illegible]
Sohio Petr. Co.	61205	11/18/81
Sun Expl. & Prod	[illegible]	12/2/81
Getty Oil Co.	61210	[illegible]
Odeco O&G Co	[illegible]	[illegible]
Conoco, Inc	61223	[illegible]
Enron, Corp	[illegible]	[illegible]
Hamilton Bros. Oil Co	61230	1/11/82
FMP Opr. Co	[illegible]	[illegible]
TXP Opr. Co.	[illegible]	[illegible]

LIST II.—TRANSCONTINENTAL GAS PIPE-LINE CORP. (TGPL) PRODUCER CONTRACTS WHICH DO CONTAIN CONTRACTUAL AUTHORIZATION FOR DELIVERY ALLOWANCES UNDER FEDERAL ENERGY REGULATORY COMMISSION ORDER NO. 94-A—Continued

Producer	TGPL Contract	
	Number	Date
Kerr McGee Corp	61233	5/21/82
Canergy Expl. Co	[illegible]	3/5/82
Texaco, Inc.	[illegible]	[illegible]
Conoco, Inc	61245	3/29/82
Newmont Oil Co	61245	[illegible]
Felmont Oil Corp	61250	[illegible]
Case Pomeroy Oil Corp	61251	4/29/82
Kerr McGee Corp	61258	6/20/82
Shell Western E&P	61260	7/20/82
TXP Opr. Co	62264	[illegible]
Newmont Oil Co	61273	1/11/83
Union Expl. Part. Ltd	[illegible]	[illegible]
FMP Opr. Co	61276	2/18/83
Exxon Corp	61279	4/15/83
Shell Offshore, Inc.	61287	[illegible]
Texaco Prod., Inc	61299	[illegible]
Cities Service O&G	61304	3/1/84
Mesa Oper. Ltd. Part.	61306	3/7/84
Amoco Prod., Co	61315	9/12/84
Union Expl. Part. Ltd	61321	11/16/84
American Prod., Part. III	[illegible]	[illegible]
American Prod., Part. IV	61336	[illegible]
Amerplor Corp	61336	[illegible]
New York Life O&G I-A	[illegible]	[illegible]
New York Life O&G I-B	61336	[illegible]
New York Life O&G I-C	61336	[illegible]
Union Texas Petr. Corp	61337	11/12/86
Mobil Oil Expl. & Prod.	61337	11/12/86
Sun Expl. & Prod	61337	11/12/86
Kerr McGee Corp	[illegible]	[illegible]
Amoco Prod. Co	[illegible]	[illegible]
Phillips Petr. Co	61340	[illegible]
Exxon Corp	[illegible]	[illegible]
Mobil Oil Expl. & Prod	[illegible]	[illegible]
TXP Opr. Co	61347	7/30/85
Southland Royalty Co	61349	7/30/85
FMP Opr. Co	61351	7/30/85
McMoran-Freeport Oil	61351	7/30/85
Exxon Corp	[illegible]	[illegible]
Oil Participations	[illegible]	[illegible]
Superior Oil Co	61356	8/1/85
Mobil Oil Expl. & Prod.	61357	8/1/85
Conoco, Inc	61360	[illegible]
Do	[illegible]	8/22/85
Mobil Oil Expl. & Prod.	61362	8/22/85
Newmont Oil Co	[illegible]	[illegible]
Orlando-Soi Ptr	61362	[illegible]
Ramcor, Inc	[illegible]	[illegible]
Amerada Hess Corp	63165	[illegible]
Petrus Oil Co	61366	[illegible]
Arco Oil & Gas Co	61368	[illegible]
Mobil Prod. TX & NM	63170	[illegible]
Sun Expl. & Prod	61373	11/12/86
Odeco O&G Co	61374	[illegible]
Felmont Oil Corp	61377	[illegible]
Amoco Prod. Co	61379	[illegible]
SPG Expl. Corp.	[illegible]	11/1/85
Mobil Oil Expl. & Prod.	[illegible]	7/31/85
Essex Offshore, Inc.	[illegible]	12/1/85
Petro Resources, Inc	[illegible]	[illegible]
Amoco Prod. Co	[illegible]	11/22/86
Park Pipe Line	[illegible]	11/22/85
Enstar Petr. Co	61399	1/16/86
Chevron USA, Co	[illegible]	[illegible]
Primary Fuels, Inc.	[illegible]	1/16/86
Union Expl. Part. Ltd	[illegible]	[illegible]
Chevron USA, Inc.	61406	1/27/86
[illegible], Petro	61410	2/17/86
McGowan, John W.	61411	[illegible]

LIST II.—TRANSCONTINENTAL GAS PIPE-LINE CORP. (TGPL) PRODUCER CONTRACTS WHICH DO CONTAIN CONTRACTUAL AUTHORIZATION FOR DELIVERY ALLOWANCES UNDER FEDERAL ENERGY REGULATORY COMMISSION ORDER NO. 94-A—Continued

Producer	TGPL Contract	
	Number	Date
Sun Expl. & Prod	61411	11/12/86
Chevron USA, Inc.	61415	[illegible]
HNG Oil Co	61421	11/1/86
Texaco Prod., Inc	61422	[illegible]
Conoco, Inc	[illegible]	[illegible]
Texaco Prod., Inc	[illegible]	[illegible]
Sun Expl. & Prod	61432	11/12/86
Hunt W.H. Trust Est	[illegible]	[illegible]
Sun-Ann O&G Co	[illegible]	[illegible]
Conoco, Inc	[illegible]	[illegible]
Do	[illegible]	[illegible]
Shell Western E&P	[illegible]	4/29/86
Phillips Petr. Co	[illegible]	5/8/86
Chevron USA, Inc.	[illegible]	[illegible]
Amerada Hess Corp.	61461	7/7/86
Do	[illegible]	7/7/86
Chevron USA, Inc.	61469	[illegible]
Union Expl. Part., Ltd	[illegible]	[illegible]
Felmont Oil Corp	[illegible]	[illegible]
Tanna Oil Co	61503	12/10/86
Huffco Petr., Corp.	[illegible]	[illegible]
Jerry Chambers Expl. Co.	[illegible]	[illegible]
Sonat Expl. Co.	61518	1/12/88

LIST III.—TRANSCONTINENTAL GAS PIPE-LINE CORP. (TGPL) PRODUCER CONTRACTS WHICH DO CONTAIN CONTRACTUAL AUTHORIZATION FOR DELIVERY ALLOWANCES UNDER FERC ORDER NO. 94-A

Producer	TGPL contract	
	Number	Date
Louisiana Land & Expl. Co.	00034	4/12/79
Canadian Occidental oil Calif., Inc.	00036	4/20/79
Do	[illegible]	[illegible]
Do	[illegible]	8/3/79
Arco Oil and Gas Co	00048	10/24/79
Petro-Lewis Funds, Inc	00051	11/19/79
Arco Oil and Gas Co.	00056	[illegible]
Do	00062	[illegible]
Elf Aquitaine, Inc.	00067	[illegible]
Mobil Oil Expl. & Prod., SE, Inc.	00072	9/12/47
Suburban Propane Gas Corp.	00100	[illegible]
Sun Expl. & Prod. & Manon Corp.	[illegible]	2/12/58
Superior Oil Co	06182	12/30/58
BHP Petroleum (Americas), Inc.)	[illegible]	[illegible]
Knob Hill	06243	7/3/[illegible]
Amoco Production Co.	06256	4/4/61
Do	06273	1/10/63
Conoco, Inc.	06277	7/14/60
Gulf Oil Corp	06286	7/7/65
Knob Hill	[illegible]	[illegible]
Superior Oil Co	06322	[illegible]
Amoco Production Co.	06326	3/3/69
Gulf Oil Corp	06345	6/16/69
Superior Oil Co	06368	7/28/74
Sun Expl. & Prod., Co	06391	6/9/7[illegible]

LIST III.—TRANSCONTINENTAL GAS PIPE-LINE CORP. (TGPL) PRODUCER CONTRACTS WHICH DO CONTAIN CONTRACTUAL AUTHORIZATION FOR DELIVERY ALLOWANCES UNDER FERC ORDER NO. 94-A—Continued

Producer	TGPL contract	
	Number	Date
Superior Oil Co	06414	5/23/72
Highland Resources	06415	5/24/72
Canadian Superior Oil (US) Ltd.	06417	5/25/72
Kerr-McGee Corp	06418	6/8/72
Getty Oil Co	06420	7/3/72
Do	06436	4/2/73
C&K Petroleum	06443	3/20/74
Getty Oil Co.	06501	3/22/76
Texaco, Inc.	06502	2/10/76
Sun Oil Co	06570	10/26/77
Getty Oil Co.	06573	10/26/77
Natresco, Inc.	06582	12/19/77
Kerr McGee	06732	2/22/79
Pioneer Prod. Co	06753	3/20/79
NT Corp	06785	8/15/80
Pyro Energy Corp	06789	5/7/79
Sanchez-O'Brien Minerals Corp.	06798	6/6/79
Shell Oil	06796	5/15/79
Do	06799	5/15/79
Sanchez-O'Brien Minerals Corp.	06812	7/11/79
NT Corp	06822	5/29/79
Getty Oil	06832	8/17/79
Texas Eastern Expl. Co	06839	8/20/79
Petro-Lewis	06857	9/17/79
Texaco, Inc.	06866	9/27/79
Philips Oil Co	06867	10/1/79
Sun Expl. & Prod	06919	1/1/80
Transco Exploration Co	06920	2/15/80
Pioneer Prod. Corp.	06923	12/3/79
Shell Onshore Partnership	06931	3/13/80
Diamond Shamrock Offshore	06933	3/13/80
Amoco Production Co.	06935	3/14/80
Do	06936	3/14/80
Superior Oil/Oil Participent, Inc.	06955	4/23/80
NT Corp	06968	7/28/80
Do	06969	7/28/80
Kerr McGee	61019	9/29/80
Shell Oil Co	61020	8/1/80
Sonat	61027	11/4/80
Kerr McGee	61042	11/26/80
Pioneer Production Corp	61049	12/15/80
Norse Petroleum, Inc	61076	2/11/81
Southern Natural Gas Co	61079	12/[illegible]/80
Amerada Hess	61118	6/14/81
Transco Exploration	61140	7/14/81
Arco Oil & Gas	61146	5/19/81
Conoco, Inc	61163	8/24/81
Petro-Lewis Funds, Inc	61171	8/1/81
Florida Expl. Co	61175	8/26/81
Texaco, Inc.	61185	8/23/81
Park Pipeline Co	61188	1/1/81
Sun Operating Ltd. Partnership	61192	10/8/81
Sun Expl. & Prod. Co	61212	12/2/81
Superior Oil Co	61215	12/4/81
Texaco, Inc.	61227	1/25/82
Sun Expl. & Prod/David Crow Trustee	61232	2/12/82
Pennzoil Prod. Co.	61245	3/29/82
Sun Expl. & Prod/David Crow Trustee	61254	[illegible]
Felmont Oil Corp	61257	7/14/82
Amerada Hess	61261	8/23/82
Petro-Lewis Funds	61277	3/21/83
Arco Oil & Gas Co	61367	8/27/85

LIST III.—TRANSCONTINENTAL GAS PIPE-LINE CORP. (TGPL) PRODUCER CONTRACTS WHICH DO CONTAIN CONTRACTUAL AUTHORIZATION FOR DELIVERY ALLOWANCES UNDER FERC ORDER NO. 94-A—Continued

Producer	TGPL contract	
	Number	Date
Do	61368	10/1/85

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4 and 178

[T.D. 88-89]

Customs Regulations Amendment Relating to Unique Bill of Lading Identifier

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends § 4.7a, Customs Regulations (19 CFR 4.7a), to require that each bill of lading accompanying a shipment of imported cargo carried by vessel be identified by a unique identifier containing not more than 16 characters. This identifier will serve to distinguish the particular bill of lading from other bills of lading issued by that carrier or issuer and from bills issued by others.

The identifier is designed to enable Customs Automated Commercial System to more accurately track the progress of cargo from its arrival to its release. This will eventually enable Customs to automate all phases of the processing of merchandise from its arrival to its entry into the commerce of the U.S. The unique identifier on the bill of lading will greatly facilitate the automated tracking of the merchandise covered by the bill of lading. Customs will require the use of the Standard Carrier Alpha Code (SCAC), for the first four characters of the unique identifier.

The identifier will be required whether or not the issuer of the bill is presently participating in the Automated Commercial System. Further it is the number which must be used on any Customs document which requires the bill of lading number.

EFFECTIVE DATE: This amendment is effective March 31, 1989.

FOR FURTHER INFORMATION CONTACT: Robin Landis, Office of Cargo Enforcement and Facilitation, (202) 566-[illegible].

SUPPLEMENTARY INFORMATION:

Background

Customs published a notice in the **Federal Register** on December 9, 1987 (52 FR 46602) proposing amendments to § 4.7a, of the Customs Regulations (19 CFR 4.7a). This notice proposed requiring a unique bill of lading number designed to enable Customs Automated Commercial System to more accurately track the progress of cargo from its arrival to its release.

Section 431, Tariff Act of 1930, as amended (19 U.S.C. 1431), requires that the master of every vessel arriving in the U.S. have on board a manifest which contains, among other things, information with respect to the nature of the merchandise on board the vessel. While the information to be provided in the manifest is set forth in section 431, the form of the manifest is to be prescribed by the Secretary of the Treasury. This authority has been delegated to the Commissioner of Customs.

Section 4.7, Customs Regulations (19 CFR 4.7), provides that the manifest shall consist of several documents. Although a bill of lading is not one of the required documents, information from the bill of lading is necessary to complete documentation such as the Cargo Declaration (Customs Form 1302) which forms part of the manifest.

The Cargo Declaration contains a column headed "B/L Nr". When inward foreign cargo is being shipped by container, each bill of lading is to be listed in numerical sequence under that column according to the bill of lading number. At present, the bill of lading number is assigned by the carrier or issuer according to its particular system of internal controls. These systems differ in complexity and sophistication. Accordingly, there is no uniform method by which bills of lading are numbered. In addition, each issuer has a different system with respect to the period of time before which a bill of lading number will be used again.

For more than 3 years, Customs has had under development a system known as the Automated Commercial System (ACS). The ultimate goal of the ACS is to automate all phases of the entry processing of imported merchandise into a single automated system.

Customs has developed the Automated Manifest System (AMS) as an integral module of the ACS. The manifest module is, in essence, both an

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imported merchandise inventory control system and a cargo release notification system. By comparing information provided in the manifest with automated Customs entry data, Customs will be able to make informed decisions with respect to the allocation of resources for the inspection of merchandise.

The AMS provides benefits to both carriers and Customs by reducing cost, speeding the movement of cargo and enhancing productivity. For example, faster notice of cargo discrepancies can be given. This quicker communication can reduce transit times and ultimately transportation costs to the consumer. Long term benefits are expected to include better utilization of equipment and better staging of cargo for delivery to consignees of their agents.

Carriers may participate directly in the AMS by transmitting manifest data directly to Customs with their own compatible automated system. Alternatively, carriers may use the computer facilities of port authorities, or other service centers which have established interface capability with Customs. These users would enter and transmit the inward cargo manifest data. Customs would thus have inventory files for these manifests. After analyzing the data, Customs would make its decision with respect to inspection and release of the merchandise. The AMS electronically informs the carrier, service center or port authority when the merchandise is authorized for release. This electronic release notification speeds the flow of cargo.

AMS was designed to use the bill of lading number as an identifier for the processing of this data. By focusing on the bill of lading number, Customs can track and make decisions with respect to the disposition of cargo. In order for the bill of lading identifier to function, however, it is obviously essential that each bill of lading number refer uniquely to an individual shipment by a particular carrier or issuer.

The proposed regulation (52 FR 40602), sets forth a uniform method by which carriers and other bill issuers would be required to number their bills of lading. It was proposed that the identifier would be 12 characters in length. It was further proposed that the first four of these characters consist of the four character Standard Carrier Alpha Code (SCAC) assigned to that carrier or issuer in the National Motor Freight Traffic Association, Inc., Directory of Standard Multi-Modal Carrier and Tariff Agent Codes. The SCAC code is considered to be the simplest and most easily utilized method of recognizing the identity of the carrier or other issuer. The next seven characters were to be either numerals or letters (or a combination), allowing carriers to utilize the identifier with their own system. It was proposed that the last character should be a "check digit", a numeral which is designed to be used to verify the validity of the preceding digits.

To make certain that the identifier remains unique, the proposed regulation provided that the number assigned to the bill of lading shall not be used by the issuer for another bill of lading for a period of 10 years after issuance.

Discussion of Comments

Sixty-two comments were received, many of them quite detailed, touching on various aspects of the proposal. Nearly all of the commenters agreed with the concept of the unique identifier. They disagreed on the format that the identifier should take.

Comment: Several commenters understood the necessity for uniqueness in bills of lading issued by a carrier, but did not understand why each carrier could not employ its own system for uniqueness which was particularly suited to its commercial needs. This flexible approach it was argued, is the best one. As long as each system is individually compatible with AMS, Customs should be satisfied.

Customs Response: Customs would prefer to allow each carrier to employ the system most convenient for that carrier. Unfortunately, the AMS simply could not accommodate such diversity. It is essential that a uniform system be in place for AMS to function, especially as participation in the system grows.

Comment: Many commenters felt that the SCAC Code should not be part of the unique identifier. They noted that the SCAC Code for the international carrier is already captured in AMS and that its inclusion in the identifier is superfluous. In addition, they argued that requiring the SCAC Code as part of the identifier does not leave enough possible combinations to account for all of the bills of lading that they might issue. Finally, certain commenters stated that use of the SCAC will cause confusion with their container numbers which are also identified by the SCAC code.

Customs Response: The SCAC code is included in the identifier to allow the bill of lading number, standing alone, to identify the issuer. This will enable Customs personnel to focus on the issuer for enforcement purposes. In addition, since the proposal embraces all bills of lading, it is obviously not true that the international carrier's SCAC code will always be the same as the issuer's code. While a few carriers use the SCAC code for other purposes, we believe that the SCAC code is the best method for Customs to identify the issuer of the bill. Accordingly, Customs has decided to retain the requirement that the first four digits consist of the SCAC code.

Comment: Several commenters argued that the identifier is not long enough to allow for the 10-year uniqueness period.

Customs Response: Customs believes that many of the commenters have failed to realize that they may use alpha as well as numeric symbols in the unique identifier. These commenters may be underestimating the number of bills that can be issued under the proposal. However, upon further consideration of the matter, Customs has determined that additional places in the identifier are appropriate in order to accommodate a greater number of bills of lading and to conform the proposal to the international standard. Accordingly, Customs has decided to change the format of the identifier to require that the identifier contain up to twelve characters after the SCAC Code. In addition, Customs has determined that a uniqueness period of 10 years is too burdensome. Accordingly, Customs has changed the period during which the number must remain unique to 3 years.

Comment: Many commenters believe that Customs should not unilaterally impose this requirement on carriers which must do business in a variety of countries. The decision as to the proper format for unique identifier should be worked out at the international level.

Customs Response: Customs has pursued this initiative at the international level for some time. It has not been possible to reach a consensus as to the proper format for a unique identifier. Because a unique identifier is necessary to the continued implementation and expansion of Customs automation efforts, Customs has decided that it can no longer await resolution at the international level. However, Customs has adopted the international standard of 12 characters for the numbering portion of the identifier.

Comment: Many carriers state that they have a substantial investment in the automation system which they presently have in place and that the modification of their system to the one required by Customs will be costly.

Customs Response: Customs recognizes that there are expenses associated with the conversion from existing systems to the system which Customs is mandating. It must be recognized that any system adopted by Customs would require changes on the part of some carriers. Customs has chosen the format that is most operationally sound for Customs while taking into account the comments received.

Comment: Some commenters would like an identifier which would be long enough to include additional digits for their own business purposes. They suggest a longer identifier, of 22 digits.

Customs Response: As discussed above, Customs has decided to add four places to the identifier. We believe that adding any more digits to the identifier would be operationally unacceptable. The additional key stroking of these digits would cause an inevitable increase in data transmission errors. Accordingly, we decline to enlarge the identifier beyond the addition four places.

Comment: Several commenters stated that the numbering of a bill of lading should be left to carriers rather than prescribed by government regulation.

Customs Response: Customs has the authority to prescribe the format of the bill of lading under existing law. We believe that Customs responsibilities of assuring the rapid and smooth movement of international cargo provide a sound basis for this initiative.

Comment: Many of the commenters opposed the use of a check digit. These commenters believed that employing the check digit requires a degree of technical sophistication that is simply not present among those who are charged with issuing the bills of lading. These commenters believe that the check digit should be eliminated.

Customs Response: Upon further consideration of the matter, Customs believes that the advantages of a check digit are outweighed by the problems which may be caused by its implementation. Accordingly, Customs has eliminated the check digit as part of the unique identifier.

Comment: Many carriers request that Customs prescribe a period for the implementation of the uniqueness requirement because of the time that will be taken in making the transition to the new requirement. Certain commenters believe that a 12-month period in which to make changes is required. Others believe that a minimum of 6 months is necessary.

Customs Response: Customs agrees that a transitional period is desirable. Upon consideration of the comments and the nature of the regulatory change, Customs deems it appropriate that this amendment shall become effective on March 31, 1989.

The identifier will then be required on bills of lading, whether or not the issuer of the bill is participating in ACS. It will be the number which must be used on any Customs document which requires the bill of lading number.

In order for Customs to implement the unique bill of lading identifier, all issuers of bills of lading are required to submit to Customs a SCAC code verified by the National Motor Freight Traffic Association. It will also be necessary for the issuers of bills of lading to submit: An accurate spelling of the corporate name; complete address, zip code, and telephone number of the corporate headquarters. This information should be sent to: Director, Office of Automated Commercial Systems, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 4220, Washington, DC 20229.

If a carrier or issuer of bills of lading is not yet in possession of a SCAC code, one should be obtained by contacting Mr. Paul Levine at the following address: National Motor Freight Traffic Association, Inc., 2200 Mill Road, Alexandria, VA 22314, Telephone number: (703) 838-1822.

Customs will accept only one SCAC code from each carrier, and those issuing bills of lading will be expected to be in complete compliance with the aforementioned requirements.

After a careful review and analysis of all the comments and further consideration of the subject matter, Customs has decided to adopt the aforementioned amendment to Part 4, Customs Regulations (19 CFR Part 4) as proposed; however, the format of the unique identifier has been changed as follows. The unique bill of lading number will be comprised of two elements. The first element will be the four character SCAC code of the issuer of the bill of lading. The second element may be up to 12 characters in length and may be either alpha and/or numeric. When alpha and numeric characters are used, the alpha characters must be grouped in the first or last positions of the identifier and not commingled with numeric characters. The check digit has been eliminated. Customs further determined that the number assigned to the bill of lading shall not be used by the issuer for another bill of lading for a period of 3 years. Finally, all carriers must submit their designated SCAC code and the additional information as required in this notice, before March 31, 1989 which is the effective date of these regulatory changes.

Regulatory Flexibility Act

The document will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Executive Order 12291

The document does not meet the criteria for a "major rule" as specified by E.O. 12291. Accordingly, no regulatory impact analysis is required.

Paperwork Reduction Act

The amendments are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501). The collection of information contained in this final regulation has therefore been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1515-0412. The estimated average burden associated with the collection of information in this final rule is 6 minutes. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to U.S. Customs Service, Paperwork Management Branch, Washington, DC 20229 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention Desk Officer for U.S. Customs Service.

Drafting Information

The principal authors of this document were Myles B. Harmon and Ann S. Minardi, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 4

Carriers, Manifest, Vessels, Bill of lading.

19 CFR Part 178

Reporting and recordkeeping requirements.

Amendments

This document amends Parts 4 and 178, Customs Regulations (19 CFR Part 4, 178), as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for Part 4 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624; 46 U.S.C. 3, 91, 2103.

2. Section 4.7a is amended by adding a new paragraph (c)(2)(iii) to read as follows:

§ 4.7a Inward manifest; information required; alternative forms.

* * * * *

(c) *Cargo Declaration* * * *

(2) * * *

(iii) All bills of lading, whether issued by a carrier, freight forwarder, or other issuer, shall contain a unique identifier consisting of up to 16 characters in length. The unique bill of lading number will be comprised of two elements. The first element will be the first four characters consisting of the carrier or issuer's four digit Standard Carrier Alpha Code (SCAC) assigned to that carrier in the National Motor Freight Traffic Association, Inc., Directory of Standard Multi-Modal Carrier and Tariff Agent Codes, applicable supplements thereto and reissues thereof. The second element may be up to 12 characters in length and may be either alpha and/or numeric.

When alpha and numeric characters are used, the alpha characters must be grouped in the first or last positions of the identifier and not commingled with numeric characters. The unique identifier shall not be used by the carrier, freight forwarder or issuer for another bill of lading for a period of 3 years after issuance.

* * * * *

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624; 46 U.S.C. 3, 91, 2103.

2. Section 178.2 is amended by inserting, in numerical order, the following entry:

§ 178.2 Listing of OMB control numbers.

19 CFR section	Description	OMB control No.
4.7a	Unique bill of lading identifier for inward manifests.	1515-0142

* * * * *

Michael H. Lane,

Acting Commissioner of Customs.

Approved: October 19, 1988.

Salvatore R. Martoche,

Assistant Secretary of the Treasury.

[FR Doc. 88-24755 Filed 10-25-88; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 218

Payments by Electronic Funds Transfer

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: The Minerals Management Service (MMS) is amending its regulations at 30 CFR Part 218 to reflect a change in references to the electronic communications system used by the United States Department of the Treasury (Treasury) to process electronic funds transfers. The "Treasury Financial Communication System" (TFCS) was replaced by the Treasury with the "Financial Management Service Fedwire Deposit System (FDS). This final rule amendment replaces the references to the TFCS with references to the new FDS.

EFFECTIVE DATE: October 26, 1988.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, Minerals Management Service, P.O. Box 25165, MS-662, Building 85, Denver Federal Center, Denver, Colorado 80225, telephone: (303) 231-3432, FTS 326-3432.

SUPPLEMENTARY INFORMATION:

I. Discussion of Amendments

Part 218 of 30 CFR contains MMS regulations governing the collection of royalties, rentals, bonuses, and other monies due the Federal Government. The regulations require that royalty payments in excess of $10,000 and deferred bonus payments from successful bidders in competitive Outer Continental Shelf lease sales be made by Electronic Funds Transfer (EFT) using the Federal Reserve Communication link to the TFCS. The EFT requirement accelerates the collection and deposit processing of payments received by MMS and allows the Government to have immediate use of the funds.

Paragraphs 218.51(a)(1) and 218.155(c) of the regulations include a reference to the Treasury's TFCS. Because the Treasury has replaced the TFCS with a new electronic communications system, the FDS, MMS is amending its regulations to reference the name of the new system.

II. Procedural Matters

Administrative Procedure Act

The changes included in this rulemaking are technical corrections only and not substantive changes. Accordingly, pursuant to 5 U.S.C. 553(b), it has been determined that it is unnecessary to issue proposed regulations before the issuance of this final regulation. For the same reason, it has been determined that in accordance with 5 U.S.C. 553(d), there is good cause to make this regulation effective upon publication in the Federal Register.

Executive Order 12291

The Department of the Interior (Department) has hereby determined that this document is not a major rule and does not require a regulatory analysis under Executive Order 12291. This final rulemaking is to reflect a change in references as the result of the implementation of a new electronic communications system by the Treasury.

Regulatory Flexibility Act

Because this rulemaking is for technical correction of existing regulations, there are no significant additional requirements or burdens placed upon small business entities as a result of implementation of this rule. Therefore, the Department has determined that this rulemaking will not have a significant economic effect on a substantial number of small entities and does not require a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

Paperwork Reduction Act of 1980

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and a detailed statement pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 [42 U.S.C. 4332(2)(c)] is not required.

List of Subjects in 30 CFR Part 218

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

Date: October 14, 1988.

Thomas M. Gernhofer,

Acting Director, Minerals Management Service.

For the reasons set out in the preamble, 30 CFR Part 218 is amended as follows:

TITLE 30—MINERAL RESOURCES

PART 218—COLLECTION OF ROYALTIES, RENTALS, BONUSES AND OTHER MONIES DUE THE FEDERAL GOVERNMENT

1. The authority citation for Part 218 is revised to read as follows:

Authority: 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 31 U.S.C. 9701; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

2. Paragraph (a)(1) of § 218.51 under Subpart B is amended by changing the words "Treasury Financial Communications System (TFCS)" in the first sentence to "Financial Management Service Fedwire Deposit System (FDS)." The revised first sentence reads as follows:

§ 218.51 Method of payment.

(a) *Payment of royalties.* (1) All payors whose aggregate royalty payment obligation to MMS on the payment due date totals $10,000 or more must make royalty payment by Electronic Funds Transfer (EFT) using the Federal Reserve Communications System (FRCS) link to the Financial Management Service Fedwire Deposit System (FDS), unless otherwise directed by MMS. * * *

* * * * *

3. Paragraph (c) of § 218.155 under Subpart D is amended by changing the acronym "TFCS" in the sixth sentence to "FDS." The revised sentence reads as follows:

§ 218.155 Method of payment.

* * * * *

(c) * * * Payors will not be held responsible for late payment due to actions beyond their control, such as mechanical or systems failure of FRCS or FDS. * * *

* * * * *

[FR Doc. 88-24725 Filed 10-25-88; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 351b and 351c

[DoD Directives 5129.3 and 5129.4]

Disestablishment of Positions; Assistant Secretary of Defense, Research and Technology; Development and Support

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: The positions of Assistant Secretary of Defense (Research and Technology) and Assistant Secretary of Defense (Development and Support) have been disestablished therefore, 32 CFR Parts 351b and 351c are no longer necessary.

EFFECTIVE DATE: November 1, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Linda M. Bynum, Correspondence and Directives Directorate, Washington Headquarters Services, Washington, DC 20301, telephone (202) 697-4111.

SUPPLEMENTARY INFORMATION:

List of Subjects.

32 CFR Part 351b

Organization and functions (Government agencies), Research and technology.

32 CFR Part 351c

Organization and functions (Government agencies), Development and support.

PARTS 351b AND 351c—[REMOVED]

Accordingly, Title 32, Chapter I is amended by removing Parts 351b and 351c.

October 21, 1988.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 88-24716 Filed 10-25-88; 8:45 am]

BILLING CODE 3810-01-M

POSTAL SERVICE

39 CFR Part 111

Supplements and Enclosures in Second-Class Publications

AGENCY: Postal Service.

ACTION: Final rule; delay of effective date.

SUMMARY: At the request of publishers, the Postal Service has decided to delay the effective date of the final rule on supplements and enclosures in second-class mail.

DATES: This document is effective October 26, 1988. The effective date of the September 15, 1988 (53 FR 35813) is delayed to March 19, 1989.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Young, (202) 268-5321.

SUPPLEMENTARY INFORMATION: On September 15, 1988, the Postal Service published a final rule entitled "Supplements and Enclosures in Second-Class Publications" (53 FR 35813-20) with an effective date of December 18, 1988. Since publication of the final rule, the Postal Service has received a number of requests from publisher and publishers' associations to delay the rule's effective date. The requesters expressed concern regarding their ability to comply with the new regulations for a variety of reasons, including the upcoming Christmas mailing season, substantial commitments for supplement material that many publishers believed they could enclose with a second-class publication until after the end of 1988, and the fact that supplemental material has been ordered, purchased, and in a number of cases, already delivered for mailings in early 1989. Without a delay of the effective date, the requesters stated that they would experience severe and unrecoverable financial losses.

Based upon these requests, the Postal Service has decided to delay the effective date of the final rule until March 19, 1989. Although the requests for a delay of the effective date centered around two new requirements for mailing loose supplements with bound publications, namely the requirement to endorse them "Supplement to" followed by the name of the publications or the name of the publisher, and the requirement that the supplement contain at least 25% nonadvertising matter, the Postal Service has decided to delay the effective date of the entire final rule. The implementation of all parts of the final rule, with its interrelated changes, on the effective date of the next quarterly issuance of the Domestic Mail Manual will simplify implementation of the final rule and avoid the confusion for Postal Service employees and customers which, experience has shown, would otherwise surely result.

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in

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the Federal Register as provided by 39 CFR 111.3.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 88-24753 Filed 10-25-88; 8:45 am]

BILLING CODE 7715-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 7E3543/R985; FRL-3497-9]

Pesticide Tolerance for Carbaryl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the insecticide carbaryl in or on the raw agricultural commodity fresh dill. The Interregional Research Project No. 4 (IR-4) petitioned for this tolerance.

EFFECTIVE DATE: October 26, 1988.

ADDRESS: Written objections, identified by the document control number, [PP 7E3543/R985], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Emergency Response and Minor Use Section, Registration Division (TS-767C), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2310.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the Federal Register of September 8, 1988 (53 FR 34792), in which it was announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition 7E3543 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the Agricultural Experiment Station of Florida.

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the residues of the insecticide carbaryl (1-naphthyl N-methylcarbamate) in or on the raw agricultural commodity fresh dill at 0.2 par per million (ppm).

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and all other relevant material have been evaluated and discussed in the proposed rule. The pesticide is considered useful for the purpose for which the tolerance is sought. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 17, 1988.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.169(e) is amended by adding and alphabetically inserting the listing for the raw agricultural commodity fresh dill, to read as follows:

§ 180.169 Carbaryl; tolerances for residues.

* * * * *

(e) * * *

Commodities	Parts per million
* * * * *	
Dill (fresh)	0.2
* * * * *	

[FR Doc. 88-24734 Filed 10-25-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-111; RM-5849]

Radio Broadcasting Services; Vero Beach, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Treasure Coast Broadcasting Company, Limited Partnership, substitutes Channel 229C2 for Channel 228A at Vero Beach, Florida, and modifies its license for Station WGYL(FM) to specify operation on the higher powered channel. Channel 229C2 can be allotted to Vero Beach with a site restriction of 4.6 kilometers (2.9 miles) southeast. The coordinates for this allotment are North Latitude 27-36-04 and West Longitude 80-22-40. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 5, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-111, adopted September 28, 1988, and released October 20, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the FM Table of Allotments for Vero Beach, Florida is amended by removing Channel 228A and adding Channel 229C2.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-24694 Filed 10-25-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-98; RM-5974]

Radio Broadcasting Services; Cornelia and Chatsworth, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Habersham Broadcasting Company, substitutes Channel 257C2 for Channel 257A at Cornelia, Georgia, and modifies its license for Station WCON-FM to specify operation on the higher powered channel. Channel 257C2 can be allotted to Cornelia in compliance with the Commission's minimum distance separation requirements and can be used at Station WCON-FM's present transmitter site. The coordinates for this allotment are North Latitude 34-30-57 and West Longitude 83-32-20. This action also modifies the license of Cohutta Broadcasting Company for Station WQMT(FM), Chatsworth, Georgia, to specify operation on Channel 255A in lieu of its present Channel 257A. Channel 255A can be allotted to Chatsworth in compliance with the Commission's minimum distance separation requirements and can be used at Station WQMT(FM)'s present transmitter site. The coordinates for this allotment are North Latitude 34-45-29 and West Longitude 84-43-59. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 5, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-98, adopted September 28, 1988, and released October 20, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the FM Table of Allotments is amended under Georgia by removing Channel 257A and adding Channel 257C2 to Cornelia and by removing Channel 257A and adding Channel 255A to Chatsworth.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-24693 Filed 10-25-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-324; RM-5755, RM-5902, RM-6280]

Radio Broadcasting Services; Columbus, Eupora, and Marion, MS and Reform, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The *Notice of Proposed Rule Making* was issued in response to two separate petitions for rule making. Tri County Broadcasting, Inc. proposed the substitution of FM Channel 241C2 for Channel 269A at Eupora, Mississippi, and modification of its license for Station WEXA(FM), to specify operation on Channel 241C2. Radio Columbus, Inc., requested the substitution of FM Channel 241C2 for Channel 276A at Columbus, Mississippi, and modification of its license for Station WMBC, to reflect the higher class channel. Eupora and Columbus are located approximately 79 kilometers apart, and Section 73.207 of the Rules require 190 kilometers between Class C2 co-channels. Therefore, the proposals are mutually exclusive.

Tri County Broadcasting Company, Radio Columbus, Inc. and Rego Broadcasting Company filed a counterproposal in an attempt to resolve the conflicting proposals. The counterproposal was put on public notice May 20, 1988, and all of the parties to the proceeding have agreed to the substitution of channels as proposed in the petitions and in the joint counterproposal. Therefore, we shall substitute Channel 241C2 for Channel 269A at Eupora, Mississippi, and modify the license of Station WEXA(FM) to reflect the new channel (33-31-20 and 89-04-30), substitute Channel 276C2 for Channel 276A at Columbus, Mississippi, and modify license of Station WMBC to specify operation on Channel 276C2 (33-29-48 and 88-31-50), substitute Channel 236A for Channel 276A at Marion, Mississippi, and modify the license of Station WQIC-FM to specify operation on the new Class A channel (32-26-08 and 88-36-24), and substitute Channel 269C2 for Channel 269A at Reform, Alabama, and modify the license of Station WVRT-FM to reflect the higher class channel (33-1,-32 and 87-58-39). With this action, this proceeding is terminated.

EFFECTIVE DATE: December 5, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheeele, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-324, adopted September 14, 1988, and released October 19, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended, under Mississippi, by removing Channel 269A and adding Channel 241C2 at Eupora, by removing Channel 276A and adding Channel 276C2 at Columbus, by removing Channel 276A and adding 236A at Marion.

2. In § 73.202(b), the Table of FM Allotments is amended, under Alabama, by removing Channel 269A and adding Channel 269C2 at Reform.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-24696 Filed 10-25-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-196; RM-5978, RM-6196, RM-6425]

Radio Broadcasting Services; Sioux Center, Iowa, Sioux Falls, SD

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Tri-State Broadcasters, Inc., substitutes Channel 230C2 for Channel 232A at Sioux Center, Iowa, and modifies its license for Station KVDB-FM to specify operation on the higher powered channel. Channel 230C2 can be allotted to Sioux Center in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.5 kilometers (3.4 miles) west. The coordinates for this allotment are North Latitude 43-04-00 and West Longitude 96-14-30. The Commission also substitutes Channel 279C2 for Channel 228A at Sioux Falls, South Dakota, at the request of Vaughn Broadcasting Group, and modifies its license for Station KKRC(FM) to specify operation on the higher powered channel. Channel 279C2 can be allotted to Sioux Falls in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.1 kilometers (1.3 miles) east. The coordinates for this allotment are North Latitude 43-32-52 and West Longitude 96-42-33. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 5, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-165, adopted September 28, 1988, and released October 20, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the FM Table of Allotments for Sioux Center, Iowa is amended by removing Channel 232A and adding Channel 230C2. The FM Table of Allotments for Sioux Falls, South Dakota is amended by removing Channel 228A and adding Channel 279C2.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-24695 Filed 10-25-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-604; RM-6388]

Radio Broadcasting Services; Waynesboro, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 235A to Waynesboro, Tennessee, as that community's first FM service, at the request of Pioneer Radio, Inc., licensee of AM Station WTNR at Waynesboro. A site restriction is imposed of 3.9 kilometers (2.4 miles) south of the community at coordinates 35-17-06 and 87-45-18. With this action, this proceeding is terminated.

DATES: Effective December 5, 1988; the window period for filing applications will open on December 6, 1988, and close on January 5, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-604, adopted September 28, 1988, and released October 20, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended under Tennessee, by adding Channel 235A, Waynesboro.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-24697 Filed 10-25-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-603; RM-6084]

Radio Broadcasting Services; Brownfield, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 282C2 for Channel 280A at Brownfield, Texas, and modifies the license of Station KKTC(FM) to specify operation on the higher class channel, as that community's first wide coverage area FM service, as requested by Brownfield Broadcasting Corp. Channel 282C2 can be allotted to Brownfield as a substitute for Channel 280A at a restricted site 5.1 kilometers (3.2 miles) east of the community, at coordinates 33-11-39 and 102-13-23. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 5, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-603, adopted September 28, 1988, and released October 20, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International

Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended, under Texas, by adding Channel 282C2 and removing channel 280A at Brownfield.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-24698 Filed 10-25-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Part 204

Department of Defense; Federal Acquisition Regulation Supplement; Information Reporting to the IRS

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Defense Acquisition Regulatory (DAR) Council has approved revisions to the DoD FAR Supplement to implement the interim Federal Acquisition Regulation coverage on IRS information reporting recently approved by the Civilian Agency Acquisition Council and the DAR Council. The FAR coverage will appear in FAC 84-40. The DFARS revisions provide the mechanism whereby the information will be collected in DoD and reported to IRS through the Federal Procurement Data System.

EFFECTIVE DATE: This rule is effective for all solicitations issued on or after November 25, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, Telephone: (202) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

26 U.S.C. 6041 and 6041A, in part, require payers, including the Federal Government, to report to the IRS certain payments made in the course of business. Information required to be reported includes company name, corporate status, taxpayer identification number (TIN), corporate parent, if any, and if there is a corporate parent, the name and TIN of the parent. Failure or refusal of an offeror to furnish the TIN may result in a 20 percent reduction of payments otherwise due under the contract.

26 U.S.C. 6050M requires heads of Federal Executive agencies to report certain contract information to the IRS. The information required to be reported for contract actions over $25,000 includes name and TIN of contractor; name and TIN of parent (if any); date of contract action; amount obligated on the contract; and the duration of the contract.

In order for the Department of Defense to comply with the Internal Revenue Service (IRS) reporting requirements, as implemented in FAR Subparts 4.9 and 52, DoD FAR Supplement Subparts 204.6, Contracting Reporting, and 204.9, Information Reporting to the IRS, have been modified to provide for contractors to submit their TIN and certain related information to the appropriate contracting office.

Public comments are not necessary because this regulation does not have significant cost or administrative impact on contractors or offerors and does not have significant effect beyond the internal operating procedures of the Department of Defense.

B. Regulatory Flexibility Act

Regulatory Flexibility Act is not applicable because the proposed policy need not be published in the **Federal Register** as it does not have significant effect beyond the internal operating procedures of the Department of Defense.

C. Paperwork Reduction Act

The rule does not impose information collection requirements within the meaning of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and OMB approval is not required pursuant to 5 CFR Part 1320.

List of Subjects in 48 CFR Part 204

Government procurement.

October 19, 1988.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, 48 CFR Part 204 is amended as follows:

1. The authority citation for 48 CFR Part 204 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 204—ADMINISTRATIVE MATTERS

2. In section 204.671-5 paragraph (b) is amended by revising Items B4, B5E, B5F, and B5G to read as follows:

204.671-5 Instructions for completion of DD Form 350.

* * * * *

(b) Part B, DD Form 350.

* * * * *

Item B4, Contract Completion Date. Enter the year, month and day of the last contract delivery date or the end of the performance period as set forth in the contract. Enter each segment as a 2-digit number. Use 01 through 12 for January through December. For example, enter 2 January 1990 as 900102.

* * * * *

Item B5E, Contractor's Taxpayer Identification Number (TIN). When required by FAR Subpart 4.9, enter the TIN that identifies the contractor receiving the award. Otherwise, leave this item blank.

Item B5F, Parent TIN. When required by FAR Subpart 4.9, enter the TIN of the parent company (common parent). Otherwise, leave this item blank.

Item B5G, Parent Name. If Item B5F is completed, enter the name of the contractor's parent company (common parent). Otherwise, leave this item blank.

3. A new Subpart 204.9 is added to read as follows:

Subpart 204.9—Information Reporting to the IRS

204.970 Procedures.

(S-70) For DoD, the information needed to meet the reporting requirements set forth will be reported using the DD Form 350, Individual Contract Action Report (over $25,000) in accordance with instructions in Subpart 204.6.

[FR Doc. 88-24608 Filed 10-25-88; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

48 CFR Parts 301, 303, 304, 305, 306, 307, 315, 317, 319, 332, 339, 342, and 352

Acquisition Regulation; Miscellaneous Amendments

AGENCY: Department of Health and Human Services (HHS).

ACTION: Final rule.

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SUMMARY: The Department of Health and Human Services is amending its acquisition regulation (HHSAR), Title 48 CFR Chapter 3, to make various administrative and procedural changes.

EFFECTIVE DATE: October 26, 1988.

FOR FURTHER INFORMATION CONTACT: Ed Lanham, Procurement Analyst, Division of Acquisition Policy, telephone (202) 245–8890.

SUPPLEMENTARY INFORMATION: The Department is amending its acquisition regulation to make the following changes.

Section 301.602–3, Ratification of unauthorized commitments, is being added to implement and supplement Federal Acquisition Regulation (FAR) coverage recently issued in Federal Acquisition Circular (FAC) 84–33. As a result, existing HHSAR section 304.170, Ratification of unauthorized contract awards, is being eliminated because it is duplicative.

Section 305.303, Announcement of contract awards, is being added to formalize procedures requiring contracting officers to notify the Department's Congressional Liaison Office of awards in the amount of $1 million or more.

Section 307.105–2, Special program clearances or approvals, is being revised to update the listing and description of the clearances and approvals required to be completed by the program office for inclusion in the request for contract document submitted to the contracting office.

Subpart 317.71, Supply and Service Acquisitions Under the Government Employees Training Act, is being revised to reflect recent determinations made by the Comptroller General and the Department's Office of General Counsel. Both have determined that the acquisition of standardized, "off-the-shelf" training courses does not have to be processed through or by contracting officials.

Section 319.870, Acquisition of technical requirements, is being amended to add language to clarify how the Small Business Administration is processing Source nominations made by the Department under the section 8(a) program.

Subpart 332.9, Prompt Payment, is being added to implement and supplement the FAR coverage on the subject as addressed in the recently issued FAC 84–33. As a result, existing Subpart 342.72, Payments to Contractors, is being removed because the coverage is duplicative of the new FAR Subpart 332.9.

Subpart 339.70, ADP Clearances and Systems Security, is being revised to update nomenclature and office designations.

The contract clauses in sections 352.242–72 through 352.242–79 are being removed as a result of the recent issuance in FAC 84–33 of FAR clause 52.232–25, Prompt Payment, which is to be used in place of all the referenced clauses.

The remaining amendments concern adding office designations and making internal procedural revisions.

The Department of Health and Human Services adheres to the policy that the public, or certain elements comprising it, should have an opportunity to provide comments on regulations which may have an impact on them. The Department has determined, however, that this rule contains no amendments that would have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of the Department. As a result, the Department is not requesting comments on these acquisition regulations and is publishing them as a final rule.

The Department of Health and Human Services certifies this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et.seq.*); therefore, no regulatory flexibility statement has been prepared. This document does not contain information collection requirements which require the approval of the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et.seq.*).

The provisions of this regulation are issued under 5 U.S.C. 301; 40 U.S.C. 486(c).

List of Subjects in 48 CFR Parts 301, 302, 304, 305, 306, 307, 315, 317, 319, 332, 339, 342, and 352

Government procurement.

Accordingly, the Department amends 48 CFR Chapter 3 as set forth below.

Date: October 11, 1988.

James F. Trickett,

Deputy Assistant Secretary for Management and Acquisition.

As indicated in the preamble, Chapter 3 of Title 48, Code of Federal Regulations, is amended as shown.

1. The authority citation for Parts 301, 302, 304, 305, 306, 307, 315, 317, 319, 332, 339, 342, and 352 continues to read as follows:

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

PART 301—[AMENDED]

301.304 [Amended]

2. Paragraph (d) of section 301.304 is amended by adding reference to the Indian Health Service in the listing as follows:

Organization	Prefix
• • • • •	•
Public Health Service	PHS
• • •	•
Health Resources and Services Administration	HRSA
Indian Health Service	IHS
National Institute of Health	NIH
• • • • •	•

3. Subpart 301.6 is amended by adding section 301.602–3 as follows:

301.602–3 Ratification of unauthorized commitments.

(b) *Policy.* (1) The Government is not bound by agreements or contractual commitments made to prospective contractors by persons to whom contracting authority has not been delegated. However, execution of otherwise proper contracts made by individuals without contracting authority, or by contracting officers in excess of the limits of their delegated authority, may be later ratified. The ratification must be in the form of a written document clearly stating that ratification of a previously unauthorized act is intended and must be signed by the head of the contracting activity (HCA).

(2) The HCA or his/her designee is the official authorized to ratify an unauthorized commitment (but see (b)(3), below).

(3) Ratification authority may be redelegated by the HCA, but not below the level of the principal official responsible for acquisition (PORA).

(c) *Limitations.* (5) The concurrence of legal counsel concerning the payment issue is optional.

(7) The ratification shall be in written document form containing verification of each limitation stated in FAR 1.602–3(c)(1)–(6), and shall be processed in accordance with 301.602–3(e) *Procedures.*

(e) *Procedures.* (1) The individual who made the unauthorized contractual commitment shall furnish the reviewing contracting officer all records and documents concerning the commitment and a complete written statement of facts, including, but not limited to: a statement as to why the contracting office was not used, a statement as to why the proposed contractor was selected, a list of other sources considered, a description of work to be performed or products to be furnished, the estimated or agreed contract price, a citation of the appropriation available, and a statement of whether the contractor has commenced performance.

(2) The contracting officer will review the submitted material, and prepare the ratification document if he/she determines that the commitment may be ratifiable. The contracting officer shall forward the ratification document and the submitted material to the HCA or designee with any comments or information which should be considered in evaluation of the request for ratification. If legal review is desirable, the HCA or designee will coordinate the request for ratification with the Office of General Counsel, Business and Administrative Law Division.

(3) If ratification is authorized by the HCA or designee, the file will be returned, along with the ratification document, to the contracting officer for issuance of a purchase order or contract, as appropriate.

(4) HCA's or their designees will report the number and dollar value of requests for ratifications received and ratifications authorized each calendar quarter. Reports shall be submitted in an original and one copy to the Deputy Assistant Secretary for Management and Acquisition to arrive no later than 30 calendar days after the close of each calendar quarter.

PART 304—[AMENDED]

304.170 [Removed]

5. Section 304.170 is removed.

PART 305—[AMENDED]

305.102 [Removed]

6. Section 305.102 is removed.

7. Subpart 305.3 is added to read as follows:

Subpart 305.3—Synopses of Contract Awards

Sec.
305.303 Announcement of contract awards.

Subpart 305.3—Synopses of Contract Awards

305.303 Announcement of contract awards.

(a) *Public announcement.* Any contract, contract modification, or delivery order in the amount of $1 million or more shall be reported by the contracting officer to the Office of the Deputy Assistant Secretary for Legislation (Congressional Liaison), Room 406G, Hubert H. Humphrey Building. Notification shall be accomplished by providing a copy of the contract or award document face page to the referenced office prior to the day of award, or in sufficient time to allow for an announcement to be made by 4:00 p.m. Washington, DC time on the day of award.

PART 306—[AMENDED]

8. Section 306.501 is amended by adding the following entry between the "HRSA" and "NIH" designations.

306.501 Requirement.

• • • • •

IHS—Associate Director, Office of Administration and Management

• • • • •

PART 307—[AMENDED]

307.105–2 [Amended]

9. Paragraph (a) of Section 307.105–2 is amended as follows:

a. In item (1) *Automated data processing.*, remove the term "HHS ADP Systems Manual" and replace it with the term "HHS Information Resources Management (IRM) Manual" in both places where it appears within the item; remove the designation "Office of Management Analysis and Systems (OMAS)," and replace it with "Office of Information Resources Management (OIRM),"; and correct the reference to "Title 41 CFR Chapter 150;" to read "Title 41 CFR Chapter 201;".

b. In Item (2) *ADP systems security.*; remove the title "ADP Systems Manual," and replace it with the title "HHS IRM Manual,".

c. Remove item (3) and replace it with the following:

• • • • •

(3) *Advisory and assistance services.* OPDIV and STAFFDIV heads and regional directors are responsible for review and approval of all proposed advisory and assistance services contracts and purchase orders. (See General Administration Manual Chapter 8–15.)

d. Remove item (4) and replace it with the following:

• • • • •

(4) *Evaluation contracts.* The Assistant Secretary for Planning and Evaluation (ASPE) must approve all evaluation projects for proposed solicitations, except those which have been included in research, demonstration, or evaluation plans previously approved by the ASPE.

• • • • •

e. Remove item (9) and replace it with the following:

• • • • •

(9) *Paperwork Production Act.* Under the Paperwork Reduction Act of 1980 (Pub. L. 96–511), a Federal agency shall not collect information or sponsor the collection of information from ten or more persons (other than Federal employees acting within the scope of their employment) unless, in advance, the agency has submitted Standard Form 83, Request for OMB Review, to the Director of the Office of Management and Budget, and the Director has approved the proposed collection of information. Procedures for the approval may be obtained by contacting the OPDIV reports clearance officer. (See Title 5 CFR Part 1320 and General Administration Manual Chapter 10–20.)

• • • • •

f. Remove item (11) *Classified contracts.*, and redesignate existing items (12), (13), (14), and (15) as (11), (12), (13), and (14), respectively.

g. In newly designated item (11) *Publications.*, remove the phrase "in excess of $2,500 and" in the first sentence.

h. In newly designated item (12) *Public affairs services.*, correct the form designation to read "Form HHS—524.".

PART 315—[AMENDED]

315.406–5 [Amended]

10. Section 315.406–5(a)(2) is amended by adding the word "and" after the semi-colon at the end of the paragraph in item (xv), by removing items (xvi) and

(xviii), by redesignating item (xvii) as item (xvi), and by removing the semicolon and word "and" from newly designated item (xvi) and replacing them with a period.

§ 18.406 [Amended]

11. Section 315.406 is amended by removing the second sentence.

PART 317—[AMENDED]

§ 317.206 [Amended]

12. Section 317.206 is amended by correcting the FAR reference to read "17.206(b)".

13. Subpart 317.71 is revised to read as follows:

Subpart 317.71—Supply and Service Acquisitions Under the Government Employees Training Act

Sec.
317.7100 Scope of subpart.
317.7101 Applicable regulations.
317.7102 Acquisition of training.

Subpart 317.71—Supply and Service Acquisitions Under the Government Employees Training Act

317.7100 Scope of subpart.

This subpart provides alternate methods for obtaining training in non-Government facilities under the Government Employees Training Act, 5 U.S.C. Chapter 41.

317.7101 Applicable regulations.

Basic policy, standards, and delegations of authority to approve training are contained in HHS Personnel Manual Instruction 410-1.

317.7102 Acquisition of training.

(a) The acquisition of interagency training courses and non-governmental off-the-shelf training courses, whether for individual employees or for groups of employees, is the responsibility of the Assistant Secretary for Personnel Administration.

(b) Non-governmental training must be acquired through the contracting office if there are costs for training course development or for modification of off-the-shelf training courses.

PART 319—[AMENDED]

§ 319.870 [Amended]

14. Section 319.870 is amended as follows:

a. In the first sentence of paragraph 319.870(a)(2), remove the word "shall" and replace it with "may".

b. In the fourth sentence of paragraph 319.870(a)(2) (i.e., the second sentence in parentheses), add the phrase "which are neither unique nor complex and requirements" between the words "requirements" and "for".

c. Between the fourth and fifth sentences of paragraph 319.870(a)(2) (i.e., the second and third sentences within parentheses), add the following sentence: "Only in extenuating circumstances will SBA accept these types of requirements when technical evaluation of more than one concern is requested." and

d. In the first sentence of paragraph 319.870(a)(4), remove the phrase "is required or".

PART 332—[AMENDED]

15. Subpart 332.9 is added to read as follows:

Subpart 332.9—Prompt Payment

Sec.
332.902 Definitions.
332.905 Invoice payments.

Subpart 332.9—Prompt Payment

332.902 Definitions.

"Fiscal office" means the office responsible for: (a) Determining whether interest penalties are due a contractor and, if so, the amount, (b) determining whether an invoice offers a financially advantageous discount, (c) maintaining records for and submission of prompt payment reports to the Deputy Assistant Secretary, Finance (DASF), ASMB, OS, and (d) processing payments to the Treasury Department to allow for payment to a contractor when due. The fiscal office shall fulfill the roles of the "designated billing office" and the "designated payment office."

332.905 Invoice payments.

(a)(2)(ii) and (b)(3). In most instances, Government acceptance or approval can occur within the five (5) working day constructive acceptance period specified in paragraph (a)(6) of the Prompt Payment clause at FAR 52.232-25 or paragraph (a)(5) of Alternate I to the Prompt Payment clause. However, the contracting officer should coordinate this provision with the Government office that will be responsible for the acceptance or approval function. The contracting officer should specify a longer period where the 5 working day period is not reasonable or practical. Considerations include, but are not limited to, the nature of supplies or services being accepted, inspection and testing requirements, shipping and acceptance terms, and resources available at the acceptance activity. A period less than 5 working days is not scheduled.

(i) In instances where the contracting officer receives the invoice and the contract requires payment to be made within 30 days after receipt of a proper invoice, the contracting officer shall submit the approved invoice to the fiscal office no later than sixteen (16) calendar days from receipt of a proper invoice by the designated fiscal office. However, when a contract provides for a payment due date other than 30 days after receipt of a proper invoice, and if contracting officer approval of the invoice is required before payment can be made, the contracting officer shall reach agreement with the fiscal office prior to award as to when the invoice is to be received in the designated fiscal office.

PART 339—[AMENDED]

§ 339.7001 [Amended]

16. Section 339.7001 is amended as follows:

a. In the introductory paragraph, remove the title "HHS ADP Systems Manual," and replace it with "HHS Information Resources Management (IRM) Manual," and remove the designation "Office of Management Analysis and Systems (OMAS)," and replace it with "Office of Information Resources Management (OIRM),".

b. In paragraph 339.7001(a), remove the acronym "OMAS" and replace it with "OIRM", and insert the phrase "Exhibit 4-10-A of" between the words "in" and "Chapter 4-10".

c. In the first sentence of paragraph 339.7001(b), remove the acronym "OMAS" and replace it with "OIRM", and insert the parenthetical phrase "(delegation of procurement authority (DPA))" between the words "document" and "is".

d. In the second sentence of paragraph 339.7001(b), remove the words "initiate action on" and replace them with "issue a solicitation based on", and insert "(DPA)" between the words "document" and "is".

§ 339.7002 [Amended]

17. Section 339.7002 is amended as follows:

a. Add the following sentence to the end of paragraph 339.7002(a): "The project officer is responsible for setting forth the specific portions of Part 6, ADP Systems Security, of the HHS IRM Manual which are applicable to the instant acquisition."

b. Paragraphs 339.7002(b)(2) and 339.7002(b)(3) are both amended by removing the title "HHS ADP Systems Manual," and replacing it with "HHS IRM Manual."

PART 342—[AMENDED]

Subpart 342.72—[Removed]

18. Subpart 342.72 is removed.

PART 352—[AMENDED]

352.242-71 through 352.242-79 [Removed]

19. Sections 352.242-72 through 352.242-79 are removed.

[FR Doc. 88-24721 Filed 10-25-88; 8:45 am]
BILLING CODE 4150-04-M

VETERANS ADMINISTRATION

48 CFR Parts 807 and 852

Acquisition Regulations Relating to Cost Comparisons

AGENCY: Veterans Administration.

ACTION: Final rule.

SUMMARY: The Veterans Administration (VA) is amending the Veterans Administration Acquisition Regulation (VAAR) to implement the office of Management and Budget (OMB) Circular A-76, which requires that a comparison be utilized in determining whether required services will be performed by Federal employees or by a contractor. This regulation will provide the means for enhancing the VA implementation of the requirements of OMB Circular A-76.

EFFECTIVE DATE: October 26, 1988.

FOR FURTHER INFORMATION CONTACT: Chris A. Figg, Acquisition Policy Staff (93), Office of Acquisition and Material Management, Veterans Administration, 810 Vermont Avenue, NW, Washington, DC, (202) 233-2334.

SUPPLEMENTARY INFORMATION:

I. Background

This regulation was published as a proposed rule on February 22, 1988 (53 FR 5201), in order to solicit public comment on the proposed acquisition-related guidance in conducting A-76 cost comparisons. After consideration of comments received, the proposed rule is being adopted with change mandated by the Veterans Benefits and Services Act of 1988 (Pub. L. 100-322) which requires two bidders for all A-76 solicitations at VA health care facilities, and a minor change requested by OMB.

There were three responses from the notice of proposed rulemaking. The first response was received from the National Federation of Federal Employees and expressed no objection to the proposed rule.

The second response was from the Small Business Administration (SBA) and expressed objection to the proposed rule at § 807.304-72 which requires that, under certain A-76 cost comparisons, at least two responsible and responsive bids must be received in order to consider contracting out a VA activity. The Chief Counsel for Advocacy, Small Business Administration, submitted an objection to our certification that the proposed rule was not subject to the Regulatory Flexibility Act (RFA) and that in any case the VA proposed rule would not have a significant impact upon a substantial number of small entities. We have concluded that the SBA assertion that the rule falls within the scope of section 601(2) of the RFA is correct. However, § 807.304-72 requiring two commercial bidders under A-76 cost comparisons has now been statutorily mandated by Pub. L. 100-322 for all A-76 studies conducted at VA health care facilities. Over a 5-year period, we currently project 275 A-76 studies at VA health care facilities. We project that a maximum of 20 percent will result in only one bid, or 55. Of these, we project half of the single bidders will be small business, or 28 small businesses. This number itself may not even meet the test of "substantial number." Furthermore, the impact should be minimized since situations of single bidders will normally be discovered in the sources sought phase thereby obviating bid preparation costs.

We base our conclusions that the rule will have minimal impact on other than VA medical center functions on its limited application. The two-bidder requirement will only be used in A-76 solicitations and only if its use is fully justified by the individual cricumstances of the cost comparison. The rule applicable to nonmedical care functions clearly states that the two-bidder requirement is expected to be used sparingly. VA guidance to contracting officers emphasizes that other more traditional approaches to ensuring selection of responsible bidders are to be favored over use of a two-bidder requirement. However, when a current in-house function is of a sensitive nature, such as that having significant potential adverse impact upon veteran beneficiaries if the function were disrupted, and for which the time frame for establishing an alternative source is lengthy, and which meets other salient criteria identified in § 807.304-72, and if the approval of the facility director or department of staff office head is obtained, the two-bidder requirement is considered a prudent safeguard.

The VA currently has approximately 100 commercial activities at nonmedical facilities which will be studied over the next 5 years. We project, as a maximum, that 33⅓ percent of these studies will meet the criteria for requiring two-bidders, or 33 studies (33⅓%×100). Based upon our experience with A-76 cost comparisons, 10-20 percent of the solicitations will result in only one bidder. Therefore, we can project six instances over a 5-year period in which a solicitation will either not be issued or will be cancelled as a result of the two-bidder rule. Of such occurrences, we project that 50 percent, or three, will be small businesses. We consider that a rule affecting three small businesses over 5 years is of minimal impact. Furthermore, we do not expect the impact upon these three to be significant since in most cases the VA will be able to determine instances of a single potential source during the sources sought phase of the cost comparison. The small business would, therefore, not incur bid preparation costs.

SBA contends that the VA two-bidder A-76 policy is unprecedented, that the concern with single bidder reliance is unfounded, that other safeguards exist and that A-76 provides protection since functions which are not successfully performed by-contractors may be brought back in-house. The VA does acknowledge that other safeguards exist and emphasizes those safeguards in preference to a two-bidder requirements. The A-76 allowance for converting in-house functions if a commercial source cannot successfully perform the function is considered in § 807.304-72(b)(2). The VA also acknowledges that the two-bidder policy is unique but contends it is a prudent protection to the possible adverse effect of single source reliance for critical VA functions. The requirement for two responsible bidders for A-76 cost comparisons has been official VA policy for 7 years. The reason for that policy was earlier experience in contracting out two highly capital intensive functions in which the respective contractors were the only commercial sources for the service. In one case, the firm was unable to perform during the subsequent contract period and in the other case subsequent contract costs escalated significantly. The two-bidder requirement was intended to provide protection against such occurrences. In order to ensure that the two-bidder requirement is only use under appropriate conditions, its usage requires high level approval and its usage is centrally monitored.

OMB has also objected to the VA two-bidder requirement as being unduly restrictive. Again, the VA is now required by law to use the two-bidder

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requirement in the majority of its A–76 studies. In those studies in which the VA retains discretionary use of the two-bidder requirement, its use will be under exceptional circumstances. However, its use under such circumstances as identified in § 807.304–72 is considered necessary. OMB also recommends a minor revision to the clause in § 852.207–70, "Report of Employment Under Commercial Activities," which is being adopted. The change will clarify that the right of first refusal is for permanent Federal employees.

The Notice of Cost Comparison provision in § 852.207–71(b) is amended to reflect the requirements in Pub. L. 100–322. The two-bidder requirement pertaining to solicitations which accept both a Goverment-owned, Contractor-operated (COCO) or Contractor-owned, Contractor-Operated (COCO) has been determined to require two GOCO bids to consider contracting on a GOCO basis and two COCO bids to consider contracting on a COCO basis.

OMB Circular A–76, Transmittal No. 7, was issued in July 1988. Transmittal No. 7 rescinded the earlier Transmittal No. 4 which had required that a bidder's/offeror's projected contributions to social security and thrift-profit sharing plans be deducted from their respective bid/offer for cost comparison purposes. Therefore, §§ 807.370 and 852.207–73 are unnecessary and are removed from the final regulation.

II. Executive Order 12291

Pursuant to the memorandum from the Director, Office of Management and Budget, to the Administrator, Office of Information and Regulatory Affairs, dated December 13, 1984, this rule is exempt from sections 3 and 4 of Executive Order 12291.

III. Regulatory Flexibility Act (RFA)

For the reasons enunciated in this preamble, the VA certifies that this rule will not have a significant impact on a substantial number of small entities.

IV. Paperwork Reduction Act

The Paperwork Reduction Act does not apply to these final regulations.

List of Subjects in 48 CFR Parts 807 and 852

Government procurement.

Approved: October 18, 1988.

Thomas K. Turnage,
Administrator.

In 48 CFR Chapter 8, Part 807 and sections 852.207–70, 852.207–71, and 852.207–72, are added as set forth below:

1. Part 807 is added to read as follows:

PART 807—ACQUISITION PLANNING

Subpart 807.3—Contractor Versus Government Performance

Sec
807.300 Scope of subpart.
807.302 General.
807.304 Procedures.
807.304–72 Requirement for second commercial source for A–76 solicitations.
807.304–73 Bid opening/receipt of proposals.
807.304–75 Bid acceptance.
807.304–76 Contract effective date.
807.304–77 Right of first refusal.

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

Subpart 807.3—Contractor Versus Government Performance

807.300 Scope of subpart.

This subpart prescribes basic procedures and principles to be followed in performing the contracting aspect of the OMB Circular A–76 cost comparison process.

807.302 General

(a) Pursuant to 38 U.S.C. 5010(c)(2), all A–76 cost comparisons of commercial and/or industrial activities performed by the VA Department of Medicine and Surgery (DM&S) at VA medical facilities will be based upon comparative cost of the first five years of contract performance. Consequently, such cost comparisons will specify contractual commitments for one year plus four one-year renewal options (see FAR 17.2). (Other VA departments and staff offices may use contractual commitments for a minimum of one year with two one-year renewal options or a maximum of one year with four one-year renewal options.) Furthermore, 38 U.S.C. 5010(c)(4) prescribes a cost comparison methodology which differs from that contained in OMB Circular A–76. In order that bidders/offerors are made aware of the cost comparison methodology which will be applied, the provision in 852.207–72, Cost Comparison Criteria—VA Medical Facilities, will be included in solicitations for cost comparisons of VA DM&S activities which are currently performed at VA medical facilities by VA employees.

807.304 Procedures.

807.304–72 Requirement for second commercial source for A–76 solicitations.

(a) Pub. L. 100–322 established a requirement that for A–76 cost comparisons conducted at health-care facilities, a contract can only be awarded if the A–76 solicitation results in responsive bids/offers from at least "two responsible, financially autonomous bidders (offerors)." Consequently, A–76 solicitations for functions at VA health-care facilities will contain the provision specified in 852.207–71.

(b) The general policy of the VA, except as identified in paragraph (a) of this section, is to proceed with A–76 cost comparison if one or more responsive and responsible bidder/offerors respond to an A–76 solicitation. However, if justified and approved in accordance with this section, an A–76 solicitation may require that two responsive and responsible bidders/offerors respond to the solicitation and will use the appropriate provision specified in 852.207–71. If the requirement for two bidders is approved and used, the cost comparison process will be terminated and the solicitation cancelled unless two bids/offers are received.

(c) The justification for use of a second commercial source requirement shall address each of the following criteria:

(1) Criticality of the activity under study to the mission of the facility and the degree of adverse impact on facility from disruption in services.

(2) Amount of resources needed (facility and capital investment, time frame, and costs attributed to obtaining adequate staff) to convert the service back to in-house operation.

(3) The availability and feasibility of obtaining the service from other VA facilities or other Government facilities.

(4) Evaluation of anticipated bidder's/offeror's essential qualification characteristics.

(5) Availability of other commercial sources in close geographic proximity to the facility.

(d) Requests to use the provisions specified in 852.207–71 will be prepared by the director (or head of the requesting element for activities consisting of less than 10 FTEE) of the facility in which the commercial activity presently exists. The request will, at a minimum, address the criteria in paragraph (b) of this section and will be forwarded for approval as follows:

(i) For A–76 solicitations comparing in-house activities consisting of less than 10 FTEE, approval is delegated to the facility director.

(ii) For A–76 solicitations comparing in-house activities consisting of 10 FTEE or more, approval will be made by the respective department head or staff office director, or their designee.

(e) A copy of each approval granted pursuant to paragraphs (c) and (d) of this section will be forwarded to Director, Office of Program Analysis and Evaluation (07), through the respective department head or staff office director, within five working days of such approval.

807.304–73 Bid opening/receipt of proposals.

The date established for bid opening or receipt of proposals will normally be 90 days after sending the request for publication to the Commerce Business Daily (CBD) (65 days after issuing the solicitation).

807.304–75 Bid acceptance.

Bid acceptance shall be 90 days from bid opening/receipt of proposals in order to accommodate the time necessary to evaluate bids/offers, finalize the cost comparison and process any appeals. Contracting officers will insert "90 days" in FAR clause 52.214–15.

807.304–76 Contract effective date.

(a) A transition from in-house performance to contract requires a period of time from contract award to beginning of contract performance (contract effective date). This time is necessary to allow for personnel adjustments, e.g., right of first refusal process, and to allow a reasonable period for the contractor to make necessary resource reallocations. The contract effective date should be carefully considered in conjunction with the A–76 Task Group and must be specified in the solicitation.

(b) Although outplacement planning to minimize the effect of any necessary reduction in force should be initiated in advace of bid opening/receipt of proposals as prescribed by Office of Personnel and Labor Relations, there are also employee and labor organization reduction-in-force notice requirements which must be satisfied.

(c) When bargaining unit employees will be affected, facility officials also should review and comply with any employee or labor organization notice requirements in applicable negotiated agreements.

807.304–77 Right of first refusal.

(a) In addition to the Right of First Refusal clause specified in FAR 52.207–3, the contracting officer will include the clause "Report of Employment Under Commercial Activities" in 852.207–70. This clause is primarily intended to verify that the contractor is meeting its obligation to provide adversely affected Federal workers the first opportunity for employment openings, for which they qualify, created by the contract.

(b) The Report of Employment Under Commercial Activities clause is also prescribed to avoid inappropriate severance payment. In order to implement the clause, the contracting officer (or Contracting Officer's Technical Representative (COTR)) must first obtain a list from the servicing personnel office of Federal employees, including their Social Security numbers, who will be adversely affected as a result of the anticipated contract. The list should be requested as soon as a preliminary determination is made to contract out a function subject to A–76. (Contracting officers may designate a COTR to coordinate the information and reporting requirements.)

PART 852—[AMENDED]

2. The authority citation for Part 852 continues to read as follows:

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

3. In Subpart 852.2, sections 852.203–70, 852.203–71, and 852.203–72 are added to read as follows:

852.207–70 Report of employment under commercial activities.

As prescribed in 807.304–75, the following clause will be included in A–76 cost comparison solicitations:

Report of Employment Under Commercial Activities (March 1987)

(a) Consistent with the Government post-employment conflict of interest regulations, the contractor shall give adversely affected Federal employees the right of first refusal for all employment openings under this contract for which they are qualified.

(b) *Definitions.* (1) An "adversely affected Federal employee" is:

(i) Any permanent Federal employee who is assigned to the government commercial activity, or

(ii) Any employee identified for release from his or her competitive level or separated as a result of the contract.

(2) "Employment openings" are position vacancies created by this contract which the contractor is unable to fill with personnel in the contractor's employee at the time of the contract award, including positions within a 50 mile radius of the commercial activity which indirectly arise in the contractor's organization as a result of the contractor's reassignment of employees due to the award of this contract.

(3) The "contract start date" is the first day of contractor performance.

(c) *Filling employment openings.* (1) For a period beginning with contract award and ending 90 days after the contract start date, no person other than an adversely affected Federal employee on the current listing provided by the contracting officer shall be offered an employment opening until all adversely affected and qualified Federal employees identified by the contracting officer have been offered the job and refused it.

(2) The contractor may select any person for an employment opening when there are no qualified adversely affected Federal employees on the latest current listing provided by the contracting officer.

(d) *Contracting reporting requirements.* (1) No later than five working days after contract award the contractor shall furnish the contracting officer with the following:

(i) A list of employment openings including salaries and benefits.

(ii) Sufficient job application forms for adversely affected Federal employees.

(2) By contract start date, the contractor shall provide the contracting officer with the following:

(i) The names of adversely affected Federal employees offered an employment opening.

(ii) The date the offer was made.

(iii) A brief description of the position.

(iv) The date of acceptance of the offer and the effective date of employment.

(v) The date of rejection of the offer, if applicable for salary and benefits contained in the rejected offer, and

(vi) The names of any adversely affected Federal employees who applied but were not offered employment and the reason(s) for withholding an offer.

(3) For the first 90 days after the contract start date, the contractor shall provide the contracting officer with the names of all persons hired or terminated under the contract within five working days of such hiring or termination.

(e) *Information provided to the contractor.* (1) No later than 10 working days after the contract award, the contracting officer shall furnish the contractor a current list of adversely affected Federal employees exercising the right of first refusal, along with their completed job application forms.

(2) Between the contract award and start dates, the contracting officer shall inform the contractor of any reassignment or transfer of adversely affected employees to other Federal positions.

(3) For a period up to 90 days after contract start date, the contracting officer will periodically provide the contractor with an updated listing of adversely affected Federal employees reflecting employees recently released from their competitive levels or separated as a result of the contract award.

(f) *Qualification determination.* The contractor has a right under this clause to determine adequacy of the qualifications of adversely affected Federal employees for any employment openings. However, an adversely affected Federal employee who held a job in the Government commercial activity which directly corresponds to an employment opening shall be considered qualified for the job. Questions concerning the qualifications of adversely affected Federal employees for specific employment openings shall be referred to the contracting officer for determination. The contracting officer's determination shall be final and binding on all parties.

(g) *Relation to other statutes, regulations and employment policies.* The requirements of this clause shall not modify or alter the contractor's responsibilities under statutes, regulations or other contract clauses pertaining to the hiring of veterans, minorities or handicapped persons.

(h) *Penalty for Noncompliance.* Failure of the contractor to comply with any provision

of this clause may be grounds for termination for default.

(End of Clause)

852.207-71 Notice of cost comparison.

When authorized in accordance with 807.304-72, the FAR provision 52.207-1, Notice of Cost Comparison (Sealed-Bid), or 52.207-2, Notice of Cost Comparison (Negotiated), whichever is appropriate, will be supplemented with the following provision for the circumstances prescribed:

(a) When only COCO bids or only GOCO bids will be accepted:

Notice of Cost Comparison (1988)

(a) Reference is made to the provision "Notice of Cost Comparison (Sealed-Bid) or (Negotiated)," FAR 52.207-1 (or 52.207-2).

(b) Bidders (offerors) are placed on notice that no contract will be awarded, irrespective of cost comparison results, unless *two or more responsive and responsible financially autonomous bidders* (offerors) respond to this solicitation.

(End of Provision)

(b) If GOCO and COCO bids/offers will be considered, the following supplemental provision will be used:

Notice of Cost Comparison—Supplement (1988)

(a) Reference is made to the provision "Notice of Cost Comparison (Sealed-Bid) or (Negotiated)," FAR 52.207-1 (or 52.207-2).

(b) Bidders (offerors) are placed on notice that this solicitation allows contractors to bid (offer) and/or Government-owned, Government-operated (GOCO) basis. However, a COCO method of performance will only be considered if two or more responsive and responsible financially autonomous firms bid (offer) on a COCO basis, and a GOCO bid will only be considered if two or more responsive and responsible financially autonomous firms bid (offer) on a COCO basis.

(End of Provision)

852.207-72 Cost comparison criteria—VA medical facilities.

As prescribed in 807.302(a), the following provision will be included in the solicitation for cost comparison of DM&S activities currently performed at VA medical centers by VA employees.

Cost Comparison Criteria—VA Medical Facilities (1988)

Bidder/offerors are placed on notice that the cost comparison calculations will conform to the criteria prescribed in Title 38, United States Code, Section 5010. In accordance with Section 5010(c)(21), a contract award will not be made unless the total cost of performance over the first five years of such performance (including the cost to the Government of conducting the study) is lower by 15 percent or more than the cost of performance by Federal employees.

(End of Provision)

[FR Doc. 88-24705 Filed 10-25-88 8:45 am]

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Proposed Rules

Federal Register
Vol. 53, No. 207
Wednesday, October 26, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 53

United States Standards for Rice

AGENCY: Federal Grain Inspection Service, USDA.[1]

ACTION: Proposed rule.

SUMMARY: In compliance with the requirements for periodic review of regulations, the Federal Grain Inspection Service (FGIS or Service) is proposing to revise the United States Standards for Rice. The Service proposes to revise the United States Standards for Rough Rice by adding a separate category for heat-damaged kernels and redefining the special grade "weevily" to the more inclusive and meaningful term "infested." The Service also proposes to revise the United States Standards for Rough Rice, Brown Rice for Processing, and Milled Rice by: (1) Incorporating the insect infestation tolerances in the standards, (2) revising the rounding procedures as stated in the sections on percentages to more generally accepted mathematical procedures, (3) eliminating many of the footnotes and references to footnotes throughout the standards and incorporating the information into the text of the standards, and (4) making other miscellaneous nonsubstantive changes to simplify and provide for uniform provisions and language in the standards.

[1] The authority to exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), concerning inspections and standardization activities related to grain and similar commodities and products thereof has been delegated to the Administrator, Federal Grain Inspection Service (7 U.S.C. 75a; 7 CFR 68.5).

DATE: Comments must be submitted on or before November 25, 1988.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., Resources Management Division, USDA, FGIS, Room 0628 South Building, P.O. Box 96454, Washington, DC, 20090-6454.

Telemail users may respond to [IRSTAFF/FGIS/USDA] telemail.

Telex users may respond as follows: to Lewis Lebakken Jr., TLX: 7607351, ANS:FGIS UC.

All comments received will be made available for public inspection at Room 0628 South Building, 1400 Independence Avenue, SW, Washington, DC, during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., address as above, telephone (202) 475-3428.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512-1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

W. Kirk Miller, Administrator, FGIS, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities because those persons who apply the standards and most users of the inspection services do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Further, the standards are applied equally to all entities.

Review of Standards

On January 7, 1988, the Service published in the **Federal Register** (53 FR 411) a request for public comment on the review of the United States Standards for Rice and specific issues identified by interested parties. The request for comments explained that the Rice Millers' Association (RMA) had requested that the Service review the heat-damaged kernels factor limits for rough rice and that the Service was reviewing the heat-damaged kernels factor limits for brown rice for processing (brown rice), and the mathematical rounding procedures. The objective of the review is to ensure that the standards continue to serve the needs of the marketplace to the greatest extent possible.

Interested parties were invited to participate in the rulemaking process by submitting written comments. During the 45-day comment period, one comment was received from a rice miller. The commenter suggested revising the factor limits for total seeds and heat-damaged kernels (TS&HT) and heat-damaged kernels and objectionable seed (HT&OBS) in rough rice and brown rice to equal the milled rice standards. The commenter stated that HT&OBS limits for rough and brown rice far exceed the limits found in the milled rice standard, making it virtually impossible to process any specific grade level of rough rice or brown rice into an equivalent grade of milled rice. In addition, in a later correspondence, the RMA also recommended modifying the rough and brown rice standards to better reflect the milled rice standard. However, the RMA recommended only revising the number of heat-damaged kernels allowed in rough rice and brown rice to equal milled rice.

The current standards for rough rice and milled rice have one grade factor HT&OBS which is determined on a milled rice basis. That is, rough rice is dehulled and milled in the laboratory to simulate the commercial milling process, and then the milled portion is analyzed for HT&OBS. Conversely, the brown rice standard includes a grading factor for heat-damaged kernels which is determined on a milled rice basis and another grading factor for objectionable seeds which is determined on a brown rice basis. These different testing procedures and factor limits make it difficult to compare separately the HT&OBS for each standard. Table 1, provides a comparison of the combined limits for HT&OBS.

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TABLE 1.—COMPARISON OF HEAT-DAMAGED KERNELS AND OBJECTIONABLE SEEDS LIMITS FOR ROUGH, BROWN, AND MILLED RICE.

Factor	U.S. Grade					
	1	II	3	4	5	6
Rough Rice: HTaOBS [1]	3	5	8	[illegible]	22	75
Brown Rice: Heat-damaged kernels [2]	1	2	4	8	15	N/A
Objectionable seeds [2]	2	10	20	25	[illegible]	N/A
Total HTaOBS [2]	3	12	24	43	65	N/A
Milled Rice: HTaOBS [1]	1	2	5	15	25	75

[1] Number in 500 grams determined on a milled rice basis.
[2] Number in 500 grams determined on a brown rice basis.
[3] Brown rice has separate limits for heat-damaged kernels and objectionable seeds. Total shown for comparison purposes only.

Objectionable seeds include all seeds, except rice and the species *Echinochloa crusgalli* which is commonly known as barnyard grass, watergrass, or Japanese millet. The presence of *Echinochloa crusgalli* seeds is addressed by the TS&HT factor in rough rice and brown rice standards and the total seeds, heat-damaged, and paddy kernels factor in the milled rice standard. Heat-damaged kernels are materially discolored and damaged as a result of heating due to improper storage, and parboiled rice kernels in nonparboiled rice which are equal to or darker than the interpretive line for heat-damaged kernels.

Objectionable Seeds

The Service believes that tightening the limits on objectionable seeds would be unnecessary. The normal milling process involves removing impurities, such as objectionable seeds. Reducing the number of seeds allowed in rough rice to the same level allowed in milled rice (e.g., reducing the U.S. No. 2 Rough Rice limit from 5 to 2 HTaOBS), could encourage producers to use additional herbicides during production or modify harvesting or other production techniques to control weeds. Reducing the number of seeds allowed in brown rice to the milled rice tolerances would have the same impact as changing the rough rice limits; plus, a change in the basis of determination from brown rice to milled rice would be necessary.

Whether an adjustment in the level of objectionable seeds is warranted to reduce but not eliminate the margin between rough and brown rice with milled rice is not clear at this time. Further review would be necessary before the Service would propose any change to the limits for objectionable seeds in rough rice and brown rice.

Heat-Damaged Kernels

The RMA and the one commenter recommended that the heat-damaged kernel limits for rough and brown rice equal the limits for milled rice. Heat-damaged kernels are determined on a milled rice basis for all three kinds of rice; thus, equalizing the limits is possible. However, for brown rice the current limits are not based on a direct count. Brown rice kernels and pieces of kernels that are heat-damaged are weighed and every 0.02-gram equals a count of one. Conversely, for rough and milled rice, each kernel or piece of a kernel equals a count of one. The desirability of changing the brown rice procedure for determining heat-damaged kernels is not clear at this time. Further review would be necessary before the Service would propose any change regarding the brown rice heat-damaged kernel limits or procedures.

However, in order to tighten the heat-damaged kernel limits for rough rice without changing the objectionable seed units, the RMA proposes to create a category for heat-damaged kernels. During a March 1977 meeting, the RMA noted that the technology was readily available and at a reasonable cost to remove objectionable seeds from rough rice during the normal milling process but that removing heat-damaged kernels is more difficult and expensive. Further, heat damage occurs as a result of heating due to improper storage or the parboiling of rice, conditions generally more controllable than field weeds.

Therefore, the Service is proposing to revise the rough rice standards by adding a separate category for heat-damaged kernels equivalent to the milled rice HTaOBS factor limits. This would provide rice mills a reasonable opportunity to produce an equivalent quality of milled rice because they would only need to remove objectionable seeds from the rough rice, rather than HTaOBS.

Basis of Determination for Brown Rice

The commenter also suggested that all factors for brown rice, except paddy kernels (kernels that are ⅛ or more covered with a hull), be graded on a milled rice basis with the grade factor limits the same as milled rice. That is, the brown rice would be milled in the laboratory and inspectors would analyze the milled rice for all factors except paddy kernels. The commenter stated that this would give the brown rice buyer a better idea of what the rice would grade after milling.

The concept of grading brown rice on a milled rice basis will most likely give distinctly different factor results because of the laboratory milling process. For example, seeds or soft chalky kernels may crumble and become pulverized; and the bran of red rice or a spot of damage may be rubbed off during the laboratory milling process. Consequently, the milling procedure may improve the quality of the rice. Therefore, the factor limits influenced by the laboratory milling process should be determined and reduced accordingly. The Service believes that further review would be necessary before the Service would propose any changes to brown rice for processing standards.

Infestation

The Service also proposes to redesignate the rough rice special grade "weevily" to "infested." The term "infested" would be used because it more appropriately describes rough rice containing live insects injurious to stored rice and the term "weevily" connotes a specific insect species, e.g., *Sitophilus* spp. Infested refers to rough rice found to contain live insect infestation above a threshold level. Other insects, in addition to types of weevils, are included within the scope of the term infested rough rice.

In addition, the Service proposes that the tolerances for insects injurious to stored rough rice be defined according to sampling designations as follows: (1) Representative sample, (2) Lot as a whole (stationary), and (3) Sample as a whole during continuous loading/unloading. These proposed tolerances are the same as those presently being applied in FGIS instructions except for minor editorial changes.

For rough rice, the representative sample would include the work portion and the file sample if needed, and when available. The work portion (except lots sampled during continuous loading/unloading) would be considered infested if it contains two or more live weevils, or one live weevil and one or more other live insects injurious to stored rice, or five or more other live insects injurious to stored rice. Lot as a whole (stationary) would be infested if two or more live weevils, or one live weevil and one or more other live insects injurious to stored rice, or five or more other live insects injurious to stored rice, or 15 or more live Angoumois moths or other live moths injurious to stored rice are found in, on, or about the lot. Sample as a whole during continuous loading/unloading would be infested if two or more live weevils, or one live weevil and one or more other live insects injurious to stored grain, or five or more other live insects injurious to stored rice are found in a component sample. The minimum sample size in 500 grams per each 100,000 pounds of rice.

The Service also proposes to incorporate the insect tolerances for brown rice and milled rice in the appropriate grade tables. For brown rice, two or more live insects injurious to stored rice is considered Sample grade. For milled rice, two or more live or dead insects injurious to stored rice is considered Sample grade. These proposed tolerances are presently in FGIS instructions and have been applied to rice inspection for several years.

Rounding

It is also proposed that the Service change its current procedure for rounding percentages for all rice standards. The current rounding procedures for percentages provide that when a figure to be rounded is followed by a figure greater than 5, the figure is rounded up to the next higher figure, e.g., 0.46 is reported as 0.5; when a figure to be rounded is followed by a figure less than 5, the figure is to be retained, e.g., 0.44 is reported as 0.4; when figures that are even are followed by the figure 5, the even figure is retained, e.g., 0.45 is reported as 0.4; and when a figure is odd and followed by a figure of 5, the figure is rounded to the next higher even figure, e.g., 0.35 is reported as 0.4.

The proposed rounding rules simply stated provide that a figure to be rounded followed by a 5 or a figure greater than 5 be rounded up to the next higher figure, e.g., report 0.35 as 0.4, 6.46 as 6.5. If the figure is followed by a number less than 5, the figure is retained, e.g., report 8.34 as 8.3. These proposed rounding procedures are consistent with rounding performed by calculators and in computer applications. Accordingly, this proposed change would adopt more generally accepted mathematical rounding procedures and would facilitate the understandability and usage of the standards.

The presence of footnotes in the standards has caused confusion among users of the standards and made publication difficult. To eliminate such confusion, most footnotes and references to footnotes are proposed to be removed from the standards. The information contained in the footnotes are included, as appropriate, within the text of the standards. Footnotes contained within the body of the grade tables were retained. In addition, it is proposed that §§ 68.204, 68.254, and 68.304 titled *Temporary modifications in equipment and procedures* be removed as necessary. It is also proposed that a section in each subpart be added giving the mailing address where instructions and information may be obtained from the Service. In addition to the proposed changes previously discussed, the table which appears in the *Code of Federal Regulations* at 7 CFR § 68.210, *Grades and grade requirements for the classes of rough rice* would be corrected to accurately reflect the provisions of the final rule published August 12, 1977 (42 FR 40871).

List of Subjects in 7 CFR Part 68

Administrative practice and procedure, Agricultural commodities, Rice.

For reasons set forth in the preamble, 7 CFR Part 68 is proposed to be amended as follows:

PART 68—REGULATIONS AND STANDARDS FOR INSPECTION AND CERTIFICATION OF CERTAIN AGRICULTURAL COMMODITIES AND THEIR PRODUCTS

1. The authority citation for Part 68 continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087, as amended (7 U.S.C. 1621 *et seq.*).

Subpart C—United States Standards for Rough Rice

Subpart D—United States Standards for Brown Rice for Processing

Subpart E—United States Standards for Milled Rice

2. Footnote 1 is removed from Subparts C, D, and E headings and the following statement is added directly below each Subpart heading to read as follows:

Note.—Compliance with the provisions of these standards does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or other Federal laws.

[§§ 68.202, 68.203, 68.207, 68.208, 68.252, 68.253, 68.255, 68.256, 68.258, 68.259, 68.302, 68.303, 68.305, 68.308, 68.315 [Amended]

3. Footnote 2 is removed from §§ 68.202(m), 68.203, 68.207, 68.208, 68.252(o), 68.253, 68.255, 68.256, 68.258, 68.259, 68.302(m), 68.302(y), 68.303, 68.305, 68.308, and 68.315(a).

[§§ 68.203, 68.207, 68.208, 68.258, 68.259, 68.308 [Amended]

4. Footnote 3 is removed from §§ 68.203, 68.207, 68.208, 68.258, 68.259, and 68.308.

§ 68.202 [Amended]

5. Section 68.202(m) is amended removing "set forth in the Rice Inspection Handbook" at the end of the last sentence and adding "prescribed in FGIS instructions" in its place.

§ 68.203 [Amended]

6. Section 68.203 is amended by removing "set forth in the Rice Inspection Handbook" and "set forth in the Rice Inspection Handbook HB 918–11" references and adding "prescribed in FGIS instructions" in both places.

§ 68.204 [Removed]

[§§ 68.205 and 68.206 [Redesignated as §§ 68.204 and 68.205]

7. Section 68.204 is removed and §§ 68.205 and 68.206 are redesignated as §§ 68.204 and 68.205, respectively.

§ 68.207 [Redesignated as § 68.206 and Amended]

8. Section 68.207 is redesignated as § 68.206 and amended by removing "the Rice Inspection Handbook, and the Equipment Manual" and adding "FGIS instructions" in its place.

§ 68.208 [Redesignated as § 68.207 and Amended]

9. Section 68.208 is redesignated as § 68.207 and amended by removing "the Rice Inspection Handbook" and adding "FGIS instructions" in its place.

§ 68.209 [Redesignated as § 68.208 and Revised]

10. Section 68.209 is redesignated as § 68.208 and revised to read as follows.

§ 68.208 Percentages.

(a) *Rounding.* Percentages are determined on the basis of weight and are rounded as follows:

(1) When the figure to be rounded is followed by a figure greater than or equal to 5, round to the next higher figure; e.g., report 6.36 as 6.4, 6.35 as 6.4, and 2.45 as 2.5.

(2) When the figure to be rounded is followed by a figure less than 5, retain the figure; e.g., report 6.34 as 6.3 and 1.22 as 1.2.

(b) *Recording.* All percentages except for milling yield, are stated in whole and tenth percent to the nearest tenth percent. Milling yield is stated to the nearest whole percent.

11. A new § 68.209 is added to read as follows:

§ 68.209 Information.

Requests for the Rice Inspection Handbook, Equipment Handbook, or for information concerning approved devices and procedures, criteria for approved devices, and requests for approval of devices should be directed to the U.S. Department of Agriculture, Federal Grain Inspection Service, P.O. Box 96454, Washington, DC 20090-6454, or any field office or cooperator.

12. Section 68.210 is revised to read as follows:

Grades, Grade Requirements, and Grade Designations

§ 68.210 Grades and grade requirements for the classes of rough rice. (See also § 68.212.)

Grade	Maximum limits of—							
	Seeds and heat-damaged kernels			Red rice and damaged kernels (singly or combined) (percent)	Chalky kernels [1]		Other types [2] (percent)	Color requirements [1]
	Total (singly or combined) (number in 500 grams)	Heat-damaged kernels and objectionable seeds (number in 500 grams)	Heat-damaged kernels (number in 500 grams)		In long grain rice (percent)	In medium or short grain rice (percent)		
U.S. No. 1	4	3	1	0.5	1.0	2.0	1.0	Shall be white or creamy.
U.S. No. 2	7	5	2	1.5	2.0	4.0	2.0	May be slightly gray.
U.S. No. 3	10	8	5	2.5	4.0	6.0	3.0	May be light gray.
U.S. No. 4	27	22	15	4.0	8.0	8.0	5.0	May be gray or slightly rosy.
U.S. No. 5	37	32	25	8.0	10.0	10.0	10.0	May be dark gray or rosy.
U.S. No. 6	75	75	75	[3] 15.0	18.0	10.0	10.0	May be dark gray or rosy.
U.S. Sample grade: [4]								

[1] For the special grain Parboiled rough rice, see § 68.212(a).
[2] These limits do not apply to the class Mixed Rough Rice.
[3] Rice in grade U.S. No. 6 shall contain not more than 6.0 percent of damaged kernels.
[4] U.S. Sample grade shall be rough rice which:
(a) Does not meet the requirements for any of the grades from U.S. No. 1 to U.S. No. 6, inclusive; or
(b) Contains more than 14.0 percent of moisture; or
(c) Is musty, or sour, or heating; or
(d) Has any commercially objectionable foreign odor; or
(e) Is otherwise of distinctly low quality.

13. Section 68.212 is amended by removing § 68.212(c); redesignating § 68.212(a) and (b) as (b) and (c); and adding a new paragraph § 68.212(a) to read as follows:

§ 68.212 Special grades and requirements.

* * * * *

(a) *Infested rough rice.* Tolerances for live insects responsible for infested rough rice are defined according to sampling designations as follows:

(1) *Representative sample.* The representative sample consists of the work portion, and the file sample if needed and when available. The rough rice (except when examined according to paragraph 3 below) will be considered infested if the representative sample contains two or more live weevils, or one live weevil and one or more other live insects injurious to stored rice, or five or more other live insects injurious to stored rice.

(2) *Lot as a whole (stationary).* The lot as a whole is considered infested when two or more live weevils, or one live weevil and one or more live insects injurious to stored rice, or five or more other live insects injurious to stored rice, or 15 or more live Angoumois moths or other live moths injurious to stored rice are found in, on, or about the lot.

(3) *Sample as a whole during continuous loading/unloading.* The minimum sample size for rice being sampled during continuous loading/unloading is 500 grams per each 100,000 pounds of rice. The sample as a whole is considered infested when a component (as defined in FGIS instructions) contains two or more live weevils, or one live weevil and one or more other live insects injurious to stored rice, or five or more other live insects injurious to stored rice.

* * * * *

14. Section 68.213 is revised to read as follows:

§ 68.213 Special grade designation.

The grade designation for infested, parboiled, or smutty rough rice shall include, following the class, the word(s) "Infested," "Parboiled Light," "Parboiled," "Parboiled Dark," or "Smutty," as warranted, and all other information prescribed in § 68.211.

§ 68.252 [Amended]

15. Section 68.252(o) is amended by removing "set forth in the Rice Inspection Handbook" in the last sentence and adding "prescribed in FGIS instructions" in its place.

§ 68.253 [Amended]

16. Sections 68.253 is amended by removing "set forth in the Rice Inspection Handbook" in the last sentence and adding "prescribed in GFIS instructions" in its place.

§ 68.254 [Removed]

17. Section 68.254 is removed.

§ 68.255 [Redesignated as § 68.254 and amended]

18. Section 68.255 is redesignated as § 68.254 and amended by removing "set forth in the Rice Inspection Handbook" and adding "prescribed in FGIS instructions" in its place.

§§ 68.256 and 68.257 [Redesignated as §§ 68.255 and 68.256]

19. Sections 68.256 and 68.257 are redesignated as §§ 68.255 and 68.256, respectively.

§ 68.258 [Redesignated as § 68.257 and Amended]

20. Section 68.258 is redesignated as § 68.257 and amended by removing "the Rice Inspection Handbook and the Equipment Handbook" and adding "FGIS instructions" in is place.

§ 68.259 [Redesignated as § 68.258 and Amended]

21. Section 68.259 is redesignated as § 68.258 and amended by removing "the Rice Inspection Handbook" at the end of the first sentence and adding "FGIS instructions" in its place.

§ 68.260 [Redesignated as § 68.259 and Revised]

22. Section 68.260 is redesignated as § 68.259 and revised to read as follows:

§ 68.259 Percentages.

(a) *Rounding.* Percentages are determined on the basis of weight and are rounded as follows:

(1) When the figure to be rounded is followed by a figure greater than or equal to 5, round to the next higher figure; e.g., report 6.36 as 6.4, 0.35 as 0.4, and 2.45 as 2.5.

(2) When the figure to be rounded is followed by a figure less than 5, retain the figure; e.g., report 6.34 as 6.3 and 1.22 as 1.2.

(b) *Recording.* All percentages, except for milling yield, are stated in whole and tenth percent to the nearest tenth percent. Milling yield is stated to the nearest whole percent.

23. A new § 68.260 is added to read as follows:

§ 68.260 Information.

Requests for the Rice Inspection Handbook, Equipment Handbook, or for information concerning approved devices and procedures, criteria for approved devices, and requests for approval of devices should be directed to the U.S. Department of Agriculture, Federal Grain Inspection Service, P.O. Box 96454, Washington, DC 20090-6454, or any field office or cooperator.

§ 68.261 [Amended]

24. Section 68.261 is amended by adding "two or more" after "(f) contains" in the table.

§ 68.302 [Amended]

25. Section 68.302(d)(5), (6), and (7) are amended by removing "§§ 68.303 and 68.304" in each paragraph and adding "§ 68.303" in its place.

26. Section 68.302(m) is amended by removing "set forth in the Rice Inspection Handbook" and adding "prescribed in FGIS instructions" in its place.

27. Section 68.302(y) is amended by removing "set forth in the Equipment Handbook" and adding "prescribed in FGIS instructions" in its place.

§ 68.303 [Amended]

28. Sections 68.303 is amended by removing "set forth in the Rice Inspection Handbook" and adding "prescribed in FGIS instructions" in its place.

§ 68.304 [Removed]

29. Section 68.304 is removed.

§ 68.305 [Redesignated as § 68.304 and Amended]

30. Section 68.305 is redesignated as § 68.304 and amended by removing "set forth in the Rice Inspection Handbook" and adding "prescribed in FGIS instructions" in its place.

§§ 68.306 and 68.307 [Redesignated as §§ 68.305 and 68.306]

31. Sections 68.306 and 68.307 are redesignated as §§ 68.305 and 68.306, respectively.

§ 68.308 [Redesignated as § 68.307 and Amended]

32. Section 68.308 is redesignated as § 68.307 and amended by removing "the Rice Inspection Handbook" and adding "FGIS instructions" in its place.

§ 68.309 [Redesignated as § 68.308 and Revised]

33. Section 68.309 is redesignated as § 68.308 and revised to read as follows:

§ 68.308 Percentages.

(a) *Rounding.* Percentages are determined on the basis of weight and are rounded as follows:

(1) When the figure to be rounded is followed by a figure greater than or equal to 5, round to the next higher figure; e.g., report 6.36 as 6.4, 0.35 as 0.4, and 2.45 as 2.5.

(2) When the figure to be rounded is followed by a figure less than 5, retain the figure; e.g., report 6.34 as 6.3 and 1.22 as 1.2.

(b) *Recording.* The percentage of broken kernels removed by a 5 plate in U.S. No. 1 and 2 Milled Rice and the percentage of objectionable seeds in U.S. No. 1 Brewers Milled Rice is reported to the nearest hundredth percent. The percentages of all other factors are recorded to the nearest tenth of a percent.

34. A new § 68.309 is added to read as follows:

§ 68.309 Information.

Requests for the Rice Inspection Handbook, Equipment Handbook, or for information concerning approved devices and procedures, criteria for approved devices, and requests for approval of devices should be directed to the U.S. Department of Agriculture, Federal Grain Inspection Service, P.O. Box 96454, Washington, DC 20090-6454, or any field office or cooperator.

§ 68.310 [Amended]

35. Section 68.310 is amended by adding "two or more" after "(f) contains" in the table.

§ 68.311 [Amended]

36. Section 68.311 is amended by adding "two or more" after "(f) contains" in the table.

§ 68.312 [Amended]

Section 68.312 is amended by adding "two or more" after "(g) contains" in the table.

§ 68.313 [Amended]

38. Section 68.313 is amended by adding "two or more" after "(h) contains" in the table.

§ 68.315 [Amended]

39. Section 68.315(a) is amended by removing "according to commercially accepted practice" and adding "as defined in the regulation issued pursuant to the Federal Food, Drug, and Cosmetic Act at 21 CFR 130.3(d)" in its place.

40. Section 68.315(d) is amended by removing "§ 68.307" in the first sentence and adding "§ 68.306" in its place.

Date: October 4, 1988.

W. Kirk Miller,

Administrator.

[FR Doc. 88-24703 Filed 10-25-88; 8:45 am]

BILLING CODE 3410-EN-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS Number: 1048-88]

Temporary Alien Workers Seeking Classification Under the Immigration and Nationality Act

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend regulations for the Immigration and Naturalization Service relating to temporary alien workers seeking classification under section 101(a)(15)(H) of the Immigration and Nationality Act. This proposed rule supersedes a previous Notice of Proposed Rulemaking published on

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August 8, 1988 at 51 FR 28576 which proposed to amend the Immigration and Naturalization Service's regulations at 8 CFR 214.2(h). The purpose of that proposed rule was to clarify Service requirements for classification, admission and maintenance of status under the H classification. Due to the controversial nature of the previous proposed rule and the extensive modifications which the Service proposes to make to the proposal after considering the comments and consulting with affected groups, the Service is issuing this new Notice of Proposed Rulemaking to give the public an opportunity to comment on the changes.

DATE: Interested persons are invited to submit written comments on this proposed rule on or before November 25, 1988.

ADDRESS: Please submit written comments in triplicate to the Director, Policy Directives and Instructions, Immigration and Naturalization Service, Room 2011, 425 Eye Street NW., Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Flora T. Richardson, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536: Telephone: (202) 633-3048.

SUPPLEMENTARY INFORMATION: On August 8, 1988 at 51 FR 28576, the Immigration and Naturalization Service published a Notice of Proposed Rulemaking proposing to amend the Service's regulations at 8 CFR 214.2(h). A main objective of that rule was to establish realistic standards for determining who qualifies as an alien of distinguished merit and ability for H-1 classification. In this respect, the rule defined profession and preeminence and listed the eligibility criteria for a member of the professions and for a person who is preeminent in his or her field. The rule also clarified the licensure requirement for H-1 classification.

The proposed rule specified the different filing requirements for certain types of petitions and made other technical amendments designed to promote consistency in the adjudication of H petitions. Some requirements were made more definitive, such as those relating to accompanying aliens, documentation of qualifications of aliens, restrictions on training programs, revocation of approved petitions, and limits on a temporary stay in the United States. Other requirements for obtaining benefits, such as those for extension of visa petitions and validity periods of petitions were modified. For the most part, the proposed rule simply restated in regulatory form existing Service policy for the H nonimmigrant classification.

The proposed rule generated extensive interest from the general public, labor and management organizations, and Members of Congress regarding standards for the H-1 classification. There was concern expressed by many commenters that the Service was being too restrictive in its interpretation of distinguished merit and ability, while others believed that the interpretation and standards go beyond Congressional intent and statutory authority. Several Congressional Committees were concerned that the regulations may expand the number of H-1 workers admitted to this country and result in displacement of American workers or depression of wages and working conditions in certain occupations and industries. They requested that the Service delay publication of a final rule until October 1, 1988 and during the intervening year, determine the occupational backgrounds of H-1 workers, the impact of H-1 workers on the American workforce, wages and working conditions of H-1 workers, and the impact of proposed regulations on admission of H-1 workers in industries now utilizing such workers.

The Service contracted with a well-known consulting firm to conduct a study on the impact of H-1 nonimmigrants on the American labor market. The results of the study were submitted to Congress in July 1988. Overall, the study found that the H-1 nonimmigrants admitted to the United States do not have an adverse impact on the labor market in terms of displacement of United States workers or depression of wages and working conditions. However, the study also found that a significant number of H-1 admissions are entry to mid-level professionals who only nominally meet the statutory standard of "distinguished merit and ability". These workers are, for the most part, sought by employers to meet labor shortages of American workers in occupational fields, such as nursing, engineering, and computer science. The contractor concluded that denial of H-1 petitions for such workers would result in undue hardship to employers and recommended a statutory change to establish a separate nonimmigrant category to accommodate them. The H-2 category would be inappropriate for these workers because it requires the jobs to be temporary in nature. Jobs filled by H-1 professional workers are usually permanent in nature.

Congress has again delayed publication of a final rule on the previous August 8, 1988, proposed rules until October 1, 1989, to give itself an opportunity to review and respond to the study. Congress would need time to amend the statute to establish a separate nonimmigrant category for entry to mid-level professionals, or to pass a legal immigration bill which responds to the needs of the American labor market. In the meantime, the Service is faced with mounting litigation regarding the standards for professionals. In view of this, the Service is proposing this significantly modified H rule which addresses the major areas of concern of the public, employers, labor organizations and Congress.

This Notice of Proposed Rulemaking reflects the Service's policies and interpretation of Congressional intent for the H classification at this time. It proposes significant changes from the previous proposed rule regarding the documentation required to establish eligibility for H-1 classification as a professional, a person of prominence, or as an accompanying alien. Changes are also proposed to procedures for consultation with unions and other experts, procedures for filing an H petition, and procedures for documenting the qualifications of aliens under the H classification. In addition, new provisions for the H-2B classification regarding temporariness and filing requirements are proposed due to the nature and increased volume of H-2B petitions now being filed since implementation of the Immigration Reform and Control Act (IRCA) of 1986.

IRCA amended section 101(a)(15)(H)(ii) to provide a new H-2A nonimmigrant classification for temporary agricultural labor separate from other temporary nonagricultural services or labor, now designated H-2B.

Since there are special criteria for the admission, extension, and maintenance of status for H-2A workers, the Service published an interim final rule effective June 1, 1987, to implement IRCA. Therefore, the provisions of this proposed rule will apply to H-2A workers only to the extent that they do not conflict with the special agricultural provisions. Paragraph (h)(4) of this proposed rule has been reserved for later incorporation of the H-2A provisions. Paragraph (h)(5) of these regulations relate only to nonagricultural (H-2B) services or labor.

The Service believes that these proposed revisions would clarify policy as it relates to the H nonimmigrant category for the public and Service officers; would facilitate the admission of exceptional, professional, and skilled workers needed by businesses and other organizations; would curb abuses; and would promotion consistency in Service determinations.

Discussion of Proposed Amendments

Filing of Petitions

A petition to classify a worker under section 101(a)(15)(H) would be filed by a United States employer (or foreign employer under the H-1 classification) with the Service office which has jurisdiction over I-129H petitions in the area of intended employment. Such a petition generally involves one employer, one beneficiary, and employment in one location. Since the Service accommodates other types of petitions; the proposed rule prescribes filing requirements which do not fit the usual situation:

(A) *Services or training in more than one location.* When the services or training will be performed in more than one location, the Service has previously allowed the petitioner to file the petition in any one of the locations where the services will be performed. The Service has difficulty in locating and tracking such petitions when inquiries arise, especially in the entertainment industry. For control purposes, the petitioner would be required to file the petition with the Service office which has jurisdiction over I-129H petitions in the area where the petitioner is located. The address which the petitioner specifies on the new Form I-129H as its location would be where the petitioner is located for filing purposes. If the petitioner is a foreign employer, the petition would be filed with the Service office which has jurisdiction over I-129H petitions in the area where the services will begin.

(B) *Agents as petitioner.* In recognition of the fact that certain services involve workers who are traditionally self-employed or who use agents to arrange their employment with numerous employers, the Service would permit an established agent to file a petition in behalf of the employer(s). Whenever the beneficiary(ies) would be employed by a single employer or whenever the beneficiary(ies) would not be using the services of an established agent, the actual employer(s) would have to file the petition.

(C) *Multple beneficiaries on an H-1 petition.* The H-1 classification requires separate documentation which shows that each individual qualifies as a professional or person of prominence, except where the person is a member of a group and the reputation of the group as a whole is evaluated for H-1 classification, or where the person is an accompanying alien to an individual or group of distinguished merit and ability in the arts, cultural, entertainment, or professional sports field. In view of this, the rule would clarify that the filing of a separate petition for each H-1 beneficiary is required unless the alien is an accompanying alien or a member of a group.

Since documentation oif qualifications of H-2 and H-3 beneficiaries is less complex than for H-1 classification, more than one beneficiary may be included in an H-2 or H-3 petition if the beneficiaries will be performing the same service or receiving the same training in the same geographical area and will be applying for visas at the same consulate.

(D) *Named beneficiaries.* The Service proposes that every H petition, except those involving certain seasonal agricultural workers include the names of the beneficiary(ies) and other identifying information required by Form I-129H. The determination which the Service must make before granting H-1, H-2, and H-3 classification relates not just to the Service or training, but also the alien's qualifications or circumstances. In addition, the Service view the identification of beneficiaries as a control against certain abuses which could occur, as inflating the actual number of workers needed and including ineligible beneficiaries in a group.

(E) *Substitution of beneficiaries.* An approved H petition is generally limited to the named beneficiary(ies). This rule would clarify that substitution of beneficiaries may be made only in approved H-1 and H-2B petitions involving a group where the qualifications of the individual beneficiaries were not considered in according H classification, such as a foreign hockey team, orchestra, dance troupe, or theatrical group. In all other cases, a new petition would be required.

H-1 Petition for Alien of Distinguished Merit and Ability

This proposed rule would explain and clarify the standards for H-1 classification and the Service's criteria for determining which aliens qualify for H-1 classification. It also clarifies licensing requirements and defines an accompanying alien and other terms used in this rule.

(A) *Interpretation of distinguished merit and ability.* The Service proposes to codify into regulations its interpretation of the statutory standard for distinguished merit and ability under the H-1 classification. Distinguished merit and ability may be established in one of two ways. First, aliens who are members of the professions within the meaning of section 101(a)(32) of the Act, 8 U.S.C. 1101(a)(32), are classifiable as aliens of distinguished merit and ability; *Matter of Essex Cryogenics Industries, Inc.*, 14 I&N Dec. 196 (Dep. Assoc. Comm. 1972); *Matter of General Atomic Company*, 17 I&N Dec. 532 (Comm. 1980). Second, aliens who are prominent or renowned in their field of endeavor are classifiable as aliens of distinguished merit and ability; *Matter of Shaw*, 11 I&N Dec. 277 (D.D. 1965).

Heretofore, the Service has not consolidated into regulation the standards for determining who qualifies as a member of the professions or a person of prominence in his or her field. The proposed rule would describe the current criteria for qualification based on case law, and would add two new categories of prominence (one related to the performing arts and one related to business). It would also clarify and simplify the rules for determining when a person may be deemed a professional by virtue of education and experience.

(1) *Definition of profession and standards for professionals.* This rule would set forth the definition of "profession" and the standards for qualifying as a member of the professions. A "profession" means an occupation which requires theoretical and practical application of a body of specialized knowledge to fully perform the occupation in such fields of human endeavor as: Architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business, accounting, law, and theology. A profession requires completion of a specific course of education at an accredited college or university, culminating in a baccalaureate or higher degree in a specific professional field, and attainment of such degree or its equivalent in the minimum requirement for entry into the profession in the United States. There are two categories of persons who do not meet these requirements but are nevertheless regarded as professionals. The first category is persons who, after passage of normal professional tests and requirements, are granted full state licenses to practice the profession. The second category is persons who lack the required degree but, by virtue of a combination of college-level education, specialized training or experience, and professional standing are in fact lawfully practicing at a professional level. (Persons who, because of lack of training or licensure, cannot qualify as professionals may, if they have achieved

positions of responsibility and significance in business, qualify as "prominent". (See discussion below.) The Service has long recognized that full state licensure in a profession or a combination of education, experience, and professional standing may result in training which is equivalent to the professional training which is normally gained through attainment of a professional degree. The proposed rule would specify the extent and type of education and experience required in order for a person to qualify as a professional. Adoption of such a rule would make it easier for the public to understand the criteria for qualification, and would simplify administration for the Service.

To qualify as a member of the professions, the alien is required to:

- Hold a United States baccalaureate or higher degree required by the profession from an accredited college or university, or
- Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the profession from an accredited college or university, or
- Hold an unrestricted state license which authorizes him or her to fully practice the profession and be engaged in that profession in the state of intended employment, or
- Have completed at least two years of college-level training appropriate to the profession, have demonstrated that he or she has sufficient specialized training and/or professional experience combined with the college-level education to be equivalent to a United States baccalaureate or higher degree required by a profession, and have attained professional standing and recognition in the particular field.

(2) *Criteria for prominence.* The basic standard for prominence is the possession of skills and recognition substantially above those ordinarily encountered, to the extent that a person so described is prominent in his or her field of endeavor; *Matter of Shaw, supra.* Although existing case law and regulations set forth the types of documentation which must be attached to a petition to establish prominence, this rule would codify those documentation requirements and would establish definitive standards for determining prominence in two new categories. Prominence could be established by an individual alien or by a team or ensemble consisting of a group of aliens. The alien(s) would be required to:

- Have sustained national (foreign or U.S.) or international acclaim and recognition for achievements in the particular field evidenced by at least three different forms of documentation, such as those described in the rule at (h)(3)(i)(D), or
- Be an artist who, or an artistic group which is recognized by governmental agencies, cultural organizations, scholars, arts administrators, critics, or other experts in the particular field for excellence in developing, interpreting, or representing a narrow and clearly identifiable, unique or traditional ethnic, folk, cultural, musical, theatrical, or other artistic performance or presentation; be coming to the United States primarily for educational or cultural event(s) to further the understanding of or development of that art form; and be sponsored primarily be educational, cultural, or governmental organizations which promote such international cultural activities and exchanges, or
- Have exceptional career achievement in business in executive, managerial, or highly technical positions evidenced by at least three significant factors such as those specified in the proposed regulations at (h)(3)(i)(C)(*4*).

To establish that an alien or group has sustained national or international acclaim and recognition for achievements in a particular field, the petitioner would have to show at the time a petition is filed that the alien or group has a prolonged or significant record of critically acclaimed successes and achievements. Persons with ephemeral or short-lived acclaim and recognition in their field and those who are just developing in a field with potential for national or international acclaim are not eligible for H–1 classification.

The Service's current regulations describe the types of documentation required for entertainers to establish that they have national or international acclaim and recognition in their field. This rule would specify the types of evidence required to document this standard in any field, including entertainment. This diversified listing of documentation also provides guidance on how many forms of evidence would be required to establish eligibility.

Although the previous proposed rule included the standard types of documentation which the service over the years has required for entertainers to establish prominence, the standard and documentation were perceived as new and more restrictive than current requirements. Most of the commenters were under the impression that every entertainer must obtain an H–1 visa to perform services in the United States. The fact is that foreign artists who are not qualified for H–1 status may seek H–2B classification to perform the same services after obtaining from the Department of Labor a labor certification or a notice that such certification cannot be made. It appears that many petitioners have come to rely on the H–1 classification as the most expedient nonimmigrant classification for aliens who perform services in the arts, cultural, and entertainment industry. This is because they have obtained H–1 petition approvals that were in error in previous years from some field offices that did not follow the standards in existing regulations.

While the Service is sensitive to the unique circumstances of the arts, cultural, and entertainment industry, the need to promote cultural exchange, and the desire of the public for exposure to other cultures and a variety of entertainment, the Service is bound by the statutory requirements of the Immigration and Nationality Act in administering the H classification. The Service's regulations, case law, and other policy must conform to Congressional intent. Congress did not build into the H classification the flexibility for the Service to consider such factors as cultural exchanges, reciprocity, freedom and artistic expression, personal preferences, or economic hardship to the petitioner in according H Classification. Nor is there a mechanism for applying lesser standards for classification to the arts, cultural, and entertainment industry than to any other industry.

The new criteria reflected in the last two standards would recognize certain unique artists or ensembles which previously have not qualified for H–1 classification but clearly possess qualifications which are exceptional in nature, and certain persons with exceptional career achievement in business. The Service does not believe that inclusion of such persons under the H–1 classification would have an adverse impact on the labor market nor would it diminish the stringent standards for distinguished merit and ability previously required for H–1 classification.

The rule would include in the H–1 distinguished merit and ability category, artists who are recognized exponents of unique forms of artistic expression which by their nature cannot receive the national or international acclaim which is possible in what might be termed the mainstream arts. Artists in this subcategory must still be recognized for their excellence and significance in minor or performing art forms by

authorities in ethno-musicology, drama, dance, etc. Events where qualifying artists perform or present their art form would have to be primarily educational or cultural in nature. This provision would exclude artists who are coming to the United States primarily to provide commercial entertainment.

The second new standard under the prominence category would rectify the situation whereby certain aliens with substantial amounts of work experience and significant achievements in business are employed in high-level positions requiring a broad range of responsibilities but have not been able to qualify for H–1 classification as professionals or persons of prominence by current standards, while a recent college graduate in a profession, such as engineering, can qualify. To qualify as prominent, the alien would be required to have exceptional career achievement in business in executive, managerial, or highly technical positions evidenced by at least three factors, such as managerial responsibility for at least 100 employees, 10 years of experience, salary in excess of $75,000 per year, and contributions of significance to the business industry. Every individual who owns or manages a business or who holds a high position in a business would not be considered prominent. In addition, this new category is not intended to accommodate all other high level business persons who cannot qualify as professionals.

(3) *Accompanying alien status.* The proposed rule would authorize accompanying alien status only for highly skilled, essential support staff who accompany H–1 beneficiaries in the arts, cultural, entertainment, and professional sports fields to the United States. This provision is intended to recognize that certain individuals or groups in the arts, cultural, entertainment, and professional sports fields provide a variety of short-term services and rely on the same individuals to regularly provide essential support for those services, such as the band for an H–1 vocalist or the choreographer for a dance troupe. The personal preference of the H–1 individual or group for working with a particular individual would not be a consideration in grantig accompanying alien status.

Essential support staff would derive H–1 classification from the H–1 alien or group in the above fields to whom his or her skills are essential if:

- The alien is coming to the United States to perform support services which cannot be readily performed by a U.S. worker,
- The alien's services are essential to the successful performance of services to be rendered by the H–1 alien or group, and
- The alien possesses appropriate qualifications, significant prior experience with the H–1 alien or group, and critical knowledge of the specific type of services to be performed so as to render success of the services dependent upon his or her participation.

(4) *Consultation with experts.* The proposed rule would provide that the director shall approve or deny a petition in the entertainment industry based on the information in the record when he or she has no doubt about H–1 eligibility or ineligibility. In all other cases, before making a decision, it is proposed that the director shall consult unions, other organizations, or recognized critics or other experts in the appropriate entertainment field regarding the qualifications of the alien and the nature of the services to be performed. This rule would establish a system for seeking a balance of views in doubtful cases. The regulations would require consultation with a management organization whenever an opinion is sought from a labor organization. In addition, the director would have the discretion to consult with critics or other experts instead of a labor and a management organization.

Licensure for H Classification

This rule would clarify the licensure requirement for H classification. An alien who is accorded H classification must be able to engage in his or her occupation immediately upon entering the United States. If the occupation requires a state or local license for an individual to engage in that occupation, an alien seeking H classification in that occupation must have that license to be found qualified to enter the United States and immediately engage in the occupation. A temporary license (except for a professional nurse) is acceptable if the alien is authorized to fully perform the duties of the occupation under applicable state law.

There are two exceptions to the licensure requirement. First, where a state allows an individual to fully engage in the occupation under the supervision of licensed senior or supervisory personnel, H classification may be accorded. Second, where a foreign professional nurse has passed the Commission on Graduates of Foreign Nursing Schools examination and met other prescribed requirements, H classification may be accorded.

Whenever the alien possesses a temporary license (or results of the CGFNS in the case of professional nurses), it is proposed that the petition shall be approved for a period not to exceed one year. The alien's request for extension of stay beyond one year would have to include evidence that he or she has obtained a permanent license or still holds a temporary license valid through the period of time which the extention is requested.

H–2B Petition for Alien To Perform Temporary Services or Labor

Every petition to classify an alien as an H–2B temporary nonimmigrant worker must have attached to it either a labor certification or a notice that such certification cannot be made, from the Secretary of Labor or the Governor of Guam, as appropriate. This rule would define temporary services, establish certain guidelines under which an H–2B petition could be filed, and specify the documentation required to accompany an H–2B petition.

(A) *Temporary services.* An H–2B nonagricultural temporary worker must be coming temporarily to the United States to perform temporary services or labor, if United States workers capable of performing such services or labor cannot be found or will not be displaced and the employment will not adversely affect the wages and working conditions of similar employed U.S. workers. Temporary services or labor under the H–2B classification would mean any job where the petitioner's need for the duties to be performed by the employee(s) is temporary regardless of whether the underlying job can be described as permanent or temporary. As a general rule, the period of the petitioner's need would have to be a year or less, although there may be extraordinary circumstances where the temporary services or labor would last longer than one year. The petitioner's need for the services or labor would have to be a one-time occurence, a seasonal need, a peakload need, or an intermittent need. The regulations would define these terms.

(B) *Filing guidelines.* This rule would limit the term of a labor certification to one year. This provision would merely set forth in the regulations what is the actual practice of the Secretary of Labor and the Governor of Guam in issuing temporary labor certifications. For H–2B classification, the petitioner would have to be a United States employer or the authorized representative of a foreign employer which shall have a location in the United States, shall have a United States location, shall consider available U.S. workers for the temporary services or labor, and shall offer terms and

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conditions of employment which are consistent with the nature of the occupation, activity, and industry in the United States. The petitioner would not be able to file an H–2B petition unless the United States petitioner had applied for a labor certification with the Secretary of Labor or the Governor of Guam within the time limits prescribed or accepted by each and had obtained a labor certification determination.

(C) *Evidence.* The rule would specify the evidence that is required to accompany an H–2B petition. In particular, the petitioner would be required to provide documentation that the individual alien qualifies for the job offer as specified in the labor certification, except in petitions involving a group. The rule sets forth Service requirements for countervailing evidence when the petitioner receives a notice that a certification cannot be made. The petitioner would be required to address availability or nonavailability of U.S. workers, the prevailing wage rate and working conditions in the occupation, and each of the reasons why the Secretary of Labor or the Governor of Guam could not grant the labor certification.

(D) *Changes to procedures for Guam.* Minor technical changes would be made to temporary labor certification procedures for the Territory of Guam to give the Governor authority to expedite the processing of applications in emergent situations and to clarify approval and reporting requirements. For normal processing of temporary labor certification applications, the employer must still place a job order with the Employment Service system for a period of 30 days. This rule would allow the Governor, at his discretion, to reduce this period by as much as 20 days for applications in the entertainment industry. The rule would also clarify that the Commissioner of Immigration and Naturalization must approve specific construction wage rates on Guam prior to implementation of new rates; specify the frequency of wage surveys; and require the Governor of Guam to furnish quarterly reports of labor certification workload and determinations.

H–3 Classification for Alien Trainees

(A) *Standards for H–3 training programs.* The Service proposes to clarify and incorporate the administrative interpretations of requirements for H–3 classification from published decisions and other Service policy over the years. Key considerations in determining the validity of an H–3 training program would be: Whether there is a structured training program; whether the training is actually productive employment; whether the training will benefit the alien in pursuing a career abroad; whether the training is available in the alien's country; and whether the alien has the skills which the training program intends to provide. The proposed restrictions on approval of a training program that are specified in this rule are designed to clarify to petitioners and Service officers conditions under which an H–3 training program fails to meet these basic criteria.

(B) *Duration of training.* The Service has observed that the H–3 classification is often requested to enable the alien to engage in actual employment under the guise to a training program. It is the Service's view that the longer the period of training the more likely it is that the alien will be engaged in productive employment. This rule would limit the duration of an H–3 training program to two years.

Extension of visa petition and extension of stay application procedures

Current regulations require the filing and approval of an abbreviated visa petition and an application for extension of stay in order to extend the beneficiary's stay in the United States. This procedure would be amended to require only the filing of an application of extension of stay by the beneficiary, accompanied by a letter (or labor certification determination in H–2 cases) from the employer restating the terms and conditions of employment as specified in the original petition. No action would be taken with respect to the visa petition if the beneficiary's application for extension of stay were denied. Approval of the beneficiary's application for extension of stay would automatically extend the visa petition for the same period. This change in procedure would reduce workload in our Regional Adjudication Centers, where petition extensions constitute a significant portion of their workload. The procedure will also reduce burden and cost to employers involved in this procedure.

Limits on a Temporary Stay (Temporariness)

As with H–1 and L applicants, the Service believes that adoption of a generous but specific limit on a temporary stay in the United States in the H–3 category would curb abuses and best serve the interests of the Service and the affected public. Current regulations already limit the stay of an H–2 beneficiary in the United States to three years. This rule proposes to limit the stay of an H–3 beneficiary to two years. The Service believes that a two year period is sufficient to accomplish the purposes of entering the United States in the H–3 classification. Extensions of stay in increments of six months would be granted in the H–3 classification as long as the total period of stay did not exceed two years. After an H–2 beneficiary has spent three years in the United States, and and H–3 beneficiary has spent two years in the United States, this rule would require that a new petition for the alien in the H or L classification would not be approved nor would the alien be readmitted to the United States as an H or L nonimmigrant unless the alien departed voluntarily and resided outside the United States for six months. The limitations on petition approval and readmission would not apply to aliens whose employment is seasonal, intermittent, or aggregate of six months or less a year.

Effect of Obtaining a Labor Certification or Filing a Preference Petition in the H–2 and H–3 Classifications

The rule would specify that the approval of a permanent labor certification or the filing or a preference petition for an H–2 or H–3 alien beneficiary in the same or a different job or training position with the same employer would be a ground to deny a new petition or the alien's application for an extension of stay.

(A) *H–2 classification.* In the case of an H–2 beneficiary, the employer previously submitted satisfactory representations that the need for the skills, or labor was temporary. If the employer's need has changed, the beneficiary no longer qualifies for H–2 classification in the same job. To avoid abuses of the H–2 classification, the Service would also not accept representative that the permanent services would be in a different job when the labor certification of preference petition is filed by the same employer.

(B) *H–3 beneficiary.* In the case of an H–3 beneficiary, the employer was required to demonstrate that the training position was to benefit the beneficiary in pursuing a career outside the United States. When that same employer obtains a labor certification or files a preference petition for the beneficiary, the Service would conclude that the purpose of the training was to recruit and train the alien to ultimately staff a position in the United States.

The Service believes that the proposed changes reflected in this proposed rule will benefit the public to the extent that they clarify

requirements, curb abuses, and make the H category more useful to businesses and other organizations. They would make clear Service policy regarding admission, the alien's temporary stay in the United States, and requirements for petitioners and beneficiaries who seek approval or classification under the H nonimmigrant category.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that the rule does not have a significant economic impact on a substantial number of small entities. This is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does the rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

Information collection requirements contained in this rule have been submitted to OMB under the Paperwork Reduction Act for clearance.

List of Subjects in 8 CFR Part 214

Administrative practice and procedure, Aliens, Authority delegation, Employment, Organization and functions, Passports and visas.

Accordingly, Part 214 of Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for Part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1186a.

2. Section 214.2 is amended by redesignating paragraph (h)(1) through (h)(16) as (h)(2) through (h)(17); adding a new paragraph (h)(1); and revising newly designated paragraphs (h)(2), (h)(3), and (h)(5) through (h)(17) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(h) *Temporary employees*—(1) *Admission of temporary employees*—(i) Under section 101(a)(15)(H) of the Act, an alien having a residence in a foreign country which he or she has no intention of abandoning may be authorized to come to the United States temporarily to perform services or labor for or to receive training from an employer, if petitioned for by that employer. Under this nonimmigrant category, the alien may be classified under section 101(a)(15)(H)(i) as an alien of distinguished merit and ability, or under section 101(a)(15)(H)(ii) as an alien who is coming to perform agricultural labor or services of a temporary or seasonal nature or other temporary services or labor, or under section 101(a)(15)(H)(iii) as an alien who is coming as a trainee. These classifications are commonly called H–1, H–2A and H–2B, and H–3, respectively. The employer must file a petition with the Service for review of the services or training and for a determination of the alien's eligibility for classification as a temporary employee or trainee, before the alien may apply for a visa or seek admission to the United States. This paragraph sets forth the standards and procedures whereby these classifications may be applied for and granted, denied, extended, revoked, or appealed.

(ii) *Description of Classifications.* (A) An "H–1" classification applies to an alien who is of distinguished merit and ability and who is coming temporarily to the United States to perform services of an exceptional nature requiring such merit and ability. In the case of a graduate of a medical school coming to the United States to perform services as a member of the medical profession, the alien must be coming pursuant to an invitation from a public or nonprofit private educational research institution or agency in the United States to teach or conduct research, or both, at or for such institution or agency. Although the services to be performed may be temporary or permanent in nature, it must be established that the employment is only for a temporary period.

(B) An "H–2A or H–2B" classification applies to an alien who is coming temporarily to the United States (*1*) to perform agricultural labor or services of a temporary or seasonal nature, or (*2*) to perform other temporary service or labor, if unemployed persons capable of performing such service or labor cannot be found in this country. This classification does not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession. The temporary or permenant nature of the services or labor to be performed must be determined. This classification requires a temporary labor certification issued by the Secretary of Labor or the Governor of Guam or a notice from one of them that certification cannot be made prior to the filing of a petition with the Service.

(C) An "H–3" classification applies to an alien who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training. The alien may receive training from an employer in any field other than graduate medical education, such as agriculture, commerce, comunication, finance, government, or the professions. This classification may not be used when all of the training will be at an academic or vocational institution.

(2) *Petitions*—(i) *Filing of petitions*—(A) *General.* A United States emloyer or foreign employer (under the H–1 classification) seeking to classify an alien as an H–1, H–2, or H–3 temporary employee shall file a petition in duplicate on Form I–129H with the Service office which has jurisdiction over I–129H petitions in the area where the alien will perform services or receive training or as further prescribed in this section. All petitions in the arts, cultural, or entertainment industry notwithstanding the location of filing, shall be adjudicated only at the appropriate Regional Service Center, except petitions for Canadian musicians to be employed within 50 miles of the Canadian border.

(B) *Services or training in more than one location.* A petition which requires services to be performed or training to be received in more than one location must include an itinerary with the dates and locations of the services or training and must be filed with the Service office which has jurisdiction over I–129H petitions in the area where the petitioner is located. The address which the petitioner specifies as its location on the I–129H petition shall be where the petitioner is located for purposes of this paragraph. If the petitioner is a foreign employer with no United States location, the petition shall be filed with the Service office which has jurisdiction over the area where the employment will begin.

(c) *Services or training for more than one employer.* If the beneficiary will perform nonagricultural services for or receive training from more than one employer, each employer must file a separate petition with the Service office which has jurisdiction over the area where the alien will perform services or receive training, unless an established agent files the petition. The alien may work part-time for multiple employers provided each has an approved petition for the alien.

(D) *Change in employers.* If the alien is in the United States and decides to change employers, the new employer must file a new petition on Form I–129H. If the alien is accorded the same H classification, an extension of stay is not required until the alien's previously authorized stay is about to expire. If the new petition is accompanied by an application for extension of stay on Form I–539 and the new petition is approved, the extension of stay may be granted for the validity of the approved

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petition, but may not exceed the limit on the alien's temporary stay that is prescribed in paragraph (h)(12)(ii) and (iii) of this section.

(E) *Amended or new petition.* The petitioner shall file an amended or new petition with the Service office where the original petition was filed to reflect any material changes in the terms and conditions of employment or training or the beneficiary's eligibility as specified in the original approved petition and obtain approval from the Service. An amended or new H–2B petition must be accompanied by an amended or new labor certification determination.

(F) *Agents as petitioners.* In cases where a foreign employer authorizes an agent to act in its behalf and in nonagricultural occupations where workers traditionally are self-employed or use agents to arrange short-term employment in their behalf with numerous employers, an established United States agent may file the petition in the following circumstances:

(*1*) A person or company in business as an agent may file the H petition involving multiple employers as the representative of the actual employers and the beneficiary(ies) if the supporting documentation includes a complete itinerary of services or engagements. The itinerary shall specify the specific dates of each service or engagement, the names and addresses of the actual employers, and the names and addresses of the establishments, venues, or locations where the services will be performed. In questionable cases, a contract between the employers and the beneficiary(ies) may be required. The burden is on the agent to explain the terms and conditions of the employment and to provide any required documentation.

(*2*) An agent which assumes responsibility as the actual employer must guarantee the wage offered and the other terms and conditions of employment by contractual agreement with the beneficiary(ies). The agent/employer must also provide an itinerary of definite employment and information or any other services planned for the period of time requested.

(ii) *Multiple beneficiaries*—(A) *H–1 petitions.* More than one beneficiary may be included in an H–1 petition if they are members of a group seeking classification based on the reputation of the group as an entity, and not the reputation of individual members, or they are accompanying aliens deriving H–1 classification from a principal H–1 beneficiary to whom their support is determined to be essential. The petition shall include the name and other identifying information required by Form I–129H for each beneficiary. If the beneficiaries will be applying for visas at more than one consulate, the petitioner shall submit a separate Form I–129H for each consulate. If the beneficiaries will be applying for admission at more than one port of entry, the petitioner shall submit an additional copy of Form I–129H for each port of entry.

(B) *H–2 and H–3 petitions.* More than one beneficiary may be included in an H–2 or H–3 petition if the beneficiaries will be performing the same service or receiving the same training in the same geographical area. If they will be applying for visas at more than one consulate, the petitioner shall submit a separate I–129H petition for each consulate. If the beneficiaries will be applying for admission at more than one port of entry, the petitioner shall submit an additional copy of Form I–129H for each port of entry.

(iii) *Named beneficiaries.* Every nonagricultural I–129H petition must include the names of beneficiaries and other required information when filed.

(iv) *Substitution of beneficiaries.* Substitution of beneficiaries may be made only in H–1 and H–2B petitions involving a group where the qualifications of individual beneficiaries will not be or were not considered in according H classification. To request a substitution, the petitioner shall notify the consular office at which the alien will apply for a visa or the port of entry where the alien will apply for admission.

(3) *Petition for alien of distinguished merit and ability (H–1)*—(i) *Standards for H–1 classification.* H–1 classification may be granted to an individual in his or her own capacity, based on a petition filed on behalf of that individual, or in his or her capacity as a member of a group, based on a petition filed on behalf of the group, or to an accompanying alien as defined in paragraph (h)(3)(i)(B)(*4*) of this section, and included in the same petition for an individual or group of distinguished merit and ability.

(A) *Types of H–1 classification*—(*1*) *H–1 classification in individual capacity.* H–1 classification may be granted to an alien who is of distinguished merit and ability. An alien of distinguished merit and ability is one who is a member of the professions or one who is prominent in his or her field and who is coming to the United States to perform services which require a professional or person of prominence.

(*2*) *H–1 classification as a member of a group.* A group of distinguished merit and ability consists of two or more persons who function as a unit, such as an athletic team or a performing ensemble. The group as a whole must be prominent in its field and must be coming to the United States to perform services which require a group of prominence. A person who is a member of a group of distinguished merit and ability may be granted H–1 classification based on that relationship, but may not perform services separate and apart from the group unless he or she is granted H–1 classification in an individual capacity.

(*3*) *H–1 classification as an accompanying alien.* A person who is an accompanying alien, as defined in paragraph (h)(3)(i)(B)(*4*) of this section, to an individual or group of distinguished merit and ability may be granted H–1 classification based on that relationship. The H–1 classification derived from the individual or group of distinguished merit and ability does not entitle an accompanying alien to individual H–1 classification when the alien will perform services separate and apart from the individual or group of distinguished merit and ability.

(B) *Definitions.* (*1*) "Profession" means an occupation which requires theoretical and practical application of a body of highly specialized knowledge to fully perform the occupation in such fields of human endeavor as: Architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business, accounting, law, theology, and the arts. A profession requires completion of a specific course of education at an accredited college or university, culminating in a baccalaureate or higher degree in a specific occupational specialty, where attainment of such degree or its equivalent is the minimum requirement for entry into the profession in the United States. There are two categories of persons who do not meet these requirements but are nevertheless regarded as professionals. They are persons who, after passage of normal professional tests and requirements, are granted full state licenses to practice the profession and persons who lack the required degree but, by virtue of a combination of academic training and professional experience are in fact lawfully practicing at a professional level.

(*2*) "Prominence" means a high level of achievement in a field evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of endeavor.

(*3*) "Group" means two or more persons established as one united entity to provide some form of service or activity, and the reputation of the group, not that of individual members, is considered in according H classification.

(*4*) "Accompanying alien" means a support person such as a manager, trainer, musical accompanist, or other highly skilled, essential person determined by the director to be coming to the United States to perform support services which cannot be readily performed by a United States worker and which are essential to the successful performance of the services to be rendered by an H–1 individual or group in the arts, cultural, entertainment or professional sports field. Such alien must possess appropriate qualifications, significant prior experience with the H–1 individual or group, and critical knowledge of the specific type of services to be performed so as to render success of the services dependent upon his or her participation. A highly skilled alien meeting the above criteria may be accorded H–1 classification based on this relationship with the H–1 individual or group to whom his or her services are essential.

(*5*) "Recognized authority" means a person who is an expert or an organization which has expertise in a particular field, possesses special skills or knowledge in that field, and is acknowledged by the Service as an acceptable source of information.

(C) Criteria and documentary requirements for a member of the professions. To qualify as a member of the professions, the alien must:

(*1*) Hold a United States baccalaureate or higher degree required by the profession from an accredited college or university, or

(*2*) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the professions from an accredited college or university, or

(*3*) Hold an unrestricted state license which authorizes him or her to fully practice the profession and be engaged in that profession in the state of intended employment, or

(*4*) Have completed at least two years of college-level training appropriate to the profession, have demonstrated that he or she has sufficient specialized training and/or professional experience combined with the college-level education to be equivalent to a United States baccalaureate or higher degree required by the profession, and have attained professional standing and recognition in the particular field as described below:

(*i*) For classification under section 101(a)(15)(H)(i) of the Act, three years of specialized training and/or professional experience shall be equivalent to one year of college-level training for purposes of calculating the amount of specialized training and/or professional experience needed to account for the remaining years of college-level training which would be necessary to obtain the required degree.

(*ii*) The professional experience must be recent and subsequent to the college-level training and include substantially all of the theoretical and practical application of specialized knowledge required at the professional level of the occupation, and

(*iii*) The alien must establish that he or she has professional standing and recognition by submitting at least one type of documentation such as:

(*A*) Recognition of professional standing by at least two experts or recognized authorities in the professional field;

(*B*) Membership in a recognized foreign or United States association in the professional field;

(*C*) Published material in professional publications by the alien or about the alien's work in the professional field; or

(*D*) Accreditation by a state in the United States or licensure to practice the profession in a foreign country.

(D) *Criteria and documentary requirements for prominence.* Prominence in a field may be established by an individual alien or by a group. The reputation of the group as an entity, not the qualifications or accomplishments of individual members, shall be evaluated for H–1 classification. Asm alien or group may establish prominence in either one of the following categories. The alien(s) must:

(*1*) Have sustained national (foreign or U.S.) or international acclaim and recognition for achievements in the particular field evidenced by at least three different types of the following documentation, that the alien or group:

(*i*) Has performed and will perform services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, or contracts;

(*ii*) Has been the recipient of significant national or international awards or prizes for services performed;

(*iii*) Has achieved national or international recognition as evidenced by critical reviews or other published material by or about the individual or group in major newspapers, trade journals, or magazines;

(*iv*) Has performed and will perform services as a lead or starring participant for organizations and at establishments which have a distinguished reputation;

(*v*) Has a record of major commercial or critically acclaimed successes, as evidenced by such indicia as title, rating, or standing in the field, box office grosses, credit for original research or product development, record sales, and other occupational achievements reported in trade journals, major newspapers, or other publications;

(*vi*) Has received significant recognition for achievements from organizations, recognized critics, government agencies or other recognized experts in the field in which the alien or group is engaged evidenced by several testimonials which clearly indicate the author's authority, expertise, and knowledge of the alien's achievements; or

(*vii*) Has commanded and now commands a high salary or other substantial remuneration for services, as evidenced by contracts or other reliable evidence.

(*2*) Be an artist who, or an artistic group which is recognized by governmental agencies, cultural organizations, scholars, arts administrators, critics, or other experts in the particular field for excellence in developing, interpreting, or representing a narrow and clearly identifiable, unique or traditional ethnic, folk, cultural, musical, theatrical, or other artistic performance or presentation; be coming to the United States primarily for educational or cultural event(s) to further the understanding of or development of that art form; and be sponsored primarily by educational, cultural, or governmental organizations which promote such international cultural activities and exchanges. An artist or group which seeks H–1 classification under this provision must:

(*i*) Provide affidavits, testimonials, or letters from recognized experts which attest to the authenticity and excellence of the alien's or group's skills in performing, or presenting the narrow and unique or traditional art form, explain the level of recognition accorded the alien or group in the native country and the United States, and give the credentials of the expert including the basis of his or her knowledge of the alien's or goup's skills and recognition. The alien or group must provide at a minimum:

(*A*) An affidavit or testimonial from the Ministry of Culture, USIA Cultural Affairs Officer, the academy for the artistic discipline, a leading scholar, a cultural institution, or a major university

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nonimmigrant classification under section 101(a)(15)(H)(i) of the Act is eligible for that classification in order to participate in a medical residency in the United States and to perform any other services as a member of the medical profession, including services primarily involving direct patient care.

(*D*) *H–1 petitions for professional nurses—(1) Beneficiary requirements.* An H–1 petition for a professional nurse shall be accompanied by evidence that the nurse has passed the examination given by the Commission on Graduates of Foreign Nursing Schools, or has obtained a full and unrestricted permanent license to practice professional nursing in the state of intended employment.

(*2*) *Petitioner requirements.* The petitioner must provide a statement certifying that the beneficiary is fully qualified and eligible under the laws governing the place of intended employment to engage in the practice of professional nursing immediately upon admission to the United States, and that under those laws, the petitioner is authorized to employ the beneficiary to perform services as a professional nurse. If the laws governing the place where the services will be performed place any limitations on the services to be rendered by the beneficiary, the statement shall contain details as to the limitations. The director shall consider any limitations in determining whether the services which the beneficiary would perform are those of a professional nurse.

(*iii*) *General documentary requirements for H–1 classification.* An H–1 petition filed on Form I–129H shall be accompanied by:

(*A*) Documentation, certifications, affidavits, degrees, diplomas, writings, reviews, or any other required evidence sufficient to establish that the beneficiary is a person of distinguished merit and ability as described in paragraphs (h)(3)(i) (C) and (D) of this section, and that the services the beneficiary is to perform require a person of such merit and ability. The evidence shall conform to the following:

(*1*) School records, diplomas, degrees, affidavits, contracts, and similar documentation submitted must reflect periods of attendance, courses of study, and similar pertinent data, be executed by the person in charge of the records of the educational or other institution, firm, or establishment where education or training was acquired, and be an original document or a certified copy. Uncertified photocopies of documents such as advertisements, playbills, reviews, and other such published material are acceptable.

(*2*) Affidavits submitted by present or former employers or recognized experts certifying to the recognition and outstanding ability of the beneficiary shall specifically describe the beneficiary's recognition and ability in factual terms and must set forth the expertise of the affiant and the manner in which the affiant acquired such information.

(B) Copies of any written contracts between the petitioner and beneficiary, or a summary of the terms of the oral agreement under which the beneficiary will be employed, if there is no written contract.

(iv) *Licensure for H classification—*(A) *General.* If an occupation requires a state or local license for an individual to fully perform the duties of the occupation, an alien (except a professional nurse) seeking H classification in that occupation must have that license to be found qualified to enter the United States and immediately engage in employment in the occupation.

(B) *Temporary licensure.* If a temporary license is available and the alien is allowed to perform the duties of the occupation without a permanent license, the director shall examine the nature and degree of performance of the duties, the degree of supervision received, and any limitations placed on the alien. If an analysis of the facts demonstrates that the alein under supervision is authorized to fully perform the duties of the occupation, H classification may be granted.

(C) *Duties without licensure.* In certain occupations which generally require licensure, a state may allow an individual to fully practice the occupation under the supervision of licensed senior or supervisory personnel in that occupation. In such cases, the director shall also examine the nature and degree of the performance of duties. If an analysis of the facts demonstrates that the alien under supervision could fully perform the duties of the occupation, H classification may be granted.

(D) *Professional nurses.* In lieu of licensure, professional nurses shall provide the evidence required in paragraph (h)(3)(ii)(C)(*1*) of this section.

(E) *Limitation on approval of petition.* In any occupation, including professional nursing, where licensure is required, the H petition may only be approved for a period of one year or for the period that the temporary license is valid, whichever is longer, unless the alien already has a permanent license to practice the occupation. An alien who is accorded H classification without the permanent license may not be granted an extension of stay or accorded a new H classification after the one year or after the temporary license expires unless he or she has obtained a permanent license in the state of intended employment.

* * * * *

(5) *Petition for alien to perform temporary nonagricultural services or labor (H–2B)—*(i) *General.* An H–2B nonagricultural temporary worker shall be coming temporarily to the United States to perform temporary services or labor, if United States workers capable of performing such services or labor cannot be found or will not be displaced and if the wages and working conditions of United States workers will not be adversely affected by the alien's employment.

(ii) *Temporary services or labor—*(A) *Definition.* Temporary services or labor under the H–2B classification refers to any job where the petitioner's need for the duties to be performed by the employee(s) is temporary, regardless of whether the underlying job can be described as permanent or temporary.

(B) *Nature of petitioner's need.* As a general rule, the period of the petitioner's need must be a year or less, although there may be extraordinary circumstances where the temporary services or labor might last longer than one year. The petitioner's need for the services or labor shall be a one-time occurrence, a seasonal need, a peakload need, or an intermittent need:

(1) One-time occurrence. The petitioner must establish that it has not employed workers to perform the services or labor in the past and that it will not need workers to perform the services or labor in the future.

(2) Seasonal need. The petitioner must establish that the services or labor is traditionally tied to a season of the year by an event or pattern and is of a recurring nature. The petitioner shall specify the period(s) of time during each year which it does not need the services or labor. The employment is not seasonal if the periods during which the services or labor is not needed is unpredictable or subject to change or is considered a vacation period for the petitioner's permanent employees.

(3) Peakload need. The petitioner must establish that it regularly employs permanent workers to perform the services or labor at the place of employment and that it needs to significantly supplement its permanent staff at the place of employment on a temporary basis due to a seasonal or short-term demand no more than once a year and that the temporary additions to

in the alien's own country or from a third country except the United States; and

(*B*) A letter from at least two different United States experts (excluding the prospective employer) in the particular field such as cultural organizations, scholars, arts administrators, governmental agencies, and critics.

(*ii*) Evidence that most of the performances or presentations will be educational or cultural events sponsored by educational, cultural, or governmental agencies.

(*3*) Have exceptional career achievement in business in executive, managerial, or highly technical positions evidenced by at least three significant factors such as:

(*i*) Managerial responsibility for an organization or a major subdivision of an organization which has an annual income of at least 25 million dollars;

(*ii*) At least 10 years of progressively responsible experience culminating in a high level executive, managerial, or technical position that involves a broad range of responsibilities;

(*iii*) A salary of at least $75,000 per year;

(*iv*) Responsibility for a workforce of 100 or more employees, at least 50 percent of which includes professional, supervisory, or other managerial employees;

(*v*) Original development of a system or product which has major significance to the industry in which the alien is employed as reported in published materials or opinions of recognized experts in the field or industry;

(*vi*) Recognition for achievements and significant contributions to an industry or field by recognized experts in the industry or field.

(ii) *Special H–1 requirements for certain groups.—*(A) *H–1 petitions for certain professionals and prominent business persons.* The history of a petitioner's submissions to the Service shall be a factor in the adjudication of petitions filed under this part.

(*1*) *Petitioners with a record of H–1 approvals.* (*i*) Where the petitioner has a significant record with the Service of consistently obtaining approval of H–1 classification for professionals and prominent aliens which the petitioner seeks to employ, the director shall waive the requirement for actual evidence of the alien's qualifications. In such a case, the petitioner's detailed description of the alien's qualifications may be accepted in lieu of documents, such as transcripts, diplomas, writings, references, and affidavits. However, if licensure or passage of an examination is required for H–1 classification, a copy of the license or the examination's results must be filed with the petition.

(*ii*) The petitioner's statement shall be in sufficient detail regarding the alien's education, training, work experience, and accomplishments to establish without question that the alien is a professional or prominent alien of distinguished merit and ability as defined in these regulations and that the alien is coming to the United States to perform services which require such merit and ability. In doubtful cases, the director shall require actual evidence of these facts.

(*2*) *Petitioner with record of H–1 denials.* Where the petitioner has a significant record with the Service of filing H–1 petitions which cannot be approved, a higher burden of proof shall be required. The petitioner will be required to provide extensive evidence in the form of supporting documents, such as transcripts, diplomas, writings, references, and affidavits to establish eligibility for H–1 classification.

(B) *H–1 petitions for prominent aliens in the arts, cultural, or entertainment field—*(*1*) *Adjudication of petition.* (*i*) In determining whether an alien in the arts, cultural, or entertainment field is prominent and whether the services require a person of prominence, the Regional Service Center director shall consider, but not be limited to, evidence described in paragraph (h)(3)(i)(D) of this section, and where he or she deems necessary, may require further evidence on any of those or other appropriate factors.

(*ii*) The Regional Service Center director may decide not to require documentation of any of the factors in paragraph (h)(3)(i)(D) of this section, if the alien or group is of such distinguished merit and ability that the name or reputation standing by itself would be sufficient to establish without any question that the alien or group is of distinguished merit and ability and that the alien or group is coming to the United States to perform services which require such merit and ability. In such a case, the petitioner must have provided a statement which describes the beneficiary's standing and achievements in the field of endeavor.

(*iii*) The Regional Service Center director shall approve or deny the petition based on the information in the record when that information clearly establishes H–1 eligibility or ineligibility in accordance with paragraph (h)(3)(i)(D)(*1*) and (*2*) of this section. In all other cases, before making a decision, the director shall consult with the appropriate union and a management organization, or recognized critics or experts in the appropriate field for an advisory opinion regarding the qualifications of the alien and the nature of the services to be performed.

(*2*) *Advisory opinions.* An advisory opinion may be furnished orally by an appropiate official, subject to later confirmation in writing, when requested by the director. The written opinion shall be signed by a duly authorized and responsible official of the organization consulted. Advisory opinions shall be nonbinding upon the Service.

(*3*) *Accompanying alien or member of a group.* When an accompanying alien is given the same H–1 classification as the principal H–1 beneficiary, the notation "Accompanying Alien" shall be noted on the approved petition and the alien's travel documents. When a group is accorded H–1 classification, "member of an H–1 group" shall be noted on the petition and Form I–94, Arrival and Departure Record, of individual aliens who are members of the group.

(*C*) *H–1 petitions for physicians—*(*1*) *Beneficiary requirements.* An H–1 petition for a physician shall be accompanied by evidence that the physician:

(*i*) Has a license to practice medicine in the state of intended employment if the physician will perform any direct patent care and the state requires the license, and

(*ii*) Has a full and unrestricted license to practice medicine in a foreign state or has graduated from a medical school in the United States or in a foreign state.

(*2*) *H–1 classification for alien graduates of foreign medical schools—*(*i*) *Petitioner requirements.* If the alien graduated from a medical school in a foreign state, the petitioner must establish that:

(*A*) The alien physician is coming to the United States primarily to teach or conduct research, or both, at or for a public or nonprofit private educational or research institution or agency at the invitation of that institution or agency, and

(*B*) No patient care activities will be performed, except those that are incidental to the physician's teaching or research.

(*ii*) *Exemption for physicians of national or international renown.* A physician who graduated from a medical school in a foreign state and who is of national or international renown in the field of medicine is exempt from the requirements in paragraph (h)(3)(ii)(B)(*2*)(*i*) of this section.

(*3*) *H–1 classification for alien graduates of United States medical schools.* An alien who graduated from a medical school in the United States and who is in all respects qualified for

staff will not become a part of the petitioner's regular operation.

(4) Intermittent need. The petitioner must establish that it has not employed permanent or full-time workers to perform the services or labor, but occasionally or intermittently needs temporary workers to perform the services or labor for short periods of 30 days or less.

(iii) *Procedures*—(A) Prior to filing a petition with the director to classify an alien as an H–2B worker, the petitioner which shall be a United States employer, shall apply for a temporary labor certification with the Secretary of Labor for all areas of the United States, except the Territory of Guam. In the Territory of Guam, the United States petitioning employer shall apply for a temporary labor certification with the Governor of Guam. The labor certification shall be advice to the director on whether or not United States workers capable of performing the temporary services or labor are available and whether or not the alien's employment will adversely affect the wages and working conditions of similarly employed United States workers.

(B) For H–2B classification, the petitioner shall be a United States employer or the authorized representative of a foreign employer which shall have a location in the United States, shall consider available U.S. workers for the temporary services or labor, and shall offer terms and conditions of employment which are consistent with the nature of the occupation, activity, and industry in the United States.

(C) The petitioner may not file an H–2B petition unless the United States petitioner has applied for a labor certification with the Secretary of Labor or the Governor of Guam within the time limits prescribed or accepted by each, and has obtained a labor certification determination as required by paragraph (h)(5)(iv) or (h)(5)(v) of this section.

(D) The Secretary of Labor and the Governor of Guam shall separately establish procedures for administering the temporary labor certification program under his or her jurisdiction.

(E) After obtaining a determination from the Secretary of Labor or the Governor of Guam, as appropriate, the petitioner shall file a petition on Form I–129H, accompanied by the labor certification determination and supporting documents, with the director having jurisdiction for I–129Hs in the area of intended employment.

(iv) *Labor certifications, except Guam*—(A) *Secretary of Labor's determination.* An H–2B petition for temporary employment in the United States, except for temporary employment on Guam, shall be accompanied by a labor certification determination that is either:

(1) A certification from the Secretary of Labor stating that qualified workers in the United States are not available and that the alien's employment will not adversely affect wages and working conditions of similarly employed United States workers; or

(2) A notice detailing the reasons why such certification cannot be made. Such notice shall address the availability of U.S. workers in the occupation and/or the prevailing wages and working conditions of U.S. workers in the occupation, except where the employer will not be paying a wage for the services to be performed.

(B) *Validity of the labor certification.* The Secretary of Labor may issue a temporary labor certification for a period of up to one year.

(C) *U.S. Virgin Islands.* Temporary labor certificates filed under section 101(a)(15)(H)(ii)(b) of the Act for employment in the United States Virgin Islands may be approved only for entertainers and athletes for periods not to exceed 45 days.

(D) *Attachment to petition.* The petitioner may file a petition accompanied by either one of the Secretary of Labor's determinations with the director. If the petitioner received a notice from the Secretary of Labor that certification cannot be made, the petitioner may present countervailing evidence that qualified workers in the United States are not available and that the terms and conditions of employment are consistent with the nature of the occupation, activity, and industry in the United States. All such evidence submitted will be considered in adjudicating the petition.

(E) *Countervailing evidence.* The countervailing evidence presented by the petitioner shall be in writing and shall address availability of U.S. workers, the prevailing wage rate for the occupation in the United States, and each of the reasons why the Secretary of Labor could not grant a labor certification. The petitioner may also provide other appropriate information in support of the petition. The director, at his or her discretion, may require additional supporting evidence.

(v) *Labor certification for Guam*—(A) *Governor of Guam's determination.* An H–2B petition for temporary employment on Guam shall be accompanied by a labor certification determination that is either:

(1) A certification from the Governor of Guam stating that qualified workers in the United States are not available to perform the required services and that the alien's employment will not adversely affect the wages and working conditions of United States resident workers who are similarly employed on Guam; or

(2) A notice detailing the reasons why such certification cannot be made. Such notice shall address the availability of U.S. workers in the occupation and/or the prevailing wages and working conditions of U.S. workers in the occupation, except where the employer will not be paying a wage for the services to be performed.

(B) *Validity of the labor certification.* The Governor of Guam may issue a temporary certification for a period up to one year.

(C) *Attachments to petition.* The employer may file a petition accompanied by either one of the Governor's determinations. If the employer receives a notice from the Governor of Guam that certification cannot be made, the employer shall present countervailing evidence that qualified persons in the United States are not available and that the terms and conditions of employment are consistent with the nature of the occupation, activity, and industry in the United States. All such evidence submitted will be considered in adjudicating the petition.

(D) *Countervailing evidence.* The countervailing evidence presented by the petition shall be in writing and shall address availability of United States workers, the prevailing wage rate, and each of the reasons why the Governor of Guam could not make the required certification. The petitioner may also provide any other appropriate information in support of the petition. The director, at his or her discretion, may require additional supporting evidence.

(E) *Criteria for Guam labor certifications.* The Governor of Guam shall establish systematic methods for determining the prevailing wage rates and working conditions for individual occupations on Guam and for making determinations as to availability of qualified United States residents.

(1) Prevailing wages and working conditions. The system to determine wages and working conditions must provide for consideration of wage rates and employment conditions for occupations in both the private and public sectors, in Guam and/or in the United States (as defined in section 101(a)(38) of the Act), and may not consider wages and working conditions outside of the United States. If the systems will include utilization of advisory opinions and consultations, they must be provided by officially sanctioned groups which reflect a balance of the interests of the private and public sectors, government, unions and management.

(2) Availability of United States workers. The system for determining availability of qualified United States workers must require the prospective employer to:

(i) Advertise the availability of the position for a minimum of three consecutive days in the newspaper with the largest daily circulation on Guam;

(ii) Place a job offer with an appropriate agency of the Territorial Government which operates as a job referral service at least 30 days in advance of the need for the services to commence, except that for applications in the entertainment industry, the 30-day period may be reduced by the Governor by not more than 20 days;

(iii) Conduct appropriate recruitment in other areas of the United States and its territories if sufficient qualified United States construction workers are not available on Guam to fill a job. The Governor of Guam may require a job order to be placed more than 30 days in advance of need to accommodate such recruitment;

(iv) Report to the appropriate agency the names of all United States resident workers who applied for the position, indicating those hired and the job-related reasons for not hiring;

(v) Offer all special considerations to all United States resident workers that the employer provides to nonimmigrant alien workers, such as the payment of transportation expenses;

(vi) Meet the prevailing wage rates and working conditions determined under the wages and working conditions system by the Governor; and

(vii) Agree to meet all Federal and Territorial requirements relating to employment, such as nondiscrimination, occupational safety, and minimum wage requirements.

(F) *Approval and publication of employment systems on Guam*—(1) *Systems.* The Commissioner of Immigration and Naturalization must approve the system to determine prevailing wages and working conditions and the system to determine availability of United States resident workers and any future modifications of the systems prior to implementation. If the Commissioner, in consultation with the Secretary of Labor, finds that the systems or modified systems meet the requirements of this section, the Commissioner shall publish them as a notice in the **Federal Register** and the Governor shall publish them as a public record in Guam.

(2) Approval of construction wage rates. The Commissioner must approve specific wage data and rates used for construction occupations on Guam prior to implementation of new rates. The Governor shall submit new wage survey data and proposed rates to the Commissioner for approval at least eight weeks before authority to use existing rates expires. Surveys shall be conducted at least every two years, unless the Commissioner prescribes a lesser period.

(G) *Reporting.* The Governor shall provide the Commissioner statistical data on temporary labor certification workload and determinations. This information shall be submitted quarterly no later than 30 days after the quarter ends.

(H) *Invalidation of temporary labor certification issued by the Governor of Guam—(1) General.* A temporary labor certification issued by the Governor of Guam may be invalidated by a director if it is determined by the director or a court of law that the certification request involved fraud or willful misrepresentation. A temporary labor certification may also be invalidated if the director determines that the certification involved gross error.

(2) Notice of intent to invalidate. If the director intends to invalidate a temporary labor certification, a notice of intent shall be served upon the employer, detailing the reasons for the intended invalidation. The employer shall have 30 days in which to file a written response in rebuttal to the notice of intent. The director shall consider all evidence submitted upon rebuttal in reaching a decision.

(3) Appeal of invalidation. An employer may appeal the invalidation of a temporary labor certification in accordance with Part 103 of this chapter.

(vi) *Evidence for H–2B petitions.* An H–2B petition filed on Form I–129B shall be accompanied by:

(A) *Labor certification or notice.* A temporary labor certification or a notice that certification cannot be made issued by the Secretary of Labor or the Governor of Guam as appropriate;

(B) *Countervailing evidence.* Evidence to rebut the Secretary of Labor's or the Governor of Guam's notice that certification cannot be made, if appropriate;

(C) *Alien's qualifications.* Documentation that the alien qualifies for the job offer as specified in the application for labor certification, except in petitions where the labor certification application requires no education, training, experience, or special requirements of the beneficiary;

(D) *Statement of need.* A statement describing in detail the temporary situation or conditions which make it necessary to bring the alien to the United States and whether the need is a one-time occurrence, seasonal, peakload, or intermittent. If the need is seasonal, peakload, or intermittent, the statement shall indicate whether the situation or conditions are expected to be recurrent.

(6) *Petition for alien trainee (H–3)*—(i) *General.* The H–3 trainee is a nonimmigrant who seeks to enter the United States at the invitation of an organization or individual for the purpose of receiving instruction in any field of endeavor, such as agriculture, commerce, communication, finance, government, transportation, or the professions, as well as training in a purely industrial establishment. This category shall not apply to physicians, who are statutorily ineligible for H–3 classification to receive any type of graduate medical education or training.

(A) *Externs.* A hospital approved by the American Medical Association or the American Osteopathic Association for either an internship or residency program may petition to classify as an H–3 trainee a medical student attending a medical school abroad, if the alien will engage in employment as an extern during his/her medical school vacation.

(B) *Nurses.* A petitioner may seek H–3 classification for a nurse who is not H–1 if it can be established that there is a genuine need for the nurse to receive a brief period of training that is unavailable in the alien's native country and such training is designed to benefit the nurse and the overseas employer upon the nurse's return to the country of origin, if:

(1) The beneficiary has obtained a full and unrestricted license to practice professional nursing in the country where the beneficiary obtained a nursing education, or such education was obtained in the United States or Canada;

(2) The petitioner provides a statement certifying that the beneficiary is fully qualified under the laws governing the place where the training will be received to engage in such training, and that under those laws the petitioner is authorized to give the beneficiary the desired training.

(ii) *Evidence*—(A) *Conditions.* The petitioner is required to demonstrate that:

(1) The proposed training is not available in the alien's own country;

(2) The beneficiary will not be placed in a position which is in the normal operation of the business and in which citizens and resident workers are regularly employed;

(3) The beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training; and

(4) The training will benefit the beneficiary in pursuing a career outside the United States.

(B) *Description of training program.* Each petition for a trainee must include a statement which:

(1) Describes the type of training and supervision to be given, and the structure of the training program;

(2) Sets forth the proportion of time that will be devoted to productive employment;

(3) Shows the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training;

(4) Describes the career abroad for which the training will prepare the alien;

(5) Indicates the reasons why such training cannot be obtained in the alien's country and why it is necessary for the alien to be trained in the United States; and

(6) Indicates the source of any remuneration received by the trainee and any benefit which will accrue to the petitioner for providing the training.

(iii) *Restrictions.* A training program may not be approved which:

(A) Deals in generalities with no fixed schedule, objectives, or means of evaluation;

(B) Is incompatible with the nature of the petitioner's business or enterprise;

(C) Is on behalf of a beneficiary who appears to already possess substantial training and expertise in the proposed field;

(D) Is in a field in which it is unlikely that the knowledge or skill will be used outside the United States;

(E) Will result in productive employment beyond that which is incidental and necessary to the training;

(F) Is designed to recruit and train aliens for the ultimate staffing of domestic operations in the United States;

(G) Does not establish that the petitioner has the physical plant and sufficiently trained manpower to provide the training specified; or

(H) Is designed to extend the total allowable period of practical training previously authorized a nonimmigrant student.

(7) *Certification of documents.* A copy of a document submitted in support of a visa petition filed pursuant to section 214(c) of the Act and § 214.2(h) of this part may be accepted without the original, if the copy bears a certification by an attorney or by a voluntary agency in accordance with § 204.2(j) of this chapter or by a United States immigration or consular officer. However, the original document shall be submitted if requested by the director.

(8) *Approval and validity of petition*—(i) *Approval.* The director shall consider all the evidence submitted and such other evidence as he or she may independently require to assist his or her adjudication. The director shall notify the petitioner on Form I–171C of the approval of the petition. The approval shall be as follows:

(A) Form I–171C shall include the beneficiary(ies) name(s) and classification and the petition's period of validity. A petition for more than one beneficiary and/or multiple services may be approved in while or in part. Form I–171C shall cover only those beneficiaries approved for classification under section 101(a)(15)(H) of the Act.

(B) The petition may not be filed or approved earlier than six months before the date of actual need for the beneficiary's service or training.

(C) If the petition is approved before the date the petitioner indicates that the services or labor or training will begin, the approved petition's validity period shall reflect the actual dates requested by the petitioner, not to exceed the limits specified in paragraph (h)(8)(ii) of this section, and the date the petition was approved.

(D) If the period of services or training requested by the petitioner exceeds the limit specified in paragraph (h)(8)(ii) of this section, the petition shall be approved only up to the limit specified in that paragraph.

(ii) *Validity.* The initial approval period of an H petition shall conform to the limits prescribed as follows:

(A) *H–1 petition.* An approved petition for an alien classified under section 101(a)(15)(H)(i) of the Act is valid for the period of established need for the beneficiary's temporary services, but not to exceed three years.

(B) *H–2B petition*—(*1*) *Labor certification attached.* If a certification by the Secretary of Labor or the Governor of Guam is attached to a petition to accord an alien a classification under section 101(a)(15)(H)(ii) of the Act, the approval of the petition shall be valid to the date to which the certification is valid, not to exceed one year.

(*2*) *Notice that certification cannot be made attached*—(*i*) *Countervailing evidence.* If the petitioner submits a notice from the Secretary of Labor or the Governor of Guam that certification cannot be made, the petitioner shall be informed that he or she may submit countervailing evidence to the director as specified in paragraphs (h)(5)(iii)(E) and (h)(5)(iv)(D) of this section if he or she has not already done so.

(*ii*) *Approval.* In any case where the director decides not to deny the petition and believes that approval of the H–2B petition is warranted despite the issuance of a notice by the Secretary of Labor or the Governor of Guam that certification cannot be made, the decision shall be certified to the Commissioner pursuant to 8 CFR 103.4. In emergent situations, the certification may be presented telephonically to the Chief of the Administrative Appeals Unit, Central Office. If approved, the petition is valid for the period of established need not to exceed one year. There is no appeal from a decision which has been certified to the Commissioner.

(C) *H–3 petition.* An approved petition for an alien classified under section 101(a)(15)(H)(iii) of the Act is valid for the documented length of the approved training program, not to exceed two years.

(iii) *Spouse and dependents.* The spouse and unmarried minor children of the beneficiary are entitled to H nonimmigrant classification and the same length and type of stay as the beneficiary if the beneficiary will be employed and residing primarily in the United States and if the spouse and unmarried minor children are accompanying or following to join the beneficiary in the United States. Neither the spouse nor a child of the beneficiary may accept employment unless he or she is the beneficiary of an approved petition filed in his or her behalf and has been granted a nonimmigrant classification authorizing his or her employment.

(9) *Denial of petition*—(i) *Multiple beneficiaries.* A petition for multiple beneficiaries may be denied in whole or in part.

(ii) *Notice of intent to deny.* When an adverse decision is proposed on the basis of evidence not submitted by the petitioner, the director shall notify the petitioner of the intent to deny the petition and the basis for the denial. The petitioner may inspect and rebut the evidence and will be granted a period of 30 days from the date of the notice in which to do so. All relevant rebuttal material will be considered in making a final decision.

(iii) *Notice of denial.* The petitioner shall be notified on Form I–292 of the decision, the reasons for the denial, and the right to appeal the denial under section 103 of this chapter.

(10) *Revocation of approval of petition*—(i) *General.* The petitioner shall immediately notify the Service of any changes in the employment of a beneficiary which would affect eligibility under section 101(a)(15)(H) of the Act and paragraph (h) of this section.

(ii) *Automatic revocation.* The approval of any petition is automatically revoked if the petitioner goes out of business or files a written withdrawal of the petition.

(iii) *Revocation on notice*—(A) *Grounds for revocation.* The director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he/she finds that:

(*1*) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition or if the beneficiary is no longer receiving training as specified in the petition; or

(*2*) The statement of facts contained in the petition was not true and correct; or

(*3*) The petitioner violated terms and conditions of the approved petition; or

(*4*) The petitioner violated requirements of section 101(a)(15)(H) of the Act and/or paragraph (h) of this section; or

(*5*) The approval of the petition violated paragraph (h) of this section or involved gross error.

(B) *Notice and decision.* The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 30 days of receipt of the notice. The director shall consider all relevant evidence presented in deciding whether to revoke the petition in whole or in part. If the petition is revoked in part, the remainder of the petition shall remain approved and a revised Form I–171C shall be sent to the petitioner with the revocation notice.

(11) *Appeal of a denial or a revocation of a petition*—(i) *Denial.* A petition denied in whole or in part may be appealed under Part 103 of this chapter.

(ii) *Revocation.* A petition that has been revoked on notice in whole or in part may be appealed under Part 103 of this chapter. Automatic revocations may not be appealed.

(12) *Admission*—(i) *General.* A beneficiary may be admitted to the United States for the validity period of the petition, plus a period of up to 10 days before the validity period begins and 10 days after the validity period ends. The authorized period of the beneficiary's admission shall not exceed the above limits.

(ii) *H–1 limitation on admission.* An alien who has spent five, or in certain extraordinary circumstances, six years in the United States under section 101(a)(15)(H)(i) and or (L) of the Act may not seek extension, change status or be readmitted to the United States under the H or L visa classification, unless the alien has resided and been physically present outside the United States, except for brief trips for pleasure or business, for the immediate prior year. In view of this restriction, a new petition shall not be approved for an alien who has spent five or six years in the United States under section 101(a)(15)(H)(i) and or (L) of the Act, unless the alien has resided and been physically present outside the United States for the immediate prior year. Brief trips for pleasure or business, for the immediate prior year, are not interruptive of the one-year requirement, but do not count towards fulfillment of that requirement. The petitioner shall provide information about the alien's employment, place of residence, and the dates and purpose of any trips to the United States for the previous year.

(iii) *H–2B and H–3 limitation on admission.* An alien who has spent three years in the United States under section 101(a)(15)(H)(ii) or two years under section 101(a)(15)(H)(iii) of the Act may not seek extension, change status, or be readmitted to the United States under the H or L classification unless the alien has resided and been physically present outside the United States for the immediate prior six months. In view of this restriction, a new petition shall not be approved for an alien who has spent three years in the United States under section 101(a)(15)(H)(ii) or two years under section 101(a)(15)(H)(iii) of the act unless the alien has resided and been physically present outside the United States, except for brief trips for business or pleasure, for the immediate prior six months. The petitioner shall provide information about the alien's employment, place of residence, and the dates and purpose of any trips to the United States for the previous six months. Brief trips for business with pleasure for the immediate prior six months are not interruptive of the six-month requirement, but do not count towards fulfillment of that requirement.

(iv) *Exceptions.* The limitations in paragraph (h)(12)(ii) and (iii) of this section shall not apply to H–1, H–2B, and H–3 aliens who did not reside continually in the United States and whose employment in the United States was seasonal or intermittent or an aggregate of six months or less per year. In addition, the limitations shall not apply to aliens who reside abroad and regularly commute to the United States to engage in part-time employment. To qualify for this exception, each period of stay must be based on a new petition, or the petitioner and the alien must provide clear and convincing proof that the alien qualifies for an exception. Clear and convincing proof shall consist of evidence such as arrival and departure records, copies of tax returns, and records of employment abroad.

(13) *Extension of visa petition validity.*—(i) *Approval.* A visa petition under section 101(a)(15)(H) of the Act shall be automatically extended, without the filing of Form I–129H, if the director extends the stay of the alien beneficiary(ies) in accordance with paragraph (h)(14) of this section. A new Form I–171C shall be issued to the petitioner at the same time that the beneficiary is notified that his or her extension of stay application has been approved. The dates of extension shall be the same for the petition and the beneficiary's extension of stay. No action shall be taken on the visa petition if the alien's application for extension of stay is denied.

(ii) *Denial.* Although an application for extension of stay under the H classification does not require the filing of a petition extension, the director may consider information relating to the petition in adjudicating the beneficiary's extension of stay. If the director determines that there are grounds to readjudicate the petition before granting or denying the extension, the director shall move to reopen or reconsider the original petition. If the petition is denied, the alien's extension of stay shall be denied for lack of an approved supporting petition.

(14) *Extension of stay*—(i) *Procedure*—(A) *H–1 and H–3 beneficiaries.* If maintaining status, the beneficiary of an H–1 or H–3 petition may apply for an extension of stay by submitting an application for extension of stay, a copy of the original petition approval notice, Form I–171C, and a letter from the petitioner which describes the beneficiary's current duties, hours of work, and salary; indicates whether any terms and conditions of the original petition have changed, gives the reasons for the extension, gives the dates of the alien's periods of stay in the United States for the previous six years under H–1 or the previous three years under H–3, and specifies the new dates of employment or training requested.

(B) *H–2 beneficiaries.* The petitioner must obtain a new labor certification or a notice that certification cannot be made in order for the H–2 beneficiary to apply for an extension of stay. If maintaining status, the H–2 beneficiary

may apply for an extension of stay by submitting an application for extension of stay, a copy of the original petition approval notice, Form I-171C, a statement which gives the dates of the alien's period of stay in the United States for the previous three years, and the new labor certification or notice with countervailing evidence.

(C) *Multiple beneficiaries.* An application for an extension of stay on behalf of multiple beneficiaries covered by the same original petition must be filed by each individual alien, except that in the case of an extension of stay for members of a group as defined in paragraph (b)(3)(i)(B)(3) of this section, one application for extension of stay is required with an attached list of beneficiaries.

(ii) *Extension periods*—(A) *H-1 extension of stay.* An extension of stay may be authorized for a period of up to two years for a beneficiary of an H-1 petition. The alien's total period of stay as an H-1 and/or L may not exceed five years, except in extraordinary circumstances. Beyond five years, an extension of stay not to exceed one year may be granted under extraordinary circumstances. Extraordinary circumstances shall exist when the director finds that termination of the alien's services will impose extreme hardship on the petitioner's business operation or that the alien's services are required in the national welfare, safety or security interests of the United States. No further extensions may be granted. If the director decides that approval of the one-year extension is warranted because of extraordinary circumstances, the decision shall be certified to the Administrative Appeals Unit before service on the alien.

(B) *H-2 extension of stay.* An extension of stay may be authorized for the validity of the labor certification not to exceed one year for a beneficiary of an H-2 petition. The alien's total period of stay as an H-2 worker may not exceed three years, except that in the Virgin Islands, the alien's total period of stay may not exceed 45 days.

(C) *H-3 extension of stay.* An extension of stay may be authorized for a period of up to one year for the beneficiary of an H-3 petition. The alien's total period of stay as an H-3 trainee, however, may not exceed two years.

(iii) *Denial of extension of stay.* If an H beneficiary's request for extension of stay is denied, the alien shall be notified of the reasons for the denial. There is no appeal from the denial of an alien's application for an extension of stay.

(15) *Effect of approval of a permanent labor certification or filing of a preference petition on H classification*—(i) *H-1 classification*—(A) *Petitioner*—(*1*) *Conditions.* The approval of a permanent labor certification or the filing of a preference petition for an alien is not by itself a ground to deny an H-1 petition if the director, in his/her judgment, determines that certain conditions are met:

(*i*) The dates of employment must be within the time limit for which an H-1 petition may be authorized, and

(*ii*) The petitioner must establish that temporary classification is not being requested for the principal purpose of enabling the employee to enter the United States permanently in advance of the availability of a visa number.

(*2*) *Evidence.* In deciding whether or not the foregoing conditions have been met, the director will consider evidence provided by the petitioner of factors such as, but not limited to the following, as appropriate:

(*i*) Petitioner's prior history of use of aliens in temporary and permanent capacities and extent to which petitioner has employed aliens without lawful authorization, and

(*ii*) Whether the employment appears to be an accommodation rather than a bona fide employer/employee relationship.

(B) *Beneficiary*—(*1*) *Conditions.* The approval of a labor certification or the filing of a preference petition is not by itself a ground to deny an H-1 beneficiary's application for admission, change of status, or extension of stay if the director, in his or her judgment, determines that certain conditions are met:

(*i*) The alien must demonstrate that he/she has not abandoned residence abroad; and

(*ii*) The alien must establish that he or she intends to enter and remain in the United States only in accordance with any authorized stay and to return abroad voluntarily at or before termination of that authorization, unless he or she has become a permanent resident to the United States in the meantime.

(*2*) *Evidence.* In determining whether the alien meets these conditions, the director shall consider evidence, which the alien shall provide, of appropriate factors such as, but not limited to, the following:

(*i*) Evidence of a residence abroad, such as home, bank accounts, or prospects of a job abroad at the end of the authorized stay;

(*ii*) Close family ties abroad;

(*iii*) History of previous stays in the United States and visa classifications and evidence that the alien has not entered or remained in the United States in violation of status or United States immigration laws; and

(*iv*) Alien's employment history within and outside the United States.

(ii) *H-2B and H-3 classification.* The approval of a permanent labor certification or the filing of a preference petition for an alien in the same or a different job or training position and for the same petitioner shall be a ground to deny the alien's request for extension of stay.

(16) *Effect of strike*—(i) A petition to classify an alien as a nonimmigrant as defined in section 101(a)(15)(H) of the Act shall be denied if the Secretary of Labor certifies to the Commissioner of Immigration and Naturalization that a strike or other labor dispute involving a work stoppage of workers is in progress in the occupation and at the place the beneficiary is to be employed or trained and that the employment or training of the beneficiary would adversely affect the wages and working conditions of United States citizens or lawful resident workers.

(ii) If a petition has been approved, but the beneficiary has not yet entered the United States to take up the approved employment or training, and the Secretary of Labor certifies to the Commissioner of Immigration and Naturalization that a strike or other labor dispute involving a work stoppage of workers is in progress in the occupation and at the place the beneficiary is to be employed or trained, and that the employment or training of the beneficiary would adversely affect the wages and working conditions of United States citizens or lawful permanent resident workers, the approval of the petition is automatically suspended and the application for admission on the basis of the petition shall be denied.

(iii) If a petition has been approved, the beneficiary has entered the United States to take up the employment or training, the beneficiary is not an "employee" as defined in the National Labor Relations Act ("NLRA") [29 U.S.C. 152(3)], and the Secretary of Labor certifies to the Commissioner of Immigration and Naturalization that a strike or other labor dispute involving a work stoppage of workers is in progress in the occupation and place of employment or training, and that the employment or training of the beneficiary would adversely affect the wages and working conditions of United States citizens or lawful permanent resident workers, the approval of the petition is automatically suspended.

(iv) If a petition has been approved, the beneficiary has entered the United States to take up employment, and the beneficiary is an "employee" within the definition of the NLRA, the existence of a strike in the occupation at the place of employment shall result in suspension of the beneficiary's authorization to work, unless the employer establishes to the satisfaction of the Secretary of Labor, who in turn certifies to the Commissioner of Immigration and Naturalization, that less than 30 percent of the work force in the occupation at the place of employment are United States citizens or lawful permanent resident workers.

(v) If a petiton has been approved, the beneficiary has entered the United States to take up employment, and the beneficiary is an "employee" within the definition of the NLRA, the existence of a strike in the occupation at the place of employment shall result in suspension of the beneficiary's authorization to work, if it is established to the satisfaction of the Secretary of Labor, who in turn certifies to the Commissioner of Immigration and Naturalization, that 30 percent or more of the work force in the occupation at the place of employment are United States citizens or lawful permanent resident workers and that the strike has been authorized by a majority of such United States citizens or lawfull permanent resident workers who voted or a majority of such workers are participating in the strike.

(vi) As used in this section, "place of employment" means any location where the employer or a joint employer does business.

(17) *Use of Form I-171C.* The Service shall notify the petitioner on Form I-171C whenever a visa petition or an extension of a visa petition is approved uder the H petition who does not require a nonimmigrant visa may present a copy of Form I-171C at a port of entry to facilitate entry into the United States. A beneficiary who is required to present a visa for admission and whose visa will have expired before the date of his or her intended return may use an original Form I-171C to apply for a new or revalidated visa during the validity period of the petition. The copy of Form I-171C shall be retained by the beneficiary and presented during the validity of the petition reentry to resume the same employment with the same petitioner and to apply for an extension of stay.

* * * * *

Dated: October 5, 1988.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

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FEDERAL TRADE COMMISSION

16 CFR Part 240

Guides for Advertising Allowances and Other Merchandising Payments and Services

AGENCY: Federal Trade Commission.

ACTION: Publication of staff recommendations for public comment.

SUMMARY: The Federal Trade Commission staff has recommended certain changes to the Commission's Guides on Advertising Allowances and Other Merchandising Payments and Services ("Guides"), issued on May 29, 1968, and amended on August 4, 1972. Before taking action on these recommended changes, the Commission requests comments from the public about them.

The Federal Trade Commission originally issued the Guide to help businesses comply with Sections 2(d) and (e) of the Robinson-Patman Act ("R-P" or the "Act"). According to the FTC staff, the proposed changes have two principal purposes: first, to clarify and correct the Guides and bring them into line with developments in the law and in enforcement policy since their last revision; and second, to eliminate requirements that appear to be necessary and in many instances to lack legal support.

The Commission would welcome comments from the public concerning the changes to the Guides proposed by the FTC staff, proposals for any further changes to the Guides, and, more generally, the usefulness of the Guides, both in their current form and in the form proposed by staff. In addition to comments on the changes proposed by staff, the Commission invites the public to address other issues.

DATE: Comments must be submitted on or before January 24, 1989.

ADDRESSES: Comments should be addressed to the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580. All Comments should be labeled "Guides for Advertising Allowances".

FOR FURTHER INFORMATION CONTACT: Federal Trade Commission, Washington, DC, 20580, A. Roy Lavik, (202) 326-3334 or Nolan E. Clark, (202) 326-2785.

SUPPLEMENTARY INFORMATION: The Federal Trade Commission's staff has recommended certain changes to the Commission's Guides on Advertising Allowances and Other Merchandising Payments and Services ("Guides"), issued on May 29, 1968, and amended on August 4, 1972. Before taking action on these recommended changes, the Commission also invites the public to address the following general questions:

(I) Do the existing Guides serve any useful purpose?

(II) Would the public interest be advanced if the Commission left the current Guides as they are without any changes?

(III) Would the public interest be advanced if the Commission simply withdrew the current Guides?

(IV) Would any changes to the Guides in addition to those proposed by staff be in the public interest?

Although revised guides published here do not include the following changes, such changes have been occasionally suggested as desirable, and comments on these ideas would be welcomed:

(A) Defining proportional equality in terms of the amount of effective promotional services received per dollar of promotional expenditure by the seller.

(B) Permitting sellers to proportionalize promotional services to different customers as well as for different media, provided that they have reliable evidence showing that such differences are justified by differences in the amount of effective promotional services being acquired or provided.

(C) Using evidence about the competitive conditions of the buying and selling sides of the market in which promotional services and allowances are granted to help in the assessment of whether the proportional equality requirement is satisfied.

With regard to each of these suggestions, the Commission would welcome public response to the following questions:

(1) What would be the predictable practical effects of the proposed change?

(2) Would economic efficiency and consumer welfare predictably be advanced by the proposed change?

(3) Is the proposed change consistent with the language of the Act and its legislative history?

(4) Would the proposed change be precluded by any controlling case law?

Set forth below is the staff's explanation of the proposed changes.

Sections 2(d) and (e) of R-P prohibit a seller from paying allowances or furnishing services to promote the resale of its products unless the allowances or services are offered to all competing customers on proportionally equal terms. Sections 2(d) and (e) apply only to allowances or services designed

primarily to stimulate resale. If a discrimination principally relates to the original sale from seller to buyer, it is subject to section 2(a) of R–P, not sections 2(d) or (e). This differentiation has important consequences. In contrast to a Section 2(a) violation, a plaintiff need not demonstrate adverse competitive effects to establish a section 2(d) or (e) violation, and although meeting competition is a defense, cost justification is not.

The primary purpose of the Guides is to provide assistance to businesses seeking to comply with sections 2(d) and (e). Private attorneys specializing in R–P practice have told Commission staff that the Guides continue to be widely used, particularly by in-house counsel. Many of the latter reportedly follow the Guides closely to minimize the possibility of private treble damage actions. Because of this substantial reliance, the Commission staff believes it is important that the Guides are accurate and not unnecessarily restrictive.

Because of changes in the law since the Guides were last amended, some Guide provisions do not reflect current law. The Supreme Court's decision in *Falls City Industries, Inc. v. Vanco Beverages, Inc.*, 460 U.S. 428 (1983), has rendered obsolete significant portions of the Guides' discussion of the meeting competition defense. Further, the relevant Guide provisions do not stress the resale requirement of sections 2(d) and (e), in contrast to such recent decisions as *Bouldis v. U.S. Suzuki Motor Corp.*, 711 F.2d 1319 (6th Cir. 1983); *L&L Oil Co. v. Murphy Oil Corp.*, 674 F.2d 1113 (5th Cir. 1982); and *Herbert R. Gibson, Sr.*, 95 F.T.C. 553 (1980), *aff'd*, 682 F.2d 554 (5th Cir. 1982), *cert. denied*, 460 U.S. 1068 (1983). Further, the Guides' *per se* condemnation of price restrictions on co-op advertising allowances has been undercut by the rule of reason approaches of *In re Nissan Antitrust Litig.*, 577 F.2d 910 (5th Cir. 1978), *cert. denied*, 439 U.S. 1072 (1979); *AAA Liquors Inc. v. Joseph E. Seagram & Son*, 705 F.2d 1203 (10th Cir. 1982), *cert. denied*, 461 U.S. 927 (1983); and *Jack Walters & Sons Corp. v. Morton Bldg., Inc.*, 737 F.2d 698 (7th Cir. 1984), *cert. denied*, 469 U.S. 1018 (1984).

Some Guide provisions have been criticized as unnecessarily restrictive, particularly the Guides' use of customer cost as the basis for proportionalizing promotional offers. A cost-based standard means, for example, that a seller would reimburse customer expenditures on different promotional activities at the same percentage of each customer's cost, although the effectiveness of the different promotional services, in generating increased demand for the seller's product, might be different. That result, by tending to suppress differences in productivity, might reduce promotional efficiency. Although the proposed revisions do not reflect these criticisms, comment on the general issue is invited.

Finally, the revisions are designed to bring the Guides into line with the many R–P cases indicating that, where possible, the Act should be construed to promote the procompetitive goals of the other antitrust laws. *See, eg., Automatic Canteen Co. v. F.T.C.*, 346 U.S. 61 (1953); *Great Atlantic & Pacific Tea Co. v. F.T.C.*, 440 U.S. 69 (1979); *O. Hommel Co. v. Ferro Corp.*, 659 F.2d 340 (3d Cir. 1981), *cert. denied*, 455 U.S. 1017 (1982); *General Motors Corp.*, 103 F.T.C. 641 (1984); *Boise Cascade Corporation*, 107 F.T.C. 76 (1986), *remanded*, 837 F.2d 1127 (D.C.Cir. 1988). In *A&P*, the Court considered whether a buyer had a duty under R–P to inform a prospective seller that its bid was substantially lower than a rival's offer. The Court refused to impose such a duty, in part because it would conflict with the Sherman Act's goal of greater price competition. The Court observed: "Imposition of Section 2(f) liability on the buyer in this case would lead to * * * price uniformity and rigidity." 440 U.S. at 80. Consistent with this reasoning, the proposed revisions are intended to make the Guides more procompetitive as well as more accurate.

This section discusses revisions in the order they would appear in the Guides. Following this explanatory section is the full text of the revised Guides, as they would appear in the Code of Federal Regulations. It should be noted that although the Guides appear in the Code of Federal Regulations and, for simplicity, the following explanation sometimes refers to Guide "requirements," the Guides are purely advisory; they are not binding regulations.

Purpose of the Guides

The revised Guides contain a new Guide One which states the purpose of the Guides. The existing Guides discuss the reason for their promulgation in their Introduction, which does not appear in the CFR. The Commission staff believes it important that there be the widest possible dissemination of the Guides' purpose and, therefore, has included this as a separate Guide which will be published in the CFR.

The Commission staff hopes that the Guides will provide assistance to businesses seeking to comply with sections 2(d) and (e) of R–P. The Guides therefore seek not only to give interpretations based on controlling case law but also to giver guidance in those areas not illuminated by cases. The Commission staff's interpretations in these latter areas, however, are believed to be consistent with section 2(d) and (e) language and grounded in their legislative history.

Definition of Customer

There are two proposed revisions to existing Guide 3 ("Who is a customer?"), now renumbered as Guide 4. The first would amend Example 2 by making clear that the promotional plan concerns services to be performed at the retail level and that the context for the competing customer determination in that example is a retailer-oriented promotion.

The second revision would remove Example 3 from existing Guide 8 and place it under revised Guide 4. Example 3 basically parallels Example 2 of revised Guide 4, except that it describes a promotion directed to wholesalers. The juxtaposition of these two examples should bring out more clearly that customer determination depends on the level (or levels) of distribution targeted by a seller's promotion.

Competing Customers

The next revision essentially shifts existing Guide 12 ("Competing customers") to a renumbered Guide 5. The Commission staff believes this enables the reader more easily to assimilate the companion concepts of customer and competing customer by successively discussing them. In addition to the repositioning, the revisions delete the reference to the seller's potential liability under section 2(a) or R-P or section 5 of the FTC Act. Several people said that the reference confused rather than enlightened their clients. The Commission staff believes that the continued inclusion of the reference serves little or no purpose and its exclusion may give greater clarity based on the cited comments.

Interstate Commerce

The proposed revision to Guide 4 ("What is interstate commerce?"), now renumbered Guide 6, states that the commerce requirement of sections 2 (d) and (e) is basically the same as the commerce requirement of section 2(a). The earlier case of *Shreveport Macaroni Manufacturing Co. v. F.T.C.*, 321 F.2d 404 (5th Cir. 1963), *cert. denied*, 375 U.S. 971 (1964), appeared to distinguish the requirements. Two recent cases, however, have indicated that the jurisdictional limitation is essentially

the same for all three sections. *See L&L Oil Co., Inc. v. Murphy Oil Corp.*, 674 F.2d at 1113; *Zoslaw v. MCA Distributing Corp.*, 693 F.2d 870 (9th Cir. 1982), *cert. denied*, 460 U.S. 1085 (1983). Further, there appears to be no compelling reason to differentiate the jurisdictional requirements in various sections of the same act. Accordingly, the proposed language gives a general description of the commerce requirement applicable to Sections 2(a), 2(d) and 2(e).

Services or Facilities

The proposed amendments to Guide 5 ("What are services or facilities?"), now renumbered Guide 7, would emphasize the resale requirement of sections 2 (d) and (e) by adding general language highlighting the requirement and by eliminating overlapping examples listed in existing Guide 5. Moreover, two examples which have been deleted—those concerning the provision of special packaging or package sizes, and the acceptance of returns for credit—seem unlikely to satisfy the resale test as currently interpreted.

Two early Commission decisions, *Luxor, Ltd.*, 31 F.T.C. 658 (1940), and *General Foods Corp.*, 52 F.T.C. 798 (1956), apply section 2(e) to special packaging. The latter case simply relies on the former, however, and its analysis of the issue is brief and conclusory. Recent Commission decisions (not involving special packaging) have interpreted the resale requirement of sections 2 (d) and (e) more strictly. Compare *Gibson*, 95 F.T.C. at 724–30 with *Alterman Foods*, 82 F.T.C. 296, 343 (1973); *see also General Motors*, 103 F.T.C. at 641. These decisions are consistent with recent appellate court opinions emphasizing the resale requirement. *See Bouldis v. U.S. Suzuki Motor Corp.*, 711 F.2d 1319, 1328 (6th Cir. 1983); *Rutledge v. Electric Hose & Rubber Co.*, 511 F.2d 668, 678 (9th Cir. 1975); *Kirby v. P.R. Mallory & Co.*, 488 F.2d 904, 910 (7th Cir. 1973), *cert. denied*, 417 U.S. 911 (1974).

Similarly, one early Commission decision, *Joseph A. Kaplan & Sons*, 63 F.T.C. 1398 (1963), *aff'd in part and modified in part on other grounds*, 347 F. 2d 785 (D.C. Cir. 1965), holds that accepting returns for credit is covered by Section 2(e). However, the analysis on this point was perfunctory and contrary to the thrust of later Commission and judicial decisions. Indeed, the Sixth Circuit recently declined to apply *Kaplan* to the facts in *Bouldis v. U.S. Suzuki Motor Corp.*, 711 F.2d at 1328.

In light of the unmistakable trend in the case law toward a stricter interpretation of the resale requirement, the Commission staff believes it would be misleading to cite special packaging and accepting returns for credit as examples of services that meet this requirement. Although these two services may sometimes satisfy the resale test, it seems likely that these services are often offered to particular customers primarily to promote the original sale. These services, moreover, do not possess the close and obvious connection to resale of the other examples cited (e.g., demonstrators, display materials). Unless public comments provide substantial evidence of the requisite resale nexus, it appears to be clearer to treat each of these services as one of the situations that the Guides do not usually cover.

Proportional Equality

Proposed Guide 8, dealing with proportional equality, is substantially the same as existing Guide 7, with the addition of a new paragraph explaining how proportional equality does not require mathematical precision or absolutely uniform treatment.

Sections 2(d) and (e) require that promotional allowances and services be made available to all competing customers on "proportionally equal" terms. In accordance with the case law, the Guide notes that "[n]o single way to proportionalize is prescribed by law." The Guides have been read to require that the seller use cost, independent of the effectiveness of the promotional services supplied or acquired, as the sole basis for proportionalizing offers among customers. Cost has been considered in essentially two ways: first, that the seller must spend or supply an equal amount for promotional purposes per unit sold to its competing customers; alternatively, that it must spend an amount that bears an equal proportion of its customers' costs of providing a promotional service. An example of the first would be a promotional payment that offers each customer 15 cents per unit of product purchased for advertising in newspapers, and if newspapers are not functionally available to certain customers, by offering them 15 cents per unit for advertising in some alternative way, such as handbills. An example of the second would be the seller paying 50 percent of its customers' cost of advertising in some alternative way if newspapers are not functionally available to some of them.

The proposed revisions would not change the language of the existing Guides in this respect. The Commission is interested in comments on whether the Guides should be revised to make it clear that a seller could vary its allowances or services to reflect differences in value to the seller. For example, should the Guides permit a seller to offer an allowance of $200 to customer A because A will use the allowance for promotions worth $200 to the seller (in terms of the number of potential customers reached), but also permit the seller to pay only $100 to customer B—who buys as much of the seller's product as customer A does, and uses the same promotional medium as A, at the same cost—because the result of B's effort is only worth $100 to the seller? This result might be a more economically efficient allocation of resources to promotional activity than requiring the seller to pay the same amount to each customer, or requiring the seller to pay their actual costs; however, is this result consistent with the Act?

The Act's legislative history indicates that the term "proportional equality" was intended to provide the measure by which a seller could provide promotional services or allowances to both its large and small customers on a basis which would not disproportionally favor the large customers over the small customers. Mr. Teegarden, counsel for the organized wholesale grocers and the draftsman of the Patman bill, stated that "proportional equality" would "depend upon such factors as the nature of the services or facilities for which it is offered and the ability of the competitor to furnish such services or facilities with corresponding value in proportion to the smaller quantities which he might be able to furnish them." [1] Similarly, the Senate and House Judiciary Committee Reports both stated that the phrase "proportionally equal terms" was:

> designed to prevent the limitation of such allowances to single customers on the ground that they alone can furnish the services or facilities in the quantity specified. Where a competitor can furnish them in less quantity, but of the same relative value, he should be entitled, and this clause is designed to accord him, the right to a similar allowance commensurate with these facilities. To illustrate: Where . . . a manufacturer grants to a particular chain distributor an advertising allowance of the stated amount per month per store in which the former's goods are sold, a competing customer with a smaller number of stores, but equally able to furnish the same service per store, and under conditions of the same value to the seller,

[1] Hearings Before the House Committee on the Judiciary on Bills to Amend the Clayton Act, 74th Cong., 1st Sess., at 38 (1935). Mr. Teegarden also considered it obvious that the seller would base payments only to "those customers able to furnish the services or facilities for which they are offered." *Id.*

would be entitled to a similar allowance on that basis.[2]

Similarly, Representative Utterback's explanation of the Conference Report related proportional equality "naturally to those customers' purchases and to their ability to render the services and facilities to be paid for." [3] The legislative history makes clear that the seller's-cost standard was intended to be a means of determining proportional equality. For example, Senator Logan, the Senate Manager of the Patman bill, explained the concept of "proportional equality" on this basis: "If one man buys $100,000 in goods and should be allowed $1,000 for advertising purposes, and another buys $10,000 in goods, he ought to be allowed $100 for advertising." [4] Is it fair to read the legislative history as permitting different payments for services of different value; or is it more accurate to interpret the statements about services of "the same relative value" to the seller to be assertions that the services of different customers, compensated on a sellers-cost basis, would necessarily be of the same value?

The relevant cases are few. Compare *Lever Brothers Co.*, 50 F.T.C. 494 (1953), in which the Commission suggested that either cost or value could be used to measure proportional equality, with *F.T.C. v. Simplicity Pattern Co.*, 360 U.S. 55, 61 (1959), endorsing the "relatively broad scope" the Commission had given to the standard of proportional equality, and *Colonial Stores*, 450 F.2d 733, 743, note 23 (5th Cir. 1971), holding that *Lever Brothers* did not permit a seller to make a grossly disproportionate offer to a single, large customer and attempt to justify the disparity on the gound that the customer's service was uniquely valuable.

There are three other proposed revisions in existing Guides 7 and 9, the former renumbered as revised Guide 8. The first is a clarification of existing language which would remove the implication in paragraph 2 of existing Guide 9 that each alternative promotional plan must be suitable for all competing customers. The purpose of requiring alternatives is to give competing customers who cannot provide or use particular media or services a practical alternative. It is necessary and may be counterproductive to require that the alternatives simultaneously be suitable for all customers.

The second change is more significant and relates to the elimination of footnote 2 to existing Guide 9, the last sentence of which reads in pertinent part: "Also, the purchase of displays or shelf space whether directly or by means of so-called allowances, may be considered an 'unfair method of competition' * * *" This statement implies that the purchase of store space is suspect. However, in *Hastings Manufacturing Co.*, Dkt. No. 4437, [1979–1983 Transfer Binder] Trade Reg. Rep. (CCH) Para. 21,646 (order modification), the Commission recognized that bidding for shelf space is a form of price competition, generally beneficial for the consumer. Additionally, in *Bayou Bottling, Inc. v. Dr. Pepper Co.*, 725 F.2d 300 (5th Cir. 1984), *cert. denied*, 469 U.S. (1984), the Fifth Circuit concluded that shelf space monopolization was unlikely. Noting that retailers generally allocated shelf space in proportion to market activity, the court saw little danger that space would be dominated by one seller.

Cooperative Advertising and Suggested Resale Prices

The final proposed revision to existing Guide 7 would delete Example 8. This example states that a seller should not refuse to reimburse a customer for expenditures on cooperative advertisement because it features a price other than the seller's suggested price. The Commission reiterated this view in a 1980 enforcement policy statement which maintained that it is *per se* illegal for a manufacturer to enter into a cooperative advertising agreement that denies payments when the dealer advertises a discount price or a price less than the one suggested. *See F.T.C. Policy Statement Regarding Price Restrictions in Advertising Programs*, 4 Trade Reg. Rep. (CCH) Para. 30,057 (October 28, 1981). The Commission has now rescinded this policy statement because it applied a broad *per se* rule to a practice that should generally be evaluated under the rule of reason. Consistent with this action, the Commission staff proposes to delete Example 8.

The only appellate decision on point supports this course of action. In *In re Nissan Antitrust Litig.*, 577 F.2d 910 (1978), *cert. denied*, 439 U.S. 1072 (1979), the Fifth Circuit reviewed a cooperative advertising plan that limited reimbursements to advertisements that contained Nissan's suggested price (or no price at all). The plan's impact on price was limited: Retailers could advertise other prices at their own expense and could (and did) sell cars at different prices. Moreover, by encouraging dealer promotion and investment, the plan may have helped Nissan penetrate a market dominated by domestic producers. The trial judge had therefore rejected a jury instruction that the plan was *per se* illegal. The Fifth Circuit upheld this decision and left standing the jury verdict for Nissan.

This case was decided after the Guides were issued but before the issuance of the Commission policy statement. Cases subsequent to the policy statement have all supported the rule of reason approach of *Nissan* rather than the *per se* approach of the policy statement. These cases are not directly on point: They do not involve cooperative advertising and they address manufacturer efforts to hold down, not support, dealer prices. On the other hand, the cases exhibit a considerable reluctance to expand the *per se* rule against vertical price fixing. All sustain limited, *direct* restraints on resale prices, in contract to the *indirect* influence on these prices exerted by restrictions on cooperative advertising. Further, in allowing manufacturers to hold down dealer prices, the decisions undercut Example 8 and the 1980 statement to the extent they indicate that a manufacturer cannot condition cooperative advertising payments on a dealer's agreement not to advertise prices *above* the suggested prices.

In *AAA Liquors, Inc. v. Joseph E. Seagram & Sons*, 705 F.2d 1203 (10th Cir. 1982), *cert. denied*, 461 U.S. 927 (1983), Seagram wished to help its retailers in Denver meet strong price competition. The company therefore gave price discounts to its wholesalers and required that they be passed on to retailers. The Tenth Circuit held that this price constraint was neither *per se* illegal nor unreasonable.

Two other Circuits have followed the lead of the Tenth Circuit. In *Lewis Service Center, Inc. v. Mack Trucks, Inc.*, 714 F.2d 842 (1983), *Cert. denied*, 467 U.S. 1228 (1984), the Eighth Circuit found no antitrust violation where Mack Truck conditioned its sales assistance program on the maximum price charged by its dealers. The Seventh Circuit held in *Jack Walters & Sons Corp v. Morton Bldg., Inc.* 737 F.2d 6 (1984), *cert. denied*, 469 U.S. 1018 (1984), that a manufacturer could secure agreements from its dealers that they would not charge prices higher than those advertised by the manufacturer.

In contrast to these decisions applying the rule of reason, the only cases applying a *per se* approach to these types of restraints are two older district court opinions; neither clearly involved a pure cooperative advertising price restriction. In *United States v. Serta Assocs., Inc.*, 296 F. Supp. 1121 (N.D.Ill. 1968), *aff'd per curiam*, 393 U.S. 534 (1969), the court found a horizontal cartel which, among other things, imposed restrictions on all advertised prices, not just those in cooperative advertisements. The co-op price restraints were ancillary to this broader scheme. In *Mt. Vernon Sundat v. Nissan Motor Corp. in U.S.A.*, 1976–1 Trade Cas. (CCH) Para. 60,842 (E.D. Va. 1976), the court cited evidence that Nissan had strongly recommended that dealers adhere to its suggested prices. These efforts may well have constituted a vertical price fixing conspiracy under the law prevailing then. Consequently both cases involved cooperative advertising price restrictions that were either clearly or arguably ancillary to direct price fixing agreements.

Additionally, two consent decrees obtained by the Department of Justice and three consent order secured by the Commission took the position that the denial of cooperative advertising payments to dealers not using the manufacturer's suggested price constituted vertical price fixing. *See United States v. E.I. du Pont de Nemours & Co.*, 1980–81 Trade Cas., (CCH) Para. 63,570 (N.D. Ohio 1980); *United States v. Nissan Motor Corp. in U.S.A.*, 1973 Trade Cas. (CCH) Para. 74,333 (N.D. Cal. 1973); *Tingley Rubber Corp.*, 96 F.T.C. 340 (1980); *Totes, Inc.*, 96 F.T.C. 335 (1980); *Advertising Checking Bureau, Inc.*, 93 F.T.C. 4 (1979). As consent decrees, however, none of these orders amounted to a judicial determination of the issue.

In sum, there is little judicial support for the view that price restrictions on cooperative advertising, standing alone, are *per se* illegal. Moreover, there is considerable precedent to the contrary.

Availability and Notification

The proposed revisions in this category relate to the seller's responsibilities to notify all competing customers of its promotional programs (existing Guide 9). Provisions dealing with this notification responsibility are scattered in existing Guides 6, 8, and 10. The revisions combine them all as part of revised Guide 9, which sets forth the twin aspects of availability: (1) The functional availability of the promotion to all competing customers; and (2) the communication of its existence.

Existing Guide 8 indicates that the seller has essentially two notification responsibilities: (1) To implement a "procedure reasonably designed to inform all his competing customers of his promotional programs;" and (2) to "verify the effectiveness" of this procedure by (a) making "spot checks" at least every 90 days of "a representative cross section of his indirect-buying customers," and (b) altering notification procedures appropriately if a spot check indicates that some customers are not receiving notice.

The Commission staff proposes to modify Guide 8 by eliminating the 90-day spot check requirement. This requirement appears overly regulatory and insufficiently cost conscious. Checking a representative cross section of indirect customers every 90 days is likely to be expensive for many sellers and usually not warranted. A seller that follows revised Guide 9 will already be using procedures reasonably designed to inform competing customers of promotional programs. In such cases, the self-interest of sellers and customers (which are generally aware that sellers offer promotional allowances and which do not want to miss specific offers) should cause most buyers to receive notice.

The Commission staff has also recommended deleting existing Guides 6 ("Need for a plan") and 10 ("Need to understand terms") from the revised Guides. These two existing Guides seem generally redundant. For example, Subsection (b) of existing Guide 6 states that a seller should inform its competing customers of the terms of its promotions. It is not clear what this adds to existing Guide 8 which goes into some detail as to the seller's notification obligation. Similarly, Subsection (a) of existing Guide 6 merely restates the existing Guide 7 stricutre that a plan should be available on proportionally equal terms to all competing customers, as does Subsection (c), stating that a seller should not overpay customers for promotional services supplied. Existing Guide 10 adds to this reiteration by counseling that sellers should inform competing customers in understandable terms of their promotions, a concept implicit, if not explicit, in revised Guide 9. The Commission staff believes this repetition is not informative. For these reasons, the revisions eliminate existing Guides 6 and 10.

The revisions revise and renumber existing Guide 13 ("Wholesaler or third party performance of seller's obligations"). Revised Guide 10 now deals with the seller's use of wholesalers or other third parties for performance of the seller's obligations. The thrust of existing Guide 13 is that no matter how a seller contracts with a third party to carry out its duties under the law, the seller remains liable for any infractions. Revised Guide 10 makes this point and eliminates the regulatory detail of existing Guide 13.

Customer's Liability

Existing Guide 14, now renumbered as Guide 11, dealing with customer liability under section 5 of the FTC Act is substantially unchanged. The examples have been edited to emphasize the scienter requirement, that the customer "knows or should know" that allowances or services received are not available on proportionally equal terms to competitors. In addition, existing Guide 15, which deals with third-party liability under Section 5 of the Federal Trade Commission Act for furnishing a customer fictitious billing, is combined with this Guide.

Meeting Competition

Existing Guide 16, renumbered as revised Guide 12, briefly describes the meeting competition defense to sections 2(d) and (e). The proposed revisions would replace most of the existing paragraph with new language that reflects the Supreme Court's decision in *Falls City Industries, Inc.* v. *Vanco Beverage, Inc.*, 460 U.S. 428 (1983), and *Great Atlantic & Pacific Tea Co.* v. *F.T.C.*, 440 U.S. 69 (1979). For example, the proposed language would drop the existing Guide's emphasis on offers to a "particular customer" and state instead that the defense is applicable to area-wide offers. In *Falls City*, the Court declared:

> There is no evidence that Congress intended to limit the availability of [the meeting competition defense] to customer-specific responses. . . . Congress intended to allow reasonable pricing responses on an area-specific basis where competitive circumstances warrant them.

Id. at 448.

Similarly, existing Guide 16 implies that the defense is available only if the seller's promotional payments meet "equally high" payments by a competitor. Such a matching requirement, however, would conflict with the exculpation of the seller in *A&P*. There, the Court held that seller had a meeting competition defense even though his offer beat, rather than simply matched, the competing offer. Further, the last sentence of the existing Guide, although correct if read narrowly, may imply to some readers that the defense is unavailable even though the seller has a reasonable belief that it will lose the customer's business if it does not improve its offer. The revised Guide, which stresses the good faith requirements, should avoid this misreading.

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[2] S. Rep. No. 1502, 74th Cong., 2d Sess., at 6 (1936); H.R. Rep. No. 2287, 74th Cong., 2d Sess., at 10 (1936).

[3] 80 Cong. Rec. 9416 (1936).

[4] 80 Cong. Rec. 3116 (1936).

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List of Subjects in 16 CFR Part 240

Robinson-Patman Act, Promotional allowances and services.

By Direction of the Commission.

Donald S. Clark,

Secretary.

16 CFR Chapter I, Subchapter B is amended by revising Part 240 to read as follows:

PART 240—GUIDES FOR ADVERTISING ALLOWANCES AND OTHER MERCHANDISING PAYMENTS AND SERVICES

Sec.

240.1 Purpose of the guide.
240.2 Applicability of the Law.
240.3 Definition of Seller.
240.4 Definition of Customer.
240.5 Definition of Competing Customers.
240.6 Interstate Commerce.
240.7 Services or Facilities.
240.8 Proportionally Equal Terms.
240.9 Availability to All Competing Customers.
240.10 Wholesaler or Third Party Performance of Seller's Obligations.
240.11 Customer's and Third Party Liability.
240.12 Meeting Competition.
240.13 Cost Justification.

Authority: Secs. 5, 6, 38 Stat. 719, as amended, 721; 15 U.S.C. 45, 46, 49 Stat. 1526; 15 U.S.C. 13, as amended.

§ 240.1 Purpose of the guides.

The primary purpose of these Guides is to provide assistance to businesses seeking to comply with sections 2 (d) and (e) of the Robinson-Patman Act (the "Act"). The Commission's interpretations are based on the language of the statute, the legislative history, administrative and court decisions, and an evaluation of the purposes of the relevant statutory provisions. Although the Commission has concluded that its interpretations are consistent with all controlling case law, the Commission has sought to provide guidance in some areas where no definitive guidance is provided by the case law.

§ 240.2 Applicability of the Law.

The substantive provisions of sections 2(d) and (e) apply only under certain circumstances.

(a) Section 2(d) applies only to:
(1) A seller of products;
(2) Engaged in interstate commerce:
(3) That either directly or through an intermediary;
(4) Pays a customer for promotional services or facilities provided by said customer;
(5) In connection with the *resale* (not the initial sale between the seller and the customer) of the seller's products;
(6) Where the customer is engaged in competition with one or more of the seller's other customers also engaged in the resale of the seller's products of like grade and quality.

(b) Section 2(e) applies only to:
(1) A seller of products;
(2) Engaged in interstate commerce;
(3) That either directly or through an intermediary;
(4) Furnishes promotional services or facilities to a customer;
(5) In connection with the *resale* (not the initial sale between the seller and the customer) of the seller's products;
(6) Where the customer is engaged in competition with one or more of the seller's other customers also engaged in the resale of the seller's products of like grade and quality.

Additionally, section 5 of the FTC Act may apply to buyers of products for resale engaged in interstate commerce, or to third parties, as outlined in § 240.11 of these Guides.

§ 240.3 Definition of Seller.

"Seller" includes any business (manufacturer, wholesaler, distributor, etc.) that sells products for resale, with or without further processing. For example, selling candy to a retailer is a sale for resale without processing. Selling corn syrup to a candy manufacturer is a sale for resale with processing.

§ 240.4 Definition of Customer.

A "customer" is any business that buys for resale directly from the seller, or the seller's agent or broker. In addition, a "customer" is any buyer of the seller's product for resale that purchases from or through a wholesaler or other intermediate reseller. The word "customer" which is used in Section 2(d) of the Act includes "purchaser" which is used in Section 2(e).

Note:—The Commission recognizes some exceptions to this general definition of "customer." For example, the purchaser of chartered merchandise would not be considered a "customer" simply on the basis of such purchase. Similarly, a retailer purchasing solely from other retailers, or making sporadic purchases, or one that does not regularly sell the seller's product, or that is a type of retail outlet not usually selling such products (e.g., a hardware store stocking a few isolated food items) will not be considered a "customer" of the seller unless the seller has been put on notice that such retailer is selling its product.

Example 1: A manufacturer sells to some retailers directly and to others through wholesalers. Retailer A purchases the manufacturer's product from a wholesaler and resells some of it to Retailer B. Retailer A is a customer of the manufacturer. Retailer B is not a customer unless the fact that it purchases the manufacturer's product is known to the manufacturer.

Example 2: A manufacturer sells directly to some independent retailers, to the headquarters of chains and of retailer-owned cooperatives, and to wholesalers. The manufacturer offers promotional services or allowances for promotional activity to be performed at the retail level. With respect to such services and allowances, the direct-buying independent retailers, the headquarters of the chains and retailer-owned cooperatives, and the wholesalers' independent retailer customers are customers of the manufacturer. Individual retail outlets of the chains and the owners of the retailer-owned cooperatives are not customers of the manufacturer.

Example 3: A seller offers to pay wholesalers to advertise the seller's product in the wholesalers' order books or in the wholesalers' price lists directed to retailers purchasing from the wholesalers. The wholesalers are customers but the retailers purchasing from the wholesalers and reached by the wholesalers' advertisements are not customers for purposes of this promotion.

§ 240.5 Definition of Competing Customers.

"Competing customers" are all businesses that compete in the resale of the seller's products of like grade and quality at the same functional level of distribution regardless of whether they purchase directly from the seller or through some intermediary.

Example 1: Manufacturer A, located in Wisconsin and distributing shoes nationally, sells shoes to three competing retailers that sell only in the Roanoke, Virginia area. Manufacturer A has no other customers selling in Roanoke or its vicinity. If Manufacturer A offers its promotion to one Roanoke customer, it should include all three, but it can limit it to them. The trade area should not be drawn arbitrarily so as to exclude competing retailers.

Example 2: A national seller has direct-buying retailing customers reselling exclusively within the Baltimore City trade area, and other customers within that area purchasing through wholesalers. The seller may lawfully engage in a promotional campaign confined to the Baltimore City trade area, provided it affords all of its retailing customers within the area the opportunity to participate, including those that purchase through wholesalers.

§ 240.6 Interstate Commerce.

This term has not been precisely defined in the statute. In general, the commerce requirement for sections 2(d) and (e) is the same as the commerce requirement for section 2(a). For a discrimination in price or promotional terms to be subject to the Act, at least one of the sales involved in a price discrimination, or shipments to at least one of the customers affected by the promotional discrimination, must cross a state line. Sales or promotional offers within the District of Columbia and most United States possessions are also covered by the Act.

§ 240.7 Services or Facilities.

These terms have not been exactly defined by the statute or in decisions. One requirement, however, is that the services or facilities be intended primarily to promote the resale of the seller's product by the customer. Services or facilities that relate primarily to the original sale are covered by section 2(a). The following list provides some examples—the list is not exhaustive—of promotional services and facilities covered by sections 2(d) and (e):

(a) Cooperative advertising;
(b) Handbills;
(c) Demonstrators and demonstrations;
(d) Catalogues;
(e) Storage cabinets;
(f) Dispaly materials;
(g) Prizes or merchandise for conducting promotional contests.

§ 240.8 Proportionally Equal Terms.

The promotional services and allowances should be made available to all competing customers on proportionally equal terms. This means that payments or services should be proportionalized on some basis that is fair to all customers who compete in the resale of the seller's products. No single way to proportionalize is prescribed by law. Any method that treats competing customers on proportionally equal terms may be used. Generally, this can best be done by basing the payments made or the services furnished on the dollar volume or on the quantity of goods purchased during a specified period. Other methods that are fair to all competing customers are also acceptable. When a seller offers more than one type of service, or payments for more than one type of service, all the services or payments should be offered on proportionally equal terms. The seller may do this by offering all the payments or services at the same rate per unit or amount purchased. Thus, a seller might offer promotional allowances of up to 12 cents a case purchased for expenditures on either newspaper advertising or handbills. Mathematical precision is not required for sellers to satisfy the standard of proportional equality. Nevertheless, sellers should have a reasonable basis for the method of proportionality they use. The seller should be prepared to show that it has not engaged in discrimination if it offers different services or allowances for promotions in different media or to different customers. If different types or groups of customers are offered different services or facilities (or different combinations or levels of services or facilities), a difference in participation rates across customer types or groups does not in itself imply that services or allowances are offered on proportionally unequal terms. A seller may not vary the rate at which—or limit the customers to whom—a particular service, or payments for a service, is offered, in order to reflect differences in the productivity of individual customers.

Example 1: A seller may offer to pay a specified part (e.g., 50 percent) of the cost of local advertising up to an amount equal to a specified percentage (e.g., 5 percent) of the dollar value of purchase during a specified period of time.

Example 2: A seller may place in reserve for each customer a specified amount of money for each unit purchased, and use it to reimburse those customers for the cost of advertising the seller's product.

Example 3: A seller should not select one or a few customers to receive special allowances (e.g., 5 percent of purchases) for promotions, while making allowances only on some lesser basis (e.g., 2 percent) to customers who compete with them.

Example 4: A seller should not provide an allowance (for services) on a basis that has rates graduated with the amount of goods purchased, as, for instance, 1 percent of the first $1,000 purchased per month, 2 percent of the second $1,000 per month, and 3 percent of all over that.

Example 5: A seller should not identify or feature one or a few customers in its own advertising without making the same service available on proportionally equal terms to customers competing with the identified customer or customers.

Example 6: A seller who makes employees available or arranges with a third party to furnish personnel for purposes of performing work for a customer should make the same offer available on proportionally equal terms to all other competing customers. In addition, the seller should offer usable and suitable alternatives of equivalent measurable cost to those competing customers for whom such services are not usable and suitable.

Example 7: A seller should not offer to pay a straight line rate for advertising if such payment results in a discrimination between competing customers: e.g., the offer of $1.00 per line for advertising in a newspaper that charges competing customers different amounts for the same advertising space. The straight line rate is an acceptable method for allocating advertising funds, if the seller offers small retailers that pay more than the lowest newspaper rate an alternative that enables them to obtain the same percentage of their advertising cost as large retailers. If the $1.00 per line allowance is based on 50 percent of the newspaper's lowest contract rate of $2.00 per line, for example, the seller should offer to pay 50 percent of the newspaper advertising cost of smaller retailers that establish, by invoice or otherwise, that they paid more than that contract rate.

§ 240.9 Availability to All Competing Customers.

(a) Functional availability. (1) The seller must take reasonable steps to ensure that services and facilities are usable in a practical sense by all competing customers. This may require offering alternative terms and conditions under which customers can participate. When a seller provides alternatives in order to meet the availability requirement, it must take reasonable steps to ensure that the alternatives are proportionally equal, but it is not required to offer all alternatives to all competing customers.

(2) When a seller offers to competing customers alternative services or allowances that are proportionally equal and at least one such offer is usable in a practical sense by all competing customers, and refrains from taking steps to prevent customers from participating, it has satisfied its obligation to make services and allowances "functionally available" to all customers. Therefore, the failure of any customer to participate in the program does not place the seller in violation of the Act.

Example 1: A manufacturer offers a plan for cooperative advertising on radio, TV, or in newspapers of general circulation. Because the purchases of some of the manufacturer's customers are too small this offer is not usable in a practical sense by them. The manufacturer should offer them alternative(s) on proportionally equal terms that are usable in a practical sense by them.

Example 2: A seller furnishes demonstrators to large department store customers. The seller should provide alternatives usable in a practical sense on proportionally equal terms to those competing customers who cannot use demonstrators. The alternatives may be services usable in a practical sense that are furnished by the seller, or payments by the seller to customers for their advertising or promotion of the seller's product.

Example 3: A seller offers short term displays of varying sizes, including some which are usable by each of its competing customers in a practical business sense. The seller requires uniform, reasonable certification of performance by each customer. Because they are reluctant to process the required paper work, some customers do not participate. This fact does not place the seller in violation of the functional availability requirement and it is under no obligation to provide additional alternatives.

(b) Notice of available services and allowances. The seller has an obligation to take steps reasonably designed to provide notice to competing customers of the availability of promotional services and allowances. Such notification should include enough

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details of the offer in time to enable customers to make an informed judgment whether to participate. When some competing customers do not purchase directly from the seller, the seller must take steps reasonably designed to provide notice to such indirect customers. Acceptable notification may vary. The following is a non-exhaustive list of acceptable methods of notification:

(1) When a seller deals directly with competing customers, by providing direct notice to them;

(2) When a promotion consists of providing retailers with display materials, by including the materials within the product shipping container;

(3) By including brochures describing the details of the offer in shipping containers;

(4) By providing information on shipping containers or product packages of the availability and essential features of an offer, identifying a specific source for further information;

(5) By placing at reasonable intervals in trade publications of general and widespread distribution announcements of the availability and essential features of promotional offers, identifying a specific source for further information; and

(6) If the competing customers belong to an identifiable group on a specific mailing list, by providing relevant information of promotional offers to customers on that list. For example, if a product is sold lawfully only under government license (alcoholic beverages, etc.), the seller may inform only its customers holding licenses.

(c) A seller may contract with intermediaries or other third parties to provide notice. See § 240.10.

Example 1: A seller has a plan for the retail promotion of its products in Philadelphia. Some of its retailing customers purchase directly and it offers the plan to them. Other Philadelphia retailers purchase the seller's products through wholesalers. The seller may use the wholesalers to reach the retailing customers that buy through them, either by having the wholesalers notify those retailers, or by using the wholesalers' customer lists for direct notification by the seller.

Example 2: A seller that sells on a direct basis to some retailers in an area, and to other retailers in the area through wholesalers, has a plan for the promotion of its products at the retail level. If the seller directly notifies competing direct purchasing retailers, and competing retailers purchasing through the wholesalers, the seller is not required to notify its wholesalers.

Example 3: A seller regularly promotes its products at the retail level and during the year has various special promotional offers. The seller's competing customers include large direct-purchasing retailers and smaller retailers that purchase through wholesalers. The promotions offered can best be used by the smaller retailers if the funds to which they are entitled are pooled and used by the wholesalers on their behalf (newspaper advertisements, for example). If retailers purchasing through a wholesaler designate that wholesaler as their agent for receiving notice of, collecting, and using promotional allowances for them, the seller may assume that notice of, and payment under, a promotional plan to such wholesaler constitutes notice and payment to the retailer. The seller must have a reasonable basis for concluding that the retailers have designated the wholesaler as their agent.

§ 240.10 Wholesaler or Third Party Performance of Seller's Obligations.

A seller may contract with intermediaries, such as wholesalers, distributors, or other third parties, for them to perform all or part of the seller's obligations under Sections 2 (d) and (e). The use of intermediaries does not relieve a seller of its responsibility to comply with the law. Therefore, in contracting with an intermediary, a seller should ensure that its obligations under the law are in fact fulfilled.

§ 240.11 Customer's and Third Party Liability.

(a) Sections 2 (d) and (e) apply to sellers and not to customers. However, a customer who knows, or should know, that it is receiving a discriminatory price through services or allowances not made available on proportionally equal terms to its competitors engaged in the resale of a seller's product may be proceeded against by the Commission under Section 5 of the Federal Trade Commission Act. Liability for knowingly receiving such a discrimination may result whether the discrimination takes place directly through payments or services, or indirectly through deductions from purchase invoices or other similar means.

Example 1: A customer should not induce or receive advertising allowances for special promotion of the seller's products in connection with the customer's anniversary sale or new store opening when the customer knows or should know that such allowances, or suitable alternatives, are not available on proportionally equal terms to all other customers competing with him in the distribution of the seller's products.

Example 2: A customer, an experienced buyer, is offered an allowance of 25 percent of his purchase volume by a seller for cooperative advertising to be paid for 100 percent by the seller. The customer knows, or should know, that most cooperative advertising programs in the industry allow payments of from 3 to 7 percent of purchases, and require 50–50 sharing by the seller and the customer. The customer would be on notice to inquire of the seller and to take such other affirmative steps as would satisfy a reasonable and prudent businessman that such allowances are affirmatively offered and otherwise made available by such seller on proportionally equal terms to all of its other customers competing with the customer in the distribution of the seller's products.

Example 3: Frequently the employees of sellers or third parties such as brokers perform in-store services for their grocery retailer customers such as stocking of shelves, building of displays and checking or rotating inventory, etc. A customer operating a retail grocery business should not induce or receive such services when the customer knows or should know that such services (or usable and suitable alternative services) are not available on proportionally equal terms to all other customers competing with it in the distribution of the seller's products.

Example 4: Where a customer has entered into a contract, understanding, or arrangement for the purchase of advertising with a newspaper or other advertising medium which provides for a deferred rebate or other reduction in the price of the advertising, the customer should advise any seller from whom reimbursement for the advertising is claimed that the claimed rate of reimbursement is subject to a deferred rebate or other reduction in price. In the event that any rebate or adjustment in the price is received, the customer should refund to the seller the amount of any excess payment or allowance.

Example 5: A customer should not induce or receive an allowance in excess of that offered in the seller's advertising plan by billing the seller at "vendor rates" or for any other amount in excess of that authorized in the seller's promotional program.

(b) Third parties, notably advertising media, might also violate section 5 of the Federal Trade Commission Act through double or fictitious rates or billing. An advertising medium, such as a newspaper, broadcast station, or printer of catalogs, that publishes a rate schedule containing fictitious rates (or rates that are not reasonably expected to be aplicable to a representative number of advertisers), or that furnishes a customer with an invoice that does not reflect the customer's actual net advertising cost (or that does not clearly state the applicable discounts and rebates) may violate Section 5 of the customer uses such deceptive schedule or invoice for a claim for an advertising allowance, payment or credit greater than that to which it would be entitled under the seller's promotional offering.

Example 1: A newspaper has a "national" rate and a lower "local rate". A retailer places an advertisement with the newspaper at the local rate for a product sold by a supplier, from which the retailer will seek reimbursement under the supplier's cooperative advertising plan. The newspaper should not send the retailer two bills, one at the national rate and another at the local rate actually charged.

Example 2: A newspaper has several published rates. A large retailer has in the past earned the lowest rate available. The newspaper should not submit invoices to the retailer showing a high rate by agreement between them unless the invoice discloses that the retailer may receive a rebate and states the amount (or approximate amount) of the rebate, if known, and if not known, the amount of rebate the retailer could reasonably anticipate.

Example 3: A radio station has a flat rate for spot announcements, subject to volume discounts. A retailer buys enough spots to qualify for the discounts. The station should not submit an invoice to the retailer that does not show either the actual net cost or the discount rate.

Example 4: An advertising agent buys a large volume of newspaper advertising space at a low, unpublished negotiated rate. Retailers then buy the space from the agent at a rate lower than they could buy it from the newspaper. The agent should not furnish the retailers invoices showing a rate higher than the retailers actually paid it.

§ 240.12 Meeting Competition.

A seller charged with discrimination in violation of sections 2(d) or (e) may defend its actions by showing that particular payments were made or services furnished in good faith to meet the payments or services offered or supplied by a competing seller. This defense is applicable to payments or services offered to particular types of customers or media on an area-wide basis, to new as well as old customers, and to discriminations caused by a decrease as well as an increase in the payments or services offered. A seller must reasonably believe that its offers are necessary to meet competitors' offers.

§ 240.13 Cost Justification.

It is no defense to a charge of unlawful discrimination in the payment of an allowance or the furnishing of a service for a seller to show that such payment or service could be justified through savings in the cost of manufacture, sale or delivery.

Concurring Statement of Chairman Daniel Oliver Proposed Revisions to the Guide for Advertising Allowances

I concur in the publication of proposed revisions to the Guides for Advertising Allowances and Services. The Guides are intended to assist businesses in complying with sections 2(d) and 2(e) of the Clayton Act, 15 U.S.C 13(d), (e), as amended by the Robinson-Patman Act. They should therefore portray the requirements of those sections as accurately as possible. Adoption by the Commission of the proposed revisions to the Guides would help substantially in that regard.

Our efforts here should be guided by the pronouncements of the Supreme Court. The Court has admonished that the Robinson-Patman Act should be construed so as to ensure its coherence with "the broader antitrust policies that have been laid down by Congress." [1]

The Commission has more recently characterized the Act as a "protectionist, non-efficiency oriented" statute, at least as it has been interpreted in the past.[2] In my view, we should make every effort to ensure that the Act is used only to prohibit conduct that actually injures competition and reduces consumer welfare.

It is not easy to apply that principle to sections 2(d) and 2(e). As a general proposition, there is little economic justification for regulating seller offers of services and allowances—or buyer efforts to induce the provision of services and allowances—when neither sellers nor buyers possess substantial market power. Competitive conditions usually ensure that no seller will offer—and no buyer will be able to induce—systematic discrimination, or "proportionally unequal" treatment, in any economically meaningful sense. Unfortunately, sections 2(d) and 2(e) are *per se* prohibitons; no showing of competitive injury is needed to establish seller liability under either section. The American Bar Association has recommended requiring the same showing of competitive injury under sections 2(d) and 2(e) that is currently required to establish liability under section 2(a),[3] and I support that recommendation.

Unless and until that recommendation is enacted into law, however, the proposed revisions to the Guides offer the best hope of ensuring that sections 2(d) and 2(e) are interpreted—by the courts and by the Commission—in as economically sensible a manner as possible. I therefore strongly support their adoption. However, I believe that the proposed revisions do not go far enough. I think at least two other changes—in proposed §§ 240.11(a) and 240.8 of the Guides—should be made. I have detailed these proposals in this statement.

I. Eliminating the Per Se Illegality of Buyer Inducement

First, the Commission should eliminate the *per se* illegality of buyer inducement. Sections 2(d) and 2(e) apply only to sellers. The Commission has relied on section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, to extend the *per se* standard of seller liability to buyers as well, and the courts have sustained that extension.[4] But the fact that the courts have *permitted* the Commission to apply section 5 in this way does not mean that the Commission must or should do so. The Commission has determined that section 5 should not be used to prohibit most practices that do not expressly violate the Robinson-Patman Act unless they actually injure competition.[5] I think this principle should be used to jettison the concept of *per se* liability in buyer inducement cases. I therefore propose that the Commission modify proposed section 240.11(a) of the Guides to read as follows:

Alternate § 240.11 (a)

(a) Sections 2(d) and 2(e) apply to sellers and not to customers. However, under section 5 of the Federal Trade Commission Act, the Commission may proceed against a customer who knows, or should know, that it is receiving a discriminatory price through services or allowances not made available on proportionally equal terms to its competitors engaged in the resale of a seller's product, but only if the provision or receipt of the services or allowances at issue injures competition. Establishing injury to competition typically will require a showing that the customer possesses substantial market power. Liability for knowingly receiving such a discrimination may result whether the discrimination takes place directly through payments or services, or indirectly through deductions from purchase invoices or other similar means.

I would welcome public comment on this proposal.

II. Defining "Proportional Equality" in Terms of the Value of Services and Allowances to Sellers, and to Reflect Competitive Market Conditions

Second, the definition of "proportional equality" in the Guides should be modified so that it is not only consistent with the case law, but also as economically sensible as possible. Because the definition of proportional equality is central to the Guides, I particularly welcome the Commission's invitation for the public to comment on these possible changes in that definition:

(A) Defining proportional equality in terms of the amount of effective

[1] *United States v. United States Gypsum Co.*, 438 U.S. 422, 458 (1978), *quoting Automatic Canteen Co. v. FTC*, 346 U.S. 61, 74 (1953).

[2] *General Motors Corp.*, 103 F.T.C. 641, 694 (1984).

[3] *ABA Favors Competitive Injury Test for Advertising and Promotional Allowances*, 52 Antitrust and Trade Reg. Rep. 357 (Feb. 26, 1987).

[4] *See, e.g., Alterman Foods, Inc. v. FTC*, 467 F.2d 993, 996–97 (5th Cir. 1974); *Grand Union Co. v. FTC*, 300 F.2d 92, 99 (2d Cir. 1962).

[5] *General Motors Corp.*, 103 F.T.C. at 700–01.

promotional services that a seller receives per dollar of promotional expenditure.

(B) Permitting sellers to vary allowances and services with the identity of the customer, as well as the media used, provided that they have reliable evidence showing that such differences for different customers are justified by differences in the amount of effective promotional services that the customers provided.

(C) Using evidence about that competitive conditions of the buying and seller sides of the market in which promotional services and allowances are granted to help in determining whether the proportional equality requirement is satisfied.

I support all three of these proposals.[6] Sections 2 (d) and (e) require that promotional allowances and services be made available to all competing customers and on "proportionally equal" terms. In accordance with the case law, existing Guide 7 notes that "[n]o single way to proportionalize is prescribed by law." However, the 1972 amendments to the Guides nevertheless appear to require—and have widely been read to require—that the seller use cost *independent* of the effectiveness of the promotional services supplied or acquired as the sole basis for proportionalizing offers among

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Two approaches to cost have typically been used. Under the first, the seller must spend or supply an equal amount for promotional purposes per unit sold to each of its competing customers. Under the second approach, the seller must spend an amount that bears an equal proportion of each of its customers' costs of providing a promotional service. The Guides are currently ambiguous as to whether both cost approaches may be used, but they have been interpreted by many as requiring reliance only on the second approach.

The primary problem with both approaches is that they do not focus expressly on the value to the seller of the promotional services provided. They do not permit the seller to vary its allowances or services to reflect the fact that more expensive services or allowances offered to one customer may be justified, because they are more effective in generating increased demand for the seller's product. By contrast, the "Alternate Section 240.8" that I propose below would define the term "effective promotional services" to refer to the effectiveness of the promotional services supplied to or provided by competing customers in generating increased demand for the seller's product.

For example, suppose a seller offers an allowance of $200 to customer A because A's use of the allowance for promotional activity in a particular medium is worth $200 to the seller (in terms of the number of potential customers reached), whereas a comparable allowance to B would be worth less than $200. The seller would prefer, without any intent to discriminate, to reduce its allowance by B until the quantity of effective promotional services acquired per dollar spent on A and B is the same. Different allowances to A and B may thus yield the seller the same amount of effective promotional services per dollar spent—rather than discrimination between A and B—because the services the seller acquires or supplies per dollar spent on promotions are the same.

In these circumstances, promotional allowances will not be supplied efficiently if the seller is required to grant the same allowance to A and B, or if the seller is required to reimburse them in proportion to the expense each incurs to provide a given promotional service.[7] In the example above, if the seller must spend $200 on B in order to spend $200 on A, the seller will secure a lower quantity of effective promotional services per dollar spent on B than per dollar spent on A, and promotional expenditures will be allocated inefficiently. In effect, the seller would have to discriminate in favor of B. Similarly, if the seller were required to reimburse A and B in proportion to the expense each incurred to provide a given promotional service and the seller spent $200 on A, it would have to spend more than $200 on B. Again, the seller would secure a lower quantity of effective promotional services per dollar spent on B than per doffar spent on A, and in effect would be discriminating in favor of B.

These effects can be restated in a slightly different way. An allowance is the price paid by a seller for promotional services provided by customers. "Units" of services offered by customers to the seller will differ in both quality and cost, as a function of variations in customer size, location, costs, or access to different media. The seller will prefer to allocate allowances so that the price it pays per unit of comparable services remains constant. In this way, the seller will secure the same service for each dollar spent.

In the example above, requiring the seller to pay each customer $200 is comparable to what is often called the *seller's*-cost standard. Requiring the seller to pay each customer the customer's cost of providing the same service is comparable to what is often called the *customer's*-cost standard. Both may produce an inefficient supply and distribution of promotional allowances and services in various forms—and hence expose potential purchasers to the seller's product less efficiently—because different types or forms of such exposure may have different effects in increasing the demand for the seller's product.

Alternate § 240.8 I propose below would give sellers greater flexibility than the existing Guides by expanding the definition of proportional equality. The seller, within limits, would be permitted to account for the fact that a particular promotional expenditure may produce different increases in the seller's sales—or different numbers of consumers or potential consumers reached—as a function of which media, distributors, and retailers are used. Media would be defined broadly to include such things as displays, for which the number of consumers reached per dollar spent may differ significantly. Alternate § 240.8 would treat as proportionally equal those promotional expenditures that result in approximately the same seller cost per consumer or potential consumer reached, or per unit of additional sales generated. Promotional expenditures or allowances offered in such a manner are not likely to be discriminatory.

Permitting sellers greater flexibility of course does not mean that all of them will use it. Alternative Section 240.8 would continue to permit a seller to grant an allowance of a uniform amount per unit of product purchased by a customer. In many instances a seller may secure a fairly uniform service per unit of expense across media or customers, so that it will have no incentive to vary the allowance.

Giving sellers greater flexibility would be consistent with what one might expect in a competitive market. Competitive sellers have an incentive to seek out all profitable opportunities to provide promotional services or allowances, and to allocate them so that the price paid or expense incurred for a given quantity of effective service is the same. In short, proportional equality—as Alternate § 240.8 would define it—will exist and persist in competitive markets.

The definition of proportional equality that I propose in Alternate § 240.8 conforms with what is often called the "value" standard of proportional equality. That standard is in turn consistent with the legislative history of the Robinson Patman Act, and with the case law interpreting the concept of proportional equality. The legislative history indicates that the term "proportional equality" was intended to provide the measure by which a seller could provide promotional services or allowances to both its large and small customers on a basis which would not disproportionally favor large customers over small customers. Taken as a whole, the legislative history can be read as suggesting that Congress intended to permit "proportional equality" to be based on either (1) a uniform allowance or service expense per unit of sale or dollar volume purchased by the seller (the seller's-cost standard) or (2) a uniform allowance or service expense per unit of effective promotional service acquired (which I refer to here as the value standard). Although Alternate § 240.8 would define proportional equality in terms of the value standard, it would accommodate the seller's cost standard as well.

The few relevant cases in this area appear to establish the permissibility of the value standard approach. In *Lever Brothers Co.*, the Commission held that *either* the cost *or* the value standard could be used to measure proportional equality.[8] The Supreme Court apparently approved this approach in *FTC v. Simplicity Pattern Co.*, stating:

> We note * * * that the Commission has indicated a willingness to give a relatively broad scope to the standard of proportional equality under sections 2 (d) and (e).[9]

More recently, in *Colonial Stores Inc. v. FTC*, The Fifth Circuit Court of Appeals observed that *Simplicity Pattern* reaffirmed "the principle expressed in *Lever Brothers* that section 2(d) does not 'require a seller to pay at the same rate * * * for types of services which are of unequal cost or value.' " [10]

The court went on the note that the *Simplicity Pattern* approach

> would allow suppliers, as long as all customers were given *some* benefits of proportional value, to channel their promotional funds into the most fruitful directions—to obtain greater returns from cooperative advertising campaigns while at the same time insuring fair treatment for all competing customers.[11]

The court found this consistent with the Commission's *Lever Brothers* decision permitting

> the supplier to formulate a promotional campaign maximizing the potency of the media of his choice—so long as *some* 'fair and reasonable' equivalent is provided for those competing rivals who could not otherwise participate. Nevertheless, the supplier's program need not ignore the relative desirability of particular promotional media and may scale reimbursement accordingly, thereby ensuring "proportionality" not only with respect to "customers' purchases" but also "their ability and equipment to render or furnish the services to be paid for".[12]

On balance, the value approach appears to be consistent with the case law. The authorization for that approach seems to flow directly from the logic of the *Lever Brothers* decision. The Commission held that under section 2(d), Lever Brothers could vary its allowances for different media based essentially on differences in the number of consumers or potential consumers reached per dollar spent. And as a recent treatise on the Robinson-Patman Act points out, there has been no judicial approval of the current Guides' apparent adoption of the cost standard as the sole means to proportionalize.[13] It therefore seems clear that sellers may rely on a value-based approach in complying with sections 2(d) and 2(e) of the Act.[14]

For similar reasons, Alternate § 240.8 would allow the introduction of evidence concerning the competitiveness of the relevant market to determine the presence of absence of proportional equality. In competitive markets, customers are necessarily treated on proportionally equal terms. Thus, evidence concerning competitive conditions is, from an economic perspective, the most relevant basis for evaluating proportionality. Unfortunately, in the past, evidence of the competitiveness of the relevant market probably would have been considered irrelevant. However, a more economically sensible approach appears to be consistent with the legislative history, is supported by the economic literature, and does not appear to be precluded by the case law.

The legislative history of the Robinson-Patman Act makes it clear that the Act was designed to prevent large and powerful companies from coercing favorable arrangements from suppliers.[16] As Respresentative Patman maintained:

> It is right up to you, whether you want these few large corporate concerns, that have the money, that have the power, to continue to coerce and intimidate the manufacturers to get the prices that they want; as to whether or not you say it is a good thing for them to go ahead and get these prices and destroy the independent merchant; or whether or not you should write into this law some provision that would protect the weak ones against the strong ones.[16]

More specifically, with respect to advertising allowances, Representative Patman argued:

> * * * Large manufacturers have been coerced into giving certain large mass buyers great reductions in prices under the guise of advertising allowances. This bill will not prohibit advertising allowances but it will prohibit advertising allowances to be used as a guise for price reductions and prohibit advertising allowances that are not given proportionally to all customers. In other words, manufacturers will have a right to select their customers but when selected they must deal with them equally and fairly.[17]

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[6] My discussion of these proposals is based in large part on the excellent work done by members of the Commission staff in connection with the Guides revision project.

[7] In *Boise Cascade*, 107 F.T.C. 76 (1986), *rev'd on other grounds*, 837 F.2d 1127 (D.C. Cir. 1988), the Commission pointed out that requiring discounts for allowances to be geared to customer cost creates an undesirable incentive: Even if discounts accurately reflected each customers's cost, under any variable discount system the less efficient firms with higher costs would received higher discounts—an economically unfortunate reversal of desired incentives. 107 F.T.C. at 212.

[8] *Lever Brothers Co.*, 50 F.T.C. 494, 511–12 (1953).

[9] *FTC v. Simplicity Pattern Co.*, 360 U.S. 55, 61 n. 4 (1959).

[10] *Colonial Stores, Inc. v. FTC*, 450 F.2d 733, 743 n. 23 (5th Cir. 1971). The court held, however, that this principle did not mean that a seller could make a grossly disproportionate offer to a single large customer and attempt to justify the disparity on the ground that the customer's service was uniquely valuable. The court stated that the statute was intended to prevent variations in offers based on "the size and mercantile prowess of the individual payee." *Id.* at 744.

[11] *Id.* at 744 n. 25, *quoting* Rowe, *Price Discrimination Under the Robinson-Patman Act* 404 (1962) (emphasis in original).

[12] *Id.*, *quoting* Rowe, *supra*, at 409 (emphasis in original).

[13] There is some board language in *Colonial Stores* that may be read to limit the ability of sellers to use the value standard. However, this language is dictum. The sellers in *Colonial Stores* made no effort whatsoever to provide services or allowances to competitors of Colonial Stores. *Id.* at 743 n.24. Thus, Alternate § 240.8 would not conflict with the *Colonial Stores* holding. A seller could not refuse to make services or allowances available to competitors, but it would have greater flexibility in determining proportional equity.

[14] III E. Kintner & J. Bauer, *Federal Antitrust Law* [illegible] (1981).

[15] Of course, in many cases sellers may find it too costly to account for differences across customers or media in the quantity of effective promotional services acquired per dollar spent. The differences may be small, and to measure them is itself costly, so Alternative Section 240.8 would permit sellers to continue to supply promotional services or allowances on a seller's-cost basis.

[16] *See, e.g.*, House Hearing on Bills to Amend the Clayton Act, 74th Cong., 1st Sess. 217 (1935).

[17] House Hearing on Bills to Amend the Clayton Act, 74th Cong. 2d Sess., at 308 (1936); *accord, e.g.*, Remarks of John E. Miller, 74th Cong. 2d Sess. (1936), 80 Cong. Rec. 6822–23.

[18] Remarks of Rep. Wright Patman, 74th Cong., 2d Sess. (1936), 80 Cong. Rec. 7739.

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Later in his treaties on the Act, Representative Patman confirmed:

> * * * Price discriminations that are practiced frequently or regularly, and at will, with devastating effects, can only be employed by a seller who has market power approaching Monopoly control over prices in the markets in which he operates.[18]

Thus, it seems clear that the Act primarily was intended to prevent the use of market power to grant or obtain discriminatory arrangements. In a competitive market, where sellers or buyers do not possess substantial market power, no economically significant price discrimination is likely to exist, much less persist, for any appreciable period of time.

The federal courts have recognized that the perceived problem of large buyers exercising coercive market power played a major role in the passage of the Act. For example, the Supreme Court has stated:

> The Robinson-Patman Act was passed in response to the problem perceived in the increased market power and coercive practices of chain stores and other big buyers that threatened the existence of small independent retailers.[19]

Finally economic analysis supports the proposition that disproportionally favorable promotional services and allowances cannot be conveyed or secured without substantial market power. For example, as Judge Posner has written:

> The second economic objection to price discrimination is that it is a symptom of—and more important, a condition fostering—monopoly or cartel pricing at the seller level. If a product is being sold at the same price to two different purchasers, though the costs of sale are different, or at different prices though the costs of sale are the same, this implies that the price that is higher relative to cost is yielding a profit in the economic sense * * *.
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> • • • • •
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> If one asks *how* a firm is able to obtain persistent profits in the economic sense, the normal reply is that the firm has a monopoly, inasmuch as competition would compress price to cost in the long run * * *. [T]he creation of monopoly may enable the monopolist to obtain * * * monopoly profits * * * by reducing output below the competitive level * * *.
>
> Thus, the existence of price discrimination is evidence that the seller or sellers engaged in the discrimination have—and are exercising—monopoly power.[20]

[18] W. Patman, *Complete Guide to the Robinson-Patman Act* 3 (2d ed. 1963).

[19] *Great Atlantic & Pacific Tea Co. v. FTC*, 440 U.S. 69, 75–76 (1979).

[20] Posner, *The Robinson-Patman Act: Federal Regulation of Price Differences*, American Enterprise Institute for Public Policy Research (1976) at 4–5 (emphasis in original).

In short, price discrimination among customers requires the possession of substantial market power. This power may reside in sellers alone, who may decide to discriminate among customers, or in buyers who may, under certain circumstances, secure terms that are more favorable than those accorded to other customers. The Robinson-Patman Act apparently was intended to prevent the coercive use of market power, something that will not systematically occur or persist in a competitive market. Therefore, evaluating the state of competition in a market in order to determine whether promotional allowances and services are being provided on a proportionally unequal basis seems fully justified. Moreover, it would make analysis under sections 2(d) and (e) more consistent with the other antitrust laws.

For the foregoing reasons, I propose that the commission modify proposed § 240.8 of the Guides to read as follows:

Alternate § 240.8 Proportionally Equal Terms

The Act requires that promotional services and allowances be made available to competing customers on proportionally equal terms. In the view of the commission, proportional equality is achieved if the amount of effective promotional services received per dollar of promotional expenditure by the seller is the same across competing customers. Although the quantity of effective promotional services is ultimately determined by the sales generated by a promotion, it may be estimated in terms of the number of potential consumers expected to be reached by a promotion, the number of potential consumers expected to respond to a promotion, or other factors reasonably believed to affect sales generated by a promotion. The seller may estimate the quantity of effective promotional services acquired or provided per dollar spent over a period of time sufficient to reveal patterns of effectiveness.

This standard of proportional equality would be approached in any market in which sellers use promotional services and allowances as a means of promoting the resale of their products through promotional activity, rather than as a form of disguised price discrimination. In such markets, each seller would, over time, have the incentive to seek out all profitable opportunities to provide promotional services or allowances, and to expand their use so that the allowances paid or expenses incurred for the same quantity of effective promotional services are equal, with the result that customers will be treated on proportionally equal terms. The result might be different in markets in which sellers have substantial market power and use promotional services and allowances as a disguised form of price discrimination.

Mathematical precision is not required for sellers to satisfy the standard of proportional equality, in part because the quantity of effective promotional services acquired from or supplied to each customer per dollar spent by a seller cannot be measured exactly. Nevertheless, sellers should have a reasonable basis for their provision of promotional services or allowances. One acceptable method of maintaining proportional equality is for the seller to treat each customer's purchase volume as a proxy for an equally effective amount of promotional services, and to make uniform payments or provide uniform services per dollar or per unit of goods purchased during a specified period of time. In addition, if a seller has a reasonable basis for concluding that it derives greater effective promotional services from expenditures in certain media or by allowances to certain customers or customer classes relative to others, it may make larger payments for these media or to these customers or customer classes if in doing so the amount of effective promotional services supplied or acquired per dollar spent remains substantially equal across all customers or classes of customers. The seller should be prepared to show that it has not engaged in discrimination if it offers different services or allowances for promotions in different media or to different customers. That is, the seller must be prepared to show that such differences are justified by differences in the amount of effective promotional services being acquired or provided. The seller may base such a showing on predictive data such as marketing studies, or on other reliable evidence.

Evidence regarding whether the relevant market is competitive would help in determining whether the proportional equality requirement is satisfied. In particular, evidence that a seller lacks substantial market power usually demonstrates that the seller has not engaged in economic discrimination, unless coerced by a buyer with substantial market power. Similarly, if the buying side of a market is competitive, this usually demonstrates that the customer involved does not possess the substantial market power needed to coerce proportionally unequal services or allowances.

If different types or groups of customers are offered different services or facilities (or different combinations or levels thereof), a difference in participation rates across customer types or groups does not in itself imply that services or allowances are offered on proportionally unequal terms.

Example 1: A seller may offer to pay a specified part (say 50%) of the cost of local advertising up to an amount equal to a specified percentage (say 5%) of the dollar value of purchases during a specified period of time.

Example 2: A seller may place in reserve for each customer a specified amount of money for each unit purchased, and use it to reimburse these customers for the cost of advertising the seller's product.

Example 3: Reliable evidence available to a seller indicates that a three-inch advertisement in Magazine A will reach 5,000 readers while the same-sized advertisement in Magazine B will reach 2,500 readers. The seller can maintain proportional equality by offering to reimburse customers $5.00 for this advertisement in Magazine A reaching 5,000 readers and $2.50 for the advertisement in Magazine B reaching 2,500 readers.

Example 4: Reliable evidence available to a seller demonstrates that every dollar spent on promotional allowances for newspaper advertising reaches 500 people while every dollar spent on handbill advertising reaches 200 people. If the seller offers to pay 100% of the cost of customers' newspaper advertising, it can maintain proportional equality by offering to pay customers 40% of the cost of handbill advertising.

Example 5: Assume the same facts as in Example 4, except that the seller has reliable evidence demonstrating that persons reached by handbills are twice as likely to purchase the seller's product as those reached by newspapers. If the seller offers to pay 100% of the cost of newspaper advertising, it can maintain proportional equality by offering to pay 80% of the cost of handbills.

Example 6: Reliable evidence available to a seller demonstrates that every $10 spent on promotional services in a given medium for Buyer A yields $15 in additional sales revenue for the seller, that every $10 spent on promotional services in the same medium for Buyer B yields $10 in additional sales revenue for the seller, and that every $10 spent on promotional services in the same medium for Buyer C yields $7.50 in additional sales revenue for the seller. The seller can maintain proportional equality in payments for promotional services by making a percentage contribution to Buyer A that is one and one half times that made to Buyer B and twice that to Buyer C.

Example 7: Customer A offers a seller space for a display reaching 1,000 potential consumers and Customer B offers space for a comparable display reaching 500 potential consumers. The price charged by Customer B is one-half that charged by Customer A. The seller's acceptance of these two offers would comply with the proportional equality requirement.

Example 8: A seller offers each customer promotional allowances at the rate of one dollar for each unit of its product purchased during the period of the promotion over and above the quantity normally purchased during such period by that customer. The seller treats the additional purchase volume as the return on promotional activity by each customer, and bases his allowance for promotional services for each retailer on the quantity of the additional purchases. Thus, if Buyer A purchases an additional 100 units, Buyer B an additional 50 units, and Buyer C an additional 25 units, the seller maintains proportional equality by allowing $100 to Buyer A, $50 to Buyer B, and $25 to Buyer C.

I look forward to public comment on these two proposals, as well as on the other proposals the Commission has published for comments.

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[MM Docket No. 88-494, RM-6412]

Radio Broadcasting Services; Clarinda, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by G.O. Radio Ltd. proposing the substitution of Channel 291C2 for Channel 292A at Clarinda, Iowa, and the modification of its license for Station KQIS–FM to specify operation on the higher powered channel. Channel 291C2 can be allotted to Clarinda in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.3 kilometers (5.8 miles) east to avoid a short-spacing to unused but applied for Channel 290A at Omaha, Nebraska. The coordinates for this allotment are North Latitude 40–42–42 and West Longitude 94–55–55. Competing expressions of interest in use of the channel at Clarinda will not be considered. See § 1.420(g) of the Commission's Rules.

DATES: Comments must be filed on or before December 12, 1988, and reply comments on or before December 27, 1988.

ADDRESS: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Glenn Olson, President, G.O. Radio Ltd., Box 550, Webster City, Iowa 50595 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–494, adopted September 28, 1988, and released October 19, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-24689 Filed 10-25-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[Docket No. 88-493, RM-6431; RM-6445]

Radio Broadcasting Services; West Point and Blair, NE

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on two mutually exclusive petitions for rule making. Kelly Communications proposes the substitution of Channel 300C1 for Channel 300A at West Point, Nebraska, and the modification of its construction permit for Station KWPN–FM to specify the higher powered channel. LDH Communications, Inc. proposes the substitution of Channel 299A for Channel 292A at Blair, Nebraska, and the modification of its license for Station KBWH–FM to specify the new Class A channel. West Point and Blair are

located approximately 52 kilometers apart. However, the Commission's Rules stipulate that first adjacent Class A and C1 allotments be separated by 129 kilometers. Channel 300C1 can be allotted to West Point in compliance with the Commission's minimum distance separation requirements and can be used at the transmitter site specified in its construction permit. The coordinates for the West Point allotment are North Latitude 41–47–06 and West Longitude 96–40–39. Alternatively, Channel 299A can be allotted to Blair in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.6 kilometers (7.2 miles) southeast to avoid a short-spacing to Station KWPN–FM at West Point with the Class A facilities specified in its construction permit. The coordinates for the Blair allotment are North Latitude 41–29–27 and West Longitude 96–01–01.

DATES: Comments must be filed on or before December 12, 1988, and reply comments on or before December 27, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: B. Jay Baraff, Esq., Baraff, Koerner, Olender & Hochberg, P.C., 2033 M Street, NW., Suite 203, Washington, DC 20036 (Counsel to Kelly Communications) and David Honig, Esq., 6032 Ocean Pines, Berlin, Maryland 21811 (Counsel to LDH Communications).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–493, adopted September 28, 1988, and released October 19, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contracts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–24700 Filed 10–25–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–491, RM–6371]

Radio Broadcasting Services; Vacaville, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Quick Broadcasting, Inc., license of Station KUIC(FM), Channel 237A, Vacaville, California, seeking the substitution of Channel 237B1 for Channel 237A and modification of its license accordingly. Reference coordinates utilized for this proposal are 38–27–30 and 121–58–22.

DATES: Comments must be filed on or before December 12, 1988, and reply comments on or before December 27, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Roger J. Metzler, Esq., Farrand, Cooper, Metzler & Bruiniers, 701 Sutter Street, 7th Flr., San Francisco, CA 94109.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–491, adopted September 28, 1988, and released October 19, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–24701 Filed 10–25–88; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1152

[Ex Parte No. 274 (Sub-No. 20)]

Rail Abandonments; Availability of Property Tax Expense Under the Unit Method of Assessment

AGENCY: Interstate Commerce Commission.

ACTION: Extension of filing deadline.

SUMMARY: On October 13, 1988, the Board of Trade of the City of Chicago, IMC Fertilizer, Inc., the Georgia Public Service Commission and others requested a two-week extension of the October 17, 1988, deadline for filing comments on a proposal, served

September 15, 1988 (53 FR 36061, Sept. 16, 1988), to change the way property taxes are treated in abandonment proceedings. The extension is granted; the deadline for filing public comments is extended until October 31, 1988.

DATES: The new deadline for filing public comments is October 31, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. [TDD for hearing impaired: (202) 275–1721]

Decided: October 19, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–24556 Filed 10–25–88; 8:45 am]

BILLING CODE 7035–01–M

Notices

Federal Register
Vol. 53, No. 207
Wednesday, October 26, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Administration; Public Meeting

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of a meeting of the Committee on Administration of the Administrative Conference of the United States. The Committee has scheduled this meeting to consider the draft report by Philip Harter, and proposed recommendations, on protecting the confidentiality of settlement communications with mediators, and related business.

Date: Wednesday, November 9, 1988, 1:30 p.m.

Location: 2120 L Street NW., Suite 500, Washington, DC 20037.

Public Participation: Committee meetings are open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to the meeting. The committee chairman may permit members of the public to present oral statements at the meetings. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

FOR FURTHER INFORMATION CONTACT: Charles Pou, Jr., Office of the Chairman, Administrative Conference of the United States, 2120 L Street NW., Suite 500 (202) 254-7020.

Jeffrey S. Lubbers,
Research Director.
October 21, 1988.

[FR Doc. 88-24820 Filed 10-25-88; 8:45 am]
BILLING CODE [illegible]

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Agricultural Biotechnology Research Advisory Committee; Guidelines Working Group; Meeting

In accordance with the Federal Advisory Committee Act of October 1972 (Pub. L. 92–463, 86 Stat. 770–776), the U.S. Department of Agricultural (USDA), Science and Education, announces the following meeting of a working group of the Agriculture Biotechnology Research Advisory Committee (ABRAC).

The Guidelines Working Group will meet at the U.S. Department of Agriculture in Room 3109, South Building, 14th Street and Independence Avenue SW., Washington, DC 20250 on December 2, 1988 from 9:00 a.m. to approximately 5:00 p.m. to discuss guidelines for agricultural biotechnology research.

This meeting is open to the public. Persons may participate in the meeting as time and space permit. The public may file written comments before or after the meeting with the contact person below.

Further information may be obtained from Dr. Alvin L. Young, Executive Secretary, Agricultural Biotechnology Research Advisory Committee, U.S. Department of Agriculture, Office of Agricultural Biotechnology, Room 321–A, Administration Building, 14th and Independence Avenue SW., Washington, DC 20250. Telephone (202) 447-9151.

Date: October 18, 1988.

Orville G. Bentley,
Assistant Secretary, Science and Education.

[FR Doc. 88-24720 Filed 10-25-88; 8:45 am]
BILLING CODE 3410-22-M

Forest Service

Management Plan for the White Salmon National Scenic River, WA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare a environmental impact statement (EIS) and management plan for the lower White Salmon River, Klickitat County, Washington, designated a National Scenic River by the Columbia River Gorge National Scenic Area Act. The agency invites written comments and suggestions on the management of this river and the scope of this analysis. In addition, the agency gives notice of the full environmental analysis and decision-making process that will occur on this plan so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the management of this river should be received by December 9, 1988.

ADDRESS: Submit written comments and suggestions concerning the management of this river to Arthur W. DuFault, Manager, Columbia River Gorge National Scenic Area, 902 Wasco Avenue, Hood River, Oregon 97031.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and EIS to Stephen Mellor, Project Manager, Columbia River Gorge National Scenic Area, 902 Wasco Avenue, Hood River, Oregon 97031, telephone (503) 386–2333.

SUPPLEMENTARY INFORMATION: The Columbia River Gorge National Scenic Area Act (Pub. L. 99–663, Nov. 17, 1986), designated a segment of the White Salmon River into the National Wild and Scenic River System. The EIS and management plan will address this river segment, as described in Pub. L. 99–663.

White Salmon, Washington: The segment from its confluence with Gilmer Creek, Washington, near the town of B Z Corner, Washington, to its confluence with Buck Creek, Washington; to be classified as a scenic river and to be administered by the Secretary of Agriculture.

James F. Torrence, Regional Forester, Pacific Northwest Region, Portland, Oregon, is the responsible official.

Public participation will be especially important at several points during the management plan process. The first point is the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State and local agencies, the Yakima Indian Nation, individuals and organizations who may be interested in or affected by the proposed action. This input will be used in the preparation of the draft EIS. In addition, the Forest Service is seeking comments on the boundary lines for the designated segment.

A series of informational workshops will be held during November, 1988, to inform the public of the planning process and to provide for public participation and involvement. Federal, State, and local agencies as well as the Yakima Indian Nation, user groups, and other organizations who may be interested in the plan will be invited to participate in scoping the issues that should be considered. In addition, a newsletter and response form is available from the Columbia River Gorge National Scenic Area for those that are unable to attend a workshop.

The Draft EIS and Management Plan are expected to be filed with the Environmental protection Agency (EPA), and available for public review by October 1989. At that time EPA will publish a notice of availability in the **Federal Register.**

The comment period on the Draft EIS and Management Plan will be 90 days from the date of the EPA notice of availability appears in the **Federal Register.** It is very important that those interested in the management plan participate at this time. To be most helpful, comments should be as specific as possible and may address the adequacy of the statement and plan and the merits of the alternatives discussed. In addition, Federal court decisions have established that reviewers of Draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions, *Vermont Yankee Nuclear Power Corp. v. NRDC,* 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS, *Wisconsin Heritage, Inc. v. Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

After the comment period ends on the Draft EIS, comments will be analyzed and considered by the Forest Service in preparing the Final EIS and Management Plan. In the final, the Forest Service is required to respond to comments received (40 CFR 1503.4). The Final EIS is scheduled to be completed by the end of the fiscal year, 1990. The responsible official will consider the comments, responses, and consequences discussed in the EIS, applicable laws, regulations, and policies in making a decision regarding the management of the river. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR 211.18.

Date: October 20, 1988.

James. F. Torrence,
Regional Forester.

[FR Doc. 88-24710 Filed 10-25-88; 8:45 am]
BILLING CODE 3410-11-M

Delegation of Authority To Issue and Terminate Certain Easements; Forest Supervisors, Northern Region

AGENCY: Forest Service, USDA.

ACTION: Notice; delegation of authority.

SUMMARY: The Regional Forester of the Northern Forest Service Region has delegated authority to all Forest Supervisors within the Region to issue and terminate, subject to the grantee's consent, easements to public road agencies, road cost-share cooperators and other qualifying landowners for the construction and use of roads under authority of the Forest Road and Trail Act of October 13, 1964 (78 Stat. 1089; 16 U.S.C. 532–38).

Similarly, authority has been delegated to certain Forest Supervisors within the Region to issue easements, reservations and stipulations for the construction and use of roads under authority of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2743; 43 U.S.C. 1761–71). This delegation also includes authority to terminate easements with the grantee's consent.

These delegations have been issued in a Regional supplement to Forest Service Manual, Chapter 2730—Road and Trail Rights-of-Way Grants.

EFFECTIVE DATE: This delegation became effective on October 14, 1988.

FOR FURTHER INFORMATION CONTACT: Oran Barr, (406) 329–3600.

John M. Hughes,
Deputy Regional Forester.

Date: October 14, 1988.

[FR Doc. 88-24723 Filed 10-25-88; 8:45 am]
BILLING CODE [illegible]

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Case No. OEE-1-88]

Order Renewing Temporary Denial of Export Privileges; Wilfried Lange

In the Matter of: Wilfried Lange, individually and doing business as Purchasing Pool Co., AM Steig 3.8913 Schondorf, Federal Republic of Germany, Respondents.

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), pursuant to the provisions of § 788.19 of the Export Administration Regulations, 15 CFR Parts 768–799 (the Regulations),[1] issued pursuant to the Export Administration Act of 1979, 50 U.S.C. app. 2401–2420 (1982 and Supp. III 1985), as amended by Pub. L. 100–418, 102 Stat. 1107 (August 23, 1988) (the Act), has asked the Assistant Secretary for Export Enforcement[2] to renew an order temporarily denying all United States export privileges to Wilfried Lange, individually and doing business as Purchasing Pool Company (hereinafter collectively referred to as respondents). The initial order was issued on April 20, 1988 (53 FR 15253, April 28, 1988). It was renewed effective June 20, 1988 (53 FR 23294, June 21, 1988), and was renewed again on August 19, 1988 (53 FR 32639, August 26, 1988).

In its renewal request of September 28, 1988, the Department states that, as a result of an ongoing investigation, it continues to have reason to believe that, on numerous occasions since the end of 1985, respondents have reexported, without the required reexport authorizations from the Department, U.S.-origin computers which are controlled for reasons of national security from West Germany to Austria, Yugoslavia and Hungary. The Department is presently trying to obtain documents that will further substantiate its belief.

The Department also believes that, in connection with its investigation into respondents' trade-related activities, respondents have provided the

[1] Effective October 1, 1988, the Export Administration Regulations were redesignated as 15 CFR Parts 768–799 (53 FR 37751, September 28, 1988). The transfer merely changed the first number of each Part from "3" to "7". Until such time as the Code of Federal Regulations is republished, the Regulations may be found in 15 CFR Parts 368–399 (1988).

[2] In accordance with Department Organization Order 50–1, dated March 23, 1988, the Assistant Secretary for Export Enforcement is now the Department official who issues temporary denial orders.

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Department with false and misleading information. Specifically, based on additional documentation the Department has obtained since it made its initial request, the Department has reason to believe that respondents have provided it with false invoices in an effort to hide the fact that they have reexported certain controlled U.S.-origin commodities from West Germany without the required reexport authorizations.

The Department further states that its investigation continues to give it reason to believe that a contract for two U.S.-origin computers which are controlled for reasons of national security presently exists between respondents and a Czechoslovakian foreign trading firm, that respondents intend to fulfill the contract in question and that they are likely to do so without complying with the Regulations.

The Department states that, viewed as a whole, the above-described events concerning respondents' past activities demonstrate that respondents are involved in a scheme to obtain controlled U.S.-origin commodities, lawfully or otherwise, take prossession of them in West Germany and then reexport them, oftentimes to proscribed destinations, without obtaining the required reexport authorizations. Accordingly, the Department believes that respondents' activities show a pattern of disregard for the Act and the Regulations.

The Department continues to believe that respondent's past activities establish that the violations of the Act and the Regulations which they are suspected of having committed and which the Department is presently investigating were deliberate and covert and are likely to occur again unless appropriate action is taken to reduce the likelihood that respondents can continue to acquire U.S.-origin goods either inside or outside of the United States.

Furthermore, the Department continues to believe that, in order to reduce the likelihood that respondents will continue to engage in activities which are in violation of the Act and the Regulations, a temporary denial order naming Wilfried Lange and Purchasing Pool Company is necessary to give notice to companies in the United States and abroad that they should cease dealing with these parties in transactions involving U.S.-origin goods.

Therefore, based on the showing made by the Department in its request for renewal, which respondents have not opposed, I find that an order temporarily denying export privileges to the respondents is necessary in the public interest to prevent an imminent violation of the Act and the Regulations and to give notice to companies in the United States and abroad to cease dealing with the respondents in goods and technical data subject to the Act and the Regulations in order to reduce the substantial likelihood that respondents will continue to engage in activities which are in violation of the Act and the Regulations.

Accordingly, it is hereby ordered:

I. all outstanding validated export licenses in which either respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of respondents' privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Respondents Wilfried Lange and Purchasing Pool Company, both with an address at AM Steig 3, 8913 Schondorf, West Germany,[1] their successors or assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported or to be exported from the United States, in whole or in part, or that are otherwise subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of a party to any export license application submitted to the Department, (b) in preparing or filing with the Department any export license application or reexport authorization, or any document to be submitted therewith, (c) in obtaining or using any validated or general export license or other export control document, (d) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported, and (e) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which either respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

IV. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with either respondent or any related party, or whereby either respondent or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity and technical data exported in whole or in part, or to be exported by, to, or for either respondent or any related party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity and technical data exported or to be exported from the United States.

V. In accordance with the provisions of § 788.19(e) of the Regulations, either respondent may, at any time, appeal this temporary denial order by filing with the Office of Administrative Law Judges, U.S. Department of Commerce, Room H-6716, 14th Street and Constitution Avenue NW., Washington, DC 20230, a full written statement in support of the appeal.

VI. This order shall remain in effect for 60 days.

VII. In accordance with the provisions of § 788.19(d) of the Regulations, the Department may seek renewal of this temporary denial order by filing a written request not later than 20 days before the expiration date. Either respondent may oppose a request to renew this temporary denial order by filing a written submission with the Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of this order.

A copy of this order shall be served on each respondent and this order shall be published in the **Federal Register**.

Effective Date: October 18, 1988.

Lee N. Mercer,

Deputy Under Secretary for the Bureau of Export Administration.

[FR Doc. 88-24687 Filed 10-25-88; 8:45 am]

BILLING CODE 3510-DT-M

[1] On previous temporary denial orders in this matter, the address of Lange and Purchasing Pool Company has been listed as Grasslfinger Str. 61, 8038 Grobenzell, West Germany.

The Department believes that Lange is no longer at that address. The Department has recently obtained this new address.

International Trade Administration

[A-427-058]

Anhydrous Sodium Metasilicate From France; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On August 23, 1988, the Department of Commerce published the preliminary results of its antidumping duty administrative review on anhydrous sodium metasilicate from France. The review covers one exporter of this merchandise to the United States and the period January 1, 1987 through December 31, 1987.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of review are unchanged from those presented in the preliminary results.

EFFECTIVE DATE: October 26, 1988.

FOR FURTHER INFORMATION CONTACT: Marquita Steadman or Phyllis Derrick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-2923.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 32089) the preliminary results of its administrative review of the antidumping duty order on anhydrous sodium metasilicate from France (46 FR 1667, January 7, 1981). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Tariff Act").

Scope of Review

Imports covered by this review are shipments of anhydrous sodium metasilicate, a crystalline silicate (Na_2SiO_3) which is alkaline and readily soluble in water. Applications include waste paper de-inking, ore-flotation, beach stabilization, clay processing, medium or heavy duty cleaning, and compounding into other detergent formulations. Anhydrous sodium metasilicate is currently classifiable under item number 421.3400 of the *Tariff Schedules of the United States Annotated* (TSUSA) and item numbers 2839.11.00 and 2839.19.00 of the *Harmonized Tariff Schedule* (HTS). As with the TSUSA, the HTS item numbers are provided for convenience and Customs purposes. The written description of the products under investigation remains dispositive.

The review covers one exporter of French anhydrous sodium metasilicate to the United States, Rhone Poulenc, and the period January 1, 1987 through December 31, 1987.

Final Results of the Review

We invited interested parties to comment on the preliminary results. We received no comments. Based on our analysis, the final results of review are the same as those presented in the preliminary results of review and we determine that a dumping margin of 60.00 percent exists for Rhone Poulenc for the period January 1, 1987 through December 31, 1987.

The Department will instruct the Customs Service to assess antidumping duties at that rate on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, the Department will require a cash deposit of estimated antidumping duties of 60.00 percent for Rhone Poulenc. For any future shipments from the remaining known exporters not covered in this review, a cash deposit of 60.00 percent shall be required as published in the final results of the last administrative review (53 FR 9785, March 25, 1988).

For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after December 31, 1987 and who is unrelated to any reviewed firm, or to any previously reviewed firm, a cash deposit of 60.00 percent shall be required. These deposit requirements are effective for all shipments of French anhydrous sodium metasilicate entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and will remain in effect until the final results of the next administrative review.

This administrative review, and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and section 353.53a of the Commerce Regulations (19 CFR 353.53a).

Jan W. Mares,

Assistant Secretary for Import Administration.

Date: October 19, 1988.

[FR Doc. 88-24788 Filed 10-25-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-814]

Ferrite Cores (of the Type Used in Consumer Electronic Products) From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by one respondent, the Department of Commerce has conducted an administrative review of the antidumping finding on ferrite cores (of the type used in consumer electronic products) from Japan. The review covers one manufacturer/exporter of this merchandise to the United States and the period March 1, 1987 through February 29, 1988. The review indicates the existence of dumping margins for the firm during the period.

Since the firm did not respond to the Department's questionnaire, we used the best information available, which was the margin from the original fair value investigation.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: October 26, 1988.

FOR FURTHER INFORMATION CONTACT: Barbara Victor or Laurie A. Lucksinger, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5222/5255.

SUPPLEMENTARY INFORMATION:

Background

On July 18, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 26714) the final results of its last administrative review of the antidumping finding on ferrite cores (of

the types used in consumer electronic products) from Japan (36 FR 4677, March 13, 1971). One respondent requested in accordance with section 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published the notice of initiation on April 27, 1988 (53 FR 15084). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the U.S. Tariff schedules will be fully converted to this Harmonized Tariff System ("HTS"). Until that time, the Department will be providing both the appropriate *Tariff Schedules of the United States Annotated* ("TSUSA") item number(s) and the appropriate HTS item number(s) with its product descriptions. As with the TSUSA, the HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HTS item number(s) as well as the TSUSA item number(s) in all petitions filed with the Department. A reference copy of the Harmonized Tariff Schedule is available for consultation in Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are magnetically soft ferrite magnets which are usually wound with wire. The merchandise is magnetized with the induction of electric current and is of the type commonly used as components in consumer electronic products such as household television receivers, projection television sets, radios, stereos and high fidelity radio systems, automobile radios, electronic home computers, etc. Ferrite cores are currently classifiable under item 535.1240 of the TSUSA. This product is currently classifiable under HTS item number 8504.90.00.

The review covers one manufacturer/exporter of Japanese ferrite cores (of the type used in consumer electronic products) to the United States and the period March 1, 1987 through February 29, 1988. Since the firm failed to respond to the Department's antidumping questionnaire, we used the best information available for appraisement and cash deposit purposes for the firm, which is the margin from the fair value investigation.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margin exists for the period March 1, 1987 through February 29, 1988:

Manufacturer/exporter	Margin (percent)
Tokyo Yuden Co., Ltd.	28

Interested parties may request disclosure and/or an administrative protective order within 5 days after the date of publication of this notice and may request a hearing within 8 days of publication. Any hearing, if requested will be held 35 days after the date of publication or the first workday thereafter. Prehearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed no later than 32 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement intructions directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margin shall be required for all shipments of Japanese ferrite cores (of the type used in consumer electronic products) by this firm. For any shipments of this merchandise from the remaining known manufacturers and/or exporters not covered in this review, the cash deposit will continue to be at the rate published in the final results of the last administrative review for those firms.

For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after February 29, 1988 and who is unrelated to the reviewed firm, a cash deposit of 1.08 percent shall be required. This cash deposit rate is based on the highest rate found in the last review for a manufacturer with shipments (52 28714).

These cash deposit requirements are effective for all shipments of Japanese ferrite cores (of the type used in consumer electronic products) entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and section 353.53a of the Commerce Regulations (19 CFR 353.53a).

Jan W. Mares,

Assistant Secretary for Import Administration.

Date: October 19, 1988.

[FR Doc. 88-24769 Filed 10-25-88; 8:45 am]

BILLING CODE 3510-DS-M

[Application No. 88-00011]

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Issuance of an Export Trade Certificate of Review.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to Abdullah Diversified Marketing, Inc. This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: Thomas H. Stillman, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97-290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

Export management services, including but not limited to consulting, international market research, advertising, marketing, insurance, product research and design, legal assistance, transportation, including trade documentation and freight forwarding, communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, financing, and taking title to goods, as they relate to the export of all products and services.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

To engage in Export Trade in the Export Markets, ADMI is certified to:

1. Provide export management services to producers in the United States on a nonexclusive and individual basis.

2. Develop and help implement in-house export procedures for producers in the United States on a nonexclusive and individual basis.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Date: October 20, 1988.

Thomas H. Stillman,

Director, Office of Export Trading Company Affairs.

[FR Doc. 88-24741 Filed 10-25-88; 8:45 am]

BILLING CODE 3510-DR-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of issuance of an Export Trade Certificate of Review, Application #88-00013.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to the CISA Export Trade Group, Inc. (CISA ETG). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: Thomas H. Stillman, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97-290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementig Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

Products

Metalcasting equipment and supplies (including consumable supplies), construction machinery, agricultural equipment, fabricated metal products, instruments, and electrical goods.

Related Services

Metalcasting services; engineering, construction, architectural and surveying services related to Products and to turnkey contracts that substantially incorporate Products, including, but not limited to, the construction of foundaries and other industrial plants; servicing and testing of Products; and training with respect to Products, including, but not limited to, their use and servicing.

Export Trade Facilitation Services (as They Relate to the Export of Products and Related Services

Consulting; international market research; marketing and trade promotion; trade show participation; insurance; services related to compliance with customs requirements; transportation; trade documentation and freight forwarding; communication and processing of export orders and sales leads; warehousing; foreign exchange; financing; and liaison with U.S. and foreign government agencies, trade associations, and banking institutions.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Members (in addition to Applicant)

Applied Industrial Materials Corporation of Mundelein, IL, and its controlling entity Aimcor Holdings, Inc. of Mundelein, IL; Asbury Cargons, Inc. of Asbury, NJ; Beardsley & Piper Division of Chicago, IL, and its controlling entity Pettibone Corporation of Des Plaines, IL; Carrier Vibrating Equipment, Inc. of Louisville, KY; C-E Cast Equipment of Cleveland, OH, and its controlling entity Combustion Engineering, Inc. of Stamford, CT; The Centrifugal Casting Machine Company of Tulsa, OK; Dependable Foundry Equipment Co., Inc./Redford-Carver Foundry Products of Sherwood, OR, and its controlling entity Tromley Industrial Holdings, Inc. of Portland, OR; General Kinematics Corporation of Barrigton, IL; George Fischer Foundry Systems, Inc. of Holly, MI, and its controlling entity Georg Fischer, Ltd. of Switzerland; Georgia-Pacific Resins, Inc. of Newark, OH, and its controlling entity Georgia-Pacific Corporation of Atlanta, GA; Graphite Sales, Inc. of Chagrin Falls, OH; The Herman Corporation of Zelienople, PA; Hunter Automated Machinery Corporation of Schaumburg, IL; Lester B. Knight & Associates, Inc. of Chicago, IL; Metaullics Systems Division, Standard Oil Engineered Materials Company of Solon, OH, and its controlling entities BP America of Cleveland, OH, and The British Petroleum Company p.l.c. of London, UK; Roberts Corporation of Lansing, MI, and its controlling entity Cross & Trecker Corporation of Bloomfield Hills, MI; Superior Graphite Company of Chicago, IL; Wedron Silica Company of Wedron, IL; The Wheelabrator Corporation of Peachtree City, GA, and its controlling entity Wheelabrator Technologies, Inc. of Danvers, MA; and Whiting Corporation of Harvey, IL.

Export Trade Activities and Methods of Operation

1. CISA ETG on behalf of its Members may:

a. Act as a clearinghouse in receiving sales leads and orders for Products and

Related Services that may be required by the metalcasting industry in the Export Markets;

b. Aid in the preparation of bids and contracts in the Export Markets, including making arrangements for barter trade;

c. Assist member companies in setting up joint bids for export projects by making distribution to member companies of bid requirements, bidding dates, and purchase specifications as received from Export Markets; and

d. Provide its Members or other Suppliers the benefit of any Export Trade Facilitation Service to facilitate the export of Products and Related Services to Export Market. This may be accomplished by CISA ETG itself, or by agreement with its Members or other parties.

2. CISA ETG and/or its Members may:

a. Engage in joint bidding or other joint selling arrangements, icluding barter arrangements, for Products and Related Services in Export Markets and allocate sales resulting from such arrangements;

b. Establish export prices for sales of Products and Related Services by the Members in Export Markets, with each Member being free to deviate from such prices by whatever amount it sees fit;

c. Discuss and reach agreements relating to standardization of Products and Related Services for Export Markets;

d. Refuse to quote prices for, or to market or sell in, Export Markets with respect to Products and Related Services;

e. Solicit non-member Suppliers to sell their Products and Related Services or offer their Export Trade Facilitation Services through the certified activities of CISA ETG and/or its Members;

f. Coordinate with respect to the installation and servicing of Products in Export Markets, including the establishment of joint warranty, service, and training centers in such markets;

g. Engage in joint promotional activities, such as advertising and trade shows, aimed at developing existing or new Export Markets; and

h. Bring together from time to time groups of Members to plan and discuss how to fulfill the technical Product and Related Service requirements of special export customers or Export Markets.

3. CISA ETG and one or more of its Members may meet to exchange and discuss the following types of information:

a. Information about sales and marketing efforts for Export Markets, activities and opportunities for sales of Products and Related Services in the Export Markets, selling strategies for Export Markets, pricing in Export Markets, projected demands in Export Markets, customary terms of sale in Export Markets, prices and availability of Products and Related Services from competitors for sales in Export Markets, and specifications for Products and Related Services by customers in Export Markets;

b. Information about the export prices, terms, quality, quantity, source, and delivery dates of Products and Related Services available from Members for export or from non-members for use in barter transactions;

c. Information about terms and conditions of contracts for sales (including barter transactions) in Export Markets to be considered and/or bid on by CISA ETG and its Members;

d. Information about joint bidding, selling, or servicing arrangements for Export Markets and allocation of sales resulting from such arrangements among the Members;

e. Information about expenses specific to exporting to and within Export Markets, including without limitation, transportation, intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing, customs, duties, and taxes;

f. Information about U.S. and foreign legislation and regulations affecting sales in Export Markets; and

g. Information about CISA ETG's or its Members' export operations, including without limitation, sales and distribution networks established by CISA ETG or its Members in Export Markets, and prior export sales by Members (including export price information).

4. CISA ETG and/or its Members may enter into agreements wherein CISA ETG and/or one or more Members agree to act in certain countries or markets as the Members exclusive or non-exclusive Export Intermediary for Products or Related Services in that country or market. In such agreements, (i) CISA ETG or the Member(s) acting as an exclusive Export Intermediary may agree not to represent any other Supplier for sale in the relevant country or market, and (ii) Members may agree that they will export for sale in the relevant country or market only through CISA ETG or the Member(s) acting as exclusive Export Intermediary, and that they will not export independently to the relevant country or market, either directly or through any other Export Intermediary. CISA ETG, when acting as an Export Intermediary, will make its services available to any Member on non-discriminatory terms.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Date: October 20, 1988.

Thomas H. Stillman,

Director, Office of Export Trading Company Affairs.

[FR Doc. 88-24707 Filed 10-25-88; 8:45 am]

BILLING CODE 3510-DR-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of termination of revocation proceedings for Export Trade Certificate of Review No. 84-00011.

SUMMARY: The Department of Commerce issued an export trade certificate of review of Watsand International Limited (Watsand). The certificate holder failed to file a timely annual report as required by law and the Department initiated revocation proceedings. Watsand filed an annual report prior to the effective date of revocation. The Department has accepted the annual report and terminated the proceedings to revoke the certificate.

FOR FURTHER INFORMATION CONTACT: Thomas H. Stillman, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97-290) authorizes the Secretary of Commerce to issue export trade certificates or review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985). Pursuant to the authority of the Act, a certificate of review was issued to Watsand on May 25, 1984 (49 FR 22847, June 1, 1984).

A certificate holder is required by law (15 USC 4018, 15 CFR 325.14(a)) to submit to the Department of Commerce annual reports relating to activities covered by its certificate. Failure to submit a complete annual report may be the basis for revocation (15 CFR 325.14(c)).

Watsand failed to submit its annual report within the time required by applicable regulations (15 CFR 325.14(b)). As a result, the Department initiated proceedings to revoke Watsand's certificate (53 FR 36086, September 16, 1988).

Prior to the effective date of the revocation the Department received an annual report from Watsand. The Department has determined that the annual report is acceptable and has terminated the revocation proceedings. Accordingly, the certificate of review issued to Watsand remains in full force and effect.

Date: October 19, 1988.

Thomas H. Stillman,

Director, Office of Export Trading Company Affairs.

[FR Doc. 88-24706 Filed 10-25-88; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit; NMFS, Southwest Fisheries Center (P77 #32)

Notice is hereby given that the Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. *Applicant:* NMFS, Southwest Fisheries Center, P.O. Box 271, La Jolla, California 92038-0271.

2. *Type of Permit:* Scientific Research.

3. *Name and Number of Marine Mammals:* An unspecified number of the following marine mammals will be taken in addition to other species not listed as endangered:

Spotted dolphin (*Stenella attenuata*)
Spinner dolphin (*Stenella longirostris*)
Common dolphin (*Delphinus delphis*)
Striped dolphin (*Stenella coeruleoalba*)
Bottlenose dolphin (*Tursiops sp.*)
Rough-toothed dolphin (*Steno bredanensis*)
Fraser's dolphin (*Lagenodelphis hosei*)
Pygmy killer whale (*Feresa attenuata*)
Melon-headed whale (Peponocephala electra)
Risso's dolphin (*Grampus griseus*)

4. *Type of Take:* To collect specimen materials from the above animals taken incidentally to tuna purse-seine fishing.

5. *Location of Activity:* Eastern Tropical Pacific Ocean.

6. *Period of Activity:* 5 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Highway, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring Maryland 20910; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Date: October 19, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88-24777 Filed 10-25-88; 8:45 am]

BILLING CODE 3510-22-M

COMMISSION ON EXECUTIVE, LEGISLATIVE AND JUDICIAL SALARIES

Meeting

Notice is hereby given, pursuant to Pub. L. 92-463, that the Commission on Executive, Legislative and Judicial Salaries will hold an open public hearing on November 10 and 11, 1988 from 9:30 a.m. to 4:30 p.m. The meeting on the 10th will be held in room 385 of the Russell Senate Office Building at Delaware and Constitution Avenue NW., Washington, DC. The meeting on the 11th will be held in Hearing Room A, at the Interstate Commerce Commission Building, 12th and Constitution Avenue NW., Washington, DC.

The purpose of the meeting is to hear testimony from current and former representatives of the three branches of government to elicit their comments and gather necessary information relevant to the mission of the Commission. Testimony on the 10th will be primarily limited to issues surrounding the Executive and Congressional branches. Testimony on the 11th will focus on the Judicial branch.

For further information, please contact the Commission's office, 736 Jackson Place NW., Washington, DC 20415, Telephone 275-8031.

Polly L. Gault,

Executive Director.

[FR Doc. 88-24948 Filed 10-25-88; 12:31 pm]

BILLING CODE 6325-01

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Charges for Certain Cotton Textile Products in Category 369-S Exported From Pakistan

October 21, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting import charges and re-opening a limit.

EFFECTIVE DATE: October 28, 1988.

Authority: Executive Order 1651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6496. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Transshipment charges amounting to 185,510 pounds and overshipment charges amounting to 284,611 pounds were made to the current limit for Category 369-S (shop towels). The Governments of the United States and Pakistan agreed that the sum of these charges (470,121 pounds) will be charged to the limits established for Category 369-S over a four-year period, beginning in 1988. Transshipments and overshipments to remain charged against the 1988 agreement year amount to 117,531 pounds. The remainder of the transshipment and overshipment charges will be charged in equal amounts of 117,530 pounds to the limits established for Category 369-S from 1989 through 1991. Consequently, 352,590 pounds are being deducted from the current charges for Category 369-S, re-opening the limit.

A description of the textile and apparel categories in terms of T.S.U.S.A. numbers is available in the

CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see Federal Register notice 52 FR 47745, published on December 16, 1987). Also see 53 FR 51, published on January 4, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 21, 1988.

Commissioner of Customs,

Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: To facilitate implementation of the Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated May 20, 1987 and June 11, 1987, as amended, between the Governments of the United States and Pakistan, I request that effective on October 28, 1988, you deduct 352,590 pounds from the charges made to the limit established in the directive of December 30, 1987 for Category 369–S [1] for the twelve-month period which began on January 1, 1988 and extends through December 31, 1988.

This letter will be published in the Federal Register.

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-24739 Filed 10-25-88; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Supplemental Application for Employment with the Department of Defense Dependents Schools; SD Form 778; and OMB Control Number 0704–0352.

Type of Request: Reinstatement.

Average Burden Hours/Minutes Per Response: 30 minutes.

Frequency of Response: On Occasion.

Number of Respondents: 5,900.

Annual Burden Hours: 2,750

Annual Responses: 5,500.

Needs and uses: Information collection provides brief personal, professional, and academic data for use in screening prospective teachers/educators for employment with the Department Dependents Schools (DoDDS).

Affected Public: Individuals or households.

Respondent's Obligation: Required to obtain or retain a benefit; Mandatory.

OMB Desk Officer: Dr. J. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone (202) 746–0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 21, 1988.

[FR Doc. 88-24714 Filed 10-25-88; 8:45 am]

BILLING CODE 3810-01-M

[1] In Category 369-S, only TSUSA number 366.2940.

Office of the Secretary

Defense Intelligence Agency Advisory Board; Meeting

AGENCY: Defense Intelligence Agency Advisory Board, DoD.

ACTION: Notice of closed Meeting.

SUMMARY: Pursuant to the provisions of Subsection (d) of section 10 of Pub. L. 92–463, as amended by section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of a panel of the DIA Advisory Board has been scheduled as follows:

DATE: 4–14 December 1988, 9:00 a.m. to 5:00 p.m. each day.

ADDRESS:

Yokota Japan (4–7 December 1988)
Seoul Korea (7–11 December 1988)
Honolulu Hawaii (11–14 December 1988)

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John E. Hatlelied, USAF, Executive Secretary, DIA Advisory Board, Washington, DC 20340–1328 (202/373–4030).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on HUMINT/Scientific and Technical Intelligence Interface.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 88-24715 Filed 10-25-88; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Floodplain Involvement Notification, Expansion of the Live Firing Range, Sandia Canyon, Los Alamos National Laboratory, NM

AGENCY: U.S. Department of Energy.

ACTION: Floodplain Involvement Notification.

SUMMARY: The Department of Energy (DOE) proposes to expand the existing Live Firing Range located in Sandia Canyon at Los Alamos National Laboratory. Pursuant to the regulations of 10 CFR Part 1022, DOE's "Compliance with Floodplains/Wetlands Environmental Review Requirements", the DOE has determined this action would involve activities within a floodplain area; therefore, the following notice is submitted for public review and comments.

The Project is an expansion to an existing 20-year old firing range within Sandia Canyon. The expansion of the present firing range will be a naturally landscaped firing course within the canyon bottom and in the floodplain of Sandia Canyon. Buildings and firing course will be upgraded within the present range. Structures within the expansion area will be built to avoid stream channels and frequently flooded areas, with the exception of a few spent ammunition backstops. The project will not necessitate removal of vegetation within the locations designated as floodplain.

The proposed construction project is isolated from other laboratory facilities and will not affect lives or property. The construction will not affect the natural or beneficial value of this floodplain.

Maps and further information are available from DOE's Albuquerque Operations Office at the address provided below.

DATE: Any comments or suggestions are due November 10, 1988.

ADDRESS: All correspondence should refer to the project by title. Address comments or requests to: John C. Themelis, Director, Environment and Health Division, Albuquerque Operations Office, U.S. Department of Energy, P.O. Box 5400, Albuquerque, New Mexico 87115, (505) 845–4651.

FOR FURTHER INFORMATION CONTACT: Harold E. Valencia, Area Manager, Los Alamos Area Office, U.S. Department of Energy, Los Alamos, New Mexico 87544, (505) 667–5105.

Issued at Washington, DC, this 13th day of October

W.I. Barker,

Acting Assistant Secretary for Defense Programs.

[FR Doc. 88-24779 Filed 10-25-88; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Final Consent Order with Kaiser International Corp.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Final Action or Proposed Consent Order.

SUMMARY: The Department of Energy (DOE) hereby gives the notice required by 10 CFR 205.199J that it has adopted as final the Consent Order with Kaiser International Corp. ("Kaiser"), successor in interest the Kaiser Aluminum International Corp., excuted on September 2, 1988 and published for comment in 53 FR 35107 on September 9, 1988.

As required by 10 CFR 205.199J, DOE provided a period of thirty days following publication of the Notice of Proposed Consent Order for the submission of comments. The ERA received no comments in response to this Notice. Accordingly, ERA has determined that the Consent Order should be made final without modification. The Consent Order becomes effective as a Final Order of the DOE on the date of publication of this Notice.

FOR FURTHER INFORMATION CONTACT: Dorothy Hamid, Office of Enforcement Litigation, Economic Regulatory Administration, U.S. Department of Energy, Room 3H–017, RG–32, 1000 Independence Avenue SW., Washington, DC 20585. (202) 586–4387.

Copies of the Consent Order may be obtained free of charge by written request to "Kaiser Consent Order Request" at the above address or by calling Dorothy Hamid at the above telephone number. Copies may also be obtained in person at the same address or at the Freedom of Information Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: On September 9, 1988, DOE published notice in the Federal Register, Vol. 53 at page 35107, announcing the execution of a Proposed Consent Order between Kaiser and DOE. In compliance with the DOE regulations, that Notice, and a Press Release issued on September 9, 1988, summarized the proposed Consent Order and the relevant facts.

In a Proposed Remedial Order ("PRO") issued to Kaiser Aluminum International Corp. on May 3, 1983, the Economic Regulatory Administration (ERA) charged that, during the period May, 1979, through December, 1980, the firm violated, *inter alia*, the anti-layering regulation at 10 CFR 212.186 by charging prices in excess of the acquisition cost without providing any service or function traditionally and historically associated with the resale of crude oil. The PRO was upheld in a Remedial Order issued by DOE's Office of Hearing and Appeals on November 16, 1986, requiring Kaiser to make restitution to DOE of $2.40 million plus interest. Kaiser's appeal of the Remedial Order is pending before the Federal Energy Regulatory Commission.

The Consent Order resolves these matters and all other civil and administrative claims or causes of action regarding Kaiser's compliance with and obligations under the federal petroleum price and allocation regulations. As consideration, Kaiser has agreed to pay DOE $1.95 million within 30 days of the effective date of the Consent Order. ERA will direct that all amounts paid by Kaiser pursuant to the Consent Order be deposited into an interest-bearing escrow account for ultimate distribution pursuant to Special Refund Procedures under 10 CFR Part 205, Subpart V, and DOE's Modified Statement of Restitutionary Policy at 51 FR 27899 (August 4, 1986).

As noted, no comments were received in response to the Notice of the Proposed Consent Order. Accordingly, ERA has determined to adopt the Proposed Consent Order without modification as a final order of the DOE, pursuant to 10 CFR 205.199J. The Consent Order become effective upon publication of this Notice.

Issued in Washington, DC, on October 18, 1988.

Milton C. Lorenz,

Chief Counsel, Office of Enforcement Litigation, Economic Regulatory Administration.

[FR Doc. 88-24778 Filed 10-25-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER85-204-000, et al.]

South Carolina Generating Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

October 21, 1988.

Take notice that the following filings have been made with the Commission:

1. South Carolina Generating Company

[Docket No. ER85–204–000]

Take notice that on October 11, 1988, South Carolina Generating Company (GENCO) tendered for filing, pursuant to Opinion Nos. 280 and 280–A, additional papers to complete its compliance filing of June 6, 1988. GENCO has filed alternative forms for Schedule 8, pages 5 and 6, of the billing format which incorporate the rate of return on common equity of 12.83% and the Federal income tax rate of 46% approved by the Commission for service as of the date the Unit Power Sales Agreement became effective.

Comment date: November 3, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Puget Sound Power & Light Company

[Docket No. ER88–618–000]

Take notice that on September 20, 1988, Puget Sound Power & Light Company (Puget) tendered for filing pursuant to 18 CFR 35.30(c), Appendix 1 to the Residential Purchase and Sale Agreement between Puget and Bonneville Power Administration (BPA). Puget has also filed the following documents:

1. The Energy Cost Adjustment Clause (ECAC) Average System Cost (ASC) adjustment demonstrated on Schedule 4 of Appendix 1 to the Residential Purchase and Exchange Agreement, Contract No. DE–MS79–81BP90954 (Agreement), between Puget and BPA reflecting Puget's ASC schedules.

2. The cover letter and supplemental supporting schedule sent to BPA.

3. BPA report dated September 7, 1988, pertaining to the ASC filing.

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Comment date: October 26, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Kansas Power and Light Company

[Docket No. ER89-10-000]

Take notice that on October 13, 1988, Kansas Power and Light Company (KPL) tendered for filing, Transmission Agreements dated June 1, 1978, with Kansas Gas and Electric Company, Centel Corporation-Western Power Division and Missouri Public Service Company. KPL states that under these agreements KPL transmits each Co-Owner's power and energy from the Jeffrey Energy Center, over its transmission facilities, to transmission interconnections with each Co-Owner.

Comment date: November 3, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Pacific Gas and Electric Company

[Docket No. ER88-569-000]

Take notice that on October 14, 1988, Pacific Gas and Electric Company (PG&E) tendered for filing the following document:

"Amendment No. 1 to Offer Of Settlement Submitted By Complianant Sacramento Municipal Utility District" (*Amendment No. 1*).

Amendment No. 1 amends certain provisions contained in the Dispute Settlement, 1988 Amendment and Power Sale Agreement which were filed by PG&E in Docket No. ER88-569-002.

Copies of this amended filing were served upon SMUD and the California Public Utilities Commission.

Comment date: November 3, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Georgia Power Company

[Docket No. EC89-3-000]

Take notice that on October 11, 1988, Georgia Power Company (GPC) tendered for filing an application for an Order authorizing the sale of approximately 6.26 miles of 115 Kv transmission line to the City of Chattanooga, Tennessee, acting through its Electric Power Board (Chattanooga).

GPC state that the proposed sale is of that portion of the East Dalton-Chatsworth transmission line located in Tennessee. The line is intended to be integrated into the sub-transmission system and to permit Chattanooga to supply bulk power to two 46/12 kv distribution substations and complete a loop feed to another 46/12 kv distribution substation.

Comment date: November 3, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Montaup Electric Company

[Docket No. ER88-585-000]

Take notice that on October 12, 1988, Montaup Electric Company (Montaup) tendered for filing a supplemental filing to answer questions by the Staff concerning the cost of service supporting this filing, as follows:

The Staff has asked Montaup for the useful life of the Unit. The useful life is thirty-seven years.

The Staff has asked how depreciation dollars were derived. The Unit depreciation rate is 2.70% based on a thirty-seven year life. The general plan depreciation rate is 5.46%. Common property is a combination of production plant and general plant equipment. Both depreciation rates are used to determine depreciation dollars for common property. Total yearly depreciation dollars ($785,000) reflect the 2.70% rate on the Unit plus the combination of both rates on common property.

The Staff has asked how property taxes, A&G and O&M were allocated to the Unit. The FERC Form 1 Report provides the totals for Somerset Station. The methodology by which property taxes, A&G and O&M are allocated are shown on the attached Figures 1–3. Twenty-five percent of the Jet MW were used so that the Jets were not allocated a disproportionate share of the expenses.

The Staff has asked if any fuel related expense was included in O&M. There is no fuel related expense in the O&M figures.

The Staff has asked how common property was allocated to the Unit. The allocations were made according to varius percentages, shown in the supporting data provided with the Company's supplemental filing.

Comment date: November 3, 1988, in accordance with Standard Paragraph E at the end of this notice.

7. Utah Power & Light Company

[Docket No. ER84-571-007 (Phase II), ER85-458-000 and ER88-391-000]

Take notice that on October 12, 1988, Utah Power & Light Company, pursuant to Opinion No. 308 issued on July 29, 1988, tendered for filing the following:

(1) Cost of Service Study based on a 46 percent federal income tax rate and a rate of return of 12.43 percent through June 30, 1987.

(2) Cost of Service Study based on a 34 percent federal income tax rate from July 1, 1987 through July 31, 1988.

(3) Cost of Service Study based on a 34 percent federal income tax rate and a rate of return of 12.77 percent to be effective August 1, 1988.

(4) Summary of Cost of Service Studies and Supporting Workpapers.

(5) System Average Wheeling Cost.

(6) Calculation of Wheeling Rates for Provo, Deseret, and WAPA under previous tax laws and the Tax Reform Act and based on rates of return of 12.43% and 12.77%.

(7) Amendments to rate schedules that consist of changes to existing contracts.

Comment date: November 3, 1988, in accordance with Standard Paragraph E at the end of this document.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24661 Filed 10-25-88; 8:45 am]

BILLING CODE 6717-01-M

Office of the Secretary

[Project No. 2573-004]

Fall River Rural Electric Cooperative; Availability of Environmental Assessment

October 21, 1988.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major license for the proposed Island Park Dam Hydroelectric Project on The Henry's Fork River in Fremont County Idaho, and has prepared Environmental Assessment (EA) for the proposed project. In the EA, the Commission staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24662 Filed 10-25-88; 8:45am]

BILLING CODE 6717-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP89-41-000, et al.]

Northwest Pipeline Corp., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Northwest Pipeline Corporation

[Docket No. CP89-41-000]

October 25, 1988.

Take notice that on October 11, 1988, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-41-000, an application pursuant to section 7(b) of the Natural Gas Act, which requested permission and approval to partially abandon its Rate Schedule ODL-1 natural gas sales service to Northwest Natural Gas Company (Northwest Natural), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest states that by letter dated September 22, 1988, Northwest Natural exercised its unlimited conversion option under the Commission's July 28, 1988, order in Docket No. CP86-578-015 by nominating revised levels of firm sales and firm transportation service to be effective on October 1, 1988. Specifically, Northwest states that Northwest Natural requested, effective October 1, 1988, that all but 60,000 therms per day of its ODL-1 sales contract demand be converted to firm transportation. To accommodate this request, Northwest and Northwest Natural entered into a new ODL-1 service agreement dated September 29, 1988, it is stated. Northwest further states that the October 1, 1988, service agreement supersedes the October 1, 1982, service agreement and reduces Northwest Natural's firm sales contract demand to 60,000 therms per day effective October 1, 1988. It is further stated that the September 29, 1988, transportation agreement supersedes the August 24, 1988, transportation agreement, effective October 1, 1988, and provides for service at a firm contract demand level of 2,800,440 therms (280,044 MMBtu's) per day under Rate Schedule TF-1 in Volume No. 1-A of Northwest's FERC Gas Tariff. Northwest states that service under this transportation agreement will be provided pursuant to Subpart B of the Commission's Regulations.

Northwest requests permission and approval to abandon an additional 2,371,370 therms per day of its firm ODL-1 sales obligations to Northwest Natural consistent with Northwest Natural's conversion of that additional volume to firm transportation. Northwest states that the remaining authorized maximum volume level for ODL-1, service to Northwest Natural will be 60,000 therms (6,000 MMBtu's) per day. This proposed abandonment of 2,371,370 therms per day of ODL-1 service, in conjunction with the 429,070 therms per day proposed to be abandoned in the amended application pending at Docket No. CP88-624-001, equates to the total of 2,800,440 therms per day which Northwest Natrual has converted to firm transportation effective October 1, 1988, it is stated.

Northwest requests that the proposed abandonment be made effective October 1, 1988, the effective date of the new firm ODL service agreement and transportation agreement.

Comment date: November 10, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. United Gas Pipe Line Company

[Docket No. CP89-8-001]

October 19, 1988.

Take notice that on October 18, 1988, United Gas Pipe Line Company (United), Post Office box 1478, Houston, Texas 77251-1478, filed in Docket No. CP88-6-001 a petition to amend the order a certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act in Docket No. CP88-6-000, by authorizing United to implement an experimental program under which United would make available to others its firm transportation rights in third party pipelines and its contract storage service leased from ANR Storage Company (ANR Storage), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

United states that it currently holds firm transportation rights in several third party interstate pipeline systems and firm contract storage rights in one off-system storage field (Firm Rights). United further states that these arrangements were entered into to enhance its operational flexibility and that these contracts between United and third party interstate pipelines and the storage company (Transporting Pipelines) are of a long-term nature and generally require United to pay a monthly demand charge regardless of the quantity of gas transported or stored for United.

United asserts that this application would permit it, during an experimental period, to make available to all others (Shippers) United's Firm Rights on a nondiscriminatory basis. United requests that the Commission do the following:

(1) Amend United's existing blanket transportation certificate issued pursuant to Section 284.221 of the Regulations to authorize United to make available to others its firm transportation rights and its firm contract storage rights in third party systems as listed in the appendix hereto.

(2) Declare that individual transporting pipelines need not request and receive Commission authority to allow their capacity to be brokered and need not accept an open access blanket certificate under Part 284 of the Regulations in order for United to broker its Firm Rights.

(3) Declare that a Shipper shall have the right to rebroker its rights in the United system as well as the Firm Rights for which its contracts to the extent such Shipper is and remains responsible for the costs and fees attributable to both the United system capacity and the Firm Rights that it re-brokers; further, the contractual provisions entered into between United and the Shipper shall remain in full force and effect regardless of the extent to which the United capacity or Firm Rights may be re-brokered.

(4) Declare that Shippers shall have the right to utilize United's Firm Rights either separately from or in conjunction with transportation through United's own facilities.

(5) Declare that United may offer its Firm Rights on either a firm or interruptible basis.

(6) Authorize maximum rates for Firm Rights brokered on a firm basis to be equivalent to the as-billed rates charged United by the Transporting Pipeline and authorize maximum rates for the Firm Rights brokered on an interruptible basis to be set at a rate equivalent to the 100 percent load factor of the rates billed United by the Trnasporting Pipeline.

(7) Authorize minimum rates for the Firm Rights brokered on a firm or interruptible basis to be equal to the variable portion (commodity portion) of the rates billed United by the Transporting Pipeline or one cent if no commodity rate is applicable to such

service and authorize United to provide discounts down to the minimum rate.

(8) Provide that as of the date United accepts the certificate amendment requested herein, United shall revise its base tariff rates to remove from its cost of service an amount equal to 50 percent of the as-filed total of its Account No. 858 costs and its ANR Storage and related costs and the remaining 50 percent shall be allocated to United's jurisdictional sales and transportation customers on the same basis as such costs are allocated in United's most current rate filing (RP88–92).

(9) Authorize United to retain all revenues received from the brokering of its Firm Rights during the term of the program.

(10) Provide that United's sales and transportation customers, as well as indirect customers of such sales and transportation customers, who accept the rate reduction provided herein would be required to forego the right to challenge or litigate any issue regarding United's Account No. 858 costs or its ANR Storage and related costs, including the level or allocation of such costs, and the revenues generated by the brokering of United Firm Rights in any United rate proceeding during the term of this experiment so long as United retains the same cost crediting and revenue treatment reflected in this application.

(11) Require United's sales and transportation customers to notify United in writing 30 days from the date this program is implemented as to whether they accept the rate reduction, cost allocation and revenue treatment or whether they elect to litigate these issues.

(12) Provide that any Shipper desiring to avail itself of United's Firm Rights be required to comply with the operational requirements and other terms and conditions set forth in United's tariff and the tariff of the Transporting Pipeline.

(13) Authorize the service for a term of three years, with authorization to abandon at the earlier of the end of the three-year period or the termination date of any particular transaction between United and a Transporting Pipeline.

United states that the proposal would result in immediate rate reductions, facilitate United's transition to an open access trnasporter, result in increased utilization of pipeline capacity and would provide the Commission with data which will be useful in evaluating other capacity brokering proposals.

Comment date: November 3, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

DOCKET No. CP88–5–001

(Appendix)

Company	Contract No.	Docket No.
ANR Pipeline Co.	T2–21–102	CP73–545
ANR Pipeline Co.	T2–21–108	CP75–129
ANR Pipeline Co.	T2–21–149	CP86–164
ANR Storage Co.	T2–21–168	CP76–432
Columbia Gulf Transmission Corp.	T2–21–298	CP83–232
Columbia Gulf Transmission Corp.	T2–21–313	CP84–199
High Island Offshore System	T2–21–385	CP75–104
Michigan Consolidated Gas Co.	T2–21–094	CP76–433
Natural Gas Pipeline Co. of America	T2–21–005	CP81–120
Natural Gas Pipeline Co. of America	T2–21–242	CP82–55
Northern Border	T2–21–297	CP76–400
Northern Natural Gas Co.	T2–21–341	ST86–3971
Panhandle Eastern Pipe Line Co.	T2–21–101	CP79–76
Sea Robin Pipeline Col.	T2–21–019	CP78–252 CP76–416
Sea Robin Pipeline Co.	T2–21–020	CP76–488
Sea Robin Pipeline Co.	T2–21–211	CP77–410
Southern Natural Gas Co.	T2–21–021	CP75–19
Southern Natural Gas Co.	T2–21–088	CP78–374
Southern Natural Gas Co.	T2–21–167	CP80–508
Stingray Gas Pipeline	T2–21–022	CP78–508
Tennessee Gas Pipeline	T2–21–056	CP76–545
Transcontinental Gas Pipeline Corp.	T2–21–027	CP76–122
Transcontinental Gas Pipeline Corp.	T2–21–067	CP79–295
Transcontinental Gas Pipeline Corp.	T2–21–093	CP79–466
Transcontinental Gas Pipeline Corp.	T2–21–104	CP79–178
Transcontinental Gas Pipeline Corp.	T2–21–146	CP80–17
Transcontinental Gas Pipeline Corp.	T2–21–173	CP81–83
Transcontinental Gas Pipeline Corp.	T2–21–263	CP83–81
Trunkline Gas Co.	T2–21–134	CP80–31
Trunkline Gas Co.	T2–21–180	CP81–26
UT Offshore System	UT–OST–3	CP76–118

3. Great Lakes Gas Transmission Company

[Docket No. CP81–225–005]

October 20, 1988.

Take notice that on October 11, 1988, Great Lakes Gas Transmission Company (Petitioner) 2100 Buhl Building, Detroit, Michigan, 48226, filed in Docket No. CP81–225–005 a petition to further amend the order issued in Docket No. CP81–225–000 pursuant to section 7(c) of the Natural Gas Act to authorize the continued transportation and exchange of the increased volumes of natural gas for Northern Minnesota Utilities, a Division of Utilicorp United Inc. (NMU) (formerly Inter-City Gas Corporation), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that by Commission order issued May 8, 1981, it was authorized to transport, during the summer period, up to 2,026 Mcf of gas per day and a total volume of 405,200 Mcf for NMU from a receipt point near Cloquet, Minnesota and redeliver thermally equivalent volumes to ANR Storage Company (ANR) for the account of NMU. During the winter period Petitioner states that it was authorized to receive up to 8,000 Mcf of gas per day from ANR and, by displacement, redeliver thermally equivalent volumes to NMU at Cloquet or two other redelivery points near Grand Rapids and Thief River Falls, Minnesota. The authorization was for an initial term ending March 31, 1991, it is stated. Petitioner states that by amendment dated December 2, 1987, it was authorized to transport and exchange increased volumes of 3,292 Mcf per day and a total volume of 658,450 Mcf during the summer period and 13,000 Mcf per day during the winter period conditioned to a term ending one year from the date of the order (December 2, 1988) or until Petitioner accepts a blanket certificate pursuant to Part 284 of the Commission's Regulations.

Petitioner asserts that NMU has advised it that the continuation of the increased transportation and exchange volumes will enable NMU to more economically meet the needs of its customers and to meet its peak winter demands.

Comment date: October 31, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. CNG Transmission Corporation

[Docket No. CP87–5–002, *et al.* CP87–312–001 CP87–313–001 CP87–314–001 CP88–197–002 CP88–388–002]

October 20, 1988.

Take notice that on October 3, 1988, CNG Transmission Corporation (Applicant), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP87–5–002, *et al.* an application pursuant to section 7(c) of the Natural Gas Act, requesting authorization to (1) provide seasonal sales of natural gas to six distribution companies, known as the Associated PennEast Customer Group (APEC), (2) provide long-term firm storage service for certain natural gas distribution companies in the Northeast, and (3) construct and operate various facilities needed to render the seasonal sales and storage services, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that this application implements Applicant's participation in the *Stipulation and Agreement* (APEC Settlement) filed on August 15, 1988 by APEC in Docket No. CP87–451–000, *et al.* The APEC Settlement severs certain proposed services and related facilities by several pipelines from the Open Season proceeding for processing as discrete projects. The Commission's Order dated September 16, 1988 in Docket No. CP87–451–000, *et al.* (44 FERC ¶ 61,340), directed the sponsors of the APEC Settlement to submit, within 15 days, revised applications modified to reflect changes in facilities and services resulting from the severance of the projects.

Applicant proposes to provide seasonal sales of up to 215,000 dt equivalent per day on a firm, long-term basis, to six local distribution companies, collectively referred to as APEC. Applicant submits that APEC consists of the Brooklyn Union Gas Company (Brooklyn Union), Elizabethtown Gas Company (Elizabethtown), Long Island Lighting Company (LILCO), New Jersey Natural Gas Company (New Jersey Natural), Public Service Electric and Gas Company (New Jersey Natural), Public Service Electric and Gas Company (PSE&G) and South Jersey Gas Company (South Jersey). Applicant proposes to render seasonal sales to the APEC customers as follows:

Buyers	Total seasonal sales (dt/day equivalent)	Delivered via Transco (dt/day equivalent)	Delivered via TETCO (dt/day equivalent)
Brooklyn Union	50,000	45,000	5,000
Elizabethtown	10,000	5,000	5,000
LILCO	35,000	35,000	0
New Jersey Natural	45,000	10,000	35,000
PSE&G	65,000	65,000	0
South Jersey	10,000	10,000	0
Total	215,000	170,000	45,000

Applicant indicates that, pursuant to the APEC Settlement, 170,000 dt equivalent per day would be delivered by Applicant to Transcontinental Gas Pipe Line Corporation (Transco) at the Leidy interconnection between Applicant and Transco in Clinton County, Pennsylvania. Applicant further indicates that Transco would transport the gas on a firm basis from its Leidy line into its system in the New York/New Jersey market area, for delivery at interconnections between Transco and each of the APEC customers. Applicant states that 45,000 dt equivalent per day of seasonal sales would be delivered by Applicant to Texas Eastern Transmission Corporation (Texas Eastern) at Compressor Station 23, near Chambersburg, in Franklin County, Pennsylvania, which is the termination point of Applicant's prospective joint ownership with Texas Eastern in the "Capacity Restoration Project". Applicant further states that Texas Eastern would transport these volumes from Chambersburg to the APEC customers.

Applicant proposes to sell gas to South Jersey under the rate specified in its SCQ Rate Schedule, FERC Gas Tariff, Original Volume No. 1. Applicant indicates that the rate for the remaining APEC customers would be the same rate which the Commission determined to be appropriate in the July 27, 1988 Order, authorizing Applicant to perform a seasonal sales services in Docket Nos. CP87–4–000, *et al.* and CP87–5–000. Applicant proposes to sell 205,000 dt per day of the 215,000 dt per day to the APEC customers at a one-part rate equal to the rate specified in Applicant's Rate Schedule CD, as contained in Applicant's effective FERC Gas Tariff Volume No. 1, calculated at a 27% load factor.

Applicant submits that the gas to be sold to the APEC customers would come from Applicant's general system supply. Applicant further submits that Applicant and the APEC customers are presently in the process of finalizing new precedent agreements. Applicant states that it would supplement this application with the newly executed precedent and sales agreements when they are available for filing.

Applicant states that its prior application in Docket No. CP87–5–000 involved a sale to PennEast Gas Services Company (PennEast) of 145,000 dt per day of gas for its system supply for the second phase of PennEast's seasonal sales. Applicant further states that it requests to amend this application (1) to reflect the restructuring of the second phase of the seasonal sales whereby Applicant makes the sales directly to the APEC customer and (2) to increase the maximum quantity for the APEC customers from 145,000 to 215,000 dt per day.

Applicant proposes to provide a firm storage service to the APEC customers and other natural gas distributors, as contemplated in the APEC Settlement, under a new proposed Rate Schedule GSS–II, to be part of Applicant's FERC Gas Tariff. Specifically, Applicant proposes to provide a Phase I storage service consisting of 10,000,000 dt equivalent of storage capacity and 100,000 dt equivalent per day of storage withdrawal capability, to be sold directly to the following distributor customers in the following amounts:

Buyer	Phase I—Commencing April 1, 1989 Maximum daily withdrawal capability (dt)	Commencing 11/1/88	Maximum daily withdrawal capability (dt)	Commencing 11/15/88
Bristol & Warren Gas Company	[illegible]		[illegible]	
Central Hudson Gas & Electric Corp.	400,000		[illegible]	
Colonial Gas Company	[illegible]		[illegible]	
Long Island Lighting Company	1,900,000		15,000	
Town of Middleborough, Massachusetts	14,100		141	
New Jersey Natural Gas Company	[illegible]		[illegible]	
Northeast Energy Associates and North Jersey Energy Associates	2,500,000		25,000	
PennFuel Gas, Inc.	[illegible]		2,000	
The Pequot Gas Company	11,300		113	
Public Service Electric & Gas Company	[illegible]		45,000	
South County Gas Company	22,500		225	
Valley Gas Company	[illegible]		[illegible]	
Total	[illegible]		100,000	

It is indicated that these volumes would be received for storage by Applicant at Leidy and, after withdrawal, delivered to Texas Eastern at Chambersburg, in Franklin County, Pennsylvania (where Applicant's prospective joint ownership with Texas Eastern of the CRP line ends) for subsequent redelivery to the customers be Texas Eastern.

Applicant indicates that, in order for storage gas to be available for withdrawal in the winter of 1989, injections of gas into storage should begin in April of 1989.

Applicant further submits that Applicant and the APEC customers are presently in the process of finalizing new precedent agreements for the restructured storage services. Applicant states that it would supplement this application with the newly executed precedent and storage agreements when they are available for filing.

Applicant states that it proposes to adopt the PennEast proposals in Docket Nos. CP87–312–000, CP88–197–000, and CP88–388–000 in order that Applicant may provide these storage services under the new GSS–II Rate Schedule directly to the customers and to reflect the changes in the customer's maximum

storage and withdrawal quantities described herein.

Applicant further states that its application in Docket No. CP87-313-000 would be unnecessary (and would be withdrawn by Applicant) if the Commission certificates the entire APEC Project.

Applicant indicates that the parties to the APEC Settlement have agreed that Phase II and Phase III (now GSS-II) of the PSS storage service in Docket No. CP87-312-000 would be processed discreetly outside of the Open Season proceeding, but only Phase I of the storage services would require certification for the 1989-90 winter season. Applicant further indicates that a critical element of the APEC Settlement is that the costs of Phase II and Phase III of the GSS-II storage service would be accorded rolled-in treatment with the costs of Phase I. Applicant requests that the Commission approve the new proposed Rate Schedule GSS-II for sales of storage services in Phases I through III to these customers, with the understanding that all costs be included in the calculation of the GSS-II rate.

In order to provide the additional seasonal sales service of 215,000 dt per day, Applicant requests authorization to construct and operate the following facilities:

(1) 7.6 miles of 30-inch pipeline to be known as Line No. TL-474, which would begin at Applicant's J.B. Tonkin Compressor Station, near the town of Murrysville, in Westmoreland County, Pennsylvania, and end at Applicant's Kiski Gate Junction, in Westmoreland County, Pennsylvania, near the town of Apollo, in Armstrong County, Pennsylvania;

(2) A new 12,600 horsepower (HP) compressor station, to be known as the Ardell Compressor Station, located in Elk County, Pennsylvania.

(3) A new 5,900 HP compressor station, to be known as the Crayne Compressor Station, located near the town of Waynesburg, in Greene County, Pennsylvania;

(4) A new 4,390 HP compressor station, to be known as the L.L. Tonkin Compressor Station, located near the town of West Union, in Doddridge County, West Virginia; and

(5) Additional measurement equipment at Applicant's Leidy Measurement and Regulation (M&R) Station.

Applicant estimates the cost of the proposed facilities for the additional 215,000 dt per day to be $32,553,583, not including filing fees. Applicant states that these facilities must be in place by November 1988.

In order to provide the proposed GSS-II storage service, Applicant proposes to construct and operate the following facilities:

(1) Drill and connect 10 new storage injection/withdrawal wells at Applicant's existing Greenlick Storage Pool;

(2) Install 1,100 HP compressor station near Applicant's existing Sharon Storage Pool to be known as State Line Compressor Station;

(3) Inject 500 MMcf equivalent of Base Gas at Sharon Storage Pool;

(4) Replace 14 existing well lines at Sharon Storage Pool; and

(5) Rework 3 existing storage wells at Sharon Storage Pool.

Applicant states that the proposed facilities were also requested by Applicant in Docket No. CP87-314-000, with the exception of the proposed 1,100 HP compressor station near Applicant's Sharon Storage Pool. Applicant indicates that a recent change in air emission standards in the State of Pennsylvania necessitates that Applicant install one 1,100 HP, clean burning compressor engine, instead of two 600 HP compressor engines, as originally proposed in Docket No. CP87-314-000. Applicant states that it requests to amend its application in Docket No. CP87-314-000 to reflect the change in compressor equipment.

Applicant estimates that the cost of the proposed facilities for the Phase I storage facilities would be $29,337,547.

Applicant states that, by joint application with Texas Eastern in Docket No. CP87-92-003, Applicant requests approval of its investment in and ownership of an undivided interest (approximately 28%) in Texas Eastern's Capacity Restoration Project which would provide Applicant 225,000 dt equivalent per day of capacity in the CRP line from Texas Eastern's Compressor Station 21-A, located near Connellsville, in Fayette County, Pennsylvania, to a interconnection with Applicant's existing Line No. PL-1 pipeline at Texas Eastern's Compressor Station 23, located at or near Chambersburg, in Franklin County, Pennsylvania. Applicant further states that it would use 145,000 dt equivalent per day of its CRP firm capacity to move gas for the APEC services to Chambersburg for delivery to Texas Eastern for further transportation to the APEC customers and would use the remaining 80,000 dt equivalent per day to move gas into its Line No. PL-1 for services for Washington Gas Light Company and Baltimore Gas and Electric Company proposed in Docket No. CP88-128-000. Applicant indicates that it would no longer need the transportation service proposed by Texas Eastern to move the 80,000 dt per day currently pending in Docket No. CP88-179-000.

Applicant estimates that the cost of its interest in the CRP to be $38,200,000, with $24,600,000 applicable to the services proposed in this application.

Comment date: November 10, 1988, in accordance with Standard Paragraph F at the end of this notice.

5. Texas Eastern Transmission Corporation and CNG Transportation Corporation

[Docket Nos. CP87-5-003, *et al.*, CP87-92-003, CP87-312-002, CP88-197-001, CP88-386-001]

October 20, 1988.

Take notice that on October 3, 1988, Texas Eastern Transmission Corporation (Texas Eastern), Post Office Box 2521, Houston, Texas 77252, and CNG Transmission Corporation, 445 West Main Street, Clarksburg, West Virginia 26301, jointly referred to as Applicants, filed in Docket Nos. CP87-5-003, *et al.* an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act, requesting a Certificate of Public Convenience and Necessity (1) authorizing Texas Eastern to render in interstate commerce additional firm transportation service pursuant to Rate Schedule FTS-4, (2) authorizing Texas Eastern to render in interstate commerce a new firm transportation service pursuant to proposed Rate Schedule FTS-5, (3) authorizing the construction, ownership and operation of pipeline facilities by Texas Eastern, (4) authorizing the construction and operation by Texas Eastern of certain pipeline facilities to be jointly owned by Texas Eastern and CNG, (5) granting Texas Eastern authorization to replace existing facilities, and (6) authorizing the addition of a point of delivery to CNG in Zone C under Texas Eastern's DCQ and I Rate Schedules, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants state that this application is being file in compliance with the Commission's September 16, 1988 Order in Docket No. CP87-451-000, *et al.* (44 FERC ¶61,340), which severed from the Open Season proceeding and provides for processing as discrete projects several pipelines' proposed services and facilities relating to implementation of a *Stipulation and Agreement* (APEC Settlement) filed on August 15, 1988 by the Associated PennEast Customer Group (APEC) in Docket No. CP87-451-000, *et al.* In the September 16, 1988 Order, the Commission directed the sponsors of the APEC Settlement to submit, within 15 days, revised applications modified to reflect changes in facilities and services resulting from the severance of the projects.

Applicants state that the instant filing is only one of several applications to be filed by various parties to provide facilities or services contemplated in the APEC Settlement. Applicants also state that while they strongly support the APEC proposal, the application herein is not intended, nor should it be construed as a replacement of the Second Amended Application in Docket No. CP87-92-002. Applicants state that, in the event the APEC Settlement is not approved, the Second Amended Application in Docket No. CP87-92-002 would be amended separately to reflect the restructured ownership of the "fence-to-fence" portion of Texas Eastern's Capacity Restoration Pipeline.

Applicants indicate that, as a result of the Commission's Order Issuing Certificates, issued on July 27, 1988 (44 FERC ¶61,152), Applicants have revised the structure of several PennEast Gas Services Company's (PennEast) projects related to the APEC Settlement services in order to comport with the policy set forth in that order. Applicants request that, for purposes of this APEC Settlement related filing, CNG be added as an Applicant party in the subject proceeding.

Applicants propose new facilities ownership structure which would provide for a joint undivided ownership by Applicants, as "Tenants in Common", of a segment of the 36-inch Capacity Restoration replacement pipeline between Texas Eastern's Compressor Station 21-A and CNG's existing PL-1 pipeline interconnection at Texas Eastern's Compressor Station 23. It is indicated that this arrangement would provide Texas Eastern with capacity rights of 554,282 dt equivalent per day, which would be sufficient to replace capacity lost due to the removal of pipe in the Capacity Restoration Program. Also, it is indicated that the arrangement would provide CNG with capacity rights totalling 225,000 dt equivalent per day in this segment of the pipeline which would be utilized by CNG to provide services as follows:

	Dt/day equivalent
Sales to APEC customers	45,000
Storage service to APEC customers and others	100,000
2d phase to sale to Washington Gas Light Co. & Baltimore Gas & Electric Co.	80,000
Total	225,000

Applicants state that the proposed restructuring addresses and resolves certain concerns indicated by the Commission in its July 27, 1988 Order. Applicants further state that they are *not* proposing the issuance of a certificate to a new jurisdictional company and that Applicants have developed a structure which serves the needs of the APEC customers by enabling the unbundling of PennEast sales, storage and transportation services. It is indicated that the joint undivided ownership of this segment of pipeline provides CNG with an extension of its existing PL-1 line into Western Pennsylvania. Applicants state that CNG would have the right to utilize its capacity in the segment in the normal course of business. Applicants submit that the proposed facility ownership structure would provide an opportunity for the Applicants to share investment costs in the indicated segment of the restored pipeline.

Applicants indicate that they are currently negotiating a construction, joint ownership, operation and maintenance agreement which, upon execution, would be submitted as a supplement to Exhibit M.

Applicants request authorization for Texas Eastern to add Compressor Station 21-A as a Point of Delivery to CNG under Texas Eastern's Rate Schedule DCQ and Rate Schedule I, or pursuant to Rate Schedule CD-1 in the event prior to the approval of this application Texeas Eastern enters into new service agreements under Rate Schedule CD-1 as currently contemplated in Docket No. RP85-177 *et al.* It is indicated that this Zone C Point of Delivery would have delivery capacity of at least 225,000 dt equivalent, provided the sum of the aggregate maximum daily delivery obligation (AMDDO) at measuring stations 082, 051 and Compressor Station 21-A would not exceed the sum of current AMDDO for measuring stations 082 and 051.

Applicants request the following authorization:

(1) For Texas Eastern to render long term, firm transportation service pursuant to Rate Schedule FTS-4 as follows:

	Maximum daily transportation quantity (dt/day equivalent)
The Brooklyn Union Gas Co	5,000
New Jersey Natural Gas Co	25,000
Elizabethtown Gas Co	5,000
Total	35,000

(2) For Texas Eastern to render long term, firm transportation service pursuant to proposed Rate Schedule FTS-5 as follows:

	Maximum daily transportation quantity (dt/day equivalent)
Bristol & Warren Gas Co	613
Central Hudson Gas & Electric Co	4,000
Colonial Gas Co	2,067
Intercontinental Energy Corp. (IEC) and Public Service Electric & Gas Co.(PSE&G)	24,508
Long Island Lighting Co	11,000
Town of Middleborough, MA	155
New Jersey Natural Gas Co	5,000
Penn Fuel Gas, Inc	2,000
The Pequot Gas Co	125
Public Service Electric & Gas Co	49,000
South County Gas Co	248
Valley Gas Co	1,000
Total	100,000

(3) For Texas Eastern to construct, own and operate pipeline facilities located in Ohio, West Virginia, Pennsylvania and New Jersey.

(4) For Texas Eastern to construct and operate certain pipeline facilities to be jointly owned by Texas Eastern and CNG located in Pennsylvania.

Applicants state that, for the period ending April 1991, PSE&G would have the right to use and obligation to pay all charges in connection with the 24,508 dt equivalent per day. Applicants further state that PSE&G would be the shipper on such days as the mean temperature at Newark, New Jersey is forecast to be 22 degrees F or colder, and IEC would be the shipper on all other days.

Applicants state that the volumes to be transported by Texas Eastern under Rate Schedule FTS-4 were originally proposed to be sold and transported by PennEast as part of Phase II of Rate Schedule SS-1 service. It is indicated that as part of the unbundled PennEast SS-1 service, CNG would be filing an application to render a seasonable sales service to the APEC customers. It is further indicated that CNG would utilize its capacity in the jointly owned pipeline and would make the sales deliveries to Texas Eastern, for the account of the APEC customers, at Compressor Station 23. Applicants state that, from this point, Texas Eastern would render the related

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unbundled transportation service in accordance with existing Rate Schedule FTS-4. Applicants further state that this service would commence upon the later of completion of facilities or November 15, 1989.

Applicants submit that Texas Eastern would charge a rate for the additional FTS-4 services which rolls in the cost of service from the Phase I of Rate Schedule FTS-4 service authorized by the Commission in the July 27, 1988 Order.

Applicants state that executed precedent agreements between Texas Eastern and these APEC customers would be filed as a supplement Exhibit I.

Applicants state that the volumes to be transported by Texas Eastern under Rate Schedule FTS-5 were originally proposed as a component of a storage service by PennEast under Rate Schedule PSS. It is indicated that as part of the unbundled PennEast PSS storage service, CNG would be filing an application to render a storage service to the APEC customers and certain other customers pursuant to a new Rate Schedule GSS-IL It is further indicated that CNG would utilize its capacity in the jointly owned pipeline and would make the sales deliveries to Texas Eastern, for the account of these customers, at Compressor Station 23 for transportation under Rate Schedule FTS-5.

Applicants indicate that, upon the later of November 15, 1989 or the completion of all necessary facilities, transportation service under the proposed Rate Schedule FTS-5 would consist of the transportation of gas for the account of Buyer received by Texas Eastern from Buyer for delivery to CNG and the transportation of gas for the account of Buyer received by Texas Eastern from CNG for delivery to or for the account of Buyer. Applicants further indicate that Texas Eastern would receive gas for transportation under Rate Schedule FTS-5 from CNG at Texas Eastern's Compressor Station 23 and would deliver gas to CNG for the account of Buyer at Texas Eastern's Compressor Station 23 or at meter station 082 at the Oakford storage facility. Applicants state that Texas Eastern would deliver gas received from CNG to points of delivery with Buyer, or in the case of the Algonquin Gas Transmission Company (Algonquin) customers' volumes, to Algonquin at measuring station 087 near Lambertville, Pennsylvania. Further, Applicants state that Texas Eastern would receive the gas from the APEC customers for storage injunction at their existing Texas Eastern delivery points by displacement of quantities otherwise delivered and would redeliver such quantities to meter station 082 at the Oakford storage facility or at the interconnection of CNG's PL-1 line near Texas Eastern's Compressor Station 23.

Applicants submit that the cost of service associated with the new incremental facilities required to render the FTS-5 service would be borne by the APEC customers receiving the FTS-5 service. Applicants further submit that, for all gas transported, Texas Eastern would charge a demand rate of $5.5549 per dt and an authorized daily over run rate of $0.1925 per dt.

It is indicated that during the interim period beginning on the day of commencement of deliveries under FTS-5 and prior to the in-service date of facilities for firm service, the customers may tender gas for transmission for the sole purpose of delivering gas to CNG for injection into storage for the customers' account and customers would pay the interim rate of $0.1230 per dt.

Applicants state that executed precedent agreements between Texas Eastern and the Participants in this transportation service would be filed as a supplement to this application.

Applicants request authorization for Texas Eastern to construct and operate the following facilities which were contemplated in the APEC Offer of Settlement:

1989

(1) 232.54 miles of 36-inch pipeline between Compressor Stations 18 and 19 and between Holbrook Compressor Station and Compressor Station 25 in various counties in the States of Ohio, West Virginia and Pennsylvania.

(2) 5.50 miles of 42-inch pipeline traversing Somerset County, New Jersey.

(3) Aerodynamic assembly changeouts at Texas Eastern's Compressor Station 23 (Chambersburg, Pennsylvania) in Franklin County, Pennsylvania.

(4) Modify an existing interconnection between Texas Eastern and Elizabethtown Gas Company designated as M&R station # 1075 located in Middlesex County, New Jersey.

(5) Removal of 215.0 miles of 20-inch and 24-inch pipeline from Compressor Station 21-A to Compressor Station 25 located in various counties of Pennsylvania.

(6) Related M&R station reconnections and hydrostatic testing of 20-inch pipe segments remaining in service in 1989.

1990

(7) 36.18 miles of 36-inch pipeline between Compressor Station 18 and Compressor Station 19, between Compressor Station 19 and Berne Compressor Station and between Berne Compressor Station and Holbrook Compressor Station in various counties in Ohio and West Virginia.

(8) Install 5.61 miles of 20-inch pipeline in between Compressor Station 19 and M&R 004 in Monroe County, Ohio.

(9) Install 1.41 miles of 8-inch pipeline in Greene County, Pennsylvania.

(10) Place in idle service 344.73 miles of 20-inch and 24-inch pipeline from Compressor Station 18 to Compressor Station 21-A in various counties in Ohio and Pennsylvania.

(11) Install 3 units to provide additional compression of 28,000 HP at station sites located west of Compressor Station 21-A and relocate one 6,000 HP unit from Compressor Station 20 to Berne Compressor Station.

(12) Modifications to unit and station piping and resizing of cylinders at sites located west of Compressor Station 21-A.

(13) Hydrostatic testing of 20, 24 and 26-inch pipeline between Compressor Station 17 and Compressor Station 19.

It is indicated that, in response to a Commission Staff data request of December 17, 1987, Texas Eastern proposed an interim construction plan, now referred to as the "fence-to-fence" proposal, whereby Texas Eastern would delay construction on compressor station sites at and east of Compressor Station 21-A until appropriate environmental clearances were obtained. It is further indicated that the "fence-to-fence" proposal would be a two-year construction project that offers an environmentally acceptable solution to expediting the process of replacing Texas Eastern's 20 and 14-inch bare pipelines. Applicants state that in the first year 17.53 miles of 36-inch pipeline would be installed west of Compressor Station 21-A to offset the capacity reduction due to continued operation of the bare pipe at reduced pressures. Applicants further state that east of Compressor Station 21-A, the 20-inch pipeline from Compressor Station 21-A to Compressor Station 24-A and the 24-inch pipeline from Compressor Station 24-A to Compressor Station 25 would be removed and replaced, between compressor stations only, with a new 36-inch pipeline. Applicants indicated that the existing 24-inch pipeline between Compressor Station 21-A and Compressor Station 24-A would remain

in service at a reduced operating pressure.

Applicants state that in the second year, construction of pipeline facilities west of Compressor Station 21-A would be required to place all bare pipe west of Compressor Station 21-A (24-inch from suction of Compressor Station 17 to Compressor Station 18, both 20-inch and 24-inch from Compressor Station 18 to Compressor Station 21-A) into idle service. Applicants submit that no additional capacity beyond the capacity restoration of 554,787 dt equivalent per day is created by the facilities constructed west of Compressor Station 21-A. Applicants further submit that the proposed "fence-to-fence" facilities in this application would provide a daily delivery capacity of 779,282 dt equivalent per day.

Applicants state that the facilities for which authorization is requested are only a portion of the facilities presently on file in Texas Eastern's Docket No. CP87-82-02. Applicants state that the facilities requested are the facilities contemplated in the APEC Offer of Settlement and which are identical to the "fence-to-fence" facilities. Applicants estimate the cost of the proposed facilities to be $455,699,000.

Comment date: November 10, 1988, in accordance with Standard Paragraph F at the end of the notice.

6. Northwest Pipeline Corporation

[Docket No. CP89-54-000]

October 21, 1988.

Take notice that on October 13, 1988, Northwest Pipeline Corporation, (Northwest) 295 Chipeta Way, Salt Lake City, Utah 84108 filed in Docket No. CP89-54-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Kimball Energy Corporation (Kimball), under its blanket authorization issued in Docket No. CP86-578-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest would perform the proposed interruptible transportation service for Kimball, a producer of natural gas, pursuant to a transportation agreement dated February 10, 1988, as amended May 1, 1988, July 22, 1988, and August 4, 1988, under its Rate Schedule TI-1. The term of the transportation agreement is from February 10, 1988, until December 31, 1995, subject to termination by either party during the primary or extended term upon five business days written notice to the other party Northwest proposes to transport on a peak day up to 150,000 MMBtu; on an average day up to 3,300 MMBtu; and on an annual basis 1,200,000 MMBtu for Kimball. Northwest proposes to receive the subject gas from various existing points of receipt located in Sweetwater and Lincoln Counties, Wyoming, La Plata County, Colorado, and Whatcom County, Washington for delivery to points located in Benton County, Washington, Sweetwater County, Wyoming, La Plata County, Colorado and Rio Arriba County, New Mexico. It is stated that Kimball has entered into sales contracts with San Diego Gas & Electric Company and Southern California Gas Company, local distribution companies. Northwest avers that no new facilities nor expansion of existing facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.233(a)(1) of the Commission's Regulations. Northwest commenced such self-implementing service on September 2, 1988, as reported in Docket No. ST88-31-000.

Comment date: December 5, 1988, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24757 Filed 10-25-88; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 10330-001, et al.]

Cross Hydro, Inc., et al.; Surrender of Preliminary Permits and Exemptions

October 21, 1988.

Take notice that the following preliminary permits/exemptions have been surrendered effective as described in Standard Paragraph I at the end of this notice.

1. Cross Hydro, Inc.

[Project No. 10330-001]

Take notice that the Cross Hydro, Inc., permittee for the Cross Creek Hydro Project No. 10330, to be located on Cross Creek in Johnson and Sheridan Counties, Wyoming, has requested that its preliminary permits be terminated. The preliminary permit was issued on August 28, 1987, and would have expired on July 31, 1990.

The permittee filed the request on August 10, 1988.

2. Tuolumne County, California

[Project No. 9406-001—California]

Take notice that Tuolumne County, California, exemptee for the Phoenix Lake Bypass Project No. 9406, has requested that its exemption be terminated. The exemption was issued on August 6, 1986, and the project would have been located on the Phoenix Lake bypass ditch in Tuolumne County, California. No construction of the hydroelectric project works has been initiated.

The exemptee filed the request on September 26, 1988.

Standard Paragraph

I. The preliminary permit/exemption shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007 in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24662 Filed 10-25-88; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 10137-001, et al.]

Monroe Hydro Associates, et al.; Surrender of Preliminary Permits and Exemptions

October 21, 1988.

Take notice that the following preliminary permits/exemptions have been surrendered effective as described in Standard Paragraph I at the end of this notice.

1. Monroe Hydro Associates

[Project No. 10137-001]

Take notice that Monroe Hydro Associates, permittee for the proposed Monroe Hydro Project No. 10137, has requested that its preliminary permit be terminated. The permit was issued on February 9, 1987, and would have expired on January 31, 1990. The project would have been located on the Salt Creek, in Monroe County, Indiana. The permittee states that the proposed project is not economically feasible as the basis for the surrender request.

The permittee filed a request on September 26, 1988.

2. Kinetic Energy Company

[Project No. 10318-001—Michigan]

Take notice that Kinetic Energy Company, permittee for the proposed Carp River Project No. 10318, has requested that its preliminary permit be terminated. The permit was issued on March 25, 1987, and would have expired on February 28, 1990. The project would have been located on the Carp River, Marquette County, Michigan.

The permittee filed a request on September 21, 1988.

3. Harden Hydro Associates

[Project No. 10136-001—Indiana]

Take notice that Harden Hydro Associates, permittee for the proposed Harden Hydro Project No. 10136, has requested that its preliminary permit be terminated. The permit was issued on March 2, 1987, and would have expired on February 28, 1990. The project would have been located on the Big Racoon River, in Parke County, Indiana. The permittee states that the proposed project is not economically feasible as the basis for the surrender request.

The permittee filed a request on September 26, 1988.

4. Patoka Hydro Associates

[Project No. 10138-001—Indiana]

Take notice that Patoka Hydro Associates, permittee for the proposed Patoka Hydro Project No. 10138, has requested that its preliminary permit be terminated. The permit was issued on February 9, 1987, and would have expired on January 31, 1990. The project would have been located on the Salt Creek, in Dubois County, Indiana. The permittee states that the proposed project is not economically feasible as the basis for the surrender request.

The permittee filed a request on September 26, 1988.

5. Huntington Hydro Associates

[Project No. 10134-001—Indiana]

Take notice that Huntington Hydro Associates, permittee for the proposed Huntington Hydro Project No. 10134, has requested that its preliminary permit be terminated. The permit was issued on February 9, 1987, and would have expired on January 31, 1990. The project would have been located on the Wabash River, in Huntington County, Indiana. The permittee states that the proposed project is not economically feasible as the basis for the surrender request.

The permittee filed a request on September 26, 1988.

6. George H. and Eleanor Hage

[Project No. 9436-001—California]

Take notice that George H. and Eleanor Hage, Permittee for the Al Smith Power Project located on Al Smith Creek in Shasta County, California have requested that the preliminary permit be terminated. The preliminary permit was issued on March 24, 1986, and would have expired on March 24, 1988. The permittee states that analysis of the project did not indicate feasibility for development.

The permittee filed a request on August 30, 1988.

7. Salamonie Hydro Associates

[Project No. 10135-001—Indiana]

Take notice that Salamonie Hydro Associates, permittee for the proposed Salamonie Hydro Project No. 10135, has requested that its preliminary permit be terminated. The permit was issued on February 5, 1987, and would have expired on January 31, 1990. The project would have been located on the Salamonie River, in Wabash County, Indiana. The permittee states that the proposed project is not economically feasible as the basis for the surrender request.

The permittee filed a request on September 26, 1988.

Standard Paragraph

I. The preliminary permit/exemption shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007 in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24758 Filed 10-25-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1473—Montana]

Montana Power Co.; Intent Not To File an Application for a New License

October 21, 1988.

Take notice that on April 27, 1988, Montana Power Company, the existing licensee for the Flint Creek Hydroelectric Project No. 1473, filed a notice of intent *not* to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 1473 was issued effective July 1, 1938, and expired June 30, 1988.

The project is located on Flint Creek in Deer Lodge and Granite Counties, Montana. The principal works of the Flint Creek Project include a 330-foot-long, 44-foot-high earth dam with a spillway at elevation 6,429.5 feet m.s.l.; a reservoir of 2,850 acres; a 6,300-foot-long penstock with a surge tank; a powerhouse with an installed capacity of 1,100 kW; a tailrace returning flow to Flint Creek; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE, Washington, DC 20426. The above information as described in the rule is now available from the licensee at 40 East Broadway, Butte, Montana 59701, telephone (406) 723-5421.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24684 Filed 10-25-88; 8:45 am]

BILLING CODE 6717-01-M

Flint Creek Project include a 330-foot-long, 44-foot-high earth dam with a spillway at elevation 6,429.5 feet m.s.l.; a reservoir of 2,850 acres; a 6,300-foot-long penstock with a surge tank; a powerhouse with an installed capacity of 1,100 kW; a tailrace returning flow to Flint Creek; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE, Washington, DC 20426. The above information as described in the rule is now available from the licensee at 40 East Broadway, Butte, Montana 59701, telephone (406) 723-5421.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24684 Filed 10-25-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1473—Montana]

Montana Power Co.; Notice Soliciting Applications for a License

October 21, 1988.

Take notice that on April 27, 1988, Montana Power Company, the licensee for the Flint Creek Hydroelectric Project No. 1473, filed a notice of intent *not* to file an application for a new license. The original license for Project No. 1473 was issued effective July 1, 1938, and expired June 30, 1988. The project is now being operated under an annual license.

The project is located on Flint Creek in Deer Lodge and Granite Counties, Montana. The principal works of the Flint Creek Project include a 330-foot-long, 44-foot-high earth dam with a spillway at elevation 6,429.5 feet m.s.l.; a reservoir of 2,850 acres; a 6,300-foot-long penstock with a surge tank; a powerhouse with an installed capacity of 1,100 kW; a tailrace returning flow to Flint Creek; a transmission line connection; and appurtenant facilities.

The Commission is soliciting applications from potential applicants, other than the existing licensee, who are interested in obtaining a license for the Flint Creek Project. All potential applicants interested in preparing a license application, should file a letter of intent with the Commission within 90 days from the date of this public notice. Potential applicants must then file their applications for license with the Commission within 18 months from the date on which their letters of intent are due to be filed with the Commission.

For further information concerning license applications for this project, please see Docket No. RM87-33-000, Notice of Proposed Rulemaking, issued May 24, 1988. Copies of the above Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

Pursuant to section15(b)(2) of the Federal Power Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). The above information as described in the rule is now available at Montana Power Company, 40 East Broadway, Butte, Montana 59701, telephone (406) 723-5421.

Potential applicants should be aware that the Commission has prepared regulations in Docket No. RM87-33-000 governing the disposition of a project for which no timely application is filed. Given the nature of these proposed regulations, the Commission can not say with certainty that a license application will be governed under section 4(e) or section 15 of the Federal Power Act. Applicants must comply with § 4.36 of the Commission's regulations in preparing their license applications.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24685 Filed 10-25-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1403—California]

Pacific Gas and Electric Co.; Intent To File an Application for a New License

October 21, 1988.

Take notice that on August 5, 1987, Pacific Gas and Electric Company, the existing licensee for the Narrows Hydroelectric Project No. 1403, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 1403 was issued effective August 1, 1941, and expires July 31, 1991.

The project is located on the Yuba River in Nevada County, California and occupies lands of the U.S. Army Corps of Engineers. The principal works of the Narrows Project include a tunnel; a penstock; a powerhouse with an installed capacity of 10.2 MW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 77 Beale Street, Room 1391, San Francisco, CA 94106. Attn: Mr. Steve D. Christ, telephone (415) 972-2629.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by July 30, 1989.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24686 Filed 10-25-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-44017; FRL-3468-1]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on trichlorobenzene (CAS No. 87-61-6), biphenyl (CAS No. 92-52-4), vinyl fluoride (CAS No. 75-02-5) and 3,4-dichlorobenzotrifluoride (CAS No. 328-84-7), submitted pursuant to final test rules and a consent order under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received. Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that results of testing conducted pursuant to these testing

consent orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for trichlorobenzene was submitted to EPA by the Chemical Manufacturers Association on behalf of the test sponsor, the Standard Chlorine Chemical Company, pursuant to a test rule at 40 CFR 799.1053. It was received by EPA on September 30, 1988. The submission describes acute toxicity of 1,2,3-trichlorobenzene to Gammarids (*Gammarus fasciatus*) under flow-through conditions. Environmental effects testing is required by this test rule.

Trichlorobenzens are used in organic intermediates, solvents, dye carriers, transformer and dielectric fluids.

Test data for biphenyl was submitted to EPA by the Monsanto Company, pursuant to a test rule at 40 CFR 799.925. It was received by EPA on October 6, 1988. The submission is a final report on biphenyl: Environmental fate in an anaerobic sewage lagoon sediment/water system. Chemical fate testing is required by this test rule.

Biphenyl is used primarily to produce dye carriers, heat transfer fluids and alkylated biphenyls.

Test data for vinyl flouride was submitted to EPA by the Chemical Manufacturers Association on behalf of the test sponsor, E.I. du Pont de Nemours and Co., pursuant to a test rule for fluoroalkenes at 40 CFR 799.1700. It was received by EPA on October 7, 1988. The submission describes a dominant lethal mutation study of vinyl fluoride in rats. Mutagenic effects testing is required by this test rule.

Fluoroalkenes are used as precursors in the manufacture of highly specialized polymers and elastomers.

Test data for 3,4-dichlorobenzotrifluoride (DCBTF) was submitted to EPA by Occidental Chemical Corporation, pursuant to a consent order at 40 CFR 799.5000. It was received by EPA on October 13, 1988. The submission describes an acute gammarid toxicity test.

Environmetal effects testing is required by this test rule. DCBTF is used as an herbicide intermediate.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to their completeness.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-44517). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: October 19, 1988.

Frank D. Kover,

Acting Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 88-24736 Filed 10-25-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-140106; FRL-3465-3]

Access to Confidential Business Information by AM-PRO Protective Agency

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, AM-PRO Protective Agency (APA) of Columbia, SC for access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATE: Access to the confidential data submitted to EPA will occur no sooner than November 9, 1988.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Officer (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: Under contract No. 68-D8-0069, contractor APA, 6941 Trenholm Road, Columbia, SC will assist the Office of Administration and Resources Management's Facilities Management and Services Division in maintaining a system which controls door reader access to TSCA secured areas at EPA's National Computer Center in Research Triangle Park, NC.

In accordance with 40 CFR 2.306(j), EPA has determined that under contract No. 68-D8-0069, APA will require access to CBI submitted to EPA under TSCA to perform successfully the duties specified under the contract. APA personnel will be given access to information submitted under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide APA access to these CBI materials on a need-to-know basis. All access to TSCA CBI under this contract will take place at EPA's Research Triangle Park facilities.

Clearance for access to TSCA CBI under this contract is scheduled to expire on September 30, 1989.

APA personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: October 19, 1988.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 88-24737 Filed 10-25-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-140104; FRL-3466-3]

Access to Confidential Business Information by Mathtech, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Mathtech, Incorporated (MAT) of Falls Church, VA for access to information which has been submitted to EPA under sections 4, 5, 6, 8, and 12 of the Toxic Substances Control Act (TSCA). Some of the informatioin may be claimed or determined to be confidential business information (CBI).

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: In accordance with 40 CFR 2.306(j), EPA has determined that MAT will require access to CBI submitted to EPA under sections 4, 5, 6, 8, and 12 of TSCA to perform successfully work specified under their contract. EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, 8, and 12 of TSCA that EPA may provide MAT access to these materials on a need-to-know basis.

Under contract no. 68-D8-0087, MAT, 5111 Leesburg Pike, Falls Church, VA, will assist the Office of Toxic Substances' Economics and Technology Division in their review of Premanufacture Notifications. MAT will also compile and analyze marketing and economic data collections on new chemicals. All access to TSCA CBI under this contract will take place at EPA Headquarters and MAT's facilities. Upon completing review of the CBI materials, MAT will return all transferred materials to EPA.

Clearance of access to TSCA CBI under this contract is scheduled to expire on September 30, 1991.

MAT has been authorized for access to TSCA CBI at its facilities under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. EPA has approved the MAT security plan, has performed the required inspection of its facilities, and has found them to be in compliance with the requirements of the manual. MAT personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: October 19, 1988.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 88-24738 Filed 10-25-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3467-6]

Science Advisory Board; Executive Committee, Dioxin Panel; Open Meeting

Under Pub. L. 92-463, notice is hereby given that a two-day meeting of the Dioxin Panel of the Executive Committee of the Science Advisory Board will be held on November 29-30, 1988, at the Capitol Holiday Inn, 550 C Street SW., Washington, DC. The meeting will start at 8:30 a.m. on November 29th and adjourn no later than 3:30 p.m. on November 30th.

The meeting of the Dioxin Panel will review two documents developed by EPA's Office of Research and Development entitled "A Cancer Risk-Specific Dose Estimate for 2,3,7,8-TCDD (including Appendices)" and "Estimating Exposures to 2,3,7,8-TCDD".

An agenda for the workshop is available from Mary L. Winston, Science Advisory Board (A-101F), U.S. Environmental Protection Agency, Washington, DC 20460, (202) 382-2552. Background documents for Dioxin are available from: The Center for Research Information (CERI) 26 W. St. Clair Street, Cincinnati, OH 45268, (513) 569-7562. The meeting will be open to the public. Members of the public can make presentations to the Panel verbally on November 29th and in writing to be distributed at the meeting.

Any member of the public wishing to make a presentation must contact Dr. C. Richard Cothern, Executive Secretary to the Committee, by telephone at (202) 382-2552 or by mail to: Science Advisory Board (A-101-F), 401 M Street SW., Washington, DC 20460 no later than c.o.b. on November 14, 1988. The Science Advisory Board expects that the public statements presented at its meeting will not be repetitive of previous submitted written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes.

Kathleen Conway,

Deputy Director, Science Advisory Board.

Date: October 11, 1988.

[FR Doc. 88-24735 Filed 10-25-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180791; FRL-3467-5]

Maryland Department of Agriculture, Receipt of Applications for Emergency Exemptions To Use (±)-2-[4,5-Dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl]-5-ethyl-3-pyridinecarboxylic acid; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUBJECT: EPA has received specific exemption requests from the Maryland Department of Agriculture (hereafter referred to as the "Applicant") to use the active ingredient (±)-2-[2,5-dihydro-4-methyl-4-[1-methylethyl]-5-oxo-1*H*-imidazol-2-yl]-5-ethyl-3-pyridinecarboxylic acid (Pursuit™) to control broadleaf weeds on 3,000 acres of lima beans, 4,000 acres of snap beans, 6,000 acres on green peas in Maryland. Pursuit™ contains an unregistered active ingredient and, therefore, in accordance with 40 CFR 166.24, EPA is soliciting comment before making the decision whether or not to grant these exemptions.

DATE: Comments must be received on or before November 10, 1988.

ADDRESS: Three copies of written comments, bearing the identification notation "OPP-180791," should be submitted by mail to: Public Docket and Information Section, Field Operations Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

In person, bring comments to: Room 236, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information (CBI)." Information so marked will not be disclosed except in accordance with procedures set forh in 40 CFR Part 2. A copy of the comment that does contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for inspection in Room 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday excluding legal holidays.

FOR FURTHER INFORMATION: By mail: Robert Forrest, Registration Division (TS-767C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Room 716, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1806).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any provisions of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue specific exemptions to permit the use of an unregistered herbicide, (±)-2-[2,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-ethyl-3-pyridinecarboxylic acid (CAS 81335-77-5), manufactured as Pursuit,™, by American Cyanamid Company, on lima beans, snap beans, and green peas in Maryland. Information in accordance with 40 CFR Part 166 was submitted as part of these requests.

On June 10, 1988 the Administrator cancelled all labeled uses of the herbicide dinoseb on beans and peas. According to the Applicant, dinoseb was used to control annual broadleaf weeds on almost all the acreages of lima beans, snap beans, and green peas grown in Maryland. The Applicant states that other products that are labeled either do not control a broad spectrum of broadleaf weeds consistently or cannot be used in Maryland without causing crop injury.

The Applicant indicates that weeds in bean and pea fields reduce yields by competing with the crop and cause additional problems. Weeds reduce harvest efficiency and result in field abandonment when weed problems are severe. Weeds interfere with insecticide applications and may result in increased insect problems or additional insecticide applications.

Pursuit™ will be applied preplant or preemergence to the crop at a maximum

rate of 0.03125 pounds active ingredient per acre. A single application will be made sometime between March 1, and May 31, 1989 to approximately 4,000 acres of snap beans, 3,000 acres of lima beans, and 6,000 acres of green peas.

This notice does not constitute a decision by EPA on the applications themselves. The regulations governing section 18 require publication of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide). Such notice provides for the opportunity for public comment on the application.

Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemptions requested by the Maryland Department of Agriculture.

Date: October 17, 1988.

Edwin F. Tinsworth,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-24590 Filed 10-25-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-REP-1-ME-2]

Maine Ingestion Pathway Plan

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of Request for FEMA Review, Evaluation and Approval of State of Maine's Ingestion Pathway Plan for Seabrook Station.

SUMMARY: The State of Maine has formally submitted its radiological emergency response plan for responding to accidents at the Seabrook Nuclear Power Station and has requested FEMA's review, evaluation and approval of its State Plan. The State Plan submitted to FEMA includes emergency response plans for the State of Maine which is partially within the established ingestion exposure pathway emergency planning zone of the Seabrook Nuclear Power Station. The State Plan was submitted to FEMA in February 1987 and again submitted in October 1988 with amendments along with a formal request for FEMA's review, evaluation and approval of its State Plan.

ADDRESS: Copies of the Plan are available for review and copying at the FEMA Region I Office under 44 CFR 5.28, or they will be made available upon request in accordance with the fee schedule for FEMA Freedom of Information Act requests as set out in subpart C of 44 CFR, Part 5 (44 CFR 5.40, *et seq.*). Reproduction fees are 15 cents a page payable in advance. Public comments on the plan may be submitted to Mr. Henry Vickers, Regional Director, at the address below within 30 days of this **Federal Register** notice.

FOR FURTHER INFORMATION CONTACT: Mr. Henry Vickers, Regional Director, FEMA Region I, J.W. McCormack Post Office and Courthouse, Boston, Massachusetts 02109.

SUPPLEMENTARY INFORMATION: The policies and procedures for FEMA's review, evaluation and approval process on the adequacy of offsite plans and preparedness is established in 44 CFR 350. FEMA findings and determinations, made under this rule, are provided to the Nuclear Regulatory Commission (NRC) for its use in making Commission findings of the adequacy of offsite plans and preparedness and in making licensing decisions on authorizing full-power operation of commercial nuclear power plants.

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 88-24765 Filed 10-25-88; 8:45 am]

BILLING CODE 6718-01-M

[FEMA-REP-1-NH-2]

New Hampshire Radiological Emergency Response Plan

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of Request for FEMA Review, Evaluation and Approval of New Hampshire State Radiological Emergency Plan for the Seabrook Nuclear Power Station.

SUMMARY: The State of New Hampshire has formally submitted its radiological emergency response plan for responding to accidents at the Seabrook Nuclear Power Station and has requested FEMA's review, evaluation and approval of its State Plan. The State Plan submitted to FEMA includes State and local emergency response plans for the State of New Hampshire and all local governments that are wholly or partially with the established plume exposure pathway emergency planning zone of New Hampshire for the Seabrook Nuclear Power Station. The State Plan was submitted to FEMA in December 1986 and again submitted in August 1988 with amendments along with a formal request for FEMA's review, evaluation and approval of its State Plan.

ADDRESS: Copies of the Plan are available for review and copying at the FEMA Region I Office under 44 CFR 5.28, or they will be made available upon request in accordance with the fee schedule for FEMA Freedom of Information Act requests as set out in subpart C of 44 CFR, Part 5 (44 CFR 5.40, et seq.). Reproduction fees are 15 cents a page payable in advance. Public comments on the plan may be submitted to Mr. Henry Vickers, Regional Director, at the address below within 30 days of this **Federal Register** notice.

FOR FURTHER INFORMATION CONTACT: Mr. Henry Vickers, Regional Director, FEMA Region I, J.W. McCormack Post Office and Courthouse, Boston, Massachusetts 02109.

SUPPLEMENTARY INFORMATION: The policies and procedures for FEMA's review, evaluation and approval process on the adequacy of offsite plans and preparedness is established in 44 CFR 350. FEMA findings and determinations, made under this rule, are provided to the Nuclear Regulatory Commission (NRC) for its use in making Commission findings of the adequacy of offsite plans and preparedness and in making licensing decisions on authorizing full-power operation of commercial nuclear power plants.

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 88-24766 Filed 10-25-88; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 100488 AND 101788

Name of acquiring person, Name of acquired person, name of acquired entity	PMN No.	Date Terminated
Union Texas Petroleum Holdings, Inc., Texaco Inc., Texaco Producing Inc	[illegible]	10/04/88
Delta plc., FL Industries Holdings, Inc., FL Industries, Inc. Surprenant Division	89-2620	10/04/88
KDR Associates, c/o Kohlberg Kravis Roberts & Co., Macmillan, Inc., Macmillan, Inc	[illegible]	[illegible]
Blue Cross and Blue Shield of Central New York, Inc., Plan Investment Fund, Inc., Plan Investment Fund, Inc	89-2665	[illegible]
DKM, Ltd., Thetford Corp., Thetford Corp	89-2668	10/04/88
Toyoda Automatic Loom Works, Ltd., Toyota Industrial Equipment Mfg., Inc. (joint venture), Toyota Industrial Equipment Mfg., Inc	[illegible]	[illegible]
Kenetech Corp., Joel M. Carino (New CNF, Inc.), CNF Acquisition I, Inc., CNF Acquisition II, Inc	[illegible]	10/04/88
Kenneth Schnitzer, a natural person, PHM Corp., ICM Mortgage Corporation	89-2699	10/04/88
Joslens, Inc., School Pictures, Inc., School Pictures, Inc	[illegible]	[illegible]
Settsu Corp., Manufacturing Acquisition Associates, L.P., Uarco Incorporated	[illegible]	[illegible]
The Clayton & Dubilier Private Equity Fund III Ltd. Ptn, Colgate-Palmolive Co., The Kendall Co	89-2693	10/06/88
JMB Group Trust IV, American Telephone and Telegraph Company, Telephone Real Estate Equity Trust	89-2539	10/07/88
MWC Holdings, Inc., Joint Venture Corp., Joint Venture Corp	[illegible]	[illegible]
Daniel J. Sullivan, The Voltrash Co., Voltrash Refrigeration, Inc	89-2591	[illegible]
Paul W. Lowden, Margaret Elardi, Pioneer Hotel & Gambling Hall, Inc	[illegible]	[illegible]
Richard E. Rainwater, American Medical International, Inc., American Medical International, Inc	89-2534	[illegible]
Wyman-Gordon Co., Precision Founders, Inc., Precision Founders, Inc	89-2638	10/07/88
York Hannover Holding AG, McDermott International, Inc., McDermott International Trading (Germany) GmbH	89-2674	10/07/88
Vintage Petroleum, Inc., Donald C. Slawson, Canyon Oil & Gas Company	89-2690	[illegible]
JMB Income Properties, Ltd.-XIII, American Telephone and Telegraph C., Telephone Real Estate Equity Trust	89-2714	[illegible]
Warburg, Pincus Capital Company, L.P., LCCI Communications, Inc., LCI Communications, Inc	[illegible]	[illegible]
Warburg, Pincus Capital Company, L.P., LCI Communications Holdings Co., LCI Communications Holdings Co	[illegible]	10/07/88
Edward W. Wedbush, Morgan, Olmstead, Kennedy & Gardner Capital Corp., Morgan, Olmstead, Kennedy & Gardner Capital Corp	89-2731	[illegible]
Siemens Aktiengesellschaft, Newmont Mining Corp., Newmont Oil Co	[illegible]	[illegible]
Computer Associates International, Inc., American Information Technologies Corp., Applied Data Research, Inc	89-2615	[illegible]
Dumez S.A., L. Legrand Price, TFI Building Materials, Inc	89-2703	[illegible]
General Electric Co., Portec, Inc., Portec Lease Corp	[illegible]	[illegible]
Lincoln National Corp., United HealthCare Corp., Peak Health Care, Inc	89-2739	10/11/88
Chock Full O'Nuts Corp., Jimbo's Jumbos, Inc., Jimbo's Jumbos, Inc	89-2745	10/11/88
General Investments Australia Limited, Forstmann & Company, Inc., General Investments America, Inc	89-2655	10/12/88
Derby International Corporation S.A., Huffy Corp., Raliegh Cycle Company of America	89-2680	10/12/88
PacifiCorp, UNC Inc., ICC Communications Corporation	89-2691	[illegible]
Mitsui Engineering and Shipbuilding Co., Ltd., Fruehauf Corp., Paceco	89-2694	[illegible]
The ARA Group, Inc., Del Web Corp., Del Webb Recreational Properties, Inc	[illegible]	[illegible]
Adolph Coors, Jr. Trust, Graphic Packaging Corp., Graphic Packaging Corp	89-2722	10/12/88
Adolph Coors, Jr. Trust, Graphic Packaging Corp., Graphic Packaging Corp	[illegible]	[illegible]
American Telephone and Telegraph Co., AT&T Automotive, Inc., AT&T Automotive, Inc	[illegible]	10/12/88
Ford Motor Co., AT&T Automotive, Inc., AT&T Automotive, Inc	89-2748	10/12/88
Sandvik AB, TRW Inc., Mission Valve & Pump Co	89-2624	[illegible]
General Electric Co., Tiffany & Co., Tiffany & Co	89-2641	[illegible]
Jean Noel Bongrain, Wilson Foods Corp., Fischer Packing Co	[illegible]	[illegible]
Wasserstein, Perella Partners, L.P., KDI Corp., KDI Corp	[illegible]	10/13/88
Wasserstein, Perella Partners, L.P., KDI Corp.,m KDI Corp	[illegible]	[illegible]
GATX Corp., Union Pacific Corp., Calnev Pipe Line Co	[illegible]	[illegible]
VMS Institutional Mortgage Fund, VMS Hotel Investment Fund, VMS Hotel Investment Fund	[illegible]	[illegible]
VMS Institutional Mortgage Fund, VMS Short Term Income Trust, VMS Short Term Income Trust	[illegible]	[illegible]
VMS Institutional Mortgage Fund, VMS Mortgage Investors L.P. III, VMS Mortgage Investors L.P. III	89-0016	[illegible]
VMS Institutional Mortgage Fund, VMS Mortgage Investors L.P. II, VMS Mortgage Investors L.P. II	[illegible]	[illegible]
VMS Institutional Mortgage Fund, VMS Mortgage Investors L.P., VMS Mortgage Investors L.P	89-0018	[illegible]
Amstrad plc, Micron Technology, Inc., Micron Technology, Inc	[illegible]	[illegible]
Noble Drilling Corp., The Royal Bank of Canada, Peter Bawden Drilling Ltd	[illegible]	[illegible]
Bennett S. Le Bow, American Brands, Inc., American brands, Inc	[illegible]	10/14/88
Kato Kagaku Co., Ltd., The Prudential Insurance Company of America, The Chicago Hotel Venture	[illegible]	[illegible]
Kato Kagaku Co., Ltd., Wacker Stetson Joint Venture, The Chicago Hotel Venture	89-2566	[illegible]
The Nomura Securities Co., Ltd., Myron R. Rosenthal, GNP Holdings, Inc	[illegible]	10/17/88
IDE Corp., Compagnie Generale d'Electricite, Alcatel Information Systems, Inc	[illegible]	[illegible]
Yuichiro Inomata, Conrad Cairtiz,One Washington Circle, Inc	[illegible]	[illegible]
LSI Logic Corp., Intelligent Systems Operating, L.P., Video Seven Inc	[illegible]	[illegible]
Gulf & Western Inc., Barclay's PLC, Barclays Bank of Delaware, N.A. and BarclaysAmerican	[illegible]	10/17/88
The Nomura Securities Co., Ltd., Brian P. Monieson, GNP Holdings, Inc	89-0010	[illegible]
International Business Machines Corp., Home Properties, Inc., Home Properties, Inc	[illegible]	[illegible]
KKR Associates, Mcmilan, Inc., Ceratin subsidiaries and assets of MAC	[illegible]	[illegible]
Anders Wilhelmsen & Co., Royal Admiral Cruises Ltd., Royal Admiral Cruises Ltd	[illegible]	[illegible]
900 Partners' Investments, Amfac, Inc., Amfac, Inc	[illegible]	[illegible]
Citadel Holding Corp., Emi Fish, La Brea Branch Office	[illegible]	[illegible]
Walter Meier Holding AG, Equipment Importers, Inc., Equipment Importers, Inc	89-0044	[illegible]
Munchener Ruckuersicherunge-Gesellschaft, Munich American Reassurance Co., Munich American Reassurance Co	[illegible]	[illegible]
Munchener Ruckuersicherunge-Gesellschaft, Munich American Reinsurance Co., Munich American Reinsurance Co	[illegible]	[illegible]
Integrated Resources, Inc., Mid-Continent Bottlers, Inc., Mid-Continent Bottlers, Inc	[illegible]	[illegible]
Southeast Banking Corp., AmeriFirst Bank, AmeriFirst Bank	[illegible]	10/17/88

FOR FURTHER INFORMATION CONTACT:
Sandra M. Peay, Contact Representative, Premerger Notificaiton Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 88-24754 Filed 10-25-88; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88F-0317]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of disodium decanedioate as a component of lubricants that may contact food.

FOR FURTHER INFORMATION CONTACT:
Richard H. White, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-473-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 8B4102) has been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 178.3570 *Lubricants with incidental food contact* (21 CFR 178.3570) be amended to provide for the safe use of disodium decanedioate as a component of lubricants that may contact food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: October 20, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-24762 Filed 10-25-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88F-0339]

Eastman Kodak Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Eastman Kodak Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of poly(ethylene 2,6-naphthalene dicarboxylate) as a basic resin in articles or as a component of articles intended for single-use or repeated-use in contact with food.

FOR FURTHER INFORMATION CONTACT:
Richard H. White, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 8B4110) has been filed by Eastman Kodak Co., Eastman Chemical Division, P.O. Box 511, Kingsport, TN 37662, proposing that Part 177—Indirect Food Additives: Polymers (21 CFR Part 177) be amended to provide for the safe use of poly(ethylene 2,6-naphthalene dicarboxylate) as a basic resin in articles or as a component of articles intended for single-use or repeated-use in contact with food.

The potential enviromental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: October 17, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-24763 Filed 10-25-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88F-0340]

Shell Oil Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Shell Oil Co. has filed a petition proposing that the food additive regulations be amended to provide for additional safe uses of poly-1-butene resins and butene/ethylene copolymers containing no more than 6 weight-percent ethylene as articles or components of articles intended for food-contact use.

FOR FURTHER INFORMATION CONTACT:
Richard H. White, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 8B4105) has been filed by the Shell Oil Co., One Shell Plaza, P.O. Box 4320, Houston, TX 77210, proposing that § 177.1570 *Poly-1-butene resins and butene/ethylene copolymers* (21 CFR 177.1570) be amended to provide for additional safe use of poly-1-butene resins and butene/ethylene copolymers containing no more than 6-weight-percent ethylene as articles or components of articles intended for food-contact use.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: October 17, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-24764 Filed 10-25-88; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Clinical Applications, Prevention and Treatment Subcommittee of the Acquired Immunodeficiency Syndrome Research Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Clinical Applications, Prevention and Treatment Subcommittee of the Acquired Immunodeficiency Syndrome Research Review Committee, National Institute of Allergy and Infectious Diseases, on November 14, 1988, at the Guest Quarters, 7335 Wisconsin Avenue, Bethesda, Maryland 20814.

The meeting will be open to the public from 8:30 a.m. to 9 a.m. on November 14, to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting of the Clinical Applications, Prevention and Treatment Subcommittee will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 9 a.m. until adjournment on November 14. These applications, proposals, and discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301) 496-5717, will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Hortencia M. Hornbeak, Executive Secretary, Acquired Immunodeficiency Syndrome Research Review Committee, NIAID, NIH, Westwood Building, Room 3A05, Bethesda, Maryland 20892, telephone (301-496-0123), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: October 21, 1988.

William F. Raub,

Deputy Director, National Institutes of Health

[FR Doc. 88-24888 Filed 10-25-88; 8:45 am]

BILLING CODE 4160-01-M

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Meeting of the Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee (AMS) of the National Institute of Arthritis and Musculoskeletal and Skin Diseases on November 4, 1988, Guest Quarters Hotel, 7335 Wisconsin Avenue, Bethesda, Maryland. The meeting will be open to public from 8:30 a.m. to 9 a.m. to discuss administrative details or other issues relating to the committee activities. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

The meeting will be closed to the public from 9 a.m. to adjournment in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual research grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning this meeting may be obtained from Dr. Melvin H. Gottlieb, Executive Secretary, Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee, NIAMS, Westwood Building, Room 3A11, Bethesda, Maryland 20892, (301) 496-0754.

Mrs. Carole Frank, Committee Management Officer, National Institute of Arthritis and Musculoskeletal and Skin Diseases, National Institutes of Health, Building 31, Room 4C27, Bethesda, Maryland 20892, 301-496-0803, will provide summaries of the meeting and roster of the committee members upon request.

(Catalog of Federal Domestic Assistance Program No. 13.846, project grants in arthritis, musculoskeletal and skin diseases research, National Institutes of Health)

Dated: October 21, 1988.

William F. Raub,

Deputy Director, National Institutes of Health.

[FR Doc. 88-24887 Filed 10-25-88; 8:45 am]

BILLING CODE 4160-01-M

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meetings of Subcommittee B and D of the Diabetes and Digestive and Kidney Diseases Special Grants Review Committee

Pursuant to Pub. L. 92-463, notice is hereby given of meetings of Subcommittee B and D of the National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, National Institute of Diabetes and digestive and Kidney Diseases (NIDDK).

These meetings will be open to the public to discuss administrative details for approximately one hour at the beginning of the first session of the first day of the meetings. Attendance by the public will be limited to space available. Notice of the meeting rooms will be posted in the hotel lobby.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, for the review, discussion, and evaluation of individual research grant applications. Discussion of these applications could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Edith Wynkoop, Committee Management Officer, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, Building 31, Room 9A19, Bethesda, Maryland 20892, 301-496-6917, will provide summaries of the meetings and rosters of the committee members upon request. Other information pertaining to the meetings can be obtained from the Executive Secretary indicated.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, Subcommittee B.

Executive Secretary: Judith M. Podskalny, Westwood Building, Room 417A, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301-496-7841.

Dates of Meeting: November 9-10, 1988.

Place of Meeting: Hyatt Regency, One Bethesda Metro Center, Bethesda, Maryland 20814.

Open: November 9, 7:30 p.m.—8:30 p.m.

Closed: November 9, 8:30 p.m. to recess. November 10, 8:00 a.m. to adjournment.

Name of Committee: National Diabetes and digestive and Kidney Diseases Special Grants Review Committee, Subcommittee D.

Executive Secretary: William E. Elzinga, Westwood Building, Room 421, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301-496-7546

Date of Meeting: November 18, 1988.
Place of Meeting: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Open: November 18, 8:30 a.m.—9:30 a.m.
Closed: November 18, 9:30 a.m. to adjournment.

Dated: October 21, 1988.

William F. Raub,
Deputy Director, National Institutes of Health
[FR Doc. 88-24889 Filed 10-25-88; 8:45 am]
BILLING CODE [illegible]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-88-1877; FR2572]

Community Development Block Grant Program for Indian Tribes and Alaskan Native Villages

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of application deadline for funds under the CDBG Program for Indian Tribes and Alaskan Native Villages for Fiscal Year 1989.

SUMMARY: This Notice sets the deadline dates for filing applications for funds under the Community Development Block Grant Program for Indian Tribes and Alaskan Native Villages for Fiscal Year 1989. Applications are required in order to provide HUD with the information necessary to rate the proposed project(s) and to assure HUD that the necessary citizen participation has taken place.

FOR FURTHER INFORMATION CONTACT: Mr. Leroy P. Gonnella, Office of Program Policy Development, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, (202) 755-6092). (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This Notice sets the deadline dates for submitting applications for the Community Development Block Grant Program for Indian Tribes and Alaskan Native Villages. HUD will use the information furnished in these applications to rate the proposed project(s) and to assure the Department that there has been the necessary citizen participation. These dates apply only to applications submitted by Indian Tribes and Alaskan Native Villages for Fiscal Year 1989.

The field responsibility for the administration of the program is divided among the following offices: Region V Office of Indian Programs (OIP) in Chicago, responsible for all HUD Indian program activities within Regions I–V, plus the State of Iowa; Oklahoma City Office, responsible for all HUD Indian program activities in the States of Arkansas, Texas, Oklahoma, Kansas, Louisiana, and Missouri; Region VIII, OIP in Denver, responsible for all HUD Indian program activities in Region VIII, plus the State of Nebraska; Region IX, OIP in Phoenix, responsible for all HUD Indian program activities in Region IX, plus the State of New Mexico; Region X, OIP in Seattle, responsible for all HUD Indian program activities in Region X, with the exception of the State of Alaska; and the Anchorage Office, responsible for all HUD Indian and Alaskan Native program activities in the State of Alaska.

Applications will be accepted by HUD as of the publication date of this Notice.

FINAL DATES FOR SUBMISSION OF APPLICATIONS

Offices	Applications must be submitted no later than
Region V, OIP	Feb. 10, 1989.
Oklahoma City Office	Nov. 30, 1988.
Region VIII, OIP	Nov. 23, 1988.
Region IX, OIP	Feb. 24, 1989.
Region X, OIP	Jan. 10, 1989.
Anchorage Office	Jan. 31, 1989.

Applications must be received or postmarked no later than the closing date specified above. Applications received or postmarked after the deadline will not be considered.

Tribes and Villages submitting applications for this program must do so on HUD forms approved by the Office of Management and Budget under OMB Control Number 2506-0043. These forms request information which assures HUD that the necessary citizen participation has taken place. Forms will be provided by the appropriate HUD Field Offices.

Authority: Sec. 107, Housing and Community Development Act of 1974 (42 U.S.C. 5307); Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: October 19, 1988.

Jack R. Stokvis,
Assistant Secretary for Community Planning and Development.
[FR Doc. 88-24732 Filed 10-25-88; 8:45 am]
BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-830-08-4830-13]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection on information and related forms and explanatory material may be obtained by contacting the Bureau's clearance office at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau's Clearance Officer and to the Office of Management of Budget's Interior Department Desk Officer, Washington, DC 20503, telephone 202/395-7313.

Title: Application for Seasonal Employment.

OMB Approval Number: 1004-0150

Abstract: This form allow applicants to present information necessary for the Bureau of Land Management to judge their qualifications, rating and ranking for a seasonal position with the Bureau.

Bureau Form Number: 1400-104(302).

Frequency: Annually.

Description of Respondents: Individuals applying for seasonal employment with the Bureau of Land Management.

Estimated Completion Time: 25 minutes.

Annual Response: Approximately 10,000.

Annual Budget Hours: Estimated 4,500.

Bureau Clearance Officer: Rose M. Berezowsky, 202/653-8853.

Date: October 17, 1988.

Tom Allen,
Assistant Director, Management Services.
[FR Doc. 88-24688 Filed 10-25-88; 8:45 am]
BILLING CODE 4310-84-M

[Alaska AA-48649-I]

Proposed Reinstatement of a Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease AA-48649-I has been received covering the following lands:

Copper River Meridian, Alaska
T. 13 N., R. 5 W.,
Sec. 17, NE¼NE¼.
(40 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from July 1, 1988, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA-48649-I as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective July 1, 1988, subject to the terms and conditions cited above.

Kay F. Kletka,
Chief, Branch of Mineral Adjudication.
Dated: October 14, 1988.
[FR Doc. 88-24689 Filed 10-25-88; 8:45 am]
BILLING CODE 4310-JA-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information may be obtained by contacting the Bureau's clearance office at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20253, telephone (202) 395-7313.

Title: Exemption for Coal Extraction Incidental to Extraction of Other Minerals—30 CFR 702.

OMB Number: 1029-0069.

Abstract: This part implements the exemption in section 702(28) of the Surface Mining Control and Reclamation Act of 1977 (the Act), Pub. L. 95-87. It requires the regulatory authority to make a determination of exemption from the requirements of the Act for operators extracting less than 16% tonnage of coal incidental to other minerals. This information will be used by the regulatory authority to make that determination.

Bureau Form Number: None.

Frequency: Annually.

Description of Respondents: Producers of Coal and other Minerals.

Estimated Completion Time: 1 hour.

Annual Responses: 1.

Annual Burden Hours: 1.

Bureau Clearance Officer: Nancy Ann Baka (202) 343-5961.

Date: October 11, 1988.

Andrew F. DeVito,
Acting Chief, Regulatory Development and Issues Management Office.
[FR Doc. 88-24752 Filed 10-25-88; 8:45 am]
BILLING CODE 4310-05-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-388 (Final)]

Certain All-Terrain Vehicles from Japan

AGENCY: International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-388 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of certain all-terrain vehicles (ATVs),[1] provided for in item 692.10 of the Tariff Schedules of the United States (TSUS), that have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Commerce has extended the investigation and will make its final determination on or before January 25, 1989, and the Commission will make its final injury determination by March 10, 1989 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207 as amended, 53 FR 33041 *et seq.* (August 29, 1988)), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: September 12, 1988.

FOR FURTHER INFORMATION CONTACT: Judith C. Zeck (202-252-1199), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of certain all-terrain vehicles are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigation was requested in a petition filed on February 9, 1988, by Polaris Industries L.P., Minneapolis MN. In respone to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (53 FR 11351, April 6, 1988).

Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

[1] The products covered by this investigation are certain ATVs, currently reported under item 692.1090 of the Tariff Schedules of the United States Annotated (TSUSA) and classifiable in subheading [illegible] of the Harmonized Tariff Schedule of the United States. Certain ATVs are motor vehicles designed for off-pavement use by one operator and no passengers and contain internal combustion engines of less than 1000cc cylinder capacity. The ATVs under investigation are non-amphibious, have three or four wheels, and weigh less than 600 pounds. They have a set designed to be straddled by the operator and handlebars for steering control.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), as amended, 53 FR 33041 *et seq.* (August 29, 1988) each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited Disclosure of Business Proprietary Information Under a Protective Order

Pursuant to § 207.7(a) of the Commission's rules (19 CFR § 207.7(a), as amended, 53 FR 33041 *et seq.* (August 29, 1988)), the Secretary will make available business proprietary information gathered in this final investigation to authorized applicants under a protective order, provided that the application be made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been filed with all the parties that are authorized to receive such information under a protective order.

Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on January 13, 1989, and a public version will be issued thereafter pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on January 27, 1989, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on January 18, 1989. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on January 24, 1989, at the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is January 24, 1989.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a non-business-proprietary summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any business proprietary materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of section 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on February 2, 1989. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before February 2, 1989.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a) as amended, 53 FR 33041 *et seq.* (August 29, 1988)) may comment on such information in their prehearing and posthearing briefs, and may also file additional written comments on such information no later than February 7, 1989. Such additional comments must be limited to comments on business proprietary information received in or after the posthearing briefs.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, Title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: October 21, 1988.

[FR Doc. 88-24782 Filed 10-25-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-285]

Certain Chemiluminescent Compositions and Components Thereof and Methods of Using the Same; Commission Decision Not To Review an Initial Determination Amending the Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 3) issued by the presiding administrative law judge (ALJ) amending the notice of investigation in the above-captioned investigation.

ADDRESS: Copies of the ID and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1106.

FOR FURTHER INFORMATION CONTACT: Thomas J. O'Connell, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1106. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

SUPPLEMENTARY INFORMATION: On September 19, 1988, the presiding ALJ issued an ID amending the notice of investigation to reflect amendments to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) effected by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418, 102 stat. 1107). The notice of investigation was amended to delete references to the former requirements that the industry in the United States be efficiently and economically operated and that the effect or tendency of the alleged unfair acts is to destroy or substantially injure an industry in the United States.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and interim rule 210.53 (53 FR 33070, Aug. 29, 1988).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: October 17, 1988.

[FR Doc. 88-24783 Filed 10-25-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-283]

Certain Electronic Dart Games; Commission Decision Not To Review an Initial Determination Amending the Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 5) issued by the presiding administrative law judge (ALJ) amending the notice of investigation to the above-captioned investigation.

ADDRESS: Copies of the ID and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Randi Field, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1099. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

SUPPLEMENTARY INFORMATION: On September 22, 1988, the presiding ALJ issued an ID amending the notice of investigation to reflect amendments to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) effected by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418, 102 stat. 1107). The notice of investigation was amended to delete the reference to the former requirement that an industry in the United States be efficiently and economically operated and to delete the reference to the former requirement that complainant be required to prove that the effect or tendency of the alleged unfair act of patent infringement is to destroy or substantially injure an industry in the United States. No petitions for review or agency comments regarding the ID were received

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and interim rule § 210.53 (53 FR 33070, Aug. 29, 1988).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: October 21, 1988.

[FR Doc. 88-24784 Filed 10-25-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-283]

Certain Electronic Dart Games; Amendment of Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the notice of investigation in the above-captioned investigation has been amended in the manner described below.

ADDRESS: Copies of the ID and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: T. Spence Chubb, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1575. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

SUPPLEMENTARY INFORMATION: On September 22, 1988, the presiding administrative law judge issued an initial determination (ID) amending the notice of investigation and directing the Commission Secretary, in the absence of Commission review of the ID, to publish the amendment to the notice of investigation in the **Federal Register**. The Commission has determined not to review the ID. Accordingly, paragraph (1) of page 2 of the notice of investigation has been amended to read as follows:

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B)(i) of section 337 in the unlawful importation into the United States, after importation, of certain electronic dart games, by reason of alleged infringement of claims 1, 2, 6, 8, or 10 of U.S. Letters Patent 4,057,251 and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: October 21, 1988.

[FR Doc. 88-24785 Filed 10-25-88; 8:45 am]

BILLING CODE 7020-02-M

[332-272]

Competitive Conditions in the U.S. and World Markets for Fresh Cut Roses

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: October 21, 1988.

SUMMARY: As required by section 4509 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418, 102 Stat. 110, approved Aug. 23, 1988), the Commission has instituted investigation No. 332-263 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) for the purpose of reporting on (1) the competitive factors affecting the domestic rose-growing industry, including competition from imports; (2) the effect that the European Community's tariff rate for imported roses has on world trade of roses; and (3) the extent to which unfair trade practices and foreign barriers to trade are impeding the marketing abroad of domestically produced roses. The 1988 Act requires that the Commission report the results of its investigation within 240 days of enactment, or by April 20, 1989.

FOR FURTHER INFORMATION CONTACT: Stephen D. Burket; Agriculture, Fisheries, and Forest Products Division; U.S. International Trade Commission; Washington, DC 20436; telephone (202) 252-1218.

Hearing: A public hearing in connection with the investigation will be held January 18, 1989, in Washington, DC. All persons will have the

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opportunity to appear by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, not later than noon January 4, 1989.

Written Submissions: Interested persons are invited to submit written statements concerning the investigation, in lieu of, or in addition to, appearances at the public hearing. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by the public. To be assured of consideration by the Commission, written statements should be received at the earliest practicable date, but not later than February 1, 1989. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 252–1809.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: October 21, 1988.

[FR Doc. 88-24788 Filed 10-25-88; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31154]

Octoraro Railway, Inc.; Acquisition and Operation Exemption; Certain Rail Line of Southeastern Pennsylvania Transportation Authority

Octoraro Railway, Inc. (Octoraro) has filed a notice of exemption to acquire by purchase and to operate approximately 37 miles of rail line now owned by Southeastern Pennsylvania Transportation Authority (SEPTA) which extends from milepost 18 near Wawa, PA, to milepost 55 near Sylmar, PA. The transfer of this rail line to Octoraro is to be accomplished first by purchase of the line from SEPTA by Chester County, PA (Chester), and then, simultaneously, by Chester's sale of the line to Octoraro. The invovled transaction was to be consummated on or about October 5, 1988. Any comments must be filed with the Commission and served on John D. Heffner and Mary Todd Foldes, Gerst, Heffner, Foldes & Podgorsky, 1700 K Street NW., Suite 1107, Washington, DC 20006, and Octoraro Railway, Inc., attn. Albert J. Derr, Chrman., P.O. Box 146, Kennett Square, PA 19348.

Octoraro has certified that no properties qualifying for inclusion in the National Register of Historic Places will be affected as a result of the involved transaction.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: October 4, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Kathleen M. King,

Acting Secretary.

[FR Doc. 88-24221 Filed 10-25-88; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 477]

Modifications to General Purpose Costing System—GPCS

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed policy.

SUMMARY: In accordance with recommendations of the Railroad Accounting Principles Board, the Commission proposes to adopt depreciation accounting, a deferred tax adjustment, and current cost of capital in developing general-purpose costs which are used in specific regulatory applications. These modifications are intended to improve the accuracy of the Commission's general purpose costing system. Additionally, the Commission proposes to adopt a transition methodology which will be used to re-cast the statutorily mandated jurisdictional threshold to reflect the impact of the proposed costing changes.

DATE: Comments will be due December 12, 1988.

ADDRESS: An original and 15 copies of comments should be sent to: Office of the Secretary Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Leslie J. Selzer (202) 275–7627; or William T. Bono (202) 275–7354, TDD for hearing impaired (202) 275–1721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to the Office of the Secretary, Room 2215, Interstate Commerce Commission Building, Washington, DC 20423, or telephone (202) 275–7428. Assistance for the hearing impaired is available through TDD Services (202) 275–1721 or by pickup from Dynamic Concepts, Inc. in Room 2229, at Commission headquarters.

This action will not significantly effect either the quality of the human environment or energy conservation. This proceeding will not have a significant impact on a substantial number of small entities.

This decision is issued under authority of 49 U.S.C. 10321.

Decided: October 19, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips.

Vice Chairman Andre dissented in part with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 88-24728 Filed 10-25-88; 8:45 am]

BILLING CODE 7035-01-M

[No. MC-F-19157]

Raynald R. Dupuis; Continuance in Control Exemption; Arrow Leasing, Inc.

ADDRESSES: Send pleadings, referring to No. MC–F–19157, to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
and
Petitioners' representative: Charles H. Webb, 608 London House, 1001 Wilson Boulevard, Arlington, VA [illegible].

Pleadings should refer to No. MC–F–19157.

Decided: October 19, 1988.

Under 49 U.S.C. 11343(e), and the Commission's regulations in Ex Parte No. 400 (Sub-No. 1), *Procedures—Handling Exemptions Filed by Motor Carriers*, 367 I.C.C. 113 (1982), the Interstate Commerce Commission exempts from the requirement of prior review and approval under 49 U.S.C. 11343(a)(5), the continuance in control by Raynald R. Dupuis, a noncarrier individual, of Arrow Leasing, Inc., which is seeking an initial grant of operating authority in No. MC–209730 to operate as a motor common carrier of passengers.

This exemption will be effective on November 25, 1988. Petitions for reconsideration must be filed by November 15, 1988. Petitions for stay must be filed by November 7, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners, Simmons, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 88-24729 Filed 10-25-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-290 (Sub-No. 47X)]

Norfolk and Western Railway Co. and Wabash Railroad Co.; Discontinuance of Service and Abandonment Exemption in Gary, IN

Norfolk and Western Railway Company (NW) and Wabash Railroad Company (Wabash) (collectively, applicants) filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments* to discontinue service over and abandon, respectively, a 1.3-mile line of railroad between milepost 239 and milepost 240.3, in Gary, IN. Wabash owns the involved line and leases it to NW.

Applicants have certified that: (1) No local or overhead traffic has moved over the line for at least 2 years; and (2) no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service on the line either in pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective November 25, 1988 unless stayed pending reconsideration. Petitions to stay regarding matters that do not involve environmental issues[1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [2] must be filed by November 7, 1988 and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by November 15, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicants' representative: Roger A. Peterson, Norfolk Southern Corporation, One Commercial Place, Norfolk, VA 23510–2191.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicants have filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) has issued an environmental assessment (EA). Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316.

In the EA, SEE notes that the U.S. Fish and Wildlife Service has advised that the Indiana bat and the dune thistle are endangered species located in the area. The Indiana Department of Natural Resources has advised that on the west end of the line there is the State threatened yellow-crowned night heron that use the wetlands located there for feeding. Both agencies recommend that applicants use caution when removing rail and ballast near the wetlands.

Decided: October 17, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-24730 Filed 10-25-88; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 400.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the Federal Register on December 22, 1987 (52 FR 48440–48446).

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; Burns et al.

In accordance with Department Policy, 28 CFR 50.7, notice is hereby given that a Consent Decree with Defendant Chittick in *United States v. Burns et al.*, Civil Action No. 88–94–L, has been lodged with the United States District Court for the District of New Hampshire. The suit is a cost recovery action brought pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9607, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99–499, 100 Stat. 1613 ("CERCLA"). The action seeks to recover costs incurred by the United States in response to the release or threat of release of hazardous substances from the former Urethane Molded Products Company manufacturing plant site ("UMP Site") and the former Polythane Company manufacturing plant site ("Polythane Site"), both of which are located in Gonic, New Hampshire.

The settling defendant is Claude Chittick, who is a defendant as to the UMP Site only. The United States alleges that Chittick is jointly and severally liable with defendant William Burns for the $61,320.14 in response costs incurred by the United States in connection with the UMP Site. The proposed Consent Decree requires Chittick to pay $30,000.00 to the United States for costs incurred by the United States in conducting investigatory and removal activities at the UMP Site. The proposed Consent Decree does not resolve the liability of the other defendants in this action.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Burns et al.*, D.J. Reference No. 90–11–3–314.

The proposed Consent Decree may be examined at the office of the United States Attorney, Room 439, Federal Building, 55 Pleasant Street, Concord, NH 03001; and at the Office of Regional Counsel, United States Environmental Protection Agency, Region I, Room 2203, John F. Kennedy Federal Building, Boston, Mass. 02203. A copy of the proposed Consent Decree may be obtained in person or by mail from the

Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please provide a check in the amount of $1.00 (ten cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-24724 Filed 10-25-88; 8:45 am]

BILLING CODE 4410-01-M

Bureau of Justice Assistance

State Reimbursement Program for Incarcerated Mariel-Cubans

AGENCY: Bureau of Justice Assistance, Justice.

ACTION: Notice of issuance of solicitation for applications to reimburse states for expenses incurred by the incarceration of Mariel-Cubans.

SUMMARY: The Bureau of Justice Assistance (BJA) is administering a program to reimburse states for expenses incurred by the incarceration of certain Mariel-Cubans in state facilities.

ADDRESS: Bureau of Justice Assistance, 633 Indiana Avenue, NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Louise Lucas, (202) 724-8374. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: The Bureau of Justice Assistance (BJA) is publishing a notice of issuance of solicitation to implement a State Reimbursement Program for Incarcerated Mariel-Cubans. The Department of Justice Appropriation Act for 1989 (Pub. L. 100-459) allocates up to $5 million for the purpose of making grants to states for their expenses for the incarceration of Mariel-Cubans in state facilities.

I. General Provisions

Statutory Authority:

The statutory authority is the Department of Justice Appropriations Act for 1989, Pub. L. 100-459.

Submission Date

The submission date for state applications is no later than February 1, 1989.

Eligible Applicants

All states are eligible to apply for and receive grants. *State* means any state of the United States and includes the District of Columbia and the Commonwealth of Puerto Rico.

Participating States

It is expected that the 38 states that participated last year may participate again this year, specifically, Arkansas, Arizona, California, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Jersey, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, West Virginia and Wisconsin. There may be the possibility of a few additional states participating also.

II. Allocations and Use of Funds

Fund Availability

The Act provides a total of $5 million for the purpose of making grants to states. The total amount of funds awarded will be on the basis that the certified number of incarcerated persons in a state bears to the total certified number of such incarcerated persons. The amount of reimbursement per prisoner, per annum, shall not exceed $12,000.

Fund Use

The intent of the public law is to reimburse the states for partial expenses incurred by reason of Mariel-Cubans having to be incarcerated in state facilities. A budget or expenditure plan is not required as the award will be solely for reimbursement. No match funds are required.

III. Application Content

(a) All state applicants *must* submit Standard Form 424 (Application for Federal Assistance), and a *certified listing* of incarcerated Mariel-Cuban prisoners. We request that inmates previously verified be *separated* from newly submitted inmates. For those previously verified, there is no need to resubmit items 13 & 14 below. The certified listing will include information in the following sequence:

(1) Name (last name first).
(2) AKA (also known as).
(3) Alien Identification Number (e.g., A24456789).
(4) Inmate Number.
(5) Date of Birth.
(6) Incarceration Date.
(7) Probable earliest release date.
(8) Conviction Offense (Criminal Offense Code No. not acceptable).
(9) Conviction date.
(10) Last known address.
(11) State facility housing the prisoner.
(12) State facility address.
(13) I-247 Form—Immigration Detainer Notice (If INS has filed a Detainer on this prisoner, submit a copy).
(14) Fingerprint card.

Submission of Mariel-Cuban data in an alternative format *must* be approved by the BJA prior to submission of an application. Please contact Louise Lucas, BJA, 202/724-8374.

(b) The certified listing *MUST* be signed by the Governor or his authorized representatives.

(c) The period of incarceration for reimbursement purposes is October 1, 1988 to September 30, 1989. The computation of funds will be based on an aggregate total of certified prisoners incarcerated for a 12-month period (e.g., if two prisoners are incarcerated for six months during the period, the state will be reimbursed the full amount for one year.

(d) The Act is specific in that the prisoner must have been paroled into the United States by the Attorney General during the 1980 influx of Mariel-Cubans. This means those Cubans who *Entered Without Inspection* (EWI), earlier arrivals (pre-boatlift), and/or later arrivals (post-boatlift), cannot be included and, thus, no expenses will be reimbursed.

(e) State law will prevail when a determination is required as to what constitutes a state facility and/or a state prisoner.

IV. Review of State Applications

State applications must be submitted in the form and at the time prescribed.

(a) The application and certified listing will be reviewed by BJA and a cross-check verification of prisoners will be made by the Immigration and Naturalization Service of the U.S. Department of Justice. This review will be accomplished no later than April 1, 1989, and grants will be immediately made to states.

(b) Compliance with Executive Order 12372, "Intergovernmental Review of Federal Programs." This program is covered by Executive Order 12372 and Department of Justice implementing regulations 28 CFR Part 30. States must submit grant applications to the state's *Single Point of Contact*, if there is a *Single Point of Contact*, and if this program has been selected for coverage by the state process, at the same time applications are submitted to the Federal agency. State processes have 60 days starting from the application deadline to comment on applications. Applicants should contact their state "Single Point of Contact" as soon as possible to alert them to the prospective application and receive instructions regarding the process.

(c) The BJA will notify the applicant in writing of the specific reasons for the disapproval of the application amendment, in whole or in part.

V. Civil Rights Assurances

The applicant State must specifically assure that it will comply, and that subgrantees and contractors will comply, with all applicable Federal non-descrimination laws and regulations, including the following:

(a) Title VI of the Civil Rights Act of 1964;
(b) Section 809(c) of Justice Assistance Act of 1984;
(c) Section 504 of the Rehabilitation Act of 1973, as amended;
(d) Title IX of the Education Amendments of 1972;
(e) The Age Discrimination Act of 1975; and,
(f) The Department of Justice Non-Discrimination Regulations, 28 CFR Part 42, Subparts, C, D, E, and G.

Any application for $500,000 or more shall be accompanied by a copy of the current Equal Employment Opportunity Program of the corrections department in accordance with the provisions of 28 CFR 42.301 *et seq.* State applicants that previously applied for and received funding under this initiative, and had an Office of Justice Programs' approval of their Equal Employment Opportunity Program, need only submit a statistical update of the previously approved program.

Charles P. Smith,

Director, Bureau of Justice Assistance.

[FR Doc. 88-29727 Filed 10-25-88; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Review Panel for the Job Training Partnership Act Presidential Awards; Meeting

The Review Panel for the Job Training Partnership Act (JTPA) Presidential Awards was renewed by Notice dated August 8, 1988, and published August 12, 1988, 53 FR 30482, to advise the Secretary of Labor on the selection of the Presidential Awards recipients.

Notice is hereby given of the meetings of the Review Panel for the JTPA Presidential Awards and its working groups during a two-week period to begin October 31, 1988.

Time and Place: 8:30 a.m., Room N5437-A Frances Perkins, Department of Labor Building, 200 Constitution Avenue NW., Washington, DC 20210.

These meetings will be closed under the authority of section 10(d) of the Federal Advisory Committee Act. The Panel will review and discuss personal information regarding the nominees, disclosure of which would constitute a clearly unwarranted invasion of privacy.

For further information, contact: Robert N. Colombo, Director, Office of Employment and Training Programs, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW., Room N-4703, Washington, DC 20210. Telephone: 202-535-0577.

Signed at Washington, DC, the 6th day of October, 1988.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 88-24761 Filed 10-25-88; 8:45 am]

BILLING CODE 4510-30-M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Adcor Drilling et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 7, 1988.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 7, 1988.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Wahington, DC, 20213.

Signed at Washington, DC this 11th day of October 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition number	Articles produced
ADCOR Drilling (Workers)	Williston, ND	10/11/88	10/6/88	21,251	Oil & Gas.
Allied Products, Div. of Carrier (Workers)	Knoxville, TN	10/11/88	9/23/88	21,252	Air Conditioning.
Amerada Hess Corp, Northern Region (Workers)	Williston, ND	10/11/88	9/9/88	21,253	Oil & Gas.
Ashland Oil Co (Workers)	Beattyville, KY	10/11/88	9/28/88	21,254	Do.
Atlas Processing Co. (Workers)	Shreveport, LA	10/11/88	9/27/88	21,255	Lube & Fuel Stocks.
Ausimont (Company)	Elizabeth, NJ	10/11/88	9/28/88	21,256	Fluoropolymers.
Baker International (Workers)	Houston, TX	10/11/88	9/13/88	21,257	Oil & Gas.
Bell Helicopter (Workers)	Amarillo, TX	10/11/88	9/20/88	21,258	Helicopter Parts.
Bethets, Inc. (Workers)	Ripley, WVA	10/11/88	9/23/88	21,259	Oil & Gas
Bowen Tools, Inc. (Workers)	Williston, ND	10/11/88	9/15/88	21,260	Do.
Donald C. Slawson (Workers)	Amarillo, TX	10/11/88	9/26/88	21,261	Do.

APPENDIX—Continued

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition number	Articles produced
Dorham Oil Tools Co., Inc. (Workers)	Katy, TX	10/11/88	9/26/88	21,262	Do.
Dyna Oil & Gas (Workers)	Borger, TX	10/11/88	9/28/88	21,263	Do.
E.Z. Construction, Co. (Workers)	Keene, ND	10/11/88	9/27/88	21,264	Do.
Elite Wireline, Inc. (Company)	[illegible], OK	10/11/88	9/15/88	21,265	Do.
Electronic Data Systems (Company)	Fairfield, NJ	10/11/88	9/29/88	21,266	Computers.
Ernest E. Fey, Inc. (Workers)	W. New York, NJ	10/11/88	9/30/88	21,267	Men's Sweaters & Ladies' Skirts.
Great Lakes Enterprises Inc. (Workers)	[illegible], TX	10/11/88	9/15/88	21,268	Oil & Gas.
Great West Operating Co., Inc. (Company)	[illegible], TX	10/11/88	9/28/88	21,269	Do.
Gregg Hamlet Shirt Co. (Workers)	Exmore, VA	10/11/88	9/28/88	21,270	Men's & Boys' Shirts.
Halliburton Services Div. (Headquarters)	Duncan, OK	10/11/88	10/6/88	21,271	Oil & Gas.
Halliburton Services Division (Bakersfield)	Bakersfield, CA	10/11/88	10/6/88	21,272	Do.
Halliburton Services Division (Pittsburgh)	Pittsburgh, PA	10/11/88	10/5/88	21,273	Do.
Halliburton Services Division (Dallas)	Dallas, TX	10/11/88	10/6/88	21,274	Do.
Halliburton Services Div. (Midland)	Midland, TX	10/11/88	10/5/88	21,275	Do.
Halliburton Services Div. (Oklahoma City)	Oklahoma City, OK	10/11/88	10/6/88	21,276	Do.
Halliburton Services Div. (Shreveport)	Shreveport, LA	10/11/88	10/6/88	21,277	Do.
Halliburton Services Div. (Houston)	Houston, TX	10/11/88	10/6/88	21,278	Do.
Halliburton Service Div. (New Orleans)	New Orleans, LA	10/11/88	10/6/88	21,279	Do.
Halliburton Services Div. (Corpus Christi)	Corpus Christi, TX	10/11/88	10/6/88	21,280	Do.
Halliburton Services Div. (Wichita)	Wichita, KS	10/11/88	10/5/88	21,281	Do.
Halliburton Services Div. (Denver, CO)	Denver, CO	10/11/88	10/5/88	21,282	Do.
Halliburton Services Div. (Industrial Serv. Div.) (Duncan)	Duncan, OK	10/11/88	10/5/88	21,283	Do.
Hawthorne Oil & Gas (Workers)	Lafayette, LA	10/11/88	9/15/88	21,284	Do.
IMCO Services (Workers)	Houston, TX	10/11/88	9/30/88	21,285	Do.
Joe Mallon Drilling Co. (Workers)	Midland, TX	10/11/88	9/29/88	21,286	Do.
L.D. Burns Drilling Co. (Workers)	Wichita Falls, TX	10/11/88	9/26/88	21,287	Do.
M-I Drilling Fluids (Workers)	Houston, TX	10/11/88	9/30/88	21,288	Do.
Magcobar Drilling Fluids (Workers)	Houston, TX	10/11/88	9/30/88	21,289	Do.
McVay Drilling Co. (Workers)	Hobbs, NM	10/11/88	9/23/88	21,290	Do.
Midwest Equipment Co. (Workers)	Odessa, TX	10/11/88	9/12/88	21,291	Do.
Mobco Drilling Co. (Workers)	Midland, TX	10/11/88	9/29/88	21,292	Do.
Mustang Drilling Co. (Workers)	Great Bend, KS	10/11/88	9/21/88	21,293	Do.
Noble Drilling Corp. (Workers)	Tulsa, OK	10/11/88	9/19/88	21,294	Do.
Panther Drilling, Inc. (Company)	Dickinson, ND	10/11/88	9/29/88	21,295	Do.
Perdue Oilfield Services (Company)	Beattyville, KY	10/11/88	9/28/88	21,296	Do.
Petro Lewis Corp. (Workers)	Catarina, TX	10/11/88	9/22/88	21,297	Do.
Petroleum Information Corp. (Workers)	San Antonio, TX	10/11/88	9/22/88	21,298	Do.
Pine Valley Resources, Inc. (Company) (Pioneer Casing (Workers))	North East, PA	10/11/88	9/28/88	21,299	Do.
	Williston, ND	10/11/88	9/12/88	21,300	Do.
Placid Oil Co. (Workers)	Houma, LA	10/11/88	9/23/88	21,301	Do.
Pool Well Serving Co. (Workers)	Keene, ND	10/11/88	9/27/88	21,302	Do.
Professional Geophysics, Inc. (Workers)	Houston, TX	10/11/88	9/15/88	21,303	Do.
Ram Drilling Co. (Company)	Browns, IL	10/11/88	9/25/88	21,304	Do.
Rebel Rentals, Inc. (Workers)	Youngsville, LA	10/11/88	9/26/88	21,305	Do.
Red Fork Drilling, Co. (Workers)	Seminole, OK	10/11/88	9/7/88	21,306	Do.
Republic Supply Co. (Workers)	Tioga, ND	10/11/88	9/26/88	21,307	Do.
Rocky Mountain Geophysics, Inc. (Company)	Denver, CO	10/11/88	9/25/88	21,308	Do.
Seibel & Sons, Inc. (Workers)	Rose, ND	10/11/88	9/22/88	21,309	Do.
Seismic Prospecting of Denver (Workers)	Englewood, CO	10/11/88	9/22/88	21,310	Do.
Slawson Drilling Co. (Workers)	Wichita, KS	10/11/88	9/14/88	21,311	Do.
Spartan Drilling and Workers Services, Inc. (Workers)	Sidney, MT	10/11/88	9/27/88	21,312	Do.
Stephens & Sons, Inc. (Company)	Corpus Christi, TX	10/11/88	9/15/88	21,313	Do.
Transamerican Natl Gas Corp (Workers)	Houston, TX	10/11/88	9/23/88	21,314	Do.
Transamerican Natl Gas Corp (Workers)	Laredo, TX	10/11/88	9/23/88	21,315	Do.
Teledyne Exploration Co. (Workers)	Houston, TX	10/11/88	9/21/88	21,316	Do.
Trainer Survey, Inc. (Workers)	Shreveport, LA	10/11/88	9/23/88	21,317	Do.
Uber Glove Co. (Workers)	Owensboro, KY	10/11/88	9/28/88	21,318	Gloves.
Whitesides Casing Crew, Inc. (Workers)	Laredo, TX	10/11/88	9/25/88	21,319	Oil & Gas.
Wilson Industries, Inc. (Workers)	Bay City, TX	10/11/88	9/20/88	21,320	Do.

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BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Amerada Hess et al.

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 7, 1988.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 7, 1988.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC this 17th day of October 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition number	Articles produced
Amerada Hess/Onshore Exploration (Company)	Houston, TX	10/17/88	9/28/88	21,321	Oil & Gas.
Amerada Hess/Onshore Admin. (Company)	Houston, TX	10/17/88	9/28/88	21,322	Do.
Amerada Hess/Onshore Exploration (Company)	Denver, CO	10/17/88	9/28/88	21,323	Do.
Atlas Wireline (Workers)	Victoria, TX	10/17/88	9/23/88	21,324	Do.
B&W Surveying & Mapping, Inc. (Company)	Midland, TX	10/17/88	9/27/88	21,325	Do.
Bethlehem Steel Corp. (USW)	Williamsport, PA	10/17/88	10/3/88	21,326	Steel Wire & Wire Rope.
Big Chief Drilling, Co. (Company)	Oklahoma City, OK	10/17/88	10/5/88	21,327	Oil & Gas.
Buford Drilling Co. (Workers)	Clodine, TX	10/17/88	10/3/88	21,328	Do.
Burris Drilling Co. (Workers)	Casper, WY	10/17/88	10/2/88	21,329	Do.
Burton/Hawks, Inc. (Workers)	Casper, WY	10/17/88	10/30/88	21,330	Do.
Catalina (Workers)	Los Angeles, CA	10/17/88	10/5/88	21,331	Sportswear & Swimwear.
Circle M. Construction (Workers)	Midland, TX	10/17/88	10/3/88	21,332	Pipelayers.
Comet Drilling Co. (Company)	Eunice, LA	10/17/88	10/5/88	21,333	Oil & Gas.
Connor Sales Co. Inc. (Workers)	Williston, ND	10/17/88	9/15/88	21,334	Do.
Denton Mills, Inc. (ACTWU)	Centerville, MI	10/17/88	9/27/88	21,335	Children's Sweaters.
Dowell/Schlumberger, Inc. (Workers)	Mt. Carmel, IL	10/17/88	10/3/88	21,336	Oil & Gas.
Duquesne Light Co. (UMWA)	Greensboro, PA	10/17/88	9/28/88	21,337	Coal.
E&I Drilling Co. (Workers)	Odessa, TX	10/17/88	10/3/88	21,338	Oil & Gas.
Ethly Corporation (Workers)	Baton Rouge, LA	10/17/88	9/26/88	21,339	Do.
Gates Molded Products (IAM)	Houston, TX	10/17/88	10/3/88	21,340	Gaskets & Rings.
General Motors Corp. CPC Doraville (UAW)	Doraville, GA	10/17/88	10/4/88	21,341	Automotive Components.
General Motors Corp. BOC Lansing (UAW)	Lansing, MI	10/17/88	10/4/88	21,342	Automobile.
General Motors Corp. BOC Lansing Body Assembly (UAW)	Lansing, MI	10/17/88	10/4/88	21,343	Automotive Bodies.
General Motors Corp. New Departure Hyatt (UAW)	Bristol, CT	10/17/88	10/4/88	21,344	Automotive Components.
General Motors Corp. Fisher Guide (UAW)	Elyria, OH	10/17/88	10/4/88	21,345	Do.
General Motors Corp. Saginaw Div. (UAW)	Athens, AL	10/17/88	10/4/88	21,346	Do.
General Motors Corp. CPC Pontiac	Pontiac, MI	10/17/88	10/4/88	21,347	Do.
General Motors Corp. Hydramatic Div. (UAW)	Ypsilanti, MI	10/17/88	10/4/88	21,348	Do.
General Hose Products (Workers)	Fairfield, NJ	10/17/88	10/6/88	21,349	Hose & Coupling.
Grace Drilling Co. (Workers)	Odessa, TX	10/17/88	9/23/88	21,350	Oil & Gas.
Grues Petroleum Mgmt., Inc. (Company)	Midland, TX	10/17/88	9/29/88	21,351	Do.
Halliburton Services Welex Div.: Headquarters	Houston, TX	10/17/88	10/6/88	21,352	Do.
Halliburton Services (Oklahoma City Div.)	Oklahoma City, OK	10/17/88	10/6/88	21,353	Do.
Halliburton Services (Midland Div.)	Midland, TX	10/17/88	10/6/88	21,354	Do.
Halliburton Services (Denver Div.)	Denver, CO	10/17/88	10/6/88	21,355	Do.
Halliburton Services (Houston Div.)	Houston, TX	10/17/88	10/6/88	21,356	Do.
Halliburton Services (Bakersfield Div.)	Backersfield, CA	10/17/88	10/6/88	21,357	Do.
Halliburton Services (New Orleans Div.)	New Orleans, LA	10/17/88	10/6/88	21,358	Do.
Halliburton Service Vann Systems Div. (Headquarters)	Houston TX	10/17/88	10/6/88	21,359	Do.
International Telecharge Inc. (Workers)	Dallas, TX	10/17/88	9/30/88	21,360	Long Distance Operators.
J.L. Offshore Drilling, Inc. (Company)	Houston, TX	10/17/88	10/3/88	21,361	Oil & Gas.
Jem Petroleum Corp. (Workers)	Englewood, CO	10/17/88	10/3/88	21,362	Do.
Kendall Drilling (Workers)	Evansville, IN	10/17/88	9/29/88	21,363	Do.
Kenting Drilling Serv. (Workers)	Williston, ND	10/17/88	10/1/88	21,364	Do.
L.H.R. Snyder, Inc. (Workers)	Grayville, IL	10/17/88	10/5/88	21,365	Do.
Loffland Brothers, Co. (Workers)	New Iberia, LA	10/17/88	9/30/88	21,366	Do.
Londontown Mfg. Co. (Workers)	Eldersburg, MD	10/17/88	10/3/88	21,367	Men's & Women's Rainwear.
M.R. Drilling Co. (Workers)	Monahans, TX	10/17/88	10/3/88	21,368	Oil & Gas.
Mestas Drilling, Inc. (Workers)	Sidney, MT	10/17/88	9/21/88	21,369	Do.
Midland Mud, Inc. (Workers)	Midland, TX	10/17/88	9/28/88	21,370	Do.
National Supply Co. (USW)	Gainesville, TX	10/17/88	10/3/88	21,371	Drilling Equipment.
New-Mex Construction Co (Workers)	Hobbs, NM	10/17/88	9/26/88	21,372	Road Construction.
NICOR Oil & Gas Corp. (Company)	Denver, CO	10/17/88	10/3/88	21,373	Oil & Gas.
North American Royalties, Inc.	Chattanooga, TN	10/17/88	10/3/88	21,374	Do.
North American Royalties, Inc.	Midland, TX	10/17/88	10/3/88	21,375	Do.
North American Royalties, Inc.	Lafayette, LA	10/17/88	10/3/88	21,376	Do.
North American Royalties, Inc.	Oklahoma City, OK	10/17/88	10/3/88	21,377	Do.
Pernie Bailey Drilling Co. (Workers)	Houston, TX	10/17/88	10/3/88	21,378	Do.
Placid Oil Co. (Workers)	Dallas, TX	10/17/88	9/30/88	21,379	Do.
Questor Drilling Co. (Workers)	Victoria, TX	10/17/88	9/19/88	21,380	Do.
R.L. Manning Drilling (Workers)	Mill, WY	10/17/88	9/22/88	21,381	Do.

APPENDIX—Continued

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition Number	Articles produced
Resources Investment Corp. (Company)	Denver, CO	10/17/88	10/4/88	21,362	Do.
Southwest Gas Systems, Inc. (Workers)	Houston, TX	10/17/88	10/3/88	21,363	Do.
Star Sportswear Mfg., (Workers)	Lynn, MA	10/17/88	10/3/88	21,364	Ladies' & Men's Rainwear.
Syndar Completion Serv. Inc. (Workers)	Grayville, IL	10/17/88	10/5/88	21,365	Oil & Gas.
TXO Production Corp. (Workers)	Midland, TX	10/17/88	9/26/88	21,366	Do.
Teledyne Movible Offshore (Company)	Lafayette, LA	10/17/88	10/6/88	21,367	Do.
(The) Western Co. (Workers)	Victoria, TX	10/17/88	10/3/88	21,368	Do.
Tool Masters, Inc. (Company)	Houma, LA	10/17/88	10/1/88	21,369	Do.
Veritas Technical Serv. Inc. (Workers)	Houston, TX	10/17/88	10/2/88	21,370	Do.

Pension and Welfare Benefits Administration

[Application No. 7494–7495 et al.]

Proposed Exemptions; American Medical Association Pension Plan (the Pension Plan) and the American Medical Association Retirement and Saving Plan (the Savings Plan), et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this Federal Register Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N–5669, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue NW., Washington, DC 20210.

Notice of Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of pendency of the exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

American Medical Association Pension Plan (the Pension Plan) and the American Medical Association Retirement and Savings Plan (the Savings Plan; Together, the Plans) Located in Chicago, Illinois

[Application Nos. D–7494 and D–7495]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406 and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code shall not apply to the acquisition or sale by the Plans of shares of certain open-end investment companies registered under the Investment Company Act of 1940 (the AMA Mutual Funds) managed by AMA Advisers, Inc. (AMA Advisers), an affiliate of the American Medical Association (AMA), provided that the following conditions are met:

(a) The Plans do not pay any investment management, investment advisory or similar fee to AMA Advisers or any affiliated person. This condition does not preclude the payment of investment advisory fees by the AMA Mutual Funds to AMA Advisers under the terms of an investment advisory agreement adopted in accordance with section 15 of the Investment Company Act of 1940.

(b) The Plans do not pay a redemption fee in connection with the sale by the Plans to the AMA Mutual Funds of such shares unless (1) the redemption fee is paid only to the applicable AMA Mutual Fund, and (2) the existence of the redemption fee is disclosed in the AMA Mutual Fund prospectus in effect both at the time of the acquisition of the shares and at the time of the sale.

(c) The Plans do not pay a sales commission in connection with the acquisition or sale of the shares of the AMA Mutual Funds.

(d) All other dealings between the Plans and the AMA Mutual Funds, AMA Advisers, or any affiliated person, are on a basis no less favorable to the Plans than such dealings are with other shareholders of the AMA Mutual Funds.

Preamble

On April 8, 1977, the Department published a class exemption, Prohibited Transaction Exemption 77–3 (PTE 77–3, 42 FR 18734) which permits the acquisition or sale of shares of an open-end investment company registered under the Investment Company Act of 1940 by an employee benefit plan covering only employees of such investment company, employees of such investment adviser or principal underwriter for the investment company, or employees of any affiliated person (as defined in section 2(a)(3) of the Investment Company Act of 1940).

The applicant represents that PTE 77–3 would allow the Plans to purchase and sell shares of the AMA Mutual Funds if the Plans covered only employees of the AMA Advisers and its affiliates. However, the Plans do not come within the terms of PTE 77–3 because there are four organizations (the Organizations) that are not affiliated persons of AMA Advisers, as defined in section 2(a)(3) of the Investment Company Act of 1940, which have employees that are covered by the Plans. The Organizations share common objectives and activities with the AMA and receive financial support from the AMA. Thus, the Organizations are closely associated with the AMA. Accordingly, because the proposed transactions with the AMA Mutual Funds appear to parallel those transactions contemplated by PTE 77–3, but for the fact that there are employees of non-affiliated organizations covered by the Plans, the Department has determined that relief comparable to that afforded by PTE 77–3 may be appropriate.

Summary of Facts and Representations

1. The Pension Plan is a defined benefit pension plan which, as of January 1, 1988, had 945 participants and total assets of approximately $44,201,000. The Savings Plan is a profit-sharing plan with a cash or deferred compensation arrangement as described in section 401(k) of the Code, which had 897 participants and total assets of approximately $5,212,000, as of January 1, 1988. The trustees of the Plans (the Trustees) are the members of the Executive Committee of the AMA Board of Trustees.

2. The assets of the Pension Plan are currently managed by Oppenheimer Capital Corporation (Oppenheimer), an unrelated party, pursuant to a contract between Oppenheimer and the Trustees. The Savings Plan allows amounts contributed by participants to be invested, at the participant's election, in one or more of four investment funds—the Liquidity Fund, the Fixed Income Fund, the Equity Index Fund, and the Managed Equity Fund (together, the Existing Funds). The Liquidity Fund is invested in short-term, fixed income securities. The Managed Equity Fund is invested in a stock portfolio of large capitalization companies with stable earnings records. Both the Liquidity Fund and the Managed Equity Fund are managed by Oppenheimer. Oppenheimer also invests assets of the Pension Plan in the Managed Equity Fund to provide a larger pool of assets for investment and greater opportunities for diversification. Assets of the Fixed Income Fund are currently invested in the Investment Grade Bond Portfolio of the Vanguard Income Securities Fund, which is a registered, open-end investment company. The Equity Index Fund, which provides for investment in a stock portfolio that is representative of the companies comprising the Standard & Poors 500 Stock Index, is currently invested in the Vanguard Index Trust, which is also a registered, open-end investment company.

3. The AMA is an Illinois not-for-profit corporation which promotes the interests of the medical profession. The AMA has allowed the Plans to be adopted by the Organizations. The Organizations are the American Medical Association Auxiliary (the Auxiliary), the American Association of Senior Physicians (the AASP), the American Association of Medical Society Executives (the AAMSE), and the American Board of Medical Specialties (the ABMS). The applicant states that the reason the Organizations were allowed to adopt the Plans was to enable the Organizations to provide a better retirement plan for their employees than they otherwise could have provided on their own. In addition, because of the relationship between the AMA and the Organizations, some employees work for more than one of the Organizations during the course of their career. Therefore, the applicant states that having a single plan for all the Organizations prevents the employees from losing some of their retirement benefits due to changing employers.

The Auxiliary is an Illinois not-for-profit corporation whose membership is open to spouses of members of the AMA. Its major purposes include support of AMA programs and fundraising for the AMA Education and Research Foundation, a charitable foundation. The AMA provides the Auxiliary with office space in the AMA headquarters building in Chicago, Illinois, without charge. Over the past ten years, the Auxiliary has hired at least five employees who had previously been employed by the AMA.

The AASP is an Illinois not-for-profit corporation which was formed in 1975 to assist physicians in preparing for retirement. The AMA provided grants totaling approximately $45,000 to help establish the AASP and continues to provide it with office space without charge. Over the past three years, the AASP has hired at least two employees who had previously been employed by the AMA.

The AAMSE is a Missouri not-for-profit corporation which was formed to provide educational and other services designed to advance the profession of medical society management. Since 1977, the AAMSE's officers have been in Chicago, Illinois, in space provided without charge by the AMA. Over the past ten years, AAMSE has hired at least two employees who had previously been employed by the AMA. The AAMSE currently has 984 members, 173 of which are AMA employees whose dues are paid by the AMA. Since 1977, the AMA has provided grants which provide a significant portion of the AAMSE budget. The AAMSE Budget for the current fiscal year totals $305,000, of which $115,000 is provided by the AMA.

The ABMS is an Illinois not-for-profit corporation whose regular membership consists of 23 medical specialty boards which certify physicians as specialists in various areas of medical practice. The purpose of the ABMS is the improvement of medical care through the setting of professional standards and surveillance of medical qualifications. Its most important specific activity is the approval of new medical specialty boards, which is a joint activity of the ABMS and the AMA Council on Medical Education. The ABMS and AMA are also among the parent organizations of the Accreditation Council for Graduate Medical education, which accredits medical residency programs; the Accreditation Council for Continuing Medical Education, which accredits providers of continuing medical education programs; and the Council for Medical Affairs, which serves as a forum for its member organizations to discuss issues relevant to medical education. Thus, although the AMA is not a member of the ABMS, the two organizations have similar purposes and are involved in a number of the same educational and accreditation activities. Over the past ten years, the ABMS has hired at least three employees, including two former Executive Vice Presidents, who had previously been employed by the AMA.

However, the Auxiliary, the AASP, the AAMSE and the ABMS are not affiliates of the AMA or AMA Advisers, as defined in section 2(a)(3) of the Investment Company Act of 1940. The

applicant represents that since section 2(a)(3) defines affiliation between organizations in terms of the ownership of voting stock or the organization being under common control, the definition is not applicable to relationships between non-stock corporations, such as the AMA and the Organizations. Thus, the Organizations are not considered to be "affiliates" of the AMA, even though the Organizations have objectives which further the purposes of the AMA, are involved in a number of joint activities with the AMA, and often share office space with, and receive financial support from, the AMA.

4. AMA Advisers is a wholly-owned subsidiary of the American medical Investment Company, which is a wholly-owned subsidiary of AMA Services, Inc., a wholly-owned subsidiary of the AMA. AMA Advisers is a registered investment adviser under the Investment Advisers Act of 1940 and serves as the investment adviser for the AMA Mutual Funds—the AMA Growth Fund, Inc., the AMA Income Fund, Inc., the AMA Money Fund, Inc., the Medical Technology Fund, Inc., and the Emerging Medical Technology Fund Inc. The AMA Mutual Funds are all open-end mutual funds, registered under the Investment Company Act of 1940, which have a total of ten investment portfolios.

5. The applicant states that the use of the AMA Mutual Funds would be in the best interests of the Plans and their participants and beneficiaries.

First, the applicant represents that the AMA Mutual Funds would make available a wider range of investment alternatives for the Plans. In particular, the Savings Plan's participants would have a wider range of investment options available to them, which would allow them to choose a combination of investment funds that meets their specific investment objectives. In addition, the use of the AMA Mutual Funds would allow the assets of the Plans to be invested as part of a larger pool of capital, which would enhance the ability of the Plans to diversify their investments and provide additional protection against unexpected losses.

Second, the applicant represents that the participants of the Plans would be provided with more information about the available investment options with respect to the AMA Mutual Funds. In this regard, the applicant notes that two of the four Existing Funds are maintained solely for the Savings Plan and are exempt from registration under Federal securities laws. Thus, the applicant states that while participants are provided with general information regarding the investment objectives and management of these particular Existing Funds, the information available is not as extensive as that contained in an AMA Mutual Fund prospectus, or as in the quarterly and annual reports and other shareholder communications for the AMA Mutual Funds.

Finally, the applicant represents that the use of the AMA Mutal Funds would provide the participants of the Savings Plan with more frequent opportunities to change investment elections. The Saving Plan currently allows participants to change their investment elections as of the beginning of each calendar quarter. The applicant believes that more frequent participant elections would be desirable, but are not feasible with the Savings Plan's current accounting and participant recordkeeping systems. The applicant states that the accounting and recordkeeping systems maintained for AMA Mutual Funds would make more frequent investment elections possible. Such investment elections would also benefit investments made by the Pension Plan.

6. The applicant proposes that the Plans be allowed to acquire or sell shares of the AMA Mutual Funds, in accordance with the conditions set forth in paragraphs (a)–(d) of PTE 77–3 which are, for all intents and purposes, indentical to those conditions included in this proposed exemption. The Trustees represent that the proposed transactions will be monitored to ensure that these conditions are met. AMA Advisers receives an investment management fee from each of the AMA Mutual Funds, as described in the appropriate prospectus for each Fund. In addition, the AMA Mutual Funds also pay certain distribution expenses pursuant to Rule 12b–1 under the Investment Company Act of 1940.[1]

The applicant states that AMA Advisers would serve as an investment advisor to the Pension Plan without charge. However, AMA Advisers will not be an investment advisor for the Savings Plan. The applicant states further that if the proposed exemption is granted, Oppenheimer will no longer be an investment manager for the Plans and that the Plans' interests in the Existing Funds will be liquidated.

7. In summary, the applicant represents that the proposed transactions will satisfy the statutory criteria of section 408(a) of the Act because: (a) The acquisition and sale of shares of the AMA Mutual Funds parallel those transactions contemplated by PTE 77–3; (b) the Plans will pay no sales commissions or redemption fees to AMA Advisers with respect to the investments in the AMA Mutual Funds; (c) the Plans will be provided with more investment options and full disclosure of all relevant facts concerning the investments; and (d) the Pension Plan will not pay any fee to AMA Advisors as a result of AMA Advisors duties as an investment adviser for the Pension Plan.

[1] The proposed relief contained herein is limited to the purchase and sale by the Plans of shares of the AMA Mutual Funds. In this regard, no relief has been requested or provided in connection with the payment of distribution expenses pursuant to Rule 12b-1 under the Investment Company Act of 1940.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Worrell Enterprises, Inc. Profit Sharing Saving Plan (the Plan) Located in Charlottesville, Virginia

[Application No. D–7525]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed cash sale (the Sale) by the Plan to Worrell Enterprises, Inc. (the Employer), the Plan sponsor and a party in interest with respect to the Plan, of 158 rare coins (the Coins) for a sales price of $701,000; provided the terms and conditions of the Sale are at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plan is a defined contribution plan with 1,300 participants and total assets of $9,204,751 as of December 31, 1987. The Employer is engaged in the newspaper business and owns and operates approximately sixty daily and weekly newspapers nation-wide. The trustee of the Plan is Crestar Bank, N.A., (the Trustee). The Investment Committee (the Committee) is appointed by the Employer and is empowered under the Plan documents to direct the Trustee's investments. The Plan documents also provide for participant-directed investments. However, the applicant represents that there are no

individually directed accounts in the Plan.[2]

2. In 1981, the Committee, then consisting of Dennis S. Rooker, John J. Badoud, Jr. and Thomas E. Worrell, Jr., decided to invest in the Coins. The Committee purchased the Coins between August, 1981 and March, 1986 for a total purchase price of $432,210 from Tallarico Rare Coins, Inc. (TRC), an unrelated party. The applicant represents that TRC and Thomas V. Tallarico of TRC issued a certificate of guarantee for each coin purchased by the Plan which stated that the sellers would repurchase any of the Coins at any time for an amount not less than the Plan's cost plus 50% of any increase in value over cost as determined by appraisal. The applicant further represents that Mr. Tallarico performed an appraisal of the Coins on at least an annual basis. On March 25, 1987, Mr. Tallarico appraised the Coins' December 31,1986 value at $701,000 (the 1986 Appraisal). The Coins represented 7.6% of the Plan's assets as of December 31, 19878.

The Committee discovered, after the 1986 Appraisal, that Mr. Tallarico and TRC were faced with severe financial trouble. Both had defaulted on a number of debts and were named as defendants in a fraud action brought by other customers. As a consequence of these discoveries, the Committee sought another appraisal of the Coins.

A subsequent appraisal of the Coins was performed on February 5, 1988 by a qualified independent appraiser, Edward Milas. Mr. Milas is President of Rare Coin Company of America and a past President of the Professional Numismatic Guild with more than 25 years professional experience. Mr. Milas determined the fair market value of the Coins to be $250,385. Mr. Milas' appraisal reflects a $450,615 loss to the Plan from the 1986 Appraisal value of the Coins, as well as a $181,825 loss from the Plan's purchase price.

3. As a result of the decrease in the Coin's value, the Plan and its participants and beneficiaries face severe difficulties. The Plan has suffered a substantial economic loss up to approximately 5% of the value of its assets due to the decrease in the Coins' value. In addition, Plan participant statements for the year ended February 29, 1987 were computed on the basis of the Coins' 1986 Valuation of $701,000. Consequently, Plan participant withdrawals were computed and disbursed on the same erroneous basis.

4. In order to avoid further economic loss and hardship to the Plan and to benefits participants and beneficiaries, the Employer now seeks an exemption to permit the cash Sale of the Coins by the Plan to the Employer for $701,000. The applicant represents that the subject exemption would benefit the Plan's participants because the Plan would be placed in a better position than it would have been in if the Coins had never been acquired by the Plan.[3] In addition, the applicant states that such a Sale will not exceed the requirements of section 415 of the Code and that the Plan will pay no fees or commissions in connection with the Sale.

5. In summary, the applicant represents that the transaction meets the statutory criteria of section 408(a) of the Act because: (a) The Sale will be a one-time transaction consummated for cash; (b) the fair market value of the Coins has been determined by a qualified independent appraiser; (c) the Plan will receive in excess of the fair market value of the Coins; (d) the Plan will dispose of assets which have declined in value; and (e) the Plan will pay no fees or commissions in connection with the Sale.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404 and 415.

[2] In this regard, the Department notes that section 408(m) of the Code provides that the acquisition after December 31, 1981, by an individually directed account under a plan described in Code section 401(a) of a collectible (including any coin) shall be treated as a distribution from the account in an amount equal to the cost to the account of the collectible.

[3] The Department notes that the fiduciary responsibility provisions of the Act apply to the acquisition, holding and sale of the Coins. Section 404(a)(1)(B) of the Act requires that a fiduciary discharge his duties with respect to a plan solely in the interests of the participants and beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

Accordingly, the plan fiduciary must act prudently with respect to the decision to enter into an investment as well as to the negotiation of the specific terms under which the investment will be held. The Department further emphasizes that it expects a plan fiduciary, prior to entering into an investment, to understand fully the nature of the investment and the risks associated with the manner of investment. In addition, such plan fiduciary must be capable of periodically monitoring the investment. Thus, in considering whether to enter into an investement, a fiduciary should take into account its ability to provide adequate oversight of the investment.

The Department also notes that, under section 405(a) of the Act, any plan fiduciary will have co-fiduciary liability for any breach of fiduciary responsibility of another plan fiduciary: (1) If he knowingly participates in or conceals such breach; (2) if by his failure to comply with section 404(a)(1), he enables another fiduciary to commit such a breach; or (3) if he has knowledge of the breach of another fiduciary and he fails to make a reasonable effort to remedy the breach.

FOR FURTHER INFORMATION CONTACT: Mrs. Betsy Scott of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Tudor Engineering Company Retirement Advantage Plan (the Plan) Located in San Francisco, California

[Application No. D–7630]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed case sale (the Sale) of a certain leasehold interest (the Leasehold) by the Plan to Tudor Engineerig Company (the Employer), which is the sponsoring employer party in interest with respect to the plan, provided that the consideration paid for the Leasehold is not less than the greater of either the sum of $130,000 or the fair market value of the Leasehold on the date of the Sale.

Summary of Facts and Representations

(1) The Plan is a profit sharing plan for salaried employees with 107 participants and total assets of $7,515,111, as of December 31, 1987. The Plan originated in 1960 and on July 1, 1987, was reinstated in the form of a Wells Fargo Bank, N.A. prototype profit sharing plan with features authorizing the Employer to make deferred-pay contributions based upon such percentage of the participants' covered compensation as the Employer may determine. Participants may elect to have all or a portion of the assets in their respective accounts invested in any or all of three different funds. The three funds are managed by Wells Fargo Bank, N.A., which is also the trustee of the Plan. One of the investments for the Plan is the Leasehold, which is invested

[2] In this regard, the Department notes that section 408(m) of the Code provides that the acquisition after December 31, 1981, by an individually directed account under a plan described in Code section 401(a) of a collectible (including any coin) shall be treated as a distribution from the account in an amount equal to the cost to the account of the collectible.

[3] The Department notes that the fiduciary responsibility provisions of the Act apply to the acquisition, holding and sale of the Coins. Section 404(a)(1)(B) of the Act requires that a fiduciary discharge his duties with respect to a plan solely in the interests of the participants and beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

Accordingly, the plan fiduciary must act prudently with respect to the decision to enter into an investment as well as to the negotiation of the specific terms under which the investment will be held. The Department further emphasizes that it expects a plan fiduciary, prior to entering into an investment, to understand fully the nature of the investment and the risks associated with the manner of investment. In addition, such plan fiduciary must be capable of periodically monitoring the investment. Thus, in considering whether to enter into an investement, a fiduciary should take into account its ability to provide adequate oversight of the investment.

The Department also notes that, under section 405(a) of the Act, any plan fiduciary will have co-fiduciary liability for any breach of fiduciary responsibility of another plan fiduciary: (1) If he knowingly participates in or conceals such breach; (2) if by his failure to comply with section 404(a)(1), he enables another fiduciary to commit such a breach; or (3) if he has knowledge of the breach of another fiduciary and he fails to make a reasonable effort to remedy the breach.

in one of the three funds designated as the Fixed Income Fund.

(2) the Employer is a California corporation headquartered in San Francisco and engaged in civil engineering design, consulting, and planning. In the year 1988 the Employer acquired a leasehold interest in underlying ground, consisting of 22,428 square feet, on which was constructed a 84-unit leasehold condominium and which is located at 250 Ohua Avenue, Waikiki, Honolulu, Oahu, Hawaii. The suit underlying the condominium project is owned by the Estate of Valentine Spitzer Lewis (Helen M. Lewis and Rhoda V. Lewis, Executrices). This acquisition in 1988 constitutes the Leasehold which provides for ground rents until the year 2044. In 1973, the Employer assigned its interests in the Leasehold to the Plan as a funding contribution. The assignment provides that the Plan is responsible for collecting ground rents from the condominium owners and their respective portion of the expenses incurred from taxes, assessments, insurance premiums, and utility charges on the property and paying to the landowner/lessor a ground rent plus paying the expenses incurred by the property. The difference between the ground rents collected, less a four percent Hawaii State Gross Excise Tax, the ground rents paid to the landowner/lessor is the yield to the Plan from the Leasehold. Until 1999, the ground rents payable by the Plan to the landowner/lessor and the rents receivable by the Plan from the condominium owners are set pursuant to the 1988 lease. Beginnig in 1999, the rents for the final four ten-year periods and one five-year period are subject to adjustment in accordance with mutual agreements or appraisals; however, in no event shall the rents for any period be less than the rents for the immediately preceding period. Under the terms of the Leasehold to the Employer and its assignment to the Plan, the Employer retained responsibility as lessee to the landowner/lessor in the event of default by the Plan as sublessee.

(3) the Plan now proposes to sell the Leasehold to the Employer because it has been determined that problems with rent collections from the condominium owners make the Leasehold undesireable as no longer an appropriate asset for the Plan. The Plan intends to invest the proceeds from the Sale in the other funds maintained by Wells Fargo Bank, N.A. Because of the difficulties anticipated in finding a purchaser for the Leasehold, the Employer is willing to purchase the Leasehold from the Plan. The Sale is to be for cash in an amount not less than the greater of either the sum of $130,000 or the fair market value of the Leasehold on the date of the Sale as determined by a qualified, independent appraiser. No fees, commissions, or other costs are to be incurred by the Plan from the Sale. The Leasehold was appraised by a qualified, independent appraiser, Robert J. Vernon, MAI, CRE and Chairman of John Child & Company, Inc. of Honolulu, Hawaii. Mr. Vernon determined that the Leasehold had a fair market value of $130,000, as of January 1, 1988.

(4) In summary, the applicant represents that the proposed exemption satisfies the criteria for an exemption under section 408(a) of the Act because (a) the Sale will be a one-time transaction for cash with no expenses incurred by the Plan; (b) the Plan will sell the Leasehold at its fair market value as determined by a qualified, independent appraiser; (c) the Plan will receive a higher rate of return on the proceeds from the sale than it is receiving in rental income; and (d) investing the proceeds in more liquid investments with less expenses entailed will preserve and enhance the assets of the Plan.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Carpenters Joint Apprenticeship and Training Committee of Wilmington, Delaware, a/k/a Local Union No. 626, United Brotherhood of Carpenters and Joiners Apprenticeship Fund (the Plan) Located in Wilmington, Delaware

[Application No. D-7664]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act shall not apply to the proposed purchase by the Plan of a parcel of unimproved real property (the Tract), for the total cash consideration of $110,000, from the United Brotherhood of Carpenters and Joiners of America, AFL–CIO Local Union No. 626 of Wilmington, Delaware (the Union), a party in interest with respect to the Plan, provided the amount paid by the Plan for the Tract is not more than fair market value at the time the transaction is consummated.

Summary of Facts and Representations

1. The Plan is an employee welfare plan established and administered under the terms of section 302 of the Labor Management Relations Act of 1947, as amended. The Plan provides training in carpentry skills on a non-profit basis to participants in an apprenticeship school it operates. The geographic jurisdiction covered by the Plan is the State of Delaware. As of April 30, 1987, the Plan had total assets of $383,941. As of May 1, 1988, the Plan had 546 participants. The Plan is administered by a joint board of trustees (the Trustees) consisting of three employee or union Trustees and three employer or management Trustees. The Trustees make investment decisions for the Plan. The Union is a labor organization having its principal offices in New Castle, Delaware.

2. In 1985, the Union acquired a parcel of real property (the Real Property) located at 626 Wilmington Road, New Castle, Delaware. The Union purchased the Real Property from The Pompeii Restaurant, Inc., an unrelated party, for $90,000. The Real Property consists of approximately 6.72 acres of land. A portion of the Real Property is improved with a one story building that is occupied by the Union. There is also a parking facility on the land. At present, the Real Property is unencumbered by a mortgage.

3. In December 1987, the Plan began using, on a gratuitous basis, an unimproved, one acre portion of the Real Property as well as the Union's parking facility. The subject Tract is directly south of the existing one story structure and parking lot. The Tract was selected for the Plan because of its proximity to Union offices, Union personnel and to contributing employers. In addition, the applicants represent that the size and cost of renovation of other sites renders them less attractive in terms of cost benefit and convenience.

4. The Plan has begun constructing a $880,000 prefabricated building on the Tract. Although the building is expected to be occupied by September 1988, a substantial amount of interior work will remain for completion by the apprentices.[4] The building will be owned by the Plan and serve as a new apprenticeship school. The school will permit year-round training for Plan participants in all aspects of carpentry work. In order to construct the school, the Plan has obtained financing in the amount of $495,000 from unrelated

[4] In this proposed exemption the Department expresses no opinion as to whether the Plan's construction of a building on land owned by the Union violated any provision of Part 4 of Title I of the Act.

parties. After the school is completed, the Plan does not intend to lease any portion of the building to parties in interest.

5. To enable the Plan to establish a permanent location in which to conduct its operations, the Trustees request an administrative exemption that will permit the Plan to purchase the Tract from the Union. The proposed sales price will be based upon the fair market value of the Tract as determined by an independent appraiser. The Plan will make a lump sum payment in cash to the Union. In addition, the Plan will not be required to pay any real estate fees or commissions in connection with the sale. Subsequent to the sale, the deed to the Tract will be recorded to reflect the Plan's separable and ascertainable ownership of the subject property. Further, it is anticipated that the Plan will continue its use of the Union's parking lot on a rent-free basis.

6. Penny M. Virtue (Ms. Virtue), S.C.V., A.P.R.A., an independent appraiser affiliated with Appraisals Limited of Wilmington, Delaware, valued the Tract as if it had been separated and subdivided from the Real Property. Based upon an appraisal report dated February 16, 1988, Ms. Virtue determined that the Tract has a fair market value of $110,000 as of February 9, 1988.

7. John E. Stapleford, Ph.D. (Dr. Stapleford) will serve as the independent fiduciary for the Plan with respect to the proposed transaction. Dr. Stapleford is an economist from Newark, Delaware who has rendered expert advice in tort cases. Dr. Stapleford has been employed as the director of a nonprofit university research center and has served on the boards of two educational institutions and a nonprofit organization. Dr. Stapleford represents that he has no family, business or investment relationship with any of the employers contributing to the Plan. Dr. Stapleford states that he has been advised by counsel for the Plan of his duties, responsibilities and liabilities under the Act as a fiduciary. Dr. Stapleford also asserts that he understands and acknowledges these duties, responsibilities and liabilities in acting as a fiduciary to the Plan.

Dr. Stapleford believes the proposed transaction is in the best interests of the Plan and its participants and beneficiaries because: (a) The nature of the Plan's investment in the subject property fulfills the educational purposes of the Plan; (b) in providing educational benefits to participants, the Plan has legitimately set its priority to acquiring operating facilities that are customized to its special needs in a location that is convenient to its staff and a Plan participants; (c) the apprenticeship school will be industrial in nature and adaptable to alternative uses; (d) the subject property will be mortgageable on relatively short notice without liquidating the investment and interrupting operations; and (e) the Plan's net assets should be sufficient to cover its debt service. In forming his opinion, Dr. Stapleford has reviewed the exemption application, Ms. Virtue's written appraisal of the Tract and all other documentation associated with the Plan. Dr. Stapleford also states that he has examined the Plan's liquidity needs and diversification requirements and he believes both of these portfolio criteria are adequate. Finally, Dr. Stapleford represents that he will attend the closing of the sale of the Tract and monitor such transaction. In this connection, Dr. Stapleford explains that he will take all appropriate actions to safeguard the interests of the Plan.

8. In summary, it is represented that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (a) The Plan will not pay more than fair market value for the Tract as such value is determined by an independent appraiser; (b) the sale of the Tract will involve a one-time payment for cash; (c) the Plan will not be required to pay any real estate fees or commissions in connection therewith; (d) the Plan participants will benefit from the gratuitous use of the parking lot on the adjoining Real Property as well as from the support services provided to Plan participants by Union and employer personnel; and (e) Dr. Stapleford, an independent fiduciary who will monitor the sale transaction, has determined the purchase is at arm's length and in the best interests of the Plan and its participants and beneficiaries.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broody of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Profit Sharing and Thrift Plan of Radiology Associates of Fort Worth (the Plan) Located in Fort Worth, Texas

[Application No. D-7676]

Proposed exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to an interest-free extension of credit on April 14, 1988, to the Plan by the InterFirst Bank Fort Worth, N.A. (now NCNB Texas National Bank) (the Trustee), a fiduciary of the Plan and a party in interest with respect to the Plan, provided that terms and conditions of the extension of credit were at least as favorable to the Plan as those which the Plan would receive in a similar transaction with unrelated parties.

EFFECTIVE DATE: If granted, the proposed exemption will be effective April 14, 1988.

Summary of Facts and Representations

(1) Radiology Associates of Fort Worth, a Texas professional association that employs 34 doctors and additional support personnel, is the sponsoring employer (the Employer) of the Plan. The Employer is engaged in the practice of radiology in Fort Worth, Texas and its environs. As of December 31, 1987, the Employer had a total of 119 employees.

The Trustee was a national banking association, organized under the laws of United States, and acquired during 1987 by the First RepublicBank Fort Worth, which was another national banking association, wholly owned by the First RepublicBank Corporation. On July 29, 1988, the Comptroller of the Currency declared all of the banks in the First Republic system (First RepublicBank) to be insolvent and the Federal Deposit Insurance Corporation (FDIC) was appointed Receiver. FDIC, exercising its authority as Receiver, created a new bank, JRB Bank, National Association (JRB Bank) and entered into a Purchase and Assumption Agreement with JRB Bank. Under the Purchase and Agreement JRB Bank acquired certain assets and liabilities of First RepublicBank, and succeeded First RepublicBank Fort Worth, N.A. as Trustee for the Plan. JRB Bank changed its name to NCNB Texas National Bank, which is a national banking association organized under the Competitive Equality Banking Act of 1987.

The Trustee and the Employer are represented to be independent of each other, having no common shareholders, officers, or directors and neither owning shares of the other. There has been a banking relationship between the Trustee and the Employer and its principal shareholder which is represented to be less than one percent of the Trustee's business.

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(2) The Plan is a defined contribution plan with individual accounts for its 138 participants and with total assets of $20,326,367.61, as of December 31, 1987. Participation in the Plan is voluntary and is available to all employees of the Employer after completion of a minimum service requirement. In addition to the funding contributions by the Employer, participants are authorized to make contributions to the Plan and to direct the investments of their respective individual accounts. Directions by participants are given in writing to the Trustee for the investment of certain percentage balances in their individual accounts rather than by specifying certain dollar amounts to be invested. Participants may choose from 8 to 16 different funds during each half of the calendar year for investments to be made at the beginning of the succeeding six months. This method for directing investments can result in cash flow problems because it compels the Trustee to estimate the dollar value of each individual account as of July 1 and January 1 of each calendar year. One of the investment options available to the participants during 1985 was units of an open-end collective trust fund, designated as the Real Estate Collective Investment Fund (RECIF), which was maintained and trusteed by FirstRepublic Bank Dallas, N.A., a wholly owned subsidiary of the Trustee's former parent corporation. The RECIF is invested solely in commercial real estate which is located in regions experiencing adverse economic problems in the southwestern part of the United States. On September 23, 1986, RECIF was terminated and is being liquidated. All requests for withdrawal, which had been paid sequentially, are now being paid on a pro rata basis in accordance with the amount invested in RECIF.

(3) In November and early December 1985, nine participants directed the Trustee to reduce the percentage balances of their respective individual accounts that were invested in units of RECIF and to move the cash obtained by the reductions to selected alternative funds. During February 1986 when processing the changes in investments as directed by the nine participants, the Trustee discovered that the cash available from the units of RECIF were insufficient for making the alternative investments chosen by the nine participants. There was found to be an adjusted cash flow shortage because of rapidly rising values in the securities markets while there were drastically decreasing values in the commercial real properties in which RECIF was invested. These changing cash values of the individual accounts for December 31, 1985, resulted in an adjusted cash flow shortage of $197,553.66. Since RECIF had always funded withdrawal requests and the Trustee was unaware of the mounting liquidity problems of the RECIF, the Trustee assumed in April 1986 that the $197,553.66 would be immediately available from the units of the RECIF. This assumption caused the Trustee on April 14, 1986, to allow an overdraft in the form of an interest-free loan to the Plan for $197,553.66 in order that the nine participants could make their chosen alternative investments.[5] Commencing in September 1986 a portion of the liquidating distributions from RECIF, in the sum of $42,367.42, has been credited by the Trustee against its loan to the Plan, leaving a current balance owing of $155,186.24. Only that portion of the distribution by RECIF which would have been credited to the nine participants individual accounts had the loan not occurred has been applied against the loan. This portion equals 42 percent of the liquidating distributions from RECIF. As to future payments of the loan, the Trustee will continue to forego interest on the unpaid portion of the loan and will continue to apply 42 percent of the proceeds received from RECIF to the repayment of the loan. Upon receipt of the entire amount of the loan from RECIF any access receipts from RECIF will be allocated for the benefit of the nine participants. If the proceeds received in liquidation of RECIF are less than the loan, no other Plan assets can be used to pay off the loan. The applicants represent that the loan from the Trustee to the Plan resulted in no expense to the Plan and no risk to participants of the Plan. In addition, the loan facilitated the participants in obtaining better investments for their respective individual accounts.

(4) In summary, the applicants represent that the transaction satisfies the criteria of section 408(a) of the Act for the following reasons (a) the loan will be evidenced in a written document which does not provide the payment of interest by the Plan; (b) the transaction protects the participants and their beneficiaries for the Plan from a decline in the value of the RECIF properties and permits new, higher yielding investments without expense or penalty; (c) the terms for repayment of the loan is limited to cash proceeds received from liquidation of RECIF commercial properties and no other assets of the Plan will be used or affected; and (d) upon liquidation of RECIF investments, any proceeds in excess of the loan will be allocated to the nine individual accounts of the Plan participants.

[5] The loan will be documented by a non-interest bearing debenture with no security interest except the pro-rata share of the liquidating proceeds received from RECIF

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 523-8881 (this is not a toll-free number).

Welborn Clinic Employees' Retirement Plan (the Plan) Located in Evansville, Indiana

[Application No. D-7718]

Proposed exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply, effective February 28, 1987, to the past and proposed lease by the Plan of certain improved real property to the Welborn Clinic (the Employer), the sponsor of the Plan, provided that the terms of such lease have been and will be at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party.

Effective Date: This exemption if granted, will be effective February 28, 1987.

Summary of Facts and Representations

1. The Plan is a defined contribution plan with 317 participants as of December 31, 1987. The Employer is a multi-speciality group medical practice in Evansville, Indiana. The trustee of the Plan is the Citizens National Bank of Evansville (the Trustee), which represents itself to be independent of and unrelated to the Employer. The Employer's principal place of business is the Welborn Clinic Building (the Clinic), which the Employer leases from the Plan. The Trustee and the Employer are requesting an exemption, effective February 28, 1987, for the Employer's lease of the Clinic from the Plan under the terms and conditions described herein.

2. The Clinic was constructed over a twenty-four year period commencing in 1950, when the original clinic building (the Original Clinic) was constructed, and continued with subsequent improvements and expansions in 1954, 1956 and 1967. The Plan acquired the 35,000 square foot Original Clinic, including the underlying land, from its predecessor plan in 1960 and commenced leasing the Original Clinic to the Employer under a net lease (the Original Lease).

In 1974 the Original Clinic was expanded substantially with a 65,000 square foot addition (the Addition) constructed by the City of Evansville, Indiana (the City) on City-owned land (hereinafter included in references to the Addition) abutting the Original Clinic. Upon completion of the Addition, the Plan leased the Addition, including furnishings and medical equipment installed therein (the Equipment), from the City (the City Lease). The City Lease granted the Plan options (the Options) to purchase the Addition and the Equipment under certain stated circumstances.

Upon commencement of the City Lease, the Employer began subleasing the Addition from the Plan under a net sublease (the Sublease) which ensured that rentals received by the Plan thereunder would always exceed the rentals which the Plan paid the City under the City Lease. The Sublease, with an initial term of 20 years, was effective June 1, 1974. On that date the Plan and the Employer also executed a renewal of the Original Lease (the Renewed Lease), which has continued on a year-to-year basis since its initial term expired in 1979. The Employer represents that its lease of the Original Clinic from the Plan under the Original Lease and the Renewed Lease and its sublease of the Addition from the Plan under the Sublease were exempt until June 30, 1984 from the prohibitions of section 406 of the Act by virtue of section 414(c)(2) of the Act.[6]

Prior to June 30, 1984, fiduciaries of the Plan exercised the Plan's Option to purchase the Equipment from the City and then sold the Equipment to the Employer. The Employer represents that its purchase of the Equipment from the Plan was exempt from the prohibitions of section 406 of the Act by virtue of section 414(c)(3) of the Act.[7]

During 1984 the necessary actions were initiated to enable the Plan to exercise the Option to purchase the Addition from the City. The Plan acquired full title to the Addition on June 1, 1985 and has continued to lease the Addition to the Employer. As a result of the consolidated ownership of the Original Clinic and the Addition by the Plan, and in recognition that the Employer occupies and operates the formerly seperate parcels as one consolidated Clinic facility, the Original Lease and the Sublease have been combined, amended and replaced with a single lease agreement (the New Lease) which governs the Employer's lease of the Clinic from the Plan and under which the Employer proposes to continue leasing the Clinic.

3. The New Lease is an absolute net lease for a fixed term which expires on May 31, 2008. The Trustee represents the interests of the Plan under the New Lease. Rentals under the New Lease are paid monthly and are subject to adjustment at five-year intervals to ensure that they remain no less than the fair market rental value of the Clinic property. For the period commencing August 1, 1988 and ending May 31, 1989, the rental (the Base Rent) shall be the greater of (1) $77,760 per month, or (2) the monthly fair market rental value of the Clinic as determined by a qualified independent appraiser selected by the Trustee. Thereafter, commencing June 1, 1989, the monthly rental shall be redetermined on June 1 every five years as the greater of (1) the monthly fair market rental value of the Clinic as determined by an independent qualified appraiser selected by the Trustee, or (2) the Base Rent adjusted for increases in the Consumer Price Index (the CPI) of the Department's Bureau of Labor Statistics in accordance with a procedure set forth in the New Lease.

Under the New Lease the Employer assumes all expenses of maintenance and repair of the Clinic and all costs of utility services to the Clinic. As additional rent, the Employer is obliged to pay all real estate taxes related to the Clinic property. The New Lease requires the Employer to purchase and maintain such insurance of the Clinic premises as the Trustee may reasonably require, to include fire and extended coverage insurance in an amount equal to full replacement cost, comprehensive bodily injury and property damage insurance in amounts required by the Trustee, and rent insurance. Under the New Lease the Employer agrees to indemnify and hold harmless the Plan against any claims and liabilities of any nature arising from the Employer's use of the Clinic premises or the Employer's noncompliance with any provisions of the New Lease. In the event the Employer defaults on the payment of rent under the New Lease or fails to fulfill any other obligation thereunder, the New Lease empowers the Trustee with remedial options which include taking possession of the premises and removing the Employer, terminating the New Lease, suing for damages while continuing the New Lease in effect, and any and all other remedies available to the Trustee at law or in equity.

Upon expiration of the New Lease provided that the Employer has performed all its obligations thereunder, the Employer may, subject to the Trustee's approval, renew the New Lease for no more than four successive renewal terms of five years each. The Trustee may decline to approve any renewal and the Employer may decline to renew. For any such renewal term, the rental shall be the greater of (1) the Clinic's monthly fair market rental value as determined by a qualified independent appraiser selected by the Trustee, or (2) the monthly rental paid during the immediately preceding five-year period adjusted for increases in the CPI according to a procedure set forth in the New Lease.

4. The Trustee maintains that it is independent of and unrelated to the Employer and that it has substantial experience as a fiduciary under the Act. The Trustee states that it has represented the Plan's interests under the previous lease arrangements with the Employer, including active and exclusive representation of the Plan's interests as of February 28, 1987, the effective date of the exemption proposed herein. The Trustee represents that it continues and will continue to represent the interests of the Plan actively and for all purposes under the New Lease. The Trustee represents that it fully understands its responsibilities as a fiduciary in this matter and that it will discharge its duties solely in the interests of the participants and beneficiaries of the Plan. In considering whether the Plan should retain the Clinic as an investment past June 30, 1984, the Trustee represents that it explored the possible alternatives, thoroughly evaluated the Plan's investment in the Clinic from various perspectives, and concluded that the Clinic constitutes an excellent investment for the Plan. The Trustee represents that since 1975 the Plan has received rent from the Employer in amounts equal to or greater than the Clinic's fair market rental value. The Trustee maintains that the terms of the New Lease adequately protect the Plan's interests in the Clinic and observes that they are sufficient to ensure that rentals will remain no less than the Clinic's fair market rental value. According to the Trustee, the Plan's investment in the

[6] In this proposed exemption the Department expresses no opinion as to whether the leases and the Subleases satisfied the requirements of section 414 of the Act.

[7] In this proposed exemption the Department expresses no opinion as to whether the sale satisfied the requirements of section 414 of the Act.

Clinic is consistent with an appropriate diversification of the Plan's total assets. Specifically, the Trustee represents that the value of the Clinic constituted less than 25 percent of the Plan's total assets as of February 27, 1987 and that it will constitute no more than 25 percent of the Plan's total assets on the date this exemption, if granted, is published in the Federal Register. According to David Matthews, MAI, an independent professional real estate appraiser in Evansville, Indiana, the unencumbered fee simple title of the Clinic had a fair market value of $6,350,000 as of December 31, 1987 and the renal payments of $77,760 per month under the New Lease were in excess of the Clinic's fair market rental value.

5. The Employer recognizes that the continuation of the subject lease arrangement past June 30, 1984 to February 28, 1987 constituted a prohibited transaction under the Act and the Code for which the Department is not proposing exemptive relief herein. Accordingly, the Employer represents that within 60 days after the publication in the Federal Register of a notice granting the exemption proposed herein, it will file a Form 5330 with the Internal Revenue Service and pay the excise taxes which are applicable under section 4975(a) of the Code as a result of the continuation of the lease arrangements from June 30, 1984 to February 28, 1987.

6. In summary, the applicant represents that the past and proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (1) The interests of the Plan for all purposes under the subject lease arrangements have been and will be represented by the Trustee, a fiduciary which is independent of and unrelated to the Employer; (2) the New Lease is an absolute net lease under which the Employer pays all costs of maintenance and repair, full insurance coverage, and all taxes and utilities for the Clinic and indemnifies the Plan against all claims and liabilities resulting from use in the Clinic; (3) the New Lease includes a procedure to ensure that rentals paid by the Employer remain no less than the Clinic's fair market rental value; (4) after a thorough evaluation, the Trustee determined that the Clinic constituted an excellent and appropriate investment for the Plan; and (5) the Trustee's approval is required by any renewal or extension of the New Lease.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject on an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of seciton 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 21st day of October, 1988.

Robert J. Doyle,

Acting Director of Regulations and Interpretations Pension and Welfare Benefits Administration U.S. Department of Labor.

[FR Doc. 88-24717 Filed 10-25-88; 8:45 am]

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[Prohibited Transaction Exemption 88-96; Exemption Application No. D-6837 et al.]

Grant of Individual Exemptions; Real Estate fur American Labor A Balcor Group Trust, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemption s to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Real Estate for American Labor A Balcor Group Trust (the Trust), Located in Chicago, IL

[Prohibited Transaction 88-96; Exemption Application No. D-6837]

Exemption

Section I. Exemption for Certain Transactions Involving the Trust

(a) The restrictions of sections 406(a), 406(b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the transactions described below if the applicable conditions set forth in Section IV are met.

(1) *Transactions Between Parties-In-Interest and the Trust: General.* Any transaction between a party-in-interest with respect to a plan which has an interest in the Trust (a Participating Plan) and the Trust, or any acquisition or holding by the Trust of employer securities or employer real property, if the party in interest is not Balcor Institutional Realty Advisors, Inc. (Balcor) or one of its affiliates, any other trust maintained by Balcor or one of its affiliates, and if, at the time of the transaction, acquisition or holding, the interest of the Participating Plan, together with the interest of any other Participating Plan maintained by the same employer or employee organization in the Trust, does not exceed 10 percent of the total of all assets in the Trust.

(2) *Special Transactions Not Meeting the Criteria of Section I(a)(1) Between Employers of Employees Covered by a Multiemployer Plan and the Trust.* Any transaction between an employer (or an affiliate of an employer) of employees covered by a multiemployer plan (as defined in section 3(37)(A) of the Act and section 414(f)(1) of the Code) that is a Participating Plan, and the Trust, or any acquisition or holding by the Trust of employer securities or employer real property, if at the time of the transaction, acquisition or holding—

The interest of the multiemployer plan in the Trust exceeds 10 percent of the total assets in the Trust, but the employer is not a "substantial employer" with respect to the plan and would not be a "substantial employer" if "5 percent" were substituted for "10 percent" in the definition of "substantial employer."

(3) *Acquisitions, Sales, or Holdings of Employer Securities and Employer Real Property.* (A) Except as provided in subsection (B) of this section (3), any acquisition, sale or holding of employer securities or employer real property by the Trust which does not meet the requirement of paragraphs (a)(1) and (a)(2) of this Section I, if no commission is paid to Balcor or to the employer, or any affiliate of Balcor or the employer in connection with the acquisition or sale of employer securities or the acquisition, sale or lease or employer real property; and

(i) In the case of employer real property—

(aa) Each parcel of employer real property and the improvements thereon held by the Trust are suitable (or adaptable without excessive cost) for use by different tenants, and

(bb) The property of the Trust that is leased or held for lease to others, in the aggregate, is dispersed geographically.

(ii) In the case of employer securities—

(aa) Neither Balcor nor any of its affiliates is an affiliate of the issuer of the security, and

(bb) If the security is an obligation of the issuer, either:

1. The Trust owns the obligation at the time the plan acquires an interest in the Trust, and interests in the Trust are offered and redeemed in accordance with valuation procedures of the section applied on a uniform or consistent basis, or

2. Immediately after acquisition of the obligation by the Trust not more than 25 percent of the aggregate amount of obligations issued in the issue and outstanding at the time of acquisition is held by such plan, and at least 50 percent of the aggregate amount of obligations issued in the issue and outstanding at the time of acquisition is held by persons independent of the issuer. Balcor, its affiliates, and any collective investment fund maintained by Balcor or its affiliates, shall be considered to be persons independent of the issuer if Balcor is not an affiliate of the issuer.

(B) In the case of a Participating Plan that is not an eligible individual account plan (as defined in section 407(d)(3) of the Act), the exemption provided in subsection (A) of this section (3) shall be available only if, immediately after the acquisition of the securities or real property, the aggregate fair market value of employer securities and employer real property with respect to which Balcor or its affiliate has investment discretion does not exceed 10 percent of the fair market value of all the assets of the Participating Plan with respect to which Balcor or its affiliate has such investment discretion.

(C) For purposes of the exemption contained in subsection (A) of this section (3), the term "employer securities" shall include securities issued by, and the term "employer real property" shall include real property leased to, a person who is a party-in-interest with respect to a Participating Plan by reason of a relationship to the employer described in section 3(14) (E), (G), (H) or (I) of the Act.

(b) The restrictions of section 406(a)(1)(A) through (D) and section 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the transactions described below, if the conditions of Section IV are met.

(1) *Certain Leases and Goods.* The furnishing of goods to the Trust by a party-in-interest with respect to a Participating Plan or the leasing of real property owned by the Trust to such party-in-interest and the incidental furnishing of goods to such party-in-interest by the Trust, if—

(A) In the case of goods, they are furnished to or by the Trust in connection with real property owned by the Trust;

(B) The party-in-interest is not Balcor, any affiliate of Balcor, or one of the other trusts; and

(C) The amount involved in the furnishing of goods or leasing of real property in any calendar year (including the amount under any other lease or arrangement for the furnishing of goods in connection with the real property investments of the Trust with the same party-in-interest, or any affiliate thereof) does not exceed the greater or $25,000 or 0.5 percent of the fair market value of the assets of the Trust on the most recent valuation date of the Trust prior to the transaction.

(2) *Transactions Involving Places of Public Accommodation.* The furnishing of services, facilities and any goods incidental to such services and facilities by a place of public accommodation owned by the Trust to a party-in-interest with respect to a Participating Plan, if the services, facilities and incidental goods are furnished on a comparable basis to the general public.

(c) The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transactions if the conditions of Section IV are met:

Any transaction between the Trust and a person who is a party in interest with respect to a Participating Plan, if—

(1) The person is a party in interest (including a fiduciary) solely by reason of providing services to the Participating Plan, or solely by reason of a relationship to a service provider described in section 3(14) (F), (G), (H) or (I) of the Act, or both, and the person neither exercised nor has any discretionary authority, control, responsibility or influence with respect to the investment of the Participating Plan's assets in, or held by, the Trust;

(2) At the time of the transaction, the interest of the Participating Plan, together with the interests of any other Participating Plan maintained by the same employer or employee organization in the Trust, does not exceed 20 percent of the total of all assets in the Trust; and

(3) The person is not Balcor or an affiliate of Balcor.

(d) The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code by reasons of section 4975(c)(1) (A) through (D) of the Code shall not apply to the purchase and sale of units of beneficial interest (Units) in the Trust if no more than reasonable compensation is paid therefor and (a) each purchase and sale is authorized in writing by a fiduciary of the Participating Plan who is independent of Balcor and any of its affiliates or (b) the purchase or sale is a mandatory redemption required by the Trust Agreement, including the failure of the Participating Plan to remain a plan which can invest in a group trust described in section 401(a)(24) of the Code, and the applicable conditions of Section IV are met.

Section II. Excess Holdings Exemption for Employee Benefit Plans

(a) The restrictions of sections 406(a) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to any acquisition or holding of qualifying employer securities of qualifying employer real property (other than through the Trust) by a Participating Plan if (1) the acquisition or holding constitutes a prohibited transaction solely by reason of being aggregated with employer securities or employer real property held by the Trust; (2) the requirements of either paragraph (a)(1) or paragraph (a)(2) of Section I of this exemption are met; and (3) the applicable conditions set forth in Section IV of this exemption are met.

Section III. Transfers of Real Property From Balcor to the Trust

(a) The restrictions of section 406(a), 406(b)(1) and (2) of the Act and the taxes imposed by section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to any sale to the Trust of real property acquired by Balcor or an affiliate during the offering period if the following conditions are met:

(a) The price paid by the Trust for the property will be no greater than the lesser of the sum of the amount paid and the holding costs incurred by Balcor or an affiliate or the fair market value of the property, as determined by an independent appraiser, as of the date of sale to the Trust;

(b) The offering memorandum (Memorandum) is supplemented during the offering period with a description of the proposed investment;

(c) All documents relating to such an investment by Balcor indicate specifically that the investment is being made on behalf of the Trust and all documents relating to the calling of funds from investors specify the investment for which such funds will be used;

(d) All such transfers are completed within 120 days of purchase by Balcor or an affiliate; and

(e) The conditions set forth in section IV of this exemption are met.

Section IV. General Conditions

(a) At the time the transaction is entered into, and at the time of any subsequent renewal thereof that requires the consent of Balcor or its affiliate, the terms of the transaction are not less favorable to the Trust than the terms generally available in arms's-length transactions between unrelated parties.

(b) Balcor or its affiliates maintain for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (c) of this Section IV to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Balcor or its affiliates, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest shall be subject to the civil penalty that may be assessed under section 502(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (c) below.

(c)(1) Except as provided in section 2 of this paragraph (c) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (b) of this Section IV are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any fiduciary of a Participating Plan who has authority to acquire or dispose of the interests in the Trust of the Participating Plan or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any Participating Plan or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any Participating Plan, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this paragraph (c) shall be authorized to examine trade secrets of Balcor or its affiliate, or commercial or financial information which is privileged or confidential.

Section V. Definitions and General Rules

For the purposes of this exemption,

(a) The term "the Trust" shall include any collective investment fund that may hereafter be established, operated and managed by Balcor or its affiliate in essentially the same manner as the Real Estate for American Labor A Balcor Group Trust.

(b) An "affiliate" of a person includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any officer, director, employee, relative of, or partner in any such person, and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(c) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or sister.

(e) The term "substantial employer" means for any plan year an employer (treating employers who are members of the same affiliated group, within the meaning of section 1563(a) of the Code, determined without regard to section 1563 (a)(4) and (e)(3)(c) of the Code, as one employer) who has made contributions to or under a multiemployer plan for each of—

(1) The two immediately preceding plan years, or

(2) The second and third preceding plan years, equaling or exceeding 10 percent of all employer contributions paid to or under that plan for each such year.

(f) The time as of which any transaction, acquisition or holding occurs is the date upon which the transaction is entered into, the acquisition is made or the holding commences. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into, or an acquisition is made, on or after the effective date of this exemption, or a renewal that requires the consent of the Trust occurs on or after the effective date of this exemption, and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, or at the time the acquisition is made, the requirements will continue to be satisfied thereafter with respect to the transaction or acquisition and the exemption shall apply thereafter to the continued holding of the property so acquired. Notwithstanding the foregoing, this exemption shall cease to apply to transactions exempt by virtue of subsections I(a)(1) and I(c) at such time as the interest of the Participating Plan exceeds the percentage interest limitations set forth in those subsections, unless no portion of such excess results from an increase in the assets allocated to the Trust by the Participating Plan. For this purpose, assets allocated do not include the investment of Trust earnings. Nothing in this paragraph (f) shall be construed as exempting a transaction described in section 406 of the Act or section 4975 of the Code while the transaction is continuing, unless the conditions of the exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption.

(g) Each Participating Plan shall be considered to own the same proportionate undivided interest in each asset of the Trust as its proportionate interest in the total assets of the Trust as calculated on the most recent preceding valuation date of the Trust.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to this proposed exemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 29, 1988 at 53 FR 28716.

FOR FURTHER INFORMATION CONTACT: David Lurie of the Department, telephone (202) 523–8671. (This is not a toll-free number.)

The O.C. Tanner Company Retirement and Savings Plan, the O.C. Tanner Manufacturing Retirement and Savings Plan, the O.C. Tanner Manufacturing Sales Representatives Retirement and Savings Plan, the O.C. Tanner Employees Savings Plan and the O.C. Tanner Retirement and Savings Plan Group Trust (collectively, the Plans) Located in Salt Lake City, Utah

[Prohibited Transaction Exemption 88–97; Exemption Application Nos. D–7604 through D–7608]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to a series of loans by the Plans to the O.C. Tanner Company involving up to 25% of each of the Plan's assets, provided that the terms of the transactions are not less favorable to the Plans than those obtainable in arm's-length transactions with unrelated parties.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on August 30, 1988 at 53 FR 33201.

For Further Information Contact: Mr. Alan Levitas of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Puckett Machinery Company Profit Sharing Plan (the Plan) Located in Jackson, MS

[Prohibited Transaction Exemption 88–98; Exemption Application No. D–7576]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the continued leasing (the Extended Lease) of certain improved real property by the Plan to Puckett Machinery Company (the Employer), a party of interest with respect to the Plan, provided the terms of the Extended Lease are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 29, 1988 at 53 FR 28726.

EFFECTIVE DATE: This exemption is effective April 1, 1985.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Alton Engineering Profit Sharing Plan (the Plan) Location in Bethesda, Maryland

[Prohibited Transaction Exemption 88–99; Exemption Application No. D–7640]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by the Plan of three limited partnership interests (the Interests) and a certain parcel of improved real property (the Property) to George J. Quinn (Mr. Quinn), a disqualified person with respect to the Plan;[1] provided that the sales price is not less than the fair market value of the Interests and the Property as of the date of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on August 30, 1988 at 53 FR 33203.

Written Comments: The applicant submitted several comments with respect to the Notice of Proposed Exemption (the Notice).

Paragraph 4 of the Notice states that in addition to the Interests owned by the Plan, Mr. Quinn owns a 2.5% interest in the Paramount L.P., and holds or controls, along with the Alton Engineering Company, a 12.6% interest in the Columbia Pike L.P. (together, the

[1] Because Mr. Quinn is the only participant in the Plan and the Alton Engineering Company is wholly-owned by Mr. Quinn, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

Quinn Interests). The fourth sentence of Paragraph 4 states that ". . . part of the Quinn Interests in the Columbia Pike L.P. were later sold to other investors, some of whom are related to Mr. Quinn." In this regard, the applicant represents that the fourth sentence of Paragraph 4 should state that part of the Quinn Interests in the Columbia Pike L.P. which were held by John A. Quinn, Mr. Quinn's older brother, were later bequeathed to other entities by Mr. John Quinn upon his death, some of which are related to Mr. Quinn. In addition, the applicant states that Mr. Quinn does not actually control all of the Quinn Interests.

After consideration of the entire record, the Department has determined to grant the exemption.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require fiduciary to discharge his duties respecting the plan solely in the interest of the paticipants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it effect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 21st day of October, 1988.

Robert J. Doyle,

Acting Director of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 88-24716 Filed 10-25-88; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on these information collections must be submitted by November 25, 1988.

ADDRESSES: Send comments to Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW, Room 3002, Washington, DC 20503; (202-395-7316). In addition, copies of such comments may be sent to Anne Cowperthwaite, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506; (202-682-5401).

FOR FURTHER INFORMATION CONTACT: Anne Cowperthwaite, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506; (202-682-5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests a review of the revision of three previously approved collections. This entry is issued by the Endowment and contains the following information:

(1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: FY 1990 Inter-Arts Program Application Guidelines.

Frequency of Collection: One-time.

Respondents: State or local governments; Non-profit institutions.

Use: Guideline instructions and applications elicit relevant information from non-profit organizations and state or local arts agencies that apply for funding under specific program categories. This information is necessary for the accurate, fair and thorough consideraton of competing proposals in the peer review process.

Estimated Number of Respondents: 310.

Average Burden Hours per Response: 10.

Total Estimated Burden: 11,991.

Title: Music Presenters and Festivals Application Guidelines FY 1990.

Frequency of Collection: One-time.

Respondents: State or local governments; Non-profit institutions.

Use: Guideline instructions and applications elicit relevent information from non-profit organizations and state or local art agencies that apply for funding under specific Program categories. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the peer review system.

Estimated Number of Respondents: 400.

Average Burden Hours per Response: 39.

Total Estimated Burden: 15,751.

Title: Design Arts Application Guidelines for FY 1990.

Frequency of Collection: One-time.

Respondents: Individuals or households; State or local governments; Non-profit institutions.

Use: Guideline instructions and applications elicit relevant information from individual artists, non-profit organizations, and state or local arts agencies that apply for funding under specific Design Arts Program categories. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the peer review process.

Estimated Number of Respondents: 831.

Average Burden Hours per Response: 34.

Total Estimated Burden: 28,472.

Anne E. Cowperthwaite,

Administrative Services Division, National Endowment for the Arts.

[FR Doc. 88-24780 Filed 10-25-88; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-320]

GPU Nuclear Corporation, Three Mile Island Nuclear Station, Unit 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.54(w)(5)(i), relative to Facility Operating License No. DPR-73, issued to GPU Nuclear Corporation (the licensee) for the Three Mile Island Nuclear Station Unit 2 (TMI-2), located at the licensee's site in Londonderry Township, Dauphin County, Pennsylvania. By Order for Modification of License, dated July 20, 1979, the licensee's authority to operate the facility was suspended and the licensee's authority was limited to maintenance of the facility in the present shutdown cooling mode (44 FR 45271). By further Order of the Director, Office of Nuclear Reactor Regulation, dated February 11, 1980, a new set of formal license requirements was imposed to refelct the post-accident condition of the facility and to assure the continued maintenance of the current safe, stable, long-term cooling condition of the facility (45 FR 11292). The license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in affect.

Environmental Assessment

Identification of Proposed Action

On August 5, 1987, the NRC published in the Federal Register a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, since this rulemaking action was not completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

The Need for the Proposed Action

The exemption is needed because insurance complying with requirements of 10 CFR 50.54(w)(5)(i) is unavailable and because the temporary delay in implementation allowed by the exemption and associated rulemaking action will permit the Commission to reconsider on its merits the trusteeship provision of 10 CFR 50.54(w)(4).

Environmental Impacts of the Proposed Action

With respect to radiological impacts on the environment, the proposed exemption does not in any way affect the operation of licensed facilities. Further, as noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage already is prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the envrironment.

The proposed exemption does not affect radiological or nonradiological effluents from the site and has no other nonradiological impacts.

Alternatives to the Proposed Action

It has been concluded that there is no measurable impact associated with the proposed exemption; any alternatives to the exemption will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The staff did not consult other agencies or persons in connection with the proposed exemption.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For information concerning this action, see the proposed rule (53 FR 36338), and the exemption which is being processed concurrent with this notice. A copy of the exemption will be available for public inspection at the Commission's Public Document Room, 2120 L Street NW, Washington, DC, and at the State Library of Pennsylvania, Government Publications Section, Education Building, Walnut Street and Commonwealth Avenue, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland, this 19th day of October 1988.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I-4, Division of Reactor Projects—I/II.

[FR Doc. 88-24745 Filed 10-25-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-220]

Niagara Mohawk Power Corp., Nine Mile Point Nuclear Station Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR Part 50.62(c)(4) to Niagara Mohawk Power Corporation (the licensee), for Unit No. 1 of the Nine Mile Point Nuclear Station

BEST COPY AVAILABLE

(NMP–1) located in Oswego County, New York.

Environmental Assessment

Identification of Proposed Action

The exemption would grant relief from 10 CFR 50.62(c)(4) to allow the NMP–1 plant to use an equivalency formula considering sodium pentaborate solution concentration, pump flow rate, boron enrichment and vessel size to determine the requirements for the liquid poison system which performs the function of the standby liquid control system (SLCS).

The licensee's exemption request, and the bases therefor, are contained in a letter dated September 14, 1988.

The Need for the Proposed Action

The exemption is needed because the licensee proposes to depart from 10 CFR 50.62(c)(4) requirements, as a result of NMP–1 having a reactor vessel diameter which is smaller than that used to establish the minimum flow and boron content requirements set forth in the regulation. NMP–1 will use an equivalency formula which considers the concentration of sodium pentaborate, pump flow rate, boron enrichment and vessel size to determine the system requirements. This equivalency formula was discussed in the licensee's March 7, 1988 request for a Technical Specification amendment for Sections 3.1.2 and 4.1.2 regarding the liquid poison system. A smaller amount of sodium pentaborate will be required because of the higher enrichment and because the vessel diameter is 213 inches, as opposed to 251 inches which is the basis for the 86 gallons per minute requirement in 10 CFR Part 50.62.

Generic Letter 85–03, "Clarification of Equivalent Control Capacity for Standby Liquid Control Systems," dated January 28, 1985 states, in part:

> The "equivalent in control capacity" wording was chosen to allow flexibility in implementation of the requirement.

The 86 gallons per minute and 13 weight percent sodium pentaborate concentration were values used in NEDE–24222, "Assessment of BWR Mitigation of ATWS, Volumes I and II," December 1979 for BWR/4, BWR/5, and BWR/6 plants with 251-inch diameter vessels. NEDE–24222 recognized that different values would provide equivalent control capacity for smaller plants.

Environmental Impacts of the Proposed Action

The exemption provides a degree of protection of NMP–1 equivalent to that required by the regulation for reactors with larger reactor vessels to ensure prompt injection of negative reactivity into a boiling water reactor pressure vessel in the event of an Anticipated Transient Without Scram (ATWS). This exemption will not affect containment integrity, nor the probability of facility accidents. Thus, post-accident radiological releases will not be greater than previously determined, nor will the granting of the proposed exemption otherwise effect radiological plant effluents, or result in any significant occupational exposure. Likewise, the exemption will not affect non-radiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Because it has been concluded that there is no measurable environmental impact associated with the proposed exemption, any alternatives to the exemption will have either no environmental impacts or greater environmental impacts.

The principal alternative to granting the exemption would be to deny the requested exemption. Such action would not reduce environmental impacts of NMP–1 operations and would not enhance the protection of the environment.

Alternative Use of Resources

This does not involve the use of resources not previously considered in connection with the Final Environmental Statement for NMP–1 dated January 1974.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based on the foregoing environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of human environment.

For further information with respect to this action, see the application for exemption dated September 14, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the Penfield Library, State University of New York, Oswego, New York 13126.

Dated at Rockville, Maryland, this 13th day of October 1988.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate I–1, Division of Reactor Projects I/II.

[FR Doc. 88–24746 Filed 10–25–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–029]

Yankee Atomic Electric Co., Yankee Nuclear Power Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–3 issued to Yankee Atomic Electric Company, (the licensee), for operation of the Yankee Nuclear Power Station located in Rowe, Massachusetts.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the Technical Specifications (TS) to accommodate changes in the incore detection system. The changes would be from moveable to fixed detectors.

The proposed action is in accordance with the licensee's application for amendment dated April 4, 1988.

The Need for the Proposed Action

The proposed changes to the TS would allow an increase in plant data collection capability to ensure that the operation of the reactor core is within the operating license limits.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the TS. We reviewed the changes from moveable incore detectors to fixed incore detectors. The changes will both improve present data collection capability and in the future make it possible to increase this capability. Older instruments with a history of failures are being replaced by more modern reliable instruments. The proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure.

Accordingly, the Commission concludes that this proposed action would result with no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed changes to the TS involve systems located within the restricted area as defined in 10 CFR Part 20. It does not affect Non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. If the requested amendment was denied, the plant would continue to operate with a less reliable core monitoring system. This could result in a degradation in safe operation with a potential for adverse environmental effects.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in previous reviews for the Yankee Nuclear Power Station. The plant was licensed prior to the requirement for issuance of a Final Environmental Statement.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated April 4, 1988 which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC and at the Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Dated at Rockville, Maryland, this 19th day of October 1988.

For the Nuclear Regulatory Commission.

Richard H. Wessman,

Director, Project Directorate I–2, Division of Reactor Projects I/II.

[FR Doc. 88–24747 Filed 10–25–88; 8:45 am]

BILLING CODE 7590–01–M

Low Level Waste Disposal Regulatory Meeting.

ACTION: Low-Level Waste Disposal Regulatory Meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) will hold a meeting on low-level waste regulatory issues as a part of NRC's continuing exchange of information program with the Agreement States. The purpose of this meeting will be to provide an opportunity for NRC to discuss current regulatory issues related to low-level waste disposal. The meeting is open to the public. following the discussions of the NRC and State representatives, members of the public will have the opportunity to ask questions with selected States. Participants in the meeting will be from those States who are presently regulating low-level waste disposal facilities and those States who anticipate regulating these types of facilities in the near future.

DATES: November 15–16, 1988.

FOR FURTHER INFORMATION CONTACT: Joel O. Lubenau, Acting Assistant Director for State Agreements Program, State, Local and Indian Tribe Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–0512.

SUPPLEMENTARY INFORMATION: Preliminary Agenda for Low-Level Waste Disposal Regulatory Meeting, November 15–16, 1988, Days Inn Congressional Park, Rockville, Maryland.

November 15, 1988

Topic

8:30—Welcome and Introduction
8:45—Objectives of the Meeting
9:00—Technical Assistance to the States
9:15—Regulatory Issues: License Application Review Process
9:45—Break
10:00—Continuation of License Application Review Process
12:00—Lunch
1:30—Regulatory Issues: Site Selection/Characterization
3:15—Break
3:30—Continuation of Discussion on Site Selection/Characterization
4:30—Adjourn

November 16, 1988

Topic

8:30—Regulatory Issues: Alternative Technology
10:30—Break
10:45—Policy Statement on Guidelines for Review of an Agreement State Program Regulating LLW
11:45—Public Participation
12:45—Close

Conduct of Meeting: This meeting will be conducted in a manner that will facilitate the orderly progression of business. Seating for the Public will be on a first come first served basis. A transcript of the meeting and written comments will be available for inspection and copying for a fee at the NRC Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC 20555 on or about December 23, 1988.

Dated at Rockville, Maryland, this 18th day of October 1988.

For the United States Nuclear Regulatory Commission.

Carlton Kammerer,

Director, State, Local and Indian Tribe Programs, Office of Governmental and Public Affairs.

[FR Doc. 88–24744 Filed 10–25–88; 8:45 am]

BILLING CODE 7590–01–M

[License No. 34–18309–01MD; Docket No. 030–14827; EA 88–194, and License No. 34–13484–01MD; Docket No. 030–15166; EA 88–242]

SYNCOR Corp.; Order Modifying Licenses (Effective Immediately)

I

SYNCOR Corporation (SYNCOR), 5225 Creek Road, Blue Ash, OH 45242, is the holder of a specific byproduct material license issued by the Nuclear Regulatory Commission (the "Commission" or "NRC") pursuant to 10 CFR Part 30. License No. 34–18309–01MD was originally issued to Pharmatopes Corporation on December 12, 1978, and was last renewed in its entirety on January 9, 1984. This license was due to expire on January 31, 1988; however, the NRC issued a letter dated January 7, 1988, acknowledging timely receipt of the Licensee's renewal application. Therefore, this license is currently active. This license authorizes, among other things, the use of molybdenum-99/technetium-99m (Mo-99/Tc-99m) generators for the production of technetium-99m sodium pertechnetate for use with reagent kits in the preparation and distribution of

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radiopharmaceuticals to authorized recipients.

II

SYNCOR Corporation (SYNCOR), 3025–3027 East 14th Avenue, Columbus, OH 43219, is the holder of a specific byproduct material license issued by the Nuclear Regulatory Commission (the "Commission" or "NRC") pursuant to 10 CFR Part 30. License No. 34–18484–01MD was originally issued to Pharmatopes, Inc. on July 24, 1979, and was last renewed in its entirety on April 24, 1986. The license expires on April 30, 1991. The license authorizes, among other things, the use of molybdenum-99/technetium-99m generators for the production of technetium-99 sodium pertechnetate to be used to prepare technetium-99 tagged radiopharmaceuticals. The license also authorizes the distribution of radiopharmaceuticals to authorized recipients.

III

On April 29 and May 9, 1988, the NRC Region III Office received notification of several maladministrations of radiopharmaceuticals utilized in diagnostic procedures that occurred on April 28, 1988, at hospitals in Southwest, Ohio. The radiopharmaceuticals had been distributed from the SYNCOR facility at Blue Ash, Ohio.

On July 6–8, 1988, NRC Region III performed an inspection at the Blue Ash facility and on August 19, 1988, NRC Region III Office of Investigations (OI) initiated an investigation into this matter. Those activities disclosed that the Blue Ash facility had distributed 17 patients doses to client hospitals consisting of free technetium (Tc)-99m sodium pertechnetate improperly labeled as Tc-99m tagged to methylene diphosphonate (MDP), a bone imaging agent. This resulted in 14 diagnostic misadministrations at seven hospitals on April 28, 1988 (Appendix B to this Order). In addition to the improper labels, the inspection determined that tagging efficiency tests of compounded radiopharmaceuticals like Tc-99m/MDP were not always performed.

On July 13, 1988, NRC Region III issued Confirmatory Action Letter No. RIII–CAL–88–019 to SYNCOR confirming the commitments of the Blue Ash facility manager to: (1) Immediately report certain misadministration events to MRC Region III and the licensee's affected clients; (2) expand the quality control program to include introduction of test samples into the production testing operation; and (3) implement double verification of satisfactory quality control test completion.

On July 22, 1988, SYNCOR requested an amendment to the Blue Ash facility license to include the provisions of Confirmatory Action Letter No. RIII–CAL–88–019, Items 1–4. Those provisions were incorporated on August 29, 1988, into License Condition No. 23 through Amendment No. 16 to the Blue Ash facility license.

In addition to the concerns described above regarding the 14 misadministrations that occurred on April 28, 1988 (Appendix B to this Order), the inspection and the subsequent OI investigation disclosed several other apparent violations of the Blue Ash facility radiopharmaceutical production requirements and radiation protection program. The identified apparent violations are listed in Appendix A to this Order.

IV

On August 30 and 31, 1988, NRC Region III conducted interviews at a sampling of seven clients of the Blue Ash facility and identified numerous occurrences of improperly tagged or labeled radiopharmaceuticals being provided to these facilities within the past 15 months. The specific problems associated with the distributed radiopharmaceuticals are listed in Appendix B to this Order.

Each of these improperly tagged or labeled doses resulted in diagnostic misadministrations or in unnecessary organ and whole body doses during the procedures. Many of these occurrences could have been prevented had appropriate quality control testing been performed as indicated by the testing records, i.e., the percent tagging test could have indicated only free Tc99m pertechnetate in the vial. This testing is particularly important because the nuclear pharmacy distributes multiple doses to clients from a single preparation of a radiopharmaceutical and the clients place reliance on the pharmacy to ensure the radiopharmaceutical is properly prepared. The dose is directly administered to the patient by the client.

As a result of these findings, on September 2, 1988, NRC Region III issued Confirmatory Action Letter No. CAL–RIII–88–028 to SYNCOR Blue Ash, confirming the commitments of the chairman of the Board and the Blue Ash facility manager to perform independent verification of satisfactory completion of all quality control program and NRC required tests and assays prior to distribution of radiopharmaceuticals. The Blue Ash facility is currently operating under these restrictions.

V

On September 8 and 9, 1988, NRC conducted an inspection at the SYNCOR Columbus, Ohio facility. That inspection disclosed that on September 5 through 7, 1988, the instrumentation utilized to perform tagging efficiency tests was out of service and testing was not performed on radiopharmaceuticals distributed on those days.

As a result of these findings, on September 9, 1988, NRC Region III issued Confirmatory Action Letter No. RIII–CAL–88–027 to SYNCOR Columbus, confirming the commitments of the Chairman of the Board to perform daily audits by the Columbus facility pharmacy manager and weekly audits by the corporate staff to assure all tests and assays at the Columbus facility are performed properly.

VI

As a result of the inspections and investigation described above, the NRC has concluded that the Blue Ash facility distributed improperly tagged or labeled radiopharmaceuticals and the Blue Ash and Columbus facilities failed to perform tests on radiopharmaceuticals. In addition, records were inadequate to reflect the actual tests performed. Clinical use of improperly tagged or labeled radiopharmaceuticals will cause: (a) Additional unnecessary radiation exposures to patients because the tests must be repeated or the material is concentrated in parts of the body where it was not prescribed; (b) delays in obtaining diagnostic information; and/or (c) difficulty in interpeting the test results. Accurate records of the quality control tests are essential to permit pharmacy and corporate management to audit compliance with the testing requirements and follow-up on identified deficiencies. In addition to these concerns, the Blue Ash facility apparently failed to implement several radiation protection requirements including dose calibrator accuracy testing, semiannual testing for operation of the fume hood, leak testing of a sealed source, calibration of a survey meter to within ± 20 percent, and maintenance of radioactive waste disposal survey records. These are described in Appendix A to this Order.

Furthermore, on February 8, 1988, the NRC Region I office conducted an inspection at the SYNCOR Allentown, Pennsylvania facility. That inspection resulted in the issuance of a Notice of Violation on June 22, 1988, which included one Severity Level III violation involving failure to properly label radiopharmaceuticals and a second aggregated Severity Level III violation involving failure to properly implement the radiation protection program at the Allentown facility. The multiple example labeling violation caused 14 diagnostic misadministrations and one of the aggregated radiation protection program violations concerned a radiation overexposure to a radiation worker. The cover letter transmitting that Notice emphasized that the NRC was concerned with the lack of management oversight of licensed activities. The NRC also issued Information Notice No. 88–53 to all manufacturers and distributors of radiopharmaceuticals for human use, nuclear pharmacies and medical licensees, to heighten their sensitivity to the NRC's concern regarding labeling errors.

In summary, the pervasiveness of SYNCOR's problems including the unacceptably large number of improperly tagged or labeled radiopharmaceuticals distributed from your Blue Ash facility, the failure of your staff at the Blue Ash and Columbus facilities to properly perform quality control including testing and recordkeeping, and the failure to properly implement certain aspects of the Blue Ash facility's radiation safety program, together with the problems which previously occurred at the Allentown facility, demonstrates a lack of control of licensed activities, raises questions regarding the adequacy of corporate oversight and presents an immediate health and safety concern. Consequently, without further regulatory action, I lack the reasonable assurance that licensed activities will be conducted in accordance with the Commission's requirements and have therefore determined that the public health and safety require that this Order be immediately effective.

VII

Accordingly, pursuant to Sections 81, 161b, 161i and 161o of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2, 30, and 32, it is hereby ordered effective immediately that:

A. 1. License No. 34–18309–01MD is modified to include the following condition: SYNCOR shall maintain in effect at the Blue Ash Facility the provisions of Confirmatory Action Letter No. RIII–CAL–88–0026, issued on September 2, 1988.

2. License No. 34–18484–01MD is modified to include the following condition: SYNCOR shall maintain in effect at the Columbus Facility the provisions of Confirmatory Action Letter No. RIII–CAL–88–0027, issued on September 9, 1988.

B. SYNCOR shall, within 10 days of the date of this Order, submit to the Regional Administrator, NRC Region III, a plan for assessment of its activities for assuring that it meets regulatory requirements and that it eliminates the distribution of improperly tagged or labeled radiopharmaceuticals at each of its facilities. This assessment shall be managed at the corporate level and the plan shall identify those individuals who will be conducting the assessment and their qualifications. Persons performing the assessment shall not be employees of the pharmacy or supervisors of the activities being assessed.

The assessment shall be initiated within 15 days of NRC approval of the plan and completed within 45 days of NRC approval.

The assessment shall include, but not be limited to: licensed activities at the Blue Ash and Columbus facilities and at least 50% of the other SYNCOR facilities licensed by the NRC, the selection of which shall have prior Region III approval, to assess:

1. The qualifications, training and commitment of SYNCOR's employees to perform licensed activities including radiopharmaceutical preparation, evaluation, and distribution tasks.

2. The adequacy of the number of SYNCOR staff assigned to perform licensed technical activities.

3. The adequacy of procedures, including manufacturer's instructions, for the preparation and distribution of radiopharmaceuticals and the uniformity of implementation of those procedures.

4. The adequacy of the quality control (QC) program and procedures for ensuring that proper radiopharmaceuticals are dispensed from the pharmacy.

5. The adequacy of the types of QC records and labeling utilized in the production and distribution of radiopharmaceuticals.

6. The validity of records maintained over the last 15 months to satisfy QC and NRC requirements.

7. The adequacy of the licensee investigation and action in response to any product deficiencies identified through internal and external (client) sources, including root cause determination, corrective actions, and notification. Interviews should be conducted with cognizant client personnel as part of this investigation.

8. The root cause of all incidents over the last 15 months involving distributed radiopharmaceuticals that were not as prescribed.

9. The adequacy of the corporate oversight of operation of the SYNCOR facilities' licensed programs.

Based on its findings, SYNCOR shall, in its report, identify programmatic weaknesses and planned program improvements and corrective action necessary to assure proper control of licensed activities.

D. SYNCOR shall submit its report within 30 days of completing the assessment to the Regional Administrator, NRC Region III; to the Director, Office of Enforcement; and to the Director, Office of Nuclear Materials Safety and Safeguards.

E. The Regional Administrator, Region III, may for good cause relax or rescind any of the above requirements upon written request by the licensee.

VIII

The licensee or any other person adversely affected by this Order may request a hearing within 30 days of the date of issuance of this Order. Any request for a hearing shall be submitted to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington DC 2055, with copies to (1) the Assistant General Counsel for Enforcement, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and (2) the Regional Administrator, Nuclear Regulatory Commission, Region III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which the person's interest is adversely affect by this Order and should address the criteria set forth in 10 CFR 2.714(d). Upon the failure of the licensee to answer or request a hearing within the specified time, the Order shall be final without further proceedings. A Request for Hearing shall not stay the Immediate Effectiveness of this Order.

If a hearing is requested, the Commission will issue an Order designating the time and place of any

hearing. If a hearing is held, the issue to be considered at the hearing shall be whether this Order shall be sustained.

For the Nuclear Regulatory Commission.
Dated at Rockville, Maryland, this 12th day of October 1988.

James M. Taylor,
Deputy Executive Director for Regional Operations.

Appendix A—Apparent Violations Identified During the Inspection and Investigation of Licensed Activities at the Syncor Blue Ash Facility

Apparent violations identified during the July and August inspections and investigations includes, but are not necessarily limited to the following:

1. Dose calibrator accuracy tests performed on March 17 and May 21, 1988, did not include the use of a barium-133 reference standard.

2. Records were not maintained of surveys of radioactive waste disposal activities performed on August 8, 1987.

3. Semiannual testing for proper operation of the fume hood used for storage or radioactive materials was not performed since October 21, 1987.

4. Semiannual sealed source leak testing of the nominal 148 microcurie barium-133 sealed source was not performed since March 1986.

5. A Bicron 2000 survey instrument was not calibrated in June 1988 to read within twenty percent of the known values for monitoring Tc-99m radiation fields.

6. Radiopharmaceuticals were dispensed on October 6, 1987, April 28, 1988, and June 9, 1988, with the incorrect pharmaceutical form listed on the dose container.

7. The "Prepared radiopharmaceutical Data Sheet" for radiopharmaceuticals prepared in-house on April 28, 1988 and on other occastons did not include the correct chemical form of the radionuclide.

8. Alumina breakthrough tests were not performed on each eluate of the generators as required by the instructions furnished by the manufacturer.

9. In the preparation of Tc-99m/MDP on April 28, 1988, using MDP–SQUIBB Technetium Tc-99m Medronate Kits, the procedure specified by the manufacturer requiring injection of sodium pertechnetate Tc-99m into the reaction vial was not followed. Instead, the sodium pertechnetate Tc-99m and the contents of several reaction vials were injected into a separate "Super Kit" vial.

Appendix B—Examples of Improperly Labeled or Tagged Radiopharmaceuticals Produced and Distributed by the Syncor Blue Ash Facility

Date	Description
6-12-87	Two doses of Tc-99m/HDP provided to Deaconess Hospital with inefficient tag.[1]
6-27-87	One dose of Tc-99m/HDP provided to Deaconess Hospital with inefficient tag.[1]
9-28-87	One dose of Tc-99m/HDP provided to Deaconess Hospital with inefficient tag.[1]
10-2-87	Two doses of Tc-99m/HDP provided to Deaconess Hospital with inefficient tag.[1]
10-6-87	One dose of Tc-99m/HDP provided to Deaconess Hospital with inefficient tag.[1]
10-6-87	One dose of free Tc-99m labeled as Tc-99m/MAA provided to Bethesda North Hospital.
12-6-87	One dose of Tc-99m/MAA labeled as Tc-99m/Chlorotec provided to Bethesda North Hospital.
2-17-88	One dose of Tc-99m/HDP provided to Deaconess Hospital with inefficient tag.[1]
4-15-88	Four doses of free Tc-99m labeled as Tc-99m/MDP provided to Bethesda North Hospital.
4-15-88	Two doses of free Tc-99m labeled as Tc-99m/MDP provided to St. Luke Hospital.
4-15-88	Two doses of free Tc-99m labeled as Tc-99m/MDP provided to Jewish Hospital.
4-18-88	Two doses of free Tc-99m labeled as Tc-99m/MDP provided to St. Luke Hospital.
4-28-88	Five doses of free Tc-99m labeled as Tc-99m/MDP provided to Bethesda North Hospital.
4-25-88	Two doses of free Tc-99m labeled as Tc-99m/MDP provided to Epp Memorial Hospital.
4-25-88	Two doses of free Tc-99m labeled as Tc-99m/MDP provided to St. Elizabeth South Hospital.
4-26-88	Two doses of free Tc-99m labeled as Tc-99m/MDP provided to St. Luke Hospital.
4-28-88	One dose of free Tc-99m labeled as Tc-99m/MDP provided to Jewish Hospital.
4-29-88	One dose of free Tc-99m labeled as Tc-99m/MDP provided to Mercy North Hospital.
4-29-88	One dose of free Tc-99m labeled as Tc-99m/MDP provided to Mercy South Hospital.
5-6-88	Two doses of free Tc-99m/DTPA labeled as Tc-99m/MAA provided to Bethesda Oak Street Hospital.

[1] While tagging efficiency is not regulated by the NRC, and a small amount of breakdown of the tag will occur with time, the frequency of inefficient tag on Tc-99m/HDP produced and distributed by the Blue Ash facility with quality control test records indicating a high tagging efficiency is cause for concern. The inefficient tag resulted in unnecessary organ dose to the patient.

[FR Doc. 88-24491 Filed 10-25-88 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-331]

Iowa Electric Light and Power Co., Duane Arnold Energy Center; Exemption

I

The Iowa Electric Light and Power Company (the licensee) is the holder of Facility Operating License No. DPR–49, which authorizes operation of the Duane Arnold Energy Center. The license provides, among other things, that it is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of a boiling water reactor at the licensee's site located in Linn County, Iowa.

II

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36336, September 19, 1988). However, because it is unlikely that this rulemaking action will be completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implemenation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

III

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of (10 CFR Part 50), which are * * * Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of section 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) a temporary exemption as descibed in section III is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in section III. Therefore, the Commission hereby grants the following exemption:

Iowa Electric Light and Power Company is exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i) but not later than April 1, 1989. Upon completion of such rulemaking the licensee shall comply with the provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact (53 FR 38378).

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.
Dated at Rockville, Maryland, this 3rd day of October, 1988.

Gary M. Holahan,
Acting Director, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-24749 Filed 10-25-88; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-538]

Memphis State University, AGN–201 Research Reactor; Order Terminating Facility Operating License

By application dated November 10, 1986, as supplemented, Memphis State University (the licensee) requested the Nuclear Regulatory Commission (the Commission) for authorization to dispose of the component parts of its AGN–201 reactor facility and to terminate Facility Operating License No. R–127. A Notice of "Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License", was published in the **Federal Register** on February 13, 1987 (52 FR 4693). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action. By Order dated January 26, 1988, the Commission authorized dismantling of the facility and disposal of component parts as proposed in the licensee's dismantling plan.

The reactor was shutdown in March 1985 and all fuel has been removed from the core and shipped to a DOE facility for processing. The reactor facility has been completely dismantled and all requirements, particularly those relevant to residual radioactivity and the packaging and shipping of fuel and radioactive material, have been met. Accordingly, the Commission has found that the facility has been dismantled and decontaminated pursuant to the Commission's Order dated January 26, 1988. Satisfactory disposition has been made of the component parts and fuel in accordance with the Commission's regulations in 10 CFR Chapter I, and in a manner not inimical to the common defense and security, or to the health and safety of the public. Therefore, based on the application filed by Memphis State University, located in Memphis, Shelby County, Tennessee, and pursuant to sections 104 and 161 b, i, of the Atomic Energy Act of 1954, as amended, and in 10 CFR 50.82(b), Facility Operating License No. R–127 is terminated as of the date of this Order. In accordance with 10 CFR Part 51, the Commission has determined that the issuance of this termination Order will have no significant impact. The Environmental Assessment was published in the **Federal Register** on October 18, 1988 (53 FR 40802).

For further details with respect to this action see (1) the application for termination of Facility Operating License No. R–127, dated November 10, 1986, as supplemented, (2) the Commission's Safety Evaluation related to the termination of the license, (3) the Environmental Assessment, and (4) the Notice of "Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License," published in the **Federal Register** on February 13, 1987 (52 FR 4693). Each of these items is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Copies of items (2), (3), and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 19th day of October 1988.

For the Nuclear Regulatory Commission.

Gary M. Holahan,
Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-24750 Filed 10-25-88; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-220]

Niagara Mohawk Power Corp. et al., Nine Mile Point Nuclear Station Unit; Exemption

I

Niagara Mohawk Power Corporation, et. al. (the licensee) is the holder of Facility Operating License No. DPR–63, which authorizes operation of the Nine Mile Point Nuclear Station Unit No. 1 at a steady-state power level not in excess of 1850 megawatts thermal. The facility is a boiling water reactor located at the licensee's site in the town of Scriba, New York. The license provides, among other things, that it is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

Appendix J to 10 CFR Part 50 requires that primary reactor containments shall meet certain containment leakage test requirements. Among these are the requirements that containment isolation valves receive local leak rate tests (Type C) and the results of all of the Type C tests are to be added to the results of the Type B tests and the combined leakage rate shall be less than $0.60L_a$.

III

By letter dated May 6, 1988, the staff sent to the licensee a Safety Evaluation (SE) concerning a review of a portion of the licensee's containment leakage rate testing program. Once conclusion of that SE was that Appendix J to 10 CFR Part 50 requires Type C tests to be periodically performed on the four containment isolation valves in the condensate return lines from the emergency condensers (also known as the reactor isolation condensers).

Consequently, by letter dated June 23, 1988, the licensee requested a temporary, schedular exemption from certain requirements of Appendix J to 10 CFR Part 50. Specifically, the licensee requested a temporary exemption from the requirement to perform Type C testing of containment isolation valves 39–03, –04, –05, and –06 in the emergency condenser condensate return lines, and from the requirement to include the leakage rates of these valves in the sum of all Type B and C leakage rates for comparison to the acceptance criterion ($0.60L_a$) of Appendix J. The requested exemption is for the period up to and including the next plant refueling outage, currently scheduled for 1990.

IV

In the past, the licensee had not included the subject valves in the Type C testing program. The licensee did not consider them to be containment isolation valves, but to be system process control valves. However, as stated above, the staff has recently determined that these valves must be Type C tested.

A recent attempt was made to perform a local leakage rate test on the emergency condenser condensate return line valves. However, since these valves were not originally designed to meet Appendix J leakage rate testing requirements and had not been locally leakage rate tested in the past, the valves were found to exhibit leakage rates greater than that allowed by Appendix J. In fact, it was difficult to establish a pressurization condition between the valves. This was particularly true relative to the inside check valves, which were designed to be held tightly closed by water at high reactor pressure (1,000 psig), whereas the Type C test is run with relatively low air pressure conditions (35 psig).

In order to leak test these valves, a number of system changes will be necessary. The check valves, which were not designed for low pressure testing, may need to be replaced if they cannot be repaired or modified to consistently meet the required leakage rate. Additionally, leak-tight test block valves and test taps may need to be installed in order to perform appropriate Appendix J tests. If the block valves leak, then they will need to be repaired or replaced. This repair is difficult with water in the reactor vessel. A major effort is required to install plugs in the recirculation lines to facilitate this repair operation. Therefore, major system changes may be necessary in addition to the procurement of replacement valves for the current valves. The licensee states that these new valves require a lead time of approximately 12 months, and the development and installation of the required changes may take 18 to 24 months. Therefore, the licensee will not be able to install or appropriately test the valves prior to startup from the next refueling outage. The requested exemption would provide the time necessary to complete the modifications so that successful testing can be conducted.

The following information was provided by the licensee in support of the exemption requests.

The valves in the emergency condenser system would not normally be closed and therefore performing a containment isolation function during a Design Basis Accident (DBA) Loss of Coolant Accident (LOCA). In fact, it is normally important for the subject valves to be open in order to assure that adequate Emergency Core Cooling System (ECCS) makeup is delivered to the reactor for those breaks where the system is expected to operate. The emergency condenser system is therefore designed, operated, and maintained to a quality of safety consistent with its core cooling function. The emergency condenser system is poised for service during normal operation with the steam supply line valves open and the condensate return line air-operated valves closed. Under accident conditions, the outside air-operated condensate isolation valves 39–05 and 39–06 will automatically open and initiate the emergency condenser system service on high ractor pressure or low-low water level in the reactor vessel.

The emergency condenser system will automatically isolate if the integrity of the system is significantly compromised (e.g., multiple condenser tube breaks, piping system breaks). High steam flow monitors initiate the isolation action by closing the steam supply valves. High radiation levels in either the primary or the secondary side of the condensers are detected by radiation monitors and the abnormal conditions are brought to the reactor operator's attention. The operator is also capable of monitoring not only the raditation level at the condenser, but also the shell side temperature and water level and the vent steaming conditions. Any indication of a system integrity loss will result in a manual steam isolation.

As is cited above, the subject air-operated valves 39–05 and 39–06 and the check valves 39–03 and 39–04 are closed during normal plant operation. If these valves exhibit sufficient leakage (10 gpm) during normal operation, the leakage can be readily detected by steaming from the condenser vent or a reactor coolant system heat imbalance. Temperature detectors are also located at the isolation valves. These monitors will indicate and alarm on abnormal leakage. If leakage occurs, it will be quickly indentified and the reactor will be shut down if the leakage is excessive. The valve is then required to be repaired to prevent steam and/or condensate from leaking into or out of the reactor coolant system via the valves Therefore, during normal operation these valves receive a continuous leak-tightness check. In addition to the above, a system integrity check of the emergency cooling system is performed per Technical Specification 6.14.

Based on the above informaton, the staff finds that the subject valves are designed to be, and would normally be, open during a LOCA and would only be required to close in the event of system leakage outside containment, which is periodically checked per Technical Specification 6.14. Also, although not equivalent to Type C testing, the valves receive, in effect, a continuous gross leak-tightness check through monitoring the system indications and alarms described above. Therefore, the staff finds that plant operation without Type C testing of the subject valves, and consequently, without adding the result of these Type C tests into the summation of leakages for comparison to the $0.60\ L_a$ acceptance criterion, during the period until the next refueling outage will not present an undue risk to the public health and safety, considering the low probability of a LOCA during which the emergency condenser system would be required to be isolated during that limited period and the mitigating features of the system, described above. After the next refueling outage is compelte, the plant will be brought into compliance with Appendix J in that subject valves will be Type C tested.

V

On the basis of the above evaluation, the staff concludes that the requested temporary, schedular exemption from the Type C testing requirements of Appendix J to 10 CFR Part 50 for emergency condenser condensate return line valves 39–03, –04, –05, and –06, and, consequently, the omission of the results of these Type C tests from the summation of leakages for comparison to the $0.60\ L_a$ acceptance criterion, is justified for the period up to and including the next refueling outage for Nine Mile Point, Unit 1.

Accordingly, the Commission has determined pursuant to 10 CFR 50.12(a), that (1) this exemption as described in Section IV is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security, and (2) special circumstances are present for this exemption in that the exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation since the staff's position was sent to them on May 6, 1988. Therefore, the Commission hereby grants the exemption request identified in Section IV above.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (53 FR 37376).

Dated at Rockville, Maryland, this 17th day of October 1988.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–24751 Filed 10–25–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–409]

Carolina Power and Light Co., Shearon Harris Nuclear Power Plant, Temporary Relocation of Local Public Document Room

Notice is hereby given that the Nuclear Regulatory Commission's (NRC) local public document room (LPDR) for Carolina Power and Light Company's Shearon Harris Nuclear Power Plant has been temporarily moved from the Richard B. Harrison Library, Raleigh, North Carolina, to the Cameron Village Regional Library, Raleigh, North Carolina.

The relocation will be in effect for approximately six months while renovations are made to the Harrison Library. Members of the public may now inspect and copy documents and correspondence related to the licensing and operation of the Shearon Harris Nuclear Power Plant at the Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605. The Library is open on the following schedule: Monday through Friday 9 am to 9 pm; Saturday 9 am to 5 pm; and Sunday 1 pm to 5 pm.

For further information, interested parties in the Raleigh area may contact the LPDR directly through Janet Virnelson, telephone number (919) 755–6098. Parties outside the service area of the LPDR may address their requests for records to the NRC's Public Document Room, 2120 L Street, NW., Washington, DC 20555, telephone number (202) 634–1273.

Questions concerning the NRC's local public document room program or the availablity of documents at the Shearon Harris LPDR should be addressed to Ms. Jona L. Souder, LPDR Program Director, Freedom of Information Act/Local Public Document Room Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone number (800) 638–8081 toll-free.

Dated at Bethesda, Maryland, this 18th day of October, 1988.

For the Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management.

[FR Doc. 88–24748 Filed 10–25–88; 8:45 am]

BILLING CODE 7590–01–M

Proposed Availability of FY 1989 Funds for Financial Assistance to Enhance Technology Transfer and Dissemination of Nuclear Energy Process and Safety Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: The Nuclear Regulatory Commission (NRC), Office of Nuclear Regulatory Research announces proposed availability of Fiscal Year (FY) 1989 funds for grants to support professional meetings, symposia, conferences, national and international commission and publications for the expansion, exchange and transfer of knowledge, ideas and concepts directed toward the research necessary to provide a technology base to assess the safety of nuclear power (hereinafter called project). In addition, NRC has a limited amount for research grants to educational institutions (see topics in Section A below). The FY 1989 ceiling for these grants is approximately $1,200,000.00. Of this amount, approximately $800,000.00 will be available for new grants. Proposals for new FY 1989 research grants should be submitted between October 1 and December 30, 1988. Proposals received after that date may not be considered for funding in FY 1989.

EFFECTIVE DATE: October 1, 1988 through September 30, 1989 (FY 1989). New research grant proposals from eductional institutions should be submitted between October 1 and December 30, 1988. Because of the limited amount available for such grants (approximately $800,000.00), proposals received after that date may not be considered for funding in FY 1989.

ADDRESS: Nuclear Regulatory Commission, ATTN: Grants Officer, Division of Contracts and Property Management, Office Administration and Resources Management, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Mrs. Jeanne Curcura (301) 492–4297 or Mrs. Yvonne Terry (301) 492–4210.

SUPPLEMENTARY INFORMATION:

Background

On November 3, 1987 (52 FR 42161), the Nuclear Regulatory commission [NRC] published in the FEDERAL REGISTER a notice that announced the proposed availability of FY 88 funds for the NRC Grant Program. The NRC is revising that notice to provide information on their grant program for FY 1989 (October 1, 1988 through September 30, 1989).

Scope and Purpose of this Announcement

Pursuant to section 31.a. and 141.b. of the Atomic Energy Act of 1954, as amended, the NRC's Office of Nuclear Regulatory Research proposes to support educational institutions, nonprofit institutions, state and local governments, and professional societies through providing funds for expansion, exchange and transfer to knowledge, ideas and concepts directed toward the research program. The program includes, but is not limited to support of professional meetings, symposia, conferences, national and international commissions, and publications. In addition, NRC has a limited amount for research grants to educational institutions (see topics below). The FY 1989 ceiling for these grants is approximately $1,200,000.00—with approximately $600,000.00 of this amount available for new grants.

The primary purpose of this program is to stimulate research to provide a technological base for the safety assessment of systems and subsystems technologies used in nuclear power applications. The results of this program will be to increase public understanding relating to nuclear safety, to pool the funds of theoretical and practical knowledge and technical information, and ultimately to enhance the protection of the public health and safety.

NRC encourages educational institutions to submit research grant proposals in the following areas.

1. Development of advanced computational methods for solving dynamic problems in nuclear reactor coolant systems under accident conditions.

2. Serve accident evaluation including, high temperature chemistry of serve accident reactor radionuclides; advanced thermal hydraulic modeling of fluids including combustible gases and molten core materials in reactor primary systems during severe accidents.

3. Advanced demographic models or statistical methods to predict population density and distribution around future power reactor sites.

4. High temperature material interactions during severe accidents (e.g., core/concrete, core debris/vessel components).

5. Steam explosions in reactors during severe accidents.

6. Human factors evaluation including criteria and guidelines to determine the risk reduction from application of human factors requirements on Nuclear Power Plant operations and maintenance.

7. Methods for the nuclear industry to use the growing pool of human preformance data.

8. Development of methodology for Risk and Reliability Analysis of closed loop control systems including advanced digital based control systems.

9. Develop and codify pragmatic, statistically valid, methods for updating severe accident frequency and consequence analysis to reflect results of new operational, experimental, and calculational data.

10. Develop merit of methods and procedures for establishing the degree to which Probabilistic Risk Assessment (PRA) results converge with operational data.

11. Development of methods to analyze and understand aging effects, improved examination and testing methods for determining condition of structures and components, and methods to assess residual lifetime of structures and components.

12. Development of methods for assuring component structural reliability, realistic methods to define the probabilities of radioactive release due to earthquakes.

13. Development of methods for assuring integrity of the primary system, i.e., pressure vessels, piping, steam generator tubing.

14. Development of methods to establish and validate decommissioning criteria, and effects of water chemistry on the primary system integrity.

15. Design of concepts to increase the safety of industrial radiography devices.

16. Development of comprehensive bibliography and analysis of data/study results on personnel dosimetry defining quantitative relationship between individuals absorbed dose and dosimeter measured dose.

17. Development of bases for a mandated or regulated periodic maintenance and replacement program for industrial radiography devices based on type of device, type of operation and operational environment.

18. Development of improved instrumentation or techniques for measuring activities, radiation dose, and dose rates, especially from small radioactive particles.

19. Development of methods for contamination prevention, measurement and control; and improved radiological air sampling methodology.

20. Investigation of the types, sensitivity and linearity of various biological effects of radiation that could be used as biological dosimeters.

21. Research on the metabolism of radionuclides and their compounds relative to calculation of internal dose.

22. Investigation of placental transfer of, and fetal doses from radionuclides incorporated by the pregnant worker.

23. Investigation of the efficacy of radioactive protective agents.

24. Compile bibliography of ionizing radiation hormesis publications.

25. Develop methodology for implementation of a nonprescriptive regulatory process at NRC, considering such factors as: (a) The most effective framework, (b) the pros/cons and practice aspects of its implementation and (c) the changes needed in NRC's current process and legislation to implement such a change.

Eligible Applicants

Educational institutions, nonprofit entities, State and local governments and professional societies are eligible to apply for a grant under this announcement.

Factors Generally Indicating Support Through Grants

The NRC's benefit from the results of grants should be no greater than for other interested parties, i.e., the public must be the primary beneficiary of the work performed. For example, surveys, studies, or research which provide specific information or data necessary for the NRC to exercise its regulatory or research mission responsibilities should be obtained by procurement contracts.

1. The primary purpose is to aid or support the development of knowledge or understanding of the subject or phenomena under study.

2. The exact course of the work and its outcome are not defined precisely and specific points in time for achievement of significant results may not be specified.

3. NRC desires that the nature of the proposed investigation be such that the recipient will bear prime responsibility for the conduct of the research and exercises judgment and original thought toward attaining the scientific goals within broad parameters of the proposed research areas and the resources provided.

4. Meaningful technical reports (as distinguished from Semi-Annual Status Reports) can be prepared only as new findings are made, rather than on a predetermined time schedule.

5. Simplicity and economy in execution and administration are mutually desirable.

Research Proposals

A research proposal should describe: (1) The objectives and scientific significance of the proposed meeting, symposium, conference, or commission; (2) the methodology to be proposed or discussed, and its suitability; (3) the qualifications of the participants and the proposing organization; and (4) the level of financial support required to perform the proposed effort.

Proposals should be as brief and concise as is consistent with communication to the reviewers. Neither unduly elaborate applications nor voluminous supporting documentation is desired.

State and local governments shall submit proposals utilizing the standard forms specified in Office of Management and Budget (OMB) Circular A–102, Attachment M. Nonprofit organizations, universities, and professional societies shall submit proposals utilizing the standard forms stipulated on OMB Circular A–110, Attachment M.

The format used for project proposals should give a clear presentation of the proposed project and its relation to the specific objectives contained in this notice. Each proposal should follow the format outlined below unless the NRC specifically authorizes exception.

1. Cover Page. The Cover Page should be typed according to the following format (submit separate cover pages if the proposal is multi-institutional):

Title of Proposal—To include the term "conference," "symposium," "workshop," or other similar designation to assist in the identification of the project;

Location and Dates of Conferences, Symposium, Workshop, etc.;

Name of Principal Participants;

Total Cost of Proposal;

Period of Proposal;

Organization or Institution and Department;

Required Signatures:

Principal Participants:

Name: _____

Date: _____

Address: _____

Telephone No: _____

Required Organization Approval:

Name: _____

Date: _____

Address: _____

Telephone No: _____

Organization Financial Officer:

Name: _____

Date: _____

Address: _____

Telephone No: _____

2. Project Description. Each proposal shall provide, in ten pages or less, a complete and accurate description of the proposed project. This section should provide the basic information to be used in evaluating the proposal to determine its priority for funding.

Applicants must identify other proposed sources of financial support for a particular project.

The information provided in this section must be brief and specific. Detailed background information may be included as supporting documentation to the proposal.

The following format shall be used for the project description:

(a) *Project Goals and Objectives.* The project's objectives must be clearly and unambiguously stated. The proposal should justify the project including the problems it intends to clarify and the development it may stimulate.

(b) *Project Outline.* The proposal should show the project format and agenda, including a list of principal areas or topics to be addressed.

(c) *Project Benefits.* The proposal should indicate the direct and indirect benefits that the project seeks to achieve and to whom these benefits will accrue.

(d) *Project Management.* The proposal should describe the physical facilities required for the conduct of the project. Further, the proposal should include brief biographical sketches of individuals responsible for planning the project.

(e) *Project Costs.* Nonprofit organizations shall adhere to the cost principles set forth in OMB Circular A–122; Educational institutions shall adhere to the cost principles set forth in OMB Circular A–21; and state and local governments shall adhere to the cost principles set forth in OMB Circular A–87.

The proposal must rovide a detailed schedule of project costs, identifying in particular:

(1) Salaries—in proportion to the time or effort directly related to the project;

(2) Equipment (rental only);

(3) Travel and Per Diem/Subsistence in relation to the project;

(4) Publication Costs;

(5) Other Direct Costs (specify)—e.g., supplies or registration fees;

Note.—Dues to organizations, federations or societies, exclusive of registration fees, are not allowed as a charge.

(6) Indirect Costs (attach negotiated agreement/cost allocation plan); and

(7) Supporting Documentation. The supporting documentation should contain any additional information that will strengthen the proposal.

Proposal Submission and Deadline

This notice is valid for Federal Government Fiscal Year 1989 (October 1, 1988 to September 30, 1989). Potential grantees are advised, however, that due to the limited funding available for new research grants to educational institutions such proposals received after December 30, 1988 may not be considered for funding in Fiscal Year 1989.

Funds

For Fiscal Year 1989, the U.S. Nuclear Regulatory Commission, Office of Nuclear Regulatory Research anticipates making a total of approximately $1,200,000.00 available for funding research grants to educational institutions. Of this amount, approximately $600,000.00 will be available for new research grants in FY 1989; thus, the importance of submitting such proposals by December 30, 1988.

Evaluation Process

All proposals received as a result of this announcement will be evaluated by an NRC review panel.

Evaluation Criteria

The award of NRC grants is discretionary. Generally, projects are supported in order of merit to the extent permitted by available funds.

Evaluation of proposals for professional meetings, conferences, symposia, etc. will employ the following criteria:

1. Potential usefulness of the proposed project for the advancement of scientific knowledge

2. Clarity of statement of objectives, methods, and anticipated results

3. Range of issues covered by the meeting agenda

4. Qualifications and experience of project speakers and

5. Reasonableness of estimated cost in relation to anticipated results

Evaluation of proposals for research will employ the following criteria:

1. Technical adequacy of the investigators and their institutional base

2. Adequacy of the research design

3. Scientific significance of proposal

4. Utility or relevance and

5. Reasonableness of estimated cost in relation to the work to be performed and anticipated results.

Disposition of Proposals

Notification of award will be made by the Grants Officer and organizations whose proposals are unsuccessful will be so advised.

Proposal Instructions and Forms

Questions concerning the preceding information, copies of application forms, and applicable regulations shall be obtained from or submitted to (Grant application packages, Standard Form 424, must be requested in writing: U.S. Nuclear Regulatory Commission, ATTN: Grants Officer, Division of Contracts and Property Management, Office of Administration and Resources Management, Washington, DC 20555.

The address for hand-carried applications is: U.S. Nuclear Regulatory Commission, ATTN: Grants Officer, Division of Contracts and Property Management, Office of Administration and Resources Management, 7920 Norfolk Avenue, Bethesda, MD 20014.

Nothing in this solicitation should be construed as committing the NRC to dividing available funds among all qualified applicants.

Dated at Washington, DC, this 17th day of October 1988.

For the U.S. Nuclear Regulatory Commission.

Patricia A. Smith,

Grant Officer, Contract Negotiation Branch No. 2, Division of Contracts and Property Management, Office of Administration and Resources Management.

[FR Doc. 88-24743 Filed 10-25-88; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Federal Employees Health Benefits; 1989 Premium Reduction for Medicare Eligible Individuals

AGENCY: Office of Personnel Management.

ACTION: Notice of Rate Reduction.

SUMMARY: This notice sets forth the amount of the 1989 reduction in Federal Employee Health Benefits premiums for Medicare eligible individuals as provided in the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100-360).

DATES: The rate reduction will be effective from January 1, 1989, through December 31, 1989.

FOR FURTHER INFORMATION CONTACT: Reginald M. Jones, Jr., Retirement and Insurance Group, OPM, Room 4351, 1900 E Street, NW., Washington, DC 20415, telephone (202) 632-3772.

SUPPLEMENTARY INFORMATION: The Medicare Catastrophic Coverage Act of 1988, Pub. L. 100-360, was enacted on July 1, 1988. It expands benefits under Medicare Parts A and B effective January 1, 1989, and January 1, 1990, respectively. Some of the additional coverage provided under the new law duplicates coverage provided under the Federal Employees Health Benefits Program (FEHBP). In order to avoid having Federal annuitants pay premiums for overlapping coverage, Section 422 of the law provides for a reduction in FEHBP premium rates for Medicare eligible Federal annuitants.

The Office of Personnel Management, in consultation with carriers offering health benefits plans contracted pursuant to section 8902 of title 5, United States Code, has determined that the amount of the premium reduction for 1989 will be $3.10 per month for each Medicare eligible individual.

Office of Personnel Management.

Constance Horner,

Director.

[FR Doc. 88-24787 Filed 10-25-88; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-16552; (812-7238)]

MassMutual Income Investors, Inc.; Application

October 20, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for deregistration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: MassMutual Income Investors, Inc.

Relevant 1940 Act Section: Section 8(f) and Rule 8f-1 thereunder.

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Dates: The application was filed on June 2, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on November 14, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicant, 1295 State Street, Springfield, Mass 01111.

FOR FURTHER INFORMATION CONTACT: Paul J. Heaney, Financial Analyst (202) 272-3420, or Brion R. Thompson, Branch Chief (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. On November 13, 1972, Applicant filed Form N-8A to register under the 1940 Act as a closed-end, diversified management investment company. On November 13, 1972, Applicant also filed Form S-4 pursuant to the Securities Act of 1933 to register 11,400,000 shares of its capital stock, $1.00 per value, which registration statement became effective on December 19, 1972, the date upon which the initial public offering of Applicant's shares commenced.

2. Applicant was organized as a Maryland corporation on November 13, 1972 and it intends to be dissolved under the laws of the State of Maryland when the Applicant receives the order requested hereby.

3. Applicant's Board of Directors approved its Agreement and Plan of Reorganization ("Plan") on September 9, 1987 and Applicant's shareholders approved the Plan at a meeting held on February 9, 1988. Pursuant to the Plan, on April 15, 1988, the Applicant transferred all of its assets and liabilities to MassMutual Investment Grade Bond Fund (the "Series"), a series of MassMutual Integrity Funds (the "Trust"). The Trust, which was formerly named MassMutual Liquid Assets Trust, was registerd under the 1940 Act on March 17, 1982 (Filed No. 811-3420). Applicant's net asset value on the implementation date of the Plan was $116,881,497, or $10.41 per share, and it received in exchange a number of shares of beneficial interest of the Series equal in value to the number of shares of capital stock of the Applicant. No brokerage commissions were incurred and the Series assumed all of the obligations and liabilities of the Applicant. Immediately thereafter, the Applicant distributed the shares of the Series received to its shareholders in complete liquidation.

4. All legal, accounting and other expenses relating to the reorganization from a Maryland coporation to a series of a Massachusetts business trust, approximately $29,130, were borne by the Applicant, and to the extent such expenses were unpaid on the date of the reorganization, by the Series. All legal, accounting and other expenses relating to the conversion of the Applicant from a closed-end investment company to an open-end investment company were borne by Massachusetts Mutual Life Insurance Company ("MassMutal").

5. The Plan authorized the Applicant, as sole shareholder of the Series prior to completion of the reorganization, to approve an investment advisory agreement between the Series and MassMutual. The Plan also authorized the Applicant to approve a plan of distribution pursuant to Rule 12b-1 under the 1940 Act on behalf of the Series, to ratify the election of the Trustees of the Trust, and to ratify the selection of the Trusts' accountants. The Applicant, acting as sole shareholder of the Series, took such actions on April 15, 1988.

6. Applicant has no shareholders, assets or liabilities. Applicant is not party to any litigation or administrative proceeding. Applicant is not engaged, nor does it propose to engage in any business activities other than those necessary to wind up its affairs.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-24775 Filed 10-25-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26202; File No. SR-MBS-88-14]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing of Amendment to Proposed Rule Change; Depository Division Rules

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 13, 1988, MBS Clearing Corporation filed with the Securities and Exchange Commission an amendment to File No. SR-MBS-88-14 as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change as amended from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

(a) *Excess Proprietary Net Free Equity.* Excess Proprietary Net Free Equity is defined in Article I, Rule 1 as Net Free Equity for any Proprietary Account included within a Participant's Master Account which is not required to collateralize transactions in such Proprietary Account. Excess Proprietary Net Free Equity is included in the computation of Supplemental Processing Collateral.

(b) *Cash Settlement.* Article VI, Rule 2, Section 3 is amended to provide, consistent with the Corporation's current practice, that the Corporation will deliver a written bill to each Participant or Limited Purpose Participant itemizing the charges for each Depository Account included within a Master Account or for the Limited Purpose Account. However, the Corporation may debit the Cash Balance of a single Depository Account designated by the Participant in lieu of debiting each Depository Account included within a Master Account.

(c) *Participants Fund* Article V, Rule 2, Section 2, is amended to allow the Corporation to determine the amount of a Participant's Mandatory Deposit to the Participants Fund for each of its Master Accounts based on average gross debits to its Cash Balances on settlement days as prescribed by the Public Securities Association (the "PSA") or such other days as the Corporation deems appropriate.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Amendment is filed to make technical changes to the Depository Rules (a) to include in the computation of Supplemental Processing Collateral "Excess Proprietary Net Free Equity" for any Proprietary Account included within a Participant's Master Account which is not required to collateralize transactions in such Proprietary Account; (b) to allow the Corporation to charge a single Depository Account included within a Master Account and designated by the Participant for all the monthly charges for all Depository Accounts included in that Master Account; and (c) to allow the Corporation to determine the level of a Participant's Mandatory Deposit based on average gross debits for either settlement days announced by the Public Securities or such other days as the Corporation determines appropriate.

The first change is intended to give Participants the full benefit of surplus Proprietary Net Free Equity, including not only the Applicable Percentage of the Market Value of Securities but also any Credit Balances.

The second change is intended to reflect the Depository's current billing practices, which have been adopted for the administrative convenience of both the Depository and its Participants.

The third change is intended to allow for variations in business patterns among Depository Participants. For most Participants, the volume of Depository activity is expected to be the greatest on PSA-designated settlements days. However, in the event that a particular Participant's pattern of business results in a greater level of activity on other days, this change will give the Depository the flexibility to base the Participant's Mandatory Deposit on its average gross debits for those days.

The proposed amendments are consistent with Section 17A of the Securities Exchange Act of 1934 in that they promote the prompt and accurate clearance and settlement of securities transactions among MBSCC's Participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal

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Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to File No. SR-MSTC-88-14 and should be submitted by November 18, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegate authority.

Jonathan G. Katz,

Secretary.

Dated: October 20, 1988.

[FR Doc. 88-24771 Filed 10-25-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-[illegible]; File No. SR-NASD-88-41]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to NASD Assessments and Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 18, 1988, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as one establishing or changing a fee under section 19(b)(3)(A)(ii) of the Act which renders the fee effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change to section 2(b) and 2(c) of Schedule A increases from $50.00 to $65.00 the fee charged to members for each application for registration as a registered representative or registered principal, and restores to $50.00 the registered representative examination fee which was mistakenly raised to $65.00 in File No. SR-NASD-88-41 (Release No. 34-26118, September 28, 1988).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change to section 2(b) of Schedule A raises from $50.00 to $65.00 the fee charged to members for each application filed with the Association for registration as a registered representative or registered principal. In File No. SR-NASD-88-41 (published by the Commission on September 28, 1988, Release No. 34-26118), this proposed rule change was incorrectly proposed as a change to section 2(c), which imposes a fee of $50.00 for each individual required to take an examination for registration as a registered representative. The registered representative examination fee remains at $50.00.

The proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Securities Exchange Act of 1934, which require that the rules of the Association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system the Association operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association does not anticipate that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received with respect to the proposed rule change contained in this filing.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is effective on filing pursuant to section 19(b)(3)(A)(ii) of the Act in that if affects assessments and fees imposed by the Association exclusively upon its members. Imposition of the fees will, however, be delayed until November 1, 1988.

At any time within 60 days of the filing of a proposed rule change pursuant to section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5

U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by November 16, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Johnathan G. Katz,

Secretary.

Dated: October 20, 1988.

[FR Doc. 88-24772 Filed 10-25-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25004; File No. SR-NYSE-88-28]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc., Relating to Listing Standards for Debt Securities

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 29, 1988, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its *Listed Company Manual* to clarify its listing standards for debt securities. The text of this proposed revision is set forth below.

(Additions are italicized, deletions are bracketed)

Section 1—The Listing Process

102.01 Minimum Numerical Standards—Domestic Companies—*Equity Listings*

* * * * *

102.02 Alternate Listing Standards—Companies Operating Primarily to Provide Venture Capital for Small and Medium Size Businesses—*Equity Listings*

* * * * *

102.03 Minimum Numerical Standards—Domestic Equity-Listed Companies—Debt Listings

Aggregate market value or principal amount—$5,000,000

Interest Coverage—

The company must be in a position to cover interest charges on all debt issued by it or a subsidiary including the issue it is seeking to list.

Distribution—

The Exchange has set no minimum criteria for the distribution of debt securities but evaluates each application to determine whether the anticipated distribution of the issue is sufficient for trading on the Exchange.

Convertible Bonds—

Debt securities convertible into common stock may be listed only if the underlying common stock is also listed on the Exchange.

103.01 Minimum Numerical Standards—Non-U.S. Companies—*Equity Listings*

* * * * *

103.05 *Minimum Numerical Standards—Non-U.S. Equity-Listed Companies—Debt Listings*

Aggregate market value or principal amount—$5,000,000

Interest Coverage—

The company must be in a position to cover interest charges on all debt issued by it or a subsidiary including the issue it is seeking to list.

Distribution—

The Exchange has set no minimum criteria for the distribution of debt securities but evaluates each application to determine whether the anticipated distribution of the issue is sufficient for trading on the Exchange.

Convertible Bonds—

Debt securities convertible into equity securities may be listed only if the underlying equity securities are also listed on the Exchange.

* * * * *

703.06 Debt Securities Offerings Listed Process

(A) The Exchange has [not] set [any] minimum numerical criteria for the listing of debt securities *in Section 1.* The issue must be of sufficient [size and] distribution [however,] to warrant trading in the Exchange market system. The Exchange has *also* set certain numerical delisting criteria. The Exchange will delist a debt security if the aggregate market value or principal amount that is publicly-held is less than $1,000,000.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed language provides one coherent and easily-located statement on debt listing standards in Section 1 of the Exchange's *Listed Company Manual* (The Listing Process) by incorporating text from other sections of the *Manual* and codifying a longstanding exchange practice involving the aggregate market value of an initial debt listing. The statutory basis under the Act is section 6(b)(5) and its requirement that a national securities exchange have rules that are designed to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. The persons making written submissions should file six copies thereof with the

Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-88-28 and should be submitted by November 16, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: October 20, 1988.

[FR Doc. 88-24773 Filed 10-25-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24731]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

October 20, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 14, 1988 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Eastern Utilities Associates (70-6583)

Eastern Utilities Associates ("EUA"), One Liberty Square, P.O. Box 2333, Boston, Massachusetts 02107, a registered holding company, has filed a post-effective amendment to its application-declaration pursuant to sections 6(a), 7, 9(a), 10, and 12(c) of the Act and Rules 42 and 50(a)(5) thereunder.

By orders of the Commission dated December 8, 1978; May 5, 1981; November 1, 1982; September 14, 1984; and May 6, 1986 (HCAR Nos. 21329, 22039, 22885, 23421, and 24067, respectively), EUA has been authorized to issue and sell from time to time, through July 1, 1988, up to 3,000,000 of its authorized but unissued common shares pursuant to its Dividend Reinvestment and Common Share Purchase Plan (the "Plan"). As of September 30, 1988, EUA had issued and sold 2,851,370 of its authorized common shares pursuant to the Plan.

EUA now proposes to issue and sell (or, in the case of shares purchased on the open market, to purchase and sell,) from time to time up to December 31, 1990, the 148,630 common shares remaining from the 3,000,000 shares previously authorized, and no more than 800,000 additional common shares.

EUA has requested an exception from the competitive bidding requirements of Rule 50 pursuant to paragraph (a)(5) thereof for the proposed issuance and sale of common shares.

Monongahela Power Company, et al. (70-7209)

Monongahela Power Company ("Monongahela"), 1310 Fairmont Avenue, Fairmont, West Virginia 26554, The Potomac Edison Company ("Potomac"), Downsville Pike, Hagerstown, Maryland 21740, and West Penn Power Company ("West Penn"), 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601, electric utility subsidiaries of Allegheny Power System, Inc., a registered holding company, have filed a post-effective amendment to their application-declaration pursuant to sections 6(a), 6(b), and 7 of the Act and Rule 50 thereunder.

By orders dated June 12, 1987 and November 9, 1987 (HCAR Nos. 24410 and 24466, respectively), Monongahela, Potomac and West Penn were authorized to issue and sell, from time to time through December 31, 1988, their first mortgage bonds ("Bonds") in maximum aggregate principal amounts of $115 million, $110 million, and $35 million, respectively, pursuant to the alternative competitive bidding procedures. On July 1, 1987, Monongahela issued and sold $40 million of its Bonds. No other Bonds have been sold. Applicants-declarants now request authorization through December 31, 1989 to issue and sell the remainder of the Bonds previously authorized.

Public Service Company of Oklahoma [70-7534]

Public Service Company of Oklahoma ("PSO"), 212 East Sixth Street, Tulsa, Oklahoma 74119, an electric utility subsidiary of Central and South West Corporation, a registered holding company, has filed a post-effective amendment to its application pursuant to sections 9(a) (1) and 10 of the Act.

By order dated August 16, 1988 (HCAR No. 24698, the "Initial Order"), PSO was authorized to purchase the municipal electric distribution system of the Town of Chelsea, Oklahoma. The purchase agreement between Chelsea and PSO was conditioned on an affirmative vote of the qualified voters of Chelsea approving both the acceptance of PSO's bid and the grant to PSO of a 25-year franchise to operate it. On July 26, 1988 an election was held, both measures were approved, and the parties anticipated that the transaction would be closed on August 24, 1988. In the interim, an action in the District Court of Rogers County, Oklahoma, successfully challenged the election, whose results were set aside.

As a consequence, another election must be held before the transaction can be consummated. However, PSO's authorization granted in the Initial Order to consummate the transaction has expired pursuant to Rule 24(c)(1). PSO therefore requests that it be authorized to purchase Chelsea's distribution system at any time through July 30, 1989, in order to allow sufficient time for the new election to be held.

Middle South Utilities, Inc., et al. [70-7534]

Middle South Utilities, Inc. ("Middle South"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, its wholly owned generating subsidiary, System Energy Resources, Inc. ("SERI"), P.O. Box 23070, Jackson, Mississippi 39225 and Middle South's other electric utility subsidiaries, Arkansas Power & Light Company, P.O. Box 551, Little Rock, Arkansas 72203, Louisiana Power & Light Company, 142 Delaronde Street, New Orleans, Louisiana 70174, Mississippi Power & Light Company, P.O. Box 1640, Jackson, Mississippi 39215, and New Orleans Public Service Inc., 317 Baronne Street, New Orleans, Louisiana 70112, have filed a declaration pursuant to sections 6(a), 7, and 12(c) of the Act and Rules 42 and 50(a)(5) thereunder.

SERI proposes to issue and sell up to $400 million aggregate principal amount of its first mortgage bonds, in one or more series from time to time through October 31, 1990 ("Bonds"). In order to provide additional security for its obligations with respect to the Bonds, SERI may determine to enter into one or more assignments, for the benefit of the holders of the Bonds, of its rights under the Availability Agreement among SERI and Middle South's other electric utility subsidiaries and under the Capital Funds Agreement between SERI and Middle South.

SERI further proposes to use the net proceeds derived from the issuance and sale of the Bonds for general corporate purposes, including, but not limited to: (i) The acquisition and retirement, by means of tender offer, open market, negotiated or other forms of purchases, in whole or in part, prior to their respective maturities, of one or more series of SERI's outstanding First Mortgage Bonds; (ii) the payment of construction costs and nuclear fuel costs; (iii) the repayments of long and short-term borrowings; and/or (iv) other working capital needs.

SERI has requested an exception from the competitive bidding requirements of Rule 50 of the Act pursuant to Rule 50(a)(5) in order to negotiate and privately place the Bonds. It may do so.

Northeast Utilities, et al. [70-7544]

Northeast Utilities ("NU"), a registered holding company, Western Massachusetts Electric Company ("WMECO"), the Quinnehtuk Company ("Quinnehtuk"), all located at 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, The Connecticut Light and Power Company ("CL&P"), Northeast Utilities Service Company ("NUSCO"), Northeast Nuclear Energy Company ("NNECO"), The Rocky River Realty Company ("RRR"), all located on Selden Street, Berlin, Connecticut 06037, and Holyoke Water Power Company ("HWP"), Canal Street, Holyoke, Massachusetts 01040, subsidiaries of NU (collectively, "Companies"), have filed an application-declaration pursuant to sections 6, 7, 9, 10, and 12(b) of the Act and Rules 43, 45 and 50(a)(5) thereunder.

The proposal includes a request for authorization through December 31, 1990 of short-term borrowings in the form of bank notes ("Bank Notes") pursuant to lines of credit and revolving credit agreements and commercial paper ("Commercial Paper"), open account advances by NU to its subsidiaries, and the continuation of a money pool ("Pool").

The aggregate amount of all short-term borrowings through December 31, 1990, whether through Bank Notes, Commercial Paper or from the Pool will not exceed $100 million in the case of NU, $350 million in the case of CL&P $80 million in the case of WMECO, $10 million in the case of HWP, $50 million in the case of NNECO, $15 million in the case of RRR, $5 million in the case of Quinnehtuk, and $40 million in the case of NUSCO.

All of the Companies, except Quinnehtuk, request authority to issue Bank Notes. Borrowings under each Bank Note will have a maximum maturity of nine months, will bear interest at a fixed or floating rate, and at such rate as should be negotiated by the lending bank and the Companies issuing such Bank Note. In issuing Bank Notes, the Companies will negotiate the lowest effective interest cost for short-term borrowings, taking into account the proposed amount and maturity of each borrowing. Before reaching agreement with lending banks as to the interest rate on borrowing, the Companies will assess the then prevailing short-term rates, such as the prime rate, LIBOR, federal funds rates and certificate of deposit rates, but in no event will the interest rate exceed the higher of 1% above the lender's prime rate or 2% above the Federal Funds Rate. Based on an assumed prime rate of 10.00% as of August 31, 1988, the effective cost of borrowings under the informal credit lines would be 10.00% or 10.5% under formal credit lines assuming a 5% compensating balance. Borrowings evidenced by the Bank Notes will occur no later than December 31, 1990. Floating rate notes will generally be subject to prepayment at any time at the Companies' option. Fixed rate notes may, in certain circumstances, not be prepayable, or may be prepayable only with "Make whole" payments. Companies other than Quinnehtuk may negotiate formal credit lines with one or more banks, subject to compensating balance requirements not exceeding 5% of available amounts, and fees not exceeding .25% per annum.

NU, CL&P and WMECO request authority to issue and sell Commercial Paper to dealers at the prevailing discount rate per annum on the date of issuance for commercial paper of comparable quality and the particular maturity sold by other public utilities. Such sales will occur only if the issuer believes that the effective interest cost will be equal to or less than that cost for the issuance of Bank Notes in amounts at least equal to the principal amount of the Commercial Paper.

The Companies proposed to continue the use of the Pool administered by NUSCO. The Pool is composed of available funds loaned by the participating Companies and borrowed by the participating Companies, except NU, to assist in meeting their respective short-term borrowing needs. Additionally, NU would be able to borrow funds by issuing Bank Notes or selling Commercial Paper solely for the purpose of lending those funds through the Pool to NUSCO, NNECO, Quinnehtuk, and RRR.

Georgia Power Company (70-7538)

Georgia Power Company ("Georgia Power"), 333 Piedmont Avenue, NE., Atlanta, Georgia, a wholly owned electric utility subsidiary of The Southern Company, a registered holding company, has filed an application-declaration pursuant to Section 9(a), 10 and 12(d) of the Act and Rule 44 thereunder.

Since 1963, Georgia Power has leased the distribution system serving the City of Warwick, Georgia ("Warwick System") under a lease agreement ("Lease Agreement") with Plant Telephone and Power Company ("Plant"), a nonaffiliate company. Georgia Power now proposes, pursuant to a proposed Letter Agreement with Plant, to purchase the Warwick System for the option exercise price specified in the Lease Agreement—the net depreciated book cost of the Warwick System as of May 3, 1963, the effective date of the Lease Agreement, of $107,902.50.

Georgia Power owns the distribution facility which serves J.C. Penney Company, Inc.'s ("JC Penney") Catalog Distribution Center, located in Forest Park, Georgia ("JC Penney Facility"). Georgia Power proposes to sell to JC Penney the JC Penney Facility for the negotiated replacement cost of the JC Penney Facility, less depreciation, and plus an amount necessary to modify the JC Penney Facility to replace the multiple meter service with single meter service, at an aggregate sale price of $1,224,044.57. The proposed transaction will permit JC Penney to take advantage of a more favorable rate tariff through single meter service from Georgia Power.

New England Hydro-Transmission Corporation, et al. (70–7584)

New England Hydro-Transmission Corporation ("NEH–NH"), a Park Street, Concord, New Hampshire 03301 and New England Hydro-Transmission Electric Company, Inc. ("NEH–M"), 25 Research Drive, Westborough, Massachusetts 01582, subsidiaries of New England Electric System, a registered holding company (together, "Applicants") have filed an application-declaration pursuant to section 6(a), 7, 9(a), 10 and 12(b) of the Act and Rules 43, 45 and 50(a)(5) thereunder.

Applicants seek authorization to enter into financing arrangements ("Credit Facility") with a syndicate of participating banks ("Bank Participants") pursuant to which Applicants may borrow up to $300 million for expansion of the existing transmission interconnection (Phase II) between the electric systems of the New England Power Pool and Hydro-Quebec. The total cost of Phase II construction in the United States is currently estimated to be approximately $585 million.

A financing company, New England Hydro Finance Company, Inc. ("NEHFC"), will be incorporated prior to the closing of the Credit Facility for the purpose of facilitating the issuance of the debt to be incurred by NEH–NH and NEH–M in connection with Phase II. NEHFC will have nominal equity capital of $10,000 and its only business will be the lending of funds obtained from the Credit Facility to NEH–NH ad NEH–M at cost. It is proposed that NEM–NH and NEH–M will each acquire 50% of the 1,000 shares of common stock of NEHFC, par value $1.00 per share, proposed to be authorized, issued and outstanding.

Under the Credit Facility, which will mature on June 30, 1998, Bank Participants will make loans ("Advances") to NEHFC under the following separate lending provisions, to be determined at the option of NEHFC. First, the Bank Participants will be obligated to make Same Day Advances, as defined, to NEHFC upon short notice at the higher of prime rate or the then applicable Federal Funds rate plus ½ of 1%. Such advances may remain outstanding for up to a maximum of seven business days. Second, upon not less than three days' notice Bank Participants will be obligated to make U.S. dollar 1, 2, 3 or 6 month London Inter-bank Offered Rate ("LIBOR")-based Advances to NEHFC at a maximum interest rate ("Maximum Interest Rate", defined below). Third, upon not less than three days' notice NEHFC may request the Bank Participants and/or other selected financial institutions, which participate as members of a tender panel ("Tender Panel") to bid competitively to make U.S. dollar 1, 2, 3, or or 6 month LIBOR-based Advances. Members of the Tender Panel who are not Bank Participants will loan funds on an unsecured basis. In addition, NEHFC will be entitled to request, upon similar notice, short term advances from the agent bank for a minimum aggregate amount of $1 million up to a maximum of $10 million. Such advances will be priced at the agent bank's cost of funds plus ⅛ of 1% and may remain outstanding for up to 60 days. For the first three years of the Credit Facility, the Maximum Interest Rate will be LIBOR plus ½ of 1%. For the next three years, the Maximum Interest Rate will be LIBOR plus ¼ of 1%. For the remaining years, the Maximum Interest Rate will be LIBOR plus ⅜ of 1%.

The Credit Facility further contemplates that, should NEHFC wish to issue commercial paper in lieu of, or in conjunction with, its direct borrowing options the Bank Participants will provide "back up" for a letter of credit to support such commercial paper issuance. This commitment to back up a letter of credit would be available unconditionally for the initial three years of the Credit Facility and extendable at the mutual option of NEHFC and the Bank Participants on a year-by-year basis thereafter. However, NEHFC would first have to secure one or more letters of credit from the Bank Participants or other banks to provide for the direct payment of maturing commercial paper. NEH–NH and NEH–M propose to guarantee the obligations of NEHFC.

The principal amount of Advances to NEHFC available under the Credit Facility will be reduced in equal semiannual amounts beginning January 1, 1994. If Phase II is cancelled, the Credit Facility shall be terminated 180 days from the date of cancellation. The Credit Facility may be cancelled in whole or in part by NEHFC without penalty upon 30 days' prior notice; provided, however, that at no time shall the uncancelled amount be less than the face value of the advances to NEHFC outstanding. Amounts cancelled may not be reinstated.

Energy Initiatives, Incorporated (70–7585)

Energy Initiatives, Incorporated ("EII"), One Gatehill Drive, Gatehill Center I, Parsippany, New Jersey 07054, a subsidiary of Jersey Central Power & Light Company ("JCP&L"), a wholly owned subsidiary of General Public Utilities ("GPU"), a registered holding company, has filed an application-declaration pursuant to sections 9(a), 10 and 12(b) of the Act and Rule 45 thereunder.

By Commission order dated April 16, 1987 (HCAR No. 24373), EII was authorized, through December 31, 1990, to invest in qualifying cogeneration facilities located anywhere in the United States, and in other qualifying facilities located within the service territories of the companies that are parties to the Pennsylvania-New Jersey-Maryland Interconnection Agreement. By order dated September 16, 1988 (HCAR No. 24718), EII was authorized, through December 31, 1992, to perform feasibility studies, develop, and provide engineering and other services for a fee ("September 1988 Order").

EII now requests authority to make investments in the activities described in the aforementioned filings of up to an aggregate amount of $30 million through December 31, 1992. The investments would be made directly or indirectly by way of the acquisition of stock or other securities, participation in general or limited partnerships, joint ventures or project financings, the making or guaranteeing of loans or involvement in other contractual arrangements. EII would not, however, guarantee any indebtedness which matures more than ten years after the date of its issue or which bears an interest rate in excess of 120% of the then prime (or comparable) rate. Any corporation, partnership, joint venture, or other business entity in which EII invests (other than any such entity which performs those additional feasibility studies, development and other services for a fee authorized by the September 1988 Order) may itself engage in financing through project financing, short-term and long-term borrowings, sales of stock or capital contributions, or any other means and in such amounts as may be deemed appropriate.

In a related filing, S.E.C. File No. 70–7525, a notice was issued on September 1, 1988 (HCAR No. 24708) on a proposal by GPU to acquire a new subsidiary, GPU Capital Resources ("GPUCR") and thereafter to transfer to CPUCR the common stock of EII.

The Columbia Gas System, Inc., (70–7588)

The Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company, and Commonwealth Gas Services, Inc. ("COS"), 800 Moorefield Park Drive, Richmond, Virginia 23236–3659 and

Columbia Gas of Virginia, Inc. ("CVA"), 200 Civic Center Drive, Columbus, Ohio 43215, both of which are distribution subsidiaries of Columbia, have filed an application-declaration pursuant to section 6(a), 7, 9(a), 10 and 12(f) of the Act and Rules 43 and 44 thereunder.

CVA, a distribution company operating in the Commonwealth of Virginia with approximately 44,000 customers is one of the Columbia distribution companies ("CDC") headquartered in Columbus, Ohio. COS is a distribution company operating in Virginia with approximately 60,000 customers and is headquartered in Richmond, Virginia. It is proposed that these two companies be merged, with COS as the surviving company, succeeding to all properties and liabilities of both companies. Pursuant to the Merger Agreement, shares of COS common stock ($50 par value) will be issued to Columbia in exchange for all shares of CVA common stock ($25 par value) held by Columbia based on the ratio or par values. Therefore, one share of COS common stock will be issued for each two shares of CVA common stock held by Columbia.

The merger into COS of Lynchburg Gas Company, the third CDC operating in Virginia, is planned for June 1989 and authority for that transaction will be sought by post-effective amendment to this file.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–24774 Filed 10–25–88; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2670]

Declaration of Disaster Loan Area; Montana

The Counties of Beaverhead, Big Horn, Cascade, Carbon, Flathead, Gallatin, Granite, Lewis & Clark, Madison, Missoula, Park, Powder River, Powell, Rosebud, Sanders, Stillwater in the State of Montana constitute an Economic Injury Disaster Loan Area as a result of damage from fires, which started as early as June 5, 1988. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on July 20, 1989 at the address listed below: Disaster Area 4 Office, Small Business Administration, P.O. Box 13795, Sacramento, California 95853–4795

or other locally announced locations. The interest rate for eligible small business concerns without credit available elsewhere is 4 percent and 9 percent for eligible small agricultural cooperatives without credit available elsewhere.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Date: October 19, 1988.

James Abdnor,

Administrator.

[FR Doc. 88–24690 Filed 10–25–88; 8:45 am]

BILLING CODE 8025–01–M

Region IX Advisory Council Meeting

The U.S. Small Business Administration, Region IX Advisory Council, located in the geographical area of Las Vegas, Nevada, will hold a public meeting, on Friday, November 18, 1988 at the Small Business Administration Post Office Building, 3rd Floor, Las Vegas, Nevada from 8:00 a.m. to 11:00 a.m., to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Elizabeth Sutton, Secretary for the Advisory Council, U.S. Small Business Administration, 301 E. Stewart, P.O. Box 7527, Las Vegas, NV 89125, 702–388–6611.

Jean M. Nowak,

Director, Office of Advisory Councils.

October 18, 1988.

[FR Doc. 88–24691 Filed 10–25–88; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Approval of Applicant as Trustee: First Interstate Bank of Texas, N.A.

Notice is hereby given that First Interstate Bank of Texas, N.A., with offices at 1000 Louisiana, Houston, Texas 77002, has been approved as Trustee pursuant to Pub. L. 89–346 and 46 CFR § 221.21—221.30.

Dated: October 19, 1988.

By Order of the Maritime Administrator.

James E. Saari,

Secretary.

[FR Doc. 88–24709 Filed 10–25–88; 8:45 am]

BILLING CODE 4910–81–M

National Highway Traffic Safety Administration

Announcing the Fourth Meeting of the Motor Vehicle Safety Research Advisory Committee

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Meeting announcement.

SUMMARY: This notice announces the fourth meeting of the Motor Vehicle Safety Research Advisory Committee (MVSRAC). The Committee was established in accordance with the provisions of the Federal Advisory Committee Act to obtain independent advice on motor vehicle safety research. At this meeting the Committee will consider reports from subcommittees on rollover crash protection for occupants of passenger cars, light trucks, and vans; biomechanics of injury; heavy truck safety; and crash data analysis. The Committee will also consider matters relating to the use of "Information Age" electronic technologies to improve vehicle safety in the traffic of tomorrow and review committee procedural matters.

Date and Time: The 1-day meeting is scheduled to begin at 10:30 a.m. on Friday, November, 18, 1988, and conclude at 5:00 p.m. that afternoon.

ADDRESS: The meeting will be held in Room 4234 of the U.S. Department of Transportation Building, which is located at 400 Seventh Street, SW., Washington, DC.

SUPPLEMENTARY INFORMATION: In May 1987, the Motor Vehicle Safety Research Advisory Committee was established. The purpose of the Committee is to provide an independent source of ideas for motor vehicle safety research. The MVSRAC will provide information, advice, and recommendations to NHTSA on matters relating to motor vehicle safety research, and provide a forum for the development, consideration and communication of motor vehicle safety research, as set forth in the MVSRAC Charter.

The meeting is open to the public, and participation by the public will be determined by the Committee Chairman.

A public reference file (Number 88–01) has been established to contain the products of the Committee and will be open to the public during the hours of 8:00 a.m. to 4:00 p.m. at the National Highway Traffic Safety Administration's Technical Reference Division in Room 5108 at 400 Seventh Street, SW., Washington, DC 20590, telephone: (202) 366–2768.

FOR FURTHER INFORMATION CONTACT: Louis V. Lombardo, Office of Research and Development, 400 Seventh Street, SW., Room 8208, Washington, DC 20590, telephone: (202) 366-4862.

Issued on: October 20, 1988.

Howard M. Smolkin,

Chairman, Motor Vehicle Safety Research Advisory Committee.

[FR Doc. 88-24776 Filed 10-25-88; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 88-88]

Conditional Approval of Francisco J. Rovira, d/b/a International Marine Consultants, as a Commercial Gauger

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of conditional approval of Francisco J. Rovira, d/b/a International Marine Consultants, as a commercial gauger.

SUMMARY: Francisco J. Rovira, d/b/a International Marine Consultants, of Hato Rey, Puerto Rico, recently applied to Customs for approval to gauge imported petroleum, petroleum products, organic chemicals and vegetable and animal oils in bulk and in liquid form under § 151.13 of the Customs Regulations (19 CFR 151.13). Customs has determined that Mr. Rovira meets the requirements for conditional approval.

Therefore, in accordance with § 151.13(c), Francisco J. Rovira, d/b/a International Marine Consultants, 42 Padre Rufo Street—Floral Park, Hato Rey, Puerto Rico 00917 (P.O. Box 6065, Old San Juan, Puerto Rico 00903), is conditionally approved to gauge the products named above in all Customs districts.

EFFECTIVE DATE: October 3, 1988.

FOR FURTHER INFORMATION CONTACT: Roger J. Crain, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229 (202-566-2446.

Dated: October 19, 1988.

John B. O'Loughlin,

Director, Office of Laboratories and Scientific Services.

[FR Doc. 88-24756 Filed 10-25-88; 8:45 am]

BILLING CODE 4820-02-M

VETERANS ADMINISTRATION

Agency Information Collection Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The responsible department or staff office; (2) the title of the collection(s); (3) the agency form number(s), if applicable; (4) a description of the need and its use; (5) how often the information collection must be completed, if applicable; (6) who will be required or asked to report; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to respond; and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Department of Veterans Benefits (203C), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233-2744.

Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: October 19, 1988.

By direction of the Administrator.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Extension

1. Department of Veterans Benefits.
2. Farm Survey and Overall Farm and Home Plan Self-Proprietor/Manager—Chapter 31, Title 38, U.S.C.
3. VA Form 28-1905n.
4. The form is used by the Vocational Rehabilitation Specialist to properly evaluate a veteran's farm for its potential and suitability to meet the goals established in the rehabilitation plan. The survey data are also used to develop and monitor the veteran's training program.
5. On occasion.
6. Individuals or households; Farms.
7. 30 responses.
8. 60 hours.
9. Not applicable.

[FR Doc. 88-24705 Filed 10-25-88; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 207
Wednesday, October 26, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION

October 20, 1988

FCC To Hold Open Commission Meeting, Thursday, October 27, 1988

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, October 27, 1988, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street NW., Washington, DC.

Agenda, Item No., and Subject

General—1—Title: Inquiry into the Compulsory License for Cable Retransmission of Broadcast Signals. Summary: The Commission will consider further action in this proceeding.

Private Radio—1—Title: Petition for Reconsideration of the Report and Order in PR Docket 87-5 regarding Multiple Address. Summary: The Commission will consider a Petition for Reconsideration of the Report and Order in PR Docket 87-5.

Common Carrier—1—Title: Rule amendments to replace the Restoration Priority System with the Telecommunications Service Priority System. Summary: The Commission will consider whether to amend Parts 0 and 64 of its rules relating to National Security Emergency Preparedness, as recommended by the Secretary of Defense and addressed in the Notice of Proposed Rulemaking in General Docket No. 87-505.

Mass Media—1—Title: Petition for Partial Reconsideration filed by the Association of Maximum Service Telecasters, Inc., and the National Association of Broadcasters of the Low Power TV Service Terrain Shielding *Policy Statement*. Summary: The Commission will reconsider its limited waiver policy regarding the consideration of terrain shielding in the evaluation of television translator, television booster and low power television applications.

Mass Media—2—Title: In the Matter of Amendment of Section 73.3555 of the Commission's Rules, the Broadcast Multiple Ownership Rules. Summary: The Commission will consider further action in MM Docket No. 87-7 relating to the duopoly and one-to-a-market provisions of the Commission's broadcast multiple ownership rules.

Mass Media—3—Title: Reexamination of the Commission's Cross-Interest Policy. Summary: The Commission seeks further comment on aspects of the cross-interest policy.

Mass Media—4—Title: Reexamination of the Commission's Cross-Interest Policy. Summary: The Commission considers changes to its cross-interest policy, which prevents individuals or entities from having meaningful relationships in two media outlets serving substantially the same area.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Sarah Lawrence, Office of Public Affairs, telephone number (202) 632-5050.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Issued: October 20, 1988.

[FR Doc. 88-24812 Filed 10-24-88; 10:50 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 12:00 noon, Monday, October 31, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: October 21, 1988.

James McAfee,

Associated Secretary of the Board.

[FR Doc. 88-24786 Filed 10-24-88; 9:02 am]

BILLING CODE 6210-01-M

INTERNATIONAL TRADE COMMISSION

[USITC SE-88-37]

TIME AND DATE: Friday, November 4, 1988 at 10:00 a.m.

PLACE: Room 101, 500 E. Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints
5. Inv. Nos. 701-TA-297 and 731-TA-422 (P) (New Steel Rails, except Light Rails, from Canada)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary. (202) 252-1000.

Kenneth R. Mason,

Secretary.

October 14, 1988.

[FR Doc. 88-24781 Filed 10-24-88 9:10 am]

BILLING CODE 7020-02-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of October 24, 31, November 7, and 14, 1988.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of October 24

Tuesday, October 25

11:00 a.m.
Periodic Briefing by TMI-2 Advisory Panel (Public Meeting)

Thursday, October 27

10:00 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

11:00 a.m.
Periodic Briefing by the Advisory Committee on Nuclear Waste (Public Meeting)

Week of October 31—Tentative

There are no meetings scheduled for the Week of October 31.

Week of November 7—Tentative

Wednesday, November 9

2:00 p.m.
Briefing on Status of Resolution of Concerns with Location of Exploratory Shaft at Yucca Mountain (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

BEST COPY AVAILABLE

Thursday, November 10

10:00 a.m.
Briefing on Final Rule on Standards for Protection Against Radiation—Part 20 (Public Meeting)

Week of November 14—Tentative

Thursday, November 17

10:00 a.m.
Briefing on Proposed Commission Policy Statement on the Professional Conduct of Nuclear Power Plant Operators (Public Meeting)
2:00 p.m.
(Briefing by DOE on High Level Waste Program (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION: Briefing on Safety Goal Implementation Plan (Public Meeting) scheduled for October 20, *postponed.*

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

William M. Hill,
Office of the Secretary.
October 20, 1988.

[FR Doc. 88-24791 Filed 10-24-88 9:04 am]
BILLING CODE [illegible]

Corrections

Federal Register
Vol. 53, No. 207
Wednesday, October 26, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV-88-122]

Oranges and Grapefruit Grown in the Lower Rio Grande Valley in Texas; Authorization of an Additional Container

Correction

In rule document 88-22103 beginning on page 37728 in the issue of Wednesday, September 28, 1988, make the following corrections:

1. On page 37729, in the first column, in the fifth complete paragraph, in the 12th line, "Texas" was misspelled.

PART 906—[CORRECTED]

2. On the same page, in the second column, in amendatory instruction 2, in the first line, "906-340" should read "906.340".

§ 906.340 [Corrected]

3. On the same page, in the same column, in § 906.340(a)(1)(vi), in the fourth line, "gauge" was misspelled.

4. On the same page, in the same column, in § 906.340(a)(1)(vii), in the eighth line, "one" should read "once".

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV-88-121]

Oranges and Grapefruit Grown in the Lower Rio Grande Valley in Texas; Proposed Tighter Minimum Size Requirements

Correction

In proposed rule document 88-22561 beginning on page 38295 in the issue of Friday, September 30, 1988, make the following corrections:

1. On page 38295, in the first column, under **FOR FURTHER INFORMATION CONTACT**, in the fourth line, after "AMS" insert a comma.

2. On page 38296, in the first column, in the second complete paragraph, in the first line, "minimum" was misspelled.

3. On the same page, in the same column, in the third complete paragraph, in the seventh line, "minimum" was misspelled.

§ 906.365 [Corrected]

4. On the same page, in the second column, in § 906.365(a)(2), in the fourth line, "2 9/16" should read "2 9/16".

5. On the same page, in the same column, in § 906.365(b), in the fifth and ninth lines, "17 CFR" should read "7 CFR".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 80736-8187]

Summer Flounder Fishery

Correction

In rule document 88-23221 beginning on page 39475 in the issue of Friday, October 7, 1988, make the following correction:

On page 39476, in the third column, in the seventh complete paragraph, in the first line, "Section 625.4(a)" should read "Section 625.4(l)".

BILLING CODE 1505-01-D

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Thailand

Correction

In notice document 88-23042 beginning on page 39330 in the issue of Thursday, October 6, 1988, make the following correction:

On page 39330, in the third column, in the table, in the right hand column, the 11th line should read "79,950 dozen.".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-42059A; FRL-3459-9]

Approval of the Department of Energy Plan for Certification of Applicators of Restricted Use Pesticides

Correction

In notice document 88-23178 beginning on page 39518 in the issue of Friday, October 7, 1988, make the following correction:

On page 39518, in the third column, under **ADDRESSES**, in the 14th line, "303-292-1603" should read "303-293-1603".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 173

[Docket No. 83F-0021]

Secondary Direct Food Additives Permitted in Food for Human Consumption; Sodium Polyacrylate

Correction

In rule document 88-23204 beginning on page 39455 in the issue of Friday, October 7, 1988, make the following correction:

§ 173.73 [Corrected]

On page 39456, in § 173.73(a)(2), in the third column, in the fourth line, "(HRR-330)" should read "(HFF-330)".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 435 and 436

[BERC-445-P]

Medicaid Program; Eligibility of Aliens for Medicaid

Correction

In proposed rule document 88-21898 beginning on page 38032 in the issue of Thursday, September 29, 1988, make the following corrections:

PART 435—[CORRECTED]

1. On page 38037, in the second column, in amendatory instruction 4, in the first line, "reusing" should read "revising".

§ 436.406 [Corrected]

2. On page 38039, in the first column, in § 436.406(k), in the fifth line, after "or" remove "§".

§ 436.408 [Corrected]

3. On page 38040, in the third column, in § 436.408(j), in the fourth line, "1152(b)" should read "1252(b)".

4. On page 38041, in the first column, in § 436.408(k), in the fifth line, after "or" remove "§".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 785 and 825

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Prime Farmland

Correction

In rule document 88-23848 beginning on page 40828 in the issue of Tuesday, October 18, 1988, make the following corrections:

1. On page 40831, in the second column, in the fifth complete paragraph, in the second line, "couple" should read "coupled".

2. On page 40835, in the first column, under "Proposed 3 Percent Exemption for Surface Facilities", in the second paragraph, in the 13th line, "real" should read "areal".

3. On the same page, in the second column, in the second complete paragraph, in the 21st line, "varied" should read "valid".

4. On the same page, in the third column, in the second complete paragraph, in the seventh line, "water" should read "waste".

5. On page 40838, in the first column, in the second complete paragraph, in the 12th line, after "the" insert "subsoil".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

29 CFR Part 801

Application of the Employee Polygraph Protection Act of 1988

Correction

In rule document 88-24377 beginning on page 41494 in the issue of Friday, October 21, 1988, make the following corrections:

1. On page 41495, in the second column, in paragraph (5), in the fourth line, "This" should read "Thus".

2. On page 41496, in the second column, in the third complete paragraph, in the first line, "sets" should read "set".

§ 801.10 [Corrected]

3. On page 41499, in the first column, in § 801.10(b), in the eighth line, "nonappropriated" was misspelled.

§ 801.11 [Corrected]

4. On the same page, in the same column, in § 801.11(a), in the first line, "Exemptions" should read "exemptions" and, in the seventh line, "test" should read "tests".

5. On the same page, in the same column, in § 801.11(c), in the 13th line, insert after the semicolon "or any employee of a contractor to such agency;".

§ 801.12 [Corrected]

5a. On the same page, in the second column, in the line after paragraph (g), "§ 810.12" should read § 801.12".

6. On the same page, in the third column, in § 801.12(b), the 25th line should read "of itself, would not be a sufficient basis to".

7. On page 41500, in the first column, in § 801.12(c)(2), in the first line, "economic" was misspelled.

8. On the same page, in the same column, in § 801.12(e)(1), continue the paragraph on the sixth line with the text beginning on the seventh line.

§ 801.22 [Corrected]

9. On page 41506, in the first column, in the fourth line, in § 801.22(c)(4), "(b)(2)(B)" should read "8(b)(2)(B)".

§ 801.30 [Corrected]

10. On page 41506, in the second column, in § 801.30(a) introductory text, the third line should read, "from the date the polygraph".

11. On the same page, in the third column, in § 801.30(c), in the ninth line, "of" should read "or".

§ 801.42 [Corrected]

12. On page 41507, in the second column, in § 801.42(a)(1), in the eighth line, "of" should read "or".

13. On the same page, in the same column, in § 801.42(a)(4), in the third line, "act" should read "Act".

§ 801.60 [Corrected]

14. On page 41508, in the second column, in § 801.60, in the fifth line, "§ 810.53" should read "§ 801.53".

§ 801.67 [Corrected]

15. On page 41509, in the second column, in § 801.67(b), in the fifth line, "appropriateness" was misspelled.

§ 801.72 [Corrected]

16. On page 41510, in the first column, in § 801.72, in the sixth line, "(15) days, fifteen" should read "fifteen (15) days,".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 25304, Amdt. 61-80, 71-11, 91-205]

RIN: 2120-AC35

Terminal Control Area (TCA) Classification and TCA Pilot and Navigational Equipment Requirements

Correction

In rule document 88-23556 beginning on page 40316 in the issue of Friday, October 14, 1988, make the following correction:

§ 91.90 [Corrected]

On page 40323, in the second column, in § 91.90(a)(3), in the fifth line, after "in" insert "the".

BILLING CODE 1505-01-D

federal register

Wednesday
October 26, 1988

Part II

Environmental Protection Agency

40 CFR Parts 280 and 281

Underground Storage Tanks Containing Petroleum—Financial Responsibility Requirements and State Program Approval Objective; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 280 and 281

[FRL-UST-3; 3419-3]

Underground Storage Tanks Containing Petroleum—Financial Responsibility Requirements and State Program Approval Objective

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is promulgating financial responsibility requirements applicable to owners and operators of underground storage tanks containing petroleum under Section 9003 (c) and (d) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) and the Superfund Amendments and Reauthorization Act of 1986 (SARA). This rule establishes requirements for demonstrating financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of underground storage tanks containing petroleum.

Today EPA is also promulgating, for purposes of state program approval, a federal technical objective for financial responsibility of owners and operators of petroleum UST systems. Subtitle I of RCRA allows EPA to approve state programs to operate in place of the federal UST requirements if those state programs have standards that are no less stringent than the federal requirements, and also provide adequate enforcement of compliance with those standards.

EFFECTIVE DATE: This rule becomes effective on January 24, 1989.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at (800) 424-9346 (toll free) or (202) 382-3000 in Washington, DC.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Authority

II. Background

A. Legislative and Regulatory Background of the Rule

B. The Comprehensive Federal UST Regulatory Program

C. Program Objectives and Summary of Today's Rule

1. Program Objectives and Major Changes in the Final Rule
2. Summary of Today's Rule

D. Availability of Mechanisms

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1. Owners and Operators
2. Tanks Taken Out of Operation Before the Date for Compliance (§ 280.90(b))
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2. Bodily Injury
3. Director of the Implementing Agency
4. Petroleum Marketing Facilities
5. Petroleum Marketing Firms
6. Property Damage
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D. Amount and Scope of Required Financial Responsibility (§ 280.93)

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2. Aggregate Amounts
3. Apportionment of Costs and Levels of Coverage Under Separate Mechanisms

E. Allowable Mechanisms and Combinations (§ 280.94)

1. Mechanisms Allowed
2. Combinations of Mechanisms
3. Attorney General Certification (§ 280.94(b))
4. New Mechanisms
5. Specification of Tanks in Financial Assurance Instruments

F. Financial Test of Self-Insurance (§ 280.95)

1. Proposed Financial Test
2. Comments on the Proposed Financial Test
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G. Guarantee (§ 280.96) and Indemnity Contract

H. Insurance and Risk Retention Group Coverage (§ 280.97)

1. Availability
2. Insurance Cost and Its Impact
3. Viability of Risk Retention Groups
4. Specific Requirements for Insurance and Risk Retention Group Coverage

I. Surety Bond (§ 280.98)

J. Letter of Credit (§ 280.99)

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L. State Fund or Other State Assurance (§ 280.101)

M. Trust Fund (§ 280.102)

N. Standby Trust Fund (§ 280.103)

O. Substitution of Financial Assurance Mechanisms by an Owner or Operator (§ 280.104)

P. Cancellation or Nonrenewal by a Provider of Financial Assurance (§ 280.105)

1. Length of Notice Period
2. Termination for Non-Payment of Premium

Q. Reporting by Owner or Operator (§ 280.106)

R. Recordkeeping (§ 280.107)

S. Drawing on Financial Assurance Mechanisms (§ 280.108)

T. Release from the Requirements (§ 280.109)

U. Bankruptcy or Other Incapacity of Owner or Operator or Provider of Financial Assurance (§ 280.110)

V. Provisions Pertaining to Other Instruments (§ 280.111)

1. Maintaining Other Instruments at Required Levels of Coverage
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W. Suspension of Enforcement (§ 280.112)

1. Statutory Authority
2. Suspension of Enforcement Process

IV. Integration with Other EPA Programs

A. Other Subtitle I Rulemakings

B. Leaking Underground Storage Tank (LUST) Trust Fund and Response Program

V. State Program Approval

A. Background

B. Financial Responsibility Objective (§ 281.37)

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VII. Economic and Regulatory Impacts

A. Regulatory Impact Analysis

1. Compliance with Executive Order 12291
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I. Authority

These regulations are issued under the authority of Sections 2002, 9001, 9002, 9003, 9004, 9005, 9006, 9007, and 9009 of the Solid Waste Disposal Act, as amended. The principal amendments to this Act have been under the Resource Conservation and Recovery Act of 1976, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616) and the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499) (42 U.S.C. 6921, 6991, 6991(a), 6991(b), 6991(c), 6991(d), 6991(e), 6991(f), and 6991(h)).

II. Background

This section provides the legislative and regulatory background for the final rule, describes the comprehensive underground storage tank (UST) regulatory program, and summarizes today's financial responsibility rulemaking.

A. Legislative and Regulatory Background of the Rule

The Hazardous and Solid Waste Amendments of 1984 (HSWA) extended and strengthened the provisions of the Resource Conservation and Recovery Act (RCRA). HSWA created Subtitle I, which provides for the development and implementation of a regulatory program for underground storage tanks (USTs) [1] containing regulated substances, including petroleum [2] and other regulated substances [3] (such nonpetroleum regulated substances are hereinafter referred to as hazardous substances). Section 9003(a) of Subtitle I requires the EPA Administrator to promulgate requirements for release detection, prevention and correction as necessary to protect human health and the environment. These technical standards were promulgated at 53 FR 37082 (September 23, 1988).

The Superfund Amendments and Reauthorization Act of 1986 (SARA) amended sections 9003 (c) and (d) of Subtitle I to mandate that the Agency establish financial responsibility requirements for UST owners and operators to assure the costs of corrective action and third-party liability caused by sudden and nonsudden accidental releases from USTs. SARA made other changes to Subtitle I affecting financial responsibility.

(1) It established $1 million per occurrence and an appropriate annual aggregate as the minimum assurance levels for USTs at facilities engaged in petroleum production, refining, or marketing, and for USTs which handle substantial amounts of petroleum; the Administrator may set lower per-occurrence limits for USTs at other types of facilities.

(2) It authorized the Administrator to suspend enforcement of the financial responsibility requirements if financial assurance for a particular class or category of USTs is "not generally available" and steps are being taken to either form a risk retention group (RRG) or establish a state fund pursuant to § 9004(c)(1).

(3) It created a $300 million Leaking UST Trust Fund to fund certain corrective action costs for petroleum releases (including the costs of cleanup, enforcement and cost recovery).[4] Before the effective date of today's rule, Trust Fund monies can be used whenever the Administrator or state under cooperative agreement determines that such action is necessary to protect human health and the environment and when there is no owner or operator capable or willing to undertake proper action. Priority must be given to cases posing the greatest threat to human health and the environment. After the effective date of today's rule, the circumstances under which Trust Fund monies may be used are more restricted (see Section IV.B).

On April 17, 1987, the Agency proposed financial responsibility requirements for USTs containing petroleum (52 FR 12786). The Agency provided a 60-day comment period and extended it for an additional 30 days. In addition, the Agency published two Supplemental Notices modifying the initial proposal (52 FR 48638, December 23, 1987, and 53 FR 10401, March 31, 1988). Based on EPA's analysis of the comments, EPA has revised the rule and is today promulgating a final rule, which is summarized in Section C below.

EPA has also issued an Advanced Notice of Proposed Rulemaking (ANPRM) on financial responsibility requirements for USTs containing hazardous substances (53 FR 3818, February 9, 1988).

B. The Comprehensive Federal UST Regulatory Program

In addition to this financial responsibility rule for USTs containing petroleum, the Agency has promulgated technical standards for USTs containing petroleum and hazardous substances (53 FR 37082, September 23, 1988) and procedures for approval of state UST programs (53 FR 37212, September 23, 1988). The three rulemakings together establish a comprehensive program to regulate USTs, as required by Subtitle I of RCRA.

The technical standards require UST owners and operators to meet standards for tank operation and design, release detection and reporting, corrective action, and closure. The operation and design standards require that USTs be protected from corrosion and equipped with devices to prevent spills and overfills. The release detection and reporting standards require owners and operators to install leak detection systems and report actual and suspected releases. These requirements pertain to new USTs on the effective date of the rule. Some operational requirements pertain to USTs currently in use on the effective date. USTs currently in use become subject to the tank operation and design requirements over a ten-year phase-in period and the release detection requirements over a five-year phase-in period. The corrective action standards, which apply to all tanks on the effective date, require owners and operators to clean up releases from UST systems. In the short run, one effect of the technical standards will be to

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[1] Under section 9001(1) "underground storage tank" is defined as "any one or combination of tanks (including underground pipes connected thereto) which is used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is 10 percent or more beneath the surface of the ground. Such term does not include any—

(A) Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes.

(B) Tank used for storing heating oil for consumptive use on the premises where stored.

(C) Septic tank.

(D) Pipeline facility (including gathering lines) regulated under—

(i) The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671, *et seq.*),

(ii) The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001, *et seq.*), or

(iii) Which is an intrastate pipeline facility regulated under State laws comparable to the provisions of law referred to in clause (i) or (ii) of this subparagraph.

(E) Surface impoundment, pit, pond, or lagoon.

(F) Storm water or waste water collection system.

(G) Flow-through process tank.

(H) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations, or

(I) Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

The term "underground storage tank" shall not include any pipes connected to any tank which is described in subparagraphs (A) through (I)." These terms are further defined by regulation under the technical standards published at (CITE-TS).

[2] Under section 9001(8), petroleum is defined as "petroleum, including crude oil or any fraction thereof," which is liquid at standard conditions of temperature (60 degrees Fahrenheit) and pressure (14.7 pounds per square inch absolute).

[3] Under section 9001(2), "regulated substances" are defined as "(A) any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (but not including any substance regulated as a hazardous waste under Subtitle C), and (B) petroleum."

[4] The Trust Fund may not be used to compensate third parties.

increase detection of releases; over the long run, the standards will reduce the likelihood that new releases will occur.

The financial responsibility rule requires that UST owners or operators demonstrate financial responsibility for the costs of corrective action and compensation of third parties arising from release of petroleum from underground storage tanks. The financial responsibility requirements will help ensure that owners and operators can respond promptly to clean up releases and to compensate third parties for any injuries or damages associated with the releases. Because the providers of financial assurance mechanisms may require UST owners and operators to install leak detection and corrosion protection systems as a condition of coverage, the financial responsibility requirements may accelerate compliance with the technical standards.

The state program approval objectives (53 FR 37212, September 23, 1988) enable states whose programs are no less stringent than the federal program and which provide for adequate enforcement of compliance to administer the UST regulatory program. EPA has designed the approval criteria to provide flexibility consistent with statutory requirements to encourage states to adopt the UST program. EPA believes that regulation of the large and varied UST population is best implemented by state and local agencies, which can oversee and enforce the UST program more effectively than EPA.

Finally, the last major component of the federal UST regulatory program, establishing financial responsibility requirements for USTs containing hazardous substances, will be proposed in the future.

C. Program Objectives and Summary of Today's Rule

1. Program Objectives and Major Changes in the Final Rule

The Agency had three guiding objectives in considering the comments received on the proposed rule and in adopting the changes for the final rule. First, the financial responsibility program for petroleum USTs must require adequate and reliable financial assurance for the costs of UST releases, based on the following considerations:

(1) The certainty that funds will be available;

(2) The sufficiency of funds to cover the costs of releases; and

(3) The availability of funds for corrective action and third-party liability.

Second, while requiring adequate and reliable financial assurances, the rule must provide flexibility, where possible, to increase the feasibility of compliance by the regulated community. Subtitle I specifically allows flexibility in establishing per-occurrence levels of assurance for USTs at facilities not engaged in petroleum production, refining, or marketing, and for aggregate levels of assurance. The Agency has carefully considered where to allow flexibility in the financial responsibility program while ensuring adequate protection for covering the costs of petroleum UST releases.

Finally, to the extent possible, this rule should promote expansion of existing assurance mechanisms and development of new ones to achieve maximum compliance by UST owners and operators. The Agency recognizes the current limited availability of financial assurance mechanisms and the difficulty many owners and operators will have in complying with the requirements, at least initially. However, insurance coverage is available now to some UST owners and operators, and a number of states have either adopted or are taking steps to adopt state funds. The Agency has constructed the final rule to promote timely compliance by all owners and operators and to encourage development of additional assurance mechanisms.

The major changes in the rule and the way in which they further these objectives are summarized below:

- *Phased schedule of compliance.* The final rule phases in compliance in four stages for different categories of UST owners. The Agency has adopted this approach to allow adequate time for compliance and to promote development of financial assurance mechanisms in the following ways:
  - —Owners most able to comply, based on financial strength, must do so 3 months after the promulgation date.
  - —Most owners in the next two groups have or can obtain insurance. The phase-in allows time for processing insurance applications (which may take several months per application). It also provides time for insurance providers to conform their policies to the requirements of this rule, as well as to decide whether to extend their policies to new segments of the regulated community. Some owners in these groups may also be able to rely on state funds.
  - —Owners scheduled for compliance 24 months after the date of promulgation of the rule, e.g., single station owners and non-marketers, will rely primarily on state funds and expansion of insurance and RRGs beyond currently available programs. The schedule provides time for these mechanisms to become available.
  - —Phasing in compliance also provides UST owners and operators time to invest in technical improvements or replacement of tanks to make them insurable, as well as to comply with the UST technical standards.
- *$500,000 per occurrence level of assurance allowed for non-marketers with monthly throughput of 10,000 gallons of gasoline or less.* The Agency has determined that this amount should be sufficient to cover about 99 percent of all claims at these facilities—a key criterion in deciding the coverage amounts. At the same time, this lower coverage amount reduces the burden on individual owners or operators. In addition, allowing a lower level of assurance may increase the number of policies insurers are able to write and may provide an incentive to extend coverage to non-marketers.
- *Lower aggregate level of assurance.* The final rule requires a maximum aggregate of $2 million and raises the number of tanks qualifying for the $1 million aggregate to 100. These aggregate levels achieve the Agency's goal that releases at UST facilities not exceed the aggregate more than one percent of the time. At the same time, the lower levels significantly reduce the burden on owners and operators. More firms will be able to use existing insurance programs (which currently provide maximum aggregate coverage of $2 million). The lower aggregate will also make it easier to capitalize RRGs and state funds.
- *Suspension of enforcement.* Today's rule does not contain suspension of enforcement procedures. The Agency has chosen to defer the promulgation of these procedures. The Agency hopes to gain experience with implementation of the program on which to base a process that minimizes the administrative burden of suspension of enforcement on owners and operators as well as on the Agency.

2. Summary of Today's Rule

This section briefly summarizes EPA's financial responsibility rule for petroleum USTs. Section III of this preamble describes the final rule, some of the major comments that were made on the proposed rule, and the rationale for the changes. The Comment/Response Document ("Summary of Comments and EPA's Response to Comments on the April 17, 1987, Proposed Financial Responsibility Rule for Petroleum Underground Storage Tanks") in the docket contains a detailed summary of all comments on the proposed rule and the Agency's response to those comments.

Today's financial responsibility requirements are applicable to owners or operators of "petroleum UST systems" with the following exceptions: (1) Federal or state entities that own or operate USTs containing petroleum; and (2) owners and operators of USTs excluded from the technical standards (Section III.A.6 below). For purposes of covering costs of corrective action and third-party liability, EPA requires all owners or operators of petroleum USTs at facilities engaged in petroleum production, refining, or marketing and owners or operators of USTs with an average monthly throughput of more than 10,000 gallons to obtain financial assurance of at least $1 million per occurrence. Owners or operators of USTs at facilities not engaged in petroleum production, refining, or marketing with an average monthly throughput of 10,000 gallons or less must maintain financial assurance of at least $500,000 per occurrence. All owners or operators must maintain an annual aggregate of $1 million or $2 million, depending on the number of USTs assured.

UST owners or operators may satisfy the requirements using the following mechanisms: insurance or risk retention group coverage, surety bond, guarantee, letter of credit, financial test of self-insurance, trust fund, a state-required mechanism, or a state fund or other state assurance. Mechanisms can be used alone or in combination to cover the costs of taking corrective action and compensating third parties as long as a mechanism or combination of mechanisms provides the appropriate amount of assurance. The only combination of mechanisms that is not allowed is the financial test of self-insurance and a guarantee where the financial statements of the owner or operator and the guarantor are consolidated.

The final rule does not contain procedures for obtaining a suspension of enforcement of the requirements. The Agency will promulgate suspension of enforcement procedures at a later date.

The final rule requires owners or operators to submit documentation of financial responsibility to the implementing agency after a known or suspected release occurs; when a provider becomes incapable of providing assurance; and when a provider revokes a mechanism and the owner or operator is unable to obtain alternate coverage. Owners or operators must also submit documentation of financial responsibility if requested by the implementing agency. In addition, UST owners or operators must notify the implementing agency of their methods of demonstrating financial responsibility upon installation of new tanks. Owners or operators must maintain records of the financial assurance mechanisms used to satisfy these requirements on-site or at their place of business.

The final rule also requires that UST owners or operators receive a notice of cancellation before terminating coverage to allow them sufficient time to procure alternate assurance and to determine whether there are existing releases.

Owners and operators must comply with these financial responsibility requirements over a phased-in compliance period lasting up to 24 months from the promulgation date of this rule.

The state program approval objective for financial responsibility of owners and operators of petroleum UST systems is also promulgated today. This objective outlines the financial responsibility requirements that owners and operators of petroleum UST systems must meet in order to be "no less stringent" than the corresponding federal technical standard, and to demonstrate adequate enforcement of compliance.

D. Availability of Mechanisms

The Agency received many comments suggesting that the mechanisms allowed to demonstrate compliance with today's rule are generally unavailable. The Agency recognizes that, for several reasons, including cost, company size, or lack of qualified providers, some of the mechanisms proposed in the rule might have a limited availability at this time. Some mechanisms, such as surety bonds and letters of credit, are likely to be available and affordable to only a few owners and operators. However, in deciding to allow a wide variety of mechanisms to be used to demonstrate financial responsibility, the Agency did not want to preclude the use of any mechanism that might be used and that would provide an adequate degree of assurance that funds will be available if needed. The guarantee, for example, was included because some UST owners and operators have business relationships with firms who might be willing and able to provide them guarantees. Not all owners and operators, however, will have that option.

The Agency recognizes that insurance and state financial assurance programs are likely to be the most feasible mechanisms for most owners and operators to comply with today's rule. Currently, however, pollution liability insurance for USTs is not widely available for a number of reasons. Foremost is the fact that such pollution liability insurance is now and is likely to continue to be offered by a limited number of specialized providers. Second is the unpredictability of the risks involved for unprotected tanks that have not been subject to regular leak detection. In addition, it is unclear to insurers how the new UST technical requirements, especially for corrective action, may change the number and cost of claims. This current uncertainty also affects the amount of reinsurance that is available for insurance policies written for USTs and thereby limits the number of policies that insurers are able to issue.

Despite its limited availability, a number of UST owners and operators have been able to find coverage. Commenters indicated that several insurers are already covering some USTs or are planning to offer such coverage in the future. While a substantial number of petroleum marketers are currently insured, the Agency recognizes that many smaller motor fuel marketers and UST owners not engaged in motor fuel marketing have had difficulty in obtaining coverage.

Implementation of the technical standards rule is likely to increase the availability of insurance over the long term. As old, unprotected tanks are removed and/or fitted with release detection systems, the number of leaks that are detected should increase significantly. As these leaks are detected and corrected, the requirements for upgrading or replacing tanks, combined with regular monitoring, should significantly reduce both the occurrence of leaks and their duration prior to detection. Over the long term, implementation of the technical standards should make UST risks more predictable and, therefore, insurers should be more willing to provide coverage.

Owners and operators who cannot secure traditional insurance coverage may also have alternatives. For some owners and operators, RRGs will offer an alternative to insurance. One such RRG has been formed and offers coverage to petroleum marketers. Several other commenters indicated an interest in forming RRGs.

State funds may also be available to UST owners and operators. In fact, Congress specifically recognized the important role that state funds may play in providing financial assurance by including attempts to form a state fund as a basis for suspension of enforcement and by explicitly allowing such funds to meet financial responsibility requirements for state program approval under RCRA section 9004(c)(1). Although not widely available at present, state funds have already been established in several states. The Agency recognizes that, in most cases, state funds may only supply a portion of the financial assurance required. Some currently available funds cover corrective action but not third-party liability costs; others cover both.

Generally, these funds do not supply coverage in the full amount required in today's rule. State funds may need to be used in combination with other mechanisms to meet the requirements of today's rule. Depending on their structure, state funds can provide an important means for compliance with financial responsibility requirements at the onset of the program and encourage development of insurance and RRGs over the longer term.

The Agency realizes that the mechanisms allowed in today's rule may be difficult to obtain at present. However, the phased-in schedule for compliance with the rule will provide insurers more time to develop and expand lines of insurance and states more time to establish state funds. In addition, the Agency expects to promulgate final procedures for suspension of enforcement in the near future. Following promulgation of that rule, those owners and operators unable to obtain a financial assurance mechanism by their compliance date may form classes and apply for a suspension of enforcement.

III. Section-by-Section Analysis

A. Applicability (§ 280.90)

The rule promulgated today applies to owners and operators of all underground storage tank systems containing petroleum, with certain exemptions or deferrals. Commenters raised several issues concerning the applicability of this rule.

1. Owners and Operators (§ 280.90(a))

The final rule applies to owners and operators of all petroleum UST systems (as defined in § 280.12 of the technical standards rule). If the owner and operator are separate persons, only one person is required to demonstrate financial responsibility although the Agency will hold each responsible if the financial responsibility requirements are not complied with by either party. While the Agency's intention with respect to this issue was explicitly stated in the preamble to the proposed rule (52 FR 12795, April 17, 1987), the rule also conveyed the Agency's intention by using the phrase "owner *or* operator" instead of "owner *and* operator" in all but the applicability section.

The Agency retains this approach and explicitly states it in the rule, as well as in the preamble, to avoid possible confusion. For this reason, the Agency has added the following language to § 280.90 *Applicability:*

If the owner and operator of a petroleum UST system are separate persons, only one person is required to demonstrate financial responsibility.

Some commenters supported the Agency's approach to applicability when the owners and operators are separate persons; however, other commenters believed that EPA should designate which person should comply with the rules. Of these commenters, some supported a rule that required only the owners to comply with the requirements while other commenters believed only operators should be held responsible. Some commenters suggested that the person with responsibility for a particular activity, e.g. tank installation, maintenance or daily operation, should demonstrate financial responsibility.

The commenters who urged EPA to designate only one responsible person when the owners and operators are separate persons believed that the proposal left owners and operators to "fight it out" to determine who will demonstrate financial responsibility and that problems would occur when they do not agree who should obtain coverage. The commenters who urged EPA to hold only operators responsible pointed out that in many cases owners will have only minimal or nominal control over the operation of the tanks (e.g., passive lessors of property such as oil jobbers or marketers ordinarily do not control day-to-day tank operations). On the other hand, one commenter who supported holding only owners responsible pointed out that, when oil jobbers and marketers own tanks, they have usually assumed responsibility for tank replacement and maintenance.

The Agency has decided not to designate a single party, either the owner or operator, as responsible for compliance with the rules because the statute requires the UST standards to be applicable to "all owners and operators," and a determination of which person should assume these costs could only be made on a cases by case basis. Under the technical requirements, both persons are responsible for corrective action; however, the liability of owners and operators to third-party claimants will vary depending on the circumstances of each case and on the applicable state law. Making financial assurance the responsibility of only the person engaged in a particular activity would also be inappropriate because the liability of an owner or operator is not limited to the results of particular activities. In some cases the person responsible for one activity may have allowed a release to occur and therefore incur liability to third parties, while in another case, the person responsible for a different activity may be liable. Under theories of strict liability and negligence, even passive lessors could be liable for third-party damages in some situations. Moreover, the person responsible for maintenance and installation will vary depending on the individual arrangements between owner and operator.

The Agency recognizes that in some instances owners and operators will have difficulty agreeing which one of them will comply with the rules. Nonetheless, the Agency believes that owners and operators are in the best position to decide between themselves, as part of their ongoing business relationships, which one of them should demonstrate financial responsibility. Owners and operators may decide that the person most responsible for particular activities should obtain financial assurance, or they may decide that the person most able to demonstrate financial responsibility should do so. EPA believes this approach will allow for greater flexibility, yet avoids the considerable expense of requiring both parties to secure financial assurance.

Other commenters expressed concern about other applicability issues. Some commenters objected to requiring current owners and operators to obtain financial assurance when past owners and operators might be responsible for contamination. Another commenter pointed out that tank testers may be responsible for releases and urged that they should be subject to financial responsibility requirements.

Current owners and operators are responsible under the regulation for obtaining financial assurances for their tanks even if previous owners or operators are responsible for contamination. In situations where a current owner or operator is faced with claims for contamination that occurred under a previous owner or operator, he may pursue appropriate legal remedies against the previous owner or operator. Similarly, damage to tanks and releases which result from tank testing activity are subject to tort claims under applicable state law. Moreover, the statute does not authorize the imposition of financial responsibility requirements on tank testers, only UST owners and operators.

Finally, one commenter requested that the Agency clearly define owners and operators to exclude corporate parents or affiliates. Parents and affiliates generally would not be subject to today's rule. Parents, for example, may serve as guarantors for owners and operators, thereby enabling the owner or operator to satisfy financial responsibility requirements, but would not be directly responsible themselves for complying with these requirements. The Agency might, however, hold parents or affiliates subject to these requirements in certain situations. For example, if an owner or operator attempted to circumvent today's requirements through the creation of a sham subsidiary or through other arrangements, the Agency could in appropriate circumstances hold a parent or affiliate responsible for compliance with these rules. Thus, a definition of owners and operators which excludes corporate parents or affiliates in all situations is not appropriate. The Agency does not expect, however, that parents or affiliates will generally be subject to these financial responsibility requirements.

2. Tanks Taken Out of Operation Before the Date for Compliance (§ 280.90(b))

The preamble to the proposed rule stated EPA's intention to make the rule applicable to tanks taken out of operation before the effective date of the rule. The language of the proposed rule, however, did not state specifically that it would apply to such tanks.

The Agency received a number of comments on this provision. One commenter questioned the Agency's authority under Subtitle I to apply financial responsibility requirements retroactively to owners of tanks taken out of operation before Subtitle I was enacted in 1984.

The statutory definition of "owner" in RCRA section 9001(3)(A) and (B) includes owners of tanks taken out of operation before enactment of HSWA, as well as owners of tanks in used on the date of enactment. RCRA section 9003(a) further authorizes EPA to promulgate regulations, including financial responsibility regulations, applicable to all owners and operators of USTs. Therefore, the Agency has authority to regulate tanks taken out of operation before the enactment of Subtitle I and to impose financial responsibility requirements on owners and operators of such tanks where necessary to protect human health or the environment:

Some commenters, while not questioning the Agency's statutory authority, urged the Agency to exempt tanks taken out of operation before the effective date of the rule or before November 8, 1985 (one year after enactment of HSWA). Commenters gave the following reasons for such an exemption:

- Providers of financial assurance are not likely to offer assurance for tanks taken out of operation unless it can be proven that there is no contamination present.
- Because so many tanks have been taken out of operation in recent years, it would be extremely difficult to identify these tanks and inform former owners and operators of their obligations.

One commenter recommended that if the requirement for such tanks is retained, owners and operators of tanks that are properly closed should not be required to maintain financial assurance if they can demonstrate that no contamination is present.

At the time the Agency proposed to require owners or operators of tanks taken out of operation before the effective date to obtain financial assurance, it also proposed in the technical rule to require these tanks to comply with closure requirements (§ 280.80). The Agency reasoned that, because non-operational tanks were subject to the closure and corrective action requirements under Subparts F and H of the technical standards, requiring financial assurance was necessary to ensure that closure was undertaken properly and quickly.

Since that time, the Agency has decided to eliminate the requirement that all USTs taken out of operation before the effective date for the technical rule undergo closure. The rule does provide, however, that implementing agencies may require owners or operators to close these tanks properly if there is a reason to believe that they may pose a threat to human health and the environment. The preamble to the technical standards rule discusses the reasons for this change.

Based on comments on the proposed financial responsibility rule and the revisions to the technical standards, the Agency has decided not to require owners or operators of USTs taken out of operation before the compliance dates in this rule to obtain financial assurance. The Agency recognizes that for many owners and operators of USTs, insurance will be the only feasible financial assurance mechanism available. The Agency agrees with commenters, among them insurance companies, that insurance providers would be extremely reluctant to assure tanks taken out of operation because of the perceived greater uncertainly associated with them.

Even if providers of assurance would assure these tanks, it is unlikely that they would cover leaks which occurred before the effective date of the policy. For example, based on standard insurance industry practice, owners and operators applying for coverage must meet certain pre-conditions which may include tank tightness testing and a determination that there are no existing releases. If releases are discovered, insurance policies probably would not cover them, because the insurance industry's practice is to exclude pre-existing releases from coverage. In addition, as a condition for coverage of a tank not in operation, an insurer might require proper closure in order to minimize the risk of a release of material which might remain in the tank. Such an insurance policy would be of little value of protecting human health and the environment since it would not cover pre-existing conditions and would only cover tanks that have been emptied of their contents. The Agency believes that the owners' and operators' resources would be better spent in closure and corrective action that in attempting to procure this type of insurance. Nevertheless, owners and operators of tanks taken out of operation before the effective date remain responsible for the costs of releases associated with them.

3. Applicability to State and Federal Government Entities (§ 280.90(c))

The final rule, like the proposed rule, is not applicable to state and federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States. Several commenters argued that state and federal government entities should not be exempt from the financial responsibility requirements. Their reasons included the following:

- Such an exemption conflicts with Congressional intent to have all tanks insured.
- The exemption will discourage sound tank management practices on the part of state and Federal governments.
- The exemption would provide state-owned transit agencies with unfair advantages over private owners.

The Agency does not interpret the Congressional intent of Subtitle I to preclude exempting any class of USTs from otherwise applicable requirements when the Agency has determined that such requirements are not necessary to protect human health or the environment. See RCRA section 9003(a). With respect to financial responsibility, such requirements need not be imposed where the owners or operators will consistently be able to cover the costs of releases in a timely fashion. The purpose of these financial responsibility requirements is to ensure that funds will be available in a timely manner to cover the costs of corrective action and compensation of third parties arising

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from UST releases. While the Agency recognizes that these requirements may provide an incentive for sound tank management practices, this is not their primary purpose.

No commenters disputed the Agency's opinion that Federal and state governments have the requisite financial strength and stability to fulfill their financial assurance obligations. In addition, exemption from the requirements will not discourage sound tank management practices by state and federal government entities, because they remain responsible for the cost of corrective action associated with the releases.

The Agency concedes that not having to pay the costs of procuring a financial assurance mechanism may result in a slight competitive advantage for state-owned transit agencies. Such an advantage is not likely to be significantly greater than advantages already enjoyed by state-owned transit systems (e.g., through government subsidies). In addition, the financial advantage of the state-owned agency is comparable to the position of any firm which can rely on a guarantee provided by a parent or related firm, and merely reflects the difference between large and small businesses. If releases occur, state-owned agencies may rely on state assistance to pay the costs of damages. Privately-owned transit agencies, however, would have to rely on their own funds to pay these costs. Thus, even without today's rule, private transit agencies have a financial incentive to purchase insurance coverage not shared by the state-owned agency.

4. Applicability to Local Government Entities

While the proposed rule exempted from the requirements those government entities whose debts and liabilities are the debts and liabilities of federal or state governments, local government entities were required to provide financial assurance for USTs that they own or operate. The final rule remains applicable to local government entities. However, under the Agency's schedule for phased compliance with the rule, local government entities have 24 months from the promulgation date to comply. EPA also intends to develop a financial test in the interim that will allow local governments that can demonstrate the requisite financial strength and stability to cover the costs associated with UST releases to self-insure.

Local government entities include both general purpose local governments and special purpose local entities. General purpose local government entities include municipalities, counties, townships, towns, villages, parishes and New England towns. Special purpose local governments perform a single function or a limited range of functions. Special purpose governments are generally designated as either public authorities or special districts such as school districts, water and sewer authorities, transit authorities or power authorities. All local governments, both general and special purpose, are subject to this rule.

One commenter supported application of the financial responsibility requirements to local government entities. However, many commenters stated that the proposed exemption for federal and state governments from demonstration of financial responsibility should be extended to local government entities. The major arguments in favor of such an exemption focused on three areas: (1) The permanence and stability of local governments; (2) the incentives for local governments to provide funds in a timely manner; and (3) the financial strength and capability to raise funds in a timely manner.

First, several commenters maintained that the permanence and stability that the Agency attributes to Federal and state governments also apply to local governments; local governments are unalterably attached to their particular locales. Moreover, commenters asserted that cities almost never go bankrupt, and when they are unable to meet their financial obligations over the short-term, their debts are not forgiven under the bankruptcy laws but are extended until they can be satisfied. Therefore, unlike private firms, local governments do not disappear even if they file bankruptcy.

Second, commenters stated that local governments have the same incentives as federal and state governments to meet their UST obligations in a timely manner. Local governments exist to safeguard public health and welfare, and local officials have voter accountability that helps assure an immediate and effective response to an UST release. One commenter, an association of city governments, stated that cities have consistently demonstrated an ability to respond to UST leaks in a timely manner and have taken prompt action to ensure that leaks do not recur in the future by either upgrading or removing failed USTs.

Third, commenters claimed that local governments have the requisite financial strength to meet potential UST obligations in a timely manner. One commenter representing city governments pointed out that cities are accustomed to addressing emergencies such as natural disasters and routinely establish contingency funds of a size that could easily cover the costs associated with most UST leaks. Another commenter noted that local appropriation procedures often are structured so that officials may take fund originally intended for one purpose and divert them to a more pressing need related to USTs.

Finally, one commenter argued that for UST releases in excess of fund reserves, many local government entities—like states—have the ability to raise funds through taxes and debt issues. The commenter stated that the delays involved with tax and bond initiatives are unlikely to affect the timeliness of an UST cleanup because cities tend to be excellent credit risks and can often have contracted work performed in an emergency without having to provide funds until after the emergency is remedied or use their own personnel to respond.

The Agency believes that there is merit in many of the points commenters raised as applied to particular municipalities. However, for several reasons, the Agency is unwilling to exempt all local government entities from these requirements. There is substantial variability in local governments in terms of size, financial capacity, and functions. A number of commenters urged that the financial test should be modified so that local government entities could use it. The corporate financial test is not applicable to most government entities because it contains a net worth indicator, a financial measure that is either unavailable to many local governments or does not measure financial strength in the same way it does for private firms. It requires reporting to the U.S. Securities and Exchange Commission (SEC) or to Dun and Bradstreet, which is also not applicable to government entities. Accordingly, the Agency is taking steps to develop a financial test that will allow local governments meeting the test criteria to self-insure like private companies that use the corporate financial test. Local governments which pass this financial test will not be required to obtain other financial assurance mechanisms to comply with the requirements of this rule. In the interim as discussed in Section III.B, under the phased schedule of compliance, the compliance date for local government entities is 24 months after promulgation. The Agency anticipates that the final financial test for local government entities will be promulgated before their scheduled compliance date.

Some commenters on the proposed rule suggested that particular special purpose local governments such as public power entities or airports should be exempt from the financial responsibility requirements. The Agency sees no reason to treat particular special purpose local government entities differently from all other local governments. All local governments remain subject to the rule and may be able to meet the local government financial test under development.

Some commenters suggested a change to the corporate financial test so that power authorities meeting the other criteria in the test could use it. Specifically, they suggested that the Agency accept reports to the Rural Electrification Administration and the Energy Information Administration, as an alternative to filing with the SEC or Dun and Bradstreet. Their comments indicated that other than filing annual statements with a different Agency, they could use the Subtitle I corporate financial test. This change has been made to the corporate financial test so that power authorities meeting the criteria in the test may use. it.

5. Applicability to Indian Tribes

The proposed rule did not address the applicability of the financial responsibility requirements to Indian tribes. Indian tribes are included in the statutory definition of municipalities in RCRA Section 1004(13). Accordingly, under the phased schedule of compliance, Indian tribes will be required to comply with financial responsibility requirements on the last compliance date, 24 months after the promulgation date of the rule, similar to municipalities. However, in the proposed financial test for local government entities, the Agency will specifically request comments on whether this test should apply to Indian tribes. The Agency intends to finalize this proposed rule before the compliance date for local government entities and Indian tribes.

6. Deferrals and Exclusions (§ 280.90(d))

Under the proposed rule, EPA would have deferred from the financial responsibility requirements certain categories of tanks that the Agency also was proposing to defer under the technical requirements. The Agency proposed to defer the regulation of these categories of USTs because it had limited information about these USTs or was otherwise uncertain about the need to regulate them. Several commenters addressed these and other categories of tanks that they believed should be deferred or exempted from the final rule.

The proposed technical requirements deferred the following categories of tanks from all of their requirements (except the requirements for corrective action and notification and the prohibition of bare steel UST installation requirements): (1) Wastewater treatment tanks, (2) sumps, (3) underground bulk storage tanks, (4) USTs containing radioactive waste and other radioactive materials, (5) UST systems containing electrical equipment, (6) hydraulic lift tanks, and (7) UST systems containing used oil.

In the final technical standards rule (53 FR 37082, September 23, 1988), the Agency has excluded some of these categories of USTs from the technical requirements. Some of the other categories of USTs that the Agency proposed to defer from regulation are now regulated. The Agency continues to defer regulating certain categories of USTs (except from corrective action requirements and prohibition of bare steel UST installation).

The financial responsibility rule tracks the final technical standards rule with respect to exclusions and deferrals from the requirements. All USTs excluded from regulation are excluded from these financial responsibility requirements. All USTs that are deferred from regulation also are not subject to these financial responsibility requirements. Because the Agency is uncertain about the need to regulate deferred categories of USTs, or has limited information about them, the application of financial responsibility requirements to the deferred categories of USTs is inappropriate at this point. The Agency's decision about the regulation of each of the categories of excluded or deferred tanks is summarized below. The preamble to the final technical standards rule contains a thorough discussion of the Agency's rationale for each decision.

- *UST Systems Containing Hazardous Waste and Regulated Substances.* The Agency has excluded these tank systems from regulation under Subtitle I.
- *UST Systems Containing Electrical Equipment and Hydraulic Lifts.* Equipment or machinery using regulated substances for operational purposes are now excluded from regulation.
- *Wastewater Treatment USTs.* Wastewater treatment tanks regulated under the Clean Water Act are excluded from regulation. Wastewater treatment USTs that are *not* regulated under the Clean Water Act are deferred from regulation.
- *Tanks Containing De Minimis Quantities of Regulated Substances.* The Agency is excluding the following categories of USTs:
  - —USTs with a capacity of less than 110 gallons;
  - —USTs holding a *de minimis* concentration of regulated substances; and
  - —USTs that serve as emergency backup tanks, hold regulated substances for only a short period of time, and are expeditiously emptied after use.
- *Sumps.* Sumps are not excluded or deferred as a separate category; however, many sumps may be excluded under the *de minimis* exclusions, the wastewater treatment exclusion, and the statutory exclusion for storm water and wastewater collection systems. Other sumps may be deferred under the "field-constructed tank" deferral.
- *Field-Constructed Tanks.* Field-constructed tanks, which include many tanks that were classified as underground bulk storage tanks in the proposal, are deferred from regulation.
- *UST Systems That Contain Radioactive Wastes and Other Radioactive Materials.* The Agency is deferring UST systems that contain radioactive materials from regulation.
- *Backup Diesel Tanks at Nuclear Facilities.* These USTs are deferred from regulation.
- *Airport Hydrant Fueling Systems.* These USTs are deferred from regulation.
- *Used Oil.* Tanks containing used oil, including crankcase oil, are no longer deferred. They are now subject to the final technical rule, and are also subject to the financial responsibility requirement.

For each of the following categories of tanks, the Agency received comments supporting a deferral or exemption of these requirements from the financial responsibility requirements (see also the preamble to the technical standards rule for a more thorough discussion):

- *Small Capacity Tanks.* One commenter urged "special consideration" for small capacity users. One commenter suggested that petroleum USTs containing under 5,000 gallons should be exempt. Another commenter suggested 4,000 gallons as a cutoff. As noted above, the Agency has decided on a *de minimis* exclusion for tanks with a capacity of less than 110 gallons.
- *Small Business.* One commenter requested a small business cutoff for the final rules because insurance may be offered only at unaffordable rates. Other commenters requested an exemption for small businesses not engaged in petroleum marketing. The Agency has not exempted small businesses from the final financial responsibility requirements because the costs of corrective action and third-party claims will not be different for small businesses than for other owners and operators. The specific concerns of small businesses and businesses not engaged in petroleum marketing are addressed in establishing a phased compliance schedule (Section III.B in the preamble) and a lower peroccurrence amount for certain facilities not engaged in petroleum production, refining or marketing (Section III D.1).
- *Tanks Containing Heating Oil.* Based on experience with releases in New Jersey, one commenter urged that heating oil for on-site

consumption should not be excluded from the requirements. Because heating oil tanks are excluded from regulation by statute, EPA cannot require these USTs to obtain [illegible].

• *Small Throughput Tanks.* One commenter supported exempting a system with small throughput volume. According to this commenter, this exemption is appropriate because most leaks are associated with piping. The Agency recognizes that a large number of releases are associated with piping; however, the Agency does not believe an exclusion for these tanks is appropriate. Releases may still occur from tanks with small throughput and owners or operators should obtain coverage for releases that do occur. However, the Agency has taken these concerns into account in establishing a lower pre-occurrence amount of financial assurance for tanks at certain facilities not engaged in petroleum production, refining, or marketing.

• *Tanks Owned by Small, Rural Telephone Systems.* One commenter urged EPA to consider exempting small, rural telephone systems from these requirements for the following reasons: (1) The unavailability of pollution insurance, (2) the high net worth requirement for self-insurance, and (3) the high per-occurrence and aggregate coverage levels. Although EPA recognizes owners and operators of these USTs may have difficulty obtaining financial assurances, releases from these USTs may still require corrective action and cause bodily injury and property damage to third-party claimants. For these reasons, EPA has not exempted these categories of USTs.

• *Aircraft Owners.* One commenter supported an exemption for aircraft owners, comparing these USTs to motor fuel tanks with a capacity less than 110 gallons. All tanks with a capacity of less than 110 gallons are now excluded from these requirements. Thus, many aircraft owners with USTs that contain a capacity of less than 110 gallons are excluded under the *de minimis* exclusion. In addition, EPA has deferred regulation of airport hydrant systems. The Agency is not aware of any evidence to support an additional exemption for these categories of USTs that contain more than 110 gallons.

B. Compliance Dates (§ 280.91)

Today's rule is effective on January 24, 1988. However, UST owners are required to *comply* with this regulation by the date assigned to their appropriate compliance category in the rule. The composition of the compliance categories and the compliance dates for each of these categories is summarized in Table 1. As Table 1 shows, EPA has designated UST ownership as the factor determining compliance categories. The rationale for this decision is explained below.

UST owners in Category I are required to comply on the effective date three months after the rule's promulgation. UST owners in Category I include all petroleum marketing firms that own 1,000 or more USTs and all other UST-owning entities that report a tangible net worth of $20 million or more to the SEC, Dun and Bradstreet, the Energy Information Administration, or the Rural Electrification Administration.

USTs owners in Category II are required to comply by 12 months after the rule's promulgation date. UST owners in Category II include all petroleum marketing firms owning 100 to 999 USTs.

USTs owners in Category III are required to comply by 18 months after the rule's promulgation date. UST owners in Category III include all petroleum marketing firms owning 13 to 99 USTs at more than one facility.

TABLE 1.—COMPLIANCE DATES FOR AND COMPOSITION OF COMPLIANCE CATEGORIES

Category and compliance date for this category	Composition of category	
	Petroleum marketing firms	Nonpetroleum marketing firms
I. 3 months after promulgation date of rule, on the effective date.	All petroleum marketing firms owning 1,000 or more USTs.	All UST-owning non-petroleum marketing firms that report a tangible net worth of $20 million or more to the SEC, Dun and Bradstreet, the Energy Information Administration, or the Rural Electrification Administration.
II. 12 months after promulgation date of rule	All petroleum marketing firms owning 100–999 USTs.	None.
III. 18 months after promulgation date of rule	All petroleum firms owning 13–99 USTs at more than one facility.	Do.
IV. 24 months after promulgation date of rule	All petroleum firms owning 1–12 USTs or owning only one facility with fewer than 100 USTs.	All UST-owning non-petroleum marketing firms that do not report a tangible net worth of $20 million or more to the SEC, Dun and Bradstreet, the Energy Information Administration, or the Rural Electrification Administration, including all local government entities.

UST owners in Category IV are required to comply by 24 months after the rule's promulgation date. UST owners in Category IV include all petroleum marketing firms owning 1–12 USTs or those owning only one facility with fewer than 100 USTs. (For example, a petroleum marketing firm owning 13 USTs at one facility would be classified by EPA in Category IV.) Category IV also include all UST-owning firms not engaged in petroleum marketing but having tangible net worth of less than $20 million and all local government entities.

In § 280.92 of the final rule, the Agency defines petroleum marketing firms as all firms owning facilities engaged in petroleum production, refining, or marketing. These includes all facilities at which petroleum is produced and all facilities at which petroleum is produced and all facilities from which petroleum is sold or transferred to other petroleum marketing or to the public. Petroleum production facilities include all refineries and all facilities engaged in producing petroleum products from purchased materials. Facilities from which petroleum is sold or transferred to other petroleum marketers or to the public include all wholesale petroleum marketers facilities, such as bulk terminals and bulk plants, and all retail petroleum marketing facilities, such as automobile service stations, marine service stations, truck stops, convenience stores selling gasoline, etc. The Agency considers all facilities selling petroleum products to the public to be retail petroleum marketing facilities, even if the amount of petroleum sold is minimal. Facilities that store petroleum products in underground storage tanks *only* to refuel their own vehicles (e.g., establishments owning fleets of vehicles) are not considered facilities that are engaged in petroleum marketing. Establishments that store fuel to refuel vehicles rented to the public (e.g., rental car facilities) are not considered facilities engaged in petroleum marketing as long as the fuel is not sold to the public at large.

The Agency considers firms owning both petroleum marketing facilities and other types of facilities that are not engaged in petroleum marketing to be petroleum marketing firms. The compliance date for such firms is based on the total number of USTs owned at their petroleum marketing facilities and at their other facilities.

Many commenters on EPA's proposed rules suggested that the Agency delay the effective date of the rule because pollution liability insurance for USTs and other financial assurance mechanisms would not be available to a large number of UST owners and operators by the rule's effective date. Although EPA has decided not to delay the effective date of this rule, the Agency is concerned about the unavailability of financial assurance mechanisms for a large portion of the regulated community. On March 31, 1988, EPA published a supplement to the proposed rule (53 FR 10401) in which the Agency explained that it was considering a phase-in of the financial responsibility regulations to allow different categories of owners and operators to come into compliance at different times after publication of the final rules. The principal reason for the phase-in was to provide sufficient time for owners and operators to obtain financial assurance in accordance with the rules. Additional reasons for the proposed phase-in included:

• The time necessary for providers of financial assurance mechanisms to conform them to EPA's requirements;
• The time necessary to provide assistance and outreach programs for portions of the regulated community;
• The administrative difficulties of trying to implement this regulation for such a large and diverse regulated community; and
• The unavailability of mechanisms to large portions of the regulated community.

The Agency received a large number of comments in response to this notice. Although the majority of commenters generally agreed with the phase-in strategy, many suggested an across-the-board delay and still others were concerned about the possible negative consequences of any type of delay (including a phase-in) to the implementation of the financial responsibility rules. The Agency agrees with many commenters who pointed out that the relative unavailability of financial responsibility mechanisms (primarily insurance, the financial test of self-insurance, or state funds) presents a problem for some members of the regulated community and that a phase-in may help to alleviate this problem. However, the Agency recognizes that the problem of the unavailability of mechanisms for some members of the regulated community may not be resolved before the compliance date for the requirements for those owners. The Agency retains its discretion to use the suspension of enforcement authority provided in section 9003(d)(5)(D) to address the problem of unavailability in the future. EPA expects that implementation of the rule during the phase-in period will enable the Agency to develop appropriate suspension of enforcement procedures based on this experience tailored to the numbers and types of facilities for which assurance remains unavailable.

Many commenters opposed a phase-in or any type of delay in the implementation of these rules. Their arguments included:

• Delaying implementation of financial responsibility rules will not increase the availability of insurance and may even further delay any response from the insurance marketplace.
• Delaying the implementation of financial responsibility rules removes a strong incentive to replace or upgrade substandard USTs quickly.
• Delaying implementation of the financial responsibility rules may delay the establishment of state funds.
• Delaying implementation of the financial responsibility rules will not eliminate the need for regulated entities to apply for a suspension of enforcement.

In deciding that a phase-in is the best regulatory strategy, the Agency has attempted to establish compliance dates which are as early as possible considering the type of assurance different types of facilities are likely to obtain. The use of an approach involving different compliance dates for different compliance categories is designed to achieve the maximum balance between the need to ensure financial capability for UST releases and the necessary time for owners and operators to obtain assurance mechanisms. For example, EPA believes that almost all firms in Category I will be able to comply with these requirements using the financial test of self-insurance or a guarantee. Chapter 2 of an EPA-sponsored study, entitled "Financial Responsibility for Underground Storage Tank Releases: Financial Profile of Retail Motor Fuel Marketing Firms," shows that all but one of the firms for whom data were collected that own 1,000 or more USTs (assuming that there are 4.1 USTs per outlet) have over $20 million in tangible net worth. Firms in other industry sectors with at least $20 million in tangible net worth will be able to pass the financial test of self-insurance as long as they file financial statements with the SEC, the Energy Information Administration, or the Rural Electrification Administration, or they report their tangible net worth to Dun and Bradstreet and Dun and Bradstreet assigns them a financial strength rating of 4A or 5A. The Agency sees no reason why such firms should not be required to comply with this regulation by the effective date of the requirements.

Further, almost all firms in Category II either have insurance now or can buy it from providers already in the marketplace, on the condition that they upgrade their tanks to meet insurers' criteria. These firms have 12 months from the promulgation date to apply for insurance and to upgrade their tanks. This period also gives insurance providers time to conform their pollution liability or environmental impairment policies to EPA's regulatory requirements and to raise the necessary capital or reinsurance to offer the limits of liability required in today's rules.

The Agency recognizes that the smaller petroleum marketing firms in Category III are less likely than firms in Category II to have have insurance and therefore need additional time for processing of their insurance applications and upgrading their USTs to meet insurers' requirements. These firms have 18 months from the promulgation date to comply with the regulations.

The Agency expects that regulated entities in Category IV (which includes the smallest petroleum marketing firms, general industry firms with tangible net worth under $20 million, local government entities, etc.) will have the most difficulty obtaining financial assurance. Most of these entities cannot pass the financial test of self-insurance included in today's rule, and pollution liability insurance has not generally been available to them. EPA expects that the majority of these regulated entities will have to rely on state funds for assurance. Many commenters responding to the Supplemental Notice (53 FR 10401) stressed that EPA's estimate of 18 months for state funds to form was overly optimistic. Today's rule would give those entities relying on a state fund for financial assurance 24 months from the rule's promulgation date to come into compliance.

In the absence of a phase-in, the Agency does not believe that most entities in the regulated community would have adequate time to comply with the financial responsibility regulations, because only the self-insurance mechanism can be implemented immediately by those firms able to use it. Those firms able to use insurance will probably not be able to comply by the effective date of the regulations. Even those firms that already have UST pollution liability policies probably do not have policies that conform to EPA's requirements or

that have sufficient limits of liability. These policies will have to be changed or augmented to comply with today's financial responsibility regulation.

It will be even more difficult for those firms that may be able to obtain insurance but have not yet done so to comply by the effective date of the regulations. One current insurer of USTs commented that some type of phase-in is "imperative" because the administrative capacity of UST insurers is not sufficient to accommodate all tank owners and operators who want to purchase insurance. In addition, most of the pollution liability insurance currently being offered to petroleum marketers contains preconditions with respect to the age of the USTs insured and leak detection methods. Firms with older USTs or inadequate leak detection methods will need time to comply with these insurer requirements. It would be impossible for all firms not already meeting these requirements to comply with them by the effective date of the regulations. Finally, as pointed out by many commenters, the development of state funds can take a considerable amount of time. Thus, the Agency concludes that it would be impossible for most of the regulated community to comply with today's financial responsibility requirements within 90 days of the promulgation of the regulations.

At the same time, the discretionary authority to suspend enforcement of the rules is not an adequate substitute for the phase-in because suspension does not serve the same purpose as a phase-in. The Agency believes that human health and the environment will be better protected by establishing reasonable compliance dates than by requiring large portions of the regulated community to devote their immedaite compliance efforts to petitioning for a suspension of enforcement. During the phase-in period, the resources of the regulated community can be devoted to obtaining financial assurance mechanisms, and the resources of the states, EPA, and the regulated community can be devoted to developing and encouraging the development of mechanisms such as state funds and RRGs. Inclusion of a phase-in will restrict the use of the suspension of enforcement mechanism to those situations where compliance difficulties have to do with things other than inadequate time to complete administrative activities and to meet insurers' preconditions.

The Agency also does not believe that deferral of the requirements is a useful substitute for a phase-in. A phase-in has two advantages over a deferral. First, a phase-in is more protective of human health and the environment than a deferral in that it requires those who can obtain financial responsibility mechanisms to do so. Second, when the deferral period is ended, there is likely to be a last-minute rush of activity that could overwhelm the insurance industry's administrative capacity and the capacity of those businesses providing tank replacement, upgrading, and release-detection services.

Furthermore, the Agency does not think this relatively short phase-in will delay the entry of new insurers into the marketplace. If the rule did not include a phase-in of compliance dates, any new insurer would have to (1) develop and announce a new program that would comply with EPA's requirements and (2) process and accept applications for this program within 90 days to allow the regulated community to comply by the effective date of the regulations. EPA believes it would be extremely difficult for UST owners and operators to get pollution liability insurance conforming to the requirements of this rule from new insurers within 90 days of the rule's effective date. The phase-in establishes the necessary time for new insurance programs to develop, publicize their operations, and process applications. With the phase-in, a new program would have 1 year to carry out these steps for its first customers and an additional year to process applications for other members of the regulated community. Furthermore, the regulated community still has a strong incentive to purchase insurance prior to the required compliance dates. The phase-in of compliance with the financial responsibility requirements does not relieve the regulated community of liability for corrective action and third-party liability. Thus, many in the regulated community will attempt to obtain insurance as soon as it becomes available.

Nor does the Agency believe that the phase-in will remove incentives for regulated entities to replace or upgrade substandard USTs or to initiate leak detection. If the rule had only one compliance date, it would be impossible for the existing tank replacement and leak detection industries to provide adequate professional service to the many firms that may need their services. The technical standards rule phases in leak detection and tank upgrading and replacement requirements for the same reason.

Finally, the Agency does not believe that the phase-in will delay the implementation of state funds. None of the state representatives who commented on the Supplemental Notice (53 FR 10401) were of the opinion that the phase-in would delay the implementation of state funds. They explained that states would need time to pass laws authorizing the establishment of a fund, to develop regulations specifying how the fund would be implemented, and to develop revenue sources and capitalize the fund. In fact, EPA views the phase-in as the only way to allow states adequate time to develop thoughtful, sound, and adequately-funded programs. The Agency believes it is more protective of human health and the environment to allow time for the development of well-thought-out programs than to create a situation that will result in the development of state funds that have not been properly designed.

In the example given in the Supplemental Notice (53 FR 10401), the phase-in categories were set up based on the number of tanks owned or operated as an indicator of financial strength and thus the time needed to comply with the rule. In today's rule, the phase-in categories are set up based on UST ownership for petroleum marketing firms and on net worth for non-petroleum marketing firms. One commenter requested that EPA clarify, both for the purpose of the phase-in and for the rule in general, that "individual persons controlling separately operated facilities may * * * treat themselves either as a single owner or operator or as several independent operators." Although this interpretation reflects EPA's intention with regard to most provisions of the final rule being promulgated today (see Section III.A.1. above), it is not the basis for the final rule's phase-in provision. Instead, the phase-in is based on the total number of USTs owned to make clear at what time USTs that are owned and operated by different entities are required to be in compliance with the final rule. UST ownership is a better indicator of both ability to comply with the financial test and to obtain insurance. If the Agency adopted the commenter's suggestion, many more owners or operators of USTs at more than one facility could qualify for a later compliance date. EPA has designated UST ownership, rather than UST operation, as the factor determining the compliance category so that earlier compliance dates will be required for most USTs (since UST-owning firms tend to be larger than UST-operating firms).

The majority of commenters agreed that the number of tanks is the most reasonable basis on which to predicate a compliance date phase-in. The reasons for the choice of the number-of-tanks criterion included:

- The number of tanks reflects a firm's financial strength and its ability to get insurance (and thus to comply with the rule);
- The number of tanks is a partial measure of the risk of release; and
- The number of tanks is easy to determine for compliance purposes and easy to verify for enforcement purposes.

Other phase-in criteria suggested by commenters included measures that were more reflective of risk (e.g., age, storage capacity, or location of tanks), financial strength, and type of industry. One commenter suggested that the basis for compliance should be the ability of owners or operators to self-insure or to obtain insurance from private or public sources. In essence, this is the strategy the Agency has adopted: it involves separating the regulated community into two groups, petroleum marketing firms and other regulated entities. For petroleum marketing firms, the number of tanks owned acts as a reasonable proxy for the ability of a firm to self-insure or to obtain insurance. For other regulated entities, the $20 million in tangible net worth requirement is a good proxy for firms that will be able to use the financial test because almost all firms with $20 million in tangible net worth should be able to use the financial test, irrespective of how many tanks that they own. (Entities with less than $20 million in tangible net worth may not be able to self-insure and insurance has not been available to such firms up to now.)

The Agency rejected basing the phase-in on risk-related measures because a schedule designed to require the highest risk USTs to comply first would not further the Agency's objective in phasing in compliance with the rules. The Agency's objective for phasing in compliance is to give the regulated community the time it will need to obtain assurance. For this reason, in developing the phase-in the Agency considered only those factors (e.g., financial strength) related to the ability of various segments of the regulated community to obtain assurance.

The Agency also notes that requiring high-risk USTs to comply first could have a negative impact on the availability of financial assurance mechanisms. If high-risk USTs were required to comply first (as some commenters suggested), insurers already in the market would be reluctant to insure additional USTs and new insurers would be reluctant to enter the market. Therefore, this would act as a disincentive to a gradual increase in the availability of insurance.

In the example described in the March 1988 Federal Register notice, EPA set up compliance categories and compliance dates as follows:

Compliance date	Number of tanks owned by operator
Effective date of rule	1,500 or more.
6 months after effective date	50 to 1,499.
12 months after effective date	6 to 49.
18 months after effective date	1 to 5.

For reasons already discussed, EPA decided to base the phase-in on the number of USTs owned and to develop different compliance categories for petroleum marketing firms and for non-petroleum marketing firms to reflect the time necessary for regulated entities to comply with this regulation. The Agency decided to give firms in the second category more time to comply and to change the number of tanks owned (for petroleum marketing firms) in each category so that the categories would more accurately reflect this objective. In making these changes, the Agency was aided by information provided by commenters with regard to the availability of assurance to various segments of the regulated community.

Petroleum marketing firms owning 1,000 or more USTs (as opposed to 1,500 or more USTs) are in Category I because the Agency believes that such firms can almost always use the financial test of self-insurance.[6] Petroleum marketing firms owning between 100 to 999 USTs (as opposed to 50 to 1,499 USTs) are in Category II because the Agency believes this UST ownership spread more accurately represents the UST-owning firms that have insurance now or can obtain it most easily. Petroleum marketing firms owning between 13 and 99 USTs at more than one facility (as opposed to 6 to 49 USTs) are in Category III because this range more accurately represents UST-owning firms that are eligible for insurance but may need more time to obtain it than firms in Category II. In addition, because insurance has not been available to petroleum marketing firms owning only one facility in the past, such facilities have been moved to Category IV.

Category IV was expanded to include firms owning 1 to 12 USTs or, as noted above, only one facility with fewer than 100 USTs (as opposed to 1 to 5 USTs). This expansion of the upper limit of the category from 5 to 12 USTs allows additional time for compliance for the smallest rural jobbers. These firms may have older USTs and greater difficulty obtaining insurance than other petroleum marketers. All non-petroleum marketing firms which cannot self-insure, including local government entities, have also been included in Category IV because pollution liability insurance has not been available to these entities in the past.

[6] Information supporting EPA's assumptions with regard to the types of financial assurance mechanisms available to petroleum marketing firms owning different numbers of USTs can be found in the Regulatory Impact Analysis for the rule that is available in the docket.

C. Definition of Terms (§ 280.92)

In the preamble to the proposed rule, the Agency discussed definitions for several terms used in the rule. With the exception of "occurrence," the Agency is adopting the definitions as proposed. This discussion addresses only those terms for which the Agency received comment.

1. Accidental Release and Occurrence

In the April 17, 1987, proposal, the Agency defined "accidental release" as

"Any sudden or nonsudden release of petroleum arising from operating an underground storage tank that results in a need for corrective action, bodily injury or property damage neither expected nor intended by the tank owner or operator (§ 280.91).

This definition incorporates both sudden and nonsudden releases, as required by RCRA Section 9003(c)(6). In addition, the Agency proposed to define "occurrence" as "an accident, including continuous or repeated exposure to conditions, which results in a release from an underground storage tank."

Two commenters asserted that the proposed definitions of occurrence and accidental release do not reflect standard insurance definitions. The commenters noted that the comprehensive general liability (CGL) form issued by the Insurance Service Office (ISO) defines "occurrence" as "an accident, including continuous or repeated exposure to substantially the same generally harmful conditions." They also noted that the ISO's pollution liability coverage form does not define "occurrence" or "release." Instead, the policy uses the term "pollution incident." These commenters urged EPA to remove the definitions of "occurrence" and "accidental release" from the rule and the certificate and endorsement forms, and to replace them with the term "pollution incident." Another commenter argued that the definition of "occurrence" should be changed to reflect the ISO's newest CGL form.

Commenters warned that if the definitions in the regulation remain at variance with those in use in the ISO's

pollution liability coverage form, courts will have to review more than one definition of key policy terms during litigation. Insurers indicated that EPA's use of non-standard definitions in today's rule would reduce the range of predictability in UST coverage and expose insurers to an uncertain amount of liability. Such conditions, they argued, would seriously impair the insurance industry's willingness to provide liability insurance required by today's rule.

In specifying the language in the certificate of insurance and endorsement, the Agency does not intend to modify contractural obligations regarding the extent of coverage under insurance policies used to satisfy the liability coverage requirement. In response to the problems cited by commenters, the Agency has retained the definition of "occurrence" but added clarifying language to the rule. The rule now allows insurance policies containing alternate definitions of "occurrence" or standard terms other than "occurrence," such as "pollution incident," to be used to satisfy the UST liability coverage requirements. This definition of occurrence is included in today's rule to assist in the understanding of the financial assurance requirements, i.e., to clarify the scope of coverage required under the rule. It is not intended to limit the meaning of "occurrence" in a way that conflicts with general insurance industry usage.

The Agency prefers not to require that policies incorporate a specific definition of "occurrence" because of the wide range of definitions currently in use and because insurance practices may change over time. However, the Agency has the authority under RCRA section 9003(d)(1) to specify acceptable and unacceptable liability insurance policy terms and the Agency may need to specify such terms in the future. In addition, policies employing unsatisfactory definitions of "occurrence" or unsatisfactory terms other than "occurrence" may not provide liability protection in accordance with today's rule.

In addition, the Agency has made a minor change to the definition of "accidental release" simply to capture the meaning more precisely. The modified definition, with the modification in italics, is as follows:

"Any sudden or nonsudden release of petroleum arising from operating an underground storage tank that results in a need for corrective action *and/or compensation for* bodily injury or property damage neither expected nor intended by the tank owner or operator (§ 280.93(a)).

The Agency received two comments arguing that the definitions of "occurrence" and "accidental releases" should include releases that are caused intentionally (e.g., sabotage, vandalism). EPA believes that an explicit inclusion is unnecessary. Since "accidental release" is defined as a release resulting in "a need for corrective action and/or compensation for bodily injury or property damage, neither expected nor intended by the tank owner of operator," the relevant determinants of coverage are the intentions and expectations of the insured. Thus, damage resulting from sabotage or vandalism is accidental if the insured party had no intention or expectation of such damage.

Finally, a commenter also suggested that vague terms like "intended" or "expected" in the definition of accidental release be defined in the rule. However, as discussed above, EPA intends to allow insurers flexibility in writing policy language by not defining every policy term explicitly. The Agency recognizes that such terms are open to interpretation, but also realizes that because they are common in insurance industry usage, defining them in the rule is not necessary and may limit availability. Therefore, the Agency believes that it is appropriate to leave interpretation of such terms to private insurance law.

2. Bodily Injury

In the proposal and in the final rule, the Agency defines "bodily injury" as having the meaning given to it by applicable state law. In addition, the definition excludes those liabilities that, consistent with standard industry practice, are excluded from coverage in liability insurance policies for "bodily injury."

The Agency received several comments in favor of the proposed definition and some comments opposed. Commenters opposed to the definition maintained that it would create inconsistent definitions, and thus varying scopes of coverage, from state to state. One commenter proposed that EPA define "bodily injury" as "any damage to a third party which the tank owner or operator is legally liable for causing due to negligence."

The Agency is reluctant to adopt a standard definition for a number of reasons. First, the Agency fears that any attempt to redefine "bodily injury" will result in a more tightly limited insurance market. Comments received from the insurance industry strongly urged EPA to retain the approach in the proposed rule, and predicted that insurers might exit the market if the term is given a standard definition.

Second, EPA recognizes that third parties will generally bring liability claims pursuant to state law. Because the definition of "bodily injury" and the treatment of bodily injury claims differ from state to state, the Agency believes that mandating a nationwide definition would promote confusion in state courts, which would be required to review two definitions of "bodily injury" (i.e., a definition pursuant to state law and a standard definition) during litigation.

Third, the Agency prefers the definitions of terms used in the liability insurance requirements to be consistent with their common meanings within the insurance industry. Since the definition of "bodily injury" often varies from state to state, mandating a standard definition would establish definitions of terms inconsistent with their common meanings.

Consequently, EPA has retained the proposed definition of "bodily injury" in today's final rule.

3. Director of the Implementing Agency

This term refers to the person responsible for implementing the UST program under Subtitle I of RCRA. For USTs in authorized states, this person is the Director of the state agency; for USTs in states without approved programs, this person is the EPA Regional Administrator.

In today's rule, this term replaces the term "Regional Administrator," a term used in the proposed rule, wherever appropriate.

4. Petroleum Marketing Facilities

This definition was not in the proposed rule. It has been added to the final rule to assist in understanding the phased schedule for compliance and to define per-occurrence levels of assurance for USTs. The definition closely follows the statutory language of RCRA section 9003(d)(5) (A) and (B). "Petroleum marketing facilities" are all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.

5. Petroleum Marketing Firms

These are all firms owning petroleum marketing facilities. Firms owning other types of facilities with USTs, as well as petroleum marketing facilities, are considered to be petroleum marketing firms. This definition also was not in the proposed rule. It has been added to the final rule to assist in understanding the phased schedule for compliance.

6. Property Damage

In the proposed rule and in the final rule, the Agency defines property damage as having the meaning given it by applicable state laws. In addition, the term excludes those liabilities which, consistent with standard industry practice, are excluded from coverage in liability insurance policies.

One commenter agreed with the Agency's approach, while other commenters suggested that the definition be modified to cover an intentional act (e.g., sabotage). Including intentional acts in the definition, the commenters argued, would ensure that owners or operators will be financially responsible for all leaks and spills, not just those that are accidental or unintentional.

As noted above, the relevant intentions and expectations of damage or injury are those of the insured. Thus, damage resulting from sabotage would be considered accidental if the insured party did not intend or expect such damage.

Consequently, EPA has decided that including intentional acts in the definition of "property damage" is unnecessary.

7. Additional Definitions

One commenter suggested that EPA use the broad term "financial assurance" to designate all acceptable methods of satisfying the financial responsibility requirements, and proposed a definition of the term.

EPA uses the term "financial assurance" to designate all acceptable methods of satisfying the financial responsibility requirements, but is not defining the term in today's rule. Because the rule clearly delineates all financial assurance mechanisms by which owners or operators may satisfy these requirements, the Agency believes that defining the term is unnecessary.

D. Amount and Scope of Required Financial Responsibility (§ 280.93)

The rule promulgated today requires that owners or operators of petroleum USTs that are located at facilities engaged in petroleum production, refining, or marketing or that handle more than 10,000 gallons of petroleum per month demonstrate evidence of financial responsibility in the minimum amount of $1 million per occurrence to cover corrective action and third-party compensation costs for accidental releases from their tanks. The minimum per-occurrence amount of assurance required for owners or operators of USTs that are not located at facilities engaged in petroleum production, refining, or marketing and that handle 10,000 gallons or less of petroleum per month is $500,000. In addition, the Agency is establishing requirements for annual aggregate levels of assurance, based on the number of USTs to be assured. Today's rule also includes a paragraph (§ 280.90(e)) that explicitly states that if the owner and the operator of a tank are separate persons, only one person must demonstrate financial responsibility. The Agency's reason for adding this paragraph is discussed in Section III.A.1, Owners and Operators.

The rationale for determining the amount and scope of required assurance is discussed below, as it pertains to the following topics:

(1) Per-Occurrence Amounts.
(2) Aggregate Amounts.
(3) Apportionment of Costs and Level of Assurance under Separate Mechanisms.

1. Per-Occurrence Amount

Section 280.93(a) of today's rule establishes $1 million per occurrence as the minimum amount of required financial assurance for owners or operators of petroleum USTs located at facilities engaged in petroleum production, refining, or marketing and for owners or operators of petroleum USTs that handle more than 10,000 gallons of petroleum per month. The minimum amount of required assurance for USTs that handle 10,000 or less gallons of petroleum per month and are located at facilities that are not engaged in petroleum production, refining, or marketing is $500,000. The proposed rule required that *all* owners or operators of petroleum-containing USTs provide assurance in the minimum amount of $1 million.

EPA received numerous comments on the subject of the required per-occurrence amount of assurance. Arguments for lowering this amount of assurance included:

- The costs of almost all UST releases are far lower than $1 million;
- Small businesses cannot afford to obtain $1 million in per-occurrence coverage;
- The money required to pay insurance premiums would be better spent on upgrading tanks;
- Insurance coverage for $1 million per-occurrence is not available; and
- A lower per-occurrence limit would encourage insurers and reinsurers to offer UST pollution liability coverage.

Several commenters pointed out that EPA had required the same per-occurrence limit of $1 million for all USTs even though Subtitle I clearly allows the Agency to set limits lower than $1 million for USTs at facilities not engaged in petroleum production, refining, or marketing and that are not used to handle large amounts of petroleum. The reasons given in support of a lower per-occurrence limit for USTs at these facilities included many of the same arguments presented above and additional reasons specific to facilities not engaged in petroleum production, refining, or marketing. Some of these additional reasons included:

- Low-volume facilities are less likely to have catastrophic-failure-induced large releases;
- Low-throughput facilities will have smaller releases from their underground pipes; and
- Low-throughout facilities can be monitored more accurately.

Finally, several commenters argued that $1 million in per-occurrence coverage might be too low. They explained that past claims data underestimate future claims and that both corrective action and third-party liability awards will be more costly in the future than they have been in the past because of corrective action regulations that impose minimum cleanup standards.

As explained in the proposal, the minimum $1 million per-occurrence level required for owners or operators of USTs at facilities engaged in petroleum production, refining, or marketing was based on the provisions of section 9003(d)(5) (A) and (B) of Subtitle I of RCRA. These sections state:

(5)(A) The Administrator, in promulgating financial responsibility regulations under this section, may establish an amount of coverage for particular classes or categories of underground storage tanks containing petroleum which shall satisfy such regulations and which shall not be less than $1,000,000 for each occurrence with an appropriate aggregate requirement.

(B) The Administrator may set amounts lower than the amounts required by subparagraph (A) of this paragraph for underground storage tanks containing petroleum which are at facilities not engaged in petroleum production, refining, or marketing and which are not used to handle substantial quantities of petroleum.

The Agency's interpretation of these provisions is confirmed by the discussion of this amendment to Subtitle I, section 205 of SARA, in the Conference Report accompanying SARA. The Report states that "The Administrator cannot set a minimum financial responsibility requirement of less than $1 million for tanks which are engaged in petroleum production, refining or marketing * * *." (House Report 99-962, 99th Congress, 2nd Session, p. 264.)

Therefore, absent further instruction from Congress, EPA's per-occurrence

requirement for USTs at facilities engaged in petroleum production, refining, and marketing must be at least [illegible].

The Agency shares the concern expressed by commenters that releases may be more expensive in the future, and performed an analysis of this issue. The model developed to aid in this analysis estimates both the costs and frequency of UST-related corrective actions. It takes into account both the more stringent cleanup standards that will prevail under the technical standards being imposed by EPA and the fact that releases will be detected sooner, when they are smaller, once the regulations have been promulgated. This analysis showed that the average costs of UST-related corrective actions will be lower rather than higher in the future (see Appendix A of the Regulatory Impact Analysis for the Financial Responsibility Requirements for Underground Storage Tanks Containing Petroleum and Chapter 7 of the Regulatory Impact Analysis of the Technical Standards for Underground Storage Tanks). Because the number of UST-related releases and the extent of the damage associated with these releases will not increase in the future, the Agency is confident that corrective action and third-party liability costs will also not increase in the years after promulgation of these requirements.

In the final rule, EPA allows owners or operators of petroleum underground storage tanks that are not located at facilities engaged in petroleum production, refining, or marketing and that handle an average of 10,000 gallons or less of petroleum per month (based on annual throughput for the previous calendar year) to provide a minimum of $500,000 in per-occurrence assurance.

As indicated above, section 9003(d)(5)(B) authorizes the Administrator of EPA to set per-occurrence amounts lower than $1 million for petroleum USTs located at facilities that are not engaged in petroleum production, refining, or marketing and that are not used to handle substantial quantities of petroleum.

Section 9003(d)(5)(C) of Subtitle I lists the factors that the Administrator may consider in setting an amount of assurance lower than $1 million for certain classes and categories of USTs:

- The size, type, location, storage, and handling capacity of underground storage tanks in the class or category and the volume of petroleum handled by such tanks;
- The likelihood of release and the potential extent of damage from any release from underground storage tanks in the class or category;
- The economic impact of the limits on the owners and operators of each such class or category, particularly relating to the small business segment of the petroleum marketing industry;
- The availability of methods of financial responsibility in amounts greater than the amount established by this paragraph; and
- Such other factors as the Administrator deems pertinent.

When the Agency considered these factors for the proposed rule, it concluded that a $1 million per-occurrence level of assurance for all USTs was appropriate and would achieve EPA's goal, which was to set a per-occurrence level high enough to cover the costs of 99 percent of UST release occurrences.

The Agency still believes that this goal is appropriate. Material submitted to the docket in response to the proposed rule has enabled the Agency to perform a more refined analysis of the frequency of per-occurrence claims at various levels. From this analysis, the Agency concludes that a $500,000 level of assurance is adequate to assure the costs of approximately 99 percent of per-occurrence claims for USTs with throughputs no greater than the throughputs characteristic of USTs at retail motor fuel marketing facilities. (This analysis is provided in Appendix B to the Regulatory Impact Analysis.) Thus, the Agency has revised the final rule to provide a lower per-occurrence level for such facilities, and has limited facilities qualifying for this lower per-occurrence amount to those with UST throughputs no greater than retail motor fuel marketing facilities (i.e., 10,000 gallons per month).

In responding to comments on the proposal and revising the rule, the Agency considered each of the criteria in section 9003(d)(5)(C), both when evaluating a per-occurrence limit of $500,000 and when identifying the class of USTs that would be allowed to use this lower per-occurrence limit. The Agency decided to use monthly throughput as the measure that best distinguishes USTs used in petroleum producing, refining, and marketing, for which Congress mandated a minimum per-occurrence limit of $1,000,000, from USTs used in other industries that might appropriately be assigned a lower per-occurrence limit. As discussed in the preamble to the proposed rule, factors such as age of tank, material of construction, and the presence of a secondary containment are not critical in determining a per-occurrence limit:

Although such factors do affect a tank's propensity to leak, there is no evidence to suggest that any of these factors affects the costs related to a release. The setting of an appropriate per-occurrence level depends on the costs of individual releases rather than on the probability that a release will occur, and there is therefore no reason why the factors mentioned above should have a bearing on the per-occurrence level of coverage required. For example, a release from a 1-year-old tank can be just as expensive to address as a release from a 20-year-old tank.

The Agency based its decision to allow a lower per-occurrence limit for facilities that are not engaged in petroleum production, refining, or marketing and that have a monthly throughput of 10,000 gallons or less primarily on the extent of the potential damage associated with releases from these tanks. The Agency also carefully analyzed the extensive UST claims record submitted by the largest insurer of service station USTs and found that this record provided statistically significant evidence that releases costing more than $500,000 occur less than 1 percent of the time. The Agency has concluded that coverage of $500,000 will assure that the per-occurrence limit is exceeded less than 1 percent of the time. These same data show that a per-occurrence limit set below the $500,000 level would be exceeded more than 1 percent of the time.

For this reason, the final rule rejects those suggestions of commenters that low-throughput USTs be exempted or that the per-occurrence limit for such USTs be set below $500,000.

The choice of 10,000 gallons per month as the definition of "substantial quantities of petroleum" is also consistent with Congressional intent as expressed in the Conference Report accompanying SARA. It states that the Administrator cannot:

> set a minimum financial responsibility requirement of less than $1 million * * * for tanks that dispense very large volumes, for instance tanks at airports. (p. 264)

The 10,000-gallon-per-month throughput limit for USTs qualifying for the $500,000 minimum per-occurrence amount is far lower than the volume of fuel dispensed monthly at typical airports.

EPA has not considered economic impact to be a primary factor in determining the appropriate per-occurrence limits. The Agency's regulatory impact analysis found that the cost of insurance premiums would have relatively minor impacts on most smaller firms that are not engaged in retail motor fuel marketing. Further, the threat to human health and the environment posed by releases from USTs is the same, in terms of severity, whether the leaking tank is owned by a small firm or a large firm.

The Agency agrees with those commenters who suggested that facilities outside the retail motor fuel marketing industry may have difficulty obtaining financial assurance mechanisms. The Agency has found that no insurer offering policies to facilities not engaged in petroleum production, refining, or marketing meets these coverage requirements. Lowering the per-occurrence limit may serve to increase the availability of financial assurance mechanisms. A lower per-occurrence limit will make it easier for insurers with limited reserves to offer these policies, will ease the capitalization of RRGs, and will allow states to set up state funds with less commitment of funds.

2. Aggregate Amounts

Section 9003(d)(5)(A) of Subtitle I grants the Administrator discretion to set "an appropriate aggregate requirement" for financial responsibility for petroleum USTs. In § 280.92(b) of the proposed rule issued on April 17, 1987, owners or operators of petroleum USTs were required to demonstrate evidence of financial responsibility in annual aggregate amounts that varied from $1 million to $6 million, depending on the number of USTs assured (see Table 2) by the mechanism or combination of mechanisms. (For the purposes of determining required aggregate levels of coverage only, any reference to tanks means only individual containment units and does not include combinations of these units. See § 280.93(c).)

TABLE 2.—PROPOSED AGGREGATE SCHEDULE

Number of tanks	Annual aggregate amount
1–12 tanks	$1,000,000
13–60 tanks	2,000,000
61–140 tanks	3,000,000
141–250 tanks	4,000,000
251–340 tanks	5,000,000
341 or more tanks	6,000,000

The Agency considered this appropriate because the aggregates were set at a sufficiently high level that corrective action and third-party liability costs incurred in any one year from releases from petroleum USTs would not be exceeded more than one percent of the time. The aggregate amounts were derived from an analysis of the probability and magnitude of corrective action and third-party liability costs during the first five years after the technical standards were promulgated. EPA's analysis used an annual probability of 11.8 percent that a tank would experience a release during these years.

The Agency received numerous comments on the proposed aggregate schedule, many of which called for lower aggregate levels. Commenters justified their requests for lower aggregates on the grounds that insurers reported no release costs exceeding $2 million and that the Agency had based its proposed aggregate schedule on an unrealistically high (11.8 percent) release probability rate. They also pointed out that aggregate insurance coverage over $2 million was unavailable, higher aggregate levels would cause correspondingly higher insurance premium costs, and the money needed for higher premium costs would be better spent on upgrading tanks. The two largest insurers of USTs noted that an aggregate of $2,000,000 had never been exceeded on any of their policies.

The Agency continues to find that the aggregate is most appropriately set on the basis of the number of USTs covered by a financial mechanism, and that an aggregate should generally provide adequate funding 99 percent of the time. However, the Agency agrees with those commenters who argued that EPA's initial estimates, both of the costs and probabilities of releases, were too high, especially for those firms that will actually be able to obtain insurance. In addition, the Agency recognizes that both the availability of financial mechanisms and economic impacts should be considered in determining classes and categories with respect to aggregate limits, as authorized under section 9003(d)(5)(C). As a result of these considerations, the Agency has revised its aggregate schedule so that the maximum aggregate is $2,000,000 (the maximum aggregate currently available), and mechanisms covering 100 USTs or less may use an aggregate of $1,000,000. Table 3 presents the aggregate schedule included in the final rule.

TABLE 3.—Aggregate Schedule

Number of tanks	Annual aggregate amount
1–100 tanks	$1,000,000
101 or more tanks	2,000,000

This revised aggregate schedule assures that most firms will not exceed the aggregate more than 1 percent of the time, given the Agency's revised estimates of the risk of UST releases. (See Appendix B of the Regulatory Impact Analysis for the Financial Responsibility Requirements for Underground Storage Tanks Containing Petroleum.) The revised aggregate schedule also has a number of important advantages over the proposed schedule. First, insurance programs do not currently provide coverage for aggregates higher than $2 million. Thus, under the revised schedule, which caps aggregates at $2 million, firms will be able to use existing insurance programs. Also, the lowered aggregates should encourage greater availability of mechanisms other than insurance and thus enable more owners or operators to utilize alternate mechanisms. For example, by reducing the amount of capitalization required, the revised schedule will make it easier to capitalize RRGs and state funds that form to provide UST pollution liability insurance. In addition, firms that already have pollution liability insurance for their USTs at the $1 million and $2 million aggregate levels will not be required to find methods of meeting the balance of their financial responsibility obligations. Given that these aggregate levels ensure that most UST owners and operators will not exceed the aggregate more than 1 percent of the time, EPA believes that the cost of requiring such additional assurance would be unnecessary.

Under the revised aggregate schedule, there are two categories of firms that may exceed the aggregate more than 1 percent of the time. The first category includes firms with more than 500 USTs. (These firms also could have exceeded the aggregate more than 1 percent of the time under the proposed aggregate schedule.) The Agency has not extended the aggregate schedule for firms owning more than 500 USTs because these firms are large and usually have more than $1 billion in net worth. Such firms can easily meet their financial obligations for UST corrective action and third-party liability, even if these obligations exceed $2 million. Futher, these firms tend to have good leak prevention programs and consequently have lower risks of UST releases than most similar firms.

The second category of firms that may have more than a 1 percent chance of exceeding the aggregate are firms with between 40 and 100 USTs that do not have sufficient leak detection programs. However, most firms with between 40 and 100 USTs are currently insured and meet insurers' leak detection requirements. Because the small number of firms with between 40 and 100 USTs that do not have sufficient leak detection programs will have to meet EPA's UST leak detection technical standards within 5 years, the Agency

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has decided not to set a higher aggregate for these firms on the basis of their temporarily higher risks.

The Agency received a number of comments suggesting that a lower aggregate level for owners or operators of upgraded tanks could provide an incentive for other owners or operators to upgrade their systems—in essence a "credit system." EPA agrees with these suggestions, but because the Agency has lowered the maximum aggregate level of required assurance from $6 million to $2 million and has raised the number of tanks qualifying for the $1 million aggregate from 12 to 100, much of the incentive to upgrade tanks and qualify for a lower level of required assurance has effectively been eliminated. Given that few owners or operators would be able to upgrade tanks to a level that would qualify for a lower amount of assurance, EPA believes that the complexity of developing, implementing, and administering such a program far outweighs its potential benefits. Therefore, the Agency still believes that it is appropriate to continue to use the number of tanks owned or operated, rather than tank characteristics, as the basis for determining aggregate levels.

During the comment period, a number of questions were raised regarding the effective date for increases in an aggregate level when an owner or operator acquires or installs additional tanks. The Agency agrees that it could prove awkward to change an aggregate level in midyear and took that factor into consideration in determining when financial assurance levels should be updated. Financial assurance mechanisms such as insurance policies and letters of credit are generally written for one year, and the final rule is consistent with this practice. Thus, an owner or operator who is using a single mechanism to assure his tanks and who has increased the number of tanks for which he is providing financial assurance is required to update the level of assurance (i.e., the aggregate level) on the anniversary date of the financial assurance mechanism. If this same owner or operator is using a combination of mechanisms to provide financial assurance for his tanks, the level of assurance must be updated by the first-occurring anniversary of any of the mechanisms being used (excluding a financial test or guarantee) (see § 280.93(f)).

The question of tank numbers also arose in the context of determining the appropriate aggregate amount when a firm is acting as a self-insurer, guarantor, and/or indemnitor (however, indemnities are not an allowable mechanism under the final rule, as discussed in Section III.G of the preamble). By aggregate amount, EPA means the total of all costs potentially incurred within a given year for all releases from petroleum USTs for which evidence of financial responsibility is being demonstrated by a single mechanism or a combination of mechanisms. If an owner or operator uses different financial assurance mechanisms to cover different USTs, the appropriate aggregate amount is based on the number of tanks covered by each separate mechanism or combination of mechanisms. One commenter recommended that, for the purpose of determining whether a firm passes the financial test, the aggregate level of coverage be "based on the total number of tanks for which a firm is responsible by self-insurance, indemnity, or guaranty." Because this was EPA's intention at the time of the proposal, the Agency recognizes that the explanation in the preamble to the proposed rule confused some commenters. By stating that the aggregate amount is based on the number of tanks for which a single mechanism or combination of mechanisms is being used to demonstrate evidence of financial responsibility the Agency means:

1. If an owner or operator self-insures his own tanks and guarantees tanks belonging to a different owner or operator, the owner must pass the *financial test* based on the total number of tanks self-insured and guaranteed. Two different examples follow:

- If an owner is self-insuring 60 tanks and guaranteeing 60 tanks, the amount of annual aggregate assurance to be demonstrated to use the financial test to self-insure and guarantee these tanks is $2 million. The guarantee must be issued for an aggregate amount of $1 million.
- If a guarantor guarantees 60 tanks for each of three different owners, the amount of annual aggregate assurance to be demonstrated to use the financial test to guarantee these 180 tanks is $2 million. Each of the three guarantees, however, must be issued for an aggregate amount of $1 million.

2. If an owner or operator uses a *combination of mechanisms* (e.g., insurance and surety bond) to demonstrate evidence of financial responsibility, the aggregate amounts provided by these mechanisms added together must equal the required aggregate amount for the number of tanks for which these mechanisms are demonstrating financial responsibility. For example, if an owner with 200 tanks has insurance with a $1 million aggregate, aggregates of additional mechanisms for these tanks must equal at least $1 million, for a total of $2 million in aggregate coverage.

3. If an owner or operator uses one financial mechanism to demonstrate evidence of financial responsibility for one set of tanks and another mechanism to demonstrate evidence of financial responsibility for a different set of tanks, each mechanism must have an aggregate amount appropriate to the separate set of tanks assured. For example, an owner has a total of 300 tanks: 140 tanks in one state and 160 tanks in another state. The 140 tanks are assured at the $2 million aggregate level by a mandatory participation state fund that only assures tanks in that state. The owner must provide additional financial assurance at the $2 million aggregate level for the other 160 tanks located elsewhere.

3. Apportionment of Costs and Levels of Coverage Under Separate Mechanisms

Several commenters questioned the provision that separate mechanisms (or combinations of mechanisms) obtained for corrective action and third-party liability must each be at the full amount of required assurance. The commenters believed that this provision would be prohibitively expensive. The Agency has retained this provision in the final rule despite the added costs of providing coverage under this approach. As explained in the preamble to the proposed rule, the Agency decided not to apportion costs between third-party liability and corrective action because apportionment limits the amount of funds that are available for either type of cost. Thus, mechanisms covering these costs separately cannot be set at amounts less than the full amount of required assurance.

Owners or operators may use a combination of mechanisms to obtain a total of $1 million per occurrence and appropriate aggregates, as long as both corrective action and third-party compensation are fully covered. For example, an owner or operator may obtain insurance coverage for the first $100,000 of corrective action and third-party liability costs and use an approved state fund to cover corrective action and third-party liability costs in excess of $100,000 up to $1,000,000. In another example, an owner or operator could obtain insurance coverage for the first $100,000 of corrective action and $300,000 of liability costs and use an approved state fund to assure corrective action costs above $100,000 and third-party liability costs above $300,000, up to $1 million.

E. Allowable Mechanisms and Combinations (§ 280.94)

1. *Mechanisms Allowed.* The proposed rule allowed a variety of mechanisms to be used to demonstrate financial responsibility, including: a financial test of self-insurance, guarantee contract, indemnity contract, insurance, RRG coverage, surety bond letter of credit, state-required mechanisms, or a state fund or other state assumption of responsibility. In general, commenters supported the range of allowable mechanisms proposed by the Agency. As discussed below, the final rule authorizes the use of each of the proposed mechanisms, with the exception of the indemnity contract, and an additional mechanism, a fully-funded trust fund.

The preamble to the proposed rule stated that three mechanisms were considered but not included in the set of allowable mechanisms: trust funds, security agreements, and lines of credit. One commenter explicitly supported the Agency's rationale for excluding trust funds and security agreements. The Agency rejected security agreements because of three concerns with respect to the adequacy of the assurance such agreements would provide: (1) The liquidity of the collateral subject to the agreement; (2) the procedural requirements to establish and maintain a security agreement; and (3) the ability of the implementing agency to seize and sell the collateral.

One commenter urged the agency to allow lines of credit, stating that lines of credit could be used for UST purposes as well as for other business purposes. The Agency believes, however, that its basis for rejecting lines of credit (i.e., that they are conditional on the current financial standing of the borrower and therefore do not represent a substitution of the issuer's credit for the borrower's) continues to be valid and, thus, that lines of credit should not be an allowable mechanism.

Another commenter advocated the inclusion of trust funds in the set of allowable mechanisms, claiming that large firms may want to use a trust fund to cover multiple tanks if other mechanisms are not available. The commenter recommended allowing either a fully funded trust fund or partial funding combined with additional coverage from another instrument.

The Agency has decided to include the trust fund as an allowable financial assurance mechanism. (See also Section III.M of this preamble.) For reasons cited in the preamble to the proposed rule, a trust fund with a build-up period does not provide adequate financial assurance for corrective action and third-party liability which could be incurred at any time in the future. However, the Agency will allow a trust fund that is immediately funded at the full amount of coverage, or partially funded and combined with another mechanism to provide full coverage. Although such a trust fund will be costly compared to other mechanisms, the Agency decided to allow it as another option to the coverage requirements.

The Agency has also removed indemnities from allowable mechanisms. In order to cover third-party liability, indemnities so closely duplicate the structure and operation of a guarantee contract that there was little to be gained by including it, and including it as a separate mechanism might create unnecessary confusion. Indemnities would generally be provided by the same firms that provide guarantees and thus their inclusion in the rule would not increase the number of potential providers of assurance.

2. *Combinations of Mechanisms.* Under the proposed rule, any combination of allowable financial assurance mechanisms could be used to demonstrate financial responsibility for corrective action and third-party compensation. Commenters in general supported this approach.

In the preamble to the proposed rule, the Agency discussed a "double-counting" problem that may arise when a financial test is combined with a guarantee provided by a corporate parent. In many cases, the reported net worth of a corporate parent includes the net worth of its subsidiaries. If a subsidiary uses the financial test (based on its own net worth) in combination with a parent guarantee (based on the parent's net worth), the subsidiary's assets available to cover UST obligations will be double counted. This double-counting will exaggerate the reserves available to the subsidiary and the parent to cover UST obligations and thus may provide inadequate financial assurance. To avoid this problem, the Agency suggested that, in cases where a financial test is combined with a guarantee, the financial information supporting the two instruments cannot be drawn from consolidated statements.

One commenter objected to the Agency proposal on two counts. First, the commenter pointed out that the Agency did not include the prohibition against consolidated financial statements in cases of a combined financial test and guarantee in the proposed rule itself, but only in the preamble. Second, the commenter stated that preparing unconsolidated financial statements would be costly for many firms and would effectively require firms to reveal generally confidential, unconsolidated data. The commenter recommended that some other means be found to address the double-counting problem of a combined financial test and guarantee.

Despite this last objection, the Agency has decided to incorporate in the final rule (§ 280.94(c)) the restriction on the use of consolidated financial statements in support of a financial test and guarantee combination. While the Agency acknowledges that this provision may impose costs on those financial test users that do not routinely prepare statements that are not consolidated with those of their guarantors, commenters have not suggested an alternative and the Agency sees no other simple way to ensure that a combined financial test and guarantee offers the full amount of net worth coverage that the Agency is requiring. If the costs of preparing unconsolidated statements and of revealing confidential business information outweigh the benefits of using a combined financial test and guarantee, then owners or operators have other financial assurance mechanisms available.

EPA does agree, however, that the restriction on the use of consolidated financial statements should be formalized in the rule itself and has accordingly added this provision at § 280.94(c).

3. *Attorney General Certification (§ 280.94(b))*— The proposed rule required that a guarantee, indemnity contract, or surety bond have a certification by the Attorney General of any state where the tanks being assured are located that the mechanism is valid and enforceable in that state. This provision was designed to ensure that the mechanisms satisfy necessary contractual formalities or requirements of a state's laws.

Several commenters objected to the requirement for an Attorney General's certification. They maintained that state Attorneys General will find the "valid and enforceable" standard unacceptable and that they do not possess the statutory authority to issue such a certification. Another commenter claimed that the certification is unnecessary because the "ultra vires" defense is essentially untenable and the right of third parties to enforce such instruments is a commonly accepted legal principle.

The Agency disagrees with the commenters' concern over the certification issue. First, state Attorneys General have indicated their willingness to provide "valid and enforceable" certifications required for the RCRA Subtitle C corporate guarantee for liability coverage (40 CFR 264.147(g) and 265.147(g)). Of a group of state Attorneys General surveyed regarding the Subtitle C corporate guarantee for liability coverage, no responding Attorney General refused to issue a certification for this corporate guarantee based on a lack of statutory authority. However, several Attorneys General indicated

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that such a request could only be made through a state agency.

Second, the surety bond and guarantee authorized in today's rule may be subject to the insurance laws and regulations of certain states. Although the "ultra vires" defense is generally no longer considered tenable, the Attorney General certification requirement ensures that any contractual formalities unique to a particular state have been addressed in the contractual agreement and that questions concerning the validity of the agreement will not delay the provision of funding for corrective action. The Agency recognizes that some states may require minor changes to the wording of the instruments to ensure that they are valid and enforceable under the laws of the state. The final rule requires submission of a letter by the Attorney General of a state verifying the validity and enforceability of the guarantee and surety bond before these mechanisms may be used to demonstrate financial responsibility.

4. *New Mechanisms.* Many commenters advocated adding a mechanism under which the Federal government provides some form of financial assurance. The suggested forms for this mechanism ranged from a Federal fund to some form of Federal insurance pool.

Several commenters advocated a Federal insurance program to offer liability insurance at a reasonable price. One commenter supported a program similar to the Federally-run Flood Insurance Program under which premiums are paid by member corporations. However, another commenter said this approach would not work, because insured parties would not want to subsidize other parties with USTs installed over vulnerable ground-water areas.

Several other commenters advocated various forms of Federal funds. One suggested approach was to establish a loan fund from which owners or operators could borrow at no interest and repay over a 25-year period. Another suggestion was to establish a fund to cover events that cost between some established amount that reflects average remedy costs and one million dollars. Under this approach, the fund would only be available to owners and operators who demonstrate responsible monitoring and leak prevention practices.

In the SARA amendments to Subtitle I, Congress has established a $500 million Leaking Underground Storage Tank (LUST) Trust Fund for addressing releases from petroleum USTs. However, after the effective date of the technical standards, use of the Trust Fund is authorized by RCRA section 9003(h) only in the following limited circumstances: (1) A responsible owner or operator capable of taking prompt and appropriate corrective action cannot be identified; (2) prompt action is required to protect human health and the environment; (3) the cost of the corrective action exceeds the financial responsibility requirements established under this rule and expenditure of additional funds is necessary; and (4) the owner or operator has failed or refused to comply with a corrective action order. (Uses of the Fund are discussed in more detail in Section IV.B.) The Fund may not be used for the purposes suggested by the commenters. Nor is EPA authorized under Subtitle I to develop another fund for any of the purposes suggested by the commenters.

In addition, one of the Agency's major goals reflected throughout the entire UST regulatory program is to encourage development of the UST program as a state-implemented program. EPA encourages states to consider developing the type of funds that commenters urged should be undertaken by the Federal government. Several different types of state funds or state-backed insurance programs can serve as assurance mechanisms to allow owners and operators to comply with the financial responsibility rule. In addition, state funds may provide valuable assistance and incentives to the regulated community to comply with the new tank performance standards.

5. *Specification of Tanks in Financial Assurance Instruments.* In the proposed rule, the Agency required that the financial assurance instruments list by identification number the specific tanks that they cover. Many commenters addressing specific mechanisms argued that this requirement is unnecessary and could in fact limit coverage or delay payment from the assurance mechanism. They felt that listing tanks individually could lead to contention as to which tanks was the source of release.

This final rule requires the listing of facilities where assured tanks are located rather than the tanks themselves. The Agency has concluded that listing of tanks at a facility where all tanks are assured under a single mechanism is unnecessary. A listing by facility should also provide greater certainty concerning which tanks at a given location are covered by the policy. Moreover, listing tanks by facility also prevents delays in payment that might arise if coverage were triggered only after identification of the particular tank that had caused the damage.

In today's rule the language of the assurance instruments is amended to strike the requirement for tank identification numbers and add a statement indicating that the required aggregate coverage levels have been purchased. Each instrument must identify each facility covered by the mechanism and the number of tanks at each facility. If separate mechanisms are used to cover different USTs at one location, the tanks covered by each mechanism must be identified in the wording of the mechanism.

F. Financial Test of Self-Insurance (§ 280.95)

1. Proposed Financial Test

As part of the underground storage tank requirements proposed on April 17, 1987, EPA included a financial test that could be used by owners and operators to self-insure. UST owners or operators able to meet the proposed financial test criteria would not be required to obtain insurance or another financial assurance mechanism to demonstrate evidence of their financial responsibility for corrective action and third-party claims arising from UST releases. The financial test of self-insurance was also proposed as a means to qualify guarantors and indemnitors of firms owning or operating USTs.

As originally proposed, the Subtitle I financial test consisted of the following criteria:

a. The firm must have a tangible net worth equal to at least 10 times the amount of aggregate assurance required for UST financial assurance. The proposed amount of required aggregate assurance ranged from $1 million to $6 million, depending on the number of tanks the owner or operator, guarantor, or indemnitor was assuring for EPA or an authorized state. If the firm was also using a financial test to meet the financial responsibility requirements for the costs of closure, post-closure care, liability coverage, and/or corrective action at a Subtitle C facility, or for the costs of plugging and abandonment at a Class I Hazardous Waste Injection Well, the firm was required to have a tangible net worth equal to at least 10 times the sum of these costs plus the required aggregated coverage for its USTs.

b. The firm must have a tangible net worth of at least $10 million.

c. The firm must either file annual financial statements with the SEC or annually report the firm's tangible net worth to Dun and Bradstreet (D&B), which must have assigned the firm a financial strength rating of 4A or 5A.

d. The firm's year-end financial statements, if independently audited, could not include an adverse auditor's opinion or a disclaimer of opinion.

In addition to these financial test criteria, the proposed requirements included procedures for financial test reporting and certification. Within 90 days after the close of each fiscal year, the chief financial officer of the firm owning, operating, guaranteeing, or indemnifying had to sign a letter reporting the year-end financial information supporting the firm's use of the financial test. If an owner or operator, guarantor, or indemnitor found at the end of the fiscal year that he was no longer eligible to use a financial test, the owner or operator was required to obtain an alternate mechanism within 120 days of the end of the fiscal year. Finally, the proposed rule authorized the Regional Administrator to disqualify a firm's use of the financial test if he found, based on reports of the firm's financial condition, that the firm no longer met the financial test requirements. The owner or operator would have 30 days after notification of such a finding to obtain another financial assurance mechanism.

The criteria for the proposed Subtitle I test reflected several key Agency objectives. First, the reliance of the test principally on a net worth measure was intended to keep the test relatively simple to administer and monitor, in view of the large number of firms to be regulated under Subtitle I requirements. At the same time, the net worth criteria were designed to ensure that virtually all firms able to pass the test would also be able to meet their UST obligations. In particular, the requirement that firms demonstrate a level of net worth 10 times the size of their potential UST obligations was based on an Agency analysis of failure rates among firms classified on the basis of their ratios of UST liabilities to net worth. The Agency found that, for those firms with UST liabilities equal to 10 percent or less of their net worth, the associated probability of bankruptcy was approximately one percent. Therefore, to achieve a level of assurance such that no more than one percent of financial test users would go bankrupt as a result of their UST obligations, the Agency decided to require that financial test users maintain their net worth at a level at least 10 times their environmental obligations.

By requiring that other environmental obligations assured by a financial test be aggregated with the required UST assurance when determining the amount of net worth to require, the Agency wished to prevent financial test users from diluting the degree of assurance provided by the test. Similarly, the requirement that there be no auditor's disclaimer of opinion or adverse opinion was also intended to increase the margin of security provided by the test. A disclaimer of opinion or an adverse opinion indicates that the auditor has found material uncertainties regarding the firm's valuation of its assets, current litigation or tax liabilities, or changes in accounting method. Therefore, because these opinions indicate that the reported net worth of a firm may be greater than its actual net worth, there is considerable doubt as to whether a firm receiving a disclaimer of opinion or an adverse opinion has sufficient resources to meet its UST obligations.

Finally, the requirement that firms either file their financial statements with the SEC or report to D&B and obtain a D&B financial strength rating of 4A or 5A was meant to ensure that the information used to support a financial test would be publicly available and therefore easily verified by EPA or state regulators. At the same time, by allowing a D&B rating as an alternative to filing with the SEC, the Agency wished to make the test available to the large number of privately-held UST owners and operators who would not otherwise be submitting their financial statements to the SEC.

2. Comments on the Proposed Financial Test

EPA received comments on its proposed Subtitle I financial test from a wide representation of firms and entities that will be affected by the UST requirements. These included both publicly- and privately-held firms, municipalities, trade associations, environmental groups, state regulatory agencies, and firms representing all aspects of UST ownership: owners of a single tank or many tanks, petroleum refiners and marketers, and firms engaged in businesses other than petroleum production, refining, or marketing. The majority of comments focused on (1) the net worth criteria of the financial test; (2) requirements for financial test certification and reporting; and (3) the ability of municipalities to use the test. Comments were also received on a number of miscellaneous issues, such as the aggregation of other environmental costs with the required level of UST coverage; the use of a binding guarantee to support the financial test; and the extension of the aggregate schedule for owners or operators using a financial test to assure a large number of USTs. The substance of the major comments received is briefly summarized below, followed by the Agency's rationale for accepting or rejecting commenters' recommendations in the final financial test requirements.

a. *Net Worth Criteria of the Financial Test.* Many commenters objected that the proposed financial test would not be available to any but the largest petroleum distributors or refiners and therefore recommended that the net worth criteria of the test be relaxed to allow smaller businesses to use the test. Other commenters argued that a lower net worth multiple was appropriate in view of the fact that the proposed per-occurrence and aggregate amounts of coverage were much higher than the average costs of UST releases. Commenters also questioned why a 10 times net worth multiple was proposed for Subtitle I, when a six times net worth multiple is required for the Subtitle C tests for closure and post-closure care and liability coverage.

The Agency agrees that the availability of the financial test will be limited to larger firms in the regulated community; nevertheless, EPA also believes that this restriction is necessary to increase the likelihood that a financial test user will be able to pay for its potential UST obligations. Because the incidence of bankruptcy among firms with less than $10 million in tangible net worth is approximately two times as great as the bankruptcy rate among firms with more than $10 million in tangible net worth, the Agency has decided to retain the minimum $10 million tangible net worth requirement in the final rule.

For similar reasons, the Agency has also decided to retain the requirement that tangible net worth be at least 10 times the required UST aggregate for any firm using the financial test. Lowering the net worth multiple would mean that more than one percent of financial test users would be predicted to fail without funding their UST obligations—a risk that the Agency does not believe should be accepted among financial test users, particularly since owners or operators who use any of the other financial assurance mechanisms allowable under Subtitle I (insurance, surety bond, etc.) pose little risk of incurring unfunded UST obligations.

Other changes are, however, being made in the final UST rule that should make the 10 times level of net worth somewhat less restrictive to potential financial test users. First, the schedule of required annual aggregates has been modified (see Section III.D), so that the maximum annual aggregate to be assured is $2 million rather than $6 million as originally proposed. Thus,

without changing the net worth requirement, the corresponding level of required net worth will nevertheless be lower for many firms owning and operating large numbers of USTs.

Second, the Agency has incorporated into the final rule (§ 280.95(c)) a second set of financial test criteria that may be used instead of the originally proposed "net worth" test. Owners or operators may now choose to use the financial test criteria of the Subtitle C test for liability coverage, as specified in § 264.147(f)(1) or § 265.147(f)(1), to demonstrate their ability to pay for their UST obligations. These criteria are included in the final rule as Alternative II, while the originally proposed financial test is retained as Alternative I. As a result of this addition, firms with a tangible net worth of $10 million and *six* times their UST obligations will be able to use a financial test under Alternative II, as long as they also have:

- At least 90 percent of their assets in the United States, or U.S. assets at least six times their UST obligations; and
- Net working capital at least six times the required amount of UST aggregate coverage; or
- A current Standard and Poor's bond rating of AAA, AA, A, or BBB, or a current Moody's bond rating of Aaa, Aa, A, or Ba.

As with Alternative I of the Subtitle I financial test, if the firm is using a financial test to assure the costs of closure, post-closure care, corrective action, liability coverage, and/or plugging and abandonment costs at a Class I Hazardous Waste Injection Well, then the multiple requirements of Alternative II must be applied to the sum of these costs plus the UST-required annual aggregate. EPA believes the two tests provide equivalent assurances of financial strength.

EPA has decided to adopt this Alternative II financial test in addition to Alternative I as a way of increasing the availability of the financial test without jeopardizing the level of assurance provided by the test. As designed for the Subtitle C liability test, and now for the UST Alternative II test, the requirement that either 90 percent of a firm's assets be in the United States or that U.S. assets be at least six times its UST obligation is intended to ensure the accessibility of these assets, should the firm require them to meet its UST costs. The net working capital requirement is designed to measure the adequacy of a firm's liquid resources, given the potential level of its environmental obligations. Because, however, the level of net working capital can vary significantly by industry, the Agency allows firms to meet the bond rating requirement as an alternative to the net working capital requirement. Thus, financially healthy firms that typically maintain relatively low levels of working capital due to the nature of their business can nevertheless use the bond rating alternative to demonstrate that they have adequate liquid resources to meet their obligations.

The Agency decided to use the financial test criteria of the Subtitle C test for liability coverage for the UST financial test because they were specifically designed for assurance of possible, rather than certain, costs. For this reason, these criteria are somewhat less stringent than the standards of the Subtitle C closure and post-closure test where future costs that are certain to be incurred are being assured. Furthermore, the criteria selected for the Alternative II test have the advantage of being easily obtained from public sources even for those firms that do not have audited financial statements or do not report to the SEC.

b. *Requirements for Certification and Reporting.* EPA received two comments endorsing the Agency's proposal not to require firms using the financial test to obtain a special auditor's report verifying the financial test information contained in the chief financial officer's report. Other commenters, however, objected to the proposed requirements for financial test certification and reporting on the grounds that such requirements were unnecessarily burdensome and restrictive. Specific objections to the reporting and certification requirements are summarized below, followed by the Agency's response to each of these objections.

- The requirement that the chief financial officer list in his annual letter every tank being assured by the financial test would be especially time-consuming for owners and operators of a large number of tanks.

EPA agrees that the requirement for individual tank listing in the chief financial officer's letter may impose an unnecessary recordkeeping burden on firms with many USTs or on firms that frequently change their inventory of USTs. The Agency has therefore adopted in the final rule the suggestion that financial test users list the sites or facilities where their tanks are located, rather than each tank. (This same suggestion has been adopted for all the financial assurance mechanisms in the final rule; see Section III.E.5.) If, however, separate mechanisms or combinations of mechanisms are used to assure different sets of USTs at a location, individual tanks must still be identified.

- Other ratings, such as a Moody's or a Standard and Poor's rating, should be allowed as a substitute for a D&B rating as part of the financial test criteria.

EPA has decided not to allow a bond rating from Moody's or Standard and Poor (S&P) as part of the Alternative I test, because these ratings cannot be used in the same way as D&B ratings or SEC reports—namely, to verify that a firm has at least $10 million in net worth. The Agency has, nevertheless, incorporated requirements for a Moody's or S&P bond rating in the Alternative II test: Under § 280.95(c)(1), a financial test user may either demonstrate that it has net working capital at least six times the required amount of UST aggregate coverage or that its most recent bond issue has received an investment grade bond rating from Moody's or S&P. As such, the bond ratings are intended to increase the availability of the test to those firms that are financially strong, but because of the nature of their business, do not routinely maintain high levels of working capital. The bond ratings are *not*, however, intended to provide evidence of the level of a firm's net worth. In the Alternative II test, this purpose is instead accomplished by the requirement that a firm either report to the SEC, the Energy Information Administration, or the Rural Electrification Administration, in which case its net worth can be easily verified in the reports publicly available from these agencies, or submit a special auditor's report, corroborating the firm's declaration that it has at least $10 million in tangible net worth.

- The annual reports filed by utilities with the Energy Information Administration and by rural electric cooperatives with the Rural Electrification Administration are publicly available. The Agency should allow reporting to one of these agencies as a substitute for reporting to the SEC.

The Agency agrees with these commenters. Because the annual reports filed by utilities with the Energy Information Administration and by rural electric cooperatives with the Rural Electrification Administration are publicly available and equivalent to annual reports filed with the SEC, the Agency will allow an annual report to one of these two agencies to substitute for reporting to the SEC.

- The 90-day deadline for filing financial test information after the firm's fiscal year end is inconvenient in view of other deadlines for filing with public agencies.

EPA recognizes that filing with the SEC is a time-consuming process, involving the compilation and verification of large amounts of financial data. Because the UST financial test relies on the same information that is reported to the SEC, many firms will not be able to prepare their financial test submission until they have first completed the SEC filing. Furthermore, the deadline for the annual reports filed by utilities with the Energy Information Administration is April 30 (i.e., 119 days after the end of the calendar year), whereas there is no strict deadline for filing with the Rural Electrification Administration. In view of these considerations, the Agency has decided to extend the deadline for completing the UST financial test by an additional 30 days. This means that the financial test information is now required to be completed 120 days after the end of the firm's reporting year, rather than 90 days, as originally proposed. With this change, the preparation of the UST financial test information should not add significantly to the reporting burden of firms.

Given this extension of the reporting deadline, the Agency has also decided to extend the deadline for obtaining a new financial assurance mechanism for those firms that find that they can no longer use a financial test. The final rule now requires that firms must obtain alternative coverage within 150 days of the end of the year reported in their annual financial statements if these statements indicate that they no longer meet the financial test criteria (§ 280.95(e)). This 150-day period is based on the expectation that firms will need up to 120 days after the close of their reporting year to compile their financial information and an additional 30 days to find an alternate mechanism if this information does not support renewing their financial test.

- The proposed rule did not clearly define the authority given to the Regional Administrator to request further information from financial test users.

EPA has retained in the final rule the proposed provision authorizing the Director of the implementing agency to require reports of financial condition at any time from a financial test user and to disallow use of the financial test if these reports demonstrate that the financial test criteria are no longer being met (§ 280.95(f)). In response to commenters' concern that such authority could be used arbitrarily to disqualify the use of the test by some firms, the Agency emphasizes that the information requested by the Director of the Implementing Agency could be used only to verify compliance with the financial test requirements as they are promulgated under § 280.95 (b) or (c) and (d). Generally, such information would include unaudited interim financial statements (such as 10–Qs submitted to the SEC) or mid-year restatements of financial information (such as 8–Ks submitted to the SEC). Any information not bearing on the requirements specified in the financial test would not be used to disqualify an owner or operator. The Agency has modified the wording of this provision to make its intention clearer in this respect.

- Reporting of financial information to EPA could result in anti-competitive activity because EPA is under no obligation to keep such information confidential.

EPA does not believe that the financial test reporting requirements will in any way violate a financial test user's interest in keeping information confidential, because the test relies only on information that is already reported to other organizations that make this information publicly available. Furthermore, the financial assurance rules do not require regular reporting of information to EPA, but instead require that owners or operators maintain a record of this information at their place of business.

In summary, the Agency emphasizes that the reporting and certification requirements for the Alternative I financial test are designed to be minimally burdensome to firms, while still ensuring that financial test information can be verified through sources other than the owner or operator. Because firms will be allowed to meet the test requirements by reporting their net worth to Dun & Bradstreet as an alternative to reporting to the SEC, the Energy Information Administration, or the Rural Electrification Administration, financial test users will not necessarily be required to have audited financial statements. For owners and operators who opt for the Alternative II financial test, however, the reporting and certification requirements are stricter. Specifically, Alternative II requires that the financial statements of an owner or operator using the financial test be independently audited. EPA considers this requirement to be necessary in the case of Alternative II because of the type of information called for by the test—namely, the level of net working capital and the level of U.S. assets. The measurement of these variables can differ substantially according to the accounting method used to prepare financial statements. By requiring that the financial statements of Alternative II test users be independently audited, EPA has, at a minimum, the assurance that these variables will be measured in a relatively consistent and conservative fashion and in accordance with generally accepted accounting principles.

Furthermore, in the final rule, Alternative II requires a special auditor's report from those firms that do not file their statements with the SEC, the Energy Information Administration, or the Rural Electrification Administration. The reason for this requirement is to provide the Agency with some objective measure of the validity of the information reported by those firms whose financial information may not otherwise be publicly available. Thus, this requirement serves the same basic purposes as the D&B rating that is included as part of the Alternative I financial test.

c. *Availability of the Financial Test to Municipalities.* Many commenters on EPA's proposed financial test requirements pointed out that the test was designed for use by private corporations and not by municipalities or other governmental entities. In particular, the reliance of the test on measures of net worth makes it inappropriate for use by most municipalities since net worth is generally not a meaningful or readily measurable indicator of a government entity's ability to meet its obligations. Only for those special purpose municipalities, whose operations and accounting procedures are similar to those of a privately owned firm, is "net worth" a meaningful indicator of financial condition. Commenters also noted that the proposed financial test reporting requirements were inapplicable to those municipalities that do not file financial statements with the SEC or report their net worth to D&B.

As discussed in Section III.A.4., the Agency intends to propose a financial test for local government entities. Under this test, qualifying local government entities would be able to demonstrate that they are capable of self-insuring the costs of cleanup and third-party liability associated with UST releases, and thus do not need to obtain a separate financial assurance mechanism.

d. *Miscellaneous Issues Concerning the Proposed Financial Test.* In the preamble to the April 17, 1987, proposed Subtitle I financial test, EPA requested comments on two requirements under consideration for inclusion in the final rule: (1) A requirement that firms issue a binding written guarantee that they will pay for the corrective action and third-party obligations that they were assuring with a financial test or through provision of a guarantee or indemnity contract; and (2) a requirement

extending the aggregate schedule beyond the required maximum for financial test users.

One commenter objected to the proposal to incorporate a binding written guarantee into the financial test criteria on the grounds that it could result in lower bond ratings for firms and increased interest costs on their debt, which in turn would impair firms' abilities to demonstrate financial assurance. Commenters also questioned whether such a guarantee would materially improve EPA's ability to obtain the required funding for UST obligations in the event of a firm's bankruptcy. In view of these comments, EPA has decided not to incorporate a requirement for a binding guarantee in the financial test provisions of the final rule.

With respect to extending the aggregate schedule for financial test users, some commenters considered that this provision would be unfair to large, financially viable firms who seek to assure their obligations with a financial test. The Agency's original intention in making such a suggestion was to limit the ability of financial test users to assure thousands of tanks on the strength of a limited net worth. Because the required aggregate is capped, it would be possible for a firm to add to the number of tanks it was assuring by means of the financial test without having to increase its required level of net worth. The Agency, however, has decided that extending the aggregate schedule is not necessary for financial test users assuring large numbers of USTs. As indicated above in discussing the aggregate schedule, those few firms that assure hundreds or thousands of USTs are also firms with resources that are substantial and more than sufficient to cover their obligations. Moreover, these same firms are likely to have good loss prevention programs to limit their potentially large liability.

Other comments received on the proposed financial test criteria included objections to the Agency's proposal to require, for purposes of the Subtitle I financial test, that an owner or operator add to the required UST aggregate any other environmental costs for which a financial test is used to demonstrate financial assurance. Commenters questioned why a ten times net worth multiple would be applied to the sum of these costs under Subtitle I, while under the provisions of the Subtitle C test, a six times net worth multiple is required for coverage of all costs being assured by a financial test.

The Agency believes that this addition of costs is necessary to ensure that an UST owner or operator can meet all of its environmental obligations without jeopardizing the financial health of the firm. The financial tests used for closure and post-closure care, liability coverage, and corrective action all rely on a measure of a firm's net worth relative to the costs being assured. If, therefore, these costs were not added together in the UST financial test for purposes of determining the required amount of net worth, UST owners or operators would, in effect, be "double pledging" their financial resources, thereby reducing the likelihood that UST obligations could be met if they were also faced with other environmental costs.

One commenter recommended that a firm owning or operating USTs and using a financial test to assure Subtitle C obligations should be required to have a tangible net worth equal to the sum of *10* times the applicable UST aggregate plus *six* times the applicable Subtitle C costs, rather than a tangible net worth equal to 10 times the sum of all costs assured by a financial test, as the Agency proposed. It was argued that this procedure for determining the magnitude of net worth coverage for multiple environmental obligations was more consistent with the Subtitle C financial test requirements, which use a six times net worth multiple. However, for reasons discussed in Section III.F.2.a. above, the Agency continues to believe that, for the purposes of the Alternative I financial test, a requirement that net worth coverage be fully 10 times *all* costs being assured by a financial test is necessary to maintain the level of protection that the Agency has set as the standard for the Subtitle I test. The Alternative II financial test, by contract, requires that net worth coverage be at least six times all environmental costs being assured by a financial test. This lower net worth coverage is acceptable in the context of the Alternative II test because the test requires firms to meet other criteria indicative of financial strength that are not included in the Alternative I test.

Another set of recommendations received by EPA urged the Agency to make the Subtitle I test more consistent with the Subtitle C financial test. In one case, a commenter recommended that the Subtitle I test adopt the same procedure for calculating tangible net worth as is currently used for the Subtitle C test for closure and post-closure care (§ 264.151(f) and (g)). Under this procedure, any of the costs being assured by the test that have been incorporated in the measure of a firm's liabilities can be subtracted from the liability total and added to net worth. Because generally accepted accounting principles require that firms accrue as liabilities those future costs that are reasonably certain and measurable, those firms with known future environmental obligations are required to count these obligations as part of their liabilities. The net worth (or difference between total assets and total liabilities) of such firms will be decreased correspondingly by the amount of the accrued liability. Thus, generally accepted accounting procedures measure net worth as if known future obligations had already been paid for or discharged. However, the purpose of the net worth criteria in a financial test is to measure the net worth resources available to a firm *before* it incurs an environmental cost, and thereby to determine whether the firm can meet this cost without jeopardizing its ability to meet other unanticipated obligations. For the Subtitle C test, EPA therefore believed that the appropriate procedure for measuring a firm's available resources was to compute net worth before adjusting for those liabilities that the test is being used to assure. EPA believes that the same reasoning is applicable to the Subtitle I test and, therefore, allows in the final rule any UST costs that have been accrued as part of total liabilities to be subtracted from the sum of total liabilities and added back to net worth. The Agency has adopted this procedure for purposes of both the Alternative I and the Alternative II UST financial tests.

3. Summary of Changes in the Financial Test

As discussed in Section 2 above, the Agency has made a number of changes to the Subtitle I financial test, proposed on April 17, 1987, largely in response to the comments received on the proposal. These changes are briefly summarized below.

a. *Alternative Financial Test Option.* In addition to the originally proposed Subtitle I test, the Agency is allowing UST owners and operators who wish to use a financial test to meet the criteria of the Subtitle C test for liability coverage. Under this option, owners or operators, and/or guarantors, would be required to demonstrate the following:

- A tangible net worth of at least $10 million;
- A tangible net worth of at least six times the amount of the applicable UST aggregate;
- U.S. assets at least 90 percent of total assets, or U.S. assets at least six times the amount of the applicable UST aggregate; and either:
- Net working capital at least six times the applicable UST aggregate, or
- A current bond rating for the most recent bond issue of AAA, AA, A, or BBB as issued by Standard and Poor's, or Aaa, Aa, A, or Baa as issued by Moody's.

In addition, firms using this alternative must have independently audited financial statements and cannot have an auditor's adverse opinion, disclaimer of opinion, or going concern qualification. For those firms that do not file their financial statements with the SEC, the Energy Information Administration or the Rural Electrification Administration, a special auditor's report, which compares the financial information reported in the test submission to the firm's financial statements and certifies that there are no material differences between the two, is also required.

b. *Disallowance of a Financial Test if a "Going Concern" Qualification Is Received on a Firm's Financial Statements.* In the proposal, the Agency stipulated that, if the financial statements of a financial test user had been independently audited, they could not carry an adverse opinion by an independent certified public accountant or a disclaimer of opinion. In the final rule, the Agency has decided to add a "going concern" qualification to the types of auditor's opinions that will disqualify a firm from using a financial test. Because a "going concern" qualification indicates that there is a question about the ability of a firm to stay in business, the Agency does not believe such firms should be allowed to rely on their own resources to cover their UST obligations.

c. *Reporting to the Energy Information Administration or the Rural Electrification Administration.* The final rule allows utilities filing annual reports with the Energy Information Administration and rural electric cooperatives filing annual reports with the Rural Electrification Administration to use the financial test.

d. *Listing of Locations of Covered USTs.* The financial test, like all of the financial assurance mechanisms in the final rule, does not require identification of individual tanks at the locations assured by the financial test unless the financial test is only being used to cover some of the USTs at one location.

e. *Extending the Deadline for Preparing the Financial Test.* The final rule allows firms using a financial test 120 days from the end of their reporting year to prepare their UST financial test. In EPA's original proposal, the chief financial officer of the firm had to sign the financial test documentation within 90 days of the close of the fiscal year. The final rule also allows owners or operators who can no longer use a financial test 150 days from the end of the reporting year to obtain alternative means of financial assurance. In the event that an owner or operator fails to obtain alternative assurance, he must notify the Director of the implementing agency within 10 days. In the proposed rule, only 120 days were allowed to obtain an alternative mechanism.

f. *Procedures for Determining Tangible Net Worth.* In the final rule, the Agency has adopted the procedure for calculating a firm's tangible net worth from the Subtitle C financial test for closure and post-closure care. With this procedure, firms are allowed to deduct from their total liabilities any accruals for costs that are being assured by the financial test. This deduction can then be added to the measure of tangible net worth.

G. Guarantee (§ 280.96) and Indemnity Contract

The final rule, unlike the proposed rule, allows only one form of financial assurance by which a firm promises to pay the specified amounts for corrective action or third-party liability for another firm: a guarantee (§ 280.96). Indemnities, which were included in the proposed rule, are not authorized in the final rule. EPA based its decision not to authorize the indemnity on the following rationale.

Many commenters on the proposed rule noted that authorization of an indemnity as an allowable mechanism to provide financial assurance in this regulatory context would seem to endorse practices which, in the past, required some petroleum product marketers to indemnify their suppliers. Although the Agency's proposed authorization was not intended to endorse any other use of indemnities, the Agency believes that dropping the indemnity will prevent any possible misunderstanding.

Moreover, in order to cover third-party liability, indemnities duplicate so closely the structure and operation of a guarantee contract that, in effect, no additional financial assurance option is added by including indemnities. In fact, their inclusion may create unnecessary confusion because, in the petroleum marketing industry, indemnities have been used in a very different context. Commenters on the proposal indicated that, in the past, petroleum product marketers have often been required by their contracts to indemnify their suppliers, rather than looking to them for indemnities and guarantees. Finally, because the same kinds of firms are likely to be guarantors and indemnitors, indemnities do not provide the regulated community with an additional group of potential financial assurance providers. For these reasons, the Agency authorizes guarantees in today's rule but not indemnities.

A guarantee is a promise by one party (the guarantor) to pay specified debts or satisfy the specified obligations of another party (the principal) in the event the principal fails to satisfy the debts or obligations. Under the final rule, a guarantee may be provided by related firms or by unrelated firms that have a substantial business relationship with the owner or operator. The obligation between the owner or operator (the principal), the implementing agency, or third parties rests on regulatory requirements and potential tort liability. If the owner or operator fails to perform corrective action or satisfy certified third-party claims, the guarantor agrees to fund a standby trust from which the implementing agency will direct the payment of corrective action costs or third-party claims.

Guarantors must demonstrate that they are qualified to provide financial assurance by satisfying the Alternative I or Alternative II financial test under § 280.95, described in Section III.F. Also, to ensure that state insurance laws do not call into question the enforceability or validity of the mechanism, the guarantee can be used only if it is certified as valid and enforceable by the Attorney General of the state where the USTs covered by the mechanism are located.

Many commenters questioned the availability of the guarantee, particularly to small- and medium-size firms. These commenters were concerned that such firms would not have the required relationship with a potential guarantor or that a potential provider would be unable to satisfy the financial test requirements. EPA's proposed rule included guarantees among a variety of alternative mechanisms to provide owners and operators a number of compliance options. Although some segments of the regulated community will be unable to use the guarantee because of the rule's business relationship and financial test requirements, the Agency continues to believe these requirements are necessary to ensure that the guarantee provides adequate financial assurance. These provisions, therefore, remain unchanged in today's rule.

The proposed rule allowed firms to provide a guarantee if they were related firms that own a controlling interest in the owner or operator (parent firms), firms that own a controlling interest in a parent firm of the owner of operator (grandparent firms), or affiliated firms that are controlled by a parent that also owns a controlling interest in the owner

or operator. As defined in § 280.92(c), "controlling interest" means direct ownership of at least 50 percent of the voting stock. The proposal also allowed a firm engaged in a "substantial business relationship" with the owner or operator to provide a guarantee as an act incidental to that business relationship. These firms were included to increase the number of potential financial assurance providers without sacrificing the validity or enforceability of the instrument. Section 280.91(j) of the proposed rule defined a "substantial business relationship" to mean the business relationship necessary under applicable state law to make a guarantee issued incident to the relationship valid and enforceable. A guarantee is considered incident to such a relationship if it arises from and depends on existing economic transactions between the guarantor and the owner or operator.

These required relationships between owners or operators and providers of guarantees were the subject of many comments. Several commenters praised the Agency for expanding the number and kinds of corporate affiliates that are authorized to provide guarantees of financial assurance and urged even further broadening in recognition of the variety of corporate structures that exist within some sectors of the regulated community such as electric utilities. One commenter suggested the broader definition of corporate affiliates used in Federal securities law, which would include any firm that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, the owner or operator.

EPA's concern is to ensure that guarantees from corporate affiliates are valid under appropriate state law and that sufficient unity of interest exists between the guarantor and the owner or operator to provide adequate assurance of financial responsibility. The proposed relationship requirements are those that seem most likely to result in adequate assurance. A firm engaged in a substantial business relationship with the owner or operator can, however, provide a guarantee regardless of its position within the corporate structure. Thus, the Agency will allow affiliates, such as those enumerated in the securities definition, that satisfy this criterion to provide financial assurance as guarantors.

The proposed rule required providers to use the contractual language specified in the rule for the guarantee. Some commenters expressed concern that the proposed wording of the guarantee instrument did not sufficiently limit the providers' liability, particularly in the event of the bankruptcy of the owner or operator. The Agency believes that the required language explicitly limits the obligation of the provider to the per-occurrence and aggregate amounts for corrective action and third-party liability as stated on the face of the instrument and that the wording, therefore, need not be modified. In addition, as discussed in Section III.V.2 of this preamble, the Agency is incorporating certain exclusionary language into the terms of the guarantee to more clearly limit the type and circumstances of third-party liability for which this mechanism can be used. A provider may, however, have incurred obligations outside those of the guarantee contract, under state law or other contractual agreements with the owner or operator. Such legal obligations will not be changed by the limitations in the guarantee.

H. Insurance and Risk Retention Group Coverage (§ 280.97)

1. Availability

Today's rule allows UST owners and operators to demonstrate financial responsibility through the purchase of insurance. The Agency believes that for many owners and operators, insurance will be the private mechanism of choice because it will be less costly and more available to most owners and operators than the other commercial mechanisms. Many commenters expressed concern, however, that insurance would not be readily available, and many felt that coverage, if available, would not be offered at the levels required by EPA and that it would not be available to particular groups of owners and operators.

The Agency recognizes that the liability insurance market, particularly the market for pollution liability coverage, has become restricted in recent years. As many commenters pointed out, a number of factors have contributed to the current limited availability of liability insurance.

The Agency also believes that despite the tight market, some insurance is available for USTs and more may become available in the near future. Evidence from the commenters suggests that UST coverage is currently available from a small number of specialty insurers, although some policies do not provide the level and scope of coverage required in the rule. One major provider of UST coverage insures over 80,000 tanks at 25,000 locations. A major insurance broker has obtained coverage for over 1,500 petroleum marketers with more than 90,000 tanks at over 28,000 locations. Effective July 1, 1987, the company that wrote policies for this broker stopped writing new policies or renewing existing policies. However, the broker is continuing to offer coverage through a RRG which has recently become licensed and which is currently offering policies. In addition to the petroleum marketers currently covered through existing policies, the RRG intends to extend coverage eventually to many of the 78,000 open dealers who currently find it difficult to obtain insurance.

Although UST insurance is most readily available to petroleum wholesalers and distributors, some non-marketers (e.g., auto dealers) have also been able to purchase coverage. Many insurance companies that do not specialize in pollution insurance nevertheless offer UST coverage to their policyholders who purchase other lines of commercial liability coverage. A major supplier of insurance to petroleum marketers also issues policies to non-marketers purchasing other liability lines. Three other major insurers also reported that they provide UST coverage to some non-marketers.

The market for UST coverage has improved somewhat since the financial responsibility regulations were proposed on April 17, 1987. Two new UST insurers have entered the market (one of whom offers coverage to non-marketers) and an existing insurer, who had provided coverage in only a few states, has expanded to offer coverage in all fifty states. This insurer also offers coverage to single station owners. Two insurers already offering other pollution liability lines have indicated that they are considering offering UST coverage as well.

The Agency is aware that the availability of coverage at the per-occurrence limits required in the statute and today's rule is limited. Recently, one major insurer lowered its per-occurrence limits from $1 million to $500,000. Its aggregate coverage levels remain at $2 million, enough aggregate coverage for owners and operators with any number of tanks to meet the aggregate requirement in the rule. The RRG discussed above has begun offering policies with $750,000 per-occurrence limits and plans to offer $1 million limits when it becomes sufficiently capitalized. In addition, a number of insurers not specializing in pollution liability coverage continue to offer coverage with $1 million per-occurrence limits. While some of these insurers offer aggregate limits of only $1 million, in most cases these insurers provide coverage to owners or operators with fewer tanks for whom $1 million would be adequate to meet the Agency's requirement. In some cases, owners and operators may have to combine policies and other mechanisms to obtain the required coverage.

While the current insurance supply is inadequate to cover all members of the regulated community, the Agency hopes that the supply will expand in the months between the promulgation of the regulations and the compliance dates for the majority of unassured USTs. As noted above, a slight expansion has already occurred. The requirement to demonstrate financial responsibility should significantly increase the demand by owners and operators for UST insurance. At the same time, promulgation of UST technical standards should increase the ability of the insurance industry to predict its risk in offering UST coverage. These two factors may increase the certainty of the profitability of insuring USTs and should encourage new entrants into the marketplace.

The Agency further believes that 12 to 18 months is a reasonable time in which to expect the insurance industry to respond to the increased demand for coverage and for alternatives to conventional insurance, like RRGs or state funds, to develop. Estimates of the time frames for establishing new insurance programs and RRGs range from 12 to 36 months. Commenters on the Supplemental Notice generally agreed with the estimates, with only one commenter suggesting that it might take as long as 5 years for a RRG to form.

Nevertheless, the Agency recognizes that some owners and operators may have difficulty obtaining insurance after the date set for compliance with the rule. In particular, individual service station dealers who are not part of an industry association may face such difficulties because UST policies are often sold through such associations, making it difficult for unaffiliated owners or operators to obtain insurance on their own. Individual service station dealers and other UST owners and operators not currently members of larger groups or trade associations may have to form or join a group to facilitate purchase of UST coverage or the formation of a RRG. Alternatively they may be able to rely on a state fund.

2. Insurance Cost and Its Impact

Many commenters felt that the cost of insurance for USTs would be prohibitively high and suggested that in considering the impact of the rule, the Agency had underestimated the cost of UST pollution liability policy premiums. Other commenters addressed issues concerning the high cost of insurance in general and felt that particular groups of owners and operators, especially small businesses and local governments, would be adversely affected by the regulations.

The Agency believes that its projection of average premium costs of $2,000 to $4,600 per facility is accurate. The estimate was developed based on current and projected premiums using data supplied by insurers. The information received in the comments supports this estimate. The proposed RRG noted above reported that its average premium for $1 million peroccurrence coverage is expected to be $2,000 per site. Other current providers reported premiums of $500 to $2,000 for coverage of one to twelve tanks. The largest average premiums were reported by the National Association of Convenience Stores (NACS) and the Society of Independent Gasoline Marketers of America (SIGMA). These trade associations reported average premiums of $13,600 and $32,000 per member respectively. NACS and SIGMA members tend to own several locations, however, and there is likely to be more than one tank at each location. Forty percent of NACS members own more than 10 stores, while 47 percent of SIGMA members own 11 to 50 outlets and 39 percent own 51 or more. Given the large numbers of sites covered, the high NACS and SIGMA average premiums are also in line with the Agency's original estimate.

Reported claims data suggest that UST claims have been predictable and not extremely costly. Most claims have been under $100,000. In addition, insurers can expect the risks of UST coverage to become more predictable in the future. While the cost of insurance for USTs could be relatively high initially, particularly when the regulations first go into effect, the increased predictability and decreased risk that the technical regulations are likely to promote should help to limit costs.

The Agency recognizes that the cost of liability insurance in general may pose a hardship upon some members of the regulated community. However, average premiums of about $2,000 are small compared to the costs of corrective action which, if incurred, would certainly pose a much greater economic hardship.

The Agency received several comments with specific suggestions for alternative requirements that might reduce the cost of obtaining insurance coverage for USTs. One commenter suggested that a tank manufacturer's product liability policy might be extended to provide indemnification for tank owners or operators. However, such a mechanism would present a number of difficulties in meeting the financial responsibility requirements. Among the difficulties would be setting a level of product liability insurance that would ensure indemnification of each tank purchaser at a level of $1 million. In addition, it is likely that the scope of product liability insurance coverage would be unacceptably low (e.g., it would only cover releases caused by tank defects). Also, administrative difficulties connected with securing payment through a manufacturer's policy might delay cleanup. For example, a claim might have to be made by first contacting the manufacturer who would then contact the insurer. Therefore, the Agency declines to authorize such a mechanism as a means of compliance with the regulations. The Agency recognizes, however, that tank manufacturers may act as guarantors for tank owners or operators provided that they comply with the applicable requirements of § 280.98.

3. Viability of Risk Retention Groups

Commenters raised a number of issues concerning the viability of risk retention groups (RRGs) as an alternative to traditional insurance coverage. Among the issues were: Difficulty of organization, cost of capitalization, instability of RRGs, and conflicts between current state laws and regulations and the Liability Risk Retention Act of 1986 (RRA), 15 U.S.C. 3901 *et seq.*

The Agency recognizes that forming an RRG requires considerable effort. Evidence from the comments suggests that it would take at least one year to establish a group. However, such groups are currently being organized to offer environmental impairment liability insurance. One of these RRGs is now offering coverage to a number of UST owners and operators, including owners of single outlets for retail motor fuel marketing.

A number of commenters were concerned that costs of capitalization could be high for RRGs. The Agency recognizes that capitalization costs could be a significant barrier to RRG development. At present, however, there is little evidence available to indicate what typical capitalization costs per owner or operator are likely to be. The recently formed RRG mentioned above requires a capital contribution of $2,000 or an amount equivalent to the annual premium, whichever is less. Premiums

are currently around $1,600 per site and are expected to increase to about $2,000.

Broader questions of general RRG stability and solvency, along with issues concerning the regulation of RRGs by states, are questions connected with the RRA and go beyond issues directly related to financial responsibility for underground storage tanks. Therefore, it is not within the scope of this rulemaking to address these broader RRG issues. Such issues, however, are being addressed by other agencies of the federal government. The Commerce Department has recently issued a report evaluating the effectiveness of the RRA.[6] The report found no major problems with RRGs themselves (in terms of solvency and potential risk to the public), but noted conflicts between state insurance laws and regulations and the provisions of the RRA. Such conflicts are matters for the states to address.

RRGs may be unavailable to some owners or operators due to an inability to organize into a group or raise the necessary capital. Regulation may also limit the formation of such groups in some states. While some UST owners and operators may be unable to form RRGs, however, the Agency believes the groups may provide an alternative to insurance for a number of owners and operators of USTs.

4. Specific Requirements for Insurance and Risk Retention Group Coverage

A number of commenters questioned specific policy conditions that insurance mechanisms must include under this rule. In general, commenters questioned the effect of these requirements on the availability of insurance. The Agency recognizes that the limited availability of insurance, in part, reflects the significant uncertainties regarding the risk that insurance providers may be undertaking and that various policy language has been developed to minimize uncertainty. Therefore, in specifying certain policy conditions the Agency attempted to meet two objectives: (1) The need to ensure that insurance coverage will provide the same level of protection as other mechanisms; and (2) the need to preserve flexibility in policy specifications to allow insurers to develop acceptable policies and to avoid unnecessarily constructing the availability of insurance.

a. *On-Site Cleanup.* Several commenters questioned the availability of insurance for on-site cleanup and suggested that financial responsibility for these costs not be required. The statute clearly requires financial assurance for corrective action. Corrective action involves cleanup of contamination caused by a release. While a release may, for an initial period of time, be confined to the property of an owner or operator of an UST, there is no way to ensure, without corrective action, that the release will not eventually affect the health or property of others. Financial responsibility for corrective action will ensure that cleanup may be undertaken promptly, thus minimizing third-party and environmental damage.

The Agency recognizes that some insurers are reluctant to provide on-site coverage because of the "moral hazard" involved. In other words, insurers fear that coverage of on-site corrective action could provide a disincentive to the owner or operator of an UST to maintain his site properly or may encourage negligence and thus may result in more releases and more claims to the insurance provider. Insurers also fear that coverage for on-site cleanup might make them responsible for the costs of routine maintenance or site restoration. First party coverage (i.e., coverage of damages to the insured) has traditionally been offered as a separate type of coverage.

Some insurers, however, provide on-site coverage in order to limit their exposure to more expensive third-party claims. Currently, the two primary sources of insurance for petroleum USTs cover on-site cleanup of UST releases. A recent entrant into the market also provides on-site cleanup coverage. In addition, some other insurance providers will cover on-site cleanup if it will prevent more costly third-party damages. The comments suggesting that on-site coverage is not generally available referred to policies covering environmental impairment liability in general and do not reflect the standard practice of the specialized market for UST coverage. The Agency received only one comment regarding the recent entry into the UST market of an insurer who will not cover on-site cleanup.

One commenter suggested that coverage for cleanup be mandated whether or not the corrective action is ordered by the government. Such a requirement could be interpreted to mean that policies must cover response actions that the owner or operator might perform as a general operating practice. Although the Agency is requiring that on-site corrective action be covered by all financial responsibility mechanisms, it does not intend to require policies that make insurers responsible for activities that are clearly the day-to-day responsibility of the owner or operator. Therefore, the Agency wishes to clarify that EPA is not mandating that acceptable insurance policies cover response actions that are part of routine maintenance of the tank site, site restoration and enhancement. Corrective action coverage will be required only for cleanup of releases required by §§ 280.60 to 280.66 and 280.72 of the technical standards or ordered by the implementing agency. The Agency believes that this requirement will ensure that adequate financial resources are available to perform necessary corrective action.

b. *Non-Sudden Accidental Occurrences.* Several commenters also suggested that insurance companies would not be willing to provide coverage for non-sudden occurrences as required by today's proposal. The statute requires, however, that all releases, whether sudden or non-sudden, be covered. This is particularly necessary to ensure adequate coverage for USTs, because it is often difficult to determine whether an UST release is sudden or gradual. Therefore, to ensure adequate protection of human health and the environment, both types of coverage are necessary. Comments indicate that coverage for non-sudden releases is currently offered by the major providers. In the event that an owner or operator could not obtain insurance for non-sudden releases, a separate mechanism could be used. Both mechanisms, however, must provide $1 million worth of coverage (see Section III.D.3).

c. *Agency Specification of Various Policy Terms.* A number of commenters from the insurance industry felt that EPA-proposed coverage terms did not precisely follow insurance industry standards and would limit availability of insurance coverage for USTs. However, it was also clear from industry comments that adoption of the recommended language would not, by itself, increase the availability of pollution insurance. The objections of the commenters centered on the definitions of the terms occurrence, accidental release, and bodily injury; on the prohibition of certain exclusions (those for non-sudden releases and on-site coverage); and the requirement that 120-day notice be given to an insured in the event of a cancellation. The commenters recommended that the Agency defer to standard industry practice in establishing policy language. One commenter suggested specific terms that he felt would more strictly define appropriate insurance coverage.

The Agency has two reasons for clearly delineating the terms of insurance policies that are acceptable to meet financial responsibility requirements. The first is that, given an insurance market with widely varying types and scopes of coverage, the Agency is concerned that the insurance provided to an UST owner or operator in fact provides a sufficient level of financial assurance. Second, because the Agency has mandated that proof of financial responsibility be demonstrated only in the event of a release or if specifically requested by the implementing agency, the Agency wants to define very clearly the terms of acceptable coverage so that both the insurer and the owner or operator can determine whether the policy is adequate to comply with the regulations.

Several commenters took issue with the Agency's use of the terms "occurrence" and "accidental release," preferring instead the combined term "pollution incident," a term widely used in the insurance industry. Commenters also suggested that the term "bodily injury" be defined in a manner consistent with the standard established in ISO's new CGL policy. These issues apply to all the instruments and have been addressed in Section III.C above.

Commenters also requested that the 120-day notification period for cancellation of insurance be shortened. The Agency agrees that a shorter time period will still give owners and operators adequate time to locate another mechanism for financial responsibility, and that the 120-day requirement may put too severe a burden on insurers by exposing them to the risk that the insured will fail to pay the premium in those 120 days. Thus, the 120-day notification period may limit the availability of UST insurance. The Agency is therefore shortening the notification period to 60 days (see also Section III.P below regarding cancellation of mechanisms). The notification period for other terminations of insurance policies has also been shortened to 60 days.

Commenters made a number of very specific recommendations regarding the terms of insurance policies. Several commenters suggested that acceptable policies be required to include a provision specifying that the insurer pay on behalf of the insured, rather than reimburse the owner or operator for cleanup costs or third-party damage payments. The Agency has considered these comments and has determined that specification that insurance policies pay on behalf of rather than indemnify the insured is not necessary to ensure that insurance will provide adequate assurance for corrective action and third-party liability costs. Many policies currently in use already specify that the insurer will pay on behalf of the insured, especially in cases of third-party liability. In some cases of corrective action, the implementing agency may undertake response activities to clean up a release in a timely manner. In such cases the implementing agency would receive reimbursement by the insurer.

One commenter recommended that lower premiums be mandated for tanks brought into compliance with tank performance standards in advance of their compliance dates. The Agency does not need to mandate particular premium levels because the market itself should respond to tank improvements by offering lower premiums for safer tanks.

d. *First Dollar Coverage.* Many commenters felt that the provision requiring policies that make insurers liable for amounts within the deductible applicable to the insurance policy would be unfair to insurers, and ultimately force them to bear the cost of the deductible. The Agency disagrees with these comments. The Agency developed this requirement to ensure that disputes (between the insurer and the insured) over who is responsible for paying amounts within deductible limits will not interfere with prompt performance of corrective action measures or with payment of third-party claims. The Agency does not intend to require policies that limit the right of insurers to specify deductibles applicable to particular policies and to receive these costs from insureds. Therefore, the first dollar coverage requirement should not hinder development of a pollution liability insurance market. If an owner or operator is in bankruptcy at the time of a release and therefore cannot pay the deductible, the insurer, as a creditor, could seek payment through the bankruptcy proceeding, just as any other creditor would.

Commenters suggested that the LUST Trust Fund might be used to guarantee payment of deductibles to the insurer. However, the statute establishing the LUST Trust Fund specifically defines those cases in which the Fund will pay corrective action costs and does not include payment of deductible amounts. In addition, the Trust Fund cannot be used to pay third-party damages.

Pollution liability policies frequently have high deductibles in order to keep premium costs down, and commenters suggested that paying amounts within these deductibles may not be affordable by the insured. The first dollar coverage requirement will prevent delay of cleanup or payment for third-party damages in such cases and will meet the Agency's goals of protecting human health and the environment. The insurer will still be entitled to recover costs within deductible limits from policyholders, although in such cases payment arrangements would have to be made.

e. *Policy Retroactive Dates and Exclusions for Pre-Existing Conditions.* Several commenters expressed concern that the Agency's acceptance of claims-made policies would limit protection of the insured and, consequently, the degree of financial assurance. Claims-made policies typically provide coverage only for releases reported during the policy period and that begin subsequent to the policy's retroactive date. The retroactive date is generally the same as the effective date of the policy.

One commenter suggested requiring the retroactive date to be 18 months prior to the effective date of the policy. The Agency understands the concern of the commenters and realizes that use of claims-made policies could result in occasional gaps in coverage, particularly with respect to releases occurring prior to the retroactive date. The Agency considered a requirement that claims-made policies have retroactive dates 6 months prior to the issue date of the policy but decided against such a requirement because few, if any, insurers are willing to offer such a policy. Given that insurance is likely to be the "mechanism of choice" of most UST owners and operators (especially smaller businesses), the Agency feels that its goals of protecting human health and the environment will not be served by specifying policy provisions which will prevent most otherwise qualified UST owners and operators from being able to obtain insurance. Prohibiting the use of claims-made policies or requiring a retroactive date prior to the policy effective date is likely to severely limit insurance availability.

In addition, the problem of gaps occurring in coverage prior to the retroactive date is likely to be a significant problem primarily at the outset of the UST financial responsibility requirements, when large numbers of previously uninsured owners and operators purchase insurance for the first time. After that initial time period, most owners or operators should be able to maintain continuous coverage, given the advance notice of cancellation that the Agency is requiring as well as the use of extended reporting periods for claims-made contracts.

[6] U.S. Department of Commerce. *Liability Risk Retention Act of 1986 Implementation Report.* September 1987.

Extended reporting periods allow the insured to report a release occurring during the policy period after the termination date of the new policy. This "tail" coverage helps prevent gaps in coverage that could arise because the replacement policy will not cover releases that occur prior to the retroactive date of the policy. In the case of policy renewal as opposed to policy replacement, most policies should provide continuous coverage over time because the retroactive date of the policy is generally the original issue date and not subsequent renewal dates.

As the technical requirements for leak detection are phased in, owners and operators are likely to identify a number of USTs that are leaking and are not covered by a financial assurance mechanism. When the owners or operators of these tanks obtain insurance, these identified leaks are likely to be excluded from coverage as "pre-existing conditions." The Agency realizes that insurance is not appropriate to meet the cost of known releases and is not requiring that insurance policies purchased to comply with today's rule cover known pre-existing conditions. Any requirement for coverage of known conditions would be likely to severely limit UST insurance availability because insurers will not be willing to issue policies obligating payment for damages that have already occurred. UST owners and operators are responsible for cleanup and third-party liability costs that are not covered by financial assurance mechanisms. In some instances the LUST Trust Fund or state funding programs may be appropriate means to fund cleanup of those pre-existing conditions. (Under the LUST Trust Fund, however, owners and operators are liable for any funds expended to clean up pre-existing conditions.)

An insurance representative expressed concern that implementation of the technical regulations would result in discovery of more releases in the early years of the regulation and lead insurers to avoid the UST market until compliance with the technical regulations is complete. While it is likely that more releases will be discovered in the early years of regulation, this fact alone should not reduce insurance availability. Insurers will establish their own pre-conditions for tank coverage. Such pre-conditions may include inspections, audits or other measures to identify existing leaks. Tanks that are insurable are likely to remain so. Tanks that are discovered to be leaking are likely to need corrective action and appropriate repair, upgrading, or replacement before an insurer will accept them for coverage. These measures will also be required by the technical standards. Phased implementation of the technical requirements should not adversely affect insurance availability, because insurers will be able to require correction of existing releases as a condition for coverage.

f. *Endorsement and Certificate of Insurance.* The Agency received a number of comments regarding the specific wording of the Endorsement and Certificate of Insurance required for users of insurance and RRC coverage. All commenters on this issue agreed that the requirement that tanks be listed by identification numbers on the certificate of insurance or endorsement would result in more limited insurance coverage than the standard industry practice of listing covered tanks by site. As described in Section III.B.5, the Agency agrees with these comments. For the purpose of determining the appropriate aggregate coverage, however, a statement indicating that the mechanism assures 100 or fewer or more than 100 USTs is necessary. In today's rule, the endorsement and certificate language (§§ 280.97(b)(1) and 280.97(b)(2)) has been amended to strike the requirement for tank serial numbers and instead requires a listing of the number of tanks at each facility insured and the name and address of each facility.

Commenters also suggested that the issue date of the policy is unnecessary for the endorsement and certificate of insurance, given that the policy effective date, which defines the date on which coverage begins, is also required. The Agency again agrees with the commenters that inclusion of the issue date is unnecessary and that the scope of coverage provided is clearer when the endorsement and certificate of insurance contain only the effective date of the policy. In policies without an effective date, the issue date is considered to be the same as the effective date. However, in cases in which policies include effective dates, coverage is generally considered to begin on the effective date. In most cases, the issue date and the effective date of the policy will be the same, but in those cases in which they are not, the difference could be a source of dispute concerning whether a particular release is covered. Listing only the effective date on the endorsement and certificate will eliminate such a dispute. Today's rule does not include the issue date of the policy in the endorsement or certificate (§§ 280.97 (b)(1) and (b)(2)), but does continue to require listing of the policy effective date.

g. *Six Months Extended Reporting Period.* As indicated in the April 1988 proposal, the Agency is concerned that a claims-made contract may leave gaps in coverage if, for example, a claim is reported after the expiration of a policy for a release that began prior to the expiration date. Such claims may not be covered by a replacement financial assurance mechanism (see retroactive date discussion, Section III.C.4.e above). Originally, the Agency proposed a one year "extended discovery" period to address this concern. Under this provision, claims made during the extended discovery period for losses that occurred during the policy period would be covered. In today's rule, the Agency has changed the term to "extended reporting period" and reduced the time frame to six months. These changes were made for several reasons.

Commenters suggested replacing the term "extended discovery period" with the term "extended reporting period" to clarify that the period only covers incidents which took place during the actual policy period and were reported during the extended reporting period. The Agency agrees with commenters that the insurance industry suggestion more accurately describes the coverage that the Agency intends. The Agency intends to require that only releases beginning during the policy period itself be covered during the extension and agrees with commenters that the term "extended discovery period" could cause confusion over whether a policy would cover occurrences beginning during the extended discovery period or only those beginning under the actual policy period and reported during the discovery period. Therefore, the Agency has changed the term to "extended reporting period." The Agency also agrees with the comment that it would be unnecessary to include an extended reporting period clause in an occurrence-based contract because by definition, such policies cover losses occurring during the policy period regardless of when they are reported. Therefore paragraph 2(e) of the endorsement and certificate of insurance (§§ 280.97(b)(1) and 280.97(b)(2)) are required only in the case of a claims-made contract.

The Agency also reconsidered the proposed one-year time frame for extended reporting. Several commenters addressed this issue. One suggested a reporting period of three years. Others urged that EPA should not establish a mandatory time frame. While the

Agency recognizes that a three-year reporting period may afford even greater assurance by allowing an owner or operator more time in which to report damages caused by a release, the Agency has declined to mandate such a lengthy reporting period. Insurers are unlikely to be willing to offer "tail" coverage as long as three years due to the continuing risk to which such coverage would expose them. Also, even if insurers were willing to offer long reporting periods, the cost of the coverage could be prohibitively expensive. Because the Agency believes that an extended reporting period is essential to ensure adequate coverage by claims-made policies, the Agency has decided not to mandate a reporting period of such length that the insurance would be unavailable or unaffordable to otherwise qualified UST owners and operators. The significant reduction in insurance coverage created by such a provision would result in lesser protection of human health and the environment.

At the same time, the Agency does not believe that the length of the reporting period should be entirely discretionary. Therefore, the Agency has decided to set a shorter minimum length of six months for the extended reporting period.

The Agency has decided that six months is a reasonable time frame in which to identify and report a release following termination of a policy for the following reasons. First, implementation of leak detection requirements should result in prompt detection of releases. Six months should be sufficient time to report releases occurring during the policy period. The Agency is making such a reporting period mandatory for all claims-made contracts used to demonstrate compliance with today's rule, regardless of the reason for termination. Although the extended reporting period differs from the industry standard, it is important to bridge the potential gap between the end of a claims-made insurance policy and the initiation of another assurance mechanism.

Second, commenters estimated that the cost of the extended reporting period could range from half the premium cost to more than the cost of a yearly premium. This reflects the difficulty in establishing proof of when releases reported during this extension actually occurred. The Agency feels that the cost of a six-month period would be affordable for more owners or operators than the cost of a one-year period, thus increasing total insurance coverage. This is especially true because the owner or operator must also pay the cost of a new financial assurance mechanism to remain in compliance with the rule.

The change of the reporting period requirement from one year to six months may help to address two other issues raised by commenters. The first issue raised by commenters concerned potential conflicts over responsibility for coverage during the reporting period. A release discovered during the reporting period could either be covered by the old insurance policy if it began prior to policy termination or by the new replacement mechanism if it began later. There could be a delay in payment for corrective action and third-party damages while the date of the release was determined. As the reporting period was extended the potential for conflict would increase. By reducing the reporting period to six months, the Agency intends to minimize the potential for conflict between mechanisms and thus the potential for delay in meeting the costs of a release.

Second, members of the insurance industry noted that the extended reporting period required by the Agency differed from the reporting period in common use in the industry in that it was an "upfront" requirement, not an option to be purchased only in the event that a policy was cancelled for reasons other than non-payment of premium. Insurers feared that mandatory reporting periods would expose them to the possibility of supplying coverage for one year to an insured who had not paid his premium, or who voluntarily cancelled, thus essentially receiving "free" coverage for one year. The Agency wishes to stress that it is only requiring an extended *reporting* period during which insureds may report releases that occurred while their policy was in effect, not an extended *coverage* period during which insurers would be liable for releases occurring after the policy's termination. Insureds who voluntarily cancel their policies, therefore, would not receive "free" coverage for any period of time. Futhermore, by establishing an appropriate schedule of premium payment, insurers can best protect themselves against providing "free" coverage to insureds whose policies they ultimately would cancel due to nonpayment of premium.

One commenter recommended that forfeiture of insurance coverage due to delayed notice of a claim be prohibited. The Agency believes, however, that the extended reporting provisions of the rule adequately ensure that claims will be covered even if not reported immediately to the insurer. The reporting period would allow an insured covered by a claims-made policy extra time to report any releases which may have occurred during the policy period, but which were not immediately discovered.

h. *Legal Defense Costs.* The Agency's proposal to exclude legal defense costs from the coverage limits of insurance policies used to comply with financial responsibility requirements was opposed by many commenters. The commenters argued that insurers will not provide coverage exclusive of legal defense costs. The Agency has reviewed these comments and decided to continue to require exclusion of coverage for legal defense costs from insurance policy indemnity limits.

The exclusion was originally proposed for several reasons: (1) To ensure that legal defense costs would not absorb too great a portion of coverage limits and thus leave little coverage available for corrective action and third-party liability; (2) to conform to the general insurance industry standard practice for comprehensive general liability of paying all legal defense costs outside policy limits until the indemnity limits have been exhausted; and (3) to provide the same level of financial assurance to cover both third-party claims and corrective action as the other mechanisms (none of the other mechanisms for demonstrating financial responsibility under the rule covers legal defense costs).

In general, the above reasons for the exclusion are still valid. Legal defense costs could amount to a significant portion of policy limits now and in the future. A study by the ISO indicates that legal defense costs have increased three times faster than indemnity losses since 1960.[1] Defense costs per one dollar of loss tripled between 1956 and 1984. This trend is not limited to any one particular area, but rather is common throughout the general liability field. There are few actual data on defense costs for liability suits brought in cases of pollution releases, but an Agency analysis of general liability, Superfund, and asbestos claims suggests that legal defense costs in cases involving pollution liability could constitute as much as 36 to 42 percent of policy liability limits.

The insurance industry standard for commercial general liability coverage continues to be payment for all legal defense costs outside general liability policy limits until the limits have been

[1] *The Rising Costs of General Liability: Legal Defense.* Insurance Services Office. 1986.

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exhausted by indemnity payments. Only about 25 percent of commercial general liability policies include payment of legal defense costs within policy limits and ISO's standard CGL policy includes a clause obligating the insurer to provide payment for legal defense until coverage is exhausted by indemnity payments. EIL policies are more likely than CGL policies to include legal defense costs within policy limits; however, industry practice even within the smaller universe of EIL policies is not uniform. EIL policies are available that provide indemnity limits exclusive of legal defense costs.

The Agency recognizes that the insurance industry attitude toward legal defense costs may be changing. Some members of the industry, in response to the spiralling costs of legal defense, have begun examining ways to contain defense costs, feeling that the insurer's traditionally unlimited "duty to defend" may be a disincentive to policyholders to keep legal defense costs down. At the same time, it does not appear that the industry is moving toward inclusion of legal defense costs within policy limits as a solution to the problem. While ISO proposed at one time that some portion of legal defense costs be included within policy limits, it withdrew that proposal and has more recently put forward a plan to limit legal defense costs outside of policy limits.

Although the Agency's reasoning on costs of legal defense and standard insurance practice continue in general to hold true, EPA recognizes that legal defense costs are sometimes handled differently in the specialized market of insurance USTs. The consensus of commenters is that insurance policies for USTs generally include legal defense costs within the policy limits. All policies issued through one major broker were written inclusive of legal defense costs. A number of other insurance providers similarly indicated that UST coverage would only be available if legal defense costs were included. One major insurer, however, has excluded, and will continue to exclude, legal defense costs for policy limits. Thus, while many current UST policies include legal defense in policy limits, the Agency does not feel that the exclusion or inclusion of legal defense costs will affect the availability of insurance coverage over the long term.

The Agency considered two other approaches to dealing with legal defense costs. The first would be to allow insurers to include legal defense costs within the limits. Because few UST insurers currently offer coverage exclusive of defense costs, this option would at least reinforce currently available insurance policies as a means of compliance with financial responsibility regulations. In addition, while it is clear that RRGs may cover legal defense costs (section 3901(a)(2)(A) of the RRA explicitly legal defense costs within the definition of allowable liability coverage), it is not clear that RRGs will generate enough capital to cover legal defense costs above and beyond policy limits. Inclusion of defense costs in the limits could facilitate RRG formation. The second approach would be to allow insurers to include legal defense costs within policy limits higher than the $1 million requirement. This approach would address insurer concerns regarding defense cost limitation, but probably would not address issues of RRG capitalization.

The Agency believes, however, that arguments for continued exclusion are compelling and that development of higher insurance policy limits allowing defense costs to be included would not guarantee that insurance would provide adequate financial assurance. The final rule continues to require that policy limits be exclusive of legal defense costs. The statutory requirement is $1 million of per-occurrence coverage for the costs of corrective action and third-party liability for USTs at facilities engaged in petroleum production, refining, or marketing. If insurance policy limits included defense costs, in effect, insurance policies would be providing financial assurance at a level lower than that required by the statute. Exclusion of legal defense costs from policy limits is also consistent with RCRA Subtitle C liability coverage regulations.

The Agency recognizes that in many cases legal defense costs may not be high enough to significantly affect the adequacy of insurance policies to provide the coverage required, particularly that for corrective action. However, if defense costs for petroleum USTs are low, then the insurance industry will not be excessively burdened if it must cover these costs outside of policy limits. Alternatively, if defense costs for petroleum USTs are high, then coverage for these costs outside policy limits is necessary to ensure adequate financial assurance for corrective action and third-party liability costs. While this may place a greater burden on the insurer, the insurer is free, as many insurers are currently doing, to limit defense costs in some way outside of policy limits.

i. *Insurer Qualifications.* The April 1987, proposal required that insurers eligible to provide policies in compliance with UST financial responsibility requirements be licensed to transact the business of insurance or as an excess or surplus lines insurer in each State where a covered UST is located. Commenters suggested that the proposed qualifications were too limiting and one commenter suggested substituting Department of Transportation regulations that allow insurers licensed or approved by a foreign government to provide coverage in addition to those licensed in any state or eligible to provide coverage as an excess or surplus lines insurer.

The Agency does not, however, feel that its qualifications for insurers are overly stringent. Foreign insurers offering coverage in the United States are generally licensed to provide coverage in at least one state which would, in most cases, qualify them to provide coverage as an excess lines insurer. Therefore, the EPA qualifications requirements should not necessarily prevent UST owners or operators from purchasing insurance from a foreign insurer. The Agency does not, however, wish to allow UST owners and operators to purchase insurance to meet financial responsibility requirements from an insurer who may not be a stable source of coverage. An insurer who is licensed only by a foreign government may not be subject to the same reserve requirements that help to ensure that an insurer can meet his obligations.

The Agency has, however, decided to make other changes to the qualifications for RRGs and insurers. Today's rule does not include separate qualification for RRGs and insurers as originally proposed, but instead imposes the same qualifications for both. Because a RRG is a type of insurer, it is simpler and more appropriate to delete the separate requirements for RRGs. The Agency has also decided to delete from the insurer qualifications the requirement that insurers be licensed or eligible in "each state where a covered underground storage tank is located." The final rule requires instead that insurers and RRGs be licensed to transact the business of insurance or eligible as an excess or surplus lines insurer in "one or more states." This change was made because the Agency decided that the proposed requirements might too severely limit insurance coverage available to owners and operators with USTs in more than one state. While the Agency continues to believe that it is essential that insurers and RRGs supplying financial assurance under today's rule be subject to adequate regulatory oversight, it believes that a requirement that insurers be licensed or eligible in one or more states will ensure that insurers and RRGs are sufficiently qualified to provide UST coverage. This ensures that the insurance provider meets the qualifications of the state in which it is writing policies. If a provider writes a policy for a large firm with USTs in more than one state, the provider must meet the eligibility requirements in the state where the firm buys the policy, but does not need to meet licensing requirements in every state where an UST may be located.

j. *Other Comments.* Commenters suggested specific changes regarding the manner in which insurance policies are interpreted by the courts, specifically, questions of joint and several liability and use of retroactive damages. These comments go beyond the scope of this rulemaking and are appropriately left to private insurance law. Note, however, that under RCRA section 9003(h)(6), liability is strict, joint and several for government costs incurred in responding to a release of petroleum from an UST under section 9003(h).

Commenters also suggested that the potential for direct action against a provider of financial assurance would deter insurers from entering the market. The statutory provisions of RCRA section 9003(d)(2), however, specifically allow direct action against any provider of financial assurance. It is, therefore, beyond the authority of the Agency to prevent such direct action.

Other commenters suggested that private insurers provide guidance to states on the structure of state programs, that insurance be used to fill gaps in state fund coverage for third-party liability, and that EPA develop outreach programs and programs to encourage entry of private insurers into the market. The Agency agrees that private insurers can provide guidance on the structure of state funds and states may choose to consult with private insurers in the development of state funds. This rule allows several mechanisms and combinations of those mechanisms to achieve compliance. For example, traditional insurance may be used in combination with some other mechanism (like a state fund) to demonstrate financial responsibility.

To encourage the entry of private insurance carriers, the Agency is currently working with the insurance industry to develop a better understanding of the UST population and how UST insurance works. Several insurance companies currently provide UST coverage and there are indications that other insurers are planning to enter the market. In addition, the Agency believes that the implementation of the technical regulations will make UST risks more predictable and thus make the market more attractive to insurers.

l. Surety Bond (§ 280.98)

The final rule, like the proposed rule, allows owners or operators to use surety bonds to satisfy their financial responsibility obligations. Section 9003(d)(1) specifically lists surety bonds as mechanisms to be considered in establishing financial responsibility requirements. Several commenters expressed concern about the availability, terms, and costs of surety bonds. These commenters did not object to the use of surety bonds as a financial mechanism, but questioned whether owners or operators would be able to obtain surety bonds at a reasonable cost. They cited several factors affecting availability. Some commenters felt that surety companies would be reluctant to provide coverage because they believe the implementing agency would have absolute discretion over the control of the funds. For this reason, one commenter objected to the cancellation provision, which requires the surety to fund a standby trust in the event the principal fails to obtain an alternative mechanism and the Director of the implementing agency knows or suspects that a release has occurred. A large number of commenters stated generally that surety bonds will be unavailable for third-party liabilty and corrective action. Finally, some commenters stated that if surety bonds are available, only those companies able to meet the financial test could afford the bond. Along these lines, one commenter explained that, in attempting to meet the collateral requirements of a surety bond, petroleum marketers would reduce or eliminate their financial ability to puchase their products and equipment or to upgrade or monitor their equipment.

The agency recognizes that certain terms of the proposed performance bond (e.g., the cancellation provision) may limit the availability of the bond. The Agency believes, however, that the terms of the surety bond as proposed are necessary to ensure that coverage is available when needed to take corrective action and compensate third parties. For example, without the cancellation provision, sureties could cancel coverage when a release is suspected and the costs would be unfunded.

The commenters who objected to the discretionary authority of the Director of the implementing agency to control the funds appear to misunderstand the proposed regulations. The performance bond clearly describes the situations in which funds may be drawn; the Director does not have unlimited discretion to draw on the funds. (See also Section III.N of the preamble for discussion of the standby trust.)

The Agency acknowledges that many companies will be unable to afford surety bonds, or meet collateral requirements. EPA has authorized the use of those bonds in order to allow those persons who can secure surety bonds the option of using them to comply with these requirements. The rule continues to allow use of a surety bond.

In addition, as discussed in Section III.V.2. the Agency is incorporating certain exclusionary language into the terms of the instrument to more clearly limit the type and circumstances of third-party liability for which this mechanism can be used.

J. Letter of Credit (§ 280.99)

The final rule, like the proposed rule, allows owners or operators to use letters of credit to satisfy their financial responsibility obligations. Section 9003(d)(1) specifically lists letters of credit as a mechanism to be considered in establishing financial responsibility requirements. Many commenters on this mechanism did not object to the use of letters of credit, but were concerned about whether this mechanism would be available. For example, many commenters believed that letters of credit are not viable options for smaller entities. Commenters pointed out that smaller companies cannot meet collateral or liquidity requirements necessary to obtain letters of credit.

Other commenters pointed out that the costs of letters of credit are much higher than the costs of insurance, and that tying up capital or collateral to purchase letters of credit would prevent owners or operators from using letters of credit to purchase equipment for their businesses, including monitoring equipment and equipment for upgrading or replacing tanks. One commenter noted that the letter of credit would be unavailable to many governmental bodies because some lending institutions refuse to issue them to governmental bodies, and some city codes prevent governmental entities from securing letters of credit.

The Agency acknowledges that the collateral requirements for letters of credit may approach or exceed the face value of the letter of credit, and will be prohibitively expensive for many owners and operators. The Agency is allowing the use of letters of credit,

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however, as an option for those owners and operators who can afford them.

One commenter objected to the language in the letter of credit because he believed that it requires the issuer to examine the legitimacy of the conditions precedent to presentation of the sight draft. This commenter suggested that the sight draft and the statement that the Director of the implementing agency must provide to the bank should identify the purpose for which the letter is being issued (corrective action and/or third-party liability for sudden and/or non-sudden releases). This commenter also suggested that these documents should specify the tank identification number and name and address of each facility location.

The letter of credit does not require the issuer to examine the legitimacy of the conditions precedent to presentation of the sight draft. The letter of credit is payable upon presentation of a sight draft and a signed statement certifying that the letter is payable pursuant to these regulations.

A number of commenters, in addressing specific mechanisms, disagreed with the proposed requirement to identify individual tanks that are assured by the mechanisms. They all felt that identification of the facilities covered by the mechanism would ensure that releases from the facilities are covered, without delays and needless paperwork to determine which tank was the source of the release. The Agency agrees, and has revised the language of the mechanisms to specify coverage by facility, rather than by individual tank. Individual tanks must be identified if separate mechanisms are being used to cover different USTs. The letter of credit does allow the parties to specify the purpose for which the letter is being issued ("corrective action" and/or "compensating third-parties for bodily injury and property damage").

In addition, as discussed in Section III.V.2., the Agency is incorporating certain exclusionary language into the terms of the instrument to more clearly limit the type and circumstances of third-party liability for which this mechanism can be used.

K. Use of State-Required Mechanisms (§ 280.100)

EPA proposed that, in those states that have not obtained UST regulatory program approval, UST owners and operators may use state-required financial assurance mechanisms to meet the federal financial responsibility requirements. However, the proposed rule required the EPA Regional Administrator to determine that such mechanisms provide assurances that are at least equivalent to those of mechanisms specified in the Federal requirements.

Several commenters noted that allowing use of state-required mechanisms will do little to help UST owners or operators because not all states have established or will establish their own financial responsibility requirements. Another commenter supported EPA's proposal that state-required mechanisms used to determine financial responsibility while EPA reviews the state program will be considered to be at least equivalent to other required mechanisms and thus in compliance with Subpart I for the amount and types of costs covered by the mechanisms.

In response, the Agency agrees that some states without authorized UST programs may not have state-implemented financial responsibility requirements for USTs. However, owners or operators in states that do not have authorized programs, but which do have financial responsibility requirements, will be able to use equivalent state-required mechanisms. These owner or operators will not have to procure additional mechanisms to satisfy the Federal requirements. The final rule regarding the use of state-required mechanisms retains the language in the proposed rule.

L. State Fund or Other State Assurance (§ 280.101)

EPA proposed that UST owners or operators may use state funds or other state assurance programs to meet the financial responsibility requirements. RCRA section 9004(c)(1) authorizes the use of "corrective action and compensation programs administered by state or local agencies" as mechanisms to provide evidence of financial responsibility for state program approval.

Although several commenters supported the use of state assurance programs as an acceptable financial assurance mechanism, commenters remarked that state assurance programs are generally not available and, even where available, often do not provide sufficient coverage. Several states remarked that they did not plan to establish funds or that the Federal government should not rely on states to demonstrate financial responsibility for UST owners and operators.

The Agency recognizes that state assurance programs are not widely available to date. However, funds have been established in several states, including Virginia, Delaware, and Minnesota. Other states are also in the process of attempting to establish funds. The Agency does not require any state to establish an assurance program.

In addition, EPA is aware state assurance programs may not provide complete financial responsibility for UST owners or operators. For example, funds may not cover third-party compensation or all corrective action costs. Therefore, UST owners and operators using these types of programs must use other financial assurance mechanisms in combination with a state fund to demonstrate compliance with the financial assurance requirements.

Several commenters suggested that states use particular program structures or particular financing mechanisms. For example, several commenters suggested that state funds cover corrective action costs above $100,000 and third-party compensation costs above $300,000, up $1 million per occurrence. Other commenters suggested that state funds be structured to encourage entry of private insurers into the UST insurance market.

The Agency believes that the structure and means of financing programs is at the discretion of each state. EPA will not dictate the approach states should take in establishing assurance programs. However, for those states interested in establishing assurance programs, EPA will provide assistance in designing and evaluating such programs. In addition, EPA has developed a handbook providing guidance on establishing state assurance programs.

The Agency also does not intend to mandate a particular program structure in states that currently use funds to cover UST release costs. For example, the Agency would not require a state with a fund that only covered corrective action costs to alter its fund structure (e.g., to add coverage for third-party compensation) in order to qualify under this section. The owner or operator would have to obtain additional assurance to cover third-party liability requirements.

M. Trust Fund (§ 280.102)

A trust fund was not included in the proposed rule as an allowable financial assurance mechanism. As stated in the preamble to the proposed rule, the Agency believed that a trust fund with a pay-in period would provide inadequate financial assurance early in the period, and a fully-funded trust fund would be unaffordable to the owners or operators most likely to need to use the trust fund. Moreover, the Agency felt that a trust fund used in combination with an insurance policy would probably be more costly than paying the additional

premium for first-dollar insurance coverage because: (1) Unlike the costs of other mechanisms, trust fund deposits are not business expenses for federal tax purposes; and (2) insurance policies for USTs may be written to include coverage of a deductible that is later recovered from the insured.

The Agency received a comment requesting that a trust fund be allowed as a financial assurance mechanism. This commenter maintained that some firms may wish to use a trust fund to cover multiple tanks if other mechanisms are not available, and advocated allowing either a fully-funded trust fund or a partially-funded trust fund if combined with another mechanism that provides the remaining amount of required coverage.

In light of this comment, the Agency decided to allow trust funds in the final rule. Although the Agency believes that trust funds will in general cost more than other mechanisms and in many cases will be unaffordable, trust funds are allowed to provide more flexibility to owners or operators in providing financial assurance. To ensure that the trust fund will provide adequate financial assurance, the Agency requires the trust fund to be fully-funded for the amount of required coverage, or partially-funded and used in combination with another allowable mechanism that provides the remaining amount of required coverage.

The language of the trust fund instrument is identical to the language of the standby trust fund used to manage funds paid from other mechanisms (e.g., letter of credit). The amount of the trust fund is determined by the owner or operator, as long as the remaining amount of required coverage is provided by another mechanism.

In addition, as discussed in Section III.V.2. of the preamble, the Agency is incorporating certain exclusionary language, into the terms of the instrument to more clearly limit the type and circumstances of third-party liability for which this mechanism can be used.

N. Standby Trust Fund (§ 280.103)

Under the proposed and final rule, EPA establishes the standby trust fund as the depository mechanism that an owner or operator must put in place upon acquiring one of the following financial assurance instruments: Guarantee (§ 280.96), surety bond (§ 280.98), or letter of credit (§ 280.99). Funds drawn under any of these instruments, pursuant to the instruction of the Director of the implementing agency, must be deposited directly into the standby trust fund by the institution making the payment. The use of a standby trust is necessary because without such a depository mechanism, any funds drawn under those instruments that are payable to the Regional Administrator would have to be paid into the U.S. Treasury and could not be used specifically to pay for the UST corrective action or third-party liability claims for which the funds were intended without Congressional action (see 31 U.S.C. 3302). Similarly, funds payable to the state Director may have to be paid into the state treasury.

The rule requires that the trustee must have the authority to act as a trustee and its trust operations must be regulated and examined by a federal or state agency. This trustee qualification requirement is the same as the trustee qualification requirement under the Subtitle C regulations. If the trust operations are not regulated and examined by a federal agency, the trust operations must be regulated and examined by a state agency in each state in which a standby trust fund is established.

All commenters on the proposed standby trust requirement argued that the provision is unnecessary. In the case where a guarantee is used to provide financial assurance, several commenters asserted that the use of the guarantee is comparable to self-insurance, which does not require a standby trust because, in each instance, funds are assured from existing corporate assets. The Agency recognizes that corporate assets are the source of the funds for both self-insurance and guarantees, but does not believe that the similarity obviates the need to establish the standby trust when a guarantee is used to provide financial assurance.

The standby trust fund is necessary to ensure access to funds when they are required and to ensure that the implementing agency can address corrective action requirements promptly and preclude further damage to health or the environment.

The financial test of self-insurance is a direct mechanism for providing finanical assurance. When it is used, the owner or operator ensures that he will take prompt, corrective action and pay valid third-party claims from existing corporate assets—evidenced by satisfaction of the financial test.

A payment guarantee, such as the guarantee in the proposed rule and today's rule, is an indirect mechanism. When it is used, the guarantor does not ensure that it will take prompt corrective action or pay third-party claims if the owner or operator does not. Rather, the guarantor contracts with the implementing agency that, if the owner or operator fails to undertake required activities, the guarantor will provide the necessary funds to undertake the activities from its corporate assets. EPA cannot hold the funds directly because of the prohibitions of 31 U.S.C. 3302, as discussed above. It is necessary, because of the prohibition, that the funds be placed in an existing depository mechanism, the standby trust, from which the implementing agency can direct funding of required actions as promptly as possible. Therefore the standby trust requirement for a guarantee remains a provision of today's rule.

Other commenters disagreed with the provision that the standby trust must be established at the same time as the financial assurance mechanism, noting that, under RCRA Subtitle C, the trust is established only when assured funds are required. The commenters misstate the requirements of Subtitle C. The standby trust requirement in today's rule differs from the Subtitle C model because its purpose is different. In the Subtitle C rule, guarantees are recognized to assure funds for closure and post-closure and third-party liability. No standby trust is required for the guarantee for liability because valid third-party claims, if not paid by the owner or operator, are paid by the guarantor directly to the claimants. If an owner or operator fails to perform closure or post-closure care whenever required to do so, the guarantor can perform the required activities itself or establish a trust from which EPA can fund the activities. Today's rule provides financial assurance for both corrective action and third-party liability. A release from an UST may or may not occur. If a release does occur and corrective action is necessary, it should not be delayed while a standby trust is put in place. Prompt action will prevent further damage to human health and the environment. In addition, because under Subtitle I one assurance mechanism covers both corrective action and third-party liability, the standby trust provides a mechanism for the Director of the implementing agency to ensure that funds are available first to pay for corrective action (see Section III.S). The Agency, therefore, has not changed the requirement that a standby trust be established when a guarantee, letter of credit, or surety bond is acquired to provide financial assurance in compliance with this rule.

The wording of the standby trust agreement must be identical to the wording provided by § 280.103(b). Uniform wording of the agreement minimizes the administrative burden on

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the implementing agency by eliminating case-by-case review of standby trust agreements and provides owners and operators with the assurance that the agreements will satisfy the regulatory requirements. In addition, as discussed in Section III.V.2. of the preamble, the Agency is incorporating certain exclusionary language into the terms of the instrument to more clearly limit the use of the mechanism only to costs associated with releases from USTs.

Commenters on the standby trust were also concerned about the costs of trusts, particularly if the owner or operator has several facilities in several states for which standby trusts must be established and maintained. The Agency evaluated the costs related to establishing and maintaining a standby trust fund when today's rule was proposed. The primary costs are the costs of managing the funds; other relatively minor costs include the administrative fee charged to establish the trust fund and fixed fees for simply maintaining the account. The incremental costs of establishing a standby trust at the time the instrument is established will be minimal, since there will be no funds in the trust. The Agency believes, therefore, that the requirement to establish the standby trust fund at the time a financial assurance instrument is acquired will not be particularly burdensome to UST owners or operators.

In addition, the final rule allows the owner or operator to establish one trust as the depository mechanism for all funds assured in compliance with this rule. Owners and operators with a number of facilities in various states may, therefore, establish one standby trust into which funds can be deposited if and when required. States authorized to implement this program may adopt this policy or may require the owner or operator to establish a standby trust in their own jurisdictions.

O. Substitution of Financial Assurance Mechanisms by an Owner or Operator (§ 280.104)

Under § 280.104 of the proposed and final rule, the Agency allowed an owner or operator to substitute alternate financial assurance, provided that an effective financial assurance mechanism or combination of mechanisms that satisfy the financial responsibility requirements existed at all times. After obtaining alternate financial assurance, an owner or operator may cancel a financial assurance mechanism by providing notice to the provider of financial assurance. The owner or operator must maintain continuous coverage with a financial assurance mechanism to ensure the availability of funds at all times for corrective action and third-party liability claims, should a release occur from an UST containing petroleum.

The Agency received no comments on provisions regarding the substitution of financial assurance mechanisms by an owner or operator, and thus promulgates these provisions as proposed.

P. Cancellation or Nonrenewal by a Provider of Financial Assurance (§ 280.105)

1. Length of Notice Period

In the April 17, 1987, proposal, the Agency required insurers to provide owners or operators 120 days notice before cancelling (i.e., failing to renew) insurance coverage and 90 days before terminating a policy under other circumstances (e.g., non-payment of premium by an insured). Other providers of financial assurance were permitted to cancel, refuse to renew, or otherwise terminate an instrument only if the provider first notified the owner or operator at least 120 days in advance. Further, EPA required any owner or operator failing to obtain an alternate mechanism within 60 days after receiving a notice of cancellation or termination to notify the implementing agency of such failure and submit evidence of the existing financial assurance mechanism, the name and address of the provider of financial assurance, and the date of cancellation. In the sixty days remaining until termination of coverage, the implementing agency would then have the opportunity to inspect the affected tanks to determine if any releases had occurred, thus assuring that the still viable mechanism could be drawn upon to provide any necessary funds. Moreover, the 120-day requirement reflected the Agency's concern that providers of financial assurance might want to cancel their mechanisms upon the discovery of an UST release, leaving the owner or operator without assurance when it is most needed.

Several commenters, primarily from the insurance industry, urged EPA to reduce the number of days' notice required for cancellation to 60 days. The commenters presented several arguments supporting their request. First, they argued that 60 days is an adequate amount of time for owners or operators to search for and obtain any other type of available assurance, or to determine that none is available and report this to the implementing agency. Second, commenters noted that a 60-day notice period is becoming a standard insurance practice in many states. Third, commenters viewed the 120-day provision as punitive to insurers, and predicted that reducing the notice period to 60 days would result in the greater availability of affordable coverage. Finally, two commenters warned that if 90 days or more notice were required, insurers would automatically send out cancellation notices on an annual basis to every insured party, thereby giving them the time to review accounts at a point closer to the beginning of a new policy year.

Based on these comments, the Agency has concluded that the 120-day notice period is unnecessary for insurance, RRG coverage, and state fund coverage. In the 60 days following an owner's or operator's determination that no other financial assurance is available, the Director of the implementing agency has the authority to require a guarantor, surety, or issuer of a letter of credit to fund a standby trust. However, the Director of the implementing agency does not have the authority to require insurers, RRGs, and state funds to fund a standby trust should a leak be suspected or confirmed. Consequently, an additional 60-day period following the determination by an owner or operator that no alternate financial assurance is available would not benefit an owner or operator using insurance, RRG coverage, or state fund coverage in the manner intended by the Agency.

Other circumstances unique to insurance, RRG coverage, and state funds also support the conclusion that a 120-day notice period for cancellation is inappropriate for these mechanisms. In cases where insurance or RRG coverage is cancelled, for example, an owner or operator has an incentive to submit any claims if there is a release. In addition, the extended reporting period for claims-made policies allows an owner or operator to file a claim six months after the policy has been cancelled. Finally, states are not likely to abruptly withdraw financial assurance in case of an UST leak.

Consequently, EPA has decided that providers of insurance, RRG coverage, and state-backed coverage need only provide a 60-day notice period for cancellation or termination of coverage. Owners or operators who fail to obtain alternate coverage after these mechanisms are cancelled are still required to notify the implementing agency 60 days after being notified of cancellation or termination of financial assurance (i.e., when coverage expires). Reporting at this time can trigger an evaluation of the USTs for releases which should be reported during the extended reporting period.

Nevertheless, the Agency, for the reasons noted above, believes that the proposed 120-day period is essential in cases where an owner or operator has obtained a guarantee, letter of credit, or surety bond. Therefore, providers of these financial assurance mechanisms must still provide a 120-day advance notice of cancellation or termination of coverage.

2. Termination for Non-Payment of Premium

A number of commenters, primarily from the insurance industry, argued that the provisions should allow for a quick termination of coverage in the event of non-payment of premium by an insured. Most suggested that this period be 10 days. Under the proposed provisions, commenters noted that the insurance agent or insurer would have to provide 90 days worth of coverage on behalf of an insured who fails to pay his premium. Some commenters warned that should the 90-day period be maintained in all cases, they might protect themselves from this contingency by requiring full payment of premium prior to the issuance of coverage. Moreover, commenters asserted that termination with 10 days notice for non-payment of premium conforms with standard industry practice on other types of insurance.

While sympathetic to industry concerns, EPA is unwilling to accept a 10-day notice period in these cases. First, the Agency calculates that such a brief notice period will not allow UST owners or operators sufficient time to obtain alternate assurance mechanisms, and hence will result in unacceptable gaps in coverage.

Second, the Agency remains convinced that the shortened 60-day notice period will fulfill the needs of providers. As noted earlier, a 60-day notice period is standard in many states. In addition, insurers, for example, could protect themselves by establishing an appropriate schedule of premium payment. Insurers could require payment 90 days before the expiration date of coverage for the maintenance or renewal of the policy. An insurer could then terminate the policy with 60 days notice if an insured does not meet the schedule of payment within 30 days of the premium due date.

The Agency therefore is requiring a 60-day notice period for termination of coverage even in the event of non-payment of premium by an insured.

Q. Reporting by Owner or Operator (§ 280.106)

The April 17, 1987, proposal required each UST owner or operator to keep evidence of financial responsibility at his UST site or at his place of business. (Section III.R of this preamble describes the nature of the records that the owner or operator must maintain.) In addition, the proposed rule required an owner or operator to submit the appropriate documentation of financial responsibility to the implementing agency in the following circumstances:

(1) When the owner or operator notifies the Regional Administrator of the existence of a new petroleum underground storage tank under § 280.22;

(2) Within 30 days after the owner or operator has a known or suspected release from a petroleum underground storage tank required to be reported under § 280.74;

(3) If the owner or operator fails to obtain alternate coverage as required by this subpart within 30 days after the owner or operator receives notice of:

- Commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a provider of financial assurance as a debtor,
- Suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism,
- Failure of a guarantor to meet the requirements of the financial test, or
- Other incapacity of a provider of financial assurance;

(4) If an owner or operator is unable to obtain alternate assurance within 60 days after receiving a notice of termination of a mechanism, as required by § 280.105(b); or

(5) If the owner or operator using the financial test fails to meet the requirements of the test, as required by § 280.94.

The Agency received several comments supporting the proposed reporting requirements. Two commenters, both representative of large segments of the regulated community, noted that an annual reporting requirement would impose excessive administrative burdens on small businesses. Moreover, a number of state government commenters expressed concern that they might be unable to administer a mandatory reporting requirement. The commenters supported their position by citing the large size of the regulated community, the lack of state financial and personnel resources, and the excessive paperwork burdens that would accompany such an effort.

Other commenters, however, urged EPA to mandate more extensive reporting requirements. Two commenters suggested an annual demonstration of financial responsibility. The commenters cited several benefits of enhanced requirements, including: (1) Greater incentives for proper tank management and rapid release detection and response; (2) the Agency's ability to target enforcement efforts towards owners or operators who fail to submit evidence; and (3) greater assurance that funds will be available to pay the costs of UST releases.

There are other potential advantages of more stringent reporting requirements. Stringent reporting could increase the level of compliance with the regulations, since owners or operators would be required to demonstrate on an annual basis that they have obtained financial assurance required under this subpart.

Despite these considerations, the Agency has decided that the advantages of more frequent reporting are outweighed by several factors unique to the UST financial responsibility program. First, the regulated UST community, consisting of an estimated 1.7 million USTs located at 500,000 facilities, is extremely large. Receiving and processing financial assurance certifications from all these UST owners or operators on an annual basis could place substantial administrative burdens on implementing agencies. In fact, the sheer volume of reports could overwhelm implementing agencies and mask the more critical information, i.e., cancellation or release notices. However, the Agency intends to develop non-traditional approaches to compliance monitoring and enforcement and will initiate pilot projects in states to test these approaches.

In addition, provisions in SARA for the LUST Trust Fund create incentives for owners and operators to comply with the regulations, since the fund may be used to pay for costs in excess of the required amount of financial responsibility if the owner or operator has maintained evidence of financial responsibility. To increase awareness of and compliance with UST rules, EPA is preparing a public outreach program aimed at providing UST owners and operators with information on all UST requirements. Moreover, many UST owners and operators are already obtaining insurance to limit their exposure to future liability due to UST costs.

Finally, the alternative of reporting by postcard, while minimizing costs for owners and operators, would still inundate implementing agencies with the same number of reports, and thus would not alleviate the critical problem created by annual reporting.

The Agency has thus decided not to impose more stringent reporting requirements on the regulated community.

The Agency also received comments opposing certain provisions of the proposed reporting requirements. Several commenters disagreed with the

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requirement to submit financial responsibility documentation for new, and not old, tanks, arguing that new tanks are less likely to leak than older tanks.

The Agency has retained this provision in the final rule. As noted above, the proposed requirement builds upon existing notification requirements mandated under section 9002(a) of Subtitle I and codified in the UST technical standards (53 FR 37082, September 23, 1988). Specifically, § 280.22 requires owners or operators who bring a new tank into use to notify the appropriate state or local agency or department of the existence, age, size, type, location, and uses of the new tanks as well as to obtain an installation certification. Including financial assurance information in these reports involves a minimal increase in the cost of these reports for the regulated community and provides valuable compliance monitoring information to the implementing agency.

Another commenter argued that owners or operators should not be required to submit financial assurance documentation for new tanks to both the EPA Regions and the states. The Agency agrees with the commenter. While the proposed rule required owners or operators to submit this documentation to the Regional Administrator, today's rule relies on submittal of the new tank notification to the appropriate state or local agency or department, as required in § 280.22 and RCRA section 9002(a).

Another commenter found the wording of § 280.108(a)(2) unclear, and inquired whether financial responsibility documentation should be submitted for a suspected release or only in the event of a confirmed release. The financial assurance reporting requirements, which have been revised to reflect provisions for reporting releases for corrective action in §§ 280.53 and 280.61 of the UST technical standards, now require submittals in the event of the confirmed releases. (These provisions are discussed in further detail in Section IV.F of the UST technical standards preamble.)

The same commenter urged EPA to allow entities installing large numbers of tanks the option of submitting financial responsibility documentation annually to the Regional Administrator rather than submitting multiple documentation for each new tank. The Agency sees no reason to adopt this approach. Section 280.22 requires that owners or operators certify in the new tank notification form that they are in compliance with the financial responsibility provisions as well as provide information on compliance with other technical requirements.

R. Recordkeeping (§ 280.107)

Under the proposed rule, owners or operators were required to maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this subpart until one year after closure or one year after the completion of closure and corrective action. An owner or operator was required to maintain at his UST site or place of business the following types of evidence for mechanisms used to demonstrate financial responsibility:

(1) Copies of assurance mechanisms specified in §§ 280.94 through 280.100, worded as specified.

(2) Letters of certification from the chief financial officer of firms using the financial test of self-insurance or providing guarantees, based on year-end financial statements for the last completed fiscal year. Such evidence must be on file no later than 120 days after the close of each fiscal year.

(3) Originally-signed duplicates of the standby trust funds worded as specified in § 280.103(b) for guarantees, surety bonds, or letters of credit.

(4) Originally-signed duplicates of the insurance policies or RRG coverage policies with the endorsements or certificates of insurance and any amendments.

(5) Copies of letters or certificates from states regarding coverage by state funds or other state assurances.

The proposed rule also required the owner or operator to maintain a certification that the financial assurance mechanism used to demonstrate financial responsibility is in compliance with the requirements of the rule.

The Agency received a number of comments concerning the recordkeeping requirements of owners or operators of petroleum USTs. Some commenters expressed unconditional support for the provisions.

Several commenters, however, were dissatisfied with the requirements. One commenter urged EPA to delete the recordkeeping requirements and instead require owners or operators to submit evidence of financial responsibility directly to the Agency. Since the Agency, as noted in Section III.Q, does not require the automatic submission of financial responsibility documentation, it has decided to retain the recordkeeping requirements under § 280.107.

Another commenter suggested that the certification of compliance be kept at the UST site, rather than at the place of business, and that it include the address of the corporate office where details would be maintained. The provisions of this section allow UST owners or operators to choose this recordkeeping option. However, as with the technical standard rule, off-site records must be made available on request of the implementing agency.

One commenter noted that requiring the annual letter from the chief financial officer supporting the use of financial tests or guarantees is unnecessary. The commenter suggested that this annual letter should not be required, especially since the certification of financial responsibility presents essentially the same information. Another commenter asserted that the certification of financial responsibility is unnecessary.

The Agency has decided to retain both requirements. Because EPA is not receiving financial responsibility reports on a regular basis, the Agency believes that requiring an annual letter from the chief financial officer may be necessary to further ensure the validity of various financial responsibility mechanisms. Moreover, the Agency notes that large firms, as a matter of standard business practice, routinely maintain the information required in the annual letter. Similarly, requiring the certification of financial responsibility will provide additional incentives for owners or operators to comply with the regulations at all times, and will not entail a substantial administrative burden.

One commenter argued that sending the chief financial officer's annual letter to all UST sites will present significant administrative burdens on some firms. The Agency agrees, and notes that the commenter might have misread the proposed rule, which allows owners or operators to maintain all documentation at either the UST site or the owner's or operator's place of business. However, off-site records must be made available upon request of the implementing agency.

One commenter questioned the need to maintain an originally-signed duplicate of the standby trust agreement at each UST location or place of business when it is adequate to maintain only a copy of the guarantee, surety bond, or letter of credit. Similarly, the commenter questioned the need to maintain an originally-signed duplicate of the insurance policy when it is adequate to maintain a copy of the certificate of insurance, especially since the commenter's policy contains confidential information not intended for widespread distribution. Requiring originals, the commenter asserted, would increase the paperwork burden exponentially for firms with large numbers of facilities. As an alternative, the commenter recommended that the Agency allow owners or operators to keep copies at each location and be required to submit originals only in accordance with proposed (§ 280.106 or within 15 days of a written request by the Agency.

The Agency agrees with the commenter that requiring an originally-signed duplicate of the standby trust agreement and the insurance policy to be maintained at each facility is unnecessary. An owner or operator need not maintain an originally-signed duplicate of an insurance policy in order to draw on the policy; similarly, an owner or operator need not present an originally-signed copy of a standby trust in order to exercise the trust.

Consequently, the Agency has revised the final rule to require an owner or operator using a guarantee, surety bond, or letter of credit to maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement. In addition, an owner or operator using an insurance policy or RRG coverage is now required to maintain a copy of the signed insurance policy or RRG coverage policy, with the endorsement or certificate of insurance and any amendments to the agreements.

The Agency also received two comments suggesting that including a list of specific tanks and tank numbers in the financial assurance mechanism is unnecessary. The Agency agrees with these comments and has revised the required wording of all mechanisms to reference each facility where covered USTs are located rather than a tank-specific list of USTs at each facility (see discussion under Section III.E of this preamble).

Pursuant to the changes outlined in Section III.T, owners or operators will not be required to maintain evidence of financial responsibility for one year after closure. Rather, owners or operators need only maintain such evidence until the date of closure or until corrective action is completed if a release is found at the time of closure.

S. Drawing on Financial Assurance Mechanisms (§ 280.108)

The proposed rule provided special procedures for funding and drawing on the trust fund and on the standby trust fund for those financial assurance mechanisms (guarantees, indemnity contracts, surety bonds, and letters of credit) that require action by EPA to initiate payment. The rule proposed procedures for EPA to follow in funding corrective action and paying valid third-party claims, while minimizing the administrative burdens on the Agency and owners, operators, and claimants.

For corrective action claims, the proposed rule required that an owner or operator who notifies the Regional Administrator of a release in accordance with proposed notification requirements (Subpart F of 40 CFR Part 280) must provide evidence of financial assurance within 30 days. Once EPA possessed the evidence of the assurance mechanism, the Regional Administrator would be able to prepare and submit the appropriate instructions to the provider of financial assurance to fund the standby trust, if necessary. If the owner or operator fails to conduct any necessary corrective action, the Regional Administrator can direct the provider to fund the standby trust and can direct payments from the fund.

The proposal provided different procedures for third-party compensation claims in § 280.108(b)(2) than were established for corrective action claims, because the UST owner or operator may contest a third-party compensation claim as invalid or inaccurate. In order to avoid EPA being placed in the role of a claims adjuster, the proposal required the owner or operator and the third-party claimant to submit a document signed by each party and by attorneys representing each party certifying the validity and amount of the claims. If the parties cannot agree on the claims or amount underlying the signed certificate, a lawsuit may be required to adjudicate the validity of the claim and any amount due.

In addition, § 280.108(c) of the proposed rule established procedures for the Regional Administrator to draw on the financial assurance mechanisms once estimates or known costs of corrective action and third-party claims are available. The rule required the Regional Administrator to instruct the trustee to pay corrective action costs before paying third-party claims in order to minimize further threats to human health and the environment and additional third-party claims caused by the release.

A number of commenters criticized the Regional Administrator's discretionary authority to fund the standby trust fund as too vague, especially in light of the Regional Administrator's apparent lack of training in technical and financial issues, his vulnerability as a political appointee to political pressures, and the lack of a mechanism by which a guarantor or indemnitor can appeal the Administrator's decision to fund the amount awarded. Some commenters thought that this loss of control over funds by financial institutions or other entities will discourage participation by such entities in providing financial assurance.

One commenter argued that providers of financial assurance will be reluctant to issue instruments if they believe they will have to process paperwork and follow the funding protocol even when their customers are financially capable of performing corrective action or paying third-party claims, or are able to obtain a substitute instrument. Apparently, providers of surety bonds and letters of credit carefully screen customers in order to minimize the likelihood that the instrument will ever be drawn upon; that is, these are truly intended to be "standby" instruments. As a solution, the commenter recommended that the 120-day cancellation provision be shortened, and that the instrument be drawn on only if substitute coverage has not been provided five working days before the instrument expires. This timeframe would lessen the probability that unnecessary paperwork and processing would commence and that cash would sit needlessly in trust funds requiring management by the trustee.

The essence of these comments is that the mechanism for funding the standby trust will diminish the availability of the financial assurance vehicles requiring establishment of a standby trust. In responding to these comments, as well as those discussed below, it should be noted that the Agency's desire to encourage the availability of a wide array of financial assurance vehicles under this rule is secondary to the Agency's mandate to assure that all financial vehicles will be readily available when a leaking UST is discovered. Thus, assuring the availability of funds for corrective actions must take precedence over marginally enhancing the availability of any one mechanism.

With respect to the commenters who thought that the Regional Administrator's role in ordering the funding of the standby trust or the disbursement of funds would impair availability or, worse, compromise the integrity of the financial assurance program, these comments greatly overstate the discretion accorded to the Director of the implementing agency (either the Regional Administrator or the state Agency director) under these regulations. The Director of the implementing agency is required to act only under clearly defined circumstances, and, other than for cancellations, only when the owner or operator does not cover the costs of corrective action and third-party liabilities. For example, the Director will require funding of and draw on the standby trust in three situations: (1) If

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the owner or operator fails to establish alternative financial assurance within 60 days of notice of cancellation, and the Director of the implementing agency determines or suspects that a release has occurred and so notifies the owner or operator (evidence of a suspected release under § 280.50 includes positive monitoring results from testing, monitoring and sampling, unusual operating conditions, or the discovery of regulated substances in the environment); (2) if the Director determines that there is a release and the owner or operator fails to undertake necessary corrective action; or (3) if the Director receives proper certification of a third-party liability claim or a valid final court order for a third-party liability claim that the owner or operator fails to pay (§ 280.108(a)(2) in the final rule). Thus, while the Director is a critical participant, the provider of financial assurance and the owner or operator are intimately involved in the actions triggering funding of the trust, and ample notification accompanies each step.

One commenter seemed to argue that availability does not hinge on the Director's sole so much as it is a function of the provider of assurance's aversion to risk and paperwork. According to this argument, these mechanisms will be available only to owners and operators who have the ability to undertake corrective action and meet demands for third-party damages, but be jeopardized if it is likely that the standby trust might be funded, necessitating cost and paperwork.

In response, EPA notes that payment into the standby trust fund is not easily triggered, but occurs when cancellation of the financial assurance vehicle coincides with the likelihood of certainty of a release from an UST or when the owner or operator fails to carry out or pay for the actual costs of corrective action or fails to pay valid third-party claims. When an instrument is cancelled and there is a known or suspected release, questions of aversion to handling costs or red tape are clearly secondary to securing the availability of funds for corrective action. The only other circumstances under which the standby trust would be drawn upon are consistent with the commenter's concern; that is when the owner or operator truly fails to cover the assured costs. Further discussion of cancellation and notice is provided in Section III.P. above.

One commenter objected to the specific language in the proposed § 280.108(a)(1)(ii) that empowers the Regional Administrator to require funding of the standby trust if the financial assurance mechanism is cancelled and not replaced and if the Regional Administrator "determine or suspects that a release . . . has occurred," arguing that mere "suspicion" on the part of the Regional Administrator was not adequate ground for funding the trust. The commenter would amend this language to prevent the Regional Administrator from acting unless a determination has been made that a release has actually occurred.

The Agency cannot accept this restriction on the Director's authority to act on the suspicion that a release has occurred. EPA intends that this suspicion be based on objective evidence, such as failure of a tank tightness test, discovery of free product in adjacent sewer and utility lines, notice by the owner or operator, or other clear but unverified evidence. Further, the suspicion must be coupled with the cancellation and nonreplacement of the financial assurance mechanism as described above. In this case, there would be no new assurance mechanism to take over when the cancellation becomes effective, leaving the owner or operator potentially unable to fund corrective action and third-party liabilities arising from release that occurred before the cancellation.

Finally, a number of commenters misunderstood the workings of the provision. One commenter thought that EPA should not propose procedures to evaluate third-party claims, but, rather, should allow the parties themselves or the courts to settle claims. An insurance company association commented that the language suggested that the owner or operator may settle a claim with a potential claimant without consultation with the insurer, thus placing the insurer in the position of indemnifying any claim, no matter how frivolous, if the owner or operator chooses to settle. An insurance company commenter requested that the standby trust provision be clarified to prevent its application to insurance entirely.

In response, the Agency notes that the claims for third-party damages are settled by the parties themselves, with full access to the courts if unresolved issues remain. The regulations simply provide a mechanism that expedites settlement of claims made against the funds held in trust if the parties agree on the details of the settlement. It is unlikely that insurance companies will be providing surety bonds, guarantees, or letters of credit, but if they do, issues concerning any alleged breach of duty by parties to the agreement are the province of the legal system, not the Director. Finally, the regulations state clearly that the provisions of the standby trust do not apply to insurance policies.

After reviewing all of the comments on drawing on the financial assurance mechanisms, EPA has concluded that only two changes should be made to § 280.108 as proposed. All references to the Regional Administrator have been changed to the Director to clarify that these responsibilities are delegated to the Director of the state implementing agency in authorized states. In addition, the standby trust is only required for guarantees, letters of credit, and surety bonds because indemnity contracts are not included as an allowable mechanism in the final rule.

T. Release From the Requirements [§ 280.109]

Under the proposed rule, owners and operators were released from the requirements after completion of closure or, if corrective action was required, after the tank was properly closed and after completion of corrective action. The preamble to the rule, however, discussed the Agency's intention to require owners and operators to comply with the requirements for one year after closure. Many commenters objected to the possibility that owners or operators who properly close their tanks would be subject to the requirements for one year after closure. These commenters pointed out that there is no need to require coverage after closure because corrective action, when required, must be taken before closure, and because they believe that insurers are unlikely to insure owners and operators after tanks are closed.

Commenters indicated that it is unlikely that financial assurance providers will provide coverage after tank closure. The Agency recognizes that this is the case. The closure requirements in Subpart G of the technical standards specify a closure process that requires owners and operators to notify the Director of the implementing agency before closure, and conduct a site assessment. If releases are identified, the owner or operator must conduct corrective action and the tanks cannot be closed until corrective action is completed. This process will ensure that closure is not completed until any releases from the petroleum UST system have been cleaned up.

Therefore, the Agency has determined that the need for financial assurance will be greatly diminished after corrective action and closure are completed and will not require owners and operators to maintain financial assurance after proper closure of their tanks. Under the final rule, owners and operators are released from the requirements after completion of closure or of corrective action and closure, when required.

U. Bankruptcy or Other Incapacity of Owner or Operator or Provider of Financial Assurance (§ 280.110)

The proposed rule required that any owner or operator named as a debtor in voluntary or involuntary bankruptcy proceedings (under Title 11 of the U.S. Code) notify the Regional Administrator within 10 days after commencement of such proceeding. In addition, the proposed rule required a guarantor or indemnitor to notify the owner or operator by certified mail within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy) of the U.S. Code that names such guarantor or indemnitor as debtor. The proposed rule stipulated, furthermore, that any owner who demonstrated financial responsibility using a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of a provider to issue a guarantee, indemnity contract, surety bond, insurance policy, risk retention group coverage policy, letter of credit, or state-required mechanism. Finally, proposed § 280.110 required states to notify the Regional Administrator and owners and operators covered by a state fund or other state assurance within 30 days after the assurance mechanism becomes incapable of covering assured costs. The proposed rule adopted the provision in Subtitle C rules for the incapacity of owners or operators, guarantors, or financial institutions (see §§ 264.148 and 265.148), but amended the language to make it more applicable to the requirements for Subtitle I financial responsibility.

One commenter doubted whether an owner or operator would be informed within 10 days after the commencement of bankruptcy of a provider of assurance to notify EPA of the bankruptcy. The commenter suggested that this requirement be eliminated.

The commenter appears to have misread the rule. Proposed § 280.110 required a guarantor or indemnitor to notify the owner or operator by certified mail within 10 days after commencement of a voluntary or involuntary bankruptcy proceeding naming the guarantor or indemnitor as a debtor. (As noted in Section III. G of today's preamble, indemnity contracts cannot be used to satisfy the financial responsibility requirements.) An owner or operator, in accordance with § 280.108, must notify the Director of the implementing agency of the incapacity (e.g., bankruptcy) of a provider of financial assurance only if the owner or operator fails to obtain alternate assurance within 30 days of receiving notice of such incapacity.

The Agency, therefore, has decided to promulgate these provisions as proposed.

V. Provisions Pertaining to Other Instruments (§ 280.111)

1. Maintaining Other Instruments at Required Levels of Coverage

If the Director of the implementing agency requires funding of the standby trust where financial assurance is provided by a guarantee, letter of credit, or a surety bond, and draws on the standby trust or on a trust fund to pay the cost of corrective action or third-party damages, the full amount of assurance required by § 280.93 will no longer be available. The proposed regulations did not specify the steps the owner or operator had to take to assure that his financial responsibility obligations were being met after one of these mechanisms had been used. While the need to take these steps was implicit in the proposed rule, the Agency is making a technical addition to the rule to clarify precisely how the mechanisms would be implemented. Accordingly, a new section has been added to the final financial responsibility regulation (§ 280.111) establishing requirements for replenishing a guarantee, letter of credit, surety bond, or trust fund if the assurance these mechanisms provide falls below the required amount.

These new provisions provide that, if the amount in the standby trust is reduced below the full amount of assurance required, the owner or operator shall:

(1) By the anniversary date of the financial mechanism from which the funds were drawn,

(2) Replenish the value of financial assurance to equal the full amount of assurance required, *or*

(3) Acquire another financial assurance mechanism for the amount by which funds in the standby trust have been reduced.

If a combination of mechanisms was used to provide the assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms. This new section provides needed instruction for the Director of the implementing agency and the owner or operator, and, more importantly, ensures that an adequate level of funding will be available for corrective action and payment of third-party damage claims.

2. Exclusionary Language for Other Instruments

The language of the instruments for guarantees, letters of credit, surety bonds and trust funds in today's rule contains a provision that they do not apply to certain categories of damages or obligations. These exclusions are patterned on existing standard exclusions found in insurance coverage, and are intended to ensure that the coverage is not exhausted by the payment of claims that are covered by other compensation systems or that are otherwise not intended to be included within the scope of coverage. The five exclusions do not represent all common insurance policy exclusions, but were selected because they were considered most relevant to the financial assurance mechanisms for liability required under Subtitle I. In commenting on specific mechanisms, some commenters were concerned about the possible uses for the mechanisms or the Director's perceived discretion in ordering payments from the standby trust. Incorporating this exclusionary language will ensure more certainty for the owner or operator and for the provider that these mechanisms will be used only for costs associated with UST releases, as the rule requires.

The exclusions, with one exception, parallel exclusions that are being proposed for instruments under Subtitle C. The purpose of adding these exclusions to Subtitle C instruments is similar to the purpose under Subtitle I, to ensure that coverage provided by the instruments will be available only to respond to corrective action and third-party claims related to releases from underground storage tanks and will not be available to cover routine accidents not related to USt releases or claims for damage to the owner or operator, or to meet other liabilities assumed by the owner or operator which are unrelated to UST releases. The Subtitle C exclusion, however, excludes damage to the property of the owner or operator. While permissible for Subtitle C liability requirements because only third-party damages must be covered, such an exclusion would be inappropriate for Subtitle I because coverage for corrective action is explicitly required. Accordingly, EPA is providing a limited form of on-site exclusion which prevents use of funds to cover non-required

corrective action (e.g., cleanup which would be part of routine maintenance and not subject to Subpart F of the technical standards).

Exclusion (a), for obligations under workers' compensation, disability benefits, or unemployment compensation law or similar law, is intended to prevent the use of Subtitle I financial assurance mechanisms to cover such claims.

Exclusion (b), for bodily injury to the employees of the owner or operator, is also intended to ensure that such claims are not covered by assurance mechanisms obtained to comply with this rule.

Exclusion (c), for bodily injury or property damage arising out of the ownership or use of any aircraft, motor vehicle, or watercraft, is to prevent use of an authorized financial assurance mechanism for routine accidents that are not directly related to management of underground storage tanks.

Exclusion (d), for property damage other than that related to cleanup as required by under Subpart F of the technical standards, is intended to prevent use of the instruments' funds to meet other on-site cleanup costs such as those for routine maintenance.

Exclusion (e), for bodily injury or property damage for which the owner or operator is obligated to pay damages by reason of the assumption of liability in a contract or agreement, is intended to exclude liabilities assumed by contract that do not involve the ownership or operation of the underground storage tank. It does not exclude settlements or other agreements to pay damages in connection with accidental occurrences resulting in bodily injury or property damage caused by releases from underground storage tanks.

W. Suspension of Enforcement (§ 280.112)

1. Statutory Authority

RCRA section 9003(d)(5)(D) authorizes the Administrator to suspend enforcement of the financial responsibility requirements for particular classes or categories of USTs. Suspensions of enforcement may allow time for owners and operators of USTs in particular classes or categories or located in particular states to obtain assurance for corrective action and third-party compensation costs. Because some owners or operators of certain classes or categories of USTs may find that financial assurance mechanisms are not generally available on the date set for compliance in the rule, suspensions would allow these owners and operators time to comply with the requirements through the formation of RRGs or the establishment of state funds.

The statute requires that, to suspend enforcement, the Administrator must determine that (1) methods of financial responsibility are not generally available for USTs in the class or category; and (2) either steps are being taken to establish a RRG for that class of tanks or a state is taking steps to establish a corrective action and compensation fund under RCRA section 9004(c)(1). A suspension of enforcement may not exceed 180 days. The Administrator has the discretion to suspend enforcement for a period of less than 180 days.

After an initial suspension expires, the Administrator may again suspend enforcement of financial responsibility requirements, but only if (1) methods of financial responsibility are still not generally available, and (2) either (a) "substantial progress" has been made in establishing a RRG; or (b) the owners or operators of USTs belonging to the class or category demonstrate, and the Administrator finds, that the state is unable or unwilling to establish a fund *and* formation of a RRG is not possible.

EPS proposed relatively detailed procedures and criteria for its consideration of suspension applications. EPA requested comment on all aspects of the proposed suspension of enforcement procedures and on any alternative procedures.

2. Suspension of Enforcement Process

A number of commenters stated that the proposed requirements were unnecessarily complex and burdensome. They urged the Agency to simplify the procedural requirements associated with suspension of enforcement. (A detailed summary of these comments is contained in the Response to Comments document, Section II.T., in the docket.) Based on these comments and the enormous uncertainty over the number of suspension applications the Agency will receive on the dates set for compliance, the Agency has decided to defer promulgation of the final procedures for suspension of enforcement. Therefore, this section is not included in today's final rule; EPA intends to promulgate final suspension procedures as necessary in the future.

As noted earlier, the regulated community subject to these rules is extremely large. Due to current constraints in the insurance industry and the assurance risks associated with the existing tank universe, there is also a correspondingly large universe of USTs for which financial assurance is currently available. However, EPA is today phasing in these requirements over two years and recognizes that the availability of certain financial assurance mechanisms (particularly state funds) may change dramatically during that time. Moreover, some states may receive approval to operate their programs in lieu of the Federal UST program as the compliance dates arrive. As a result of these factors, there is significant uncertainty over whether, and to what extent, suspension of enforcement will be necessary in the future. Thus, it is impossible for the Agency to craft appropriate procedures for implementing the provision in a manner that is at the same time consistent with statutory requirements, responsive to the regulated community, and not an overwhelming burden on the Agency.

During the phase-in period, the Agency will gain experience with implementation of the UST financial responsibility program and gather additional information on the form that suspension of enforcement petitions should take. This will serve as the basis for adopting procedures, if necessary, before the scheduled compliance dates for the largest group of UST owners and operators. Until such procedures are promulgated, however, the Agency does not intend to exercise its discretionary suspension authority.

IV. Integration with Other EPA Programs

In promulgating the Subtitle I financial responsibility requirements, the Agency received a number of comments concerning integration of these requirements with other EPA program, including other Subtitle I rulemakings and the LUST Trust Fund programs.

A. Other Subtitle I Rulemakings

The proposal noted that certain requirements in other Subtitle I rulemakings were relevant to UST financial responsibility requirements. One set of relationships raised in the preamble was the influence of UST technical standards on the cost of corrective action and third third-party liability, and on the amounts of aggregate coverage needed. Early detection or reduction in the probability of release will reduce the occurrence and extent of harm, thus influencing coverage. These relationships were the subject of numerous comments addressed in Section III.D of this preamble concerning aggregate levels of coverage.

Numerous comments raised other significant concerns about the relationship between the technical and financial responsibility requirements. Commenters were concerned about the

impact providers of financial assurance would have on tank upgrading and replacement vis-a-vis the proposed phasing of requirements in the technical standards rule. For example, several state and local governments addressed the relationship between the content and timing of the proposed technical UST requirements and the financial requirements, primarily the securing of insurance. They thought that insurance would become more readily available and less expensive if tank inspection and certification were required first since insurance companies generally attached these conditions to coverage. However, they were surprised that the Agency's timeframe for bringing tanks into compliance with new tank standards was so long in view of the relationship between tank upgrading and inspection and availability of insurance.

Some went further, stating that the insurance industry via the financial responsibility requirements would be determining the technical tank standards, and that this incongruity was a major philosophical and logical flaw in the regulations. Rather, technical considerations should drive the construction and monitoring standards; then, with tougher tank standards, the financial responsibility requirements cna be significantly curtailed. Furthermore, they argued that the heavy reliance placed by Congress and EPA on financial responsibility was not consistent with the goal of Subtitle I to prevent contamination of ground water. Instead, consideration should be given to expanding efforts in preventing contamination, which should be the objective of regulation, rather than environmental reclamation after the fact.

Commenters from the regulated community made approximately the same comment as the above, noting that meeting conditions imposed by insurers for tank tightness and leak detection will force tank owners and operators to meet technical standards when the financial responsibility requirements become effective, despite the later compliance schedules under the technical standards.

Drawing a blunter economic relationship between the financial responsibility and the technical requirements, these commenters stated that the money spent on insurance would be unavailable for tank upgrading where, they reasoned, it would be better spent. One commenter concluded that a conservative UST technical program and the state-of-the-art UST manufacturing and installation techniques currently available will substantially reduce, if not eliminate, the need for excessive financial responsibility in most cases.

Commenters from states and the regulated community argued that the timing and content of the technical and financial responsibility regulations will result in remediation, rather than prevention, being the dominant consideration behind UST control, and in the providers of financial assurance specifying the technical requirements for tank owners and operators as a condition for coverage. The states and owners and operators apparently differ on how each would correct this situation. The states would strengthen the technical requirements and reduce the financial responsibility requirements, whereas commenters from the regulated community would substitute state-of-the-art technical requirements for all financial assurance requirements.

EPA does not believe either correction is necessary. EPA does not agree with the assumption that the technical and financial responsibility rules are necessarily competing alternatives, and in its final rules has attempted to interrelate the two more clearly.

Congress specified that financial responsibility under section 9003 (c) and (d) of RCRA could be required at the discretion of the Administrator. SARA amended these provisions to mandate financial responsibility coverage and to provide a response program for petroleum UST releases. Congress did not present these amendments as alternatives to technical specifications for USTs. The sections of this comprehensive legislation cannot be viewed in isolation, but must be viewed as a whole; the overall goal of the legislation is to reduce the unacceptable risk to human health and the environment posed by thousands of UST leaks through prevention and assuring quick response when leaks occur.

Both the technical and financial responsibility requirements are preventive in nature. Neither would be totally preventive of harm to the public health and environment in itself, but in conjunction they will assure a high degree of protection. The direct control of leakage from USTs is obviously a preventive strategy, but is not foolproof. The funds assured through the various mechanisms permitted in this rulemaking establish a safety net that finances immediate and thorough corrective action when a release does occur and before the spread of contamination. If the provider of assurance also places demands on the owner or operator for technical controls, this strengthens protection of public health and the environment by increasing the incentive for tank upgrading and replacement as well as assuring funds for corrective action and third-party liability.

Phasing in compliance for the financial responsibility requirements brings this compliance schedule more into balance with the compliance schedule for the technical requirements. The Agency projects that many owners and operators will begin to comply with the technical standards early in the phased-in schedule for tank testing and upgrading or replacement. These tanks will represent low-risk USTs and thus financial assurance, particularly insurance, should be available for them at a lower cost than for pre-regulation tanks.

The Agency recognizes that there might be continuing concern because the timeframes for the two regulations are not the same; however, EPA cannot wait until all technical requirements are in place before imposing the financial responsibility rules. The result of further delay would be an unduly long period of time during which many members of the regulated community would have no financial assurance and could be unable to afford the cost of cleanup or liability. Moreover, longer delay would provide little incentive to states and insurance providers to develop mechanisms that will be needed to comply with the rule.

Several commenters claimed that the burden of complying with financial responsibility requirements would force owners and operators to move tanks aboveground and, thus, that the final rules should contain criteria that help the changeover to aboveground systems. For example, commenters suggested that an owner or operator's commitment to move tanks aboveground over a specified period of time should trigger an exemption from interim requirements for leak detection. Small businesses would be especially likely to install aboveground petroleum tanks in place of USTs. Because these tanks would pose significant hazards to facility personnel, local communities, and the environment, the commenters went on to urge the Agency to assess the consequences of this scenario before promulgating a final rule, and, meanwhile, to exempt small businesses not involved in petroleum marketing from financial responsibility requirements.

The Agency feels that moving tanks aboveground is not necessarily a problem if done in compliance with applicable state and local requirements.

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Any tank removed from underground to aboveground must meet the same closure requirements under Subpart G as any other tank that is taken out of service or permanently closed. No reasons have been put forth by commenters for why financial assurance requirements should be waived for owners and operators who intend to withdraw tanks from coverage under these regulations in the future. In addition, because numerous jurisdictions already stringently regulate or prohibit aboveground tanks, the Agency suspects that moving tanks will not present as appealing an alternative to leaving the tanks underground and providing mandated protection. Therefore, EPA has not provided an exemption from these requirements for tanks that may be moved aboveground.

Finally, two suggestions were submitted that would relate technical and financial requirements. One commenter suggested that a financial credit should be available to owners and operators who installed secondary containment with continuous interstitial monitoring, thereby minimizing the potential for leak occurrence and attendant cleanup costs and third-party damages. However, EPA has rejected the use of such credits, as discussed in Section III.D, above.

The second mechanism consists of a new federal fund, financed by a sales tax on petroleum products, to be collected and used by states as a state cleanup fund. One condition on the fund is that owners and operators would have to register tanks with the state environmental department within 90 days, with failure to comply triggering the need to supply proof of insurance and/or net worth as prescribed in the proposed financial responsibility regulations. However, the only available federal fund, the LUST Trust Fund under section 9003(h), was created to provide cleanup of UST releases in particular circumstances. Congress did not authorize its use as a financial assurance mechanism. Rather the fund is intended to "stand behind" the owner or operator who has obtained financial responsibility in the required amounts. SARA Conference Report H. Rep. 99-962, 99th Cong., 2nd Sess. at 271.

B. Leaking Underground Storage Tank (LUST) Trust Fund and Response Program

Because the LUST Trust Fund and the financial responsibility program are closely related, the comments proposed a wide range of uses for the Fund. Several commenters stated that the final regulation should require states to use the Trust Fund to cover costs in excess of financial responsibility limits where the owner or operator has complied with all regulatory and financial responsibility requirements. In support, the commenters cited the Agency's discretion to forego full cost-recovery in section 9003(h)(6)(B) and the potential incentive this provision might give owners and operators to secure financial responsibility and report leaks promptly, as reasons why the final rules should specify such a condition on use of the Trust Fund.

Several additional uses of the Trust Fund were suggested. One commenter encouraged EPA to allow use of Trust Fund monies in cases where a leak occurs at the site of an owner or operator who belongs to a class against which enforcement has been suspended. Another commenter suggested that the Trust Fund could be used to repay RRGs for payments for deductibles. To offset these costs to the Fund, the RRG would require protection beyond that required by the final regulations (e.g., secondary containment). Another commenter objected to the requirement that an insurance company must pay the deductible for a company in bankruptcy, because if the Trust Fund were used for such purposes, the U.S. Government would be a preferred creditor in bankruptcy, whereas an insurance company making the payment would be non-preferred.

A state commenter argued that Trust Fund money should not be given only to states with approved UST regulatory programs. The commenter stated that the Trust Fund and the regulatory program were created separately and should remain so; that the loss of Fund monies would place a major financial burden on states with marginal capability to fund the base program; and, furthermore, that the environment and public health would be jeopardized by not using the Trust Fund separately from the regulatory program, as designed by Congress. Mayors could tap into the Fund if EPA would require, as part of state program approval, that the state program provide direct municipal access to the Trust Fund for cleanup and oblige the state to address other local concerns. In addition, the commenter urged EPA to seek authority to use the Fund as a source of grants to develop local programs.

With respect to the numerous and varied uses of the LUST Trust Fund offered in the comments, as noted earlier, Congress has authorized use of the Fund to pay corrective action costs only under limited and specifically defined circumstances. After final regulations on the technical standards and financial responsibility go into effect, Fund monies can be used to pay for corrective action only in the following situations:

(1) An owner or operator who is required to undertake the corrective action and who is capable of carrying out corrective action properly does not exist or cannot be identified;

(2) Prompt action by the Administrator (or state) is necessary to protect human health and the environment;

(3) The financial resources of the owner or operator, including any UST financial assurance, are inadequate to pay the entire cost of the corrective action, and expenditures from the Fund are necessary to assure effective corrective action; or

(4) An owner or operator has failed or refused to comply with an order to perform corrective action.

Section 9003(h)(11) explicitly prohibits the expenditure of Fund monies for corrective action at any facility where the owner or operator has failed to maintain evidence of financial responsibility in the required amounts, except (1) in cases where there is no solvent owner or operator, or (2) in cases where immediate action is necessary to respond to an imminent and substantial endangerment of human health or the environment, or (3) to undertake an "allowable corrective action" to protect human health. (Section 9003(h)(5) defines these allowable corrective actions to include "temporary or permanent relocation of residents and alternative water supplies" and exposure assessments undertaken to protect human health.)

One result of these requirements is the preclusion of many of the alternative uses for the Fund suggested by commenters. Specifically, EPA does not agree that the state should be required to use the Trust Fund to cover costs in excess of the financial responsibility requirement. While the statute clearly allows the state to use the Trust Fund in such a situation, the decision should be made on a case-by-case basis at the discretion of the state. EPA also does not agree with commenters who suggested that the Trust Fund be used to (1) repay RRGs for payments for deductibles, and (2) to pay deductibles for companies in bankruptcy. Owners and operators are expected to maintain evidence of financial responsibility and pay the costs of their releases. Congress intended the Trust Fund to stand behind an owner or operator who obtained assurance to meet the financial responsibility requirement and, as indicated above, is to be used in instances where the cost of corrective action exceeds the level of financial responsibility required to be maintained.

In response to the comment that Trust Fund money should not be given to states that do not have approved UST regulatory programs, the Agency wants to emphasize that the negotiation of state cooperative agreements for use of the LUST Trust Fund is proceeding on a path separate from the approval of state programs. However, EPA has decided to make a link between the LUST Trust Fund and UST regulatory program to ensure that future contamination is minimized. After the effective date of today's final rule, a state's success in making reasonable progress toward submitting a completed application for state program approval may be grounds for increasing state access to the Trust Fund in fiscal year 1990 and thereafter.

In response to the commenters urging that the Trust Fund be made directly available to local governments, EPA's cooperative agreement process involves states negotiating arrangements for proper use, recovery, and accounting of Trust Fund money with EPA. The municipalities are not parties to these negotiations and will need to rely on the state to implement a sound and effective program for the use of the Trust Fund for corrective action. The statute does not provide for any direct EPA/municipality arrangement.

Finally, as discussed in Section III.W of this preamble, the Agency has decided to defer promulgation of final procedures for suspension of enforcement. Until such procedures are promulgated, the Agency does not intend to exercise its discretionary suspension of enforcement authority. At that time, the Agency will address the use of LUST Trust Fund monies to respond to releases from tanks whose owner or operator is a member of a class which has been granted a suspension of enforcement.

V. State Program Approval

A. Background

Section 9004 of RCRA allows any state to submit an underground storage tank regulatory program for review and approval by EPA. An EPA-approved state UST regulatory program will operate "in lieu of" the Federal program. The Agency may approve the state program if the state demonstrates that its program (1) imposes requirements that are "no less stringent" than the Federal release detection, prevention, correction, and financial responsibility requirements, and (2) provides for adequate enforcement of compliance with such requirements.

B. Financial Responsibility Objective (§ 281.37)

In its final State Program Approval rule (53 FR 37212, September 23, 1988), EPA promulgated criteria for state program approval in the form of objectives for seven of the technical program elements in the final technical standards rule (53 FR 37082, September 23, 1988): New UST system design, construction, installation and notification; upgrading existing UST systems; general operating requirements; release detection; release reporting and investigation; corrective action; and out-of-service and closed UST systems. The eighth objective for financial responsibility of owners and operators of petroleum UST systems is promulgated in today's rule.

These objectives represent the Agency's expectations of what constitutes a no-less-stringent state program. By requiring the state to achieve the objectives underlying the detailed Federal requirements in each element rather than match each regulatory detail of the Federal requirements, EPA provides a performance-based measure for evaluating programs and recognizes that the precise details in the Federal program are not the only feasible approach to UST regulation. By establishing these objectives, EPA also provides a framework for approval that guarantees that each state UST program provides a minimum level of protection.

An important objective of the Federal program is that owners and operators of UST systems containing petroleum have adequate financial responsibility to undertake corrective action and meet third-party liability claims. The Federal law mandates $1 million per occurrence with appropriate aggregate amounts as the minimum level of assurance needed by most owners and operators of petroleum UST systems to meet cleanup and liability costs. Today's Federal financial responsibility rule allows an exception for certain classes of owners and operators who store small quantities of petroleum for purposes other than selling it as a product. More specifically, owners and operators not engaged in petroleum production, refining, or marketing and who have a throughput of 10,000 gallons or less per month are required to have only $500,000 per occurrence for corrective action and third-party liability claims. In addition, the financial responsibility rule sets the aggregate amounts at $2 million for owners and operators with more than 100 UST systems, and $1 million for those who have 100 or fewer UST systems. Finally, the financial responsibility requirements will be phased-in over a 24-month period from the date of promulgation for different groups of owners and operators. In order to be no less stringent than the Federal requirements for financial responsibility for USTs containing petroleum, the state must have requirements for owners and operators to have financial assurance and for the types of mechanisms used to provide that financial assurance.

The Agency received comments in support of the holistic approach to determining no less stringent state programs, particularly because such an approach would enable a state to trade-off more stringent technical requirements with less stringent financial requirements, for example, lower amounts of financial responsibility. While the Agency understands that states may experience difficulty in obtaining statutory or regulatory authority to require $1 million in coverage, that amount was established by Congress in Subtitle I and EPA believes it does not have the flexibility to lower that level of coverage as part of the Federal program or as part of state program approval.

The first aspect of this objective (§ 281.37(a)) concerns the amount of financial assurance, both per occurrence and in aggregate, that an owner or operator must have. First, the state must have a statute or regulations that require an owner or operator to have at least $1 million or $500,000 per occurrence and $1 million or $2 million in aggregate, depending on the size and type of the operation. This requirement follows directly from the Federal financial responsibility regulations for petroleum-containing UST systems.

The Supplemental Notice published on December 23, 1987 (52 FR 48644) included an objective for financial responsibility; however, aggregate levels were not included in the proposed objective. To remain consistent with the Federal requirements for financial responsibility, the Agency today is promulgating the final objective with a requirement that the owner or operator have financial assurance in appropriate aggregate levels. Addition of the aggregate is necessary to ensure that approved states require an adequate level of coverage. The aggregate level varies depending on the number of tanks owned or operated. Owners and operators with 1 to 100 tanks must have an aggregate level of coverage of $1 million and those with more than 100 tanks must have an aggregate level of coverage of $2 million. The final objective establishes the same levels of coverage. Further discussion on pre-

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occurrence and aggregate levels of coverage can be found in today's preamble at Section III.D.

The second aspect of this objective (§ 281.37(b)) concerns the phase-in compliance schedule for owners and operators. The objective proposed on December 23, 1987 (52 FR 48644) did not include a provision for a phase-in schedule. This provision is being added to be consistent with decisions made following the Supplemental Notice to the proposed rule for financial responsibility for petroleum USTs that was published in the **Federal Register** on March 31, 1988 (53 FR 10401). In today's final financial responsibility rule, EPA has decided to phase-in compliance over 24 months from the date of promulgation at all UST systems following a schedule based on net worth and the number of tanks owned. Although EPA recommends that a similar approach be used by state programs, the Agency has decided to allow flexibility in the objective for states to use other phase-in approaches provided that the schedule is completed in 24 months. Approaches that allow all of the regulated community to wait until the end of the 24-month period would not be accepted as an orderly schedule.

The third aspect of this objective (§ 281.37(c)) concerns the variety of financial mechanisms that may be used by owners and operators to demonstrate adequate financial responsibility. The Federal financial responsibility rule allows a wide variety of mechanisms and combinations of mechanisms to be used. The state may also allow a variety of financial mechanisms to be used. To determine whether state-allowed or required mechanisms are no less stringent than the Federal requirement, general criteria have been established that are applicable to all financial mechanisms. By establishing these criteria in the Federal objective, the Agency believes that it is unnecessary for the state to have detailed requirements for each mechanism affected by these criteria for purposes of state program approval. However, EPA encourages states to adopt the financial responsibility regulation, especially the language of each mechanism, since they have been developed and tested to ensure that adequate financial responsibility will be available when necessary. For example, the state will not be expected to demonstrate that its regulations require a surety company to state in a bond that the bond cannot be cancelled during a 120-day period following notice of cancellation of the bond to the owner or operator. The state must, however, be able to draw on the funds assured by the bond before cancellation occurs. The state regulations must ensure that the time period before the effective cancellation of the bond provides ample opportunity for the state to assess the facility, determine if a release has occurred, and, if needed, draw funds from the instrument. In this way, the Federal objectives for financial responsibility for UST systems containing petroleum are met.

Section 9004(c)(1) of Subtitle I allows states to set up a fund that may be used to meet the no less stringent requirement for financial responsibility. The state may choose to establish a state fund to provide financial assurance for certain classes of owners and operators or for all owners and operators. The general criteria for state funds are represented in the objective (§ 281.37(a) and (c)); these criteria are essentially the same as the requirements for state funds set out in the Federal financial responsibility rule in § 280.100. Further discussion on state funds and their use in providing financial assurance will be available in guidance due to be issued this fall by EPA. A briefer discussion can also be found in EPA's *State Program Approval Handbook*.

Some commenters expressed concern that the requirement that states have a financial responsibility program that is no less stringent than the Federal program in order to receive state program approval will delay approval of state programs. The commenters stated that complex financial responsibility requirements could discourage states from submitting UST programs for approval. They urged that EPA promulgate a simple financial responsibility framework and provide guidance to the states.

As explained above, the requirement that an approved state program contain financial responsibility requirements that are no less stringent than those under the Federal program is required by RCRA Section 9004. However, EPA has developed an approach to state program approval that provides states as much latitude as possible consistent with the statute in adopting approaches to fulfill the requirement. The Agency recognizes the difficulties for states in developing financial responsibility programs and is preparing detailed guidance and outreach assistance to states to help them develop their programs.

A more complete analysis of issues regarding state program approval is presented in the preamble to that rule (53 FR 37212, September 23, 1988).

VI. Compliance Monitoring and Enforcement

Although not raised as an issue in the proposal, implications of the proposed rules for compliance monitoring and enforcement activities received considerable comment. Many of the comments were submitted by states.

In general, the comments note that performing compliance monitoring and enforcement for financial responsibility rules will place a heavy resource burden on the states. Moreover, some states are currently understaffed while others apparently have little experience with the options for demonstrating financial responsibility and would have difficulty evaluating them. Also, the proposed requirement for maintaining financial responsibility for one year after tank closure would be difficult to enforce, especially if the business is sold, closes, or goes bankrupt.

Some states noted that, if the states will be responsible for implementation of the financial responsibility program and will not be provided funding, then EPA should not have a strong oversight role or stringent requirements for state program approval. Another state commenter reads the proposed section on reporting, which requires owners or operators to send evidence of financial responsibility to the Regional Administrator, to mean that EPA will administer the entire financial responsibility program.

A number of non-governmental commenters also noted the enormous burden that ensuring compliance for such a large universe would entail, with some offering approaches to enhance compliance and enforcement. One approach suggested by several commenters is that EPA collect evidence of financial responsibility from all owners or operators through periodic reporting; for example, using the Tank Notification Program to provide the basis for annual notification of compliance with financial responsibility requirements. Other commenters suggested that proof of financial responsibility be made a condition to obtain an annual operating permit. Another suggested that enforcement would be enhanced if the scope of these complicated rules could be clarified using the following techniques: (1) Workshops, (2) fact sheets, (3) more detailed summaries, and (4) condensed versions of the regulations.

Virtually all of the comments evidence both justifiable concern that performing compliance monitoring and enforcement for such an enormous regulated community presents a formidable challenge and considerable confusion about EPA's program for dealing with this challenge. The Agency believes that UST requirements can best be implemented if the program is delegated to the states and localities. In a companion rule to the financial responsibility rules, EPA has set forth the requirements and approval procedures for state UST programs (53 FR 37212, September 23, 1988). States with approved programs will have primary enforcement responsibility for their own UST programs. Under this rule, EPA has provided states as much flexibility as possible to develop their own approach to UST regulation and implementation consistent with statutory requirements.

Thus, in response to state concerns, the Agency will be allowing each state seeking program approval considerable latitude in establishing the details of an enforcement program. Although Federal law mandates certain elements of the financial responsibility requirements (e.g., the one million dollar minimum level of assurance), the Federal program not only allows a wide variety of mechanisms, but allows the states to develop their own financial mechanisms (e.g., state funds) to meet these requirements. In short, contrary to the concerns expressed in the comments, EPA intends that, over time, states will assume primary responsibility for the UST program and will also have considerable ability to tailor their programs to each state's experiences and resources.

States could adopt more stringent provisions, such as reporting requirements, than are established in the Federal requirements, or they could adopt any of the mechanisms for assuring compliance that have been submitted in comments. Although EPA believes that the event-based reporting requirements finalized today are sufficient to ensure compliance by the regulated community and to provide timely information to the implementing agency for compliance monitoring, states can and, in many instances, have imposed annual notification requirements on owners or operators.

In addition to assisting the states seeking approval with the development of their programs, EPA will be providing the regulated community with extensive compliance outreach materials, which should include materials targeted to the needs of the large and diverse UST population. A secondary benefit of compliance outreach should be a higher degree of awareness of these regulations and a greater level of voluntary compliance, thus easing the enforcement burden on the states.

VII. Economic and Regulatory Impacts

A. Regulatory Impact Analysis

1. Compliance with Executive Order 12291

Sections 2 and 3 of Executive Order 12291 (46 FR 131393, February 19, 1981) require that a regulatory agency determine whether a new regulation will be "major" and, if so, that a regulatory impact analysis (RIA) be conducted. A major rule is defined as one that is likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

EPA has conducted an RIA of the Subtitle I financial responsibility requirements for petroleum-containing underground storage tanks. Based on this analysis, the Agency has concluded that this regulation may have annual costs of greater than $100 million. Therefore, the regulation promulgated today is a major rule, as defined by E.O. 12291. The following six sections summarize the results of the RIA: Section 2 describes the integration of the technical standards and financial responsibility RIAs; section 3 describes the regulated community affected by this regulation; section 4 presents some of the methods and assumptions used to produce the financial responsibility RIA; section 5 presents EPA's estimates of the present value of real resource costs; section 6 discusses the regulation's economic impacts; and section 7 describes its potential benefits.

2. Integration of the Financial Responsibility and Technical Standards Regulatory Impact Analyses

Under section 9003 of Subtitle I of RCRA, the Administrator of EPA is required to promulgate both technical and financial responsibility requirements for USTs. The RIA described here presents the costs, economic impacts, and benefits associated with the UST financial responsibility requirements. A separate RIA assesses the costs, economic impacts, and benefits of the technical standards (53 FR 37212, September 23, 1988).

The results of the RIA for the financial responsibility regulation are presented both in terms of the incremental costs and economic impacts of the financial responsibility requirements (the additional costs and impacts that owners or operators complying with the technical standards will absorb to comply with the financial responsibility requirements) and in terms of the total costs and economic impacts associated with the imposition of the technical standards and the financial responsibility requirements. (The benefits of the technical standards and the financial responsibility requirements were not integrated because these two regulations have different types of benefits that are not additive.)

Methodology—There are two important differences between the regulated community for the technical standards rules and that for the financial responsibility requirements. First, the technical standards apply to petroleum-containing and hazardous-substance-containing USTs. The financial responsibility requirements only apply to petroleum-containing USTs. Owners or operators of hazardous-substance-containing USTs are not yet required to demonstrate evidence of financial responsibility. Second, all owners or operators of USTs falling within the scope of the technical standards rule will incur costs to comply with the technical standards. States and the Federal government, however, will not incur costs to comply with the financial responsibility requirements, because they are not required to *demonstrate* evidence of financial responsibility for their USTs. Therefore, the regulatory impact analysis for the financial responsibility requirements applies to a smaller universe of USTs (approximately 1.5 million) than does the regulatory impact analysis for the technical standards (approximately 1.7 million). The combined costs and economic impacts of both rules apply to the entire universe of 1.7 million USTs.

The technical standards will require firms to improve their methods of leak detection within 2 to 5 years after these rules are promulgated; in addition, firms are allowed up to 10 years to replace or upgrade their UST systems to meet UST system performance requirements. To comply with the financial responsibility requirements, many firms will similarly have to improve their methods of leak detection and replace or upgrade UST system components, although within a faster timeframe. This is because, to demonstrate evidence of financial responsibility, many firms that cannot self-insure and that do not currently have insurance will have to attempt to get insurance within two years of the

financial responsibility rule's effective date. Insurers will generally require upgrading of UST systems as a prerequisite to coverage.

For the financial responsibility RIA, EPA assumed that insurers would require that:

- Tanks be less than 15 years old or retrofitted to meet new tank performance standards, and
- Leak detection measures taken by tank owners or operators be at least as stringent as those required by the technical standards.

To avoid double-counting leak detection and tank upgrading costs, the combined costs of the technical standards and the financial responsibility requirements are estimated by attributing to the financial responsibility requirements the *difference* between the present value of the costs of meeting insurers' criteria and the present value of the costs of meeting the technical standards. The only other cost elements added by the financial responsibility requirements to the total costs of both rules are the costs of procuring and maintaining financial assurance mechanisms.

The financial responsibility RIA compares the economic impacts of the technical standards alone to the combined economic impacts of the technical standards and the financial responsibility requirements. While the combined impacts of both requirements are, in all cases, more severe than the impacts of the technical standards alone, in individual cases, the financial responsibility requirements actually help to mitigate the economic impacts of the technical standards. Quicker detection of UST releases and the availability of insurance to pay UST corrective action costs will lessen, for some firms, the economic impacts of having to comply with corrective action requirements.

3. The Regulated Community

This regulation is estimated to apply to 1.5 million underground storage tanks (USTs) containing petroleum located at 468,000 separate facilities. For the purpose of this analysis, the regulated community was divided into four major sectors: Retail motor fuel marketing, agriculture, local government entities, and general industry. Retail motor fuel marketing is the largest single affected sector and includes 193,000 retail motor fuel outlets owned by approximately 90,000 firms. This sector has been further subdivided into three segments: Refiners, multi-outlet retail chains, and open dealers (defined as firms owning and operating a single retail motor fuel outlet). The agricultural sector includes all farms owning USTs with capacities of more than 1,100 gallons; approximately 40,000 USTs located at 30,500 farms meet this definition. Local government entities own approximately 82,000 USTs at 23,000 facilities. For the purposes of this analysis, the general industry sector includes all other sectors (i.e., sectors other than retail motor fuel marketing, government, and agriculture) where USTs are located. Firms in the general industry sector range from large manufacturing concerns to small retail operations. USTs in this sector usually are used to provide motor fuel for fleets of vehicles (e.g., at trucking firms and automobile rental agencies) or to provide convenient access to motor fuel for off-the-road vehicles (e.g., construction equipment). The general industry sector is estimated to contain 242,000 USTs at 192,000 facilities owned by approximately 137,000 firms.

4. Assumptions and Methodology Used in the RIA

Following are the key assumptions used to estimate the costs and other impacts of this regulations:

- The costs and economic impacts of the technical standards are the baseline from which the costs and economic impacts of the financial responsibility requirements will be measured.
- Owners, rather than operators, satisfy and pay the costs of financial responsibility requirements, except when the owner is a private individual and the operator is a business corporation.
- All owners who qualify for self-insurance use this mechanism to satisfy their financial responsibility requirements and incur real resource costs for developing and maintaining the required records and reports.
- All firms or local governments currently insured for corrective action and compensation of third-parties will maintain their insurance to comply with this regulation.
- Firms or local governments that are not currently insured and that cannot use the financial test of self-insurance will attempt to obtain insurance (rather than other financial assurance mechanisms) to comply with this regulation.
- Insurance will only be available to firms or local governments meeting insurers' criteria for insurability. The RIA presents regulatory costs assuming that all firms and local governments that do not currently have insurance or pass the financial test are able to get insurance by meeting insurers' criteria for insurability (i.e., upgrading or replacing tanks greater than 15 years old and instituting suitable leak detection measures). Using this assumption results in higher costs than assuming that firms and local governments that do not currently have insurance or meet the financial test cannot get insurance. Obtaining a suspension of enforcement should be less expensive than meeting insurers' eligibility requirements within 2 years and paying insurance premiums thereafter.
- Insurance premium costs are estimated by assuming that premiums will be double the expected value of corrective action and third-party liability costs for the USTs covered. The expected value of costs of corrective action and third-party liability are based on the UST model developed for the technical standards RIA.

5. Annual Real Resource Costs

There are three main cost elements in the combined total costs of the financial responsibility and technical standards requirements: Costs related to the tank replacement and upgrading and to leak detection; costs related to performing corrective action; and the costs of procuring financial assurance mechanisms. The costs of procuring financial assurance mechanisms do not include the costs related to performing corrective action because these costs are accounted for separately. They also do not include the costs of satisfying third-party liability awards because such costs would be incurred even if the technical standards and the financial responsibility requirements were not promulgated. The cost of insurance, for example, does not include that portion of insurance premiums used to pay the costs of corrective action and third-party liability awards. It does include the cost of insurers' profits, administraive costs, and sales costs.

These costs (the *real resource costs* of insurance) are equal to approximately 40 percent of the total insurance premium cost.

The present value of the combined real resource costs of the technical standards and the financial responsibility requirements over 30 years is $70.28 billion. $38.83 billion of these costs represent the costs of tank replacement, tank upgrading, and leak detection. $29.49 billion of these costs represent the costs of performing corrective action. $1.96 billion of these costs represent the real resource costs of financial assurance mechanisms. A portion of these costs (e.g., the costs of tank upgrading and replacement, and the costs of procuring insurance) would be incurred even if the technical standards and financial responsibility requirements were not promulgated. The present value of the total incremental costs of both rules (the costs of the technical standards and the financial responsibility requirements attributable to the promulgation of these rules) is $49.63 billion. $18.50 billion of these costs are attributable to tank replacement, tank upgrading, and leak detection; $29.49 billion are attributable to corrective action; and $1.64 billion are attributable to procuring financial assurance mechanisms.

The incremental costs of complying with the financial responsibility requirements represent a minor portion of the combined incremental costs of the technical standards and financial responsibility rules. The incremental costs of the financial responsibility requirements alone are $701 million. These incremental costs include $1.55 billion for accelerated tank replacement, tank upgrading, and leak detection (to meet insurers' criteria for insurance); $1.64 billion for financial assurance mechanisms (for firms that do not currently have them); and a $2.49 billion *cost savings* in the cost of corrective action. This savings results from the earlier application of improved leak detection, and earlier tank upgrading than would be required if only the technical standards were promulgated.

6. Economic Impacts

The economic impacts of the regulations are assessed for all firms in the retail motor fuel marketing sector, except refiners, and for firms in the general industry sector for which the expected annual insurance premium costs are more than 10 percent of the before-tax-profits.

In the retail motor fuel marketing sector, economic impacts are measured in terms of the percentage of existing outlets surviving 5, 10, and 15 years after the imposition of regulations. Through year 5, 87 percent of existing small-firm-owned outlets would survive if only the technical requirements were imposed. (Small firms are defined as firms with less than $4.6 million in annual sales. This corresponds to the Small Business Administration's definition of small firms in this sector.) Assuming the imposition of technical and financial responsibility requirements, 55 percent of existing outlets survive, if all small firms obtain insurance. By year 15, 34 percent of outlets would survive the imposition of technical requirements and 47 percent would survive the imposition of both technical and financial responsibility requirements, if all small firms obtain insurance. Thus, by year 15, the imposition of the financial responsibility requirements has a beneficial impact on the survival of small-firm-owners and operators.

Small-firm-owned outlets that do not have existing releases and that can afford improved leak detection and tank upgrading or replacement costs are better able to survive with insurance than without it. Those small-firm-owned outlets with existing releases and outlets owned by financially-marginal small firms will exit the industry more quickly with the imposition of the financial responsibility requirements than with the imposition of the technical standards alone.

The technical standards RIA does not account for the fact that many large firms in the retail motor fuel marketing sector have insurance which can mitigate the economic impacts of having to perform corrective action. It thus presents a worst case economic impact scenario. The technical standards RIA estimates that 73 percent of existing retail motor fuel marketing outlets owned by large firms (other than refiners) would survive through year 5. The financial responsibility RIA, which accounts for the fact that many of these firms have insurance, estimates that 83 percent of large-firm-owned outlets survive through year 5. By year 15, only 50 percent of large-firm-owned outlets would survive the imposition of the technical standards if they did not have insurance. When insurance is considered, 78 percent of large-firm-owned outlets survive through year 15.

In the general industry sector, EPA examined financial data for firms in 65 four-digit SIC code categories that contain firms that own USTs. In only 4 of these SIC code categories would the value of premiums exceed 10 percent of the before-tax profits of average firms in those categories having less than $1 million in assets, and the impact of these premium costs on the pre-tax returns on assets for these firms ranged between 0.1 and 0.9 percent. Most firms in these SIC code categories do not use USTs, and it is impossible that, if the costs of today's regulation imposed severe impacts on those firms in those sectors that do use them, they could avoid these costs by closing their UST facilities.

7. Benefits

Today's rule is associated with a variety of potential economic benefits that are discussed in qualitative terms in the RIA. Potential economic benefits from the financial responsibility requirements can be placed in three categories:

- Resource allocation;
- Willingness to pay for distributional goals; and
- Reductions in cleanup costs, environmental and health damage, UST releases, and business disruptions.

If the financial responsibility requirements induce firms to consider the full costs of UST releases as part of their real production costs (i.e., cost internalization), the result may be an improvement in the allocative efficiency of UST users. Since allocative efficiency improvements result in improvements for the population in the aggregate, the population can be expected to be willing to pay for this improvement. Similarly, the population also could be willing to pay for progress toward distributional goals (i.e., be willing to incur some cost to ensure that the UST owners and operators and the consumers of goods whose production involves the use of USTs and who benefit from the use of the USTs also bear the costs of that activity).

Small firms that use insurance to meet their financial responsibility requirements may be more inclined to report releases from their USTs promptly, whereas firms without insurance may be reluctant to report releases out of a fear that the costs associated with the release could force the firms out of business. In addition, firms having to obtain insurance will have to meet insurers' eligibility requirements (e.g., improved leak detection and tank upgrading), thus reducing the likelihood of releases.

As reported above, meeting insurers' eligibility criteria is estimated to save $2.49 billion in corrective action costs over 30 years. Over the long term, the imposition of the financial responsibility requirements also reduces the economic disruptions caused by the bankruptcy of firms unable to meet the costs of performing corrective action or satisfying third-party liability awards. After 15 years, the number of surviving outlets is 14 percentage points higher if financial responsibility requirements are imposed.

The RIA also estimates the quantitative benefits of the financial responsibility rule. It provides a comparison of the value of unfunded financial responsibility obligations that would occur if the technical standards alone were implemented, to the value of unfunded financial responsibility obligations if all businesses in the retail motor fuel marketing sector meet financial responsibility requirements using insurance or the financial test. In making this comparison, the RIA finds that the promulgation of the financial responsibility, in addition to the technical, standards saves $391 million, or $494 per UST, over a 30-year period.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small

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entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

EPA has conducted an analysis of the impacts of this regulation on small businesses as part of its regulatory impact analysis (RIA) and has concluded that this regulation may have a significant economic impact on some small businesses. EPA examined the economic impacts of financial responsibility requirements on the small business segments of the retail motor fuel marketing industry and on the general industry sectors for which expected annual insurance premium costs are more than 10 percent of before-tax profits.

In the retail motor fuel marketing sector, economic impacts are measured in terms of the percentage of existing outlets surviving 5, 10, and 15 years after the imposition of regulations. Through year 5, 57 percent of existing small-firm-owned outlets would survive if only the technical requirements were imposed. Assuming the imposition of technical and financial responsibility requirements, 55 percent of existing outlets survive, if all small firms can obtain insurance. By year 15, 34 percent of outlets would survive the imposition of technical requirements and 47 percent would survive the imposition of both technical and financial responsibility requirements, if all small firms can obtain insurance. Thus, by year 15, the imposition of the financial responsibility requirements has a beneficial impact on the survival of small-firm-owned outlets.

In the general industry sector, EPA found that the costs of insurance premiums represent 10 percent or more of the before-tax profits of firms that have less than $1 million in assets in 4 of the 65 four-digit SIC codes examined. The impact of these premium costs on the pre-tax returns on assets for these firms ranged between 0.1 and 0.9 percent.

The RIA does not examine the possibility that all corrective action costs and third-party liability awards might be paid by state funds financed by taxes on gasoline. Such funds would minimize economic impacts on small businesses and transfer the costs of these financial responsibility requirements to the consumers of motor fuel.

C. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2050–0068. The reporting and recordkeeping burden on the public for this collection is estimated at 65,707 hours for the 265,534 respondents, with an average of 0.1 hours per response. These burden estimates include all aspects of the collection effort and may include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information, etc.

If you wish to submit comments regarding any aspect of this collection of information, including suggestions for reducing the burden, or if you would like a copy of the information collection request (please reference ICR #1360), contact Rick Westlund, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460 (202–382–2745); and Marcus Peacock, Office of Management and Budget, Washington, DC 20503.

List of Subjects in 40 CFR Parts 280 and 281

Administrative practice and procedure, Environmental protection, Hazardous materials insurance, Oil pollution, Penalties, Petroleum, Reporting and recordkeeping requirements, State program approval, Surety bonds, Underground storage tanks, Water pollution control.

Lee M. Thomas,
Administrator.

Dated: October 14, 1988.

For the reasons set out in the preamble, Parts 280 and 281 of Title 40 of the Code of Federal Regulations are amended as follows:

PART 280—TECHNICAL STANDARDS AND CORRECTIVE ACTION REQUIREMENTS FOR OWNERS AND OPERATORS OF UNDERGROUND STORAGE TANKS

1. The authority citation for Part 280 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991, 6991(a), 6991(b), 6991(c), 6991(d), 6991(e), 6991(f), and 6991(g).

2. Appendices I through III following Subpart G are designated as Appendices I through III to Part 280.

3. 40 CFR Part 280 is amended to add a new Subpart H as follows:

Subpart H—Financial Responsibility

Sec.

280.90 Applicability.
280.91 Compliance dates.
280.92 Definition of terms.
280.93 Amount and scope of required financial responsibility.
280.94 Allowable mechanisms and combinations of mechanisms.
280.95 Financial test of self-insurance.
280.96 Guarantee.
280.97 Insurance and risk retention group coverage.
280.98 Surety bond.
280.99 Letter of credit.
280.100 Use of state-required mechanism.
280.101 State fund or other state assurance.
280.102 Trust fund.
280.103 Standby trust fund.
280.104 Substitution of financial assurance mechanisms by owner or operator.
280.105 Cancellation or nonrenewal by a provider of financial assurance.
280.106 Reporting by owner or operator.
280.107 Recordkeeping.
280.108 Drawing on financial assurance mechanisms.
280.109 Release from the requirements.
280.110 Bankruptcy or other incapacity of owner or operator or provider of financial assurance.
280.111 Replenishment of guarantees, letters of credit, or surety bonds.
280.112 Suspension of enforcement.
[Reserved]

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Subpart H—Financial Responsibility

§ 280.90 Applicability.

(a) This subpart applies to owners and operators of all petroleum underground storage tank (UST) systems except as otherwise provided in this section.

(b) Owners and operators of petroleum UST systems are subject to these requirements if they are in operation on or after the date for compliance established in § 280.91.

(c) State and Federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States are exempt from the requirements of this subpart.

(d) The requirements of this subpart do not apply to owners and operators of any UST system described in § 280.10 (b) or (c).

(e) If the owner and operator of a petroleum underground storage tank are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in event of noncompliance. Regardless of which party complies, the date set for compliance at a particular facility is determined by the characteristics of the owner as set forth in § 280.91.

§ 280.91 Compliance dates.

Owners of petroleum underground storage tanks are required to comply with the requirements of this subpart by the following dates:

(a) All petroleum marketing firms owning 1,000 or more USTs and all other UST owners that report a tangible net worth of $20 million or more to the U.S. Securities and Exchange Commission (SEC), Dun and Bradstreet, the Energy Information Administration, or the Rural Electrification Administration: January 24, 1989.

(b) All petroleum marketing firms owning 100–999 USTs: October 26, 1989.

(c) All petroleum marketing firms owning 13–99 USTs at more than one facility: April 26, 1990.

(d) All petroleum UST owners not described in paragraphs (a), (b), or (c) of this section, including all local government entities: October 26, 1990.

§ 280.92 Definition of terms.

When used in this subpart, the following terms shall have the meanings given below:

(a) "Accidental release" means any sudden or nonsudden release of petroleum from an underground storage tank that results in a need for corrective action and/or compensation for bodily injury or property damage neither expected nor intended by the tank owner or operator.

(b) "Bodily injury" shall have the meaning given to this term by applicable state law; however, this term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

(c) "Controlling interest" means direct ownership of at least 50 percent of the voting stock of another entity.

(d) "Director of the Implementing Agency" means the EPA Regional Administrator, or, in the case of a state with a program approved under section 9004, the Director of the designated state or local agency responsible for carrying out an approved UST program.

(e) "Financial reporting year" means the latest consecutive twelve-month period for which any of the following reports used to support a financial test is prepared:

(1) a 10–K report submitted to the SEC;

(2) an annual report of tangible net worth submitted to Dun and Bradstreet; or

(3) annual reports submitted to the Energy Information Administration or the Rural Electrification Administration. "Financial reporting year" may thus comprise a fiscal or a calendar year period.

(f) "Legal defense cost" is any expense that an owner or operator or provider of financial assurance incurs in defending against claims or actions brought,

(1) By EPA or a state to require corrective action or to recover the costs of corrective action;

(2) By or on behalf of a third party for bodily injury or property damage caused by an accidental release; or

(3) By any person to enforce the terms of a financial assurance mechanism.

(g) "Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in a release from an underground storage tank.

Note: This definition is intended to assist in the understanding of these regulations and is not intended either to limit the meaning of "occurrence" in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of "occurrence."

(h) "Owner or operator," when the owner or operator are separate parties, refers to the party that is obtaining or has obtained financial assurances.

(i) "Petroleum marketing facilities" include all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.

(j) "Petroleum marketing firms" are all firms owning petroleum marketing facilities. Firms owning other types of facilities with USTs as well as petroleum marketing facilities are considered to be petroleum marketing firms.

(k) "Property damage" shall have the meaning given this term by applicable state law. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, such exclusions for property damage shall not include corrective action associated with releases from tanks which are covered by the policy.

(l) "Provider of financial assurance" means an entity that provides financial assurance to an owner or operator of an underground storage tank through one of the mechanisms listed in §§ 280.95–280.103, including a guarantor, insurer, risk retention group, surety, issuer of a letter of credit, issuer of a state-required mechanism, or a state.

(m) "Substantial business relationship" means the extent of a business relationship necessary under applicable state law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from and depends on existing economic transactions between the guarantor and the owner or operator.

(n) "Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

§ 280.93 Amount and scope of required financial responsibility.

(a) Owners or operators of petroleum underground storage tanks must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following per-occurrence amounts:

(1) For owners or operators of petroleum underground storage tanks that are located at petroleum marketing facilities, or that handle an average of more than 10,000 gallons of petroleum per month based on annual throughput for the previous calendar year; $1 million.

(2) For all other owners or operators of petroleum underground storage tanks; $500,000.

(b) Owners or operators of petroleum underground storage tanks must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following annual aggregate amounts:

(1) For owners or operators of 1 to 100 petroleum underground storage tanks, $1 million; and

(2) For owners or operators of 101 or more petroleum underground storage tanks, $2 million.

(c) For the purposes of paragraphs (b) and (f) of this section, only, "a petroleum underground storage tank" means a single containment unit and does not mean combinations of single containment units.

(d) Except as provided in paragraph (e) of this section, if the owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for:

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(1) Taking corrective action;

(2) Compensating third parties for bodily injury and property damage caused by sudden accidental releases; or

(3) Compensating third parties for bodily injury and property damage caused by nonsudden accidental releases, the amount of assurance provided by each mechanism or combination of mechanisms must be in the full amount specified in paragraphs (a) and (b) of this section.

(e) If an owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for different petroleum underground storage tanks, the annual aggregate required shall be based on the number of tanks covered by each such separate mechanism or combination of mechanisms.

(f) Owners or operators shall review the amount of aggregate assurance provided whenever additional petroleum underground storage tanks are acquired or installed. If the number of petroleum underground storage tanks for which assurance must be provided exceeds 100, the owner or operator shall demonstrate financial responsibility in the amount of at least $2 million of annual aggregate assurance by the anniversary of the date on which the mechanism demonstrating financial responsibility became effective. If assurance is being demonstrated by a combination of mechanisms, the owner or operator shall demonstrate financial responsibility in the amount of at least $2 million of annual aggregate assurance by the first-occurring effective date anniversary of any one of the mechanisms combined (other than a financial test or guarantee) to provide assurance.

(g) The amounts of assurance required under this section exclude legal defense costs.

(h) The required per-occurrence and annual aggregate coverage amounts do not in any way limit the liability of the owner or operator.

§ 280.94 Allowable mechanisms and combinations of mechanisms.

(a) Subject to the limitations of paragraphs (b) and (c) of this section, an owner or operator may use any one or combination of the mechanisms listed in §§ 280.95 through 280.109 to demonstrate financial responsibility under this subpart for one or more underground storage tanks.

(b) An owner or operator may use a guarantee or surety bond to establish financial responsibility only if the Attorney(s) General of the state(s) in which the underground storage tanks are located has (have) submitted a written statement to the implementing agency that a guarantee or surety bond executed as described in this section is a legally valid and enforceable obligation in that state.

(c) An owner or operator may use self-insurance in combination with a guarantee only if, for the purpose of meeting the requirements of the financial test under this rule, the financial statements of the owner or operator are not consolidated with the financial statements of the guarantor.

§ 280.95 Financial test of self-insurance.

(a) An owner or operator, and/or guarantor, may satisfy the requirements of § 280.93 by passing a financial test as specified in this section. To pass the financial test of self-insurance, the owner or operator, and/or guarantor must meet the criteria of paragraph (b) or (c) of this section based on year-end financial statements for the latest completed fiscal year.

(b)(1) The owner or operator, and/or guarantor, must have a tangible net worth of at least ten times:

(i) The total of the applicable aggregate amount required by § 280.93, based on the number of underground storage tanks for which a financial test is used to demonstrate financial responsibility to EPA under this section or to a state implementing agency under a state program approved by EPA under 40 CFR Part 281;

(ii) The sum of the corrective action cost estimates, the current closure and post-closure care cost estimates, and amount of liability coverage for which a financial test is used to demonstrate financial responsibility to EPA under 40 CFR 264.101, 264.143, 264.145, 265.143, 265.145, 264.147, and 265.147 or to a state implementing agency under a state program authorized by EPA under 40 CFR Part 271; and

(iii) The sum of current plugging and abandonment cost estimates for which a financial test is used to demonstrate financial responsibility to EPA under 40 CFR 144.63 or to a state implementing agency under a state program authorized by EPA under 40 CFR Part 145.

(2) The owner or operator, and/or guarantor, must have a tangible net worth of at least $10 million.

(3) The owner or operator, and/or guarantor, must have a letter signed by the chief financial officer worded as specified in paragraph (d) of this section.

(4) The owner or operator, and/or guarantor, must either:

(i) File financial statements annually with the U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural Electrification Administration; or

(ii) Report annually the firm's tangible net worth to Dun and Bradstreet, and Dun and Bradstreet must have assigned the firm a financial strength rating of 4A or 5A.

(5) The firm's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

(c)(1) The owner or operator, and/or guarantor must meet the financial test requirements of 40 CFR 264.147(f)(1), substituting the appropriate amounts specified in § 280.93 (b)(1) and (b)(2) for the "amount of liability coverage" each time specified in that section.

(2) The fiscal year-end financial statements of the owner or operator, and/or guarantor, must be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination.

(3) The firm's year-end financial statements cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

(4) The owner or operator, and/or guarantor, must have a letter signed by the chief financial officer, worded as specified in paragraph (d) of this section.

(5) If the financial statements of the owner or operator, and/or guarantor, are not submitted annually to the U.S. Securities and Exchange Commission, the Energy Information Administration or the Rural Electrification Administration, the owner or operator, and/or guarantor, must obtain a special report by an independent certified public accountant stating that:

(i) He has compared the data that the letter form the chief financial officer specifies as having been derived from the latest year-end financial statements of the owner or operator, and/or guarantor, with the amounts in such financial statements; and

(ii) In connection with that comparison, no matters came to his attention which caused him to believe that the specified data should be adjusted.

(d) To demonstrate that it meets the financial test under paragraph (b) or (c) of this section, the chief financial officer of the owner or operator, or guarantor, must sign, within 120 days of the close of each financial reporting year, as defined by the twelve-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

I am the chief financial officer of [insert: name and address of the owner or operator, or guarantor]. This letter is in support of the use of [insert: "the financial test of self-insurance," and/or "guarantee"] to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" and/or "nonsudden accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this financial test or a financial test under an authorized State program by this [insert: "owner or operator," and/or "guarantor"]: [List for each facility: the name and address of the facility where tanks assured by this financial test are located, and whether tanks are assured by this financial test or a financial test under a State program approved under 40 CFR Part 281. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test or a financial test under a State program authorized under 40 CFR Part 281 by the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22 or the corresponding State requirements.]

A [insert: "financial test," and/or "guarantee"] is also used by this [insert: "owner or operator," or "guarantor"] to demonstrate evidence of financial responsibility in the following amounts under other EPA regulations or state programs authorized by EPA under 40 CFR Parts 271 and 145:

EPA Regulations	*Amount*
Closure (§§ 264.143 and 265.143)	$
Post-Closure Care (§§ 264.145 and 265.145)	$
Liability Coverage (§§ 264.147 and 265.147)	$
Corrective Action (§§ 264.101(b))	$
Plugging and Abandonment (§ 144.63)	$
Closure	$
Post-Closure Care	$
Liabilitly Coverage	$
Corrective Action	$
Plugging and Abandonment	$
Total	$

This [insert: "owner or operator," or "guarantor"] has not received an adverse opinion, a disclaimer of opinion, or a "going concern" qualification from an independent auditor on his financial statements for the latest completed fiscal year.

[Fill in the information for Alternative I if the criteria of paragraph (b) of § 280.95 are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of paragraph (c) of § 280.95 are being used to demonstrate compliance with the financial test requirements.]

Alternative I

1. Amount of annual UST aggregate coverage being assured by a financial test, and/or guarantee	$
2. Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, and/or guarantee	$
3. Sum of lines 1 and 2	$
4. Total tangible assets	$
5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6]	$
6. Tangible net worth [subtract line 5 from line 4]	$

	Yes	No
7. Is line 6 at least $10 million?		
8. Is line 6 at least 10 times line 3?		
9. Have financial statements for the latest fiscal year been filed with the Securities and Exchange Commission?		
10. Have financial statements for the latest fiscal year been filed with the Energy Information Administration?		
11. Have financial statements for the lastest fiscal year been filed with the Rural Electrification Administration?		
12. Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating of 4A or 5A? [Answer "Yes" only if both criteria have been met.]		

Alternative II

1. Amount of annual UST aggregate coverage being assured by a test, and/or guarantee	$
2. Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, and/or guarantee	$
3. Sum of lines 1 and 2	$
4. Total tangible assets	$
5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6]	$
6. Tangible net worth [subtract line 5 from line 4]	$

Alternative I—Continued

7. Total assets in the U.S. [required only if less than 90 percent of assets are located in the U.S.]	$

	Yes	No
8. Is line 6 at least $10 million?		
9. Is line 6 at least 6 times line 3?		
10. Are at least 90 percent of assets located in the U.S.? [If "No," complete line 11.]		
11. Is line 7 at least 6 times line 3?		

[Fill in either lines 12–15 or lines 16–18:]

12. Current assets	$
13. Current liabilities	
14. Net working capital [subtract line 13 from line 12]	

	Yes	No
15. Is line 14 at least 6 times line 3?		
16. Current bond rating of most recent bond issue		
17. Name of rating service		
18. Date of maturity of bond		
19. Have financial statements for the latest fiscal year been filed with the SEC, the Energy Information Administration, or the Rural Electrification Administration?		

[If "No," please attach a report from an independent certified public accountant certifying that there are no material differences between the data as reported in lines 4–18 above and the financial statements for the latest fiscal year.]

[For both Alternative I and Alternative II complete the certification with this statement.]

I hereby certify that the wording of this letter is identical to the wording specified in 40 CFR Part 280.95(d) as such regulations were constituted on the date shown immediately below.

[Signature]
[Name]
[Title]
[Date]

(e) If an owner or operator using the test to provide financial assurance finds that he or she no longer meets the requirements of the financial test based on the year-end financial statements, the owner or operator must obtain alternative coverage within 150 days of the end of the year for which financial statements have been prepared.

(f) The Director of the implementing agency may require reports of financial condition at any time from the owner or operator, and/or guarantor. If the Director finds, on the basis of such reports or other information, that the owner or operator, and/or guarantor, no longer meets the financial test requirements of § 280.95(b) or (c) and (d), the owner or operator must obtain

alternate coverage within 30 days after notification of such a finding.

(g) If the owner or operator fails to obtain alternate coverage within 150 days of finding that he or she no longer meets the requirements of the financial test based on the year-end financial statements, or within 30 days of notification by the Director of the implementing agency that he or she no longer meets the requirements of the financial test, the owner or operator must notify the Director of such failure within 10 days.

§ 280.96 Guarantee.

(a) An owner or operator may satisfy the requirements of § 280.93 by obtaining a guarantee that conforms to the requirements of this section. The guarantor must be:

(1) A firm that (i) possesses a controlling interest in the owner or operator; (ii) possesses a controlling interest in a firm described under paragraph (a)(1)(i) of this section; or, (iii) is controlled through stock ownership by a common parent firm that possesses a controlling interest in the owner or operator; or,

(2) A firm engaged in a substantial business relationship with the owner or operator and issuing the guarantee as an act incident to that business relationship.

(b) Within 120 days of the close of each financial reporting year the guarantor must demonstrate that it meets the financial test criteria of § 280.95 based on year-end financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in § 280.95(d) and must deliver the letter to the owner or operator. If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within 120 days of the end of that financial reporting year the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the owner or operator. If the Director of the implementing agency notifies the guarantor that he no longer meets the requirements of the financial test of § 280.95 (b) or (c) and (d), the guarantor must notify the owner or operator within 10 days of receiving such notification from the Director. In both cases, the guarantee will terminate no less than 120 days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator must obtain alternative coverage as specified in § 280.110(c).

(c) The guarantee must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Guarantee

Guarantee made this [date] by [name of guaranteeing entity], a business entity organized under the laws of the state of [name of state], herein referred to as guarantor, to [the state implementing agency] and to any and all third parties, and obligees, on behalf of [owner or operator] of [business address].

Recitals

(1) Guarantor meets or exceeds the financial test criteria of 40 CFR 280.95 (b) or (c) and (d) and agrees to comply with the requirements for guarantors as specified in 40 CFR 280.96(b).

(2) [Owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22 or the corresponding state requirement, and the name and address of the facility.] This guarantee satisfies 40 CFR Part 280, Subpart H requirements for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

(3) [Insert appropriate phrase: "On behalf of our subsidiary" (if guarantor is corporate parent of the owner or operator); "On behalf of our affiliate" (if guarantor is a related firm of the owner or operator); or "Incident to our business relationship with" (if guarantor is providing the guarantee as an incident to a substantial business relationship with owner or operator)] [owner or operator], guarantor guarantees to [implementing agency] and to any and all third parties that:

In the event that [owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the [Director of the implementing agency] has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the [Director], shall fund a standby trust fund in accordance with the provisions of 40 CFR 280.108, in an amount not to exceed the coverage limits specified above.

In the event that the [Director] determines that [owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 40 CFR Part 280, Subpart F, the guarantor upon written instructions from the [Director] shall fund a standby trust in accordance with the provisions of 40 CFR 280.108, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the [Director], shall fund a standby trust in accordance with the provisions of 40 CFR 280.108 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria of 40 CFR 280.95 (b) or (c) and (d), guarantor shall send within 120 days of such failure, by certified mail, notice to [owner or operator]. The guarantee will terminate 120 days from the date of receipt of the notice by [owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code naming guarantor as debtor, within 10 days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 40 CFR Part 280.

(7) Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable financial responsibility requirements of 40 CFR Part 280, Subpart H for the above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

(8) The guarantor's obligation does not apply to any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaded to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily damage or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 40 CFR 280.93.

(9) Guarantor expressly waives notice of acceptance of this guarantee by [the implementing agency], by any or all third parties, or by [owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in 40 CFR 280.96(c) as such regulations were constituted on the effective date shown immediately below.

Effective date: _____

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary: _____

(d) An owner or operator who uses a guarantee to satisfy the requirements of § 280.93 must establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with instructions from the Director of the implementing agency under § 280.108. This standby trust fund must meet the requirements specified in § 280.103.

§ 280.97 Insurance and risk retention group coverage.

(a) An owner or operator may satisfy the requirements of § 280.93 by obtaining liability insurance that conforms to the requirements of this section from a qualified insurer or risk retention group. Such insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.

(b) Each insurance policy must be amended by an endorsement worded as specified in paragraph (b)(1) of this section, or evidenced by a certificate of insurance worded as specified in paragraph (b)(2) of this section, except that instructions in brackets must be replaced with the relevant information and the brackets deleted:

(1) Endorsement

Name: [name of each covered location] _____

Address: [address of each covered location] _____

Policy Number: _____

Period of Coverage: [current policy period] _____

Name of [Insurer or Risk Retention Group]: _____

Address of [Insurer or Risk Retention Group]: _____

Name of Insured: _____

Address of Insured: _____

Endorsement:

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering the following underground storage tanks:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22, or the corresponding state requirement, and the name and address of the facility.]

for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions inconsistent with subsections (a) through (e) of this Paragraph 2 are hereby amended to conform with subsections (a) through (e):

a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this endorsement is attached.

b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 40 CFR 280.95-280.102.

c. Whenever requested by [a Director of an implementing agency], the ["Insurer" or "Group"] agrees to furnish to [the Director] a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"] will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

e. The insurance covers claims for any occurrence that commenced during the term of the policy that is discovered and reported to the ["Insurer" or "Group"] within six months of the effective date of the cancellation or termination of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in 40 CFR 280.97(b)(1) and that the ["Insurer" or "Group"] is ["licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states"].

[Signature of authorized representative of Insurer or Risk Retention Group]

[Name of person signing]

[Title of person signing], Authorized Representative of [name of Insurer or Risk Retention Group]

[Address of Representative]

[2] Certificate of Insurance

Name: [name of each covered location] _____

Address: [address of each covered location] _____

Policy Number: _____

Endorsement (if applicable): _____

Period of Coverage: [current policy period] _____

Name of [Insurer or Risk Retention Group]: _____

Address of [Insurer or Risk Retention Group]: _____

Name of Insured: _____

Address of Insured: _____

Certification:

1. [Name of Insurer or Risk Retention Group], [the "Insurer" or "Group"], as identified above, hereby certifies that it has issued liability insurance covering the following underground storage tank(s):

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22, or the corresponding state requirement, and the name and address of the facility.]

for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations,

indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location), exclusive of legal defense costs. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The ["Insurer" or "Group"] further certifies the following with respect to the insurance described in Paragraph 1:

a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this certificate applies.

b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 40 CFR [illegible].

c. Whenever requested by [a Director of an implementing agency], the ["Insurer" or "Group"] agrees to furnish to [the Director] a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"] will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

e. The insurance covers claims for any occurrence that commenced during the term of the policy that is discovered and reported to the ["Insurer" or "Group"] within six months of the effective date of the cancellation or other termination of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in 40 CFR 280.97(b)(2) and that the ["Insurer" or "Group"] is ["licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states"].

[Signature of authorized representative of insurer]
[Type name]
[Title], Authorized Representative of [name of insurer or Risk Retention Group]
[Address of Representative]

(c) Each insurance policy must be issued by an insurer or a risk retention group that, at a minimum, is licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states.

§ 280.96 Surety bond.

(a) An owner or operator may satisfy the requirements of § 280.93 by obtaining a surety bond that conforms to the requirements of this section. The surety company issuing the bond must be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.

(b) The surety bond must be worded as follows, except that instructions in brackets must be replaced with the relevant information and the brackets deleted:

Performance Bond

Date bond executed: _____
Period of coverage: _____
Principal: [legal name and business address of owner or operator]

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation (if applicable):

Surety(ies): [name(s) and business address(es)]

Scope of Coverage: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22, or the corresponding state requirement, and the name and address of the facility. List the coverage guaranteed by the bond: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases" "arising from operating the underground storage tank"].

Penal sums of bond:
Per occurrence $ _____
Annual aggregate $ _____
Surety's bond number: _____

Know All Persons by These Presents, that we, the Principal and Surety(ies), hereto are firmly bound to [the implementing agency], in the above penal sums for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sums jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sums only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sums.

Whereas said Principal is required under Subtitle I of the Resource Conservation and Recovery Act (RCRA), as amended, to provide financial assurance for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tanks identified above, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully ["take corrective action, in accordance with 40 CFR Part 280, Subpart F and the Director of the state implementing agency's instructions for," and/or "compensate injured third parties for bodily injury and property damage caused by" either "sudden" or "nonsudden" or "sudden and nonsudden"] accidental releases arising from operating the tank(s) indentified above, or if the Principal shall provide alternate financial assurance, as specified in 40 CFR Part 280, Subpart H, within 120 days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

Such obligation does not apply to any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 40 CFR 280.93.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by [the Director of the implementing agency] that the Principal has failed to ["take corrective action, in accordance with 40 CFR Part 280, Subpart F and the Director's instructions," and/or "compensate injured third parties"] as guaranteed by this bond, the Surety(ies) shall either perform ["corrective action in accordance with 40 CFR Part 280 and the Director's instructions," and/or "third-party liability compensation"] or place funds in an amount up to the annual aggregate penal sum into the standby trust fund as directed by [the Regional Administrator or the Director] under 40 CFR 280.108.

Upon notification by [the Director] that the Principal has failed to provide alternate financial assurance within 60 days after the date the notice of cancellation is received by the Principal from the Surety(ies) and that [the Director] has determined or suspects that a release has occurred, the Surety(ies) shall place funds in an amount not exceeding the annual aggregate penal sum into the standby trust fund as directed by [the Director] under 40 CFR 280.108.

The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the annual aggregate to the penal sum shown on the face of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal, as evidenced by the return receipt.

The Principal may terminate this bond by sending written notice to the Surety(ies).

In Witness Thereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 40 CFR 280.98(b) as such regulations were constituted on the date this bond was executed.

Principal

[Signature(s)]
[Names(s)]
[Title(s)]
[Corporate seal]

Corporate Surety(ies)

[Name and address]
[State of Incorporation: _____
[Liability limit: $_____
[Signature(s)]
[Names(s) and title(s)]
[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: $_____

(c) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. In all cases, the surety's liability is limited to the per-occurrence and annual aggregate penal sums.

(d) The owner or operator who uses a surety bond to satisfy the requirements of § 280.93 must establish a standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the Director under § 280.108. This standby trust fund must meet the requirements specified in § 280.103.

§ 280.97 Letter of credit.

(a) An owner or operator may satisfy the requirements of § 280.93 by obtaining an irrevocable standby letter of credit that conforms to the requirements of this section. The issuing institution must be an entity that has the authority to issue letters of credit in each state where used and whose letter-of-credit operations are regulated and examined by a federal or state agency.

(b) The letter of credit must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Irrevocable Standby Letter of Credit

[Name and address of issuing institution]
[Name and address of Director(s) of state implementing agency(ies)]

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. —— in your favor, at the request and for the account of [owner or operator name] of [address] up to the aggregate amount of [in words] U.S. dollars $[insert dollar amount], available upon presentation [insert, if more than one Director of a state implementing agency is a beneficiary, "by any one of you"] of

(1) your sight draft, bearing reference to this letter of credit, No. ——, and

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of Subtitle I of the Resource Conservation and Recovery Act of 1976, as amended.".

This letter of credit may be drawn on to cover [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the underground storage tank(s) identified below in the amount of [in words] $[insert dollar amount] per occurrence and [in words] $[insert dollar amount] annual aggregate:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22, or the corresponding state requirement, and the name and address of the facility.]

The letter of credit may not be drawn on to cover any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 40 CFR 280.93.

This letter of credit is effective as of [date] and shall expire on [date], but such expiration date shall be automatically extended for a period of [at least the length of the original term] on [expiration date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify [owner or operator] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event that [owner or operator] is so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by [owner or operator], as shown on the signed return receipt.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner or operator] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in 40 CFR 280.99(b) as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]
[Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code"].

(c) An owner or operator who uses a letter of credit to satisfy the requirements of § 280.93 must also establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Director of the implementing agency will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Director under § 280.108. This standby trust fund must meet the requirements specified in § 280.103.

(d) The letter of credit must be irrevocable with a term specified by the issuing institution. The letter of credit

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must provide that credit be automatically renewed for the same term as the original term, unless, at least 120 days before the current expiration date, the issuing institution notifies the owner or operator by certified mail of its decision not to renew the letter of credit. Under the terms of the letter of credit, the 120 days will begin on the date when the owner or operator receives the notice, as evidenced by the return receipt.

§ 280.100 Use of state-required mechanism.

(a) For underground storage tanks located in a state that does not have an approved program, and where the state requires owners or operators of underground storage tanks to demonstrate financial responsibility for taking corrective action and/or for compensating third parties for bodily injury and property damage, an owner or operator may use a state-required financial mechanism to meet the requirements of § 280.93 if the Regional Administrator determines that the state mechanism is at least equivalent to the financial mechanisms specified in this subpart.

(b) The Regional Administrator will evaluate the equivalency of a state-required mechanism principally in terms of: certainty of the availability of funds for taking corrective action and/or for compensating third parties; the amount of funds that will be made available; and the types of costs covered. The Regional Administrator may also consider other factors as is necessary.

(c) The state, an owner or operator, or any other interested party may submit to the Regional Administrator a written petition requesting that one or more of the state-required mechanisms be considered acceptable for meeting the requirements of § 280.93. The submission must include copies of the appropriate state statutory and regulatory requirements and must show the amount of funds for corrective action and/or for compensating third parties assured by the mechanism(s). The Regional Administrator may require the petition to submit additional information as is deemed necessary to make this determination.

(d) Any petition under this section may be submitted on behalf of all of the state's underground storage tank owners and operators.

(e) The Regional Administrator will notify the petitioner of his determination regarding the mechanism's acceptability in lieu of financial mechanisms specified in this subpart. Pending this determination, the owners and operators using such mechanisms will be deemed to be in compliance with the requirements of § 280.93 for underground storage tanks located in the state for the amounts and types of costs covered by such mechanisms.

§ 280.101 State fund or other state assurance.

(a) An owner or operator may satisfy the requirements of § 280.93 for underground storage tanks located in a state, where EPA is administering the requirements of this subpart, which assures that monies will be available from a state fund or state assurance program to cover costs up to the limits specified in § 280.93 or otherwise assures that such costs will be paid if the Regional Administrator determines that the state's assurance is at least equivalent to the financial mechanisms specified in this subpart.

(b) The Regional Administrator will evaluate the equivalency of a state fund or other state assurance principally in terms of: Certainty of the availability of funds for taking corrective action and/or for compensating third parties; the amount of funds that will be made available; and the types of costs covered. The Regional Administrator may also consider other factors as is necessary.

(c) The state must submit to the Regional Administrator a description of the state fund or other state assurance to be supplied as financial assurance, along with a list of the classes of underground storage tanks to which the funds may be applied. The Regional Administrator may require the state to submit additional information as is deemed necessary to make a determination regarding the acceptability of the state fund or other state assurance. Pending the determination by the Regional Administrator, the owner or operator of a covered class of USTs will be deemed to be in compliance with the requirements of § 280.93 for the amounts and types of costs covered by the state fund or other state assurance.

(d) The Regional Administrator will notify the state of his determination regarding the acceptability of the state's fund or other assurance in lieu of financial mechanisms specified in this subpart. Within 60 days after the Regional Administrator notifies a state that a state fund or other state assurance is acceptable, the state must provide to each owner or operator for which it is assuming financial responsibility a letter or certificate describing the nature of the state's assumption of responsibility. The letter or certificate from the state must include, or have attached to it, the following information: the facility's name and address and the amount of funds for corrective action and/or for compensating third parties that is assured by the state. The owner or operator must maintain this letter or certificate on file as proof of financial responsibility in accordance with § 280.107(b)(5).

§ 280.102 Trust fund.

(a) An owner or operator may satisfy the requirements of § 280.93 by establishing a trust fund that conforms to the requirements of this section. The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the state in which the fund is established.

(b) The wording of the trust agreement must be identical to the wording specified in § 280.103(b)(1), and must be accompanied by a formal certification of acknowledgement as specified in § 280.103(b)(2).

(c) The trust fund, when established, must be funded for the full required amount of coverage, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining required coverage.

(d) If the value of the trust fund is greater than the required amount of coverage, the owner or operator may submit a written request to the Director of the implementing agency for release of the excess.

(e) If other financial assurance as specified in this subpart is substituted for all or part of the trust fund, the owner or operator may submit a written request to the Director of the implementing agency for release of the excess.

(f) Within 60 days after receiving a request from the owner or operator for release of funds as specified in paragraph (d) or (e) of this section, the Director of the implementing agency will instruct the trustee to release to the owner or operator such funds as the Director specifies in writing.

§ 280.103 Standby trust fund.

(a) An owner or operator using any one of the mechanisms authorized by §§ 280.96, 280.98, or 280.99 must establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal agency or an agency of the state in which the fund is established.

(b)(1) The standby trust agreement must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Trust Agreement

Trust agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of state] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "incorporated in the state of _____" or "a national bank"], the "Trustee."

[Whereas, the United States Environmental Protection Agency, "EPA," an agency of the United States Government, has established certain regulations applicable to the Grantor, requiring that an owner or operator of an underground storage tank shall provide assurance that funds will be available when needed for corrective action and third-party compensation for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of the underground storage tank (This paragraph is only applicable to the standby trust agreement.)];

[Whereas, the Grantor has elected to establish [insert either "a guarantee," "surety bond," or "letter of credit"] to provide all or part of such financial assurance for the underground storage tanks identified herein and is required to establish a standby trust fund able to accept payments from the instrument (This paragraph is only applicable to the standby trust agreement.)];

[Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee;

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions

As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of the Financial Assurance Mechanism.

This Agreement pertains to the [identify the financial assurance mechanism, either a guarantee, surety bond, or letter of credit, from which the standby trust fund is established to receive payments (This paragraph is only applicable to the standby trust agreement.)].

Section 3. Establishment of Fund.

The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of [implementing agency]. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. [The Fund is established initially as a standby to receive payments and shall not consist of any property.] Payments made by the provider of financial assurance pursuant to [the Director of the implementing agency's] instruction are transferred to the Trustee and are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor as provider of financial assurance, any payments necessary to discharge any liability of the Grantor established by [the state implementing agency].

Section 4. Payment for ["Corrective Action" and/or Third-Party Liability Claims"].

The Trustee shall make payments from the Fund as [the Director of the implementing agency] shall direct, in writing, to provide for the payment of the costs of [insert: "taking corrective action" and/or compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the tanks covered by the financial assurance mechanism identified in this Agreement.

The Fund may not be drawn upon to cover any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 40 CFR 280.93.

The Trustee shall reimburse the Grantor, or other persons as specified by [the Director], from the Fund for corrective action expenditures and/or third-party liability claims in such amounts as [the Director] shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as [the Director] specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund

Payments made to the Trustee for the Fund shall consist of cash and securities acceptable to the Trustee.

Section 6. Trustee Management.

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the tanks, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a–2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment

The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a–1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with

certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Advice of Counsel

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation

The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 13. Instructions to the Trustee.

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule B or such other designees as the Grantor may designate by amendment to Schedule B. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by [the Director of the implementing agency] to the Trustee shall be in writing, signed by [the Director], and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or [the director] hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or [the Director], except as provided for herein.

Section 14. Amendment of Agreement

This Agreement may be amended by an instrument in writing executed by the Grantor and the Trustee, or by the Trustee and [the Director of the implementing agency] if the Grantor ceases to exist.

Section 15. Irrevocability and Termination

Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and [the Director of the implementing agency], if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 16. Immunity and Indemnification

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or [the Director of the implementing agency] issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such indemnification.

Section 17. Choice of Law

This Agreement shall be administered, construed, and enforced according to the laws of the state of [insert name of state], or the Comptroller of the Currency in the case of National Association banks.

Section 18. Interpretation

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 40 CFR 280.103(b)(1) as such regulations were constituted on the date written above.

[Signature of Grantor]
[Name of the Grantor]
[Title]
Attest:
[Signature of Trustee]
[Name of the Trustee]
[Title]
[Seal]
[Signature of Witness]
[Name of the Witness]
[Title]
[Seal]

(2) The standby trust agreement must be accompanied by a formal certification of acknowledgment similar to the following. State requirements may differ on the proper content of this acknowledgment.

State of _____
County of _____

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]
[Name of Notary Public]

(c) The Director of the implementing agency will instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the Director determines that no additional corrective action costs or third-party liability claims will occur as a result of a release covered by the financial assurance mechanism for which the standby trust fund was established.

(d) An owner or operator may establish one trust fund as the depository mechanism for all funds assured in compliance with this rule.

§ 280.104 Substitution of financial assurance mechanisms by owner or operator.

(a) An owner or operator may substitute any alternate financial assurance mechanisms as specified in this subpart, provided that at all times he maintains an effective financial assurance mechanism or combination of mechanisms that satisfies the requirements of § 280.93.

(b) After obtaining alternate financial assurance as specified in this subpart, an owner or operator may cancel a financial assurance mechanism by providing notice to the provider of financial assurance.

§ 280.105 Cancellation or nonrenewal by a provider of financial assurance.

(a) Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the owner or operator.

(1) Termination of a guarantee, a surety bond, or a letter of credit may not occur until 120 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

(2) Termination of insurance, risk retention group coverage, or state-funded assurance may not occur until 60 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

(b) If a provider of financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in §280.108, the owner or operator must obtain alternate coverage as specified in this section within 60 days after receipt of the notice of termination. If the owner or operator fails to obtain alternate coverage within 60 days after receipt of the notice of termination, the owner or operator must notify the Director of the implementing agency of such failure and submit:

(1) The name and address of the provider of financial assurance;

(2) The effective date of termination; and

(3) The evidence of the financial assistance mechanism subject to the termination maintained in accordance with § 280.107(b).

§ 280.106 Reporting by owner or operator.

(a) An owner or operator must submit the appropriate forms listed in § 280.107(b) documenting current evidence of financial responsibility to the Director of the implementing agency:

(1) Within 30 days after the owner or operator identifies a release from an underground storage tank required to be reported under § 280.53 or § 280.61;

(2) If the owner or operator fails to obtain alternate coverage as required by this subpart, within 30 days after the owner or operator receives notice of:

(i) Commencement of a voluntary or involuntary proceeding under Title 11 (Bakruptcy), U.S. Code, naming a provider of financial assurance as a debtor,

(ii) Suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism,

(iii) Failure of a guarantor to meet the requirements of the financial test,

(iv) Other incapacity of a provider of financial assurance; or

(3) As required by § 280.96(g) and § 280.105(b).

(b) An owner or operator must certify compliance with the financial responsibility requirements of this part as specified in the new tank notification form when notifying the appropriate state or local agency of the installation of a new underground storage tank under § 280.22.

(c) The Director of the Implementing Agency may require an owner or operator to submit evidence of financial assurance as described in § 280.107(b) or other information relevant to compliance with this subpart at any time.

(The information requirements in this section have been approved by the Office of Management and Budget and assigned OMB control number 2050-0068.)

§ 280.107 Recordkeeping.

(a) Owners or operators must maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this subpart for an underground storage tank until released from the requirements of this subpart under § 280.108. An owner or operator must maintain such evidence at the underground storage tank site or the owner's or operator's place of business. Records maintained off-site must be made available upon request of the implementing agency.

(b) An owner or operator must maintain the following types of evidence of financial responsibility:

(1) An owner or operator using an assurance mechanism specified in §§ 280.95 through 280.100 or § 280.102 must maintain a copy of the instrument worded as specified.

(2) An owner or operator using a financial test or guarantee must maintain a copy of the chief financial officer's letter based on year-end financial statements for the most recent completed financial reporting year. Such evidence must be on file no later than 120 days after the close of the financial reporting year.

(3) An owner or operator using a guarantee, surety bond, or letter of credit must maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.

(4) An owner or operator using an insurance policy or risk retention group coverage must maintain a copy of the signed insurance policy or risk retention group coverage policy, with the endorsement or certificate of insurance and any amendments to the agreements.

(5) An owner or operator covered by a state fund or other state assurance must maintain on file a copy of any evidence of coverage supplied by or required by the State under § 280.101(d).

(6) An owner or operator using an assurance mechanism specified in §§ 280.95 through 280.102 must maintain an updated copy of a certification of financial responsibility worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Financial Responsibility

[Owner or operator] hereby certifies that it is in compliance with the requirements of Subpart H of 40 CFR Part 280.

The financial assurance mechanism[s] used to demonstrate financial responsibility under Subpart H of 40 CFR Part 280 is [are] as follows:

[For each mechanism, list the type of mechanism, name of issuer, mechanism number (if applicable), amount of coverage, effective period of coverage and whether the mechanism covers "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases."]

[Signature of owner or operator]
[Name of owner or operator]
[Title]
[Date]

[Signature of witness or notary]
[Name of witness or notary]
[Date]

The owner or operator must update this certification whenever the financial assurance mechanism(s) used to demonstrate financial responsibility change(s).

(The information requirements in this section have been approved by the Office of Management and Budget and assigned OMB control number 2050-0068.)

§ 280.108 Drawing on financial assurance mechanisms.

(a) The Director of the implementing agency shall require the guarantor, surety, or institution issuing a letter of credit to place the amount of funds stipulated by the Director, up to the limit of funds provided by the financial assurance mechanism, into the standby trust if:

(1)(i) The owner or operator fails to establish alternate financial assurance within 60 days after receiving notice of cancellation of the guarantee, surety bond, letter of credit, or, as applicable, other financial assurance mechanism; and

(ii) The Director determines or suspects that a release from an underground storage tank covered by the mechanism has occurred and so notifies the owner or operator or the owner or operator has notified the Director pursuant to Subparts E or F of a release from an underground storage tank covered by the mechanism; or

(2) The conditions of paragraph (b)(1) or (b)(2)(i) or (ii) of this section are satisfied.

(b) The Director of the implementing agency may draw on a standby trust fund when:

(1) The Director makes a final determination that a release has occurred and immediate or long-term corrective action for the release is needed, and the owner or operator, after appropriate notice and opportunity to comply, has not conducted corrrective action as required under 40 CFR Part 280, Subpart F; or

(2) The Director has received either:

(i) Certification from the owner or operator and the third-party liability claimant(s) and from attorneys representing the owner or operator and the third-party liability claimant(s) that a third-party liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as principals and as legal representatives of [insert owner or operator] and [insert name and address of third-party claimant], hereby certify that the claim of bodily injury [and/or] property damage caused by an accidental release arising from operating [owner's or operator's] underground storage tank should be paid in the amount of $[_____].

[Signatures]
Owner or Operator
Attorney for Owner or Operator
(Notary) Date
[Signature(s)]
Claimant(s)
Attorney(s) for Claimant(s)
(Notary) Date

or (ii) A valid final court order establishing a judgment against the owner or operator for bodily injury or property damage caused by an accidental release from an underground storage tank covered by financial assurance under this subpart and the Director determines that the owner or operator has not satisfied the judgment.

(c) If the Director of the implementing agency determines that the amount of corrective action costs and third-party liability claims eligible for payment under paragraph (b) of this section may exceed the balance of the standby trust fund and the obligation of the provider of financial assurance, the first priority for payment shall be corrective action costs necessary to protect human health and the environment. The Director shall pay third-party liability claims in the order in which the Director receives certifications under paragraph (b)(2)(i) of this section, and valid court orders under paragraph (b)(2)(ii) of this section.

§ 280.109 Release from the requirements.

An owner or operator is no longer required to maintain financial responsibility under this subpart for an underground storage tank after the tank has been properly closed or, if corrective action is required, after corrective action has been completed and the tank has been properly closed as required by 40 CFR Part 280, Subpart G.

§ 280.110 Bankruptcy or other incapacity of owner or operator or provider of financial assurance.

(a) Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming an owner or operator as debtor, the owner or operator must notify the Director of the implementing agency by certified mail of such commencement and submit the appropriate forms listed in § 280.107(b) documenting current financial responsibility.

(b) Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing financial assurance as debtor, such guarantor must notify the owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in § 280.96.

(c) An owner or operator who obtains financial assurance by a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, risk retention group coverage policy, surety bond, letter of credit, or state-required mechanism. The owner or operator must obtain alternate financial assurance as specified in this subpart within 30 days after receiving notice of such an event. If the owner or operator does not obtain alternate coverage within 30 days after such notification, he must notify the Director of the implementing agency.

(d) Within 30 days after receipt of notification that a state fund or other state assurance has become incapable of paying for assured corrective action or third-party compensation costs, the owner or operator must obtain alternate financial assurance.

§ 280.111 Replenishment of guarantees, letters of credit, or surety bonds.

(a) If at any time after a standby trust is funded upon the instruction of the Director of the implementing agency with funds drawn from a guarantee, letter of credit, or surety bond, and the amount in the standby trust is reduced below the full amount of coverage required, the owner or operator shall by the anniversary date of the financial mechanism from which the funds were drawn:

(1) Replenish the value of financial assurance to equal the full amount of coverage required, *or*

(2) Acquire another financial assurance mechanism for the amount by which funds in the standby trust have been reduced.

(b) For purposes of this section, the full amount of coverage required is the amount of coverage to be provided by § 280.93 of this subpart. If a combination of mechanisms was used to provide the assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms.

§ 280.112 Suspension of enforcement.

[Reserved]

PART 281—APPROVAL OF STATE UNDERGROUND STORAGE TANK PROGRAMS

4. The authority citation for Part 281 continues to read as follows:

Authority: Secs. 2002, 9004, 9005, 9006 of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6912, 6991 (c), (d), (e)).

5. 40 CFR Part 281 is amended to add § 281.37 as follows:

§ 281.37 Financial responsibility for UST systems containing petroleum.

(a) In order to be considered no less stringent than the federal requirements for financial responsibility for UST systems containing petroleum, the state requirements for financial responsibility

for petroleum UST systems must ensure that:

(1) Owners and operators have $1 million per occurrence for corrective action and third-party claims in a timely manner to protect human health and the environment;

(2) Owners and operators not engaged in petroleum production, refining, and marketing and who handle a throughput of 10,000 gallons of petroleum per month or less have $500,000 per occurrence for corrective action and third-party claims in a timely manner to protect human health and the environment;

(3) Owners and operators of 1 to 100 petroleum USTs must have an annual aggregate of $1 million; and

(4) Owners and operators of 101 or more petroleum USTs must have an annual aggregate of $2 million.

(b) Phase-in of requirements. Financial responsibility requirements for petroleum UST systems must, at a minimum, be scheduled to be applied at all UST systems on an orderly schedule that completes a phase-in of the financial responsibility requirements within 18 months after the effective date of the federal regulations.

(c) States may allow the use of a wide variety of financial assurance mechanisms to meet this requirement. Each financial mechanism must meet the following criteria in order to be no less stringent than the federal requirements. The mechanism must: Be valid and enforceable; be issued by a provider that is qualified or licensed in the state; not permit cancellation without allowing the state to draw funds; ensure that funds will only and directly be used for corrective action and third party liability costs; and require that the provider notify the owner or operator of any circumstances that would impair or suspend coverage.

(d) States must require owners and operators to maintain records that demonstrate compliance with the state financial responsibility requirements, and these records must be made readily available when requested by the implementing agency.

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Part III

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Part 4 et al.
Federal Acquisition Regulation (FAR); Miscellaneous Amendments

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 5, 8, 9, 13, 14, 15, 19, 25, 28, 33, 36, 37, 45, 52, and 53

[Federal Acquisition Circular 84-40]

Federal Acquisition Regulation (FAR); Miscellaneous Amendments

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments and final rules.

SUMMARY: Federal Acquisition Circular (FAC) 84-40 amends the Federal Acquisition Regulation (FAR) with respect to the following: Taxpayer Identification Number; Revised Federal Procurement Data System (FPDS) Forms; Sources Sought Synopsis for R&D; Restrictions on Competitive Procurement of Electric Service; Revision to OMB Circular A-120, Organizational Conflicts of Interest; Blanket Purchase Agreement Review Procedures; Signed Confirmation of Telegraphic Bids; Small Business Size Standards; Small Business Set-Asides (Sec. 921, DoD Authorization Act); Excess and Near Excess Foreign Currency; Service of Protest Clause; GAO Bid Protest Rules; Accountability for Government Property in the Possession of Contractors; Amendment of Solicitations; and Computer-Generation of Standard Forms.

DATES:

Effective Date: November 25, 1988.

Comment Date: Comments on the interim rule, Subpart 4.9 and Section 52.204-3, should be submitted to the FAR Secretariat on or before December 27, 1988, to be considered in the formulation of a final rule. Please cite Item I, FAC 84-40, in all correspondence on this subject.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523-4755.

SUPPLEMENTARY INFORMATION:

A. Background.

FAC 84-40, Item I. (Interim Rule)

In order for Federal agencies to comply with the Internal Revenue Service (IRS) reporting requirements, the Federal Acquisition Regulation (FAR) Subpart 4.9, Information Reporting to the IRS, and corresponding coverage in Part 52 have been developed to provide for contractors to submit their taxpayer identification number (TIN) and certain related information to the appropriate contracting office.

26 U.S.C. 6041 and 6041A, in part, as implemented in 26 CFR, require payors, including the Federal Government, to report to the IRS certain payments made to contractors. Information required to be reported includes company name, address, TIN, and corporate status. Failure or refusal to furnish the TIN may result in a 20 percent reduction of payments otherwise due under the contract.

26 U.S.C. 6050M, as implemented in 26 CFR, requires head of Federal Executive agencies to report certain contract information to the IRS. The information required to be reported for certain contract actions over $25,000 includes name, address, and TIN of contractor; name and TIN of common parent (if any); date of contract action; amount obligated on the contract; and estimated contract completion date.

B. Determination to Issue an Interim Rule

FAC 84-40, Item I

A determination has been made under authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) to issue the regulations in Item I of FAC 84-40 as an interim rule. This action is necessary because—

(a) The Internal Revenue Service (IRS), on July 29, 1988, published in the **Federal Register** (53 FR 28669) a proposed rule, with a 30-day comment period, implementing the requirements of 26 U.S.C. 6050M;

(b) It is anticipated that the IRS final rule will be published in the near future; and

(c) In order for Federal Executive agencies to be prepared to comply with the statutory requirements to be implemented in the anticipated IRS final rule, it is necessary to establish procedures for collection of the required taxpayer identification information in advance of the IRS final rule.

DoD, GSA, and NASA have determined that compelling reasons exist to promulgate an interim rule without prior opportunity for public comment. However, pursuant to Pub. L. 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in formulating a final rule.

C. Paperwork Reduction act

FAC 84-40, Item I

The Paperwork Reduction Act (Pub. L. 96-511) is deemed to apply because the interim rule contains an information collection requirement. Accordingly, a request for approval of a new information collection requirement concerning Information Reporting to the Internal Revenue Service has been submitted to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Public comments concerning this OMB clearance request were invited through a October 5, 1988, **Federal Register** notice (53 FR 39128).

FAC 84-40, Items II through XVII

The Paperwork Reduction Act (Pub. L. 96-511) does not apply because these final rules do not impose any reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

D. Regulatory Flexibility Act

FAC 84-40, Item I

This interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because all taxpayers are required to have a Taxpayer Identification Number (TIN) and this rule merely requests contractors to provide that number. Contractors should have immediate knowledge of this information item, making any significant additional effort unnecessary. An Initial Regulatory Flexibility analysis has, therefore, not been prepared. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite FAR Case 88-610 in correspondence.

FAC 84-40, Items II, V, VI, VII, VIII, IX, XI, XIII, XV, XVI, and XVII

The Regulatory Flexibility Act (Pub. L. 96-354) does not apply because each revision is not a "significant revision" as defined in FAR 1.501-1; i.e., it does not alter the substantive meaning of any coverage in the FAR having a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of the issuing agencies. Accordingly, and consistent with section 1212 of Pub. L. 98-525 and section 302 of Pub. L. 98-577 pertaining to publication of proposed regulations (as implemented in FAR Subpart 1.5, Agency and Public Participation), solicitation of agency and public views on the revisions is not required. Since such solicitation is not required, the Regulatory Flexibility Act does not apply.

FAC 84-40, Item III

DoD, GSA, and NASA certify that the final rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility act of 1980, 5 U.S.C. 601, *et seq.* The rule does not change current FAR requirements regarding synopsizing solicitations for R&D requirements. It merely clarifies and makes optional the synopsizing of advance notices of interest in R&D fields.

FAC 84-40, Item IV

DoD, GSA, and NASA certify that this final rule will not have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). However, a Final Regulatory Flexibility Analysis has been prepared and will be submitted to the Chief Counsel for Advocacy of the Small Business Administration.

FAC 84-40, Item X

It is expected that this final rule will have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). A Final Regulatory Flexibility Analysis has been prepared and will be submitted to the chief Counsel for Advocacy of the Small Business Administration.

FAC 84-40, Item XII

DoD, GSA, and NASA certify that the final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The rule does not impose any new requirements on contractors, large or small, and serves only to clarify existing regulatory coverage concerning protest procedures.

FAC 84-40, Item XIV

This rule will apply to all small businesses performing under Government contracts that provide for the furnishing of Government property. Approximately fifty thousand small businesses hold Government contracts. While the number of small businesses being furnished Government property under these contracts is unknown, the ultimate impact on small businesses should be minimal. The problem with dual property systems exists primarily with large contractors. Small businesses normally maintain only one property control system for their own and Government property. Comments regarding the Initial Regulatory Flexibility Act Analysis were solicited in the **Federal Register** on October 7, 1987 (52 FR 37595). No public comments were received. A Final Regulatory Flexibility Analysis has been prepared and submitted to the Chief Counsel for Advocacy for the Small Business Administration.

E. Public Comments

FAC 84-40, Item III

On November 5, 1987, a proposed rule was published in the **Federal Register** (52 FR 42519). The comments that were received were considered by the Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council in the development of this final rule.

FAC 84-40, Item X

On October 14, 1987, an interim rule was published in the **Federal Register** (52 FR 38188). Over 35 public comments were received addressing a number of issues including Subcontracting Limitations, Fair Proportion by Industry, and Fair Market Price. The comments that were received were considered by the Councils in the development of this final rule.

FAC 84-40, Item XII

On November 25, 1986, a proposed rule was published in the **Federal Register** (51 FR 42805). The Comments that were received were considered by the Councils in the development of this final rule.

FAC 84-40, Item XIV

On October 7, 1987, a proposed rule was published in the **Federal Register** (52 FR 37595). The comments that were received were considered by the Councils in the development of this final rule and the change made to FAR 45.505(c) was made for clarification only.

List of Subjects in 48 CFR Parts 4, 5, 8, 9, 13, 14, 15, 19, 25, 28, 33, 36, 37, 45, 52, and 53

Government procurement.

Dated: October 19, 1988.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Federal Acquisition Circular

Number 84-40

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84-40 is effective November 25, 1988.

Eleanor Spector,

Deputy Assistant Secretary of Defense for Procurement.

Richard G. Austin,

Acting Administrator, GSA.

October 17, 1988.

S.J. Evans,

Assistant Administrator for Procurement, NASA.

Federal Acquisition Circular (FAC) 84-40 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Taxpayer Identification Number

FAR Subpart 4.9 and a clause at 52.204-3 are added for the purpose of implementing statutory and regulatory requirements pertaining to taxpayer identification and reporting.

Item II—Revised FPDS Forms

FAR 4.601 and 53.204-2 are revised to prescribe revised Standard Forms 279 and 281 for reporting contract actions to the Federal Procurement Data System.

Item III—Sources Sought Synopsis For R&D

FAR 5.205 is revised to clarify ambiguities in the existing FAR text and to make optional the synopsizing of advance notices of contracting officers' interest in Research and Development fields.

Item IV—Restriction on Competitive Procurement of Electric Service

FAR Subpart 8.3 is revised to incorporate the provisions of Sec. 8093 of the Department of Defense (DoD) Appropriations Act, FY 1988, contained in Pub. L. 100-202, permanently restricting the use of appropriated funds by any agency of the United States Government for competitive procurement of electric service, except as spelled out in the Act.

Item V—Revision to OMB Circular A-120

FAR 9.505-3, 37.000, 37.101, and Subpart 37.2 are revised to incorporate the changes called for in the revised OMB Circular. On January 12, 1988, OMB revised Circular A-120, "Guidelines for the Use of Consulting Services," in an effort to provide for greater control over the contracting for Advisory and Assistance Services.

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Item VI—Organizational Conflicts of Interest

FAR 9.507 is revised to require the Chief of the Contracting Office (unless the agency designates a higher level official) to approve the contracting officer's plan for dealing with potential organizational conflicts of interest.

Item VII—Blanket Purchase Agreement Review Procedures

FAR 13.205(a) is revised to allow annual review of BPA files by the ordering officer on a random sample basis to ensure procedural compliance with the FAR. Currently, the FAR requires a semiannual review of all BPA files.

Item VIII—Telegraphic Bids/Proposals

FAR 14.201–6(g), 15.407(e), and the clauses at 52.214–13 and 52.215–17 are revised to allow procurements of perishable subsistence to be exempt from the requirement for submission of signed and completed copies of bids/proposals subsequent to submission of telegraphic offers.

Item IX—Small Business Size Standards

FAR 19.102 is revised to incorporate changes made to the size standards regulations as published in the Federal Register by the Small Business Administration. The modified size standard in the SIC Code 1629 of Major Group 16 pertaining to Dredging and Surface Cleanup Activities was effective September 15, 1988, by issuance of a final rule on August 25, 1988 (53 FR 32370), and the addition of Major Group 62 was effective September 8, 1988, by issuance of an emergency interim rule on August 9, 1988 (53 FR 29876).

Item X—Small Business Set-Asides (Sec. 921, DoD Authorization Act)

Section 921 of the National Defense Authorization Act for Fiscal year 1987 (Pub. L. 99–661), entitled "Small Business Set-Asides," amended sections 8 and 15 of the Small Business Act (15 U.S.C. 637; 15 U.S.C. 644) in order to increase participation by small business and small disadvantaged business concerns in the Federal procurement process. Identical amendments to the Small Business Act were contained in the Department of Defense Appropriations Act, 1987 (Pub. L. 99–591). At a later date, technical corrections to the amendments were made by the Defense Technical Corrections Act of 1987 (Pub. L. 100–26). This final rule revises certain sections of FAR Parts 14, 19, and 52 in order to conform FAR procurement procedures with the statutory amendments. Other provisions of Section 921 which require rulemaking by the Small Business Administration (e.g., size determination program) are addressed in separate issuances by that Agency (see Federal Register, March 17, 1987 (52 FR 8251) and August 31, 1987 (52 FR 32870)).

Item XI—Excess and Near Excess Foreign Currency

FAR 25.304 is revised to expedite transmittal of changes in the lists of excess and near-excess currencies.

Item XII—Service of Protest Clause

FAR 33.101 is revised to conform the definition of "Interested Party" to General Accounting Office regulations governing consideration of protests. The clause at 52.233–2 is revised to clarify service of protest requirements.

Item XIII—GAO Bid Protest Rule

FAR 33.104 is revised to allow the protestor to file a request for documents it believes relevant to the protest, and to provide for two types of conferences, one on the merits of the protest and a fact finding conference. This revision is in accordance with the General Accounting Office (GAO) final rule changes to the regulations governing consideration of bid protests by the GAO and published in the Federal Register on December 8, 1987 (52 FR 46445).

Item XIV—Accountability for Government Property in the Possession of Contractors

FAR 45.505(c) is amended to clarify the requirements for records and reports of Government property in the possession of contractors. Under the revised coverage, contractors' systems for maintaining Government property records must be, as a minimum, equivalent to their own systems for maintaining records of contractor-owned property.

Item XV—Amendment of Solicitations

FAR at 52.214–3 and 52.215–8 are revised to clarify that when a solicitation amendment changes one aspect of a solicitation and does not mention other aspects of the solicitation, then those other aspects remain unchanged. This revision is necessary because of an inconsistency in interpretation of the FAR by the General Accounting Office (GAO) and the General Services Administration Board of Contract Appeals (GSBCA).

Item XVI—Computer-Generation of Standard Forms

FAR 53.103 and 53.105 are revised to allow for the computer generation of standard and optional forms.

Item XVII—Changes to Standard Form (SF) 1415, Consent of Surety

Standard Form 1415, Consent of Surety and Increase of Penalty, is revised to provide a place for the entry of the dollar figure amount the penalty of the payment bond or bonds are increased due to contract modification. FAR 28.106–8 and 53.228(1) are revised to show the date of the edition to be used and to state that local reproduction is authorized. SF 1415 is illustrated. As the SF 1415 is authorized for local reproduction, a copy is provided in the looseleaf edition of the FAR for the user to reproduce copies as required.

Therefore, 48 CFR parts 4, 5, 8, 9, 13, 14, 15, 19, 25, 28, 33, 36, 37, 45, 52, and 53 are amended as set forth below:

1. The authority citation for 48 CFR Parts 4, 5, 8, 9, 13, 14, 15, 19, 25, 28, 33, 36, 37, 45, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Ch. 137; and 42 U.S.C. 3473(c).

PART 4—ADMINISTRATIVE MATTERS

2. Section 4.602 is amended by revising paragraph (c) to read as follows:

4.602 Federal Procurement Data System.

* * * * *

(c) Data collection points in each agency report data on SF 279, Federal Procurement Data System (FPDS) Individual Contract Action Report, and SF 281, Federal Procurement Data System (FPDS) Summary Contract Action Report ($25,000 or Less), or computer-generated equivalent.

4.703 [Amended]

3. Section 4.703 is amended in paragraph (a)(2) by removing the words "4.705 and 4.704" and inserting in their place the words "4.706 through 4.705–3".

4. Subpart 4.9, consisting of sections 4.900 through 4.904, is added to read as follows:

Subpart 4.9—Information Reporting to the Internal Revenue Service

Sec.

4.900 Scope of subpart.
4.901 Definitions.
4.902 General.
4.903 Procedures.
4.904 Solicitation provision.

Subpart 4.9—Information Reporting To The Internal Revenue Service

4.900 Scope of subpart.

This subpart provides policies and procedures applicable to contract and payment information reporting to the Internal Revenue Service (IRS).

4.901 Definitions.

"Common parent," as used in this subpart, means an offeror that is a member of an affiliated group of corporations that files its Federal income tax returns on a consolidated basis.

"Corporate status," as used in this subpart, means a designation as to whether the offeror is a corporate entity, an unincorporated entity, (e.g., sole proprietorship or partnership), or a corporation providing medical and health care services.

"Taxpayer Identification Number (TIN)," as used in this subpart, means the number required by the IRS to be used by the offeror in reporting income tax and other returns.

4.902 General.

(a) 26 U.S.C. 6041 and 6041A, as implemented in 26 CFR, in part, require payors, including Federal Government agencies, to report to the IRS payments made to certain contractors.

(1) The following payments are exempt from this reporting requirement:

(i) Payments to corporations. However, payments to corporations providing medical and health care services or engaged in the billing and collecting of payments for such services are not exempted.

(ii) Payments for bills for merchandise, telegrams, telephone, freight, storage, and similar charges.

(iii) Payments of income required to be reported on an IRS Form W–2 (e.g., contracts for personal services).

(iv) Payments to a hospital or extended care facility described in 26 CFR 501(c)(3) that is exempt from taxation under 26 CFR 501(a).

(v) Payments to a hospital or extended care facility owned and operated by the United States, a state, the District of Columbia, a possession of the United States, or a political subdivision, agency, or instrumentality of any of the foregoing.

(vi) Payments for any contract with a state, the District of Columbia, a possession of the United States, or a political subdivision, agency, or instrumentality of any of the foregoing.

(2) The following information is required to provide report to IRS:

(i) Name, address, and TIN of contractor.

(ii) Corporate status (see 4.901).

(b) 26 U.S.C. 6050M, as implemented in 26 CFR, requires heads of Federal Executive agencies to report to the IRS the following information for certain contracts in excess of $50,000:

(1) Name, address, and TIN of contractor.

(2) Name and TIN of common parent (if any).

(3) Date of the contract action.

(4) Amount obligated on the contract action.

(5) Estimated contract completion date.

4.903 Procedures.

The information reported to the IRS under 4.902(b) will be transmitted using the Federal Procurement Data System (see Subpart 4.6 and implementing instructions).

4.904 Solicitation provision.

The contracting officer shall insert the provision at 52.204–3, Taxpayer Identification, in all solicitations, unless the TIN of each offeror has previously been obtained and is known.

PART 5—PUBLICIZING CONTRACT ACTIONS

5. Section 5.205 is amended by revising paragraph (a) to read as follows:

5.205 Special situations.

(a) *Research and development (R&D) advance notice.* Contracting officers may publish in the CBD, advance notices of their interest in potential R&D programs whenever existing solicitation mailing lists do not include a sufficient number of concerns to obtain adequate competition. Advance notices shall not be used where security considerations prohibit such publication. Advance notices will enable potential sources to learn of R&D programs and provide their sources with an opportunity to submit information which will permit evaluation of their R&D capabilities. Potential sources which respond to advance notices shall be added to the appropriate solicitation mailing list for subsequent solicitation. Advance notices shall be titled "Research and Development Sources Sought," cite the appropriate Numbered Note, and include the name and telephone number of the contracting officer or other contracting activity official from whom technical details of the project can be obtained. This will enable sources to submit information for evaluation of their R&D capabilities. Contracting officers shall synopsize all subsequent solicitations for R&D contracts, including those resulting from a previously synopsized advance notice, unless one of the exceptions in 5.202 applies.

* * * * *

PART 6—REQUIRED SOURCES OF SUPPLIES AND SERVICES

6. Section 6.302 is amended by adding paragraph (d) to read as follows:

6.302 Applicability.

* * * * *

(d)(1) Section 8093 of the Department of Defense Appropriations Act, 1988, contained in Pub. L. 100–202, provides that none of the funds appropriated by that Act or any other Act with respect to any fiscal year by any Department, agency, or instrumentality of the United States, may be used for the purchase of electricity by the Government in any manner that is inconsistent with the state law governing the providing of electric utility service, including state utility commission rulings and electric utility franchises or service territories established pursuant to state statute, state regulation, or state-approved territorial agreements.

(2) The Act does not preclude—

(i) The head of a Federal agency from entering into a contract pursuant to 42 U.S.C. 8287 (which pertains to the subject of shared energy savings);

(ii) The Secretary of a military department from entering into a contract pursuant to 10 U.S.C. 2394 (which pertains to contracts for energy or fuel for military installations); or

(iii) The Secretary of a military department from purchasing electricity from any provider when the utility or utilities having applicable state-owned franchise or other service authorizations are found by the Secretary to be unwilling or unable to meet unusual standards for service reliability that are necessary for purposes of national defense.

PART 9—CONTRACTOR QUALIFICATIONS

7. Section 9.505–3 is amended by revising the section title; by removing in the first sentence the word "consulting" and inserting in its place "advisory and assistance"; and by removing in the second sentence in the title of the OMB Circular the word "Consulting" and inserting in its place the words, "Advisory and Assistance," to read as follows:

9.505–3 Providing technical evaluation or advisory and assistance services.

* * * * *

8. Section 9.507 is amended by revising paragraph (a) and the introductory text of paragraph (b) to read as follows:

5.607 Procedures.

(a) If the contracting officer initially decides that a particular acquisition involves a significant potential organizational conflict of interest, before issuing the solicitation the contracting officer shall submit for approval to the chief of the contracting office (unless a higher level official is designated by the agency)—

* * * * *

(b) The approving official shall—

* * * * *

PART 13—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

13.103-1 [Amended]

9. Section 13.103–1 is amended in paragraph (f) by removing the acronym "ADTS"; and inserting in its place the words "GSA Nonmandatory ADP".

10. Section 13.205 is amended by revising paragraph (a) to read as follows:

13.205 Review procedures.

(a) The contracting officer placing orders under a BPA, or the designated representative of the contracting officer, shall review a sufficient random sample of the BPA files at least annually to ensure that authorized procedures are being followed.

* * * * *

PART 14—SEALED BIDDING

11. Section 14.201–6 is amended by redesignating paragraph (g) as (g)(1) and by adding a new (g)(2) to read as follows:

14.201-6 Solicitation provisions.

* * * * *

(g) * * *

(2) The contracting officer shall insert the basic provision with its Alternate I in invitations for bids that are for perishable subsistence, and when the contracting officer considers that offerors will be unwilling to provide acceptance periods long enough to allow written confirmation.

* * * * *

14.205-5 [Amended]

12. Section 14.205–5 is amended by removing in paragraph (a) the parenthetical reference "(see also 19.501(k))".

PART 15—CONTRACTING BY NEGOTIATION

13. Section 15.407 is amended by redesignating paragraph (e) as (e)(1) and by adding a new (e)(2) to read as follows:

15.407 Solicitation provisions.

* * * * *

(e) * * *

(2) The contracting officer shall insert the basic provision with its Alternate 1 in solicitations that are for perishable subsistence and when the contracting officer considers that offerors will be unwilling to provide acceptance periods long enough to allow written confirmation.

* * * * *

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

14. Section 19.102 is amended in Major Group 16 by removing in the second SIC Code 1629 the figure "$9.5" and inserting in its place the figure "$13.5"; and by adding Major Group 62 to Division H after Major Group 60 to read as follows:

19.102 Size standards.

* * * * *

MAJOR GROUP 62—SECURITY AND COMMODITY BROKERS, DEALERS, EXCHANGES, AND SERVICES

SIC	Description	Size
6221	Commodity Contracts, Brokers, and Dealers.	$3.5

15. Section 19.202–6 is amended by revising paragraph (a) to read as follows:

19.202-6 Determination of fair market price.

* * * * *

(a) For total and partial small business set-aside contracts, the fair market price shall be the price achieved in accordance with the reasonable price guidelines in 15.805–2.

* * * * *

16. Section 19.501 is amended by revising paragraph (g)(2) to read as follows:

19.501 General.

* * * * *

(g) * * *

(2) Awards will be made at fair market prices. Withdrawal of a repetitive set-aside will be in accordance with 19.505.

* * * * *

19.503-2 [Amended]

17. Section 19.503–2 is amended by removing in paragraph (b) the words "reasonable prices" and inserting in their place the words "fair market prices".

19.503-3 [Amended]

18. Section 19.503–3 is amended by removing in paragraph (a)(3) the words "reasonable price" and inserting in their place the words "fair market price".

19.507 [Amended]

19. Section 19.507 is amended in the second sentence of paragraph (d) by removing the words "an unreasonable price" and inserting in their place the words "more than a fair market price".

19.508 [Amended]

20. Section 19.508 is amended in the first sentence of paragraph (a) by removing the words "because of unreasonable price" and inserting in their place the words "payment of more than a fair market price".

21. Section 19.508 is amended by revising paragraph (e) to read as follows:

19.508 Solicitation provisions and contract clauses.

* * * * *

(e) The contracting officer shall insert the clause at 52.219–14, Limitations on Subcontracting, in solicitations and contracts, except those awarded using small purchase procedures in Part 13, for supplies, services, and construction, if any portion of the requirement is to be set aside for small business, or if the contract is to be awarded under Subpart 19.5.

22. Section 19.806–1 is amended by adding a new pararaph (a) and redesignating existing paragraphs (a) and (b) as (b) and (c) to read as follows:

19.805-1 General.

(a) The contracting officer shall estimate the current fair market price of the work to be performed by the SBA's contractor.

* * * * *

PART 25—FOREIGN ACQUISITION

23. Section 25.304 is amended by revising paragraph (a) and by removing pararaphs (e) and (f) to read as follows:

25.304 Excess and near-excess foreign currencies.

(a) The United States holds currencies of certain countries in amounts determined annually by the Secretary of the Treasury to be excess to the normal, or above the immediate (near-excess) requirements of the Government. These countries are identified in Bulletins issued by the Office of Management and Budget which will be distributed through agency procedures on an expedited basis. Additional information may also be obtained from the Department of the Treasury, Office of the Assistant Secretary for International Affairs, Office of Development Policy. Acquisitions of foreign end products, services, or construction paid for in excess of near-excess foreign currencies are an exception to the balance of payments restrictions in this subpart (see 25.302(b)(6)).

* * * * *

(e) [Removed]

(f) [Removed]

PART 28—BONDS AND INSURANCE

24. Section 28.106–3 is amended in paragraph (a) to add a second sentence to read as follows:

28.106-3 Additional bond.

(a) * * * Standard Form 1415 is authorized for local reproduction, and a copy of the form is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

PART 33—PROTESTS, DISPUTES, AND APPEALS

25. Section 33.101 is amended by revising the definition "Interested Party" to read as follows:

33.101 Definitions.

"Interested Party for the purpose of filing a protest," as used in this subpart, means an actual or prospective offeror whose direct economic interest could be affected by the award of a contract or by the failure to award a contract.

* * * * *

26. Section 33.104 is amended by revising paragraph (a); by redesignating existing paragraphs (e), (f), and (g) as (f), (g), and (h); and by adding a new paragraph (e) to read as follows:

33.104 Protests to GAO.

(a) *General.* (1) A protestor shall furnish a copy of its complete protest to the official or location designated in the solicitation or, in the absence of such a designation, to the contracting officer, no later than 1 day after the protest is filed with the GAO. Failure to furnish a complete copy of the protest within 1 day may result in dismissal of the protest by GAO.

(2)(i) If the protestor files a request for documents with a protest, the agency shall furnish copies of those requested documents, and the documents described in 33.104(a)(6), along with the copy of the agency report to the protestor, unless the protestor is not otherwise authorized by law to receive the requested documents or the documents—

(A) Are not relevant to the protest;

(B) Would give the protestor a competitive advantage; or

(C) Have been previously provided to the protestor.

(ii) Documents referred to in subdivision (a)(2)(i) of this section not furnished to the protestor shall be identified, and the reason for not furnishing them stated in the agency report described in subparagraph (a)(3) of this section.

(iii) If the protestor, after receipt of the agency report, requests additional documents, the agency must respond to the GAO within 5 days by filing the requested documents or by identifying any documents which will not be furnished to the protestor, and stating the reason for not furnishing them.

(3) When a protest, before or after award, has been lodged with the GAO, the agency shall prepare a report. The report should include a copy of—

(i) The protest;

(ii) The offer submitted by the protesting offeror and a copy of the offer which is being considered for award or which is being protested;

(iii) The solicitation, including the specifications or portions relevant to the protest;

(iv) The abstract of offers or relevant portions;

(v) Any other documents that are relevant to the protest; and

(vi) The contracting officer's signed statement setting forth findings, actions, and recommendations and any additional evidence or information deemed necessary in determining the validity of the protest. The statement shall be fully responsive to the allegation of the protest. If the contract action or contract performance continues after receipt of the protest, the report will include the determination(s) prescribed in paragraphs (b) or (c) of this section.

(vii) In addition to subdivisions (a)(3)(i) through (vi) of this section, the copy of the report forwarded to the GAO shall also identify the other parties who are being furnished copies of the report.

(4) Other persons, including offerors, involved in or affected by the protest shall be given notice of the protest and its basis in appropriate cases, within 1 work day after its receipt by the agency. The agency shall give immediate notice of the protest to the contractor if the award has been made or, if no award has been made, to all parties who appear to have a reasonable prospect of receiving an award if the protest is denied. These persons shall also be advised that they may submit their views and relevant information directly to the GAO with a copy to the contracting officer and to other participating interested parties within a specified period of time. Normally, the time specified will be 1 week.

(5) The agency shall submit a complete report (see subparagraph (a)(3) of this section) to GAO within 25 work days after receipt from GAO of the telephonic notice of such protest, or within 10 work days after receipt from GAO of a determination to use the express option, unless—

(i) The GAO advises the agency that the protest has been dismissed; or

(ii) The agency advises GAO in writing that the specific circumstances of the protest require a longer period and GAO establishes a new date. Any new date shall be documented in the agency's protest file.

(6)(i) Timely action on protests is essential. Upon notice that a protest has been lodged with the GAO, the contracting officer shall immediately begin compiling the information necessary for a report to the GAO. To further expedite processing, when furnishing a copy of the report including relevant documents to the GAO, the agency shall simultaneously furnish a copy of the report including relevant documents to the protestor and the awardee or offeror who appears to have a substantial prospect of receiving an award if the protest is denied, and a copy of the report without relevant documents to other interested parties who have responded to the notice in subparagraph (a)(4) of this section, unless the protestor or other interested party is not otherwise authorized by law to receive those documents, or subdivisions (6)(i) (A) and (B) are applicable. Upon request, the agency shall also provide to any interested party a relevant document contained in the report.

(A) Documents previously furnished to or prepared by a party (e.g., the solicitation or the party's own proposal) need not be furnished to that party.

(B) Classified or privileged information or information that would give a party a competitive advantage and other information that the Government determines under appropriate authority to withhold should be deleted from the copy of the report or relevant documents furnished to that party.

(C) If documents are withheld from any of the parties, the agency must include in the report and in the copies of the report provided to the protestor and the interested parties, a list of the withheld documents.

(ii) The protestor and other interested parties shall be requested to furnish a copy of any comments on the report

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directly to the GAO, as well as to the contracting officer and to other participating interested parties.

(7) Agencies shall furnish the GAO with the name, title, and telephone number of one or more officials (in both field and headquarters offices, if desired) whom the GAO may contact who are knowledgeable about the subject matter of the protest. Each agency shall be responsible for promptly advising the GAO of any change in the designated officials.

* * * * *

(e) *Conferences.* (1) A conference on the merits of the protest may, at the sole discretion of the GAO, be held at the request of the protestor, the agency, or any interested party.

(2) A fact finding conference may, at the sole discretion of the GAO, be held at the request of any protestor, agency or interested party, or on the initiative of the GAO. The fact finding conference is intended to resolve specific factual disputes essential to the resolution of the protest which cannot otherwise be resolved from the record. Witnesses may be called to testify under oath and each party may question witnesses. A transcript will be made of the proceeding, and copies are available from the GAO for a fee. Written comments on the transcript may be submitted to the GAO within 3 days of receipt.

* * * * *

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

27. Section 36.501 is amended by revising paragraph (b) to read as follows:

36.501 Performance of work by the contractor.

* * * * *

(b) The contracting officer shall insert the clause at 52.236-1, Performance of Work by the Contractor, in solicitations and contracts, except those awarded pursuant to Subparts 19.5 or 19.8, when a fixed-price construction contract is contemplated and the contract amount is expected to exceed $1,000,000. The contracting officer may insert the clause on solicitations and contracts when a fixed-price construction contract is contemplated and the contract amount is expected to be $1,000,000 or less.

PART 37—SERVICE CONTRACTING

37.000 [Amended]

28. Section 37.000 is amended by removing in the second sentence the word "consulting" and inserting in its place the words "advisory and assistance".

37.101 [Amended]

29. Section 37.101 is amended by removing in paragraph (d) the word "consulting" and inserting in its place the words "advisory and assistance"; by removing paragraph (e); and by redesignating existing paragraphs (f) through (j) as (e) through (i).

30. Subpart 37.2, consisting of sections 37.200 through 37.207 is revised to read as follows:

Subpart 37.2—Advisory and Assistance Services

Sec.
37.200 Scope of subpart.
37.201 Definition.
37.202 Policy.
37.203 Types of advisory and assistance services.
37.204 Exclusions.
37.205 Management controls.
37.206 Requesting activity responsibilities.
37.207 Contracting officer responsibilities.

Authority: 40 U.S.C. 486(c); 10 U.S.C Ch. 137; and 42 U.S.C. 2473(c).

37.200 Scope of subpart.

This subpart prescribes policies and procedures for acquiring advisory and assistance services by contract. The subpart regulates these contracts with individuals and organizations for both personal and nonpersonal services.

37.201 Definition.

"Advisory and assistance services" means services, other than those excluded or exempted in this subpart, to support or improve agency policy development, decision-making, management, and administration, or to support or improve the operation of management systems.

37.202 Policy.

(a) The acquisition of advisory and assistance services is a legitimate way to improve Government services and operations. Accordingly, advisory and assistance services may be used at all organizational levels to help managers achieve maximum effectiveness or economy in their operations.

(b) Subject to 37.205, agencies may contract for advisory and assistance services, when essential to the agency's mission, to—

(1) Obtain outside points of view to avoid too limited judgment on critical issues;

(2) Obtain advice regarding developments in industry, university, or foundation research;

(3) Obtain the opinions, special knowledge, or skills of noted experts;

(4) Enhance the understanding of, and develop alternative solutions to, complex issues;

(5) Support and improve the operation of organizations;

(6) Ensure the more efficient or effective operation of managerial or hardware systems.

(c) Advisory and assistance services shall not be—

(1) Used in performing work of a policy, decision-making, or managerial nature which is the direct responsibility of agency officials;

(2) Used to bypass or undermine personnel ceilings, pay limitations, or competitive employment procedures;

(3) Contracted for on a preferential basis to former Government employees;

(4) Used under any circumstances specifically to aid in influencing or enacting legislation;

(5) Used to obtain professional or technical advice which is readily available within the agency or another Federal agency.

37.203 Types of advisory and assistance services.

Advisory and assistance services may take the form of information, advice, opinions, alternatives, conclusions, recommendations, training, or direct assistance. These services consist of—

(a) *Individual experts and consultants.* Individual experts and consultants are persons possessing special, current knowledge or skill that may be combined with extensive operational experience. This enables them to provide information, opinions, advice, or recommendations to enhance understanding of complex issues or to improve the quality and timeliness of policy development or decision-making.

(b) *Studies, analyses, and evaluations.* Studies, analyses, and evaluations are organized, analytic assessments needed to provide the insights necessary for understanding complex issues or improving policy development or decision-making. These analytic efforts result in formal, structured documents containing data or leading to conclusions and/or recommendations. This summary description is operationally defined by the following criteria:

(1) *Objective.* To enhance understanding of complex issues or to improve the quality and timeliness of agency policy development or decision-making by providing new insights into, understanding of, alternative solutions to, or recommendations on agency policy and program issues, through the applications of fact finding, analysis, and evaluation.

(2) *Areas of application.* All subjects, issues, or problems involving policy development of decision-making in the agency. These may involve concepts, organization, programs and other systems, and the application of such systems.

(3) *Outputs.* Outputs are formal structured documents containing or leading to conclusions and/or recommendations. Data bases, models, methodologies, and related software created in support of a study, analysis, or evaluation are to be considered part of the overall study effort.

(c) *Management and professional support services.* Management and professional support services take the form of advice, training, or direct assistance for organizations to ensure more efficient or effective operations of managerial, administrative, or related systems. This summary description is operationally defined in terms of the following criteria:

(1) *Objective.* To ensure more efficient or effective operation of management support or related systems by providing advice, training, or direct assistance associated with the design or operation of such systems.

(2) *Areas of application.* Management support or related systems such as program management, project monitoring and reporting, data collection, logistics management, budgeting, accounting, auditing, personnel management, paperwork management, records management, space management, and public relations.

(3) *Outputs.* Services in the form of information, opinions, advice, training, or direct assistance that lead to the improved design or operation of managerial, administrative, or related systems. This does not include training which maintains skills necessary for normal operations. Written reports are normally incidental to the performance of the service.

(d) *Engineering and technical service.* Engineering and technical services (technical representatives) take the form of advice, training, or, under unusual circumstances, direct assistance to ensure more efficient or effective operation or maintenance of existing platforms, weapon systems, related systems, and associated software. All engineering and technical services provided prior to final Government acceptance of a complete hardware system are part of the normal development, production, and procurement processes and do not fall in this category. Engineering and technical services provided after final Government acceptance of a complete hardware system are in this category except where they are procured to increase the original design performance capabilities of existing or new systems or where they are integral to the operational support of a deployed system and have been formally reviewed and approved in the acquisition planning process.

37.204 Exclusions.

The following activities and programs are excluded or exempted from the definition of advisory or assistance services:

(a) Activities that are reviewed in accordance with the OMB Circular A-76, Policies for Acquiring Commercial or Industrial Products and Services Needed by the Government.

(b) Architectural and engineering services as defined in Part 36.

(c) ADP/Telecommunications functions and related services that are controlled in accordance with 41 CFR Part 201, the Federal Information Resources Management Regulation.

(d) Research on theoretical mathematics and basic medical, biological, physical, social, psychological, or other phenomena.

(e) Engineering studies related to specific physical or performance characteristics of existing or proposed systems.

(f) The day-to-day operation of facilities (e.g., the Johnson Space Center and related facilities) and functions (e.g., ADP operations and building maintenance).

(g) Government-owned, contractor-operated (GOCO) facilities. However, any contract for advisory and assistance services other than the basic contract for operation and management of a GOCO shall come under the definition of advisory or assistance services.

(h) Clinical medicine.

(i) Those support services of a managerial or administrative nature performed as a simultaneous part of, and nonseparable from specific development, production, or operational suppport activities. In this context, nonseparable means that the managerial or administrative systems in question (e.g., subcontractor monitoring or configuration control) cannot reasonably be operated by anyone other than the designer or producer of the end-item hardware.

(j) Contracts entered into in furtherance of statutorily mandated advisory committees.

(k) Initial training, training aids, and technical documentation acquired as an integral part of the lease or purchase of equipment.

(l) Routine maintenance of equipment, routine administrative services (e.g., mail, reproduction, telephone), printing services, and direct advertising (media) costs.

(m) Auctioneers, realty-brokers, appraisers, and surveyors.

(n) The National Foreign Intelligence Program (NFIP).

(o) The General Defense Intelligence Program (GDIP).

(p) Tactical Intelligence and Related Activities (TIARA).

(q) Foreign Military Sales.

(r) Engineering and technical services as set forth in 37.203(d).

37.205 Management controls.

OMB Circular A-120 requires each agency to establish procedures for a written evaluation at the conclusion of the contract to assess the utility of the deliverables to the agency and the performance of the contractor.

37.206 Requesting activity responsibilities.

Requests for advisory and assistance services shall include—

(a) A statement certifying that the requirement is for advisory and assistance services as defined in this subpart.

(b) Written justification of need and certification that such services do not unnecessarily duplicate and previously performed work or services.

(c) Written approval for such services by an official at a level above the requesting office. However, in the case of requirements received by the contracting officer during the fourth quarter of the fiscal year, for award during the same fiscal year, the approval at the second level, or higher level if required by agency procedures, above the requesting office shall accompany the request for contract action.

(d) Properly chargeable funds certified by the cognizant fiscal/budget office.

37.207 Contracting officer responsibilities.

The contracting officer is responsible for determining whether any requested contractual action, regardless of dollar value, constitutes advisory and assistance services as described in this subpart. The contracting officer's determination shall be final. Before processing any contractual action for advisory and assistance services, the contracting officer shall verify that—

(a) Action is taken to avoid conflicts of interest in accordance with Subpart 9.5.

(b) The applicable requirements of this subpart and 37.103 and 37.104 are met;

(c) The services being contracted for consist only of the types of services defined in 37.202;

(d) The request includes a statement of need and certification by the requesting official (see 37.206(a) and (b)); and

(e) Written approval for the requirement, including requests for contract modifications beyond the scope of the acquisition originally approved, has been obtained from the appropriate level(s) (see 37.206(c)).

PART 45—GOVERNMENT PROPERTY

31. Section 45.505 is amended by revising paragraph (c) to read as follows:

45.505 Records and reports of Government property.

* * * * *

(c) Official Government property records must identify all Government property and provide a complete, current, auditable record of all transactions. The contractor's system of records maintenance shall be sufficient to adequately control Government property as required by this section. The contractor's system of records maintenance, as a minimum, shall be equivalent to and maintained in the same manner as the contractor's system for maintaining records of contractor-owned property, but need not exceed the requirements of this subpart. The records shall be safeguarded from tampering or destruction. Records shall be accessible to authorized Government personnel.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

32. Section 52.204–3 is added to read as follows:

52.204–3 Taxpayer identification.

As prescribed in 4.904, insert the following provision:

TAXPAYER IDENTIFICATION (NOV 1988)

(a) *Definitions.*

"Common parent," as used in the solicitation provision, means an offeror that is a member of an affiliated group of corporations that files its Federal income tax returns on a consolidated basis.

"Corporate status," as used in this solicitation provision, means a designation as to whether the offeror is a corporate entity, an unincorporated entity (e.g., sole proprietorship or partnership), or a corporation providing medical and health care services.

"Taxpayer Identification Number (TIN)," as used in this solicitation provision, means the number required by the IRS to be used by the offeror in reporting income tax and other returns.

(b) The offeror is required to submit the information required in paragraphs (c) through (e) of this solicitation provision in order to comply with reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M and implementing regulations issued by the Internal Revenue Service (IRS). If the resulting contract is subject to reporting requirements described in 4.902(a), the failure or refusal by the offeror to furnish the information may result in a 20 percent reduction of payments otherwise due under the contract.

(c) *Taxpayer Identification Number (TIN).*

( ) TIN: _____.

( ) TIN has been applied for.

( ) TIN is not required because:

( ) Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the U.S. and does not have an office or place of business or a fiscal paying agent in the U.S.;

( ) Offeror is an agency or instrumentality of a foreign government;

( ) Offeror is an agency or instrumentality of a state or local government;

( ) Other. State basis. _____.

(d) *Corporate Status.*

( ) Corporation providing medical and health care services, or engaged in the billing and collecting of payments for such services;

( ) Other corporate entity;

( ) Not a corporate entity;

( ) Sole proprietorship

( ) Partnership

( ) Hospital or extended care facility described in 26 CFR 501(c)(3) that is exempt from taxation under 26 CFR 501(a).

(e) *Common Parent.*

( ) Offeror is not owned or controlled by a common parent as defined in paragraph (a) of this clause.

( ) Name and TIN of common parent:

Name _____

TIN _____

(End of provision)

33. Section 52.214–3 is revised to read as follows:

52.214–3 Amendments to Invitations for Bids.

As prescribed in 14.201–6(b)(3), insert the following provision:

AMENDMENTS TO INVITATIONS FOR BIDS (NOV 1988)

(a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

(b) Bidders shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date in the space provided for this purpose on the form for submitting a bid, or (3) by letter or telegram. The Government must receive the acknowledgment by the time and at the place specified for receipt of bids.

(End of provision)

34. Section 52.214–13 is amended by revising the introductory text and by adding Alternate I to read as follows:

52.214–13 Telegraphic Bids.

As prescribed in 14.201–6(g)(1), insert the following provision:

* * * * *

Alternate I (NOV 1988). As prescribed in 14.201–6(g)(2), substitute the following for paragraph (d) of the basic clause:

(d) Written confirmation of telegraphic bids is not required.

35. Section 52.215–8 is revised to read as follows:

52.215–8 Amendments to Solicitations.

As prescribed in 15.407(c)(4), insert the following provision:

AMENDMENTS TO SOLICITATIONS (NOV 1988)

(a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

(b) Offerors shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment; (2) by identifying the amendment number and date in the space provided for this purpose on the form for submitting an offer; or (3) by letter or telegram. The Government must receive the acknowledgment by the time specified for receipt of offers.

(End of proivision)

36. Section 52.215–17 is amended by revising the introductory text and by adding Alternate I to read as follows:

52.215–17 Telegraphic Proposals.

As prescribed in 15.407(e)(1) insert the following provision:

Alternate I (NOV 1988). As prescribed in 15.407(e)(2), substitute the following for paragraph (d) of the basic provision:

(d) Written confirmation of telegraphic proposals is not required.

37. Section 52.233–2 is revised to read as follows:

52.233–2 Service of Protest.

As prescribed in 33.106, insert the following provision:

SERVICE OF PROTEST (NOV 1988)

(a) Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the General Accounting Office (GAO) or the General Services Administration Board of Contract Appeals (GSBCA), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from _____

(Contracting Officer designate the official and location where a protest may be served on the Contracting Officer.)

(b) The copy of any protest shall be received in the office designated above on the same day a protest is filed with the GSBCA or within one day of filing a protest with the GAO.

(End of provision)

52.236–13 [Amended]

38. Section 52.236–13 is amended by removing in paragraph (b) the date "April 1961" and inserting in its place the date "October 1984".

PART 53—FORMS

39. Section 53.103 is revised to read as follows:

53.103 Exceptions.

Agencies shall not (a) alter a standard form prescribed by this regulation, or (b) use for the same purpose any form other than the standard form prescribed by this regulation without receiving in advance an exception to the form (see 41 CFR 201–45.510).

40. Section 53.105 is revised to read as follows:

53.105 Computer generation.

Agencies may computer-generate the standard and optional forms prescribed in the FAR without exception approval (see 53.103), providing there is no change to the name, content, or sequence of the data elements, and the form carries the standard or optional form number and edition date. Agencies shall notify the FAR Secretariat of their decisions to computer-generate forms prescribed by the FAR.

41. Section 53.204–2 is revised to read as follows:

53.204–2 Contract reporting (SF's 279, 281).

The following forms are prescribed for use by executive agencies in reporting contract actions, as specified in 4.602(c):

(a) *SF 279 (REV. 10/88), Federal Procurement Data System (FPDS) Individual Contract Action Report* (See 4.602(c).)

(b) *SF 281 (REV. 10/88), Federal Procurement Data System (FPDS) Summary Contract Action Report ($25,000 or Less).* (See 4.602(c).)

42. Section 53.228 is amended by revising paragraph (l) to read as follows:

53.228 Bonds and insurance (SF's 24, 25, 25–A, 25–B, 26, 34, 35, 273, 274, 275, 1414, 1415, 1416).

* * * * *

(l) *SF 1415 (REV. 11/87), Consent of Surety and Increase of Penalty.* (See 28.106–1(l).) SF 1415 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

43. Section 53.301–279 is revised to read as follows:

BILLING CODE 6820–61–M

53.301-279 Standard Form 279, FDDS-Individual Contract Action Report (over $10,000).

FEDERAL PROCUREMENT DATA SYSTEM (FPDS)
INDIVIDUAL CONTRACT ACTION REPORT

INTERAGENCY REPORT CONTROL NUMBER
0295 - 88A - QU

1. REPORTING AGENCY (FIPS 95)
2. CONTRACT NUMBER (Left justified)
3. MODIFICATION NUMBER (Left justified)
4. CONTRACTING OFFICE ORDER NUMBER (Left justified)
5. CONTRACTING OFFICE — Code
6. ACTION DATE — CY MO
7. TYPE OF DATA ENTRY — A - Original; B - Deleting; C - Correcting
8. REPORT PERIOD — FY Q
9. KIND OF CONTRACT ACTION — A. Initial Letter Contract; B. Definitive Contract; C. Supersedding Letter Contract; D. New Definitive Contract; E. Small Purchase Procedure; F. Order Under Indef Delivery Contract (IDC); G. Order Under BOA; H. Order/Modification Under Federal Schedule; M. Modification; P. Termination for Default; T. Termination for Convenience; Z. Initial Load of Federal Schedule Contract
10. DOLLARS OBLIGATED OR DEOBLIGATED THIS ACTION (Round to nearest 1000, right justified) (Use lead zeros) — 0 0 0
11. TYPE OF OBLIGATION — A - Obligated; B - Deobligated
12. PRINCIPAL PRODUCT OR SERVICE (FPDS Product/Service Code Manual) — Code
13. PRINCIPAL STANDARD INDUSTRIAL CLASSIFICATION (SIC) CODE (Use 2 SIC Manual) — Code
14. ADVISORY ASSISTANCE SERVICES AWARD — Y - Yes; N - No
15. CONTRACTOR (Last name)
16. CONTRACTOR ESTABLISHMENT CODE
17. PRINCIPAL PLACE OF PERFORMANCE (State or U.S. outlying area, city or place - FIPS 55) — State; City
18. FOREIGN COUNTRY (FIPS 10-3)
19. CONTRACT FOR FOREIGN GOVERNMENT OR INTERNATIONAL ORGANIZATION — Y - Yes; N - No
20. TARIFF OR REGULATED (FPR-CICA) — Y - Yes; N - No

FOREIGN TRADE DATA

21. NO. OF BIDDERS OFF-SHORE FOREIGN FIRMS
22. BUY AMERICAN ACT PERCENT DIFFERENCE
23. COUNTRY OF MANUFACTURE (FIPS 10-3)
24. TYPE OF PROCUREMENT PRIOR TO AWARD — A. Synopsized prior to award; B. Not synopsized due to Urgency; C. Not synopsized for other reason
25. TYPE OF CONTRACT OR MODIFICATION — A. Fixed-Price Redetermination; J. Firm Fixed-Price; K. Fixed-Price with Economic Price Adjustment; L. Fixed-Price Incentive; M. Cost-Plus Award-Fee; S. Cost - No Fee; T. Cost-Sharing; U. Cost-Plus Fixed-Fee; V. Cost-Plus Incentive-Fee; W. Time and Materials; Z. Labor Hour

FOR DOD SUPPLIES ONLY

26. DO A - DX3 Applicable; B - Small Purchase Procedure; C - Subject to Statute other than DCA; D - Pre-DCA
26. SOLICITATION PROCEDURES (Complete only if Item 25 = A) — A. Full and Open Competition - Sealed Bid; B. Full and Open Competition - Competitive Proposal; C. Full and Open Competition - Combination; E. Architect - Engineer; F. Basic Research; P. Multiple Award Schedule; Q. Alternate Source - Reduced Cost; R. Alternate Source - Mobilization; S. Alternate Source - Engrg & D Capability; T. 8(a) Award (Exclude 8(a) Awards); L. Other than Full and Open Competition
27. AUTHORITY FOR OTHER THAN FULL AND OPEN COMPETITION (Complete only if Item 26 = L) — A. Unique Source; B. Follow-on Contract; C. Unsolicited Research Proposal; D. Patent / Data Rights; E. Utilities; F. Standardization; G. Only One Source - Other; H. Urgency; J. Mobilization; K. Essential R & D Capability; L. International Agreement; M. Authorized by Statute; N. Authorized Resale; P. National Security; Q. Public Interest
28. NUMBER OF OFFERS SOLICITED (Complete only if Item 26 = A) — A. One; B. More than one
29. EXTENT COMPETED — A. Competed Action; B. Not Available for Competition; C. Follow-on to Competed Action; D. Not Competed
30. TYPE OF CONTRACTOR — A. Small Disadvantaged Business; B. Other Small Business; C. Large Business; D. Sheltered Workshop; E. Nonprofit Educational Organization; F. Subgrantee Assistance; G. Other Nonprofit Organization; H. State/Local Govt - Educational; I. State/Local Govt - Hospital; J. Other State/Local Government; K. Foreign Contractor; L. Foreign Government; M. Domestic Contractor Performing Outside U.S.
31. WOMAN-OWNED SMALL BUSINESS — Y - Yes; N - No
32. PREFERENCE PROGRAM — A. Directed to Sheltered Workshops; B. 8(a) Program; C. Combined Labor Surplus Area / Small Business Set-Aside; D. Small Business Set-Aside; E. Labor Surplus Area Set-Aside; F. Yes Bid Preference; G. Buy Indian/Self-Determination Act; H. No Preference Program or Not Listed
33. SUBCONTRACTING PLAN — A. Required; B. Not Required
34. SUBJECT TO LABOR STATUTES — A. Walsh-Healey Act, Manufacturer; B. Walsh-Healey Act, Regular Dealer; C. Service Contract Act; D. Davis-Bacon Act; E. Not Subject to Walsh-Healey, Service Contract, or Davis-Bacon Act
35. ESTIMATED CONTRACT COMPLETION DATE — CY MO
36. CONTRACTOR'S TIN
37. COMMON PARENT'S NAME
38. COMMON PARENT'S TIN
39. RESERVED FOR FPDS
40. OPTIONAL REPORTED DATA ELEMENT
41. FOR AGENCY INTERNAL USE
42. CONTRACTING OFFICER OR REPRESENTATIVE — a. TYPED NAME; b. SIGNATURE; c. TELEPHONE NO.; d. DATE SUBMITTED (YYMMDD)

NSN 7540-01-070-7031 Previous edition not usable

219 - 100

Standard Form 279, (REV. 10-88) FAR (48 CFR) 53.301-279

44. Section 53-301-281 is revised to read as follows:

53.301-281 Standard Form 281, FDDS-Summary of Contract Actions of $10,000 or Less.

FEDERAL PROCUREMENT DATA SYSTEM (FPDS)
SUMMARY CONTRACT ACTION REPORT ($25,000 or Less)
(Dollars in thousands, rounded to the nearest thousand)

INTERAGENCY REPORT CONTROL NUMBER
0295 - 88A - QU

CIVILIAN AGENCIES: Net dollars and number of actions where anticipated value of instrument is $25,000 or less.

DEPARTMENT OF DEFENSE: Net dollars and number of actions where amount obligated on action is $25,000 or less.

A. REPORT PERIOD — FY ____ QTR ____
B. REPORT TYPE (X one) — ORIGINAL ____ REVISION ____
C. REPORTING AGENCY CODE (FIPS 95)
D. REPORTING AGENCY NAME
E. CONTRACTING OFFICE CODE
F. CONTRACTING OFFICE NAME

PART I - PRIME CONTRACT ACTIONS OF $25,000 OR LESS

	PROCUREMENT METHOD	Number of Actions (a)	NET DOLLAR AMOUNTS: Small Business Concerns (b)	Large Business Concerns (c)	Domestic Outside U.S. / Foreign (d)	Other Entities (e)	Total Dollars (f)
NEW AWARDS AND MODIFICATIONS	1. Tariff or Regulated						
	2. Contract for Foreign Government or International Organization						
	3. Small Purchases (FAR Part 13)						
	4. Delivery Orders - GSA Schedules Only						
	5. Delivery Orders - Other Federal Schedules						
	6. Delivery Orders - All Other						
	7. Other Procurement Methods						
	8. TOTAL NEW AWARDS AND MODIFICATIONS						
COMPLETION	9. Competed						
	10. Not Competed						
	11. Not Available for Competition						
MODIFICATIONS	12. TOTAL MODIFICATIONS (Excluding Line 3)						

PART II - SELECTED SOCIOECONOMIC STATISTICS
(Includes both new awards and modifications)

PREFERENCE PROGRAMS

CATEGORY	Number of Actions (a)	Total Net Dollars (b)
13. Small Business - Small Purchase Set-Aside		
14. Small Business Set-Aside		
15. Labor Surplus Area Set-Aside		
16. Combined Labor Surplus/ Small Business Set-Aside		
17. 8(a) Awards		

TYPE OF CONTRACTOR

CATEGORY	Number of Actions (a)	Total Net Dollars (b)
18. Small Disadvantaged Business		
19. Woman-Owned Small Business		
20. Sheltered Workshop		

21. PERSON SUBMITTING REPORT — NAME; SIGNATURE; TELEPHONE NUMBER (Include area code); DATE SUBMITTED

NSN 7540-01-001-0330 Previous edition not usable

281-100

BILLING CODE 6820-61-C

Standard Form 281, (REV. 10-88) FAR (48 CFR) 53.301-281

BEST COPY AVAILABLE

VOL 53 ISS 207 OCT 26 1988 UMI

45. Section 53-301-1415 is revised to read as follows:

53.301-1415 Standard Form 1415, Consent of Surety and Increase of Penalty.

CONSENT OF SURETY AND INCREASE OF PENALTY	1. CONTRACT NO.	2. MODIFICATION NO.	3. DATED

4. The surety (co-sureties) consents (consent) to the foregoing contract modification and agrees (agree) that its (their) bond or bonds shall apply and extend to the contract as modified or amended. The principal and surety (co-sureties) further agree that on or after the execution of this consent, the penalty of the performance bond or bonds is increased by _____ dollars ($_____). and the penalty of the payment bond or bonds is increased by _____ dollars ($_____). However, the increase of the liability of each co-surety resulting from this consent shall not exceed the sums shown below.

5. NAME OF SURETY(IES)	6. INCREASE IN LIABILITY LIMIT UNDER PERFORMANCE BOND	7. INCREASE IN LIABILITY LIMIT UNDER PAYMENT BOND
a.	$	$
b.		
c.		

8. INDIVIDUAL PRINCIPAL	a. BUSINESS ADDRESS	b. DATE THIS CONSENT EXECUTED c. SIGNATURE* d. TYPED NAME	*(Seal)*
9. CORPORATE PRINCIPAL	a. CORPORATE NAME AND BUSINESS ADDRESS	b. DATE THIS CONSENT EXECUTED c. PERSON EXECUTING CONSENT (Signature)* BY d. TYPED NAME AND TITLE OF ABOVE PERSON	*(Affix Corporate Seal)*

*The Principal or authorized representative shall execute this Consent of Surety and Increase of Penalty with the modification to which it pertains. If the representative (e.g., attorney-in-fact) that signs the consent is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved, a Power-of-Attorney or a Certificate of Corporate Principal must accompany the consent.

10 CORPORATE SURETY(IES)

A	a. CORPORATE SURETY'S NAME AND ADDRESS	b. PERSON EXECUTING CONSENT (Signature) BY c. TYPED NAME AND TITLE OF ABOVE PERSON	*(Affix Corporate Seal)*
B	a. CORPORATE SURETY'S NAME AND ADDRESS	b. PERSON EXECUTING CONSENT (Signature) BY c. TYPED NAME AND TITLE OF ABOVE PERSON	*(Affix Corporate Seal)*
C	a. CORPORATE SURETY'S NAME AND ADDRESS	b. PERSON EXECUTING CONSENT (Signature) BY c. TYPED NAME AND TITLE OF ABOVE PERSON	*(Affix Corporate Seal)*

Add similar signature blocks on the back of this form if necessary for additional co-sureties.

AUTHORIZED FOR LOCAL REPRODUCTION

STANDARD FORM 1415 (REV. 11-87)
Prescribed by GSA
FAR (48 CFR) 53.228(f)

[FR Doc. 88-24806 Filed 10-25-88; 8:45 am]

BILLING CODE 6820-61-C

federal register

Wednesday
October 26, 1988

Part IV

Environmental Protection Agency

40 CFR Part 148

Underground Injection Control Program; Hazardous Waste Disposal Injection Restrictions; Additional Effective Dates; First Third Wastes; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 148

[FRL-3396-3]

Underground Injection Control Program; Hazardous Waste Disposal Injection Restrictions; Additional Effective Dates; First Third Wastes

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is today proposing rules implementing the Congressionally mandated prohibitions on the underground injection of selected hazardous wastes. This proposed action is being taken in response to amendments to the Resource Conservation and Recovery Act (RCRA) enacted through the Hazardous and Solid Waste Amendments of 1984 (HSWA).

Today's notice proposes effective dates for certain wastes prohibited under section 3004(g) of RCRA. It also solicits comment on the appropriateness of certain treatment standards promulgated pursuant to section 3004(m) of RCRA as they relate to injected waste. The general framework for implementing the land disposal restrictions for injection of hazardous wastes was promulgated on July 26, 1988 (53 FR 28116 *et seq.*). That rule should be consulted for a more thorough explanation of the Agency's rationale concerning the implementation of the land disposal restrictions for hazardous waste injection.

DATES: Comments must be received on or before December 27, 1988; the public hearing will be held from 1:00 p.m. until 4:00 p.m. on December 19, 1988; requests to present oral testimony should be received on or before November 25, 1988.

ADDRESSES: Comments (in triplicate), requests to testify, and inquiries concerning the Public Docket should be addressed to Bruce Kobelski, EPA, Office of Drinking Water (WH–550), 401 M Street SW., Washington, DC 20460. The hearing will be held in the Auditorium of the EPA Training Center, Waterside Mall, 401 M Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Atcheson, Office of Drinking Water, EPA, (202) 382–5508.

SUPPLEMENTARY INFORMATION

Preamble Outline

I. Background

A. Statutory Authority

1. Section 3004(f)
2. Section 3004(g)
3. Proposed Standard for Demonstrating Protection of Human Health and the Environment

B. Effect on State UIC Primacy

C. Summary of the Land Disposal Restrictions Framework

1. Regulatory Framework
2. Applicability
3. Development of RCRA section 3004(m) Treatment Standards
4. Determination of Alternative Capacity and Ban Effective Dates
5. Exemption for Treatment in Surface Impoundments
6. Dilution Prohibition
7. Storage Prohibition
8. Variance from the Treatment Standard
9. "No Migration" Exemption

II. Summary of Today's Proposal—Remainder of First Third of Scheduled Wastes

A. Background

B. "First Third" Wastes for which EPA has not Set Treatment Standards (Including all Chemical Specific "P" and "U" Wastes)

C. "First Third" Wastes with Established BDAT which Current Data indicate are not Being Injected

D. Determination of Available Capacity and Effective Dates for Injected "First Third" Wastes (with Established BDAT) not Addressed on August 16, 1988

1. Allocating Limited Treatment Capacity
2. [illegible]
3. [illegible]
4. [illegible]
5. [illegible]

III. Regulatory Requirements

A. Regulatory Impact Analysis

B. Regulatory Flexibility Analysis

C. Paperwork Reduction Act

IV. References

I. Background

A. Statutory Authority

The Hazardous and Solid Waste Amendments of 1984 (HSWA), enacted on November 8, 1984, impose substantial new responsibilities on those who handle hazardous waste. The amendments prohibit the continued land disposal of hazardous waste beyond specified dates unless the waste meets or is treated to meet levels established pursuant to RCRA section 3004(m) *or* the Administrator determines that the prohibition is not required in order to protect human health and the environment for as long as the wastes remain hazardous (RCRA section 3004(d)(1), (e)(1), (f)(2), (g)(5)). Congress established a separate schedule in section 3004(f) for making determinations regarding the injection of dioxins and solvents and the list of wastes specified in section 3004(d)(2), termed the "California list."

Wastes meeting the treatment standards set by EPA under section 3004(m) of RCRA may be land disposed. The statute requires EPA to set "levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized" (RCRA section 3004(m)(1)).

Land disposal prohibitions are effective immediately upon the statutory deadlines unless the Agency sets another effective date based on the earliest date that adequate alternative treatment, recovery, or disposal capacity which is protective of human health and the environment will be available (RCRA section 3004(h) (1) and (2)). However, these effective date variances may not exceed 2 years beyond the otherwise applicable statutory effective date. In addition, two 1-year, case-by-case extensions of the effective date may be granted under certain circumstances (RCRA section 3004(h)(3)).

For the purposes of the land disposal restrictions program, the statute specifically defines land disposal to include, but not be limited to, any placement of hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome or salt bed formation, or underground mine or cave (RCRA section 3004(k)). The statute also sets forth a series of deadlines for Agency action.

The land disposal prohibitions apply to all hazardous wastes identified or listed under RCRA section 3001 as of November 8, 1984, the date of enactment of HSWA. For any hazardous waste identified or listed under RCRA section 3001 after November 8, 1984, EPA is required to make land disposal restriction determinations within 6 months of the date of identification or listing (RCRA section 3004(g)(4)). However, the statute does not impose an automatic prohibition on land disposal if EPA misses a deadline for any newly listed or newly identified waste.

1. Section 3004(f)

Section 3004(f) addresses the disposal by injection of solvents, dioxins, and California list wastes. Specifically, this section requires the Administrator to promulgate rules prohibiting the disposal of such wastes into wells if it may "reasonably be determined that such disposal may not be protective of human health and the environment for as long as the waste remains hazardous * * *". On July 26, 1988, the Agency established effective dates for the ban against the underground injection of solvents and dioxins (53 *FR* 28118 *et seq.*). On August 16, 1988, the Agency established effective dates for the ban against the underground injection of California list wastes (53 *FR* 30908 *et seq.*).

2. Section 3004(g)

Section 3004(g) of RCRA applies to all methods of land disposal. It requires the Agency to set a schedule for making land disposal restriction decisions for all hazardous wastes listed in 40 CFR Part 261 under RCRA section 3001(c) as of November 8, 1984, other than the wastes referred to in section 3004 (d) and (e). EPA promulgated this schedule on May 28, 1986 (51 *FR* 19300 *et seq.*). A final rule setting effective dates for the ban against the underground injection of certain section 3004(g) wastes was promulgated on August 16, 1988 (53 FR 30908 *et seq.*).

Section 3004(g)(5) provides that the regulations promulgated by the Administrator must prohibit methods of land disposal except for methods "which the Administrator determines will be protective of human health and the environment for as long as the wastes remain hazardous * * *".

Furthermore, the section provides that, except for wastes which comply with the standards expressed in section 3004(m), a method of land disposal may not be determined to be protective of human health and the environment, "unless, upon application by an interested person, it has been demonstrated to the Administrator, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous."

3. Proposed Standard for Demonstrating Protection of Human Health and the Environment

On July 26, 1988 (53 *FR* 28116 *et seq.*), the Agency applied an identical standard to injection of hazardous waste, regardless of whether the waste was covered under section 3004(f) or section 3004(g). A brief summary of that framework follows.

As noted in that rule, section 3004 (f) and (g) do not use the same language, but both require a demonstration that injection is protective of human health and the environment. Under section 3004(g) it is clear that such a demonstration must include a showing of "no migration" from the injection zone for as long as the wastes remain hazardous. EPA believes that the "no migration" standard of section 3004(g) helps define what is protective of human health and the environment under section 3004(f). Section 3004(g), by its terms, restricts the injection of certain hazardous wastes into injection wells. Since the wastes covered under section 3004(f) are just as hazardous to human health and the environment as those under section 3004(g), EPA believes that injection of either set of wastes should be subject to the same standard. Thus, the Agency believes that the "no migration" demonstration should be similar for all injection wells regardless of the type of injected waste, and that the "no migration" standard should apply to all facilities injecting hazardous waste regardless of which section of the statute they are subject to.

B. Effect on State UIC Primacy

States need not seek authorization to administer the land disposal restrictions program codified in Part 148 to maintain Underground Injection Control (UIC) primacy. These provisions are in effect in all states as a matter of federal law. However, the Agency expects that State agencies which have primacy for the UIC program will wish to implement Part 148, and receive authorization to grant "no migration" exemptions from land disposal restrictions as well as case-by-case extensions under section 3004(h)(3). However, before such authorization can be granted, the State would have to demonstrate that it has the authority to implement section 3004(f), (g), and (h)(3) of RCRA, and receive authorization to do so. A thorough discussion of the conditions under which such authorization can take place can be found in 50 *FR* 28728 *et seq.*, July 15, 1985, 51 *FR* 40618 *et seq.*, Nov. 7, 1986, and 52 *FR* 25783 *et seq.*, July 8, 1987. In addition, where jurisdiction for UIC and RCRA do not reside in the same State agency, EPA will require a Memorandum of Understanding between the two entities, clearly outlining responsibility for granting exemptions.

C. Summary of the Land Disposal Restrictions Framework

1. Regulatory Framework

On November 7, 1986, EPA promulgated a final rule (51 *FR* 40572) establishing the regulatory framework for implementing the land disposal restrictions. Corrections to the November 7, 1986, final rule were included in a June 4, 1987, Federal Register notice (52 *FR* 21010) to clarify the Agency's approach to regulating restricted wastes. Some changes to the framework were also made in the July 8, 1987, rulemaking on the California list wastes (52 *FR* 25760). An August 17, 1988, promulgation set effective dates for the ban against the surface disposal of certain RCRA section 3004(g) ("First Third") wastes (53 *FR* 31138 *et seq.*). Rules which specifically address disposal of hazardous waste through injection wells were promulgated on July 26, 1988 (53 FR 28116), and August 16, 1988 (53 *FR* 30908 *et seq.*).

By each deadline, according to a schedule established in the statute under section 3004(d), (e), or (f) (or promulgated on May 28, 1986 (51 *FR* 19300), for section 3004(g) wastes), the Agency has promulgated or intends to promulgate the applicable treatment standards for each hazardous waste. Restricted wastes may be land disposed in a Subtitle C facility if they meet the applicable treatment standards.

After the effective dates of the prohibitions, wastes that do not comply with the applicable treatment standards will be prohibited from continued disposal in injection wells unless a petition has been approved under Subpart C of Part 148 demonstrating that continued management of those hazardous wastes in the injection well is protective of human health and the environment for as long as the waste remains hazardous. Also, section 148.4 provides that EPA may, on a case-by-case basis, grant an extension to the effective date according to the procedures outlined in § 268.5. An extension may not exceed one year, and the Administrator may not renew an extension more than once.

2. Applicability

Land disposal is defined as including, but not limited to, placement in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome or salt bed formation, or underground mine or cave.

The land disposal restrictions apply prospectively to the affected wastes. In other words, hazardous wastes placed into land disposal units after the effective date of a statutory or regulatory prohibition are subject to the restrictions, but wastes land disposed prior to the applicable effective date are not required to be removed or exhumed for treatment. Similarly, the restrictions on storage of affected hazardous wastes apply only to wastes placed in storage after the effective date of an applicable

land disposal restriction. If, however, wastes subject to the land disposal restrictions are removed from either a storage unit or land disposal unit after the effective date, such wastes would be subject to the restrictions and treatment standards.

The provisions of the land disposal restrictions apply to wastes produced by all generators of over 100 kilograms of hazardous waste (or greater than 1 kg of acute hazardous waste) in a calendar month; however, wastes produced by small quantity generators of less than or equal to 100 kilograms of hazardous waste (or less than or equal to 1 kg of acute hazardous waste) per calendar month are conditionally exempt from the land disposal prohibitions.

The land disposal restrictions apply to both interim status and permitted facilities. All permitted facilities are subject to the restrictions regardless of existing permit conditions. The regulations at 40 CFR 270.4(a) have been amended so that compliance with a RCRA permit (including permits-by-rule under Section 270.60(b)) no longer constitutes compliance with Subtitle C as a whole.

3. Development of RCRA Section 3004(m) Treatment Standards

In the November 7, 1986, rulemaking, EPA promulgated a technology-based approach to setting treatment standards under Section 3004(m). These treatment standards are based on the performance of the best demonstrated available technology (BDAT) identified for the hazardous constituents.

In developing the treatment standards, EPA first characterizes the wastes and establishes treatability groups for wastes having similar physical and chemical properties, and thus, similar treatability characteristics. Once the treatability groups are established, EPA collects and analyzes data on identified technologies used to treat the wastes in each treatability group.

EPA identifies those technologies that are "demonstrated" by full-scale operations. The demonstrated technologies are then evaluated to determine whether they may be considered "available." Under the land disposal restrictions framework initially used, to be considered "available", the Agency determined whether the demonstrated technologies: (1) Are commercially available, and (2) substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized.

As explained in the August 17, 1988, promulgation, the Agency is reevaluating the role of risk in making capacity determinations. A thorough description of this issue can be found at 53 FR 31190 *et seq.*, August 17, 1988.

The performance data on the demonstrated available technologies are evaluated to determine whether the data are representative of well-designed and well-operated treatment systems. Only data from well-designed and well-operated systems are included in determining BDAT. Such performance data are then statistically analyzed to determine the performance level representative of treatment by the candidate technology. EPA may set the treatment standards as either a specific technology or as a performance level of treatment monitored by measuring the concentration level of the hazardous constituents in the waste or treatment residual, or an extract of the waste or treatment residual. When possible, EPA would prefer to set a treatment standard as a performance level, allowing the regulated community greatest flexibility in meeting the treatment standard. When treatment standards are set as performance levels, the regulated community may use any technology (not otherwise prohibited, e.g., impermissible dilution) to treat the waste to meet the treatment standard, and is not limited to only those technologies which have been considered in determining BDAT.

In the final rule prohibiting land disposal of solvents and dioxins by means other than injection (see 52 FR 40593, November 7, 1988), EPA promulgated regulations requiring the regulated community to use the Toxicity Characteristic Leaching Procedure (TCLP) (Part 268 Appendix I) when developing an extract from the waste or treatment residual. This extract must be analyzed to determined whether the concentrations of hazardous constituents meet the applicable treatment standards (which are expressed in Table CCWE at § 268.41 as constituent levels in the TCLP extract). The TCLP has only been promulgated for monitoring compliance with the treatment standards established for the F001–F005 spent solvent wastes and the F020–F023 and F026–F028 dioxin-contaminated wastes treatment standards, and will only be used when the treatment standards are expressed as concentration of hazardous constituents in a waste (or treatment residual) extract.

4. Determination of Alternative Capacity and Ban Effective Dates

a. Establishing Effective Dates. The manner in which effective dates are established differs according to what sections of the statute govern particular wastes. Solvents, dioxins, and California list wastes, which are covered under Sections 3004 (d), (e), and (f), are subject to the so-called "hard hammer." Under this statutory scheme, the waste is automatically banned upon the statutory deadline, regardless of whether the Agency acts to set BDAT or fails to prohibit disposal of such wastes (although the Agency may, under Section 3004(h)(2), establish a different effective date (in effect provide variances) for up to 2 years based on lack of alternate protective treatment, recovery, or disposal capacity). The statutory deadline prohibiting land disposal of these wastes by injection is August 8, 1988.

Pursuant to Section 3004(g), the Agency must establish a schedule by which any hazardous wastes not covered under Sections 3004 (d), (e), or (f) are banned. The statute mandates that these scheduled wastes be addressed in three stages: August 8, 1988; June 8, 1989; and May 8, 1990. It further states that the wastes should be placed in one of these "thirds" based on their intrinsic hazard and volume. High-volume, highly hazardous wastes are placed in the first third; wastes with relatively lower hazards or which are produced in lower volumes are placed in the later thirds. Unlike the wastes subject to the "hard hammer," there is no immediate statutory ban on all forms of land disposal in cases where the Agency fails to take action. If EPA fails to set BDAT or otherwise establish prohibition dates for the first two "thirds" by the August 8, 1988 or June 8, 1989 deadlines, respectively, the wastes in the first two "thirds" are not banned by the statute from land disposal until May 8, 1990, unless EPA issues regulations establishing an earlier effective date for the ban. If these wastes were to be managed in a landfill or surface impoundment, the units would have to comply with the requirements of Section 3004(o) during the period the facilities were not subject to a ban.

On August 18, 1988 (53 FR 30908 *et seq.*), the Agency promulgated regulations setting effective dates for the ban against the underground injection of certain "First Third" wastes. Today's rulemaking proposes effective dates for the prohibition against the underground injection of the remaining "First Third" wastes with established BDAT. Pursuant to section 3004(g), until EPA promulgates regulations setting effective dates that prohibit this method of land disposal for these wastes, the wastes are subject to the "soft hammer" requirements of section 3004(g)(6), which do not prohibit disposal in underground injection wells until May 8, 1990.

b. Effective Dates Based on National Capacity Determinations. The agency has the authority to grant national variances (for up to a 2-year maximum) from the statutory effective date based upon a lack of adequate alternative capacity. To make this determination, EPA considers, on a nationwide basis, both the physical capacity of alternative treatment technologies (permitted and interim status facilities that are expected to be on-line by the effective date) and the quantity of restricted wastes generated. If adequate capacity is available, the restriction on land disposal of that waste goes into effect upon the statutory deadline, or sooner if EPA establishes an earlier date. If there is a significant shortage of national capacity, EPA may set an alternative effective date based on the earliest date on which adequate capacity for treatment that is protective of human health and the environment will be available. During the period of the national variance, the waste may be land disposed in compliance with § 268.5(h)(2).

c. Case-by-Case Extensions. The Agency will consider granting up to a one-year extension (renewable only once) of a ban effective date on a case-by-case basis to an applicant who applies for such an extension. The applicant must demonstrate (among other things stated in § 268.5) that a good faith effort has been made to locate and contract with treatment, recovery, or disposal facilities nationwide to manage his wastes, and that he has entered into a binding contractual commitment to construct or otherwise provide alternative capacity that cannot reasonably be made available by the applicable effective date due to circumstances beyond his control. During the period of the extension, the waste may be land disposed in compliance with § 268.5(h)(2).

5. Exemption for Treatment in Surface Impoundments.

Wastes that would otherwise be prohibited from one or more methods of land disposal may be treated in a surface impoundment that meets certain technological requirements (§ 268.4(a)(3)) as long as treatment residuals that fail to meet the applicable treatment standard or prohibition level are removed within one year of entry into the impoundment and are not placed into any other surface impoundment. The owner or operator of such an impoundment must certify to the Regional Administrator that the technical requirements have been met and must also submit a copy of the waste analysis plan that has been modified to provide for testing treatment residuals in accordance with § 268.4.

As promulgated in the California list final rule for surface disposed wastes (52 FR 25760), evaporation of hazardous constituents as the principal means of treatment is not considered treatment for the purposes of this exemption (§ 268.4(b)).

6. Dilution Prohibition

As established in the November 7, 1986, rule, and modified in the July 8, 1987, rule, dilution is prohibited as a substitute for adequate treatment. This includes dilution to achieve compliance with a treatment standard or compliance level, as well as dilution to circumvent the effective date of a prohibition, or to otherwise avoid or circumvent a land disposal prohibition (§ 268.3). However, dilution is permitted only if it is a necessary part of the treatment process.

7. Storage Prohibition

Storage of prohibited wastes is banned except where storage is solely for the purpose of accumulating such quantities of wastes as are necessary to facilitate proper treatment, recovery, or disposal (§ 268.50). RCRA-permitted treatment, storage, and disposal facilities may store restricted wastes for as long as needed, provided such storage is solely for this purpose. However, if the facility stores a prohibited waste for more than one year, it bears the burden of proof that such storage was solely for this purpose (no notification of storage exceeding one year is requried). For storage of less than one year, EPA bears the burden of proof that such storage was not for the sole purpose of accumulating such quantities of wastes as are necessary to facilitate proper treatment, recovery, or disposal. This statutory prohibition on storage does not apply to RCRA wastes which meet the treatment standard, wastes which have been granted a variance or an extension to the effective date, and stored wastes which are the subject of a "no migration" exemption under § 148.20.

8. Variance from the Treatment Standard

EPA established the variance from the treatment standard to account for those wastes which are unable to meet the applicable treatment standards, even if well-designed and well-operated systems are used (§ 268.44). Petitions must demonstrate (among other things) that the waste is significantly different from the wastes evaluated by EPA in setting the treatment standard and that the waste cannot be treated in compliance with the applicable treatment standard. This variance procedure could establish a new waste treatability group and corresponding BDAT treatment standard that would apply to all wastes meeting the criteria of the new waste treatability group.

9. "No Migration" Exemption

Section 148.20 as published (53 FR 28118 *et seq.*) outlines in detail the Agency's plan for implementing the "no migration" provisions of RCRA with respect to injected wastes. Briefly, a petitioner is required, through modeling, to demonstrate that there is no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This demonstration can be made in one of two ways. The operator may demonstrate, using flow and transport models, that the site conditions are such that injected fluids will not migrate vertically out of the injection zone or migrate within the injection zone to a point of discharge from the injection zone for a period of ten thousand years. Alternatively, an owner or operator may show that the waste is transformed, due to geochemical processes, for example, in such a manner that it will become nonhazardous at the edge of the injection zone. In keeping with existing policy, the Agency used health-based standards, such as Maximum Contaminant Levels (MCLs), to define hazardous levels. A demonstration based on geochemical modeling cannot rely on attenuative mechanisms occurring outside the injection zone.

Also, the operator must demonstrate that the well was in compliance with the substantive area of review, corrective action, and mechanical integrity requirements of Part 146 as promulgated on July 26, 1988 (53 FR 28118 *et seq.*).

II. Summary of Today's Proposal—Remainder of First Third of Scheduled Wastes

A. Background

Historically, hazardous waste disposal has been regulated through two programs: surface disposal through 40 CFR Parts 264, 265, and new Part 268, and underground injection through the UIC Program (40 CFR Parts 144 through

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147). On July 26, 1988 (53 FR 28118 *et seq.*), the Agency promulgated Part 148 which established the framework for implementing the HSWA prohibitions for injected wastes, and set effective dates for the ban against the injection of solvents and dioxins. On April 26, 1988 (53 FR 14492 *et seq.*), EPA proposed effective dates for the ban against the underground injection of California list wastes as well as certain of the "First Third" wastes for which BDAT had been proposed. That proposal was promulgated on August 16, 1988 (53 FR 30908 *et seq.*), with the exception of three waste codes. The Agency is today reproposing the effective dates for those waste codes in light of more complete data on the available treatment capacity and the quantities of wastes generated (Refs. 1 and 2).

In addition to reassessing the April 26, 1988, proposal for three waste codes, EPA is today proposing effective dates for the ban against the underground injection of the remaining "First Third" wastes for which BDAT has been identified.

The subset of injected wastes being addressed in today's proposal will be subject to the "soft hammer" provisions of section 3004(g)(6) until promulgation of this rule. The Agency will move as expeditiously as possible to finalize these regulations at the earliest possible date.

Although EPA's information on waste generated and treatment capacity available is, in general, reasonably accurate, the amount and characteristics of waste generated as a result of ongoing and future cleanups conducted pursuant to RCRA section 3004 and CERCLA is less clear. The Agency, however, recognizes that such wastes are subject to the land ban provisions of RCRA, and recognizes further, that they will likely place a substantial demand on both onsite and commercial treatment over the next few years. Today's proposal incorporates a framework for addressing the projected volumes of these wastes in the capacity determinations which follow (see 53 FR 30911, August 16, 1988).

B. "First Third" Wastes for Which EPA has not Set Treatment Standards (Including all Chemical Specific "P" and "U" Wastes)

The Agency has not set treatment standards at this time for the "First Third" wastes outlined in Table 1 below. EPA is moving as expeditiously as possible to conduct the testing and analysis of alternative treatments for those wastes for which it is required to set BDAT, but on which it has not yet acted. Until that research is complete and effective dates are established, these wastes are subject to the "soft hammer" and as such are not prohibited from land disposal until the Agency sets an effective date or until May 8, 1990, whichever comes first (see Section (I)(C)(4)(a) of this preamble).

Table. 1—"First Third" Wastes for Which No BDAT has been Established

F006 wastewaters—The wastewater component of treatment sludges from certain electroplating operations.

(NOTE: The Agency has established BDAT for the nonwastewater component of the F006 waste category. See Section (II)(C) of today's preamble.)

F007—Spent cyanide plating bath solutions from electroplating operations.

F008—Plating bath sludges from the bottom of plating baths from the electroplating operations where cyanides are used in the process.

F009—Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process.

F019—Wastewater treatment sludges from the chemical conversion coating of aluminum.

K004 wastewaters—The wastewater component of treatment sludge from the production of zinc yellow pigments.

(Note: The Agency has established BDAT for the nonwastewater component of the K004 waste category. See Section (II)(C) of today's preamble.)

K006 wastewaters—The wastewater component of oven residue from the production of chrome oxide green pigments.

(Note: The Agency has established BDAT for the nonwastewater component of the K006 waste category. See Section (II)(C) of today's preamble.)

K011—Bottom stream from the wastewater stripper in the production of acrylonitrile.

K013—Bottom stream from the acetonitrile column in the production of acrylonitrile.

K014—Bottoms from the acetonitrile purification column in the production of acrylonitrile.

K017—Heavy ends (still bottoms) from the purification column in the production of epichlorohydrin.

K021—wastewaters—The wastewater component of aqueous spent antimony catalyst waste from fluoromethanes production.

(Note: The Agency has established BDAT for the nonwastewater component of the K021 waste category. See Section (II)(C) of today's preamble.)

K022 wastewaters—The wastewater component of distillation bottom tars from the production of phenol/acetone from cumene.

(Note: The Agency has established BDAT for the nonwastewater component of the K022 waste category. See Section (II)(C) of today's preamble.)

K031—By-product salts generated in the production of MSMA (monosodium methanearsenate and cacodylic acid).

K035—Wastewater treatment sludges generated in the production of creosote.

K036 wastewaters—The wastewater component of still bottoms from toluene reclamation distillation in the production of disulfoton.

(Note: The Agency has established BDAT for the nonwastewater component of the K036 waste category. See Section (II)(C) of today's preamble.)

K046 wastewaters and explosive nonwastewaters—Both the explosive nonwastewater component and all wastewater components of treatment sludges from the manufacturing, formulation, and loading of lead-based initiating compounds.

(Note: The Agency has established BDAT for the nonexplosive nonwastewater component of the K046 waste category. See Section (II)(C) of today's preamble.

K060 wastewaters—The wastewater component of ammonia still lime sludge from coking operations.

(Note: The Agency has established BDAT for the nonwastewater component of the K060 waste catgegory. See Section (II)(C) of today's preamble.)

K061 Wastewaters—The wastewater component of emission control dust/sludge from the primary production of steel in electric furnaces.

(Note: The Agency has established BDAT for the nonwastewater component of the K061 waste category. See Section (II)(C) of today's preamble.)

K069 wastewaters and calcium sulfate nonwastewater—All wastewaters and the calcium sulfate nonwastewater component of emission control dust/sludge from secondary lead smelting.

(Note: The Agency has established BDAT for the noncalcium sulfate nonwastewater component of the K069 waste category. See Section (II)(C) of today's preamble.)

K073—Chlorinated hydrocarbon waste from the purification step of the diaphragm cell process using graphite anodes.

K083 wastewaters and ash nonwastewaters—All wastewaters and the ash nonwastewater component of distillation bottoms from aniline production.

(Note: The Agency has established BDAT for the no ash nonwastewater component of the K083 waste category. See Section (II)(C) of today's preamble.)

K084—Wastewater treatment sludges generated during the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.

K085—Distillation of fractionation column bottoms from the production of chlorobenzenes.

K086—Solvent sludges, caustic washes and sludges, or water washes and sludges from cleaning tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead.

(Note: The Agency has established BDAT for K086 solvent washes. See Section (II)(C) of today's preamble.)

K106—Wastewater treatment sludge from the mercury cell process in chlorine production.

P and U wastes—All remaining "First Third" chemical specific wastes originally listed under § 261.33 (e) and (f) (i.e., those beginning with a "U" or a "P").

C. "First Third" Wastes With Established BDAT Which Current Data Indicate Are Not Being Injected

The RCRA section 3004(g) "First Third" wastes listed in Table 2 below are "First Third" wastes with BDAT standards which current data indicates are not being injected.

(Note: Included in Table 2 are K025 nonwastewaters and K100 nonwastewaters. Originally "Second Third" and "Third Third" wastes, respectively, these wastes have established BDAT and as such are being addressed along with the "First Third" wastes.)

Restricting the injection of these waste would have a negligible effect on the availability of treatment capacity. Therefore, EPA is proposing that these wastes be banned from underground injection upon the date of final promulgation of this rule. The Agency requests comment on whether any of these wastes are being injected, and if so, at what quantities and with what characteristics.

Table 2.—"First Third" Wastes With Established BDAT Which Current Data Indicate Are Not Being Injected

P008 nonwastewaters—The nonwastewater component of treatment sludges from certain electroplating operations.

(Note: The Agency has not established BDAT for P008 wastewaters. See Section (II)(B) of today's preamble.)

K001—Bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol.

K004 nonwastewaters—The nonwastewater component of treatment sludge from the production of zinc yellow pigments.

(Note: The Agency has not established BDAT for K004 wastewaters. See Section (II)(B) of today's preamble.)

K006 nonwastewaters—The nonwastewater component of oven residue from the production of chrome oxide green pigments.

(Note: The Agency has not established BDAT for K006 wastewaters. See Section (II)(B) of today's preamble.)

K015—Still bottoms from the distillation of benzyl chloride.

K018—Heavy ends from the fractionation column in ethyl chloride production.

K020—Heavy ends from the distillation of vinyl chloride in vinyl chloride monomer production.

K021 nonwastewaters—The nonwastewater component of aqueous spent antimony catalyst waste from fluoromethanes production.

(Note: The Agency has not established BDAT for K021 wastewaters. See Section (II)(B) of today's preamble.)

K022 nonwastewaters—The nonwastewater component of distillation bottom tars from the production of phenol/acetone from cumene.

(Note: The Agency has not established BDAT for K022 wastewaters. See Section (II)(B) of today's preamble.)

K024—Distillation bottoms from the production of phthalic anhydride from naphthalene.

K025 nonwastewaters—The nonwastewater component of distillation bottoms from the production of nitrobenzene by the nitration of benzene.

(Note: The Agency established BDAT for K025 nonwastewaters, originally listed with the "Second Third" wastes, on August 17, 1988. The Agency has not established BDAT for K025 wastewaters. As such, K025 wastewaters remain a "Second Third" waste, and will be addressed at a later date.)

K036 nonwastewaters—The nonwastewater component of still bottoms from toluene reclamation distillation in the production of disulfoton.

(Note: The Agency has not established BDAT for K036 wastewaters. See Section (II)(B) of today's preamble.)

K037—Wastewater treatment sludge from the production of disulfoton.

K044—Wastewater treatment sludges from the manufacturing and processing of explosives.

K045—Spent carbon from the treatment of wastewater containing explosives.

K046 nonexplosive nonwastewaters—The nonexplosive nonwastewater component of treatment sludges from the manufacturing, formulation, and loading of lead-based initiating compounds.

(Note: The Agency has not established BDAT for K046 wastewaters and the explosives nonwastewater component of the K046 waste category. See Section (II)(B) of today's preamble.)

K047—Pink/red water from TNT operations.

K048—Dissolved air flotation (DAF) float from the petroleum refining industry.

K060 nonwastewaters—The nonwastewater component of ammonia still lime sludge from coking operations.

(Note: The Agency has not established BDAT for K060 wastewaters. See Section (II)(B) of today's preamble.)

K061 nonwastewaters—The nonwastewater component of emission control dust/sludge from the primary production of steel in electric furnaces.

(Note: The Agency has not established BDAT for K061 wastewaters. See Section (II)(B) of today's preamble.)

K069 noncalcium sulfate nonwastewaters—The noncalcium sulfate nonwastewater component of emission control dust/sludge from secondary lead smelting.

(Note: The Agency has not established BDAT for K069 wastewaters and the calcium sulfate nonwastewater component of the K069 waste category. See Section (II)(B) of today's preamble.)

K083 no ash nonwastewaters—The no ash nonwastewater component of distillation bottoms from aniline production.

(Note: The Agency has not established BDAT for K083 wastewaters and the ash nonwastewater component of the K083 waste category. See Section (II)(B) of today's preamble.)

K086 solvent washes—Solvent washes from cleaning tubs and equipment used in the formulation of ink from

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pigments, driers, soaps, and stabilizers containing chromium and lead.

(Note: The Agency has not established BDAT for KO86 solvent sludges, caustic washes and sludges, or water washes and sludges. See Section (II)(B) of today's preamble.)

KO87—Decanter tar sludge from coking operations.

KO99—Untreated wastewater from the production of 2,4–D.

K100 nonwastewaters—The nonwastewater component of waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting.

(Note: The Agency established BDAT for K100 nonwastewaters, originally listed with the "Third Third" wastes, on August 17, 1988. The Agency has not established BDAT for K100 wastewaters. As such, K100 wastewaters remain a "Third Third" waste, and will be addressed at a later date.)

K101—Distillation tar residues from the distillation of aniline-based compounds in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.

K102—Residue from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.

The Agency is aware that leachate gathered from leachate collection systems is frequently injected. Moreover, some impoundments may elect to close rather than meet minimum technology standards by November 8, 1988, as required by section 3005(j). Both the leachate and any wastes injected as a result of impoundments closing may contain wastes which have established BDATs, but for which the Agency has no data indicating whether the waste is injected, and therefore has not evaluated whether a capacity variance is warranted. The Agency specifically requests comment on whether such wastes are injected, and on the quantities and characteristics of this waste. Based on this data, the Agency may elect to allow the prohibition dates for injected wastes proposed today to stand, or establish new dates for all or some of the wastes.

D. Determination of Available Capacity and Effective Dates for Injected "First Third" Wastes (With Established BDAT) Not Addressed on August 10, 1988

1. *Allocating Limited Treatment Capacity.* Often, several waste streams will share a common form of BDAT and, thus, form a treatability group. Wastewater treatment, for example, is BDAT for several waste codes. Where there is sufficient available treatment capacity in a given treatability group, EPA will not grant national capacity variances. Where there is insufficient capacity EPA must allocate or dedicate certain waste streams to the available capacity and may grant capacity variances for the others.

The allocation decisions may have the short term effect of delaying an effective prohibition date for underground injection of certain waste streams for up to two years. At the end of that time, all waste streams will be subject to the land disposal prohibitions.

The Agency does believe that it is possible to set out certain decision rules which are consistent with statutory concerns under RCRA and with initial Agency analysis concerning the relative risks posed by waste streams and certain disposal methods. Based on these considerations, the Agency has adopted the following framework regarding allocation of available treatment capacity. EPA used this framework for its allocation decisions regarding injected waste in the proposed rule setting effective dates for solvents and dioxins (see 52 *FR* 32450) as well as the final rule setting effective dates for California list wastes and certian of the "First Third" wastes (see 53 *FR* 30908 *et seq.*).

One of the strongest congressional concerns leading to the land disposal restrictions was disposal in surface impoundments and landfills. Indeed, in establishing a presumption against land disposal the statute singles out these specific disposal practices as the least favored mode of hazardous waste management (See Section 1002(b)(7) of RCRA). Similarly, Section 3004(f) addresses the same wastes as section 3004(d) and (e) but applies a later deadline for wastes disposed by underground injection.

Moreover, preliminary Agency analysis suggests that injection wells generally pose less risk than surface disposal units. In addition, the Agency has been reviewing petitions from several injection facilities, and believes on the basis of preliminary data, that many operators may successfully demonstrate that their facilities meet the "no migration" standard as required by section 3004(f) and (g) of RCRA (*See generally*, 53 *FR* 28118 *et seq.*, July 26, 1988). The number of similar variances likely to be granted to surface disposal units, on the other hand, appears limited. Accordingly, directing wastes from surface disposal to available treatment capacity is likely to be a permanent requirement. Forcing wastes away from wells which may meet the recently promulgated standards for demonstrating "no migration" under section 3004(f) and (g)—i.e., are protective—to limited treatment capacity is a significant short-term dislocation. In view of these factors, the Agency believes that apportioning available treatment capacity first to waste disposed in surface land disposal units is most consistent with Congressional intent, protective of human health and the environment, and the most rational way to avoid short-duration dislocations in environmentally protective treatment or disposal practices.

A second decision rule EPA is using is to allocate to available treatment capacity the substantial quantities of wastes resulting from both CERCLA removal and remedial actions as well as corrective actions under section 3004(u) of RCRA before allocating injected waste streams. Preliminary studies indicate that approximately 18.3 to 36.5 *billion* gallons of ground water containing "First Third" wastes may be extracted from sites between 1988 and 1990 (Ref. 3). Since these wastes are generated at sites where EPA has determined that clean-up action is needed to protect human health or the environment, the Agency believes it should administer the capacity variances in a manner which preserves the ability to treat these wastes from clean ups.

Similarly, the Agency has observed that as facilities contemplate complying with the requirements of Section 3005(j) of RCRA, some are electing to close down existing surface impoundments, in many cases displacing huge volumes of waste. The Agency believes that treatment capacity will be farther limited as these waters are processed through the system, and treated or otherwise managed. Again, EPA believes that these wastes should be applied against available capacity before those which are rejected.

The Agency has received substantial comment on prior capacity variance proposals on limitations to the practical availability of treatment for high volume waste streams. In particular, commenters have stated that availability of transportation and related facilities needed to transport waste to commercial treatment facilities, the difficulty of installing on-site tanks for large volume waste streams, and the limits of options for managing residues from treatment all serve to limit access to or delay the availability of treatment. With respect to transportation, truck and rail capacity, and the facilities necessary to handle the transfers of high volume wastes are not now, and cannot shortly be developed (Refs. 4 and 5). Compounding this, much of the available wastewater treatment capacity is located in the northeast, while injection wells are located primarily in the Gulf Coast region (Ref. 5). To the extent that the trucks and tank cars are tied up in travelling long distances, their availability would be further limited.

The above decision rules and factors are used in the capacity analyses below.

Table 3 summarizes the proposed effective dates for the ban against the underground injection of certain "First Third" wastes. This table lists only those "First Third" wastes with established BDAT for which underground injection effective ban dates were not promulgated on August 16, 1988, and which the Agency believes are, or might be, injected. This table includes three waste codes for which effective dates were first proposed on April 26, 1988. These effective dates are being reproposed in light of new data received from the Agency's ongoing Treatment, Storage, Disposal, and Recycling (TSDR) Survey. Discussions of all wastes addressed in Table 3 follow.

TABLE 3.—INJECTED "FIRST THIRD" WASTES (WITH ESTABLISHED BDAT) NOT ADDRESSED ON AUGUST 16

RCRA Waste Code	Previously Proposed Effective Date, if applicable	Proposed effective date based on new data
K016	Variance until 8/8/90	Dilute K016 (<1%)—variance until 8/8/90; concentrated K016 (>1%)—date of final promulgation of this rule
K019	Variance until 8/8/90	Date of final promulgation of this rule
K030	Variance until 8/8/90	Date of final promulgation of this rule
K103	Being proposed for the first time today	Date of final promulgation of this rule

2. *K016.* Wastes categorized as K016 consist of heavy ends or distillation residues from the production of certain halogenated hydrocarbons. The TSDR Survey identified 118 million gallons of injected, dilute (<1%) K016 wastes with an identified BDAT of wastewater treatment consisting of biological treatment followed by wet air oxidation. The survey also indicated that 170,000 gallons of K016 may be injected at concentrations equal to or greater than 1%. BDAT for these K016 wastes would be liquid combustion (Ref. 2). There are approximately 20 million more gallons of injected K016 than was identified on April 26, 1988.

The Agency has determined that there is 72 million gallos of available capacity for the treatment train applicable to injected, dilute K016 waste. Similarly 246 million gallons of available capacity have been identified for injected wastes utilizing liquid combustion as treatment. Based on this information, the Agency is revising the 2-year treatment variance proposed for K016 wastes on April 26, 1988. At the time of the proposal, the Agency assumed that all injected K016 wastes were concentrated, and consequently subject to a BDAT of incineration. The variance proposed on April 26, 1988, was based on a lack of available incineration capacity. The TSDR Survey changed these assumptions in two ways. First, the majority of injected K016 wastes were found to be dilute; second, the amount of incineration capacity available has increased dramatically. Accordingly, EPA is today proposing to grant a variance for dilute K016, and ban its injection on August 8, 1990. EPA is proposing to prohibit, upon final promulgation of this rule, the injection of concentrated K016 unless it is treated to meet the BDAT treatment standards.

3. *K019.* This waste stream is composed of heavy ends and distillation residues generated in the production of ethylene dichloride. The new survey has identified only 65,000 gallons of this relatively dilute waste that are being injected. The most appropriate treatment for this waste would be wastewater treatment based on biological degradation (Ref. 2). As mentioned above, the survey shows an alternative capacity of 72 million gallons for injected wastes amenable to this type of treatment. Because the Agency has identified adequate capacity for this particular waste stream, EPA is today proposing to revise the proposal of April 26, 1988, which proposed a 2-year variance from the prohibition date. Based on the TSDR Survey data, the Agency is no longer proposing a variance and is proposing to prohibit, upon final promulgation of this rule, the injection of K019 wastes unless it is treated to meet the BDAT treatment standards.

4. *K030.* This waste is generated in the production of trichloroethylene and perchloroethylene and consists of column bottoms and heavy ends. As with K019, the injected waste is dilute and is best treated by wastewater treatment based on biological degradation. As noted above, EPA has identified 72 million gallons of such treatment capacity for injected wastes. The survey shows less than 30,000 gallons of this waste being injected. The Agency believes that the information gathered from the survey shows sufficient capacity to treat this waste, and is therefore changing the position outlined in the April 26, 1988, proposal. Today's proposal would prohibit, upon the final promulgation of this rule, the injection of K030 waste unless it is treated to meet the BDAT treatment standards.

5. *K103.* This waste stream consists of residues from the production of analine. The best information available to the Agency at this time indicates that 31,560 gallons of K103 are being injected each year (Ref. 2). The Agency believes that this waste is relatively concentrated. The specified BDAT for K103 is liquid combustion, which shows an available capacity of 246 million gallons for injected wastes. Based on this information, the Agency is not proposing to grant a variance for K103 wastes which do not meet the BDAT treatment standards, and will ban the underground injection of such wastes upon the final promulgation of this rule. The Agency believes the excess capacity is sufficiently large to assure that there will be treatment for K103 wastewaters resulting from remedial actions pursuant to either CERCLA or section 3004(u) of RCRA.

III. Regulatory Requirements

A. Regulatory Impact Analysis

Executive Order 12291 requires EPA to assess the effect of contemplated Agency actions during the development of regulations. Such an assessment consists of a quantification of the potential benefits and costs of the rule, as well as a description of any beneficial or adverse effects that cannot be quantified in monetary terms. In addition, Executive Order 12291 requires that regulatory agencies prepare an analysis of the regulatory impact of

major rules. Major rules are defined as those likely to result in:

1. An annual cost to the economy of $100 million or more; or

2. A major increase in costs or prices for consumers or individual industries; or

3. Significant adverse effects on competition, employment, investment, innovation or international trade.

The Agency had previously performed an analysis of the proposed regulation to assess the economic effect of associated compliance costs for the entire "First Third" list wastes (Ref. 6). Total compliance costs of the entire "First Third" list regulations (i.e., those being proposed today, those finalized on August 16, 1988, and those for which BDAT has not yet been defined) are estimated at $28.5 million, or $9.2 million annualized. Alternate treatment costs are estimated to total $25.75 million ($6.0 million annualized), and petition costs are estimated to be $2.75 million ($0.20 million annualized). These costs indicate that this proposal does not constitute a major rule under Executive Order 12291.

B. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, whenever an agency publishes a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the agency's administrator certifies that the rule will not have significant economic effect on a substantial number of small entities.

Owners and operators of hazardous waste injection wells are generally major chemical, petrochemical and other manufacturing companies. The Agency is not aware of any small entities that would be affected by this rule. Section 148.1(c)(3) of the regulatory framework for this rule exempts any small quantity generator, as defined in § 261.5, from the underground injection prohibitions established in that framework. The Administrator certifies that this rule will not have significant economic effects on a substantial number of small entities. As a result of this finding EPA has not prepared a formal Regulatory Flexibility Analysis.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 0370.05), and was approved by OMB (Control No. 2040-0042). We are inviting further comments on this ICR, as the wastes regulated under this proposal have not been noticed before. A copy may be obtained from Information Policy Branch; EPA; 401 M Street, SW. (PM-223); Washington, DC 20460. Submit comments on these requirements to EPA at the above address. The final rule will respond to any comments on the information collection requirements.

IV. References

(1) Findings on Class I Hazardous Wells Affected by the Land Ban Rules; Temple, Barker and Sloane, December, 1987.

(2) Background Document for First Third wastes to Support 40 CFR Part 268 Land Disposal Restrictions, First Third waste Volumes, Characteristics, and Required and Available Treatment Capacity—Part II; U.S. EPA, OSW, May 1988.

(3) Estimated Quantity of Extracted Ground Water—RCRA Facilities and CERCLA Sites: 1988–1990; Report to U.S. EPA, ICF Incorporated, July 1988.

(4) Comments of the Chemical Manufacturers Association on EPA's Proposed Rule Regarding Hazardous Waste Disposal Injection Restrictions; Chemical Manufacturers Association, October 1987.

(5) Evaluation of Availability of Alternate Treatment and Disposal Capacity for Injected Hazardous wastes; Tischler/Kocurek for the Chemical Manufacturers Association, October 1987.

(6) Regulatory Impact Analysis of Proposed Hazardous waste Disposal Restrictions for Class I Injection of First Thirds List Waste; EPA Report, Contract No. 68-03-3348, Cadmus Group, Inc., October 1987.

List of Subjects in 40 CFR Part 148

Administrative practice and procedure, Confidential business information, Hazardous materials, Hazardous materials transportation, Hazardous waste, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal, Water supply, Water pollution control.

Dated: September 30, 1988.

Lee M. Thomas,

Administrator.

Therefore it is proposed that Chapter I, Part 148 of Title 40 be amended as follows:

PART 148—HAZARDOUS WASTE INJECTION RESTRICTIONS

1. The authority citation for Part 148 continues to read as follows:

Authority: Sec. 3004, Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*

2. Section 148.14 is revised to read as follows:

§ 148.14 Waste Specific Prohibitions—First Third Wastes.

(a) Effective [insert the effective date of this rule], the wastes specified in 40 CFR 261.32 as EPA Hazardous waste numbers F006 (nonwastewaters), K001, K004 (nonwastewaters), K006 (nonwastewaters), K015, K016 (at concentrations greater than or equal to 1%), K018, K019, K020, K021 (nonwastewaters), K022 (nonwastewaters), K024, K025 (nonwastewaters), K030, K036 (nonwastewaters), K037, K044, K045, nonexplosive K046 (nonwastewaters), K047, K048, K060 (nonwastewaters), K061 (nonwastewaters), non $CaSO_4$ K069 (nonwastewaters), no ash K083 (nonwastewaters), K086 solvent washes, K087, K099, K100 (nonwastewaters), K101, K102, and K103 are prohibited from underground injection.

(b) Effective August 8, 1990, the waste specified in 40 CFR 261.32 as EPA Hazardous waste numbers K016 (at concentrations less than 1%), K049, K050, K051, K052, K062, K071, and K104 are prohibited from undergound injection.

(c) The requirements of paragraphs (a) and (b) of this section do not apply:

(1) If the wastes meet or are treated to meet the applicable standards specified in Subpart D of Part 268; or

(2) If an exemption from a prohibition has been granted in response to a petition under Subpart C of this part; or

(3) During the period of extension of the applicable effective date, if an extension is granted under § 148.4 of this part.

[FR Doc. 88-24583 Filed 10-25-88; 8:45 am]

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Wednesday
October 26, 1988

Part V

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Research; Actions Under Guidelines; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Research; Actions Under Guidelines

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice of Actions under NIH guidelines for research involving recombinant DNA molecules.

SUMMARY: This notice sets forth four actions to be taken by the Director, National Institutes of Health (NIH), under the May 7, 1986, NIH Guidelines for Research Involving Recombinant DNA Molecules (51 FR 16958, May 7, 1986).

EFFECTIVE DATE: October 26, 1988.

FOR FURTHER INFORMATION CONTACT: Additional information can be obtained from Ms. Rachel Levinson, Office of Recombinant DNA Activities, National Institutes of Health, 12441 Parklawn Drive, Suite 58, Rockville, Maryland, (301) 770-0131.

SUPPLEMENTARY INFORMATION: Today four actions are being promulgated under the NIH Guidelines for Research Involving Recombinant DNA Molecules. These four proposed actions were published for comment in the Federal Register of April 18, 1988 (53 FR 12752), and reviewed and recommended for approval by the NIH Recombinant DNA Advisory Committee (RAC) at its meeting on June 3, 1988. A transcript and minutes of that meeting are available from the Office of Recombinant DNA Activities at the address given above.

In accordance with section IV–C–1–b of the NIH Guidelines, these actions have been found to comply with the NIH Guidelines and to present no significant risk to health or to the environment.

Part I of this announcement provides background information on the actions. Part II provides a summary of the actions of the Director, NIH.

I. Decisions on Actions Under NIH Guidelines

A. Proposed Amendment Regarding Certain Large-Scale Fermentation Experiments

In a letter dated March 24, 1988, Dr. Joseph R. Fordham of Novo Laboratories, Inc., Danbury, Connecticut, requested that Section III–B–5, Experiments Involving More Than 10 Liters of Culture, be amended by adding the following paragraph:

"For large-scale (LS) fermentation experiments, involving non-pathogenic and non-toxicogenic recombinant strains of host organisms having an extended history of safe industrial use the appropriate physical containment conditions need be no greater than those for the host organisms unmodified by recombinant DNA techniques; the IBC can specify higher containment if it deems it necessary."

Justification for the proposed change was included in the submission.

This proposal was published for comment in the Federal Register of April 18, 1988 (53 FR 12752).

Three letters were received with comments on this proposal. All of the letters provided unqualified support for the proposal.

The RAC considered this proposal at the June 3, 1988, meeting. The RAC supported the proposal but felt that it should be incorporated into Appendix K, "Physical Containment for Large-Scale Uses of Organisms Containing Recombinant DNA Molecules," rather than in Section III–B–5. Accordingly, the RAC recommended that Appendix K–I be modified to read as follows:

Appendix K–I—Selection of Physical Containment Levels

The selection of the physical containment level required for recombinant DNA research or production involving more than 10 liters of culture is based on the containment guidelines established in Part III of the Guidelines. For purposes of large-scale research or production, three physical containment levels are established. These are referred to as BL1–LS, BL2–LS, and BL3–LS. The BL1–LS level of physical containment is recommended for large-scale research or production of viable organisms containing recombinant DNA molecules which require BL1 containment at the laboratory scale. For large-scale fermentation experiments involving non-pathogenic and non-toxigenic recombinant strains of host organisms having an extended history of safe industrial use, the IBC may set large-scale containment conditions at those appropriate for the host organism unmodified by recombinant DNA techniques and consistent with good industrial large-scale practices. The BL3–LS level of physical containment is required for large-scale research or production of viable organisms containing recombinant DNA molecules which require BL2 containment at the laboratory-scale. The BL3–LS level of physical containment is required for large-scale research or production of viable organisms containing recombinant DNA molecules which require BL3 containment at the laboratory scale. No provisions are made for large-scale research or production of viable organisms containing recombinant DNA molecules which require BL4 containment at the laboratory scale. If necessary, these requirements will be established by NIH on an individual basis.

The RAC then voted 17 in favor, none opposed, and one abstention to recommend approval of the proposal as amended.

I accept this recommendation and Appendix K–I has been modified accordingly.

B. Large-Scale Production Involving Cephalosporium Acremonium Strain LU4–79–6

In a letter dated December 4, 1987, Dr. Mark A. Fogelsong of Eli Lilly and Company, Indianapolis, Indiana, requested approval to conduct large-scale experiments and production involving *Cephalosporium acremonium* strain LU4–79–6 under less than Biosafety Level 1-Large Scale (BL1–LS) conditions. Information on *C. acremonium* and construction of strain LU4–79–6 was provided in the submission.

This proposal was published for comment in the Federal Register of April 18, 1988 (53 FR 12752).

Four letters were received with comments of support for the proposal.

The RAC considered this proposal at the June 3, 1988, meeting. By a vote of twelve in favor, none opposed, and three abstentions, the RAC recommended approval of the proposal.

I accept this recommendation and Appendix D has been modified accordingly.

C. Proposed Amendment of Appendix A To Include Pseudomonas Mendocina

In a letter dated March 28, 1988, Dr. Burt D. Ensley of AMGen, Thousand Oaks, California, requested that *Pseudomonas mendocina* be included in Sublist A of Appendix A of the NIH Guidelines. Data in support of the request were included in the submission.

This proposal was published for comment in the Federal Register of April 18, 1988 (53 FR 12752), for public comment. No comments on the proposal were received.

The RAC considered this proposal at the June 3, 1988, meeting. By a vote of fourteen in favor, none opposed, and no abstentions, RAC recommended approval of the proposal.

I accept this recommendation and Appendix A has been modified accordingly.

D. Proposed Amendment of Appendix C–IV To Include Bacillus Licheniformis

In a letter dated March 30, 1988, Dr. Joseph R. Fordham of Novo Laboratories, Inc., Danbury, Connecticut, requested that *Bacillus licheniformis* be added to the title and to the first sentence of Appendix C–IV of the NIH Guidelines. This section would be amended to read as follows:

Appendix C–IV—Experiments Involving Bacillus Subtilis or Bacillus Licheniformis Host-Vector Systems

Any asporogenic *Bacillus subtilis* or *Bacillus licheniformis* strain * * *

Data in support of the request were included in the submission.

This proposal was published in the April 18, 1988, Federal Register (53 FR 12752) for public comment. One letter of support for this proposal was received.

The RAC considered this proposal at the June 3, 1988, meeting. The RAC recommended that "asporogenic" be added before "*Bacillus licheniformis*" for emphasis. By a vote of fourteen in favor, none opposed, and no abstentions, RAC recommended approval of the proposal.

I accept this recommendation and Appendix C–IV has been modified accordingly.

II. Summary of Actions

A. Revision of Appendix K–I

Appendix K–I is modified to read as follows:

Appendix K–I—Selection of Physical Containment Levels

The selection of the physical containment level required for recombinant DNA research or production involving more than 10 liters of culture is based on the containment guidelines established in Part III of the Guidelines. For purposes of large-scale research or production, three physical containment levels are established. These are referred to as BL1–LS, BL2–LS, and BL3–LS. The BL1–LS level of physical containment is recommended for large-scale research or production of viable organisms containing recombinant DNA molecules which require BL1 containment at the laboratory scale. For large-scale fermentation experiments involving non-pathogenic and non-toxigenic recombinant strains of host organisms having an extended history of safe industrial use, the IBC may set large-scale containment conditions at those appropriate for the host organism unmodified by recombinant DNA techniques and consistent with good industrial large-scale practices. The BL3–LS level of physical containment is required for large-scale research or production of viable organisms containing recombinant DNA molecules which require BL2 containment at the laboratory-scale. The BL3–LS level of physical containment is required for large-scale research or production of viable organisms containing recombinant DNA molecules which require BL3 containment at the laboratory scale. No provisions are made for large-scale research or production of viable organisms containing recombinant DNA molecules which require BL4 containment at the laboratory-scale. If necessary, these requirements will be established by NIH on an individual basis.

B. Revision of Appendix D

The following section is added to Appendix D:

Appendix D–XII

"Eli Lilly and Company of Indianapolis, Indiana, may conduct large-scale experiments and production involving *Cephalosporium acremonium* strain LU4–79–6 under less than Biosafety Level 1-Large Scale (BL1–LS) conditions.

C. Revision of Sublist A of Appendix A

Sublist A of Appendix A is modified by the addition of *Pseudomonas mendocina* to the list of organisms.

D. Revision of Appendix C–IV

Appendix C–IV is modified to read as follows:

Appendix C–IV—Experiments Involving Bacillus subtilis or Bacillus licheniformis Host-Vector Systems

Any asporogenic *Bacillus subtilis* strain which does not revert to a sporeformer with a frequency greater than 10^{-9} can be used for cloning DNA with the exception of those experiments listed below.

For these exempt laboratory experiments, BL1 physical containment conditions are recommended.

For large-scale fermentation experiments BL1–LS physical containment conditions are recommended. However, following review by the IBC of appropriate data for a particular host-vector system, some latitude in the application of BL1–LS requirements as outlined in Appendix K–II–A through K–II–F is permitted.

Exceptions. Experiments described in Section III–A which require specific RAC review and approval before initiation of the experiment.

Experiments involving Class 3, 4, or 5 organisms [1] or cells known to be infected with these agents may be conducted under containment conditions specified by Section III–B–2 with prior IBC review and approval.

Large-scale experiments (e.g., more than 10 liters of culture) require prior IBC review and approval (see Section III–B–5).

Experiments involving the deliberate cloning of genes coding for the biosynthesis of molecules toxic for vertebrates (see Appendix F).

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

James B. Wyngaarden,

Director, National Institutes of Health.

[FR Doc. 88–24704 Filed 10–25–88; 8:45 am]

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H.R. 5175/Pub. L. 100-504
To designate the Federal building and United States courthouse located at 100 South Highland, Jackson, Tennessee, as the "Ed Jones Federal Building and United States Courthouse." (Oct. 20, 1988; 102 Stat. 2542; 1 page) Price: $1.00

S. 2561/Pub. L. 100-528
Protection and Advocacy for Mentally Ill Individuals Amendments Act of 1988. (Oct. 20, 1988; 102 Stat. 2543; 4 pages) Price: $1.00

H.R. 2981/Pub. L. 100-510
To designate the facility of the United States Postal Service located at 650 Hoes Lane Turnpike in Kearny, New Jersey, as the "Dominick V. Daniels Postal Facility." (Oct. 20, 1988; 102 Stat. 2547; 1 page) Price: $1.00

H.R. 3029/Pub. L. 100-511
To designate the new Post Office Building in Gretna, Louisiana, as the "William W. Perez, Jr., Post Office Building." (Oct. 20, 1988; 102 Stat. 2548; 1 page) Price: $1.00

H.R. 4103/Pub. L. 100-512
Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988. (Oct. 20, 1988; 102 Stat. 2549; 12 pages) Price: $1.00

H.R. 4035/Pub. L. 100-513
Extending permission for the President's Commission on White House Fellows to accept certain donations. (Oct. 20, 1988; 102 Stat. 2561; 1 page) Price: $1.00

H.R. Res. 444/Pub. L. 100-514
Designating November 6-12, 1988, as "National Women Veterans Recognition Week." (Oct. 20, 1988; 102 Stat. 2562; 1 page) Price: $1.00

S. 2057/Pub. L. 100-515
To provide for the establishment of the Coastal Heritage Trail Route in the State of New Jersey, and for other purposes. (Oct. 20, 1988; 102 Stat. 2563; 3 pages) Price: $1.00

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Briefing on How To Use the Federal Register—
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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Title 3—

The President

Proclamation 5888 of October 24, 1988

National Down Syndrome Month, 1988

By the President of the United States of America

A Proclamation

During National Down Syndrome Month, 1988, we can all grow in awareness of the nature of Down Syndrome; of the needs, rights, and abilities of persons affected by it; and of continuing progress in our understanding of this developmental disability and our responsibilities, as individuals and communities, toward those involved and their families.

Today, fortunately, we are making many options available for people with Down Syndrome, such as early intervention, mainstreaming, recreation, socialization, respite services, employment, and independent living programs. These welcome developments are in the finest traditions of American life and of our long-standing willingness to offer acceptance, help, and hope to our neighbors in time of need.

Private and public research continues in areas such as finding the cause of the extra chromosome 21 in people with Down Syndrome; mapping this chromosome's genes; understanding the relationship between Down Syndrome and Alzheimer's disease; and using computers to facilitate language and speech. Private groups such as the National Down Syndrome Congress and the National Down Syndrome Society, and public units such as the National Institute of Child Health and Human Development, the Public Health Service's Division of Maternal and Child Health, and the President's Committee on Mental Retardation, foster these and other activities for the benefit of persons affected by Down Syndrome and for the good of Americans yet unborn.

As we salute past and present accomplishments, we realize that many important needs still remain—and that we can solve them better the more we keep in mind the innate rights and human dignity Down Syndrome individuals share with their fellow Americans.

The Congress, by Senate Joint Resolution 302, has designated the month of October 1988 as "National Down Syndrome Month" and authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of October 1988 as National Down Syndrome Month. I invite all concerned citizens, agencies, and organizations to unite during October with appropriate observances and activities directed toward helping affected individuals and their families enjoy to the fullest the blessings of life.

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IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of October, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-25053
Filed 10-26-88; 11:11 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5889 of October 24, 1988

National Lupus Awareness Month, 1988

By the President of the United States of America

A Proclamation

This year, we again set aside the month of October to mark our great concern for the thousands of Americans who suffer from lupus. An immune system disorder of unknown cause, lupus in its systemic form may affect the joints, skin, and one or more internal organs, such as the kidney, heart, and brain.

Lupus is a chronic disease in which there is always the potential threat of serious illness and disability. The disease can occur in men, but women in their childbearing years are the majority of its victims. Minorities, especially blacks, are particularly vulnerable; lupus is three times more prevalent in black women than in white women.

Ordinarily, the immune system protects against infection by producing antibodies that successfully combat foreign substances. In people with lupus, the immune system produces abnormal antibodies that react harmfully against the individual's own tissues.

To combat lupus, we need new research findings and new approaches to diagnosis and treatment. Scientists in biology, biochemistry, immunology, genetics, and other fields are seeking to understand its causes and disease processes to develop better means of detection, treatment, and prevention. If this work is to continue, and if we are to take advantage of the knowledge we have already gained, public awareness of lupus and of the importance of continuing scientific research on this disease is critical. The Federal Government and private health organizations are working together to promote awareness of lupus and research on it. This collaboration ultimately will conquer this significant public health problem.

The Congress, by Senate Joint Resolution 303, has designated the month of October 1988 as "National Lupus Awareness Month" and authorized and requested the President to issue a proclamation in observance of the event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of October 1988 as National Lupus Awareness Month. I urge the people of the United States and educational, philanthropic, scientific, medical, and health care organizations and professionals to observe this month with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of October, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-25054
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Presidential Documents

Proclamation 5890 of October 25, 1988

Pregnancy and Infant Loss Awareness Month, 1988

By the President of the United States of America

A Proclamation

Each year, approximately a million pregnancies in the United States end in miscarriage, stillbirth, or the death of the newborn child. National observance of Pregnancy and Infant Loss Awareness Month, 1988, offers us the opportunity to increase our understanding of the great tragedy involved in the deaths of unborn and newborn babies. It also enables us to consider how, as individuals and communities, we can meet the needs of bereaved parents and family members and work to prevent causes of these problems.

Health care professionals recognize that trends of recent years, such as smaller family size and the postponement of childbearing, adds another dimension of poignance to the grief of parents who have lost infants. More than 700 local, national, and international support groups are supplying programs and strategies designed to help parents cope with their loss. Parents who have suffered their own losses, health care professionals, and specially trained hospital staff members are helping newly bereaved parents deal constructively with loss.

Compassionate Americans are also assisting women who suffer bereavement, guilt, and emotional and physical trauma that accompany post-abortion syndrome. We can and must do a much better job of encouraging adoption as an alternative to abortion; of helping the single parents who wish to raise their babies; and of offering friendship and temporal support to the courageous women and girls who give their children the gifts of life and loving adoptive parents. We can be truly grateful for the devotion and concern provided by all of these citizens, and we should offer them our cooperation and support as well.

The Congress, by Senate Joint Resolution 314, has designated the month of October 1988 as "Pregnancy and Infant Loss Awareness Month" and authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of October 1988 as Pregnancy and Infant Loss Awareness Month. I call upon the people of the United States to observe this month with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of October, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-25055
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Rules and Regulations

Federal Register
Vol. 53, No. 208
Thursday, October 27, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 1, 2, 7, 9, 15, 19, 20, 21, 30, 35, 40, 50, 51, 53, 55, 60, 61, 70, 71, 72, 73, 74, 75, 81, 100, 110, 140, 150, 170 and 171

Relocation of NRC's Public Document Room; Other Minor Nomenclature Changes

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to indicate that its Public Document Room has moved to a new location in the District of Columbia. The hours remain unchanged: 7:45 a.m. to 4:15 p.m. weekdays. These amendments are being made to inform NRC licensees and members of the public of this relocation. This rule also makes minor nomenclature changes in NRC organization to reflect new internal organizational titles.

EFFECTIVE DATE: October 27, 1988.

FOR FURTHER INFORMATION CONTACT: Donnie H. Grimsley, Director, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-7211.

SUPPLEMENTARY INFORMATION: On September 9, 1988 (53 FR 35135), the NRC published in the **Federal Register** a general notice announcing that as of September 19, 1988, the NRC's Public Document Room, formerly located in the Matomic Building at 1717 H Street NW., Washington, DC, will be relocated at the Gelman Building, 2120 L Street NW., Lower Level, Washington, DC, 20555. These amendments reflect that relocation.

In addition, these amendments reflect a change to the name of an organizational unit that has changed since the final rule revising the NRC's Statement of Organization and General Information was published in the **Federal Register** on August 21, 1987 (52 FR 31601), to reflect the reorganization of the agency.

Because these amendments deal solely with the organization and relocation of agency personnel, the notice and comment provisions of the Administrative Procedure Act do not apply under 5 U.S.C. 553(b)(A). These amendments are effective upon publication in the **Federal Register**. Good cause exists to dispense with the usual 30-day delay in the effective date, because these amendments are of a minor and administrative nature, dealing with the organization and relocation of agency personnel.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR Parts 1, 2, 7, 9, 15, 19, 20, 21, 30, 35, 40, 50, 51, 53, 55, 60, 61, 70, 71, 72, 73, 74, 75, 81, 100, 110, 140, 150, 170 and 171.

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

1. The authority citation for Part 1 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 1.3 [Amended]

2. In § 1.3, in paragraph (a), remove the words "1717 H Street, NW.," and add in their place the words "2120 L Street NW.,".

§ 1.5 [Amended]

3. In § 1.5, in the introductory text of paragraph (a), remove the words "1717 H Street NW.," and add in their place the words "2120 L Street NW.," and remove paragraph (a)(5) and redesignate paragraphs (a)(6) through (a)(10) as paragraphs (a)(5) through (a)(9).

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

4. The authority citation for Part 2 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 2.4 [Amended]

5. In § 2.4, in paragraph (k), remove the words "1717 H Street NW.," and add in their place the words "2120 L Street NW.,".

§ 2.101 [Amended]

6. In § 2.101, in paragraphs (a)(2) and (g)(1), remove the words "1717 H Street NW.," and add in their place the words "2120 L Street NW.,".

§ 2.206 [Amended]

7. In § 2.206, in paragraph (a)(1), remove the words "1717 H Street, NW.," and add in their place the words "2120 L Street NW.,".

§ 2.701 [Amended]

8. In § 2.701, in paragraph (a)(1), remove the words "1717 H Street, NW.," and add in their place the words "2120 L Street NW.,".

§ 2.802 [Amended]

9. In § 2.802, in paragraph (g), remove the words "1717 H Street, NW.," and add in their place the words "2120 L Street NW.,".

PART 7—ADVISORY COMMITTEES

10. The authority citation for Part 7 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 7.17 [Amended]

11. In § 7.17, in paragraph (a), remove the words "1717 H Street, NW.," and add in their place the words "2120 L Street NW.,".

PART 9—PUBLIC RECORDS

12. The authority citation for Part 9 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, amended (42 U.S.C. 5841).

§ 9.21 [Amended]

13. In § 9.21, in paragraph (b), remove the words "1717 H Street, NW.," and add in their place the words "2120 L Street NW.,".

§ 9.23 [Amended]

14. In § 9.23, in paragraph (a)(1), remove the words "1717 H Street, NW.," and add in their place the words "2120 L Street NW.,".

§ 9.35 [Amended]

15. In § 9.35, in paragraph (a)(1), remove the words "1717 H Street, NW.," and add in their place the words "2120 L Street NW.,".

§ 9.107 [Amended]

16. In § 9.107, in paragraph (d)(1), remove the words "1717 H Street, NW.," and add in their place the words "2120 L Street NW.,".

PART 15—DEBT COLLECTION PROCEDURES

17. The authority citation for Part 15 continues to read as follows:

Authority: Sec.161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 15.3 [Amended]

18. In § 15.3, in the second sentence, remove the words "1717 H Street, NW.," and add in their place the words "2120 L Street NW.,".

PART 19—NOTICES, INSTRUCTIONS, AND REPORTS TO WORKERS: INSPECTIONS

19. The authority citation for Part 19 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 19.5 [Amended]

20. In § 19.5, remove the words "1717 H Street, NW.," and add in their place the words "2120 L Street NW.,".

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

21. The authority citation for Part 20 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 20.7 [Amended]

22. In § 20.7, remove the words "1717 H Street, NW.," and add in their place the words "2120 L Street NW.,".

PART 21—REPORTING OF DEFECTS AND NONCOMPLIANCE

23. The authority citation for Part 21 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841)

§ 21.5 [Amended]

24. In § 21.5, remove the words "1717 H Street, NW.," and add in their place the words "2120 L Street NW.,".

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

25. The authority citation for Part 30 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 30.6 [Amended]

26. In § 30.6 paragraph (a)(2)(i), remove the words "1717 H Street, NW.," and add in their place the words "2120 L Street NW.,".

PART 35—MEDICAL USE OF BYPRODUCT MATERIAL

27. The authority citation for Part 35 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 35.632 [Amended]

28. In § 35.632, in paragraph (d), remove the words "1717 H Street, NW.," and add in their place the words "2120 L Street NW.,".

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

29. The authority citation for Part 40 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 40.5 [Amended]

30. In § 40.5, paragraph (a)(2)(i), remove the words "1717 H Street, NW.," and add in their place the words "2120 L Street NW.,".

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

31. The authority citation for Part 50 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 50.34 [Amended]

32. In § 50.34, in paragraph (f)(3)(v)(A)(2) remove the words "1717 H Street, NW.," and add in their place the words "2120 L Street NW.,".

§ 50.44 [Amended]

33. In § 50.44, in paragraph (c)(3)(iv)(C), remove the words "1717 H Street, NW.," and add in their place the words "2120 L Street NW.,".

§ 50.55a [Amended]

34. In § 50.55a, in paragraph (b), remove the words "1717 H Street, NW.," and add in their place the words "2120 L Street NW.,".

Appendix G—[Amended]

35. In Appendix G, in the third undesignated paragraph under I., remove the words "1717 H Street, NW.," and add in their place the words "2120 L Street NW.,".

Appendix H—[Amended]

36. In Appendix H, in the second undesignated paragraph under I., remove the words "1717 H Street, NW.," and add in their place the words "2120 L Street NW.,".

Appendix J—[Amended]

37. In Appendix J, in the first footnote under paragraph III.A.3.(a), remove the words "1717 H Street, NW.," and add in their place the words "2120 L Street NW.,".

Appendix Q—[Amended]

38. In Appendix Q, in paragraph 4, remove the words "1717 H Street, NW.," and add in their place the words "2120 L Street NW.,".

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

39. The authority citation for Part 51 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 51.52 [Amended]

40. In § 51.52, in the first footnote under paragraph (c) Summary Table S–4, remove the words "1717 H Street, NW.," and add in their place the words "2120 L Street NW.,".

§ 51.62 [Amended]

41. In § 51.62, in paragraph (a), remove the words "1717 H Street, NW.," and

add in their place the words "2120 L Street NW.,".

§ 51.120 [Amended]

42. In § 51.120, remove the words "1717 H Street, NW.," and add in their place the words "2120 L Street NW.,".

§ 51.123 [Amended]

43. In § 51.123, in paragraph (a), remove the words "Division of Technical Information and Document Control" and add in their place the words "Division of Information Support Services".

PART 53—[AMENDED]

44. The title of Part 53 is revised to read as follows:

PART 53—CRITERIA AND PROCEDURES FOR DETERMINING THE ADEQUACY OF AVAILABLE SPENT NUCLEAR FUEL STORAGE CAPACITY

45. The authority citation for Part 53 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 53.11 [Amended]

46. In § 53.11, in paragraph (c), remove the words "1717 H Street NW.," and add in their place the words "2120 L Street NW.,".

§ 53.29 [Amended]

47. In § 53.29, in paragraph (c), remove the words "1717 H Street NW.," and add in their place the word "2120 L Street NW.,".

PART 55—OPERATOR'S LICENSES

48. The authority citation for Part 55 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 55.5 [Amended]

49. In § 55.5, paragraph (a)(2)(i), remove the words "1717 H Street NW.," and add in their place the words "2120 L Street NW.,".

§ 55.23 [Amended]

50. In § 55.23, in the introductory text, remove the words "Publication Services Section, Document Management Branch, Division of Technical Information and Document Control, and add in their place the words "Records and Reports Management Branch, Division of Information Support Services,".

§ 55.31 [Amended]

51. In § 55.31, in paragraph (a)(1), remove the words "Publication Services Section, Document Management Branch, Division of Technical Information and Document Control," and add in their place the words "Records and Reports Management Branch, Division of Information Support Services,".

§ 55.45 [Amended]

52. In § 55.45, in paragraph (b)(2)(iii), remove the words "Publication Services Section, Document Management Branch, Division of Technical Information and Document Control," and add in their place the words "Records and Reports Management Branch, Division of Information Support Services,".

PART 60—DISPOSAL OF HIGH-LEVEL WASTES IN GEOLOGICAL REPOSITORIES; LICENSING PROCEDURES

53. The authority citation for Part 60 is revised to read as follows:

Authority: Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246, (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); sec. 121, Pub. L. 97–425, 96 Stat. 2228 (42 U.S.C. 10141).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 60.10, 60.71 to 60.75 are issued under sec. 1610, 68 Stat. 950, as amended (42 U.S.C. 2201)(o)).

§ 60.2 [Amended]

54. In § 60.2, in the definition for "Public Document Room", remove the words "1717 H Street NW.," and add in their place the words "2120 L Street NW.,".

§ 60.4 [Amended]

55. In § 60.4, second sentence, remove the words "1717 H Street NW.," and add in their place the words "2120 L Street NW.,".

PART 61—LICENSING REQUIREMENTS FOR LAND DISPOSAL OF RADIOACTIVE WASTE

56. The authority citation for Part 61 is revised to read as follows:

Authority: Secs. 53, 57, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246, (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); Tables 1 and 2, §§ 61.3, 61.24, 61.25, 61.27(a), 61.41 through 61.43, 61.52, 61.53, 61.55, 61.56, and 61.61 through 61.63 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201)(b)); §§ 61.9a, 61.10 through 61.16, 61.24 and 61.80 are issued under sec. 1610, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

§ 61.4 [Amended]

57. In § 61.4, second sentence, remove the words "1717 H Street, NW.," and add in their place the words "2120 L Street NW.,".

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

58. The authority citation for Part 70 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 70.5 [Amended]

59. In § 70.5, in paragraph (a)(2)(i), remove the words "1717 H Street, NW.," and add in their place the words "2120 L Street NW.,".

PART 71—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

60. The authority citation for Part 71 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 71.1 [Amended]

61. In § 71.1, remove the words "1717 H Street, NW.," and add in their place the words "2120 L Street NW.,".

PART 72—LICENSING REQUIREMENTS FOR THE STORAGE OF SPENT FUEL IN AN INDEPENDENT SPENT FUEL STORAGE INSTALLATION (ISFSI)

62. The authority citation for Part 72 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 72.4 [Amended]

63. In § 72.4, second sentence, remove the words "1717 H Street, NW.," and add in their place the words "2120 L Street NW.,".

§ 72.16 [Amended]

64. In § 72.16, second sentence in paragraph (a), remove the words "1717 H Street, NW.," and add in their place the words "2120 L Street NW.,".

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

65. The authority citation for Part 73 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 73.4 [Amended]

66. In § 73.4, remove the words "1717 H Street, NW.," and add in their place the words "2120 L Street NW.,".

PART 74—MATERIAL CONTROL AND ACCOUNTING OF SPECIAL NUCLEAR MATERIAL

67. The authority citation for Part 74 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 74.5 [Amended]

68. In § 74.5, paragraph (b)(1), remove the words "1717 H Street NW.," and add in their place the words "2120 L Street NW.,".

PART 75—SAFEGUARDS ON NUCLEAR MATERIAL—IMPLEMENTATION OF US/IAEA AGREEMENT

69. The authority citation for Part 75 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 75.2 [Amended]

70. In § 75.2, in paragraph (b), remove the words "1717 H Street, NW.," and add in their place the words "2120 L Street NW.,".

§ 75.6 [Amended]

71. In § 75.6, paragraph (c), remove the words "1717 H Street NW.," and add in their place the words "2120 L Street NW.,".

PART 81—STANDARD SPECIFICATIONS FOR THE GRANTING OF PATENT LICENSES

72. The authority citation for Part 81 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 81.3 [Amended]

73. In § 81.3, second sentence, remove the words "1717 H Street NW.," and add in their place the words "2120 L Street NW.,".

PART 100—REACTOR SITE CRITERIA

74. The authority citation for Part 100 is revised to read as follows:

Authority: Secs. 103, 104 161, 182, 68 Stat. 936, 937, 948, 953, as amended (42 U.S.C. 2133, 2134, 2201, 2232); sec. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

§ 100.11 [Amended]

75. In § 100.11, in the Note under paragraph (b)(3), in the second complete undesignated paragraph, remove the words "1717 H Street, NW.," and add in their place the words "2120 L Street NW.,".

PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

76. The authority citation for Part 110 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 110.2 [Amended]

77. In § 110.2, in the definition for "Public Document Room", remove the words "1717 H Street NW.," and add in their place the words "2120 L Street NW.,".

PART 140—FINANCIAL PROTECTION REQUIREMENTS AND INDEMNITY AGREEMENTS

78. The authority citation for Part 140 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 140.5 [Amended]

79. In § 140.5, second sentence, remove the words "1717 H Street NW.," and add in their place the words "2120 L Street NW.,".

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

80. The authority citation for Part 150 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 150.4 [Amended]

81. In § 150.4, second sentence, remove the words "1717 H Street NW.," and add in their place words "2120 L Street NW.,".

PART 170—FEES FOR FACILITIES AND MATERIALS LICENSES AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

82. The authority citation for Part 170 continues to read as follows:

Authority: 31 U.S.C. 9701, 96 Stat. 1051; sec. 301, Pub. L. 92-314, 86 Stat. 222 (42 U.S.C. 2201(w)); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 170.5 [Amended]

83. In § 170.5, second sentence, remove the words "1717 H Street NW.," and add in their place the words "2120 L Street NW.,".

PART 171—ANNUAL FEE FOR POWER REACTOR OPERATING LICENSES

84. The authority citation for Part 171 is revised to read as follows:

Authority: Sec. 7601, Pub. L. 99-272, 100 Stat. 146; sec. 301, Pub. L. 92-314, 86 Stat. 222, (42 U.S.C. 2201(w)); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 171.9 [Amended]

85. In § 171.9, second sentence, remove the words "1717 H Street NW.," and add in their place the words "2120 L Street NW.,".

Dated at Rockville, Maryland, this 14th day of October 1988.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 88-24742 Filed 10-26-88; 8:45 am]

BILLING CODE 7590-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Modification of Size Standards for Research and Development on Aircraft; Aircraft Parts; Aircraft Engines; Guided Missiles and Space Vehicles, Their Parts, Auxiliary Equipment, Propulsion Units and Propulsion Unit Parts

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: The SBA is modifying the size standards applicable to firms engaged in research and development (R&D) for aircraft; aircraft parts; aircraft engines; guided missiles and space vehicles, their parts, propulsion units and propulsion unit parts, and their auxiliary equipment to conform with the size standards for these services in existence prior to January 1, 1987. Due to a reassignment in the Standard Industrial Classification (SIC) System by the Office of Management and Budget (OMB), these services became subject to a much lower size standard. The standards are being reinstated by this rule because the contractual requirements for these services necessitate a higher size than that for other types of research and development.

This final rule establishes a size standard of 1,500 employees for aircraft

research and development, and a size standard of 1,000 employees for all other aforementioned research and development within SIC code 8731 (Commercial Physical and Biological Research). These size standards are the same standards for similar R&D activities within the manufacturing SIC codes 3721, 3724, 3728, 3761, 3764, and 3769.

DATE EFFECTIVE: October 27, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Norman Salenger, Size Standards Staff, (202) 653-6373.

SUPPLEMENTARY INFORMATION: Effective January 1, 1987, the Office of Management and Budget (OMB) revised the Standard Industrial Classification (SIC) System and, at that time, published the industry titles with a limited description for most industries. The SBA issued an emergency interim rule, effective January 1, 1987, to set size standards for the revised SIC system.

In its notice of January 6, 1987, SBA stated that the modification was "to make its size standards compatible with the new SIC system, not to initiate any size standard changes" (52 FR 397). In September 1987, the SIC Manual was published describing each SIC industry in greater detail. At that time, it first became generally known that research and development (R&D) on aircraft; aircraft engines; aircraft parts; guided missiles and space vehicles, their propulsion units, parts and auxiliary equipment had been partially reclassified. When a firm performs such R&D, but is not a manufacturer of these items, the firm is no longer classified along with manufacturing firms under the manufacturing SIC codes 3721, 3724, 3728, 3761, 3764, and 3769 (which have a 1,500-employee size standard for aircraft (SIC code 3721) and a 1,000-employee size standard for the others), but is classified under SIC code 8731, Commercial Physical and Biological Research, which has a 500-employee size standard.

This reassignment by OMB of these activities inadvertently changed the size standards on small business set-aside contracts for the aforementioned R&D services. Under § 121.3(b)(1) of the SBA's size regulations, a size standard for a procurement is selected from the SIC industry category most closely associated with the product or service being procured. Consequently, the reclassification of nonmanufacturing aircraft, guided missile and space vehicle R&D firms to a service industry division also changed the SIC designation for such R&D contracts to the service SIC code 8731 with its lower size standard of 500 employees. The lower size standard applies to any firm bidding on such R&D contracts, irrespective of whether the firm is primarily a manufacturer or nonmanufacturer. The reclassification of nonmanufacturing firms to a service industry with a lower size standard than the previously applicable manufacturing industry also effects their eligibility for assistance through other SBA programs, such as the direct and guarantee financial assistance programs. Since the comment period for the January 6, 1987, Emergency Interim Rule ended on March 9, 1987, and the SIC Manual indicating the reclassification of firms engaged in R&D activities from their former SIC codes was first published in September 1987, the affected firms did not have adequate opportunity to comment on the new size standard.

The SBA received numerous complaints from affected firms and Federal agencies concerning the adverse effect of the lowering of the size standard for these activities. The size of many firms active in Federal procurement of R&D on aircraft, guided missiles, space vehicles, and related equipments falls between the current and previous size standards. Firms above the 500-employee size standard were not given an opportunity to provide SBA with information on the appropriateness of retaining higher size standards. Federal agencies were particularly concerned about the feasibility of continuing to set aside these types of R&D procurements at the 500-employee size standard.

As a result of these complaints and concerns, the SBA published in the **Federal Register**, on March 30, 1988, an emergency interim final rule to restore, on a temporary basis, the size standards applicable prior to the SIC revision of these R&D activities. This interim rule provided for a 60-day comment period so that interested parties could express their views and provide information on the suitability of the interim size standards or the suitability of adopting the size standard of 500 employees for these services, the same as applicable to R&D contracts for other services within SIC code 8731.

A total of 10 comments was received, seven from firms, one from an association, and two from Federal Government agencies. Six firms supported the interim size standards of 1,000 and 1,500 employees. Five of the six firms stated reasons for supporting a higher standard, but did not provide data or other information to substantiate their position. One firm failed to give a reason for its support of the higher standards.

Two firms said that the R&D contracts in the affected fields require personnel with numerous technical disciplines in order to compete with large firms. One firm stated that the Government is issuing more umbrella type contracts which require firms to hire additional employees to be able to perform on the contracts. Two firms and one association supported the interim standard, citing only that the SIC reclassification resulted in an inadvertent size standard reduction.

Comments from two Air Force agencies were in support of the interim standards. The Air Force Ballistic Missile Office, headquartered at Norton Air Force Base, said that firms with less than 500 employees have difficulty demonstrating an ability to successfully compete for efforts of such magnitude as their R&D contracts. Also, it said that at a 1,000-employee size standard a small R&D firm has the opportunity to compete and survive against major aerospace firms. The Air Force Space Division commented that a 1,000-employee threshold for R&D on space systems and boosters is the minimum standard that allows participation by small businesses as prime contractors and that allows them to perform at least 50 percent of the effort with their own work force (Section 921(c) of Pub. L. 99-591 requires that at least 50 percent of the effort on a service contract be performed by the contractor's own work force). The Space Division said that, recently, three projects totaling $102 million would not have been set aside for small business if not for the 1,000-employee size standard.

One respondent opposed adopting the size standards of 1,000 and 1,500 employees for the subject R&D. The comment came from a large R&D firm with the argument that R&D contracts for aerospace issued under SIC code 8731 are closely related to engineering services for aerospace under SIC code 8711. It stated that procurements under both SICs require similar skills and often comparable facilities and that often the same firm receives contracts under both SIC classifications. It pointed out that a firm with 500 employees would have approximately $24 million in revenue, almost twice that of the size standard of $13.5 million for SIC code 8711. To raise the size standard for SIC code 8731 contracts in these fields to 1,000 or 1,500 employees would widen the gap which it argued is already inequitable. It further argued that firms of less than 500 employees are already at a great disadvantage when forced to compete with firms two or three times their size and that SBA's assistance

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should be directed at these smaller firms.

Based on our analysis of all comments, it is the position of the SBA that a 500-employee size standard would not be sufficient to meet the requirements for contracts for R&D in the aircraft, missile and space fields. A requirement necessary for all contracts set aside for small business is that there be at least two responsive bidders, capable of performing the work at reasonable prices. Furthermore, section 921(c) of Pub. L. 98–591 requires that on service contracts (R&D is a service) at least 50 percent of the effort must be by the prime contractor's own work force. The comments indicate that a 1,000-employee size standard is appropriate for R&D in the missile and space fields. No comment specifically addressed the need for a 1,500-employee size standard for aircraft R&D. However, R&D firms in this activity face the same problems discussed by firms involved in guided missile and space vehicle R&D. In response to the one comment that firms with a R&D capability also do the less complicated engineering work, Federal data show the scope of R&D contracts to be substantially larger than for engineering services. For example, in fiscal year 1987 the average size R&D contract awarded was $37,076,000 for aircraft and $16,483,000 for guided missiles, space vehicles and related items. These contracts are significantly larger than contracts for military equipment and weapons and aerospace equipment engineering which average $1,437,000. Thus a larger size standard is supported for R&D work as opposed to engineering. In addition, the size standard applicable to any service contract is for the services being procured and is not based on the variety of services any contractor can supply. It is the responsibility of the contracting officer to properly classify the contract as R&D or as engineering services, as the case may be. Should a misclassification occur, it can be corrected through the established appeal procedure.

Supportive of the restoration of the 1,000 and 1,500-employee size standards are data on Federal procurements for fiscal years 1986 and 1987. These data show that under the size standards of 1,500 employees for aircraft R&D and 1,000 employees for missile and space R&D less than 4 percent of the total contract dollars was awarded to small business. Of that awarded to small business, slightly over 80 percent was through set-aside and 8(a) procurements. The percentage of small firm participation is low enough to indicate that a size standard of 500 employees would eliminate a substantial portion of these small R&D firms as sources for Federal procurements and reduce the small business share from the already low 4 percent. Currently, the Congress has expressed interest in small business increasing its participation in industries where low participation rates prevail. Implementing the higher R&D size standards will ensure that small business participation will continue in the R&D field. Procurement data for fiscal years 1986 and 1987, during which the 1,500 and 1,000-employee size standard was in affect, are shown on the following tables.

TABLE 1.—RESEARCH AND DEVELOPMENT PROCUREMENTS FOR AIRCRAFT, MISSILE AND SPACE SYSTEMS

[Thousands of dollars]

	Total procurement	From small business	Small business set-asides	8(a) contracts
Aircraft R&D:				
FY 1986	$2,030,794	$11,366	$3,017	$842
FY 1987	3,370,935	20,756	8,178	0
Missile and Space R&D:				
FY 1986	5,313,696	173,659	80,975	24,219
FY 1987	5,847,562	229,657	101,288	45,248

Source: Federal Procurement Data Center (FPDC).

TABLE 2.—SMALL BUSINESS PERCENTAGE OF ALL PROCUREMENTS

	Aircraft R&D, Percent	Missile and space R&D, Percent
FY 1986	0.38	3.27
FY 1987	0.62	3.86

Source: FPDC.

TABLE 3.—SET-ASIDE AND 8(a) PERCENTAGE OF SMALL BUSINESS SHARE

	Aircraft R&D, Percent	Missile and space R&D, Percent
FY 1986	31.86	68.57
FY 1987	29.72	66.06

Source: FPDC.

Compliance With Executive Order 12291, Regulatory Flexibility Act and Paperwork Reduction Act

This final rule defines which firms engaged in research and development work in the aircraft, missile and space fields are eligible to receive SBA's assistance, including eligibility to bid on Federal contracts set aside for exclusive small business bidding. SBA has determined that this regulation is a major rule as defined by Executive Order 12291, because it could have an economic impact of $100 million or more per year. This impact is due to the potential awards of over $100 million in total value to one group of firms instead of another group of firms. Because of the absence of statistics below the four-digit SIC level, summary data on R&D firms cannot be presented. The following discussion analyzes the impact on procurement and financial assistance programs of the restored size standards.

This regulation restores the size definition of a small R&D firm engaged in aircraft, space and missile R&D to the same size definition that existed prior to the 1987 revision of the SIC manual. As a result of that 1987 revision, these firms were shifted to an industry with a lower size standard. Thus those firms with over 500 employees no longer were eligible to bid on contracts set aside for small business. The benefits to restoring the previous size standards can be assessed in terms of contract awards reserved for small business. In FY 1987 there were $107,664,000 worth of contracts awarded to small firms for aircraft, space and missile R&D through the set-aside program. Additionally, this size standard also affects the eligibility of small firms owned by socially and economically disadvantaged persons in SBA's 8(a) program. In FY 1987, there were $48,248,000 in contracts for the subject R&D awarded through the 8(a) program.

The supplementary information above describes why this action is being taken as it applies to Federal procurements. This rule also applies to eligibility for SBA's financial assistance. However, the impact of the change on financial assistance is estimated to be none because of two factors. SBA's loan limit is $500,000 to any firm and the firm must not be able to obtain financing from conventional sources. As a result of these two restrictions, very few, if any, loans are made in any year to firms in any industry with 500 or more employees. In FY 1987, 98.8 percent of the firms that received an SBA loan had less than 100 employees. It is very unlikely that any R&D firm of over 500 employees would receive an SBA's loan in any year.

SBA certifies that this rule would not be likely to result in a major increase in costs or prices to the Federal government or the firms involved, nor would it have a significant adverse effect on the United States economy.

SBA certifies that this rule would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* According to the United States Establishment and Enterprise Microdata File (USEEM), there are nine R&D firms with 500 to 999 employees. Additionally, there is only a small number of other firms, primarily in the manufacturing industries, with a capability for R&D on aircraft, space vehicles and guided missiles that would lose eligibility as a small business without this rule. The available data do not permit the exact number of the latter to be ascertained.

The legal basis for this final rule in sections 3(a) and 5(b)(6) of the Small Business Act, 15 U.S.C. 632(a) and 634(b)(6). There are no Federal rules which will duplicate, overlap or conflict with this final rule.

SBA certifies that this rule contains no reporting or recordkeeping requirements which are subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs-business, Loan programs-business, Recording and recordkeeping requirement, Small business.

Accordingly, Part 121 of 13 CFR is amended as follows:

PART 121—[AMENDED]

1. The authority citation for Part 121 continues to read as follows:

Authority: Secs.3(a) and 5(b)(6) of the Small Business Act, 15 U.S.C. 632(a) and 634(b)(6), and Public Laws 98-591 and 98-577.

§ 121.2 [Amended]

2. Table 2 in § 121.2(d)(2) is amended by revising the column headings and revising SIC code 8731 under "Major Group 87—Miscellaneous Services" to read as follows:

SIC ("=New SIC Code in 1987, Not Used in 1972)	Description [U.S.C.—Not elsewhere classified]	Size standards in number of employees or millions of dollars
8731*[19]	Commercial Physical and Biological Research	
	Aircraft	1,500
	Aircraft Parts and Auxiliary Equipment, Aircraft Engines and Engines Parts	1,000
	Space Vehicles and Guided Missiles, their Propulsion Units, their Propulsion Unit Parts, and their Auxiliary Equipment and Parts	1,000
	Other Commercial Physical and Biological Research	500

3. Footnote 19 in § 121.2 is revised to read as follows:

[19] SIC–8731: For research and development contracts requiring the delivery of a manufactured product, the appropriate size standard to use is that of the manufacturing industry in which the specific product is classified.

Research and development, as defined in the SIC Manual, means laboratory or other physical research and development on a contract or fee basis. Research and development for purposes of size determinations does not include the following: Economic, educational, engineering, operations, systems, or other nonphysical research or computer programming, data processing, commercial and/or medical laboratory testing.

For purposes of the Small Business Innovation and Research (SBIR) program, SBA has adopted a different definition. See § 121.7 of these regulations.

Research and development for guided missiles and space vehicles includes evaluation and simulation, and other services requiring thorough knowledge of complete missiles and spacecraft.

James Abdnor,

Administrator, U.S. Small Business Administration.

Date: August 23, 1988.

[FR Doc. 88–24662 Filed 10–26–88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-ANM-7]

Alteration of Transition Area; Laramie, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action provides controlled airspace for aircraft executing a new instrument approach procedure to the General Breese Field, Laramie, Wyoming. This action does not change the existing 700 foot transition area. The area will be depicted on aeronautical charts for pilot reference, and is intended to segregate aircraft operating in Instrument Flight Rules conditions from other aircraft which are operating in Visual Flight Rules conditions.

EFFECTIVE DATE: 0901 U.T.C. December 15, 1988.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM–535, Federal Aviation Administration, Docket No. 88–ANM–7, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168; Telephone: (206) 431–2536.

SUPPLEMENTARY INFORMATION:

History

On July 6, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by amending the Laramie, Wyoming Transition Area (53 FR 25346).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations provides additional controlled airspace in the Laramie, Wyoming transition area. The additional area is needed to encompass a new approach procedure to General Breese Field, Wyoming. The area will be depicted on aeronautical charts for pilot reference enabling pilots to remain clear of controlled airspace or otherwise comply with Instrument Flight Rules.

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The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current.

It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Laramie, Wyoming [Amended]

On the seventh line after "VORTAC", add the following description: ° ° ° that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at Latitude 41°53'00" N., Longitude 105°51'00" W.; to Latitude 41°53'00" N., Longitude 105°08'00" W.; to Latitude 41°13'00" N., Longitude 105°08'00" W.; to Latitude 41°13'00" N., to Longitude 105°51'00" W.; thence to point of beginning excluding all other controlled airspace which overlaps.

Issued in Seattle, Washington, on October [illegible], 1988.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 88-24804 Filed 10-26-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 25725; Amdt. No. 1385]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated in SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS-230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may requie making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria

contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Oreder 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Robert L. Goodrich,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective December 15, 1988

Cordova, AK—Cordova-Mile 13, ILS/DME RWY 27, Amdt. 7
West Palm Beach, FL—Palm Beach Intl, VOR RWY 31, Amdt. 2
Rome, GA—Richard B. Russell, VOR/DME RWY 1, Amdt. 7
Rome, GA—Richard B. Russell, VOR/DME RWY 19, Amdt. 6
Rome, GA—Richard B. Russell, LOC/DME RWY 1, Amdt. 2
Rome, GA—Richard B. Russell, NDB-A, Amdt. 5
Mount Carmel, IL—Mount Carmel Muni., VOR RWY 22, Amdt. 6
Mount Carmel, IL—Mount Carmel Muni., NDB RWY 4, Amdt. 2
Pickneyville, IL—Pickneyville-Du Quoin, NDB RWY 18, Amdt. 1
Lafayette, IN—Purdue University, RNAV TWY 28, Amdt. 4
Grinnell, IA—Grinnell Municipal, NDB RWY 13, Orig.
Grinnell, IA—Grinnell Municipal, NDB RWY 31, Orig.
Grinnell, IA—Grinnell Municipal, VOR/DME RWY 31, Amdt. 1
Martha's Vineyard, MA—Martha's Vineyard, VOR RWY 24, Amdt. 12
Detroit, MI—Detroit Metropolitan Wayne County, VOR RWY 9, Amdt. 12, CANCELLED
Iron Mountain/Kingsford, MI—Ford, VOR RWY 1, Amdt. 11
Iron Mountain/Kingsford, MI—Ford, VOR/DME RWY 1, Orig., CANCELLED
Iron Mountain/Kingsford, MI—Ford, VOR RWY 19, Amdt. 5, CANCELLED
Iron Mountain/Kingsford, MI—Ford, VOR/DME RWY 19, Orig., CANCELLED
Iron Mountain/Kingsford, MI—Ford, VOR RWY 31, Amdt. 13
Iron Mountain/Kingsford, MI—Ford, VOR/DME RWY 31, Orig., CANCELLED
Iron Mountain/Kingsford, MI—Ford—LOC/DME BC RWY 19, Amdt. 9
Iron Mountain/Kingsford, MI—Ford, ILS RWY 1, Amdt. 8
Jackson, MI—Jackson County-Reynolds Field, VOR RWY 6, Amdt. 16
Jackson, MI—Jackson County-Reynolds Field, VOR RWY 14, Amdt. 17
Jackson, MI—Jackson County-Reynolds Field, VOR RWY 24, Amdt. 19
Jackson, MI—Jackson County-Reynolds Field, VOR RWY 32, Amdt. 16
Jackson, MI—Jackson County-Reynolds Field, NDB RWY 24, Amdt. 12
Jackson, MI—Jackson County-Reynolds Field, ILS RWY 24, Amdt. 12
Minneapolis, MN—Minneapolis-St. Paul Intl/Wold-Chamberlain, ILS RWY 11L, Amdt. 1
Fairmont, NE—Fairmont State Airfield, NDB RWY 35, Orig.
Sidney, NE—Sidney Muni, VOR RWY 12, Amdt. 5
Sidney, NE—Sidney Muni, VOR/DME or TACAN RWY 12, Amdt. 2
Sidney, NE—Sidney Muni, VOR RWY 30, Amdt. 5
Sidney, NE—Sidney Muni, VOR/DME or TACAN RWY 30, Amdt. 2
Wayne, NE—Wayne Muni, NDB RWY 22, Amdt. 3
Rock Hill, SC—Rock Hill Muni/Bryant Field, NDB-C, Amdt. 4
College Station, TX—Easterwood Field, VOR or TACAN RWY 10, Amdt. 16
College Station, TX—Easterwood Field, VOR RWY 28, Amdt. 8
College Station, TX—Easterwood Field, LOC BC RWY 16, Amdt. 2
College Station, TX—Easterwood Field, NDB RWY 34, Amdt. 8
College Station, TX—Easterwood Field, ILS RWY 34, Amdt. 8
Madison, WI—Morey, RNAV RWY 12, Amdt. 3

. . . Effective November 17, 1988

Siloam Springs, AR—Smith Field, RNAV RWY 18, Orig.
Cleveland, OH—Cleveland-Hopkins Intl, NDB RWY 5L, Amdt. 2
Cleveland, OH—Cleveland-Hopkins Intl, NDB RWY 5R, Amdt. 3
Cleveland, OH—Cleveland-Hopkins Intl, ILS RWY 5R, Amdt. 13
Cleveland, OH—Cleveland-Hopkins Intl, ILS RWY 23L, Amdt. 13
Indianapolis, IN—Indianapolis Terry, ILS RWY 36, Amdt. 3
Augusta, ME—Augusta State, NDB-B, Amdt. 7, CANCELLED
Southbridge, MA—Southbridge Muni, VOR-A, Amdt. 2, CANCELLED

. . . Effective October 5, 1988

Covington, GA—Covington Muni, VOR/DME RWY 9, Amdt. 2

The FAA published an Amendment in Docket No. 25711, Amdt. No. 1384 to Part 97 of the Federal Aviation Regulations (VOL 53 FR No. 195 Page 39453; dated Friday October 7, 1988) under Section 97.27 effective December 15, 1988, which is hereby amended as follows:

Ottawa, OH—Putnam County, NDB RWY 27, Amdt. 8 CANCELLED
Wadsworth, OH—Wadsworth Muni, NDB RWY 2, Amdt. 2, effective date should read November 17, 1988

[FR Doc. 88-24805 Filed 10-26-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 773 and 799

[Docket No. 80063-8162]

Computers; Exports Under Special Licenses

AGENCY: Bureau of Export Administration, U.S. Department of Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration is amending the processing data rates (PDR) for electronic computers that may be exported to certain countries under the Distribution License (DL) procedure.

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This final rule changes the current maximum PDR for computers that may be shipped under the DL to destinations in countries listed in Supplement Nos. 2 or 8 to Part 773 from 1000 to 2000 million bits per second. It also changes the maximum PDR for destinations listed in Supplement No. 3 to Part 773 from 250 million bits per second (with case-by-case approval for individual requests up to a PDR of 500 million bits per second) to a PDR of 500 million bits per second.

Formerly, for destinations in countries not listed in Supplement Nos. 2, 3, or 8 to Part 773, the DL authorized shipments of computers having a *floating point* PDR of 20 million bits per second or less. This final rule establishes a new maximum limit of a *total* PDR of 200 million bits per second for shipments of computers under the Distribution License to these countries.

The new PDR levels are established to maintain consistency with other licensing policies and to increase the use of the Distribution License by increasing the thresholds for computer eligibility consistent with nuclear non-proliferation concerns and other export control requirements. Moreover, this change is consistent with the continuing initiative by the Department of Commerce to reform the U.S. export control system and ensure that export licensing requirements are justified in light of escalating worldwide levels of computer technology and ever growing foreign availability of computers.

Finally, this rule removes the prohibition against exporting electronic computers under the Project License procedure to conform with the Office of Export Licensing's practice of routinely waiving this prohibition.

EFFECTIVE DATE: This rule is effective October 27, 1988.

FOR FURTHER INFORMATION CONTACT: Eileen Albanese, Special Licensing Division, Bureau of Export Administration, Telephone: (202) 377-3287.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under Control Numbers 0694-0002, 0694-0003, and 0694-0010.

3. This final rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Section 13(a) of the Export Administration Act of 1979, as amended (EAA) (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

5. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Willard Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Parts 773 and 799

Exports, Reporting and recordkeeping requirements.

Accordingly, Parts 773 and 799 of the Export Administration Regulations are amended as follows:

1. The authority citation for 15 CFR Parts 773 and 799 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

PART 773—[AMENDED]

§ 773.3 [Amended]

2. In § 773.3, paragraphs (d)(4) and (l)(4)(ix) are removed.

3. In Supplement No. 1 to Part 773, footnotes 8, 9, and 10 are removed, footnote 11 is redesignated as footnote 8, the first 1565 entry immediately following the 1555 entry is revised to read as set forth below, and the second 1565 entry is removed.

Supplement No. 1 to Part 773—Commodities Excluded From Certain Special License Procedures

* * * * *

1565 Electronic computers exceeding the following specified limits for the following destinations. This includes any device, apparatus, or accessory that upgrades an electronic computer to exceed the following limits.

A. *Destinations listed in Supplement Nos. 2 and 8 to Part 773.* A "total processing data rate" of 2000 million bits per second;

B. *Destinations listed in Supplement No. 3 to Part 773.* A "total processing data rate" of 500 million bits per second;

C. *Destinations not listed in Supplement Nos. 2, 3, or 8 to Part 773.* A "total processing data rate" of 200 million bits per second.

* * * * *

PART 799—[AMENDED]

Supplement No. 1 to § 799.1—[Amended]

4. In Supplement No. 1 to Part 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1565A, the *Special Licenses Available* paragraph is revised to read as set forth below and the two Notes between the *Technical Data* paragraph and the *GFW Eligibility* paragraph are removed.

1565A Electronic computers, "related equipment," equipment or systems containing electronic computers, and specifically designed components and accessories.

Special Licenses Available: None available for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 778.18(c)). Under the Distribution License procedure, electronic computers having a total processing data rate of 2000 million bits per second or less may be exported to approved destinations listed in Supplement Nos. 2 or 8 to Part 773; electronic computers having a total processing data rate of 500 million bits per second or less may be exported to approved destinations listed in Supplement No. 3 to Part 773; and electronic computers having a total processing data rate of 200 million bits per second or less may be exported to any other approved destinations. The Service Supply License procedure may be used to service electronic computers that do not exceed the limits for the specific destinations listed above as eligibile for the Distribution License.

* * * * *

Supplement No. 1 to § 799.2—[Amended]

5. In Supplement No. 1 to § 799.2, Interpretation No. 1, in paragraphs (b)(1) and (2) the number "1000" is revised to red "2000", in paragraph (b)(3) the number "250" is revised to read "500", and in paragraph (b)(4) the words "floating point" are revised to read "total".

Dated: October 21, 1988.

Michael T. Zacharia,

Assistant Secretary for Export Administration.

[FR Doc. 88-24740 Filed 10-26-88; 8:45 am]

BILLING CODE 3510-DT-M

RAILROAD RETIREMENT BOARD

20 CFR Part 365

Enforcement of Nondiscrimination on the Basis of Handicap in Railroad Retirement Board Programs

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: This regulation provides for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, as it applies to programs or activities conducted by the Railroad Retirement Board. It sets forth standards for what constitutes discrimination on the basis of mental or physical handicap, provides a definition for individual with handicaps and qualified individual with handicaps, and establishes a complaint mechanism for resolving allegations of discrimination. This regulation is issued under the authority of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap in programs or activities conducted by Federal executive agencies.

EFFECTIVE DATE: December 27, 1988.

FOR FURTHER INFORMATION CONTACT: Michael C. Litt, 844 Rush Street, Chicago, Illinois 60611. (312) 751-4929, TDD (312) 751-4660. Copies of this notice will be made available on tape for persons with impaired vision who request them. They may be obtained at the above address.

SUPPLEMENTARY INFORMATION:

Background

The Railroad Retirement Board administers two major programs: It pays retirement and disability benefits under the Railroad Retirement Act (45 U.S.C. 231 *et seq.*) and unemployment and sickness benefits under the Railroad Unemployment Insurance Act (45 U.S.C. 351 *et seq.*). The former replaces the social security system with respect to employees in the railroad industry. The latter replaces various state unemployment compensation laws with respect to employees in the railroad industry. The Board also administers or has administered a number of smaller benefit programs with regard to displaced workers of various bankrupt railroads. The purpose of this rule is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as it applies to programs and activities conducted by the Railroad Retirement Board. Section 504 states, in pertinent part, that:

> No otherwise qualified individual with handicaps in the United States, * * * shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance *or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.*
>
> (29 U.S.C. 794 (1978 amendment italicized).)

On December 16, 1987, the Board published Part 365 as a proposed rule and invited comments for 60 days ending February 16, 1988 (52 FR 47601-47610). The Board received one comment from the Eastern Paralyzed Veterans Association which pointed out that § 365.103 provides that the regulations do not apply to federally assisted programs and consequently, that if the Board administers any such programs, the Board should adopt regulations applying the subject matter of Part 365 to those programs. The Board does not administer any such programs; accordingly, no such regulations are needed.

Section 504 requires that regulations that apply to the programs and activities of Federal Executive agencies shall be submitted to the appropriate authorizing committees of Congress and that such regulations may take effect no earlier than the thirtieth day after they have been so submitted. The Board is submitting this regulation to the Senate Committee on Labor and Human Resources and its Subcommittee on the Handicapped and to the House Committee on Education and Labor and its Subcommittee on Select Education. This regulation will become effective on December 27, 1988.

The substantive nondiscrimination obligations of the agency, as set forth in this rule, are identical, for the most part, to those established by Federal regulations for programs or activities receiving Federal financial assistance. *See* 28 CFR Part 41 (section 504 coordination regulation for federally assisted programs). This general parallelism is in accord with the intent expressed by supporters of the 1978 amendment in floor debate, including its sponsor, Rep. James M. Jeffords, that the Federal Government should have the same section 504 obligations as recipients of Federal financial assistance. 124 Cong. Rec. 13,901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E2668, E2670 (daily ed. May 17, 1978) *id.*; 124 Cong. Rec. 13,897 (remarks of Rep. Brademas); *id.* at 38,552 (remarks of Rep. Sarasin).

There are, however, some language differences between this rule and the Federal Government's section 504 regulations for federally assisted programs. These changes are based on the Supreme Court's decision in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979), and the subsequent circuit court decisions interpreting *Davis* and section 504. *See Dopico* v. *Goldschmidt*, 687 F. 2d 644 (2d Cir. 1982); *American Public Transit Association* v. *Lewis*, 655 F. 2d 1272 (D.C. Cir. 1981) (*APTA*); *see also Rhode Island Handicapped Action Committee* v. *Rhode Island Public Transit Authority*, 718 F. 2d 490 (1st Cir. 1983).

These language differences are also supported by the decision of the Supreme Court in *Alexander* v. *Choate*, 469 U.S. 287 (1985), where the Court held that the regulations for federally assisted programs did not require a recipient to modify its durational limitation on Medicaid coverage of inpatient hospital care for handicapped persons. Clarifying its *Davis* decision, the Court explained that section 504

requires only "reasonable" modifications. *Id.* at 300, and explicitly noted that "[t]he regulations implementing section 504 (for federally assisted programs) are consistent with the view that *reasonable* adjustments in the nature of the benefit offered must at times be made to assure meaningful access" (*id.* at 301 n. 21) (emphasis added).

Incorporation of these changes, therefore, makes this section 504 federally conducted regulation consistent with the Federal Government's section 504 federally assisted regulations as interpreted by the Supreme Court. Many of these federally assisted regulations were issued prior to the judicial interpretations of *Davis*, subsequent lower court cases interpreting *Davis*, and *Alexander;* therefore their language does not reflect the interpretation of section 504 provided by the Supreme Court and by the various circuit courts. Of course, these federally assisted regulations must be interpreted to reflect the holdings of the Federal judiciary. Hence the agency believes that there are no significant differences between this regulation for federally conducted programs and the Federal Government's interpretation of section 504 regulations for federally assisted programs.

This regulation has been reviewed by the Department of Justice. It is an adaptation of a prototype prepared by the Department of Justice under Executive Order 12250 (45 FR 72995, 3 CFR, 1980 Comp., p. 298) and distributed to Executive agencies.

This regulation has also been reviewed by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206).

It is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR, 1981 Comp., p. 127) and, therefore, a regulatory impact analysis has not been prepared.

This regulation does not impose any requirements for information collections within the meaning of the Paperwork Reduction Act.

The Railroad Retirement Board is not an "agency" within the meaning of the Regulatory Flexibility Act and, accordingly, the requirements of that Act are not applicable to the Board.

Section-by-Section Analysis

Section 365.101 Purpose.

Section 365.101 states the purpose of the rule, which is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

Section 365.102 Application.

This regulation applies to all programs or activities conducted by the agency. Under this section, a federally conducted program or activity is, in simple terms, anything a Federal agency does. Aside from employment, there are two major categories of federally conducted programs or activities covered by this regulation: Those involving general public contact as part of ongoing agency operations and those directly administered by the agency for program beneficiaries and participants. Activities in the first category include communication with the public (telephone contacts, office walk-ins, or interviews) and the public's use of the agency's facilities. Activities in the second category include programs that provide Federal services or benefits. This regulation does not, however, apply to programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

Section 365.103 Definitions.

"Agency." For purposes of this regulation "agency" means the Railroad Retirement Board.

"Assistant Attorney General." "Assistant Attorney General" refers to the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids." "Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in an enjoy the benefits of the agency's programs or activities. The definition provides examples of commonly used auxiliary aids. Although auxiliary aids are required explicitly only by § 365.160(a)(1), they may also be necessary to meet other requirements.

"Board" Board means the three-member governing body of the agency. See §§ 365.170(i) and 365.170(j), 45 U.S.C. 231f(a).

"Chief Executive Officer." The Chief Executive Officer is the chief operating officer of the agency.

"Complete complaint." "Complete complaint" is defined to include all the information necessary to enable the agency to investigate the complaint. The definition is necessary because the 120 day period for the agency's investigation (see § 365.170(g)) begins when the agency receives a complete complaint.

"Facility." The definition of "facility" is similar to that in the section 504 coordination regulation for federally assisted programs, 28 CFR 41.3(f), except that the term "rolling stock or other conveyances" has been added and the phrase "or interest in such property" has been deleted to clarify its coverage. The phrase, "or interest in such property," is deleted because the term "facility," as used in this regulation, refers to structures and not to intangible property rights. It should, however, be noted that the regulation applies to all programs and activities conducted by the agency regardless of whether the facility in which they are conducted is owned, leased, or used on some other basis by the agency. The term "facility" is used in §§ 365.149, 365.150, and 365.170(f).

"Individual with handicaps." The definition of "individual with handicaps" is identical to the definition of "handicapped person" appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.31). Although section 103(d) of the Rehabilitation Act Amendments of 1986 changed the statutory term "handicapped individual" to "individual with handicaps," the legislative history of this amendment indicates that no substantive change was intended. Thus, although the term has been changed in this regulation to be consistent with the statute as amended, the definition is unchanged. In particular, although the term as revised refers to "handicaps" in the plural, it does not exclude persons who have only one handicap.

"Qualified individual with handicaps." The definition of "qualified individual with handicaps" follows the definition of "qualified handicapped person" with respect to services that appears in the section 504 coordination regulation for federally assisted programs (28 CFR 41.32).

Under this definition a qualified individual with handicaps is an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits under a program or activity administered by the Board.

Paragraph (2) of this definition explains that "qualified individual with handicaps" means "qualified handicapped person" as the term is defined for purposes of employment in the Equal Employment Opportunity Commission's regulation at 29 CFR 1613.702(f), which is made applicable to this part by § 365.140. Nothing in this part changes existing regulations applicable to employment

"Section 504." This definition makes clear that, as used in this regulation, "section 504" applies only to programs or activities conducted by the agency and not to programs or activities to which it provides Federal financial assistance.

Section 365.110 Self-evaluation.

The agency shall conduct a self-evaluation of its compliance with section 504 within one year of the effective date of this regulation. The self-evalution requirement is present in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.5(b)(2)). Experience has demonstrated the self-evaluation process to be a valuable means of establishing a working relationship with individuals with handicaps that promotes both effective and efficient implementation of section 504.

Section 365.111 Notice.

Section 365.111 requires the agency to disseminate sufficient information to employees, applicants, participants, beneficiaries, and other interested persons to apprise them of the rights and protections afforded by section 504 and this regulation. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe the agency's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio.

Section 365.130 General prohibitions against discrimination.

Section 365.130 is an adaptation of the corresponding section of the section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.51).

Paragraph (a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in § 365.130 establish the general principles for analyzing whether any particular action of the agency violates this mandate. These principles serve as the analytical foundation for the remaining sections of the regulation. If the agency violates a provision in any of the subsequent sections, it will also have violated one of the general prohibitions found in § 365.130. When there is no applicable subsequent provision, the general prohibitions stated in this section apply.

Paragraph (b) prohibits overt denials of equal treatment of individuals with handicaps. The agency may not refuse to provide an individual with handicaps with an equal opportunity to participate in or benefit from its programs simply because the person is handicapped. The agency must pay benefits under the entitlement programs it administers to any individual who meets the statutory requirements for those programs. The agency may not afford an individual with handicaps access to assistance in obtaining benefits under any program which it administers that is not equal to the access afforded to others.

Paragraph (b)(1)(iii) requires that the opportunity to participate or benefit afforded to an individual with handicaps be as effective as that afforded to others. The later sections on program accessibility (§§ 365.149–365.151) and communications (§ 365.160) are specific applications of this principle.

Despite the mandate of paragraph (d) that the agency administer its programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps, paragraph (b)(1)(iv), in conjunction with paragraph (d), permits the agency to develop separate or different aids, benefits, or services when necessary to provide individuals with handicaps with an equal opportunity to participate in or benefit from the agency's programs or activities. Paragraph (b)(1)(iv) requires that different or separate aids, benefits, or services be provided only when necessary to ensure that the aids, benefits, or services are as effective as those provided to others. Even when separate or different aids, benefits, or services would be more effective, paragraph (b)(2) provides that a qualified individual with handicaps still has the right to choose to participate in the program that is not designed to accommodate individuals with handicaps.

Paragraph (b)(1)(v) prohibits the agency from denying a qualified individual with handicaps the opportunity to participate as a member of a planning or advisory board.

Paragraph (b)(1)(vi) prohibits the agency from limiting a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, or service.

Paragraph (b)(3) prohibits the agency from utilizing criteria or methods of administration that deny individuals with handicaps access to the agency's programs or activities. The phrase "criteria or methods of administration" refers to official written agency policies and the actual practices of the agency. This paragraph prohibits both blatantly exclusionary policies or practices and nonessential policies and practices that are neutral on their face, but deny individuals with handicaps an effective opportunity to take the necessary actions to obtain benefits under the programs administerd by the agency.

Paragraph (b)(4) specifically applies the prohibition enunciated in § 365.130(b)(3) to the process of selecting sites for construction of new facilities or selecting existing facilities to be used by the agency. Paragraph (b)(4) does not apply to construction of additional buildings at an existing site.

Paragraph (b)(5) prohibits the agency, in the selection of procurement contractors, from using criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

Paragraph (c) provides that programs conducted pursuant to Federal statute or Executive order that are designed to benefit only individuals with handicaps, or a given class of individuals with handicaps, may be limited to those individuals with handicaps.

Paragraph (d), discussed above, provides that the agency must administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps, *i.e.*, in a setting that enables individuals with handicaps to interact with nonhandicapped persons to the fullest extent possible.

Section 365.140 Employment.

Section 365.140 prohibits discrimination on the basis of handicap in emplyment by the agency. Courts have held that section 504, as amended in 1978, covers the employment practices of Executive agencies. *Gardner* v. *Morris*, 752 F. 2d 1271, 1277 (8th Cir. 1985); *Smith* v. *United States Postal Service*, 742 F. 2d 257, 259–280 (6th Cir. 1984); *Prewitt* v. *United States Postal Service*, 662 F. 2d 292, 302–04 (5th Cir. 1981). Contra *McGuiness* v. *United States Postal Service*, 744 F. 2d 1318, 1320–21 (7th Cir. 1984); *Boyd* v. *United States Postal Service*, 752 F. 2d 410, 413–14 (9th Cir. 1985).

Courts uniformly have held that in order to give effect to section 501 of the Rehabilitation Act, which covers Federal employment, the administrative procedures of section 501 must be followed in processing complaints of employment discrimination under section 504. *Morgan* v. *United States Postal Service*, 798 F. 2d 1162, 1164–65 (8th Cir. 1986), *Smith*, 742 F. 2d at 262; *Prewitt*, 662 F. 2d at 304. Accordingly, § 365.140 (Employment) of this rule adopts the definitions, requirements,

and procedures of section 501 as established in regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR Part 1613. In addition to this section, § 365.170(b) specifies that the agency will use the existing EEOC procedures to resolve allegations of employment discrimination.

Responsibility for coordinating enforcement of Federal Laws prohibiting discrimination in employment is assigned to the EEOC by Excutive Order 12067 (3 CFR, 1978 Comp., p. 206). Under this authority, the EEOC establishes government-wide standards on nondiscrimination in employment on the basis of handicap. While this rule could define terms with respect to employment and enumerate what practices are covered and what requirements apply, the agency has adopted EEOC's recommendation that to avoid duplicative, competing, or conflicting standards with respect to Federal employment, reference in these regulations to the government-wide EEOC rules is sufficient. The class of Federal employees and applicants for employment covered by section 504 is identical to or subsumed within that covered by section 501. To apply different or lesser standards to persons alleging violations of section 504 could lead unnecessarily to confusion in the enforcement of the Rehabilitation Act with respect to Federal employment.

Section 365.149 Program accessibility: Discrimination prohibited.

Section 365.149 states the general nondiscrimination principle underlying the program accessibility requirements of §§ 365.150 and 365.151.

Section 365.150 Program accessibility: Existing facilities.

This regulation adopts the program accessibility concept found in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.57), with certain modifications. Thus, § 365.150 requires that the services and assistance which the agency provides to those individuals seeking benefits under programs administered by the agency, when viewed in their entirety, be readily accessible to and usable by individuals with handicaps.

Although all facilities, except for the Board's headquarters building in Chicago, in which the agency operates are either owned or leased by and under the control of the General Services Administration (GSA), the agency recognizes its obligation to request the GSA to make any structural changes which the agency determines are necessary to ensure program accessibility. The regulation also makes clear that the agency is not required to make each of its existing facilities accessible (§ 365.150(a)(1)). However, § 365.150, unlike 28 CFR 41.56–41.57, places explicit limits on the agency's obligation to ensure program accessibility (§ 365.150(a)(2)).

Paragraph (a)(2) generally codifies recent case law that defines the scope of the agency's obligation to ensure program accessibility. This paragraph provides that in meeting the program accessibility requirement the agency is not required to take, or request the GSA to take, any action that would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. A similar limitation is provided in § 365.160(c). This provision is based on the Supreme Court's holding in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979), that section 504 does not require program modifications that result in a fundamental alteration in the nature of a program, and on the Court's statement that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. Since *Davis*, circuit courts have applied this limitation on a showing that only one of the two "undue burdens" would be created as a result of the modification sought to be imposed under section 504. *See, e.g., Dopico* v. *Goldschmidt*, 687 F. 2d 644 (2d Cir. 1982); *American Public Transit Association* v. *Lewis (APTA)*, 655 F. 2d 1272 (D.C. Cir. 1981). This interpretation is also supported by the Supreme Court's decision in *Alexander* v. *Choate*, 469 U.S. 287 (1985). *Alexander* involved a challenge to the State of Tennessee's reduction of inpatient hospital care coverage under Medicaid from 20 to 14 days per year. Plaintiffs argued that this reduction violated section 504 because it had an adverse impact on handicapped persons. The Court assumed without deciding that section 504 reaches at least some conduct that has an unjustifiable disparate impact on handicapped people, but held that the reduction was not "the sort of disparate impact" discrimination that might be prohibited by section 504 or its implementing regulation (*id.* at 299).

Relying on *Davis*, the Court said that section 504 guarantees qualified handicapped persons "meaningful access to the benefits that the grantee offers" (*id.* at 301) and that "*reasonable adjustments* in the nature of the benefit being offered must at times be made to assure meaningful access." (*id.*, n. 21) (emphasis added). However, section 504 does not require " 'changes,' 'adjustments,' or 'modifications' to existing programs that would be 'substantial' * * * or that would constitute 'fundamental alteration(s) in the nature of a program' " (*id.*, n. 20) (citations omitted). *Alexander* supports the position, based on *Davis* and the earlier lower court decisions, that in some situations, certain accommodations for a handicapped person may so alter an agency's program or activity or entail such extensive costs and administrative burdens that the refusal to undertake the accommodations is not discriminatory. Thus the failure to include such an "undue burden" provision could lead to judicial invalidation of the regulation or reversal of a particular enforcement action taken pursuant to the regulation.

This paragraph, however, does not establish an absolute defense; it does not relieve the agency of all obligations to individuals with handicaps. Although the agency is not required to take or request the GSA to take actions that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens, it nevertheless must take or request the GSA to take any other steps necessary to ensure that individuals with handicaps receive the benefits and services of the federally conducted program or activity.

It is our view that compliance with § 365.150(a) would in most cases not result in undue financial and administrative burdens on the agency. In determining whether financial and administrative burdens are undue, all agency resources available for use in the funding and operation of the conducted program or activity should be considered. The burden of proving that compliance with § 365.150(a) would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with the agency. The decision that compliance would result in such alteration or burdens must be made by the Chief Executive Officer and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any specific class of persons has been injured by the Chief Executive Officer's decision or failure to make a decision may file an appeal under the compliance procedures established in § 365.170(h).

Paragraph (b) indicates that in general the agency will comply with the requirements of § 365.150 by making

home visits. Paragraph (b) also sets forth a number of other means by which program accessibility may be achieved, including redesign of equipment, reassignment of services to accessible buildings, and provision of aides. In choosing among methods, the agency shall give priority consideration to those that will be consistent with provision of services in the most integrated setting appropriate to the needs of individuals with handicaps. Structural changes in existing facilities are required only when there is no other feasible way to make the agency's program accessible. (It should be noted that "structural changes" include all physical changes to a facility; the term does not refer only to changes to structural features, such as removal of or alteration to a load-bearing structural member). The agency may comply with the program accessibility requirement by delivering services at alternate accessible sites.

Paragraphs (c) and (d) establish time periods for complying with the program accessibility requirement. As currently required for federally assisted programs by 28 CFR 41.57(b), the agency must make or, where applicable, request the GSA to make, any necessary structural changes in facilities as soon as practicable, but in no event later than three years after the effective date of this regulation. Where structural modifications are required, the agency will develop or, where applicable, request the GSA to develop a transition plan within six months of the effective date of this regulation. Aside from structural changes, all other necessary steps to achieve compliance shall be taken within sixty days.

Section 365.151 Program accessibility: New construction and alterations

Overlapping coverage exists with respect to new construction under section 504 and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). Section 365.151 provides that those buildings that are constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered to be readily accessible to and usable by individuals with handicaps in accordance with 41 CFR 101–19.600 to 101–19.607. This standard was promulgated pursuant to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). We believe that it is appropriate to adopt the existing Architectural Barriers Act standard for section 504 compliance because new and altered buildings subject to this regulation are also subject to the Architectural Barriers Act and because adoption of the standard will avoid duplicative and possibly inconsistent standards.

Existing buildings leased by the agency after the effective date of this regulation are not required by the regulation to meet accessibility standards simply by virtue of being leased. They are subject, however, to the program accessibility standard for existing facilities in § 365.150. To the extent the buildings are newly constructed or altered, they must also meet the new construction and alteration requirements of § 365.151.

Federal practice under section 504 has always treated newly leased buildings as subject to the existing facility program accessibility standard. Unlike the construction of new buildings where architectural barriers can be avoided at little or no cost, the application of new construction standards to an existing building being leased raises the same prospect of retrofitting buildings as the use of an existing Federal facility, and the agency believes the same program accessibility standard should apply to both owned and leased existing buildings.

In *Rose* v. *United States Postal Service*, 774 F. 2d 1355 (9th Cir. 1985), the Ninth Circuit held that the Architectural Barriers Act requires accessibility at the time of lease. The *Rose* court did not address the issue of whether section 504 likewise requires accessibility as a condition of lease, and the case was remanded to the District Court for, among other things, consideration of that issue. The agency may provide more specific guidance on section 504 requirements for leased buildings after the litigation is completed.

Section 365.160 Communications

Section 365.160 requires the agency to take appropriate steps to ensure effective communication with personnel of other Federal entities, applicants, participants, and members of the public. These steps shall include procedures for determining when auxiliary aids are necessary under § 365.160(a)(1) to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, the agency's program or activity. They shall also include an opportunity for individuals with handicaps to request the auxiliary aids of their choice. This expressed choice shall be given primary consideration by the agency (§ 365.160(a)(1)(i)). The agency shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § 365.160(c). That paragraph limits the obligation of the agency to ensure effective communication in accordance with *Davis* and the circuit court opinions interpreting it (*see, supra*, preamble § 365.150(a)(2)). Unless not required by § 365.160(c), the agency shall provide auxiliary aids at no cost to the individual with handicaps.

It is our view that compliance with § 365.160 would, in most cases, not result in undue financial and administrative burdens on the agency. In determining whether financial and administrative burdens are undue, all agency resources available for use in the funding and operation of the conducted program or activity should be considered. The burden of proving that compliance with § 365.160 would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with the agency. The decision that compliance would result in such alteration or burdens must be made by the Chief Executive Officer and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any specific class of persons has been injured by the Chief Executive Officer's decision or failure to make a decision may file an appeal under the compliance procedures established in § 365.170(h).

In some circumstances, a notepad and written materials may be sufficient to permit effective communication with a hearing-impaired person. In many circumstances, however, they may not be, particularly when the information being communicated is complex or exchanged for a lengthy period of time (*e.g.*, a meeting) or where the hearing-impaired applicant or participant is not skilled in spoken or written language. Then, a sign language interpreter may be appropriate. For vision-impaired persons, effective communication might be achieved by several means, including readers and audio recordings. In general, the agency intends to make clear to the public (1) the communications services it offers to afford individuals with handicaps an equal opportunity to participate in or benefit from its programs or activities, (2) the opportunity to request a particular mode of communication, and (3) the agency's preferences regarding auxiliary aids if it can demonstrate that several different modes are effective.

The agency shall ensure effective communication with vision-impaired and hearing-impaired persons involved in hearings conducted by the agency. Auxiliary aids must be afforded where necessary to ensure effective

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communication at the proceedings. If sign language interpreters are necessary, the agency may require that it be given reasonable notice prior to the proceeding of the need for an interpreter. Moreover, the agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature (§ 365.160(a)(1)(ii)). For example, the agency need not provide eye glasses or hearing aids to applicants or participants in its programs. Similarly, the regulation does not require the agency to provide wheelchairs to persons with mobility impairments.

Paragraph (b) requires the agency to take appropriate steps to provide information to individuals with handicaps concerning accessible services, activities, and facilities and to ensure that information regarding section 504 rigths and protections that is supplied to employees, applicants, participants, beneficiaries, and other interested persons under § 365.111 is effectively communicated to individuals with handicaps.

Section 365.170 Compliance procedures.

Paragraph (a) specifies that paragraphs (c) through (l) of this section establish the procedures for processing complaints other than employment complaints. Paragraph (b) provides that the agency will process employment complaints according to procedures established in existing regulations of the EEOC (29 CFR Part 1613) pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

The agency is required to accept and investigate all complete complaints (§ 365.170(d)). If it determines that it does not have jurisdiction over a complaint, it shall promptly notify the complainant and make reasonable efforts to refer the complaint to the appropriate entity of the Federal government (§ 365.170(e)).

Paragraph (f) requires the agency to notify the Architectural and Transportation Barriers Compliance Board upon receipt of a complaint alleging that a facility subject to the Architectural Barriers Act was designed, constructed, or altered in a manner that does not provide ready access to and use by individuals with handicaps.

Paragraph (g) requires the agency to provide to the complainant, in writing, findings of fact and conclusions of law, the relief granted if noncompliance is found, and notice of the right to appeal (§ 365.170(g)). One appeal within the agency shall be provided (§ 365.170(i)). The appeal will not be heard by the same person who made the initial determination of compliance or noncompliance (§ 365.170(i)).

Paragraph (l) permits the agency to delegate its authority for investigating complaints to other Federal agencies. Under this paragraph the agency may have any required investigation performed by a non-government investigator under contract with the agency. However, the statutory obligation of the agency to make a final determination of compliance or noncompliance may not be delegated.

List of Subjects in 20 CFR Part 365

Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Federal Buildings and facilities, Government employees, Handicapped.

For the reasons set forth in the preamble, Chapter II, Title 20 of the Code of Federal Regulations is amended by adding Part 365 to Subchapter F to read as follows:

PART 365—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE RAILROAD RETIREMENT BOARD

Sec.

365.101 Purpose.
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365.103 Definitions.
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365.150 Program accessibility: Existing facilities.
365.151 Program accessibility: New construction and alterations.
365.152—365.159 [Reserved]
365.160 Communications.
365.161—365.169 [Reserved]
365.170 Compliance procedures.
365.171—365.999 [Reserved]

Authority: 9 U.S.C. 794.

§ 365.101 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 365.102 Application.

This regulation (§§ 365.101–365.170) applies to all programs or activities conducted by the agency, except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

§ 365.103 Definitions.

For purposes of this part, the term—

"Agency" means Railroad Retirement Board.

"Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunications devices for deaf person (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

"Board" means the three-member board, appointed pursuant to 45 U.S.C. 231f, which heads the agency.

"Chief Executive Officer" means the Chief Executive Officer of the Railroad Retirement Board. This individual is the chief operating officer of the agency.

"Complete complaint" means a written statement that contains the complainant's name and address and describes the agency's actions in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

"Individual with handicaps" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) "Physical or mental impairment" includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having such an impairment.

"Qualified individual with handicaps" means—

(1) An individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, a program or activity.

(2) "Qualified handicapped person" as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 365.140.

"Section 504" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617); the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955); the Rehabilitation Act Amendments of 1986, (Pub. L. 99–506, 100 Stat. 1810), and the Civil Rights Restoration Act of 1987 (Pub. L. 100–259, 102 Stat. 28 (1988)). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

§§ 365.104–365.109 [Reserved]

§ 365.110 Self-Evaluation.

(a) The agency shall, by December 27, 1989, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, until at least three years following the completion of the self-evaluation, maintain on file and make available for public inspection:

(1) A description of areas examined and any problems identified, and

(2) A description of any modifications made.

§ 365.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the agency head finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this part.

§§ 365.112–365.129 [Reserved]

§ 365.130 General Prohibitions against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or service to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others.

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage or opportunity enjoyed by others receiving benefits under any programs administered by the Board.

(2) The agency may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purposes or effect of which would:

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap;

(ii) Deny qualified individuals with handicap assistance in obtaining benefits under any program administered by the agency; or

(iii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would:

(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive Order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive Order to a different class of individuals with handicaps is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

§§ 365.131–365.139 [Reserved]

§ 365.140 Employment.

No qualified individual with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities.

§§ 365.141–365.148 [Reserved]

§ 365.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 365.150, no qualified individual with handicaps shall, because the agency's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 365.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity when viewed in its entirety is readily accessible to and usable by individuals with handicaps. Although all facilities in which the agency operates, except for the headquarters building, are either owned or leased by and under the general control of the General Services Administration (GSA), the agency recognizes its obligation to request the GSA to make space reassignments or any structural changes which the agency determines are necessary to ensure program accessibility. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by individuals with handicaps; or

(2) Require the agency to take or to recommend to the GSA any action that the agency can demonstrate would result in a fundamental alteration in the nature of a program or activity or result in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 365.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Chief Executive Officer after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens that would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods.* In general the agency will comply with this section by making home visits. The agency may also comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aids to beneficiaries, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The agency is not required to make or request the GSA to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making or requesting space reassignments or alterations to existing buildings, shall ensure that accessibility requirements, to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it are met. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by February 27, 1989, except that where structural changes in facilities are undertaken, the agency will make such changes or, where applicable, request the GSA to make such changes by December 27, 1991, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop or, where applicable, request the GSA to develop, by June 27, 1989, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§ 365.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

§§ 365.152–365.159 [Reserved]

§ 365.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the individual with handicaps.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

(b) The agency shall take appropriate steps to provide individuals with handicaps with information as to the existence and location of accessible services, activities, and facilities and information regarding their section 504 rights under the agency's programs or activities.

(c) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 365.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Chief Executive Officer after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§§ 365.161–365.169 [Reserved]

§ 365.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) Except with respect to complaints arising under § 365.170(b), responsibility for implementation and operation of this section shall be vested in the Chief Executive Officer.

(d) The Chief Executive Officer shall accept and investigate all complete complaints for which he or she has jurisdiction. All complete complaints must be filed within 90 days of the alleged act of discrimination. The Chief Executive Officer may extend this time period for good cause.

(e) If the Chief Executive Officer receives a complaint over which the agency does not have jurisdiction, he or she shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The Chief Executive Officer shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility used by the agency that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), is not readily accessible to and usable by individuals with handicaps.

(g) Within 120 days of the receipt of a complete complaint under § 365.170(d) for which the agency has jurisdiction, the Chief Executive Officer shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 45 days of receipt from the Chief Executive Officer of the letter required by § 365.170(g). The Chief Executive Officer may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the Board.

(j) The Board shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the Board determines that it needs additional information from the complainant, it shall have 30 days from the date it receives the additional information to make its determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies except that the authority for making the final determination may not be delegated to another agency.

§§ 365.171–365.999 [Reserved]

Dated: October 19, 1988.

By Authority of the Board.

For the Board.

Beatrice Rosenthal,

Secretary to the Board.

[FR Doc. 88-24861 Filed 10-26-88; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

Pennsylvania Permanent Regulatory Program; Approval of Amendments

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of proposed amendments submitted by the Commonwealth of Pennsylvania as modifications to its permanent regulatory program (hereinafter referred to as the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments consist of revisions to Pennsylvania's Inspection and Enforcement Policy and Civil Penalty Program for coal mining. Section II.J of the Inspection and Enforcement Policy is revised to (1) clarify that an individual civil penalty assessment is one of the alternative enforcement actions available to the State, (2) designate the withholding or

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denying of license renewal as an additional alternative enforcement option, and (3) clarify that the State is not restricted to one type of alternative enforcement action, but may pursue one or more of the alternative enforcement actions available. Section II.2 of the Civil Penalty Program is revised to (1) establish a 60-day timeframe to initiate alternative enforcement action(s) subsequent to issuance of a failure-to-abate cessation order (FTA–CO) in those cases where the mandatory $750 daily penalty is capped at 30 days, and (2) clarify that an individual civil penalty action can be initiated separately or in conjunction with other alternative enforcement options as deemed necessary to gain compliance.

EFFECTIVE DATE: October 27, 1988.

FOR FURTHER INFORMATION CONTACT: Robert Biggi, Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, Third Floor, Suite 3C, Harrisburg Transportation Center, 4th and Market Streets, Harrisburg, Pennsylvania 17101, Telephone (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior conditionally approved the Pennsylvania program on July 31, 1982. Information pertinent to the general background, revisions, modifications and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Pennsylvania program can be found in the July 30, 1982 Federal Register (47 FR 33050–33082). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Discussion of Amendments

By letter dated April 14, 1987 (Administrative Record No. PA 696), Pennsylvania proposed to amend its program to satisfy the requirements of 30 CFR 938.16 (g) and (h), as specified in the September 8, 1986 Federal Register (51 FR 31945–31946). The revisions to the Inspection and Enforcement Policy clarify that individual civil penalties are an alternative enforcement option and that Pennsylvania can use each alternative enforcement option independently or in concert with other types of alternative enforcement actions, as required by 30 CFR 938.16(g). In addition, bond forfeiture has been deleted as an acceptable form of alternative enforcement.

As required by 30 CFR 938.16(h), the Civil Penalty Program has been revised to establish a time period subsequent to the prescribed abatement date by which one or more of the alternative enforcement options must be initiated should assessment of the mandatory $750 daily civil penalty for failure to abate a violation be terminated.

The July 2, 1987 Federal Register announced receipt of the proposed amendments and invited public comment on their adequacy (52 FR 25037). The public comment period ended August 3, 1987. The public hearing scheduled for July 27, 1987, was no held since no person requested an opportunity to testify at the hearing.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendments to the Pennsylvania program.

1. Inspection and Enforcement Policy

As revised, Section II.J requires The Department of Environmental Resources (DER) to initiate one or more of six listed types of alternative enforcement actions within 60 days of the expiration of the prescribed abatement period if assessment of the mandatory $750 daily civil penalty for failure to abate a violation is restricted to 30 days. The previous language appeared to limit DER to initiation of only one such action. The revised version also includes individual civil penalties as an alternative enforcement option that can be used singularly or in concert with other alternative enforcement actions. This provision satisfies 30 CFR 938.16(g), which required that Pennsylvania clarify that individual civil penalties are an alternative enforcement action, and that the Commonwealth has the authority to pursue any number of the enforcement options enumerated in Section II.j.

Prior to this amendment, Pennsylvania last revised this portion of its Inspection and Enforcement policy on May 22, 1986. OSMRE subsequently disapproved Section II.J to the extent that it allowed bond forfeiture, license withholding or denial of license renewal to be used as alternative enforcement actions when terminating assessment of failure-to-abate penalties (51 FR 31942, September 8, 1986). The current amendment no longer includes bond forfeiture as an acceptable alternative enforcement action; however, it retains license withholding and denial of license renewal as available options.

Before an action can be approved as alternative enforcement, it must be no less stringent than the four statutory provisions listed in 30 CFR 845.15(b)(2) in ensuring that abatement occurs or that there will not be a recurrence of the failure to abate. Since a permittee cannot conduct surface mining anywhere in Pennsylvania without a surface mine operator's license, denial or withholding of license renewal for an operator with an active surface mining operation would be an action no less stringent than permit suspension or revocation provided the license is due for renewal during the time period when the alternative enforcement action must be initiated.

However, as explained in the September 8, 1986 Federal Register notice, OSMRE originally disapproved this portion of the policy because it did not specify that more than one alternative enforcement option could be selected and did not link the timing of the withholding or denial of license renewal to the time period within which alternative enforcement must be initiated. If Pennsylvania's chosen alternative enforcement action was license withholding or denial of renewal, no action could be taken during the specified time period and the operator would not have an immediate additional incentive to abate the violation. Similarly, withholding or denying a license renewal of an operator not intending to continue mining would be unproductive. As stated in the preamble to the Federal rule, the regulatory authority must take whatever enforcement action or actions would most likely result in abatement of the violation in the most expeditious manner possible (45 FR 58782, September 4, 1980).

The April 14, 1987 amendment now under consideration remedies the discrepancy by revising section II.J. to require the Department to initiate one or more of the listed alternative enforcement actions within 60 days of the expiration of the prescribed abatement period. Thus, if the permittee's license does not fall due for renewal within the 60-day period for initiating alternative enforcement, or if the operator does not need or desire license renewal, the regulatory authority can and must select one or more of the other alternative enforcement options. However, if the permittee is licensed and is actively operating and if the license renewal date coincides with the period within which alternative enforcement must be initiated, denial or withholding of the renewal would be a highly effective action, no less stringent then permit suspension or revocation,

one of the four alternative enforcement actions specified in 30 CFR 845.15(b)(2).

Therefore, for the reasons discussed above, the Director finds that revised Section II.J of Pennsylvania's Inspection and Enforcement Policy is no less effective than the corresponding Federal rule at 30 CFR 845.15(b)(2), provided it is implemented in the manner described.

2. Civil Penalty Program

As required by 30 CFR 938.16(h), Pennsylvania has revised Section II.2 of its Civil Penalty Program to establish a time period within which DER is required to initiate one or more of the alternative enforcement options listed in Section II.J of DER's Inspection and Enforcement Policy. This amendment requires DER to initiate one or more alternative enforcement actions whenever assessment of the mandatory $750 daily civil penalty for a FTA–CO is limited to 30 days. Such alternative enforcement action(s) may be initiated at any time after the FTA–CO is issued, but must be initiated within 60 days of the FTA–CO issuance date. This 60-day period is equivalent to two 30-day periods listed in the corresponding Federal regulation at 30 CFR 845.15(b)(2), which requires initiation of alternative enforcement within 30 days after assessment of the FTA–CO penalty ceases. Therefore, the Director now finds Section II.2 of the State's Civil Penalty Program to be a no less effective than and procedurally similar to the Federal regulation.

IV. Public and Agency Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Pennsylvania program. No substantive comments were received.

The Director solicited public comments in the July 2, 1987 Federal Register (52 FR 25037). No comments were received during or after the comment period which closed on August 3, 1987. Since no one requested an opportunity to testify, the public hearing scheduled for July 27, 1987, was cancelled.

V. Director's Decision

As discussed in the findings above, the Director has determined that the amendments submitted to OSMRE on April 14, 1987, incorporate penalties and sanctions no less stringent than those set forth under sections 518 and 521 of SMCRA and no less effective than the regulations set forth in 30 CFR Part 845 and that they contain the same or similar procedural requirements relating thereto. He is therefore approving the amendments, provided they are implemented in the manner discussed in the findings. Since the amendments satisfy the requirements of 30 CFR 938.16 (g) and (h) and either delete or correct provisions disapproved previously, the Director is also removing 30 CFR 938.16 (g) and (h) and the partial disapproval of Section II.J of the Inspection and Enforcement Policy recorded at 30 CFR 938.12 and 938.15(f).

The Federal rules at 30 CFR Part 938 codifying decisions concerning the Pennsylvania program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs to the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action, OSMRE is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

The Department of Interior has determined that this rule will not have significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 938

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Richard D. Miller,

Acting, Deputy Director.

Date: October 24, 1988.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T, Part 938 of the Code of Federal Regulations is amended as set forth below:

PART 938—PENNSYLVANIA

1. The authority citation for Part 938 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

§ 938.12 [Removed]

2. Section 938.12 is removed.

3. In § 938.15, paragraph (f) is revised and a new paragraph (o) is added to read as follows:

§ 938.15 Approval of regulatory program amendments.

* * * * *

(f) The amendments to the following sections of the Pennsylvania State program which were submitted to OSMRE on September 30, 1985, and May 22, 1986 are approved effective September 8, 1986.

Civil Penalty Program

Section I
Section II.2
Section II.4
Section II.8

Inspection and Enforcement Policy

Section II.B.2.a.(4) and (5)
Section II.E
Section II.J

* * * * *

(o) The following amendments to the Pennsylvania program as submitted to OSMRE by letter dated April 14, 1987, are approved effective October 27, 1988. Revisions to Section II.J of the Inspection and Enforcement Policy and Section II.2 of the Civil Penalty Program, both of which concern the use of alternative enforcement actions for failure to abate a violation.

§ 938.16 [Amended]

4. Section 938.16 is amended by removing paragraphs (g) and (h).

[FR Doc. 88–24870 Filed 10–26–88; 8:45 am]
BILLING CODE 4310–05–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-508; RM-5513]

Radio Broadcasting Services; Liberal, KS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates Channel 286C2 to Liberal, Kansas, as that community's fourth FM broadcast service, in response to a petition filed by Thunderbird Broadcasting, Inc. The coordinates used for the allotment of Channel 286C2 at Liberal are 37-02-30 and 100-55-24. With this action, this proceeding is terminated.

DATES: Effective December 5, 1988; the window period for filing applications will open on December 6, 1988, and close on January 5, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-508, adopted September 28, 1988, and released October 21, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kansas is amended by adding Channel 286C2 at Liberal.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-24883 Filed 10-26-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-152; RM-6291]

Radio Broadcasting Services; Denison, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 285C2 for Channel 285A at Denison, Texas, and modifies the license of Station KMKT-FM to specify operation on the higher class co-channel, at the request of Sunbelt Wireless Company. The upgrade could provide the community with its first wide coverage area FM service. A site restriction of 21.0 kilometers (13.0 miles) east of the community is required at coordinates are 33-45-22 and 96-46-22. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 5, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-152, adopted September 30, 1988, and released October 21, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Texas, by removing Channel 285A and adding Channel [illegible] at Denison.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-24884 Filed 10-26-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-534; RM-6067]

Radio Broadcasting Services; Lubbock, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 293C2 for Channel 292A at Lubbock, Texas, and modifies the permit of Station KESJ(FM) to specify operation on the higher class channel, at the request of Barton Broadcasting Company. The channel substitution could provide Lubbock with its seventh expanded radio service. A site restriction of 12.4 kilometers (7.7 miles) east of the city is required at coordinates 33-35-34 and 101-42-36. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 5, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-534, adopted September 30, 1988, and released October 21, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Texas, by removing Channel 292A and adding Channel 293C2 at Lubbock.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-24885 Filed 10-26-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-517; RM-6067]

Radio Broadcasting Services; Lufkin, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 257C2 for Channel 257A at Lufkin, Texas, and modifies the license of Station KUEZ(FM) to specify operation on the higher class co-channel, at the request of Darrell E. Yates. This action could provide a second wide coverage area FM service at Lufkin. The station's current transmitter site will have to be relocated to a site approximately 7.5 kilometers (4.6 miles) northwest of the community at coordinates 31-23-54 and 94-46-31. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 5, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-517, adopted September 30, 1988, and released October 21, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Texas, by removing Channel 257A and adding Channel 257C2 at Lufkin.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-24886 Filed 10-26-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-546; RM-6068, RM-6254]

Radio Broadcasting Services; Marble Falls and Johnson City, TX.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 300C2 to Johnson City, Texas, as that community's first FM service, at the request of Hawkins Broadcasting, Inc. The allotment requires a site restriction of 18.9 kilometers (11.7 miles) west of Johnson City, at coordinates 30-13-30 and 98-35-50. In addition, this action dismisses a mutually exclusive petition proposing the allotment of Channel 300A to Marble Falls, Texas at the request of the petitioner, Don Werlinger, d/b/a The Broadcast Development Group, Inc.

With this action, this proceeding is terminated.

DATES: Effective December 5, 1988; The window period for filing applications will open on December 6, 1988, and close on January 5, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order MM Docket No. 87-546, adopted September 29, 1988, and released October 21, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Texas, by adding Channel 300C2, Johnson City.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-24887 Filed 10-26-88; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 53, No. 208
Thursday, October 27, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1709

Rural Development

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration (REA) proposes to amend 7 CFR Chapter XVII by adding a new Part 1709, Rural Development, and adding Subpart B, Rural Economic Development Loan and Grant Program. The new Part will contain REA's policies, requirements and procedures covering rural development programs. The new subpart will establish policies, requirements and procedures to implement a rural economic development loan and grant program established by section 313 of the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*) (the "RE Act"). The program will provide zero interest loans and grants to RE Act borrowers for the purpose of promoting rural economic development and job creation projects.

DATE: Public comments concerning this proposed rule must be received by REA no later than November 28, 1988.

ADDRESS: Comments may be mailed to Blaine Stockton, Jr., Assistant Administrator—Management, Rural Electrification Administration, Room 4083–South Building, U.S. Department of Agriculture, Washington, DC 20250. Comments received may be inspected in Room 4083 between 8:15 a.m. and 4:45 p.m.

FOR FURTHER INFORMATION CONTACT: Blaine Stockton, Jr., Assistant Administrator—Management, Rural Electrification Administration, Room 4083-South Building, U.S. Department of Agriculture, Washington, DC. 20250, telephone number (202) 382–9552. The Draft Regulatory Impact Analysis describing the options considered in developing this rule and the impact of implementing the proposed rule is available on request from the above office.

SUPPLEMENTARY INFORMATION: This rule is issued in conformity with Executive Order 12291, Federal Regulations. This action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment or productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, this rule has been determined to be "not major."

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.* (1976) and, therefore, does not require an environmental impact statement or an environmental assessment.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.853, Rural Economic Development Loan and Grant Program. For the reasons set forth in the final rule related Notice to 7 CFR Part 3015, Subpart V (50 FR 47034, November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Public reporting burden for this collection of information is estimated to average 1.7 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Office, OIRM, Room 404–W, Washington, DC 20250; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Background

On December 21, 1987, Section 313, Cushion of Credit Payments Program, was added to the RE Act. Section 313 establishes a Rural Economic Development Subaccount and authorizes the Administrator of REA to utilize funds in this subaccount to provide zero interest loans or grants to RE Act borrowers for the purpose of promoting rural economic development and job creation projects.

Comments

On April 7, 1988, REA published an advance notice of proposed rulemaking in an effort to obtain public comments on all aspects of this new program. REA received a total of 54 written comments and several comments over the telephone. Nine organizations in the propane industry opposed the new program while forty-five organizations comprised of RE Act borrowers, electric and telephone trade organizations, and several economic development organizations supported the new program.

Organizations in the propane industry opposed the program on principle even though it is established by law. Many stated that they objected to their competition, the electric utilities, getting taxpayer money at zero percent or as a grant. Other propane industry organizations said they favored rural economic development but did not feel it should be controlled by electric utilities. One organization said REA had fulfilled its mission. Another believed a problem in rural America is loans that have gone bad. Throughout these nine comments was a general belief that the rural economic development program would put the propane industry at a competitive disadvantage with electric utilities. Despite the propane industry's adamant opposition, REA must proceed with implementing this program since it is established by law.

Many of the organizations commenting in favor of the program supplied specific suggestions that were incorporated into the proposed rule. These comments will be addressed in the following paragraphs which discuss major provisions of the proposed rule.

The section of the proposed rule setting forth REA's policy stresses that borrowers are encouraged to promote rural economic development that is based on sound economic and financial analysis. Many organizations mentioned the importance of sound analysis to the long-term success of rural development.

A large number of organizations addressed the issue of eligibility of borrowers to receive zero interest loans or grants and, in particular, whether or not eligibility should be dependent on making cushion of credit payments. Most organizations said a borrower should not have to make cushion of credit payments (also called advance payments) that lead to credits in the Rural Economic Development Subaccount in order to be eligible for funds under this program. Several organizations took the opposite position, saying that it would only be fair to establish some connection between eligibility and cushion of credit payments. One organization suggested that a borrower should receive grant or zero interest loan funds in an amount equal to the amount of funds generated as a result of its cushion of credit payments. The proposed rule establishes no requirement that a borrower must make cushion of credit payments to be eligible for funds under this program. The only restriction is that a borrower that is not current in its payments on All RE Act financing or is in bankruptcy proceedings is not eligible.

REA received many suggestions on the particular type of rural economic development project this program should help finance. The proposed rule does not attempt to define specific types of projects that are eligible for funds but rather provides for the Administrator to exercise broad discretion in selecting projects. To provide guidance to borrowers applying for loan or grant funds, the rule contains a list of important selection factors the Administrator will consider.

Many of the selection factors were mentioned in the comments. There was strong support for encouraging the use of supplemental or matching funds from other sources to leverage the loan or grant funds provided under this program. This is included as a selection factor. Some other selection factors suggested were a comparison of the unemployment rates to a national or state level, a comparison of jobs to be created to the amount of the investment and support for projects that improve marketable skills. Since REA believes that the nature of this program leads naturally to encouraging demonstration projects, we have included a commitment to being a demonstration project as a factor. Also, REA and many organizations which commented believe that local community support and planning will be crucial to the success of this program. Accordingly, REA will consider endorsements and sponsorship to be an important indicator of the potential for the ultimate success of the project. Several other factors will be considered such as the location of the project, organizational characteristics, probability of long-term success and finally whether or not a borrower has made cushion of credit payments.

Whether or not a borrower has made cushion of credit payments does not determine eligibility in any manner; however, the Administrator is required to encourage borrowers to make voluntary payments. REA believes it is appropriate to at least weigh in a borrower's commitment to generating funds for the program along with all the other selection factors.

REA did consider including an objective ranking procedure based on assigning a given number of points for each of the selection factors. One organization suggested instituting this type of ranking procedure as a way to ensure equitable treatment of all applicants. REA invites your comments on this point.

Several organizations suggested that the Administrator select the mixture of zero interest loans and grants to make out of available funds based on a preference for zero interest loans over grants. They argued that the principal of zero interest loans is repaid into the Subaccount and can be recycled into new projects. REA supports this argument. The rule does not preclude making a certain amount of grants but rather indicates a preference for zero interest loans.

REA has established the minimum dollar amount of a zero interest loan or grant at $10,000 mainly for administrative purposes. No maximum level is proposed although REA did consider establishing a maximum amount based on a percentage of the total amount available in the Subaccount. REA believes the Administrator should have a considerable amount of discretion in determining the maximum amount available for a particular project.

The pre-proposal notice asked for suggestions on establishing the terms for zero interest loans to the borrower. The most common suggestions were that REA recognize the start-up nature of many projects and allow for flexibility. The proposed rule reflects these suggestions.

The security for the zero interest loan will be based on necessary legal agreements between REA and the borrower as well as a requirement that REA approve all agreements between the borrower and the project. The proposed rule was deliberately written to allow flexibility in devising the security and controls necessary for the long-term success of the program.

The proposed rule contains a section stating that a rural economic development project must not result primarily in the transfer of existing employment or business activity from one area to another. It is not the intention of this provision to be restrictive to rural development but rather to prevent criticism of the program. REA believes, for example, that this program should not be used to finance business moves that take jobs away from those currently employed elsewhere. REA recognizes that this type of determination can be difficult at times which is the reason the language stresses that is must not result primarily in such a transfer.

Several organizations commented on the method of processing loan and grant applications. REA has attempted to minimize the amount of paperwork and forms borrowers need to submit. We have established both a preapplication and application stage in the process. It obviously makes sense for a borrower to only go through the extra effort of an application if its project has been selected. One organization recommended a periodic selection process. We have incorporated this recommendation by establishing four application periods throughout the year. This will provide both timely action on an preapplication and equitable treatment to all borrowers.

Many organizations stressed the need for streamlined procedures for this program and our regulations reflect this desire. This loan and grant program is a Federal program subject to various laws, regulations and executive orders. REA wishes to point out that there is a considerable difference between the requirements placed on borrowers receiving grants versus the requirements placed on borrowers receiving zero interest loans under this program. The differences result from the standardized Federal regulations covering grant programs that apply as well to the grant portion of this program. The Federal regulations on grants are quite extensive. Most requirements are found in the Code of Federal Regulations (CFR) under 7 CFR Part 3015 and 7 CFR Part 3016. The proposed rule contains several references to these regulations. Zero interest loans are not covered by

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these government-wide regulations. The zero interest loan program will follow, to the extent possible, a streamlined version of the current RE Act loan procedures and requirements. A required difference in handling grants and zero interest loans is mainly evident in two sections, one is the section on the disbursement of funds and the other is the section on review and other requirements of borrowers.

The proposed rule requires the borrower to monitor the project. REA believes close coordination between the borrower and the project is essential for the success of this program.

List of Subjects in 7 CFR Part 1709

Community development, Grant programs, Loan programs, Rural areas.

In view of the above, REA proposes to amend 7 CFR Chapter XVII by adding the following new Part 1709 to read as follows:

PART 1709—RURAL DEVELOPMENT

Subpart A—[Reserved]

Sec.
1709.1–1709.9 [Reserved]

Subpart B—Rural Economic Development Loan and Grant Program

1709.10 Purpose.
1709.11 Policy.
1709.12 Definitions.
1709.13 Source of funds.
1709.14 Eligibility.
1709.15 Purposes of zero interest loans and grants.
1709.16 Selection of recipients of zero interest loans and grants.
1709.17 Preference for zero interest loans over grants.
1709.18 Limitation on use of zero interest loan and grant funds.
1709.19 Size of zero interest loans and grants.
1709.20 Terms of zero interest loan repayment.
1709.21 Agreements and security for funds.
1709.22 Transfer of employment or business.
1709.23 Environmental requirements.
1709.24 Other considerations.
1709.25 Preapplications and applications.
1709.26 Application processing.
1709.27 Zero interest loan and grant approval.
1709.28 Disbursement of zero interest loans and grant funds.
1709.29 Review and other requirements.

Authority: 7 U.S.C. 901 et seq.; Title I, Subtitle D, Sections 1443, Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203; Delegation of Authority by the Secretary of Agriculture, 7 CFR 2.23; Delegation of Authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72.

Subpart A—[Reserved]

§§ 1709.1–1709.9 [Reserved]

Subpart B—Rural Economic Development Loan and Grant Program

§ 1709.10 Purpose.

This subpart sets forth the Rural Electrification Administration's (REA's) policies and procedures for making zero interest loans and grants to Borrowers in accordance with the Cushion of Credit Payments Program authorized in section 313 of the Act. The zero interest loans and grants are to be provided for the purpose of promoting rural economic development and rural job creation projects.

§ 1709.11 Policy.

(a) It is REA's policy to encourage Borrowers to make deposits voluntarily into cushion of credit accounts of the Rural Electrification and Telephone Revolving Fund. Borrowers are also encouraged to use the Rural Economic Development Loan and Grant Program to promote rural economic development and rural job creation projects that are based on sound economic and financial analysis.

(b) REA will maintain liaison with officials of other federal, state, regional and local rural development agencies to coordinate rural economic development programs.

§ 1709.12 Definitions.

(a) "Act"—the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*).

(b) "Administrator"—the Administrator of the Rural Electrification Administration.

(c) "Associated Utility Organization"—state or regional utility organizations, utility trade organizations or other professional utility organizations of which the Borrower proposing the Project is a member.

(d) "Borrower"—a borrower of funds under the act.

(e) "Demonstration Project"—a Project for which the owner agrees to provide REA with detailed information on the steps it takes in organizing and operating the Project, will permit REA and REA's guests to make reasonable visits to the Project, and honor any other reasonable REA request to disseminate information on the Project.

(f) "Employee Ownership"—owned by the employees of the organization.

(g) "Project"—a rural economic development project or rural job creation project which a Borrower proposes and the Administrator approves to receive benefits of the Rural Economic Development Loan and Grant Program.

(h) "REA"—the Rural Electrification Administration.

(i) "Rural Area"—a rural area as defined in section 13 of the Act.

(j) "Technical Assistance"—Market research, product and/or service improvement, feasibility studies, environmental studies, and similar activities that benefit rural economic development or rural job creation projects.

§ 1709.13 Source of funds.

All funds for zero interest loans and grants provided under this program shall come from interest differential credits to the Rural Economic Development Subaccount (Subaccount), any other funds made available to the Subaccount and from the repayment of zero interest loans into the Subaccount.

§ 1709.14 Eligibility.

Zero interest loans and grants may be made to any Borrower that is current in its payments on financing provided under the Act, as determined by the Administrator, and is not in bankruptcy proceedings.

§ 1709.15 Purposes of zero interest loans and grants.

Zero interest loans and grants shall be provided to promote rural economic development and/or job creation projects, including, but not limited to, project feasibility studies, start-up costs, incubator projects, and other reasonable expenses for the purpose of fostering rural economic development.

§ 1709.16 Selection of recipients of zero interest loans and grants.

The selection and approval of applications for zero interest loans and/or grants rests solely within the discretion of the Administrator. In making this determination, the Administrator will consider, among other factors, the following:

(a) The amount of supplemental grant or loan funds provided for to be provided to the Project from private sources, state and local government sources, federal government sources, the Borrower(s) or other sources of funds.

(b) A comparison of the unemployment rate in the rural area where the Project will be located to the state and National unemployment rates.

(c) A comparison of the Per Capita Personal Income in the rural area where the Project will be located to state and National income levels.

(d) A comparison of the number of jobs that the Project will create in rural areas to the amount of grant and zero interest loan funds requested.

(e) Projects that lead directly to improving marketable skills.

(f) Commitment from the owner(s) of the Project that the Project will be a Demonstration Project.

(g) Projects that will be located in Rural Areas or will provide greater benefit to Rural Areas than other areas.

(h) Projects that have received the endorsement or sponsorship of businesses, local business and community leaders, Associated Utility Organizations, or local, state or federal governmental organizations.

(i) Projects that have received the endorsement of Certified Development Companies approved by the U.S. Small Business Administration.

(j) Projects that will be organized or reorganized on a not-for-profit basis or to provide full or majority Employee Ownership.

(k) Projects that in REA's best judgment have the greatest probability of success as measured by long-term job creation or retention and rural economic development.

(l) Applications submitted by Borrowers that have made deposits into the Subaccount.

§ 1709.17 Preference for zero interest loans over grants.

Selection of applications shall be based on a preference for providing Borrowers zero interest loans rather than grants under this program.

§ 1709.18 Limitation on use of zero interest loan and grant funds.

(a) Zero interest loans and grants shall not be used:

(1) To fund or assist projects of which any director, officer, or owner of the Borrower, or close relative thereof, is an owner, or which would create a conflict of interest or would create the appearance of a conflict of interest; provided, however, cooperative members are not to be considered owners of the Borrower in this determination;

(2) For any costs incurred on the Project prior to approval of the Project by REA, except for any costs approved by REA as necessary for the initiation of the Project;

(3) For payment to any owner, partner or beneficiary of any property, building, equipment acquired for the Project when such person will retain any interest in the Project or is an owner, director or officer of the Borrower; provided, however, cooperative members are not to be considered owners of the Borrower in this determination; or

(4) For any purpose not reasonably related to the Project as determined by the Administrator.

(b) A Borrower may not charge the Project interest for the use of the proceeds of the zero interest loan provided under this program; however, it may charge the Project reasonable loan servicing charges.

(c) A Borrower must calculate any costs to charge the Project for the use of or in connection with the grant proceeds provided under this program based on 7 CFR Part 3015 and 7 CFR Part 3016.

(d) A Borrower may not make a profit from any zero interest loan or grant provided from the Subaccount.

(e) The Borrower may temporarily deposit the zero interest loan funds into a separate Federally insured account. However, all interest earned on temporarily deposited funds in excess of $250 per year must be passed on to the Project.

(f) The Borrower may temporarily deposit the grant funds in accordance with 7 CFR Part 3015 and 7 CFR Part 3016.

§ 1709.19 Size of zero interest loans and grants.

The minimum dollar amount of a zero interest loan or grant provided to the Borrower under this program shall be $10,000.

§ 1709.20 Terms of zero interest loan repayment.

(a) REA shall determine the terms and repayment schedule of the zero interest loan to the Borrower based on the nature of the Project. In general, the repayment terms the Borrower sets on zero interest loan proceeds provided to the Project must be at least as generous as the zero interest loan provided to the Borrower but, with the Administrator's approval, may be more generous.

(b) Generally, the term of the zero interest loan shall not exceed 10 years. The first principal repayment installment on the zero interest loan may be deferred two years or until the Project generates sufficient cash to begin repaying its loan to the Borrower, whichever comes first as determined by the Administrator, provided in equivalent deferred repayment schedule is provided on the loan to the Project. The terms of the zero interest loan to the Borrower may provide for either equal periodic principal payments or, if the Administrator determines that it is necessary, a graduated repayment schedule where the first principal repayment will be equal to some fraction of the last principal repayment. If the Borrower receives a graduated principal repayment schedule it shall provide a comparable graduated repayment schedule to the Project. Ordinarily, monthly principal payments will be established on the note to the Borrower.

§ 1709.21 Agreements and security for funds.

(a) The Borrower and REA shall execute agreements, including all necessary security agreements, covering the repayment of funds from this program.

(b) REA must approve all agreements between the Borrower and the Project, including all (1) grant, loan and security agreements, (2) loan notes, and (3) all subsequent revisions or amendments thereof.

§ 1709.22 Transfer of employment or business.

The Project must not result primarily in the transfer of any existing employment or business activity from one area to another, as determined by the Administrator.

§ 1709.23 Environmental requirements.

(a) Prospective recipients of zero interest loans or grants must consider the potential environmental impacts of their applications at the earliest planning stages and develop plans and Projects that minimize the potential to adversely affect the quality of the environment.

(b) *Application for Technical Assistance zero interest loans or grants.* The application for a Technical Assistance zero interest loan or grant is generally covered by 7 CFR 1794.31(b) (13) and (14). Consequently, normally no Borrower's Environmental Report or other environmental documentation is required to support such an application. No zero interest loan or grant funds will be available for Technical Assistance for any Project, any portion of which, lies within an area designated for protection under the Coastal Barrier Resources Act.

(c) *Application for zero interest loans or grants other than Technical Assistance.* REA will review supporting materials in the application and initiate its environmental review process pursuant to 7 CFR Part 1794. This process will focus on any environmental concerns or problems that are associated with the Project. The level and scope of environmental review required will be determined in accordance with the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Policy for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–

1508), 7 CFR Part 1794 and other relevant Federal environmental laws, regulations, and Executive Orders. No activity related to the Project that would have an adverse effect on the environment shall be undertaken prior to completion of REA's environmental review process.

§ 1706.24 Other considerations.

(a) *Equal opportunity and nondiscrimination requirements.* All zero interest loans and grants made under this Subpart are subject to certain provisions in 7 CFR Part 1790 (or REA Bulletin 320-19, Nondiscrimination Among Beneficiaries of the REA Program) and 7 CFR Part 1791 (or REA Bulletin 320-15(20-15), Equal Employment Opportunity in Construction Financed with REA Loans) depending on the dollar amount involved and other characteristics.

(b) *Architectural Barriers Act of 1968.* All facilities financed with REA zero interest loans or grants which are accessible to the public or in which physically handicapped persons may be employed or reside must be developed in compliance with this law.

(c) *Flood hazard area precautions.* In accordance with 7 CFR Part 1788, if the Project is in an area subject to flooding, flood insurance must be provided to the extent available and required under the National Flood Insurance Act of 1968, as amended by the Flood Disaster Protection Act of 1973 (Pub. L. 93-231). The insurance shall cover, in addition to the buildings, any machinery, equipment, fixtures, and furnishings contained in the buildings. REA shall comply with Executive Order 11988, Floodplain Management, in considering the application for the Project.

(d) *Real property acquisition.* Any acquisition of real property in connection with this program is subject to 7 CFR Part 21, Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs. These regulations require that owners of real property to be acquired for Federal or federally-assisted programs and persons displaced from their dwellings, businesses, or farms as a result of such acquisition be provided fair, consistent, and equitable treatment.

§ 1706.25 Preapplications and applications.

(a) Borrowers may file a preapplication during any quarterly preapplication period. The quarterly preapplication periods will cover the official working days from January 1 to January 14, from April 1 to April 14, from July 1 to July 14, and from October 1 to October 14 of each year.

(b) Preapplications shall consists of:

(1) An application form, "Application for Federal Assistance," Standard Form 424;

(2) A board resolution requesting zero interest loan or grant, specifying any commitment from the Borrower to the owner of the proposed Project, and stating that the proposed Project will not violate the limitations in Section 1706.10, Limitation on use of zero interest loan and grant funds; and

(3) A brief written narrative containing, but not limited to, the following:

(i) Proposed rural economic development and job creation Project including location, primary beneficiaries, and number and type of jobs to be created;

(ii) Amount of zero interest loan and/or grant requested;

(iii) General description of conditions and terms to be placed on ultimate recipient of funds, including collateral;

(iv) Source and amount of any supplemental grant or loan funds to be provided to the Project from private sources, governments, the Borrower or any other source. The conditions, terms, interest rate, etc. of the supplemental funds shall be detailed;

(v) Any commitment from the owner of the Project that the Project will be a Demonstration Project;

(vi) Any endorsements of Associated Utility Organizations, businesses, local leaders, local or state governments, SBA-approved Certified Development Company and any specific commitments, either financial or otherwise, from these parties;

(vii) Depending on the stage of development of the Project, any budgets, pro forma operating reports and balance sheets, market research, etc.;

(viii) Description of the entity which will own, construct or operate the Project, including but not limited to: (A) the form of organization (i.e., corporation, nonprofit corporation, partnership, sole proprietor), (B) the owners and officers and (C) any Employee Ownership; and

(ix) Any other information that the Borrower believes is relevant.

(c) REA may request additional information from the Borrower deemed relevant.

(d) During the preapplication review process, the Borrower may change the amount of the zero interest loan or grant funds requested, if approved by the Administrator.

(e) REA will prepare a written notification for each preapplication indicating whether or not it has been selected. Selected applicants will be provided with environmental information, requirements and guidelines for filing a complete application. A Borrower that submitted a preapplication that was not selected will be asked whether it desires to be considered the next quarter. The Borrower may modify its preapplication after it has been considered without resubmitting all material required in a preapplication. If the Borrower so desires, REA will consider a preapplication that has not been substantially modified or updated, as determined by the Administrator, for up to one year. A Borrower may submit new or updated preapplications as often as it desires.

The information collection requirements contained in paragraph (b)(1) were approved by the Office of Management and Budget under control number [0640-0044]

§ 1706.26 Application processing.

Upon selection of a Project to receive a zero interest loan and/or grant, REA will prepare a Letter of Conditions outlining conditions under which the zero interest loan or grant will be made and send it to the Borrower. The Borrower will sign a copy of the letter, stating its intent to meet the conditions, and return the copy to REA. The Letter of Conditions will include, among other things, the maximum amount of zero interest loan or grant, Project description and approved use of zero interest loan and/or grant funds, supplemental funds to be provided, any agreements or conditions the Borrower proposed in the preapplication, any special conditions REA establishes, and a copy of the loan/grant agreement or other legal documents the Borrower will be required to sign.

§ 1706.27 Zero interest loan and grant approval.

All zero interest loans and grants made under this subpart will be approved by the Administrator, or designee.

§ 1706.28 Disbursement of zero interest loan and grant funds.

REA shall disburse grant funds to the Borrower and the Borrower shall disburse grant proceeds to the Project in accordance with the provisions of 7 CFR Part 3015 and 7 CFR Part 3016. REA shall disburse zero interest loan funds to the Borrower and the Borrower shall disburse zero interest loan proceeds to the Project in accordance with REA regulations.

§ 1706.29 Review and other requirements.

(a) REA will review Borrowers receiving zero interest loans or grants, as necessary, to ensure that funds are expended for approved purposes. Borrowers receiving zero interest loans or grants shall monitor the Project to the extent necessary to ensure the Project is in compliance with all applicable regulations, including ensuring that funds are expended for approved purposes.

(b) Borrowers receiving zero interest loans shall have prepared, as an exhibit to their annual audit, a financial report and general accounting of all zero interest loan funds in accordance with the provisions of 7 CFR Part 1786.

(c) Grants provided under this program will be administered under and are subject to 7 CFR Part 3015 and 7 CFR Part 3016, as appropriate. The Borrower that receives a grant shall be subject to requirements under these regulations which cover, among other things, financial reporting, accounting records, budget controls, record retention and audits.

[The information collection and the recordkeeping and recording requirements contained in paragraph (c) were approved by OMB under the following control numbers: Budget Information—Nonconstruction, Standard Form 424A [OMB control number 0348-0044], Budget Information—Construction, Standard Form 424C [OMB control number 0348-0041], Assurances—Nonconstruction, Standard Form 424B [OMB control number 0348-0040], Assurances—Construction, Standard Form 424D [OMB control number 0348-0042], Financial Status Report—Long Form, Standard Form 269 [OMB control number 0348-0039], Financial Status Report—Short Form, Standard Form 269A [OMB control number 0348-0039], Request for Advance and Reimbursement, Standard Form 270 [OMB control number 80-R0183], Outlay Report and Request for Reimbursement for Construction Programs, Standard Form 271 [OMB control number 80-R0181], Federal Cash Transactions Report, Standard Form 272 [OMB control number 80-R0182].

Dated: October 24, 1988.

Jack Van Mark,

Acting Administrator.

[FR Doc. 88-24585 Filed 10-26-88; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-ASO-19]

Proposed Revocation of Transition Area; Forest, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revoke the transition area, "Forest, Mississippi Transition Area." The transition area was established to accommodate Instrument Flight Rule (IFR) operations at the Forest Municipal Airport. At the time the transition area was established, a nonfederal, Nondirectional Radio Beacon (NDB) with a Standard Instrument Approach Procedure (SIAP) had been planned for the airport. The airport authority has since abandoned plans to commission the NDB and publish the NDB SIAP.

DATE: Comments must be received on or before November 25, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO-530, Manager, Airspace and Procedures Branch, Docket No. 88-ASO-19, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-ASO-19." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revoke the Forest, Mississippi transition area. The transition area was established to afford airspace protection for Instrument Flight Rule (IFR) aircraft executing a Standard Instrument Approach Procedure (SIAP) based on a planned non-federal Nondirectional Radio Beacon (NDB). The airport authority has since abandoned plans to commission the NDB and publish the NDB SIAP. Therefore, a need does not exist for the transition area. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a

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"significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, Transition area.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Rgulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Forest, MS [Removed]

Issued in East Point, Georgia, on October 13, 1988.

William D. Wood,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 88-24806 Filed 10-26-88; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 435

Mail Order Merchandise Rule; Advance Notice of Proposed Rulemaking

AGENCY: Federal Trade Commission.

ACTION: Advance notice of proposed rulemaking and request for comments.

SUMMARY: This notice requests comments on whether the Commission should initiate a proceeding to amend the Mail Order Merchandise Trade Regulation Rule, 16 CFR Part 435 ("the Rule"), to include shipment of merchandise ordered by telephone or any other means. The Commission also seeks comments on whether the Rule's definition of a "properly completed order" for credit sales should be amended to mean the time the seller receives sufficient information to charge the buyer's account.

DATE: The Commission shall accept written comments until December 27, 1988.

ADDRESS: Send comments to Federal Trade Commission, Washington, DC 20580. Comments should be addressed: Attention: Advance Notice of Proposed Rulemaking/Amendment of the Mail Order Merchandise Rule.

FOR FURTHER INFORMATION CONTACT: Joel N. Brewer, Attorney, Federal Trade Commission, Bureau of Consumer Protection, Division of Enforcement, 601 Pennsylvania Avenue NW., Room 4632, Washington, DC 20580. Telephone: (202) 326-2987.

SUPPLEMENTARY INFORMATION:

Part A—Background Information

On October 22,1975, the Federal Trade Commission published, at 40 FR 49492, the Trade Regulation Rule relating to Mail Order Merchandise, 16 CFR Part 435. A Statement of Basis and Purpose for the Rule was published November 5, 1975, at 40 FR 51582. The Rule became effective on February 2, 1976. Under the Rule a mail order seller who is unable to ship merchandise within the time stated in the solicitation of the order or within thirty days of receipt of a properly completed order if no time is stated, must provide the buyer with a notice of delay. If the delay is thirty days or less, the notice must give the buyer the option to cancel the order. If the delay is more than thirty days or is indefinite, the seller must notify the buyer that, unless the buyer expressly consents to such a delay, the order will be automatically cancelled. If the buyer agrees to the delay date given in the first notice but the seller cannot meet the new shipping date, the seller must send out a second notice of delay. The order will then be cancelled automatically unless the buyer signs a consent on the second notice and returns it to the seller.

The Rule also requires sellers to have a reasonable basis for claims they make about shipping time. Where no claim is made, there is an implied claim that merchandise will be shipped within thirty days. When a refund is required by the Rule, a seller is allowed one billing cycle to take specified action where there is a credit sale, and seven working days to mail a refund where the buyer has made a cash, check or money order payment.

At the time the rulemaking record was developed, it was not generally the practice of the direct marketing industry to solicit consumer orders of merchandise by telephone. Since then, the popularity of this form of solicitation has grown considerably. Moreover, other electronic methods of ordering merchandise, such as interactive cable systems which are presently largely experimental, give promise of someday being more widespread.

Our experience enforcing the Mail Order Rule suggests that many of the problems that led to the promulgation of the Rule have surfaced in the burgeoning telemarketing industry as well. Although these problems cannot be pursued as violations of the Rule, they may be considered violations of section 5 of the FTC Act. *See, e.g., U.S.* v. *Network Marketing, et al.*, 86 Civ. 6927 (RJW) (S.D.N.Y., Consent Decree filed September 12, 1986) (in soliciting telephone orders, every solicitation treated as though it were a solicitation for an order of mail order merchandise covered by the Rule); *cf., Jay Norris Corp. et al.*, 91 F.T.C. 751, 850 (1978), *affirmed*, 598 F.2d 1244 (2d Cir. 1979), *cert. denied*, 444 U.S. 980 (1979).

This experience has prompted our consideration of whether a need exists to expand the Rule to cover telephone sales by adding the word "or by telephone," or "or telephones order," or words of similar import after the words "by mail," or "mail order," or the like as appropriate wherever they appear in the present Rule. The Commission wishes to solicit comment on this issue.

Additionally, the Commission wishes to seek comment on whether the Rule should be further broadened to include newly developing telemarketing technologies that may play an increasingly important role in the solicitation of sales in the future. This could be accomplished by adding the words "or by telephone or by any other means," or "telephone order or order by any other means," or words of similar import after the words "by mail" or "mail order" or the like as appropriate wherever they appear in the present Rule. Importantly, the Mail Order Rule is premised on the unfair or deceptive practice of failing to provide for the timely shipment of merchandise. The means by which the merchandise is ordered does not appear to be material to such an unfair or deceptive practice.

If the Commission should decide to proceed with either of these alternatives, an amendment to the Rule would raise an additional issue. Currently, credit sales represent a small percentage of sales covered by the Rule. Most mail order merchandise is paid by check or money order. However, the preponderant means of payment for telephonically ordered merchandise is by credit card. Extending the Rule's coverage to include telemarketing would dramatically increase the volume of credit transactions that fall within the Rule.

Section 435.2(b)(1) of the Rule defines the term "receipt of a properly completed order" in the credit sale context as being the time the seller charges the buyer's charge account. This definition provides the starting point from which the Rule measures the timeliness of shipment.[1] Under this definition, it is possible for merchants to hold orders without notice to the buyers and without providing them any options to cancel as long as they did not charge the buyers' charge accounts. The Commission is concerned that by increasing the volume of credit transactions covered by the Rule without changing this definition, it could open a major gap in coverage. When the Commission originally adopted the Rule, it stated that:

> While the consumer who paid in advance may feel more oppressed when faced with non-delivery or late delivery of merchandise, all consumers who order mail order merchandise are the victims of unfair or deceptive practices when the seller who solicited their orders lacked a reasonable basis for expecting to be able to ship within 30 days of receipt of the orders or within the time stated in the solicitations. *Statement of Basis and Purpose* accompanying the Rule, 40 FR 51582, 51594 (November 5, 1975).

Therefore, the Commission also desires to solicit comment on whether it would be appropriate to revise § 435.2(b)(1) to parallel more closely § 435.2(b)(2) by providing that a properly completed order is one in which the seller receives sufficient information to charge the buyer's account.

The Commission invites public comment on the foregoing issues. In addition, the Commission invites public comment on whether there are fair and feasible alternatives to the proposed amendments under consideration. Finally, pursuant to section 22(a)(1) (A), (B), and (C) of the FTC Act, the Commission invites public comment on whether the alternative amendments to the Rule under consideration by the Commission's staff (1) will have an annual effect on the national economy of $1,000,000,000 or more; (2) will cause a substantial change in the cost or price of goods or services which are used extensively by particular industries, which are supplied extensively by particular geographic regions, or which are required in significant quantities by the Federal Government, or by state or local governments; or (3) will have a significant impact upon persons subject to regulation under such amendment and upon consumers.

[1] However, if an express shipping representation is made in the advertising that solicits the order, the starting point becomes the time the seller receives all information necessary to process and ship the order, regardless of whether the sale is a credit transaction or not.

Part B—Objectives

The objective of the Commission's action in this area is to consider whether conditions in the direct marketing practices industry support broadening the scope of the Mail Order Rule. The principal question the Commission wishes to explore is what evidence is there that an amendment of the Rule is necessary.

Further, what evidence is there indicating that any amendment should include additional marketing technologies. Finally, is there any evidence that an expanded Rule would have a negative impact.

Part C—Regulatory Alternatives Under Consideration

The Commission currently has no regulatory alternatives under consideration other than the proposed Advanced Notice of Proposed Rulemaking.

Part D—Rulemaking Procedures

If the Commission determines that any of the amendments under consideration, or any other possible amendment proposed in response to the Advance Notice of Proposed Rulemaking, is appropriate, a notice of proposed rulemaking asking for public comment on a specific proposed amendment or amendments will be published in the **Federal Register**. The Commission may utilize expedited rulemaking procedures pursuant to § 1.20 of the Commission's Rules of Practice.

Part E—Request for Comments

The Commission has not reached any conclusions concerning any of the issues raised herein. The Commission wishes to receive public comments on the various alternative courses of action discussed. The Commission believes that such public comment would greatly enhance its understanding of the issues that need to be considered. Interested persons are invited to address any issues of fact, law, policy, or procedure, and to suggest any alternative course of action which they believe should be considered by the Commission.

List of Subjects in 16 CFR Part 435

Mail Order Merchandise Trade Practices.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 88-24854 Filed 10-26-88; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

Abandoned Mine Land Reclamation Program; Public Comment Period and Opportunity for Public Hearing on an Amendment to the Kansas Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: On September 30, 1988, the State of Kansas submitted to the Office of Surface Mining Reclamation and Enforcement (OSMRE) a proposed amendment to its Abandoned Mine Land Reclamation (AMLR) Plan (hereinafter referred to as the Kansas Plan). Kansas is proposing to assume responsibility for administering an emergency reclamation program and has submitted a plan outlining the procedures for administration of such a program.

This notice sets forth the times and location that the Kansas Plan and proposed amendments will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding a public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. November 28, 1988. If requested, a public hearing on the proposed amendments will be held on November 21, 1988. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m., on November 14, 1988.

ADDRESSES: Written comments and requests for a hearing should be mailed or hand carried to Mr. William J. Kovacic at the address listed below. Copies of the Kansas Plan, the proposed amendment to the plan, and all written comments received in response to this notice will be available for public review and copying at addresses listed below during normal business hours Monday through Friday, excluding

holidays. Each requester may receive, free of charge, one copy of the proposed amendment by contacting the OSMRE Kansas City Field Office.

Mr. William J. Kovacic, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106—Telephone: (816) 374-6405

Office of Surface Mining Reclamation and Enforcement, Administrative Records Office, Room 5215, 1000 L Street NW., Washington, DC 20240—Telephone: (202) 343-5492

Kansas Department of Health and Environment, Surface Mining Section, Bureau of Waste Management, 107 W. 11th, P.O. Box 1418, Pittsburgh, Kansas 66762—Telephone: (314) 231-8615.

FOR FURTHER INFORMATION CONTACT:
Mr. William J. Kovacic, Director, Kansas City Field Office, at the address or telephone number listed in "ADDRESSES."

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior conditionally approved the Kansas AMLR program on February 1, 1982. Information pertinent to the general background, revisions, and amendments to the initial program submission, as well as the Secretary's findings and the disposition of comments can be found in the February 1, 1982, Federal Register (47 FR 4513). Deficiencies that result in the conditional approval were corrected by the State, and on June 3, 1983, all conditions of approval were removed by the OSMRE. The Secretary's findings can be found in the June 3, 1983 Federal Register (48 FR 24874).

Information concerning the previously approved plan and the proposed amendments may be obtained from the agency offices listed under "ADDRESSES."

The Secretary has adopted regulations that specify the content requirements of a State reclamation plan and the criteria for plan approval (30 CFR Part 884). The regulations provide that a State may submit to the Director proposed amendments or revisions to the approved reclamation plan. If the amendments or revisions change the scope or major policies followed by the State in the conduct of its reclamation program, the Director must follow the procedures set out in 30 CFR 884.14 in approving or disapproving an amendment or revision.

II. Discussion of Proposed Amendment

By letter dated September 30, 1988, Kansas submitted a reclamation plan amendment to OSMRE (Administrative Record No. AML–KS 93). The amendment consists of procedures to be used in the implementation and administration of emergency reclamation projects.

On September 19, 1983, OSMRE informed the State and Tribes of the opportunity to amend their reclamation plans to include responsibility for administering emergency response reclamation activities (47 FR 42729). For a State to undertake such activities as part of its reclamation program, it must demonstrate that it has the statutory authority to administer emergency reclamation activities, the technical capabilities to design and supervise emergency response work and the appropriate procurement procedures to quickly respond to emergencies either directly or through contractors. The State of Kansas has submitted material demonstrating compliance with these requirements.

III. Public Comment Procedures

OSMRE is seeking comments on the adequacy of the Kansas proposed amendments as set forth in 30 CFR 884.15, and whether the criteria for assumption of emergency response activities specified in 47 FR 42729 (September 19, 1983), have been satisfied. If approved, the amendments would become part of the Kansas Abandoned Mine Land Reclamation Plan.

Written Comments.

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Kansas City Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4:00 p.m. November 14, 1988. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the OSMRE office listed under "ADDRESSES" by contacting the person listed under "FOR FURTHER INFORMATION CONTACT". All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "ADDRESSES." A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 916

Coal mining, Intergovernmental relations, Surface mining, Underground mining, Abandoned mine land plans.

Date: October 17, 1988.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 88-24818 Filed 10-26-88; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 925

Abandoned Mine Land Reclamation Program; Public Comment Period and Opportunity for Public Hearing on an Amendment to the Missouri Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: On August 22, 1988, the State of Missouri submitted to the Office of Surface Mining Reclamation and Enforcement (OSMRE) a proposed amendment to its Abandoned Mine Land Reclamation (AMLR) Plan (hereinafter referred to as the Missouri Plan). The amendment includes a complete revision of the Missouri Plan. Substantive changes are proposed pertaining to the agency organizational structure, the procedures for reclamation project ranking and selection, and the AMLR database. Procedures have been added pertaining to liens, appraisals, and rights of entry on private lands and for land acquisition, management, and disposal.

This notice sets forth the times and locations that the Missouri Plan and proposed amendments will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding a public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. November 28, 1988. If requested, a public hearing on the proposed amendments will be held on November 21, 1988. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m., on November 14, 1988.

ADDRESSES: Written comments and requests for a hearing should be mailed or hand carried to Mr. William J. Kovacic at the address listed below. Copies of the Missouri Plan, the proposed amendment to the plan, and all written comments received in response to this notice will be available for public review and copying at addresses listed below during normal business hours Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contacting the OSMRE Kansas City Field Office.

Mr. William J. Kovacic, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106—Telephone: (816) 374-6405

Office of Surface Mining Reclamation and Enforcement, Administrative Records Office, Room 5215, 1000 L Street NW., Washington, DC 20240—Telephone: (202) 343-5492

Missouri Department of Natural Resources, Land Reclamation Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, Missouri 65102—Telephone: (314) 751-4041.

FOR FURTHER INFORMATION CONTACT:
Mr. William J. Kovacic, Director, Kansas City Field Office, at the address or telephone number listed in "ADDRESSES."

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior approved the Missouri AMLR program on January 29, 1982. Information pertinent to the general background, revisions, and amendments to the initial program submission, as well as the Secretary's findings and disposition of comments can be found in the January 29, 1982, Federal Register (47 FR 4253–4254).

Information concerning the previously approved plan and the proposed amendments may be obtained from the agency offices listed under "ADDRESSES."

The Secretary has adopted regulations that specify the content requirements of a State reclamation plan and the criteria for plan approval (30 CFR Part 884). The regulations provide that a State may submit to the Director proposed amendments or revisions to the approved reclamation plan. If the amendments or revisions change the scope or major policies followed by the State in the conduct of its reclamation program, the Director must follow the procedures set out in 30 CFR 884.14 in approving or disapproving an amendment or revision.

II. Discussion of Proposed Amendment

By letter dated August 22, 1988, Missouri submitted a reclamation plan amendment to OSMRE (Administrative Record No. AML–MO 59). The proposed amendment consists of a complete revision to the approved Missouri Plan as provided for by 30 CFR 884. Specifically, the following areas of the plan are being revised.

1. Organization (30 CFR 884.13(d)(2) & (2)): Missouri is proposing to update certain portions of its AMLR plan to reflect changes that have occurred in the State agency structure. The State has also submitted additional material incorporating into the plan the staffing policies outlined in the State manual of personnel procedures.

2. Project selection (30 CFR 884.13(c)(2)): Missouri has submitted revised project scoring criteria to ensure that projects involving threats to the public health and safety are addressed before lower priority problems. Missouri is also proposing a project prioritization methodology based upon the OSMRE "Abandoned Mine Land Inventory Update Manual, August 1984". Section 403 of the Surface Mining Act, 30 U.S.C. 1233, provides that expenditures from the AML Fund on eligible lands and waters reflect certain stated priorities. The first two priorities concern the protection of the public health, safety, and general welfare.

3. Reclamation on private land (30 CFR 884.13(c)(5)): Missouri has submitted procedures to clarify 10 CSR 40–8.060 regarding liens and appraisals on private lands.

4. Rights of entry (30 CFR 884.13(c)(6)): The State has submitted additional material concerning non-consensual entry requirements as specified in 30 CFR 877.13(c).

5. Coordination of Reclamation Activities (30 CFR 884.13(c)(3)): The State has proposed amending its coordination procedures to eliminate the requirement for a State Reclamation Committee. The Missouri Land Reclamation Program is the only State or Federal agency actively performing reclamation of coal mined lands with the State. Missouri has proposed procedures for coordinating with the agencies in the original State Reclamation Committee and with other interested agencies on an individual basis, in the development of construction projects.

6. Land Acquisition, Management and Disposal (30 CFR 884.13(c)(4)): Missouri has proposed adding a procedure to allow for acquisition of land through sale, donation or condemnation in accordance with the provisions outlined in 30 CFR 879, 10 CSR 40–9.040 and 10 CSR 40–9.050.

7. Database (30 CFR 884.13(f) Missouri is proposing to amend the database pertaining to eligible lands and waters incorporating approved AML inventory sites.

III. Public Comment Procedures

OSMRE is seeking comments on the adequacy of the Missouri proposed revision as set forth in 30 CFR 884.15. If approved, the revised would replace the original Missouri Abandoned Mine Land Reclamation Plan.

Written Comments

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Kansas City Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4:00 p.m. November 14, 1988. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow

OSMRE officials to prepare adequate and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the OSMRE office listed under "ADDRESSES" by contacting the person listed and under "FOR FURTHER INFORMATION CONTACT". All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "ADDRESSES". A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 913

Coal mining, Intergovernmental relations, Surface mining, Underground mining, Abandoned mine land plans.

Date: October 17, 1988.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 88-36819 Filed 10-26-88; 8:45 am]

BILLING CODE 4310-05-M

VETERANS ADMINISTRATION

38 CFR Part 17

Medical Benefits; Quality Assurance Confidentiality

AGENCY: Veterans Administration.

ACTION: Proposed regulations.

SUMMARY: The Veterans Administration (VA) proposes to amend the regulations that provide for the VA medical quality assurance program. These regulations delineate the responsibilities of the VA's Department of Medicine and Surgery (DM&S) with respect to the conduct of the Quality Assurance (AQ) program and establish standards that assure that certain quality assurance records and documents are adequately safeguarded and used only for proper purposes. These proposed amendments would redefine the medical quality assurance program to include peer review component, add occurrence screening as a quality assurance activity, and delete credentialing and privileging as a mandatory quality assurance function.

DATES: Comments must be received on or before November 28, 1988.

Comments will be available for public inspection until December 6, 1988. It is proposed to make § 17.506(16), 17.507(xvi), 17.517 and 17.518 effective January 1, 1985, and the remainder of these regulations effective 30 days after final publication in the Federal Register.

ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays) until December 6, 1988.

FOR FURTHER INFORMATION CONTACT: Robert Lubran, Chief, Systems Review Staff, Office of Quality assurance, Department of Medicine and Surgery, (202) 233-3115.

SUPPLEMENTARY INFORMATION: The Veterans Disability Compensation and Housing Benefits Amendments of 1980 (Pub. L. 96-385) amended 38 U.S.C. 3305 to require the Administrator of Veterans Affairs to specify, by regulation, activities which meet the definition of the VA's medical quality assurance program. This act explicitly precludes any activity from being designated as a quality assurance program activity for the purposes of confidentiality unless such designation has been specified in regulation. The Veterans Health Care Amendments of 1985 (Pub. L. 99-166) amended section 3305, and added sections 4151 and 4152 to 38 U.S.C., to require the Administrator to establish and conduct a quality assurance program and delineate the responsibilities of the Chief Medical Director with respect to the quality assurance program. 38 U.S.C. 4151 requires DM&S to periodically evaluate the quality of medical care provided by the Department in terms of certain measures of outcome from surgery as part of the quality assurance program. The Veterans Benefits and Services Act of 1988 (Pub. L. 100-322) directs the Administrator to "take actions to improve the operation of quality assurance programs and activities in the Veterans Administration, including • • • implementation of • • • 'occurrence screening'."

On July 28, 1981, the VA published proposed regulations (47 FR 38540) to implement 38 U.S.C. 3305. Final implementing regulations were published October 22, 1982 (47 47007), and, as codified at 38 CFR 17.500-17.540, are the existing regulations which the VA now proposes to amend. Development and refinement of the VA's quality assurance program since the publication of those Health Service Review Organization (HSRO) regulations have necessitated the need for changes.

The VA is proposing the following changes to the existing regulations:

a. General provisions. We would redefine the term Health Services Review Organization (HSRO) at § 17.500 to include three components: Systematic Internal Review (SIR), Medical District Initiated Peer Review Organization (MEDIPRO) and Systematic External Review Program (SERP). These terms describe, respectively, the VA's overall quality assurance program (HSRO); the medical facilities' quality assurance component (HSRO-SIR); the medical district initiated peer review organization HSRO-MEDIPRO); and the evaluation component (HSRO-SERP) external to the medical facility. These changes would clarify that the VA's system of medical district level clinically oriented peer review (HSRO-MEDIPRO) is an integral part of the DM&S quality assurance program. Section 17.501 would be amended to substitute the Office of Quality Assurance for the Medical Inspector and Evaluation Office which has been abolished and to include responsibilities of the regional director and medical district director. Section 17.504 would be amended to include the HSRO-MEDIPRO program with respect to the conduct of VA employees and others involved in quality assurance.

b. Quality Assurance Program. We would add occurrence screening as the 16th element under the function of continuous monitoring in §§ 17.506(a) and 17.507(a)(4). Occurrence screening is intended to supplement patient incident reporting under the Patient Injury Control function, § 17.506, by screening patient care through an evaluation of patients records to identify potentially adverse events. Indentification of such potential findings would be confirmed through a medical facility peer review process. This change would implement section 201(a)(2) of the Veterans Benefits and Services Act of 1988. Sections 17.506(e), 17.515, and 17.518(f) relating to credentialing and delineation of clinical privileges, would be removed from the 17.500 series and placed elsewhere in 38 CFR Part 17. Sections 17.511-17.513 would be reserved. A new § 17.514 would require a written HSRO-MEDIPRO plan, mandate that DM&S medical districts undertake peer review and would describe HSRO-MEDIPRO program activities. Section 17.516 would be redesignated as § 17.515.

c. Designation and description of confidential records and documents. Section 17.516 would be amended to cover records and documents pertaining to the HSRO program which are generated for the Agency by a consultant or contractor, and to provide for protection of records covered under other statutes. Sections 17.517 and 17.518 would be redesignated as §§ 17.516 and 17.517, respectively. Section 17.517 would be amended to include reports and documents created by individuals as well as those created by committee and study teams in the paragraph that concerns continuous monitoring and utilization review documents. This is necessary because the occurrence screening process often generates documents which contain the deliberations of individual health care evaluators. A new § 17.518 would describe the types of HSRO-MEDIPRO quality assurance documents and records, whether created before or after the final publication of these regulations, which are confidential and provileged under 38 U.S.C. 3305 and these regulations. Provision has been made in § 17.518 for the disclosure to Congress of aggregate statistical data on facility-specific mortality and morbidity rates and related quality of care evaluations, as required by 38 U.S.C. 4151 and 4152. Section 17.520 would be amended to reflect redesignation of the above paragraphs. Section 17.523 would broaden existing disclosure authorities to include the medical district director, regional director and Chief Medical Director; § 17.524 would be modified to conform with the requirements set forth in the previous section. These authorities reflect the appropriate role of DM&S officials in the disclosure of confidential HSRO records and documents. Section 17.527 which covers access to HSRO records within the agency would require VA officials at each medical district, region and the central office to establish certain practices for ensuring that adequate controls are in place to limit access to HSRO-MEDIPRO and other confidential quality assurance records and that such records are available to VA officials. Section 17.527(h) would be amended to specify that HSRO-SIR confidential and privileged records and documents would be subject to disclosure to HSRO-MEDIPRO. The penalty and fine for unauthorized disclosure of confidential information would not be amended.

The VA is proposing to make § 17.506(16), Occurrence screening, § 17.507(xvi), Occurrence screening, § 17.514, HSRO-MEDIPRO, and § 17.518, HSRO-MEDIPRO records and documents, effective January 1, 1985. If these regulations were not retroactive, the VA would be required to maintain these records in two categories, those created before and those created after the effective date of these regulations which would be confusing and impractical.

The VA has determined that these proposed regulations are not major as defined by Executive Order 12291, Federal Regulation. They will not have an effect on the economy of $100 million and will not result in any major increases in costs or prices for anyone; nor will they have significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

The Administrator hereby certifies that these proposed regulations will not, when promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), these regulations are, therefore, exempt from the regulatory analysis requirements of 5 U.S.C. 603 and 604. The reason for this certification is that the regulations govern only the internal VA handling of a small category of confidential VA records. These regulations concern the Agency's implementation of its medical quality assurance program, and impose no regulatory burdens on small entities.

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Health care, Health facilities, Health professions, Medical devices, Medical research, Mental health programs, Nursing home care, Philippines, Veterans.

Approved: September 26, 1988.

Thomas K. Turnage,

Administrator.

38 CFR, Part 17, Medical, is proposed to be amended as follows:

PART 17—[AMENDED]

1. Section 17.500 is amended by revising paragraph (b), (c) and (d) to read as follows:

§ 17.500 General.

• • • • •

(b) HSRO is a three faceted program:

(1) Health Services Review Organization—Systematic Internal Review (HSRO-SIR) is an integrated quality assurance process that is internal to each VA medical facility.

(2) Health Services Review Organization—Medical District Initiated Peer Review Organization (HSRO-MEDIPRO) is a clinically oriented, medical district based, peer review system of quality of care and resource utilization assessment external to the medical facility.

(3) Health Services Review Organization—Systematic External Review Program (HSRO-SERP) is a systemwide VA review mechanism external to each VA medical facility in which health care evaluators review clinical and administrative aspects of the quality of care in VA medical facilities and the effectiveness of their HSRO-SIR programs. HSRO-SERP may include a review of the effectiveness of HSRO-MEDIPRO programs.

(c) Corrective action on all medical facility problems or recommendations identified by a HSRO-SIR, HSRO-MEDIPRO or HSRO-SERP review will be initiated and implemented at the lowest possible organizational level through existing lines of authority.

(d) HSRO-SIR, HSRO-MEDIPRO and HSRO-SERP program activities will be established, conducted and maintained at DM&S organizational levels as prescribed in these regulations and VA policy.

(Authority: 38 U.S.C. 3305)

2. Section 17.501 is revised to read as follows:

§ 17.501 Departmental responsibility.

(a) The Chief Medical Director is responsible for the implementation, maintenance, and enforcement of these regulations and will ensure that each DM&S organizational element maintains an effective and efficient HSRO program as specified in VA policy.

(b) The Director, Office of Quality Assurance, will provide guidance, oversight, and recommendations to the Chief Medical Director concerning the effectiveness of the HSRO program and the need to make improvements.

(c) Each regional director will ensure that HSRO-MEDIPRO is operational in the region and that clinical care and resource utilization problems unresolved at the district level are acted upon. The regional director will monitor and evaluate the implementation of district HSRO-MEDIPRO plans; review HSRO-MEDIPRO minutes and reviews; approve HSRO-MEDIPRO reports;

provide necessary followup on HSRO–MEDIPRO program documents; and approve HSRO–MEDIPRO Board appointments.

(d) Each medical district director is responsible for implementing and supervising the HSRO–MEDIPRO program within the district and for providing administrative and analytical support. The authority for day-to-day planning, coordinating, implementing and monitoring compliance with policies and procedures is delegated to the HSRO–MEDIPRO coordinator. Supervision of the HSRO–MEDIPRO staff will be by the medical district director or designee.

(Authority: 38 U.S.C. 3305)

3. Section 17.504 is revised to read as follows:

§ 17.504 Conduct.

(a) Any VA employee participating in HSRO–SIR, HSRO–MEDIPRO or HSRO–SERP activities or having access to confidential and privileged quality assurance records and documents will comply with the requirements of these regulations. Participating employees will exercise prudent and diligent care and act in good faith while gathering and analyzing factual information prior to making any judgment which may reflect adversely on another VA employee or a VA medical facility. Employees will perform their duties in accordance with prevailing standards and procedures to ensure the safety and welfare of VA beneficiaries and others.

(b) Only those employees in supervisory, executive, or HSRO capacities who have sufficient job related needs to study or otherwise use confidential and privileged records and documents should have access to patient or provider specific identification information or to the confidential coding system. Access to HSRO records within the agency is governed by § 17.527 of this part.

(c) VA employees, upon voluntary or involuntary termination of VA employment for any reason, will not disclose to any person or organization any HSRO records or documents which are designated as confidential and privileged by 38 U.S.C. 3305 and these regulations.

(Authority: 38 U.S.C. 3305)

4. In § 17.506, paragraph (a)(16) is added to read as follows:

17.506 Mandatory HSRO–SIR functions and elements.

* * * * *

(a) * * *

(16) Occurrence screening.

* * * * *

5. In § 17.506, paragraph (e) is removed.

6. In § 17.507, paragraph (a)(4)(xvi) is added to read as follows:

§ 17.507 Description of continuous monitoring.

* * * * *

(a) * * *

(4) * * *

(xvi) *Occurrence screening.* This involves screening cases against a predetermined list of criteria concerning the provision of care to patients. Those cases which involve one or more of the occurrences will be reviewed to identify possible problems in patient care. When appropriate, action will be taken to correct the problems identified in the individual case. In addition, cases meeting the criteria will be entered into an ongoing occurrence screening data base which will be regularly reviewed and analyzed to identify patterns which may be problematic.

7. Section 17.514 is added to read as follows:

§ 17.514 HSRO–MEDIPRO.

(a) Each medical district, in accordance with any directives from the Chief Medical Director, will develop and establish a written MEDIPRO plan which establishes responsibilities, defines policy and describes procedures and mechanisms necessary to maintain an effective HSRO–MEDIPRO program. The plan will be reviewed annually by the HSRO–MEDIPRO board, updated as appropriate and will address the following subjects:

(1) Purpose of HSRO–MEDIPRO program.

(2) Program objectives.

(3) HSRO–MEDIPRO board structure and functions.

(4) Use of physician/dental advisors.

(5) HSRO–MEDIPRO staff roles and responsibilities.

(6) Meeting schedule and protocol.

(7) Review process.

(8) Plans for periodic reliability checks on HSRO–MEDIPRO staff and physician/dental advisors.

(9) Reporting.

(10) Relationship to other district councils.

(b) HSRO–MEDIPRO provides a means for representative VA health care professionals to evaluate VA medical facility, patient and practitioner records and documents to assess the quality of care and appropriateness of resource utilization. The goal of the HSRO–MEDIPRO program is to foster quality care under a prospective resource allocation methodology. HSRO–MEDIPRO is designed to function as a data driven system which combines data analysis and subsequent chart review to focus peer review activities. HSRO–MEDIPRO is intended to augment and not duplicate existing VA quality assurance activities including HSRO–SIR and HSRO–SERP.

(c) Each HSRO–MEDIPRO program, in accordance with any directives from the Chief Medical Director, will establish uniform procedures and conduct peer review activities including, but not limited to, the following:

(1) Analyzing data to identify potential problems in quality of care or validity of data and to develop and review objectives on a regular basis. VA data sources include, but are not limited to, Patient Treatment File (PTF), records maintained on the Decentralized Hospital Computer Program (DHCP), tort claims, incident reports, and Automated Management Information System (AMIS). Problem areas may be indicated by statistically significant variations between appropriate medical district, regional or national peer group patterns of care. The following categories are examples of potential problem areas for the purpose of HSRO–MEDIPRO data analysis and focused review and these regulations:

(i) Mortality.

(ii) Interhospital transfers.

(iii) Interservice transfers.

(iv) Inpatient admissions/readmissions.

(v) Applicants found not in need of care.

(vi) One-day inpatient stays.

(vii) Length of stay by Diagnostic Related Group (DRG).

(viii) Discharge planning.

(ix) Appropriateness of levels of care such as acute care, long-term care, and ambulatory care.

(x) Ancillary services.

(2) Selecting topics for focused review. HSRO–MEDIPRO boards, in accordance with any directives from the Chief Medical Director, will select and prioritize topics for review based on medical district, regional and national considerations. Such considerations may include, for example, topics which reflect deviations of clinical indicators from VA system norms; topics which reflect large numbers of patients or serious consequences such as death or disability; topics which are likely to reflect systemwide problems related to resource allocation systems and other VA cost containment efforts; and topics which lend themselves to interventions at the medical center level.

(3) Generating clinical hypotheses and study objectives. Each HSRO–MEDIPRO board and staff will generate clinical hypotheses and study objectives for focused review topics.

(4) Developing criteria. HSRO–MEDIPRO board and staff will develop and/or use specific, objective criteria to guide records review and analysis. A variety of resources may be used in the development of criteria including previously developed criteria and physician and dental advisor expertise.

(5) Conducting focused review and, as necessary, referring records and other documents to physician/dental advisors for peer review. Focused review refers to the review of a well-defined, limited or structured topic by a health professional peer in order to evaluate a potential quality of care problem or opportunity for improvement. Peer review refers to an assessment by health care practitioners of services ordered or furnished by other practitioners in the same professional field.

(6) Sharing findings with VA medical facilities. HSRO–MEDIPRO will provide medical facilities with information relative to quality of care and practice patterns. Such information may include practitioner-specific and aggregate district, region and national data. VA medical facilities will use these findings in their HSRO–SIR program to document satisfactory or superior quality of care and to identify areas where attention should be directed. If necessary, medical centers will take action to correct identified problems or make improvements through appropriate interventions such as education and training of VA medical staff or management. Other HSRO–MEDIPRO information that may be provided to medical facilities includes study criteria, data validation information, HSRO–MEDIPRO study summaries pertaining to the medical center, HSRO–MEDIPRO minutes and quarterly reports, and letters of observation indicating potential problems found in areas other than the topic under consideration for focused review.

(7) Resolving facility disagreement with HSRO–MEDIPRO study findings. Medical facilities may communicate in writing to the HSRO–MEDIPRO board where there is a disagreement over the findings of a HSRO–MEDIPRO study. The HSRO–MEDIPRO board will review all such medical facility documents; unresolved issues will be referred to the appropriate regional director for action.

(8) Providing HSRO–MEDIPRO board followup as necessary. HSRO–MEDIPRO boards, in accordance with any directives from the Chief Medical Director, will conduct followup evaluations of medical center actions after an appropriate period of time has elapsed.

(9) Integrating findings with the appropriate DM&S organizational elements. HSRO–MEDIPRO will report periodically on its findings and followup actions to the respective regional director and to the Director, Office of Quality Assurance. Where study findings have implications for planning or resource allocation purposes, communication should occur with the appropriate organizational unit, e.g., the District Planning Board or the District Executive Council.

(d) The VA may conduct a health care review(s) of HSRO–MEDIPRO to determine the effectiveness of the HSRO–MEDIPRO program in meeting its objectives, assess compliance with relevant policies and procedures, validate medical record reviews and to accomplish other similar objectives.

(e) Each medical district will have an HSRO–MEDIPRO board consisting of clinically active VA physicians and dentists to conduct HSRO–MEDIPRO activities. The membership and selection process for the HSRO–MEDIPRO boards will be determined by VA policy directive(s).

(Authority: 38 U.S.C. 3305)

§ 17.515 [Removed]

§§ 17.516 and 17.517 [Redesignated as §§ 17.515 and 17.516]

8. a. Section 17.515 is removed, and § 17.516 and § 17.517 are redesignated § 17.515 and § 17.516, respectively.

b. Newly-designated § 17.515 is revised and newly-designed § 17.516 is amended by adding paragraphs (c) and (d) to read as follows:

§ 17.515 HSRO–SERP.

(a) HSRO–SERP is an ongoing review program concerned principally with the quality of patient care provided at each VA medical facility and the effectiveness of its HSRO–SIR program. HSRO–SERP evaluates each VA medical facility service as well as the facility as a whole. The HSRO–SERP review includes a periodic assessment conducted at each VA medical facility by a multidisciplinary peer review team of VA health care professionals. Team members are selected from other VA medical facilities for their expertise in their respective disciplines and their evaluation skills. The HSRO–SERP review may also address the effectiveness of the HSRO–MEDIPRO program.

(b) HSRO–SERP also includes reviews and analyses of HSRO–SIR, HSRO–SERP and HSRO–MEDIPRO documents by VA central office officials.

(c) The HSRO–SERP program is intended to complement other evaluations, reviews and surveys of VA medical facilities that utilize standards and criteria which may be unrelated to the quality of patient care. Such activities are conducted by a variety of agencies and organizations including the VA Department of Medicine and Surgery, accrediting bodies such as the Joint Commission on Accreditation of Healthcare Organizations, Federal regulatory agencies, e.g., Nuclear Regulatory Commission, and veterans organizations.

(Authority: 38 U.S.C. 3305)

§ 17.516 HSRO records and documents.

* * * * *

(c) When used in the HSRO program, confidential records protected by statutes such as 38 U.S.C. 3305; 5 U.S.C. 552a, the Privacy Act; 38 U.S.C. 4132 (drug and alcohol abuse and sickle cell anemia treatment records); and 38 U.S.C. 3301 (veterans names and addresses), retain whatever confidentiality protection they have under these laws and applicable regulations and will be handled accordingly. To the extent that information protected by 38 U.S.C. 3301 or 4132 is incorporated into HSRO records, the information in the HSRO records is still protected by these statutes.

(d) Records and documents generated by a contractor or consultant in the course of conducting an HSRO program activity or function as specified in these regulations or an evaluation of any HSRO program as specified in these regulations shall be confidential and privileged to the same extent that the records and documents would be confidential and privileged if created by the Agency under these regulations.

§ 17.518 [Redesignated as § 17.517]

9. Section 17.518 is redesignated § 17.517.

10. Newly-designated § 17.517 is amended by revising paragraph (c) to read as follows:

§ 17.517 HSRO–SIR records and documents.

* * * * *

(c) Continuous monitoring and utilization review functions generate individual, committee or study team minutes, notes, reports, and memoranda produced in the process of deliberations by health care evaluators. Such documents are confidential and privileged in their entirety. Individual continuous monitoring and utilization review documents comparing one or

more patient's treatment with objective criteria or norms would be such a confidential document. Other memoranda and study documents or records prepared for review by HSRO–SIR committees are confidential and privileged only if they reveal the identity, even by implication, of individual VA employees or other individuals involved in the quality assurance process or the results or outcomes of HSRO–SIR reviews or studies. Summary documents or records which only identify study topics, the period of time covered by the study, criteria, norms, interpretive comments and major overall findings, but which do not identify health care providers, even by implication, are not considered confidential and privileged documents or records under 38 U.S.C. 3305 and these regulations.

* * * * *

11. In newly-designated § 17.517, paragraph (f) is removed.

12. Section 17.516 is added to read as follows:

§ 17.516 HSRO–MEDIPRO records and documents.

(a) Those records and documents generated by HSRO–MEDIPRO activities in accordance with § 17.514 of this part are confidential and privileged.

(b) HSRO–MEDIPRO records and documents made confidential and privileged as provided by 38 U.S.C. 3305 include the following:

(1) Records and documents which reveal the actual results or outcomes of studies of individual patient care and treatment as compared with clinical criteria or norms or which may identify, even by implication, individual VA patients or employees or other individuals involved in peer review activities. Such studies are based on analyses of data from such sources as the PTF, records maintained on the DHCP and medical records. Those records and documents which are maintained in personnel or similar files are not made confidential and privileged by 38 U.S.C. 3305. 38 U.S.C. 3305 makes confidential and privileged the minutes, notes, reports and other documents produced in the process of deliberations by the HSRO–MEDIPRO board when it reviews the performance of a medical facility or health care professional for the purpose of peer review.

(2) HSRO–MEDIPRO notes, working papers, staff reports and memoranda that contain the deliberations of health care evaluators.

(3) HSRO–MEDIPRO board minutes, memoranda, deliberations, reports, letters, studies or other documents pertaining to HSRO–MEDIPRO peer review activities.

(c) Other documents concerning HSRO–SIR reviews or studies prepared for review by HSRO–MEDIPRO staff or board are confidential and privileged only if they reveal the identity, even by implication, of VA employees or others involved in the quality assurance process or the results or outcomes of HSRO–SIR reviews or studies, as provided in § 17.517.

(d) Summary documents or records, other than those discussed in paragraphs (a), (b), and (c) of this section, which only identify study topics, the period of time covered by the study, criteria, norms or a summary of findings, and which do not identify VA patients or employees or others involved in peer review activities, even by implication, are not considered confidential and privileged documents or records under 38 U.S.C. 3305 and these regulations.

(e) Records and documents, to the extent that they are aggregations of statistical data and do not identify, even by implication, individual VA employees or other individuals involved in the peer review process, are not confidential or privileged. Nothing in these regulations shall be construed to authorize or require the withholding of such aggregate statistical data or information from disclosure.

(f) HSRO–MEDIPRO documents must not be filed in a manner by which they can be retrieved by reference to an individual identifier.

(Authority: 38 U.S.C. 3305)

13. Sections 17.523 and 17.524 are revised to read as follows:

§ 17.523 Disclosure authorities.

(a) The VA medical facility director is authorized to disclose any confidential and privileged HSRO–SIR records or documents to other agencies, organizations, or individuals where these regulations expressly provide for disclosure.

(b) The VA medical district director is authorized to disclose any confidential and privileged HSRO–MEDIPRO records or documents to other agencies, organizations, or individuals where these regulations expressly provide for disclosure.

(c) The VA regional director is authorized to disclose any confidential and privileged HSRO–SERP records or documents to other agencies, organizations, or individuals where these regulations expressly provide for disclosure.

(d) The VA Chief Medical Director is authorized to disclose any confidential and privileged HSRO records or documents to other agencies, organizations, or individuals where these regulations expressly provide for disclosure.

(Authority: 38 U.S.C. 3305)

§ 17.524 Appeal of decision to deny disclosure.

When a request for records or documents subject to these regulations is denied by the VA medical facility director, medical district director, regional director or Chief Medical Director, the VA official denying the request will notify the requestor of the right to appeal this decision to the Administrator of the Veterans Affairs within 60 days. The Administrator's decision is the agency's final decision.

(Authority: 38 U.S.C. 3305)

14. Section 17.527 is amended by revising paragraphs (b), (d), (g), and (h), to read as follows:

§ 17.527 Access to HSRO data within the agency.

* * * * *

(b) No individual shall be permitted physical access to privileged and confidential HSRO records and documents identified in §§ 17.517, 17.518 and 17.519 of this part unless such individual has received adequate training and has been informed of the penalties for unauthorized disclosure. Any misuse of confidential and privileged HSRO records or documents shall be reported through the HSRO confidentiality officer to the appropriate DM&S official.

* * * * *

(d) A list should be maintained at each medical facility, medical district, region and the central office of those VA employees or others who are authorized access to confidential and privileged HSRO records and documents. Each authorized individual will sign a statement that he or she is aware of the requirements for confidentiality and will not divulge any information in any way to any source or person except in accordance with these regulations.

* * * * *

(g) Confidential and privileged HSRO records and documents shall be maintained in secure filing cabinets and locked when not under personal supervision. A security system for storing, processing, accessing and retrieving automated data will be developed and maintained at each medical facility, medical district, region and VACO. Such security systems will include procedures and internal controls to identify individuals who have authorized access to those data and at what time such access occurred. Adequate internal controls will be developed and maintained so that confidential and privileged data, including automated data, may not be retrieved by an individual identifier(s). Each VA medical facility, medical district, region and the VACO will provide for the periodic review of confidential and privileged HSRO records and documents, including data, to determine whether security is adequate and which, if any, records and documents shall be retained. In general, confidential and privileged HSRO records and documents will be maintained for a minimum of 3 years and may be held longer if needed for HSRO research studies, legal purposes, or related quality assurance purposes.

(h) HSRO–SIR records and documents, as defined in § 17.517 of this part, will be available to HSRO–MEDIPRO staff and board members, the medical district director and other medical district management officials, regional directors and HSRO–SERP team members. HSRO–SIR, HSRO–MEDIPRO and HSRO–SERP records and documents will be available to VA central office management officials working in HSRO functions, service and staff office directors, and assistant chief medical directors.

* * * * *

15. Section 17.534 is amended by revising paragraph (f) to read as follows:

§ 17.534 Authorized disclosure: non VA requests.

* * * * *

(f) In general, Joint Commission (Joint Commission on Accreditation of Healthcare Organizations) survey teams and similar national accreditation agencies or boards and other organizations requested by the VA to consult, assess or evaluate the effectiveness of HSRO–SIR, HSRO–MEDIPRO or HSRO–SERP program activities are entitled to full disclosure of any and all privileged and confidential HSRO records or documents with the following qualifications:

(1) Accreditation agencies which are charged with assessing all aspects of medical facility patient care, e.g., Joint Commission, may have access to all confidential HSRO records and documents.

(2) Accreditation agencies charged with more narrowly focused review (e.g., College of American Pathologists, American Association of Blood Banks, Nuclear Regulatory Commission, etc.) may have access only to such confidential and privileged HSRO records and documents as are relevant to their respective focus.

* * * * *

[FR Doc. 88-24798 Filed 10-26-88; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

49 CFR Part 661

[Docket No. 88–G; RIN 2132–AA15]

Buy America Requirements; Amendments

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Extension of comment period for proposed rule.

SUMMARY: On August 29, 1988, the Urban Mass Transportation Administration issued a Notice of Proposed Rulemaking to implement changes to the "Buy America" requirements made by section 337 of the Surface Transportation and Uniform Relocation Assistance Act of 1987. A number of parties have requested that the comment period be extended. The purpose of this document is to extend the comment period until November 14, 1988.

DATE: Comments should be received by November 14, 1988.

ADDRESS: Comments should be addressed to: Department of Transportation, Urban Mass Transportation Administration, Office of the Chief Counsel, Docket No. 88–G, 400 Seventh Street, SW., Room 9316, Washington, DC 20590. Comments will be available for review by the public at this address from 9:00 am to 5:00 pm, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Edward J. Gill, Jr., Assistant Chief Counsel for Programs, Office of the Chief Counsel, Room 9316, UMTA, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–4063.

SUPPLEMENTARY INFORMATION: On August 29, 1988, UMTA published a Notice to Propose Rulemaking to implement the statutory changes to its "Buy America" requirements made necessary by section 337 of the Surface Transportation and Uniform Relocation Assistance Act of 1987. Comments were due to be submitted by October 28, 1988. UMTA has received a number of requests from individual companies that the comment period be extended. In addition, the American Iron and Steel Institute and the Railway Progress Institute, both of which represent a number of entities that could possibly be affected by the proposed regulations, have requested an extension because of the complexity of the proposed regulations.

All parties have requested a 30 day extension. While UMTA reconized that the proposed regulations are complex, it is felt that an extension of 30 days would unduly delay the publication of the final rule, especially in light of the 60 day comment period that was already provided. However, because of the importance of receiving comments from all parties that may be affected by the proposed regulations, it has been determined that it is reasonable to extend the closing date of UMTA Docket No. 88–G from October 28, 1988 to November 14, 1988.

Dated: October 24, 1988.

Theodore A. Mathis,

Deputy Chief Counsel.

[FR Doc. 88-24862 Filed 10-26-88; 8:45 am]

BILLING CODE 4910-57-M

VOL 53 ISS 208 OCT 27 1988 UMI

Notices

Federal Register
Vol. 53, No. 208
Thursday, October 27, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

October 21, 1988.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–[illegible].

Comments on any of the items listed should be sumbitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Revision

• Office of Finance and Management.

Uniform Administrative Requirements for Grants and Cooperative Agreements SF–424, SF–269, SF–272, SF–272a, SF–270, SF–271.

Recordkeeping; On Occasion; Quarterly; Annually.

Businesses or other for-profit; Non-profit institutions; 2,767 responses; 124,040 hours; not applicable under section 3504(h).

Gerald Miske, (202) 382–1553.

Extension

• Rural Electrification Administration.

Report of Compliance and Participation.

REA Form 268.

Annually.

Small businesses or organizations; 2,000 responses; 1,340 hours; not applicable under section 3504(h).

Patricia B. Armijo, (202) 382–9500.

NEW

• Rural Electrification Administration.

7 CFR 1709.10—1709.29, Rural Economic Development Loan and Grant Program N/A.

On Occasion.

Small businesses or organizations; 430 responses; 715 hours; not applicable under 3504(h).

Mark B. Wyatt, (202) 382–0410.

Larry K. Roberson,

Acting Departmental Clearance Officer.

[FR Doc. 88–24617 Filed 10–26–88; 8:45 am]

BILLING CODE 3410–01–M

COMMISSION ON CIVIL RIGHTS

California Advisory Committee; Agenda and Notice of Public Meeting

Notice of hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the California Advisory Committee to the Commission will convene at 7:30 p.m. and adjourn at 10:30 p.m. on November 10, 1988, at the Clarion Hotel, 700 16th Street, Sacramento, California 95814. The purpose of the meeting is to plan activities and discuss the upcoming forum on higher education.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Deborah Hesse or Philip Montez, Director of the Regional Division (213) 894–3437. (TDD 213/894/0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 20, 1988.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 88–24640 Filed 10–26–88; 8:45 am]

BILLING CODE 6335–01–M

Colorado Advisory Committee; Agenda and Notice of Public Meeting

Notice of hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Colorado Advisory Committee to the Commission will convene a meeting at 1:30 p.m. and adjourn at 3:30 p.m. on November 15, 1988, at the Radisson Hotel Denver, 1550 Court Place, Denver, Colorado 80202. The purpose of the meeting is to plan Advisory Committee activities for the fiscal year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Maxine Kurtz or Philip Montez, Director of the Western Regional Division (213) 894–3437, (TDD 213/894/0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 20, 1988.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 88–24641 Filed 10–26–88; 8:45 am]

BILLING CODE 6335–01–M

Minnesota Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Minnesota Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 9:00 p.m., on November 22, 1988, at the Holiday Inn downtown, 1313 Nicollet Mall, Minneapolis, Minnesota. The purpose of the meeting is to review the status of current Committee projects and discuss issues which are possible subjects for future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Talmadge L. Bartelle, or William F. Muldrow, Acting Director of the Central Regional Division (816) 426–5253, (TDD 816/426–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 20, 1988.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 88–24642 Filed 10–26–88; 8:45 am]

BILLING CODE 6335–01–M

Missouri Advisory Committee; Agenda And Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Missouri Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 2:00 p.m., on November 21, 1988, at the Drury Inn Airport at 10800 Pear tree Lane, St. Louis, Missouri. The purpose of the meeting is to review the status of current Committee projects and discuss issues which are possible subjects for future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Joanne M. Collins, or William F. Muldrow, Acting Director of the Central Regional Division (816) 426–5253, (TDD 816/426–5009). Hearing impaired persons who will attend the meting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 20, 1988.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 88–24643 Filed 10–26–88; 8:45 am]

BILLING CODE 6335–01–M

Ohio Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Minnesota Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 8:30 p.m., on November 17, 1988, at the Holiday Inn, 2429 South Reynolds Road, Toledo, Ohio. The Committee will hold a community forum on the nature and extent of issues and problems related to race relations in Toledo, Ohio.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Donald G. Prock, or William F. Muldrow, Acting Director of the Central Regional Division, (816) 426–5253, (TDD 816/426–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 20, 1988.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 88–24644 Filed 10–26–88; 8:45 am]

BILLING CODE 6335–01–M

Utah Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Utah Advisory Committee to the Commission will convene at 7:00 p.m. and adjourn at 9:00 p.m., on November 16, 1988, at the Airport Holdiay Inn, 1659 West North Temple, Salt Lake City, Utah 84116. The purpose of the meeting is to conduct program planning.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee member Shu H. Cheng or Philip Montez, Director of the Western Regional Division (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 20, 1988.

Melvin L. Jenkins

Acting Staff Director.

[FR Doc. 88–24645 Filed 10–26–88; 8:45 am]

BILLING CODE 6335–01–M

Washington Advisory Committee; Agenda and Notice of Public Forum

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that the Washington Advisory Committee to the Commission to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m., on November 16, 1988, at the Aladdin Motor Inn, 900 Capitol Way, Olympia, Washington 98501. The purpose of the meeting is to plan project activities for the new charter period and to discuss civil rights issues affecting the State of Washington.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Sharon Bumala or Philip Montez, Director of the Regional Division (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 20, 1988.

Melvin L. Jenkins

Acting Staff Director.

[FR Doc. 88–24646 Filed 10–26–88; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C-431-098]

Viscose Rayon Staple Fiber from Sweden; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on viscose rayon staple fiber from Sweden. We preliminarily determine the net subsidy to be 14.93 percent *ad valorem* for the period January 1, 1986 through December 31, 1986. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: October 27, 1988.

FOR FURTHER INFORMATION CONTACT: Cynthia Sewell or Paul McGarr, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3337.

SUPPLEMENTARY INFORMATION:

Background

On August 31, 1987, the Department of Commerce ("the Department") published in the Federal Register (52 FR 32822) the final results of its last administrative review of the countervailing duty order on viscose rayon staple fiber from Sweden (48 FR 50914, November 4, 1983). On May 28, 1987, the petitioner, the U.S. Rayon Producers Committee, requested in accordance with § 355.10 of the Commerce Regulations an administrative review of the order. We published the initiation on June 19, 1987 (52 FR 23330). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. We will be providing both the appropriate *Tariff Schedules of the United States Annotated* ("TSUSA") item numbers and the appropriate Harmonized System ("HS") item numbers with our product descriptions. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs offices have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of Swedish regular viscose rayon staple fiber and high-wet modulus ("modal") viscose rayon staple fiber. Such merchandise is currently classifiable under TSUSA item numbers 309.4320 and 309.4325. These products are currently classifiable under HS item numbers 5504.10.00-2 and 5504.90.00-2.

The review covers the period January 1, 1986 through December 31, 1986 and three programs. The only known Swedish exporter of this merchandise to the United States is Svenska Rayon, AB.

Analysis of Programs

(1) Loans/Grants for Plant Creation

Under three agreements, the Swedish government provided Svenska with interest-free loans for the creation of a modal fiber plant. The agreements provided that the Swedish government would forgive the loans in equal amounts over ten years if Svenska maintained its modal fiber production capacity for ten years. If Svenska eliminated this production capacity prior to the end of the ten-year period, the agreements also provided that the remaining amount of the outstanding principal would fall due immediately.

The first agreement, Project 77, was concluded in 1975, and the Swedish government disbursed the funds between 1975 and 1977. The second agreement, Project 81, was concluded in 1978 and the funds disbursed between 1978 and 1981. In 1979, the Swedish government provided a final interest-free loan to Svenska for pollution control improvements to the modal fiber plant.

Forgiveness of these loans began when the equipment purchased went into operation. Although Svenska had modified its modal fiber plant to produce regular fiber, it maintained the modal fiber production facilities through the latter part of 1985. Accordingly, the Swedish government forgave ten percent of the total disbursements to Svenska under Project 77 in each year from 1978 through 1985. Similarly, the Swedish government forgave ten percent of the total disbursement under Project 81 in each year from 1981 through 1985 and ten percent of the environmental loan in each year from 1980 through 1985.

In our previous reviews of this order, we treated each ten-percent forgiveness as a grant and considered the benefit stream from each grant to be the remaining life of the loan. We treated the unforgiven portions of these loans as contingent liabilities because Svenska's yearly ten-percent forgiveness was contingent upon its maintaining modal fiber production capacity. (*See*, the preliminary results of review on rayon staple fiber from Sweden (51 FR 29145, August 15, 1986).)

In late 1985, however, Svenska permanently discontinued all modal fiber production and closed the modal fiber plant designed and developed for production of such fiber. In 1986, the Swedish Government concluded negotiations with Svenska which resulted in forgiveness of Svenska's remaining indebtedness from the plant creation and pollution control. The effective date for forgiveness was May 28, 1986.

If we had known that the contingency for forgiveness originally imposed by the Swedish government would never actually be enforced (*i.e.*, the Swedish government forgave Svenska's remaining loan balances even though the company ceased to produce modal fiber), we would have from the outset considered these "loans" as outright grants, and applied a declining balance methodology to measure the benefit. That is, we would have allocated the benefits from each grant over the 10-year average useful life of assets in the rayon fiber industry, according to the "Asset Guideline Classes" of the Internal Revenue Service, and assessed countervailing duties accordingly. Since it is now apparent that these loans were in fact grants, we have retrospectively recalculated the benefit streams using the declining balance methodology. We used as discount rates the national average corporate bond rates in Sweden for the years in which each grant was received (obtained from the *Monthly Digest of Swedish Statistics*, a Swedish government publication). We consider those rates to be the best information available because we have no information on Svenska's weighted cost of capital for those years. Because our current and prior methodologies produced different benefit streams, we have adjusted our calculations to account for benefits previously countervailed to ensure that those benefits will not be countervailed in this or subsequent reviews.

We allocated the benefits attributable to the review period over the value of Svenska's net sales during the review period. On this basis, we preliminarily determine the benefit from this program to be 10.58 percent *ad valorem*.

(2) Elderly Employment Compensation Program

The Swedish government provided a subsidy to certain companies within the textile and clothing industries through a special employment contribution for older workers. This program provided compensation to a company based upon the number of hours worked by employees over 50 years of age. A company participating in the program had to agree not to dismiss or release redundant employees of any age for any reason other than normal attrition. Payments were calculated on the basis of 28 kronor per hour for employees over age 50 who wer involved in production. The payments could not exceed 15 percent of the compnay's total labor costs.

Svenska received its last payment under this program in July 1982. In January 1983, the Swedish government excluded the rayon fiber industry, including Svenska, from this program. Using the declining balance methodology referred to above, we calculated Svenka's benefit by allocating the 1982 payment over ten years, the average useful life of assets in the rayon fiber industry. We used Svenska's 1982 weighted cost of capital as the discount rate.

We allocated the benefit attributable to the review period over the value of Svenska's net sales during the review period. On this basis, we preliminarily determine the benefit from this program to be 0.46 percent *ad valorem*.

(3) Grant for Manpower Reduction and Conditional Loan

The Swedish government concluded an agreement with Svenska in 1980 consisting of two parts: a grant for manpower reduction and a conditional loan to cover operating losses. The grant was intended to compensate the company for maintaining redundant employees longer than collective agreements and employment protection laws required, and for retraining employees to work elsewhere within the KF Industri group (the group of firms, including Svenska, owned directly or indirectly by Kooperativa Forbundet). The grant was paid through the National Labor Market Board in two installments, one in December 1980, and the other in July 1981. Svenska received no new manpower production grants during the period of review.

Using the declining balance methodology, we allocated each grant over ten years, the average useful life of assets in the rayon fiber industry. We used as a discount rate the national average corporate bond rate in Sweden for 1980, the year in which the agreement was reached.

We allocated the benefit attributable to the review period over the value of Svenska's net sales during the review period. On this basis, we preliminarily determine the benefit from this grant to be 0.59 percent *ad valorem*.

For the conditional loan part of the 1980 agreement, the terms (including the length) and conditions depended on the company's profit levels. The conditional loan was disbursed in three installments between 1980 and 1982. Under the original agreement, the Swedish government would forgive portions of the outstanding principal and interest of the loan if Svenska did not make a sufficient profit (as determined by a confidential formula concluded between the Swedish government and Svenska). If Svenska attained the requisite level of profit, it would have to repay a certain portion of the loan, including interest. Svenska did not make a sufficient profit in any year between 1983 and 1985, and the Swedish government forgave the yearly repayment of the loan in 1983, 1984 and 1985. On May 28, 1986, in conjuntion with the forgiveness of the loans/grants for plant creation, the Swedish government forgave the total outstanding balance of this loan.

Because Svenska never made any payments on this loan, which was forgiven in its entirely over four years, we have reconsidered our methodology and are treating each of the three loan installments as grants given in the year of receipt. As with the loans/grants for plant creation program, we have applied the declining balance methodology, allocating benefits from each grant over the 10-year average useful life of assets in the rayon fiber industry, and have adjusted our calculations to account for benefits previously countervailed.

We allocated the benefit attributable to the review period over the value of Svenska's net sales during the review period. On this basis, we preliminarily determined the benefit from the conditional loan to be 3.30 percent *ad valorem*.

Preliminary Results of Review

As a result of our review, we preliminarily determine the net subsidy to be 14.93 percent *ad valorem* for the period January 1, 1986 through December 31, 1986.

The Department intends to instruct the Customs Service to assess countervailing duties of 14.93 percent of the f.o.b. invoice price on all shipments of this merchandise exported on or after January 1, 1986 and on or before December 31, 1986.

Further, the Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 14.93 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the last workday preceding. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.10.

Jan W. Mares,

Assistant Secretary, Import Administration.

Date: October 17, 1988.

[FR Doc. 88-24879 Filed 10-26-88; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review on Certain Carbon Steel Billets; Request for Comments

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products, the U.S.-Spain Arrangement Concerning Trade in

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Certain Steel Products, and the U.S.-Brazil Arrangement Concerning Trade in Certain Steel Products, with respect to certain carbon steel billets suitable for rolling into wire rod.

DATE: Comments must be submitted no later than November 7, 1988.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377-0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products, the U.S.-Spain Arrangement Concerning Trade in Certain Steel Products, and the U.S.-Brazil Arrangement Concerning Trade in Certain Steel Products provide that if the U.S. determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product or products.

We have received a short-supply request for the following types of carbon steel billets, made in basic oxygen furnaces and suitable for rolling into wire rod, with a square cross section of 5 1/8 inches on each side and a length of 20 feet:

(1) AISI grade 12L14;
(2) AISI grades 1006, 1022, 1060, and 1541, aluminum killed fine grain;
(3) AISI grades 1008, 1008, 1010, modified fully rimmed;
(4) AISI grade 1069, modified silicon killed coarse grain;
(5) AISI grade 1022, modified silicon killed fine grain; and,
(6) AISI grades 1144 (modified) and 1215 (modified).

Any party interested in commenting on this request should send written comments as soon as possible, and no later than November 7, 1988. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary submission information should clearly so label the business proprietary portion of the submission and also provide a non-proprietary which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B-099, Import Administration, U.S. Department of Commerce, at the above address.

Jan W. Mares,
Assistant Secretary for Import Administration.
October 21, 1988.

[FR Doc. 88-24878 Filed 10-26-88; 8:45 am]
BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments; Pennsylvania State University et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with subsections 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 88-086R. *Applicant:* The Pennsylvania State University Department of Chemistry, 152 Davey Laboratory, University Park, PA 16802. *Instrument:* Mass Spectrometer, Model M25SE. *Manufacturer:* Kratos Scientific Instruments, United Kingdom. Original notice of this resubmitted application was published in the **Federal Register** of February 13, 1988.

Docket No.: 88-279 and 88-280. *Applicant:* University of Hawaii, Hawaii Institute of Geophysics, 2525 Correa Road, Honolulu, HI 96822. *Instruments:* Automated Wavelength-Dispersive X-Ray Fluorescence Spectrometry System, SRS 303 and Agitating Fusion Furnace with Accessories. *Manufacturers:* Siemens Energy and Automation Inc., West Germany and Sietronics Pty. Ltd., Australia, respectively *Intended Use:* Quantitative geochemical analysis of a wide range of geologic materials including natural rocks and fluids, and possibly synthetic analogues of natural materials. The data obtained will be used to investigate process pertaining to the origin and evolution of volcanic and sedimentary materials, including the composition of sources of magmas, sub-volcanic magma chamber processes, volcanic eruptive mechanisms, and sedimentary environments. In addition, the instruments will be used for educational purposes in various geology and geophysics courses. *Applications Received by Commission of Customs:* September 1, 1988.

Docket No.: 88-281. *Applicant:* University of California, Santa Barbara, Department of Chemistry, Santa Barbara, CA 93106. *Instrument:* Stopped-Flow Apparatus, Model SFA-11. *Manufacturer:* Hi Tech, United Kingdom. *Intended Use:* The instrument will be used to mix a solution of the enzyme containing potassium bromide and a suitable substrate to be brominated (i.e., monochlorodimedone) with a solution of hydrogen peroxide. Investigators will vary the concentrations of enzyme, bromide, organic substrate and hydrogen peroxide to determine how the rate of the reaction is affected. *Application Received by Commissioner of Customs:* September 1, 1988.

Docket No.: 88-282. *Applicant:* Vanderbilt University School of Medicine, T-2404 Center North, 21st Avenue at Garland, Nashville, TN 37232. *Instrument:* Automated Image Analysis Microscope System of Chromosome Analysis, Model Cytoscan CS2. *Manufacturer:* Image Recognition Systems, United Kingdom. *Intended Use:* The instrument will be used for research and diagnosis of birth defects due to chromosome anomalies. Another research application will be in-situ hybridization for the localization of genes to chromosomes which requires examination of hundreds of spreads and retrieval of the same spreads after additional treatments. Educational purposes include teaching resident physicians, fellows and researchers who rotate through or visit the cytogenetics laboratory. *Application Received by Commissioner of Customs:* September 1, 1988

Docket No.: 88-283. *Applicant:* Kansas State University, Biology Division, Ackert Hall, Manhattan, KS 66506. *Instrument:* Rapid Kinetics Accessory, Model SFA-11. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended Use:* The instrument will be used to study permeability of liposomes containing channel proteins from mammalian optical lens fiber cell membranes using the fluorescence quenching method. *Application Received by Commissioner of Customs:* September 1, 1988.

Docket No.: 88-284. *Applicant:* Department of the Interior, U.S. Geological Survey, Denver Federal Center, Box 25046, Mail Stop 964, Denver, CO 80225. *Instrument:* Time-Domain Electromagnetic Prospecting System, Model TEM47. *Manufacturer:* Geonics, Canada. *Intended Use:* The instrument will be used to measure the electrical conductivity of the earth, particularly to determine the properties of geothermal systems, ground-water aquifers, and mineral deposits for research purposes. The results will be compared with other electromagnetic techniques to determine if the theoretical superiority of the TDEM exists in practice. *Application Received by Commissioner of Customs:* September 1, 1988.

Docket No.: 88-285. *Applicant:* The Johns Hopkins University, Charles and 34th Streets, Baltimore, MD 21218. *Instrument:* Stopped-Flow Accessory for Fluorimeter, Model SFA-11. *Manufacturer:* Hi-Tech Scientific Ltd., United Kingdom. *Intended Use:* The instrument will be used to study the properties of contractile proteins which will include the assembly of filaments, the association of proteins with each other and with membranes. The unit will be used to measure the time course of these reactions using fluorescence or light scattering signals recorded in an existing spectrofluorimeter. *Application Received by Commissioner of Customs:* September 2, 1988.

Docket No.: 88-286. *Applicant:* Regents of the University of California, Material Management Department, Riverside, CA 92521. *Instrument:* Particle Calorimeter—Limited Streamer Tracking Chamber System. *Manufacturer:* CERN, Switzerland. *Intended Use:* The instrument will be used for educational purposes in the course Physics 140L "Advanced Physics Laboratory" in which students will be introduced to the methods, instruments, processes, data acquisition and analysis techniques of modern physics experiments. *Application Received by Commissioner of Customs:* September 2, 1988.

Docket No.: 88-287. APPLICANT: City University of New York Medical School, 138th Street and Convent Avenue, New York, NY 10031. *Instrument:* Electron Microscope, Model JEM 100CX. *Manufacturer:* Joel Ltd., Japan. *Intended Use:* The instrument will be used for the following research purposes:

1. Structural analysis of thin sections to determine high resolution subcellular features of tissues and cells under normal and experimental conditions.
2. Molecular conformational analysis and nucleic acid hybridization using various tilting angles.
3. Determination at high resolution of the localization of cellular antigens or antigenic domains in molecules.
4. Study of tissue and cellular metabolic and transport functions under normal and experimental conditions.
5. Study of carbon replicas of freeze-etched specimens to localize intramembranous protein domains in different cell regions under normal and experimental conditions.
6. Optical diffraction analysis of periodically repeating biological structures.
7. Quantification of structural parameters of tissues and cell using stereological techniques.

Application Received by Commissioner of Customs: September 6, 1988.

Docket No.: 88-288. *Applicant:* California State University, Fullerton, Fullerton Foundation, 800 N. State College Blvd., Fullerton, CA 92634. *Instrument:* Electron Microscope, Model H-7000-3. *Manufacturer:* Hitachi Ltd., Japan. *Intended Use:* The instrument will be used to study the ultrastructural features of samples of biological origin. Cellular fine structure will be studied in tissue samples isolated from a variety of living organisms. In addition, macromolecules and/or macromolecular complexes will be studied in negatively-stained or rotary metal-shadowed preparations. The instrument will also be used for educational purposes in the course BIOL 415: Introduction to Electron Microscopy. This course exposes undergraduate and graduate students to the basic theories and practices of electron microscopy with an emphasis on their application to the study of biological phenomena. *Application Received by Commissioner of Customs:* September 6, 1988.

Docket No.: 88-289. *Applicant:* Purdue University, West Lafayette, IN 47907. *Instrument:* Electron Microprobe, Model CAMEBAX SX50. *Manufacturer:* Cameca Instruments Inc., France. *Intended Use:* The instrument will be used to investigate solid state materials predominantly those occurring as minerals, metals, ceramics and new compounds prepared for possible industrial and engineering purposes. The experiments to be conducted are essentially the measurement of x-ray intensities emitted by samples when bombarded by a focussed beam of electrons. In addition, the instrument will be used for educational purposes in various geoscience courses which will provide firm introduction to the theory and operation of an electron microprobe. *Application Received by Commissioner of Customs:* September 7, 1988.

Docket No.: 88-290. *Applicant:* University of Denver, Denver, CO 80208. *Instrument:* Electron Microscope, Model H-7000. *Manufacturer:* Hitachi Scientific, Japan. *Intended Use:* Study of macromolecules and macromolecular complexes such as the mitotic apparatus, viruses, surface antigens of cancer cells, cell surface properties of bacteria and brain cell macromolecules. *Application Received by Commissioner of Customs:* September 8, 1988.

Docket No.: 88-291. *Applicant:* Cornell University, Baker Laboratory of Chemistry, Ithaca, NY 14845-1301. *Intended Use:* Preparative Quench and Stopped-Flow Spectrofluorimeter, Model PQ/SF-53. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Instrument:* Studies of the refolding and unfolding of proteins in an effort to determine the effects that genetically engineered mutations have on the fast folding/unfolding phases of various proteins. The proteins studies are Bovine Pancreatic Ribonuclease A (RNase A), Hen Egg-White Lysozyme, and Marine Epidermal Growth factor (M-EGF). *Application Received by Commissioner of Customs:* September 8, 1988.

Docket No.: 88-292. *Applicant:* University of California, Purchasing Department, 1156 High Street, Santa Cruz, CA 95064. *Instrument:* Mass Spectrometer, Model VG Sector. *Manufacturer:* VG Isotopes, United Kingdom. *Intended Use:* The instrument will be used to measure the isotopic compositions, mainly in the Sm-Nd, Rb-Sr, and U-TH-Pb isotopic systems of rocks, sediments, and seawater. This instrument will also be used for education purposes in earth sciences and chemistry courses in which students will gain experience in applying isotopic data to the subject matter of the course (e.g., formation of igneous and metamorphic rocks, age dating of rock samples). *Application Received by Commissioner of Customs:* September 8, 1988.

Docket No.: 88-293. *Applicant:* State of New Jersey, Department of Environmental Protection, Division of Water Resources, NJ Geological Survey, CN-029, Trenton, NJ 08625. *Instrument:* Transient Electromagnetic Data Acquisition System, Model EM 37-3P. *Manufacturer:* Geonics Ltd., Canada. *Intended Use:* The instrument will be used in surface geophysical investigations related to geologics mapping for hydrogeologic evaluation and ground-water pollution delineation. The experiments will consist of surface geophysical measurements at selected sites to provide enough information for geologic interpretation. *Application*

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Received by Commissioner of Customs: September 8, 1988.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-24876 Filed 10-26-88; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments; University of Dallas et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with subsections 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 88-215R. *Applicant:* University of Dallas, 1845 E. Northgate Drive, Irving, TX 75062-4799. *Instrument:* Rapid Kinetics accessory, SFA-11. *Manufacturer:* Hi-Tech Scientific, Ltd., United Kingdom. Original notice of this resubmitted application was published in the Federal Register of June 17, 1988.

Docket No.: 88-294. *Applicant:* Northeastern University, 360 Huntington Avenue, Boston, MA 02115. *Instrument:* Low Temperature Kinetic Spectrofluorimeter, SF41. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended Use:* The instrument will be used to conduct low temperature kinetic measurements of the change of fluorescent signal in reactions 1 and 2. Studies of the very air-sensitive reactants $L_6Cu_2X_6$ (eq 1) and $M_4C_4X_4$ (eq 2) at low temperatures in an aprotic solvent to determine the manner in which the reactants of eqs 1 and 2 interact to give the products. *Application Received by Commissioner of Customs:* September 12, 1988.

Docket No.: 88-295. *Applicant:* Norfolk State University, 2401 Corprew Avenue, Norfolk, VA 23504. *Instrument:* Temperature Jump Spectrophotometer, *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended Use:* The instrument will be used to give students experimental experience in methods of kinetics and spectroscopy in the physical chemistry laboratory. *Application Received by Commissioner of Customs:* September 12, 1988.

Docket No.: 88-296. *Applicant:* U.S. Department of the Interior, U.S. Geological Survey, 521 W. Seneca, Ithaca, NY 14850. *Instrument:* Drill-Hole Pipe Assembly and Data Acquisition Monitors. *Manufacturer:* Westbay Instruments Ltd., Canada. *Intended Use:* The instrument will be used in an hydrogeologic study to determine ground-water flow and ground-water quality characteristics of upper bedrock stratigraphy (200-500 ft.) in the Niagara Falls area. The overall objective of this study is to develop a three-dimensional mathematical ground-water flow model and a geochemical model of the upper bedrock stratigraphy of the Niagara Falls area. *Application Received by Commissioner of Customs:* September 12, 1988.

Docket No.: 88-297. *Applicant:* Methodist Medical Center, 301 W. Colorado Boulevard, Dallas, TX 75208. *Instrument:* Electron Microscope, Model EM 10CA, Carl Zeiss, West Germany. *Intended Use:* The instrument is intended to be used to provide trainee pathologists with both a scientific basis for the study of abnormal morphology (structural changes in disease) as well as experience in the diagnostic applications of electron microscopy. *Application Received by Commissioner of Customs:* September 12, 1988.

Docket No.: 88-298. *Applicant:* Rhodes College, 2000 North Parkway, Memphis, TN 38112-1690. *Instrument:* Electron Microscope, Model EM109T/TFP with Accessories. *Manufacturer:* Carl Zeiss, West Germany. *Intended Use:* The instrument will be used to study fungal cells and isolated subcellular components in order to better understand the pathway of secretion in fungal cells and the role of coated vesicles in that process. *Application Received by Commissioner of Customs:* September 14, 1988.

Docket No.: 88-299. *Applicant:* National Institutes of Standards and Technology, Contracts Office, Building 301, Gaithersburg, MD 20899. *Instrument:* Electron Back-Scatter Pattern Imaging and Analysis System EBSP 8400. *Manufacturer:* Custom Camera Design, United Kingdom. *Intended Use:* The instrument will be used for studies of polycrystalline superconducting ceramics; structural single-phase ceramics such as alumina, silicon carbide and silicon nitride; whisker, fibre and particulate reinforced ceramic-ceramic and ceramic-metal composites; and model ceramic systems, e.g., MgO doped with CoO. Investigations will be conducted to relate the crystallography, state of strain and microstructure of various ceramic and metal materials to their composition, processing and properties. *Application Received by Commissioner of Customs:* September 14, 1988.

Docket No.: 88-300. *Applicant:* University of California, Lawrence Livermore National Laboratory, P.O. Box 5012, L-650, Livermore, CA 94550. *Instrument:* Streak Camera, IMACON 500. *Manufacture:* Hadland Photonics Ltd., United Kingdom. *Intended Use:* The instrument will be used for studies of techniques for single shot analog recording of very high bandwidth signals at bandwidths heretofore not achieved. *Application Received by Commissioner of Customs:* September 14, 1988.

Docket No.: 88-301. *Applicant:* University of California, Lawrence Livermore National Laboratory, P.O. Box 5012, L-650, Livermore, CA 94550. *Instrument:* 2D CCD Image Analyzer System, Model 2D/STD. *Manufacturer:* Hadland Photonics Ltd., United Kingdom. *Intended Use:* The instrument will be used for studies of the duration of the pulses generated by laser oscillators, the duration of the pulses delivered by laser amplifier, the synchronization of laser beams at the plasma or x-ray source, and the temporal dynamics of chirped and compressed laser beams. *Application Received by Commissioner of Customs:* September 14, 1988.

Docket No.: 88-302. *Applicant:* National Bureau of Standards, Gaithersburg, MD 20899. *Instrument:* Two Monochromator Bending Devices. *Manufacturer:* Grenoble Modular Instruments, France. *Intended Use:* The instruments will be used for studies of condensed matter (e.g. high T_c superconductors, polymers, hydrogen adsorbing metals, molecular crystals, intercalated graphite, magnetic materials, materials exhibiting orientational and translational disorder, etc.). *Application Received by Commissioner of Customs:* September 14, 1988.

Docket No.: 88-303. *Applicant:* Armed Forces Radiobiology Research Instrument, NMC-NCR, Building 42, Bethesda, MD 20814-5145. *Instrument:* Electron Microscope, Model H-7000-2T. *Manufacturer:* Hitachi Ltd., Japan. *Intended Use:* The instrument will be used for studies of a variety of animal tissues (which will include intestine and lung) and isolated and purified cells (macrophages, neutrophils, mast cells and hemopoietic stem cells). The experiments will involve the investigation of the effects of radiation on these specimens. *Application received by Commissioner of Customs:* September 16, 1988.

Docket No.: 88-304. *Applicant:* University of California, Berkeley, Purchasing Department, 2405 Bowditch Street, Berkeley, CA 94720. *Instrument:* Electron Microscope, Model JEM 1200EX/SEG/DP/DP. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument will be used to study the ultrastructure of animal and plant material obtained from diatoms, mammalian mammary epithelial cells, vertebrate retinas, rat hepatoma cell lines, frog oocytes, sea urchin embryos, murine lymphomas, a variety of tissues from fruit flies and grasshoppers, mammalian gastrointestinal epithelia, freshwater amoebae, leech embyros and mammalian brain. Various experiments will be conducted to elucidate the cellular and molecular mechanisms of embryonic development and the functioning of a number of normal and pathological adult tissues. In addition, the instrument will be used in a one-on-one basis in the training of honors students, graduate students and postdoctoral fellows. *Application Received by Commissioner of Customs:* September 19, 1988.

Docket No.: 88-305. *Applicant:* Oregon State University, Chemistry Department, Corvallis, OR 97331-4003. *Instrument:* Particle Electrophoresis, Mark II. *Manufacturer:* Rank Bros., United Kingdom. *Intended Use:* The instrument will be used for studies of the electrophoretic mobility of clays and oxides with adsorbed surfactants. *Application Received by Commissioner of Customs:* September 19, 1988.

Docket No.: 88-306. *Applicant:* Texas A&M University, Aerospace Engineering Department, Computer Science and Aerospace Engineering Building, College Station, TX 97843. *Instrument:* Jet Engine Test Set, Model GT117-2. *Manufacturer:* Gilbert Gilkes & Gordon Ltd., United Kingdom. *Intended Use:* The instrument will be used for the training of students in various aerospace courses. *Application Received by Commission of Customs:* September 22, 1988.

Docket No.: 88-307. *Applicant:* The Ohio State University, Department of Anatomy, 333 West 10th Avenue, Columbus, OH 43210. *Instrument:* Electron Microscope, Model CM12. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* The instrument will be used for the following varied research projects:

(1) Natural Aspects of Craniofacial Morphogenesis
(2) Spinal Cord Plasticity and Regeneration
(3) Isolation and Establishment of Gastrin Producing Cell Lines
(4) Enkephalin Fiber Growth and Specificity in the Developing Cerebellum
(5) Molecular Mechanisms of Craniofacial Epithelial Differentiation
(6) Immunocytochemical Studies of Developing Synaptic Proteins

In addition, the instrument will be used for training students and faculty in needed electron microscopy skills. *Application Received by Commissioner of Customs:* September 22, 1988.

Docket No.: 88-308. *Applicant:* Rutgers University, Procurement and Contracting, P.O. Box 6998, Piscataway, NJ 08855-6999. *Instrument:* Spectrascan Accessory to Stopped-Flow Instrument, Model MG-3000. *Manufacturer:* Hi-tech, United Kingdom. *Intended Use:* Examination of the kinetic properties of intermediates in chemical and biochemical reactions generated within msec's to determine the fundamental chemical mechanism of enzyme catalyzed reactions. *Application Received by Commissioner of Customs:* September 22, 1988.

Docket No.: 88-309. *Applicant:* Scripps Clinic and Research Foundation, 10666 North Torrey Pines Road, La Jolla, CA 92037. *Instrument:* NMR Spectrometer, Model AM-600 with Accessories. *Manufacturer:* Bruker Analytische Messtechnik, GmbH, West Germany. *Intended Use:* The instrument will be used to measure high resolution nuclear magnetic resonance spectra of a wide range of biological materials including, but not limited to, peptides, proteins and nucleic acids. The wide range of research objectives will include the following:

1. Investigation of the solution conformation and molecular motions of hemoglobins to provide an understanding of the mechanisms by which oxygen binding by hemoglobins is controlled.
2. Investigation of the conformation of antigenic peptides in solution and bound to monoclonal antibodies to provide an understanding of the processes of antigenic recognition.
3. Studies of the solution conformations of electron transfer proteins and of the interactions between them to improve an understanding of the mechanisms and pathways of biological electron transfer processes.
4. Investigation of the conformation of proteins and peptide fragments of proteins to provide an understanding of the nucleation events in protein folding.
5. Studies of the solution conformations of anaphylatoxins and viral antigens with a view to elucidation of their biological mechanisms.
6. Studies of the structure of DNA oligomers and DNA-drug complexes to gain some understanding of the effects of drugs on DNA molecules.
7. Development of NMR methods for the determination of the conformation and dynamics of biomolecules.

Application Received by Commissioner of Customs: September 29, 1988.

Docket No.: 88-310. *Applicant:* Queens Hospital Center, 82-68 164th Street, Jamaica, NY 11432. *Instrument:* Electron Microscope, Model EM 109. *Manufacturer:* Carl Zeiss, West Germany. *Intended Use:* The instrument will be used in determining the diagnosis of pathologic tissues. *Application Received by Commissioner of Customs:* September 29, 1988.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-24877 Filed 10-26-88; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Import Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Haiti

October 24, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: October 24, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: The Governments of the United States and Haiti agreed to increase the current designated consultation levels for Categories 340/640 and 350.

A description of the textile and apparel categories in terms of T.S.U.S.A. numbers is available in the

CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see Federal Register notice 52 FR 47745, published December 16, 1987). Also see 52 FR 48854, published on December 28, 1987.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 24, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 21, 1987, concerning imports of certain cotton and man-made fiber textile products, produced or manufactured in Haiti and exported during the twelve-month period which began on January 1, 1988 and extends through December 31, 1988.

Effective on October 24, 1988, the directive of December 21, 1987 is hereby amended to increase the levels for cotton and man-made fiber textile products in the following categories[1]:

Category	Amended 12-mo limit
340/640	220,000 dozen.
360	57,000 dozen.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements

[FR Doc. 88-24830 Filed 10-26-88; 8:45 am]

BILLING CODE 3510-DR-M

Negotiated Settlement on an Import Limit for Certain Cotton Textile Products Produced or Manufactured in India

October 24, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: October 31, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6494. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: During consultations held May 6 and 7, 1988 between the Governments of the United States and India, agreement was reached to amend further the current Bilateral Textile Agreement.

A copy of the bilateral agreement, as amended, is available from the Textile Division, Economic Bureau, U.S. Department of State, (202) 647-1998.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see Federal Register notice 52 FR 47745, published on December 16, 1987). Also see 53 FR 58, published on January 4, 1988, and 53 FR 9961, published on March 28, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 24, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel the directive of December 30, 1987 issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on October 31, 1988, you are directed to count imports for consumption and withdrawals from warehouse for consumption of cotton textile products in Category 314, produced or manufactured in India and exported during the period January 1, 1988 through June 30, 1988.

The directive of December 30, 1987 is amended further to move Category 314 from Group II to Group I. All charges in Group II for Category 314 made on or after January 1, 1988 shall be removed from Group II.

Further, you are directed to establish a limit of 2,500,000 square yards [1] for Category 314 in Group I for the six-month period which began on July 1, 1988 and extends through December 31, 1988. Import charges will be made as data becomes available.

Textile products in Category 314 which have been exported to the United States prior to July 1, 1988 shall not be subject to the limit established in this directive. Further, you are directed to continue counting imports for consumption and withdrawals from warehouse for consumption of cotton textile products in Category 314, produced or manufactured in India and exported from January 1, 1987.

Textile products in Category 314 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-24831 Filed 10-26-88; 8:45 am]

BILLING CODE 3510-DR-M

Negotiated Settlement on Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in India

October 24, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending and establishing limits.

EFFECTIVE DATE: October 31, 1988.

AUTHORITY: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6494. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: During consultations held May 6 and 7, 1988 between the Governments of the United States and India, agreement was reached to amend further the current Bilateral Textile Agreement.

A copy of the bilateral agreement, as amended, is available from the Textiles Division, Economic Bureau, U.S. Department of State, (202) 647-1998.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see Federal Register notice 52 FR 47745, published on December 16, 1987). Also see 53 FR 58, published on January 4, 1988, and 53 FR 9961, published on March 28, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 24, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 30, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1988 and extends through December 31, 1988.

Effective on October 31, 1988, the directive of December 30, 1987 is amended to establish limits for cotton and man-made fiber textile products in Categories 219 and 300/301 and to adjust the Group II limit. The December 30, 1987 directive is amended further to move Category 219 from Group II to Group I. All import charges in Category 219 made on or after January 1, 1988 shall be charged to Category 219 in Group I and deducted from Group II. Categories 300/301 remain subject to the Group II limit.

Category	12-mo restraint limit [1] (Jan. 1, 1988 Dec. 31, 1988)
Level in Group I:	
219	40,000,000 square yards.
Group II:	
200, 201, 220-229, 239, 300/301, 317, 326, 330-334, 345, 349-352, 359-362, 369-S [2] 369-O [3] 600-607, 611-835, 637-652, 659, 665 [4], 666-670 and 831-859, as a group.	1,97,061,752 square yards equivalent.
Subleval in Group II:	
300/301	6,088,957 pounds.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.
[2] In Category 369-S, only TSUSA number 366.2640.
[3] In Category 369-O, all TSUSA numbers except 360.2990, 360.7600, 361.5420 and 366.2640.
[4] In Category 665pt., all TSUSA numbers except 360.7600 and 361.5420.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-24832 Filed 10-26-88; 8:45 am]

BILLING CODE 3510-DR-M

Implementation of 1989 Textile Import Controls and Visa Arrangements Based on the Harmonized System

October 24, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Martin J. Walsh, International Commodity Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-3400.

SUPPLEMENTARY INFORMATION: On January 1, 1989 the United States will implement the Harmonized Tariff Schedule (HTS).

Interested parties should be advised that:

1. All textile shipments subject to U.S. import quotas which are exported in 1988 and which arrive in the United States on and after January 1, 1989, will be charged to the appropriate unfilled 1988 quota limit.

2. For countries with a correct category and correct quantity visa system, all goods exported prior to January 1, 1989, should be covered by a visa showing the correct 1988 category number and unit of measurement. Entry will not be denied to merchandise which is properly vissed and exported in 1988 but which arrives in the United States in 1989. If the applicable 1988 quota is filled, this merchandise will be charged to the applicable, HTS based, 1989 quota.

3. All goods subject to the correct category visa requirements, exported on and after January 1, 1989 must be covered by a visa showing the correct 1989 category number and unit of measure. The 1989 units of measure will be square meters for categories which are currently measured in square yards and square feet. Categories currently measured in pounds will be measured in kilograms. Attached is a list of the 1989 categories with the corresponding units of measure.

The coverage of certain categories will change under the HTS. These changes include:

(a) Playsuits, sunsuits, etc. Current Categories 337 and 637 will be merged and redesignated as Category 237.

(b) Babies' garments and clothing accessories in HTS headings 6111, 6209 and 6505 (articles for young children of a body height not exceeding 86 centimeters) will be in Categories 239 (cotton or man-made fiber), 439 (wool) and 839 (silk blends or non-cotton vegetable fibers).

(c) Category 611 will cover woven fabrics containing 85 percent or more by weight of artificial staple fibers.

(d) Suits in Categories 443, 444, 643, 644, 843 and 844 will be limited to the suits defined in HTS Chapter 61, Note 3(a), and Chapter 62, Note 3(a).

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

U.S. Textile And Apparel Category System, 1989

Categories numbered in the:

200 series are of cotton and/or man-made fiber
300 series are of cotton
400 series are of wool
600 series are of man-made fiber
800 series are of silk blends or non-cotton vegetable fibers

BEST COPY AVAILABLE

		Unit
Yarn:		
200	Yarns put up for retail sales, and sewing thread.	kg.
201	Specialty yarns	kg.
300	Carded cotton yarn	kg.
301	Combed cotton yarn	kg.
400	Wool yarn	kg.
600	Textured filament yarn	kg.
603	Yarn containing 85% or more by weight artificial staple fiber.	kg.
604	Yarn containing 85% or more by weight synthetic staple fiber.	kg.
606	Non-textured filament yarn	kg.
607	Other staple fiber yarn	kg.
800	Silk blends or non-cotton vegetable fiber yarn.	kg.
Fabric:		
218	Of yarns of different color	m2.
219	Duck	m2.
220	Fabric of special weave	m2.
222	Knit fabric	kg.
223	Non-woven fabric	kg.
224	Pile & tufted fabric	m2.
225	Blue denim	m2.
226	Chambrays, batistes, lawns, voiles	m2.
227	Oxford cloth	m2.
229	Special purpose fabric	kg.
313	Sheeting	m2.
314	Poplin & broadcloth	m2.
315	Printcloth	m2.
317	Twills	m2.
326	Sateens	m2.
410	Woven fabric	m2.
414	Other wool fabric	kg.
611	Woven fabric containing 85% or more by weight artificial staple.	m2.
613	Sheeting	m2.
614	Poplin & broadcloth	m2.
615	Printcloth	m2.
617	Twills & sateens	m2.
618	Woven artificial filament fabric	m2.
619	Polyester filament fabric	m2.
620	Other synthetic filament fabric.	m2.
621	Imitation fabric	kg.
622	Rayon fiber fabric	m2.
624	MMF fabric, woven, containing more than 15% but less than 85% wool.	m2.
625	Poplin & broadcloth of staple/filament fiber combinations.	m2.
626	Printcloth of staple/filament fiber combination.	m2.
627	Sheeting of staple/filament fiber combinations.	m2.
628	Twills & sateens of staple/filament fiber combinations.	m2.
629	Other fabrics of staple/filament fiber combinations.	m2.
810	Woven fabric, silk blend & non-cotton vegetable fiber.	m2.
Apparel		
237	Playsuits, sunsuits, etc	doz.
239	Babies' garments and clothing accessories.	kg.
330	Handkerchiefs	doz.
331	Gloves and mittens	dpr.
332	Hosiery	dpr.
333	M&B suit-type coats	doz.
334	Other M&B coats	doz.
335	W&G coats	doz.
336	Dresses	doz.
338	M&B knit shirts	doz.
339	W&G knit shirts & blouses	doz.
340	M&B shirts, not knit	doz.
341	W&G shirts & blouses, not knit.	doz.
342	Skirts	doz.
345	Sweaters	doz.
347	M&B trousers, breeches & shorts.	doz.
348	W&G trousers, breeches & shorts.	doz.
349	Brassieres & other body supporting garments.	doz.
350	Robes, dressing gowns, etc.	doz.
351	Nightwear and pajamas	doz.
352	Underwear	doz.
353	M&B down-filled coats	doz.
354	W&G down-filled coats	doz.
359	Other cotton apparel	kg.
431	Gloves and mittens	dpr.
432	Hosiery	dpr.
433	M&B suit-type coats	doz.
434	Other M&B coats	doz.
435	W&G coats	doz.
436	Dresses	doz.
438	Knit shirts & blouses	doz.
439	Babies' garments and clothing accessories.	kg.
440	Shirts & blouses, not knit	doz.
442	Skirts	doz.
443	M&B suits	no.
444	W&G suits	no.
445	M&B sweaters	doz.
446	W&G sweaters	doz.
447	M&B trousers, breeches & shorts.	doz.
448	W&G trousers, breeches & shorts.	doz.
459	Other wool apparel	kg.
630	Handkerchiefs	doz.
631	Gloves and mittens	dpr.
632	Hosiery	dpr.
633	M&B suit-type coats	doz.
634	Other M&B coats	doz.
635	W&G coats	doz.
636	Dresses	doz.
638	M&B knit shirts	doz.
639	W&G knit shirts & blouses	doz.
640	M&B shirts, non knit	doz.
641	W&G shirts & blouses, not knit.	doz.
642	Skirts	doz.
643	M&B suits	no.
644	W&G suits	no.
645	Sweaters of non-cotton vegetable fibers.	doz.
646	Sweaters, of silk blends	doz.
647	Trousers, breeches & shorts.	doz.
650	Robes, dressing gowns, etc.	doz.
651	Nightwear and pajamas	doz.
652	Underwear	doz.
658	Neckwear	kg.
659	Other apparel	kg.
Made-Up And Miscellaneous Textiles		
360	Pillowcases	no.
361	Sheets	no.
362	Bedspreads and quilts	no.
363	Terry and other pile towels	no.
369	Other cotton manufactures	kg.
464	Blankets	kg.
465	Floor coverings	m2.
469	Other wool manufactures	kg.
665	Floor coverings	m2.
666	Other man-made fiber furnishings.	kg.
669	Other man-made fiber manufactures.	kg.
670	Flat goods, handbags, and luggage.	kg.
863	Towels	no.
870	Luggage	kg.
871	Flatgoods and handbags	kg.
899	Other silk & veg blend manufactures.	kg.

[FR Doc. 88-24834 Filed 10-26-88; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Request for Bilateral Textile Consultations With the Government of Turkey

October 24, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Article 3 of the Arrangement Regarding International Trade in Textiles.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on categories on which consultations have been requested, call (202) 377-3740.

SUPPLEMENTARY INFORMATION: On September 30, 1988, the United States Government requested the Government of Turkey to enter into consultations concerning exports to the United States of cotton and man-made fiber dresses in Categories 336/636, produced or manufactured in Turkey.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with Turkey, the Committee for the Implementation of Textile Agreements may later establish limits for the entry and withdrawal from warehouse for consumption of cotton and man-made fiber dresses in Categories 336/636, produced or manufactured in Turkey and exported during the twelve-month period which began on September 30, 1988 and extends through September 29, 1989, at a level of 109,998 dozen.

A summary market statement for these categories follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 336/636 or to comment on domestic production or availability of products included in the category, is invited to submit 10 copies of such comments or information to James H. Babb, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Categories 336/636. Should such a solution be reached in consultations with the Government of Turkey, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987).

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Turkey—Market Statement

Cotton and Man-Made Fiber Dresses (Category 336/636)

September 1988.

Summary and Conclusions

U.S. imports of cotton and man-made fiber dresses (Category 336/636) from Turkey reached 112,172 dozen during the year ending July 1988, 84 percent above the 61,052 dozen imported a year earlier. Cotton and man-made fiber dress imports from Turkey were 71,702 dozen in 1987 and 59,526 dozen in 1986. During the first seven months of 1988, imports of cotton and man-made fiber dresses (Category 336/636) from Turkey reached 91,955 dozen, a 79 percent increase above the 51,485 dozen imported during the same period of 1987.

The U.S. market for cotton and man-made fiber dresses (Category 336/636) has been disrupted by imports. The sharp and substantial increase in imports from Turkey is contributing to this disruption.

U.S. Production and Market Share

U.S. production of cotton and man-made fiber dresses (Category 336/636) has been on the decline, falling from 19,843 thousand dozen in 1982 to 15,711 thousand dozen in 1987, a decline of 21 percent. The domestic manufacturers' share of the market fell from 91 percent in 1982 to 75 percent in 1987, a drop of 16 percentage points.

U.S. Imports and Import Penetration

U.S. imports of cotton and man-made fiber dresses (Category 336/636) have increased steadily since 1982, increasing from 1,933 thousand dozen in 1982 to 5,224 thousand dozen in 1987, an average annual rate of 22 percent. During the first seven months of 1988, imports of cotton and man-made fiber dresses (Category 336/636) reached 3,666 thousand dozen, 5 percent above the level imported during the same period of 1987. The ratio of imports to domestic production increased over three times, rising from 10 percent in 1982 to 33 percent in 1987.

Duty-Paid Value and U.S. Producers' Price

Approximately 77 percent of Category 336/636 imports from Turkey during the first seven months of 1988 entered under TSUSA numbers 384.3210—women's cotton knit dresses, not ornamented; 384.4925—women's, girls' and infants' cotton woven dresses, other than those of corduroy, velveteen and those with two or more colors in the warp and/or filling, not ornamented; and 384.9425—women's man-made fiber woven dresses, other than those with two or more colors in the warp and/or the filling, not ornamented. These dresses entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable dresses.

[FR Doc. 88-24833 Filed 10-26-88; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice information collection.

SUMMARY: The Commodity Futures Trading Commission has submitted information collection 3038-0016, Compliance with Requirement for Designation as a Contract Market, to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. The information collected pursuant to this rule provides a basis for determining that the terms and conditions of a futures contract reflect current commercial practices and that the contract serves an economic purpose.

ADDRESS: Persons wishing to comment on this information collection should contact Gary Waxman, Office of Management and Budget, Room 3228, NEOB, Washington, DC 20502, (202) 395-7340. Copies of the submission are available from Joseph G. Salazar, Agency Clearance Officer, (202) 254-9735.

Title: Compliance with Requirement for Designation as a Contract Market.
Control Number: 3038-0016
Action: Extension.
Respondents: Contract Markets.
Estimated Annual Burden: 620 total hours.

Respondents	Regulation (17 CFR)	Estimated no. of respondents	Annual responses	Est. avg. hours per response
Contract Markets	1.50	1	1	250
	5.2	1	1	250
	[illegible]	3	1	40

Issued in Washington, DC on October 24, 1988.

Jean A Webb,

Secretary of the Commission.

[FR Doc. 88-24861 Filed 10-26-88; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Wage Rates and Fringe Benefits; OMB Control Number 0704-0102.

Type of Request: Extension.

Average Burden Hours/Minutes Per Response: 1 hour.

Frequency of response: On occasion.

Number of Respondents: 165.

Annual Burden Hours: 165.

Annual Responses: 165.

Needs And Uses: The Service Contract Act requires Air Force contractors to pay wages and fringe benefits that are compatible with those prevailing in the local area where the work is to be performed. Section 4(c) of the Act provides that the parties to the contract may request a hearing to establish prevailing rates when negotiated wages and fringe benefits appear to be substantially at variance with local rates. The Air Force needs the Wage Rates and Fringe Benefits survey to determine prevailing local rates and, when necessary, to support its position during formal hearings.

Affected Public: State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations.

Frequency: Continuing.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Dr. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Mr. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 24, 1988.

[FR Doc. 88-24893 Filed 10-26-88; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, And Applicable OMB Control Number: DoD FAR Supplements, Part 46, Quality Assurances and Related Clauses in Part 52.246; No Form; and OMB Control Number 0704-0233.

Type of Request: Extension.

Average Burden Hours/Minutes Per Response: 1.43 hours.

Frequency of Response: 1.

Number of Respondents: 112.

Annual Burden Hours: 14,160.

Annual Responses: 112.

Needs And Uses: Collection requirements related to Quality Assurance matters in the performance of contracts.

Affected Public: Businesses or other for-profit; Non-Profit Institutions; and Small Businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Ms. Eyvette R. Flynn.

Written comments and recommendations on the proposed information collection should be sent to Ms. Eyvette R. Flynn at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense. October 24, 1988.

[FR Doc. 88-24894 Filed 10-26-88; 8:45 am]

BILLING CODE 3810-01-M

Committees; Establishment, Renewal, Termination, etc.: Defense Language Institute Board of Visitors

ACTION: Renewal of the Defense Language Institute Board of Visitors.

SUMMARY: Under the provisions of Pub. L. 92-463, "Federal Advisory Committee Act," notice is hereby given that the Defense Language Institute Board of Visitors has been determined to be in the public interest and has been renewed.

The Defense Language Institute Board of Visitors provides the Commandant of the Defense Language Institute with advice on matters related to educational philosophy, program effectiveness, instructional methods, research efforts, administration policies, and relationships with other language teaching activities, for the purpose of strengthening and improving the Defense Foreign Language Program. The Board enables the Department of Defense to capitalize on the knowledge and expertise of national level government industrial, and academic leaders to assist in establishing the Defense Language Institute as a major center for language training research.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 24, 1988.

[FR Doc. 88-24892 Filed 10-26-88; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Norway concerning Peaceful Uses of Nuclear Energy, and the Agreement for Cooperation between the Government of the United States of America and the Government of Switzerland concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/SD(NO)-2, for the transfer of 30,221 kilograms of heavy water from Norway to Switzerland for use at European Organization for Nuclear Research (CERN), Geneva, Switzerland. The heavy water is being returned to Switzerland after upgrading in Norway.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than November 14, 1988.

For the Department of Energy.

Date: October 20, 1988.

David B. Waller,

Assistant Secretary of Energy International Affairs and Energy Emergencies.

[FR Doc. 88-24897 Filed 10-26-88; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Switzerland concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involve approval of the following retransfer: RTD/EU(SD)-71, for the retransfer of 11 irradiated plates containing 48 grams of uranium, enriched to 93.75 percent in the isotope uranium-235, for recovery of molybdenum-99 for use in medical applications, from Switzerland to Karlsruhe, the Federal Republic of Germany.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than November 14, 1988.

For the Department of Energy.

Date: October 20, 1988.

David B. Waller,

Assistant Secretary of Energy International Affairs and Energy Emergencies.

[FR Doc. 88-24896 Filed 10-26-88; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangements

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangements" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangements to be carried out under the above-mentioned agreements involve approval of the following retransfers:

RTD/JA(EU)-44, for the transfer of a dummy fuel element and a dummy control element from the Federal Republic of Germany to Japan for hydraulic testing. The elements contain 3.370 kilograms of uranium depleted in the isotope uranium-235. The elements are designed for the JMTR research reactor.

RTD/JA(EU)-45, for the transfer of micro-miniplates from the Federal Republic of Germany to Japan for use in the JMTR research reactor. The miniplates contain 0.126 of uranium enriched to 43.8 percent in the isotope uranium-235, 0.700 grams of uranium enriched to 19.7 percent in the isotope uranium-235, and 90 grams of depleted uranium.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that these subsequent arrangements will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than November 14, 1988.

For the Department of Energy.

Date: October 20, 1988.

David B. Waller,

Assistant Secretary of Energy, International Affairs and Energy Emergencies.

[FR Doc. 88-24899 Filed 10-26-88; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/JA(EU)-46, for the transfer of fuel elements for use in the JRR-3 research reactor from France to Japan. The fuel elements contain 104.739 kilograms of uranium enriched to 19.95 percent in the isotope uranium-235.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than November 14, 1988.

Date: October 20, 1988.

For the Department of Energy.

David R. Waller,

Assistant Secretary of Energy, International Affairs and Energy Emergencies.

[FR Doc. 88-24900 Filed 10-26-88; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves the approval for the sale of 84.77 grams of natural uranium to Quinta Raddison Ltd. Essex, United Kingdom, for use as standard reference material. Contract Number S-EU-944 has been assigned to this transaction.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than November 14, 1988.

Date: October 20, 1988.

For the Department of Energy.

David R. Waller,

Assistant Secretary of Energy International Affairs and Energy Emergencies.

[FR Doc. 88-24901 Filed 10-26-88; 8:45 am]

BILLING CODE 6450-01-M

[Solicitation No. DE-PS07-88ID12830]

Idaho Operations Office; Workpiece Temperature Analyzer System for Industrial Furnaces; Research and Development

AGENCY: Department of Energy.

ACTION: Solicitation for Financial Assistance, Applications for Research and Development of a Workpiece Temperature Analyzer System for Industrial Furnaces (WPTA).

SUMMARY: The U.S. Department of Energy requests applications for financial assistance for research and development of a workpiece temperature analyzer for industrial furnaces. This announcement is the complete solicitation document and no other document for this work is available. The objective of this research is to increase the energy efficiency of industrial heating processes through the development of advanced measurement systems that measure the temperature of the workpiece itself, not the temperature of the gas cavity in which it is located. Workpiece is herein defined as a solid object, either metallic or ceramic. Examples of applications may include reheating, annealing, sintering, soaking, heat treating, thermal setting, and curing. This analyzer must be a remote (non-contact) system, capable for use in moderate (>1000 F) to high temperature industrial processes in both new and retrofit applications. The temperature profile and surface temperature of the workpiece will be determined either by direct measurement or inferred by calculation from direct measurements. Control of the proposed application using information from the WPTA is not part of this solicitation but would be a natural extension of the solicited work.

The project is to consist of three phases. Phase I is anticipated to consist of development of a preliminary conceptual design(s) and concept evaluation(s) to identify potential, economic, and fuel saving benefits. Phase II is anticipated to consist of sensor system development, laboratory scale test and evaluation, full scale design, and reevaluation of the economic analysis undertaken in Phase I. Phase III is anticipated to involve fabrication, assembly and field testing of a full scale system at an industrial site.

DOE anticipates that this solicitation will result in multiple cooperative agreement awards for Phase I, one of which will likely proceed to later phases. Information gathered during Phase I will form the basis for a decision to proceed or not to proceed to Phases II and III.

The project awarded will be cost-shared by DOE and the Participant with the Participant's cost share increasing as the project proceeds through the various phases. DOE has approximately $450,000 available for all awards made in Phase I. No fee or profit will be paid to the Participant. Negotiation, award, and administration will be in accordance with DOE Financial Assistance Regulations (10 CFR Part 600). The Catalog of Federal Domestic Assistance number for this program is 81.078.

Profit-making entities, individuals, educational institutions, nonprofit institutions and other entities are eligible to submit applications in response to this solicitation. Federal agencies and/or laboratories owned, operated, or under the cognizance of the Federal Government are not eligible for award and should not submit applications. Applications which anticipate participation of such a laboratory by subcontract, use agreement, or other arrangement must include satisfactory evidence of specific authorization from the cognizant Federal agency.

All timely proposals received will be evaluated and point-scored in accordance with the following four criteria: *Criterion 1* is the technical and economic potential of the concept and is divided into two parts. *Criterion 1a* is the technical viability of the proposed technology(s). Factors considered favorable are high feasibility of the technology(s); low development cost and time needed to proceed to a commercial product(s); and high advancement of the technology relative to other systems commercially available or currently under development in terms of the potential for achieving energy savings, product cost reductions, and quality improvements. *Criterion 1b* is the applicability of the concept. Factors to be considered favorable are high potential for improvements in the proposed application(s) when the proposed technology is installed; long survivability in the expected environment; low projected operational and capital cost; low space, utility, manpower and maintenance requirements; high reliability; good likelihood of industrial acceptance; and high potential for national energy savings from commercializing the concept on a national basis. *Criterion 2* is the ability of the proposer to successfully complete all phases of the project. Factors to be considered are the proposer's knowledge of workpiece temperature measurement in general; the proposer's knowledge of the specific proposed technology involved for measuring workpiece temperature; the proposer's knowledge of the proposed industrial application and market factors effecting acceptance of a WPTA by the industry represented by the proposed application(s); the facilities available for building and testing the proposed concept; ability to complete Phases II and III; qualifications of the key individuals and the percentage of their time devoted to the project; background on the proposer's marketing channels for related products lines; and facilities and personnel for production and commercialization. *Criterion 3* is the Statement of Work relative to clarity, completeness, responsiveness, and adequacy to achieve the stated objectives of this solicitation. *Criterion 4* is the project management plan relative to the completeness and adequacy of the work breakdown structure, the schedule (sequence of project tasks, principal milestones, decision points, and sufficiency of time to complete tasks), individual responsibilities and task assignments of each project participant, estimates of personnel effort for each of the tasks, resource and manpower availability to satisfy task requirements, and project management methods. Proposals are to be prepared for the complete project. A detailed Statement of Work and cost estimate are required for Phase I. More general descriptions and rough estimates are also required for later phases.

The criteria are listed in descending order of importance. Criterion 1 is weighted approximately four tenths the total evaluation criteria value. Criterion 1a is about twice the value of Criterion 1b. Criterion 2 is about three tenths the total value, and Criterion 3 and 4 combined weigh approximately three tenths the total value and are equal. Applications should be responsive to the criteria listed above.

In conducting the evaluation of applications, the Government may utilize assistance and advice from non-Government personnel. Applicants are therefore requested to state on the cover sheet of the application if they do not consent to an evaluation by such non-Government personnel. Applicants are further advised that DOE may be unable to give full consideration to an application submitted without such consent. Information contained in the applications shall be treated in accordance with the policies and procedures set forth in 10 CFR 600.16.

Cost considerations will not be point scored or adjectively rated. Applicants are advised, however, that the evaluated cost may be the basis for selection. In making the selection decision, the apparent advantages of individual applications will be weighed against the probable cost to the Government to determine whether better proposals, excluding cost considerations, are worth the probable cost differences.

DOE reserves the right to reject any and all applications received in response to this solicitation or to select any application as a basis for negotiation. DOE may require applications to be clarified or supplemented to the extent considered necessary either through additional written submissions or oral presentations; however, the award may be made solely on the information contained in the proposal. A description of the applicant's organization should be included in the proposal along with the most recent two years' financial statements. The Government is not liable for any costs incurred in the preparation of an application. Further, cost incurred prior to the signing of a cooperative agreement are not reimbursable.

DATES: The due date for applications is 4:00 p.m., Mountain Daylight Time, on December 16, 1988. Late applications will be handled in accordance with 10 CFR 600.13. Prospective applicants who intend to submit an application in response to this solicitation should notify the contact below of their intent in writing. Questions regarding this solicitation should also be submitted to this contact in writing by November 18, 1988. Questions and answers will be issued in writing by amendment to this solicitation. Copies of all amendments to this solicitation will be sent only to those notifying this office of their intent to submit an application. Selection is expected to be made in February 1989 and award in March 1989.

Contacts: Three copies of each proposal, including the signed original, should be submitted to: U.S. Department of Energy, Attn: Trudy A. Thorne, Contracts Management Division, Idaho Operations Office, 785 DOE Place, Idaho Falls, Idaho 83402.

Questions relating to this solicitation for Financial Assistance Applications may be directed to Trudy A. Thorne, telephone: (208) 526-0519. Issued at Idaho Falls, Idaho on October 14, 1988.

R. Brent Clark,

Director, Contracts Management Division.

[FR Doc. 88-24895 Filed 10-26-88; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award; Intent to Award Grant to Trent J. Parker-Uni-Frac, Inc.

AGENCY: U.S. Department of Energy.

ACTION: Notice of Non-Competitive Financial Assistance Award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.14, it is making a financial assistance award based on an unsolicited application under Grant Number DE-FG01-89CE15428 to Trent J. Parker-Uni Frac, Inc., for development of his invention the "T-By Tray" which is designed for the Uni-Frac distillation column.

Scope: This grant will aid in providing confirmation of the predicted efficiency of T-By Trays as part of the Uni-Frac distillation column. Hot distillation tests will be performed with hydrocarbons at the University of Texas Separation Research Center. These tests will be followed by detailed design of a pilot system for test and demonstration purposes to be installed at an independent testing laboratory.

The purpose of this project will be to evaluate the effect of certain column and contacting stage designs on the separation efficiency of a distillation column. Distillation is the most widely used method of separating liquid mixtures.

Eligibility: Based on receipt of an unsolicited application, eligibility of this award is being limited to Trent J. Parker—Uni-Frac, Inc., a private corporation with high qualifications in this specialized field of technology. It has been determined that this project has high technical merit, representing an innovative and novel idea which has a strong possibility of allowing for future reductions in the nations energy consumption.

The term of this grant shall be from November 15, 1988 thru May 15, 1990. The estimated cost of this grant is $50,241.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, Attn: Phyllis Morgan, MA-453.2, 1000 Independence Avenue, SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 88-24896 Filed 10-26-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. TM89-1-34-001, TQ89-1-34-001, TQ88-3-34-002]

Florida Gas Transmission Co.; Proposed Changes in FERC Tariff

October 21, 1988.

Take notice that on October 14, 1988, Florida Gas Transmission Company (FGT), tendered for filing the following tariff sheets:

TM89-1-34-000 and TQ89-1-34-000

Tariff Sheets Proposed Effective October 1, 1988, FERC Gas Tariff, First Revised Volume No. 1
Substitute 32nd Revised Sheet No. 8
FERC Gas Tariff, Original Volume No. 2
Substitute 54th Revised Sheet No. 128

TQ88-3-34-000

Tariff Sheets Proposed Effective November 1, 1988, FERC Gas Tariff, First Revised Volume No. 1
Substitute 33rd Revised Sheet No. 8
FERC Gas Tariff, Original Volume No. 2
Substitute 55th Revised Sheet No. 128

FGT states that the above referenced

tariff sheets are being filed pursuant to the Commission's Letter Order dated September 30, 1988 in Docket Nos. TM89-1-34 and TQ89-1-34.

FGT states that on Aug. 31, 1988, it filed tariff sheets to be effective Oct. 1, 1988 to remove the surcharge adjustment pursuant to the transition rules under § 154.310 of the Commission's regulations, and to reduce FGT's Annual Charge Adjustment (ACA). The filing also requested a waiver of the Commission's regulations to implement a subsequent surcharge to passthrough overcollections for the five month period immediately preceding the June 1, 1988 effective date of Order Nos. 483 and 483-A.

By Commission Letter Order dated September 30, 1988, the request for waiver was denied and the subject tariff sheets were rejected. FGT was directed to file revised tariff sheets to reflect the removal of the existing surcharge and the reduction in the ACA charge. FGT states that the instant tariff sheets have been submitted to comply with the directives of the letter order.

FGT states that the effect of the revisions is an increase of .837¢/therm for Rate Schedules G and I, and an increase of .35¢/Mcf for Rate Schedule T-3, as compared to the rates contained in TF88-8-34 effective September 1, 1988.

FGT states that a copy of its filing has been served on all customers receiving gas under its FERC Gas Tariff, First Revised Volume No. 1, Original Volume No. 2, and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 28, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24672 Filed 10-26-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-240-002]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

October 21, 1988.

Take notice that on October 19, 1988, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following tariff sheets to its FERC Gas Tariff Original Volume No. 1:

First Substitute Original Revised Sheet No. 3-C.7
First Substitute Original Revised Sheet No. 3-C.8
First Substitute Original Revised Sheet No. 3-C.9

Panhandle proposes a September 29, 1988 effective date.

Panhandle states that the proposed tariff sheets are being filed in compliance with the Commission's September 28, 1988 order in the above-captioned proceeding accepting Panhandle's proposed recovery of the take-or-pay charges to be billed to Panhandle by Trunkline Gas Company (Trunkline) pursuant to Trunkline's proposal to recover take-or-pay settlement costs under Order No. 500 in Docket No. RP88-239-000. The September 28 Order required Panhandle to eliminate the CD reduction adjustments to the base year sales volumes for the twelve General Service Customers and to revise the base and deficiency period sales volumes for Kokomo Gas and Fuel Company. Further, Ordering Paragraph (B) required Panhandle to track any modifications to Trunkline's take-or-pay charges. Trunkline is filing contemparaneously herewith a revision to its take-or-pay recovery mechanism in Docket No. RP88-239-000. Panhandle's filing herein satisfies the requirements of the September 28th order.

Panhandle states that copies of the filing were mailed to all of Panhandle's jurisdictional customers and interested state commissions, as well as the parties to the above-captioned proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before October 31, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24673 Filed 10-26-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-241-002]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

October 24, 1988.

Take notice that on October 19, 1988, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following tariff sheets to its FERC Gas Tariff Original Volume No. 1:

First Substitute Sixty-Sixth Revised Sheet No. 3-A
First Substitute Forty-Third Revised Sheet No. 3-B
First Substitute Original Revised Sheet No. 3-C.4
First Substitute Original Revised Sheet No. 3-C.5
First Substitute Original Revised Sheet No. 3-C.6

The proposed effective date of these revised sheets is September 29, 1988.

First Substitute Sixty-Seventh Revised Sheet No. 3-A
First Substitute Forty-Fourth Revised Sheet No. 3-B

The proposed effective date of these revised tariff sheets is October 1, 1988.

Panhandle states that the proposed tariff sheets are being filed in compliance with the Commission's September 28, 1988 order in the above-captioned proceeding accepting Panhandle's proposed recovery of take-or-pay settlement costs under Order No. 500 in Docket No. RP88-241-000. The September 28 Order required Panhandle to remove carrying charges which predate the September 29, 1988 effective date, to eliminate the CD reduction adjustments to the base period sales volumes for the twelve General Service Customers, to revise the base and deficiency period sales volumes for Kokomo Gas and Fuel Company and to adjust the amounts to be recovered herein to reflect amounts payable to non-affiliates for which written or verbal commitments had been made at the time of the filing. Further, Ordering Paragraph (B) required Panhandle to eliminate any payments to producers which were affiliated with Panhandle at the time take-or-pay settlements were entered into. The revised tariff sheets filed herewith have been adjusted to reflect the requirements of the September 28th order.

Panhandle states that copies of the filing were not sent to all of Panhandle's jurisdictional customers and interested state commissions, as well as the parties to the above-captioned proceeding and the parties to the Docket No. RP87-103 proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before October 31, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24674 Filed 10-26-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-196-004]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

October 21, 1988.

Take notice that Transwestern Pipeline Company (Transwestern) on October 17, 1988, tendered for filing certain tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1.

Transwestern states the tariff sheets are filed in compliance with the Commission's July 22, 1988 order in Docket No. RP88-196-000, approving, with certain preconditions, Transwestern's June 24, 1988 filing to implement one of the Commission's Order 500 recovery options for take-or-pay buyout and contract reformation costs (Transition Costs). As state in the June 24, 1988 filing, Transwestern elected to: (1) absorb twenty-five percent (25%) of the total Transition Costs, (2) direct bill twenty-five percent (25%) of the total Transition Costs (TCR Fee), and (3) recover the remaining fifty percent (50%) through a Transition Cost Recovery Surcharge (TCR Surcharge).

Transwestern states that under the proposal, it will recover from jurisdictional and non-jurisdictional customers, the TCR Fee through a direct bill due thirty days after the tariff sheets become effective with the option for customers to amortize the TCR Fee over a period up to twelve months with the unpaid balance accumulating interest. The TCR Surcharge will be recovered on total throughput, amortized over five years.

Transwestern proposes to limit the instant filing to the recovery of costs incurred only through September 1, 1988 along with interest from the later of July 24, 1988 or the date of payment by Transwestern.

Transwestern requests that the Federal Energy Regulatory Commission grant any and all waivers of its rules, regulations and orders as may be necessary, specifically § 154.63 of its Regulations, so as to permit the above listed rate tariff sheets to become effective December 1, 1988 with the remaining tariff sheets to become effective July 24, 1988.

Copies of the filing were served on Transwestern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 28, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24675 Field 10-26-88; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

October 21, 1988.

The Federal Communications Commission has submitted the following information collection requirement to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act, as amended (44 U.S.C. 3501 *et seq.*).

Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Jerry Cowden, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785.

OMB Number: 3060-0349
Title: Sections 76.73 and 76.75—Cable TV EEO Policy and Programs
Action: Extension
Respondents: Businesses (including small businesses)
Frequency of Response: On occasion
Estimated Annual Burden: 5,575 recordkeepers; 143,612 total hours; 8 hours to 52 hours each (average 25.76 hours)
Needs and Uses: Each cable television employment unit is required to establish, maintain, and carry out a program to ensure equal employment opportunity (EEO) in every aspect of its policy and practice. Records maintained by cable units for EEO purposes are used by cable units to complete the Annual Employment Report (Form FCC 395-A) and by Commission staff in field investigations.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 88-24869 Filed 10-26-88; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1753]

Petitions for Reconsideration and Applications for Review of Actions in Rule Making Proceedings

Petitions for reconsideration and applications for review have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor International Transcription Service (202-857-3800). Oppositions to these petitions and applications must be filed November 14, 1988. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast

Stations. (Benton, Clarksville, Dardanelle, El Dorado, Hampton, Harrison, Huntsville, Mena, Ozark and Sherwood, Arkansas; Homer, Louisiana; Sallisaw and Vinita, Oklahoma; Hooks and Kilgore, Texas. (MM Docket No. 87-72, RM's 5481, 5288, 5325, 5714, 5239, 5301, 5604, 5660, 5680, 5411, 5421, 5481, 5688, 5515, 5685, 5262, 5251 & 5262].

Number of petitions received: 4.

Applications For Review

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Jennings, Erath, Mamou and Maurice, Louisiana; and Groves and Nederland, Texas) (MM Docket No. 87-104, RM's 5425, 5612, 5972, 5989 & 5989).

Number of applications received: 1.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Lafayette, Louisiana) [MM Docket No. 87-186, RM-5492]

Number of applications received: 2.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 88-24671 Filed 10-26-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-002744-003.

Title: Atlantic and Gulf/West Coast of South America Conference.

Parties:

Compania Chilena de Navigacion Interoceania, S.A.
Compania Sud Americana de Vapores
Lykes Bros. Steamship Co., Inc.
Compania Peruana de Vapores
Lineas Navieras Bolivianas S.A.M.
Naviera Neptuno, S.A.

Synopsis: The proposed modification would amend the agreement in connection with financial guarantees required of new members. The new member will not be permitted to vote until the financial guarantee is posted.

Agreement No.: 217-011218.

Title: Navieras Pacifico/N.V. CMB S.A. Space Charter Agreement.

Parties:

Navieras Pacifico C.A.
N.V. CMB S.A.

Synopsis: The proposed Agreement would authorize the parties to charter excess space from one another in the trade between the West Coast of the United States and Canada, and designated areas in Central and South America. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: October 21, 1988.

[FR Doc. 88-24672 Filed 10-26-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

The Citizens and Southern Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 17, 1988.

A. Federal Reserve Bank of Atlanta (Robert E. Hack, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *The Citizens and Southern Corporation*, Atlanta, Georgia, and Citizens and Southern Georgia Corporation, Atlanta, Georgia; to acquire 100 percent of the voting shares of Heritage Trust, Conyers, Georgia.

B. Federal Reserve Bank of St. Louis (Randall C. Summer, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Jamestown Bancorp, Inc.*, Jamestown, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Jamestown, Jamestown, Kentucky.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice president) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Michael Bancorporation, Inc.*, Minneapolis, Minnesota; to become a bank holding company by acquiring 91.35 percent of the voting shares of Summit National Bank, St. Paul, Minnesota.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222

1. *Moody Bank Holding Company, Inc.*, Reno, Nevada; to become a bank holding company by acquiring 24.99 percent of the voting shares of Bank of Galveston, N.A., Galveston, Texas; and 97.25 percent of the voting shares of The Moody National Bank of Galveston, Galveston, Texas.

Board of Governors of the Federal Reserve System, October 20, 1988.

James McAfee,

Associate Secretary of the Board.

FR Doc. 88-24737 Filed 10-26-88 8:45 am]

BILLING CODE 6210-01-M

Signet Banking Corp.; Application To Engage de Novo in Permissible Nonbanking Activities; Correction

This notice corrects a previous Federal Register notice (FR Doc. 88-18416) published at page 30870 of the issue for Tuesday, August 16, 1988.

Under the Federal Reserve Bank of Richmond, the entry for Signet Banking Corporation, is amended to read as follows:

1. *Signet Banking Corporation*, Richmond, Virginia; to engage *de novo* through its subsidiary, Signet Investment Corporation, Richmond, Virginia, in the offering of securities brokerage services and investment advisory services to retail and institutional customers. The Board has previously approved the provision of these services in *Bank of New England Corporation*, 74 Federal Reserve Bulletin 702 (1988).

Comments on this application must be received by November 11, 1988.

Board of Governors of the Federal Reserve System, October 20, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-24795 Filed 10-26-88; 8:45 am]

BILLING CODE 6210-01-M

Washington National Holdings, N.V.; Formation of; Acquisitions by; and Mergers of Bank Holding Companies; Correction

This notice corrects a previous Federal Register notice (FR Doc. 88-17082) published at page 28694 of the issue for Friday, July 29, 1988.

Under the Federal Reserve Bank of Richmond, the entry for Washington Bancorporation, is amended to read as follows:

1. *Washington National Holdings, N.V.*, Netherlands Antilles; acquire 100 percent of the voting shares of Washington Bancorporation, Washington, DC and thereby indirectly acquire The Washington Bank (of Maryland), Baltimore, Maryland, a *de novo* bank.

Comments on this application must be received by November 11, 1988.

Board of Governors of the Federal Reserve System, October 20, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-24796 Filed 10-26-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Federal Financial Participation in State Assistance Expenditures; Federal Matching Shares for Aid to Families With Dependent Children, Medicaid, and Aid to Needy Aged, Blind, or Disabled Persons for October 1, 1989 Through September 30, 1990

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: The Federal Percentages and Federal Medical Assistance Percentages for Fiscal Year 1990 have been calculated pursuant to the Social Security Act. These percentages will be effective from October 1, 1989 through September 30, 1990. This notice announces the calculated "Federal percentages" and "Federal medical assistance percentages" that we will use in determining the amount of Federal matching in State welfare and medical expenditures. The table gives figures for each of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands. Title XIX of the Social Security Act (the Act) exists in each jurisdiction, title IV-A in all jurisdictions except the Northern Mariana Islands, titles I, X, and XIV operate only in Guam and the Virgin Islands, while title XVI (AABD) operates only in Puerto Rico. The percentages in this notice apply to State expenditures for assistance payments and medical services (except family planning which is subject to a higher matching rate). The statute provides separately for Federal matching of administrative costs.

Sections 1101(a)(8) and 1905(b) of the Act, as revised by section 9528 of Pub. L. 99-272, require the Secretary of Health and Human Services to publish these percentages each year. The Secretary is to figure the percentages, by formulas in sections 1101(a)(8) and 1905(b) of the Act, from the Department of Commerce's statistics of average income per person in each State and in the Nation as a whole. The percentages are within upper and lower limits given in those two sections of the Act. The statute specifies the percentages to be applied to Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

The "Federal percentages" are for Aid to Families with Dependent Children (AFDC) and aid to needy aged, blind, or disabled persons, and the "Federal medical assitance percentages" are for Medicaid. However, under section 1118 of the Act, States with approved Medicaid plans may claim Federal matching funds for expenditures under approved State plans for these other programs using either the Federal percentage or the Federal medical assistance percentage. These States may claim at the Federal medical assistance percentage without regard to any maximum on the dollar amounts per recipient which may be counted under paragraphs (1) and (2) of sections 3(a), 403(a), 1003(a), 1403(a), and 1603(a) of the Act.

DATES: The percentages listed will be effective for each of the 4 quarter-year periods in the period beginning October 1, 1989 and ending September 30, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Emmett Dye, Office of Family Assistance, Family Support Administration, 370 L'Enfant Promenade SW., Washington, DC 20447, Telephone (202) 252-5047.

(Catalog of Federal Domestic Assistance Program Nos. 13.808—Assistance Payments—Maintenance Assistance (State Aid); 13.714—Medical Assistance Program)

Dated: October 21, 1988.

Otis R. Bowen,

Secretary of Health and Human Services.

FEDERAL PERCENTAGES AND FEDERAL MEDICAL ASSISTANCE PERCENTAGES, EFFECTIVE OCTOBER 1, 1989–SEPTEMBER 30, 1990 (FISCAL YEAR 1990)

State	Federal percentage	Federal medical assistance percentage
Alabama	[illegible]	73.21
Alaska	[illegible]	50.00
American Samoa	50.00	50.00
Arizona	58.66	60.99
Arkansas	65.00	74.58
California	[illegible]	50.00
Colorado	50.00	[illegible]
Connecticut	50.00	50.00
Delaware	[illegible]	50.00
District of Columbia	50.00	[illegible]
Florida	[illegible]	54.70
Georgia	[illegible]	62.09
Guam	50.00	[illegible]
Hawaii	50.00	54.55
Idaho	[illegible]	73.30
Illinois	[illegible]	50.00
Indiana	[illegible]	[illegible]
Iowa	[illegible]	62.52
Kansas	51.19	[illegible]
Kentucky	[illegible]	72.95
Louisiana	66.00	[illegible]
Maine	[illegible]	65.20
Maryland	50.00	50.00
Massachusetts	[illegible]	[illegible]
Michigan	50.00	[illegible]
Minnesota	50.00	52.74
Mississippi	[illegible]	80.16
Missouri	54.65	[illegible]
Montana	[illegible]	71.05
Nebraska	56.80	61.12
Nevada	50.00	[illegible]
New Hampshire	[illegible]	[illegible]
New Jersey	50.00	[illegible]
New Mexico	[illegible]	72.25
New York	[illegible]	[illegible]
North Carolina	[illegible]	67.46
North Dakota	63.91	67.52
Northern Mariana Islands	50.00	50.00
Ohio	55.06	59.57
Oklahoma	[illegible]	68.29
Oregon	[illegible]	62.95
Pennsylvania	[illegible]	56.86
Puerto Rico	50.00	[illegible]
Rhode Island	50.17	55.15
South Carolina	65.00	[illegible]
South Dakota	[illegible]	[illegible]
Tennessee	65.00	69.64
Texas	[illegible]	[illegible]
Utah	65.00	74.70
Vermont	[illegible]	[illegible]
Virgin Islands	[illegible]	[illegible]
Virginia	[illegible]	50.00
Washington	50.00	53.86
West Virginia	[illegible]	[illegible]

FEDERAL PERCENTAGES AND FEDERAL MEDICAL ASSISTANCE PERCENTAGES, EFFECTIVE OCTOBER 1, 1988–SEPTEMBER 30, 1990 (FISCAL YEAR 1990)—Continued

State	Federal percentages	Federal medical assistance percentages
Wisconsin	54.76	59.28
Wyoming	50.17	65.95

[1] For purpose of section 1118 of the Social Security Act, the percentage used under titles I, X, XIV, and XVI and Part A of title IV will be 75 per centum.

[FR Doc. 88-24871 Filed 10-26-88; 8:45 am]

BILLING CODE 4150-04-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT-060-08-4410-14]

Moab District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Moab, Interior.

ACTION: Moab District Advisory Council meeting.

SUMMARY: The Moab District Advisory Council will meet Tuesday and Wednesday, November 29 and 30, 1988. The meeting will be held in the Tamarisk Inn in Green River, Utah, beginning at 10 a.m. on the 29th and adjourning at 3:00 p.m. on the 30th. The focus of the agenda will be the San Rafael Draft Resource Management Plan/Draft Environmental Impact Statement (DRMP/DEIS). Also, approval of previous meeting's minutes, selected program updates, new business, opportunity for public comment, finalization of resolutions, and adjournment.

All Advisory Council meeting are open to the public. Persons wishing to make a comment to the Council must notify the BLM by November 28. Depending on the number of people desiring to make a statement, a per-person time limit may be established. For further information, contact: Mary Plumb, Public Affairs Officer, P.O. Box 970, Moab, Utah 84532. Phone (801) 259-8111.

Gene Nodine,

District Manager.

[FR Doc. 88-24880 Filed 10-26-88; 8:45 am]

BILLING CODE 4310-DQ-M

[AZ-040-08-4410-02]

Safford District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94-579 and 43 CFR Part 1780, that a meeting of the Safford District Advisory Council will be held.

DATE: Friday, November 18, 1988 at 10:00 a.m.

ADDRESS: Bureau of Land Management, Safford District Office, 425 E. 4th Street, Safford, AZ.

SUPPLEMENTARY INFORMATION: The agenda for the meeting includes the following items: Overview of the San Simon Project; Wilderness release language and water rights; RMP update; Management update; and business from the floor.

The meeting is open to the public. Interested persons may make oral statements to the Council between 1:00 and 2:30 p.m. or may file written statements for the Council's consideration. Anyone wishing to make an oral statement must contact the Safford District Manager by November 17, 1988. Depending upon the number of people wishing to make oral statements, a per person time limit may be established.

Summary minutes of the meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

FOR FURTHER INFORMATION: Gil Esquerdo, Public Affairs Specialist, Safford District Office, 425 E. 4th St., Safford, AZ 85546. Telephone (602)-428-4040.

Roy A. Brady,

District Manager.

Date: October 18, 1988.

[FR Doc. 88-24855 Filed 10-26-88; 8:45 am]

BILLING CODE 4310-32-M

[NM-030-4212-11; NMNM98021]

Realty Action; Chaparral, NM, Interior,

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following described parcel of land has been examined and identified as suitable for lease/patent under section 212 of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2750; 43 U.S.C. 869-4; 44 Stat. 741, as amended):

T. 26 S., R. 5 E.
Sec. 14, S½SW¼SE¼SW¼, NMPM(1.25 acres).

The subject land will be offered to the Disabled American Veterans Chapter 25 of Chaparral, New Mexico for a meeting place and community activities center. This lease/patent is consistent with the Bureau of Land Management's planning system and County plans. The public interest will be served by offering this land under the Recreation and Public Purposes Act.

DATE: Comments must be submitted on or before December 12, 1988.

ADDRESS: Comments should be sent to: Bureau of Land Management, Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Mathilda Dzielak at the address above or at 505-525-8228, (FTS 571-8350).

SUPPLEMENTARY INFORMATION: Publication of this notice will segregate the public land from all appropriations under the public land laws, including the mining laws but not mineral leasing laws. This segregation will terminate upon the issuance of a lease/patent, 2 years from the date of publication of this notice in the Federal Register or upon publication of a notice of termination. Any adverse comments will be evaluated by the State Director who may vacate or modify this realty action and issue a final determination. In the absence of any objections, this realty actions will become the final determination of the Department of the Interior.

Richard T. Watts,

Acting District Manager.

October 20, 1988.

[FR Doc. 88-24856 Filed 10-26-88; 8:45 am]

BILLING CODE 4310-FB-M

[CA-940-08-4520-12; Group 1013]

Plat of Survey; California

October 14, 1988.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

San Bernardino Meridian, Riverside County

T. 5S., R. 1 E.

2. This plat representing the dependent resurvey of a portion of the west boundary, and a portion of the subdivisional lines, and the survey of the subdivision of section 30, Township 5 South, Range 1 East, San Bernardino Meridian, California, under Group No. 1012 California, was accepted September 14, 1988.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquires relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Bobbie J. Baldwin,

Acting Chief, Public Information Section.

[FR Doc. 88-24858 Filed 10-26-88; 8:45 am]

BILLING CODE 4310-40-M

[ID-942-09-4730-12]

Idaho; Filing of Plats of Survey

The plat of survey of the following described land, was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 10:00 a.m., October 19, 1988.

The plat representing the dependent resurvey of portion of the 1971 restored original meander lines for the left bank of the Snake River and the survey of irregular lots 18, 19, and 20 in Section 22 T. 5 N., R. 38 E., Boise Meridian, Idaho, Group No. 697 was accepted October 7, 1988.

This survey was executed to meet certain administrative needs by this Bureau.

All inquiries about this land should be sent to the Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Gerald W. Hochstrasser,

Acting Chief, Cadastral Surveyor for Idaho.

October 19, 1988.

[FR Doc. 88-24881 Filed 10-26-88; 8:45 am]

BILLING CODE 4310-GG-M

[CA-940-08-4214-10; CACA 17620]

Proposed Withdrawal and Opportunity for Public Meeting; California

October 19, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 662.50 acres of public land in San Bernardino County, to protect and preserve the Calico Early Man Site. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

DATE: Comments and requests for a public meeting must be received by January 25, 1988.

ADDRESS: Comments and meeting requests should be sent to the California State Director, BLM, 2800 Cottage Way, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, (916) 978-4815.

SUPPLEMENTARY INFORMATION: On August 24, 1988, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

San Bernardino Meridian

T. 10 N., R. 2 E.,
Sec. 15, S½S½SW¼NW¼, S½SW¼SE¼NW¼, W½NE¼SW¼, W½SW¼, and W½SE¼SW¼;
Sec. 22, SW¼NE¼NE¼NE¼, W½NE¼NE¼, SE¼NE¼NE¼, W½NE¼, SE¼NE¼, NW¼, and N½S½;
Sec. 23, SW¼SW¼NW¼, NW¼, W½SW¼NW¼, SW¼SE¼SW¼NW¼, W½NW¼SW¼, and W½E½NW¼SW¼.

The area described contains approximately 662.50 acres in San Bernardino County.

The purpose of the proposed withdrawal is to protect the archaeological, historical, geological, and recreational integrity of the Calico Early Man Site.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the Federal Register at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the Federal Register, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are licenses, permits, cooperative agreements, or discretionary land-use authorizations of a temporary nature.

Nancy J. Alex,

Chief, Lands Section, Branch of Adjudication and Records.

[FR Doc. 88-24857 Filed 10-26-88; 8:45 am]

BILLING CODE 4310-84-M

[WY-088-08-4214-10; WYW 112132]

Proposed Withdrawal and Opportunity for Public Meeting; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of Energy has filed an application to withdraw 80 acres of public mineral estate approximately 40 miles northwest of Douglas, Wyoming. The application proposes withdrawing the Federal mineral estate while purchasing the private surface, in order to stabilize, in place, an uranium mill tailings area, known as the Spook Site. This notice will temporarily segregate the land for up to two (2) years from location and entry under the United States mining laws. The lands will remain open to mineral leasing with the concurrence of the Department of Energy, the Nuclear Regulatory Commission, and the Bureau of Land Management. During this period, the Department of Energy will prepare the necessary National Environmental Policy Act compliance documentation and justification for Secretarial consideration of the withdrawal application. The withdrawal is requested for a period of five (5) years pending permanent Congressional action.

DATE: Comments and requests for a public meeting should be received on or before January 25, 1988.

ADDRESS: Comments and meeting requests should be sent to the Wyoming State Director, BLM, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82003.

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, BLM Wyoming State Office, 307-772-2072.

SUPPLEMENTARY INFORMATION: On October 5, 1988, the U.S. Department of Energy filed an application to withdraw the following described public mineral estate for their exclusive use for construction of a proposed disposal site for residual radioactive wastes pursuant to the Uranium Mill Tailings Radiation Control Act of 1978; 92 Stat. 3021, 42 U.S.C. 7901 *et seq.*

Sixth Principal Meridian

T. 36 N., R. 73 W.,
Sec. 28, SE¼NE¼,NE¼SE¼.

The area described contains 80 acres in Conners County.

Effective on the date of publication, these lands are segregated from location and entry under the United States mining laws. The lands remain open to mineral leasing subject to concurrence by the Department of Energy, the Nuclear Regulatory Commission, and the Department of the Interior.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period are only those specific uses authorized by the Department of Energy, the Nuclear Regulatory Commission, and the Department of the Interior. Additionally, existing oil and gas leases WYW 76347, and WYW 39988, will continue to be authorized.

The temporary segregation of the lands in connection with the withdrawal application shall not affect the administrative jurisdiction over the lands, and the segregation shall not have the effect of authorizing any use of the lands by the Department of Energy.

Hillary A. Oden,
State Director.

Date: October 21, 1988.

[FR Doc. 88-24816 Filed 10-26-88; 8:45 am]
BILLING CODE 4310-22-M

Bureau of Mines

Advisory Committee on Mining and Mineral Resources Research; Meeting

The Advisory Committee on Mining and Mineral Resources Research will meet from 8:00 a.m. to 5:00 p.m. (or completion of business) on Thursday, November 17, 1988, in the Secretary's Conference Room (Room 5160), U.S. Department of the Interior, 18th and C Streets, NW., Washington, DC 20240.

The proposed agenda is:

1. Welcome by the Assistant Secretary—Water and Science and by the Directors of the Bureau of Mines and the Geological Survey.
2. Approval of the minutes of the meeting of September 30, 1987.
3. Approval of the 1988 grant awards program.
4. Review of 1988 legislation affecting the Mineral Institutes program:

Public Law 100-483
Appropriations for the Mineral Institutes
Appropriations for related purposes.

5. Status of proposed regulations: Discussion and approval of criteria to be used in the evaluation of allotment grants.
6. Review and recommendations concerning the continuation or revision of current generic mineral technology center configuration.
7. Discussion of and approval of the annual update to the National Plan for Research in Mining and Mineral Resources.
8. New business.

This meeting is open to the public. Approximately 30 visitors can be accommodated on a first-come, first-served basis. Written statements concerning the subjects are welcome.

In order to be admitted to the building, visitors who expect to attend should inform Dr. Ronald A. Munson, Chief, Office of Mineral Institutes, Bureau of Mines, Mail Stop 1020, 2401 E Street, NW., Washington, DC 20241, phone (202) 634-1328, no later than noon, Wednesday, November 16.

Dated: October 24, 1988

T. S. Ary,
Director.

[FR Doc. 88-24794 Filed 10-26-88; 8:45 am]
BILLING CODE 4310-53-M

Bureau of Reclamation

Investigation and Potential Construction of Cogeneration-Desalination Plants in the Colorado River Basin

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of investigation and potential construction of cogeneration-desalination plants in the Colorado River Basin.

SUMMARY: The Bureau of Reclamation, Upper Colorado Region, intends to enter into a cooperative agreement with Sunlaw Energy Corporation for the preparation of feasibility and National Environmental Policy Act (NEPA) documents for investigation and potential construction of cogeneration-desalination plants in the Colorado River Basin. Response to this notice will be used to determine if a comparable source more advantageous to the government is available. If no affirmative responses are received within the specified time, a cooperative agreement will be awarded to Sunlaw Energy Corporation.

DATES: Written responses addressing the specified selection criteria in order to determine capability to meet the requirements must be received by the Upper Colorado Regional Office of the Bureau of Reclamation within 30 calendar days after publication of this notice.

ADDRESS: Point of contact is Bureau of Reclamation, 125 South State Street, PO Box 11568, Salt Lake City, UT, 84147.

FOR FURTHER INFORMATION CONTACT: Dave Trueman, (801) 524-6292 or Rebecca Parton (801) 524-3594.

SUPPLEMENTARY INFORMATION: Study and construction of salinity control units in the Colorado Rivern Basin are authorized under Public Laws 92-500, 93-320, 96-375, and 98-569. These authorities extend to cooperative developments with private industry interested in sharing the cost of investigation and developments which include salinity control as a project co-purpose.

The feasibility and NEPA study costs are expected to be between $1 million and $1.5 million per site and will be cost shared between the Bureau of Reclamation and the project proponent.

Selection criteria included the least cost per ton of salt removed, the highest cost share for cogeneration plants, lowest capital investment by the Federal government, most effective disposal of salt by-product, public support, environmental soundness, and best use of fresh water by-product.

A new project is more likely to receive favorable Congressional authorization and funding where the salinity control costs are less than $70 per ton of salt removed and disposed of. Projects will probably not be favorably considered, at this time, which are above $100 per ton of salt removed and disposesd of.

J. Austin Burke,
Acting Deputy Commissioner of Reclamation.

Date: October 17, 1988.

[FR Doc. 88-24880 Filed 10-26-88; 8:45 am]
BILLING CODE 4310-09-M

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Alaska Outer Continental Shelf

AGENCY: Minerals Management Service (MMS), U.S. Department of the Interior.

ACTION: Notice of the Availability of Environmental Documents Prepared for Outer Continental Shelf (OCS) Minerals Exploration Proposals on the Alaska OCS.

SUMMARY: The MMS, in accordance with Federal regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Environmental Assessments (EA's) and Findings of No Significant Impact (FONSI's) prepared by the MMS for oil and gas exploration activities proposed on the Alaska OCS. This listing includes all proposals for which FONSI's were prepared by the Alaska OCS in the 3-month period preceding this Notice.

Proposal

Amoco, as operator for itself; Shell Western Exploration and Production Inc.; and Union Oil of California propose to drill up to 14 wells from 12 leases acquired from Lease Sale 97 of March 1988. The leases are located in the eastern Alaskan Beaufort Sea, approximately 30 miles northeast of Arey Island in about 170 feet of water. Amoco has named the prospect "Galahad." The most likely location for the first well is Lease OCS-Y 1092. The wells will be drilled during the "open-water" season from the CANMAR Explorer II or the Beaudril Kulluk beginning as early as 1988.

Location

Lease	Blocks
OCS-Y 1085	NR 6-4 [illegible]
[illegible]	[illegible]
1087	368
1091	411
1092	412
1093	413
1094	414
1097	456
[illegible]	457
1099	458
1100	501
1101	502

Environmental Assessment

EA No. AK 88-03.

FONSI Date

September 30, 1988.

FOR FURTHER INFORMATION CONTACT: Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EA's and FONSI's prepared for activities on the Alaska OCS are encouraged to contact the MMS office in the Alaska OCS Region.

The FONSI and associated EA are available for public inspection between the hours of 7:45 a.m. and 4:30 p.m., Monday through Friday at: Minerals Management Service, Alaska OCS Region, Library, 949 East 36th Avenue, Room 502, Anchorage, Alaska 99508-4302, phone: (907) 261-4435.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and FONSI's for proposals which relate to exploration for oil and gas resources on the Alaska OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. The EA is used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA 102(2)(C). A FONSI is prepared in those instances where MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

The Notice constitutes the public Notice of Availability of environmental documents required under the NEPA regulations.

Date: October 14, 1988.

Alan D. Powers,
Regional Director, Alaska OCS Region.

[FR Doc. 88-24859 Filed 10-26-88; 8:45 am]
BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332-253]

Competitive Conditions in the U.S. and World Markets for Fresh Cut Roses

AGENCY: U.S. International Trade Commission.

ACTION: Correction of filing dates.

SUMMARY: Requests to appear at the public hearing and prehearing briefs (original and 14 copies) should be filed with the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436 not later than January 4, 1989. Post-hearing briefs are required by February 1, 1989.

Notice of the investigation will be published in the Federal Register of October 26, 1988.

By order of the Commission.

Kenneth R. Mason,
Secretary.

Issued: October 24, 1988.

[FR Doc. 88-24890 Filed 10-26-88; 8:45 am]
BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31329]

Tennessee Southern Railroad Co., Inc.; Purchase and Lease; CSX Transportation, Inc.; Decision

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision accepting application for consideration.

SUMMARY: The Commission is accepting for consideration the application, filed September 23, and supplemented September 30, 1988, by the Tennessee Southern Railroad Company, Inc., to acquire, by purchase and lease, 117.86 miles of rail line of CSX Transportation, Inc., between Florence, AL, and Columbia, TN; between Columbia and Pulaski, TN; and between Columbia and Godwin, TN. Pursuant to 49 CFR Part 1180, the Commission finds this to be a minor transaction.

DATES: Written comments must be filed with the Interstate Commerce Commission no later than November 25, 1988. Written comments from the Secretary of Transportation and Attorney General of the United States must be filed by December 12, 1988. Applicants' reply is due by December 30, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. (TDD for hearing impaired: (202) 275-1721).

ADDRESSES: An original and 10 copies of

all documents must be sent to: Office of the Secretary, Case Control Branch, Attn: Finance Docket No., 31329, Interstate Commerce Commission, Washington, DC 20423.

In addition, one copy of all documents in this proceeding must be sent to each of applicants' representatives:

Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202

R. Lawrence McCaffrey, Jr., Counsel for Tennessee Southern Railroad Company, Inc., Suite 600, 1350 New York Avenue, NW., Washington, DC [redacted]

SUPPLEMENTARY INFORMATION: By application filed September 23, and supplemented September 30, 1988, Tennessee Southern Railroad Company, Inc., (TSRC) and CSX Transportation, Inc., (CSX), collectively referred to as applicants, seek Commission approval under 49 U.S.C. 11343, *et seq.*, for TSRC to acquire, by purhcase and lease, 117.86 miles of CSX lines in Tennessee and Alabama. TSRC will purchase CSX's lines between Natco, TN, (milepost 229.50) and Columbia, TN, (milepost 233.40) and between Columbia (milepost 233.00) and Nucarbon, TN, (milepost 272.70), a total of 43.60 miles, for $1.2 million. Also, TSRC will lease for a 10-year period CSX's lines between Nucarbon (milepost 272.70) and Florence, AL, (milepost 312.26); between Columbia (milepost 233.40) and Pulaski, TN, (milepost 265.80); and between Natco (milepost 229.50) and Godwin, TN, (milepost 227.20), a total of 74.26 miles, for an annual rental of $65,000. Applicants contend that this is a minor transaction under 49 CFR 1180.2(c), and they submitted an application in accordance with the railroad consolidation procedures at 49 CFR Part 1180 for minor transactions. The parties intend to consummate the transaction as soon as possible after final Commission approval.

TSRC is a Class III railroad. It operates 1.4 miles of line in Florence and is controlled by G. Richard Abernathy, an individual. It commenced operations on July 11, 1988. CSX is a Class I railroad and a unit of CSX Corporation.

Applicants state that the acquisition by TSRC will result in the preservation and improvement of rail service to the approximately 25 shippers on these lines. Whereas CSX intended to reduce its 5-day per week service to 3 days weekly, TSRC intends to provide service 5 or 6 days per week. TSRC will not eliminate any facilities on the line. As a short line operator, it states that it will offer a more responsive service to the shippers. By integrating its present operations with the new operation, TSRC states that it will be able to spread out its current administrative, insurance, and operating costs. It anticipates that it will be an efficient, low-cost carrier and that, in the long term, shippers will be able to share in its cost savings. CSX has been unable to service fully the needs of its shippers on this short-haul line, and many of them have converted to motor carriage. By implementing local marketing and providing low cost, efficient service, TSRC hopes to regain many of CSX's former shippers.

Noting that TSRC presently does not serve any of the shippers on the lines, applicants contend that the transaction will not create a monopoly or reduce rail competition. TSRC's service will merely be substituted for that of CSX. Moreover, operation of the lines by TSRC is alleged to enhance intermodal competition by offering improved rail service to shippers, and in particular those shippers that previously converted to motor carriage.

The Railway Labor Executives' Association and the United Transportation Union request the imposition of labor protective conditions. Applicants state that the proposed transaction between Godwin and Florence will result in the elimination of 12 CSX employee positions. TSRC has agreed to hire three current and former CSX employees when it commences operations. It also will create seven new positions and give affected CSX employees preferential hiring rights. Applicants do not specifically indicate the extent to which both the acquisition and lease transactions together, as well as the extent which each of the transactions separately, will affect employees. Although applicants state that they assume that all affected employees will be afforded the protection pursuant to the conditions set forth in *New York Dock Railway—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979); those conditions would only be applicable to employees affected by the acquisition. We have determined that the appropriate labor protective conditions in lease transactions are those contained in *Mendocino Coast Ry., Inc.—Lease and Operate*, 354 I.C.C. 732 (1978) and 360 I.C.C. 653 (1980) (*Mendocino*). Accordingly, the *Mendocino* conditions would likely be imposed for the benefit of employees affected only by the lease.

Under the consolidation regulations, we must determine initially whether a proposed transaction is major, significant, minor, or exempt. The proposed transaction involves a Class I and a Class III railroad. It has no regional or national significance and will neither result in a major market extension nor reduce the present level of competition. Accordingly, we find the proposal a minor transaction under 49 CFR 1180.2(c). Because the application complies with the applicable regulations governing minor transactions, we are accepting it for consideration.

The application and exhibits are available for inspection in the Public Docket Room at the Offices of the Interstate Commerce Commission in Washington, DC. In addition, they may be obtained upon request from applicants' representatives named above.

Any interested persons, including government entities, may participate in this proceeding by submitting written comments. Comments must be filed no later than November 25, 1988. The Secretary of Transportation and Attorney General of the United States must file their comments no later than December 12, 1988. An original and 10 copies must be filed with the Secretary, Interstate Commerce Commission, Washington, DC 20423.

Written comments must be served concurrently by first-class mail on the United States Secretary of Transportation, the Attorney General of the United States, and the applicants' representatives. Written comments must also be served on all parties of record within 10 days of service of the service list by the Commission. We plan to issue the service list by December 12, 1988. Any person who files timely written comments shall be considered a party of record if the person's comments so request. In this event, no petition for leave to intervene need be filed. Consistent with 49 CFR 1180.4(d)(1)(iii), written comments must contain:

(A) The docket number and title of the proceeding;

(B) The name, address, and telephone number of the commenting party and its representative upon whom service shall be made;

(C) The commenting party's position, *i.e.*, whether it supports or opposes the proposed transaction;

(D) A statement of whether the commenting party intends to participate formally in the proceeding or merely comment upon the proposal;

(E) If desired, a request for an oral hearing with reasons supporting this request; the request must indicate the disputed material facts that can only be resolved at a hearing; and

(F) A list of all information sought to be discovered from applicant carriers.

Because we have determined that the proposal in this proceeding constitutes a minor transaction, no responsive applications will be permitted. The time limits for processing a minor transaction are set forth at 49 U.S.C. 11345(d).

Discovery may begin immediately. We admonish the parties to resolve all discovery matters amicably.

This action will not significantly affect either the quality of the human environment or energy conservation.

It is ordered: 1. This proposal is found to be a minor transaction under 49 CFR 1180.2(c).

2. The application in Finance Docket No. 31329 is accepted for consideration.

3. The parties shall comply with all provisions as stated above.

4. This decision is effective on the date of service.

Decided: October 20, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 88-24848 Filed 10-26-88; 8:45 am]

BILLING CODE [redacted]

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; Continental Chemiste Corp. et al.

In accordance with the Policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Continental Chemiste Corporation and Kenneth Kass*, Civil Action No. 87-C-10214, was lodged with the United States District Court for the Northern District of Illinois on September 21, 1988. The action was filed pursuant to the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), 7 U.S.C. 136 *et seq.*, against Continental Chemiste Corporation ("Chemiste") and Kenneth Kass. Chemiste is an Illinois corporation conducting business in Chicago and Defendant Kass was the president of the corporation. The Complaint alleged that Defendants violated FIFRA by distributing and selling pesticides that were not registered under FIFRA, by distributing and selling misbranded pesticides, by refusing to allow the EPA to inspect Chemiste's records and premises under FIFRA and by violating the cancellation of the registration of the pesticides produced by Defendants. The Complaint sought an injunction against further violations of section 12 of FIFRA and an order directing Defendants to comply with the provisions of an EPA notice concerning the cancellation of the registrations of Defendants pesticides.

The Consent Decree enjoins the Defendants from further violations of section 12 of FIFRA and requires compliance with the provisions of an EPA notice concerning the cancellation of the registrations of Defendants' pesticides. Defendant Chemiste is required to notify retailers who received shipments of the cancelled pesticides that the sale of "Moth-Cloud" (EPA Reg. No. 495-8-Cancelled) and "Smo-Cloud" (EPA Reg. No. 495-6-Cancelled) is prohibited. Defendant must accept all returned stocks of these lindane-based pesticides from retailers and dispose of the pesticides in accordance with the Resource Conservation and Recovery Act, 42 U.S.C. 6901, *et seq.*, reformulate the pesticides into a registered product or export the pesticides.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States* v. *Continental Chemiste Corporation and Kenneth Kass*, DOJ Reference No. 1-742.

The proposed Consent Decree may be examined at the office of the United States Attorney, 219 South Dearborn Street, Room 1500 S, Chicago, Illinois, 60604, and at the office of Regional Counsel, Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the proposed Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. A request for a copy of the proposed Consent Decree with exhibits should be accompanied by a check in the amount of $1.60 (ten cents per page copying costs) payable to the "United States Treasurer."

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-24852 Filed 10-26-88; 8:45 am]

BILLING CODE [redacted]

Antitrust Division

Pursuant to the National Cooperative Research Act of 1984; The Importance of Lubricating Oil in Diesel Particulate Emissions, Southwest Research Institute

Notice is hereby given that, on October 3, 1988, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute ("SwRI") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing the addition of a party to its group research project regarding "The Importance of Lubricating Oil in Diesel Particulate Emissions." The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the SwRI advised that Pennzoil Products Company (effective August 10, 1988) has become a party to the group research project.

No other changes have been made in either the membership or planned activity of the group research project.

On August 21, 1987, SwRI filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 18, 1987, 52 FR 35335. On December 22, 1987, SwRI filed an additional written notification. The Department published a notice in the **Federal Register** in response to the additional notification on January 19, 1988 (53 FR 1418). On May 27, 1988, SwRI filed an additional written notification. The Department published a notice in the **Federal Register** in response to the additional notification on June 23, 1988 (53 FR 23704) and on August 16, 1988, SwRI filed an additional written notification. The Department published a notice in the **Federal Register** in response to the additional notification on September 15, 1988 (53 FR 35936).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 88-24853 Filed 10-26-88 8:45 am]

BILLING CODE [redacted]

DEPARTMENT OF LABOR

Office of the Secretary

Commission on Workforce Quality and Labor Market Efficiency; Meeting

The Commission on Workforce Quality and Labor Market Efficiency was established under the provisions of the Federal Advisory Committee Act to increase the excellence of the American workforce.

A public meeting of the Commission on Workforce Quality and Labor Market Efficiency will be held on December 6, 1988, commencing at 1:00 p.m., in room S-2506 of the Department of Labor, 200 Constitution Avenue NW., Washington, DC.

The purposes of the meeting are to:

1. Approve the interim report of the Commission.

2. Review the research agenda of the Commission's staff.

3. Be given briefings by experts in the fields of: education, economics, and compensation and benefits packages.

For additional information, contact: Laurie J. Bassi, Deputy Director, Commission on Workforce Quality and Labor Market Efficiency, U.S. Department of Labor, 200 Constitution Avenue NW., Room C-2313, Washington, DC 20210, telephone (202) 523-4656.

Individuals or organizations wishing to submit written statements pertaining to the research agenda of the Commission on Workforce Quality and Labor Market Efficiency should send 40 copies to the address given above. Papers will be accepted and included in the record of the meeting if received on or before December 1, 1988.

On January 5, 1989 and thereafter, official records of the meeting will be available for public inspection at: Department of Labor, 200 Constitution Avenue, Room C-2313, Washington, DC.

Signed at Washington, DC, this 21st day of October 1988.

Ann McLaughlin,

Secretary of Labor.

[FR Doc. 88-24667 Filed 10-26-88 8:45 am]

BILLING CODE 4510-23-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATE: Requests for copies must be received in writing on or before December 12, 1988. Once the appraisal of the records is complete, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESS: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Defense Nuclear Agency (N1-374-88-6). Records relating to the exposure of individuals to radioactive materials. Long-term retention is proposed (75 years).

2. Department of the Navy, Chief of Naval Operations, Naval Data Automation Command (N1-NU-88-5). A comprehensive schedule relating to planning, design, construction, acquisition, development, maintenance, administration, and disposition of structures and facilities ashore, including fleet facilities. Schedule provides for permanent retention of records relating to overall policies, procedures and significant actions.

3. Department of Agriculture, Forest Service (N1-95-17). General correspondence files maintained in the offices of energy coordinators throughout the agency.

4. Department of Commerce, International Trade Administration (N1-151-88-7). Routine administrative records of the Office of the Director, Office of International Trade Promotion, 1985-91.

5. Department of Commerce, International Trade Administration (N1-151-88-12). Product background files for Commercial News USA.

6. Department of Commerce, Bureau of Economic Analysis, Business Outlook Division (N1-375-88-4). Working papers for the Inventory and Sales Anticipation Survey, 1957-71.

7. Department of Education, Office of International Education (N1-12-88-5). Reading file of Oliver J. Caldwell, 1952-81.

8. Department of Health and Human Service, Public Health Service (N1-90-88-4). Routine financial files and license control cards of the United States Cadet Nurse Corps, 1941-49.

9. Department of Labor, Bureau of Labor Statistics, Office of Wages and Industrial Relations (N1-257-88-4). Information copies of union wage agreements for selected occupations and strike index cards.

Dated: October 24, 1988.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 88-24663 Filed 10-26-88; 8:45 am]

BILLING CODE 7515-01-M

Advisory Committee on Presidential Libraries; Meeting

Notice is hereby given that the Committee on Presidential Libraries will meet on Thursday, November 17, 1988, from 1:30 p.m. to 3:30 p.m., in Room 105 of the National Archives Building, 7th and Pennsylvania Avenue, NW., Washington, DC.

This will be the first meeting of the committee. The agenda for the meeting will be to discuss the organizational structure and functions of the committee.

The meeting will be open to the public. For futher information, call John Fawcett on 202-523-3212.

Dated: October 21, 1988.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 88-24662 Filed 10-26-88; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for International Programs; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for International Programs.

Date: November 21, 1988, 8:30 a.m. to 5:00 p.m., November 22, 1988, 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 1800 G Street, NW., Room 1143, Washington, DC 20550.

Type of Meeting: Open.

Contact Person: Dr. John Boright, Director, Division of International Programs, National Science Foundation, Washington, DC 20550, Telephone (202) 357-9552.

Summary of Minutes: May be obtained from Contact Person.

Purpose of Meeting: To provide advice, recommendations, and oversight related to support for international cooperation in science and engineering.

Tentative Agenda:

November 21

- Status report on international programs of NSF.
- Status of current international initiatives.
- Briefing on International Information and Analysis Section activities.
- Briefing on major international negotiations.
- Briefing on Pacific Rim initiatives.

November 22

- Discussion of science and engineering initiatives with Pacific Rim countries.

October 24, 1988.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 88-24793 Filed 10-26-88; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-344]

Portland General Electric Co., The City of Eugene, Oregon and Pacific Power and Light Co., Trojan Nuclear Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-1 issued to Portland General Electric Company, *et al.*, (the licensee), for operation of Trojan Nuclear Plant, located in Columbia County, Oregon.

Environmental Assessment

Identification of Proposed Action

The proposed amendment is a request to revise the Trojan Technical Specifications (TS) to delete the U-235 enrichment limit on fuel assemblies, and to authorize the storage of new fuel assemblies with enrichment of up to 4.5 weight percent (w/o) U-235 in the new fuel storage racks.

The proposed action is in accordance with the licensee's application for amendment dated March 1, 1988, as supplemented August 5, 1988.

The Need for the Proposed Action

The proposed amendment is required to permit the receipt, storage and use of fuel assemblies with an enrichment of U-235 up to 4.5 w/o, which is higher than the 3.5 w/o currently allowed by the Trojan Technical Specifications.

Environmental Impacts of the Proposed Action

The safety considerations associated with reactor operation with fuel enriched to 4.5 w/o U-235 have been evaluated by the NRC staff. The staff has concluded that such changes would not adversely affect plant safety.

The use of fuel with increased enrichment would not significantly increase the environmental impacts associated with operation of the facility and such impacts would be within those evaluated in the Final Environmental Statement related to operation of Trojan. The proposed action would not involve a significant change in the probability or consequences of any accident previously evaluated, nor does it involve a new or different kind of accident. Consequently, any radiological releases resulting from an accident would be significantly greater than previously determined. The proposed amendment does not otherwise affect routine radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendment. The Commission also concludes that the proposed action will not result in a significant increase in individual or cumulative occupational radiation exposure.

With regard to nonradiological impacts, the proposed amendment does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The environmental impacts of transportation resulting from the use of higher enrichment fuel and extended irradiation are discussed in the staff assessment entitled "NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation," which was published in the Federal Register on August 11, 1988 (53 FR 30355) in connection with the Shearon Harris Nuclear Power Plant, Unit 1, Environmental Assessment and Finding of No Significant Impact. As indicated therein, the environmental cost contribution of transportation of the increases in the fuel enrichment up to 5% and irradiation limits up to 60 GWD/MT are either unchanged or may, in fact, be reduced from those summarized in

Table S-4, as set forth in 10 CFR 51.52(c). These findings are applicable to this amendment for the Trojan Nuclear Plant.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the Federal Register on May 18, 1988 (53 FR 17807). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action

Because the Commission has concluded that there are no significant environmental impacts associated with the proposed action, there is no need to examine alternatives to the proposed action.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Final Environmental Statement related to operation of Trojan Nuclear Power Plant, dated August 1973.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request that supports the proposed amendment. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, the Commission concludes the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated March 1, 1988, as supplemented August 5, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Portland State University Library, 731 SW., Harrison Street, Portland, Oregon 97207.

Dated at Rockville, Maryland, this 6th day of October 1988.

For the Nuclear Regulatory Commission.

George W. Knighton,

Director, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-24821 Filed 10-26-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-395]

South Carolina Electric & Gas Co. and South Carolina Public Service Authority, Virgil C. Summer Nuclear Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-12 to the South Carolina Electric & Gas Company and South Carolina Public Service Authority (the licensee) for the Virgil C. Summer Nuclear Station, Unit No. 1, located in Fairfield County, South Carolina.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the provisions in the Technical Specifications (TS) relating to fuel enrichment.

The proposed action is in accordance with the licensee's applications dated March 8, 1988; May 20, 1988; and June 20, 1988, which were supplemented with submittals filed July 8, 1988; August 31, 1988; September 16, 1988; September 30, 1988; and October 11, 1988.

The Need for the Proposed Action

The proposed changes are needed so that the licensee can (1) continue use of higher enrichment fuel and (2) maintain the flexibility to extend the fuel irradiation and to operate for longer fuel cycles.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the Technical Specifications. The proposed revisions would permit use of fuel enriched with Uranium 235 in excess of 4 weight percent and up to 4.25 weight percent and the licensee would expect the fuel to be irradiated to levels above 33 gigawatt days per metric ton (GWD/MT), but not to exceed 60 GWD/MT. The safety considerations associated with reactor operation with higher enrichment and extended irradiation have been evaluated by the NRC staff. The staff has concluded that such changes would not adversely affect plant safety. The proposed changes have no effect on the probability of any accident. The increased burnup may slightly change the mix of fission products that might be released in the event of a serious accident but such small changes would not significantly affect the consequences of serious accidents. No changes are being made in the types or amounts of any radiological effluents that may be released offsite. There is no significant increase in the allowable individual or cumulative occupational radiation exposure.

With regard to potential nonradiological impacts of reactor operation with higher enrichment and extended irradiation, the proposed changes to the TS involve systems located within the restricted area, as defined in 10 CFR Part 20. They do not affect nonradiological plant effluents and have no other environmental impact.

The environmental impacts of transporation resulting from the use of higher enrichment fuel and extended irradiation are discussed in the NRC staff's assessment entitled, "NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation," dated July 7, 1988. This assessment was published in the August 11, 1988 Federal Register (53 FR 30355) as part of the Carolina Power & Light Co., et al., Shearon Harris Nuclear Power Plant, Unit 1, Environmental Impact Assessment and Finding of No Significant Impact for the utilization of higher enriched fuel and extended fuel irradiation and is hereby referenced for this Environmental Assessment and Finding of No Significant Impact. As indicated therein, the environmental cost contributions of the proposed increase in the fuel enrichment and irradiation limits are either unchanged or may in fact be reduced from those summarized in Table S-4, as set forth in 10 CFR 51.52(c). Therefore, the Commission concludes that there are no significant radiological or nonradiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives would have equal or greater environmental impacts.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement related to the operation of the Virgil C. Summer Nuclear Station, Unit No. 1," dated May 1981.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment and various revisions and supplemental information submitted dated March 8, 1988; May 20, 1988; June 20, 1988; July 8, 1988; August 31, 1988; September 16, 1988; September 30, 1988; and October 11, 1988, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the Fairfield County Library, Garden and Washington Street, Winnsboro, South Carolina 29180.

Dated at Rockville, Maryland, this 24th day of October 1988.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Director, Project Directorate II-1, Division of Reactor Projects I/II.

[FR Doc. 88-24949 Filed 10-26-88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Advanced Boiling Water Reactors; Meeting

The ACRS Subcommittee on Advanced Boiling Water Reactors will hold a meeting on November 15–16, 1988, Room P-114, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, November 15, 1988–8:30 a.m. until the conclusion of business.

Wednesday, November 16, 1988–8:30 a.m. until the conclusion of business.

The Subcommittee will continue its FDA review of this standard plant. Detailed ACRS questions will be covered on review module 1. An overview of the second review module is planned.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Herman Alderman (telephone 301/492-7750) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: October 19, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88-24790 Filed 10-26-88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Procedures for Meetings

Background

Procedures to be followed with respect to meetings conducted pursuant to the Federal Advisory Committee Act by the Nuclear Regulatory Commission's Advisory Committee on Reactor Safeguards, which were published October 2, 1987 (52 FR 37033), are renewed by this notice. These procedures are set forth in order that they may be referenced in future individual meeting notices.

The Advisory Committee on Reactor Safeguards (ACRS) is an independent group established by Congress to review and report on each application for a construction permit and on each application for an operating license for a nuclear power reactor facility and on certain other nuclear safety matters. The Committee's reports become a part of the public record. Although ACRS meetings are ordinarily open to the public and provide for oral or written statements from members of the public to be considered as a part of the Committee's information gathering procedure, they are not adjudicatory hearings such as are conducted by the Nuclear Regulatory Commission's Atomic Safety and Licensing Board as part of the Commission's licensing process. ACRS reviews do not normally encompass matters pertaining to environmental impacts other than those pertaining to radiological safety. ACRS full meetings are conducted in accordance with the Federal Advisory Committee Act.

General Rules Regarding ACRS Meetings

An agenda is published in the Federal Register for each full Committee meeting and for each Subcommittee meeting which is partially or fully open to public attendance. Practical considerations may dictate some alterations in the agenda. The Chairman of the Committee or Subcommittee which is meeting is empowered to conduct the meeting in a manner that, in his judgment, will facilitate the orderly conduct of business, including provisions to carry over an incomplete session from one day to the next.

With respect to public participation in ACRS meetings, the following requirements shall apply:

(a) Persons wishing to submit written statements regarding the agenda items may do so by providing a readily reproducible copy at the beginning of the meeting. When meetings are held at locations other than Washington, DC, reproduction facilities are usually not available. Accordingly, 15 additional copies should be provided for use at such meetings. Comments should be limited to safety-related areas within the Committee's purview.

Persons desiring to mail written comments may do so by sending a readily reproducible copy addressed to the Designated Federal Official specified in the Federal Register notice for the individual meeting in care of the ACRS, NRC, Washington, DC 20555. Comments postmarked no later than one calendar week prior to a meeting will normally be received in time for reproduction, distribution, and consideration at the meeting.

(b) Persons desiring to make an oral statement at the meeting should make a request to do so prior to the beginning of the meeting, identifying the topics and desired presentation time so that

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appropriate arrangements can be made. The Committee will receive oral statements on topics relevant to its purview at an appropriate time chosen by the Chairman.

(c) Further information regarding topics to be discussed, whether a meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call, on the working day prior to the meeting, to the Office of the Executive Director of the Committee (telephone: 301/492–4516 ATTN: the Designated Federal Official specified in the **Federal Register** Notice for the meeting) between 7:30 a.m. and 4:15 p.m., Washington, DC time.

(d) Questions may be asked only by ACRS Members, Consultants, and Staff.

(e) The use of still, motion picture, and television cameras, the physical installation and presence of which will not interfere with the conduct of the meeting, will be permitted both before and after the meeting and during any recess. The use of such equipment will be allowed while the meeting is in session at the discretion of the Chairman to degree that is not disruptive to the meeting. When use of such equipment is permitted, appropriate measures will be taken to protect proprietary or privileged information which may be in documents, folders, etc., being used during the meeting. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept.

(f) A copy of the transcript of the open portions of the meeting where factual information is presented will be available at the NRC Public Document Room, 2120 L Street NW., Washington, DC 20555, for inspection within one week following the meeting. A copy of the minutes of the meeting will be available at the same location on or before three months following the meeting. Copies may be obtained upon payment of appropriate charges

Special Provisions When Proprietary Sessions Are To Be Held

If it is necessary to hold closed sessions for the purpose of discussing matters involving proprietary information, persons with agreements permitting access to such information may attend those portions of ACRS meetings where this material is being discussed upon confirmation that such agreements re effective and relate to the material being discussed.

The Executive Director of the ACRS should be informed of such an agreement at least three working days prior to the meeting so that it can be confirmed and a determination made regarding the applicability of the agreement to the material that will be discussed during the meeting. The minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to the Designated Federal Official prior to the beginning of the meeting.

Date: October 24, 1988.

Andrew L. Bates,

Acting Advisory Committee Management Officer.

[FR Doc. 88–24825 Filed 10–26–88; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee on Auxiliary and Secondary Systems; Meeting

The ACRS Subcommittee on Auxiliary and Secondary Systems will hold a meeting on November 22, 1988, Room P–114, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting will be as follows:

Tuesday, November 22, 1988–10:45 a.m. until 4:00 p.m.

The Subcommittee will review the adequacy of the proposed staff's plans to implement the recommendations resulting from the Fire Risk Scoping Study.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this reviw.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS Staff member, Mr. Sam Duraiswamy (telephone 301/492–9522) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: October 19, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88–24827 Filed 10–26–88; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee on Reliability Assurance; Meeting

The ACRS Subcommittee on Reliability Assurance will hold a meeting on November 2, 1988, Room P–114, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting will be as follows:

Tuesday, November 22, 1988—8:00 a.m. Until 10:30 a.m.

The Subcommittee will continue its discussion of the Equipment Qualification-Risk Scoping Study with special emphasis on the peer-review comments.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Sam Duraiswamy (telephone 301/492–9522) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: October 19, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88–24826 Filed 10–26–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–456, License No. NPF–72, EA 88–91]

Commonwealth Edison, Braidwood Station, Unit 1; Order Imposing Civil Monetary Penalty

I

Commonwealth Edison Company (licensee) is the holder of Operating License No. NPF–72 issued by the Nuclear Regulatory Commission (NRC/Commission) on July 2, 1987. The license authorizes the licensee to operate the Braidwood Station, Unit 1, in accordance with the conditions specified therein.

II

An inspection of the licensee's activities was conducted during the period March 1–17, 1988. The results of this inspection indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated May 6, 1988. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed for the violations.

The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty by letter dated June 20, 1988. In its response, the licensee denies Violations B, C.1, and part of C.2 and admits Violation A. In addition, the licensee takes issue with the proposed imposition of a Severity Level III violation and the civil penalty.

After reviewing the licensee's response, the NRC staff concludes that with regard to Violation B the licensee was correct in arguing that the violation was incorrect as stated in that testing performed on March 4 and 11, 1987 could not have detected a problem in a design change that was not fully implemented until a few weeks after the testing. In a letter dated September 7, 1988 the NRC staff informed the licensee of that conclusion and provided the licensee with a modification of Violation B which properly identified the time period of testing which, by the licensee's admission, was inadequate to identify the heater interlock logic switch deficiency. The licensee responded to the September 7, 1988 letter in a letter dated October 6, 1988. In that response the licensee did not take exception to the modified violation but rather provided additional information relative to system operability.

III

After consideration of the licensee's responses and the statements of fact, explanation, and argument for mitigation contained herein, the Deputy Executive Director for Regional Operations has determined, as set forth in the Appendix to this Order, that Violations A and C occurred as stated, that Violation B as amended in the NRC staff's letter of September 7, 1988 occurred as stated, that the violations are properly categorized at Severity Level III, and that the penalty proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, It Is Hereby ordered that:

The licensee pay a civil penalty in the amount of Fifty Thousand Dollars ($50,000) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing shall be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Regional Administrator, Region III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137, and a copy to the NRC Resident Inspector, Braidwood Station.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made at that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issue to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty as amended referenced in Section II above, and

(b) Whether, on the basis of such violations, this Order should be sustained.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 19th day of October 1988.

James M. Taylor,

Deputy Executive Director for Regional Operations.

Appendix

On May 6, 1988, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for voilations identified during an NRC inspection. Commonwealth Edison Company (CECO) responded to the Notice on June 20, 1988. In its initial response, the licensee admits that Violation A occurred as stated, but denies that Violations B, C.1, and part of C.2 occurred as stated in the Notice. In addition, the licensee takes issue with the proposed imposition of the Severity Level III violation and the civil penalty. The NRC staff's evaluation and conclusions regarding the licensee's arguments follows.

Restatement of Violation B

B. 10 CFR Part 50, Appendix B, Criterion XI, "Test Control," requires in

part, that a test program be established to demonstrate that systems and components will perform satisfactorily in service.

Commonwealth Edison Company Quality Procedure No. 11–2, "Development, Performance, Documentation, and Evaluation of Preoperational and Start-Up Tests," in part implements 10 CFR Part 50, Appendix B, Criterion XI. Section 3.2 of Quality Procedure No. 11–2 defines preoperational tests as tests to demonstrate the satisfactory mechanical and electrical operation of the systems involved including interlocks between systems.

Contrary to the above, the licensee's test program did not demonstrate that the Control Room Ventilation System would perform satisfactorily in that preoperational testing of the Control Room Ventilation Systems which was performed on March 4 and 11, 1987 on trains B and A respectively did not identify that heater interlock logic switches were wired incorrectly, that specified switch setpoints had not been adjusted, and that the Control Room Ventilation Systems were inoperable.

Summary of Licensee's Response to Violation B

The licensee denies the violation because the design error could not have been detected by initial preoperational testing of the Control Room Ventilation Systems (CRVS) performed on March 4 and 11, 1987. The design change was not completed until May 21, 1987. However, the licensee admits that testing requried subsequent to the installation of the design change was incorrectly selected. It also points out that the Notice transmittal letter characterized the CRVS as a degraded system rather than an inoperable system as stated in Violation B.

NRC Evaluation of Licensee's Response

The NRC staff agrees that the design change occurred after the initial preoperational testing of the CRVS on March 4 and 11, 1987, and, therefore, the initial preoperational tests could not have detected the design error. However, the licensee admits that testing required subsequent to the installation of the design change was incorrectly selected. This testing is considered part of the requried preoperational testing program and should have been adequate to identify the design error before the CRVS were declared operable at the time of initial criticality for Unit 1 on May 29, 1987; however, the design error was not identified by the licensee until November 6, 1987, during a review of CRVS startup test results. The NRC staff agrees with the licensee's statement that, for consistency, the Notice transmittal letter characterization of the CRVS as a degraded system rather than an inoperable system is also appropriate for Violation B. In consideration of these comments, Violation B was amended in a September 7, 1988 letter to the licensee to read as follows:

B. 10 CFR Part 50, Appendix B, Criterion XI, "Test Control," requires in part, that a test program be established to demonstrate that systems and components will perform satisfactorily in service.

Commonwealth Edison Company Quality Procedure No. 11–2, "Development, Performance, Documentation, and Evaluation of Preoperational and Start-up Tests," in part implements 10 CFR part 50, Appendix B, Criterion XI. Section 3.2 of Quality Procedure No. 11–2 defines preoperational tests as tests to demonstrate the satisfactory mechanical and electrical operation of the systems involved including interlocks between systems.

Contrary to the above, the licensee's test program did not demoantrate that the Control Room Ventilation Systems (CRVS) would perform satisfactorily in that CRVS preoperational testing, which was completed before the CRVS were declared operable at the time of Unit 1 initial criticality on May 29, 1987, did not identify that heater interlock logic switches were wired incorrectly, that specified switch setpoints had not been adjusted, and that the CRVS were in a degraded condition.

The violation, as modified, focuses on the licensee's failure to adequately implement the CRVS preoperational test program, including tests required following system design changes but before the systems were declared operational, rather than the inability of the initial preoperational tests to identify the design error. The licensee responsed to the September 7, 1988 letter. However, that response dated October 6, 1988 only provided further information relative to system operability and did not take exception to the modified violation. Therefore, the NRC staff has concluded that the violation, as rewritten for clarification, occurred.

Restatement of Violation C.1

C. 10 CFR Part 50, Appendix B, Criterion V, "Instructions, Procedures, and Drawings," requires that activities affecting quality be prescribed by documented instructions, procedures, or drawings and be accomplished in accordance with these instructions, procedures, or drawings.

Contrary to the above, as of November 6, 1987, it was identified that activities affecting quality had not been accomplished in accordance with prescribed instructions or drawings, in that:

1. The Architect Engineer did not perform the interdisciplinary review of ECN 34446, to verify or check the adequacy of the design information, as required by procedures.

Summary of Licensee's Response to Violation C.1

The licensee denies the violation and contends that it is a restatement of Violation A.

NRC Evaluation of Licensee's Response

The NRC staff maintains that Violations C.1 and A are different. Violation A states that the licensee did not meet the requirements of 10 CFR Part 50, Appendix B, Criterion III because measures for coordination among design organizations were inadequate in that the measures failed to ensure that ECN No. 34272 was correctly incorporated into ECN No. 34446. The root cause of Violation A was ambiguous nomenclature used in the logic diagrams of ECN No. 34272. Violation C.1 states that the licensee did not meet the requirements of 10 CFR Part 50, Appendix B, Criterion V in that activities affecting quality had not been accomplished in accordance with prescribed procedural instructions. Specifically, the architect engineer did not follow the procedural requirement to perform the interdisciplinary review of ECN No. 34446 to verify or check the adequacy of the design information. The root cause of Violation C.1 was an individual's error which resulted in a procedural instruction being improperly implemented. Sargent & Lundy General Quality Assurance Procedure No. GQ–3.13, "Engineering Change Notices," states that the preparer shall forward the ECN for internal interfacing comments and if no interfacing comments are required, the ECN shall be forwarded directly to the reviewer. By incorrectly concluding that no internal interfacing comments were necessary, the preparer precluded the interdisciplinary review of ECN No. 34446 that could have caught the error that was made. This violation occurred independently of and in addition to Violation A.

Restatement of Violation C.2

C. 10 CFR Part 50, Appendix B, Criterion V, "Instructions, Procedures and Drawings," requires that activities affecting quality be prescribed by documented instructions, procedures, or drawings and be accomplished in accordance with these instructions, procedures, or drawings.

Contrary to the above, as of November 6, 1987, it was identified that activities affecting quality had not been accomplished in accordance with prescribed instructions or drawings, in that:

2. The heater interlock logic switches for the Control Room Ventilation Systems had not been modified in accordance with the instructions or drawings of ECN No. 34272 which was issued December 16, 1986 or in accordance with the differential pressure switch setpoint specifications for Switches OPDS–VC059 (Sheet No. PS631) and OPDS–VC060 (Sheet No. PS633) which were promulgated on February 9, 1987.

Summary of Licensee's Response to Violation C.2

The licensee denies the first part of the violation because it contends that the heater interlock logic switches for the Control Room Ventilation Systems (CRVS) had been modified in accordance with the instructions and drawings of ECN No. 34272 on May 20 and 21, 1987. The licensee admits that the differential pressure switch setpoints specifications had not been implemented in a timely fashion, per the Station Review Program, because of a work backlog.

NRC Evaluation of Licensee's Response

The NRC staff maintains its position that the CRVS had not been modified in accordance with the instructions or drawings of ECN No. 34272. The modifications which occurred in May 1987 were in accordance with ECN No. 34446, not ECN No. 34272. The instructions and drawings of ECN No. 34272 correctly specified the modifications to the CRVS heater interlock logic switches. Due, in part, to the licensee's failure to follow design control procedures, ECN No. 34272 specifications were incorrectly incorporated into ECN No. 34446.

Summary of Lincensee's Arguments Regarding Severity Level

The licensee acknowledges that there were specific deficiencies which required corrective action, but believes that no programmatic defects exist warranting the imposition of a Severity Level III violation and civil penalty. The licensee presents the following arguments to support this assertion:

1. The failure to coordinate mechanical and electrical design requirements was an isolated occurrence resulting from one individual's misinterpretation of nomenclature.

2. A 100% review of safety-related differential pressure switch applications at the four Byron and Braidwood units revealed no similar discrepancies, thus demonstrating that adequate measures were established to control design interfaces.

3. The failure to conduct a proper test of the change in heater design resulted from an individual (rather than general) failure to judge accurately the complexity of the change.

4. A review of 2,176 preoperational testing "deficiencies," resulting from changes in design after completion of preoperational testing but before the systems were released to plant operations showed that the proper tests had been conducted in all but five cases (only three in addition to CRVS tests for which licensee was cited). The licensee asserts this demonstrates that the test control program was, in general, fundamentally sound and properly implemented.

5. A review of violations identified during the last SALP period indicated that those items should not be considered symptomatic of the items presented in the Notice.

NRC Evaluation of Licensee's Response

The NRC staff maintains that the violations should be categorized collectively as a Severity Level III problem in accordance with 10 CFR Part 2, Supplement I.C.2, in that the violations resulted in systems (CRVS) designed to prevent or mitigate a serious safety event not being able to perform their intended function under certain conditions. In Attachment C to its June 20, 1988 response, the licensee responds to NRC concerns regarding its safety significance assessments. The licensee provides additional information in its October 6, 1988 letter. The licensee concludes that while thyroid dose in an accident could be increased due to the degraded CRVS, that dose would remain below the design criterion of 10 CFR Part 50, Appendix A, GDC–19 (23.7 rem versus 30 rem). The NRC staff review of the licensee's submittals indicates that although some of the NRC concerns have been resolved, the licensee assessment remains speculative, especially the filter efficiency assumption for 100% relative humidity conditions. Moreover, although the staff and the licensee disagree on some assessment assumptions, there is agreement that the Control Room Ventilation Systems were in a degraded condition and the accident thyroid dose would be increased due to the degraded conditions. NRC's concerns are based not only on the degraded systems but also, and more importantly, on the underlying design control and testing problems which permitted a safety system to be operated for several months in a modified condition without appropriate verification to assure it met design requirements. Although the design and test control problems appear to be primarily due to personnel errors, the failure to reset the heater interlock switch setpoints was due to a programmatic backlog problem which caused significant delays in making setpoint adjustments. The series of problems represented by the violations exacerbated the initial design error by delaying its discovery. As a result of this delay, the Control Room Ventilation Systems (CRVS) were degraded from May 29, 1987 until November 21, 1987.

The NRC staff has reviewed the specific arguments made by the licensee and concludes that an argument may be made that no programmatic deficiencies existed. However, the fact remains that in this case a series of errors resulted in a safety related system being in a degraded mode and, as such, the violations most appropriately fit example C.2 of Supplement I of 10 CFR Part 2, Appendix C.

Summary of Request for Mitigation of Civil Penalty

The licensee contends that an adequate basis exists for mitigation of the proposed Civil Penalty. In support of this position, it presents the following arguments which address the five civil penalty adjustment factors contained in Section V(B) of 10 CFR 2, Appendix C:

1. Prompt Identification and Reporting

Summary of Licensee's Argument. Under the circumstances, the length of time to discover the design error was not unreasonably long and, as such, should not be the basis to discount the licensee's prompt reporting.

NRC Evaluation. Under the NRC Enforcement Policy, the reasonableness of the length of time to discovery depends on the opportunities for discovery and ease of discovery. In this case, from the time ECN No. 34446 was prepared on December 16, 1986 until the design error was discovered, during a review of CRVS startup test results on November 6, 1987, the licensee missed numerous discovery opportunities, including: (1) Interfacing comment reviews of ECN No. 34446, if the ECN preparer had properly followed the

procedure; (2) the required review of the ECN by the reviewer and the approver; (3) the testing of the heater switch design change in May 1987, if the correct test type had been chosen; (4) switch setpoint verifications, if the setpoint had been adjusted as required before the CRVS were declared operable on May 29, 1987; (5) various CRVS surveillance and startup tests between May 29 and November 6, 1987, if the setpoints had been adjusted as required; and (6) the CRVS startup test on October 2, 1987, if startup test personnel had been fully cognizant of the system operability implications of the zero heater current measurements. It is the NRC staff's position that it is reasonable to have expected the licensee to have discovered the design error earlier and, therefore, mitigation of the proposed civil penalty for prompt identification and reporting of the event is not warranted.

2. Corrective Action to Prevent Recurrence

Summary of Licensee's Arguments. The licensee contends that prompt and comprehensive corrective actions have been taken.

NRC Evaluation. Although the design changes were quickly corrected after the errors were identified, it was 15 days before the heater interlock switch setpoints were corrected. Furthermore, although the licensee conducted a review to verify no other safety-related errors were associated with design changes which occurred after completion of system preoperational testing but before the systems were released to the Operations Department, the review was conducted after concerns were raised by the NRC during the enforcement conference. It is the NRC staff's position that the licensee's corrective actions were not sufficiently prompt to warrant mitigation of the proposed civil penalty for corrective action to prevent recurrence.

3. Past Performance

Summary of Licensee's Agruments. The licensee believes that this incident is distinct from other issues addressed in the last Braidwood SALP. The licensee maintains that, although prior violations have occurred in the Braidwood Startup Test Program, and that this program is significant to the safe operation of Braidwood Station, the remedial review done of the results of the program, as they relate to detection of design errors, has identified no prior occurrence for which prior corrective action was either inadequate or ineffective.

NRC Evaluation. The NRC maintains that the design control problems are indicative of the previous performance problems identified during the SALP 7 assessment period. The SALP 7 Inspection Report (No. 50-456/88001(DRP); No. 50-457/88001(DRP)) findings are symptomatic of the items presented in the Notice in that they are indicative of a need to reduce personnel errors by increasing personnel alertness and sensitivity to plant conditions and requirements and to improve design control, test control, and adherence to procedures.

4. Prior Notice of Similar Events

Summary of Licensee's Arguments. The licensee contends that there was no prior notice of similar events.

NRC Evaluation. The NRC staff agrees that the licensee had no prior notice. However, because a lack of prior notice does not serve as a basis for mitigation under the Enforcement Policy, the base civil penalty is unaffected by this factor.

5. *Multiple Occurrences*

Summary of Licensee's Arguments. The licensee contends that comprehensive reviews of design changes did not identify multiple occurrences of the problems identified in the Notice.

NRC Evaluation. The NRC staff agrees that there were no multiple occurrences. However, because a lack of multiple occurrences does not serve as a basis for mitigation under the Enforcement Policy, the base civil penalty is unaffected by this factor.

NRC Conclusion. The NRC staff concludes that the violations, as amended with respect to Violation B, occurred as stated in the Notice of Violation and Proposed Imposition of Civil Penalty. Moreover, the NRC concludes that the violations are appropriately classified as a Severity Level III problem. Further, the NRC staff has also concluded that a sufficient basis has not been provided by the licensee for the reduction of the Severity Level, or remission, or mitigation of the proposed civil penalty. Accordingly, the civil penalty in the amount of Fifty Thousand Dollars ($50,000) should be imposed.

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[Docket No. 50-461, License No. NPF-62, EA 88-91]

Illinois Power Company (Clinton Nuclear Station); Order Imposing Civil Monetary Penalty

I

Illinois Power Company (licensee) is the holder of Operating License No. NPF-62 issued by the Nuclear Regulatory Commission (NRC or Commission) on April 17, 1987. The license authorizes the licensee to operate the Clinton Nuclear Station in accordance with the conditions specified therein.

II

Special safety inspections of the licensee's activities were conducted during the periods April 17 through October 13, 1987 and February 25 through March 31, 1988. (NRC Inspection Reports No. 50-461/87028 (DRS) and No. 50-461/88010 (DRS)). The results of the inspections indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the licensee by letter dated June 1, 1988. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed for the violations. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty by letter dated June 29, 1988. In its response, the licensee denied Violations A and C and admitted Violation B. In addition, the licensee requested remission of the civil penalty.

III

After consideration of the licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the Deputy Executive Director for Regional Operations has determined, as set forth in the Appendix to this Order, that Violation A occurred as stated and that the penalty proposed for the violation designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed. With respect to Violation C it was determined that although the licensee failed to meet the EQ requirements of 10 CFR 50.49 the violation is most appropriately classified at Severity Level IV and should be removed as a violation supporting the proposed civil penalty.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is Hereby Ordered That:

The licensee pay a civil monetary penalty in the amount of Seventy-Five Thousand Dollars ($75,000) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and should be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Regional Administrator, Region III, 799 Roosevelt Road, Glen Ellyn, Illinois, 60137, and a copy to the NRC Resident Inspector, Clinton Nuclear Station.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made at that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issue to be considered at such hearing shall be:

(a) Whether the licensee was in violation of NRC requirements as described in Violation A set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in Section II above, and

(b) Whether, on the basis of that violation and Violation B set forth in the Notice and admitted by the licensee, this Order should be sustained.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 20th day of October 1988.

James M. Taylor,

Deputy Executive Director for Regional Operations.

Appendix—Evaluation and Conclusion

On June 1, 1988, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during an NRC inspection. Illinois Power Company responded to the Notice on June 29, 1988. In its response, the licensee admitted that Violation B occurred, but denied that Violations A and C occurred as stated in the Notice. The licensee argues that the NRC's actions in proposing a civil penalty for Violations A and C is not consistent with sound regulatory practices and that remission of the penalty is warranted. The contested violations are restated below, followed by a summary of the licensee's response, the NRC evaluation, and the NRC conclusion.

I. Restatement of Violation A

10 CFR 50.49(f) requires, in part, that each item of electric equipment important to safety be qualified by testing and/or analysis under postulated environmental conditions.

Contrary to the above, as of August 19, 1987, the following equipment important to safety was not qualified by appropriate testing and/or analysis which reflected the installed configuration:

One hundred and ninety-six AMP KYNAR electrical butt splices installed in valve actuators, solenoid valves and electrical junction boxes affecting multiple safety systems.

Summary of Licensee's Response

The licensee denies that Violation A occurred as stated, in that it had a qualification test report for the most severe environmental condition anticipated in a design basis accident (DBA). The licensee stated that the samples were tested in a configuration similar to their installation in the plant. The licensee noted that in the cover letter accompanying the Notice of Violation, the NRC stated that the butt splices and the wire nuts should have been tested in contact with a ground "since that is a possible configuration and failure mode." When a walkdown of butt splices was performed, none were found in contact with a metal ground. The licensee believes that the NRC's view of the environmental qualification testing required for these items is a result of a new interpretation by the NRC of the applicable regulations and of industry standards.

NRC Evaluation of Licensee's Response

Although the licensee had a qualification test report on AMP KYNAR butt splices for severe environmental parameters anticipated during a DBA at Clinton, the tested configuration of the AMP KYNAR butt splices did not simulate an installation in which the splices were touching each other or the metal enclosures. Since Clinton installation and maintenance procedures provide no restrictions for ensuring that splices do not touch each other or the metal housing, severe failures in these configurations were postulated by the NRC during the inspection and were confirmed during testing of the splices.

The licensee in its response stated that during a walkdown subsequent to the NRC finding, none of the splices were found to be in contact with a metal ground. However, it is not clear to the NRC how the licensee could assume that several splices installed in a congested metal junction box or equipment housing would not touch the metal enclosure and thereby have the potential of being grounded. In addition, prior to the NRC finding, the licensee had no evidence to support a conclusion that the splices were not touching the enclosure since such a configuration was allowed by installation design or could result due to maintenance activities. In short, a butt splice in contact with ground is an expected configuration. It was also noted that the licensee's response did not address postulated failures due to splices touching each other and there was no record in the licensee's EQ documentation to show that any evaluations or tests of such a configuration had been performed.

The NRC's view of this violation does not reflect a new interpretation of the EQ regulations and standards. 10 CFR 50.49(k) establishes NUREG-0588, Category I, requirements as being acceptable for qualification of original equipment. NUREG-0588, Category I, section 2.2(3) refers to IEEE 323-1974, section 6.3.1.2 which states, in part, that equipment during a type test shall be maintained in a manner and a position that simulates its expected installation when in actual use. The NRC has proposed a number of other environmental qualification enforcement actions for cases in which installed equipment was not maintained in the condition or position of the tested equipment. The NRC recognizes that there is no specific requirement to consider splice-to-splice and splice-to-metal housing configurations. However, given the rather unique application of the AMP KYNAR butt splices, inside containment at Clinton, the NRC concludes that considering such configurations is necessary and not unreasonable. Based on the above considerations, the licensee had not conducted a test to demonstrate qualification of the butt splices in the expected mounting configuration in which splices touch each other or the metal enclosure nor was it demonstrated that such configuration should not be considered.

Restatement of Violation C

10 CFR 50.49(f) requires, in part, that each item of electric equipment important to safety be qualified by testing and/or analysis under postulated environmental conditions.

Contrary to the above, as of August 19, 1987, the following equipment important to safety was not qualified by appropriate testing and/or analysis which reflected the installed configuration:

Two hundred and seventy Thomas and Betts nylon wire caps installed in ninety dual voltage Limitorque actuators affecting multiple pieces of equipment important to safety.

Summary of Licensee's Response

The licensee denies that Violation C occurred as stated, in that these caps were tested by Limitorque for anticipated environmental conditions during a DBA at the Clinton Station. The licensee states that the caps were tested in the configuration installed in the plant. The licensee believes that the NRC's view that environmental qualification testing of these items was not adequate is the result of a new interpretation by the NRC of industry standards.

NRC Evaluation of Licensee's Response

The licensee's EQ documentation did not address the testing of any kind of nylon wire caps. Subsequent to the finding, the licensee contended that a letter from the vendor (Limitorque) confirmed that Thomas and Betts wire caps were used; however, a letter from a vendor, in lieu of test data, is not considered an adequate basis for the environmental qualification of the component. Since there was no evidence in the EQ files that the wire caps had been tested, and NRC was unable to determine if the installed configuration was adequate.

NRC's view of this violation does not represent a new interpretation of the EQ regulations and standards. NUREG 0588, Category I, Section 5(2) states that a certificate of conformance by itself is not acceptable unless it is accompanied by test data and information on the qualification program. Examining the applicable industry standard, it is found that IEEE 323–1974, Section 6.2(5), states that qualification of Class 1E equipment shall include identification of the design life of any components which may have a life shorter than that of the complete equipment. Since the test report does not state that Thomas and Betts wire caps were used in the tested actuators, the vendor correspondence does not state that the wire caps were used in the tested actuators (and were unprotected), and since no data was provided which supports the vendor's assertions, insufficient evidence exists to support qualification. Furthermore, because the suspect caps were made of nylon, a material susceptible to radiation and thermal aging, the licensee should have addressed the mounting configuration and the condition of the caps during and after LOCA testing.

In conclusion, the NRC staff maintains that Violation C represents a violation of EQ requirements. However, after reconsidering the significance of the violation of NRC staff recommends that it be classified at Severity Level IV. Further, because this violation has been the subject of extensive discussion and corrective actions have been taken, it is recommended that a revised Notice not be issued.

II. Summary of Licensee's Request for Remission

The licensee believes that Violations A and C as stated in the Notice of Violation and Proposed Imposition of Civil Penalty did not occur and that other extenuating circumstances exist which make escalation of the civil penalty unwarranted and render remission of the penalty appropriate.

Past Performance

The licensee states that Illinois Power Company's performance in the area of environmental qualification of equipment at Clinton Power Station has been generally good. Similarly, during August through October of 1987, the NRC conducted an in-depth evaluation of the EQ program and found that it complies with NRC EQ requirements and, with limited specific exceptions, was properly implemented.

Prompt and Effective Corrective Action

For two of the examples cited in the alleged violation (AMP KYNAR butt splices and the nylon wire caps), corrective action was prompt and effective, resulting in completion of corrective action with no impact on plant operation. The NRC recognized in the cover letter accompanying the Notice of Violation that the corrective action in response to this item was "prompt and effective.

Other Extenuating Circumstances

The licensee states that the Notice of Violation that was issued by NRC Region III has concluded that the tests reviewed and accepted by Illinois Power Company were not adequate because the butt splices and wire caps were not tested while restrained to a grounded metal surface. Furthermore, when testing the nylon wire caps in the fashion required by the NRC, the only way that the wire caps coud be held in contact with metal was to physically restrain them to the actuator casing; otherwise contract could not be maintained. Thus, contact of these items with metal is only a speculative possibility that is unsupported by the design requirments or by the installations actually obeserved in the plant.

NRC Evaluation of Licensee's Request for Mitigation or Remission

The NRC staff has concluded that the removal of Violation C does not affect the civil penalty proposed. Violation A and B alone are sufficient for a Severity Level III violation and therefore the civil penalty is proposed based only on those two violations.

NRC reviews each proposed civil penalty on its own merits and adjusts the base civil penalty values upward or downward appropriately. The criteria for these adjustments are set forth in 10 CFR Part 2, Appendix C.V.B. Adjustments to the base civil penalty may be made for the factors described below:

1. *Prompt Identification and Reporting*—Reduction of up to 50% of the base civil penalty may be given when a licensee identifies the violations and promptly reports the violation to the NRC. In this case, the violations were identified by the NRC. Therefore, no reduction was made.

2. *Corrective Action to Prevent Recurrence*—Unusually prompt and extensive corrective action may result in reducing the proposed civil penalty as much as 50% of the base value. On the other hand, the civil penalty may be increased as much as 50% of the base value if initiation of corrective action is not prompt or is only minimally acceptable. The licensee took prompt actions to develop justifications for Continued Operation and to test the AMP KYNAR butt splices, however, the actions taken by the licensee were inadequate following the discovery by the NRC in August 1987 that a junction box did not have a weep hole (Violation B which was admitted by the licensee). The licensee considered it an isolated case, but later found 155 others. Although prompt and extensive corrective actions were not taken for all of the identified violations, the licensee did so for 1 of the 2 problems and therefore 25% mitigation is appropriate.

3. *Past Performance*—Reduction by as much as 100% of the base civil penalty may be given for good prior performance in the general area of concern. On the other hand, the base civil penalty may be increased by as much as 100% for prior poor performance in the general area of concern. In this case, neither escalation or mitigation was deemed appropriate since the NRC has not conducted prior broad inspections in this area and therefore has an inadequate basis for judging past performance.

4. *Prior Notice*—The base civil penalty may be increased by as much as 50% for cases where the licensee had prior knowledge of a problem as a result of a licensee audit, or specific NRC or industry notification. In this case, the licensee has prior notice about the junction box problem in the form of IE information Notice 84–57, a previous NRC violation (50–461/87028–03(b)), and a licensee Nonconforming Material Report dated September 16, 1986. Therefore, because the licensee had prior notice on one of the violations 25% escalation is appropriate.

4. *Multiple Occurrences*—The base civil penalty may be increased as much as 50% where multiple examples of a particular violation were identified during the inspection period. Based on numerous examples (196 AMP KYNAR butt splices and 156 junction boxes) and the numerous systems involved, the base civil penalty was increased by 50 percent.

In its presentation of "other Extenuating Circumstances," the licensee maintains that splice-to-splice contact is not a realistic possibility. Despite the licensee's assertion, the NRC staff concludes that the existence of a splice-to-splice contact is a realistic possibility where a mass of wires and splices are confined to the volume of an actuator casing. Therefore, these devices should have been tested in the splice-to splice configuration, since this represents a possible failure mode. This matter was addressed previously in the Appendix as was the NRC staff's revised position relative to Violation C.

As a result of the above considerations, the NRC has determined that a civil penalty increased 50% above in the base civil penalty is appropriate.

III. NRC Conclusions

The NRC staff has concluded that Violation A did occur as stated in the Notice of Violation and no basis has been provided for remission or mitigation of the civil penalty. Accordingly, the proposed civil penalty in the amount of $75,000 should be imposed.

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[Docket Nos. 50-259, 50-260, and 50-296]

Tennessee Valley Authority; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–33, DPR–52 and DPR–68 issued to Tennessee Valley Authority (TVA or the licensee), for the operation of the Browns Ferry Nuclear Plant (BFN), Units 1, 2 and 3, located in Limestone County, Alabama.

The proposed amendment would change the Browns Ferry (BFN) Technical Specification (TS) for Units 1, 2 and 3 to allow the Core Spray System (CSS) (Section 3.5.A.5) to be inoperable provided specific Limiting Conditions for Operation (LCO) are met. In addition, Unit 2 TS Tables 3.2.A and 3.2.B would be temporarily changed to note that Reactor Low Water Level Instruments LIS–3–203 A–D and LIS–3–58 A–D will be out-of-service during the time that the reactor vessel level monitoring upgrade system (RVLMS) is being performed. These changes are TS 280 and 281–T, respectively, in the licensee's application dated October 14, 1988.

Using the General Electric (GE) Standard Technical Specifications, the licensee's proposed amendment would state that the Core Spray is not required to be operable during refueling provided that the following steps are executed (1) reactor head is removed, (2) cavity is flooded, (3) spent fuel gates are removed, and (4) water level is maintained within specific limits. Changing the BFN TS as proposed, will allow various work (e.g., the reactor level monitoring modification) be performed in a safe and more efficient manner.

In addition, an asterisk (*) notation for TS 3.5.A.5 would require that there would be manual initiation capability to start either 1 loop of CSS or 1 Residual Heat Removal (RHR) pump, and its associated diesel generator. This requirement would ensure that there is additional water makeup capability and emergency power source available when there is work in progress that has the potential to drain the vessel. The spent fuel pool has a low level indication which alarms in the control room. By maintaining the requirement of TS 3.5.A.5 of having one Residual Heat Removal Service Water (RHRSW) pump operable, an additional source of water supply to the spent fuel pool is assured.

In performing the reactor vessel water level monitoring system upgrade modification, two specific water level monitoring instruments will be out-of-service. These instruments either automatically initiate the actuation of the diesel generator(s) on a reactor low water level signal or the Standby Gas Treatment System and the Reactor Building Isolation upon receipt of a reactor low level signal. Since the subject modifications render the automatic function of these instruments to be out-of-service, the licensee cannot meet the current TS. The proposed amendment request would grant temporary relief to permit fuel to be moved from the spent fuel pool to the reactor without the automatic initiation functions of these two instruments. During the time the automatic initiation logic is out-of-service, manual initiation of these systems would be available.

Before issuance of the proposed amendment, the Commission will have made findings required by the Atomic Energy Act of 1954 (the Act), as amended, and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination is provided by the licensee in its submittal and is given below.

NRC has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from an accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

1. The proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

a. Changing TS LCO 3.5.A.5 does not change any of the design criteria or bases for

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which BFN was licensed. The BFN Final Safety Analysis Report (FSAR) and the assumptions made in the accident analysis are not invalidated as a result of this change. The proposed change requires specific conditions to be met when the CSS is not needed to be operable. In addition to those conditions identified in the GE Standard TS, we are adding the requirements to have manual initiation capability available for either 1 CSS loop or 1 RHR pump, and their associated diesel generator(s), when work is being performed with the capability of draining the reactor vessel. This along with the requirement of having 1 RHRSW pump operable ensures that adequate water is available for makeup to the reactor vessel. The proposed change is still bounded by the FSAR analysis since the change only applies to operability requirements in the cold shutdown or refuel conditions.

b. This temporary change would allow the Reactor Low Water Level Instrument (LIS–3–203 A–D) to be out-of-service during that time in which the reactor vessel level monitoring system modification is being installed. When the reactor water level falls below the low level setpoint, this instrument automatically initiates the Standby Gas Treatment System and Reactor Building Isolation. The intended safety function of these systems is still maintained through the manual initiation capability. In addition to having manual initiation capability available, these systems would still automatically initiate upon receipt of a high radition signal. Again, this temporary relaxation does not invalidate any safety-related function or analysis in which BFN was licensed.

c. This temporary change would allow the Reactor Water Level Instrument (LIS–3–58 A–D) to be out-of-service during that time in which the reactor vessel level monitoring system modification is being installed. One of the functions of this instrument is to automatically actuate the diesel generator(s) when the reactor water level falls below the low level setpoint. Maintaining the manual initiation capability of the diesel generator(s) ensures that emergency power is available to either the CSS or RHR system. This ensures that adequate makeup water is available to either the CSS or RHR system. This ensures that adequate makeup water is available to the reactor vessel. This proposed change does not invalidate the BFN FSAR and the design basis to which BFN was designed.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

a. The proposed changes, as stated above, are enveloped by the current BFN FSAR. Even though the automatic initiation logic for the CSS and RHR system will be out-of-service during the specific LCO conditions stated in LCO 3.5.A.5, the addition of the asterick notation (*) requiring that manual initiation capability for 1 CSS loop or 1 RHR pump ensures that adequate water supply is available to keep the reactor core covered.

(b) The temporary relaxation of allowing instrument LIS–3–203 A–D to be out-of-service, will not introduce a new accident. Again, there is manual capability available to initiate the Standby Gas Treatment System and Reactor Building isolation in the event they are needed to perform their intended safety function. In addition, these systems will still have automatic initiation capability available if a high radiation signal were received. The high radiation monitor is located on the refueling floor.

c. The temporary relaxation of allowing instrument LIS–3–58 A–D to be out-of-service, will not introduce a new accident different than that previously evaluated. Requiring the manual actuation capability of the diesel generator(s) provides additional assurance that either the CSS or RHR system would be able to provide makeup water to the reactor vessel if needed. By providing this assurance, BFN would be in a condition bounded by the current FSAR.

3. The proposed changes does not involve a significant reduction in a margin of safety.

a. By identifying the specific LCO conditions when the CSS and RHR automatic initiation logic could be out-of-service, added assurance is provided that an adequate margin of safety is maintained. In addtion to the subject conditions, the proposed TS requires that a RHRSW pump is operable and the capability of manual initiaties of 1 CSS loop or 1 RHR pump and an associated diesel generator are available. This would ensure that adequate equipment is available to perform their intended safety function.

The bases section of the BFN TS (3.5) states that by requiring the spent fuel pool gates to be open with the vessel head removed, the combined water inventory in the fuel pool, the reactor cavity, and the separator/dryer, between the fuel pool low level alarm and the reactor vessel flange, is approximately 66,800 cubic feet (462,000 gallons). This will provide adequate low pressure cooling in lieu of CSS and RHR (LPCI and containment cooling mode) as required in TS 3.5.A.4 and 3.5.B.3. With the additional requirements placed on TS 3.5.A.5, of having manual operation capability of 1 loop of CSS, 1 RHR pump, and automatic operation of 1 RHRSW pump a redundant supply of water is provided.

The BFN FSAR LOCA analysis assumes a pipe break under operating conditions in which the reactor is pressurized. This would allow the reactor vessel to drain at a faster rate than if the head were removed. As discussed above, requiring the cavity to be flooded, the spent fuel pool gate be opened, and that at least one RHRSW pump be operable, when irradiated fuel is in the vessel, ensures that an adequate supply of water is available to maintain the reactor core covered. In addition, the spent fuel pool has a low level alarm that alarms in the control room. When this alarm is received, makeup water can be supplied either through the RHRSW pump and/or the available CSS loop or RHR pump. Ensuring that the associated diesel generator has manual initiation capability during this LCO provides added assurance that emergency power is available therefore, adequate makeup capability will be maintained. By ensuring these conditions are met, the margin of safety is not significantly reduced.

b. The temporary relaxation to allow instrument LIS–3–203 A–D to be out-of-service during that time in which the reactor vessel level monitoring system modification is being performed does not significantly reduce the margin of safety since the manual initiation of the Standby Gas Treatment System and Reactor Building isolation would be available.

Along with the manual initiation capability of these systems, their automatic initiation capability will still be available upon receipt of a high radiation signal. These systems will be able to perform their intended safety function.

c. The temporary relaxation to allow instrument LIS–3–58 A–D to be out-of-service during that time in which the RVLMS is being performed does not significantly reduce the margin of safety since the manual initiation of the diesel generator(s) would be available. Manual initiation would supply power to the CSS and RHR system if required to perform their intended safety function.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives request for a hearing.

Comments should be addressed to the Regulatory Publications Branch, Division of Freedom of Information and Publication Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publciation date and page number of this **Federal Register** notice.

By November 28, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license, and any person whose interest may be affected by the proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene must be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene must set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceedings; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which the petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, the petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions should be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final detemination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determinaton is that the request for amendment involves a significant hazards consideration, any hearing held would take place before the issuance of the amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances, change during the notice such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and state comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Suzanne C. Black: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

Nontimely filings of the petition for leave to intevene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board designated to rule on the petition and/or requests, that the request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, Washington, DC 20555, and at the Local Public Document Room located at the Athens Public Library, South Street, Athens, Alabama 35611.

Dated at Rockville, Maryland, this 20th day of October 1988.

For the Nuclear Regulatory Commission.

Suzanne C. Black,

Assistant Director for Projects, TVA Projects Division, Office of Special Projects.

[FR Doc. 88–24822 Filed 10–26–88; 8:45 am]

BILLING CODE 7590–01–M

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

Public Information Collection Requirements Submitted to OMB for Review

DATE: October 27, 1988.

PADC has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511 (44 U.S.C. Ch. 35). Copies of the submission may be obtained by calling the PADC clearance officer listed. Send comments to the OMB reviewer listed and to the PADC clearance office.

Pennsylvania Avenue Development Corporation

OMB Number: 3210.

Form Number: No form number available; information requested in the Request for Proposals for the completion of the Federal Triangle in Washington, DC.

Title: Development Prospectus (Request for Proposals).

Description: Under the authority of the Federal Triangle Development Act of 1987 (Pub. L. 100–113), PADC has prepared a Request for Proposals for the completion of the Federal Triangle in Washington, DC, which will require bidders to submit information concerning financial investment in the project, past and present relationships among all members of each bidder's team, and documentation verifying the bidder's ability to complete projects on time and within budget.

Respondents: Real Estate Developers; Construction firms; Architect firms; Financial firms.

Clearance Officer: Talbot J. Nicholas II, Attorney, (202) 724–9057, PADC, Suite

1220 North, 1331 Pennsylvania Avenue, NW., Washington, DC 20004.

OMB Reviewer: Pam Barr, (202) 395-7340, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Washington, DC 20503.

Date: October 20, 1988.

M.J. Bradie,

Executive Director.

[FR Doc. 88-24851 Filed 10-26-88; 8:45 am]

BILLING CODE 7820-01-M

PHYSICIAN PAYMENT REVIEW COMMISSION

Commission Hearing and Meeting

AGENCY: Physician Payment Review Commission.

ACTION: Notice of public hearing and meeting.

SUMMARY: The Physician Payment Review Commission will hold a hearing on Wednesday, November 2, 1988, from 9:00 a.m. to 5:30 p.m. in which groups representing physicians and beneficiaries will provide suggestions for the Commission's evaluation of the resource based relative value study by William Hsiao and will comment on other fee schedule issues. The Commission will hold a meeting on the two days following the hearing: Thursday, November 3, 1988, from 9:00 a.m. to 4:00 p.m. and Friday, November 4, 1988 (public meeting times to be announced at Thursday's session). Both the hearing and the meeting will be held at the Washington Plaza Hotel on Thomas Circle at Massachusetts and Vermont Avenues, NW.

The morning session of the meeting on November 3 will be devoted to a discussion between Commissioners and Dr. William Hsiao about his resource based relative value study. Topics to be covered in the afternoon session include practice guidelines, alternative approaches to moderating expenditure growth, and organizational models for administering expenditure targets. The times and topics for the public portion of the meeting on November 4 will be announced at the previous day's meeting.

ADDRESS: The Commission office is located in Suite 510, 2120 L Street, NW., Washington, DC. The telephone number is 202/653-7220.

FOR FURTHER INFORMATION CONTACT: Lauren LeRoy, Deputy Director, 202/653-7220..

Paul B. Ginsburg,

Executive Director.

[FR Doc. 88-24835 Filed 10-26-88; 8:45 am]

BILLING CODE 6820-SE-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26309; File No. SR-NYSE-88-21]

Self-Regulatory Organization; Proposed Rule Change by New York Stock Exchange, Inc. Relating to Mandatory Indications on Openings, and Reopenings When Rule 80B Is In Effect, and Trading Halts With Indications When Rule 80A Is In Effect

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 18, 1988, the New York Exchange ("NYSE") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

(a) The proposed rule change consists of guidelines for mandatory indications on openings, and reopenings when Exchange Rule 80B is in effect, and guidelines for mandatory trading halts with indications when Exchange Rule 80A is in effect.[1]

Current Exchange policy requires, and shall continue to require, dissemination of an indication upon any delayed opening or regulatory and nonregulatory trading halt, except for a trading halt put into effect pursuant to the "circuit breaker" provisions of Exchange Rule 80B.

In addition, dissemination of an indication shall be *mandatory* for an opening which will result in a price change constituting the lesser of 10% or three points from the prior NYSE close, or five points if the previous close is $100 or higher, unless the price change is less than one point. These guidelines shall be effective prior to any opening as well as for the reopening of trading following a trading halt instituted pursuant to the "circuit breaker" provisions of Exchange Rule 80B.

During the five-minute period that Rule 80A is in effect and systematized orders in the NYSE-listed component stocks of the S&P 500 Index relating to program trading (as defined in Rule 80A) are diverted to an undisclosed file ("sidecar"), market conditions may warrant a widening of normal quotation spreads in a particular stock.

Reasonable trade variations should nonetheless take place during that period depending on supply and demand, and ITS commitments to trade received during the five-minute sidecar period should receive an execution at the best available bid or offer, as appropriate, in the subject security when the commitment is received in accordance with reasonable trade-to-trade continuity.

During, and at the conclusion of the five-minute sidecar period, trading in any sidecar stock shall halt if there is not sufficient trading interest on the Exchange to allow for orderly executions in that stock. In any event, trading in such stock *shall* be halted, and a price indication disseminated, where the next sale would be:

- *More than one point* from a last sale *under $20;*
- *More than two points* from a last sale *between $20 and $99 7/8;* and
- *More than three points* from a last sale of *$100 or more.*

In any case where trading in any of the 50 highest capitalized NYSE listed stocks in the S&P 500 index is halted, and there is an imbalance in such stock of 50,000 shares or more, the size of the imbalance in such stock shall also be disseminated. A trading halt shall not be *required* on the basis of a 50,000 share imbalance alone.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of the mandatory indications on openings and reopenings when Rule 80B is in effect is to provide guidance to specialists (and Exchange Floor Officials), by means of standard, uniform criteria for dissemination of market information, where significant price changes occur on any opening of trading.[2]

These guidelines will supplement existing Exchange policies regarding trading halts and delayed openings, and would be applicable on any trading day, including any day that trading is reopened following a trading halt put into effect pursuant to the "circuit breaker" provisions of Exchange Rule 80B. If, on any "circuit breaker" day, trading in a security has not reopened by one-half hour after the resumption of trading on the Exchange, the matter should be treated as a delayed opening.

The purpose of the mandatory trading halts with indications on any day that the "sidecar" provisions of Exchange Rule 80A are in effect is to (i) provide guidance, in a volatile market, as to how specialists may quote their market during the five-minute sidecar period, when there may be some uncertainty as to the possible build-up of significant market imbalances; and (ii) provide standard, uniform criteria (mandatory price indications) for disseminating market information where a significant price change appears likely once the sidecar period has ended.

(2) Statutory Basis for the Proposed Rule Change

The basis under the Securities Exchange Act of 1934 ("1934 Act") for this proposed rule change is the requirement under section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors' and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the 1934 Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 17, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

October 21, 1988.

Jonathan G. Katz,

Secretary.

Exhibit A

To: All Members and Member Organizations

Subject: Guidelines for Mandatory Indications on Openings, and Reopenings When Rule 80B ("Circuit Breakers") Is In Effect, and Mandatory Trading Halts With Indications When Rule 80A ("Sidecare") Is In Effect

Effective immediately, the Exchange is instituting guidelines for mandatory indications on openings, and reopenings when NYSE Rule 80B is in effect, as well as guidelines for quotation spreads and mandatory trading halts with indications when NYSE Ruel 80A (the "sidecare") is in effect.

I. Guidelines for Mandatory Indications on Openings

Current Exchange policy requires, *and shall continue to require,* dissemination of an indication upon any delayed opening or regulatory and nonregulatory trading halt, except for a trading halt put into effect pursuant to the "circuit breaker" provisions of Exchange Rule 80B.

In addition, dissemination of an indication shall be *mandatory* for an opening which will result in a price change constituting the lesser of 10% or three points from the prior NYSE close, or five points if the previous close is $100 or higher, unless the price change is less than one point. These guidelines shall be effective prior to any opening as well as for the reopening of trading following a trading halt instituted pursuant to the "circuit breaker" provisions of Exchange Rule 80B. If, on any day that Rule 80B is in effect, trading in a security has not reopened by one-half hour after the resumption of trading on the Exchange, the matter should be treated as a delayed opening, and requires an indication as well as a Floor Official's supervision.

II. Manadatory Trading Halts With Indications When Rule 80A Is In Effect

During the five-minute period that Rule 80A is in effect and systematized orders in the NYSE-listed component stocks of the S&P 500 Index relating to program trading (as defined in Rule 80A) are diverted to an undisclosed file ("sidecare"), market conditions may warrant a widening of normal quotation spreads in a particular stock. Reasonable trade variations should nevertheless take place during that period based upon supply and demand, and ITS commitments to trade received during the five-minute "sidecar" period should receive executions at the best available bid or offer, as appropriate, in the subject security when the commitment is received in accordance with reasonable trade-to-trade continuity.

During, and at the conclusion of, the five-minute sidecar period, trading in any sidecar stock shall halt, and an indication shall be disseminated, if there is a significant imbalance in that stock. In any event, trading in such stock *shall* be halted, and a price indication disseminated, where the next sale would be:

- *More than one point* from a last sale *under $20;*
- *More than two points* from a last sale *between $20 and $99 7/8;* and
- *More than three points* from a last sale of *$100 or more.*

[1] Rules 80A and 80B were approved in Securities Exchange Act Release No. 26198 (October 19, 1988).

[2] These guidelines will be disseminated to Exchange members in an Information Memorandum attached to this release as *Exhibit A.*

In any case where trading in any of the 50 highest capitalized NYSE listes stocks in the S&P 500 index is halted, and there is an imbalance in such stock of 50,000 shares or more, the size of the imbalance in such stock will also be disseminated. A trading halt shall not be *required* on the basis of a 50,000 share imbalance alone.

Any questions on the matters described above may be directed to Mr. Michael Seeley (212) 656-6531.

Robert J. McSweeney,

Vice President.

[FR Doc. 88-24836 Filed 10-26-88; 8:45am]

BILLING CODE 8010-01-M

[Release No. 34-26207; File No. SR-NYSE-88-31]

Self-Regulatory Organizations; Filing and Accelerated Temporary Approval Until December 31, 1988 of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Mandatory Indications on Openings and Reopenings When Rule 80B is in Effect, and Trading Halts With Indications When Rule 80A is in Effect

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(b)(1), notice is hereby given that on October 18, 1988, the New York Stock Exchange, Inc. filed with the Securities and Exchange, Inc. the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

(a) The proposed rule change consists of guidelines for mandatory indications on openings, and reopenings when Exchange Rule 80B is in effect, and guidelines for mandatory trading halts with indications when Exchange Rule 80A is in effect.[1]

Current Exchange policy requires, and shall continue to require, dissemination of an indication upon any delayed opening or regulatory and nonregulatory trading halt, except for a trading halt put into effect pursuant to the "circuit breaker" provisions of Exchange Rule 80B.

In addition, dissemination of an indication shall be *mandatory* for an opening which will result in a price change constituting the lesser of 10% or three points from the prior NYSE close, or five points if the previous close is $100 or higher, unless the price change is less than one point. These guidelines shall be effective prior to any opening as well as for the reopening of trading following a trading halt instituted pursuant to the "circuit breaker" provisions of Exchange Rule 80B.

During the five-minute period that Rule 80A is in effect and systematized orders in the NYSE-listed component stocks of the S&P 500 Index relating to program trading (as defined in Rule 80A) are diverted to an undisclosed file ("sidecar"), market conditions may warrant a widening of normal quotation spreads in a particular stock.

Reasonable trade variations should nonetheless take place during that period depending on supply and demand, and ITS commitments to trade received during the five-minute sidecar period should receive an execution at the best availalble bid or offer, as appropriate, in the subject security when the commitment is received in accordance with reasonable trade-to-trade continuity.

During the five-minute period that Rule 80A is in effect and systematized orders in the NYSE-listed component stocks of the S&P 500 Index relating to program trading (as defined in Rule 80A) are diverted to an undisclosed file ("sidecar"), market conditions may warrant a widening of normal quotation spreads in a particular stock.

Reasonable trade variations should nonetheless take place during that period depending on supply and demand, and ITS commitments to trade received during the five-minute sidecar period should receive an execution at the best available bid or offer, as appropriate, in the subject security when the commitment is received in accordance with reasonable trade-to-trade continuity.

During, and at the conclusion of the five-minute sidecar period, trading in any sidecar stock shall halt if there is not sufficient trading interest on the Exchange to allow for orderly executions in that stock. In any event, trading in such stock *shall* be halted, and a price indication disseminated, where the next sale would be:

- *More than one point* from a last sale *under $20*;
- *More than two points* from a last sale *between $20 and $99 ⅞*; and
- *More than three points* from a last sale of *$100 or more*.

In any case where trading in any of the 50 highest capitalized NYSE listed stocks in the S&P 500 index is halted, and there is an imbalance in such stock of 50,000 shares or more, the size of the imbalance in such stock shall also be disseminated. A trading halt shall not be *required* on the basis of a 50,000 share imbalance alone.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of the mandatory indications on openings and reopenings when Rule 80B is in effect is to provide guidance to specialists (and Exchange Floor Officials), by means of standard, uniform criteria for dissemination of market information, where significant price changes occur on any opening of trading.

These guidelines will supplement existing Exchange policies regarding trading halts and delayed openings, and would be applicable on any trading day, including any day that trading is reopened following a trading halt put into effect pursuant to the"circuit breaker" provisions of Exchange Rule 80B. If, on any "circuit breaker" day, trading in a security has not reopened by one-half hour after thr resumption of trading on the Exchange, the matter should be treated as a delayed opening.

The purpose of the mandatory trading halts with indications on any day that the "sidecar" provisions of Exchange Rule 80A are in effect is to (i) provide guidance, in a volatile market, as to how specialists may quote their market during the five-minute sidecar period, when there may be some uncertainty as to the possible build-up of significant market imbalances; and (ii) provide standard, uniform criteria (mandatory price indications) for disseminating market information where a significant price change appears likely once the sidecar period has ended.

(2) Statutory Basis for the Proposed Rule Change

The basis under the Securities Exchange Act of 1934 ("1934 Act") for this proposed rule change is the requirement under section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors' and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the 1934 Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the Commission grant accelerated effectiveness to the proposed rule change pursuant to section 19(b)(2) of the 1934 Act. The Exchange's request is based on its desire to have the proposed rule change take effect concurrently with the effectiveness of new Rules 80A and 80B. This accelerated effectiveness would be for a period to expire December 31, 1988, to give the Commission sufficient time to consider giving permanent approval to the proposed rule change, which permanent approval is sought in File No. SR-NYSE-88-31 submitted concurrently with this filing. The Commission finds that the proposed rule change is consistent with the requirements of the 1934 Act and the rules and regulations thereunder applicable to a national securites exchange, in particular, the requirements of section 6 and the rules and regulations thereunder. The proposal will permit the Exchange to implement specific procedures to handle trading once the circuit breaker and "sidecar" provisions of Rules 80A and 80B go into effect. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof because the rule change will permit the Exchange to implement trading procedures if Rules 80A and/or 80B go into effect at any time prior to Commission action on the Exchange's request for permanent approval of these procedures.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rules change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of publication.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[3] that the proposed rule change (NYSE-88-30) is approved until December 31, 1988.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

Dated: October 21, 1988.

Exhibit A

To: All Members and Member Organizations

Subject: Guidelines for Mandatory Indications on Openings, and Reopenings When Rule 80B ("Circuit Breakers") Is In Effect, and Mandatory Trading Halts With Indications When Rule 80A ("Sidecar") Is In Effect

Effective immediately, the Exchange is instituting guidelines for mandatory indications on openings, and reopenings when NYSE Rule 80B is in effect, as well as guidelines for quotation spreads and mandatory trading halts with indications when NYSE Rule 80A (the "sidecar") is in effect.

I. Guidelines for Mandatory Indications on Openings

Current Exchange Policy requires, *and shall continue to require*, dissemination of an indication upon any delayed opening or regulatory and nonregulatory trading halt, except for a trading halt put into effect pursuant to the "circuit breaker" provisions of Exchange Rule 80B.

In addition, dissemination of an indication shall be *mandatory* for an opening which will result in a price change constituting the lesser of 10% or three points from the prior NYSE close, or five points if the previous close is $100 or higher, unless the price change is less than one point. These guidelines shall be effective prior to any opening as well as for the reopening of trading following a trading halt instituted pursuant to the "circuit breaker" provisions of Exchange Rule 80B. If, on any day that Rule 80B is in effect, trading in a security has not reopened by one-half hour after the resumption of trading on the Exchange, the matter should be treated as a delayed opening, and requires an indication as well as a Floor Official's Supervision.

II. Mandatory Trading Halts With Indications When Rule 80A is in Effect

During the five-minute period that Rule 80A is in effect and systematized orders in the NYSE-listed component stocks of the S&P 500 Index relating to program trading (as defined in Rule 80A) are diverted to an undisclosed file ("sidecar"), market conditions may warrant a widening of normal quotation spreads in a particular stock. Reasonable trade variations should nevertheless take place during that period based upon supply and demand, and ITS commitments to trade received during the five-minute "sidecar" period should receive executions at the best available bid the commitment is received in the subject security when commitment is received in accordance with reasonable trade-to-trade continuity.

During, and at the conclusion of, the five-minute sidecar period, trading in any sidecar stock shall halt, and an indication shall be disseminated, if there is a significant imbalance in that stock. In any event, trading in such stock *shall* be halted, and a price indication disseminated, where the next sale would be:

- *more than one point* from a last sale *under $20*;
- *more than two points* from a last sale *between $20 and $99 7/8*; and
- *more than three points* from a last sale of *$100 mor more*.

In any case where trading in any of the 50 highest capitalized NYSE listed stocks in the S&P 500 index is halted, and there is an imbalance in such stock of 50,000 shares or more, the size of the imbalance in such stock will also be disseminated. A trading halt shall not be *required* on the basis of a 50 000 share imbalance alone.

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[1] Rules 80A and 80B were approved in Securities and Exchange Act Release No. 26198 (October 19, 1988).

[2] Securities and Exchange Act Release No. 26198, approving new Rule 80A, stated that at the conclusion of the five minute sidecar period, the order imbalance, if any, in each of the applicable stocks would be reported to the public and the specialist. This filing explains the minimum imbalance necessary for dissemination to the public: 50,000 shares or more. This size imbalance is similar to the imbalance minimum used for the special Expiration Friday opening procedures.

[3] 15 U.S.C. 78s(b) (1982).

[4] 17 CFR 200.30-3(a)(12) (1988).

Any questions on the matters described above may be directed to Mr. Michael Seeley (212) 656-6531.

Robert J. McSweeney,
Vice President.

[FR Doc. 88-24837 Filed 10-26-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Application for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

October 21, 1988.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Atmos Energy Corp.[1]
Common Stock, No Par Value (File No. 7-3944)
First National Corporation
Common Stock, No Par Value (File No. 7-3945)
Medusa Corporation
Common Shares, Without Par Value (File No. 7-3946)
Wyse Technology, Inc.
Common Stock, $.01 Par Value (File No. 7-3947)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 11, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

[1] Atmos Energy Corp. was formerly named Energas Co.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-24838 Filed 10-26-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16905; 812-7028]

Midlantic Funding Corp.; Application

October 21, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: Midlantic Funding Corporation.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from all provision is of the 1940 Act.

Summary of Application: Applicant requests an order exempting it from all provisions of the 1940 Act so that it may sell certain debt instruments and non-voting preferred stock and utilize the proceeds to finance the activities of its sole shareholder, a bank holding company, and certain companies controlled by it sole shareholder.

Filing Date: The application was filed on May 6, 1988, and amended on October 17, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on November 17, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, Metro Park Plaza, P.O. Box 600, Edison, NJ 08818.

FOR FURTHER INFORMATION CONTACT: Jeremy N. Rubenstein, Staff Attorney at (202) 272-2847, or H.R. Hallock, Jr., Special Counsel at (202) 272-3030 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant was incorporated in New Jersey in 1987 as a wholly-owned subsidiary of Midlantic Corporation ("Midlantic"), a New Jersey corporation registered as a bank holding company under the Bank Holding Company Act of 1956 (the "Bank Holding Company Act"). Midlantic has as its primary and predominate business activity the management and control of, and provision of services and capital funds to, its wholly owned subsidiaries, Midlantic Banks Inc. ("MBI") and Continental Bancorp, Inc. ("CBI"), each of which is also a registered bank holding company under the Bank Holding Company Act, and its other direct and indirect subsidiaries. Midlantic also owns directly one national bank and a discount brokerage company.

2. MBI has as its primary and predominate business activity the management and control of, and provision of services and capital funds to, its subsidiaries. As of March 31, 1988, MBI owned seven national bank subsidiaries and one state bank subsidiary and a division and bank-related subsidiaries which engage in such activities as mortgage banking, equipment leasing, factoring and foreign investments.

3. CBI has as its primary and predominate business activity the management and control of, and provision of services and capital funds to, its subsidiaries. As of March 31, 1988, CBI owned three state chartered bank subsidiaries and a bank-related subsidiary engaged in credit-related reinsurance.

4. The banking services offered by Midlantic's direct and indirect bank subsidiaries (the "Bank Subsidiaries") include all the usual services of commercial banks. Certain of the Bank Subsidiaries provide financial and data processing services to customers and other banks and provide trust services, including administration of estates and trusts, pension and other employee benefit plans, investment advisory and agency accounts, and a full range of other fiduciary, corporate fiduciary and agency services.

5. Applicant was organized by Midlantic to engage in financing the business operations of Midlantic and Midlantic's other direct and indirect subsidiaries. All of Applicant's issued and outstanding securities other than the debt securities and non-voting preferred stock described below are or will be held by Midlantic. Applicant's primary function will be to raise funds through the sale of debt securities and to invest in or loan money to Midlantic or Midlantic's other direct or indirect subsidiaries. Although Applicant has no present intention to do so, it may in the future raise funds through the sale of non-voting preferred stock. Funds raised through the sale of non-voting preferred stock, if any, will be invested in or loaned to Midlantic or Midlantic's other direct or indirect subsidiaries. The debt securities and non-voting preferred stock, if any, will be guaranteed by Midlantic as follows:

(a) Applicant's debt securities issued to or held by the public will be unconditionally guaranteed by Midlantic as to payment of principal, interest and premium, if any (except that the guarantee may be subordinated in right of payment to other debt of Midlantic);

(b) Applicant's non-voting preferred stock issued to or held by the public will be unconditionally guaranteed by Midlantic as to payment of dividends, payment of the liquidation preference in the event of liquidation, and payments to be made under a sinking fund, if a sinking fund is to be provided (except that the guarantee may be subordinated in right of payment to other debt of Midlantic);

(c) Midlantic's guarantee will provide that in the event of a default in payment of principal, interest, premium, dividends, liquidation preference or payments made under a sinking fund, if any, on any debt securities or non-voting preferred stock issued by Applicant, the holders of those securities may institute legal proceedings directly against Midlantic to enforce the guarantee without first proceeding against Applicant;

(d) The debt securities and non-voting preferred stock issued by Applicant will be convertible or exchangeable only for securities issued by Midlantic or for debt securities or non-voting preferred stock will meet applicable conditions set forth in the preceding three subparagraphs.

6. Applicant will invest or loan at least 85% of any cash or cash equivalent raised through the offering of its debt securities or non-voting preferred stock or through other borrowings as soon as practicable, but in no event later than six months after Applicant's receipt of such cash or cash equivalents, only in or to the following: (i) Midlantic, (ii) MBI, (iii) CBI, (iv) the Bank Subsidiaries, (v) Midlantic's non-bank subsidiaries excepted from the definition of investment company under section 3(c)(3), section 3(c)(4), section 3(c)(5) or section 3(c)(6) of the 1940 Act (such non-bank subsidiaries are hereinafter collectively referred to as the "section 3(c)(3)–(6) Subsidiaries") or (vi) Midlantic's other direct or indirect subsidiaries which qualify as "companies controlled by the parent company" as defined in Rule 3a–5 under the 1940 Act. At no time will Applicant invest in, reinvest in, own, hold or trade in securities other than (i) Government securities, (ii) securities of Midlantic, MBI, CBI, the Bank Subsidiaries, the section 3(c)(3)–(6) Subsidiaries or Midlantic's other direct or indirect subsidiaries which qualify as "companies controlled by the parent company" as defined in Rule 3a–5, and (iii) debt securities which are exempted from the provisions of the Securities Act of 1933 ("1933 Act") by section 3(a)(3) of the 1933 Act or (iv) bank certificates of deposit, including negotiable Eurodollar certificates of deposit and domestic bank certificates of deposit, each of which will be of such a principal amount as to not be marketed to the general public and will have a maturity no greater than that permitted for securities exempted from the provisions of the 1933 Act by section 3(a)(3) thereof (whether or not such certificates are exempted by section 3(a)(3) of the 1933 Act) ("Certificates"). All of the Certificates will be issued by internationally active financial institutions (i) which are organized in countries where such financial institutions are comprehensively regulated as to their capital adequacy and other factors relating to their financial soundness by central banks and/or other sovereign bank regulatory authorities (in the United States these entities are the Board of Governors of the Federal Reserve System ("Federal Reserve Board"), the Comptroller of the Currency ("Comptroller"), and the Federal Deposit Insurance Corporation ("FDIC"), and (ii) which have been approved for investment for the funds of the Bank Subsidiaries by Midlantic National Bank's Investment Department, which approvals are subject to review by the Federal Reserve Board, the FDIC and the Comptroller.

7. Applicant will not engage in business with any entities other than Midlantic or Midlantic's other direct or indirect subsidiaries, apart from the issuance of debt securities or non-voting preferred stock guaranteed by Midlantic as described above and temporary investment of excess funds.

Applicant's Legal Analysis

1. The business to be conducted by Applicant may cause it to fall within the types of businesses described in section 3(a)(1) or 3(a)(3) of the 1940 Act. Applicant may not rely on the safe harbor provided by Rule 3a–5 because Midlantic may not be considered a "parent company" under Rule 3a–5(b)(2). As a bank holding company primarily engaged through its direct and indirect subsidiaries in the business of banking, Midlantic may be an investment company under section 3(a) of the 1940 Act. Midlantic's exempt status under the 1940 Act therefore is derived from section 3(c)(6) of the 1940 Act.

2. Applicant may not rely on the safe harbor provided by Rule 3a–5 because each of MBI, CBI, the Bank Subsidiaries and the section 3(c)(3)–(6) Subsidiaries may not be considered a "company controlled by the parent company" under Rule 3a–5(b)(3). Any of MBI, CBI, the Bank Subsidiaries and the section 3(c)(3)–(6) Subsidiaries may be an investment company under section 3(a) of the 1940 Act and may not be excepted or exempted under section 3(b) of the 1940 Act. Applicant states that: (i) Both MBI and CBI are bank holding companies primarily engaged through their direct subsidiaries in the business of banking, and that each MBI's and CBI's exempt status under the 1940 Act therefore is derived from section 3(c)(6) of the 1940 Act; (ii) the Bank Subsidiaries are banks involved primarily in the business of banking, and that their exempt status under the 1940 Act therefore is derived from section 3(c)(3) of the 1940 Act; and (iii) the section 3(c)(3)–(6) Subsidiaries derived their exempt status under the 1940 Act from section 3(c)(3), section 3(c)(4), section 3(c)(5) or section 3(c)(6) of the 1940 Act. The activities of MBI, CBI, the Bank Subsidiaries and the section 3(c)(3)–(6) Subsidiaries do not raise the concerns that prompted the exclusion of entities exempted from the definition of investment company under section 3(c) of the 1940 Act from the definition of "company controlled by the parent company" under Rule 3a–5(b)(3). Accordingly, the failure of MBI, CBI, the Bank Subsidiaries and section 3(c)(3)–(6) Subsidiaries to satisfy the definitional requirements of Rule 3a–5(b)(3) should not prevent issuance of the requested exemption order.

3. Applicant may not rely on the safe harbor provided by Rule 3a–5 because Applicant proposes to invest in, hold, trade and own Certificates as well as government securities, debt securities which are exempt from the provisions of the Securities Act of 1933, as amended, by section 3(a)(3) of that act, and securities of Midlantic, MBI, CBI, the

Bank Subsidiaries, the section 3(c)(3)–(6) Subsidiaries or Midlantic's other direct or indirect subsidiaries which qualify as a "company controlled by the parent company" as defined in Rule 3a–5. The Commission's stated intention in adopting Rule 3a–5 was to permit a finance subsidiary to invest in, hold, own and trade short term money market instruments so that the finance subsidiary had flexibility in short term management of the proceeds of its securities offering. Although Certificates are not expresely included in the list of securities a finance subsidiary may invest in, trade, own or hold under Rule 3a–5(a)(6), Certificates are short term money market instruments which would afford a finance subsidiary appropriate flexibility in its short term cash management without sacrificing security or otherwise impairing reasonable cash management. Applicant asserts that Certificates are at least as secure as certain investments otherwise permitted under Rule 3a–5(a)(6). Accordingly, Applicant's investment in, owning, trading and holding Certificates should not prevent issuance of the requested exemption order.

4. On the basis of the foregoing, granting the requested exemption is appropriate in the public interest and consistent with the protection of investors and the proposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–24639 Filed 10–26–88; 8:45 am]

BILLING CODE [illegible]

SMALL BUSINESS ADMINISTRATION

Region III Advisory Council Meeting; Maryland

The U.S. Small Business Administration, Region III Advisory Council, located in the geographical area of Baltimore, will hold a public meeting, from 2:00 p.m. to 5:00 p.m. on Wednesday, November 30, 1988 at the Maryland Small Business Development Center, 123 West 24th Street, Baltimore, Maryland 21218, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Charles J. Gaston, District Director, U.S. Small Business Administration, 10 North Calvert Street, 3rd Floor, Baltimore, Maryland 21202, 301/962–2084.

Jean M. Nowak,

Director, Office of Advisory Councils.

October 21, 1988.

[FR Doc. 88–24607 Filed 10–26–88; 8:45 am]

BILLING CODE 8025–01–M

Region VI Advisory Council Meeting; Texas

The U.S. Small Bussiness Administration Region VI Advisory Council, located in the geographical area of Dallas, will hold a public meeting at 9:00 a.m. on Friday, November 18, 1988 at the Lincoln City Club, 5440 LBJ Freeway, Dallas, Texas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or other present.

For further information, write or call James S. Reed, District Director, U.S. Small Business Administration, 1100 Commerce, Room 3C36, Dallas, Texas 75242, 214/767–0800.

Jean M. Nowak,

Director, Office of Advisory Councils.

October 21, 1988.

[FR Doc. 88–24608 Filed 10–26–88; 8:45 am]

BILLING CODE 8025–01–M

Region VI Advisory Council Meeting; Texas

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of Lower Rio Grande Valley of Texas, will hold a public meeting at 1:30 p.m. on Tuesday, November 22, 1988 at the Board Room of Pan American University, Edinburg Texas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Miguel A. Cavazos, Jr., District Director, U.S. Small Business Administration, 222 E. Van Buren, Suite 500, Harlingen, Texas 512/427–8625.

Jean M. Nowak,

Director, Office of Advisory Councils.

October 21, 1988.

[FR Doc. 88–24609 Filed 10–26–88; 8:45 am]

BILLING CODE 8025–01–M

Region III Advisory Council Meeting; West Virginia

The U.S. Small Business Administration Region III Advisory Council, located in the geographical area of Clarksburg, will hold a public meeting, on Tuesday and Wednesday, November 29–30, 1988 from 1:00 p.m. to 4:30 p.m. on the 29th and 9:00 a.m. to 12:00 noon on the 30th at the Parkersburg Community College, (Room 150) located on Route 47, East of Parkersburg in the town of Cedar Grove, WV, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Marvin P. Shelton, District Director, U.S. Small Business Administration, P.O. Box 1608, Clarksburg, WV 26302–1608, 304/623–5631.

Jean M. Nowak,

Director, Office of Advisory Councils.

October 21, 1988.

[FR Doc. 88–24610 Filed 10–26–88; 8:45 am]

BILLING CODE 8025–01–M

TENNESSEE VALLEY AUTHORITY

Privacy Act of 1974; New Routine Uses

AGENCY: Tennessee Valley Authority (TVA).

ACTION: New routine uses for TVA–15, "Land Between The Lakes Hunter Records—TVA," and TVA–30, "Land Between The Lakes Mailing Lists—TVA."

SUMMARY: As required by the Privacy Act, TVA gave notice (53 FR 36894, August 16, 1988) of its intention to establish one new routine use for the system of records entitled TVA–15, "Land Between The Lakes Hunter Records—TVA," and two new routine uses for the system of records entitled TVA–30, "Land Between The Lakes Mailing Lists—TVA." No comments were received. The new routine uses are shown below. The full text of TVA–15 may be found at 53 FR 10,983, April 4, 1988. The full text of TVA–30 may be found at 53 FR 10,990–10,9991, April 4, 1988.

EFFECTIVE DATE: October 27, 1988.

FOR FURTHER INFORMATION CONTACT: Ronald E. Brewer, 615–751–2520

TVA–15

SYSTEM NAME:

Land Between The Lakes Hunter Records—TVA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal identifying information, State hunting license(s) number(s), and information related to the hunts.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; Executive Order 6161.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To provide mailing lists to students of faculty of educational institutions for the purposes of research.

TVA–30

SYSTEM NAME:

Land Between The Lakes Mailing Liste—TVA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal identifying information, address, and information about their Land Between The Lakes associated interests, activities, or program participation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; Executive Order 6161.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To provide mailing lists to students or faculty of educational institutions for the purposes of research.

To provide mailing lists to participants in Land Between The Lakes Leadership Training programs for the purpose of facilitating communication among participants.

John W. Thompson,

Vice President, Services.

[FR Doc. 88–24650 Filed 10–26–88; 8:45 am]

BILLING CODE 8120–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Intent To Prepare an Environmental Impact Statement and To Hold an Environmental Scoping Meeting for Runway 27 Departure Procedures at Logan International Airport, Boston, MA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of public environmental scoping meeting.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for alternative aircraft departure procedures from Runway 27 at Boston-Logan International Airport. To ensure that all significant issues related to the proposed action are identified, public meetings will be held.

FOR FURTHER INFORMATION CONTACT: John Silva, Environmental Program Manager, Federal Aviation Administration, New England Region, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803. Telephone no.: 617–273–7060.

SUPPLEMENTARY INFORMATION: During April 1988, FAA, New England Region completed an Environmental Assessment (EA) of alternative departure procedures from Runway 27 at Boston-Logan International Airport. The assessment concluded in the need to prepare an EIS. The EIS will examine promising alternative air traffic control departure procedures, which could reduce the adverse effects of aircraft noise to community residents and sensitive land uses.

Comments and suggestions are invited from federal, state, and local agencies, and other interested parties, in order to ensure that a full range of issues related to these proposed projects are addressed and all significant issues identified. Copies of the EA may be obtained by contacting FAA at the above address or telephone number. Comments and suggestions may be mailed to the same address.

Public Scoping Meetings

In order to provide public input, a scoping meeting for federal, state, and local agencies will be held on Monday, December 12, 1988, at 9:30 a.m., at the auditorium, Department of Transportation, Transportation System Center, 55 Broadway, Kendall Square, Cambridge, Massachusetts. The public is invited. Additional scoping meetings to receive citizen input are planned over the next several months. Federal, state, and local agency representatives are encouraged to attend. Information about these meetings may be obtained by contacting FAA at the above address or telephone number.

Issued in Burlington, Massachusetts, on October 12, 1988.

Vincent A. Scarano,

Manager, Airports Division, FAA, New England Region.

[FR Doc. 88–24601 Filed 10–26–88; 8:45 am]

BILLING CODE 4910–13–M

Deadline for Submission of Preapplication for Airport Grant Funds Under the Airport Improvement Program for Fiscal Year 1989

Section 509(e) of the Airport and Airway Improvement Act of 1982 (AAIA) provides that the sponsor of each airport to which entitlement funds are apportioned shall notify the Secretary, by such time and in a form as prescribed by the Secretary, of the sponsor's intent to apply for passenger and cargo entitlement funds. Notification of the sponsor's intent to apply during Fiscal Year 1989 for any of its entitlement funds, including those unused from prior years, shall be in the form of a project preapplication or application (SF 424) submitted to the FAA field office no later than January 31, 1989. Approval of preapplications or applications after that date may be deferred by the FAA until the following fiscal year. FAA field offices, in developing their regional programs, may request sponsors' input at an earlier date. Every effort should be made to have projects under grant by August 15, 1989.

The FAA also recommends that all other airports or planning agencies expecting to apply for airport grant funds do so early in the fiscal year. Such prospective applicants should contact the appropriate FAA field office for information on that office's deadline. These offices will assist in the preparation of preapplications/applications and provide procedural information as needed.

Prompt submission of complete requests will allow earlier funding decisions by the FAA. This, in turn, may be advantageous to sponsors in competing for available funds and in maximizing construction during a construction season.

This notice submitted by Mr. John Sekman, APP–520, on (202) 267–3831.

Issued in Washington, DC, on October 14, 1988.

Fred L. Galla,

Director, Office of Airport Planning and Programming.

[FR Doc. 88–24600 Filed 10–26–88; 8:45 am]

BILLING CODE 4910–13–M

Flight Service Station at Imperial, CA; Closing

Notice is hereby given that on or about October 21, 1988, the Flight Service Station at Imperial, California will be closed. Services to the general aviation public of Imperial, formerly provided by this office, will be provided

by the Flight Service Station in San Diego, California. This information will be reflected in the next reissuance of the FAA organization statement.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354.)

William H. Williams, Jr.,

Acting Regional Administrator, Western-Pacific Region.

Issued in Lawndale, California, on October 12, 1988.

[FR Doc. 88-24802 Filed 10-26-88; 8:45 am]

BILLING CODE 4910-13-M

Flight Service Station at Decatur Memorial Airport, Decatur, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Closing.

SUMMARY: Notice is hereby given that on October 2, 1988, the Flight Service Station (FSS) at Decatur Memorial Airport, Decatur, Illinois was closed. Services to the aviation public in the Decatur flight plan area, formerly provided by the Decator FSS, will be provided by the new Automated Flight Service Stations at St. Louis, Missouri and Kankakeee, Illinois. This information will be reflected in the FAA organization statement the next time it is reissued.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354.)

Timothy P. Forte,

Regional Administrator, Great Lakes Region.

Issued in Des Plaines, Illinois on October 11, 1988.

[FR Doc. 88-24803 Filed 10-26-88; 8:45 am]

BILLING CODE 4910-13-M

UNITED STATES INFORMATION AGENCY

Bureau of Educational and Cultural Affairs; Grant Program; Summer Institute in American Studies

Contingent upon the availability of funds, the Bureau of Educational and Cultural Affairs of the United States Information Agency (USIA) will solicit proposals for a graduate-level summer institute in American studies for approximately 35 secondary school educators in English and American literature, history, geography and language. The institute is conducted entirely in English. Participants will come from countries in Europe, Asia, Africa, Latin America and the Middle East. ESIA is asking for detailed proposals from institutions which have an acknowledged reputation in American Studies and special expertise in handling international programs.

The objective of the institute is to support and encourage the efforts of other countries to improve the quality of teaching about American society and culture at the secondary level. The program should be designed for teacher educators and/or secondary-level classroom teachers with responsibilities in curriculum planning and course and materials development whose teaching assignments required a general-up-to-date knowledge of American civilization and culture. Their academic preparation can be in the field of English and American literature, history, geography and language.

Time Frame and General Description

The institute should be programmed to last approximately 45 days, beginning on or about Thursday, July 6, and ending on or about Saturday, August 9, 1989. The participants will arrive directly at the campus site from their home countries. It is expected that the university program staff will make arrangements to have participants met upon arrival at the airport nearest the university campus. Few if any participants will have visited the United States previously. In view of this, an initial orientation to the U.S. and to the campus should be considered an integral part of the institute and should be held on the first two to three days of the progams. The applicant is asked to design a two-part program (a) A four-week academic program at the university and (b) a two-week escorted tour of different regions of the United States, planned, arranged and conducted by the Program Director and principal university staff. The tour segment should be seen as an integral part of the program, complementing and reinforcing the academic material. The tour should include a three-to-four-day visit to Washington, DC, at the end of the tour before participants depart for their home countries. Programming in Washington should include a half-day briefing session at the U.S. Information Agency.

Program Objectives

The institute should be a graduate level academic program aimed at improving the participant's understanding of American society and institutions and contemporary issues most relevant to shaping of these institutions. The program should provide an intellectual framework and an organizing principle for understanding and teaching about the U.S. For the purpose of the institute, American studies is understood to include aspects of American history, literature, geography and political science. The institute should address the diversity and complexity of American contemporary life and the underlying unity of social and political institutions. The program should provide a basic overview of American institutions, current issues, and the social and political response to these issues. In addition, academic instruction should address a range of views of American values and character; social, economic and literary history; geographical features; forms of creative expression; and education, religion, industry and technology. The academic program should maintain a relative balance among plenary sessions, lectures, workshops and practicums. Academic activities should reinforce and provide opportunities to clarify the central themes and objectives of the program. Lengthy lectures should not be the usual format. The proposal should include a detailed syllabus outlining the focus of the subject matter with specific readings required for each unit.

Activities should include an orientation to the U.S. and the university community, field trips to places of local interest, home stays with families in the area (other secondary educators if possible), and events which will bring the participants into contact with Americans from different walks of life. These encounters will give the participants a chance to experience American society, its institutions and language, and observe the variety of attitudes that constitute one of our country's most striking characteristics.

In addition to the substantive presentations and discussions about American society, the institute should focus upon pedagogical concerns, materials and curricular development for teaching about the U.S., and available materials and audio-visual resources. Samples of secondary school curricula, materials and topical bibliographies in American studies fields should be provided or developed during the program. It should be noted that these participants will come from several different disciplines—EFL, history, geography, and literature—and from a variety of educational systems. Most systems have rigorous teacher training programs for certification, and classroom methods evaluated and approved by regional inspectors. Similarly, some systems require adherence to an assigned textbook while orders allow significant flexibility to teachers in determining what materials they will use in presenting a lesson. The variety of approaches and experiences should provide the basis for interaction which will be both culturally and professionally.

All programming and administrative logistics, management of the academic program and cultural tour will be the responsibility of the university. A project secretary and/or project assistant is required to carry out clerical and administrative duties required for the smooth operation of the institute during the program grant period, from the planning period to the completion of required reports to USIA. USIA will be responsible for all communications to and from the U.S. Information Service posts abroad and will be available to offer any advice or guidance the university might find useful. To assist the university with programming facilitative services during the tour, there is a possibility of utilizing the programming and hospitality services of volunteer community groups across the country that are affiliated with the National Council for International Visitors, a national-wide network that provides hospitality and program assistance to foreign visitors.

If your university decides to submit a proposal, it should provide a detailed plan in response to the needs and priorities outlined above. Applicants should draw imaginatively on the full range of resources offered by their universities but may involve outstanding professionals from other universities and organizations. The proposal must clearly demonstrate quality on-site management capabilities for both the residential and the itinerant programs. The overall effectiveness of the institute hinges upon good administrative and organizational capabilities to manage the interactions between foreign educators and Americans. The university should indicate the tour sites, not to exceed three cities in addition to Washington, DC.

A panel of senior USIA officers experienced in American studies, the exchange of international educators, and foreign affairs will use the following criteria when evaluating proposals:

(1) Quality and creative and imaginative design of the institute;

(2) Quality, rigor, and appropriateness of proposed syllabus to goals of the institute;

(3) Clear evidence of the ability to deliver a substantive academic and pedagogical American studies program;

(4) Demonstrated high quality American studies programs—experience with foreign teachers is desirable;

(5) A quality evaluation at the conclusion of the institute;

(6) Evidence of strong on-site administrative and managerial capabilities for international visitors with specific discussion of how managerial and logistical arrangements will be undertaken;

(7) The experience of professionals and staff assigned to the program;

(8) The availability of local and state resources for the orientation and Institute;

(9) A well-thought out and comprehensive cultural tour to complement the academic progam;

(10) Cost-effectiveness.

Budget Guidelines

For your guidance, our experience with similar institutes indicates that the cost to organize and administer the 45-day academic and group tour segment of this Institute would range from $1,200–1,500 per person based on a group of 30 to 35 participants, excluding international and domestic air travel expenses and cost for room and board on campus and hotel and meals on tour.

The proposal should provide a detailed line-item budget outlining specific expenditures and source(s) from which funds are anticipated. The budget should include any in-kind and cash contributions to the program from universities, contributions, cost-sharing, or private sector.

Included in the budget worksheet should be budget explanations detailing how costs were computed, i.e. salaries should include position title, annual salary, and per cent of effort used for this program.

Please note that indirect costs for American studies institutes are limited to eight percent (8%).

The budget should include and elaborate on the following information:

Administrative

(1) Salaries, benefits, and services (including support staff) for the program.

(2) Overhead costs: A copy of the indirect cost rate of the cognizant agency should be included.

(3) Administrative costs, ground transportation, (including tour and transfer buses to and from airports) and group tour admission costs for *all* activities during the course of the on-site university Institute and subsequent cultural tour.

Program

(1) Miscellaneous costs, such as honoraria, film rental, and support material, etc.

(2) University escort travel and [illegible]

For Institutional Recipients of Previous Grants Only

If your university was funded for a similar program last year, the budget should include last year's detailed line-item budget. Significant differences for each item must be noted and justified.

Funding Arrangements

(1) Lodging and Meals

Each foreign participant will receive a per diem for the 45-day program. This should cover the costs of room and board while on campus and during the tour and personal expenses. Although they should not be included as part of the budget, please indicate the costs for lodging and meals and an estimated cost of the books required by the program so that the per diem calculated for the program will include sufficient funds to cover basic living expenses for the 45 days of the institute. A recommended allowance for cultural activities should also be included. Please note that grantee institutions will be funded on a per capita basis directly by Fulbright Commissions abroad and by individual grants awarded by the Division for the Study of the U.S. For participants coming from countries that cannot issue U.S. dollars, the grantee institution may be requested to disburse per diem and other allowances approved for the program. Such funds cannot be subject to indirect costs.

(2) International and Domestic Air Travel

International travel arrangements are usually made and paid by USIS Posts abroad. The university is required to book all domestic flights through a U.S. carrier. Flight information is cabled to the posts and Commissions through USIA cable services. If domestic air tickets are issued in the U.S., they should be booked and purchased through the Agency approved Travel Management Center which allows access to government discount air fares. If issued abroad, participating USIS posts will usually pay for both domestic and international air fares.

Applicants should submit *ten copies each* of a 500-word sumary, a proposal not to exceed 20 typed, double-spaced pages addressing the points outlined above, the detailed budget, and completed and signed application cover sheet (enclosed). Final proposals must be received in the Agency by COB December 19, 1988. The proposal package should be submitted to: U.S. Information Agency, Office of Academic Programs, American Studies Branch, E/AAS Attn: Kay Passias, Rm. 256, 301 4th St., SW., Washington, DC 20547. Phone (202) 485–2568.

BEST COPY AVAILABLE

VOL 53 ISS 208 OCT 27 1988 UMI

Dated: October 21, 1988.

Barry Ballow,

Chief, Division for the Study of the United States.

[FR Doc. 88-24789 Filed 10-26-88; 8:45 am]

BILLING CODE 8320-01-M

VETERANS ADMINISTRATION

Agency Information Collection Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The reponsible department or staff office; (2) the title of the collection(s); (3) the agency for number(s), if applicable; (4) a description of the need and its use; (5) how often the information collection must be completed, if applicable; (6) who will be required or asked to report; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to respond; and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Department of Veterans Benefits (20SC), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-2744.

Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: October 25, 1988.

By direction of the Administrator.

David M. Bess,

Executive Assistant, Office of Information Management and Statistics.

New Collection

1. Department of Veterans Benefits.
2. Veterans Mortgage Life Insurance Inquiry.
3. VA Form 29-0543.
4. The form is used by the VA to ensure proper maintenance of Veterans Mortgage Life Insurance accounts.
5. On occasion.
6. Individuals or households.
7. 540 responses.
8. 45 hours.
9. Not applicable.

Extension

1. Department of Veterans Benefits.
2. Certificate of Balance on Deposit.
3. VA Form 27-4718a.
4. This form is completed by VA fiduciaries, as required by State courts and/or Federal statutes, to lessen the vulnerability of Federal funds to fraud, waste, and abuse.
5. On occasion.
6. Individuals or households; State or local government; Federal agencies or employees; Non-profit institutions.
7. 20,000 responses.
8. 1,005 responses.
9. Not applicable.

Extension

1. Department of Veterans Benefits.
2. Claim for Veterans Mortgage Life Insurance.
3. VA Form 29-0548.
4. The form is used by the mortgage holder to apply for the proceeds of Veterans Mortgage Life Insurance.
5. On occasion.
6. Businesses or other for-profit.
7. 250 responses.
8. 250 hours.
9. Not applicable.

[FR Doc. 88-24790 Filed 10-26-88; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 208
Thursday, October 27, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

AGENCY MEETING

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:30 a.m. on Friday, October 21, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to: (1) Assistance agreements pursuant to section 13(c) of the Federal Deposit Insurance Act; (2) the Corporation's corporate activities; and (3) certain supervisory activities.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Mr. Robert J. Herrmann, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550-17th Street, NW., Washington, DC.

Dated: October 21, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 88-24891 Filed 10-24-88; 4:22 pm]

BILLING CODE 6714-01-M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, November 1, 1988, 10:000 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, November 3, 1988, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC., (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Eligibility Report for Candidates to Receive Presidential Primary Matching Funds.
Status of Presidential Audits.
Draft Advisory Opinion 1988-37: Martin F. Connor on behalf of the Non-Partisan Political Support Committee for General Electric Company Employees.
Administrative Matters

PERSON TO CONTACT FOR INFOMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 88-24946 Filed 10-25-88 11:58 am]

BILLING CODE 6715-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Wednesday, November 2, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: October 25, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-25004 Filed 10-25-88; 3:47 pm]

BILLING CODE 6210-01-M

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 9:00 a.m., Thursday, November 3, 1988.

PLACE: Edgewater Hotel, 666 Wisconsin Avenue at Lake Mendota, Madison, Wisconsin 53701, (608) 256-9071.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Central Liquidity Facility Report and Review of CLF Lending Rate.
3. Insurance Fund Report and Waiver of Premium.
4. Request by the State of Ohio for Exemption from NCUA Lending Rules.
5. Recommendations on Chartering and Field of Membership Issues.
6. Fiscal Year 1989 Operating Fee Assessment.
7. Legislative Update.

TIME AND DATE: 2:30 p.m., Tuesday, November 1, 1988.

PLACE: Edgewater Hotel, 666 Wisconsin Avenue at Lake Mendota, Madison, Wisconsin 53701, (608) 256-9071.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Administrative Action under section 206(b) of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
3. Request for Exemption from § 701.21(h), NCUA Rules and Regulations. Closed pursuant to exemptions (8) and (9)(A)(ii).
4. Merger. Closed pursuant to exemptions (8) and (9)(A)(ii).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 357-1100.

Becky Baker,

Secretary of the Board.

[FR Doc. 88-24975 Filed 10-25-88; 2:49 pm]

BILLING CODE 7535-01-M

VOL 53 ISS 208 OCT 27 1988 UMI

[8510-01-M]

Corrections

Federal Register
Vol. 53, No. 208
Thursday, October 27, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF EDUCATION

[CFDA No. 84.003]

Office of Bilingual Education and Minority Languages Affairs

Correction

In the issue of Tuesday, October 18, 1988, on page 40824, in the first column, in the correction of notice document 88-22456, a portion of the text that appeared is inaccurate and is corrected as follows:

In paragraph (3), in the third line, "January 6, 1988" should read "January 6, 1989".

[BILLING CODE 1505-01-D]

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59653; FRL-3440-9]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

Correction

In notice document 88-23475 beginning on page 39787 in the issue of Wednesday, October 12, 1988, make the following corrections:

On page 39790, in the second column, under Y 89—382, in the second line, "(S)2 2-" should read "(S) 2-"; and in the fourth line, "Cyclohexandeimethanol" should read "Cyclohexanedimethanol".

[BILLING CODE 1505-01-D]

OFFICE OF MANAGEMENT AND BUDGET

Cost of Hospital and Medical Care and Treatment Furnished by the United States; Certain Rates Regarding Recovery From Tortiously Liable Third Persons

Correction

In notice document 88-22840 beginning on page 39001 in the issue of Tuesday, October 4, 1988, make the following corrections:

On page 39002, in the first column, in the table, in the 12th line, the entry for "Nursing home care" should be corrected, and entries for "Prescription" and "Spinal cord injury care" should be inserted above and below to read as follows:

	Effective October 1, 1988		
	DOD	[illegible]	[illegible]
. . . . .			
Prescription		10	
Nursing home care		160	
Spinal cord injury care		538	
. . . . .			

[BILLING CODE 1505-01-D]

federal register

Thursday
October 27, 1988

Part II

Department of the Treasury

Internal Revenue Service

26 CFR Part 1
Study of Intercompany Pricing Rules; Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

Study of Intercompany Pricing Rules

AGENCY: Internal Revenue Service, Treasury.

ACTION: Study of intercompany pricing rules and solicitation for public comments.

SUMMARY: The Department of the Treasury and the Internal Revenue Service are soliciting public comments with respect to the discussion draft on intercompany pricing published herewith. The discussion draft was prepared at the request of the Congress. The draft discusses difficulties in administering section 482 of the Internal Revenue Code, and proposes a methodology for interpreting recent changes to section 482 made by the 1986 Tax Reform Act. It solicits comments on the application and interpretation of section 482 contained therein.

DATES: Written comments must be delivered or mailed by February 15, 1989.

ADDRESS: Send comments to Office of Associate Chief Counsel (International), Branch 1, 950 L'Enfant Plaza South SW., Room 3319, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Michael F. Patton of the Office of Associate Chief Counsel (International), Internal Revenue Service, 950 L'Enfant Plaza South SW., Washington, DC 20224, Attention: CC:INTL:Br1, telephone 202-287-4851 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The Treasury Department and the Internal Revenue Service are studying the intercompany pricing rules set forth in Internal Revenue Code section 482 and the regulations promulgated thereunder. The study focuses on the 1986 Tax Reform Act's amendment to section 482 concerning income arising from the transfer of intangible property between related parties. It also explores issues relating to cost-sharing agreements and the administration of section 482.

This notice invites interested parties to submit written comments (in triplicate) on this matter. All material submitted will be available for public inspection and copying.

Charles S. Triplett,

Deputy Associate Chief Counsel (International).

A Study of Intercompany Pricing

Prepared by Treasury Department, Office of International Tax Counsel, Office of Tax Analysis; Internal Revenue Service, Office of Assistant Commissioner (International), Office of Associate Chief Counsel (International)

Discussion Draft

October 18, 1988.

I. OVERVIEW AND BACKGROUND

Chapter 1

Overview

A. Introduction

Section 482 of the Internal Revenue Code [1] authorizes the Secretary of the Treasury to allocate income, deductions, and other tax items among related taxpayers to prevent evasion of taxes or to reflect their incomes clearly. The Tax Reform Act of 1986 [hereinafter 1986 Act] amended section 482 for the first time in many years by providing that the income from a transfer or license of intangible property must be commensurate with the income attributable to the intangible. The Conference Committee report stated:

> The conferees are also aware that many important and difficult issues under section 482 are left unresolved by this legislation. The conferees believe that a comprehensive study of intercompany pricing rules by the Internal Revenue Service should be conducted and that careful consideration should be given to whether the existing regulations could be modified in any respect.[2]

In response to this recommendation, the Internal Revenue Service and the Treasury Department have reexamined the theory and administration of section 482, with particular attention paid to transfers of intangible property. This study presents the findings and recommendations of the Service and Treasury.

The study is divided into four parts. Part I recounts the history of section 482 and the evolution of issues leading to the 1986 amendments. Part I also contains recommendations and suggestions for further consideration to assure both thoughtful analysis by taxpayers in setting transfer prices and disclosure of information to permit adequate development of transfer pricing issues on examination.

[1] Unless otherwise stated, all references to sections and regulations are to the Internal Revenue Code of 1986 and the regulations promulgated thereunder.

[2] H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II-638 (1986) [hereinafter 1986 Conf. Rep.].

The problems that have been encountered in relation to transfers of intangible property are both legal and administrative. The 1986 Act clarifies the legal standard for determining arm's length pricing by stating that transfer prices for intangible property must be "commensurate with income." Part II discusses Congress' 1986 change to section 482 and explains that this standard requires periodic, and generally prospective, adjustments to transfer prices to reflect significant changes in the income attributable to intangible property. In any event, transfer prices must be determined on the basis of true comparables if they in fact exist. Part II concludes that the commensurate with income standard is fully consistent with the arm's length principle.

The primary administrative difficulty relating to transfers of intangible property is the failure of the regulations to specify a so-called fourth method of income allocation for situations in which comparable transactions do not exist. This problem has been particularly acute with respect to high profit intangibles. Part III of the study explores the economic theory underlying section 482 and proposes a methodology for allocating income, and thereby determining transfer prices in such cases, which draws upon various methods that have been used on an ad hoc basis by the Service, taxpayers, and the courts. The methodology would utilize functional analysis and allocate income by using comparable transactions when they exist, arm's length rates of return when comparables do not exist, and a profit split approach when neither comparables nor arm's length rates of return can be used to allocate all intangible income.

Part IV examines cost sharing arrangements and relevant implications arising from the 1986 legislation.

The specific chapters in each part and the appendices to the study are described below.

B. Part I: Background

Chapter 2 reviews the history of particular transfer pricing legislation and regulations before 1986, including regulations promulgated in 1968, which are still in effect today.

Chapter 3 discusses administrative problems. This chapter is supplemented by a survey of selected International Examiners and Group Managers, summarized in Appendices A and B, which sought information about how the section 482 regulations work in practice. Significant problems include access to

pricing information and difficulties in applying pricing methods to transfers of intangible assets. The chapter includes recommendations regarding the maintenance of transfer pricing information in the taxpayer's books and records, which would be required to be provided to the IRS immediately upon request in an examination, summary reporting of the taxpayer's transfer pricing methodology on Forms 5471 and 5472, and the assertion of appropriate penalties for failure to disclose information or for substantial understatements of income.

The regulations place strong emphasis on finding comparable unrelated party transactions as a guide for evaluating related party transactions. Chapter 4 discusses the search for comparables in the decided cases, and concludes that comparables are often either absent or misused when transfers of intangible property are at issue.

The regulations provide that, when comparables are unavailable, some other appropriate method of allocating income among related parties may be used. Chapter 5 examines the decided cases to see what other methods have been used, including profit splits, rates of return, income to expense ratios, and customs valuations.

C. Part II: Section 482 After the 1986 Tax Reform Act

Chapter 6 focuses on the "commensurate with income" standard incorporated into section 482 by the 1986 Act. After describing the legislative history, the chapter discusses limitations some have suggested on the scope of the standard, and explains its application to normal profit potential intangibles as well as to high profit potential intangibles.

Chapter 7 addresses an issue of major concern to the foreign trading partners of the United States: compatibility with international transfer pricing standards. The chapter concludes that the arm's length standard is the accepted international norm for making transfer pricing adjustments. The study reaffirms that Congress intended the commensurate with income standard to be consistent with the arm's length standard, and that it will be so interpreted and applied by the Internal Revenue Service and the Treasury Department.

Chapter 8 discusses the need under the commensurate with income standard to make periodic adjustments to intangible income allocations. Recommendations address the issues of the frequency of review, retroactivity, lump sum payments, and set-offs.

Taxpayers and practitioners have long advocated safe harbors as a solution to many of the problems arising under section 482. Chapter 9 discusses safe harbors in theory and analyzes some of the safe harbors that have been proposed. While the Service and Treasury do not categorically reject the possibility that some useful safe harbors might be developed, none of those currently proposed appears satisfactory.

D. Part III: Methods for Valuing Transfers of Intangibles

The current regulations adopt a market-based approach, distributing income among related parties the way a free market would distribute it among unrelated parties. Some critics have suggested that a unitary business approach, eliminating the fiction of arm's length dealing and accounting for economies of related party dealing through a formulary method, might be more theoretically sound. Chapter 10 examines these arguments and concludes that the market-based arm's length standard remains the better theoretical allocation method.

Chapter 11 discusses the formulation of a methodology for applying the arm's length standard to transfers of intangible property. Beginning with a discussion of the use of exact and inexact comparables, the chapter proposes as an additional method an arm's length return method that, with appropriate adjustments, could be used in a large percentage of cases. For cases involving intangibles in which comparables and the arm's length return method cannot account for all income to be allocated, a profit split addition to the arm's length return method is described.

E. Part IV: Cost Sharing Arrangements

Chapter 12 presents a description of cost sharing arrangements and describes the history of their tax treatment, comparing the detailed section 482 cost sharing regulations that were proposed in 1966 with the terse version actually promulgated in 1968. The chapter reviews foreign experience with cost sharing, a 1984 Congressional recommendation that the cost sharing rules be expanded, and the special rules governing cost sharing arrangements between possessions corporations and their domestic affiliates.

The legislative history regarding the change to section 482 in the 1986 Act states that Congress intended to permit bona fide cost sharing arrangements, but expected the economic results of such arrangements to be consistent with the commensurate with income standard. Chapter 13 identifies and discusses various issues related to the use of cost sharing arrangements after the 1986 Act.

F. Appendices

Appendices A and B to the study summarize the results of a survey of Service personnel about the administration of section 482. Appendix C analyzes the transfer pricing law and practices of selected jurisdictions. Appendix D describes the publicly available information about third party licensing practices. Appendix E contains 14 examples that illustrate how the principles explained in the study are applied in different factual contexts.

G. Future Agenda

This study reflects input from taxpayer groups, practitioners, and other concerned members of the public, as well as the combined experience and careful thought of those in the government charged with enforcing section 482. Nevertheless, it is only a beginning; it sets forth conclusions and recommendations in some areas, and describes the need for further study in others.

In the study, input is requested on specific issues from taxpayers and practitioners. More generally, however, readers are urged to provide any comments that would be useful in formulating a fair and workable system of administering a statute that has challenged taxpayers and the government alike. It is anticipated that comments will be taken into account in drafting proposed regulations and in examining additional issues not discussed in this study—including such areas as the services portion of the section 482 regulations, the impact of currency fluctuations on transfer pricing, a more detailed review of functional analysis, and the proper methodology for valuing assets under the various "fourth method" approaches described in Chapter 11.

Comments should be forwarded in triplicate to the Office of Associate Chief Counsel (International), Branch 1, 950 L'Enfant Plaza South SW., Room 3319, Washington, DC 20024. Comments are requested to be filed by February 15, 1989.

Chapter 2

Transfer Pricing Law and Regulations Before 1986

A. Early History

The Commissioner was generally authorized to allocate income and deductions among affiliated

corporations in 1917.[5] He could require related corporations to file consolidated returns whenever necessary to more equitably determine the invested capital or taxable income. * * *" The earliest direct predecessor of section 482 dates to 1921, when legislation went beyond authority to require consolidated accounts and authorized the Commissioner to prepare consolidated returns for commonly controlled trades or businesses to compute their "correct" tax liability.[6] This legislation was passed partly because possessions corporations, ineligible to file consolidated returns with their domestic affiliates, offered opportunities for tax avoidance.[7] As early as 1921, Congress perceived the potential for abuse among related taxpayers engaged in multinational transactions.

When the predecessor to current section 482 was incorporated into the 1928 Revenue Act (as section 45), the provision was removed from the expiring consolidated return provisions and significantly expanded.[8] The Commissioner's authority to make an adjustment under section 45 was expressly predicated upon his duty to prevent tax avoidance and to ensure the clear reflection of the income of the related parties (to determine their "true tax liability," in the words of the legislative history).[9]

B. Regulations and the Courts—Through the Early 1960s

For many years, the small number of United States companies with multinational affiliates meant that section 482 had little impact in the international context. Prior to the early 1960s, the primary focus of the Service's enforcement efforts using section 482 was domestic. Regulations issued in 1935 [10] (under section 45) remained in effect substantially unchanged until [illegible].

The regulations set forth the arm's length standard as the fundamental principle underlying section 482: "The standard to be applied in every case is that of an uncontrolled taxpayer dealing at arm's length with another uncontrolled taxpayer." [11] They did not, however, mandate the use of any particular allocation method.

The case law interpreting section 482 and its predecessors took a broad approach. The concepts of "evasion of taxes" [12] and "clear reflection of income" [13] were developed into far-reaching weapons to attack a variety of tax abuses. The predecessors of section 482 were used to prevent recognition of a tax loss on securities following a tax-free transfer from the corporation that had incurred, but could not use, the loss,[14] and to prevent the mismatching of the expenses incurred by one corporation in growing crops from the income artificially realized by another corporation from harvesting and selling those crops.[15]

The courts applied a number of different standards for determining when transactions were conducted at arm's length. Transactions were scrutinized to determine if related parties received full, fair value,[16] a fair and reasonable price,[17] or a fair price including a reasonable profit.[18]

Before 1964, it was generally understood that section 482 could not be used by the Service to place taxpayers, in effect, on a consolidated return basis.[19] In 1964, the Tax Court used section 482 to combine the incomes of two separate corporations that operated a downtown clothing store and its suburban branch store.[20] This case raised concerns among taxpayers over the use of section 482 in substance to ignore separate corporate entities.

C. Developments in the 1960s

By the early 1960s, the business and regulatory climate in which U.S. and foreign multinationals operated changed substantially. In 1961, the Treasury Department urged that significant changes be made in the taxation of U.S. enterprises with foreign affiliates. In particular, Treasury contended that section 482 was not effectively protecting U.S. taxing jurisdiction.[21]

In 1962, Congress considered how to stop U.S. companies from shifting U.S. income to their foreign subsidiaries.[22] While the Ways and Means Committee observed that under existing law the Service could prevent this practice by allocating income under section 482, it proposed further legislation to minimize "the difficulties in determining a fair price," particularly in instances "where there are thousands of different transactions engaged in between a domestic company and its foreign subsidiary." [23]

The Ways and Means Committee proposal as adopted by the House would have added to section 482 a new subsection dealing with sales of tangible property between U.S. corporations and their foreign corporate affiliates.[24] Unless the taxpayer could demonstrate its use of an arm's length price under the comparable uncontrolled price method, taxable income was to be apportioned between related parties under a formula based on their relative economic activities. In addition, no income was to be allocated to a "foreign organization whose assets, personnel, and office and other facilities which are not attributable to the United States are grossly inadequate for its activities outside the United States." [25]

The Senate version of the 1962 Revenue Bill, which prevailed in conference, omitted the House provision. Instead, the Finance Committee concluded that section 482 already provided ample regulatory

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[5] Regulation 41, Articles 77–78, War Revenue Act of 1917, ch. 63, 40 Stat. 300 (1917).

[6] Rev. Act of 1921, ch. 136, section 240(d), 42 Stat. [illegible] (1921).

[7] S. Rep. No. 275, 67th Cong., 1st Sess. 29 (1921).

[8] Rev. Act of 1928, ch. 852, section 45, 45 Stat. 806 [illegible].

[9] H.R. Rep. No. 2, 70th Cong., 1st Sess. 16–17 [illegible].

[10] Treas. Reg. 86, section 45–1(b) (1935).

[11] *Id.*

[12] *Asiatic Petroleum Co. v. Comm'r.* 79 F.2d 234, 236 (2d Cir.), *cert. denied*, 296 U.S. 645 (1935) (concept of evasion for this purpose includes civil tax avoidance).

[13] *Central Cuba Sugar Co. v. Comm'r*, 198 F.2d 214, 215 (2d Cir.), *cert. denied*, 344 U.S. 874 (1952) (application of clear reflection standard does not require proof of tax avoidance motive).

[14] *National Securities Corp. v. Comm'r*, 137 F.2d 600 (3d Cir.), *cert. denied*, 320 U.S. 794 (1943).

[15] *Central Cuba Sugar*, *supra* n. 11; *Rooney v. U.S.*, 305 F.2d 681 (9th Cir. 1962).

[16] *Friedlander Corp. v. Comm'r*, 25 T.C. 70, 77 [illegible].

[17] *Pollock's Pistol Works v. Comm'r*, 21 T.C. 953, [illegible] (1954).

[18] *Grenada Industries v. Comm'r*, 17 T.C. 231 (1951), *aff'd*, 202 F.2d 873 (5th Cir.), *cert. denied*, 346 U.S. 819 (1953).

[19] *Seminole Flavor Co. v. Comm'r*, 4 T.C. 1215 (1945); *cf. Moline Properties v. Comm'r*, 319 U.S. 436 (1943). In extreme cases of income shifting, other legal theories such as assignment of income, substance over form, disregard of corporate entity, or treatment of corporate entity as an agent have been used by courts to attribute income to the appropriate person or corporate entity. These theories are beyond the scope of this paper, and they are generally not used by courts when section 482 is also applicable. *See, e.g., Hospital Corporation of America v. Comm'r*, 81 T.C. 520 (1983) (foreign affiliate not treated as a sham; section 482 applied for use of U.S. parent's [illegible]).

[20] *Hamburgers York Road, Inc. v. Comm'r*, 41 T.C. 821 (1964); *Aiken Drive-In Theatre Corp. v. U.S.*, 281 F.2d 7 (4th Cir. 1960) (the shifting of an abandonment loss from one corporation to another created an inaccurate picture of income, justifying use of section 482).

[21] *Hearings on the President's 1961 Tax Recommendations Before the Committee on Ways and Means*, 87th Cong., 1st Sess., vol. 4, at 3549 (1961) (statement of M. Caplin, Commissioner of Internal Revenue, "Problems in the Administration of the Revenue Laws relating to the Taxation of Foreign Income").

[22] H.R. Rep. No. 1447, 87th Cong., 2d Sess. 28 (1962).

[23] *Id.*

[24] H.R. 10650, 82d Cong., 2d Sess., section 6 (1962).

[25] *Id.*; *see* H.R. Rep. No. 1447, 87th Cong., 2d Sess. 537–38 (1962).

authority to prevent improper multinational allocations.[26] The Conference Committee endorsed this approach, stating:

> The conferees on the part of both the House and the Senate believe that the objectives of section 6 of the bill as passed by the House can be accomplished by amendment of the regulations under present section 482. Section 482 already contains broad authority to the Secretary of the Treasury or his delegate to allocate income and deductions. It is believed that the Treasury should explore the possibility of developing and promulgating regulations under this authority which would provide additional guidelines and formulas for the allocation of income and deductions in cases involving foreign income.[27]

D. The Current Regulations

Treasury responded by promulgating regulations, issued in final form in 1968, that (with only a few changes) govern transfer pricing practices today.[28] Those regulations reaffirmed the arm's length standard as the principal basis for transfer pricing adjustments but attempted, for the first time, to establish rules for specific kinds of intercompany transactions. The final regulations applied to the performance of services, the licensing or sale of intangible property, and the sale of tangible property.[29]

1. *Services.* In determining an arm's length charge for services, § 1.482–2(b)(3) of the regulations provides:

> For the purpose of this paragraph an arm's length charge for services rendered shall be the amount which was charged or would have been charged for the same or similar services in independent transactions with or between unrelated parties under similar circumstances considering all relevant facts.

The regulations do not provide any specific guidance for determining what the charge in independent transactions would have been in the absence of comparable transactions with independent parties.

2. *Intangible property.* As to the licensing or sale of intangible property, § 1.482–2(d)(2)(ii) of the regulations provides:

> In determining the amount of an arm's length consideration, the standard to be applied is the amount that would have been paid by an unrelated party for the same intangible property under the same circumstances. Where there have been transfers by the transferor to unrelated parties involving the same or similar intangible property under the same or similar circumstances the amount of the consideration for such transfers shall generally be the best indication of an arm's length consideration.

The intangible property portion of the regulations contemplate a failure to find appropriate comparables. Where they are unavailable, the regulations list 12 factors to be taken into account, including prevailing rates in the industry, offers of competitors, the uniqueness of the property and its legal protection, prospective profits to be generated by the intangible, and required investments necessary to utilize the intangible.[30] The regulation offers little or no guidance, however, in determining how much relative importance particular factors are to be given.

3. *Tangible property.* Finally, the section 482 regulations set out detailed rules for determining the transfer prices of tangible personal property. Section 1.482–2(e)(2)(4) of the regulations describes three specific methods for determining an appropriate arm's length price: The comparable uncontrolled price method, the resale price method, and the cost plus method. All three rely on comparable transactions to determine an arm's length price, either directly or by reference to appropriate markups in comparable unrelated transactions. The regulations mandate that the three enumerated methods be used in the order set forth. They also authorize other unspecified methods, which have come to be known generically as "fourth methods":

> Where none of the three methods of pricing * * * can reasonably be applied under the facts and circumstances as they exist in a particular case, *some appropriate method of pricing* other than those described in subdivision (ii) of this subparagraph, or variations on such methods, can be used. [Emphasis supplied.] [31]

The specific transaction-oriented models described above for making transfer pricing determinations were adopted in lieu of "mechanical safe havens" based on profit margins, percentage mark-ups or mark-downs, and the like, which had been suggested by various taxpayers commenting on proposed regulations issued in 1965 and 1968. Such safe harbors were rejected for two reasons. First, because of the extraordinary range of returns earned at arm's length, even within a single industry or company, no principled and equitable basis for such safe harbors could be devised. Second, any effective safe harbor income allocation would inevitably serve as a "floor," applying only to those taxpayers not able to document a more advantageous fact pattern.[32] As discussed in Chapter 9, *infra*, the concerns raised by safe harbors still have not been satisfactorily dispelled.

E. Conclusion

In general, the section 482 regulations relating to services, intangible property, and tangible property rely heavily on finding comparable transfer prices or comparable transactions. The regulations provide little guidance for determining transfer prices in the absence of comparables.

Chapter 3

Recent Service Experience in Administering Section 482

In order to determine what difficulties International Examiners are encountering in administering the regulations, a questionnaire was prepared through the joint efforts of Treasury, Chief Counsel, and International Examination personnel. The questionnaire was sent to selected International Examiners (IEs) and IE Group Managers. In addition, selected IRS economists, IEs, Group Managers, and IRS trial attorneys were interviewed.

The results of the analysis of the questionnaires have been compiled and are set forth in Appendix A. Included in Appendix B is a completed questionnaire reflecting the aggregate data supplied by the respondents.[33] In

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[26] *See, e.g., Hearings on H.R. 10650 Before the Senate Committee on Finance*, 87th Cong., 2d Sess., pt. 7, at 2913, 3011–3012 (1962) (statements by P. Seghers and D.N. Adams).

[27] H.R. Rep. No. 2508, 87th Cong., 2d Sess. 18–19 (1962).

[28] Proposed regulations were issued in 1965, were withdrawn and reproposed in 1966, and were issued in final form in 1968. Proposed Treas. Reg. §§ 1.482–1(d) and 2, 30 FR 4256 (1965); Proposed Treas. Reg. §§ 1.482–1(d) and 2, 31 FR 10394 (1966); and T.D. 6952, 1968–1 C.B. 218.

[29] In addition to the tangible and intangible property and the services regulations, there are safe harbors and other rules for interest rates on related party loans, Treas. Reg. § 1.482–2(a), and rules similar to the services rules for related party leasing transactions, Treas. Reg. § 1.482–2(c). These rules are generally not discussed in this paper.

[30] Treas. Reg. § 1.482–2(d)(2)(iii).

[31] Treas. Reg. § 1.482–2(e)(1)(iii).

[32] Surrey, *Treasury's Need to Curb Tax Avoidance in Foreign Business through the Use of Section 482*, 28 J. Tax'n 75 (1968).

[33] IEs and Group Managers were requested to complete one questionnaire for each of the three cases they considered to be their most important section 482 cases. In some instances respondents had not had experience with three important section 482 cases, so that fewer responses were made to some questions. In others, some respondents answered based on their general experience, rather than the particular case for which the questionnaire was completed. In many instances the categorization of particular issues entails a great deal of judgment. For example, a case such as *Hospital Corporation of America*, *supra* n. 17, could be viewed as a services case, an allocation of income case, a profit split case, or an intangibles case. For these reasons we have used the results of

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general, the survey and interviews revealed no surprises. The two primary problems in administering section 482 have been the difficulty of obtaining pricing information from the taxpayers during an examination and the difficulty of valuing intangibles—including the valuation of intangible property in connection with sales of tangible property. This chapter discusses these problems, makes several related suggestions regarding disclosure of information and penalties, and suggests that the early use of counsel and economic experts would alleviate these problems.

A. Service's Access to Pricing Information

A significant threshold problem in the examination of section 482 cases has been IRS access to relevant information to make pricing determinations. In some cases, relevant information is not furnished by the taxpayer to the examining agent.[33] In other cases, long delays are experienced by agents in receiving information, in most cases without explanation for the delays. In many cases, delays in responding to IE requests for information exceed one year.[33] Because of the emphasis upon timely closing of large cases in the recent past, section 482 cases have been closed without receiving necessary information or without the opportunity for agents to follow up on information that has been provided.[34]

The experience of the agents has been that the vast majority of taxpayers, when asked, are unable to provide an explanation of how their intercompany pricing was established.[35] This may account in large part for the denial of access to information and delays encountered by IEs.

In recent years the Service has placed an emphasis on examination of transactions with subsidiaries located in tax haven jurisdictions.[36] Because of the financial and commercial secrecy laws that exist in tax haven jurisdictions, IRS access to third party data has been significantly hampered. Problems with access to information because of foreign secrecy laws have been to some extent alleviated by the enactment of section 982 [37] and by a broad interpretation of the IRS administrative summons power by the courts.[38] However, as will be subsequently discussed, agents have failed to use the section 982 and administrative summons procedures aggressively.

Because of the dramatic increase in recent years in direct foreign investment in the United States,[39] the examination of transactions between foreign parents and their U.S. affiliates will become an increasingly more important part of the international examination program. A survey of rates of return on these companies based on IRS statistics of income ("SOI") data reveals a substantially lower than average profit in this country reported by these companies, which may involve transfer pricing policies.[40]

In practice, examinations of United States subsidiaries of foreign parents have developed into some of the Service's most difficult examinations. A primary reason for the difficulty is that agents are unable to obtain timely access to necessary data, which is typically in the hands of the parent company. In many cases, foreign parent companies refuse to produce this information upon request. An additional difficulty encountered by agents is that foreign parent corporations may not be subject to information reporting requirements similar to U.S. requirements.[41]

Both the administrative summons procedures [42] and the formal document request procedures [43] are tools that are available to IEs to compel production of information necessary to determine whether a section 482 adjustment is appropriate. Unfortunately, for a variety of reasons, IEs seldom serve administrative summonses or section 982 requests.[44] The most common reason given for failing to use these procedures is the time delay necessary to follow them, which conflicts with the need to close the examination. Another reason given in many cases was the necessity of maintaining a good working relationship with the taxpayer, which IEs feared would be harmed if these procedures were used.

Although section 6001 contains a general requirement that a taxpayer maintain adequate books and records, the section 482 regulations are generally silent with regard to records and their accessibility to either support or to determine arm's length prices.[45] Thus, the current regulations do not advise taxpayers specifically of the type of information that is necessary in order to determine compliance with section 482. Specific information on transactions between parent and subsidiary corporations is required on forms 5471 and 5472, which have been widely used by agents in planning and conducting section 482 examinations.

Service experience has been that many taxpayers do not rely upon any form of comparable transactions or other contemporaneous information either in planning or in defending intercompany transactions.[46] Although the legislative history to the 1986 Act expresses concern that industry average royalty rates are used by taxpayers to justify royalties for high profit intangibles,[47] the more serious problem

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the questionnaire throughout this paper primarily for purposes of illustration. However, the results, where used, represent and correspond with the experiences of persons interviewed and others in the Service responsible for administering section 482.

[33] Many of the requests for information that are not financial concern transactions with third parties that would provide comparables for analyzing a potential section 482 adjustment. Appendix B, *infra*, at Question 10C.

[34] Appendix B, *infra*, at Question 10.

[35] Appendix B, *infra*, at Question 13, and Appendix A, *infra*, at 4–6.

[36] Appendix B, *infra*, at Question 14.

[37] General Accounting Office, Report to the Chairman, Committee on Ways and Means, *IRS Audit Coverage: Selection Procedures Same for Foreign and other U.S. Corporations* 28–29 (1988) [hereinafter GAO, *IRS Audit Coverage*].

[37] Under section 982, a taxpayer which, without reasonable cause, fails to produce, within 90 days, foreign based documents sought by the agent during the course of the examination through the use of a formal document request may be precluded from introducing the documents sought in a subsequent court proceeding. A special court proceeding is established at which the taxpayer may show reasonable cause for failing to produce the requested documents or otherwise move to quash the formal document request.

[38] *Veco v. United States*, 644 F.2d 1334 (9th Cir. 1981), *cert. denied*, 454 U.S. 1098 (1982) (summons for books and records of Swiss controlled foreign corporation enforced notwithstanding potential violations of the Swiss Penal Code).

[39] Foreign direct investment in the United States increased from about $34.8 billion in 1977 to about $183.36 billion in 1984. GAO, *IRS Audit Coverage*, *supra* n. 36, at 10.

[40] Hobb, *Foreign Investment and Activity in the United States through Corporations*, 1982, SOI Bulletin 83–86 (Summer 1987); *see BNA Daily Tax Report*, April 1, 1987, at G2.

[41] Wheeler, *SEC Requires Less Disclosure from Foreign Corporations*, Tax Notes, October 12, 1987, at 195–197.

[42] Section 7602; *United States v. Toyota Motor Corp.*, 561 F. Supp. 348 (C.D. Cal. 1983); *United States v. Toyota Motor Corp.*, 569 F. Supp. 1158 (C.D. Cal. 1983).

[43] Section 982.

[44] In the survey conducted as part of this study, IEs reported using summonses and section 982 requests in approximately 5% and 4%, respectively, of the cases reported in the survey. Appendix B, *infra*, at Questions 21, 22.

[45] An exception is Treas. Reg. § 1.482-2(b)(7) requires adequate records to verify costs or deductions used in connection with a charge for services to an affiliate.

[46] Appendix B, *infra*, at Question 57.

[47] H.R. Rep. No. 426, 99th Cong., 1st Sess. 424 (1985) [hereinafter 1985 House Rep.]. The survey revealed that in approximately 41% of the cases in which taxpayers relied upon comparables, industry averages were used, Appendix A, *infra*.

has been that the taxpayer, not having structured the transaction with any comparable in mind, seeks to defend its position by finding whatever transaction or method gets closest to the transfer price initially chosen, whether that be an industry average rate of return or some other type of comparable.

Problems related to information and aggressive return positions would be alleviated if the regulations specifically set out a taxpayer's responsibility to document the methodology used in establishing intercompany transfer prices prior to filing the tax return and to require that such documentation be provided within a reasonable time after request. The documentation should include references to any comparable transactions, rates of return, profit splits, or other information or analyses used by the taxpayer in arriving at transfer prices. In general, a taxpayer making relatively minor investments would not be required to obtain information regarding comparable transactions outside of its own knowledge of its business affairs and those of its competitors, but to use information and analyses that generally would have been produced by the taxpayer in the course of developing its business plan. However, a taxpayer engaging in a major transaction or one involved in a complex profit split analysis involving significant high profit intangibles [48] would be expected to gather and analyze the types of information illustrated by the examples in Appendix E which, once again, is information likely to be produced by the taxpayer in developing its business plan. In the absence of comparables, taxpayers should be required at a minimum to apply a rate of return analysis or profit split methodology that may be prescribed in regulations under which the taxpayer would identify assets and functions performed by it and its affiliates and identify the rate of return or profit split that the taxpayer believes should be assigned or allocated to each activity or function.

Furthermore, Forms 5471 and 5472 should be revised to include summary information describing how intercompany prices were determined and an attestation that the documentation required to be maintained under the section 482 regulations, as described above, was available at the time of preparation of the return and will be made available at the start of an IRS examination. Requiring information to be made available at the beginning of an audit would alleviate problems of receiving either too little or too much information near the expiration of the statute of limitations.

The Service and Treasury believe that taxpayer compliance in the transfer pricing area with respect both to disclosure of information and to conformity with the arm's length standard would be enhanced by the proper assertion of appropriate penalties. While the penalty imposed by section 6661 for substantial understatement of tax can apply, to date the Service has only infrequently imposed penalties in connection with making section 482 adjustments.[49] The Internal Revenue Service is currently engaged in a comprehensive study of the role of civil tax penalties,[50] as are many other interested parties. It, therefore, seems timely to focus now on the effectiveness of existing penalties in encouraging compliant taxpayer behavior and penalizing unjustified positions in the transfer pricing area. Consideration should be given to when the section 6661 penalty should be raised and whether it is adequate to deter instances where taxpayers do not make intercompany pricing decisions upon a reasonable basis, or whether a new penalty should be proposed.

The Service and Treasury are interested in recommendations in this area, including such specific comments as to the type and amount of penalties, and whether there should be certain transaction oriented thresholds that ought to apply before any penalty could be asserted. For example, a transaction specific penalty (similar to the overvaluation penalty of section 6659) may be an appropriate means of deterring substantial deviations from the commensurate with income standard. Specific consideration should be given to whether the applicable penalty provisions should be amended to apply if there is a substantial deviation from the appropriate commensurate with income payment regardless of whether there is disclosure on the tax return of the manner in which taxpayers computed transfer prices. Disclosure of the taxpayer's method of computing a transfer price can not adequately inform the Service as to whether such a transfer price substantially deviates from the appropriate section 482 transfer price absent a thorough audit. Consequently, such disclosure should not prevent the imposition of a penalty for substantial deviation from the correct section 482 transfer price.[51] Since it is possible to use the provisions of section 367(d) to deter abusive situations (*see* discussion of section 367(d) *infra* Chapter 6), it may also be appropriate to clarify how taxpayers may avoid imposition of penalties in the context of section 367 adjustments.

B. Intangibles

A significant portion of section 482 adjustments proposed in recent years have involved an adjustment for pricing with respect to the licensing or other transfer of intangibles.[52] Because of the absence of comparables in many cases, intangible transfers generally are the most problematic of adjustments due to the inherent difficulty of valuing intangibles under the existing regulations. As previously noted in Chapter 2, the intangible property portion of the regulations contemplate a failure to find appropriate comparables and list 12 factors to be taken into account in valuing intangibles in the absence of comparables. No guidance is given, however, in determining the relative importance of particular factors.

In a significant number of cases, IEs relied upon sections of the regulations other than the intangibles portion to make a transfer pricing adjustment.[53] Intangibles are often transferred by incorporation into tangible property that is sold or rented. In these types of cases, the taxpayers have not been required to isolate the value of the intangible.[54] Incorporating a return on an intangible in a transfer price for tangible property does not alleviate, however, the difficulty of valuing the intangible.

A common example is the transfer of tangible property with a trademark, trade name, or recognizable logo attached. It is clear from the regulations that a trademark, trade name, or logo is an intangible.[55] The regulations

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[48] *See* discussion *infra* Chapter 11.

[49] Under Rev. Proc. 85-26, 1985-2 C.B. 579, a taxpayer that reports intercompany transactions on Schedules G and M of Form 5471, may avoid the substantial understatement penalty. *See* Rev. Proc. 85-26, 1985-1 C.B. 580 (amended returns or statements made following commencement of a CEP examination may avoid assertion of the substantial understatement penalty).

[50] Commissioner's Penalty Study, *A Philosophy of Civil Tax Penalties* (discussion draft June 8, 1988).

[51] *See* discussion of the commensurate with income standard and periodic adjustments *infra* Chapters 6 and 8.

[52] In the survey conducted for the study, an adjustment was made under Treas. Reg. § 1.482-2(d) in about 50% of the reported cases. Appendix B, *infra*, at Question 68.

[53] In approximately 40% of the cases reported in the survey, IEs cited the inability to value an intangible as the reason why they failed to follow the intangibles section of the regulations. Appendix B, *infra*, at Question 72.

[54] Rev. Rul. 75–254, 1975–1 C.B. 243.

[55] Treas. Reg. § 1.482–2(d)(3).

governing the sales of tangible property specify that, in applying the comparable uncontrolled price, resale price, and cost plus methods, adjustments must be made for sales with or without trademarks, provided there is a reasonably ascertainable effect on the price.[54] In some cases adjustments for trademarks are relatively easy to make. The analysis, however, becomes much more complex if there are no similar products sold (with or without trademarks) on which to base a comparison. Setting a transfer price for a product in such a case involves the same difficult exercise as setting a royalty rate for a licensed intangible. One of the recent pharmaceutical cases presents an example of this latter situation since it involved the sale of unique pharmaceutical products.[55]

Intangibles may also be transferred in the form of services. In some circumstances, taxpayers have attempted to shift large amounts of income to tax haven subsidiaries by "loaning" a few key employees to a tax haven affiliate. By loaning employees, the parent company may simultaneously provide services and transfer valuable intangible know-how. In transactions which are structured as an intangibles transfer, it is difficult to value services rendered in connection with the transfer of intangible property, which may be necessary for purposes of determining the source of the income.[56]

A particularly difficult aspect of valuing intangibles has been determining what part of an intangible profit is due to manufacturing intangibles and what part is due to marketing intangibles.[56] This problem has particular significance in section 936, since the possessions corporation is generally entitled to a return only on manufacturing intangibles when it elects the cost sharing method under section 936(h).

Problems with intangibles underlie the amendment made to section 482 by the 1986 Act, as discussed in Part II. The intangibles section of the section 482 regulations should be modified to provide a specific analysis to be used when comparable uncontrolled transactions do not exist. The method should provide for appropriate allocations of income when multiple intangibles (such as marketing and manufacturing intangibles) are present in the same set of transactions. Part III is devoted to the subject of an appropriate methodology for allocating intangible income.

C. Application of Pricing Methods for Transfers of Tangible Property

When considering an adjustment with respect to the transfer price for tangible property, the regulations require both the taxpayer and the Service to follow a priority of pricing methods: first, the comparable uncontrolled price method must be attempted, then resale price method, then cost plus method, and, if none of them are applicable, some other method or combination of the prior methods.[60] Five prior studies using data available from both the Service and multinational corporations have examined the frequency with which each of these methods has been used. The results of these surveys are set forth below:

PERCENTAGE OF CASES IN WHICH VARIOUS SECTION 482 PRICING METHODS WERE USED

Report	CUP	Resale	Cost plus	Other
1973 Treas. Report [61]	20	11	27	40
Conference Bd Report [62]	28	19	23	30
Burns Report [63]	24	15	30	32
GAO [64]	15	14	29	47
1984 IRS Survey [65]	41	7	7	45
1987 IRS Survey (overall)	32	6	24	38

PERCENTAGE OF CASES IN WHICH VARIOUS SECTION 482 PRICING METHODS WERE USED—Continued

Report	CUP	Resale	Cost plus	Other
1987 IRS Survey [66] (tangible property)	31	18	37	14

Recent Service experience has been that the starting point for analyzing any pricing issue begins with the search for a comparable uncontrolled transaction. For a significant number of cases, these transactions can be found, although frequently not without a great deal of ingenuity and persistance by the examining agent or other Service personnel.[67] If comparable uncontrolled prices do not exist, IEs or Service economists will seek to locate comparable transactions based on functions performed and risks borne by the entity at issue. This type of an issue lends itself to resale price or cost plus, depending upon the circumstances. If neither comparable uncontrolled prices nor comparable uncontrolled transactions can be found, a variety of fourth methods may be used.

One justification given for the current priority of methods in the regulations is that both the taxpayer and the Service are thus directed to a common frame of analysis to avoid the problem of the Service using one method while the taxpayer uses another method. However, as currently structured, the

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[54] *See, e.g.*, Treas. Reg. § 1.482-2(e)(2)(iii) and example (2), 1.482-2(e)(3)(iii) example (2), and 1.482-[illegible].

[55] *Eli Lilly & Co. v. Comm'r*, 84 T.C. 996 (1985), *rev'd in part, aff'd in part* and *remanded*, Nos. 88-2911 and 88-3116 (7th Cir. August 31, 1988) (*Lilly*). *See* the discussion of *Lilly*, *infra*, Chapters 4 and 5.

[56] In certain circumstances, no separate allocation is required for services performed in connection with the transfer of intangible property. Treas. Reg. § 1.482-2(f)(4). Services are rendered in connection with the transfer of intangible property if they are merely ancillary or subsidiary to the transfer of the intangible property. The regulations give as an example of ancillary services start-up help given to a related entity in order for it to integrate a trade secret manufacturing process into its operations. The regulations then state that, should the transferor continue to render services after the process has been integrated into the manufacturing process, a separate allocation for services would be required under the regulations. The experience of the IEs is that the current regulations fail to give them specific guidance on how to determine when services rendered in connection with the transfer of an intangible require a separate allocation.

Appendix D discusses results of a preliminary survey of data available at the SEC. This data has the potential to determine when unrelated parties would extract a specific charge for services rendered in connection with the transfer of an intangible.

[57] In *Lilly*, *supra* n. 57, the Tax Court ultimately determined the parent company's marketing return based upon using its "best judgment." *Lilly*, 84 T.C. at 1189; *See also G. D. Searle and Co. v. Comm'r (Searle)*, 88 T.C. 252, 378 (1987).

[58] Treas. Reg. § 1.482-2(e)(1) (ii) and (iii).

[61] Treasury Department News Release, *Summary Study of International Cases Involving Section 482 of the Internal Revenue Code* (Jan. 6, 1973), reprinted in 1973 *Standard Federal Tax Report* (CCH) par. 6419.

[62] *Tax Allocations and International Business: Corporate Experience with Section 482 of the Internal Revenue Code*, Conference Board Report No. 555 (1972).

[63] Burns, *How IRS Applies the Intercompany Pricing Rules of Section 482: A Corporate Survey*, 54 J. Tax'n 308 (1980).

[64] General Accounting Office, Report by the Comptroller General to the Chairman, House Committee on Ways and Means, *IRS Could Better Protect U.S. Tax Interests in Determining the Income of Multinational Corporations* (1981) (hereinafter GAO, *IRS Could Better Protect U.S. Tax Interests*).

[65] IRS Publication No. 1243, *IRS Examination Data Reveal an Effective Administration of Section 482 Regulations* (1984).

[66] As stated earlier, the percentages from the 1987 survey do not represent a scientifically valid random sample. They are based upon responses to a questionnaire sent to selected groups of International Examiners who responded with respect to a small number of cases selected by them. Compared to the 1984 survey undertaken by the Assistant Commissioner (Examination), however, they suggest one significant trend: A substantial increase in the use of the cost plus method with a corresponding decrease in cases classified as either "comparable uncontrolled price" or "other." Such a trend would probably be due to an emphasis during the last several years on examining cases that involved manufacturing activities in tax haven jurisdictions. *See* GAO, *IRS Audit Coverage*, *supra* n. 38, at 28-29.

[67] Appendix B, *infra*, at Questions 63-64.

regulations literally require that both the taxpayer and the agent attempt to apply the methods in priority order. Because the resale price method generally applies only to distributors of goods, while the cost plus method applies generally to manufacturers, there does not seem to be any reason in theory why the agent or taxpayer should attempt to apply the resale price method before applying the cost plus method.[68] In practice, taxpayers and agents rely upon comparable uncontrolled prices or transactions, when they exist. When they do not exist, agents or taxpayers use whatever method they believe best reflects the economic realities of the transaction at issue. While there are valid theoretical reasons for retaining the priority of the comparable uncontrolled price method,[69] there do not seem to be any valid reasons for preferring resale price over cost plus or another method, or for preferring resale price or cost plus over some other economically sound method. Rather, the method used should generally be the one for which the best data is available and for which the fewest number of adjustments are required.

One technique that is missing from the section 482 regulations that in practice is used extensively by the international examiners is functional analysis. This analysis focuses on the economic functions performed by the affiliated parties to a transaction and the economic risks borne by each of the parties.[70] This technique is used by IEs and Service economists not as a method standing alone but rather as a means of verifying that prices or transactions are truly comparable to the situation under examination or as a basis for a fourth method.

As discussed in section B, intangibles are often transferred by incorporation into tangible property that is sold, and setting a transfer price for a product in such a case involves the same difficult exercise as setting a royalty rate for a licensed intangible. The difficulty of valuing intangibles is, therefore, as much a problem in the context of sales of property as in the case of licenses or other transfers of intangibles.

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[68] In *Lilly*, *supra* n. 57, the IRS notice of deficiency was based upon the cost plus method while the taxpayer initially attempted to rely upon the resale price method. The Tax Court rejected application of the cost plus method and, also, the taxpayer's analysis under both the resale price and "fourth" methods. It ultimately adopted a profit split method for the first two years at issue and a CUP method for the final year. *See* discussion of *Lilly infra* Chapters 4 and 5.

[69] *See* discussion of this issue *infra* Chapter 11.

[70] I.R.M. § 4233 (523.2). The Manual states that almost all cases can be analyzed using a functional analysis.

D. Use of Specialists and Counsel

The use of counsel and economic specialists at the examination level would ameliorate some of the problems, discussed above, of obtaining information and dealing with difficult intangible pricing cases. Legal assistance during examination is needed to assist in obtaining relevant information and in determining whether an appropriate legal basis exists for a proposed adjustment. Economists are needed in many cases to perform a functional analysis and to help evaluate the proper returns to be accorded to the related parties. Other experts may be required to analyze practices within the taxpayer's industry. The goal of the attorney, the economist, and other specialists should be to assist the IE in obtaining all relevant facts and to determine whether an adjustment may be sustained on appropriate legal and economic theories if the matter ever results in litigation.

For section 482 cases developed 10 years ago, it would have been normal for the IE to develop the case without the assistance of an economist or without the assistance of a Chief Counsel attorney. Authority and expertise in international tax matters were then split between the National Office Examination function and the Director, Foreign Operations District. Legal expertise in international tax matters was diffused among at least four national office divisions and was limited in field offices.

In May 1986 the Office of the Assistant Commissioner (International) was created to provide an emphasis upon, and a focal point for, development of international issues at the examination stage. The Office of Associate Chief Counsel (International) was created in March 1986 to provide a similar focal point for legal issues. In addition, a network of International Special Trial Attorneys and senior District Counsel attorneys has been created to litigate significant international tax cases, including section 482 cases. More importantly, these field attorneys and their National Office counterparts have been encouraged to assist the field in developing these cases, and IEs are encouraged to use their assistance.[71]

Within the last several years, the Service has substantially increased the number of economists available to assist IEs and has decentralized these activities from the national office to three key District offices: Baltimore, New York, and Chicago. Use of economists in major section 482 examinations that do not involve safe harbors is now required.[72]

One criticism that has been made concerning the more extensive use of counsel and experts at the examination stage is that the time necessary to complete an examination (already lengthy) will be further extended. Service experience has been, however, that increased use of specialists has not unduly delayed disposition of the examination in the vast majority of the cases.[73] Furthermore, the early use of specialists in some cases will prevent erroneous adjustments from ever being made, thus saving both taxpayers and the government substantial sums of time and money.

E. Conclusions and Recommendations

Access to Pricing Information

1. The failure of the taxpayer to document the methodology used to establish transfer prices under the section 482 regulations and delays or failure by taxpayers in supplying information to IEs are significant problems that hamper the IRS in its administration of section 482.

2. The section 482 regulations are deficient in not requiring taxpayers to document intercompany pricing policies and to supply information upon examination. The section 482 regulations should be amended to require taxpayers to document the methodology used to establish transfer prices prior to filing the tax return and to provide such documentation during examination within a reasonable time after request. The documentation should include references to any comparable prices or transactions, rates of return, profit splits or other information or analysis used by the taxpayer in arriving at the transfer price.

3. Forms 5471 and 5472 should be revised to include: (a) Summary information describing how intercompany prices were determined; and (b) an attestation that the documentation described in paragraph 2, *supra*, was available at the time of preparation of the return and will be made available at the start of an IRS examination.

4. IEs experiencing difficulties in obtaining transfer pricing information have failed to deal with noncompliant taxpayers through the issuance of section 982 requests and administrative summonses. The Service should more aggressively pursue noncompliant

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[71] I.R.M. § 4233 (524).

[72] I.R.M. § 42 (12)3.

[73] Appendix B, *infra*, at Question 32.

taxpayers that delay, without justification, in producing relevant pricing information by using the section 982 and administrative summons procedures.

5. The assertion of appropriate penalties is a necessary but often ignored element of transfer pricing compliance. In conjunction with the Service's broad-based review of penalties, the Government should determine whether existing penalties are sufficient to: (a) Compel taxpayers to provide thorough and accurate information as set forth in paragraphs 2 and 3 *supra*; and (b) deter taxpayers from setting overly aggressive and unjustified transfer prices that are inconsistent with the commensurate with income standard. If it is felt that existing penalties are inadequate, legislative solutions should be pursued. The Service and Treasury encourage comments in this area, including the type of penalty, such as a transaction based penalty, that might be proposed.

Intangibles

6. Establishing appropriate transfer prices for intangibles has been a significant problem because of the inherent difficulty of valuing intangibles—particularly when intangibles are transferred simultaneously with the transfer of tangible property or the provision of services.

7. The intangibles section of the section 482 regulations should be modified to provide a specific method of analysis to be used when comparable uncontrolled transactions do not exist. This method should provide for appropriate allocation when multiple intangibles (such as marketing and manufacturing intangibles) are present in the same set of transactions. Part III is devoted to the subject of an appropriate methodology for allocating intangible income.

Application of Pricing Method for Transfers of Tangible Property

8. The current priority for the comparable uncontrolled price method should be retained, since such prices generally provide the best evidence of what unrelated parties would do in an arm's length transaction. There does not appear to be any reason to retain the current priority of the resale price method over the cost plus method, or for preferring resale price or cost plus over some other economically sound method. Rather, the method used should generally be the one for which the best data is available and for which the fewest number of adjustments are required.

9. Since intangibles are often incorporated into tangible property that is sold, the difficulty of valuing intangibles is as much of a problem in many transfers of tangible property as in the context of licenses or other transfers of intangible property.

Use of Specialists and Counsel

10. The use of counsel and economic specialists at the examination level would ameliorate the problems of obtaining information and dealing with the difficult intangible pricing cases. Chief Counsel attorneys familiar with transfer pricing issues should be involved in significant cases at an early stage to make sure that relevant information necessary for the examination is being obtained and that a technical basis for a potential adjustment exists. An economist needs to be involved at an early stage to perform a functional analysis and to evaluate the proper returns to be accorded to the related parties. The goal of the attorney, the economist, and other specialists should be to assist the IE in obtaining all relevant facts and to determine whether an adjustment may be sustained on appropriate legal and economic theories if the matter ever results in litigation.

Chapter 4

The Search for Comparables

A. Introduction

As explained in Chapter 2, the section 482 regulations rely heavily on finding comparable goods, services, and intangibles to determine whether an arm's length price has been used. Where such comparables exist—where arm's length transactions bearing a reasonable economic resemblance to those being examined have occurred in the free market—application of the regulations is relatively straightforward. Where no comparables can be found, or where similar items are only distantly comparable, the regulations leave the Service, the taxpayers, and the courts with little guidance.

This chapter examines several recent cases decided under section 482 to assess the use of comparables by the parties and the courts, whether in the context of either sales of tangible property, the provision of services, or licenses or other transfers of intangible property. These cases show that comparables are often difficult to locate, and may be misused or misinterpreted even if they are found. In most of the cases discussed in this chapter, no comparables were available. The courts' resolution of the issues in the absence of comparables is discussed in Chapter 5.

B. Specific Comparables

In recent years, transfer pricing cases involving highly profitable products—which usually are associated with unique intangibles—have severely tested the comparables approach of the present section 482 regulations. This problem is illustrated by the *Lilly* [77] case. In *Lilly*, the U.S. parent corporation, Lilly U.S., transferred highly profitable manufacturing intangibles, including patents and know-how (primarily relating to the drugs Darvon and Darvon-N), to its newly-formed U.S. subsidiary in Puerto Rico, Lilly P.R., in a tax-free exchange for Lilly P.R. stock under section 351. The Service took the position that the income associated with those intangibles should be allocated to Lilly U.S., notwithstanding their tax-free transfer to Lilly P.R.

In preparation for trial, the government's experts surveyed the most successful U.S. pharmaceutical products. They discovered that the patents to such products were rarely transferred, except to a related party. The government argued that unrelated parties would not have transferred the Darvon intangibles and that, accordingly, there were no comparable marketplace transactions. While the Tax Court did not fully subscribe to the government's theory of the case, it nevertheless was not able to find appropriate comparables for the patented products in question for the first 2 years at issue, 1971 and 1972.[78] The court proceeded to make its own allocations, basing its adjustments on the proposition that a distortion of income was created by the transfer of intangibles from Lilly U.S. to Lilly P.R. in exchange for Lilly P.R. stock. In the Tax Court's view, the distortion arose because it felt that Lilly would have demanded a stream of income from the transferred Darvon intangibles in order to fund a proportionate part of its ongoing general research and development efforts. The Tax Court also used a profit split approach to increase the return of Lilly U.S. on marketing expenditures and intangibles.[79] On appeal, the Seventh Circuit rejected the Tax Court's allocation to support research and development, but affirmed its profit split methodology.

[77] *Supra* n. 57.

[78] For 1973, the Tax Court was able to use a comparable uncontrolled price approach because the Darvon patent had expired. However, numerous adjustments were made to reach a transfer price.

[79] See discussion of the Tax Court's profit split analysis *infra* Chapter 5.

In *Searle*,[80] the petitioner transferred the patents (or licenses) on its most successful pharmaceutical products to its U.S. subsidiary, SCO, operating in Puerto Rico. These intangibles represented products accounting for approximately 80 percent of the petitioner's profits and sales. As in *Lilly*, the government argued that a section 482 allocation from SCO to the petitioner was appropriate.

The petitioner, relying on § 1.482-2(d)(2)(ii) of the regulations, argued that, since it had originally acquired two of the transferred intangibles by licensing agreements carrying royalties of ten percent and eight percent of net sales, an unrelated party would not have paid more than a royalty in this range for the intangible property transferred to SCO. The court, however, found that the original licenses were not comparable; the products were licensed from European pharmaceutical firms prior to their approval by the FDA, and thus could not have been marketed in the United States at the time of the license. The court concluded that the intangibles to SCO were significantly more valuable than the "mere licensing agreements" upon which the taxpayer relied.[81]

Ultimately, the court found, despite the voluminous record, that "there is little hard evidence from which we can determine what consideration petitioner would have demanded had the transactions under scrutiny here taken place between unrelated parties dealing at arm's length." [82]

Problems with finding or applying comparables for valuable intangibles have not been limited to pharmaceutical companies. In *Hospital Corporation of America*,[83] a U.S. hospital management company, HCA, entered into negotiations to recruit professional and non-professional staff to manage a state-of-the-art hospital in Saudi Arabia. It formed a Cayman Islands corporation, LTD, ostensibly to negotiate and perform the management contract. HCA performed services for LTD and made available at little cost all of its know-how, experience, management systems knowledge, and other intangibles. The parties offered no evidence of comparable transactions, and the court identified none. Nevertheless, the court allocated 25% of the income to LTD as compensation for its management service.

The Tax Court was also unable to find appropriate comparables in *Ciba-Geigy Corp. v. Comm'r.*,[84] where the Service sought to reduce royalties paid by a U.S. subsidiary to its foreign parent for the rights to manufacture and sell a herbicide. Unlike the approach taken by the courts in *Lilly* for 1973, where multiple adjustments were made to a third party transaction in order to determine a comparable price, the court in *Ciba-Geigy* rejected as comparables licenses of the same product to unrelated parties because of differences in geographic markets, years of the license, and differences in required purchases of raw materials.[85] Instead the court relied upon testimony from an unrelated party about what his company would have been willing to pay in the form of a royalty for the same rights.

The comparability of third party resale price margins was at issue in *E.I. DuPont de Nemours & Co. v. United States* [*DuPont*].[86] In that case, the U.S. parent company incorporated DuPont International S.A., DISA, in Switzerland to serve as a super distributor of DuPont products in Europe. Internal DuPont memos indicated that DuPont planned to sell its goods to DISA at prices below fair market value, so that on resale most of the profits would be reported in a foreign country having much lower tax rates than the United States.[87] Although for many products DISA performed no special services for either DuPont or its customers, DuPont structured its pricing to DISA anticipating that the latter would capture 75 percent of the total profits involved, although DISA actually realized less than this percentage. The Service reallocated much of this profit back to the parent.

The government introduced expert testimony at trial to the effect that, after the allocations, DISA's ratio of gross income to total operating costs was greater than that achieved by 32 specific firms that were functionally similar to DISA. Additionally, it was shown that, after the allocations, DISA's return on capital was greater than that of 98 percent of 1133 companies surveyed.[88]

The taxpayer, on the other hand, relied solely upon the resale price method. It contended that similar companies selling similar products experienced average markups of between 19.5 and 36 percent, comparing favorably with DISA's 28 percent gross profit margin. In rejecting the taxpayer's position the court made the following comments:

> Taxpayer tells us that a group of 21 distributors, whose general functions were similar to DISA's, provides the proper base of comparison. Beyond the most general showing that this group, like DISA, distributed manufactured goods, there is nothing in the record showing the degree of similarity called for by the regulation. No data exist to establish similarity of products (with associated marketing costs), comparability of functions, or parallel geographic (and economic) market conditions. Rather, the record suggests significant differences. Defendant has introduced evidence that the six companies plaintiff identifies most closely with DISA all had average selling costs much higher than DISA. Because we agree with the trial judge and defendant's expert that, in general, what a business spends to provide services is a reasonable indication of the magnitude of those services, and because plaintiff has not rebutted that normal presumption in this case, we cannot view these six companies as having made resales similar to DISA's. They may have made gross profits comparable to DISA's but their selling costs, reflecting the greater scale of their services or efforts, were much higher in each instance. Moreover, the record shows that these companies dealt with quite different products (electronic and photographic equipment) and functioned in different markets (primarily the United States).[89]

Another case that raised questions of comparability is *United States Steel v. Comm'r.*[90] There, the Service contended that Navios, the petitioner's wholly owned shipping company, was charging the petitioner more than an arm's length rate for shipping ore from Venezuela to United States ports. The government relied on evidence that, had U.S. Steel contracted with other shippers for the same tonnage per year, it would have paid considerably lower rates. The petitioner countered that, because Navios charged unrelated steel producers the same rate as the petitioner, a perfect comparable was available from which to determine an arm's length price. The government contended that the unrelated third party transactions were not comparable because they were few in number, they were not based on a continuing long-term relationship, and the volume shipped was much smaller than the ten million tons annually shipped by Navios for U.S. Steel.

[80] *Supra* n. 50.

[81] *Id.*, at 378.

[82] *Id.*, at 378.

[83] *Supra* n. 17.

[84] 86 T.C. 172 (1986).

[85] *Id.* at 195-96.

[86] 608 F.2d 445 (Ct. Cl. 1979).

[87] The facts in *DuPont* are similar to the abuses relating to the use of foreign base sales companies to defer the taxation of income in the United States that Congress sought to end through the Subpart F provisions enacted in the Revenue Act of 1962. H.R. Rep. No. 1447, 87th Cong., 2d Sess. 28 (1962).

[88] See discussion *infra* Chapter 5 regarding the income to costs ratio and return on capital methods used in *DuPont*.

[89] *Supra* n. 88.

[90] 617 F.2d 942 (3d Cir. 1980), *rev'g* T.C. Memo. 1977-140.

The Tax Court did not decide the case on the basis of comparables. Instead, the court focused on constructed freight charges and on the profit that the tax haven subsidiary was projected by the taxpayer to earn on the activities it undertook.

On appeal, the Second Circuit held that, if appropriate comparables were available to support the petitioner's prices, no section 482 allocation would be sustained despite evidence tending to show that the activities resulted in a shifting of tax liability among controlled taxpayers.[91] The appellate court accepted the third party transactions as comparables and reversed the Tax Court on this issue, notwithstanding the substantial economic differences from the related party transactions.

C. Industry Statistics as Comparables

The Service and taxpayers have relied on industry statistics in several cases to justify or defend against section 482 allocations. Industry statistics have generally been offered as evidence of comparable uncontrolled prices or for markup percentages under the resale price or cost plus methods. The courts, however, have been reluctant to accept such statistics in the absence of a specific showing of comparability.

In the *DuPont* case, discussed *supra*, the taxpayer relied on gross profit margins of drug and chemical wholesalers contained in the Internal Revenue Service's Source Book of Statistics of Income for 1960 to support a gross profit margin of 28 percent. The gross profit margins of these companies averaged 21 percent and ranged from 9 to 33 percent. The court noted that in applying the resale price method it was necessary to find substantially comparable uncontrolled resellers. Because there was no indication from the Source Book that the necessary degree of comparability was present, the court rejected the taxpayer's industry statistics.

The government relied upon the Source Book of Statistics of Income in *PPG Industries Inc. v. Comm'r*,[92] to allocate a substantial portion of the income of a Swiss corporation to its U.S. parent. Rejecting this approach, the court found the Source Book evidence wanting because it could not be determined whether comparable transactions were involved.

In *Ross Glove Co. v. Comm'r*,[93] the Service allocated income from a foreign glove manufacturer to its U.S. parent. The government relied upon expert testimony that the glove manufacturing industry was not a high profit industry, and that a typical glove manufacturer rarely had a year in which gross profits equalled three percent of sales. The court rejected this testimony because it did not relate to the rate of return earned by Philippine glove manufacturers, such as the taxpayer's subsidiary, whose profits generally were higher than those of U.S. manufacturers. Industry statistics were also rejected as unreliable in *Edwards v. Comm'r*[94] and in *Nissho Iwai American Corp. v. Comm'r*.[95]

D. The Regulations in the Absence of Comparables

The only detailed transfer pricing methods in the regulations rely in one way or another on comparables. The cases discussed in this chapter, in which comparables were generally unavailable, suggest that the regulations fail to resolve the most significant and potentially abusive fact patterns. This failure was noted both in the Court of Claims opinion and the trial judge's opinion in *DuPont*. Trial Judge Willi, after finding for the government, suggested that the current regulatory structure was wholly inadequate:

> At least where the sale of tangible property is involved, the Commissioner's regulations seem to accommodate nothing short of a "pricing method" to determine the question of an arm's length price. Treas. Reg. § 1.482-2(3)(e)(1)(iii). Moreover, as plaintiff has correctly noted, the regulation approach seems to rule out net profit as a relevant consideration in the determination of an arm's length price, this despite Congress' encouragement to the contrary, as expressed in H.R. Rep. No. 2508, 87th Cong., 2d Sess. 18–19 (1962) (Conference Report).

As evidenced by the magnitude of the record compiled in this case, the resolution by trial of a reallocation controversy under section 482 can be a very burdensome, time-consuming and obviously expensive process—especially if the stakes are high. A more manageable and expeditious means of resolution should be found.[96]

In difficult cases for which comparable products and transactions do not exist, the parties and the courts have been forced to devise ad hoc methods of their own—so-called "fourth methods"—to determine appropriate allocations of income. The next chapter describes the methods that the courts have used to resolve these issues.

E. Conclusion

The failure of the regulations to provide guidance in the absence of comparable products and transactions has created problems in cases involving sales of tangible property, the provision of services, and licenses or other transfers of intangible property. Taxpayers and the courts have been forced to devise ad hoc "fourth methods" to resolve such cases.

Chapter 5

Fourth Method Analysis Under Section 482

A. Introduction

Although the "other method" provision of § 1.482–2(e)(1)(iii) (commonly known as the "fourth method") by its terms applies only to tangible property transfer pricing cases, the term "fourth method" has been used to describe any case resolved by using a method not specifically described in the regulations, typically when comparable uncontrolled transactions were unavailable. This chapter discusses the use of the "fourth method" approach in the decided cases, including cases involving the sale of tangible property, the licensing or other transfer of intangible property, and the provision of services.

B. Profit Splits

The most frequent alternative method used by the courts in the absence of comparables is the profit split approach. Under this approach, the court determines the total profits allocable to the transactions at issue and simply divides them between the related parties in some ratio deemed appropriate by the court. The validity of the method, of course, rests on the accurate determination of total profits and the reasonableness of the factors used to set the profit split ratio.

An illustration of the profit split method is found in *Lilly*.[97] After rejecting the resale price and cost plus pricing methods advocated by the parties because of the absence of comparables, the Tax Court attempted to find an appropriate fourth method under § 1.482–2(e)(1)(iii) of the regulations. The court cited a number of studies and surveys indicating that fourth methods were used by the Service approximately one-third of the time, and determined that a profit split approach was permissible.[98]

[91] 617 F.2d at 951.
[92] 55 T.C. 928 (1970).
[93] 60 T.C. 569 (1973).
[94] 67 T.C. 224 (1976).
[95] T.C. Memo. 1986–578.
[96] 78–1 USTC para. 9374, at 83,910 (Ct. Cl. Trial Div. 1978).
[97] *Supra* n. 37. See discussion of *Lilly supra* Chapter 4.
[98] 84 T.C. at 1148–49. The results of these surveys and studies are referenced in Chapter 3, *supra*.

In adopting the profit split approach, the Tax Court relied heavily on *PPG Industries Inc.*[99] The court there, in considering the allocation of income between PPG and its foreign subsidiary, applied a profit split analysis (which produced a 55–45 profit split in favor of PPG) to buttress the court's primary analysis using the comparable uncontrolled price method.

The Tax Court in *Lilly* also found support in *Lufkin Foundry & Machine Co. v. Comm'r*,[100] in which it had used a profit split method. On appeal, the Fifth Circuit rejected the Tax Court's profit split approach because the court had not attempted to apply the three specific pricing methods in the regulations and because, by itself, a profit split approach was not sufficient evidence of what parties would have done at arm's length. However, the Court in Lilly distinguished the Fifth Circuit's reversal of the Tax Court's holding on the following grounds:

> The three preferred pricing methods detailed in the regulations are clearly inapplicable due to a lack of comparable or similar uncontrolled transactions. Petitioner's evidence amply demonstrates that some fourth method not only is more appropriate, but is inescapable.[101]

After providing for location savings,[102] manufacturing profit, marketing profit, and a charge for ongoing general research and development performed by the parent, the Tax Court in *Lilly* arrived at undivided profits of $25,489,000 for 1971 and $19,277,000 for 1972.[103] It considered these amounts to be the profits from intangibles, consisting of manufacturing intangibles belonging to Lilly P.R. and marketing intangibles belonging to Lilly U.S. The court rejected the taxpayer's argument that its marketing intangibles were of little value and assigned 45 percent of the intangible income to Lilly U.S. as a marketing profit and 55 percent of the intangible income to Lilly P.R. as a manufacturing profit. The court did not explain how it arrived at the 45–55 split, other than stating that it used its best judgment and that it bore heavily against the taxpayer because it failed to prove the arm's length prices for Lilly P.R.'s products.[104] On appeal, the Seventh Circuit affirmed the Tax Court's profit split.[105]

The *Searle*[106] case was tried by the Tax Court shortly after *Lilly*. The primary facts that distinguished *Searle* from *Lilly* were that Searle transferred nearly all of its highly profitable manufacturing intangibles to its Puerto Rican subsidiary and that Searle did not purchase the products produced in Puerto Rico, but instead marketed them in the United States as an agent for its subsidiary. While the court could not technically apply a fourth method under the regulations governing sales of tangible property (since there were no intercompany sales), the court nevertheless imposed a profit split similar in result to the profit split imposed in *Lilly*.

In *Searle*, the Tax Court did not specifically determine the revenue that each of the parties should earn from manufacturing and marketing or which party should bear the expenses of research and development and administration. While suggesting that additional royalties were due Searle for the intangibles provided to SCO, the court stated that "whether our allocation herein is considered an additional payment for services or for intangibles that were not transferred or as a royalty payment for intangibles themselves, the result is the same."[107]

A profit split approach is also contained in section 936(h) of the Code, added by the Tax Equity and Fiscal Responsibility Act of 1982, effective for years beginning after December 31, 1982. In general, section 936(h) authorizes a profit split election under which the combined taxable income of the possessions affiliate and the U.S. affiliate, with respect to products produced in whole or in part in the possession, will be allocated 50 percent to the possessions affiliate and 50 percent to the U.S. affiliate. If a profit split election is made, section 482 is not available for any further allocation.

The section 936(h) 50–50 profit split does not, however, provide any logical support for 50–50 profit splits in cases not falling within the narrow scope of the section. Thus, even though the Tax Court and Congress have moved in the direction of 50–50 profit splits in some limited cases, it would appear that profit splits should only be used in the absence of appropriate comparables, and then only after a careful analysis of what functions each party has performed, what property they have employed, and what risks they have undertaken. When one affiliate's role in the transactions has been extremely limited, a 50–50 profit split may not be at all appropriate.

Such a lopsided division of relevant factors occurred in *Hospital Corporation of America*.[108] The court's opinion recites in great detail the numerous services HCA provided for LTD in negotiating the management contract and in staffing and operating the hospital, as well as the numerous intangibles that HCA provided, such as its substantial experience, know-how, and management systems. Under these circumstances it would be extremely difficult to estimate accurately the arm's length value for the large volume of services and intangibles made available. It was certainly easier for the court to look at the relative value of the functions that each party performed, so that a profit split ratio could be developed. The court in *HCA* did just that, adopting a 75–25 (75 for HCA and 25 for LTD) split of the profits previously reported by LTD.[109] Unfortunately, there is no discernible rationale contained in the opinion for such a split.

Hospital Corporation of America, like *Searle*, was not a transfer pricing case and therefore was not a fourth method case under the tangibles pricing regulation. However, both of these cases illustrate that, when highly profitable, unique intangibles are at issue, traditional methods of valuation will often fail because comparables are unavailable. In these circumstances a profit split approach appears reasonable as long as it is based on a careful functional analysis to determine each party's economic contribution to the combined profit.

C. Rate of Return; Income to Expense

Although profit splits are being used more frequently, the courts have used other methods as well to justify transfer pricing adjustments. Two of these methods are illustrated by the *DuPont*[110] case.

In defending the Service's section 482 allocations, the government used two different methods. The first method was computing the ratio of gross income to total operating costs (known as the "Berry ratio" because it was first used by the Government's expert witness, Dr. Charles Berry). DISA's Berry ratio

[99] *Supra* n. 92.
[100] T.C. Memo. 1971–101, *rev'd*, 466 F.2d 805 (5th Cir. 1972).
[101] 84 T.C. at 1150–51.
[102] "Location savings" were specifically authorized for certain Puerto Rican affiliates by Rev. Proc. 63–10, 1963–1 C.B. 490, 494. Location savings do not otherwise automatically accrue to an affiliate, but under the arm's length standard of section 482 are distributed as the marketplace would divide them.
[103] 84 T.C. at 1168, n. 102.
[104] 84 T.C. at 1167.
[105] *See* discussion *supra* Chapter 4.
[106] *Supra* n. 58. *See* discussion of *Searle supra* Chapter 4.
[107] 88 T.C. at 376.
[108] *Supra* n. 17. *See* discussion *supra* Chapter 4.
[109] 81 T.C. at 601.
[110] *Supra* n. 88. *See* discussion *supra* Chapter 4.

before the allocation was 281.5 percent of operating expenses for 1959 and 397.1 percent for 1960. After the section 482 allocation, DISA's Berry ratio was 108.6 for 1959 and 179.3 for 1960. A survey of six management firms, five advertising firms, and 21 distributors (firms which were generally functionally similar to DISA) revealed average Berry ratios ranging from 108.3 to 129.3. Thus, DISA's combined Berry ratio for 1959 and 1960 before the allocation was about three times higher than the average for the other firms. As noted by the court, in over a hundred years of those companies' experience, none of them had ever achieved the ratios claimed by DISA. Even after the allocation, its Berry ratio was somewhat higher than that of the comparable firms.[111]

The second approach, developed by Dr. Irving Plotkin, was to compare DISA's rate of return on capital to that of 1133 companies that did not necessarily have functional similarities to DISA, but instead reflected a comprehensive selection from industry as a whole. Prior to the allocation, DISA had a rate of return of 450 percent in 1959 and 147.2 percent in 1960—rates higher than those of all 1133 other companies. Even after the allocation, DISA's rate of return exceeded that of 98 percent of the 1133 companies surveyed.[112] Based on this evidence the court sustained the Service's allocations.

While the Berry ratio and the rate of return analysis found in *DuPont* are interesting, it should be kept in mind that the court may have looked favorably on this evidence partly because it indicated that even after the allocation DISA earned greater profits than almost any other corporation, whether comparable or not. These methods were not used directly to make a section 482 adjustment, but rather to support the reasonableness of the Service's allocation.

Evidence relating to rates of return was also presented in *Lilly*.[113] No general research and development costs for new drugs were being charged by the parent to the subsidiary. The Tax Court determined that a substantial adjustment should be made to the income of the Puerto Rican subsidiary to reflect a proportional payment by the subsidiary of the general research and development expense of the parent.[114]

[111] *Id.* at 489.

[112] *Id.*

[113] 84 T.C. at 1157, 1161.

[114] The court relied upon testimony by the Service's accounting expert, Dr. James Wheeler, to show that, if the taxpayer had transferred the rest of its successful products to Puerto Rico under terms similar to its transfer of Darvon, the return would have been sufficient to enable it to continue funding its R&D program, which the court characterized as the "life blood" of a successful pharmaceutical company. 84 T.C. at 1160–1161. As noted previously in Chapter 4, *supra*, the Tax Court was reversed on this issue.

The difference between the rates of return to the two entities was not, however, due solely to the understating of the subsidiary's research and development expense (as determined by the court), but was also attributable to the presence of valuable intangibles that were not properly reflected in the transfer price. A rate of return analysis was used to identify what appeared to be excessive rates of return on assets, so that further inquiry could be made to determine if the returns were in fact excessive and, if so, why.

The rate of return analysis and other information contained in the report by Dr. Wheeler was as follows:[115]

	Percent		
	1971	1972	1973
Return on average employed assets:[116]			
Parent (consolidated return)	19.9	23.8	20.4
Puerto Rican subsidiary	136.4	142.6	100.7
Adjusted taxable income to net sales:[117]			
Parent (consolidated return)	18.8	20.4	24.7
Puerto Rican subsidiary	69.6	88.8	56.8
Operating expenses to sales:			
Parent (consolidated return)	41.5	39.8	38.9
Puerto Rican subsidiary	8.8	11.6	16.2

[115] These assets must also have been reported on Lilly's financial books of account; thus some intangible assets are not included. In a recent article, it was noted that Eli Lilly had a five year average return on shareholders equity of 23 percent (on an after-tax basis), citing a report in Forbes, Forbes, January 11, 1988, at 216. Compare this consolidated return on assets with the return in excess of 100 percent earned by the Puerto Rican subsidiary during the years 1971–1973.

[116] The reported taxable income for the subsidiary does not reflect the exclusion provided by section 931 of the Internal Revenue Code of 1954 and successor Internal Income.

Computations based on the record in *Searle*[118] and reflected in the companies' income tax returns (also part of the record) show a similar disproportion. By way of indirect comparison, in 1968 (the year before intangibles were transferred to Puerto Rico), Searle reported taxable income of approximately $46,700,000 on sales of approximately $81,800,000. In the years before the Tax Court, Searle's sales declined to approximately $36,200,000 in 1974 and $46,700,000 in 1975, resulting in losses of $6,800,000 in 1974 and $23,100,000 in 1975. During these years the Puerto Rican subsidiary had net sales and income of:

Year	Net sales	Net income
1974	$114,784,000	$74,581,000
1975	130,044,000	72,240,000

The rates of return on assets based on the company's tax return position were as follows:[119]

	Percent	
	1974	1975
Return on average employed assets:		
Parent (consolidated return)	[illegible]	[illegible]
Puerto Rico Subsidiary	119.2	119.0
Cost of goods sold to sales:		
Parent (consolidated return)	54.0	56.2
Puerto Rico subsidiary	13.3	13.6
Operating expenses to sales:		
Parent (consolidated return)	38.7	[illegible]
Puerto Rico subsidiary	35.4	38.0

It is important to note that the data regarding rate of return and other evidence presented by the government in *Lilly* and *Searle* did not necessarily provide the court or the parties with a definitive, quantitative transfer price or charge for intangibles. Rather, like Dr. Plotkin's testimony in *DuPont*, it was used to support the reasonableness of a resulting allocation or determination.[120] As discussed in Chapter 11, the Service and Treasury believe that, in cases where no comparables exist, a more refined rate of return analysis can be used to establish a transfer price and not merely to verify the reasonableness of an allocation.

D. Customs Values

An additional approach to transfer pricing that has occasionally been used in litigation is that of adopting the values set by the United States Customs Service. For example, in *Ross Glove Co.*,[121] the Tax Court accepted the taxpayer's use of the markup used by Customs in valuing gloves imported from the Philippines for purposes of applying the cost plus method. However, in *Brittingham v. Commissioner*,[122] the Tax Court made it clear that it would not bind taxpayers to their own declared Customs' valuations where it

[117] *Supra* n. 59.

[118] 84 T.C. at 1168–69, 1182–83. *See* Wheeler, *An Academic Look at Transfer Pricing in a Global Economy*, Tax Notes, July 4, 1988, at 91.

[119] Wheeler, *supra* n. 115, at 91.

[120] The Seventh Circuit in *Lilly*, *supra* n. 57, discounted this type of evidence because it called into question Lilly P.R.'s ownership of the intangibles at issue.

[121] *Supra* n. 59. *See* discussion *supra* Chapter 4.

[122] 88 T.C. 372 (1987), *aff'd*, 868 F.2d 1275 (5th Cir. 1979).

could be shown that these values were erroneous.[123]

E. Conclusions and Recommendations

1. Over the years the courts, and in particular the Tax Court, have used various fourth methods for determining appropriate arm's length prices for section 482 allocations. A profit split is appropriate in some cases to establish a transfer price on an arm's length basis because unrelated parties are concerned about the respective shares of potential profits when entering into a business arrangement.[124] The problem with the profit split approach taken by the courts, however, is not that the courts have focused on the wrong elements of the transaction, but that they generally have failed to adopt a consistent and predictable methodology.

2. The rate of return on assets and costs to income ratio methods used in *DuPont* provide some reasonable basis for allocating income and determining transfer prices in the absence of comparables. However, these methods have not yet been sufficiently developed by the courts to fill the gap in analysis left by the section 482 regulations when comparable uncontrolled transactions cannot be located. A profit split or other method should be developed to determine transfer prices in the absence of comparables, which is the subject of Part III of this study.

II. SECTION 482 AFTER THE 1986 TAX REFORM ACT

Part I of the study described the history of section 482, its administration by the Service, and its interpretation by the courts. The lack of specific guidance in the tangible property, intangible property, and services provisions of the section 482 regulations to resolve cases for which appropriate comparables do not exist—notably cases involving high profit intangibles—has caused significant problems for taxpayers, the Service, and courts alike.

The amendment made by the 1986 Act to section 482 is Congress' response to the problem described in Part I of determining transfer pricing for high profit intangibles. Specifically, section 482 was amended to provide that income from a transfer or license of intangible property shall be commensurate with the income attributable to the intangible. This Part II discusses the scope of the commensurate with income standard and the requirement for periodic adjustments. The compatibility of these changes with the international norm for transfer pricing—the arm's length principle—is also discussed. Finally, this part explores the role of safe harbors for avoiding adjustments under section 482.

Chapter 6

The Commensurate With Income Standard

A. Legislative History

The 1986 Act amended section 482 to require that payments to a related party with respect to a licensed or transferred intangible be "commensurate with the income"[125] attributable to the intangible. The provision applies to both manufacturing and marketing intangibles.[126] The legislative history clearly indicates Congressional concern that the arm's length standard as interpreted in case law has failed to allocate to U.S. related parties appropriate amounts of income derived from intangibles.[127] The amendment is a clarification of prior law. Accordingly, it should not be assumed that the Service will cease taking positions that it may have taken under prior law.

The primary difficulty addressed by the legislation was the selective transfer of high profit intangibles to tax havens. Because these intangibles are so often unique and are typically not licensed to unrelated parties, it is difficult, if not impossible, to find comparables from which an arm's length transfer price can be derived. When justifying the compensation paid for such intangibles, however, taxpayers often used comparisons with industry averages, looked solely at the purportedly limited facts known at the time of the transfer, or did not consider the potential profitability of the transferred intangible (as demonstrated by post-agreement results). Taxpayers relied on intangibles used in vastly different product and geographic markets, compared short-term and long-term contracts, and drew analogies to transfers where the parties performed entirely different functions in deriving income from the intangible.

Congress determined that the existing regime, which depends heavily upon the use of comparables and provides little clear guidance in the absence of comparables, was not in all cases achieving the statutory goal of reflecting the true taxable income of related parties. Congress therefore decided that a refocused approach was necessary in the absence of true comparables. The amount of income derived from a transferred intangible should be the starting point of a section 482 analysis and should be given primary weight.[127] Further, it is important to analyze the functions performed, and the economic costs and risks assumed by each party to the transaction, so that the allocation of income from the use of the intangible will be made in accordance with the relative economic contributions and risk taking of the parties.[128] The application of the functional analysis approach to the actual profit experience from the exploitation of the intangible allocates to the parties profits that are commensurate with intangible income. Looking at the income related to the intangible and splitting it according to relative economic contributions is consistent with what unrelated parties

[123] Largely in response to the *Brittingham* case, Congress enacted section 1059A in 1986. This section generally forces an importer to use a value for income tax purposes no greater than the value declared for customs purposes.

[124] *See* J. Baranson, *Technology and the Multinationals* at 84 (1978).

[125] (e) Treatment of Certain Royalty Payments.—

(1) In General.—Section 482 (relating to allocation of income and deductions among taxpayers) is amended by adding at the end thereof the following new sentence: "In the case of any transfer (or license) of intangible property (within the meaning of section 936(h)(3)(B)), the income with respect to such transfer or license shall be commensurate with the income attributable to the intangible."

(2) Technical Amendment.—Subparagraph (A) of section 367(d)(2) (relating to transfers of intangibles treated as transfer pursuant to sale for contingent payments) is amended by adding at the end thereof the following new sentence: "The amounts taken into account under clause (ii) shall be commensurate with the income attributable to the intangible."

Section 1231(e)(1), Tax Reform Act of 1986, 100 Stat. 2085 (1986).

[126] For this purpose, intangibles are broadly defined by reference to section 936(h)(3)(B) under which intangible property includes any:

(i) Patent, invention, formula, process, design, pattern, or know-how;

(ii) Copyright, literary, musical, or artistic composition;

(iii) Trademark, trade name, or brand name;

(iv) Franchise, license, or contract;

(v) Method, program, system, procedure, campaign, survey, study, forecast, estimate, customer list, or technical data; or

(vi) Any similar item,

which has substantial value independent of the services of any individual. *See also* Treas. Reg. § 1.482–2(d)(3)(ii) and Rev. Rule 64–56, 1964–1 C.B. 113, regarding the treatment of know-how as property in a section 351 transfer.

[127] 1985 House Rep., *supra* n. 47, at 420–427; 1986 Conf. Rep., *supra* n. 2, at II–637–638. Several commentators have suggested that the phrase "commensurate with income" derives from *Nestle Co., Inc. v. Comm'r*, T.C. Memo. 1963–14, where the Tax Court sanctioned a taxpayer's post-agreement increase in royalties paid by an affiliate for a very profitable intangible license. The opinion states that "[s]o long as the amount of the royalty paid was *commensurate with the value of the benefits received and was reasonable*, we would not be inclined to, nor do we think we would be justified to, conclude that the increased royalty was something other than what it purported to be." (Emphasis supplied). There is, however, nothing in the legislative record to indicate that this is the case or to indicate Congressional approval or disapproval of the result in *Nestle*.

[128] 1985 House Rep., *supra* n. 47, at 426.

[128] 1986 Conf. Rep., *supra* n. 2, at II–637.

do. The general goal of the commensurate with income standard is, therefore, to ensure that each party earns the income or return from the intangible that an unrelated party would earn in an arm's length transfer of the intangible.

In determining the income that forms the basis for application of the commensurate with income standard, what time frame should be used as a point of reference: The time of the transfer alone, or an annual or other periodic basis? The legislative history reflects Congressional concern that, by confining an analysis of an appropriate transfer price to the time a transfer was made, taxpayers could transfer a high profit potential intangible at an early stage and attempt to justify use of an inappropriate royalty rate by claiming that they did not know that the product would become successful.[129] Accordingly, for these reasons, Congress determined that the actual profit experience should be used in determining the appropriate compensation for the intangible and that periodic adjustments should be made to the compensation to reflect substantial changes in intangible income as well as changes in the economic activities performed and economic costs and risks borne by the related parties in exploiting the intangibles.[130] As discussed further below, this is consistent with what unrelated parties would do.

The legislative history indicates that the commensurate with income standard does not prescribe a specific, formulary approach for determining an intangible transfer price. For example, it does not automatically require that the transferor of the intangible receive all income attributable to the exploitation of the intangible. It does not prescribe (nor depend for its application upon) a specific legal form for transfers of intangible property. Thus, it applies to licenses of intangible property, sales of tangible property which incorporate valuable intangibles, and to transfers of intangibles through the provision of services. Nor does it mandate any specific treatment of the transferor or transferee. In particular, the provision does not mandate a "contract manufacturer" return for the licensee in all cases.[131]

B. Scope of Application

The scope of the commensurate with income standard is not discussed in the legislative history. Two proposals have been made for limiting the scope of the standard, one based on potential double taxation and one limiting the application of the provision to the types of cases that prompted the legislative change.

1. *Double taxation and related issues.* Double taxation can occur when two countries have different rules of allocation; have the same rules but interpret or apply them differently in actual operation; have the same rules and interpret and apply them in the same way, but do not allow correlative adjustments; or permit correlative adjustments in theory but do not remove procedural barriers (*e.g.*, statutes of limitation on refund claims).[132]

Taxpayers and others have argued that the commensurate with income standard will necessarily increase the incidence of double taxation, and that therefore Congressional intent should not be fully implemented. As described more fully in the next chapter, the correct application of the commensurate with income standard is premised soundly on arm's length principles. The Service and Treasury therefore do not believe that the commensurate with income principle will increase the incidence of double taxation.

Indeed, in fairly common cases where the commensurate with income standard will be applied—outbound transfers of intangibles from U.S. parents to foreign subsidiaries—the issue of double taxation does not arise. In these situations, the foreign tax credit provisions of U.S. domestic law (including the foreign sourcing and characterization of royalties relating to intangibles used overseas) will normally prevent the double taxation of earnings.[133] Furthermore, the outbound transfer patterns that were the subject of Congressional concern involve transfers to manufacturing affiliates located in tax havens, where there is no potential for double taxation. The question of whether the appropriate amount of income is attributed to foreign operations in these cases is, therefore, whether the correct amount of income is eligible for deferral from U.S. tax and whether it is properly characterized for foreign withholding tax purposes, rather than the issue of double taxation.

2. *Legislative impetus.* The commensurate with income standard was clearly intended to overcome problems encountered in applying the section 482 regulations to transfers of high profit potential intangibles, such as those at issue in *Lilly* and *Searle*. Because of its origin as a response to the problem of high profit intangibles, it has been suggested that the commensurate with income standard should be limited to transfers of high profit intangibles to affiliates in low tax jurisdictions.[134] The statute, however, applies to all related party transfers of intangibles, both inbound and outbound,[135] without quantitative or qualitative restrictions. Furthermore, the economic theory of arm's length dealing underlying the methods set forth in this study apply to all transfers of intangibles, regardless of the type of intangible or residence of the licensee. Consequently, the commensurate with income standard should apply to transfers of all related party intangibles, not just the high profit potential intangibles. The analysis set forth in Chapter 11 provides a framework for implementing the commensurate with income standard that can be applied to all intangible transfers, rather than merely to high profit potential intangibles.

C. Application of Commensurate With Income Standard to Normal Profit and High Profit Intangibles

1. *Normal profit intangibles.* In related party transfers of normal profit intangibles, there are likely to be comparable third party licenses. Such licenses can produce evidence of arm's length dealings. The arm's length bargaining of the unrelated parties over the terms of the arrangement reflects each party's judgment about what its share of the combined income (or appropriate expense reimbursement) ought to be. Hence, each has made a judgment that the remuneration it expects to receive is commensurate with the income attributable to its exploitation of the intangible.

Application of the commensurate with income standard to normal profit intangibles will ordinarily produce results consistent with those obtained under pre-1986 law in those cases where economically appropriate comparables were used. For example, the licensing

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[129] 1985 House Rep., *supra* n. 47, at 424.

[130] *Id.* at 425–426.

[131] *Id.* at 428.

[132] International Fiscal Association, *Cahiers de Droit Fiscal International* (Studies on International Fiscal Law), Vol. LVI. at I–6 (1971).

[133] So long as the foreign affiliate ultimately pays out its residual earnings as a dividend and exhausts its remedies for obtaining an adjustment in the foreign jurisdiction, the total amount of foreign income taxes on the U.S. export in the relevant limitation category (and, therefore, the amount of limitation under section 904) will be the same no matter what the amount of royalty, and the taxes paid by the foreign affiliate will be deemed paid by the U.S. parent. The operation of the foreign tax credit will thus prevent any double taxation on those earnings irrespective of the amount of the royalty payment for U.S. tax purposes.

[134] Wright & Clowery, *The Super-Royalty: A Suggested Regulatory Approach*, Tax Notes, July 27, 1987, at 425–426.

[135] 1986 Conf. Rep., *supra* n. 2, at II–637.

agreement for the formula to a particular brand of perfume is likely to have many "inexact" comparables.[136] If appropriate comparables exist, they can be examined to determine an arm's length, or commensurate with income, return. Thus, in many cases the appropriate income allocation under both the existing regulations and the commensurate with income standard will be the same, provided that internal and external standards of comparability are met.[137]

2. *High profit potential intangibles.* As described in Chapter 4, the difficulty in applying section 482 to high profit potential intangibles [138] is that unrelated party licenses of comparable intangibles almost never exist. Consequently, if the appropriate related party transfer price for a high profit potential intangible is expressed in terms of a royalty, the result may not bear any resemblance to a third party license for a normal intangible. That is, owing to the intangible's enormous profitability, an allocation under the commensurate with income standard, if made solely through a royalty rate adjustment, might be so large compared to normal product royalty rates that it does not look like an arm's length royalty. Therefore, one might argue that an extraordinarily high rate could never be an arm's length royalty merely because third party royalties are never that high.

From an economic perspective, however, an unprecedented or "super-royalty" rate may be required to appropriately reflect a relatively minor economic contribution by the transferee and achieve a proper allocation of income.[139] As discussed in Chapter 11, the commensurate with income standard, in requiring a "super-royalty" rate in order to achieve a proper allocation of income in such a case, does not mandate a rate in excess of arm's length rates. Nor does it permit taxpayers to set a "super-royalty" rate in excess of arm's length rates. For example, enactment of the commensurate with income standard would not justify royalty increases in excess of arm's length rates by U.S. affiliates of foreign parent corporations (or vice versa).

Rather than creating a new class of royalty arrangements, the enactment of the commensurate with income standard reflects the recognition that, for certain classes of intangibles (notably high profit potential intangibles for which comparables do not exist), the use of inappropriate comparables had failed to produce results consistent with the arm's length standard. Enactment of the commensurate with income standard was thus a directive to promulgate rules that would give primary weight to the income attributable to a transferred intangible in determining the proper division of that income among related parties. In the rare instance in which there is a true comparable for a high profit intangible, the royalty rate must be set on the basis of the comparable because that remains the best measure of how third parties would allocate intangible income.

D. Special Arrangements

1. *Lump sum sales or royalties.* Some commentators have suggested that the commensurate with income standard should not prohibit the use of non-contingent, lump sum royalty or sale payments. While the Service and Treasury agree that parties are free to structure their transactions as either a sale or license, the economic consequences of a lump sum payment arrangement generally must resemble those under a periodic payment approach in order to satisfy the commensurate with income standard, unless the taxpayer can demonstrate, by clear and convincing evidence, that such treatment is inappropriate on the basis of arm's length arrangements, *i.e.*, an exact or inexact comparable transaction.[140] By its terms, the amendment to section 482 applies to *any* transfer of an intangible, which includes an outright transfer by sale or license for a non-contingent, lump sum amount.[141] Furthermore, exempting such arrangements from the commensurate with income standard would elevate form over substance and encourage non-arm's length lump sum arrangements designed to circumvent the new rules. Thus, periodic adjustments may be required under the commensurate with income standard even in the case of lump sum sale or royalty arrangements.[142]

2. *Interaction with section 367(d).* Section 367(d), enacted as part of the 1984 Tax Reform Act, provides that when intangible property is transferred by a U.S. person to a foreign corporation in a transaction described in sections 351 or 361, the transferor shall be treated as receiving annual payments, over the useful life of the property, contingent on productivity or use of the property, regardless of whether such payments are actually made. These payments are treated as U.S. source income. A subsequent disposition to an unrelated party of either the intangible property or the stock in the transferee triggers immediate gain recognition. The 1986 Act made the commensurate with income standard applicable in computing payments attributable to the transferor under section 367(d). The periodic adjustment of lump sum royalty or sale payments would merely achieve parity with section 367(d) transfers.[143] Section 367(d) may also suggest that certain exceptions from the periodic payment approach may be appropriate—*e.g.*, transfers to corporations in which an unrelated corporation has a substantial enough interest that an objective valuation of the transferred intangible can be considered to be arm's length.[144]

Sales and licenses of intangibles are generally not subject to section 367(d), since they are not transactions described in sections 351 or 361. The temporary regulations state that, when an actual license or sale has occurred, an adjustment to the consideration received by the transferor shall be made solely under section 482, without reference to section 367(d).[145] However, if the purported sale or license to the related person is for no consideration [146] or if the terms of the

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[136] *See* discussion of the concepts of inexact and exact comparables *infra* Chapter 11.

[137] *See* discussion of the concepts of internal and external comparability *infra* Chapter 11.

[138] The term high profit potential intangibles refers to those products which generate profits far beyond the normal returns found in the industry. No specific definition or formula for determining whether an item is a high profit potential product is suggested herein. Nonetheless, hypothetical products such as an AIDS vaccine, a cure for the common cold, or a cheap substitute for gasoline would all fit into this concept because of the enormous consumer demand for such a product, the market protection provided by a patent, and the corresponding potential for enormous profitability. Similarly, a patented product that just happens to work better than others, or produces the same result with fewer side effects, may also qualify.

[139] The German tax authorities have faced a similar situation, and the imputation of very high royalty rates has led to the charge that the imputed royalties are not arm's length. *See* Jacob, *The New "Super-Royalty" Provisions of Internal Revenue Code 1986: A German Perspective*, 27 European Taxation 320 (1987).

[140] *See infra* Chapter 11.

[141] 1985 House Rep., *supra* n. 47, at 425.

[142] *See* discussion of the mechanism for making adjustments to lump sum payments *infra* Chapter 8.

[143] Staff of Joint Comm. on Taxation, *General Explanation of the Revenue Provisions of the Deficit Reduction Act of 1984*, 98th Cong., 2d Sess. 432–433 (1984) [hereinafter *General Explanation of the DRA of 1984*].

[144] The Service and Treasury invite comments as to whether this possible exception should be under a different standard than the concept of control under section 482.

[145] Treas. Reg. § 1.367(d)–1T(g)(4)(i).

[146] *Id.*

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purported sale or license differ so greatly from the substance of an arm's length transfer that the transfer should be considered a sham,[147] the transfer will be treated as falling within section 367(d).

In essence, the commensurate with income standard treats related party transfers of intangibles as if an intangible had been transferred for a license payment that reflects the intangible's value throughout its useful life, a result similar to section 367(d). Because the section 367(d) source of income rule can apply to certain transactions cast in the form of a sale or license, the temporary regulations could be amended to specify which sales or licenses are subject to both the commensurate with income standard and the U.S. source income characterization of section 367(d). Moreover, a license payment that is less than some specific percentage of the appropriate arm's length amount could be considered so devoid of economic substance that the arm's length charge should be subject to section 367(d). Thus, those related party transfers which deviate substantially from the proper commensurate with income payment would be subject to 367(d), even if cast in the form of a sale or license.

3. *Cost sharing agreements.* The legislative history envisions the use of bona fide research and development cost sharing arrangements as an appropriate method of attributing the ownership of intangibles *ab initio* to the user of the intangible, thus avoiding section 482 transfer pricing issues related to the licensing or other transfer of intangibles.[148] Use of cost sharing arrangements had previously been encouraged in connection with the enactment in 1984 of section 367(d).[149] Cost sharing arrangements are discussed in detail in Chapters 12 and 13, *infra*.

E. Conclusions

1. Congress enacted the commensurate with income standard because application of existing rules had not focused appropriate attention upon the income generated by the transfer of an intangible in situations in which comparables do not exist.

2. Application of the commensurate with income standard requires the determination of the income from a transferred intangible, and a functional analysis of the economic activities performed and the economic costs and risks borne by the related parties in exploiting the intangible, so that the intangible income can be allocated on the basis of the relative economic contributions of the related parties. The commensurate with income standard does not mandate a "contract manufacturer" return for the licensee in all or even most cases.

3. The commensurate with income standard requires that intangible income be redetermined and reallocated periodically to reflect substantial changes in intangible income, or changes in the economic activities performed and economic costs and risks borne by the related parties.

4. The application of the functional analysis approach to the actual profit experience from the exploitation of intangibles is consistent with what unrelated parties would do and is, therefore, consistent with the arm's length principle.

5. Because the commensurate with income standard is consistent with arm's length principles, it should not increase the incidence of double taxation.

6. The commensurate with income standard applies to all types of intangible property transfers between related parties, not just high profit potential intangibles, including both inbound and outbound transfers of intangibles. In the cases of normal profit intangibles in which comparables normally exist, the new standard, like prior law, will ordinarily base the analysis on comparable transactions, with refinements in the definition of appropriate comparables. In any event, intangible income must be allocated on the basis of comparable transactions if comparables exist.

7. Lump sum sale and royalty payments for intangibles generally will be subject to the commensurate with income standard.

Chapter 7

Compatibility With International Transfer Pricing Standards

A. Introduction

Shortly after passage of the 1986 Act, various U.S. taxpayers and representatives of foreign governments expressed concern that the enactment of the commensurate with income standard was inconsistent with the "arm's length" standard as embodied in tax treaties and adopted by many countries for transfer pricing matters. As a result, they argued, the application of the commensurate with income standard would lead to double taxation for which no remedy would exist under treaties, because of application of transfer pricing standards by the United States that would be inconsistent with those applied by various other foreign governments.[150]

To allay fears that Congress intended the commensurate with income standard to be implemented in a manner inconsistent with international transfer pricing norms and U.S. treaty obligations, Treasury officials publicly stated that Congress intended no departure from the arm's length standard, and that the Treasury Department would so interpret the new law.[151] Treasury and the Service continue to adhere to that view, and believe that what is proposed in this study is consistent with that view.

B. The Arm's Length Standard as an International Norm

The problem of double taxation arising from different transfer pricing methods has been addressed through intergovernmental negotiation and agreement, principally in bilateral tax treaties that specifically provide for certain adjustments by the treaty partners to the tax liability of any entity when its dealings with related entities differ from those that would have occurred between unrelated parties. For example, an OECD model income tax convention permits adjustments to the profits of an enterprise where, in dealing with related enterprises, "conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises * * *."[152] If the adjustment is consistent with that standard, the OECD Model Convention calls for the other contracting state to make an adjustment to the profits of the enterprise in its jurisdiction to take into account the first state's adjustments.[153]

[147] Treas. Reg. § 1.367(d)-1T(g)(4)(ii).

[148] 1986 Conf. Rep., *supra* n. 2, at II-638.

[149] *General Explanation of the DRA of 1984*, *supra* n. 143, at 433.

[150] *See* discussion *supra* Chapter 6 regarding relief from double taxation pursuant to the foreign tax credit provisions and sourcing rules of United States internal law.

[151] Letter from J. Roger Mentz, Assistant Secretary (Tax Policy) of the Department of Treasury to Representative Philip M. Crane (May 28, 1987); Remarks of Stephen E. Shay, International Tax Counsel of the Department of Treasury before the International Fiscal Association (February 12, 1987). Appendix C to this study summarizes the legal and administrative approaches similar to those described throughout this study taken by some of our major treaty partners in dealing with transfer pricing issues.

[152] Organization of Economic Cooperation and Development, Committee on Fiscal Affairs, *Model Double Taxation Convention on Income and on Capital*, Art. 9(1) ("Associated Enterprises") (1977) [hereinafter OECD Model Convention].

[153] *Id.* at Art. 9(2).

If differences of opinion arise between the two states as to the proper application of this standard, the OECD Model Convention calls for the competent authorities of the respective jurisdictions to consult with one another.[154] The other major model used by countries in negotiating their tax treaties, the United Nations Model Double Taxation Convention Between Developed and Developing Countries, contains an Article 9 entitled "Associated Enterprises" that is not materially different.[155]

In 1981, the Treasury Department released a model income tax treaty that it uses as a starting point for negotiating income tax treaties with other countries.[156] Although this model has been revised in a number of particulars to account for the many changes in U.S. tax law since the time of its release, the provisions governing associated enterprises have not changed. The basic provision is virtually identical to the OECD Model Convention.[157]

The arm's length standard is embodied in all U.S. tax treaties; it is in each major model treaty, including the U.S. Model Convention; it is incorporated into most tax treaties to which the United States is not a party; it has been explicitly adopted by international organizations that have addressed themselves to transfer pricing issues; [158] and virtually every major industrial nation takes the arm's length standard as its frame of reference in transfer pricing cases.[159] This overwhelming evidence indicates that there in fact is an international norm for making transfer pricing adjustments and that the norm is the arm's length standard.[160]

It is equally clear as a policy matter that, in the interest of avoiding extreme positions by other jurisdictions and minimizing the incidence of disputes over primary taxing jurisdiction in international transactions, the United States should continue to adhere to the arm's length standard.

C. Reference to Profitability Under the Arm's Length Standard

Because the arm's length standard is the international norm, a serious potential for disputes over primary taxing jurisdiction would exist if the United States were to implement the commensurate with income standard in a manner that violates arm's length principles. Does a system which, only in the absence of appropriate comparable transactions, places primary emphasis upon the income (or profits) related parties earn from exploiting an intangible violate the arm's length standard, as understood in the international context?

Probably the most commonly referenced expression of the arm's length standard as understood by the nations that have adopted it is a report issued in 1979 by the OECD.[161] This report adopts the general principle of arm's length pricing for all transactions between related parties. Concerning transfers of intangible property, the report states:

> The general principle to be taken as the basis for the evaluation for tax purposes of transfer prices between associated enterprises under contracts for licensing patents or know-how is that the prices should be those which would be paid between independent enterprises acting at arm's length.[162]

It is useful to refer to those methods that the report considers inconsistent with its arm's length concept to aid in defining such concept. These the report refers to as "global" methods for transfer pricing. They would include, for example, "allocating profits in some cases in proportion to the respective costs of the associated enterprises, sometimes in proportion to their respective turnovers or to their respective labour forces, or by some formula taking account of several such criteria."[163] The report criticizes these methods as necessarily arbitrary.[164]

The report also notes that the effect of its arm's length approach, as distinguished from those it criticizes, is:

> [T]o recognise the actual transactions as the starting point for the tax assessment and not, in other than exceptional cases, to disregard them or substitute other transactions for them. The aim in short is, for tax purposes, to adjust the price for the actual transaction to an arm's length price.[165]

Nowhere, however, does the report suggest that the profits of the related enterprises are irrelevant to this determination. Indeed, there are several instances where the report specifically authorizes an inquiry into profits or profitability. For example, the report notes:

> [Its criticism of global methods] is not to say, however, that in seeking to arrive at the arm's length price in a range of transactions, some regard to the total profits of the relevant [multinational enterprise] may not be helpful, as a check on the assessment of the arm's length price or in specific bilateral situations where other methods give rise to serious difficulties and the two countries concerned are able to adopt a common approach and the necessary information can be made available.[166]

In arriving at an arm's length price, the report specifically authorizes an analysis of economic functions performed by each related party in determining "when a profit is likely to arise and roughly what sort of profit it is likely to be."[167]

Other references to profits occur in the report. For example, in the section of the report relating to the sale of tangible goods entitled "Methods of Ascertaining an Arm's Length Price," methods are outlined that permit reference to comparable profits or returns on capital invested as a means of determining the appropriate transfer price. These methods are viewed by the report as a supplement to the traditional approach of looking to comparable transactions, but they are clearly suggested as

[154] *Id.*

[155] *United Nations Model Double Taxation Convention Between Developed and Developing Countries*, U.N. Doc. ST/ESA/102, at 27 (1980) [hereinafter U.N. Model Convention].

[156] U.S. Treasury Dept., Proposed Model Convention Between the United States of America and * * * for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital (1981).

[157] The United States model adds a third paragraph to the OECD Model Convention Article 9 that reserves to each state the right to make adjustments under its internal law. The purpose of this paragraph is only to make explicit that the use of the word "profits" in the OECD model does not constrain either jurisdiction to make adjustments consistent with the arm's length standard of paragraph 1, with respect to deductions, credits, or other allowances between related persons. This provision reads as follows:

> 3. The provisions of paragraph 1 shall not limit any provisions of the law of either Contracting State which permit the distribution, apportionment or allocation of income, deductions, credits, or allowances between persons, whether or not residents of a Contracting State, owned or controlled directly or indirectly by the same interests when necessary in order to prevent evasions of taxes or clearly to reflect the income of any of such persons. *Id.*

[158] U.N. Model Convention, *supra* n. 155, at 108; *see generally* Organization for Economic Cooperation and Development, Report of the Committee on Fiscal Affairs, *Transfer Pricing and Multinational Enterprises* (1979) [hereinafter OECD, *Transfer Pricing and Multinational Enterprises*].

[159] *See, e.g., Cross-Border Transactions Between Related Companies: A Summary of Tax Rules* (W. R. Lawlor, ed. 1985) (discussion of transfer pricing practices of twenty-five different countries, most of which take the arm's length standard as their basic rule of transfer pricing).

[160] A recent article has suggested that the arm's length standard for transfer pricing should not limit the transfer pricing practices of governments. Langbein, *The Unitary Method and the Myth of Arm's Length*, Tax Notes, Feb. 17, 1988, at 625.

[161] OECD, *Transfer Pricing and Multinational Enterprises*, *supra* n. 158.

[162] *Id.* at 31.

[163] *Id.* at 14.

[164] *Id.* at 14–15.

[165] *Id.* at 28.

[166] *Id.* at 15.

[167] *Id.* at 17.

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appropriate tools for arriving at a proper transfer price.[168]

With regard to valuing transfers of intangible property, the report notes that, "[o]ne of the common approaches employed in practice is to make a pragmatic appraisal of the trend of an enterprise's profits over a long period in comparison with those of other unrelated parties engaged in the same or similar activities and operating in the same area." [169] The report questions whether this approach is practical, because it would be difficult to isolate respective profits due to different accounting methods, and difficult to know-how to apportion the overall profit between the two parties. No suggestion is made, however, that such a method could never be used in the absence of comparable transactions because it conflicts in principle with the arm's length standard.[170]

D. Periodic Adjustments Under the Arm's Length Standard

The next chapter describes an important element of the commensurate with income standard—periodic adjustments must be made in appropriate cases to reflect actual profit experience under the license. As noted in that chapter, there are sound arm's length reasons to require such adjustments—principally the rarity of long-term, fixed licenses negotiated at arm's length, particularly with respect to high profit potential intangibles, and the fact that actual profit experience under a license indicates in most cases anticipated profits that would have been considered by unrelated parties. Moreover, that chapter permits taxpayers to avoid adjustments over time if they can demonstrate on the basis of arm's length evidence that no such adjustments would have been made by unrelated parties. The Service and Treasury therefore believe that such periodic adjustments as will be made under the new standard will be consistent with the arm's length standard as embodied in U.S. double taxation treaties.

[168] *Id.* at 42–43.

[169] *Id.* at 54.

[170] The objection raised in the report regarding the type of analysis advocated in this report is not that it violates the arm's length standard, but that it may call for more information than can be practically obtained and analyzed by the tax authorities. See *id.* at 15. As noted in Appendix D, the degree of detail and analysis that will be called for under the new methodology will depend in each case on the magnitude of the potential for income shifting. Further, in cases of transfers of routine intangibles, available comparable licenses will generally obviate the need for almost all of this information.

E. Resolution of Bilateral Issues

The Service and Treasury recognize that implementation of the commensurate with income standard in all its particulars, including periodic adjustments, treatment of lump-sum payments [171] and access to information to perform the necessary analysis, may lead to differences with the competent authorities of our treaty partners and perhaps more general issues of treaty policy and interpretation. Recognizing this, the United States competent authority and the Treasury Department should be receptive to the concerns of foreign governments, and endeavor to seek bilateral solutions insofar as those concerns can be accommodated in a manner consistent with Congressional intent in enacting the commensurate with income standard.

F. Conclusions

1. The arm's length standard requires that each entity calculate its profits separately and that related party transactions be priced as if unrelated parties had entered into them. Reference to the profits (including the trend of those profits over time) of related parties to determine a royalty in a licensing transaction is intended to reflect what unrelated parties would do and, therefore, is consistent with the arm's length standard.

2. The arm's length standard as accepted by the international community does not preclude reference to profits of related parties to allocate income, but in fact encompasses such an approach as a supplement to the traditional approach of looking to comparable transactions. It is, therefore, reasonable to conclude that such an approach is consistent with international norms as applied to situations in which comparables do not exist.

3. The approach taken by Congress in enacting the commensurate with income standard and the approaches suggested in Chapters 8 and 11, *infra*, for implementing that standard, including the provision for periodic adjustments, are consistent with internationally recognized arm's length principles. Applied in a manner consistent with arm's length principles, the commensurate with income standard is not likely to increase international disputes over the right of primary taxing jurisdiction.

4. The United States competent authority and the Treasury Department should endeavor whenever possible to seek bilateral solutions to problems that may arise with our treaty partners in the interpretation and administration of the commensurate with income standard.

[171] See the discussion *infra* Chapter 8.

Chapter 8

Periodic Adjustments

A. Introduction

As discussed in Chapter 6, an intangible transfer price that is commensurate with the income attributable to the intangible must reflect the "actual profit experience realized as a consequence of the transfer." [172] The "commensurate with income" language requires that changes be made to the transfer payments to reflect substantial changes in the income stream attributable to the intangible as well as substantial changes in the economic activities performed, assets employed, and economic costs and risks borne by related entities.

The Congressional directive to the Service to make adjustments to intangible returns that reflect the actual profit experience is in part a legislative rejection of *R.T French v. Comm'r.*[173] That case endorsed the view that a long-term, fixed rate royalty agreement could not be adjusted under section 482 based on subsequent events that were not known to the parties at the original contract date. Thus, underlying the directive is perhaps a view that contractual arrangements between unrelated parties—particularly those involving high profit intangibles—are not entered into on a long term basis without some mechanism for adjusting the arrangement if the profitability of the intangible is significantly higher or lower than anticipated. A very preliminary review of unrelated party licensing agreements obtained from the files of the Securities and Exchange Commission, discussed in Appendix D, and other input received to date, seems to support this view. Indeed, as a matter of long term business strategy, unrelated parties may renegotiate contractual arrangements even absent explicit renegotiation provisions to reflect revised expectations regarding an intangible's profitability.[174]

[172] 1985 House Rep., *supra* n. 47, at 425.

[173] 60 T.C. 836 (1973).

[174] Since related parties always have the ability to renegotiate contractual arrangements, explicit contractual provisions permitting renegotiation of related party arrangements would have little meaning and, therefore, should not be a prerequisite for making adjustments. Furthermore, related party contracts that contain these provisions will not necessarily lead to results that conform to the experience of unrelated parties operating under similar circumstances. If the contract proves more profitable than expected, the parties can refuse to

Aside from the empirical evidence of what unrelated parties seem to do, actual profit experience is generally the best indication available absent comparables, of anticipated profit experience that arm's length parties would have taken into account at the outset of the arrangement. It is, therefore, perfectly consistent with the arm's length standard to treat related party license agreements generally as renegotiable arrangements and to require periodic adjustments to the transfer price to reflect substantial changes in the income stream attributable to the intangible.[175]

Intangible transfer prices will in any event be determined on the basis of comparables if they exist. If a particular taxpayer demonstrates that it has comparable long-term, non-renegotiable contractual arrangements with third parties, the arm's length standard will preclude periodic adjustments of the related person intangible transfer price. In that event, a comparable would exist by definition, which would determine the consideration for the related person transfer, both initially and over time. Comparables are always the best measure of arm's length prices. In the case of a high profit intangible, however, a third party transaction generally must be an exact comparable in order for the transaction to constitute a valid comparable.[176]

It may also be possible in certain other cases to exclude subsequent profit experience from consideration under the arm's length standard. To do so, the taxpayer would need to demonstrate each of the following to avoid an adjustment based on subsequent profit experience:

1. That events had occurred subsequent to the license agreement that caused the unanticipated profitability;

2. That the license contained no provision pursuant to which unrelated parties would have adjusted the license; and

renegotiate or adjust it, despite explicit provisions in the contract which permit or require them to do so. Thus, requiring that related party contracts mimic the terms of unrelated party contracts will not alone ensure that the results experienced by the related parties under those contracts will approximate arm's length dealing. 1985 House Rep., *supra* n. 47 at 425–426. Without the ability to make changes for adjustments over time, related party agreements will be observed when they suit the tax needs of the parties and amended or changed when they work to their detriment. *Compare R.T. French Co. v. Comm'r*, 60 T.C. 836 (1973), *with Nestle Co., Inc. v. Comm'r*, T.C. Memo. 1963–14.

[175] Periodic adjustments will also obviate the need for the often fruitless inquiry into the state of mind of the taxpayer and its affiliate at the outset.

[176] *See* the discussion *infra* Chapter 11, regarding the role of comparables in determining whether an adjustment over time is necessary.

3. That unrelated parties would not have included a provision to permit adjustment for the change that caused the unanticipated profitability.

For example, assume that there are twelve heart drugs that perform similar therapeutic functions, none of which has a dominant market share. Several of these drugs are licensed to unrelated parties under long term arrangements which do not provide a mechanism for adjusting the royalty payments because of subsequent changes. The taxpayer's drug, which is licensed to a related party, uses an active ingredient which is different from the other products with which it competes. The competitor's drugs, however, lose all of their market share during the course of the license agreement because their products are found to cause serious side effects, and the licensed product's profits increase dramatically. In this case, if the taxpayer could prove the three factors above, the taxpayer could avoid an adjustment based on the increase in profitability.

As noted earlier, Congress was particularly concerned about taxpayers attempting to justify low-royalty transfers at an early stage based on the purported inability to predict subsequent product success.[177] Because of this concern, it would be appropriate to impose a high standard of proof, such as a clear and convincing evidence standard, on taxpayers in order to demonstrate that subsequent profitability could not have been anticipated. In no event should this test be available to taxpayers if inexact comparable licenses with no provision for periodic adjustments cannot be found in the marketplace.

A substantial change in intangible income will not necessarily result in an adjustment. As dicussed in Chapter 6 and described in Chapter 11, determining the intangible income is merely the first step in the analysis of allocating intangible income. The second step involves allocating income on the basis of the activities performed and economic costs and risks borne by the parties. If intangible income increases solely due to the efforts of the transferee, then the increase in intangible income will be allocated exclusively to the transferee, and no adjustment will be made to the income of the transferor.

B. Periodic Review

Annual adjustments may not be required to reach the appropriate amount of income under the commensurate with income standard. Adjustments are not required for minor variations in intangible income, only for substantial changes in intangible income.[178] Several issues are raised by this requirement. How often should the taxpayer review its transfer pricing structure to determine whether income is being properly reported and to avoid potential penalties? How often may the Service make adjustments in the course of examination? Should the regulations define substantially? Should the adjustments be applied retroactively or prospectively? Should periodic adjustments be made in the case of a sale of intangibles and other situations involving lump sum payments? Should set-offs be permitted?

The frequency with which a taxpayer should review its related party intangible transfer agreements and how often the Service should be able to make adjustments are not questions that can be governed by inflexibles rules. When the transferee experiences a substantial change in its profits from the intangible resulting from some particular event (whether anticipated or not), a review by the taxpayer is clearly warranted; further, an adjustment by the Service is warranted unless the taxpayer can demonstrate, by clear and convincing evidence, that the conditions discussed above for avoiding an adjustment based on subsequent profit experience are met Even absent a clear-cut event, it is possible that gradual changes over time may create a substantial deviation from the parties' expectations at the time they entered into the contract.

In general, taxpayers should review transfer pricing arrangements relating to intangibles (especially high profit intangibles) as often as necessary to assure that their transfer prices are consistent with substantial changes in intangible income that may have occurred since the inception of the current transfer pricing arrangements. For industries that undergo rapid technological change or for products that have a relatively short life, this standard may dictate annual review. In short, the taxpayer should review its pricing structure relating to intangibles as often and thoroughly as necessary to assure that income is reported on its U.S. tax return in a manner that is consistent with the commensurate with income standard. Taxpayers that fail to do so risk the imposition of the substantial understatement or other appropriate penalty.[179]

[177] 1985 House Rep., *supra* n. 47, at 424.

[178] *Id.* at 426.

[179] As discussed *supra* in Chapter 3, the regulations or statute should be amended to ensure

On the other hand, the Service should be permitted to make a transfer pricing adjustment without necessarily having to demonstrate that its proposed adjustment is justified by identifiable changes in intangible income compared with a prior taxable year. In other words, if the adjustment can be supported on the basis of exact or inexact comparables, or on the basis of the rate of return analysis or such other methodology as is adopted by the Service for use in cases in which exact or inexact comparables to do not exist,[100] then the Service should not have to demonstrate that the adjustment specifically relates to identifiable changes in intangible income occurring since the last taxable year examined. An approach whereby the Service would be estopped from making an adjustment, absent clearly identifiable changes in intangible income, because of the Service's prior acceptance of some commensurate with income amount in a prior year would present problems of proof that are not necessarily relevant to the appropriateness of the adjustment. At most, consideration should be given only to requiring that the proposed adjustment to income be substantial in relation to the income reported by the taxpayer from the transaction—and then only for audits subsequent to the first in-depth audit of transfer prices conducted for taxable years after 1986.

It may be advisable to publish in the Internal Revenue Manual a list of factors that, if one or more changes substantially, would indicate that there may be a substantial change in intangible income that may warrant an examination of the taxpayer's intangible transfer pricing. These factors might include: (a) The size and number of markets penetrated; (b) the product's market share; (c) the product's sales volume; (d) the product's sales revenue; (e) the number of uses for the technology; (f) improvements to the technology; (g) marketing expense; (h) production costs; (i) the services provided by each party in connection with the use of the intangible; and (j) the product's profit margin or the process' cost savings.[101]

Any periodic adjustments that are made under the commensurate with income standard generally should be made prospectively—*i.e.*, for the taxable year under audit and subsequent taxable years (provided that there is no further substantial change in the intangible income and other relevant facts). Unless unrelated parties would have set a different royalty rate on the date of the transfer based upon expectations of future high profitability or other facts known on the date of transfer, the arm's length standard would require only that the transfer price be commensurate with actual income—*i.e.*, that the transfer price be changed only as the intangible income changes.

C. Lump Sum Payments

As discussed in Chapter 6, the commensurate with income standard applies to transfers of intangibles by sale or license for noncontingent, lump sum amounts. Thus, periodic adjustments may be required under the commensurate with income standard in the case of lump sum sale or royalty arrangements as well as periodic royalty arrangements. In the case of a lump sum sale, how should the Service make a section 482 allocation if it is not apparent until many years after the sale that the lump sum payment was insufficient under the commensurate with income standard?

One possibility would be to recharacterize the sale as a license, thereby giving the Service the ability to require additional royalty payments sufficient to satisfy the commensurate with income standard. It is clear, however, that parties dealing at arm's length occasionally sell intangibles. Thus, failure to recognize sale arrangements for related party transactions could be viewed as a deviation from the arm's length standard.

Alternatively, the Service could recognize the transfer as a sale but make a section 482 allocation to increase the initial lump sum payment. Unless taxpayers using lump sum sale arrangements were required by regulation or statute to keep the statute of limitations open for the payment year, the statute of limitations could bar adjustments to a lump sum payment in closed taxable years, contrary to Congressional intent. Moreover, other problems would exist in adjusting the lump sum even if the statute of limitations were open. For example, any mid-stream adjustment to the initial lump sum made before the statute of limitations expires on the year of sale would necessarily be based on a projection of future profits over the remaining life of the intangible that could be too high or too low. Furthermore, any mechanism, whether elective or mandatory, that would keep the statute of limitations for the year of transfer open for extended periods would disrupt the examination process by unduly delaying the closing of audits.

A lump sum sale arrangement should instead be treated as an open transaction to assure that the sale over time satisfies commensurate with income standard. This approach is the only approach which recognizes the transaction as a sale, allows for adjustments of the sale price under the commensurate with income standard, and minimizes the statute of limitation and other problems inherent in making adjustments to income in the year of the sale. Under this approach, a lump sum sale payment made in the year of the transfer would result in gain taxable in the year of transfer but would then be treated as a prepayment of the commensurate with income amounts. No section 482 allocation would be required until the aggregate commensurate with income amount exceed the prepayments.

Under this method, the lump sum is treated as invested on the date of the lump sum payment in a hypothetical certificate of deposit ("C.D.") maturing on the last day of taxpayer's current tax year bearing interest at the appropriate federal funds rate based on the anticipated life of the intangible (for U.S. developed intangibles) or the appropriate rate in the development country. At the end of year one the balance of the C.D. investment would be computed. From this amount, the amount of the commensurate with income amount would be subtracted. The remaining balance would then be treated as invested in a C.D. maturing at the end of year two. At the end of each tax year a computation similar to that done at the end of year one would be made. When the C.D. balance is exhausted, the taxpayer would be required thereafter to include the entire commensurate with income amount in income each year.

Consider, for example, an intangible that is transferred for $1,000 and that would demand a commensurate with income amount in each of ten years as shown:

	Lump sum $1000 payment increased by time value return (assume 10%) at end of year (Col. 3 plus returns on Col. 3 amounts)	Commensurate with income	Remaining lump sum payment at beginning of year (prior year Col. 1 less prior year Col. 2)
	Col. 1	Col. 2	Col. 3
Year:			
1	$1100	$100	$1000
2	1100	100	1000
3	1000	100	900
4	990	200	790
5	869	200	669
6	736	500	215
7	237	500	0
8		500	0
9		300	0
10		300	0

The $1,000 lump sum payment would be converted as shown in column 1 into a stream of income which is offset by the commensurate with income amount in column 2 until the stream of income is exhausted in year 7. Thereafter, the commensurate with income amount would be fully included in the transferor's income.[102]

Because section 482 may be applied only by the Service, no refunds could be allowed if an excessive lump sum was paid. However, to prevent abuse of outbound lump sum payments in inbound licensing arrangements, the Service would be allowed to adjust excessive lump sum payments that clearly exceed the commensurate with income standard.

D. Set-Offs in Royalty Arrangements

It is possible that the initial royalty rate set by the parties could be too large in some years and too small in other years when analyzed under the commensurate with income standard. Under existing regulations, section 482 adjustments traditionally have been made on a year-by-year basis. Only intra-year set-offs of proposed adjustments against excessive income derived on related party transactions are authorized under § 1.482–1(d)(3) of the regulations.[103] Thus, the Service could make adjustments in some years without making an allowance for excessive royalties paid in other years. Assume, for example, that a license generates a fixed royalty amount on an intangible that produces fluctuating income due to business cycles or changes in demand. Over time, the royalty may be an appropriate one on average, but in some years it may be too low and in others too high.

Because of the problems inherent in an open transaction approach, the current rule prohibiting multi-year set-offs should be retained. The potentially harsh effect of this rule will be mitigated by the fact that periodic adjustments generally should be made only in cases of substantial changes in circumstances and by the ability of taxpayers to adjust their own arrangements prospectively, reducing or increasing the royalty, to account for changed circumstances. It will also create an incentive for taxpayers to examine their arrangements periodically to see whether an adjustment favorable to them would be appropriate.

E. Conclusions

1. Periodic adjustments are necessary in order to reflect substantial changes in the income stream produced by a transferred intangible, taking into account the activities performed, assets employed, and economic costs and risks borne by the related parties.

2. Requiring periodic adjustments is consistent with the arm's length principle, since unrelated parties generally provide some mechanism to adjust for change in the profitability of transferred intangibles and since actual profit experience generally is the best indication available of the anticipated profit experience that unrelated parties would have taken into account at the outset of the arrangement.

3. Taxpayers should review transfer pricing arrangements relating to transferred intangibles as often and as thoroughly as necessary to assure that income is reported over time in a manner consistent with the commensurate with income standard.

4. Periodic adjustments made under the commensurate with income standard generally should be prospective unless a different royalty rate would have been set on the date of transfer based upon expectations of the parties and the facts known as of the date of transfer.

5. A lump sum sale of an intangible should be characterized as an open transaction whereby the lump sum sale payment results in gain at the time of transfer, but is then treated as a prepayment of the commensurate with income amounts. No section 482 allocation would be required until the aggregate commensurate with income amounts exceed the prepayment.

6. Multi-year set-offs of proposed adjustments against excessive related party income derived in other taxable years will not be permitted.

Chapter 8

The Need for Certainty: Are Safe Harbors the Solution?

A. Introduction

One of the most consistent criticisms of the section 482 regulations is that they do not provide taxpayers with enough certainty to establish intercompany prices that will satisfy the Service without overpaying taxes. Based on the government's experience in litigation, the current section 482 regulations also fail to provide the Service and the courts with sufficiently precise rules to make appropriate section 482 adjustments, especially when third party comparables are not available.[104] One of the most common suggestions for solving these problems is to amend the section 482 regulations to adopt safe harbors, or simple, mechanical, bright-line tests that may be used in lieu of the fact-specific arm's length inquiry under section 482.[105]

B. General Problems With Safe Harbors

While numerous safe harbors have been proposed, they generally have taken two forms: (1) Absolute safe harbors that grant the taxpayer total freedom from a section 482 adjustment

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adequate disclosure of transfer pricing methodology and penalize unjustified substantial understatements of tax resulting from nonconformity to the arm's length standard.

[100] *See infra* Chapter 11.

[101] *See also* the factors set forth in Treas. Reg. § 1.482–2(d)(2)(iii).

[102] It has been suggested that the commensurate with income standard will result in all gains from the sale of intangibles being treated as royalties under the Internal Revenue Code and under our tax treaties, because of the provision in the Code and those treaties covering gains contingent on productivity, use or disposition of the relevant intangible. There is no intention by the Service or Treasury to eliminate the possibility of sale treatment for transfers of intangibles in appropriate cases, either for treaty purposes or for U.S. withholding tax purposes. Further, the Service and Treasury believe that the mere fact that subsequent profits may be taken into account in appropriate cases by U.S. tax authorities in determining transfer prices on audits, or that a lump sum is treated as a deposit on the appropriate section 482 transfer price in order to assure that a commensurate with income adjustment can be made notwithstanding the statute of limitations, does not have this effect. The terms of the transaction itself (*i.e.*, whether it provides for contingent consideration based, *e.g.*, on sales volume or units sold) will determine treatment under the royalty article. Further, even if the commensurate with income standard were incorporated by reference into the relevant sales document, there is no necessary relationship between productivity, use or disposition and a proper commensurate with income payment. For example, sales might increase dramatically in a given year, but the method called for may result in no increase in payments, or the taxpayer may have an arm's length basis for making no adjustment.

[103] *But see* Treas. Reg. § 1.482–2(d)(1)(ii)(d), Ex. 3, which appears to allow an inter-year set-off.

[104] GAO, *IRS Could Better Protect U.S. Tax Interests*, *supra* n. 64, at 63; ABA Comm. on Affiliated and Related Corporations, *Administrative Recommendation No. 8* (1986) (hereinafter ABA *Admin. Rec.*); Langbein, *supra* n. 100, at 655.

[105] *See* GAO, *IRS Could Better Protect U.S. Tax Interests*, *supra* n. 64, at 48–50.

once the criteria for the safe harbor are satisfied, and (2) conditional safe harbors that produce a rebuttable presumption or a shift in the burden of proof in the taxpayer's favor, but that may be overcome by the Service through evidence showing that a section 482 adjustment is necessary.

Although various types of safe harbors are available, they all have one common element that makes them both attractive to the taxpayer and potentially troublesome to the government: they generally would serve only to reduce tax liability. Taxpayers for which a safe harbor would produce a lower tax liability than the appropriate normative rule would use it. Those for which a safe harbor would produce a higher tax liability than the appropriate normative rule generally would not seek the protection of the safe harbor but would apply the normative rule. Reducing administrative costs, or the need for certainty, may encourage some taxpayers to use a safe harbor in marginal situations even if application of the normal rule would result in a tax savings. In general, however, the only benefit a safe harbor offers from the Service's perspective is a savings of administrative costs.

Ideally, safe harbor standards should be easy and inexpensive vehicles for selecting cases that warrant closer scrutiny. The perfect safe harbor would result in the elimination of all insignificant cases and the selection of cases for detailed analysis by taxpayers and further examination by the Service that would more likely produce sustainable, significant adjustments if analyzed incorrectly by the taxpayer. The question is whether there are any safe harbors that are capable of approaching these goals.

A look at the Service's experience with section 482 safe harbors is instructive. The best example is the safe harbor for interest rates found in § 1.482–2(a)(2)(iii). From the Service's point of view, results under this safe harbor have been mixed at best. The safe harbor was originally set between 4 and 6 percent. This was probably sufficient in 1968, but it soon became inappropriately low. However, the government was very slow to change the safe harbor range as interest rates rose.[166] The safe harbor for interest now tracks the Federal rates required to be determined for purposes of the original issue discount rule under section 1274(d), which reflect market rates and are adjusted monthly. While this is probably a satisfactory solution, many taxpayers were able to gain a substantial windfall while the government made successive attempts to choose an appropriate safe harbor rate.

Another example of a safe harbor is found in § 1.482–2(c)(2)(iii) of the regulations, which provides a safe harbor computation of an arm's length rental for the use of tangible property. Experience has demonstrated that this safe harbor was overly generous to taxpayers (*i.e.*, requiring too little rent). It was repealed by regulations finalized this year.[167] No substitute safe harbor has been provided to date.[168]

The government's experience in the section 482 area has been that safe harbors have generally treated amounts as arm's length that were usually different from market rates. This result is even more likely to occur in the transfer pricing area because of the inherent difficulty of constructing valuation safe harbors for the types of intangible and tangible property that have created transfer pricing problems under section 482 . Furthermore, because of the complexity of the regulatory process and the difficulty in obtaining reliable data, adjustments or corrections to safe harbor standards would be slow. In any event, the fundamental deficiencies of safe harbors are not resolved by continually reviewing and revising the rates, or by intentionally setting the safe harbor on the conservative side for protection of the revenue. If safe harbors are set at non-market rates, they will be used only by taxpayers that will benefit by making or receiving payments at those rates.

C. Specific Proposals

The following lists some of the safe harbors that have been proposed and includes a short explanation of some of the reasons why they have not been endorsed by the Service and Treasury.

1. *Pricing based on industry norms.* This approach is contrary to the legislative history of the section 482 changes in the 1986 Act.[169] Industry norms generally do not reflect arm's length prices for highly profitable intangibles. Accordingly, any safe harbors based on industry norms or statistics would permit transfer prices that would be far different from the arm's length standard in the most significant cases.

2. *Profit split—minimum U.S. profit.* This approach would guarantee that the United States would capture a certain minimum of the profit in transfer pricing cases, perhaps 30 percent. The commensurate with income standard is designed to divide the income involved between related parties to "reasonably reflect the relative economic activity undertaken by each."[170] A safe harbor that splits profits a certain way in all cases would be inconsistent with the case-by-case factual determination that is necessary to measure the economic contribution made by each of the related parties. Furthermore, a fixed U.S. profit requirement would be objectionable to other countries when intangibles were developed outside the United States.

3. *Profit split based on taxpayer's proportionate share of combined costs (ABA Proposal).*[171] The problem with this safe harbor is that it presumes that different types of expenses contribute equally to the combined profit. For example, expenses incurred for highly skilled technical services might contribute proportionately more to the combined profit than those incurred for unskilled services. Furthermore, it might be very difficult to determine what indirect expenses (including, for example, research and development expenses) are attributable to particular products, and taxpayers might be able to manipulate the profit split by shifting expenses from one product to another or one entity to another (such as by "loaning" employees).

4. *Profit split based on share of combined costs and assets (ABA Proposal).*[172] The second ABA safe harbor is a modification of the first one. Instead of relying entirely on relative expenses, it relies 50 percent on expenses, and 50 percent on the fair market value of the assets used in the production of the property involved in the sale. However, at a minimum not less than 25 percent of the combined taxable income would be allocated to the buyer. If one of the parties employed its assets in a very inefficient manner, it would nevertheless be rewarded in the same manner as if it were highly efficient. Additionally, assets could be arbitrarily shifted from one entity to another; difficult questions of property valuation could arise; and property could be purchased just to tip the balance of profits. Because of those problems, a party could receive a substantial amount of the combined taxable income, yet be doing very little to earn the income.

5. *Insubstantial tax benefit test.* This safe harbor would be available if the rate of tax in the foreign jurisdiction was at least 80 percent of the U.S. rate. The theory behind this safe harbor is that taxpayers will use arm's length pricing if no overall tax savings result from doing otherwise. While this approach may have some pragmatic appeal, there are still several problems with it. An adjustment under section 482 does not depend on an intent to avoid taxes. Even if the taxpayer is overpaying its worldwide tax liability, if U.S. income is being understated, an adjustment should be made. Furthermore, as a policy matter the United States will not cede its taxing jurisdiction to a foreign country other than by treaty. Accordingly, if a taxpayer intentionally or inadvertently shifts income to a high tax jurisdiction it should be subject to a section 482 adjustment without the benefit of a safe harbor. As a practical matter, however, the Service proposes relatively few adjustments between a U.S.-based parent company and its affiliates located in another jurisdiction whose effective tax rate is nearly the same or higher. Different problems are presented by foreign-based parents and their U.S. affiliates.

6. *Profit distribution test.* This safe harbor would be satisfied if at least 25 percent of the pre-royalty net profit of an affiliate was distributed to the parent. This test is directly contrary to the commensurate with income concept. If an affiliate is responsible for only 10 percent of the economic activity in question it should not be able to keep up to 75 percent of the profit involved.

7. *Prior settlement test.* Under this proposal, when the Service had accepted a specific pricing method in a prior examination, the burden would be on the Service to show that the pricing method is unreasonable for the current year. This safe harbor is unacceptable because there could be any number of reasons why the Service had accepted a particular pricing method. To force the Service to demonstrate that the previously agreed upon method has become unreasonable could help perpetuate an error or make it more difficult to adjust to changing circumstances.

D. Burden-Shifting Safe Harbors

Some of the safe harbor proposals would operate by shifting the burden of proof to the Service. It has been proposed, for example, that a taxpayer's full disclosure of the method by which it determines its transfer prices would shift the burden of proof to the government. (See Chapter 3, *supra*, for a description of IRs' experiences in seeking information.) Section 6001 requires all taxpayers to maintain adequate books and records to substantiate positions taken on the tax return, including section 482 issues. Thus, a taxpayer could obtain a shift in the burden of proof merely by complying with the law.

The Service and Treasury do not believe that "burden-shifting" safe harbors are a viable approach. The critical issues presented in the section 482 area are almost always factual in nature, and taxpayers are almost always uniquely familiar with—and in exclusive possession of—the relevant facts. To place the burden of proof on the government in this situation would be unworkable.

E. Conclusions and Recommendations

1. Historical experience with safe harbors indicates that they generally result in unwarranted windfalls for taxpayers, without significant benefits for the government.

2. In the highly factual section 482 context, no one safe harbor or combination of safe harbors has yet been proposed that would be useful but not potentially abusive.

3. While the possibility that useful safe harbors could be developed is not categorically rejected, additional section 482 safe harbors are not recommended at the present time.

III. METHODS FOR VALUING TRANSFERS OF INTANGIBLES

A significant reason for the enactment of the commensurate with income standard was the failure to properly take into account the income earned by related parties in exploiting intangibles. As detailed in earlier chapters, inappropriate comparables or ad hoc profit split approaches have been used to analyze cases involving related party transfers of unique intangibles.

This part of the study seeks to define the appropriate use of comparable transactions. It also proposes an alternative method of analysis that does not directly rely upon comparable transactions. Fourteen detailed examples applying the methods described in this part are set forth in Appendix E. These methods are generally consistent with various methods of income allocation used by the Service, taxpayers, and the courts under pre-1986 Act law and, if adopted, would appropriately be applicable to cases arising prior to the 1986 Act.

Chapter 10

Economic Theories Concerning the Implementation of Section 482

A. Introduction

The current section 482 regulations use a market-based approach to income allocation. The goal of this approach is to distribute income in the same way that the market would distribute the income; that is, related parties should earn the same returns that unrelated parties would earn under similar circumstances. This approach is implemented through separate accounting in which an individual transfer price is determined for each transaction.[173]

The argument for the market-based method to allocate income was articulated by Stanley Surrey, former Assistant Secretary (Tax Policy), who discussed the way that unrelated parties are taxed:

> Tax administrators do not question transactions that are governed by the marketplace. If Company A sells goods to unrelated Company B at a certain price or furnishes services at a particular price, the income of both companies is determined by using that price. One company may be large and the other small; one may be a monopoly; one may be financially strong and the other in a weak condition. But these and other factors which may affect the price at which the transaction occurs are not the concern of the tax administrator.[174]

Having established the tax system's acceptance of the marketplace, he concludes:

> Presumably, most transactions are governed by the general framework of the marketplace and hence it is appropriate to seek to put intra-group transactions under that general framework. Thus, use of the standard of arm's length, both to test the actual allocation of income and expense resulting under controlled intra-group arrangements and to adjust that allocation if it does not meet such standard, appears in theory to be a proper course.[175]

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[166] The following changes have been made to the safe harbor interest rate: 6–8 percent effective January 1, 1976; 11–13 percent effective July 1, 1981; 100–130 percent of the applicable Federal rate effective May 9, 1988. Final regulations were published on June 13, 1988. T.D. 8204, 1988–24 I.R.B. 11.

[167] T.D. 8204, 1988–24 I.R.B. 11.

[168] *See* Treas. Reg. § 1.482–2(c)(2)(ii).

[169] 1985 House Rep., *supra* n. 47, at 434–35.

[170] *Id.*

[171] ABA, *Admin. Rec., supra* n. 184, at 14. The ABA proposals are applicable only to the transfer of tangible property. Other proposals apply only to intangible property. Because many of the safe harbors would have the same advantages and disadvantages regardless of the type of property involved, this discussion does not address the different types of property separately.

[172] *Id.* at 14–15.

[173] A variation of this approach retains the goal of a market-based allocation but claims that in some situations the target is best reached by an estimate, or that average prices can be used for certain transactions. The estimate can be provided by some type of formulary apportionment.

[174] Surrey, *Reflections on the Allocation of Income and Expenses Among National Tax Jurisdictions*, 10 Law and Policy in International Business 409, 414 (1978).

[175] *Id.* at 414.

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Recent criticism has questioned whether the market-based arm's length approach is flawed as a matter of general principle. An alternative approach might be based on the concept of an integrated business. Loosely defined, an integrated business consists of firms under common control and engaged in similar activities. Proponents of the alternative approach assert that one cannot assume that related parties conduct market-based transactions within the entity. They claim that, because an entity will not act as if its parts are unrelated, it does not make sense to try to account for individual transactions in the way that unrelated parties subject to market forces would account for similar transactions. Under this theory, the allocation of income can only be accomplished by applying some formula chosen by the government.

This chapter explores the tension between these alternative approaches, and suggests a way to apply the arm's length principle to an integrated business. It concludes that the market-based arm's length approach remains the best theoretical allocation method.

B. The Arm's Length Approach in an Integrated Business: Theory

The goal of a market-based approach is to ensure that the return to an economic activity is allocated to the party performing the economic activity. Critics of the market-based approach argue that an arm's length price will not achieve this goal. Relevant practical issues are how close one can get to the right price and whether getting that price is costly relative to settling for an estimate.

One commentator has suggested that the difficulties encountered in administering the current regulations stem not from practical considerations, but rather from fundamental problems inherent in applying a market-based approach to transactions of integrated businesses.[106] Specifically, it has been argued that the flaw in an arm's length approach is that it does not allow a return to the form of organization. That is, because an integrated enterprise is presumably more efficient, it will be able to execute an integrated economic activity at a lower cost than a series of independent firms whose joint efforts are necessary to execute the same series of transactions. This omission creates a "continuum price problem," a situation in which the sum of the returns for separate services rendered by independent parties is less than the actual return of the combined group.

[106] Langbein, *supra* n. 60, at 627.

This argument grows out of the literature on the reasons for the existence of multinationals.[107]

That multinationals may exist because of integrated or "firm-specific" economies does not require a rejection of the arm's length principle. Transfer prices are supposed to reflect the contribution of the activity and assets utilized in each location to economic income. Therefore, each party should earn at least as much as it could have earned as an unrelated party under alternative arrangements.

Furthermore, an analysis of "alternative arrangements" need not be restricted to analyzing conventional arm's length transactions. Consider a U.S. firm that owns the worldwide rights to a unique patented drug that it wishes to sell into a new market (and assume that the drug or patent is valuable in its own right and that marketing activity, for example, is not an important factor). The firm could license the use of the patent to unrelated parties to produce the drug in the new market. Alternatively, the firm could enter into a joint venture by affiliating with a company that has the ability to produce the drug. If the pharmaceutical firm entered into a joint venture it would probably be able to negotiate a very large share of the profits given the value of the patent, because any number of local firms could provide the labor and capital necessary to mix and package the drug.

There are, therefore, two types of arm's length transactions to consider—one in which the parties remain independent and another in which the two parties make an arm's length agreement to affiliate by merger, joint venture, acquisition, or simply through the hiring of local labor and capital within a subsidiary. Restricting attention to transactions between parties that remain unrelated can fail to accomplish the objective of allocating to each party its contribution to income, if such transactions do not accurately reflect the actual relations between the related parties.

Another way of describing the arm's length agreements that have to be considered is to say that they are the arrangements that would be made between unrelated parties if they could choose to have the costs of related parties—*i.e.*, to use the related party technology. In general, tax rules should distort business decisions as little as possible because rules that minimize such distortions will lead to the greatest possible production efficiency. Transfer pricing rules will allow the most efficient production technology to come to the fore if, holding the cost functions constant, they result in the same tax burdens whether or not the parties are related. In other words, if unrelated parties somehow had access to the technology available to related parties, their operations should not result in more or less total taxes than would be paid by a multinational using this technology. The difficulty, of course, is the practical application of this interpretation of the arm's length standard.

[107] Caves explains that many multinationals exist because of a failure in the market for intangibles. R. Caves, *Multinational Enterprise and Economic Analysis* (1982). In essence, intra-firm transactions can be more profitable than inter-firm transactions because of the expense of negotiating complete contracts or the inability of a firm to capture the full value of a piece of knowledge through contracts with unrelated parties without fully explaining the knowledge and thus eliminating its value.

C. The Arm's Length Approach in an Integrated Business: Practice

The arm's length approach can be more correctly applied to an integrated business by using certain tools of microeconomic theory. The continuum price problem arises when a vertically or horizontally integrated production technology that is available to multinational corporations results in lower costs than a nonvertically or horizontally integrated technology, which unrelated parties would have to use. How can an examination of unrelated party transactions lead to a satisfactory resolution of the transfer pricing problems?

As a first step, consider an industry in which there is no difference in costs between related party and unrelated party dealings; there is only one production technology, and it is available to the parties in both types of arrangements. There is thus no continuum price problem, and the arm's length standard, as traditionally interpreted, can be applied. It is likely that both unrelated party and related party transactions will actually occur in the marketplace, and it should be possible to observe prices from the former and use them to determine the incomes of each party in the latter.

This procedure satisfies the objective described in section B above of using information about unrelated parties operating at arm's length to determine the allocation of income in the related party setting. The related parties that sell intermediate goods will be given the same gross revenues as the corresponding unrelated parties; related parties that purchase them will have the same cost of goods sold as corresponding unrelated parties.

Further, it has already been assumed that the two sets of parties operate in the same market and have the same cost structure; therefore, the external prices and internal costs will be equal. Thus, the related parties will have the same net taxable incomes as the corresponding unrelated parties. They should therefore have the same total tax burden as the unrelated parties with which they are competing.

Now return to the situation in which a vertically or horizontally-integrated technology, available only to multinational companies, is dominant. If multinational corporations are able to produce at lower cost, then in the long run it should be difficult for the smaller companies to continue in existence. Therefore, arm's length prices may be unavailable. An appropriate transfer pricing result will be achieved if each related party were assigned the income that the corresponding unrelated party would earn, if the latter were using the efficient cost structure.

Microeconomic theory leads to an unambiguous and natural statement of what the income of unrelated parties should be in these circumstances. As long as the industry under analysis is competitive and the factors of production are homogeneous and mobile between sectors, it is assumed that "economic," "excess," or "above-normal" profits will be zero in the long run.[108] That is, each firm will earn just enough to be able to pay for the land, labor, capital, and other factors of production that it uses to produce its outputs.

The zero economic profit concept does not state that taxable income should be zero. If owners of the firm have supplied it with capital or other inputs, the firm should earn enough to be able to reward the shareholders for these factors; otherwise, the shareholders would be wise to find a better investment. Rather, the zero profit concept implies that in a competitive industry there should be an equality between the gross revenues of a firm and the summation of the market returns that are or could be earned by all of the factors of production that the firm employs. If gross revenues were higher than this amount, then the firm would be earning "above-normal" profits; the existence of "above-normal" profits would attract other firms to enter the industry until these "above-normal" profits disappeared through competition. If gross revenues were lower than this amount, a firm would not be able to earn enough to reward all of the factors it employs and, in the long run, would have to shrink or disappear.

This equality between revenue and the sum of returns to each factor of production may be used to determine the proper allocation of income among the related parties within the multinational. Specifically, subject to the discussion in section D *infra* regarding monopoly situations and intangibles, one should measure the factors of production used by each related party and compute the returns that each one would earn on its best alternative use in the marketplace. The sum of these amounts yields total input returns that each related party would have to earn if it were an unrelated enterprise. The sum also equals the amount that the multinational enterprise would have to pay an unrelated party to get it to produce the same outputs (employing the same inputs and using the same technology) as the related party does. Attributing this gross income to each related party will result in its tax base being equal to the hypothetical unrelated party alternative; therefore, the tax burden will be equal. Thus, there will be no tax incentive or disincentive to related party transactions.

The theory discussed above implies that a competitive firm's gross revenue, which equals price times quantity of output, will be equal to the returns that the factors it employs could earn in the marketplace. The traditional arm's length approach looks at the gross revenue side of this equation; the alternative procedure outlined above looks at the input side. It starts by identifying the factors of production employed by the firm, determining the returns that these factors would earn in the marketplace, and computing the sum. In short, the traditional approach looks for the prices that the firm's outputs would command in the marketplace, whereas the alternative approach seeks to determine the returns that the firm's factors would earn in the marketplace. Both approaches are equally consistent with the basic goal of the arm's length principle, which is to use information about unrelated parties operating at arm's length to determine the allocation of income in a related party setting.

D. Further Practical Problems

There are two further practical difficulties in applying the arm's length approach to integrated business economies: application of the approach to monopoly situations and valuation of intangibles. This section briefly describes these difficulties and suggests possible approaches to solving them.

1. *Monopoly situations.* In a market that cannot be entered by more than one for a few firms, the existence of "above-normal" profits cannot be ruled out, because potential competitors will not be able to compete them away. The equality discussed above between gross revenue and the returns that factors could earn in the marketplace, and the results deried from it, cannot then be assumed to hold.

However, it may still be possible to apply the basic idea. For example, consider a situation in which a corporation has been granted worldwide patent rights to a unique product. The company still can choose between exploiting this patent through related party or unrelated party dealings, and it would be worthwhile for this decision to be made free of distortions that could be caused by transfer pricing rules. To get an unrelated corporation to provide a good or service, the company would have to pay the unrelated corporation the sum of the returns that would be earned by the factors it would employ. Therefore, it would still be proper to use the alternative procedure to determine the income of the related corporation.[109]

2. *Valuation of intangibles.* The starting point for the alternative application of the arm's length approach is to measure the factors of production employed by the related parties, and to determine the returns that they would earn in the marketplace. This procedure can be implemented in a straightforward fashion only if the factors can be identified and measured.

However, there is at least one factor of production, intangible assets, for which it is often difficult to assign a precise value. These assets are often unique and it is frequently difficult to decide what returns they would earn if separately employed in the marketplace.

[108] For a narrative explanation of the zero profit condition, *see* R. Lipsey and P. Steiner, *Economics* 229–231 (6th ed. 1981). For a mathematical presentation of the implications of this condition, *see* J. Henderson and R. Quandt, *Microeconomic Theory* 107–110 (3d ed. 1980).

[109] In more complicated situations, both the affiliated corporation and any potential unrelated party participant may have possess bargaining rights that allow them to earn above-normal profits. In deciding whether to use such an unrelated party, a corporation would have to consider what would happen if it attempted to bargain with it. There are analyses, relating to economic game theory, that attempt to predict what the range of outcomes would be in such a bilateral monopoly situation. If the outcome, specifically the income of the potential unrelated party, can be predicted, then it would be proper to use it to determine the income of the corporation's affiliate. This is so, to repeat, because this procedure would allow the corporation's choice between using an affiliate versus an unrelated party to be made free of tax distortions. To implement this procedure, however, one would need to analyze the theoretical models of bargaining situations in detail, and this analysis is beyond the scope of the present [illegible].

One should not conclude that the presence of any intangible asset will make the alternative procedure impossible to implement. It may be that only one of the related parties employs intangible assets to any significant degree. In this situation it suffices to measure the factors of production employed by the party with measurable assets and to allocate the residual income to the related party employing significant intangible assets. If both parties employ intangible assets, valuation becomes more difficult and, in some cases, judgmental, but not impossible.

E. Conclusions

1. The arm's length standard remains the theoretically preferable approach to income allocation Microeconomic theory can be utilized to apply the arm's length standard to an integrated operation.

2. In certain situations, production technologies may be such that unrelated parties operating at arm's length can be expected to coexist with vertically or horizontally integrated multinational corporations. In these cases, arm's length prices should exist and their application to related party transactions should lead to appropriate results. This is the traditional approach embodied in the section 482 regulations.

3. In other situations, vertically or horizontally integrated technologies available only in related party dealings may dominate. Third party prices will be difficult to find in these cases; moreover, the use of the rare third party prices that occur may be inappropriate. However, since information may exist as to the arm's length returns attributable to the factors of production employed by one or both of the related parties, this information can be used to modify the traditional approach and take account of the integrated businesses.

Chapter 11

Arm's Length Methods for Evaluating Transactions Involving Intangible Property

A. Introduction

This chapter discusses the methodology for implementing the arm's length principle for transactions involving intangible property. The goal of the chapter is to propose a theoretical framework for analyzing the situations that have caused the greatest amount of difficulty in the transfer pricing area in order to generate further consideration of the difficult issues involved.

B. Role of Comparable Transactions

"Exact comparables," which are those involving the transfer of the same intangible property, supply the best evidence of what unrelated parties would do in a related party transaction. The weight to be given to evidence of "inexact" comparables, which generally are those involving different but economically similar intangible property, is not so clear. Nor is the resort to inexact comparables automatically justified by the arm's length principle. This section first outlines the standards for exact comparables. It then discusses the appropriate role for inexact ones.

1. *Exact comparables: two examples.* Exact comparables are most likely to occur in connection with the transfer of common products that embody intangibles that are widely available to producers, such as the once unique technology now employed in pocket calculators, digital watches, or microwave ovens. Comparability in such cases of widely available technology is usually easy to demonstrate.

The existence of an exact comparable for unique intangible property, however, is not inconceivable. Consider a multinational company that acquires an unrelated company whose only assets are a small amount of cash, equipment, and the rights to a valuable new invention. If, immediately after this acquisition, the multinational sells those rights to a subsidiary, there really can be no question as to the proper transfer price: It is the acquisition price minus the cash and value of the equipment. In fact, because this comparable is available, any other arrangement could be held suspect. Assume further that the subsidiary and the parent have no other transactions in the initial and following years. The subsidiary's income should include the return to the intangible in all future years, assuming that the subsidiary paid the arm's length consideration at the time of the initial transfer.

As a second example, consider a U.S. corporation that decides to exploit one of its intangibles. It sets up a Mexican subsidiary to serve the Latin American market, while it licenses the Asian rights to an unrelated Korean company. Assume further that the Asian and Latin American markets, and the parent's dealing between the Korean company and the Mexican subsidiary, are comparable in all important aspects. The Korean licensing arrangement should determine the Latin American subsidiary's allocation of income from the transfer of the intangible.

2. *Standards for Exact Comparables.* The assumptions made in these examples raise the crucial question: How is one to know if a potential comparable is indeed exact? The first requirement is that the comparable transaction involve the same intangible property transferred under substantially similar circumstances. Thus, an exact comparable should involve the same patent, product design, process, trademark, or other intangible transferred to the related party.

However, licenses of intangibles are usually exclusive. Therefore, it is extremely unlikely that the same intangible would be licensed to two different parties for the same use and geographic market. The standards for exact comparables should not require these aspects to be identical.

Instead, two types of additional standards should be met. First, the comparable transaction and the related party arrangement must take place in substantially similar economic environments; these standards may be called "external" ones. Second, the transactions must contain substantially similar contractual features; they must satisfy "internal" standards of comparability.

No amount of general discussion of these standards is likely to turn them into objective tests. As in all matters concerning transfer pricing, facts and circumstances must determine the outcome of specific cases. The following observations, however, may suggest some useful guidelines.

a. "External" standards. In examining external standards, the essential question is whether unrelated parties would regard the economic environment of the transaction under examination as similar to that of the proposed comparable transaction. In other words, would unrelated parties earn substantially similar profits from a substantially similar transaction? For example, the size and level of economic development of the markets should be substantially similar.[200] If one market is much larger, or if the product is already accepted in one market and not the other, one can presume that unrelated parties would not arrive at the same arrangements to license an intangible into these two markets. As another example, one market may contain many competitors, but in the other a licensee can expect to have a monopoly for a number of years. Again, it is reasonable to conclude that unrelated parties would come to different terms in negotiating licenses for these markets.

[200] Rev. Rul. 87-71, 1987-2 C.B. 148.

Another set of external standards concerns transactions between the licensor and licensee that are collateral to the transfer of the intangible in question. If the parties to one transaction have substantial dealings in the intangible with third parties (such as a cross-licensing arrangement) but the parties to the other set of transactions do not, external standards of comparability are not satisfied. There are clearly reasons why unrelated parties will reach different outcomes if they expect to have further dealings than if they do not. For example, an isolated exchange should not be taken as exactly comparable to a continuing transactional relationship. The comprable used in the *U.S. Steel* decision [201] has been criticized on this basis.

Finally, the level of economic risks being assumed and the functions performed by each party must be similar. Clearly, it would be inappropriate to compare a related party transaction where the affiliate engages solely in manufacturing a product with a transaction in which the unrelated party not only manufactures but also must market the product.

b. "Internal" standards. To meet this set of standards, the contractual aspects of the transactions being compared must be substantially similar in all important aspects. The most obvious ones include the amount and form of compensation for the transferred intangible. The most common compensation form is a royalty determined as a percentage of sales or quantity produced, but, as Appendix D discusses, other forms are sometimes used. If the comparable transaction contains accelerator or decelerator clauses under which the royalty increases or decreases as sales increase, for example, such clauses should appear in the related party transaction. Other elements of a transaction can have a significant effect on the income realized by unrelated parties to a license or similar agreement. These elements must be substantially similar in order for the unrelated party transaction to be an exact comparable. For example, if the unrelated party agreement provides for the licensee to receive a specified level of technical assistance and training, the related party transaction should contain similar rights. Similarly, if one agreement calls for the licensee to perform significant marketing or product development, while in the other the licensor performs the marketing, the agreements lack internal comparability.

[201] *See* discussion *supra* Chapter 4.

3. *Exact comparables and periodic adjustments.* A comparable that is exact at the outset of a transaction may lose its exactness over time. There should therefore be two requirements of continued use of the exact comparable over time. First, the arrangements must be consistent in their provision for options and other types of contingency clauses so that they provide for substantially the same types and amounts of adjustments for changing circumstances. Second, the comparables will not remain exact over time unless related parties perform these adjustments as unrelated parties do, under circumstances that are comparable.

Is the concept of an exact comparable so rigid that the results of related party and unrelated party agreements must be the same? Consider a U.S. company that licenses an intangible to two unrelated parties, one in Asia and one in Latin America. It is reasonable to predict that the arrangements will be similar if the economic environments are similar. However, it will probably not be the case that the U.S. company will realize the same income from the two transactions in every year. Business cycles, for example, vary across locations over time. The Asian licensee may have a very profitable experience when times are "lean" in Latin America, or vice versa.

The standards for exact comparables should not require year-by-year equality between the results of the unrelated party arrangement and of the related party one if it is reasonable to conclude that the long-term results will be comparable. Related parties should not be required to exercise rights they might have, if unrelated parties do not in fact exercise them.

4. *The role of inexact comparables.* This section describes the appropriate role for unrelated party transactions that cannot satisfy one or more of the standards for exact comparables. Because of the unpredictable outcomes that inexact comparables have caused in the past, one might argue that they simply should not be used. However, the data presented in Appendix A suggests that some continued use of inexact comparables would be appropriate. The International Examiners reported that they made some use of comparables in making transfer pricing adjustments 75 percent of the time.[202] Although the reported use of comparables for transfers of intangibles in general was lower, it was higher (76.5 percent) for marketing intangibles.[203] The IEs did not report making final determinations based solely on these comparables in all these cases, but that they made some use of them. Clearly, in practice, inexact comparable transactions provide significant information, even with respect to transfers of intangible property.

The problem, therefore, is not that inexact comparables are useless or misleading. Rather, either they have been given too much emphasis in many cases or inappropriate comparables have been used. This proper conclusion is that it is appropriate to make use of them, but that it is inappropriate to determine transfer prices solely on the basis of inexact comparables. This conclusion is fully consistent with the arm's length principle. The arm's length approach requires that exact comparables, when they are available, should determine transfer pricing allocations of income. However, it does not follow that the same is true of inexact comparables. That is, inexact comparables should be resorted to only when exact comparables are unavailable. Further, they should not be given priority over the alternative method outlined in section C of this chapter in all cases.

5. *Selection of appropriate inexact comparables.* Once it is determined that an exact comparable does not exist, how should inexact comparables be selected? The most obvious point is that the external and internal standards discussed previously should parallel those in the transaction at issue as closely as possible. For example, if the unrelated parties in the potential comparable operate in a very different economic environment—if the market is much smaller or the related parties carry on a much broader set of transactions—then the comparable should not be used to justify the related party arrangement. Similarly, if the intangible in the unrelated party transaction is at a very different stage of development or concerns a dissimilar product or service, then its use as a comparable is inappropriate.

In more traditional terms, an unrelated party arrangement should be used as an inexact comparable if the differences between it and the related party transaction can be reflected by a reasonable number of adjustments that have definite and ascertainable effects on the terms of the arrangement. The current regulations for section 482, although silent on this issue in connection with transfers of intangible

[202] Appendix A, *infra.*

[203] *Id.*

property, discuss it quite carefully in connection with transfers of tangible property. They mention that adjusting a sale for differences in transportation costs or minor physical modifications would probably be appropriate, but that an adjustment for the presence or absence of a trademark would not.[204]

This approach should be extended to transfers of intangible property. For example, unrelated party arrangements frequently require the licensor to provide a specified amount of training or expert assistance to the licensee for a brief period.[205] It may be possible to adjust a comparable that includes such a provision by comparing it with an arrangement that does not, or that provides for less assistance.

At the other extreme, consider an attempt to compare an unrelated party license with a related party license when the unrelated party licensee performs different functions than the related party licensee. For example, the former may be responsible for substantial marketing, while the latter may not. It seems clear that the effect of this difference would not be definite and ascertainable. Therefore, an adjustment for it would be too speculative to be appropriate.

Similarly, intangibles differ in their fundamental profitability. Attempting to compare a low-profit intangible to a high-profit one by adjusting for this difference would clearly be too speculative to be appropriate. Comparable transactions involving intangibles that are likely to be of typical or average profitability are therefore appropriate inexact comparables only if the related party intangible under analysis is typical or average.

The current regulations contain a list of twelve factors which are essentially internal and external standards that might be examined in order to determine whether an unrelated party license is an appropriate inexact comparable. As many observers have pointed out, however, it is difficult to derive useful guidance from this list, because it does not discuss the relative weights to be placed on the factors in a given situation. For example, prospective profits to be realized from the intangible appears late in the list, but after the 1986 Tax Reform Act this factor must be given special consideration. In contrast, the first listed item cites prevailing industry rates, which should not be relied upon unless the intangible being transferred is demonstrably average, based on observable indicators of profitability.

Another approach that provides a framework for use of inexact comparables is "functional analysis." Although not explicitly mentioned in the regulations, this procedure is outlined in the IRS Manual [206] and has been found to be a useful place to start in transfer pricing situations. In essence, the goal of functional analysis is to identify the economic activities actually undertaken or to be undertaken by the parties in both the related party situation and unrelated party situation. The most appropriate comparables may be chosen by identifying the ones in which the unrelated parties carry on the same major economic activities as the related parties. Section C of this chapter examines functional analysis in the context of the arm's length rate of return method. Functional analysis is an equally valid approach for analyzing comparables on the basis of the similarity between the economic activities performed.[207]

6. *Use of inexact comparables and periodic adjustments.* It is inappropriate to use inexact comparables to justify a related party transaction merely by analyzing similarities at the time of the initial transfer. For example, there may be valid inexact comparables that justify the establishment of a related party agreement with a fifteen percent royalty rate. These comparables may further justify fixing this rate for two years. Even if no adjustment were required during the first two years, in year three the taxpayer may not continue to rely upon the prior inexact comparables unless, after re-examination, use of these comparables remains appropriate.

Suppose a significant change occurs during the term of a license agreement. For example, suppose a taxpayer licenses a product design to a related party. At the time of the transfer, the taxpayer makes a good faith estimate that the product will be a routine one, and will attain 10–25 percent of its market. Based on this fact, the taxpayer gathers information on comparable transactions (none of which can meet the standards for an exact comparable). The information indicates that a royalty rate of 10 percent of sales is appropriate. The comparables contain varying duration and contingency clauses. In year three, the product design becomes uniquely popular and garners 95 percent of the market. Given this set of facts, the inexact comparables previously used may no longer be used in year three and succeeding years to justify the 10% related party royalty rate.[208]

Although unlikely, the taxpayer may find inexact comparables involving products with a 95 percent market share that demonstrate that the 10 percent royalty rate is still appropriate. More realistically, suppose that there are comparables that show that products in the taxpayer's industry with a 95 percent market share typically command a much higher royalty, or, as may be more likely, that there are no comparables for such a situation. In such case, the taxpayer must use the arm's length return method outlined in section C below either to justify the royalty rate previously set or to adjust the related party arrangement to bring it into compliance with the results of this new analysis.

C. An Arm's Length Return Method

The previous chapter discusses why a method that looks to arm's length returns, as distinct from arm's length prices, is appropriate. This section discusses how such a method should operate. Although some of the terminology in this section may be new, most of the techniques discussed in it are not. One of the main arguments for the development of an arm's length return method, in fact, is that taxpayers, the Service, and especially the courts have found it necessary to use ad hoc and incompletely developed versions of such a method in the past and will undoubtedly continue to do so in the future. Therefore, the goal of this discussion is to lay a foundation for this approach so that it may be used to achieve more consistent and satisfactory results.

1. *Basic arm's length return method—*a. *General description.* Consider a U.S. company, Widgetco, that holds worldwide patent rights to the widget, a high-tech light gathering device that is expected to be a vital component in certain satellites and scientific instruments. Widgetco intends to exploit this patent in the following way. A foreign affiliate will manufacture the widgets, under license from Widgetco. Besides utilizing the license, Widgetco and the affiliate will engage in the following transactions. Widgetco will sell various types of microchips, seals and filters to the affiliate, which will also buy some of these products from unrelated suppliers. The affiliate will use these components to manufacture the widgets and sell them to Widgetco, which will market and distribute them. Widgetco maintains a research staff that developed the widget and will continue to try to improve it.

It would be very difficult to depend purely on comparable transactions, as traditionally defined, to establish the proper allocation of income in this sort of "round trip" transfer-pricing situation. There are three separate types of comparables that would have to be found. The first is a set of prices for the components the parent will sell to the affiliate. The second is the royalty that the affiliate should pay to the parent under the production license. The third is the transfer price for the finished widgets. Although it may be possible to find exact comparables for one of these types of transactions, such as the purchase price of some of the components, it will in general be impossible to find comparables for all three. Further, finding an answer to only one aspect of the problem provides little help in deciding the proper allocation of income between the related parties.

Another approach would be to try to find one or more comparable transactions in which a company contracts with an unrelated party to manufacture a product similar to the widget. It is likely that these transactions will not be good inexact comparables. In general, the form, risks, and extent of relationships in the related party case will at least appear to be quite different from those in a contract manufacturer transaction. Among other things, the foreign affiliate carries raw material, work-in process, and finished goods inventories and should receive a normal market return on its activities that reflects its investment in such assets and the moderate risk that manufacturers using routine manufacturing processes bear with respect to their investment in manufacturing facilities and inventories. Using the terminology of the previous section, a contract manufacturer transaction is likely to fail both the external and internal standards for inexact comparables, because both the types of transactions between the parties and the terms of their agreements will differ. While comparables of this type should not be discarded from all consideration (because this type of comparable may provide useful information), it would be improper to base a resolution of the transfer pricing issue solely on such information.

An arm's length return approach would start from a different perspective. It would seek to identify the assets and other factors of production that will be used by the related parties in the relevant line of business and would try to assign market returns to them.

The first step in this process is to perform a functional analysis—*i.e.*, to break down each line of business into its component activities or functions. It should then be possible to identify which of the functions utilize only factors of production that can be measured and assigned market returns and those which do not. In most cases, identifying functions with measurable factors will lead to distinguishing between those functions that make significant use of preexisting intangible assets and those that do not. In Widgetco's case, Widgetco owns several types of assets that are difficult to measure, including the widget patent and other manufacturing intangibles, the ongoing enterprise value of the research staff, and the marketing intangibles. On the other hand, the foreign affiliate utilized measurable factors of production, assuming that the manufacturing process is a routine one. Specifically, the affiliate employs labor, plant, equipment, working capital, and what might be called "routine" manufacturing intangibles—*i.e.*, know-how related to efficiency in routine manufacturing processes that most manufacturers develop through experience. Since it is easier to evaluate the factors of production to be used by the foreign affiliate, the market rate of return analysis will focus on the affiliate. As the theoretical analysis in the previous chapter demonstrates, focusing on the return of the affiliate in this manner is a valid extension of the arm's length principle.

Next, income should be assigned to each of the functions with measurable factors—here the functions performed by the affiliate. The reason for identifying measurable factors (and, therefore, focusing on the affiliate) is that the functions that employ measurable factors will probably be carried on by a wide range of unrelated parties for which information will probably be available regarding market returns earned by them. A market return consistent with the returns of unrelated parties can be assigned to each of the affiliate's functions since they all employ measurable factors. Once returns are identified for all of the affiliate's functions, the residual income from the line of business is then allocated to Widgetco.

Assume, as stated, that the only function to be performed by Widgetco's foreign affiliate is manufacturing and that this function does not involve the significant use of intangible property developed by the affiliate or purchased by it from unrelated parties. Under the rate of return method the assets of the foreign affiliate would be divided into liquid working capital and all other assets (*i.e.*, the production assets). The actual return on the liquid working capital will be identified and allocated to the foreign affiliate. Rates of return on production assets used in similar manufacturing activities of similar risk must be identified or estimated.[209] Income will then be allocated to the affiliate for its manufacturing activity in an amount equal to the identified or estimated rate of return as applied to its production assets. This rate of return would include, by definition, a return on routine manufacturing intangibles that manufacturers commonly possess as well as a return for assuming normal business risks that manufacturers bear with respect to their investment in manufacturing facilities and inventories.[210] The residual amount of income from the line of business is allocated to Widgetco.

The same allocation would be made to the foreign affiliate if it sold its output to a second affiliate and not back to Widgetco. In neither case would the foreign affiliate receive a return from marketing its product.

b. *Use of arm's length information.* There are two ways that arm's length information can be used to allocate income to the activities of the Widgetco manufacturing affiliate. The first method has been previously described—to identify the unrelated parties' rates of return on assets utilized in a particular function, taking into account only the non-liquid assets relevant to the function in the line of business being examined. If satisfactory measures of the unrelated parties' assets are available, it should be possible to calculate an appropriate rate of return for each function and apply it to the related party's assets utilized in that function.

The second way to use the arm's length information is to measure it against a yardstick other than rates of return on assets. A common alternative

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[204] Treas. Reg. § 1.482-2(e)(2)(ii).

[205] *See infra* Appendix D for further discussion of unrelated party licenses.

[206] I.R.M. § 600 *et seq.*

[207] As Appendix D stresses, it is insufficient merely to replicate a royalty rate in order to achieve a comparable license. For example, the technological services provided by the licensor may have a large impact on the profitability of the license from the licensor's perspective.

[208] There may be other cases where the taxpayer can demonstrate an arm's length basis for continuing to use inexact comparables. *See* discussion *infra* Chapter 8 regarding periodic adjustments.

[209] Because manufacturing is a broad category, the function or activity would be defined more precisely. An example might be "medium instrumentation fabrication, assembly, and testing."

[210] *See* discussion of risk *infra* section E.

is the ratio of income to operating costs. For example, in the *DuPont* case,[11] and expert witness, Dr. Charles Berry, computed the ratio of gross income before reduction by operating costs and interest to operating costs for DISA, DuPont's Swiss affiliate, and for a number of unrelated parties performing similar functions. This analysis is useful to measure returns on service activities and in other situations where assets are difficult to measure consistently or, more generally, where there is reason to believe that the relationship between income and costs is more stable or easier to measure than the relationship between income and assets. As is true with assets, it is important to consider the types of costs and their relationships to income earned, not just the totals. For example, some analysts have used the ratio of gross income to "above the line" costs. This approach is suspect if the unrelated parties incur proportionately larger amounts of "below the line" costs, such as advertising, than the related affiliate incurs.

The use of both types of unrelated party information is consistent with the fundamental goal of the basic arm's length return method, which is to use information about unrelated parties to determine the returns that would have been earned had the related parties' activities been undertaken at arm's length. Therefore, both approaches are potentially applicable depending upon the availability of either type of information and the appropriateness of using either type of information in the particular circumstances.

c. *Applicability of basic arm's length return method.* The basic arm's length return method should have wide, but not universal, applicability in situations where exact or inexact comparable transactions are not available. It will not be sufficient alone, however, when both of the related parties own preexisting and significant intangible assets that are vital to the success of the project—for example, if Widgetco's foreign affiliate actively markets the products it manufactures in a manner that utilizes signifcant self-developed marketing intangibles. In such cases, it will be difficult to find a set of unrelated parties that possess the same type and amount of intangible assets as the affiliate and are thus able to perform the same activities. It will be difficult, therefore, to obtain the arm's length information needed to assign a return to either affiliate's activities.

This discussion is not meant to imply, however, that the basic arm's length return method is to be avoided whenever an affiliate possesses any amount of intangible assets. It is unlikely, for example, that any manufacturing operation is so simple that it does not involve the use of some intangibles. An affiliate engaged only in manufacturing may employ a skilled labor force, and the efforts expended in recruiting and training it may create at least some amount of going concern type of intangible. Further, the affiliate's experience in producing the parent's designs may lead to the development of some amount of know-how. These facts alone, however, should not prevent the application of the basic method. The reason is that unrelated parties performing similar activities, will, in general, possess these types of "routine" intangibles. Therefore, by measuring the return on assets that unrelated parties earn for performing similar activities and bearing similar risks, the basic method will automatically capture the returns earned by these "routine" intangibles and will properly attribute them to the affiliate. It is only when the affiliate owns some type of intangible that is of major importance to the enterprise, and which few unrelated parties possess, that the basic method is insufficent standing alone to resolve the issue.

The basic arm's length return method will probably be appropriate for most manufacturing affiliates. It should be possible to observe the rates of return on assets or ratios of income to costs that are earned by unrelated parties performing similar manufacturing activities involving similar risks and amounts of routine intangibles. It is possible to think of exceptions, however. Consider a corporation that has assembled a large and valuable team of engineers and skilled craftsmen within a European subsidiary in order to develop or perfect a complex manufacturing process. If no or few unrelated parties would be capable of performing this development activity, the basic arm's length return method will not be sufficient standing alone to resolve the case.

Similarly, the basic method will be applicable to many distribution and marketing affiliates. An affiliate that sets up and maintains a distribution network undoubtedly possesses a going concern intangible; an affiliate that markets products to industrial customers by participating in trade shows and maintaining a staff of salespersons undoubtedly possesses some amount of know-how. However, it seems likely that these sorts of activities are undertaken by unrelated parties that possess similar amounts of going concern value and know-how. Therefore, it should be possible to determine the arm's length returns on assets for these activities, which will include the appropriate returns to these "routine" intangibles. In other situations, however, the basic method alone will not suffice.

2. *Profit split addition to the basic arm's length return method.* Although the basic arm's length return method should be widely applicable, there are situations in which its use alone will clearly be inadequate. A large multinational corporation may have foreign subsidiaries that have research, marketing, planning, manufacturing, and other divisions that are as large and active as those of all but the biggest U.S. companies. Therefore, these affiliates may perform complex functions, take significant risks and own significant intangible assets equal to those of the typical parent corporation. If so, the basic arm's length return method would be impossible to apply because exact or inexact comparables, or rates of returns, for these complex functions are generally unavailable.

Consider Teachem, a U.S. company that is a world leader in designing and producing educational toys. It serves its major overseas market, Western Europe, through a French sales affiliate, Enseignerem. Teachem is planning to license a new set of designs to Enseignerem, who will modify them in minor ways, such as translating the instructions and markings, and who will hire local contract manufacturers to produce them. Enseignerem will utilize its own trademark and be responsible for all aspects of marketing and distribution in Europe. It will decide which of the toys to include in its line, set its own advertising budget, and design campaigns to promote the new line and its Enseignerem trademark. It also maintains a sales force and distribution network. Teachem maintains a research and testing staff to develop new products. The affiliate does not.

Assume further that Teachem has a business policy of not licensing its designs to unrelated parties. Exact comparables will therefore be absent, and inexact comparables may be difficult to find. How would an arm's length return approach be applied to determine the appropriate royalty rate to be paid by Enseignerem for the use of Teachem's designs? The first step is to identify the functions performed by the parent and the subsidiary in the line of business in which the licensed designs are used (the sale of new toy designs in the European market). The parent should be allocated the returns on the basic product designs, while the subsidiary is entitled to the returns to be earned by its trademarks, marketing efforts, and distribution network, plus any intangibles related to the modifications.

The next step is to identify the functions that employ measurable factors—*i.e.*, activities that do not involve the use of significant intangible assets. These activities should be analyzed using the basic arm's length return method. Enseignerem's distribution and manufacturing activities may be examples. It should be possible to find unrelated parties that perform these types of activities and incur similar business risks. Thus, it should be possible to determine an arm's length rates of return on assets (or income-to-costs ratio) for each activity and apply the arm's length rate or ratio to the appropriate related party factors. The resulting income should then be allocated to the party performing the activity. In this case, income attributable to distribution and manufacturing activities would be allocated to Enseignerem. If the parent corporation performs or is to perform routine activities involving the line of business, they too should be analyzed using the basic method.

These two steps will leave a quantity of income not yet allocated and a set of activities involving significant intangible assets not yet accounted for. The goal of the first two steps is to isolate the income that is attributable to the significant intangible assets owned by the corporate groups as a whole and used in the line of business in question—primarily the designs owned by Teachem and the marketing intangibles (including the trademark) owned by Enseignerem.

The goal of the remaining step is to identify the intangible income attributable to the relevant line of business and then split that income according to the relative value that the marketplace would put on each party's significant intangible assets had they been employed by unrelated parties operating at arm's length. The intangible income is equal to the combined net income from the line of business less the income allotted under the prior steps to functions with measurable factors—*i.e.*, the residual combined net income determined after applying the basic rate of return method to activities with measurable factors of the parties. In splitting the residual amount between the related parties, it is not necessary to place a specific value on each party's intangible assets, only a relative value. Of course, it is easier to state this principle than to describe in detail how it is to be applied in practice. In many cases, there will be little or no unrelated party information that will be useful in determining how the split would be determined in an arm's length setting. Furthermore, the costs of developing intangibles, even if known, may bear no relationship to value, especially in the case of legally protected intangibles, and generally should not be used to assign relative values to the parties' intangible assets. Splitting the intangible income in such cases will largely be a matter of judgment. There are two possible sources of arm's length information, however.

First, it may be possible to find unrelated parties that engage in similar activities and that use similar intangibles. The unrelated party transactions must be economically similar, of course, including the level of economic risks assumed. It would be inappropriate to use a profit split derived from a situation in which the unrelated parties' intangibles were much less (or more) profitable than those owned by the related parties. Further, it would be inappropriate to compare the split derived from a transaction in which an unrelated party conducted only wholesale level marketing, for example, with a related party situation in which an affiliate markets products to consumers. These requirements resemble the standards discussed above for inexact comparables. The analysis of unrelated party profit splits should explain the relationship between the observed profit splits and the overall profitability of the significant intangibles involved with a reasonable degree of accuracy. It is also necessary to analyze the functions that the unrelated licensors and licensees perform and the risks that they bear. Comments in this area should focus on how such an analysis can be implemented.

Second, in come circumstances, a taxpayer may have arm's length evidence of the value of its own or its affiliate's intangibles. For example, a taxpayer may have recently purchased its affiliate and may have some basis for determining the value of the intangible assets using the purchase price.

3. *Arm's length return method and periodic adjustments.* Issues involving periodic adjustments are easier to analyze for the arm's length return method than for the methods involving comparable transactions. Because the basic arm's length return method looks to the factors of production used by the parties, the income allocation should adjust as the factors change. Thus, as an affiliate's plant, equipment, and other measurable factors change from the projections in the initial analysis, the income allocated to them should change. Similarly, the profit split percentage is intended to reflect the relative values of significant intangible assets owned by the parties. When the value of intangibles belonging to one of the parties has changed, the percentage should be changed. For example, a dramatic increase in sales may be due to either a recent product improvement or an extensive marketing campaign, in which case proportionately more profit should be assigned to the developing or marketing affiliate, respectively.

These conclusions are not intended to imply, however, that there must be year-by-year equality between the related parties' incomes and the results of an ideal application of the method. The prior discussion of long-run versus year-by-year results is again relevant. For example, consider an independent firm that uses only plant and equipment. Although it should earn the market rate of return in the long run, it will, in general, experience lower returns or even losses in "lean" times and higher returns at the other end of the business cycle. Periodic adjustments will be required for significant changes in income. Therefore, changes (either negative or positive) that are less than significant may tend to even out in a long-term equilibrium. The absence of a requirement for an adjustment over time when insubstantial changes in income occur is a corollary of the rule that de minimis adjustments will not be made. Chapter 8 discusses this issue, including reasons why explicit inter-year set-offs would not be practicable, in more detail.

D. Priority and Coordination Among Methods

The previous sections of this chapter discussed two broad approaches for analyzing transfers of intangible property: an approach based on comparable transactions and one based on arm's length returns to factors employed. Which is to be used in a given situation? The answer is clear in one case. If an exact comparable is present, it and only it should be used to determine the allocation of income from the transfer. It follows from the definition of exactness that there can be no better evidence of what unrelated parties operating at arm's length would have done.

Finding an exact comparable, however, can be extremely difficult. In the majority of cases, particularly

[11] *See* discussion *supra* Chapter 6.

contested ones, the allocation of income will come from either the intangible comparable method or the arm's length return method. The facts and circumstances of each case should determine which method—or methods—should be used.

There are four basic types of cases. In the first, the intangible for which a section 482 transfer price is being determined is comparable, to those used by unrelated taxpayers and each of the related parties is expected to employ significant and complex intangibles. The inexact comparables method should be chosen.

In the second case, the section 482 intangible is unique, and the affiliate utilizing the intangible will engage in functions that use only measurable factors of production and routine amounts of intangibles. The basic arm's length return method should be used.

In the third case, the section 482 intangible has many competitors and the affiliate using the intangible will engage in simpler kinds of functions. *Both* of the methods are potentially applicable. Under the theory on which they are based, they should yield similar results. This situation should, in practice, be the easiest for the taxpayer to analyze and should engender the least amount of controversy.

In the final case, the section 482 intangible is unique and both of the related parties own one or more significant intangibles that will be used in exploiting it. This is the hardest case. The profit-split version of the arm's length return method must be used.

E. Risk-Bearing in Related Party Situations

Economic environments are full of uncertainty, and this fact must be recognized in all methods of income allocation. In general, in a related party transaction, the market reward for taking risks must be allocated to the party truly at risk.

Companies take risks in all dealings in the marketplace, and are rewarded for doing so. Some of this risk disappears in related party transactions. The legislative history of the Tax Reform Act of 1986 noted:

> In addition, a parent corporation that transfers potentially valuable property to its subsidiary is not faced with the same risks as if it were dealing with an unrelated party. Its equity interest assures it of the ability ultimately to obtain the benefit of future anticipated or unanticipated profits, without regard to the price it sets.[212]

[212] 1986 House Rep., *supra* n. 47, at 424-(1986). A line of court cases not directly relevant to section 482 has reached a similar conclusion. In *Carnation Co. v. Commissioner*, 71 T.C. 400 (1978), *aff'd*, 640 F.2d 1010 (9th Cir. 1981), *cert. denied*, 454 U.S. 965 (1981), and succeeding cases, members of an affiliated group of corporations were denied deductions for "insurance premium" payments to another member of the group that insured predominantly risks of the group. The courts decided that no true insurance was present, because there was no true risk shifting between the parent and its affiliates. *Carnation Co. v. Commissioner*, 71 T.C. 400 (1978), *aff'd*, 640 F.2d 1010 (9th Cir. 1981), *cert. denied*, 454 U.S. 965 (1981).

How should risk be accounted for in related party transactions? The riskiness of true economic activities gives rise to greater returns in the marketplace; therefore, if one part of an enterprise is inherently more risky than another, more income should be allocated to it. This allocation should be based on the risks arising out of the true economic activities undertaken by the parts of the enterprise, not on mechanisms that merely shift risks within the group.

This conclusion has implications for the proper application of both the comparables approach and the arm's length return approach. First, in searching for appropriate comparables, one should look for situations in which an unrelated party contracted to perform an economic activity that is about equal in riskiness to the activity done by the affiliate; it would be inappropriate to rely on comparables in which the unrelated party undertook a significant risk of some kind not undertaken by the related party. Likewise, in applying the arm's length rate of return method, unrelated party rates of return should be used only if they reflect similar levels of risk. But merely stating that unrelated party transactions must bear the same level of risk as the related party begs the question of what risks the related party should be allowed to assume. It's necessary to decide first what risks may be appropriately assumed by the related parties, depending on the functions that each performs. Only then is it possible to identify what unrelated party arrangements are comparable so that comparable rates of return (or inexact comparable transactions) can be determined.

Returning to the Widgetco example, the affiliate, as the manufacturer, is at risk both with respect to its investment in plant and equipment and with respect to inventories. The risk with respect to plant and equipment will be significant only if the facilities cannot be used for other purposes without incurring significant additional costs. If there is risk that the product will not be successful because there is uncertainty that the product will perform as anticipated or have the usages anticipated, then that risk should be borne by Widgetco as owner of the manufacturing intangible (the patent) and should not be reflected in the affiliate's rate of return. The affiliate's return should reflect only the moderate level of risk borne by manufacturers of products that are reasonably expected to achieve market acceptance. Likewise, if there is uncertainty that the product will be marketed successfully, then that marketing risk also should not be borne by the affiliate but should probably be shared in some fashion by the owner of the manufacturing intangible and the marketer, depending upon the extent to which anticipated profits from the enterprise are attributable to the manufacturing intangibles or the marketing activities.

On the other hand, assume that the risk does not relate to undue uncertainty regarding the anticipated performance or usage of the product or the market acceptability of the product. Assume, instead, that it is highly uncertain whether the product can be produced cheaply enough to make the enterprise viable, or that it is uncertain whether the manufacturing process will produce the product with the same quality as prototypes produced in the laboratory. These risks are risks inherent in the manufacturing function and should probably be shared in some fashion between the owner of the manufacturing intangible and the manufacturing affiliate. If the manufacturing affiliate is itself developing an efficient production process that attempts to achieve low production costs or to assure consistency in quality of output, then the affiliate should be allocated a return that reflects a substantial portion of that risk being borne by the manufacturing affiliate. (In such case, the manufacturing affiliate would bring to bear significant manufacturing process intangibles which would necessitate the application of the profit split addition to the basic arm's length return method.) If, instead, the owner of the intangible has also developed the production process without significant contribution by the manufacturing affiliate, then a separate manufacturing intangible related to the production process has been created, and the owner of such intangible is entitled to an arm's length return. The manufacturing affiliate's return should not bear more than the moderate level of risk borne by manufacturers of products that are reasonably expected to achieve market acceptance.

F. Coordination With Other Aspects of Transfer Pricing

The purpose of this chapter is to provide a framework for the development of new methods for allocating income from intangible property. Therefore, methods for allocation of income in situations involving provision of services [213] or transfers of tangible property [214] may appear at first glance to be outside the scope of the present discussion. However, the rules for intangible property must be coordinated with the rules for other types of transactions between related parties for obvious reasons. Transfers of tangible property and provision of services frequently accompany a transfer of intangible property; all three are often bundled into a single economic transaction. Further, if the rules relating to one type of transaction become more or less favorable to taxpayers, then they will easily be able to find ways to structure their transactions to take advantage of the disparities.

It may be helpful to establish a priority for single economic transactions that involve more than one type of transfer. For example, licensing agreements often contain clauses that require the licensor to provide training or other services to the licensee. Further, transfers of tangible property often involve intangibles, since the goods transferred often depend for their value on embodied trademarks or patents. In these cases, the basic allocation of income issue should be settled under the rules to be developed for intangible property.

G. Conclusions and Recommendations

1. An approach incorporating two alternative methods for determining transfer prices for intangibles would achieve more appropriate allocations of income and greater consistency in result.

2. The first method uses exact or inexact comparables when they exist.

a. An exact comparable is the same intangible licensed to an unrelated parties, when the circumstances surrounding it and the related party transfer are similar. The price derived from this method has priority over all others.

b. An inexact comparable is an intangible very similar to the intangible transferred to a related party, but not identical. Differences must be definite and ascertainable. If the other intangible, the contractual arrangements, or the economic circumstances are too different, it may not be used as a comparable.

3. The second method uses an arm's length return analysis instead of looking for a comparable transaction and adopting that transfer price as the section 482 transfer price for the related party transfer.

a. The basic arm's length return approach applies when one party to the transaction performs economic functions using measurable assets or other factors, but not using significant intangibles of its own. The first step is to break down the relevant line of business into its component activities or functions and measure the factors (generally assets) utilized by the party performing the simpler set of functions. Income attributable to those functions is determined by identifying rates of return to assets or other factors of unrelated entities performing similar economic activities and assuming similar economic risks, and applying a comparable rate of return to the assets or other factors of the related party. Any residual income is thereby effectively assigned to the other party. The royalty rate or other transfer price for intangibles utilized by the related party must be set to achieve the allocation of residual income to the other party.

b. When both parties perform complex economic functions, bear significant economic risks, and use significant self-developed intangibles, a profit split analysis must be added to the basic rate of return method. Under the profit split analysis, the combined net income from the line of business must first be determined. The profit split analysis assigns the residual net income, determined after applying the basic rate of return method to the measurable assets of the parties, between the parties based upon the relative values of the parties' unique intangibles.

4. While the standards for exact or inexact comparables do not require year-by-year equality between results of the unrelated party arrangements and related party arrangements, unrelated party arrangements can lose their comparability over time as the facts and circumstances relevant to the standards for comparability change. In such case an adjustment to allocations of income may be necessary. Under the arm's length return method, income allocations reflect the functions performed by the parties and—*i.e.*, they reflect the measurable factors of production and the value of significant intangibles employed by the parties in performing those functions. Therefore, income allocated to the related parties under the arm's length return method will change as the functions performed or the factors of production or value of intangibles employed by the parties change.

5. Other than in the case of exact comparables, there should be no priority among these methods. However, each is designed to be utilized under a specific set of facts, so the underlying fact pattern should determine the method or methods to be used.

6. Risk should be accounted for under all methods described in this chapter, since the market rewards risk takers. However, the risk premium should be attributed to the affiliate undertaking the economic function in which the risk inheres.

[213] Treas. Reg. § 1.482-2(b).

[214] Treas. Reg. § 1.482-2(c).

IV. COST SHARING ARRANGEMENTS

Preceding parts of this study have analyzed the proper prices to be applied, or amount of income to be allocated, when an intangible is transferred between related parties. Cost sharing arrangements are an alternative method by which related parties can develop and exploit intangibles. The history of such arrangements, their acceptance for tax purposes, and an outline of rules that should be followed for post-1986 cost sharing arrangements are discussed in this part.

Chapter 12

History of Cost Sharing

A. Introduction

In general, a cost sharing arrangement is an agreement between two or more persons to share the costs and risks of research and development as they are incurred in exchange for a specified interest in any property that is developed. Because each participant "owns" specified rights to any intangibles developed under the arrangement, no royalties are paid by the participants for exploiting their rights to such intangibles. The Conference Report accompanying the 1986 Act indicates that Congress did not intend to preclude the use of bona fide research and development cost sharing arrangements. However, Congress expected the results produced under a bona fide cost sharing arrangement to be consistent with results under the commensurate with income standard.[215]

Cost sharing arrangements have long existed at arm's length between unrelated parties. Typically, unrelated parties pool their resources and expertise in a joint effort to develop a specified product in exchange for a share of potential profits. The Service has little experience with ordinary unrelated party cost sharing arrangements because they are at arm's

[215] 1986 Conf. Rep., *supra* n. 2, at II-6.

length and normally do not have unusual tax consequences.[216]

In view of the limited information currently available on both related and unrelated cost sharing agreements, the Service and Treasury would appreciate receiving information from taxpayers regarding their contractual arrangements and experience with cost sharing.

B. 1986 Proposed Section 482 Regulations

Proposed Treas. Reg. § 1.482–2(d)(4), published on August 2, 1986, provided extensive rules for cost sharing arrangements.[217] The proposed regulations permitted any affiliate (other than one in the trade or business of producing intangible property) to participate in the cost sharing arrangement, provided that the intangible property was intended for use in connection with the active conduct of the affiliate's business. The regulations specifically authorized cost sharing arrangements for single projects, but did not disqualify multiple projects or continuing arrangements. The sharing of costs and risks was required to be proportional to the anticipated benefits to be received by each member from the arrangement. Cost sharing was required to be based on sales, profits or other variable criteria.

The 1986 proposed regulations did not explicitly address the "buy-in" question—that is, the compensation to be paid to the developer or owner of intangibles that are made available at the time the arrangement commences. They did, however, require that an arm's length amount be paid to the affiliate that provides intangibles that substantially contribute to the arrangement. Any required section 482 allocation for services provided by other affiliates was also to be included as a cost of the arrangement.

The proposed cost sharing regulations were ultimately abandoned in favor of the simpler general requirements presently contained in § 1.482–2(d)(4).

C. Current Regulations

The current rules in § 1.482–2(d)(4) state that a cost sharing agreement must be in writing and provide for the sharing of costs and risks of developing intangible property in return for a specified interest in the property that may be produced. A bona fide cost sharing arrangement must reflect an effort in good faith by the participants to bear their respective shares of all costs and risks on an arm's length basis. The terms and conditions must be comparable to those that would have been adopted by unrelated parties in similar circumstances.[218]

D. Foreign Experience With Cost Sharing Agreements

The 1979 OECD Report on *Transfer Pricing and Multinational Enterprises* [219] stated that, although international cost sharing agreements for research and development costs were not common, some had recently been entered into by large multinational enterprises. The OECD report indicated that, with the exception of the United States, none of its members had laws or regulations pertaining specifically to cost sharing arrangements. A major concern expressed by the OECD report was that the participants to the arrangement be in a position to benefit from any intangibles developed under the arrangement before the cost sharing payments would be allowed as deductible expenses. The OECD report stated that the United States did not require a profit mark-up for research and development activities performed. The OECD report reflected a consensus, however, that a profit mark-up would be appropriate when research was performed at the specific request of a member of the cost sharing group. There was also a consensus that withholding taxes should not apply to cost sharing payments when paid.

A few countries have specifically addressed cost sharing arrangements since publication of the OECD report. Germany has developed guidelines [220] for the use of cost sharing agreements in cases in which expenses for research and development can only be valued in the aggregate. Division of the costs must be based on the extent that each party actually benefits or expects to benefit from the arrangement. When determining costs incurred, no profit element is recognized for tax purposes. Appropriate costs to be shared may include a contribution to general and administrative costs.

E. Deficit Reduction Act of 1984

Section 367(d), enacted in 1984, provides that a transfer of intangibles to foreign corporations in an exchange described in section 351 or 361 is to be treated as a sale, with the transferor being treated as receiving amounts that reasonably reflect the amounts that would have been received under an agreement providing for annual payments contingent on productivity, use, or disposition of the property. Such payments are treated as reductions of the foreign entity's earnings and profits and as U.S. source income to the U.S. recipient. The "Blue Book" discussion of section 367(d) indicates that it is to have no application to bona fide cost sharing arrangements.[221] The Blue Book further recognized that it may be appropriate for the Treasury Department to elaborate on the current cost sharing rules to address problems with cost sharing arrangements.[222]

F. Cost Sharing Under Section 936(h)

After 1982, the intangible income of a domestic corporation qualifying for the possessions tax credit must be included in the income of its U.S. shareholders, unless the possessions corporation either elects the cost sharing method or elects the 50% of combined taxable income method, both of which are contained in section 936(h). Under the section 936(h) cost sharing election, the possessions must pay its share of the affiliated group's total research and development costs based on the ratio of sales by the affiliated group of products produced in the possession to total sales by the affiliated group of all products. The cost sharing payment must be computed with respect to "product areas" rather than single projects. "Product areas" are defined, in general, by reference to the three-digit Standard Industrial Classification codes (SIC codes) promulgated by the Commerce Department. Cost sharing payments made by the possessions corporation are not treated as income to the recipient but reduce otherwise allowable expenses.

A possessions corporation making the cost sharing election is treated as owning the manufacturing intangibles utilized in its business, and the income from such intangibles then becomes eligible for the possessions tax credit. Pricing of products between a possessions corporation electing the cost sharing method and its domestic U.S. affiliates must still meet the requirements of section 482, taking into account that the possessions corporation is treated as owning the manufacturing intangibles.

Pursuant to an amendment made by the 1986 Act, a possession corporation making the cost sharing election must pay the greater of 110% of the pre-1986 statutory cost sharing amount or the royalty required to be paid to the developer of the intangibles under the commensurate with income standard.[223] Given the special circumstances in which the section 936(h) cost sharing provisions apply and the 1986 Act changes, section 936(h) cost sharing arrangements do not provide much guidance with regard to the appropriate requirements for other cost sharing arrangements.

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[216] *See generally* Rev. Rul. 80–643, 1980–2 C.B. 327, revoked by Rev. Rul. 77–1, 1977–1 C.B. 161; *see also* Gen. Couns. Mem. 36,331 (December 29, 1975).

[217] 31 FR 10394 (1966).

[218] Whether a particular cost sharing agreement meets the requirements of section 482 is generally a factual question not appropriate for a private letter ruling. There have been private letter rulings regarding issues that are peripheral to the central question of whether a cost sharing agreement is bona fide. However, none of these rulings concerned the characteristics necessary for an agreement to be considered bona fide under the current regulations. See Priv. Ltr. Ruls. 8111103, [illegible], and [illegible].

[219] OECD, *Transfer Pricing and Multinational Enterprises*, *supra* n. 158, at 56–62.

[220] The guidelines for cost sharing agreements are found in paragraph 7 of the German Transfer Pricing Guidelines. English and French translations of these guidelines are contained in Raedler-Jacob, *German Transfer Pricing/Prix de Transfert en Allegmagne* (Kluwer Law and Taxation Publishers, Deventer, Netherlands, and Metzner, Frankfurt, Germany 1984). The guidelines are also available in International Bureau of Fiscal Documentation, *Tax Treatment of Transfer Pricing* (Amsterdam, [illegible]).

[221] *General Explanation of the DRA of 1984*, *supra* n. 143, at 433.

[222] *Id.*

Chapter 13

Cost Sharing After the Tax Reform Act of 1986

A. Introduction

The Conference Report to the 1986 Act states that, while Congress intends to permit cost sharing agreements,[224] it expects cost sharing arrangements to produce results consistent with the purposes of the commensurate with income standard in section 482—*i.e.*, that "the income allocated among the parties reasonably reflect the actual economic activity undertaken by each." The Committee Report also emphasized three potential problems that should be addressed in any revision of § 1.482–2(d)(4).

The first problem is selective inclusion in the arrangement of high profit intangibles. The Report states:

> Under a bona fide cost sharing arrangement, the cost sharer would be expected to bear its portion of all research and development costs, on successful as well as unsuccessful products within an appropriate product area, and the cost of research and development at all relevant development stages would be included.[225]

The second issue concerns the basis on which contributions are to be measured. The Report states:

> In order for cost-sharing arrangements to produce results consistent with changes made by the Act to royalty arrangements, it is envisioned that the allocation of R&D cost-sharing arrangements generally be proportionate to profit as determined before research and development.[226]

The third specific Congressional concern relates to the "buy-in" issue. The Report states:

> In addition, to the extent, if any, that one party is actually contributing funds toward research and development at a significantly earlier point in time, or is otherwise effectively putting its funds at risk to a greater extent than the other, it would be expected that an appropriate return would be required to such party to effectively reflect its investment.[227]

This chapter examines these and other issues that have arisen with regard to the requirements for a bona fide cost sharing arrangement after the Tax Reform Act of 1986. It should be made clear at the outset that, if an arrangement is not bona fide, any payments made under the cost sharing agreement will be considered as offsets to the arm's length price that should have been paid for the intangibles. While § 1.482–2(d)(4) limits adjustments by the Service in the context of cost sharing arrangements to an adjustment of contributions paid, this regulation presupposes that the arrangement is bona fide. If the arrangement is not bona fide, normal arm's length standards would apply, including the commensurate with income standard.

B. Products Covered

In section 936(h), product area research is defined generally by reference to the three-digit Standard Industrial Classification (SIC) codes, meaning that the section 936(h) cost sharing arrangement covers research and development costs over a very broad product area.[228] As described above, the legislative history to the 1986 Act contemplates that a section 482 cost sharing arrangement should cover all research and development costs within an "appropriate product area." The approach in section 936 and in the 1986 Act legislative history contrasts to the proposed 1986 regulations. Cost sharing arrangements described in the 1986 proposed regulations could cover a single project, although multi-project or product area cost sharing agreements were not prohibited.

As discussed in section C below, broad product area cost sharing arrangements raise the issue of whether the potential benefits are proportionate to the participants' cost sharing payments. This issue is of particular concern in cost sharing arrangements of foreign-owned multinational groups if U.S. persons are participants, since cost sharing payments made by U.S. participants are deductible for U.S. tax purposes.[229]

On the other hand, single product arrangements present the potential that cost sharing may be employed solely for high profit potential intangibles, such that foreign affiliates of U.S. multinational groups acquire the rights to such intangibles without bearing the cost of research related to low profit potential intangibles and unsuccessful research. The incentive to include selectively only high profit potential intangibles in a cost sharing arrangement is most acute when tax haven entities are the primary or predominate participants in the arrangement.[230]

Three-digit SIC code product areas would seem to be the appropriate scope of most cost sharing arrangements. Both the Service or the taxpayer should be permitted to demonstrate, however, that a narrower or broader agreement is more appropriate. Taxpayers choosing a narrower agreement would need to show that the agreement is not merely an attempt to shift profits from successful research areas while leaving expenses of unsuccessful or less successful areas to be absorbed by the U.S. or higher tax affiliates. For example, some members of a multinational food and beverage group might be interested in research and development to develop a multipurpose artificial sweetener, yet their respective food and beverage product lines might be sufficiently diverse (or might be products for which research and development is not necessary) that a single product agreement would be appropriate. Taxpayers choosing a broader agreement would need to show that the agreement is not being used to charge U.S. affiliates or other participants for research and

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[223] Section 936(h)(5)(C)(i)(I), as amended by § 1231(e)(1)(A), Pub. L. No. 99–514, 100 Stat. 2085 ([illegible]).

[224] 1986 Conf. Rep., *supra* n. 2, at II–638.

[225] Id.

[226] *Id.*

[227] *Id.*

[228] Section 936(h)(5)(C)(i)(I).

[229] Another potential abuse may arise in the context of a domestic affiliate that is a co-developer of the intangible, or otherwise participates in a *de facto* cost sharing arrangement. In such cases, the foreign entity may try to avoid the characterization of a cost sharing arrangement in order to extract royalties from the domestic affiliate, particularly where the withholding tax on the royalties is reduced by a tax treaty and the royalty income is not taxed or lightly taxed by the foreign jurisdiction.

[230] *See Lilly*, *supra*, n. 57, at 1138.

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development without reasonable prospect of benefit. From the Service's perspective, a product area that is broader or narrower than three-digit SIC codes may be necessary to avoid these distortions.

C. Cost Shares and Benefits

Underlying all of the problems discussed in the legislative history of the 1986 Act in relation to cost sharing arrangements is the fundamental principle that the costs borne by each of the participants should be proportionate to the reasonably anticipated benefits to be received over time by each participant from exploiting intangibles developed under the cost sharing arrangement. This cost share/benefit principle has several facets, including the appropriate product area to be covered (discussed in section B above), definition of costs to be covered (discussed in section D below), and the measurement of anticipated benefits and several other issues discussed below.

1. *Assignment of exclusive geographic rights.* In general, the computation of cost shares should reflect a good faith effort to measure reasonably anticipated benefits to be derived from the arrangement. While it is difficult under the best of circumstances to predict what benefits each of the participants will derive, it is virtually impossible to do so unless the participants are assigned specific exclusive geographic rights to intangibles developed under the arrangement. Specific assignment of rights could take the form of assigning the rights to manufacturing intangibles relating to products to be sold in the United States to a U.S. affiliate, rights related to European markets to an Irish affiliate, rights related to Middle Eastern and Pacific rim markets to a Singapore affiliate, etc. In such case, the U.S. affiliate would derive the income attributable to the manufacturing intangibles developed under the arrangement with respect to any sales in U.S. markets regardless of whether ultimately the U.S. affiliate is manufacturing the products sold in U.S. markets. (As discussed below, however, the participants must be those expected to exploit the intangibles by performing the manufacturing function themselves.)

Alternatively, exclusive worldwide rights to different types of intangibles developed under the arrangement could be assigned to particular participants. This latter type of arrangement would warrant special scrutiny to assure that the cost shares reflect reasonably anticipated benefits.[221] Moreover, if research activities are not common to the various types of intangibles produced under the arrangement, then the research related to each type of intangible should be charged to the specific affiliate that will receive the rights to that type of intangible. This is particularly true of arrangements where one of the parties produces components. The Service and Treasury would welcome comments on this topic. In short, such research activities are not the proper subject of a cost sharing arrangement.

For various reasons, including consistency with longstanding section 367(a) policy, U.S. geographic rights should never be permitted to be assigned under a cost sharing arrangement to a foreign person if either: (1) The participants are part of a U.S. owned multinational group; (2) a significant portion of the research is performed in the United States; or (3) any U.S. person participates in the arrangement. Accordingly, U.S. rights could be acquired by a foreign person only in the case of a foreign-owned multinational group that conducts the research overseas and does not include any U.S. affiliates as a participant in the arrangement.

2. *Overly broad agreements.* The principle that cost shares be proportionate over time to the reasonably anticipated benefits may affect the issue of whether cost sharing arrangements are overly broad in terms of the products covered or the affiliates participating in the agreement. For instance, a manufacturing conglomerate makes widgets and gadgets. An overall cost sharing agreement for research and development may be inappropriate if a particular affiliate does not make both widgets and gadgets. If a disproportionate amount of research and development relates to widgets but affiliate A manufactures only gadgets, affiliate A would be subsidizing the research for the widget manufacturers. Although every participant in a cost sharing agreement should not be required to benefit from every intangible that may be produced, cost shares should be proportionate to the reasonably anticipated benefits. It may be necessary, therefore, either to have separate cost sharing agreements for widget and gadget research, to adjust affiliate A's cost share to reflect the costs related to gadget research, or to exclude affiliate A from the cost sharing arrangement.[222]

3. *Direct exploitation of intangibles by participants.* The cost share/benefit principle may otherwise affect who may participate in a cost sharing arrangement. In general, the benefit to be derived under a cost sharing arrangement is the right to use a developed intangible in the manufacture of a product. Therefore, the participant must be in a position to exploit the intangible in the manufacture of products.[223] It is not necessary that all participants be capable of manufacture at the time costs are being incurred, so long as it is reasonably anticipated that the participants will be capable of manufacture once the intangibles are developed and will use intangibles developed under the arrangement in the manufacture of products.[224]

[221] As discussed in the next paragraph, rights to exploit an intangible in the U.S. must belong to a U.S. affiliate.

[222] The exclusion of affiliate A from the cost sharing arrangement raises the question of which of the other participants should pay for research related to intangibles that may be used by affiliate A. For various reasons, not all affiliates that anticipate using the intangibles developed under the cost sharing agreement may actually participate in the arrangement. For example, there may be reason to exclude a particular affiliate that manufactures only certain types of products and therefore will use only certain types of intangibles developed under the arrangement. Alternatively, the arrangement may not be recognized under foreign law for tax purposes, such that a deduction for cost sharing payments would be denied. In such cases, some affiliate must fund research for intangible rights to be used in manufacturing by the nonparticipants. While there is no clear answer, it seems appropriate that the affiliate that performs the research should fund and receive the residual rights.

[223] As a roughly analogous requirement, the 1986 regulations required that participants use the intangibles developed under the cost sharing arrangement in the active conduct of their trade or business. Prop. Treas. Reg. § 1.482–2(d)(4)(ii)(b). 31 FR 10,394 (1986). The 1986 regulations would also have excluded as participants companies in the trade or business of performing research for others. This latter exclusion seems unnecessary so long as the affiliate that performs the research and development funds an appropriate portion of the research and development costs and is capable of using the intangible rights that it acquires under the agreement in the manufacture of products.

[224] Expectations will not always prove true, and in some situations the participant that acquires certain rights to intangibles developed under the cost sharing agreement will not ultimately directly exploit those rights. For example, assume that a Dutch affiliate acquires the European rights to intangibles developed under the arrangement with the anticipation of manufacturing products for European markets in Ireland. It later appears that it will be necessary for various reasons to have a locally incorporated entity manufacture in Germany products to be sold in the German market. Unless the German rights to the intangible are transferred in a contribution to capital or other tax free transaction, the German rights would have to be licensed or sold to the German affiliate. In either case the intangible would be subject to section 482 and, generally, the subpart F provisions would treat the resulting royalty or sales income as foreign personal holding company income includible in subpart F income.

4. *Measurement of anticipated benefits.* In order to determine whether cost shares are proportionate to reasonably anticipated benefits, it is necessary to measure the anticipated benefits. Obviously there has to be some prediction, rough though it may be, of the kinds of intangibles likely to be produced and the relative proportion of units that will be produced and sold under the rights of each participant. In many cases, estimated units of production may be an appropriate measure of benefit assuming that there is a uniform unit of production that can be used as a measuring device. If there is no uniform unit of production, then sales value may be an appropriate measure, if measured at the same level of production or distribution for all participants. As stated in section A above, however, the Conference Report anticipated that cost shares be proportionate to profit as determined before research and development. Given the legislative history, therefore, neither units of production nor sales would be an appropriate measure if it were apparent (or became apparent during the course of the agreement) that profitability differed substantially with respect to various participants' rights. This would be true, for example, in situations in which geographic markets differ significantly in terms of production costs, market barriers, or other factors that bear significantly on profitability. In such cases, estimated gross profit or net profit may have to be used, or some adjustments may have to be made to cost shares determined on the basis of units of production or sales.

It is not realistic, however, to expect taxpayers in most instances to be able to estimate gross or net profit margins from estimated sales. Even estimates of units produced or sales value probably would be imprecise. It may be that a cost sharing agreement should not be recognized if units of production or sales are not appropriate measures and gross or net margins are extremely difficult to estimate. In such cases, the relationship between cost shares and anticipated benefits may simply be too tenuous.

5. *Periodic adjustments.* The language in the legislative history that the results of cost sharing arrangements be consistent with changes made by the 1986 Act to royalty arrangements has one other obvious implication. The cost shares should be adjusted periodically, on a prospective basis, to reflect changes in the estimates of relative benefits, including a change in the measurement standard if that becomes appropriate. In any event there is always a risk that the cost sharing agreement could subsequently be rejected as a bona fide arrangement if the estimates of benefits derived under the arrangement proved to be so substantially disproportionate to the cost shares that the estimates of benefits cannot be considered to have been made in good faith. Periodic adjustments to the cost sharing arrangement would reduce that risk.

D. Costs To Be Shared

In general, the costs to be shared should include all direct and indirect costs of the research and development undertaken as part of the arrangement. Direct costs would include expenses for salaries, research materials, and facilities. However, there should be a limitation on the annual inclusion of costs for depreciable assets that is consistent with U.S. tax accounting principles. Otherwise, deductions for outbound payments may be overstated. Indirect costs should include a portion of overall corporate management expense and overall interest expense that is allocated and apportioned to research and development activities in a manner consistent with U.S. expense allocation principles. The costs to be reimbursed should be net of any charges for research undertaken on specific request or for any government subsidies granted.[225]

E. Buy-in Requirements

As previously stated, the legislative history to the 1986 Act states that a party to a cost sharing arrangement that has contributed funds or incurred risks for development of intangibles at an earlier stage must be appropriately compensated by the other participants—hence the requirement for a buy-in payment. One of the primary reasons for adopting cost sharing provisions is to avoid the necessity of valuing intangibles. Yet, if there are intangibles that are not fully developed that relate to the research to be conducted under the cost sharing arrangement, it is necessary to value them in order to determine an appropriate buy-in payment.

There are three basic types of intangibles subject to the buy-in requirement. A participant may own preexisting intangibles at various stages of development that will become subject to the arrangement. A company may also conduct basic research not associated with any product. Finally, there may be a going concern value associated with a participant's research facilities and capabilities that will be utilized.

Fully developed intangibles command a royalty to the extent used by other participants and are generally not appropriately incorporated into a cost sharing arrangement. Thus, royalties for preexisting developed intangibles may not be included in the buy-in payment, but instead are subject to the general rules of the commensurate with income standard. Because a subsequent substantial deviation in the income stream from the intangible might require an adjustment, it is important to identify separately the income stream and royalties related to preexisting developed intangibles. In many situations, research is performed with respect to preexisting intangibles in order to improve the preexisting intangibles (improved software, for example) or to develop the next generation of intangibles. The requirement for an adjustment to the royalty paid for the intangible would not apply if the intangible is enhanced in value solely as a result of research undertaken after inception of the cost sharing arrangement.

The buy-in payment should reflect the full fair market value of all intangibles utilized in the arrangement and not merely costs incurred to date. To permit a buy-in based on cost would be inconsistent with the provisions of section 367(d) which effectively precluded the tax-free transfer of intangibles and, by implication, the transfer of intangibles at cost.[226] The buy-in payment could take the form of lump sum or periodic payments spread over the average life expectancy of contributed intangibles—perhaps on a declining basis since intangibles generally have greater value in the earlier stages of their life cycle. Obviously, periodic payments should reflect the time value benefit of not making a lump sum payment at the inception of the agreement.

[225] It is generally expected that there will not be a profit element in cost sharing agreements. A profit should be required, however, for research performed at the specific request of a group member or for a person outside the arrangement group. OECD, *Transfer Pricing and Multinational Enterprises, supra* n. 156, at p. 119. In either case, the amount received should reduce the costs to be shared. Cost items that should not be included in the costs to be shared among the participants is the buy-in cost of transferring intangibles from the party by whom they were developed to the other participants. This general subject is discussed in section E below.

[226] The legislative history of the 1986 Act states that the provisions of section 367(d) can be avoided by selling intangibles subject to the application of section 482 to the sale. S. Rep. No. 169, 99th Cong., 2nd Sess., vol. 1 at 368 (1984). The legislative history did not contemplate that a transfer at cost would avoid the application of section 367(d).

A "buy-out" occurs when a participant withdraws from a cost sharing arrangement. Having funded a portion of research and development prior to withdrawal, that person owns a share of whatever the agreement has borne to date and must be compensated by the other participants for the value of what the arrangement has produced to date and not merely reimbursed for costs incurred to date.

A "secondary buy-in" is required when new members are admitted after a cost sharing agreement is in place. If a new member is acquiring a portion of the geographic rights of one of the original participants, any buy-in amount should be paid to the affiliate whose geographic rights are being reduced. Once again, in order for the buy-in to be arm's length, any new member must compensate the original participants in a manner similar to the original buy-in computation, but based upon current values and not merely costs incurred to date.

F. Marketing Intangibles

The 1986 amendment to section 482 provides that the term "intangible property" shall have the same meaning as in section 936(h)(3)(B). The section 936 definition of intangible property includes marketing intangibles. This does not mean, however, that marketing intangibles are necessarily the proper subject of cost sharing rules developed with manufacturing intangibles in mind.

In general, marketing costs yield a present benefit (even if also a future benefit) and, therefore, are currently deductible expenses for which a charge must be made under the services provisions of the section 482 regulations if the benefit therefrom accrues to a related person.[237] (Research expenses related to manufacturing intangibles generally do not yield present benefits but, nevertheless, are currently deductible pursuant to the special provisions of section 174.) In the context of marketing expenses, the services regulations under section 482 presently serve the same function as would rules governing cost sharing arrangements in identifying the potential beneficiaries of a marketing expense and requiring an appropriate charge (albeit with a profit element in certain cases). There seems to be no need for an additional regime to deal with the tax treatment of cost sharing arrangements related to marketing expenses. Comment is requested, however, concerning any situations which are believed not to be covered by the section 482 services regulations or any perceived problems which arise under those regulations as they affect marketing expenses.

G. Character of Cost Sharing Payments

Under section 936(h), the amount of any required cost sharing payment is not treated as income of the recipient, but instead reduces the amount of deductions otherwise allowable.[238] More generally, when expenditures are made with the expectation of reimbursement, they are treated as loans, and therefore the reimbursement does not constitute gross income to the recipient.[239] Accordingly, cost sharing payments are not income to the recipient but, instead, reduce costs which are otherwise deductible in computing taxable income and earnings and profits. Since cost sharing payments are not gross income to the recipient, no U.S. withholding tax would be imposed on outbound cost sharing payments made by a U.S. person to a foreign person.

Characterizing cost sharing payments in this manner also reduces the amount of research and development expenses of the entity performing the research that are subject to allocation under the rules of § 1.861–8 and increases the amount subject to allocation by the participants making the cost sharing payments.[240] Furthermore, since the payments received by the entity performing the research will not constitute income, payments received by a U.S. entity from foreign affiliates are not foreign source income to the U.S. entity.

For purposes of calculating the credit allowable under section 41 for research expenditures, members of a commonly controlled group of corporations may disregard intercompany reimbursements for research expenditures.[241] This rule treats a U.S. company that actually performs U.S. situs research as incurring 100 percent of the research expenses for purposes of calculating the research credit, even if the U.S. company is reimbursed for a portion of those expenses pursuant to a section 482 cost sharing arrangement.

One group of taxpayers has suggested that the regulations should allow a cost sharer to denominate its rights under a cost sharing arrangement as a geographically exclusive, no-royalty, perpetual license if a license is required to obtain local country tax benefits or if the parent would be in a better position to protect against infringement than the subsidiary. If under U.S. law, the participant is clearly the beneficial owner of intangibles developed under the cost sharing arrangement, then labeling its interest as a "license" will not change the characterization for U.S. tax purposes, even if legal title to the rights are held by its parent serving as nominee owners of such rights. Therefore, whatever label is applied to the arrangement for foreign law purposes generally would not affect its U.S. tax treatment unless the label affects substantive legal rights relating to the intangible.

H. Possessions Corporations

The cost sharing payment made by a possessions corporation pursuant to the special cost sharing election under section 936(h)(5)(I) must be determined under those rules and not under a contractual cost sharing arrangement that would otherwise govern the charges incurred by the participants. Indeed, the statute and regulations explicitly provide that the section 936(h) cost sharing payment shall not be reduced by a contractual cost sharing payment.[242] Under section 936(h), the cost sharing payment by the possessions corporation must equal the greater of the amount required under the new commensurate with income standard or 110 percent of the pre-1986 Act statutory cost sharing amount. Under the commensurate with income standard, the cost sharing amount must at least equal the fair market royalty which would have to be paid to the developer if the manufacturing intangibles had been licensed (even in cases in which the intangible had previously been transferred in a section 351 exchange).

The amount paid under section 936(h) entitles the possessions corporation to be treated as the owner of manufacturing intangibles previously developed by its U.S. affiliates. The fact that a possessions corporation has entered into a cost sharing arrangement for the development of future intangibles and is paying a lesser amount under that arrangement does not affect the amount required under the section 936(h) cost sharing election. Indeed, since the section 936(h) cost sharing payment is compensation for intangibles previously developed and the section 482 cost sharing payment made pursuant to the contractual cost sharing agreement is for the cost of developing new intangibles, both amounts appropriately must be paid initially—one by statutory election and the second pursuant to the contractual arrangement. It might be argued that, once intangibles are developed under the section 482 cost sharing arrangement, the possessions corporation's section 936 cost sharing payment should be reduced so that the possessions corporation does not pay a second time for that intangible. The statute, however, precludes that result.

I. Administrative Requirements

Taxpayers seeking to enter into cost sharing arrangements should be required to make a formal election and to document the specifics of the agreement contemporaneously. Any U.S. participant should be required to include a copy of the agreement with its first return filed subsequent to the agreement's effective date. Taxpayers making the election would agree to produce, in English and in the United States, the records of foreign participants necessary to verify the computation and appropriateness of the respective cost shares within 60 days of a request by the Service. These records would include identification of the SIC code or other basis used to determine products covered by the agreement, and summary information concerning sales, gross margins, and net income derived with respect to such products. The House Report accompanying the 1986 Act suggests that the Service should require similar records to be kept and produced under the authority of section 6001 for section 936(h) cost sharing agreements.[243]

J. Transitional Issues for Existing Cost Sharing Agreements

It is unlikely that there will be preexisting cost sharing agreements that will meet all of the standards described above. If such agreements are not recognized, the Service and taxpayers will encounter significant problems in determining ownership of preexisting intangibles and the treatment of the payments that have been made pursuant to the preexisting agreements. Some type of grandfather treatment would therefore appear to be appropriate. One possibility would be to permit any cost sharing agreement that conforms to the requirements of the existing regulations, and that has been in existence for more than 5 years prior to 1987, to be recognized fully if conformed within a certain period after the promulgation of the new rules with respect to matters other than the buy-ins that occurred prior to June 6, 1984 (the effective date of section 367(d)). If the cost sharing agreement has been in effect for less than 5 years and the agreement does not conform substantially to the new rules, then the old agreement would not be recognized. If a new agreement that conforms to the new rules is adopted, then all payments pursuant to the old agreement would be taken into account as an adjustment to any required buy-in payments relating to the new agreement.[244]

K. Conclusions and Recommendations

1. Congress intended to permit cost sharing arrangements if they produce results consistent with the commensurate with income standard in section 482.

2. Three-digit SIC code product areas seem to be the appropriate scope for most cost sharing arrangements. Both the Service and the taxpayer should be permitted to demonstrate, however, that a narrower or broader agreement is more appropriate.

3. The fundamental principle underlying the concerns identified in the legislative history of the 1986 Act with respect to cost sharing is that costs borne by each of the participants must be proportionate to the reasonably anticipated benefits to be received over time by the participants from exploiting intangibles developed under a cost sharing arrangement. This principle has several implications.

a. In order for taxpayers to make a good faith effort to predict anticipated benefits, it is essential that the participants be assigned specific and exclusive geographic rights to intangibles developed under the arrangement. U.S. geographic rights generally should not be permitted to be assigned to a foreign person.

b. Cost sharing arrangements may be overly broad in terms of products covered or affiliates participating in the agreement if some participants would utilize only a narrow range of intangibles developed under the agreement.

c. Since the benefit to be derived under a cost sharing arrangement is the right to use developed intangibles in the manufacture of a product, participants must generally be capable of manufacturing and using developed intangibles in the manufacture of products.

d. In estimating anticipated benefits, units of production or sales value generally would be an acceptable unit of measure unless profitability would reasonably be expected to differ significantly with respect to various participants' rights. In the latter instance, some adjustments must be made, or some other standard of measurement utilized, to reflect more accurately the reasonably anticipated benefits to be derived by the participants.

e. Cost shares should be adjusted periodically, on a prospective basis, to reflect changes in the estimates of relative benefits, including a change in the measurement standard if that becomes necessary.

4. The costs to be shared should include all direct and indirect costs determined in a manner consistent with U.S. tax accounting and expense allocation principles.

5. A party that contributes funds or incurs risks for development of intangibles at an earlier stage must be appropriately compensated by the other participants in the form of a buy-in for the value of preexisting intangibles (including basic research and the going concern value of research capability).

a. Fully developed intangible command a royalty and should not be incorporated into a cost sharing agreement, with the result that the buy-in may not reflect compensation for fully developed intangibles.

b. A secondary buy-in is required whenever a participant withdraws from a cost sharing arrangement or a new participant enters the arrangement.

6. Expenses relating to marketing intangibles are presently governed by the services provisions of the section 482 regulations. There seems to be no need for marketing expenses to be subject to a cost sharing regime developed for manufacturing intangibles.

7. Cost sharing payments are not income to the recipient but, instead, reduce costs that are otherwise deductible for purposes of computing

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[237] Treas. Reg. § 1.482–2(b)(2).

[238] Section 936(h)(5)(C)(i)(IV)(c); Treas. Reg. § 1.936–6(b)(3).

[239] *Baccordo v. U.S.*, 12 Cl. Ct. 184 (1987).

[240] Section 1.861–8 sets out rules for allocating and apportioning deductions between U.S. and foreign source gross income. A special allocation rule gives companies the right to allocate fewer U.S. research and development expenses to foreign source income, even though the income generated by the expenses is foreign source. Treas. Reg. § 1.861–8(e)(3)(B)(ii). Under the 1986 Act, 50 percent of all amounts allowable as a deduction for qualified domestic research and experimental expenditures is apportioned to income from sources within the United States with only the remaining 50 percent apportioned on the basis of gross sales or gross income of companies benefitting from the research and development. This special provision applies only to expenses incurred in tax years after August 1, 1986, and on or before August 1, 1987. § 1216, Pub. L. 99–514, 100 Stat. 2085 (1986). Provisions similar in concept are currently under consideration in Congress.

[241] Treas. Reg. § 1.41T–6(e); Priv. Ltr. Rul. 8843004, (July 22, 1988).

[242] Section 936(h)(5)(C)(i)(I); Treas. Reg. § 1.936–6(a)(3).

[243] 1986 House Rep., *supra* n. 47, at 418–419.

[244] This approach is generally consistent with the cost sharing regulations published in 1968, which permitted pre-existing cost sharing agreements to be modified within 90 days of publication of the section 482 regulations. Treas. Reg. § 1.482–2(d)(4).

taxable income and earnings and profits. Consequently, outbound cost sharing payments are not subject to U.S. withholding tax, and inbound payments are not foreign source income.

8. Since a section 936(h) cost sharing payment is compensation for intangibles previously developed and a section 482 cost sharing payment is for the cost of developing new intangibles, both amounts appropriately must be paid initially if a possessions corporation making the section 936(h) cost sharing election enters into a section 482 cost sharing arrangement. Under the statute, the section 936(h) payment may in no event be reduced to reflect amounts paid under a section 482 cost sharing agreement.

9. Taxpayers should be required to make a formal election if they enter into a cost sharing arrangement, to file a copy of the agreement with their return, and produce records necessary to verify the computation and appropriateness of the respective cost shares.

10. Cost sharing agreements in existence for more than five years prior to 1987 should be grandfathered if they conform in certain respects with new rules to be promulgated. Other agreements will not be bona fide unless and until they substantially conform to the new rules.

Appendix A—Analysis of Questionnaire Responses

A. IRS Access To Pricing Information

- Significant section 482 issues were identified by IEs over 70 percent of the time and by the domestic agent about 10 percent of the time.
- Significant section 482 issues were initially identified using the following sources:

Source:	Percentage of responses
Form 5471	50.36
Form 5472	[illegible]
Financial data	[illegible]
Prior exam	7.19
Industry experience	2.88
Customs data	2.16

- Time alloted to develop the 482 issue was determined by:

	Percentage of responses
Case manager	51.32
Domestic group manager	7.78
I.E. manager	35.53
Branch chief	5.28

- About 66 percent of the IEs reported that the decision on time allotment was made after receiving adequate opportunity to analyze the section 482 issue.
- Almost 90 percent of respondents stated the time alloted to examine the section 482 issue was [illegible].
- Factors affecting time allotment were:

	Percentage of responses
Potential yield	[illegible]
Assurance of yield	4.48
Both of the above	28.35
Neither of the above	34.33

- Annual Reports to shareholders were used to identify or develop section 482 issues in 34 percent of the cases.
- The portions of the Annual Report specifically considered for identification or development of section 482 issues were:

	Percentage of responses
Income tax notes	18
Segment information note for product line	11
Segment information for geographic area	36
Other	14

- Sixty-five percent of respondents thought that information on Forms 5471 and 5472 was helpful in planning exams.
- In 29 percent of the reported cases, section 482 issues were identified and not pursued. In 20 percent of the reported cases, section 482 issues were identified and not changed.
- The taxpayer had no readily available basis to support its section 482 transaction in almost 75 percent of the cases.
- In over 50 percent of the reported cases, taxpayers failed to make timely and complete responses to questions asked in developing section 482 issues.
- More than 66 percent of the responses indicate that there was no reasonable explanation for any delay in responding to questions aimed at developing section 482 issues.
- Reasons given for delays in responding in IDRs:
  - —Tax department staffing.
  - —Records located overseas.
  - —Foreign parent refused to produce records.
  - —Extremely detailed requests for information from the foreign subsidiaries.
  - —Lack of cooperation existed between the parent and subsidiary.
- Unreasonable delays in responding to requests for information concerned:
  - —Control of affiliates—34.4 percent of [illegible].
  - —Existence of comparable transactions with third parties—48.5 percent of responses.
  - —Terms of comparable transactions with third parties—48.5 percent of responses.
- The average length of delay to responses was 12.2 months. The portion of the delay deemed as reasonable by the responding IEs averaged 2.2 months.
- Using a summons to obtain information was considered as follows:

	Percentage of responses
Considered	41
Discussed with taxpayer	34
Employed	5

- IE descriptions of circumstances in which issuance of a summons was considered:
  - —Formal summons discussed—not used because case manager felt that the action would close the door to future cooperation in domestic audits.
  - —It was felt that the issuance of a summons for records would only delay the overall development and completion of the case.
  - —Summons considered due to delay in response to agent and economist. Not issued as taxpayer eventually did respond, although the responses were generally inadequate.
  - —Used as a threat to speed-up IDR response time. Generally not useful.
  - —Taxpayer complained that our request was overly broad. After discussion with Branch Chief, including the use of section 982 and summons, Taxpayer offered an alternative to books and records, under which most of the information requested was eventually received.
- Section 982 procedures arose to the following extent:

	Percentage of responses
Considered	[illegible]
Discussed	17.6
Employed	[illegible]

- IE descriptions of the circumstances in which section 982 was considered:
  - —The section 982 procedures were mentioned in opening conference.
  - —Taxpayer's practice was to furnish as little information as possible with approximately a 90-day turn around time. When subsequent IDRs needed to be issued, the same practice was followed.
  - —Taxpayer is well aware of our open year policy and planned closing dates. IE was of the opinion that taxpayer feels if they use delaying tactics the case will become "old" and will be closed out undeveloped. Taxpayer's delaying tactics prevented the issuance of follow up IDRs. Taxpayer refused to furnish its parent's cost data for the products that were at issue.
  - —Taxpayer was late in providing data after initial adjustments were prepared. Taxpayer's attorney's tactic was to continue indefinite discussion of the issue, including appeals to the National Office.
  - —Taxpayer's responses to IDRs took from 6 months to a year. The audit was stretched out to the point that the planned audit closing date became a problem.
  - —Section 482 issues were raised on the previous audit. The prior examiner received virtually no information from the taxpayer. Detailed information was submitted by the taxpayer in the Appeals protest. This information was used by the IE and the economist in subsequent years.
  - —Taxpayer clearly not responsive to IDRs that would hurt him. In three cycles, the key IDRs were not answered.
  - —District allows taxpayers excessive amount of time to respond to IDRs. A two year audit cycle takes five years to complete.
- According to responding IEs, the following adversely affected the development of section 482 issues:

	Number of responses	
	Yes	No
(a) 3.0, 5 open years policies	21	44
(b) Planned audit closing dates	[illegible]	39
(c) Taxpayer tactics	[illegible]	[illegible]

- Competent Authority considerations affected the resolutions of 10% of the reported cases.
- Only 3% of respondents claimed that competent authority considerations affected their decision to pursue any section 482 issue.
- Appeals settled 28% of the section 482 issues in the reported cases.
- 69% of respondents disagreed with the terms of the Appeals settlement.
- Counsel was involved in 26% of cases settled by Appeals.
- 76% of respondents did not receive a copy of the Appeals settlement.
- The section 482 issues were resolved at the examination level 43.4% of the time in the reported cases.
- The IE was appropriately consulted in 90% of the reported cases resolved by Examination.
- The section of the 482 regulations providing the basis for Examination's resolution was:

	Percentage of responses
Comparable uncontrolled price	32
Resale price method	8
Cost plus method	24
Other	36

- The IE agreed with the resolution by Examination 85.7% of the time.

B. Application of Pricing Methods

- IEs stated that the taxpayer used comparables as follows with regard to [illegible] transactions:

	Percentage of responses
Planning transactions	9
Defending transactions	33
Did not rely on comparables	[illegible]

- 71% of IEs who responded stated that the comparables used were not made available to them at or near the beginning of the examination.
- Description of comparable(s) relied on by taxpayer in planning or defending its section 482 transaction:
  - —In performance of services, taxpayer tried to establish comparables based on charges to third parties.
  - —The taxpayer presented pricing data with an unrelated distributor of similar property in a different country.
  - —Sales invoices to third parties.
  - —Contracts between unrelated third parties.
  - —Taxpayer claimed it was charging the same royalties to all of its foreign subsidiaries.
  - —Taxpayer secured quote from third party in small quantity transaction.
  - —Weighted average of Canadian CPC's third party sales. Method required by Revenue Canada.
  - —Sales to 50% owned subsidiaries.
  - —Industry norms.
- Only 19% of those responding accepted the taxpayer's comparables.
- Examples of explanations why taxpayer's comparables were not accepted:
  - —The taxpayer was looking only at the services and not looking at the overall transaction, i.e. providing services, the transfer of technology and other intangibles.
  - —The comparables did not reflect true arm's length pricing because they ignored the fact that the parent performed substantial marketing, distribution, and trademarking functions, or the circumstances were otherwise different.
  - —The taxpayer's method generated approximately 185% of the combined profit to the low tax entity and a loss to the U.S. parent.
  - —The taxpayer's comparables included very small volumes.
- The taxpayer relied on comparables based on "industry norms" in 41% of the cases reported.
- Description of industry average "comparables" submitted by the taxpayer to support its assertions:
  - —Robert Morris Associates—Annual Statistics by SIC Code of Gross Profit Margins for Wholesale Automotive Equipment Dealers.
  - —Taxpayer relied on published AFRA demurrage rates.
  - —Taxpayer used the average resale mark-ups for the industry.
- Comparables were used as a basis for adjustment in about 75% of the cases reported.
- Representative sources for finding comparables relied upon by IEs:
  - —The IRS Economist used industry (construction) comparables. The services that the offshore company performed were that of a construction manager. The economist determined that, based on comparables, the offshore company should receive a comparable profit. The remaining profit was allocated back to the taxpayer for services and intangibles.
  - —Economist used industry statistics from docketed cases and SEC reports of unrelated taxpayers.
  - —Taxpayer was requested and did provide comparable transactions of its manufacturer parent with its unrelated distributors.
  - —Information from third parties with respect to comparable transactions (a similar product under similar circumstances in a similar market).
  - —License agreement with related and unrelated parties.
  - —Analysis of industry, consulting with ISP, contacting other IEs examining similar companies.
  - —Third party agreements for similar services or intangibles with same taxpayer in same circumstances.
  - —Obtained Form 10K information from serveral U.S. entities and used to establish the arm's length price on a cost plus basis.
  - —Third party sales of taxpayer and compiled statistics from "Robert Morris & Associates—Annual Statement Studies."
- The following are descriptions of significant problems encountered by IEs in developing a comparable:
  - —The information sought from third parties was old—5 to 6 years. In one instance the third party relocated and finding records was difficult. Records were not organized when obtained.
  - —Difficulty in acquiring information from third parties and obtaining permission to use data from the third party.
  - —Adjusting for differences in geographic markets.
  - —There are no comparables at this level of distribution. All manufacturing/sales companies in this industry are related.
  - —The products manufactured and sold by the Puerto Rican affiliates were the high volume, profitable products. The functions performed by the subsidiaries did not correspond to any third party situation. Consequently, the comparables identified were useless.
- Methods used in proposing tangible property adjustments by percentage of [illegible]:

	Percent
Comparable uncontrolled price	31
Resale price method	18
Cost plus method	[illegible]
Other method	11

- A majority of IEs who responded claim that the priority of methods was useful in development or analysis of the tangible price [illegible].
- Market penetration was not considered as a factor when determining section 482 adjustment in about 75% of the cases reported.
- The taxpayer's documentation considered the priority of pricing methods in 50% of the cases reported where documentation existed.
- Excerpts of descriptions of "other methods used by the taxpayer to justify its pricing policies.
  - —Taxpayer claimed intercompany price was arm's length because it was negotiated between the lower tier sub and its foreign [illegible].

—Taxpayer contended all income attributable to intangibles belonged to the Puerto Rican affiliate.
—Prior appellate settlements.
—Taxpayer attempted to identify other charges made by the parent to its subsidiaries that were equivalent to the royalty adjustment that was proposed.
—Taxpayer explained its method as being required by Revenue Canada.
—"Old fashioned business know-how".

• In over 75% of the cases reported, the taxpayer relied on a profit split to determine its transfer price.

• Descriptions of taxpayer's methods of computing profit split:

—Market penetration accounted for any difference in price.
—Resale price.
—Taxpayer computes revenues of products made in Puerto Rico then reduced them by: cost of sales P.R., an R&D cost sharing amount based on section 936(h), selling and administrative expenses based on a fractional calculation and other income or expenses using section 936(h)—this gave CTI of which they considered the P.R. entity to possess half.
—Taxpayer used prior Appeals settlement profit split.
—Taxpayer allowed its domestic subsidiaries a profit of 6% on the cost incurred by such subsidiaries.
—Taxpayer used profit earned by the parent on other transactions with related parties. Taxpayer's contention is that the subsidiary's high profit is irrelevant as long as the parent made an adequate profit on the transaction.
—Taxpayer claimed that the marketing company should recover all of its marketing costs (11% of sales) plus derive a profit (4% of sales).

C. Services

• The IEs proposed an adjustment for services in 32.8% of the reported cases.

• In 43% of the reported cases, difficulty in applying the services regulations was the primary reasons for not making an adjustment.

• Difficulties reported by IEs in applying the service regulations included:

—Determining for whose benefit services were provided.
—Undue burden on the IE to: (1) Isolate costs, (2) determine whether the service was an integral part of the business, and, (3) develop comparables to determine proper adjustment.
—Determining what services were rendered, by whom, the amount of time spent rendering the service, and the cost of the service.
—The service regulations do not allow a profit in the allocation.

• Example of difficulties in deciding whether to propose an adjustment for services rendered or intangibles transferred included:

—Taxpayer only wanted to charge for services at the same rate they generally charged third parties. IE used a functional analysis to show that know-how was also transfered to related parties but not to third parties.
—Taxpayer does purchasing for a subsidiary and picks up a 5% profit. IE had no idea if the profit mark-up was appropriate.
—Taxpayer allocated a portion of cost based on time spent by officers. Because of the 25 percent rule, the IE was prevented from making an adjustment.

D. Intangibles

• 50% of the cases reported involved a significant transfer of intangibles.

• Adjustments were made under Treas. Reg. § 1.482–2(d) in about 50% of the reported cases.

• Factors reported by IEs as affecting the decision to proceed under services or sales of tangible property regulations rather than under the intangibles section:

	Percent
(a) Inability to separately identify the intangible	39.2
(b) Inability to document the transfer	17.4
(c) Inability to value the intangible	43.4

• IE recommend changes in the regulations that would have made an adjustment for intangibles more feasible:

—Spell out that T/P's reputation is an intangible.
—Clarify that a CFC should not get a marketing profit if they don't do marketing.

• In reported cases involving the transfer of intangibles to a related party, the taxpayer acknowledged the transfer at the outset of the examination 48.8% of the time.

• Documentation produced by taxpayers with respect to the transfers of intangibles:

—Unrelated professional appraisal
—Corporate minutes and legal documents
—Licensing agreements
a. With related entities
b. With unrelated entities
—Section 351 transfer documents
—Section 367 ruling

• Marketing intangibles were involved in 25% of the intangible cases.

• Data relied upon or method of intangible valuation:

—Advertising and marketing expenses
—Trade name and trademark defense costs
—Distribution costs
—Market dominance—3rd party brokerage statements—market studies—royalties textbooks—profit and loss comparisons—patent infringement cases—prevailing rates in the industry.
—Compared rates charged by taxpayer to unrelated parties.
—Used functional analysis to show that CFCs were not active in crude oil trading. Only administrative and communication services were performed. Economist determined an arm's length service fee due the CFC for services performed, then used the residual method to value the income to be allocated to the domestic subsidiary.

• Taxpayers used a cost sharing agreement with a related party in 17½% of the cases reported.

• Description of cost sharing agreements:

—Parent billed Puerto Rican subsidiary for their share of R&D.
—R&D costs shared based on percentage of sales. Director costs charged to entity deriving benefit.
—Reimbursed for R&D, marketing, and administration.
—Share in R&D and reimbursed marketing costs.

E. Use of Specialists and Counsel

• The following specialists were involved with reported cases:

	Percentage of responses
Engineer	18
Economist	88
Appraiser	2

• IE descriptions of issues considered by specialist and how the specialist was brought into the case:

—Economist performed a functional analysis of activities of CFCs and identified comparables. The economist was requested after the taxpayer prepared a section 482 study to refute the proposed adjustment. In order to be successful in Appeals or court, an economist was considered essential.
—An economist was requested to assist in developing the third party comparables found by the IE and to assist in assessing taxpayer's arguments.
—An economist was involved in the prior year and, accordingly, was requested for the current cycle. An engineer was needed to assess the electrical engineering function of the related companies.
—An economist was requested for a valuation of risk capital.
—An engineer was used to compare the CFC shop to unrelated shops. An economist found comparable mark-ups.
—An economist was used on an informal basis as to procedure and appropriate percentage of profit.
—An economist was used on the royalty expense issue and to evaluate a trademark transfer; engineer was used to evaluate a fee structure.
—The economist was requested to review our position with respect to imputation of royalty and technical service income. Looking beyond this, the economist suggested that a potential pricing issue existed. The economist was assigned late in the examination and was not granted the time needed to develop the pricing issues.
—The economist added support in the development of the transfer of intangibles issue. The economist was brought into the case after we recognized and began developing the issue.
—An economist was requested by IE—used to establish arm's length pricing of foreign sales.
—An appraiser was brought in by the IE and the Case Manager to evaluate the sale of U.S. entity's stock at book value and to establish control elements.
—The economist performed a functional analysis on Puerto Rican operations. It was difficult to attack taxpayer's pricing as long as we accepted the function of the Puerto Rican subsidiary as a full-fledged manufacturer.
—IE received informal advice on a stewardship issue.

• According to the IEs, specialists were brought in at appropriate times in 91% of the reported cases.

• Specialists raised additional issues in 9% of the reported cases.

• 79% of respondents thought that specialists' reports were particularly useful in proposing issues.

• Brief descriptions of specialists' reports which were helpful:

—The economist report was very useful since it discussed, in depth, the functional analysis and comparables used in determining the arm's length rates for intangibles and services.
—Economist report supported the IE's conclusion that market penetration was not prevalent in the years under examination, which was the thrust of the taxpayer's argument.
—Economist report gave a basis for reasonable profit factor in pricing computation.
—The economist's report was useful in establishing the service fee for CFC and the function of taxpayer's worldwide trading activity.
—The report made a good case for treating the subsidiary as a contract manufacturer. Prior to that, taxpayer was maintaining its position that the resale method applied.
—The economist developed a method of joining data secured by means of a private survey with data from a public source. The economist revealed to the agent a number of other sources that are available for statistical analysis and comparisons.

• Specialist's reports were used:

	Percentage of responses
To support an adjustment	87.1
Not used	10.8

• Responses indicate that specialists did not cause an undue delay in 90% of the cases.

• 14% of respondents stated that restrictions were placed on their use of a specialist.

• The taxpayer employed a specialist in 27% of the reported cases.

• The taxpayer's use of a specialist was as follows:

	Percentage of responses
Planning section 482 transaction	25
Involved in audit	80

• IRS Counsel was involved in 39% of the reported cases.

• 14% of respondents claimed that had counsel been involved, their cases would have been better developed.

• Counsel was involved at a timely stage of case development in 78% of reported cases.

• Persons who determined that counsel should become involved were:

	Percentage of responses
Case manager	58
Domestic group manager	1
IE manager	36
IE	12
Industry specialist	5

• The types of legal assistance rendered:

Activity:	Percentage of responses
District Counsel technical assistance	83
National Office technical advice	11
Summons review	80
Section 982 Proceedings review	7

• The assistance rendered by counsel was considered useful in development of section 482 issues in 66% of responses.

Appendix B—Section 482 Questionnaire—International Examiners

CASE NAME_____Years_____

PLEASE ATTACH A COPY OF YOUR EXAMINATION REPORT ON THIS CASE TO YOUR RESPONSE TO THIS QUESTIONNAIRE.

Please check the appropriate column(s). Check:

(A) if the listed section 482 issue was present in this case;
(B) if the taxpayer agreed to the proposed adjustment; and
(C) if the taxpayer did not agree to the proposed adjustment.

Please enter the dollar amount of the proposed adjustment in column (D).

	(A)	(B)	(C)	(D)
Transfer pricing	[79]	[17]	[34]	$5.9 billion.
Income allocation (other than transfer pricing)	[13]	[2]	[19]	$1.1 billion.
Expense allocation (not including cost sharing agreements)	[15]	[12]	[11]	$105 million.
Cost sharing agreements	[1]	[0]	[0]	$_____
Intangibles	[18]	[5]	[10]	$480 million.
Services	[10]	[3]	[8]	$34 million.
Interest	[17]	[10]	[10]	$175 million.
Rental expense	[1]	[1]	[0]	$_____
Gain allocation	[2]	[1]	[1]	$27 million.
Miscellaneous	[5]	[2]	[2]	$58 million.

(Please briefly identify. Do not futher identify or discuss in this questionnaire any routine adjustments to the general and administrative or overhead expenses of related parties.)

☐ Please check here if this case involved section 936.
☐ Please check here if you have answered question 100 on this questionnaire.

1. Who initially identified the significant 482 issues in this case? (Please check the appropriate box or boxes and briefly identify the issues raised by each.)

Domestic agent	[0]	Yourself	[57]	Other	[20]
Case manager	[0]	I.E. group manager	[1]		
Domestic group manager	[0]	Economist	[3]		

If other, please identify_____

2. Please list each of the significant 482 issues in this case in the spaces provided below. (Use an additional sheet to identify other significant 482 issues, if any.) Please also indicate how each of these issues was initially identified (whether by you or by someone else) by filling in the number corresponding to the method used to identify the issue in the space below.

(1) Form 5471
(2) Form 5472
(3) Financial data
(4) Prior exam
(5) Experience with the industry
(6) Customs data
(7) Other (please briefly explain in the appropriate space)
(8) Do not know how issue was identified by another person

	Issue	How identified?
A.	(1)	[19]
B.	[2]	33
C.	[3]	19
D.	[4]	10
E.	[5]	4
F.	[6]	3
	[7]	

3. Who principally determined the amount of time allotted to developing the 482 issues in this case?

A. Case manager	[29]
B. Domestic group manager	[6]
C. I.E. manager	[27]
D. Branch chief	[4]
E. Exam chief	[0]

4. Was the decision on time allotment made after you had an adequate opportunity to analyze the 482 issues?

Yes [41] No [22]

5. Was the time allotment flexible?

Yes [51] No [6]

6. Was the amount of time allotted to the development of the 482 issues in this case affected either by the potential yield or the likelihood that there would be a yield? (Check one.)

A. Potential yield affected allotment	[22]
B. Assurance of yield affected allotment	[3]
C. Both affected the allotment	[19]
D. Neither affected the allotment	[23]

7. Did you use one or more annual reports to shareholders to identify or develop a 482 issue?

Yes [24] Please continue.
No [46] Skip to question 10.

8. Which of the following portions of the annual report, if any, were specifically considered? (Check if considered.)

A. The income tax note to the financial statement	[6]
B. The segmental information note for product line data	[13]
C. The segmental information note for geographic area data	[15]
D. Other	[6]

(please identify) ———

9 identified

9. Who initiated the use of annual reports in your consideration of the 482 issues in this case?

A. Yourself	[22]
B. Domestic group manager	[0]
C. Case manager	[0]
D. I.E. group manager	[0]
E. Domestic agent	[2]
F. Other	[3]

(please identify) ———

10. Was the information required to be reported on Form 5471 or 5472 (or predecessor forms) helpful or inadequate in planning the exam?

Generally helpful	[33]
Generally inadequate	[13]

11. Please briefly describe any specific information required to be reported on these forms that you found helpful in planning your examination in this case.

40 ———

12. Please briefly describe any specific respects in which the information now required to be reported on Forms 5471 anbd 5472 was (or would have been) inadequate in this case. What specific additional information reporting requirements would have been useful in the planning and conduct of your examination in this case? (For example, would your case development have been improved if taxpayers were affirmatively required to disclose the transfer pricing method relied upon by the taxpayer?)

36 ———

13. Were there any identified 482 issues that were not pursued or that were no-changed?

A. Not pursued?
Yes [19] No [47]

B. No-changed?
Yes [10] No [40]

If you answered yes to either question, please briefly identify the issue(s) and explain.

23 ———

14. Did the taxpayer have readily available the basis and support for its section 482 transactions?

Yes [19] No [51]

15. Did the taxpayer generally make timely and compete response to the questions in your IDRs that were asked to develop the 482 issues in this case?

Yes [31] Please skip to question 20.
No [40] Continue.

16. Were there reasonable explantations for any delays by the taxpayer in responding to the questions you asked in IDRs that were aimed at developing the 482 issues in this case?

Yes [13] Please continue.
No [27] Skip to question 18.

17. Please briefly describe any reasonable bases for the delays.

18 ———

18. Please indicate whether the taxpayer unreasonably delayed responding to any questions in your IDRs that dealt with the following:

	Yes	No
A. Control of affiliates	[11]	[21]
B. The existence of its comparable transactions with third parties	[19]	[16]
C. The terms of its comparable transactions with third parties	[16]	[17]

19. In the spaces below, please estimate the length of any delay and the portion of the delay, if any, that was reasonable.

	Mos.
Total time delayed	12.2
Reasonable portion of delay	2.2

20. Did IRS management become involved in attempting to secure information from the taxpayer? If so, indicate each management level involved and whether the information sought was obtained as a result of that involvement.

	Level	Was the requested information obtained? Yes	No
A. No involvement	[26]		
B. Group chief	[35]	[22]	[19]
C. Branch chief	[15]	[11]	[9]
D. Exam chief	[4]	[2]	[10]
E. District director	[3]	[1]	[10]

21. Was the use of summonses considered, discussed with the taxpayer, and/or employed?

	Yes	No
Considered?	[28]	[41]
Discussed?	[21]	[42]
Employed?	[3]	[54]

If you answered yes to any of the above, please briefly describe the circumstances and the results obtained.

24 ———

22. Was the use of section 982 considered, discussed with the taxpayer, and/or employed?

	Yes	No
Considered?	[17]	[47]
Discussed?	[9]	[42]
Employed?	[2]	[49]

If you answered yes to any of the above, please briefly describe the circumstances and the results obtained.

13 ———

23. Did you work with an economist, engineer, appraiser or other specialist on the case?

	Yes	No
A. Engineer?	[10]	[46]
B. Economist?	[47]	[28]
C. Appraiser?	[1]	[49]
D. Other [1]?	[9]	[40]

[1] If other, please briefly describe.

If you have answered yes to any of the above, please continue.

If you answered no to all of the above, please skip to question 34.

24. Please briefly describe the issue(s) considered by any specialist(s) and how the specialist(s) was (were) brought into the case.

43 ———

25. Was (were) the specialist(s) involved in the case at an appropriate time?

[40] Yes, all specialists were brought into the case at appropriate times.
[4] No, not all specialists were brought into the case at appropriate times.

If no, please briefly explain. ———

26. Did the specialist(s) raise new 482 issues?

Yes [4] Please continue.
No [40] Skip to question 28.

27. Please briefly identify the 482 issues initially raised by the specialist(s) in the case.

9 ———

28. Were any of the specialists' reports useful to you?

Yes [33] Please continue.
No [9] Skip to question 30.

29. Please briefly identify which report(s) was (were) useful, and why.

34 ———

30. Please briefly indicate which report(s) was (were) not useful, and why.

12 ———

31. How were specialists' reports used in connection with your proposed adjustment? (If more than one specialists' report was prepared in this case, please fill in the appropriate number of reports in the spaces provided.)

A. Report recommended against the adjustment	[1]	———
B. Used to support adjustment	[35]	———
C. Not used to support adjustment	[4]	———

32. Did the involvement of any specialist unduly delay the case?

Yes [4] No [40]

33. Did anyone place a restriction on your use of a specialist?

Yes [6] No [38]

If yes, who? (Please identify.) ———

34. Did the taxpayer employ a specialist?

Yes [18] Please continue.
No [45] Skip to question 36.

35. Was the taxpayer's specialist utilized in planning the transaction, in refuting a proposed adjustment, or both?

	Yes	No
Involved in planning?	[4]	[12]
Involved in audit?	[16]	[4]

36. Did Counsel become involved in the case?

Yes [27] Please skip to question 38.
No [42] Continue.

37. Would the case have been better developed if Counsel had become involved?

Better developed	[6]
No difference	[37]

Please skip to question 43.

38. Was Counsel involved at a timely stage?

Yes [22] Please skip to question 40.
No [7] Continue.

39. Would the case have been better developed if Counsel had become involved at an earlier time?

Better developed [6] No difference [4]

40. Who determined that Counsel should become involved?

A. Case manager	[5]
B. Domestic group manager	[1]
C. I.E. manager	[14]
D. Exam Chief	[0]
E. Yourself	[11]
F. Industry Specialist	[2]

41. Please check the appropriate box to indicate the type of assistance rendered by Counsel in this case.

	Oral	Written
A. District Counsel technical assistance	[19]	[9]
B. National Office technical advice	[0]	[5]
C. Summons review	[4]	[5]
D. Section 982 proceeding review	[1]	[2]

42. Was the assistance rendered by Counsel useful in your development of the 482 issues in this case?

Yes [19] No [9]

43. Did any of the following adversely affect your development of 482 issues in this case?

	Yes	No
A. 3.0, 5 open years policies	[21]	[44]
B. Planned audit closing dates	[28]	[39]
C. Taxpayer tactics	[31]	[29]
D. Other	[7]	[27]

If you checked yes for C. or D.,

Please briefly explain.

44. Were any of the 482 issues resolved in Examination?
Yes [30] Please continue.
No [39] Skip to question 50.

45. Did Examination's resolution involve only the 482 issues in the case alone or was it part of a broader resolution?
482 issues resolution only ..... [23]
Part of over-all resolution ..... [7]

46. Were you appropriately consulted regarding the resolution of the 482 issue(s) in the case that were resolved in Examination?
Yes [27] No [3]

47. Which provisions of the 482 regulations provided the basis for Examination's resolution of 482 transfer pricing issues in this case?
A. Comparable uncontrolled price ..... [8]
B. Resale price method ..... [2]
C. Cost plus ..... [6]
D. Any "other" reasonable method ..... [9]

48. Did you agree with the resolution?
Yes [24] No [4]
If no,
Please briefly explain.

49. Did Competent Authority considerations affect Examination's resolution of any section 482 issue in this case?
Yes [3] No [28]
If yes, please briefly describe the transaction that gave rise to this concern.

50. Did Competent Authority considerations affect your decision to pursue or not pursue any section 482 issue in this case?
Yes [2] No [67]
If yes,
please briefly explain.

51. Did Appeals settle any section 482 issue in this case?
Yes [17] Please continue.
No [44] Skip to question 54.

52. Did you agree with the terms of Appeals' settlement of the 482 issue(s) in this case?
Yes [5] No [11]
If no,
please briefly explain.

53. Was Counsel involved in the Appeal settlement?
Yes [5] No [14]

54. Did you receive a copy of Appeals' final report on this case?
Yes [9] No [29]

55. In this case, were there difficulties establishing "control" for purposes of section 482?
Yes [5] No [64]

56. Was control established by means other than direct or indirect ownership of a majority of the stock of a controlled corporation?
Yes [7] No [61]
If yes, please briefly explain how control was established.

57. Did the taxpayer rely on comparables either in planning or defending its 482 transactions?
[7] Relied on comparables in planning transactions.
[24] Relied on comparables in defending transactions.
[42] Did not rely on comparables in either planning or defending transactions. Please skip to question 62.

58. Were those comparables made available to you at or near the beginning of the examination?
Yes [9] No [22]

59. Please briefly describe the comparable(s) relied upon by the taxpayer in planning or defending its 482 transactions.
27

60. Did you accept the taxpayer's comparables?
Yes [5] No [22]
If no, please briefly explain why.

61. Did the taxpayer rely upon comparables based on "industry norms" in planning or defending its transfer pricing?
Yes [11] No [16]
If yes, please briefly describe the data provided by the taxpayer to support its comparables.

62. Did you seek to use a comparable as a basis for making any 482 adjustments in this case?
Yes [42] Please continue.
No [25] If either you or the taxpayer sought to rely or relied on comparables, skip to question 67. Otherwise, skip to question 68.

63. Did you actually use a comparable as the basis for making the 482 adjustments in the case?
Yes [34] No [12]

64. How did you identify the comparable you used or sought to use?
40

65. Were you able to properly develop information regarding the comparable you used or sought to use?
Yes [32] No [11]

66. Please briefly describe any significant problems you encountered in attempting to develop the comparable you used or sought to use.
23

67. What kind of adjustments, if any, were needed for both the taxpayer and Service comparables to achieve arm's length? (Please check all that apply.)

Government comparable		Taxpayer comparable
[8]	Warranties and rebates	[2]
[12]	Level of market	[7]
[8]	Geographic market	[4]
[8]	Volume of transactions	[3]
[8]	Length of agreement	[4]
[12]	Product differences	[3]
[8]	Terms of sale	[3]
[8]	Currency translation	[1]
[12]	Other	[8]

If other, please explain briefly.
12

68. In your opinion, did this case involve any significant transfer or permissive use of any of the following: a patent, invention, formula, process, trade secret, design, brand name, pattern, know-how, marketing expertise, or show-how?
Yes [34] Please continue.
No [33] Skip to question 70.

69. Please briefly describe the patent, etc.
35

70. Did you specifically make an adjustment in this case for intangibles under Treas Reg. 1.482-2(d)?
Yes [19] Please skip to question 73.
No [20] Continue.

71. In making an adjustment for (1) related party services, or (2) the transfer pricing of tangible property, did you take the transfer or use of intangibles into account?
Yes [11] Please continue.
No. [18] Skip to question 73.

72. What factors dictated the decision to proceed under the services or sales of tangible property regulations rather than make an adjustment under the intangibles regulations?
A. Inability to separately identify the transferred intangibles ..... [9]
B. Inability to document the transfer or use ..... [4]
C. Inability to value the intangibles ..... [10]
D. Other ..... [1]
If other, please explain.

73. Which of the following factors were most important to you and to the taxpayer in determining the arm's length pricing for the most significant transferred intangible in this case? Please select up to five factors that were most important to you and to the taxpayer and number them in decreasing order of importance (*i.e.*, five is most important, one is least) in the appropriate spaces.

	Government		Taxpayer	
	Responses	Weight	Responses	Weight
A. Prevailing rates in the same industry for similar property	14	3.6	6	4.7
B. Offers of competing transferors	4	4.0	4	3.0
C. Bids of competing transferees		3	1.7	
D. Limitations on geographic area covered	4	2.0	4	2.3
E. Nonexclusivity of grant	3	2.0	6	[illegible]
F. Uniqueness of the transferred property	17	3.4	10	2.7
G. Likelihood of continuing uniqueness	10	1.9	6	[illegible]
H. Patent or other legal protections	9	1.4	7	1.1
I. Services rendered in connection with the transfer of property	14	3.1	8	3.5
J. Prospective profits to be realized by the transferee from the property	19	3.5	10	3.5
K. Costs to be save by the transferee as the result of the transfer of the property	12	2.4	10	[illegible]
L. Capital investment and start-up expenses of the transferee	8	2.1	2	[illegible]
M. Availability of substitutes for the transferred property	5	3.0	2	[illegible]
N. Prices paid by third parties where the property is resold or sublicensed to them	5	2.4	3	[illegible]
O. Transferor's costs of development	12	2.6	8	[illegible]
P. Other facts or circumstances (please explain)	4	2.0	4	[illegible]

74. Did the taxpayer acknowledge at the outset the existence of a transfer of intangibles to a related party in this case?
Yes [18] Please continue.
No [11] Skip to question 78.

75. What documentation for the intangible transfer did the taxpayer produce? Please briefly describe.
14

76. What changes, if any, in the intangibles regulations would have made an adjustment for intangibles more feasible in this case?
19

77. If there were marketing intangibles involved in the case, did you attempt to value such marketing intangibles separate and apart from the manufacturing or other intangibles involved in the case?
Yes [9] Please continue.
No [27] Skip to question 79.

78. Please briefly describe the method utilized to value the marketing intangibles in this case and the type of data you relied upon.
14

79. Did the 482 issues in this case involve the pricing of tangible property?
Yes [40] Please continue.
No [28] Skip to question 82.

80. Which method did you use in proposing your adjustment?

A. Comparable uncontrolled price?
Yes [15] Please continue.
No [26] Skip to part G. of this question.
Please check the appropriate box if you relied on:
(1) transactions between the same taxpayer (or a related taxpayer) and third parties; or
(2) transactions between two parties both of which were not related to your taxpayer.
[4] Relied only on related party transactions. Please skip to part G. of this question.
[13] Relied on one or more unrelated party transactions. Continue.

B. Please briefly describe the unrelated party transaction(s) you relied upon to develop your comparable(s).

C. Were you able to disclose to the taxpayer the terms of the comparable(s) you documented through unrelated party transactions?
No [5] Please continue.
Yes [8] Skip to part G. of this question.

D. Please briefly describe the reasons (promises of confidentiality, etc.) that you were unable to discuss the terms of the comparable with the taxpayer.
8

E. If it became necessary, would you have been able to disclose the terms of the comparable(s) you documented through unrelated party transactions as evidence in court?
No [2] Please continue.
Yes [5] Skip to part G. of this question.

F. Please briefly describe any impediments to your introduction of the terms of the comparable(s) in court that were different than those described in part D. of this question. (If no difference, please write "same.")

G. Resale price method?
Yes [9] No [21]
H. Cost-plus method?
Yes [16] No [13]
I. "Other" method?
Yes [7] No [17]
If other, please describe briefly the "other method" used by you.

81. Was the priority of methods required under Treas. Reg. sec. 1.482–2(e) useful or detrimental in your development or analysis of the tangible transfer price issue?
Useful [19] Detrimental [17]
If detrimental, please briefly explain.

82. In considering any proposed adjustments under section 482, did you consider whether the taxpayer's interest in "penetrating" a new market needed to be taken into account?
Yes [17] No [47]

83. In its responses to your proposed adjustments, did the taxpayer argue that your proposed pricing adjustments needed to be modified to take into account its market penetration goals?
Yes [5] Please continue.
No [62] Skip to question 87.

84. For how many years had the taxpayer sold in that market?
9 responses 17.88 years (average)

85. Did you accept the taxpayer's contentions?
Yes [2] Skip to question 87.
No [6] Please continue.

86. If you rejected all or part the taxpayer's contentions with respect to market penetration, please briefly explain.
5

87. Did the taxpayer provide you with contemporaneous documentation regarding the methods it used to set its transfer prices?
Yes [16] Please continue.
No [48] Skip to question 89.

88. Did the taxpayer's documentation expressly consider the priority of pricing methods set out in Treas. Reg. sec. 1.482–2(e)?
Yes [10] No [10]

89. Please describe briefly any "other method" used by the taxpayer to justify its pricing policies.
32

90. Did the taxpayer contend in Examination that its "other reasonable method" of transfer pricing resulted in an appropriate profit split, or did it rely on a profit split to determine its transfer prices?
Yes [14] Please continue.
No [49] Skip to question 92.

91. Please briefly describe the taxpayer's means of computing the profit split it utilized or defended as appropriate.
11

92. Did this taxpayer utilize a cost sharing agreement with a related party?
Yes [12] Please continue.
No [58] Skip to question 96.

93. Please briefly describe the cost sharing agreement.
11

94. Please briefly describe any adjustments you proposed to make to the expense allocations required by this agreement.
4

95. In this case, did you have difficulty deciding whether to propose making a 482 adjustment based on—
(1) services performed by one related party on behalf of another;
or—
(2) transfers of intangibles between the related parties?
(Example: Did you have to decide between proposing an adjustment based on (1) a parent corporation's "training" its new subsidiary's employees, or (2) the parent's transfer of "know-how" to the new subsidiary?)
Yes [19] Please continue.
No [43] Skip to question 97.

96. Please briefly describe the issue.
18

97. In this case, did you consider proposing an adjustment based on the provision of services by one related party to another?
Yes [22] Please continue.
No [45] Skip to question 100.

98. If your proposed adjustments did not include an adjustment with respect to related party services, was your decision based on difficulties in applying the services regulations under section 482?
Yes [13] Please continue.
No [17] Skip to question 100.

99. Please briefly describe any specific difficulties you had applying the services regulations.
8

100. If we have overlooked asking about any significant 482 issues that you believe could be better addressed in regulations, please take the time to identify the issue, the regulation, and any thoughts you have about how that regulation might better address the issue. Please do not confine yourself to the issues raised in this case. Please attach additional sheets if necessary.

Appendix C—Transfer Pricing Law and Practices of Selected U.S. Treaty Partners

Canada

The statutory basis for transfer pricing allocations is section 69(2) of the Income Tax Act [1] that provides as follows:

Where a taxpayer has paid or agreed to pay to a non-resident person with whom he was not dealing at arm's length as to price, rental, royalty or other payment for or for the use or reproduction of any property or as consideration for the carriage of goods or passengers, or other services, an amount greater than the amount (in this subsection referred to as the "reasonable amount") which would have been reasonable in the circumstances if the non-resident and the taxpayer had been dealing at arm's length, the reasonable amount shall, for the purpose of computing the taxpayer's income under this Part, be deemed to have been the amount that was paid or payable therefor.

Section 69(3) of the Income Tax Act provides as follows:

Where a non-resident person has neither paid nor agreed to pay to a taxpayer with whom he was not dealing at arm's length as to price, rental, royalty or other payment for or for the use or reproduction of any property, or as consideration for the carriage of goods or passengers or for other services, the amount that would have been reasonable in the circumstances if the non-resident person and taxpayer had been dealing at arm's length, that amount shall, for the purpose of computing the taxpayer's income under this Part, be deemed to have been received or receivable by the taxpayer therefor.

Sections 69 (2) and (3) apply to all taxpayers including individuals, unincorporated businesses, trusts, and corporations. However, section 69(2) applies only when the Canadian taxpayer has paid more than a reasonable amount and does not apply when the Canadian taxpayer has paid less than a reasonable amount. Similarly, section 69(3) applies only when the Canadian taxpayer has received less than a reasonable amount and does not apply when the Canadian taxpayer has received more than a reasonable amount.

Interpretation of this statute by the Canadian government has been provided in an Information Circular issued by the Department of National Revenue in 1987.[2] In this Circular, Revenue Canada interprets the phrase "reasonable in the circumstances" to mean the price that would have prevailed if the parties to the transaction had been dealing at arm's length. In applying this arm's length standard, Revenue Canada has endorsed the methods enumerated in the 1979 OECD report on Transfer Pricing and Multinational Enterprises. Although the methods are not prioritized as to the order that they must be used, Revenue Canada has expressed a preference for the comparable uncontrolled price method and the following sequence of tests:

1. Sales by taxpayer to unrelated parties;
2. Comparable transactions between unrelated third parties;
3. Resale price method;
4. Cost plus method; and

[1] Income Tax Act, S.C. 1970–71–72.

[2] Department of National Revenue Information Circular No. 87–2, *International Transfer Pricing and Other International Transactions* (Feb. 27, 1987).

5. Any other method in support of the other methods or where the other methods are inappropriate.[3]

These methods apply to the sale of goods as well as to the acquisition or disposition of intangible property. With respect to royalty rates on the disposition of intangibles, Revenue Canada's Information Circular states that, in determining an arm's length rate, the focus will be on:

(a) Prevailing rates in the industry;
(b) Terms of the license, including geographic limitations and exclusivity of rights;
(c) Singularity of the invention and the period for which it is likely to remain unique;
(d) Technical assistance, trade-marks, and "know-how" provided along with access to the patent;
(e) Profits anticipated by the licensee; and,
(f) Benefits to the licensor arising from sharing information on the experience of the licensee.[4]

In addition, when only use of the intangible is transferred, it must be determined whether the transferree's payment is "in fact for the use of the intangible for the year—as opposed to a payment for its outright acquisition or other capital outlay." [5]

France

The statutory basis for transfer pricing allocations is Articles 57 of the French General Tax Code which is as follows:

In assessing income tax due by enterprises which are subordinated to or controlled by enterprises established outside France, the income to which is indirectly transferred to the latter, either by increasing or decreasing purchase or sale prices, or any other means, shall be restored to the trading results shown in the account. The same procedure is followed with respect to undertakings which are controlled by an enterprise or a group of enterprises also controlling enterprises located outside France.

* * * * *

Should specific data not be available for making the adjustments provided for the preceding paragraph, the taxable profits are determined by comparison with those of similar undertakings run normally.[6]

The tax administration has endorsed the 1979 OECD Report on Transfer Pricing and Multilateral Enterprises, although the OECD guidelines are not binding on the French authorities.[7] In enforcing Article 57, the authorities generally compare profit margins of similar entities to identify any abnormalities.[8]

A similar approach is apparently taken with respect to the payment of royalties by a French taxpayer in that a deduction will be allowed for the payment only to the extent that the net income of the payee or subsidiary is at least equal to that realized by a French enterprise engaged in a similar activity. Furthermore, under the French exchange control law, all royalty agreements with and payments to nonresidents must be reported, prior to payment, to the National Institute of Industrial Property.[9]

The experience of the Office of Assistant Commissioner (International) is that French companies filing consolidated returns that include foreign subsidiaries must agree to allow French tax authorities on-site inspection of the subsidiaries' books and records; that, as indicated above, profit experience is a very important factor in examinations; and that no guidelines have been developed for evaluation of royalty cases involving transfer of intangibles. When intangibles are transferred to a tax haven, payments received on account of the transfer are deemed to be unreasonable, and the burden is on the taxpayer to establish that the payments are reasonable.

Although cost sharing arrangements are permitted,[10] the French authorities do not have specific rules applicable to such arrangements.

Germany

The statutory basis for intercompany pricing adjustments includes Article 8(3) of the Corporation Tax Law, which states that hidden distributions of income do not reduce taxable income.[11] Section 31 of the Corporation Tax Regulations interprets "hidden distributions" to include a benefit granted by a company to a related person, outside the normal statutory profit distributions, which an orderly and conscientious manager would not have granted to an unrelated party under comparable circumstances.[12]

Similarly, Article 1(1) of the Foreign Tax Affairs Law states that where the income of a taxpayer resulting from his business relationship with a related person is reduced because the taxpayer, within his business relationship extending to a foreign country, has agreed on terms and conditions which deviate from those unrelated third parties would have agreed upon under the same or similar circumstances, then his income shall, notwithstanding other provisions, be determined as if the income had been earned under terms and conditions agreed upon between unrelated third parties.[13] Article 1(1) applies to all related or affiliated taxpayers, including individuals, partnerships, and corporations.

Paragraph 2.1.1 of the Transfer Pricing Guidelines of 1983 [14] (hereinafter referred to as Guidelines) requires that business dealings between related parties be evaluated on the principle of arm's length dealings between independent parties acting in a situation of free competition.

Paragraphs 2.2.2 through 2.2.4 of the Guidelines list the following as the standard methods for evaluating transfer prices: comparable uncontrolled price method, resale price method, and cost plus method. In contrast to § 1.482–2(e)(2)(ii), which requires that these methods be used in the order prescribed if the circumstances of the case permit, paragraph 2.4.1 of the Guidelines states that; "[t]here is no single correct sequence of standard methods for the examination of transfer prices which applies to all groups of cases." Also, paragraph 2.4.2 of the Guidelines, similar to the "fourth method" provision of § 1.482–2(e)(1)(iii), allows use of a combination of the three standard methods or of other methods.

In cases involving transfers of intangibles to offshore manufacturing affiliates, paragraph 5.1.1 of the Guidelines recognizes that a determination must be made whether the transferor has received an adequate consideration for the transfer of the intangible. Paragraph 5.2.2 of the Guidelines states that an arm's length price for transfer of an intangible is to be determined under "an appropriate method." Paragraph 5.2.3 of the Guidelines indicates that the preferable method is the comparable uncontrolled price method but, if the facts of a case will not support application of this method:

then the starting point for the examination is the consideration that a most business manager of the licensee enterprise would only pay a royalty up to an amount which leaves the enterprise *with an acceptable commercial profit* from the licensed product. [Emphasis added.]

According to paragraph 5.2.4 of the Guidelines, the cost plus method may be used "in exceptional cases." One such exceptional case is described in paragraph 2.1.3 (Example 3) of the Transfer Pricing Guidelines of 1983, as follows:

An enterprise transfers particular manufacturing functions to a foreign subsidiary corporation. Production and marketing by the foreign corporation are closely tied in with the business of the domestic enterprise.

The articles produced are purchased by the parent corporation under a long-term arrangement. The subsidiary corporation with its limited range of production could not in the long run survive as an independent corporation. Between unrelated parties the production would have been carried out on a subcontract basis. * * * The transfer price can accordingly be determined using the cost plus method.

This approach is essentially the same as that of the IRS in the *Lilly* case, discussed *supra*, Chapters 4 and 5.

One commentator, Mr. Friedhelm Jacob, Counselor for Tax Affairs at the West German Embassy in Washington, DC, has noted that, in contrast to the 1986 Tax Reform Act amendments to section 482, which require adjustments over time for substantial changes in circumstances, the German

[3] *Id.* at paras. 13–19.
[4] *Id.* at para. 46.
[5] *Id.* at para. 42.
[6] Code General des Impots, art. 57.
[7] *See* Instruction Administrative (May 4, 1973), *published in* Bulletin Official de la Direction Generale des Impots 4A–2–73.
[8] BNA, No. 364–9253, France: Transfer Pricing Within Multinational Enterprises and Article 56 of the French General Tax Code 11 (1980).
[9] *Id.* at 11.
[10] *Id.* at 11.
[11] Koerperschaftsteuergesetz art. Section 8(3).
[12] Koerperschaftsteuerrichtlinien Section 31.
[13] Koerperschaftsteuergesetz art. Section 1(1).
[14] *See* Intl. Bureau of Fiscal Documentation, *The Tax Treatment of Transfer Pricing* (1987) (English translation).

approach has been that the determination of fair market consideration for an intangible is made at the time of the transfer.[15]

Paragraph 2.A.3 of the Guidelines recognizes that related entities may enter into bona fide cost sharing arrangements and that such arrangements can affect transfer prices. Under paragraph 7.1.1 of the Guidelines, cost sharing arrangements are to be taken into consideration in making transfer price [illegible] between the entities involved in the arrangement. However, full costs, direct and indirect, must be calculated and included under a recognized accounting method. If the cost sharing arrangement is to be recognized, the services must be distinguishable and the aggregate of the costs must be separable as to the services. No profit is permitted in such an arrangement. Furthermore, a taxpayer seeking a deduction for a cost sharing payment must have "a specific right, definite both in nature and scope, to benefit from the activities of the central organization."

The experience of the Office of the Assistant Commissioner (International) has been that, if the comparable uncontrolled price method cannot be utilized, the German tax authority generally allows a price or royalty that leaves the enterprise with an acceptable commercial profit from the sale of licenses, although there are no published industrial safe harbor profit norms. With respect to the transfer of intangibles, the tax authority does not consider that the intangible property itself was used when a person acquires the goods or merchandise produced with the intangible.

Japan

Article 66-5 of Japan's Special Taxation Measures Law is effective for taxable years beginning on or after April 1, 1986.[16] This law applies only to corporations (and certain other legal entities recognized under Japanese law), but does not apply to individuals, unincorporated joint ventures, and similar entities. Furthermore, Art. 66-5 applies only to transactions between a foreign corporation and a corporation that is subject to Japanese tax and only when the two entities are related by at least a 50 percent direct or indirect ownership.

Article 66-5 is as follows:

(1) In the event that, during a business year commencing on or after April 1, 1986, a corporation ("Corporation A") has conducted sale or purchase of assets, provision of services or other transactions with a foreign affiliated corporation ("Corporation B") which has a relationship with Corporation A in which one of the corporations in question, directly or indirectly, owns a number of shares comprising 50 percent or more of the total number of issued shares of the other one or has any other special relationship with Corporation A ("Special Relationship") and, in connection with such above mentioned transaction ("Transaction"), if the amount of consideration of which payment was received by Corporation A from Corporation B was less than an arm's length price, or if the amount of consideration which Corporation A paid to Corporation B was greater than an arm's length price, then, for purposes of corporate income taxation of corporation A for the said business year, the Transaction will be deemed to have been carried out at an arm's length price.

Paragraph (2) of Article 66-5 lists the methods by which the arm's length price is to be determined, although in contrast to § 1.482-2(e)(1)(ii) the methods are not prioritized as to the order in which they must be employed. In the case of sale or purchase of inventory assets, the permissible methods are comparable uncontrolled price, resale price, cost plus, and, if none of the first three methods may be applied, a method "similar to" the first three methods or "other methods prescribed by cabinet order." In the case of other transactions (*i.e.*, that do not involve the sale or purchase of inventory assets), the arm's length price is determined by "a method which is equivalent to" the comparable uncontrolled price method, the resale price method, the cost plus method, and, if none of the first three methods may be applied, a method "equivalent to" or a method which is "similar to" one of the first three methods.[17]

The comparable uncontrolled price method is described generally as the price that would have been paid between a buyer and a seller who are unrelated, where the sale or purchase of inventory is the same type of inventory as the inventory involved in the subject transaction, and the circumstances, including commercial level and transaction volume, are similar. It is permissible to use this method where the transactions are not precisely comparable, but it is possible to adjust for differences.[18]

The resale price method is described as the price computed by deducting a normal amount of profit (meaning an amount computed by multiplying the resale price by a normal profit percentage) from the amount of consideration when a buyer of inventory assets involved in the subject transaction resells inventory assets to a person with which it has no special relationship.[19]

The cost plus method is described as the price computed by adding a normal amount of profit (meaning an amount computed by multiplying the amount of costs by a normal profit percentage), to the amount of the costs of the seller to acquire, by purchase, manufacture, or other acts, the inventory assets involved in the subject transaction.[20]

The guidance given by the Japanese legislation for determinating an arm's length price for the transfer of an intangible asset is that methods similar to comparable uncontrolled price, resale, and cost plus methods can be used, and that, if none of these methods is applicable, a fourth method may be used.

A unique aspect of Japan's transfer pricing law is a preconfirmation system whereby a Japanese parent or subsidiary may request pre-approval of a sale or purchase price from a foreign related entity from the tax administration. The purpose for this procedure is to reduce the number of transfer pricing cases and to eliminate uncertainties in international transactions. No such procedure is available under U.S. law, and the IRS would not grant such a ruling because of the factual nature of the issue. The Japanese experience to date is that taxpayers are taking a "wait and see" attitude towards the pre-confirmation procedures.[21]

United Kingdom

The statutory basis under U.K. law for adjustments to transfer prices is section 770 of the Income and Corporation Taxes Acts of 1988 [ICTA]. This section provides that where any property is sold and:

(a) The buyer is a body of persons over whom the seller has control, or the seller is a body of persons over whom the buyer has control, or both the buyer and the seller are bodies of persons over whom the same person or persons has or have control; and

(b) the property is sold at a price ("the actual price") which is either—

(i) Less than the price which it might have been expected to fetch if the parties to the transaction had been independent persons dealing at arm's length ("the arm's length price"), or

(ii) Greater than the arm's length price,

then, in computing for tax purposes the income, profits or losses of the seller where the actual price was less than the arm's length price, and of the buyer where the actual price was greater than the arm's length price, the like consequences shall ensue as would have ensued if the property had been sold for the arm's length price.[22]

This section applies to rentals, grants and transfers of rights, interests or licenses, loan interest, patent royalties, management fees, payments for services, and payments for goods.

Guidance with respect to application of section 770 of the ICTA is provided in Notes published by Inland Revenue.[23]

An Inland Revenue Note defines "arm's length price" as the price which might have been expected if the parties to the transaction has been independent persons dealing at arm's length, i.e. dealing with each other in a normal commercial manner unaffected by any special relationship between them.[24]

The Note dealing with methods of arriving at arm's length prices is as follows:

In ascertaining an arm's length price the Inland Revenue will often look for evidence of prices in similar transactions between parties who are in fact operating at arm's length. They may however find it more useful in some circumstances to start with the resale price of the goods or services etc. and arrive at the relevant arm's length purchase price by deducting an appropriate mark-up. They may find it more convenient on the other hand to start with the cost of the goods or services and arrive at the arm's length price by adding an appropriate mark-up. But they will in practice use any method which seems likely to produce a satisfactory result. They will be guided in their search for an arm's length price by the considerations set out in the OECD Report on Multinationals and Transfer Pricing. [This Report examines the considerations which need to be taken into account in arriving at arm's length prices in general and also in particular in the context of sales of goods, the provision of intra-group services, the transfer of technology and rights to use trade marks within a group and the provision of intra-group loans].[25]

Appendix D—An Empirical Analysis of the Marketplace for Intangibles

A. Introduction

One question that has been raised during the preparation of the paper is whether the requirement for periodic adjustments in certain situations is consistent with the manner in which unrelated parties structure arrangements involving transfers of intangibles. Additionally, the Congressional concern about related party use of inappropriate comparables raises questions about which characteristics of unrelated party arrangements should be included in related party arrangements. This appendix draws upon academic work that examines actual licensing experience by unrelated parties in an effort to address this issue.[1] Although each of the papers examined had a different goal, the underlying data collected through surveys or interviews with licensees and licensors provides relevant information about what unrelated parties do.

In addition to synthesizing other authors' work on technology transfers, the Service and Treasury have collected a sample of license agreements drawn from the records of the Securities and Exchange Commission ("SEC"). The SEC requires that companies disclose license agreements that are "material" to the operation of the company.[2] The disclosures to the SEC provide a potential data base of over five hundred agreements. Only sixty of these agreements have been analyzed for this report. The choice of agreements in the sample was largely dictated by the ease of discovery and the availability of documents within the SEC's files. The sample consists of forty agreements for the manufacturing industry, most of which are clustered in the Standard Industrial Classifications (SIC) for pharmaceutical preparations, toilet preparations, electronic computing equipment, semiconductors, surgical and medical equipment, and ophthalmic goods. The other twenty agreements are for the services industry, mostly within the SICs for computer programming, computer software, and research and development laboratories.

In this study, the SEC documents have been used primarily for further illustration of the points raised by other authors. Further examination of the SEC agreements will be conducted after publication of this study, with a view toward relating them to financial accounting and tax data of the firms involved, and publishing the results. An analysis of available data might give a more complete picture of the incomes realized by the two parties to the transaction and suggest criteria for determining a profit split in comparable cases.

B. Goal of Licensing Agreements

Parties contemplating entering into a license agreement are ultimately concerned with the income they can expect to receive from the arrangement. The existence of proprietary knowledge suggests that production and sale of the product will result in profits that are greater than those necessary to provide a normal rate of return to the inputs provided by both parties. The actual division of these profits will depend on each party's forecast of the total profits, and on the relative bargaining strength of the two parties.

Some authors have formally diagrammed and discussed the negotiating range of unrelated parties.[3] The basic premise is that the parties are concerned with the split of the net income from the product. Baranson reports that Bendix officials "indicated that, if a broad cross-section of American industry were polled, one would find that the average goal is a return to the licensor equal to about one-third of the profit of a well-run, well-established licensee with a broad market."[4] Caves *et al.* find that the licensor will capture an average of forty per cent of the expected profits that remain after the deduction of a normal return on capital. According to their sample, the range of the split leaves one-third to one-half of the profits to the licensor.[5] Contractor's overview of the literature suggests that licensors "should settle for a 25 to 30 percent share of the licensee's incremental profit."[6]

These averages can not necessarily be used to replicate an individual arm's length deal because they do not, for example, control for the specific economic activities undertaken by the parties. They do show that unrelated parties enter negotiations for a license agreement with expectations about the total profits that they think will be earned from the exploitation of the intangible, and about the share of the profit that they can expect to receive.

C. Payment Terms for a License

Although the goal is to capture a portion of the profits, the provisions in license agreements rarely specify that a percentage of the profits will be paid as compensation for the right to exploit the intangible. This may be because the licensor fears that the accounting for profits can be manipulated too easily by a licensee, who may be able to choose what costs are included. Instead, a royalty that is a percentage of the net selling price is typically chosen.[7] Fifty-eight percent of the agreements in the SEC sample used a royalty based on the net selling price.[8] This means of achieving the split of profits from the intangible leads to a more easily verifiable number for the licensor.

Of the SEC agreements that have royalties based on the net selling price, 40 percent have a constant royalty rate. Because costs vary over time, a flat royalty rate will lead to a different profit split on a year-by-year basis. Therefore, an examination of the returns over the lifetime of the agreement is necessary to determine the true division of the profits.

Some agreements apparently attempt to even out the returns earned by varying the royalty rate. A number of different structures are possible. Some agreements have a royalty rate that declines over time; others are structured so that the rate rises and then falls. Thirty percent of the SEC agreements that have royalties based on the net selling price vary the royalty rate over the years of the agreement.

The remaining 30 percent of agreements with royalties based on the net selling price vary the royalty rate based on total sales of

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[15] Jacob, *The New "Super-Royalty" Provisions of Internal Revenue code 1986: A German Perspective*, 27 European Taxation 330 (1987).

[16] Japan Special Taxation Measures Law, art. 66-5 (March 31, 1988), an outline of which is contained in Appendix I. to the Speech of Toshiro Kiribuchi, Deputy Commissioner (International Affairs), National Tax Administration, at the International Tax Institute Seminar, New York, NY (June 2, 1988).

[17] Special Taxation Measures Law, art. 66-5 section 2(i) and (ii).

[18] Special Taxation Measures Law, art. 66-5 section 2(ii).

[19] Special Taxation Measures Law, art. 66-5 section 2(iii)(b).

[20] Special Taxation Measures Law, art. 66-5 section 2(i)(c).

[21] Go. Kawada, Director, Office of International Operations, National Tax Administration, Remarks at the International Tax Institute Seminar, New York, NY (June 27, 1988).

[22] Income Tax Acts of 1988, section 770.

[23] Thomas, Richard, Deputy to Assistant of Taxes, Board of Inland Revenue, Remarks at the International Tax Institute Seminar, New York, NY (June 27, 1988).

[24] *The Transfer Pricing of Multinational Enterprises. Notes by the UK Inland Revenue* (Jan. 28, 1981), at 1, *reprinted in* Int'l Bureau of Fiscal Documentation, *Tax Treatment of Transfer Pricing* [1988].

[25] *Id.* at 3.

[1] Authors who rely on statistics that include related party transactions are quick to point out that the numbers are biased due to potentially tax motivated manipulations. *See, e.g.*, Katz and Shapiro, *How to License Intangible Property*, 101 Quarterly Journal of Economics 367–389 (1986).

[2] "Material" is an accounting concept that describes items about which a prudent investor ought reasonably to be informed. For an explanation of a "material contract," *see* Item 10 of the Instructions to the Exhibit Table for Form 10-K 17 CFR 229.601.

[3] *See, e.g.*, F. Contractor, *International Technology Licensing*, at Chapter 3 (1981).

[4] J. Baranson, *Technology and the Multinationals* 84 [1978].

[5] Caves, Crookell, and Killinger, *The Imperfect Market for Technology Licenses*, 45 Oxford Bull. of Economics and Statistics 249, 258 (1983).

[6] Contractor, *supra* n. 3, at 125.

[7] The net selling price is typically the price charged by the licensee to unrelated parties on an f.o.b. factory basis after deduction for state and local sales taxes and, sometimes, after deduction for quantity discounts.

[8] Recall that the sample size is small and was not chosen randomly. All percentages provided are purely illustrative and should not be accorded the weight one would give to a larger, randomly selected sample.

the product. This structure may be most clearly tied to the returns that the licensor requires. It may also provide incentives to the licensee; this aspect will be discussed below.

Not all compensation packages are based on a percentage of the net selling price. Eighteen percent of the agreements in the SEC sample require a royalty per unit. Once again, the royalty per unit may be constant or it may change as more units are sold. In the SEC sample, 60 percent of the royalties per unit were constant, and 40 percent declined per unit as the number of units increased. The licensor may prefer to base the royalty on units sold instead of on net selling price if the licensee is contemplating discounts or if the intangible may be sold as part of a larger package, such as when software is distributed free of charge to the buyer of a computer. In the SEC sample, 80 percent of the royalty per unit agreements occurred in licenses for computer software. Computer software would seem to be the type of product for which "free" samples may be provided or which may be part of a package deal. Indeed, 67 percent of the sample agreements in the SIC code for "Computer Programming and Software" contain royalties per unit.[9]

Some agreements combine advance or lump sum fees with a royalty based on sales or units. Different factors might explain these payments in different settings. If the licensee's country of incorporation limits the allowable royalty rate, an initial lump-sum fee might be used to ensure that the licensor earns the required return.[10] Alternatively, the goal of a front-end fee may be to lower the licensor's risk by ensuring a minimum return. In the SEC sample, 10 percent of the agreements with per unit or net selling price royalties also have initial lump sum fees.

Another means of lowering the licensor's risk is for the licensee to prepay a nonrefundable amount of money against which future royalty obligations are credited. In addition, a minimum payment may be due each year. If the total royalties paid are less than this amount, the licensee must pay the difference to the licensor. Forty-seven percent of the agreements with per unit or net selling price royalties contain this type of [illegible].

Finally, a lump sum fee may provide the sole compensation for the use of an intangible for a certain number of years. Twenty percent of the SEC agreements used a one time, lump sum payment or annual lump sum payments. Such an arrangement fixes the return that the licensor will receive. This payment scheme leaves the licensee to absorb all the variance in the amount earned. Just as in the minimum payment scheme, if the product is much less popular than expected, the licensee will absorb the loss. However, unlike the minimum payment scheme, if the product is much more popular than expected, the licensee will reap all of the unexpected rewards. This type of arrangement could provide a strong incentive to the licensee to concentrate resources on selling the product.

Forcing the licensee to absorb the risk may not be the only reason that lump sum fees are chosen. The licensor may have patented a new technique or instrument that the licensee wishes to use to attempt to create another product. In this case there is no readily apparent unit to be produced, nor is anything being sold initially. Therefore, a lump sum fee may be the only practical means of compensating the licensor for the use of the patent. Lump sum fees may also be used to settle disputes over patent infringement claims.

D. Provisions Which May Affect Returns

Other clauses in the agreement, which do not explicitly affect payment, may affect the returns earned by the licensor and the licensee. For example, the licensor may require the licensee to perform a certain amount of marketing. This clause can be very specific, and may require that a certain amount be spent or that a certain percentage of the licensee's marketing expenditures be devoted to the licensor's product.[11] Alternatively, the marketing or advertising clause may be open-ended, requiring that the licensee use its "best efforts."[12] Although such a clause does not readily translate into a dollar figure, it potentially gives the licensor the ability to terminate the agreement or to file suit if unsatisfied with the results.

One might expect to find these clauses in licenses for products in which advertising plays a pivotal role in determining the success of the product. Indeed, in the SEC sample, these marketing or advertising clauses seem to be particularly prevalent in the SIC code for toilet preparations. Seventy-three percent of the agreements in the SEC sample that contain advertising clauses are for licenses with respect to clothing articles or toilet preparations. Once again, certain features of agreements seem to be product specific. This suggests that a comprehensive analysis of the marketplace for intangibles should ideally focus on individual product groups.

In addition to lowering the licensor's risk, these marketing clauses imply that the licensee is engaging in a significant economic activity beyond the manufacture and distribution of the good that embodies the intangible. One would expect that the performance of this additional activity would affect the returns that each party anticipates.[13]

A major factor affecting the licensor's return from licensing the intangible is the amount of technical support required as a condition of the license. The total expense of transferring a technology to a licensee will depend on the technology and on the licensee's level of expertise. Transfer costs include the physical transfer costs of plans, specifications, and designs, as well as the cost of training the licensee to make use of them. Since the licensor has typically already created the product being licensed, the cost of transferring the technology may be the biggest resource cost to the licensor. Indeed, Contractor finds that the most important factor in determining the licensor's return on an agreement is the amount of technical services provided.[14] By carefully limiting the amount of service automatically provided, the licensor can minimize uncertainty of return from its transfer.

Additional technical support is sometimes provided on a time and expense basis.[15] The split between "free" technical support and additional support for which the license is charged varies depending on the circumstances. Additional detail would be necessary to test hypotheses concerning how expectations about technical support affect technical assistance provisions and how these provisions affect the whole licensing package. The SEC data reveal a variety of solutions to the technical assistance question. Some set a specific time period for "free" technical support.[16] Others require that technical assistance be reimbursed at cost,[17] at a fixed rate,[17] or at the lowest rate

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[9] This product specific use of a certain type of royalty base is the type of information that one would hope to find in more situations after a thorough examination of the SEC data.

[10] If the licensee's country of incorporation intends to limit the compensation flowing out of the country, attempts to provide a lump sum payment may only serve to shift the analysis. In addition to limiting the royalty rate, the country may also challenge the lump sum payment.

[11] One agreement states that: [I]n each License Year during the term of this Agreement, Licensee shall expend a sum equal to 2% of the Net Sales of Licensed Products * * * for trade and consumer advertising of Licensed Products under the Licensed Trademarks. All such advertising shall be in accordance with the provisions of this Agreement. Licensee shall furnish Licensor with copies of each such advertisement and with proof of such advertising expenditure.

The agreement goes on to define advertising and to require that "such advertising shall have been submitted to Licensor and received its prior written approval."

[12] One such clause reads: "[Licensee] shall use its best efforts to document, package, market, distribute, advertise and promote the use of the Software. All advertising and promotion * * * shall be undertaken at [the licensee's] expense. * * *"

[13] Contractor, *supra* n. 3, at 123, n. 6.

[14] Berenson, *supra* n. 4, atg 65, n. 4.

[15] A license for the design, use, and sale of laser accessories with a per unit royalty provides: Upon [licensee's] request, [licensor] shall give or shall cause to be given to [licensee] such technical assistance and shall give or shall cause to be given to [licensee's] employees such training for 6 months after the date hereof as [licensee] may reasonably require in connection with the transfer of technology provided in the preceding paragraph * * *.

[16] A license to manufacture and sell clothing using the licensor's trademark with a royalty based on net sales notes: Licensor agrees to furnish technical aid to the licensee (excluding information concerning advertising, packaging and customer lists) if requested in writing, provided that the licensee pays all of the expenses for such aid. * * *

[17] A 1985 license agreement to modify and sell software where the license makes regular, fixed royalty payments says: [Licensor] agrees to provide technical assistance concerning the Software to licensee, upon request by Licensee, in the development of the Modified Software; provided, however, that in addition to all other sums payable under this agreement, Licensee agrees to pay [licensor] the sum of $100.00 per hour for all labor provided by [licensor], plus reimbursement for all expenses incurred by [licensor] in providing such technical assistance to Licensee.

charged by the licensor to third parties.[18] As is true of the marketing clauses in a licensing agreement, a licensor may need to balance the desire to push all of the technical costs onto the licensee with the need to ensure that the licensed intangible is used productively.

E. Preparing for Surprises

An arm's length license agreement is shaped by each party's expectations about costs, sales, and the overall profit potential from the use of the intangible. The parties' expectations may differ, and they may differ markedly from the actual profit experience with the product. Therefore, even if both parties are pleased with the royalty rate to be paid, the level of technical services to be provided, and any marketing clauses or clauses on market restrictions, it is possible that future events will leave one or both of the parties dissatisfied with the arrangement.

There are two types of surprises from which the parties may desire protection. One surprise occurs if further development of the intangible significantly improves the product's profitability. The other occurs if several years of actual profit experience lead to a change in expectations about future profitability.

The first surprise is of particular concern to the licensor. In order to insure against this risk, many license agreements contain "grant back" or "technology flowback" clauses. These clauses specify that the licensor receives, free of charge, any enhancements to the technology that are developed by the licensee. These clauses serve to discourage the licensee from doing its own R&D and potentially competing with the licensor. They further protect the licensor from losing out on serendipitous discoveries by the licensee. Caves *et al.* found grant back clauses in 43 percent of the 257 agreements they studied. However, the clauses appeared 76 percent of the time in agreements involving "dominant product" licensors.[19]

The second type of surprise, changes in the parties' expectations about future profitability, can create problems from which both licensors and licensees may want relief. Termination clauses provide one kind of protection in these circumstances. In one agreement, a license for the use of a trade name, the licensee was required to meet certain sales targets. This type of arrangement allows the licensor to exist from the deal or renegotiate if the volume is insufficient to realize the expected returns from the intangible.

In other cases, termination clauses allow the parties to end the contract, without cause, after giving notice. This safety valve may not lead to actual termination but instead may offer an opportunity for renegotiation if one of the parties thinks that its returns are inadequate. The structure of termination clauses varies. Clauses may allow immediate termination, or they may require several years notice. Manufacturers' distributors can typically be dropped by the manufacturer to whom they are under contract on 30 days' notice.[20] At the other end of the spectrum, some terminations without cause are tied to the length of a patent. However, not all agreements involving patent life specify such a long period before renegotiation is considered. Thirty-four percent of the SEC agreements provide for termination without cause for the licensee, while 21 percent allow the licensor to terminate without cause after a given period of time.

Some agreements have no termination clause except for cause. There are several situations in which a license might be likely to lack a termination clause. If the licensee was required to make a substantial initial investment in order to make use of the intangible, one can hypothesize that the licensee would not enter into the agreement if the licensor could easily pull out of the deal. Another type of agreement without a termination clause might be one involving the license of products, such as computer software, that have a very short lifespan. In this case the relevant life is so short that termination is not a useful option; both parties must choose correctly the first time. Related to this group are agreements that are scheduled to end after a specific, and relatively short, length of time. These agreements will automatically be renegotiated if the parties wish to extend the license.

Fifty-five percent of the SEC sample agreements allow no termination except for cause. However, of this subset, 22 percent are agreements that have a specified length of less than three years, and another six percent are agreements of five or six years in duration. These agreements seem to fall into the category of licenses with relatively short lengths.

Twenty-eight percent of the SEC sample agreements without a termination clause (16 percent of the total sample) were agreements with a duration of ten years or more. More information on these licenses would need to be gathered in order to test the hypothesis that extended licenses tend to exist when the licensee is required to make a substantial initial investment.[21]

Of the remaining agreements with no termination clause, 22 percent were for agreements with lump sum payments and 22 percent were for agreements of indeterminate length. The latter group typically specified that the agreement lasted until the patent expired; these patent expiration dates were not readily available.[22]

The existence of termination clauses shows that companies are concerned about their ability to predict the total profits from the exploitation of an intangible. Regardless of the existence of termination clauses, agreements do get renegotiated. The frequency of renegotiation would give information about the "surprises" that occurred and the companies' ability to predict the outcome of a license agreement. Although it is not possible to make general statements about the overall frequency of renegotiations or terminations based on the sample of agreements we examined, some examples of renegotiations were found. A license to manufacture and sell clothing under a trademark was renegotiated in the second year of a six year term. The amended agreement provided the licensor with a royalty rate, based on net selling price, one percentage point higher than the original rate. However, the new agreement also lowered the percentage of the net selling price to be spent by the licensee on advertising by one-half a percentage point.

Other agreements provide clear evidence that the parties contemplated the possibility that renegotiation might be necessary. One agreement, with no termination clause, provides for renegotiation of the royalty rate after three years. At that time, "[B]oth the royalty rate and the scope of the Patented Portions will be renegotiated * * * [to] aggregate to not less than 1.5 percent and not more than 2.5 percent of the Royalty Portion selling price of such Licensed Products." Another agreement provides for renegotiation after certain events occur, instead of after a certain time period. This is a 15 year agreement which the licensee can terminate on six months' notice. It says: "Licensor or Licensee are unable at the Effective Date of this Agreement to value on a proportionate basis the future worth to Licensee of the rights presently owned by Licensor in the Technological Field * * *." The agreement goes on to provide for current royalty payments and for additional payments, depending on the outcome of certain events.

This discussion of terminations and renegotiations shows that there is no single way of dealing with uncertainty. Ultimately, much more detailed analysis would have to be undertaken to determine what circumstances lead unrelated parties to renegotiate or terminate contracts.

F. Conclusions and Recommendations

The agreements filed with the SEC and those analyzed in the academic work provide a body of information concerning arm's length transactions involving intangible property. This body of information points out key factors that should be considered when determining the proper allocation of income in related party situations. The SEC data and other sources will be further analyzed in greater detail following publication of this

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[18] A license for the use of a new type of laser where the licensee provides fixed annual royalty payments requires: [Licensor] shall make available such technical assistance as [licensee] may reasonably request for understanding or exploiting the Proprietary Technology at [licensor's] standard rates, and under terms that are no less favorable than those extended to any of its other customers.

[19] Caves, *supra* n. 5, at 281, n. 5. A dominant product is one that accounts for more than 50% of a firm's sales. This classification relates only to the level of the firm's diversification. It does not make any distinction with regard to the overall profitability of the product. *Id.* at 252.

[20] Galante, *Quickie Divorce Curbs Sought By Manufacturer's Distributors*, Wall Street Journal, July 13, 1987, at 25.

[21] In addition, representative information on all licenses, regardless of term, that require the licensee to make a substantial investment would be necessary in order to test the hypothesis that a large initial investment by the licensee leads to a license of long duration.

[22] These agreements could be of short duration: several of the other license agreements in the sample were for patents with only two three years left before expiration.

paper. For example, patterns might be disclosed between royalty rates and specific levels of technical assistance, or marketing expenditures, either in general or by specific industry groups. Moreover, a study of the prevalence of, and circumstances that trigger, termination or renegotiation clauses (as well as the results following exercise of the clause) might be helpful in determining when unrelated parties exercise these rights.

Appendix E—Examples of Methods for Valuing Transfers of Intangibles

Preamble to Examples

The examples that follow illustrate the principles and methods described in Chapter 11. They are intended to set forth what the Service and Treasury believe is an ideal application of these principles and methods to specific factual situations. They are intended to serve as guidance for taxpayers in planning their pricing transactions as well as for both taxpayers and the Service on audit. In large part, the types of information set forth are based upon information used by IEs and economists on audit and used by taxpayers or outside economists for planning purposes.

In general, it is expected that the amount of information about comparable transactions, rates of returns, and costs for a taxpayer's industry and claimed comparable transactions will be the greatest following a full examination of the taxpayer's return. But, as Chapter 3 makes clear, taxpayers have a burden to document contemporaneously, and to justify, their transfer pricing policies and their return positions. The Service and Treasury recognize the practicalities involved in locating and analyzing the type of information set forth in certain of these examples when transactions are planned or returns filed. In general, the taxpayer making a relatively minor investment would not be expected to have gathered and analyzed data outside of its own knowledge or its business affairs and those of its competitors. As Chapter 3 indicates, however, a taxpayer engaging in a transaction involving high profit intangibles should arguably be expected to gather and analyze the type of information set forth in certain of the examples, to the extent that it is available, contemporaneously with the transaction.

Example 1: Exact Comparable

Hydrangea, Inc. is a U.S. developer, producer, and marketer of business software for personal computers. It has developed a new line of specialized accounting software that it expects to sell mainly in foreign markets.

Hydrangea expects that this product will have a life cycle similar to most other products in its line. Thus, it expects that this software will have a peak productive life of three to five years. If it is moderately successful, there will be a small, declining market after that, as obsolescence sets in. If the product is very successful, Hydrangea may decide to develop an enhanced, substantially modified version after the peak period, which it would treat as a new product.

Hydrangea has decided to serve the market in country F for this software by licensing it to an unrelated country F corporation, Fleur, with which it has had satisfactory dealings in the past. Specifically, Hydrangea and Fleur have negotiated a licensing agreement with the following terms. Fleur receives an exclusive license to market Hydrangea's product in country F and agrees to pay Hydrangea 20 percent of the net selling price for each copy it sells. Fleur agrees not to market competing products while the license is in effect. Fleur will market the product under its brand name and will perform the necessary work to modify the product to integrate it into its own line of accounting software. Hydrangea agrees to provide Fleur, for free, with any corrected, revised, and enhanced versions of the software that it releases publicly during the first four years. (Fleur and Hydrangea understand that, after that period, the latter is permitted to develop an enhanced, substantially modified product and to call for new negotiations with Fleur, [illegible] or market the new product itself.) The agreement grants Fleur a perpetual license to the current product. During the first four years, neither party can terminate without cause; after that period, Fleur can terminate with six months' notice.

Hydrangea will serve the market in country B through its wholly owned local subsidiary, Royal Hydrangea. The markets in countries F and B are substantially similar in size, sophistication, and ability to use business software intended for personal computers. Royal Hydrangea performs the same functions as Fleur relating to marketing and distribution of accounting software. Thus, it will modify the product as necessary for local requirements; it has been and will continue to be responsible for marketing its products and developing its trademark; and, it maintains a distribution network, including a sales staff. For these reasons, Hydrangea concludes the external standards for using the Fleur agreement as an exact comparable are satisfied.

Hydrangea satisfies the internal standards by including all important features of the Fleur agreement in its agreement with Royal Hydrangea. Thus, the royalty is set at 20 percent of net selling price. The provisions concerning corrections and revisions are also, therefore, included, as are the provisions concerning duration and termination.

Each year, Hydrangea reexamines its related party arrangement to determine if the exact comparable approach is still valid. Specifically, it determines whether the two markets are still similar, and whether Fleur and Royal Hydrangea still perform similar functions. If these aspects of the external standards have substantially changed, or if Fleur terminates its agreement, Hydrangea must reestablish the appropriateness of its related party transaction, which may require adjusting the royalty rate.

Example 2: Unavailability of Comparables

A U.S. company has developed a unique good that it believes will capture 80 percent of the relevant market. The U.S. company plans to produce the good in the United States and to license the rights to production and sale for the rest of the world to its foreign subsidiary. The U.S. company can find no examples of situations in which an unrelated party licensed the rights to production for a product that captured such a large share of the market. Therefore, the company should use the arm's length return method in order to set the appropriate royalty rate with its foreign subsidiary.

Example 3: Inexact Comparable

Shampoo Inc., a well known hair-care products corporation in the United States, plans to set up a subsidiary in country Z in order to introduce its line of products in country Z. The subsidiary will manufacture, distribute, and market the products using the Shampoo trademark. When planning the appropriate transfer price for the license, Shampoo officials started with the knowledge that one of their competitors, Condition Corp., licensed a line of hair-care products to an unrelated party in country Z, Lotions, Inc.

The Condition license covers the formulas for all of Condition's hair-care products as well as the Condition trademark. The license gives Lotions the right to manufacture, distribute, and market the licensed products. Terms include an exclusive license in country Z for a term of four years paying a royalty of four percent of the net selling price. The licensor agrees to provide the licensee with product formulations, scientific data, manufacturing know-how, marketing, public relations, and related assistance. The licensee must adhere to strict quality control standards in manufacturing, distribution, and marketing. The licensor has the right to inspect operations of the licensee to verify such quality. The licensee is prohibited from manufacturing, importing, or marketing competing products in country Z.

From the terms of the agreement it is clear that Lotions performs the same functions that Shampoo's subsidiary in country Z will perform. It is also clear that Condition provides the same type of services and quality control for Lotion's operations that Shampoo will provide for its subsidiary in country Z. It is anticipated that Shampoo's subsidiary will have a volume of sales similar to Lotion's once its operations are fully developed. Finally, Shampoo knows that the gross margin, [net sales—cost of sales)/net sales, on sales of Shampoo's products in the United States is similar to the gross margin achieved by Condition in the United States, which indicates that their manufacturing processes and sales activities have comparable efficiencies. Therefore, it is appropriate for Shampoo to set a royalty rate of four percent of the net selling price for a four year term.

Example 4: Likely Use of Inexact Comparables

Computers Inc., a U.S. software company that specializes in games, plans to acquire the rights to manufacture, market, and distribute a new computer game, Gizmo, created by its European subsidiary. Gizmo will be an addition to Computers' existing line of games. Computers Inc. projects that the total number of Gizmo copies distributed will be close to the industry average. Numerous third party licenses for computer software are available. Computers examines these licenses for appropriate inexact comparables and should be able to determine the appropriate royalty amount and other terms for its agreement with its affiliate from the third party agreements.

Example 5: Basic Arm's Length Return Method: U.S. Importer and Distributor

TravelFun is a large publicly traded foreign corporation with a U.S. subsidiary, TravelUS. TravelFun produces a unique recreational product using sophisticated and highly sought-after production technology. TravelUS imports the assembled product and distributes it under the Travel name. TravelUS has the exclusive right to develop the Travel name in the United States. Because of the importance of the intangibles, TravelUS must apply the rules governing the transfer of intangible property.

TravelFun does not license the Travel name to unrelated parties, nor does it allow unrelated parties to distribute the product. Therefore, no exact comparables are available. Similar products exist that could potentially serve as inexact comparables; however, none of them are sold to unrelated distributors. Therefore, when TravelFun sets up its policy for transfer prices of units sold into the United States for 1989 it uses the rate of return method. In order to apply the method properly, the following information is necessary: (1) A general description of the functions that TravelUS performs, (2) financial information on companies performing similar functions, and (3) analyses of appropriate rates of return.

(1) *Functions of TravelUS.* TravelUS imports the product from TravelFun and distributes it to retailers. TravelUS is responsible for developing the marketing strategy in the United States.

(2) *Companies performing similar functions.* Initially, TravelFun seeks data about publicly traded independent operators of wholesale distribution businesses. A search of the appropriate SIC categories yields a number of companies that differ in the following ways: (1) Some are importers, while others acquire their products in the United States; (2) some are distributors of final products, while others distribute parts; and, (3) some apply intensive marketing, while others do not. Examination of these firms' published financial information indicates that the sample should be narrowed to 16 firms in order to reflect more clearly the functions performed by TravelUS. TravelUS is an importer that distributes final products and performs an important marketing function. Each firm in the final sample has some combination of these characteristics. Balance sheet and income data are then collected for the sample of 16 companies.

(3) *Analysis of appropriate rates of return.* The company evaluates the available information in order to determine the appropriate ratios on which to base its comparisons. Comparable asset data are not available for all firms in the sample. Therefore, an attempt must be made to determine a rate of return for TravelUS based on available cost data for the sample of firms. A number of ratios can be considered as a means of determining an appropriate return on costs. Possibilities include the ratio of gross profit to operating expenses (the Berry ratio), the ratio of operating income to the cost of sales and operating expenses, and the ratio of net pre-tax income to total expenses. The choice of the appropriate ratio will depend on the composition of the sample and the stability of the ratios over time.

For the sample of 16 companies, all of the ratios lead to similar results. TravelUS retains the information that supports this claim, but upon examination presents only the analysis using the Berry ratio. As defined above, the Berry ratio is the ratio of gross profit to operating expense:

$$\text{Berry ratio} = \frac{\text{Net Sales} - \text{Cost of Sales}}{\text{Operating Expenses}}$$

Net sales are total revenue from sales less cash discounts to customers for payment within a specified time. Cost of sales is also referred to as cost of goods sold, including freight charges. Operating expenses include selling expenses such as sales salaries and commissions, advertising and marketing expenses, depreciation expenses, supplies, office salaries, and payroll taxes. The major expense not included in either cost of goods sold or operating expenses is interest expense.

For the 16 firms in the sample the average Berry Ratio is 1.40 with a standard deviation of .15. (The minimum ratio was 1.17 and the maximum was 1.61.) TravelUS uses the average ratio, 1.40, in order to determine the payment that should be made to the parent. Additional information that will be necessary includes net sales, operating expenses, and cost of sales that are not included in the payment to the parent for the product.

TravelUS projects sales of 20,000 units, net sales revenue for 1989 of $100 million, and operating expenses of $30 million. Cost of Sales are projected to be $2 million plus transfer payments to TravelFun. Plugging this information into the equation for the Berry ratio yields:

$$1.40 = \frac{\$100 \text{ mil.} - [\$2 \text{ mil} + 20{,}000 \times]}{\$30 \text{ mil}}$$

Therefore, x, the transfer price paid for each unit, is $2800. TravelUS will pay TravelFun $2800 per unit of import and projects that it will pay TravelFun a total of $56 million in [illegible].

Example 6: Basic Arm's Length Return Method: Foreign Subsidiary Serving Local Market

Counter Inc., a U.S. corporation that specializes in over-the-counter drugs, plans to set up a subsidiary in country X. The subsidiary will manufacture, distribute, and market Counter's products in country Z. The manufacturing process is not particularly complex. The subsidiary will set up its own distribution network, which will be of average size for the industry. Further, it will perform its own marketing; however, because the subsidiary will, in general, sell "generic" products that will sell under its customers' brand names and trademarks, its marketing activities will involve contacting drug stores and other selling concerns, and not the development of a unique, consumer-level marketing intangible.

Counter's search for unrelated party licenses for comparable products proves fruitless. The search does yield a number of licenses in which the functions performed by each party are similar. The products are not similar enough to over-the-counter drugs to be classified as inexact comparables; however, the level of manufacturing, the type of distribution network, and the type of marketing performed in each case are similar. Therefore, Counter searches for information about the returns earned by each of these companies. Analysis of the income statements and balance sheets of the firms in the sample yields an average rate of return earned. This average can be used by Counter to determine the royalty rate to be paid by its subsidiary in country Z.

Example 7: Basic Arm's Length Return Method: Foreign Subsidiary Producing for U.S. Market

A U.S. corporation has developed and patented the formula for a new heart drug that has fewer potential side effects than any drug in existence. The U.S. corporation plans to manufacture the drug in a foreign subsidiary to be located in country Y, which has very low labor costs. The completed product will be returned to the parent for sale in the United States. In addition, some of the manufactured drug will be shipped from the manufacturing subsidiary to a marketing subsidiary in country X for sale in Europe. The parent wishes to fashion the transaction so that a royalty will be paid by the subsidiary to the parent for the right to manufacture and sell the drug. The parent and the subsidiary in X will then pay the

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manufacturing subsidiary for the finished product.

The following information is known or projected:

1. The drug will sell for $2.00 per pill.

2. The volume of sales in the United States in 1989 will be approximately 900 million pills.

3. The volume of sales in Europe in 1989 will be approximately 600 million pills.

4. Marketing and distribution costs in the United States are estimated to be $14.4 million.

5. Marketing and distribution costs incurred by the country X subsidiary are estimated to be $7.5 million.

6. The manufacturing subsidiary's costs will be as follows:

Cost of Chemicals.....$110 million
Operating Expenses.....$75 million
License Payments.....To be determined
All Other Expenses.....$5 million

7. The manufacturing subsidiary will have the following assets:

Cash.....$12 million
Factory.....$360 million

8. The manufacturing subsidiary will have the following income:

Interest Income.....$1 million
Revenue from Sale of Drug...To be determined

There are no transfers by unrelated parties that would provide an inexact comparable for either the license the parent grants to the manufacturing subsidiary or for the pill that is sold to the parent and to the marketing subsidiary. There are other companies that perform similar marketing and manufacturing functions. The difficult piece to measure is the value of the patent which is held by the parent. Therefore, the parent turns to the arm's length return method as the appropriate method. The parent will find proper rates of return for the manufacturing and marketing segments of production and allocate to itself the residual profits.

A sample of manufacturers in locations with low labor costs shows that manufacturers earn an average rate of return on their manufacturing assets of 12 percent. The subsidiary's total manufacturing assets, the factory, cost $360 million. Prices should be structured so that the manufacturing subsidiary earns profits of $44.2 million ($43.2 million return on the factory asset plus the known $1 million return on cash).

If all of the drug were resold to the parent, the split between the cost of the final pill and the license payment would be unimportant as long as the correct amount of income remained allocated to the subsidiary. However, in this case the final product is also being sold to the subsidiary in country X, so the correct split is important.

Information on marketers and distributors of drugs shows that they earn approximately cost plus 25 percent, both in the United States and in country X. Based on the costs outlined above, the parent should earn net income of $3.6 million on its distribution and marketing activities, the Country X subsidiary should earn net income of $2.4 million. Revenue from the sale of the heart drug will be approximately $1800 million in the United States and $1200 million in Europe. Therefore, the manufacturing subsidiary should charge $1.98 per pill.

Total revenue received by the manufacturing subsidiary will be $2971 million ($2970 million from sales and $1 million from interest income.) The royalty to be paid to the parent will be a percentage of the net sale price of $1.98. The correct royalty rate, r, can be determined by the following equation, which shows the manufacturing subsidiaries revenues and costs:

Net Income ($44.2 mil.) = Total Revenue ($2971 mil.) — Cost of Chemicals ($110 mil.)
— Operating Expenses ($75 mil.)
— Other Expenses ($5 mil.)
— Royalties Paid [(1500 mil.) ($1.98)r]

Solving for r shows that r equals .921.

Therefore, the appropriate royalty rate is 92.1 percent of the net selling price of $1.98.

Example 8: Likely Use of Basic Arm's Length Return Method

A U.S. company manufactures electronic equipment for sale in the United States. The U.S. company designs the equipment and licenses the designs to its foreign subsidiary. The subsidiary assembles the circuit boards and other components for the products and sells them to the parent. For transfer pricing purposes, the parent searches for the rate of return earned by independent computer assembly operations in order to determine the amount of income that should be attributed to its foreign subsidiary.

Example 9: Likely Use of Either Inexact Comparables or Basic Arm's Length Return Method

A U.S. company manufactures and markets a line of sportswear. The company plans to introduce the same line of clothing to Europe through its European subsidiary. The subsidiary will manufacture, market, and distribute the casual wear using the parent's trademark. The clothing is marketed toward middle income consumers and is projected to sell at prices and earn a market share similar to several other brands which are marketed to this group. The parent has two options when setting its transfer pricing policy. If unrelated party licenses of trademarks for clothing can be located, then these inexact comparables can be used to establish appropriate terms for the license agreement. If information is available on the returns earned by unrelated parties that perform functions similar to the European subsidiary, then the rate of return method can be employed.

Example 10: Profit Split Method Using Split Observed in Arm's Length Transaction

ABC is a U.S. corporation that produces advanced machine tools. It maintains a large artificial intelligence research lab, which has made significant advances in computer vision. Recently, this work has begun to yield marketable products. Specifically, ABC has developed a "sighted" numerically controlled machine tool (NCMT) that can be programmed to recognize the pieces on which it should perform its fabrication tasks. ABC expects this new device to be a significant advance over competing NCMTs because the pieces will not have to be precisely aligned before the fabrication operations can be performed; therefore, the "sighted NCMT" should be much easier to operate and integrate into an assembly line. The key element in this advance is the software that allows the NCMT to determine the precise position and orientation of a piece placed on its operating deck. ABC has obtained worldwide patent protection for this software. As is true of most of ABC's products, the device must be substantially modified for each customer's specific application, and ABC maintains a large and expert engineering staff to accomplish this.

ABC projects that devices based on the new technology will eventually become an important source of revenues and profits for the company. During the first three to five years, ABC expects to have no significant competitors, and plans to market the devices to the high price, high mark-up, low volume, most technologically advanced segment of the NCMT market. After that period, as the technology becomes more common, ABC expects that sighted NCMTS will, in general, replace other types of NCMTs and that its lead will enable it to capture a significant share, perhaps 50 percent or more, of the overall NCMT market.

ABC-Europe is a wholly owned subsidiary of ABC incorporated in country X. All of ABC's products currently sold in Europe are produced and marketed by this company. ABC-Europe maintains its own research and engineering staffs and manufactures all of the devices it sells. A majority of the products in its line involve technology licensed from ABC, but a significant fraction depend on technology developed through its own research efforts. ABC-Europe performs all of the marketing for Europe, and its engineering staff performs the necessary development work of the devices for each customer.

ABC plans to transfer the European rights to exploit the software and associated technology for sighted NCMTs to ABC-Europe. ABC has no plans to license the technology to an unrelated party; therefore, no exact comparable is available. ABC has conducted a search for inexact comparables; although the search does turn up unrelated party transactions involving licenses of machine tool devices and patents, ABC has concluded that none of them can meet the standards for the inexact comparable method. Specifically, none of the potential comparables are for devices which involve profit margins as high as the sighted NCMT's will have in the short run, nor market shares as large as ABC anticipates having in the long run.

ABC next considers the basic arm's length return method. It concludes that ABC-Europe's activities in exploiting the sighted NCMT technology can be split into four functions: (a) Conducting research to search for uses in the European market, (b) marketing the devices, including participating in trade shows, conducting demonstrations, and providing technical assistance (mass-market retail-level advertising is not necessary in this industry), (c) designing the specific devices to meet the requirements of each customer's application, and (d) manufacturing and distributing the devices.

ABC concludes that some but not all of these functions can be analyzed under the basic arm's length return method. Once each customer's design has been set, manufacture of the devices will not be much more complicated than current NCMTs, and ABC is familiar with firms that manufacture current-generation NCMTs according to others' designs. Therefore, ABC concludes that function (d) can be analyzed in this way; specifically, it concludes that a rate of return to operating assets of 16 percent is the average for firms that perform this function. Marketing is not a major activity in this industry, because the customers are extremely knowledgeable. ABC deals with firms that perform marketing functions for it; based on its knowledge of these firms, ABC concludes that a 20-percent ratio of income to costs is a reasonable way to value the contribution of function (b).

Functions (a) and (c), however, cannot be analyzed in this way. ABC-Europe's staff of scientists and engineers, while smaller than ABC's, is still one of the largest and most expert in Europe. ABC knows of no independent firm in the machine tool industry, in the United States or Europe, that would be able to conduct research, development, or design work as satisfactorily as or on a scale comparable to ABC-Europe. Therefore, ABC concludes that it would be inappropriate to value the contributions that ABC-Europe's performance of these functions will make toward selling sighted NCMTs in Europe by multiplying the assets employed by a rate of return, or multiplying the costs incurred by an income-to-costs ratio. In short, a profit-split approach is necessary.

Although ABC's search for comparables did not turn up appropriate licenses in the machine tool industry, other transactions between unrelated parties were found. For example, ABC obtained information about the following transaction: a group of professors, in partnership with their university, established a consortium to patent and exploit a process through which a new product can be produced by a genetic engineering technique. The consortium bargained at arm's length with several large chemical companies, and negotiated a licensing agreement with one of them. The licensee manufactures the product, tailors it to meet the specific needs of various groups of farmers, and markets it. The product has no significant competitors and has achieved widespread use in certain important agricultural applications. The licensee pays the university consortium a royalty of $7 per pound.

ABC next gathers information about the chemical company and the industry in which it operates. It is able to determine that the chemical company maintains a large staff of scientists and engineers which performs functions concerning the new product that are comparable to the research and development activities that ABC-Europe will perform. The chemical company undertakes significantly more marketing activities than will ABC-Europe, and the manufacturing process for the product is not comparable. Further, ABC is able to determine the following information: (a) The product sells for $27 per pound; (b) production costs are ten dollars per pound; (c) independent firms that produce chemicals using similar production techniques earn profits equal to 20 percent of cost; (d) marketing and distribution expenses are three dollars per pound, and (e) independent firms that perform similar marketing and distribution activities earn 33 percent of expenses.

This information allows ABC to determine the profit split between the basic technology contributed by the university consortium, on the one hand, and the research, development, and application activities and know-how contributed by the chemical company, on the other. Specifically, the latter's profit per pound, net of royalty and expenses, is seven dollars ($7=$27−$7−$10−$3). Of this amount, two dollars should be attributed to the manufacturing activity and one dollar to the marketing and distribution ($2=$10×0.20, and $1=$3×0.33). This leaves four dollars per unit as the return to the chemical company's know-how and skills as to R&D and application of technology to its customers' needs. The university's income is the seven dollars royalty. Therefore, the profit split is 64 percent (64 percent=7/(7+4)) for the licensor's basic technology and 36 percent (36 percent=4/(7+4)) for the intangibles employed by the licensee. (Note that the licensor and licensee each earn 20 percent of the total profits, since they each earn seven dollars per pound; however, 50 percent vs. 50 percent is not the relevant profit split for this situation, because it does not distinguish between the profits for the manufacturing and marketing functions.)

Finally, ABC is able to determine the proper arrangement for its license to ABC-Europe. There are many ways ABC could structure the arrangement. One would simply be to specify that ABC-Europe (a) determine gross profits from sales of sighted NCMTs (with gross profits defined as sales receipts minus manufacturing and marketing costs), (b) subtract 16 percent of the value of assets used in manufacturing the devices, (c) subtract 20 percent of the marketing costs, (d) subtract 36 percent of the remainder, and, finally, (e) remit the remaining amount to ABC as a royalty.

Alternatively, ABC could use additional information about ABC-Europe's future activities to set a more traditional licensing arrangement. ABC's projections for sales of sighted NCMTs in Europe during the first three years of operations include the following figures. The devices will sell, on average, for $100,000 each. Cost of production will be $56,000 and will require $50,000 of production assets per device. Marketing costs will be $5,000 per device. These projections imply that gross profits, defined as sales receipts minus manufacturing and marketing costs, equal $39,000 per machine. Of this amount, ABC-Europe should be allocated $8,000 for the manufacturing function and $1,000 for marketing ($8,000=$50,000×0.16 and $1,000=$5,000×0.20). Remaining profits are thus $30,000 per device. This amount should be split 64 percent to ABC and 36 percent to ABC-Europe; thus ABC should be allocated $19,200 per device and ABC-Europe the remaining $10,800. A more traditional licensing arrangement, therefore, would require that ABC-Europe pay ABC a royalty equal to 19.2 percent of sales (19.2 percent=$19,200/$100,000).

If ABC chooses the former type of arrangement, periodic adjustments to it are less likely to be necessary, because the allocation of income between ABC and its affiliate will automatically adjust to a large extent. ABC should reconsider periodically, however, whether the manufacturing rate of return to assets, the marketing income to cost ratio, and the profit split percentages are still appropriate. If ABC chooses the latter type of licensing arrangement, many more periodic adjustments to it will likely be necessary. Specifically, in addition to considering the preceding factors, ABC must determine if actual experiences depart from the projections enough to imply significant changes in the appropriate allocation of income. If so, ABC will have to recalculate the sales based royalty rate by substituting the relevant actual figures for the projections in the preceding paragraph.

Example 11: Profit Split Method Using Information About Relative Values of Preexisting Intangibles

Teachem is a U.S. corporation that designs, produces, and markets educational toys in the U.S. It maintains a staff of educational psychologists and engineers to develop and design the toys, which are perceived as uniquely high quality and sell at a premium. Enseignerem is a wholly owned affiliate of Teachem and is incorporated in country F. It is one of the largest toy companies in Europe. It was, and still is, the largest toy company in country P when it was acquired by Teachem a number of years ago. Enseignerem incurs large advertising and other marketing costs to develop its trademark and reputation as a producer of high quality educational toys. It is responsible for its own marketing strategies, which are different in important respects from Teachem's marketing efforts in the United States. For example, Enseignerem maintains a large sales force that calls on schools and other institutions, and institutional sales account for a much larger proportion of its revenues.

Teachem has recently developed a new line of electronic toys and intends to license the European rights to the designs to Enseignerem. Teachem does not plan to license them to any unrelated parties; therefore, an exact comparable is not available. Further, Teachem expects that Enseignerem will be able to capture its usual high market share, especially in the institutional market, and will be able to sell the toys for its usual significant premiums over its competitors. For these reasons, Teachem decides that suitable inexact comparables will probably not be available.

Teachem next considers the basic arm's length return method. Enseignerem will perform three functions with respect to the new line of toys. It will be responsible for manufacturing them; specifically, it will negotiate contracts and supervise independent contract manufacturers who will actually produce the toys. Second, it will distribute them. Third, Enseignerem will be responsible for all aspects of marketing them.

The first two functions can be analyzed

under the basic arm's length return method. Teachem projects that the new toys will sell for $100 each in Europe. Payments to the contract manufacturers will be approximately $40 per toy. Enseignerem has found that distribution costs, including transportation and costs of holding inventories, are usually one-half of production costs, and expects that the new line will be typical in this regard. Therefore, Teachem projects that distribution costs will be $20 per toy. Finally, Enseignerem expects to incur costs of four dollars per toy relating to the supervision of the contract manufacturers. These costs include the salaries of engineers who will be assigned to visit and test the contractors, and premiums for liability insurance.

In some of its product lines, Enseignerem employs contract manufacturers who are willing to distribute, as well as produce, the items. By comparing these contracts with those calling for manufacturing only, Teachem concludes that the independent firms that perform distribution earn a return for it equal to 25 percent of the distribution costs. Teachem therefore allocates five dollars per toy to Enseignerem for the distribution function ($5=$20x0.25). Teachem also decides that a 25 percent income-to-costs ratio is appropriate for the first function, responsibility for manufacturing. Thus, Teachem allocates one dollar per toy to the affiliate as the return for performing it ($1=$4x0.25).

Teachem decides that the affiliate's final function, marketing, cannot be analyzed by the basic method. Enseignerem is not planning to incur any significant costs attributable solely to the new toys. In general, it focuses its advertising on promoting the Enseignerem reputation rather than displaying a single item, and does not plan to issue a separate catalog or set up a separate sales force for the new line. Therefore, Teachem decides that it is not possible to identify or measure the costs or assets that Enseignerem will devote to the new product line. However, it would clearly be wrong to conclude that Enseignerem deserves no return for the marketing function, because its preexisting reputation, sales force, and knowledge of its market are crucial to the success of the new product line in Europe. Therefore, a profit split is necessary.

To summarize the analysis to this point, the toys are projected to earn a gross profit of $36 each ($36=$100−$40−$20−$4). Of this amount, six dollars should be allocated to Enseignerem for the functions analyzed with the basic method. Thus, $30 per toy is left as the combined return to Teachem's product designs and Enseignerem's trademark, sales force, and other marketing intangibles. The next step is to split these profits in a way that reflects the relative economic values of these sets of intangibles.

Teachem concludes that the new line of toys is similar to other lines that the corporate group has introduced in the past few years in terms of the importance of the underlying design relative to marketing intangibles. Specifically, the design involved a typical amount of research and development effort and the toys will be marketed in ways similar to, and with similar intensity as, other products. Teachem analyzes its own performance record and educational toy industry information on the relative importance of design and marketing intangibles therein. Based on a good faith analysis of this data, Teachem concludes that it is reasonable to assign a relative value of the design intangibles equal to one-half the value of marketing intangibles. Accordingly, it allocates ten dollars of the $30 to be split to itself and the remaining $20 to Enseignerem.

Teachem can structure the arrangement in any form that achieves the appropriate allocation of income, ten dollars per toy to the parent and $20 to Enseignerem. Specifically, it could establish an agreement in which Enseignerem pays Teachem a royalty for the European rights to the product designs at a rate of ten percent of sales. In future years, Teachem must reexamine its arrangement and, if any key element in the analysis described above changes significantly, must adjust the royalty rate accordingly.

Example 12: Likely Use Of Profit Split Method

The research staff of a European company that manufactures and markets food products has just created a chemical compound that will alter the way that the human digestive system reacts to sugar. The company believes that by adding the compound to its products, the products will pass through the human digestive system without being absorbed. The compound is unique because it leaves the taste of the product unchanged. No information is known about the possible side effects of this compound. The company wants to use this discovery to offer a whole line of diet products. The European company has a U.S. subsidiary that presently manufactures and markets existing products in the United States. The U.S. subsidiary also has a research staff. Because the prime market for this new product is the weight-conscious United States, the parent licenses the compound to the U.S. subsidiary for development and for the extensive and expensive testing that will be necessary in order to obtain approval from the Food and Drug Administration. Because the product is unique and because the subsidiary performs such complex functions, the profit split arm's length return method is probably most appropriate.

Example 13: Periodic Adjustments To Reflect Changes in Functions

A U.S. corporation produces and markets widgets in the United States and it has a subsidiary in country X that produces and markets widgets in Europe. The U.S. parent is in the early stages of developing a new super-widget. In 1988 it is clear that this could be a major breakthrough in widget technology; however, the manufacturing process is still rudimentary. It is unclear whether the process can be developed to the point that it would be possible to mass-produce the super-widget. The U.S. parent believes that the team of employees at its subsidiary in country X is best suited for the time-consuming and expensive job of developing the process to produce the super-widget.

In determining an appropriate transfer price for the license of the technology, the parent can find no inexact comparable for the super-widget. Similarly, the basic arm's length return method is not feasible because neither party is performing standardized functions. Therefore, the U.S. parent attempts a profit split analysis.

Based on the best information available in 1988, the U.S. corporation predicts that the development process should be completed by 1994. An increasing number of super-widgets will be produced between 1988 and 1994; however, only in 1994 will true assembly-line style production be feasible. Based on an analysis of the relative costs incurred by the parent and by the subsidiary, and on an analysis of the relative returns earned by unrelated parties when risky products are jointly developed, a 50-50 profit split on the returns of the design of the super-widget is adopted by the parent.

By the end of 1989, as the parent is filing its 1989 tax returns and is rechecking its transfer price policy for 1990, super-widgets are being successfully mass-produced at close to the volume predicted for 1994. Instead of requiring the extended development process predicted two years earlier, establishing production was more similar to the effort necessary when adjusting production lines for improved versions of products. Accordingly, the parent adjusts its transfer price policy to a basic arm's length return analysis for its subsidiary in country X. Specifically, the parent determines the average rate of return earned by independent companies that manufacture a product similar in complexity to super-widgets. Because the parent is particularly cautious and feels it would be difficult to sustain its profit split for 1989, it also modifies the 1989 policy to a rate of return analysis. While at the outset of this transaction it appeared that the subsidiary in country X would be required to use significant intangibles of its own to establish the production process, the actual experience of the parties was that no unique intangibles were contributed by the subsidiary. The decrease of five years in the time expected to develop production to the 1994 level constitutes a significant change that requires an adjustment.

Example 14: Periodic Adjustments to Reflect Changes in Indicators of Profitability

A U.S. pharmaceutical company has patented the formula for a new anti-arthritic drug with fewer side effects that those in existence. The U.S. parent's subsidiary in country Y will manufacture the drug and market it worldwide. There are numerous third party licenses for the existing anti-arthritic drugs. The parent decides that these products are comparable because it feels that its product will be a close competitor to them, and will sell for a similar price and capture a similar market share. Specifically, it believes that its drug will capture approximately 15 percent of the market, as do several of the existing products. The parent uses the eight percent royalty on net selling price that is found in those licenses and adopts other significant features of such licenses as well. For example, the length of the agreement is for the length of the patent.

The U.S. parent reviews its license with the subsidiary at the start of year two and finds

that its drug has only an eight percent market share. However, the market share seems to be continuing to grow. Indeed, at the beginning of year three its market share is 16 percent and at the beginning of year four its market share is 21 percent. In each of these years the U.S. parent decides that the inexact comparable is still appropriate.

By the end of year four the popularity of this drug has skyrocketed and it captures 50 percent of the market. Since this share of the market is far beyond that captured by any of the third party licenses, it can no longer be assumed that the level of overall profitability for the product licensed to the related party is similar to that for the products licensed to unrelated parties. Specifically, to the extent that market share is an indication of the mark-up that can be charged on a product, the related party product, which captures 50 percent of the market, is probably much more profitable than products that capture only 15 percent of the market. Therefore, the present inexact comparables are not longer valid. A search for other inexact comparables fails to produce a license involving a similar market share. Therefore, the parent turns to a basic arm's length return analysis to determine what its subsidiary should earn.

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Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 780, 784, 816 and 817
Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Performance Standards; Permanent and Temporary Impoundments; Final Rule

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 780, 784, 816 and 817

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Performance Standards; Permanent and Temporary Impoundments

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the United States Department of the Interior (DOI) is amending certain portions of its permanent program regulations governing permanent and temporary impoundments at surface and underground coal mining operations. Most of the revisions respond to a court decision; others respond to a 1986 amendment to the Surface Mining Control and Reclamation Act of 1977.

The rule, which includes design, construction and inspection requirements for impoundments: (1) Requires a minimum static safety factor for small impoundments; (2) requires stable foundations and abutments during all phases of construction for small impoundments; (3) establishes new spillway requirements for impoundments; (4) establishes a distinction between impoundments based on size and potential adverse effects resulting from impoundment failure; and (5) authorizes qualified registered professional land surveyors to inspect small impoundments and to certify the construction of siltation structures.

EFFECTIVE DATE: November 28, 1988.

FOR FURTHER INFORMATION CONTACT: Robert A. Wiles, P.E., or Stephen M. Sheffield, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202–343–1502 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Final Rule and Comments
III. Procedural Matters

I. Background

The Surface Mining Control and Reclamation Act of 1977 ("the Act" or SMCRA), 30 U.S.C. 1201 *et seq.*, sets forth general regulatory requirements governing surface coal mining and the surface impacts of underground coal mining. Environmental protection performance standards for permanent water impoundments constructed during surface mining activities appear in section 515(b)(8) of the Act, 30 U.S.C. 1265(b)(8), and provisions governing the construction of siltation structures appear in section 515(b)(10)(B), 30 U.S.C. 1265(b)(10)(B). Sections 516(b)(9) and (10) of the Act, 30 U.S.C. 1266(b)(9) and (10), authorize similar regulation of water impoundments and siltation structures for underground mining activities. Section 516(b)(10) further provides that the Secretary shall make such modifications in these requirements as are necessary to accommodate the distinct differences between surface mining and underground mining.

The permanent regulatory program for surface coal mining and reclamation operations was promulgated on March 13, 1979 (44 FR 15312). Requirements for sedimentation ponds at surface mining activities were established at 30 CFR 816.46 (44 FR 15400), while those for underground mining activities were established at 30 CFR 817.46 (44 FR 15428). OSMRE implemented the provisions of section 515(b)(10)(B) of the Act for siltation structures by establishing requirements for sedimentation ponds. At that time, OSMRE considered sedimentation ponds to be the "best technology currently available" for controlling sediment movement from surface coal mining operations.

Requirements for permanent and temporary impoundments at surface and underground mining activities were established in the 1979 rules at 30 CFR 816.49 (44 FR 15401) and 30 CFR 817.49 (44 FR 15428), respectively.

Permitting requirements for reclamation and operation plans for impoundments at surface activities and underground mining activities were established in the 1979 rules at 30 CFR 780.25 (44 FR 15380) and 30 CFR 784.16 (44 FR 15388), respectively.

Section 816.49 regulates all types of impoundments whether they are temporary or permanent. The terms "impoundment," "impoundment structure," "permanent impoundment" and "temporary impoundment" are defined at 30 CFR 701.5. In addition to the regulations governing all impoundments, there are special regulations covering specific types of impoundments. At § 816.46 are regulations covering siltation structures. Requirements for coal mine waste impounding structures are provided at § 816.84. These special provisions supplement the guidance provided at § 816.49 for these special categories of impounding structures.

In promulgating the 1979 rules, and again in the 1983 rules, OSMRE did not identify any differences between impoundments for surface and underground mines that necessitated different regulatory provisions. The permitting rules applicable to impoundments for surface mining activities at 30 CFR 780.25 and those for underground mining activities at 30 CFR 784.16 were identical. Similarly, the performance standards for surface mining activities at 30 CFR 816.46, 816.49, and 816.84 were identical to the rules for underground mining activities at 30 CFR 817.46, 817.49, and 817.84, respectively.

During revision of the permanent regulatory program in 1983, OSMRE replaced most of the specific design criteria in § 816.46 (48 FR 44051) and § 816.49 (48 FR 44004) with performance standards, thereby providing regulatory authorities greater flexibility in the administration of impoundment design. Section 816.46 was renamed "Hydrologic balance: Siltation Structures," to be consistent with the wording of section 515(b)(10)(B)(ii) of the Act and to reflect rule changes which allowed the use of siltation structures other than sedimentation ponds, such as chemical treatment facilities or mechanical structures. The 1983 rules at §§ 816.46 and 816.49 and related coal mine waste impounding structure provisions in § 816.84(b), were challenged in the U.S. District Court for the District of Columbia in *In re Permanent Surface Mining Regulation Litigation*, (*In re Permanent II (Round III)*) 620 F. Supp. 1519 (D.D.C. July 15, 1985).

The District Court remanded: (1) Sections 816.49(a)(3) and (a)(5)(i) because they included requirements for a static safety factor and for foundation investigation and laboratory testing of small sedimentation ponds without having included such requirements when the rule was proposed on June 21, 1982 (47 FR 26754), as required by the Administrative Procedure Act (620 F. Supp. at 1568–1570); and (2) §§ 816.49 and 816.84(b) to the extent they deferred to the Mine Safety and Health Administration (MSHA) impoundment classification standards when OSMRE had not separately justified reliance on such standards (*Id.* at 1536–1537). In addition, in response to plaintiff's challenge of the combination spillway requirement of §§ 816.49(a)(8) and 816.84(b)(1), the Secretary of the Interior agreed to propose a rule specifying that one spillway that can safely pass the design precipitation event may serve as a combination principal and emergency spillway. (*Id.* at 1536 and 1571–1572.)

On October 21, 1987 (52 FR 39364), OSMRE proposed to amend its permanent program regulations governing permanent and temporary impoundments at surface and underground mining operations. In addition to soliciting public comments and providing an opportunity for public hearings upon request, OSMRE provided a 70-day public comment period. OSMRE received comments from seventeen organizations, including State regulatory authorities, environmental groups and representatives of the coal industry. No public meeting was requested and none was held.

The remainder of this section of the preamble is organized by issues as follows: (1) Impoundment Size; (2) spillways; (3) stability; (4) foundations; (5) certification of Siltation Structures; and (6) inspection of Impoundments. Changes to the proposed rule and OSMRE's consideration of public comments are discussed in the subsequent section, "Discussion of Final Rule and Comments."

1. Impoundment Size

In both the 1979 and 1983 regulations at 30 CFR 816.49, OSMRE classified impoundments based on size and required larger impoundments to meet more stringent requirements than smaller impoundments. A similar classification was included in the 1983 rules for sedimentation ponds at 30 CFR 816.46(c)(2) and for coal mine waste impounding structures at 30 CFR 816.84(b).

OSMRE adopted the MSHA criteria for impounding structures in the 1979 rule (44 FR 15401) and continued to apply them in the 1983 rules. In 30 CFR 77.216, MSHA imposes minimum plan requirements for design, construction and maintenance information that take into account size and potential hazards to miners for certain impounding structures (see "Discussion of Final Rule and Comments" for specific MSHA criteria). Under §§ 816.46(c)(2) and 816.49 of the 1983 rules, structures meeting MSHA criteria were required to meet MSHA requirements. Similarly, the requirements for coal mine waste impounding structures in § 816.84(b) of the 1983 rules were also based on the MSHA criteria.

In *In re Permanent II (Round III)*, plaintiffs objected to OSMRE using this distinction between sizes of coal mine waste impounding structures in § 816.84(b), contending that the distinction had the effect of resulting in less scrutiny for smaller impoundments. Plaintiffs maintained that OSMRE's deferral to the classification system used by MSHA was improper, and that OSMRE should independently classify impoundments. Plaintiffs contended that the Secretary had not justified using MSHA's distinction in terms of the Act.

The court remanded § 816.84(b) insofar as it deferred to the MSHA criteria, finding that the Secretary must independently consider and justify the adoption of a distinction based on impoundment size, and that he had not properly justified using the MSHA criteria. (620 F. Supp. at 1536–1537.) The court also remanded § 816.49 to the extent those provisions required a distinction between large and small impoundments. (620 F. Supp. at 1537.)

On November 20, 1986 (51 FR 41958), OSMRE announced its intention to propose a new rule to comply with the court order. After reconsidering the administrative record of the previous rules, as well as the legislative history of the Act and the opinion of the District Court, on October 21, 1987 (52 FR 39364), OSMRE proposed §§ 816.49(a), 816.46(c)(2) and 816.84(b). The criteria to determine which impoundments must meet the more stringent stability requirements of § 816.49(a)(3) would be based on both size and a provision whereby a small impoundment would be subject to more stringent requirements if the regulatory authority determined that it was located where failure would be expected to cause loss of life or serious property damage. The justification for using these criteria is included in the subsequent "Discussion of Final Rule and Comments" section of this preamble.

2. Spillways

The 1983 rules at 30 CFR 816.49(a)(8) and 816.84(b)(2) required that all impoundments, including coal mine waste impounding structures, include a combination of principal and emergency spillways designed and constructed to safely pass the design precipitation event. This requirement for a combination of spillways was challenged in *In re Permanent II (Round III)*. The Secretary determined that the challenge had merit and stated his intention to propose a rule specifying that one spillway that can safely pass the design precipitation event may serve as a combination principal and emergency spillway. (620 F. Supp. at 1538 and 1571–1572.) On November 20, 1986 (51 FR 41952), OSMRE announced the suspension of §§ 816.49(a)(8) and 816.84(b)(2) to the extent that they required separate principal and emergency spillways where one spillway may safely pass the design precipitation event. Consistent with the Secretary's stated intent, OSMRE included proposed revisions to these sections in the October 21, 1987 (52 FR 39364), proposed rule.

3. Stability

On June 21, 1982 (47 FR 26760), OSMRE proposed that static safety factors for impoundments be determined "by prudent engineering design." In response to comments on the 1982 proposal and in order to simplify the requirement, OSMRE adopted in § 816.49(a)(3) of the 1983 rule (48 FR 44004) a single static safety factor requirement of 1.5 and a seismic safety factor requirement of 1.2 for all impoundments.

Challengers to the 1983 rule in *In re Permanent II (Round III)* contended that OSMRE's 1982 proposed rule had not included a static safety factor of 1.5 for small impoundments, and therefore the public was not given adequate notice that this requirement would apply to small sedimentation ponds. The court remanded this rule for additional rulemaking to the extent that it applied to small sedimentation ponds not previously required to meet the 1.5 static safety factor. (620 F. Supp. at 1568–1570.) Accordingly, on November 20, 1986 (51 FR 41958), OSMRE suspended § 816.49(a)(3) insofar as it applied to small sedimentation ponds. OSMRE proposed revisions to § 816.49(a)(3) on October 21, 1987 (52 FR 39364).

4. Foundations

The 1983 rule (48 FR 44004) in § 816.49(a)(5)(i) required that foundations and abutments for impounding structures be designed to be stable under all conditions of construction and operation. Section 816.49(a)(5)(i) also required sufficient foundation investigation and laboratory testing to determine design requirements for foundation stability for all impoundments, regardless of size. That provision was challenged in *In re Permanent II (Round III)* on the basis that the rule violated the Administrative Procedure Act because the requirements for foundation investigation and laboratory testing were not included for small sedimentation ponds when OSMRE proposed the rule on June 21, 1982 (47 FR 26759).

The court remanded § 816.49(a)(5)(i), rejecting the application of foundation investigation and laboratory testing to small ponds because there was insufficient notice in the proposed rule that these requirements were being applied to small ponds. (620 F. Supp. at 1568–1570.) On November 20, 1986 (51 FR 41958), in response to the court

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action, OSMRE suspended § 816.49(a)(5)(i) insofar as it applied to small sedimentation ponds. OSMRE proposed revisions to § 816.49(a)(5)(i) on October 21, 1987 (52 FR 39364).

5. Certification of Siltation Structures

An October 30, 1986, amendment to the Act authorized land surveyors to certify the construction of siltation structures. (Sec. 123, Pub. L. 99–591, 100 Stat. 3341–267.) The certification requirement of section 515(b)(10)(B)(ii) of the Act was amended by inserting after "qualified registered engineer" the phrase, "or a qualified registered professional land surveyor in any State which authorizes land surveyors to prepare and certify such maps or plans." Prior to this amendment, section 515(b)(10)(B)(ii) required that siltation structures be certified only by a qualified registered engineer. Consistent with this amendment, OSMRE proposed revisions to § 816.46(b)(3) on October 21, 1987 (52 FR 39364).

6. Inspection of Impoundments

The 1979 impoundment regulations at § 816.49(h) (44 FR 15402) authorized land surveyors to perform and certify the annual inspection of small impoundments except for coal processing waste dams and embankments. During the preparation of the 1983 rule (48 FR 44004) OSMRE inadvertently omitted this provision from § 816.49. The fact that the provision was missing was not noticed until OSMRE promulgated a final rule on April 24, 1985 (50 FR 16194), to implement a November 4, 1983, amendment to the Act which authorized qualified land surveyors in certain States to certify cross sections, maps and plans.

Although neither the 1979 nor the 1983 rule included any comments on the merits of land surveyors doing the annual inspection of small impoundments, comments received during the preparation of the 1985 final rule supported land surveyors' capability to perform these inspections (50 FR 16197, April 24, 1985). OSMRE found the comments on this point to have merit and stated in the preamble to the 1985 rule that it would consider proposing a revision to § 816.49(a)(10) to allow post-construction inspections of small impoundments by qualified land surveyors. However, OSMRE believed that it was inappropriate to include such a provision in the final 1985 rule because it had not been included in the proposed rule (49 FR 38959). OSMRE proposed the implementation of this provision in § 816.49(a)(10) on October 21, 1987 (52 FR 39364).

II. Discussion of Final Rule and Comments

After consideration of the administrative record of this rule, as well as the legislative history of the Act and the opinions of the District Court in *In re Permanent II (Round III)*, and in light of current technical information on impoundment design, construction and inspection, OSMRE is amending its permanent regulatory program. Consistent with its findings when promulgating the 1979 and 1983 rules, OSMRE has not identified any differences between impoundments for surface and underground mines that would necessitate different regulatory provisions for underground mines. Therefore, the permitting rules governing impoundments for surface mining activities at 30 CFR 780.25 and for underground mining activities at 30 CFR 784.16 are identical. Likewise, the rules for surface mining activities at 30 CFR 816.46, 816.49 and 816.84 are identical to the rules for underground mining activities at 30 CFR 817.46, 817.49 and 817.84, respectively. Thus, the following discussion of 30 CFR 780.25, 816.46, 816.49 and 816.84 also applies to 30 CFR 784.16, 817.46, 817.49 and 817.84, respectively.

In addition to the rule language revisions discussed in the remainder of this preamble, OSMRE has made minor editorial changes to improve the clarity of the rule. For instance, the plural nouns, "impoundments" and "sedimentation ponds," have been replaced with the singular "impoundment" and "sedimentation pond." This usage more clearly prescribes requirements applicable to each permitted structure.

General Comments

In addition to comments received on specific provisions of the October 21, 1987, proposed rule, OSMRE received several general comments. One commenter asserted that it appeared that OSMRE was again drafting rules with nationwide application but designed for conditions found in the eastern States; however, no specific examples were included in the comment. OSMRE should, the commenter maintained, redraft these rules to recognize regional differences and allow States to tailor their regulatory programs accordingly.

OSMRE is charged under SMCRA with establishing national permitting requirements and performance standards. In meeting this requirement, OSMRE has attempted to set such standards in a manner that is both uniform and flexible. However, during the analysis of this particular comment OSMRE was unable to identify any conditions at western mines that would be affected differently from similar conditions at eastern mines. Although minimum Federal requirements and standards must always be met, State regulatory authorities may incorporate local considerations into their programs, so long as all provisions of State programs are no less effective than the requirements of SMCRA and the Federal regulations.

Another commenter maintained that in numerous instances OSMRE failed to disclose the basis and technical justification for the proposed rule changes (specific instances are discussed subsequently with the relevant rule sections), and therefore the rule should be withdrawn pending sensitivity analyses of the impacts of proposed changes and disclosure of technical justifications, or the rulemaking record should be reopened for public comment after disclosure of such information.

OSMRE believes that the proposed and final preambles adequately discuss the basis for and the purpose of the rule. The impacts of the rule are addressed under the criteria of Executive Order 12291, the Regulatory Flexibility Act, and the National Environmental Policy Act of 1969, as summarized in III, "Procedural Matters."

OSMRE received a comment on the background discussion of the preamble to the proposed rule (52 FR 39365) concerning the 1983 renaming of § 816.46 from "Hydrologic balance: Sedimentation ponds" to "Hydrologic balance: Siltation structures." OSMRE's reason for making this change, as the preamble to the proposed rule noted, was "to be consistent with the wording of section 515(b)(10)(B)(ii) of the Act and to reflect rule changes which provided for the use of certain siltation structures other than sedimentation ponds, such as chemical treatment facilities or mechanical structures that have a point-source discharge." (52 FR 39365.) The commenter suggested that this could leave the reader with the notion that some sort of siltation structure having point sources of discharge must be used to control sediment.

OSMRE did not intend to convey this notion, but was providing an example of suitable structures. OSMRE understands the commenter's concern, and has included a more accurate description of the rule in the background section of this preamble.

Sections 780.25(c)/784.16(c) Permitting Requirements for Permanent and Temporary Impoundments

Section 780.25(c) of OSMRE's permanent program regulations establishes permitting requirements applicable to the design of permanent and temporary impoundments. Final revisions to § 780.25(c) are primarily organizational changes.

The first sentence of § 780.25(c) of the 1983 rule, which read, "Permanent and temporary impoundments shall be designed to comply with the requirements of § 816.49 of this chapter," has been retained as § 780.25(c)(1) in this rule. Two commenters suggested identical revisions to the language of this paragraph so that it would read like a permitting requirement rather than a performance standard. They suggested that the sentence read, "Each permit application shall include design plans for each permanent and temporary impoundment demonstrating compliance with the requirements of § 816.49 of this chapter." Although OSMRE recognizes the basis for this suggestion, this change was not made in the final rule. Existing rule language at § 780.25(a) adequately introduces all the requirements of § 780.25 in a permitting context so that changes to the other paragraphs of § 780.25 are unnecessary.

As proposed, this rule moves to § 780.25(c)(2) the previous § 816.49(a)(1) requirement that a copy of the plan submitted to the District Manager of MSHA under 30 CFR 77.216 also be submitted to the regulatory authority as part of the permit application. This requirement was moved because it is more closely related to the permitting provisions of Part 780 than to the performance standards of Part 816.

The first sentence of § 780.25(c)(2) was revised, as suggested by three commenters, by adding the phrase "meeting the size or other criteria of the Mine Safety and Health Administration" to indicate that MSHA requires review only of plans for those impoundments that meet the criteria of 30 CFR 77.216(a). This is a more accurate reference to the requirement which applies only to impoundments meeting the MSHA criteria.

Two commenters maintained that language for sedimentation ponds in § 780.25(b), a section not included in the proposed rule, presents the same problem as described above in that it requires that each plan comply with MSHA's requirements. The above change to § 780.25(c)(2) of the final rule makes it clear that OSMRE requires that only impoundments meeting MSHA criteria meet MSHA requirements and is adequate to address the commenters' concern with § 780.25(b).

The second sentence of § 780.25(c)(2) has been revised at the suggestion of a commenter to be consistent with OSMRE's existing rules at § 780.25(a)(1)(v), which allow for the submittal of detailed design plans after the submittal of the permit application. OSMRE has added the phrase, "in accordance with paragraph (a) of this section", to the second sentence of § 780.25(c)(2). This clarifies that detailed design plans can be submitted to the regulatory authority in accordance with the schedule in the general plan.

One commenter suggested that OSMRE revise § 780.25(c)(2) to replace the requirement to submit to the regulatory authority the plan required by MSHA with a requirement to submit to the regulatory authority "documentation proving that this plan was approved by MSHA". The commenter cited the burden placed on operators because of the large volume of paper included in a MSHA submittal and the sizeable number of copies of such plans required by the regulatory authority. The commenter further noted that operators cannot be certain which information in the submittal is relevant to MSHA's needs and which is necessary under SMCRA and that some of the information is sent to the regulatory authority merely because it was sent to MSHA and not because it is necessary for the review under SMCRA.

The proposal to submit to the regulatory authority a certification of MSHA's approval in lieu of the plan required for MSHA's review is unacceptable. MSHA's approval does not constitute approval under SMCRA. MSHA's mandate to provide for the safety of miners warrants considerations in their review different from those of OSMRE under SMCRA, particularly with respect to public safety and environmental effects.

OSMRE considered whether or not the removal of the requirement to submit the plan required by MSHA to the regulatory authority would reduce the paperwork requirements of this provision. OSMRE does not believe that this would accomplish a reduction in the burden on applicants. Although OSMRE's information needs under SMCRA are not identical to those of MSHA, particularly in respect to OSMRE's reclamation plan requirements, the design and construction information included in the plan submitted to MSHA does satisfy to a great extent OSMRE's needs for design and construction information. Removing this requirement would necessitate the preparation by the applicant of detailed design and construction documentation for OSMRE that, although possibly different in minor respects, would essentially be duplicative of the information prepared for MSHA. Further, because the design and construction information needs of both agencies are very similar, there would be little to be gained by having the applicant separate out the information necessary for review by OSMRE from that necessary for review by MSHA. In addition, the requirement to submit the entire MSHA documentation to the regulatory authority accomplishes the goal of having to the extent possible uniform requirements from agency to agency and from statute to statute.

This same commenter maintained that this requirement serves no useful purpose because the information necessary for review under SMCRA that is found in the plan required by MSHA is already required elsewhere in the SMCRA permit.

OSMRE disagrees. Consideration of the plan required to be submitted to MSHA is an integral part of the review of the design and construction of an impoundment because of the level of specificity that it provides. The requirement is included precisely because it satisfies a documentation need not covered elsewhere in regulations. To the extent that the information included in the plan also meets other requirements of OSMRE's regulations, for example the general requirement applicable to impoundments in § 780.25(a)(1)(ii) to submit "a description, map, and cross section of the structure", OSMRE considers such other related requirements will have been met.

The final rule at § 780.25(c)(3) allows the regulatory authority to establish engineering design standards in lieu of engineering tests for small impoundments located where impoundment failure would not be expected to cause loss of life or serious property damage. The design standards, which will be implemented through the State program approval process, will ensure stability comparable to the minimum static safety factor of 1.3 for small impoundments that is specified in § 816.49(a)(3)(ii). OSMRE approval of any design standards issued by the regulatory authority will be based on the adequacy of those standards to ensure achievement of that minimum static safety factor.

This approach provides for the promulgation of a national standard based on a 1.3 safety factor (see discussion of § 816.49(a)(3)(ii) for more

detail) while giving the regulatory authority flexibility to establish engineering design standards to accommodate local conditions. Under this provision, a regulatory authority can establish specific embankment slopes, minimum freeboard requirements, etc., as long as minimum stability is achieved. The proposed language of § 780.25(c)(3) was slightly revised in the final rule to clarify that engineering design standards will be acceptable only if they "ensure stability comparable to a 1.3 minimum static safety factor."

OSMRE received four comments supporting this change. One commenter suggested the OSMRE adopt the design criteria for small impoundments found in U.S. Soil Conservation Service (SCS) *Pond: Practice Standard 378*, 1985 (*SCS Practice Standard 378*), and thereby meet the requirement in section 515(b)(8)(B) of SMCRA that permanent water impoundments be compatible with structures constructed under Pub. L. 83–566 (see the discussion of § 816.49(a)(1) for more information on this compatibility requirement). Adopting these criteria, the commenter believed, would take advantage of the SCS's considerable experience in the design and construction of impoundments, while not placing an undue burden on coal mine operators.

The requirement that small impoundments comply with SCS design criteria was included in OSMRE's original permanent program regulations (44 FR 15401; March 13, 1979), but was later removed to "allow appropriate professionals the latitude necessary for application of technological advances and innovative techniques as well as of updated design guides." (47 FR 28758; June 21, 1982). Although, in most cases, OSMRE considers the SCS criteria for small impoundments adequate in lieu of engineering tests to show compliance with the 1.3 safety factor, and encourages regulatory authorities to consider adoption of such criteria, it would be inappropriate to incorporate the SCS criteria into these regulations. To do so would unnecessarily restrict the ability of States to adopt or establish design standards that are as adequate as the SCS criteria, though not identical in all respects. In States that have had adequate design criteria in place for years, such a requirement would mean overhauling an otherwise acceptable system without any improvement in environmental protection.

Sections 816.46(b)(3)/817.46(b)(3) Certification of Siltation Structures

In response to an October 30, 1986, amendment to the Act (see S. *Certification of siltation structures* in "Background"), OSMRE is amending § 816.46(b)(3) to authorize land surveyors in certain States to certify the construction of siltation structures before they are placed in operation. Prior to the amendment, the Act authorized only qualified registration engineers to certify siltation structures. This new provision, which was supported by one commenter, authorizes the certification of siltation structures by a qualified registered professional land surveyor in any State which authorizes land surveyors to prepare and certify cross sections, maps, and plans in accordance with § 780.25.

Sections 816.46(c)(2)/817.46(c)(2) Sedimentation Pond Spillways

Because the spillway requirements for sedimentation ponds are based on the spillway design requirements for permanent and temporary impoundments in § 816.49, final changes in § 816.49 (a)(8) and (c)(2) necessitate changes in § 816.46(c)(2) to ensure consistency. Comments received by OSMRE addressed the spillway requirements as they apply to both sections. The similar provisions in these two sections, the comments and OSMRE's responses, which are applicable to all impoundments, including sedimentation ponds, are addressed later in the discussion of § 816.49 (a)(8) and (c)(2) under four headings: *Single Spillway Provision, Spillway Linings, Design Precipitation Events*, and *Storage Control*. The following discussion summarizes the final changes in § 816.46(c)(2).

Final § 816.46(c)(2) has been restructured, and language prescribing single spillway configuration requirements has been added in paragraphs (i) (A) and (B). The reasons for this restructuring and for further specifying the spillway provisions are addressed in the discussion of comments for § 816.49 (a)(8) and (c)(2) concerning impoundments.

Under § 816.46(c)(2), a sedimentation pond spillway or spillways must have sufficient capacity to safely pass the specified precipitation event. A single spillway is sufficient for a large or small sedimentation pond as long as it passes the specified precipitation event.

Section 816.46(c)(2) changes the provision in § 816.46(c)(2)(ii) of the 1983 rule, which specified that ponds "may use a single spillway if the spillway (A) is an open-channel of nonerodible constructain and capable of maintaining sustained flows; and (B) is not earth- or grass-lined." OSMRE is allowing a single open-channel spillway as long as the specified design precipitation event can be accommodated. However, language has been added at final § 816.46(c)(2)(i) that limits the type of single spillway configurations that may be approved by the regulatory authority. Paragraph (c)(2)(i)(A) authorizes a single open-channel spillway of nonerodible construction and designed to carry sustained flows. Paragraph (c)(2)(i)(B) authorizes a single earth- or grass-lined spillway designed to carry short-term, infrequent flows at non-erosive velocities where sustained flows are not expected. The discussion of § 816.49(a)(8) addresses the rationale for these additions, as well as relevant comments.

The rule includes at § 816.46(c)(2)(iii) a provision, applicable to temporary structures, authorizing the regulatory authority to approve the design of a sedimentation pond that relies primarily on storage to control the runoff from the design precipitation event in lieu of meeting the spillway requirements at § 816.46(c)(2)(i). The rule stipulates that this will be allowed when it is demonstrated by the operator and certified by a qualified registered professional engineer or qualified registered professional land surveyor in accordance with § 780.25(a) that the sedimentation pond will safely control the design precipitation event, the water from which will be safely removed in accordance with current, prudent, engineering practices. The regulatory authority may approve such a sedimentation pond if it is located where failure would not be expected to cause loss of life or serious property damage, except where (1) in the case of a sedimentation pond meeting MSHA criteria, the pond is designed to control the precipitation of the probable maximum precipitation of a 6-hour event, or greater event as specified by the regulatory authority; or (2) in the case of a sedimentation pond not meeting MSHA criteria, the pond is designed to control the precipitation of a 100-year 6-hour event, or greater event as specified by the regulatory authority.

OSMRE has replaced the sentence "in the absence of an adquate, or any, spillway" which appeared in the proposed rule, with "in lieu of meeting the requirements in paragraph (c)(2)(i) of this section." Paragraph (c)(2)(i) authorizes the regulatory authority to approve a single spillway only when it

is an open-channel spillway. OSMRE believes that a closed-conduit type spillway alone will not adequately pass the design precipitation event without a considerable reliance on storage. In the absence of having a combination of principal and emergency spillways or a single open-channel spillway meeting the requirements of § 816.46(c)(2)(i), a sedimentation pond would have to meet the requirements for structures relying primarily on storage in § 816.46(c)(2)(iii).

OSMRE believes that the provision allowing sedimentation ponds that rely primarily on storage will be useful for those sedimentation ponds where the runoff area is small, or where pumps or a decant structure will be used to control the water level in the facility. OSMRE believes that current, prudent, engineering practice requires that at least 90 percent of the water stored during the design precipitation event be removed within the 10-day period following the event.

Section 816.46(c)(2)(ii)(A) requires that large sedimentation ponds, those meeting the size or other qualifying criteria of 30 CFR 77.216(a), shall have sufficient spillway capacity to safely pass a 100-year 6-hour precipitation event, or greater event as specified by the regulatory authority.

Section 816.46(c)(2)(ii)(B) requires that small sedimentation ponds, those not meeting the size or other qualifying criteria of 30 CFR 77.216(a), shall have sufficient spillway capacity to safely pass a 25-year 6-hour precipitation event, or greater event as specified by the regulatory authority. In both cases, the 6-hour precipitation event is the same as in the 1983 rule.

Although these two provisions were proposed as paragraphs (c)(2)(i) and (c)(2)(ii), respectively, because of a restructuring of final § 816.46(c)(2), they are relocated without additional change to paragraphs (c)(2)(ii)(A) and (c)(2)(ii)(B), respectively, of the final rule.

Sections 816.49(a)(1)/817.49(a)(1) Impoundment Size Distinction

Section 515(b)(8)(B) of the Act requires that "permanent impoundment dam construction will be so designed as to achieve necessary stability with an adequate margin of safety compatible with that of structures constructed under Pub. L. 83–566 (16 U.S.C. 1006)." Public Law 83–566, the Watershed Protection and Flood Prevention Act of 1954, authorizes the planning and construction of Federal water control facilities. In implementing Pub. L. 83–566, the U.S. Soil Conservation Service (SCS) has established criteria for the design and construction of impoundments. The SCS criteria divide impounding structures into two categories based on size and potential hazard. Larger and/or potentially more hazardous impoundments must meet the more stringent design and construction requirements of *SCS Technical Release 60*, while smaller and less hazardous impoundments must meet the less stringent requirements of *SCS Practice Standard 378*.

Under the size criteria adopted by the SCS, dams over 35 feet high and those with a product (storage times the height of the dam) of 3000 or more are subject to the more stringent requirements of *SCS Technical Release 60*. In addition, all dams, regardless of their size, located "where failure may cause loss of life, serious damage to homes, industrial and commercial buildings, important public utilities, main highways, or railroads," and dams located "in predominantly rural or agricultural areas where failure may damage isolated homes, main highways or minor railroads or cause interruption of use or service of relatively important public utilities" are subject to the requirements of *SCS Technical Release 60*. Thus, in implementing Pub. L. 83–566 the SCS has adopted more stringent design and construction requirements for impoundments that exceed a specified size, as well as for those where failure may cause loss of life or serious property damage.

The regulations of the Mine Safety and Health Administration (MSHA) also reflect the engineering consensus that larger impoundments present a greater potential downstream hazard than do smaller impoundments. Thus, MSHA regulates impoundments which "can: (1) Impound water, sediment or slurry to an elevation of five feet or more above the upstream toe of the structure and can have a storage volume of 20 acre-feet or more; or (2) impound water, sediment or slurry to an elevation of 20 feet or more above the upstream toe of the structure; or (3) as determined by the District Manager, present a hazard to coal miners." (30 CFR 77.216(a)).

In implementing the requirements of section 515(b)(8)(B) of SMCRA, OSMRE could have adopted the SCS criteria, and thus ensured that "impoundment dam construction will be so designed as to achieve necessary stability with an adequate margin of safety compatible with that of structures constructed under Pub. L. 83–566." Further, OSMRE could have restricted application of the criteria to permanent impoundments, as section 515(b)(8)(B) does not apply to temporary impoundments. However, in view of this broader mandate of section 102(a) of the Act "to protect society and the environment," OSMRE has adopted a rule that is based on the size and hazard distinctions established by the SCS, yet incorporates this more stringent MSHA criteria. In addition, this rule applies to temporary, as well as permanent, impoundments, thus ensuring that more impoundments meet these more stringent standards than is required by section 515(b)(8)(B).

First, § 816.49(a)(1) applies the MSHA criteria, including the MSHA size distinction, is differentiating between impoundments. Impoundments meeting the MSHA criteria are automatically subject to both the more stringent standards of OSMRE's rules (see discussion of § 816.49(a)(3), *Stability*) and the MSHA regulations at 30 CFR 77.216 to 77.216–5. By adopting the MSHA criteria at 30 CFR 77.216(a), § 816.49 subjects all impoundments 20 feet high or more, as well as those impounding 20 acre-feet or more, to its more stringent stability requirements. Compared to the SCS threshold of 35 feet in height, OSMRE's threshold of 20 feet in height will subject more dams to the greater stability requirements of this rule than would otherwise be the case if OSMRE simply adopted the SCS criteria to satisfy the minimum requirements of section 515(b)(8)(B) of the Act.

Second, OSMRE has included language in the rule to ensure that impoundments which do not meet the MSHA criteria, but are "located where failure would be expected to cause loss of life or serious property damage," are also subject to the more stringent stability requirements. OSMRE interprets the phrase "loss of life or serious property damage" to mean loss or damage of the same magnitude as recognized by the SCS in applying its standards (see above).

In addition to providing a high level of protection to society and the environment for large and/or potentially more hazardous impoundments, this rule includes reasonably stringent stability requirements for smaller and potentially less hazardous impoundments, and thus provides an appropriate degree of environmental protection for every structure.

Beyond meeting the mandates of sections 102(a) and 515(b)(8)(B) of the Act, the criteria chosen by OSMRE reflect the direction given to OSMRE by section 201(c)(12) of the Act to cooperate with other Federal agencies to minimize duplication of inspection, enforcement, and administration of the Act. Although acting under a different legal authority from OSMRE, MSHA carries out many similar inspection and enforcement responsibilities. By incorporating

MSHA's criteria into this rule, OSMRE is enhancing regulatory consistency between the two agencies.

This combined consideration of potential impoundment hazard based on the locational standards employed by the SCS, along with the more stringent MSHA size distinctions, is fully consistent with the stability and safety requirements of section 515(b)(8)(B) of the Act. Moreover, it accomplishes a level of regulatory uniformity with MSHA that is consistent with section 201(c)(12) of the Act while meeting the mandate of section 201(a) of the Act to protect "society and the environment" beyond the MSHA criteria, which derive from the Federal Coal Mine Health and Safety Act's narrower mandate to protect the health and safety of miners.

SCS Practice Standard 378 and *SCS Technical Release 60* have been entered in the OSMRE Administrative Record for this rule.

In addition to incorporating the size and hazard criteria described above, OSMRE has made two minor organizational changes in the rule. OSMRE has reorganized §§ 780.25(c) and 816.49(a)(1) to clarify impoundment size distinctions relative to permitting and to performance standards, respectively. The first sentence in final § 816.49(a)(1) is the same as in the 1983 rule, except that the phrase "size or other" is inserted before "criteria" to be consistent with other provisions of the rule.

OSMRE has relocated from § 816.49(a)(1) of the 1983 rule to § 780.25(c)(2) the provision requiring that a copy of the plan submitted to the District Manager of MSHA under 30 CFR 77.216 also be submitted to the regulatory authority as part of the permit application. This sentence was relocated because it is a permitting provision rather than a performance standard.

OSMRE received four comments on the adoption of the MSHA criteria, three supportive, one in opposition. The three supporting commenters essentially based their support on the fact that it would be beneficial for OSMRE and MSHA to have a uniform size classification.

One of the supporting commenters acknowledged that evaluating impoundments based on size and hazard is generally accepted and appropriate because larger structures can be expected to present more of a danger to life and property and require more care in design and construction than small impoundments. The commenter added that the MSHA classification increases protection because it results in the application of a more stringent standard to more structures than would be covered under other criteria, including the SCS guidelines. Further, the commenter pointed out, consistent classification systems by agencies regulating impoundments have proved beneficial by minimizing conflicting requirements and this improving the quality of construction and maintenance of structures.

The other two commenters supporting OSMRE's adoption of MSHA criteria conceded that although it is the most stringent of the criteria discussed by OSMRE in the October 21, 1987, preamble to the proposed rule, it is beneficial to operators because they are, generally, complying with MSHA criteria already, and the use of the same criteria will avoid burdening operators with an additional standard.

One commenter objected to the adoption of the MSHA criteria, suggesting that it would result in the application of stability, construction and inspection requirements for small impoundments below those necessary to assure the protection intended to be afforded by SMCRA. The commenter further maintained that OSMRE failed to take into account the requirement in section 515(b)(8) of SMCRA that all impoundments, without regard to size or storage volume, be designed, constructed and maintained so as to assure that they will achieve necessary stability with an adequate margin of safety compatible with that of structures constructed under Pub. L. 83–560. The commenter further suggested that OSMRE's evaluation of impoundments would allow small impoundments to be approved absent sufficient safeguards.

Although the requirement in section 515(b)(8)(B) of SMCRA neither suggests nor precludes the adoption of a size distinction, it does require that permanent impoundments be constructed to achieve stability and a margin of safety "compatible with that of structures constructed under Pub. L. 83–568." As discussed previously, the SCS employs a size distinction in building impoundments under Pub. L. 83–566, whereby smaller, potentially less hazardous dams are subject to less stringent design and construction requirements. In addition to adopting more stringent criteria for differentiating between impoundments than that established by the SCS under Pub. L. 83–566, OSMRE has applied reasonably stringent stability criteria to smaller impoundments to the extent that they will not be approved absent sufficient safeguards (see discussion of § 816.49(a)(3) *Stability*).

This same commenter claimed that OSMRE's reliance on the SCS guidelines and the *Federal Guidelines for Dam Safety* (the latter document was cited by OSMRE in the preamble to the proposed rule as an example of a Federal document employing a size distinction) to support adoption of the MSHA criteria is misplaced. Although the commenter did not attempt to refute the assertion in the *Guidelines* that larger impoundments generally created a greater risk in terms of the potential for loss of life and serious property damage, the commenter maintained that the *Guidelines* set forth a definition of "dam" which applied to all structures in which there is a potentially significant downstream hazard. Specifically, the commenter continued, although the definition identified dams as artificial barriers which either were 25 feet or more in height measured at the downstream toe, or had impoundment capacity of 50 acre-feet or more, its lower-end exclusion applied only to structures of less than six feet in height or which impounded less than 15 acre-feet of storage volume, less than the 20 acre-feet threshold under MSHA criteria. Because of this very limited exclusion, the commenter suggested, the *Guidelines* definition is, depending on the natural ground slope, potentially more or less inclusive than the MSHA classification. And even this lower-end exclusion, the commenter added, could be waived if a structure presented a downstream hazard.

It is because of OSMRE's concern about the potential downstream hazards of small impoundments that these rules include the qualifying phrase "or located where failure would be expected to cause loss of life or serious property damage." Thus, the regulatory authority shall apply the more stringent performance standards to a small impoundment if its failure would be expected to cause loss of life or serious property damage. Thus, the commenter's concern about how inclusive the MSHA criteria are, relative to those in the *Guidelines*, will be met by the ability of regulatory authorities to apply more stringent requirements where necessary due to the location of the dam.

The commenter also maintained that the *Federal Guidelines for Dam Safety* were not intended as guidelines or standards for the technology of dams, but were developed to establish basic principles applicable to all dams. In addition, the commenter pointed out, they were developed as part of a review of national policy for thousands of major structures creating potential risks comparable to those of the earthen embankment Teton Dam in Idaho, which failed in 1976. Although, the commenter conceded, the failure of an impoundment below the MSHA standards might be of little consequence in a national context, OSMRE's responsibility under SMCRA to protect the environment still stands. The real message of the *Guidelines*, the commenter maintained, is that if OSMRE pursues a differential classification, the criteria must ensure a minimum level of safety regardless of structure size or volume.

As mentioned before, the rule provides a reasonable minimum level of safety for all impoundments. And, as noted in the discussion of § 816.49(a)(3) *Stability*, OSMRE's minimum requirements for all dams, regardless of size or potential hazard, are appropriately stringent in light of SMCRA's requirement to protect the environment.

This same commenter was puzzled by OSMRE's reliance on the SCS guidelines as support for differential classification, because the SCS guidelines, unlike MSHA's and OSMRE's regulations, include numerous design and performance standards for small impoundments, including specifications for minimum top width, slope controls, minimum freeboard, side slope configurations, inlet protection, spillways, and other standards. The commenter pointed out that if the SCS, acting under the authorization of Pub. L. 83–566, deemed it necessary to establish such design and performance standards, why does OSMRE consider the same unnecessary in implementing section 515(b)(8)(B) of SMCRA. The commenter asked OSMRE to justify how the adoption of size distinctions, absent design and construction standards commensurate with those of the SCS, would provide for the stability and adequate margin of safety that the SCS has accomplished under Pub. L. 83–566.

OSMRE recognizes that safety requirements can be approached from either the perspective of establishing design standards or by setting minimum safety factors. Although the SCS has adopted design standards and minimum safety factors in the technical manual, OSMRE believes that the adoption of safety factors provides desirable flexibility in the design of impoundments. OSMRE believes that instead of restricting qualified professionals in the design of impoundments, the adoption of safety factors provide equivalent protection and allows them to employ more flexible design standards in designing safe and stable impoundments. OSMRE believes that the adoption of the equivalent minimum safety factor requirements in this rule provides for the construction of impoundments with an adequate level of safety compatible with that achieved in the construction of impoundments by the SCS (see discussion of *Stability* for technical basis for choice of required safety factors).

This same commenter maintained that the MSHA classification itself is inadequate to satisfy safety concerns. The commenter cited a disaster involving a structure on the Left Fork of the Ages Creek in Ages, Kentucky, that was built in lifts which did not individually meet the criteria of 30 CFR 77.216 but which impounded a total amount of water far in excess of the criteria. The loss of a life and destruction of homes in this instance, in derogation of congressional intent under SMCRA, the commenter asserted, can be attributed to this "loophole" in the MSHA classification.

The Ages Creek structure failed because of compliance problems rather than the lack of governing regulations. The structure, which was permitted by MSHA as a refuse pile rather than as an impoundment, failed due to the large quantity of water entrapped within the pile in violation of MSHA's 30 CFR 77.215(e) and OSMRE's 30 CFR 816.83(a).

Furthermore, OSMRE includes in these new impoundment regulations a provision which addresses the commenter's concern about a "loophole" in the MSHA classification. Under § 816.49(a)(3), a series of small structures which individually do not meet the criteria of 30 CFR 77.216 would still be subject to the more stringent stability requirements for large impoundments if structural failure would be expected to cause loss of life or serious property damage. In such a case, it is the potential downstream hazard that dictates which stability standard applies, not the size of each structure.

And, finally, the Ages structure was built of coal mine waste. Under 30 CFR 816.81(c)(2), all coal mine waste structures permitted by OSMRE, including refuse piles and impounding structures, must meet the more stringent long-term safety factor of 1.5, regardless of size.

The final point made by this commenter was that OSMRE's effort to maintain regulatory consistency with MSHA is a fundamental distortion and misunderstanding of its congressional mandate. The commenter disputed OSMRE's assertion in the October 21, 1987, preamble (52 FR 39368) that SMCRA warrants consistency between the regulations of OSMRE and MSHA.

The commenter cited the passage of SMCRA in the wake of the Buffalo Creek, West Virginia, disaster of 1972 and the awareness by Congress that regulations issued under the Federal Coal Mine Health and Safety Act of 1969 were insufficient to provide for the protection of the public-at-large and the environment. The commenter reminded OSMRE that its responsibilities under SMCRA do not duplicate MSHA's responsibilities under the 1969 Act, but are supplementary to them. Whereas MSHA's responsibility is to the safety of miner's on-site, SMCRA goes beyond that by addressing the safety of the public, both on and off the minesite. The commenter suggested that OSMRE tacitly acknowledged this in adopting an "escape clause" which allows more stringent treatment of small impoundments where failure would be expected to cause loss of life or serious property damage. However, the commenter added, this "escape clause" is much too narrow in light of the fact that it only addresses "life and serious property damage," whereas SMCRA mandates consideration of risk of damage to the environment as well. In failing to go beyond MSHA's standards, the commenter maintained, OSMRE must independently justify, and allow public comment on such justification, that the numeric size and volumetric limitations adopted by MSHA are scientifically and technically sound and supported in the literature and remain so despite the fact that the MSHA standards were adopted in 1975.

In sum, the commenter suggested that in order to independently justify the criteria used by MSHA on technical bases, and to further demonstrate how the rule provides a degree of assurance of stability with a margin of safety commensurate with Pub. L. 83–566 and guidelines adopted thereunder, OSMRE should conduct investigations and comparisons and renotice the rule.

Prudence dictates, the commenter concluded, that assurance of protection of the public and the environment should be provided by the most rigorous and most protective technical standards currently in general use, not by blind deference to an agency whose mandate is not protection of the general public and the environment, and whose regulations have already proven fatally inadequate to the task.

OSMRE does not dispute this commenter's interpretation that SMCRA goes beyond the Federal Coal Mine Health and Safety Act. That is why OSMRE has included in its regulations a provision for considering the potential for loss of life or serious property

damage in determining the potential hazard of an impoundment. OSMRE is not deferring to MSHA on questions of impoundment hazards, but is adopting under SMCRA what it believes to be a reasonable basis for differentiating between larger, more hazardous impoundments and smaller, less hazardous ones. In addition to incorporating the size distinction and the consideration of the potential hazard to miners under MSHA's rules at 30 CFR 77.216(a)(3), OSMRE has included in this rule consideration of the potential hazard of an impoundment to the public-at-large. An impoundment that is not large enough to meet the MSHA criteria, and not otherwise hazardous to miners, would not be subject to MSHA's review. However, such an impoundment would be subject to the more stringent stability and safety requirements of OSMRE's rules if its failure would be expected to cause loss of life or serious property damage. Thus, OSMRE has established a hazard evaluation based on SMCRA's mandate to protect society and the environment, and, contrary to the commenter's assertion, has gone beyond the MSHA standards for regulating impoundments.

The commenter raised the point that OSMRE's provision for considering the potential loss of life or serious property damage is deficient in not including similar consideration of the hazard to the environment. OSMRE does not deny the importance of the mandate under SMCRA to protect the environment, as well as society. The establishment in these rules of stringent safety and stability standards for all impoundments provides considerable environmental protection. By establishing performance standards for all small impoundments, OSMRE has established a level of environmental protection for such impoundments and the areas potentially affected by them that does not exist elsewhere in Federal regulations. At the same time, when considering the potential destruction resulting from an impoundment failure, OSMRE believes it is reasonable to place the highest priority on the protection of downstream populations. OSMRE believes that the provisions included in this rule are a reasonable response to the urgent need to protect lives and property and SMCRA's mandate to protect the environment.

Finally, concerning the commenter's assertion that OSMRE has not technically justified its incorporation of the MSHA criteria, OSMRE points to section 515(b)(8)(B) of SMCRA which requires that impoundments be as stable and safe as those constructed under Pub. L. 83–566 (*i.e.*, built by the SCS). Since the requirements of this rule are more stringent than for impoundments built by the SCS, it stands to reason that they must meet the level expected by the Congress under section 515(b)(8)(B) of SMCRA. In addition, OSMRE has technically justified its choice of minimum safety factors (see discussion of § 816.49(a)(3) *Stability*) for all categories of impoundments.

Sections 816.49(a)(3)/817.49(a)(3) Stability

Section 816.49(a)(3)(i) requires impoundments meeting the size or other criteria of 30 CFR 77.216(a) or located where failure would be expected to cause loss of life or serious property damage to have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions, and a seismic safety factor of at least 1.2 (see 3. *Stability* in "Background"). The phrase "located where failure would be expected to cause loss of life or serious property damage" differs from the proposed phrase, "located where failure may cause loss of life or serious property damage." OSMRE believes that the phrase "would be expected" provides a more reasonable test than the term "may" in considering the likelihood of the occurrence of loss of life or serious property damage. With this change, this provision is consistent with similar references in the permitting provisions at § 780.25(c)(3) and the spillway provisions at § 816.49(a)(8)(i)(D).

For impoundments not meeting the size or other criteria of 30 CFR 77.216(a), except coal mine waste impounding structures, and located where failure would not be expected to cause loss of life or serious property damage, § 816.49(a)(3)(ii) requires a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions or compliance with the requirements of § 780.25(c)(3). The phrase "located where failure would not be expected to cause loss of life or serious property damage" differs from the proposed phrase, "not located where failure may cause loss of life or serious property damage," for the same reasons discussed relative to the parallel change in paragraph (a)(3)(i) above.

OSMRE selected the 1.3 safety factor for non-hazardous small impoundments based on the U.S. Mining Enforcement and Safety Administration's *Engineering and Design Manual—Coal Refuse Disposal Facilities* (Prepared by D'Appolonia Consulting Engineers, Inc., Pittsburgh, Pa., 1975). The manual suggests a 1.3 safety factor for new coal refuse embankments that have a low hazard potential (p. 5.144). These are structures located in rural or agricultural areas where failure would cause only slight damage to structures such as farm buildings, forests or agricultural land, or minor roads. Because coal refuse impounding structures are, generally, of greater concern from a hazard standpoint than other impoundments, and because the manual considers the 1.3 safety factor to be adequate for coal refuse impounding structures that have a low hazard potential, OSMRE believes that this is a reasonable safety factor for other impoundments with low hazard potential. However, because of OSMRE's concerns relative to the safety of coal mine waste impounding structures, § 816.81(c)(2) requires all such structures to meet a minimum static safety factor of 1.5.

In addition, under § 816.49(a)(3) an impoundment, irrespective of size, is subject to the more stringent stability requirements specified in § 816.49(a)(3) if the regulatory authority determines that it is located where failure would be expected to cause loss of life or serious property damage. This additional safeguard links the criteria for determining if an impoundment is potentially hazardous directly to the purpose stated in section 102(a) of SMCRA to protect society and the environment from the adverse effects of surface coal mining operations. By requiring the regulatory authority to ensure that a small impoundment meets the more stringent stability standards for large impoundments where failure would be expected to cause loss of life or serious property damage, the provision covers those potentially hazardous small impoundments that may not be hazardous to miners under MSHA criteria, but may pose a threat to other populations or property.

All of the comments received by OSMRE concerning this provision addressed the stability requirements for small impoundments in § 816.49(a)(3)(ii). One commenter suggested that requiring small impoundments to meet a minimum safety factor of 1.3 is unnecessary because of the slight hazard potential of such structures. The commenter stated that stability of these embankments depends on proper construction and maintenance practices more than a mathematical analysis. Due to the size of small impoundments, the commenter added, it is often difficult to perform a sufficient number of checks of possible failure surfaces and thus accurately estimate the minimum safety factor. Such calculated safety factors, the commenter said, may lead to false indications of stability. The commenter suggested that, in the case of small impoundments, OSMRE replace this requirement with a requirement that embankments be stable under all conditions of construction and use.

In addition to reviewing MSHA's *Engineering and Design Manual—Coal Refuse Disposal Facilities*, OSMRE reviewed *SCS Design Guide 378, SCS Technical Release 60*, and a soil mechanics text (Terzaghi and Peck, 1967) and found that these sources did not substantiate the commenter's assertion that an accurate minimum safety factor cannot be estimated for small embankments. The soil mechanics text (*Ibid.*, page 259), in a discussion on sources of error in stability computations, listed three sources of error but did not reference computation problems in detecting deeper failures within the embankment. However, calculations are not necessary if design standards are established by the regulatory authority in accordance with § 780.25(c)(3). Based on the consideration of this technical information and the option to employ design standards, OSMRE believes that the commenter's concern is adequately addressed. Thus, the 1.3 safety factor will continue to be applied to small impoundments.

Two other commenters suggested that the establishment of a national stability standard for small impoundments is unwarranted. The commenters further suggested that the 1.3 static safety factor should be applied to small impoundments only when failure would be expected to cause loss of life or serious property damage. In other situations, the commenters urged, it is sufficient to simply require that standard engineering practices be used. These commenters pointed out the SCS has not adopted a minimum safety factor for small impoundments under the authority of Pub. L. 83–566 and that ten years of experience with SMCRA has not indicated a need for such a standard. Rather than create an additional administrative burden on operators without effecting an added benefit to the public, the commenters maintained, OSMRE should adopt the design guidance found in *SCS Practice Standard 378* to ensure the stability of small impoundments.

OSMRE believes that performance standards rather than design standards represent the preferred approach to regulating impoundment design and construction. Performance standards create minimum national standards that are more adaptable to variations in climate, geology, topography and other regional physical conditions.

OSMRE rejects the commenter's suggestion that the 1.3 static safety factor should apply only to small impoundments where failure would be expected to cause loss of life or serious property damage. As discussed earlier, OSMRE selected the 1.3 safety factor as an appropriate minimum standard necessary to ensure stability with a margin of safety that adequately considers potential environmental effects as required under SMCRA. Because of the necessity to ensure the most stringent stability requirements in cases where impoundment failure would be expected to cause loss of life or serious property damage, OSMRE retains the 1.5 static safety factor for *all* potentially hazardous impoundments. Furthermore, design standards that ensure stability comparable to a 1.3 safety factor may be established by the regulatory authority under § 780.25(c)(3) in lieu of engineering tests.

One of these two commenters also argued that the requirement that a licensed professional certify the design and construction of small structures should provide assurance that good engineering practice will be applied and negate the need for the safety factor requirement. The same commenter also maintained that smaller impoundments will not receive less scrutiny during construction and inspection because the operators have a vested interest in ensuring that impoundments are stable, even if only to avoid the cost of rebuilding the structures, reclaiming the environment, and paying fines associated with the violations should they experience failures.

OSMRE considers it important to apply both the minimum safety factor requirement and the requirement that individuals certifying impoundment design and construction be licensed as professionally qualified. If either were dropped in deference to the other, it would increase the potential that impoundments would be inadequately designed or constructed.

Providing additional rationale for this position, this same commenter pointed out that in Ohio, the Department of Natural Resources, which regulates the design and construction of certain dams, does not regulate structures of a small size because of the low hazard potential. In fact, the commenter maintained, they frequently will exempt a larger dam from regulation if their review indicates the downstream hazard potential is low, while dams that are not exempted are subject to strict design standards and construction inspection and maintenance requirements. The commenter added that, in addition to Ohio, MSHA and the SCS do not have stability requirements. The commenter also noted that since the implementation of SMCRA in Indiana (May 3, 1978) there have been many hundreds of small ponds built in accordance with accepted design practices, and the commenter knew of no instance where a properly designed and built small impoundment caused any sort of problem whatsoever. This commenter summarized the position by suggesting that there is ample technical evidence that designing small impoundments according to certain non-analytical, predetermined standards is a common, standard, accepted and prudent engineering practice.

Again, consistent with OSMRE's position concerning design guides mentioned earlier, OSMRE acknowleges that designing and constructing impoundments in accordance with the SCS design guides will, generally, result in impoundments meeting the requirements of these regulations. OSMRE recognizes that safe structures can be built employing accepted and prudent engineering practice that conform to the performance standards of these regulations and that such practices can be a part of the regulatory program.

Finally, these two commenters and a third perceived an inconsistency between the language of § 816.49(a)(3)(ii), which requires a 1.3 static safety factor, and § 780.25(c)(3), which allows States to develop design standards that do not include safety factors. Commenters assumed that OSMRE's language in § 780.25(c)(3) was intended to leave open the option for the regulatory authority to develop design standards in lieu of requiring demonstration of the 1.3 safety standard. A fourth commenter was more specific in this regard in suggesting that OSMRE revise the language to allow the regulatory authority the option of establishing engineering design standards for small impoundments through the State program approval process lieu of engineering tests.

Section 780.25(c)(3) authorizes the regulatory authority to establish engineering design standards in lieu of requiring engineering tests to meet the required 1.3 static safety factor for small impoundments. Because § 780.25(c)(3) was not cross-referenced in proposed § 816.49(a)(3)(ii), that authority was not readily evident in the proposed rule. To correct this oversight, the final § 816.49(a)(3)(ii) includes a cross-reference to § 780.25(c)(3) to clarify that

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small impoundments located where failure would not be expected to cause loss of life or serious property damage must either have a minimum static safety factor of 1.3 or, alternatively, meet design standards developed in accordance with § 780.25(c)(3).

One commenter, in supporting the 1.3 static safety factor for non-hazardous impoundments as logical and sound engineering practice, noted that the rule would ensure an adequate level of safety for less hazardous impoundments while allowing engineers and, as applicable, land surveyors, the latitude to exercise professional judgment in determining how to best meet the required safety factor. In addition, this commenter pointed out, the regulatory authority has an opportunity to review the methods used in the determination of the safety factor when the detailed design plans are submitted as required by § 780.25(a)(3).

One commenter suggested that § 816.49(a)(3)(i) should read: "Impoundments meeting the size or other criteria of 77.216(a) of this title or *other impoundments* located where failure * * *." OSMRE believes that the final rule as originally written clearly indicates that impoundments must meet the 1.5 safety factor if they meet the criteria of 30 CFR 77.216 or if they are located where failure would be expected to cause loss of life or serious property damage. Thus, the suggested change has not been made.

A final commenter on this provision maintained that the requirement in SMCRA to protect the environment as well as life and property warrants application of the 1.5 safety factor to all impoundments regardless of size. OSMRE disagrees. As stated in the earlier discussion relative to size distinction, OSMRE believes that adequate environmental protection is ensured by applying the 1.3 static safety factor and the provisions in § 816.49 to non-hazardous small impoundments.

Sections 816.49(a)(5)(i)/817.49(a)(5)(i) Foundations

Final § 816.49(a)(5)(i) requires that the foundation and abutments for impounding structures be stable during all phases of construction and operation, and be designed based on adequate and accurate information on the foundation conditions (see 4. *Foundations* in "Background"). The rule requires that for impoundments meeting the size or other criteria of 30 CFR 77.216(a) foundation investigation and any necessary laboratory testing of foundation material must be performed to determine the design requirements for foundation stability. The final rule does not prescribe any specific tests, but requires the designer to conduct whatever testing and investigation are necessary to determine that the foundation of the structure will be stable. The rule requires the designer to determine if it is necessary to conduct laboratory tests of foundation material depending upon whether tests of similar material already have been conducted or are available.

One commenter supported the provision as a logical and sound engineering practice. Two commenters suggested that, although the requirement that foundation and abutments be stable during construction and operation is justified, the provision concerning the determination of the adequacy and accuracy of the foundation information is vague. Instead of this requirement, these commenters suggested, the engineer should be given the latitude to use judgment in evaluating the foundation and abutment conditions to ensure that the performance standard is met in accordance with current, prudent, engineering practice.

OSMRE agrees that the alternative proposed by the commenter expresses a similar intent; however, the rule language is more specifically aimed at acquiring adequate and accurate information of the foundation conditions upon which to base subsequent designs.

These same two commenters further maintained that the requirement for foundation investigations and laboratory testing for MSHA-regulated impoundments was redundant and unnecessary. They argued that plans for MSHA structures must comply with the requirements of 30 CFR 77.216–2(a) (5) and (13), which address the properties of the foundation materials and slope stability, respectively. Allowing MSHA to establish the geotechnical information necessary for structures under their jurisdiction, they said, complies with section 201(c)(12) of SMCRA to minimize duplication with other Federal agencies.

Although, as the commenters pointed out, MSHA does address foundations in 30 CFR 77.216–2(a) (5) and (13), the MSHA rules require only that the plan describe the physical and engineering properties of the foundation and the computed minimum factor of safety range for slope stability. OSMRE's provisions, on the other hand, actually stipulate foundation investigation and laboratory testing requirements for impoundments meeting the requirements of 30 CFR 77.216(a) and supplement rather than duplicate the requirements in the MSHA rules.

Another commenter opposed the proposal to allow increased flexibility in the determination of testing for foundation stability. OSMRE has an obligation, the commeter maintained, to establish minimum standards for ensuring that foundation investigations, including testing, are adequate to ensure the stability of foundations, abutments and foundation material. In view of the increased risk being introduced by allowing land surveyors to certify impoundments (see discussion of § 816.49(a)(10)), the commenter added, there is a greater need for standardizing testing of impoundments and for ensuring that all impoundment foundations are properly constructed. The commenter concluded that, inasmuch as OSMRE intends to allow greater flexibility to the designing engineer in foundation investigation and construction, a requirement should be adopted for an engineer to inspect and certify each phase of impoundment construction.

The existing regulations in § 816.49(a)(10)(i) require regular inspection of impoundments during construction. OSMRE believes that this provision satisfies this commenter's concern. OSMRE further believes that it would not be feasible to establish a set of standardized tests for investigation and testing of the foundations of impoundments. As noted in MSHA's *Engineering and Design Manual—Coal Refuse Disposal Facilities* (p. 5.53), the type and extent of investigation necessary depends upon the size of the planned embankment, the complexity of the site geology, the nature of the foundation materials, and whether or not the embankment will impound water. Based on the complexity of a site, the site investigation for each project will vary and must be complete enough to provide the necessary data for analysis of the site and the design of the structure. Furthermore, where the required safety factor is achieved over a wide range of foundation conditions, detailed foundation investigation would be unnecessary.

Sections 816.49(a)(8)/817.49(a)(8) Permanent and Temporary Impoundment Spillways; Single Spillway Provision

The spillway requirements of § 816.46(c)(2) are also included in § 816.49(a)(8) to ensure consistency between the spillway requirements for sedimentation ponds and those for all impoundments. The comments addressed these requirements as they would apply to both §§ 816.46(c)(2) and 816.49(a)(8). The comments and OSMRE's response applicable to all impoundments, including sedimentation ponds, are addressed in the following discussion.

Final § 816.49(a)(8) has been restructured and single spillway configuration requirements have been added in paragraphs (i) (A) and (B). The reasons for this restructuring and for clarifying the spillway provisions are addressed in the following discussion. All final revisions to § 816.49(a)(8) have also been made to § 816.46(c)(2) for sedimentation ponds.

Section 816.49(a)(8) requires that impoundments include either a combination of principal and emergency spillways, or a single spillway designed and constructed to safely pass the applicable design precipitation event (see 2. *Spillways* in "Background"). Four commenters addressed the single spillway provision; one supported it without qualification while three objected to its application as envisioned in the proposed rule.

One of the objecting commenters suggested that a single spillway is an unacceptable alternative to a combination of principal and emergency spillways in the case of an embankment-type impoundment, regardless of its size. The elimination of the principal spillway, which typically consists of a drop-inlet pipe, the commenter said, would inhibit the pond's storage of water during any storm event, thus affecting the mine operator's ability to treat or contain the water. By requiring the use of both a principal spillway pipe and an open-channel emergency spillway, the commenters suggested, the regulatory authority is assured of a stable, nonerodible system with steady flow and stable velocity that will conduct storm flow safely and without sediment. The same commenter suggested, however, that the single spillway allowance is acceptable in cases of small excavated impoundments because such impoundments are not equipped with the drop-inlet pipe as as primary spillway.

A second commenter objected to the single spillway provision to the extent that it would allow single conduit spillways without ensuring appropriate storage control. Because of safety concerns, the commenter suggested that a single conduct spillway should be allowed only for extremely small drainage areas, perhaps as large as four acres. The commenter pointed out that there are two disadvantages to the single conduit spillway: (1) Near maximum capacity is attained at relatively low heads and there is little increase in capacity beyond the designed head such that a flood larger than the selected inflow design flood would result in more discharge than the spillway could handle; and (2) overtopping is more likely to occur than with an open-channel spillway because conduit spillways are more likely to become obstructed or clogged. The commenter went on to state that obstruction is even more likely to occur if the structure is a permanent impoundment, due to the minimum or non-existent maintenance after bond release. Therefore, in addition to restricting the use of single conduit spillways to small drainage areas, the commenter suggested that such spillways only be allowed for temporary impoundments and only in cases where failure would not be expected to cause loss of life or serious property damage.

A third commenter presented a threefold objection to the single spillway provision. First, the use of a single spillway has the potential to result in the inability of sedimentation ponds to attain adequate water quality limitations and to adequately remove sediment. The commenter conceded that these problems can be avoided by proper placement of the single spillway outlet and by paying more attention to the removal of sediment to ensure that the sediment storage volume is not exceeded.

The commenter's second concern was that use of a single spillway would result in increased peak stormwater discharges, with increased potential for downstream flooding, particularly in steep-sloped regions of Appalachia where peak discharge response to storm events is quick and the off-site impacts of the increased peak flow due to mining can be severe. The commenter pointed out that Congress was concerned about this problem and intended the hydrologic protections of SMCRA to address the "greater peak flows, more rapid changes in discharge, * * * and increased flooding of streams" resulting from contour mining in Appalachia. (H.R. Rep. No. 95–218, 95th Cong., 1st Sess., 111 (1977).)

The commenter added that discharge problems, which are moderated through the size and configuration of spillways and the existence of storage capability, are exacerbated by any reduction in the ability to control discharge, including the discharge resulting from storm events of a lesser magnitude than the design precipitation event. Thus, the commenter concluded, reliance on a single spillway rather than dual spillways increases the possibility of discharge problems. Even where the single spillway is designed to adequately pass the design event, the commenter added, it results in the creation of a permanent pool immediately below the spillway, thus eliminating the capability of the pond to control stormwater runoff and to moderate the increased downstream peak flow.

This same commenter's third concern was that the use of a single spillway would increase the level of saturation of the pond material and, thereby, threaten the stability of the pond. The commenter's concern about the downstream impacts resulting from this increased likelihood of pond failure was heightened because of the use of embankment ponds on steep-sloped [illegible].

If OSMRE implements the single spillway provision in proposed §§ 816.46(c)(2) and 816.49(a)(8), the commenter concluded, in order for the impoundment to function safely and effectively, the provision must be accompanied by a requirement that such spillway be an open-channel design because of the potential for pipe or conduit spillways to become blocked and cause structural failure.

In summarizing these three concerns, this same commenter pointed out that OSMRE did not accompany its October 21, 1987, proposal with any references or technical justifications for the adoption of the single spillway provision, nor did OSMRE address the ability of impoundments to attain, under various conditions, the water quality discharge limits, to moderate peak flow, and to prevent additional contributions of runoff outside the permit area in order to prevent flooding or flood height increases. The commenter urged OSMRE to conduct sensitivity analyses and computer modelling of small, medium and large watersheds under various mining conditions to determine the impacts of the proposed single spillway provision. The commenter further suggested that, upon completion of the above analyses, the comment period be reopened for more discussion of the proposed provision.

OSMRE believes that the concerns of the commenters are satisfied by the performance standards, certification and bond release requirements of OSMRE's rules. The qualified registered professional must consider the impacts of increased peak storm water discharges, saturation of the pond material and other specific design parameters on the structural plan in the design and certification of the impoundment. If a structure is designed with an open-channel serving as both a principal and emergency spillway, it must meet all of the provisions of the regulations. for instance, the discharge water in a sedimentation pond must

meet the effluent limitations of § 816.46(c)(1)(iii) (B) and (C). Also, in determining the safety factor, consideration must be given to any increase in the water level caused by using a single open-channel spillway.

As a result of the review of comments and further technical consideration, OSMRE has modified this provision to allow the regulatory authority to approve a single spillway only when it is of open-channel configuration meeting the requirements of § 816.49(a)(8)(i). OSMRE believes that a closed-conduit type spillway alone will not likely pass the design precipitation event without a considerable reliance on storage. In the absence of a combination of principal and emergency spillways or a single open-channel spillway meeting the requirements of § 816.49(a)(8)(i), an impoundment would have to meet the requirements in § 816.49(c)(2) for structures relying primarily on storage.

Sections 816.49(a)(8)(i)/817.49(a)(8)(i) Permanent and Temporary Impoundment Spillways; Spillway Linings

The requirements included in § 816.49(a)(8)(i) relative to spillway linings are also included in § 816.49(c)(2)(i) to ensure consistency between the spillway requirements in the rules for sedimentation ponds and those for all impoundments. Comments received on these proposed sections addressed these requirements as they would apply to both. Those comments and OSMRE's response applicable to all impoundments, including sedimentation ponds, are addressed in the following discussion.

OSMRE had proposed in § 816.49(a)(8) to prohibit the use of earth- or grass-lined single spillways. This prohibition was first introduced in the 1983 rules for small sedimentation ponds at § 816.46(c)(2)(ii) to provide an additional safeguard to the use of single spillways in such ponds (48 FR 44046). Hence, in proposing to allow the use of a single spillway for impoundments under § 816.49(a)(8), OSMRE considered it appropriate to include the prohibition on earth- or grass-lined single spillways found in the previous rules for small sedimentation ponds.

OSMRE received eight comments on this provision, seven of which opposed various aspects of the prohibition against earth- or grass-lined spillways. As a result of the review of comments and further technical consideration, OSMRE has modified the prohibition against grass- and earth-lined spillways. In its place, language has been added to final § 816.49(a)(8)(i)(B) that specifies that the regulatory authority may approve a single earth- or grass-lined spillway designed to carry short-term, infrequent flows at non-erosive velocities where sustained flows are not expected. Also, the requirement at paragraph (a)(8)(i)(A) specifies that the regulatory authority may approve a single open-channel spillway of nonerodible construction and designed to carry sustained flows. These same revisions have been made to the final rule for sedimentation ponds at § 816.46(c)(2)(i) (A) and (B).

One commenter suggested that the prohibition against earth- or grass-lined spillways was unnecessary in sparsely populated areas where impoundments present little risk to life and property, such as Wyoming. In addition, the commenter maintained that it was possible to design stable earth- or grass-lined channels for flood flows.

Another commenter suggested that restrictions on grass-lined channels for small impoundments were inappropriate for semi-arid States, such as North Dakota, where such spillways generally function adequately because of the rare occurrences of flows through emergency spillways. The commenter maintained that this is because impoundments in North Dakota are designed to contain the runoff from a 10-year 24-hour or larger precipitation event and are dewatered after precipitation events to ensure control through storage. Although, the commenter acknowledged, grass-lined spillways are not ideal for "sustained flows," requiring that a spillway be "capable of maintaining sustained flows" is unnecessary in areas where sustained flows are rarely experienced. The commenter suggested that OSMRE recognize regional differences in spillway requirements by qualifying this provision to allow the regulatory authority to approve grass-lined open channels where there are no sustained flows.

Another commenter agreed with OSMRE in the prohibition of earth-lined spillways, but criticized the restriction on grass-lined spillways for essentially the same reason as the previous commenter: Not all spillways are subject to sustained flows. This commenter went on to point out that the provision requiring that spillways be of nonerodible construction could be interpreted to prohibit the use of rock-lined spillways which are capable of handling sustained flows. Additionally, the commenter noted that adequate single spillways can be designed with a combination lining of both rock and grass such that the sustained flows are channeled through the rock portion while the occasional storm flows pass over the grass portion. The commenter suggested that the language in § 816.49(a)(8) should be revised to recognize that linings such as grass and rock can be nonerodible provided that spillway design ensures that flow velocities do not exceed certain critical limits.

This same commenter also suggested that OSMRE adopt the phrase "single open channel spillway" instead of "open channel single spillway." OSMRE believes that this suggested revision places the various modifiers in their appropriate order and has adopted it, with the addition of a hyphen between "open" and "channel" in the final rule.

Another commenter objecting to the prohibition on earth- and grass-lined spillways maintained that such a prohibition is not supported in the technical literature. The commenter cited *SCS Technical Release 60* as a standard which acknowledges permissible flow velocities for vegetation- and earth-lined spillways. By not acknowledging that there are varying site-specific circumstances, the commenter suggested, the proposed rule would not allow engineers the necessary flexibility to design cost effective spillways. It was suggested that OSMRE revise the rule so that engineers would be allowed to exercise professional judgment in determining, in each case, the most cost effective design that will meet the requirement to have a nonerodible spillway.

One commenter noted that spillway stability is influenced by factors other than spillway lining, including the slope of the land at the point of discharge. The commenter maintained that earth- and grass-lined spillways have been used with satisfactory results and that such spillways can meet the requirement in § 816.49(a)(8) to be of nonerodible construction. Making this provision final, the commenter suggested, would result in a requirement to convert spillways to concrete-lined channels and thus substantially increase costs without adding any benefit. Instead of prohibiting earth- or grass-lined spillways, the commenter advised, OSMRE should require applicants to demonstrate in each case that such spillways are of nonerodible construction and therefore stable.

Taking a similar position to the above commenters, another commenter suggested that prohibition on earth- and grass-lined spillways disregards prudent, engineering practices and drastically exceeds SCS standard guidelines and practices. This commenter also asked if impoundments employing a previously approved earth- or grass-lined spillway would need to be modified to meet the new requirement.

Still another commenter suggested that spillways for impoundments with large reservoir storage capacities could be earth-lined if they infrequently carried water.

Two commenters pointed out that structure without dams, such as incised structures, pose little or no danger to life and property and should not be subject to the strict requirements applicable to impoundments with dams.

As noted by the commenters, grass- or earth-lined spillways are appropriate under certain conditions and when properly designed to safely pass the design storm. In most cases, grass- or earth-lined spillways are used for emergency flows which are infrequent and not sustained. In all cases, the design flow velocity must be below the permissible velocity for the type of spillway lining. The prohibition on grass- or earth-lined spillways was included in the proposed rule to prevent the use of such spillways to carry sustained flows. Based on the comments and the guidelines in *SCS Practice Standard 378* and *SCS Technical Release 60*, OSMRE is allowing grass- or earth-lined spillways when they are designed to carry short term, infrequent flow at non-erosive velocities that can be safely handled by the vegetated or earth spillway. Since the rule has been revised to allow grass- or earth-lined spillways, previously approved spillways would not need to be modified.

Only one commenter addressing this provision suggested a more stringent spillway lining requirement. In order to prevent embankment failure due to erosion of the spillway channel, the commenter suggested, OSMRE should require that all open-channel spillways be constructed in solid ground and not within the impoundment embankment unless the spillway is lined with concrete.

OSMRE appreciates the commenter's concern for properly located and designed spillway channels, but the provisions were not added to the final rule. These are factors that should be considered by the professional who designs and certifies the impoundment and are at a level of detail that is inappropriate for the rule.

Sections 816.49(a)(8)(ii)/817.49(a)(8)(ii) Permanent and Temporary Impoundment Spillways; Design Precipitation Events

The requirements of § 816.49(a)(8)(ii) relative to design precipitation events also are included in § 816.46(c)(2)(ii) to ensure consistency between the spillway requirements for sedimentation ponds and those for all impoundments. The comments addressed these requirements as they would apply to both sections. The comments and OSMRE's response applicable to all impoundments, including sedimentation ponds, are presented in the following discussion.

Final § 816.49(a)(8)(ii)(A) requires that impoundments meeting the size or other criteria of 30 CFR 77.216(a) be able to pass a 100-year 6-hour precipitation event, or greater event as specified by the regulatory authority. Section 816.49(a)(8)(ii)(B) requires that impoundments not meeting the size or other criteria of 30 CFR 77.216(a) be able to pass a 25-year 6-hour precipitation event, or greater event as specified by the regulatory authority. These two provisions were proposed as paragraphs (a)(8)(i) and (a)(8)(ii), respectively; because of a restructuring of final § 816.49(a)(8), they appear in paragraphs (ii) (A) and (B), respectively, of the final rule. Similar organizational adjustments have been made in § 816.46(c)(2) for sedimentation ponds.

In the October 21, 1987, proposed rule, OSMRE had described the impoundments to which the design events in § 816.49(a) (i) and (ii) would apply as "large impoundments meeting the size or other criteria of § 77.216(a)" and "small impoundments not meeting the size or other criteria of § 77.216(a)", respectively. In the final paragraphs at § 816.49(a)(ii) (A) and (B), the words "large" and "small", respectively, have been deleted because these terms are redundant and possibly confusing in light of the references to the size or other criteria of § 77.216(a).

The rule also removes previous § 816.49 (b)(7) and replaces (c)(2) with a new provision concerning storage impoundments (discussed later). The previous § 816.49 (b)(7) and (c)(2) stipulated two different design precipitation events, depending on whether an impoundment was permament or temporary. The sections were removed because it is more appropriate from a safety standpoint to make the design precipitation event dependent upon whether an impoundment is large or small, respectively, rather than whether it is permanent or temporary. The 100-year 6-hour design precipitation event for larger impoundments under § 816.49(a)(8)(ii)(A) is the same as the event in § 816.46(c)(2)(ii)(B) for larger sedimentation ponds. Likewise, the 25-year 6-hour design precipitation event for smaller impoundments under § 816.49(a)(8)(ii)(A) is the same as the event in § 816.46(c)(2)(ii)(B) for smaller sedimentation ponds. The changes require that all impounding structures, except for structures constructed of coal mine waste or intended to impound coal mine waste and meeting the criteria in 30 CFR 77.216(a), be designed to meet one of the two specified precipitation events depending on impoundment size. See §§ 816.84(b)(2) through 817.84(b)(2) for the design events that apply to coal mine waste impounding structures.

OSMRE received two comments on the requirements applicable to larger impoundments. One commenter concurred with OSMRE's proposed provision on the specified design event for larger impoundments. A second commenter objected to the specified 100-year 6-hour event for impoundments meeting MSHA criteria because MSHA does not necessarily require the 100-year 6-hour event in all cases. The commenter suggested that OSMRE revise the provision to require adherence to MSHA standards without specifying the design event.

As stated in the discussion of comments on other provisions of these rules, OSMRE's responsibility under SMCRA is not the same as MSHA's responsibility under the Federal Coal Mine Health and Safety Act of 1969. Where OSMRE adopts more stringent requirements than MSHA it does so consistent with SMCRA's mandate to protect society and the environment.

OSMRE received eight comments on the design event in § 816.49(a)(8)(ii)(B) applicable to smaller impoundments. Four commenters requested that OSMRE return to the requirement in the 1979 regulations whereby such impoundments were subject to a 25-year 24-hour event. One of the four commenters pointed out that most existing small impoundments in North Dakota were designed, approved, and constructed under the 25-year 24-hour event requirement, and that these impoundments continue to operate without problems. This design event, the commenter added, is an adequate standard consistent with *SCS Practice Standard 378*. To require the 25-year 6-hour event, this commenter suggested, would have significant economic effects with negligible additional benefit, especially in light of the fact that the regulatory authority already has the authority to require a more stringent design event in individual cases, as warranted, where failure would be expected to cause loss of life or serious property damage.

Another of the four commenters favoring the 25-year 24-hour event maintained that requiring the new design event for small impoundments

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would necessitate the rebuilding of most existing small impoundments. The commenter suggested that the least costly method of providing for the passage of this larger peak flow, to increase the height of the embankment to provide more temporary storage and a greater head on the discharge structure during the design event, would not always be possible because of topographic and stability constraints. Alternatives, the commenter maintained, would include widening earth-channel spillways or, in some cases where drop-inlet spillways are used, removal of the entire embankment and reconstruction with larger drop-inlet spillways.

Still another of the four commenters pointed out that Pennsylvania has successfully employed the SCS 25-year 24-hour standard by requiring the routing of different storm events through the impoundment or sufficient storage in the impoundment to contain the runoff from the storm event. In addition, the commenter noted, the storm event that is applied increases in magnitude as the pond drainage area increases. On the other hand, the Federal 6-hour requirement, the commenter pointed out, while resulting in higher peak rainfall and runoff values, results in lower total runoff values than the 24-hour event. Further, the commenter maintained that the 6-hour event originated from MSHA requirements for coal waste impounding structures which necessitate a more stringent requirement because of the available storage for surface runoff and the need to route the entire storm event through the emergency spillway. However, in the case of non-coal waste impoundments, which normally contain appreciable runoff storage capacities, the commenter suggested that the regulatory authority be allowed to specify the use of other currently accepted design events such as the 24-hour duration event accepted by the SCS and employed in Pennsylvania.

One commenter suggested that OSMRE add a new subsection stipulating that all spillways having designs previously approved by the regulatory authority that have good compliance records shall be exempted from the new rules.

OSMRE adopted the 25-year 6-hour design precipitation event in 1983 to provide consistency with the requirements for temporary impoundments (48 FR 44046). These same requirements were reproposed in 1987 (52 FR 39364) to provide for consistency between siltation structures and impoundments. As noted by the commenter, the 25-year 6-hour event probably results in higher peak rainfall intensity and runoff values than the 24-hour event, but in lower total runoff values. OSMRE selected the 25-year 6-hour event to guard against sudden, potentially more dangerous storms of short duration. The final rule will remain as proposed; however, the regulatory authority may specify, in accordance with § 780.25(c)(3), other standards that are in accordance with current, prudent, engineering practices.

Two other commenters suggested that, in light of the fact that a permanent impoundment will likely have a life of more than 25 years, all permanent impoundments, including those not meeting the MSHA criteria, should be subject to the 100-year 6-hour design requirement.

The SCS recommends a minimum design storm of 50-year frequency for the largest structure, whether permanent or temporary, that can be built under *SCS Practice Standard 378*. Based on this standard, OSMRE disagrees with the suggestion that the 100-year 6-hour design event should be required for small permanent impoundments. OSMRE believes that it is more appropriate to base the design storm on the size of the structure, which is more closely related to hazard potential, than on the life of the structure. Further, regulatory authorities can exercise discretion and specify a greater design event than the 25-year 6-hour event on a case-by-case basis if they believe that the expected life of the impoundment or potential hazard of the impoundment warrants more stringent requirements.

Another commenter found the 25-year 6-hour event requirement acceptable, but asked if impoundments designed under the 10-year 24-hour event and approved by both the State and OSMRE, would need to be modified to meet the new requirement. Also, the commenter asked whether the design event pertained to the spillway requirement or the containment capacity of the impoundment.

The 10-year 24-hour event is the containment and treatment requirement of § 816.46(c)(1)(iii)(C) relative to effluent limitations, and generally an impoundment meeting that requirement would not need to be modified. This containment and treatment requirement is not affected by the design storm events that apply to spillways in this rule. However, if the impoundment storage necessary to control the runoff from the design precipitation event exceeds the storages needed to contain or treat the 10-year 24-hour event, the size of the impoundment would have to meet the larger storage requirement.

Sections 816.49(a)(10)/817.49(a)(10) Inspection of impoundments

Section 816.49(a)(10) specifies the qualified professionals who are authorized to meet the requirement for inspecting each impoundment in accordance with paragraph (a)(10)(i) of that section. In addition to the professionals listed in the previous rule, inspections also may be performed by qualified registered professional land surveyors as specified in paragraph (a)(10)(iv). See 6. *Inspection of impoundments* in "Background" for rationale for the change.

Also, § 816.49(a)(10)(ii) authorizes a qualified registered professional land surveyor as specified in paragraph (a)(10)(iv) to provide the certified report of the inspection results to the regulatory authority. In addition to this change, a language change was made to the 1983 rule. The language in this section that the impoundment has been "constructed and/or maintained" as designed differs from the language in the 1983 rule which read "constructed and maintained." This change is intended to make clear that the construction will not necessarily have to be recertified every time a maintenance inspection is conducted.

Section 816.49(a)(10)(iv) authorizes certain qualified registered professional land surveyors, in accordance with § 780.25(a), to inspect, certify and submit the report required for any temporary or permanent impoundment that does not meet the size or other criteria of 30 CFR 77.216(a), except for coal mine waste impounding structures (see 6. *Inspection of impoundments* in "Background"). In accordance with § 780.25(a), a qualified registered professional land surveyor is authorized to inspect and certify small impoundments in any State which authorizes land surveyors to prepare and certify such plans. The rule does not allow land surveyors to certify coal mine waste impounding structures, which are covered by § 816.84. OSMRE believes that the more complicated design and construction requirements of coal mine waste impounding structures necessitate certification by a professional engineer. The rule also requires that the land surveyor be experienced in the construction of impoundments to be consistent with the experience requirement for professional engineers in § 816.49(a)(10).

The changes in paragraphs (a)(10)(ii) and (a)(10)(iv) are not to be confused with the provision in the introductory language in paragraph (a)(10) allowing inspections by a "qualified professional specialist, under the direction of a professional engineer." The requirement in the introductory language is retained from the 1983 rule. Under paragraphs (a)(10)(ii) and (a)(10)(iv), the "qualified registered professional land surveyor" will be authorized to conduct certain inspections and certify reports independently. Under the provision in the introductory language in paragraph (a)(10), the "qualified professional specialist" can perform inspections only under the direction of a "professional engineer."

One commenter supported the provision in § 816.49(a)(10)(ii) requiring that all inspection reports be filed with the regulatory authority immediately following the inspection. Several commenters objected to this provision on the basis that it would create unnecessary paperwork. They suggested that maintaining inspection records on the mine site and submitting them periodically would be adequate. One commenter further added that the proposed requirement could trigger the issuance of unnecessary notices of violation by regulatory authorities, while other commenters suggested that some regulatory authorities do not want the records sent to their offices but prefer that they be kept at the mine site to reduce their paperwork problems.

OSMRE believes it is necessary to have the inspection report sent to the regulatory authority so that any problems can be brought to the State's attention, and in order to provide the State the opportunity to adequately monitor corrective actions that may be necessary. Having the information on file in the State office also provides advance information to inspectors before beginning an inspection trip. OSMRE is sensitive to the concern that regulatory authorities' paperwork burdens should be reduced where possible. However, several regulatory authorities commented on this proposed rule, and none suggested that this reporting requirement presented a burden.

Two of the commenters who objected to the filing requirements also objected to the requirement for an annual inspection and certification by a registered professional engineer for all impoundments, regardless of size, on the basis that it is unnecessary and would result in yet another paperwork requirement for operators without effecting an added public benefit. They noted that presently only structures meeting MSHA criteria must be certified annually and argued that if small impoundments are properly designed and constructed, an annual inspection by a qualified person, not necessarily an engineer, should be sufficient to detect any significant structural problems.

This commenter incorrectly maintained that annual certifications are required only for those impoundments meeting MSHA criteria. Under existing § 816.49(a)(10)(i), which was not reproposed, inspections are required for all impoundments "at least yearly," while under paragraph (a)(10)(ii), the inspector must "promptly, after each inspection, provide to the regulatory authority a certified report * * *." Again, for the same reasons mentioned above, OSMRE considers the annual certification to the regulatory authority to be an important component of impoundment safety and protection of the public.

Two commenters suggested that there was an inconsistency between OSMRE's inspection and certification provisions. They maintained that where an engineer performs the quarterly inspection of impoundments not meeting MSHA criteria under paragraph (a)(11), it is necessary under paragraph (a)(10)(ii) to certify the results each quarter. This, the commenter suggested, conflicts with the annual inspection requirement in paragraph (a)(10)(i). The point the commenter made is that, so long as MSHA has determined that regulating smaller structures is unnecessary, and that annual certifications are not required, it would seem reasonable for OSMRE to adopt the same regulatory philosophy. Any significant problems with small impoundments, the commenter concluded, would be observed and brought to the operator's attention during the regulatory authority's complete quarterly inspection.

OSMRE considers the inspection and certification requirement of § 816.49(a)(10) and the "examination" requirement of paragraph (a)(11) to be distinctly different requirements serving distinctly different purposes. The examination under paragraph (a)(11) by a "qualified person" occurs quarterly for impoundments not meeting the criteria of 30 CFR 77.216(a) and weekly for those meeting the criteria. This serves the need to monitor large impoundments more frequently because of their greater potential hazard. The inspection and accompanying certification by a "qualified registered professional engineer" or a "qualified registered professional land surveyor" under paragraph (a)(10) ensures a more stringent level of inspection and ensures that the regulatory authority is made aware of the condition of impoundments.

OSMRE does, however, recognize that the clarity of the proposed inspection and examination provisions could be improved as noted by the commenter. Therefore, OSMRE has revised paragraph (a)(10)(ii) in the final rule to read, "The qualified registered professional engineer, or qualified registered professional land surveyor as specified in paragraph (a)(10)(iv) of this section, shall promptly, after each inspection required in paragraph (a)(10)(i), provide the regulatory authority with a certified report that the impoundment has been constructed and/or maintained as designed and in accordance with the approved plan and this chapter." The added reference will make clear that the certification report requirement does not apply to the examination referenced in paragraph (a)(11).

As discussed previously relative to storage control in § 816.49(a)(10), a commenter maintained that the inspection and certification provisions of the proposed rules are not consistent. The commenter suggested that the provision in § 816.49(a)(8) requiring that impoundments relying primarily on storage demonstrate sufficient control in the judgment of a qualified registered professional engineer contradicts the land surveyor provision of § 816.49(a)(10)(iv) authorizing land surveyors to certify impoundments not meeting the criteria of 30 CFR 77.216(a).

OSMRE believes this comment has merit and has changed § 816.49(a)(8) of the final rule to allow qualified professional registered land surveyors to certify structures that rely primarily on storage to control the design precipitation event and, thus, remove a limitation on the land surveyor provision of § 816.49(a)(10)(iv). This change makes the rules consistent with the authority of qualified registered professional land surveyors to certify impoundments that do not meet the criteria of 30 CFR 77.216(a).

One commenter supported the land surveyor inspection and certification provision, suggesting that land surveyors are as qualified as engineers to make the physical measurements that are involved in post-construction certification.

One commenter urged rejection of the provision at § 816.49(a)(10)(iv) authorizing qualified registered professional land surveyors to inspect and certify impoundments not meeting the MSHA criteria, suggesting that it would weaken the enforcement process and contribute to the construction of potentially hazardous structures because land surveyors lack the

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technical expertise in the hydraulics of impoundment dam and spillway design. This commenter also maintained that regulatory authorities' workload prevents them from devoting the necessary technical staff to investigate and determine if land surveyors are experienced in the construction of impoundments. This same commenter also asked how much experience in impoundment dam, embankment, and spillway construction a land surveyor must have in order to be competent to certify impoundments.

One commenter was alarmed by the proposal in § 816.49(a)(10)(iv) to authorize land surveyors to inspect and certify impoundments not meeting the size or other criteria of 30 CFR 77.216(a), maintaining that the provision may result in the certifiction of impoundments by individuals lacking proper training and knowledge of hydrologic and geologic considerations attendant to such structures. This commenter also incorporated by reference earlier objections to the October 2, 1984 (49 FR 38956), proposed provision to allow land surveyors to certify the design of impoundments not meeting the criteria of 30 CFR 77.216(a), which was issued in final on April 24, 1985 (50 FR 16194).

This commenter reaffirmed an objection to the 1985 rule on the basis that it authorized land surveyors to certify the design of components of plans that the commenter believed were outside of the professional capability of land surveyors and beyond the intent of the November 4, 1983, amendment to SMCRA. The commenter voiced opposition to allowing the design of any water-retaining impoundments, regardless of size, by anyone other than a qualified, registered professional engineer with experience in the design of such impoundments. Such an allowance, the commenter maintained, in addition to creating a significant public hazard, is inconsistent with the November 4, 1983, SMCRA amendment which did not intend to authorize land surveyors to certify the design of such components.

In response to this commenter's concerns about the 1984 proposal (50 FR 16195), OSMRE noted that activities properly within the field of surveying vary among the States and that the rule authorized "surveyors only to perform those functions in a particular State for which they have authority under State law." Because of variations that exist from State to State, OSMRE declined to further restrict properly authorized land surveyors in design certification and continues to maintain the same position.

In objecting to the October 21, 1987, proposal in paragraph (a)(10)(iv) of § 816.49 to allow qualified registered professional land surveyors to inspect and certify impoundments not meeting the size or other criteria of 30 CFR 77.216(a), the commenter noted the wide disparity among various States in the qualifications and capabilities of professional land surveyors to undertake such certifications. It is precisely because of this disparity that OSMRE must rely on State licensing authorities to ensure that land surveyors are authorized to perform only those design certifications that they are qualified to perform in consideration of their background, training, and experience.

This same commenter further addressed two fundamental concerns. First, as with the objection to the design certification provision of the 1985 rule, the commenter suggested that the annual inspection and certification of impoundments is a matter which involves questions of material stability and geology which are outside of the traditional competence of the surveying profession. In support of this contention, the commenter quoted from a statement to the Congress by the American Institute of Professional Geologists (AIPG) supporting the 1983 SMCRA amendment: " * * * the 'lead' or primary role for preparation and certification of geological and geotechnical documents is the sole responsibility of professional geologists or of registered professional engineers qualified in the earth sciences." The commenter urged OSMRE to add limiting language to § 816.49(a)(10)(iv) such that, in addition to restricting the provision to any State which authorizes land surveyors to prepare and certify plans for impoundments, it would be restricted to States which authorize land surveyors to perform and certify inspections of impoundments.

This same commenter's second fundamental concern was that OSMRE must establish national minimum standards for experience and training of land surveyors in the area of impoundment certification to avoid problems in States which (1) do not have minimum qualifications for engaging in the practice of land surveying; or (2) may have standards that do not suffice to ensure a minimum level of competence in this technical area; or (3) allow "grandfathering" of practicing land surveyors based solely on surveying experience without requiring any formal training. The requirement in the proposed rule, "shall be experienced in the construction of impoundments," the commenter argued, was vague and not sufficient to ensure a minimum level of competence. The commenter concluded, limiting this provision to those impoundments that do not meet MSHA criteria does not ensure adequate safety because such impoundments still may present a threat to the public and the environment.

As discussed elsewhere in this preamble (see 0. *Inspection of Impoundments* in I. Background), OSMRE found that comments received during the preparation of the 1985 final rule authorizing design certifications by land surveyors presented compelling arguments for authorizing qualified registered professional land surveyors to inspect and certify those impoundments not meeting the criteria of 30 CFR 77.216(a). Certainly it is reasonable to accept that if land surveyors are qualified to certify design and construction, then they would also be qualified to inspect the impoundments that they have designed.

OSMRE acknowledges concerns about the technical qualifications of land surveyors in the hydraulics of impoundment dam and spillway design. Consequently, OSMRE limited this authority to impoundments not meeting the size or other criteria of 30 CFR 77.216(a). Also, OSMRE requires that the land surveyor shall have experience in the construction of impoundments, in accordance with paragraph (a)(10)(iv). Furthermore, the rule provide many levels of protection, of which design certification is only one. Section 816.49(a)(2) requires that the certifying land surveyor have previous experience in impoundment design and construction. Any design which is certified by a land surveyor must conform to the performance standards of the regulatory program and be submitted to the regulatory authority for review as part of a permit application. Under § 816.49(a)(10), impoundments are given frequent inspections, while under § 816.49(a)(11), all small impoundments are examined for structural weakness and hazardous conditions at least quarterly. Thus, OSMRE concludes that it is proper to authorize qualified registered professional land surveyors to certify the design and construction of small impoundments.

Concerning the commenter's suggestion that OSMRE add limiting language to § 816.49(a)(10)(iv) restricting its application to States which authorize land surveyors to perform and certify inspections of impoundments, OSMRE does not see what this would change in practice. If land surveyors lack the authority under a State law to inspect

impoundments, then, it follows, this provision in OSMRE's rules would not apply in such a State.

Another commenter made the general suggestion that professional geologists should be more involved in the design and certification of impoundments. This rule does not affect the authority previously granted to professional geologists.

A final commenter on the land surveyor provision suggested that OSMRE also allow qualified registered landscape architects to certify maps and plans for small impoundments, certify construction, and perform annual inspections. The commenter maintained that most landscape architects are trained in hydrology for calculating storm water runoff; hydraulics for designing ditches and culverts; earthwork for determining cut and fill volumes, required grading and construction techniques; and soil mechanics for determining the behavior of soil under various loading conditions. Coupled with practical experience and registration, the commenter suggested, the landscape architect is very capable of developing plans, managing construction, and conducting annual stabilility and hazardous-condition inspections on all small impoundments.

The November 4, 1983, and October 30, 1986, amendments to SMCRA specifically authorized an expanded role for land surveyors in impoundment design, but do not provide such authorization to landscape architects. This rule does not authorize landscape architects to prepare independently or to certify cross sections, maps and plans. Lacking proper authorization, it would be inappropriate for OSMRE to consider such revisions to the rules at this time.

Sections 816.49(c)(2)/817.49(c)(2) Temporary Impoundments; Storage Control

The requirements included in § 816.49(c)(2) concerning the use of storage to control the design precipitation event are also included in § 816.46(c)(2)(iii) to ensure consistency between the spillway requirements in the rules for sedimentation ponds and those in the rules for all impoundments. Comments on these sections addressed these requirements as they would apply to both sections. Those comments and OSMRE's response applicable to all impoundments, including sedimentation ponds, are addressed in the following discussion.

Under final § 816.49(c)(2), the regulatory authority is authorized to approve the design of a temporary impoundment that relies primarily on storage to control the runoff from the design precipitation event in lieu of meeting the requirements in § 816.49(a)(8)(i) when it is demonstrated by the operator and certified by a qualified registered professional engineer or qualified registered professional land surveyor in accordance with § 780.25(a) that the impoundment will safely control the design precipitation event, the water from which will then be safely removed, in accordance with current, prudent, engineering practices. The regulatory authority may only approve such an impoundment if it is located where failure would not be expected to cause loss of life or serious property damage except where (1) in the case of an impoundment meeting MSHA criteria, it is designed to control the precipitation of the probable maximum precipitation of a 6-hour event, or greater event as specified by the regulatory authority; or (2) in the case of an impoundment not meeting MSHA criteria, it is designed to control the precipitation of a 100-year 6-hour event, or greater event as specified by the regulatory authority.

A similar storage control provision was proposed on October 21, 1987, in § 816.49(a), but has been moved in the final rule to § 816.49(c) in response to a comment suggesting that it only apply to temporary impoundments (comment discussed later). This same language is included in § 816.46(c)(2)(iv) for sedimentation ponds, which generally are temporary structures, to ensure consistency between the provisions applicable to temporary impoundments and those applicable to sedimentation ponds. Section 816.46 does not contain separate provisions for permanent and temporary sedimentation ponds. However, because the requirements in § 816.49 apply to all impounding structures, a permanent sedimentation pond would have to meet all of the requirements applicable to permanent impoundments in § 816.49(a) and 816.49(b).

OSMRE believes that this new provision will be useful for those impoundments where the runoff area is small, or where pumps or a decant structure would be used to control the water level in the facility. As OSMRE stated in the October 21, 1987, preamble to the proposed rule (52 FR 39360), OSMRE believes that current, prudent, engineering practice requires that at least 90 percent of the water stored during the design precipitation event be removed within the 10-day period following the design precipitation event.

Two commenters suggested that OSMRE's proposed prohibition on storage impoundments with moderate or high downstream hazard potential was unjustified. The commenters maintained that such impoundments pose no greater downstream threat than conventional impoundments (those with spillways) provided they are designed in accordance with current, prudent, engineering practices. The commenters pointed out that removing at least 90 percent of the water stored during the design precipitation event within the 10-day period following the event is the same criteria as that of the MSHA for high hazard conventional impoundments. These commenters also maintained that current, prudent, engineering practice accounts for increased hazard potential by designing for a larger precipitation event.

OSMRE proposed a prohibition on using impoundments that rely primarily on storage to control the runoff from the design precipiction event in the absence of an adequate or any spillway where they may pose a downstream hazard because of safety concerns. However, OSMRE also recognizes that the safety of such structures can be reasonably assured by requiring that they meet especially stringent design precipitation event requirements. In response to these comments, OSMRE added the provisions at §§ 816.49(c)(2) (A) and (B) authorizing the regulatory authority to approve the design of impoundments that rely primarily on storage if such impoundments are located where failure would not be expected to cause loss of life or serious property damage, except where (1) in the case of an impoundment meeting MSHA criteria, it is designed to control the precipitation of the probable maximum precipitation of a 6-hour event, or greater event as specified by the regulatory authority; or (2) in the case of an impoundment not meeting MSHA criteria, it is designed to control the precipitation of a 100-year 6-hour event, or greater event as specified by the regulatory authority.

The regulatory authority may find it appropriate to increase either the size or the duration of the event, or both, on a case-by-case basis depending on design concerns. For example, some large impoundments may warrant the application of the probable maximum precipitation of a 36-hour event. The design procedures of MSHA's *Engineering and Design Manual—Coal Refuse Disposal Facilities* include recommendations for the design precipitation event and flood routing techniques for designing structures in hazardous locations.

Two commenters suggested that, if OSMRE intends to equate the 10-day/90-percent removal standard with current,

prudent, engineering practice, the rule should so specify rather than merely stating such a contention in the preamble. Another commenter suggested that OSMRE require and implement through the State program approval process the development of engineering standards and operational standards (e.g., water testing, decanting protocol) for storage impoundments. The commenter also suggested that OSMRE abandon the 10-day/90-percent removal standard because, in the case of sedimentation ponds, it may actually run counter to the intent of the rule by not providing sufficient detention time to allow for settlement of suspended solids. The commenter added that during the first days after the precipitation event, and particularly in the case of multiple events, water may need to remain in the impoundment without discharge. OSMRE should, the commenter urged, address removal time on a case-by-case basis.

OSMRE is not requiring the 10-day period, 90-percent removal standard as a provision of § 816.49 for impoundments, but is allowing the necessary flexibility to address water removal procedures on a case-by-case basis. OSMRE beleives that this flexibility is particularly important in the case of sedimentation ponds because of the need to allow sufficient time for the settlement of suspended solids, as pointed out by the above commenter. However, OSMRE has retained the 10-day period, 90-percent removal requirement for coal mine waste impounding structures because of the variable nature of coal waste and the resultant stability concerns.

Another commenter maintained that the provision allowing impoundments without a spillway was both foolhardy and dangerous and that OSMRE failed to cite any technical literature to support its proposal. The commenter suggested that this provision, if implemented absent stringent conditions on design and operation, would (1) invite overtopping and structural failure of impoundments; (2) create significant increases in the phreatic surface of impoundments with potentially attendant structural weakness; (3) result in a likely increase in sediment pond size, a matter of great concern in steep-sloped areas due to question of downstream safety in the event of failure; and (4) necessitate close scrutiny of the sediment clean-out and decanting schedules and plans to ensure that the pond does not became incapable of storing the design event.

This same commenter went on to state that, should this provision become final, OSMRE should explicitly require careful analyses of the phreatic surface and of the stability of storage-based impoundments. Further, the commenter suggested, because there must be continual and routine maintenance of storage-based impoundments to ensure effective functioning through the decanting of stormwater, this provision should not be applied to permanent structures. Should OSMRE insist on applying this provision to temporary impoundments, the commenter followed, engineering standards and operational requirements for such structures must be developed by OSRME or required to be developed by individual states for OSRME's approval. Any provision finally adopted, the commenter maintained, presents a host of enforcement-related problems and warrants that OSRME recognize that the efficacy of storage-based impoundments is dependent on routine and timely maintenance and that the regulatory authority clearly has the duty to make such routine maintenance a permit condition.

This same commenter was further concerned that the 10-day/90-percent removal standard endorsed by OSRME, although a critical component of any final provision, may be too lenient in cases where two significant storm events occur within a 10-day period or where lesser storms continue over a multi-day period, as is common in the winter, causing structural failure.

In conclusion, this commenter urged that, prior to making this provision final, modelling and sensitivity analyses be conducted on storage-based impoundments under a wide range of watershed configurations and mining conditions to ensure proper restrictions on the use of such structures.

OSMRE agrees with this commenter's suggestion that the allowance for impoundments relying primarily on storage should apply only to temporary impoundments. Permanent impoundments without adequate spillways would present a host of stability and safety problems once regulatory jurisdiction terminates. Therefore, this provision, although originally proposed as part of the general requirements for impoundments in § 816.49(a), has been moved to the section for temporary impoundments, § 816.49(c). The new § 816.49(c)(2) replaces paragraph (2) of the 1983 rules, which specified a design precipitation event requirement for temporary impoundments which is no longer applicable. Language similar to that in § 816.49(c)(2) has been placed in a new § 816.48(c)(2)(iii) for sedimentation ponds so that the two requirements applicable to temporary structures are parallel.

The other concerns raised by this commenter may apply to any structure. It is only through the application of experienced judgment by qualified registered professionals that safe and reliable structures are designed, constructed, and inspected. The specific design criteria discussed by the commenter must be considered by the professional during the design sequence, but is an inappropriate level of detail for the rule. Consideration of the potential for overtopping, impoundment failure, increase in phreatic surface, and increase in impoundment size relative to steep-slope locations, need to be made by a professional authorized to design and construct structures. Sediment clean-out and decanting capabilities already must be considered in the inspection and certification of impoundments under existing § 816.49(a)(10)(ii). Further, States may develop more specific performance and operational requirements to suit their particular regional differences. OSMRE believes that the application of this approach assures proper design and construction of safe impounding structures.

As a result of the review of comments and further technical consideration, OSMRE has replaced the sentence "in the absence of an adequate, or any, spillway," which appeared in the proposed rule, with "in lieu of meeting the requirements in paragraph (a)(8)(i) of this section." Paragraph (a)(8)(i) allows the regulatory authority to approve a single spillway only when it is of open-channel configuration. OSMRE believes that a closed-conduit type spillway alone will not adequately pass the design precipitation event without considerable reliance on storage. In the absence of a combination of principal and emergency spillways or a single open-channel spillway meeting the requirements of § 816.49(a)(8)(i), an impoundment would have to meet the requirements of § 816.49(c)(2) for structures relying primarily on storage.

A final commenter maintained that proposed § 816.49(a)(8) is inconsistent with OSMRE's proposed provision at § 816.49(a)(10), which allows qualified registered professional land surveyors to inspect and certify impoundments not meeting MSHA criteria. The commenter suggested that the provision in § 816.49(a)(8) requiring that impoundments relying primarily on storage demonstrate sufficient control in the judgment of a qualified registered professional engineer contradicts the land surveyor provision discussed here. The commenter suggested that OSMRE should carry over the land surveyor allowance to § 816.49(a)(8). This, the commenter argued, is consistent with the SMCRA amendments of November 4, 1983, and October 30, 1986, intended to authorize land surveyors to design and certify certain ponds that contain the design event.

OSMRE believes this comment has merit and has made the change in the final rule to allow qualified professional registered land surveyors to certify structures that rely primarily on storage to control the design precipitation event. This will make this provision consistent with other provisions that allow land surveyors to certify impoundments that do not meet the size or other criteria of 30 CFR 77.216(a).

Sections 816.84 (b)(2) and (f)/817.84 (b)(2) and (f) Coal Mine Waste Impounding Structure Spillways

Because the final spillway requirements for coal mine waste impounding structures are based in large part on the spillway design requirements for permanent and temporary impoundments in § 816.49(a)(8), § 816.84(b)(2) was revised to reflect the changes in § 816.49(a)(8). Rather than require a combination of principal and emergency spillways, § 816.84(b)(2) requires that each impounding structure constructed of coal mine waste or intended to impound coal mine waste that meets the criteria of 30 CFR 77.216(a) have sufficient spillway capacity to safely pass, adequate storage capacity to safely contain, or a combination of storage capacity and spillway capacity to safely control, the probable maximum precipitation of a 6-hour precipitation event, or greater event as specified by the regulatory authority (see 2. *Spillways* in "Background"). The design precipitation event is increased from a 100-year 6-hour event to the probably maximum precipitation (PMP) of a 6-hour duration event in order not to conflict with the MSHA guidelines. The PMP is the amount of rainfall that has been determined by meteorologists to represent the maximum storm potential that can be expected for any specific area and in every instance is greater than a 100-year 6-hour storm.

OSMRE believes there is no need to require spillways for impounding structures so long as the structures are designed and constructed in accordance with the requirements of §§ 816.49 and 816.84. Under existing § 816.84(e), such structures shall be designed so that at least 90 percent of the water stored during the design precipitation event can be removed within a 10-day period. Final § 816.84(f) requires that, for such structures, at least 90 percent of the water stored during the design precipitation event shall be removed within the 10-day period following the design precipitation event.

One commenter voiced support for the allowance for one spillway in coal mine waste impounding structures, while another commenter stated support for the requirement for a probable maximum precipitation of a 6-hour duration event applicable to spillways.

Three commenters objected to the change in required design event from a 100-year 6-hour event to a probable maximum precipitation of a 6-hour duration event. Despite OSMRE's claim that this would be consistent with MSHA's requirements, the commenters pointed out, MSHA does not necessarily require this design event for spillways. Rather, the commenters added, MSHA's recommended minimum design storm criteria vary with the impoundment volume, depth and hazard potential. The commenters concluded that it would make more sense for OSMRE to remove specific design criteria from this provision and insert language that would simply require adherence to MSHA standards, particularly, as one commenter noted, because MSHA's requirements are complex and subject to change.

As discussed in the sections concerning spillways and size distinctions, OSMRE does not defer to MSHJA in meeting its statutory responsibility. OSMRE has selected the PMP storm for the design of coal mine waste impounding structure spillways to provide protection to society and the environment in line with the mandate of SMCRA. Also, the minimum design storm in the MSHA guidelines applies to both water and coal mine waste impounding structures and, thus, the MSHA guidelines address a wider range of design storms.

Two commenters suggested that the language in proposed § 816.84(f) was confusing in light of existing language in paragraph (e) of that section. While, the commenter acknowledged, the intent to present a design standard in paragraph (e) and a performance standard in paragraph (f) is understood, the two would be clearer if combined as a performance standard. As now written, the commenter concluded, proposed paragraph (f) could be misconstrued to not require drawdown for storms less than the design precipitation event.

Section 816.84(e) establishes the performance standard that the impounding structure shall be designed so that at least 90 percent of the water stored during the design precipitation event can be removed within a 10-day period. Section 816.84(f) requires drawdown for the design precipitation event and also discharge of the inflow from smaller storms to maintain the capacity of the impoundment to handle the inflow from the design storm when it occurs. Therefore, paragraph (e) is the required capability of the discharge system, and paragraph (f) is the standard for discharging the runoff in a reasonable time to ensure adequate continued capacity of the structure. Since the proceeding paragraphs serve two distinct functions, OSMRE believes they should be separate paragraphs.

Comments on Other Rule Provisions

OSMRE received several comments on provisions that were not part of the October 21, 1987, proposed rulemaking. Under the Administrative Procedure Act, OSMRE cannot revise the final rule to reflect any of these comments because the public has not been given an opportunity to respond to any proposed language.

One commenter maintained that swamps, dugout ponds, and excavated basins, regulated under 30 CFR 816.45, present almost no hazard potential because they are usually small and have little or no embankment. The commenter suggested that the spillway requirements, stability analyses, and inspection and certification requirements proposed for small impoundments in § 816.49(a) should not apply to such low-hazard impoundments. In response, OSMRE points out that § 816.49(a) applies to the sediment control measures in § 816.45 whenever they meet the definition of impoundments in § 701.5.

Two commenters suggested amending § 816.49(a)(6) dealing with slope protection and erosion control because the language is inconsistent and unnecessarily restrictive. Pointing out that paragraph (c)(6) requires slope protection to prevent surface erosion and sudden drawdown, the commenters questioned what, if any, effect slope protection would have in preventing sudden drawdown. The primary problem associated with sudden drawdown, the commenters maintained, is mass stability of an impounding structure embankment. The commenters suggested that OSMRE include performance standards addressing sudden drawdown with other stability standards.

The same commenters voiced concern about § 816.49(a)(7), which requires that embankment faces be vegetated, except

for riprapping of slopes where water is impounded. This provision, commenters maintained, does not allow for the construction of zoned embankments utilizing rock fill for the downstream sections of the structure. They further suggested that rock fill slopes could be designed to prevent erosion and thus meet the ultimate goal of the regulation. In conclusion, the commenters suggested that engineers should be allowed to utilize professional judgment to determine the most cost-effective design to meet the ultimate objective of the performance standard.

One commenter suggested that OSMRE revise § 816.84(b)(1) to remove the prohibition on retaining coal mine waste impounding structures permanently as part of the approved postmining land use. The commenter cited a recently completed experimental practice that demonstrated the effectiveness of direct vegetation establishment on an abandoned coal mine waste (slurry) impoundment to create a wetland habitat.

All of these comments addressed provisions not included in OSMRE's October 21, 1987, proposed rule. Therefore, they do not affect the final rule.

Reference Materials

Reference materials used to develop this final rule are as follows:

U.S. Soil Conservation Service, *Earth Dams and Reservoirs: Technical Release 60*, 1985.

U.S. Soil Conservation Service, *Pond: Practice Standard 378*, 1985.

U.S. Mining Enforcement and Safety Administration, *Engineering and Design Manual—Coal Refuse Disposal Facilities*; Prepared by D'Appolonia Consulting Engineers, Inc., Pittsburgh, Pa., 1975.

U.S. Mine Safety and Health Administration, *Information Report 1100; Design Guidelines for Coal Refuse Piles and Water, Sediment, or Slurry Impoundments and Impounding Structures*, 1979.

U.S. Mine Safety and Health Administration, *Amendment to Information Report 1100; Design Guidelines for Coal Refuse Piles and Water, Sediment, or Slurry Impoundments and Impounding Structures*, 1983.

Federal Coordinating Council for Science, Engineering and Technology, *Federal Guidelines for Dam Safety*, 1979.

Karl Terzaghi and Ralph B. Peck, *Soil Mechanics in Engineering Practice*, second edition, John Wiley & Sons, Inc., 1967.

III. Procedural Matters

Effect in Federal Program States and on Indian Lands

The rule applies through cross-referencing in those States with Federal programs. This includes California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for these States appear at 30 CFR Parts 905, 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947, respectively. The rule also applies through cross-referencing to Indian lands under the Federal program for Indian lands as provided in 30 CFR Part 750.

Effect on State Programs

Following promulgation of the final rule, OSMRE will evaluate permanent State regulatory programs approved under section 503 of SMCRA to determine whether any changes in these programs will be necessary. If the Director determines that certain State program provisions should be amended in order to be made no less effective than the revised Federal rules, the individual States will be notified in accordance with the provisions of 30 CFR 732.17.

Paperwork Reduction Act

The information collection requirements contained in Parts 780, 784, 816, and 817 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1029–0036, 1029–0039, 1029–0047, and 1029–0048. Sections of this final rule with information collection requirements are 30 CFR 780.25, 784.16, 816.49(a)(10), and 817.49(a)(10); and the public reporting burden of these sections is estimated to average, respectively, 36.1, 17.2, 1, and 1 hours per response. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Information Collection Clearance Officer, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Executive Order 12291 and Regulatory Flexibility Act

The DOI has determined that this document is not a major rule under the criteria of Executive Order 12291 (February 17, 1981) and that it will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The rule will affect a relatively small number of surface coal mining operations. The rule does not distinguish between small and large entities. The economic effects of the rule are estimated to be minor, and no economic effects are anticipated as a result of the rule.

National Environmental Policy Act

OSMRE has prepared an environmental assessment (EA), and has made a finding (FONSI) that this rule will not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). The EA and FONSI are on file in the OSMRE Administrative Record in Room 5131A, 1951 Constitution Avenue, NW., Washington, DC 20240.

Author

The principal author of this rule is Robert A. Wiles, P.E., with assistance from Stephen M. Sheffield, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202–343–1502 (Commercial or FTS).

List of Subjects

30 CFR Part 780

Reporting and recordkeeping requirements, Suface mining.

30 CFR Part 784

Reporting and recordkeeping requirements, Underground mining.

30 CFR Part 816

Environmental protection, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 817

Environmental protection, Reporting and recordkeeping requirements, Underground mining.

Accordingly, 30 CFR Parts 780, 784, 816 and 817 are amended as set forth below.

Dated: August 10, 1988.

James E. Cason,

Acting Assistant Secretary—Land and Minerals Management.

PART 780—SURFACE MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

1. The authority citation for Part 780 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*; Pub. L. 100–34; and 16 U.S.C. 470 *et seq.*

2. Section 780.25 is amended by revising paragraph (c) to read as follows:

§ 780.25 Reclamation plan: Ponds, impoundments, banks, dams, and embankments.

* * * * *

(c) *Permanent and temporary impoundments.* (1) Permanent and temporary impoundments shall be designed to comply with the requirements of § 816.49 of this chapter.

(2) Each plan for an impoundment meeting the size or other criteria of the Mine Safety and Health Administration shall comply with the requirements of §§ 77.216–1 and 77.216–2 of this title. The plan required to be submitted to the District Manager of MSHA under § 77.216 of this title shall be submitted to the regulatory authority as part of the permit application in accordance with paragraph (a) of this section.

(3) For an impoundment not meeting the size or other criteria of § 77.216(a) of this title and located where failure would not be expected to cause loss of life or serious property damage, the regulatory authority may establish through the State program approval process engineering design standards that ensure stability comparable to a 1.3 minimum static safety factor in lieu of engineering tests to establish compliance with the minimum static safety factor of 1.3 specified in § 816.49(a)(3)(ii) of this chapter.

* * * * *

PART 784—UNDERGROUND MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

3. The authority citation for Part 784 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*; Pub. L. 100–34; and 16 U.S.C. 470 *et seq.*

4. Section 784.16 is amended by revising paragraph (c) to read as follows:

§ 784.16 Reclamation plan: Ponds, impoundments, banks, dams and embankments.

* * * * *

(c) *Permanent and temporary impoundments.* (1) Permanent and temporary impoundments shall be designed to comply with the requirements of § 817.49 of this chapter.

(2) Each plan for an impoundment meeting the size of other criteria of the Mine Safety and Health Administration shall comply with the requirements of §§ 77.216–1 and 77.216–2 of this title. The plan required to be submitted to the District Manager of MSHA under § 77.216 of this title shall be submitted to the regulatory authority as part of the permit application in accordance with paragraph (a) of this section.

(3) For an impoundment not meeting the size of other criteria of § 77.216(a) of this title and located where failure would not be expected to cause loss of life or serious property damage, the regulatory authority may establish through the State program approval process engineering design standards that ensure stability comparable to a 1.3 minimum static safety factor in lieu of engineering tests to establish compliance with the minimum static safety factor of 1.3 specified in § 817.49(a)(3)(ii) of this chapter.

* * * * *

PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES

5. The authority citation for Part 816 is revised to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, as amended; sec. 115 of Pub. L. 98–146, 30 U.S.C. 1257; and Pub. L. 100–34.

6. Section 816.46 is amended by revising paragraphs (b)(3) and (c)(2) to read as follows:

§ 816.46 Hydrologic balance: siltation structures.

* * * * *

(b) * * *

(3) Siltation structures for an area shall be constructed before beginning any surface mining activities in that area, and upon construction shall be certified by a qualified registered professional engineer, or in any State which authorizes land surveyors to prepare and certify plans in accordance with § 780.25(a) of this chapter a qualified registered professional land surveyor, to be constructed as designed and as approved in the reclamation plan.

* * * * *

(c) * * *

(2) *Spillways.* A sedimentation pond shall include either a combination of principal and emergency spillways or a single spillway configured as specified in paragraph (c)(2)(i) of this section, designed and constructed to safely pass the applicable design precipitation event specified in paragraph (c)(2)(ii) of this section, except as set forth in paragraph (c)(2)(iii) of this section.

(i) The regulatory authority may approve a single open-channel spillway that is:

(A) Of nonerodible construction and designed to carry sustained flows; or

(B) Earth- or grass-lined and designed to carry short-term infrequent flows at non-erosive velocities where sustained flows are not expected.

(ii) Except as specified in paragraph (c)(2)(iii) of this section, the required design precipitation event for a sedimentation pond meeting the spillway requirements of paragraph (c)(2) of this section is:

(A) For a sedimentation pond meeting the size or other criteria of § 77.216(a) of this title, a 100-year 6-hour event, or greater event as specified by the regulatory authority.

(B) For a sedimentation pond not meeting the size or other criteria of § 77.216(a) of this title, a 25-year 6-hour event, or greater event as specified by the regulatory authority.

(iii) In lieu of meeting the requirements in paragraph (c)(2)(i) of this section, the regulatory authority may approve a sedimentation pond that relies primarily on storage to control the runoff from the design precipitation event when it is demonstrated by the operator and certified by a qualified registered professional engineer or qualified registered professional land surveyor in accordance with § 780.25(a) of this chapter that the sedimentation pond will safely control the design precipitation event, the water from which shall be safely removed in accordance with current, prudent, engineering practices. Such a sedimentation pond shall be located where failure would not be expected to cause loss of life or serious property damage, except where:

(A) In the case of a sedimentation pond meeting the size or other criteria of § 77.216(a) of this title, it is designed to control the precipitation of the probable maximum precipitation of a 6-hour event, or greater event as specified by the regulatory authority; or

(B) In the case of a sedimentation pond not meeting the size or other criteria of § 77.216(a) of this title, it is designed to control the precipitation of a 100-year 6-hour event, or greater event as specified by the regulatory authority.

* * * * *

7. Section 816.49 is amended by removing the suspension of paragraphs (a)(3), (a)(5)(i) and (a)(8), revising paragraphs (a)(1), (a)(3), (a)(5)(i), (a)(8), the introductory text of paragraph (a)(10), and paragraphs (a)(10)(ii), (a)(10)(iv), and (c)(2); and removing paragraph (b)(7) to read as follows:

§ 816.49 Impoundments.

(a) * * *

(1) An impoundment meeting the size or other criteria of § 77.216(a) of this title shall comply with the requirements of § 77.216 of this title and this section.

* * * * *

(3) *Stability.* (i) An impoundment meeting the size or other criteria of § 77.216(a) of this title or located where

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failure would be expected to cause loss of life or serious property damage shall have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions, and a seismic safety factor of at least 1.2.

(ii) Impoundments not meeting the size or other criteria of § 77.216(a) of this title, except for a coal mine waste impounding structure, and located where failure would not be expected to cause loss of life or serious property damage shall have a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions or meet the requirements of § 780.25(c)(3).

* * * * *

(5) *Foundation.* (i) Foundations and abutments for an impounding structure shall be stable during all phases of construction and operation and shall be designed based on adequate and accurate information on the foundation conditions. For an impoundment meeting the size or other criteria of § 77.216(a) of this title, foundation investigation, as well as any necessary laboratory testing of foundation material, shall be performed to determine the design requirements for foundation stability.

* * * * *

(8) *Spillways.* An impoundment shall include either a combination of principal and emergency spillways or a single spillway configured as specified in paragraph (a)(8)(i) of this section, designed and constructed to safely pass the applicable design precipitation event specified in paragraph (a)(8)(ii) of this section, except as set forth in paragraph (c)(2) of this section.

(i) The regulatory authority may approve a single open-channel spillway that is:

(A) Of nonerodible construction and designed to carry sustained flows; or

(B) Earth- or grass-lined and designed to carry short-term, infrequent flows at non-erosive velocities where sustained flows are not expected.

(ii) Except as specified in paragraph (c)(2) of this section, the required design precipitation event for an impoundment meeting the spillway requirements of paragraph (a)(8) of this section is:

(A) For an impoundment meeting the size or other criteria of § 77.216(a) of this title, a 100-year 6-hour event, or greater event as specified by the regulatory authority.

(B) For an impoundment not meeting the size or other criteria of § 77.216(a) of this title, a 25-year 6-hour event, or greater event as specified by the regulatory authority.

* * * * *

(10) *Inspections.* Except as provided in paragraph (a)(10)(iv) of this section, a qualified registered professional engineer or other qualified professional specialist under the direction of a professional engineer, shall inspect each impoundment as provided in paragraph (a)(10)(i) of this section. The professional engineer or specialist shall be experienced in the construction of impoundments.

* * * * *

(ii) The qualified registered professional engineer, or qualified registered professional land surveyor as specified in paragraph (a)(10)(iv) of this section, shall promptly after each inspection required in paragraph (a)(10)(i) of this section provide to the regulatory authority a certified report that the impoundment has been constructed and/or maintained as designed and in accordance with the approved plan and this chapter. The report shall include discussion of any appearance of instability, structural weakness or other hazardous condition, depth and elevation of any impounded waters, existing storage capacity, any existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability.

* * * * *

(iv) In any State which authorizes land surveyors to prepare and certify plans in accordance with § 780.25(a) of this chapter, a qualified registered professional land surveyor may inspect any temporary or permanent impoundment that does not meet the size or other criteria of § 77.216(a) of this title and certify and submit the report required by paragraph (a)(10)(ii) of this section, except that all coal mine waste impounding structures covered by § 816.84 of this chapter shall be certified by a qualifed registered professional engineer. The professional land surveyor shall be experienced in the construction of impoundments.

* * * * *

(c) * * *

(2) In lieu of meeting the requirements in paragraph (a)(8)(i) of this section, the regulatory authority may approve an impoundment that relies primarily on storage to control the runoff from the design precipitation event when it is demonstrated by the operator and certified by a qualified registered professional engineer or qualified registered professional land surveyor in accordance with § 780.25(a) of this chapter that the impoundment will safely control the design precipitation event, the water from which shall be safely removed in accordance with current, prudent, engineering practices. Such an impoundment shall be located where failure would not be expected to cause loss of life or serious property damage, except where:

(A) In the case of an impoundment meeting the size or other criteria of § 77.216(a) of this title, it is designed to control the precipitation of the probable maximum precipitation of a 6-hour event, or greater event as specified by the regulatory authority; or

(B) In the case of an impoundment not meeting the size or other criteria of § 77.216(a) of this title, it is designed to control the precipitation of a 100-year 6-hour event, or greater event as specified by the regulatory authority.

* * * * *

8. Section 816.84 is amended by removing the suspension of paragraph (b)(2), revising paragraph (b)(2), and adding paragraph (f) to read as follows:

§ 816.84 Coal mine waste; impounding structures.

* * * * *

(b) * * *

(2) Each impounding structure constructed of coal mine waste or intended to impound coal mine waste that meets the criteria of § 77.216(a) of this title shall have sufficient spillway capacity to safely pass, adequate storage capacity to safely contain, or a combination of storage capacity and spillway capacity to safely control, the probable maximum precipitation of a 6-hour precipitation event, or greater event as specified by the regulatory authority.

* * * * *

(f) For an impounding structure constructed of or impounding coal mine waste, at least 90 percent of the water stored during the design precipitation event shall be removed within the 10-day period following the design precipitation event.

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

9. The authority citation for Part 817 is revised to read as follows:

Authority: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*, as amended; sec. 115 of Pub. L. 98-146, 30 U.S.C. 1257; and Pub. L. 100-34.

10. Section 817.46 is amended by revising paragraphs (b)(3) and (c)(2) to read as follows:

§ 817.46 Hydrologic balance: siltation structures.

* * * * *

(b) * * *

(3) Siltation structures for an area shall be constructed before beginning any underground mining activities in that area, and upon construction shall be certified by a qualified registered professional engineer, or in any State which authorizes land surveyors to prepare and certify plans in accordance with § 784.16(a) of this chapter a qualified registered professional land surveyor, to be constructed as designed and as approved in the reclamation plan.

* * * * *

(c) * * *

(2) *Spillways.* A sedimentation pond shall include either a combination of principal and emergency spillways or a single spillway configured as specified in paragraph (c)(2)(i) of this section, designed and constructed to safely pass the applicable design precipitation event specified in paragraph (c)(2)(ii) of this section, except as set forth in paragraph (c)(2)(iii) of this section.

(i) The regulatory authority may approve a single open-channel spillway that is:

(A) Of nonerodible construction and designed to carry sustained flows; or

(B) Earth- or grass-lined and designed to carry short-term infrequent flows at non-erosive velocities where sustained flows are not expected.

(ii) Except as specified in paragraph (c)(2)(iii) of this section, the required design precipitation event for a sedimentation pond meeting the spillway requirements of paragraph (c)(2) of this section is:

(A) For a sedimentation pond meeting the size or other criteria of § 77.216(a) of this title, a 100-year 6-hour event, or greater event as specified by the regulatory authority.

(B) For a sedimentation pond not meeting the size or other criteria of § 77.216(a) of this title, a 25-year 6-hour event, or greater event as specified by the regulatory authority.

(iii) In lieu of meeting the requirements in paragraph (c)(2)(i) of this section, the regulatory authority may approve a sedimentation pond that relies primarily on storage to control the runoff from the design precipitation event when it is demonstrated by the operator and certified by a qualified registered professional engineer or qualified registered professional land surveyor in accordance with § 784.16(a) of this chapter that the sedimentation pond will safely control the design precipitation event, the water from which shall be safely removed in accordance with current, prudent, engineering practices. Such a sedimentation pond shall be located where failure would not be expected to cause loss of life or serious property damage, except where:

(A) In the case of a sedimentation pond meeting the size or other criteria of § 77.216(a) of this title, it is designed to control the precipitation of the probable maximum precipitation of a 6-hour event, or greater event as specified by the regulatory authority; or

(B) In the case of a sedimentation pond not meeting the size or other criteria of § 77.216(a) of this title, it is designed to control the precipitation of a 100-year 6-hour event, or greater event as specified by the regulatory authority.

* * * * *

11. Section 817.49 is amended by removing the suspension of paragraphs (a)(3), (a)(5)(i) and (a)(8), revising paragraphs (a)(1), (a)(3), (a)(5)(i), (a)(8), the introductory text of paragraph (a)(10), and paragraphs (a)(10)(ii), (a)(10)(iv), and (c)(2); and removing paragraph (b)(7) to read as follows:

§ 817.49 Impoundments.

(a) * * *

(1) An impoundment meeting the size or other criteria of § 77.216(a) of this title shall comply with the requirements of § 77.216 of this title and this section.

* * * * *

(3) *Stability.* (i) An impoundment meeting the size or other criteria of § 77.216(a) of this title or located where failure would be expected to cause loss of life or serious property damage shall have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions, and a seismic safety factor of at least 1.2.

(ii) Impoundments not meeting the size or other criteria of § 77.216(a) of this title, except for a coal mine waste impounding structure, and located where failure would not be expected to cause loss of life or serious property damage shall have a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions or meet the requirements of § 784.16(c)(3).

* * * * *

(5) *Foundation.* (i) Foundations and abutments for an impounding structure shall be stable during all phases of construction and operation and shall be designed based on adequate and accurate information on the foundation conditions. For an impoundment meeting the size or other criteria of § 77.216(a) of this title, foundation investigation, as well as any necessary laboratory testing of foundation material, shall be performed to determine the design requirements for foundation stability.

* * * * *

(8) *Spillways.* An impoundment shall include either a combination of principal and emergency spillways or a single spillway configured as specified in paragraph (a)(8)(i) of this section, designed and constructed to safely pass the applicable design precipitation event specified in paragraph (a)(8)(ii) of this section, except as set forth in paragraph (c)(2) of this section.

(i) The regulatory authority may approve a single open-channel spillway that is:

(A) Of nonerodible construction and designed to carry sustained flows; or

(B) Earth- or grass-lined and designed to carry short-term, infrequent flows at non-erosive velocities where sustained flows are not expected.

(ii) Except as specified in paragraph (c)(2) of this section, the required design precipitation event for an impoundment meeting the spillway requirements of paragraph (a)(8) of this section is:

(A) For an impoundment meeting the size or other criteria of § 77.216(a) of this title, a 100-year 6-hour event, or greater event as specified by the regulatory authority.

(B) For an impoundment not meeting the size or other criteria of § 77.216(a) of this title, a 25-year 6-hour event, or greater event as specified by the regulatory authority.

* * * * *

(10) *Inspections.* Except as provided in paragraph (a)(10)(iv) of this section, a qualified registered professional engineer or other qualified professional specialist under the direction of a professional engineer, shall inspect each impoundment as provided in paragraph (a)(10)(i) of this section. The professional engineer or specialist shall be experienced in the construction of impoundments.

* * * * *

(ii) The qualified registered professional engineer, or qualified registered professional land surveyor as specified in paragraph (a)(10)(iv) of this section, shall promptly after each inspection required in paragraph (a)(10)(i) of this section provide to the regulatory authority a certified report that the impoundment has been constructed and/or maintained as designed and in accordance with the approved plan and this chapter. The report shall include discussion of any appearance of instability, structural weakness or other hazardous condition, depth and elevation of any impounded waters, existing storage capacity, any

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existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability.

* * * * *

(iv) In any State which authorizes land surveyors to prepare and certify plans in accordance with § 784.16(a) of this chapter, a qualified registered professional land surveyor may inspect any temporary or permanent impoundment that does not meet the size or other criteria of § 77.216(a) of this title and certify and submit the report required by paragraph (a)(10)(ii) of this section, except that all coal mine waste impounding structures covered by § 817.84 of this chapter shall be certified by a qualified registered professional engineer. The professional land surveyor shall be experienced in the construction of impoundments.

* * * * *

(c) * * *

(2) In lieu of meeting the requirements in paragraph (a)(8)(i) of this section, the regulatory authority may approve an impoundment that relies primarily on storage to control the runoff from the design precipitation event when it is demonstrated by the operator and certified by a qualified registered professional engineer or qualified registered professional land surveyor in accordance with § 784.16(a) of this chapter that the impoundment will safely control the design precipitation event, the water from which shall be safely removed in accordance with current, prudent, engineering practices. Such an impoundment shall be located where failure would not be expected to cause loss of life or serious property damage, except where:

(i) In the case of an impoundment meeting the size or other criteria of § 77.216(a) of this title, it is designed to control the precipitation of the probable maximum precipitation of a 6-hour event, or greater event as specified by the regulatory authority; or

(ii) In the case of an impoundment not meeting the size or other criteria of § 77.216(a) of this title, it is designed to control the precipitation of a 100-year 6-hour event, or greater event as specified by the regulatory authority.

* * * * *

12. Section 817.84 is amended by removing the suspension of paragraph (b)(2), revising paragraph (b)(2), and adding paragraph (f) to read as follows:

§ 817.84 Coal mine waste: impounding structures.

* * * * *

(b) * * *

(2) Each impounding structure constructed of coal mine waste or intended to impound coal mine waste that meets the criteria of § 77.216(a) of this title shall have sufficient spillway capacity to safely pass, adequate storage capacity to safely contain, or a combination of storage capacity and spillway capacity to safely control, the probable maximum precipitation of a 6-hour precipitation event, or greater event as specified by the regulatory authority.

* * * * *

(f) For an impounding structure constructed of or impounding coal mine waste, at least 90 percent of the water stored during the design precipitation event shall be removed within the 10-day period following the design precipitation event.

[FR Doc. 88-24536 Filed 10-26-88; 8:45 am]
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federal register

Thursday
October 27, 1988

Part IV

Department of Housing and Urban Development

Office of the Secretary

24 CFR Parts 18, 905 and 990
Litigation Reporting and Related Requirements for Certain Recipients of HUD Assistance; Proposed Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 18, 905, and 990

[Docket No. R-88-1298; FR-2134]

Litigation Reporting and Related Requirements for Certain Recipients of HUD Assistance

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would specify litigation reporting and related requirements for certain recipients of HUD assistance. It sets forth the circumstances in which these recipients would have have to report their litigation activity to HUD, and prohibits recipients from using HUD assistance and related funds to pay the costs of litigation against the United States. The rule would also specify the conditions under which Public Housing Agencies and Indian Housing Authorities must obtain advance HUD approval to initiate or defend a claim in litigation and to dispose of certain liability claims that do not involve litigation. The rule would give HUD assistance recipients as much autonomy as possible in planning and executing their litigation activities, consistent with HUD's responsibility to ensure the integrity and safety of the Federal financial interest involved.

DATE: *Comment due date:* December 27, 1988.

ADDRESS: Interested persons may submit comments to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for inspection by interested persons in the Office of the Rules Docket Clerk at the address listed above.

FOR FURTHER INFORMATION CONTACT: For the Section 202 program of Housing for the Elderly or Handicapped, and the Section 8 Housing Certificate, Housing Voucher, and Moderate Rehabilitation programs: Lawrence Goldberger, Director, Office of Elderly and Assisted Housing, room 6130, (202) 755–5720; for other programs administered by the Assistant Secretary for Housing-Federal Housing Commissioner: James J. Tahash, Director, Planning and Procedures Division, Room 6182, (202) 426–3944; for programs administered by the Assistant Secretary for Public and Indian Housing: Thomas Sherman, Director, Office of Public Housing, Room 4204 (202) 755–5380; for the Research and Development program: Paul Gatons, Director, Housing and Community Studies, Room 8232, (202) 755–6900. The mailing address for each of the above individuals is: Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. The telephone numbers listed are not toll-free.

SUPPLEMENTARY INFORMATION: The information collection requirements contained in §§ 18.10, 905.510, 18.20, 905.520, 18.25, and 905.525 of this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the Federal Register. Public reporting burden for the collection of information requirements contained in this rule are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading.

Findings and Certifications

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden (including the identifying docket number and title), to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., Room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for HUD.

Overview of Rule

This proposed rule would specify litigation reporting and related requirements for a number of recipients of HUD assistance. The rule consists of four discrete elements:

a. *Litigation reporting.* Recipients of HUD assistance would have to report to HUD on actual or threatened litigation involving an assisted activity in two circumstances: where HUD requests a report and, whether or not HUD has made a request, where it appears likely that the litigation (or threatened litigation, if commenced) will necessitate the use of additional HUD assistance or program income in connection with the litigation or the activity involved. Reporting would be required while the grant, cooperative, or other agreement with respect to the assistance involved remains in effect. (24 CFR 18.10 and 905.510)

b. *Litigation against the United States.* State and local governments, and Indian tribal, recipients of HUD assistance would be subject to the cost principle in OMB-Circular A–87 *Rev., Cost Principles for State and local Governments,* prohibiting the use of Federal funds to pay legal expenses for the litigation of claims against the United States. Other recipients of HUD assistance would be prohibited from using HUD assistance or program income to pay the litigation costs involved in pursuing a claim against the United States or defending a claim pursued by the United States. (24 CFR 18.15 and 905.515)

c. *Approval of PHA and IHA affirmative and defensive litigation.* Public Housing Agencies (PHAs) and Indian Housing Authorities (IHAs) would have to obtain advance HUD approval to initiate or defend a claim in litigation involving an assisted activity, if it appeared likely that the litigation would necessitate the use of additional HUD assistance or program income in connection with the litigation itself, or the activity involved in the litigation. For purposes of the rule, "litigation" would include settlements and appeals. If this HUD approval is required, approval would also have to be obtained for any contract for litigation services with respect to the litigation, if the PHA or IHA selects the legal counsel to be retained. (24 CFR 18.20 and 905.520)

d. *Approval of the disposition of liability claims not involving litigation.* PHAs and IHAs would have to obtain advance HUD approval of the proposed disposition of liability claims that do not involve litigation when the claim is filed, if the PHA or IHA does not have liability insurance; or when a claim, considered alone or together with all other outstanding claims against the PHA or IHA, exceeds its liability insurance coverage or the amount available to pay claims from any self-insurance reserve fund that it maintains. (24 CFR 18.25 and 905.525)

The rule is designed to accord HUD assistance recipients as much freedom as possible to plan and carry out their litigation and related activities. HUD regulation would be limited to situations in which HUD has a clear financial interest in the litigation. Where HUD proposes to regulate, it would impose obligations on assistance recipients only to the extent necessary to accomplish the Federal purpose involved. A provision-by-provision analysis of the rule's significant provisions follows.

Definitions

1. *Types of assistance subject to the rule.* The rule would cover two types of assistance: "HUD assistance" and "program income." "HUD assistance" would be defined to cover:

(a) Assistance for the development, operation, or modernization of public and Indian housing under title I or II of the United States Housing Act of 1937, as appropriate.

(b) Annual contributions for assistance under section 8 of the United States Housing Act of 1937.

(c) Loans for housing for the elderly or handicapped under section 202 of the Housing Act of 1959.

(d) Rent supplements under section 101 of the Housing and Urban Development Act of 1965.

(e) Assistance under the Flexible Subsidy program under section 201 of the Housing and Community Development Amendments of 1978.

(f) Assistance for research and development under section 501 of the Housing and Urban Development Act of 1970.

Coverage of the Section 8 and public and Indian housing programs woud be particularly important, because they represent the Department's principal ones, both in terms of frequency of litigation affecting them, and the potential for increased financial exposure to the Department as a result of the outcome of the litigation. Based on our experience with this rule, the Department may propose to add other programs by subsequent rule making.

The rule would define "program income" to mean income:

(1) That a recipient of HUD assistance receives from any source; and

(2) That must be used for specific purposes relating to the assistance.

Examples of items that would not be considered "program income" include (but are not limited to):

(1) For the Public Housing program, donations, bond proceeds, State and local government payments, and income from non-HUD programs.

(2) Housing Assistance Payments made to housing owners under the Section 8 program.

(3) Syndication proceeds in connection with the Section 8 program.

The Department believes that the "program income" concept provides a more appropriate standard for delineating recipient litigation responsibilities than simple receipt of HUD assistance. The "program income" test acknowledges the fact that direct HUD assistance can generate income that must be used for specific purposes relating to the assistance, and is, therefore, a form of "Federal assistance" in which HUD has a clear financial interest.

The definition of "program income" in 24 CFR 85.25 (the Administrative Requirements for Grants and Cooperative Agreements, published on March 11, 1988, at 53 FR 8034) would not apply to this rule. The majority of the programs that would be subject to this rule (including the Section 8 program) are not covered by Part 85. Thus, the Department believes that it is appropriate to adopt a definition of "program income" that is sensitive to the particular requirements of this rule.

The Department specifically requests comment on the propriety of treating the items listed above as either included in the definition of "program income" or excluded from it.

The term "litigation" would specifically exclude criminal proceedings. The Department wishes to note that it has been encouraging PHAs to seek local prosecution of tenants who commit fraud in HUD-assisted programs administered by PHAs. This type of activity clearly falls within the exclusion from the rule's coverage.

2. *Types of recipients of HUD assistance subject to the rule.* The following persons or entities would be subject to the rule's requirements:

(a) Public Housing Agencies (PHAs) and Indian Housing Authorities (IHAs) in the Public and Indian Housing programs.

(b) Project owners and (as appropriate PHAs, and PHA contract administrators, in the project-based Section 8 programs.

(c) PHAs in the Housing Certificate and Voucher programs, and the Moderate Rehabilitation program.

(d) Owners of proejcts in the Section 202, the Rent Supplement, or the Flexible Subsidy program.

(e) Persons or entities receiving assistance under the Research and Development program.

3. *Time period during which litigation reporting responsibilities would apply.* The rule would specify the time period during which its litigation reporting responsibilities would apply by use of the term "period of HUD assistance". The term would be defined to mean the time period during which the relevant HUD assistance agreement (*e.g.*, the annual contributions contract for the public and Indian housing and Section 8 programs) remains in effect.

The time period delineated by this definition would be inclusive. Both before and after the effectivess of the agreement, the recipient would have no reporting responsibility, even if the litigation itself continues after the expiration of the agreement. During the period, however, reporting would be required, irrespective of when the litigation or threatened litigation arose.

4. *Administrative proceedings.* The proposed rule would define the term "litigation" to include "administrative proceedings (including binding arbitration)". The Department solicits comment on whether some forms of administrative proceedings should be excluded from the rule's coverage. Among others, the Department specifically seeks comment on whether personnel matters, bid protests, and labor-management disputes should be subject to the final rule.

Parts Amended

The proposed rule would make two amendments to title 24 of the Code of Federal Regulations to set forth the litigation reporting and related responsibilities of assistance recipients. It would amend existing 24 CFR Part 905 (Indian Housing) to apply these requirements to Indian housing under title II of the United States Housing Act of 1937. A new 24 CFR Part 18 would contain the rule's requirements for the other covered programs.

This separation is necessitated by the independent charter for Indian housing established by the Indian Housing Act of 1988 (Pub. L. 100–358, approved June 29, 1988) and the proposed rule that HUD published on June 29, 1988 (53 FR 24554) to consolidate all regulations from 24 CFR Chapter IX in a revamped Part 905. When this rule is made final, it will be inserted at the appropriate place in the reconstituted Part 905.

Note: For purposes of this preamble, all references to Part 18 apply to Part 905, with specific designations such as § 18.5 translating to § 905.505, § 18.10 to § 905.510, § 18.15 to § 905.515, etc.

Litigation Reporting Requirements

Proposed § 18.10 specifies two circumstances in which recipients of HUD assistance must report to HUD on their litigation activity. Paragraph (a) would require reporting only where HUD requests it; paragraph (b) would require reporting in all cases that meet its criteria. Under paragraph (a), HUD assistance recipients would have to report during the period of HUD assistance on any actual or threatened litigation involving them, if the matter involves a program, project, or activity

related with HUD assistance or program income.

Proposed § 18.10(b) would require reporting where the litigation or threatened litigation meets paragraph (a)'s criteria *and* it appears likely that the litigation or threatened litigation (if commenced) will necessitate the use of additional HUD assistance or program income, either in connection with the litigation (*e.g.*, for satisfying a judgment or paying a settlement or the costs of litigation) or in connection with the program, project, or activity involved. Reporting would be required at the earliest point that this standard is met while the litigation is pending or threatened.

If an assistance recipient is required to report to HUD under either of these provisions, § 18.10(c) would permit HUD to request such additional reports during the period of HUD assistance as the Department deems appropriate. Under § 18.10(d), HUD would determine the form, content, frequency, and timing of reports under proposed § 18.10.

Proposed § 18.10 reflects the Department's overall concern (described above) that litigation responsibilities be imposed only where they are strictly necessary to furthering a direct Federal financial interest, and only to the minimum degree necessary to accomplish that end. Proposed § 18.10(a) would require reporting *only* where HUD requests it and the litigation involves a program using HUD assistance or program income. Use of the HUD assistance/program income test would ensure that HUD has a discernible financial interest in the conduct and outcome of the litigation. Reporting upon request would permit HUD to choose only those cases that present significant issues from the Department's standpoint.

For the vast majority of cases, the Department does not expect to request assistance recipients to make reports. Assistance recipients would be wholly free to handle their own litigation as they deem best. Where a request is made, the only burden on recipients would be to report to HUD. The Department intends to limit reporting requests to the minimum content and time necessary to discharge its overall responsibility of safeguarding the Federal financial interest in the matter. Indeed, the Department believes that much of the necessary reporting may be done through the submission of existing documents and other written material.

Proposed § 18.10(b) differs from § 18.10(a) in that reporting would be mandatory whenever it appears likely that additional Federal assistance or program income will be needed for the assisted activity involved or to satisfy a judgment, pay a settlement or litigation costs, or otherwise in connection with the litigation. The Department believes that mandatory reporting is justified because of the immediacy of the Federal financial exposure: The likelihood for the need for more funding. As with proposed § 18.10(a), the only burden on assistance recipients would involve reporting, and HUD intends to limit the content and time of the reporting to the minimum, consistent with protection of the Federal interest.

The applicability of §§ 18.10(b) and 18.20(a) (approval of affirmative and defensive litigation) would depend on the need for "additional" HUD assistance or program income. The Department is considering defining this concept in the final rule, and seeks comment on how best to accomplish this.

One issue that the Department considered in developing the proposed rule was whether to impose reporting requirements where assistance recipients' litigation involved the construction or application of Federal or State constitutions, statutes, or regulations; or a HUD assistance grant or cooperative agreement. The concern was that these types of litigation could affect HUD's policies, even in the absence of a direct financial interest, and should be brought to HUD's attention through recipient reporting. The Department believes, however, that it would generally learn about important cases affecting HUD policy anyway, and that the burden of universal reporting on this category of litigation is not necessary to further HUD's interests. The proposed rule does not contain this provision.

Litigation Against the United States

Proposed § 18.15 prohibits HUD assistance recipients from using HUD assistance and related amounts to pay the recipient's costs of pursuing a claim against the United States or defending a claim pursued by the United States. It should be noted that this prohibition would apply not only where the original litigation is instituted by the Federal government or the recipient, but also to situations during litigation in which the recipient is pursuing or defending a claim against the United States.

For State and local government, and Indian tribal, recipients of HUD assistance, the rule would incorporate the disallowance of legal fees feature that has been adopted on a government-wide basis in 24 CFR 85.22. That "common" rule cross-references the cost principles specified in OMB Circular A-87. Section B.16. of Attachment B of the Circular provides, "Legal expenses for the prosecution of claims against the Federal government are unallowable." The Department understands that a "common" rule designed to codify Circular A-87 is under development within the Administration. When the "common" rule is issued, today's rule would be amended accordingly.

Circular A-87 applies to Federal grants and cooperative agreements and subawards to State and local governments, and federally recognized Indian tribes. Thus, for purposes of this proposed rule, 24 CFR 85.22 covers the public housing program under title I of the United States Housing Act of 1937, the Indian housing program under title II of the 1937 Act for federally recognized Indian tribes, and the Section 8 programs that are administered by PHAs (Housing Certificates, Housing Vouchers, Moderate Rehabilitation, and other Section 8 programs in which a PHA is the project owner or contract administrator). It does not, however, cover the other programs that would be subject to this rule.

The Department believes that it is appropriate to extend the disallowance of legal fees provision to the other recipients of HUD assistance covered by the proposed rule. Initially, such an extension would not introduce an unknown cost principle to Federal benefit law. As noted above, the "common rule" applies on a government-wide basis—to over 20 Federal agencies and a large number of programs. In the case of this proposed rule, applying the disallowance of legal fees doctrine to the public and Indian housing and PHA-administered Section 8 activities accounts for a clear majority of the funds to which this rule would apply. Extension to non-federally recognized tribes, Section 8 non-PHA owners, and several smaller programs would not constitute a significant shift in policy.

In addition, the Department believes that there is compelling justification for ensuring that the disallowance of legal fees principle applies to all HUD assistance recipients that would be covered by the rule. We believe that there are two justifications for this position.

First, since HUD assistance originates in the Federal Treasury, and program income indirectly emanates from the Treasury, permitting these funds to be used in litigation against the United States is tantamount to making United States taxpayers foot the bill for litigation against themselves. The Department believes that this is not only wasteful of scarce Federal resources, but also unacceptable from the standpoint of sound public policy.

Second, we believe that HUD assistance and program income should be preserved for the benefit of program beneficiaries. Unsuccessful litigation against the United States can entail the outlay of significant sums that will either be lost to their intended beneficiaries or made up from additional HUD funds. These results impair the Department's ability to protect its financial interests and to accomplish its statutory responsibility to ensure that its programs are administered to provide the greatest benefit with the funds available.

The Department recognizes that the rule would not prohibit recipients of HUD assistance from using HUD assistance or program income for litigation against non-Federal parties, and that such litigation, if unsuccessful, could have the same deleterious effects as litigation against the United States. The Department believes, however, that recipient litigation against non-Federal parties (such as actions against vendors of goods and services) is far more frequent and far more directly related to the recipient's ability to carry out its statutory responsibilities to its program beneficiaries than litigation against the United States. We believe that this, along with the fact that it is inappropriate for Federal taxpayers to pay the costs of litigation against themselves, amply justify extending the disallowance of legal fees precept to all HUD assistance recipients that would fall within the ambit of this rule.

If assistance recipients that are not subject to § 85.22 wish to litigate against the Department, we believe that they should do so with funds that are not derived from HUD. The Department notes in this regard that one source of funds for some recipients' litigation costs is the Equal Access to Justice Act (EAJA), 28 U.S.C. 2412(d). Under that Act, a recipient with no more than 500 employees and not more than $7 million in assets may obtain reimbursement from the government for its costs of litigation, if (1) it prevailed in the case, (2) the Federal government action or inaction and its litigation position were not substantially justified, and (3) there were no special circumstances that would make an award of fees against the United States unjust.

Section 18.15(c) would except Housing Assistance Payments to housing owners under the Section 8 program from § 18.15(a)'s prohibition. These amounts are "earned" rental payments, and constitute disposable income for the owner, not HUD assistance or program income that must be used for a program purpose.

PHA and IHA Litigation

Proposed § 18.20(a) would require PHAs and IHAs to obtain advance HUD approval during the period of HUD assistance to initiate or defend a claim in litigation that involves an assisted activity, at the earliest stage of the proceeding in which it appears likely that the litigation will necessitate the use of additional HUD assistance or program income in connection with the litigation itself, or the activity involved in the litigation. Under proposed § 18.20(b), HUD would give its approval, unless HUD determined that the PHA/IHA position would not be cost-beneficial.

Proposed § 18.20(c) would require that if approval of affirmative or defensive litigation is required, HUD must also approve any contract for litigation services with respect to the litigation, if the PHA or IHA selects the legal counsel to be retained. The Department understands that some PHA insurance policies provide that the insurer will select the attorney to handle the insurance claim, and such arrangements would not be subject to the rule.

Where the litigation services are covered by the rule, approval would be granted under proposed § 18.20(d), unless HUD determined that (1) any attorney involved would have a conflict of interest, or would otherwise be subject to disqualification under applicable requirements for attorney professional responsibility, or (2) the proposed fees and costs are unreasonable, based on the "going rate" in the area for attorneys performing similar work.

Section 18.20(e) would permit HUD to withdraw any previously provided approval in the litigation, or for a legal services contract, at any point in the proceeding that HUD determines that the respective standards for approval are no longer met.

As would be the case under proposed § 18.10(b), the trigger for HUD involvement under proposed § 18.20(a) would be the likelihood of increased Federal financial exposure. This would give the Department clear financial and programmatic interest in the conduct and outcome of the litigation, and would provide the rationale for HUD involvement with the recipient.

Unlike the recipient reporting requirements proposed in § 18.10, this provision would be limited to litigation involving PHAs and IHAs, and would require HUD approval of both affirmative and defensive litigation, including settlements and appeals. The Department believes that it is appropriate to limit the scope of this section to PHAs and IHAs. These entities are far more likely than other HUD assistance recipients to be party to litigation involving significant amounts that HUD may be asked to provide if the litigation is lost or the matter is settled. This potential financial exposure also would justify HUD approval of, rather than simply reporting on, the PHA's or IHA's conduct of the litigation. All claims in litigation would be subject to approval, irrespective of whether the original litigation is against the IHA or PHA or its position arises in the course of the litigation.

As noted above, approval would be given, unless HUD determined that the position of the PHA or IHA is not cost-beneficial. In making this determination, the Department would take into account factors such as the amount in controversy; the likely amount of an adverse judgment, including the likely amount of any HUD exposure; the likely litigation costs; the likelihood of the PHA/IHA position prevailing, both in the trial court and on appeal; and the possibility of reaching a settlement, including the likely settlement amount and the savings in litigation expenses if the matter is settled.

HUD approval of litigation services would only be required where the PHA's/IHA's proposed defense or settlement of a claim in litigation has the requisite potential financial effect. In order to safeguard this Federal interest, it is essential that the attorney's fees and costs to be paid by the PHA/IHA not be excessive and that the litigation not be marred by a conflict of interest or the disqualification of counsel for the PHA or IHA. It should be noted that HUD approval would involve inquiries only into these factors: the PHA or IHA would retain responsibility for all other aspects of its dealings with legal counsel, including determinations of counsel's competence and suitability for the task.

IHAs currently have special rules for litigation services contracts in their regulations. Section 905.310 requires IHAs to obtain approval of litigation services contracts in both defensive and affirmative litigation. As noted earlier, this provision is the subject of another pending rulemaking that would consolidate all the regulatory provisions dealing with Indian housing in 24 CFR Part 905. One of the purposes of that rulemaking is to evaluate current requirements for prior approval of various activities, with an eye toward decreasing the number of actions that require HUD approval and permitting

well-managed IHAs to dispense with some of the remaining approvals. The decision about what HUD approval should be required for IHAs' litigation services contracts will be made in the context of that rulemaking, where the experience with IHAs' litigation activities can be better judged.

Approval of Disposition of Liability Claims

Proposed § 18.25(a) requires each PHA and IHA to obtain advance HUD approval of its proposed disposition of a liability claim when:

—The claim is filed, if the PHA or IHA does not have liability insurance coverage or is self-insured; or

—A claim, by itself or when added to all other outstanding claims against the PHA or IHA, exceeds the PHA's or IHA's liability insurance coverage or the amount available in any self-insurance reserve fund that is maintains. Under proposed § 18.25(b), HUD would approve disposition of the claim, unless the disposition were not cost-beneficial.

This provision recognizes that liability insurance claims can have the same serious, adverse effect on the Federal financial interest as litigation. The basic design of this section is very similar to proposed § 18.20: The trigger for HUD involvement is the likelihood of direct Federal expense, the HUD requirement is one of approval, and the provision is limited to PHAs and IHAs. As with proposed § 18.20, these elements reflect the potential scope of the Federal liability from insurance claims filed against PHAs and IHAs.

HUD approval to dispose of an insurance claim would be given, unless the PHA's or IHA's proposed disposition is not found to be cost beneficial. In making this determination, HUD would consider factors such as the amount of the liability claim, the likely settlement, the extent of the likely HUD financial exposure, and whether it is preferable to litigate the claim, rather than to pay it.

Sanctions

If a HUD assistance recipient fails to comply with any of the requirements of the proposed rule, the Department would take whatever action may be appropriate under the assistance instrument: e.g., the annual contributions contract or the regulatory agreement. In the case of PHAs and IHAs, however, the proposed rule would give the Department an additional enforcement tool. It would permit the Department to offset future operating subsidy amounts under section 9 of the United States Housing Act of 1937 (24 CFR Part 990), if the PHA or IHA has violated § 18.15 (or § 905.515). It would also permit HUD to offset future operating subsidy to the extent HUD determines that the failure of the PHA or IHA to comply with the requirements of § 18.20 or § 18.25 (or the analogous provisions of Part 905, in the case of Indian housing) worked to increase the demand for HUD assistance. (The Department is considering adding specific procedures for making the determinations of the impact of a particular violation of § 18.20 or § 18.25.) Generally, the amount in question would be deducted in the PHA's or IHA's next fiscal year, but the Department would be authorized to provide a longer payback period, if recoupment of the amount in the next fiscal year would impose a hardship on the PHA or IHA. This additional enforcement mechanism would provide both effective deterrence and a sure, swift way of repaying amounts improperly spent by PHAs and IHAs under the rule.

The Department is considering including in the final rule authority for the Department to reject an application for additional HUD assistance to pay a judgment or the costs of litigation of any recipient of HUD assistance that fails to comply with the requirements of § 18.10, 18.15, 18.20, or 18.25. Public comment is requested on whether this authority should be added to the rule.

Implementation

The changes proposed by this rule would apply to litigation (as provided by §§ 18.10 through 18.20), and to liability claims not involving litigation (as provided by § 18.25), that are pending on, or arise on or after [insert effective date of rule].

Findings and Certifications

Environment

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR Part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

Major Rule

This rule would not constitute a "major rule", as that term is defined in section 1(b) of Executive Order 12291 issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it would not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. The rule would impose litigation requirements on certain recipients of HUD assistance. All covered recipients would be subject to reporting to HUD on their litigation activity. PHAs and IHAs would also be subject to obtaining HUD approval of their litigation, and their proposed disposition of liability claims.

The rule would apply to all HUD recipients, large and small; the additional rules for PHAs and IHAs would apply to all such entities, large and small. As described more fully in earlier parts of this preamble, any burden on entities subject to the rule has been kept to the minimum necessary to safeguard the Federal interest involved, and in any event, would not have a significant economic impact on any HUD assistance recipients, including small entities.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule would, if implemented, have federalism implications and, thus, are subject to review under the Order. Specifically, the rule's litigation reporting and related requirements would have substantial, direct effects on (1) PHAs administering the Section 8 and public housing programs and (2) the relationship between the Federal government and these entities. This is so because this rule would restrict PHAs' ability to structure their own litigation and related activities, by requiring them to report to HUD on certain types of litigation and to obtain approval of certain affirmative and defensive claims in litigation and certain liability claims that do not involve litigation; and by prohibiting them from using federally related funds to sue, or defend against suit by, the United States.

In developing the litigation reporting and related features of this rule, the Department has attempted to give PHAs as much freedom as possible to plan and execute their litigation activities, consistent with the Department's responsibility to ensure that it receives timely information on litigation and related matters that may result in the need for additional Federal assistance. Thus, HUD regulation is limited to situations in which the Department has a clear and direct financial stake in the outcome of the litigation. When HUD does regulate, the conduct of PHA litigation and related functions is affected only to the extent necessary to accomplish the Federal purpose involved.

The prohibition on litigation against the United States tracks existing regulatory authority, and is not a new policy subject to review under the Order.

The Department believes that although the proposed rule has significant effects on PHAs, it is designed to achieve a legitimate Federal purpose and is carefully crafted to limit its effects to those necessary to achieve that end. In these circumstances, the Department believes that the Order imposes no bar to implementation of the rule. For these reasons as well, the General Counsel has determined that the rule's federalism implications are not sufficiently significant to warrant preparation of a Federalism Assessment under section 6(b) of the Order.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, *the Family*, has determined that this rule does not have potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The rule involves litigation reporting and related requirements; any effect on the family would likely be indirect and insignificant.

Semiannual Agenda of Regulations

This rule is listed in the Department's semiannual agenda of regulations published on April 25, 1988 (53 FR 13854), under Executive Order 12291 and the Regulatory Flexibility Act at 49 FR 15960.

Information Collection Requirements

The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Sections 18.10, 905.510, 1820, 905.520, 18.25 and 905.525 of this proposed rule have been determined by the Department to contain collection of information requirements. Information on these requirements is provided as follows:

TABULATION OF ANNUAL REPORTING BURDEN PROPOSED RULE—LITIGATION REPORTING AND RELATED REQUIREMENTS FOR CERTAIN RECIPIENTS OF HUD ASSISTANCE

Description of information collection	Section of 24 CFR Affected	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
Litigation Reporting Requirements (Reporting at HUD's request)	18.10(a), 905.510(a)	810	2.0	[illegible]	1.5	1230
Required Reporting	[illegible]	760	2.0	1520	1.4	[illegible]
Additional Reports	[illegible]	460	1.3	624	1.5	936
Approval of Affirmative and Defensive Litigation (including Settlements and Appeals)	18.20(a), 905.520(a)	407	2.5	1017	4.4	4474
Approval of Defensive Litigation Services	18.20(c), 905.520(c)	420	1.5	630	2.5	1575
Approval of Disposition of Liability Claims	18.25(a), 905.25	260	2.0	[illegible]	8.0	1040
Total Annual Burden						11,260

List of Subjects

24 CFR Part 18

Litigation reporting, Approval of defensive litigation and claims not involving litigation, Use of federally related funds to prosecute claims against the United States.

24 CFR Part 905

Grant programs: housing and community development, Grant programs: Indians, Indians, Loan programs: Indians, Low- and moderate-income housing, Public housing, Homeownership.

24 CFR Part 990

Grant programs: housing and community development, Low- and moderate-income housing, Public housing.

Accordingly, 24 CFR would be revised to read as follows:

1. A new Part 18 would be added to title 24, Code of Federal Regulations, to read as follows:

PART 18—LITIGATION REQUIREMENTS FOR CERTAIN RECIPIENTS OF HUD ASSISTANCE

Subpart A—General

Sec.
18.1 Summary and purpose.
18.3 Applicability
18.5 Definitions.

Subpart B—Requirements for Recipients of HUD Assistance, Including PHAs

18.10 Litigation reporting requirements.
18.15 Litigation against the United States.

Subpart C—Special Requirements for PHAs

18.20 Defensive litigation and settlements.
18.25 Approval of disposition of liability claims not involving litigation.

Authority: For public housing programs under title I of the United States Housing Act of 1937, secs. 3, 4, 5, 6, 8, 9, 14, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437b, 1437c, 1437d, 1437f, 1437g, 1437*l*); for the Section 202 program of Housing for the Elderly or Handicapped, sec. 202, Housing Act of 1959 (12 U.S.C. 1701q); for the Rent Supplement program, sec. 101, Housing and Urban Development Act of 1965 (12 U.S.C. 1701s); for the Flexible Subsidy program, sec. 201, Housing and Community Development Amendments of 1978 (12 U.S.C. 1715z–1a); for the Research and Development program, sec. 501, Housing and Urban Development Act of 1970 (12 U.S.C. 1701z–1); sec. 7(d), Department of Housing and Urban Development Act 42 U.S.C. 3535(d)).

Subpart A—General

§ 18.1 Summary and purpose.

(a) *Summary.* This part specifies the litigation reporting and related requirements that apply to recipients of HUD assistance under certain programs administered by the Department of Housing and Urban Development. It sets forth the circumstances in which these recipients must report their litigation activity to HUD, and prohibits them

from using HUD assistance and related funds to pay the costs of litigation against the United States. The part also specifies the conditions under which Public Housing Agencies (PHAs) must obtain advance HUD approval to initiate or defend a claim in litigation and to dispose of certain liability claims that do not involve litigation.

(b) *Purpose.* (1) The purpose of this part is to ensure that recipients of HUD assistance provide HUD with timely and meaningful information on litigation and related matters that may result in the need for additional HUD assistance, while at the same time according these recipients as much autonomy as possible to plan and execute their litigation activities. HUD regulation under this part is limited to situations in which HUD has a clear and direct financial stake in the conduct and outcome of the litigation. When HUD does regulate, the conduct of recipients' litigation is affected only to the extent necessary to accomplish the Federal purpose involved.

(2) This part is also designed to prohibit recipients of HUD assistance from using this assistance and related funds to litigate against the United States. For PHAs that own or operate public housing under title I of the United States Housing Act of 1937 or that administer assistance under section 8 of the Act, this prohibition tracks existing regulatory authority. (See 24 CFR 85.22(b), incorporating section B. 18. of Attachment B to OMB Circular A-87, published at 48 FR 9548, 9552 (1981), prohibiting State and local governments, and agencies and instrumentalities thereof, from using the proceeds of Federal grants, contracts, and other agreements to pay for the prosecution of claims against the Federal government.) Extending this prohibition to the other recipients of HUD assistance covered by this part not only prevents the impropriety of permitting federally related funds to be used in litigation against the Federal government, but it also ensures that this assistance is used as it was originally intended: To benefit program beneficiaries.

§ 18.5 Applicability.

(a) *In General.* This part applies to litigation involving recipients of HUD assistance (as provided by §§ 18.10 through 18.20), and to liability claims against PHAs that do not involve litigation (as provided by § 18.25), that are pending on, or arise on or after, [insert effective date of this rule].

(b) *Indian Housing Authorities.* 24 CFR Part 905, Subpart E, contains the litigation reporting and related requirements that apply to Indian Housing Authorities that own or operate Indian housing under title II of the United States Housing Act of 1937.

§ 18.6 Definitions.

Mail means the United States Department of Housing and Urban Development.

HUD assistance means:

(a) Grants, loans, or annual contributions made available for the development, operation, or modernization of public housing under title I of the United States Housing Act of 1937 (sections 4, 5, 6, 9, and 14 of the Act (42 U.S.C. 1437b, 1437c, 1437d, 1437g, and 1437l; 24 CFR Parts 941, 968, and 990)];

(b) Annual contributions made available for assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f; 24 CFR Parts 880 through 884 and 887.

(c) Loans made available for housing for the elderly or handicapped under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q; 24 CFR Part 885).

(d) Rent supplements made available under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s; 24 CFR part 215).

(e) Grants or loans made available under the Flexible Subsidy program under section 201 of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1715z-1a; 24 CFR Part 219).

(f) Grants or cooperative agreements made available for research and development under section 501 of the Housing and Urban Development Act of 1970 (12 U.S.C. 1701z-1).

Indian Housing Authority (IHA) means any entity that:

(a) Is authorized to engage or assist in the development or operation of lower income housing for Indians; and

(b) Is established:

(1) By exercise of the power of self-government of an Indian tribe independent of State law; or

(2) By operation of State law providing specifically for housing authorities for Indians, including regional housing authorities in the State of Alaska.

Litigation means any civil action at law or any proceeding in equity, including any appeal or settlement in such an action or proceeding. The term includes administrative proceedings (such as binding arbitrations), but does not include criminal proceedings or routine eviction matters.

Period of HUD assistance means the time period during which the following agreements remain in effect:

(a) For the public housing and Section 8 programs, the annual contributions contract under title I of the United States Housing Act of 1937.

(b) For the Rent Supplement program, the assistance contract.

(c) For the Section 202 program of Housing for the Elderly or Handicapped and the Flexible Subsidy program, the loan agreement.

(d) For the Research and Development program, the grant agreement or cooperative agreement.

Program income (a) means income that:

(1) A recipient of HUD assistance receives;

(2) Is derived from any source; and

(3) Must be used for specific purposes relating to the assistance.

(b) Examples of program income include (but are not limited to):

(1) For the Section 8 program, administrative fees, operating reserves, and investment income.

(2) For the Public Housing program, rental income, investment income, and other income that is taken into account in determining operating subsidy amounts under section 9 of the United States Housing Act of 1937 (24 CFR Part 990), and operating reserves.

(c) Examples of items that are not considered program income include (but are not limited to):

(1) For the Public Housing program, donations, bond proceeds, State or local government payments, and income from non-HUD programs.

(2) Housing Assistance Payments made to housing owners under the Section 8 program.

(3) Syndication proceeds in connection with the Section 8 program.

(d) The definition of program income in 24 CFR 85.25 does not apply to the term used in this part.

Public Housing Agency (PHA) means any State, county, municipality, or other governmental entity or public body (or agency or instrumentality) that is authorized to engage in or assist in the development or operation of housing for lower income families.

Recipient of HUD assistance means the following persons or entities that receive HUD assistance:

(a) PHAs in the Public Housing program.

(b) Project owners and (as appropriate) PHAs, and PHA contract administrators, in the project-based Section 8 programs (24 CFR Parts 880, 881, 883, 884, and 886).

(c) PHAs and IHAs in the Housing Certificate and Moderate Rehabilitation progams (24 CFR Part 882), and in the Housing Voucher program (24 CFR Part 887).

(d) Persons or entities receiving assistance under the Research and Development program.

Threatened litigation means any communication, oral or written, announcing an intention to institute litigation.

Subpart B—Requirements for Recipients of HUD Assistance, Including PHAs

§ 18.10 Litigation reporting requirements.

(a) *Reporting at HUD's request.* At HUD's request, each recipient of HUD assistance must report to HUD during the period of HUD assistance on any litigation to which the recipient is a party or that is threatened against the recipient, if the litigation or threatened litigation involves a program, project, or activity assisted with HUD assistance or program income.

(b) *Required reporting.* (1) Whether or not HUD has requested a report under paragraph (a) of this section, each recipient of HUD assistance must report to HUD during the period of HUD assistance on any litigation to which the recipient is a party or that is threatened against the recipient, if:

(i) The litigation or threatened litigation involves a program, project, or activity assisted with HUD assistance or program income; and

(ii) It appears likely that the litigation or threatened litigation (if commenced) will necessitate the use of additional HUD assistance or program income in connection with:

(A) The litigation (*e.g.*, to satisfy a judgment, or to pay the costs of a settlement or the costs of litigation); or

(B) The program, project or activity involved in the litigation.

(2) The report required by paragraph (b)(2) of this section must be made at the earliest practicable point during the time that the litigation is pending or threatened in which the criterion specified in paragraph (b)(1)(ii) of this section is met.

(c) *Additional reports.* If a recipient of HUD assistance is required to report to HUD under paragraph (a) or (b) of this section, HUD may request such additional reports during the period of HUD assistance covering such time while the litigation is pending or threatened as HUD deems appropriate.

(d) *Manner of reports.* HUD will determine the form, content, frequency, and timing of reports required under paragraphs (a) and (b) of this section.

§ 18.15 Litigation against the United States.

(a) *Prohibition of litigation.* (1) State and local governments. The cost principle governing the use of Federal funds to pay litigation costs in connection with the litigation of claims against the Federal government that is contained in 24 CFR 85.22 (incorporating section B.18. of OMB Circular A-87) applies to:

(i) PHAs in the Public Housing program.

(ii) PHAs, and PHA contract administrators, in the project-based Section 8 programs (24 CFR Parts 880, 881, 883, 884, and 886).

(iii) PHAs and IHAs in the Housing Certificate and Moderate Rehabilitation programs (24 CFR Part 882), and in the Housing Voucher program (24 CFR Part 887).

(2) Other recipients of HUD assistance. A recipient of HUD assistance, other than a recipient referred to in paragraph (a)(1) of this section, may not use HUD assistance or program income to pay its litigation costs to pursue a claim against the United States or to defend a claim pursued by the United States.

(b) *Definitions.* For purposes of this section:

(1) "HUD assistance" does not include Housing Assistance Payments made to housing owners under the Section 8 program.

(2) The term "litigation costs" includes items such as attorneys' and witness' fees and court costs.

Subpart C—Special Requirements for PHAs

§ 18.20 Definitive litigation and settlements.

(a) *Approval of litigation.* (1) Each PHA must obtain advance HUD approval during the period of HUD assistance to initiate or defend a claim in litigation (including settlements and appeals), if:

(i) The litigation involves a program, project, or activity assisted with HUD assistance or program income; and

(ii) It appears likely that the litigation will necessitate the use of additional HUD assistance or program income in connection with:

(A) The litigation itself (*e.g.*, to satisfy a judgment or to pay the costs of litigation) or the settlement; or

(B) The program, project, or activity involved in the litigation.

(2) Recipients of HUD assistance must seek the approval required by paragraph (a)(1) of this section at any stage before or during the litigation in which the criterion specified in paragraph (a)(1)(ii) of this section is met.

(b) *Standards for approving litigation.* HUD will grant the approval referred to in paragraph (a) of this section, unless HUD determines, based on the facts and circumstances before it, that approval would not be cost-beneficial. In making this determination, HUD will take into account factors such as the amount in controversy in the litigation; the likely amount of a judgment for or against the PHA (as appropriate); the anticipated litigation costs, including contracts for litigation services; the likely amount of any HUD financial exposure; the likelihood of the PHA position prevailing in the trial court or on appeal; and the likelihood of reaching a settlement, including the likely settlement amount and any savings in litigation costs if the matter is settled.

(c) *Litigation services.* If HUD approval is required to initiate or defend a claim in litigation under paragraph (a) of this section, the PHA must request HUD approval of any contract for litigation services with respect to the litigation, if the PHA selects the legal counsel to be retained.

(d) *Standards for approving litigation services.* HUD will grant the approval referred to in paragraph (c) of this section, unless HUD determines that the legal counsel retained, or proposed to be retained, by the PHA would have a conflict of interest, or would otherwise be subject to disqualification under applicable requirements for attorney professional responsibility; or on the basis of the fees and costs paid to counsel for similar work in the same area, the proposed fees and costs are unreasonable.

(e) *Withdrawal of approval.* HUD may withdraw any approval provided under paragraph (a) or (c) of this section at any stage of the litigation at which HUD determines that the PHA's position in the litigation, or the litigation services contract, does not meet the standards for approval specified in paragraph (b) or (d) of this section, respectively.

§ 18.25 Approval of disposition of liability claims not involving litigation.

(a) *Approval of disposition of liability claims.* Each PHA must obtain HUD approval of its proposed disposition of a liability claim that does not involve litigation when:

(1) The claim is filed, if the PHA does not have liability insurance coverage or is self-insured; or

(2) A claim, by itself or taken together with all other outstanding claims against the PHA, exceeds its liability insurance coverage or the amount available to pay liability claims from any self-insurance reserve fund that the PHA maintains.

(b) *Standards for approval.* HUD will grant the approval referred to in paragraph (a) of this section, unless

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HUD determines, based on the facts and circumstances before it, that approval would not be cost-beneficial. In making this determination, HUD will take into account factors such as the amount of the liability insurance claim; the likely amount of a settlement; the extent of the potential Federal financial exposure; and whether it is preferable to litigate the claim, rather than settle it.

(c) *Withdrawal of approval.* HUD may withdraw any approval provided under paragraph (a) of this section at any point at which HUD determines that the proposed disposition of the liability claim does not meet the standards for approval specified in paragraph (b) of this section.

PART 905—INDIAN HOUSING

2. The authority citation for 24 CFR Part 905 would be revised to read as follows:

Authority: Sec. 205, United States Housing Act of 1937 (as added by the Indian Housing Act of 1988 (Pub. L. 100-358, approved June 29, 1988)); sec. 7(b), Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

3. Part 905 would be amended by adding a new Subpart E, to read as follows:

Subpart E—Litigation Reporting and Related Requirements for Indian Housing Authorities

Sec.
905.501 Summary and purpose.
905.503 Applicability.
905.505 Definitions.
905.510 Litigation reporting requirements.
905.515 Litigation against the United States.
905.520 Approval of litigation.
905.525 Approval of disposition of liability claims not involving litigation.

Subpart E—Litigation Reporting and Related Requirements for Indian Housing Authorities

§ 905.501 Summary and purpose.

(a) *Summary.* This subpart specifies the litigation and related requirements that apply to Indian Housing Authorities (IHAs) under title II of the United States Housing Act of 1937, as added by the Indian Housing Act of 1988 (Pub. L. 100-358, approved June 29, 1988). It sets forth the circumstances in which IHAs must report their litigation activity to HUD, and prohibits them from using HUD assistance and related funds to pay the costs of litigation against the United States. The subpart also specifies the conditions under which IHAs must obtain advance HUD approval to initiate or defend a claim in litigation and to dispose of certain liability claims that do not involve litigation.

(b) *Purpose.* (1) The purpose of this subpart is to ensure that IHAs provide HUD with timely and meaningful information on litigation and related matters that may result in the need for additional HUD assistance, while at the same time according IHAs as much autonomy as possible to plan and execute their litigation activities. HUD regulation under this subpart is limited to situations in which HUD has a clear and direct financial stake in the conduct and outcome of the litigation. When HUD does regulate, the conduct of IHAs' litigation is affected only to the extent necessary to accomplish the Federal purpose involved.

(2) This subpart is also designed to prohibit IHAs from using this assistance and other funds subject to this subpart to litigate against the United States. For federally recognized Indian tribes, this prohibition tracks existing regulatory authority. (See 24 CFR 85.22(b), that incorporates section B.16. of Attachment B to OMB Circular A-87, published at 48 FR 9548, 9853 (1982), prohibiting federally recognized Indian tribes from using the proceeds of Federal grants, contracts, and other agreements to pay for the prosecution of claims against the Federal government.) Extension of the prohibition to non-federally recognized tribes not only prevents the impropriety of permitting federally related funds to be used in litigation against the Federal government, but also ensures that this assistance is used as it was originally intended: To benefit program beneficiaries.

§ 905.503 Applicability.

(a) *In general.* This subpart applies to litigation involving IHAs (as provided by §§ 905.510 through 905.520), and to liability claims against IHAs that do not involve litigation (as provided by § 905.525), that are pending on, or arise on or after, [insert effective date of this rule].

(b) *Other recipients of HUD assistance.* 24 CFR Part 18 contains the litigation reporting and related requirements for recipients of HUD assistance, as defined in 24 CFR 18.5.

§ 905.505 Definitions.

As used in this subpart:

HUD means the United States Department of Housing and Urban Development.

HUD assistance means grants, loans, or annual contributions made available for the development, operation, or modernization of Indian housing under title II of the United States Housing Act of 1937.

Indian Housing Authority (IHA) means any entity that:

(a) Is authorized to engage or assist in the development or operation of lower income housing for Indians; and

(b) Is established:

(1) By exercise of the power of self-government of an Indian tribe independent of State law; or

(2) By operation of State law providing specifically for housing authorities for Indians, including regional housing authorities in the State of Alaska.

Litigation means any civil action at law or any proceeding in equity, including any appeal or settlement in such an action or proceeding. The term includes administrative proceedings (such as binding arbitration), but does not include criminal proceedings or routine eviction matters.

Period of HUD assistance means the time period during which the annual contributions contract under title II of the United States Housing Act of 1937 remains in effect.

Program income (a) means income that:

(1) An IHA receives;

(2) Is derived from any source; and

(3) Must be used for specific purposes relating to the assistance.

(b) Examples of program income include (but are not limited to) rental income, investment income, and other income that is taken into account in determining operating subsidy amounts under section 9 of the United States Housing Act of 1937 (24 CFR Part 990), and operating reserves.

(c) Examples of items that are not considered program income include (but are not limited to) donations, bond proceeds, State or local government payments, and income from non-HUD programs.

(d) The definition of program income in 24 CFR 85.25 does not apply to the term as used in this subpart.

Threatened litigation means any communication, oral or written, announcing an intention to institute litigation.

§ 905.510 Litigation reporting requirements.

(a) *Reporting at HUD's request.* At HUD's request, each IHA must report to HUD during the period of HUD assistance on any litigation to which the IHA is a party or that is threatened against the IHA, if the litigation or threatened litigation involves a program, project, or activity assisted with HUD assistance or program income.

(b) *Required reporting.* (1) Whether or not HUD has requested a report under paragraph (a) of this section, each IHA must report to HUD during the period of HUD assistance on any litigation to which the IHA is a party or that is threatened against the IHA, if:

(i) The litigation or threatened litigation involves a program, project, or activity assisted with HUD assistance or program income; and

(ii) It appears likely that the litigation or threatened litigation (if commenced) will necessitate the use of additional HUD assistance or program in connection with:

(A) The litigation (*e.g.*, to satisfy a judgment, or to pay the costs of a settlement or the costs of litigation); or

(B) The program, project, or activity involved in the litigation.

(2) The report required by paragraph (b)(1) of this section must be made at the earliest practicable point during the time that the litigation is pending or threatened in which the criterion specified in paragraph (b)(1)(ii) of this section is met.

(c) *Additional reports.* If an IHA is required to report to HUD under paragraph (a) or (b) of this section, HUD may request such additional reports during the period of HUD assistance covering such time while the litigation is pending or threatened as HUD deems appropriate.

(d) *Manner of reports.* HUD will determine the form, content, frequency, and timing of reports required under paragraphs (a) and (b) of this section.

§ 905.515 Litigation against the United States.

(a) *Prohibition of litigation.* (1) Federally recognized Indian tribal governments. The cost principle governing the use of Federal funds to pay for litigation costs in connection with the litigation of claims against the Federal government that is contained in 24 CFR 85.22 (incorporating section B.16. of OMB Circular A-87) applies to IHAs acting on behalf of federally recognized Indian tribal governments.

(2) Other Indian tribal governments. An IHA, other than an IHA referred to in paragraph (a)(1) of this section, may not use HUD assistance or program income to pay its litigation costs to pursue a claim against the United States or to defend a claim pursued by the United States.

(b) *Definition.* For purposes of paragraph (a) of this section, the term "litigation costs" includes items such as attorneys' and witness' fees and court costs.

§ 905.520 Approval of litigation.

(a) *Affirmative and defensive litigation.* (1) Each IHA must obtain advance HUD approval during the period of HUD assistance to initiate or defend a claim in litigation (including settlements and appeals), if:

(i) The litigation involves a program, project, or activity assisted with HUD assistance or program income; and

(ii) It appears likely that the litigation will necessitate the use of additional HUD assistance or program income in connection with:

(A) The litigation itself (*e.g.*, to satisfy a judgment or to pay the costs of litigation) or the settlement; or

(B) The program, project, or activity involved in the litigation.

(2) The IHA must seek the approval required by paragraph (a)(1) of this section at any stage before or during the litigation in which the criterion specified in paragraph (a)(1)(ii) of this section is met.

(b) *Standards for litigation.* HUD will grant the approval referred to a paragraph (a) of this section, unless HUD determines, based on the facts and circumstances before it, that approval would not be cost-beneficial. In making this determination, HUD will take into account factors such as the amount in controversy in the litigation; the likely amount of a judgment for or against the IHA; the anticipated litigation costs, including contracts for litigation services; the likely amount of any HUD financial exposure; the likelihood of the IHA position prevailing in the trial court or on appeal; and the likelihood of reaching a settlement, including the likely settlement amount and any savings in litigation costs if the matter is settled.

(c) *Litigation services.* If HUD approval is required to initiate or defend a claim in litigation under paragraph (a) of this section, the IHA must request HUD approval of any contract for litigation services with respect to the litigation, if the IHA selects the legal counsel to be retained.

(d) *Standards for approving litigation services.* HUD will grant the approval referred to in paragraph (c) of this section, unless HUD determines that the legal counsel retained, or proposed to be retained, by the IHA would have a conflict of interest, or would otherwise be subject to disqualification under applicable requirements for attorney professional responsibility; or on the basis of the fees and costs paid to counsel of similar experience for similar work in the same area, the proposed fees and costs are unreasonable.

(e) *Withdrawal of approval.* HUD may withdraw any approval provided under paragraph (a) or (c) of this section at any stage of the litigation at which HUD determines that the IHA's position in the litigation, or the litigation services contract, does not meet the standards for approval specified in paragraph (b) or (d) of this section, respectively.

§ 905.525 Approval of disposition of liability claims not involving litigation.

(a) *Approval of disposition of liability claims.* Each IHA must obtain HUD approval of its proposed disposition of a liability claim that does not involve litigation when:

(1) The claim is filed, if the IHA does not have liability insurance coverage or is self-insured; or

(2) A claim, by itself or taken together with all other outstanding claims against the IHA, exceeds its liability insurance coverage or the amount available to pay liability claims from any self-insurance reserve fund that the IHA maintains.

(b) *Standards for approval.* HUD will grant the approval referred to in paragraph (a) of this section, unless HUD determines, based on the facts and circumstances before it, that approval would not be cost-beneficial. In making this determination, HUD will take into account factors such as the amount of the liability claim; the likely amount of a settlement; the extent of the potential Federal financial exposure; and whether it is preferable to litigate the claim, rather than settle it.

(c) *Withdrawal of approval.* HUD may withdraw any approval provided under paragraph (a) of this section at any point at which HUD determines that the proposed disposition of the liability claim does not meet the standards for approval specified in paragraph (b) of this section.

PART 990—ANNUAL CONTRIBUTIONS FOR OPERATING SUBSIDY

4. The authority citation for 24 CFR Part 990 would be revised to read as follows:

Authority: Sec. 9, United States Housing Act of 1937 (42 U.S.C. 1437g)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

5. In § 990.110, a new paragraph (f) would be added, to read as follows:

§ 990.110 Adjustments.

* * * * *

(f) *Adjustments for violation of litigation reporting and related requirements.* HUD may make a downward adjustment in the amount of the PHA's operating subsidy, to the extent HUD determines that the PHA's failure to comply with the requirements of 24 CFR 18.15, 18.20, and 18.25, or §§ 905.515, 905.520, and 905.525, as appropriate, resulted in a diminution, or

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additional use, of HUD assistance or program income (as these terms are defined in §§ 18.5 and 905.505). Any adjustment under this paragraph will be made in the PHA's next Fiscal Year, except that if an adjustment would cause a severe financial hardship on the PHA, the HUD Field Office may establish a recovery schedule that represents the minimum number of years needed for repayment.

Date: October 19, 1988.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 88-24677 Filed 10-26-88; 8:45 am]

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October 27, 1988

Part V

Department of Transportation

Coast Guard

33 CFR Parts 151, 155, and 158

46 CFR Part 25

Regulations Implementing the Pollution Prevention Requirements of Annex V of MARPOL 73/78; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 151, 155 and 158

46 CFR Part 25

[CGD 88-062]
RIN 2115-AC99

Regulations Implementing the Pollution Prevention Requirements of Annex V of MARPOL 73/78

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes rules to implement the requirements of the "Act to Prevent Pollution from Ships," as recently amended by Congress. These rules will implement Annex V of the International Convention for the Prevention of Pollution by Ships, 1973 entitled "Regulations for the Prevention of Pollution by Garbage by Ships." These regulations would apply to marine craft of any size or type, including commercially operated ships and fishing vessels, uninspected vessels, recreational boats, oil rigs and platforms. These proposed rules also specify that ports and terminals, including recreational boating facilities, commercial fishing facilities, and mineral and oil industry "shorebases", must ensure the availability of facilities to receive ship-generated garbage. The Coast Guard expects that these rules will reduce the incidence of discharges of plastics, including synthetic fishing nets, and other ship-generated garbage into the marine environment.

DATES: 1. Comments must be submitted on or before November 25, 1988.

2. Public hearings will be held at Washington, DC on November 10, 1988; at Houston, Texas on November 14, 1988 and at Seattle, Washington on November 18, 1988.

ADDRESSES: 1. Written comments should be submitted to Commandant (G-LRA-2/21), U.S. Coast Guard Headquarters—Room 2110, 2100 Second Street, SW., Washington, DC, 20593-0001 Attention: CGD 88-062. Normal office hours are between 8:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

2. Oral comments may be presented at any of three public hearings that will be held to discuss this proposal. One hearing will be held in Room 2232 of the Nassif Building (U.S. Department of Transportation Headquarters), 400 "D" Street SW., Washington, DC on November 10, 1988. A second hearing will be held in the Gulf Coast Grand Ballroom at the Houston Hobby Holiday Inn, Houston, Texas on November 14, 1988. The third hearing will be held in the East Room of the Seattle Sheraton Hotel, 1400 Sixth Avenue, Seattle, Washington on November 15, 1988. All hearings will begin at 10:00 a.m. and will continue until 3:30 p.m., unless all comments are heard earlier. In order to ensure that the opinions of the public are received by the close of the comment period, commenters appearing at the public hearings are requested to bring a written summary of their remarks for insertion into the rulemaking record.

3. Persons desiring to discuss potential regulatory standards for shipboard incinerators should submit written comments to: Commandant (G-MTH), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001.

4. Persons interested in obtaining a copy of, or commenting upon, the Coast Guard's economic analysis of the designation of the Gulf of Mexico as a "Special Area" under Annex V of MARPOL 73/78 should write to Commander David Pascoe at the following address: Commandant (G-MER-3), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC, 20593-0001.

5. Persons desiring to learn about the specific requirements of the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) certification process should write: U.S. Department of Agriculture—APHIS, PPQ, Federal Building—Room 638, 6505 Belcrest Road, Hyattsville, MD 20782 Attention: Dr. Ronald Caffey.

6. Persons desiring to comment on the information collection requirements in this Notice of Proposed Rulemaking should submit their comments to: Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, Attention: Desk Officer, U.S. Coast Guard.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Joel R. Whitehead, Project Manager, Office of Marine Safety, Security and Environmental Protection (G-MPS-5), (202) 267-0491, between 7:00 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: For the convenience of the reader, the Supplementary Information explaining the Coast Guard's Proposed Rulemaking is organized as indicated below:

I. Preliminary Information
II. Background
III. Regulatory Approach
IV. Summary of public comments received in response to ANPRM
V. Section by section analysis of the proposed rules
VI. Regulatory evaluation and environmental impact

I. Preliminary Information

Interested persons are invited to participate in this proposed rulemaking by submitting written views, data or arguments. Each comment should include the name and address of the person submitting the comment, reference the docket number [CGD 88-062], identify the specific topic to which each comment applies and include sufficient detail to indicate the basis on which each comment is made. If an acknowledgement is desired, a stamped self-addressed postcard or envelope should be enclosed. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal.

The Coast Guard will hold three public hearings, as described above, to allow interested persons an opportunity to express their views on this proposal. These public hearings are not adversary proceedings. Although all public hearings will be recorded, it is requested that participants supplement their remarks with written statements submitted either at the public hearing they attend or to the address listed the second paragraph in ADDRESSES above.

Drafting Information

The principal persons involved in drafting this notice are: Lieutenant Commander Joel R. Whitehead, Project Manager, Office of Marine Safety, Security and Environmental Protection and Mr. Stanley Colby, Project Counsel, Office of the Chief Counsel.

II. Background

The Act to Prevent Pollution from Ships (33 U.S.C. 1901–1911), as amended by Title II of Pub. L. 100–220, (101 Stat. 1458), hereafter referred to as the Act, requires the Secretary of the Department in which the Coast Guard is operating to administer and enforce Annex V of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution by Ships, 1973 (MARPOL 73/78). Annex V of MARPOL 73/78 is entitled "Regulations for the Prevention of Pollution by Garbage by Ships" and was designed to reduce the introduction of ship-generated garbage into the marine environment. These proposed regulations will apply to all marine craft (inspected or uninspected) on the navigable waters and within the 200 mile Exclusive Economic Zone, regardless of flag, and to U.S. ships wherever they are located. Annex V prohibits ships from discharging plastics, limits other types of garbage discharges and requires that adequate reception facilities be provided at ports and terminals to receive ship-generated garbage. A particular focus of Annex V is to prevent the discharge of plastics, including synthetic fishing nets, and other persistent debris into the marine environment.

The Coast Guard published an Advance Notice of Proposed Rulemaking (ANPRM) for this rulemaking in the June 24, 1988 issue of the Federal Register (53 FR 23884). The complete text of Annex V of MARPOL 73/78 was printed as Appendix A of the ANPRM. In the ANPRM, the Coast Guard summarized the environmental, economic and safety concerns requiring a regulatory solution and explained its general approach to addressing Annex V in its regulations. The Coast Guard also solicited input from the public as to how best to implement the recent amendments to the Act in its regulations. Comments received prior to the preparation of these proposed rules are summarized below.

III. Regulatory Approach

The regulations proposed in this Notice modify or add to existing regulations in 33 CFR Parts 151, 155, and 158, and 46 CFR Part 25. Existing pollution prevention regulations implement Annexes I and II of MARPOL 73/78 as follows: Part 151 addresses shipboard requirements to prevent pollution and Part 158 discusses the reception facility requirements. This Notice proposes to add new subparts and to revise the general sections of Parts 151 and 158 to implement the requirements of Annex V as directed by Pub. L. 100–220. There are no new requirements imposed in these regulations which change Annex I or Annex II implementing requirements, although a few editorial or typographical errors found in those regulations have been corrected. Minor revisions in 33 CFR Part 151 are proposed which change references in 33 CFR Part 151 which were redesignated. In 46 CFR Part 25, the proposed rule would require uninspected vessels, including privately owned recreational boats, to retain garbage generated on board when it cannot be discharged in accordance with these regulations. This requirement was proposed for Title 46 because most uninspected vessel operators are likely to be familiar with this Title. Moreover, adding this change to Title 46 will create awareness among the boating public of their responsibilities under the Act, because these rules would then be included in the educational efforts of the U.S. Coast Guard Auxiliary, U.S. Power Squadron and other boating educational organizations on operators of recreational craft. Because many commenters questioned the relationship of recent amendments to the Act to other existing federal legislation, an effort has been made in this preamble to address their similarities and dissimilarities. Some of these laws are the Refuse Act (33 U.S.C. 407), the Clean Water Act (33 U.S.C. 1251 *et seq.*), the Clean Air Act (42 U.S.C. 7401 *et seq.*), the Resource Conservation and Recovery Act of 1976 (RCRA) (42 U.S.C. 6901–6987), and the Marine Protection, Research and Sanctuaries Act of 1972 (MPRSA) (33 U.S.C. 1401 *et seq.*).

In drafting these proposed rules, the Coast Guard considered the comments received and discussions held with numerous industry representatives, environmental organizations and federal agencies. Section 1905(a) of the Act also requires the Coast Guard to consult with appropriate federal agencies in establishing regulations which set the criteria for determining the adequacy of reception facilities. Accordingly, the Coast Guard has consulted with many federal agencies, including the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture, the National Marine Fisheries Service (NMFS) of the National Oceanographic and Atmospheric Administration (NOAA), the Environmental Protection Agency (EPA) and the Minerals Management Service (MMS) of the Department of the Interior.

The Coast Guard recognizes that implementation of Annex V of MARPOL 73/78 calls for a major change in the way in which ships and ports or terminals manage ship-generated garbage. Moreover, the Coast Guard is cognizant that much of the litter found on shores and beaches is derived from shore based sources and that Annex V of MARPOL 73/78 was not designed to address these pollution sources. In fact, Annex V of MARPOL 73/78 addresses only a portion of a much larger dilemma of solid waste management throughout the world. Effective implementation of Annex V over the next decade will require significant efforts in shipboard engineering, educational efforts targeted at commercial fishermen, merchant seamen and recreational boaters, and an effective enforcement program. The Coast Guard's proposed regulations lay the foundation for these efforts.

IV. Public Comments Received by the Coast Guard

The Coast Guard received a total of thirty-nine letters encompassing some 147 individual comments and suggestions as to how the Coast Guard should draft its regulations. These comments are discussed below and are arranged by topic.

1. Requests for Extension of Comment Period and Implementation of Annex V

The Coast Guard received four requests for an extension of the ANPRM comment period but was unable to grant these because of the short period of time before the Annex enters into force internationally. To ensure that the ANPRM was widely distributed, the Coast Guard directly mailed approximately 3,700 copies of the ANPRM to interested persons and organizations. One comment was received requesting that the Coast Guard delay implementation of Annex V. The Coast Guard is unable to do this since by the terms of MARPOL 73/78 and the domestic law implementing it, the Annex will be in effect on December 31, 1988.

2. Requests for Public Hearing

The Coast Guard received six requests to hold a public hearing. One commenter specifically requested a hearing to be held in Texas, because of the severe debris problems which exist in the Gulf of Mexico. The Coast Guard will hold hearings as announced above.

3. Applicability

The Coast Guard received three comments concerning the waters and vessels to which these regulations would apply. One commenter stated that the Coast Guard's regulations should apply to privately owned ships on contract to the government. The Act provides that ships owned or operated by the U.S. government which are in noncommercial service need not comply with regulations established by the Coast Guard and this is reflected in the proposed rules in 33 CFR 151.51. This exclusion does not apply to privately owned ships operated by owners under contract to the U.S. government. However, a privately owned ship that is bareboat chartered to the U.S. government is considered to be "operated by" the government and, if in noncommercial service, is therefore temporarily excluded. Within five years after the effective date of Annex V, government owned vessels must comply with regulations established by their own agencies to implement the requirements of Annex V.

One commenter from the Great Lakes commented that there is little to be gained by including the Great Lakes within waters subject to these rules since the Refuse Act already applies there. By section 2(b) of the Act, as amended (33 U.S.C. 1901(b)), Congress specifically applied the requirements of Annex V to the navigable waters of the United States, which include the Great Lakes. Therefore, the Coast Guard's proposed rules would apply to the Great Lakes.

4. Definitions

The Coast Guard received seventeen comments concerning the definitions of the words "garbage", "plastic", "reception facility", "disposal", "port" and "Great Lakes".

New definitions to the pollution prevention regulations are proposed in 33 CFR 151.05 and 33 CFR 158.120. It was not considered necessary to define Great Lakes in this proposal since this term is generally understood and a precise definition is not critical. It is important to the understanding of these proposed rules that there is a clear distinction made between the terms "terminal", "port", and "reception facility" as defined in existing regulations and in this proposed rule. As defined in the Act, "terminal" refers to a single waterfront facility or terminal handling "harmful substances." The term "port", however, is not so limited. A "port" can be a port authority, a group of terminals which decide to be grouped together as a cooperative unit, or a lighterage area, anchorage area, or any other area, designated by the Coast Guard Captain of the Port (COTP) for purposes of these regulations. Therefore, the Coast Guard has proposed amending the definition of "port", for Annex V purposes, to include specific types of facilities which cater to recreational boaters, commercial fishermen or mineral and oil industry operations. Under Annexes I and II, some terminals have formed "ports" or cooperatives to share expenses in cases where there was not sufficient demand for a single terminal to support its own reception facility. The Coast Guard expects similar arrangements to be made with respect to the provision of garbage reception facilities, especially to meet APHIS requirements.

A "reception facility" refers only to the means made available at a port or terminal for the disposal of specified garbage. A reception facility does not have to be a fixed part of a port or terminal; it may be a mobile service such as a tank truck, barge, "dumpster" or other commercial or municipal garbage disposal operation.

5. Discharge Limitations of MARPOL 73/78

Five commenters addressed what specific types of garbage may, or may not, be discharged as allowed by Regulations 3–6 of Annex V of MARPOL 73/78. Figure 1 graphically displays these limitations. One commenter suggested that the Coast Guard should require dunnage, lining and packing materials which will float, to be offloaded from ships to shoreside reception facilities prior to their departure from ports and terminals. This commenter suggested that if they were not offloaded prior to departure, the later discharge of these items might conflict with the ocean dumping prohibitions of the MPRSA. The present rulemaking does not deal with the MPRSA, and the Coast Guard does not have the authority under the Act to require the offloading of dunnage, etc. The MPRSA prohibits the transportation of materials from the United States for the specific purpose of dumping them into ocean waters, unless authorized by permit from the EPA. House Committee Report 100–380 (the report of the House of Representatives on H.R. 940, which became Title II of Pub. L. 100–220), discusses the relationship of the MPRSA and the Act to Prevent Pollution from Ships (APPS), as amended. The Report states that MPRSA "also prohibits the transport of any material from the United States for the purpose of dumping it into ocean waters." If dunnage or other materials are transported for the exclusive purpose of dumping them at sea, the prohibitions of the MPRSA would apply.

FIGURE 1.—MARPOL 73/78 ANNEX V

[Summary of garbage discharge restrictions]

Garbage type	All vessels except offshore platforms and associated vessels		Offshore platforms and associated vessels [2] (33 CFR 151.73)
	Outside special areas (33 CFR 151.69)	In special areas [1] (33 CFR 151.71)	
Plastics—Includes synthetic ropes and fishing nets and plastic bags.	Disposals prohibited	Disposals prohibited	Disposals prohibited.
Floating dunnage, lining and packing materials.	Disposal prohibited less than 25 miles from nearest land.	do	Do.
Paper, rags, glass, metal bottles, crockery and similar refuse.	Disposal prohibited less than 12 miles from nearest land.	do	Do.
Paper rags, glass, etc. comminuted or ground [3].	Disposal prohibited less than 3 miles from nearest land.	do	Do.
Food waste not comminuted or ground	Disposal prohibited less than 12 miles from nearest land.	Disposal prohibited less than 12 miles from nearest land.	Disposal prohibited less than 12 miles from nearest land.
Food waste comminuted or ground [3]	Disposal prohibited less than 3 miles from nearest land.	do	Disposal prohibited less than 12 miles from nearest land.
Mixed refuse types	(*)	(*)	(*)

[1] Special areas for Annex V are the Mediterranean, Baltic, Red and Black Seas, and Persian Gulf areas. (33 CFR 151.53).
[2] Offshore platforms and associated vessels includes all fixed or floating platforms engaged in exploration or exploitation of seabed mineral resources, and all vessels alongside or within 500m of such platform.
[3] Comminuted or ground garbage must be able to pass through a screen with a mesh size no larger than 25 mm. (1 inch) (33 CFR 151.75).
[4] When garbage is mixed with other harmful substances having different disposal or discharge requirements the more stringent disposal restrictions shall apply.

Finally, there were two comments received concerning the discharge of incinerator ash from a ship's domestic incinerator into the oceans, as is currently practiced by many ships. One comment favored and one opposed this. Congress clearly intended that incineration at sea of ship-generated garbage be one option available to ship operators. In House Report 100–380 it expressly encouraged the U.S. Navy to consider this option for its 600-ship fleet in order to achieve compliance with Annex V of MARPOL 73/78. Moreover, the International Maritime Organization (IMO) document, "Draft Guidelines for the Implementation of Annex V of MARPOL 73/78" (Working Paper 10 of the 25th Session of MEPC, hereafter referred to as MEPC 25/WP.10), specifically notes that "ash and clinkers" from incineration of ship-generated garbage are considered "garbage" within the meaning of Annex V since they are "operational wastes" and may, therefore, be discharged at sea outside of 12 nautical miles in accordance with Regulation 3(1)(b)(ii) of Annex V. These ashes and clinkers which can pass through a 25 millimeter (1 inch) screen may be discharged beyond 3 nautical miles from land, provided that "clinkers" of plastic, if not fully reduced to ash, are still considered a plastic and subject to the no discharge requirements of Annex V. The Coast Guard's proposed rule would, then, prohibit the discharge of incinerator ash at sea within 3 nautical miles from nearest land, but not beyond. The EPA has advised the Coast Guard that it might consider incinerator ash brought ashore to be subject to the manifesting and testing requirements of RCRA. The Coast Guard is concerned that proper disposal of incinerator ash has not been fully studied and has submitted a request to the Marine Environment Protection Committee (MEPC) of IMO to place this issue on the agenda at its next session in March 1989 and that it become a part of its future work program.

The Coast Guard also received four comments concerning garbage discharge limitations specifically on board fixed and floating platforms. Three commenters recommended that food wastes and incinerator ash be allowed under the Coast Guard rules to be discharged by oil rigs, platforms and vessels alongside them. Another commenter stated that all discharges by these ships, except food wastes outside 12 nautical miles, should be prohibited. Two commenters said that the EPA's National Pollution Discharge Elimination System (NPDES) regulations authorized under the Clean Water Act presently allow oil rigs and other point sources to discharge non-floating wastes and that Annex V duplicates these requirements. The Coast Guard takes the position that after December 31, 1988, an oil rig or platform operator could be in compliance with a valid NPDES permit and not be in compliance with Annex V of MARPOL 73/78 because these proposed rules go beyond the requirements of the NPDES permitting system. The EPA's NPDES permits issued to oil rigs and platforms prohibit the discharge of floating solid wastes and garbage, but allow sinkable wastes to be discharged unless they are specifically prohibited. Under Annex V, a higher standard is required for oil rigs and platforms, since no discharge of garbage (except food wastes beyond 12 nautical miles) is allowed. Because of this disparity between the NPDES process and Annex V requirements, the EPA has indicated that it is considering in future NPDES permits to require oil rigs and platforms to comply with Annex V. Based on consultations between the Coast Guard and EPA, the proposed Coast Guard regulations do not provide for exempting oil rigs and platforms from Annex V requirements because they have an NPDES permit.

Under the Coast Guard's proposed rules, uncommunicated food or vittual wastes must be discharged beyond 12 nautical miles, whether the "ship" is an oil rig or platform or not. In accordance with IMO's Draft Guidelines, the Coast Guard does not consider "graywater" or "dishwater" to fall within the meaning of "garbage" under Annex V. Proposed definitions for these two terms are shown in the proposed 33 CFR 151.05 definitions.

6. Equipment Requirements for Ships

Four comments were received concerning mandatory equipment installations on board ships in order to comply with Annex V of MARPOL 73/78. Three commenters recommended that the Coast Guard mandate the installation of compactors, incinerators or comminuters on ships and another was opposed to mandatory requirements for equipment of any kind. The Coast Guard has examined the Act and determined that broad mandates for equipment installation are not authorized. Moreover, they would deny ship owners and operators the flexibility to tailor equipment needs to each ship based upon the particular circumstances of the ship, such as crew size, route, voyage length, etc. Some ships may not need any equipment on board at all, provided the crew properly manages their garbage by any of several means which may include product substitutions to avoid plastics in food stores and supplies, separation of plastics, legally discharging garbage at sea, and storage of garbage for final disposal ashore. Accordingly, the Coast Guard's proposed regulations allow, but do not mandate, the use of particular types of equipment such as incinerators, compactors, or grinders. This is discussed in further detail in the section by section analysis of the rules in Part IV below.

Six comments were received recommending that the Coast Guard establish environmental and safety standards for shipboard incinerators. At present, the only Coast Guard regulations applicable to incinerators used on board ship for disposal of ship-generated garbage are found in Marine Engineering and Electrical regulations found in 46 CFR Parts 50 through 64 and Parts 110 through 113, respectively. These regulations presently apply to U.S. ships only and do not address either airborne emissions or the ash and clinker residues they generate. In addition, through regulations stemming from the Clean Air Act, the EPA or states may regulate the airborne emissions from shipboard incinerators. The Coast Guard has recently discussed the possibility of drafting comprehensive incinerator design and performance standards with various organizations, including the American Society for Testing and Materials (ASTM) and the Society of Naval Architects and Marine Engineers (SNAME). The Coast Guard is hopeful that these initiatives, with the cooperation of the EPA, may lead to an acceptable industry standard which could then be adopted within Coast Guard regulations in a subsequent rulemaking. Persons interested in discussing such an initiative should contact the Coast Guard's Marine Technical and Hazardous Materials Division, Commandant (G–MTH), as indicated in the second paragraph in ADDRESSES above.

7. Operational Requirements

Three commenters proposed that garbage be separated into component types (plastics, dunnage, food wastes, etc.) in order to manage shipboard wastes. The Coast Guard believes these proposed rules allow flexibility for separation and encourage ship operators to consider the separation at the source of generation. The U.S. Navy, in a series of several major at sea tests on board their warships, has found that one very effective way of managing garbage is to separate plastics in each space where they are generated by placing separate containers for plastics and non-plastics. This method eliminates the need for later separation of plastics from large masses of aggregated garbage and places responsibility for garbage management on individual generators. However, because ships can legally discharge most types of garbage, except plastics, subject to the limitations discussed herein, the Coast Guard's proposed rules do not mandate separation, but recognize this as one way of achieving compliance with these proposed rules.

Three commenters questioned whether commercial fishermen were required to recover derelict fishing gear

or garbage which becomes entrained in fishing nets during normal fishing operations. House Report 100–360 makes it clear that Congress did not intend for refuse or other flotsam found in nets to be considered garbage for the purposes of Annex V of MARPOL 73/78. This type of flotsam, if found, may legally be returned to the sea without being in violation of Annex V. Annex V prohibits the intentional discharge of fishing nets at sea. The Coast Guard recognizes that most fishing nets are lost accidentally during fishing operations and, due to their high cost, are rarely abandoned. The Coast Guard and NMFS encourage commercial fishermen to retrieve both fishing gear and other refuse found while fishing, especially since these types of debris can deplete existing stocks of marine seafood.

8. Recordkeeping Requirements, Waste Management Plans and Information Placards.

The Coast Guard received a total of seventeen comments favoring these requirements for certain ships and three opposing them. One commenter suggested that the Coast Guard's rules should require fishermen to record and report loss or recovery of fishing gear, establish a gear identification system and require degradable panels or sections on traps and nets. As indicated in the ANPRM, the Act requires the Secretary by December 31, 1989, to designate those U.S. ships which must maintain refuse record books or keep log entries, maintain a shipboard waste management plan, or display placards to notify crew and passengers of the requirements of Annex V. Congress allowed this additional time for the Coast Guard to pursue negotiations at the IMO so that an international standard or agreement could be reached. The Coast Guard does not favor establishing requirements solely for U.S. flag vessels without having first exhausted the possibility of consistent and mandatory international requirements for all ships subject to MARPOL 73/78. The Coast Guard intends to propose international requirements at the 27th Session of the MEPC.

While recording of lost fishing gear could fall within the scope of the Act, the Coast Guard believes that the suggestions concerning gear identification systems and biodegradable traps and nets are clearly beyond the scope of the Coast Guard's authority, especially since NOAA was tasked to study implementation of such a system in Title IV of Pub. L. 100–220, the "Driftnet Impact, Monitoring, Assessment and Control Act of 1987."

The Coast Guard does not intend to specify requirements for these provisions in this rulemaking, but will propose an amendment to these regulations in early 1989. To facilitate this, the Coast Guard has reserved §§ 151.55, 151.57 and 151.59 of Part 151 for these three items. The twenty comments received in response to the ANPRM will be retained for consideration in developing this future proposal.

9. Special Areas

Six commenters noted support for designation of the Gulf of Mexico as a special area under Annex V. One commenter opposed this designation as being too costly. This designation would make the Gulf a no discharge zone, except that ground or comminuted food wastes could be discharged outside 12 nautical miles from the nearest land. As noted in the ANPRM, this proposed rulemaking will not address designation of the Gulf as a special area because an amendment to MARPOL 73/78 would be required and this could not be accomplished until after the entry into force date of Annex V. In anticipation of this, the Coast Guard has prepared a study entitled "Economic Analysis of Designation of the Gulf of Mexico as a 'Special Area' under Annex V of the MARPOL Protocol." The Coast Guard will consider the seven comments received on this topic in developing its position on whether the Gulf of Mexico should be designated as a special area under Annex V. Persons interested in either obtaining a draft copy of the Coast Guard's economic analysis, or in commenting on it should write Commandant (G–MER–3) at the address shown in the third paragraph of ADDRESSES above.

10. Reception Facilities

Twenty-five comments were received concerning the criteria the Coast Guard proposed in its ANPRM for adequacy of reception facilities: Capacity, accessibility and ability to receive APHIS regulated food wastes. In the proposed rule, ports or terminals must be able to receive all garbage generated by ships, subject to certain important exceptions. In the ANPRM, the Coast Guard provided a worksheet to assist port and terminal operators in estimating the amount of ship-generated garbage they may receive once Annex V enters into force. The worksheet was derived from formulae found in a 1978 IMO document entitled "Guidelines on the Provision of Adequate Reception Facilities in Ports." Several commenters complained that the worksheet or formulae provided in the ANPRM were awkward or unrealistic, two recommended defining "domestic wastes" on the worksheet and one suggested revising the formulas to include capacity of garbage generated from fixed or floating platforms. This worksheet, with minor revisions, appears at the end of the preamble of this document as Appendix A.

The Coast Guard is no longer considering requiring ports and terminals to provide reception facility capacity based upon these formulae. Nevertheless, for the reasons stated below, the Coast Guard feels these formulae may provide a reasonable guide for a terminal operator to estimate the capacity it may receive after December 31, 1988. As far as is known, there are only two major ports in the United States which have conducted an extensive examination of their ship-generated waste stream. One of these found that the formulae estimated a projected garbage capacity demand some 200–300% above its current demand. Depending on the location of the port, types of ships served and other factors, this may not be inaccurate. A second port is utilizing the worksheet formulae in conjunction with other publicly available data to determine its reception facility needs. It is important to realize that these formulae are premised upon several facts. First, the formulae were designed using data from oceangoing ships only, and therefore may not be suitable for estimating garbage reception needs for marinas, mineral and oil "shorebases", or ports or terminals serving predominantly recreational boaters or commercial fishermen. Secondly, the final "garbage capacity demand" generated by using the formulae presume that ships discharge all authorized garbage into the sea as allowed by Annex V. Finally, the formulae do not take into account the fact that ships may install incinerators which might reduce the expected amounts. Despite these shortcomings, the Coast Guard feels these formulae will be useful in assisting port and terminal operators to gauge an upper limit for their garbage reception needs.

The Coast Guard received eight comments concerning "accessibility" as a criterion for determining the adequacy of a garbage reception facility. Three commenters noted that reception facilities should be located so that they do not impede cargo handling or terminal operations. The Coast Guard concurs with this and has addressed this aspect in the proposed 33 CFR 158.410(a)(2). One commenter was opposed to "accessibility" as a criterion for adequacy whatsoever. Four more

indicated that port and terminal operators should be able to contract for reception facility services to commercial waste haulers in order to allow for flexibility of operations at a port or terminal. Two other commenters suggested that port and terminal operators should be able to have facilities available within a specified period of time. One commenter was opposed to requiring the installation of any equipment at ports or terminals whatsoever. The Act states that port or terminal operators must either provide, or ensure the availability of garbage reception facilities. The Coast Guard takes this to mean that contractual arrangements for Annex V reception facilities are perfectly acceptable in complying with these regulations, especially for APHIS regulated food wastes. Because most ports and terminals currently provide reception facilities for general garbage only, the real concern is the potential for ship delays due to the unavailability of APHIS facilities. The Coast Guard proposes that APHIS reception facilities must be made available within 24 hours after notice of need is given by an oceangoing ship.

Two commenters objected to the Coast Guard statement in the ANPRM that there should be no obligation on the part of any port or terminal to provide reception facilities for ships not having commercial transactions at that port or terminal. They stated that any port or terminal must make available their reception facilities to all ships. The Coast Guard does not believe this would be appropriate or effective to impose such a requirement. Port or terminal operators could provide reception facilities to any ship requesting them but would only be obligated to do this in the proposed 33 CFR 158.420 for ships having commercial transactions at a given port or terminal. Three commenters raised the issue that some states do not allow ship-generated garbage originating from outside the state to be brought ashore, apparently in contravention of the new requirements of Annex V of MARPOL 73/78. This issue is not addressed in this proposal and is currently undergoing legal review.

One commenter requested that the Coast Guard clarify who is responsible at a port or terminal for transportation and disposal of garbage. The Coast Guard does not feel it appropriate to mandate which parties at a port should convey garbage from ship to a reception facility, since in many cases collective bargaining agreements govern. As noted earlier, the Act mandates that persons in charge of ports and terminals "provide, or ensure the availability of" adequate reception facilities. This proposed rulemaking does not address disposal of garbage after it has reached a reception facility, since this is generally regulated under the authority of other federal, state and local laws. The proposed rule provides at 33 CFR 158.410(a)(3), that each facility must hold each federal, state and local permit or license required by environmental and public health laws and regulations and as a consequence would have to comply with these regulations concerning garbage handling and disposal.

11. Certificates of Adequacy (COAs)

The Coast Guard received numerous comments addressing whether, and how, the Coast Guard should issue COAs. It is proposed to define COAs in 33 CFR 158.120 as a document issued by the Coast Guard which certifies that a port or terminal meets the requirements of 33 CFR Part 158 with respect to reception facilities. A COA must have the application form which was submitted to the Coast Guard attached to it. The Coast Guard is seeking the approval of the Office of Management and Budget to amend an existing Information Collection item (OMB Approval #2115–0543) to include a new application form for COAs on Coast Guard "Form C." Although all ports and terminals are required to meet the requirements of these regulations for reception facilities, only a small fraction of them will be required to apply for a COA on Form C.

Six comments were received in favor of the Coast Guard issuing COAs and two opposed. Two of those in favor of issuing COAs suggested the Coast Guard issue COAs to large marinas of 100 or more boat slips. The Coast Guard believes that most ports and terminals should not be required to hold COAs because the intent of the COA is primarily to ensure that large oceangoing ships have reception facilities for their ship-generated garbage. The proposed rules would require that Annex V COAs be issued to ports and terminals which receive oceangoing ships subject to Annex I or II of MARPOL 73/78 and to those which receive more than 25 port arrivals annually by ships whose last port of call was outside the continental United States or Canada. The Coast Guard believes that many new approved APHIS facilities will be necessary at many ports and terminals which have previously had little demand. After December 31, 1988, ships will not be able to discharge plastics at sea and if those plastics have come into contact with foreign food wastes regulated by APHIS, those plastics must be deposited ashore and treated in accordance with APHIS regulations. Ships may elect to discharge these plastics ashore at a subsequent port or terminal with approved APHIS facilities.

However, the Coast Guard is still considering issuing COAs to some large commercial fishing facilities (see definition in 33 CFR 158.120) and is currently discussing this with NOAA and NMFS. Issuing COAs to ports and terminals which receive large oceangoing ships, and potentially to large commercial fishing facilities would ensure that ships would not be delayed due to lack of APHIS facilities and that fishing ships had a location to dispose of nets and net fragments.

12. Training and Education

Three comments were received on the subject of training and education of mariners. The Coast Guard will ensure that the discharge requirements of Annex V of MARPOL 73/78 appear on licensing and documentation examinations for U.S. Merchant Marine officers and appropriate documentation exams for unlicensed personnel. Moreover, when these rules are finalized, the Coast Guard expects that the Coast Guard Auxiliary, U.S. Power Squadron and other safety oriented organizations will include the requirements of the Act and these regulations in their boating courses for the recreational boater.

13. Enforcement and Penalties

The Coast Guard received four comment letters concerning enforcement of Annex V. One commenter suggested that the Coast Guard routinely take penalty action against foreign flag ships rather than refer violations to the Party flag state. The Coast Guard believes that this comment is one which need not be addressed by regulation. To the extent that procedures involving referral to the flag party state provides for the effective enforcement of Annex V prohibitions, the Coast Guard intends to employ those procedures. Where these procedures prove to be ineffective, or where the flag state of the ship is not party to MARPOL 73/78, the Coast Guard intends to exercise its civil penalty authority under the Act in a manner consistent with MARPOL 73/78 and international law.

Another commenter suggested the Coast Guard initiate a "ticketing" system for violations of Annex V. The Coast Guard is looking into such a system for this and other types of routine violations. One commenter asked the Coast Guard to clarify which level of government could enforce the

provisions of Annex V. In accordance with the Act, only the Coast Guard may assess civil penalties under its provisions. Through Memoranda of Understanding or other agreements, the Coast Guard expects to receive enforcement assistance from other federal agencies, including APHIS and the National Marine Fisheries Service. Moreover, the Coast Guard could receive third party notification of violations of these regulations by individuals, local law enforcement officials or state officials pursuant to existing or new Coast Guard-State agreements.

One commenter requested the Coast Guard outline the "Bounty System" allowed for by section 9 of the Act. This is in reference to the authorization granted to the Secretary of Transportation to return up to 50% of civil or criminal penalties collected to the person reporting Annex V related violations. In view of the limited amount of time to address the mandated provisions of Annex V and the Act, the bounty provisions have not been included in this proposal. The Coast Guard is considering the development of regulations implementing this provision which would be proposed in the Federal Register at a later date.

14. Environmental Impact

One person commented that the Coast Guard was required to prepare an Environmental Impact Statement as a part of this rulemaking. The Coast Guard has studied the environmental impacts that are possible as a result of this rule. The Coast Guard's Draft Environmental Assessment is discussed in greater detail under the heading "Environmental Impact" in Part VI below. Another commenter requested that the Coast Guard consider the positive environmental benefit provided by "offshore marine waste processing facilities." These facilities are not yet operational and there is not enough known about them for the Coast Guard to quantify any environmental impacts.

15. Economic Impact

Three comments were received concerning the economic impact of this rulemaking. One asked the Coast Guard to consider the positive economic benefits attributable to the reduction of beach cleanup costs, improvement of fisheries and preservation of wildlife and endangered species. The Coast Guard agrees that these are positive benefits which should result from this rulemaking, but notes that these are difficult to estimate with reliability. Two other commenters noted that the economic impact of these regulations upon drilling companies would have a significant adverse economic impact on their industry. The Coast Guard believes that certain industries and the operators of ships on certain trade routes will be economically impacted to a greater degree than others. For example, the oil and mineral industry could be affected more than other sectors because of the restrictions imposed by Regulation 4 of Annex V. Similarly, ships which operate predominantly in the special areas are more likely to install costly equipment, such as incinerators or compactors. One commenter from a large shipping company stated that it was budgeting $30,000 per vessel for equipment installation. This figure is consistent with the Coast Guard's estimate of approximately $75,000 for installation of a large incinerator. The potential economic impact of this rulemaking is discussed in Part VI below.

V. Section-by-Section Analysis of the Proposed Rules

Sections of the proposed rules which are essentially self-explanatory are not discussed in the section-by-section analysis that follows.

33 CFR 151.03 Applicability

The existing applicability section would be revised to clearly indicate that each subpart in this part (one for each Annex of MARPOL 73/78) now contains its own applicability statements.

33 CFR 151.05 Definitions

This section would be revised by adding definitions of several new words relevant to Annex V of MARPOL 73/78. They are discussed below:

1. "Commercial fishing facility" would be added to indicate that these facilities are considered "ports" for the purposes of these regulations.

2. "Garbage" would be defined exactly as it appears in Annex V of MARPOL 73/78. The most important concept in this definition is that "garbage" for the purposes of these regulations must be "ship-generated." Graywater and dishwater, as discussed earlier, are not considered garbage within the meaning of Annex V.

3. "Harmful substance" would be defined here exactly as it appears in MARPOL 73/78. It is important to note that "garbage," including but not limited to plastics, is considered to be a "harmful substance" since it is liable to "create hazards to human health, to harm living resources and marine life, to damage amenities" and because it is specifically subject to control by MARPOL 73/78.

4. "Plastic" would be defined to provide a technically acceptable and very broad definition of those materials which are prohibited from discharge under this proposal. An explanatory note would follow describing, to the nonscientific layman, the types of plastic items which are commonly found on ships and likely to be discharged. The proposed definition would include synthetic materials, including what are called "biodegradable" plastics. These plastics often consist of polymers connected by starch molecules which cause the plastic to break down when exposed to sunlight or water. The Coast Guard is concerned that the exclusion of biodegradable plastics from the definition of plastic might lead to a transfer of entanglement related environmental damages to ingestion related ones. The proposed definition is meant to include both plastic products, raw resin pellets and composite products in which the plastic component is a minor, but essential element in its functioning, for example, in a plastic-lined paper cup. This definition excludes glass, paints, varnishes, waxes (all of which might be considered "plastics" by other definitions), and plastic polymers naturally produced by living organisms but harvested and used by man, such as chitin. "Clinkers" of plastic or pieces which have not been fully reduced to ash by incineration, would still be considered "plastic" under these regulations.

5. "Recreational boating facility" would be defined to indicate that these are considered "ports" for the purposes of these regulations.

6. "Special area" would be revised to indicate the new sections in the regulations where each Annex's special areas are defined. The Mediterranean Sea, Black Sea, Baltic Sea, the Red Sea and the Gulf areas are currently designated as special areas for both Annex I and Annex V.

7. "Victual waste" would be defined to include "food wastes" since this latter term is used throughout Annex V but is not defined therein. "Victual wastes" and "food wastes" are interchangeable terms within the meaning of Annex V, however, the proposed regulations refer only to the term "victual wastes" for consistency.

33 CFR 151.08 Denial of Entry

A new paragraph (b) would be added to indicate that the Captain of the Port (COTP) may deny ships entry to ports and terminals which do not ensure the availability of adequate reception facilities for Annex V or for those ports and terminals required to hold a COA which do not have one.

33 CFR 151.09

The existing section "Control of discharge of oil" would be redesignated as 33 CFR 151.10 and a new "Applicability" section would be added in its place to list which ships must comply with Subpart B (Annex I of MARPOL 73/78). The Coast Guard believes that separate applicability sections would make it more clear to industry and enforcement personnel exactly which Annexes apply to which ships.

33 CFR 151.11 Exceptions for Emergencies

Paragraph (a) would be revised to change the existing 33 CFR 151.09 reference to read 33 CFR 151.10.

33 CFR 151.13 Special Areas for Annex I of MARPOL 73/78

This section would be revised to indicate that the special areas indicated apply to Annex I of MARPOL 73/78. This revision would also correct typographical errors in the description of the Mediterranean Sea and Gulfs Areas so that these two area descriptions read exactly as they appear in MARPOL 73/78. Finally, paragraph (g) would change the reference to "151.09" to read "151.10" to agree with the proposed reorganization.

33 CFR 151.30 Applicability

This section would list the ships which are subject to regulations implementing Annex II of MARPOL 73/78 without requiring the reader to make a cross-reference to the Annex I applicability, as is required now. This section currently appears as an exception to the applicability of Annex I in 33 CFR 151.03(a)(4). As proposed, there would be no difference between the old and new references, except that readability would be improved.

Subpart D

This proposed subpart would contain the regulatory additions necessary to implement the recent amendments to the Act and, concurrently, would implement Annex V of MARPOL 73/78. The proposed rules in Subpart D delineate shipboard requirements only.

33 CFR 151.51 Applicability

This section would define the ships that are subject to regulations implementing Annex V of MARPOL 73/78. This subpart would apply to all U.S. ships wherever located, and to foreign flag vessels (whether party to MARPOL 73/78 or not) when in the navigable waters of the U.S. or within the 200 mile Exclusive Economic Zone of the U.S. Readers should be aware that "ship" as defined in § 151.05 includes "all marine craft operating in the marine environment." Excluded from applicability of these regulations are U.S. government owned or operated ships if they are in noncommercial service and other vessels excluded by MARPOL 73/78.

33 CFR 151.53 Special Areas for Annex V of MARPOL 73/78

This section would state the special areas for Annex V. They are currently the same as for Annex I of MARPOL 73/78. The Coast Guard specified this as a separate section as an aid to the reader and to allow for the addition of other sea areas which have been proposed for designation under Annex V. An explanatory note has been added below this section to advise the reader that while these sea areas are defined as special areas, the discharge restrictions in proposed 33 CFR 151.71 would not go into effect until a sufficient number of states bordering the special area have notified IMO that reception facilities are available. IMO must also provide one year's notice to party states as to the effective date.

33 CFR 151.55 151.57 and 151.59 Recordkeeping Requirements, Waste Management Plans, and Placards

These sections would be reserved for a futrue rulemaking and would specify requirements for these three items authorized under the Act.

33 CFR 151.61 Inspection for Compliance and Enforcement

This section would allow the Coast Guard or other authorized federal agencies to inspect vessels to determine if they are operating in accordance with these regulations and Annex V of MARPOL 73/78. As part of the enforcement program, other federal agencies, such as APHIS and NMFS may inspect ships and report noncompliance to the Coast Guard for action.

33 CFR 151.63 Control of Discharges of Plastic or Garbage

This section would contain substantive enforcement requirements for the subpart. It provides that unless the person in charge of a ship can prove that no plastics are on board which might require disposal ashore, that person must discharge ship-generated garbage in accordance with paragraph (a)(1) or (a)(2) of this section, depending on whether plastics are separated before discharge or not. If plastics are separated on board ship, then remaining garbage may be either discharged (if allowed by § 151.69, § 151.71 or § 151.73), incinerated, or retained on board for later shore disposal. If plastics are not separated on board ship, garbage containing mixtures of plastic and other garbage must be either incinerated on board ship or retained on board for later shoreside disposal and garbage containing no plastics may be handled as allowed by paragraph (a)(1) of this section. If the master, operator, or person in charge of a ship has plastics requiring disposal aboard the ship and cannot show compliance with paragraph (a)(1) or (a)(2) of this seciton, it will be presumed that Annex V of MARPOL 73/78 has been violated. This section will form the basis of a multi-agency federal enforcement program.

33 CFR 151.65 Reporting Requirements for Garbage Regulated by USDA

This section would require ship operators to advise the port or terminal 24 hours in advance of arrival of the need for an APHIS reception facility. The Coast Guard believes this section is necessary based upon comments received and upon the fact that most terminals will not have their own APHIS approved reception facility but will instead contract for these services. This reporting requirement would lessen the possibility that ships would be unduly delayed while waiting to offload APHIS regulated garbage.

33 CFR 151.67 Operating Requirements: Disposal of Plastic

This section would contain the shipboard operating procedures for disposal of plastics. No person onboard U.S. ships, wherever located, may discharge plastics into the sea. Also, no person onboard foreign flag ships, both party and nonparty to MARPOL 73/78, may discharge plastics into the navigable waters or 200 mile Exclusive Economic Zone of the United States. Consistent with MARPOL 73/78, this section indicates that if plastics are mixed with non-plastics, then the entire mixture must be treated as though it were plastic.

33 CFR 151.69 Operating Requirements: Disposal of Garbage Outside Special Areas

This section would implement Regulation 3 of Annex V of MARPOL 73/78, establish three discharge zones as measured seaward from the baseline of the territorial sea, and prescribe allowable discharge requirements for persons on board ships located outside the special areas defined in § 151.53.

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33 CFR 151.71 Operating Requirements: Disposal of Garbage Within Special Areas

This section would implement Regulation 5 of Annex V of MARPOL 73/78. Because the special areas are sea areas which are already severely polluted or are more likely to become polluted because of their unique oceanographic conditions, extraordinary discharge requirements are mandated. In these areas, only victual wastes may be discharged at sea, and then only when a ship is at least 12 nautical miles from the nearest land. No other discharge of garbage would be permitted.

33 CFR 151.73 Operating Requirements: Disposal of Garbage from Fixed or Floating Platforms

This section would implement Regulation 4 of MARPOL 73/78. It prohibits the discharge of garbage from all fixed or floating platforms which are engaged in the exploration, exploitation or associated offshore processing of seabed mineral resources. This prohibition also extends to all ships alongside or within 500 meters of such platforms. Beyond 12 nautical miles, only comminuted or ground victual wastes could be discharged into the sea from platforms or from ships alongside or within 500 meters of the platforms. The intent of this stringent requirement is to prevent the seabed beneath stationary vessels such as mobile offshore drilling units (MODU's), oil rigs, platforms, drillships, etc. from being inundated with ship-generated garbage. The Coast Guard interprets the phrase "exploration" to have the same meaning as the definition found in 33 CFR 141.10 and that "exploitation" is intended to mean the actual taking of seabed mineral resources.

33 CFR 151.75 Grinders or Comminuters

This section would specify a performance standard to discharge certain garbage at the distances from nearest land specified in § 151.69(a)(2) or § 151.73(b). The Coast Guard does not intend that each grinder or comminuter must have the screen attached, but they must be able to demonstrate compliance with this performance standard if requested by an authorized federal official.

33 CFR 151.81 Penalties for Violation

This section would be added as a clear statement of the penalties authorized under the Act.

33 CFR 155.350(a)(2) and 155.400(b)(2)

These sections would be revised by correcting references to "151.09" to "151.10."

33 CFR 158.100 Purpose

This section would be revised by adding a new paragraph (b)(3) to indicate that the purpose of the subpart is also to show the procedures for certifying the adequacy of reception facilities for garbage.

33 CFR 158.110 Applicability

This section would revise the existing applicability section to show that Subparts B, C, and E of Part 158 apply to ports and terminals that receive Annex I and II ships, as well as to ship repair yards. Paragraph (b) would be added to indicate that all ports and terminals within, or subject to the jurisdiction of the United States, must comply with the reception facility criteria of Subpart D. For the purposes of Annex V, ports include, but are not limited to, terminals and facilities which receive Annex I or II ships, or that are commercial fishing facilities, mineral and oil industry "shorebases" or recreational boating facilities, as defined later.

33 CFR 158.120 Definitions and Acronyms

This section would be revised by adding new definitions of "Certificates of Adequacy", "Commercial fishing facility", "Form C", "Garbage", "Harmful substance", "Mineral and oil industry shorebases", "Reception facility", "Recreational boating facility" and "The Act". Some of these are identical in their definitions to 33 CFR 151.05. The remaining are discussed below:

1. "Certificate of Adequacy" would be amended from its former definition to clarify that this form is issued by the Coast Guard and indicates that the port or terminal meets the requirements of the appropriate subpart to show compliance with Annex I, II or V of MARPOL 73/78.

2. "Commercial fishing facility", "Recreational boating facility", and "Mineral and oil industry shorebases" would be added to indicate that they are specific types of ports which must comply with the reception facility requirements of Annex V.

3. "Form C" would be added to indicate the name of the application form for a COA for garbage. Most persons in charge of a port or terminal would not have to complete Form C and be issued a COA, though all would be required to meet the reception facility requirements in 33 CFR 158.410 and 158.420. Form C appears later in this document, at the end of the preamble, as Appendix B.

4. "Reception facility" would be revised to add descriptive terms specific to an Annex V reception facility. The term is broadly defined but connotes the physical containment in which garbage is stored or conveyed. Annex V reception facilities may be "dumpsters" or other garbage containers, or even mobile facilities, such as a modified ship or barge.

33 CFR 158.130 Delegations

This section would be revised for clarity and to reflect the new delegation of authority to the COTP for Annex V. Paragraph (e)(1) delegates authority to the COTP to deny entry to ships to Annex I, II or V ports or terminals required to have a COA. Paragraph (e)(2) delegates the authority to deny entry to ports and terminals required to have adequate reception facilities, but are not required to have a COA.

33 CFR 158.135 Who Must Have a Certificate of Adequacy?

This section would be added to clarify who must have a COA. Addition of this section is necessary since all Annex I and II ports and terminals are required to be issued COAs and it is proposed that only a small portion of Annex V ports and terminals would be required to have COAs. Ports and terminals subject to Annex V of MARPOL 73/78 would have to hold COAs if they receive ships subject to Annex I or II of MARPOL 73/78. The Coast Guard is still considering issuing COAs to commercial fishing facilities to ensure that commercial fishermen have reception facilities to dispose of nets and net fragments.

33 CFR 158.140 Applying for a Certificate of Adequacy

This section would be revised by adding paragraph (a)(2). Until June 30, 1989 all Annex V COA applications made on Form C would be submitted to U.S. Coast Guard Headquarters at the address indicated on Form C. After this date, local COTPs will review and issue COAs to qualifying ports and terminals.

33 CFR 158.160 Issuance and Termination of a Certificate of Adequacy

This section would be revised to provide for the issuance, revocation, suspension and termination of Annex V COAs. This section spells out the responsibility of the COTP to physically inspect Annex I or II reception facilities prior to issuing a COA and the COTP's responsibility only to review an Annex V reception facility application.

33 CFR 158.163 Reception Facility Operations

Paragraph (b)(2) would be revised by adding the word "operator" to indicate that an operator of a ship, in addition to a master, is authorized to examine a port or terminal's COA.

33 CFR 158.165 Certificates of Adequacy: Change of Information

This section would be revised for clarity and would list those sections of Form C which would, if changed, require written notification to the local COTP.

33 CFR 158.167 Penalties for Violation

This section would be added as a clear statement of the penalties authorized under the Act.

Subpart D—Criteria for Adequacy of Reception Facilities: Garbage

This new subpart would describe the criteria for determining the adequacy for Annex V reception facilities. All ports and terminals, whether or not they must have a COA, would have to comply with the requirements of §§ 158.410 and 158.420.

33 CFR 158.410 Reception Facilities: General

This section would contain the general requirements for Annex V reception facilities. It places the burden upon the port or terminal operator to ensure that it holds all federal, state and local permits for the handling of garbage. Ports and terminals which have an APHIS reception facility, autoclave or incinerator located on their property must have an APHIS Compliance Agreement for both the means of conveyance to and from ships and for the device which incinerates or sterilizes the garbage. Reception facilities for APHIS regulated wastes should be properly identified in accordance with APHIS Compliance Agreements. APHIS requires that a separate reception facility be available for APHIS regulated materials so that other nonregulated garbage not become contaminated. In absence of separate facilities, all garbage deposited in a garbage reception facility, if it contains any APHIS regulated garbage, must be treated in accordance with APHIS regulations. If a port or terminal contracts out for APHIS approved services, the contractor must obtain the certifications required by APHIS.

A port or terminal which receives more than 25 port arrivals annually by ships whose last port of call was outside the continental United States or Canada would have to show on Form C the name of the APHIS approved contractor. A port or terminal must also ensure that a reception facility (garbage container, "dumpster", etc.) is located so that garbage deposited from ships would not readily be able to enter the water and so that it will not interfere with terminal operations. Terminals such as ship repair yards would not have to provide APHIS reception facilities within 24 hours, if they could provide facilities before a ship departed. Finally, ports and terminals would have to ensure that APHIS garbage facilities were available within 24 hours after notice is given by ships.

33 CFR 158.420 Reception Facilities: Capacity and Exceptions

Ports and terminals would have to ensure the availability of garbage reception facilities capable of receiving all garbage that the master or person who is in charge of a ship wants to discharge ashore, subject to two exceptions. Ports and terminals would not be obligated to receive large quantities of spoiled or damaged cargoes not usually discharged, or garbage from ships not having commercial transactions with that port or terminal.

Subpart E—Port and Terminal Operations

The existing Subpart D would be redesignated "Subpart E" to order to allow for the placement of a new Subpart D implementing the reception facility requirements of Annex V in numerical sequence immediately after Annexes I and II requirements. Sections 158.400 and 158.432 would be redesignated §§ 158.500 and 158.520 respectively.

46 CFR 25.50–1 Criteria

This section would require vessels not normally inspected by the Coast Guard to retain garbage generated on board for later disposal ashore, unless it can discharge garbage at sea in accordance with 33 CFR Part 151.

Regulatory Evaluation

The Coast Guard considers the proposed regulations to be significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979) and non-major under Executive Order 12291. A draft regulatory evaluation has been prepared and placed in the rulemaking docket. Copies of the evaluation may be inspected or copied as indicated in the first paragraph of ADDRESSES above.

The Coast Guard considerd several alternatives in this rulemaking: take no regulatory action except for determining the criteria of adequacy for reception facilities; develop a performance-based regulatory program requiring inspection of reception facilities at all ports and terminals before issuing COAs to those which meet standards; or develop a performance-based regulatory program requiring all ports and terminals to meet minimal reception facility standards and issue certain ports and terminals COAs after they have certified their compliance with the regulations.

The Coast Guard decided on the final option to implement the requirements of Pub. L. 100–200. The decision was based on several factors. A performance based regulatory program was selected as it was best suited for implementation of legislation prohibiting improper disposal of garbage. Performance standard regulatory programs are more conducive to compliance choices that are custom fitted to individual entities.

The Coast Guard considered the costs of the implementation of these regulations by considering six distinct industry sectors: merchant shipping, the fishing industry, recreational boating, offshore oil and gas operations, research and other miscellaneous classes of vessels, and ports and terminals.

Only those portions of each sector affected by implementation of Pub. L. 100–220 were considered. Vessels on the Great Lakes and internal waters of the United States were not considered as they must currently comply with the provisions of the Refuse Act. Ports and terminals were considered in all areas for the additional burden that provisions for additional waste collection would entail. Costs for each of these sectors were projected after an industry profile was constructed and current garbage disposal practices were analyzed to establish baseline costs. Estimates of cost compliance options were made for each sector except ports and terminals, which were based on a different set of compliance options. Estimates of which compliance options each industry sector would choose were made and the total costs were projected based on these compliance options. The total annual projected costs are approximately $41.7 million. This burden is apportioned among the sectors as follows: Merchant shipping, $2.9 million; commercial fishing, $33.9 million; recreational boating, $1.4 million; offshore oil and gas, $0.9 million; miscellaneous vessels, $.4 million; and ports $2.2 million.

Plastic in the ocean originates from several sources, not solely from the vessels regulated by these proposed rules. Combined with a paucity of data, the quantitative estimation of benefits of

compliance with the proposed regulations becomes problematic. The Coast Guard requests comments from state and local governments on the amount of marine debris in their jurisdiction, the cost associated with properly disposing of that debris, and estimates as to the amount of that debris originating from ships.

This section identifies quantifiable and non-quantifiable benefits from implementation of Pub. L. 100–220. Most quantifiable benefits result from savings due to events of pollution not occurring. One source of benefits would accrue from the reduction of damages to vessels from garbage entanglement in propellers, water intakes or other vessel equipment in contact with the water. Benefits could also be realized through avoidance of fishery losses due to "ghost fishing" by discarded nets and traps that continue to catch fish or mammals. Another large benefit would be the reduction of beach cleanup costs. Beach debris problems tend to be localized to specific areas that receive wastes carried on principal ocean currents or that are in proximity to heavily traveled shipping routes or fishing regions. The quantity of plastic, garbage and other debris discharged in the ocean will be reduced under this regulation. However, numerous other sources of plastic waste will not be affected by this regulation. It is uncertain whether beach areas will continue to require cleanup efforts, or if the cleanup efforts can be substantially reduced. Therefore, it is not possible to ascribe a quantitative estimate to reduction in beach cleanup costs. Another benefit closely tied to the reduction in beach cleanup costs is increased tourism and its associated spending in beach areas. Again it is difficult to quantify the change that these regulations will have on tourist spending in beach areas. Finally, one could consider increases in the values of beach properties. A net public gain occurs from improvement in ocean environmental conditions to the extent that beach property increases in value.

Environmental benefits are difficult to quantify but their effects can be considered. These benefits include a reduction in damages by plastic wastes to endangered species and the increased enjoyment of beach areas. Plastic garbage is believed to have deleterious effects on certain endangered species including Hawaiian monk seals and various species of sea turtles. This proposed regulation will limit one source of oceanic plastic garbage affecting these species. Persons visiting a beach will receive increased enjoyment of the resource to the extent that less debris is present.

The potential net benefits of the proposed regulations are estimated to be positive. The estimate results from an analysis that considered potential costs and benefits.

Regulatory Flexibility Act

A regulatory flexibility analysis was conducted to evaluate the impact of the proposal on small entities and it has been made part of the Draft Regulatory Evaluation in accordance with the Regulatory Flexibility Act. The Coast Guard is proposing to adopt the Small Business Administration's (SBA) definition of "small business" used when considering SBA loans to concerns engaging in transportation and warehousing (13 CFR 121.3 through 121.10) as a definition for small entities. A concern is considered small, under this definition, if its annual receipts do not exceed $1.5 million.

The Coast Guard does not have accurate information on how many vessels or ports and terminals grouped in the various sectors discussed in the "Potential Costs" portion would qualify as small entities. However, the Coast Guard currently estimates that this will effect 2,200 U.S. flag vessels of less than 1000 gross tons, 14,800 commercial fishing vessels, 600 offshore service vessels, and 4,400 ports and terminals, including recreational boating facilities. Any person affected by the proposed regulations who believes that they qualify as a small entity or has information concerning small entity impacts is requested to submit information on the basis for their qualification and the anticipated impact. Vessels which qualify as small entities will decide which option they will choose for compliance:

a. Garbage separation, with storage of plastic waste on board and final disposal ashore;

b. Storage of all garbage and final disposal ashore;

c. Garbage separation, with compaction and storage of plastic wastes on board and final disposal ashore;

d. Garbage incineration;

e. Product substitution.

Ports which qualify as small entities may have to invest in small-scale incineration equipment, equipment for garbage handling, or make contractual arrangements for reception facilities if they do not already have these.

These proposals contain minimal reporting or recordkeeping requirements for small entities. A small minority of all ports and terminals will also be required to complete an application "Form C" for a COA. Most vessels which are small entities would not have to comply with the reporting requirements for disposal of APHIS regulated garbage. Based on a worst case estimate of 4.2 percent of the combined income cost of compliance for small vessels, the Coast Guard certifies that if the proposed rules are adopted, they will not have a significant economic impact on a substantial number of small entities. As discussed throughout the SUPPLEMENTARY INFORMATION, some existing legislation may duplicate, conflict or overlap with the proposed rule. Some of these include the Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act. The Clean Air Act and Resource Conservation and Recovery Act may restrict the use of incinerators as a compliance choice for vessels in U.S. waters. Specifically, the Clean Air Act may restrict emissions from incinerators and the Resource Conservation and Recovery Act may restrict the shore disposal of clinkers or ashes from vessel incinerators. The Clean Water Act also prohibits the discharge of pollutants, including garbage, in U.S. waters. There is a duplication of the proposed rule and regulations implementing the Clean Water Act for floating garbage and an inconsistency between them for non-floating solid wastes in that the proposed rule would prohibit the discharge of non-floating wastes from mobile offshore drilling units and platforms, while the Clean Water Act regulations would allow this type of discharge.

Environmental Impact

Under Annex V of MARPOL 73/78, the Act, and these proposed regulations, the discharge of plastic from vessels into the sea will be prohibited and the discharge of other ship-generated garbage within 25 nautical miles of land will be restricted. Ports and terminals where ships call would also be required to provide adequate facilities for receiving this garbage.

The reception facility rules in this document do not directly affect the marine environment, but they are an essential part of an overall scheme to limit pollution of the marine environment and substantially reduce the need to dispose of plastics and other ship-generated garbage at sea. The proposed facility regulations will affect the locations where ship-generated garbage is received by reception facilities, implementing the requirements of Regulation 7 of Annex V of MARPOL 73/78, that adequate reception facilities be available to meet the needs of ships without undue delay. If left unregulated, ships would not be able to discharge garbage, especially APHIS regulated garbage, at all ports and terminals because reception facilities would not be readily available. Further, in those ports and terminals where reception facilities would be available, the demand for reception facilities would exceed the supply. This would drive up the cost of disposal, contribute to the delay of vessels, and adversely affect compliance with the discharge requirements of Annex V and the Act.

The regulations are expected to have a beneficial effect on the environment by contributing to the reduction of the occurrence of plastic in the marine environment as well as other ship-generated garbage. However, the impact of the proposed action involves two factors. First, is the source of the marine debris. The proposed regulations apply to U.S. vessels and foreign flag vessels when operating in U.S. waters. U.S. vessels account for less than 5% of the world fleet. Foreign flag vessels which operate in U.S. waters make up a much larger percentage of this fleet. Once outside U.S. waters, foreign flag vessels from a country not signatory to Annex V, are not required to comply with these regulations and may continue past disposal practices. Over 1,000 public vessels in noncommercial service, including naval vessels and other government owned or operated ships, have until five years after the effective date of these regulations to comply with regulations established by their own agencies to implement the requirements of Annex V. Further, these regulations do not apply to land based sources which, depending upon the predominant activity in the region, may account for more than half of the debris in the marine environment. Therefore, this action can influence only a rather limited portion of the overall marine debris problem.

The second factor is the marine environment. Several negative impacts from marine debris have been noted on marine wildlife including selected endangered species. The effect of this regulatory program on these impacts will be limited for several reasons. First, the proposed action will have limited influence on the overall marine debris problem. Second, there is little evidence to suggest that persistent marine debris has had a significant adverse impact on environmental populations. There is ample evidence that entanglement and ingestion of persistent marine debris have had an adverse affect on individual members of many species; however, scientists can identify adverse impacts on only a few wildlife populations, e.g., Northern fur seals and the endangered Hawaiian monk seals. Third, the proposed regulations do not affect accidental loss of fishing gear or active fishing operations, which are major contributors to the issue of entanglement. Fourth, plastics account for a small portion of the debris disposed of by ships. The bulk of ship-generated garbage is still permitted to be discharged further out at sea.

A draft environmental assessment of these regulations has been prepared and may be inspected or copied at the address indicated in paragraph of ADDRESSES above.

Paperwork Reduction Act

This proposal would change the information collection requirements at 33 CFR 151.05 and 33 CFR 158.40. Revisions to existing OMB paperwork approvals have been submitted to the Office of Management and Budget (OMB) for these proposed regulations. They have been assigned RCS/OMB Control Numbers 2115-0544 and 2115-0543 respectively. This proposal would make it mandatory for masters to give 24 hours notice of the need for an APHIS approved reception facility and for all ports and terminals which meet the requirements of 33 CFR 158.40 to apply for a COA for Garbage. This proposal is discussed in the preamble of this notice under "Supplementary Information." Persons desiring to comment on this information collection requirement should submit their comments to the Office of Management and Budget at the address listed in the fifth paragraph of ADDRESSES above. A copy of these comments should also be submitted to the Coast Guard at the address shown in the first paragraph of ADDRESSES above.

Federalism Statement

This notice of proposed rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the concepts discussed therein do not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Regulatory Information Number (RIN)

A regulatory information number has been assigned to this regulatory action and it is listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center (RISC) publishes the Unified Agenda in April and October of each year. The RIN number listed at the heading of this document can be used to cross reference this action with the Unified Agenda.

BILLING CODE 4910-14-M

APPENDIX A

WORKSHEET FOR ESTIMATING DEMAND FOR GARBAGE RECEPTION FACILITIES

NAME OF TERMINAL/PORT _____

ADDRESS _____

_____

_____

_____

telephone _____

telex _____

I. DOMESTIC WASTE- Complete those sections corresponding to the vessel types visiting your terminal or port.

1kg= 2.2 pounds
1 pound=.45 kg

1. HARBOR VESSEL SECTION:

Harbor vessels are considered vessels that do not leave the vicinity of the terminal /port and are, therefore, always in restricted waters.**

A. ENTER number of harbor vessels using the terminal/port during a peak seven-day period _____ vessels/week

B. ENTER average duration of harbor vessel activity at terminal/port with persons aboard. _____ days

C. ENTER average number of persons on board a typical harbor vessel. _____ persons/vessel

D. CALCULATE domestic garbage resulting from harbor vessels. [ ] kg/week

A x B x C x 1

(Note: average generation rate on harbor vessels is assumed to be 1.0 kg/person-day)

2. INLAND AND COASTAL WATERWAY VESSEL SECTION:

*Inland and coastal waterway vessels are considered vessels which do not travel beyond the offshore limits and are usually in restricted waters.***

E. ENTER number of inland/coastal vessels entering the terminal/port during a peak seven-day period. _____ vessels/week

F. ENTER average duration of inland/coastal vessel stay at terminal/port (with persons aboard) plus average duration of voyage to terminal/port through restricted waters.** _____ days

G. ENTER average number of persons on board a typical inland/coastal vessel. _____ persons/vessel

H. CALCULATE domestic garbage resulting from inland/coastal vessels. [ ] kg/week

E x F x G x 1.5

(Note: average generation rate on inland/coastal vessels is assumed to be 1.5 kg/person-day)

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* All formulae are based on the Marine Environmental Protection Committee paper 25/WP. 10 entitled, "DRAFT GUIDELINES FOR THE IMPLEMENTATION OF ANNEX V, REGULATIONS FOR THE PREVENTION OF POLLUTION BY GARBAGE FROM SHIPS."

** Restricted waters as used here means the "Navigable Waters of The U.S." as defined in 33 Code of Federal Regulations Part 2.05-25. [These waters include the Territorial seas (3 miles off shore), lakes, bays, sounds, rivers and intercoastal waterways.]

II. CARGO ASSOCIATED WASTE

Complete this section only if your facility unloads dry bulk, break bulk, or containerized cargo.

R. ENTER total amount of break bulk cargo received during a peak seven-day period. _____ kg/week

S. ENTER total amount of dry bulk cargo received during a peak seven-day period. _____ kg/week

T. ENTER total amount of containerized cargo received during a peak seven-day period. _____ kg/week

U. CALCULATE total cargo associated waste. [ ] kg/week

$$\frac{R}{123} + \frac{S}{10000} + \frac{T}{25000}$$

III. ALL OTHER GARBAGE WASTE

V. ENTER average duration of a vessel stay (for all vessels in facility) at terminal/port plus average duration of transit through restricted waters**. _____ days

W. ENTER average quantity of all other garbage waste generated daily from typical vessel. [This should include such wastes as scraped paint, rust waste, sweeping waste and engine room maintenance waste.] _____ kg/vessel-day

X. CALCULATE all other waste per vessel. [ ] kg/vessel

V x W

Y. ENTER average number for vessels (all types) at terminal/port during peak seven-day period _____ vessels

Z. CALCULATE total of all other garbage waste for all vessels. [ ] kg/week

X x Y

AA. CALCULATE total garbage capacity demand from vessels visiting this facility. [ ] kg

Q+U+Z

WORKSHEET EXAMPLE:

Thrifty Services owns a waterfront terminal which offloads 3 oceangoing oil tankers per week. These vessels arrive from the far east every week and stay inport for three days and then depart once again for the far east. Two of the vessels have a crew complement of ten persons. The remaining vessel only has a crew of eight. There is an eight hour passage through restricted waters before arriving at the terminal. Besides the domestic waste, vessels usually generate about 20 kg of other garbage per day. This garbage consists of sweeping waste, scraped paint waste, rust waste and engineroom maintenance waste.

For this particular case, since the terminal only receives oceangoing vessels and those vessels only carry oil in bulk only sections I.3., I.5. and III. would be completed on the worksheet as shown below:

I. DOMESTIC WASTE (cont)

3. SEAGOING CARGO VESSEL SECTION:

I. ENTER number of seagoing cargo vessels entering terminal/port during a peak seven-day period.	3	vessels/week
J. ENTER average duration of seagoing cargo vessel stay in terminal/port plus average duration of voyage to terminal/port through restricted waters.**	3.3	days
K. ENTER average number of persons on board a typical seagoing cargo vessel.	9.3	persons/vessel
L. CALCULATE domestic garbage resulting from seagoing cargo vessels. IxJxKx2	92.1	kg/week

(Note: average generation rate on seagoing cargo vessels is assumed to be 2.0 kg/person-day)

5. TOTAL DOMESTIC GARBAGE

Q. CALCULATE combined domestic weight of garbage generated by all vessels. D+H+L+P	92.1	kg/week

III. ALL OTHER GARBAGE WASTE

V. ENTER average duration of a vessel stay (for all vessels in facility) at terminal/port plus average duration of transit through restricted waters.**	3	days
W. ENTER average quantity of all other garbage waste generated daily from typical vessel. [This should include such wastes as scraped paint, rust waste, sweeping waste and engine room maintenance waste.]	20	kg/vessel-day
X. CALCULATE all other waste per vessel. VxW	60	kg/vessel
Y. ENTER average number for vessels (all types) at terminal/port during peak seven-day period	3	vessels
Z. CALCULATE the total of all other garbage waste for all vessels. XxY	180	kg/week
AA. CALCULATE total garbage capacity demand from vessels visiting this facility. Q+U+Z	272.1	kg/week

APPENDIX B: **APPLICATION FOR A RECEPTION FACILITY CERTIFICATE OF ADEQUACY FOR GARBAGE**

FORM C

This form should take no longer than 15 minutes to complete.

The Act to Prevent Pollution From Ships (33 USC 1901) authorizes the Department of Transportation to issue certificates to Terminals and Ports verifying their adequacy to receive operational garbage from ships. Regulations implementing this program are in 33 CFR Code of Federal Regulations Part 158. To continue to recieve ships at a port or terminal an applicant must hold a Certificate of Adequacy for Garbage if it recieves oceangoing tankers, or any other oceangoing ship of 400 gross tons or more, carrying residues and mixtures containing oil; or if it recieves oceangoing ships carrying Noxious Liquid substances. To recieve a Certificate of Adequacy for Garbage application is required on FORM C.

Definitions:

"Terminal": an onshore facility or an offshore structure located in the navigable waters of the United States or subject to the jurisdiction of the United States and used, or intended to be used, as facility for the transfer or other handling of a harmful substance. The definition of "navigable waters" for the purposes of this section may be found in 33 CFR 2.05-25.

"Port": (1) a group of terminals that combines to act as a unit and is considered a port for purposes of this part; or (2) A port authority or other organization that chooses to be considered a port for purposes of this part. For the purposes of Annex V of Marpol 73/78 Port also means a commercial fishing facility, recreational boating facility and a mineral and oil industry shorebase.

A. Terminal Section:

Complete this section if you are applying as a single terminal.

1.

Name of Terminal

Street Address

City State Zip

Name of Terminal Person in charge

Phone number ( ) - (area code)

After completing this section go to Section C.

2. Check the following boxes if the terminal receives or discharges any of the following cargoes from vessels visiting the terminal:

☐ Oil	☐ Discharge	☐ Receive
☐ Oily wastes	☐ Discharge	☐ Receive
☐ Fuel	☐ Discharge	☐ Receive
☐ Bulk dry cargo	☐ Discharge	☐ Receive
☐ Explosives	☐ Discharge	☐ Receive
☐ Hazardous Substances	☐ Discharge	☐ Receive
☐ Ash	☐ Discharge	☐ Receive
☐ Other	☐ Discharge	☐ Receive

3. Check the following boxes if the terminal handles or services any of the following vessels:

- ☐ Vessels of Foreign registry
- ☐ U.S. Vessels in domestic trade
- ☐ U.S. Vessels in foreign trade
- ☐ Passenger vessels
- ☐ Vessels servicing the offshore Mineral and oil industry
- ☐ Unmanned Barges
- ☐ Chemical ships
- ☐ Container ships
- ☐ Break bulk ships
- ☐ Ferry boat ships
- ☐ Fishing ships

B. Port Section:

Complete this section if you are applying as a PORT.

1.

Name of Port

Street Address

City State Zip

Name of Port Person in charge

Phone number ( ) - (area code)

Number of Terminals which will be members of this Port?_____

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B. Port Section (cont) Individual terminal data:

Ports are to complete the following entries for each individual terminal which is a member of the port.

2.

Name of Terminal

Street Address

City State Zip

Name of Terminal Person in charge

Phone number ( ) -
area code

Signature of Person in Charge of Terminal
Signature indicates Terminal Acknowledges that terminal agrees and consents to being considered as a member of the port, described in Section B.

3. Check the following boxes if the terminal receives or discharges any of the following cargoes from vessels visiting the terminal:

☐ Oil	☐ Discharge	☐ Receive
☐ Oily wastes	☐ Discharge	☐ Receive
☐ Fuel	☐ Discharge	☐ Receive
☐ Bulk dry cargo	☐ Discharge	☐ Receive
☐ Explosives	☐ Discharge	☐ Receive
☐ Hazardous Substances	☐ Discharge	☐ Receive
☐ Fish	☐ Discharge	☐ Receive
☐ Other	☐ Discharge	☐ Receive

4. Check the following boxes if the terminal handles or services any of the following vessels:

☐ Vessels of Foreign registry	☐ Unmanned Barges
☐ U.S. Vessels in domestic trade	☐ Chemical ships
☐ U.S. Vessels in foreign trade	☐ Container ships
☐ Passenger vessels	☐ Break bulk ships
☐ Vessels servicing the offshore Mineral and oil industry	☐ Ferry boat ships
	☐ Fishing ships

2.

Name of Terminal

Street Address

City State Zip

Name of Terminal Person in charge

Phone number ( ) -
area code

Signature of Person in Charge of Terminal
Signature indicates Terminal Acknowledges that terminal agrees and consents to being considered as a member of the port, described in Section B.

3. Check the following boxes if the terminal receives or discharges any of the following cargoes from vessels visiting the terminal:

☐ Oil	☐ Discharge	☐ Receive
☐ Oily wastes	☐ Discharge	☐ Receive
☐ Fuel	☐ Discharge	☐ Receive
☐ Bulk dry cargo	☐ Discharge	☐ Receive
☐ Explosives	☐ Discharge	☐ Receive
☐ Hazardous Substances	☐ Discharge	☐ Receive
☐ Fish	☐ Discharge	☐ Receive
☐ Other	☐ Discharge	☐ Receive

4. Check the following boxes if the terminal handles or services any of the following vessels:

☐ Vessels of Foreign registry	☐ Unmanned Barges
☐ U.S. Vessels in domestic trade	☐ Chemical ships
☐ U.S. Vessels in foreign trade	☐ Container ships
☐ Passenger vessels	☐ Break bulk ships
☐ Vessels servicing the offshore Mineral and oil industry	☐ Ferry boat ships
	☐ Fishing ships

2.

Name of Terminal

Street Address

City State Zip

Name of Terminal Person in charge

Phone number ( ) -
area code

Signature of Person in Charge of Terminal
Signature indicates Terminal Acknowledges that terminal agrees and consents to being considered as a member of the port, described in Section B.

3. Check the following boxes if the terminal receives or discharges any of the following cargoes from vessels visiting the terminal:

☐ Oil	☐ Discharge	☐ Receive
☐ Oily wastes	☐ Discharge	☐ Receive
☐ Fuel	☐ Discharge	☐ Receive
☐ Bulk dry cargo	☐ Discharge	☐ Receive
☐ Explosives	☐ Discharge	☐ Receive
☐ Hazardous Substances	☐ Discharge	☐ Receive
☐ Fish	☐ Discharge	☐ Receive
☐ Other	☐ Discharge	☐ Receive

4. Check the following boxes if the terminal handles or services any of the following vessels:

☐ Vessels of Foreign registry	☐ Unmanned Barges
☐ U.S. Vessels in domestic trade	☐ Chemical ships
☐ U.S. Vessels in foreign trade	☐ Container ships
☐ Passenger vessels	☐ Break bulk ships
☐ Vessels servicing the offshore Mineral and oil industry	☐ Ferry boat ships
	☐ Fishing ships

This page may be locally reproduced to accomodate larger Ports

Section C.

1. Does the terminal or port receive more than 25 visits from vessels arriving from foreign ports (except Canada), Hawaii or any territories or possessions of the United States?

☐ Yes
☐ No *If the answer is "NO" go to question No. 3*

2. Does the terminal or port have facilities approved by the Administrator, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, for the disposal of garbage from foreign ports (except Canada), Hawaii or any Territories or Possessions of the United States in accordance with Title 9 Code of Federal Regulations Part 94.

☐ Yes
☐ No *(If the answer is "No" you may attach a waiver request in accordance with 33 CFR 158 on a separate attached sheet.)*

NAME OF APHIS APPROVED FACILITY TYPE (INCINERATOR, STERILIZER, AUTOCLAVE, ETC.)

City State Phone Number

3. For those terminal(s)/port(s) requiring the services of an Animal and Plant Health Inspection Service approved facility, would the terminal or port receive all garbage from these ships visiting the terminal/port within 24 hours of vessel after notification of need for such services is given?

☐ Yes
☐ No *(If the answer is "No" you may attach a waiver request in accordance with 33 CFR 158 on a separate attached sheet.)*

4. Is the terminal or port able to receive all garbage as defined in 33 CFR 158.120 which the master or person in charge of a ship desires to discharge, except:
(1) large quantities of spoiled or damaged cargoes not normally expected to be discharged by a ship; or
(2) garbage from ships not having commercial transactions with that terminal or port?

☐ Yes
☐ No *(If the answer is "No" you may attach a waiver request in accordance with 33 CFR 158 on a separate attached sheet.)*

The terminal/port person in charge identified in the Application shall notify the U. S. Coast Guard Captain of the Port (COTP) in writing 30 days after any of the terminal/port information supplied under 33 CFR 158.165(b)(3) changes.

Civil Penalties. A person who after notice and an opportunity for a hearing, is found:
a. to have made a false, fictitious or fraudulent statement or representation in any matter in which a statement or representation is required to be made under the Act to Prevent Pollution from Ships, or the regulations thereunder, shall be liable to the United States for a civil penalty, not to exceed $5,000 for each statement or representation; or

b. to have violated the Act to Prevent Pollution from Ships, or the regulations issued therunder, shall liable to the United States for a civil penalty, not to exceed $25,000 for each violation.

CERTIFICATION

I HEREBY CERTIFY THAT THE INFORMATION PROVIDED IN THIS APPLICATION FOR A GARBAGE RECEPTION FACILITY CERTIFICATE OF ADEQUACY FOR RECEPTION FACILITIES RECEIVING GARBAGE IS COMPLETE, TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

SIGNATURE OF TERMINAL/PORT PERSON IN CHARGE

PRINTED OR TYPED NAME OF PERSON IN CHARGE

DATE SIGNED

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Section D:

Circle the location of the USCG Captain of the Port Office which has authority in your area

Commanding Officer	USCG Marine Safety Office	Guam	1
Commanding Officer	USCG Marine Safety Office	Boston, MA	2
Commanding Officer	USCG Marine Safety Office	Portland, ME	3
Commanding Officer	USCG Marine Safety Office	Providence, RI	4
Commanding Officer	USCG Marine Safety Office	Huntington, WV	5
Commanding Officer	USCG Marine Safety Office	Louisville, KY	6
Commanding Officer	USCG Marine Safety Office	Memphis, TN	7
Commanding Officer	USCG Marine Safety Office	Paducah, KY	8
Commanding Officer	USCG Marine Safety Office	Pittsburgh, PA	9
Commanding Officer	USCG Marine Safety Office	St. Louis, MO	10
Commanding Officer	USCG Marine Safety Office	Baltimore, MD	11
Commanding Officer	USCG Marine Safety Office	Hampton Roads, VA	12
Commanding Officer	USCG Marine Safety Office	Wilmington, NC	13
Commanding Officer	USCG Marine Safety Office	Charleston, SC	14
Commanding Officer	USCG Marine Safety Office	Jacksonville, FL	15
Commanding Officer	USCG Marine Safety Office	San Juan, PR	16
Commanding Officer	USCG Marine Safety Office	Savannah, GA	17
Commanding Officer	USCG Marine Safety Office	Tampa, FL	18
Commanding Officer	USCG Marine Safety Office	Chicago, IL	19
Commanding Officer	USCG Marine Safety Office	Corpus Christi, TX	20
Commanding Officer	USCG Marine Safety Office	Galveston, TX	21
Commanding Officer	USCG Marine Safety Office	Port Arthur, TX	22
Commanding Officer	USCG Marine Safety Office	Mobile, AL	23
Commanding Officer	USCG Marine Safety Office	Buffalo, NY	24
Commanding Officer	USCG Marine Safety Office	Cleveland, OH	25
Commanding Officer	USCG Marine Safety Office	Detroit, MI.	26
Commanding Officer	USCG Marine Safety Office	Duluth, MN	27
Commanding Officer	USCG Marine Safety Office	Milwaukee, WI	28
Commanding Officer	USCG Marine Safety Office	Toledo, OH	29
Commanding Officer	USCG Marine Safety Office	Long Beach, CA	30
Commanding Officer	USCG Marine Safety Office	San Diego, CA	31
Commanding Officer	USCG Marine Safety Office	San Francisco, CA	32
Commanding Officer	USCG Marine Safety Office	Portland, OR	33
Commanding Officer	USCG Marine Safety Office	Honolulu, HI	34
Commanding Officer	USCG Marine Safety Office	Anchorage, AK	35
Commanding Officer	USCG Marine Safety Office	Juneau, AK	36
Commanding Officer	USCG Marine Safety Office	Valdez, AK	37
Commanding Officer	USCG Marine Safety Office	Puget Sound, WA	38
Commanding Officer	USCG Marine Safety Office	Morgan City, LA	39
Commanding Officer	USCG Marine Safety Office	Miami, Fl	40
Commanding Officer	USCG Marine Safety Office	Philadelphia, PA	41
Commanding Officer	USCG Marine Safety Office	New Orleans, LA	42
Captain of the Port, New Haven	USCG Group Long Island Sound	New Haven, CT	43
Captain of the Port, New York	USCG Group New York	New York, NY	44
Captain of the Port, Houston	Port Safety Station Houston	Houston, TX	45
Captain of the Port, Muskegon	USCG Group Muskegon	Muskegon, MI	46
Captain of the Port, Sault Ste. Marie	USCG Group Sault Ste. Marie	Sault Ste. Marie, MI	47

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List of Subjects

33 CFR Part 151

Oil pollution, Reporting and recordkeeping requirements, Water pollution control.

33 CFR Part 155

Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 158

Administrative practice and procedure, Harbors, Oil pollution, Penalties, Reporting and recordkeeping requirements, water pollution control.

46 CFR Part 25

Fire prevention, Marine safety.

In consideration of the preceding, it is proposed to amend Parts 151, 155 and 158 of Title 33, Code of Federal Regulations and Part 25 of Title 46, Code of Federal Regulations as follows:

1. The heading of Part 151 is revised to read as follows:

PART 151—OIL, NOXIOUS LIQUID SUBSTANCE AND GARBAGE REGULATIONS

2. The authority citation for Part 151 is revised to read as follows:

Authority: 33 U.S.C. 1321(j)(1)(C) and 1903(b), E.O. 11735, 49 CFR 1.46.

3. Section 151.01 is revised to read as follows:

§ 151.01 Purpose.

The purpose of this part is to implement the Act to Prevent Pollution from Ships, 1980, as amended (33 U.S.C. 1901–1911) and Annexes I (Oil), II (Noxious Liquid Substances) and V (Garbage) of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78), done at London on February 17, 1978.

Note.—MARPOL 73/78 is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. Please include reference number "ADA 186 505" in your request.

4. Section 151.03 is revised to read as follows:

§ 151.03 Applicability.

This part applies to each ship that must comply with Annex I, II or V of MARPOL 73/78.

5. Section 151.05 is amended by adding the definitions for the terms "Dishwater", "Garbage", "Graywater", "Harmful substance", "Plastic", "Victual waste", in the proper alphabetical sequence and by revising the definitions of "Discharge", "Port", and "Special Area" to read as follows:

§ 151.05 Definitions.

* * * * *

"Discharge", as defined by MARPOL 73/78 in relation to harmful substances or effluent containing such substances, means any release howsoever caused from a ship and includes any escape, disposal, spilling, leaking, pumping, emitting or emptying. It does not include—

(1) Dumping within the meaning of the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, done at London on November 13, 1972; or

(2) Release of harmful substances directly arising from the exploration, exploitation, and associated off-shore processing of seabed mineral resources; or

(3) Release of harmful substances for purposes of legitimate scientific research relating to pollution abatement or control. "Dishwater" means the liquid residue from the manual or automatic washing of dishes and cooking utensils which have been pre-cleaned to the extent that any food particles adhering to them would not normally interfere with the operation of automatic dishwashers.

* * * * *

"Garbage" means all kinds of victual, domestic and operational waste excluding fresh fish and parts thereof, generated during the normal operation of the ship and liable to be disposed of continuously or periodically, except dishwater, graywater and those substances that are defined or listed in other Annexes to MARPOL 73/78.

"Graywater" means drainage from dishwasher, shower, laundry, bath, and washbasin drains and does not include drainage from toilets, urinals, hospitals, and drainage from cargo spaces.

"Harmful substance" means any substance which, if introduced into the sea, is liable to create hazards to human health, harm living resources and marine life, damage amenities or interfere with other legitimate uses of the sea, and includes any substance subject to control by MARPOL 73/78.

* * * * *

"Plastic" means any garbage that is solid material that contains as an essential ingredient one or more synthetic organic high polymers and is formed or shaped during either manufacture of the polymer or fabrication into a finished product by heat or pressure or both.

Note.—Plastics possess material properties ranging from hard and brittle to soft and elastic. Plastics are used for a variety of marine applications including, but not limited to: Packing (vaporproof barriers, bottles, containers, liners), ship construction (fiberglass and laminated structures, siding, piping insulation, flooring, carpets, fabrics, adhesives, electrical and electronic components), disposable eating utensils and cups (including foamed products), bags, sheeting, floats, synthetic fishing nets, monofilament fishing line, strapping bands, hardhats, synthetic ropes and lines.

"Port" means:

(1) A group of terminals that combines to act as a unit and be considered a port for the purposes of this part;

(2) A port authority or other organization that chooses to be considered a port for the purposes of this part;

(3) A place or facility that has been specifically designated as a port by the Captain of the Port (COTP); or

(4) For the purposes of Annex V or MARPOL 73/78, terminals or facilities which provide wharfage or other services to ships, including but not limited to commercial fishing facilities, recreational boating facilities, or mineral and oil industry shorebases.

* * * * *

"Special area" means a sea area, where for recognized technical reasons in relation to its oceanographical and ecological condition and to the particular character of its traffic, the adoption of special mandatory methods for the prevention of sea pollution by oil, NLS, or garbage is required. Special areas for the purposes of Annex I of MARPOL 73/78 include those listed in § 151.13 and for the purposes of Annex V of MARPOL 73/78 include those listed in § 151.59.

* * * * *

"Victual waste" means any spoiled or unspoiled food waste.

6. Section 151.07 is revised to read as follows:

§ 151.07 Delegations.

Each Coast Guard official designated as a Captain of the Port (COTP) or Officer in Charge, Marine Inspection (OCMI) Or Commanding Officer, Marine Safety Office (MSO), is delegated the authority to:

(a) Issue International Oil Pollution Prevention (IOPP) Certificates;

(b) Detain or deny entry to ships not in substantial compliance with MARPOL 73/78 or not having an IOPP Certificate or evidence of compliance with MARPOL 73/78 on board;

(c) Receive and investigate reports under § 151.15; and

(d) Issue subpoenas to require the attendance of any witness and the production of documents and other evidence, in the course of investigations of potential violations of the Act to

Prevent Pollution from Ships, as amended (33 U.S.C. 1901–1911), this part, or MARPOL 73/78.

7. Section 151.08 is revised to read as follows:

§ 151.08 Clearance or entry.

(a) Unless a ship is entering under force majeure, no oceangoing tanker or any other oceangoing ship of 400 gross tons or more required by § 151.10 to retain oil or oily residues and mixtures on board while at sea, and no oceangoing ship carrying a Category A, B or C NLS cargo or NLS residue in cargo tanks that are required to be prewashed under 46 CFR Part 153, may enter any port or terminal under § 158.110(a) of this chapter unless the port or terminal has a Certificate of Adequacy, as defined in § 158.120 of this chapter.

(b) A COTP may deny the entry of a ship to a port or terminal under § 158.110(b) if:

(1) The port or terminal does not have a Certificate of Adequacy, as required in § 158.135 of this chapter; or

(2) The port or terminal is not in compliance with the requirements of Subpart D of Part 158.

§ 151.10 [Redesignated from § 151.09]

8. Section 151.09 is redesignated as § 151.10.

9. A new § 151.09 is added to Subpart B to read as follows:

§ 151.09 Applicability.

(a) Except as provided in paragraph (b) of this section this subpart applies to each ship that:

(1) Is operated under the authority of the United States and engages in international voyages;

(2) Is operated under the authority of the United States and is certificated for ocean service;

(3) Is operated under the authority of the United States and is certificated for coastwise service beyond three nautical miles from land;

(4) Is operated under the authority of the United States and operates at any time seaward of the outermost boundary of the territorial sea of the United States as defined in § 2.05–10 of this chapter; or

(5) Is operated under the authority of a country other than the United States while in the navigable waters of the United States, or while at a port or terminal under the jurisdiction of the United States.

(b) This subpart does not apply to:

(1) A warship, naval auxiliary, or other ship owned or operated by a country when engaged in noncommercial service;

(2) A Canadian or U.S. ship being operated exclusively on the Great Lakes of North America or their connecting and tributary waters;

(3) A Canadian or U.S. ship being operated exclusively on the internal waters of the United States and Canada (as defined in § 2.05–20 of this chapter); or

(4) Any other ship specifically excluded by MARPOL 73/78.

10. Section 151.11 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 151.11 Exceptions for emergencies.

(a) Sections 151.10 and 151.13 do not apply to:

* * * * *

11. Paragraphs (a) and (g) of § 151.13 are revised to read as follows:

§ 151.13 Special areas for Annex I of MARPOL 73/78.

(a) For the purposes of this subpart the special areas are the Mediterranean Sea area, the Baltic Sea area, the Black Sea area, the Red Sea area, and the "Gulfs Area" that are defined as follows:

(1) The Mediterranean Sea area means the Mediterranean Sea proper including the gulfs and seas therein, with the boundary between the Mediterranean and the Black Sea constituted by the 41° N parallel and bounded to the west by the Straits of Gibraltar at the meridian of 5°36' W.

(2) The Baltic Sea area means the Baltic Sea proper with the Gulf of Bothnia, the Gulf of Finland and the entrance to the Baltic Sea bounded by the parallel of the Skaw in the Skagerrak at 57°44.8' N.

(3) The Black Sea area means the Black Sea proper with the boundary between the Mediterranean Sea and the Black Sea constituted by the parallel 41° N.

(4) The Red Sea area means the Red Sea proper including the Gulfs of Suez and Aqaba bounded at the south by the rhumb line between Ras si Ane (12°8.5' N, 43°19.6' E) and Husn Murad (12°40.4' N, 43°30.2' E).

(5) The Gulfs area means the sea area located northwest of the rhumb line between Ras al Hadd (22°30'N, 59°48' E) and Ras al Fasteh (25°04' N, 61°25' E).

* * * * *

(g) Nothing in this section prohibits a ship on a voyage, only part of which is in a special area, from discharging outside the special area in accordance with § 151.10

12. By revising § 151.30 to read as follows:

§ 151.30 Applicability.

(a) Except as provided in paragraph (b) of this section subpart applies to each ship that:

(1) Is operated under the authority of the United States and engages in international voyages;

(2) Is operated under the authority of the United States and is certificated for ocean service;

(3) Is operated under the authority of the United States and is certificated for coastwise service beyond three nautical miles from land;

(4) Is operated under the authority of the United States and operates at any time seaward of the outermost boundary of the territorial sea of the United States as defined in § 2.05–10 of this chapter; or

(5) Is operated under the authority of a country other than the United States while in the navigable waters of the United States, or while at a port or terminal under the jurisdiction of the United States.

(b) This subpart does not apply to:

(1) A tank barge whose certificate is endorsed by the Coast Guard for a limited short protected coastwise route if the barge is constructed and certificated primarily for service on an inland route;

(2) A warship, naval auxiliary, or other ship owned or operated by a country when engaged in noncommercial service;

(3) A Canadian or U.S. ship being operated exclusively on the Great Lakes of North America or their connecting and tributary waters;

(4) A Canadian or U.S. ship being operated exclusively on the internal waters of the of the United States and Canada as defined in § 2.05–20 of this chapter; or

(5) Any other ship specifically excluded by MARPOL 73/78.

13. Part 151 is amended by adding a new Subpart D to read as follows:

Subpart D—Garbage Pollution

Sec.

151.51 Applicability.
151.53 Special areas for Annex V of MARPOL 73/78.
151.55 Recordkeeping requirements. [Reserved]
151.57 Waste management plans. [Reserved]
151.59 Placards. [Reserved]
151.61 Inspection for compliance and enforcement.
151.63 Control of discharge of plastic or garbage.
151.65 Reporting requirements for garbage regulated by USDA.
151.67 Operating requirements: Discharge of plastic.
151.69 Operating requirements: Discharge of outside special areas.
151.71 Operating requirements: Discharge of garbage within special areas.
151.73 Operating requirements: Discharge of garbage from fixed or floating platforms.
151.75 Grinders or comminuters.
151.77 Exceptions for emergencies.
151.81 Penalties for violation.

Subpart D—Garbage Pollution

§ 151.51 Applicability.

(a) Except as provided by paragraph (b) of this section, this subpart applies to:

(1) Each ship that is of United States registry or nationality, or one operated under the authority of the United States, wherever located; and

(2) Each ship, other than a ship referred to in paragraph (a)(1) of this section, while in the navigable waters or the Exclusive Economic Zone of the United States.

Note to paragraph (a)(2).—The Exclusive Economic Zone extends from the baseline of the territorial sea seaward 200 miles as defined in the Presidential Proclamation 5030 of March 10, 1983 (3 CFR, 1983 COMP. p. 22).

(b) This subpart does not apply to:

(1) A warship, naval auxiliary, or other ship owned or operated by the United States when engaged in noncommercial service; or

(2) Any other ship specifically excluded by MARPOL 73/78.

§ 151.53 Special areas for Annex V of MARPOL 73/78.

For the purposes of this subpart the special areas are the Mediterranean Sea area, the Baltic Sea area, the Black Sea area, the Red Sea area, and the "Gulfs Area" that are defined as follows:

(a) The Mediterranean Sea area means the Mediterranean Sea proper including the gulfs and seas therein, with the boundary between the Mediterranean and the Black Sea constituted by 41° N parallel and bounded to the west by the Straits of Gibraltar at the meridian of 5°36' W.

(b) The Baltic Sea area means the Baltic Sea proper with the Gulf of Bothnia, the Gulf of Finland and the entrance to the Baltic sea bounded by the parallel of the Skaw in the Skagerrak at 57°44.8' N.

(c) The Black Sea area means the Black Sea proper with the boundary between the Mediterranean Sea and the Black Sea constituted by the parallel 41° N.

(d) The Red Sea area means the Red Sea proper including the Gulfs of Suez and Aqaba bounded at the south by the rhumb line between Ras si Ane (12°8.5' N, 43°19.6' E) and Husn Murad (12°40.4' N, 43°30.2' E).

(e) The Gulfs area means the sea area located northwest of the rhumb line between Ras al Hadd (22°30' N, 59°48' E) and Ras al Fasteh (25°04' N, 61°25' E).

Note to § 151.53.—In accordance with paragraph (4)(b) of Regulation 5 of Annex V of MARPOL 73/78, the discharge restrictions for special areas in § 151.71 will go into effect when the government of each party country whose coastline borders a special area has notified IMO that reception facilities are available at all of its ports within the special area and IMO has then established an effective date for the special area and notified all party states no less than 12 months before the effective date. Notice of these effective dates will be published in the Federal Register and added in this note.

§ 151.55 Recordkeeping requirements. [Reserved]

§ 151.57 Waste management plans. [Reserved]

§ 151.59 Placards. [Reserved]

§ 151.61 Inspection for compliance and enforcement.

While within the navigable waters of the United States or the Exclusive Economic Zone, a ship to which this subpart applies is subject to inspection by the Coast Guard or other authorized federal agency to determine if:

(a) The ship has been operating in accordance with these regulations and has not discharged plastics or other garbage in violation of the provisions of Annex V of MARPOL 73/78;

(b) Grinders or comminuters used for discharge of garbage between 3 and 12 nautical miles from nearest land are capable of reducing the size of garbage so that it will pass through a screen with openings no greater than 25 millimeters (one inch);

(c) Information for recordkeeping requirements, when required under section § 151.55, is properly and accurately logged;

(d) A waste management plan, when required under § 151.57, is on board and that the condition of the ship, equipment and operational procedures of the ship meet the plan; and

(e) Placards, when required by § 151.59, are posted on board.

§ 151.63 Control of discharge of plastic or garbage.

(a) Unless the master, operator, or person who is in charge of a ship can show that plastic requiring disposal is not generated aboard the ship, that person shall meet either paragraph (a)(1) or (a)(2) of this section:

(1) Where plastic is separated throughout the ship for shoreside disposal or for incineration on board ship, all remaining garbage must be:

(i) Incinerated on board the ship;

(ii) Discharged in accordance with § 151.69, § 151.71 or § 151.73; or

(iii) Retained on board for disposal ashore to a reception facility; or

(2) Where plastic is not separated from other types of garbage throughout the ship:

(i) All mixed garbage generated on the ship must be incinerated on board ship or retained for disposal ashore at a reception facility;

(ii) Any garbage that does not contain plastic, may be incinerated on board the ship, discharged in accordance with § 151.69, § 151.71 or § 151.73, or retained on board for disposal ashore to a reception facility.

(b) If the master, operator, or person who is in charge of a ship is unable to show that plastic for disposal is not generated aboard the ship, or show compliance with paragraph (a)(1) or (a)(2) of this section, it will be presumed that Annex V of MARPOL 73/78 has been violated.

§ 151.65 Reporting requirements for garbage regulated by USDA.

If garbage regulated by the Animal and Plant Health Inspection Service (APHIS) of USDA is to be disposed of at a port or terminal located in the United States, or under the jurisdiction of the United States, the master or person who is in charge of each oceangoing ship shall notify the port or terminal at least 24 hours before entering the port or terminal of:

(a) The name of the ship; and

(b) The estimated volume of garbage requiring disposal at an approved APHIS facility.

§ 151.67 Operating requirements: Discharge of plastic.

No person on board any ship to which this subpart applies may discharge at sea, plastic or garbage mixed with plastic, including, but not limited to, synthetic ropes, synthetic fishing nets, and plastic garbage bags. All plastic must be incinerated or disposed of ashore.

§ 151.69 Operating requirements: Discharge of garbage outside special areas.

(a) When operating outside of a special area specified in § 151.53, any person who does not retain garbage on board for later shoreside disposal may discharge garbage that is separated from plastic, if the distance from nearest land is more than:

(1) 25 nautical miles for dunnage, lining and packing materials that float; or

(2) 12 nautical miles for victual wastes and all other garbage including paper products, rags, glass, metal, bottles,

crockery and similar refuse, except that, such garbage may be discharged outside of three nautical miles from nearest land after it has been passed through a grinder or comminuter specified in § 151.75.

(b) Mixtures of garbage having different discharge requirements under paragraph (a)(1) or (a)(2) of this section must be:

(1) Retained on board for later disposal ashore; or

(2) Discharged in accordance with the more stringent requirement prescribed by paragraph (a)(1) or (a)(2) of this section.

§ 151.71 Operating requirements: Discharge of garbage within special areas.

When a ship is located in a special area listed in § 151.53, no person may discharge garbage, except victual waste may be discharged beyond 12 nautical miles from nearest land.

§ 151.73 Operating requirements: Discharge of garbage from fixed or floating platforms.

(a) Except as allowed in paragraph (b) of this section, no person may discharge garbage from:

(1) A fixed or floating platform engaged in the exploration, exploitation or associated offshore processing of seabed mineral resources; or

(2) Any ship within 500 meters (1650 feet) of such platforms.

(b) Victual waste may be discharged into the sea from a ship or fixed or floating platform regulated by paragraph (a) of this section if:

(1) It passes through a comminuter or grinder meeting § 151.75; and

(2) That ship or fixed or floating platform is beyond 12 nautical miles from nearest land.

§ 151.75 Grinders or comminuters.

Each grinder or comminuter used to discharge garbage in accordance with § 151.69(a)(2) or § 151.73(b) of this part, must be capable of processing garbage so that it passes through a screen with openings no greater than 25 millimeters (one inch).

§ 151.77 Exceptions for emergencies.

Sections 151.67, 151.69 and 151.71 of this subpart do not apply to the following:

(a) Discharges of garbage from a ship for the purpose of securing the safety of a ship and those on board or saving life at sea.

(b) The escape of garbage resulting from damage to a ship or its equipment, if all reasonable precautions have been taken before and after the occurrence of the damage, to prevent or minimize the escape.

(c) The accidental loss of synthetic fishing nets or the loss of synthetic material during repair of nets, provided all reasonable precautions have been taken to prevent such losses.

§ 151.81 Penalties for violation.

(a) A person who violates MARPOL 73/78 or the regulations of this part is liable for a civil penalty not to exceed $25,000 for each violation, as provided by 33 U.S.C. 1908(b)(1). Each day of a continuing violation constitutes a separate violation.

(b) A person who knowingly violates MARPOL 73/78 or the regulations of this part is subject to a fine for each violation, of not more than $50,000 dollars or imprisonment for not more than 5 years, or both, as provided by 33 U.S.C. 1908(a).

(c) A ship operated in violation of MARPOL 73/78 or the regulations of this part is liable in rem for any fine imposed under paragraph (a) of this section or civil penalty assessed pursuant to paragraph (b) of this section, and may be proceeded against in the United States district court of any district in which the ship may be found.

PART 155—[AMENDED]

14. The authority citation to Part 155 is revised to read as follows and the authority citations following the sections are removed:

Authority: 33 U.S.C. 1231; 49 CFR 1.46 except 155.480, 155.700, and 155.710 which are issued under 33 U.S.C. 1321(j)(i)(C), E.O. 11735, as amended, 3 CFR, 1971–1975 COMP. p. 793, 49 CFR 1.46. Sections 155.100, 155.110, 155.120, 155.130, 155.350, 155.360, 155.370, 155.380, 155.390, 155.400, 155.430, 155.440, and 155.470 are also issued under 33 U.S.C. 1903(b); 49 CFR 1.46.

15. Section 155.350(a)(2) is revised to read as follows:

§ 155.350 Bilge slops/fuel oil tank ballast water discharges on oceangoing ships of less than 400 gross tons.

(a) * * *

(2) Has approved oily-water separating equipment for the processing of oily bilge slops or oily fuel oil tank ballast and discharges into the sea in accordance with § 151.10.

* * * * *

16. Section 155.400(b)(2) is revised to read as follows:

§ 155.400 Platform machinery space drainage on oceangoing fixed and floating drilling rigs and other platforms.

* * * * *

(b) * * *

(2) Discharge in accordance with § 151.10(b)(3), (b)(4) and (b)(5) of this chapter.

* * * * *

17. The authority citation for Part 158 is revised to read as follows:

Authority: 33 U.S.C. 1903(b); 49 CFR 1.46.

18. The heading of Part 158 is revised to read as follows:

PART 158—RECEPTION FACILITIES FOR OIL, NOXIOUS LIQUID SUBSTANCES, AND GARBAGE

19. The heading of Subpart A is revised to read as follows:

Subpart A—General

20. The undesignated center heading for §§ 158.100—158.165, "General" is removed.

21. Section 158.100(b) is revised to read as follows:

§ 158.100 Purpose.

* * * * *

(b) Procedures for certifying that reception facilities are adequate for receiving:

(1) Residues and mixtures containing oil from oceangoing tankers and any other oceangoing ships of 400 gross tons or more;

(2) NLS residue from oceangoing ships; or

(3) Garbage from ships.

* * * * *

22. Section 158.110 is revised to read as follows:

§ 158.110 Applicability.

(a) Subparts B, C, and E apply to each port and each terminal located in the United States or subject to the jurisdiction of the United States that is:

(1) Used by oceangoing tankers, or any other oceangoing ships of 400 gross tons or more, carrying residues and mixtures containing oil, or by oceangoing ships to transfer NLSs, except those ports and terminals that are used only by:

(i) Non-self-propelled tank barges that are not configured and are not equipped to ballast or wash cargo tanks while proceeding enroute;

(ii) Ships carrying NLS operating under waivers under 46 CFR 153.491(b); or

(iii) A ship repair yard that services oceangoing ships carrying oil or NLS residue.

(b) Subpart D applies to each port and terminal located in the United States or subject to the jurisdiction of the United States, including but not limited to deepwater ports, commercial fishing facilities, mineral and oil industry shorebases, and recreational boating facilities.

23. Section 158.120 is amended by adding definitions for the terms "Commercial fishing facility", "Form C", "Garbage", "Harmful substance", "Mineral and oil industry shorebase", "Recreational boating facility", in the proper alphabetical sequence and by revising the definitions of "Certificate of Adequacy", "Port", "Reception facility" and "The Act", to read as follows:

§ 158.120 Definitions and acronyms.

* * * * *

"Certificate of Adequacy (COA)" means a document issued by the Coast Guard or other authorized agency that certifies a port or terminal meets the requirements of this part with respect to reception facilities required under MARPOL 73/78, and has Form A, Form B, or Form C attached.

* * * * *

"Commercial fishing facility" means a port that includes docks or other facilities where commercial fishing vessels offload their catch. "Form C" means the application for a reception facility Certificate of Adequacy for Garbage, Coast Guard form USCG–CG–5401C.

"Garbage" means all kinds of victual, domestic and operational waste, excluding fresh fish and parts thereof, generated during the normal operation of the ship and liable to be disposed of continuously or periodically, except those substances that are defined or listed in other Annexes to MARPOL 73/78.

"Harmful substance" means any substance which, if introduced into the sea, is liable to create hazards to human health, harm living resources and marine life, damage amenities or interfere with other legitimate uses of the sea, and includes any substance subject to control by MARPOL 73/78.

* * * * *

"Mineral and oil industry shorebase" means a port which is primarily a base of operation for ships serving the mineral and oil industry.

* * * * *

"Port" means:

(1) A group of terminals that combines to act as a unit and be considered a port for the purposes of this part;

(2) A port authority or other organization that chooses to be considered a port for the purposes of this part;

(3) A place or facility that has been specifically designated as a port by the Captain of the Port (COTP); or

(4) For the purposes of Annex V of MARPOL 73/78, facilities which provide wharfage or other services to ships, including but not limited to commercial fishing facilities, recreational boating facilities, or mineral and oil industry shorebases. "Reception facility" means anything capable of receiving shipboard residues and mixtures containing oil or NLS residue, or receiving garbage, including, but not limited to:

(1) Fixed piping that conveys residues and mixtures for the ship to a storage or treatment system;

(2) Tank barges, railroad cars, tank trucks, or other mobile facilities;

(3) Containers or other receptacles that are used as temporary storage for garbage; or

(4) Any combination of fixed and mobile facilities. "Recreational boating facility" means recreational vessels. It includes but is not limited to marinas, boatyards, and yacht clubs. It does not include a place or facility containing only an unattended launching ramp.

* * * * *

"The Act" means the Act to Prevent Pollution from Ships, as amended, (33 U.S.C. 1901–1911).

24. Section 158.130 is revised to read as follows:

§ 158.130 Delegations.

Each COTP is delegated the authority to:

(a) Conduct inspections at ports and terminals required to have reception facilities under this part;

(b) Issue Certificates of Adequacy;

(c) Grant waivers under § 158.150;

(d) Designate ports; and

(e) Deny entry of ships to any port or terminal, except when a ship is entering under force majeure, that does not have—

(1) A COA if required under § 158.135; or

(2) Garbage reception facilities required under Subpart D of this part.

25. Part 158 is amended adding § 158.135 to read as follows:

§ 158.135 Who must have Certificates of Adequacy?

To continue to receive ships, a port or terminal must hold one or more of the following

(a) A COA for oil if it receives oceangoing tankers, or any other oceangoing ship of 400 gross tons or more, carrying residues and mixtures containing oil;

(b) A COA for NLS residue if it receives oceangoing ships carrying NLSs; or

(c) A COA for garbage if it receives the ships under paragraph (a) or (b) of this section.

26. Section 158.140 is revised to read as follows:

§ 158.140 Applying for a Certificate of Adequacy.

(a) To continue to receive ships, a port or terminal required by § 158.135 to have a COA for its reception facilities, the person in charge must apply to the Coast Guard for a certificate as follows:

(1) Applicants for a COA required by § 158.135 (a) or (b) must apply to the COTP of the Zone in which the port or terminal is located using Form A or Form B, respectively.

(2) Before June 30, 1989, an applicant for a COA required by § 158.135(c) must apply on Form C to: Commandant (G–MPS–1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, Attention: Annex V Reception Facility Desk. On or after June 30, 1989 applicants must apply on Form C to the COTP of the Zone in which the port or terminal is located.

(b) Applications for Certificates of Adequacy (Forms A, B, and C) may be obtained from the local Coast Guard COTP.

27. Section 158.160 is revised to read as follows:

§ 158.160 Issuance and termination of a Certificate of Adequacy.

(a) After reviewing an application made under § 158.140(a)(1), the COPT determines by inspection the following:

(1) When the application is made on Form A, whether or not the reception facility meets Subpart B of this part.

(2) When the application is made on Form B, whether or not the reception facility and the port, or the reception facility and the terminal, meet Subpart C of this part.

Note to paragraph (a).—If in the instruction manual required by § 158.330(b) there is a certification by a registered professional engineer licensed by a state or the District of Columbia that the backpressure requirements under § 158.330(a) are met, the COTP determines whether or not to accept this finding.

(b) After the inspections under paragraph (a) of this section are conducted, and after consulting with the Administrator of the Environmental Protection Agency (EPA) or his or her designee, the COTP:

(1) Issues a Certificate of Adequacy of the person in charge for the port or terminal; or

(2) Denies the application and informs the person in charge in writing of the reasons; for the denial.

(c) After reviewing an application made under § 158.140(a)(2), Commandant (G–MPS–1) or the COTP:

(1) Issues a COA to the person in charge for the port or terminal; or

(2) Denies the application and informs the person in charge in writing of the reasons for the denial.

(d) The COA has attached to it any waivers that are granted under § 158.150 when the COA is issued.

(a) Each COA remains valid until:
(1) Suspended;
(2) Revoked; or
(3) This part no longer applies to the port or terminal.

28. Section 158.163(b)(2) is revised to read as follows:

§ 158.163 Reception facility operations.

* * * * *

(b) * * *

(2) Available for inspection by the COTP and the master, operator, person who is in charge of a ship, or agent for a ship.

* * * * *

29. Section 158.165(b) is revised to read as follows:

§ 158.165 Certificate of Adequacy: Change of information.

* * * * *

(b) The person in charge shall notify the COTP in writing within 30 days after any information required in the following is changed:

(1) Form A, sections 1, 3B, 3C, 3E, 3F, 3I, or 3J.

(2) Form B, sections 1, 3, 4, 5B, 5D, 5E, 5F, or 5G.

(3) Form C, sections A1, B1, B2, or C3.

* * * * *

30. Part 158 is amended by adding § 158.167 to read as follows:

§ 158.167 Penalties for violation.

(a) A person who violates MARPOL 73/78 or the regulations of this part is liable for a civil penalty not to exceed $25,000 for each violation, as provided by 33 U.S.C. 1908(b)(1). Each day of a continuing violation constitutes a separate violation.

(b) A person who knowingly violates MARPOL 73/78 or the regulations of this part is subject to a fine for each violation, of not more than $50,000 dollars or imprisonment for not more than 5 years, or both, as provided by 33 U.S.C. 1908(a).

(c) A ship operated in violation of MARPOL 73/78 or the regulations of this part is liable in rem for any fine imposed under paragraph (a) of this section or civil penalty assessed pursuant to paragraph (b) of this section, and may be proceeded against in the United States district court of any district in which the ship may be found.

Subpart D—[Redesignated as Subpart E]

31. Subpart D of Part 158 is redesignated as Subpart E.

§ 158.400 [Redesignated as § 158.500]

32. Section 158.400 is redesignated § 158.500.

§ 158.420 [Redesignated as § 158.520]

33. Section 158.420 is redesignated § 158.520.

34. Part 158 is amended by adding a new Subpart D to read as follows:

Subpart D—Criteria for Adequacy of Reception Facilities: Garbage

Sec.
§ 158.400 Purpose.
§ 158.410 Reception facilities: General.
§ 158.420 Reception facilities: Capacity and exceptions.

Subpart D—Criteria for Adequacy of Reception Facilities: Garbage

§ 158.400 Purpose.

The purpose of this subpart is to supply the criteria for adequacy of reception facilities at ports and terminals that receive ships in order to comply with Regulation 7 of Annex V to MARPOL 73/78.

§ 158.410 Reception facilities: General.

(a) Except as allowed in paragraph (b) of this section, the person in charge of a port or terminal shall ensure that the port or terminal's reception facility:

(1) Is capable of receiving APHIS regulated garbage at the port or terminal no later than 24 hours after notice under § 151.65 of this chapter is given to the port or terminal;

(2) Is arranged so that it does not interfere with port or terminal operations and so that garbage that has been discharged from ships to it cannot readily enter the water; and

(3) Holds each federal, state, and local permit or license required by environmental and public health laws and regulations concerning garbage handling.

Note to paragraph (a)—The U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) requires vessels disposing of victual wastes or garbage contaminated by victual wastes, except for vessels that operate only between the continental United States and Canadian ports, to incinerate or sterilize those victual wastes in accordance with their regulations in 7 CFR 330.400 and 9 CFR 94.5.

(b) A reception facility for a ship repair yard does not have to meet the requirements of paragraph (a)(1) of this section if it is capable of completing the transfer of garbage from a ship before the ship departs from the yard.

§ 158.420 Reception facilities: Capacity and exceptions.

Each day the port or terminal is in operation, the person in charge of a port or terminal must provide, or ensure the availability of, a reception facility that is capable of receiving all garbage that the master or person who is in charge of a ship desires to discharge, except:

(a) Large quantities of spoiled or damaged cargoes not usually discharged by a ship; or

(b) Garbage from ships not having commercial transactions with that port or terminal.

Chapter I of Title 46 Code of Federal Regulations is amended as follows:

35. The authority citation to Part 25 is revised to read as follows:

Authority: 33 U.S.C. 1903(b), 46 U.S.C. 3306, 4104, and 4302; 49 CFR 1.46.

36. Part 25 is amended by adding Subpart 25.50 to read as follows:

Subpart 25.50—Garbage Reception

Sec.
25.50–1 Criteria.

§ 25.50–1 Criteria.

Each vessel must retain all garbage generated on board the vessel for later shoreside disposal, unless it is discharged at sea as specified under 33 CFR Part 151.

Note: The Act to Prevent Pollution from Ships, as amended (33 U.S.C. 1901–1911), prohibits the discharge of all plastics into the navigable waters and the Exclusive Economic Zone of the United States and limits discharges of other types of garbage in these waters. See 33 CFR 151.53 for definitions of "Plastic" and "garbage."

Dated: August 25, 1988.

P.A. Yost,
Admiral, Commandant, U.S. Coast Guard.

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Part VI

Department of Housing and Urban Development

Assistant Secretary for Public and Indian Housing

24 CFR Part 968

Public Housing CIAP and Comprehensive Grant Programs; Proposed Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Assistant Secretary for Public and Indian Housing

24 CFR Part 968

[Docket No. R-88-1433; FR-2488]

Public Housing CIAP and Comprehensive Grant Programs

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: The proposed rule would simplify the current CIAP program and establish the new Comprehensive Grant program, which would fund the modernization of public housing in a more flexible way for public housing agencies (PHAs) that own or operate a total of 500 or more public housing units. The new program will not become operational until Congress enacts a law revising the method for allocating assistance. The current CIAP program would be limited to PHAs with fewer than 500 units.

DATE: Comments must be received by December 27, 1988 to assure their consideration.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Comments should refer to this above docket number and title. A copy of each comment submitted will be available for public inspection and copying during regular business hours in room 10276.

FOR FURTHER INFORMATION CONTACT: Nancy S. Chisholm, Director, Policy Staff, Public and Indian Housing, Department of Housing and Urban Development, Room 4118, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755-6713. Hearing or speech impaired individuals may call HUD's TDD number (202) 426-0015. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. PAPERWORK REDUCTION ACT OF 1980

The information collection requirements contained in this rule have been submitted to OMB for review under the Paperwork Reduction Act of 1980. No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the Federal Register. Public reporting burden for the collection of information requirements contained in this rule are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, *Findings and Certifications*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., Room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

II. BACKGROUND

Part 968 now contains the regulations for the Public Housing Comprehensive Improvement Assistance program (CIAP program), which applies to all public housing, including housing owned or operated by Indian housing authorities (IHAs). The proposed rule would rename Part 968 as "Public Housing Modernization," and reorganize it by establishing a Subpart A, containing generally applicable provisions; Subpart B, setting forth the current CIAP program contained in Part 968, as revised by this proposed rule, but limiting its applicability to PHAs that own or operate fewer than 500 units; and Subpart C, setting forth the new Comprehensive Grant program for the larger PHAs. Part 968 would apply to all PHAs, except for IHAs. By separate rulemaking, HUD intends to consolidate all public housing regulations applicable to IHA housing in 24 CFR Part 905. In connection with publication of the final regulation, HUD will make conforming changes to cross references to Part 968 that are contained in other regulations in Chapter IX of Title 24.

A number of other regulations for the public housing program that may affect this part are at various stages of development. When this rule is published for effect, it will include appropriate amendments based on these other rulemakings.

III. PROGRAM DESCRIPTION

A. Subpart A—General Provisions Applicable to Part 968

2. Purpose and Applicability

Section 968.101 would set forth general statements of purpose and applicability for the revised Part 968. The purpose of the Public Housing Modernization program is to provide financial assistance to PHAs to improve the physical condition and upgrade the management and operation of public housing projects, to assure they continue to serve lower income families. Subpart A applies to all modernization under Part 968. Subpart B sets forth the requirements and procedures for the CIAP program for PHAs that own or operate fewer than 500 public housing units. Subpart C sets forth the requirements and procedures for the new Comprehensive Grant program for PHAs that own or operate 500 or more public housing units. For purposes of the 500 unit threshold, units under the Turnkey III and Mutual Help Homeownership Opportunities programs would be excluded, and nonviable units approved by HUD for use because no alternative housing is available would be included.

Part 968 applies to PHA-owned public housing (including Lanham Act and Public Works Administration projects) and to Section 23 Leased Housing Bond-Financed projects. It does not apply to projects under the Section 23 Leased Housing Non-Bond Financed or Section 10(c) Leased Housing programs, or to Section 23 or Section 8 Housing Assistance Payments program projects, which do not qualify as public housing and contain alternative means to fund necessary maintenance and capital improvements.

2. Indian Housing

The Department is planning to consolidate all public housing regulations for Indian Housing in Part 905 (see proposed rule, 53 FR 24554, published June 29, 1988). Accordingly, Part 968 would not apply to Indian housing. If the plan to consolidate the regulations in Part 905 does not go forward before the amendments proposed in this rule to Part 968 take effect, Indian housing will be made subject to this Part, which would be amended to take into account features unique to Indians, such as the Indian preference. Accordingly, persons interested in Indian Housing should comment on this proposed regulation as well as Part 905, since comments on both will be the basis for a Comprehensive Grant program for IHAs that own or operate a total of 500 or more public housing units under either Part 905 or Part 968. HUD does not anticipate having to publish a separate proposed regulation to amend Part 905 or Part 968 for this purpose.

3. Definitions

Section 968.105 would contain certain key definitions necessary for an understanding of Subparts A, B, and C, including definitions of the U.S. Housing Act of 1937, ACC, CIAP program, Federal Fiscal Year, HUD, IHA, and PHA. Subparts B and C would contain their own definitions sections, and include some identical definitions to minimize the need to refer outside of the CIAP or Comprehensive Grant Program Subpart.

4. Miscellaneous Federal Requirements

Section 968.110 would contain a catalog of the principal Federal statutory and regulatory requirements that apply to this Part, including civil rights, environmental, wage rate, and lead-based paint requirements. The lead-based paint requirements have been extensively revised, consistent with the final rule published on June 6, 1988 (53 FR 20796). Paragraph (g) provides that, beginning on April 2, 1989, modernization under Part 968 will be subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended by the Uniform Relocation Act Amendments of 1987, and implementing regulations. The Department of Transportation has the responsibility for issuing government-wide regulations implementing the 1987 amendments. While it is too early to say what these requirements will be, they will represent a change in relocation policies applicable to the modernization of public housing.

5. Modernization and Energy Conservation Standards

Section 968.115 would require all modernization under Part 968 to meet HUD's modernization standards and HUD's energy conservation standards for cost-effective conservation measures.

6. Preemption of State Prevailing Wage Requirements

Section 968.120 would contain the provisions preempting State prevailing wage requirements that were recently published for effect. (See 53 FR 30208, August 10, 1988.) Comparable provisions for tribal law would be added to Part 905.

B. Subpart B—CIAP Program Simplifications

Subpart B would set forth the regulations specifically applicable to the CIAP program. This Subpart is largely based on the existing Part 968. However, it would make a number of changes designed to simplify program administration, as described below. References are to the proposed new section designations, which are based on the numbering system in the proposed Indian rule, so that comparable sections share the last two digits of their section number (for example, proposed § 905.605, Eligible Costs, is § 968.205 in this proposed regulation). The following chart shows both the current and proposed section numbers for the various provisions.

Proposed	Proposed section heading	Current
968.201	Purpose and applicability.	968.1 and .2.
968.203	Definitions	968.3.
968.205	Eligible costs	968.4.
968.210	Procedures for obtaining approval of a modernization program.	968.5.
968.215	Modernization project	968.6.
968.220	Tenant participation	968.7.
968.225	Homebuyer participation.	968.8.
968.230	Special requirements for homeownership projects.	968.10.
968.235	Special requirements for section 23 leased housing bond-financed projects.	968.11.
968.240	Contracting requirements.	968.12.
968.245	Fund requisitions	968.13.
968.250	Budget revisions	968.16.
968.255	Fiscal closeout of a modernization program.	968.17.

1. One-Stage Application Process

Section 968.210 would be amended to expedite and simplify the current application process by eliminating the two-part (preliminary and final) application process and requiring only one application. The Department also intends to propose legislation to eliminate certain burdensome requirements described below. Information which is now submitted with the final application would be either submitted at the front-end with the application or at the time of joint review by HUD and the PHA or eliminated as a submission requirement. These changes would streamline the modernization application and approval process for smaller PHAs.

While PHAs would be required to submit a more complete application upfront, the selected applications would be able to reach the implementation stage faster. The Department invites comments on whether PHAs favor one-stage or two-stage processing. The Department also welcomes suggestions on any other ways these regulations could be shortened and simplified.

The application (§ 968.210(c)) would be required to contain:

a. A 5-year funding request plan, which is the PHA's estimate of the comprehensive modernization funds to be requested over a 5-year period to meet the total physical and management improvements needs of its projects;

b. A preliminary assessment of the physical and management improvement needs and the estimated costs of the project(s) for which the PHA is requesting modernization in the current year;

c. For each project proposed for comprehensive modernization, an identification of and an estimate of the total costs of replacement of equipment, systems, or structural elements that would normally be replaced (assuming routine and timely maintenance is performed) over the remaining period of the ACC or during the 30-year period beginning on the date of submission of the application, whichever period is longer (the Department intends to propose legislation to drop this requirement since it is not possible for PHAs to project replacement needs over a 30-year period with sufficient accuracy to make this a useful planning tool);

d. A resolution by the PHA Board of Commissioners approving the application and containing various certifications.

e. Other information required by HUD. The proposed regulation would set forth the required contents of the PHA application with less specificity in order to make it easier to make changes to these requirements by handbook. The Department intends to continue to require PHAs to submit an organization and staffing plan and a statement on the locality's compliance with cooperation agreement.

If a PHA is selected for a joint HUD/PHA review (§ 968.210(e)), the PHA would conduct a comprehensive assessment for each project proposed for comprehensive modernization. The assessment would include: The current physical condition and the physical improvements necessary to meet the standards, and an identification of management needs and the improvements needed to upgrade the management and operation of each

project. The comprehensive assessment would include a plan for making the improvements and replacements and for meeting the needs including: (a) A project operating budget for each 12-month period covered by the plan, excluding modernization costs; and (b) an estimate of the financial resources to be available from all sources and the amount of modernization funds to be requested for each 12-month period covered by the plan. (The Department intends to propose legislation to drop the requirements to prepare an operating budget and an estimate of available resources for each 12-month period covered by the plan. It is not feasible for PHAs to project with sufficient accuracy to make these useful planning tools.)

After HUD funding decisions, the PHA would submit an implementation schedule (§ 968.210(j)) for each project in the approved modernization program.

2. Current Two-Stage Application Process

Currently the preliminary application contains:

a. A 5-year funding request plan, which is the PHA's initial comprehensive assessment of the modernization funds to be requested over a five-year period to meet the total physical and management improvements needs of its project; and

b. An explanation of the priority order of the projects for which modernization funding is requested.

For joint review, the PHA completes a detailed comprehensive assessment of the total physical and management improvement needs of the projects for which the PHA is requesting modernization. The assessment includes the current physical condition and the physical improvements necessary to meet the standards, the improvements needed to upgrade the management and operation of each project, and an identification of management needs.

Currently, the final application submission contains:

a. For each project, an identification of , and an estimate of the total cost of, replacement of equipment, systems, or structural elements that would normally be replaced (assuming routine and timely maintenance is performed) over the remaining period of the ACC or during the 30-year period beginning on the date of submission of the application, whichever period is longer (the Department intends to propose legislation to drop this requirement since it is not possible for PHAs to project replacement needs over a 30-year period with sufficient accuracy to make this a useful planning tool);

b. As part of the comprehensive assessment, a plan for making the improvements and replacements and for meeting the needs. The plan contains: (i) A schedule of actions to be completed over a period of not greater than 5 years from the date of approval of the application, within each 12-month period covered by the plan, and which are necessary to make the physical improvements and to upgrade the management and operation; (ii) the estimated cost of each action; (iii) a project operating budget for each 12-month period covered by the plan, excluding modernization costs; and (iv) an estimate of the financial resources to be available from all sources and the amounts of modernization funds to be requested for each 12-month period covered by the plan (the Department intends to propose legislation to repeal the requirements to submit the information required by clauses (iii) and (iv), since it is not feasible for PHAs to project with sufficient accuracy to make these useful planning tools);

c. An organization and staffing plan;

d. A PHA report on compliance by the local governing body with the terms of the cooperation agreement;

e. An energy audit; and

f. A resolution by the PHA Board of Commissioners approving the final application and containing various certifications.

3 Simplification of Other Requirements

To continue the Department's efforts to reduce burdensome program requirements, §968.240(i), Management Improvements Contracts, and § 968.250, Budget Revisions, would be amended to permit PHA certification of compliance for PHAs with proven modernization capability.

Section 968.240(i), Management Improvement Contracts, would be modified to become consistent with § 968.240 (b), (e), and (g), which permit either prior HUD approval or PHA certification of compliance, depending on the modernization capability and past modernization performance of the PHA. Section 968.240(i) requires the PHA to comply with HUD requirements either to (a) submit for prior HUD approval contracts for management improvements, as well as contract changes, or (b) certify that the contracts accurately reflect HUD-approved work, do not exceed the HUD-approved budget amount, and have received HUD clearance under previous participation procedures.

Section 968.250, Budget Revisions, would be modified to become consistent with § 968.240 (b), (e), (g), and (i), which permit either prior HUD approval or PHA certification of compliance, depending on the modernization capability and past modernization performance of the PHA. Section 968.250 would permit a PHA to comply with HUD requirements either to (a) submit the proposed budget revision for prior HUD approval if the PHA plans to delete or substantially revise approved work items, add new work items, or incur modernization costs in excess of the approved budget amount for a work item, or (b) certify that the revisions are necessary to carry out the approved work and do not result in the approved budget amount for any project being exceeded.

Section 968.14, Progress Reporting, and § 968.16, On-Site Inspections, of the existing regulations are not included in the proposed rule. Section 968.9(i), Insurance, would also be omitted. Section 968.245, Fund Requisitions, would be made more general. HUD intends to cover these matters in program handbooks.

4. Special Purpose Modernization

The amendments made by section 120 of the Housing and Community Development Act of 1987, amending the provisions governing special purpose modernization, will be implemented by a separate rulemaking.

5. Declaration of Trust

Section 968.215(c) would require a PHA to execute and file for record a Declaration of Trust to protect the rights and interests of HUD. This is currently a handbook requirement that merits inclusion in the regulations as an important legal requirement.

C. Subpart C—Comprehensive Grant Program

1. Purpose—Section 968.301

Subpart C would set forth the policies and procedures for the new Comprehensive Grant program, authorized under section 14 of the U.S. Housing Act of 1937, as amended by section 119 of the Housing and Community Development Act of 1987. Under this program, PHAs that own or operate a total of 500 or more public housing units would receive financial assistance for the modernization of their public housing based on a formula (see paragraph C.4). Units under the Turnkey III and Mutual Help Homeownership Opportunities programs would not be counted, since homeownership units are eligible only for limited physical improvements.

Under this program, PHAs would have much greater discretion to plan and carry out modernization of their public housing projects. Unlike the CIAP program, which is a competitive application program, PHAs would receive a share of each year's available funding in accordance with an application formula. As a condition of receiving funding, PHAs would be required to submit for HUD approval a comprehensive plan setting forth all necessary physical and management improvements. Included in the comprehensive plan would be a five-year action plan specifying the particular activities the PHA proposes to carry out to reasonably ensure the long-term viability of each project at a reasonable cost. After HUD notified a PHA of the amount of funds it would be allocated for any fiscal year, the PHA would submit an annual statement of activities and expenditures, describing its plans for the year. Thirty days after the end of each PHA's fiscal year, the PHA would submit a performance and evaluation report describing its use of assistance during the year.

In administering the program, HUD is required, under section 14(e)(4)(D) of the 1937 Act, to respect the professional judgment of the administrators of the PHA, to the greatest extent possible. Accordingly, in its review of the PHA's comprehensive plan, annual statement, and performance and evaluation report, HUD would generally defer to the judgment of the PHA.

2. Definitions—Section 968.305

Section 968.305 would set forth the definitions that would apply to the Comprehensive Grant program.

3. Eligible Costs—Section 968.310

Section 968.310(a) would set forth the purposes for which assistance under this program could be used, as follows:

a. Activities described in the HUD-approved comprehensive plan and its annual statement of activities and expenditures. Included in these activities as eligible costs are the costs of physical and management improvements, tenant moving costs, administrative costs, lead-based paint testing and abatement costs, and assistance for tenant management corporations, all of which are also eligible under the CIAP program (see § 968.205). Unlike the CIAP program, management improvements undertaken under the Comprehensive Grant program do not have to be tied to a program of planned physical improvements. A PHA may not spend more than 15 percent of its annual grant on "soft costs": Management improvements, administration, fees and costs, and relocation expenses (see § 968.310(c)).

b. Emergency work. This category of work need not be contained in the PHA's comprehensive plan, since by its nature it is unanticipated and it does not make sense to require a PHA to amend its comprehensive plan or annual statement before it can carry out emergency work to correct conditions that pose an immediate threat to tenant life, health, or safety or that is related to fire safety. However, where a PHA is aware of necessary emergency work, it should describe it in its comprehensive plan, action plan, and annual statement.

c. Funding of reserve accounts. A PHA will be responsible for planning their use of assistance so that they can meet future replacement and unanticipated emergency needs. The PHA may establish reserve accounts for this purpose if it chooses. Amounts that the PHA plans to allocate to these reserve accounts will be specified in the PHA's action plan and annual statements. HUD is still considering how best to provide for funding of these reserves. Whether they are actually funded or maintained as unfunded accounts until the PHA needs to draw down amounts, HUD intends to apply earned or imputed interest to the balance so the value of the account keeps pace with cost increases.

d. Preparation of the PHA's comprehensive plan (including the action plan and costs related to assisting tenants to participate in the planning process); annual statement; and annual performance and evaluation report.

For homeownership programs under Subpart C, as under the CIAP program under Subpart B, only work items that are not the responsibility of the homebuyer families and that are related to health and safety, correction of development deficiencies, physical accessibility, cost-effective energy conservation, and lead-based paint testing and abatement would be eligible for assistance. (See § 968.310(b).)

A PHA could not make luxury improvements to its projects, as specified by HUD, because of the adverse effect such improvements would have on the PHA's ability to modernize its units within a reasonable time period and because of long-term increased operating and maintenance costs. HUD intends to specify in the program handbook prohibited improvements, such as pools, dwelling unit trash compactors, garbage disposals, and dishwashers, as it now does for the CIAP program. (See § 968.310(d).)

Section 14(f)(2)(B) of the 1987 Act provides that a PHA could use Comprehensive Grant program assistance for special purpose needs, even if the needs are not indicated in the PHA's comprehensive plan or annual statement. The proposed rule would not implement this provision, since the Department intends to propose legislation to repeal it. Under this program, since a PHA has even more flexibility than it would have under special purpose modernization, there is no need for this separate category of modernization.

4. Allocation of Assistance—Section 968.315

Section 14(k) of the 1937 Act provides that assistance shall be allocated under section 14 in substantial accord with the current allocation system under the CIAP program, until Congress establishes, by law, a revised method for allocating assistance under this program. HUD is required to submit a report to Congress by February 5, 1989 on the need for modernization assistance, proposed allocation alternatives, and related information. After Congress enacts a legislative formula, HUD will publish regulations in the Federal Register for public comment.

Pending enactment of an allocation method for the Comprehensive Grant program, § 968.315(a) would be reserved. For purposes of this proposed rule, HUD is assuming that funds will be allocated to PHAs through a formula based on objective factors. A full discussion of alternative methods for allocating modernizations funds under the comprehensive grant program, and HUD's recommendation for a funding method, will be included in the report to Congress. Several provisions of section 14 of the 1937 Act are inconsistent with a formula allocation system. Therefore, they are not included in this proposed regulation, and, depending on the analysis and recommendations in the report to Congress, HUD may propose amendments to delete them in connection with enactment of the funding method. These provisions are:

(a) The second sentence of section 14(e)(3)(A), which provides that the Secretary shall review the relative needs for restoring public housing shown by comprehensive plans in HUD's regional or field offices; and

(b) Section 14(h), which provides that, in making assistance available under either the CIAP or Comprehensive Grant program, HUD shall give preference to PHAs that have emergency needs or have a significant number of vacant units and that have demonstrated a capability to carry out activities proposed in their comprehensive plans. HUD intends to propose an amendment

to limit the preference to the CIAP program.

PHAs should be aware, in developing their comprehensive plans and action plans, that, while they are required to modernize to the level of the modernization standards required by law, and may undertake major redesign or significant project additions, HUD does not plan to seek funding from Congress for funds beyond those necessary to address the backlog of mandatory modernization needs and the accrual of mandatory modernization needs over time. Therefore, in the planning process, PHAs should be exploring with their State and local governments sources of funding to enable them to undertake that work which they have identified as desirable at their projects which is beyond the mandatory modernization standards.

No financial assistance would be allocated to a PHA from the annual appropriation for modernization unless HUD has approved its comprehensive plan, except in the case of emergency work. Where a PHA needs funds to address emergency work and does not have an appproved comprehensive plan, it would submit an annual statement and any other supporting documentation required by HUD, describing its proposed emergency work and requesting funding to carry it out. For purposes of the proposed rule, HUD expects PHAs to be able to meet emergency needs out of their regular grant allocation, assuming a reasonable level of appropriations for the Modernization program. HUD will address the issue of how best to fund emergency needs in the report it will submit to Congress next year.

5. Comprehensive Plans—Section 968.320

HUD must approve a comprehensive plan submitted by a PHA, as a condition for receiving Comprehensive Grant program funding, except funding for emergencies. The plan would identify the physical and management improvements needed for each of the PHA's projects, including estimates of the costs. It would include general strategies for addressing these needs and also highlight any special strategies, such as major redesign or partial demolition, that are necessary to ensure the long-term viability of the projects. Accordingly, each plan would contain the following elements.

a. A comprehensive assessment of the physical needs of the PHA's projects that are necessary to permit them to be rehabilitated to a level at least equal to the modernization and life-cycle cost-effective energy conservation standards, as required in § 968.115. The plan must also identify the replacement needs the PHA anticipates over the five-year term of the action plan.

b. A comprehensive assessment of management needs, so decent, safe, and sanitary living conditions will be provided.

c. A demonstration that completion of the physical and management improvements will reasonably ensure the long-term physical and social viability of each project at a reasonable cost. With respect to social viability, the PHA shall demonstrate that there is a realistic potential to eliminate or modify neighborhood or environmental conditions that jeopardize the long-term social viability of the project or to alter the project to cope effectively with these conditions. The PHA shall assess problems such as high density in the project, a concentration of assisted housing, or physical deterioration of, the neighborhood, industrial or commercial development which jeopardizes the suitability of the site for residential use, air pollution, and high rates of crime and vandalism. Under this viability review, reasonable cost would be defined in § 968.305 as the cost (excluding the cost of management improvements, administration, architectural and engineering fees, and other fees) of the modernization program that does not exceed 62.5 percent (for a nonelevator structure) or 69 percent (for an elevator structure) of the total cost guidelines for a new project with the same structure type and number and size of units in the market area. This is the same standard used to determine whether a CIAP project is financially feasible. A PHA may not use its grant for improvements to a project unless completion of the improvements would reasonably ensure long-term viability at a reasonable cost, except in the case of emergency work. In addition, if a PHA had received assistance under Part 968 within the preceding five-year period (other than for emergency work), it would demonstrate that the proposed improvements and replacements would not duplicate work funded during that period.

The Department invites comments specifically on whether PHAs should have the flexibility to spend more on a particular project than is needed to ensure viability (so long as viability can be achieved within the reasonable cost limit). In other words, should a PHA have the discretion to make more improvements to a project than are strictly necessary to achieve viability? The proposed rule does not address this point.

d. An action plan to carry out the physical and management improvements that the PHA determines will reasonably ensure long-term project viability, and will reasonably ensure that the PHA will meet, or make reasonable progress towards meeting, the performance standards in § 968.345 (see section C.10., below). The PHA develops the action plan based on estimates provided by HUD of the amount of assistance the PHA can reasonably expect to receive over its five-year term and on PHA estimates of funds that will be available from other sources, such as State and local governments. The action plan specifies, for each project, a schedule of the improvements to be completed over a period of up to five years. The action plan also includes a preliminary estimate of the total cost of the items for each year covered by the action plan. If all the improvements contained in the comprehensive plan cannot reasonably be scheduled to be completed in five years, the PHA must amend its action plan annually to add an additional year until all improvements are addressed.

The Department invites comments on whether PHAs should be required to amend their action plans annually until all work is covered, or whether the action plan should stay in effect (if the work specified in it is carried out on schedule) for five years, at which point a new action plan covering an additional five years of work would be prepared by the PHA and submitted to HUD for approval.

PHAs are not required to address all needs identified in their comprehensive plans within the five-year period before funding their reserve accounts. A PHA could choose, for example, to address only emergency needs at a particular project, while discussing with the local government that actions to take with respect to the project. In the meantime, the PHA could increase funding of its reserve.

e. A local government statement, signed by the chief executive officer of the unit of general local government, certifying that the PHA developed the comprehensive plan in consultation with local government officials and tenants, including at least one public hearing, that the plan is consistent with the local government's assessment of its lower income housing needs, and that the local government will cooperate in providing tenant programs and services.

f. A statement signed by the PHA director that the PHA will carry out its comprehensive plan in accordance with title VI of the Civil Rights Act of 1964, title VIII of the Civil Rights Act of 1968, and section 504 of the Rehabilitation Act of 1973.

g. A PHA resolution, adopted by its Board of Commissioners, approving the plan and certifying that the PHA will comply with all requirements that apply to the program, including certain listed requirements.

If a PHA had submitted a comprehensive plan for modernization (CPM) under the CIAP program, it could convert it to a Comprehensive Grant comprehensive plan by submitting only the changes necessary to reflect the results of consultations with local government officials and tenants, and to include the additional items required by the regulations.

A PHA would be required to amend its comprehensive plan (including the action plan) as part of its annual statement or at any other time, when the bases for the needs assessment or other feature of the plans had substantially changed. As required by section 14(e)(3)(B), a PHA would have the right to amend its comprehensive plan to extend the time for performance if HUD is unable to provide the amount of assistance set forth in the plan or has not provided the assistance in a timely manner.

6. HUD Review and Approval of Comprehensive Plan—§ 968.325

Upon submission of a complete comprehensive plan, it would be considered to be approved unless HUD notified the PHA in writing within 75 calendar days that it has disapproved the plan, indicating the reasons for disapproval and the necessary modifications. As noted above, HUD is required to defer to the professional judgment of the PHA, to the maximum extent possible. Accordingly, it would approve the plan except as follows:

a. HUD determines the PHA's identification of physical and management needs is plainly inconsistent with available significant facts and data. For example, HUD would disapprove a plan if it determined that (i) the proposed improvements and replacements would not bring all of the PHA's projects up to the modernization and energy conservation standards in § 968.115; (ii) the management and operational improvements would not address all of the PHA's areas of deficiency; or (iii) the proposed improvements are not related to the needs identified, such as where vacancy problems are not addressed.

b. HUD determines the action plan is plainly inappropriate to meeting the needs identified in the comprehensive plan.

c. HUD determines that the PHA has not demonstrated that completion of the improvements and replacements would reasonably ensure the long-term viability of one or more projects at a reasonable cost.

d. HUD has evidence which tends to challenge, in a substantial manner, the local government statement or the PHA resolution.

Where the PHA and HUD disagreed over a viability determination under § 968.325(b)(3) or other substantive matters, HUD could approve a comprehensive plan subject to resolution of the disagreement between HUD and the PHA.

7. Annual Statement of Activities and Expenditures—Section 968.330

After HUD notified the PHA of the estimated amount of assistance it would receive under the formula for a particular fiscal year and the PHA estimated how much funding will be available from other sources, such as the State and local governments, the PHA would be required to submit an annual statement of activities, obligations, and expenditures. The annual statement would describe the activities the PHA intends to carry out for the coming year, consistent with its comprehensive plan, including its action plan. Included in the statement would be PHA certifications that it has given tenants affected by it and local government officials an opportunity to review the draft statement and submit comments, and that the PHA has taken tenant and local government comments into account. The annual statement would also include a proposed amendment to its action plan, if necessary to maintain a current five-year plan, where not all improvements specified in the comprehensive plan are covered by the current five-year action plan. In addition, where the bases for the needs assessment or other features of the comprehensive plan substantially change, the PHA would have to propose an amendment to its comprehensive plan. The annual statement would also include a PHA resolution approving the annual statement and stating that the resolution and statements submitted with the comprehensive plan are still current.

Like the comprehensive plan, an annual statement would be considered to be aprroved unless HUD notified the PHA of disapproval within 75 calendar days. HUD would approve an annual statement, except where it is determined to be plainly inconsistent with the comprehensive plan; HUD has evidence to challenge, in a substantial manner, the certifications in the statement; or the proposed amendments to the comprehensive plan are not acceptable in accordance with the review standards that apply to the review of a comprehensive plan. HUD could approve a statement with conditions.

A PHA would be required to submit major changes in its annual statement to HUD for approval, except in the case of changes due to emergencies or unanticipated work discovered during rehabilitation.

After HUD approved each year's annual statement, HUD and the PHA would enter into an ACC amendment covering that year's grant amount.

8. Conduct of Modernization Activities—Section 968.335

After ACC execution, the PHA would carry out its modernization program in accordance with its approved annual statement. The PHA could requisition modernization funds to pay for management and physical improvements and to fund its replacement reserve. The contracting requirements in Part 85, Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Tribal Governments (see § 968.115(j)) would apply. At the completion of activities funded by each annual grant, the PHA would be required to comply with certain closeout requirements.

9. PHA Performance and Evaluation Report—Section 968.340

Within 30 days after the end of each PHA fiscal year, the PHA would submit a performance and evaluation report, in the form prescribed by HUD, describing its actual use of assistance for the previous year. The report would contain an assessment of the relationship of the use of funds provided under the Comprehensive Grant program, as well as the use of any other funds (such as Community Development Block Grant program assistance, State assistance, and private funding), to the needs identified in the PHA's comprehensive plan and to the program purposes specified in § 968.301(a)(1). The report would include a PHA certification that it made the draft report available for review and comment by affected tenants before submission to HUD.

10. HUD Review of PHA Performance—Section 968.345

a. *HUD determination.* At least annually, HUD would carry out such reviews of PHA performance as may be necessary or appropriate to make the determinations required by this

paragraph, taking into consideration all available evidence.

i. *Conformity with comprehensive plan.* HUD would determine whether the PHA had carried out its activities under this Subpart in a timely manner and in accordance with its comprehensive plan.

(a) In making this determination, HUD would review the PHA's performance to determine whether the modernization activities undertaken during the period under review conform substantially to the activities specified in the approved annual statement, consistent with the approved comprehensive plan. The review could include whether any activities that were undertaken which were not included in the approved annual statement are eligible under § 968.310, are specified in the action plan, or are due to emergencies or unanticipated work discovered during rehabilitation. HUD would also consider whether the PHA received more or less funding than anticipated when it developed its annual statement.

(b) HUD would review a PHA's performance to determine whether the activities carried out comply with the requirements of the Act, including the requirement that the work carried out meets the modernization and energy conservation standards in § 968.115, this part, and other applicable laws and regulations.

ii. *Continuing capacity.* HUD would determine whether the PHA has a continuing capacity to carry out its comprehensive plan in a timely manner.

(a) The primary factors to be considered in arriving at a determination that a recipient has a continuing capacity would be those described in i. and iii., as they relate to carrying out the comprehensive plan. If HUD determined that the PHA has carried out its activities under this Subpart in a timely manner, taking into account the level of funding available, and in accordance with its comprehensive plan and that the PHA has satisifed, or has made reasonable progress towards satisfying, the performance standards prescribed in subparagraph (3) as they relate to activities under this Subpart, HUD would generally consider the PHA to have a continuing capacity.

(b) HUD would give particular attention to PHA efforts to accelerate the progress of the program and to prevent the recurrence of past deficiencies or noncompliance with applicable laws and regulations.

iii. *Reasonable progress.* HUD would determine whether the PHA has satisfied, or has made reasonable progress towards satisfying, the following performance standards:

(a) With respect to the physical condition of each project, whether the projects are in substantial compliance with the housing quality standards in 24 CFR [illegible] and

(b) With respect to the management condition of the PHA, whether:

(i) Operating reserves, exclusive of tenants accounts receivable, exceed a reasonable percentage of maximum operating reserves, in accordance with HUD guidelines (30 percent is the current requirement);

(ii) Operating expenses are less than or equal to income, or do not exceed income by more than a reasonable amount, in accordance with HUD guidelines (the current requirement is that expenses must not exceed income);

(iii) Annual utility consumption, as compared to the average of the previous three years' rolling base consumption, adjusted for variances in heating degree days, has not increased more than a reasonable amount, in accordance with HUD guidelines, has not changed, or has decreased (5 percent is the current cap on utility increases);

(iv) The PHA is a "high occupancy" PHA, as determined by HUD, or is meeting the occupancy goals of a comprehensive occupancy plan approved by HUD, in accordance with § 990.118 of this chapter (this is the current requirement);

(v) Annual rent collections equal or exceed a percentage, as specified by HUD, of annual rents chargeable by the PHA plus rental accounts receivable as of the end of the PHA's fiscal year (90 percent is the current requirement);

(vi) The annual average number of vacancy days between tenants is not more than a reasonable number of days, as specified by HUD (30 calendar days is the current requirement); and

(vii) The PHA has inspected all of its dwelling units annually, or more or less often, as specified by HUD, using housing quality standards as a minimum standard (the current requirement is for inspection of 100 percent of the units).

In setting the management standards and making the determination of PHA performance as measured against the standards, HUD would take into account what is reasonable to expect a PHA to achieve, based on the experience of PHAs in similar circumstances, as determined by HUD. The current standards were developed in consultation with PHA organizations as indicators of overall good management performance in key aspects of PHA operations.

(c) HUD would propose changes to these standards only after consultation with PHAs and PHA organizations.

b. *Condition for receipt of assistance.* As required by section 14(g) of the 1937 Act, no financial assistance could be made available under this subpart unless HUD determines that the PHA has made substantial efforts to meet the objectives of the preceding year under the PHA's comprehensive plan, or, for the first year a PHA receives assistance under this subpart, under the PHA's approved CIAP modernization program. In making this determination, HUD would take into account its determinations under 10.a., described above.

c. *Corrective action.*

i. HUD could order a PHA to take corrective action only if HUD determines:

(a) The PHA has not submitted a performance and evaluation report, in accordance with § 968.340;

(b) The PHA has not carried out its activities under Subpart C in a timely manner and in accordance with its comprehensive plan;

(c) The PHA does not have a continuing capacity to carry out its comprehensive plan in a timely manner;

(d) The PHA has not satisfied, or has not made reasonable progress towards satisfying, the performance standards specified in paragraph (a)(3).

(e) An audit conducted in accordance with 24 CFR Part 44 and § 968.110(i) reveals findings that HUD reasonably believes require corrective action.

Note: Determinations c.i. (b), (c), and (d) are closely based on sections 14(e)(4)(B) (i), (ii), and (iii) of the 1937 Act, with one exception. Section 14(e)(4)(B)(iii) (item c.i.(d), above) has a second part requiring HUD to determine whether a PHA "has made reasonable progress in carrying out modernization projects approved under this section." This concept appears to be included in clause (i) of that section: "[whether the PHA] has carried out its activities under this section in a timely manner and in accordance with its comprehensive plan * * *." HUD invites public comment on whether the second part of clause (iii) should be treated separately in the regulations.

ii. Where HUD determined that corrective action would be appropriate, it would design corrective actions to prevent continuation of the deficiency, mitigate adverse effects, and prevent recurrence of the same or similar deficiencies.

iii. HUD could direct a PHA to take one or more of the following corrective actions:

(a) Submit additional information concerning the operations of the PHA to determine the cause for PHA not meeting the standards in 10. a.i., ii., and iii., above explaining steps the PHA is taking to correct the deficiencies, documenting that the activities were not inconsistent with program requirements, and demonstrating the PHA's continuing capacity to carry out the comprehensive plan;

(b) Submit schedules for completing the work and to report on its progress;

(c) Correct deficiencies specified in a letter advising the PHA if the deficiency and warning it that HUD will impose sanctions if the deficiency recurs or is not corrected;

(d) Submit supporting material to document one or more of the statements, resolutions, and certifications submitted by the PHA;

(e) Not to incur financial obligations, or to suspend payments for one or more activities;

(f) Reimburse, from non-HUD sources, one or more program accounts for any amounts improperly expended; and

(g) Take such other corrective actions HUD determines appropriate to correct PHA deficiencies.

d. *Conditioning.* HUD could condition approval of the next year's annual statement, or otherwise condition a PHA's program, based on substantial evidence, in accordance with paragraph a., HUD Determination.

PHAs determined by HUD to be troubled would be conditioned at the beginning of their participation in the Comprehensive Grant program. HUD will approve an annual statement on the condition that the PHA take one or more corrective actions, such as submitting a schedule for completion of the work and reporting on its progress. The conditions would vary depending on the particular circumstances of a troubled PHA. Troubled PHAs would continue to be conditioned until such time as they demonstrated compliance with program requirements.

e. *Withholding and Reallocating Grant Amounts.* HUD would withhold some or all of a PHA's annual grant where it has required the PHA to take corrective action and the PHA fails to correct the deficiency within a reasonable time.

In addition, where HUD has withheld a PHA's grant for two or more consecutive fiscal years, it could reallocate some or all of the amount HUD has withheld up to that time, as well as future allocations, to other PHAs in the next Federal fiscal year. However, HUD would reallocate grant amounts only if it has required the PHA to take corrective action and the PHA has failed to correct the deficiency within a reasonable time. Before HUD could reallocate a grant, it would notify the PHA and give it an opportunity to consult with HUD regarding the proposed action. Where a PHA's grant funds are reallocated, a PHA could receive higher amounts in future years, but only after correction of its deficiencies and demonstration of an ability to carry out a modernization program. The required report to Congress will discuss alternative approaches for the restoration of reallocated amounts.

Section 14 explicity authorizes HUD to withhold a PHA's grant but is silent regarding HUD's authority to reallocate withheld grant amounts. The regulations include reallocation provisions because the Department believes it has inherent authority to do so in order to make statutorily-authorized withholding a viable sanction.

11. *Transition.* The Department intends to proposes a legislative proposal to permit a PHA to use any amount that HUD has obligated for it under CIAP for the purpose for which the CIAP amount was provided, or for purposes consistent with an action plan submitted by the PHA under the Comprehensive Grant program, as the PHA determines to be appropriate. CIAP projects already underway would have to be completed, unless HUD authorized another use of unobligated funds. This authority would permit an orderly transition from CIAP to the Comprehensive Grant program, while giving PHAs the discretion to decide the most effective and efficient way for available modernization funds to be spent.

IV. FINDINGS AND CERTIFICATIONS

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50 that implement section 102(2)(C) of the National Environmenal Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh St. S.W., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, or innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The rule was listed as sequence number 1031 under the Office of Public and Indian Housing in the Department's Semiannual Regulatory Agenda published on April 25, 1988 (53 FR 13854, 13892), under Executive Order 12291 and the Regulatory Flexibility Act.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. The rule would simplify the current Comprehensive Improvement Assistance program for the modernization of public housing and establish a new Comprehensive Grant program under which larger PHAs would receive modernization assistance from HUD on a formula basis. HUD does not anticipate a significant economic impact on small entities since PHAs would continue to carry out their modernization activities by entering into contracts for the work as they now do. There may be some beneficial effects, to the extent the rule would simplify and streamline the process.

Information collections for the CIAP program in Subpart B of this rule are identical to or less burdensome than ones contained in the current CIAP program requirements. The approved paperwork control numbers assigned by the Office of Management and Budget appear in the text of Subpart B.

The collection of information requirements for the Comprehensive Grant program contined in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Several sections of this proposed rule have been determined by the Department to contain collection of information requirements. This information is needed for HUD to administer the CIAP Comprehensive Grant programs. PHAs are the likely respondents. Information on these requirements is provided as follows:

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CHART 1.—TABULATION OF ANNUAL REPORTING BURDEN: PROPOSED RULE—PUBLIC HOUSING COMPREHENSIVE GRANT PROGRAM PHAS WITH 500 OR MORE PUBLIC HOUSING UNITS—24 CFR PART 968, SUBPART C

Description of Information Collection	Section of 24 CFR Affected	Number of respondents	Number of responses per respondents	Total Annual responses	Hours per response	Total hours
Comprehensive plan, including action plan, local government statement, civil rights statement, PHA resolution, and public hearing requirement.	[illegible]	375	1	375	30.00	11,340
Annual statement of activities and expenditures, including tenant and local government consultation requirements.	968.330	378	1	378	8.00	3,024
Fund requisitions	[illegible]	375	20	7,560	.50	3,780
Contract administration	[illegible]	50	1	50	1.00	50
Fiscal closeout	968.335(d)	378	1	378	1.00	378
Performance and evaluation report, including tenant consultation requirement	[illegible]	378	1	378	5.00	1,890
Corrective actions	[illegible]	25	2	50	8.00	350
Total annual burden						20,712

CHART 2.—TABULATION OF ANNUAL REPORTING BURDEN: PROPOSED RULE—PUBLIC HOUSING COMPREHENSIVE GRANT PROGRAM (CIAP) PHAS WITH FEWER THAN 500 PUBLIC HOUSING UNITS—24 CFR PART 968, SUBPART B

Description of Information Collection	Section of 24 CFR Affected	Number of respondents	Number of responses per respondents	Total Annual responses	Hours per response	Total hours
CIAP application (2577–0004)	968.210 968.215(c)	1,000	1.0	1,000	3.00	3,000
CIAP survey instrument (physical needs assessment) (2577–0047)	968.210	560	1.5	750	12.00	1,980
CIAP project implementation schedule (2577–0065)	968.210	800	1.5	1,200	.50	600
CIAP evidence of consultation (tenant and homebuyer) (2577–0046)	[illegible]	1000	1.5	1,500	2.00	3,000
CIAP contract administration (2577–0039) [1]	968.240	912	4.0	3,648	1.00	3,648
CIAP fund requisitions (2577–0043)	968.245	800	5.0	4,000	.50	2,000
CIAP reporting/monitoring/closeout (2577–0046)	[illegible]	800	6.0	4,800	1.00	4,800
Total annual burden						26,046

[1] This information collection includes both public housing development and CIAP. The reduced total responses from 3648 to 3648 and the reduced total hours from 7023 to 3648 is due to a reduction in CIAP.

This rule has been developed in accordance with Executive Order 12612, Federalism, and determined not to have substantial, direct effects on PHAs. With respect to the CIAP porgram, the rule would simplify the application process, making it easier for PHAs to obtain modernization assistance. The changes are consistent with federalism principles since they reduce unnecessary burdens on PHAs. The nature and purpose of the program would not change.

With respect to the Comprehensive Grant program, the new program would simply provide an alternative means of funding PHAs, based on an allocation method to be enacted by Congress. PHAs would not longer have to compete for funding, and would be given greater discretion in carrying out their modernization activities. The new program is consistent with federalism principles since it reduces unnecessary burdens on PHAs. While it is a "new" program, it is primarily a change only to the way HUD funds PHA modernization activities, not to the modernization activities.

In addition, since the changes are principally to the allocation system for providing modernization assistance and since participation by PHAs is discretionary, the rule lacks the direct and substantial effects on PHAs required for a policy with federalism implications under the Order.

This rule has been developed in accordance with Executive Order 12606, The Family. It does not have potential significant impact on family formation, maintenance, or general well-being. The rule would change the application process for the CIAP program and would provide modernization funding for large PHAs on a formula grant basis. Families would not be affected since PHAs would continue to carry out modernization activities at public housing projects.

The Catalog of Domestic Assistance numbers for the programs affected by this rule are 14.850, 14.851, and 14.852.

List of Subjects in 24 CFR Part 968

Loan programs: housing and community development, Public housing, Reporting and recordkeeping requirements, Grant programs: housing and community development, Indians.

For the reasons set forth in the preamble, Part 968 of Title 24 of the Code of Federal Regulations is proposed to be revised to read as follows:

PART 968—PUBLIC HOUSING MODERNIZATION

Subpart A—General

Sec.
968.101 Purpose and applicability.
968.105 Definitions.
968.110 Other program requirements.
968.115 Modernization and energy conservation standards.
968.120 Preemption of State prevailing wage requirements.

Subpart B—Comprehensive Improvement Assistance Program (For PHAs That Own or Operate Fewer than 500 Public Housing Units)

968.201 Purpose.
968.205 Definitions.
968.206 Eligible costs.
968.210 Procedures for obtaining approval of a modernization program.
968.215 Modernization project.
968.220 Tenant participation.
968.225 Homebuyer participation.
968.230 Special requirements for homeownership projects.
968.235 Special requirements for section 23 leased housing bond-financed projects.
968.240 Contracting requirements.
968.245 Fund requisitions.
968.250 Budget revisions.
968.255 Fiscal closeout of a modernization program.

Subpart C—Comprehensive Grant Program (For PHAs That Own or Operate 500 or More Public Housing Units)

968.301 Purpose.
968.305 Definitions.
968.310 Eligible costs
968.315 Allocation of assistance.
968.320 Comprehensive plans.
968.325 HUD review and approval of comprehensive plan.
968.330 Annual statement of activities and expenditures.
968.335 Conduct of modernization activities.
968.340 PHA performance and evaluation report.
968.345 HUD review of PHA performance.

Authority: Secs. 6 and 14, United States Housing Act of 1937 (42 U.S.C. 1437d, 1437*l*); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General

§ 968.101 Purpose and applicability.

(a) *Purpose.* Section 14 of the Act established the Public Housing Modernization program, authorizing HUD to provide financial assistance to public housing agencies (PHAs) to improve the physical condition and upgrade the management and operation of existing public housing projects, to assure that such projects continue to be available to serve lower income families. These physical and management improvements are funded under section 5(c) of the Act. This part prescribes the requirements and procedures for the Public Housing Modernization program.

(b) *Applicability.* (1) Subpart A applies to all modernization under this part. Subpart B sets forth the requirements and procedures for the Comprehensive Improvement Assistance program (CIAP program) for PHAs that own or operate fewer than 500 public housing units. Subpart C sets forth the requirements and procedures for the Comprehensive Grant program for PHAs that own or operate 500 or more public housing units under subpart C. Modernization of housing owned or operated by Indian housing authorities (IHAs) is covered by 24 CFR Part 905. For purposes of the 500 unit threshold, units under the Turnkey III and Mutual Help Homeownership Opportunities programs are excluded.

(2) This part applies to PHA-owned lower income public housing projects, including conveyed Lanham Act and Public Works Administration (PWA) projects, and to Section 23 Leased Housing Bond-Financed projects, for which PHAs request assistance under the CIAP or Comprehensive Grant program. This part also applies to the implementation of modernization programs which were approved before FFY 1989. This part does not apply to projects under the Section 23 Leased Housing Non-Bond Financed program, the Section 10(c) Leased Housing program, or the Section 23 or Section 8 Housing Assistance Payments programs.

§ 968.105 Definitions.

As used in this part:

Act. The United States Housing Act of 1937 (42 U.S.C. 1437 et seq.).

Annual contributions contract (ACC). A contract under the Act between HUD and the PHA containing the terms and conditions under which the Department assists the PHA in providing decent, safe, and sanitary housing for lower income families. The ACC must be in a form prescribed by HUD under which HUD agrees to provide assistance in the development, modernization, and/or operation of a lower income housing project under the Act, and the PHA agrees to develop, modernize, and operate the project in compliance with all provisions of the ACC and the Act, and all HUD regulations and implementing requirements and procedures.

CIAP program. The Comprehensive Improvement Assistance program.

FFY. Federal fiscal year.

HUD. The Department of Housing and Urban Development, including the regional and field offices that have been delegated authority to perform functions pertaining to this part for the area in which the PHA is located.

IHA. Indian housing authority. (The regulations for IHAs are contained in 24 CFR Part 905.

PHA. Public housing agency (excluding an IHA).

§ 968.110 Other program requirements.

The PHA shall comply with the following program requirements:

(a) *Civil rights compliance.* The PHA shall comply with the Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4), 24 CFR Part 1; Title VIII of the Civil Rights Act of 1968, as amended (42 U.S.C. 3601–3619); Executive Orders 11063 (Equal Opportunity in Housing), 11246 (Equal Employment Opportunity), and 12138 (Women's Business Enterprise); section 3 of the HUD Act of 1968 (12 U.S.C. 1701u); the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), 24 CFR Part 146; and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), 24 CFR Part 8.

(b) *Minority and women's business enterprise opportunity.* In conformance with Executive Order 11625 and 14432, the PHA shall take every action to meet Departmental goals for awarding modernization contracts to minority business enterprises. The PHA shall take appropriate affirmative action to assist women's business enterprise.

(c) *Environmental clearance.* Before approving a proposed project, HUD will comply with the requirements of 24 CFR Part 50, implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4332, *et seq.*) and related requirements of 24 CFR 50.4.

(d) *Flood insurance.* HUD will not approve for acquisition, construction, or improvement, a building located in an area that has been identified by the Federal Emergency Management Agency as having special flood hazards, unless the following conditions are met:

(1) Flood insurance on the building is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 *et seq.*); and

(2) The community in which the area is situated is participating in the National Flood Insurance Program in accord with 44 CFR Parts 59–79, or less than one year has passed since FEMA notification regarding flood hazards.

(e) *Wage rates.* —(1) *Davis Bacon.* With respect to modernization work or contracts over $2,000 (except for nonroutine maintenance work), all laborers and mechanics employed by the PHA or its contractors shall be paid not less than the wages prevailing in the locality, as predetermined by the

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Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a through 276c).

(2) *HUD-determined.* With respect to all nonroutine maintenance work or contracts, all laborers and mechanics employed by the PHA or its contractors shall be paid not less than the wages prevailing in the locality, as determined or adopted by HUD pursuant to section 12 of the United States Housing Act of 1937.

(3) *State.* Prevailing wage rates determined under State law are inapplicable under the circumstances set out in § 968.120.

(f) *Technical wage rates.* All architects, technical engineers, draftsmen, and technicians employed in the development of a project, shall be paid not less than the wages prevailing in the locality, as determined or adopted (subsequent to a determination under applicable State or local law) by HUD.

(g) *Relocation assistance.* (1) On and after April 2, 1989, modernization under this part shall be subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended by the Uniform Relocation Act Amendments of 1987, and implementing regulations, 49 CFR Part 24 (to be published by the Department of Transportation).

(2) Actual and reasonable moving costs for tenants who have to be moved, either temporarily or permanently, to accommodate the modernization are eligible modernization costs. The PHA shall provide temporary or permanent housing at comparable cost for affected tenants on a nondiscriminatory basis.

(h) *Physical accessibility.* The PHA shall comply with the Architectural Barriers Act of 1968 (42 U.S.C. 4152–4157), and HUD implementing regulations (24 CFR Part 40).

(i) *Audits.* Under the Single Audit Act of 1984 (31 U.S.C. 7501–7507), all PHAs that receive assistance under this part must comply with the audit requirements of 24 CFR Part 44. The Secretary of Housing and Urban Development, the Inspector General of the Department of Housing and Urban Development, and the Comptroller General of the United States shall have access to all books, documents, papers, or other records that are pertinent to the activities carried out under this section in order to make audit examinations, excerpts, and transcripts.

(j) *Administrative requirements—OMB Circular A–102.* The Administrative Requirements for Grants and Cooperative Agreements to States, Local, and Federally Recognized Indian Tribal Governments under OMB Circular A–102, as set forth in 24 CFR Part 85, are applicable to grants under this part, except as specified in this part and in 24 CFR 990.103(c) and 24 CFR 990.201.

(k) *Lead-based paint poisoning prevention—(1) General—CIAP program.* The PHA shall comply with the lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846) and HUD implementing regulations (24 CFR Part 35 and Part 965, Subpart H). Comprehensive plans (as described in § 968.210(c)) shall be amended to include the schedule for lead-based paint testing and abatement. Testing shall be completed on or before June 6, 1993. Testing and abatement shall be completed with respect to family projects approved for comprehensive and homeownership modernization (paragraph (k)(1)(i) of this section), applications for comprehensive and homeownership modernization of family projects (paragraph (k)(1)(ii) of this section), and other family projects not undergoing comprehensive and homeownership modernization (paragraph (i)(1)(iii) of this section). Any previous testing or abatement work which does not meet the requirements of this rule must be tested and abated in accordance with these requirements.

(i) *Comprehensive and homeownership modernization in progress.* With respect to family projects approved for comprehensive and homeownership modernization (assisted under section 9 of the United States Housing Act of 1937) which may contain lead-based paint for which funds have been reserved by HUD before June 6, 1955, no construction contracts, excluding those contracts solely for emergency or energy conservation work items, shall be executed until random testing as described in this paragraph has taken place and any necessary abatement as described in this paragraph is included in the modernization budget.

(ii) *Application for comprehensive and homeownership modernization projects.* With respect to applications for family projects for comprehensive and homeownership modernization (assisted under section 9 of the United States Housing Act of 1937) which may contain lead-based paint for which funds are reserved on or after June 6, 1988, no construction contracts, excluding those contracts solely for emergency or energy conservation work items, shall be executed until random testing as described in this paragraph has taken place and any necessary abatement as described in this paragraph is included in the modernization budget.

(iii) *Other family projects not undergoing comprehensive and homeownership modernization.* Any family project (assisted under section 9 of the United States Housing Act of 1937) not undergoing comprehensive and homeownership modernization (as covered in paragraphs (k)(i) (i) and (ii) of this section), including family projects which previously have been comprehensive or homeownership modernized under previous regulations, shall be randomly tested as described in this paragraph and abated if lead-based paint is found as described in this paragraph.

(2) *General—Comprehensive Grant program.* The PHA shall comply with the Lead-Based Paint poisoning Prevention Act (42 U.S.C. 4821–4846) and HUD implementing regulations (24 CFR Part 35 and Part 965, Subpart H). Comprehensive plans (as described in § 968.320) shall include the schedule for lead-based paint testing and abatement. Testing shall be completed on or before June 6, 1993. Any previous testing or abatement work which does not meet the requirements of this rule must be tested and abated in accordance with these requirements.

(i) With respect to family projects (assisted under section 9 of the Act) to be modernized, which may contain lead-based paint, no construction contracts, excluding those contracts solely for emergency work items, shall be executed until random testing as described in this paragraph has taken place and any necessary abatement as described in this paragraph is included in the action plan.

(ii) Any family project (assisted under section 9 of the Act) not undergoing modernization under this subpart, including family projects which previously have been modernized under previous regulations, shall be randomly tested as described in this paragraph and abated if lead-based paint is found as described in this paragraph.

(3) *Random testing.*—(i) *Requirements for random testing.* If the family project (including homeownership units) was constructed before 1978 or substantially rehabilitated before 1978, the PHA shall cause a random sample of all family project units to be tested for lead-based paint on applicable surfaces (including defective paint surfaces). Random testing shall be scheduled or prioritized by age of the family projects and whether the family projects are known to have lead-based paint from unit turnover testing or presence of previous elevated blood levels (EBLs). Ten units shall be tested in family projects that are comprised of contiguous units which were built at the same time and contain 20 or more units. Six units shall be tested in similar projects with fewer than 20 units. A sample of interior common areas and exterior surfaces which are part of the family project shall also be tested. For scattered site family projects involving multi-unit structures, 10 units shall be tested in structures containing 20 or more units and six units shall be tested in projects with fewer than 20 units, together with a sample of interior common areas and exterior surfaces and defective paint surfaces which are part of the family project. For other scattered site family projects involving single unit structures which are not contiguous or were built at different times, the PHA shall cause each unit to be tested for lead-based paint on applicable surfaces. The interior common areas required to be sampled by this paragraph may include PHA-owned or operated child care facilities or non-dwelling PHA facilities commonly used by children under seven years of age.

(ii) *Random testing results.* If none of the tested units, interior common areas, or exterior surfaces contain lead-based paint, the family projects may be considered free of lead-based paint, and no further testing or abatement action will be required. If lead-based paint is found in any units in the sample, all units in the family project are required to be tested. If lead-based paint is found in any interior common areas, all interior common areas in the family project are required to be tested. If lead-based paint is found on any exterior surface, all exterior surfaces in the family project are required to be tested. In the family projects that are known to contain some lead-based paint, no random sampling is necessary, but all applicable surfaces shall be tested.

(iii) *Requirements.* Testing, tenant protection, lead-based paint debris disposal, recordkeeping, and state and local law requirements as described in §§ 965.705, 965.707, 965.708, 965.709 and 965.710 of this chapter shall be followed.

(iv) *Eligibility as planning cost.* Random testing as described in this paragraph (k)(3) is an eligible planning cost as authorized by §§ 968.205(d) and 968.310(a)(1).

(v) *Exemption.* Where abatement will result from rehabilitation activities planned (i.e., where all applicable surfaces will be replaced, covered, or otherwise abated as described in this part), those surfaces need not be tested.

(4) *Abatement.* If lead-based paint is found on applicable surfaces, such surface shall be treated in accordance with § 965.705 of this chapter. Abatement within a comprehensive and homeownership modernization project should be prioritized in relation to the immediacy of the hazards found to children under seven years of age.

(Information collection requirements contained in paragraph (k) were approved by the Office of Management and Budget under control number 2577–0090).

(l) *Energy conservation.* The PHA shall comply with 24 CFR Part 965, Subpart C, regarding the conduct or update of an energy audit and the undertaking of cost-effective energy conservation measures. The cost of performing or updating an energy audit is an eligible modernization cost.

§ 968.115 Modernization and energy conservation standards.

(a) All improvements funded under this part, which may include alterations, betterments, additions, replacements, or non-routine maintenance, shall meet the HUD modernization standards, described in paragraph (b) of this section and established to provide decent, safe, and sanitary living conditions in PHA-owned and PHA-operated public housing, and the HUD energy conservation standards for cost-effective energy conservation measures in such projects, described in paragrpah (c) and (d) of this section.

(b) The modernization standards are standards which will provide decent, safe, and sanitary living conditions in public housing, including corrections of violations of basic health and safety codes, and address all deficiencies, including those related to defered maintenance, in order to meet the intent of HUD's minimum property standards as they could reasonably be applied to existing housing. In addition, these standards cover improvements relating to site and building security. The modernization standards are contained in HUD Handbook 7485.2, as revised, Public and Indian Housing Modernization Standards, and in other documents cited in the Handbook.

(c) The energy conservation standards are standards for the installation of cost-effective energy conservation measures, including solar energy systems. The energy conservation standards provide for the conducting or updating of energy audits, including cost-benefit analyses of energy saving opportunities, in order to determine which measure will be cost-effective in conserving energy. The energy conservation standards are contained in the HUD Workbook, Energy Conservation for Housing, and in other documents cited in the Workbook.

(d) Life-cycle cost-effective energy performance standards established by HUD to reduce the operating costs of public housing projects over the estimated life of the building shall apply to projects modernized under this part. These standards are contained in HUD Handbook 7418.1, as revised, Life-Cycle Cost Analysis for Utility Combinations.

§ 968.120 Preemption of State prevailing wage requirements.

(a) A prevailing wage rate (including basic hourly rate and any fringe benefits) determined under State law shall be inapplicable to the modernization of a project whenever:

(1) The modernization of the project is otherwise subject to State law requiring the payment of wage rates determined by a State or local government or agency to be prevailing; and

(2) The wage rate determined under State law to be prevailing with respect to an employee in any trade or position employed in the modernization of a project exceeds whichever of the following Federal wage rates is applicable:

(i) The wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a *et seq.*) to be prevailing in the locality with respect to such trade;

(ii) An applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the Department of Labor or a DOL-recognized State Apprenticeship Agency;

(iii) An applicable trainee wage rate based thereon specified in a DOL-certified trainee program; or

(iv) In the case of non-routine maintenance, the wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position.

(v) For the purpose of ascertaining whether a wage rate determined under State law for a trade or position exceeds the Federal wage rate:

(A) Where a rate determined by the Secretary of Labor or an apprentice of trainee wage rate based thereon is applicable, the total wage rate determined under State law, including fringe benefits (if any) and basic hourly rate, shall be compared to the total wage rate determined by the Secretary of Labor or apprentice or trainee wage rate; and

(B) Where at a rate determined by the Secretary of HUD is applicable, any fringe benefits determined under State law shall be excluded from the comparison with the rate determined by the Secretary of HUD.

(b) Whenever paragraph (a)(1) of the section is applicable:

(1) Any solicitation of bids or proposals issued by the PHA and any

contract executed by the PHA for modernization of the project shall include a statement that any prevailing wage rate (including basic hourly rate and any fringe benefits) determined under State law to be prevailing with respect to an employee in any trade or position employed under the contract is inapplicable to the contract and shall not be enforced against the contractor or any subcontractor with respect to employees engaged under the contract whenever either of the following occurs:

(i) Such nonfederal prevailing wage rate exceeds:

(A) The applicable wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a *et seq.*) to be prevailing in the locality with respect to such trade;

(B) An applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the Department of Labor or a DOL-recognized State Apprenticeship Agency; or

(C) An applicable trainee wage rate based thereon specified in a DOL-certified trainee program; or

(ii) Such nonfederal prevailing wage rate, exclusive of any fringe benefits, exceeds the applicable wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position.

Failure to include this statement may constitute grounds for requiring resolicitation of the bid or proposal;

(2) The PHA itself shall not be required to pay the basic hourly rate or any fringe benefits comprising a prevailing wage rate determined under State law and described in paragraph (a)(2) of this section to any of its own employees who may be engaged in the modernization of the project; and

(3) Neither the basic hourly rate nor any fringe benefits comprising a prevailing wage rate determined under State law and described in paragraph (a)(2) of this section shall be enforced against the PHA or any of its contractors or subcontractors with respect to employees engaged in the modernization of the project.

(c) Nothing in this section shall affect the applicability of any wage rate established in a collective bargaining agreement with a PHA or its contractors or subcontractors where such wage rate equals or exceeds the applicable Federal wage rate referred to in paragraph (a)(2) of this section, nor does this section impose a ceiling on wage rates a PHA or its contractors or subcontractors may choose to pay independent of State law.

(d) The provisions of this section shall be applicable to work performed under any prime contract entered into as a result of a solicitation of bids or proposals issued on or after October 6, 1988 and to any worked performed by employees of a PHA on or after October 6, 1988.

Subpart E—Comprehensive Improvement Assistance Program (For PHAs That Own or Operate Fewer Than 500 Public Housing Units)

§ 968.201 Purpose.

The purpose of this subpart is to set forth the policies and procedures for the CIAP program under which PHAs that own or operate fewer than a total of 500 units of public housing receive financial assistance for the modernization of public housing projects, including comprehensive, emergency, homeownership, lead-based paint and special purpose modernization.

§ 968.203 Definitions.

In addition to the definitions in § 968.103, the following definitions apply to this subpart:

Comprehensive modernization. A modernization program for a project which provides for all needed physical and management improvements. Under CIAP, all modernization programs are comprehensive modernization, except those defined as emergency, homeownership, lead-based paint, or special purpose.

Emergency modernization. A modernization program for a project that is limited to physical work items of an emergency nature, posing an immediate threat (i.e., must be corrected within one year of funding approval) to tenant life, health, or safety or related to fire safety. Under emergency modernization, management improvements are not eligible modernization costs.

Financial feasibility. The cost (excluding the cost of management improvements, administration, architectural and engineering fees, and other fees) of the modernization program does not exceed 62.5 percent (for a nonelevator structure) or 69 percent (for an elevator structure) of the total cost guidelines for a new project with the same structure type and number and size of units in the market area.

Financially distressed PHA. A PHA that has an operating reserve level of 20 percent or less of its authorized maximum or other level as determined by HUD, as shown on the latest year-old financial statement.

Homebuyer Agreement. A Turnkey III Homebuyer's Ownership Opportunity Agreement.

Homeownership modernization. A modernization program for a project that is under the Turnkey III Homeownership Opportunities program. Under homeownership modernization, limited physical improvements are eligible modernization costs, but management improvements are not eligible modernization costs.

Lack of management capability. The PHA has inadequate management practices, as determined by HUD on the basis of regular monitoring and performance of on-site reviews, audits, and surveys, and has not taken appropriate corrective action. Management practices which are to be considered include, but are not limited to: management, financial, and accounting controls; tenant programs and services; tenant and project security; tenant selection and eviction; occupancy; rent collection; and maintenance.

Lack of modernization capability. The PHA has previously approved, but unobligated, modernization funds that are over one year old for emergency modernization and over three years old (or older, where HUD has approved a longer period) for comprehensive, special purpose, lead-based paint, or homeownership modernization, and that HUD has determined that the failure to obligate the funds is due to reasons within the PHA's control; or has spent modernization funds so that the quality of the work does not assure the long-term social and physical viability of the modernized units.

Lead-based paint modernization. A modernization program for a family project, constructed or substantially rehabilitated before 1978, that is limited to lead-based paint testing and lead-based paint hazard abatement as prescribed in §§ 965.705 and 968.110(k)(1)(iii). Under lead-based paint modernization, management improvements are not eligible modernization costs.

Modernization funds. Funds derived from an allocation of budget authority for the purpose of funding physical and management improvements under an approved modernization program.

Modernization program. A PHA's program for carrying out modernization, as set forth in the approved application for modernization funds.

Modernization project. The improvement of one or more existing public housing projects under a new project number designated for modernization purposes. The term "project" or "public housing project" means a development project with a unique project number.

Non-routine maintenance. Work items that ordinarily would be performed on a regular basis in the course of upkeep of a property, but have become substantial in scope because they have been put off, and that involve expenditures that would otherwise materially distort the level trend of maintenance expenses. Replacement of equipment and materials rendered unsatisfactory because of normal wear and tear by items of substantially the same kind does qualify, but reconstruction, substantial improvement in the quality or kind of original equipment and materials, or remodeling that alters the nature or type of housing units does not qualify.

Special purpose modernization. A modernization program for a project that is limited to cost-effective energy conservation work items which will not be adversely affected by any subsequent comprehensive modernization. Under special purpose modernization, management improvements are not eligible modernization costs.

Work item. Any separately identifiable unit of work constituting a part of a modernization program.

§ 968.205 Eligible costs.

(a) *Physical improvements.* Physical improvements eligible for modernization funding include alterations, betterments, additions, replacements, and non-routine maintenance that are necessary to meet the modernization and energy conservation standards prescribed in § 968.115. These standards may be exceeded only when necessary or highly desirable for the long-term physical and social viability of the individual project. If demolition is proposed, the PHA shall comply with 24 CFR Part 970.

(b) *Management improvement costs—*

(1) *Eligibility.* Management improvements that are project-specific or PHA-wide in nature are eligible modernization costs only under comprehensive modernization, subject to all of the following conditions:

(i) The management improvements are necessary to correct identified management problems and to sustain the physical improvements at the project to be comprehensively modernized;

(ii) The managment improvements require additional funds for implementation and the funds are not available from other sources;

(iii) The combined costs for management improvements and planning under paragraph (d) of this section do not exceed 10 percent of the total estimated physical improvement costs for a project (from all fiscal years), unless specifically approved by HUD. Under paragraph (d) of this section, planning costs shall not exceed 5 percent of the funds available to a HUD regional office in a particular FFY;

(iv) Management improvement costs are funded only for the implementation period of the physical improvements. In rare cases, HUD may approve a longer period, up to a maximum of five years where it is clearly shown to be necessary to complete the initial installation and demonstrate that the management work item will bring about needed management improvements; and

(v) Where an approved modernization program includes management improvements which involve ongoing costs, HUD is not obligated to provide continued funding or additional operating subsidy after the end of the implementation period of the management improvements. The PHA is responsible for finding other funding sources, reducing its ongoing management costs, or terminating the management activities.

(2) *Eligible management areas.* Subject to the conditions set forth in paragraph (b)(1) of this section, management improvements may involve or upgrade the following areas:

(i) Management, financial, and accounting control systems of the PHA that are related to the project to be modernized;

(ii) Adequacy and qualifications of personnel employed by the PHA in the management and operation of the project to be modernized, for each significant category of employment;

(iii) Adequacy and efficacy of the following for the project to be modernized:

(A) Tenant programs and services;

(B) Tenant and project security;

(C) Tenant selection and eviction;

(D) Occupancy;

(E) Rent collection; and

(F) Maintenance; and

(iv) Tenant management corporations under paragraph (i) of this section.

(c) *Tenant moving costs.* See § 968.110(g).

(d) *Planning costs.* Planning costs necessary for developing the application (i.e., costs incurred before modernization program approval) are eligible modernization costs. These costs may be reimbursed after application approval. Financially distressed PHAs may request approval from HUD for up-front funding of planning costs where HUD determines that developing the application would otherwise present an undue financial hardship. Not more than 5 percent of the funds available to the HUD regional office in a particular FFY shall be used for planning costs.

(e) *Administrative costs.* Administrative costs necessary for the additional design and implementation of the physical and management improvements (*i.e.*, costs to be incurred after modernization program approval) are eligible modernization costs, as follows:

(1) *Nontechnical and technical salaries.* The salaries of nontechnical and technical PHA personnel assigned full-time or part-time to the modernization program are eligible modernization costs. Any proration of salaries shall be justified by the PHA, authorized by HUD, and reflected by an appropriate revision to the PHA's operating budget.

(2) *Employee benefit contributions.* PHA contributions to employee benefit plans on behalf of nontechnical and technical PHA personnel are eligible modernization costs in proportion to the amount of salary charged to the modernization program.

(f) *Homeownership projects.* For homeownership projects only, eligible physical improvements are limited to work items that are not the responsibility of the homebuyer families and that are related to health and safety, correction of development deficiencies, physical accessibility, cost-effective energy conservation measures, and lead-based paint testing and abatement. Nonroutine maintenance or replacements, additions, items that are the responsibility of the homebuyer families, and management improvements are not eligible modernization costs for homeownership projects.

(g) *Lead-based paint testing.* Lead-based paint testing costs, as described in §§ 965.705 and 965.706 of this chapter and § 968.110(k), are eligible modernization costs.

(h) *Lead-based paint hazard abatement.* Lead-based paint hazard abatement costs, as described in §§ 965.705 and 965.706 of this chapter and § 968.110(k), are eligible modernization costs.

(i) *Tenant management corporations.* Eligible modernization costs include use of management improvement funds to assist a tenant or resident management corporation, as defined in § 964.7 of this chapter, to develop its management capabilities and carry out management improvements identified as PHA-wide or project-specific in nature, under the terms of a management contract between the PHA and the tenant management corporation. (See Part 964 of this chapter for information on the establishment and functions of tenant management corporations) Such

funding is subject to the limitations indicated in paragraph (b) of this section.

§ 968.215 Procedures for obtaining approval of a modernization program.

(a) *HUD notification.* As soon as possible after modernization funds for a particular FFY become available, HUD shall give written notification of the availability of such funds and the time frame for submission of the application.

(b) *PHA consultation with local officials and tenants/homebuyers.* The PHA shall develop the application in consultation with local officials and tenants/homebuyers at the project to be modernized, as set forth in §§ 968.220 and 968.225. Before developing the application, the PHA shall consult with local government officials as to whether the proposed comprehensive, special purpose, or homeownership modernization is financially feasible and will result in long-term physical and social viability of the project.

(c) *Application.* The PHA shall submit to HUD an application, in a form prescribed by HUD, which shall include, but not be limited to:

(1) A five-year funding request plan, which includes the PHA's estimate of the comprehensive modernization funds to be requested over a five-year period to meet the total physical management improvement needs of its projects sufficient to meet the modernization and energy conservation standards in § 968.115, including any special purpose, lead-based paint, and homeownership needs, as well as any emergency needs in the current FFY.

(2) A preliminary assessment of the total physical and management improvement needs and estimated costs of the project(s) for which the PHA is requesting comprehensive modernization and of the specialized needs and estimated costs of the project(s) for which the PHA is requesting special purpose, lead-based paint, homeownership, or emergency modernization in the current FFY.

(3) For each project proposed for comprehensive modernization, an identification of and an estimate of the total costs of replacement of the equipment, systems, or structural elements that would normally be replaced (assuming routine and timely maintenance is performed) over the remaining period of the ACC or during the 30-year period beginning on the date of submission of the application, whichever period is longer.

(4) A resolution by the PHA Board of Commissioners, approving the application and containing certifications as required by HUD.

(d) *HUD screening and review.* HUD shall screen and review the application, and select an application for further processing, on the basis of such factors as the extent and urgency of the need and the PHA's management and modernization capability.

(e) *PHA preparation for joint review.* The PHA shall prepare for the joint review by:

(1) Reaching agreement with HUD on the specific project(s) to be covered during the joint review;

(2) For each project proposed for comprehensive modernization, conducting the comprehensive assessment, which shall include: consideration of the current physical condition and the physical improvements necessary to meet the standards (see § 968.205(a)); and an identification of management needs related to items set forth in § 968.205(b)(2) and the improvements needed to upgrade the management and operation of each such project so that decent, safe, and sanitary living conditions will be provided. The comprehensive assessment shall include a plan for making the improvements and replacements and for meeting the needs, including:

(i) A project operating budget for each 12-month period covered by the plan, excluding modernization costs; and

(ii) An estimate of the financial resources to be available from all sources and the amounts of modernization funds to be requested for each 12-month period covered by the plan.

(3) Reviewing the other factors to be covered during the joint review as prescribed by HUD.

(f) *Joint review.* The PHA and HUD shall conduct an on-site review to discuss the proposed modernization program, as set forth in the application, and reach tentative agreement on PHA needs. The joint review shall include an on-site inspection of the property and resolution of the relevant issues as prescribed by HUD.

(g) *Comprehensive modernization approach.* HUD will fund proposed comprehensive modernization in one stage, or, on an exception basis, in more than one stage—not to exceed a total of five stages. Bases for exception include a PHA's lack of modernization or management capability (which necessitates multi-stage funding), or a total funding requirement for the comprehensive modernization of a large magnitude relative to the funding available to the HUD regional office.

(1) *One-stage funding.* Under one-stage funding, the total amount of modernization funds for all required physical and management improvements at the project shall be approved at one time, from funds for a single FFY, under application.

(2) *Multi-stage funding.* Under multi-stage funding, the total amount of modernization funds for all required physical and management improvements at the project shall be approved in the fewest number of stages that are feasible, over several different FFYs, with the total number of stages not to exceed five. The first stage will include funds for architectural/engineering work and/or a portion of the physical improvements. Management improvements may be included in the first stage to the extent they are eligible costs under § 968.205(b).

(i) *First stage.* At the first stage of funding, the final application shall include a comprehensive assessment of the project's physical and management improvement needs and a plan under paragraph (e)(2) of this section addressing only the work items to be completed during this stage. When approving the first stage, HUD will indicate the approximate balance of the funds required to complete the comprehensive modernization, but also will indicate that future funding will be subject to all of the following conditions: the availability of funds, satisfactory progress by the PHA in obligating first stage and subsequent stage funds, PHA submission of additional documents, and PHA compliance with HUD regulatory and statutory requirements.

(ii) *Subsequent stages.* Where the PHA is requesting for a subsequent stage of a multi-stage comprehensive modernization, HUD will determine whether the PHA has made satisfactory progress in obligating prior stage funds, whether it has submitted necessary additional documents, and whether it has complied with HUD regulatory and statutory requirements. If the PHA has not satisfied these conditions, HUD will not approve that subsequent stage of funding at this time. The PHA submission for any subsequent stage should not duplicate items previously submitted.

(3) *Implementation.* After the application for each stage is approved, the PHA and HUD shall agree on an implementation period that is appropriate for that funding stage, not to exceed five years for any stage from the date on which that stage is first funded.

(h) *HUD funding decisions.* After all of the joint reviews, HUD will determine whether the PHA will be approved for funding and whether any further modifications are required to the application, giving preferences to PHAs which request assistance for:

(1) Group 1, projects having emergency conditions that pose an immediate threat (i.e., must be corrected within one year of funding approval) to tenant life, health, or safety or related to fire safety. Funding is limited to correction of emergency conditions and may not be used for substantial rehabilitation. Emergency conditions include all lead-based paint testing and abatement as required by § 965.706 of this chapter.

(2) Group 2, projects:

(i) Having conditions which threaten tenant life, health, or safety or having a significant number (10 percent or more) of vacant or substandard units; and

(ii) located in PHAs having demonstrated a capability of carrying out the proposed modernization activities (comprehensive, special purpose, lead-based paint, and homeownership modernization); or

(iii) other family projects not receiving comprehensive modernization funds as defined in § 968.203, and are required to conduct lead-based paint testing and abatement under §§ 965.705 and 968.110(k)(1)(iii) of this part.

Within this group, the Secretary may also give priority to additional factors, such as the correction of physical disparities under the nondiscrimination preference, the project is at the second or subsequent stage of comprehensive modernization, cost benefit, and the need for lead-based paint testing and hazard abatement.

(3) Group 3, other projects located in PHAs having demonstrated a capability of carrying out the proposed modernization activities (comprehensive, special purpose, and homeownership modernization). The Secretary may give priority to factors which demonstrate that the modernization will result in the greatest cost benefit.

(i) *ACC amendment.* After HUD approval of the application, HUD and the PHA shall enter into an ACC amendment to obtain modernization funds.

(j) *Implementation schedule.* After HUD executes the ACC, the PHA shall submit for HUD approval an implementation schedule for each project in the approved modernization program.

§ 968.215 Modernization project.

(a) *Modernization projects.* For purposes of funding modernization, each modernization program approved for a PHA shall be treated as a separate modernization project. The modernization project may include improvements to one or more public housing projects. Improvements to a single public housing project may be included in more than one modernization project.

(b) *ACC.* HUD and the PHA shall enter into an ACC amendment for each modernization project. The ACC amendment shall require lower income use of the housing for not less than 20 years from the date of the ACC amendment (subject to sale of homeownership units in accordance with the terms of the ACC).

(c) *Declaration of trust.* The PHA shall execute and file for record a Declaration of Trust as provided under the ACC to protect the rights and interests of HUD throughout the 20 year period during which the PHA is obligated to operate the individual projects receiving modernization grant funds in accordance with the ACC, the Act, and HUD regulations and requirements.

§ 968.220 Tenant participation.

For a rental project only, before submission of the application, the PHA shall consult with the tenant (including, for purposes of this section, tenant organizations and resident management corporations (see § 964.37 of this chapter), if any) regarding its intent to submit an application for modernization funds. Before the joint review, the PHA shall notify the tenant of the project to be modernized of the proposed modernization program, give tenants a reasonable opportunity to present their views on the proposed program and alternatives to it, and give full and serious consideration to tenant recommendations. At the joint review, the PHA shall provide the tenants and HUD with copy of, and an evaluation of, tenant recommendations, indicating the reasons for PHA acceptance or rejection, consistent with HUD requirements and the PHA's own determination of efficiency, economy, and need. The PHA also shall provide a copy of this evaluation to the tenants. After HUD approval of the modernization program, the PHA shall inform the tenants of the approved work items. The provisions of this section do not apply to proposed work items of an emergency nature affecting the life, health, and safety of tenants. However, the PHA shall inform tenants of approved emergency work items.

(Approved by the Office of Management and Budget under OMB control number 2577-0046.)

§ 968.225 Homebuyer participation.

(a) For a homeownership project only, before the joint review, the PHA shall discuss the modernization program with the homebuyer families of the project to be modernized and advise them of the effect of the modernization on the terms of the homebuyer agreements. The PHA shall give the homebuyer families a reasonable opportunity to present their views of the proposed program and give full and serious consideration to their recommendations consistent with HUD requirements and the PHA's own determination of efficiency, economy, and need.

(b) The PHA shall inform each homebuyer family that:

(1) To participate, it must be in substantial compliance with the terms of its homebuyer agreement;

(2) It will have an opportunity to express its views and preferences with respect to the modernization of its home;

(3) The purchase price and the amortization period will be increased as provided in § 968.230;

(4) It will have an opportunity to participate in the final inspection of the work to determine completion in accordance with the requirements; and

(5) Participation in the program is optional.

(c) The PHA shall provide each homebuyer family with a copy of the PHA's evaluation of its recommendations, the tentative decisions reached on the modernization program to be submitted to HUD, the estimated cost of the proposed modernization program, and the amount of the cost to be attributed to its home.

(d) If the homebuyer family decides to participate in the modernization program with respect to any of the proposed work items, it must agree in writing that its homebuyer agreement will be amended upon approval of the application to provide that, as a result of the amount of modernization cost attributed to its home, the purchase price and the amortization period will be increased as provided in § 968.230.

(e) Any homebuyer family may decline to participate without risk to its homebuyer status.

(f) Before HUD approval of the application, the PHA shall obtain a signed agreement from each participating homebuyer family that it will amend its homebuyer agreement upon approval of the application. The PHA shall retain copies of the signed agreements in its files for inspection by HUD.

(g) The provisions of paragraphs (b) through (f) of this section do not apply where modernization work is limited to correction of development deficiencies, conduct of energy audits, undertaking of cost-effective energy conservation

measures, or lead-based paint testing and abatement.

(Approved by the Office of Management and Budget under OMB control number 2577-[illegible])

§ 968.230 Special requirements for homeownership projects.

(a) Promptly after HUD approval of the application, each homebuyer family shall execute an amendment to its Homebuyer Agreement, reflecting an increase in the purchase price of its home and an extension of the amortization period in accordance with paragraphs (b) and (c) of this section, except where the modernization work is limited to the correction of development deficiencies, conduct of energy audits, undertaking of cost-effective energy conservation measures, or lead-based paint testing and abatement.

(b) For Turnkey III projects that have purchase price schedules:

(1) The amount of estimated modernization cost attributable to the home, as shown in the HUD-approved application, shall be added to the homebuyer's purchase price as initially determined for Turnkey III projects.

(2) The period of the homebuyer's current purchase price schedule shall be extended by the same percentage as the percentage of increase in the homebuyer's purchase price. The new purchase price schedule shall:

(i) Show monthly amortization of the new purchase price over a period commencing on the same day as the original purchase price schedule and terminating at the end of the extended period; and

(ii) Be computed on the basis of the same interest rate as used for the current purchase price schedule.

(3) If a modernization program is approved for a project after one or more earlier modernization programs for the same project, the total amount of modernization cost attributable to the home under the prior modernization program(s) shall be included as part of the homebuyer's initial purchase price in apply the provisions of paragraphs (b) (1) and (2) of this section.

(c) For Turnkey III projects that do not have purchase price schedules:

(1) These projects do not involve purchase price schedules for amortization of the homebuyer's purchase price over a fixed period of time because the homebuyer's purchase price in these projects is based on the unamortized balance of the portion of the project's development debt attributable to the home. Consequently, it is necessary to establish a separate schedule for the amortization of the estimated modernization cost attributable to the home, as shown by the HUD-approved application.

(2) The PHA shall furnish to the homebuyer a schedule showing monthly amortization of the estimated modernization cost attributable to the home, at the minimum loan interest rate specified in the ACC for the modernization project, over a period commencing on the first day of the month after the date of original occupancy of the home by the homebuyer and terminating at the end of the period determined as follows:

(i) Divide the amount of the estimated modernization cost attributable to the home (including the total amount of modernization cost attributable to the home under prior modernization programs, if any) by the amount of the current HUD-approved estimated replacement cost of the home.

(ii) Multiply this amount by 25, round the result to the next higher number, and add that number to 25. This is the number of years to be used as the period for the modernization amortization schedule.

(iii) The purchase price for the unit shall be the sum of (a) the balance of the debt attributable to the home and (b) the amount remaining on the modernization schedule at the time of settlement.

§ 968.235 Special requirements for Section 23 Leased Housing Bond-Financed projects.

(a) A Section 23 Leased Housing Bond-Financed project is eligible for modernization only if HUD determines that the project has met the following conditions:

(1) The project was financed by the issuance of bonds;

(2) Clear title to the project will be conveyed to or vested in the PHA at the end of the section 23 lease term;

(3) There are no legal obstacles affecting the PHA's use of the property as public housing during the 20-year period of the modernization;

(4) After completion of the modernization, the project will have a remaining useful life of at least 20 years and it is in the financial interest of the Federal Government to improve the project; and

(5) The project is covered by a cooperation agreement between the PHA and local governing body during the 20-year period of the modernization.

(b) A Section 23 Leased Housing Bond-Financed project which has been conveyed to the PHA after the bonds have been retired is similarly eligible for modernization if the conditions specified under paragraph (a) of this section have been satisfied.

§ 968.240 Contracting requirements.

(a) *Compliance with State and local law and Federal requirements.* The PHA shall comply with State and local laws and Federal requirements applicable to bidding and contract awards. [See § 968.110 (e) and (f) and § 968.120 for wage rate requirements.]

(b) *PHA agreement with architect/engineer.* The PHA shall obtain architectural/engineering services through the competitive negotiation process, except where FFY 1981 or subsequent year funds are being used to finance additional services under an existing contract. Notwithstanding 24 CFR 85.36(g), the PHA shall comply with HUD requirements either to submit the contract for prior HUD approval before execution or to certify that the scope of work is in consistent with any agreements reached with HUD, and that the fee is appropriate and does not exceed the HUD-approved budget amount.

(c) *Sealed bid (formal advertising) requirements.* For each construction or equipment contract over $25,000, and lead-based paint testing services over $25,000, the PHA shall conduct formal advertising as required in § 85.36(d)(2) of this chapter, except for procurement under the HUD Consolidated Supply Program, 24 CFR Part 965, Subpart G.

(d) *Assurance of completion.* For each construction or equipment contract over $25,000, the contractors shall furnish a performance and payment bond for 100 percent of the contract price or, notwithstanding 24 CFR 85.36(h) and as may be required by law, separate performance and payments bonds, each for 50 percent or more of the contract price, or a 20 percent cash escrow, or a 25 percent letter of credit.

(e) *Construction and bid documents.* Notwithstanding 24 CFR 85.36(g), the PHA shall comply with HUD requirements either to submit complete construction and bid documents for prior HUD approval before inviting bids or certify to receipt of the required architect's/engineer's certification that the construction documents accurately reflect HUD-approved work and that the bid documents are complete and include all mandatory items.

(f) *Contract award.* The PHA shall obtain HUD approval of the proposed award of modernization construction and equipment contracts if the bid amount exceeds the HUD-approved budget amount or if the procurement meets the criteria set forth in 24 CFR 85.36(g)(2) (i) through (iv). In all other instances, the PHA shall make the award without HUD approval after the PHA has certified that:

(1) The bidding procedures and award were conducted in compliance with State or local laws and Federal requirements;

(2) The award does not exceed the approved budget amount and does not meet the criteria in § 85.36(g)(2) (i) through (iv) for prior HUD approval; and

(3) HUD clearance has been obtained for the award under previous participation procedures, including absence of the contractor from the HUD Consolidated List of Debarred, Suspended or Ineligible Contractors and Grantees.

(g) *Contract modifications.* Notwithstanding 24 CFR 85.36, except in an emergency endangering life or property, the PHA shall comply with HUD requirements either to submit the proposed contract modifications for prior HUD approval, or certify that such modifications are within the scope of the contract and that any additional costs are within the latest HUD-approved budget or otherwise approved by HUD.

(h) *Construction requirements.* The PHA shall submit to HUD periodic progress reports and shall submit all contract settlement documents for prior HUD approval.

(i) *Management improvement contracts.* The PHA shall obtain consultant services through the competitive proposal process. The PHA shall comply with HUD requirements either to submit contracts for management improvements, as well as contract changes, for prior HUD approval, or certify that the contracts accurately reflect HUD-approved work, do not exceed the HUD-approved budget amount, and have received HUD clearance under previous participation procedures. In the case of contract changes, the PHA also shall certify that the changes are within the scope of the contract and that any additional costs are within the latest HUD-approved budget or otherwise are approved by HUD.

§ 968.245 Fund requisitions.

To request modernization funds against the total approved modernization budget, the PHA shall submit a request to HUD in accordance with HUD requirements.

(The information collection requirements were approved by the Office of Management and Budget under OMB control numbers 2577-0104 and 2577-0049.)

§ 968.250 Budget revisions.

The PHA shall not incur any modernization cost in excess of the total approved budget. The PHA shall submit a budget revision, in a form prescribed by HUD, if the PHA plans (within the total approved modernization budget) to incur modernization costs in excess of the approved budget amount for any project. The PHA also shall comply with HUD requirements either to submit the proposed budget revision for prior HUD approval if the PHA plans to delete or substantially revise approved work items, add new work items, or incur modernization costs in excess of the approved budget amount for a work item, or certify that the revisions are necessary to carry out the approved work and do not result in the approved budget amount for any project being exceeded.

§ 968.255 Fiscal closeout of a modernization program.

Upon completion of a modernization program, the PHA shall submit the actual modernization cost certificate, in a form prescribed by HUD, to HUD for review, audit verification, and approval. The PHA shall immediately remit any excess funds provided by HUD. The audit shall follow the guidelines prescribed by 24 CFR Part 44, Non-Federal Government Audit Requirements. If the audited modernization cost certificate indicates that there are still excess funds, the PHA shall remit the excess funds as directed by HUD. If the audited modernization cost certificate discloses unauthorized expenditures, the PHA shall take such corrective actions as HUD may direct.

(Approved by the Office of Management and Budget under OMB control number 2577-0049.)

Subpart C—Comprehensive Grant Program (for PHAs That Own or Operate 500 or More Public Housing Units)

§ 968.301 Purpose.

(a) *Purpose.* (1) The purpose of the Comprehensive Grant program under this subpart is:

(i) To provide modernization assistance to PHAs that own or operate a total of 500 or more units of public housing on a reliable and more predictable basis, to enable them to operate, upgrade, modernize, and rehabilitate public housing projects, to ensure their continued availability for lower income families as decent, safe, and sanitary rental housing at affordable rents;

(ii) To provide considerable discretion to PHAs to decide the specific improvements, the manner of their execution, and the timing of the expenditure of modernization funding;

(iii) To simplify significantly the program of Federal assistance for capital improvements in public housing projects;

(iv) To provide increased opportunities and incentives for more efficient management of public housing projects; and

(v) To give PHAs greater control in planning and expending funds for modernization, rehabilitation, maintenance, and improvement of public housing projects to benefit lower income families.

(2) The purpose of this subpart is to set forth the policies and procedures for the Comprehensive Grant program under which PHAs that own or operate a total of 500 or more units of public housing receive financial assistance on a formula grant basis for the modernization of public housing projects.

§ 968.305 Definitions.

In addition to the definitions in § 968.103, the following definitions apply to this subpart:

Action plan. A plan of the actions to be completed by a PHA over a period of five years to make the necessary physical and management improvements identified in the PHA's comprehensive plan. The action plan is part of the comprehensive plan and may be revised as necessary. See § 968.320(b)(4).

Annual statement. A statement submitted annually by a PHA to HUD of the activities and expenditures it expects to undertake during the 12-month period following provision of assistance to the PHA by HUD. See § 968.330.

Comprehensive plan. A plan prepared by a PHA and approved by HUD setting forth all of the physical and management improvement needs of the PHA's public housing projects, and the management improvement needs of the agency, including the PHA's action plan, cost estimates, and required local government and PHA certifications. The comprehensive plan may be revised, as necessary. See § 968.320(b).

Emergency work. Physical work items of an emergency nature, posing an immediate threat to tenant life, health, or safety or related to fire safety. Under the Comprehensive Grant program, management improvements are not eligible as emergency work and, therefore, must be covered by the comprehensive plan before the PHA may carry them out.

Homebuyer agreement. A Turnkey III Homebuyer's Ownership Opportunity Agreement.

Lack of management capability. The PHA (a) has inadequate management

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practices, as determined by HUD on the basis of its annual review of PHA performance under § 968.345, or lacks management capability, as defined in § 968.203, with respect to CIAP funding received by the PHA before FFY 1989, and (b) has not taken appropriate corrective action.

Lack of modernization capability. The PHA (a) has inadequate modernization capability, as determined by HUD on the basis of its annual review of PHA performance under § 968.345 or lacks modernization capability, as defined in § 968.203, with respect to CIAP funding received by the PHA before FFY 1989, and (b) has not taken appropriate corrective action.

Modernization funds. Funds derived from an allocation of budget authority for the purpose of funding physical and management improvements under an approved comprehensive plan.

Modernization project. The improvements to one or more existing public housing projects, as set forth in the annual statement, under a new grant number designated for that FFY. The term "project" or "public housing project" means a development project with a unique project number.

Non-routine maintenance. Work items that ordinarily would be performed on a regular basis in the course of upkeep of property, but have become substantial in scope because they have been put off, and involve expenditures that would otherwise materially distort the level trend of maintenance expenses. Replacement of equipment and materials rendered unsatisfactory because of normal wear and tear by items of substantially the same kind does qualify, but reconstruction, substantial improvement in the quality or kind of original equipment and materials, or remodeling that alters the nature or type of housing units does not qualify.

Reasonable cost. The cost (excluding the cost of management improvements, administration, architectural and engineering fees, and other fees) of rehabilitating a project does not exceed 62.5 percent (for a nonelevator structure) of the total cost guidelines for a new project with the same structure type and number and size of units in the market area.

§ 968.310 Eligible costs.

(a) *Eligible costs.* A PHA may use financial assistance received under this subpart only:

(1) To undertake activities described in its approved comprehensive plan under § 968.320(b), and its annual statement under § 968.330, including the following:

(i) Physical improvements, including alterations, betterments, additions, replacement, and non-routine maintenance that are necessary to meet the modernization and energy conservation standards prescribed in § 968.115. These standards may be exceeded only when the PHA determines that is appropriate for the long-term physical and social viability of the individual project. If demolition is proposed, the PHA shall comply with 24 CFR Part 970;

(ii) Management improvements;

(iii) Tenant moving costs (see § 968.110(g));

(iv) Administrative costs necessary for the additional design and implementation of the physical and management improvements (*i.e.*, costs to be incurred after modernization program approval), as follows:

(A) The salaries of nontechnical and technical PHA personnel assigned full-time or part-time to the modernization program are eligible modernization costs. Any proration of salaries shall be justified by the PHA, authorized by HUD, and reflected by an appropriate revision to the PHA's operating budget; and

(B) PHA contributions to employee benefit plans on behalf of nontechnical and technical PHA personnel are eligible modernization costs in proportion to the amount of salary charged to the modernization program;

(v) Lead-based paint testing costs, as described in §§ 965.705 and 965.706 of this chapter and § 968.110(k);

(vi) Lead-based paint hazard abatement costs, as described in §§ 965.705 and 965.706 of this chapter and § 968.110(k); and

(vii) Use of management funds to assist a tenant or resident management corporation, as defined in § 964.7 of this chapter, to develop its management capabilities and carry out management improvements identified as PHA-wide or project-specific in nature, under the terms of a management contract between the PHA and the tenant management corporation. (See Part 964 of this chapter for information on the establishment and functions of tenant management corporations.) Such funding is subject to the limitations indicated in paragraph (c) of this section;

(2) To carry out emergency work, whether or not the need is indicated in the PHA's comprehensive plan or annual statement; and

(3) To fund a reserve to carry out eligible activities in future years;

(4) To prepare a comprehensive plan, including an action plan, under § 968.320, including reasonable costs necessary to assist tenants in participating in the planning process in a meaningful way; an annual statement under § 968.330; and an annual performance and evaluation report under § 968.340.

(b) *Homeownership projects.* For homeownership projects only, eligible physical improvements are limited to work items that are not the responsibility of the homebuyer families and that are related to health and safety, correction of development deficiencies, physical accessibility, cost-effective energy conservation measures, and lead-based paint testing and abatement. Nonroutine maintenance or replacements, additions, items that are the responsibility of the homebuyer families, and management improvements are not eligible modernization costs for homeownership projects.

(c) *Cost limitations.* A PHA shall not use more than a total of 15 percent of its annual grant for management improvements, administration, fees and costs, and relocation expenses.

(d) *Luxury improvements prohibited.* A PHA shall not make luxury improvements, as specified by HUD.

§ 968.315 Allocation of assistance.

(a) *Formula distribution of assistance.* [Reserved]

(b) *Prerequisite for receiving assistance.* No financial assistance, except for emergency work, may be made available under this subpart unless HUD has approved a comprehensive plan submitted by the PHA meeting the requirements of § 968.320. To receive funding for emergency work where HUD has not approved a PHA's comprehensive plan, the PHA shall submit an annual statement to HUD, and any other supporting documentation required by HUD, describing its proposed emergency work, and requesting funding to carry out the work.

§ 968.320 Comprehensive plans.

(a) *Deadline for submission.* As soon as possible after modernization funds first become available for allocation under this subpart, HUD shall notify PHAs in writing of their availability and the deadline for submitting a comprehensive plan.

(b) *Contents of comprehensive plan.* The comprehensive plan shall identify the physical and management improvements needed for each of the PHA's projects, as well as any necessary PHA-wide improvements. The plan shall also include estimates of the cost of these improvements. The plan shall set forth general strategies for addressing the needs, and highlight any special strategies, such as major redesign or partial demolition of a project, that are necessary to ensure the long-term physical and social viability of the projects. Accordingly, each comprehensive plan shall contain the following elements:

(1) *Comprehensive assessment of physical needs.* The plan shall include a comprehensive assessment of:

(i) The current physical condition of each project owned or operated by the PHA;

(ii) The physical improvements necessary for each project to permit the project to be rehabilitated to a level at least equal to the modernization standards, and to comply with the life-cycle cost-effective energy conservation performance standards, as required in § 968.115;

(iii) The replacement needs of equipment systems and structural elements that will be required to be met (assuming routine and timely maintenance is performed) during the period covered by the action plan (see paragraph (b)(4) of this section); and

(iv) Whether one or more buildings occupied predominantly by one racial or ethnic group are in substandard condition and are in significantly worse condition than one or more buildings occupied predominantly by other racial or ethnic groups, and in such cases the improvements required to correct the conditions.

(2) *Comprehensive assessment of management needs.* The plan shall include a comprehensive assessment of the improvements needed to upgrade the management and operation of the PHA and of each viable project, so decent, safe, and sanitary living conditions will be provided. The assessment shall include at least an identification of needs related to:

(i) The management, financial, and accounting control systems of the PHA;

(ii) The adequacy and qualifications of personnel employed by the PHA in the management and operation of its projects, for each significant category of employment;

(iii) The adequacy and efficacy of the following:

(A) Tenant programs and services;

(B) Tenant and project security;

(C) Tenant selection and eviction;

(D) Occupancy;

(E) Rent collection; and

(F) Maintenance; and

(iv) Tenant management corporations as provided in § 968.205(i).

(3) *Demonstration of long-term physical and social viability.* The plan shall include an analysis, on a project-by-project basis, demonstrating that completion of the improvements and replacements identified under paragraphs (b) (1) and (2) of this section will reasonably ensure, in accordance with HUD guidelines, the long-term physical and social viability of each project at a reasonable cost. The plan may not include improvements and replacements unless their completion would reasonably ensure long-term viability at a reasonable cost, except in the case of emergency work. In addition, if the PHA has received assistance under Part 968 within the preceding five-year period (other than for emergency work), it shall demonstrate that the proposed improvements and replacements do not duplicate work funded during that period.

(4) *Action plan.* The comprehensive plan shall include an action plan to carry out the improvements and replacements identified under paragraphs (b) (1) and (2) of this section that the PHA determines will reasonably ensure the long-term physical and social viability of each project at a reasonable cost, as required by paragraph (b)(3) of this section, and will reasonably ensure that the PHA will meet or make reasonable progress towards meeting the performance standards in § 968.345. The PHA shall develop the action plan based on estimates provided by HUD of the amount of assistance the PHA will receive over its five-year term and on PHA estimates of funds that will be available from other sources, such as State and local governments.

(i) The action plan shall include a schedule, in priority order, of the improvements to be completed over a period of no more than five years from the date HUD approves the comprehensive plan and that are necessary:

(A) To make the improvements and replacements identified under paragraph (b)(1) of this section for each project in which the PHA plans to use assistance under this subpart (the PHA shall give priority to activities required to correct conditions that are life-threatening); and

(B) To upgrade the management and operation of the PHA and its projects, as described in paragraph (b)(2) of this section.

(ii) The action plan shall specify the estimated period of time within which each project will be comprehensively modernized. The period for completion of the modernization shall be reasonable, taking into consideration the amount of work required.

(iii) If the needs identified in the comprehensive plan cannot be completed within five years covered by the action plan, the PHA shall maintain a current five-year action plan by annually amending its action plan, in connection with submission of its annual statement, until all necessary work is covered by the action plan.

(iv) The action plan shall include preliminary estimate of the total cost of the items identified under paragraphs (b) (1) and (2) of this section, for each year covered by the action plan.

(5) *Local government statement.* The comprehensive plan shall include a statement signed by the chief executive officer of the unit of general local government, certifying to the following:

(i) The PHA developed the comprehensive plan in consultation with appropriate local government officials and with tenants of the housing projects, including at least one public hearing. The PHA held the hearing before initial adoption of the comprehensive plan by the PHA, and the hearing gave tenants and other interested parties an opportunity to summarize their priorities and concerns, to ensure full consideration of their priorities and concerns in the PHA's planning process.

(ii) The comprehensive plan is consistent with the unit of general local government's assessment of its lower income housing needs (as evidenced by its housing assistance plan under the Community Development Block Grant program, 24 CFR Part 570, where applicable), and that the unit of general local government will cooperate in providing tenant programs and services.

(6) *Civil rights statement.* The plan shall include a statement, signed by the chief executive officer of the PHA, certifying that the PHA will carry out the comprehensive plan in conformity with title VI of the Civil Rights Act of 1964, title VIII of the Civil Rights Act of 1968, and section 504 of the Rehabilitation Act of 1973.

(7) *PHA resolution.* The plan shall include a resolution adopted by the PHA Board of Commissioners approving the comprehensive plan and certifying that:

(i) The PHA will comply with all policies, procedures, and requirements prescribed by HUD for the modernization, including implementation of the modernization in a timely, efficient, and economical manner;

(ii) The proposed physical work meets the modernization and energy conservation standards in § 968.115;

(iii) The PHA will comply with applicable civil rights requirements under § 968.110(a).

(iv) The PHA has adopted the goal of awarding a specified percentage of the dollar value of the total of the

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modernization contracts, to be awarded during subsequent FFYs, to minority business enterprises under § 968.110(b);

(v) The PHA has obtained flood insurance or determined that flood insurance is not required under § 968.110(d);

(vi) The PHA will comply with relocation assistance requirements under § 968.110(g);

(vii) The PHA will comply with requirements for physical accessibility under § 968.110(h);

(viii) The PHA will comply with lead-based paint testing and abatement requirements under § 968.110(k); and

(ix) The PHA will comply with all other applicable laws, regulations, and other program requirements.

(c) *Conversion of a CPM under the CIAP program to an Comprehensive Grant comprehensive plan.* If, under the CIAP program in connection with pre-FFY 1990 funding, a PHA has submitted a comprehensive plan for modernization (CPM) before the effective date of this subpart, the PHA may submit only the changes necessary to reflect the results of consultations with local government officials and tenants and to include the additional items required by § 968.320, instead of an entirely new comprehensive plan.

(d) *Amendments.* When the bases for the needs assessment or other feature of the comprehensive plan have substantially changed, the PHA shall propose an amendment to its comprehensive plan (including its action plan), as part of its annual statement (see § 968.330(b)(4)) or at any other time. The proposed amendment shall include certifications that the PHA has made the proposed amendment publicly available for comment before its submission to HUD, including consultation with appropriate local government officials; given tenants sufficient time to review and comment on the amendments; and taken tenant and local governments comments into consideration in preparing and submitting the amendment. A PHA shall have the right to amend its comprehensive plan and related anual statements to extend the time for performance whenever HUD has not provided the amount of assistance set forth in the comprehensive plan or has not provided the assistance in a timely manner.

§ 968.315 HUD review and approval of comprehensive plan.

(a) *Submission of comprehensive plan.* (1) Upon receipt of a comprehensive plan from a PHA, HUD shall determine whether:

(i) It is complete in all significant matters; and

(ii) The PHA has submitted any additional information or assurances required as a result of HUD monitoring, findings of inadequate PHA performance, or audit findings.

If the PHA has submitted a complete comprehensive plan and all required information and assurances, HUD will accept the plan for review, as of the date of receipt. If the PHA has not submitted all required material, HUD will promptly notify the PHA that it has disapproved the plan as submitted, indicating the reasons for disapproval and the modifications required to qualify the comprehensive plan for HUD review.

(b) *HUD approval of comprehensive plan.* (1) A comprehensive plan accepted for review in accordance with paragraph (a) of this section shall be considered to be approved, unless HUD notifies the PHA in writing, postmarked or delivered within 75 calendar days of the date of receipt, that HUD has disapproved the comprehensive plan, indicating the reasons for disapproval and the modifications required to make the comprehensive plan approvable.

(2) HUD shall approve the comprehensive plan except where it makes a determination in accordance with one or more of the following:

(i) On the basis of available significant facts and data pertaining to the physical and operational condition of the PHA's projects or the management and operations of the PHA, HUD determines that the PHA's identification of modernization needs (see § 968.320(b) (1) and (2)) is plainly inconsistent with such facts and data. HUD will take into account facts and data such as those derived from HUD monitoring, audits, and tenant comments and will disapprove a comprehensive plan based on such findings as:

(A) The completion of the improvements and replacements will not bring all of the PHA's projects to a level at least equal to the standards in § 968.115;

(B) The improvements identified relating to management and operation do not address all of the PHA's areas of deficiency; and

(C) The proposed improvements are not related to the identified needs, such as where one or more projects have significant vacancy rates, but the plan does not address how to fill the vacancies.

(ii) On the basis of the comprehensive plan, HUD determines that the action plan (see § 968.320(b)(4)) is plainly inappropriate to meeting the needs identified in the comprehensive plan. HUD may take into account the thoroughness of the PHA in identifying the physical and managerial needs, including causes of managerial problems; and the effectiveness, based on experience, of the proposed activities in meeting the PHA's management and physical improvement needs.

(iii) On the basis of the comprehensive plan, HUD determines that the PHA has failed to demonstrate that completion of improvements and replacements identified in the comprehensive plan, as required by § 968.320(b) (1) and (2), will reasonably ensure long-term viability of one or more public housing projects to which they relate at a reasonable cost, as required by § 968.320(b)(3).

(iv) HUD has evidence which tends to challenge, in a substantial manner, the local government statement or PHA resolution contained in the comprehensive plan, as required in § 968.320(b) (5) and (6). Any unresolved preliminary finding or final determination by HUD that the PHA is in violation of one of the civil rights requirements listed in § 968.110(a) will be considered such evidence. Such evidence could also include complaints form tenants that they did not have an opportunity to express their views, or complaints from the unit of general local government that it was not adequately consulted in the development of the plan.

(3) After HUD approves the comprehensive plan (or any amendments to it), it shall be binding upon HUD and the PHA.

(c) *Partial approval of plan.* Where the PHA and HUD disagree over a viability determination under paragraph (b)(3) of this section or other substantive matters, HUD may approve a comprehensive plan subject to resolution of the disagreement between HUD and the PHA.

§ 968.320 Annual statement of activities and expenditures.

(a) *Submission of annual statement of activities and expenditures.* After being advised by HUD of the estimated amount of assistance it will receive under this subpart with respect to any fiscal year and estimating how much funding will be available from other sources, such as State and local governments, the PHA shall submit an annual statement of activities and expenditures in accordance with instructions contained in the notification to the PHA. Upon receipt of an annual statement from a PHA, HUD shall determine whether:

(1) It is complete in all significant matters; and

(2) The PHA has submitted any additional information or assurances required as a result of HUD monitoring, findings of inadequate PHA performance, or audit findings.

If the PHA has submitted a complete annual statement and all required information and assurances, HUD will accept the statement for review, as of the date of receipt. If the PHA has not submitted all required material, HUD will promptly notify the PHA that it has disapproved the statement as submitted, indicating the reasons for disapproval and the modifications required to qualify the annual statement for HUD review.

(b) *Contents of annual statement.* The annual statement:

(1) Shall describe, for each project, the activities, obligations, and expenditures the PHA plans to undertake, in whole or in part, with the assistance HUD indicates the PHA will receive (the PHA may include any activities and expenditures, so long as they are consistent with its approved plan);

(2) Shall relate, for each project, the activities, obligations, and expenditures to the comprehensive plan, stating the amount of work to be done in the year covered by the annual statement, and the remaining amount of work to be done;

(3) Shall include certifications by the PHA that:

(i) The proposed activities, obligations, and expenditures are consistent with the approved comprehensive plan of the PHA;

(ii) The PHA has given tenants affected by the planned activities and appropriate local government officials an opportunity to review the draft annual statement and comment on it, and that the PHA has taken tenant and local government comments into account in developing the annual statement submitted to HUD for approval;

(iii) The PHA will comply with § 968.230, where a homeownership project is involved; and

(iv) The PHA will comply with § 968.235, with respect to section 23 leased housing bond-financed projects;

(4)(i) Shall propose an amendment to its action plan, approved as part of its comprehensive plan, where more than five years is needed to complete the improvements and replacements identified in the comprehensive plan and the action plan must be amended to maintain a current five-year plan, as required by § 968.320(b)(4)(iii); and

(ii) When the bases for the needs assessment or other feature of the comprehensive plan have substantially changed, shall propose an amendment to its comprehensive plan, as required by § 968.320(d); and

(5) Shall include a PHA resolution approving the annual statement, and stating that the resolution submitted in accordance with § 968.320(b)(6) is still current or amending the obsolete resolution.

(c) *HUD review and approval of annual statement.* (1) An annual statement accepted in accordance with paragraph (a) of this section shall be considered to be approved, unless HUD notifies the PHA in writing, postmarked or delivered within 75 calendar days of the date HUD accepts it for review under paragraph (a) of this section (or of the date funds are appropriated, if later), that HUD has disapproved the annual statement, indicating the reasons for disapproval and the modifications required to make the annual statement approvable.

(2) HUD shall approve the annual statement, except where:

(i) HUD determines the annual statement is plainly inconsistent with the activities specified in the comprehensive plan;

(ii) HUD has evidence which tends to challenge, in a substantial manner, the certifications or resolution contained in the annual statement, as required by paragraphs (b) (3), (4), and (5) of this section; or

(iii) HUD determines the proposed amendments, if any, to the PHA's comprehensive plan are not acceptable in accordance with the review standards in § 968.325(b).

(3) *HUD conditional approval of annual statement.* HUD may approve an annual statement with conditions, where HUD determines, based on substantial evidence, that the PHA has failed to meet the standards in paragraph (c)(2) of this section. In such a case, HUD shall notify the PHA that the annual statement is being approved with conditions, indicating the reasons for the conditions and the modifications required for HUD to remove the conditions. The conditions may restrict use of funds in accordance with HUD guidelines and may include the actions specified in § 968.345(c).

(d) *Amendments to annual statement.* The PHA shall submit major changes in its annual statement to HUD for approval, except in the case of emergency work or unanticipated work discovered during the rehabilitation of a project. The PHA shall advise HUD of changes due to emergencies and unanticipated work in its performance and evaluation report submitted under § 968.340. HUD shall review a request to amend an annual statement in accordance with paragraph (c) of this section.

(e) *ACC Amendment.* After HUD approval of each year's annual statement, HUD and the PHA shall enter into an ACC amendment to obtain modernization funds.

§ 968.325 Conduct of modernization activities.

(a) *Initiation of activities.* After HUD has approved the annual statement and entered into an ACC amendment with the PHA, the PHA shall undertake the modernization activities and expenditures set forth in its approved annual statement.

(b) *Fund requisitions.* To request modernization funds against the approved annual statement, the PHA shall submit a request to HUD in accordance with HUD requirements.

(c) *Contracting requirements.* The contracting requirements set forth in 24 CFR Part 85 shall apply, unless HUD imposes additional requirements under § 968.345(d).

(d) *Fiscal closeout of a comprehensive grant.* Upon completion of activities funded by each annual grant, the PHA shall submit the actual modernization cost certificate, in a form prescribed by HUD, to HUD for review, audit verification, and approval. The audit shall follow the guidelines prescribed by 24 CFR Part 44, Non-Federal Government Audit Requirements. If the audited modernization cost certificate discloses unauthorized expenditures, the PHA shall take such corrective actions as HUD may direct.

§ 968.340 PHA performance and evaluation report.

No later than 30 days after each PHA fiscal year for which a PHA has received assistance under this subpart, the PHA shall submit a performance and evaluation report, in a form prescribed by HUD, describing its use of assistance made available under this subpart in accordance with the approved annual statement. The report shall include an assessment of the relationship of the use of funds made available under this subpart, as well as the use of other funds such as Community Development Block Grant program assistance, State assistance, and private funding, to the needs identified in the PHA's comprehensive plan and to the purposes of this subpart specified in § 968.301(a). The report shall include a certification that the PHA has made the draft report available for review and comment by affected tenants before its submission to HUD.

§ 968.345 HUD review of PHA performance.

(a) *HUD determination.* At least annually, HUD shall carry out such reviews of PHA performance as may be necessary or appropriate to make the determinations required by this paragraph, taking into consideration all available evidence.

(1) *Conformity with comprehensive plan.* HUD will determine whether the PHA has carried out its activities under this Subpart in a timely manner and in accordance with its comprehensive plan.

(i) In making this determination, HUD will review the PHA's performance to determine whether the modernization activities undertaken during the period under review conform substantially to the activities specified in the approved annual statement, consistent with the approved comprehensive plan. The review may include whether any activities that were undertaken which were not included in the approved annual statement are eligible under § 968.310, are specified in the action plan, or are due to emergencies or unanticipated work discovered during rehabilitation. HUD will also consider whether the PHA received more or less funding than anticipated when it developed its annual statement.

(ii) HUD will review a PHA's performance to determine whether the activities carried out comply with the requirements of the Act, including the requirement that the work carried out meets the modernization and energy conservation standards in § 968.115, this part, and other applicable laws and regulations.

(2) *Continuing capacity.* HUD will determine whether the PHA has a continuing capacity to carry out its comprehensive plan in a timely manner.

(i) The primary factors to be considered in arriving at a determination that a recipient has a continuing capacity are those described in paragraphs (a) (1) and (3) of this section as they relate to carrying out the comprehensive plan. If HUD determines that the PHA has carried out its activities under this subpart in a timely manner, taking into account the level of funding available, and in accordance with its comprehensive plan and that the PHA has satisified, or has made reasonable progress towards satisfying, the performance standards prescribed in paragraph (a)(3) of this section as they relate to activities under this subpart, HUD will generally consider the PHA to have a continuing capacity.

(ii) HUD will give particular attention to PHA efforts to accelerate the progress of the program and to prevent the recurrence of past deficiencies or noncompliance with applicable laws and regulations.

(3) *Reasonable progress.* HUD shall determine whether the PHA has satisfied, or has made reasonable progress towards satisfying, the following performance standards:

(i) With respect to the physical condition of each project, whether the projects are in substantial compliance with the housing quality standards in 24 CFR 882.109; and

(ii) With respect to the management condition of the PHA, whether:

(A) Operating reserves, exclusive of tenants accounts receivable, exceed a reasonable percentage of maximum operating reserves, in accordance with HUD guidelines;

(B) Operating expenses are less than or equal to income, or do not exceed income by more than a reasonable amount, in accordance with HUD guidelines;

(C) Annual utility consumption, as compared to the average of the previous three years' rolling base consumption, adjusted for variances in heating degree days, has not increased more than a reasonable amount, in accordance with HUD guidelines, has not changed, or has decreased;

(D) The PHA is a "high occupancy" PHA, as determined by HUD, or is meeting the occupancy goals of a comprehensive occupancy plan approved by HUD, in accordance with § 990.118 of this chapter.

(E) Annual rent collections equal or exceed a percentage, as specified by HUD, of annual rents chargeable by the PHA plus rental accounts receivable as of the end of the PHA's fiscal year;

(f) The annual average number of vacancy days between tenants is not more than a reasonable number of days, as specified by HUD; and

(G) The PHA has inspected all of its dwelling units annually, or more or less often, as specified by HUD, using housing quality standards as a minimum standard.

In setting standards under paragraph (a)(3)(ii) of this section and making the determination under paragraph (a)(3) of this section, HUD will take into account what is reasonable to expect a PHA to achieve, based on the experience of PHAs in similar circumstances, as determined by HUD.

(iii) HUD will propose changes to these standards only after consultation with PHAs and PHA organizations.

(b) *Condition for receipt of assistance.* No financial assistance may be made available under this subpart unless HUD determines that the PHA has made substantial efforts to meet the objectives of the preceding year under the PHA's comprehensive plan, or, for the first year a PHA receives assistance under this subpart, under the PHA's approved CIAP program. In making this determination HUD will take into account its determinations under paragraph (a) of this section.

(c) *Corrective action.* (1) HUD may order a PHA to take corrective action only if HUD determines:

(i) The PHA has not submitted a performance and evaluation report, in accordance with § 968.340;

(ii) The PHA has not carried out its activities under Subpart C in a timely manner and in accordance with its comprehensive plan;

(iii) The PHA does not have a continuing capacity to carry out its comprehensive plan in a timely manner;

(iv) The PHA has not satisfied, or has not made reasonable progress towards satisfying, the performance standards specified in paragraph (a)(3) of this section.

(v) An audit conducted in accordance with 24 CFR Part 44 and § 968.110(i) reveals findings that HUD reasonably believes require corrective action.

(2) HUD shall design corrective action to prevent a continuation of the deficiency; mitigate any adverse effects of the deficiency to the extent possible; and prevent a recurrence of the same or similar deficiencies.

(3) HUD may direct a PHA to take one or more of the following corrective actions:

(i) Submit additional information:

(A) Concerning the PHA's administrative, planning, budgeting, accounting, management, and evaluation functions, to determine the cause for a PHA not meeting the standards in paragraphs (a) (1), (2), or (3) of this section;

(B) Explaining any steps the PHA is taking to correct the deficiencies;

(C) Documenting that PHA activities were not inconsistent with the PHA's annual statement or other applicable laws, regulations, or program requirements; and

(D) Demonstrating that the PHA has a continuing capacity to carry out the comprehensive plan in a timely manner;

(ii) Submit schedules for completing the work identified in its annual statement and report periodically on its progress on meeting the schedules;

(iii) Correct deficiencies specified in a letter from HUD advising the PHA of the deficiencies and warning it that HUD will impose sanctions if the deficiency recurs or if it is not corrected within a specified time;

(iv) Submit supporting material to document one or more of the statements, resolutions, and certifications submitted as Part of the PHA's comprehensive plan, annual statement, or performance and evaluation report;

(v) Not to incur financial obligations, or to suspend payments for one or more activities;

(vi) Reimburse, from non-HUD sources, one or more program accounts for any amounts improperly expended;

(vii) Take such other corrective actions HUD determines appropriate to correct PHA deficiencies.

(d) *Conditioning.* HUD may condition the approval of the next year's annual statement, or otherwise condition a PHA's program, based on substantial evidence, in accordance with paragraph (a) of this section.

(e) *Withholding and reallocating grant amounts.* (1) HUD may withhold some or all of the PHA's annual grant where it has required a PHA to take corrective action and the PHA has failed to correct the deficiency within a reasonable time.

(2) Where HUD has withheld a PHA's annual grant to two or more consecutive fiscal years, it may reallocate some or all of the amounts that have been withheld up to that time, as well as future allocations, to other PHAs in the next FFY. HUD will not reallocate annual grant amounts until HUD has required a PHA to take corrective action and the PHA has failed to correct the deficiency within a reasonable time. Before reallocating a grant, HUD will notify the PHA and give it an opportunity, within a prescribed time, to consult with HUD regarding the proposed action.

Dated: September 28, 1988.

Jacqueline Aamot,

Associate General Deputy Assistant Secretary for Public and Indian Housing.

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202–275–3030).

H.R. 2772/Pub. L. 100–516
Mni Wiconi Project Act of 1988. (Oct. 24, 1988; 102 Stat. 2566; 12 pages) Price: $1.00

H.R. 3235/Pub. L. 100–517
Health Maintenance Organization Amendments of 1988. (Oct. 24, 1988; 102 Stat. 2578; 6 pages) Price: $1.00

H.R. 4345/Pub. L. 100–518
United States Grain Standards Act Amendments of 1988. (Oct. 24, 1988; 102 Stat. 2584; 5 pages) Price: $1.00

H.R. 4417/Pub. L. 100–519
To authorize appropriations to the Secretary of Commerce for the programs of the National Bureau of Standards for fiscal year 1989, and for other purposes. (Oct. 24, 1988; 102 Stat. 2589; 10 pages) Price: $1.00

H.R. 4724/Pub. L. 100–520
To direct the Secretary of Agriculture to release a reversionary interest of the United States in certain land located in Oktibbeha County, Mississippi. (Oct. 24, 1988; 102 Stat. 2599; 2 pages) Price: $1.00

H.R. 2399/Pub. L. 100–521
Forest Ecosystems and Atmospheric Pollutaion Research Act of 1988. (Oct. 24, 1988; 102 Stat. 2601; 3 pages) Price: $1.00

H.R. 5423/Pub. L. 100–522
To authorize continued storage of water at Abiquiu Dam in New Mexico. (Oct. 24, 1988; 102 Stat. 2604; 1 page) Price: $1.00

S. 1911/Pub. L. 100–523
To amend title 5, United States Code, to allow all forest fire fighting employees to be paid overtime without limitation while serving on forest fire emergencies. (Oct. 24, 1988; 102 Stat. 2605; 1 page) Price: $1.00

S. 2018/Pub. L. 100–524
Congaree Swamp National Monument Expansion and Wilderness Act. (Oct. 24, 1988; 102 Stat. 2606; 3 pages) Price: $1.00

S. 2479/Pub. L. 100–525
Immigration Technical Corrections Act of 1988. (Oct. 24, 1988; 102 Stat. 2609; 14 pages) Price: $1.00

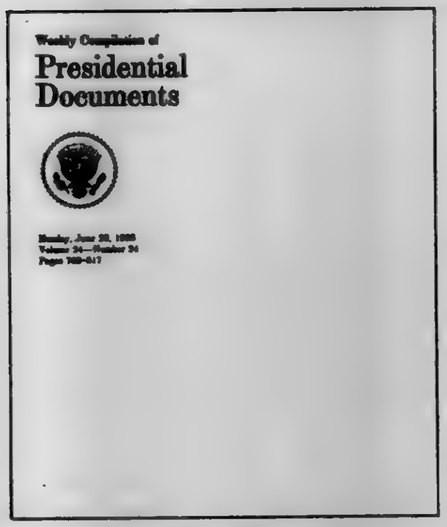
S. 2749/Pub. L. 100–526
Defense Authorization Amendments and Base Closure and Realignment Act. (Oct. 24, 1988; 102 Stat. 2623; 12 pages) Price: $1.00

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October 28, 1988

Briefing on How To Use the Federal Register—
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
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3. The important elements of typical Federal Register documents.
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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 88-148]

Witchweed Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the list of suppressive areas under the witchweed quarantine and regulations by adding to the list areas in five counties in North Carolina and one county in South Carolina. We are also deleting from the list areas in eight counties in North Carolina and three counties in South Carolina. These actions are necessary in order to impose certain restrictions on the interstate movement of regulated articles for the purpose of preventing the artificial spread of witchweed and to delete unnecessary restrictions on the interstate movement of regulated articles.

EFFECTIVE DATE: November 28, 1988.

FOR FURTHER INFORMATION CONTACT: Eddie Elder, Chief Operations Officer, Domestic and Emergency Operations Staff, National Programs, PPQ, APHIS, USDA, Room 661, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8365.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule published in the **Federal Register** and effective July 1, 1988 (53 FR 24923-24928, Docket Number 88-027), we amended the regulations at 7 CFR Part 301 by adding areas in Beaufort, Duplin, Greene, Hoke, and Sampson Counties in North Carolina, and Florence County in South Carolina to the list of suppressive areas in § 301.80-2a. We also deleted areas in Craven, Cumberland, Duplin, Hoke, Lenoir, Richmond, Scotland, and Wayne Counties in North Carolina, and Florence, Horry, and Marlboro Counties in South Carolina from the list of suppressive areas in § 301.80-2a. Comments on the interim rule were required to be postmarked or received on or before August 30, 1988. We did not receive any comments. The facts presented in the interim rule still provide the basis for this rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have detemined that it is not a "major rule." Based on information complied by the Department, we have determined that this rule will have an estimated annual effect on the economy of less than $4,000; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This action affects the interstate movement of regulated articles from specified areas in North Carolina and South Carolina. Based on information compiled by the Department, we have determined that approximately 281,000 small entities move these articles interstate from North Carolina and South Carolina. However, this action affects only 172 of these entities by removing 164 entities from regulation and placing 8 new entities under regulation. We have determined that the 164 deregulated entities will realize combined annual savings of approximately $3,800, or $23.17 each, in regulatory and control costs. We estimate that the 8 newly regulated entities will need to invest a similar amount, approximately $23 each, per year, in order to comply with our regulations. We therefore estimate that the overall impact from this action will be less than $4,000.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

The program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant pests, Plants (Agriculture), Quarantine, Transportation, Witchweed.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR Part 301 and that was published at 53 FR 24923-24928 on July 1, 1988.

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162 and 164-167; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, on this 24th day of October.

James W. Glosser,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-24933 Filed 10-27-88; 8:45 am]
BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 637]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

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SUMMARY: Regulation 637 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 286,733 cartons during the period October 30 through November 5, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 637 (§ 910.937) is effective for the period October 30 through November 5, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended [7 CFR Part 910] regulating the handling of lemons grown in California and Arizona. This order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended. This action is based upon the recommendations and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1988-89. The Committee met publicly on October 25, 1988, in Redlands, California, to consider the current and prospective conditions of supply and demand and recommended, by a 12-1 vote, a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that the demand for lemons is strong.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910--LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.937 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.937 Lemon Regulation 637.

The quantity of lemons grown in California and Arizona which may be handled during the period October 30, 1988, through November 5, 1988, is established at 286,733 cartons.

Dated: October 26, 1988.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 88-25091 Filed 10-27-88; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1464

Tobacco; Loans and Purchase Program

AGENCY: Commodity Credit Corporation (CCC), USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations at 7 CFR Part 1464 to conform with the provisions of section 1001C of the Food Security Act of 1985, as implemented in the regulations found at 7 CFR Part 1498 (53 FR 29552). Also, in accordance with the provisions of section 637 of Pub. L. 99-591, this final rule deletes special provisions which previously required burley tobacco producers, as a condition of eligibility for price support, to agree to make contributions on a three-year basis to any No Net Cost Fund established by a burley tobacco loan association, thus making burley tobacco producers subject to the same one-year provision as are required by producers of other kinds of tobacco. Additionally, a minor technical amendment is made in 7 CFR 1464.10 for clarity.

EFFECTIVE DATE: October 28, 1988.

FOR FURTHER INFORMATION CONTACT: Douglas Richardson, Tobacco Operations Branch, Tobacco and Peanuts Division, USDA-ASCS, P.O. Box 2415, Washington, DC 20013 (202) 447-3516.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedure established in accordance with Executive Order 12291 and Department Regulation No. 1512-1 and has been classified as "not major." It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises, to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this rule applies are: Commodity Loan and Purchases; 10.051, as found in the catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

A final rule was published on August 5, 1988 (53 FR 29552), setting forth regulations at 7 CFR Part 1498 which will be used in determining whether a foreign individual or entity is eligible to receive certain payments, loans, and benefits. Such regulations affect the eligibility of certain producers of tobacco. Accordingly, for clarity the regulations at 7 CFR Part 1498 are being referenced in 7 CFR 1464.7 for use in determining price support program eligibility for tobacco producers.

Section 637 of Pub. L. 99-591 deleted special provisions set forth in the Agricultural Act of 1949, as amended, which required that burley tobacco producers, as a condition for price support eligibility, agree to make contributions on a three-year basis to any No Net Cost Fund established for an association that provides price support to burely tobacco producers. Deleting this special provision permits burley tobacco producers to qualify for price support in the same manner as other tobacco producers by agreeing, on an annual basis, to make contributions to any No Net Cost Fund established for a burley tobacco association under the provisions of 7 CFR 1464.10. This final rule amends 7 CFR 1464.10 to remove this special three-year provision for burley tobacco.

This final rule inserts, in 7 CFR 1464.10 (i)(5)(i), a word which was omitted inadvertently in a previous amendment.

Since these amendments are merely technical in nature, it has been determined that public comments are not necessary. Accordingly, this final rule is effective upon publication in the **Federal Register.**

List of Subjects in 7 CFR Part 1464

Price support programs, Tobacco.

Final Rule

PART 1464--[AMENDED]

Accordingly, 7 CFR Part 1464 is amended to read as follows:

1. The authority citation for Part 1464 is revised to read:

Authority: Secs. 4 and 5 of the Commodity Credit Charter Act, as amended, 62 Stat. 1070 as amended, 1072 15 U.S.C. 714b, 714c, secs. 101, 106, 106A, 1060, 401, 423 of the Agricultural Act of 1949, as amended, 63 Stat. 1051, as amended, 74 Stat. 6, as amended, 96 Stat. 197, as amended, 63 Stat. 1054, as amended, 7 U.S.C. 1441, 1445, 1445-1, 1421, 1423, sec. 1001C of the Food Security Act of 1985, as amended, 99 Stat. 1444, as amended, 7 U.S.C. 1308.

2. Section 1464.7 is amended by adding paragraph (d) to read as follows:

§ 1464.7 Eligible producers.

* * * * *

(d) Must not be ineligible, in accordance with Part 1498 of this title, to receive price support payments, loans, and benefits.

§ 1464.10 [Amended]

3. Section 1464.10 is amended by removing and reserving paragraph (g) and by adding the word "association" after the word "applicable" in paragraph (i)(5)(i).

Signed in Washington, DC, on October 25, 1988.

Milton Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 88-25009 Filed 10-27-88; 8:45 am]

BILLING CODE 3410-05-M

Farmers Home Administration

7 CFR Part 1924

Planning and Performing Construction and Other Development

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations dealing with planning and performing construction and other development. This action is implemented to allow applicants to obtain the services from a wider range of individuals and organizations in order to plan projects and administer general construction contracts, and will increase the loan applicant's ability to obtain the above services at reasonable cost and in a timely manner. The intended effect is to increase FmHA's ability to provide decent, sanitary and safe housing in rural areas.

EFFECTIVE DATE: November 28, 1988.

FOR FURTHER INFORMATION CONTACT: Reginald J. Rountree, Loan Specialist, Special Programs Branch, Single Family Housing Processing Division, Farmers Home Administration, USDA, Room 5534, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250, Telephone (202) 382-1474.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be "non-major." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Programs Affected

This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.410--Low Income Housing Loans (Section 502 Rural Housing Loans). For the reasons set forth in the Final rule and related Notice(s) to 7 CFR 3015, Subpart V, this activity affects the following programs that are included in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials: 10.405--Farm Labor Housing Loans and Grants; 10.406--Farm Ownership Loans; 10.413--Recreation Facility Loans; 10.415--Rural Rental Housing Loans; and 10.416--Soil and Water Loans.

Regulatory Flexibility Act

The Administrator, Farmers Home Administration, USDA, has determined that this action will not have a significant economic impact on a substantial number of small entities because it deals with the general administration of construction contracts and minimum certification requirements.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

Discussion of Final Rule

Background

At the present time, FmHA requires applicants to have their drawings and specifications certified only by licensed architects, professional engineers, authorized building officials, or certified code authorities as meeting applicable laws, ordinances, codes, and regulations related to the safety and sanitation on buildings. This requirement has caused approved loan applicants hardship in finding qualified certifiers at reasonable cost and has resulted in delays in assisting low-income and very low-

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income applicants to obtain adequate housing. The major purpose for revising FmHA regulations is to authorize individuals or organizations, trained and experienced in the compliance, interpretation or enforcement of the applicable development standards, to certify that drawings and specifications meet adopted codes and standards.

On March 9, 1988, FmHA published a proposed rule in the **Federal Register** (53 FR 7532–7534) with a comment period ending May 9, 1988. Fourteen comments were received. The following concerns were registered: (1) The changes, as proposed, would have a definite weakening effect upon certification of drawings and specifications as they relate to reliability and competency of builders and contractors. A builder's or contractor's license does not assure competency as to plan reviews since such review is not part of the licensing process. (2) The statement "others with equivalent qualifications" is very vague. What is the definition of "equivalent qualifications"? Who judges or decides whether these "equivalent qualifications" are acceptable? What criteria is followed? (3) As part of the certification process the copy of the license, certificate or authorization of the individual doing the certifying should be included. (4) The changes, as proposed, would increase the amount of paper work and the workload of FmHA personnel in both the State and county offices, and accountability and reliability of FmHA personnel. (5) There would be possible conflict of interest by allowing contractors and builders to certify their own plans and specifications. (6) There was concern that too many errors would result by allowing untrained and/or uncertified officials, be they FmHA employees or other government officials, to review plans submitted by builders/contractors in order to determine if they meet adopted codes. (7) Debarment proceedings are difficult and time consuming, therefore, causing a reluctance on the part of the FmHA County Supervisors to initiate such actions. (8) The first set of plans submitted by a builder should be reviewed by the FmHA personnel designated to do so prior to loan approval and construction. By having a post review, it may be too late to effect proper correction of a deficiency. (9) FmHA instructions should provide grounds for discontinuing acceptance of certification from persons who submit certifications determined by FmHA not to be in compliance with codes. (10) Increased cost to loan applicants due to certifiers being held liable for deficiencies. (11) Architects and engineers have always certified that plans and specifications meet State and local codes and ordinances—to require additional certification appears somewhat redundant.

After careful review, discussion, and evaluation of the comments received, FmHA has decided to limit self certification and is adopting procedures to allow a wider range of individuals and organizations to certify drawings and specifications, although the range of such certifiers is not as broad as that contained in the proposed rule. Self certification will be limited to builders/contractors that have been approved by the United States Department of Housing and Urban Development (HUD) or provide a 10-year warranty, also the use of plan services will be available to builders/contractors who are unable to self certify. This will resolve the major problem of States not having certifiers at a reasonable cost to loan applicants.

Discussion of Changes

1. Section 1924.5(f)(1)(iii) is partially revised as follows:

(a) Paragraph (A) is revised to list individuals or organizations who are authorized to certify drawings and specifications.

(b) Paragraph (B) is revised to state the certifier's license, or authorization must be current at the time of certification and a building permit or professional stamp is not an acceptable substitute for the certification statement.

(c) Paragraph (C) is revised to list others authorized to certify drawings and specifications.

(d) Paragraph (D) is revised to contain the provisions of what was paragraph (B) in the current regulation, which required that the same individual or organization (if available) that certified the original drawings and specifications certify any modifications to the original drawings and specifications. If that person is not available, the drawings and specifications must be recertified by another authorized plan certifier.

(e) Paragraph (E) is added to contain the provisions of what was paragraph (C) in the current regulation, which stated under what circumstance the certification of a modification of drawings and specifications may be waived.

(f) Paragraph (F) is added to contain and revise the provisions of what was paragraph (D) in the current regulation, and provides the suggested format for certification to contain the minimum representation from the certifier that is acceptable to FmHA.

List of Subjects in 7 CFR Part 1924

Agriculture, Construction management, Construction and repair, Energy conservation, Housing, Loan program—Agriculture, Low and moderate income housing.

Accordingly, Chapter XVIII, Title 7, Code of Federal Regulations, is amended as follows:

PART 1924—GENERAL

1. The authority citation for Part 1924 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 42 U.S.C. 2942; 5 U.S.C. 301; sec. 10 Pub.L. 93-357, 88 Stat. 392; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Planning and Performing Construction and Other Development

2. Section 1924.5 is amended by revising paragraphs (f)(1)(iii) (A) through (E) and adding (f)(1)(iii)(F) to read as follows:

§ 1924.5 Planning development work.

* * * * *

(f) * * *

(1) * * *

(iii) * * *

(A) Certifications may be accepted from individuals or organizations who are trained and experienced in the compliance, interpretation or enforcement of the applicable development standards for drawings and specifications. Plan certifiers may be any of the following:

(*1*) Licensed architects,

(*2*) Professional engineers,

(*3*) Plan reviewers certified by a national model code organization listed in Exhibit E to this subpart,

(*4*) Local building officials authorized to review and approve building plans and specifications, or

(*5*) National codes organizations listed in Exhibit E to this subpart.

(B) The license or authorization of the individual must be current at the time of the certification statement. A building permit (except as noted in paragraph (f)(1)(iii)(C)(*2*) of this section) or professional's stamp is not an acceptable substitute for the certification statement. However, a code compliance review conducted by one of the National recognized code organizations indicating no deficiencies or the noted deficiencies have been corrected is an acceptable substitute for the certification statement.

(C) For Single Family Housing (one to four family dwelling units) FmHA may also accept drawings and specifications that have been certified by:

(*1*) Registered Professional Building Designers certified by the American Institute of Building Design.

(*2*) A local community, if that community has adopted, by reference, one of the model building codes and has trained official(s) who reviews plans as well as inspects construction for compliance as a requisite for issuing a building permit. The building permit, issued by the community, may serve as evidence of acceptance. The State Director will determine eligible communities and publish, as a State supplement to this section, a list of those communities that qualify.

(*3*) A plan service that provides drawings and specifications that are certified by individuals or organizations as listed in paragraphs (f)(1)(iii)(A) or (f)(1)(iii)(C) (*1*) and (*2*) of this section as meeting the appropriate state adopted development standard.

(*4*) Builders/Contractors who provide 10-year warranty plans for the specific FmHA finance dwelling unit that meet the requirements of Exhibit L of this subpart.

(*5*) Builders/Contractors that are approved by the United States Department of Housing and Urban Development (HUD) for self-certification.

(D) The modifications of certified drawings or specifications must be certified by the same individual or organization that certified the original drawings and specifications. If such individual or organization is not available, the entire set of modified drawings and specifications must be recertified.

(E) The certification of modifications for single family housing (SFH) construction may be waived if the builder or original author of the drawings and specifications provides a written statement that the modifications are not regulated by the applicable development standard. The County Supervisor may consult with the State Office Architect/Engineer as to acceptance of the statement and granting a waiver.

(F) The following format is suggested for certification and contains the minimum representation acceptable to FmHA:

I _____ being a (licensed architect, professional engineer, or authorized building official, etc.) in the State of _____ hereby certify that I have reviewed:

_____ the drawings and specifications dated _____ prepared by (name of firm or individual) and related to the development of the (project/applicant name (if known) and location)

_____ modifications listed below, that have been clearly indicated on the drawings and specifications dated _____ prepared by _____, certified by _____ and related to the development of the (project/applicant name (if known) and location).

Based upon this review, to the best of my/our knowledge and belief, these documents conform to the (names and editions of applicable development standards) designated as the development standard for the project.

I further understand that false certification and failure to comply may result in suspension or debarment from participating in future government programs.

Date

Signature

Title

* * * * *

Date: September 14, 1988.

Roland R. Vautour,

Under Secretary for Small Community and Rural Development.

[FR Doc. 88-24888 Filed 10-27-88; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 11

[Docket No. 88-19]

Securities Exchange Act Disclosure Rules; Technical Amendments

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Final rule; technical amendments.

SUMMARY: The Office of the Comptroller of the Currency ("OCC") is publishing technical amendments to its Securities Exchange Act Disclosure Rules codified at 12 CFR Part 11. The technical amendments involve minor adjustments or additions to the language of certain sections to conform more clearly to long-standing OCC interpretation of the sections. The action is necessary because when the OCC adopted final amendments to Part 11, which became effective on December 30, 1985, it made certain minor changes that were inadvertent. The intended effect of the technical amendments is to facilitate compliance by national banks with the requirements of amended Part 11.

No collection of information requirements are involved in the technical amendments.

EFFECTIVE DATE: October 28, 1988.

FOR FURTHER INFORMATION CONTACT: Michael C. Dugas, Securities and Corporate Practices Division, telephone (202) 447–1954, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is publishing technical amendments to its Securities Exchange Act Disclosure Rules, 12 CFR Part 11, to clarify the meaning of certain sections of the rule.

On October 30, 1985, the OCC published in the **Federal Register** final amendments to Part 11 at 50 FR 45278. These amendments, which became effective on December 30, 1985, included a complete reformatting and reorganization of Part 11. In the process of reformatting the regulation, certain amendments, intended to involve form only, but which could be interpreted to be substantive, were adopted. The OCC has continued to interpret these provisions in the same manner as prior to the 1985 amendments. The purpose of this final rule is to prevent any misinterpretation of these substantively unchanged provisions.

Section 11.410(e)(2) is amended by reinserting a clause which was accidentally deleted in the 1985 amendments.

Section 11.590, Item 5 is amended by adding a new paragraph requiring disclosure in proxy statements of certain transactions between a bank and its principal security holders or members of their immediate families.

Prior to the 1985 amendments, the above disclosure requirement, as well as the requirement for similar disclosure of certain transactions between the bank and its directors or nominees, was contained in Item 7(e) of the proxy form, which at the time was codified at § 11.51, Item 7(e). When the disclosure requirement was moved to Item 6 as part of the 1985 amendments, it became subject to an existing introductory instruction in Item 6 limiting the disclosure required by that Item to nominees and persons who would remain as directors after the meeting. The deletion of the disclosure requirement for transactions with principal security holders was unintentional, and the OCC has continued to require such disclosure as being material to shareholders or investors.

Accordingly, § 11.590, Item 5, which contains other disclosure requirements for principal shareholders, is amended to incorporate this requirement. Section 11.590, Item 6 is amended to clarify its scope, in light of the changes to Item 5 discussed above.

Sections 11.844(c)(1)(iv) (D), (E) and (F), are being amended to require disclosure of indebtedness to trusts,

immediate family members and corporations or organizations having specified relations with principal security holders. This disclosure was required prior to the 1985 amendments but was inadvertently deleted from the regulation when the format was changed in 1985. The OCC has continued to require this disclosure as material to shareholders and investors.

Section 11.844(c), Instruction D is amended to clarify that for purposes of determining whether indebtedness of a director, nominee or principal shareholder exceeds 10 percent of equity capital, the indebtedness shall be aggregated with that of a trust, immediate family member or affiliated corporation or organization, related to such person. Aggregation was required prior to the 1985 amendments. Since the time of the 1985 amendments the OCC has continued to require aggregation.

Regulatory Impact Analysis

Pursuant to Executive Order 12291, the OCC has determined that these amendments do not constitute a major rule. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

The Comptroller of the Currency has certified that this final rule will not have a significant impact on a substantial number of small banks or other small entities.

Adoption Without Notice and Comment and Reason for Immediate Effective Date

The OCC has found that notice and comment procedures and a thirty day delayed effective date concerning this final rulemaking are unnecessary. This final rule is technical in nature and has no substantive effect.

List of Subjects in 12 CFR Part 11

National Bank, Banking, Securities disclosure rules.

For reasons set out in the preamble, Part 11 of Chapter I of Title 12 of the Code of Federal Regulations is amended to read as follows:

PART 11—[AMENDED]

1. The authority citation for 12 CFR Part 11 continues to read as follows:

Authority: 15 U.S.C. 781, 78m, 78n, 78p, 78w.

§ 11.410 [Amended]

2. Section 11.410(e)(2) is amended by inserting the clause "shall be deemed to be beneficial owners of the securities" between the words "securities" and "subject".

3. Section 11.590, Item 5, paragraph (b) is added to read as follows:

§ 11.590 Form for proxy and information statement (Form F-4).

Item 5. * * *

(b) Furnish the information required by § 11.844(a) for persons described in § 11.844(a)(3) and any member of the immediate family of persons described in § 11.844(a)(3).

4. Section 11.590, Item 6, paragraph (b) is revised to read as follows:

§ 11.590 Form for proxy and information statement (Form F-4).

Item 6. * * *

(b) The information required by § 11.844(a) for persons described in § 11.841(a) (1) and (2) and any member of the immediate family of persons described in § 11.844(a) (1) and (2).

* * * * *

§ 11.844 [Amended]

5. Section 11.844(c)(1)(iv)(D) is amended by changing the phrase "persons specified in § 11.844(c)(1)(iv)(A) or § 11.844(c)(1)(iv)(B)" to read "persons specified in paragraph (c)(1)(iv) (A), (B) or (C)."

6. Section 11.844(c)(1)(iv)(E) is amended by changing the phrase "persons specified in paragraph (c)(1)(iv) (A) and (B)" to "persons specified in paragraph (c)(1)(iv) (A), (B) or (C)."

7. Section 11.844(c)(1)(iv)(F) is amended by changing the phrase "persons specified in paragraph (c)(1)(iv) (A) and (B)" to "persons specified in paragraph (c)(1)(iv) (A), (B) or (C)."

8. Section 11.844(c), Instructions to Paragraph (C) of § 11.844, Instruction 2.D., is amended by changing the phrase "to a person specified in (A), (B), (C), (D), (E) or (F) of this paragraph" to read "by the bank to a person specified in (A), (B) or (C) of this paragraph, together with extensions of credit by the bank to related persons or entities specified in (D), (E) or (F) of this paragraph.".

Date: October 24, 1988.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 88-25011 Filed 10-27-88; 8:45 am]

BILLING CODE 4810-33-M

FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 220, 221 and 224

Regulations G, T, U and X; Securities Credit Transactions; List of Marginable OTC Stocks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; determination of applicability of regulations.

SUMMARY: The List of Marginable OTC Stocks is comprised of stocks traded over-the-counter (OTC) that have been determined by the Board of Governors of the Federal Reserve System to be subject to the margin requirements under certain Federal Reserve regulations. The List is published four times a year by the Board as a guide for lenders subject to the regulations and the general public. This document sets forth additions to or deletions from the previously published List effective August 8, 1988 and will serve to give notice to the public about the changed status of certain stocks.

EFFECTIVE DATE: November 14, 1988.

FOR FURTHER INFORMATION CONTACT: Peggy Wolffrum, Securities Regulation Analyst, Division of Banking Supervision and Regulation, (202) 452-2781. For the hearing impaired *only*, Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (TTD) (202) 452-3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Set forth below are stocks representing additions to or deletions from the Board's List of Marginable OTC Stocks. This supersedes the last List which was effective August 8, 1988. Additions and deletions for that List were published at 53 FR 28168, July 27, 1988. A copy of the complete List incorporating these additions and deletions is available from the Federal Reserve Banks.

The List of Marginable OTC Stocks includes those stocks that meet the criteria specified by the Board of Governors in Regulations G, T, U and X (12 CFR Parts 207, 220, 221 and 224, respectively). These stocks have the degree of national investor interest, the depth and breadth of market, and the availability of information respecting the stock and its issuer to warrant regulation in the same fashion as exchange-traded securities. The List also includes any stock designated under an SEC rule as qualified for trading in the national market system (NMS Security). Additional OTC stocks may be designated as NMS securities in the interim between the Board's quarterly publications. They will become automatically marginable at broker-dealers upon the effective date of their NMS designation. The names of these stocks are available at the Board and the Securities and Exchange Commission and will be incorporated into the Board's next quarterly List.

The requirements of 5 U.S.C. 553 with respect to notice and public participation were not followed in connection with the issuance of this amendment due to the objective character of the criteria for inclusion and continued inclusion on the List specified in 12 CFR 207.6 (a) and (b), 220.17 (a) and (b), and 221.7 (a) and (b). No additional useful information would be gained by public participation. Teh full requirements of 5 U.S.C. 553 with respect to deferred effective date have not been followed in connection with the issuance of this amendment because the Board finds that it is in the public interest to facilitate investment and credit decisions based in whole or in part upon the composition of this List as soon as possible. The Board has responded to a request by the public and allowed a two-week delay before the List is effective.

List of Subjects

12 CFR Part 207

Banks, Banking, Credit, Federal Reserve System, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 220

Banks, Banking, Brokers, Credit, Federal Reserve System, Margin, Margin requirements, Investments, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 221

Banks, Banking, Credit, Federal Reserve System, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 224

Banks, Banking, Borrowers, Credit, Federal Reserve System, Margin, Margin requirements, Reporting and recordkeeping requirements, Securities.

Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. §§ 78g and 78w), and in accordance with 12 CFR 207.2(k) and 207.6(c) (Regulation G), 12 CFR 220.2(s) and 220.17(c) (Regulation T), and 12 CFR 221.2(j) and 221.7(c) (Regulation U), there is set forth below a listing of deletions from and additions to the Board's List:

Deletions From List

Stocks Removed for Failing Continued Listing Requirements

Alaska Bancorporation
$.01 par common
Amcole Energy Corporation
$.01 par common
American First Corporation
$1.00 par common
American Health Companies, Inc.
$.01 par common
American Telemedia Network, Inc.
No par common
Anchor Financial Corporation
$8.00 par common
Bancoklahoma Corporation
$2.00 par common
Bercor, Inc.
No par common
Bildner, J. Sons, Inc.
$.01 par common
Bioplasty, Inc.
$.01 par common
Butler, John O., Company
$.01 par common
Calstar, Inc.
$.10 par common
Camera Platforms International, Inc.
$.005 par common
CCA Industries, Inc.
Class A, warrants (expire 06-30-89)
Chief Automotive Systems, Inc.
$.10 par common
Coated Sales, Inc.
$.01 par common
Computer Microfilm Corporation
$.25 par common
Corvus Systems
No par common
Crazy Eddie, Inc.
6% convertible subordinated debentures
Decor Corporation
$.01 par common
Dewey Electronics Corporation
$.01 par common
DNA Plant Technology Corp.
Warrants (expire 01-17-90)
Eagle Telephonics, Inc.
Class A, warrants (expire 10-12-88)
Empire Insurance Company
$1.00 par common
Endotronics, Inc.
No par common
Finest Hour, Inc.
No par common
First World Cheese, Inc.
Warrants (expire 06-05-91)
Fountain Powerboat Industries Inc.
Warrants (expire 12-15-91)
Gateway Medical Systems, Inc.
$.10 par common
Gemcraft, Inc.
$.10 par common
General Physics Corporation
$.025 par common
Geneve Capital Group, Inc.
$.10 par common
Healthways Systems, Inc.
$.01 par common
Hitk Corporation
$.001 par common
Infinity Broadcasting Corp.
Class A, $.01 par common
Intel Corporation
Warrants (expire 06-15-88)
International Robomation/Intelligence
No par common
Invention, Design, Engineering Associates, Inc.
$.01 par common
Knutson Mortgage Corporation
$.01 par common
Medmaster Systems, Inc.
Warrants (expire 07-10-91)
Memory Metals, Inc.
$.01 par common
Microwave Filter Company, Inc.
$.10 par common
North American Holding Corp.
$.01 par common, Class A, non-voting, $.001 par common
Pay 'Save, Inc.
$1.00 par common
Precision Target Marketing, Inc.
$.01 par common
Warrants (expire 06-23-89)
Quality Systems, Inc.
$.01 par common
Ramtek Corporation
$.01 par common
Ritzy's G. D., Inc.
No par common
Saratoga Standardbreds, Inc.
$.01 par common
Scientific Micro Systems, Inc.
$.01 par common
Sooner Defense of Florida, Inc.
$.01 par common
Southern Hospitality Corporation
$.08-½ par common
Thermal Profiles, Inc.
$.01 par common
Trans World Airlines, Inc.
$6.00 par cumulative exchangeable preferred
United Financial Group, Inc.
No par common
Vanzetti Systems Inc.
$.01 par common
Vega Biotechnologies, Inc.
$.01 par common
Virgin Group, PLC
American Depository Receipts
Webb, Del E., Corporation
Warrants (expire 02-01-90)
Wessex Corp.
$.01 par common

Stocks Removed for Listing on a National Securities Exchange or Being Involved in an Acquisition

Albany International Corp.
Class A, $.001 par common
Amcast Industrial Corporation
No par common
Baker, Fentress & Company
$1.00 par common
Bear Automotive Service Equipment Co.
$.01 par common
Berkline Corporation, The

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$1.00 par common
Beverly Savings Bank (Massachusetts)
$.10 par common
BIW Cable Systems, Inc.
$.40 par common
Brougher Insurance Group, Inc.
No par common
Capital Wire & Cable Corporation
No par common
Central Pacific Corporation
No par common
Century Communications Corp.
Class A, $.01 par common
Century Papers, Inc.
$1.00 par common
Command Airways, Inc.
$.01 par common
Comprehensive Care Corporation
$.10 par common
Concurrent Computer Corporation
$.01 par common
Crosby, Philip Associates, Inc.
$.01 par common
Crystal Oil Company
$.01 par common
$.01 par convertible preferred
Cyprus Minerals Company
No par common
Datametrics Corporation
No par common
Daxor Corporation
$.01 par common
Diagnostic Products Corporation
No par common
Dianetics, Inc.
No par common
Dresher, Inc.
$.01 par common
Energas Company
No par common
ESCO, Inc.
$1.00 par common
Farm Fresh, Inc.
$.01 par common
First Kentucky National Corporation
No par common
First Union Corporation
$3.33-⅓ par common
Freedom Federal Savings Bank (Illinois)
$.01 par common
Frozen Food Express Industries, Inc.
$1.50 par common
Gartner Group, Inc., The
$.01 par common
Grandview Resources, Inc.
No par common
Hooper Holmes, Inc.
$.01 par common
Hunter-Melnor, Inc.
$.01 par common
IEC Electronics Corporation
$.05 par common
Josephson International, Inc.
$.05 par common
Lancer Corporation
$.01 par common
Lewis, Palmer G., Company, Inc.
$1.00 par common
Matrix Science Corporation
$.01 par common
Micom Systems, Inc.
$.01 par common
Middleby Corporation, The
$.01 par common
National Guardian Corporation
$.10 par common
Norton Enterprises, Inc.
$.01 par common
P&C Foods, Inc.
$.01 par common
Photronics Corporation
$.10 par common
Shoney's South, Inc.
$.05 par common
Silicon Systems, Inc.
$.01 par common
Simmons Airlines, Inc.
No par common
Southold Savings Bank, The (New York)
$1.00 par common
Southstate Bank for Savings
$.10 par common
Sovran Financial Corporation
$5.00 par common
Spectramed, Inc.
$.01 par common
SPI Pharmaceuticals, Inc.
$.01 par common
System Industries, Inc.
$.01 par common
Taunton Savings Bank
$.10 par common
TCBY Enterprises, Inc.
$.10 par common
Total Ericsson Resources, Ltd.
$.01 par common
Unicare Financial Corp.
No par common
USP Real Estate Investment Trust
$1.00 par shares of beneficial interest
Welbilt Corporation
$.10 par common
Wellman, Inc.
$.001 par common
Western Federal Savings and Loan Association (California)
$1.00 par common
Wings West Airlines, Inc.
No par common
Wyse Technology
No par common
Xidex Corporation
$.0875 par common
Warrants (expire 04–16–93)
Zondervan Corporation, The
$1.00 par common

Additions To The List

AIT Limited
American Depository Receipts
All American Semiconductor, Inc.
$.01 par common
American Continental Corporation
$1.00 per exchangeable preferred
American Power Conversion Corporation
$.01 par common
ARIX Corporation
No par common
Asiamerica Equities, Inc.
$1.00 par common
Assix International, Inc.
$.001 par common, Warrants (expire 07–18–97)
Associated Natural Gas Corporation
$.10 par common
B & H Bulk Carriers, Ltd.
$.01 par common
Babbage's, Inc.
$.10 par common
Bailey Corporation
$.10 par common
BI Incorporated
No par common
Biogen, Inc.
Warrants (expire 06–30–94)
BMC Software, Inc.
$.01 par common
Candela Laser Corporation
$.01 par common
Casual Male Corporation, The
$.01 par common
Cellular, Inc.
$.001 par common
Centennial Beneficial Corp.
No par common
Ceramics Process Systems Corporation
$.01 par common
Charter Federal Savings Bank (New Jersey)
$.01 par common
Chemex Pharmaceuticals, Inc.
Class 1—warrants (expire 05–20–90)
Chemical Financial Corp.
$10.00 par common
Cliffs Drilling Company
No par convertible exchangeable preferred stock
Colorocs Corporation
Class C, warrants (expire 03–31–89)
Class D, warrants (expire 10–25–88)
Concord Camera Corp.
No par common
Constar International, Inc.
Warrants (expire 11–13–89)
Convergent Solutions, Inc.
$.01 par common, Warrants (expire 05–15–92)
Coral Gold Corporation
No par common
Cornucopia Resources Ltd.
No par common
Corporate Data Sciences, Inc.
No par common
Critical Industries, Inc.
$.001 par common
Dekalb Genetics Corporation
Class B, no par common
DFSouthwestern, Inc.
$1.00 par common
Eagle Bancorp, Inc.
$.10 par common
Eastland Financial Corp.
$.01 par common
Environmental Control Group, Inc.
$.10 par common
Essex County Gas Company
$2.50 par common
First Federal Savings Bank of Perry
$1.00 par common
First of Long Island Corporation, The
$.10 par common
Franklin First Financial Corporation
$.01 par common
Genlyte Group Incorporated
$.01 par common
GNI Group, Ind., The
No par common
Goodheart-Willcox Company, Inc.
$1.00 par common
Gull Laboratories, Inc.
$.01 par common
Healthwatch, Inc.
No par common
High Plains Corporation
$.10 par common
Home Federal Savings Bank (South Carolina)
$1.00 par common
Home Port Bancorp, Inc.
$.10 par common
Imagine Films Entertainment, Inc.
$.01 par common
Intercargo Corporation
$1.00 par common
Intervoice, Inc.
No par common
Kinder-Care Learning Centers, Inc.
$.01 par common
Kwik Products International Corporation
No par common
Landmark American Corporation
$.01 par common
Landmark Graphics Corporation
$.05 par common
Long Island City Financial Corporation, The
$.10 par common
Mayflower Financial Corporation
$.01 par common
Microamerica, Inc.
$.01 par common
Nalcap Holdings, Inc.
No par common
National Media Corporation
$.10 par common
Neorx Corporation
$.02 par common
Novellus Systems, Inc.
No par common
Olympic Savings Bank (Washington)
$1.00 par common
Pancretec, Inc.
No par common
Phoenix Technology Ltd.
$.001 par common
Pride Petroleum Services, Inc.
No par common
Ratners Group, PLC
American Depository Receipts
Reliable Life Insurance Company, The
Class A, $1.00 par common
Rock Financial Corporation
$3.33 par common
Scientific Technologies, Incorporated
No par common
Selfix, Inc.
$.01 par common
Showscan Film Corporation
$.001 par common
Sierra On-Line, Inc.
$.01 par common
Silk Greenhouse, Inc.
$.01 par common
Smithfield Companies, Inc., The
No par common
Software Toolworks, Inc., The
$.01 par common
Stake Technology Ltd.
No par common
Stotler Group Inc.
$1.00 par common
Structofab, Inc.
$.02 par common
Synoptics Communications, Inc.
No par common
Tele-Optics, Inc.
$.01 par common, Warrants (expire 08–11–89)
Tons of Toys, Inc.
$.01 par common
Tuscarora Plastics, Inc.
No par common
Unigene Laboratories, Inc.
$.01 par common, Warrants (expire 08–11–92)
United National Bancorp
$2.50 par common
Unitronix Corporation
No par common
VMS Mortgage Investors, L.P. III
Depository units of limited partnership interest
Washington Savings Bank, F.S.B. (Maryland)
$.01 par common
Weitek Corporation
No par common
Wetterau Properties, Inc.
$.01 par common
Wholesale Club, Inc., The
No par convertible preferred

By order of the Board of Governors of the Federal Reserve System, acting by its Staff Director of the Division of Banking Supervision and Regulation pursuant to delegated authority (12 CFR 265.2(c)(18)), October 24, 1988.

William W. Wiles,
Secretary of the Board.

[FR Doc. 88–24916 Filed 10–27–88; 8:45 am]
BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

Federal Old-Age Survivors and Disability Insurance (1988–)

CFR Correction

At 51 FR 10816, March 28, 1986, the Social Security Administration published an amendment to § 404.315(c) of Title 20 (Parts 400–499). The amendment to § 404.315(c) was published incorrectly. At 51 FR 16168, May 1, 1986, the cross reference in § 404.315 was corrected to read "§ 404.1505".

In the April 1987, revision of the Code of Federal Regulations, on page 76, column 2, paragraph (c), line 2, the cross reference was published incorrectly as "§ 404.1405". In the April 1988, revision of the Code of Federal Regulations on page 80, column 1, paragraph (c), line 2, the cross reference continued to be published incorrectly.

§ 404.315 [Corrected]

The cross reference reading "§ 404.1405" should read "§ 404.1505" in the second line of paragraph (c) of § 404.315.

BILLING CODE 1505-01-D

Food and Drug Administration

21 CFR Parts 74, 81, and 82

[Docket No. 87N-0160]

Listing of Color Additives Subject to Certification; D&C Red No. 33; Confirmation of Effective Date and Partial Stay of Effectiveness

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date and partial stay of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of September 30, 1988, for the permanent listing of D&C Red No. 33 for use in drugs and cosmetics generally. Also, FDA is staying the removal of the section on the temporary tolerances insofar as is necessary to continue the temporary tolerance for D&C Red No. 36.

DATE: *Effective date confirmed:* September 30, 1988, except the provisions that are stayed that relate to a temporary tolerance for D&C Red No. 36.

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FOR FURTHER INFORMATION CONTACT: Patricia J. McLaughlin, Center for Food Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5740.

SUPPLEMENTARY INFORMATION: In the Federal Register of August 30, 1988 (53 FR 33110), FDA published a final rule permanently listing D&C Red No. 33 for general use in drugs and cosmetics, except for use in the area of the eye. The action was in response to a petition filed by the Cosmetic, Toiletry, and Fragrance Association; the Pharmaceutical Manufacturers Association; and the Certified Color Manufacturers Association, Inc., and to a petition filed by Procter and Gamble Co. That final rule amended 21 CFR Part 74 by adding new §§ 74.1333 and 74.2333. The rule also amended 21 CFR 81.1 and 81.27 by removing the entries for D&C Red No. 33 from those regulations. The rule revised 21 CFR 82.1333 to require that D&C Red No. 33 conform in identity and specifications to the requirements of 21 CFR 74.1333 and to require that all lakes of the color additive be manufactured from previously certified batches of the straight color additive.

The August 30, 1988, final rule also removed 21 CFR 81.25, which established temporary tolerances for D&C Red No. 33 and D&C Red No. 36, but FDA is staying the removal of that section as it applies to D&C Red No. 36 to allow continuity of use for D&C Red No. 36 while the agency considers an objection to the final rule on that color additive. (See the document published elsewhere in this issue of the Federal Register concerning D&C Red No. 36.) The temporary tolerance for D&C Red No. 33 is removed, effective September 30, 1988.

FDA stated that the final rule on D&C Red No. 33 would become effective September 30, 1988, except for any provisions that may be stayed by the filing of proper objections by September 29, 1988. FDA received one objection to the final rule. A manufacturer of the color additive objected to the description of the manufacturing process stated in 21 CFR 74.1333(a)(1), which says "To manufacture the additive, the product obtained from the nitrous acid diazotization of aniline is coupled with 4-hydroxy-5-amino-2,7-naphthalenedisulfonic acid in an alkaline aqueous medium. The color additive is isolated as the sodium salt." The manufacturing process outlined in the objection uses an acetyl derivative of the reactant described in the regulation, coupling the product obtained from the nitrous acid diazotization of aniline with 4-hydroxy-5-acetylamino-2,7-naphthalenedisulfonic acid. The product of this coupling is then deacetylated and isolated as the sodium salt. The objector requested a period of 90 days to allow it to bring its manufacturing process into conformity with the regulation. The objection is on file in the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857, under Docket No. 87N–0160.

The objection did not request a change in the regulation, and therefore does not provide a basis for not confirming the effective date of the final rule. However, to allow the objector to bring its process into conformity with the final rule, the agency will not take action against D&C Red No. 33 manufactured in accordance with the process described in that objection until after December 31, 1988. The color additive must meet the specifications in the final rule.

FDA is also partially staying the removal of § 81.25 so that the temporary tolerance on use of D&C Red No. 36 in ingested drugs can continue in effect while the objection on that use of that color additive is considered. The listing of D&C Red No. 33 in that section is removed.

List of Subjects

21 CFR Part 74

Color additives, Cosmetics, Drugs.

21 CFR Part 81

Color additives, Cosmetics, Drugs.

21 CFR Part 82

Color additives, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376)) and the Transitional Provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86–618, sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), the effective date of September 30, 1988, for the amendments to Parts 74, 81, and 82 promulgated in the August 30, 1988, final rule (53 FR 33110) is confirmed, except that the removal of § 81.25 is partially stayed as set forth below.

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

1. The authority citation for 21 CFR Part 81 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); Title II, Pub. L. 86–618; sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note); 21 CFR 5.10.

§ 81.25 [Amended]

2. The removal of paragraph (c)(1) in § 81.25 *Temporary tolerances*, except for the listing of D&C Red No. 33, is stayed.

Dated: October 25, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–25050 Filed 10–27–88; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Parts 74, 81, and 82

[Docket Nos. 78N–0366 and 87N–0182]

Listing of Color Additives Subject to Certification; D&C Red No. 36; Confirmation of Effective Date, Partial Stay of Effectiveness, and Postponement of Closing Date

AGENCY: Food and Drug Administration.

ACTION: Final rule; partial confirmation of effective date and partial stay of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of September 2, 1988, for the permanent listing of D&C Red No. 36 for use in drugs and cosmetics generally. The agency is staying one provision to which an objection was made. The agency is also postponing the closing date of the provisional listing for D&C Red No. 36 and staying the termination of the temporary tolerance regulation for D&C Red No. 36.

DATE: *Effective date confirmed:* September 2, 1988, except those provisions that are stayed. The new closing date for the provisional listing is December 27, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia J. McLaughlin, Center for Food Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5740.

SUPPLEMENTARY INFORMATION:

In the Federal Register of August 2, 1988 (53 FR 29024), FDA published a final rule permanently listing D&C Red No. 36 for general use in drugs and cosmetics, except for use in the area of the eye. The action was in response to a petition filed by the Cosmetic, Toiletry, and Fragrance Association (CTFA). That rule amended 21 CFR Part 74 by adding new §§ 74.1336 and 74.2336. Also, that rule amended 21 CFR 81.1, 81.25, and 81.27 by removing the entries for D&C Red No. 36 from those regulations. The rule revised 21 CFR 82.1336 to require that D&C Red No. 36 conform in identity and specifications to the requirements of 21 CFR 74.1336 and to require that all lakes of the color additive be manufactured from previously certified batches of the straight color additive. FDA stated that the final rule would become effective September 2, 1988, except for any provisions that may be stayed by the filing of proper objections by September 1, 1988. FDA received one objection to the final rule.

In the August 2, 1988, final rule, FDA stated that the petitioner had not provided information on levels of use of the color additive in drugs. The agency, in searching its files of new drug applications for data on current use levels, found only three ingested drug products containing the color additive, all at very low levels of use. Because this information indicated to the agency that only low levels were necessary to accomplish the intended technical effect, the agency limited the use in ingested drugs to 1.0 milligram (mg) of the color additive per daily dose of the drug. This limit was lower than the 1.7 mgs per daily dose requested by the petitioner.

One drug manufacturer objected to the lower limitation because it manufactures an approved ingested drug product that may be prescribed in some cases at a dosage that provides 1.6 mgs of the color additive in a day. This level is higher than the limit established in the final rule. The objector requested the agency to establish a tolerance of 1.7 mgs of the color additive per daily dose of the ingested drug, as petitioned, in the final rule.

As provided under section 701(e)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371(e)(2)), the filing of an objection to a particular provision of the final rule serves to stay the effectiveness of that provision of the regulation until the agency can rule on the objection. The objection is on file in the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857, under Docket No. 87N–0182.

This objection concerns only one provision in the regulations on D&C Red No. 36 rather than the entire effect of the regulations. Thus the agency is staying the effectiveness of the provision of the final rule concerning use in ingested drugs while the agency considers the objector's request. To provide for the uninterrupted use of the color additive and to prevent any interruption in the provisional listing of D&C Red No. 36 for this use, the agency is staying the parts of the August 2, 1988, final rule that removed the entries for D&C Red No. 36 from the provisional list (21 CFR 81.1(b)) and from the temporary tolerances (21 CFR 81.25(c)(1)). During the stay, the use in ingested drugs will be limited by the temporary tolerance. The agency expects that it will need only a brief time to complete its evaluation of the objection. Therefore, the agency concludes that the effective date of the final rule published in the Federal Register of August 2, 1988, should be confirmed, with the exception of the provision pertaining to use in ingested drugs, that is, the first sentence in 21 CFR 74.1336(c).

Futhermore, FDA is postponing the October 28, 1988, closing date for the provisional listing of D&C Red No. 36 until December 27, 1988, to provide time for the agency to complete its evaluation of the objection and to issue appropriate Federal Register documents. The present closing date of October 28, 1988, was established by a regulation published in the Federal Register of August 30, 1988 (53 FR 33122).

Because the current closing date expires on October 28, 1988, FDA concludes that notice and public procedure on this regulation and delayed effective date are impracticable. Thus, good cause exists for issuing the postponement as a final rule, effective on October 28, 1988. Moreover, this action is consistent with the protection of the public health because the postponement simply continues the limitation as it has been for many years, and is consistent with the standards set forth for continuation of provisional listing in *McIlwain v. Hayes*, 690 F.2d 1041 (D.C. Cir. 1982). In accordance with 5 U.S.C. 553(b), (d)(1), and (d)(3), this postponement is issued as a final regulation, effective October 28, 1988.

List of Subjects

21 CFR Part 74

Color additives, Cosmetics, Drugs.

21 CFR Part 81

Color additives, Cosmetics, Drugs.

21 CFR Part 82

Color additives, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetics Act (secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376)) and the Transitional Provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86–618, sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), the effective date of September 2, 1988, for 21 CFR 74.1336 (except the first sentence in paragraph (c), for 21 CFR 74.2336, and for 21 CFR 82.1336 is confirmed, and Parts 74 and 81 are amended as follows:

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 74 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); 21 CFR 5.10.

§ 74.1336 [Amended]

2. The addition of the first sentence in paragraph (c) in § 74.1336 *D&C Red No. 36* is stayed.

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

3. The authority citation for 21 CFR Part 81 continues to read as follows

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); Title II, Pub. L. 86–618; sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note); 21 CFR 5.10.

§ 81.1 [Amended]

4. The removal of the entry "D&C Red No. 36" from the table in paragraph (b) of § 81.1 *Provisional listings of color additives* is stayed, and the closing date is revised to read "December 27, 1988."

§ 81.25 [Amended]

5. The removal of the entry "D&C Red No. 36" from the table in paragraph (c)(1) in § 81.25 *Temporary tolerances* is stayed.

Dated: October 25, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–25049 Filed 10–27–88; 8:45 am]

BILLING CODE 4160-01-M

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Placement of Carfentanil into Schedule II

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: This final rule is issued by the Administrator of the Drug Enforcement Administration (DEA) to place carfentanil, a narcotic substance, into Schedule II of the Controlled Substances Act (CSA) (21 U.S.C. 801 *et seq.*). This action follows receipt of a letter from the Associate Commissioner for Health Affairs, Food and Drug Administration (FDA), notifying DEA that carfentanil has received final approval for marketing as a new animal drug. This rule imposes the regulatory controls and criminal sanctions of a Schedule II narcotic substance under the CSA on the manufacture, distribution, importation and exportation of carfentanil.

EFFECTIVE DATE: October 28, 1988.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 633–1366.

SUPPLEMENTARY INFORMATION: A notice was published in the **Federal Register** on January 12, 1988 (53 FR 743) proposing that carfentanil be placed into Schedule II of the CSA. Interested persons were given until February 11, 1988 to submit comments or objections regarding the proposal. No correspondence of any kind was received regarding the proposal. Furthermore, according to the September 30, 1988 letter from the Associate Commissioner for Health Affairs, FDA, the new animal drug application for carfentanil has been approved.

Based on the scientific and medical evaluation and recommendation contained in the November 12, 1987 letter from the Assistant Secretary for Health, Department of Health and Human Services, the Administrator of DEA, pursuant to the provisions of 21 U.S.C. 811 (a) and (b), finds that:

(1) Carfentanil has a high potential for abuse;

(2) Carfentanil has a currently accepted veterinary medical use in treatment in the United States; and

(3) Abuse of carfentanil may lead to severe psychological or physical dependence.

The above findings are consistent with the placement of carfentanil into Schedule II of the CSA. The Administrator further finds that carfentanil is an opiate as defined in 21 U.S.C. 802(18) since it has an addiction-forming and addiction-sustaining liability similar to morphine. Consequently, carfentanil is a narcotic since the definition of narcotic, as stated in 21 U.S.C. 802(17)(A), includes: "Opium, opiates, derivatives of opium and opiates."

Regulations that are effective on October 28, 1988, and imposed on carfentanil are as follows:

1. *Registration.* Any person who manufactures, distributes, engages in research, imports or exports carfentanil or who proposes to engage in carfentanil's manufacture, distribution, importation, exportation or research shall obtain a registration to conduct that activity by October 28, 1988, pursuant to Part 1301 of Title 21 of the Code of Federal Regulations.

2. *Security.* Carfentanil must be manufactured, distributed and stored in accordance with §§ 1301.71, 1301.72(a)(c)(d), 1301.73, 1301.74, 1301.75(b)(c) and 1301.76 of Title 21 of the Code of Federal Regulations.

3. *Labeling and packaging.* All labels on commercial containers of, and all labeling of, carfentanil which is packaged and distributed after October 28, 1988, shall comply with the requirements of Sections 1302.03–1302.05 and 1302.07–1302.08 of Title 21 of the Code of Federal Regulations.

4. *Quotas.* Quotas for carfentanil are established pursuant to Part 1303 of Title 21 of the Code of Federal Regulations.

5. *Inventory.* Registrants possessing carfentanil are required to take inventories pursuant to Section 1304.04 and Sections 1304.11–1304.19 of Title 21 of the Code of Federal Regulations.

6. *Records.* All registrants must keep records pursuant to Section 1304.04 and Sections 1304.21–1304.29 of Title 21 of the Code of Federal Regulations.

7. *Reports.* All registrants are required to file reports pursuant to Sections 1304.31–1304.41 of Title 21 of the Code of Federal Regulations.

8. *Order Forms.* Each distribution of carfentanil requires the use of an order form pursuant to Part 1305 of Title 21 of the Code of Federal Regulations.

9. *Prescriptions.* As carfentanil has been approved by the FDA for use in veterinary medical treatment, the drug may be dispensed by prescription. Prescriptions for carfentanil are to be issued pursuant to Sections 1306.01–1306.07 and Sections 1306.11–1306.15.

10. *Importation and Exportation.* All importation and exportation of carfentanil shall be in compliance with Part 1312 of Title 21 of the Code of Federal Regulations.

11. *Criminal Liability.* Any activity with carfentanil not authorized by or in violation of the CSA or the Controlled Substances Import and Export Act continues to be unlawful. on October 28, 1988, carfentanil for the purposes of criminal liability shall be treated as a Schedule II narcotic controlled substance.

12. *Other.* In all other respects, this order is effective on October 28, 1988.

Pursuant to Title 5, United States Code, Section 605(b), the Administrator certifies that the scheduling of carfentanil, as ordered herein, will not have a significant impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96–354). Carfentanil is being placed into Schedule II following its approval to be marketed as a narcotic anesthetic for use in veterinary clinics specializing in big game control. This rule will cause such establishments to handle carfentanil in a manner identical to that in place for other Schedule II products.

In accordance with the provisions of section 201(a) of the CSA (21 U.S.C. 811(a)), this scheduling action is a formal rulemaking "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, have been exempted from the consultation requirements of Executive Order 12291 (46 FR 13193). This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by Section 201(a) of the CSA (21 U.S.C. 811(a)) and delegated to the Administrator of DEA by regulations of the Department of Justice (28 CFR Part 0.100), the Administrator hereby orders that 21 CFR Part 1308 be amended as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for 21 CFR Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b).

§ 1308.12 [Amended]

2. Paragraph (c) of § 1308.12 is amended by redesignating the existing paragraphs (c)(6) through (c)(24) as (c)(7) through (c)(25) and adding a new paragraph (c)(6) as follows:

§ 1308.12 Schedule II.

* * * * *

(c) * * *

(6) Carfentanil—9743

* * * * *

John C. Lawn,
Administrator, Drug Enforcement Administration.

Dated: October 19, 1988.

[FR Doc. 88-24974 Filed 10-27-88; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 81

[Docket No. 76N-0384]

Provisional Listing of FD&C Red No. 3 in Cosmetics and Externally Applied Drugs, and of its Lakes in Food, Drugs, and Cosmetics; Postponement of Closing Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of FD&C Red No. 3 for use in coloring cosmetics and externally applied drugs and of the lakes of this color additive for use in coloring food, drugs, and cosmetics. The new closing date for the provisional listing of this color additive will be June 30, 1989. This postponement will permit the uninterrupted use of this color additive while FDA receives and evaluates new information on FD&C Red No. 3 and prepares appropriate Federal Register documents for the regulation of this color additive.

EFFECTIVE DATE: October 28, 1988, the new closing date for FD&C Red No. 3 and its lakes will be June 30, 1989.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Center for Food Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5676.

SUPPLEMENTARY INFORMATION:

I. Background

Under Title II of the Color Additive Amendments of 1960 (the transitional provisions) (Pub. L. 86–618, sec. 203 (21 U.S.C. 376, note)), FDA is authorized to postpone the closing date of the provisional listing of a color additive. The agency's discretion in issuing such postponements is limited in only two respects: "Such postponements must be consistent with the public health, and the Commissioner must judge that the scientific investigations are going forward in good faith and will be completed as soon as reasonably practicable." (*McIlwain* v. *Hayes*, 690 F.2d 1041, 1047 (DC Cir. 1982) and *Public Citizen* v. *Department of Health and Human Services*, No 86–5150 (decided in *Public Citizen* v. *Young*, 831 F.2d 1108, 1122 (DC Cir. 1987)).)

In the **Federal Register** of August 30, 1988 (53 FR 33147), FDA proposed to postpone the closing date of FD&C Red No. 3. FDA proposed this postponement to allow the agency time to complete its evaluation of data from a new rat study being conducted by the Certified Color Manufacturers' Association (CCMA). This study is designed to demonstrate that FD&C Red No. 3 has no direct effect on the thyroid, i.e., that it operates through a secondary mechanism. This postponement also allows the agency to complete its evaluation of the sale and use data on FD&C Red No. 3, to make a final decision with respect to the status of FD&C Red No. 3 under the color additive amendments, and to prepare the appropriate **Federal Register** documents for the regulation of this color additive. The agency concluded that these activities can be accomplished by June 30, 1989.

In response to the proposal, FDA received 34 comments from members of Congress, trade associations, food growers, food processors, a packer, a marketer, and a public interest group. Thirty-three comments supported the proposed postponement of the closing date. One comment (from Public Citizen, a public interest group) opposed the postponement.

FDA has carefully considered these comments and has also considered, in light of the comment opposing the proposed extension, whether this extension is appropriate under the standards set forth in *McIlwain* v. *Hayes*. The summary of the comments and the conclusions that the agency has reached follow:

II. Comments

A. Comments Supporting the Proposed Extension

The agency received 33 comments supporting the proposed extension. Five comments (from a cherry grower, two processors, a marketer, and a trade association) noted that June 30, 1989, is in the middle of the cherry growing season and requested an extension of the provisional listing for FD&C Red No. 3 until the end of the season (September 1, 1989).

The agency acknowledges the concern expressed by these five comments. However, the agency believes that it is important to resolve the issues relating to FD&C Red No. 3 as expeditiously as possible. The agency concludes that postponement of the closing date to June 30, 1989, provides a reasonable time period for the agency to receive and evaluate the new information from the CCMA study, to decide whether FD&C Red No. 3 can be permanently listed, and to develop the appropriate Federal Register documents. Thus, based on information currently available to it, the agency concludes that it is reasonably practicable for these steps to be completed by June 30, 1989. Further, the agency concludes that postponement of the closing date for the convenience of the users of the color additive would be inconsistent with the transitional provisions of the Color Additive Amendments.

B. Comment Opposing the Proposed Extension

The comment opposing the postponement asserted that FDA has provided no valid justifications for its extension of the provisional listing of FD&C Red No. 3. The comment further asserted that this extension is designed to delay, rather than to resolve, the provisional listing of the color additive. The comment based its opposition to the postponement on its brief filed in the United States Court of Appeals for the District of Columbia Circuit in *Public Citizen* v. *Department of Health and Human Services, supra*, and its July 19, 1988, comments objecting to the agency's previous extension of the provisional listing of FD&C Red No. 3 to August 30, 1988.

In opposing the proposed postponement of the closing date for provisional listing for FD&C Red No. 3, the comment listed four points. Although each is discussed separately below, most of the points are dealt with by the decision in *Public Citizen* v. *Young, supra*, 831 F.2d at 1122–1123. That decision establishes that postponement

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of the closing date to June 30, 1989, is consistent with the purposes of the transitional provisions. In that case, the Court of Appeals upheld FDA's postponement of the closing date for FD&C Red No. 3, pending further evaluation of data to determine whether a secondary mechanism was responsible for the carcinogenic effect that was observed. The court held that the principles established in *McIlwain* v. *Hayes* were controlling. That is, the closing dates for provisionally listed color additives can be extended if such postponements are consistent with the public health and, in the Commissioner's judgment, the scientific investigations are going forward in good faith and will be completed as soon as reasonably practicable. The court further held that FDA had not unreasonably delayed its decision as to permanent listing, because unreasonable delay must be determined in the context of the transitional provisions, which allow "the time necessary for careful testing and also for careful review of data." (831 F.2d at 1123, n.19.) The four issues raised by the comment, and the agency's responses follow:

1. *Carcinogenicity of FD&C Red No. 3.* The comment asserted that, under the Delaney clause, FDA must ban all uses of FD&C Red No. 3. The comment stated that the long-term feeding studies on FD&C Red No. 3 have been completed for many years, and the agency previously concluded that they demonstrated that FD&C Red No. 3 causes tumors in animals. The comment cited *Public Citizen* v. *Young, supra*, to support its assertion.

The agency agrees with the comment that it had previously concluded that the data demonstrated that FD&C Red No. 3 caused tumors in animals. However, as the agency noted in its letter of September 2, 1988, written in response to Public Citizen's July 19, 1988, letter mentioned above (Ref. 2), some scientists believe these tumors are a result of a secondary mechanism caused by a hormonal imbalance that occurs only at high doses of FD&C Red No. 3. If such a mechanism can be demonstrated, it may be possible to prescribe by regulation conditions of use for FD&C Red No. 3 such that there is no reasonable expectation that its presence in the human diet would induce the formation of thyroid tumors. The letter further notes that the purpose of the extensions of the provisional list has been to provide time to resolve this scientific issue.

Public Citizen v. *Young* does not prevent the agency from postponing the closing date for FD&C Red No. 3. Although in that case the court held that the Delaney clause precluded the permanent listing of a carcinogenic color additive, the same panel held concurrently in *Public Citizen* v. *Department of Health and Human Services* that FDA could postpone the closing date for FD&C Red No. 3 even though the agency had previously concluded that the additive caused tumors in laboratory animals. In that case, the court stated that "There was a possibility * * * that the dye might have effected the rats' thyroid glands, with that effect in turn causing the tumors. *Id.* If this were established, then a no-effect level in rats might be established. *Id.; see also* 50 Fed. Reg. at 35,786–87. Until the agency arrives at a final decision as to this question, the question of the Delaney Clause's application is not ripe" (Ref. 1, p. 1123).

2. *Health risk from exposure to FD&C Red No. 3.* The comment asserted that the past findings regarding the safety of FD&C Red No. 3 place a greater burden on the agency and require the agency to act quickly on its provisional listing. The comment alleged that Government officials have recognized for a long time that FD&C Red No. 3 may pose serious health hazards to the public; the comment also noted that the recent panel report concluded that, even if FD&C Red No. 3 is permitted to stay on the market, limits on its use may be necessary. The comment submitted the Health Research Group's 1984 petition to ban FD&C Red No. 3 and the transcript of a radio interview of February 19, 1985, given by former Assistant Secretary of Health, Edward Brandt, to support its assertion.

The agency does not agree that FD&C Red No. 3 may pose serious health hazards to the public. In its extensions (including the recent proposed extension to June 30, 1989), the agency has evaluated the potential health risk to the public from the use of FD&C Red No. 3 during the time period of the extension and concluded that these extensions were consistent with the public health. The agency has concluded that the short-term exposure to FD&C Red No. 3 resulting from these relatively brief extensions does not present a safety concern. For this reason, and for the reasons stated in the August 30, 1988, proposal, the agency reaffirms its conclusion that the postponement of the closing date for the provisional uses of FD&C Red No. 3 and its lakes to June 30, 1989, does not present a public health hazard and is consistent with *McIlwain* v. *Hayes*.

The agency agrees, however, with the conclusions of its scientific review panel (see 53 FR 33147 at 33148) that in the future, if FD&C Red No. 3 is permitted to stay on the market, limits on its use may be necessary. To that end, the agency published notices in the Federal Register of November 19, 1987 (52 FR 44485), and December 21, 1987 (52 FR 48328), respectively, requesting data on specific uses of FD&C Red No. 3. In these notices the agency stated that it may be necessary for the agency to limit the aggregate uses of FD&C Red No. 3, i.e., to allocate the allowable uses of the color additive among all of its prevailing uses in food, drugs, and cosmetics. The issue the agency would address in this possible allocation would be the uses of FD&C Red No. 3 that are safe for chronic exposure over a lifetime (as opposed to its safe use during a relatively limited period of time).

The comment cited the Health Research Group's 1984 petition to ban FD&C Red No. 3 in support of its view. The agency has already responded to this petition (Ref. 3). In its response, the agency concluded that "the provisionally listed uses of this color additive do not present a hazard to the public that would warrant termination of provisional listing at this time." The issues raised in the 1984 petition were fully litigated in *Public Citizen* v. *Department of Health and Human Services*.

The comment also cited a radio interview with Edward Brandt, in support of its view. The agency notes that this interview with Brandt occurred after he had left the Department of Health and Human Services. Therefore, it does not necessarily represent the current opinion of the department or the agency. Furthermore, Brandt did not, in the interview, declare that current exposure to FD&C Red No. 3 is unsafe; he merely stated that he considered that the public health risk from exposure to certain other color additives (D&C Red Nos. 8, 9, 19, 37, and D&C Orange No. 17) was less significant than for FD&C Red No. 3.

3. *The secondary mechanism and the Delaney clause.* The comment asserted that there is no valid legal basis for this extension because the issue of an indirect or secondary mechanism is immaterial under the Delaney clause. The comment stated that, but for the ingestion of the dye, the animal tumors would not have been induced.

For the reasons discussed above, the agency does not agree with this comment. As the Court of Appeals stated in *Public Citizen* v. *Young, supra*, 831 F.2d at 1123, the question of the application of the Delaney clause is not ripe until the agency has decided the secondary mechanism issue.

4. *Justification for extension.* The comment asserted that there is no valid justification for this extension. The comment stated that after being permitted to market FD&C Red No. 3 for many decades, the industry has still not shown that it is safe. The comment further stated that the agency has for many years been aware of the secondary mechanism issue but has provided no reason why it has not been resolved. The comment also stated that the agency has provided no explanation of why the new study was not done before and of how the study would be relevant to the agency's determinations. Finally the comment asserted that the agency has failed to explain why it will take from November 1988 (when the study will be completed), until June 30, 1989, to evaluate the results of the study.

The agency determined that it would take until June 30, 1989, to: (1) Evaluate the results of the new study on FD&C Red No. 3 in the context of all the available data relating to the secondary mechanism, (2) determine the appropriate course of action to take in light of all the available data on the safety of the color additive, and (3) prepare the Federal Register documents necessary to take this action. The issue of the secondary mechanism with regard to the action of FD&C Red No. 3 on thyroid function is difficult to evaluate because of the complex endocrine functions of the thyroid gland. Therefore, the agency needs more review time than would be expected, based on the nature of the ongoing study, in order to assess what implications those findings have on earlier studies. Furthermore, given the unique and controversial nature of the issues relating to FD&C Red No. 3, and the possibly significant economic impact of its decision, the agency requires adequate time to develop and review the necessary documents to implement its decision.

The agency has evaluated only a few cases where data suggest that the tumorigenic effect of a substance occurred through a secondary mechanism. These cases have not provided the agency with an adequate basis for developing general guidelines for determining the type of data that would unequivocably demonstrate a secondary mechanism. In each instance, the agency has evaluated the data submitted on a case-by-case basis and has determined whether the data demonstrated a secondary mechanism of action. The case of FD&C Red No. 3 is even more difficult to evaluate because of the complexity of the role of the thyroid hormones in the metabolic homeostasis of the organism. Nevertheless, the agency has sought to resolve the issue as presented by the report of its expert panel that the tumorigenic effect "is more likely to be the result of an indirect (secondary) mechanism." (See 53 FR 33147 of 33148.) The agency concluded that the ongoing CCMA study may produce results that are relevant to the secondary mechanism issue. The events leading to the CCMA study followed a logical progression. After initial review of the secondary mechanism issue, the agency decided that it needed the assistance of an expert panel. After the panel completed its work, the agency made the panel's report available to the public for review. CCMA subsequently informed the agency that it had decided to do an additional study in an effort to clarify the secondary mechanism issue. At the time the Court of Appeals decided *Public Citizen* v. *Department of Health and Human Services*, the agency had extended the provisional listing to allow the expert panel to complete its report. Thus, the additional steps, taken after the panel completed its report, are consistent with the decision in that case.

III. Environmental And Economic Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental effect statement is required.

FDA has determined that extending the provisional listing of these color additives requires no change in the current industry practice concerning the manufacture or use of these ingredients. Therefore, FDA certifies, in accordance with section 605(b) of the Regulatory Flexibility Act, that no significant economic impact on a substantial number of small entities would derive from this action. Further, the economic effects of this final rule have been analyzed and it has been determined that it is not a major rule as defined in Executive Order 12291.

IV. Conclusion

The agency has carefully evaluated each of the comments submitted to the proposal of August 30, 1988, to postpone the closing dates for provisional listing of FD&C Red No. 3. Based upon this evaluation, the agency continues to believe that it is appropriate to postpone the closing date for the provisional listing of FD&C Red No. 3 so that the agency can consider the results of the CCMA study, as well as the sale and use data, before making a final decision with respect to the status of FD&C Red No. 3 under the color additive amendments. Accordingly, the order set forth below would amend 21 CFR 81.1(a) and 81.27(d) to postpone the closing date to June 30, 1989, to provide sufficient time for the agency to take final action in this matter.

V. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. *Public Citizen* v. *Young*, 831 F.2d 1108, 1122–1123 (DC Cir. 1987).

2. Letter dated September 2, 1988, from Frank E. Young, Commissioner of Food and Drugs, to Katherine A. Meyer and William B. Schultz, Public Citizen Litigation Group.

3. Letter dated June 21, 1985, from Frank E. Young, Commissioner of Food and Drugs, to Sydney M. Wolfe, Director and Peter Lurie, Staff Researcher, Public Citizen Health Research Group.

List of Subjects in 21 CFR Part 81

Color additives, Color additives provisional list, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 81 is amended as follows:

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOOD, DRUGS, AND COSMETICS

1. The authority citation for 21 CFR Part 81 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1058 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); Title II, Pub. L. 85–616; sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note); 21 CFR 5.10.

§ 81.1 [Amended]

2. Section 81.1 *Provisional lists of color additives* is amended in the table of paragraph (a) by revising the closing date for the entry "FD&C Red No. 3" to read "June 30, 1989."

§ 81.27 [Amended]

3. Section 81.27 *Conditions of provisional listing* is amended in the table, appearing in the introductory text of paragraph (d), by revising the closing date for the entry "FD&C Red No. 3" to read "June 30, 1989."

Dated: October 25, 1988.
John M. Taylor,
Associate Commissioner for Regulatory Affairs.
[FR Doc. 88-25068 Filed 10-27-88; 8:45 am]
BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8217]

Income Tax; Taxable Years Beginning After December 31, 1953 and OMB Control Numbers Under the Paperwork Reduction Act; Certain Cash or Deferred Arrangements Under Employee Plans

AGENCY: Internal Revenue Service, Treasury.

ACTION: Corrections to final regulations.

SUMMARY: This document contains corrections to Treasury Decision 8217, which was published in the Federal Register for Monday, August 8, 1988 (53 FR 29658). The final regulations relate to certain cash or deferred arrangements under employee plans.

FOR FURTHER INFORMATION CONTACT: William D. Gibbs, Office of the Assistant Chief Counsel, Employee Benefits and Exempt Organizations, 202-377-6372 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections provide the public with the guidance needed to comply with the law and affect sponsors of plans that contain cash or deferred arrangements and employees who are entitled to make elections under these arrangements. They reflect changes in the applicable tax law made by the Revenue Act of 1978.

Need For Correction

As published, T.D. 8217 contains typographical errors that, if not corrected, might cause confusion to taxpayers and practitioners.

Correction of Publication

Accordingly, the publication of the final regulations (T.D. 8217) which was the subject of FR Doc. 88-17720, is corrected as follows:

1. On page 29664, in the second column, in § 1.401 (k)-1 (a) (2) (i), in the last line, "of" should read "or".

2. On page 29671, in the first column, in § 1.401 (k)-1 (f) (3) (v), in the *Example*, in the second and third lines after the table, "(10.00% + 78.80%)" should read "((10.00% + 7.80%)/2)."

3. On page 29673, in the second column, in § 1.401 (k)-1 (h) (4) (iii) (A), in the next to the last line, "employer" should read "employes".

Dale D. Goode,
Chief, Regulations Unit Assistant Chief Counsel (Corporate).
[FR Doc. 88-24091 Filed 10-27-88; 8:45 am]
BILLING CODE 4830-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

Approved State Plans for Enforcement of State Standards; Approval of Supplements to the Utah State Plan

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Approval of supplements to the Utah State plan.

SUMMARY: This document gives notice of Federal approval of amendments to the Utah Occupational Safety and Health Act which provide for rulemaking procedures similar to those of Federal OSHA, and an amendment to the Utah Administrative Rulemaking Act to remove inconsistent requirements for adopting rules and regulations.

EFFECTIVE DATE: October 28, 1988.

FOR FURTHER INFORMATION CONTACT: James F. Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, Room N3647, 200 Constitution Avenue NW., Washington, DC 20210. Telephone (202) 523-8148.

SUPPLEMENTARY INFORMATION:

Background

The Utah Occupational Safety and Health Plan was approved under section 18(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667(c)) (hereinafter referred to as the Act) and Part 1902 of this chapter on January 10, 1973 (38 FR 1178). A determination of final approval was made under section 18(e) of the Act on July 18, 1985 (50 FR 28770). Part 1953 of this chapter provides procedures for the review and approval of State change supplements by the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter referred to as the Assistant Secretary).

Description of Supplements

A. Administrative Rulemaking Act

The State submitted on May 6, 1985, amendments to its Administrative Rulemaking Act (Chapter 46a, Title 63, Utah Annotated, 1953) effective April 29, 1985. The supplement contains Utah's amendments to its Administrative Rulemaking Act (section 63-46a-1 through 63-46a-15) which provide for rulemaking procedures similar to those of Federal OSHA.

The amendments are as follows:

(1) Section 63-46a-2 adds new definitions.

(2) Section 63-46a-3 provides new procedures for State agencies to use in maintaining complete copies of current rules and making them available to the public for inspection during regular business hours.

(3) Section 63-46a-4 provides additional provisions for State agencies to follow when making, amending, or repealing a rule. It also extends the public comment period from 20 days to 30 days.

(4) Section 63-46a-5 provides a set period of 30 days of receipt of the request for the requested hearing to be held.

(5) Section 63-46a-9, on the review of rules at five-year intervals, expands procedures for State agencies to use in providing supporting reason when they decide to continue the rule.

(6) Section 63-46a-10 adds provisions for the Office of Administrative Rules to administer the rulemaking process.

(7) Section 63-46a-11 provides procedures for the Legislative Review Committee to carry out its responsibility for oversight of the rulemaking process.

(8) Section 63-46a-13 clarifies the validity or applicability of a rule which may be determined in an action for declaratory judgment in any district court when it is alleged that the rule or its potential application, interferes with or impairs, the legal rights or privileges of the plaintiff.

B. Utah Occupational Safety and Health Act of 1973 (UOSH)

The State submitted on May 6, 1985, amendments to its Occupational Safety and Health Act (Chapter 69, Utah Code Annotated 1953). The amendments are as follows:

(1) Sections 35-9-3 and 35-9-6 were amended to bring the Act into conformance with the Utah Administrative Rulemaking Act and to remove inconsistent requirements for adopting rules and regulations.

(2) Section 35-9-8 was amended to authorize the Occupational Safety and Health Division to seek administrative warrants under UCA 77-23-11, when an employer refuses to permit entry. UCA 77-23-11 provides that magistrates, on showing of probable cause that a safety, health, etc., rule has been violated, may issue a warrant.

(3) Sections 35-9-10, 35-9-11 and 35-9-12 were amended to clarify Review Commission procedures for internal review of a hearing examiner's decision and to provide for judicial review by District Courts and appeal to the Utah Supreme Court. This amendment also consolidates into one law Utah's procedures relating to the review commission.

(4) Section 35-9-6 was amended to provide that Utah shall issue a permanent standard no later than 120 days after publication of an emergency standard instead of six months.

Location of Supplement for Inspection and Copying

A copy of the plan and the supplement may be inspected and copied during normal business hours at the following locations:

Office of the Regional Administrator, Occupational Safety and Health Administration, Room 1554, Federal Building, 1961 Stout Street, Denver, Colorado 80202; the Utah Industrial Commission, UOSHA Offices at 160 East Third South, Salt Lake City, Utah 84111-5800; and the Office of the Director of Federal-State Operations, Room N3700, 200 Constitution Avenue NW., Washington, DC 20210.

Public Participation

Under § 1953.2(c) of this chapter, the Assistant Secretary may prescribe alternative procedures to expedite the review process or for any other good cause which may be consistent with applicable law. The Assistant Secretary finds that the State's revisions to its Administrative Rulemaking Act and Occupational Safety and Health Act were adopted in accordance with procedural requirements of the law, which included the opportunity for public participation. Good cause is therefore found for approval of this supplement, and further public participation would be unnecessary.

Decision

After careful consideration and extensive review by the Regional and National Offices, the Utah plan supplement described above is found to be in substantial conformance with comparable Federal provisions and is hereby approved under Part 1953 of this chapter. The decision incorporates the requirements of the Act and implementing regulations applicable to State plans generally.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

Signed at Washington, DC, this 24th day of October, 1988.
John A. Pendergrass,
Assistant Secretary.

Accordingly, 29 CFR Part 1952 is hereby amended as follows:

PART 1952—[AMENDED]

1. The authority citation for Part 1952 continues to read:

Authority: Secs. 8, 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 657, 667); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), or 9-83 (48 FR 35736), as applicable.

2. A new § 1952.117 is added to Subpart E to read as follows:

§ 1952.117 Changes to approved plans.

In accordance with Part 1953 of this chapter, the following Utah plan changes were approved by the Assistant Secretary:

(a) *Legislation.* (1) The State submitted an amendment to the Utah Administrative Rulemaking Act (Chapter 46a, Title 63, Utah Code Annotated 1953), which became effective on April 29, 1985, which provides for rulemaking procedures similar to those of Federal OSHA in sections pertaining to expansion of definitions; availability of proposed rule to the public; a set time period allowed for public comment; the time period provided for a requested hearing to be held; and, provisions for determining the validity or applicability of a rule in an action for declaratory judgment. The Assistant Secretary approved the amendment on October 24, 1988.

(2) The State submitted amendments to its Occupational Safety and Health Act (Chapter 69, Utah Code Annotated 1953), which became effective on April 29, 1985, which provide for seeking administrative warrants, clarify review procedures for the hearing examiner, provide for issuing a permanent standard no later than 120 days after publication of an emergency standard, and remove inconsistent requirements for adopting rules and regulations. The Assistant Secretary approved the amendments on October 24, 1988.

[FR Doc. 88-24041 Filed 10-27-88; 8:45 am]
BILLING CODE 4510-26-M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 505

[Army Reg 340-21]

The Army Privacy Program

AGENCY: Department of the Army, DOD.

ACTION: Final Rule.

SUMMARY: The Department of the Army is amending its rule for administering the Privacy Act by revising Access and Amendment Refusal Authority responsibilities resulting from reorganizations.

DATES: Effective October 28, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. William A. Walker, Policy and Strategy Directorate, Office of the Director of Information Systems for Command, Control, Communications and Computers, Office of the Secretary of the Army, Washington, DC 20310-0107.

SUPPLEMENTARY INFORMATION: This amendment shifts responsibilities for Access and Amendment Refusal Authority to conform with the reorganization of the Department of the Army as a result of the Goldwater-Nichols Department of Defense Reorganization Act of 1986, and other organizational realignments. Access and Amendment Refusal Authority responsibility for the functions of the Comptroller of the Army (for financial records) has been absorbed by the Administrative Assistant to the Secretary of the Army. The rule is not a "major rule" as defined by Executive Order 12291. Therefore, no regulatory impact analysis has been prepared. The Department of the Army certifies that this document will not have an impact on a significant number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Therefore, no regulatory flexibility analysis has been prepared. The rule has no collection of information requirements and therefore does not require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 32 CFR Part 505

Information, Archives and Records, Privacy, Freedom of Information.

Dated: October 20, 1988.
John O. Roach,
Department of the Army Liaison Officer with the Federal Register.

PART 505—[AMENDED]

The authority citation for 32 CFR Part 505 continues to read as follows:

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Authority: 5 U.S.C. 552a (Pub. L. 93-579); DOD Directive 5400.11, June 9, 1982; and DOD Regulation 5400.11 R, August 31, 1983.

§ 505.1 [Amended]

1. 32 CFR Part 505.1 is amended by revising paragraph (g) as follows:

* * * * *

(g) Access and Amendment Refusal Authority (AARA). Each Access and Amendment Refusal Authority is responsible for action on requests for access to or amendment of, records referred to them under this regulation. The officials listed below and their designees, are the only Access and Amendment Refusal Authorities for records in their functional areas:

(1) The Administrative Assistant to the Secretary of the Army, is authorized to act for the Secretary of the Army (SA) on requests for all records maintained by the Office of the Secretary of the Army and its serviced activities, as well as those requests requiring the personal attention of the SA.

(2) The Inspector General for IG investigative records.

(3) The President or Executive Secretary of Boards, councils, and similar bodies established by the Department of the Army to consider personnel matters, excluding the Army Board of Correction of Military Records.

(4) The Deputy Chief of Staff for Personnel: For records of active and former non-appropriated fund employees (except those in the Army and Air Force Exchange Service; alcohol and drug abuse treatment records; and behavioral science records.

(5) The Deputy Chief of Staff for Operations and Plans: For military police records and reports and prisoner confinement and correctional records.

(6) Chief of Engineers: For records pertaining to civil works, including litigation; military construction; engineer procurement; other engineering matters not under the purview of another AARA; ecology; and contractor qualifications.

(7) The Surgeon General: For medical records, except those property part of the Official Personnel Folder (OMP/GOVT-1 system of records).

(8) Chief of Chaplains: For ecclesiastical records.

(9) The Judge Advocate General: For legal records for which responsible.

(10) Chief, National Guard Bureau: For personnel records of the Army National Guard.

(11) Chief of Army Reserve: For personnel records of Army retired, separated and reserve military personnel members.

(12) Commander, United States Army Material Command (AMC): For records of Army contractor personnel of AMC.

(13) Commander, United States Army Criminal Investigation Command (USACIDC): For criminal investigation reports and military police reports included therein.

(14) Commander, United States Total Army Personnel Agency: For personnel and personnel related records of Army members on active duty and current Federal appropriated fund civilian employees. (Requests from former civilian employees to amend a record in an OPM system of records such as the Official personnel Folder should be sent to the Office of Personnel Management, Assistant Director for Workforce Information, Compliance and Investigations Group, 1900 E Street, NW, Washington, DC 20415-0001.)

(15) Commander, U.S. Army Community and Family Support Center: For records relating to morale, welfare and recreation activities; community life programs; family action programs; retired activities, club management, Army emergency relief, consumer protection, retiree survival benefits, and records dealing with DA relationships and social security, veterans' affairs, United Service Organizations, U.S. Soldiers' and Airmen's Home and American Red Cross.

(16) Commander, U.S. Army Intelligence and Security Command: For Army intelligence, security investigative and related records.

(17) Commander, Army and Air Force Exchange Service: For records pertaining to employees, patrons, and other matters which are the responsibility of the Exchange Service.

(18) Commander, Military Traffic Management Command: For transportation records.

(19) Director of Army Safety: For safety records.

(20) Commander, U.S. Army Information Systems Command: For records which do not fall within the functional area of another AARA.

* * * * *

[FR Doc. 88-24994 Filed 10-27-88; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 228

Disposal of Mineral Materials

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule permits the Chief of the Forest Service to authorize the noncompetitive sale of minerals of more than 200,000 cubic yards upon a finding that the larger volume is necessary to respond to emergency situations, to prevent the curtailment of locatable mineral operations which generate large volumes of mineral materials as a by-product, or to respond to a critical public need for the prompt development of mineral leases or mining claims on federal lands. The intended effect is to allow the Forest Service to respond to such circumstances in an orderly and expeditious manner when necessary to protect the public health or safety or to avoid severe economic repercussions from circumstances beyond the prospector's or operator's control .

DATE: This rule is effective October 28, 1988.

FOR FURTHER INFORMATION CONTACT: Steve Marshall, Minerals and Geology Staff, Forest Service, USDA, (703) 235-1142.

SUPPLEMENTARY INFORMATION: The Materials Act of July 31, 1947 (30 U.S.C. 601 *et seq.*) allows the Secretary of Agriculture to sell mineral materials noncompetitively where their competitive sale would be impracticable. Existing regulations at 36 CFR Part 228, Subpart C covering sales of mineral materials limit the noncompetitive sale of mineral materials to 200,000 cubic yards or weight equivalent to any entity per year per State. These regulations require that the United States receive the appraised fair market value for any mineral materials sold noncompetitively. The existing regulations do not provide for situations where the disposal of larger quantities of mineral materials is necessary to respond to emergency situations affecting public health, safety, or property, to prevent the curtailment of locatable mineral operations which generate large volumes of mineral materials as a by-product, or to respond to a critical public need for the prompt development of mineral leases issued by the United States or mining claims located under the United States mining laws.

On April 2, 1987, the Forest Service published an interim rule (52 FR 10564) permitting the Chief of the Forest Service to authorize the noncompetitve sale of minerals in certain limited circumstances. The need for some method of granting exceptions to the

200,000 cubic yard limitation arose from a situation in California wherein a claimant mining locatable minerals on a National Forest might have been forced to periodically cease operations because the claimant was close to exceeding the 200,000 cubic yard limitation on sand and gravel then in effect. This claimant has a mining operation for locatable minerals which yields sand and gravel as a by-product. Since the sand and gravel production is an integral part of the mining operation, it is impractical to offer the material competitively. Thus, the sand and gravel had been disposed of through noncompetitive sales to the claimant.

Prior to 1987, by-product sand and gravel had been of small enough volumes that the yardage limitation had not posed a problem. However, in 1987, increased production of locatable minerals began. This resulted in more sand and gravel being produced than could have been accommodated noncompetitively under the existing regulations. This situation convinced the Agency that it needed the flexibility to meet such needs in the future, wherever they may arise.

In addition to this type of production situation, future emergency needs for disposal of more than 200,000 cubic yards of mineral materials might not permit the time-consuming competition required by 36 CFR 228.58. An emergency might include a situation such as large volumes of sand and gravel being needed for constructing dikes during floods. Without a means to exceed the volume limitations, the Agency could not legally respond to such an emergency.

Thus the Agency promulgated an interim rule that allowed the Chief to authorize noncompetitive sale of larger volumes upon a finding that the larger volume is necessary: (1) To respond to emergency situations; (2) to prevent the curtailment of locatable mineral operations which generate large volumes of mineral materials as a by-product; or, (3) to respond to a critical public need for the prompt development of mineral leases or mining claims on federal lands.

The Forest Service invited the public to comment on the interim rule for consideration in development of this final rule. However, no public comments were received.

The interim rule has been applied three times during the year it has been in effect. In addition to the previously cited situation, it was used in connection with a locatable mineral operation in Alaska and with a leasable mineral operation in Wyoming. The interim rule proved to be an effective remedy in all three of the situations in which it was applied.

Therefore, in light of Agency experience under the interim rule and the absence of any comments on the rule, the Department is adopting the interim rule as a final rule without change. Because the interim rule has been in place for a year and the final rule is identical to the interim, good cause exists for making the rule effective upon publication.

This rule has been reviewed under Executive Order 12291 and USDA procedures and it has been determined that this rule is not a major rule. Additionally, it will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This authority is equally applicable to all entities, whether large or small. The final rulemaking contains no information collection requirements requiring the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et. seq.*

Based on both past experience and environmental analysis, this final rule will have no significant effect on the human environment, individually or cumulatively. Therefore, it is categorically excluded from documentation in an environmental assessment or an environmental impact statement (40 CFR 1508.4).

List of Subjects in 36 CFR Part 228

Administrative practice and procedure; Environmental protection; Mines; National forests; Public lands—Mineral resources; Rights of way; Reporting and recordkeeping requirements; Surety bonds; Wilderness areas.

PART 228—MINERALS

Subpart C—Disposal of Mineral Materials.

Therefore, for the reasons set forth in the preamble, the interim rule amending 36 CFR 228.59, which was published at 52 FR 10564 on April 2, 1987, is adopted as a final rule without change.

Date: October 6, 1988.

Richard E. Lyng,

Secretary.

[FR Doc. 88-25012 Filed 10-27-88; 8:45 am]

BILLING CODE 3410-11-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3448-1]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today's rulemaking takes final action to approve the carbon monoxide (CO) state implementation plan (SIP) for the Wichita, Kansas, area. EPA proposed approval of the Wichita CO plan on March 31, 1988 (53 FR 10389) in response to a submittal from the Kansas Department of Health and Environment. EPA received no comments from the public during the comment period. Today's action will make the Wichita CO SIP completely approved.

EFFECTIVE DATE: November 28, 1988.

ADDRESSES: Copies of the state submission are available for public inspection at the Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101; Kansas Department of Health and Environment, Bureau of Air Quality and Radiation Control, Forbes Field, Topeka, Kansas 66620; and Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Robert J. Chanalor at (913) 236-2893; FTS 757-2893.

SUPPLEMENTARY INFORMATION: On March 3, 1978 (43 FR 8964), EPA designated a portion of Wichita, Kansas, nonattainment with respect to the CO primary National Ambient Air Quality Standard (NAAQS) as required by Section 107(d) of the Clean Air Act, as amended in 1977.

The state submitted a CO plan for Wichita on April 16, 1981. This plan was approved by EPA on January 22, 1982 (47 FR 3113). On February 3, 1983 (48 FR 4972), EPA identified Wichita, Kansas, as a nonattainment area unlikely to attain the CO standard by the December 31, 1982, attainment date. This determination was based upon air quality data from 1980, 1981, and 1982. Violations were found in each of those years.

On February 29, 1984, EPA notified the state of Kansas under authority of Section 110(a)(2)(H) of the Act, that the CO SIP for Wichita was substantially inadequate to attain the CO standard.

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EPA extended the time required under section 110(c)(1)(C) for plan revision to one year. EPA requested that the state submit a schedule for plan development within 60 days of the date of notification. EPA received that schedule on May 23, 1984.

In response to the call for a SIP revision, the state of Kansas submitted a revised CO SIP for Wichita on March 1, 1985. Since there are no significant stationary CO sources in Wichita, the original plan approved by EPA depended upon transportation control measures (TCM) for CO emissions reductions. The plan revision submitted in 1985 contained an additional TCM and a commitment to continue the city's voluntary inspection and maintenance (I/M) program through 1988. Further, the plan submittal contained a modeling analysis projecting attainment of the CO standard by 1987 even without additional TCMs. Most of the CO emissions reductions were because of federally mandated automobile emissions control. This modeling study was included as part of the attainment demonstration.

The 1985 SIP revision contained a request for redesignation to attainment. The modeling analysis and air quality monitoring data were sufficient to support redesignation. EPA proposed approval of the SIP revision and the redesignation request on December 20, 1985 (50 FR 51687). For a more detailed discussion on the rationale for approval, the reader should review the Federal Register notice cited above and the technical support document.

EPA did not proceed to final rulemaking on the December 20, 1985, proposed rule for three reasons: (1) the one TCM in the SIP revision was discontinued by the city, (2) there was a discontinuity in the CO monitoring data, and (3) violations were recorded in March 1986. Thus, EPA was unable to approve the revision at that time. Additionally, on May 14, 1986, the KDHE advised EPA that since there was inadequate CO data upon which to base a redesignation, EPA should withhold further action on the redesignation request.

On September 3, 1987, KDHE submitted supplemental information applicable to the Wichita CO SIP. The submittal included two new TCMs adopted by the Wichita City Council to replace the discontinued TCM. On March 3, 1988 (53 FR 10399), EPA again proposed approval of the Wichita CO SIP including the supplemental TCMs. That notice also withdrew the redesignation proposal because of insufficient data to support redesignation to attainment for CO. That proposed rulemaking acknowledged there were three quarters of data in1986 and three quarters in 1987 showing no exceedance of the CO air quality standard. No comments were received on the proposal.

Wichita appeared on the list of potential SIP call areas in Appendix A of EPA's proposed ozone and carbon monoxide policy (52 FR 45044, November 24, 1987). However, EPA examined the CO monitoring data from Wichita and found no exceedances in 1987 and no exceedances in the first quarter 1988. These air quality data support the Wichita modeling study that projected attainment by December 31, 1987. For the reasons discussed above, EPA believes the SIP is adequate for attainment and maintenance of the CO standard. ACTION: EPA approves the Wichita CO SIP revision submitted on March 1, 1985, with the two new TCMs replacing the left turn ban contained in the control strategy in that submittal. These new TCMs are: (1) computerized signalization project, and (2) the overpass over Kellogg Avenue as part of the Wichita CO SIP.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under section 307(b)(1) of the Clean Air Act, as amended, judicial review of this action is available only by filing a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant impact on a substantial number of small entities. (See 46 FR 8709.)

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Reporting and recordkeeping requirements, Incorporation by reference.

Note: Incorporation by reference of the SIP for the state of Kansas was approved by the Director of the Federal Register on July 1, 1982.

Date: September 12, 1988.

Lee M. Thomas,
Administrator.

40 CFR Part 52, Subpart R, is amended as follows:

PART 52—[AMENDED]

Subpart R—Kansas

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.870 is amended by adding paragraph (c)(22) to read as follows:

§ 52.870 Identification of plan.

* * * * *

(c) * * *

(22) On March 1, 1985, the Governor of Kansas submitted a revised carbon monoxide state implementation plan for Wichita, Kansas. On September 3, 1987, The Kansas Department of Health and Environment submitted two new transportation control measures as part of the revised Wichita carbon monoxide control plan.

(i) Incorporation by reference. (A) Letter of September 3, 1987, from the Kansas Department of Health and Environment and attached transportation control measures adopted August 18, 1987.

(B) Revision of the Wichita-Sedgwick County Portion of the Kansas State Implementation Plan for Carbon Monoxide submitted by the Governor on March 1, 1985. The plan contains an attainment demonstration, emissions inventory, and a control strategy.

3. The table in § 52.879 is revised to read as follows:

§ 52.879 Attainment dates for national standards.

* * * * *

Air quality control region	Pollutant							
	Particulate matter		Sulfur oxides		Nitrogen dioxide	Carbon monoxide	Photochemical oxidants (hydrocarbons)	Lead
	Primary	Secondary	Primary	Secondary				
Metropolitan Kansas City Interstate	c	a	c	c	c	3/31/77	c	a
South Central Kansas Interstate	a	a	c	c	c	g	a	a
Northeast Kansas Interstate	a	a	c	c	c	c	a	a

Air quality control region	Pollutant							
	Particulate matter		Sulfur oxides		Nitrogen dioxide	Carbon monoxide	Photochemical oxidants (hydrocarbons)	Lead
	Primary	Secondary	Primary	Secondary				
Southeast Kansas Intrastate	c	a	c	c	a	a	c	c
North Central Kansas Intrastate	a	a	c	a	c	c	a	c
Northwest Kansas Intrastate	a	a	c	a	c	c	a	c
Southwest Kansas Intrastate	a	a	a	a	c	c	a	c

NOTE: Sources subject to plan requirements and attainment dates established under section 110(a)(2)(A) prior to the 1977 Clean Act Act Amendments remain obligated to comply with those requirements by the earlier deadlines. The earlier attainment dates are set out at 40 CFR Part 52 (1980) § 52.879.

a. July 1975.
b. Five years from plan approval or promulgation
c. Air quality levels presently below secondary standards.
d. Transportation and/or land use control strategy to be submitted no later than April 15, 1973.
e. December 31, 1982.
f. Secondary standard attainment date to be determined by secondary attainment plan.
g. EPA called for a SIP revision on February 29, 1984. EPA approved the new attainment date of December 31, 1987, in the revised Wichita CO SIP.

[FR Doc. 88-21285 Filed 10-27-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6813]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective date shown in this rule because of noncompliance with the revised floodplain management criteria of the NFIP. If FEMA receives documentation that the community has adopted the required revisions prior to the effective suspension date given in this rule, the community will not be suspended and the suspension will be withdrawn by publication in the Federal Register.

EFFECTIVE DATE: As shown in fifth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, Federal Center Plaza, 500 C Street SW., Room 416, Washington, DC 20472, (202) 646-2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the NFIP (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures.

On August 25, 1986, FEMA published a final rule in the Federal Register that revised the NFIP floodplain management criteria. The rule became effective on October 1, 1986. As a condition for continued eligibility in the NFIP, the criteria at 44 CFR 60.7 require communities to revise their floodplain management regulations to make them consistent with any revised NFIP regulation within 6 months of the effective date of that revision or be subject to suspension from participation in the NFIP.

The communities listed in this notice have not amended or adopted floodplain management regulations that incorporate the rule revision. Accordingly the communities are not compliant with NFIP criteria and will be suspended on the effective date shown in this final rule. However, some of these communities may adopt and submit the required documentation of legally enforceable revised floodplain management regulations after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the Federal Register. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

The Administrator finds that notice and public procedures under 5 U.S.C. 533(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 90- and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As stated in Section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to adopt adequate floodplain management measures, thus placing itself in noncompliance with the Federal standards required for community participation.

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State	Community name	County	Community Number	Effective date
[illegible]	Martin, City of	Floyd	210071	Nov. 4, 1988.
Delaware	Bethany Beach, Town of	Sussex	105083	Nov. 18, 1988.
Do	Blades, Town of	Sussex	100031	Do.
Do	Bridgeville, Town of	Sussex	105072	Do.
Do	Cheswold, Town of	Kent	100054	Do.
Do	Clayton, Town of	Kent	100005	Do.
Do	Felton, Town of	Kent	100006	Do.
Do	Harrington, City of	Kent	100010	Do.
Do	Little Creek, Town of	Kent	100015	Do.
Do	Middletown, Town of	New Castle	100024	Do.
Do	Rehoboth Beach, City of	Sussex	105086	Do.
Do	Slaughter Beach, Town of	Sussex	100059	Do.
Do	Wyoming, Town of	Kent	100020	Do.

Harold T. Duryee,
Administrator, Federal Insurance Administration.

[FR Doc. 88-24931 Filed 10-27-88; 8:45 am]

BILLING CODE 6718-21-M

44 CFR Part 64

[Docket No. FEMA 6812]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities were required to adopt floodplain management measures compliant with the NFIP revised regulations that became effective on October 1, 1988. If the communities did not do so by the specified date, they would be suspended from participation in the NFIP. The communities are now in compliance. This rule withdraws the suspension. The communities' continued participation in the program authorizes the sale of flood insurance.

EFFECTIVE DATE: As shown in fifth column.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding.

In addition, the Director of FEMA has identified the Special Flood Hazard Areas in these communities by publishing a Flood Insurance Rate Map. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the Special Flood Hazard Area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom the authority has been delegated by the Director, FEMA, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on these participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, the suspension for each listed community has been withdrawn. The entry reads as follows:

§ 64.6 List of eligible communities.

State and community name	County	Community No.	Effective date
Texas			
Kountze, city of	Hardin	480845	Sept. 2, 1988, suspension withdrawn.
La Vernia, city of	Wilson	481050	Do.
Lake Ransom Canyon, village of	Lubbock	481377	Do.
Morton, city of	Cochran	481127	Do.
Normangee, city of	Leon	480436	Do.
Primera, town of	Cameron	481188	Do.
Reno, city of	Lamar	481254	Do.
Shepherd, city of	San Jacinto	480554	Do.
Trinity, city of	Trinity	481033	Do.

State and community name	County	Community No.	Effective date
Tuscola, city of	Taylor	481017	Do.
Florida:			
Pahokee, city of	Palm Beach	120219	Do.
Pembroke Park, town of	Broward	120052	Do.
Kentucky:			
Unincorporated areas	Rowan	210235	Do.
South Shore, city of	Greenup	210091	Do.
Taylor Mill, city of	Kenton	210246	Do.
North Carolina:			
Bill Devil Hills, town of	Dare	375353	Do.
Unincorporated areas	Lenoir	370144	Do.
Kinston, city of	Lenoir	370145	Do.
Bayboro, town of	Pamlico	370188	Do.
Vandemere, town of	Pamlico	370438	Do.
South Carolina:			
Port Royal, town of	Beaufort	450028	Do.
Sullivans Island, township of	Charleston	455418	Do.
Tennessee:			
Rockwood, city of	Roane	475443	Do.
Unincorporated areas	Rutherford	470165	Do.
Unincorporated areas	Sumner	470349	Do.
Tazewell, city of	Claiborne	475448	Do.
New York:			
Amsterdam, city of	Montgomery	360440	Do.
Ancram, town of	Columbia	361211	Do.
Arkport, village of	Steuben	360763	Do.
Black Brook, town of	Clinton	361204	Do.
Boonville, town of	Oneida	360519	Do.
Broadalbin, village of	Fulton	361188	Do.
Canastota, village of	Madison	360366	Do.
Cazenovia, village of	Madison	360364	Do.
Clinton, town of	Dutchess	361304	Do.
Deposit, village of	Delaware	360043	Do.
Fort Edward, village of	Washington	361536	Do.
Grand View-on-Hudson, village of	Rockland	360360	Do.
Greenport, village of	Suffolk	361404	Do.
Hardenburgh, town of	Ulster	361578	Do.
Herkimer, village of	Herkimer	360306	Do.
Hornell, city of	Steuben	360778	Do.
Hornellsville, town of	Steuben	360777	Do.
Huntington Bay, village of	Suffolk	361543	Do.
Islip, town of	Suffolk	365337	Do.
Martinsburg, town of	Lewis	360370	Do.
Morristown, village of	St. Lawrence	360718	Do.
New Castle, town of	Westchester	360921	Do.
Orangetown, town of	Rockland	360689	Do.
Florida:			
Pembroke Pines, city of	Broward	120053	Sept. 30, 1988, suspension withdrawn.
Sebastian, city of	Indian River	120123	Do.
Unincorporated areas	Seminole	125354	Do.
St. Cloud, city of	Osceola	121191	Do.
Tamarac, city of	Broward	120058	Do.
Georgia:			
Camilla, city of	Mitchell	130137	Do.
Kentucky:			
Calvert City, city of	Marshall	210184	Do.
Unincorporated areas	Carter	210080	Do.
Evarts, city of	Harlan	210101	Do.
Mississippi:			
Ruleville, town of	Sunflower	280167	Do.
Satartia, town of	Yazoo	280184	Do.
North Carolina:			
Bladenboro, town of	Bladen	370062	Do.
Unincorporated areas	Bladen	370066	Do.
Unincorporated areas	Lee	370331	Do.
Unincorporated areas	Orange	370342	Do.
Tennessee:			
Franklin, city of	Williamson	470206	Do.
Germantown, city of	Shelby	470352	Do.
Goodlettsville, city of	Davidson/Sumner	470287	Do.

Harold T. Duryee,
Administrator, Federal Insurance Administration.

[FR Doc. 88-24932 Filed 10-27-88; 8:45 am]

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FEDERAL MARITIME COMMISSION

[Docket No. 88-17]

46 CFR Part 571

Interpretations and Statements of Policy

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: This final rule states that common carriers or conferences may not require a shippers' association to obtain or apply for a Department of Justice Business Review Letter prior to or as part of a service contract negotiation process. The rule is intended to help eliminate unnecessary impediments to the operation of shippers' associations and the negotiation of service contracts.

DATE: Effective October 28, 1988.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5740.

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission ("Commission" or "FMC") initiated this proceeding by publication in the **Federal Register** of a proposed rule stating that common carriers or conferences may not require the production of a Business Review Letter ("BRL") from the Department of Justice ("DOJ") [1] prior to or as part of a service contract negotiation process with a shippers' association. 53 FR 27178, July 19, 1988. Comments on the proposed rule were solicited, and the Commission received seven responses. Upon review of those comments, the Commission has determined to adopt an amended version of the proposed rule.

As stated in the Supplementary Information section of the proposed rule, there have been several Commission pronouncements, as well as advice contained in speeches and BRLs from the Department of Justice, to the effect that there is no reason for a carrier or conference to require, as part of the service contract negotiation process, a shippers' association to obtain a BRL. It has been noted that carriers and conferences do not risk antitrust exposure by negotiating in good faith with parties representing themselves as shippers' associations, provided that the conference agreement authorizes such negotiations. DOJ, however, has indicated that despite these assurances, shippers' associations continue to request BRLs, allegedly because conferences refuse to negotiate with them unless they have one.

Thus, DOJ, in order to abate what it considers the unnecessary expenditure of its resources inherent in preparing repetitive letters, requested the Commission to initiate a proceeding to clarify its views on the matter. The Commission accordingly proposed the instant interpretive rule. The proposed rule was also intended to eliminate unnecessary impediments to the operation of shippers' associations and to discourage violations of section 10(b)(13) of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1709(b)(13), which prohibits carrier and conferences from refusing to negotiate with a shippers' association. To this end, the proposed rule states in relevant part that:

> a common carrier or conference may not require a shippers' association to obtain or produce a Business Review Letter from the Department of Justice prior to or as part of a service contract negotiation process.

Comments

Five of the comments received in response to the proposed rule are from shipper or shippers' association interests. The National Federation of Export Associations ("NFEA"), the North American Shippers Association, Inc. ("NASA"), and the National Association of Export Companies ("NEXCO") all support the proposed rule as written. NASA and NEXCO state that the rule should serve to strengthen and develop shippers' associations. NFEA opines that requiring BRLs prior to negotiating with shippers' associations "results not from apprehension regarding possible antitrust violation, but rather a desire to construct artificial impediments to good faith negotiations."

The First National Shippers Association ("FISA") states that while the Proposed Rule would serve a useful purpose, it does not go far enough. FISA contends that carriers frequently refuse to negotiate with shipper's associations in many, sometimes subtle, ways, of which the "delaying tactics" of requesting BRLs are not one.[2] FISA proposes that the Commission finalize the Proposed Rule with an additional provision cautioning that individual carrier activities or patterns of behavior may constitute tacit refusals to deal, in contravention of sections 10(b)(13) and 10(c)(1) of the 1984 Act. FISA also would have the Final Rule state that the Commission shall therefore "establish procedures whereby shippers' associations can bring to the Commission's attention such patterns of behavior and the Commission will review such patterns" to determine whether enforcement actions are necessary.

FISA's suggestions have not been adopted herein. FISA's comments address broad issues concerning shippers' association-conference relationships which are not encompassed in the Proposed Rule and which are therefore outside the scope of this proceeding. The proposed rule is narrow in scope, and the parties were invited to comment only on the narrow issue presented. Moreover, there would seem to be little purpose served or guidance provided in issuing a statement acknowledging that some Shipping Act violations may be performed in subtle ways. This is not a phenomenon peculiar to conferences and the service contract negotiation process; it is likely to be equally true of any statutory violations.

We are also not adopting FISA's suggestion that the Commission use the Final Rule to announce that it "shall establish procedures" for complaints about such practices. Such procedures do exist—in the Commission's general Rules of Practice and Procedure governing the filing of complaints. Separate, specialized complaint procedures for allegations of violations of section 10(b)(13) have not been shown to be necessary. Finally, the Interpretive Rule mechanism is intended to advise of statutory interpretations, not to serve as a forum for public announcements of future Commission actions.

The American Institute for Shippers' Associations, Inc. ("AISA") claims that conferences impose many "conditions precedent" to negotiations which constitute unnecessary burdens and impediments to the formation and operation of shippers' associations. AISA argues that there is no valid purpose that could be served by conferences requesting to see a BRL, and that such actions should be reviewed simply as a matter of discrimination and refusal to negotiate. Although AISA notes and concurs with the Commission's admonishment that comments on the Proposed Rule be limited to the narrow issue presented, it nevertheless suggests that the Proposed Rule be broadened to include: (1) Negotiations on all matters—*e.g.*, independent action, time-volume rates, or loyalty contracts—not just service contracts; and (2) all forms of legal clearances—*e.g.*, Federal Trade Commission advisory opinions and export trade certificates—not just BRLs.

AISA's proposal that the rule be broadened to include other types of negotiations and other types of legal clearances is, like FISA's suggestions, outside the scope of this proceeding. The amendments urged by AISA could involve facts and considerations beyond those discussed in the Proposed Rule and commented upon in the responses received. Should the Commission determine that conference requirements for other documents are impeding service contract negotiation processes, or that similarly burdensome requirements have become prevalent in negotiations other than for service contracts, such matters could be addressed at that time as necessary. In the meantime, nothing precludes shippers' associations from filing formal complaints alleging section 10(b)(13) violations, or from informally bringing to the Commission's attention any difficulties they are having in this regard.

The remaining two comments are from conference interests. The Trans-Pacific Freight Conference of Japan and the Japan-Atlantic and Gulf Freight Conference ("the Conferences") note that they publish a rule in their tariffs that requires shippers' associations to provide them a copy of any BRL *already* obtained. The Conferences emphasize that they do not attempt to *require* shippers' associations to apply for such a letter. But BRLs are said to "contain a source of relevant basic information concerning the association, its status and its intentions to function as a proper statutory entity." They claim that if "qualified or unfavorable" letters have been issued, the Conferences have a legitimate interest in knowing about them so as to avoid "Shipping Act or antitrust exposure." They therefore object to that part of the Proposed Rule which would prohibit carriers from requiring the production of BRLs, and suggest an amendment to the rule which would permit a conference requirement that shippers' associations provide copies of such letters which they may have already voluntarily secured. The Transpacific Westbound Rate Agreement ("TWRA") also states that although it does not require shippers' associations to apply for BRLs, it requests that the Commission permit the production *of* such documents already issued.[3]

The Conferences' argument that seeing an already-obtained BRL "is of utmost relevance to conferences" in ascertaining the holder's "identity and statutory qualifications" is not wholly persuasive. It is not clear how such a letter would provide assistance to a conference in this regard.[4] Also, the point of this interpretive rule is that a shippers' association's bona fides has no impact on a carrier's or conference's antitrust exposure.

However, given that a major purpose of this rulemaking is to prevent impediments to the negotiation process, it does not appear that, as a general matter, providing a copy of a letter already in one's possession would impede or delay that proces. Nor would production of a letter generally cause any breach of confidentiality. BRLs are routinely made publicly available by the Department of Justice.

The Commission has therefore determined to delete the word "produce" from § 571.1(b) of the proposed rule, so that the Final Rule does not prohibit a conference from requesting such letters already in the possession of a shippers' association. The basic premise of the Final Rule—that application for a BRL should not be a condition precedent to service contract negotiation—has been supported by all parties commenting in this proceeding. To this end, the final rule has been limited to providing only that a conference may not require an association to "obtain or apply for" a BRL. The addition of the words "apply for" does not broaden the scope of the Proposed Rule, but rather clarifies the type of impositions on shippers' associations which the conference may not require. The deletion from the Proposed Rule of the word "produce" reflects the Commission's determination that no regulatory purpose would be served by extending the rule to prohibit a practice—*i.e.*, requesting to see letters *already* in the *possession* of a shippers' association—which is not ordinarily burdensome. Although not proscribing this practice as a matter of law, the Final Rule should not be read as approving or even encouraging it.[5] Nor does the Final Rule affirmatively require any particular action on the part of a shippers' association or a conference in the event such a request is made. Issues arising from unusual circumstances concerning a request for an existing BRL can be addressed on a case-by-case basis.

Finally, TWRA objects to language contained in the Supplementary Information to the Proposed Rule which, it says, may be read to constitute standards precluding conferences from obtaining legitimate commercial and legal status information concerning shippers' associations. TWRA explains that it sometimes requests information such as the list of an association's officers. TWRA fears that such practices may be attacked by those reading too broadly the FMC statement in the Supplementary Information that:

> Regardless of a conference's motive, a refusal to negotiate with a shippers' association pending receipt of documentation which has been established to be clearly unnecessary or immaterial constitutes a section 10(b)(13) violation.

The "unnecessary or immaterial" language is so subjective, TWRA contends, that, if treated as a standard for future *ad hoc* determinations, it would generate controversy, fail to provide adequate guidance, and preclude such relevant considerations as motive and the *de minimis* burdensomeness of the request. Therefore, it argues, the Commission should amend this language to clarify that it is not intended to serve as a standard for any prospective conference practices which the Commission has not specifically addressed.

TWRA is correct that the narrow rule proposed should not be interpreted as attempting to establish whether *prospective, previously unaddressed* requests for documents are lawful.

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[1] BRLs are documents, issued on request by DOJ's Antitrust Division, which review proposed business conduct and state DOJ's enforcement intentions with respect to that conduct. See 28 CFR 50.6.

[2] FISA contends that carriers also insist on dealing only with individual members rather than the designated association negotiator; claiming logistical problems in meeting to consider association proposals; rejecting reasonable association contracts, sometimes while instituting even lower rate decreases; or establishing alternative volume incentive plans for shippers which render association participation unnecessary.

[3] Unlike the Conferences, however, TWRA does not read the Proposed Rule as prohibiting this practice, and requests no amendment to the Proposed Rule in this regard.

[4] AISA, citing a 1985 BRL to the Beverage Importers' Freight Association, claims that DOJ has "clearly stated that it renders no opinion on whether the association is a 'bona fide' shippers' association within the meaning of the Shipping Act of 1984."

[5] In 1985, the Commission specifically rejected a petition suggesting that shippers' associations be *required* by FMC rule to produce already-obtained Business Review Letters. *See In the Matter of Petition for Rulemaking Concerning Shippers' Associations*, Order Denying Petition, 22 S.R.R. 1625 (February 11, 1985). The instant Final Rule does not alter the determination that a commercial practice which is of questionable benefit should not be made mandatory by Commission regulation. Rather, the instant Final Rule reflects, in part, the complementary principle that a commercial practice which is not as a general matter burdensome will not ordinarily be enjoined.

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However, TWRA's fears of a misinterpretation or misapplication of the rule do not appear to be well founded. The provision it objects to already refers to "documentation which *has been established* to be clearly unnecessary or immaterial * * * *" (Emphasis added.) It is unlikely, therefore, to be interpreted to refer to requests which have not been addressed by the Commission, as feared by TWRA. Moreover, the provision is not part of the Proposed Rule, but is merely meant to explain the necessity of the rule, which in turn clearly refers only to requests for BRLs, and in the context of service contract negotiations. We, therefore, do not find it necessary to amend any language in the proposed rule.

List of Subjects in 46 CFR Part 571

Antitrust, Contracts, Maritime carriers, Shippers' associations.

Therefore, pursuant to 5 U.S.C. 553, and secs. 7, 8, 10, and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1706, 1707, 1709 and 1716) the Federal Maritime Commission adds a new Part 571 to Subchapter D of Title 46 of the Code of Federal Regulations as follows:

PART 571—INTERPRETATIONS AND STATEMENTS OF POLICY

Authority: 5 U.S.C. 553, 46 U.S.C. app. 1706, 1707, 1709, and 1716.

§ 571.1 Interpretation of Shipping Act of 1984—Refusal to negotiate with shipper's associations.

(a) Section 8(c) of the Shipping Act of 1984 ("1984 Act") authorizes ocean common carriers and conferences to enter into a service contract with a shippers' association, subject to the requirements of the 1984 Act. Section 10(b)(13) of the 1984 Act prohibits carriers from refusing to negotiate with a shippers' association. Section 7(a)(2) of the 1984 Act exempts from the antitrust laws any activity within the scope of that Act, undertaken with a reasonable basis to conclude that it is pursuant to a filed and effective agreement.

(b) The Federal Maritime Commission interprets these provisions to establish that a common carrier or conference may not require a shipper's association to obtain or apply for a Business Review Letter from the Department of Justice prior to or as part of a service contract negotiation process.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 88-24907 Filed 10-27-88; 8:45 am]

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DEPARTMENT OF DEFENSE

48 CFR Parts 227 and 252

Federal Acquisition Regulation Supplement; Patents, Data, and Copyrights

AGENCY: Department of Defense (DOD).

ACTION: Interim rule and request for comments.

SUMMARY: This interim rule replaces in its entirety the interim rule that was published for public comment on April 1, 1988, 53 FR 10700. Revisions have been made based on an analysis of the public comments received in response to the April 1 interim rule.

DATES: *Effective:* The rule is effective for all solicitations and resulting contracts issued on or after October 31, 1988. Solicitations issued prior to October 31, 1988, for which the date set for receipt of offers has not passed, shall be amended to incorporate provisions and clauses of the revised interim rule. Where the date for receipt of offers has passed, and discussions will otherwise be held, the provisions and clauses of the revised interim rule will be made a part of the request for best and final offers, unless the contracting officer determines that inclusion of the revised coverage would significantly delay the award of the contract.

Comment: Comments on the interim rule should be submitted to the address shown below not later than (30 days from date of November 28, 1988).

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OASD (P&L) (MRS), Room 3D139, The Pentagon, Washington, DC 20301-3062. Please cite DAR Case 87-303 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background.

An interim rule was published on April 1, 1988, to implement section 808 of Pub. L. 100-180 which required that the rule be effective no later than April 4, 1988. A total of 44 comments were received and evaluated by the DAR Council. Several significant issues were raised in the public comments. As a result, the following major changes are being made to the regulations.

First, the definition of "required as an element of performance under a Government contract or subcontract" was considered to be overly broad and could be interpreted to give the Government unlimited rights in technical data resulting from private development. The definition has been revised to encompass only development that was both accomplished during and necessary for performance of a Government contract or subcontract.

Second, the regulation has been revised to clearly state the Government's policy to protect technical data pertaining to a privately developed commercial item. It is not the Government's policy to obtain technical data or data rights for the competitive acquisition of privately developed commercial items. Specific approvals are now required before acquiring data or rights in data greater than those afforded in 10 U.S.C. 2320(a)(2) (c) and (d) pertaining to such items.

Third, the provisions in the interim rule that the Government would have unlimited rights in any data not included in a list in the contract have been eliminated in the revised interim rule.

Fourth, the notification and listing procedures have been revised to simplify and clarify the process for establishing rights in data. The coverage has been revised to clarify that the listing process does not accelerate the validation process and is not a final determination of rights. The former provisions at 252.227-7035, Preaward Notification, and at 252.227-7038, Listing and Certification of Development of Technology with Private Funding, have been merged into paragraphs (j) and (k) of the basic data rights clause, 252.227-7013.

Fifth, the requirement that offerors and contractors submit development cost data when notifying the Government that items were developed in part at private expense has been deleted, since in many cases this would be unnecessary burden. However, the contracting officer may still request this data, where necessary. Also, the certification has been changed to a representation that need only be provided when the offeror or contractor notifies the government of its intent to limit the government's rights in technical data.

Sixth, the responsibility of prime contractors to recognize and protect their subcontractor's data rights, while satisfying their contracts with the Government, has been emphasized.

Finally, guidance to the contracting officer concerning negotiations has been clarified and other minor revisions have been made as a result of the analysis of public comments.

B. Regulatory Flexibility Act

A revised Regulatory Flexibility Analysis is necessary and is being provided to the Chief Counsel for Advocacy of the U.S. Small Business Administration. Interested parties may obtain a copy of the Analysis by submitting a written request to the individual listed above.

C. Paperwork Reduction Act

This interim rule contains information collection requirements within the meaning of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. Accordingly, an emergency information collection clearance request has been submitted to OMB pursuant to 5 CFR 1320.18. Public comments concerning that request will be invited by OMB through a subsequent **Federal Register** notice.

D. Determination to Issue as Interim Rule

A determination has been made under the authority of the Secretary of Defense to issue this coverage. Section 808 of the National Defense Authorization Act (Pub. L. 100-180) required the Department of Defense to make certain changes to the Defense FAR Supplement Regarding Technical Data. The Department of Defense published coverage in the April 1, 1988, **Federal Register**. Comments from within the acquisition community as to properly defining the rights of both the Government and contractors in regard to Technical Data have necessitated issuance of another interim rule in this complex and sensitive area.

List of Subjects in 48 CFR Parts 227 and 252

Government procurement.

Charles W. Lloyd

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, 48 CFR Parts 227 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 227 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 227—PATENTS, DATA, AND COPYRIGHTS

2. Subpart 227.4, is revised to read as follows:

Subpart 227.4—Technical Data, Other Data, Computer Software, and Copyrights

Sec.

227.470 Scope.
227.471 Definitions.
227.472 Acquisition Policy for technical data and rights in technical data.
227.472-1 General.
227.472-2 Establishing minimum government needs.
227.472-3 Rights in technical data.
227.473 General procedures.
227.473-1 Procedures for establishing rights in technical data.
227.473-2 Prohibitions.
227.473-3 Marking and identification requirements.
227.473-4 Validation of restrictive markings on technical data.
227.473-5 Remedies for noncomplying technical data.
227.473-6 Subcontractor rights.
227.474 [Reserved]
227.475 Other procedures.
227.475-1 Data requirements.
227.475-2 Deferred delivery and deferred ordering.
227.475-3 Warranties of technical data.
227.475-4 Delivery of technical data to foreign governments.
227.475-5 Overseas contracts with foreign sources.
227.475-6 [Reserved]
227.475-7 [Reserved]
227.475-8 Publication for sale.
227.476 Special works.
227.477 Contracts for acquisition of existing works.
227.478 Architect-engineer and construction contracts.
227.478-1 General.
227.478-2 Acquisition and Use of plans, specifications and drawings.
227.478-3 Contracts for Construction supplies and research & development work.
227.478-4 [Reserved]
227.478-5 Approval of restricted designs.
227.479 Small Business Innovative Research Program (SBIR Program).
227.480 Copyrights.
227.481 Acquisition of rights in computer software.
227.481-1 Policy.
227.481-2 Procedures.
227.482 [Reserved]

227.470 Scope.

This subpart sets forth the Department of Defense policies and procedures relating to the acquisition of technical data and computer software as well as rights in technical data, other data, computer software, and copyrights. This part does not apply to rights in computer software acquired under GSA schedule contracts.

227.471 Definitions.

"Commercial computer software", as used in this subpart, means computer software which is used regularly for other than Government purposes and is sold , licensed, or leased in significant quantities to the general public at established market or catalog prices.

"Computer", as used in this subpart, means a data processing device capable of accepting data, performing prescribed operations on the data, and supplying the results of these operations; for example, a device that operates on discrete data by performing arithmetic and logic processes on the data, or a device that operates on analog data by performing physical processes on the data.

"Computer data base", as used in this subpart, means a collection of data in a form capable of being processed and operated on by a computer.

"Computer program", as used in this subpart, means a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. Computer programs include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort-merge programs, and ADPE maintenance/diagnostic programs, as well as applications programs such as payroll, inventory control, and engineering analysis programs. Computer programs may be either machine-dependent or machine-independent, and may be general-purpose in nature or be designed to satisfy the requirements of a particular user.

"Computer software", as used in this subpart, means computer programs and computer data bases.

"Computer software documentation", as used in this subpart, means technical data, including computer listings and printouts, in human-readable form which (a) documents the design or details of computer software, (b) explains the capabilities of the software, or (c) provides operating instructions for using the software to obtain desired results from a computer.

"Data", as used in this subpart, means recorded information, regardless of form or method of the recording.

"Detailed design data", and used in this subpart, means technical data that describes the physical configuration and performance characteristics of an item or component in sufficient detail to ensure that in item or component produced in accordance with the technical data will be essentially

identical to the original item or component.

"Detailed manufacturing or process data", as used in this subpart, means technical data that describes the steps, sequences, and conditions of manufacturing, processing or assembly used by the manufacturer to produce an item or component or to perform a process.

"Developed", as used in this subpart, means that the item, component, or process exists and is workable. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state of the art. To be considered "developed", the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component or process be actually reduced to practice within the meaning of Title 35 of the United States Code.

"Developed Exclusively with Government Funds" as used in this subpart, means, in connection with an item, component, or process, that the cost of development was paid for in whole by the Government or that the development was required for the performance of a Government contract or subcontract.

"Developed Exclusively at Private Expense", as used in this subpart, means, in connection with an item, component, or process, that no part of the cost of development was paid for by the Government and that the development was not required for the performance of a Government contract or subcontract. Independent research and development and bid and proposal costs, as defined in FAR 31.205–18 (whether or not included in a formal independent research and development program), are considered to be at private expense. All other indirect costs of development are considered Government funded when development was required for the performance of a Government contract or subcontract. Indirect costs are considered funded at private expense when development was not required for the performance of a Government contract or subcontract.

"Form, fit, and function data", as used in this subpart, means technical data that describes the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

"Government purpose license rights" (GPLR), as used in this subpart, means, rights to use, duplicate, or disclose data (and in the SBIR Program, computer software), in whole or in part and in any manner, for Government purposes only, and to have or permit others to do so for Government purposes only. Government purposes include competitive procurement, but do not include the right to have or permit others to use technical data (and in the SBIR Program, computer software) for commercial purposes.

"Limited rights", as used in this subpart, means rights to use, duplicate, or disclose technical data, in whole or in part, by or for the Government, with the express limitation that such technical data shall not, without the written permission of the party asserting limited rights, be: released or disclosed outside the Government; used by the Government for manufacture, or in the case of computer software documentation, for preparing the same or similar computer software; or used by a party other than the Government, except that the Government may release or disclose technical data to persons outside the Government, or permit the use of technical data by such person, if—

(a) Such release, disclosure, or use—

(i) Is necessary for emergency repair and overhaul; or

(ii) Is a release or disclosure of technical data (other than detailed manufacturing or process data) to, or use of such data by, a foreign government that is in the interest of the Government and is required for evaluational or informational purposes;

(b) Such release, disclosure, or use is made subject to a prohibition that the person to whom the data is released or disclosed may not further release, disclose, or use such data; and

(c) The contractor or subcontractor asserting the restriction is notified of such release, disclosure, or use.

"Required for the Performance of a Government Contract or Subcontract", as used in this subpart, means, in connection with the development of an item, component, or process, that the development was specified in a Government contract or subcontract or that the development was accomplished during and was necessary for performance of a Government contract or subcontract.

"Restricted rights", as used in this subpart, means rights that apply only to computer software, and include, as a minimum, the right to—

(a) Use computer software with the computer for which or with which it was acquired, including use at any Government installation to which the computer may be transferred by the Government;

(b) Use computer software with a backup computer if the computer for which or with which it was acquired is inoperative;

(c) Copy computer programs for safekeeping (archives) or backup purposes; and

(d) Modify computer software, or combine it with other software, subject to the provision that those portions of the derivative software incorporating restricted rights software are subject to the same restricted rights.

In addition, restricted rights include any other specific rights not inconsistent with the minimum rights in (a) through (d) above that are listed or described in a contract or described in a license agreement made a part of a contract.

"Technical data", as used in this subpart, means recorded information, regardless of the form or method of the recording of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.

"Unlimited rights", as used in this subpart, means rights to use, duplicate, release, or disclose, technical data or computer software in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

"Unpublished", as used in this subpart, means that technical data or computer software has not been released to the public or furnished to others without restriction on further use or disclosure. Delivery of other than unlimited rights technical data or computer software to or for the Government under a contract does not, in itself, constitute release to the public.

227.472 Acquisition Policy for Technical Data and Rights in Technical Data.

227.472–1 General.

The acquisition of technical data and the rights to use that data requires a balancing of competing interests.

(a) *The Government's Interests.* The Government has extensive needs for many kinds of technical data and the rights to use such data. It needs may exceed those of private commercial customers. Millions of separate items must be acquired, operated and maintained for defense purposes often at points remote from the source supply. Technical data are required for training of personnel, overhaul and repair, cataloging, standardization, inspection and quality control, packaging and logistics operations. Technical data resulting from research and development and production contracts must be disseminated to many different users. The Government must make technical data widely available to increase competition, lower costs and provide for mobilization. Finally, the Government has an interest in encouraging contractors to develop new technologies and to improve existing technologies to satisfy Government and commercial needs. To encourage contractors and subcontractors to expend resources in developing applications of these technologies, it may be appropriate to allow them to exclusively exploit the technology.

(b) *The Contractor's Interests.* Commercial and nonprofit organizations have property rights and economic interests in technical data. Technical data are often closely held in the commercial sector because their disclosure to competitors could jeopardize the contractor's competitive advantage. Public disclosure can cause serious economic hardship to the originating company.

(c) *The Balancing of Interests.* (1) The Government's need for technical data and a contractor's economic interest in it do not necessarily coincide. However, they may coincide. This is true in the case of innovative contractors who can best be encouraged to develop items of military usefulness when their rights in such items are scrupulously protected.

(2) The Government needs to encourage delivery of data essential for military needs, even though that data would not customarily be disclosed in commercial practice. When the Government pays for research and development, it has an obligation to foster technological progress through wide dissemination of the information and, where practicable, to provide competitive opportunities for other interested parties.

(3) Acquiring, maintaining, storing, retrieving, protecting and distributing technical data are costly and burdensome for the Government. Therefore, it is necessary to avoid acquisition of unnecessary technical data.

(d) *Identification of Technical Data Rights.* The Department of Defense is required by 10 U.S.C. 2320 to recognize and protect contractor rights in technical data and to negotiate rights in technical data resulting from mixed private and Government funded development and, under 10 U.S.C. 2321, to perform a thorough review of all restrictions on its right to use or disclose technical data. For these reasons, it is necessary that all contractor and subcontractor assertions of rights be identified in the contract as early in the acquisition process as possible but no later than delivery of the technical data to the Government (see 227.473–1).

227.472–2 Establishing Minimum Government Needs.

(a) *General.* The Department of Defense shall obtain only the minimum essential technical data and data rights. In establishing the minimum Government needs, the following factors shall be considered: whether the item, component, or process will be competitively acquired; whether repair and overhaul work will be contracted out; whether the repair or replacement parts will be commercial items; or whether the item will be acquired by form, fit and function data, performance specifications, or by detailed design data. In deciding how to acquire data and data rights, the Department of Defense will use the least intrusive procedures in order to protect the contractor's economic interests (see Subpart 217.72). DoD Directive 5010.12, DoD Data Management Program, sets forth policies and procedures to be followed in acquiring technical data.

(b) *Commercial Items.* It is DoD policy to encourage the use of commercial items to the maximum practicable extent (see 210.002 (S–70)). To further this policy, it is DoD policy to limit acquisition of technical data and rights in technical data pertaining to commercial items developed at private expense; neither data nor data rights should be acquired for the competitive acquisition of such a commercial item. Therefore for such commercial items, the DoD will normally only obtain technical data and data rights as provided in 10 U.S.C. 2320(a)(2) (C) and (D) (see 227.472–3(a)(1)), such as those needed for operation, maintenance, installation, and training. Additional technical data may not be acquired unless approved by the chief of the contracting office, and greater data rights may not be acquired unless approved by the head of the contracting activity.

227.472–3 Rights in technical data.

There are three basic types of rights which apply to technical data delivered under contract to the Government. These are unlimited rights, limiting rights, and Government purpose license rights. The Government is entitled to unlimited rights in technical data as enumerated in (a)(1) below. The Government will obtain limited rights as discussed in (b)(1) below. Government purpose license rights may be established in accordance with (a)(2). (b)(2), or (c) below.

(a) *Unlimited rights.* (1) The Government is entitled to and, except as provided in paragraph (a)(2), will receive unlimited rights in—

(i) Technical data pertaining to items, components, or processes which have been or will be developed exclusively with Government funds;

(ii) Technical data resulting directly from performance of experimental, developmental, or research work specified as an element of performance under Government contract or subcontract;

(iii) Form, fit, and function data pertaining to items, components, or processes prepared or required to be delivered under any Government contract or subcontract;

(iv) Manual or instructional materials (other than detailed manufacturing or process data and commercial computer software documentation) prepared or required to be delivered under any Governmental contract or subcontract necessary for installation, operation, maintenance, or training purposes;

(v) Technical data prepared or required to be delivered under any Government contract or subcontract and constituting corrections or changes to Government-furnished data or computer software;

(vi) Technical data, which are otherwise publicly available, or have been released or disclosed by the contractor or subcontractor, without restriction on further release or disclosure;

(vii) Technical data in which the Government has obtained unlimited rights as a result of negotiations; and

(viii) Technical data previously delivered subject to limited rights or Government purposes license rights which have expired.

(2) *Exception to Unlimited Rights—Government Purpose License Rights.* (i) To encourage commercial utilization of technologies developed under Government contracts, the Government may agree to accept technical data subject to Government purpose license rights (GPLR). The Government shall retain the royalty-free right to use, duplicate, and disclose data for Government purposes only and to permit others to do so for Government

purposes only for a stated period of time. After the time priod has elapsed, the GPLR will expire and the Government will be entitled to unlimited rights.

(ii) The contracting officer should not agree to accept GPLR when—

(A) Technical data are likely to be used for competitive procurement involving large numbers of potential competitors, for items such as spares; and

(B) Technical data must be published (e.g., to disclose the results of research and development efforts).

(b) *Limited rights.* (1) Except as provided in paragraph (b)(2), the Government will obtain limited rights in unpublished technical data pertaining to items, components, or processes developed exclusively at private expense, provided the data are properly marked with the limited rights legend and, provided they are not technical data described in paragraph (a) above.

(2) *Exception to Limited Rights—Obtaining Greater Rights in Technical Data.* (i) If the Government needs data rights pertaining to items, components, or processes developed exclusively at private expense to develop alternative sources, the contracting officer may negotiate with the contractor or subcontractor to acquire additional rights and technical assistance, where appropriate. Before acquiring additional rights, the contracting officer should consider alternatives, such as—

(A) Developing alternate items, components, or processes; or

(B) Obtaining a commitment by the contractor or subcontractor to qualify additional sources.

(ii) Greater rights in technical data may be obtained by negotiation of a lump sum fee, royalty, GPLR or other arrangement. Any greater rights shall be stated as a separate contract line item. The contracting officer shall not acquire any greater rights unless—

(A) There is a need for disclosure outside the Government; and

(B) If the specific rights are required for competitive procurement, the anticipated savings from competition are likely to exceed the acquisition cost of the technical data and the rights therein.

(c) *Rights in Technical Data Pertaining to Items, Components, and Processes Developed with Mixed Funding.* As required by 10 U.S.C. 2320, the contracting officer will negotiate rights in technical data associated with an item, component, or process developed in part with Government funds and in part at private expense (mixed funding) whenever a contractor provides the notice contained in 252.227–7013(j) with respect to such data. Absent the notice, the Government shall have unlimited rights in the technical data and shall have met the obligation to negotiate. Negotiations shall begin at the earliest possible time and the results shall be incorporated into the contract, preferably at time of award, but in any event before delivery of the data.

227.473 General procedures.

227.473–1 Procedures for establishing rights in technical data.

(a) *Notification requirements.*—(1) *Background.* Offerors and contractors are required by 252.227–7013(j) to notify the Government of any asserted restrictions on the Government's right to use or disclose technical data or computer software. This notice advises the contracting officer of the contractor's or any subcontractor's intended use of items, components, processes, or computer software that—

(i) Have been developed exclusively at private expense;

(ii) Have been developed in part at private expense; or

(iii) Embody technology developed exclusively with Government funds for which the contractor or subcontractor requests the Government to grant exclusive commercial rights. Items, components, or processes do not need to be identified if no technical data is required to be delivered or if the required technical data will be delivered with unlimited rights.

(2) *Preaward Notification.* (i) The offeror is required to identify, in its proposal, items, components, processes or computer software which it intends to use and which would result in delivery of technical data to the Government with other than unlimited rights. The notification must be accompanied by the representation described in (a)(5) below.

(ii) After receipt of the offerors' proposals, the Government must determine if the offerors submitted the information required by 252.227–7013(j). Failure to submit should initially be treated as a correctable, minor irregularity (see FAR 15.607). However, if an offeror refuses to submit the information, then the offer may be deemed to be unacceptable.

(iii) The information provided by the offeror may also be used in the source selection process (e.g., life cycle cost analyses). However, in no event may an offer be found unacceptable, for purposes of contract award, solely because the offeror refuses to sell or otherwise relinquish to the Government rights in technical data to which the offeror is otherwise entitled under applicable law or regulation (see 227.473–2(b)).

(3) *Contract award.* (i) The contractor's notification will serve as the basis for the list to be included in the contract identifying all technical data with restrictions on the Government's right of use or disclosure that is required by paragraph (k) of the clause at 252.227–7013.

(ii) During the life of the contract, this list will be updated as needed to address additional assertions by the contractor or subcontractors under the notification process, to incorporate the results of Government reviews and challenges, and to specifically identify or describe all technical data to be delivered with restrictions on the Government's rights of use or disclosure. Also, during contract performance, changing conditions may require bilateral modification of the list.

(iii) The purpose of the list is to facilitate the review of contractor assertions required by 10 U.S.C. 2321 and to provide a basis for Government acquisition planning. It is not a final determination of rights and does not alter the rights of the parties under 10 U.S.C. 2320 or 2321.

(4) *Postaward notification.* Because it may be impracticable to identify all items, components, processes or computer software that would result in delivery to the Government of technical data with other than unlimited rights prior to contract award, paragraph (j) of the clause at 252.227–7013 requires the contractor to continue the notification process during performance of the contract by notifying the contracting officer prior to committing to the use of the privately developed item, component, process or computer software. This notification must be accompanied by the representation described in (a)(5) below.

(5) *Representations.* (i) If pursuant to the preaward or postaward notification procedures the offeror/contractor notifies the Government that technical data or computer software may be delivered with other than unlimited rights, then the notice must be accompanied by the representation at 252.227–7013(j).

(A) This clause authorizes the contracting officer to request additional information needed to evaluate the assertions.

(B) This representation assists the parties to negotiate rights in technical data and computer software to be delivered to the Government with other than unlimited rights, but does not alter the rights of the parties which are contained in the clause at 252.227–7037.

(ii) If delivery of technical data is expected under a resultant negotiated contract, the provision at 252.227–7028, Requirement for Technical Data Representation, shall be included in the solicitation. The provision requires the contractor to provide the following:

(A) Identification of an existing contract or subcontract under which the technical data were delivered or will be delivered, and the place of delivery; and

(B) Identification of any limitation on the Government's right to use the data, including identification of the earliest expiration date for the limitation.

(6) *Supporting information.* The contracting officer should rely on the representation provided with the contractor's notification. Detailed supporting information, either preaward or postaward, should normally not be requested unless there are reasonable grounds to question the validity of the assertion. While the contractor or subcontractor is obligated to provide sufficient information to fully justify the assertions, the contracting officer should only obtain enough information to determine if the assertion is reasonable and to evaluate its likely impact on the Government.

(b) *Establishing rights in technical data.* (1) If the offeror or the contractor is asserting limited rights in the technical data, the contracting officer shall include the item, component or process in the list in the contract described at 252.227–7013(k), unless there are grounds to question the validity of the assertion. If appropriate, the procedures at 217.7201 will be followed and greater rights obtained pursuant to 227.472–3(b)(2). Still, the assertions are subject to Government review and possible challenge in accordance with 227.473–4 and 252.227–7037.

(2) If the offeror or contractor is requesting exclusive commercial rights in technical data that would otherwise be delivered to the Government with unlimited rights, the contracting officer should agree to permit the contractor to establish exclusive commercial rights pursuant to 227.472–3(a)(2), unless the Government's intended use of the data would make protection of the contractor's rights unduly burdensome.

(i) Exclusive commercial rights may be accomplished by either deferring delivery or ordering of the technical data in accordance with 227.474–2 or by agreeing to accept the data with Government purpose license rights for a specified period of time in accordance with 227.472–3(a)(2).

(ii) The item, component, or process and the technical data will be identified in the list in the contract.

(3) If the offeror or contractor is asserting that the item, component, or process is developed with mixed funding, then the respective rights will be negotiated using the guidelines at paragraph (c) below and the results identified in the listing described at 252.227–7013(k).

(i) These negotiations will be conducted to the maximum practicable extent prior to contract award. However, if there are numerous offerors or under urgent circumstances, the contracting officer may determine that preaward negotiations are impracticable. This determination must be approved by the chief of the contracting office. The contracting officer will notify the contractor, stating that the contractor must notify the contracting officer if it elects to use the item, component or process. In that event, the contracting officer shall insert a provision in the contract providing procedures for subsequent negotiation of rights.

(ii) Data rights resulting from mixed funding need not be negotiated for small purchases or contracts awarded using sealed bidding.

(c) *Negotiation of Rights.*—(1) *Negotiation Factors.* The contracting officer shall consider, as appropriate, the following factors when negotiating rights in technical data developed with mixed funding or when the Government negotiates to relinquish rights or to acquire greater rights:

(i) The acquisition strategy for the item or system (including logistics support);

(ii) Whether the item or system (or related logistics support) will be competed;

(iii) Timing of such competition;

(iv) The economic life of the technology and whether it can be commercialized;

(v) Funding contributions of the respective parties;

(vi) Development of alternative sources for industrial mobilization or other purposes;

(vii) Burden of protecting the contractor's rights in technical data; and

(viii) Other factors, such as unique contractor qualification or expertise contributing to the configuration management or development of the item, component or process.

(2) *Negotiation situations.* The following are examples of how the negotiation factors in (c)(1) above may be applied.

(i) When the Government does not anticipate an early need to use the data for competition and the contractor has requested exclusive rights in the data, the Government may negotiate to establish limited rights which, upon expiration of a time limitation, would become unlimited rights.

(ii) Where the Government requires early use of the data for competition, the contractor has requested exclusive commercial rights in the data, and protecting the contractor's rights is not unduly burdensome, the contracting officer may negotiate GPLR which would expire after a specified period of time and become unlimited rights.

(iii) Where the Government requires early use of the data for competition and the contractor has no interest in commercializing the data, the Government may negotiate to obtain unlimited rights or to establish another suitable arrangement that would satisfy the Government's needs.

(3) *Negotiation of Time Periods.* When time limitations for either GPLR or limited rights are negotiated, they shall be expressed in the contract as a date certain and should normally be no less than one year nor more than five years after the estimated date of first production delivery to the Government of the item, component, process, or computer software to which the technical data pertains.

(i) Time limitations for GPLR and limited rights greater than five years may be negotiated to provide the contractor a reasonable opportunity to recover its private investment, if:

(A) The technical data will not be needed for competition; and

(B) Longer periods are approved by the chief of the contracting office.

(ii) Time limitations for limited rights and GPLR may be extended; if:

(A) Other interested parties have not requested access to the technical data;

(B) The technical data need not be publicly disclosed to meet a specified Government need; and

(C) The contractor provides adequate consideration for remarking any technical data with revised legends.

(4) *Non-Standard license rights.* Unlimited rights, Government purpose license rights, and limited rights and combinations of these rights (i.e., with time limitations) are considered standard license rights. All other license rights are considered non-standard license rights and shall not be negotiated in technical data resulting from mixed funding unless approved by the chief of the contracting office. Direct licensing arrangements are not considered non-standard license rights unless they involve delivery of technical data with non-standard rights.

(d) *Standard non-disclosure agreements.* (i) Technical data subject to other than unlimited rights shall not be

released outside the Government unless the release is subject to a prohibition against further release, use, or disclosure. If the data are subject to GPLR, the recipient must sign the Standard Non-Disclosure Agreement shown below. This Agreement must be executed by an official authorized to bind the contractor.

(ii) Nothing in this section impairs the rights of the developer of the data and third parties from independently entering into agreements concerning commercial uses of the data.

(iii) The contracting officer shall require each contractor receiving data subject to GPLR to execute the Standard Non-Disclosure Agreement before receipt of the data. If a contractor has previously signed an agreement, the earlier agreement may be provided.

Standard Non-disclosure Agreement

The undersigned (name), as the authorized representative of (company name) (hereinafter, "the licensee"), requests technical data subject to Government Purpose License Rights (hereinafter, "GPLR data") to compete for, perform, or to prepare to compete for, or to perform Government contracts. In consideration thereof:

(1) Licensee agrees that the GPLR data identified in this agreement shall be used only for Government purposes.

(2) Licensee agrees to provide written notice and a copy of the non-disclosure agreement to the contractor whose name appears in the GPLR legend (hereinafter referred to as the "contractor") whenever it receives GPLR data. The notification shall identify the GPLR data, the date and place of its receipt and the source from which the data was received.

(3) Licensee shall not, without prior written permission of the contractor, provide or disclose any GPLR data to any other company, person or entity, except its subcontractors. The licensee agrees not to disclose GPLR data to any subcontractor or potential subcontractor unless the subcontractor or potential subcontractor has executed the Standard Non-Disclosure Agreement.

(4) Licensee agrees not to use GPLR data for commercial purposes.

(5) Licensee agrees to adopt operating procedures and physical security measures designed to protect GPLR data from disclosure or release to unauthorized third parties.

(6) Licensee agrees to indemnify the Government, its agents and employees from all liability arising out of, or in any way related to, the misuse or unauthorized disclosure by the licensee, its employees or agents of any GPLR data it received. Licensee will hold the Government, its agents and employees, harmless against any claim or liability, including attorney fees, costs and expenses, arising out of the misuse or unauthorized disclosure of any GPLR supplied to the licensee hereunder.

(7) Execution of this non-disclosure agreement by the licensee or any of its authorized subcontractors is for the benefit of the contractor identified in the legend on any GPLR data received. Any such contractor is a third party beneficiary of this agreement who may have the right of direct action against the licensee to enforce the agreement or to seek damages which may result from any material breach of the agreement.

(8) This agreement shall be effective only for so long as the data remains unpublished (or until the GPLR legend expires).

Signed this ___ day of _____, 19___.

Licensee

(e) *Contract clause.* The contracting officer shall insert the basic data clause at 252.227–7013, Rights in Technical Data and Computer Software, in solicitations and contracts when technical data is specified to be delivered, or computer software may be originated, developed, or delivered, *provided* that such clause shall not be used in solicitations and contracts—

(1) When no data other than existing works are to be acquired in accordance with 227.477;

(2) When no data other than special works are to be acquired in accordance with 227.476;

(3) When the work will be performed by foreign sources in accordance with 227.475–4; and

(4) For architect-engineer services or construction in accordance with 227.476.

227.473–2 Prohibitions.

(a) In accordance with 10 U.S.C. 2320(a)(1), a contractor or subcontractor may not be prohibited from receiving from a third party a fee or royalty for the use of technical data pertaining to an item, component, or process developed exclusively at private expense by the contractor or subcontractor, except as otherwise specifically provided by law.

(b)(1) In accordance with 10 U.S.C. 2320(a)(2)(F), a contractor or a subcontractor (or a prospective contractor or subcontractor) may not be required, as a condition of being responsive to a solicitation or as a condition for the award of a contract or subcontract—

(i) To sell or otherwise relinquish to the United States any rights in technical data beyond those to which the Government is entitled under 10 U.S.C. 2320(a)(2) (C) and (D); or

(ii) To refrain from offering to use, or from using, an item, component, or process to which the contractor is entitled to restrict the Government's rights in technical data under 10 U.S.C. 2320(a)(2)(B).

(2) It is permissible to evaluate such factors as the impact on life cycle costs of limitations on the Government's ability to use or disclose the technical data. Further, nothing prohibits agreements which provide the Government with greater rights than it would otherwise be entitled to, for a fair and reasonable price (see 227.472–3(b)(2)).

227.473–3 Marking and identification requirements.

(a) *Clauses.* The contracting officer shall include the clauses at 252.227–7018 and 252.227–7029 in all contracts which also contain the clause at 252.227–7013. These clauses contain marking requirements for technical data and computer software and related procedures.

(b) *Contractor marking procedures.* The contractor's procedures required under the clause at 252.227–7018 shall be reviewed by the contract administration office and the contracting officer may withhold payments under the clause at 252.227–7030 for failure to establish, maintain and follow adequate marking procedures.

(c) *Unmarked technical data.* Technical data received with no restrictive markings are deemed to be furnished with unlimited rights. However, within six months after delivery of such data, the contractor may request permission to place restrictive markings on the data at its own expense. The contracting officer may approve the request if the contractor—

(1) Demonstrates that the omission was inadvertent;

(2) Establishes that the use of the markings is authorized; and

(3) Relieves the Government of liability with respect to the technical data.

(d) *Unjustified markings.* If the contracting officer believes that restrictive markings are not justified, the contracting officer will follow the procedures in 227.473–4 and the clause at 252.227–7037.

(e) *Non-Conforming Markings.* If technical data which the contractor is authorized by the contract to furnish with restrictive markings is received with non-conforming markings, the technical data shall be used according

to the proper restriction, and the contractor shall be required to correct the markings to conform with the contract. If the contractor fails to correct the markings within 60 days after notice, Government personnel may correct the markings at the contractor's expense, notify the contractor in writing, and thereafter may use the technical data accordingly. Copyright notices, which conform to the requirement in 17 U.S.C. 401 and 402 are not considered restrictive markings.

227.473–4 Validation of restrictive markings on technical data.

(a) *General.* The clause at 252.227–7037 sets forth rights and procedures pertaining to the validation of restrictive markings asserted by contractors and subcontractors on deliverable technical data and shall be included in all solicitations and contracts which require the delivery of technical data. The Government should review the validity of any asserted restriction on technical data deliverable under a contract. This review should be accomplished before acceptance of the technical data, but no later than three years after final payment or three years after delivery of the technical data to the Government, whichever is later. The contracting officer may challenge restrictive markings if there are reasonable grounds to question their validity but only if the three-year period has not expired. However, the Government may challenge a restrictive marking at any time if the technical data (1) is publicly available; (2) has been furnished to the United States without restriction; or (3) has been otherwise made available without restriction. Only the contracting officer's final decision resolving a formal challenge constitutes "validation" as addressed in 10 U.S.C. 2321. A decision by the Government not to challenge a restrictive marking or asserted restriction does not constitute "validation".

(b) *Prechallenge request for information.*— (1) Prior to making a written determination to challenge, the contracting officer must request the contractor or subcontractor to furnish information explaining the basis for any asserted restriction. If this information is incomplete, additional justification should be requested. The contracting officer should provide a reasonable time for submission of the required data.

(2) The contracting officer should request advice from the cognizant Government activity having interest in the validity of the markings.

(3) If the contracting officer, after reviewing all available information, determines that reasonable grounds exist to question the current validity of a restrictive marking, and that continued adherence to the marking would make subsequent competition impracticable or if the contractor or subcontractor fails to respond to the prechallenge request within a reasonable period, the contracting officer shall challenge the restriction following the procedures in the clause at 252.227–7037.

227.473–5 Remedies for noncomplying technical data.

(a) When data does not comply with the contract, the contracting officer should consider all remedies. These remedies include reduction of progress payments, withholding final payment, contract termination, and a reduction in contract price or fee.

(b) The clause at 252.227–7030, Technical Data—Withholding of Payment, is designed to assure timely delivery of technical data and shall be included in solicitations and contracts requiring delivery of technical data. Unless the contract specifies a lesser withholding limit, the clause permits withholding up to 10 percent of the contract price. The contracting officer shall determine the amount to be withheld after considering the estimated value of the technical data to the Government. Payment shall not be withheld when non-delivery results from causes beyond the control and without the fault or negligence of the contractor.

(c) As required by 10 U.S.C. 2320(b)(7), the clause at 252.227–7036, Certification of Technical Data Conformity, shall be included in solicitations and contracts which include the clause at 252.227–7031, Data Requirements.

227.473–6 Subcontractor rights.

(a) Prime contractors must satisfy their contractual obligations to the Government while ensuring that the rights afforded subcontractors under 10 U.S.C. 2320 and 2321 are recognized and protected. In satisfying these obligations, prime contractors must accomplish the balancing of interests described at 227.472–1 in dealing with their subcontractors by ensuring that—

(1) The clauses 252.227–7013, Rights in Technical Data and Computer Software, and 252.227–7018, Restrictive Markings in Technical Data, are included in all subcontracts that call for delivery of technical data to the Government;

(2) A subcontractor is not hampered from furnishing limited rights data directly to the Government rather than through the prime contractor or higher-tier subcontractor;

(3) The economic leverage of the prime or higher-tier subcontractor is not used to acquire rights in technical data from subcontractors; and

(4) Subcontractor rights are recognized and protected in the notification and listing process (see 227.473–1).

(b) The prime contractor may not use its obligation to recognize and protect subcontractor rights in technical data as an excuse for failing to satisfy its contractual obligations to the Government.

227.474 [Reserved]

227.475 Other procedures.

227.475–1 Data requirements.

(a) The clause at 252.227–7031, Data Requirements, shall be included in all solicitations and contracts, except that the clause need not be included in—

(1) Any contract or order less than $25,000;

(2) Any contract awarded to a contractor outside the United States, except those awarded under Subpart 225.71, Canadian Purchases;

(3) Any research or exploratory development contract when reports are the only deliverable item(s);

(4) Any service contract, when the contracting officer determines that the use of the DD Form 1423 is impractical;

(5) Any contract under which construction and architectural drawings and specifications are the only deliverable items;

(6) Any contract for commercial items when the only deliverable data is such an item, or would be packaged or furnished with such items in accordance with customary trade practices; or

(7) Any contract for items containing potentially dangerous material requiring controls to assure adequate safety, when the only deliverable data is the Materials Safety Data Sheet (MSDS) required by the clause at FAR 52.223–3.

(b) The clause at 252.227–7031, Data Requirements, states that the contractor is required to deliver only data listed on the DD Form 1423 and data deliverable under clauses prescribed in the FAR and DFARS.

227.475–2 Deferred delivery and deferred ordering.

(a) *General.* Technical data and computer software are expensive to prepare, maintain and update. By delaying the delivery of technical data or computer software until needed, storage requirements are reduced and the probability of using obsolete technical data and computer software is decreased. Purchase of technical data and computer software which may

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become obsolete because of hardware changes is also minimized.

(b) *Deferred delivery.* When the contract requires delivery of technical data or computer software, but does not contain a time for delivery, the clause at 252.227-7026 "Deferred Delivery of Technical Data and Computer Software", shall be included in the contract. The clause permits the contracting officer to require the delivery of data identified as "deferred delivery" data at any time until two years after acceptance by the Government of all item (other than data or computer software) under the contract or contract termination, whichever is later. The obligation of subcontractors to deliver such technical data expires two years after the date the prime contractor accepts the last item from the subcontractor for use in the performance of the contract. The contract must specify which technical data "or" computer software will be subject to deferred delivery. The contracting officer should provide sufficient notice to permit timely delivery or the technical data or computer software.

(c) *Deferred ordering.* When a potential need exists for technical data or computer software, but a firm requirement is not established, the clause at 252.227-7027, "Deferred Ordering of Technical Data or Computer Software", should be included in the contract. Under this clause, the contracting officer may order any technical data or computer software that has been generated as part of the performance of the contract. The contracting officer may order technical data or computer software under this clause at anytime until three years after acceptance of all items (other than technical data or computer software) under the contract or contract termination, whichever is later. The obligation of subcontractors to deliver such technical data or computer software expires three years after the data the contractor accepts the last item under the subcontract. When the data and computer software are ordered, the delivery dates shall be negotiated and the contractor compensated for converting the technical data or computer software into the prescribed form. Compensation to the contractor shall not include the cost of technical data or computer software which the Government has already paid for.

227.475-2 Warranties of technical data.

The factors contained in Subpart 246.7, Warranties, shall be considered in deciding whether to include warranties of technical data. The basic technical data warranty clause is set forth in the clause at 252.246-7001. There are two alternates to the basic clause. The basic clause and appropriate alternate should be selected in accordance with section 246.701.

227.475-4 Delivery of technical data to foreign governments.

When the Government proposes to make technical data subject to limited rights available for use by a foreign government, it will, to the maximum extent practicable, give reasonable notice to the contractor or subcontractor asserting rights in the technical data. Any release shall be subject to a prohibition against further release, use or disclosure.

227.475-5 Overseas contracts with foreign sources.

The clause at 252.227-7032, Rights in Technical Data and Computer Software (Foreign), should be used in solicitations and contracts with foreign sources when the Government will acquire unlimited rights in all deliverable technical data, and computer software. However, the clause shall not be used in contracts for special works (see section 227.476), contracts for existing works (see section 227.477), or contracts for Canadian purchases (see Subpart 225.71, Canadian Purchases). However, the clause at 252.227-7013, "Rights in Technical Data and Computer Software", shall be used whenever the rights to be obtained are those which would be obtained if contracting with United States firms. Either clause may be modified to meet the peculiar requirements of the foreign acquisition: *Provided,* it is consistent with sections 227.472 and 227.481.

227.475-6 [Reserved]

227.475-7 [Reserved]

227.475-8 Publication for sale.

Alternate I of the clause at 252.227-7013, Rights in Technical Data and Computer Software, may be used in research contracts when the contracting officer determines, in consultation with counsel, that public dissemination by the contractor:

(a) Would be in the interest of the Government;

(b) Would be facilitated by the Government relinquishing its right to publish the work for sale, or to have others publish the work for sale on behalf of the Government.

227.476 Special works.

(a) The clause at 252.227-7020, Rights in Data—Special Works, shall be used in all contracts where the Government needs ownership and control of the work to be generated under the contract. Examples include:

(1) Production of audiovisual works including motion pictures;

(2) Television recordings with or without accompanying sound;

(3) Preparation of motion picture scripts, musical compositions, sound tracks, translations, adaptations, and the like;

(4) Histories of the respective Departments for services or units thereof;

(5) Works pertaining to recruiting, morale, training, or career guidance;

(6) Works pertaining to the instruction or guidance of Government officers and employees in the discharge of their official duties; and

(7) Production of technical reports and studies.

(b) Contracts for audiovisual works may include limitations in connection with music licenses, talent releases, and the like which are consistent with the purpose for which the works are acquired.

227.477 Contracts for acquisition of existing works.

(a) *Acquisition of existing works.* (1) The clause at 252.227-7021, Rights in Data—Existing Works, shall be used in contracts exclusively for the acquisition of existing motion pictures, television recordings, or other audiovisual works. The contract may contain limitations consistent with the purposes for which the material covered by the contract is being acquired. Examples of these limitations are—(i) means of exhibition or transmission; (ii) time; (iii) type of audience; and (iv) geographical location. The indemnity language in paragraph (c) of the clause may be modified to be consistent.

(2) In contracts which call for the modification of existing motion pictures, television records, or other audiovisual works through editing, translation, or addition of subject matter, the clause at 252.227-7020, Rights in Data—Special Works, appropriately modified, shall be used.

(b) *Off-the-Shelf Acquisition of Books and Similar Items.* Unless the right to reproduce technical data is an objective of the contract, no contract clause prescribed in this part need be included in contracts solely to acquire data, other than motion pictures, which exist before the start of the acquisition (such as the off-the-shelf acquisitions of existing products).

227.478 Architect-engineer and construction contracts.

227.478-1 General.

This section sets forth policies and procedures, pertaining to data, copyrights, and restricted designs unique to the acquisition of construction and architect-engineer services.

227.478-2 Acquisition and use of plans, specifications, and drawings.

(a) *Architectural Designs and Data Clauses for Architect-Engineer or Construction Contracts*—(1) *Plans and Specifications and As-Built Drawings.* (i) Except as provided in (a)(1)(ii) below, use the clause at 252.227-7022, Government Rights (Unlimited), in solicitations and contracts for architect-engineer services and for construction involving architect-engineer services.

(ii) When the purpose of a contract for architect-engineer services or for construction involving architect-engineer services is to obtain a unique architectural design of a building, a monument, or construction of similar nature, which for artistic, aesthetic or other special reasons the Government does not want duplicated, the Government may acquire exclusive control of the data pertaining to design by including the clause at 252.227-7023, Drawings and Other Data to Become Property of Government, in solicitations and contracts.

(2) *Shop Drawings for Construction.* The Government shall obtain unlimited rights in shop drawings for construction. In solicitations and contracts calling for delivery of shop drawings, include the clause at 252.227-7033, Rights in Shop Drawings.

227.478-3 Contracts for construction supplies and research and development work.

The provisions and clauses required by this section shall not be used when the acquisition is limited to either (a) construction supplies or materials, (b) experimental, developmental, or research work, or test and evaluation studies of structures, equipment, processes, or materials for use in construction; or (c) both.

227.478-4 [Reserved]

227.478-6 Approval of restricted designs.

The clause at 252.227-7024, Notice and Approval of Restricted Designs, may be included in architect-engineer contracts to permit the Government to make informed decisions concerning noncompetitive aspects of the design.

227.479 Small Business Innovative Research Program (SBIR Program).

(a) Public Law 97-219, "Small Business Innovation Development Act of 1982", requires the Department of Defense to establish a Small Business Innovation Research Program (SBIR Program). Small Business Administration (SBA) Policy Directive No. 65-01 provides guidance on the program.

(b)(1) Data and computer software generated under an SBIR program contract shall not be disclosed outside the Government for two years after contract completion, except—

(i) When necessary for program evaluation, or

(ii) When the contractor consents in writing to additional disclosure.

(2) Upon expiration of the period of non-disclosure, the Government shall have a nonexclusive, worldwide, royalty-free license in technical data and computer software for Government use.

(c) Copyrights in technical data and computer software generated under an SBIR program contract shall, when agreed to in writing by the contracting officer, be owned by the contractor. The Government should obtain a royalty-free license under any copyright. Each publication of copyrighted material should contain an appropriate acknowledgment and disclaimer statement.

(d) The clause at 252.227-7013, Rights in Technical Data and Computer Software, with its Alternate II, shall be included in all contracts awarded under the SBIR Program which require delivery of technical data or computer software.

227.480 Copyrights.

(a) In general, the copyright law gives a copyright owner exclusive rights to—

(1) Reproduce the copyrighted work;

(2) Prepare derivative works;

(3) Distribute copies or phonorecords to the public;

(4) Perform the copyrighted work publicly; and

(5) Display the copyrighted work publicly.

(b) Any material that is protected under the copyright law is not in the public domain, even though it may have been published. Acts inconsistent with the rights in (a) above may not be exercised without a license from the copyright owner.

(c) Department of Defense policy allows the contractor to copyright any work of authorship first prepared, produced, originated, developed, or generated under a contract, unless the work is designated a "special work". If the work is a special work, the Government retains ownership and control of the work. The contractor may not assert any rights or claim to copyright in special works. The contractor is required to grant to the Government and authorize the Government to grant to others a nonexclusive, paid-up, worldwide license for Government purposes in any work of authorship (other than a "special work") first prepared, produced, originated, developed, or generated under the contract.

(d) The clause at 252.227-7013, Rights in Technical Data and Computer Software, requires the contractor to grant the Government and authorizes the Government to grant to others a nonexclusive, paid-up, worldwide license for Government purposes, under any copyright owned by the contractor in any technical data or computer software prepared for or acquired by the Government under the contract. The clause at 252.227-7020, Rights in Data—Special Works, requires that any work first produced in the performance of the contract become the sole property of the government, and the contractor agrees not to assert any rights or establish any claim to copyright in such work. This clause requires that the contractor grant to the Government and authorize the Government to grant to others a nonexclusive, paid-up, worldwide license for Government purposes in any portion of a work which is not first produced in the performance of the contract but in which copyright is owned by the contractor and which is incorporated in the work furnished under the contract.

(e) The clauses at 252.227-7013 and 252.227-7020 provide that, unless written approval of the contracting officer is obtained, the contractor agrees not to include in any work prepared, produced, originated, developed, generated or acquired under the contract; any work of authorship in which copyright is not owned by the contractor without acquiring for the Government and those acting by or on behalf of the Government a nonexclusive, paid-up, worldwide license for Government purposes in the copyrighted work.

§ 227.481 Acquisition of rights in computer software.

§ 227.481-1 Policy.

(a) The Government shall have unlimited rights in:

(1) Computer software resulting directly from or generated as part of the performance of experimental, developmental, or research work specified as an element of performance

in a Government contract or subcontract:

(2) Computer software required to be originated or developed under a Government contract, or generated as a necessary part of performing a contract;

(3) Computer data bases, prepared under a Government contract, consisting of (i) information supplied by the Government; (ii) information in which the Government has unlimited rights; or (iii) information which is in the public domain;

(4) Computer software prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government-furnished software; or

(5) Computer software which is in the public domain or has been or is normally furnished by the contractor or subcontractor without restriction.

(b) When the Government has unlimited rights in computer software in the possession of a contractor, no payment will be made for rights of use of such software in performance of Government contracts or for the later delivery to the Government of such computer software, *provided* however, that the contractor shall be entitled to compensation for converting the software into the prescribed form for reproduction and delivery to the Government.

(c) It is Department of Defense policy to acquire only such rights to use, duplicate, and disclose computer software developed at private expense as are necessary to meet Government needs. Such rights should be designed to allow the Government flexibility while, at the same time, adequately preserving the rights of the contractor. Computer software developed at private expense may be purchased or leased. Restrictions may be negotiated with respect to the right of the Government to use, duplicate, or disclose computer programs or computer data bases developed at private expense. As a minimum, however, the Government shall have the rights provided in the definition of restricted rights in Section 227.471.

(d) Patented or copyrighted computer software will not be subject to any agreement prohibiting the Government from infringing a patent or copyright. Title 28, United States Code, Section 1498 provides that the Government is liable only for reasonable compensation for use of a patented invention or for infringement of copyright. However, see Section 227.7011.

(e) When computer software is developed at private expense and acquired with restricted rights, the associated computer software documentation will be acquired with limited rights to the extent provided in the definition of limited rights in Section 227.471, and will not be used for preparing the same or similar computer software.

(f) Commercial computer software and related documentation developed at private expense may be leased, or a license to use may be purchased, by the Government subject to the restrictions in paragraph (c)(1)(ii) of the clause at 252.227–7013, Rights in Technical Data and Computer Software.

227.481–2 Procedures.

(a) *Deviations.* All requests for deviations from this 227.481 shall be submitted to the DAR Council in accordance with the procedures in FAR 1.401.

(b) *General.* (1) Except as provided under 252.227–7031, Data Requirements, any computer program or computer data base to be acquired under a contract shall be listed on the Contract Data Requirements List (DD Form 1423). Also, if a contract requires the conversion of data to machine-readable form, the editing or revision of existing programs, or the preparation of computer software documentation, the products of this work, if required to be delivered, shall be included on the DD Form 1423.

(2) The clause at 252.227–7013, Rights in Technical Data and Computer Software, shall be included in every contract under which computer software may be originated, developed, or delivered. That clause establishes the circumstances under which the Government secures unlimited rights in both technical data and computer software, limited rights in technical data, and restricted rights in computer software. In negotiated contracts where the clause at 252.227–7013, Rights in Technical Data and Computer Software, is required, the provision at 252.227–7019, Identification of Restricted Rights Computer Software, shall be included in the solicitation.

(3) Contracts under which computer software developed at private expense is acquired or leased shall explicitly set forth the rights necessary to meet Government needs and restrictions applicable to the Government as to use, duplication and disclosure of the software. Thus, for example, such software may be needed, or the owner of such software will only sell or lease it, for specific or limited purposes such as for internal agency use, or for use in a specific activity, installation or service location. In any event, the contract must clearly define any restrictions on the right of the Government to use such computer software, but such restrictions will be acceptable only if they will permit the Government to fulfill the need for which such software is being acquired. The recital of restrictions may be complete within itself or it may reference the contractor's license or other agreement setting forth restrictions. If referencing is employed, a copy of the license or agreement must be attached to the contract. The minimum rights are provided in the Rights in Technical Data and Computer Software clause at 252.227–7013, and need not be included in the recital.

(4) When computer software developed at private expense is modified or enhanced as a necessary part of performing a contract, only that portion of the resulting product in which the original product is recognizable will be deemed to be computer software development at private expense to which restricted rights may attach.

(5) The scope of the restrictions on or, conversely, the scope of the use which the Government is permitted to make of such software shall be taken into account in determining the reasonableness of the contract price for the computer software.

(c) *Computer software subject to restricted rights.* (1) Because of the widely-varying restrictions which are likely to be encountered in the purchase or lease of computer software developed at private expense, a standard recital setting forth specific restrictions and rights suitable for all cases is not feasible. If the standard set of restrictions and rights set forth in paragraph 227.481–1(f) for commercial computer software is not appropriate, personnel are urged to consult counsel in any case in which the proposed contractor requests the Government to accept other restrictions on the use of such software.

(2) To apprise user personnel of the restrictions on use, duplication or disclosure agreed to by the Government with respect to such software sold or leased to the Government, the contractor is required to place the following legend on such software:

Restricted Rights Legend

Use, duplication or disclosure is subject to restrictions stated in Contract No. _____ with (Name of Contractor).

For commercial computer software and documentation, the contract number may be omitted and replaced by "paragraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at 252.227–7013", and the contractor's address added. The Government shall include the same restrictive markings on all its reproductions of the computer software unless the Government cancels such markings pursuant to the procedures in 227.473–4(c).

(3) A statement setting forth the restrictions imposed on the Government to use, duplicate, and disclose computer software subject to restricted rights is required to be prominently displayed in human-readable form in the computer software documentation. The reference to the Rights in Technical Data and Computer Software clause in the Restricted Rights Legend on commercial computer software and documentation satisfies this requirement.

(4) Except as provided in paragraph (b) above, computer programs, computer data bases, and computer software documentation delivered to the Government pursuant to a contract requirement must be identified with the number of the prime contract and the name of the contractor.

(5) All markings, (notices, legends, identifications, etc.) concerning restrictions on the use, duplication, or disclosure of computer software required or authorized by the terms of the contract under which delivery is made are required to be in human-readable form that can be readily and visually perceived and, in addition may be in machine-readable form as appropriate and feasible under the circumstances. Such markings shall be affixed by the contractor to the computer software prior to delivery of the software to the Government.

(6) The human-readable markings may be applied to card decks, magnetic tape reels, or disc packs. This may be, in the case of a card deck, on a notice card even though the cards of the deck do not contain printed material; in the case of a card deck packaged in a container intended as a permanent receptacle for the cards, on the container; in the case of a tape, on the tape reel or on the surface of the leader and trailer of the tape; and in the case of a disc pack, on the hub of the disc.

(d) *Unmarked or improperly marked computer software.* (1) No restrictive markings shall be placed upon computer software unless restrictions are set forth in the contract prior to delivery of the software. Copyright notices as specified in Title 17, United States Code, Sections 401 and 402 are not considered "restrictive markings". The Government may require the contractor to identify the contractual provision setting forth such restrictions before accepting computer software with restrictive markings. If computer software is received with restrictive markings, and there is a question whether it is authorized by the contract to be furnished with restricted rights, it shall be used subject to the asserted restrictions pending written inquiry to the contractor. If no response to an inquiry has been received within 60 days, or if the response fails to identify the restrictions set forth in the contract, the cognizant Government personnel shall cancel or ignore the markings, notify the contractor accordingly in writing, and thereafter use the software with unlimited rights.

(2) Computer software received without a restrictive legend shall be deemed to have been furnished with unlimited rights. However, the contractor may request permission to place restrictive markings on such software at its own expense, and the Government may so permit, if the contractor establishes that the markings are authorized by the contract and demonstrates that the omission was inadvertent. Failure of the contractor to mark such computer software prior to delivery to the Government shall relieve the Government of liability for any use, duplication or disclosure of such computer software.

(3) If computer software authorized by the contract to be furnished with restrictions is received with restrictive markings not in the form prescribed by the contract, the software should be used in accordance with the restrictions provided for in the contract and the contractor shall be required by written notice to correct the markings to conform with those specified in the contract. If the contractor fails to correct the markings within 60 days after notice, Government personnel may correct the markings, and so notify the contractor.

227.482 [Reserved]

3. Sections 252.227–7013, 252.227–7018, 252.227–7019, 252.227–7021, and 252.227–7028 through 252.227–7031 are revised; section 252.227–7035 is removed and the section marked "Reserved"; section 252.227–7036 is revised; and section 252.227–7038 is removed and the section marked "Reserved". Sections 252.227–7014 through 252.227–7017, 252.227–7020, 252.227–7022 through 252.227–7027, 252.227–7032 through 252.227–7034 and 252.227–7037 remain unchanged and are republished for the convenience of the reader, to read as follows:

252.227–7013 Rights in technical data and computer software.

As prescribed at 227.473–1(e) and 227.481–2(b)(2), insert the following clause:

Rights in Technical Data and Computer Software (OCT 1988)

(a) *Definitions.*

(1) "Commercial computer software", as used in this clause, means computer software which is used regularly for other than Government purposes and is sold, licensed, or leased in significant quantities to the general public at established market or catalog prices.

(2) "Computer" as used in this clause, means a data processing device capable of accepting data, performing prescribed operations on the data, and supplying the results of these operations; for example, a device that operates on discrete data by performing arithmetic and logic processes on the data, or a device that operates on analog data by performing physical processes on the data.

(3) "Computer data base", as used in this clause, means a collection of data in a form capable of being processed and operated on by a computer.

(4) "Computer program", as used in this clause, means a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. Computer programs include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort-merge programs, and ADPE maintenance/diagnostic programs, as well as applications programs such as payroll, inventory control, and engineering analysis programs. Computer programs may be either machine-dependent or machine-independent, and may be general-purpose in nature or be designed to satisfy the requirements of a particular user.

(5) "Computer software", as used in this clause, means computer programs and computer data bases.

(6) "Computer software documentation", as used in this clause, means technical data, including computer listings and printouts, in human-readable form which (i) documents the design or details of computer software, (ii) explains the capabilities of the software, or (iii) provides operating instructions for using the software to obtain desired results from a computer.

(7) "Data", as used in this clause, means recorded information, regardless of form or method of the recording.

(8) "Detailed design data", as used in this clause, means technical data that describes the physical configuration and performance characteristics of an item or component in sufficient detail to ensure that an item or component produced in accordance with the technical data will be essentially identical to the original item or component.

(9) "Detailed manufacturing or process data", as used in this clause, means technical data that describes the steps, sequences, and conditions of manufacturing, processing or assembly used by the manufacturer to produce an item or component or to perform a process.

(10) "Developed", as used in this clause, means that the item, component, or process exists and is workable. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state of the art. To be considered "developed", the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component or process be actually reduced to practice within the meaning of Title 35 of the United States Code.

(11) "Developed Exclusively with Government Funds", as used in this clause, means, in connection with an item, component, or process, that the cost of development was paid for in whole by the Government or that the development was required for the performance of a Government contract or subcontract.

(12) "Developed Exclusively at Private Expense", as used in this clause, means, in connection with an item, component, or process, that no part of the cost of development was paid for by the Government and that the development was not required for the performance of a Government

contract or subcontract. Independent research and development and bid and proposal costs, as defined in FAR 31.205-18 (whether or not included in a formal independent research and development program), are considered to be at private expense. All other indirect costs of development are considered Government funded when development was required for the performance of a Government contract or subcontract. They are considered funded at private expense when development was not required for the performance of a Government contract or subcontract.

(13) "Form, fit, and function data", as used in this clause, means technical data that describes the required overall physical, functional, and performance characteristics, (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

(14) "Government purpose license rights" (GPLR), as used in this clause, means rights to use, duplicate, or disclose data (and in the SBIR Program, computer software), in whole or in part and in any manner, for Government purposes only, and to have or permit others to do so for Government purposes only. Government purposes include competitive procurement, but do not include the right to have or permit others to use technical data (and in the SBIR Program, computer software) for commercial purposes.

(15) "Limited rights", as used in this clause, means rights to use, duplicate, or disclose technical data, in whole or in part, by or for the Government, with the express limitation that such technical data shall not, without the written permission of the party asserting limited rights, be: released or disclosed outside the Government; used by the Government for manufacture, or in the case of computer software documentation, for preparing the same or similar computer software; or used by a party other than the Government, except that the Government may release or disclose technical data to persons outside the Government, or permit the use of technical data by such persons, if—

(i) Such release, disclosure, or use—

(A) is necessary for emergency repair and overhaul; or

(B) is a release or disclosure of technical data (other than detailed manufacturing or process data) to, or use of such data by, a foreign government that is in the interest of the Government and is required for evaluational or informational purposes;

(ii) Such release, disclosure, or use is made subject to a prohibition that the person to whom the data is released or disclosed may not further release, disclose, or use such data; and

(iii) the contractor or subcontractor asserting the restriction is notified of such release, disclosure, or use.

(16) "Required for the Performance of a Government Contract or Subcontract", as used in this clause, means, in connection with the development of an item, component, or process, that the development was specified in a Government contract or subcontract or that the development was accomplished during and was necessary for performance of a Government contract or subcontract.

(17) "Restricted rights", as used in this clause, means rights that apply only to computer software, and include, as a minimum, the right to—

(i) Use computer software with the computer for which or with which it was acquired, including use at any Government installation to which the computer may be transferred by the Government;

(ii) Use computer software with a backup computer if the computer for which or with which it was acquired is inoperative;

(iii) Copy computer programs for safekeeping (archives) or backup purposes; and

(iv) Modify computer software, or combine it with other software, subject to the provision that those portions of the derivative software incorporating restricted rights software are subject to the same restricted rights.

In addition, restricted rights include any other specific rights not inconsistent with the minimum rights in (a)(17) (i)–(iv) above that are listed or described in the contract or described in a license agreement made a part of the contract.

(18) "Technical data", as used in this clause, means recorded information, regardless of the form or method of the recording of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.

(19) "Unlimited rights", as used in this clause, means rights to use, duplicate, release, or disclose, technical data or computer software in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(20) "Unpublished", as used in this clause, means that technical data or computer software has not been released to the public or furnished to others without restriction on further use or disclosure. Delivery of other than unlimited rights technical data or computer software to or for the Government under the contract does not, in itself, constitute release to the public.

(b) *Rights in Technical Data*—(1) *Unlimited Rights.* Unless otherwise agreed in writing, the Government is entitled to and will receive unlimited rights in:

(i) Technical data pertaining to an item, component, or process which has been or will be developed exclusively with Government funds;

(ii) Technical data resulting directly from performance of experimental, developmental, or research work which was specified as an element of performance under this or any other Government contract or subcontract;

(iii) Form, fit, and function data pertaining to items, components, or processes prepared or required to be delivered under this or any other Government contract or subcontract;

(iv) Manuals or instructional materials (other than detailed manufacturing or process data and commercial computer software documentation) prepared or required to be delivered under this or any other contract or any subcontract hereunder necessary for installation, operation, maintenance, or training purposes;

(v) Technical data prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government-furnished data or computer software;

(vi) Technical data which is otherwise publicly available, or has been released or disclosed by the Contractor or subcontractor, without restriction on further release or disclosure;

(vii) Technical data in which the Government has obtained unlimited rights as a result of negotiations; and

(viii) Technical data previously delivered subject to either GPLR or limited rights and the restrictive condition has expired.

(2) *Government Purpose License Rights.* The Government shall have Government purpose license rights (GPLR) in technical data which the parties have agreed will be furnished with GPLR. The Government may disclose or provide GPLR data to a person or corporation that has executed the Standard Non-Disclosure Agreement. This agreement establishes the third party beneficiary status of the Contractor identified in the GPLR legend. If the recipient of GPLR data has executed the Standard Non-Disclosure Agreement, the Contractor shall have no claim or right of action against the Government for damages related to misuse or unauthorized disclosure of the data. GPLR shall be effective, during the time period specified in the contract, only when the portion or portions of each piece of data subject to such rights are identified (for example, by circling, underscoring, or a note), and are marked with the legend below containing:

(i) The number of the prime contract under which the technical data is to be delivered;

(ii) The name of the Contractor and/or any subcontractor asserting Government purpose license rights; and

(iii) The date when the data will be subject to unlimited rights.

Government Purpose License Rights Legend

Contract No. _____

Contractor: _____

_____

_____

Government purpose license rights shall be effective until (insert date certain); thereafter, the Government purpose license rights will expire and the Government shall have unlimited rights in the technical data.

The restrictions governing use of technical data marked with this legend are set forth in the definition of "Government Purpose License Rights" in paragraph (a)(14) of the clause at 252.227-7013 of the contract listed above. This legend, together with the indications of the portions of this data which are subject to Government purpose license rights, shall be included on any reproduction hereof which includes any part of the portions subject to such limitations.

(3) *Limited Rights.* Unless otherwise agreed, the Government shall have limited rights in:

(i) Technical data pertaining to items, components, processes or computer software developed exclusively at private expense, except for data in the categories in (a)(1) above;

(ii) Technical data that the parties have agreed will be subject to limited rights for a specified period of time; and

(iii) Technical data listed or described in a license agreement made a part of the contract and subject to conditions other than those described in the definitions of limited rights. Notwithstanding any contrary provision in the license agreement, the Government shall have the rights included in the definition of "limited rights" in paragraph (a)(15) above.

Limited rights will remain in effect so long as the technical data remains unpublished and provided that only the portions of each piece of data subject to limited rights are identified (for example, by circling, underscoring, or a note), and the piece of data is marked with the legend below containing:

(A) The number of the prime contract under which the technical data is to be delivered; and

(B) The name of the Contractor and/or any subcontractor asserting limited rights.

(C) The date the data will be subject to unlimited rights (if applicable).

Limited Rights Legend

Contract No. _____.

Contractor: _____, _____

_____

_____

Limited rights shall be effective until (insert date certain), thereafter the limited rights will expire and the Government shall have unlimited rights in the technical data.

The restrictions governing the use and disclosure of technical data marked with this legend are set forth in the definition of "limited rights" in paragraph (a)(15) of the clause at 252.227-7013 of the contract listed above.

For technical data which the parties have agreed will be subject to limited rights for a specified time period, insert the agreed upon date. If the limited rights are not subject to an expiration date, so indicate.

For technical data which the parties have agreed will be subject to rights other than those described in the definitions of limited rights or GPLR in paragraph (a)(15) and (a)(14) above, insert the following statement:

"In addition to the minimum rights described in the definition of limited rights in DFARS clause at 252.227-7013, the Government shall have the rights described in the license or agreement made a part of Contract No. _____."

This legend, together with the indications of the portions of this data which are subject to limited rights, shall be included on any reproduction hereof which includes any part of the portions subject to such limitations. This technical data will remain subject to limited rights only so long as it remains "unpublished" as defined in paragraph (a) above.

(c) *Rights in Computer Software*—(1) *Restricted Rights.* (i) The Government shall have restricted rights in computer software, listed or described in a license agreement made a part of this contract, which the parties have agreed will be furnished with restricted rights. Notwithstanding any contrary provision in any such license agreement, the Government shall have the rights included in the definition of "restricted rights" in paragraph (a)(17) above. Unless the computer software is marked by the Contractor with the following legend:

Restricted Rights Legend

Use, duplication or disclosure is subject to restrictions stated in Contract No. _____ with (Name of Contractor) and the related computer software documentation includes a prominent statement of the restrictions applicable to the computer software, the Government shall have unlimited rights in the software. The Contractor may not place any legend on computer software restricting the Government's rights in such software unless the restrictions are set forth in a license agreement made a part of this contract prior to the delivery date of the software. Failure of the Contractor to apply a restricted rights legend to the computer software shall relieve the Government of liability with respect to the unmarked software.

(ii) Notwithstanding subparagraph (c)(1)(i) above, commercial computer software and related documentation developed at private expense and not in the public domain may be marked with the following Legend:

Restricted Rights Legend

Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013.

_____

(Name of Contractor and Address)

When acquired by the Government, commercial computer software and related documentation so legended shall be subject to the following:

(A) Title to and ownership of the software and documentation shall remain with the Contractor.

(B) User of the software and documentation shall be limited to the facility for which it is acquired.

(C) The Government shall not provide or otherwise make available the software or documentation, or any portion thereof, in any form, to any third party without the prior written approval of the Contractor. Third parties do not include prime contractors, subcontractors and agents of the Government who have the Government's permission to use the licensed software and documentation at the facility, and who have agreed to use the licensed software and documentation only in accordance with these restrictions. This provision does not limit the right of the Government to use software, documentation, or information therein, which the Government has or may obtain without restrictions.

(D) The Government shall have the right to use the computer software and documentation with the computer for which it is acquired at any other facility to which that computer may be transferred; to use the computer software and documentation with a backup computer when the primary computer is inoperative; to copy computer programs for safekeeping (archives) or backup purposes; and to modify the software and documentation or combine it with other software. *Provided*, that the unmodified portions shall remain subject to these restrictions.

(2) *Unlimited Rights.* The Government shall have unlimited rights in:

(i) Computer software resulting directly from performance of experimental, developmental or research work which was specified as an element of performance in this or any other Government contract or subcontract;

(ii) Computer software required to be originated or developed under a Government contract, or generated as a necessary part of performing a contract;

(iii) Computer data bases, prepared under a Government contract, consisting of information supplied by the Government, information in which the Government has unlimited rights, or information which is in the public domain;

(iv) Computer software prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government-furnished computer software; and

(v) Computer software which is otherwise publicly available, or has been, or is normally released, or disclosed by the Contractor or subcontractor without restriction on further release or disclosure.

(d) *Technical Data and Computer Software Previously Provided Without Restriction.* Contractor shall assert no restrictions on the Government's rights to use or disclose any data or computer software which the Contractor has previously delivered to the Government without restriction. The limited or restricted rights provided for by this clause shall not impair the right of the Government to use similar or identical data or computer software acquired from other sources.

(e) *Copyrights.* (1) In addition to the rights granted under the provisions of paragraphs (b) and (c) above, the Contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world, of the scope set forth below, under any copyright owned by the Contractor, in any work of authorship prepared for or acquired by the Government under this contract, to reproduce the work in copies or phonorecords, to distribute copies or phonorecords to the public, to perform or display the work publicly, and to prepare derivative works thereof, and to have others do so for Government purposes. With respect to technical data and computer software in which the Government has unlimited rights, the license shall be of the same scope as the rights set forth in the definition of "unlimited rights" in (a)(19) above. With respect to technical data in which the Government has limited rights, the scope of the license is limited to the rights set forth in the definition of "limited rights". With respect to computer software which the parties have agreed will be furnished with restricted rights, the scope of the license is limited to such rights.

(2) Unless written approval of the Contracting Officer is obtained, the Contractor shall not include (in technical data or computer software prepared for or acquired by the Government under this contract) any works of authorship in which copyright is not owned by the Contractor without acquiring for the Government any rights necessary to perfect a copyright license of the scope specified herein.

(3) The Contractor shall be considered the "person for whom the work was prepared" for the purpose of determining authorship under 17 U.S.C. 201(b).

(4) Technical data delivered under this contract bearing a copyright notice shall also include the following statement:

This material may be reproduced by or for the U.S. Government pursuant to the copyright license under the clause at DFARS 252.227-7021 [date].

(f) *Removal of Unjustified and Nonconforming Markings*—(1) *Unjustified Technical Data Markings.* Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may, at the Contractor's expense, correct, cancel, or ignore any marking not justified by the terms of this contract on any technical data furnished hereunder in accordance with the clause of this contract entitled "Validation of Restrictive Markings on Technical Data", DFARS 252.227-7037.

(2) *Nonconforming Technical Data Markings.* Correction of nonconforming markings is not subject to DFARS 252.227-7037. The Government may, at the Contractor's expense, correct any nonconforming markings if the Contracting Officer notifies the Contractor and the Contractor fails to correct the nonconforming markings within sixty (60) days.

(3) *Unjustified and Nonconforming Computer Software Markings.* Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may correct, cancel, or ignore any marking not authorized by the terms of this contract on any computer software furnished hereunder, if:

(i) The Contractor fails to respond within sixty (60) days to a written inquiry by the Government concerning the propriety of the markings; or

(ii) The Contractor's response fails to substantiate, within sixty (60) days after written notice, the propriety of restricted rights markings.

In either case, the Government shall give written notice to the Contractor of the action taken.

(g) *Relation to Patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(h) *Limitation on Charges for Data and Computer Software.* The Contractor recognizes that the Government is not obligated to pay, or to allow to be paid, any charges for data or computer software which the Government has a right to use and disclose to others without restriction and Contractor agrees to refund any such payments. This provision applies to contracts that involve payments by subcontractors and those entered into through the Military Assistance Program, in addition to U.S. Government prime contracts. It does not apply to reasonable reproduction, handling, mailing, and similar administrative costs.

(i) *Acquisition of Technical Data and Computer Software from Subcontractors.* (1) The Contractor must satisfy its contractual obligation to the Government while ensuring that the rights afforded its subcontractors under 10 U.S.C. 2320 and 2321 are recognized and protected. In satisfying its obligation, the Contractor must accomplish the balancing of interests described at DFARS 252.227-7013 in dealing with its subcontractors.

(2) Whenever any technical data or computer software is to be obtained from a subcontractor under this contract, the Contractor shall use this same clause in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the Government's or the Contractor's rights in the subcontractor data or computer software.

(3) Technical data required to be delivered by a subcontractor shall normally be delivered to the next higher-tier contractor. However, when there is a requirement in the prime contract for data which may be submitted with other than unlimited rights by a subcontractor, then said subcontractor may fulfill its requirement by submitting such data directly to the Government, rather than through the prime Contractor.

(4) The Contractor and higher-tier subcontractors will not use their power to award subcontracts as economic leverage to obtain rights in technical data or computer software from their subcontractors.

(5) The Contractor shall ensure that subcontractor rights are recognized and protected in the notification and listing process at paragraphs (j) and (k) below.

(6) In no event shall the Contractor use its obligation to recognize and protect subcontractor rights in technical data as an excuse for failing to satisfy its contractual obligation to the Government.

(j) *Notice of Limitations on Government Rights.* (1) The Offeror/Contractor shall notify the Contracting Officer of its or its potential subcontractor's use in the performance of the contract or subcontract of items, components, processes and computer software that—

(i) Have been developed exclusively at private expense;

(ii) Have been developed in part at private expense; or

(iii) Embody technology that has been developed exclusively with Government funds in which the Offeror or Contractor or subcontractor desires exclusive rights to commercialize, with Government approval.

(2) Such notification is not required with respect to items, components, processes or computer software if no technical data is required to be delivered or if the required technical data is delivered with unlimited rights.

(3) Such notification shall be accompanied by the following representation:

Representation of Private Development

The Offeror/Contractor/Subcontractor represents that, to the best of its knowledge and belief, the information contained in this notification is current, accurate, and complete.

Date _____
Name and Title _____
Official _____

This representation shall be dated and the signing official (identified by name and title) shall be duly authorized to bind the Contractor.

(4) Upon request by the Contracting Officer, the Offeror or Contractor shall provide sufficient information to enable the Contracting Officer to identify and evaluate the Contractor's or subcontractor's assertions made in (j)(1) above.

(k) *Identification of restrictions on Government rights.* Technical data and computer software shall not be tendered to the Government with other than unlimited rights, unless the technical data or computer software are identified in a list made part of this contract. This list is intended to facilitate review and acceptance of the technical data and computer software by the Government and does not change, waive, or otherwise modify the rights or obligations of the parties under the clause at DFARS 252.227-7037. As a minimum, this list must—

(1) Identify the items, components, processes, or computer software to which the restrictions on the Government apply;

(2) Identify or describe the technical data or computer software subject to other than unlimited rights; and

(3) Identify or describe, as appropriate, the category or categories of Government rights, the agreed-to time limitations, or any special restrictions on the use of disclosure of the technical data or computer software.

(l) *Postaward Negotiation—Disputes.* In the case of an item, component, or process that is developed in part with Government funds and in part at private expense, if, after exhausting all reasonable efforts, the parties fail to agree on the apportionment of the rights in technical data furnished under this contract by the date established in the contract for agreement, or within any extension established by the Contracting Officer, then the Contracting Officer may establish the respective data rights of the parties, subject to Contractor appeal as provided in the Disputes clause. In any event, the Contractor shall proceed with completion of the contract.

(End of clause)

Alternate I (OCT 1988)

As prescribed at 227.475-8, add the following paragraph to the basic clause:

(m) *Publication for sale.* If, prior to publication for sale by the Government and within the period designated in the contract or task order, but in no event later than twenty-four (24) months after delivery of such data, the Contractor publishes for sale any data (1) designated in the contract as being subject to this paragraph and (2) delivered under this contract, and promptly notifies the Contracting Officer of these publications, the Government shall not publish such data for sale or authorize others to do so. This limitation on the Government's right to publish for sale any such data so published by the Contractor shall continue as long as the data is protected as a published work under the copyright law of the United States and is reasonably available to the public for purchase. Any such publication shall include a notice identifying this contract and recognizing the license rights of the Government under this clause. As to all such data not so published by the Contractor, this paragraph shall be of no force or effect.

Alternate II (OCT 1988)

As prescribed at 227.475(d), substitute the following paragraphs (b) and (c) for the existing paragraphs (b) and (c) in the basic clause:

(b) *Rights in Technical Data—(1) Unlimited Rights.* The Government is entitled to and will receive unlimited rights in:

(i) Form, fit, and function data pertaining to items, components, or processes prepared or required to be delivered under this or any other Government contract or subcontract;

(ii) Manuals or instructional materials (other than detailed manufacturing or process data or commercial computer software documentation) prepared or required to be delivered under this or any other contract or any subcontract hereunder necessary for installation, operation, maintenance, or training purposes;

(iii) Technical data prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government-furnished data; and

(iv) Technical data which is otherwise publicly available, or has been released or disclosed by the contractor or subcontractor, without restriction on further release or disclosure.

(2) *Limited Rights.* The Government shall have limited rights in:

(i) Unpublished technical data pertaining to items, components or processes developed exclusively at private expense, and unpublished computer software documentation related to computer software that is acquired with restricted rights, other than such data included in (b)(1) above. Limited rights shall be effective provided that only the portion or portions of each piece of data to which limited rights are to be asserted are identified (for example, by circling, underscoring, or a note), and that the piece of data is marked with the legend below containing:

(A) The number of the prime contract under which the technical data is to be delivered; and

(B) The name of the Contractor and/or any subcontractor asserting limited rights.

Limited Rights Legend

Contract No. _____
Contractor: _____.

_____ _____ _____ _____
_____ _____ _____ _____

The restrictions governing the use of technical data marked with this legend are set forth in the definition of "Limited Rights" in DFARS clause at 252.227-7013. This legend, together with the indications of the portions of this data, shall be included on any reproduction hereof which includes any part of the portions subject to limited rights. The limited rights legend shall be honored only as long as the data continues to meet the definition of limited rights.

(3) *Government Purpose License Rights.* For a period of two (2) years (or such other period as may be authorized by the Contracting Officer for good cause shown) after the delivery and acceptance of the last deliverable item under the contract, the Government shall have limited rights and, after the expiration of the two-year period, shall have Government purpose license rights in any technical data prepared or required to be delivered under this contract or subcontract hereunder, which is not otherwise subject to unlimited or limited rights pursuant to subparagraph (b)(1) or (b)(2) above. The Government shall not be liable for unauthorized use or disclosure of the data by third parties. Government Purpose License Rights shall be effective provided that only the portion or portions of each piece of data to which such rights are to be asserted are identified (for example, by circling, underscoring, or a note), and that the piece of data is marked with the legend below:

(A) the number of the prime contract under which the technical data is to be delivered; and

(B) the name of the contractor and/or any subcontractor asserting Government Purpose License Rights.

Government Purpose License Rights (SBIR Program)

Contract No. _____.
Contractor: _____.

For a period of two (2) years after delivery and acceptance of the last deliverable item under the above contract, this technical data shall be subject to the restrictions contained in the definition of "Limited Rights" in DFARS clause at 252.227-7013. After the two-year period, the data shall be subject to the restrictions contained in the definition of "Government Purpose License Rights" in DFARS clause at 252.227-7013. The Government assumes no liability for unauthorized use or disclosure by others. This legend, together with the indications of the portions of the data which are subject to such limitations, shall be included on any reproduction hereof which contains any portions subject to such limitations and shall be honored only as long as the data continues to meet the definition of Government purpose license rights.

(c) *Rights in Computer Software*—(1) *Restricted Rights.* (i) The Government shall have restricted rights in computer software, listed or described in a license agreement made a part of this contract, which the parties have agreed will be furnished with restricted rights. Notwithstanding any contrary provision in any such license agreement, the Government shall have the rights included in the definition of "restricted rights" in paragraph (a)(17) above. Unless the computer software is marked by the Contractor with the following legend:

Restricted Rights Legend

Use, duplication or disclosure is subject to restrictions stated in Contract No. _____ with (Name of Contractor).

and the related computer software documentation includes a prominent statement of the restrictions applicable to the computer software, the Government shall have unlimited rights in the software. The Contractor may not place any legend on computer software indicating restrictions on the Government's rights in such software unless the restrictions are set forth in a license agreement made a part of this contract prior to the delivery date of the software. Failure of the Contractor to apply a restricted rights legend to such computer software shall relieve the Government of liability with respect to this unmarked software.

(ii) Notwithstanding subparagraph (c)(1)(i) above, commercial computer software and related documentation developed at private expense and not in the public domain may be marked with the following legend:

Restricted Rights Legend

Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013.

_____
(Name of Contractor and Address)

When acquired by the Government, commercial computer software and related documentation so legended shall be subject to the following:

(A) Title to and ownership of the software and documentation shall remain with the Contractor.

(B) Use of the software and documentation shall be limited to the facility for which it is acquired.

(C) The Government shall not provide or otherwise make available the software or documentation, or any portion thereof, in any form, to any third party without the prior written approval of the Contractor. Third parties do not include prime contractors, subcontractors and agents of the Government who have the Government's permission to use the licensed software and documentation at the facility, and who have agreed to use the licensed software and documentation only in accordance with these restrictions. This provision does not limit the right of the Government to use software, documentation, or information therein, which the Government has or may obtain without restriction.

(D) The Government shall have the right to use the computer software and documentation with the computer for which it is acquired at any other facility to which that computer may be transferred; to use the computer software and documentation with a backup computer when the primary computer is inoperative; to copy computer programs for safekeeping (archives) or backup purposes; and to modify the software and documentation or combine it with other software, provided that the unmodified portions shall remain subject to these restrictions.

(2) *Government Purpose License Rights.* For a period of two (2) years (or such other period as may be authorized by the

Contracting Officer for good cause shown) after the delivery and acceptance of the last deliverable item under the contract, the Government shall have restricted rights and, after expiration of the two-year period, shall have Government purpose license rights in:

(i) Computer software resulting directly from performance of experimental, developmental or research work which was specified as an element of performance in this or any Government contract or subcontract;

(ii) Computer software required to be originated or developed under a Government contract, or generated as a necessary part of performing a contract; and

(iii) Any other computer software required to be perpared or delivered under this contract or subcontract hereunder, which is not otherwise subject to restricted or unlimited rights pursuant to subparagraph (c)(1) or (c)(3) herein. Government purpose license rights shall be effective provided that each unit of software is marked with an abbreviated license rights legend reciting that the use, duplication, or disclosure of the software is subject to the same restrictions included in the same contract (identified by number) with the same contractor (identified by name). The Government assumes no liability for unauthorized use, duplication, or disclosure by others.

(3) *Unlimited Rights.* The Government shall have unlimited rights in:

(i) Computer software required to be prepared or delivered under this or any subcontract hereunder that was previously delivered or previously required to be delivered to the Government under any contract or subcontract with unlimited rights;

(ii) Computer software that is publicly available or has been or is normally released or disclosed by the Contractor without restriction on further use or disclosure; and

(iii) Computer data bases, consisting of information supplied by the Government, information in which the Government has unlimited rights, or information which is in the public domain.

252.227-7014 [Reserved]

252.227-7015 [Reserved]

252.227-7016 [Reserved]

252.227-7017 [Reserved]

252.227-7018 Restrictive Markings on Technical Data.

As prescribed at 227.473–3(a), insert the following clause:

Restrictive Markings on Technical Data (OCT 1988)

(a) The Contractor or any subcontractor that delivers technical data with other than unlimited rights shall have, maintain, and follow throughout the performance of this contract, written procedures sufficient to assure that restrictive markings are used only when authorized by the terms of the "Rights in Technical data and Computer Software" clause of this contract. The Contractor or subcontractor shall also maintain a quality assurance system to assure compliance with this clause.

(b) As part of the procedures, the Contractor shall as a minimum:

(1) Maintain records to show how the procedures of paragraph (a) above were applied in determining that the markings are authorized;

(2) Maintain records sufficient to justify the validity of any restrictive markings on technical data delivered under this contract;

(3) Provide for review of subcontractor procedures for controlling the restrictive markings on technical data. Where appropriate, the Contractor may request Government assistance in evaluating subcontractor procedures; and

(4) Establish and maintain operating procedures and physical security designed to protect any technical data subject to other than unlimited rights from inadvertent or unauthorized marking, disclosure or release to third parties.

(c) The Contractor shall, within sixty (60) days after award of this contract, identify in writing to the Contracting Officer by name or title the person(s) having the final responsibility within the Contractor's organization for determining whether restrictive markings are to be placed on technical data to be delivered under this contract. The Government is authorized to contact such person(s) to resolve questions involving restrictive markings.

(d) The Contracting Officer may evaluate, verify and obtain a copy of the Contractor's procedures. The failure of the Contracting Officer to evaluate or verify such procedures shall not relieve the Contractor of the responsibility for complying with paragraphs (a) and (b) above.

(e) If the Contracting Officer gives written notification of any failure to maintain or follow the established procedures, or of any deficiency in the procedures, corrective action shall be accomplished within the time specified by the Contracting Officer.

(f) This clause shall be included in each subcontract under which technical data is required to be delivered. When so inserted, "Contractor" shall be changed to "Subcontractor".

(End of clause)

252.227-7019 Identification of restricted rights computer software.

As prescribed at 227.461–2(b)(2), insert the following provision:

Identification of Restricted Rights Computer Software (APR 1988)

The Offeror is required to identify in his proposal, to the extent feasible, any such computer software which was developed at private expense and upon the use of which it desires to negotiate restrictions, and to state the nature of the proposed restrictions. Any restrictions on the Government's use or disclosure of computer software developed at private expense and to be delivered under the contract must be set forth in an agreement made a part of the contract, either negotiated prior to award or included in a modification of the contract before such delivery. If no such computer software is identified, all deliverable computer software will be subject to unlimited rights.

(End of provision)

252.227-7020 Rights in data—special works.

As prescribed at 227.476(a), insert the following clause:

Rights in Data—Special Works (MAR 1979)

(a) The term "works" as used herein includes literary, musical, and dramatic works; pantomimes and choreographic works; pictorial, graphic, and sculptural works; motion pictures and other audiovisual works; sound recordings; and works of similar nature. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

(b) All works first produced in the performance of this contract shall be the sole property of the Government, which shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work under 17 U.S.C. 201(b), and the Government shall own all of the rights comprised in the copyright. The Contractor agrees not to assert or authorize others to assert any rights, or establish any claims to copyright, in such works. The Contractor, unless directed to the contrary by the Contracting Officer, shall place on any such works delivered under this contract the following notice:

• (*Year date of delivery*) United States Government as represented by the Secretary of (*department*). All rights reserved.

In the case of a phonorecord, the c will be replaced by P.

(c) Except as otherwise provided in this contract, the Contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world (1) to reproduce in copies or phonorecords, to prepare derivative works, to distribute copies or phonorecords, and to perform or display publicly any portion of a work which is not first produced in the performance of this contract but in which copyright is owned by the Contractor and which is incorporated in the work furnished under this contract, and (2) to authorize others to do so for Government purposes.

(d) Unless written approval of the Contracting Officer is obtained, the Contractor shall not include in any works prepared for or delivered to the Government under this contract any works of authorship in which copyright is not owned by the Contractor or the Government without acquiring for the Government any rights necessary to perfect a license of the scope set forth in paragraph (c) above.

(e) The Contractor shall indemnify and save and hold harmless the Government, and its officers, agents and employees acting for the Government, against any liability, including costs and expenses, (1) for violation of proprietary rights, copyrights, or rights of privacy or publicity, arising out of the creation, delivery, or use of any works furnished under this contract, or (2) based upon any libelous or other unlawful matters contained in such works.

(f) Nothing contained in this clause shall imply a license to the Government under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(g) Paragraphs (c) and (d) above are not applicable to material furnished to the Contractor by the Government and incorporated in the work furnished under the contract; *Provided*, such incorporated material is identified by the Contractor at the time of delivery of such work.

(End of clause)

252.227-7021 Rights in data—Existing works.

As prescribed at 227.477(a), insert the following clause:

Rights in Data—Existing Works (MAR 1979)

(a) The term "works" as used herein includes literary, musical, and dramatic works; pantomimes and choreographic works; pictorial, graphic and sculptural works; motion pictures and other audiovisual works; sound recordings; and works of a similar nature. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

(b) Except as otherwise provided in this contract, the Contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world (1) to distribute, perform publicly, and display publicly the works called for under this contract and (2) to authorize others to do so for Government purposes.

(c) The Contractor shall indemnify and save and hold harmless the Government, and its officers, agents, and employees acting for the Government, against any liability, including costs and expenses, (1) for violation of proprietary rights, copyrights, or rights of privacy or publicity arising out of the creation, delivery, or use, of any works furnished under this contract, or (2) based upon any libelous or other unlawful matter contained in same works.

[End of clause)

252.227-7022 Government rights [Unlimited].

As prescribed at 227.478–2(a)(1)(i), insert the following clause:

Government Rights (Unlimited) (MAR 1979)

The Government shall have unlimited rights, in all drawings, designs, specification, notes and other works developed in the performance of this contract, including the right to use same on any other Government design or construction without additional compensation to the Contractor. The Contractor hereby grants to the Government a paid-up license throughout the world to all such works to which he may assert or establish any claim under design patent or copyright laws. The Contractor for a period of three (3) years after completion of the project agrees to furnish the original or copies of all such works on the request of the Contracting Officer.

(End of clause)

252.227-7023 Drawings and other data to become property of Government.

As prescribed at 227.478–2(a)(1)(ii), insert the following clause:

Drawings and Other Data To Become Property of Government (MAR 1979)

All designs, drawings, specifications, notes and other works developed in the performance of this contract shall become the sole property of the Government and may be used on any other design or construction without additional compensation to the Contractor. The Government shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work under 17 U.S.C. 201(b). With respect thereto, the Contractor agrees not to assert or authorize others to assert any rights nor establish any claim under the design patent or copyright laws. The Contractor for a period of three (3) years after completion of the project agrees to furnish all retained works on the request of the Contracting Officer. Unless otherwise provided in this contract, the Contractor shall have the right to retain copies of all works beyond such period.

(End of clause)

252.227-7024 Notice and approval of restricted designs.

As prescribed at 227.478–5, insert the following clause:

Notice and Approval of Restricted Designs (APR 1984)

In the performance of this contract, the Contractor shall, to the extent practicable, make maximum use of structures, machines, products, materials, construction methods, and equipment that are readily available through Government or competitive commercial channels, or through standard or proven production techniques, methods, and processes. Unless approved by the Contracting Officer, the Contractor shall not produce a design or specification that requires in this construction work the use of structures, products, materials, construction equipment, or processes that are known by the Contractor to be available only from a sole source. The Contractor shall promptly report any such design or specification to the Contracting Officer and give the reason why it is considered necessary to so restrict the design or specification.

(End of clause)

252.227-7025 [Reserved]

252.227-7026 Deferred delivery of technical data or computer software.

As prescribed at 227.475–2(b), insert the following clause:

Deferred Delivery of Technical Data or Computer Software (APR 1988)

The Government shall have the right to require, at any time during the performance of this contract, within two (2) years after either acceptance of all items (other than data or computer software) to be delivered under this contract or termination of this contract, whichever is later, delivery of any technical data or computer software item identified in this contract as "deferred delivery" data or computer software. The obligation to furnish such technical data required to be prepared by a subcontractor and pertaining to an item obtained from him shall expire two (2) years after the date Contractor accepts the last delivery of that item from that subcontractor for use in performing this contract.

(End of clause)

252.227-7027 Deferred ordering of technical data or computer software.

As prescribed at 227.475–2(c), insert the following clause:

Deferred Ordering of Technical Data or Computer Software (APR 1988)

In addition to technical data or computer software specified elsewhere in this contract to be delivered hereunder, the Government may, at any time during the performance of this contract or within a period of three (3) years after acceptance of all items (other than technical data or computer software) to be delivered under this contract or the termination of the contract, order any technical data or computer software generated in the performance of this contract or any subcontract hereunder. When the technical data or computer software is ordered, the Contractor shall be compensated for converting the data or computer software into the prescribed form, for reproduction and delivery. The obligation to deliver the technical data of a subcontractor and pertaining to an item obtained from him shall expire three (3) years after the date the Contractor accepts the last delivery of that item from that subcontractor under this contract. The Government's rights to use said data or computer software shall be pursuant to the "Rights in Technical Data and Computer Software" clause of this contract.

(End of clause)

252.227-7028 Requirement for technical data representation.

As prescribed at 227.473–1(a)(5)(ii), insert the following provision:

Requirement for Technical Data Representation (OCT 1988)

The Offeror shall submit with its offer a representation as to whether the Offeror has delivered or is obligated to deliver to the Government under any contract or subcontract the same or substantially the same technical data included in its offer; if so, the Offeror shall identify:

(a) One existing contract of subcontract under which the technical data were delivered or will be delivered, and the place of delivery; and

(b) Any limitation on the Government's right to use or disclose the data, including, when applicable, identification of the earliest date the limitation expires.

(End of provision)

252.227-7029 Identification of technical data.

As prescribed at 227.473-3(a), insert the following clause:

Identification of Technical Data (APR 1988)

Technical data delivered under this contract shall be marked with the number of this contract, name of Contractor, and name of any subcontractor who generated the data.

(End of clause)

252.227-7030 Technical data—withholding of payment.

As prescribed at 227.473-5(b), insert the following clause:

Technical Data—Withholding of Payment (OCT 1988)

(a) If technical data specified to be delivered under this contract, is not delivered within the time specified by this contract or is deficient upon delivery (including having restrictive markings not identified in the list described in the clause at 252.227-7013(k) of this contract), the Contracting Officer may until such data is accepted by the Government, withhold payment to the Contractor of ten percent (10%) of the total contract price or amount unless a lesser withholding is specified in the contract. Payments shall not be withheld nor any other action taken pursuant to this paragraph when the Contractor's failure to make timely delivery or to deliver such data without deficiencies arises out of causes beyond the control and without the fault or negligence of the Contractor.

(b) The withholding of any amount or subsequent payment to the Contractor shall not be construed as a waiver of any rights accruing to the Government under this contract.

(End of clause)

252.227-7031 Data requirements.

As prescribed at 227.475-1(a), insert the following clause:

Data Requirements (Oct 1988)

The Contractor is required to deliver only the data items listed on the DD Form 1423 (Contract Data Requirements List) and data items identified in and deliverable under any contract clause of FAR Subpart 52.2 and DoD FAR Supplement Subpart 252.2 made a part of the contract.

(End of clause)

252.227-7032 Rights in technical data and computer software (foreign).

As prescribed at 227.475-5, insert the following clause:

Rights in Technical Data and Computer Software (Foreign) (Jun 1987)

The United States Government may duplicate, use, and disclose in any manner for any purposes whatsoever, including delivery to other governments for the furtherance of mutual defense of the United States Government and other governments, all technical data including reports, drawings and blueprints, and all computer software, specified to be delivered by the contractor to the United States Government under this contract.

(End of clause)

252.227-7033 Rights in shop drawings.

As prescribed at 227.478-2(a)(2), insert the following clause:

Rights in Shop Drawings (Apr 1988)

(a) Shop drawings for construction means drawings, submitted to the Government by the Construction Contractor, subcontractor or any lower-tier subcontractor pursuant to a construction contract, showing in detail (i) the proposed fabrication and assembly of structural elements and (ii) the installation (i.e., form, fit, and attachment details) of materials or equipment. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(b) This clause, including this paragraph (b), shall be included in all subcontracts hereunder at any tier.

(End of clause)

252.227-7034 Patents—subcontracts.

As prescribed at 227.304-4, insert the following clause:

Patents—Subcontracts (Apr 1984)

The Contractor will include the clause at FAR 52.227-12, Patent Rights—Retention by the Contractor (Long Form), suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by other than a small business firm or nonprofit organization.

(End of clause)

252.227-7035 [Reserved]

252.227-7036 Certification of technical data conformity.

As prescribed at 227.473-5(c), insert the following clause:

Certification of Technical Data Conformity (May 1987)

(a) All technical data delivered under this contract shall be accompanied by the following written certification:

The Contractor, _____, hereby certifies that, to the best of its knowledge and belief, the technical data delivered herewith under Contract No. _____ is complete, accurate, and complies with all requirements of the contract.

Date _____

Name and Title of Certifying Official _____

This written certification shall be dated and the certifying official (identified by name and title) shall be duly authorized to bind the Contractor by the certification.

(b) The Contractor shall identify, by name and title, each individual (official) authorized by the Contractor to certify in writing that the technical data is complete, accurate, and complies with all requirements of the contract. The Contractor hereby authorizes direct contact with the authorized individual responsible for certification of technical data. The authorized individual shall be familiar with the Contractor's technical data conformity procedures and their application to the technical data to be certified and delivered.

(c) Technical data delivered under this contract may be subject to reviews by the Government during preparation and prior to acceptance. Technical data is also subject to reviews by the Government subsequent to acceptance. Such reviews may be conducted as a function ancillary to other reviews, such as in-process reviews or configuration audit reviews.

(End of clause)

252.227-7037 Validation of restrictive markings on technical data.

As prescribed in 227.473-4(a) insert the following clause:

Validation of Restrictive Markings on Technical Data (Apr 1988)

(a) *Definitions.* The terms used in this clause are defined in the clause at DFARS 252.227-7013 of the Department of Defense Federal Acquisition Regulation Supplement [DFARS].

(b) *Justification.* The Contractor or subcontractor at any tier is responsible for maintaining records sufficient to justify the validity of its markings that impose restrictions on the Government and others to use, duplicate, or disclose technical data delivered or required to be delivered under the contract or subcontract, and shall be prepared to furnish to the Contracting Officer a written justification for such restrictive markings in response to a challenge under paragraph (d) below.

(c) *Prechallenge Request for Information.* (1) The Contracting Officer may request the Contractor or subcontractor to furnish a written explanation for any restriction asserted by the Contractor or subcontractor on the right of the United States or others to use technical data. If, upon review of the explanation submitted, the Contracting Officer remains unable to ascertain the basis of the restrictive marking, the Contracting Officer may further request the Contractor or subcontractor to furnish additional information in the record of, or otherwise in the possession of or reasonably available to, the Contractor or subcontractor to justify the validity of any restrictive marking on technical data delivered or to be delivered under the contract or subcontract (e.g., a statement of facts accompanied with supporting documentation). The Contractor or subcontractor shall submit such written data as requested by the Contracting Officer within the time required or such longer period as may be mutually agreed.

(2) If the Contracting Officer, after reviewing the written data furnished pursuant to paragraph (c)(1) above, or any other available information pertaining to the validity of a restrictive marking, determines that reasonable grounds exist to question the current validity of the marking and that

continued adherence to the marking would make impracticable the subsequent competitive acquisition of the item, component, or process to which the technical data relates, the Contracting Officer shall follow the procedures in (d) below.

(3) If the Contractor or subcontractor fails to respond to the Contracting Officer's request for information under paragraph (c)(1) above, and the Contracting Officer determines that continued adherence to the marking would make impracticable the subsequent competitive acquisition of the item, component, or process to which the technical data relates, the Contracting Officer may challenge the validity of the marking as described in paragraph (d) below.

(d) *Challenge.* (1) Notwithstanding any provision of this contract concerning inspection and acceptance, if the Contracting Officer determines that a challenge to the restrictive marking is warranted, the Contracting Officer shall send a written challenge notice to the Contractor or subcontractor asserting the restrictive markings. Such challenge shall:

(i) State the specific grounds for challenging the asserted restriction;

(ii) Require a response within sixty (60) days justifying and providing sufficient evidence as to the current validity of the asserted restriction; and

(iii) State that a DoD Contracting Officer's final decision, issued pursuant to paragraph (f) below, sustaining the validity of a restrictive marking identical to the asserted restriction, within the three-year period preceding the challenge, shall serve as justification for the asserted restriction if the validated restriction was asserted by the same Contractor or subcontractor (or any licensee of such Contractor or subcontractor) to which such notice is being provided.

(iv) State that failure to respond to the challenge notice may result in issuance of a final decision pursuant to paragraph (e) below.

(2) The Contracting Officer shall extend the time for response as appropriate if the Contractor or subcontractor submits a written request showing the need for additional time to prepare a response.

(3) The Contractor's or subcontractor's written response shall be considered a claim within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.), and shall be certified in the form prescribed by FAR 33.207, regardless of dollar amount.

(4) A Contractor or subcontractor receiving challenges to the same restrictive markings from more than one Contracting Officer shall notify each Contracting Officer of the existence of more than one challenge. The notice shall also state which Contracting Officer initiated the first in time unanswered challenge. The Contracting Officer initiating the first in time unanswered challenge after consultation with the Contractor or subcontractor and the other Contracting Officers, shall formulate and distribute a schedule for responding to each of the challenge notices to all interested parties. The schedule shall afford the Contractor or subcontractor an opportunity to respond to each challenge notice. All parties will be bound by this schedule

(e) *Final Decision When Contractor or Subcontractor Fails to Respond.* Upon a failure of a Contractor or subcontractor to submit any response to the challenge notice, the Contracting Officer will issue a final decision to the Contractor or subcontractor in accordance with the Disputes clause at FAR 52.233-1, pertaining to the validity of the asserted restriction. This final decision shall be issued as soon as possible after the expiration of the time period of paragraph (d)(1)(ii) or (d)(2) above. Following the issuance of the final decision, the Contracting Officer will comply with the procedures in (f)(2) (ii) through (iv) below.

(f) *Final Decision When Contractor or Subcontractor Responds.* (1) If the Contracting Officer determines that the Contractor or subcontractor has justified the validity of the restrictive marking, the Contracting Officer shall issue a final decision to the Contractor or subcontractor sustaining the validity of the restrictive marking, and stating that the Government will continue to be bound by the restrictive marking. This final decision shall be issued within sixty (60) days after receipt of the Contractor's or subcontractor's response to the challenge notice, or within such longer period that the Contracting Officer has notified the Contractor or subcontractor that the Government will require. The notification of a longer period for issuance of a final decision will be made within sixty (60) days after receipt of the response to the challenge notice.

(2)(i) If the Contracting Officer determines that the validity of the restrictive marking is not justified, the Contracting Officer shall issue a final decision to the Contractor or subcontractor in accordance with the Disputes clause at FAR 52.233-1. Notwithstanding paragraph (e) of the Disputes clause, the final decision shall be issued within sixty (60) days after receipt of the Contractor's or subcontractor's response to the challenge notice, or within such longer period that the Contracting Officer has notified the Contractor or subcontractor of the longer period that the Government will require. The notification of a longer period for issuance of a final decision will be made within sixty (60) days after receipt of the response to the challenge notice.

(ii) The Government agrees that it will continue to be bound by the restrictive marking for a period of ninety (90) days from the issuance of the Contracting Officer's final decision under paragraph (f)(2)(i) of this clause. The Contractor or subcontractor agrees that, if it intends to file suit in the United States Claims Court it will provide a notice of intent to file suit to the Contracting Officer within ninety (90) days from the issuance of the Contracting Officer's final decision under paragraph (f)(2)(i) of this clause. If the Contractor or subcontractor fails to appeal, file suit, or provide a notice of intent to file suit to the Contracting Officer within the ninety (90)-day period, the Government may cancel or ignore the restrictive markings, and the failure of the Contractor or subcontractor to take the required action constitutes agreement with such Government action.

(iii) The Government agrees that it will continue to be bound by the restrictive marking where a notice of intent to file suit in the United States Claims Court is provided to the Contracting Officer within ninety (90) days from the issuance of the final decision under paragraph (f)(2)(i) of this clause. The Government will no longer be bound, and the Contractor or subcontractor agrees that the Government may strike or ignore the restrictive markings, if the Contractor or subcontractor fails to file its suit within one (1) year after issuance of the final decision. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, that urgent or compelling circumstances will not permit waiting for the filing of a suit in the United States Claims Court, the Contractor or subcontractor agrees that the agency may, following notice to the Contractor or subcontractor, authorize release of disclosure of the technical data. Such agency determination may be made at any time after issuance of the final decision and will not affect the Contractor's or subcontractor's right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(iv) The Government agrees that it will be bound by the restrictive marking where an appeal or suit is filed pursuant to the Contract Disputes Act until final deposition by an agency Board of Contract Appeals or the United States Claims Court. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, following notice to the Contractor that urgent or compelling circumstances will not permit awaiting the decision by such Board of Contract Appeals or the United States Claims Court, the Contractor or subcontractor agrees that the agency may authorize release or disclosure of the technical data. Such agency determination may be made at any time after issuance of the final decision and will not affect the Contractor's or subcontractor's right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(g) *Final Disposition of Appeal or Suit.* (1) If the Contractor or subcontractor appeals or files suit and if, upon final disposition of the appeal or suit, the Contracting Officer's decision is sustained—

(i) The restrictive marking on the technical data shall be cancelled, corrected or ignored; and

(ii) If the restrictive marking is found not to be substantially justified, the Contractor or subcontractor, as appropriate, shall be liable to the Government for payment of the cost to the Government of reviewing the restrictive marking and the fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Government in challenging the marking, unless special circumstances would make such payment unjust.

(2) If the Contractor or subcontractor appeals or files suit and if, upon final

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disposition of the appeal or suit, the Contracting Officer's decision is not [illegible].

(i) The Government shall continue to be bound by the restrictive marking; and

(ii) The Government shall be liable to the Contractor or subcontractor for payment of fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Contractor or subcontractor in defending the marking, if the challenge by the Government is found not to have been made in good faith.

(h) *Duration of Right to Challenge.* The Government may review the validity of any restriction on technical data, delivered or to be delivered under a contract, asserted by the Contractor or subcontractor. During the period within three (3) years of final payment on a contract or within three (3) years of delivery of the technical data to the Government, whichever is later, the Contracting Officer may review and make a written determination to challenge the restriction. The Government may, however, challenge a restriction on the release, disclosure or use of technical data at any time if such technical data (1) is publicly available; (2) has been furnished to the United States without restriction; or (3) has been otherwise made available without restriction. Only the Contracting Officer's final decision resolving a formal challenge by sustaining the validity of a restrictive marking constitutes "validation" as addressed in 10 U.S.C. 2321. A decision by the Government, or a determination by the Contracting Officer, to not challenge the restrictive marking or asserted restriction shall not constitute "validation".

(i) *Privity of Contract.* The Contractor or subcontractor agrees that the Contracting Officer may transact matters under this clause directly with subcontractors at any tier that assert restrictive markings. However, this clause neither creates nor implies privity of contract between the Government and subcontractors.

(j) *Flowdown.* The Contractor or subcontractor agrees to insert this clause in subcontracts at any tier requiring the delivery of technical data.

[End of clause]

[illegible] [Reserved]

[FR Doc. 88-24416 Filed 10-27-88; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 655

[Docket No. 71294-8228]

Atlantic Mackerel, Squid, and Butterfish Fisheries

AGENCY: National Marine Fisheries Services (NMFS), NOAA, Commerce.

ACTION: Notice of squid specification increase.

SUMMARY: NOAA issues this notice to increase the Initial Optimum Yield (IOY) specification for *Loligo* squid as required by the regulations governing the squid fisheries. This increase is assigned to the domestic annual harvest (DAH) and makes an additional 3,000 metric tons (mt) available for domestic annual processing (DAP). Regulations governing the squid fisheries require publication of any adjustments, accompanied by reasons for such adjustments. This action is intended to foster the goal of the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) by creating benefits for the U.S. fishing industry.

DATE: This notice is effective on filing. Comments are invited until November 14, 1988.

FOR FURTHER INFORMATION CONTACT: Kathi L. Rodrigues, 508-281-3600, ext. 324.

SUPPLEMENTARY INFORMATION: Under 50 CFR 655.22, final initial specifications for squid were published on March 4, 1988, (53 FR 6991) for the fishing year January 1 through December 31, 1988. The regulation at § 655.21 (b)(1)(v) provide that initial annual specifications may be adjusted by the Regional Director, NMFS Northeast Region, after consultation with the Mid-Atlantic Fishery Management Council (Council). The Regional Director may adjust the IOY upward to the Allowable Biological Catch (ABC) at any time during the fishing year if new information indicates that U.S. fishermen will exceed the initial DAH.

Domestic Landings of *Loligo* for 1988 are expected to exceed the initial DAH specified for the fishing year. On August 31, 1988 the catch reached 13,285 mt. The catch for the September through December period for the previous 3 years averaged 2,100 mt. Based on this information, the Regional Director projects that the 14,000 mt DAH will be exceeded before the fishing year ends on December 31, 1988. In addition, the 1988 catch rate is at least one and one half times the averaged previous 3-year rate and, therefore, it is estimated that domestic harvesters will utilize approximately 3,000 mt during the remainder of 1988.

The Council has been apprised of the catch projections and agrees with the Regional Director's decision to increase the IOY and assign the increase to DAH. The assignment provides the additional tonnage to DAP necessary for domestic fishing operations to continue.

In accordance with § 655.22 (f), notice is hereby given that the IOY for *Loligo* squid of 14,000 mt is increased by 3,000 mt to a total of 17,000 mt. DAH and DAP for *Loligo* squid are each increased from 14,000 mt to 17,000 mt.

Classification

This action is authorized by 50 CFR Part 655 and complies with E.O. 12291.

In view of the need to avoid disruption of the domestic fishery, NOAA has determined that this adjustment will be effective upon filing with the Federal Register because delaying the effective date of this notice is impractical unnecessary and contrary to the public interests.

List of Subjects in 50 CFR Part 655

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 24, 1988.

Alan Dean Parsons,

Acting Director, Office of Fisheries Conservation and Management.

[FR Doc. 88-24904 Filed 10-25-88; 9:40 am]

BILLING CODE [illegible]

Proposed Rules

Federal Register
Vol. 53, No. 209
Friday, October 28, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 422

[Amdt. No. 4; Doc. No. 5880S]

Potato Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby proposes to amend the Potato Crop Insurance Regulations (7 CFR Part 422), effective for the 1989 and succeeding crop years in all states, the intended effect of which is to: (1) Revise and reissue the Quality Potato Option to make the option continuous and to define "acceptable inspection"; (2) add a new Frost/Freeze Option to provide coverage against frost and freeze, and (2) add a new Processing Potato Quality Option as a means of providing insurance on potatoes produced under contract with a processor.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than November 28, 1988, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC, 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The new sunset review date established for these regulations is August 1, 1993.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (1) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC proposes to revise and reissue the Quality Potato Option (7 CFR 422.9) with the following changes:

1. The Option has been made continuous. The insured no longer has to submit a new application for each crop year. All language regarding annual submission of the form has been removed.

2. Language has been added to indicate that if both this Option and the frost/freeze Option are in effect that only the Option which results in the least production to count will be considered. This language is necessary to prevent the possibility of a separate indemnity for each Option.

3. The definition of "acceptable inspection" and language designating who may make grade determinations has been added. These additions are in response to an Office of Inspector General—Audit (OIG) comment which requested that any grade determination should be made by someone with proper training.

4. Additional minor editorial changes have been made to improve clarity. These changes do not effect the meaning or intent of the provisions.

FCIC also proposes to add two new Options to the Potato Crop Insurance Regulations for the 1989 crop year, as follows:

1. The proposed Frost/Freeze Option, (7 CFR 422.10), is a modification of the frost/freeze chart formerly used in conjunction with the 1988 loss adjustment procedures. This Option may be added to a grower's basic policy at an additional premium.

2. The proposed Processing Potato Quality Option (7 CFR 422.11), may also be added to a grower's basic policy for an additional premium. This Option provides quality adjustment specifically for processing potatoes. Its availability will initially be limited to two counties. The current Quality Potato Option will provide quality adjustment for both fresh and processing potatoes in other selected counties. After insuring experience is analyzed, use of this Processing Potato Quality Option may be expanded.

FCIC is soliciting public comment on this proposed rule for 30 days following publication in the Federal Register. Written comments, data, and opinions on the proposed rule should be sent to Peter F. Cole, Office of the Manager, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250. All written comments received pursuant to this notice will be available for public inspection and copying at the above address during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 422

Crop insurance, Potatoes.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the Potato

Crop Insurance Regulations (7 CFR Part 422), proposed to be effective for the 1989 and succeeding crop years, in the following instances:

PART 422—POTATO CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR Part 422 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR 422.9 is revised to read as follows:

§ 422.9 Quality potato option.

(a) Notwithstanding the provisions of § 422.7(d), subsection 9.e. of this part, an insured producer may, upon submission to the Corporation or a reinsured company and subsequent approval of a Quality Potato Option (Option), elect to insure all insurable acreage of potatoes under this option. The Option is continuous and will remain in effect until the underlying potato insurance policy (basic policy) is cancelled or terminated in accordance with the basic policy's terms, or until the Option is cancelled or terminated by the insured or the Corporation in the same manner as the basic policy may be cancelled or terminated.

(b) For those who elect to insure potatoes under this Option, all provisions of the basic policy will apply except those in conflict with this Option. The terms of the Option are:

United States Department of Agriculture

Federal Crop Insurance Corporation

Potato Crop Insurance Policy

Quality Potato Option

(This is a continuous Option. Refer to section 15 of the Potato Crop Insurance Policy)

Insured's Name _____
Address _____
Contract No. _____
Crop Year _____
Identification No. _____

SSN TAX

1. You must have a Federal Crop Insurance Potato Policy (basic policy) in force. This Quality Potato Option (Option) provides guaranteed production on a hundredweight (cwt.) basis only.

2. This Option must be submitted to us on or before the sales closing date for the initial crop year in which you wish to insure your potatoes under this Option.

3. If you elect this Option, all acreage of potatoes insured under the basic policy must be insured under this Option except for any acreage:

a. Specifically excluded by the Actuarial Table;

b. Grown for seed if you elect to exclude the acreage from coverage; or

c. Insured under the Processing Potato Quality Option.

4. Production to count determined under subsection 9.e. of the basic policy will be further modified as follows:

a. Production to count, unharvested appraised production, production stored after an acceptable inspection, and marketed production containing potatoes that grade less than U.S. No. 2" will be determined by dividing the actual percentage of potatoes grading U.S. No. 2" or better by the percentage factor, and multiplying the result, not to exceed 1.000, by the number of weight (cwt.) of such potatoes; or

b. Production to count of potatoes stored without an acceptable inspection will be 100 percent of the gross weight (cwt.) of such potatoes.

5. If you have a Frost/Freeze Potato Option and this Option in effect on the same production, the production to count will be based on the Option which results in the least production to count.

6. All sampling and grade determinations must be made by a potato grader licensed or certified by the applicable State or United States Department of Agriculture. However, if such a grader is not available to sample or grade the potatoes, the sampling or grading for the purposes of this Option will be performed by us.

7. Your premium rate for this Option will be contained in the Actuarial Table.

8. "Acceptable inspection" means that prior to storage the potatoes are evaluated by us and grade determinations are made in accordance with section 6 of this Option.

9. "Percentage factor" means the historical average percentage of potatoes grading U.S. No. 2" or better, by type, determined from your records as established by us. If at least four continuous years of records are available, the percentage factor will be the simple average of the available records not to exceed 10 years. If less than four years of records are available, the percentage factor will be the one contained in the actuarial table. The Actuarial Table may provide different percentage factors by type.

* The actuarial table may provide for U.S. No. 1 in place of U.S. No. 2.

Insured's Signature _____
Date _____
Corporation Representative's Signature and Code Number _____
Date _____

COLLECTION OF INFORMATION AND DATA (PRIVACY ACT)

The following statements are made in accordance with the Privacy Act of 1974 (5 U.S.C. 552(a)). The authority for requesting information to be supplied on this form is the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), or any of the crop insurance regulations contained in 7 CFR Part 400 *et seq.*

The information requested is necessary for the Federal Crop Insurance Corporation (FCIC) to process this form to provide insurance, determine eligibility, determine the correct parties to the agreement or contract, collect premiums, pay indemnities, or other purposes. Furnishing the Social Security number is voluntary and no adverse action will result from failure to do so.

Furnishing the information required by this form, other than the Social Security number, is also voluntary; however, failure to furnish the correct, complete information requested may result in rejection of this form, rejection of any claim for indemnity, or the ineligibility of any applicant for insurance. Failure to provide certain requested information may result in appropriate action being taken, including suit against the policyholder/debtor to recover an indebtedness. The information contained in this form will be used by Federal Agency Officers and FCIC employees who have a need for such information in the performance of their duties.

The information may be furnished to FCIC contract agencies and contract loss adjusters, reinsured companies, other U.S. Department of Agriculture agencies, Internal Revenue Service, Department of Justice, or other State and Federal law enforcement agencies if litigation becomes necessary, credit reporting agencies and U.S. Government contract collection agencies, and in response to orders of a court, magistrate, administrative tribunal or opposing counsel as evidence in the course of discovery in litigation.

3. New §§ 422.10 and 422.11 are added to read as follows:

§ 422.10 Frost/freeze option.

(a) Notwithstanding the provisions of § 422.7(d), subsection 9.e. of this part, an insured producer may, upon submission to the Corporation or a reinsured company and subsequent approval of a Frost/Freeze Potato Option (Option), elect to insure all insurable acreage of potatoes under this option. The Option is continuous and will remain in effect until the underlying potato insurance policy (basic policy) is cancelled or terminated in accordance with the basic policy's terms, or until the Option is cancelled or terminated by the insured or the Corporation in the same manner as the basic policy may be cancelled or terminated.

(b) For those who elect to insure potatoes under this Option, all provisions of the basic policy will apply except those in conflict with this Option. The terms of the Option are:

United States Department of Agriculture

Federal Crop Insurance Corporation

Potato Crop Insurance Policy

Frost/Freeze Potato Option

(This is a continuous Option. Refer to section 15 of the Potato Crop Insurance Policy)

Insured's Name _____
Address _____
Contract No. _____
Crop Year _____
Identification No. _____

SSN TAX

1. You must have a Federal Crop Insurance Potato Policy (basic policy) in force. This Frost/Freeze Potato Option (Option) provides guaranteed production on a hundredweight (cwt.) basis only.

2. This Option must be submitted to us on or before the sales closing date for the initial crop year in which you wish to insure your potatoes under this Option.

3. If you elect this Option, all acreage of potatoes insured under the basic policy must be insured under this Option.

4. If the actuarial table provides a date after which loss of production due to frost or freeze damage is not insurable, this Option will provide coverage only until such date.

5. Production to count for a unit damaged by frost or freeze will be determined by applying the percentage obtained from the following table to the production to count determined under the basic policy:

Percent damage due to frost or freeze:	Percent [1]
0 to 5	100
6	95
7	90
8	70
9	60
10	50
11	45
12	40
13	35
14	30
15	25
16	20
17	15
18	10
19	5
20	0

[1] Percent of production to count.

The adjustment production to count will then be counted against your production guarantee to determine the amount of loss. We must inspect the production prior to harvest to determine the amount of frost or freeze damage.

If the frost or freeze damage is determined to be 20 percent or more at the time of harvest, you may with our written permission, destroy the crop. (It will be considered a total loss) and you will be indemnified accordingly. You may also elect to market or store the crop and apply the total harvested production minus the frost or freeze damaged potatoes against guarantee. This decision must be made by you on the day the potatoes are determined to be 20 percent or more frost or freeze damaged.

6. If you have the Potato Quality Option or the processing Potato Quality Option and this Option in effect, the production to count will be based on the Option which results in the least production to count.

7. Your premium rate for this Option will be established by the actuarial table.

Insured's Signature _____
Date _____
Corporation Representative's Signature and Code Number _____
Date _____

COLLECTION OF INFORMATION AND DATA (PRIVACY ACT)

The following statements are made in accordance with the Privacy Act of 1974 (5 U.S.C. 552(a)). The authority for requesting information to be supplied on this form is the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), or any of the crop insurance regulations contained in 7 CFR Part 400 *et seq.*

The information requested is necessary for the Federal Crop Insurance Corporation (FCIC) to process this form to provide insurance, determine eligibility, determine the correct parties to the agreement or contract, collect premiums, pay indemnities, or other purposes. Furnishing the Social Security number is voluntary and no adverse action will result from failure to do so. Furnishing the information required by this form, other than the Social Security number, is also voluntary; however, failure to furnish the correct, complete information requested may result in rejection of this form, rejection of any claim for indemnity, or the ineligibility or any applicant for insurance. Failure to provide certain requested information may result in appropriate action being taken, including suit against the policyholder/debtor to recover an indebtedness. The information contained in this form will be used by Federal Agency Officers and FCIC employees who have a need for such information in the performance of their duties.

The information may be furnished to FCIC contract agencies and contract loss adjusters, reinsured companies, other U.S. Department of Agriculture agencies, Internal Revenue Service, Department of Justice, or other State and Federal law enforcement agencies if litigation becomes necessary, credit reporting agencies and U.S. Government contract collection agencies, and in response to orders of a court, magistrate, administrative tribunal or opposing counsel as evidence in the course of discovery in litigation.

§ 422.11 Processing potato quality option.

(a) Notwithstanding the provisions of subsection § 422.7(d)9.e. of this part, an insured producer may, upon submission to the Corporation or a reinsured company and subsequent approval of a Processed Potato Quality Option (Option), elect to insure all insurable acreage of potatoes contracted with a processor under this option. The Option is continuous and will remain in effect until the underlying potato insurance policy (basic policy) is cancelled or terminated in accordance with the basic policy's terms, or until the Option is cancelled or terminated by the insured or the Corporation in the same manner as the basic policy may be cancelled or terminated.

(b) For those who elect to insure potatoes under this Option, all provisions of the basic policy will apply except those in conflict with this Option. The terms of the Option are:

United States Department of Agriculture

Federal Crop Insurance Corporation

Potato Crop Insurance Policy

Processing Potato Quality Option

(This is a continuous Option. Refer to section 15 of the Potato Crop Insurance Policy)

1. You must have a Federal Crop Insurance Potato Policy (basic policy)— in force. This Processing Potato Quality Option (Option) provides guaranteed production on a hundredweight (cwt.) basis only.

2. This Option must be submitted to us on or before the sales closing date for the initial crop year in which you wish to insure your potatoes under this Option.

3. A written contract must be executed with a processor for the potato types insured under this Option and a copy submitted to us on or before the acreage reporting date for potatoes. If you elect this Option, all insurable acreage of the types of potatoes under contract with a processor must be insured under this Option.

4. This Option does not apply to potatoes damaged by frost or freeze.

5. Production to count, determined in accordance with subsection 9.e. of the policy, will be further modified as follows:

a. Production to count of unharvested appraised potatoes, potatoes stored after an acceptable inspection, and potatoes marketed (unless the potatoes were marketed to a processor for human consumption) which grade less than U.S. No. 2":

(1) For factors other than those listed in subsection (2) below, will be determined by dividing the percentage of potatoes grading U.S. No. 2 or better by the percentage factor, and multiplying the result, not to exceed 1.000, by the number of cwt. of such potatoes, or

(2) Due to internal defects, because of a specific gravity of less than 1.070, or have a fry color of No. 3 or darker due to either sugar exceeding 10% or sugar ends exceeding 10%, production will be:

(i) Zero for unharvested appraised potatoes;

(ii) Twenty five percent (25%) of the gross weight for potatoes stored after an acceptable inspection; or

(iii) Determined by dividing the market value per cwt. of the damaged production by the highest price election available for the insured unit, and multiplying the result, not to exceed 1.000, by the number of cwt. of such production for marketed potatoes, which are not accepted by a processor of potatoes, for human consumption.

b. Production to count for potatoes stored without an acceptable inspection or accepted by a processor of potatoes for human consumption will be 100" of the gross weight (cwt.) of such potatoes.

6. All grade determinations for the purposes of this Option will be made using the United States Standards for Grades of Potatoes for Processing.

7. If you have the Frost/Freeze Potato Option and this Option in effect, the production to count will be based on the Potato which results in the least production to count.

8. All sampling and grade determinations must be made by a potato grader licensed or certified by the applicable State or United States Department of Agriculture. However, if such a grader is not available, sampling or grading for the purposes of this Option will be performed by us.

9. Your premium rate for this Option will be established by the actuarial table.

10. "Acceptable Inspection" means that prior to storage the potatoes are evaluated by us and grades determined in accordance with section 8 of this Option.

11. "Precentage Factor" means the historical average percentage of potatoes grading U.S. No. 2* or better, by type, determined from your records or established by us. If at least four continuous years of records are available, the percentage factor will be the simple average of the available records not to exceed 10 years. If less than four years of records are available, the percentage factor will be the one contained in the actuarial table. The Actuarial Table may provide different percentage factors by type.

*The actuarial table may provide for U.S. #1 grade in place of U.S. No. 2.

Insured's Signature _____
DATE
Corporation Representative's _____
Signature and
Code Number _____
DATE _____

COLLECTION OF INFORMATION AND DATA (PRIVACY ACT)

The following statements are made in accordance with the Privacy Act of 1974 (5 U.S.C. 552(a)). The authority for requesting information to be supplied on this form is the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), or any of the crop insurance regulations contained in 7 CFR Part 400 *et seq.*

The information requested is necessary for the Federal Crop Insurance Corporation (FCIC) to process this form to provide insurance, determine eligibility, determine the correct parties to the agreement or contract, collect premiums, pay indemnities, or other purposes. Furnishing the Social Security number is voluntary and no adverse action will result from failure to do so. Furnishing the information required by this form, other than the Social Security number, is also voluntary; however, failure to furnish the correct, complete information requested may result in rejection of this form, rejection of any claim for indemnity, or the ineligibility of any applicant for insurance, failure to provide certain requested information may result in appropriate action being taken, including suit against the policyholder/debtor to recover an indebtedness. The information contained in this form will be used by Federal Agency Officers and FCIC employees who have a need for such information in the performance of their duties.

The information may be furnished to FCIC contract agencies and contract loss adjuster, reinsured companies, other U.S. Department of Agriculture agencies, Internal Revenue Service, Department of Justice, or other State and Federal law enforcement agencies if litigation becomes necessary, credit reporting agencies and U.S. Government contract collection agencies, and in response to orders of a court, magistrate, administrative tribunal or opposing counsel as evidence in the course of discovery in litigation.

Done in Washington, DC, on October 24, 1988.

John Marshall,
Manager, Federal Crop Insurance Corporation.

[FR Doc. 88-25001 Filed 10-27-88; 8:45 am]
BILLING CODE 3410-08-M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

Labor Certification Process for the Temporary Employment of Aliens in Agriculture in the United States; Adverse Effect Wage Rate Methodology

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed rule.

SUMMARY: The Employment and Training Administration of the Department of Labor (DOL) is publishing a proposed rule adopting a methodology for computing adverse effect wage rates (AEWRs) for the temporary alien agricultural labor certification (H–2A) program. AEWRs are the minimum wage rates which must be offered and paid to U.S. and alien workers by employees seeking certification of temporary or seasonal agricultural labor or services of nonimmigrant alien workers (H–2A visaholders) in the United States. Because of the uncertainty of the outcome of ongoing litigation involving the existing methodology which was initially adopted on June 1, 1987, DOL is proposing to adopt that same methodology based upon an expanded record.

DATE: Interested parties are invited to submit written comments on this document through November 28, 1988.

ADDRESS: Send written comments to: Assistant Secretary of Labor, Employment and Training Administration, Room N4456, 200 Constitution Avenue NW., Washington, DC 20210; Attention: Director, U.S. Employment Service.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas M. Bruening, Telephone: 202–535–0163 (this is not a toll-free number).

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I. Introduction.

Whether to grant or deny an employer's petition to import a nonimmigrant alien to the United States for the purpose of temporary employment is solely the decision of the Attorney General and his designee, the Commissioner of the Immigration and Naturalization Service (INS). The Immigration and Nationality Act (INA) (8 U.S.C. 1101 *et seq.*), as amended by the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99–603, 100 Stat. 3359, provides that the Attorney General may not approve such a petition from an employer for employment of nonimmigrant alien workers (H–2A visaholders or workers) for temporary or seasonal services or labor in agriculture unless the petitioner has applied to the Secretary of Labor (Secretary) for a labor certification showing that: (1) There are not sufficient U.S. workers who are able, willing, and qualified and who will be available at the time and place needed to perform the labor or services involved in the petition; and (2) the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.

The amendments to the INA made by IRCA codified DOL's role in the temporary alien agricultural labor certification process. Prior to June 1, 1987, many of DOL's responsibilities specified in IRCA were carried out under the requirement in the INA at 8 U.S.C. 1184(c) that the Attorney General consult with appropriate agencies of the Government concerning the importation of nonimmigrant workers, and under INS regulations governing the reliance placed by INS on the advice of DOL relative to U.S. worker availability and adverse effect. See 8 CFR 214.2(h)(3)(i)

(1988); 20 CFR Part 655, Subpart C (1988).

The H–2A-related amendments to the INA made by IRCA apply to petitions and applications filed under INA sections 214(c) and 216 on or after the effective date of June 1, 1987. IRCA section 301(d), 8 U.S.C. 1186 note; see U.S.C. 1184(c) and 1186. Section 301(e) of IRCA requires that "[n]otwithstanding any other provision of law, final regulations to implement * * * [sections 101(a)(15)(ii)(a) and 216 of the Immigration and Nationality Act] shall first be issued, on an interim or other basis, not later than the effective date." 8 U.S.C. 1186 note.

On May 5, 1987, DOL published in the **Federal Register** (52 FR 16770) a proposed rule to implement DOL's responsibilities under the H–2A temporary alien agricultural labor certification program, as set out at sections 101(a)(15)(H)(ii)(a), 214(c), and 216 of the INA, as amended by IRCA. 8 U.S.C. 1101(a)(15)(ii)(a), 1184(c), and 1186). Under that program, job opportunities are certified for H–2A workers to perform agricultural labor or services of a temporary or seasonal nature in the United States. Written comments on the proposed rule were invited through May 19, 1987.

On June 1, 1987, DOL published an interim final rule in the **Federal Register**, effective on that date. 52 FR 20496. The rulemaking document discussed many of the comments received in response to the proposed rule, changing some language not relevant to this document. The comment period also was reopened through July 31, 1987. The amendments in DOL's June 1, 1987, interm final rule contained changes to the labor certification process as mandated by IRCA and revised procedures as deemed necessary by DOL to carry out its statutory responsibilities. In December 1987, the United States of Appeals for the DC Circuit remanded the interim final rule to DOL for a further explanation of the June 1, 1987, methodology. In April 1988, an explanation of the June 1, 1987, rule was submitted to the U.S. District Court. That court recently rules that the new explanation was unaccepted because it was based, in part, on information not in the rule-making record on June 1. While the DOL disagrees with the ruling and continues to litigate that issue, DOL herein proposes to adopt the same methodology adopted on June 1, 1987, but utilizing an expanded rulemaking record. This procedure was suggested by the court and agreed to by the plaintiffs at the September 28, 1988, oral argument. Comments on the interim final rule and the proposed rule continue to be considered. Based on those comments, as well as on comments submitted in response to this rulemaking, a final rule will be promulgated at a later date after consideration of all comments.

II. The June 1, 1987, Methodology

IRCA is expected to expand significantly the lawful importation program. DOL, therefore, decided to establish H–2A program adverse effect wage rates (AEWRs) not merely for the 14 "traditional user States", but instead to set them for every State (except Alaska). In order to ensure that the wages of similarly employed U.S. workers are not adversely affected, DOL continued in the June 1, 1987, interim final H–2A regulation its past policy and practice of requiring covered agricultural employers to offer and pay their U.S. and H–2A workers no less than the applicable AEWR, as determined by the Director, U.S. Employment Service (USES). Further, the interim final H–2A regulations, as had the H–2A regulations, provided that employers applying for temporary alien agricultural labor certifications must agree to comply with all employment-related laws. If the employment is covered by a wage standard applicable under any federal or State minimum wage law, the employer must comply with that law. See *e.g.*, 29 U.S.C. 206(a); and 20 CFR 653.501(d)(4) and (e)(1) (1988). If the prevailing wage for the occupation in the labor market of intended employment is higher, the employer must offer and pay that wage. Thus, a worker in employment under the H–2A program must be paid at the highest of the applicable wage rates, whether that highest rate is the AEWR, the prevailing wage, or the federal or State statutory minimum wage. See *Limoneira Co.* v. *Wirtz*, 327 F.2d 499 (9th Cir. 1964), *aff'g*, 225 F.Supp. 961 (S.D. Cal. 1963); see also *Elton Orchards, Inc.* v. *Brennan*, 508 F.2d 1154, 1158 (1st Cir. 1974); and *Flecha* v. *Quiros*, 567 F.2d 1154, 1156 (1st Cir. 1977). These decisions acknowledge DOL's discretion in the area of AEWRs and form a basis for construing DOL's H–2A regulations.

Although continuing its basic past policy of requiring the payment of the AEWR, prevailing wage, or statutory minimum wage, whichever is highest, DOL, in the June 1, 1987, interim final rule, revised the procedures for calculating and establishing AEWRs for H–2A work. DOL changed the method of calculating AEWRS, by basing AEWRs on the level of actual average hourly agricultural wages for each State, as surveyed by the U.S. Department of Agriculture (USDA). This new methodology sets AEWRs in each year for the H–2A program at a level equal to the previous year's annual regional average hourly wage rates for field and livestock workers (combined), as computed by USDA quarterly wage surveys. (This is the same data series by which AEWRs under the previous H–2 agricultural worker program were indexed. USDA publishes the data for the 48 contiguous States and Hawaii by nineteen agricultural regions, which consist of one or more States.)

The new methodology ties AEWRs directly to the average wage, as opposed to the old methodology which resulted in AEWRs substantially higher than agricultural earnings in many States, and lower for some States. The new methodology is based directly on a current average agricultural wage that is not apparently depressed by the presence of foreign workers, rather than being based on a 1950 agricultural wage that had been adjusted upward by various methods over the years, as discussed below in Section IV.

III. AFL–CIO v. Brock

Upon publication of the interim final rule, the AFL–CIO sued DOL to, among other things, invalidate the interim final 20 CFR 655.107(e), which established the methodology for computing AEWRs.

On December 22, 1987, the United States Court of Appeals for the District of Columbia Circuit reversed a lower court decision that had invalidated the interim final 20 CFR 655.107(e). *American Federation of Labor and Congress of Industrial Organizations* v. *Brock*, 835 F.2d 912 (DC Cir. 1987), *rev'g*, 668 F. Supp. 31 (D.D.C. 1987). Also vacated was that portion of the lower court decision that stayed the implementation of the June 1, 1987, interim final AEWR methodology in 20 CFR 655.107(e). 835 F.2d at 913 n. 2. However, the DC Circuit held that the interim final rule did not contain information sufficient for the court to "discern the reasonableness of the action without further explanation" and remanded the matter "to the Department for a more adequate explanation of its actions * * *" 835 F.2d at 913 n. 2, 919, and 920. The DC Circuit, therefore, remanded the rulemaking for DOL to provide a more reasoned explanation for why it chose in the June 1, 1987, methodology to discontinue what it viewed as the prior practice of providing for an enhancement to correct for the past employment of legal and undocumented aliens. Upon remand, the District Court ordered the "reasoned explanation" to be issued on or before

April 30, 1988, unless otherwise ordered. *AFL–CIO* v. *Brock*, Civil Action No. 87–1683 (Order, D.D.C. March 25, 1988). DOL submitted the expanded explanation to the District Court in April 1988.

DOL engaged in an extensive analysis of the opinion, a review of the pre- and post-June 1, 1987, rulemaking record and other data, and consultations with other affected agencies of the Federal Government. As a result of those consultations, and on the basis of its own analysis, DOL herein proposes to adopt prospectively the AEWR methodology set forth below.

IV. Historical Protections Against Adverse Effect on Wages

A. History of AEWRs

1. Background

In order to adequately assess the court's concern that the June 1, 1987, AEWR methodology represents a substantial departure from past practice, it is necessary to review DOL's longstanding practice in setting AEWRs.

From the beginning of the Federal Government's involvement in the lawful importation of foreign agricultural workers, dating at least as far back as 1942, the Government has sought to protect similarly employed U.S. workers from the adverse effect such employment would have on their wages. At first, these programs were established under both international agreements and federal statutes, and more recently by federal statutes alone.

For a number of decades, DOL has computed and published AEWRs for the temporary employment of nonimmigrant alien workers for agricultural employment under various admission programs. *See* H.N. DELLON, "Foreign Agricultural Workers and the Prevention of Adverse Effect", 17 *Labor Law Journal* 739 (1966). Mr. Dellon's article notes that, as far back as 1953, employers seeking to import foreign nationals to work in various crop activities (in that case, under the Bracero Program) were required to pay not less than a wage established by DOL. Eventually, AEWRs began to be set periodically on a Statewide basis. See *Dona Ana County Farm & Livestock Bureau, Inc.* v. *Goldberg*, 200 F. Supp. 210 (D.D.C. 1961).

As time passed, establishment of AEWRs became more formalized, and AEWRs were computed and set for the H–2 agricultural worker program as well, after public notice and comment. See, *e.g.*, 29 FR 19101, 19102 (December 30, 1964); 32 FR 4569, 4571 (March 28, 1967); and 35 FR 12394, 12395 (August 4, 1970).

2. World War II Programs

The 1942 Agreement With Mexico Respecting the Temporary Migration of Mexican Workers, stemming from the wartime shortage of domestic farm labor, facilitated the importation of Mexican workers in the beginnings of the "Bracero program". 56 Stat. 1759, EAS 278 (July 23 and August 4, 1942). The 1942 Agreement required that the Mexican workers be paid the same wage rates as those paid to U.S. farmworkers, but in no event could hourly rate workers be paid less than $.30 per hour. See Wayne D. Rasmussen, *A History of the Emergency Farm Labor Supply Program, 1943–47*, U.S. Department of Agriculture, Bureau of Agricultural Economics, Monograph No. 13 (September 1951) (Rasmussen) at 203. The $.30 per hour wage was equivalent to the federal Fair Labor Standards Act (FLSA) minimum wage then applicable to nonagricultural employment. In 1943, the $.30 per hour minimum in the 1942 Agreement was extended to piece-rate workers. 57 Stat. 1152, EAS 351 (April 26, 1943). In 1946, the wage was raised to $.37 per hour or $33.60 per week (the latter for bi-weekly-paid workers). See Rasmussen at 211.

Congress specifically authorized the Bracero program, and programs to import farmworkers from other Western Hemisphere areas, by statute by enacting Pub. L. 45 in 1943. Act of April 29, 1943, c. 82, 57 Stat. 70. Pub. L. 45 and the agreements with the foreign governments provided the basic structure for the operation of the Mexican and other foreign farm labor programs through 1947.

Other international agreements, although less formal, were entered into with the Bahamas, Barbados, Jamaica, Canada, and Newfoundland (then separate from Canada):

(a) By a March 16, 1943, agreement establishing the Bahamian program, workers were guaranteed the higher of the local prevailing wage or $.30 per hour (equivalent to the FLSA minimum wage). See Rasmussen at 225. This was raised to $15.00 weekly or $30.00 bi-weekly in 1946. See Rasmussen at 240.

(b) By an April 2, 1943, agreement establishing the Jamaican program, workers were guaranteed the higher of the local prevailing wage of $.30 per hour (equivalent to the FLSA minimum wage). See Rasmussen at 250–51. This was raised to $15.00 weekly or $30.00 bi-weekly in 1946. See Rasmussen at 253.

(c) By a May 24, 1944, agreement establishing the Barbadian program, workers were guaranteed the higher of the local prevailing wage or $.30 per hour (equivalent to the FLSA minimum wage). See Rasmussen at 273–274. This was raised to $15.00 weekly or $30.00 bi weekly in 1946. See Rasmussen at 275.

(d) Thirteen cents and $.15 per barrel minimum piece rates were set for Canadian farmworkers in the Maine potato harvest. Rasmussen at 276.

(e) By a March 23, and 24, 1944, agreement establishing the Newfoundland program, dairy workers were guaranteed the higher of the local prevailing wage or $65.00 per month. See Rasmussen at 282.

3. Post-war Program

The World War II programs ended at the close of 1947. However, temporary foreign agricultural workers continued to enter the United States, particularly from Mexico, pursuant to section 3 of the Immigration Act of 1917, and post-war extensions and revisions of the 1942 international agreement. 61 Stat. 3738, TIAS 1710 (March 25 and April 2, 1947); 62 Stat. 3887, TIAS 1868 (February 21, 1948); and 2 U.S.T. 1048, TIAS 2260 (August 1, 1949). The agreement was information extended in 1950. The work contract under the post-1947 agreements differed in the area of wages, however. There was no guaranteed hourly wage (in 1945 this was $.37 per hour) and no guaranteed minimum piece-rate earnings.

4. Bracero Program

Concern was raised, however, that importation of these workers had caused wages in their areas of employment to lag. President's Commission on Migratory Labor, *Migratory Labor in American Agriculture* (1951) at 58–59. After negotiations with Mexico, a new agreement was negotiated, authorized by Pub. L. 78, c. 223, 65 Stat. 119 (July 12, 1951), 7 U.S.C. 1461–1468 (1951) (now deleted). Mexican workers could not be admitted unless the Secretary of Labor determined, among other things, that "the employment of the workers will not adversely affect the wages and working conditions of domestic agricultural workers similarly employed. * * * * " A new international agreement was signed, effective August 11, 1951. Migrant Labor Agreement of 1951, 2 U.S.T. 1940, TIAS 2331, 162 UNTS 103 (August 11, 1951). Workers were to be paid the prevailing wage rates. As amended and updated in the 1950's and early 1960's, the 1951 statute and international agreement authorized the Bracero program in that period.

The 1951 extension of the 1951 agreement added the requirement that the wages stated in the contract shall be no less than an adverse effect wage rate determined by the Secretary of Labor. 10 U.S.T. 1630, TIAS 4815; 12 U.S.T. 3130, TIAS 4913. In 1952, these ranged from $.60 per hour in Arkansas to $1.00 per hour in 17 other States. The ceiling was set to correspond (rounded to the nearest $.05) to the USDA's national survey of average agricultural earnings, which was found to be $.99 in 1951. By comparison, the FLSA minimum (not yet extended to agriculture) was $1.15 per hour. States with average earnings above the national average were held to the $1.00 rate; and one State at the national average was rounded down to $.95. In six other States with average earnings below the national average, the AEWR was set generally by taking the State average hourly farm wage rate, as reported in the 1950 Census of Agriculture and adjusting it to 1951 in accordance with the trend in farm wage rates for that State as measured by USDA's series of average hourly farm wage rates with the obtained figures rounded down to the next $.05. These AEWRs applied only to the Bracero program. The 1952 AEWRs for 24 Bracero-user States continued to be used in 1953 and in 1954, the final year of the Bracero program.

5. H–2 Program

In 1952, Congress passed the Immigration and Nationality Act, 8 U.S.C. 1101 *et seq.*, which, as amended and updated, controls the importation of other foreign agricultural workers (and, since 1952, Mexican workers as well). This was known as the H–2 program (now replaced under IRCA by the H–2A Program). The use of legally admitted non-Mexican workers was, until the late 1970's, mainly in Atlantic seaboard States (with the exception of sheepherders in the western States).

Only prevailing wages were required to be offered under the H–2 program until 1963. In that year, near the close of the Bracero program, the H–2 program established a series of AEWRs for 11 East Coast H–2 user States. A maximum AEWR ($1.00 per hour) was retained, but the bases for the rates were derived from the 1959 Census of Agriculture average hourly earnings for each State adjusted by the 1959–61 trend in wages as determined by USDA. The 1963 AEWRs continued to be used in 1964.

A new formula was applied to set AEWRs for 28 States using foreign agricultural workers in 1965. See 20 CFR 602.10 (1965), 29 FR 19101 (December 30, 1964). The formula used the 1950 Census of Agricultural average hourly farm wage (AHFW) rate for each State, adjusted by the 1950–63 trend in gross average hourly earnings of production workers in manufacturing or the 1950 Census of Agriculture national AHFW rate similarly adjusted, whichever was higher, rounded down to the nearest $.05. A minimum AEWR of $1.15 per hour and a maximum of $1.40 per hour was applied. The AEWR was set above the computed level in five New England States (all except Connecticut), to $1.25 for Maine and to $1.30 for the other four States. The maximum caused AEWRs in five States (California, Kansas, Minnesota, South Dakota, and Utah) to be lowered below the computed level, to $1.40.

In 1967, AEWRs were increased by $.20 per hour, based on 1963–66 changes in the USDA survey of farm wages and other factors.

Beginning in 1968, these AEWRs were computed by adjusting the previous year's Statewide AEWR by the same percentage as the percentage change in the Statewide annual average wage rates for field and livestock workers, as surveyed by the USDA, and were set through rulemaking amending the H–2 agricultural worker regulations. See 41 FR 25018 (June 22, 1976); and 43 FR 10306, 10310 (March 10, 1978); see also 20 CFR 602.10b(a)(1) (1977).

The regulations for the H–2 agricultural worker program were consolidated and substantially revised in 1978, after an extended comment period and six public hearings (May and June 1977). 20 CFR Part 655, Subpart C, 43 FR 10306 (March 10, 1978). As part of that rulemaking, DOL's methodology for computing AEWRs, as well as alternative methodologies for computing AEWRs, were discussed and considered. 43 FR at 10310–10311. The methodology was set out in the regulations for the H–2 agricultural worker program. 20 CFR 655. 207, 43 FR at 10317.

DOL continued to study the AEWR after the 1977–78 rulemaking. An Advance Notice of Proposed Rulemaking was published in 1979, and six additional public hearings were held. 44 FR 59890 (October 16, 1979). Various alternative methodologies were presented for public comment; the public responded to the alternatives and additional methodologies were suggested as part of the rulemaking record. A proposed rule (with a four-month comment period) was published in 1980, and a final rule was published in 1981. 46 FR 4568 (January 16, 1981); 45 FR 29854 (May 6, 1980); and 45 FR 15914 (March 11, 1980). The final rule would have established a single, nationwide, AEWR at the level of the previous year's national annual average hourly wage for

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piece-rate-paid hired agricultural workers, as computed by USDA surveys. However, as part of a general review of agency regulations, and to consider fully the impact of the new methodology, it was withdrawn prior to its effective date. 46 FR 32437 (June 23, 1981); and 46 FR 19119 (March 27, 1981).

In 1981, USDA substantially reduced its number of surveys and ceased compiling annual average field and livestock worker wage rates, as well as the survey data which would have been used in the rule withdrawn in 1981. Various interim methodologies were utilized until USDA reestablished its surveys and DOL reestablished the 1968–1981 methodology. The interim methodologies did not change the basic way in which AEWRs were computed, by adjusting the previous year's rate by the annual change in farm worker wages as reflected in a wage survey. These were accompanied by further rulemaking, and opportunity for and consideration of public comments. See, *e.g.*, 51 FR 20516, (June 5, 1986), 51 FR 15915 (April 29, 1986); 51 FR 12672 (April 16, 1986); 50 FR 47636 (November 19, 1985); 49 FR 31784 (August 8, 1984); 48 FR 30208 (July 27, 1984); 48 FR 40188 (September 2, 1983); 48 FR 33684 (July 22, 1983); 48 FR 232 (January 4, 1983); 47 FR 52196 (November 19, 1982); and 47 FR 37980 (August 27, 1982).

B. *Summary*

This review of the history of the setting of AEWRs over the past 40 years leads to two conclusions; first, that the old methodology was *not* designed to enhance Statewide average hourly earnings from the USDA survey; and, second, that the fact that the AEWR averaged 20% above the average hourly earnings from the USDA survey in the fourteen "traditional user States" is an unintended result of the application of the various methodologies used in the 1960's to create the AEWR base; it cannot in any way be viewed as a measurement of the quantum of adverse effect.

In all its long history of dealing with AEWRs, DOL has employed a number of methodologies for setting AEWRs during the different periods of time. None of these methodologies ever has purported to add an enhancement to the USDA rates. To the contrary, DOL's efforts to set Statewide AEWRs have always been in response to instances where it was thought that wage depression existed in specific crops or activities. (DOL consistently has set Statewide AEWRs. Because of the absence of data from which to measure wage depression at the local level and because of the vast number of different crops, activities and areas in which such local AEWRs would have to be set, it was and is administratively infeasible to set AEWRs for specific crops or activities.) The fact that the pre-June 1, 1987, AEWRs were higher than the USDA average in most (but not all) States is the *result* of other methodologies that were distinctly different from that of adding an explicit enhancement to a Statewide USDA earnings rate. These previous methodologies included setting AEWRs at or *below* the USDA average (early 1960's); assuming that agricultural wage rates should have increased by the same percentage as manufacturing wage rates (1965); setting an absolute floor and an absolute ceiling as well, both regardless of the comparison with manufacturing wages (1965); and assuming that the rates in all States should have increased by the same *absolute* amount (20 cents) as the increase in the national USDA rate (1967). These different methodologies do not appear to have measured wage depression accurately. For example, in 1965, DOL used increase in manufacturing wages as a proxy for increases in agricultural wages, which were believed to be depressed. The application of this methodology led to AEWRs which were higher than Statewide agricultural earnings in some States and lower in others. In order to address these erratic results, DOL imposed a minimum and maximum AEWR.

If it had been DOL policy to enhance the USDA Statwide or regional rates, some degree of uniformity or consistency of relationship between the old AEWRs and the USDA rates, or at least some recognizable pattern relating to estimated presence of illegal aliens, should have been apparent. However, such was clearly not the case. In fact, under the older methodology there would have been four States (Delaware, Oregon and Washington) in 1987 with AEWRs *below* the applicable USDA average wage rates. These include at least three States with known heavy concentrations of illegals—Washington, Oregon and Florida. This fact very clearly contradicts any assumption that DOL has had a longstanding policy of enhancing USDA average wage rates. At the other extreme, there would have been six States with AEWRs 70 percent or more above the USDA rate. None of these States—Nevada, Alabama, Utah, Minnesota, Mississippi, and South Carolina—is noted for high concentrations of illegal aliens.

Moreover, none of the DOL methodologies ever attempted to measure, with any degree of accuracy, the actual amount by which prevailing wages had been depressed (*i.e.*, adversely affected) by the employment of alien workers. They were simply rough efforts to compensate for what DOL believed was wage depression or stagnation caused by the importation of large numbers or workers under the Bracero program. Thus, the historical fact that the application of the various methodologies resulted in AEWRs which, in most cases, were higher than average agricultural wages is merely fortuitous. It does not reflect any determination that these enhancements themselves were the correct measure of the compensation necessary to eliminate the past adverse effects caused by the Bracero workers.

V. Explanation for Retaining the Methodology in the Interim Final Rule

Following the DC Circuit's decision in *American Federation of Labor and Congress of Industrial Organizations* v. *Brock*, DOL has extensively reexamined the issues involved in establishing AEWRs for the H–2A program. As explained in the preamble to the June 1, 1987, interim final rule, application of the previous methodology (applied in only 14 States) to a nationwide (49 State) H–2A program would produce inexplicable and unjustifiable results. 52 FR 20404. As a result of the anomalies created by broad application of the old AEWR methodology, DOL determined that a new methodology for setting AEWRS is needed, one that is capable of rational application across the country. DOL promulgated the June 1, 1987, methodology, believing that it satisfied this requirement.

DOL has chosen to use the USDA survey of farm and livestock workers because it presents the best available data on hourly wages in the agricultural sector. The USDA conducts a scientific quarterly survey of the wages of farm and livstock workers. The survey includes small farms not covered in other surveys. The scope and frequency of the survey means that all crops and activities now covered by the H–2A program will be included in the survey data and that peak work periods also will be covered.

Because DOL anticipates that enforcement of IRCA will give rise to a significant expansion of the H–2A program to new States, crops and activities, DOL has decided to set AEWRs for all States, except Alaska, for which USDA data are unavailble. The promulgation of nationwide AEWRs will give new entrants to the H–2A program the opportunity to know in advance the wages they will be required to offer if they choose to apply for H–2A workers and will avoid the delays, uncertainties and litigation that have occurred in the past when new States were sought to be added to the H–2A program.

In light of the DC Circuit's decision in *American Federation of Labor and Congress of Industrial Organizaitons* v. *Brock*, DOL has reviewed its past practices in setting AEWRs, as described in Section IV above, and has reviewed the available literature on the effects of legal and illegal immigration to determine whether, and *to what extent*, wage depression caused by lawful and illegal alien workers exists in the agricultural labor market. Included in this review were several studies published quite recently. For the reasons outlined below, this analysis has reconfirmed DOL's belief that the June 1, 1987, methodology is valid and appropriate for ensuring that the importation of H–2A workers will not adversely affect the wages of similarly employed domestic workers.

A. Recent Studies Suggest that the Extent of Past Adverse Effect, If Any, From the Employment of Illegal Aliens, Has Been Small and Confined to Local Labor Markets and Not Reflected to Any Significant Degree in the USDA Data Series From Which the AEWR Is Derived

While DOL has believed that there is a tendency for illegal alien workers to adversely affect wage rates, it cannot disregard recent studies and analyses which conclude that such effect probably has been minor and localized. Many of these studies were conducted during the past few years, during the time IRCA was being debated, prior to enactment, and also since enactment. They have been conducted by some of the most prestigious research and evaluation organizations, applying the most rigorous state-of-the-art methodological standards. They include studies and analyses performed by the Council of Economic Advisers, the General Accounting Office, the National Commission for Employment Policy, the National Bureau of Economic Research, the Urban Institute, and other prominent individual researchers.

The 1986 *Economic Report of the President*, prepared by the Council of Economic Advisors, summarizes an extensive review of recent research and economic thinking on wage and employment effects of immigration. The Council's conclusion as to wage effect is mixed:

> *Some* studies of the effects of immigration on wage levels have revealed evidence of adverse wage effects. For example, one study concluded that real wages were 6 to 10 percent lower on average *in cities near the Mexican border*. Several studies found a reduction in the wages of unskilled workers *in areas with high concentrations* of unskilled immigrant workers.
>
> *Other studies*, however, have shown that greater concentrations of aliens in labor markets are associated with *higher earnings* of native-born workers. Increased wages have been found both for broad groups of workers and also for native-born minority groups with whom immigrants might compete directly for jobs.

(Emphasis added; *Id.* at 223)

The General Accounting Office (GAO), responding to a Congressional request, surveyed the existing literature on the effects of illegal aliens on the wages and working conditions of legal workers. *(Illegal Aliens: Influence of Illegal Workers on Wages and Working Conditions of Legal Workers* (GAO/PEMD–88–13BR) (March 1988)). Initially, 230 studies were reviewed; these were pared down to 28 which met GAO's standards for relevance and analytical rigor. With respect to the question, "Do illegal alien workers depress wages and worsen working conditions for native and legal workers?", GAO came to the following qualified and uncertain conclusion:

> With regard to the first question, our answer is a qualified "yes." Our major finding, based primarily on results from nine case studies, is that illegal aliens do, *in some cases*, exert downward pressure on wages and working conditions within low-wage, low-skilled jobs *in certain labor markets*. The four case studies that supported this finding examined illegal alien workers in competition for the same jobs with legal or native workers. Competing native or legal *agricultural workers*, food processing workers, and janitors *in specific labor markets* suffered depressed wages or worsened working conditions as employers in these sectors began to hire a higher percentage of illegal workers.
>
> In three *other sectors and labor markets*, the effects of illegal workers on legal or native workers' wages and working conditions overall *could not be determined*. The five case studies in these sectors or markets provided evidence that the increased supply of workers for *some* job categories, in *some* business and industry sectors such as the garment industry, depressed wages for some native or legal workers but, at the same time, by stimulating business, also expanded employment opportunities and wages for *other* legal and native workers in complementary, usually skilled occupations. None of these studies, however, permitted an assessment of net effects. This suggests that the effects of illegal workers on the wages and working conditions of native or legal workers are not *automatically* in the direction of depressing those conditions, and that those effects depend on a number of factors, of which the illegal status of the workers is one.

(Emphasis added, except *"automatically,"* which is in original; *Id.* at 1–2)

It should be noted that the only wage depression shown in agricultural employment cited in the GAO report appeared in two limited, localized, studies of San Diego County, California, pole tomatoes and Ventura County, California, citrus. GAO itself noted that these studies were probably atypical.

> The case studies also may poorly represent workplaces that employ international migrants. For example, most of the studies that found wage depression overall were on unionized settings. Substantial evidence indicates that unionization tends to lead to higher wages. In these cases, a part of the effect that illegal aliens may have had on wages was to counteract the effect that the unions had had on wages.

(*Id.* at 84 n 1.)

Thus, the wage-depressing effects noted in the studies may have had as much to do with anti-union activities as any other motive and might have occurred even if the non-union workers been legal workers.

Further, GAO pointed out that other economic forces also may come into play in determining whether the removal of illegal workers will necessarily raise wages:

> [O]ne cannot assume that the absence of illegal aliens would, in all cases, cause an increase in wages and job opportunities for native workers. In some cases, the higher wages necessary to bring workers into a given labor market would possibly raise the employer's costs to a level that prevents the employer from competing effectively with foreign producers.

(*Id.* at 64)

It also must be noted that DOL submitted critical comments on the draft GAO Report. *Id.* at 57–62. These comments were directed at the adequacy of the GAO analysis with respect to adverse impacts of employing illegal workers in specific occupations and activities in local labor markets. These comments did not take issue with the GAO finding that the effects of employing illegal workers are difficult to detect at levels of analysis beyond specific activities in local labor markets.

The National Commission for Employment Policy also reviewed the available literature in 1986 and came to a similar qualified conclusion (*Illegal Immigrants and Refugees—Their Economic Adoptation and Impact on Local U.S. Labor Markets: A Review of the Literature* (October 1986)):

> The evidence regarding the labor market impact of undocumented entrants is *mixed and somewhat inconclusive*. Undocumented workers do displace some native-born U.S.

workers and do lower wages and working conditions in *some* occupations and *geographical areas*. The opportunities for U.S. workers sometimes are reduced where undocumented workers dominate segments of the labor market. On the other hand, undocumented workers in some instances create and perpetuate jobs for themselves as well as for some U.S. workers. Furthermore, they help to preserve some U.S. firms that, without such a supply of foreign labor, might move their operations overseas. *The evidence is not conclusive regarding the overall or aggregate effects on the labor market.* Rather the evidence suggests that the labor market effects of undocumented workers may best be viewed as *a series of local and regional effects which vary widely.*

(Emphasis added; *Id.* at vii)

The National Bureau of Economic Research (NBER) has just completed a two-year research project on the internationalization of the U.S. labor market, including the impact of immigration on wages and employment. Its findings question whether immigrants have had any adverse effect on the wages of U.S. workers (*NBER Summary Report: Immigration, Trade, and the Labor Market* (January 20, 1988)):

Increased immigration has *some modest adverse impacts* on the employment and wages of workers who are the closest substitutes for immigrants, *the immigrants themselves* and earlier immigrants, but *little, if any, impact on young black and Hispanic Americans who are likely to be the next closest substitutes* (Topel and Lalonde). Employment and wages of less educated black and white natives have not worsened noticeably in cities in which immigrant shares of the population rose in the 1970's, while on the positive side, there is some evidence that less skilled natives have moved out of low-wage service and manufacturing industries and that these industries have grown more rapidly or declined more slowly in cities with more immigrants (Altonji and Card). The broad implication is that *immigrants have been absorbed into the American labor market with little adverse impact on natives.*

(Emphasis added; *Id.* at 7)

An Urban Institute study of the impact of the large population of Mexicans immigrating, both legally and illegally, into Southern California found the following with respect to effect on wages (*The Fourth Wave: California's Newest Immigrants* (1985)):

The presence of Mexicans and, in all likelihood, of other immigrant groups, reduced the average wages in manufacturing and *some* services, both in Los Angeles and elsewhere in California. This reduction in average wages primarily reflects the increasing share of Hispanics in the work force, since wages for this group are lower than for non-Hispanics in similar occupations. We also conclude that the presence of immigrants has *somewhat depressed the wages of non-hispanics* working as laborers, but the impact on the *wages paid to non-Hispanics* in semi-skilled occupations *appears to be negligible.* The principal reasons why immigrants received lower wages are that they are less likely to be unionized and they have less experience and education than other workers.

(Emphasis added; *Id.* at 123)

Specifically with respect to agriculture, Dr. Phillip L. Martin, Professor of Agricultural Economics, University of California at Davis, in a study conducted for DOL, raises serious doubts as to whether illegal aliens have adversely effected agricultural wage rates (*IRCA and the U.S. Farm Labor Market* (February 1988)):

If illegal alien workers are replaced by U.S. citizens, legal immigrants, and legal non-immigrants, there will be *offsetting effects on farm wages.* Generally, the illegal aliens and the legal non-immigrants are "solo men" (in the U.S. without families); such workers *tend to earn more per hour at prevailing piece rates than more diverse U.S. workers.* Some illegal aliens are "isolated and powerless," to the extent that such illegal aliens are replaced by other workers, there should be upward pressure on farm wages.

(Emphasis added; *Id.* at 1)

Dr. Martin states in the same report, "*The evidence of these possible wage-depressing effects of illegals is sparse.* [Emphasis added.]" *Id.* at 8. As indicated above, one of the main reasons for Dr. Martin's doubt about adverse effect is the fact that aliens often have higher productivity than U.S. workers, so that when paid by the piece their average hourly earnings exceed those of U.S. workers, thus possibly even raising the average wage rate. As he states, "Illegal alien farmworkers tend to be young men; such solo men tend to be the most productive farmworkers in the sense that *they have higher-than-average hourly earnings at prevailing piece rates.* [Emphasis added.]" *Id.* at 14.

Even if there may have been adverse effects on agricultural wages from the employment of illegal aliens, they apparently have been so concentrated in specific crops, activities, and areas that such effects do not appear to be reflected to any significant degree in the USDA data series, which includes all agricultural activities, usually in multi-State regions. Dr. Martin states as his first major conclusion in his 1988 study cited above:

The removal of illegal alien workers should raise farm wages. However, illegal alien workers are not uniformly distributed throughout agriculture; instead, they are concentrated in particular tasks, commodities, areas, and on certain farms. Thus the *wage increases traceable to the removal of illegal alien workers may not be apparent in regularly-published wage data such as Farm Labor.*

(Emphasis added; *Id.* at 1)

Clearly, if the removal of illegal aliens may not significantly affect the USDA wage data, their presence also may not affect this series to any significant extent. (Note: The USDA periodical *Farm Labor* is the publication containing the USDA data series on which AEWRs are based.)

This view is strongly supported by the 1988 GAO report cited above:

Our experience in the *prior* synthesis on illegal workers (GAO/PEMD-88-18B) suggested the general lesson that *wage depression is harder and harder to detect at levels of analysis beyond or above a highly localized and occupation-specific labor market.* For example, we found evidence of displacement of legal citrus pickers by illegal ones in Ventura County, California, but those effects probably would not be evident in data on agricultural workers in central California generally and even less so at higher levels of aggregation such as unskilled workers in the state. Thus, case studies that concentrate on specific industries or sectors in labor markets in specific communities may be better able to detect wage depression than aggregate data.

(Emphasis added; *Id.* at 18.)

Evidence suggesting that the USDA wage rates have not been affected significantly by the presumably lower wages paid to illegals is provided by State average wage data from that USDA data series itself. An examination of average agricultural earnings in the six States most likely to have the highest concentrations of undocumented workers, as measured by the highest concentration of seasonal crop workers, and as shown in the USDA data published in *Farm Labor*, does not reveal a consistent pattern of depression in the USDA earnings data over time. Over the 1974–87 period (the longest period with consistent USDA survey data), average agricultural earnings in North Carolina, Oregon, Texas and Washington increased by more than the national average. Only California and Florida had increases that were below the national average. However, the absolute level of wage rates in both California and Florida is well above the national average.

B. The AEWR Methodology in the Interim Final Rule Is Justified By the Available Evidence

From DOL's review of the available information on the agricultural labor market, DOL views the data and literature as inconclusive on the issue of adverse effect or wage depression from the presence of illegal alien workers on the USDA data series. This inconclusiveness is due, in part, to statistical difficulties in measuring wage depression, but also reflects the fact that data on illegal workers are nearly impossible to obtain for purposes of measuring any possible wage depression caused by such workers. DOL is aware of no study that has quantified or measured any wage depression at any aggregate level such as the State or the region. To the extent that there is some anecdotal evidence of wage depression from these sources, the evidence also suggests that the adverse effects are highly localized and concentrated in specific areas and crop activities. The evidence further suggests that because of the nature of the illegal alien workforce, and because of the concentration of that workforce in particular localities and crops, such adverse effects as may exist are not reflected, to any substantial extent, if at all, in USDA average wage data.

Thus, DOL concludes that setting the AEWR at the level of average agricultural wages, as determined by the USDA survey, is the correct approach. To the extent that wage depression does exist on a concentrated local basis, the average agricultural wage does not appear to be significantly affected by this wage depression. Further, none of the studies reviewed by DOL here quantified or measured any wage depression that might exist in the USDA data series. This series is, therefore, the appropriate source of rates to use to set the AEWR. Based on all of the information available, there is no justification for adding any enhancement to the USDA average agricultural wage. Such an explicit enhancement could only be justified if alien agricultural employment has depressed average agricultural earnings, and if the extent of the depression can be measured at the aggregate level.

Even though the evidence is not conclusive on the existence of past adverse effect, DOL still believes that its statutory responsibility to U.S. workers will be discharged best by the adoption of an AEWR set at the USDA average agricultural wage in order to protect against the possibility that the anticipated expansion of the H–2A program will itself create wage depression or stagnation.

As pointed out in the preamble to the June 1, 1987, interim final rule, the old methodology had resulted in anomalies among the State rates which could not be explained in any rational manner relating to presence of illegal aliens and past adverse effect. See 52 FR at 20504. In light of: (1) The recent studies cited earlier which indicate that it is highly questionable as to whether and how much adverse effect has occurred from the use of illegal aliens; (2) the likelihood that any adverse effect which might have occured may not be reflected in the USDA data series; and (3) the apparent anomalies in that old AEWR methodoogy, it is clear that adding to that USDA average any enhancement factor comparable to that resulting from the old methodology—such as the observed 20 percent average in the 14 States for which old AEWRs were published—would be inappropriate. Even if one were to assume (despite the absence of evidence) that there has been some adverse effect on the USDA rates in States with larger concentrations of illegal aliens, applying an enhancement factor across-the-board to all States clearly would be inequitable and inappropriate.

VI. Other Considerations in Developing an AEWR Methodology

DOL must assume that IRCA will achieve its stated purpose of removing illegal aliens from the labor force. See 8 U.S.C. 1324a. (One might note that AEWRs, if set too high, might be a disincentive to the use of H–2A and U.S. workers, and could undermine efforts to eradicate the employment of illegal aliens.) Agricultural employers who have employed illegal alien workers in the past then must fill their labor needs with U.S. workers (including special agricultural workers authorized under IRCA) or with H–2A workers. All of these will be covered by various wage and working condition protections, and the total number may well fall short of the pre-IRCA agricultural labor force. These changed conditions could tend to create upward pressures on agricultural wage rates.

Within this context, the AEWR requirement in the H–2A program could contribute to upward wage pressures. Non–H–2A employers will be forced to compete for workers with H–2A employers at the wage rates required in the H–2A program. Using the USDA average as the AEWR will probably have some "ratcheting" effect on wages, as the previous year's *average* becomes the current year's *minimum*. This will be particularly true if the number of covered workers (H–2A workers and their U.S. co-workers) at the wage rates required in the H–2A program expands significantly. As a result, requiring an enhancement to the USDA average rate as the AEWR could increase labor costs of employers of H–2A workers and weaken their ability to compete with foreign imports. Lower domestic production could reduce the demand for labor, adversely affecting both wages and job opportunities for U.S. workers whom IRCA was designed to protect.

These effects would also be inconsistent with the purpose of the labor certification process, as recognized by the courts, that the temporary foreign worker regulations are "to promote a manageable scheme * * * that is fair to both sides." *Flecha* v. *Quiros*, 567 F. 2d 1154, 1156 (1st Cir. 1977). As part of the labor certification process, the setting of AEWRs must balance the needs and interests of U.S. workers and U.S. employers. See *Flecha* v. *Quiros*, 567 F. 2d at 1155–1156; *Rogers* v. *Larsen*, 563 F. 2d 617, 626 (3rd Cir. 1977); and *Elton Orchards, Inc.* v. *Brennan*, 508 F. 2d 493 (1st Cir. 1974).

The IRCA amendments to the INA do not change the role and effect of the statutory policy to protect the wages of similarly employed U.S. agricultural workers from the adverse effect which may result from the employment of alien workers. Under the H–2A program, as under the H–2 program before it,

> [t]he common purposes [of the program] * * * are to assure [employers] an adequate labor force on the one hand and to protect the jobs of citizens on the other. Any statutory scheme with these two purposes must inevitably strike a balance between the two goals. Clearly, citizen-workers would best be protected and assured high wages if no aliens were allowed to enter. Conversely, elimination of all restrictions upon entry would most effectively provide employers with an ample labor force.

Rogers v. *Larsen*, 563 F. 2d 617, 626 (3d Cir. 1977); *Flecha* v. *Quiros*, 567 F. 2d at 1154. As stated by the U.S. Court of Appeals for the First Circuit, the purpose of the INA and temporary foreign worker regulations are "to provide a manageable scheme * * * that is fair to both sides." *Flecha* v. *Quiros*, 567 F. 2d at 1156.

> We start with a given, that it has always been a Congressional policy to prefer domestic workers in all fields. However, it is also necessary to consider would-be employers, although in case of conflict, wide leeway favoring domestic workers is given the U.S. Secretary [of Labor]. *Elton Orchards, Inc.* v. *Brennan*, 1 Cir., 1974, 508 F. 2d 493 * * *

Id., 567 F. 2d at 1155. Thus, the methodology for computing an AEWR must recognize the need to balance the goals of supplying an adequate labor force to employers and protecting the jobs of U.S. workers.

"[R]ather than an area of pure statutory interpretation as to which there is in theory only a single answer", *Building & Construction Trades' Department, AFL–CIO* v. *Donovan*, 712 F.2d 611, 619 (DC Cir. 1983), *cert. denied*,

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464 U.S. 1089 (1984). DOL has "broad discretion" to set AEWRs in accordance with "any of a number of reasonable formulas * * * or" *Florida Sugar Cane League, Inc.* v. *Usery*, 531 F.2d 299, 303–304 (5th Cir. 1976). See *American Federation of Labor and Congress of Industrial Organizations* v. *Brock*, 835 F.2d 912, 915 n 5 (DC Cir. 1987); *Florida Fruit & Vegetable Association, Inc.* v. *Donovan*, 583 F. Supp. 286 (S.D. Fla. 1984), *aff'd sub nom. Florida Fruit & Vegetable Association, Inc.* v. *Brock*, 771 F.2d 1455 (11th Cir. 1985), *cert. denied*, 108 S. Ct. 1524 (1988); *Shoreham Cooperative Apple Producers' Association, Inc.* v. *Donovan*, 764 F.2d 135 (2d Cir. 1985); *Virginia Agricultural Growers' Association, Inc.* v. *Donovan*, 774 F.2d 90 (4th Cir. 1985); *accord, Rowland* v. *Marshall*, 650 F.2d 28 (4th Cir. 1981) (*per curiam*); *Williams* v. *Usery*, 531 F.2d 305, 306 (5th Cir.), *cert. denied*, 429 U.S. 1000 (1976); *Flecha* v. *Quiros*, 567 F.2d 1154 (1st Cir. 1977); *Limoneira Co.* v. *Wirtz*, 225 F. Supp. 961 (S.D. Cal. 1963), *aff'd*, 327 F.2d 499 (9th Cir. 1964); and *Dona Ana County Farm & Livestock Bureau, Inc.* v. *Goldberg*, 200 F. Supp. 210 (D.D.C. 1961); see also *Production Farm Management* v. *Brock*, 767 F.2d 1368 (9th Cir. 1985). DOL believes that the June 1, 1987, methodology is the appropriate method by which to set AEWRs in light of its obligations to balance the needs of U.S. workers and U.S. employers and in light of its great discretion to develop any reasonable formula to set AEWRs.

VII. Conclusion

The AEWR is the minimum wage rate that agricultural employers seeking nonimmigrant alien workers must offer to and pay their U.S. and alien workers, if prevailing wages and any federal or State minimum wage rates are below the AEWR. The AEWR is a wage floor, and the existence of an AEWR does not prevent the worker from seeking a higher wage or the employer from paying a higher wage.

The purpose of an AEWR, as described by the U.S. Court of Appeals for the Fifth Circuit, is "to neutralize an 'adverse effect' resultant from the influx of temporary foreign workers." It is a "method of avoiding wage deflation." *Williams* v. *Usery*, 531 F.2d 305, 306 (5th Cir. 1976), *cert. denied*, 429 U.S. 1000; see *Florida Sugar Cane League, Inc.* v. *Usery*, 531 F.2d 299 (5th Cir. 1976); see also *Production Farm Management* v. *Brock*, 767 F.2d 1368 (9th Cir. 1985); *Limoneira Co.* v. *Wirtz*, 225 F. Supp. 961 (S.D. Cal. 1963), *aff'd*, 327 F.2d 499 (9th Cir. 1964); *Dona Ana County Farm and Livestock Bureau* v. *Goldberg*, 200 F. Supp. 210 (D.D.C. 1961); and 20 CFR 655.0) (1988). The AEWR thus ensures that the wages of similarly employed U.S. workers will not be adversely affected by the lawful importation of temporary, nonimmigrant alien workers. For the reasons outlined above, DOL believes that the June 1, 1987, methodology satisfies DOL's duties under IRCA to ensure that the importation of H–2A workers does not adversely affect the wages of similarly employed domestic workers.

VIII. Request for Comments

DOL requests comments on the proposed rule. Specifically, any additional studies or evidence as to known and measured wage depression reflected in the USDA data series caused by the presence in the agricultural work force of illegal aliens will be very helpful to enable DOL to further examine the conclusions drawn from the materials reviewed. While most of the studies cited in this document are publicly available, the study by Dr. Martin is not available generally. DOL has supplied copies of the Martin study to the parties in the *AFL-CIO* v. *Brock* litigation and will supply, upon request, copies to any other interested person. Copies may be obtained by writing to or calling the contact person listed at the beginning of this document.

Regulatory Impact

This document affects only those employers using nonimmigrant aliens workers (H–2A visaholders) in temporary agricultural jobs in the United States. It does not have the financial or other impact to make it a major rule and, therefore, the preparation of a regulatory impact analysis is not necessary. See Executive Order No. 12291, 3 CFR 1981 Comp., p. 127, 5 U.S.C. 601 note.

The Department of Labor has notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to the Regulatory Flexibility Act at 5 U.S.C. 605(b), that this proposed rule does not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This document contains no paperwork requirements which mandate clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Catalog of Federal Domestic Assistance Number

This program is listed in the *Catalog of Federal Domestic Assistance* as Number 17.202, "Certification of Foreign Workers for Agricultural and Logging Employment."

List of Subjects in 20 CFR Part 655

Administrative practice and procedure, Agriculture, Aliens, Employment, Forest and forest products, Guam, Labor, Migrant labor, Wages.

Proposed Rule

Accordingly, Part 655 of Chapter V of Title 20, Code of Federal Regulations, is proposed to be amended as follows:

PART 655—LABOR CERTIFICATION PROCESS FOR THE TEMPORARY EMPLOYMENT OF ALIENS IN THE UNITED STATES

1. In 20 CFR Part 655, the authority citation is revised to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(H) and 1184(c), and 29 U.S.C. 49 *et seq.*;

§§ 655.00, 655.00, and 655.00 also issued under 8 U.S.C. 1188 and 8 CFR 214.2(h)(4)(i);

Subpart A and Subpart C also issued under 8 CFR 214.2(h)(4)(i);

Subpart B also issued under 8 U.S.C. 1188.

2. Section 655.107(a) is republished to read as follows:

§ 655.107 Adverse effect wage rates (AEWRs).

(a) *Computation and publication of AEWRs.* Except as otherwise provided in this section, the AEWRs for all agricultural employment (except for those occupations deemed inappropriate under the special circumstances provisions of § 655.93 of this part) for which temporary alien agricultural labor certification is being sought shall be equal to the annual weighted average hourly wage rate for field and livestock workers (combined) for the region as published annually by the U.S. Department of Agriculture (USDA) based on the USDA quarterly wage survey. The Director shall publish, at least once in each calendar year, on a date or dates to be determined by the Director, AEWRs for each State (for which USDA publishes regional data), calculated pursuant to this paragraph (a) as a notice or notices in the **Federal Register**.

* * * * *

Signed at Washington, DC, this 25th day of October 1988.

Ann McLaughlin,

Secretary of Labor.

[FR Doc. 88-24864 Filed 10-27-88; 8:45 am]

BILLING CODE 4510-30-M

20 CFR Ch. V

Worker Adjustment and Retraining Notification Act; Solicitation of Comments in Advance of Proposed or Interim Final Rulemaking; Discussion Paper

AGENCY: Employment and Training Administration, Labor.

ACTION: Solicitation of comments in advance of proposed or interim final rulemaking.

SUMMARY: On September 16, 1988, the Department of Labor (DOL) published a notice in the **Federal Register** soliciting comment from interested parties regarding the implementation of Pub. L. 100–379, the Worker Adjustment and Retraining Notification Act (WARN). These comments were to advise DOL on the degree of statutory interpretation which was believed to be most appropriate for regulations which the Secretary of Labor will prescribe pursuant to section 8 of WARN. Based on those comments received on a timely basis, and study of the legislative history, the Department is now publishing for public comment a paper which reviews sections 2, 3, 4, and 11 of the WARN statute and discusses questions raised by commenters regarding the interpretation of relevant sections of the Act in the rulemaking which will follow the close of this latest comment period.

DATES: To receive consideration, comments must be received at DOL as soon as possible. Attention is drawn to the tight timeframe. All timely comments will be reviewed and considered in the process of drafting regulations, but in view of a possible interpretation of the effective date provision discussed below, DOL may publish interim final regulations by December 2, 1988. The preamble to those regulations may not extensively discuss all comments.

ADDRESS: Submit comments to Dolores Battle, Office of Job Training Programs, Employment and Training Administration, Room N–4459, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Robert N. Colombo, Telephone: (202) 535–0577.

SUPPLEMENTARY INFORMATION: In response to the September 16 publication, the Department received a total of 43 timely individual letters of comment. To adjust for the Columbus Day holiday, comments received as late as the afternoon of October 12 were formally considered, and late comments were reviewed to the extent possible. This response included comments from 11 companies, 5 national unions, 15 employer associations, 4 law firms, and 8 other comments from State officials, members of Congress, employee associations and citizens.

In the September 16 Notice, DOL first requested comment on "the extent to which the Department should issue interpretive regulations." The consensus among respondents from business and labor was that DOL should provide interpretive regulations where possible, in order to facilitate understanding of WARN provisions and for effective implementation of advance notice required by the Act. Commenters expressed strong concern about the potential for expansive litigation, and believe that DOL rulemaking can assist businesses and workers through definition of important terms and conditions set forth in WARN. The Department recognizes, as many commenters have also recognized, that this rulemaking will not address all of the many technical variations in industry and company-specific situations, given the diversity of U.S. company structures and employment arrangements.

The Department draws to the attention of the employer community the language of section 7 of WARN, "Procedures Encouraged Where Not Required." This provision presents the sense of the Congress that employers not otherwise covered under WARN who are taking action to lay off or terminate workers should voluntarily provide 60-day advance notice to employees. Although DOL's rulemaking will establish the principles for providing notice to affected workers and for applying statutory exclusions, exemptions, and reduced notice to proposed plant closings and permanent workforce reductions, it may be good business practice, as well as civically desirable, for employers to routinely provide advance notice to workers or their unions, the local chief elected official, and the State dislocated worker unit whenever possible.

The September 16 **Federal Register** notice solicited comment on "the extent that regulations are needed [and] the specific views of commenters on how particular sections of the law should be implemented through regulations." Commenters raised many points and concerns regarding each section of the statute. This notice will review the statute, identifying issues in sections 2, 3, 4, and 11, which may be interpreted through DOL rulemaking.

It is the Department's intent, through these regulations and through the Trade Adjustment Assistance Program (TAA) and Economic Dislocation and Worker Adjustment Assistance Act (EDWAA) regulations, to provide for maximum coordination of the actions and activities of these programs to assure that the negative impact of dislocation on the workers is lessened to the extent possible. While this coordination will be primarily addressed through TAA and EDWAA regulations, the WARN regulations will also deal with the topic where appropriate.

The Statute, Issue by Issue

DOL is seeking to establish principles for broad application of WARN's requirements. In reviewing the following selection of key issues and comments, DOL points out again that its regulations cannot specifically address all situations and possibilities.

The issues discussed in this paper are preliminary. DOL believes that the interpretations suggested in the text are reasonable but recognizes that other reasonable interpretations exist. DOL does not intend by publishing this paper to adopt any final positions on, or interpretation of, WARN. DOL will carefully review all comments before adopting regulations. As noted in the discussion that follows, the question of whether or not to issue interpretative regulations on a number of specific issues is still open, and the Department may decide, after considering comments received, that an appropriate alternative may be not to issue regulations on some issues covered in this paper.

1. Effective Date—Section 11 of Act

WARN has an effective date of February 4, 1989. Section 3(a) of WARN states "an employer shall not order a plant closing or mass layoff until the end of a 60-day period after the employer serves written notice * * *."

A number of commenters believe that this language should be interpreted to require that employers must provide full 60-day notice in advance of planned plant closings or mass layoffs occurring after the effective date, i.e., any actions planned to occur on or after February 4, 1989 would be subject to the full 60-day notice requirement, requiring notice on or after December 6, 1988.

A second group of commenters interpreted the effective date provision as requiring notice to be given only for actions which will occur 60 days after February 4, 1989, i.e., notice would be required only for actions occurring on or after April 5, 1989.

A third group interpreted the law as meaning that an employer must give such advance notice as is possible for

all covered employment actions that occur after February 4, 1989, e.g., for a layoff occurring on March 6, 1989 the employer would be required to provide 30 days' notice.

Since reasonable arguments can be made to support all three interpretations, many commenters requested clarification on this issue. In order to avoid potential liability, prudent employers may wish to anticipate the adoption of the first interpretation, and be prepared to provide 60-day advance notice, as early as December 6, 1988, for any covered employment actions which are planned to occur on or after February 4, 1989.

2. Definition of Employer—Section 2(a)(1)

Commenters have raised a range of interpretative issues having to do with the meaning of the term "business enterprise" and the form of a business organization. These include whether and to what extent subsidiaries which are wholly or partially owned by a parent company are separate employers for the purpose of WARN, and to what extent independent contractors can be considered separate from their business clients. Questions have been raised regarding the coverage of non-profit organizations, and public and quasi-public organizations which perform commercial work.

In response to questions raised, it appears that there are conditions under which all of these entities can be considered as "employers" within the meaning of the Act. In developing general principles for its regulations, DOL will look for guidance to existing statutes such as the National Labor Relations Act (NLRA), the Fair Labor Standards Act (FLSA), the Employee Retirement Income Security Act (ERISA) and interpretations thereunder.

3. When to Measure Whether a Mass Layoff Has Occurred—Section 2(a)(3)(B)

The point at which the number of employees should be measured for the purpose of determining coverage and whether the 33% threshold for a mass layoff has been reached could be a "snapshot", or an average calculated over a period of time.

In response to some comment letters, it appears that a "snapshot" of the employment level at the time notice is required to be given will be the basic rule to apply in the majority of cases, but circumstances may arise where it would be appropriate to use an average employment figure. In such cases, any intent of the employer to evade the Act by reducing employment levels over time would appear to be the paramount consideration in any subsequent civil action.

4. Single Site of Employment—Section 2(a) (2) and (3)

While some commenters have suggested that DOL not regulate on this issue, DOL has received numerous comments concerning possible definition of the term "single site of employment". Comments and the legislative history suggest that a "single site" means more than just a single building.

The common thread in determining what is a single site would appear to be a sufficient degree of geographic contiguity as well as an operational connection. Several buildings which are part of a "campus" would be an obvious example of a single site. On the other hand, geographically separate buildings (i.e., several blocks or miles apart) would not appear to constitute a single site unless they were part of a single operation. An example of such an exception might be two warehouses several blocks apart sharing the same staff and equipment.

5. Facilities or Operating Units—Section 2(a)(2)

Numerous comments point to the wide variety of possible workplace and organizational arrangements within a single site that might constitute a "facility or operating unit." It has been suggested by many commenters that DOL regulations deal with questions regarding traveling sales forces, different assembly or product lines, teams of workers with the same occupation or skill, and different departments and divisions. Comments suggest that "facility" refers to a building or buildings, and "operational unit" refers to a product, task, or specific work function within or across facilities at the single site.

For workers whose primary duties require travel from point to point (e.g., railroad workers, bus drivers, salespersons), the facility or operating unit to which they are assigned as their home base might define the unit in which they are covered for WARN purposes.

6. Determination of Plant Closing and Mass Layoff Data—Section 2(a) (2) and (3)

Several commenters raised questions about determining the plant closing or mass layoff data when all employees are not terminated on the same date.

In response to questions raised, the date of the first individual termination within the statutory 30-day period triggers the 60-day notice requirement. The Act provides that each subsequent group of terminees is entitled to a full 60-day notice. Therefore, in order to address the concerns of commenters one possible approach is described below.

Employers may wish to look ahead 30 days and behind 30 days to determine whether planned employment actions in the aggregate trigger the coverage of the Act. In the case of the possible application of section 3(d) of the Act, the employer may wish to look ahead and behind for 90 days.

Employers may wish to exercise care in making an accurate determination of the effects of planned employment actions, since a failure to do so will subject the employer to the civil penalties of the Act. Also, it is noted that while the 60-day period is the minimum for advanced notice, this provision is not intended to discourage employers from voluntarily providing longer periods of advance notice.

7. Plant Closing or Mass Layoff?—Section 2(a) (2) and (3)

A number of commenters have raised the possibility of a different characterization of the same termination action (i.e., plant closing and mass layoff) depending upon the definitions. The Act provides that plant closings, which can be triggered by the termination of a smaller number of workers than a mass layoff, involve the shut-down of one or more distinct units within a single site. A mass layoff involves employment loss, regardless of whether one or more units are shut down at the site.

8. Definition of "Affected Employees"—Section 2(a)(5)

Questions arise in determining who the affected employees are where bumping rights apply. The Act appears to be clear that "affected employees" includes those incumbents in positions that are to be eliminated. In response to comments, it appears that the intent of WARN can be interpreted to require that notice be given to other employees who will likely lose their jobs because of bumping rights or other factors, to the extent that such workers can be identified 60 days in advance.

A second question arises concerning the number of "affected employees" to be used in determining whether coverage thresholds are met, i.e., whether to count only incumbents, or both incumbents and bumped workers. It appears that only incumbents should be counted in determining whether coverage thresholds have been reached.

Questions have been posed whether "affected employees" includes supervisory and managerial workers. It would appear from the legislative history that such workers are covered.

9. Definition of Employment Loss—Section 2(a)(6)

Commenters viewing this question from different perspectives point out that the essential nature of the loss is of the worker's job rather than the loss of compensation. While some commenters suggested that plans for income subsidies after the loss of employment do not constitute "employment loss", it would appear that the loss of work, not the loss of income, would satisfy the definition of the term "employment loss."

Another issue raised was whether a reduction in hours of work of more than 50% is to be measured in the aggregate or for each employee individually. It would appear that the reduction of hours would be applied to each employee.

Questions also were raised about whether voluntary retirement(s) or departure(s) resulting from incentive programs are covered as employment losses. It would not appear that truly voluntary departure(s) would be covered as employment losses.

10. Definition of "Part-time Employee"—Section 2(a)(1), 2(a)(2), 2(a)(3) and 2(a)(8)

DOL received comments regarding the definition of "part-time employee". Reviewing the statute, it appears that the term "part-time employee" was intended to cover employees who work on average fewer than 20 hours per week, or workers who would traditionally be understood as short-time, "seasonal" employees.

In response to questions, regular full-time employees with tenure of less than 6 of the last 12 months appear to be part-time employees for purposes of WARN. While part-time employees are not counted in determining whether plant closing or mass layoff thresholds are reached, such workers would appear to be "affected employees" and due notice.

Other commenters asked that a period be specified for calculating whether a worker has worked "an average of fewer than 20 hours per week." It appears that a reasonable period for making this calculation may be the shorter of the actual time the worker has been employed or 90 days.

11. Responsibility for Notice: Seller and Purchaser—Section 2(b)(1)

Despite several comments proposing that regulations limit the responsibility of the buyer to provide notice to employees of a business it has purchased, the Act and legislative history appear to support the view that the full responsibility to notify any workers to be terminated remains with the seller up to and including the effective date of the sale and is assumed by the purchaser beginning on the day after the effective date of the sale. To the extent that the seller was aware of pending termination plans, the seller would appear to be required to give notice. If the seller fails to do so, it appears that the seller may be liable for its failure. If the buyer has been silent about any plans to reduce the workforce, the seller may not be liable to give notice prior to sale. It may be prudent for the buyer and seller to determine the impacts of the sale of workers and to give notice.

This subsection of the Act states that, "* * * any person who is an employee of the seller (other than a part-time employee) as of the effective date of the sale shall be considered an employee of the purchaser immediately after the effective date of the sale." This provision appears to preserve the tenure of the employees of a business that has been sold.

12. Offers to Transfer Employees—Section 2(b)(2) (A) and (B)

Questions were raised about the criteria to be used in determining whether an offer of a job transfer satisfies the requirements of the Act. While WARN is silent, it appears appropriate to interpret the term "transfer" to mean that the new job be regular, and be a reasonable transfer in terms of pay and working conditions, and be within reasonable commuting distance.

Many commenters asked for a definition of what constitutes a "reasonable commuting distance." One possible interpretation is to give it the same meaning as construed by the Internal Revenue Service in 26 CFR 1.119–1(d)(4) of their regulations. This regulation takes into consideration the following factors: geographic accessibility of the place of work, the quality of the roads, customarily available transportation, and the usual travel time.

In response to several comments, DOL notes that under section 2(b)(2)(B), the employer may become liable for failure to give notice if an offer to transfer beyond reasonable commuting distance is not accepted after the 60-day notice period has expired. An employer may, therefore, be well advised to provide 60-day advance notice as part of the transfer offer.

13. Notice to "Affected Employees" or Their Representatives—Section 3(a)(1)

Section 3(a)(1) of the statute provides for notice to affected workers or to their representatives to be served at least 60 days prior to any planned mass layoff or plant closing. In cases where affected employees are represented by one or more unions, the Act requires that notice be served upon the union(s). In cases where employees are not represented by unions, notice is to be given directly to each affected worker.

Several commenters raised questions about timing. It appears that Congress intended for this notice to have been received by the employees or by their representative for at least 60 days. The Department views any reasonable method of delivery to be acceptable (e.g., first class mail, timed for arrival at least 60 days before separation; personal delivery with optional signed receipt; insertion of notice into employees' pay envelopes).

Questions have also been raised about what constitutes effective service upon union representatives. The question is raised regarding which level of a union's hierarchy should be served. It appears that the notice should be served on the closest or most direct representative of the affected employees (i.e., the local union(s)). This notice should be served on the chief elected officer of each local union representing affected employees.

Several commenters requested separate service to both the employees and to their representative(s). The statue appears to be clear that service of notice to each union representing affected employees discharges the employer's obligation to provide advance notice to represented workers.

14. Notice to the State Dislocated Worker Unit and to the Local Government—Section 3(a)(2)

Several commenters were unclear about the identity of the State Dislocated Worker Program unit to which notice is to be sent. Since the States are restructuring to implement training under the EDWAA, service upon the Governor of the State might be viewed as constituting service upon the State Dislocated Worker Unit until such time as the Governor publishes appropriate State procedures for serving notice to the State Dislocated Worker Unit.

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The issue has been raised about whether territories and insular areas are included as States under WARN. It appears that WARN was intended to operate in coordination with the State dislocated worker units created under the amended Title III of the Job Training Partnership Act (JTPA). For the purpose of WARN, a viable interpretation may be that the term "State" includes the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

Questions were also raised concerning the appropriate chief elected official to be notified in some localities. The identity of the chief elected official obviously will vary according to the local government structure. In the case of elected boards, it would appear that notice should be served upon the board's chairperson.

Questions also were raised about what taxes should be counted for purposes of determining "the unit of local government to which the employer pays the highest taxes." It appears that all local taxes paid to a "general purpose political subdivision of a State" should be aggregated for this purpose.

Several commenters raised questions about the timing of notice to State and local governments. It would appear that the transmittal of notice should be timed to allow both State and local officials to have notice in hand at least 60 days prior to the proposed employment action.

15. For How Long is Notice Effective?—Section 3(a)

Several commenters raised questions about whether a new notice is required to all parties if the date of a planned employment action is postponed. In response to these questions, it would appear that written notice should be given for any postponement. If the postponement is for less than 60 days, the 60-day notice requirements of WARN would not appear to apply and the notice should be given as soon as possible and should simply state the date to which the planned employment action is postponed and the reason(s) for this postponement. If the postponement is for 60 days or more from the originally scheduled date, it appears that a new notice should be given that complies with WARN, i.e., be given at least 60 days in advance and contain the information and be served on the parties as required by WARN. In response to comments, the Department may consider the establishment of this cutoff period in order to prevent intentional "rolling notice" (i.e., routine periodic notice).

16. Content of Notice—Section 3(a)

In response to comments, the Department suggests the following elements which might be included in the actual written notice. The Department invites comments on whether these or other elements should be described in regulations.

a. Notice to "affected employees"—Notice should be written in language understandable to the employee, and should include the name and address of the facility, a clear identification of the expected date when the plant closing or mass layoff will commence and, if different, the date on which the employee will be laid off or terminated. The notice should also identify whether the action is a permanent or temporary plant closing or a mass layoff, and if a temporary layoff, its expected duration to the extent known. This notice should also advise affected employees of the existence of any applicable bumping rights. In response to concerns raised in the legislative history, a fine print or "ticketed notice" (i.e., preprinted notice regularly included in each employee's paycheck or pay envelope) does not appear to meet the requirements of WARN. Further, the Department would recommend the inclusion of information on available dislocated worker assistance.

b. Notice to "each representative of the affected employees"—This notice should contain the name and address of the facility, the names and addresses of the employees represented by the union in positions to be affected, and the affected employees' job titles and numbers in each job classification. The expected date of the first separation should be clearly given, as well as the anticipated schedule for making separations including the identification of bargaining unit members who will be laid off or terminated, and whether the planned action constitutes a mass layoff or plant closing, and if a temporary layoff, its expected duration to the extent known. The notice should also indicate what other, if any, unions represent affected employees, and state the existence of any applicable bumping rights.

c. Notice to the "State dislocated worker unit"—This notice should contain the name and address of the facility, the affected employees' job titles and numbers in each job classification, the name of the union(s) representing the affected workers and the name and address of the chief elected officer of each such union. Where bumping is applicable, the notice should so state. The expected date of the first separation should be clearly given, as well as the anticipated schedule for making separations, and whether the planned action constitutes a mass layoff or plant closing, and if a temporary layoff, its expected duration to the extent known. The notice also should identify a company official to contact for further information.

d. Notice to "chief elected official of the unit of local government"—The notice to the chief elected official of the jurisdiction where the plant closing or mass layoff is to occur should contain the name and address of the facility, the affected employees' job titles and numbers in each job classification, the name of the union(s) representing the affected workers and the name and address of the chief elected officer of each such union. Where bumping is applicable, the notice should so state. The expected date of the first separation should be clearly given, as well as the anticipated schedule for making separations, and whether the planned action constitutes a mass layoff or plant closing, and if a temporary layoff, its expected duration to the extent known. The notice also should identify a company official to contact for further information.

17. Reduction Notification Period—Section 3(b)

Section 3(b) of WARN sets forth three conditions under which the notification period may be reduced to less than 60 days. These conditions are:

(1) Where an "employer was actively seeking capital or business which, if obtained, would have enabled the employer to avoid or postpone the shutdown and the employer reasonably and in good faith believed that giving the notice would have precluded the employer from obtaining the needed capital or business";

(2) Where the dislocation event is "caused by business circumstances that were not reasonably foreseeable at the time the notice would have been required"; and

(3) Where a natural disaster has occurred.

Several commenters suggested that the Department should develop definitions of these three conditions that set objective standards by which employers may measure their conduct. The following discussion is an attempt to develop the outline of objective standards.

It appears clear from the legislative history of WARN that Congress intended these exceptions to the 60-day notice requirement to be narrowly construed.

Comments suggest that the definition of natural disaster can be objectively defined to include flood, drought, earthquake, storm, tidal wave/tsunami, and similar effects of nature. The legislative history provides some direction on the "natural disaster" basis for reduced notice, noting that employers may be required to prove that the plant closing or mass layoff is a direct result of a natural disaster. Commenters cited instances of indirect effects of natural disasters, which might be the basis for reduced notice under "business circumstances that were not reasonably foreseeable."

The Conference Report on H.R. 3 describes the burden of proof assumed by an employer choosing to use the "faltering company" basis for reduction of notification. The Act provides that the "faltering company" exception is applicable to plant closings and not mass layoffs.

To qualify for reduced notice under the "faltering company" exception, the Conference Report states that an employer must be able to demonstrate the existence of several facts or conditions. First, it must demonstrate that it was "actively seeking capital or business", that is, seeking financing or refinancing through the arrangement of loans, the issuance of stock, bonds or other methods of internally generated financing or that it was seeking, through any other commercially reasonable method, to obtain additional money, credit or business. The employer must identify specific actions taken to obtain capital or business. The employer must show that there was a realistic opportunity to obtain the financing or business. Its actions will be viewed in a company-wide context; thus, a company with access to capital markets or with cash reserves may not avail itself of this exception by looking solely at the financial condition of the plant or facility to be closed.

Second, the Conference Report states that the employer must show that the financing or business sought "if obtained, would have enabled the employer to avoid or postpone the shutdown." The employer must objectively demonstrate that the amount of money or financing or the volume of new business sought would have enabled the employer to keep the plant or facility open for a reasonable period of time.

Third, the Conference Report states that the employer must show that it "reasonably or in good faith believed that giving the notice required would have precluded the employer from obtaining the needed capital or business." The employer must be able to objectively demonstrate that it reasonably thought that a potential customer or source of financing would have been unwilling to provide the new business of financing if notice were given, i.e., if the employees and/or the public were aware that the plant or facility might have to close. This element can be satisfied if it can be shown that the financing/business source would not choose to do business with a troubled company or with a company whose workforce would be looking for other jobs.

Commenters made a number of interesting observations concerning the "business circumstances that were not reasonably foreseeable" basis for reduction. The Conference report of H.R. 3 included language to help clarify this provision. "For example . . . a principal client of the employer may suddenly and unexpectedly terminate * * * a major contract; or an employer may experience a *sudden, unexpected, and dramatic* change in business conditions such as price, cost, or declines in customer orders." [Emphasis added].

The Conference Report suggests that the test for determining when business circumstances are reasonably unforeseeable must focus on the employer's business judgment. An employer must exercise such commercially reasonable business judgment as would a similarly situated employer in predicting the demands of its particular market. On the other hand, employers should not be required to accurately predict general economic conditions that also may affect demand for their product. Furthermore, the primary objective indicator of a business circumstance that is reasonably unforeseeable will be that circumstances is caused by some sudden, dramatic, and unexpected action or condition outside the employer's control, such as a strike at a major supplier or customer, an economic downturn or the closing of a major customer or supplier.

The Department recognizes that the definition of the faltering company and unforeseeable business circumstance bases for reduction of notice are complex and not easily defined. The Department is interested in comments which will help to further identify or define the general principles or factors that would help to define the situations in which these provisions apply.

Finally, the Department notes that in circumstances where reduced notice is authorized, the statute requires that "as much notice as is practicable" shall be given, with the addition of a "brief explanation of the basis for reducing the notification period." While a disaster may preclude full or even advance notice, the statute provides that the employer is still obligated to give notice, whether in advance of or after the fact of an employment loss caused by a natural disaster.

18. Determinations With Respect to Employment Loss—Section 3(d)

This section involves the application of the notice requirements of the Act in situations in which distinct but related terminations or layoffs occur within a 90-day period. A number of commenters noted that complexities associated with this provision. The comments did not, however, give direction additional to that in the Act and the legislative history, and the Department does not anticipate issuing any substantial interepretation of this provision through rulemaking.

19. Exemption, Limited Employment—Section 4(1)

Commenters sought further interpretation of the language in section 4(1), "hired with the understanding that their employment was limited." The legislative history indicates that the employers must clearly understand that their employment is temporary. While the Department sees that some guidance is possible to define how such an understanding may be clearly stated (e.g., by reference to employment contracts or employment practices of an industry or a locality) it appears that the burden or proof lies with the employer should there be questions regarding the temporary employment understanding.

For example, employees in construction and agriculture may frequently be hired for harversting, processing, or for work on a particular building. Such work may be seasonal but recurring. Such work might fall under this exemption. On the other hand, employers may also have permanent employees might work on a variety of jobs and tasks continously through most of the calendar year. Such employees might not be included under this exemption; therefore, in certain circumstances it may be prudent for employers to clarify temporary work understandings in writing when workers are hired. Giving written notice will not, however, convert permanent employment into temporary work, making jobs exempt from WARN.

It has been pointed out that certain jobs may be classified as related to a specific contract or order. Whether such jobs are temporary may depend on the duration of the job, whether the employee was specifically hired to work only on the job and whether the

employer expects that the contract or order is part of a long term relationship.

20. Exemptions: Strikes or Lockouts—Section 4(2)

WARN exempts from required notice plant closings that "constitute a strike or * * * a lockout not intended to evade the requirements of this Act." Economic strikers who have been permanently replaced also are not entitled to notice. The definitions of the terms of this provision are governed by the NLRA.

It appears that, in practical terms, the strike or lockout exemption was intended to apply only to lockouts and only to those lockouts that are related to collective bargaining and are not a subterfuge intended to evade the requirements of WARN.

Questions were raised about the secondary effects of strikes, that is, situations in which other plants, operating units or facilities are forced to close as a result of a strike by other workers, or at other plants or operations. It appears that this situation is not covered by the strike/lockout exemption but may be an unforeseeable business circumstance to which the reduced notice provisions of section 3(b) may apply. Thus, to the extent a strike is not reasonably foreseeable 60 days in advance, an employer may be entitled to reduce the notice period.

Questions were raised about whether notice is required to be given to non-striking employees in the same plant or facility. It appears that non-strikers are not covered by the exemption and are due notice if otherwise entitled.

21. Enforcement—Section 5

A number of commenters addressed the enforcement issue. No enforcement powers are delegated under WARN to DOL or to State governments. The Department's role will be to provide information concerning its implementing regulations, and to revise these regulations as required. The Department therefore will not be in a position to make advisory rulings, or issue opinions or any actual cases. Enforcement and related functions are reserved for the courts.

Conclusion

Responding to the September 16 publication, commenters have in the Department's view been forthright and helpful in sharing their insights into WARN implementation, as well as raising what in their judgment are issues and problems. The Department appreciates this effort, and requests through this notice further advice in the development of appropriate interpretative regulations for WARN.

Signed at Washington, DC, this 24th day of October 1988.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 88-25024 Filed 10-27-88; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE-158-86, 160-86]

Excise and Income Taxes; 401 (k) Arrangements Under the Tax Reform Act of 1986 and Nondiscrimination Requirements for Employee and Matching Contributions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to the **Federal Register** publication on Monday, August 8, 1988, beginning at 53 FR 29719 of the notice of proposed rulemaking. The proposed rules relate to cash or deferred arrangements described in section 401(k) of the Internal Revenue Code of 1986, and nondiscrimination rules for employee contributions and matching contributions made to employee plans contained in section 401(m) of the Code. These changes were made to the Code by the Tax Reform Act of 1986.

FOR FURTHER INFORMATION CONTACT: William D. Gibbs, Office of the Assistant Chief Counsel, Employee Benefits and Exempt Organizations, 202-377-9372 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On August 8, 1988, proposed rules relating to cash or deferred arrangements and nondiscrimination rules for employee contributions and matching contributions were published in the **Federal Register** (53 FR 29719). The amendments were proposed to conform the regulations to changes in the applicable tax law made by the Tax Reform Act of 1986.

Need for Correction

As published, the proposed rules contains a typographical error which may prove to be misleading and is in need of correction.

Correction of Publication

Accordingly, the publication of the proposed rules (EE-158-86, 160-86), which was the subject of FR Doc. 88-17721 (53 FR 29719), is corrected as follows:

1. On page 29730, in the third column, in § 1.401(k)-1 (g) (6) (iii) (C), in the last line, "(g)(6)(ii)(A) and (B) of this section." should read "(g)(6)(i)(A) and (B) of this section."

Dale D. Goode,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 88-24690 Filed 10-27-88; 8:45 am]

BILLING CODE 4830-01-M

31 CFR Part 103

Reopening of Comment Period on Bank Secrecy Act Regulations

AGENCY: Departmental Offices, Treasury.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: Treasury has received requests to extend the comment period on the Proposed Amendments to the Bank Secrecy Act Regulations Regarding Reporting and Recordkeeping Requirements by Casinos, published in the **Federal Register** on August 18, 1988, [53 FR 31370] (corections published August 24, 1988 (53 FR 32323)). Notice is hereby given that Treasury is reopening the comment period.

DATE: Comments will be accepted through November 14, 1988.

ADDRESS: Address written comments to: Amy G. Rudnick, Director, Office of Financial Enforcement, Office of the Assistant Secretary (Enforcement), Department of the Treasury, Room 4320, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: John M. Zoscak, Jr., Attorney-Adviser, Office of the Assistant General Counsel (Enforcement), Room 2000, 1500 Pennsylvania Avenue NW., Washington, DC 20220, (202) 566-2914.

Date: October 18, 1988.

John P. Simpson,

Acting Assistant Secretary, (Enforcement).

[FR Doc. 88-24937 Filed 10-27-88; 8:45 am]

BILLING CODE 4810-25-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[GEN Docket No. 87-24; FCC 88-321]

Program Exclusivity Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This *Further Notice of Proposed Rule Making (Further Notice)* seeks additional comment and information regarding several rules concerning the ability of television stations to obtain exclusivity rights for the programs they broadcast. The initial *Notice of Proposed Rule Making (Notice)* (52 FR 15738, Apr. 30, 1987) in this proceeding addressed three rules: cable syndicated exclusivity, cable network non-duplication, and non-network territorial exclusivity. On May 18, 1988, the Commission adopted a *Report and Order* (53 FR 27167, July 19, 1988) which reinstituted syndicated exclusivity rules for cable television systems and extended the scope of the existing cable network non-duplication rules. With respect to the non-network territorial exclusivity rule, the Commission found that the submitted comments provided insufficient information on which to base a decision regarding the proposed elimination or modification of the rule. Accordingly, the Commission concluded that it was appropriate to retain the existing territorial exclusivity rule, with one modification to permit broadcasters to obtain such rights on a national basis, and to issue a further notice of proposed rule making to request additional information before deciding whether to change this rule. Furthermore, in the *Report and Order*, the Commission stated it would consider several refinements to the syndicated exclusivity and network non-duplication rules in the context of the further rule making proceedings.

DATES: Comments due December 12, 1988; and replies December 27, 1988

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Marcia Glauberman, Mass Media Bureau (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a summary of a Commission *Further Notice of Proposed Rule Making* adopted October 13, 1988, and released October 21, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, Northwest, Suite 140, Washington DC 20037.

Summary of the Further Notice of Proposed Rule Making

1. In the *Notice*, the Commission proposed to eliminate the non-network territorial exclusivity rule based on its initial assessment of three factors relating to this rule: 1) competitive market effects; 2) changes in the program supply market; and 3) practical concerns. The *Further Notice* provides a review of our initial analysis of this matter, summarizes comments submitted in response to the *Notice*, and requests additional information and discussion regarding the continued need for the non-network territorial exclusivity rule. In particular, additional information is requested concerning several points raised in the comments that were counter to the initial analysis: 1) that elimination of the rule would have an adverse effect on the production of syndicated programming; 2) that programming with high audience appeal remains scarce; and 3) that elimination of the rule would harm populations located in the portions of fringe market's service area that are not served by larger market stations. The *Further Notice* also requests comment regarding the possible modification of the geographic limits of the applicability of the rules, such as an increase in the specified mileage zone, in the event that it is retained.

2. The *Further Notice* also seeks comment on one provision of the network territorial exclusivity rule (Section 73.658(b)) not previously considered in this proceeding. We request that commenters consider the possible elimination or modification of the provision of this rule that prohibits television stations from entering into exclusivity agreements which prevent stations licensed to different communities from acquiring the rights to the same network program. This restriction on exclusivity arrangements is similar to those provided by the other rules under consideration in this proceeding and it appears appropriate to request comments regarding this rule in the *Further Notice*.

3. In the *Report and Order*, the Commission stated that it would consider changes in the geographic limits applicable to the new syndicated exclusivity rules and modified network non-duplication rule in the context of its further consideration of the non-network territorial exclusivity matter. Therein, the Commission also identified several new issues relating to program exclusivity that were not addressed in the *Notice*, including whether to modify these rules in order that they might apply uniformly to all types of television stations. Accordingly, the *Further Notice* requests comment on a proposal to adopt a consistent set of geographic limits for all program exclusivity rules for network and non-network programming carried by over-the-air television stations and cable systems. In addition, the *Further Notice* proposes to revise each of the program exclusivity rules such that all stations covered by the scope of our television rules, including commercial, non-commercial, low power television, and translator stations, are entitled to bargain for and exercise program exclusivity against other broadcast stations that may be available either over-the-air or through cable carriage.

4. This is a non-restricted notice and comment rule making proceeding. *See* § 1.1231 of the Commission's Rules, 47 CFR 1.1231, for rules governing permission *ex parte* contacts.

5. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, this proceeding will consider elimination or modification of the non-network territorial rule and changes to other program exclusivity rules in a manner that will balance our desire to maximize the flexibility of parties entering into exclusivity arrangements against our concern that small and fringe market stations have access to sufficient programming to serve the public. Public comment is requested on the initial regulatory flexibility analysis set out in full in the Commission's complete decision.

6. Pursuant to applicable procedures set forth in Section 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before December 12, 1988, and reply comments on or before December 27, 1988. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

7. This *Further Notice of Proposed Rule Making* is issued pursuant to authority contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended.

List of Subjects in 47 CFR Parts 73 and 76

Television broadcasting and cable television.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 88-24988 filed 10-27-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 232, 242, 245, and 252

Department of Defense Federal Acquisition Regulation Supplement; Contractor Material Management and Accounting Systems (MMAS)

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for comments.

SUMMARY: To implement section 634, Pub. L. 100-456, the Department of Defense is proposing the following changes to the DoD FAR Supplement. A new Subpart 245.72, Contractor Material Management and Accounting Systems, is added. Paragraph 232.503-15(d) is added to identify the conditions under which the ACO may grant blanket approval for material transfers between contracts. Paragraph 245.505-3(f) (2) (ii) is added to allow the contractor's material control system to physically commingle inventories that may include materials charged or allocated to fixed price, cost reimbursement, and commercial contracts so long as the contractor has adequate controls to ensure that the requirements of 245.7206 are not compromised. The clause at 252.245-7001 is added to incorporate the requirements of the new subpart into appropriate contracts. In addition, section 242.302, Contract Administration Functions is changed to incorporate the evaluation of contractor MMAS into the list of ACO responsibilities.

DATE: Comments on the proposed revisions should be submitted in writing to the Executive Secretary, DAR Council, at the address shown below on or before December 27, 1988, to be considered in the formulation of the final rule. Please cite DAR Case 88-311 in all correspondence related to this issue.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OASD(P&L) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301-3062.

FOR FURTHER INFORMATION CONTACT: Cdr. Benjamin R. Sellers, Office of Cost, Pricing And Finance, ODASD(P), Room 3C800, The Pentagon, Washington DC 20301-8000, Telephone (202) 695-7197.

SUPPLEMENTARY INFORMATION:

A. Background

Audit findings at a number of defense contractor locations disclosed the need for increased attention to material management and accounting systems (MMAS) and their compliance with current rules and regulations. As a result, on December 14, 1987 the Department of Defense published a notice of intent to develop a proposed rule regarding contractor MMAS's. On September 30, 1988, Section 634, Pub. L. 100-456 was enacted. This law requires the Secretary of Defense to prescribe regulations containing standards for inventory accounting systems within 30 days and appropriate certification and enforcement requirements within 180 days of enactment of the law. This proposed rule prescribes standards for inventory accounting systems and enforcement requirements. In the course of developing the proposed rule, the DAR Council carefully considered the question of contractor certification of inventory accounting systems. Recent controls and in-depth review procedures have been initiated regarding contractor estimating systems in addition to the procedures contained in this proposed rule regarding contractor material management and accounting systems. These new procedures, combined with (1) the Government's long-standing remedies under the cost accounting standards clause, defective pricing clause, and the progress payments clause, and (2) the existing certifications regarding current cost or pricing data, overhead charges, and cost vouchers/progress payment requests, provide adequate protection for the Government's interest such that further certification is not required.

B. Regulatory Flexibility Act

The Department of Defense certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. Although the proposed rule applies to small businesses under certain circumstances, only large businesses meeting certain dollar thresholds are required to demonstrate the degree to which their material management and accounting systems conform to the standards contained in the proposed rule.

C. Paperwork Reduction Act

The rule does contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et. seq. A request for a Public Information Collection is being prepared for submission to OMB which estimates an increased burden of 1,667,000 hours for OMB control number 0704-0246.

List of Subjects in 48 CFR Parts 232, 242, 245, and 252

Government Procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, it is proposed that 48 CFR Parts 232, 242, 245, and 252 be amended as follows:

1. The authority citation for 48 CFR Parts 232, 242, 245, and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 232—CONTRACT FINANCING

2. Section 232.503-15 is added to read as follows:

232.503-15 Application of Government title terms.

(d) The approval requirements of FAR 32.503-15(d) are met when the ACO has determined that the contractor's material management and accounting system conforms to the standard at 245.7206(b)(7). ACO blanket approval of cost transfers between contracts should be contingent upon the contractor retaining records of the transfer activity that took place in the prior month and reporting, at least monthly, a summary of the transfer activity that took place in the prior month. The summary report should include as a minimum, the total number of transfers and their dollar value.

PART 242—CONTRACT ADMINISTRATION

3. Section 242.302 is amended by adding paragraph (S-76) to read as follows:

242.302 Contract administration functions.

* * * * *

(S-76) Evaluate contractor material management and accounting systems as prescribed in subpart 245.72.

PART 245—GOVERNMENT PROPERTY

4. Section 245.505-3 is added to read as follows:

245.505-3 Records of material.

(f)(2)(ii) For DoD contracts, the contractor's material control system may physically commingle inventories that may include materials charged or allocated to fixed price, cost reimbursement, and commercial contracts so long as the contractor has adequate controls to ensure that the requirements of 245.7206 are not compromised.

5. A new Subpart 245.72, consisting of sections 245.7201 through 245.7209, is added to read as follows:

Subpart 245.72—Contractor Material Management and Accounting Systems

Sec.

245.7201 Scope of subpart.
245.7202 Definitions.
245.7203 Policy.
245.7204 Applicability.
245.7205 Responsibilities.
245.7206 Material management and accounting system standards.
245.7207 System disclosure, demonstration, and maintenance requirements.
245.7208 Procedures.
245.7209 Contract clause.

Subpart 245.72—Contractor Material Management and Accounting Systems

245.7201 Scope of subpart.

This subpart prescribes policies, procedures, and standards for use in the evaluation of contractors' material management and accounting systems (MMAS). It further prescribes the responsibilities of the contractor, the auditor, and the contracting officer regarding the assessment, demonstration, evaluation, and correction of deficiencies in a contractor's MMAS.

245.7202 Definitions.

"Contractor", for purposes of this subpart, means a business unit as defined in FAR 31.001.

"Material Management and Accounting System", (MMAS) as used in this subpart, means the contractor's system(s) for planning, controlling, and accounting for the acquisition, use, and disposition of material. MMAS's may be manual or automated and they may be integrated with planning, engineering, estimating, purchasing, inventory, and/or accounting systems, etc. or they may be essentially stand-alone systems.

"Valid Time-Phased Requirements" means material which is (i) needed to fulfill the production plan, including reasonable quantities for scrap, shrinkage, yield, etc., and (ii) is charged/billed to contracts or other cost objectives in a manner consistent with their need to fulfill the production plan.

245.7203 Policy.

It is the policy of the Department of Defense that all contractors have a MMAS that accurately estimates material requirements, assures that costs of purchased and fabricated material charged or allocated to a contract are based on valid time-phased requirements, and maintains a consistent, equitable, and unbiased logic for costing of material transactions.

245.7204 Applicability.

(a) All contractors who receive prime contracts, other than contracts awarded under the set-aside procedures of FAR Part 19, which contracts are greater than the small purchase threshold set forth in FAR 13.101 and which are either (1) cost reimbursement contracts, or (2) are fixed price contracts with progress or other financing payments are expected to have a MMAS which conforms to the standards at 245.7206.

(b) The specific requirements of sections 245.7207 and 245.7208 apply to any large business contractor which in its preceding fiscal year received DoD prime contracts or subcontracts totaling $50 million or more.

(c) For a large business contractor not meeting the criteria in paragraph (b) of this section but which in its preceding fiscal year received DoD prime contracts or subcontracts totaling $10 million or more, the PCO may require compliance with paragraphs (d) and (e) of the clause at 252.245-7001 with the concurrence, or at the request, of the ACO when such compliance is in the best interest of the Government (e.g., significant material management and accounting system deficiencies are believed to exist).

(d) The demonstration and evaluation requirements of sections 245.7207 and 245.7208 do not apply to small businesses, educational institutions, or nonprofit organizations.

245.7205 Responsibilities.

(a) Contractors shall assess their MMAS's and take reasonable action to comply with the standards at 245.7206.

(b) Contractors meeting the requirements in 245.7204 (b) or (c) shall disclose their MMAS to the cognizant ACO and shall, upon the request of the ACO, demonstrate the degree to which their MMAS complies with the standards at 245.7206, and shall present a comprehensive plan for correcting any significant deficiencies.

(c) The ACO will neither approve nor disapprove a contractor's MMAS, but only determine whether it adequately conforms to the standards set forth in 245.7206. However, the approval requirements of FAR 32.503-15(d)(5) are met when the ACO has determined that the MMAS conforms to the standard at 245.7206(b)(7). ACO blanket approval of cost transfers between contracts should be contingent upon the contractor retaining records of the transfer activity that took place in the prior month and reporting, at least monthly, a summary of the transfer activity that took place in the prior month. The summary report should include as a minimum, the total number of transfers and their dollar value.

(d) For a contractor meeting the requirements in 245.7204 (b) or (c) above, the cognizant ACO shall determine the adequacy of the contractor's MMAS and pursue appropriate corrections of deficiencies.

(e) On behalf of the ACO, the cognizant auditor will advise and assist the ACO in evaluating both the contractor's MMAS and the contractor's correction of any deficiencies thereto. Auditors shall assess the significance of contractor deficiencies and provide the ACO an estimate of the adverse material impact to the Government resulting from such deficiency(s).

245.7206 Material management and accounting system standards.

(a) MMAS's must have adequate internal accounting and administrative controls to assure system and data integrity; and

(b) Comply with the following:

(1) Have an adequate system description including policies, procedures, and operating instructions complaint with the FAR and DFARS.

(2) Assure that costs of purchased and fabricated material charged or allocated to a contract are based on valid time-phased requirements as impacted by minimum/economic order quantity restrictions. A 98 percent bill of material accuracy and a 95 percent master production schedule accuracy are desirable as a goal in order to assure that requirements are both valid and appropriately time-phased. If systems have accuracy levels below those above, the contractor must demonstrate that (i) there is no material harm to the Government due to lower accuracy levels, and/or (ii) the cost to meet the accuracy goals is excessive in relation to the impact on the Government.

(3) Provide a mechanism to identify, report, and resolve system control weaknesses and manual overrides. Systems should identify operational exceptions such as excess/residual inventory as soon as known.

(4) Provide audit trails and maintain records necessary to evaluate system logic and to verify through transaction testing that the system is operating as desired. Both manual records and those in machine readable form will be maintained for the prescribed record retention periods.

(5) Establish and maintain adequate levels of record accuracy, and include reconciliation of recorded inventory quantities to physical inventory by part number on a periodic basis. A 95

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percent accuracy level is desirable. If systems have an accuracy level below 95 percent, the contractor must demonstrate that (i) there is no material harm to the Government due to lower accuracy level, and/or (ii) the cost to meet the accuracy goal is excessive in relation to the impact on the Government.

(6) Provide details description(s) of circumstances which will result in manual or system generated transfers of parts.

(7) Maintain a consistent, equitable, and unbiased logic for costing of material transactions. The contractor will maintain and disclose a written policy describing the transfer methodologies. The costing methodology may be standard or actual cost, or any of the inventory costing methods in FAR 30.411–50(b). Consistency must be maintained across all contract and customer types, and from accounting period to accounting period for initial charging and transfer charging.

(i) The system should transfer parts and associated costs within the same billing period.

(ii) In the few circumstances where it may not be appropriate to transfer parts and associated costs within the same billing period, use of a "loan/payback" technique must be approved by the ACO. When the technique is used there must be controls to ensure that parts are paid back expeditiously; procedures and controls are in place to correct any overbilling that might occur; at a minimum, the borrowing contract and the date the part was borrowed are identified monthly; and the cost of the replacement part is charged to the borrowing contract.

(8) Where allocations from common inventory accounts are used, have controls in addition to the requirements of standards in (b)(2) and (7) above to ensure that:

(i) Reallocations and any credit due are processed no less frequently than the routine billing cycle;

(ii) Inventories retained for requirements which are not under contract are not allocated to contracts;

(iii) Algorithms are maintained based on valid and current data.

(9) Notwithstanding FAR 45.505–3(f)(2)(ii), have adequate controls to ensure that physically commingled inventories that may include materials charged or allocated to fixed price, cost reimbursement, and commercial contracts do not compromise requirements of any of the above standards.

(10) Be subjected to periodic internal audits to ensure compliance with established policies and procedures.

245.7207 System disclosure, demonstration, and maintenance requirements.

(a) A MMAS disclosure/demonstration is adequate when the contractor has provided the cognizant ACO:

(1) Documentation which accurately describes those policies, procedures, and practices that the contractor currently uses in its MMAS in sufficient detail for the Government to reasonably make an informed judgment regarding the adequacy of the contractor's MMAS; and

(2) Sufficient evidence to demonstrate the degree of conformance of its MMAS to the standards at 245.7206, including a comprehensive plan for correcting any significant deficiencies.

(b) Significant changes to the MMAS must be disclosed to the cognizant ACO within 30 days of their implementation.

(c) If the contractor notifies the ACO and the auditor that disclosed information relative to its MMAS contains commercial or financial information which it regards as privileged and confidential, such information shall be protected and shall not be released outside the Government without the permission of the contractor. The contractor should place an appropriate legend on the face of the disclosed document at the time of submission.

245.7208 Procedures.

(a) *System Evaluation.* Cognizant audit and contract administration activities will jointly establish and manage programs for evaluating the MMAS's of contractors meeting the requirements of 245.7204(b) or (c). Evaluations will be based on the disclosure/demonstrations provided by the contractors. Evaluations and reports shall be accomplished as a contract audit and contract administration office team effort. Evaluations shall be tailored to take full advantage of the day-to-day work done as an integral part of both the contract audit and contract audit and contract administration activities. A system evaluation shall be conducted at least every three years, except where the ACO, in consultation with the auditor, determines that past experience and a current vulnerability assessment of the contractor discloses low risk. If the ACO determines that the Government is subject to high risk, MMAS evaluations should be done more frequently. To the extent possible, the evaluation team leader should inform the contractor and the ACO of significant findings during the conduct of the evaluation. The team leader should apprise the contractor during an exit conference of any significant findings.

(b) *Disposition of evaluation team findings*—(1) *Reporting of evaluation team findings.* The report shall address the evaluation team findings and recommendations. If there are significant MMAS deficiencies, the report shall provide an estimate of the adverse material impact to the Government resulting from those deficiencies and a recommendation as to the acceptability of the contractor's corrective action plan.

(2) *Field pricing reports.* When the report of an evaluation indicates that there is a significant MMAS deficiency, all field pricing reports for that contractor will contain a recommendation relating to proposed cost and pricing data adjustments necessary to protect the interest of the Government, until the deficiency(s) is corrected.

(3) *Initial notification of contractor.* Upon receipt of the system evaluation report, the ACO shall provide a copy to the contractor and allow 30 days, or a reasonable extension thereto, for submission of its written response. If no significant deficiencies are identified, the ACO will notify the contractor in a timely manner.

(i) *Contractor agreement.* If the contractor agrees with the report findings and recommendations the contractor should proceed with the execution of the corrective action plan.

(ii) *Contractor disagreement.* If the contractor disagrees with the report findings and recommendations, the contractor's response should contain the rationale for each area of disagreement.

(4) *Evaluation of contractor's response.* The ACO, in consultation with the auditor, will evaluate the contractor's written response and determine whether——

(i) The MMAS contains deficiencies which need correction;

(ii) Any deficiencies are significant enough to result in the reduction or suspension of progress payments; and

(iii) Proposed corrective actions are adequate to correct the deficiencies.

(5) *Contracting officer responsibility.* (1) When the ACO determines that there is a significant MMAS deficiency, the ACO shall suspend, in accordance with FAR 32.503–6, an appropriate percentage of affected costs on progress payment claims and public vouchers proportionate to the adverse material impact to the Government until a corrective action plan is submitted and accepted. The percentage of the suspension will be impacted by the quality of the contractor's self-assessment, demonstration, and corrective action plan. After acceptance of the corrective action plan, but prior to complete implementation, the ACO will reduce the suspension as appropriate to reflect the contractor's progress. In no case however, will total amounts of affected costs be approved for progress payments or public vouchers until the contractor's system is determined to be acceptable for Government contract costing purposes, or the amount of the impact is determined to be immaterial.

(ii) When the report of an evaluation indicates that there is a significant MMAS deficiency, the ACO should ensure that the effect of the deficiency(s) is considered in the review of the contractor's estimating system pursuant to DFARS 215.811.

(6) *Notification of ACO determination.* The ACO will notify the contractor and the auditor of the determination and any decision to reduce or suspend progress payments. The notice shall identify the deficiencies requiring correction and will indicate acceptance or rejection of the contractor's corrective action plan.

(7) *Monitoring contractor's corrective action.* The auditor and ACO will monitor the contractor's progress toward correction of deficiencies. In the event the contractor fails to make adequate progress toward corrective action, the ACO shall take further appropriate action to ensure that the contractor corrects the deficiency. Actions which should be considered by the ACO include, but are not limited to, bringing the issue to the attention of higher level management, further reduction or suspension of progress payments in accordance with FAR 32.503–6, disapproval of the contractor's cost accounting system and/or cost estimating system, and/or recommendations concerning award of future contracts.

245.7209 Contract clause.

The contracting officer shall insert the clause at 253.245–7001 in all solicitations and resulting contracts which are greater than the small purchase threshold set forth in FAR 13.101 and are either (a) cost reimbursement contracts or (b) are fixed-price contracts with progress or other financing payments. However, the clause shall not be included in that portion of solicitations and contracts which are set-aside for exclusive participation by small businesses and small disadvantaged business concerns.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Section 252.245–7001 is added to read as follows:

252.245–7001 Material management and accounting system requirements and standards.

As prescribed in 245.7209, insert the following clause.

Material Management and Accounting System Requirements and Standards (October 1988)

(a) *Definitions.*

"Contractor", for purposes of this clause, means a business unit as defined at FAR 31.001, i.e., any segment of an organization, or an entire business organization which is not divided into segments.

"Material Management and Accounting System". (MMAS) as used in this subpart, means the contractor's system(s) for planning, controlling and accounting for the acquisition, use, and disposition of material. MMAS's may be manual or automated and they may be integrated with planning, engineering, estimating, purchasing, inventory, and/or accounting systems, etc. or they may be essentially stand-alone systems.

"Valid Time-Phased Requirements" means material which is (1) needed to fulfill the production plan, including reasonable quantities for scrap, shrinkage, yield, etc., and (2) is charged/billed to contracts or other cost objectives in a manner consistent with their need to fulfill the production plan.

(b) *General.* The contractor agrees to maintain a material management and accounting system (MMAS) that accurately estimates material requirements, assures that costs of purchased and fabricated material charged or allocated to a contract are based on valid time-phased requirements, and maintains a consistent, equitable, and unbiased logic for costing of material transactions.

(c) *Applicability.* The Contractor will assess its MMAS and take reasonable action to comply with the standards set forth in section 45.7206 of the DoD FAR Supplement. Paragraphs (d) and (e) below are also applicable if the Contractor is a large business and, in its fiscal year preceding award of this contract, received Department of Defense (DoD) prime contracts or subcontracts totaling fifty million dollars ($50 million) or more. Paragraphs (d) and (e) below are also applicable if the Contractor is a large business which, in its fiscal year preceding award of this contract, received DoD prime contracts or subcontracts totaling ten million dollars ($10 million) or more and, during performance of this contract, the Contracting Officer notifies the Contractor in writing that paragraphs (d) and (e) of this clause apply.

(d) *System disclosure, demonstration, and maintenance requirements.* (1) The Contractor shall disclose its MMAS to the cognizant ACO and shall, upon the request of the ACO, demonstrate the degree to which its MMAS conforms to the standards set forth in section 245.7206 of the DoD FAR Supplement. If the contractor desires the Government to protect such information as privileged or confidential, an appropriate legend should be placed on the face of the document(s) at the time of submission. A MMAS disclosure/demonstration is adequate when the contractor has provided the cognizant ACO:

(i) Documentation which accurately describes those policies, procedures, and practices that the contractor currently uses in its MMAS in sufficient detail for the Government to reasonably make an informed judgment regarding the adequacy of the contractor's MMAS; and

(ii) Sufficient evidence to demonstrate the degree of compliance of its MMAS with the standards at 245.7206 of the DoD FAR Supplement, including a comprehensive plan for correcting any significant deficiencies.

(2) Significant changes to the MMAS must be disclosed to the ACO within 30 days of their implementation.

(e) *MMAS deficiencies.* (1) If during the period of performance of this contract, the Contractor receives a report of the evaluation of its MMAS, the Contractor agrees to respond as follows:

(i) If the Contractor agrees with the report findings and recommendations, the Contractor shall, within thirty (30) days of receipt of such report, indicate its agreement in writing and shall proceed to execute the corrective action plan, if any, agreed-to by the ACO.

(ii) If the Contractor disagrees with the report findings and recommendations, the Contractor shall respond in writing within thirty (30) days of receipt of the report, indicating its rationale for each area of disagreement.

(2) The ACO shall evaluate the Contractor's response to the report and notify the Contractor of his/her determination concerning any remaining deficiencies and/or the adequacy of any proposed or completed corrective action(s).

(End of clause)

[FR Doc. 88–25036 Filed 10–27–88; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 655

[Docket No. 81025–8226]

Atlantic Mackerel, Squid, and Butterfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of proposed preliminary initial specifications for 1989 and request for comments.

SUMMARY: NOAA issues this notice to propose preliminary initial specifications for the 1989 fishing year for Atlantic mackerel, squid, and butterfish. Regulations governing these

fisheries require the Secretary of Commerce (Secretary) to propose for public comment preliminary initial specifications for the coming fishing year on or about November 1. This action provides information and requests comments for NOAA's determination of the initial specifications for the 1989 fishing year.

DATE: Comments must be received on or before November 28, 1988.

ADDRESS: Send comments to Kathi L. Rodrigues, Northeast Regional Office, NMFS, 2 State Fish Pier, Gloucester, MA 01930-3097. Mark on the outside of the envelope, "Comments—Annual Specifications".

FOR FURTHER INFORMATION CONTACT: Kathi L. Rodrigues, 508-281-3600, ext. 324.

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for Atlantic Macherel, Squid, and Butterfish Fisheries (FMP) (51 FR 10547, Mar. 27, 1986), as amended, stipulate at 50 CFR 655.22(b) that the Secretary will publish a notice specifying the preliminary initial annual amounts of the initial optimum yields (IOYs), as well as the amounts for domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), and total allowable levels of foreign fishing (TALFF) for the species managed under the FMP. No reserves are permitted under the FMP for any of these species.

Procedures for determining the initial annual amounts are found at §§ 655.21 and 655.22. The Secertary is required to publish this notice on or about November 1 of each year and to provide a 30-day comment period on the preliminary specifications. These specifications are based on reecommendations submitted by the Mid-Atlantic Fishery Management Council (Council), the lead Council for the FMP.

The Director, Northeast Region, NMFS (Regional Director) in consultation with the Council, has determined the total allowable biological catch (ABC), IOY, DAH, DAP, JVP and TALFF for each species. The analyses of the economic factors specified at § 655.21(b)(1)(i) and § 655.21(b)(2)(ii) for squid and Atlantic mackerel respectively, Council recommendations and other relevant data are available for inspection at the NMFS Regional Office at the above address during the comment period.

The following table lists the preliminary initial specifications in metric tons (mt) for the maximum optimum yield (Max OY); ABC; OIY, which is the sum of DAH (DAP+JVP) and TALFF; for Atlantic mackerel, *Illex* and *Loligo* squids, and butterfish. These initial specifications are the amounts that the Regional Director is proposing for the 1989 fishing year beginning January 1, 1989.

TABLE.—PRELIMINARY INITIAL ANNUAL SPECIFICATIONS FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR THE 1989 FISHING YEAR, JANUARY 1 THROUGH DECEMBER 31, 1989.

[In metric tons (mt)]

Specifications	Squid		Atlantic Mackerel	Butterfish
	Loligo	Illex		
Max oy [a]	44,000	30,000	N/A [b]	16,000
ABC [c]	37,000	22,500	330,000	16,000
IOY	22,012	15,000	74,000	15,024
DAH	22,000	15,000	44,000 [d]	10,000
DAP	22,000	12,000	20,000	10,000
JVP	0	3,000	10,000	0
TALFF	12	0	30,000 [e]	24

[a] Maximum OYs as stated in the FMP.
[b] Not applicable; see the FMP.
[c] IOY can not in this amount.
[d] Includes 14,000 mt projected recreational catch.
[e] For every 9 mt of TALFF, foreign partner is required to purchase 3 mt of JVP and 1 mt of U.S.-processed product. If U.S. product is unavailable, an additional 3 mt of JVP may be substituted.

The Regional Director has determined that the IOY levels proposed for the 1989 fishing year will promote the continued growth of the domestic industry, thereby providing the greatest overall benefit to the United States. These levels were set to encourage continued growth in both the harvesting and processing sectors of the U.S. fishing industry in accordance with the purposes of the Magnuson Fishery Conservation and Management Act. They were selected after meetings and discussions with the Concil, considering information from industry groups and foreign natioinal representatives, and review of the performance of U.S. fishermen, processors, projected domestic landings, stock assessments, and joint venture information.

Atlantic Squids

The maximum IOYs specified in the FMP are 44,000 mt for *Loligo* and 30,000 mt for *Illex*. Based on the most recent scientific information available, the Council has recommended setting ABCs for *Loligo* and *Illex* at the same levels set for 1986, 1987, and 1988. The proposed IOYs, presented in the above table, represent a modification of ABC based on the analysis of nine economic factors outlined in the FMP and contained in the regulations at § 655.21(b)(2)(ii).

Domestic landings of *Loligo* for 1988 are expected to be above 14,000 mt and are already the highest on record. Based on this domestic production, as well as the information provided from the processors' survey, the Council has projected an improvement for the 1989 fishing year, and has recommended setting DAH at 8,000 mt above the 1988 amount. The proposed *Loligo* IOY equals the proposed DAP plus a TALFF of 12 mt, an amount to accommodate *Loligo* squid incidentally caught in the Atlantic mackerel directed fishery. Based on the Council's projection that domestic processors have the capacity and intent to utilizie the entire amount expected to be harvested, the proposed *Loligo* JVP is zero.

The *Illex* IOY level proposed is based on the Council's statement indicating that the U.S. industry would benefit most from an IOY level that provides an amount for domestic processing similar to the previous year's amount. As a result, the Council has recommended that DAH be set at 15,000 mt. Based on the processors' reported capacity and intent to utilize approximately 10,000 mt in 1989, a DAP of 12,000 mt is proposed. With a DAP of 12,000 mt, the remaining 3,000 mt, which U.S. processors do not have the capacity and intent to process, is proposed for the JVP level. In his decision to adopt the Council's recommdations for *Illex*, the Regional Director has weighed the domestic harvesters' interest in participating in joint ventures against continued foreign involvement. The Regional Director concurs with the Council that the specifications, as proposed, would be in the best interest of the developing U.S. *Illex* fishery.

As in the previous fishing year, specifications give priority to domestic users. Squid IOYs, as recommended by the Council, are proposed at levels which provide squid TALFFs at bycatch levels only. The Council has recommended an *Illex* IOY which results in an *Illex* TALFF of zero, based upon it's recommendation that there be no foreign directed fishing for silver and red hake during 1989 and, therefore, there is no need for an *Illex* TALFF to provide for bycatch. The annual specifications for the hakes have not been completed at this time. Until specifications for hakes are determined, the Regional Director proposes to set the *Illex* IOY at a level which results initially in an *Illex* TALFF of zero. If a directed fishery for hakes by foreign nations is allowed during 1989, the appropriate bycatch, as specified in the FMP, will be added to the TALFFs.

Atlantic Mackerel

The proposed 1989 Atlantic mackerel ABC, calculated according to the formula at § 655.21(b)(2)(i), is 330,000 mt. An Atlantic mackerel IOY is proposed at a level that allows for TALFF and JVP amounts of 30,000 mt and 10,000 mt, respectively. These amounts are considerably lower than previous amounts and reflect a commitment by the Council to take the necessary steps toward development of the U.S. industry.

The Council's recommendations on the mackerel IOY were made after reviewing the nine economic factors specified in the FMP and contained at § 655.21(b)(2)(ii), and after consideration of public testimony from industry members. The Council's policy for development of U.S. fisheries has been to stimulate growth and investment on the domestic side with a concurrent phasing-out of foreign participation. Maximum benefits have been provided to U.S. fishing interests by application of this policy to the *Loligo* squid and butterfish fisheries. The Council proposes to follow the same course in developing the Atlantic mackerel fishery.

In proposing the IOY level the Regional Director has taken into consideration economic and social factors which include market information, domestic processing capacity, investment in new equipment, etc. Indications are that sufficient expansion of U.S. harvesting and processing capacity has already occurred, both shoreside and at-sea processing capability, to achieve the IOY. In addition, new opportunities for U.S.-processed mackerel are opening in the world marketplace. Current world resource conditions appear favorable for expansion of markets for U.S.-processed mackerel. A relatively weak U.S. dollar will also serve to aid U.S. marketing efforts abroad. Based on consideration of all of the above, the Regional Director has determined that the specifications recommended by the Council will likely provide the maximum benefits to the overall U.S. industry.

The Council further recommended that the foreign allocations of TALFF be contingent upon purchase of 3 mt of Atlantic mackerel JVP and 1 mt of U.S. processed product for every 9 mt of TALFF. If U.S.-processed product is unavailable, a purchase of 3 mt of JVP will be considered the equivalent of 1 mt of processed product. The Regional Director proposes to adopt this measure as is reflected in footnote e to the table.

The Council has urged the Regional Director to limit the number of foreign permits to the number necessary to harvest the particular allocation and to distribute allocations in increments so as to ensure compliance with the purchase requirements.

The Council expressed concern over the incidental take of marine mammals associated with the mackerel fishery and has urged the Regional Director to do everything within his power to reduce impacts on marine mammals. The Regional Director shares the Council's concern for marine mammal protection and will support measures that can reasonably be expected to achieve that objective.

Butterfish

The Regional Director has reviewed the most recent biological data, including data on discards, pertaining to butterfish stocks, and he proposes no changes proposed to the butterfish specifications over the previous year with the exception of an adjustment to TALFF to provide for bycatch from the mackerel fishery. In accordance with the provisions of the FMP, a butterfish TALFF of 24 mt is proposed to provide for bycatch from the mackerel fishery.

The Councils' recommendations, and all public comments on the annual specifications, will be considered in the final decision. A notice of final determination of the initial amounts and response to public comments is expected to be published in the **Federal Register** on or about December 15, 1988.

Classification

This action is authorized by 50 CFR Part 655 and complies with E.O. 12291.

(16 U.S.C. 1801 *et seq.*)

List of Subjects in 50 CFR Part 655

Fisheries, Reporting and recordkeeping requirements.

Dated: October 21, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries National Marine Fisheries, Service.

[FR Doc. 88-24902 Filed 10-27-88; 8:45 am]

BILLING CODE 3510-22-M

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Notices

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

Interpreters in Courts of the United States; Announcement of Spanish/English Certification Examination

AGENCY: Administrative Office of the United States Courts.

ACTION: Notice of Spanish/English Certification Examination for Court Interpreters.

SUMMARY: The Director of the Administrative Office of the United States Courts announces that the agency will conduct the written portion of the certification examination for individuals who desire to be certified to serve as Spanish/English interpreters in courts of the United States in accordance with the Court Interpreters Act, Pub. L. No. 95–539, 92 Stat. 2040 (1978) (28 U.S.C. 1827). To sit for the examination, an individual must file a written application.

DATES: The agency will administer the written portion of the examination March 4, 1989, at 1:00 p.m. The deadline for filing of application is 4:00 p.m. on January 15, 1989. The oral portion will be administered in July/August 1989.

ADDRESSES: Mailed applications along with a $25 money order, cashier's check, or personal check payable to *University of Arizona Federal Court Project* are to be sent to: Federal Court Interpreters Certification Project, Modern Language Building, Room 456, University of Arizona, Tucson, Arizona 85721.

FOR FURTHER INFORMATION CONTACT: Dr. Roseann Gonzalez, University of Arizona, telephone (602) 621–3687 (Mountain Time).

SUPPLEMENTARY INFORMATION:

I. Background

The Director of the Administrative Office of the United States Courts (AOUSC) is responsible for the establishment of a program to facilitate the use of interpreters in courts of the United States. He must prescribe, determine, and certify the qualifications of persons who may serve as certified interpreters in bilingual proceedings and proceedings involving the hearing impaired (28 U.S.C. 1827(b)). Whenever an interpreter is required for a person in any criminal or civil action initiated by the United States, the presiding judicial officer must utilize the services of a certified interpreter, unless no certified interpreter is reasonably available.

The AOUSC will provide the courts with a roster of certified court interpreters selected on the basis of the successful completion of written and oral examinations in English and a foreign language.

II. This Examination

This examination will be a comprehensive written and oral examination for bilingual proficiency in Spanish and English, developed and administered under contract by the University of Arizona.

The written portion of the examination does not necessarily require the special knowledge of legal vocabulary. Each applicant who completes successfully the written portion will be eligible for the oral examination. Successful applicants will receive notice of the time and place of the oral portion of the examination.

The oral portion of the examination will test, in simulated settings, the applicant's ability to: (1) Interpret precisely from Spanish to English, in consecutive, simultaneous, and summary modes; (2) interpret from English to Spanish in consecutive, simultaneous, and summary modes; (3) perform sight interpretation. The oral portion of the examination does not necessarily require previous experience in court interpreting.

Testing Sites

Applicants may sit for the written examination at any of the locations identified below. Applicants must identify the city for taking both the written and oral portions. For 1989, oral examination sites are limited to Phoenix, AZ; Los Angeles and San Francisco, CA; Washington, DC; Miami, FL; Atlanta, GA; Chicago, IL; New Orleans, LA; Boston, MA; Albuquerque, NM; New York City, NY; San Juan, PR; Houston and San Antonio, TX.

Written Testing Sites

Alaska: Anchorage
Arizona: Phoenix, Tucson
California: Fresno, Los Angeles, Monterey, Sacramento, Sand Diego, San Francisco
Colorado: Denver
Connecticut: Hartford
District of Columbia
Florida: Miami, Orlando
Georgia: Atlanta
Hawaii: Honolulu
Illinois: Chicago
Louisiana: New Orleans
Massachusetts: Boston
Missouri: Kansas City
Nevada: Las Vegas, Reno
New Jersey: Newark, Trenton
New Mexico: Albuquerque, Las Cruces, Santa Fe
New York: Brooklyn, Manhattan
Ohio: Cincinnati
Puerto Rico: San Juan
Texas: Brownsville, Corpus Christi, Dallas, Houston, Laredo, San Antonio
Utah: Salt Lake City
Washington: Seattle

Filing

Written applications are preferred, but phone applications will be accepted if the fee is sent by January 15, 1989. If you do not have an application form, type or print the following information on 8½ × 11 paper:

1. Name
2. Mailing address, incl. zip code
3. Daytime telephone number
4. Evening telephone number
5. City for written examination
6. City for oral examination
7. Date of birth
8. Social Security Number
9. Special arrangements necessary because of physical disability or keeping of the Sabbath (explain)
10. I did/did not take the written and/or oral examination in 1987
11. I.D. number of exam (if known)
12. Enclosed money order/check number

Exam Procedures

You will receive an admission ticket to the exam shortly before the exam date. It will list the exact location of the exam. Present the admission ticket and a photo identification: driver's license, passport, work/student identification, etc. to be admitted to the exam.

III. Qualifications

There are no formal educational requirements for certification, either in languages or interpreting. However, the difficulty of the examination is at the college degree level of proficiency. Successful completion of the oral portion of the examination normally would require prior training or professional experience in simultaneous, consecutive, and summary interpreting.

IV. Duties

Successful completion of the examination will not necessarily lead to full-time employment. Interpreters satisfy most court needs as independent contractors. However, where full-time interpreters are needed, only certified interpreters will be eligible for appointment.

As the federal courts require full-time salaried interpreters, these interpreters will be chosen from the eligibility lists. The annual salary range is JSP–10 and JSP–12 ($25,226–$43,161) for full-time salaried interpreters. For certified interpreters who provide services as independent contractors, the fee is $210 per day.

Court interpreters perform all or some of the following duties: (1) interpret verbatim in simultaneous, consecutive, or summary mode a foreign language into English, and vice versa, at arraignments, preliminary hearings, pretrial hearings, trials, and other court proceedings; (2) transcribe for electronic sound recordings; and (3) translate technical, medical, and legal documents and correspondence for introduction as evidence.

L. Ralph Mecham,
Director.

[FR Doc. 88–24912 Filed 10–27–88; 8:45 am]
BILLING CODE 2810-01-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Agricultural Biotechnology Research Advisory Committee; Confinement Working Group

In accordance with the Federal Advisory Committee Act of October 1972 (Pub. L. No. 92–463, 86 Stat. 770–776), the U.S. Department of Agriculture (USDA), Science and Education, announces the following meeting of a working group of the Agricultural Biotechnology Research Advisory Committee (ABRAC).

The Confinement Working Group will meet at the Congress Hotel, Plaza Room, 520 South Michigan Avenue, Chicago, Illinois, 60605 on November 11, 1988 from 1:00 p.m. to approximately 5:00 p.m. to discuss containment and confinement levels for agricultural research with animals.

This meeting is open to the public. Persons may participate in the meeting as time and space permit. The public may file written comments before or after the meeting with the contact person below.

Written comments may be sent to, and further information on the working group meeting may be obtained from, Dr. Alvin L. Young, Executive Secretary, Agricultural Biotechnology Research Advisory Committee, U.S. Department of Agriculture, Office of Agricultural Biotechnology, Room 321–A, Administration Building, 14th and Independence Avenue SW., Washington, DC, 20250. Telephone (202) 447–0185.

Date: October 12, 1988.

Robert W. Long,
Deputy Assistant Secretary, Science and Education.

[FR Doc. 88–24935 Filed 10–27–88; 8:45 am]
BILLING CODE 3410-22-M

Federal Grain Inspection Service

Advisory Committee Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of the following committee meeting contingent upon timely reestablishment of the Committee:

Name: Federal Grain Inspection Service Advisory Committee.

Date: November 17, 1988.

Place: Baltimore-Washington International Airport Marriott, West Nursery Road, Baltimore, Maryland, 21240.

Time: 8:30 a.m.

Purpose: To provide advice to the Administrator of the Federal Grain Inspection Service on the efficient and economical implementation of the U.S. Grain Standards Act of 1976 and to assure the normal movement of grain in an orderly and timely manner.

The agenda includes: (1) OIG audit activity on protein, Cu-Sum, and standard reference method for corn moisture; (2) Subcommittee reports on the FGIS mission statement and in-transit grain quality; (3) updates on international monitoring and safety matters; (4) grain quality issues on such items as aflatoxin, shriveled and wrinkled soybeans, wheat classification, and soybean oil and protein; and (5) other matters.

The meeting will be open to the public. Public participation will be limited to written statements unless otherwise requested by the Committee Chairman. Persons, other than members, who wish to address the Committee or submit written statements before or after the meeting should contact W. Kirk Miller, Administrator, FGIS, U.S. Department of Agriculture, P.O. Box 96454, Washington, DC 20090–6454, telephone (202) 382–0219.

Dated: October 21, 1988.

W. Kirk Miller,
Administrator.

[FR Doc. 88–24934 Filed 10–27–88; 8:45 am]
BILLING CODE 3410-EN-M

Forest Service

Penny Ridge Fire Timber Salvage and Resource Recovery; Shasta-Trinity National Forests; CA

AGENCY: Forest Service.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service USDA will prepare an environmental impact statement for the salvage of fire damaged timber and resource recovery work within an area affected by a wildland fire (Hermit Fire) that began on September 28, 1988. The proposed project is located on the Yolla Bolla Ranger District, Shasta-Trinity National Forests, approximately 12 miles south of the community of Wildwood in Trinity County, California. Most of the area is undeveloped and within the former Penney Ridge roadless area released for multiple-use purposes by the 1984 California Wilderness Act. The agency invites written comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope of the analysis must be received by December 3, 1988.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to: Acting District Ranger Jack Ratledge, Yolla Bolla Ranger District, Attn: Penny Ridge EIS, Platina, California 96076.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and environmental impact statement to Ken Smith, EIS Team

BEST COPY AVAILABLE

Leader, Yolla Bolla Ranger District, Platina, California, 96076. Telephone (916) 352–4211.

SUPPLEMENTARY INFORMATION: This project proposes the development of a currently unroaded area that was identified during the RARE II (Roadless Area Review and Evaluation) analysis as the Penny Ridge areas. This area was released for multiple-use management by the 1984 California Wilderness Act.

The environmental impact statement will be prepared in accordance with existing approved land and resource management plans. The analysis will set standards and guidelines for management activities, and provide a schedule of these activities. Alternative locations of timber harvest units and roads will be identified and evaluated.

A range of alternatives will be examined to deal with the significant issues developed during the scoping process. One alternative will be No Action. Other alternatives will consider various levels, types, and locations of timber harvest and alternative locations and methods of access.

Robert R. Tyrrel, Forest Supervisor, Shasta-Trinity National Forests, Redding, California, is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft environmental impact statement (DEIS).

The scoping process includes:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploration of additional alternatives.
5. Identification of potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determination of potential cooperating agencies and task assignments.

The draft environmental impact statement (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by September 1989. At that time EPA will publish a notice of availability of the DEIS in the Federal Register.

The comment period on the draft environmental impact statement will be 45 days from the EPA notice of availability appears in the Federal Register. It is very important that those interested in the management of the above described areas participate at that time. To be the most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S.; 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement. The final EIS is scheduled to be completed by December 1989. In the final EIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the EIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to the adrainistrative review process.

Robert R. Tyrrel,

Forest Supervisor.

Date: October 21, 1988.

[FR Doc. 88-24957 Filed 10-27-88; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration

Title: Reporting Requirement for Report of Commodities Returned After Temporary Export to Bloc Countries

Form Number: Agency—EAR 372.8(c)(2); OMB—0694-0000

Type of Request: Extension of the expiration date of a currently approved collection

Burden: 100 respondents; 52 reporting/recordkeeping hours. Average hours per respondent is one-half hour.

Needs and Uses: Exporters are required to request an export license when commodities are being sent temporarily to a communist bloc country to display, demonstrate, or use for testing purposes. When such items are returned to the U.S., the exporter must file a report with Export Administration providing certain customs information. This information is used by BXA to ensure that temporarily exported commodities are not diverted to improper users.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations

Frequency: On occasion

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: Francine Picoult 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: October 24, 1988.

Linda Engelmeier,

Management Analyst, Office of Management and Organization.

[FR Doc. 88-24950 Filed 10-27-88; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration

Title: Disclosure of Shipment Which Should Have Been Made Under a Validated License

Form Number: Agency—N/A; OMB—0694-0012

Type of Request: Extension of the expiration date of a currently approved collection

Burden: 20 respondents; 21 reporting/recordkeeping hours. Average hours per respondent is one hour.

Needs and Uses: Occasionally exporters discover that they have shipped a commodity out of the country without obtaining an export license. The Export Administration Act contains a provision to allow exporters to clear the record by submitting certain information on the shipment. Export Enforcement uses the information to investigate the matter. Depending on the severity of the violation, BXA decides whether or not to take legal action.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations

Frequency: On occasion

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: Francine Picoult 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitutional Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC.

Dated: October 24, 1988.

Linda Engelmeier,

Management Analyst, Office of Management and Organization.

[FR Doc. 88-24951 Filed 10-27-88; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration

Title: Unprocessed Western Red Cedar

Form Number: Agency—N/A; OMB—0694-0023

Type of Request: Extension of the expiration date of a currently approved collection

Burden: 300 respondents; 150 reporting hours—Average hours per respondent is ½ hour.

Needs and Uses: This information is collected as supporting documentation for license applications to export western red cedar. The Export Administration Act prohibits the export of western red cedar from state or federal lands. The information provided is used to enforce this provision of the Act.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations

Frequency: On occasion

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: Francine Picoult 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Micahals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC. 20503.

Dated: October 24, 1988.

Linda Engelmeier,

Management Analyst, Office of Management and Organization.

[FR Doc. 88-24952 Filed 10-27-88; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration

Title: Petroleum (Crude Oil)

Form Number: Agency—None; OMB 0694–0027

Type of Request: Extension of the expiration date of a currently approved collection

Burden: 25 respondents; 100 reporting hours—Average hours per response is 4.

Needs and Uses: This information is collected as supporting documentation for license applications to export petroleum (crude oil). It is used to make sure that the export would be in compliance with the five statutes that restrict the export of U.S. domestic crude oil. The statutes are: Minerals Leasing Act, Energy Policy and Conservation Act, Outer Continental Shelf Lands Act, Naval Petroleum Reserves Production Act, and the Export Administration Act.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations

Frequency: On occasion

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: Francine Picoult 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Micahls, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC. 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC

Dated: October 24, 1988.

Linda Engelmeier,

Management Analyst, Office of Management and Organization.

[FR Doc. 88-24953 Filed 10-27-88; 8:45 am]

BILLING CODE 3510-CW-M

Foreign-Trade Zones Board

[Order No. 397]

Resolution and Order Approving the Application of the City of Flint, Michigan for a Special-Purpose Subzone in Midland, MI

Proceedings of the Foreign-Trade Zones Board, Washington, DC

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign Trade Zones Board has

adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the City of Flint, Michigan, grantee of Foreign-Trade Zone 140, filed with the Foreign-Trade Zones Board (the Board) on February 24, 1987, requesting special-purpose subzone status for the Terfenadine manufacturing facility (Bldg. 827) at the Dow Chemical Company plant in Midland, Michigan, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority to Establish a Foreign-Trade Subzone in Midland, Michigan

WHEREAS, by an act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

WHEREAS, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

WHEREAS, the City of Flint, Michigan, grantee of Foreign-Trade Zone 140, has made application (filed February 24, 1987, FTZ Docket 2-87, 52 FR 8634) in due and proper form to the Board for authority to establish a special-purpose subzone at the Terfenadine manufacturing plant of Dow Chemical Company, located in Midland, Michigan;

WHEREAS, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

WHEREAS, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

NOW THEREFORE, in accordance with the application filed February 24, 1987, the Board hereby authorizes the establishment of a subzone at the Terfenadine manufacturing plant of Dow Chemical Company in Midland, Michigan, designated on the records of the Board as Foreign-Trade Subzone No. 140B, at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from federal, state, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

IN WITNESS WHEREOF, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC., this 20th day of October 1988, pursuant to Order of the Board.

Foreign-trade Zones Board.

Jan W. Mares,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88-24999 Filed 10-27-88; 8:45 am]

BILLING CODE 3510-DS-M

[Docket 34-88]

Foreign-Trade Zone 78—Nashville, TN; Extension of Time Limit for Subzones 78C and 78D Tennessee Valley Authority Equipment Storage Facilities Hartsville and Phippe Bend, TN

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Metropolitan Nashville-Davidson County Port Authority, grantee of FTZ 78, requesting an extension of the time limit on Subzones 78C (to 10-25-89) and 78D (to 12-31-89) at Tennessee Valley Authority's (TVA) nuclear equipment storage facilities in Hartsville and Phippe Bend, Tennessee. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 USC 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on October 25, 1988.

Subzones 78C and 78D were approved by the Board on March 30, 1984, to allow TVA to defer duties on certain foreign-sourced nuclear power plant equipment purchased for power plants that were never built (Board Order 246, 49 FR 13562). The approval was requested and granted for five years (3-30-89), during which time TVA had expected to sell the equipment. TVA only recently found a purchaser in the Park Company, an Ohio general partnership, which plans to sell the equipment to a foreign buyer. As part of the sales transaction, TVA has entered into a related agreement with the Global Power Company, Inc., a Delaware Corp., (an affiliate of Park) regarding the leasing of the facilities on which the property in question is located. This will place Global in the position of subzone operator for purposes of the transaction. The transaction is contingent upon the continuation of subzone status. In the absence of this transaction, TVA planned to scrap the equipment in question.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr., (Chairman), director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Joel Mish, District Director, U.S. Customs Service, South Central Region, 423 Canal Street, New Orleans, Louisiana 70130; and, Colonel O'Brene Richardson, District Engineer, U.S. Army Engineer District Memphis, B-202, 167 N. Main, Memphis, Tennessee 38103-1894.

Comments concerning the proposed time extension are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before November 11, 1988.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce District Office Suite 1114 Parkway Towers, 404 James Robertson Parkway, Nashville, TN 38103-1505.

Office of the Executive Secretary Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th & Pennsylvania Ave., NW., Washington, DC 20230.

Dated: October 25, 1988.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88-25115 Filed 10-27-88; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[(C-351-602)]

Steel Wheels From Brazil; Preliminary Affirmative Countervailing Duty Determination and Initiation of Upstream Subsidy Investigation

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Preliminary Affirmative Countervailing Duty Determination and Initiation of Upstream Subsidy Investigation.

SUMMARY: We preliminarily determine that benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Brazil of steel wheels. The estimated net subsidy is zero for Borlem and 18.62 percent *ad valorem* for all other companies. We have notified the U.S. International Trade Commission (ITC) of our determination. We are directing the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from all companies, except Borlem, which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and to require a cash deposit or bond for each such entry equal to 18.62 percent *ad valorem*.

On the basis of new information submitted by the petitioner, we are initiating an investigation to determine whether manufacturers, producers, or exporters in Brazil of steel wheels receive benefits which constitute upstream subsidies within the meaning of the countervailing duty law. In accordance with section 703(g) of the Tariff Act of 1930, we may extend the deadline for a final determination to 165 days after the preliminary determination if we conclude that additional time is necessary to make the required determination concerning upstream subsidization. We conclude that such additional time is required. Accordingly, we will make our final determination no later than April 7, 1989.

EFFECTIVE DATE: October 28, 1988.

FOR FURTHER INFORMATION CONTACT: Philip Pia or Bernard Carreau, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTAL INFORMATION

Case History

On July 29, 1988, we received a petition in proper form from the Kelsey-Hayes Company on behalf of United States producers of steel wheels. In compliance with 19 CFR 355.26, the petition alleged that manufacturers, producers, or exporters in Brazil of steel wheels receive, directly or indirectly, benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry. We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on August 18, 1988, we initiated such an investigation (53 FR 32267, August 24, 1988). We stated that we expected to issue a preliminary determination by October 24, 1988.

Since Brazil is a "country under the Agreement" within the meaning of section 701(b) of the Act, an injury determination is required for this investigation. Therefore, we notified the ITC of our initiation. On September 12, 1988, the ITC preliminarily determined that there is a reasonable indication that imports of steel wheels materially injure, or threaten material injury to, a U.S. industry (53 FR 36660, September 21, 1988).

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the U.S. tariff schedules will be fully converted to the *Harmonized Tariff Schedule* (HTS). All merchandise entered, or withdrawn from warehouse, for consumption on or after this date will be classified solely according to the appropriate HTS item number(s). Until that time, however, the Department will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item number(s) and the appropriate HTS item number(s) with our product descriptions. As with the TSUSA, the HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HTS item number(s) as well as the TUSUA item number(s) in all new petitions filed with the Department. A reference copy of the HTS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are steel wheels currently provided for in item 692.3230 of the TSUSA and currently classifiable under HTS item number 8708.70.60. The merchandise includes steel wheels, assembled or unassembled, consisting of a disc and a rim, designed to be mounted with both tube type and tubeless pneumatic tires, in wheel diameter sizes ranging form 13.0 inches to 16.5 inches, inclusive, and generally for use on passenger automobiles, light trucks, and other vehicles.

In a submission dated September 28, 1988, Borlem, S.A., a respondent company, argued that rims imported separately are not within the scope of the investigation. In submissions dated October 7, 1988 and October 12, 1988, the petitioner argued that rims imported separately and sold as "distinct articles of commerce" are not within the scope of the investigation, but that rims imported separately as a means of circumvention, are within the scope of the investigation. In a submission dated October 21, 1988, the petitioner, as well as NI Industries, a domestic interested party, argued that all rims, whether imported separately as a distinct article of commerce or not, are within the scope of the investigation.

We intend to examine these arguments, and any additional arguments submitted in this proceeding, in further detail. Until we have sufficient information to make a definitive scope ruling, we tentativley determine that rims or discs, imported separately, are included in the scope of this investigation.

Analysis of Programs

For purposes of this preliminary determination, the period for which we are measuring subsidization (the review period) is calendar year 1987. During our investigation of steel wheels we received information showing that two companies, Rockwell-Fumagalli and

Borlem S.A., accounted for substantially all exports of steel wheels to the United States during the period of review.

I. Programs Preliminarily Determined to Confer Subsidies

(1) CACEX Preferential Working Capital Financing for Exports Under this program, the Department of Foreign Commerce ("CACEX") of the Banco do Brasil provides short-term working capital financing to exporters at preferential rates. The loans have a term of one year or less. During the period of review, Fumagalli made interest payments on CACEX loans, but Borlem did not use this program.

On August 31, 1984, Resolution 950 made CACEX working capital financing available through commercial banks at prevailing market rates, with interest due at maturity. It authorized the Banco do Brasil to pay the lending institution an "equalization fee," or rebate, of up to 10 percentage points over the commercial interest rate, which the lending institution could pass on to the borrowers. On May 2, 1985, Resolution 1009 increased the equalization fee to 15 percentage points.

Since the interest charged on CACEX export financing under Resolutions 950 and 1009 is at prevailing market rates, this program would not be countervailable absent the equalization fee and the exemption from the IOF (a general tax on financial transactions). Therefore, the interest differential for those loans is equal to the equalization fee plus the 1.5 percent IOF. Because this program provides financing at preferential rates only to exporters, we preliminarily determine that it is countervailable.

We consider the benefits from loans to occur when the borrower makes the interest payments. For CACEX loans on which interest was paid during the period of review, we multiplied the interest differential by the loan principal. We allocated the result over Fumagalli's total exports. On this basis, we preliminarily determine the benefit from this program to be zero for Borlem and 2.25 percent *ad valorem* for Fumagalli and all other firms.

(2) Income Tax Exemption for Export Earnings

Under this program, exporters of steel wheels are eligible for an exemption from income tax on the portion of their profits attributable to exports. The Brazilian government calculates the tax-exempt fraction of profit as the ratio of export revenue to total revenue. Because this program provides tax exemptions that are limited to exporters, we preliminarily determine that it is countervailable. Fumagalli used this program in 1987, but Borlem did not.

The nominal corporate tax rate in Brazil is 35 percent. However, Brazilian tax law permits companies to reduce their income taxes by investing up to 26 percent of their tax liability in specified companies and funds. This tax credit effectively reduces the nominal 35 percent corporate tax rate. Because Fumagalli invested in the specified companies and funds, its effective tax rate was lower than the nominal 35 percent rate during the period of review.

We calculated Fumagalli's effective tax rate by dividing its net tax liability by its taxable profit. We calculated the benefit by multiplying the amount of tax-exempt profit by the effective tax rate and allocating the result over Fumagalli's total exports. On this basis, we preliminarily determine the benefit from this program to be zero for Borlem and 2.15 percent *ad valorem* for Fumagalli and all other firms.

(3) The IPI Export Credit Premium

Under this program, the Brazilian government pays exporters in cash a percentage of the f.o.b. price of the exported merchandise. The payment is made through the bank involved in the export transaction. Exporters of steel wheels were eligible for the maximum IPI export credit premium, which was 15 percent during the period of review. Because this program provides payments that are limited to exporters, we preliminarily determine that it is countervailable. Fumagalli received the premium in 1987, but Borlem did not.

We calculated the benefit by dividing the amount of IPI credit premium earned on shipments of steel wheels to the United States by Fumagalli's exports to the United States. On this basis, we preliminarily determine the benefit from this program to be zero for Borlem and 13.24 percent *ad valorem* for Fumagalli and all other firms.

(4) CIC–CREGE 14–11 Financing

Under its Circular CIC–CREGE 14–11, the Banco do Brasil provides preferential financing to exporters on the condition that they maintain on deposit a minimum level of foreign exchange. The interest rate is based on the cost of funds to banks plus a spread of three percentage points, which is below our benchmark rate (see below). The loans have a term of one year and a variable interest rate, which changes every quarter. Because this program provides loans at preferential rates only to exporters, we preliminarily determine that it is countervailable. Fumagalli made payments on a loan under this program during the period of review. The interest payments on this loan were made on the last day of each month, and the full principal was repaid at maturity. Borlem did not participate in this program during the review period.

The predominant short-term lending instrument commercially available in Brazil during the review period was a 60-day discount of accounts receivable. For our benchmark we used a yearly average of the annualized cost of these dicount rates, which are published weekly in *Gazeta Mercantil*, a Brazilian financial publication. In order to borrow a given amount for one year, a commercial borrower in Brazil would have been required to roll over a 60-day discount of accounts receivable ("duplicatas") five times. Each rollover would consist of discounting the original principal by the commercial discount rate prevailing on the day of the rollover. We have calculated an annual effective interest rate benchmark by multiplying the average monthly discount rate in 1987 by two to obtain a 60-day discount rate. We then converted the 60-day discount to an interest rate. Finally we compounded this rate six times to obtain an annual effective interest rate benchmark of 280.90 percent.

To measure the benefit, we compared the benchmark with the preferential rate and multiplied the differential by the full amount of the loan. We then divided the result by Fumagalli's exports to the United States. On this basis, we preliminarily determine the benefit from this program to be zero for Borlem and 0.10 percent *ad valorem* for Fumagalli and all other firms.

(5) BEFIEX

The Commission for the Granting of Fiscal Benefits to Special Export Programs ("BEFIEX") allows Brazilian exporters, in exchange for export commitments, to take advantage of several types of benefits, such as import duty reductions, an increased IPI export credit premium, and tax exemptions or tax credits. Because these benefits are provided only to exporters, we preliminarily determine that this program is countervailable. Fumagalli received import duty reductions on capital equipment during the review period, but Borlem did not.

To calculate the benefit, we divided the amount of import duty reductions by Fumagalli's total exports in 1987. On this basis, we preliminarily determine the benefit to be zero for Borlem and 0.48 percent *ad valorem* for Fumagalli and all other firms.

(6) FINEX Export Financing

Resolutions 68 and 509 of the Conselho Nacional do Comercio Exterior (CONEX) provide that CACEX may draw upon the resources of the Fundo de Financiamento a Exportacaco (FINEX) to subsidize short- and long-term loans for both Brazilian exporters (Resolution 68) and foreign importers (Resolution 509) of Brazilian goods. CACEX pays the lending bank an "equalization fee" that makes up the difference between the subsidized interest rate and the prevailing commercial rate. CACEX also provides the lending bank with a "handling fee" equal to two percent of the loan principal in order to encourage foreign bank participation in the program. During the period of review, the interest rates ranged between 5.25 percent and 8.19 percent per annum, which are below our benchmark rate (see below). Because this program provides loans at preferential rates only to exporters (or their foreign importers), we preliminarily determine that it is countervailable. We consider loans to U.S. importers to be equivalent to loans to their corresponding exporters. One of Fumagalli's importers made interest payments on Resolution 509 FINEX loans in 1987. Neither Borlem nor its importers used this program during the period of review.

Resolution 509 loans to U.S. importers are given in U.S. dollars. We therefore chose as a benchmark interest rate the average quarterly interest rate for commercial and industrial short-term dollar loans as published by the United States Federal Reserve Board. The average rate in 1987 was 9.81 percent per annum.

To measure the benefit, we multiplied the value of the loan principal on which interest payments were due in 1987 by the differential between the preferential interest rate and our benchmark. We divided the result by Fumagalli's exports of steel wheels to the United States in 1987. On this basis, we preliminarily determine the benefit to be zero for Borlem and 0.50 percent *ad valorem* for Fumagalli and all other firms.

II. Programs Preliminarily Determined Not to be Used

(We examined the following programs and preliminarily determine that producers or exporters of steel wheels did not use them during the review period:

(1) Accelerated depreciation for Brazilian-made capital goods;

(2) Duty-free treatment and tax exemption on equipment used in export production ("DCI");

(3) Financing for the storage of merchandise destined for export ("Resolution 330");

(4) Federal stock (EFG) loans; and

(5) Industrial enterprise (FST) loans.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all unliquidated entries of steel wheels from Brazil from all companies, except Borlem S.A., that were entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, and to require a cash deposit or bond for each such entry of this merchandise from all companies, except Borlem S.A., of 18.82 percent *ad valorem*. This suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry 120 days after the Department makes its preliminary affirmative determination or 45 days after the Department's final affirmative determination, whichever is later.

Initiation of Upstream Subsidy Investigation

In our initiation notice (53 FR 32268, August 24, 1988), we declined to initiate as upstream subsidy investigation because the petitioner did not provide adequate information to support its allegation that a competitive benefit was conferred on steel wheels by means of subsidies provided to input (steel) producers. Under the terms of section 771A(b)(1),

"a competitive benefit has been bestowed when the price for the input product * * * is lower than the price that the manufacturer or producer of merchandise which is the subject of the countervailing duty proceeding would otherwise pay for the product in obtaining it from another seller in an arms-length transaction."

On October 12, 1988, the petitioner provided published Brazilian prices for hot-rolled sheet. Comparing these prices with the petitioner's surrogate "arm's-length" prices, we conclude that there are reasonable grounds to believe or suspect that a competitive benefit is bestowed on Brazilian producers of steel wheels. The petitioner had already provided reasonable grounds to believe or suspect that a subsidy, as described in section 771(5)(B) of the Act, has been bestowed on the input product (hot-rolled sheet), and that the alleged upstream subsidy has a significant effect on the cost of manufacturing steel wheels. For these reasons, we are initiating an upstream subsidy investigation on steel wheels from Brazil.

Public Comment

In accordance with 19 CFR 355.35, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination no later than March 3, 1989. Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration within 10 days of the date of publication of this notice.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, at least 10 copies of pre-hearing briefs must be submitted to the Assistant Secretary by February 17, 1989.

Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 355.34, on or before November 28, 1988, at the above address and in at least 10 copies.

This notice is published pursuant to section 703(f) of the Act [19 U.S.C. 1671b(f)].

October 24, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88–24998 Filed 10–27–88; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Intent to Conduct a Public Hearing for the Nomination of Sites to Comprise the Virginia Estuarine Research Reserve

AGENCY: National Oceanic and Atmospheric Administration, National

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Ocean Service, Office of Ocean and Coastal Resource Management.

ACTION: Notice of intent to conduct a public hearing for the Virginia Estuarine Research Reserve.

SUMMARY: In accordance with section 315 of the Coastal Zone Management Act of 1972 as amended, the Commonwealth of Virginia intends to conduct a public hearing to discuss the proposed nomination of two sites as components in a Virginia Estuarine Research Reserve System.

Discussion

The Commonwealth of Virginia is studying the feasibility of establishing a National Estuarine Research Reserve System in the Virginia portion of the Chesapeake Bay and its tributaries. Research reserves will provide natural coastal habitats as field laboratories for baseline ecological studies and education programs. Research and monitoring programs will be designed to enhance basic scientific understanding of coastal environments and aid in resource management decisionmaking. Information derived from sponsored studies will provide a basis for measuring progress in Chesapeake Bay clean-up efforts and will be used to increase public awareness of coastal issues. The Virginia Institute of Marine Science (VIMS) has the lead role in developing and managing the reserve system.

Fifty (50) percent of the funding for establishing and managing the reserve system is provided by the National Oceanic and Atmospheric Administration (NOAA) under the Coastal Zone Management Act of 1972, as amended. Additional funds for research and education are provided by NOAA on a continuing, competitive basis for the life of the program. There are 17 research reserves nationwide, including one in Maryland.

VIMS has evaluated one hundred and thirteen (113) possible reserve sites, being assisted in this effort by a panel of the Commonwealth's leading coastal ecologists. Sites were evaluated on the basis of their representation of typical coastal ecosystems found in the Bay and its tributaries, ecological value, lack of disturbance, importance to research and environmental education, and the Commonwealth's ability to protect and manage the site so that research can occur in an undisturbed setting.

VIMS has completed its evaluation of proposed reserve sites on the York River and is seeking comments on the merits of the program from landowners, local officials, and state and federal officials. VIMS has scheduled a series of public meetings to inform the public about the reserve system and the sites proposed for nomination to NOAA.

A public meeting will be conducted on: Tuesday, November 15, 1988 at 7:00 p.m. in the van den Boogaard Center, 3510 King William Avenue and Route 30, West Point, Virginia. The proposed Taskinas Creek (James City County) and Sweet Hall Marsh (King William County) sites will be discussed at this hearing.

All interested individuals are encouraged to attend the public meeting. Invited speakers include representatives of VIMS, the Council on the Environment, and NOAA. Speakers will describe the importance of the proposed research programs to local, regional and/or statewide environment issues, and the opportunities for local involvement in reserve operations and management. Public comments on the reserve concept are invited.

An information packet on the proposed Chesapeake Bay National Estuarine Research Reserve in Virginia will be available at the public meetings or can be obtained in advance by contacting Ms. Carroll Curtis at the Virginia Institute of Marine Science, Gloucester Point, Virginia 23062 (804/624-7156). Persons wishing to make a presentation at the public meeting are encouraged to contact Ms. Curtis before November 15. Speakers are also asked to provide a written copy of their statement at the meeting. It is recommended that members of the public limit their presentations to 3-5 minutes in length.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Estuarine Reserves)

Date: October 25, 1988.

Thomas J. Maginnis,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 88-25005 Filed 10-27-88; 8:45 am]

BILLING CODE 3510-22-M

Emergency Striped Bass Research Study; Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

SUMMARY: The National Marine Fisheries Service and the U.S. Fish and Wildlife Service will hold a joint meeting to discuss progress on the Emergency Striped Bass Research Study as authorized by the amended Anadromous Fish Conservation Act (Pub. L. 98-118).

DATE: The meeting will convene on Thursday, December 1, 1988, 10:00 a.m., and will adjourn at approximately 3:00 p.m. The meeting is open to the public.

ADDRESS: Room 7000-A, Department of the Interior, C Street between 18th and 19th Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: David G. Deuel, Office of Fisheries Conservation and Management, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, Maryland 20910. Telephone: (301) 427-2347.

Dated: October 21, 1988.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management.

[FR Doc. 88-24908 Filed 10-27-88; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council and its advisory entities will convene public meetings, November 14-18, 1988, at the Sheraton Inn-Portland Airport, 8235 NE. Airport Way, Portland, OR, as follows:

Council—will convene November 16 at 8 a.m., with a closed session (not open to the public), to discuss litigation, personnel, and other appropriate matters. At 9 a.m., the Council will convene its open session to consider groundfish management issues. Groundfish agenda items include, among others, a review of the 1988 fishery, management specifications and measures for 1989, joint venture net restrictions, limited entry and fishery management plan (FMP) Amendment #4.

There will be a public comment period on November 16 at approximately 4 p.m., to hear comments on issues not on the agenda. Public comments on agenda items will be heard during the Council's discussion of each issue.

On November 17 the Council will convene at 8 a.m., to address habitat allocation plans for 1989, administrative matters, and habitat issues. On November 18 the Council will convene at 8 a.m., to consider salmon management issues, including a review of the 1988 fisheries, a report from the Klamath Fishery Management Council, the FMP amendment for 1989, an experimental fishing permit application to allow dockside sorting of salmon, a "scoping" session for amending the FMP in 1990, and other matters.

Scientific and Statistical Committee (SSC)—will convene November 14 at 8 a.m., to address issues on the Council agenda, will reconvene November 15 at 8 a.m., and on November 16 if necessary.

Groundfish Select Group (GSG)—will convene November 14 at 1 p.m., to develop recommendations for 1989 groundfish management measures, and will reconvene November 15 at 8 a.m.

Groundfish Advisory Subpanel—will convene November 14 at 1 p.m., or at the conclusion of the GSG public meeting to address groundfish matters on the Council agenda.

Habitat Committee—will convene November 15 at 1 p.m., to consider relevant and timely habitat issues for fisheries under Council jurisdiction.

Halibut Select Group—will convene November 16 at 5 p.m., to develop recommendations to the Council on management of the non-Indian halibut fisheries in 1989.

Enforcement Consultants—will convene November 15 at 1 p.m., to address issues on the Council agenda relating to enforcement and will reconvene November 16 at 8 a.m.

Budget Committee—will convene November 16 at 5 p.m., to review 1988 and 1989 funding for Council operations.

Salmon Select Group—will convene November 17 at 8 a.m., to conduct its annual review of estimation procedures used in salmon management.

Salmon Advisory Subpanel (SAS)—will convene November 17 at 1 p.m., to consider salmon issues on the Council agenda.

Salmon Technical Team—see SAS agenda item.

Detailed agendas for the above meetings will be available to the public after October 21. For further information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 221-6352.

Date: October 21, 1988.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-25019 Filed 10-27-88; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

October 21, 1988.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virgina 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 7-159,915—Biocontrol of Grey-Mold in Pome Fruits Using Acremonium breve.
SN 7-226,606—Methods for Inhibiting Rust Infections of Plants.
SN 7-229,386—Encapsulated Calcium Carbide as a Nitrification Inhibitor.
SN 7-229,877—Shaking Mechanism for Fruit Harvesting.

Department of Commerce

SN 6-851,607 (4,772,524)—Fibrous Monolithic Ceramic and Method for Production.
SN 6-897,227 (4,772,745)—Polymer-Reactive Photosensitive Anthracenes.
SN 7-015,577 (4,771,022)—High Pressure Process for Producing Transformation Toughened Ceramics.
SN 7-065,530 (4,772,370)—Process for Producing Icosahedral Materials.

Department of Health and Human Services

SN 6-884,251 (4,769,756)—Systematic Method for Matching Existing Radiographic Projections with Radiographs to be Produced From a Specified Region of Interest in Cancellous Bone.
SN 7-017,701 (4,772,632)—Antineoplastic, System-L Specific Amino Acid Nitrogen Mustards.

Department of the Air Force

SN 7-007,212—Substrate Handling System.
SN 7-175,972—Nickel Gradient Electrode.
SN 7-229,590—Smart Controller

Department of the Army

SN 6-898,576 (4,758,387)—Disposal of Solid Propellants.
SN 7-184,930—Insensitive High Energy Explosive Compositions.
SN 7-189,459—Light Weight Non-Saturating Spaced Core Inductor.
SN 7-234,069—Method of Making a Multidimensional Quantum-Well Array.

Department of the Interior

SN 6-877,890 (4,772,391)—Composite Membrane for Reverse Osmosis.

Tennessee Valley Authority

SN 7-044,919 (4,757,263)—Insulation Power Factor Alarm Monitor.
SN 7-073,619 (4,760,784)—Compacting Plate Locking Device Used For Packaging Expansible Material.

[FR Doc. 88-24992 Filed 10-27-88; 8:45 am]

BILLING CODE 3510-04-M

Patent and Trademarks Advisory Committee

Advisory Committee for Patents and Trademarks; Open Meeting

AGENCY: Patent and Trademark Office, Commerce.

SUMMARY: The Committee was established on December 17, 1986, to advise the Patent and Trademark Office on domestic and foreign patent issues, international trademark matters, the Administration of the Office, and its office-wide automation program.

Time and Place: December 2, 1988, from 9:00 a.m. to 4:30 p.m. The Committee will meet in the Commissioner's Confrerence Room at the Patent and Trademark Office, Crystal Park 2, Room 912, in Crystal City, Arlington, VA.

Agenda:

(1) Independent Government Corporations.

(2) Interrelationship of the PTO and ACPAT.

Public Observation: The meeting will be open to public observation; approximately 12 seats will be available for the public on a first-come, first-served basis. If time permits, oral comments by the public of no more than three minutes on each topic within the above agenda will be allowed. Written comments and suggestions will be accepted before or after the meeting on any of the agenda matters.

FOR FURTHER INFORMATION CONTACT: E. R. Kazenske, Executive Assistant to the Assistant Secretary, Crystal Park 2, Suite 906, Patent and Trademark Office, Washington, DC 20231. Telephone: 703/557-3071.

Date: October 24, 1988.

Donald J. Quigg,

Assistant Secretary and Commissioner of Potents and Trademarks.

[FR Doc. 88-24997 Filed 10-27-88; 8:45 am]

BILLING CODE 3510-16-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1988 Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1988 a commodity to be produced and a service to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: November 28, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557–1145.

SUPPLEMENTARY INFORMATION: On September 2 and August 12, 1988, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (53 FR 30459 and 34140) of proposed additions to Procurement List 1988, December 10, 1987 (52 FR 46926). No comments were received concerning the proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified workshops to produce the commodity and provide the service at a fair market price and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–6.0.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodity and service listed.

c. The actions will result in authorizing small entities to produce the commodity and provide the service procured by the Government.

Accordingly, the following commodity and service are hereby added to Procurement List 1988:

Commodity

Side Rack, Vehicle, 2510–00–880–0523

Service

Commissary Shelf Stocking and Custodial Service, Fort Monmouth, New Jersey

Beverly L. Milkman,

Executive Director.

[FR Doc. 88–24988 Filed 10–27–88; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Department of the Army

Record of Decision; Former Camp Elliott, San Diego, CA

Background

Pursuant to Council on Environmental Quality Regulations implementing the National Environmental Policy Act (NEPA), this document records the remedial action decision for the unexploded ordnance and related debris contamination caused by previous DOD-related activities on a portion of the Former Camp Elliott Training Range. A Feasibility Study of Remedial Action Alternatives and an Environmental Impact Statement have been prepared for the site. Camp Elliott Reservation operated as a tank, anti-tank, and artillery training/practice range during the World War II-Korean War era. A portion of the Former Camp Elliott Reservation now encompasses Tierrasanta was declared surplus property and transferred to developers in 1966. The community currently comprises over 6,000 residential units plus ancillary office, commercial and public service facilities. The project area includes 1697 acres of remaining open space in the Tierrasanta community. To facilitate comparison and analysis of alternatives, the open space within the project area was divided into sub-areas A, B, C, E, and F.

Decision

During the conduct of the study, it became apparent that no single alternative was appropriate for the entire project area. Therefore, the recommended plan or preferred alternative consists of a combination of alternatives for the various sub-areas. Based on the findings and conclusions of the Feasibility Study, Environmental Impact Statement, and associated correspondence received in response to coordination of this document I have decided that the plan as recommended below be conducted.

Sub-Area A: The plan for this area involves reacquisition and fencing by the U.S. Government of the 167 acres adjacent to the Naval Air Station Miramar, North of the project area. The reacquisition will be accomplished pursuant to a non-CERCLA authority.

Sub-Area B: The plan for this area, which encompasses 65 acres, involves fencing along the southern right-of-way line of the proposed State Route 52. Fencing would occur once the California Department of Transportation (CALTRANS) has obtained legal right-of-way. This will effectively isolate both Sub-Areas A and B from the rest of Tierrasanta to the South.

Sub-Area C: The plan for this area (Tierrasanta Norte residential development, approximately 358 acres) involves ordnance clearance sweeps using electromagnetic ordnance locators, after selective manual removal of vegetation, in areas to remain as permanent open space (approximately 75 acres), and ordnance clearance sweeps using electromagnetic ordnance locators in the remaining undeveloped area disturbed by the developer.

Sub-Area D: The plan for this area (Regency Hill residential development, 58 acres) involves an ordnance clearance sweep, using electromagnetic ordnance locators, of approximately 23 acres which surround the developing area and form the faces for the mesa, and no action in the remaining area disturbed by the development.

Sub-Area E: The plan for this area (approximately 454 acres located along the eastern project boundary) involves 209 acres, presently U.S. Navy owned, and is not eligible for funding under the DERP formerly used sites program, and 245 acres where 3 separate actions are planned. The plan for the 245 acres is as follows: approximately 56 acres, previously burned, involves ordnance clearance using electromagnetic ordnance locators; 129 acres involves ordnance clearance using electromagnetic ordnance locators after selective manual removal of vegetation; and 60 acres involves ordnance clearance sweeps using electromagnetic ordnance locators and controlled burning for vegetation removal.

Sub-Area F: The plan for this area (approximately 774 acres of remaining open space in canyons adjacent to developed residential or commercial areas) involves ordnance clearance using electromagnetic ordnance locators after selective removal of brush by manual cutting and removal. This area will be given first priority for implementation.

Other Actions

In addition to the plan identified above, a follow-up ordnance test sweep will be conducted one year after the initial clearance effort to monitor and/or verify the clearance effectiveness. Follow-up ordnance sweeps will be conducted based on the results of the one year follow-up test sweep efforts. Also efforts will be made to expand educational programs on unexploded ordnance within the community.

Alternatives Considered

In arriving at the decision to implement the various preferred remedial actions, several alternatives were considered. They were as follows: (1) Ordnance clearance using electromagnetic ordnance locators after selective manual removal of vegetation. (2) Ordnance clearance using electromagnetic ordnance locators after prescribed burning. (3) Limitation of certain types of development and/or placement of additional development restrictions. (4) Visual sweeps in conjunction with sub-surface electromagnetic detection, where possible without vegetation removal. (5) Restriction of access through signs and fencing. (6) Reacquisition of property by the Government, and (7) No action.

Each alternative was evaluated for each sub-area based on the following parameters: public safety, economic feasibility, technical feasibility, environmental issues, local public opinion, and Federal, State, and local restrictions. Environmental issues included biological resources, cultural resources, land-use, esthetics, air quality, water quality/erosion, recreation, socioeconomics, safety, and construction impacts. Alternatives that were considered to be environmentally preferable are alternatives listed in items 3, 4, 5, 6, and 7 above.

Based on the primary objective of the project (to product public health, safety, and general welfare) and the alternatives analyses, the preferred alternatives listed in items 1 and 2 above are recommended for most sub-areas. Even though these alternatives were the more costly and presented significant, but short term, adverse impacts to the vegetation and wildlife, it was not technically feasible to effectively locate and remove ordnance items from the areas without the associated short term impacts.

Mitigation

All practicable means to avoid or minimize environmental harm from the selected alternatives have been adopted. A preliminary cutting plan which minimizes impacts to vegetation has been developed. Prior to implementation, a comprehensive cutting plan will be prepared to assure that all feasible measures to minimize environmental impacts are incorporated into the project. A preliminary prescribed burn plan, considering fire intensity, frequency, duration, species composition, size, pattern, season, extent, weather, fuel, soil and site of the burn, and which minimizes impacts to vegetation, has been developed. Prior to implementation, a comprehensive burn plan will be prepared to assure that all feasible measures to minimize impacts are incorporated into the project.

Vernal pools which may contain the Federally endangered San Diego mesa mint will be avoided in any fence construction or prescribed burn activity. Prior to the unlikely event that vernal pool complexes containing the mesa mint need to be manually cleared of vegetation, coordination with the USFWS pursuant to the Endangered Species Act will be undertaken. Coordination with the USFWS will be conducted regarding those vernal pools containing mesa mint and ordnance contamination.

Every effort will be made to preserve the sensitive southern oak woodland, sycamores, and scrub oaks. All willow and post oak woodlands will be flagged by a biologist during project implementation. Precautions to keep these areas in an undisturbed condition will be taken. A qualified biologist will be on-site during project implementation to minimize adverse impacts on biological resources and and to enforce the environmental mitigation commitments of the project.

Vehicle access within the project area will be limited to existing paved and dirt roads and foot paths. Cultural resource sites were found in Sub-areas A, B, and E. No impact from construction will occur in sub-areas A and B. A qualified archeologist will be present during project implementation in sub-area E to assure that significant impacts to the site are avoided.

Public Involvement

A thorough public involvement program has been conducted throughout the site evaluation process. Public concerns, such as safety, socioeconomic and environmental effects have all been carefully considered.

Environmental compliance

The environmental documentation has been prepared in accordance with NEPA. The project has appropriately considered all applicable environmental laws, executive orders, and other policies as required.

Authority

My decision as detailed above has been carefully made in consideration of environmental impacts and other essential parameters as described. The goals of the Defense Environmental Restoration Program for formerly used sites, public safety, fiscal responsibility, and environmental protection are best served by selection of the preferred alternatives presented in this document.

Date: August 19, 1988.

William H. Parker, III,

Deputy Assistant Secretary of Defense, (Environment).

[FR Doc. 88–25010 Filed 10–27–88; 8:45 am]

BILLING CODE 3710–08–M

Military Traffic Management Command Directorate of Personal Property Through Government Bill of Lading Program for Household Goods and Unaccompanied Baggage

AGENCY: Military Traffic Management Command, DoD.

ACTION: Invitation to comment on procedural change on notification of incidents of major significance.

SUMMARY: DOD 4500.34R, Appendix A, paragraph 32 states that incidents of major significance will be reported to the destination PPSO, origin PPSO, and the appropriate area command and/or field office. However, if the incident occurred enroute to destination, there is no requirement to notify the PPSO responsibile for the area where the incident occurred and who is responsible for many of the actions required in connection with the incident.

Therefore, it is proposed to add the following underlined requirement to DOD 4500.34R, Appendix A, paragraph 32:

32. *Strikes, Port Congestion, Fires, Pilferage, Vandalism, and Similar Incidents.*

a. In the event of incidents of major significance which produce significant loss, damage or delay resulting from strikes, port congestion, fires, pilferage, vandalism, and similar incidents, I will notify the destination *PPSO* and the appropriate MTMC area command and/or field office by electrical transmission (TWX or TELEX) of the incident not later than the first working day upon discovery. *"If the incident occurred en route to final destination, I will notify the PPSO responsible for the area where the incident occurred in addition to the destination PPSO".* A copy of the electrical transmission will also be promptly mailed to the origin *PPSO.* In addition, I will provide the following information within 5 working days after the incident or discovery thereof, by electrical transmission (TWX or TELEX)

or mailgram to *the appropriate MTMC area command and/or field office*, with a copy to the *HQMTMC, ATTN: MT–PP, Falls Church, VA 22041–5050*, the origin and destination *PPSO and when applicable, the PPSO responsible for the area where incident occurred.*

(1) Type of incident.

(2) Location of incident.

(3) Last name, first name, MI, grade, service, and SSN of member.

(4) PPGBL number and date issued.

(5) Code of Service.

(6) Origin ITO.

(7) Destination ITO.

DATE: Submit written comments by 25 Nov 88 to: Headquarters Military Traffic Management Command, 5611 Columbia Pike, ATTN: MT–PPQ–O, Falls Church, VA 22041–5050.

[redacted]

Department of the Army Alternate Liaison Officer With the Federal Register.

[FR Doc. 88–24998 Filed 10–27–88; 8:45 am]

BILLING CODE 3710–08–M

Board of Visitors, United States Military Academy; Open Meeting

In accordance with section 10(a)(20) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following meeting.

Name of Committee: Board of Visitors, United States Military Academy

Dates of Meeting: 5–7 December 1988

Place of Meeting: West Point, New York

Start Time of Meeting: 9:00 a.m., 5 December 1988

Proposed agenda: Briefings on: Future Facilities Planning; Expansion of the Hotel Thayer; Attitudes of USMA Graduates and Officers from Other Sources of Commissioning; and Adequacy of Levels of Capital Investment at USMA. The Board will also receive updates on the following: 2002 Strategic Planning; Fellowship in Leader Development; Institute of American Leadership; Integration of Women in USCC; and Federal Assessment of Lands for the Highland Falls School District.

All proceedings are open. For further information, contact Lieutenant Colonel Morgan Roseborough, United States Military Academy, West Point, NY 10996–5001, [914) 938–3301.

For the Chairman of the Board of Visitors

Morgan G. Roseborough, Jr.,

LTC, GS, Executive Secretary, USMA Board of Visitors.

[FR Doc. 88–24999 Filed 10–27–88; 8:45 am]

BILLING CODE 3710–08–M

Engineers Corps

Open Meeting; Coastal Engineering Research Board

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meetings.

Name of Committee: Coastal Engineering Research Board (CERB).

Date of Meetings: November 15–17, 1988.

Place: Sheraton Beach Inn, Virginia Beach, Virginia.

Time: 8:30 a.m. to 5:00 p.m. on November 15; 8:30 a.m. to 5:00 p.m. on November 16; 8:00 a.m. to 12:00 noon on November 17.

Theme: Long-Range Research Needs in Coastal Engineering.

Proposed Agenda: The morning session on November 15 will consist of a review of CERB business, presentations and discussions on Coastal Issues and Needs in the Commonwealth of Virginia; Virginia Public Beach Board/Summary of Virginia Coastal Needs and the Use of section 933 Authority for Beach Nourishment; and Review of Federal Coastal Projects in Virginia.

The afternoon of November 15 will be devoted to a bus trip and tour of Virginia Beach, Rudee Inlet, Fort Story, and Lynnhaven Inlet.

The session on November 16 will consist of several presentations entitled: Long-Range Outlook for Coastal Engineering in the Corps; an Introduction and Review of Coastal R&D Program; Future Directions in Coastal R&D; Structure Design Criteria; Instrumentation (National Research Council Study); Facilities; and Report on the Workshop for Practicing Coastal Engineers. The session will also consist of two panel discussions. One panel will discuss Hydrodynamics (waves, currents, wave/structure interaction, storm surge, tidal circulation, etc.), and the other panel will discuss Sediment Transport (longshore, navigation channel shoaling, erosion, beach fills, etc.).

On November 17 there will be a presentation on the National Science Foundation, Science and Technology Centers. Recommendations by members of the Board will also be presented.

This meeting is open to the public; participation by the public is scheduled for 9:15 a.m. on November 17.

The entire meeting is open to the public subject to the following:

1. Since seating capacity of the meeting room is limited, advance notice of intent to attend, although not required, is requested in order to assure adequate arrangements for those wishing to attend.

2. Oral participation by public attendees is encouraged during the time scheduled on the agenda; written statements may be submitted prior to the meeting or on or before November 15, 1988.

Inquiries and notice of intent to attend the meeting may be addressed to Colonel Dwayne G. Lee, Executive Secretary, Coastal Engineering Research Board, U.S. Army Engineer Waterways Experiment Station, P.O. Box 631, Vicksburg, Mississippi 39181–0631.

Dwayne G. Lee,

Colonel, Corps of Engineers Executive Secretary.

[FR Doc. 88–25028 Filed 10–27–88; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO), Executive Panel Advisory Committee Latin America Task Force will meet November 28–29, 1988 from 9 a.m. to 5 p.m. each day, in Norfolk, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to gain a broad overview and insight on Latin America related to U.S. security and naval interests. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302–0268. Phone (703) 756–1205

Date: October 24, 1988.

Jane M. Virga,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 88–25021 Filed 10–27–88; 8:45 am]

BILLING CODE 3810–AE–M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee Panel on Next Generation Computer Resources will meet on November 16–17, 1988. The meeting will be held at the General Electric Company, 2361, Jefferson Davis Highway, Arlington Virginia. The meeting will commence at 1:00 P.M. and terminate at 6:00 P.M. on November 16; and commence at 8:00 A.M. and terminate at 5:00 P.M. on November 17, 1988. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings for the panel members on computer resources. The agenda will include discussions on Navy computer needs, submarine combat systems, government computer standards, commercial computer standards and Congressional guidance. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander L. W. Snyder, U.S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5000; Telephone Number: (202) 696–4870.

Date: October 25, 1988.

Jane M. Virga,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 88–25022 Filed 10–27–88; 8:45 am]

BILLING CODE 3810–AE–M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee Panel on Countermine Capabilities for Amphibious Operations will meet on November 21–22, 1988. The meeting will be held at the Naval Coastal Systems Center, Panama City, Florida. The meeting will commence at 8:30 A.M. and terminate at 4:30 P.M. on November 21; and commence at 8:00 A.M. and terminate at 4:00 P.M. on November 22, 1988. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings for the panel members related to an assessment of the mine/countermine threat and current capabilities and limitations, and an evaluation of the technological approaches to detection, neutralization, marking and reporting problems. The agenda will include discussions on detection and reporting, fielded and developmental systems, vulnerabilities, and program plans and funding. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander L. W. Snyder, U.S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5000; Telephone Number: (202) 696–4870.

Date: October 25, 1988.

Jane M. Virga,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 88–25023 Filed 10–27–88; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

National Advisory Council on Indian Education.

AGENCY: National Advisory Council on Indian Education.

ACTION: Notice of partially closed meetings.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming meetings of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of the meeting is required under section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2.

DATES: November 14, 1988, 1:00 to 2:00 p.m. for the NACIE Executive Committee (Closed Meeting); 2:45 to 4:15 p.m. for Communications and Legislative Committee Meetings (Open Meeting).

November 15, 1988, 8:00 a.m. until the conclusion of business for the full NACIE Council Meeting (Open Meeting).

November 16, 1988, 8:30 a.m. until approximately 4:00 p.m. for the full NACIE Council Meeting (Closed Meeting) and from 4:00 p.m.–4:30 p.m. (Meeting).

ADDRESS: Doubletree Downtown Tulsa Hotel, 616 West Seventh Street, Tulsa, OK 74127, (918/587–8000) (November 14, 1988, Open Meeting) Tulsa Convention Center, 100 Civic Center Street, Tulsa, OK 74127 (918/592–7177) (November 15–16, 1988, Meetings).

FOR FURTHER INFORMATION CONTACT: Gloria Duus, Acting Executive Director, National Advisory Council on Indian Education, 330 C Street, SW., Room 4072, Switzer Building, Washington, DC 20202–7556 (202/732–1353).

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under section 442 of the Indian Education Act (20 U.S.C. 1221g). The Council is established to, among other things, assist the Secretary of Education in carrying out responsibilities under the Indian Education Act (Title IV of Pub. L. 92–318), and to advise Congress, and the Secretary of Education, the Under Secretary of Education and the Assistant Secretary of Elementary and Secondary Education with regard to education programs benefiting Indian children and adults.

On Monday, November 14, 1988, the closed meeting of the NACIE Executive Committee will start at 1:00 p.m., and will end approximately 2:30 p.m. The agenda will consist of preparations for confidential information of recommended candidates for NACIE's permanent Executive Director position to the full Council. The open meeting will start at 2:45 p.m. and end at approximately 4:15 p.m. for the Communications and Legislative Committees reports.

On Tuesday, November 15, 1988, starting at 8:00 a.m. until the conclusion of business, the full Council meeting will be open to the public. The proposed agenda includes:

(1) Chairman's Report.

(2) Acting Executive Director's Report.

(3) Action on previous minutes.

(4) Scholl Quality Control and Tribal Relations Committee Reports.

(5) NACIE Philosophy/Goals/Objectives.

(6) NACIE Handbook Update.

(7) NACIE By-Laws Update.

(8) NACIE Budget for FY'89.

(9) FY'89 Calendar for NACIE.
(10) Other NACIE Business.

On Wednesday, November 16, 1988, the full Council meeting will be closed to the public, beginning at 8:30 a.m. until approximately 4:00 p.m. to interview final candidates for the permanent, NACIE Executive Director, Council will discuss personnel matters that will involve confidential information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session.

The Executive Committee and full Council sessions will be closed under the authority of section 10(d) of the Federal Advisory Committee Act (Public Law 92-463; 5 U.S.C. Appendix 2) and under exemption (6) of Section 55b (c) of the Government in the Sunshine Act (Pub. L. 94-049; 5 U.S.C. 552b (c)(6). At approximately 4:00 to 4:30 p.m. on November 16, the Council will resume the open meeting to elect officers.

A summary of the activities of the closed session and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b shall will be available to the public inspection at the office of the National Advisory Council on Indian Education located at 330 C Street, SW., Room 4072, Switzer Building, Washington, DC 20202-7556 (202-732-1353).

Dated: October 25, 1988.

Signed at Washington, DC.

Gloria Dunn,

Acting Executive Director, National Advisory Council on Indian Education.

[FR Doc. 88-25000 Filed 10-27-88; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No.: 84.197]

Notice Inviting Applications for New Awards for Fiscal Years 1989 Under the College Library Technology and Cooperation Grants Program

Purpose: To encourage resource-sharing projects among the libraries of institutions of higher education through the use of technology and networking and to improve the library and information services provided to them by public and nonprofit private organizations as well as to conduct research or demonstration projects to meet special needs in using technology to enhance library and information [illegible].

Deadline for Transmittal of Applications: January 13, 1989.

Deadline for Intergovernmental review Comments: March 14, 1989.

Applications Available: November 8, 1988.

Available Funds: $3,651,000.

Estimated Range of Awards: $15,000-$175,000.

Estimated Average Size of Awards: Networking Grant—$30,000, Combination Grant—$125,000, Services to Institutions Grant—$25,000, Research and Demonstration Grant—$100,000.

Estimated Number of Awards: Networking Grant—28, Combination Grant—15, Services to Institutions Grant—5, Research and Demonstration Grant—8.

Project Period: 12-36 months.

The Department is not bound by any estimates in this notice.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals and Non-profit Organizations), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Education Appeal Board) and Part 79 (Intergovernmental Review of Department of Education Programs and Activities); (b) The regulations as published in the Federal Register at 53 FR 27114, to be codified in 34 CFR Part 778.

For Application or Information Contact: Frank A. Stevens, Director, or Linda Loeb, Program Officer, Library Development Staff, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 402M, Washington, DC 20208-5571. Telephone (202) 357-6315.

Program Authority: 20 U.S.C. 1021 et seq.

Dated: October 24, 1988.

Bruce V. Mazzo,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 88-24939 Filed 10-27-88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Conservation and Renewable Energy

National Energy Extension Service Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-263, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: National Energy Extension Service Advisory Board.

Date and Time: Thursday, November 17, 1988, 8:00-5:00 p.m., Friday, November 18, 1988, 8:00 a.m.-12:00 noon.

Place: Hyatt Regency Crystal City, Fairfax Room 2799 Jefferson Davis Highway, Arlington, VA 22202.

Contact: Susan D. Heard, Department of Energy, Forrestal Building—6A061, 1000 Independence Avenue SW., Washington, DC 20585. Telephone: 202-586-8290.

Purpose of the Board

The Board was established to carry on a continuing review of the National Energy Extension Service and the plans and activities of each State in implementing Energy Extension Service programs. Additionally, the Board is responsible for reporting on an annual basis to the Cognress, the Secretary of Energy, and the Director of the Energy Extension Service.

Tentative Agenda

Thursday, November 17, 1988

- Program status report
- State program status reports by individual Board members
- Public comment (10 minute rule)

Friday, November 18, 1988

- Discussion of Issues for Board's Tenth Annual Report
- Public comment (10 minute rule)

Public Participation

The meeting is open to the public. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Susan D. Heard at 202-586-8290. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcripts

Available for public review and copying at the Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9 a.m. and 4 p.m. Monday thru Friday, except Federal Holidays.

Issued at Washington, DC, on October 24, 1988.

J. Robert Franklin,

Advisory Committee Management Officer.

[FR Doc. 88-25002 Filed 10-27-88; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. ERA C&E 88-01; Certification Notice—29]

Filing of Certification of Compliance; Coal Capability of New Electric Powerplants Pursuant to Provisions of the Powerplant and Industrial Fuel Use Act, as Amended

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*), provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a), 42 U.S.C. 8311(a), Supp. V, 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the Federal Register a notice reciting that the certification has been filed. One owner and operator of a proposed new electric base load powerplant has filed a self certification in accordance with section 201(d). Further information is provided in the SUPPLEMENTARY INFORMATION section below.

SUPPLEMENTARY INFORMATION: The following company has filed a self certification:

Name	Date received	Type facility	Megawatt capacity	Location
Greenleaf Unit Two Associates, Inc., Radnor, PA	10-14-88	Cogen Topping Cycle	49	Yuba City, CA.

Amendments to the FUA on May 21, 1987, (Pub. L. 100-42) altered the general prohibitions to include only new electric baseload powerplants and to provide for the self certification procedure.

Issued in Washington, DC, on October 25, 1988.

Anthony J. Como,

Director, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-25003 Filed 10-27-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER89-14-000 et al.]

Tucson Electric Power Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

October 21, 1988.

Take notice that the following filings have been made with the Commission:

1. Tucson Electric Power Company

[Docket No. ER89-14-000]

Take notice that on October 17, 1988, Tucson Electric Power Company (Tucson) tendered for filing an Economy Energy Agreement (Agreement) between Tucson and the Metropolitan Water District of Southern California. The primary purpose of the Agreement is to establish the terms and conditions for the supplying of economy energy between Tucson and the Metropolitan Water District of Southern California. Tucson states that services may be provided under Service Schedule A to the Agreement entitled "Economy Energy Interchange."

Tucson requests an effective date of September 16, 1988, and therefore requests waiver of the Commission's notice requirements.

Tucson states that copies of the filing were served upon the Metropolitan Water District of Southern California.

Comment date: November 7, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Bangor Hydro-Electric Company, New England Power Company

[Docket No. ER89-12-000]

Take notice that on October 17, 1988, Bangor Hydro-Electric Company (Bangor) and New England Power Company (New England) tendered for filing as an Initial Rate Schedule, an Electric Generating Capability Sales Agreement. The Agreement provides for the sale by Bangor to New England of 20,000 KW of electric generating capability during November 1, 1988 through October 31, 1989 and the total output associated therewith.

Comment date: November 7, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Minnesota Power & Light Company

[Docket No. ER89-11-000]

Take notice that on October 17, 1988, Minnesota Power & Light Company tendered for filing a Participation Power Transaction Agreement between Minnesota Power & Light Company and Northern States Power Company. Under this Agreement, Minnesota Power & Light Company will sell participation power as available from its Syl Laskin steam electric station Unit No. 2 to Northern States Power Company on a participation power interchange basis in accordance with the Mid-Continent Area Power Pool Agreement, Service Schedule A. This Agreement provides for energy sales only during the period from May 1, 1988 through October 31, 1988 inclusive. The parties request a waiver of the Commission's 60 day filing period for this Agreement and a retroactive effective date of May 1, 1988 for such Agreement.

Comment date: November 7, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Central Hudson Gas & Electric Company

[Docket No. ER89-13-000]

Take notice that on October 17, 1988, Central Hudson Gas & Electric Company (Central Hudson) tendered for filing, as a rate schedule an executed Agreement dated June 1, 1988 between Central Hudson and Orange and Rockland Utilities, Inc. (O&R). The proposed rate schedule provides for transmission of Capacity and Energy by Central Hudson for O&R between Central Hudson's 69 Kv. transmission interconnection with New York State Electric & Gas Corporation's (NYSE&G) West Woodbourne Substation and Central Hudson's 115 Kv. interconnection with O&R at O&R's Sugarloaf Substation.

The rate schedule provides for a monthly transmission charge of $1.00 per megawatthour of Energy received from NYSE&G for O&R's account at NYSE&G's West Woodbourne Substation for delivery to O&R's Sugarloaf Substation and $1.00 per

megawatthour of purchased service tariff 3(ST–3) received from New York Power Authority's (NYPA) Blenheim-Gilboa Pumped Storage Hydroelectric Plant. In addition O&R shall pay CHG&E $24 per megawatt-day for scheduled delivery of firm capacity.

Central Hudson states that copies of the subject filing were served upon Orange and Rockland Utilities, Inc.

Comment date: November 7, 1988, in accordance with Standard Paragraph E at the end of this notice.

[standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulation Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–24972 Filed 10–27–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP89–9–000 et al.]

Tennessee Gas Pipeline Co. et al.; Natural Gas Certificate Filings

October 24, 1988.

Take notice that the following filings have been made with the Commission:

1. Tennessee Gas Pipeline Company

[Docket No. CP89–9–000]

Take notice that on October 4, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89–9–000 a request, pursuant to § 157.205 and 284.223 of the Commission's Regulations, for authorization to provide transportation for Tejas Power Corporation (Tejas), a marketer, under Tennessee's blanket certificate issued in Docket No. CP87–115–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee proposes to transport up to a maximum daily quantity (MDQ) of 30,000 dekatherms, for Tejas from receipt points located offshore Louisiana, offshore Texas, and the states of Texas, Louisiana, and Mississippi. The point of delivery and the ultimate delivery point are located in Pennsylvania, it is asserted.

Tennessee also indicates that transportation service for Tejas initially started September 1, 1988, as reported in Docket No. ST88–5836, pursuant to the self-implementing provision of Section 284.223 of the Regulations.

Further, Tennessee states that would transport approximately 30,000 dekatherms on a peak day, 4,000 dekatherms on an average day and 1,460,000 dekatherms on an annual basis.

Comment date: December 8, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. Southern Natual Gas Company

[Docket No. CP89–32–000]

Take notice that on October 7, 1988, Southern Natural Gas Compnay (Southern), P.O. Box 2573, Birmingham, Alabama 35202–2563 filed in Docket No. CP89–32–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing firm transportation services for some of Southern's customers and the construction, installation and operation of compression and metering facilities necessary to render the transportation services, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern states that it is authorized to sell gas for resale to Austell Natural Gas System (Austell), the City of Cartersville, Georgia (Cartersville), Marshall County Gas District (Marshall), the City of Pleasant Grove, Alabama (Pleasant Gove), South Georgia Natual Gas Company (South Georgia), and to the City of Wrens, Georgia (Wrens). Southern further states that it has signed precedent agreements with each of these customers to provide them with firm transportation service and, correspondingly, to increase each customer's total firm entitlements on Southern's system based on the transportation demand requested by each customer in the precedent agreement. It is explained that the sum of the requested transportation services (and hence, the increase in Southern's firm obligation) totals 13,279 Mcf per day. The maximum daily transportation volume requested by each customer is listed in the Appendix. Southern states that it would sign service agreements with each of the customers to provide the requested firm transportation pursuant to its Rate Schedule FT.

In order to render the proposed tranportation service, Southern requests authority to construct a new compressor station on its North Main Line at Mile Post 352.5 in St. Clair County, Alabama. Southern indicates that the proposed station would include one 4,390 horsepower turbine compressor. Southern also requests authority to modify and enlarge its existing Austell No. 2 and Marshall No. 1 meter stations in Cobb County, Georgia and Etowah County, Alabama, respective. Southern estimates that the cost of the proposed facilities would be $3,697,450.

Comment date: November 14, 1988, in accordance with Standard Paragraph F at the end of this notice.

Appendix—Firm Transportation Requests of Southern's Customers

Customer	Request in Mcf per day
Austell	8,295
Cartersville	1,000
Marshall	1,933
Pleasant Grove	1,000
South Georgia	375
Wrens	676

3. Arkla Energy Resources, a Division of Arkla, Inc.

[Docket No. CP89–66–000]

Take notice that on October 17, 1988, Arkla Energy Resources (AER), a division of Arkla, Inc., P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP89–66–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a sales tap and related jurisdictional facilities necessary to deliver gas from its jurisdictional system for resale by Arkansas Louisiana Gas Company (ALG), a division of Arkla, Inc., under the certificate authorization issued in Docket Nos. CP82–384–000 and CP82–384–001 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

AER proposes to:

(1) Construct and operate a sales tap on its Line AD in Pittsburg County, Oklahoma, to deliver gas to ALG for service to Joe Clark, a domestic residential customer who would use approximately 352 Mcf per year and about 2 Mcf on a peak day.

(2) Construct and operate a sales tap on its Line AD in Pittsburg County, Oklahoma, to deliver gas to ALG for service to Vernice A. Jones, a domestic residential customer who would use approximately 352 Mcf per year and about 2 Mcf on a peak day.

(3) Construct and operate a sales tap on its Line S–77 in Webster Parish, Louisiana, to deliver gas to ALG for service to Rodney Hortman, a commerical customer who would use approximately 85 Mcf per year and about 1 Mcf on a peak day.

AER states that the gas would be delivered from its general system supply, which it is stated is adequate to provide the service.

AER states that the gas delivered and resold by ALG to the end user would be priced in accordance with the currrently filed rate schedules authorized by the appropriate state regulatory authority.

Comment date: December 8, 1988, in accordance with Standard Paragraph G at the end of this notice.

4. Williams Natural Gas Company

[Docket No. CP89–23–000]

Take notice that on October 5, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed an application in Docket No. CP89–23–000 pursuant to section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations for authorization to abandon all sales services to the Cities of Chanute, Auburn, Garnett, Humboldt, Iola, Neodesha and Osage City, Kansas and the City of Cleveland, Oklahoma, referred to collectively as the "Cities", all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Williams requests authorization under section 7(b) of the Natural Gas Act to abandon existing full requirements sales service to the Cities under Williams' prior Rate Schedules F, C and I, and direct sales service to certain direct industrial users owned by the Cities, retroactively effective as of August 5, 1988, the date Cities indicates that it began receiving all of their gas requirements from third-party suppliers under a transportation agreement between Williams and Vesta Energy Company. Williams states that such abandonment authorization is consistent with, and specifically contemplated by, the July 22, 1988, stipulation approved by the United States Court of Appeals for the Tenth Circuit (*City of Chanute, et al* v. *WNG*, No. 88–1225) under which it is indicated that Williams and the Cities terminated all existing sales contracts between them and Cities agreed not to oppose abandonment of sales service in proceedings to be initiated before the Commission by Williams.

Williams states further that abandonment authorization retroactive to the time at which the Cities commenced receipt of 100 percent of their requirements from third-party sources is appropriate and within the Commission's authority under the Natural Gas Act.

Pursuant to 18 CFR 284.10(d)(2) the exercise of the customers' option to convert constitutes consent to the proposed abandonment.

Comment date: November 14, 1988, in accordance with Standard Paragraph F at the end of this notice.

5. Southern Natural Gas Company

[Docket No. CP89–63–000]

Take notice that on October 14, 1988, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP89–63–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing (1) construction, installation and operation of new mainline compression, measurement, and regulation facilities and (2) the rendition of firm seasonal transportation for certain of Transcontinental Gas Pipe Line Corporation's (Transco) existing customers located in Zones 1 and 2 of Transco's pipeline system, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern proposes to construct, install and operate:

- 1,100 horsepower of additional compression and modification and enlargement of existing meter station at Frost Station, Livingston Parish, Louisiana.
- 3,000 horsepower of additional compression, construction of new measuring station, and a new interconnect with Transco at Pearl River Station, Walthall County, Mississippi.
- 2,000 horsepower of additional compression (uprating existing units) at Gallion Station, Marengo County, Alabama.
- 8,780 horsepower of additional compression at Auburn Station, Lee County, Alabama.
- 16,990 horsepower of new compression at a new compressor station to be located at East Tuscaloosa, Jefferson County, Alabama.
- Modifications to enlarge existing Transco meter station at Jonesboro Exchange Station, Clayton County, Georgia.
- 4,390 horsepower of additional compression at a compressor station proposed in another pending application (Docket No. CP89–32–000) at Pell City, St. Clair County, Alabama.

It is indicated that the proposed facilities would cost an estimated $19,661,450 and would be financed initially through short-term loans and cash from current operations, with permanent financing to be arranged as part of Southern's overall long-term financing program.

Southern states that the proposed facilities would enable it to render firm, long-term seasonal transportation service of up to 167,000 Mcf per day during the peak winter months of December, January, and February, and up to 150,300 Mcf per day during the shoulder months of November and March. Southern states that the proposed incremental service would be provided to meet the current need for firm winter service for customers in the southern market area of Transco's pipeline system which have signed precedent agreements with Transco. The customers proposed to be served with the new seasonal transportation service and the specific volumes nominated by each are listed in the Appendix below.

Southern asserts that its proposal is designed to be competitive with and complementary to Transco's proposal for winter season service as filed in Docket No. CP88–760–000. Southern proposes to provide its transportation service in conjunction with the service proposed by Transco. Southern insists that it can install facilities necessary for delivery of the volumes, along with any construction of facilities proposed by Transco downstream of Transco's Station No. 120, at a lower cost of service and with better terms of service.

Under its proposal, Southern states that it would transport gas from two Transco-Southern interconnections (Frost and Pearl River) and would redeliver volumes to Transco at the Clayton County, Georgia interconnection, for ultimate redelivery by Transco at existing points of delivery with the shippers. In the alternative, Southern states that it could redeliver gas directly to those shippers which are customers of both Transco and Southern.

For the seasonal transportation service, Southern proposes to charge an initial monthly reservation charge of $2.29 per Mcf of peak month transportation demand. Southern states that the proposed reservation rate is designed to recover the cost of service attributable to the proposed expansion using the fixed-variable rate design methodology. In addition to the monthly reservation charge, Southern proposes

to charge a volumetric take-or-pay surcharge as set forth in Section 22.3 to the General Terms and Conditions of Southern's FERC Gas Tariff.

Comment date: November 14, 1988, in accordance with Standard Paragraph F at the end of his notice.

CONTRACT QUANTITIES (MCF/D) PROPOSED IN DOCKET NO. CP88-760-000

Shipper	Peak months	Shoulder months
Atlanta Gas Light Co	58,000	17,000
City of Buford	2,000	1,200
Clinton Newberry	1,750	1,530
City of Commerce	350	751
City of Covington	1,500	1,350
Fort Hill Natural Gas Authority	2,500	2,250
City of Fountain Inn	250	225
City of Greenwood	1,875	1,688
City of Greer	1,000	900
City of Kings Mountain	1,000	900
City of Lawrenceville	4,000	3,600
City of Lexington	950	855
Lynchburg Gas Co	1,000	850
City of Monroe	750	675
North Carolina Natural Gas Corp.	15,200	14,670
Piedmont Natural Gas Corp.	50,000	45,000
Public Service of North Carolina	31,575	28,418
City of Shelby	2,000	1,400
South Carolina Pipeline Corp	10,000	9,000
City of Social Circle	250	225
City of Sugar Hill	1,000	900
Tri-County Natural Gas Co.	850	765
City of Union	1,000	900
Georgia United Cities Gas Co.	3,800	3,420
S.C. United Cities Gas Co.	750	675
City of Winder	500	450

Standard Paragraphs:

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notion by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24973 Filed 10-27-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD88-19735T]

Designation of Tight Formation, Hidalgo County, TX; Texas-30 Addition 1; Tight Formation Determination

Issued October 24, 1988.

Take notice that on September 15, 1988, the Railroad Commission of Texas (Texas) submitted to the Commission its determination that an additional portion of the Tabasco (Vicksburg 10,100) Field, located in Hidalgo County, Texas, qualifies as a tight formation under section 107(c)(5) of the Natural Gas Policy Act of 1978. The application includes the Railroad Commission's order issued August 29, 1988, finding that the proposed addition meets the requirements of the Commission's regulations set forth in 18 CFR Part 271.

Any person desiring to be heard or to protest Texas' determination should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Rules of Practice and Procedure (18 CFR 385.211, 385.214 (1988)). All such comments should be filed within 20 days after publication of this notice in the **Federal Register.** Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24969 Filed 10-27-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-317-001]

ANR Pipeline Co.; Proposed Changes in the FERC Gas Tariff

October 20, 1988.

Take notice that ANR Pipeline Company ("ANR") an October 21, 1988 tendered for filing as a part of its FERC Gas Tariff Original Volume No. 1, six copies each of the following tariff sheets:

Second Revised Sheet No. 1
Second Revised Sheet No. 2
First Revised Sheet No. 38
Second Revised Sheet No. 75
Third Revised Sheet No. 77
Third Revised Sheet No. 79
Third Revised Sheet No. 80
First Revised Sheet No. 86
Third Revised Sheet No. 111
Second Revised Sheet No. 112
Third Revised Sheet No. 113
Third Revised Sheet No. 114

It is stated that the preceding tariff sheets are being filed to comform ANR's Original Volume No. 1 FERC Gas Tariff with the Order Approving Abandonments and Issuing Certificate ("Order") issued by the Federal Energy Regulatory Commission ("Commission") on September 21, 1988 in Docket No. CP88-317-000 (44 FERC ¶ 61-361 (1988)).

ANR further states that this filing also reflects the cancellation of the following currently effective tariff sheets in ANR's Original Volume No. 1:

Original Sheet No. 33
Original Sheet No. 34
First Revised Sheet No. 35
Original Sheet No. 93

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street NE., Washington, DC 20426 by November 2, 1988 in accordance with Rules 211 and 214 of the Commission's Rules and Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24979 Filed 10-27-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-6-000]

El Paso Natural Gas Co.; Tariff Filing

October 25, 1988.

Take notice that on October 20, 1988, pursuant to section 4 of the Natural Gas Act and Part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Act, El Paso Natural Gas Company ("El Paso") submitted Second Revised Sheet No. 101 to its FERC Gas Tariff, First Revised Volume No. 1 to become effective November 1, 1988.

El Paso states that the tendered tariff sheet, when accepted by the Commission and permitted to become effective, will permit El Paso to discount a specified component of its commodity sales rates from time to time and at any time upon 24-hours' notice to the Commission. El Paso made this request to assist it in addressing a critical operational emergency that has recently developed on El Paso's system. El Paso specifically seeks authority to discount the non-gas component of such rates not to exceed the portion thereof attributable to the costs of El Paso's Reserve for Exploration ("RFX") properties. El Paso states that the RFX properties constitute a source of gas supply to support its sales and the costs thereof, being exclusively supply-related, are allocated exclusively to El Paso's sales services and are included in the "non-gas" component of such rate. El Paso states that inasmuch as none of such costs are reflected in the calculation of its rates for transportation services, such discounts as El Paso may offer from time to time would not appropriately apply to El Paso's transportation rates. El Paso will apply such discounts to all sales for resale without discrimination. In order to be able to offer such discounts, El Paso respectfuly requests waiver as necessary of all applicable Commission rules and regulations.

El Paso states that on June 1, 1988, in Docket No. RP88-44-000, El Paso indicated that the RFX costs included in its currently effective sales commodity rates equate to $.3088 per dth. El Paso beleives that the ability to discount the non-gas component of its commodity sales rates by as much as $.3088 per dth from time to time could be of critical importance in assisting it to achieve and maintain levels of sales sufficient to permit it to avoid the operational crisis which it now faces. El Paso proposes to file on or before October 28, 1988, the proposed tariff sheet reflecting the amount of the discount to be offered by El Paso, effective November 1, 1988.

Because of the emergency nature of this request, El Paso respectfully requested that the Commission grant such waiver of its applicable rules, regulations and orders as may be necessary to permit the tendered tariff sheet to become effective on November 1, 1988 and to remain effective until the earlier of July 1, 1989 or the effective date of a Gas Inventory Charge, or similar mechanism, and/or approval of the transfer of the RFX costs to the purchased gas component of its sales rates.

El Paso states that copies of the filing have been served upon all of its interstate pipeline system sales customers and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 1, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any persom wishing to become a part must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24983 Filed 10-27-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-220-001]

Mississippi River Transmission Corp.; Tariff Filing

October 25, 1988.

Take notice that on October 20, 1988 Mississippi River Transmission Corporation (MRT) tendered for filing Substitute Twenty-Sixth Revised Sheet No. 4 to its FERC Gas Tariff, Second Revised Volume No. 1 to be effective October 1, 1988.

MRT states that its filing is being submitted to comply with the Commission's September 20, 1988 Order in the above-referenced proceeding which required MRT to file within thirty (30) days a revised tariff sheet incorporating its latest purchased gas cost adjustment filing which became effective September 1, 1988, in Docket No. TQ88-1-25-000. MRT states that the instant filing also reflects MRT's most recent Annual Charge Adjustment currently reflected on Twenty-Sixth Revised Sheet No. 4 which was made effective October 1, 1988, in Docket No. TM89-1-25-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.211). All such motions or protests should be filed on or before November 2, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24980 Filed 10-27-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP86-63-002, RP88-116-000, RP88-17-000, RP88-94-003, RP88-210-000 and RP88-225-000]

Southern Natural Gas Co.; Informal Settlement Conference

October 24, 1988.

Take notice that a conference will be convened in these proceedings on November 4, 1988, at 10:00 a.m. at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC for the purpose of exploring the possible settlement of the above-reference dockets.

Any party, as defined by 18 CFR 385.102(c), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

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For additional information, contact Carmen Gastilo (202) 357–5737.

Lois D. Cashell,

Secretary.

[FR Doc. 88–24982 Filed 10–27–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–230–001]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

October 24, 1988.

Take notice that on October 19, 1988, Trunkline Gas Company (Trunkline) tendered for filing the following tariff sheets to its FERC Gas Tariff Original Volume No. 1:

First Substitute Sixty-Fourth Revised Sheet No. 3–A
First Substitute Original Revised Sheet No. 3–A.5
First Substitute Original Revised Sheet No. 3–A.8

The proposed effective date of these revised sheets is September 29, 1988.

First Substitute Sixty-Fifth Revised Sheet No. 3–A

The proposed effective date of this revised tariff sheet is October 1, 1988.

Trunkline states that the proposed tariff sheets are being filed in compliance with the Commission's September 28, 1988 order in the above-captioned proceeding accepting Trunkline's proposed recovery of take-or-pay settlement costs under Order No. 500. Ordering Paragraph (B) of the September 28 Order required Trunkline to allocate amounts attributable to Mississippi River Transmission Corporation, remove carrying charges which predate the September 29, 1988 effective date and to eliminate any payments to producers which were affiliated with Trunkline at the time take-or-pay settlements were entered into. Trunkline states that the revised tariff sheets filed herewith have been adjusted to reflect the requirements of the Commission's September 28, 1988 order.

Trunkline states that copies of the filing were sent to all of Trunkline's jurisdictional customers and interested state commissions, as well as the parties to the above-captioned proceeding and the parties to the Docket No. RP88–180–000 proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before Oct. 31, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–24971 Filed 10–27–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP88–177–003 (RP87–120–002)]

Texas Gas Transmission Corp.; Tariff Filing

October 20, 1988.

Take notice that on October 21, 1988, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Docket No. RP88–177

June 1, 1988 Effective Date

Second Substitute Seventh Revised Sheet No. 14
Substitute Original Sheet No. 14A
Substitute Original Sheet No. 14B
Substitute Original Sheet No. 14C

Docket No. RP88–230

September 1, 1988 Effective Date

Substitute Original Sheet No. 14D
Substitute Original Sheet No. 14E
Substitute Original Sheet No. 14F
Substitute Original Sheet No. 14G

Texas Gas states that this filing is made to reflect revisions in the allocation of both United Gas Pipeline Company and Tennessee Gas Pipeline Company's take-or-pay charges to Texas Gas's downstream customers. In both dockets Texas Gas has reallocated charges, originally proposed to be recovered by Texas Gas from ANR Pipeline Company, to its current jurisdictional and nonjurisdictional, as ordered by the Commission. The filing also corrects a minor error in Associated Natural Gas Company's 1982 sales volumes by adjusting the volume downward by 24,152 Mcf. Finally, with respect to the flowthrough of United's take-or-pay charges, the filed tariff sheets track qualification of United's charges due to a compliance filing made by United on August 31, 1988. Texas Gas proposes the revised tariff sheets remain effective as of June 1 and September 1, 1988, respectively, the dates the initial tariff sheets were allowed to go into effect.

Copies of this filing have been served upon Texas Gas's jurisdictional and nonjurisdictional sales customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 2, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–24981 Filed 10–27–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TC88–17–000]

Southern Natural Gas Co.

October 24, 1988.

Take notice that on September 30, 1988, Southern Natural Gas Company, (Southern), tendered for filing a Petition For Extension of Time concerning certain provisions of the Stipulation and Agreement dated December 30, 1981 in Docket No. TC81–84–000. By order dated December 30, 1981, the Commission approved the aforementioned Stipulation and Agreement, which established the procedures to be followed in updating the Priority 2.1 Essential Agricultural Use (EAU) requirements of Southern's resale and direct sale customers. One provision of the Stipulation and Agreement requires Southern to resurvey triennially its customers' EAU requirements in order to update its Index of Requirements to reflect any changes in their EAU requirements. A triennial survey is due to be conducted this year.

By letter dated June 7, 1988, Southern advised its customers of its intention to update the Index of Requirements. At that time, Southern intended that this general update of the Index of Requirements would include its customer's EAU requirements so that it would not be necessary to undertake separately the triennial review contemplated by the Stipulation and Agreement. Since that time, two factors have occurred which, Southern alleges, confirm that it is not necessary to undertake the separate update of EAU requirements this year. First, in an order issued on July 27, 1988 in Docket No. RP88–17–000, the Commission directed Southern to complete an update of its Index of Requirements "as soon as practicable." Second, according to Southern, its customers have repeatedly questioned the desirability of conducting an EAU update this year.

Southern alleges that there is good cause for waiving the triennial update of EAU requirements as requested herein. Although Southern and its customers have already initiated the process of revising Southern's Index of Requirements in accordance with the Commission's Order of July 27, 1988, Southern states that its customers have advised that it is not possible for them to complete the survey of all their customers in time for a revised Index to be implemented for use this winter. Notwithstanding that fact, since the revision will include EAU requirements, according to Southern, all of their customers have indicated that they do not desire to undertake separately a survey of their EAU requirements this year.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or a Protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such Motions or Protests should be filed on or before November 7, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a Motion to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–24970 Filed 10–27–88; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3460–1; EPA Project Number SAC 87–91]

Approval of Prevention of Significant Air Quality Deterioration (PSD) Permit to Sierra Pacific Industries' Loyalton Project

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice.

SUMMARY: Notice is hereby given that on May 31, 1988 the Environmental Protection Agency issued a PSD permit under EPA's federal regulations 40 CFR 52.21 to the applicant named above. The PSD permit grants approval to construct a 20 MW wood-fired cogeneration project located in Loyalton, Sierra County, California. The permit is subject to certain conditions, including an allowable emission rate as follows: NO_x: 36.9 lbs/hr or 0.110 lb/MMbtu (3-hour average), CO: 167.8 lbs/hr or 0.50 lb/MMBtu (3-hour average).

FOR FURTHER INFORMATION: Copies of the permit are available for public inspection upon request; address request to: Linda Barajas (A–3–1), U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105. (415) 974–8221, FTS 454–8221.

SUPPLEMENTARY INFORMATION: Best Available Control Technology (BACT) requirements includes Multi-Clones, ESP, Ammonia injection, high pressure secondary air injection.

DATE: The PSD permit is reviewable under Section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by December 27, 1988.

David P. Howekamp,

Director, Air Management Division, Region 9.

Date: October 19, 1988.

[FR Doc. 88–24964 Filed 10–27–88; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3468–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared October 10, 1988 through October 14, 1988 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5074.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 22, 1988 (53 FR 13318).

Draft EISs

ERP No. DS–AFS–J62008–MT, Rating EC2, 1987 Deerlodge National Forest, Noxious Weed Control Program, Herbicide Use, Implementation, Deer Lodge, Granite, Jefferson, Madison, Powell and Silver Bow Counties, MT.

Summary:

EPA has concerns with the lack of detailed environmental monitoring plans, the absence of cumulative effects discussions, and the limited range of wildlife species included in the assessment.

ERP No. D–BLM–K60065–CA, Rating LO, Death Valley and Joshua Tree National Monuments Boundary Adjustments, Transfer of Land Between the Bureau of Land Management and the National Park Service, California Desert District, Inyo and Riverside Counties, CA.

Summary:

EPA lacks of objections to the proposed action.

Final EISs

ERP No. F–BLM–K65113–00, California Vegetation Management Program, Implementation, Orange, Riverside, Kern, Inyo, and Modoc Counties, CA and NV.

Summary:

EPA expressed continuing concerns that vegetation management activities could adversely impact ground water, surface water and protected beneficial uses. EPA requested that the Record of Decision commit to specific ground water protection measures and a ground water monitoring program.

ERP No. F–FHW–D40228–VA, VA–664 Construction, US 58 Interchange at Bowers Hill in the City of Chesapeake to US 17 in the City of Suffolk, Funding Section 10 and 404 Permit, VA.

Summary:

EPA believes that the document should address the impacts of secondary development stimulated by a project on wildlife and the natural environment in greater detail.

ERP No. F–NPS–L61175–AK, Noatak National Preserve, Wilderness Recommendation, Designation or Nondesignation, AK.

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Summary:

Review of the final EIS has been completed and the project found to be satisfactory. No formal comments were sent to the agency.

ERP No. F-NPS-L61177-AK, Aniakchak National Monument and Preserve, Wilderness Recommendations, Designation or Nondesignation, AK.

Summary:

Review of the final EIS has been completed and the project found to be satisfactory.

ERP No. F-NPS-L61178-AK, Kobuk Valley National Park, Wilderness Recommendations, Designation or Nondesignation, AK.

Summary:

Review of the final EIS has been completed and the project found to be satisfactory.

ERP No. F-SCS-E36162-MS, Whites Creek Watershed Protection and Flood Prevention Plan, Funding, Possible 404 Permit and Implementation, Webster County, MS.

Summary:

EPA's draft EIS concerns on this facility have been satisfactorily addressed.

ERP No. FS-SFW-L64024-AK, Kenai National Wildlife Refuge Comprehensive Conservation Management Plan, Wilderness Recommendations, Designation or Nondesignation, Kenai Peninsula Borough, AK.

Summary:

Review of the final EIS has been completed and the project found to be satisfactory.

Dated: October 25, 1988.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 88-24944 Filed 10-27-88; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3468-6]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5076 or (202) 382-5075. Availability of Environmental Impact Statements Filed October 17, 1988 Through October 21, 1988 Pursuant to 40 CFR 1506.9.

EIS No. 880350, Final, FHW, NY, Lockport Expressway/I-990 Extension, North French Road to Millersport Highway/NY-263 To Transit Road, Funding, 404 Permit, Erie County, NY, Due: November 28, 1988, Contact: Harold J. Brown (518) 472-3616.

EIS No. 880351, Draft, UMT, CA, Colma BART Station Project, Transit Improvements, Funding, San Mateo County, CA, Due: December 12, 1988, Contact: Carmen Clark (415) 974-7317.

EIS No. 880352, DSuppl, FHW, NY, Southern Tier Expressway Construction, Corning Area, Painted Post to NY-414, Reevaluation of Alternatives and Updated Information, Funding, Steuben County, NY, Due: December 12, 1988, Contact: Harold J. Brown (518) 472-3616.

EIS No. 880353, Final, BLM, CA, Western Mojave Land Tenure Adjustments Project, Implementation, Kern, Los Angeles, and San Bernardino Counties, CA, Due: November 28, 1988, Contact: Karla Swanson (619) 256-3501.

Dated: October 24, 1988.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 88-24943 Filed 10-27-88; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3468-5]

City of Tallahassee-Leon County, Florida Wastewater Management Amendment to the Notice of Intent To Prepare an Environmental Impact Statement (EIS) Supplement.

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: This notice is an amendment to the Notice of Intent (NOI) to prepare a supplement to the Tallahassee-Leon County, Florida Wastewater Management Environmental Impact Statement (1983).

Purpose: EPA issued a Notice of Intent to prepare an EIS on proposed wastewater management facilities for Tallahassee, Florida on January 8, 1988. EPA is issuing this amendment to inform the public that a second Federal action will be addressed in the EIS. The EIS will address the possible transfer of land from the United States Forest Service (USFS) to the City of Tallahassee.

For Further Information and to be Placed on the Project Mailing List Contact: Robert B. Howard, Chief, NEPA Compliance Section, Environmental Assessment Branch, EAB-4, US EPA Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365. Telephone: (404) 374-7109 or (FTS) 257-3776.

Need for Action: The EPA, the City of Tallahassee, and the Leon County Board of County Commissioners previously determined the need to reevaluate the selected alternative in the Tallahassee-Leon County Wastewater Management EIS (1983). Subsequent to the initial public scoping meeting held April 19, 1988, the City of Tallahassee and the USFS have decided to examine the possibility of exchanging land to be used for new irrigation sprayfields. Population and sewage flow projections and alternative locations of treatment facilities and irrigation sprayfields will be addressed. The results of the EIS supplement will be used in determining EPA 201 Construction Grant funding eligibility and the acceptability of transfer of lands to the City of Tallahassee by the USFS.

Alternatives: The EIS supplement will examine the feasible long-term alternatives for wastewater management in the study area including proposed land exchange alternatives.

Scoping: A scoping meeting to address issues that should be considered regarding possible land exchanges with the USFS will be held on November 15, 1988 at 7:30 pm at the Tallahassee City Commission Chambers. Input to the EIS supplement may also be submitted in writing to the contact person listed above. Participation in the EIS process is invited from individuals, organizations, and government agencies. Persons wishing to be included on the mailing list to receive a copy of the draft EIS supplement should write to the same address.

Estimated Date of Draft EIS Release: July 1989.

Responsible Official: Greer Tidwell, Regional Administrator.

Dated: October 25, 1988.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 88-24945 Filed 10-27-88; 8:45 am]

BILLING CODE 6560-01-M

[OPP-30165; FRL-3468-3]

Pesticide Registration; Availability For Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of draft Standards for comment.

SUMMARY: This notice announces the availability of draft pesticide Registration Standard documents for comment. The Agency has completed a review of the listed pesticides and is making available documents describing its regulatory conclusions and actions.

DATE: Written comments on the Registration Standards should be submitted on or before December 27, 1988.

ADDRESSES: Three copies of comments identified with the docket number listed with the Registration Standard should be submitted to: By mail: Public Information Branch, Field Operations Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

In person, deliver comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with the procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket and docket index will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: To request a copy of a Registration Standard, contact the Public Information Branch, in Rm. 246 at the address given above (703-557-2805). Requests should be submitted no later than November 28, 1988 to allow sufficient time for receipt before the close of the comment period.

For technical questions related to the Registration Standard, contact the Production Manager listed for that Standard, at the phone number given.

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency conducts a systematic review of pesticides to determine whether they meet the criteria for continued registration under section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). That review culminates in the issuance of a Registration Standard, a document describing the Agency's regulatory conclusions and positions on the continued registrability of the pesticide. In accordance with 40 CFR 155.34(c), before issuing certain Registration Standards, the Agency makes the draft document available for public comment.

Draft Registration Standards for the following pesticides are now available:

Name of pesticide	Docket number	Contact person
Methidathion	552-37-6	Dennis Edwards, Product Manager 12, 703-557-2386.
Chlorothalonil	1897-45-6	Lois Rossi, Product Manager 21, 703-557-1900.

Copies of the Registration Standards may be obtained from the Agency at the address listed under FOR FURTHER INFORMATION CONTACT. Because of the length of the Standards and the limited number of copies available for distribution, only one copy can be provided by mail to any one individual or organization. The Registration Standards are also available for inspection and copying in EPA Regional offices at the addresses listed below after November 28, 1988.

List of EPA Regional Offices

Pesticides and Toxic Substances Branch, EPA—Region I, JFK Federal Building, Boston, MA 02203, Contact person: Marvin Rosenstein

Pesticides and Toxic Substances Branch, EPA—Region II, Woodbridge Avenue, Edison, NJ 08837, Contact Person: Ernest Regna

Toxics and Pesticides Branch, EPA—Region III, 841 Chestnut St., 7th Fl., Philadelphia, PA 19107, Contact person: Larry Miller

Pesticide and Toxic Substances Branch, EPA—Region IV, 345 Courtland St., NE., Atlanta, GA 30365, Contact Person: Richard Dullaway

Pesticides and Toxic Substances Branch, EPA—Region V, 230 South Dearborn St., Chicago, IL 60604, Contact person: Phyllis Reed

Pesticide and Toxic Substances Branch (6T-PT), EPA—Region VI, 1445 Ross Avenue, Dallas, TX 75270, Contact person: Robert Murphy

Pesticide and Toxic Substances Branch, EPA—Region VII, 726 Minnesota Ave., Kansas City, KS 66101, Contact person: Leo Alderman

Toxic Substances Branch, EPA—Region VIII, 999 18th St., Suite 500, Denver, CO 80202, Contact person: C. Alvin Yorke

Pesticides and Toxics Branch (T-5-1), EPA—Region IX, 215 Fremont St., San Francisco, CA 94105, Contact person: Davis Bernstein

Pesticides and Toxic Substances Branch, EPA—Region X, 1200 6th Ave., Seattle, WA 98101, Contact person: Ken Feigner.

Dated: October 17, 1988.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

[FR Doc. 88-24961 Filed 10-27-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-62069; FRL-3468-7]

Receipt of Application for Approval to Dispose of Polychlorinated Biphenyls

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt of application.

SUMMARY: EPA Headquarters has received an application from AmerEco Environmental Services, Inc. (AmerEco), Kingsville, Missouri, for nationwide approval to dispose of polychlorinated biphenyls (PCBs) using a mobile modular rotary kiln incinerator. This approval process is done under the authority of section 6(e) of the Toxic Substances Control Act (TSCA). EPA is notifying interested persons of the request, and comments may be submitted.

DATE: Comments should be received by November 28, 1988.

ADDRESS: Three copies of written comments should be addressed to: TSCA Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M St., SW., Washington, DC 20460.

Comments should bear the identifying notation OPTS-62069. The application (without confidential business information) and comments received in response to this notice are available for public inspection and copying in Rm. NE-G004 at the address noted above from 8 a.m. to 4 p.m. Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202-554-1404), TDD-(202-554-0551).

SUPPLEMENTARY INFORMATION: Under 40 CFR 761.60(e), the Regional Administrators and the Assistant Administrator for Pesticides and Toxic Substances (OPTS) share the approval authority for permitting alternative PCB disposal technologies. A Regional Administrator determines whether to approve an application when the disposal will take place in that region only or, in the case of research and development (R and D), on PCB disposal methods involving less than 500 pounds of PCB material. The Assistant

Administrator for OPTS determines whether to approve applications for mobile and other types of PCB disposal technologies that may be operated in more than one region or, in the case of R and D, on disposal methods involving 500 pounds or more of material. Notwithstanding, the Assistant Administrator for OPTS may delegate the authority to review and approve any aspect of a disposal system to OPTS staff or to a Regional Administrator. The rationale for permit approval authority is discussed in "Polychlorinated Biphenyls (PCBs); Procedural Amendment of the Approval Authority for PCB Disposal Facilities and Guidance for Obtaining Approval," published in the Federal Register of March 30, 1983 (48 FR 13161).

In general, EPA may approve alternative methods of PCB disposal if they achieve a level of performance equivalent to an incinerator approved under 40 CFR 761.70 or a high efficiency boiler approved under 40 CFR 761.60 and will not present an unreasonable risk of injury to health or the environment. EPA also imposes some protective conditions requiring the application to address such items as testing of all gaseous, liquid, and solid effluent streams for PCBs and any other contaminants which may potentially contribute to the environmental risk of operating the disposal unit. To obtain a permit for an alternative method of PCB disposal, the applicant must supply detailed technical descriptions and drawings of the site, process and control equipment, monitoring and sampling methods, quality assurance plan, and emergency and contingency measures, as well as a full discussion of all cleanup and closure procedures.

When EPA Headquarters receives a permit application, it reviews the application and determines if the permit application is complete. If the application is not acceptable, EPA lists its deficiencies in a letter to the applicant and the applicant can remedy the application. If the application is acceptable, a determination is made whether a process demonstration is needed. If one is needed, the applicant must submit a demonstration test plan to the Agency. After receipt of the process demonstration test plan, EPA either approves, requires modification or additions to the process demonstration test plan, or disapproves it and notifies the applicant. Once the Agency accepts a process demonstration test plan, a demonstration test approval is issued by EPA. As part of this approval, the applicant will be required to give advance written notice of at least 30 days to the EPA regional office and State and local governments where the process demonstration will take place. This 30-day period provides the public an opportunity to discuss local issues related to the planned disposal operation and provides the EPA regional office with information necessary for effective monitoring for compliance with the demonstration approval. If the application cannot be approved because the process demonstration test fails, the problems with the process demonstration are addressed on a case-by-case basis.

EPA will grant or deny approval for full scale operation based on a review of the application package, demonstration test results, and other submitted information. Approval for operation will contain special conditions that EPA finds necessary to protect human health or the environment. It also requires compliance with all applicable State, local, or other Federal requirements. The PCB disposal approval decision process (from receipt of the permit application to issuance of a final approval) generally can take from 6 months to 1 year, depending on the quality of information submitted by the applicant and the complexities involved. If a permit is issued for more than one site, 30-day notice is required before operation may begin at any site other than where the process demonstration took place.

The application from AmerEco is for nationwide permission to operate a mobile rotary kiln incinerator for the destruction of PCB wastes including solids, sludges, and liquids. This process is based on an existing system design currently operating in Europe.

In determining whether to approve this application, EPA will take into consideration, along with other factors, the comments received on the application.

Dated: October 20, 1988.

Martin P. Halper,

Director, Exposure Evaluation Division, Office of Toxic Substances.

[FR Doc. 88-24982 Filed 10-27-88; 8:45 am]

BILLING CODE [illegible]

[FRL-3465-9]

Fuels and Fuel Additives; Modification of a Fuel Waiver Granted to the Texas Methanol Corporation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has reconsidered a portion of a fuel waiver granted under section 211(f) of the Clean Air Act to the Texas Methanol Corporation (Texas Methanol) (53 FR 3636, February 8, 1988, and 53 FR 17977, May 19, 1988). Today's notice approves the use of an alternative corrosion inhibitor, DMA–67, in Texas Methanol's gasoline-alcohol fuel, OCTAMIX.

ADDRESS: Copies of the information relative to this request are available for inspection in public docket EN–87–06 at the Central Docket Section (LE–131A) of the EPA, South Conference Center, Room 4, 401 M Street, SW., Washington, DC, (202) 382–7548, between the hours of 8:00 a.m. and 4:00 p.m. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying materials in the docket.

FOR FURTHER INFORMATION CONTACT: Sylvia L. Correa, Attorney/Advisor, Field Operations and Support Division (EN–397F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC. 20460, (202) 382–2635.

SUPPLEMENTARY INFORMATION:

I. Background

Section 211(f)(1) of the Clean Air Act (Act), 42 U.S.C. 7545(f)(1), makes it unlawful for any manufacturer of any fuel or fuel additive to first introduce into commerce or to increase the concentration in use of any fuel or fuel additive for general use in light-duty motor vehicles manufactured after model year 1974, which is not substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 206 of the Act. Section 211(f)(4) of the Act, 42 U.S.C. 7545(f)(4), provides that the Administrator of EPA, upon application of any manufacturer of any fuel or fuel additive, may waive the prohibitions established under section 211(f)(1), if the Administrator determines that the applicant has established that such fuel or fuel additive or a specified concentration thereof, and the emission products of such fuel or additive or specified concentration thereof, will not cause or contribute to a failure of any emission control device or system (over the useful life of any vehicle in which such device or system is used) to achieve compliance by the vehicle with the emission standards with respect to which it has been certified pursuant to section 206 of the Act. The same section specifies that if the Administrator does not act to grant or deny an application within 180 days of receipt of the application, the waiver authorized by section 211(f)(4) shall be treated as granted.

The Texas Methanol Corporation received a waiver for a gasoline-alcohol fuel blend, known as OCTAMIX, consisting of a maximum of 3.7 percent by weight fuel oxygen, a maximum of 5 percent by volume methanol, a minimum of 2.5 percent by volume cosolvents and 42.7 milligrams/liter (mg/1) of Petrolite TOLAD MFA–10 corrosion inhibitor. As was the case with a previous waiver granted by EPA, the Agency invited other corrosion inhibitor manufacturers to submit test data to establish, on a case-by-case basis, whether their formulations are acceptable as alternatives to TOLAD MFA–10. (*See* Reconsideration of DuPont Waiver, 51 FR 39400, October 31, 1986.)

On April 25, 1988, E. I. DuPont de Nemours and Co., Inc., (DuPont) requested that EPA allow the use of an alternative corrosion inhibitor, DMA–67, in OCTAMIX. DMA–67 is a formulation consisting of a corrosion inhibitor and a carburetor detergent, much like Petrolite's TOLAD MFA–10.

On July 7, 1988, EPA published a notice in the Federal Register (53 FR 25537) announcing receipt of DuPont's request and inviting comment on it. The comment period closed August 8, 1988.

II. Discussion

One of the major areas of concern to EPA in reviewing any waiver request is the problem of materials compatibility. Materials compatibility data could show a potential failure of fuel systems, emissions related parts and emission control parts from use of the fuel or additive. Any failure could result in greater emissions.

Initially, Texas Methanol requested the use of TOLAD MFA–10 or an appropriate concentration of any other corrosion inhibitor such that the fuel will pass the National Association of Corrosion Engineers's test TM–01–72 (NACE Rust Test). However, EPA concluded that compliance with the NACE Rust Test alone was not adequate in determining the suitability of a corrosion inhibitor. (*See* OCTAMIX decision 53 FR 3636, February 8, 1988.) The Agency decided, therefore, to look at corrosion inhibitors on a case-by-case basis to establish whether each formulation as environmentally acceptable.

In a prior decision involving a gasoline-alcohol fuel with a composition very similar to OCTAMIX, EPA concluded that DMA–67 was comparable to TOLAD MFA–10 and DGOI–100 (another DuPont additive which contains a corrosion inhibitor). *See* 52 FR 18736, May 19, 1987. DuPont incorporated by reference the same supporting information into this application as was considered in that decision.

The principal ingredient in DMA–67 relative to corrosion inhibition is DCI–11, which is currently used in over 80 percent of the fuel grade ethanol manufactured in the United States. DCI–11 was specifically designed to provide corrosion protection to gasoline-alcohol blends.

In order to determine whether the OCTAMIX waiver would meet the criteria of section 211(f) if DMA–67 were to be used as an inhibitor, EPA reviewed all data submitted with or referenced by the application. The only commenter, Ford Motor Company, stated that it had reviewed the data and rationale presented in the application and had no objection for approval of the waiver modification at this time.

III. Finding and Conclusion

Based of the information submitted by DuPont in its application, I conclude that the performance of DMA–67 in OCTAMIX would be comparable to TOLAD MFA–10. Therefore, I am modifying condition (3) of the OCTAMIX waiver to read as follows:

(3) Any one of the following two corrosion inhibitor formulations must be included:

(a) Petrolite's corrosion inhibitor formulation, TOLAD MFA–10, blended in the final fuel at 42.7 mg/1;

OR,

(b) DuPont's corrosion inhibitor formulation, DMA–67, blended in the final fuel at 31.4 mg/1.

This should provide additional flexibility to any manufacturer wishing to produce the OCTAMIX blend. At the same time, any manufacturer wishing to use a corrosion inhibitor other than the two permitted by the OCTAMIX waiver must apply for a further revision of the waiver. Since EPA is still unaware of any basis for extrapolating findings in the emissions impact of one inhibitor to other inhibitors, the Agency will continue to examine the emissions impact of specific corrosion inhibitor formulations on a case-by-case basis.

IV. Miscellaneous

EPA has determined that this action does not meet any of the criteria for classification as a major rule under Executive Order 12291. Therefore, no regulatory impact analysis is required.

This action is not a "rule" as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2), because EPA is not required to undergo "notice and comment" under section 553(b) of the Administrative Procedure Act or other law. Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this section on small business entities.

This is a final Agency action of national applicability. Jurisdiction to review this action lies exclusively in the U.S. Court of Appeals for the District of Columbia Ciruit. Under section 307(b)(1) of the Act, judicial review of this action is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of the date of publication of this notice. Under section 307(b)(2), judicial review may not be obtained in any subsequent judicial proceeding brought by the Agency to enforce the statutory prohibitions.

Date: October 21, 1988.

John A. Moore,

Acting Administrator.

[FR Doc. 88–24985 Filed 10–27–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Revision of 3067–0156

Title: State Operating Plan for Superfund Relocation Assistance

Abstract: States may elect to administer permanent relocation activity, to individuals, businesses, and community facilities requiring relocation under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended. When a State agrees to administer all or part of the relocation activities, the State must submit a permanent relocation plan to FEMA for approval. This revision adds the planning requirements for permanent relocation assistance to the already approved requirements for temporary relocation assistance.

Type of Respondents: State or local governments

Estimate of Total Annual Reporting and Recordkeeping Burden: 36

Number of Respondents: 12

Estimated Average Burden Hours Per Response: 3 hours

Frequency of Response: Annually

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Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to the FEMA Clearance Officer at the above address; and to Francine Picoult, (202) 395–7231, Office of Managment and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Date: October 21, 1988.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 88–24930 Filed 10–27–88; 8:45 am]

BILLING CODE 6718-01-M

Notice of FEMA Advisory Board Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act, announcement is made of the following FEMA Advisory Board meeting:

Name: Federal Emergency Management Agency Advisory Board.

Date of Meeting: November 22, 1988.

Time: 9:00 a.m.–4:00 p.m.

Place: Federal Emergency Management Agency, Emergency Information and Coordination Center, 500 C Street, SW., Washington, DC 20472.

Purpose: FEMA executives will provide reports on the Agency's budget and personnel. The status of a review of Civil Defense Programs will be provided and discussed. Program development concepts for the protection of national infrastructure assets will be discussed. Sessions on the future work agendas for the Board and the Board Panels will be conducted. Discussions will include classified information. The Director has determined that the Board meeting should be closed to the public in accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II (1982)), because discussions will involve information that is specifically authorized to be kept "Secret" in the interest of national defense and is properly classified pursuant to the Executive Order.

Robert H. Morris,

Deputy Director.

[FR Doc. 88–24929 Filed 10–27–88; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–010689–034.

Title: Transpacific Westbound Rate Agreement.

Parties:

American President Lines, Ltd.
Hanjin Container Lines, Ltd.
Hyundai Merchant Marine Co., Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Liner System, Ltd.
Nippon Yusen Kaisha, Ltd.
Sea-Land Service, Inc.

Synopsis: The proposed modification would permit a conference carrier who merges with a nonconference carrier to fulfill the nonconference carrier's contractual obligations in connection with service contracts.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: October 25, 1988.

[FR Doc. 88–24977 Filed 10–27–88; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200165.

Title: Maryland Port Administration Terminal Agreement.

Parties:

Maryland Port Administration (MPA)
Ceres Corporation (Ceres)

Synopsis: The agreement provides Ceres with a three year lease of portions of the Dundalk Marine Terminal for the berthing of vessels, the loading, discharging and storage of cargo, and related services. Ceres will receive volume discounts from MPA's terminal tariff rates if it meets an initial minimum tonnage level.

Agreement No.: 224–200164.

Title: Port of Oakland Terminal Use Agreement.

Parties:

City of Oakland
Compagnie Maritime Belge (CMB)

Synopsis: The agreement provides that CMB shall have a nonexclusive right to use certain assigned premises at the Port's Charles P. Howard Terminal for its published regularly scheduled Northern California port of call. In return for CBM's use of the premises, the Port shall receive ninety percent of all revenue from dockage and wharfage earned on the assigned premises pursuant to Port of Oakland Tariff in lieu of payment of one hundred percent of said tariff charges.

Agreement No.: 224–200163.

Title: Mid-Gulf Seaports Marine Terminal Conference Agreement.

Parties: Ports of New Orleans, Lake Charles, Baton Rouge, Orange, Gulfport, Beaumount, Houston, Galveston, South Louisiana, Brownsville, Port Arthur, Tampa, Pensacola, Panama City, Brazos River Harbor, Corpus Christi and Alabama State Docks.

Synopsis: The proposed agreement provides for the parties to consult with one another and to establish port marine terminal rates, charges and rules in connection with marine terminal services and facilities. The agreement also provides that the parties may limit the agreement to the establishment of one rate, rule or regulation of a particular character.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: October 25, 1988.

[FR Doc. 88–24978 Filed 10–27–88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Community Trust Financial Services Corp. et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 21, 1988.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW, Atlanta, Georgia 30303:

1. *Community Trust Financial Services Corporation,* Hiram, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Community Trust Bank, Hiram, Georgia.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *American Chartered Bancorp, Inc.,* Schaumburg, Illinois; to become a bank holding company by acquiring 80 percent of the voting shares of American Chartered Bank, Schaumburg, Illinois.

2. *First Suburban Bancorp Corporation,* Maywood, Illinois; to acquire 100 percent of the voting shares of First State Bank of Alsip, Alsip, Illinois.

3. *First Wisconsin Corporation,* Milwaukee, Wisconsin; to acquire 100 percent of the voting shares of Metro Bancorp, Incorporated, Phoenix, Arizona, and thereby indirectly acquire Metropolitan Bank, Phoenix, Arizona.

4. *IBT Bancorp,* Mount Pleasant, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Isabella Bank and Trust, Mount Pleasant, Michigan.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *BON, Inc.,* Moundridge, Kansas; to acquire 92.5 percent of the voting shares of The Farmers State Bank and Trust Company, Canton, Kansas.

2. *State National Bancshares, Inc.,* Heavener, Oklahoma; to become a bank holding company by acquiring at least 80 percent of the voting shares of State National Bank of Heavener, Heavener, Oklahoma.

3. *United Community Corporation,* Oklahoma City, Oklahoma; to acquire at least 80 percent of the voting shares of BancFirst, Oklahoma City, Oklahoma, in organization.

Board of Governors of the Federal Reserve System, October 24, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–24913 Filed 10–27–88; 8:45 am]

BILLING CODE 6210-01-M

Jacob Schmidt Company and American Bancorporation, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies, and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement for the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regaring the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 21, 1988.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Jacob Schmidt Company and American Bancorporation, Inc.,* St. Paul, Minnesota; to acquire 100 percent of the voting shares of Barnesville Investment Corporation, Barnesville, Minnesota, which owns The First National Bank of Barnesville, Barnesville, Minnesota.

In connection with this application, Applicant has also applied to acquire First Agency of Barnesville, Inc., Barnesville, Minnesota, and thereby engage in general insurance agency activities which are permissible pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 24, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–24914 Filed 10–27–88; 8:45 am]

BILLING CODE 6210-01-M

Tokai Bank, Ltd.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 21, 1988.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *The Tokai Bank, Limited,* Nagoya, Japan; to acquire Master Lease Corporation, Bala Cynwyd, Pennsylvania, and thereby engage in acting as agent, broker, or adviser in leasing personal property through Toshiba Master Lease, Ltd., ABI-Master Lease, Ltd., Simplex Master Lease, Ltd., and NYNEX Master Lease Partners, all pursuant to § 225.25(b)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 24, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-24915 Filed 10-27-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

Federal Council on the Aging; Meeting

Agency Holding the Meeting: Federal Council on the Aging.

Time and Date: Meeting begins at 9:00 a.m. and ends at 5:00 p.m. on Thursday, November 17, 1988 and begins at 9:00 a.m. and ends at 4:00 p.m. on Friday, November 18, 1988; and from 9:00 a.m. to 12 Noon on Saturday, November 19, 1988.

Place: On Thursday, November 17 from 9:00 to 4:00 p.m. Board room, The York Hotel, 940 Sutter Street, San Francisco, CA. On Friday, November 18, from 9:00 to 12 Noon, meeting will be held in the Board Room, The York Hotel; from 1:00 p.m. to 4:00 p.m., White Conference on Aging Forum at the Gerontological Society's Annual Scientific Meeting, Tiburon Room, San Francisco Hilton Hotel, San Francisco, CA.

Status: Meeting is open to the public.

Contract person: Pete Conroy, Room 4545, Wilbur J. Cohen North Building, 330 Independence Avenue, SW., Washington, DC 20201; Phone: 245-2451.

The Federal Council on the Aging was established by the 1973 Amendments to the Older Americans Act of 1965 (PL 93029, 42 U.S.C. 3015) for the purpose of advising the President, the Secretary of Health and Human Services, the Commissioner on Aging and the congress on matters relating to the special needs of older Americans.

Notice is hereby given pursuant to the Federal Advisory committee Act (PL 92-453, 5 U.S.C. App. 1, Sec. 10, 1976) that the Council will hold a meeting on November 17 through November 19, 1988 from 9:00 AM-5:10 PM and from 9:00 AM-4:00 PM respectively. On November 18, the afternoon session from 1 p.m.-3 p.m., will be a *Forum on the 1991 White House Conference on Aging,* at the GSA Conference on Aging, Tiburon Room, San Francisco Hilton Hotel, San Francisco. On November 19 the FCoA quarterly meeting will reconvene at the York Hotel, 940 Sutter Street, San Francisco, CA.

The agenda will include: *A White House Conference on Aging Forum* At the Gerontological Society's Conference. Participants are as follows: Testimony from organizations and individuals on suggested themes for the WHCoA conference, as well as on issues to be addressed, organization and process, participation, pre-and post-conference activities, and other relevant areas; Jack McCarthy, AoA Program Director, Region IX. The rest of the three-day meeting will include discussion of Targeting of OAA Funds Review, Committee Reports, Older Worker Employment, and Agenda Projects including the 1991 White House Conference on Aging Plan project.

Dated: October 24, 1988.

Ingrid Azvedo,

Chairperson Federal Council on the Aging.

[FR Doc. 88-24988 Filed 10-27-88; 8:45 am]

BILLING CODE 4130-01-M

Public Health Service

Statement of Organization, Functions, and Delegations of Authority; Alcohol, Drug Abuse, and Mental Health Administration

Part H, Chapter HM, Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (39 FR 1654, January 11, 1974, as amended most recently at 52 FR 23212-13, June 18, 1987, and 52 FR 26187, July 13, 1987), is amended to reflect the reorganization of the Office of the Administrator and National Institute on Drug Abuse, ADAMHA.

The reorganization accomplishes the following: (1) revises the functional statement of the immediate Office of the Administrator to include science policy functions transferred from the Office of Science; (2) abolishes the Office of Financing and Coverage Policy distributing agency data policy, OMB reports clearance and Block Grant administration to other offices within the Office of the Administrator, and reassigns responsibility for reimbursement and financing policy to the National Institute on Drug Abuse.

Under Section HM-B, Organization and Functions, Office of the Administrator (HMA), delete the statement and substitute the following:

(1) Provides leadership in the development of agency policies and programs; (2) develops ADAMHA science policy and ensures that the scientific mission of the agency is reflected in all agency activities; (3) carries out ADAMHA-wide functions such as coordination of equal employment opportunity activities; and (4) maintains liaison with the Assistant Secretary for Health, the Surgeon General, and the public and private sectors on matters related to program and other activities as may be required.

Under the heading Office of Financing and Coverage Policy (HMA6), delete the title and statement.

Under the heading Office of Policy Coordination (HMA2), following item (7), delete the "and," and after item (8) delete the period, add a semicolon and item (9): coordinates agency data policy activities as they relate to the planning, collection, management, evaluation, and dissemination of agency statistical and epidemiologic data and performs the OMB reports clearnace funtions.

Under the heading Office of Communications and External Affairs (HMA4) following item (8) delete the "and," and following item (9) delete the period and add a semicolon and items (10), (11), (12), and (13), as follows:

(10) administers the ADM services block grant program, including compliance reviews, technical assistance to States, Territories, and Indian Tribes; (11) administers the Emergency Substance Abuse Treatment and Rehabilitation block grant program; (12) establishes, implements, analyzes, and coordinates agency data policy and data activities as they relate to block grant programs statistical data; and (13) provides for information exchange between ADAMHA and other Government agencies and State and local governments on matters relating to aclohol, drug abuse and mental health programs.

Under the heading Office of Science (HMA5) delete the title and statement and substitute the following:

Office of Extramural Programs (HMA5) (1) Provides leadership and advice in the development of extramural program policy and implementation of extramural programs; (2) develops, evaluates, and provides guidance on policies relating to peer review of all discretionary grant and cooperative agreement applications and research contracts; (3) performs centralized grant application receipt and referral; (4) conducts analyses of agencywide extramural policy, research infrastructure and research system issues; (5) collects data and prepares recurring and special reports on ADAMHA extramural programs; and (6) provides advice on and coordinates implementation of committee management policies and procedures.

Under Section HMH, National Institute on Drug Abuse (HMH), delete the statement for the *Office of the Director (HMH1),* and substitute the following:

Office of the Director (HMH1) (1) Provides leadership, direction, and policy in the development of Institute goals, priorities, policies, and programs and serves as the focal point for the Development's efforts on drug abuse; (2) conducts and coordinates Institute's interagency and international activities; (3) conducts Institute activities associated with the scheduling of psychoactive drugs, their medical and nonmedical use, and their diversion from legitimate medical channels; (4) collaborates with other Federal agencies to establish standards for drug prescribing practices; and (5) develops, implements, and reviews all reimbursement, financing, and coverage policy and research involving financing and coverage policy for drug abuse programs (including alcohol).

Date: October 19, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88-24928 Filed 10-27-88; 8:45 am]

BILLING CODE 4160-20-M

DEPARTMENT OF THE INTERIOR

National Strategic Materials and Minerals Program Advisory Committee Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, that the National Strategic Materials and Minerals Program Advisory Committee (NSMMPAC) will meet on Tuesday, November 15, 1988, from 9:30 a.m. until 12:30 p.m. or until business is concluded. The meeting will convene at the Washington, Dulles Ramada Renaissance, Route 28 (Sully Road), 13869-71 Part Center Road, Herndon, Virginia. It will be open to the public, subject to the availability of space.

The agenda will include: Introduction of new members, reports of task force activities, and any recommendations for possible action by the Committee. The Committee will vote on the final versions of two recommendations. The first, prepared by the Advanced Materials Task Force, discusses advanced materials processing and fabrication. The second is a recommendation by the Defense Industrial Base Task Force offering suggestions for better coordination of defense industrial base issues.

Statements are invited from groups and members of the general public who have an interest in mining, minerals or materials issues. The Committee is particularly interested in hearing any comments or suggestions regarding advanced materials and technology issues which fall within the purview of the Committee. To ensure that time will be available to hear such statements, prospective witnesses are requested to notify the Committee staff (see below) of their intention to appear.

FOR FURTHER INFORMATION CONTACT: Brenda Kay, Department of the Interior, Washington, DC, Room 6650, (202) 343-2130.

Dated: October 25, 1988.

Brenda Kay,

Staff Assistant.

[FR Doc. 88-25014 Filed 10-27-88; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Land Management

[NV-030-09-4212-11; N-43030]

Classification Termination and Opening Order; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates Recreation and Public Purposes classification N-43030 and opens the affected lands to the operation of the public land laws including location under the mining laws.

EFFECTIVE DATE: November 28, 1988.

FOR FURTHER INFORMATION CONTACT: Ben F. Collins, District Manager, Las Vegas District Office, Bureau of Land Management, 4765 Vegas Drive, P.O. Box 26569, Las Vegas, Nevada 89126, [702] 646-5030.

SUPPLEMENTARY INFORMATION: In April 1987, a Notice of Realty Action (NORA) was issued which identified the following described land as being suitable for lease/purchase pursuant to the Recreation and Public Purposes Act (43 U.S.C. 869, 869-1 to 869-4):

Mount Diablo Meridian, Nevada

T. 19 S., R. 60 E.,
Sec. 17, N½NE¼NE¼NE¼.

The NORA provided for classification of the lands as well as segregation against all forms of appropriation under the public land laws and location under the mining laws, but not the Recreation and Public Purposes Act or the mineral leasing laws. A lease was subsequently issued to the Animal Rescue Foundation for an animal adoption center. No development has taken place on the land and on August 8, 1988, the lease was relinquished. A determination has been made that the Recreation and

Public Purposes classification and segregation are no longer appropriate.

At 10:00 a.m. on November 28, 1988, the land will be open to the operation of public land laws, subject to valid existing rights, existing classifications and withdrawals, and requirements of applicable law. All valid applications received prior to or at 10:00 a.m. on November 28, 1988, will be considered as simultaneously filed. All other applications received will be considered in the order of filing.

At 10:00 a.m. on November 28, 1988, the land will also be open to the operation of the mining laws. Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attemped adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts. The land remains open to the mineral leasing laws.

Edward F. Spang,
State Director, Nevada.

[FR Doc. 88-24896 Filed 10-27-88; 8:45 am]
BILLING CODE 4310-HC-M

[AZ-920-09-4212-13; A-23840]

Exchange of Public and Private Lands in Mohave and Yavapai Counties, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of exchange of land.

SUMMARY: This action informs the public of the completion of an exchange between the United States and Cyprus Bagdad Copper Corporation, Byner Cattle Company, and Cyprus Mineral Park Corporation. The United States transferred title to 6,101.22 acres in Mohave and Yavapai counties and accepted title to 3,488.44 acres, also in Mohave and Yavapai Counties.

FOR FURTHER INFORMATION CONTACT: John Gaudio, BLM Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, (602) 241–5534.

SUPPLEMENTARY INFORMATION: On October 5,1988, the Bureau of Land Management issued Patent Nos. 02–89–0001 through 02–89–0004, and Deed No. AZ–89–001, pursuant to the Federal Land Policy and Management Act of October 21, 1976.

Patent No. 02–89–0001 transferred the mineral estate in the following public land to Cyprus Bagdad Copper Corporation:

Gila and Salt River Meridian

T. 14 N., R. 9 W.,
Sec. 6, lots 1 to 7, incl., S½NE¼, SE¼ NW¼, E½SW¼, SE¼;
Sec. 7, lots 1 and 2, E½NW¼;
Sec. 10, lots 1 and 2.
T. 14 N., R. 10 W.,
Sec. 1, lots 1 to 4, incl., S½N½, S½;
Sec. 11, N½NE¼, NW¼;
Sec. 12, N½N½, SE¼NE¼;
T. 15 N., R. 9 W.,
Sec. 29, lot 4, E½SW¼, W½SE¼;
Sec. 29, lots 20, 21 and 22, N½N½, SE¼ NE¼;
Sec. 31, lots 1 to 8, incl., S½NE¼, E½W½, SE¼;
Sec. 33, lots 1 and 6, N½NE¼, SW¼NE¼, NE¼NW¼;
Sec. 34, lot 1, W½NE¼, E½NW¼.

The area described comprises 3,468.97 acres in Yavapai County.

Patent No. 02–89–002 transferred the following public land to Cyprus Bagdad Copper Corporation:

Gila and Salt River Meridian

T. 14 N., R. 9 W.,
Sec. 4, lots 8, 9, and 10, incl., and lot 20;
Sec. 5, lot 5, SW¼NW¼, W½SE¼NW¼, W½E½SE¼NW¼, W½E½NE¼SW¼, W¼NE¼SW¼, W½SW¼, S½NE¼, SE¼SW¼, W½SE¼SW¼, SE¼SW¼, NE¼SW¼SE¼, S½SW¼SE¼;
Sec. 8, lots 3 and 12, S½SW¼NE¼NE¼, W½E½NW¼NE¼, W¼NW¼NE¼, S½SE¼SE¼NE¼, N¼NE¼NW¼, SE¼ NE¼NW¼;
Sec. 9, SW¼SE¼NW¼.
T. 15 N., R. 9 W.,
Sec. 27, SE¼NE¼SE¼, E½SE¼SE¼;
Sec. 28, lots 2 and 5, N½N½NE¼, N½S½ N½NE¼;
Sec. 29, Lots 12, 13 and 14, S½NW¼NW¼ SW¼, SW¼NW¼SW¼, N½NW¼ SW¼SW¼;
Sec. 30, lot 4, and lots 7 to 13, incl.;
Sec. 32, lot 45;
Sec. 33, lots 13 to 18, incl.
T. 15 N., R. 10 W.,
Sec. 33, S½;
Sec. 34, S½;
Sec. 35, S½.
T. 16 N., R. 10 W.,
Sec. 1, lot 6.

The area described comprises 1,824.60 acres in Yavapai County.

Patent No. 02–89–0003 transferred the following public land to Byner Cattle Company:

Gila and Salt River Meridian

T. 16 N., R. 13 W.,
Sec. 10, W½E½;
Sec. 22, W½NE¼.
T. 16½ N., R. 13 W.,
Sec. 36, NW¼NW¼.

The area described comprises 280.00 acres in Mohave County.

Patent No. 02–89–0004 transferred the following public land to Cyprus Mineral Park Corporation:

Gila and Salt River Meridian

T. 20 N., R. 18 W.,
Sec. 6, lots 9 and 11, E½SE¼SE¼SE¼;
Sec. 8, W½NW¼NW¼NE¼;
Sec. 18, lot 6.
T. 21 N., R. 18 W.,
Sec. 34, W½SW¼SW¼SE¼.

The area described comprises 30.00 acres in Mohave County.

Deed No. AZ–89–001 transferred the following public land to Byner Cattle Company:

Gila and Salt River Meridian

T. 16 N., R. 13 W.,
Sec. 11, W½SW¼;
Sec. 15, W½NE¼.
T. 16½ N., R. 13 W.,
Sec. 24, lot 1, NE¼SE¼;
Sec. 27, SW¼SW¼;
Sec. 33, E½NE¼, SE¼NE¼.
T. 17 N., R. 13 W.,
Sec. 35, E½SE¼.

The area described comprises 497.95 acres in Mohave County.

In exchange land was conveyed to the United States from Cyprus Bagdad Copper Corporation and Byner Cattle Company.

The land conveyed to the United States from Cyprus Bagdad Copper Corporation is described as follows:

Gila and Salt River Meridian

T. 16 N., R. 10 W.,
Sec. 25, M.S. 1963 B.

The area described comprises 4.995 acres in Yavapai County.

The land conveyed to the United States from Byner Cattle Company is described as follows:

Gila and Salt River Meridian

T. 14 N., R. 10 W.,
Sec. 7, lot 4;
Sec. 18, lot 1, NE¼NW¼.
T. 15 N., R. 10 W.,
Sec. 15, SW¼SE¼;
Sec. 21, SE¼SW¼, SE¼;
Sec. 22, N½NE¼, SW¼NE¼, SE¼NW¼, NE¼SW¼, S½SW¼, NW¼SE¼;
Sec. 34, NE¼NE¼;
Sec. 35, NW¼NW¼.
T. 15 N., R. 14 W.,
Sec. 3, lots 1 to 4, incl., S½N½, S½;
Sec. 11, NW¼NE¼, W½, W½SE¼, SE¼SE¼.
T. 26 N., R. 13 W.,
Sec. 8, NE¼SE¼, N½N½N½SE¼SE¼;
Sec. 11, E½NW¼;
Sec. 23, SE¼SW¼;
Sec. 26, NW¼NE¼, N½SW¼SE¼, SE¼SW¼SE¼.
T. 16½ N., R. 13 W.,
Sec. 21, W½W½SE¼SE¼;
Sec. 28, NW¼NW¼NE¼NE¼, N½NE¼N W¼NE¼.
T. 16½ N., R. 16 W.,

Sec. 27, all;
Sec. 35, lots 1, 2, and 3, S½NE¼, E½NW¼, NW¼SW¼, W½SE¼.
T. 17 N., R. 13 W.,
Sec. 14, W½NE¼.
T. 17 N., R. 13 W.,
Sec. 14, W½NE¼.
T. 17 N., R. 14 W.,
Sec. 33, NE¼NW¼, S½NW¼, SW¼.

The area described comprises 3,483.445 acres in Mohave and Yavapai Counties.

The purpose of this notice is to inform the public and interested State and local government officials of the exchange of public and private land.

The land conveyed to the United States in this exchange will be administered by the Bureau of Land Management.

John T. Mezes,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88-24908 Filed 10-27-88; 8:45 am]
BILLING CODE 4310-32-M

[AZ-925-09-4212-13; A-23825]

Exchange of Public and Private Lands in Mohave County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of exchange of land.

SUMMARY: This action informs the public of the completion of an exchange between the United States and Walter E. and Edna M. Blewer, The United States transferred 500.00 acres in Mohave County and in exchange accepted 3,866.55 acres, also in Mohave County.

FOR FURTHER INFORMATION CONTACT: John Gaudio, BLM Arizona State Office, Post Office Box 16563, Phoenix, Arizona 85011, (602) 241–5534.

SUPPLEMENTARY INFORMATION: On September 30, 1988, the Bureau of Land Management transferred the following described land by Deed Nos. AZ–88–013 and AZ–88–014, pursuant to the Federal Land Policy and Management Act of October 21, 1976:

Gila and Salt River Meridian

T. 19 N., R. 21 W.,
Sec. 31, lot 5, E½, E½W½.

The area described comprises 500.00 acres in Mohave County.

In exchange the surface in the following described land was conveyed to the United States:

Gila and Salt River Meridian

T. 14 N., R. 12 W.,
Sec. 5, S½;
Sec. 17, N½
T. 18 N., R. 17 W.,
Sec. 9, N½SW¼, SW¼SW¼.
T. 21 N., R. 17 W.,
Sec. 21, Lots 1 to 4, incl., W½E½, W½;
Sec. 27, N½, SE¼.
T. 23 N., R. 13 W.,
Sec. 3, lots 1 to 4, incl., SW¼NW¼, W½W½, SE¼W¼.
T. 27 N., R. 16 W.,
Sec. 3, lots 1 to 4, incl., S½N½, S½.
T. 28 N., R. 15 W.,
Sec. 17, west 1340 feet of lots 2, 3 and 4, W½.
T. 28 N., R. 16 W.,
Sec. 35, E½, E½NW¼, SW¼NW¼, SW¼.

The areas described aggregate 3,866.55 acres in Mohave County.

The purpose of this notice is to inform the public and interested State and local government officials of this exchange of public and private land.

The surface of the land conveyed to the United States will be administered by the Bureau of Land Management. The mineral estate in the reconveyed land remains out of Federal ownership.

John T. Mezes,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88-24909 Filed 10-27-88; 8:45 am]
BILLING CODE 4310-32-M

[MT-070-09-4220-01]

Area Closure, Headwaters Resource Area; Butte District, MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Emergency area closure on public lands.

SUMMARY: Notice is hereby given that effective immediately all public lands in the Jimmys Gulch Area, northwest of the Confederate Gulch Road in Sections 26, 27, 34 and 35, T. 10 N., R. 2 E., and Sections 3, 4 (SE1/4SE1/4) and 9 (E1/2NE1/4), T. 9 N., R. 2 E., P.M.M. are closed to all motorized vehicle uses. This area is located some 23 miles north of Townsend, Montana. The purpose of this closure is to prevent further soil erosion, vegetative losses, elk harassment, visitor safety risks, and user conflicts.

Authority for this closure is 43 CFR 8341.2. The closure will remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT: Gary Leppart, Headwaters Resource Area Manager, P.O. Box 3388, Butte, MT 59702

Gary L. Gerth,
Acting District Manager.

October 13, 1988.

[FR Doc. 88-24908 Filed 10-27-88; 8:45 am]
BILLING CODE 4310-DN-M

[AK-910-09-4210-02]

Northern Alaska Advisory Council; Meeting

A public meeting of the Northern Alaska Advisory Council will be held at the BLM's Fairbanks Office Building on Wednesday, December 7, 1988. The meeting will start at 8:30 a.m. and end at 5 p.m. Comments from the public will be accepted from 1 to 2 p.m.; written comments may be submitted.

During the meeting the Council will discuss the cumulative environmental impact statements for the drainages of the Fortymile River, the Minto Flats and the Birch and Beaver creek drainages; and for the military withdrawal lands of Fort Wainwright and Fort Greely. The Arctic, Kobuk and Steese/White Mountains districts will report on summer field activities and the Alaska Fire Service will discuss its Fire Crew Management Policy and the Wildfire Suppression Policy.

For information contact the Public Affairs Office, Bureau of Land Management, 1150 University Avenue, Fairbanks, Alaska 99709, telephone (907) 474–2231.

Donald E. Rumberg,
Designated District Manager, Northern Alaska Advisory Council.

October 20, 1988.

[FR Doc. 88-24923 Filed 10-27-88; 8:45 am]
BILLING CODE 4310-84-M

[CA-940-09-4220-12; Group 956]

Plat of Survey; California

October 19, 1988.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Lassen County

T. 31 N., R. 12 E.

2. This plat representing the dependent resurvey of a portion of the west boundary, and a portion of the subdivisional lines, and the survey of the subdivision of sections 19, 29, and 30, Township 31 North, Range 12 East, Mount Diablo Meridian, California, under Group No. 956 California, was accepted September 27, 1988.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquires relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lytge,

Chief, Public Information Section.

[FR Doc. 88-24910 Filed 10-27-88; 8:45 am]

BILLING CODE 4310-84-M

[CA-940-08-4520-12; Group 953]

Plat of Survey; California

October 19, 1988.

1. This plant of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, San Luis Obispo

T. 32 S., R. 22 E.

2. This plat representing the dependent resurvey of a portion of the subdivision of section 20, Township 32 South, Range 22 East, Mount Diablo Meridian, California, under Group No. 953 California, was accepted September 28, 1988.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Mangement, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lytge,

Chief, Public Information Section.

[FR Doc. 88-24911 Filed 10-27-88; 8:45 am]

BILLING CODE 4310-84-M

Minerals Management Service

Outer Continental Shelf Oil and Gas Lease Sales; List of Restricted Joint Bidders; Correction

On Thursday, October 20, 1988, at 53 FR 41249 the List of Restricted Joint Bidders was published in the Federal Register as a matter of information to the public. The section below should read as follows:

Group VI. BP America, Inc.; Standard Oil Co.; Sohio Petroleum Co.; Standard Oil Production Co.; Standard Alaska Production Co.

William D. Bettenberg,

Director, Minerals Management Service.

Date: October 21, 1988.

[FR Doc. 88-24940 Filed 10-27-88; 8:45 am]

BILLING CODE 4310-MR-M

Cape Cod National Seashore; Bicycle Trail Plan

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of bicycle trail plan.

SUMMARY: The National Park Service has prepared a Bicycle Trail Plan. The plan includes proposed trail locations throughout Cape Cod National Seashore.

With this Notice of Availability, the National Park Service is seeking comments on the plan before implementation.

DATE: Written comments will be accepted until December 27, 1988.

ADDRESSES: Comments should be directed to: Superintendent, Cape Cod National Seashore, South Wellfleet, Massachusetts 02663.

DATE: October 6, 1988.

Herbert Olsen,

Superintendent, Cape Cod National Seashore

[FR Doc. 88-25016 Filed 10-27-88; 8:45 am]

BILLING CODE 4310-70-M

National Park Service

Meetings; Blackstone River Valley National Heritage Corridor Commission

Notice is hereby given in accordance with section 552b of Title 5, United States Code, that a meeting of the Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, November 3, 1988.

The Commission was established pursuant to Pub. L. 99-647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene at 7:00 p.m. at the Blackstone Valley Regional Vocational Technical High School, Pleasant Street, Upton, Massachusetts, for the following reasons:

1. Review and approval of a FY 1989 budget.
2. Cultural Heritage and Land Management Plan status report.
3. Public Information and Education programs status report.
4. Status report on the Woonsocket Rubber Company Building Visitor Center, Woonsocket, Rhode Island.

It is anticipated that about twenty people will be able to attend the session, in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: Lawrence D. Gall, Interim Executive Director, Blackstone River Valley National Heritage Corridor Commission, P.O. Box 34, 21 Mendon Street, Uxbridge, Massachusetts 01569, Telephone (508) 278-9400.

Further information concerning this meeting may be obtained from Lawrence Gall, Interim Executive Director of the Commission, at the above address.

Lawrence D. Gall,

Interim Executive Director, Blackstone River Valley National Heritage Corridor Commission.

[FR Doc. 88-25027 Filed 10-27-88; 8:45 am]

BILLING CODE 4310-70-M

Chesapeake and Ohio Canal National Historical Park Commission; Meeting

Notice is hereby given in accordance with Federal Advisory Committee Act that a meeting of the Chesapeake and Ohio Canal National Historical Park Commission will be held Saturday, December 3, 1988 at the Grace Episcopal Church, 1041 Wisconsin Avenue, NW., Georgetown, DC.

The Commission was established by *Pub. L. 91-664* to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historical Park.

The members of the Commission are as follows:

Mrs. Sheila Rabb Weidenfeld, Chairman, Washington, DC
Mrs. Dorothy Tappe Grotos, Arlington, Virginia
Mr. Samuel S. D. Marsh, Bethesda, Maryland
Mr. Keith A. Kirk, Hancock, Maryland
Mr. James F. Scarpelli, Sr., Cumberland, Maryland
Ms. Elise B. Heinz, Arlington, Virginia
Professor Charles P. Poland, Jr., Chantilly, Virginia
Captain Thomas F. Hahn, Shepherdstown, West Virginia
Colonel Ralph Albertazzie, Martinsburg, West Virginia
Mr. Rockwood H. Foster, Washington, DC
Mr. Barry A. Passett, Washington, DC
Mrs. Jo Reynolds, Potomac, Maryland
Ms. Nancy C. Long, Glen Echo, Maryland
Mrs. Minny Pohlmann, Dickerson, Maryland
Dr. James H. Gilford, Frederick, Maryland
Mr. Edward K. Miller, Hagerstown, Maryland
Mrs. Sue Ann Sullivan, Williamsport, Maryland
Mrs. Josephine L. Beynon, Cumberland, Maryland
Mr. Robert L. Ebert, Cumberland, Maryland

Matters to be discussed at this meeting include:

1. Old and new business
2. Superintendent's report
3. Committee reports
   Plans and Projects Committee
   Resource Protection Committee
4. Public comments

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Richard L. Stanton, Superintendent, C&O Canal National Historical Park, P.O. Box 4, Sharpsburg, Maryland 21782.

Minutes of the meeting will be available for public inspection six (6) weeks after the meeting at Park Headquarters, Sharpsburg, Maryland.

Date: October 24, 1988.

Ronald N. Wrye,

Regional Director, National Capital Region.

[FR Doc. 88-25017 Filed 10-27-88; 8:45 am]

BILLING CODE 4310-70-M

Farmington Wild and Scenic River Study, Massachusetts and Connecticut, Farmington River Study Committee; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, 5 U.S.C. App. 1 s 10), that the first meeting of the Farmington River Study Committee will be held Monday, November 14, 1988.

The Committee was established pursuant to Public Law 99-590. The purpose of the Committee is to consult with the Secretary of the Interior and to advise the Secretary in conducting the study of the Farmington River segments.

The meeting will convene at 7:30 p.m. on the second floor of the Riverton Volunter Firehouse, Route 20, Riverton, Connecticut, for the following reasons:

1. Swearing in of Committee Members;
2. Review of Enabling Legislation, Study Concept and Components;
3. Discussion of Election of Committee Leadership and Establishment of By-Laws;
4. Establishment of Subcommittees;

It is anticipated that about ninety people will be able to attend the session in addition to the Committee members.

Interested persons may make oral/written presentations to the Committee or file written statements. Such requests should be made to the official listed below prior to the meeting.

Further information concerning this meeting may be obtained from the Public Affairs Officer, National Park Service, North Atlantic Region, 15 State St., Boston, MA 02109 (617) 565-6687.

Steven H. Lewis,

Acting Regional Director.

Date: October 18, 1988.

[FR Doc. 88-25018 Filed 10-27-88; 8:45 am]

BILLING CODE 4310-70-M

Golden Gate National Recreation Area Advisory Commission; Meeting Cancellation

Notice is hereby given in accordance with the Federal Adivsory Committee Act that a meeting of the Golden Gate National Recreation Area Advisory Commission at 7:30 p.m. (PST) on Thursday, November 10, 1988, at Building 201, Fort Mason, San Francisco, California is cancelled.

Dated: October 7, 1988.

Stanley T. Albright,

Regional Director, Western Region.

[FR Doc. 88-25015 Filed 10-27-88; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. Pursuant to the Interstate Commerce Act section 10524(b), the subsidiaries wholly owned by Beck/Arnley-World Parts Corp. are listed with the intent of participation in compensated intercorporate hauling operations.

The parent company and principal office of Beck/Arnley-World Parts Corp. is located at 1020 Space Park South, Nashville, Tennessee 37211. The participating subsidiaries are:

Name of corporation	State of incorporation
Beck/Arnley-World Parts Corp.	Tennessee.
Beck-Arnley Corp.	New York.
Beck-Arnley Corp.	California.
World Parts Corp.	Tennessee.
Products, Inc.	California.

B. 1. Parent corporation, address of principal office and State of incorporation: Crowley Maritime Corporation, 101 California, San Francisco, CA 94111-5875 (a Delaware corporation).

2. Wholly-owned subsidiaries which will participate in the operations, addresses of their respective principal offices, and State(s) of incorporation:

i. Crowley Towing and Transportation Company, North Regency Two, 9487 Regency Square Boulevard, Jacksonville, FL 32225 (a Louisiana corporation).

ii. Crowley Caribbean Transport, Inc., North Regency Two, 9487 Regency Square Boulevard, Jacksonville, FL 32225 (Delaware corporation).

iii. CTMT, Inc., North Regency Two, 9487 Regency Square Boulevard, Jacksonville, FL 32225 (a Delaware corporation).

iv. Crowley Maritime Salvage, Inc., 2401 Fourth Avenue, Seattle, WA 98111 (a California corporation).

v. Trailer Marine Transport Corporation, North Regency Two, 9487 Regency Square Boulevard, Jacksonville, FL 32225 (a Delaware corporation).

vi. American Transport Lines, Inc., North Regency Two, 9487 Regency Square Boulevard, Jacksonville, FL 32225 (a Delaware corporation).

vii. American Transport Line, Ltd., North Regency Two, 9487 Regency Square Boulevard, Jacksonville, FL 32225 (a Delaware corporation).

viii. San Diego Transportation Company, 101 California, San Francisco, CA 94111-5875 (a California corporation).

ix. The Harbor Tug and Barge Company, 101 California, San Francisco, CA 94111-5875 (a California corporation).

x. Harbor Carriers, Inc., 101 California, San Francisco, CA 94111-5875 (a California corporation).

xi. H. Tourist, Inc., 101 California, San Francisco, CA 94111-5875 (a California corporation).

xii. Crowley Constructors, Inc., 101 California, San Francisco, CA 94111-5875 (a California corporation).

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xiii. Pacific Alaska Fuel Service, Inc., 2401 Fourth Avenue, Seattle, WA 98121 (a Delaware corporation).

xiv. Puget Sound Tug and Barge Company (PST&B), 2401 Fourth Avenue, Seattle, WA 98121 (a Washington corporation), and its d/b/a companies:

(a) PST&B d/b/a Shaughnessy & Company, Inc., 2401 Fourth Avenue, Seattle, WA 98121.

(b) PST&B d/b/a Alaska Hydro-Train, 2401 Fourth Avenue, Seattle, WA 98121.

(c) PST&B d/b/a United Transportation Company, 2401 Fourth Avenue, Seattle, WA 98121.

(d) PST&B d/b/a Pacific Alaska Lines—West, 2401 Fourth Avenue, Seattle, WA 98121.

(e) PST&B d/b/a APUTCO, 2401 Fourth Avenue, Seattle, WA 98121.

(f) PST&B d/b/a Arctic Marine Freighters, 2401 Fourth Avenue, Seattle, WA 98121.

(g) PST&B d/b/a Oilfield Services, 2401 Fourth Avenue, Seattle, WA 98121.

(h) PST&B d/b/a Arctic Lighterage Company, 2401 Fourth Avenue, Seattle, WA 98121.

(i) PST&B d/b/a Pacific Alaska Lines, 2401 Fourth Avenue, Seattle, WA 98121.

(j) PST&B d/b/a Hawaiian Marine Lines, 2401 Fourth Avenue, Seattle WA 98121.

xv. Pacific Northern Marine Corporation, 2401 Fourth Avenue, Seattle WA 98121 (a Washington corporation).

xvi. Crowley Environmental Services, Inc., 2401 Fourth Avenue, Seattle WA 98121 (a Delaware corporation).

xvii. Northwestern Construction, Inc., 2401 Fourth Avenue, Seattle WA 98121 (an Alaska corporation).

C. (1) Parent corporation and address of principal office: Dixie Aluminum Products Co., Inc., 422 Candler Street, Gainesville, GA 30501. (Dixie Aluminum Products Co., Inc. is a Georgia corporation).

(2) Wholly-owned subsidiaries which will participate in the operations, and state(s) of incorporation: Sanders Sales, Inc., 422 Candler Street, Gainesville, GA 30501. (Sanders Sales, Inc. is incorporated under the laws of the State of Georgia and is 100% owned by Dixie Aluminum Products Co., Inc.).

D. 1 Parent corporation and address of principal office: Dixon Valve & Coupling Company, 800 High Street, Chestertown, Maryland 21620.

2. Wholly-owned subsidiaries which will participate in the operations, and State of incorporation: Buck Company, Inc. 807 Lancaster Pike, Quarryville, Pennsylvania 17566.

E. 1. Parent corporation and address of principal office: Explosives Technologies International, Inc. (ETI), Rockwood Office Park, Bldg. #1, 501 Carr Rd., Wilmington, DE 19809.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(i) Buckeye Explosives, Inc., 314 Cross Street—P.O. Box 514, Dover, OH 44622, Incorporated—Ohio.

(ii) Atlanta Explosives, Inc., 114 McLarty Rd., Whitesburg, GA 30185, Incorporated—GA.

(iii) Beattie Explosives, Inc., Rt. 3—P.O. Box 15, Hayden Lake, ID 83835, Incorporated—ID.

(iv) Southern Explosives Corp., Oil City Road—P.O. Box 688, Glasgow, KY 42141, Incorporated—KY.

(v) Contract Carrier, Inc., W. County RD BB—P.O. Box 218, Greenfield, MO 65661, Incorporated—MO.

(vi) Keystone Explosives, Inc., Rt 536—P.O. Box 115, Punxsutawney, PA, Incorporated—PA.

(vii) Prater Explosives, 7854 Hancock, County RD 223, Findlay, OH 45840, A Corporation—OH.

(viii) King Explosives, Inc., 3341 Fitzgerald RD, P.O. Box 367, Ranch Cordova, CA 95741, Incorporated—CA.

(ix) DECO Services, Inc., dba, Danbury Explosives, 107 Danbury Road, New Milford, CT 06770, A corporation—CT.

(x) Explosives Energy Inc., dba Arkansas Explosives, 10711 Otter Creek East Blvd., Mablevale, AR 72103, Incorporated—AR.

F. 1. Parent corporation and address of principal office: Universal Petroleum Products, Inc., P.O. Box 1288, Burlington, NJ 08016.

2. Wholly-owned subsidiaries which will participate in the operations, and their States of incorporation: Name and Jurisdiction Where Incorporated

(a) Enzie Transport, Inc., a New Jersey Corporation

Nonita E. McGee,

Secretary.

[FR Doc. 88-24969 Filed 10-21-88; 8:45 am]

BILLING CODE 7035-01-M

ICC Senior Executive Service Performance Review Board

October 19, 1988.

The purpose of this Notice is to designate a change in the membership of the ICC Senior Executive Service Performance Review Board (PRB).

John F. Hennigan, Jr., Director, Office of Transportation Analysis, has been appointed as an alternate member of the Performance Review Board; Heather J. Gradison, Chairman.

Noreta R. McGee,

Secretary.

[FR Doc. 88-24960 Filed 10-27-88; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31345]

Wisconsin and Calumet Railroad Company, Inc. Modified Rail Certificate, Notice

On September 21, 1988, a notice was filed by the Wisconsin and Calumet Railroad Company, Inc. (W&C), for a modified certificate of public convenience and necessity under 49 CFR 1150.23. By contract with the Wisconsin River Rail Transit Commission (WRRTC), W&C is authorized to operate indefinitely, beginning on September 21, the following rail lines in Wisconsin: between Lone Rock (milepost 0.26) and Richland Center (milepost 16.4), a distance of 16.14 miles; between Middleton (milepost 146.72) and Prairie du Chien (milepost 237.4) excluding trackage between milepost (233.75 and milepost 233.59), a distance of 90.52 miles; and between Mazomanie (milepost 0.07) and Prairie du Sac (milepost 13.07), a distance of 13 miles.

Prior to abandonment, the lines were owned and operated by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (MILW). The Commission authorized abandonment of the line between Middleton and Prairie du Chien in Docket No. AB-7 (Sub-No. 83) *Chicago, M. St. P., & Pac. R. Co.-Aband.-Betw. Lone Rock and Prairie Du Chien WI* (not printed), served February 28, 1980. The Commission authorized abandonment of the line between Lone Rock and Richland Center and between Mazomanie and Prairie du Sac in in Docket No. AB-7 (Sub-No. 99), *Chicago, M. ST. P., & Pac. R. Co.-Aband.-Middleton Richland Center, WI* (not printed), served May 6, 1982.

The rail lines were acquired from MILW by the State of Wisconsin acting through the WRRTC and the Wisconsin Department of Transportation. A previous operator of the involved lines became bankrupt and discontinued operations.

This notice must be served on the Association of American Railroads (Car Service Division), as agent of all railroads subscribing to the car-service and car-hire agreement, and on the American Short Line Railroad Association.

Dated: October 20, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-24849 Filed 10-27-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Bureau of International Labor Affairs

Partial Revision of the Indigenous and Tribal Populations Convention, 1957 (No. 107), International Labor Organization

AGENCY: Department of Labor.

ACTION: Request for comment from tribal governments.

SUMMARY: The Department of Labor invites comments from tribal governments on the appended proposed revision of the International Labor Organization's (ILO) Indigenous and Tribal Populations convention, 1957 (No. 107). In response to an ILO request, the Bureau of International Labor Affairs of the Department of Labor, with the assistance of the relevant Federal agencies, will prepare comments on the proposed text. The ILO will then incorporate comments of Member States into a second draft of the proposed revised convention. Comments from tribal governments on the draft will be sought in early 1989 as soon as it becomes available.

DATE: Due to the ILO response deadline, comments of tribal governments must be received on or before November 21, 1988 to receive consideration in formulating the United States response. A new ILO draft text for the proposed revised convention will be published after Governments make their responses.

ADDRESS: Written comments should be directed to Marion F. Houstoun, Office of International Organizations, Bureau of International Labor Affairs, S-5311, U.S. Department of Labor, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Marion F. Houstoun, Office of International Organizations, Bureau of International Labor Affairs, Department of Labor, Washington, DC 20210, telephone number (202) 523-6241.

SUPPLEMENTARY INFORMATION: In June 1988, the annual Conference of the International Labor Organization (ILO) held the first of two annual discussions of the Partial Revision of a Convention (No. 107), which the Conference adopted in 1957, on Indigenous and Tribal Populations. The existing Convention deals with a wide range of issues such as native land rights, consultation between governments and native peoples in social and economic development, and issues of employment, vocational training, health and education affecting tribal peoples. The Convention is being revised because its assimilationist or integrationist approach to fundamental issues is widely seen as inappropriate and outdated. The OLO has issued the report of the June 1988 session of the Conference Committee on Convention No. 107 and a proposed text based on the results of the meeting. The ILO has requested that Governments submit amendments or comments on the proposed text. These comments will be incorporated into a second draft of the proposed revised convention, which will be considered at the June 1989 session of the Committee. The Bureau of International Labor Affairs of the Department of Labor, with the assistance of the Departments of Interior and State, will prepare comments for the ILO. The Department of Labor invites comments from tribal governments on the proposed revised Convention. The revised Convention is intended to be a broad statement of principles that can be adopted by many countries whose indigenous and tribal peoples face a wide range of circumstances and conditions. Comments will be sought again in early 1989 as soon as the second ILO draft becomes available.

Signed this 20th day of October 1988.

Eugene K. Lawson,

Deputy Under Secretary for International Affairs, U.S. Department of Labor.

APPENDIX

PROPOSED TEXT

The text of a proposed Convention concerning indigenous and tribal peoples (or populations) in independent countries will be found below. This text is based on the conclusions adopted by the International Labor Conference at its 75th Session.

Reference should also be made to the report of the Committee appointed by the Conference to consider this item. In a departure from past practice, this report is not summarised in the present volume but is being communicated to member States in its entirety, together with the record of the discussion in plenary session (see *Provisional Record* No. 32 and No. 36 attached).

Only a very small number of changes from the Conclusions adopted by the Conference are included in the text of the proposed Convention, mostly for editorial reasons. Where necessary, they are discussed below. Special attention is drawn in this respect to the discussion below of the Part of the text dealing with land rights.

Proposed Convention

Preamble

The text of a draft Preamble is being submitted for the first time. It appears appropriate to refer in particular to the development of international human rights law since Convention No. 107 was adopted in 1957, as well as to other developments which affect indigenous and tribal peoples more directly. The reference to the co-operation of other international organizations is taken from Convention No. 107, with the addition of a reference to the Inter-American Indian Institute in view of the valuable collaboration which has been taking place with that organization.

Article 1

The use of the term "(peoples/populations)" reflects an agreement in the Committee that the question could not be satisfactorily resolved during the 75th Session; reference is made to paragraphs 30 to 39 of the report of the Committee. There did appear to be widespread, though not universal, agreement that the term "peoples" should be used if an acceptable formula could be found to ensure that it did not imply rights beyond the scope of the revised Convention, in particular with regard to self-determination in the sense of separation from the State.

Part II. Land

The text of the proposed Convention is taken directly from the Proposed Conclusions contained in Report VI (2) submitted to the 75th Session of the Conference. Following its referral to a working party and a general discussion in the Conference Committee, this subject was set aside for more detailed consideration at the 76th Session. The text of the proposed Convention thus does not reflect either the agreements which were reached on similar language in respect of other parts of the Conlusions, or the elements of agreement which appeared to emerge during the working party's discussions. Governments and other respondents may therefore wish to take the following considerations into account in pareparing their comments.

Lands/territories. A discussion was held in the working party on this issue which is not fully reflected in the Committee's report but which may assist in clarifying the issues raised. Two basic positions became apparent. First, the indigenous and tribal representatives, supported by the Workers' members and some

governments, felt that the word "lands" is too restrictive and does not express the relationship between these peoples and the territories they occupy. Nor, on a purely practical level, does the word "lands" cover elements such as sea ice for the northern peoples, which are parts of their territories but are not land. It also does not reflect other elements which are inherent in their concept of territory, such as the flora and fauna, waters and the environment as a whole. On the other hand, a number of governments and the Employers' members pointed out that some internal legal systems are based on the concept of lands and not territories, at least where the acquisition of enforceable rights is concerned. Furthermore, the word "territories" is used in many national legal texts only to refer to the national territory as a whole, and its use in this context might raise problems in connection with national sovereignty.

While this issue remains to be explored fully at the 76th Session of the Conference, the Office points out that both terms were already used in Part II of Convention No. 107 and that no problems have arisen in interpreting them since 1957. It appears that the issues raised during the Conference discussion might be resolved if the word "lands" were used in connection with the establishment of legal rights, while "territories" could be used when describing a physical space, when discussing the environment as a whole or when discussing the realtionship of these peoples to the territories they occupy.

Ownership, possession or use. Some consensus appeared to be emerging to use this expression uniformly instead of more limited expressions such as "rights of ownership and possession" (Article 13 of the proposed Convention).

Seek the consent. The use of this phrase in the Proposed Conclusions (see especially Proposed Conclusion 30) evoked considerable concern among some delegates that the right of States to take final decisions on the disposition of the national territory was being called into question. In fact, it was meant to indicate that a serious attempt should be made to obtain the consent of the inhabitants of the areas concerned before undertaking activities which affected them. There was no intention to imply a veto power and no implication that the State's power to decide be limited. It should be noted that the continued use of this phrase in Article 14, paragraph 2, of the proposed Convention derives from the Committee's decision to use the corresponding text of the Proposed Conclusions without modification as the basis for the proposed Convention. Moreover, where this phrase was used in another part of the Proposed Conclusions, it was modified by the Committee to "consult fully" (see Article 6(*a*) of the proposed Convention).

Surface and subsoil resources. While these phrases were used in the Proposed Conclusions, some consensus appeared to be emerging in the working party to use instead the concepts of renewable and non-renewable resources. Respondents may wish to take this into account in framing their comments.

Proposed new Point

Attention is drawn to paragraphs 216 and 217 of the Conference Committee's report, where a proposed new Point concerning indigenous and tribal peoples in frontier areas is discussed. While no new Article is included in the text of the proposed Convention, the Office will examine the question more fully for the final report to be put before the Conference. It is pointed out that an obligation for two States, each of which has ratified a given Convention, to conclude agreements between themselves to regulate the matters covered in the Convention is well established in ILO standards. Reference may also be made to Part X of Recommendation No. 104.

Proposed Convention Concerning Indigenous and Tribal (Peoples/Populations) in Independent Countries

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 76th Session on 7 June 1989, and

Noting the international standards contained in the Indigenous and Tribal Populations Convention and Recommendation, 1957, and

Recalling the terms of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the many international instruments on the prevention of discrimination, and

Considering that the developments which have taken place in international law since 1957, as well as developments in the situation of indigenous and tribal (peoples/populations) in all regions of the world, have made it appropriate to adopt new international standards on the subject, and

Recognising the aspirations of these (peoples/populations) to control over their own institutions, ways of life and economic development, whithin the framework of the States in which they live, and

Noting that in many parts of the world these (peoples/populations) have been unable to enjoy their fundamental human rights to the same degree as the rest of the populations of the States within which they live, and

Calling attention to the vital contributions of indigenous and tribal traditions to the cultural diversity and social and ecological harmony of humankind and to international co-operation and understanding, and

Noting that the following standards have been framed with the co-operation of the United Nations, the Food and Agriculture Organisation of the United Nations, the United Nations Educational, Scientific and Cultural Organisation and the World Health Organisation, as well as of the Inter-American Indian Institute, at appropriate levels and in their respective fields, and that it is proposed to continue this co-operation in promoting and securing the application of these standards, and

Having decided upon the adoption of certain proposals with regard to the partial revision of the Indigenous and Tribal Populations Convention, 1957 (No. 107), which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention revising the Indigenous and Tribal Populations Convention, 1957;

adopts this day of June of the year one thousand nine hundred and eighty-nine the following Convention, which may be cited as the Indigenous and Tribal (Peoples/Populations) Convention (Revised), 1989:

Part I. General Policy

Article 1

1. This Convention applies to:

(a) tribal (peoples/populations) in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;

(b) (peoples/populations) in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.

3. The indigenous and tribal (peoples/populations) mentioned above are referred to hereinafter as "the (peoples/populations) concerned".

Article 2

1. Governments shall have the responsibility for developing, with the full participation of the (peoples/populations) concerned, co-ordinated and systematic action to guarantee respect for the integrity of these (peoples/populations) and their rights.

2. Such action shall include measures for:

(a) enabling member of these (peoples/populations) to benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population;

(b) promoting the full realisation of the social, economic and cultural rights of these (peoples/populations) with respect for their social and cultural identity, their customs and traditions and their institutions;

(c) assisting the members of the (peoples/populations) concerned to raise their standard of living to that enjoyed by other members of the national community, in a manner compatible with the aspirations and ways of life of these (peoples/populations).

Article 3

1. Indigenous and tribal (peoples/populations) shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination.

2. No form of force or coercion shall be used in violation of the human rights and fundamental freedoms of the (peoples/populations) concerned, including the rights contained in this Convention.

Article 4

1. Special measures shall be adopted as appropriate for safeguarding the institutions, persons, property, labor and environment of the (peoples/populations) concerned.

2. Such special measures of protection shall not be contrary to the wishes of the (peoples/populations) concerned.

3. Enjoyment of the general rights of citizenship, without discrimination, shall not be prejudiced in any way by such special measures of protection.

Article 5

In applying the provisions of this Convention:

(a) due account shall be taken of the cultural and religious values and practices of these (peoples/populations), and of the nature of the problems which face them both as groups and as individuals;

(b) the integrity of the values, practices and institutions of these (peoples/populations) shall be respected;

(c) policies aimed at mitigating any difficulties experienced by these (peoples/populations) in adjusting to new conditions of life and work shall be adopted, with the full participation and co-operation of the (peoples/populations) affected.

Article 6

In applying the provisions of this Convention, governments shall:

(a) consult fully the (peoples/populations) concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;

(b) establish means by which these (peoples/populations) may freely participate at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which may affect them directly;

(c) make available to these (peoples/populations) opportunities and resources for the full development of their own institutions and initiatives.

Article 7

1. The improvement of the conditions of life and work and level of education of the (peoples/populations) concerned, with their participation and co-operation, shall be a matter of priority in plans for the overall economic development of areas inhabited by them. Special projects for development of the areas in question shall also be so designed as to promote such improvement.

2. The (peoples/populations) concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, territories, institutions and spiritual well-being and to exercise control, to the extent possible over their own economic, social and cultural development. In addition, they shall be involved in the formulation and implementation of plans and programmes for national and regional development which may affect them directly.

3. Governments shall ensure that studies are carried out, in collaboration with the (peoples/populations) concerned, to assess the social, spiritual, cultural and environmental impact of planned development activities on them.

Article 8

1. In the application of national laws and regulations to the (peoples/populations) concerned, due regard shall be had to their customary laws.

2. These (peoples/populations) shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system or with internationally recognised human rights.

3. The application of paragraphs 1 and 2 of this Article shall not prevent members of these (peoples/populations) from exercising the rights granted to all citizens and from assuming the corresponding duties.

Article 9

1. To the extent compatible with the national legal system and internationally recognised human rights, the use of methods customarily practised by the (peoples/populations) concerned for dealing with crimes or offences committed by their members shall be respected.

2. The customs of these (peoples/populations) in regard to penal matters shall be take into consideration by the authorities and courts dealing with such [redacted]

Article 10

The exaction from the members of the (peoples/populations) concerned of compulsory personal services in any form, whether paid or unpaid, shall be prohibited and punishable by law, except in cases prescribed by law for all citizens.

Article 11

1. In imposing penalties laid down by general law on members of these (peoples/populations) account shall be taken of their economic, social and cultural characteristics.

2. Preference shall be given to methods of punishment other than confinement in prison.

Article 12

The (peoples/populations) concerned shall be safeguarded against the abuse of their fundamental rights and shall be able to take legal proceedings for the effective protection of these rights. Members of these (peoples/populations) shall have the right to use their own languages in any legal proceedings.

Part II. Land*

Article 13

1. The rights of ownership and possession of the (peoples/populations) concerned over the lands which they traditionally occupy shall be recognised.

2. Governments shall take steps as necessary to identify the lands which the (peoples/populations) concerned traditionally use and occupy, and to guarantee effective protection of their rights of ownership and possession.

Article 14

1. Special measures shall be taken to safeguard the control of the (peoples/populations) concerned over natural resources pertaining to their traditional territories, including flora and fauna, waters and sea ice, and other surface resources.

2. Governments shall seek the consent of the (peoples/populations) concerned, through appropriate mechanisms, before undertaking or permitting any programmes for the exploration or exploitation of mineral and other subsoil resources pertaining to their traditional territories. Fair compensation shall be provided for any such activities undertaken within the territories of the said (peoples/populations).

Article 15

1. Subject to the following paragraphs of this Article, the (peoples/populations) concerned shall not be removed from their habitual territories.

2. Where the removal of the said (peoples/populations) is considered necessary as an exceptional measure, such removals shall take place only with their free and informed consent. Where their consent cannot be obtained, such removal shall take place only following appropriate procedures established by national laws and regulations, including public inquiries, which provide the opportunity for effective representation of the (peoples/populations) concerned.

3. In such exceptional cases of removal, these (peoples/populations) shall be provided with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. In cases where chances of alternative employment exist, and where the (peoples/populations) concerned prefer to have compensation in money or in kind, they shall be so compensated under appropriate guarantees.

4. Persons thus removed shall be fully compensated for any resulting loss or injury.

Article 16

1. Procedures for the transmission of rights of ownership, possession and use of land which are established by the customs of the (peoples/populations) concerned shall be respected, within the framework of national laws and regulations.

2. The consent of the (peoples/populations) concerned shall be sought when considering the adoption of national laws or regulations concerning the capacity of the said (peoples/populations) to alienate their land or otherwise transmit rights of ownership, possession and use of their land.

3. Persons who are not members of these (peoples/populations) shall be prevented from taking advantage of the customs referred to in paragraph 1 of this Article or of lack of understanding of the laws on the part of the members of these (peoples/populations) to secure the ownership, possession or use of land belonging to them.

Article 17

Unauthorised intrusion upon, or use of, the lands of the (peoples/populations) concerned shall be considered an offence. Adequate penalties for such offences and appropriate recourse procedures shall be established by law.

Article 18

National agrarian programmes shall secure to the (peoples/populations) concerned treatment equivalent to that accorded to other sections of the national community with regard to:

(a) the provision of more land for these (peoples/populations) when they have not the area necessary for providing the essentials of a normal existence, or for any possible increase in their numbers.

(b) the provision of the means required to promote the development of the lands which these (peoples/populations) already possess.

Article 19

Adequate procedures shall be established within the national legal system to resolve land claims by the (peoples/populations) concerned, including claims arising under treaties.

Part III. Recruitment and Conditions of Employment

Article 20

1. Governments shall, within the framework of national laws and regulations, and in full co-operation with the (peoples/populations) concerned, adopt special measures to ensure the effective protection with regard to recruitment and conditions of employment of workers belonging to these (peoples/populations), to the extent they are not effectively protected by laws applicable to workers in general.

2. Governments shall do everything possible to prevent any discrimination between workers belonging to the (peoples/populations) concerned and other workers, in particular as regards:

(a) admission to employment, including skilled employment, as well as measures for promotion and advancement;

(b) equal remuneration for work of equal value;

(c) medical and social assistance, occupational safety and health, all social security benefits and any other occupationally related benefits, and housing;

(d) the right of association and freedom for all lawful trade union activities, and the right to conclude collective agreements with employers or employers organizations.

3. The measures taken shall include measures to ensure:

(a) that workers belonging to the (peoples/populations) concerned, including seasonal, casual and migrant workers in agricultural and other employment, as well as those employed by labour contractors, enjoy the protection afforded by national law and practice to other such workers in the same sectors;

(b) that workers belonging to these (peoples/populations) are not subjected to working conditions hazardous to their health, in particular through exposure to pesticides or other toxic substances;

(c) that workers belonging to these (peoples/populations) are not subjected to coercive recruitment systems, including bonded labour and other forms of debt servitude;

(d) that workers belonging to these (peoples/populations) enjoy equal opportunities and equal treatment in employment for men and women, and protection from sexual harassment;

(e) that workers belonging to these (peoples/populations), including seasonal and migrant workers employed in agriculture or in other activities, are fully informed of their rights under labour legislation and of the means of redress available to them.

4. Particular attention shall be paid to the establishment of adequate labour inspection services in areas where workers belonging to the (peoples/populations) concerned undertake wage employment, in order to ensure compliance with the provisions of this Part of this Convention.

Part IV. Vocational Training Handicrafts and Rural Industries

Article 21

Members of the (people/populations) concerned shall enjoy opportunities at least equal to those of other citizens in respect of vocational training measures.

Article 22

1. Measures shall be taken to promote the voluntary participation of members of the (peoples/populations) concerned in vocational training programmes of general application.

2. Whenever existing programmes of vocational training of general application do not meet the special needs of the (peoples/populations) concerned, governments shall, with the full participation of these (peoples/populations), ensure the provision of special training programmes and facilities.

3. Any special training facilities shall be based on the economic environment, social and cultural conditions and practical needs of the (peoples/populations) concerned. And studies made in this connection shall be carried out in co-operation with these (peoples/populations), who shall progressively assume responsibility for the organization and operation of such special training programmes, if they so decide.

Article 23

1. Handicrafts, rural and community-based industries, and subsistence economy and traditional activities of the (peoples/populations) concerned, such as hunting, fishing, trapping and gathering, shall be recognised, strengthened and promoted as important factors in their economic development. The integrity of these traditional activities shall be protected.

2. Upon the request of the (peoples/populations) concerned, appropriate technical and financial assistance shall be provided, taking into account traditional technologies and the cultural characteristics of these (peoples/populations), as well as the importance of sustainable and equitable development.

Part V. Social Security and Health

Article 24

Social security schemes shall be extended progressively to cover the (peoples/populations) concerned, and applied without discrimination against them.

Article 25

1. Governments shall ensure that adequate health services are make available to the (peoples/populations) concerned, or shall provide them with resources to allow them to design and deliver services under their own responsibility and control, so that they may enjoy the highest attainable standard of physical and mental health.

2. Health services shall, to the extent possible, be community-based. These services shall be planned and administered in co-operation with the (peoples/populations) concerned and take into account their economic, geographic, social and cultural conditions as well as their traditional preventive care, healing practices and medicines.

3. The health care system shall, to the extent possible, allow for the training and employment of local community health workers, and focus on primary health care while maintaining strong links to other levels of health care services.

4. The provision of such health services shall be co-ordinated with other social, economic and cultural measures in the country, with the full participation of the (peoples/populations) concerned.

Part VI. Education and Means of Communication

Article 26

Measures shall be taken to ensure that members of the (peoples/populations) concerned have the opportunity to acquire education at all levels on at least an equal footing with the rest of the national community.

Article 27

1. Education programmes and services for the (peoples/populations) concerned shall be developed and implemented in collaboration with them to address their special needs, and shall incorporate their histories, their knowledge and technologies, their value systems and their further social, economic and cultural aspirations.

2. The competent authority shall ensure the training of members of these (peoples/populations) and their involvement in the formulation and implementation of education programs, with a view to the progressive transfer of responsibility for the conduct of these programmes to these (peoples/populations).

3. In addition, governments shall recognise the right of these (peoples/populations) to establish their own educational institutions and facilities. Appropriate resources shall be provided for this purpose.

Article 28

1. Children belonging to the (peoples/populations) concerned shall be taught to read and write in their own indigenous language or in the language most commonly used by the group to which they belong, as decided by these (peoples/populations).

2. Adequate measures shall be taken to ensure that these (peoples/populations) have the opportunity to attain fluency in the national language or in one of the official languages of the country.

3. Effective measures shall be taken to preserve and promote the development and practice of the indigenous languages of the (peoples/populations) concerned.

Article 29

The imparting of general knowledge and skills that will help children belonging to the (peoples/populations) concerned to participate fully and on an equal footing in their own community and in the national community shall be an aim of education for these (peoples/populations).

Article 30

1. Governments shall adopt measures appropriate to the traditions and cultures of the (peoples/populations) concerned, to make known to them their rights and duties, especially in regard to labour, economic opportunities, education and health matters, social welfare and their rights deriving from this Convention.

2. If necessary, this shall be done by means of written translations and through the use of mass communications in the languages of these (peoples/populations).

Article 31

Educational measures shall be taken among all sections of the national community, and particularly among

*Part II of this proposed Convention is based directly on the Proposed Conclusions contained in Report VI(2) to the 75th Session of the Conference. In preparing comments on this Part, please refer to the relevant section of the Office commentary (*Provisional Record* No. 32) to the general discussion of this subject contained in paragraphs 125–126 of the Conference Committee's report.

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those that are in most direct contact with the (peoples/populations) concerned, with the object of eliminating prejudices that they may harbour in respect of these (peoples/populations). To this end, efforts shall be made to ensure that history textbooks and other educational materials provide a fair, accurate and informative portrayal of the societies and cultures of these (peoples/populations).

Part VII. Administration

Article 32

1. The governmental authority responsible for the matters covered in this Convention shall create or develop agencies or other appropriate mechanisms to administer the programmes affecting the (peoples/populations) concerned, and provide them with the means necessary for the proper fulfilment of the functions assigned to them.

2. These programmes shall include:

(a) planning co-ordination, execution and evaluation, in co-operation with the (peoples/populations) concerned, of the measures provided for in this Convention;

(b) proposing of legislative and other measures to the competent authorities and supervision of the application of the measures taken in full co-operation with the (peoples/populations) concerned.

Part VIII. General Provisions

Article 33

The nature and scope of the measures to be taken to give effect to this Convention shall be determined in a flexible manner, having regard to the conditions characteristic of each country.

Article 34

The application of the provisions of this Convention shall not adversely affect rights and benefits of the (peoples/populations) concerned pursuant to other Conventions and Recommendations, under treaties or international instruments, or under national laws, awards, custom or agreements.

Part IX. Final Provisions

Article 35

This Convention revises the Indigenous and Tribal Propulations Convention, 1957.

[FR Doc. 88-25088 Filed 10-27-88; 8:45 am]

BILLING CODE 4510-28-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New York:
NY88-4 (Jan. 8, 1988) ..... pp. 712-716.
Pennsylvania:
PA88-7 (Jan. 8, 1988) ..... pp. 902-904, [illegible]
PA88-10 (Jan. 8, 1988) ..... p.930.
PA88-23 (Jan. 8, 1988) ..... pp. 1000-1004.
PA88-24 (Jan. 8, 1988) ..... pp. 1006-1008.

Volume II

Illinois:
IL88-1 (Jan. 8, 1988) ..... p. 75.
Ohio:
OH88-1 (Jan. 8, 1988) ..... pp. 726-727.
OH88-2 (Jan. 8, 1988) ..... pp. 738-740, pp. 742-748.
OH88-3 (Jan. 8, 1988) ..... pp. 758-763.
OH88-28 (Jan. 8, 1988) ..... pp. 814-817.
OH88-29 (Jan. 8, 1988) ..... pp. 820-825, pp. 827-829, pp. 831-832, [illegible]

Volume III

Oregon:
OR88-1 (Jan. 8, 1988) ..... p. 902.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered from any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the State covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 21st day of October, 1988.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 88-24719 Filed 10-27-88; 8:45 am]

BILLING CODE 4510-27-M

Bureau of Labor Statistics

Response to Comments on Changes in Local Area Unemployment Statistics (LAUS) Procedures

AGENCY: Bureau of Labor Statistics, Labor.

ACTION: Changes in local area unemployment statistics methodology.

SUMMARY: As a result of the comments received during the Federal Register comment period, the Bureau of Labor Statistics has confirmed its intention to introduce the new method of estimating statewide labor force, employment, unemployment, and unemployment rate cited in its **Federal Register** notice, published June 17, 1988 at 53FR 22749. The new method includes the mandatory use of regression models for the District of Columbia and the 39 States which do not use the Current Population Survey estimates directly each month. The new method will be indroducted beginning with data for January 1989.

FOR FURTHER INFORMATION CONTACT: Sharon Brown 202-523-1038.

Dated at Wahington, DC, this 21st day of October 1988.

Janet L. Norwood,

Commissioner.

[FR Doc. 88-24921 Filed 10-27-88; 8:45 am]

BILLING CODE 4510-24-M

[Docket No. M-88-105-C]

Freeman United Coal Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Freeman United Coal Mining Company, P.O. Box 100, West Frankfort, Illinois 62896 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Orient No. 6 Mine (I.D. No. 11-00599) located in Jefferson County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirements that trolley wires and trolley feeder wires, high-voltage cables and transformers not be located inby the last open crosscut and be kept at least 150 feet from pillar workings.

2. The longwall mining equipment in use at the mine is powered by 950-volt, a.c. electricity. The circuit breakers and cables used in this medium-voltage system are at the practical limits of safe and efficient operation.

3. This equipment is subject to unacceptable voltage drops across the system which causes a decrease in the working torques of the drive motors and leads to excessive strain on equipment and high-current loads in the electric circuitry. In order to maintain compliance with overcurrent protection in low- or medium-voltage systems, it is necessary to split the loads and increase the number of cables. This doubles the amount of cable handling and electrical connections that needs to be done and results in a diminution of safety to miners.

4. As an alternate method, petitioner proposes that throughout the mine, 2400-volt a.c. electricity would be used to power longwall mining equipment inby the last open crosscut and within 150 feet of gob areas with specific equipment and conditions as outlined in the petition.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 28, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: October 20, 1988.

[FR Doc. 88-24917 Filed 10-27-88; 8:45 am]

BILLING CODE 4510-43-M

Mine Safety and Health Administration

[Docket No. M-88-106-C]

Kinney Branch Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Kinney Branch Coal Company, Inc., P.O. Box 166, Virgie, Kentucky 41572 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 4 Mine (I.D. No. 15-15821) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The mine is in the No. 3 Elkhorn seam and ranges from 36 to 60 inches in height with ascending and descending grades.

3. Petitioner states that the use of canopies on the mine's electric face equipment would result in a diminution of safety because the canopies would limit the equipment operator's visibility and seating position resulting in cramped conditions, fatigue, and reduced safety.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson

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Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 28, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: October 25, 1988.

[FR Doc. 88-24918 Filed 10-27-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. 88-88-188-C]

Meadow River Co.; Petition for Modification of Application of Mandatory Safety Standard

Meadow River Company, Box 75, Lookout, West Virginia 25868 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Meadow River Mine (I.D. No. 46-03467) located in Fayette County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that as safety considerations permit, abandoned areas be examined on a weekly basis.

2. Petitioner states that due to adverse roof conditions an abandoned area of the mine cannot be safely traveled.

3. As an alternate method, petitioner proposes to establish evaluation check points to examine the abandoned area for hazardous conditions.

4. In support of this request, petitioner states that the proposed evaluation check points would be examined by a certified person and a record of each examination would be recorded in an approved book.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 28, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: October 20, 1988.

[FR Doc. 88-24919 Filed 10-27-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. 88-88-186-C]

W&D Coal Co., Inc; Petition for Modification of Application of Mandatory Safety Standard

W&D Coal Company, Inc., P.O. Box 82, Artemus, Kentucky 40903 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 2 (I.D. No. 15-16369) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on electric face cutting equipment, continuous miners, longwall face equipment and loading machines. The monitor is required to be kept operative and properly maintaned and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30–40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand-held continuous oxygen and methane monitors instead of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor would be equipped with a hand-held continuous monitoring methane and oxygen detector and all persons would be trained in the use of the detector;

(b) Prior to allowing the coal loading tractor in the face area, a gas test would be performed to determine the methane concentration in the atmosphere. When the elapsed time between trips does not exceed 20 minutes, the air quality would be monitored continuously after each trip. This would provide continuous monitoring of the mine atmosphere for methane to assure the detection of any methane buildup between trips;

(c) If one percent methane is detected, the operator would manually deenergize the battery tractor immediately. Production would cease and would not resume until the methane level is lower than one percent;

(d) A spare continuous monitor would be available to assure that all coal hauling tractors would be equipped with a continuous monitor;

(e) Each monitor would be removed from the mine at the end of the shift, and would be inspected and charged by a qualified person. The monitor would also be calibrated monthly; and

(f) No alterations or modifications would be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 28, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: October 20, 1988.

[FR Doc. 88-24920 Filed 10-27-88; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

Wyoming State Standards; Approval

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Approval of Wyoming standard: Multi-piece rim and single-piece rim wheels.

SUMMARY: This notice approves Wyoming's standard for Multi-Piece Rim and Single-Piece Rim Wheels, submitted on April 10, 1984, in response to a Federal program change under 29 CFR 1953.21. Wyoming's standard for Multi-Piece Rim and Single-piece Rim Wheels is substantively different from the Federal Occupational Safety and Health Administration (OSHA) standard found at 29 CFR 1910.177. The State standard, which applies to all industries except construction, is broader in scope than the Federal standard, which does not apply to agriculture, construction, or maritime. Where a State standard adopted pursuant to an OSHA-approved State plan differs significantly from a comparable Federal standard, the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (the Act) requires that the State standard must be "at least as effective" as the Federal standard. In addition, if a different standard is applicable to a product distributed or used in interstate commerce, it must be required by compelling local conditions and not pose any undue burden on interstate commerce.

On July 15, 1988, OSHA published a Federal Register notice (53 FR 26797) requesting public comment on both the "at least as effective" criterion as well as the "product clause test" in section 18(c)(2) of the Act. This notice invited interested persons to submit by August 15, 1988, written comments and views regarding the Wyoming standard and whether it should be approved by the Assistant Secretary. In response to this notice, OSHA did not receive any comments.

EFFECTIVE DATE: October 28, 1988.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, Room N3647, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 523–8148.

SUPPLEMENTARY INFORMATION:

A. Background

The requirements for adoption and enforcement of safety and health standards by a State with a State plan approved under section 18(b) of the Act are set forth in section 18(c)(2) of the Act and in 29 CFR Part 1902, 29 CFR 1952.7, and 29 CFR 1954.21, .22, and .23. OSHA regulations (29 CFR 1953.23(a)(1)) require that States respond to the adoption of new or revision permanent Federal standards by State promulgation of comparable standards within six months of OSHA publication in the Federal Register. A 30-day response time is required for State adoption of a standard comparable to a Federal emergency temporary standard (29 CFR 1953.22(a)(1). Newly adopted State standards or revisions to standards must be submitted for OSHA review and approval under procedures set forth in 29 CFR Part 1953, but are enforceable by the State prior to Federal review and approval. Section 18(c)(2) of the Act provides that State standards must be at least as effective as their Federal counterparts, and that if State standards which are not identical to Federal standards are applicable to products which are distributed or used in interstate commerce, such standards must be required by compelling local conditions and must not unduly burden interstate commerce. (This latter requirement is commonly referred to as the "product clause.")

On May 3, 1974, notice was published in the Federal Register (39 FR 15394) of the approval of the Wyoming State plan and the adoption of Subpart BB to Part 1952 containing the decision. A determination of final approval was made under section 18(e) of the Act on June 27, 1985 (50 FR 28770). The Wyoming State plan provides for the adoption of State standards in the following manner.

The Wyoming Occupational Health and Safety Department either proposes to adopt Federal standards or drafts such standards as it considers necessary after agency review and research and consultation with other persons knowledgeable in the specific field for which the standards are being formulated. The standards are submitted to the Wyoming Occupational Health and Safety Commission for its approval. The Wyoming plan provides for adoption of a standard as a State standard after public notice and hearing are published in accord with the Wyoming Administrative Procedure Act, and Federal OSHA rule-making requirements.

The Federal standard for Multi-Piece Rim and Single-Piece Rim Wheels was promulgated on February 3, 1984 (49 FR 4338). After public input, the Wyoming Health and Safety Commission adopted a standard for Multi-Piece Rim and Single-Piece Rim Wheels on May 18, 1984. The standard became effective on July 27, 1984. By letter dated April 10, 1984, with attachments, from Donald D. Owsley, former Administrator, Wyoming Occupational Health and Safety Department, to Byron Chadwick, OSHA Regional Administrator, the State submitted the standard (Safety rules and regulations for General Industry as required by Wyoming Statute 1977, section 27–11–105 (a)(viii)) and incorporated the revision as part of its occupational health and safety plan.

B. Public Participation

A Federal Register notice requesting public comment on both the "at least as effective" criterion as well as the "product clause test" of section 18(c)(2) of the Act was published on July 15, 1988 (53 FR 26797). This notice invited interested persons to submit by August 15, 1988, written comments and views regarding the standard for Wyoming Multi-Piece Rim and Single-Piece Rim Wheels and whether it should be approved by the Assistant Secretary. In addition, comments were specifically sought on whether the standard is applicable to products which are distributed or used in interstate commerce, is required by compelling local conditions, and unduly burdens interstate commerce. In response to the July 15, 1988 Federal Register notice, OSHA received no comments.

C. Decision

Having reviewed the State submission and having received no objections to the approval of standard, OSHA has determined that:

(1) The Wyoming standard for multi-piece rim and single-piece rim wheels is at least as effective as the Federal standard.

(2) The record on this standard includes no evidence, developed by or submitted to OSHA, that the standard amendment is not in compliance with the "product clause test" of section 18(c)(2) of the Act. OSHA therefore approves the Wyoming standard for multi-piece rim and single-piece rim wheels.

D. Location of Supplement for Inspection and Copying

A copy of the Wyoming Standard on Multi-Piece Rim and Single-Piece Rim Wheels, along with approved State provisions for adoption of standard, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, U.S. Department of Labor, Room 1576, Federal Office Building, 1961 Stout Street, Denver, Colorado 80294; the Occupational Health and Safety Department, 604 East 25th Street, Cheyenne, Wyoming 82002; and Director, Federal-State Operations, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3700, 200 Constitution Avenue, NW., Washington, DC 20210.

Authority: Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR Part 1902, Secretary of Labor's Order No. 9–83 (48 FR 35736).

Signed this 21st day of October 1988, in Washington, DC.

John A. Pendergrass,

Assistant Secretary.

[FR Doc. 88-24942 Filed 10-27-88; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (88-91)]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

VOL 53 ISS 209 OC 28 1988 UMI

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC).

DATE AND TIME: November 17, 1988, 9 a.m. to 5 p.m.

ADDRESS: National Aeronautics and Space Administration, Room 226–A, Federal Office Building 10B, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Nathaniel B. Cohen, Code ADI–1, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–8766.

SUPPLEMENTARY INFORMATION: The NAC was established as an interdisciplinary group to advise senior management on the full range of NASA's programs, policies, and plans. The Council is chaired by Dr. John L. McLucas and is composed of 26 members. Standing committees containing additional members report to the Council and provide advice in the substantive areas of aeronautics, aerospace medicine, space science and applications, space systems and technology, space station, commercial programs, and history, as they relate to NASA's activities.

The meeting will be open to the public up to the seating capacity of the room, which is approximately 60 persons including Council members and other participants. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the participants.

Type of Meeting: Open.

Agenda:

November 17, 1988

9 a.m.—Introduction.
9:10 a.m.—Committee Reports.
10 a.m.—Space Station International Agreements.
11 a.m.—National Research Council Space Policy Study.
1 p.m.—Discussion.
5 p.m.—Adjourn.

October 24, 1988.

Philip D. Waller,

Director, General Management Division.

[FR Doc. 88–24927 Filed 10–27–88; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings: Design Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that meeting of the Design Arts Advisory Panel (Individuals Section) to the National Council on the Arts will be held on November 16–17, 1988, from 9:00 a.m.–5:30 p.m.; and on November 18, 1988, from 9:00 a.m.–5:00 p.m. in room 730 of the Nancy hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on November 18, from 2:30–5:00 p.m. The topics for discussion will include guidelines and policy issues.

The remaining sessions of this meeting on November 16 and 17 from 9:00 a.m.–5:30 p.m.; and on November 18 from 9:00 a.m.–2:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Mangement Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

October 24, 1988.

Yvonne M. Sabine,

Director Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88–24993 Filed 10–27–88; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–498]

Houston Lighting & Power Co.; Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operation License No. NPF–76, issued to the Houston Lighting & Power Company (the licensee), for operation of the South Texas Project, Unit 1, located in Matagorda County, Texas.

Identification of Proposed Action

The amendment would consist of changes to the Technical Specifications (TS) and would authorize an increase of the storage capacity of the spent fuel pool from 169 fuel assemblies to 1989 fuel assemblies.

The amendment to the TS is responsive to the licensee's application dated March 8, 1988 as supplemented March 28, 1988. The NRC staff has prepared an Environmental Assessment of the Proposed Action, "Environmental Assessment by the Office of Nuclear Reactor Regulation Relating to the Expansion of the Spent Fuel Pool, Facility Operating License No. NPF–76, Houston Lighting & Power Company, South Texas Project, Unit 1, Docket No. 50–498, dated October 18, 1988.

Summary of Environmental Assessment

The "Final Generic Environmental Impact Statement (FGEIS) on Handling and Storage of Spent Light Water Power Reactor Fuel" (NUREG–0575), Volumes 1–3, concluded that the environmental impact of interim storage of spent fuel was negligible and the cost of the various alternatives reflects the advantage of continued generation of nuclear power with the accompanying spent fuel storage. Because of the differences in design, the FGEIS recommended evaluating spent fuel pool expansions on a case-by-case basis.

For the South Texas Project, Unit 1, the expansion of the storage capacity of the spent fuel pool will not create any significant additional radiological effects or non-radiological environmental impacts.

The additional whole body dose that might be received by an individual at the site boundary is less than 0.1 mrem/year; the estimated dose to the population within an 80 kilometer radius is estimated to be less than 0.1 person-rem/year. These doses are small compared to the fluctuations in the annual dose this population receives from exposure to background radiation. The occupational radiation dose for the proposed operation of the expanded spent fuel pool is estimated to be less than three percent of the total annual occupational radiation exposure for this facility.

The only non-radiological impact affected by the SFP expansion is the waste heat rejected. The increase in total plant waste heat is less than 0.01%. There is no significant environmental impact attributed to the waste heat from the plant due to this very small increase.

Findings of No Significant Impact

The staff has reviewed the proposed spent fuel pool expansion to the facility relative to the requirements set forth in 10 CFR Part 51. Based on this assessment, the staff concludes that there are no significant radiological or non-radiological impacts associated with the proposed action and that the issuance of the proposed amendment to the license will have no significant impact on the quality of the human environment. Therefore, pursuant to 10 CFR 51.31, no environmental impact statement needs to be prepared for this action.

For further details with respect to this action, see (1) the application for amendment to the Technical Specifications dated March 8, 1988 as supplemented on March 28, 1988; and additional information provided by the licensee in letters dated August 9, 10, 19, 30 and September 21, 22, and 29, 1988, (2) the FGEIS on Handling and Storage of Spent Light Water Power Reactor Fuel (NUREG–0575), (3) the Final Environmental Statement for South Texas Project, Units 1 and 2, dated August 1986, and (4) the Environmental Assessment dated October 18, 1988.

These documents are available for public inspection at the Commission's Public Document Room 2120 L Street, NW., Washington, DC 20555 and at the Wharton Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488 and Austin Public Library, 810 Guadalupe Street, Austin, Texas 78701.

Dated at Rockville, Maryland, this 18th day of October 1988.

For the Nuclear Regulatory Commission.

Walter A. Paulson,

Acting Director, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–24957 Filed 10–27–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–206]

Southern California Edison Company; San Diego Gas and Electric Company; San Onofre Nuclear Generating Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR–13 issued to Southern California Edison Company, *et al.*, (the licensee), for operation of San Onofre Nuclear Generating Station, Unit No. 1, located in San Diego County, California.

Environmental Assessment

Identification of Proposed Action

The proposed amendment is a request to replace the core average burnup limit with a limit on moderator temperature coefficient, to incorporate more frequent correlation of excore axial offset, and revise the formula for incore axial offset.

The Need for the Proposed Action

The proposed amendment is required to allow reactor operation to be based directly on the limiting value of moderator temperature coefficient and facilitate closer surveillance of incore flux distribution.

Environmental Impacts of the Proposed Action

The proposed action would not involve a significant change in the probability or consequences of any accident previously evaluated, nor does it involve a new or different kind of accident. Consequently, any radiological releases resulting from an accident would not be significantly greater than previously determined. The proposed amendment does not otherwise affect routine radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendment. The Commission also concludes that the proposed action will not result in a significant increase in individual or cumulative occupational radiation exposure.

With regard to nonradiological impacts, the proposed amendment does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on July 6, 1988 (53 FR 25713). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action

Because the Commission has concluded that there are no significant environmental impacts associated with the proposed action, there is no need to examine alternatives to the proposed action.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Final Environmental Statement related to operation of San Onofre Nuclear Generating Station, Unit No. 1, dated October 1973.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request that supports the proposed amendment. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated August 31, 1987 which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 24th day of October 1988.

For the Nuclear Regulatory Commission.

George W. Knighton,

Director, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–24956 Filed 10–27–88; 8:45 am]

BILLING CODE 7590–01–M

VOL 53 ISS 209 OCT 28 1988 UMI

[Docket No. 50-263]

Northern States Power Co., Monticello Nuclear Generating Plant; Exemption

I

The Northern States Power Company (NSP, the licensee) is the holder of Facility Operating License No. DPR-22, which authorizes operation of the Monticello Nuclear Generating Plant (Monticello) at a steady-state power level not in excess of 1670 megawatts thermal. The plant is a boiling water reactor located at the licensee's site in Wright County, Minnesota. The license provides, among other things, that Monticello is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

The Code of Federal Regulations, 10 CFR 50.54(o), specifies that primary reactor containments for water-cooled power reactors shall comply with Appendix J, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors." Paragraph III.A.3 of Appendix J incorporates by reference the American National Standard ANSI N45.4–1972, "Leakage Rate Testing of Containment Structures for Nuclear Reactors." This standard requires that containment leakage rate calculations for containment integrated leakage rate tests (CILRTS) be performed using either the Point-to-Point method or Total Time method.

Further advances in leakage rate testing technology have provided improved test methods, including a newer method of evaluating test data called the Mass Point method. This Mass Point method was incorporated in a newer standard, ANSI/ANS–56.8–1981, "Containment System Leakage Testing Requirements" (revised 1987) and in fact has been accepted by the Commission's staff as an improved alternative method of calculating containment leakage rates. However, a strict interpretation of the specific wording of Appendix J, III.A.3, by referencing only the older ANSI standard, precludes use of the newer improved method, unless the licensees who wish to use this method receive an exemption from the Appendix J requirement of conforming to this provision of ANSI N45.4–1972.

III

By letter dated August 1, 1988, as supplemented by letter dated August 23, 1988, the licensee requested an exemption from 10 CFR Part 50, Appendix J, Paragraph III.A.3, which requires that all CILRTs be performed in accordance with ANSI N45.4–1972. ANSI N45.4–1972 requires that leakage rate calculations be performed using either the Total Time method or the Point-to-Point method.

The licensee indicated that since the issuance of ANSI N45.4–1972, a more accurate method of determining containment leakage rates, the Mass Point method, has been developed as described in ANSI/ANS–56.8. Therefore, the licensee has requested an exemption to allow the use of the Mass Point method for calculating containment leakage rates.

It has been recognized by the professional community that the Mass Point method is superior to the Point-to-Point and Total Time methods which are referenced in ANSI N45.4–1972 and endorsed by the present regulations. The Mass Point method calculates the air mass at a series of points in time, and plots it against time. A linear regression line is plotted through the mass-time points using a least squares fit. The slope of this line is divided by the intercept of this line, and the result is multiplied by an appropriate constant to obtain the calculated leakage rate.

The superiority of the Mass Point method becomes apparent when it is compared with the two other methods. In the Total Time method, a series of leakage rates are calculated on the basis of containment air mass differences between an initial data point and each individual data point thereafter, and an average of these leakage rates is then determined. If for any reason (e.g., instrument error, lack of temperature equilibrium, ingassing, or outgassing) the initial data point is not accurate, the results of the test will be affected. In the Point-to-Point method, the leak rates are based on the mass difference between each pair of consecutive data points, and these leakage rates are then averaged to yield a single leakage rate estimate. Mathematically, this can be shown to be the difference between the air mass at the beginning of the test and the air mass at the end of the test expressed as a percentage of the containment air mass. It follows from the above that the Point-to-Point method ignores any mass readings taken during the test and thus the leakage rate is calculated on the basis of the difference in mass between two measurements taken at the beginning and at the end of the test, which are 24 hours apart.

On February 29, 1988 (53 FR 5965), the Commission published a proposed amendment to Appendix J to explicitly permit the use of the Mass Point method, subject to certain conditions that have been accepted by the Commission's staff since approximately 1976, as well as to permit the use of the prior methods referenced in ANSI N45.4–1972.

In addition to the method of calculation, consideration of the length of the test should also be included in the overall program. In accordance with Section 7.6 of ANSI N45.4–1972, a test duration of less than 24 hours is only allowed if approved by the Commission, and the only currently approved methodology for such a test is contained in Bechtel Topical Report BN–TOP–1, Revision 1, "Testing Criteria for Integrated Leakage Rate Testing of Primary Containment Structures for Nuclear Power Plants," dated November 1, 1972. This approach only allows use of the Total Time method. Therefore, the Commission conditions the exemption to require a minimum test duration of 24 hours when the Mass Point method is used. By letter dated August 23, 1988, the licensee confirmed that a minimum test duration of 24 hours will be utilized when the Mass Point method is used.

In the August 1, 1988 letter, the licensee also submitted information to identify the special circumstances for granting this exemption for Monticello pursuant to 10 CFR 50.12. The purpose of Appendix J to 10 CFR Part 50 is to assure that containment leak-tight integrity can be verified periodically throughout the service lifetime in order to maintain containment leakage rate within the limited specified in the facility Technical Specifications. The underlying purpose of the rule, in specifying particular methods for calculating leakage rates, is to assure that accurate and conservative methods are used to assess the results of containment leakage rate tests. The Commission's staff has determined that the Mass Point method is an acceptable method for calculating containment leakage rates and satisfies the purpose of the rule.

Based on the above discussion, the licensee's proposed exemption from paragraph III.A.3 of Appendix J to allow use of the Mass Point method as requested in the submittal dated August 1, 1988, as revised by letter dated August 23, 1988, is acceptable, until such provision of Appendix J is modified. Thereafter, the licensee shall comply with the provisions of such rule. The exemption applies only to the method of calculating leakage rates (by use of the Mass Point method) and not to any other aspects of the tests.

IV.

Accordingly, the Commission has determined pursuant to 10 CFR 50.12(a)(1), that this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission has further determined that special circumstances, as set forth in 10 CFR 50.12(a)(2)(ii), are present justifying the exemption, namely that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. Accordingly, the Commission hereby grants an exemption as described in Section III above from Paragraph III.A.3 of Appendix J to the extent that the Mass Point method may be used for containment leakage rate calculations, providing it is used with a minimum test duration of 24 hours. The exemption is granted until such provision of Appendix J is modified. Thereafter, the licensee shall comply with the provisions of such rule. The exemption applies only to the method of calculating leakage rate (using the Mass Point method) and not to any other aspects of the tests.

Pursuant to 10 CFR 51.32, the Commission has determined that granting of this exemption will not have a significant effect on the quality of the human environment (October 4, 1988, 53 FR 38994).

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

Dated at Rockville, Maryland this 21st day of October 1988.

[FR Doc. 88-24956 Filed 10-27-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 30-8004; ASLBP No. 88-562-01-SC]

Wrangler Laboratories, Larsen Laboratories, Orion Chemical Co. and John P. Larsen; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the Federal Register, 37 F.R. 28710 (1972) and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding:

Wrangler Laboratories, Larsen Laboratories, Orion Chemical Company and John P. Larsen

General License Authority of 10 CFR 40.22

E. A. 87–223

This Board is being established pursuant to the request of Mr. John P. Larsen for a hearing regarding an Order issued by the Deputy Executive Director for Regional Operations, dated August 15, 1988, entitled "Order Revoking Licenses."

An order designating the time and place of any hearing will be issued at a later date.

All correspondence, documents and other materials shall be filed in accordance with 10 CFR 2.701. The Board is comprised of the following Administrative Judges:

Administrative Judge Charles Bechhoefer, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Administrative Judge Jerry R. Kline, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Administrative Judge Frederick J. Shon, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

Issued at Bethesda, Maryland, this 24th day of October 1988.

[FR Doc. 88-24955 Filed 10-27-88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer—Kenneth Fogash (202) 272–21412.

Upon written request copy available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, DC 20549.

Revision.

Form 144.

File No. 270–112.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval amendments to Rule 144 (17 CFR 230.144), which will alter the manner in which the holding period for restricted securities is calculated. The amendments should reduce the number of filings on Form 144, which is a notification of resale of securities without registration in reliance on Rule 144. With respect to Form 144 approximately 34,818 respondents are affected and an estimated 2 burden hours are required per response. The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–6004 and Gary Waxman, Clearance Officer, Office of Management and Budget, Room 3228, New Executive Office Building, Washington, DC 20503.

October 21, 1988.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-24939 Filed 10-27-88; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review of Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, Washington, DC 20549.

New

Rule 144A

File No. 270–322.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval Rule 144A which provides a safe harbor exemption from the registration requirements of the Securities Act of 1933 for resale of securities to specified institutional investors. The Rule is not a form but would cause reductions in Forms S–1, S–2, S–3, S–4, S–11, S–18, F–1, F–2, F–3, F–4, 10–K, 10–Q, 8–K, 20–F and 6–K.

Direct general comments to Gary Waxman, Clearance Officer, Office of Management and Budget, Room 3228,

New Executive Office Building, Washington, DC 20503.

[illegible]
Secretary.

October 22, 1988.

[FR Doc. 88-25025 Filed 10-27-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16927; File No. 812-7045]

Application for Exemption; Acacia Capital Corp. et. al.

October 24, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: Acacia Capital Corporation ("Fund"), Acacia National Variable Life Insurance Account B, and certain life insurance companies and variable life insurance separate accounts (collectively, "Applicants").

Relevant 1940 Act Sections: Exemption requested under section 6(c) of the 1940 Act from sections 9(a), 13(a), 15(a), and 15(b) of the Act and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder.

Summary of Application: Applicants seek an order to the extent necessary to permit shares of the Fund to be sold to and held by variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies.

Filing Date: The application was filed August 11, 1988, and amended on October 11, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on November 17, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issue you contest. Serve the applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notifications of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Acacia Capital Corporation and Acacia National Variable Life Insurance Account B, 51 Louisiana Avenue, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Ulness, Attorney, at (202) 272-2026 or Clifford E. Kirsch, Special Counsel, at (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

Applicants' Representations

1. The Fund is a Maryland corporation registered under the 1940 Act as an open-end, diversified management investment company. The Fund currently consists of eight series. Additional series may be added in the future. Shares of the Fund currently are offered only to the separate accounts of the Acacia National Life Insurance Company, for the purpose of funding variable annuity and variable life contracts.

2. The Fund intends to offer shares of its existing and future series to separate accounts of any interested insurance company in order to fund variable annuity contracts and variable life insurance contracts (collectively referred to herein as "variable contracts"). Insurance companies whose separate account(s) now owns or, in the future, will own, shares of the Fund are referred to herein as "participating insurance companies." The use of a common management company as the underlying investment medium for both variable annuity and variable life insurance separate accounts is commonly referred to, and is referred to herein, as "mixed funding." The use of a common management company as the underlying investment medium for separate accounts of unaffiliated insurance companies is referred to herein as "shared funding."

3. Rule 6e-2(b)(15) precludes mixed and shared funding and Rule 6e-3(T)(b)(15) precludes shared funding. Applicants have requested exemptive relief to the extent necessary to permit shares of the Fund to be sold for mixed funding and shared funding. Applicants propose that the requested relief extend to a class consisting of life insurers and variable life insurance separate accounts investing in the Fund (and principal underwriters and depositors of such accounts).

4. Applicants state that mixed and shared funding should benefit variable contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Applicants also state that granting the requested relief should result in an increased amount of assets available for investment by the Fund which in turn may benefit variable contract owners by promoting economies of scale, by permitting greater safety through greater diversification, or by making the addition of new series of the Fund more feasible. Applicants state that the Fund will not be managed to favor or disfavor any particular insurer or type of insurance product. Applicants believe that mixed and shared funding will have no adverse federal income tax consequences.

Disqualification

5. Section 9(a) of the 1940 Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in sections 9(a)(1) or (2). Rules 6e-2(b)(15) (i) and (ii), and 6e-3(T)(b)(15) (i) and (ii), provide exemptions from section 9(a) under certain circumstances, subject to limitations on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying management company.

6. The partial relief granted in Rules 6e-2(b)(15) and 6e-3(T)(b)(15) from the requirements of Section 9 in effect limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. The application states that it is unnecessary to apply section 9(a) to the many thousands of individuals in various unaffiliated insurance companies (or affiliated companies of participating insurance companies) that may utilize the Fund as the funding medium for variable contracts. The application states that there is no regulatory purpose in extending the monitoring requirements because of mixed or shared funding. Applicants state that the increased monitoring costs would reduce the net rates of return realized by contract owners.

7. The relief provided by Rule 6e-2(b)(15) (i) and (ii) and Rule 6e-3(T)(b)(15) (i) and (ii) is requested only for participating insurance companies and their affiliated persons who do not participate in management or administration of the Fund. Certain affiliated persons of Acacia National Life Insurance Company may participate in the management or administration of the Fund and the Fund does not request an exemption in regard to such persons.

Voting

8. The application states that the language of Rules 6e-2(b)(15)(iii) and 6e-3(1)(b)(15)(iii) assumes the existence of a pass-through voting requirement with respect to management investment company shares held by a separate account. Applicants state that pass-through voting privileges will be provided with respect to all variable contract owners so long as the Commission interprets the Act to require pass-through voting privileges for variable contract owners.

9. The application states that Rules 6e-2(b)(15)(iii) and 6e-3(T)(b)(iii) provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming the limitations on mixed and shared funding are observed. The application states that the rights of an insurance company or of a state insurance regulator to disregard contract owners' voting instructions are not inconsistent with mixed funding of different insurance products or shared funding by unaffiliated insurers.

Applicants' Conditions

Applicants have consented to the following conditions:

1. A majority of the Board of Directors of the Fund shall consist of persons who are not "interested persons" of the Fund, as defined by Section 2(a)(19) of the Act and the Rules thereunder and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any director or directors, then the operation of this condition shall be suspended (a) for a period of 45 days if the vacancy or vacancies may be filled by the Board of Directors; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. The Fund will comply with all provisions of the Act requiring voting by shareholders, and in particular the Fund will either provide for annual meetings or comply with Section 16(c) of the Act (although the Fund is not one of the trusts described in Section 16(c) of the Act) as well as with Sections 16(a) and, if and when applicable, 16(b). Further, the Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors and with whatever rules the Commission may promulgate with respect thereto.

3. The Board will monitor the Fund for the existence of any material irreconcilable conflict among the interests of the contract owners of all separate accounts investing in the Fund. An irreconcilable material conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any series are being managed; (e) a difference in voting instructions given by variable annuity contract owners and variable life insurance contract owners; or (f) a decision by an insurer to disregard the voting instructions of contract owners.

4. Participating insurance companies and the Fund's investment adviser, Calvert Asset Management Company ("Adviser"), will report any potential or existing conflicts to the Board of Directors of the Fund. Participating insurance companies and the Adviser will be responsible for assisting the Board in carrying out its responsibilities under these conditions, by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by each participating insurance company to inform the Board whenever contract owner voting instructions are disregarded. The responsibility to report such information and conflicts and to assist the Board will be a contractual obligation of all insurers investing in the Fund under their agreements governing participation in the Fund and such responsibilities will be carried out with a view only to the interests of the contract owners.

5. If it is determined by a majority of the Board of Directors of the Fund, or a majority of its disinterested directors, that a material irreconcilable conflict exists, the relevant insurance companies shall, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested directors), take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict, up to and including: (a) Withdrawing the assets allocable to some or all of the separate accounts from the Fund or any series and reinvesting such assets in a different investment medium, including another series of the Fund, or submitting the question whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (i.e., annuity contract owners, life insurance contract owners, or variable contract owners of one or more participating insurance companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; and (b) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of an insurer's decision to disregard contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, the insurer may be required, at the Fund's election, to withdraw its separate account's investment in the Fund and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of an irreconcilable material conflict and to bear the cost of such remedial action shall be a contractual obligation of all participating insurance companies under their agreements governing participation in the Fund and these responsibilities will be carried out with a view only to the interests of contract owners. For purposes of this condition 5, a majority of the disinterested members of the Board shall determine whether or not any proposed action adequately remedies any irreconcilable material conflict, but in no event will the Fund or the Adviser be required to establish a new funding medium for any variable contract. No participating insurance company shall be required by this condition 5 to establish a new funding medium for any variable contract if an offer to do so has been declined by vote of a majority of contract owners materially adversely affected by the irreconcilable material conflict.

6. The Board's determination of the existence of an irreconcilable material conflict and its implications shall be made known promptly to all participating insurance companies.

7. Participating insurance companies will provide pass-through voting privileges to all variable contract owners so long as the Commission continues to interpret the Act as requiring pass-through voting privileges for variable contract owners. Participating insurance companies shall be responsible for assuring that each of their separate accounts participating in the Fund calculates voting privileges in a manner consistent with other

participating insurance companies. The obligation to calculate voting privileges in a manner consistent with all other separate accounts investing in the Fund shall be a contractual obligation of all participating insurance companies under their agreements governing participation in the Fund. Participating insurance companies will vote shares, for which they have not received voting instructions as well as shares attributable to them in the same proportion as they vote shares for which they have received instructions.

8. The Fund will notify all participating insurance companies that prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate.

9. If and to the extent that Rule 6e-2 and Rule 6e-3(T) are amended, or Rule 6e-3 is adopted, to provide exemptive relief from any provision of the Act or the rules promulgated thereunder with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested in this Application, then the Fund and/or the participating insurance companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e-2 and 6e-3(T), as amended, and Rule 6e-3, as adopted, to the extent such rules are applicable.

10. All reports received by the Board of Directors of potential or existing conflicts, and all Board action with regard to determining the existence of a conflict, notifying participating insurance companies of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

For the Commission, by the Division Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-25007 Filed 10-27-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

International Standards on the Transport of Dangerous Goods; Public Meeting

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that RSPA and the International Regulations Committee (INTEREC) of the Hazardous Materials Advisory Council will jointly conduct a public meeting to discuss agenda items of the upcoming 15th Session of the United Nations Committee of Experts on the Transport of Dangerous Goods.

DATE: November 28, 1988, 9:30 a.m.

ADDRESS: Room 3442, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Richard C. Barlow, Acting International Standards Coordinator, Office of Hazardous Materials Transportation, Department of Transportation, Washington, DC 20590; (202) 366-0656.

SUPPLEMENTARY INFORMATION: This meeting will be conducted jointly with the International Regulations Committee (INTEREC) of the Hazardous Materials Advisory Council to discuss items that will be presented to the United Nations Committee of Experts on the Transport of Dangerous Goods during the 15th Session to be held December 5 to 14, 1988. Topics to be covered include: (1) Final approval of revisions to the Recommendations on the Transport of Dangerous Goods, Chapter 10; (2) Special Recommendations on Packing for Class 1; (3) adoption of a new Test Series 7 for explosives; (4) adoption of a new Division 1.6 and Compatibility Group N for explosives; (5) adoption of the definition and classification of aerosols; (6) revision of the classification and grouping criteria for gases; (7) adoption of a generic classification system for organic peroxides; and (8) other proposals for amendments to the United Nations Recommendations on the Transport of Dangerous Goods.

Issued in Washington, DC, on October, 21, 1988.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 88-25030 Filed 10-27-88; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: October 24, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Alcohol, Tobacco and Firearms

OMB Number: 1512-0182.

Form Number: ATF REC 5110/02—ATF F 5110.1L

Type of Review: Extension.

Title: Distilled Spirits Plants Warehousing Records and Reports.

Description: The information collected is used to account for proprietor's tax liability, adequacy of bond coverage and protection of the revenue. The information also provides data to analyze trends, audit plant operations, monitor industry activities and compliance to provide for an efficient allocation of field personnel plus provide for economic analysis.

Respondents: Businesses or other for-profit, and Small businesses or organizations.

Estimated Number of Respondents: 234.

Estimated Burden Hours Per Response: 2 hours.

Frequency of Response: Monthly.

Estimated Total Reporting Burden: 5,616 hours.

Clearance Officer: Robert Masarsky, (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-24924 Filed 10-27-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: October 21, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0169.

Form Number: IRS Forms 4461, 4461-A and 4461-B.

Type of Review: Revision.

Title: 1. Application for Approval of Master or Prototype Defined Benefit Plan. 2. Application for Approval of Master or Prototype Defined Contribution Plan. 3. Application for Approval of Master or Prototype Plan Mass Submitter Adopting Sponsor.

Description: IRS uses these forms to determine from the information submitted whether the applicant plan qualifies under section 401(a) of the Internal Revenue Code for plan approval. The application also is used to determine if the related trust qualifies for tax exempt status under Code section 501(a).

Respondents: Businesses or other for-profit, and Small businesses or organizations.

Estimated Number of Respondents: 1,200.

Estimated Burden Hours Per Response:

	4461	4461-A	4461-B
Recordkeeping	40 hrs/53 mins	42 hrs/34 mins	6 hrs/42 mi.
Learning about the law or the form	4 hrs/58 mins	4 hrs/32 mins	1 hr/11 mins.
Preparing the form	6 hrs/30 mins	6 hrs/22 mins	2 hrs/14 ms.
Copying, assembling, and sending the form to IRS	18 mins.	16 mins.	18 mins.

Frequency of Response: On occasion (The forms are normally filed only once.)

Estimated Total Reporting Burden: 125,828 hours.

Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Department Reports Management Officer.

[FR Doc. 88-24925 Filed 10-27-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: October 24, 1988.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0173.

Form Number: IRS Form 4563.

Type of Review: Resubmission.

Title: Exclusion for Income for Residents of American Samoa.

Description: Used by bona fide residents of American Samoa whose income is from sources within American Samoa, Guam, and the Northern Mariana Islands to the extent specified in Internal Revenue Code section 931. This information is used by the Service to determine if an individual is eligible to exclude possession source income.

Respondents: Individuals or households.

Estimated Number of Respondents: 1153.

Estimated Burden Hours Per Response:

Recordkeeping—33 minutes

Learning about the law or the form—5 minutes

Preparing the form—25 minutes

Copying, assembling, and sending the form to IRS—17 minutes

Frequency of Response: Annually.

Estimated Total Reporting Burden: 135 hours.

Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 88-24926 Filed 10-27-88; 8:45 am]

BILLING CODE 4810-25-M

Customs Service

[T.D. 88-87]

Rescinded Notice of Broker Permit Revocation, George S. Bush & Co., Inc., Portland, OR

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Notice is hereby given that George S. Bush & Co., Inc., of Portland, Oregon was erroneously included on the list of Customs broker permits revoked by action of law which was published in the **Federal Register** on July 11, 1988 (53 FR 27126), and in the Customs Bulletin on July 20, 1988, Vol. 22, No. 29 as T.D. 88-30.

To the best of our knowledge George S. Bush & Co., Inc., (Portland), has never possessed a broker permit for San Francisco, and has never conducted Customs business in that district.

Dated: October 13, 1988.

Victor G. Weems,

Director, Office of Trade Operations.

[FR Doc. 88-24968 Filed 10-27-88; 8:45 am]

BILLING CODE 4820-02-M

Office of the Secretary

[Dept. Cir.—Public Debt Series—No. 27-88]

Treasury Notes of October 31, 1990, Series AO-1990

Washington, October 20, 1988.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites

tenders for approximately $9,000,000,000 of United States securities, designated Treasury Notes of October 31, 1990, Series AG-1990 (CUSIP No. 9128227 WU 2), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated October 31, 1988, and will accrue interest from that date, payable on a semiannual basis on April 30, 1989, and each subsequent 6 months on October 31 and April 30 through the date that the principal becomes payable. They will mature October 31, 1990, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239-1500, prior to 1:00 p.m., Eastern Daylight Saving time, Wednesday, October 26, 1988. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, October 25, 1988, and received no later than Monday, October 31, 1988.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public intrest. The Secretary's action under this section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Monday, October 31, 1988. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, October 27, 1988. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Monday, October 31, 1988. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 88-25031 Filed 10-26-88; 10:40 am]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 209
Friday, October 28, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 53, page 41646, October 24, 1988.

PREVIOUSLY ANNOUNCED DATE OF MEETING: October 28, 1988.

CHANGES: Date of meeting changed to October 28, 1988 and previous item 4 concerning the compliance status report is deleted. Outside participants added to item 3. Agenda as revised listed below.

TIME AND DATE: 10:00 a.m., Friday, October 28, 1988.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

Open to the Public

1. ATV Voluntary Standard

The Commission will consider the proposed voluntary standard for all-terrain vehicles developed under the provisions of the Consent Decrees in *United States v. American Honda Motor Co., Inc., et al.*, Civil Action No. 87-1852.

2. Lawn Darts Final Rule

The Commission will consider a draft Federal Register notice banning lawn darts capable of causing skull puncture injury. The rule was proposed in the Federal Register on July 29, 1988 (53 FR 28557).

3. Tremolite in Limestone Products, HP 87-1

The staff will brief the Commission on Petition HP 87-1 from Dr. Mark Germine concerning tremolite in limestone products. In addition the Commission voted to permit presentations by Dr. Mark Germine, Dr. Jerrold Abraham, Dr. Lynn Silver, and Mr. William Kitchen.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301-492-6800.

Sheldon D. Butts,
Deputy Secretary.
October 26, 1988.

[FR Doc. 88-25077 Filed 10-26-88; 2:30 pm]
BILLING CODE 6355-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 41645, Monday, October 24, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (eastern time) Monday, October 31, 1988.

CHANGE IN THE MEETING: The Closed Session of the meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer, Executive Secretariat, [202] 0746.

Frances M. Hart,
Executive Officer, Executive Secretariat.
[FR Doc. 88-25051 Filed 10-26-88; 1:43 pm]
BILLING CODE 6750-06-M

INTER-AMERICAN FOUNDATION BOARD

Inter-American Foundation Board Meeting—Cancellation

TIME AND DATE: October 31, 1988, 8:00-9:30 p.m.

PLACE: 1515 Wilson Boulevard, Fifth Floor, Rosslyn, Virginia, 22209.

The Inter-American Foundation's Board meeting scheduled for October 31, 1988 has been cancelled. No new date has been set.

CONTACT PERSON FOR MORE INFORMATION: Charles M. Berk, Secretary to the Board of Directors, (703) 841-3812.

Date: October 25, 1988.
Charles M. Berk,
Sunshine Act Officer.
[FR Doc. 88-25013 Filed 10-25-88; 4:28 pm]
BILLING CODE 7025-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 53, No. 203/Thursday, October 20, 1988/41277.

PREVIOUSLY ANNOUNCED TIME AND DATE: 9:30 a.m., Tuesday, October 25, 1988.

CHANGE IN MEETING: A majority of the Board Members determined by recorded vote that the business of the Board required revising the agenda of this meeting and that no earlier announcement was possible. Item two (recommendation to FAA re Review of Airline Sick Leave Policies) has been added. This item is to be discussed in the open part of the meeting.

FOR MORE INFORMATION, CONTACT: Bea Hardesty, (202) 382-6525.

Bea Hardesty,
Federal Register Liaison Officer.
October 25, 1988.
[FR Doc. 88-25061 Filed 10-26-88; 1:44 pm]
BILLING CODE 7533-01-M

Corrections

Federal Register
Vol. 53, No. 209
Friday, October 28, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP88-4-000]

Tennessee Gas Pipeline Co.; Filing

Correction

In notice document 88-24635 appearing on page 43012 in the issue of Tuesday, October 25, 1988, in the third column, the docket number should appear as set forth above.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3333-4]

Standards of Performance for New Stationary Sources; Magnetic Tape Manufacturing Industry

Correction

In rule document 88-22483 beginning on page 38892 in the issue of Monday, October 3, 1988, make the following corrections:

§ 60.711 [Corrected]

1. On page 38916, in § 60.711(c), in table 1B, in the first column, under "Compliance provisions" in the fifth line, "(c)(2)" should read "(b)(2)".

2. On page 38917, in § 60.711(c), in table 1B, in the fourth column, in the first entry, "(1)" should read "(i)"; and in the fifth column, in the fifth entry, after "(h)," insert "(i)".

§ 60.713 [Corrected]

3. On page 38916, in the second column, in § 60.713(a)(2), in the seventh line, "ventilated" was misspelled.

4. On page 28919, in the first column, in § 60.713(b)(1)(iii)(C), the ninth line should read "within ±2.0 percent;".

5. On page 38921, in the first column, in § 60.713(b)(9)(ii), in the third line, "record" should read "records".

§ 60.715 [Corrected]

6. On page 38922, in the second column, in § 60.715(d), in the second line, "volumetric" was misspelled.

§ 60.717 [Corrected]

7. On page 38923, in the third column, in § 60.717(f), in the fourth line, after "operation" insert "is".

8. On the same page, in the same column, in § 60.717((f)(1), in the second line, "§ 670.7" should read "§ 60.7".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

Finding on Foreign Social Insurance or Pension System; Zaire

Correction

In notice document 88-22292 appearing on page 38066 in the issue of Thursday, September 29, 1988, make the following correction:

In the second column, in the fifth line, after "are", insert "not".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 614

Unemployment Compensation for Ex-Servicemembers

Correction

In rule document 88-23734 beginning on page 40550 in the issue of Monday, October 17, 1988, make the following corrections:

1. On page 40551, in the third column, in the 17th and the 21st lines, "nonmonetary" was misspelled.

2. On page 40552, in the first column, in the 13th line, "used" should read "use".

§ 614.1 [Corrected]

3. On page 40553, in the third column, in § 614.1(d)(2)(ii), in the 12th line, "adhere" should read "adhered".

§ 614.2 [Corrected]

4. On page 40554, in the first column, in § 614.2(g)(1), in the second line, "included" should read "including"; and in the third line, "reserved" should read "reserve".

Appendix A—[Corrected]

5. On page 40558, in the third column, in the second complete paragraph, in the third line, "services" was misspelled.

Appendix B—[Corrected]

6. On page 40557, in the third column, in the first line, "completed" should read "complete".

7. On page 40558, in the third column, the last paragraph should be designated "h".

BILLING CODE 1505-01-D

PENSION BENEFIT GUARANTY CORPORATION

Request for Approval of Special Withdrawal Liability Rules; Steamship Trade Association of Baltimore, Inc.—International Longshoremen's Association Pension Plan

Correction

In notice document 88-23988 beginning on page 40805 in the issue of Tuesday, October 18, 1988, make the following corrections:

On page 40807, in the table, in the first column, in the fifth line, after "1. Employer contributions", the footnote reference should be removed; and on the same line, in the second column, the third entry should read "13,615 [2]".

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-26180]

Rescission of Rules Under the Securities Exchange Act of 1934

Correction

FR Doc. 88-24230, beginning on page 41205 in the issue of Thursday, October 20, 1988, concerning the elimination of obsolete rules, was published in the "Proposed Rules" section of the issue. It should have appeared in the "Rules" section.

BILLING CODE 1505-01-D

VOL 53 ISS 209 OCT 28 1988 UMI

federal register

Friday
October 28, 1988

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 922

National Marine Sanctuary Program Regulations; Final Rule

VOL 53 ISS 209 OCT 28 1988 UMI

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 80468-7304]

National Marine Sanctuary Program Regulations

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: These final regulations implement the provisions of the Marine Sanctuaries Amendments of 1984, Title I of Pub. L. 98-498 (16 U.S.C. 1431 *et seq.*) (the Act or the Amendments). While the Amendments build upon the foundation established in the previous Marine Sanctuary Program regulations (48 FR 24296 (1983)), revisions are necessary to reflect procedural and some policy changes of the Amendments.

DATE: These regulations are effective November 28, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph A. Uravitch, Chief, Marine and Estuarine Management Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1825 Connecticut Avenue, NW., Suite 714, Washington, DC 20235 at 202/673-5122.

SUPPLEMENTARY INFORMATION:

I. Authority

This notice of final rulemaking is issued under the authority of Title III of the Marine Protection, Research, and Sanctuaries Act, 16 U.S.C. 1431 *et seq.*

II. General Background

On October 19, 1984, President Reagan approved Pub. L. No. 98-498; Title I of Pub. L. No. 98-498, referred to as the Marine Sanctuaries Amendments of 1984 (the Act or the Amendments), authorizes appropriations through FY 1988 for, and makes revisions to, Title III of the Marine Protection, Research, and Sanctuaries Act, 16 U.S.C. 1431 *et seq.* The National Marine Sanctuary Program is administered by the Marine and Estuarine Management Division, National Oceanic and Atmospheric Administration, Department of Commerce. The Amendments set out the purposes and policies of the National Marine Sanctuary Program, establish specific criteria and procedures for designating and implementing National Marine Sanctuaries, and provide for greater participation by the Congress, the Regional Fishery Management Councils (established by the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*), and other affected agencies or persons. The designation standards set forth in the Amendments basically track the site identification and selection standards and active candidate criteria used to identify potential National Marine Sanctuaries, and evaluate sites for designation.

On June 12, 1986, NOAA published proposed regulations for continued implementation of the National Marine Sanctuary Program, pursuant to the Act (51 FR 21389). Written comments on the proposed regulations were accepted until August 11, 1986. These comments have been considered in preparing these final regulations.

The final regulations set forth the Program's mission and goals, amend procedures for revising the Site Evaluation List (SEL), set forth site identification and selection criteria for including areas of the marine environment possessing historical resources of special national significance on the SEL, revise the sanctuary designation standards and process, and initiate a consultation process with Congress and Regional Fishery Management Councils (when regulations on fisheries activities are affected) prior to commencing the environmental review process required pursuant to the National Environmental Policy Act. These regulations supersede the previous regulations for the program (48 FR 24296 (1983)).

III. Refinements to the Regulations for the National Marine Sanctuary Program

The proposed regulations solicited comments on procedural and policy revisions required to implement the Amendments. These modifications and how they are reflected in the final regulations are discussed below.

A. Findings, Purpose, and Policies

The Amendments add findings which recognize that certain areas of the marine environment possess "conservation, recreational, ecological, historical, research, educational or esthetic qualities which give them special national significance" (Section 301(a)). This differs from the original Act, which provided, in section 302(a), that National Marine Sanctuaries should be designated only for their "conservation, recreational, ecological, or esthetic values" (Section 302, Pub. L. No. 92-532, codified at 16 U.S.C. 1432(a) (1983)). To reflect the addition of historical qualities, NOAA's working list of potential sites is being amended (See IV.A. of the Preamble and Subpart B of the regulations). Consistent with the Amendments purpose and policies, the National Marine Sanctuary Program provides for comprehensive management and conservation, including the support and coordination of scientific research involving the resources of marine sanctuaries, stresses efforts to enhance public awareness, understanding, appreciation, and wise use of the marine environment; and encourages public and private uses of such resources consistent with the Program's primary objective to protect them (Section 301(b) (2)-(5)). These policies are reflected in the Program's mission and goals set forth at § 922.1.

B. Designation Standards

The Secretary of Commerce may designate a discrete area of the "marine environment" as a National Marine Sanctuary, if he finds that:

(a) the area is of special national significance due to its resource or human-use values;

(b) Existing state and Federal authorities are inadequate to ensure coordinated and comprehensive management of the area, including resource protection, scientific research and public education;

(c) Designation of the area as a National Marine Sanctuary will facilitate the objectives in subparagraph (b); and

(d) The area is of a size and nature that will permit comprehensive and coordinated conservation and management.

(Section 303(a)).

These findings are reflected at § 922.33(a) of the final regulations.

C. Consultation

In making the above findings, the Secretary must consult with the House Committee on Merchant Marine and Fisheries; the Senate Committee on Commerce, Science, and Transportation; the Secretaries of State, Defense, Transportation, and the Interior, the Administrator of the Environmental Protection Agency, and the heads of other interested Federal agencies; the responsible officials or relevant agency heads of the appropriate state or local government entities, including the coastal zone management agencies, that will or are likely to be affected by the establishment of the area as a National Marine Sanctuary; the appropriate officials of any Regional Fishery Management Council established by section 302 of the Magnuson Act (16 U.S.C. 1852) that may be affected by a proposed designation; and other interested persons. The consultation process for a potential designation is set forth in the final regulations at § 922.31.

Further, the Secretary of Commerce prepares, as part of an environmental impact statement, a resource assessment report regarding the commercial and recreational uses in the area proposed for designation. The Secretary must consult with the Secretary of the Interior with respect to any uses in the area subject to the primary jurisdiction of the Department of the Interior (See section 303(b) (2) and (3)). The requirement for preparation of the resource assessment report is set forth in the final regulations at § 922.31(b).

D. Fishery Regulations

Where fishery regulations are necessary, the Secretary shall provide the appropriate regional Fishery Management Council the opportunity to recommend to the Secretary draft sanctuary fishery regulations. This requirement is set forth in the final regulations at § 922.31(f).

E. Designation

A proposed designation of a National Marine Sanctuary becomes effective after the close of a review period of forty-five (45) days of continuous session of Congress, commencing with the publication of a notice of the designation and final implementing regulations in the Federal Register, unless:

(1) The designation or any of its terms is disapproved by enactment of a joint resolution of disapproval by Congress; or

(2) In the case of a proposed sanctuary located partially or entirely within state boundaries, the Governor of the affected state objects to the designation or any of its terms.

If the Secretary determines that disapproval of or objection to a proposed designation will affect the designation in a manner such that sanctuary goals and objectives cannot be fulfilled, the Secretary may withdraw the designation. Section 922.34 governs designation.

F. Access and Valid Rights

Section 304(c) of the Act provides that the Secretary may not terminate leases, permits, and rights of subsistence use or access either in existence on October 19, 1984 (the date of enactment of Pub. L. No. 98-498) for then existing National Marine Sanctuaries, or in existence on the date new national marine sanctuaries are designated pursuant to the Amendments. However, section 304(c) also provides that the exercise of such leases, permits or rights is "subject to regulation by the Secretary consistent with the purposes for which the sanctuary is designated." The provisions of section 304(c) are set forth at § 922.11 of the final regulations.

G. Research and Education

The Amendments, at section 306, specify that the Secretary may conduct research and education programs to carry out the purposes of the Act. Research and education are specifically discussed at § 992.40(a) of the final regulations.

IV. Sanctuary Designation Process

The revisions contained in the Amendments, discussed above, make several modifications to the sanctuary designation process. This section describes the revised designation process, which is depicted in summary form in Figure 1.

A. Site Evaluation List

To identify sites for future consideration as national marine sanctuaries, NOAA instituted a site evaluation process in 1982; this process culminated in a list of sites, the SEL, which was published in 1983 (48 FR 35568). As initially established, the SEL consisted of twenty-nine (29) natural resource sites. The SEL serves as NOAA's working list for possible national marine sanctuary designation and is discussed in subpart B of the regulations. The qualities expressed in the original Act were used in establishing the SEL; thus, the SEL was focused on sites with conservation, recreational, ecological, or esthetic qualities.

While the Amendments add historical, research, and educational qualities, sites possessing research and educational qualities were solicited and considered in the original SEL process. Research and educational qualities are inherent in sites possessing significant conservation, recreational, ecological, and esthetic values; consequently, sites possessing research and educational qualities of special national significance are included on the current SEL. Sites of nationally significant historical quality were not, however, considered in the SEL process; the evaluation teams did not include maritime archeologists or historians or any person schooled in submerged cultural resources. There are no historical sites on the SEL. Thus, the SEL list now requires revision to include discrete marine areas possessing nationally significant historical qualities for possible conservation and management as provided by the Act. Provisions for the revision of the SEL are set forth at § 922.22. In these regulations, NOAA's use of the term "historical" comports with the Act in encompassing cultural, archeological, and paleontological elements.

B. Designation of National Marine Sanctuaries

Selection of a site from the SEL as an active candidate represents the second phase in evaluating a site for potential designation; it begins the environmental impact statement process. Notice of selection as an active candidate and intent to prepare a draft environmental impact statement (DEIS) is placed in the Federal Register. At any time a site can be dropped from consideration if it is determined that a site does not meet the standard and criteria set forth in the Act.

After selection as an active candidate, a draft management plan (including necessary regulations) is prepared along with a draft environmental impact statement (DEIS). The DEIS evaluates the impacts of sanctuary designation and management plan implementation. During the preparation of the DEIS, a resource assessment report is prepared documenting present and potential uses of the area, including commercial and recreational fishing, research and education, minerals and energy development, subsistence uses, and other commercial or recreational uses. In consultation with the Secretary of the Interior, a resource assessment section is prepared regarding any commercial or recreational resource uses in the area under consideration that are subject to the primary jurisdiction of the Department of the Interior (Section 303(b)(3)). After the DEIS and draft plan are prepared, a notice of proposed designation is published in the Federal Register and media serving communities which may be affected by the designation. On the same day that the Federal Register notice is issued, a detailed prospectus on the designation proposal (which includes the DEIS and draft plan), as discussed in § 922.32(a), is sent to the House Merchant Marine and Fisheries Committee and the Senate Commerce, Science, and Transportation Committee for review for a forty-five (45) day period of continuous session.

After preparation of a final EIS and final management plan, including proposed final regulations, the Secretary of Commerce must determine whether to designate the area as a National Marine Sanctuary. Section 922.33(a) of the regulations sets forth the factors considered by the Secretary in making this determination. Designated sanctuaries should be illustrative of the nation's marine areas and allow for coordinated and comprehensive management. Generally, decisions to

designate areas as National Marine Sanctuaries are based on an evaluation of the area's natural and historical resource and human-use values; the effects of present and future uses on these values and the effects of designation on these uses; the adequacy of existing state and Federal management of the area; whether designation will ensure comprehensive management; the area's size and manageability, (e.g., it is anticipated that the maximum size will not exceed that of the largest existing national marine sanctuary, the Channel Islands National Marine Sanctuary (1252 square nautical miles)); the fiscal capability to designate and operate any given area; and the public benefits to be derived from designation.

Notice of designation is published in the **Federal Register**. The designation becomes effective after the close of a second Congressional review period (and Governor's review for sites including state waters) of forty-five (45) days of continuous session of Congress, dating from the **Federal Register** notice of designation (See § 922.34).

If the terms of the designation are found acceptable by Congress, and the Governor(s), for sites including any state waters, the Secretary will implement the management plan, including surveillance and enforcement activities, and such research and education programs as are necessary and reasonable to carry out the purposes and policies of the Act.

FIGURE 1.—SANCTUARY DESIGNATION PROCESS (SUMMARY)

Process stage	Action	Notice
Site Evaluation List (SEL) Established.	Final SEL	FR Notice.
Selection as Active Candidate.	Site selected from SEL as "Active Candidate"	FR Notice; Public Notice of Selection.
Proposed Designation (STARTS NEPA PROCESS).	Development of Designation Materials	Notice of Intent to Prepare DEIS.
	Regional Scoping Meeting	FR Notice; Public Notice.
	Consultations with Congress, affected Regional Fishery Management Councils, states, Federal agencies, and other interested persons; preparation of DEIS, Draft Management Plan, Proposed Regulations, and Resource Assessment Report.	
	Prospectus to Congress (including Draft EIS and Draft Management Plan, proposed regulations for review under Section 304 of the Act).	FR Notice (including proposed regulations and summary of Draft Management Plan published concurrently with Draft EIS availability of Prospectus to Congress); Public Notice.
	Public Hearing	FR Notice; Public Notice.
	Prepare Final EIS/Management Plan and Designation Determination and Findings.	Occurs within three years of selection as Active Candidate.
Designation	If site meets criteria, Secretary then designates the national marine sanctuary.	FR Notice (Designation, final regulations; availability of Final EIS/Final Management Plan Notice to Congress (304(b)).
	Designation effective after 45-day period for Congressional and Gubernatorial Review under Section 304(b) of the Act.	

V. Summary of Significant Comments on the Proposed Regulations and NOAA's Responses

NOAA received comments from five sources. Commenters included Federal and state agencies and representatives of the oil and gas industry. All comments received are on file at the Marine and Estuarine Management Division, Office of Ocean and Coastal Resource Management and are available at that office for review upon request. Each of the major issues raised by commenters has been summarized and NOAA's responses are provided under the relevant subheading in this section.

Section-by-Section Analysis

Subpart B—Site Evaluation List

Proposed § 922.20(c)—One reviewer suggested that the additional criteria—historical, research, and education—to be considered when selecting sites did not sufficiently address the unique attributes of urban estuarine areas. The reviewer also noted that the research and educational values of urban estuarine systems may not necessarily be recognized within the context of conservation, recreational, ecological or esthetic values.

Response: NOAA recognizes the importance of urban estuarine areas and their research and educational values and believes that these values are sufficiently represented by the designation standards set out in section 303(a) of the Act. However, as stated in § 922.1(c)(i), priority consideration will be given to offshore areas where there are no other existing special area protection mechanisms. The commenter should also consider State, local and city governments as well as the National Coastal Zone Management Program for protection of urban estuarine areas.

Proposed § 922.21(a)—One reviewer suggested that the proposed regulations were not consistent with established cultural resource procedures in that sites do not attain national significance until they have been designated National Historic Landmarks (NHL) and that under the proposed rules a site could be designated as a national marine sanctuary without being nationally significant, *i.e.*, designated as an NHL.

Response: In accordance with the Act, a site does not have to be designated an NHL or listed on the National Register to be considered nationally significant. In a cultural resource management context, SEL selection based on the criteria used for evaluating NHL eligibility conforms with existing cultural resource procedures in that established uniform standards are used to identify important historical properties worthy of protection, preservation, research and interpretation. Designation as an NHL is not a prerequisite to SEL selection, nor does SEL selection necessarily imply nomination as an NHL. The SEL serves as the preliminary process for the identification and evaluation of sites having special national significance for possible designation as National Marine Sanctuaries. After placement on the SEL, sites are further evaluated when selected as Active Candidates for sanctuary designation. Nomination as an NHL may result from the documentation compiled during the SEL process and Active Candidate evaluation; however, such designation is distinct from the purposes of designation as a National Marine Sanctuary under the Act.

Another reviewer suggested that if all sites on the SEL are nationally significant, that they would also be NHLs and, therefore, subject to the provisions of the regulations published by the Advisory Council on Historic Preservation for protecting cultural resources (36 CFR Part 800).

Response: Sites selected for placement on the SEL do not have to be NHLs and, therefore, do not necessarily fall under the Advisory Council's regulations. If, however, any site selected for placement on the SEL is already an NHL, it remains subject to those regulations.

Proposed § 922.21(b)—One reviewer suggested that the public comment period be lengthened to 90 days for review of proposed historical sites prior to their being added to the SEL.

Response: NOAA agrees with this comment and the regulations have been modified accordingly.

Proposed § 922.22—One reviewer suggested that the phrase "or state" be added after "Federal" in the first sentence since the statement does not preclude states from restricting activities on areas prior to formal site designation.

Response: The listing of a site on the SEL does not subject the site to Federal regulation under the Act. The status quo for the site is, therefore, unchanged. Accordingly, an area listed on the SEL is still subject to both Federal and state regulation under other authorities. The effect of inclusion of a site on the SEL is set forth at § 922.20(c).

Subpart C—Designation of National Marine Sanctuaries

Proposed § 922.33(a)(2)(B)—One reviewer suggested that management plans for sanctuaries designated at historically significant sites do not need additional measures to protect the site from disturbances related to outer continental shelf (OCS) mineral development activities because adequate protections are already in place.

Response: We acknowledge that the Department of the Interior (DOI) has responsibility for mitigating any adverse impact on historically significant sites from disturbances related to OCS mineral development activities. However, mitigation of adverse impact from OCS mineral development activities does not provide for coordinated and comprehensive management including scientific research, public education, and interpretation. A major goal of the National Marine Sanctuary Program is to enhance resource protection through comprehensive and coordinated conservation and management that complements existing regulatory authorities. The provisions of the Act enhance and complement the existing DOI historical resource protection program. The National Marine Sanctuary Program is the only mechanism to date for the protection, conservation, research, and interpretation of nationally significant historical resources beyond the territorial sea (see § 922.2(d) for the definition of marine environment). To ensure that all existing authorities are properly coordinated, it is essential that the management plan for any sanctuary designated at any nationally significant historical site address comprehensive protection, including, but not limited to, potential threats from OCS mineral development activities.

Proposed Appendix I—National Marine Sanctuary Program Site Identification and Selection Criteria for Sites With Historical Qualities of Special National Significance

One reviewer suggested that the word "special" be deleted from the "special national significance" criterion for identification and selection because a site on the NHL may not meet the criteria for placement on the SEL.

Response: By specifying that only areas of "special" national significance may be designated a National Marine Sanctuary under the Act, some NHL sites may not qualify for consideration as a National Marine Sanctuary. The cultural resource component of the National Marine Sanctuary Program is intended to be very selective, illustrative of the Nation's maritime heritage and representative of the Nation's most significant historical marine resources. Thus, it is possible that some NHLs will not be considered for sanctuary designation. All historical National Marine Sanctuaries designated in the future will be eligible to be designated as NHLs, but all marine-situated NHLs may not necessarily be considered for designation as National Marine Sanctuaries.

A reviewer commented that references to the World Heritage List (WHL) are not relevant in making SEL decisions. *Response:* Since all future historical National Marine Sanctuaries will be eligible to be nominated as NHLs and because many of these National Marine Sanctuaries may also be internationally significant, it is appropriate to specify that some may be listed on the WHL. The use of the evaluation criteria for the WHL as the established uniform standard to evaluate international significance is consistent with cultural resources procedures and policies. Additionally, it recognizes the international nature of maritime cultural resources and emphasizes that consistent with the overall mission, the National Marine Sanctuary Program will coordinate its efforts to manage marine areas of special national significance with other countries managing marine protected areas.

VI. Other Actions Associated with the Notice of Final Rulemaking

(A) Classification Under Executive Order 12291

NOAA has concluded that these regulations are not major "rules" within section 1(b) of Executive Order 12291 because they will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

These final rules amend existing procedures by providing greater selectivity and specifity in initially identifying and designating potential National Marine Sanctuaries in accordance with the Marine Sanctuaries Amendments of 1984, Pub. L. 98-498. These rules establish a revised process for identifying, designating and managing National Marine Sanctuaries. They will not result in any direct economic or environmental effects, nor will they lead to any major indirect economic or environment impacts. They are intended to reduce delay and uncertainty in the site selection and approval process. All subsequent marine sanctuary designations and implementing regulations including any regulations recommended by the Fishery Management Councils will be reviewed for compliance with Executive Order 12291.

(B) Regulatory Flexibility Act Analysis

A Regulatory Analysis is not required for this notice of final rulemaking. The regulations set forth procedures for identifying, selecting, and, if designated,

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managing National Marine Sanctuaries. Because the notice and comment requirements of section 553 of Title 5 of the U.S. Code are not applicable to this proposed procedural rule (5 U.S.C. 553(b)(3)(A)), the Regulatory Flexibility Act also does not apply (5 U.S.C. 603(a)). All subsequent marine sanctuary designations and implementing regulations will be reviewed for compliance with the Regulatory Flexibility Act.

(C) Paper Work Reduction Act of 1980 (Pub. L. 96-511)

These regulations do not contain a collection of information for purposes of the Paperwork Reduction Act.

(D) National Environmental Policy Act

NOAA has concluded that publication of these final rules does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Environmental protection, Marine resources, Natural resources.

Dated: October 21, 1988.

Thomas J. Maglesia,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program]

Accordingly, 15 CFR Part 922 is revised as follows:

PART 922—NATIONAL MARINE SANCTUARY PROGRAM

Subpart A—General

Sec.
922.1 Mission, goals, and special policies.
922.2 Definitions.
922.10 Effect of national marine sanctuary designation.
922.11 Access and valid rights.

Subpart B—Site Evaluation List (SEL)

922.20 General.
922.21 Periodic reevaluation, deletions, and additions.
922.22 Addition of sites with historical qualities of special national significance.

Subpart C—Designation of National Marine Sanctuaries

922.30 Selection of active candidates.
922.31 Development of designation materials.
922.32 Congressional prospectus.
922.33 Designation determination and findings.
922.34 Designation.
922.35 Coordination with states.

Subpart D—Implementation After Designation

Sec.
922.40 General.
922.41 Enforcement procedures.

Appendix 1 to Part 922—National Marine Sanctuary Program Site Identification and Selection Criteria for Marine Areas with Qualities of Special National Significance.

Authority: Pub. L. 92-498 (16 U.S.C. 1431-1434)

Subpart A—General

§ 922.1 Mission, goals, and special policies.

(a) In accordance with the standards set forth in Title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (Act), the mission of the National Marine Sanctuary Program (Program) is to identify, designate and manage areas of the marine environment of special national significance due to their conservation, recreational, ecological, historical, research, educational, or esthetic qualities.

(b) The goals of the Program are to carry out the mission to:

(1) Provide enhanced resource protection through comprehensive and coordinated conservation and management of National Marine Sanctuaries that complements existing regulatory authorities;

(2) Support, promote, and coordinate scientific research on, and monitoring of, the site-specific marine resources of the National Marine Sanctuaries;

(3) Enhance public awareness, understanding, appreciation and wise use of the marine environment; and

(4) Facilitate, to the extent compatible with the primary objective of resource protection, multiple uses of the National Marine Sanctuaries.

(c) To the extent consistent with the policies set forth in Title III of the Act, in carrying out the Program's mission and goals:

(1) Particular attention will be given to the establishment and management of marine areas as National Marine Sanctuaries for the protection of the area's natural resource and ecosystem values; particularly for ecologically or economically important or threatened species or species assemblages, and for offshore areas where there are no existing special area protection mechanisms;

(2) The size of National Marine Sanctuaries, while highly dependent on the nature of the sites' resources, will be no longer than necessary to ensure effective management;

(3) Management efforts will be coordinated to the extent practicable with other countries managing protected marine areas;

(4) Program regulations, policies, standards, guidelines, and procedures under the Act concerning the identification, evaluation, registration, and treatment of historical resources shall be consistent, to the extent practicable, with the declared national policy for the protection and preservation of these resources as stated in the National Historic Preservation Act of 1966 (NHPA), 16 U.S.C. 470 *et seq.*, the Archeological and Historical Preservation Act of 1974, 16 U.S.C. 469 *et seq.*, and the Archeological Resources Protection Act of 1979 (ARPA), 16 U.S.C. 470aa *et seq.* The same degree of regulatory protection and preservation planning policy extended to historical resources on land shall be extended, to the extent practicable, to historical resources in the marine environment within the boundaries of designated National Marine Sanctuaries. The management of historical resources under the authority of the Act shall be consistent, to the extent practicable, with the Federal archeological program by consulting the Uniform Regulations, ARPA (43 CFR Part 7), the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716, Sept. 29, 1983) and other relevant Federal regulations.

§ 922.2 Definitions.

(a) "Act" means Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431 *et seq.*

(b) "Active Candidate" means a site selected by the Secretary from the Site Evaluation List for further consideration for possible designation as a National Marine Sanctuary.

(c) "Historical" means possessing historical, cultural, archeological, or paleontological significance, including sites, structures, districts, and objects significantly associated with or representative of earlier people, cultures, and human activities and events.

(d) "Marine environment" means those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands over which the United States exercises jurisdiction, consistent with international law.

(e) "National historic landmark" means a district, site, building, structure or object designated by the Secretary of the Interior under the National Historic Landmarks (NHL) Program (36 CFR Part 65).

(f) "National Marine Sanctuary" means an area of the marine environment, as defined above in subsection (d), of special national significance due to its resource or human-use values, which is designated to ensure its conservation and management.

(g) "Person" means any private individual, partnership, corporation, or other entity; or any officer, employee, agent, agency, department, or instrumentality of the Federal government, of any state or local unit of government, or of any foreign government.

(h) "Regional Fishery Management Council" means any fishery council established under section 302 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

(i) "Secretary" means the Secretary of the United States Department of Commerce or his or her designee.

(j) "Site Evaluation List" (SEL) means a list of selected natural and historical resource sites selected by the Secretary as qualifying for further evaluation for possible designation as National Marine Sanctuaries.

(k) "State" means each of the several states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, the United States Virgin Islands, Guam, and any other commonwealth, territory, or possession of the United States.

(l) "Subsistence use" means the customary and traditional use by rural residents of areas near or in the marine environment for direct personal or family consumption as food, shelter, fuel, clothing, tools or transportation; for the making and selling of handicraft articles; and for barter, if for food or nonedible items other than money, if the exchange is of a limited and noncommercial nature.

§ 922.10 Effect of national marine sanctuary designation.

The designation of a National Marine Sanctuary, and the regulations implementing it, are binding on any person subject to the jurisdiction of the United States. Designation does not constitute any claim to territorial jurisdiction on the part of the United States for designated sites beyond the U.S. territorial sea, and the regulations implementing the designation shall be applied in accordance with generally recognized principles of international law, and in accordance with treaties, conventions, and other agreements to which the United States is a party. No regulation shall apply to a person who is not a citizen, national, or resident alien of the United States, unless in accordance with—

(a) Generally recognized principles of international law;

(b) An agreement between the United States and the foreign state of which the person is a citizen; or

(c) An agreement between the United States and the flag state of the foreign vessel, if the person is a crewmember of the vessel.

§ 922.11 Access and valid rights.

Leases, permits, licenses, or rights of subsistence use or access either in existence on October 19, 1984 (the date of enactment of the Marine Sanctuaries Amendments of 1984 (Pub. L. No. 98-498)), with respect to any National Marine Sanctuary designated before that date, or in existence on the date of designation of any National Marine Sanctuary designated after October 19, 1984, shall not be terminated by the Secretary. The Secretary, may, however, regulate such leases, permits, licenses, or rights consistent with the purposes for which the Sanctuary was designated.

Subpart B—Site Evaluation List

§ 922.20 General.

(a) The Site Evaluation List (SEL) was established in 1983 as a comprehensive list of marine sites with high natural resource values that are highly qualified for further evaluation for possible designation as National Marine Sanctuaries. Appendix 1 describes that list, how it was established and its purposes. In addition, Subpart F of Appendix 1 has been revised to establish identification and selection criteria for revising the list to include marine sites with historical qualities of special national significance.

(b) Only sites on the SEL may be considered for subsequent review as active candidates for designation.

(c) Placement of a site on the SEL, or selection of a site from the SEL as an active candidate for designation as provided for in § 922.30, shall not subject the site to any regulatory control under the Marine Protection, Research and Sanctuaries Act. Such controls may only be imposed after designation, as provided for in § 922.34.

§ 922.21 Periodic reevaluation, deletions, and additions.

(a) The Secretary shall reevaluate any site remaining on the SEL for five years (December 31, 1988, for the original sites on the SEL and a separate five-year review period, beginning with the date of their addition, for any sites added to the SEL).

(b) If, after a five-year reevaluation, the Secretary determines that a marine site on the SEL is no longer highly qualified in accordance with the Program's mission and goals and the site identification and selection criteria, the Secretary shall publish a notice in the **Federal Register** of an intent to delete the site from the SEL and provide a 45-day period for public comment.

(c) As sites are designated as National Marine Sanctuaries, or rejected from further consideration, they will be removed from the SEL. Rejected sites will not be replaced on the SEL.

(d) If, after a five-year reevaluation, the Secretary determines that the new sites should be considered for addition to the SEL, the Secretary shall publish a notice in the **Federal Register** at least 12 months prior to initiating a new site identification process. After a 90-day period is provided for public comment on the Secretary's determination, the Secretary shall reevaluate the prior SEL development process and publish a notice in the **Federal Register** requesting public comment on that process and any proposed modifications, if necessary.

(e) Except as provided in § 922.21(d) and § 922.22, the Secretary will consider recommendations of potential additional sites to the SEL only if such sites are important new discoveries or if substantial new information previously unavailable establishes the natural significance of a known site. The Secretary may determine, after an opportunity for public review and comment, whether such sites meet the selection criteria and are highly qualified in accordance with the Program's mission and goals. Qualified sites will be added to the SEL for further evaluation as National Marine Sanctuaries, consistent with the procedures set forth in these regulations.

§ 922.22 Addition of sites with historical qualities of special national significance.

(a) The identification and selection criteria set forth in Appendix 1 shall be used to identify areas of the marine environment possessing historical qualities of special national significance. The Secretary shall establish a group of experts to be called the Marine Historical Resource Evaluation Team to recommend a list of marine sites with historical values of special national significance for inclusion in the SEL. The Marine and Estuarine Management Division of the National Oceanic and Atmospheric Administration shall direct and coordinate the activities of the Team.

(b) After analysis of the historical sites recommended by the Marine

Historical Resource Evaluation Team, the Secretary shall publish a notice in the Federal Register of the historical sites proposed for placement on the SEL and shall afford the public at least 90 days in which to comment. On the basis of the identification and selection criteria in Appendix 1, and after full consideration of public comment, the Secretary shall select those sites which are qualified for placement on the SEL because of their historical qualities of special national significance, and shall publish a notice in the Federal Register of the selected sites. Written documentation shall be prepared describing the values qualifying each site for placement on the SEL.

Subpart C—Designation of National Marine Sanctuaries

§ 922.30 Selection of active candidates.

(a) The Secretary shall, from time to time, select a limited number of sites from the SEL for Active Candidate consideration based on a preliminary assessment of the designation standards set forth in § 922.33.

(b) Selection of a site as an Active Candidate shall begin the formal sanctuary designation-evaluation process. A notice of intent to prepare a draft environmental impact statement shall be published in the Federal Register and in newspapers in the area(s) of local concern. A brief written analysis describing the site shall be provided. The Secretary, at any time, may drop a site from consideration if the Secretary determines that the site does not meet the designated standards and criteria set forth in the Act.

§ 922.31 Development of designation materials.

(a) After selecting a site as an Active Candidate, the Secretary shall prepare a draft designation document, including terms of the proposed designation, a draft management plan to implement the proposed designation and any proposed regulations needed to implement the terms of the proposed designation. The draft designation document shall be prepared in consultation with the House Merchant Marine and Fisheries Committee and the Senate Commerce, Science, and Transportation Committee; the Secretaries of State, Defense, Transportation, and the Interior, the Administrator of the Environmental Protection Agency, and the heads of other interested Federal agencies; the responsible officials or relevant agency heads of the appropriate state or local government entities, including coastal zone management agencies, that will or are likely to be affected by the establishment of the area as a National Marine Sanctuary; the appropriate officials of any Regional Fishery Management Council established by section 302 of the Magnuson Act which may be affected by the proposed designation; and other interested persons.

(b) The terms of the proposed designation shall include the geographic area to be included within the sanctuary; the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or esthetic values; and the types of activities that would be subject to regulation in order to protect those characteristics. Following designation, the terms of designation may be modified only by the same procedures through which the original designation was made. If proposed regulations are needed to implement the terms of the proposed designation, they shall be consistent with the terms of designation. Following designation, all amendments to these regulations shall be consistent with the terms of designation.

(c) The draft management plan generally shall include sections on: goals and objectives; management responsibilities; resource studies and research; enforcement, including surveillance activities; interpretive and educational programs; and proposed regulations (where applicable). Proposed regulations relating to activities under the jurisdiction of one or more other Federal agencies shall be developed in consultation with those agencies.

(d) A draft environmental impact statement (DEIS) shall be prepared on the designation document/management plan, including any proposed regulations. The DEIS shall also include the resource assessment report, discussed in paragraph (h) of this section; maps depicting the boundaries of the proposed area, and the existing and potential uses and resources of the area.

(e) The draft management plan and the DEIS shall be prepared as quickly as possible to allow for maximum public input. The time period between Active Candidate selection and proposing to designate the area as a National Marine Sanctuary normally will not exceed three (3) years unless the Secretary determines that additional time is needed for public input.

(f) The Secretary shall provide the appropriate Regional Fishery Management Council with the opportunity to prepare and recommend for consideration by the Secretary draft regulations for fishing within the proposed sanctuary if the proposed sanctuary includes waters within the U.S. Exclusive Economic Zone.

(1) The Council shall have one hundred and twenty (120) days from the date of the Secretary's request to prepare draft fishery regulations and submit them to the Secretary. In preparing these recommendations, the Council shall use as guidance the national standards of section 301(a) of the Magnuson Act (16 U.S.C. 1851) to the extent that they are consistent and compatible with the goals and objectives of the proposed sanctuary designation.

(2) Draft regulations recommended by the Council, or its determination that regulations are not necessary, may be accepted by the Secretary. When making a determination whether to accept the Council's recommendation, the Secretary shall consider whether the Council's action fulfills the purposes and policies of the Marine Protection, Research, and Sanctuaries Act and the goals and objectives of the proposed designation;

(3) The Secretary shall prepare proposed fishery regulations necessary to implement the proposed sanctuary designation if the Council:

(i) Declines to make a determination with respect to the need for regulations,

(ii) Makes a determination which is rejected by the Secretary, or

(iii) Fails to recommend draft proposed regulations within the period specified in paragraph (f)(1) of the section.

(4) All amendments to fishery regulations shall be drafted, approved, and issued in the same manner as the original regulations.

(g) Fishery activities not proposed for regulation under paragraph (f) of this section may be listed in the draft sanctuary designation document as potentially subject to regulation, without following the procedures specified in paragraph (f) of this section. If the Secretary subsequently determines that regulation of any such fishery activity is necessary, then the procedures specified in paragraph (f) shall be followed.

(h) As part of the DEIS, the Secretary shall develop a resource assessment report documenting present and potential uses of the area, including commercial and recreational fishing, research and education, minerals and energy development, subsistence uses, and other commercial or recreational uses. In consultation with the Secretary of the Interior, the Secretary shall draft a resource assessment section for the report concerning any commercial or recreational resource uses in the area that are subject to the primary jurisdiction of the Department of the Interior.

(i) After the DEIS is prepared, the Secretary shall publish a notice of proposed designation in the Federal Register. That notice shall include the text of the draft designation document, any proposed regulations determined necessary to implement the proposed designation, and a summary of the management plan. The Federal Register notice shall be published concurrently with the Environmental Protection Agency (EPA) Notice of Availability of the DEIS.

(1) Notice of the proposed designation shall be published in newspapers of general circulation or communicated to electronic media in the communities that may be affected by the proposal.

(2) No sooner than thirty (30) days after publication of the notice of proposed designation in the Federal Register, the Secretary shall hold at least one public hearing in the coastal area or areas most affected by the proposed designation for the purpose of receiving the views of any interested parties.

§ 922.32 Congressional prospectus.

(a) As required by section 304(a)(1)(C) of the Act, on the same day that the Federal Register notice in § 922.31(i) is issued, the Secretary shall submit to the House Committee on Merchant Marine and Fisheries and the Senate Commerce, Science, and Transportation Committee a prospectus containing:

(1) The terms of the proposed designation;

(2) The basis of the designation findings made under section 303(a) of the Act with respect to the area;

(3) An assessment of the factors required to be considered by section 303(b)(1) of the Act;

(4) Proposed mechanisms to coordinate existing regulatory and management authorities within the area;

(5) The DEIS and the draft management plan, including the proposed regulations, detailing the proposed goals and objectives, management responsibilities, resource studies, interpretive and educational programs, and enforcement, including surveillance activities for the area;

(6) An estimate of the annual cost of the proposed designation, including costs of personnel, equipment and facilities, enforcement, research, and public education;

(7) An evaluation of the advantages of cooperative state and Federal management if all or part of a proposed marine sanctuary is within the territorial limits of any state or is superjacent to the subsoil and seabed within the seaward boundary of a state, as that boundary is established under the Submerged Lands Act (43 U.S.C. 1301 *et seq.*); and

(8) Any proposed regulations that may be necessary and reasonable to implement the proposed designation.

(b) In accordance with the provisions of section 304 of the Act, the Secretary shall not publish a notice to designate an area proposed as a National Marine Sanctuary until after forty-five (45) days of a continuous session of Congress starting with the day the prospectus required by paragraph (a) of this section is submitted to Congress. If either the Committee on Merchant Marine and Fisheries of the House of Representatives or the Committee on Commerce, Science and Transportation of the Senate, within the forty-five day period, issue a report concerning the prospectus, this report shall be considered by the Secretary before publishing a notice to designate a national marine sanctuary.

§ 922.33 Designation determination and findings.

(a) In addition to preparation of the final environmental impact statement (FEIS), final regulations, and final management plan, the Secretary shall prepare a written Designation Determination and Findings to include:

(1) A determination that the designation will fulfill the purposes and policies of the Act; and

(2) Finding that:

(i) The area is of special national significance due to its resource or human-use values;

(ii) Existing state and Federal authorities are inadequate to ensure coordinated and comprehensive conservation and management of the area, including resource protection, scientific research, and public education;

(iii) Designation of the area as a national marine sanctuary will ensure coordinated and comprehensive conservation and management of the area, including resource protection, scientific research, and public education; and

(iv) The area is of a size and nature that will permit comprehensive and coordinated conservation and management.

(b) In preparing the Designation Determination and Findings the Secretary must consider:

(1) The area's natural resource and ecological qualities, including its contribution to biological productivity, maintenance of ecosystem structure, maintenance of ecologically or commercially important or threatened species or species assemblages, and the biogeographic representation of the site;

(2) The area's historical, cultural, archeological, or paleontological significance;

(3) The present and potential uses of the area that depend on maintenance of the area's resources, including commercial and recreational fishing, subsistence uses, other commercial and recreational activities, and research and education;

(4) The present and potential activities that may adversely affect the factors identified in paragraph (b) considerations (1), (2) and (3) of this section;

(5) The existing State and Federal regulatory and management authorities applicable to the area and the adequacy of those authorities to fulfill the purposes and policies of the Act;

(6) The manageability of the area, including such factors as its size, its ability to be identified as a discrete ecological unit with definable boundaries, its accessibility, and its suitability for monitoring and enforcement activities;

(7) The public benefits to be derived from sanctuary status, with emphasis on the benefits of long-term protection of nationally significant resources, vital habitats, and resources which generate long-term;

(8) The negative impacts produced by management restrictions on income-generating activities such as living and nonliving resources development;

(9) The socioeconomic effects of sanctuary designation; and

(10) The fiscal capability to manage the area as a National Marine Sanctuary.

(c) In preparing the Designation Determination and Findings, the Secretary shall consider the views of interested persons, heads of interested Federal agencies, responsible officials of appropriate state and local government entities, and appropriate officials of any Regional Fishery Management Council(s) that may be affected by the designation submitted in response to the notice proposing the designation or submitted as part of a public hearing on the proposal; and any reports submitted by the House Committee on Merchant Marine and Fisheries or the Senate Committee on Commerce, Science, and Transportation in response to the sanctuary proposal prospectus.

§ 922.34 Designation.

(a) In designating an area as a National Marine Sanctuary, the Secretary shall publish a notice of the

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designation in the **Federal Register**; this notice shall include the text of the final implementing regulations and shall also advise the public of the availability of the final management plan and the final EIS.

(b) The designation and regulations shall become final and take effect after the close of a review period of forty-five (45) days of continuous session of Congress, computed in accordance with section 304(b)(4) of the Act, beginning on the date of publication of the Federal Register notice in paragraph (a) of this section unless:

(1) The designation or any of its terms is disapproved by enactment of a joint resolution of disapproval consistent with section 304(b)(3) of the Act; or

(2) In the case of a national marine sanctuary that is located partially or entirely within the seaward boundary of any state, the Governor(s) of the affected state(s) certifies to the Secretary that the designation or any of its terms is unacceptable, in which case the designation or the unacceptable term shall not take effect in the area of the sanctuary lying within the seaward boundary of the state(s).

(c) If the Secretary determines that the actions in paragraph (b) of this section affect the sanctuary designation in a manner that sanctuary goals and objectives cannot be fulfilled, the Secretary may withdraw the entire designation. If the Secretary does not withdraw the designation, only those terms of the designation not disapproved under paragraph (b)(1) of this section or not certified under paragraph (b)(2) of this section shall take effect.

§ 922.35 Coordination with States.

(a) The Secretary shall consult and cooperate with affected states throughout the national marine sanctuary designation process. In particular the Secretary shall:

(1) Consult with the relevant state officials prior to selecting any site on the SEL as an Active Candidate pursuant to § 922.30, especially concerning the relationship of any site to state waters and the consistency of the proposed designation with a federally approved state coastal zone management program. For the purposes of a consistency review by states with a federally approved coastal zone management programs, designation of a national marine sanctuary is deemed to be a Federal activity, which, if directly affecting the state's coastal zone, must be undertaken in a manner consistent to the maximum extent practicable with the approved state coastal zone program as provided by section 307(c)(1) of the Coastal Zone Management Act of 1972, as amended, and implementing regulations at 15 CFR Part 930, Subpart C.

(2) Ensure that relevant state agencies are consulted prior to holding any public hearings pursuant to § 922.31(i)(2).

(3) Provide the Governor an opportunity to certify the designation or any of its terms as unacceptable as specified in § 922.34(b)(2).

Subpart D—Implementation After Designation

§ 922.40 General.

(a) The Secretary shall implement the management plan, and applicable regulations, including carrying out surveillance and enforcement activities, and conducting such research and education as are necessary and reasonable to carry out the purposes and policies of the Act.

(b) Consistent with the sanctuary management plan, the Secretary shall develop and implement a site-specific contingency and emergency-response plan designed to protect the sanctuary resources. The plan shall contain alert procedures and actions to be taken in the event of an emergency such as a shipwreck or an oil spill.

(c) Where essential to prevent immediate, serious and irreversible damage to sanctuary resources, activities including those not listed in the designation may be regulated within the limits of the Act on an emergency basis for an interim period not to exceed one hundred and twenty (120) days, during which time an appropriate amendment of the terms of the designation shall be sought by the Secretary.

(d) Every five years, or sooner, the Secretary shall evaluate the substantive progress toward implementing the management plan and the goals of a designated sanctuary, especially the effectiveness of site-specific management techniques.

§ 922.41 Enforcement procedures.

The consolidated civil procedure regulations, set forth at 15 CFR Part 904, shall apply to all enforcement matters under the Act.

Appendix 1 to Part 922—National Marine Sanctuary Program Site Identification and Selection Criteria for Marine Areas with Qualities of Special National Significance

Background

The Site Evaluation List (SEL) was established in 1983 (48 FR 30888, August 4, 1983). Only sites on the SEL may be considered by the Secretary for subsequent review as "Active Candidates" for designation.

The original SEL was based on the then existing Marine Research, Protection, and Sanctuaries Act, which provided that national marine sanctuaries could be designated for their conservation, recreational, ecological, or esthetic values. It consisted of twenty-nine (29) marine sites with high natural resource values, identified and recommended for inclusion on the SEL by regional resource evaluation teams in accordance with the National Marine Sanctuary Program's mission and goals and then existent site identification and selection criteria (48 FR 24296, May 31, 1983). The Marine Sanctuaries Amendments of 1984 (Pub. L. No. 98-498) amended the Act to add additional qualities—historical, research, or education—which must also be considered when selecting sanctuary sites.

Areas of nationally significant research and educational qualities were considered in establishing the original SEL. These qualities are inherent in sites possessing significant conservation, recreational, ecological, or esthetic value. Therefore, additional areas of significant research and educational values will not be reconsidered at this time, except as provided in § 922.21 of the regulations.

Sites possessing nationally significant historical resources were not specifically considered when establishing the original SEL. There are no historical sites on the SEL. The existing SEL now needs to be amended to add areas of the marine environment possessing historical qualities of special national significance. Thus, the existing site identification and selection criteria have been amended to incorporate more specific criteria to identify and select areas of the marine environment possessing historical qualities of special national significance.

Site Identification and Selection Criteria

The following criteria are grouped into four categories: (1) Natural resource values; (2) human use/historical resource values; (3) potential activity impacts; and (4) management concerns. The criteria under each category reflect concerns significant to the National Marine Sanctuary Program and are designed to ensure that sites recommended to NOAA for SEL consideration have high natural resource and human resource values.

In selecting sites for the SEL, NOAA also considers the extent information on the site is available, existing and potential activity impacts and management concerns (as presented in sections III and IV, below). NOAA's selection of sites for the SEL is only the first of several determinations before sanctuary designation or subsequent rejection of the site as not qualified for sanctuary status.

At the SEL stage, NOAA's prime focus is on the site's natural resource and human use/historical resource values. The presence of such high values is a requisite or "minimum" requirement for NOAA's further consideration since the Marine Protection, Research, and Sanctuaries Act emphasizes the protection and management of marine areas which are of special national significance based on the site's conservation, recreational, ecological, historical, research, educational or esthetic qualities. Other, more specific issues are factored into NOAA's decision whether to select a site as an Active Candidate (see Subpart C of the regulations).

To determine if an area possesses historical values of special national significance and otherwise meets the Sanctuary designation standards specified in Section 303 of the Act, certain definitions and criteria are included in this appendix (see II.F) for use in evaluating these potential sites for listing on the SEL in accordance with § 922.22 of the regulations.

I. Natural Resource Values

A. Subregional Representation

The area under consideration is representative of the biogeographic subregion in which it is located.

Examples: This criterion would apply to an area containing species assemblages which are especially characteristic of the Oregonian subregion of the British Columbian region. Another example would be an area containing species assemblages which are especially characteristic of the Floridian or American Atlantic Antillean subregion of the West Indian region.

B. Community Representation

The area under consideration is significant in relation to the ecological communities which are found within the specified habitat type or within the biogeographic region or subregion (*i.e.*, on a macroscale, communities as assemblages of species populations within a prescribed area or habitat).

Examples: (1) The wide spectrum of marine habitats in the Channel Islands National Marine Sanctuary in California created by accentuated bottom relief, varied bottom substrates, and graduation in water depth from island shorelines to deep coastal basins support a variety of ecological communities.

(2) Coral reef, grass bed, soft bottom, and open-bay habitat areas in the Key Largo National Marine Sanctuary support a variety of ecological communities associated with the east Florida reef tract.

C. Biological Productivity

The area under consideration is significant in relation to its level of primary and/or secondary production.

Examples: (1) East Breaks at the edge of the continental shelf off Corpus Christi, Texas, is characterized by intense local upwelling, high primary productivity, and exceptional fish production.

(2) In the Gray's Reef National Marine Sanctuary, much production may be imported; outcroppings of limestone rocks may serve to entrap, conserve, and circulate detritus and plankton which provides energy sources for reef invertebrates, which in turn support marine fisheries and sea turtles.

(3) In the Channel Islands National Marine Sanctuary, the cold waters of the California current flowing south meet the warm waters of the California Counter Current flowing north to create upwellings of cold nutrient-rich waters that enhance the biological productivity of the area.

Note: This example also meets Criterion I.F.

(4) In many cases, coral reefs are not only energetically self-sustaining (*i.e.*, they produce locally enough food to support the community), but they are also specifically organized to entrap, hoard, and recycle materials received from the surrounding waters (*i.e.*, products that are imported and conserved).

D. Biotic Character/Species Representation

The area under consideration is of special interest because it supports:

(1) Ecologically limited species;

(2) Ecologically important species; or

(3) Unique species associations or biological assemblages.

Examples: (1) This criterion would apply to marine habitat areas upon which ecologically limited species (e.g., threatened, endangered, rare, depleted, endemic, or peripheral species) are dependent during all or part of their lives.

(2) This criterion would apply to marine areas containing species which contribute in a significant way to the maintenance of a specified ecosystem found in the region or subregion, such as the Channel Islands Marine Sanctuary, which supports one of the most varied assemblages of marine mammals and seabirds in the world.

(3) The waters of Point Lobos, California, support a unique assemblage of kelp, sea urchin shelves, and sea otters.

(4) Submarine canyons support unusual biological communities of soft corals, crustaceans, and fish, and are known as "pueblo villages."

(5) This criterion would also apply to wide sandy bottom areas which are characterized by low productivity, but unique species composition, such as certain areas off central Texas.

E. Species Maintenance

The area under consideration is important to life history activities, including special feeding, courtship, breeding, birthing/nursery, resting/wintering, and migratory areas.

Examples: (1) The waters off Point Reyes and the Farallon Islands provide deep and shallow water feeding areas for a wide variety of marine organisms, including seabirds, marine mammals, and marine fisheries. The Farallon Islands support the largest seabird rookeries in the contiguous United States and are used, along with the mainland, by California sea lions, harbor seals, and elephant seals for hauling out and pupping purposes. Whales, including several endangered species, and porpoise pass through the sanctuary on annual migrations.

(2) The waters around certain Hawaiian Islands are important wintering, birthing/nursery, and perhaps courtship/breeding areas for endangered whales.

(3) Spiny lobster migration routes off Florida are important for the "off shelf" movement of this species.

(4) The mouth of the Mississippi River is an important brown shrimp over-wintering ground.

F. Ecosystem Structure/Habitat Features

The area under consideration is characterized by special chemical, physical, and/or geological habitat features.

Examples: (1) The Florida Middle Grounds on the Gulf of Mexico continental shelf represent an unusual geological formation—a drowned Pleistocene reef—which supports rich and diverse reef communities.

(2) Transition zones occur where two different marine systems converge—such as at coastal/marine system interfaces, shelf/slope interfaces, soft bottom/hard bottom ecotones, or cold water/warm water current convergence zone. These areas of mixing often have unique physical and ecological characteristics, high production, and species diversity/population densities which are often greater than in areas flanking them. For example, a transition zone is formed near Cape Hatteras where cold northern waters of the Labrador Current mix with warm water eddies of the Gulf Stream/Florida Current and as a result, northern and southern species mix and co-exist with species endemic to the area.

Note.—This example also meets Criterion I.C.

(3) Easternmost coastal areas of Maine—with unique bay-heads and rocky coasts, varied substrates derived from glacial materials, extensive sub-fjord character, and numerous offshore islands—are matched by few areas in the world in habitat types and species diversity.

II. Human Use/Historical Resource Values

A. Fishery Resources of Recreational Importance

The area under consideration contains fish and shellfish species, species groups (e.g., snapper-grouper complex), or fishery habitats which are important to the recreational fishing industry/community and for which conservation and management are in the public interest.

B. Fishery Resources of Commercial Importance

The area under consideration contains fish and shellfish species, species groups (e.g., snapper-grouper complex), or fishery habitats which are important to the commercial fishing industry and for which conservation and management are in the public interest.

C. Ecological/Esthetic Resources of Importance for Recreational Activities Other Than Fishing

The area under consideration contains exceptional natural resources and features which, because of their importance to nature watching and other nonconsumptive recreational activities, enhance human appreciation, understanding, and enjoyment of nature.

Examples: (1) Rocky shorelines, shallow nearshore waters, and intertidal pools in the Channel Islands and Gulf of the Farallones National Marine Sanctuaries have rich and varied plant and animal life which attract many persons interested in photography and nature study.

(2) The prominent topography around the Channel Islands and Gulf of the Farallones National Marine Sanctuaries provides outstanding ocean vistas.

(3) The spectacular spur-and-groove coral reef formation in the Looe Key National Marine Sanctuary attracts SCUBA and snorkeling enthusiasts from all over the world.

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(4) The waters off Maui, Hawaii, are popular for humpback whale watching.

D. Research Opportunity

The area under consideration provides exceptional opportunities for research in marine science and resource management.

Examples: (1) The Gray's Reef National Marine Sanctuary serves as a natural laboratory or control area for research in live bottom ecology.

(2) The Key Largo National Marine Sanctuary is amenable to onsite research activities for many reasons, including the diversity of resources available, the past history of scientific research and education in the area, the compatibility with similar research efforts in adjacent John Pennekamp State Park and Biscayne National Park, and the proximity of the site to user groups. In addition, the Carysfort Reef Lighthouse provides a unique research base from which to launch studies concerning the sanctuary environment.

(3) The Channel Islands National Marine Sanctuary offers a special opportunity to coordinate research with the Channel Islands National Park. Such coordination will contribute to a better scientific understanding of the marine environment and to more effective management by answering questions such as those related to development and use of marine resources.

E. Interpretive Opportunity

The area under consideration provides an excellent opportunity to interpret the meanings and relationships of special marine resources in order to enhance general understanding, appreciation, and wise use of the marine environment.

Examples: (1) Through a variety of interpretive media, including aquaria displays, narrated slide shows and glassbottom boat tours, a visitor to the Key Largo National Marine Sanctuary is exposed to a variety of marine and coastal ecosystems, including open ocean, fringing coral reefs, patch reefs, mangroves, open bay, and barrier islands.

(2) The Channel Islands National Marine Sanctuary provides an exceptional opportunity to interpret marine and insular ecosystem features through the use of various interpretive "hands on" techniques that go beyond traditional educational tools such as brochures and pamphlets.

F. Historical, Cultural, Archeological or Paleontological Significance

The area under consideration contains (or is likely to contain) historical resources of special national significance.

Definitions

The term "historical" as defined in § 922.3(c) means possessing historical, cultural, archeological or paleontological significance, including sites, structures, districts and objects significantly associated with or representative of earlier people, cultures, and human activities and events. The term is used in its broad sense to refer to both pre-historic and historic periods, to the anthropological concept of culture, and to the processes, events, places, and objects related to the human past. The phrase "special national significance" in the context of historical areas denotes those areas with historical values of unique national significance and which are illustrative of the nation's maritime heritage.

Criteria for Identification and Selection

The site identification criteria to be used by the Marine Historical Resource Evaluation Team to make its recommendation to the Secretary and the criteria to be used by the Secretary for selection of recommended sites for inclusion on the SEL are the same.

To qualify for recommendation to the Secretary and for selection for listing on the SEL because of a site's historical values, a site must have special national significance within the meaning set forth below in paragraphs (1) and (2) and meet the programmatic requirements set forth in paragraph (3). In determining whether a site has special national significance, the site's contribution to the historical resources already represented in the National Marine Sanctuary Program, if any, shall also be considered.

(1) *Determination of Significance*—The National Historic Landmark (NHL) Program (36 CFR Part 65), administered by the Department of the Interior, focuses attention on properties of exceptional value to the nation as a whole. It is the Federal means of weighing the national significance of historical resources. Properties designated as NHLs that are not already listed on the National Register of Historic Places are automatically listed there. In addition to adding historical units to the National Park System, NHL designation is a prerequisite for determining the eligibility of historical resources for nomination to the World Heritage List.

Consistent with the Marine Research, Protection, and Sanctuaries Act directive that the management of special marine areas complement existing regulatory authorities to the extent practicable, the criteria for nomination as a NHL shall be used as the first step in evaluating the historical, cultural, archeological or paleontological significance of a marine resource (See Table 1). Sites of national significance demonstrated by their designation as NHLs, or considered in consultation with the Department of the Interior and other appropriate authorities as meeting the NHL criteria, shall be further evaluated for recommendation for selection and evaluation for addition on the SEL, in accordance with paragraphs (2) and (3), below. Sites within the jurisdiction of the United States which have international significance as determined by the criteria for nomination to the World Heritage List shall also be evaluated (See Table 2).

(2) *Determination of Representative Distribution*—In addition to having national significance, a site, in order to be recommended or selected, must complement or contribute to the desired range of historical resources of the National Marine Sanctuary Program. Consistent with the Program's mission and goals set forth in § 922.1 of the regulations, sites recommended or selected for historical qualities must be illustrative of the nation's maritime heritage and representative of the nation's most significant historical marine resources.

(3) *Additional Programmatic Requirements*—In addition to having special national significance to qualify for recommendation and selection for addition to the SEL, coordinated and comprehensive conservation and management of the site including: (a) resource protection; (b) scientific research and monitoring; and (c) public education must be necessary in order to derive maximum present and future public benefit from the site's resources. Designation of a site as a National Marine Sanctuary must also complement existing regulatory authorities and improve the protection and preservation of the site's resources.

Additional Factors in Site Identification and Selection

III. Potential Activity Impacts

Many marine areas are subject to human use, some of which bring adverse pressures to bear on the natural resources. Where applicable, initial identification of potential marine sanctuary areas includes a summary of existing and potential human activities in these areas as well as a preliminary assessment of environmental impacts. To the extent such information is available, NOAA's selection of sites for the SEL will consider impacts of human activities on the area's natural resource and human use values, as well as the impacts of site selection on human activities already taking place within the site.

IV. Management Concerns

A. Relationship to Other Programs

While some sanctuaries may be designed to protect resources not currently managed by other existing programs (*e.g.*, the *U.S.S. MONITOR* on the continental shelf off North Carolina), most recommendations involved cooperation with some other Federal, State, local agency or organization. The ability of existing regulatory mechanisms to protect the values of the area and the contribution of the National Marine Sanctuary Program to that existing management effort may be an important factor in selecting sanctuary candidates. Depending on the location, the resource, and the existing system, national marine sanctuary designation could either complement the status quo by filling specific gaps or form a management umbrella over a fragmented system to help coordinate and strengthen diverse, but related efforts. At different sites, NOAA may work to complement other programs' efforts such as national estuarine research reserves, national parks, wildlife refuges, or state preserves, among others. There may be instances where NOAA's primary contribution to protection of special marine areas will be in the form of enhanced public awareness through interpretive and research programs.

B. Management of a Conservation Unit

Optimum size of a marine sanctuary is an issue to be considered in potential sanctuary sites. The size or extent of a marine sanctuary should be a cohesive conservation unit amenable to effective management given fiscal and staff constraints of the managing entities.

C. Accessibility

Since national marine sanctuaries are to be readily available for public use, when use is compatible with the sanctuary's goals and objectives, consideration should be given to factors which limit or enhance public access to a particular site.

D. Surveillance and Enforcement

Another issue to be considered when evaluating a potential sanctuary site is the degree to which the area lends itself to adequate enforcement and surveillance and the capabilities of responsible agents (*e.g.*, U.S. Coast Guard, state law enforcement divisions, or the like). This depends on the location, its size, and the types of resources involved. Consideration is also given to: (1) Degree of surveillance/enforcement presence needed in the area—light, medium, or heavy; (2) schedule—routine, prescribed, or case-by-case basis; and (3) logistics—vessels, aircraft, personnel, equipment, and budgetary requirements.

E. Economic Considerations

The designation of a national marine sanctuary may have economic effects at both local and national levels. Prior to the development of a management plan for a particular site which describes the uses and activities which may take place within a sanctuary, it is difficult to calculate fully the economic impact of sanctuary designation. It is also difficult to determine, at the SEL stage, the economic benefits of the sanctuary to society as a whole based on such considerations as public use, and research and interpretive values which will also be fully described in a management plan. Sanctuary designation may, in some cases, enhance economic value by ensuring long-term protection for commercially significant resources, such as commercial or recreational fish stocks, vital habitats, and resources which generate tourism. Conversely, a designated marine sanctuary may have negative economic impacts if management regulations unduly restrict commercial activities.

To the extent feasible, a decision to include a proposed site on the SEL will take into consideration the economic effects of sanctuary designation. As consideration of a particular site progresses through the designation process, more information will be developed and analyzed concerning the economic effects of sanctuary designation.

Table 1.—National Historic Landmark Program Selection Criteria (36 CFR 65.4)

Specific Criteria of National Significance: The quality of national significance is ascribed to districts, sites, buildings, structures and objects that possess exceptional value or quality in illustrating or interpreting the heritage of the United States in history, architecture, archeology, engineering and culture and that possess a high degree of integrity of location, design, setting, materials, workmanship, feeling and association, and:

(1) That are associated with events that have made a significant contribution to, and are identified with, or that outstandingly represent, the broad national patterns of United States history and from which an understanding and appreciation of those patterns may be gained; or

(2) That are associated importantly with the lives of persons nationally significant in the history of the United States; or

(3) That represent some great idea or ideal of the American people; or

(4) That embody the distinguishing characteristics of an architectural type specimen exceptionally valuable for a study of a period, style or method of construction or that represent a significant, distinctive and exceptional entity whose components may lack individual distinction; or

(5) That are composed of integral parts of the environment not sufficiently significant by reason of historical association or artistic merit to warrant individual recognition but collectively compose an entity of exceptional historical or artistic significance, or outstandingly commemorate or illustrate a way of life or culture; or

(6) That have yielded or may be likely to yield information of major scientific importance by revealing new cultures, or by shedding light upon periods of occupation over large areas of the United States. Such sites are those which have yielded, or which may reasonably be expected to yield, data affecting theories, concepts and ideas to a major degree.

Ordinarily, cemeteries, birthplaces, graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings and properties that have achieved significance within the past 50 years are not eligible for designation. Such properties, however, will qualify if they fall within the following categories:

(1) A religious property deriving its primary national significance from architectural or artistic distinction or historical importance; or

(2) A building or structure removed from its original location but which is nationally significant primarily for its architectural merit, or for association with persons or events of transcendent importance in the nation's history and the association consequential; or

(3) A site of a building or structure no longer standing but the person or event associated with it is of transcendent importance in the nation's history and the association consequential; or

(4) A birthplace, grave or burial if it is of a historical figure of transcendent national significance and no other appropriate site, building or structure directly associated with the productive life of that person exists; or

(5) A cemetery that derives its primary national significance from graves if persons of transcendent importance, or from an exceptionally distinctive design or from an exceptionally significant event; or

(6) A reconstructed building or ensemble of buildings of extraordinary national significance when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other buildings or structures with the same association have survived; or

(7) A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own national historical significance; or

(8) A property achieving national significance within the past 50 years if it is of extraordinary national importance.

Table 2.—Criteria for Inclusion of Cultural Properties on the World Heritage List

(1) A monument, group of buildings or site which have been nominated for inclusion on the World Heritage List will be considered to be of outstanding universal value for the purposes of the World Heritage Convention when the World Heritage Committee finds that it meets one or more of the following criteria and the test of authenticity. Each property nominated should therefore:

(i) Represent a unique artistic achievement, a masterpiece of the creative genius; or

(ii) Have exerted great influence, over a span of time or within a cultural area of the world, on developments in architecture, monumental arts or townplanning and landscaping; or

(iii) Bear a unique or at least exceptional testimony to a civilization which has disappeared; or

(iv) Be an outstanding example of a type of structure which illustrates a significant stage in history; or

(v) Be an outstanding example of a traditional human settlement which is representative of a culture and which has become vulnerable under the impact of irreversible change; or

(vi) Be directly or tangibly associated with events or with ideas or beliefs of outstanding universal significance. (The Committee considered that this criterion should justify inclusion in the List only in exceptional circumstances or in conjunction with other criteria); and

In addition, the property must meet the test of authenticity in design, materials, workmanship, or setting.

(2) The following additional factors will be kept in mind by the Committee in deciding on the eligibility of a cultural property for inclusion on the List:

(i) The state of preservation of the property should be evaluated relatively, that is, it should be compared with that of other property of the same type dating from the same period, both inside and outside the country's borders; and

(ii) Nominations of immovable property which is likely to become movable will not be considered.

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Part III

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 921

National Estuarine Reserve Research System Regulations; Proposed Rule

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 921

[Docket No. 70674-7174]

National Estuarine Reserve Research System Regulations

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Proposed rule.

SUMMARY: The regulations revise existing rules for national estuarine sanctuaries in accordance with the Coastal Zone Management Reauthorization Act of 1985 (Pub. L. 99-272) and recommendations contained in the Office of Inspector General Report No. F-728-5-010, "Opportunities to Strengthen the Administration of the Estuarine Sanctuary Program." Effective with the signing of the Coastal Zone Management Act (CZMA) amendments on April 7, 1986, the name of the Estuarine Sanctuary Program changed to National Estuarine Reserve Research System; estuarine sanctuary sites are referred to as national estuarine research reserves. These regulations revise the process for designation of research reserves. Greater emphasis is placed on the use of reserves to address national estuarine research and management issues, and to make maximum use of the System for research purposes through coordination with other elements within NOAA and with other Federal and state agencies which are sponsoring estuarine research. Additional emphasis is also given to providing financial assistance to states to enhance public awareness and understanding of estuarine areas by provding opportunities for public education and interpretation. The regulations provide new guidance for delineating reserve boundaries and new procedures for arriving at the most effective and least costly approach to acquisition land. Clarifications in the total amount of financial assistance authorized for each national estuarine research reserve, and in criteria for withdrawing the designation of a reserve, have also been added.

DATE: Comments will be accepted until December 30, 1988. After the close of the comment period and review of the comments received, final regulations will be published in the Federal Register.

ADDRESS: Send comments to: Mr. Joseph Uravitch, Chief; Marine and Estuarine Management Division; Office of Ocean and Coastal Management, NOS/NOAA; 1825 Connecticut Avenue NW., Washington DC 20235, (202) 673-5122.

FOR FURTHER INFORMATION CONTACT: Mr. Art Jeffers, (202) 673-5128.

SUPPLEMENTARY INFORMATION: NOAA is proposing revised regulations for implementing the National Estuarine Reserve Research System, pursuant to section 315 of the Coastal Zone Management Act, as amended (16 U.S.C. 1416). The System has been operating under National Estuarine Program regulations published June 27, 1984 (49 FR 26502). Based on experience in operating the System and on the Coastal Zone Management Act (CZMA) amendments effective in April 1986, a number of changes in operating procedures and policy are required The proposed regulations implement these changes, which include:

I. Changing the Name and Emphasis of the Program

The CZMA amendments established the National Estuarine Program System (System). The System consists of (1) Each estuarine sanctuary designated before enactment of the Coastal Zone Management Reauthorization Act of 1985, and (2) each estuarine area designated as a national estuarine research reserve under subsection 921.30 of these regulations. The term estuarine sanctuary no longer appears in regulations; the term research reserve or reserve appears in its place.

The Mission Statement for the System is much the same as for the National Estuarine Sanctuary Program. However, the goals for the National Estuarine Reserve Research System stress the use of reserve sites for promotion and coordination of estuarine research on a national level as the highest priority and reason for establishing the System. The protection and management of estuarine areas and resources are clearly intended to support the research mission, not as ends in themselves. Consultation with other Federal and state agencies to promote use of one or more reserves within the System by such agencies when conducting estuarine research is also a clearly defined goal of the System. The regulations also emphasize using a reserve's natural resources and ecology to enhance public awareness and understanding of estuarine areas, and providing suitable opportunities for public education and interpretation. This education goal has been elevated to become one of the essential criteria for designation of a reserve.

II. Revision of the Procedures for Selecting, Designating and Operating National Estuarine Research Reserves

(A) *Revision of designation criteria.* The Coastal Zone Management Reauthorization Act of 1985 established, for the first time, statutory criteria for designating an area as a national estuarine research reserve. An area may be designated by the Secretary of Commerce if:

"(1) The Governor of the coastal state in which the area is located nominates the area for that designation; and

(2) The Secretary of Commerce finds that:

(A) The area is a representative estuarine ecosystem that is suitable for long-term research and contributes to the biogeographical and typological balance of the System;

(B) The law of the coastal state provides long-term protection for reserve resources to ensure a stable environment for research;

(C) Designation of the area as a reserve will serve to enhance public awareness and understanding of estuarine areas, and provide suitable opportunities for public education and interpretation; and

(D) The coastal state in which the area is located has complied with the requirements of any regulations issued by the Secretary to implement this section."

Some of these criteria for designation are either new or substantially more specific than those contained in the existing regulations. For example, the Governor in a coastal state must nominate an estuarine area for designation, and findings are required that the law of the coastal state provides long-term protection for reserve resources to ensure a stable environment for research and that designation of the area will serve to enhance public awareness and understanding of estuarine areas. The criteria in the existing regulations have been revised accordingly.

(B) *Revision of site selection criteria and procedures.* The criteria for selecting an estuarine area for designation as a national estuarine research reserve have been expanded to provide guidance for determining boundaries for the proposed site. The Office of Inspector General Report No. F-728-5-010 criticized the lack of specific guidelines for setting limits on boundaries around estuarine sanctuaries to ensure that only land essential to the mission of the program be included inside the sanctuary. References in the existing regulations to

ensure that the boundaries encompass an adequate portion of the key land and water areas of the natural system to approximate an ecological unit are too vague, particularly since terms are not defined. The proposed regulations define key land and water areas as a "core area" within the reserve which is so vital to the functioning of the estuarine ecosystem that it must be under a level of control sufficient to ensure the long-term viability of the reserve for research on natural processes. The determination of key land and water areas must be based on scientific knowledge of the area. The concept of a "buffer" area to protect the core area and provide additional protection for estuarine-dependent species has also been defined in the regulations. The buffer zone may include an area necessary for facilities required for research and interpretation, and additionally, to accommodate a shift of the core area as a result of biological, ecological or geomorphological change which reasonable could be expected to occur. States will be required to use scientific criteria to justify the boundaries selected for a proposed site.

The information requirements for NOAA approval of a proposed site under existing regulations were confusing and now have been clarified.

NOAA has recognized the need to conduct studies to develop a basic description of the physical, chemical, and biological characteristics of the site. As a result, states may now be eligible for Federal funding of these studies after NOAA approval of a proposed site.

(C) *Management plan development.* Once NOAA approves the proposed site and decides to proceed with designation, the state must develop a draft management plan. The contents of the plan, including the memorandum of understanding (MOU) between NOAA and the state, are specified in the regulations. The acquisition portion of the plan has been greatly expanded to implement recommendations in the Office of Inspector General Report No. F-728-5-010. It is proposed that states be required to justify the use of fee simple acquisition methods and make greater use of non-fee simple methods to conserve expenditure of funds. For each parcel, both in the core area and the buffer zone, states must determine, with appropriate justification: (1) The minimum level of control(s) required, (2) the level of existing state control, and (3) the level of additional state control(s) required; states must also examine all reasonable alternatives for attaining the additional level of control required, perform a cost analysis of each, and rank, in order of cost, the alternative methods of acquisition which were considered. The cost-effectiveness assessment must also compare short-term and long-term costs. The state shall give priority consideration to the least costly method(s) of attaining the minimum level of long-term control required.

(D) *Financial assistance awards for site selection and post site selection.* The first five types of awards under the National Estuarine Reserve Research System is for site selection and post-site selection, which includes preparation of a draft management plan (including MOU) and the collection of information necessary for preparation of the environmental impact statement. The maximum total Federal share of these awards has been raised to $100,000. Of this amount, up to $25,000 may be used to conduct the site selection process as described in § 921.11. After NOAA's approval of a proposed site and decision to proceed with the designation process, the state may expend: (1) Up to $40,000 of this amount to develop the draft management plan and collect information for preparation of the environmental impact statement; and (2) up to the remainer of available funds to conduct studies to develop a basic description of the physical, chemical, and biological characteristics of the site.

(E) *Financial assistance awards for acquisition, development, and initial management.* The regulations divide eligibility for financial assistance awards for acquisition and development into two phases. In the initial phase, states are working to meet the criteria required for formal research reserve designation, i.e., establishing adequate state control over key land and water areas in accordance with the draft management plan and preparing a final management plan. In this pre-designation phase, funds are available for acquiring interest in land, which is the primary purpose of this award, and for minor construction (e.g., nature trails and boat ramps), preparation of architectual and engineering plans and specifications, development of the final management plan, and hiring a reserve manager and other staff as necessary to implement the NOAA approved draft management plan.

The length of time for this initial phase of acquisition and development may be up to three years. After the site receives Federal designation as a national estuarine research reserve, the state may request additional financial assistance to acquire additional property interests (e.g., for the buffer zone), for construction of research and interpretive facilities, and for restorative activities in accordance with the approved final management plan.

The Coastal Zone Management Reauthorization Act of 1985 specifies that the amount of financial assistance provided with respect to the acquisition of land and waters, or interests therein, for any one national estuarine research reserve may not exceed 50 per centum of the costs of the lands, waters, and interests therein or $4,000,000, whichever amount is less.

The amount of Federal financial assistance provided under the regulations for development costs directly associated with major facility construction (i.e., other than land acquisition) for any one national estuarine research reserve must not exceed 50 per centum of the costs of such construction or $1,000,000, whichever amount is less.

(F) *Financial assistance awards for operation and management.* The amount of Federal financial assistance available to a state to manage the reserve and operate programs consistent with the mission and goals of the National Estuarine Reserve Research System has been raised to $420,000. Of this amount, no more than $70,000 may be requested in a twelve month period, allowing for a period of Federal assistance for operation of management assistance of six years of more. Up to ten percent of the total award (Federal and state) each year may be used for construction-type activities.

A time limit has been imposed on the expenditure of operations and management awards for personnel positions. The Federal portion of operations and management awards may be used for the support of any single staff position (e.g., reserve manager, assistant manager, research coordinator, education/interpretive coordinator, secretary/administrative assistant, custodial support, or their equivalents) for a period not exceeding three years. The intent of this provision is to ensure that the state makes a longterm commitment of resources to staff the reserve adequately, well in advance of the period when Federal funding for operation and management is terminated.

(G) *Financial assistance for research.* The CZM Reauthorization Act of 1985 specifically affects the conduct of the System's research program by establishing the requirement for developing Estuarine Research Guidelines and specifying what these guidelines shall include. The legislation also requires the Secretary of Commerce to require that NOAA, in conducting or

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supporting estuarine research, give priority consideration to research that uses reserves in the System, and that NOAA consult with other Federal and state agencies to promote use of one or more reserves by such agencies when conducting estuarine research.

The research guidelines, which are referred to in regulations, but are not part of them, state that NOAA will provide research grants only for proposals which address research questions and coastal management issues that have highest national priority as determined by NOAA, in consultation with prominent members of the estuarine research community.

One significant addition to the regulations is that research awards are available on a competitive basis to any coastal state or qualified public or private person, thus making it possible for the first time for public or private persons, organizations or institutions to compete with coastal states and coastal state universities for NOAA research funding to work in research reserves.

(H) *Financial assistance awards for interpretation and education.* The CZM Reauthorization Act of 1985 authorizes the award of grants for the purposes of conducting educational and interpretive activities. To stimulate the development of innovative or creative interpretive and educational projects and materials which will enhance public awareness and understanding of estuarine areas, the regulations provide for funds to be available on a competitive basis to any coastal state entity. These funds are provided in addition to any other funds available to a coastal state under these regulations.

Categories of potential educational and interpretive projects include:

(1) Design, development and distribution/placement of interpretive or educational media (i.e., the development of tangible items such as exhibits/displays, publications, posters, signs, audio-visuals, computer software, and maps, which have an educational or interpretive purpose, and techniques for making available or locating information concerning reserve resources, activities, or issues);

(2) Development and presentation of curricula, workshops, lectures, seminars, and other structured programs or presentations for on-site facility or field use;

(3) Extension/outreach programs; or

(4) Creative and innovative methods and technologies for implementing interpretive or educational projects.

Interpretive and educational projects may be oriented to one or more research reserves or the entire System. Those projects which would benefit more than one research reserve, and, if practical, the entire National Estuarine Reserve Research System, shall receive priority consideration for funding.

III. Other actions associated with the proposed rulemaking

(A) *Classification under executive order 12291.* NOAA has concluded that these regulations are not major because they will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers; individual industries; Federal, state, or local government agencies; or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

These proposed rules amend existing procedures for identifying, designating, and managing national estuarine research reserves in accordance with the CZM Reauthorization Act of 1985. They will not result in any direct economic or environmental effects nor will they lead to any major indirect economic or environmental impacts.

(B) *Regulatory Flexibility Act analysis.* A Regulatory Flexibility Analysis is not required for this notice of proposed rulemaking. The regulations set forth procedures for identifying and designating national estuarine research reserves, and managing sites once designated. These rules do not directly affect "small government jurisdictions" as defined by Pub. L. 96-354, the Regulatory Flexibility Act, and the rules will have no effect on small businesses.

(C) *Paperwork Reduction Act of 1980.* This rule contains collection of information requirements subject to Pub. L. 96-511, the Paperwork Reduction Act (PRA), which have already been approved by the Office of Management and Budget (approval number 0648-0121) for use through October 31, 1989. Public reporting burden for the collections of information contained in this rule is estimated to average 2,012 hours per response for management plans and related documentation, 1.25 hours for performance reports, and 15 hours for annual reports and work plans. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to Richard Roberts; Room 1235; Department of Commerce; Washington, DC; 20230; and to the Office of Information and Regulatory Affairs; Office of Management and Budget; Washington, DC; 20503.

(D) *Executive Order 12612.* This rule does not contain policies with sufficient Federalism implications to warrant preparation of a Federalism assessment under Executive Order 12612.

(E) *National Environmental Policy Act.* NOAA has concluded that publication of the proposed rules does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

List of Subjects in 15 CFR Part 921

Administrative practice and procedure, Coastal zone, Environmental protection, Natural resources, and Wetlands.

Dated: October 21, 1988.

Thomas J. Maginnis,

Assistant Administrator for Ocean Services and Coastal Zone Management.

Federal Domestic Assistance, Catalog Number 11.420, National Estuarine Reserve, Research System.

For the reasons set forth in the preamble, it is proposed that 15 CFR Part 921 be amended by revising Subparts A through F and by adding Subparts G and H to read as set forth below. No changes are proposed to Appendix 1—Biogeographic Classification Scheme or Appendix 2—Typology of National Estuarine Research Reserves.

PART 921—NATIONAL ESTUARINE RESERVE SYSTEM REGULATIONS

Subpart A—General

Sec.

921.1 Mission, goals and general provisions.
921.2 Definitions.
921.3 National Estuarine Reserve Research System Biogeographic Classification Scheme and Estuarine Typologies.
921.4 Relationship to other provisions of the Coastal Zone Management Act.

Subpart B—Site Selection, Post Site Selection and Management Plan Development

921.10 General.
921.11 Site selection.
921.12 Post site selection.
921.13 Management Plan and Environmental Impact Statement development.

Subpart C—Acquisition, Development, and Preparation of the Final Management Plan

921.20 General.

Sec.

921.21 Initial acquisition and development awards.

Subpart D—Reserve Designation and Subsequent Operation

921.30 Designation of National Estuarine Research Reserves.
921.31 Supplemental acquisition and development awards.
921.32 Operation and management: Implementation of the Management Plan.
921.33 Boundary changes, amendments to the Management Plan, and addition of multiple-site components.

Subpart E—Performance Evaluation and Withdrawal of Designation

921.40 Evaluation of system performance.
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Subpart F—Research

921.50 General.
921.51 Estuarine research guidelines.
921.52 Promotion and coordination of estuarine research.

Subpart G—Interpretation and Education

921.60 General.
921.61 Categories of potential interpretive and educational projects; evaluation criteria.

Subpart H—General Financial Assistance Provisions

921.70 Application information.
921.71 Allowable costs.
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Authority: Section 315, Pub. L. 92-583, as amended; 86 Stat. 1280 (16 U.S.C. 1461).

Subpart A—General

§ 921.1 Mission, goals and general provisions.

(a) The mission of the National Estuarine Reserve Research System is the establishment and management, through Federal-state cooperation, of a national system of estuarine research reserves representative of the various regions and estuarine types in the United States. Estuarine research reserves are established to provide opportunities for long-term research, education, and interpretation.

(b) The goals of the System for carrying out this mission are to:

(1) Ensure a stable environment for research through long-term protection of estuarine reserve resources;

(2) Address coastal management issues identified as significant through coordinated estuarine research within the System;

(3) Enhance public awareness and understanding of the estuarine environment and provide suitable opportunities for public education and interpretation;

(4) Promote Federal, state, public and private use of one or more reserves within the System when such entities conduct estuarine research; and

(5) Conduct and coordinate estuarine research within the System, gathering and making available information necessary for improved understanding and management of estuarine areas;

(c) National estuarine research reserves shall be open to the public. Multiple uses are allowed to the degree compatible with the research reserve's overall purpose as provided in the management plan (see § 921.12) and consistent with paragraphs (a) and (b) of this section. Use levels are set by the individual state and analyzed in the management plan. The research reserve management plan shall describe the uses and establish priorities among these uses. The plan shall identify uses requiring a state permit, as well as areas where uses are encouraged or prohibited. Consistent with resource protection and research objectives, public access may be restricted to certain areas within a research reserve.

(d) Certain manipulative research activities may be allowed on a limited basis, but only if specified in the management plan and only if the activity is consistent with overall reserve purposes and the reserve resources are protected. Manipulative research activities with a significant or long-term impact on reserve resources require the prior approval of the state and the National Oceanic and Atmospheric Administration (NOAA). Habitat manipulation for resource management purposes is not permitted within national estuarine research reserves.

(e) While the intent of establishing national estuarine research reserves is the protection of natural pristine estuarine sites for research, educational and interpretive purposes, NOAA recognizes that many estuarine areas have undergone ecological change as a result of human activities. Although restoration of degraded areas is not a primary purpose of the System, some restorative activities may be permitted in an estuarine research reserve as specified in the management plan.

(f) NOAA may provide financial assistance to coastal states, not to exceed 50 percent of all actual costs, to assist in the acquisition, development and operation of, and the conduct of educational or interpretive activities concerning, national estuarine research reserves (see Subpart H). NOAA may provide financial assistance to any coastal state or public or private person, not to exceed 50 percent of all actual costs, to support research and monitoring within a national estuarine research reserve. Five types of awards are available under the National Estuarine Reserve Research System. The predesignation awards are for site selection, draft management plan preparation and conduct of basic characterization studies. The acquisition and development award is intended primarily for acquisition of interests in land and construction. The operation and management award provides funds to assist in implementing the research, educational, and administrative programs detailed in the research reserve management plan. At the conclusion of Federal financial assistance for operation and management, funding for the long-term operation of the research reserve becomes the responsibility of the state. The research award provides funds to conduct estuarine research and monitoring within the System. The educational and interpretive award provides funds to conduct estuarine educational and interpretive activities within the System.

(g) Lands already in protected status managed by other Federal agencies, state or local governments, or private organizations can be included within national estuarine research reserves only if the managing entity commits to long-term non-manipulative management. Federal lands already in protected status cannot comprise the key land and water areas of a research reserve (see § 921.11(c)(3)).

§ 921.2 Definitions.

(a) "Act" means the Coastal Zone Management Act, as amended, 16 U.S.C. 1451 *et seq.* Section 315 of the Act, 16 U.S.C. 1461, establishes the National Estuarine Reserve Research System.

(b) "Assistant Administrator" (AA) means the Assistant Administrator for Ocean Services and Coastal Zone Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, or designee.

(c) "Coastal state" means a state of the United States in or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes. For the purposes of this title, the term also includes Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Marianas, the Trust Territories of the Pacific Islands, and American Samoa (see 16 U.S.C. 1453(4)).

(d) "Estuary" means that part of a river or stream or body of water having unimpaired connection with the open sea, where the sea water is measurably

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...ciated with fresh water derived from land drainage. The term also includes estuary-type areas of the Great Lakes (see 16 U.S.C. 1453(7)).

(e) "National Estuarine Research Reserve" means an area that is a representative estuarine ecosystem suitable for long/term research, which may include all or the key land and water portion of an estuary, and adjacent transitional areas and uplands constituting to the extent feasible a natural unit, and which is set aside as a natural field laboratory to provide long-term opportunities for research, education, and interpretation on the ecological relationships within the area (see 16 U.S.C. 1453(8)). This includes those areas designated as national estuarine sanctuaries under section 315 of the Act prior to the date of the enactment of the Coastal Zone Management Reauthorization Act of 1985 and each area designated as a national estuarine research reserve pursuant to the provisions of these regulations.

§ 921.3 National Estuarine Reserve Research System Biogeographic Classification Scheme and Estuarine Typologies.

(a) National estuarine research reserves are chosen to reflect regional differences and to include a variety of ecosystem types. A biogeographic classification scheme based on regional variations in the nation's coastal zone has been developed. The biogeographic classification scheme is used to ensure that the national Estuarine Reserve Research System includes at least one site from each region. The estuarine typology system is utilized to ensure that sites in the System reflect the wide range of estuarine types within the United States.

(b) The biogeographic classification scheme, presented in Appendix 1, contains 27 regions. Figure 2 graphically depicts the biogeographic regions of the United States.

(c) The typology system is presented in Appendix 2.

§ 921.4 Relationship to other provisions of the Coastal Zone Management Act.

(a) The National Estuarine Reserve Research System is intended to provide information to state agencies and other entities involved in addressing coastal management issues. Any coastal state, including those that do not have approved coastal zone management programs under section 306 of the Act, is eligible for an award under the National Estuarine Reserve Research System (see § 921.5(c)).

(b) For purposes of consistency review by states with a federally approved coastal zone management program, the designation of a national estuarine research reserve is deemed to be a Federal activity, which, if directly affecting the state's coastal zone, must be undertaken in a manner consistent to the maximum extent practicable with the approved state coastal zone program as provided by section 307(c)(1) of the Act, and implementing regulations at 15 CFR Part 930, Subpart C. At the earliest practicable time, a state with a federally approved coastal zone management program shall consult with appropriate state officials concerning the consistency of the proposed national estuarine research reserve.

Subpart B—Site Selection, Post Site Selection and Management Plan Development

§ 921.10 General.

(a) A state may apply for Federal financial assistance for the purpose of site selection, preparation of documents specified in § 921.13 (draft management plan and environmental impact statement (EIS)) and the conduct of research necessary to complete basic characterization studies. The total Federal share of this group of predesignation awards may not exceed $100,000, of which up to $25,000 may be used for site selection as described in § 921.11. In the case of a multi-component national estuarine research reserve in which one or more components are proposed to be located within different states, this provision applies to each state. Financial assistance application procedures are specified in Subpart H.

(b) In selecting a site, a state may choose to develop a multiple-site research reserve reflecting a diversity of habitats in a single biogeographic region. A multiple-site research reserve also allows the state to develop complementary research and educational programs within the multiple components of its research reserve. Multiple-site research reserves are treated as one reserve in terms of financial assistance and development of an overall management framework and plan. Each individual component of a proposed multiple-site research reserve shall be evaluated both separately under § 921.11(c) and collectively within the context of the multi-component reserve as part of the site selection process. A state may propose to establish a multiple-site research reserve at the time of the initial site selection, or at any point in the development or operation of the estuarine research reserve, even after Federal funding for the single component research reserve has expired. If the state decides to develop a multiple-site national estuarine research reserve after the initial acquisition and development award is made for a single site, the proposal is subject to the requirements set forth in § 921.33. Importantly, however, a state may not propose to add one or more components to an already designated research reserve if the operation and management of such research reserve has been found deficient or the research conducted is not consistent with the Estuarine Research Guidelines in accordance with the provisions of Subpart E. In addition, the total acquisition funding for a multiple-site research reserve remains limited to $4,000,000 (see § 921.20). The funding for operation of multiple-site research reserve remains limited to $420,000 (see § 921.32(c)).

§ 921.11 Site selection.

(a) A state may use up to $25,000 in Federal funds to establish and implement a site selection process which is approved by NOAA.

(b) In addition to the requirements set forth in Subpart H, a request for Federal funds for site selection must contain the following programmatic information:

(1) A description of the proposed site selection process and how it will be implemented in conformance with the biogeographic classification scheme and typology (§ 921.3);

(2) An identification of the site selection agency and the potential management agency; and

(3) A description of how public participation will be incorporated into the process (see § 921.11(d)).

(c) As part of the site selection process, the state and NOAA shall evaluate and select the final site(s). NOAA has final authority in approving such sites. Site selection shall be guided by the following principles:

(1) The site's contribution to the biogeographical and typological balance of the National Estuarine Reserve Research System (see the biogeographic classification scheme and typology set forth in § 921.3 and Appendices 1 and 2);

(2) The site's ecological characteristics, including its biological productivity, diversity of flora and fauna, and capacity to attract a broad range of research and educational interests. The proposed site must be a representative estuarine ecosystem and should, to the maximum extent possible, be a natural system;

(3) Assurance that the site's boundaries encompass an adequate portion of the key land and water areas of the natural system to approximate an ecological unit and to ensure effective conservation. Boundary size will vary greatly depending on the nature of the ecosystem. Research reserve boundaries must encompass the area within which adequate control has or will be established by the managing entity over human activities occurring within the reserve. General, reserve boundaries will encompass two areas: key land and water areas (or "core area") and a buffer zone. Key land and water areas and a buffer zone will likely require significantly different levels of control (see § 921.13(a)(7)). The term "key land and water areas" refers to that core area within the reserve that is so vital to the functioning of the estuarine ecosystem that it must be under a level of control sufficient to ensure the long-term viability of the reserve for research on natural resources. Key land and water areas, which comprise the core area, are those ecological units of a natural estuarine system which preserve, for research purposes, a full range of significant physical, chemical and biological factors contributing to the diversity of fauna, flora and natural processes occurring within the estuary. The determination of which land and water areas are "key" to a particular reserve must be based on specific scientific knowledge of the area. A basic principle to follow when deciding upon key land and water areas is that they should encompass resources representative of the total ecosystem, and which if compromised could endanger the research objectives of the reserve. The term "buffer zone" refers to an area adjacent to or surrounding key land and water areas and essential to their integrity. Buffer zones protect the core area and provide additional protection for estuarine-dependent species, including those that are rare or endangered. When determined appropriate by the state and approved by NOAA, the buffer zone may also include an area necessary for facilities required for research and interpretation. Additionally, buffer zones should be established sufficient to accommodate a shift of the core area as a result of biological, ecological or geomorphological change which reasonably could be expected to occur. National estuarine research reserves may include existing Federal or state lands already in a protected status where mutual benefit can be enhanced. Importantly, however, NOAA will not approve a site for potential national estuarine research reserve status that is dependent upon the inclusion of currently protected Federal lands in order to meet the requirements for research reserve status (such as key land and water areas). Such lands may only be included within a research reserve to serve as a buffer or for other ancillary purposes;

(4) The site's suitability for long-term estuarine research, including ecological factors and proximity to existing research facilities and educational institutions;

(5) The site's compatibility with existing and potential land and water uses in contiguous areas; and

(6) The site's importance to education and interpretive efforts, consistent with the need for continued protection of the natural system.

(d) Early in the site selection process the state must seek the views of affected landowers, local governments, other state and Federal agencies and other parties who are interested in the area(s) being considered for selection as a potential national estuarine research reserve. After the local government(s) and affected landowner(s) have been contacted, at least one public meeting shall be held in the area of the proposed site. Notice of such a meeting, including the time, place, and relevant subject matter, shall be announced by the state through the area's principal news media at least 15 days prior to the date of the meeting and by NOAA in the Federal Register.

(e) A state request for NOAA approval of a proposed site (or sites in the case of a multi-site reserve) must contain a description of the proposed site in relationship to each of the site selection principles (§ 921.11(c)) and the following information:

(1) An analysis of the proposed site based on the biogeographical scheme/typology discussed in § 921.3 and set forth in Appendices 1 and 2;

(2) A description of the proposed site and its major resources, including location, proposed boundaries, and adjacent land uses. Maps, including aerial photographs, are required;

(3) A description of the public participation process used by the state to solicit the views of interested parties, a summary of comments, and, if interstate issues are involved, documentation that the Governor(s) of the other affected state(s) has been contacted. Copies of all correspondence, including contact letters to all affected landowners must be appended;

(4) A list of all sites considered and a brief summary of the basis for not selecting the non-preferred sites; and

(5) A nomination of the proposed site(s) for designation as a National Estuarine Research Reserve by the Governor of the coastal state in which the area is located.

§ 921.12 Post site selection.

(a) At the time of the state's request for NOAA approval of a proposed site, the state may submit a request for up to $40,000 of predesignation funds to develop the draft management plan and for the collection of the information necessary for preparation of the environmental impact statement. At this time, the state may also submit a request for the remainder of the predesignation fund for research necessary to complete a basic characterization of the physical, chemical and biological characteristics of the site approved by NOAA. The state's request for these post site selection funds must be accompanied by the information specified in Subpart H and, for draft management plan development and environmental impact statement information collection, the following programmatic information:

(1) A draft management plan outline (see § 921.13(a) below); and

(2) An outline of a draft memorandum of understanding (MOU) between the state and NOAA detailing the Federal-state role in research reserve management during the initial period of Federal funding and expressing the state's long-term commitment to operate and manage the national estuarine research reserve.

(b) The state is eligible to use the funds referenced in § 921.12(a) after the proposed site is approved by NOAA.

§ 921.13 Management plan and environmental impact statement development.

(a) After NOAA approves the state's proposed site and request to use remaining predesignation funds for draft management plan development and environmental impact statement development, the state shall develop a draft management plan, including an MOU. The plan will set out in detail:

(1) Research reserve goals and objectives, management issues, and strategies or actions for meeting the goals and objectives;

(2) An administrative section including staff roles in administration, research, education/interpretation, and surveillance and enforcement;

(3) A research plan, including a monitoring design;

(4) An education/interpretive plan;

(5) A plan for public access to the research reserve;

(6) A construction plan, including a proposed construction schedule, preliminary drawings and general descriptions of proposed developments. Information should be provided for proposed minor construction projects in sufficient detail to allow these projects to begin in the initial phase of acquisition and development. If a visitor center, research center or any other facilities are proposed for construction or renovation at the site, or restorative activities which require significant construction are planned, a detailed construction plan including preliminary cost estimates and architectural drawings must be prepared as a part of the final management plan; and

(7) An acquisition plan identifying the ecologically key land and water areas of the research reserve, ranking these areas according to their relative importance, and including a strategy for establishing adequate state control over these areas sufficient to provide protection for reserve resources to ensure a stable environment for research. This plan must include an identification of ownership within the proposed research reserve boundaries, including land already in the public domain; the method(s) which the state proposes to use—acquisition (including less-than-fee options) or the feasible alternatives—to establish adequate state control; an estimate of the fair market value of any property interest—fee or less-than-fee simple interest—which is proposed for acquisition; a schedule estimating the time required to complete the process of establishing adequate state control of the proposed research reserve, and a discussion of any anticipated problems. In selecting a preferred method(s) for establishing adequate state control over areas within the proposed boundaries of the reserve, the state shall perform the following steps for each parcel determined to be part of the key land and water areas (control over which is necessary to protect the integrity of the reserve for research purposes), and for those parcels required for research and interpretive support facilities or buffer purposes:

(i) Determine, with appropriate justification, the minimum level of control(s) required (*e.g.*, management agreement, regulation, less-than-fee property interest, fee simple property acquisition, a combination of these approaches or other feasible alternative);

(ii) Identify the level of existing state control(s);

(iii) Identify the level of additional state control(s), if any, necessary to meet the minimum requirements identified in paragraph (a)(7)(i) of this section;

(iv) Examine all reasonable alternatives for attaining the level of control identified in paragraph (a)(7)(iii) of this section, and perform a cost analysis of each; and

(v) Rank, *in order of cost*, the methods (including acquisition) identified in paragraph (a)(7)(iv) of this section.

An assessment of the relative cost-effectiveness of control alternatives shall include a reasonable estimate of both short-term costs (*e.g.*, acquisition of property interests, regulatory program development including associated enforcement costs, negotiation, adjudication, etc.) and long-term costs (*e.g.*, monitoring, enforcement, adjudication, management and coordination, etc.). In selecting a preferred method(s) for establishing adequate state control over each parcel examined under the process described above, the state shall give priority consideration to the least costly method(s) of attaining the minimum level of long-term control required. Generally, with the possible exception of buffer areas required for support facilities, the level of control(s) required for buffer areas will be considerably less than that required for key land and water areas. This acquisition plan, after receiving the approval of NOAA, shall serve as a guide for negotiations with landowners. A final boundary for the reserve shall be delineated as a part of the final management plan.

Note.—As discussed in § 921.11(c)(3), if Federally protected lands are to be included within the proposed research reserve, the state must demonstrate to NOAA that the site meets the criteria for national estuarine research reserve status independent of the inclusion of such protected lands.

(8) A resource protection plan detailing applicable authorities, including allowable uses, uses requiring a permit and permit requirements, any restrictions on use of the research reserve, and a strategy for research reserve surveillance and enforcement of such use restrictions, including appropriate government enforcement agencies;

(9) If applicable, a restoration plan describing those portions of the site that may require habitat modification to restore natural conditions; and

(10) A proposed memorandum of understanding (MOU) between the state and NOAA regarding the Federal-state relationship during the establishment and development of the national estuarine research reserve, and expressing a long-term commitment by the state to maintain effectively the research reserve after Federal financial assistance for operation and management of the site has expired. In conjunction with the MOU and where possible under state law, the state will consider taking appropriate administrative or legislative action to ensure the long-term protection and operation of the national estuarine research reserve. The MOU shall be signed prior to research reserve designation. If other MOUs are necessary (such as with a Federal agency or another state agency), drafts of such MOUs also must be included in the plan.

(11) If the state has a federally approved coastal zone management program, documentation that the proposed national estuarine research reserve is consistent to the maximum extent practicable. See § 921.4(b).

(b) Regarding the preparation of an environmental impact statement (EIS) under the National Environmental Policy Act on a national estuarine research reserve proposal, the state shall provide all necessary information to NOAA concerning the socioeconomic and environmental impacts associated with implementing the draft management plan and feasible alternatives to the plan. Based on this information, NOAA will prepare the draft EIS.

(c) Early in the development of the draft management plan and the draft EIS, the state shall hold a meeting in the area or areas most affected to solicit public and government comments on the significant issues related to the proposed action. NOAA will publish a notice of the meeting in the **Federal Register**. The state shall be responsible for publishing a similar notice in the local media.

(d) NOAA will publish a **Federal Register** notice of intent to prepare a draft EIS. After the draft EIS is prepared and filed with the Environmental Protection Agency (EPA), a Notice of Availability of the DEIS will appear in the **Federal Register**. Not less than 30 days after publication of the notice, NOAA will hold at least one public hearing in the area or areas most affected by the proposed national estuarine research reserve. The hearing will be held no sooner than 15 days after appropriate notice of the meeting has been given in the principal news media and in the **Federal Register** by NOAA and the state, respectively. After a 45-day comment period, a final EIS will be prepared by NOAA.

Subpart C—Acquisition, Development and Preparation of the Final Management Plan

§ 921.20 General.

The acquisition and development period is separated into two major phases. After NOAA approval of the site, draft management plan and draft MOU, and completion of the final EIS, a state is eligible for an initial acquisition and development award(s). In this initial phase, the state should work to meet the criteria required for formal research reserve designation; *e.g.*, establishing adequate state control over the key land and water areas as specified in the draft management plan and preparing the final management plan. These requirements are specified in § 921.30. Minor construction in accordance with the draft management plan may also be conducted during this initial phase. The initial acquisition and development phase is expected to last no longer than three years. If necessary, a longer time period may be negotiated between the state and NOAA. After research reserve designation, a state is eligible for a supplemental acquisition and development award(s). In this post-designation acquisition and development phase, funds may be used in accordance with the final management plan to construct research and educational facilities, complete any remaining land acquisition, and for restorative activities identified in the final management plan. In any case, the amount of Federal financial assistance with respect to the acquisition of lands and waters, or interests therein, for any one national estuarine research reserve may not exceed an amount equal to 50 per cent of the costs of the lands, waters, and interests therein or $4,000,000, whichever is less.

§ 921.21 Initial acquisition and development awards.

(a) Assistance is provided to aid the recipient in:

(1) Acquiring a fee or less-than-fee real property interest in land and water areas to be included in the research reserve boundaries (see § 921.13(a)(7));

(2) Minor construction, as provided in paragraphs (b) and (c) of this section;

(3) Preparing the final management plan; and

(4) Up to the point of research reserve designation, initial management costs, *e.g.*, for implementing the NOAA approved draft management plan, preparing the final management plan, hiring a reserve manager and other staff as necessary and for other management-related activities.

Application procedures are specified in Subpart H.

(b) The expenditure of Federal and state funds on major construction activities is not allowed during the initial acquisition and development phase. The preparation of architectural and engineering plans, including specifications, for any proposed construction, or for proposed restorative activities, is permitted. In addition, minor construction activities, consistent with paragraph (c) of this section also are allowed. The NOAA-approved draft management plan must, however, include a construction plan and a public access plan before any award funds can be spent on construction activities.

(c) Only minor construction activities that aid in implementing portions of the management plan (such as boat ramps and nature trails) are permitted during the initial acquisition and development phase. No more than five (5) percent of the initial acquisition and development award may be expended on such facilities. NOAA must make a specific determination, based on the final EIS, that the construction activity will not be detrimental to the environment.

(d) Except as specifically provided in paragraphs (a) through (c) of this section, construction projects, to be funded in whole or in part under an acquisition and development award(s), may not be initiated until the research reserve receives formal designation (see § 921.30).

Note.—The intent of these requirements and the phasing of the acquisition and development award(s) is to ensure that substantial progress in establishing adequate state control over and, if necessary, acquiring the key land and waters areas has been made and that a final management plan is completed before major sums are spent on construction. Once substantial progress in establishing adequate state control/acquisition has been made, as defined by the state in the management plan, other activities guided by the final management plan may begin with NOAA's approval.

(e) For any real property acquired in whole or part with Federal funds for the research reserve the state shall execute suitable title documents to include substantially the following provisions, or otherwise append the following provisions in a manner acceptable under applicable state law to the official land record(s):

(1) Title to the property conveyed by this deed shall vest in the [recipient of the CZMA section 315 award or other federally approved state agency] subject to the condition that the designation of the [name of National Estuarine Reserve] is not withdrawn and the property remains part of the federally designated [name of National Estuarine Research Reserve]. In the event that the property is no longer included as part of the research reserve, or if the designation of the research reserve of which it is part is withdrawn, then NOAA or its successor agency, after full and reasonable consultation with the State, may exercise the following rights regarding the disposition of the property:

(i) The recipient may retain title after paying the Federal Government an amount computed by applying the Federal percentage of participation in the cost of the original project to the current fair market value of the property;

(ii) If the recipient does not elect to retain title, the Federal Government may either direct the recipient to sell the property and pay the Federal Government an amount computed by applying the Federal percentage of participation in the cost of the original project to the proceeds from the sale (after deducting actual and reasonable selling and repair or renovation expenses, if any, from the sale proceeds), or direct the recipient to transfer title to the Federal Government. If directed to transfer title to the Federal Government, the recipient shall be entitled to compensation computed by applying the recipient's percentage of participation in the cost of the original project to the current fair market value of the property.

Note.—The intent of this requirement is to ensure that the official land record(s) associated with real property within a national estuarine research reserve acquired in whole or part with Federal funds includes an appropriate reference to the Federal interest in the property which would arise should such property: (1) Be used for a purpose other than as a national estuarine research reserve, or (2) be no longer included as a part of a federally designated national estuarine research reserve. Fair market value of the property must be determined by an independent appraiser and certified by a responsible official of the state, as provided by OMB Circular A-102 Revised, Attachment F, as amended or superseded, and NOAA's Uniform Relocation and Real Property Acquisition Policies.

(f) Upon instruction by NOAA, provisions analogous to those of § 921.21(e) shall be included in the documentation underlying less-than-fee-simple interests acquired in whole or part with Federal funds.

(g) The expenditure of Federal funds or non-Federal matching share funds to acquire a partial undivided interest (*i.e.*, less-than-full or less than 100% of fee simple or less-than-fee-simple interest) in real property is not allowed. However, in the case where a state has

previously acquired a partial undivided interest in real property with non-Federal funds, if the remaining interest is subsequently acquired with Federal or non-Federal funds and such acquisition was identified as a part of an approved acquisition strategy, then the fair market value of such an existing partial undivided interest in real property may be allowable as match (*i.e.*, non-Federal share) for an acquisition and development award (see also the requirements of § 921.71). This prohibition does not apply to acquisition(s) of partial undivided interests which have been identified as a part of an acquisition strategy which has been approved by NOAA prior to the effective date of these regulations.

(h) Prior to submitting the final management plan to NOAA for review and approval, the state shall hold a public meeting to receive comment on the plan in the area affected by the estuarine research reserve. NOAA will publish a notice of the meeting in the **Federal Register**. The state shall be responsible for having a similar notice published in the local media.

Subpart D—Reserve Designation and Subsequent Operation

§ 921.30 Designation of National Estuarine Research Reserves.

(a) The AA shall designate an area as a national estuarine research reserve pursuant to section 315 of the Act, based upon written findings that the state has met the following requirements:

(1) The Governor of the coastal state in which the area is located has nominated the area for designation as a national estuarine research reserve;

(2) The area is a representative estuarine ecosystem that is suitable for long-term research and contributes to the biogeographical and typological balance of the System;

(3) Key land and water areas of the proposed research reserve, as identified in the management plan, are under adequate state control sufficient to provide long-term protection for reserve resources to ensure a stable environment for research;

(4) Designation of the area as a reserve will serve to enhance public awareness and understanding of estuarine areas, and provide suitable opportunities for public education and interpretation;

(5) A final management plan has been approved by NOAA;

(6) An MOU has been signed between the state and NOAA ensuring a long-term commitment by the state to the effective operation and implementation of the national estuarine research reserve; and

(7) The coastal state in which the area is located has complied with the requirements of these regulations.

(b) NOAA will determine whether the designation of a national estuarine research reserve in a state with a federally approved coastal zone management program directly affects the coastal zone. If the designation is found to directly affect the coastal zone, NOAA will make a consistency determination pursuant to section 307(c)(1) of the CZMA and 15 CFR Part 930, Subpart C. The results of this consistency determination will be published in the **Federal Register** when a notice of designation is published. See 921.30(c).

(c) NOAA will cause a notice of designation of a national estuarine research reserve to be placed in the **Federal Register**. The state shall be responsible for having a similar notice published in the local media.

(d) The term "state control" in § 921.30(a)(3) does not necessarily require that key land and water areas be owned by the state in fee simple. Less-than-fee interests and regulatory measures are encouraged where the state can demonstrate that these lands are adequately controlled consistent with the purposes of the research reserve (see also § 921.13(a)(7)).

§ 921.31 Supplemental acquisition and development awards.

After national estuarine research reserve designation, and as specified in the approved management plan, the state may request a supplemental acquisition and development award(s) for acquiring additional property interests identified in the management plan as necessary to enhance long-term protection of the area for research, for facility construction, for restorative activities identified in the approved management plan, and for administrative purposes. The amount of Federal financial assistance provided for development costs directly associated with facility construction other than land acquisition (*i.e.*, major construction activities) for any one national estuarine research reserve may not exceed $1,000,000. In the case of a multi-component national estuarine research reserve in which all components are not located in one state, this provision applies to each involved state. Application procedures are specified in Subpart H. Land acquisition must follow the procedures specified in § 921.13(a)(7) and § 921.21 (e) and (f).

§ 921.32 Operation and Management: Implementation of the Management Plan.

(a) After the national estuarine research reserve is formally designated, the state is eligible to receive Federal funds to assist the state in the operation and management of the research reserve. The purpose of this Federally funded operation and management phase is to implement the approved final management plan and to take the necessary steps to ensure the continued effective operation of the research reserve after direct Federal support is concluded.

(b) State operation and management of national estuarine research reserves shall be consistent with the mission, and shall further the goals, of the National Estuarine Research Reserve System (see § 921.1).

(c) Federal funds of up to $420,000, to be matched by the state on a 50/50 basis, are available for the initial operation and management of the national estuarine research reserve, including the establishment and initial operation of a basic environmental monitoring program. In the case of a multi-component national estuarine research reserve in which all components are not located within one state, this provision applies to each involved state. State financial responsibility for the operation and management of the research reserve is fully assumed at the conclusion of initial Federal funding for operation and management.

(d) Operation and management funds are subject to the following limitations:

(1) No more than $70,000 in Federal funds may be expended in a twelve month award period (*i.e.*, Federal funds for operation and management may not be expended at a rate greater than $70,000 per year);

(2) No more than ten percent of the total amount (state and Federal shares) of each operation and management award may be used for construction-type activities (*i.e.*, $14,000 maximum per year); and

(3) The Federal share of operation and management awards may not be used for the support of any single research reserve position (*i.e.*, research reserve manager, research coordinator, assistant manager, education/interpretive coordinator, secretary/administrative assistant, custodial support, or their equivalents) for a period longer than three years.

Note.—The intent of this requirement is to ensure the state makes a commitment of basic staff resources to the project early in the operation and management phase. Given state financial responsibility for long-term operation and management of the site as a national estuarine research reserve, phasing down Federal support for the basic management, program coordination and administrative personnel required for efficient operation and management of the research reserve is in the interest of both the Federal Government and state. Such a limitation on the uses of the Federal share of operation and management awards, while continuing to allow state support of such personnel as a part of the state share, will aid in avoiding "all or nothing" situations otherwise faced by state agencies and legislatures at the time Federal funding expires for initial operation and management.

§ 921.33 Boundary changes, amendments to the Management Plan, and addition of multiple-site components.

(a) Changes in research reserve boundaries and major changes to the final management plan, including state laws or regulations promulgated specifically for the research reserve, may be made only after written approval by NOAA. If determined to be necessary, NOAA may require public notice, including notice in the **Federal Register** and an opportunity for public comment. Changes in the boundary involving the acquisition of properties not listed in the management plan or final EIS require public notice and the opportunity for comment; in certain cases, an environmental assessment may be required. Where public notice is required, NOAA will place a notice in the **Federal Register** of any proposed changes in research reserve boundaries or proposed major changes to the final management plan. The state shall be responsible for publishing an equivalent notice in the local media. See also requirements of §§ 921.4(b) and 921.13(a)(11).

(b) As discussed in § 921.10(b), a state may choose to develop a multiple-site national estuarine research reserve after the initial acquisition and development award for a single site has been made. Public notice of the proposed addition will be placed by NOAA in the **Federal Register**. The state shall be responsible for publishing an equivalent notice in the local media. An opportunity for comment, in addition to the preparation of either an environmental assessment or environmental impact statement on the proposal, will also be required. An environmental impact statement, if required, shall be prepared in accordance with § 921.13 and shall include an administrative framework for the mulitiple-site research reserve and a description of the complementary research and educational programs within the research reserve. If NOAA determines, based on the scope of the project and the issues associated with the additional site, that an environmental assessment is sufficient to establish a multiple-site research reserve, then the state shall develop a revised management plan which, concerning the additional component, incorporates each of the elements described in § 921.13(a). The revised management plan shall address goals and objectives for all components of the multi-site research reserve and the additional component's relationship to the original site(s).

Subpart E—Performance Evaluation Withdrawal of Designation

§ 921.40 Evaluation of system performance.

(a) Following designation of a national estuarine research reserve pursuant to § 921.30, periodic performance evaluations shall be conducted concerning the operation and management of each national estuarine research reserve, including the research being conducted within the reserve and education and interpretive activities. Evaluations may assess performance in all aspects of research reserve operation and management or may be limited in scope, focusing on selection issues of importance. Performance evaluations in assessing research reserve operation and management may also examine whether a research reserve is in compliance with the requirements of these regulations, particularly whether:

(1) The operation and management of the research reserve is consistent with and furthers the mission and goals of the National Estuarine Reserve Research System (see § 921.1), and

(2) A basis continues to exist to support any one or more of the findings made under § 921.30(a).

(b) Generally, performance during the operation and management phase supported by Federal financial assistance will be evaluated on a biennial schedule. Following the conclusion of Federal financial assistance for the support of research reserve operation and management, evaluations shall be conducted at least once every four years. More frequent evaluations may be scheduled as determined to be necessary by NOAA.

(c) Performance evaluations will be conducted by Federal officials. When determined to be necessary, Federal and non-Federal experts in natural resource management, estuarine research, interpretation or other aspects of national estuarine research reserve operation and management may be requested by NOAA to participate in performance evaluations.

(d) Performance evaulations will be conducted in accordance with the procedural and public participation provisions of the CZMA regulations on review of performance at 15 CFR Part 928 (*i.e.*, § 928.3(b) and § 928.4).

(e) To ensure effective Federal oversight of each research reserve within the National Estuarine Reserve Research System after Federal support for a reserve's operation and management is concluded, the state is required to submit an annual report on operation and management of the research reserve during the immediately preceding state fiscal year. This annual report must be submitted within a sixty day period following the end of the state fiscal year. The report shall detail program successes and accomplishments, referencing the research reserve management plan and, as appropriate, the work plan for the previous year. A work plan, detailing the projects and activities to be undertaken over the coming year to meet the goals and objectives of the research reserve as described in the management plan and the state's role in ongoing research reserve programs, shall also be included. Inadequate annual reports will trigger a full-scale performance evaluation.

§ 921.41 Suspension of eligibility for financial assistance.

(a) If a performance evaluation under § 921.40 reveals that the operation and management of the research reserve is deficient, or that the research being conducted within the reserve is not consistent with the Estuarine Research Guidelines referenced in Subpart F, the eligibility of the research reserve for Federal financial assistance as described in these regulations may be suspended until the deficiency or inconsistency is remedied.

(b) NOAA will provide the state with a written notice of the deficiency or inconsistency. This notice will explain the finding, propose a solution or solutions, provide a schedule by which the state should remedy the deficiency or inconsistency, and state whether the state's eligibility for Federal financial assistance has been suspended in whole or part. In this notice the state shall also be advised that it may comment on this finding and meet with NOAA officials to discuss the results of the performance evaluation and seek to remedy the deficiency or inconsistency.

(c) Eligibility of a research reserve for financial assistance under these regulations shall be restored upon written notice by NOAA to the state that the deficiency or inconsistency has been remedied.

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(d) If, after a reasonable time, a state does not remedy a deficiency in the operation and management of a national estuarine research reserve which has been identified pursuant to a performance evaluation under § 921.40(a), such outstanding deficiency shall be considered a basis for withdrawal of designation (see § 921.42).

§ 921.42 Withdrawal of designation.

(a) Designation of an estuarine area as a national estuarine research reserve may be withdrawn if a performance evaluation conducted pursuant to § 921.40 reveals that:

(1) The basis for any one or more of the findings made under § 921.30(a) in designating the research reserve no longer exists;

(2) A substantial portion of the research conducted within the research reserve, over a period of years, has not been consistent with the Estuarine Research Guidelines referenced in Subpart F; or

(3) A state, after a reasonable time, has not remedied a deficiency in the operation and management of a research reserve identified pursuant to an earlier performance evaluation conducted under § 921.40.

(b) If a basis is found under § 921.42(a) for withdrawal of designation, NOAA will provide the state with a written notice of this finding. This notice will explain the basis for the finding, propose a solution or solutions and provide a schedule by which the state should correct the deficiency. In this notice, the state shall also be advised that it may comment on the finding and meet with NOAA officials to discuss the finding and seek to correct the deficiency.

(c) If, within a reasonable period of time, the deficiency is not corrected in a manner acceptable to NOAA, a notice of intent to withdraw designation, with an opportunity for comment, will be placed in the **Federal Register**.

(d) The state shall be provided the opportunity for an informal hearing before the AA to consider NOAA's finding of deficiency and intent to withdraw designation, as well as the state's comments on and response to NOAA's written notice pursuant to § 921.42(b) and **Federal Register** notice pursuant to § 921.42(c).

(e) Within 30 days after the informal hearing, the AA shall issue a written decision regarding the designation status of the national estuarine research reserve. If a decision is made to withdraw research reserve designation, the procedures specified in § 921.21(e) regarding the disposition of real property acquired in whole or part with Federal funds shall be followed.

Subpart F—Research

§ 921.50 General.

(a) To stimulate high quality research within designated national estuarine research reserves, NOAA may provide financial support for research which is consistent with the Estuarine Research Guidelines referenced in § 921.51. Research funded under this Subpart must be conducted within research reserves with approved final management plans. Research funds are primarily used to support management-related research that will enhance scientific understanding of the research reserve ecosystem, provide information needed by reserve managers and coastal management decisionmakers, and improve public awareness and understanding of estuarine ecosystems and estuarine management issues. Research projects may be oriented to specific research reserves; however, research projects that would benefit more than one research reserve in the National Estuarine Reserve Research System are encouraged.

(b) Federal research funds under this Subpart are not intended as a source of continuous funding for a particular project over time. Research funds may be used to support start-up costs for long-term projects if an applicant can identify an alternative source of long-term research support.

(c) Research funds are available on a competitive basis to any coastal state or qualified public or private person. A notice of available funds will be published in the **Federal Register**. Research funds are provided in addition to any other funds available to a coastal state under the Act. Federal research funds must be matched equally by the recipient, consistent with § 921.71(e)(4) ("allowable costs").

§ 921.51 Estuarine research guidelines.

(a) Research within the National Estuarine Reserve Research System shall be conducted in a manner consistent with Estuarine Research Guidelines developed by NOAA.

(b) The Estuarine Research Guidelines are being developed separately from these regulations and will be made available as administrative guidance to each national estuarine research reserve and any interested public or private individual. A summary of the Estuarine Research Guidelines will be published in the **Federal Register** as a part of the notice of available funds discussed in § 921.50(c).

(c) The Estuarine Research Guidelines:

(1) Include a mechanism for identifying and establishing priorities among the coastal management issues that should be addressed through a coordinated research effort;

(2) Identify national estuarine research priorities and other NOAA criteria for selecting research proposals to be funded under this Subpart;

(3) Establish common research principles and objectives to guide the development of research programs at each national estuarine research reserve;

(4) Identify, to the extent practicable, consistent research methodologies which will improve comparability of data, allow for the broadest application of research results, and encourage the maximum use of the National Estuarine Reserve Research System for research purposes;

(5) Establish performance standards upon which the effectiveness of the research efforts, and the value of research reserves in addressing coastal management issues identified as priorities through the mechanism referenced in § 921.51(c)(1), may be measured; and

(6) Examine alternative sources of funds for estuarine research and recommend methods for encouraging the use of these alternative sources of funds for conducting estuarine research within the National Estuarine Reserve Research System with particular emphasis on the procedures established under § 921.52.

(d) The Estuarine Research Guidelines shall be reviewed periodically as determined to be necessary by NOAA or at least once every four years. This review will include an opportunity for comment by the estuarine research community.

§ 921.52 Promotion and coordination of estuarine research.

(a) NOAA will promote and coordinate the use of the National Estuarine Reserve Research System for research purposes.

(b) NOAA will, in conducting or supporting estuarine research other than that authorized under section 315 of the Act, give priority consideration to research that uses the National Estuarine Reserve Research System.

(c) NOAA will consult with other Federal and state agencies to promote use of one or more research reserves within the National Estuarine Reserve Research System when such agencies conduct estuarine research.

Subpart G—Interpretation and Education

§ 921.60 General.

(a) To stimulate the development of innovative or creative interpretive and educational projects and materials to enhance public awareness and understanding of estuarine areas, NOAA may fund interpretive and educational activities. Interpretive and educational projects funded under this Subpart must be conducted within research reserves with approved final management plans.

(b) Educational and interpretive funds are available on a competitive basis to any coastal state entity. These funds are provided in addition to any other funds available to a coastal state under the Act. Federal interpretation and educational funds must be matched equally by the recipient, consistent with § 921.71(e)(4) ("allowable costs").

§ 921.61 Categories of potential interpretive and educational projects; evaluation criteria.

(a) Proposals for interpretive or eductional projects will be considered under the following categories:

(1) Design, development and distribution/placement of interpretive or educational media (*i.e.*, the development of tangible items, such as exhibits/displays publications, posters, signs audio/visuals, computer software and maps which have an educational or interpretive purpose; and techniques for making available or locating information concerning research reserve resources, activities, or issues);

(2) Development and presentation of curricula, workshops, lectures, seminars, and other structured programs or presentations for facility or field use;

(3) Extension/outreach programs; or

(4) Creative and innovative methods and technologies for implementing interpretive or educational projects.

(b) Interpretive and educational projects may be oriented to one or more research reserves or to the entire system. Those projects which would directly benefit more than one research reserve, and, if practicable, the entire National Estuarine Reserve Research System, shall receive priority consideration for funding.

(c) Proposals for interpretive and educational projects in national estuarine research reserves will be evaluated in accordance with criteria listed below:

(1) Educational or interpretive merits;

(2) Relevance or importance to reserve management or coastal decision-making;

(3) Educational quality (e.g., soundness of approach, experience related to methodologies);

(4) Importance to the National Estuarine Reserve Research System;

(5) Budget and Institutional Capabilities (e.g., reasonableness of budget, sufficiency of logistical support); and

(6) In addition, in the case of long-term projects, the ability of the state or the grant recipient to support the project beyond this initial funding.

Subpart H—General Financial Assistance Provisions

§ 921.70 Application information.

(a) Only a coastal state may apply for Federal financial assistance awards for preacquisition, acquisitions and development, operation and management, and education and interpretation. Any coastal state or public or private person may apply for Federal financial assistance awards for estuarine research. If a state is participating in the national Coastal Zone Management Program, the applicant for an award under section 315 of the Act shall notify the state coastal management agency regarding the application.

(b) An original and two copies of the formal application must be submitted at least 120 working days prior to the proposed beginning of the project to the following address: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, Universal Building, 1825 Connecticut Avenue, NW., Suite 714, Washington, DC 20235. The Application for Federal Assistance Standard Form 424 (Non-construction Program) constitutes the formal application for site selection, post-site selection, operation and management, research, and education and interpretive awards. The Application for Federal Financial Assistance Standard Form 424 (Construction Program) constitutes the formal application for land acquisition and development awards. The application must be accompanied by the information required in Subpart B (predesignation), Subpart C and §921.31 (acquisition and development), and § 921.32 (operation and management) as applicable. Applications for development awards for construction projects, or restorative activities involving construction, must include a preliminary engineering report. All applications must contain back up data for budget estimates (Federal and non-Federal shares), and evidence that the application complies with the Executive Order 12372, "Intergovernmental Review of Federal Programs." In addition, applications for acquisition and development awards must contain:

(1) State Historic Preservation Office comments;

(2) Written approval from NOAA of the draft management plan for initial acquisition and development award(s); and

(3) A preliminary engineering report for construction projects, or restorative activities involving construction.

Note: Information on preparing a preliminary engineering report (PER) is provided in "Engineering and Construction Guidelines for Coastal Energy Impact Program Applicants" (42 FR 64636 (1977)).

§ 921.71 Allowable costs.

(a) Allowable costs will be determined in accordance with applicable OMB Circulars and guidance for Federal financial assistance, the financial assistance agreement, these regulations, and other Department of Commerce and NOAA directives. The term "costs" applies to both the Federal and non-Federal shares.

(b) Costs claimed as charges to the award must be reasonable, beneficial and necessary for the proper and efficient administration of the financial assistance award and must be incurred during the award period, except as provided under preagreement costs, paragraph (d) of this section.

(c) Costs must not be allocable to or included as a cost of any other Federally-financed program in either the current or a prior award period.

(d) Costs incurred prior to the effective date of the award (preagreement costs) are allowable only when specifically approved in the financial assistance agreement. For non-construction awards, costs incurred more than three months before the award beginning date will not be approved. For construction and land acquisition awards, NOAA will evaluate preagreement costs on a case-by-case basis.

(e) General guidelines for the non-Federal share are contained in OMB Circular A–102, Attachment F. The following may be used by the state in satisfying the matching requirement:

(1) Site Selection and Post Site Selection Awards. Cash and in-kind contributions (value of goods and services directly benefiting and specifically identifiable to this part of the project) are allowable. Land may not be used as match.

(2) Acquisition and Development Awards. Cash and in-kind contributions are allowable. In general, the fair market

value of lands to be included within the research reserve boundaries and acquired pursuant to the Act, with other than Federal funds, may be used as match. However, the fair market value of real property allowable as match is limited to the fair market value of a real property interest equivalent to, or required to attain, the level of control over such land(s) identified by the state and approved by the Federal Government as that necessary for the protection and management of the national estuarine research reserve. Appraisals must be performed according to Federal appraisal standards as detailed in NOAA regulations and the "Uniform Appraisal Standard for Federal Land Acquisitions." The fair market value of privately donated land, at the time of donation, as established by an independent appraiser and certified by a responsible official of the state (pursuant to OMB Circular A–102 Revised, Attachment F, as amended or superseded) may also be used as match. Land, including submerged lands already in the state's possession, in a fully-protected status consistent with the purposes of the National Estuarine Reserve Research System, may be used as match only if it was acquired starting within a one-year period prior to the award of preacquisition or acquisition funds and with the intent to establish a national estuarine research reserve. For state lands not in a fully-protected status (*e.g.*, a state park containing an easement for subsurface mineral rights), the value of the development right or foregone value may be used as match if acquired by or donated to the state for inclusion within the research reserve. A state may initially use as match land valued at greater than the Federal share of the acquisition and development award. The value in excess of the amount required as match for the initial award may be used to match subsequent supplemental acquisition and development awards for the national estuarine research reserve (see also § 921.20). Costs related to land acquisition, such as appraisals, legal fees and surveys, may also be used as [illegible]

(3) Operation and Management Awards. Generally, cash and in-kind contributions (directly benefiting and specifically identifiable to this phase of the project), except land, are allowable. However, for the fourth and any subsequent operation and management awards (see § 921.32), if a statutory basis for long-term operation and management of the national estuarine research reserve (specific to or including specific reference to that research reserve) has not been enacted by the state and state funds adequate for the support of a research reserve manager or the equivalent have not been appropriated or otherwise demonstrated to be available, then allowable costs for match are limited to non-Federal supported personnel service (*e.g.*, state employees) necessary for direct support of research reserve operation and management as outlined in the federally approved final management plan. (See § 921.32(d)(3)).

(4) Research, Education and Interpretive Awards. Cash and in-kind contributions (directly benefiting and specifically indentifiable to the scope of work), except land, are allowable. For research awards, costs incurred in conducting a part of a research project "off-site" (*i.e.*, outside research reserve boundaries) are not allowable, with the exception of non-Federal costs incurred as part of a project meeting the following conditions:

(i) NOAA has previously approved the entire research effort both on and off-site and, specifically, the scope of work encompassed by the proposed off-site research and the manner in which it addresses a NOAA national estuarine research priority, a priority coastal management issue, and the mission and one or more goals of the National Estuarine Reserve Research System;

(ii) The information gathered will address a critical management or resource information issue within the research reserve;

(iii) The methodology proposed for the off-site research is such that, if this research, or aspect of a larger research project, were to be conducted within the boundaries of research reserve, such methodology could reasonably be expected to result in long-term negative impacts on research reserve resources or management;

(iv) The research reserve is to be used as a control area for manipulative research to be conducted in the area proposed for off-site research; and

(v) The Federal share of the research project will not be used to support any part of the off-site research.

§ 921.72 Amendments to financial assistance awards.

Actions requiring an amendment to the financial assistance award, such as a request for additional Federal funds, revisions of the approved project budget or original scope of work, or extension of the performance period must be submitted to NOAA on Standard Form 424 and approved in writing.

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federal register

Friday
October 28, 1988

Part IV

Department of Health and Human Services

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance; Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following is submitted to OMB since the last list was published on October 21, 1988.

HEALTH CARE FINANCING ADMINISTRATION

(Call Reports Clearance Officer on 301–966–2088 for copies of package)

ACTION: The Health Care Financing Administration has submitted the following public information requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511.

SUMMARY: On June 3, 1988, the final rule "Conditions for Intermediate Care Facilities for the Mentally Retarded," was published in the Federal Register. This rule revised and simplified the content of regulations for intermediate care facilities for the mentally retarded and persons with related conditions. The effective date of these regulations was October 3, 1988. In view of the considerable opportunity already extended to the public for comment, the OMB has approved expedited processing (30 days) for this information collection proposal. The following summarizes the information collection proposal submitted to OMB.

Type of Request: Revision
Originating Office: Health Care Financing Administration
Title of Information Collection: Conditions for Participation for Intermediate Care Facilities for the Mentally Retarded
Form Number: HCFA–R–120
Frequency: Annual
Respondents: Businesses or Others for Profit
Estimated Number of Responses: 3,600
Average Hours per Response: 15
Total Estimated Burden Hours: 54,161
Additional Information or Comments: As required by 5 CFR 1320.15(b)(1), a copy of the regulation text is re-published herein. The sections containing paperwork burden are as follows: 42 CFR 483.410, 483.420, 483.440, 483.450, 483.460, and 483.470.

Written comments and recommendations for the proposed information collections should be sent directly to the designated OMB Desk Officer at the following address:

OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503, Attention: Allison Herron.

Date: October 25, 1988.

James V. Oberthaler,
Deputy Assistant Secretary for Information Resources Management.

[redacted]

List of Subjects

42 CFR Part 431

Grant programs—health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 435

Aid to Families with Dependent Children, Grant programs—health, Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Wages.

42 CFR Part 440

Grant programs—health, Medicaid.

42 CFR Part 442

Grant programs—health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Part 483

Grant programs—health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Chapter IV is amended as set forth below:

A. The table of contents for Chapter IV, Subchapter E is amended by adding a new Part 483 to read as follows:

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

• • • • • •

SUBCHAPTER E—STANDARDS AND CERTIFICATION

Part

• • • • • •

483 Conditions of participation for long term care facilities

• • • • • •

PART 431—STATES ORGANIZATION AND GENERAL ADMINISTRATION

B. Part 431 is amended as follows:

1. The authority citation for Part 431 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act. (42 U.S.C. 1302).

§ 431.610 [Amended]

2. In § 431.610(f)(1), remove the word "standards" and add in its place the word "requirements".

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA AND THE NORTHERN MARIANA ISLANDS

C. Part 435 is amended as follows:

1. The authority citation for Part 435 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. In § 435.1009, the introductory language is republished and the definition of "Active treatment in institutions for the mentally retarded" is revised as follows:

§ 435.1009 Definitions relating to institutional status.

For purposes of FFP, the following definitions apply:

"Active treatment in intermediate care facilities for the mentally retarded" means treatment that meets the requirements specified in the standard concerning active treatment for intermediate care facilities for persons with mental retardation under § 483.440(a) of this subchapter.

* * * * *

PART 440—SERVICES: GENERAL PROVISIONS

D. Part 440 is amended as follows:

1. The authority citation for Part 440 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

§ 440.150 [Amended]

2. Section 440.150(c)(3) is amended by removing the phrase "defined in § 435.1009" and adding in its place the phrase "specified in § 483.440".

PART 442—STANDARDS FOR PAYMENT FOR SKILLED NURSING AND INTERMEDIATE CARE FACILITY SERVICES

E. Part 442 is amended as set forth below:

1. In the table of contents, § 442.252 and the entire Subpart G (consisting of §§ 442.302—442.318) are removed; and the titles of §§ 442.106 and 442.110, and the authority citation for Part 442 are revised to read as follows:

PART 442—STANDARDS FOR PAYMENT FOR SKILLED NURSING AND INTERMEDIATE CARE FACILITY SERVICES

Sec.

* * * * *

442.106 Certification with standard-level deficiencies: General provisions.

* * * * *

442.110 Certification period: Facilities with standard-level deficiencies.

* * * * *

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

2. In § 442.1(a), the first sentence is revised to read as follows:

§ 442.1 Basis and purpose.

(a) This part states requirements for provider agreements and facility certification relating to the provision of services furnished by skilled nursing facilities and intermediate care facilities to Medicaid recipients. * * *

* * * * *

3. In § 442.13(b)(1), remove the word "standards" and add in its place the word "requirements", and revise paragraph (c) to read as follows:

§ 442.13 Effective date of agreement.

* * * * *

(c) *All Federal requirements are not met on the date of the survey.* If the provider fails to meet any of the requirements specified in paragraph (b) of this section, the agreement must be effective on the earlier of the following dates:

(1) The date on which the provider meets all requirements.

(2) The date on which the provider is found to meet all applicable conditions of participation and submits a correction plan for other deficiencies to the State survey agency or an approvable waiver request, or both.

§ 442.14 [Amended]

4. Section 442.14(b)(3) is amended by removing the word "standards" and adding in its place the word "requirements".

§ 442.16 [Amended]

5. Section 442.16(b) is amended by removing the word "standards" and adding in its place the word "requirements".

6. In § 442.30(a), the introductory language is republished and paragraphs (a)(1) and (4) are revised to read as follows:

§ 442.30 Agreement as evidence of certification.

(a) Under §§ 440.40(a) and 440.150 of this chapter, FFP is available in expenditures for SNF and ICF services only if the facility has been certified as meeting the requirements for Medicaid participation, as evidenced by a provider agreement executed under this part. An agreement is not valid evidence that a facility has met those requirements if HCFA determines that—

(1) The survey agency failed to apply the applicable certification requirements under Subpart D, E, or F of this part or Subpart D of Part 483, which sets forth the conditions of participation for ICFs/MR;

* * * * *

(4) The survey agency failed to use the Federal requirements and the forms, methods and procedures prescribed by HCFA in current general instructions, as required under § 431.610(f)(1) of this chapter, for determining the qualifications of providers; or

* * * * *

7. Section 442.109 is revised to read as follows:

§ 442.109 State plan requirements.

A State plan must provide that the requirements of this subpart and Part 483 are met.

8. In § 442.101, paragraphs (d) and (e) are revised to read as follows:

§ 442.101 Obtaining certification.

* * * * *

(d) The notice must indicate that one of the following provisions pertains to the facility:

(1) The facility meets the applicable requirements:

(i) A SNF meets the requirements in Subpart D of this part and each of the conditions of participation in Part 405, Subpart K of this chapter.

(ii) A ICF meets the requirements in Subparts E and F of this part.

(iii) A ICF/MR meets the requirements of Subpart E of this part and each of the conditions of participation in Part 483, Subpart D of this chapter.

(2) The facility is considered to meet applicable requirements based on waivers or variances granted by HCFA or survey agency if such waivers or variances are allowed under the applicable subpart.

(3) The facility has been certified with deficiencies in accordance with the following:

(i) An ICF has been certified if deficiencies are covered by an acceptable plan of correction.

(ii) An SNF or ICF/MR has been certified with standard-level deficiencies if—

(A) All conditions of participation are found met; and

(B) The facility submits an acceptable plan of correction covering the remaining deficiencies, subject to other limitations specified in § 442.106.

(e) For SNFs and ICFs/MR, the failure to meet one or more of the applicable conditions of participation is cause for termination or non-renewal of the provider agreement.

9. Section 442.105 is amended by revising the title and the introductory paragraph to read as follows:

§ 442.106 Certification with standard-level deficiencies: General provisions.

If a survey agency finds a facility deficient in meeting the standards specified under Subpart D, E or F of this part or under Subpart D of Part 483, the agency may certify the facility for Medicaid purposes under the following conditions:

* * * * *

10. Section 442.110 is amended by revising the title to read as follows:

§ 442.110 Certification period: Facilities with standard-level deficiencies.

11. In § 442.117(a), the introductory paragraph is republished and paragraph (a)(1) is revised to read as follows:

§ 442.117 Termination of certification: facilities whose deficiencies pose immediate jeopardy.

(a) A survey agency must terminate a facility's certification if it determines that—

(1) The facility no longer meets applicable conditions of participation (for SNFs and ICFs/MR) or standards (for ICFs) specified under Subpart D, E, and F of this part or Part 483, Subpart D of this chapter; and

* * * * *

§ 442.116 [Amended]

12. In § 442.118, paragraph (b)(1) is amended by adding the phrase "ICFs/MR" after "SNFs", and paragraph (b)(3)(i) is amended by removing the phrase "conditions of participation (for SNFs) or standards (for ICFs and ICFs/MR)" adding in its place the phrase "conditions of participation (for SNFs and ICFs/MR or standards (for ICFs)."

§ 442.119 [Amended]

13. In § 442.119, paragraphs (a)(1) and (b)(1) are amended by removing the phrase "conditions of participation (for SNFs) or standards (for ICFs and ICFs/MR)" and adding in its place the phrase "conditions of participation (for SNFs and ICFs/MR) or standards (for ICFs)".

§ 442.252 [Removed]

14. Subpart E is amended by removing § 442.252.

15. Section 442.254(b) is revised to read as follows:

§ 442.254 Standards for hospitals and SNF's providing ICF services.

* * * * *

(b) If a hospital or SNF participating in Medicare or Medicaid is also a provider of ICF/MR services, it must meet each of the conditions of participation specified in Part 483, Subpart D of this chapter.

§§ 442.400–442.516 [Removed]

16. Subpart G, (Consisting of §§ 442.400–442.516) is removed.

F. A new Part 483 is added to Subchapter E to read as follows:

PART 483—CONDITIONS OF PARTICIPATION FOR LONG TERM CARE FACILITIES

Subpart A–C—[Reserved]

Subpart D—Conditions of Participation for Intermediate Care Facilities for the Mentally Retarded

Sec.

483.400 Basis and purpose.

483.405 Relationship to other HHS regulations.

483.410 Condition of participation: Governing body and management.

483.420 Condition of participation: Client protections.

483.430 Condition of participation: Facility staffing.

483.440 Condition of participation: Active treatment services.

483.450 Condition of participation: Client behavior and facility practices.

483.460 Condition of participation: Health care services.

483.470 Condition of participation: Physical environment.

483.480 Condition of participation: Dietetic services.

Authority: Secs. 1102, 1905(c) and (d) of the Social Security Act (42 U.S.C 1302, 1396d(c) and (d)).

Subpart A–C—[Reserved]

Subpart D—Conditions of Participation for Intermediate Care Facilities for the Mentally Retarded

§ 483.400 Basis and purpose.

This subpart implements section 1905 (c) and (d) of the Act which gives the Secretary authority to prescribe regulations for intermediate care facility services in facilities for the mentally retarded or persons with related conditions.

§ 483.405 Relationship to other HHS regulations.

In addition to compliance with the regulations set forth in this subpart, facilities are obliged to meet the applicable provisions of other HHS regulations, including but not limited to those pertaining to nondiscrimination on the basis of race, color, or national origin [45 CFR Part 80], nondiscrimination on the basis of handicap [45 CFR Part 84], nondiscrimination on the basis of age [45 CFR Part 91], protection of human subjects of research [45 CFR Part 46], and fraud and abuse [42 CFR Part 455]. Although these regulations are not in themselves considered conditions of participation under this Part, their violation may result in the termination or suspension of, or the refusal to grant or continue, Federal financial assistance.

§ 483.410 Condition of participation: Governing body and management.

(a) *Standard: Governing body.* The facility must identify an individual or individuals to constitute the governing body of the facility. The governing body must—

(1) Exercise general policy, budget, and operating direction over the facility;

(2) Set the qualifications (in addition to those already set by State law, if any) for the administrator of the facility; and

(3) Appoint the administrator of the facility.

(b) *Standard: Compliance with Federal, State, and local laws.* The facility must be in compliance with all applicable provisions of Federal, State and local laws, regulations and codes pertaining to health, safety, and sanitation.

(c) *Standard: Client records.*

(1) The facility must develop and maintain a recordkeeping system that includes a separate record for each client and that documents the client's health care, active treatment, social information, and protection of the client's rights.

(2) The facility must keep confidential all information contained in the clients' records, regardless of the form or storage method of the records.

(3) The facility must develop and implement policies and procedures governing the release of any client information, including consents necessary from the client, or parents (if the client is a minor) or legal guardian.

(4) Any individual who makes an entry in a client's record must make it legibly, date it, and sign it.

(5) The facility must provide a legend to explain any symbol or abbreviation used in a client's record.

(6) The facility must provide each identified residential living unit with appropriate aspects of each client's record.

(d) *Standard: Services provided under agreements with outside sources.*

(1) If a service required under this subpart is not provided directly, the facility must have a written agreement with an outside program, resource, or service to furnish the necessary service, including emergency and other health care.

(2) The agreement must—

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(i) Contain the responsibilities, functions, objectives, and other terms agreed to by both parties; and

(ii) Provide that the facility is responsible for ensuring that the outside services meet the standards for quality of services contained in this subpart.

(3) The facility must assure that outside services meet the needs of each client.

(4) If living quarters are not provided in a facility owned by the ICF/MR, the ICF/MR remains directly responsible for the standards relating to physical environment that are specified in § 483.470 (a) through (g), (i) and (k).

§ 483.420 Condition of participation: Client protections.

(a) *Standard: Protection of clients' rights.* The facility must ensure the rights of all clients. Therefore, the facility must—

(1) Inform each client, parent (if the client is a minor), or legal guardian, of the client's rights and the rules of the facility;

(2) Inform each client, parent (if the client is a minor), or legal guardian, of the client's medical condition, developmental and behavioral status, attendant risks of treatment, and of the right to refuse treatment;

(3) Allow and encourage individual clients to exercise their rights as clients of the facility, and as citizens of the United States, including the right to file complaints, and the right to due process;

(4) Allow individual clients to manage their financial affairs and teach them to do so to the extent of their capabilities;

(5) Ensure that clients are not subjected to physical, verbal, sexual or psychological abuse or punishment;

(6) Ensure that clients are free from unnecessary drugs and physical restraints and are provided active treatment to reduce dependency on drugs and physical restraints;

(7) Provide each client with the opportunity for personal privacy and ensure privacy during treatment and care of personal needs;

(8) Ensure that clients are not compelled to perform services for the facility and ensure that clients who do work for the facility are compensated for their efforts at prevailing wages and commensurate with their abilities;

(9) Ensure clients the opportunity to communicate, associate and meet privately with individuals of their choice, and to send and receive unopened mail;

(10) Ensure that clients have access to telephones with privacy for incoming and outgoing local and long distance calls except as contraindicated by factors identified within their individual program plans;

(11) Ensure clients the opportunity to participate in social, religious, and community group activities;

(12) Ensure that clients have the right to retain and use appropriate personal possessions and clothing, and ensure that each client is dressed in his or her own clothing each day; and

(13) Permit a husband and wife who both reside in the facility to share a room.

(b) *Standard: Client finances.* (1) The facility must establish and maintain a system that—

(i) Assures a full and complete accounting of clients' personal funds entrusted to the facility on behalf of clients; and

(ii) Precludes any commingling of client funds with facility funds or with the funds of any person other than another client.

(2) The client's financial record must be available on request to the client, parents (if the client is a minor) or legal guardian.

(c) *Standard: Communication with clients, parents, and guardians.* The facility must—

(1) Promote participation of parents (if the client is a minor) and legal guardians in the process of providing active treatment to a client unless their participation is unobtainable or inappropriate;

(2) Answer communications from clients' families and friends promptly and appropriately;

(3) Promote visits by individuals with a relationship to the client (such as family, close friends, legal guardians and advocates) at any reasonable hour, without prior notice, consistent with the right of that client's and other clients' privacy, unless the interdisciplinary team determines that the visit would not be appropriate;

(4) Promote visits by parents or guardians to any area of the facility that provides direct client care services to the client, consistent with the right of that client's and other clients' privacy;

(5) Promote frequent and informal leaves from the facility for visits, trips, or vacations; and

(6) Notify promptly the client's parents or guardian of any significant incidents, or changes in the client's condition including, but not limited to, serious illness, accident, death, abuse, or unauthorized absence.

(d) *Standard: Staff treatment of clients.* (1) The facility must develop and implement written policies and procedures that prohibit mistreatment, neglect or abuse of the client.

(i) Staff of the facility must not use physical, verbal, sexual or psychological abuse or punishment.

(ii) Staff must not punish a client by withholding food or hydration that contributes to a nutritionally adequate diet.

(iii) The facility must prohibit the employment of individuals with a conviction or prior employment history of child or client abuse, neglect or mistreatment.

(2) The facility must ensure that all allegations of mistreatment, neglect or abuse, as well as injuries of unknown source, are reported immediately to the administrator or to other officials in accordance with State law through established procedures.

(3) The facility must have evidence that all alleged violations are thoroughly investigated and must prevent further potential abuse while the investigation is in progress.

(4) The results of all investigations must be reported to the administrator or designated representative or to other officials in accordance with State law within five working days of the incident and, if the alleged violation is verified, appropriate corrective action must be taken.

§ 483.430 Condition of participation: Facility staffing.

(a) *Standard: Qualified mental retardation professional.* Each client's active treatment program must be integrated, coordinated and monitored by a qualified mental retardation professional who—

(1) Has at least one year of experience working directly with persons with mental retardation or other developmental disabilities; and

(2) Is one of the following:

(i) A doctor of medicine or osteopathy.

(ii) A registered nurse.

(iii) An individual who holds at least a bachelor's degree in a professional category specified in paragraph (b)(5) of this section.

(b) *Standard: Professional program services.*—(1) Each client must receive the professional program services needed to implement the active treatment program defined by each client's individual program plan. Professional program staff must work directly with clients and with paraprofessional, nonprofessional and other professional program staff who work with clients.

(2) The facility must have available enough qualified professional staff to carry out and monitor the various professional interventions in accordance with the stated goals and objectives of every individual program plan.

(3) Professional program staff must participate as members of the interdisciplinary team in relevant aspects of the active treatment process.

(4) Professional program staff must participate in on-going staff development and training in both formal and informal settings with other professional, paraprofessional, and nonprofessional staff members.

(5) Professional program staff must be licensed, certified, or registered, as applicable, to provide professional services by the State in which he or she practices. Those professional program staff who do not fall under the jurisdiction of State licensure, certification, or registration requirements, specified in § 483.430(b), must meet the following qualifications:

(i) To be designated as an occupational therapist, an individual must be eligible for certification as an occupational therapist by the American Occupational Therapy Association or another comparable body.

(ii) To be designated as an occupational therapy assistant, an individual must be eligible for certification as a certified occupational therapy assistant by the American Occupational Therapy Association or another comparable body.

(iii) To be designated as a physical therapist, an individual must be eligible for certification as a physical therapist by the American Physical Therapy Association or another comparable body.

(iv) To be designated as a physical therapy assistant, an individual must be eligible for registration by the American Physical Therapy Association or be a graduate of a two year college-level program approved by the American Physical Therapy Association or another comparable body.

(v) To be designated as a psychologist, an individual must have at least a master's degree in psychology from an accredited school.

(vi) To be designated as a social worker, an individual must—

(A) Hold a graduate degree from a school of social work accredited or approved by the Council on Social Work Education or another comparable body; or

(B) Hold a Bachelor of Social Work degree from a college or university accredited or approved by the Council on Social Work Education or another comparable body.

(vii) To be designated as a speech-language pathologist or audiologist, an individual must—

(A) Be eligible for a Certificate of Clinical Competence in Speech-Language Pathology or Audiology granted by the American Speech-Language-Hearing Association or another comparable body; or

(B) Meet the educational requirements for certification and be in the process of accumulating the supervised experience required for certification.

(viii) To be designated as a professional recreation staff member an individual must have a bachelor's degree in recreation or in a specialty area such as art, dance, music or physical education.

(ix) To be designated as a professional dietitian, an individual must be eligible for registration by the American Dietetics Association.

(x) To be designated as a human services professional an individual must have at least a bachelor's degree in a human services field (including, but not limited to: sociology, special education, rehabilitation counseling, and psychology).

(xi) If the client's individual program plan is being successfully implemented by facility staff, professional program staff meeting the qualifications of paragraph (b)(5) (i) through (x) of this section are not required—

(A) Except for qualified mental retardation professionals;

(B) Except for the requirements of paragraph (b)(2) of this section concerning the facility's provision of enough qualified professional program staff; and

(C) Unless otherwise specified by State licensure and certification requirements.

(c) *Standard: Facility staffing.* (1) The facility must not depend upon clients or volunteers to perform direct care services for the facility.

(2) There must be responsible direct care staff on duty and awake on a 24-hour basis, when clients are present, to take prompt, appropriate action in case of injury, illness, fire or other emergency, in each defined residential living unit housing—

(i) Clients for whom a physician has ordered a medical care plan;

(ii) Clients who are aggressive, assaultive or security risks;

(iii) More than 16 clients; or

(iv) Fewer than 16 clients within a multi-unit building.

(3) There must be a responsible direct care staff person on duty on a 24 hour basis (when clients are present) to respond to injuries and symptoms of illness, and to handle emergencies, in each defined residential living unit housing—

(i) Clients form whom a physician has not ordered a medical care plan;

(ii) Clients who are not aggressive, assaultive or security risks; and

(iii) Sixteen or fewer clients.

(4) The facility must provide sufficient support staff so that direct care staff are not required to perform support services to the extent that those duties interfere with the exercise of their primary direct client care duties.

(d) *Standard: Direct care (residential living unit) staff.* (1) The facility must provide sufficient direct care staff to manage and supervise clients in accordance with their individual program plans.

(2) Direct care staff are defined as the present on-duty staff calculated over all shifts in a 24-hour period for each defined residential living unit.

(3) Direct care staff must be provided by the facility in the following minimum ratios of direct care staff to clients:

(i) For each defined residential living unit serving children under the age of 12, severely and profoundly retarded clients, clients with severe physical disabilities, or clients who are aggressive, assaultive, or security risks, or who manifest severely hyperactive or psychotic-like behavior, the staff to client ratio is 1 to 3.2.

(ii) For each defined residential living unit serving moderately retarded clients, the staff to client ratio is 1 to 4.

(iii) For each defined residential living unit serving clients who function within the range of mild retardation, the staff to client ratio is 1 to 6.4.

(4) When there are no clients present in the living unit, a responsible staff member must be available by telephone.

(e) *Standard: Staff training program.* (1) The facility must provide each employee with initial and continuing training that enables the employee to perform his or her duties effectively, efficiently, and competently.

(2) For employees who work with clients, training must focus on skills and competencies directed toward clients' developmental, behavioral, and health needs.

(3) Staff must be able to demonstrate the skills and techniques necessary to administer interventions to manage the inappropriate behavior of clients.

(4) Staff must be able to demonstrate the skills and techniques necessary to implement the individual program plans for each client for whom they are responsible.

§ 483.440 Condition of participation: Active treatment services.

(a) *Standard: Active treatment.* (1) Each client must receive a continuous active treatment program, which includes aggressive, consistent

implementation of a program of specialized and generic training, treatment, health services and related services described in this subpart, that is directed toward—

(i) The acquisition of the behaviors necessary for the client to function with as much self determination and independence as possible; and

(ii) The prevention or deceleration of regression or loss of current optimal functional status.

(2) Active treatment does not include services to maintain generally independent clients who are able to function with little supervision or in the absence of a continuous active treatment program.

(b) *Standard: Admissions, transfers, and discharge.* (1) Clients who are admitted by the facility must be in need of and receiving active treatment services.

(2) Admission decisions must be based on a preliminary evaluation of the client that is conducted or updated by the facility or by outside sources.

(3) A preliminary evaluation must contain background information as well as currently valid assessments of functional developmental, behavioral, social, health and nutritional status to determine if the facility can provide for the client's needs and if the client is likely to benefit from placement in the facility.

(4) If a client is to be either transferred or discharged, the facility must—

(i) Have documentation in the client's record that the client was transferred or discharged for good cause; and

(ii) Provide a reasonable time to prepare the client and his or her parents or guardian for the transfer or discharge (except in emergencies).

(5) At the time of the discharge, the facility must—

(i) Develop a final summary of the client's developmental, behavioral, social, health and nutritional status and, with the consent of the client, parents (if the client is a minor) or legal guardian, provide a copy to authorized persons and agencies; and

(ii) Provide a post-discharge plan of care that will assist the client to adjust to the new living environment.

(c) *Standard: Individual program plan.* (1) Each client must have an individual program plan developed by an interdisciplinary team that represents the professions, disciplines or service areas that are relevant to—

(i) Identifying the client's needs, as described by the comprehensive functional assessments required in paragraph (c)(3) of this section; and

(ii) Designing programs that meet the client's needs.

(2) Appropriate facility staff must participate in interdisciplinary team meetings. Participation by other agencies serving the client is encouraged. Participation by the client, his or her parent (if the client is a minor), or the client's legal guardian is required unless that participation is unobtainable or inappropriate.

(3) Within 30 days after admission, the interdisciplinary team must perform necessary assessments or reassessments as needed to supplement the preliminary evaluation conducted prior to admission. The comprehensive functional assessment must take into consideration the client's age (for example, child, young adult, elderly person) and the implications for active treatment at each stage, as applicable, and must—

(i) Identify the presenting problems and disabilities and where possible, their causes;

(ii) Identify the client's specific developmental strengths;

(iii) Identify the client's specific developmental and behavioral management needs;

(iv) Identify the client's need for services without regard to the actual availability of the services needed; and

(v) Include physical development and health, nutritional status, sensorimotor development, effective development, speech and language development and auditory functioning, cognitive development, social development, adaptive behaviors or independent living skills necessary for the client to be able to function in the community, and as applicable, vocational skills.

(4) Within 30 days after admission, the interdisciplinary team must prepare for each client an individual program plan that states the specific objectives necessary to meet the client's needs, as identified by the comprehensive assessment required by paragraph (c)(3) of this section, and the planned sequence for dealing with those objectives. These objectives must—

(i) Be stated separately, in terms of a single behavioral outcome;

(ii) Be assigned projected completion dates;

(iii) Be expressed in behavioral terms that provide measurable indices of performance;

(iv) Be organized to reflect a developmental progression appropriate to the individual; and

(v) Be assigned priorities.

(5) Each written training program designed to implement the objectives in the individual program plan must specify:

(i) The methods to be used;

(ii) The schedule for use of the method;

(iii) The person responsible for the program;

(iv) The type of data and frequency of data collection necessary to be able to assess progress toward the desired objectives;

(v) The inappropriate client behavior(s), if applicable; and

(vi) Provision for the appropriate expression of behavior and the replacement of inappropriate behavior, if applicable, with behavior that is adaptive or appropriate.

(6) The individual program plan must also:

(i) Describe relevant interventions to support the individual toward independence.

(ii) Identify the location where program strategy information (which must be accessible to any person responsible for implementation) can be found.

(iii) Include, for those clients who lack them, training in personal skills essential for privacy and independence (including, but not limited to, toilet training, personal hygiene, dental hygiene, self-feeding, bathing, dressing, grooming, and communication of basic needs), until it has been demonstrated that the client is developmentally incapable of acquiring them.

(iv) Identify mechanical supports, if needed, to achieve proper body position, balance, or alignment. The plan must specify the reason for each support, the situations in which each is to be applied, and a schedule for the use of each support.

(v) Provide that clients who have multiple disabling conditions spend a major portion of each waking day out of bed and outside the bedroom area, moving about by various methods and devices whenever possible.

(iv) Include opportunities for client choice and self-management.

(7) A copy of each client's individual program plan must be made available to all relevant staff, including staff of other agencies who work with the client, and to the client, parents (if the client is a minor) or legal guardian.

(d) *Standard: Program implementation.* (1) As soon as the interdisciplinary team has formulated a client's individual program plan, each client must receive a continuous active treatment program consisting of needed interventions and services in sufficient number and frequency to support the achievement of the objectives identified in the individual program plan.

(2) The facility must develop an active treatment schedule that outlines the

current active treatment program and that is readily available for review by relevant staff.

(3) Except for those facets of the individual program plan that must be implemented only by licensed personnel, each client's individual program plan must be implemented by all staff who work with the client, including professional, paraprofessional and nonprofessional staff.

(e) *Standard: Program documentation.* (1) Data relative to accomplishment of the criteria specified in client individual program plan objectives must be documented in measurable terms.

(2) The facility must document significant events that are related to the client's individual program plan and assessments and that contributes to an overall understanding of the client's ongoing level and quality of functioning.

(f) *Standard: Program monitoring and change.* (1) The individual program plan must be reviewed at least by the qualified mental retardation professional and revised as necessary, including, but not limited to situations in which the client—

(i) Has successfully completed an objective or objectives identified in the individual program plan;

(ii) Is regressing or losing skills already gained;

(iii) Is failing to progress toward identified objectives after reasonable efforts have been made; or

(iv) Is being considered for training towards new objectives.

(2) At least annually, the comprehensive functional assessment of each client must be reviewed by the interdisciplinary team for relevancy and updated as needed, and the individual program plan must be revised, as appropriate, repeating the process set forth in paragraph (c) of this section.

(3) The facility must designate and use a specially constituted committee or committees consisting of members of facility staff, parents, legal guardians, clients (as appropriate), qualified persons who have either experience or training in contemporary practices to change inappropriate client behavior, and persons with no ownership or controlling interest in the facility to—

(i) Review, approve, and monitor individual programs designed to manage inappropriate behavior and other programs that, in the opinion of the committee, involve risks to client protection and rights;

(ii) Insure that these programs are conducted only with the written informed consent of the client, parent (if the client is a minor), or legal guardian; and

(iii) Review, monitor and make suggestions to the facility about its practices and programs as they relate to drug usage, physical restraints, time-out rooms, application of painful or noxious stimuli, control of inappropriate behavior, protection of client rights and funds, and any other area that the committee believes need to be addressed.

(4) The provisions of paragraph (f)(3) of this section may be modified only if, in the judgment of the State survey agency, Court decrees, State law or regulations provide for equivalent client protection and consultation.

§ 483.450 Condition of participation: Client behavior and facility practices.

(a) *Standard: Facility practices—Conduct toward clients.* (1) The facility must develop and implement written policies and procedures for the management of conduct between staff and clients. These policies and procedures must—

(i) Promote the growth, development and independence of the client;

(ii) Address the extent to which client choice will be accommodated in daily decision-making, emphasizing self-determination and self-management, to the extent possible;

(iii) Specify client conduct to be allowed or not allowed; and

(iv) Be available to all staff, clients, parents of minor children, and legal guardians.

(2) To the extent possible, clients must participate in the formulation of these policies and procedures.

(3) Clients must not discipline other clients, except as part of an organized system of self-government, as set forth in facility policy.

(b) *Standard: Management of inappropriate client behavior.* (1) The facility must develop and implement written policies and procedures that govern the management of inappropriate client behavior. These policies and procedures must be consistent with the provisions of paragraph (a) of this section. These procedures must—

(i) Specify all facility approved interventions to manage inappropriate client behavior;

(ii) Designate these interventions on a hierarchy to be implemented, ranging from most positive or least intrusive, to least positive or most intrusive;

(iii) Insure, prior to the use of more restrictive techniques, that the client's record documents that programs incorporating the use of less intrusive or more positive techniques have been tried systematically and demonstrated to be ineffective; and

(iv) Address the following:

(A) The use of time-out rooms.

(B) The use of physical restraints.

(C) The use of drugs to manage inappropriate behavior.

(D) The application of painful or noxious stimuli.

(E) The staff members who may authorize the use of specified interventions.

(F) A mechanism for monitoring and controlling the use of such interventions.

(2) Interventions to manage inappropriate client behavior must be employed with sufficient safeguards and supervision to ensure that the safety, welfare and civil and human rights of clients are adequately protected.

(3) Techniques to manage inappropriate client behavior must never be used for disciplinary purposes, for the convenience of staff or as a substitute for an active treatment program.

(4) The use of systematic interventions to manage inappropriate client behavior must be incorporated into the client's individual program plan, in accordance with § 483.440(c) (4) and (5) of this subpart.

(5) Standing or as needed programs to control inappropriate behavior are not permitted.

(c) *Standard: Time-out rooms.* (1) A client may be placed in a room from which egress is prevented only if the following conditions are met:

(i) The placement is a part of an approved systematic time-out program as required by paragraph (b) of this section. (Thus, emergency placement of a client into a time-out room is not allowed.)

(ii) The client is under the direct constant visual supervision of designated staff.

(iii) The door to the room is held shut by staff or by a mechanism requiring constant physical pressure from a staff member to keep the mechanism engaged.

(2) Placement of a client in a time-out room must not exceed one hour.

(3) Clients placed in time-out rooms must be protected from hazardous conditions including, but not limited to, presence of sharp corners and objects, uncovered light fixtures, unprotected electrical outlets.

(4) A record of time-out activities must be kept.

(d) *Standard: Physical restraints.* (1) The facility may employ physical restraint only—

(i) As an integral part of an individual program plan that is intended to lead to less restrictive means of managing and eliminating the behavior for which the restraint is applied;

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(ii) As an emergency measure, but only if absolutely necessary to protect the client or others from injury; or

(iii) As a health-related protection prescribed by a physician, but only if absolutely necessary during the conduct of a specific medical or surgical procedure, or only if absolutely necessary for client protection during the time that a medical condition exists.

(2) Authorizations to use or extend restraints as an emergency must be:

(i) In effect no longer than 12 consecutive hours; and

(ii) Obtained as soon as the client is restrained or stable.

(3) The facility must not issue orders for restraint on a standing or as needed basis.

(4) A client placed in restraint must be checked at least every 30 minutes by staff trained in the use of restraints, released from the restraint as quickly as possible, and a record of these checks and usage must be kept.

(5) Restraints must be designed and used so as not to cause physical injury to the client and so as to cause the least possible discomfort.

(6) Opportunity for motion and exercise must be provided for a period of not less than 10 minutes during each two hour period in which restraint is employed, and a record of such activity must be kept.

(7) Barred enclosures must not be more than three feet in height and must not have tops.

(e) *Standard: Drug usage.* (1) The facility must not use drugs in doses that interfere with the individual client's daily living activities.

(2) Drugs used for control of inappropriate behavior must be approved by the interdisciplinary team and be used only as an integral part of the client's individual program plan that is directed specifically towards the reduction of and eventual elimination of the behaviors for which the drugs are employed.

(3) Drugs used for control of inappropriate behavior must not be used until it can be justified that the harmful effects of the behavior clearly outweigh the potentially harmful effects of the drugs.

(4) Drugs used for control of inappropriate behavior must be—

(i) Monitored closely, in conjunction with the physician and the drug regimen review requirement at § 483.460(j); for desired responses and adverse consequences by facility staff; and

(ii) Gradually withdrawn at least annually in a carefully monitored program conducted in conjunction with the interdisciplinary team, unless clinical evidence justifies that this is contraindicated.

§ 483.480 Condition of participation: Health care services.

(a) *Standard: Physician services.* (1) The facility must ensure the availability of physician services 24 hours a day.

(2) The physician must develop, in coordination with licensed nursing personnel, a medical care plan of treatment for a client if the physician determines that an individual client requires 24-hour licensed nursing care. This plan must be integrated in the individual program plan.

(3) The facility must provide or obtain preventive and general medical care as well as annual physical examinations of each client that at a minimum include the following:

(i) Evaluation of vision and hearing.

(ii) Immunizations, using as a guide the recommendations of the Public Health Service Advisory Committee on Immunization Practices or of the Committee on the Control of Infectious Diseases of the American Academy of Pediatrics.

(iii) Routine screening laboratory examinations as determined necessary by the physician, and special studies when needed.

(iv) Tuberculosis control, appropriate to the facility's population, and in accordance with the recommendations of the American College of Chest Physicians or the section of diseases of the chest of the American Academy of Pediatrics, or both.

(4) To the extent permitted by State law, the facility may utilize physician assistants and nurse practitioners to provide physician services as described in this section.

(b) *Standard: Physician participation in the individual program plan.* A physician must participate in—

(1) The establishment of each newly admitted client's initial individual program plan as required by § 483.360 of this chapter that specifies plan of care requirements for ICFs; and

(2) If appropriate, physicians must participate in the review and update of an individual program plan as part of the interdisciplinary team process either in person or through written report to the interdisciplinary team.

(c) *Standard: Nursing services.* The facility must provide clients with nursing services in accordance with their needs. These services must include—

(1) Participation as appropriate in the development, review, and update of an individual program plan as part of the interdisciplinary team process;

(2) The development, with a physician, of a medical care plan of treatment for a client when the physician has determined that an individual client requires such a plan;

(3) For those clients certified as not needing a medical care plan, a review of their health status which must—

(i) Be by a direct physical examination;

(ii) Be by a licensed nurse;

(iii) Be on a quarterly or more frequent basis depending on client need;

(iv) Be recorded in the client's record; and

(v) Result in any necessary action (including referral to a physician to address client health problems);

(4) Other nursing care as prescribed by the physician or as identified by client needs; and

(5) Implementing, with other members of the interdisciplinary team, appropriate protective and preventive health measures that include, but are not limited to—

(i) Training clients and staff as needed in appropriate health and hygiene methods;

(ii) control of communicable disease and infections, including the instruction of other personnel in methods of infection control; and

(iii) Training direct care staff in detecting signs and symptoms of illness or dysfunction, first aid for accidents or illness, and basic skills required to meet the health needs of the clients.

(d) *Standard: Nursing staff.* (1) Nurses providing services in the facility must have a current license to practice in the State.

(2) The facility must employ or arrange for licensed nursing services sufficient to care for clients health needs, including those clients with medical care plans.

(3) The facility must utilize registered nurses as appropriate and required by State law to perform the health services specified in this section.

(4) If the facility utilizes only licensed practical or vocational nurses to provide health services, it must have a formal arrangement with a registered nurse to be available for verbal or onsite consultation to the licensed practical or vocational nurse.

(5) Non-licensed nursing personnel who work with clients under a medical care plan must do so under the supervision of licensed persons.

(e) *Standard: Dental services.* (1) The facility must provide or make arrangements for comprehensive diagnostic and treatment services for each client from qualified personnel, including licensed dentists and dental hygienists either through organized dental services in-house or through arrangement.

(2) If appropriate dental professionals must participate, in the development, review and update of an individual program plan as part of the interdisciplinary process either in person or through written report to the interdisciplinary team.

(3) The facility must provide education and training in the maintenance of oral health.

(f) *Standard: Comprehensive dental diagnostic services.* Comprehensive dental diagnostic services include—

(1) A complete extraoral and intraoral examination, using all diagnostic aids necessary to properly evaluate the client's oral condition, not later than one month after admission to the facility (unless the examination was completed within twelve months before admission);

(2) Periodic examination and diagnosis performed at least annually, including radiographs when indicated and detection of manifestations of systemic disease; and

(3) A review of the results of examination and entry of the results in the client's dental record.

(g) *Standard: Comprehensive dental treatment.* The facility must ensure comprehensive dental treatment services that include—

(1) The availability for emergency dental treatment on a 24-hour-a-day basis by a licensed dentist; and

(2) Dental care needed for relief of pain and infections, restoration of teeth, and maintenance of dental health.

(h) *Standard: Documentation of dental services.* (1) If the facility maintains an in-house dental service, the facility must keep a permanent dental record for each client, with a dental summary maintained in the client's living unit.

(2) If the facility does not maintain an in-house dental service, the facility must obtain a dental summary of the results of dental visits and maintain the summary in the client's living unit.

(i) *Standard: Pharmacy services.* The facility must provide or make arrangements for the provision of routine and emergency drugs and biologicals to its clients. Drugs and biologicals may be obtained from community or contract pharmacists or the facility may maintain a licensed pharmacy.

(j) *Standard: Drug regimen review.* (1) A pharmacist with input from the interdisciplinary team must review the drug regimen of each client at least quarterly.

(2) The pharmacist must report any irregularities in clients' drug regimens to the prescribing physician and interdisciplinary team.

(3) The pharmacist must prepare a record of each client's drug regimen reviews and the facility must maintain that record.

(4) An individual medication administration record must be maintained for each client.

(5) As appropriate the pharmacist must participate in the development, implementation, and review of each client's individual program plan either in person or through written report to the interdisciplinary team.

(k) *Standard: Drug administration.* The facility must have an organized system for drug administration that identifies each drug up to the point of administration. The system must assure that—

(1) All drugs are administered in compliance with the physician's orders;

(2) All drugs, including those that are self-administered, are administered without error;

(3) Unlicensed personnel are allowed to administer drugs only if State law permits;

(4) Clients are taught how to administer their own medications if the interdisciplinary team determines that self administration of medications is an appropriate objective, and if the physician does not specify otherwise;

(5) The client's physician is informed of the interdisciplinary team's decision that self-administration of medications is an objective for the client;

(6) No client self-administers medications until he or she demonstrates the competency to do so;

(7) Drugs used by clients while not under the direct care of the facility are packaged and labeled in accordance with State law; and

(8) Drug administration errors and adverse drug reactions are recorded and reported immediately to a physician.

(l) *Standard: Drug storage and recordkeeping.* (1) The facility must store drugs under proper conditions of sanitation, temperature, light, humidity, and security.

(2) The facility must keep all drugs and biologicals locked except when being prepared for administration. Only authorized persons may have access to the keys to the drug storage area. Clients who have been trained to self administer drugs in accordance with § 483.460(k)(4) may have access to keys to their individual drug supply.

(3) The facility must maintain records of the receipt and disposition of all controlled drugs.

(4) The facility must, on a sample basis, periodically reconcile the receipt and disposition of all controlled drugs in schedules II through IV (drugs subject to the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. 801 *et seq.*, as implemented by 21 CFR Part 308).

(5) If the facility maintains a licensed pharmacy, the facility must comply with the regulations for controlled drugs.

(m) *Standard: Drug labeling.* (1) Labeling of drugs and biologicals must—

(i) Be based on currently accepted professional principles and practices; and

(ii) Include the appropriate accessory and cautionary instructions, as well as the expiration date, if applicable.

(2) The facility must remove from use—

(i) Outdated drugs; and

(ii) Drug containers with worn, illegible, or missing labels.

(3) Drugs and biologicals packaged in containers designated for a particular client must be immediately removed from the client's current medication supply if discontinued by the physician.

(n) *Standard: Laboratory services.* (1) For purposes of this section, "laboratory" means an entity for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological or other examination of materials derived from the human body, for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or assessment of a medical condition.

(2) If a facility chooses to provide laboratory services, the laboratory must—

(i) Meet the management requirements specified in § 405.1316 of this chapter; and

(ii) Provide personnel to direct and conduct the laboratory services.

(A) The laboratory director must be technically qualified to supervise the laboratory personnel and test performance and must meet licensing or other qualification standards established by the State with respect to directors of clinical laboratories. For those States that do not have licensure or qualification requirements pertaining to directors of clinical laboratories, the director must be either—

(*1*) A pathologist or other doctor of medicine or osteopathy with training and experience in clinical laboratory services; or

(*2*) A laboratory specialist with a doctoral degree in physical, chemical or biological sciences, and training and experience in clinical laboratory services.

(B) The laboratory director must provide adequate technical supervision

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of the laboratory services and assure that tests, examinations and procedures are properly performed, recorded and reported.

(C) The laboratory director must ensure that the staff—

(*1*) Has appropriate education, experience, and training to perform and report laboratory tests promptly and proficiently;

(*2*) Is sufficient in number for the scope and complexity of the services provided; and

(*3*) Receives in-service training appropriate to the type and complexity of the laboratory services offered.

(D) The laboratory technologists must be technically competent to perform test procedures and report test results promptly and proficiently.

(3) The laboratory must meet the proficiency testing requirements specified in § 405.1334(a) of this chapter.

(4) The laboratory must meet the quality control requirements specified in § 405.1327 of this chapter.

(5) If the laboratory chooses to refer specimens for testing to another laboratory, the referral laboratory must be approved by the Medicare program either as a hospital or an independent laboratory.

§ 483.470 Condition of participation: Physical environment.

(a) *Standard: Client living environment.* (1) The facility must not house clients of grossly different ages, developmental levels, and social needs in close physical or social proximity unless the housing is planned to promote the growth and development of all those housed together.

(2) The facility must not segregate clients solely on the basis of their physical disabilities. It must integrate clients who have ambulation deficits or who are deaf, blind, or have seizure disorders, etc., with others of comparable social and intellectual development.

(b) *Standard: Client bedrooms.* (1) Bedrooms must—

(i) Be rooms that have at least one outside wall;

(ii) Be equipped with or located near toilet and bathing facilities;

(iii) Accommodate no more than four clients unless granted a variance under paragraph (b)(2) of this section;

(iv) Measure at least 80 square feet per client in multiple client bedrooms and at least 80 square feet in single client bedrooms; and

(v) In all facilities initially certified or in buildings constructed or with major renovations or conversions on or after [*the effective date of these regulations*], have walls that extend from floor to ceiling.

(2) If a bedroom is below grade level, it must have a window that—

(i) Is usable as a second means of escape by the client(s) occupying the room; and

(ii) Is no more than 44 inches (measured to the window sill) above the floor unless the facility is surveyed under the Health Care Occupancy Chapter of the Life Safety Code, in which case the window must be no more than 36 inches (measured to the window sill) above the floor.

(3) The survey agency may grant a variance from the limit of four clients per room only if a physician who is a member of the interdisciplinary team and who is a qualified mental retardation professional—

(i) Certifies that each client to be placed in a bedroom housing more than four persons is so severely medically impaired as to require direct and continuous monitoring during sleeping hours; and

(ii) Documents the reasons why housing in a room of only four or fewer persons would not be medically feasible.

(4) The facility must provide each client with—

(i) A separate bed of proper size and height for the convenience of the client;

(ii) A clean, comfortable, mattress;

(iii) Bedding appropriate to the weather and climate; and

(iv) Functional furniture appropriate to the client's needs, and individual closet space in the client's bedroom with clothes racks and shelves accessible to the client.

(c) *Standard: Storage space in bedroom.* The facility must provide—

(1) Space and equipment for daily out-of-bed activity for all clients who are not yet mobile, except those who have a short-term illness or those few clients for whom out-of-bed activity is a threat to health and safety; and

(2) Suitable storage space, accessible to clients, for personal possessions, such as TVs, radios, prosthetic equipment and clothing.

(d) *Standard: Client bathrooms.* The facility must—

(1) Provide toilet and bathing facilities appropriate in number, size, and design to meet the needs of the clients;

(2) Provide for individual privacy in toilets, bathtubs, and showers; and

(3) In areas of the facility where clients who have not been trained to regulate water temperature are exposed to hot water, ensure that the temperature of the water does not exceed 110° Fahrenheit.

(e) *Standard: Heating and ventilation.* (1) Each client bedroom in the facility must have—

(i) At least one window to the outside; and

(ii) Direct outside ventilation by means of windows, air conditioning, or mechanical ventilation.

(2) The facility must—

(i) Maintain the temperature and humidity within a normal comfort range by heating, air conditioning or other means; and

(ii) Ensure that the heating apparatus does not constitute a burn or smoke hazard to clients.

(f) *Standard: Floors.* The facility must have—

(1) Floors that have a resilient, nonabrasive, and slip-resistant surface;

(2) Nonabrasive carpeting, if the area used by clients is carpeted and serves clients who lie on the floor or ambulate with parts of their bodies, other than feet, touching the floor; and

(3) Exposed floor surfaces and floor coverings that promote mobility in areas used by clients, and promote maintenance of sanitary conditions.

(g) *Standard: Space and equipment.* The facility must—

(1) Provide sufficient space and equipment in dining, living, health services, recreation, and program areas (including adequately equipped and sound treated areas for hearing and other evaluations if they are conducted in the facility) to enable staff to provide clients with needed services as required by this subpart and as identified in each client's individual program plan.

(2) Furnish, maintain in good repair, and teach clients to use and to make informed choices about the use of dentures, eyeglasses, hearing and other communications aids, braces, and other devices identified by the interdisciplinary team as needed by the client.

(3) Provide adequate clean linen and dirty linen storage areas.

(h) *Standard: Emergency plan and procedures.* (1) The facility must develop and implement detailed written plans and procedures to meet all potential emergencies and disasters such as fire, severe weather, and missing clients.

(2) The facility must communicate, periodically review, make the plan available, and provide training to the staff.

(i) *Standard: Evacuation drills.* (1) The facility must hold evacuation drills at least quarterly for each shift of personnel and under varied conditions to—

(i) Ensure that all personnel on all shifts are trained to perform assigned tasks;

(ii) Ensure that all personnel on all shifts are familiar with the use of the facility's fire protection features; and

(iii) Evaluate the effectiveness of emergency and disaster plans and procedures.

(2) The facility must—

(i) Actually evacuate clients during at least one drill each year on each shift;

(ii) Make special provisions for the evacuation of clients with physical disabilities;

(iii) File a report and evaluation on each evacuation drill;

(iv) Investigate all problems with evacuation drills, including accidents, and take corrective action; and

(v) During fire drills, clients may be evacuated to a safe area in facilities certified under the Health Care Occupancies Chapter of the Life Safety Code.

(3) Facilities must meet the requirements of paragraphs (i)(1) and (2) of this section for any live-in and relief staff they utilize.

(j) *Standard: Fire protection.* (1) *General.* (i) Except as specified in paragraph (j)(2) of this section, the facility must meet the applicable provisions of either the Health Care Occupancies Chapters or the Residential Board and Care Occupancies Chapter of the Life Safety Code (LSC) of the National Fire Protection Association, 1985 edition, which is incorporated by reference.[*]

(ii) The State survey agency may apply a single chapter of the LSC to the entire facility or may apply different chapters to different buildings or parts of buildings as permitted by the LSC.

(iii) A facility that meets the LSC definition of a residential board and care occupancy and that has 16 or fewer beds, must have its evacuation capability evaluated in accordance with the Evacuation Difficulty Index of the LSC (Appendix F).

(2) *Exceptions.* (i) For facilities that meet the LSC definition of a health care occupancy:

(A) The State survey agency may waive, for a period it considers appropriate, specific provisions of the LSC if—

(*1*) The waiver would not adversely affect the health and safety of the clients; and

(*2*) Rigid application of specific provisions would result in an unreasonable hardship for the facility.

(B) The State survey agency may apply the State's fire and safety code instead of the LSC if the Secretary finds that the State has a code imposed by State law that adequately protects a facility's clients.

(C) Compliance on November 28, 1982 with the 1967 edition of the LSC or compliance on April 18, 1966 with the 1961 edition of the LSC, with or without waivers, is considered to be compliance with this standard as long as the facility continues to remain in compliance with that edition of the Code.

(ii) For facilities that meet the LSC definition of a residential board and care occupancy and that have more than 16 beds, the State survey agency may apply the State's fire and safety code as specified in paragraph (j)(2)(B) of this section.

(k) *Standard: Paint.* The facility must—

(1) Use lead-free paint inside the facility; and

(2) Remove or cover interior paint or plaster containing lead so that it is not accessible to clients.

(l) *Standard: Infection control.*

(1) The facility must provide a sanitary environment to avoid sources and transmission of infections. There must be an active program for the prevention, control, and investigation of infection and communicable diseases.

(2) The facility must implement successful corrective action in affected problem areas.

(3) The facility must maintain a record of incidents and corrective actions related to infections.

(4) The facility must prohibit employees with symptoms or signs of a communicable disease from direct contact with clients and their food.

§ 483.480 Condition of participation: Dietetic services.

(a) *Standard: Food and nutrition services.*

(1) Each client must receive a nourishing, well-balanced diet including modified and specially-prescribed diets.

(2) A qualified dietitian must be employed either full-time, part-time, or on a consultant basis at the facility's discretion.

(3) If a qualified dietitian is not employed full-time, the facility must designate a person to serve as the director of food services.

(4) The client's interdisciplinary team, including a qualified dietitian and physician, must prescribe all modified and special diets including those used as a part of a program to manage inappropriate client behavior.

(5) Foods proposed for use as a primary reinforcement of adaptive behavior are evaluated in light of the client's nutritional status and needs.

(6) Unless otherwise specified by medical needs, the diet must be prepared at least in accordance with the latest edition of the recommended dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences, adjusted for age, sex, disability and activity.

(b) *Standard: Meal services.* (1) Each client must receive at least three meals daily, at regular times comparable to normal mealtimes in the community with—

(i) Not more than 14 hours between a substantial evening meal and breakfast of the following day, except on weekends and holidays when a nourishing snack is provided at bedtime, 16 hours may elapse between a substantial evening meal and breakfast; and

(ii) Not less than 10 hours between breakfast and the evening meal of the same day, except as provided under paragraph (b)(1)(i) of this section.

(2) Food must be served—

(i) In appropriate quantity;

(ii) At appropriate temperatures;

(iii) In a form consistent with the developmental level of the client; and

(iv) With appropriate utensils.

(3) Food served to clients individually and uneaten must be discarded.

(c) *Standard: Menus.* (1) Menus must—

(i) Be prepared in advance;

(ii) Provide a variety of foods at each meal;

(iii) Be different for the same days of each week and adjusted for seasonal changes; and

(iv) Include the average portion sizes for menu items.

(2) Menus for food actually served must be kept on file for 30 days.

(d) *Standard: Dining areas and service.*

The facility must—

(1) Serve meals for all clients, including persons with ambulation deficits, in dining areas, unless otherwise specified by the interdisciplinary team or a physician;

[*] Incorporation of the 1985 edition of the National Fire Protection Association's Life Safety Code (published February 7, 1985; ANSI/NFPA 101) was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51 that govern the use of incorporations by reference. The Code is available for inspection at the Office of the Federal Register Information Center, Room 8401, 1100 L Street NW., Washington, DC. Copies may be obtained from the National Fire Protection Association, Batterymarch Park, Quincy, Mass. 02269.

If any changes in this Code are also to be incorporated by reference, a notice to that effect will be published in the Federal Register

(2) Provide table service for all clients who can and will eat at a table, including clients in wheelchairs;

(3) Equip areas with tables, chairs, eating utensils, and dishes designed to meet the developmental needs of each client;

(4) Supervise and staff dining rooms adequately to direct self-help dining procedure, to assure that each client receives enough food and to assure that each client eats in a manner consistent with his or her developmental level; and

(5) Ensure that each client eats in an upright position, unless otherwise specified by the interdisciplinary team or a physician.

(Catalog of Federal Domestic Assistance Program No. 13.714 Medical Assistance Program)

Dated: September 4, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: March 31, 1988.

Otis R. Bowen,

Secretary.

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H.R. 3471/Pub. L. 100–627

Department of Veterans Affairs Act. (Oct. 25, 1988; 102 Stat. 3635; 14 pages) Price: $1.00

H.R. 4554/Pub. L. 100–628

To remove certain restrictions on land acquisitions for Andersonville National Battlefield. (Oct. 25, 1988; 102 Stat. 3649; 1 page) Price: $1.00

H.R. 5603/Pub. L. 100–629

To quiet title and possession with respect to a certain private land claim in Sumter County, Alabama. (Oct. 25, 1988; 102 Stat. 3650; 1 page) Price: $1.00

H.J. Res. 648/Pub. L. 100–630

To encourage increased international cooperation to protect biological diversity. (Oct. 25, 1988; 102 Stat. 3651; 1 page) Price: $1.00

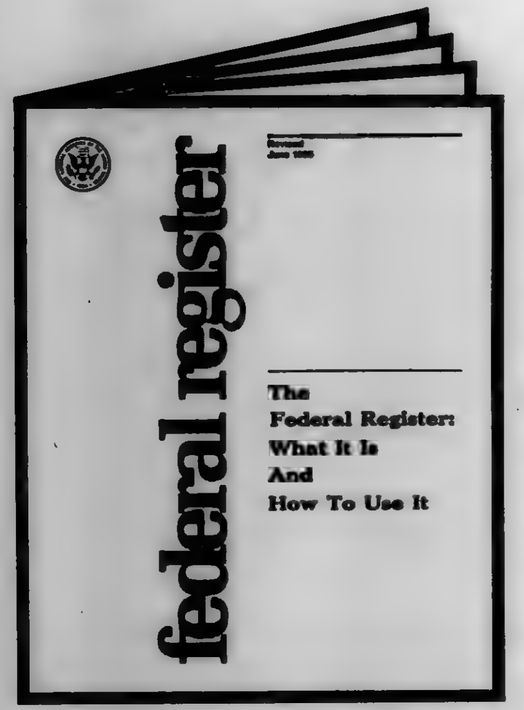
S. 636/Pub. L. 100–631

To amend the Department of Energy Organization Act to authorize protective force personnel who guard the strategic petroleum reserve or its storage and related facilities to carry firearms while discharging their official duties and in certain instances to make arrests without warrant; to establish the offense of trespass on property of the strategic petroleum reserve, and for other purposes. (Oct. 25, 1988; 102 Stat. 3652; 2 pages) Price: $1.00

S. 656/Pub. L. 100–632

Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1988. (Oct. 25, 1988; 102 Stat. 3654; 35 pages) Price: $1.25

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Presidential Documents

Title 3—
The President

Proclamation 5891 of October 27, 1988

National Adult Immunization Awareness Week, 1988

By the President of the United States of America

A Proclamation

America does well to hold a national week of observance to remind citizens that the need for immunization does not stop with childhood. Vaccine-preventable diseases continue to kill grown-ups in our Nation; as many as 70,000 adults die each year because they do not take advantage of vaccines for influenza, pneumococcal pneumonia, hepatitis B, tetanus, and other preventable infectious diseases. Even among people at greatest risk for complications—the elderly and the chronically ill—fewer than one in five routinely receive annual influenza vaccination and fewer than one in 10 have been vaccinated against pneumococcal pneumonia.

Immunization with safe and effective vaccines can greatly reduce the tragic loss of life and reduce the massive costs associated with health care. The Surgeon General of the United States has repeatedly urged adults to use appropriate preventive health-care practices, including vaccination for diseases preventable through immunization. We can all do our share in making sure we ourselves and members of our families know about and receive immunization, and that our neighbors and communities have the same opportunity.

In recognition of the importance of adult immunization and of the benefits of public awareness, the Congress, by Senate Joint Resolution 335, has designated the week beginning October 23, 1988, as "National Adult Immunization Awareness Week" and authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning October 23, 1988, as National Adult Immunization Awareness Week. I call upon all government agencies and the people of the United States to observe this week with appropriate activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of October, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-25302
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Rules and Regulations

Federal Register
Vol. 53, No. 210
Monday, October 31, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Parts 725 and 726

Burley Tobacco; Marketing Quotas and Acreage Allotments

AGENCY: Agricultural Stabilization and Conservation Service (ASCS), USDA.

ACTION: Interim rule and request for comments.

SUMMARY: This interim rule amends the regulations found at 7 CFR Parts 725 and 726. These changes are necessary to implement provisions of the Disaster Assistance Act of 1988 with respect to: (1) Providing for the crediting of undermarketings of flue-cured or burley tobacco effective farm marketing quota when disaster payments are made on the 1988 crop of tobacco; (2) determination of 1989 effective burley tobacco marketing quotas when the 1988 crop of burley tobacco produced on a farm is less than the farm's effective farm marketing quota for 1988 because of natural disaster conditions and; (3) the lease and transfer of burley tobacco marketing quotas after July 1 from a farm that has suffered a loss as the result of a natural disaster condition.

DATES: Comments must be received on or before November 30, 1988, in order to be assured consideration.

EFFECTIVE DATE: October 31, 1988.

ADDRESSES: Interested persons are invited to submit written comments to: Director, Tobacco and Peanuts Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013. Written comments must be received by November 30, 1988, to be assured consideration. All written submissions made pursuant to this notice will be made available for public inspection in room 5750–South Building, USDA, between the hours of 8:15 a.m. and 4:45 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dennis Daniels, Program Specialist, Tobacco and Peanuts Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013, telephone (202) 382–0200.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Department Regulation No. 1512–1 and has been classified as "not major." It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises, to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this rule applies are: Commodity Loan and Purchases; 10.051, as found in the catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Producers of flue-cured and burley tobacco need to be informed of the provisions of this rule as soon as possible. Producers of burley tobacco must make decisions regarding the lease and transfer of burley tobacco farm marketing quotas because of existing natural disaster conditions. Producers of flue-cured and burley tobacco must make decisions regarding disaster payments that may be made on farms eligible to receive disaster payments in accordance with Part 1477 of this title because the acceptance of disaster payments on eligible flue-cured and burley tobacco farms will affect the manner in which the 1988 undermarketings of the effective farm marketing quota are determined.

The 1988 undermarketings may affect the 1989 effective farm marketing quota. Accordingly, it has been determined that this interim rule shall become effective upon publication in the Federal Register without prior opportunity for public comment. However, the public is invited to comment on this interim rule for a period of 30 days after publication in the Federal Register. A final document discussing comments received and any amendments to this interim rule which may be considered necessary will be published in the Federal Register as soon as possible.

Discussion of Changes

Sections 317 and 319 of the Agricultural Adjustment Act of 1938, as amended ("the 1938 Act"), provide the manner in which undermarketings of burley and flue-cured poundage quotas are determined. This interim rule amends the regulations found at 7 CFR Parts 725 and 726 to implement the provisions of section 203 of the Disaster Assistance Act of 1988 (the "1988 Act") which changed the manner in which undermarketings are determined for the 1988 crop only, when a disaster payment is made with respect to a 1988 crop of burley or flue-cured tobacco. Under the amended regulations, the undermarketings of the 1988 crop of burley or flue-cured tobacco that otherwise could be claimed shall be reduced by the number of pounds for which a disaster payment was made on such 1988 crop of tobacco.

For burley tobacco, section 304 of the 1988 Act authorizes an increase in the 1989 effective undermarketings from that previously authorized if producers on a farm have undermarketed the farm's 1988 effective farm marketing quota due to a natural disaster condition. Previously, under the provisions of the 1938 Act, the effective undermarketings for burley tobacco could not exceed the sum of the 1988 basic farm marketing quota and any quota leased to the farm in 1988. This interim rule amends the regulations found at 7 CFR Part 726 to provide that the 1989 effective undermarketings for qualifying burley tobacco farms may not exceed the sum of the pounds of quota leased to the farm in 1988 and 125

percent of the 1988 basic farm marketing quota.

This interim rule amends further the regulations at 7 CFR Part 726 to implement the provisions of section 304 of the 1988 Act which amended section 319 of the 1938 Act with respect to the 1988 and subsequent crops of burley tobacco to authorize the lease and transfer of burley tobacco marketing quota after July 1 under certain natural disaster conditions. This interim rule provides that the burley tobacco marketing quota which is assigned to a farm may be leased and transferred from such farm after July 1 if: (1) The planted acreage of burley tobacco is determined to be sufficient to produce a quantity of tobacco equal to the effective farm marketing quota under average conditions; and (2) the farm's expected production of burley tobacco is less than 80 percent of the farm's effective marketing quota as a result of a natural disaster. Any such lease and transfer of burley tobacco marketing quota may be made to any other eligible farm within the same State where the transferring farm is located administratively.

The quantity of a burley tobacco marketing quota which may be leased and transferred to an eligible farm under this rule is limited to an amount which is required to market the current year's crop of burley tobacco on the receiving farm.

Lists of Subjects in 7 CFR Part 725 and 726

Acreage allotments, Marketing quotas, Reporting and recordkeeping requirements, Tobacco.

Interim Rule

PARTS 725 AND 726—[AMENDED]

Accordingly, 7 CFR Parts 725 and 726 are amended as follows:

1. In Part 725:

The authority citation is revised to read as follows:

Authority: Sec. 301, 313, 314, 314A, 316, 316A, 317, 363 372–375, 377 and 378 of the Agricultural Adjustment Act of 1938, as amended: 52 Stat. 38, as amended, 47, as amended, 48, as amended; 98 Stat. 215; 75 Stat. 469, as amended; 98 Stat. 206; 79 Stat. 66, as amended; 52 Stat. 69, as amended, 65, as amended; 66, as amended, 70 Stat. 206, as amended, 72 Stat. 995, as amended; (7 U.S.C. 1301, 1313, 1314, 1314–1, 1314b 1314b–1, 1314c, 1363, 1372–75, 1377, 1378); sec. 401 of the Agricultural Act of 1949, as amended; 63 Stat. 1054, as amended (7 U.S.C. 1421); Pub. L. 100–387.

2. Section 725.51 is amended by revising paragraph (qq) as follows:

§ 725.51 Definitions.

* * * * *

(qq) *Undermarketings.* The number of pounds by which the effective farm marketing quota is more than the number of pounds marketed. However, with respect to undermarketings of the 1988 crop, undermarketings are the number of pounds by which the effective farm marketing quota is more than the sum of the number of pounds marketed and the number of pounds for which a disaster payment was made on the 1988 crop of tobacco under Part 1477 of this title.

* * * * *

3. In Part 726:

The authority citation is revised to read as follows:

Authority: Sec. 301, 313, 314, 314A, 316B, 318, 319, 363, 372–375, 377, and 378 of the Agricultural Adjustment Act of 1938, as amended: 52 Stat. 38, as amended, 47, as amended, 48, as amended; 98 Stat. 210, 215; 79 Stat. 469, as amended, 79 Stat. 63, as amended, 65, as amended, 66, as amended; 70 Stat. 206, as amended; 72 Stat. 995, as amended; (7 U.S.C. 1301, 1313, 1314, 1314–1, 1314b–2, 1314e, 1363, 1372–75, 1377, 1378); sec. 401 of the Agricultural Act of 1949, as amended; 63 Stat. 1054, as amended; (7 U.S.C. 1421); Pub. L. 100–387.

4. Section 726.51 is amended by revising paragraph (pp)(2) as follows:

§ 726.51 Definitions.

* * * * *

(pp) * * *

(2) *Effective.* The smaller of actual undermarketings or the sum of the previous year's farm marketing quota plus pounds leased to the farm for the previous year. However, with respect to the 1989 crop, if the county committee determines that the farm has produced less than the effective farm marketing quota as a result of a natural disaster condition, the effective undermarketings are the smaller of the:

(i) Actual undermarketings of the 1988 crop minus the number of pounds for which a disaster payment was made on the 1988 crop of tobacco under Part 1477 of this title, or

(ii) Sum of the pounds of quota leased to the farm in 1988 and 125 percent of the 1988 farm marketing quota.

* * * * *

5. Section 726.68 is amended by revising paragraphs (a) and (d)(2); inserting paragraph (d)(3)(iv) previously reserved, and revising paragraphs (d)(4), (e)(4), and (f) to read as follows:

§ 726.68 Transfer of tobacco marketing quotas by lease, by sale, or by the owner.

(a) *General.* Effective with respect to the 1963 crop year and in accordance with the provisions of this section, a burley tobacco marketing quota (including a quota which has been pooled in accordance with the provisions of Part 719 of this chapter) may be transferred between farms within a county by sale or lease, or by the owner to another farm owned or operated by such owner. A sale of quota may be made only when required to prevent forfeiture of the quota in accordance with § 726.69. If the farm is subject to a lien, the consent of a lienholder is not required for either a transfer by sale or a one year transfer by lease or by the owner to be effective. For the 1988 and subsequent crop years, a burley tobacco marketing quota also may be transferred after July 1 by lease to a farm in any county within the same State when the county committee determines that the:

(1) Lessor has planted an acreage of burley tobacco sufficient to produce the effective farm marketing quota under average conditions, and

(2) Farm's expected production of burley tobacco is less than 80 percent of the farm's effective marketing quota as a result of drought, excessive rain, hail, wind, tornado, or other natural disasters as determined by the Deputy Administrator for State and County Operations.

* * * * *

(d) * * *

(2) *Subleasing.* In order to determine whether there is any subleasing of a burley farm marketing quota, the current year is divided into two periods, the period up to and including July 1, and the period after July 1. The county committee shall not approve a transfer during either period if the effect would be both a transfer to and from the farm during the same period: *Provided,* That a transfer may be approved within any crop year if quota is transferred from a farm for one or more years and the farm subsequently is combined with another farm that otherwise is eligible to receive quota by lease or by the owner.

(3) * * *

(iv) *Filed after July 1.* If the transfer agreement is filed after July 1, unless the county committee in the county in which the farm is located for administrative purposes determines that the:

(A) Acreage planted to burley tobacco on the farm was sufficient to produce, under average conditions, an amount of tobacco which, when added to any carryover tobacco from the previous marketing year, would equal the farm's effective farm marketing quota.

(B) Lessor made reasonable and customary efforts to produce the effective farm marketing quota.

(C) Producers on the farm qualify for price support in accordance with the provisions of Part 1464 of this title; and

(D) Farm's expected production of burley tobacco is less than 80 percent of the farm's effective marketing quota as a result of a flood, hail, wind, tornado, or other natural disaster.

* * * * *

(4) *Receiving farm.* A transfer of quota to a farm by lease or by the owner shall not be approved:

(i) *Limitation.* If the pounds of quota being transferred to the farm by lease or by the owner exceed the smaller of 15,000 pounds or the difference between the farm marketing quota and one-half the result obtained by multiplying the acres of cropland on the farm by the farm yield: *Provided,* That this provision shall not be applicable to a transfer filed after July 1 of the current crop year in accordance with the natural disaster provisions of this section.

(ii) *Filed after July 1.* If the transfer agreement is filed after July 1:

(A) Unless the producers on the farm qualify for price support in accordance with the provisions of Part 1464 of this title; and

(B) The pounds of quota to be transferred to the lessee farm exceed the difference obtained by subtracting the effective farm marketing quota (before the filing of the transfer agreement) for the lessee farm from the total pounds of tobacco marketed and/or available for marketing (based on estimated pounds of tobacco on hand and/or in the process of being produced) from the farm in the current year.

* * * * *

(e) * * *

(4) *When to file.* Filed on or before July 1 of the current year: *Provided,* That:

(i) *Late filed provision.* An agreement to transfer quota by lease may be considered to have been filed on July 1 of the current year if such transfer agreement is filed not later than the end of the marketing year that begins during the current year and the county committee, with the concurrence of the State committee, determines that on or before July 1 of the current year the lessee and lessor agreed to such lease and transfer of quota and the failure to file such transfer agreement did not result from gross negligence on the part of any party to such lease and transfer.

(ii) *Natural disaster.* A transfer agreement may be filed after July 1 of the current crop year and before February 16 of the following calendar year when the transfer is made in accordance with the natural disaster transfer provisions of this section.

* * * * *

(f) *Period of transfer.* A transfer by lease or by owner may be for a period of one to five years: *Provided,* That an agreement to transfer quota by lease shall be limited to the current crop year if the transfer is filed after July 1 in accordance with the natural disaster provisions of this section.

* * * * *

Signed in Washington, DC on October 25, 1988.

Milton Hertz,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 88-25008 Filed 10-28-88; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Part 966

Florida Tomatoes; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The final rule regarding Florida tomatoes will authorize expenses and establish an assessment rate under Marketing Order 966 for the 1988–89 fiscal period. Authorization of this budget will allow the Florida Tomato Committee to incur expenses reasonable and necessary to administer the program. Funds for this program will be derived from assessments on handlers.

EFFECTIVE DATE: August 1, 1988 through July 31, 1989.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–447–5331.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 966 (7 CFR Part 966), regulating the handling of tomatoes grown in Florida. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 handlers of Florida tomatoes under this marketing order, and approximately 160 producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable tomatoes handled from the beginning of such year. An annual budget of expenses is prepared by the committee and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of tomatoes. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by expected shipments of tomatoes. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. A recommended budget and rate of assessment is usually acted upon by the committee before the season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approval must be expedited so that the committee will have funds to pay its expenses.

The Florida Tomato Committee met on September 8, 1988, and unanimously recommended a 1988–89 budget of $1,537,000. Last season's budget was $763,000. The major expense allocation

is for education and promotion, which at a total of $1,140,500, this item accounts for about 75 percent of the budget. Also, increases are made in production research (up $7,000 to $115,000) and in administrative expenses (up $16,500 to $221,500).

The committee unanimously recommended an assessment rate of $0.025 per 25-pound container, up one cent from last year. When applied to projected shipments of 54.3 million containers, this will generate assessment income of $1,357,500. This amount when added to about $12,500 in other income and $167,000 from the reserve fund will be adequate to cover budgeted expenses. The beginning reserve of $593,000 with above projections, will be reduced to $425,500, well within the marketing order limit of one fiscal year's expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the **Federal Register** (53 FR 39305, October 6, 1988). That document contained a proposal to add § 966.226 to establish expenses and an assessment rate for the Florida Tomato Committee. That rule provided that interested persons could file comments through October 17, 1988. No comments were received.

It is found that the specified expenses are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, the Secretary also finds that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects in 7 CFR Part 966

Marketing agreements and orders, Tomatoes (Florida).

For the reasons set forth in the preamble, 7 CFR Part 966 is amended as follows:

PART 966—TOMATOES GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 966 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 966.226 is added to read as follows:

Note: This section will not be published in the Code of Federal Regulations.

§ 966.226 Expenses and assessment rate.

Expenses of $1,537,000 by the Florida Tomato Committee are authorized and an assessment rate of $0.025 per 25-pound container of tomatoes is established for the fiscal period ending July 31, 1989. Unexpended funds may be carried over as a reserve.

Dated: October 26, 1988.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88-25136 Filed 10-28-88; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 981

Expenses and Assessment Rate for Almonds Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate for the 1988–89 crop year under the marketing agreement and order for California almonds. The almond marketing order requires that the assessment rate for a particular crop year shall apply to all assessable almonds handled from the beginning of such year. An annual budget of expenses is prepared by the Almond Board of California (Board) and submitted to the U.S. Department of Agriculture for approval. The members of the Board are handlers and producers of regulated almonds. They are familiar with the Board's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate an appropriate budget. The assessment rate recommended by the Board is derived by dividing anticipated expenses by expected shipments of assessable almonds. The assessment rate is applied to actual shipments and is expected to produce sufficient income to pay the Board's anticipated expenses during the 1988–89 crop year. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATES: July 1, 1988, through June 30, 1989.

FOR FURTHER INFORMATION CONTACT: Allen Belden, Marketing Specialist, Marketing Order Administration Branch, FaV, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 981 (7 CFR Part 981), both as amended, regulating the handling of almonds grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 115 handlers and 7,500 producers under the California almond marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.1) as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of almond handlers and producers may be classified as small entities.

The almond marketing order requires that the assessment rate for a particular crop year shall apply to all assessable almonds handled from the beginning of such year. An annual budget of expenses is prepared by the Board and submitted to the U.S. Department of Agriculture (USDA) for approval. The members of the Board are handlers and producers of regulated almonds. They are familiar with the Board's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Board is derived by dividing anticipated expenses by expected shipments of assessable almonds. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Board's expected expenses. The recommended budget and rate of assessment are usually acted upon by the Board before August 1 of each crop year, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the Board will have funds to pay its expenses.

The Board met on July 20, 1988, and unanimously recommended 1988–89 marketing order program expenditures of $16,130,309, and an assessment rate of 2.65 cents per pound (kernelweight basis) of almonds.

The 2.65 cent per pound 1988–89 assessment rate compares with a 1987–88 assessment rate of 2.8 cents per pound. While the 2.5 cent per pound creditable rate is the same as the 1987–88 rate, the .15 cent per pound non-creditable portion of the total assessment, which handlers must pay to the Board, is one-half of the .3 cent per pound 1987–88 rate.

Projected expenses of $16,130,309 for 1988–89 compare with 1987–88 budgeted expenses of $15,995,334. Budget categories for 1988–89 are $894,300 for administrative expenses, $257,309 for production research $996,900 for public relations, and $56,800 for the 1989 crop estimate. Comparable actual expenditures for the 1987–88 crop were $676,789, $169,776, $744,428, and $54,100, respectively. The remaining 1988–89 expenses of $13,925,000 is the estimated amount which handlers will spend on their own marketing promotion activities based on a projected 1988–89 marketable California almond production of 557,000,000 kernelweight pounds and assumes that all handlers receive full credit against the 2.5 cent per pound creditable assessment obligation. For the 1987–88 crop year, $14,250,000 was budgeted for handler marketing promotion activities based on a projected marketable production of 570,000,000 kernelweight pounds. An actual figure is not yet available because handlers have until December 31, 1988, to complete marketing promotion activities for which they may receive credit toward their 1987–88 crop year creditable assessment obligations.

While this final action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. Further, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

This action adds a new § 981.337 and is based on Board recommendations and other information. A proposed rule was published in the September 16, 1988, issue of the **Federal Register** (53 FR 36053). Comments on the proposed rule were invited from interested persons until September 26, 1988. Comments were received from Steven W. Easter, Vice President, Member and Government Relations, Blue Diamond Growers (Blue Diamond); Frank S. Swain, Chief Counsel for Advocacy, U.S. Small Business Administration (SBA); and James G. Crecelius, General Manager, Monte Vista Farming Company.

In his comment, Mr. Easter stated that Blue Diamond, representing about 5,100 California almond growers, supports the 1988–89 budget expenditures and assessment rate for almonds.

The SBA, in their comment, disagreed with the USDA's Regulatory Flexibility Act (RFA) certification and questioned the comment period of less than 30 days for the proposed rule. The SBA requested that the USDA perform a regulatory flexibility analysis. Section 605(b) of the RFA provides that agency heads may certify that rules, if promulgated, will not have a significant economic impact on a substantial number of small entities. That section further requires the agency to provide a succinct statement explaining the reasons for such certification. The AMS has considered the economic impact of this rule on small entities. It is the AMS's view that the majority of handlers in the California almond industry may be classified as small businesses. The amount of assessment expenses attributable to such handlers is not significant in comparison to their gross annual receipts and therefore does not constitute a significant economic impact on them. Additionally, the budget and assessment rate was developed by the Board, which is comprised of members nominated by growers and handlers to represent their interests in administering the marketing order. For these and other aforementioned reasons, the administrator of the AMS has certified that this action will not have a significant economic impact on a substantial number of small entities. This certification meets the applicable requirements of the RFA.

The SBA also criticized the ten-day comment period for the proposed rule. Since expenses are incurred on a continuous basis, it was determined that a comment period of less than 30 days was appropriate because the budget and assessment rate approvals needed to be expedited so that the Board would have sufficient funds to pay its expenses. The Board's new fiscal year began July 1, 1988, and the National Agricultural Statistics Service provided necessary information on the almond crop size on July 12, 1988. Thus, the Board was able to unanimously recommend its projected budget expenditures and an assessment rate at its July 20, 1988, public meeting. Since the Board's fiscal year had already begun, a comment period of less than 30 days was deemed appropriate.

In his comment, Mr. Crecelius stated that the proposed advertising assessment is unfair and wasteful of growers' money. The Board, composed of growers and handlers, has recommended the expenditures for advertising activities with a reasonable expectation of improved returns to producers. The Board and the USDA feels that generic advertising, as well as handler brand advertising, and marketing promotion activities benefits all handlers and growers by increasing demand for all almonds. Additionally, handlers may receive credit against their advertising assessments for activities other than brand advertising. Handlers may receive credit for generic advertising and for the following three types of marketing promotion expenditures: (1) The distribution of sample packages of almonds to charitable and educational outlets; (2) the purchase of promotional materials from the Board; and (3) certain costs related to mail order promotions. Alternatively, handlers may receive 150 percent credit against their advertising assessments for direct payments to the Board, for use by the Board to pay its own generic public relations and promotion program. In fact, the Board's 1987–88 generic promotion program was designed to increase the domestic consumption of almonds by developing consumer, food service, and industrial markets. The objective of the consumer program is to build and maintain positive consumer attitudes towards

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almonds, encourage present users of almonds to broaden the scope of their usage, and encourage occasional almond users to increase their almond usage. The objective of the food service program is to increase the use of almonds in school lunch menus. The objective of the industrial program is to increase the use of almonds and almond products by industrial manufacturers, increase awareness of the high quality of California almonds, and communicate the product's nutritional advantages.

After consideration of the information and recommendations submitted by the Board and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

This budget and assessment rate should be expedited because the Board needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis. In addition, handlers are aware of this action, which was recommended by the Board at public meetings. Therefore, the Secretary also finds that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register (5 U.S.C. 553).

List of Subjects in 7 CFR Part 981

Almonds, California, Marketing agreements and orders.

For the reasons set forth in the preamble, a new § 981.337 is added as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 981 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 981.337 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 981.337 Expenses and assessment rate.

Expenses of $16,130,309 by the Almond Board of California are authorized for the crop year ending June 30, 1988. An assessment rate for that crop year payable by each handler in accordance with § 981.81 is fixed at 2.65 cents per pound of almonds (kernelweight basis) less any amount credited pursuant to § 981.41, but not to exceed 2.5 cents per pound of almonds (kernelweight basis).

Dated: October 25, 1988.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88-25136 Filed 10-28-88; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 547, 548, 549, 563, 569a, 569b, 569c, 575, 576, and 577

[No. 88-1158]

Receivership Claims Procedures; Review Procedures; Expedited Relief Procedures

Dated: October 24, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), in its own right and as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), is promulgating final rules governing the determination of claims filed against the FSLIC as Receiver for failed savings and loan institutions, and the determination of requests for injunctive or declaratory relief arising from threatened actions by the FSLIC as Receiver. The final rules incorporate, with minor modifications, proposed regulations that were published in the Federal Register on June 8, 1988 (Supplemental Notice of Proposed Rulemaking, 53 FR 21474), and supersede Interim Procedures that were published in the Federal Register on April 21, 1988 (53 FR 13105).

EFFECTIVE DATE: November 30, 1988.

FOR FURTHER INFORMATION CONTACT: Carl J. Gold, Attorney, (202) 377–6285; or Christopher Bellotto, Assistant General Counsel, (202) 377–7401; or Judith L. Friedman, Associate General Counsel, (202) 377–7368; Adjudication Division, Office of the General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On June 8, 1988, in a Supplemental Notice of Proposed Rulemaking ("Supplemental Notice," 53 FR 21474), the Board sought comment on proposed regulations regarding adjudicatory proceedings involving FSLIC receiverships.[1] The proposed regulations would constitute three new parts of Title 12 of the Code of Federal Regulations: Part 575, "Procedures for the Administration and Determination of Claims Filed with the FSLIC as Receiver" ["Claims Procedures"]; Part 576, "Procedures for the Administration and Determination on Review of Determinations of the FSLIC as Receiver" ["Review Procedures"]; and Part 577, "Procedures for the Administration and Determination of Requests for Expedited Relief From Decisions or Threatened Actions of the FSLIC as Receiver" ("Expedited Relief Procedures"). In brief, the scope of each set of Procedures is as follows. The Claims Procedures govern the filing, and determination by the FSLIC as Receiver, of claims for monetary recovery and other forms of relief by creditors and other potential claimants against the receivership of savings institutions for which the Board has appointed the FSLIC as Reciever. The Review Procedures govern the filing, and final determination by the Board, of challenges to determinations by the FSLIC as Receiver pursuant to the Claims Procedures. The Expedited Relief Procedures, which provide a separate avenue of relief from the Claims and Review Procedures, govern the filing and determination, by the Board, of requests for declaratory, injunctive, or other equitable relief by persons faced with a threatened action of the FSLIC as Receiver, for example, a notice of foreclosure, an action for eviction, or repudiation of a contract.

Three comments were received on the proposal; two from individuals and one from a trade association. The commenters questioned the statutory basis, the constitutionality, and the practical efficacy of the requirement that persons filing claims with, or seeking relief from actions by, the FSLIC as Receiver, exhaust their rights through an administrative process before seeking judicial intervention.

The Board stated in the Supplemental Notice:

> the purpose of the proposed regulations is to provide a uniform procedure under which persons seeking relief from actions threatened by the FSLIC as Receiver for a failed institution, or seeking to recover funds or gain other relief from an FSLIC receivership, may exhaust their administrative remedies at the Board. The Board regards such exhaustion as a prerequisite to the availability of judicial review of actions by the FSLIC as Receiver.

53 FR at 21474. By this statement, the Board sought to inform persons unfamiliar with its adjudicatory procedures that it believes claimants and petitioners must exhaust those procedures as a prerequisite to judicial consideration of their claims. The Board continues to hold that view and expects that it will be validated in litigation now pending in the United States Supreme Court. *See Coit Independence Joint Venture v. Federal Savings and Loan Insurance Corporation as Receiver of FirstSouth, F.A., cert. granted*, 108 S. Ct. 1105 (1988). In view of the pendency of that litigation, in which the issue of exhaustion of administrative remedies will be fully considered and resolved, the issue will not be discussed herein. To the extent that commenters raised issues which would require action by Congress, those comments are also beyond the scope of this proceeding and will not be discussed. One commenter requested that the Board stay promulgation of final rules until *Coit* is decided and/or Congress acts regarding codification of the exhaustion requirement. Such a stay would leave a regulatory vacuum for an indefinite time, to the detriment of Claimants and others requiring Board intervention, as well as to the FSLIC as Receiver. Other commenters raised issues regarding the proper scope and standard of judicial review of Bank Board decisions. Those issues should be resolved in judicial proceedings or through legislation, and will not be considered in this rulemaking proceeding.

Accordingly, the Board will discuss herein only comments relating to specific provisions of the proposed regulations. All commenters proposed specific modifications to the proposed regulations. These commenters recommended that the Board make clear that the FSLIC as Receiver, which all perceive to be an interested party, is not the adjudicator in disputed receivership matters, and stands on an equal footing before the Board with claimants and other third parties. One commenter proposed that the Board employ Administrative Law Judges to conduct oral hearings where issues cannot be resolved on a written record, and that the Administrative Law Judge be empowered to require parties to use alternative dispute resolution procedures, *e.g.*, arbitration or mediation, in appropriate circumstances. All commenters recommended that the Board utilize, at least in some circumstances, oral hearing procedures, affording the parties the opportunity of cross-examination and discovery, including the use of subpoenas. Two commenters protested that the Claims Procedures enable the Receiver to delay the resolution of claims, and recommend that the Board adopt fixed time limits for the various steps in the claims determination process, or for the Receiver's determination in general.

Upon review of the comments and consideration of the Board's experience since publication of the Supplemental Notice, the Board has determined not to make major modifications to the proposed regulations. As noted in the Supplemental Notice (53 FR at 21474), the proposed regulations were based upon Interim Procedures published in the Federal Register on April 21, 1988 (53 FR 13105). Those Interim Procedures were, in turn, the product of repeated refinement of procedures the Board has employed in hundreds of adjudicatory proceedings since early 1986. As intended, numerous claimants and others are utilizing the procedures, and have exercised their rights to obtain judicial review of Board determinations.[2] The Board believes that the proposed regulations are consistent with the purposes enunciated in the Supplemental Notice, and should be adopted with only minor, technical modifications.

In regard to the comments concerning specific features of the Board's proposed adjudicatory procedures, the Board has already addressed the concern that the FSLIC as Receiver should not be the adjudicator of claims and other requests for relief. The FSLIC as Receiver has no decisional function in regard to Requests for Expedited Relief, and, while it can allow or disallow claims, under the final regulations and disallowance of a claim is not an adjudication, but merely a determination that the Receiver believes it is in the best interest of the estate to contest the claim. *See* § 576.3(e) (Board may make its own findings of fact and conclusions of law based upon the Administrative Record compiled in the review of the Receiver's Determination). To date, the Board has not found use of Administrative Law Judges or discovery or subpoena power to be necessary. Moreover, legislation would likely be required for the Board to employ Administrative Law Judges and to give the Board an effective subpoena mechanism and it would be impracticable to delay adopting final regulations pending such Congressional action. One commenter recommended that the Board utilize alternative dispute resolution procedures. The Board is willing to utilize such procedures on a case-by-case basis within the existing adjudicatory process if the parties to an adjudication demonstrate that such procedures would serve the public interest. A specific rule on this subject is, therefore, unnecessary. Finally, the Board finds some merit to the suggestions that strict time limits be imposed upon the Receiver's processing of claims. However, none of the parties proposed specific time limits or attempted to supply data that would enable the Board to establish such limits. The Board will, through its developing experience in the adjudicative process and through the collection of data relating to the determination of claims, continue to investigate the need for, and proper scope of, time limits for the Receiver's determination of claims.

Summary of Technical Modifications to Proposed Regulations

Upon further review of its experience in processing claims pursuant to the Interim Procedures, the Board is adopting the rules as proposed, with the following technical modifications.

Proposed § 575.1(a) is modified to clarify that the Claims Procedures, which govern actions of Special Representatives and managing officers of receiverships, also apply to their agents and employees.

Proposed § 575.2(a) is modified to conform to the scope of § 569c.11(a)(2).

Proposed § 575.2(c)(2) is modified to describe accurately the functions currently performed by agents of Special Representatives.

Proposed § 575.2(h)(1)(v) is modified to conform to the dollar amount established by § 569c.11(a)(4), below which a claim need not be filed for certain services.

Proposed § 575.2(z) is modified to accurately reflect the authority by which a Special Representative may be appointed.

Proposed § 575.5 is incorporated in § 575.3, and modified to reflect actual receivership publication practices.

A new § 575.5 is added, encompassing a portion of proposed § 575.3.

Proposed § 575.12(c) is modified to clarify that "Special Representative" in § 575.13 also includes a designee of the Special Representative.

Proposed § 575.13(f) is modified to conform to general disclosure practices regarding settlement negotiations.

Proposed § 575.13(g) is modified to make mailing procedures internally consistent.

Proposed § 575.13(m) is deleted as superfluous. All subsequent subsections are renumbered to reflect this deletion.

Proposed § 575.13(q) is modified to clarify that the Receiver is to provide Claimants with the Board's Review Procedures in case of a total or partial disallowance.

Proposed § 575.13(s) is deleted as unnecessary; the function contemplated for the record of claim is already

[1] As noted in the Supplemental Notice, this supplemental rulemaking subsumes only a portion of the rulemaking proceeding regarding the conduct of FSLIC receiverships that the Board began in November 1986. *See* 50 FR 48870 (Nov. 27, 1985); 51 FR 25125 (July 9, 1986).

[2] *See McIlwain v. FSLIC*, No. A–88–CA–507 (W.D. Tex., Aug. 2, 1988); *Musacchio v. FSLIC*, C 88–2227 (N.D. Cal., June 6, 1988); *Gold Hawk Joint Venture, et al. v. FSLIC*, No. 4–88–346–E (N.D. Cal., July 5, 1988); *Block v. FHLBB*, No. H–87–3298 (S.D. Tex., Oct. 8, 1987); *Gray Falls Shopping Center, Ltd., et al. v. FSLIC*, No. H–88–3877 (S.D. Tex., Aug. 8, 1987); (consolidated judicial review of Board decisions that denied five Requests for Expedited Relief).

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performed by the Notice of Allowance (or Disallowance).

Proposed § 575.17(b)(2) is modified to eliminate redundancies in relation to § 575.17(b)(1).

Section 575.14 reflects changed nomenclature to avoid confusion with Requests for Expedited Relief.

Final Regulatory Flexibility Analysis

No comments were filed addressing the Initial Regulatory Flexibility Analysis contained in the Supplemental Notice. Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following regulatory flexibility analysis:

1. *Need for and objectives of the rule.* These elements are incorporated above in "SUPPLEMENTARY INFORMATION" regarding this final rule.

2. *Issues raised by comments and agency assessment and response.* These elements are incorporated above in "SUPPLEMENTARY INFORMATION".

3. *Significant alternatives minimizing small-entity impact and agency response.* The proposed rules would apply to all claimants, petitioners and receiverships, regardless of size. Every effort has been made in formulating the rule to minimize financial and other burdens on individuals and small businesses participating in the Board's adjudicatory process.

4. *Overlapping or conflicting federal rules.* None known.

List of Subjects in 12 CFR Parts 575, 576, 577

Savings and loan associations.

Accordingly, the Board hereby amends Chapter V, Subchapter D of Title 12, Code of Federal Regulations, as set forth below.

1. The Interim Procedures affecting Parts 547, 548, 549, 563, 569a, 569b, and 569c published in the **Federal Register** of April 21, 1988 (53 FR 13105) are hereby removed.

2. Part 575 is added to read as follows:

PART 575—PROCEDURES FOR THE ADMINISTRATION AND DETERMINATION OF CLAIMS FILED WITH THE FSLIC AS RECEIVER

Sec.
575.1 Purpose.
575.2 Definitions.

Subpart B—Notice to Potential Claimants
575.3 Publication of notice.
575.4 Proof of Claim.
575.5 Insured deposits.
575.6 Uninsured deposits.

Subpart B—Procedure for Initial Review of Claims
575.7 Agents of the Special Representative.
575.8 Control log for Proofs of Claim.
575.9 Review of Proof of Claim.
575.10 Review on the merits of a claim.
575.11 Allowance, disallowance, or retention for further review of claim.

Subpart C—Procedure for Review of Claims Retained for Further Review
575.12 Special Representative and Claims Counsel.
575.13 Elements of review.
575.14 Request for immediate determination.

Subpart D—Standards for Determination of Claims
575.15 Burden of proof.
575.16 Exclusion from claims procedure.
575.17 Application of claims procedure.
575.18 Criteria for the determination of claims for provision of services, supplies, and materials.
575.19 Claims to security, priority, or preference.

Authority: Sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); 48 Stat. 132, as amended (12 U.S.C. 1464); 48 Stat. 1256, as amended (12 U.S.C. 1729).

§ 575.1 Purpose.

(a) The purpose of these procedures is to provide for uniform administration and determination of claims filed with the FSLIC as Receiver under appointment by the Federal Home Loan Bank Board ("Board" or "Bank Board"). These procedures are to be followed by Special Representatives and managing officers of the receiverships and their agents and employees to assure compliance with the Federal Regulations governing the processing and determination of claims, and to insure uniformity of notices to claimants, documentation of claims, determination of the merits of claims by allowance or disallowance in whole or in part, payment of claims, and the review process. Full compliance with and exhaustion of these procedures is a prerequisite to review by the Federal Home Loan Bank Board. Judicial review of the disallowance in whole or in part of a claim against the assets of the FSLIC as Receiver is available only after exhaustion of these procedures and review and final agency action by the Board. These procedures are also applicable where, pursuant to statutory and regulatory authority, the Federal Deposit Insurance Corporation is the Receiver for a Federal savings bank.

(b) The Board, in its regulations, and its Office of General Counsel, have made it clear that the FSLIC as Receiver of an institution the accounts of which are insured by the FSLIC, recognizes the validity of certain secured obligations of insured institutions entered into pursuant to legal authority, and the right of secured creditor in certain circumstances to cause the liquidation of collateral.

(c) The General Counsels of the Board have rendered several opinions concerning the status of collateralized obligations of a savings and loan association for which the Board has appointed the FSLIC as Receiver, beginning in 1963; and the Board has issued resolutions concerning the subject. These procedures are not inconsistent with such opinion issued by General Counsels of the Board or the Board's resolutions; and these procedures should not be taken to mean or imply that compliance with the procedures is a condition precedent to liquitation of collateral in the circumstances in which the General Counsel's opinions have indicated that a court would permit the liquidation of collateral or the Board has indicated by resolution or order that liquidation of collateral would be permitted.

(d) The Board, in adopting these procedures, is not directing the FSLIC as Receiver to require such secured creditors to observe all such noticed procedures as a precondition of exercising valid liquidation rights pursuant to valid security contracts entered into by an insured institution as authorized under its governing law prior to the appointment of the Receiver. Nor is the Board directing the FSLIC as Receiver to subject such holders of participating interests that are not creditors of the insured institution in receivership generally to such procedures. In the event, however, that a Receiver disputes a creditor's claim to a security interest in an asset in which the institution has an interest or a participant's characterization of its status, the Receiver may require such creditor or other entity to establish its claimed status prusuant to these procedures; and the Receiver in such cases may take such action as it deems necessary to protect its interest in any asset.

§ 575.2 Definitions.

For the purposes of these procedures, the procedures for Requests for Review pursuant to Part 576 of this chapter, and the procedures for Requests for Expedited Relief pursuant to Part 577 of this chapter, the following definitions shall apply:

(a)(1) "Administrative expenses of the association" means expenses incurred within thirty (30) days prior to the Receiver's taking possession of the association, and are limited to reasonable expenses incurred for services actually provided by accountants, attorneys, appraisers,

examiners, or management companies, or reasonable expenses incurred by employees which were authorized and reimbursable under a pre-existing expensed reimbursement policy, that, in the opinion of the Receiver, are of benefit to the receivership, and shall not include wages or salaries of employees of the association;

(2) "Administrative expenses of the Receiver" means the costs, expenses, and debts of the Receiver;

(b) "Affected Person" means a person, corporation, partnership or other legal entity that owns or has an interest in real or personal property, or is otherwise obligated on a debt secured by real or personal property, against which the Receiver has expressed an intent to take action that may affect, impair, diminish, or terminate such interest. By way of example only, if the Receiver posts for foreclosure pursuant to a deed of trust, the legal owner or owners of the real estate encumbered with the lien sought to be foreclosed on would be an "Affected Person."

(c) "Agent of the Special Representative" means a person designated by the Special Representative, the Bank Board, or the FSLIC to perform certain functions for the receivership, which may include but are not limited to maintaining a tracking system of claims filed with the Receiver and reviewing Proofs of Claim submitted to the Receiver.

(d) "Applicant" means any person or entity that asserted a claim against the Association or the Receiver and seeks review by the Bank Board.

(e) "Association" means savings and loan association or savings bank for which the Board has appointed the FSLIC or the FDIC as Receiver.

(f) "Board" or "Bank Board" means the Federal Home Loan Bank Board, as defined in 12 CFR 500.10 or its authorized agent.

(g) "Certificate of Mailing" means a written statement certifying that the referenced document has been placed in the United States mail, first class, postage prepaid, on the date specified.

(h) "Claim" means an assertion of a right to payment or other relief against an association or the Receiver; it does not include a demand for deposit insurance to the extent such insurance is payable or paid by FSLIC, acting in its corporate capacity, or a Request for Expedited Relief which is filed with the Board. All claims shall be submitted in writing in a Proof of Claim.

(1) "Claim" includes but is not limited to:

(i) Demand for recoupment, set-off, security, priority, or preference;

(ii) Request to foreclose or to oppose foreclosure by the Receiver on security property or assets of the association;

(iii) Demand for interest, penalties, fees or the recognition or nonrecognition of liens securing equitable subordinated claims;

(iv) Administration expenses of the association (a proof of claim need not be filed for services that were actually rendered, within 30 days prior to the Receiver's taking possession, by accountants, attorneys, appraisers, examiners, or management companies). Such services will be considered for priority payment by the Receiver as explained in Subpart D of this part, if in the opinion of the Receiver such services are of benefit to the receivership;

(v) Demand by employees of the association for wages and salaries, including vacation, severance, sick leave pay, and contributions to employee benefits plan; (a proof of claim need not be filed for wages, salaries, and benefits earned within 30 days prior to the appointment of the Receiver that do not exceed $2,000, or as otherwise set by the Board, which wages, salaries, and benefits will be considered for priority payment by the Receiver as explained in Subpart D of this part).

(2) "Reconcilable claim(s)" means a claim that may be allowed in whole based upon the Receiver's review of the books and records of the association or the Receiver without additional fact finding or additional consideration of related legal issues.

(3) "Claim(s) retained for further review" means claims that are not Reconcilable Claims.

(i) "Claimant" means any person or entity asserting a claim against the association or the Receiver.

(1) A Claimant may include, but is not limited to:

(i) Holder(s) of claim(s) that appear on the face of the books or records of the association, or are otherwise known to the Receiver, on the date of appointment of the Receiver;

(ii) Holder(s) of claim(s) that appear on the face of the books or records of the association or the Receiver, or are otherwise known to the Receiver after the date of the appointment of the Receiver;

(iii) Holder(s) of claim(s) that arise from acts or omissions of the Receiver;

(iv) Holder(s) of a participation interest in a loan originated by the association or in which the association is participating, if the Receiver disputes the participant's characterization of its status;

(v) Borrower(s);

(vi) Guarantor(s);

(vii) Unsecured creditor(s), or secured creditor(s);

(viii) Holder(s) of mechanic's, materialmen's, or other lien(s) or person(s) or entities that seek to obtain a mechanic's, materialmen's, or other lien against assets of the association or assets in which the Receiver has or seeks to assert an interest; or

(ix) Any person(s) or entities seeking to recover civil money damages or equitable relief against the association or the Receiver.

(2) Claimants, at their election, may be represented by an agent, who shall be designated and identified to the receiver in writing by name and address. Upon such designation, all correspondence and communication shall be between the Special Representative and the agent for the Claimant. For purposes of these procedures the term Claimant shall be deemed to include any properly designated agent(s) of the Claimant.

(j) "Claims Counsel" means legal counsel retained to represent the Receiver, as designated by the Special Representative with the consent of the General Counsel, to perform specific tasks, hereinafter described.

(k) "Claims Procedures" means the Procedures for the Administration and Determination of Claims Filed with FSLIC as Receiver.

(l) "Current bills" means those administrative expenses of the Receiver incurred on or after the date of the appointment of the Receiver, and includes costs, expenses, and debts of the Receiver.

(m) "Depositor" or "Accountholder" means the holder of a withdrawable account or accounts in an association.

(n) "Director, OFSLIC" means the Director of the Office of the Federal Savings and Loan Insurance Corporation, as defined in 12 CFR 500.20.

(o) "Filed with" or "served upon" means actually received.

(p) "FSLIC" means the Federal Savings and Loan Insurance Corporation, as defined in 12 CFR 500.4.

(q) "General Counsel" means the General Counsel to the Board, as defined in 12 CFR 500.17, or an attorney(s) in the Office of General Counsel ("OGC") designated by the General Counsel.

(r) "Insurance Division, OFSLIC" means the Insurance Division of the Office of Federal Savings and Loan Insurance Corporation.

(s) "Federal holiday" means a day designated as a legal holiday by the

President or the Congress of the United States of America.

(t) "Petitioner" means an Affected Person filing a Request for Expedited Relief.

(u) "Proof of Claim" means the form specified by the Director, OFSLIC, with the concurrence of the General Counsel, upon which a claim shall be submitted in writing. The Claimant shall have a continuing duty to supplement and update information contained therein, including but not limited to advising the Receiver in writing of the Claimant's current address.

(v) "Publish" is defined at 12 CFR 549.1(a).

(w) "Receiver" means the FSLIC or the Federal Deposit Insurance Corporation as Receiver as appointed by the Bank Board pursuant to applicable federal law.

(x) "Receiver's record" means all notices to claimants, Proof(s) of Claim, anything required by the procedures, and any documentation and other writing compiled by the Special Representative that form the basis for the Receiver's determination to allow or disallow a claim in whole or in part.

(y) "Request for Expedited Relief" means a written request submitted by an Affected Person to the Bank Board in accordance with applicable procedures. A Request for Expedited Relief is not a "claim" as defined herein.

(z) "Special Representative" means individual(s) designated as Special Representative(s) for the FSLIC as Receiver for an association as stated in the Board Resolution appointing the FSLIC as Receiver, in another Board Resolution, or as designated pursuant to any Board Resolution. The Director, OFSLIC, or designee, with the concurrence of the General Counsel, shall designate the Special Representative(s) for each receivership who will have primary responsibility for the administration of the claims procedure. The Special Representative(s) shall conduct the claims procedure, including the determination of the merits of claims.

(aa) "Disallowed claim" means a claim or part of a claim which, pursuant to the Receiver's Determination, has not been allowed.

Subpart A—Notice to Potential Claimants

§ 575.1 Publication of notice.

In accordance with the existing regulations and orders of the Board, the Receiver shall, promptly after the date of appointment, publish notice to all potential claimants of the association as shown on the books and records of the association, or as otherwise may be known to the Receiver, of their right to present claims to the Receiver and simultaneously shall mail to such claimants at their last known address: (a) A notice of their right to present claims to the Receiver, (b) a Proof of Claim form, and (c) a copy of the "Instructions for Filing Claims with the FSLIC as Receiver."

Such notice shall be published 30 days and again 60 days after the date of the first publication. The Special Representative shall retain copies of the published notices in the files of the Receiver.

§ 575.4 Proof of Claim.

The notice shall provide that a Proof of Claim shall be filed with the Receiver on or before a specified date not less than 90 days from the date of the first publication of such notice.

§ 575.5 Insured deposits.

Demands by accountholders for deposit insurance will be determined by the Insurance Division, OFSLIC, in separate proceedings, and not pursuant to this Claims Procedure.

§ 575.6 Uninsured deposits.

(a) When a depositor receives a determination from the Insurance Division, OFSLIC, that some of the amount deposited is uninsured, the depositor will receive a Certificate of Claim in Liquidation for any uninsured amount on deposit. A copy of that Certificate will be provided to the Receiver by the Insurance Division.

(b) The Receiver will retain the Certificate for the period of the receivership. When there is a distribution to general creditors, such claims will be paid pro rata with others of the same priority out of the assets of the receivership.

(c) A depositor also may be a claimant under this Claims Procedures for claims not based upon insurance of accounts. The FSLIC need not file a claim for amounts of deposits on which it pays insurance or otherwise satisfies its insurance obligation.

Subpart B—Procedure for Initial Review of Claims

§ 575.7 Agents of the Special Representative.

The Special Representative shall designate as many agents, as, in the opinion of the Special Representative, are necessary and appropriate to review and process claims filed with the Receiver and to perform functions as assigned by the Special Representative ("agent of the Special Representative"). The Special Representative, in consultation with the General Counsel, shall designate from the law firm(s) retained to advise the Receiver as many Claims Counsel as are necessary to assist in the claims process. Such law firm(s) shall act under the supervision of and be advised by the General Counsel.

§ 575.8 Control log for Proofs of Claims.

All Proofs of Claim filed with the Receiver shall be recorded by entry into a control log in chronological order of receipt. The control log shall include the name of each claimant and an assigned serial number.

§ 575.9 Review of Proof of Claim.

After each Proof of Claim is entered into the control log, an agent of the Special Representative shall review it to determine whether it has been properly filed in accordance with the directions contained in the Notice to Claimants and the Proof of Claim form ("properly filed").

(a) If a Proof of Claim is found not to be properly filed, a copy of it shall be returned to the claimant promptly with a written explanation of the deficiencies in it ("deficiency notice"). The deficiency notice shall advise the claimant that a corrected Proof of Claim must be filed with the Receiver within the later of 30 days from the date of the mailing of the deficiency notice or the filing date published under § 575.4 of this part, and that failure to correct the deficiencies before the expiration of the applicable time period may result in disallowance of the claim.

(b) In the discretion of the Special Representative, if material deficiencies in the Proof of Claim are not timely corrected, the claim may be disallowed in whole or in part. The determination of disallowance for failure to correct deficiencies in the Proof of Claim shall be in writing and explain the deficiencies that remain and shall be mailed promptly to the Claimant by certified mail, return receipt requested, and regular mail with a certificate of mailing. A copy of the determination, the certificate of mailing, and the receipt card, if any shall be maintained in the files of the Receiver for the duration of the receivership, and shall become part of the administrative record.

(c) The originals of a Proof of Claim, deficiency notice, and any corrected Proof of Claim shall be retained in the files of the Receiver and shall become part of the record with respect to such claim.

(d) When a Proof of Claim or any corrected Proof of Claim is determined to be properly filed, the claim shall be promptly assigned to an agent of the Special Representative for initial review on the merits. A properly filed corrected Proof of Claim shall supersede a previously filed deficient Proof of Claim for purposes of review on the merits.

§ 575.10 Review on the merits of a claim.

The review on the merits shall determine whether each claim:

(a) Is a Reconcilable Claim that the Special Representative may allow in whole based upon the books and records of the association or the Receiver, which books and records appear to be reliable and to provide no basis for disallowance; or

(b) Is a claim that should be retained for further review, which claim the Special Representative cannot allow in whole or disallow in whole or in part without further review or investigation.

§ 575.11 Allowance, disallowance, or retention for further review of claim.

The Special Representative shall notify each Claimant within 180 days after the end of the 90 day notice period, as set forth in the regulations, or after receipt of the properly filed Proof of claim, whichever is later, whether the claim is allowed in whole or in part, disallowed, or retained for further review. The notice shall be in writing and shall be mailed to the Claimant by certified mail, return receipt requested, and by regular mail with a certificate of mailing.

Subpart C—Procedure for Review of Claims Retained for Further Review

§ 575.12 Special Representative and Claims Counsel.

The Role of the Special Representative and Claims Counsel:

(a) The Special Representative shall be the decisionmaker, and the Claims Counsel shall provide legal advice to the Special Representative. The Special Representative, in his discretion, may assign the tasks of review of claims to Claims Counsel or to other agents of the Special Representative, subject to the oversight and direction of the Director, Operations and Liquidation Division, OFSLIC, with the advice and consent of the General Counsel.

(b) In exercising this discretion, the Special Representative shall consider:

(1) The nature of the task;

(2) The issues involved in the claim; and

(3) Where no significant legal issue is presented, the cost savings involved in assigning to a non-attorney agent of the Special Representative those tasks, such as preparing and forwarding notices to the Claimant, that do not require an attorney or that can be performed by a non-attorney at the direction and under the supervision of Claims Counsel.

(c) References to the Special Representative in the provisions of § 575.13 of this part, therefore, include agents or other designees of the Special Representative.

§ 575.13 Elements of review.

(a) Upon assignment, an agent of the Special Representative shall review promptly the Proof of Claim and documentation submitted by the Claimant in support of the claim and determine whether additonal documentation or other writings or materials are necessary to reach a determination with respect to the claim.

(b) In connection with the compiling of such documentation, the Special Representative may require the Claimant to provide additional information or documentation in support of the claim. Specifically, the Special Representative may:

(1) Notify the Claimant in writing to file with the Receiver, within 30 days, additional documentation or written information if, in the opinion of the Special Representative, it appears that such additional documentation or others written information would assist in the determination of the claim;

(2) Notify the Claimant to make available for inspection and copying any relevant, non-privileged documents or written information in the custody of or subject to the control of the claimant or his agent at a reasonable time, upon reasonable notice, and at the Receiver's expense;

(3) Notify the Claimant to file with the Receiver within 30 days a sworn written response to written questions posed on behalf of the Receiver ("response to written questions").

(c) The Special Representative may, at a reasonable time after reasonable notice, review documents or other written information relevant to the claim in the custody of or subject to the control of any person or entity, including the Claimant or his employees, and may obtain sworn statements in which statement, documents or other writings shall be made a part of the Receiver's record. In connection with the gathering of this documentation or information, the Special Representative may require the Claimant to make such documentation or information available to the Special Representative or to assist or cooperate with the Special Representative in obtaining it.

(d) The Special Representative shall, upon the request of a Claimant, provide an opportunity, at a reasonable time after reasonable notice to the Special Representative, to inspect and copy at the Claimant's expense any non-privileged documents or other written information relevant to the claim that are in the custody of or subject to the control of the Receiver.

(1) All requests to inspect or copy such documents shall be in writing, shall be specific, shall not request materials already in the possession of or otherwise reasonably available to the Claimant, and shall be framed so as to avoid undue burden or expense to the Receiver.

(2) A written request that fails to comply with such requirements shall be subject to denial by the Special Representative.

(3) The Special Representative may defer response to document requests until he has decided whether to retain the claim for further review. The Special Representative may decide to deny a document request from a Claimant if be determines to allow the claim in whole.

(e) The Special Representative may grant requests by a Claimant to appear before an agent of the Special Representative, or may require Claimants to appear before an agent of the Special Representative, to give statements or discuss the claim or documentation.

(f) The Special Representative or his agent, subject to the approval of the Special Representative, may negotiate compromises or settlements of claims. Settlement agreements shall be reduced to writing and made a part of the Receiver's record. Statements by Claimants and Receivers' Representatives and their agents made during settlement discussions and in written communications for purposes of settlement shall not be part of the Receiver's record and shall be treated in accordance with Federal Rule of Evidence 408.

(g) The Special Representative may require the Claimant in writing to submit a memorandum addressing legal issues the resolution of which would assist in the determination of the claim ("request for memorandum"). The request for memorandum shall be mailed to the Claimant with a certificate of mailing, and shall advise the Claimant that the memorandum shall be filed with the Receiver no later than 30 days after the date of mailing of the request for memorandum. The request for memorandum, certificate of mailing, and any memorandum filed by the Claimant shall be made a part of the Receiver's record.

(h) The Special Representative shall inform the Claimant in writing that the Special Representative, in his sole discretion, may disallow in whole or in

part any claim in the event the Claimant fails:

(1) To provide to the Special Representative, as requested and within the time period specified, additional documentation or written information, responses to written questions, or [illegible];

(2) To make available for inspection and copying any non-privileged documents in the Claimant's custody or subject to the Claimant's control; or

(3) To appear and give a sworn statement upon notice by the Special Representative.

(i) The Special Representative shall compile a Receiver's record consisting of: The Proof(s) of Claim, all documents or other writings and sworn statements submitted by or obtained from the Claimant or his agent; all sworn statements and documents or other writings obtained from persons or entities other than the Claimant, and all documents or other writings in the custody or subject to the control of the Special Representative which, in the opinion of the Special Representative, are relevant to the claim; and all notices from the Special Representative to the Claimant.

(j) After compiling the Receiver's record, the Special Representative shall notify the Claimant in writing of the compilation of the record ("notice of record"). The notice of record shall itemize, in the form of an index, those documents, statements, and other writings that are to be made a part of the record and advise the Claimant to provide the Receiver within 30 days of the date of the mailing of the notice of record with any additional documents, statements, written information, or other writings for inclusion in the record. The Special Representative shall mail the notice of record by certified mail, return receipt requested, and by regular first class mail and execute a certificate of mailing. Thereafter, the Receiver's record shall include the documents as described in the index, the notice of record, and any additional documents provided by the Claimant in response to the notice of record. The Receiver's record will be made available to the Claimant, at any reasonable time and upon reasonable notice, for inspection and copying at the Claimant's expense.

(k) Claims Counsel shall consult with the Special Representative and provide such confidential, privileged legal advice as may be necessary to assist the Special Representative to reach a proposed determination with respect to the claim.

(l) After evaluating the information contained in the Receiver's record, the Special Representative shall prepare a proposed determination of claim in the form of proposed findings of fact and conclusions of law ("proposed determination").

(m) The Special Representative shall promptly mail the proposed determination to the Claimant by certified mail, return receipt requested, and regular first class mail, and execute a certificate of mailing.

(n) If the Claimant does not file a request for reconsideration as specified in paragraph (o) of this section, the proposed determination shall constitute the Receiver's Determination, and the Special Representative shall notify the Claimant in writing of his right to obtain review of the Receiver's Determination by the Bank Board, in accordance with applicable regulations and procedures. The notice shall state that such review by the Bank Board is a prerequisite to obtaining judicial review.

(o) The proposed determination shall advise the Claimant of his right to file with the Receiver, within 30 days from the date of mailing of the notice, a written request for reconsideration ("request for reconsideration").

(1) The request for reconsideration shall state the specific grounds for any objection to proposed findings of fact or conclusions of law and may present proposed alternative findings of fact and conclusions of law. The request for reconsideration should present more than mere conclusory objections to proposed findings of fact or conclusions of law.

(2) If the Claimant does not object to a proposed finding of fact or conclusion of law in the request for reconsideration, such fact or conclusion shall be conclusively established against the Claimant.

(3) If the request for reconsideration is not timely filed with the Receiver, any objections to the proposed findings of fact and conclusions of law, in the absence of an extension of time by the Special Representative or a showing of good cause, may be deemed to be waived by the Claimant.

(4) The Special Representative shall promptly reply in writing to the request for reconsideration (Special Representative's reply"). The Special Representative's reply will state whether the Special Representative agrees or disagrees with the contentions contained in the request for reconsideration and explain modifications, if any, made by the Special Representative to the proposed determination. The Special Representative's reply will be mailed to the Claimant by the Special Representative by certified mail, return receipt requested, and regular mail with a certificate of mailing.

(5) The request for reconsideration and the Special Representative's reply shall become part of the Receiver's record.

(6) After considering the Receiver's record, the Receiver will issue a determination on the claim ("Receiver's Determination"), signed on behalf of the Receiver by the Special Representative, in the form of findings of fact and conclusions of law.

(p) The Special Representative shall promptly mail to the Claimant by certified mail, return receipt requested, and by regular mail, the Receiver's Determination and a statement of the Claimant's right to obtain review of the Receiver's Determination by the Bank Board. The statement shall inform the Claimant that requesting such review by the Bank Board is a prerequisite to obtaining judicial review, and shall enclose a copy of the procedures for obtaining review. The Receiver's Determination and the executed return receipt, if any, shall be made a part of the Receiver's record, whereupon the Receivers record, which is the basis for any Request for Review to the Bank Board, shall be deemed closed.

(q) The Special Representative shall maintain the Receiver's record in the office of the Receiver for the duration of the receivership and for a period of six (6) months following termination of the receivership by the Bank Board upon conclusion of the final audit.

§ 575.14 Request for immediate determination.

A Claimant may make a written request to the Receiver that a claim be processed immediately. The burden shall rest upon the Claimant to establish good cause for immediate processing of a claim. The standard for good cause shown shall be substantial harm to the Claimant in the absence of immediate processing. It shall be in the sole discretion of the Receiver whether to direct that a claim be accorded immediate processing. The Receiver shall notify the Claimant in writing, by certified mail, return receipt requested, and regular mail, of his decision on the request, and in the event the request is granted, the schedule for such immediate processing.

Subpart D—Standards for Determination of Claims

§ 575.15 Burden of proof

The burden of proof shall rest upon the Claimant to establish the claim by a preponderance of the evidence.

Preponderance of the evidence means evidence that when fairly considered produces the stronger impression, has the greater weight, and is more convincing as to its truth when weighed against the evidence in opposition thereto.

§ 575.16 Exclusion from claims procedure.

(a) A proof of claim need not be filed for certain administrative expenses of the association enumerated below, and for employee age claims of $3,000.00 or less.

(b) Claims regarding current bills of the Receiver are not subject to the bar date for the receivership.

§ 575.17 Application of claims procedure.

(a) Administrative expenses of the association and employee wage/benefit claims are claims and thus are subject to the requirements of the claims procedure except as provided in § 575.2(b)(1)(iv) and (v) of this part.

(b) Service or materials providers and association employees shall be provided with Proof of Claim forms to submit to the Receiver to obtain payment of administrative expenses of the association and appropriate employee wage/benefit claims.

(c) Federal law preempts any state law that directs prompt payment of employee wages/benefits upon employment termination. The Special Representatives are urged to assure affected employees that their claims for wages/benefits will receive expeditious consideration.

§ 575.18 Criteria for the determination of claims for provision of services, supplies, and materials.

No claim for provision of services, supplies, or materials shall be allowed in full in the absence of:

(a) Evidence that the services, supplies, or materials were provided in good condition or at an acceptable market or professional level.

(b) Evidence that the services, supplies, or materials were provided on the dates and in the quantities as claimed.

(c) Evidence that the charges or fees are based upon actual services rendered or materials provided and are commensurate with the appropriate geographical market, professional, or trade standards for the services or materials provided on the applicable dates.

(d) Evidence that any payments already made on a claim by the Association or the Receiver have been deducted from the claim.

(e) A determination by the Special Representative that there is not pending judicial or other proceedings involving the claim and that there exists no judgment or other final determination in a proceeding on the claim.

(f) A determination by the Special Representative that the Receiver does not have any set-off rights or counter-claims against the Claimant.

(g) A determination by the Special Representative that the claim does not appear to be fraudulent or otherwise reasonably suspect.

§ 575.19 Claims to security, priority, or preference.

With the exception of certain payments established and set out in the implementing Board Resolution or other orders or resolutions of the Board, which payments are to be made promptly and are excluded from requirements of the claims procedure, all claims to security, priority, or preference shall be claims retained for further review within the claims procedure. This will afford the Special Representative the opportunity, in consultation with Claims Counsel, to determine whether the Receiver has a basis or grounds upon which to challenge the granting of a security interest in receivership assets. If no basis is found to challenge the grant of a security interest in a receivership asset, the Receiver shall immediately allow the claim. Secured Claimants who require a decision upon their claims more rapidly than the 180 days provided for initial review should file a request as specified in Subpart C, § 575.14 of this part, explaining how a delay in decision could cause them harm.

3. Part 576 is added to read as follows:

PART 576—PROCEDURES FOR THE PROCESSING AND DETERMINATION ON REVIEW OF DETERMINATIONS OF THE FSLIC AS RECEIVER

Sec.

576.1 Purpose.
576.2 Notice of right to file a Request for Review.
576.3 Filing of a Request for Review.
576.4 Content of Request for Review.
576.5 Basis for Board Decision.
576.6 Burden of proof.
576.7 Issuance of Decision.
576.8 Decision in writing.
576.9 Denial of claim.
576.10 Requests for extension of time and waiver of other procedural requirements.
576.11 Satisfaction of Claim Certificate.
576.12 Procedural questions.

Authority: Sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); 48 Stat. 132, as amended (12 U.S.C. 1464); 48 Stat. 1250, as amended (12 U.S.C. 1729).

§ 576.1 Purpose.

The following procedures will be used for the processing and determination on review of determinations of the Federal Savings and Loan Insurance Corporation [FSLIC] as Receiver.

§ 576.2 Notice of right to file a Request for Review.

Claims denied in whole or in part by the FSLIC as Receiver are subject to review by the Federal Home Loan Bank Board [Bank Board] upon timely filing of a Request for Review. Should the FSLIC as Receiver deny the claim in whole or in part, the parties will be so notified in writing and this notice will explain the right to review before the Bank Board and include a copy of the review procedures. All Requests for Review must comply strictly with the following procedures. Failure to comply with these procedures may result in dismissal of the Request for Review.

§ 576.3 Filing of a Request for Review.

(a) A Request for Review of a Receiver's Determination ("Request" or "Request for Review") must be filed within 60 calendar days from the date the Determination is issued.

(b) All Requests for Review are deemed to be filed when received and date/time stamped by the Bank Board.

(c) A Request for Review (original and 1 copy) must be filed with the Bank Board at the following address:

Federal Home Loan Bank Board, Office of General Counsel, Adjudication Division, 1700 G Street, NW., Washington, DC. 20552, Attention: Lead Paralegal.

The Request must include a signed statement certifying that a copy has been mailed or hand delivered to the Receiver.

(d) All submissions (*i.e.*, the Request, Response, and all other related filings) must inlcude an original and one (1) copy as well as a signed statement certifying that a copy has been sent to the opposing party(ies) and any other interested party. Failure to comply with this requirement may result in the return of the filing as incomplete and could adversely affect the party's rights to proceed.

(e) The Receiver shall provide the Bank Board, within 10 work days of the Bank Board's receipt of the Request, with a copy of the Receiver's record of the proceeding. The Receiver shall certify that the copy of the record provided to the Bank Board is complete, true, and correct. The Receiver may, within the same time period, file a Response to the Request for Review, which shall be served upon the person requesting review ("Requestor").

(f) The Receiver shall make available to the Requestor, or any interested

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party, during normal business hours, at the offices of the Receiver's representative, the opportunity to review the Receiver's record of the proceeding. At the request of any Requestor or interested party, the Receiver shall provide copies of the Receiver's record. The costs of duplication shall be borne by the party requesting the copies.

(g) A Request for Review must be filed within the time provided under this paragraph (a) of this section. Failure to file a Request for Review within this time period constitutes waiver of any objection to the Receiver's Determination. A timely Request filed with the Bank Board in accordance with these procedures is mandatory to obtain judicial review of the Receiver's Determination. Any part of the Receiver's Determination that the Request for Review does not contest shall not later be the subject of judicial review.

§ 576.4 Content of Request for Review.

(a) To be deemed complete a Request for Review must include:

(1) A clear and concise statement of the facts and arguments on which the Request is based;

(2) A clear and concise statement of the alleged factual and legal errors in the Receiver's Determination, including citation to applicable statutes, regulations, and legal authority, and to the Receiver's record; and

(3) If the Request is based on facts not available to the Receiver at the time of issuance of the Receiver's Determination, a separate identification and statement of all such fact upon which the Request is based.

(b) The Bank Board anticipates that in most cases a preliminary review of the Request and the Receiver's record will be made within 60 days of the date that the Receiver's record was received. At that time, the parties will be notified in writing that:

(1) The Administrative Record (defined in § 576.5(a) of this part) is complete and is closed; or

(2) More information is needed (in which case further instructions will be included); or

(3) The Bank Board anticipates that an additional 30, 60 or 90 days may be necessary before preliminary review can be completed.

§ 576.5 Basis for Board Decision.

(a) The Administrative Record that forms the basis of the Bank Board's Decision generally consists of the Request for Review, the Receiver's record, and any response to the Request for Review ("Response") submitted by the Receiver or other interested party(ies).

(b) Any materials in addition to those in paragraph (a) of this section may be submitted to the Administrative Record only upon an Order of the Bank Board to allow supplementation of the Administrative Record. Any party may, by motion, request leave to supplement the record; however, such motions will be granted only upon a showing of good cause. A finding of good cause by the Bank Board generally requires that the moving party demonstrates that the argument, documentation, information, or evidence sought to be admitted or considered was not readily available when the claim was before the Receiver's Representative; or some similar compelling reason why the submission was not included in the Receiver's record.

(c) A motion for leave to supplement the record made after the party's initial submission of a Request for Review or Response, must be supported by good cause demonstrating why the supplemental matter could not have been included with the initial submission.

(d) upon a finding by the Bank Board that the record provides a sufficient basis for rendering a Decision, the record will be closed. The parties will be notified by the Bank Board of the closing of the record.

(e) The Bank Board may make its own findings of fact and conclusions of law based upon the Administrative Record.

§ 576.6 Burden of proof.

The burden of proof rests at all times with the Requestor.

§ 576.7 Issuance of Decision.

Within 180 days from the date the Administrative Record is closed, the Bank Board will issue a Decision on the merits of the Request, determining the extent of entitlement to the claim or any portion thereof. Alternatively, within 30 days from the date that the Administrative Record is closed, the Bank Board, in its sole discretion or based upon the advice or request of the General Counsel, may entertain oral argument, or other supplementary proceedings, in which case a Decision will be issued within 180 days of the completion of such supplementary proceedings.

§ 576.8 Decision in writing.

The Bank Board's Decision ("Decision") will be issued in writing. It will set forth the reasons for the Decision and will constitute final agency action for the purpose of seeking judicial review.

§ 576.9 Denial of claim.

If no Decision is issued by the Bank Board within the time specified in § 576.7 of this part, and the Bank Board has not given notice to the parties requesting review that the Bank Board has in its discretion extended the time limit on its own motion, the Receiver's Determination, issued pursuant to § 57.13(o)(6) of this part, will become the Decision of the Bank Board. This Decision will be final agency action for the purpose of seeking judicial review.

§ 576.10 Requests for extension of time or waiver of other procedural requirements.

Failure to comply with any procedural requirements set forth herein may result in dismissal of the Request for Review. However, reasonable requests for extensions of time or waiver of other procedural requirements may be granted upon a showing of good cause.

§ 576.11 Satisfaction of Claim Certificate.

(a) If the Bank Board determines that the claim, or any portion of the claim, is to be allowed, Claimants must, to secure payment, promptly execute and deliver to the Bank Board a "Satisfaction of Claim" certificate, which will be provided to the Claimant with the Decision.

(b) If the Bank Board determines that only a portion of a claim is allowable, the "Satisfaction of Claim" certificate will specify the portion found allowable. A claim or any portion of a claim not specifically allowed by the Bank Board is deemed denied and constitutes a final agency action for purposes of seeking judicial review.

§ 576.12 Procedural questions.

Any questions concerning these Procedures may be addressed, in writing, to:

Adjudication Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

4. Part 577 is added to read as follows:

PART 577—PROCEDURES FOR THE ADMINISTRATION AND DETERMINATION OF REQUESTS FOR EXPEDITED RELIEF FROM DECISIONS OR THREATENED ACTIONS OF THE FSLIC AS RECEIVER

Sec.

577.1 Purpose.
577.2 How to file a Request for Expedited Relief.
577.3 Content of Request for Expedited Relief.
577.4 Decision.
577.5 Requests for extension of time or waiver of other procedural requirements.

Authority: Sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); 48 Stat. 132, as amended (12 U.S.C. 1464); 48 Stat. 1259, as amended (12 U.S.C. 1729).

§ 577.1 Purpose.

Requests for Expedited Relief seek extraordinary intervention by the Federal Home Loan Bank Board [Bank Board] with respect to the Federal Savings and Loan Insurance Corporation [FSLIC] as Receiver. All Requests will be scrutinized for strict compliance with the procedural requirements set forth below. Failure to comply with these requirements may result in denial of the Request.

§ 577.2 How to file a Request for Expedited Relief.

(a) These procedures must be complied with fully and within the prescribed time periods. Any noncompliance or lateness may result in denial of the Request unless a waiver of procedure or an extension of time has been granted for good cause shown. These procedures are fully applicable to the FSLIC as Receiver.

(b) Any decision or threatened action by the FSLIC as Receiver may be the subject of a Request for Expedited Relief seeking extraordinary intervention by the Bank Board outside of the routine claims process. Requests for Expedited Relief must be filed within five work days from the date of the notice of FSLIC as Receiver's decision or threatened action. All Requests for Expedited Relief are deemed to be filed when received and date/time stamped by the Bank Board at the office specified in paragraph (d) of this section. When notice of such a decision or threatened action is delivered by mail, three additional work days will be allowed for the filing of the Request.

Example: A Notice of Foreclosure is a "threatened action" by the FSLIC as Receiver. If the FSLIC as Receiver issues a Notice of Foreclosure dated January 1, of a foreclosure sale scheduled for February 1, the Request for Expedited Relief must reach the Bank Board and be date/time stamped within five work days of January 1. If the FSLIC as Receiver's notice was delivered by U.S. mail, the Request for Expedited Relief must reach the Bank Board and be date/time stamped within eight work days of January 1. Work days are Monday through Friday, excluding weekends and Federal holidays.

(c) All submissions are deemed to be filed when received, and date/time stamped by the Federal Home Loan Bank Board at the office specified in paragraph (d) of this section.

(d) The original and one copy of the Request for Expedited Relief, and any supporting documents, must be filed with:

Federal Home Loan Bank Board, Office of General Counsel, Adjudication Division, 1700 G Street, NW., Washington, DC 20552, Attention: Lead Paralegal.

(e) A copy of the Request for Expedited Relief, and any supporting documents, must be mailed or hand delivered to the Receiver at the address(es) supplied in any decision or notice of threatened action by the FSLIC as Receiver.

(f) All submissions to the Bank Board must include a signed statement certifying that an additional copy has been sent or hand delivered to the FSLIC as Receiver, at the address(es) listed in paragraph (e) of this section, on or before the date the submission was filed with the Bank Board.

§ 577.3 Content of Request for Expedited Relief.

(a) A Request for Expedited Relief does not involve a determination on the merits of a claim. It is solely a request to the Bank Board to intercede by instructing the FSLIC as Receiver to do or to refrain from doing some act. Accordingly, to obtain the relief requested, the Request for Expedited Relief must contain the following:

(1) A clear and concise statement of the facts and issues on which Request is based;

(2) A clear and concise statement of any alleged factual and/or errors or omissions made by the FSLIC as Receiver;

(3) Citations to applicable statutes, regulations, or other legal authority;

(4) All relevant documentation that supports the Request;

(5) An assessment of the likelihood of success on the merits of the underlying claim;

(6) A clear and concise statement of the probable imminent and irreparable harm likely to occur if expedited relief is not granted;

(7) A signed statement certifying that the FSLIC as Receiver has been mailed or hand delivered a copy of the Request on or before the day that the Request was filed with the Bank Board.

(b) The FSLIC as Receiver shall file its Response and all supporting documentation within five (5) work days from the date a Request for Expedited Relief is filed with the Bank Board. The time limitations discussed above with regard to delivery by U.S. mail are also applicable to the FSLIC as Receiver. The Receiver's Response shall contain legal and factual arguments in opposition to the Request for Expedited Relief. A copy of that Response and all supporting documentation must be sent or hand delivered to the party requesting expedited relief and the Receiver must certify that it has done so.

(c) The Request for Expedited Relief, the supporting documentation, and the Receiver's Response and supporting documentation, will form the basis for the administrative record on which the Bank Board will make its determination.

§ 577.4 Decision.

(a) The party requesting expedited relief shall be known as the Petitioner.

(b) The burden of proving entitlement to expedited relief rests at all times with the Petitioner.

(c) Upon receipt, the Request for Expedited Relief will be reviewed to assure compliance with all procedural requirements. If the Request is procedurally deficient it may be dismissed and the parties will be so notified.

(d) If the Request is properly filed, is susceptible to resolution by the Bank Board, and no additional information is needed, a Decision on the Request will be issued by the Bank Board as soon as practicable. It will state the reasons for the determiantion and will constitute final agency action for purposes of securing judicial review.

(e) If additional information is required for resolution of the Request, notification in writing will be made by the Bank Board of the need for such information. The Bank Board will order that the information be submitted by a date certain. If no further information is needed for resolution of the Request, a Decision will be issued by the Bank Board as soon as practicable.

(f) Unauthorized supplemental pleadings will not be considered by the Bank Board in the absence of good cause shown. To show good cause for an otherwise unauthorized supplemental pleading, a party must demonstrate the existence of new and material evidence that was not readily available at the time of the initial filing despite the party's due diligence.

(g) If appropriate, the Bank Board may, upon motion of a party or its own motion, issue an Order instructing the FSLIC as Receiver to stay temporarily its threatened action or decision pending resolution of the Request for Expedited Relief ("Order"). Such Order will be granted where necessary to maintain the status quo for the time required for the Bank Board to consider the Request for

Expedited Relief. The issuance of such an Order does not, however, prohibit the FSLIC as Receiver from making any preparations legally required in advance of its threatened action (e.g., reposting foreclosure). Any such stay will remain in full force and effect for a period of time sufficient to enable the party requesting relief to be provided with the Bank Board's Decision and an opportunity to seek judicial review of that Decision. Such time will be at least five (5) work days from the date of the Decision where delivery of the Bank Board's Decision is by express (overnight) delivery service and eight (8) work days if by certified or regular U.S. mail.

§ 577.5 Requests for extension of time or waiver of other procedural requirements.

Failure to comply with any of the procedural requirements set forth herein may result in denial of the Request for Expedited Relief. However, reasonable requests for extensions of time or waiver of other procedural requirements may be granted upon a showing of good cause.

By the Federal Home Loan Bank Board.

John F. Ghiglieri,

Assistant Secretary.

[FR Doc. 88-25073 Filed 10-28-88; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 75

[Airspace Docket No. 88-AEA-7]

Alteration of Jet Route; New York

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The amendment alters the description of Jet Route J-217 located in the vicinity of Hancock, NY. A segment of J-217 west of the Keating, PA, very high frequency omni-directional radio range and tactical air navigational aid (VORTAC) is never used or requested. This amendment revokes that segment between the Keating VORTAC and the Grace, PA, intersection. This action reduces chart clutter.

EFFECTIVE DATE: 0901 u.t.c., December 15, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On August 17, 1988, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to alter the description of J-217 by revoking a route segment between the Keating VORTAC and the Grace intersection (53 FR 31018). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA/ No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 75 of the Federal Aviation Regulations revokes a segment of J-217 between the Keating VORTAC and the Grace intersection. This segment of J-217 is never used or requested. This action reduces chart clutter.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 75 of the Federal Aviation Regulations (14 CFR Part 75) is amended, as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J-217 [Revised]

From Hancock, NY to Keating, PA.

Issued in Washington, DC, on October 17, 1988.

Shelomo Wugalter,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 88-25082 Filed 10-28-88; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-26217; File No. S7-17-88]

Exemption of Certain Foreign Government Securities Under the Securities Exchange Act of 1934 for Purposes of Futures Trading

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission amends Rule 3a12-8 under the Securities Exchange Act of 1934 to designate government debt securities issued by Austria, Denmark, Finland, the Netherlands, Switzerland, and West Germany as "exempted securities" for purposes of the marketing and trading in the United States of futures contracts on those securities. Rule 3a12-8 currently grants such an exemption to British, Canadian, Japanese, Australian, French, and New Zealand government debt securities underlying futures contracts that meet certain conditions set forth in the Rule. The amendment will extend the exemption to government securities issued by Austria, Denmark, Finland, the Netherlands, Switzerland, and West Germany, thereby removing such securities from those on which futures trading is prohibited by the Commodity Exchange Act. Trading the underlying securities, absent compliance with applicable registration and other requirements, will remain prohibited to the same extent as under current federal securities law.

EFFECTIVE DATE: October 31, 1988.

FOR FURTHER INFORMATION CONTACT: David L. Underhill, Esq., 202/272-2375, Division of Market Regulation, Securities and Exchange Commission, Room 5168 (Mail Stop 5-1), 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

Under the Commodity Exchange Act ("CEA"), futures trading on an individual security is prohibited unless the underlying security is an exempted security under the Securities Act of 1933 ("Securities Act") or the Securities Exchange Act of 1934 ("Exchange Act"). The Securities and Exchange Commission ("SEC" or "Commission") adopted and later amended Rule 3a12-8 ("Rule") under the Exchange Act to designate debt securities of Great Britain, Canada, Japan, Australia, France, and New Zealand (the "six designated sovereign issuers") as "exempted securities" under the Exchange Act solely for purposes of marketing and trading futures on those securities in the United States. In effect, the designation of those securities as exempted securities removes the CEA's prohibition against marketing and trading futures on those securities in the United States, so long as the other terms of the Rule are satisfied. The Commission today adopts an amendment to the Rule. The amendment adds the debt securities of Austria, Denmark, Finland, the Netherlands, Switzerland, and West Germany (the "seven newly designated sovereign issuers") to the list of designated foreign government securities exempted by the Rule. To qualify for the exemption, futures contracts on securities of the newly designated sovereign issuers will have to meet all the other existing requirements of the Rule.

II. Background

The CEA, as amended by the Futures Trading Act of 1982,[1] prohibits the trading of futures contracts on individual securities unless those securities qualify as exempted securities under section 3 of the Securities Act or section 3(a)(12) of the Exchange Act.[2] Because foreign government securities are not exempted securities under either of these sections, the CEA prohibition against trading futures on individual securities prevents the marketing and trading of futures on such foreign government securities in this country. Section 3(a)(12) of the Exchange Act, however, provides that the term "exempted security" includes

> such other securities * * * as the Commission may, by such rules and regulations as it deems consistent with the public interest and the protection of investors, either unconditionally or upon specified terms and conditions or for stated periods, exempt from the operation of any one or more provisions of this title which by their terms do not apply to an "exempted security" or to "exempted securities."

In March 1984, pursuant to section 3(a)(12) under the Exchange Act, the Commission promulgated Rule 3a12-8.[3] The Rule, as amended,[4] designates British, Canadian, Japanese, Australian, French, and New Zealand government securities that meet certain conditions as "exempted securities" under the Exchange Act. The purpose of the Rule is to permit certain exchange-traded futures contracts on the designated foreign government securities to be marketed and traded in the United States.[5] Under the Rule, government debt securities of the six designated sovereign issuers are considered exempted securities under the Exchange Act only with respect to futures trading on those securities and provided that: (1) The securities are not registered in the United States; (2) the futures contracts require delivery outside the United States; and (3) the futures contracts are traded on a board of trade.[6]

Rule 3a12-8 was promulgated in response to Congress' understanding, in approving the 1982 amendments to the CEA, that neither the SEC nor the Commodity Futures Trading Commission ("CFTC") had intended to bar British government bond futures.[7] and that administrative action would be taken to allow the sale of these futures contracts in the U.S.[8] In promulgating the Rule, the Commission implemented Congress' intent without abandoning its longstanding policy of subjecting foreign government securities, for most purposes, to the requirements of the federal securities laws. Accordingly, the conditions set forth in the Rule are designed to ensure that a domestic market in unregistered foreign government securities does not develop and that futures markets in these instruments are not used to avoid the registration and other provisions of the federal securities laws.

At the time the Commission originally proposed Rule 3a12-8, it recognized that, should the securities of additional governments become subject to futures trading, it could become necessary to amend the Rule to include those securities.[9] Subsequently, the Commission amended the Rule to include Japanese, Australian, French, and New Zealand government debt.

On September 29, 1988, the London International Financial Futures Exchange, Ltd. ("LIFFE") began trading a Deutschmark-denominated German government bond futures contract (or "Bund" contract). The Commission staff has been informed that U.S. citizens, particularly institutional investors, are interested in trading this new product and has received a request that Rule 3a12-8 be amended accordingly.[10] As the world's securities markets become increasingly internationalized, the Commission expects to receive additional petitions for exemptive relief. As an alternative to continuing to amend the Rule on a country-by-country basis, the Commission, on August 16, 1988, issued a release ("1988 Proposal Release") proposing to amend the Rule by adding debt securities issued by Austria, Denmark, Finland, the Netherlands, Norway, Sweden, Switzerland, and West Germany to the Rule's list of designated foreign government securities.[11]

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[1] Pub. L. No. 97-444, 96 Stat. 2294, 7 U.S.C. 1 *et seq.*

[2] Section 2(a)(1)(B)(v) of the CEA, 7 U.S.C. 2a(v) (1982), provides that "[a]o person shall offer to enter into, enter into, or confirm the execution of any contract of sale (or option on such contract) for future delivery of any security, or interest therein or based on the value thereof, except an exempted security under section 3 of the Securities Act * * * or section 3(a)(12) of the * * * Exchange Act * * *."

[3] *See* Securities Exchange Act Release No. 20708, March 2, 1984, 49 FR 8595 ("Adopting Release"), and 19811, May 25, 1983, 48 FR 24725 ("1983 Proposal Release").

[4] As originally adopted, the Rule applied only to British and Canadian government securities. *See* Adopting Release, *supra* note 3. The Rule was amended in 1986 to include Japanese government securities. *See* Securities Exchange Act Release No. 23423, July 11, 1986, 51 FR 25098. In 1987, the Rule was amended to include debt securities issued by Australia, France, and New Zealand. *See* Securities Exchange Act Release No. 23072, October 29, 1987, 51 FR [illegible].

[5] As discussed above, without this designation the trading of futures on these securities in the United States would be prohibited by section 2(a)(1)(B)(v) of the CEA.

[6] A requirement that the board of trade be located in the country that issued the underlying debt [illegible]. *See* Securities Exchange Act Release No. 24209, March 12, 1987, 52 FR [illegible].

[7] *See* 1983 Proposal Release, *supra* note 3, 48 FR at 24725 [citing 128 Cong. Rec. H7602 (daily ed. September 23, 1982) (statements of Representatives Daschle and Wirth)].

[8] In extending the exemption to futures on Canadian, Japanese, Australian, French, and New Zealand government debt securities, the Commission noted that there did not appear to be any legal or regulatory reason for treating them differently from British sovereign debt futures.

[9] *See* 1983 Proposal Release, *supra* note 3, 48 FR at 24725-27.

[10] *See* letter from Brooksley Born, Arnold & Porter, to Howard L. Kramer, Assistant Director, Division of Market Regulation, SEC, dated June 3, [illegible].

[11] *See* Securities Exchange Act Release No. 25968, August 16, 1988, 53 FR 31709. The countries proposed to be added to Rule 3a12-8 in the 1988

Continued

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III. Discussion

The Commission received seven comment letters in response to the 1988 Proposal Release, including two from the same commentator.[13] Four of the six commentators endorsed or expressed no objection to adding the eight countries included in the 1988 Proposal Release to the list of countries covered by the Rule.[14] Norway and Sweden, however, objected to the exemption of their sovereign debt securities for purposes of futures trading thereon, citing their respective currency restrictions.[15]

The Commission also solicited comment in its 1988 Proposal Release on whether under the proposal the information available in English regarding newly-eligible futures contracts and underlying sovereign debt would be adequate to permit U.S. investors to make informed investment decisions.[16] The two commentators that addressed this issue argued that U.S. investors should have sufficient access to information in English concerning the relevant futures markets and underlying debt instruments.[16]

In addition, the Commission solicited comment on whether there are any legal or policy reasons for determining that debt securities issued by Austria, Denmark, Finland, the Netherlands, Norway, Sweden, Switzerland, or West Germany should not be accorded the same treatment for purposes of futures trading in the U.S. as are debt securities issued by the six designated sovereign issuers. The one commentator that addressed this issue stated that there did not appear to be any valid legal or policy reasons for denying U.S. investors the ability to trade futures on debt issued by Austria, Denmark, Finland, the Netherlands, Norway, Sweden, Switzerland, or West Germany.[17]

Based on the comment letters received and for the additional reasons discussed below, the Commission has determined that Rule 3a12–8 should be amended to include the debt obligations of Austria, Denmark, Finland, the Netherlands, Switzerland, and West Germany. The Commission agrees that there are no valid legal or policy reasons for denying U.S. investors the ability to trade futures on debt securities issued by the six newly-designated sovereign issuers and that the availability of these new hedging vehicles will allow investors to take advantage of the growing globalization of the securities markets. Due in large part to this trend toward internationalization, U.S. investors should have ready access to information in English concerning the markets and government securities of the six newly-designated sovereign issuers. It also is important to note that the existing conditions set forth in the Rule (*i.e.*, that the underlying securities not be registered in the United States, that the futures contracts require delivery outside the United States,[18] and that the contracts be traded on a board of trade) will apply to futures contracts on debt securities issued by the six newly-designated sovereign issuers. This should ensure that the federal securities laws will not be subverted by the marketing and trading of futures on additional government securities in this country.[19]

The Commission has determined not to add Norway and Sweden to the Rule's list of eligible sovereign issuers. As noted above, Norway and Sweden objected to the exemption of their sovereign debt securities for purposes of futures trading thereon. Although the Commission believes that trading of Norwegian and Swedish sovereign debt securities could become active enough to support development of a futures market on such securities, as a matter of international comity the Commission will not add Norwegian and Swedish sovereign debt securities to those exempted by the Rule.[20]

IV. Cost/Benefit Analysis

In connection with the 1988 Proposal Release, the Commission noted that there do not appear to be any costs associated with the amendment adopted today. While the rule is being expanded to exempt the debt of additional countries, the Rule continues to include safeguards designed to protect U.S. investors by preventing unregistered bonds issued by the six newly-designated sovereign issuers from entering the country and by requiring that futures on those bonds be traded on boards of trade. In addition, the amendment imposes no recordkeeping or compliance burden in itself and merely provides an exemption under the federal securities laws. The principal benefit associated with the amendment is that it will allow U.S. investors to trade a greater range of futures contracts on foreign government debt. The Commission received no comments on the costs and benefits of the amendment to Rule 3a12–8.

V. Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act,[21] the Chairman of the Commission certified in connection with the 1988 Proposal Release that the amendment to Rule 3a12–8, if adopted, would not have a significant economic impact on a substantial number of small entities. The Commission received no comments on this certification.

VI. Effects on Competition and Other Findings

Section 23(a)(2) of the Exchange Act[22] requires the Commission, in adopting rules under the Exchange Act, to consider the competitive effects of such rules, if any, and to balance any impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission has considered the amendment to Rule 3a12–8 in light of the standards cited in section 23(a)(2) and believes that adopting of the amendment will not impose any burden on competition not necessary or appropriate in furtherance of the Exchange Act. As stated above, the amendment is designed to assure the lawful availability in this country of futures on the sovereign debt securities of the six newly-designated countries that otherwise would not be permitted to be marketed under the terms of the CEA. The amendment thus serves to expand the range of financial products available in the U.S. and enhances competition in financial markets. Insofar as the Rule contains limitations, they are designed to promote the purposes of the exchange Act by ensuring that futures trading on government securities of the six newly-designated sovereign issuers is consistent with the goals and purposes of the federal securities laws by minimizing the impact of the Rule on securities trading and distribution in the U.S.

The Commission finds, in accordance with the Administrative Procedure Act,[23] that the amendment to Rule 3a12–8 is exemptive in nature. Accordingly, the Commission has determined to make the foregoing action effective immediately upon publication in the Federal Register.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

VII. Text of the Adopted Amendment

The Commission is amending Part 240 of Chapter II, Title 17 of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read as follows:

Authority: Sec. 23, 48 Stat. 901, as amended; 15 U.S.C. 78w. * * * § 240.3a12–8 also issued under 15 U.S.C. 78a *et seq.*, particularly Sections 3(a)(12), 15 U.S.C. 78c(a)(12) and 23(a), 15 U.S.C. 78w(a).

2. Section 240.3a12–8 is amended by removing the word "or" from (a)(1)(v), replacing the period with a semi-colon at (a)(1)(vi), and adding paragraphs (a)(1) (vii) through (xii) as follows:

§ 240.3a12–8 Exemption for designated foreign government securities for purposes of futures trading.

(a) * * *

(1) * * *

(vii) Austria;

(viii) Denmark;

(ix) Finland;

(x) The Netherlands;

(xi) Switzerland; or

(xii) West Germany.

* * * * *

By the Commission.

Jonathan G. Katz,

Secretary.

Dated: October 26, 1988.

[FR Doc. 88–25120 Filed 10–28–88; 8:45 am]

BILLING CODE 8010–01–M

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

Exchange-Visitor Programs

AGENCY: United States Information Agency.

ACTION: Policy statement.

SUMMARY: The regulation found at 22 CFR 514.31 regarding requests for waivers of the home-country physical presence requirements of the Immigration and Nationality Act, as amended, does not provide for an appeal, reconsideration or reopening of an Agency decision not to recommend a waiver of the two-year home residency requirement to the Attorney General. Accordingly, the Agency will no longer accept appeals or requests for reopening, review, or reconsideration from aliens seeking hardship waivers or interested Government agency waivers.

EFFECTIVE DATE: October 31, 1988.

ADDRESS: Merry Lymn, Assistant General Counsel, Room 700, United States Information Agency.

FOR FURTHER INFORMATION CONTACT: Merry Lymn, Assistant General Counsel, United States Information Agency, Office of the General Counsel, 301 4th Street, SW., Room 700, Washington, DC 20547; (202) 485-7920.

SUPPLEMENTARY INFORMATION: Under the Immigration and Nationality Act, section 212(e), a person who was admitted to the United States under section 101(a)(15)(j) or who acquired such status after admission, must reside in and be physically present in the country of his or her nationality or last legal permanent residence for an aggregate of two years following departure from the United States in

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[13] Letters were received from the following: Jorgen Holmquist, Financial Counselor, Embassy of Sweden, dated September 9, 1988 ("Sweden Letter") and October 18, 1988; Brookaley Born, Arnold & Porter, dated September 13, 1988 (on behalf of LIFFE) ("Arnold & Porter Letter"); Laurids Mikaelson, Minister (Economic Affairs), Embassy of Denmark, dated September 19, 1988; Robert H. Weiss, Vice President and Associate General Counsel, Shearson Lehman Hutton, dated September 19, 1988 ("Shearson Letter"); Arve Thorvik, Counselor of Economic Affairs, Embassy of Norway, dated September 20, 1988 ("Norway Letter"); and Ian M. de Jong, Counselor (Economic), Embassy of the Netherlands, dated September 21, 1988 ("Netherlands Letter"). The second letter from Sweden was submitted in response to a Commission staff request for clarification of the first letter.

[14] Denmark and the Netherlands stated that they have no objections to the amendment contained in the 1988 Proposal Release. Indeed, the Netherlands applauded such an amendment as contributing to a "further integration of financial markets." Netherlands Letter, *supra* note 12, at 1. Arnold & Porter commented in support of U.S. trading of LIFFE's German Bund contract by noting that the German debt market is very active in Europe and that there is a large U.S. interest in futures contracts on West German sovereign debt securities. Arnold & Porter also argued that amending the Rule to include sovereign debt securities of additional countries other than West Germany would reduce delays and Commission administrative burdens that could arise if new sovereign debt futures contracts were developed. Arnold & Porter Letter, *supra* note 12, at 3–7. Finally, Shearson supported the proposed amendment to the Rule, but argued that all sovereign debt should be exempted from purposes of futures trading thereon.

[15] In particular, Norway cited its policy of limiting "the role of the Norwegian kroner as an international transaction and investment currency * * * ." Norway Letter, *supra* note 12, at 1. Sweden noted that its currency controls prohibiting non-residents from holding Swedish kroner-denominated securities would preclude development of a market for physically-settled futures on such securities and that "[i]n any case it is not in the interest of the Swedish government that such a market develops." Sweden Letter, *supra* note 12, at 1.

[16] In adopting Rule 3a12–8 the Commission decided not to require, as a condition to the exemption, that such information be available. *See* Adopting Release, *supra* note 3, 49 FR 8597–98. At the time Rule 3a12–8 was adopted, both the United Kingdom and Canada had government debt issues registered in the U.S. As a result, although those particular issues were not the subject of U.S. futures trading, U.S. investors had relevant disclosure materials concerning the issuers, *i.e.*, the governments of Canada and the United Kingdom. In addition, Australia and New Zealand had government debt issues registered in the U.S. when they were added to the Rule's list of eligible issuers. The Japanese and French governments, however, had not registered any securities in the U.S. when they were added to the Rule. Of the new countries that will become eligible under the current amendment, only Austria and Denmark currently have government debt securities registered in the U.S.

[17] Arnold & Porter Letter, *supra* note 12, at 5–6; Shearson Letter, *supra* note 12, at 1. Arnold & Porter stressed the availability of information regarding West German Bund futures contracts traded on LIFFE, the underlying German sovereign debt securities, and the "general creditworthiness of the German government so as to allow U.S. investors knowledgeably to trade futures on Bunds." Arnold & Porter Letter, *supra* note 12, at 5–6.

[18] *See* Shearson Letter, *supra* note 12, at 1. The Commission also solicited comments on possible procedures or standards pursuant to which it could exempt the debt securities of additional countries without having to do so on a country-by-country basis, including the generic rating standard approach proposed originally in May 1987 (*see* note 11, *supra*) and a standard based on volume and depth of trading in a sovereign issuer's debt. In response, one commentator, Shearson Lehman Hutton, argued that all sovereign debt securities should qualify for the exemption provided by Rule 3a12–8. *See* Shearson Letter, *supra* note 12, at 2–3.

[19] Although the only futures contract likely to be eligible immediately for sale in the United States once the amendment is adopted is the physically-settled West German bond futures contract traded on LIFFE, the Commission in the past has stated that cash-settlement would be consistent with the Rules' requirement that delivery occur outside the United States *See* Securities Exchange Act Release No. 25072, October 29, 1987, 52 FR 42277, at 42279 n.18.

[20] The marketing and trading of foreign futures contracts also is subject to regulation by the CFTC. In particular, section 4(b) of the CEA authorizes the CFTC to regulate the offer and sale of foreign futures contracts to U.S. residents, while Rule 30.02 (18 CFR 30.02), promulgated under section 2(a)(1)(A) of the CEA, is intended to a prohibit fraud in connection with the domestic offer and sale of futures contracts executed on foreign exchanges. In addition, the CFTC recently adopted a series of regulations governing the domestic offer and sale of futures and options contracts traded on foreign boards of trade. The rules, which became effective on January 4, 1988, but which have not been fully implemented pending CFTC review of petitions for exemption, require, among other things, that the domestic offer and sale of foreign futures be effected through CFTC registrants or through entities subject to a foreign regulatory framework comparable to that governing domestic futures trading. *See* 52 FR 28980 (August 5, 1987).

[20] The Commission specifically reserves the right to consider exempting such debt securities under the Rule in the future. In addition, although the amendment approved today should obviate the need to amend Rule 3a12–8 in the near future, the Commission will continue to consider possible procedures or standards pursuant to which it could exempt the debt securities of additional countries other than on a country-by-country basis.

[21] 5 U.S.C. 605(b) (1982).

[22] 15 U.S.C. 78w(a)(2) (1982).

[23] 5 U.S.C. 553 (1982).

order to be eligible to apply for an immigrant visa, for permanent residence, or for a nonimmigrant visa under section 101(a)(15)(H) or section 101(a)(15)(L) if (1) the person's participation in the program for which he came to the United States was financed in whole or in part, directly or indirectly by the Government of the United States or the Government of his or her nationality or last legal residence, (2) who at the time of admission is engaged in a skill on the skills list for the country of nationality or last legal residence, or (3) who came to the United States or acquired such status in order to receive a graduate medical education. The section also provides that the Attorney General may waive the two-year home residency requirement if the United States Information Agency recommends such waiver "pursuant to the request of an interested United States Government Agency, or of the Commissioner of Immigration and Naturalization, after he has determined that departure from the United States would impose exceptional hardship upon the alien's spouse or child (if such spouse or child is a citizen of the United States or a lawfully resident alien), or that alien cannot return to the country * * * because he would be subject to persecution on account of race, religion, or political opinion * * *" The law also provides that a waiver may be granted to all except those who came to the United States for graduate medical education or training if the alien's country furnishes a statement of no objection.

Under the statute the request for a recommendation from the United States Information Agency comes from either an interested United States Government agency or the Commissioner of the Immigration and Naturalization Service. Requests are not to come directly to the United States Information Agency.

The regulations promulgated by the Immigration and Naturalization Service found at 8 CFR 212.7(c) provide that waiver applications based upon hardship be made directly to the Immigration and Naturalization Service. Upon meeting the standards imposed by those regulations and a finding of hardship being made, the Immigration and Naturalization Service requests a recommendation from United States Information Agency as to whether to grant or deny the waiver. The Immigration and Naturalization Service is the only party before the United States Information Agency. The communication comes from the Immigration and Naturalization Service. The United States Information Agency responds to the Immigration and Naturalization Service. In this regard, the Immigration and Naturalization Service Operations Instructions at 212.8 provide:

> The recommendation of the Director, United States Information Agency, made in any section 212(e) case will be sent directly to the district director having jurisdiction over the exchange alien's place of temporary residence in the United States, or over his last place of residence in the United States if the alien is abroad. The district director shall inform the exchange alien of the decision and furnish a copy of it to the General Counsel, United States Information Agency, Washington, DC 20547 and the interested United States agency. When the waiver application is approved and the applicant intends to apply for a visa, the alien shall be instructed to present the district director's decision to the consul as a part of the visa application. When the waiver application is denied, notwithstanding a favorable recommendation from the Director, USIA, the alien, any interested agency, and the General Counsel, United States Information Agency, shall be notified of the denial of the application, of the reasons and of the right of appeal when appropriate. [See 8 CFR 212.7(e)].

Additionally, 8 CFR 212.7(c)(10) precludes appeal from cases denied a favorable recommendation by this Agency. The proper forum for review of a waiver denial based upon a negative USIA opinion is to request that the Immigration and Naturalization Service reconsider the waiver pursuant to 8 CFR 103.5. The INS will, if new facts are presented warranting review, send a new I-613 to USIA for a second opinion. Thus, any appeal is to be made to the Immigration and Naturalization Service, not to the United States Information Agency.

When an interested United States Government agency requests a waiver, the head of such agency submits a request to the United States Information Agency. The interests of the United States Government are at issue. The interests of the subject alien are not before the United States Information Agency, and the alien is not a party to the proceeding. Should the United States Information Agency recommend denial of the waiver request, the interested government agency is the appropriate party to appeal, not the alien.

The only situation in which the alien is a party before the United States Information Agency, is a case in which there is no objection to the waiver by the home country.

The United States Information Agency regulations do not provide for appeal in any case. Rather, the agency has established a Waiver Review Board to which certain types of cases are referred as a part of the internal administrative decision-making process. These cases include:

> * * * Cases involving requests of interested United States Government agencies, in which the recommendation of the Supervisory Attorney is unfavorable; cases in which another federal agency has provided the Agency with a written opposition to a waiver in which the recommendation to the Supervisor Attorney is favorable; cases in which a "no objection" letter from the Government of the exchange visitor's country or nationality or last legal residence appears in the file and whose participation in any program is financed by the United States Government in an amount under $2000, and as to which the recommendation of the Supervisory Attorney is unfavorable, except for an exchange visitor who received graduate medical education; cases involving claims of probable persecution on the ground of race, religion, political opinion, nationality, or membership in a particular social group, in which the Department of State has provided the Agency with a written opinion that there is no genuine basis for a claim of probable persecution on the ground alleged, and in which the recommendation of the Supervisory Attorney is favorable; and cases in which for any reason the Supervisory Attorney requests Exchange Visitor Waiver Board review of his or her recommendation. The Agency's complete file in any such case shall be referred to the Exchange Visitor Waiver Board. The Exchange Visitor Waiver Board shall review the program, policy and foreign relations aspects of the case, and shall prepare and transmit to the Attorney General or his or her designee a recommendation which, whether favorable or unfavorable, shall constitute the final recommendation of the Agency.

Consequently, cases which should go to the Waiver Review Board go automatically to the Board for review, without a request from the alien.

Nonetheless, the Agency is inundated with requests for reconsideration, review, re-reconsideration, re-review, ad infinitum. Some parties request review of their file several times. While there is no provision for these reviews, the agency has tried to accommodate as many people as possible and has reviewed files over and over. This accommodation has resulted in a six month backlog of applications. In other words, an alien applying for a waiver must wait six months to learn if his or her file needs supplementation before it is even considered. In an attempt to reduce the backlog, additional staff has been hired. However, aliens continue to press for reviews and re-reviews of their files. The reviews are undertaken even though no new evidence has been placed in the file warranting review. Consequently, few files are ever closed (unless the waiver is granted) and the backlog continues to grow. Additionally this practice has caused administrative problems at the Immigration and Naturalization Service.

Upon review of the entire situation, the Agency has determined that it is not in anyone's interest to keep case files open indefinitely.

The Agency has also determined that there is no provision in the Agency regulations for such a review. On the other hand, there is adequate provision for review if undertaken in accordance with specified procedures. When a difficult case of the type specified in the regulation is before the Agency, a review is automatically referred to the Board, without a request. In the case of hardship, the Immigration and Naturalization Service has adequate provision for appeal. See 8 CFR 103.5 wherein procedures for reopening or reconsidering applications are set forth. Should the Immigration and Naturalization Service determine that reopening or reconsideration is warranted under its procedures, the Immigration and Naturalization Service will forward the case to the United States Information Agency. The United States Information Agency will no longer consider appeals by individuals who have not followed the procedures set forth in lawfully promulgated regulations.

Accordingly, all requests to reopen, reconsider, appeal, or otherwise review any decision in a waiver case by the United States Information Agency, made directly to United States Information Agency by anyone other than an appropriate United States Government Agency (except aliens in "no objection" cases) will automatically be returned to sender. The file will not be reviewed.

List of Subject in 22 CFR Part 514

Cultural exchange programs.

Dated: October 13, 1988.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 88-25140 Filed 10-28-88; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 510

[Docket No. R-88-1414; FR-2543]

Section 312 Rehabilitation Loan Program; Removal of Risk Premium and Application Fee Provisions

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: The rule removes 24 CFR 510.34 and 510.36, which are the Department's regulations on the policies and procedures governing premiums to be charged to offset loan default risks and fees charged for applications approved under the Section 312 Rehabilitation Loan Program. Section 518(b) of the Housing and Community Development Act of 1987 prohibits the Federal government from imposing risk premiums or loan fees on loans made under section 312 of the Housing Act of 1964.

EFFECTIVE DATE: Under section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)), this final rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the rule's publication. HUD will publish a notice of the effective date of this rule following expiration of the 30-session-day waiting period. Whether or not the statutory waiting period has expired, this rule will *not* become effective until HUD's separate notice is published announcing a specific effective date.

FOR FURTHER INFORMATION CONTACT: Richard Burke, Office of Urban Rehabilitation, Department of Housing and Urban Development, Room 7168, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 755-5327. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 518(b) of the Housing and Community Development Act of 1987 amended section 312(g) of the Housing Act of 1964 to prohibit the Department or any other Federal agency from imposing a risk premium or loan fee on loans made under section 312 after February 5, 1988. In 1985, HUD established a loan risk premium of one percent to offset losses from loan defaults (24 CFR 510.34) and an application fee of $200 for single-family loans and $300 for all other loans to offset administrative costs incurred by HUD under the program (24 CFR 510.36). (See 50 FR 38791 (Sept. 25, 1985)). With the enactment of section 518(b), these regulations are now obsolete. The purpose of this rule is to remove 24 CFR 510.34 and 510.36 from the Code of Federal Regulations.

The subject matter of this rulemaking action relates to implementing a statutory provision that renders HUD regulations obsolete and unenforceable and is therefore exempt from the notice and public comment requirements of section 533 of the Administrative Procedure Act (5 U.S.C. 553). The rule merely removes the obsolete and unenforceable regulations from the Code of Federal Regulations.

Other Matters

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291. The rule does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local agencies or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Consistent with the provisions of section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601), the Undersigned certifies that this rule does not have a significant economic impact on a substantial number of small entities.

This rule was listed in the Department's Semiannual Agenda of Regulations published on October 24, 1988 (53 FR 41974, 42000), pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Section 312 Rehabilitation Loan Program is listed in the Catalog of Federal Domestic Assistance as program number 14.220.

List of Subjects in 24 CFR Part 510

Loan programs—housing and community development, Relocation assistance, Urban renewal.

Accordingly, the Department amends 24 CFR Part 510 as follows:

PART 510—SECTION 312 REHABILITATION LOAN PROGRAM

1. The authority citation for 24 CFR Part 510 continues to read as follows:

Authority: Sec. 312, United States Housing Act of 1964 (42 U.S.C. 1452b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 510.34 [Removed and Reserved]

2. Section 510.34 is removed and reserved.

§ 510.36 [Removed and Reserved]

3. Section 510.36 is removed and reserved.

Dated: October 21, 1988.

Jack R. Stokvis,

Assistant Secretary for Community Planning and Development.

[FR Doc. 88-25109 Filed 10-28-88; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8233]

Income Taxes; Investment Tax Credit for Qualified Rehabilitation Expenditures; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Corrections to final regulations.

SUMMARY: This document contains corrections to Treasury Decision 8233, which was published in the Federal Register for Tuesday, October 11, 1988 (53 FR 39589). The final regulations relate to an investment tax credit for qualified rehabilitation expenditures to qualified rehabilitated buildings.

FOR FURTHER INFORMATION CONTACT: Stuart G. Weasler, 202-566-3822 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections provide guidance to taxpayers in the application of sections 46, 48 and 191 of the Internal Revenue Code of 1986. Changes to the applicable law were made by the Economic Recovery Tax Act of 1981, the Technical Corrections Act of 1982, the Tax Reform Act of 1984, and the Tax Reform Act of 1986.

Need For Correction

As published, T.D. 8233 contains a typographical error and an omission.

Correction of Publication

Accordingly, the publication of the final regulations (T.D. 8233), which was the subject of FR Doc. 88-23219, is corrected as follows:

§ 1.48-12 [Corrected]

Paragraph 1. In § 1.48-12 (c)(3)(ii)(A)(2), page 39599, column 1, eighteenth line, the language "used (or placed in Service) prior to the" is corrected to read "used (or placed in service) prior to the".

Paragraph 2. In § 1.48-12(c)(8)(i), page 39600, column 2, ninth line, the language "of 168(g) applies to such expenditure by" is corrected to read "of section 168(g) applies to such expenditure by".

Dale D. Goode,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 88-25112 Filed 10-28-88; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

Approval of Amendments to the Missouri Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of program amendments submitted by Missouri as modifications to the State's permanent regulatory program (hereinafter referred to as the Missouri program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments incorporate changes to the Missouri regulations in the areas of prime farmland, coal exploration, small operator's assistance program (SOAP), two-acre exemption, inspection and enforcement, experimental practices, definitions, alternative bonding system, revegetation success, permit acreage fees, use of explosives, general revenue fund prohibition, and State law stringency. These changes are being made to maintain the State's consistency with SMCRA and the Federal regulations, to clarify requirements, and to incorporate additional flexibility provided by the revised Federal rules.

EFFECTIVE DATE: October 31, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Kovacic, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106; Telephone: (816) 374-6405.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior approved the Missouri program on November 21, 1980 (45 FR 77017). Information pertinent to the general background and revisions to the permanent program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Missouri program can be found in the November 21, 1980, Federal Register (45 FR 77017). Subsequent actions concerning proposed amendments are codified at 30 CFR 925.15 and 925.16.

II. Submission of Amendments

On December 14, 1987, (Administrative Record No. MO-353) and on December 18, 1987, (Administrative Record No. MO-354) the State of Missouri submitted amendments to its approved regulatory program. The proposed regulations amend Chapters 4, 6, 7, and 8 of Division 40—Land Reclamation Commission (LRC), Title 10—Department of Natural Resources, of the Missouri Code of State Regulations (CSR). The amendments also revise sections 444.730, 444.800, 444.805, and 444.950 of the Revised Statutes of Missouri (RSMo).

These revisions are proposed by Missouri in response to: (1) A June 11, 1986, letter (Administrative Record No. MO-295) under 30 CFR Part 732 from OSMRE, concerning regulatory reform; (2) a June 9, 1987 letter (Administrative Record No. MO-364) under 30 CFR Part 732 from OSMRE concerning the protection of historic, cultural, and archaeological resources during coal exploration in accordance with the revised Federal regulations promulgated February 10, 1987, (52 FR 4244); (3) Public Law 100-34 and the OSMRE notice of suspension that repealed the two-acre exemption published in the June 4, 1987, Federal Register (52 FR 21228); (4) a January 30, 1986, letter from OSMRE (Administrative Record No. MO-351) under 30 CFR Part 732 concerning the adequacy of the Missouri alternative bonding system; and (5) a required program amendment at 30 CFR 925.16(j) concerning revegetation success during the initial program. Missouri has also chosen to revise some of its statutes and regulations to increase flexibility and clarify existing regulations.

The amendment revises: 10 CSR 40-2.090(6)(B), Revegetation Requirements; 10 CSR 40-3.050(1)(E) and 10 CSR 40-3.210(1)(E), Surface and Underground Requirements for the Use of Explosives; 10 CSR 40-4.010, Coal Exploration Requirements; 10 CSR 40-4.030, Operations on Prime Farmland; 10 CSR 40-6.010(6)(A), General Requirements for Permits, Permit Applications, and Coal Exploration; 10 CSR 40-6.020, General Requirements for Coal Exploration, Permits; 10 CSR 40-6.040(16) and 10 CSR 40-6.110(16), Surface and Underground Prime Farmland Investigation; 10 CSR 40-8.060(1) (E), (G), (J), and (K), Experimental Practices; 10 CSR 40-7.021(4)(B), Duration and Release of Reclamation Liability; 10 CSR 40-8.010(1)(A), Definitions; 10 CSR 40-8.030(3)(B), Inspection and Enforcement; 10 CSR 40-8.050, Small Operators Assistance; 10 CSR 40-8.070(2), Applicability; and §§ 444.730, 444.800, 444.805, and 444.950 RSMo 1986 of Missouri statute related to mining.

The Director announced receipt of the proposed amendment in the February 26, 1988, Federal Register (53 FR 5804) and, in the same notice, opened the public comment period and provided an opportunity for a public hearing on their substantive adequacy. No public comments were received by March 28, 1988, the close of the comment period. The public hearing, scheduled for March 22, 1988, was not held because no one requested an opportunity to testify.

Following a thorough review of the Missouri amendments, OSMRE notified that State on April 20, 1988 (Administrative Record No. MO-380), of its concerns regarding several provisions in the areas of applicability, prime farmland, and definitions. These concerns identified changes that appeared to be less effective than the Federal regulations. On May 10, 1988 (Administrative Record No. MO-377), Missouri informed OSMRE that it plans to address these concerns during future rulemakings.

III. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.15 and 732.17, that the Missouri program amendments submitted on December 14 and 18, 1987, meet the requirements of SMCRA and 30 CFR Chapter VII, except as discussed below. Only those provisions of particular interest are discussed below. Any provisions not specifically discussed below are found to be no less stringent than SMCRA and no less effective than the Federal regulations, although the Director may require further changes in the future as a result of Federal regulatory revisions, court decisions, and his ongoing oversight of the Missouri program. Provisions that are not discussed either contain language similar to the corresponding Federal regulations, lack a Federal counterpart, or involve provisions that add specificity, and that do not adversely affect other aspects of the program.

1. Operations on Prime Farmlands

a. 10 CSR 40-4.030(4)(A): Applicability

The proposed amendment at 10 CSR 40-4.030(4)(A) would exempt from prime farmland performance standards coal preparation plants, support facilities, and roads of surface mining activities. The Federal regulation excluding these activities, 30 CFR 823.11(a), was remanded by the U.S. District Court for the District of Columbia decision *IN RE: Permanent Surface Mining Regulation Litigation II*, Civil Action No. 79-1144 (PSMRL II).

The Director finds the exemption from prime farmland performance standards to be less stringent than SMCRA and less effective than the Federal regulations, and is disapproving the amendment to 10 CSR 40-4.030(4)(A). Missouri will be required to amend this regulation to comply with the court's ruling.

b. 10 CSR 40-4.030(b)(B): Water Bodies on Prime Farmland

The proposed amendment at 10 CSR 40-4.030(4)(B) would allow Missouri to approve land use changes from cropland that is prime farmland to water bodies. The District Court (PSMRL II) held that the Federal regulations at 30 CFR 823.11(b) provided an impermissibly broad variance from the post-mining use of cropland qualifying as prime farmland. This type of land use change is not allowable.

The Director finds the land use change from cropland designated as prime farmland to water bodies to be less stringent than SMCRA and less effective than the Federal regulations, and is disapproving the amendment to 10 CSR 40-4.030(4)(B). Missouri will be required to amend this regulation to comply with the court's ruling.

c. 10 CSR 40-4.030(7)(B)6: Productivity on Prime Farmland

The proposed amendment at 10 CSR 40-4.030(7)(B)6 outlines the selection process for determining those crops to be used for proof of productivity on prime farmland. The crops must be commonly grown in the county of the permit area. The crop planted on the most acreage within the county must be utilized for at least one of the three years necessary to prove productivity. An exception to this is hay crops. If a hay crop is planted to the most acreage in a county, then the crop with the second largest acreage must be utilized for proof of productivity in at least one of the three years during crop measurement. The amendment does not, however, require that the row crop with greatest rooting depth be chosen as one of the reference crops as required at 30 CFR 823.15(b)(6).

The Director finds the method of reference crop selection at 10 CSR 40-4.030(7)(B)6 to be less stringent than SMCRA and less effective than the Federal regulations. Missouri will be required to amend this regulation to be no less effective than 30 CFR 823.15(b)(6).

2. 10 CSR 40-8.010(1)(A)18: Definitions

The proposed amendment at 10 CSR 40-8.010(1)(A)18 includes as part of the definition of "coal processing plant" and "coal preparation plant" the requirement that such a facility separate coal from its impurities. This definition is impermissibly narrow as compared to the revised rule promulgated by OSMRE on May 11, 1987 (52 FR 17724). As defined at 30 CFR 701.5, a facility where coal is subjected to chemical or physical processing or cleaning, concentrating, or other processing or preparation is regulated, even if it does not separate coal from its impurities.

The Director finds the definition of "coal processing plant" and "coal preparation plant" to be less stringent than SMCRA and less effective than the Federal regulations, and is disapproving the amendment to 10 CSR 40-8.010(1)(A)18. Missouri will be required to amend this regulation to be no less effective than the definition of "coal preparation plant" at 30 CFR 701.5.

3. 10 CSR 40-2.090(6)(B): Revegetation Requirements

Missouri amends 10 CSR 40-2.090(6)(B) to add a requirement that the revegetation success standard be met for 2 growing seasons in order to respond to a required program amendment at 30 CFR 925.16(j) concerning 30 CFR 715.20(f).

The amended revegetation success standard makes the Missouri regulations the same as the Federal regulations; therefore, the Director finds the amendment of 10 CSR 40-2.090(6)(B) to be no less stringent than SMCRA and no less effective than the Federal regulations.

4. 10 CSR 40-6.020(3) (B)8 and (D)2: Coal Exploration

Missouri amends 10 CSR 40-6.020(3) (B)8 and (D)2 to require that applications include cultural, historic, and archaeological resources within the proposed exploration area as required in a June 9, 1987, letter (Administrative Record No. MO-364) under 30 CFR Part 732 from OSMRE concerning 30 CFR 772.12(b)(8).

The application requirement amendments make the Missouri regulations the same as the Federal regulations; therefore, the Director finds the amendment of 10 CSR 40-6.020(3)(B)8 and (D)2 to be no less stringent than SMCRA and no less effective than the Federal regulations.

5. 10 CSR 40-6.070(2)(B): Two-Acre Exemption Repeal

Missouri amends 10 CSR 40-6.070(2)(B) by removing the two-acre exemption from surface coal mine regulation. On May 7, 1987, the President signed Pub. L. 100-34 repealing the two-acre exemption in all Federal and State programs. The requirements of SMCRA now apply to all surface coal mining operations regardless of size, unless exempt under some other provision. On June 4, 1987 (52 FR 21228), OSMRE published a notice of suspension for 30 CFR 700.11(b), making the Federal regulation consistent with SMCRA.

The exemption removal amendment makes the Missouri regulations the same as the Federal regulations; therefore, the Director finds the amendment to 10 CSR 40-6.070(2)(B) to be no less stringent than SMCRA and no less effective than the Federal regulations.

6. 10 CSR 40-6.020 (7) and (8): Coal Exploration Bonding

Missouri amends 10 CSR 40-6.020 (7) and (8) to require a reclamation bond for all coal exploration permits and to identify conditions for their release. A bond of $5,000 per acre is required when 250 tons of coal or less will be removed. A bond calculated at a rate sufficient to complete reclamation as performed by the commission is required where more than 250 tons of coal will be removed. The bonding requirements of 30 CFR Part 800 apply only to surface mining and reclamation operations; thus, OSMRE does not have a comparable regulation to Missouri's requirement for coal exploration bonding.

The Director finds that the amendment to 10 CSR 40-6.020 (7) and (8) is not inconsistent with SMCRA and the Federal regulations because it has adopted requirements that are more stringent than the requirements of 30 CFR Part 800.

7. Section 444.960: Bonding

Missouri amends its statutes at § 444.960 RSMo 1986 by requiring a bond of no more than $10,000 per acre for the coal preparation area. Missouri has an alternative bonding system that divides the reclamation liability between the operator reclamation bond for Phase I reclamation and the reclamation trust fund for Phase II and Phase III. This amendment would increase the operator bond on coal preparation areas for Phase I reclamation from $2,500 per acre to $10,000 per acre. The amendment is a partial response to a January 30, 1986, letter (Administrative Record No. MO-351) under 30 CFR Part 732 concerning 30 CFR 800.11(e) (1) and (2). This amendment is one of several measures yet to come that are designed to address the concerns of that letter.

The Director finds, based on the above discussion, that the above amendment, as proposed by Missouri, is a significant improvement to the Missouri alternative bonding system. The amendment, as proposed, is an adequate partial response to OSMRE's January 30, 1986, letter pursuant to 30 CFR 732.17(d) and is consistent with SMCRA and the Federal regulations because it provides a substantial economic incentive for the permittee to comply with the reclamation provisions.

8. Section 444.805: Definitions

Missouri amends its statutes at § 444.805 RSMo 1986 to add definitions of "coal preparation area" and "coal preparation area reclamation" to be consistent with language adopted under § 444.950 RSMo 1986 concerning the bonding and reclamation of coal preparation areas. OSMRE does not have parallel definitions of these terms. The definitions adopted by Missouri are consistent with related terms defined at 30 CFR 701.5 concerning coal preparation and disturbed areas and add greater detail for determining the area to be bonded and reclaimed specifically related to coal preparation.

The Director finds that the amendment at § 444.805 RSMo 1986 is not inconsistent with SMCRA and the Federal regulations.

9. 10 CSR 40-6.010(6)(A): Permit Fee

Missouri amends 10 CSR 40-6.010(6)(A) to increase the fee charged for new surface coal mine permits from $35 per acre to $100 per acre. 30 CFR 777.17 requires each application for a surface coal mining and reclamation permit to be accompanied by a fee as determined by the regulatory authority. Such fee may be less than, but shall not exceed, the actual or anticipated cost of reviewing, administering, and enforcing the permit. Missouri has provided documentation in a July 25, 1988, letter to OSMRE (Administrative Record No. MO-380) that the change in fees will not generate revenues in excess of the cost of reviewing, administering, and enforcing the permit.

The amended permit fee fulfills the requirements of the Federal regulations at 30 CFR 777.17; therefore, the Director finds the amendment of 10 CSR 40-6.010(6)(A) to be no less stringent that SMCRA and no less effective than the Federal regulations.

10. 10 CSR 40-3.050(1)(E) and 10 CSR 40-3.210(1)(E): Use of Explosives

Missouri amends 10 CSR 40-3.050(1)(E) and 10 CSR 40-3.210(1)(E), concerning blasting buffer zones, by deleting them. The proposed amendment will eliminate these zones and rely on the performance standards of 10 CSR 40-3.050(5) to restrict the effect of explosives for the protection of the public and property. The Federal regulations at 30 CFR 816.61 through 816.66 and 817.61 through 817.66 do not establish blasting buffer zones and also rely on the same performance standards for the protection of property and the public.

The deletion of the blasting buffer zone makes the Missouri regulations the same as the Federal regulations; therefore, the Director finds that the amendment to 10 CSR 40-3.050(1)(E) and 10 CSR 40-3.210(1)(E) to be no less stringent than SMCRA and no less effective than the Federal regulations.

11. Section 444.730: Program Funding

Missouri amends its statutes by deleting subsection 4 of Section 444.730 RSMo 1986 thereby removing the State prohibition on appropriating or expending general revenue for the administration or enforcement of the Missouri program. Section 503(a) of SMCRA and 30 CFR 732.15(d) require that a State demonstrate that it has the ability to carry out the requirements of SMCRA "* * * with sufficient funding to enable the State to regulate surface coal mining and reclamation operations * * *" The proposed amendment will neither increase or decrease State funding, it will only allow the program one more potential source of funds.

The Director finds that the amendment at section 444.730 RSMo 1986 is not inconsistent with the requirements of SMCRA and the Federal regulations.

12. Section 444.800: State Law Stringency

Missouri amends its statutes at subsection 4 of section 444.800 RSMo 1986 to direct the Land Reclamation Commission in its adoption of rules and regulations to insure that such rules and regulations shall be no more stringent than the comparable Federal regulations, unless it can be affirmatively shown that the greater stringency is essential to the proper administration and enforcement of this law. The Federal regulations at 30 CFR 730.11 require that State laws and regulations be "in accordance with" or "consistent with" the Federal law and regulations. The Federal regulations at 30 CFR 700.3(c) also allow for a State's law or regulations to provide more stringent regulations or controls than those provided by SMCRA. The proposed amendment will not allow the State to reduce the effectiveness of its program below the limits of SMCRA, but will allow the State to exceed the limits of SMCRA, if the appropriate conditions are met.

The Director finds that the amendment at section 444.800 RSMo 1986 is not inconsistent with SMCRA and the Federal regulations.

IV. Public and Agency Comments

As discussed above, the Director solicited public comment and provided opportunity for a public hearing on the proposed amendments. No public comments were received, and since no one requested an opportunity to testify at a public hearing, no hearing was held.

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11), comments were also solicited from various Federal agencies with an actual or potential interest in the Missouri program. The U.S. Environmental Protection Agency (EPA) concurred that the amendments to the Missouri program demonstrate the legal authority, administrative capability, and technical conformity to SMCRA regulations necessary to maintain water quality standards promulgated under the authority of the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*). None of the other agencies notified offered any comment.

In accordance with 30 CFR 732.17(h)(4), comments were also solicited from the State Historic Preservation Officer and the Advisory Council on Historic Preservation; however, no substantive comments were received.

V. Director's Decision

Based on the above findings, the Director is approving the proposed amendments submitted by Missouri on December 14 and 18, 1987, with the exception of those provisions concerning regulations determined to be inconsistent with SMCRA, the Federal regulations, or court decisions. To the extent required by 30 CFR 732.17(11)(ii), the EPA has concurred in this approval (Administrative Record No. MO-370).

The Federal regulations at 30 CFR Part 925 codifying decisions concerning the Missouri program are amended to implement this decision. This approval is contingent upon the State's promulgation of the proposed regulations in the identical form submitted for OSMRE's review and approval with the exception of typographical errors. The final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

The Director is disapproving the following provisions of the proposed amendments: (1) As discussed in the finding 1a, the exemption from prime farmland performance standards of coal preparation plants, support facilities, and roads associated with surface coal mining activities in 10 CSR 40-4.030(4)(A); (2) as discussed in finding 1b, the exemption of water bodies from prime farmland performance standards where the original land use was prime farmland in 10 CSR 40-4.030(4)(B); and (3) as discussed in finding 2, the definitions of "coal processing plant" and "coal preparation plant" insofar as they exclude certain facilities that physically process coal in 10 CSR 40-6.010(1)(A)18.

Effect of Director's Decision

Section 503 of SMCRA establishes that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly the Secretary's regulations at 30 CFR 732.17(a) require that any alteration of an approved State program must be submitted to OSMRE as a program amendment. Thus, any changes to the program are not enforceable by the State until approved by the Director. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the Missouri program, the Director will recognize only statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives, and other materials, and will require the enforcement by Missouri of only such provisions.

VI. Procedural Determinations

1. *National Environmental Policy Act.* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act.* On July 12, 1984, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action,OSMRE is exempt from the requirement to prepare a regulatory impact analysis, and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act.* This rule does not contain information collection requirements which require approval by the OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 925

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: October 21, 1988.

Robert E. Rieldt,

Deputy Director, Office of Surface Mining Reclamation and Enforcement.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below.

PART 925—MISSOURI

1. The authority citation for Part 925 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 925.12 is added to read as follows:

§ 925.12 State program provisions and amendments disapproved.

The following provisions of the Missouri surface coal mining regulations as submitted on December 14 and 18, 1987, are hereby disapproved:

(a) 10 CSR 40-4.030(4)(A) insofar as it would exempt from prime farmland performance standards coal preparation plants, support facilities, and roads associated with surface coal mining activities.

(b) 10 CSR 40-4.030(4)(B) insofar as it would exempt from prime farmland performance standards water bodies as a postmining land use.

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(c) 10 CSR 40–8.010(1)(A)18 the definitions of "coal processing plant" and "coal preparation plant" insofar as they exempt from regulation certain facilities where coal is subjected to chemical or physical processing or cleaning, concentrating, or other processing or preparation, if they do not separate coal from its impurities.

3. Section 925.15 paragraph (g) is added to read as follows:

§ 925.15 Approval of regulatory program amendments.

* * * * *

(g) The following amendments as submitted to OSMRE on December 14 and 16, 1987, are approved effective October 31, 1988.

(1) Revisions to the Missouri Code of State Regulations at 10 CSR 40–4.030(4)(C), (5), (6), and (7)(A), (B)(1), (2), (3), (4), (5), (7), and (8), Operations on Prime Farmland; 10 CSR 40–6.040(16), Prime Farmland Investigation; 10 CSR 40–6.060(4)(B), (C), and (D), Requirements for Permits on Prime Farmland; 10 CSR 40–6.110(16), Prime Farmland Investigation; 10 CSR 40–4.010, Coal Exploration Requirements; 10 CSR 40–6.020, General Requirements for Coal Exploration Permits; 10 CSR 40–8.050, Small Operator's Assistance; 10 CSR 40–8.070(2), Applicability and General Requirements; 10 CSR 8.030(3)(B), Availability of records; 10 CSR 40–7.021(4)(B), Inspection and Enforcement; 10 CSR 40–6.060(1)(E), (G), (J), and (K), Experimental Practices; 10 CSR 40–8.010(1)(A)5, 15, 16, 17, 19, 20, 25, 47, 48, and 62, Definitions; 10 CSR 40–2.090(6)(B), Revegetation Requirements; 10 CSR 40–6.010(6)(A), Permit fees; and 10 CSR 40–3.050(1)(E) and 10 CSR 3.210(1)(E), Blasting buffer zone.

(2) Revisions of the Revised Statutes of Missouri at sections 444.730, 444.800, 444.805 and 444.950 related to mining.

4. Section 925.16 is amended by removing and reserving paragraph (j) and adding paragraph (m) to read as follows:

§ 925.16 Required program amendments.

* * * * *

(j) [Reserved]

* * * * *

(m) By November 15, 1988, amend its program at:

(1) 10 CSR 40–4.030(4)(A) to remove the exemption from prime farmland performance standards afforded to coal preparation plants, support facilities, and roads associated with surface mining activities to be no less effective than 30 CFR 823.11(a).

(2) 10 CSR 40–4.030(4)(B) to remove the exemption from prime farmland performance standards provided to water bodies as a postmining land use to be no less effective than 30 CFR 823.11(b).

(3) 10 CSR 40–4.030(7)(B)6 to add a requirement that the row crop with the greatest rooting depth be chosen as one of the reference crops to be no less effective than 30 CFR 823.15(b)(6).

(4) 10 CSR 40–8.010(1)(A)18 to revise its definitions of "coal processing plant" and "coal preparation plant" to include all facilities where coal is subjected to chemical or physical processing or cleaning, concentrating, or other processing or preparation, even if it is not separating coal from its impurities, to be no less effective than the definitions found at 30 CFR 701.5.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[FRL-3332-8]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Revision of Particulate Emission Standards for Certain 1987 and Later Model Year Light-Duty Diesel Trucks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating a final rule that establishes the following particulate standards under the Clean Air Act for light-duty diesel trucks with a loaded vehicle weight of 3,751 pounds or above (LDDT2): 0.50 gram per mile for the 1987 model year; 0.45 gram per mile for the 1988 through 1990 model years; and 0.13 gram per mile for the 1991 and later model years. The 1987–90 model year standards are applicable at low altitudes only; the 1991 and later model year standard is an all-altitude standard. Particulate standards for light-duty diesel trucks with a loaded vehicle weight of 3,750 pounds or below (LDDT1) will remain unchanged. Particulate emissions averaging will not be available for LDDT2s for the 1987 through 1990 model years, although it will continue to be available for LDDT1s and diesel passenger vehicles. Beginning in 1991, particulate emissions averaging between different LDDT2 engine families within a manufacturer will be allowed.

Nonconformance penalties will also be available for the heavier portion of the 1991 and later model year LDDT2s which may fail to comply with the 0.13 gram per mile particulate emission standard. The actual rates for the NCP's made available are not included in this final rule. The rates will be established in a separate rulemaking proceeding.

The Agency is promulgating these regulations in response to a petition from General Motors Corporation that outlines a plan to develop control technology which could substantially reduce light-duty diesel truck particulate emissions from current control levels.

EFFECTIVE DATE: November 30, 1988.

ADDRESSES: Public Docket: Copies of materials relevant to this rulemaking proceeding are contained in Public Docket A–86–20 at the Central Docket Section of the U.S. Environmental Protection Agency, South Conference Center, Room 4, 401 M Street SW., Washington, DC 20460, and are available for review between the hours of 8:00 a.m. and 3:00 p.m., Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Mr. David Robertson, Manufacturers Operations Division (EN–340–F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, Telephone: (202) 382–2525.

SUPPLEMENTARY INFORMATION:

I. Background

EPA regulations previously promulgated under the Clean Air Act required that particulate emissions from light-duty diesel trucks (LDDTs) be reduced from 0.60 gram per mile (g/mi) to 0.26 g/mi beginning with the 1987 model year. 49 FR 3010 (January 24, 1984), *codified at* 40 CFR 86.087–9 (1986). However, EPA regulations permit manufacturers unable to meet the 0.26 g/mi standard to sell their LDDTs in excess of 6,000 pounds gross vehicle weight rating (GVWR) if they pay nonconformance penalties (NCPs). (The Clean Air Act does not make NCPs available for vehicles weighing less than 6,000 pounds GVWR.) EPA made NCPs available for the 0.26 g/mi standard upon finding that the new standard is significantly more difficult to meet than the 0.60 g/mi standard, requires substantial work to meet, and is likely to create a manufacturer which is a technological laggard. 50 FR 53454 (December 31, 1985).

General Motors Corporation (GM) has submitted to the Administrator a petition requesting that the 0.26 g/mi particulate standard be modified for those LDDTs with a loaded vehicle weight (LVW) of 3,751 pounds or greater, otherwise known as LDDT2s.[1] (*See* Petition of December 19, 1986, Docket No. A–86–20, Document No. II–D–2, revising April 17, 1986 version.) GM believes that the 0.26 g/mi standard is not technologically feasible by model year 1987 for its 6.2 liter (6.2L) diesel engine family. According to confidential sales estimates submitted by manufacturers to EPA's Certification Division, the 6.2L engine family is the only full-size, large displacement engine family in the LDDT2 class to be sold in model years 1987 and 1988.[2] GM stated that the 6.2L LDDT could most likely comply with the 0.26 g/mi standard by the 1989 model year, largely through refinement of already existing technology, e.g., electronically controlled exhaust gas recirculation, catalytic converters, and electronically controlled fuel injection.

GM requested that for LDDT2s, the particulate standard be relaxed to 0.50 g/mi for 1987 and 0.45 g/mi for 1988 through 1990 an then tightened to 0.13 g/mi beginning with the 1991 model year. In effect, GM's proposal is to relax the standard for model years 1987 through 1990 to permit manufacturers to focus their efforts on development of advanced particulate control technology which would, in turn, allow compliance with a 0.13 g/mi particulate emission standard by 1991. In exchange for the near-term relaxation of the 0.26 g/mi standard, GM claimed that there would be a significant long-term environmental benefit from the development of more effective particulate control technology applicable not only to LDDT2s, but potentially to other diesel vehicle classes as well.

As part of its petition, GM set forth a proposed research and development plan on which it based its projection of the probable technological feasibility of a 0.13 g/mi standard by model year 1991. The plan pursues an advanced particulate control technology with a particulate trap-oxidizer system ("trap") as its primary objective. Traps filter particulate matter from diesel exhaust, then burn off the trapped matter. Application of traps to LDDT2s presents several technological issues, such as durability during the longer useful life of light-duty trucks, that in GM's opinion have yet to be resolved. GM's proposed plan targets these issues for resolution by 1991, even in the event GM discontinues production of its 6.2L LDDT. GM's petition also asked EPA to make NCPs available for the proposed 1991 standard.

The Agency has carefully considered GM's petition and the technology development program it has proposed. Specifically, the research and development plan outlined by GM suggests that a 0.13 g/mi standard is attainable by model year 1991. EPA believes that the 0.13 g/mi standard could create significant environmental benefits. The standard will likely halve particulate emissions from LDDT2s compared to the 0.26 g/mi standard previously in place for the same time frame. Although the plan outlined in GM's petition would relax the particulate standards for 4 model years, EPA analysis shows that GM's suggested schedule of standards could realize a net LDDT2 emissions reduction over the 1987 and later model year 0.26 g/mi standard as early as 1995, assuming a moderate increase in LDT sales, plus a moderate increase in diesel sales penetration of that LDT market. (*See* Particulate Emissions Projection of the GM 6.2L Diesel Engine, Docket No. A–86–20, Document No. IIA–B–1 hereinafter "No. IIA–B–1.") Given the health and environmental hazards associated with particulate matter (see section IV, *infra*), a net reduction in LDDT2 particulate emissions would clearly be beneficial.

A more significant potential benefit of GM's suggested technology forcing strategy is that it could reduce particulate emissions from classes of vehicles in addition to LDDT2s. LDDT2s meeting a 0.13 g/mi standard will be controlled to a level substantially below the concurrent standards for lighter LDDTs and diesel passenger vehicles. Even though LDDT2s do not emit a large proportion of total diesel motor vehicle particulate emissions, EPA believes that if particulate trap technology capable of meeting a 0.13 g/mi standard is developed for LDDT2s, it could be transferable to lighter vehicle classes. Further, LDDT2s trap technology might also be transferable to heavier vehicles, a possibility GM notes in its petition.

Considering GM's showing of the likely feasibility of a 0.13 g/mi standard, and EPA's analysis of the environmental benefits that the 0.13 g/mi standard would likely yield, EPA decided to propose the schedule of revised standards outlined in GM's petition in a Notice of Proposed Rulemaking (52 FR 20175, June 4, 1987). In this NPRM the Agency also proposed to make NCPs available for 1991 and subsequent model year LDDT2s subject to the 0.13 g/mi particulate standard. (*See* Section III.B., *infra*).

[1] EPA previously distinguished between LDDTs and the lighter LDDTs in setting NO_x emission standards. *See* 50 FR 10606, 10620 (March 15, 1985).

[2] Only two other manufacturers are selling LDDT2s for the 1987 model year. Both of their models have smaller engines than GM's and one is significantly lighter; thus they emit less particulates. Neither of these other two are selling LDDT2s for the 1988 model year.

II. Statutory Authority

Some LDDT2s exceed 6,000 pounds GVWR, and thus qualify as heavy-duty vehicles (HDV) under section 202(b)(3)(C) of the Act, 42 U.S.C. 7521(b)(3)(C). Other LDDT2s, while exceeding 3,751 pounds LVW, do not exceed 6,000 pounds GVWR, and thus are not HDVs.

For LDDT2s which are also HDVs, section 202(a)(3)(A)(iii), 42 U.S.C. 7521(a)(3)(A)(iii), authorizes EPA to promulgate particulate emission standards.

For LDDT2s which are not HDVs, section 202(a)(1) of the Clean Air Act, 42 U.S.C. 7521(a)(1), provides that the Administrator shall "by regulation prescribe * * * standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles * * * which may reasonably be anticipated to endanger the public health or welfare * * *." Particulate matter may be regulated as a threat to the public health and welfare. *NRDC* v. *EPA*, 655 F.2d 318, 327 (DC Cir.), *cert. denied*, 454 U.S. 1017 (1981).

Section 202(a)(3)(A)(iv), 42 U.S.C. 7521(a)(3)(A)(iv), authorizes EPA to categorize heavy-duty vehicles and engines according to vehicle weight, horsepower, "or such other factors as may be appropriate." Section 202(a)(1) grants EPA broad discretion to define classes of vehicles for purposes of setting standards under that section.

Section 206(g) of the Act, 42 U.S.C. 7525(g), permits the Administrator to promulgate NCPs for nonconforming heavy-duty vehicles and engines which do not exceed an "upper limit" of emission nonconformity. Section 206(g)(3) requires NCPs to be designed so as to:

- Increase with the degree of emission nonconformity;
- Increase periodically to provide incentives for nonconforming manufacturers to achieve the emission standard; and
- Remove any competitive disadvantage to conforming manufacturers.

Finally, section 301(a) of the Act, 42 U.S.C. 7620(a), provides in part that "the Administrator is authorized to prescribe such regulations as are necessary to carry out his functions under this Act."

III. Discussion of Final Rule and Comments

This final rule adopts the NPRM provisions described above with one

exception: The NCP penalty rates that were presented for LDDT2s in the 6,001 to 8,500 GVWR category in the NPRM are not being incorporated into this final rule. The actual penalty rates that will be applicable for the NCPs made available under this rulemaking will be established in a separate rulemaking proceeding. This will allow the Agency to base NCP rates on more recent information than if the penalty rates were established herein.

During the time that was available for public comment on the NPRM, eight organizations provided written comments. Of these eight, five are vehicle or engine manufacturers, one is an industry trade association, one is an emission control manufacturer, and one is an environmental organization.

a. General Issues

Several comments were received that did not directly address provisions proposed in the NPRM. Cummins Engine Company (Cummins) comments concerned the impact this rulemaking might have on an Advance Notice of Proposed Rulemaking (ANPRM) that EPA published on September 8, 1986 (51 CFR Part 32032). The ANPRM addressed the possible reclassification of Class IIB vehicles (8,501 to 10,000 lbs. GVWR) as LDTs. Cummins suggested that the LDDT2s particulate emission standards promulgated in this rulemaking should not apply to Class IIB vehicles, if the EPA concludes that these vehicles should be reclassified as LDTs.

It is beyond the scope of this rulemaking to address the applicability of the revised particulate emission standards contained herein to vehicles that are not currently categorized as LDDT2s. The appropriate forum to address Cummins' particular concern is the rulemaking process that would consider the possible reclassification of the IIB vehicles as LDTs.

The Natural Resources Defense Council (NRDC) had several comments relating to commitments GM discussed in its petition of December 19, 1986, and EPA's responsibility in assuring that these commitments are met. NRDC also commented that semi-annual meetings should occur between GM and EPA to discuss the progress of the research in developing the technology needed to meet the 0.13 gram/mile exhaust particulate standard.

In the December 19, 1986 petition GM made several commitments and statements that have provided support for this final rule. GM committed to continue with the technology development program through the 1991 model year, to accept the feasibility of the 0.13 gram/mile exhaust particulate standard for the 1991 model year, and to provide EPA with information on the progress of the development program by scheduling annual program reviews. EPA intends to hold GM to these stated commitments. GM has already proceeded with its planned development program and has provided information regarding this program to EPA during an initial meeting between EPA and GM representatives. Similar reviews will occur annually, or more often as is warranted by the progression of the program.

In its comments, Converter Technology proposed that EPA, truck manufacturers, particulate control device manufacturers, and other interested groups commit to regular briefings about the progress and development of any new particulate control technology. EPA, as always, is willing to meet with any interested parties that may be able to provide relevant information on new emission control technologies.

b. The Standards

NRDC and Converter Technology both commented that, in their opinion, the previous 1987 LDDT2 particulate standard of 0.26 g/mi is technologically feasible. As mentioned earlier, GM stated in its petition that it does not believe the 0.26 g/mi particulate standard is feasible for GM's 6.2L LDDT in the 1987 or 1988 model years. Two other manufacturers certified LDDT2 vehicles as meeting the 0.26 g/mi standard in the 1987 model year, and one certified LDDT2 vehicles in the 1988 model year although this manufacturer does not plan to sell any 1988 model year vehicles in this vehicle class. The ability of these manufacturers to meet the 0.26 g/mi standard, however, does not necessarily establish that the standard is technologically feasible for all LDDT2s. These other manufacturers had LDDT2 vehicles with significantly smaller engine displacements than the GM 6.2L engine, and one of the vehicles was substantially lighter; thus they emit less particulate emissions.

By temporarily relaxing the 0.26 g/mi standard, EPA believes that manufacturers will be able to concentrate their resources on developing substantially improved control technologies to meet a significantly lower particulate standard in the 1991 model year. The 0.13 g/mi particulate standard established in this final rule for the 1991 model year reduces the emissions level to half of what would have been allowed by the previous standard in that same model year. Even though the interim standards (1987 to 1990) are relaxed, they are still lower than the 1986 model year LDDT2 particulate emission standard. EPA projections indicate that cumulative LDDT2 particulate emissions resulting from these changes in the particulate emission standard will reach a break-even point in the mid-to late 1990s. In addition, EPA continues to believe that technology developed to meet the more stringent 1991 model year LDDT2 particulate emission standard may be transferable to other diesel-powered classes. This could provide EPA with an opportunity to reduce the particulate emission standards for these other classes, providing an added long-term benefit for the environment.

Converter Technology suggested some alternative provisions for this final rule that were not in the NPRM. One suggestion was to allow the use of an emission banking scheme using debits and credits to apply to the emission standards from the 1987 to possibly the 1995 model year. Manufacturers would presumably start the period with a debit in their banking accounts. If, at the end of the allowable period, manufacturers did not balance their accounts they would be required to pay NCPs on the difference. The Agency has decided to make NCPs available for manufacturers that may have trouble developing the required technology by the 1991 model year. However, EPA is presently considering the use of "banking and trading" in a separate rulemaking. *See* 51 FR 31959 (September 8, 1986).

A second suggestion was to not collect the NCPs in the 1991 or possibly even the 1992 model year if none of the manufacturers in the LDDT2 category had developed the technology required to comply with the particulate matter emission standard. Converter Technology also suggested that the implementation of the 0.13 g/mi emission standard should be dependent on the demonstration of a workable particulate control technology, and that if a manufacturer develops the technology prior to the 1991 model year, the technology should be incorporated into production vehicles at that time. EPA views the 1991 model year standard promulgated in this final rule as "technology-forcing." Section 202(a)(3)(A)(iii) of the Clean Air Act authorizes EPA to set "technology-forcing" particulate emission standards to provide manufacturers with the incentive to develop needed technology. Standards based on manufacturer's progress, by contrast, would not provide any incentive to further technology, especially in a category such as the LDDT2 that has very few manufacturers producing vehicles. The manufacturers, of course, can incorporate the new technology into their vehicles at any time prior to the 1991 model year and the Agency would be pleased to see manufacturers do so.

Comments received from the Toyota Technical Center, USA, Inc. (Toyota) suggested that the 0.13 g/mi exhaust particulate standard may not be technologically feasible by the 1991 model year. Converter Technology also made this point. EPA believes that the standard is technologically feasible by 1991, based largely on the research and development plan set forth by GM, the major producer of vehicles in the LDDT2 category, in its petition to the Agency. EPA is not required to establish emission standards that every manufacturer can readily meet. The possibility that there may be technological laggards is the basis for NCPs being made available for the 0.13 g/mi exhaust particulate standard.

The standards for the 1987–90 model years are tighter than the 1986 model year standard of 0.60 g/mi and may require additional control measures, yet they will permit manufacturers to focus their attention and resources on development of a particulate trap-oxidizer system, instead of a system which refines existing technology. EPA has estimated that the 1991 standard of 0.13 g/mi is approximately equivalent in stringency to the particulate standard of 0.10 gram per brake horsepower-hour (g/BHP-hr) applicable to 1991 model year heavy-duty diesel bus engines and all 1994 and later model year heavy-duty engines (HDEs) to be installed in vehicles exceeding 8500 pounds GVWR. Thus, the 0.13 g/mi particulate standard will most likely require the development and installation of traps, because EPA has already found that the 0.10 g/BHP-hr standard will most likely require use of a trap-oxidizer system. *See* 50 FR 10606 (March 15, 1985).

EPA arrived at the 0.13 g/mi particulate standard for LDDT2s using the same methodology it employed for the 0.10 g/BHP-hr particulate standard for HDEs. That methodology considers such factors as trap efficiency, engine-out levels, deterioration rate for engine-out emissions, the availability of averaging for emission from different families, and compliance margin.

In their comments the Manufacturers of Emission Controls Associated (MECA) indicates they do not feel that relaxation of the interim standards from the previously established 0.26 g/mi standard is a good precedent for the Agency to establish. Converter Technology felt that EPA might unwittingly be stifling technological development by relaxing the interim standards. On the contrary, EPA believes this action is appropriate because relaxation of the interim standards will allow manufacturers to concentrate their respective resources on developing improved technologies.

c. Test Procedures

Mercedes-Benz of North America, Inc. (Mercedes-Benz) had several comments relating to the use of the presently defined exhaust particulate emission measurement procedure and the calculation procedure used for determining the deterioration factor. Mercedes-Benz believes that the present exhaust particulate measurement techniques are insufficient to reliably determine low levels of particulate matter. In addition, Mercedes-Benz does not believe that the present procedure for determining the deterioration factor addresses problems associated with extremely low particulate emission levels or problems associated with deterioration that might be non-linear. Mercedes-Benz did not provide information in its comments to support its concerns.

Discussions concerning the applicability of the present exhaust particulate measurement techniques and the deterioration factor have occurred in the past. Mercedes-Benz correctly notes an EPA workshop in July 1985, and a California Air Resources Board (CARB) workshop in July 1986, as two occasions on which these topics were discussed. Previous discussions have included concerns related to the minimum detectable limit of the present procedure and the accuracy and precision of the present test procedure at very low levels of particulate emissions. EPA intends to assess the present procedure for emission levels expected from vehicles meeting the 0.13 g/mi standard. Some refinements to the test procedure, such as increasing the flow through the sample filters, may be incorporated. EPA maintains ongoing programs to evaluate and update the test procedures, and is always willing to consider ideas and information helpful to refining the procedures.

d. Other Vehicle Classes

In the NPRM the Agency discussed the possibility that once the technology to meet the 0.13 g/mi standard was developed it could be applied to other vehicle categories and the emission standards tightened. EPA received several comments on its discussion. The Manufacturers of Emission Controls Association (MECA) commented that EPA should not delay lowering exhaust particulate standards for other light-duty truck and vehicle classes. NRDC stated that exhaust particulate standards for other diesel applications should be tightened when the trap technology has been successfully demonstrated. Converter Technology stated that the technology developed for the LDDT2 category will be readily transferable across vehicle classes. Mercedes-Benz did not agree that the technology developed to meet the 1991 MY LDDT2 particulate emission standard would be readily transferrable to other vehicle classes.

EPA continues to believe that the technology developed to meet the 1991 model year particulate emission standard promulgated in this final rule may be transferable to other categories of diesel-powered vehicles, since the size, weight, and use of other light-duty vehicles is not substantially different from the LDDT2 category. However, the specific application of this technology to other vehicle classes is beyond the scope of this final rule. When the technology has been developed EPA will evaluate the applicability of the technology to other diesel-powered classes.

Converter Technology apparently was under the impression that the NPRM specifically proposed a reduction of the light-duty diesel vehicle (LDDV) particulate standard to 0.10 g/mi. Neither the NPRM nor this final rule affect the particulate matter emission standards applicable to LDDVs.

e. Averaging

In this final rule EPA is allowing particulate averaging between different engine families of LDDT2s, beginning with the 1991 model year. It does not permit particulate averaging between LDDT2s and other classes of vehicles, such as LDDT1s and diesel passenger vehicles. (The previous 1987 model year standard did permit such inter-class averaging.) Under some scenarios, inter-class averaging would permit manufacturers to avoid development of the trap technology for LDDT2s, while avoidance is unlikely if averaging is permitted only within the LDDT2 class. However, inter-class averaging will remain available between LDDT1s and diesel passenger vehicles. This approach to averaging allows manufacturers considerable flexibility in meeting the particulate standards while insuring that the air quality goals made possible by the development of trap technology will not be compromised.

NRDC expressed substantial concern regarding the provision that allows particulate averaging. MECA stated that it is inappropriate to allow averaging for the 1991 and later model years.

However, the allowance of averaging was a basic premise in EPA's development and evaluation of the reasonableness of the 0.13 g/mi standard. Specifically, EPA arrived at the 0.13 g/mi particulate standard assuming that 60 percent of the vehicles would use the trap technology. This assumption was appropriate since EPA's goal was to arrive at a standard equivalent to the 0.10 g/BHP hour HDE standards for which EPA had also assumed that 90 percent of vehicles would use traps. If EPA had assumed that averaging would not be made available for this particulate standard, EPA would have arrived at a somewhat higher emission standard than that being promulgated. Even with the use of averaging, manufacturers are still required to meet a substantially reduced particulate emission level beginning in the 1991 model year that significantly reduces particulate matter emissions from the LDDT2 vehicle class.

f. Nonconformance Penalty

Converter Technology argued that NCPs should not be made available because it may provide manufacturers with a more attractive alternative than developing and incorporating the required technology for production. It believes that the penalty formula is not adequate to provide enough incentive for manufacturers to finance new technology. As required by section 206(g)(3) of the Clean Air Act, 42 U.S.C. 7525(g), EPA designed NCPs to remove any competitive disadvantage to conforming manufacturers. The Agency established the NCP penalty formula in a prior rulemaking (50 FR 53454) and adheres to this formula for the reasons described below. The actual values for the penalties will be established in a separate rulemaking.

1. Availability

Because of the 0.13 g/mi particulate standard for 1991 and later model year LDDT2s is technology-forcing, EPA is making NCPs available for vehicles in the 6,001 to 8,500 pound GVWR category that fail to comply with the 1991 model year particulate emission standard.

EPA promulgated regulations governing the availability of NCPs in two parts. The Phase I NCP rulemaking (50 FR 35374, August 30, 1985) established generic criteria for determining the emission standards for which NCPs will be offered, generic criteria for establishing an upper limit (an emission level above which heavy-duty vehicles or engines cannot be certified or introduced into commerce), and the penalty rate formula for determining the NCP payment. The Phase II NCP rulemaking (50 FR 53454, December 31, 1985) established specific emission standards for which NCPs were made available, the upper limits for those standards, and numerical values for the variables in the penalty rate formula for particular subclasses of engines and trucks. Among those standards for which NCPs were made available is the 1987 0.20 g/mi particulate standard applicable to LDDTs which are also heavy-duty vehicles (HDVs), i.e., those LDDTs having a GVWR between 6,001 and 8,500 pounds. Only the heavier portion of the LDDT2 class are also HDVs, because a vehicle which exceeds 3750 pounds LVW does not necessarily exceed 6000 pounds GVWR. *See* section II, above.

Because this final rule changes the 1987 and later model year particulate standard for LDDTs, NCP availability, upper limits and penalty rate values were reassessed for the 1987 and later heavy LDDT2s.

The Phase I NCP rulemaking established three "generic" criteria for determining the emission standards for which NCPs will be offered: the emission standard in question must become significantly more difficult to meet; substantial work must be required for compliance with the standard; and EPA must determine that a technological laggard is likely to develop. A technological laggard is a manufacturer which cannot meet the particular emission standard due to technological (not economic) difficulties and which consequently might be forced out of the marketplace.

This rulemaking relaxes the LDDT particulate standards now applicable to 1987 through 1990 MY LDDT2s. Thus, the regulations making available NCPs for the 0.20 g/mi standard are rescinded. The interim standards are not significantly more difficult to meet than the 1986 standard of 0.60 g/mi, substantial work to meet them is not required, and no technological laggard is likely. GM, in its amended petition, has indicated to EPA that its 6.2L engine family can meet these standards using technology currently available for production LDDTs, and EPA believes the same would be true for any other heavy LDDT2s in the market. Thus, NCPs are not available for the 1987 to 1990 model years LDDT2s.

This rulemaking establishes a 1991 and later model year LDDT2 particulate standard of 0.13 g/mi. This standard is significantly more difficult to meet than the previous 1987 and later model year standard of 0.20 g/mi, for which NCPs had been made available. It requires advanced technology that is not yet perfected, and thus, a technological laggard may well develop. Accordingly, EPA believes it is appropriate to offer an NCP for the 1991 and later model year 0.13 g/mi particulate standard for heavy LDDT2s. However, NCPs are not available for LDDT2s which are not also HDVs (i.e., NCPs are not available for vehicles with 8,000 lbs. or less GVWR).

As noted above, an upper limit is an emission level above which HDVs or HDEs cannot be certified or introduced into commerce, despite the availability of NCPs. Where there is a previously applicable emission standard, that standard serves as the upper limit.

In the case of the 1991 and later model year LDDT2 particulate standard of 0.13 g/mi, the revised 1990 LDDT2 particulate standard of 0.45 g/mi is the previous applicable emission standard, and thus, is the 1991 upper limit.

2. Penalty Rates for 1991 LDDT2 Particulate Standard

EPA has not established penalty rates or NCP cost data for this rule. The cost values for "heavy" LDDT2s subject to the 1991 and subsequent model year LDDT2 particulate standard of 0.13 g/mi will be proposed and established in a subsequent and separate rulemaking. This will allow the Agency to collect and analyze more recent information.

IV. Impacts of the Final Rule

A. Environmental Impact

EPA analysis shows that establishment of a 0.13 g/mi standard beginning in 1991 should create important environmental benefits by causing a long-term net decrease in diesel particulate emissions and thus reducing the hazards associated with diesel particulate matter.

In the short run, the impact of the temporary relaxation of the particulate standards applicable to LDDT2s will be insignificant because of the small number of vehicles in this market. By far the greater proportion of LDTs are gasoline-fueled. Diesels currently compose only 6 percent of the LDT fleet. The small short-term negative effect will in time be reduced by the implementation of the more stringent particulate emissions standards beginning in the 1991 model year. EPA estimates that cumulative LDDT2 particulate emissions resulting from relaxing, then later tightening, the standard will reach the "break-even" point in the mid-to late 1990s. The "break-even" point is the point at which the cumulative emissions average, under the amended standards, results in the emissions level that would have been expected to occur had the standard remained 0.26 g/mi throughout. EPA expects net reductions to occur once the "break-even" point is surpassed, with the magnitude of the reduction depending on the amount of diesel sales penetration of the LDT market. (*See* No. IIA–B–1.) This scenario assumes moderate growth in all LDT sales. As mentioned previously, this emission benefit may be greater if the particulate trap technology developed for LDDT2s is transferable to lighter vehicle classes, and EPA sets more stringent standards for those classes. If all LDDT2s comply with the 0.13 g/mi standard beginning in 1991, it will create a net particulate emissions reduction of as much as 24,746 tons by the year 2000, a reduction of more than 25 percent compared to the base case of a 0.26 g/mi standard for all LDDT2s starting in 1987. (*See*, No. IIA–B–1.)

B. Economic Impact

To determine the economic impact of the 0.13 g/mi particulate standard, EPA looks to a preliminary analysis performed for estimating the NCP associated with the 0.13 g/mi particulate standard for 1991 and later model year heavy LDDT2s. This analysis shows that the cost to manufacturers and owners of achieving compliance with the 0.13 g/mi particulate standard, is about $487 per vehicle. In its petition, GM has estimated that it will spend $50 million on engineering to develop an emissions control system to bring its 6.2L engine family LDDT2s into compliance with the 0.13 g/mi particulate standard by 1991. EPA estimates the average cost to manufacturers to be $10 million per year.

The fact that GM proposed the 0.13 g/mi strategy raises a strong presumption that the resulting net reduction in particulate emissions will not be purchased at an unreasonable cost. Confidential business information on file with EPA's Certification Division shows that the GM 6.2L vehicles composed the bulk of the LDDT2 market for 1986 and 1987 and are the only vehicles being sold in the LDDT2 category for the 1988 model year. As far as the Agency is aware, GM may be the only manufacturer who will be significantly affected by the change to the 0.13 g/mi standard in 1991. The Agency received no comments addressing the economic impact of this rulemaking on any other motor vehicle manufacturers, owners, or other interested parties.

Administrative Designation

Under Executive Order 12291, EPA must judge whether a regulation is "major," and therefore subject to the requirement of a Regulatory Impact Analysis. This proposed regulation is not major because it will have an economic impact of less than $100 million per year, and will not have significant adverse effects on competition, productivity, investment, employment or innovation.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any written comments from OMB to EPA and any EPA response to those comments are available for public inspection in the docket cited at the beginning of this preamble.

Effect on Small Entities

Section 605 of the Regulatory Flexibility Act, 5 U.S.C. 605, requires that the Administrator certify that regulations do not have a significant impact on a substantial number of small entities. I certify that this regulation does not have impact on a substantial number of small entities. Few, if any, small entities market LDDT2s.

List of Subjects in 40 CFR Part 86

Administrative practice and procedures, Air Pollution Control, Gasoline, Motor Vehicles, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Authority: Sections 202, 203, 207, 208, 215, and 301(b) of the Clean Air Act, as amended; 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550 and 7601(a).

Dated: October 21, 1988.

John A. Moore,

Acting Administrator.

TABLE OF CHANGES

Section	Change	Reason
1. Part 86, authority	Add cites	Clarification.
2. section 86.087–2	Add paragraph to define "Composite particulate standard." Add paragraph to define "Production weighted average".	Clarification.
3. Section 86.087–9:		
(a)(1)(iv)	Amend paragraph to reflect change in standard for LDDT2; revise averaging of vehicle emissions.	This is a new requirement.
(d)(1)(iv)	Amend paragraph to denote LDDT1 only	Remove LDDT2 high-altitude particulate standard.
4. Section 86.088–9:		
(a)(1)(iv)	Amend paragraph to reflect change in standard for LDDT2; revise averaging of vehicle emissions.	This is a new requirement.
(d)(1)(iv)	Amend paragraph to denote LDDT1 only	Remove LDDT2 high-altitude particulate standard.
5. Section 86.091–9	Add language to define 1991 model year LDT emission standards; define averaging of vehicle emissions.	Incorporate a new requirement of LDDT2 particulate emissions at all altitudes.
6. 86.1105–87:		
(a)	Removed and Reserved.	Remove requirement.
(c)	Allow NCP for 1991 LDDT2 particulate standard for Heavy-Duty Engines.	New requirement.

For the reasons set forth in the preamble, Part 86, Subparts A and I, Chapter I of Title 40, Code of Federal Regulations, is amended as follows:

PART 86—[AMENDED]

1. The authority citation for Part 86 is revised to read as follows:

Authority: Secs. 202, 203, 206, 207, 208, 215, and 301(a) of the Clean Air Act, as amended, 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, 7601(a).

2. A new § 86.087–2 of Subpart A is added to read as follows:

§ 86.087–2 Definitions.

"Composite particulate standard" for a manufacturer which elects to average diesel light-duty vehicles and diesel light-duty trucks with a loaded vehicle weight equal to or less than 3,750 lbs (LDDT1s) together in the particulate averaging program, means that standard calculated according to the following equation and rounded to the nearest hundredth gram per mile:

$$\frac{(PROD_{LDV})(STD_{LDV})+(PROD_{LDDT})(STD_{LDDT})}{(PROD_{LDV})+(PROD_{LDDT})} = \text{Manufacturer composite particulate standard}$$

Where:

$PROD_{LDV}$ represents the manufacturer's total light-duty vehicle production for those engine families being included in the average for a given model year.

STD_{LDV} represents the light-duty vehicle particulate standard.

$PROD_{LDDT}$ represents the manufacturer's total diesel light-duty truck production for those engine families with a loaded vehicle weight equal to or less than 3,750 lbs which are being included in the average for a given model year.

STD_{LDDT} represents the light-duty truck particulate standard for diesel light-duty trucks with a loaded vehicle weight equal to or less than 3,750 lbs.

"Production-weighted average" means the manufacturer's production-weighted average particulate emission level, for certification purposes, of all of its diesel engine families included in the particulate averaging program. It is calculated at the end of the model year by multiplying each family particulate emission limit by its respective production, summing these terms, and dividing the sum by the total production of the affected families. Those vehicles produced for sale in California or at high altitude shall each be averaged separately from those produced for sale in any other area. Diesel light-duty trucks with a loaded vehicle weight equal to or greater than 3,751 lbs (LDDT2s) shall only be averaged with other diesel light-duty trucks with a loaded vehicle weight equal to or greater than 3,751 lbs produced by that manufacturer.

3. Section 86.087–9 of Subpart A, is amended by revising paragraph (a)(1)(iv) and adding paragraph (d)(1)(iv), to read as follows:

§ 86.087–9 Emission standards for 1987 and later model year light-duty trucks.

(a)(1) * * *

(iv) *Particulate emissions* (diesels only).

(A) For light-duty trucks up to and including 3,750 lbs loaded vehicle weight, 0.26 grams per vehicle mile (0.16 grams per vehicle kilometer).

(B) For light-duty trucks 3,751 lbs and greater loaded vehicle weight, 0.59 grams per vehicle mile (0.31 grams per vehicle kilometer).

(C) A manufacturer may elect to include all or some of its light-duty truck engine families subject to the standard of paragraph (a)(1)(iv)(A) of this section in the particulate averaging program, provided that trucks produced for sale in California or in designated high-altitude areas may be averaged only within each of those areas. If the manufacturer elects to average together particulate emissions of light-duty trucks subject to the standard of paragraph (a)(1)(iv)(A) of this section with the particulate emissions of diesel light-duty vehicles, its composite particulate standard applies to the combined fleets of those light-duty trucks and diesel light-duty vehicles included in the average and is calculated as defined in § 86.085–2.

* * * * *

(d)(1) * * *

(iv) *Particulate emissions* (diesels only). For light-duty trucks up to and including 3,750 lbs. loaded vehicle weight, 0.26 grams per vehicle mile (0.16 grams per vehicle kilometer).

4. Section 86.088–9 of Subpart A, is amended by revising paragraphs (a)(1)(iv) and (d)(1)(iv), to read as follows:

§ 86.088–9 Emission standards for 1988 and later model year light-duty trucks.

(a)(1) * * *

(iv) *Particulate emissions* (diesels only).

(A) For light-duty trucks up to and including 3,750 lbs loaded vehicle weight, 0.26 grams per vehicle mile (0.16 grams per vehicle kilometer).

(B) For light-duty trucks 3,751 lbs and greater loaded vehicle weight, 0.45 grams per vehicle mile (0.28 grams per vehicle kilometer).

(C) A manufacturer may elect to include all or some of its light-duty truck engine families subject to the standard of paragraph (a)(1)(iv)(A) of this section in the particulate averaging program, provided that trucks produced for sale in California or in designated high-altitude areas may be averaged only within each of those areas. Diesel and gasoline-fueled engine families may not be averaged together. If the manufacturer elects to average together particulate emissions of light-duty trucks subject to the standard of paragraph (a)(1)(iv)(A) of this section with the particulate emissions of diesel light-duty vehicles, its composite particulate standard applies to the combined fleets of those light-duty trucks and diesel light-duty vehicles included in the average and is calculated as defined in § 86.085–2.

* * * * *

(d)(1) * * *

(iv) *Particulate emissions* (diesels only). For light-duty trucks up to and including 3,750 lbs loaded vehicle weight, 0.26 gram per vehicle kilometer).

5. A new § 86.091–9 is to be added, to read as follows:

§ 86.091–9 Emission standards for 1991 and later model year light-duty trucks.

(a)(1) The standards set forth in paragraphs (a) through (c) of this section shall apply to light-duty trucks sold for principal use at other than a designated high-altitude location. Exhaust emissions from 1991 and later model year light-duty trucks shall not exceed:

(i) *Hydrocarbons.* 0.8 grams per vehicle mile (0.5 grams per vehicle kilometer).

(ii) *Carbon monoxide.* (A) 10 grams per vehicle mile (6.2 grams per vehicle kilometer).

(B) 0.50 percent of exhaust gas flow at curb idle (gasoline-fueled light-duty trucks only).

(iii) *Oxides of nitrogen.* (A) For light-duty trucks up to and including 3,750 lbs loaded vehicle weight, 0.26 grams per vehicle mile (0.16 gram per vehicle kilometer).

(B) For light-duty trucks 3,751 lbs and greater loaded vehicle weight, 1.2 grams per vehicle mile (0.75 grams per vehicle kilometer).

(C) A manufacturer may elect to include all or some of its light-duty truck engine families in the NO_x averaging program, provided that trucks produced for sale in California or in designated high-altitude areas may be averaged only within each of those areas. Diesel and gasoline-fueled engine families may not be averaged together. If the manufacturer elects to average together NO_x emissions of light-duty trucks subject to the standards of paragraphs (a)(1)(iii)(A) and (a)(1)(iii)(B) of this section, its composite NO_x standard applies to the combined fleets of light-duty trucks up to and including, and over, 3,750 lbs loaded vehicle weight included in the average and is calculated as defined in § 86.085–2.

(iv) *Particulate emissions* (diesels only). (A) For light-duty trucks up to and including 3,750 lbs loaded vehicle weight, 0.26 grams per vehicle mile (0.16 grams per vehicle kilometer).

(B) For light-duty trucks 3,751 lbs and greater loaded vehicle weight, 0.13 grams per vehicle mile (0.08 grams per vehicle kilometer).

(C) A manufacturer may elect to include all or some of its light-duty truck engine families in the particulate averaging program, provided that trucks produced for sale in California or in designated high-altitude areas may be averaged only within each of those areas, and that light-duty trucks subject to the standard of paragraph (a)(1)(iv)(B) of this section may be averaged only with other light-duty trucks subject to the standard of paragraph (a)(1)(iv)(B) of this section. If the manufacturer elects to average together particulate emissions of light-duty trucks subject to the standard of paragraph (a)(1)(iv)(A) of this section with the particulate emissions of diesel light-duty vehicles, its composite particulate standard applies to the combined fleets of those light-duty trucks and diesel light-duty vehicles included in the average and is calculated as defined in § 86.085–2.

(2) The standards set forth in paragraphs (a)(1)(i), (a)(1)(ii)(A), (a)(1)(iii), and (a)(1)(iv) of this section refer to the exhaust emitted over a driving schedule as set forth in Subpart B of this part and measured and calculated in accordance with those procedures. The standard set forth in paragraph (a)(1)(ii)(B) of this section refers to the exhaust emitted at curb idle and measured and calculated in accordance with the procedures set forth in Subpart P of this part.

(b)(1) Fuel evaporative emissions from 1991 and later model year gasoline-fueled light-duty trucks shall not exceed:

(i) *Hydrocarbons.* 2.0 grams per test.

(2) The standard set forth in paragraph (b)(1) of this section refers to a composite sample of the fuel evaporative emissions collected under the conditions set forth in Subpart B of this part and measured in accordance with those procedures.

(c) No crankcase emissions shall be discharged into the ambient atmosphere from any 1991 and later model year light-duty truck.

(d)(1) Model year 1991 and later light-duty trucks sold for principal use at a designated high-altitude location shall be capable of meeting the following exhaust emission standards when tested under high-altitude conditions:

(i) *Hydrocarbons.* 1.0 grams per vehicle mile (0.62 grams per vehicle kilometer).

(ii) *Carbon monoxide.* (A) 14 grams per vehicle mile (8.7 grams per vehicle kilometer).

(B) 0.50 percent of exhaust gas flow at curb idle (gasoline-fueled light-duty trucks only).

(iii) *Oxides of nitrogen.* (A) For light-duty trucks up to and including 3,750 lbs loaded vehicle weight, 1.2 grams per vehicle mile (0.75 grams per vehicle kilometer).

(B) For light-duty trucks 3,751 lbs and greater loaded vehicle weight, 1.7 grams per vehicle mile (1.1 grams per vehicle kilometer).

(iv) *Particulate emissions* (diesels only).

(A) For light-duty trucks up to and including 3,750 lbs loaded vehicle weight, 0.26 grams per vehicle mile (0.16 grams per vehicle kilometer).

(B) For light-duty trucks 3,751 lbs and greater loaded vehicle weight, 0.13 grams per vehicle mile (0.08 grams per vehicle kilometer).

(2) The standards set forth in paragraphs (d)(1)(i), (d)(1)(ii)(A), (d)(1)(iii), and (d)(1)(iv) of this section refer to the exhaust emitted over a driving schedule as set forth in Subpart B of this part and measured and calculated in accordance with those procedures. The standard set forth in paragraph (d)(1)(ii)(B) of this section refers to the exhaust emitted at curb idle and measured and calculated in accordance with the procedures set forth in Subpart P of this part.

(e)(1) Fuel evaporative emissions from 1991 and later model year gasoline-fueled light-duty trucks sold for principal use at a designated high-altitude location shall not exceed 2.6 grams per test when tested under high altitude conditions.

(2) The standard set forth in paragraph (e)(1) of this section refers to a composite sample of the fuel evaporative emissions collected under the conditions set forth in Subpart B of this part and measured in accordance with those procedures.

(f) No crankcase emissions shall be discharged into the ambient atmosphere from any 1991 and later model year light-duty trucks sold for principal use at a designated high-altitude location.

(g)(1) Any light-duty truck that a manufacturer wishes to certify for sale at low altitude must be capable of meeting high-altitude emission standards (specified in paragraphs (d) through (f) of this section). The manufacturer may specify vehicle adjustments or modifications to allow the vehicle to meet high-altitude standards but these adjustments or modifications may not alter the vehicle's basic engine, inertia weight class, transmission configuration, and axle ratio.

(i) A manufacturer may certify unique configurations to meet the high-altitude standards but is not required to certify these vehicle configurations to meet the low-altitude standards.

(ii) Any adjustments or modifications that are recommended to be performed on vehicles to satisfy the requirements of paragraph (g)(1) of this section:

(A) Shall be capable of being effectively performed by commercial repair facilities, and

(B) Must be included in the manufacturer's application for certification.

(2) The manufacturer may exempt 1985 and later model year vehicles from compliance with the high-altitude emission standards set forth in paragraphs (d) and (e) of this section if the vehicles are not intended for sale at high altitude and if the following requirements are met. A vehicle configuration shall only be considered eligible for exemption if the requirements of either paragraph (g)(2)(i), (ii), (iii), or (iv) of this section are met.

(i) Its design parameters (displacement-to-weight ratio (D/W) and engine speed-to-vehicle-speed ratio (N/V)) fall within the exempted range for that manufacturer for that year. The exempted range is determined according to the following procedure:

(A) The manufacturer shall graphically display the D/W and N/V data of all vehicle configurations it will offer for the model year in question. The axis of the abscissa shall be D/W (where (D) is the engine displacement expressed in cubic centimeters and (W) is the gross vehicle weight (GVW) expressed in pounds), and the axis of the ordinate shall be N/V (where (N) is the crankshaft speed expressed in revolutions per minute and (V) is the vehicle speed expressed in miles per hour). At the manufacturer's option, either the 1:1 transmission gear ratio or the lowest numerical gear ratio available in the transmission will be used to determine N/V. The gear selection must be the same for all N/V data points on the manufacturer's graph. For each transmission/axle ratio combination, only the lowest N/V value shall be used in the graphical display.

(B) The product line is then defined by the equation, $N/V = C(D/W)^{-0.9}$ where the constant, C, is determined by the requirement that all the vehicle data points either fall on the line or lie to the upper right of the line as displayed on the graphs.

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(C) The exemption line is then defined by the equation, $N/V=C(0.84\ D/W)^{-0.5}$ where the constant, C, is the same as that found in paragraph (g)(2)(i)(B) of this section.

(D) The exempted range includes all values of N/V and D/W which simultaneously fall to the lower left of the exemption line as drawn on the graph.

(ii) Its design parameters fall within the alternate exempted range for that manufacturer that year. The alternate exempted range is determined by substituting rated horsepower (hp) for displacement (D) in the exemption procedure described in paragraph (g)(2)(i) of this section and by using the product line $N/V=C(hp/W)^{-0.5}$.

(A) Rated horsepower shall be determined by using the Society of Automotive Engineers Test Procedure J 1349, or any subsequent version of that test procedure. Any of the horsepower determinants within that test procedure may be used, as long as it is used consistently throughout the manufacturer's product line in any model year.

(B) No exemptions will be allowed under paragraph (g)(2)(ii) of this section to any manufacturer that has exempted vehicle configurations as set forth in paragraph (g)(2)(i) of this section.

(iii) Its acceleration time (the time it takes a vehicle to accelerate from 0 to a speed not less than 40 miles per hour and not greater than 50 miles per hour) under high-altitude conditions is greater than the largest acceleration time under low-altitude conditions for that manufacturer for that year. The procedure to be followed in making this determination is:

(A) The manufacturer shall list the vehicle configuration and acceleration time under low-altitude conditions of that vehicle configuration which has the highest acceleration time under low-altitude conditions of all the vehicle configurations it will offer for the model year in question. The manufacturer shall also submit a description of the methodology used to make this determination.

(B) The manufacturer shall then list the vehicle configurations and acceleration times under high-altitude conditions of all those vehicles configurations which have higher acceleration times under high-altitude conditions than the highest acceleration time at low altitude identified in paragraph (g)(2)(iii)(A) of this section.

(iv) In lieu of performing the test procedure of paragraph (g)(2)(iii) of this section, its acceleration time can be estimated based on the manufacturer's engineering evaluation, in accordance with good engineering practice, to meet the exemption criteria of paragraph (g)(2)(iii) of this section.

(3) The sale of a vehicle for principal use at a designated high-altitude location that has been exempted as set forth in paragraph (g)(2) of this section will be considered a violation of section 203(a)(1) of the Clean Air Act.

Subpart L—[Amended]

6. Section 86.1105–87 of Subpart L is amended by removing and reserving paragraph (a), redesignating paragraph (c) as paragraph (d), and adding a new paragraph (c), to read as follows:

§ 86.1105–87 Emission standards for which nonconformance penalties are available.

(a) [Reserved]

* * * * *

(c) Effective in the 1991 model year, NCPs will be available for the following emission standards: (1) Diesel light-duty truck (rated in excess of 6,000 pounds GVWR) particulate emission standard of 0.13 grams per vehicle mile.

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[FR Doc. 88-24883 Filed 10-28-88; 8:45 am]

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40 CFR Parts 261 and 302

[FRL-3485-7]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Removal of Iron Dextran from the List of Hazardous Wastes

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is amending its regulations under the Resource Conservation and Recovery Act (RCRA) to remove iron dextran (ferric dextran) (CAS No. 9004–66–4) from § 261.33, the list of commercial chemical products which are hazardous wastes when discarded or intended to be discarded; and to remove iron dextran from Appendix VIII of Part 261, the list of RCRA hazardous constituents. EPA also is removing iron dextran from the list of hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). EPA is taking this action because iron dextran, when improperly treated, stored, transported, disposed of, or otherwise managed, is not capable of posing a substantial present or potential hazard to human health or the environment.

DATE: This regulation becomes effective on October 31, 1988.

ADDRESSES: The Office of Solid Waste (OSW) docket is located in the sub-basement at 401 M Street, SW., Washington, DC 20460, and is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials by calling (202) 475–9327. Refer to "Docket number F–88–IDEP–FFFFF" when making appointments to review any background documents for this rulemaking. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost; additional copies cost $0.20 per page.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at (800) 424–9346 or at (202) 382–3000. For technical information contact Denny Cruz, Office of Solid Waste (SW–332), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382–4802.

SUPPLEMENTARY INFORMATION:

I. Background

On November 8, 1985, EPA proposed to amend its regulations under RCRA to remove iron dextran from 40 CFR 261.33, the list of commercial chemical products which are hazardous wastes when discarded or intended to be discarded; and to remove iron dextran from Appendix VIII of Part 261, the list of RCRA hazardous constituents (50 FR 46468). EPA also proposed to remove iron dextran from the CERCLA list of hazardous substances. This proposal responded to an August 9, 1983, petition submitted by Pfizer Corporation pursuant to § 260.20 to delist iron dextran.

The Agency originally listed iron dextran in 40 CFR 261.33(f) (EPA Hazardous Waste No. U139) and Appendix VIII based upon the listing criteria in 40 CFR 261.11(a)(3)(i)–(xi) and the Agency's Carcinogen Assessment Group (CAG) assessment that iron dextran exhibited sufficient evidence of carcinogenicity. Iron dextran has been designated as a Class B2 carcinogen by CAG according to EPA's Guidelines for Carcinogen Risk Assessment (51 FR 33992) based upon sufficient evidence of carcinogenicity in animals, but inadequate data in humans. A further review of the evidence for the carcinogenicity dextran reveals that it is limited to studies in which iron dextran was given to experimental animals by subcutaneous or intramuscular injection;

in addition, there is no evidence that iron dextran is carcinogenic when orally or otherwise administered. Furthermore, the large size of the iron dextran complex (molecular weight approximately 180,000) [1] prevents its absorption by the oral, dermal, or inhalation routes. In fact, dextran, to which the iron is complexed, is a large polysaccharide (molecular weight 40,000—75,000) that is commonly used parenterally (nonintestinally) as a plasma expander. By definition, plasma expanders have an osmotic pressure comparable to plasma, preventing them from crossing membrane barriers, and thereby effectively prohibiting their absorption from the circulatory system.[2] Since they cannot cross membrane barriers, they cannot be absorbed by the oral, dermal, or inhalation routes. Iron dextran is much larger than dextran; thus, it too will not be absorbed. Therefore, EPA now concludes that iron dextran, when discarded, does not pose a significant hazard to human health or the environment because iron dextran, due to its size, stability, and osmotic pressure, is not absorbed by the oral, dermal, or inhalation routes, and exposure via subcutaneous or intramuscular injection at levels of concern is not a likely mismanagement scenario. Accordingly, iron dextran also does not meet the standard for listing a hazardous constituent on Appendix VIII of Part 261 set forth at § 261.11(a). That section provides for listing in Appendix VIII only if a constituent has been shown in scientific studies to have toxic, carcinogenic, mutagenic, or teratogenic effects on human or other life forms. Applying this standard in the context of Subtitle C, that is, to protect human health and the environment from the risks of improper hazardous waste management, EPA concludes that the available scientific studies, which address carcinogenic effects of subcutaneous injection of iron dextran, when viewed in light of the lack of absorption of iron dextran via oral, dermal, and inhalation routes, do not demonstrate carcinogenic effects as a result of a plausible mismanagement scenario. Similarly, iron dextran also does not meet the standard for listing of a hazardous waste set forth at § 261.11(a)(3). Again, because iron dextran cannot be absorbed by the oral, dermal, or inhalation routes, it is not "capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed."

II. Response to Comments

EPA received comments from the Natural Resources Defense Council (NRDC) in response to the proposed rulemaking. The NRDC presented the following arguments: (1) Sufficient evidence exists of carcinogenicity in experimental animals by the injection route indicating the potential to cause tumors by other routes of exposure including ingestion, (2) suggestive evidence exists in rodents that iron dextran can induce tumors at distal sites, and (3) there are case reports in the literature of injection site tumors in humans. These arguments are discussed below in more detail.

1. The commenter states that "the sufficient evidence of carcinogenicity in experimental animals by the injection route indicates the potential to cause tumors by other routes of exposure, including ingestion." The commenter states that iron dextran has not been adequately tested by other routes of administration and that in the absence of such data, "a prudent approach is to assume that iron dextran is potentially carcinogenic in humans by the oral or inhalation routes." In support of this, the commenter cites an analysis of the literature that found that of 102 chemicals reviewed, only 8.7% that were positive for carcinogenicity by a subcutaneous route were negative when tested by other routes.

The Agency agrees that other routes are potential pathways for carcinogenicity if one route has shown to be carcinogenic. However, iron dextran, because of its size, stability and osmotic pressure is unlikely to be absorbed by any route of exposure other than subcutaneous or intramuscular injection. Accordingly, it could not pose a significant hazard to human health or the environment through these other routes of exposure.

2. The commenter states "there is, in fact, some suggestive evidence in rodents that iron dextran can induce tumors at distal sites." The commenter cites, in support of this contention, one subcutaneous injection study in rats where distal tumors were elevated by 6.3% over a control incidence of 7.2% in one of four treatment groups.

The Agency has reviewed these data and does not deem this positive evidence. The increased incidence was not dose-related, it was only seen in one group, and was not statistically significant. We concluded, therefore, that the incidence of distal tumors found in this study does not provide positive evidence of carcinogenicity.

3. The commenter cites another study in mice that discussed the possibility that iron dextran may act as a co-carcinogenic factor in the case of lymphoreticular neoplasms, increasing host susceptibility to the oncogenic virus possibly present in both test and control animals.

The Agency does not believe that this study provides conclusive evidence of carcinogenic effects; rather the Agency regards such evidence as speculation. Therefore, this suggestive result is not a significant toxic effect.

4. The commenter claims "further evidence of iron dextran's carcinogenicity is provided by very recent experiments in which iron dextran was injected in mice implanted with L1210 cell line inoculates. In these experiments, the L1210 cell line acted as a potential tumor analogue. Iron dextran not only accelerated proliferation of the L1210 cells, but also significantly increased the lethality of these cells. This provided further evidence that iron overload is carcinogenic not only at the site of entry but systemically as well."

The Agency agrees that iron overload is correlated with carcinogenicity. The studies cited by the commenter presented evidence of a high incidence of lung cancer in hematite (iron ore) miners, hepatomas in gold miners due to the excessive oral ingestion of iron-contaminated beer, and gastric cancer in people with occupations exposed to iron dust, all associated with hemochromatosis, a disorder of iron metabolism. However, the EPA does not believe that the above-cited studies provide evidence of iron dextran-induced iron overload because iron dextran cannot be absorbed by any route other than subcutaneous, nor is there evidence that subcutaneous exposure will result in concentrations of iron dextran high enough to induce iron overload-associated cancer at distal sites.

5. The commenter states "there have been a number of case reports in the literature of tumors at the injection site in humans." Specifically, the commenter cites eight cases of sarcomas that have followed intramuscular injection of iron compounds.

The Agency believes that these studies are of questionable value. All of the studies involved tumors or lesions at the site of injection. The Agency promulgated a policy on September 24, 1986, on how to deal with tumors at the site of injection in the *Guidelines for Carcinogen Risk Assessment* (51 FR 33992). These guidelines state that

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[1] Lundin, P.M. 1961. The carcinogenic action of complex iron preparations. *Brit. J. Cancer* 15:838.

[2] Goodman L.S. and A. Gilman, eds. 1975. *The Pharmacological Basis of Therapeutics*. 5th ed. MacMillan Publishing Co., Inc. New York, NY.

tumors at the site of injection alone are "limited" evidence of the carcinogenicity of a compound. Furthermore, three of the studies involved the injection of jectofer, an iron sorbitol and citric acid complex, rather than iron dextran, and therefore any conclusion drawn from these studies about the carcinogenicity of iron dextran is questionable.

In summary, the Agency is issuing a final rule to remove iron dextran from the list of hazardous wastes on the grounds that, because of its size, it does not present a carcinogenic risk to humans by any route of exposure other than possible subcutaneous. Exposure via subcutaneous or intramuscular exposure at levels of concern, however, is not a plausible mismangement scenario. Multiple doses of milliliter quantities of iron dextran need to be injected into the system to possibly cause a detrimental effect. This is a highly unlikely mismanagement scenario. There are no other known reasons to list iron dextran.

Iron dextran is not absorbed by oral, dermal, or inhalation routes. It is a drug that is regulated by the Food and Drug Administration for non-intestinal use only. All of the animal and human data cited by the commenter as supportive evidence of systemic carcinogenicity have been reviewed by the Agency, and are regarded as being inadequate, inconclusive, or speculative.

III. Relationship to Other Regulatory Authorities

Whenever a hazardous waste or waste stream is listed under section 3001 of RCRA, it is co-listed as a hazardous substance under the statutory provisions of section 101(14) of CERCLA. The Agency, in its April 4, 1985, final rule on nonification requirements and reportable quantity (RQ) adjustments, noted that iron dextran, along with numerous other elements, compounds, mixtures, solutions, and hazardous wastes, was designated as a hazardous substance under section 102(a) of CERCLA. (See 50 FR 13456.)

In addition to amending the RCRA regulations to remove iron dextran from 40 CFR 261.33(f) and 40 CFR Part 261, Appendix VIII, the Agency is today removing iron dextran from the CERCLA section 102(a) list of hazardous substances. As a result of the removal of iron dextran from the § 261.33(f) and Part 261 Appendix VIII lists, the Agency has no basis upon which to retain iron dextran on the CERCLA section 102(a) list of hazardous substances. The Agency's designation of iron dextran under section 102(a) was based solely upon its inclusion as a hazardous substance under section 101(14) of CERCLA. The Agency has previously stated that when hazardous substances are added to or removed from the lists which comprise the CERCLA section 101(14) list of hazardous substances, corresponding changes will be made simultaneously both to the list of hazardous substances in section 101(14) and the list of CERCLA hazardous substances designated under section 102(a) and published in 40 CFR Table 302.4. (See 48 FR 23552, 23554 (May 25, 1983 proposed rule); Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102 (Volume 1, March 1985) at RS–4.)

Although iron dextran is today being removed from the CERCLA § 102(a) list, wastes containing iron dextran may, in certain circumstances, be hazardous substances under section 102(a). Wastes containing iron dextran which exhibit any of the hazardous characteristics identified in 40 CFR 261.20 through 261.40, are CERCLA hazardous substances under section 101(14) and are designated as section 102(a) CERCLA hazardous substances. All unlisted hazardous substances have a reportable quantity of 100 pounds under 40 CFR 302.5(b).

IV. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 7003 and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State which the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in non-authorized States. EPA is directed to implement those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized States in the interim.

B. Effect on State Authorizations

Today's rule promulgates regulations that are not effective in authorized States since the regulations are not being imposed pursuant to the Hazardous and Solid Waste Amendments of 1984. Thus, the regulations will be applicable only in those States that do not have interim or final authorization. In authorized States, the regulations will not be applicable until the State revises its program to adopt equivalent regulations under State law.

40 CFR 271.21(e)(2) requires that States that have final authorization must modify their programs to include equivalent regulations within a year of promulgation of these regulations if only regulatory changes are necessary, or within two years of promulgation if statutory changes are necessary. These deadlines can be extended in exceptional cases (40 CFR 271.21(e)(3)). Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

It should be noted that authorized States are only required to modify their programs when EPA promulgates Federal regulations that are more stringent or broader in scope than the existing Federal regulations. For those Federal program changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs. This is a result of section 3009 of RCRA, which allows States to impose regulations in addition to those in the Federal program. The regulations promulgated today at §§ 261.33(f) and 302.4 are considered to reduce the scope of the existing Federal regulations. Therefore, authorized States are not required to modify their programs to adopt regulations equivalent or substantially equivalent to the provisions listed above.

V. Effective Date

This rule is effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six month period to come into compliance. This is the case here since this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on the petitioner by an effective date six months after promulgation and the fact that such a deadline is not necessary to achieve the purpose of section 3010, this rule is effective immediately.

VI. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This rule reduces the regulatory requirements applicable to the regulated community. It is not major because it would not result in an effect on the economy of $100 million or more, nor would it result in a major increase in costs or prices to individual industries, consumers, Federal, State or local government agencies, or geographic regions. Finally, there would be no adverse impact on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, this amendment is not a major regulation, and no Regulatory Impact Analysis has been conducted.

This amendment was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

VII. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking, for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small business, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have a significant economic impact on small entities since it reduces regulatory requirements. Moreover, relatively few small entities dispose of iron dextran. Accordingly, I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VIII. Paperwork Reduction Act

This final rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects

40 CFR Part 261

Hazardous wastes, Recycling.

40 CFR Part 302

Air pollution control, Chemicals, Hazardous materials, Hazardous substance, Hazardous wastes, Intergovernmental relations, Natural resources, Nuclear materials, Pesticides and pests, Radioactive materials, Recycling, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control.

Date: October 21, 1988.

John A. Moore,

Acting Administrator.

For the reasons set out in the preamble, Title 40 of the Code of Federal regulations is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Sections 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), 6921 and 6922].

§ 261.33 [Amended]

2. Amend the table in § 261.33(f) by removing the listing: "U189 . . . 900466–4 . . . Iron dextran."

Appendix VIII [Amended]

3. Amend Appendix VIII by removing the listing: "Iron dextran . . . Same . . . 9004–66–4."

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

1. The authority citation for Part 302 continues to read as follows:

Authority: Section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9602, Sections 311 and 501(a) of the Federal Water Pollution Control Act, 33 U.S.C. 1321 and 1361.

§ 302.4 [Amended]

2. Amend § 302.4 by removing the entire entry for "iron dextran" and "ferric dextran" from Table 302.4 and its Appendix A.

[FR Doc. 88–25078 Filed 10–28–88; 8:45 am]
BILLING CODE 6560–50–M

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40 CFR Parts 261 and 302

[FRL-3459-6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Removal of Strontium Sulfide From the List of Hazardous Wastes

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is amending its regulations under the Resource Conservation and Recovery Act (RCRA) to remove strontium sulfide (CAS No. 1314–98–1) from § 261.33, the list of commercial chemical products which are hazardous wastes when discarded or intended to be discarded; and to remove strontium sulfide from Appendix VIII of Part 261, the list of RCRA hazardous constituents. EPA also is removing strontium sulfide from the list of hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). EPA is taking this action because strontium sulfide, when improperly treated, stored, transported, disposed of, or otherwise managed, does not pose a significant hazard to human health or the environment.

DATE: This regulation becomes effective on October 31, 1988.

ADDRESSES: The Office of Solid Waste (OSW) docket is located in the sub-basement at 401 M Street, SW., Washington, DC 20460, and is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials by calling (202) 475–9327. Refer to "Docket number F–83–SSPA–FFFFF" when making appointments to review any background documents to this rulemaking. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost; additional copies cost $0.20 per page.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at (800) 424–9346 or at (202) 382–3000. For technical information contact Denny Cruz, Office of Solid Waste (SW–332),

U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, [202] 382-4825.

SUPPLEMENTARY INFORMATION:

I. Authority

These regulations are being promulgated under the authority of sections 2002(a) and 3001 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a) and 6921 (commonly referred to as RCRA), and section 102(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9602.

II. Background

On August 26, 1983, EPA proposed to amend its regulations under RCRA to remove strontium sulfide from 40 CFR 261.33, the list of commercial chemical products which are hazardous wastes when discarded or intended to be discarded; and to remove strontium sulfide from Appendix VIII of Part 261, the list of RCRA hazardous constituents (48 FR 39000). This proposal was in response to a February 5, 1981 petition submitted by Chemical Products Corporation, pursuant to § 260.20 to delist strontium sulfide.

The Agency originally listed strontium sulfide in 40 CFR 261.33(e) (EPA Hazardous Waste No. P107) and Appendix VIII based upon the listing criteria in 40 CFR 261.11(a)(2) and its oral (human) lowest lethal dose (LDL_{lo}) of 50 mg/kg as listed in the *Registry of Toxic Effects of Chemical Substances (RTECS)* (National Institute for Occupational Safety and Health (NIOSH), 1978). A further look at the evidence for the toxicity of strontium sulfide reveals that the oral (human) LDL_{lo} value of 50 mg/kg was actually reported in the original source, *The Clinical Toxicology of Commercial Products* (Gosselin *et al.*, 1976), as a range of 50 to 500 mg/kg for "Probable Oral Lethal Dose (Human)." The lowest value of this range (50 mg/kg) was subsequently reported by NIOSH in spite of a footnote in the original source which states that the toxicity for strontium sulfide was based upon "obviously inadequate data" and that it could "represent no more than guesses."

The more recent *RTECS* supplement (NIOSH, 1985) does not list the oral (human) LDL_{lo} value for strontium sulfide because of the lack of reliable data on its toxicity.

The Agency has searched for current reliable data on the acute and chronic (specifically, teratogenic) toxicity of strontium sulfide in numerous toxicological sources through the Office of Research and Development and has found no additional data. In view of this lack of reliable information, the Agency believes that there is insufficient evidence to support the continued listing of strontium sulfide as either an acute hazardous waste or as a toxic waste.

It is important to note, however, that this action does not completely release wastes containing strontium sulfide from regulatory control under RCRA. The Agency believes that wastes containing high concentrations of strontium sulfide may exhibit the characteristic of reactivity (40 CFR 261.23(a)(5)) (*i.e.*, a sulfide-bearing waste which, when exposed to pH conditions between 2 and 12.5, can generate toxic gases (*e.g.*, H_2S), vapors, or fumes in a quantity sufficient to present a danger to human health or the environment). If the wastes exhibit the characteristic of reactivity, they must be handled as hazardous wastes.

III. Response to Comment

EPA received one comment which agreed with the Agency's proposal to delist strontium sulfide based on the most current data available.

The Agency therefore stands by its proposal to delist strontium sulfide on the basis that there is insufficient evidence to support its listing as either an acute hazardous waste or as a toxic waste.

IV. Relationship to Other Regulatory Authorities

Whenever a hazardous waste or waste stream is listed under section 3001 of RCRA, it is co-listed as a hazardous substance under the statutory provisions of section 101(14) of CERCLA. The Agency, in its April 4, 1985, final rule on notification requirements and reportable quantity (RQ) adjustments, noted that strontium sulfide, along with numerous other elements, compounds, mixtures, solutions, and hazardous wastes, was designated as a hazardous substance under section 102(a) of CERCLA. (See 50 FR 13456.)

In addition to amending the RCRA regulations to remove strontium sulfide from 40 CFR 261.3(e) and 40 CFR Part 261, Appendix VIII, the Agency is today removing strontium sulfide from the CERCLA section 102(a) list of hazardous substances. As a result of the removal of strontium sulfide from the § 261.33(e) and Part 261 Appendix VIII lists, the Agency has no basis upon which to retain strontium sulfide on the CERCLA section 102(a) list of hazardous substances. The Agency's designation of strontium sulfide under Section 102(a) was based solely upon its inclusion as a hazardous substance under section 101(14) of CERCLA. The Agency has previously stated that when hazardous substances are added to or removed from the lists which comprise the CERCLA section 101(14) list of hazardous substances, corresponding changes will be made simultaneously both to the list of hazardous substances in section 101(14) and the list of CERCLA hazardous substances designated under section 102(a) and published in 40 CFR Table 302.4. (See 48 FR 23552, 23554 (May 25, 1983 proposed rule); Technical Background Document to Support Rulemaking Pursuant to CERCLA section 102. (Volume 1, March 1985) at ES–4.)

Although strontium sulfide is today being removed from the CERCLA section 102(a) list, wastes containing high concentrations of strontium sulfide may, in certain circumstances, be hazardous substances under section 102(a). As discussed above, the Agency believes that a waste containing high concentrations of strontium sulfide may exhibit the characteristic of reactivity such that it must be handled as a hazardous waste under 40 CFR 261.23. Unlisted RCRA hazardous wastes, or hazardous wastes exhibiting any of the characteristics identified in 40 CFR 261.20 through 61.40, are CERCLA hazardous substances under § 101(14) and are designated as section 102(a) CERCLA hazardous substances. (See 40 CFR 302.4(b).) Thus, if wastes containing strontium sulfide exhibit the characteristic of reactivity under 40 CFR 261.23, these wastes would also be CERCLA hazardous substances under section 102(a). All unlisted hazardous substances have a reportable quantity of 100 pounds under 40 CFR 302.5(b).

V. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 7003 and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA would not issue permits for

any facilities in the State that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in non-authorized States. EPA is directed to implement those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized States in the interim.

B. Effect on State Authorizations

Today's rule promulgates regulations that are not effective in authorized States because the regulations are not being imposed pursuant to the Hazardous and Solid Waste Amendments of 1984. Thus, the regulations will be applicable only in those States that do not have interim or final authorization. In authorized States, the regulations will not be applicable until the State revises its program to adopt equivalent regulations under State law.

40 CFR 271.21(e)(2) requires that States that have final authorization must modify their programs to include equivalent regulations within a year of promulgation of these regulations if only regulatory changes are necessary, or within two years of promulgation if statutory changes are necessary. These deadlines can be extended in exceptional cases (40 CFR 271.21(e)(3)). Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

It should be noted that authorized States are only required to modify their programs when EPA promulgates Federal regulations that are more stringent or broader in scope than the existing Federal regulations. For those Federal program changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs. This is a result of section 3009 of RCRA, which allows States to impose regulations in addition to those in the Federal program. The regulations promulgated today at § 261.33(e) are considered to reduce the scope of the existing Federal regulations. Therefore, authorized States are not required to modify their programs to adopt regulations equivalent or substantially equivalent to the provisions listed above.

VI. Effective Date

This rule is effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. This is the case here since this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on the petitioner by an effective date six months after promulgation and the fact that such a deadline is not necessary to achieve the purpose of section 3010, this rule is effective immediately. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

VII. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This rule reduces the regulatory requirements applicable to the regulated community. It is not major because it would not result in an annual effect on the economy of $100 million or more, nor would it result in a major increase in costs or prices to individual industries, consumers, Federal, State, or local government agencies, or geographic regions. Finally, there will be no adverse impacts on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, this amendment is not a major regulation, and no Regulatory Impact Analysis has been conducted.

This amendment was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

VIII. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small business, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have a significant economic impact on small entities since it reduces regulatory requirements. Moreover, relatively few small entities disposed of strontium sulfide. Accordingly, I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

IX. Paper Reduction Act

This final rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

X. References

Gosselin, R.E. *et al.* 1976. *The Clinical Toxicology of Commercial Products.* The Williams and Wilkins Co. Baltimore, MD.

National Institute of Occupational Safety and Health. 1978. *Registry of Toxic Effects of Chemical Substances.* USDHHS. Cincinnati, OH.

National Institute of Occupational Safety and Health. 1985. *Registry of Toxic Effects of Chemical Substances: 1983–1984 Cumulative Supplement to the 1981–1982 Edition.* USDHHS. Cincinnati, OH.

List of Subjects

40 CFR Part 261

Hazardous wastes, Recycling.

40 CFR Part 302

Air pollution control, Chemicals, Hazardous materials, Hazardous substance, Hazardous wastes, Intergovernmental relations, Natural resources, Nuclear materials, Pesticides and pests, Radioactive materials, Recycling, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control.

Date: October 21, 1988.

John A. Moore,

Acting Administrator.

For the reasons set out in the preamble, Title 40 of the Code of Federal Regulations is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6934.

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§ 261.33 [Amended]

2. Amend the table in § 261.33(e) by removing the listing: "P107 * * * 1314-98-1 * * * Strontium sulfide."

Appendix VIII—[Amended]

3. Amend Appendix VIII by removing the listing: "Strontium sulfide * * * Same * * * 1314-98-1."

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

1. The authority citation for Part 302 continues to read as follows:

Authority: Section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9602; Sections 311 and 501(a) of the Federal Water Pollution Control Act, 33 U.S.C. 1321 and 1361.

§ 302.4 [Amended]

2. Amend § 302.4 by removing the entry for "strontium sulfide" from Table 302.4 and its Appendix A.

[FR Doc. 88-25079 Filed 10-28-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the California Freshwater Shrimp

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the California freshwater shrimp (*Syncaris pacifica*) to be an endangered species. The species is threatened by introduced predatory fish and deterioration or loss of habitat resulting from water diversion, impoundments, livestock grazing, agricultural activities and development, urbanization, and water pollution. The California freshwater shrimp is known from only twelve streams in Napa, Marin, and Sonoma Counties, California. This rule implements the protection provided under the Endangered Species Act of 1973, as amended, for the California freshwater shrimp.

EFFECTIVE DATE: November 30, 1988.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Fish and Wildlife Enhancement Field Station, Division of Endangered Species, 2800 Cottage Way, Room E-1823, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Mr. Gail C. Kobetich, Field Supervisor, at the above address (916/978-4866 or FTS 460-4866).

SUPPLEMENTARY INFORMATION:

Background

The California freshwater shrimp, *Syncaris pacifica* (Holmes), is a decapod crustacean of the family Atyidae. Samuel J. Holmes first described *S. pacifica* as *Miersia pacifica* in 1895. In 1900, Holmes erected a new genus, *Syncaris*, for the California atyids based on notable differences in the chelae (pinchers) and rostrum (horn-shaped structure between the eyes). *S. pacifica* can be distinguished from *Paloemonias*, the only other atyid genus in the United States, by its well-developed stalked eyes. *Paloemonias* are blind and dwell in caves in the eastern United States. *S. pacifica* is the only surviving species in the genus *Syncaris*.

Adults may reach 5 centimeters (cm) (2⅛ inches) in length. Nearly transparent in water, the adults appear out of water to be greenish-grey to almost black with pale blue uropods (tail fins). An adult female lays relatively few eggs (50–70, Hedgpeth 1975; 100–120, Eng 1981). While she carries the eggs on her body for 8 to 9 months, slow overwintering development of the eggs occurs. During this period, many larvae die due to adult female death and genetic or embryonic developmental problems. As a result, the number of embryos emerging from the eggs during May are reduced typically by 50 percent. During the first summer, larval growth is rapid, but sexual maturity is not reached until the second summer.

The California freshwater shrimp is endemic to gentle gradient (less than 1 percent), low elevation (below 115 meters (380 feet)), freshwater streams in Marin, Napa, and Sonoma Counties, California. The species, a true freshwater shrimp, inhabits quiet portions of tree-lined streams with underwater vegetation and exposed tree roots. Once common in the three counties, *S. pacifica* now occurs only within restricted portions of 12 streams. It cannot tolerate salt or brackish water and does not occur in the intertidal reaches or estuarine areas of any of the streams (Born 1968, Hedgpeth 1968, and Li 1981). The shrimp's transparency, secretive habits, and rapid escape behavior contribute to its obscurity and make it difficult to capture or detect by the casual observer. The California Department of Fish and Game (CDFG) attributed the decline in shrimp populations primarily to degradation and loss of its habitat resulting from increased urbanization, overgrazing, agricultural development, dam construction, and water pollution (CDFG 1980). Essentially compatible with native fish species, *S. pacifica* is threatened by the introduction of exotic predators, especially fishes of the sunfish family. Because of the species' low reproductive potential, slow maturity, restricted distribution, and specialized habitat requirements, *S. pacifica* is particularly vulnerable to habitat loss and predation by exotic species against which its natural defense mechanisms are ineffective.

On June 4, 1974, the Service entered into a contract with the Sierra Club Foundation to investigate the status of freshwater shrimps in Pacific drainages. A final report under this contract was submitted in September 1975 by Dr. Joel W. Hedgpeth. Dr. Hedgpeth concluded in his report that *Syncaris pacifica* had been extirpated in some streams and was reduced in distribution and abundance in others. This report cited dredging, streambed gravel stockpiling, stream diversion, and building temporary summer gravel dams on the Austin Creek system as the major factors responsible for the decline of the California freshwater shrimp. Larry Serpa (1985) reported the species inhabited eleven streams in the Russian River, San Francisco Bay, and other coastal drainages. These streams are East Austin, Salmon, Lagunitas, Big Austin, Sonoma, Huichica, Green Valley, Jonive, Walker, Yulupa, and Blucher. This survey included a total of 52 streams in the three drainages. Bill Cox of CDFG (personal communication 1988) found shrimp in the Napa River near Calistoga. This finding increases the total number of streams in the area known to contain shrimp to 12 out of the 53 surveyed.

The California freshwater shrimp was proposed as a threatened species on January 12, 1977 in the **Federal Register** (42 FR 2507). That proposal was withdrawn on December 10, 1979 (44 FR 70796), under a provision of the 1978 amendments to the Endangered Species Act of 1973, which required withdrawal of all pending proposals if they were not finalized within 2 years of the proposal. On March 23, 1980, the Service received from CDFG a series of annotated maps delineating the known, current distribution of the California freshwater shrimp. These maps summarize the distribution data collected by CDFG in 1979 and 1980. Additional distributional

data were received by the Service from the CDFG on October 30, 1980. CDFG later sent to the Service detailed information on the distribution, life history, and status of the shrimp in 1981 (Eng 1981, Serpa 1985). These maps and additional data constitute significant new information on which to make a determination of endangered status for the California freshwater shrimp.

In the **Federal Register** of April 22, 1987 (52 FR 13254), the Service proposed the California freshwater shrimp as an endangered species. On June 8, 1987, a request for a public hearing on this proposal was received from S. Reid Gustafson, Vice President, Shea Homes, San Jose, California. On June 19, 1987, the Service extended the comment period, which originally closed June 22, 1987, to August 1, 1987, and gave notice of the public hearing (52 FR 23317). The Service held the public hearing on July 15, 1987. On July 31, 1987, the Service extended the comment period an additional 60 days to October 1, 1987 (52 FR 28680), to accommodate several requests.

Summary of Comments and Recommendations

In the April 22, 1987, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in the *San Francisco Chronicle/Examiner* (July 9, 1987), *Santa Rosa Democrat* (July 10, 1987), *Argus-Courier* (July 10, 1987), and the *Independent Journal* (July 10, 1987), all of which invited general public comment. A total of 49 written comments on the listing were received and 2 comments not pertaining to the listing. A total of 21 individuals attended the public hearing in Santa Rosa, California, on July 15, 1987, and 11 provided testimony. The two additional **Federal Register** notices extending the comment period and announcing the public hearing were also published in the aforementioned four newspapers in June and July, respectively.

During the comment period, totaling approximately 6 months, 49 comments on the listing were received. Of the 35 comments that were substantial and stated a position on listing, 18 (36.7 percent) supported the listing and 17 (34.7 percent) did not; 14 (38.6 percent) were nonsubstantive. These written comments and the nine statements presented at the public hearing are discussed below.

Multiple comments from the same individual or entity are combined and regarded as one response.

Support for the listing proposal was voiced by one State agency (California Department of Fish and Game), seven conservation organizations (or branches thereof), and 10 other interested parties.

Opposing comments and other comments questioning the rule can be placed in a number of general groups. These categories of comments, and the Service's response to each, are listed below.

Comment 1: Several questions were raised pertaining to the available biological information on the shrimp. Have enough surveys been done to determine that the shrimp does not occur in other streams in the area? What are its specific habitat requirements? Without complete information on the above topics, is this listing premature?

Service response: The Service finds that surveys since 1950 (testimony of Dr. Hedgpeth at the public hearing) and the recent surveys (Hedgpeth, 1968, 1975, Eng 1981, and Serpa 1986) of 53 streams in the area, including the historical locations of the shrimp, provide adequate information on the distribution, habitat requirements, and threats to the species to warrant the present action for the shrimp. Further studies on the distribution would consume additional time during which the shrimp would not be protected. Further, because of the strict habitat requirements of the species, the shrimp is not likely to occur in other areas. In the Background, and Factors Affecting the Species sections of this rule, the natural habitat and requirements of the shrimp are described. Pertinent studies on the habitat requirements of the shrimp are listed in the References Cited section of the proposed rule and the final rule. In some cases, the data were supplied by personal communications with field biologists and are so noted in the text.

Under § 424.11(b) of the regulations for listing endangered species (50 CFR Part 424), the Secretary shall make any determination solely on the basis of the best available scientific and commercial information regarding a species' status, without reference to possible economic or other impacts of such determination. The State of California, recognizing the decline in the California freshwater shrimp, listed it as endangered in 1980. The species continues to lose habitat and decline in distribution and population size. Therefore, based on the available information regarding the status of the shrimp, the Service believes immediate listing is warranted.

Comment 2: What is the difference between the two types of summer dams used in the area? What are the effects of the summer gravel dams as well as gravel mining and removal on the shrimp and its habitat? It was suggested that dams such as those built by the Cazadero Dam Committee (a group of private citizens and property owners along the Austin Creek system) on the Austin Creek System in Sonoma County and the Giacomini Dam in Marin county have actually helped the shrimp. Commenters stated the need for dams in the area to provide water for drinking, fire protection, and recreation during the dry season.

Service response: Presently, there are two methods of temporary summer dam construction in those counties where shrimp are known to occur. One method and probably the more damaging to the shrimp, is the practice of using a bull-dozer or other earth-moving equipment to create a dam by pushing gravel from the streambed over culverts placed in the live stream. Flash boards may be placed over the opening of the culvert to regulate the amount of water retained behind the structure. This method causes extensive siltation downstream during the initial construcion period and later when the dam is washed out during the heavy rainstorms in the fall. Siltation changes the substrate from gravel to fine silt. this silt suffocates the source of food for the shrimp such as other small invertebrates and encrusting organisms that live in the gravel substrate and on submerged rocks.

The other method of temporary summer dam construction in this area is done by placing pérmanent structures or abutments on opposite shores of the streams and using a crane to suspend a movable bridge onto these structures. This temporary bridge is put in place during the spring or early summer and removed in the fall. This type of dam has no adverse affect on the shrimp because the aquatic habitat is not altered.

The adverse effects of the summer gravel dams on the shrimp are summarized under section A of the Summary of Factors Affecting the Species in the final rule. Temporary dams constructed only of gravel destroy shrimp habitat in two ways. First, the dams are allowed to remain in the streams until the winter rains wash them out. This gravel is then carried downstream and deposited in the undercut banks adversely affecting the essential habitat for the shrimp. When streamflows are high during the winter

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and spring. *Syncaris* are found under submerged undercut banks where fine roots extending into the water provide cover. In such a habitat, the shrimp are sheltered from the strong currents of winter flows. During the summer and fall when the streamflow is lower, the shrimp are associated with streamside vegetation that extends into the water and provides shade as well as appropriate hiding places. These essential areas are degraded as habitat for the shrimp when they are filled with sand and gravel. Second, when the dams are in place throughout the summer, a warm, long, narrow lake is created in what was once a cool stream environment. Because the feeding behavior and thermoregulatory adaptations of the shrimp are specific to survival in a cool, slow-moving water environment, they are not adapted to a warm, still water habitat and will eventually die if they cannot return to the cool stream environment. They do occur in deep cool pools in the stream. These dams also entrap a large number of aggressive, fast growing, exotic fish species which prey on the shrimp and other aquatic organisms.

There is no evidence that the temporary summer gravel dams, such as those constructed by the Cazadero Dam Committee, have helped the shrimp. The shrimp habitat of East Austin Creek has been degraded by the dams to the extent that the present population of shrimp is discontinuously distributed. The shrimp population cannot maintain itself in the reaches of the stream with dams without being replenished from small upstream refugia. These dams prevent the movement of shrimp from upstream refugia to downstream feeding, mating, and hiding sites.

The Giacomini seasonal dam was placed in the intertidal zone in the lower end of Lagunitas Creek in Marin County. This dam is nearly 10 miles downstream from usable shrimp habitat and is not expected to affect this species because the shrimp cannot tolerate brackish water. As the dam has prevented the intrusion of brackish water into the creek, it has increased the upstream usable habitat of the shrimp. There are no shrimp downstream of this dam to be adversely affected by siltation during annual dam construction.

Gravel and aggregate mining in the area has probably not harmed the shrimp since it provides a means by which gravel washed downstream from the seasonal dams can be removed from the dry steambed without significantly causing siltation. Gravel and aggregate mining is not done in the live stream and sorting, grading, and washing activities are done away from the stream. The tailings from this activity are placed in sediment ponds that do not allow effluent to enter the stream. Most of the damage to the shrimp habitat by gravel mining occurred prior to passage of the National Environmental Policy Act in 1970 and subsequent environmental legislation which prohibits certain activities in waterways. Present gravel and aggregate mining operations are not known to disturb or damage shrimp habitat.

Comment 3: Will the listing of the species mean an end to the construction of summer dams?

Service response: Changes in the size, number, method of construction, and method of removal of summer recreational dams on the Austin Creek system, which includes Austin, Kidd, and East Austin Creeks, have been required through the Corps of Engineers permitting process. Only East Austin has a population of shrimp, thus, only these dams may be affected by the listing through the Corps of Engineers permitting process.

These dams change a cool, slow-moving stream into a warm, long, narrow lake which lacks pool/riffle areas and overhanging vegetation, essential to the shrimp's survival. The present method of gravel dam removal (by letting the winter rains wash the dams out), is more harmful than the construction technique of pushing the gravel up from the streambed into gravel dams. When dams wash out, the gravel and fine silt are deposited in the undercut banks which are essential habitat for the shrimp (see comment 2). Presently, an experimental method of summer gravel dam construction is being tried under a Corps of Engineers permit to the Cazadero Dam Committee. As a condition of this permit, the present number (38) and size (5 to 8 feet high, approximately 12 feet at the top, 26 feet wide at the bottom, and 55 feet long to extend across the stream channel) of the dams on the Austin Creek system is to be reduced over a 5-year period. The number of beaches also will be reduced. These conditions were placed on the Cazadero Dam Committee permit to upgrade the habitat for anadromous fish species and to avoid adverse impacts to the shrimp in East Austin Creek. This new dam construction method involves digging a pit in the dry streambed and connecting the pit to the live stream by a culvert. Its impact on the shrimp habitat is not fully known. However, direct and indirect effects on the shrimp by siltation are significantly reduced because a swimming hole is formed outside of the live stream and the pool/riffle characteristics of the stream remain intact. Further, this method has been tried in East Austin Creek where there are three gravel dams. There are 24 summer gravel dams on the lower reaches of Austin Creek and the shrimp no longer occurs in these reaches of the stream. However, shrimp could occur in isolated refugia in the upper reaches of the stream. In its present state, Austin Creek is not suitable habitat because it lacks undercut banks and overhanging vegetation which are the essential habitat requirements for the shrimp. Extensive rehabilitation of the aquatic habitat would be necessary to convert this stream to usable shrimp habitat. When the number and size of the dams are decreased by 1990, a more natural pool to riffle ratio should occur in all streams in the Austin Creek system, which is desirable habitat for the shrimp. Overhanging vegetation can be encouraged to grow and provide shelter and food for the shrimp.

The Service will work through the section 7 consultation process of the Act to assist agencies in the planning phase of water dependent projects and measures are likely to be developed and implemented to reduce or avoid adverse effects on the shrimp and its habitat. The Service will provide technical assistance and advice to parties interested in increasing and enhancing the shrimp habitat through appropriate mitigation measures.

Comment 4: Several commenters were concerned that the shrimp will be collected and transferred into streams outside its known distribution, thus possibly making such other areas subject to the provisions of the Act.

Service response: Although shrimp could be placed in other streams in the area, it is doubtful that a population could become established because of the specific microhabitat requirements of the shrimp. Historically, these microhabitat requirements have limited the distribution of the shrimp. During the development of the recovery plan for this species, the Service will explore the need to reintroduce shrimp into areas from which they have been extirpated. It is generally Service policy not to introduce a species into an area outside of its known historical range. If a population of shrimp is discovered in areas not presently known to the Service, these shrimp will receive the same protection under the Act as those in known locations.

Comment 5: What are the economic impacts of listing the shrimp and what affect will the listing have on gravel operations, agriculture, urban development (construction), recreation, and other activities in the three counties? Will the listing cause delays in projects? Commenters asked for assurances that there would be little, if any, economic impact and what appropriate mitigation measures would be acceptable to permit the activities to continue. It was suggested that the Service designate critical habitat and prepare an economic analysis as part of that proposal.

Service response: Under the Act and its implementing regulations, listing determinations are to be made solely on the basis of the best available scientific and commercial information regarding a species' status, without reference to possible economic or other impacts of such determination. 16 U.S.C. 1533(b)(1)(A); 50 CFR 424.11(b).

Section 7(a) of the Act, as amended, requires agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

One Federal activity that may affect the California freshwater shrimp is the authorization by the Corps of Engineers to construct summer dams. For example, the Cazadero Dam Committee has received a permit to construct 28 temporary summer dams on the Austin Creek system, three of which are on East Austin Creek. These gravel structures are built by local residents to impound water for swimming and fire control. This permit is valid until 1990, provided that the permittee adheres to the general and special conditions of the permit such as notification of California Department of Fish and Game and the Corps of Engineers about any changes to permitted activities. Special permit conditions require the permittee to reduce the total number of dams from 33 to 25 on the Austin Creek system. This includes a reduction in the number of dams from 5 to 3 on East Austin Creek where the shrimp occurs. The permit conditions also require the permittee to reduce the size and height of these dams, including the amount of water impounded, and to reduce the number and size of beaches by 1990 on the entire Austin Creek system. The Corps of Engineers may modify, suspend, revoke, or cancel the permit at any time before 1990 if any of these conditions are not met by the permittee. These restrictions were devised for the benefit of anadromous fish and the freshwater shrimp. Other methods of water retention for summer recreation and municipal water supplies that do not adversely affect the shrimp are being explored, such as joining an existing aqueduct and reservoir system. The Soil Conservation Service and the Coastal Conservancy are actively assisting in conservation measures for the shrimp on Salmon and Bleacher Creeks.

Project delays can be avoided when proper measures such as habitat restoration or stream enhancement are taken to conserve and protect the shrimp and its habitat in the early stages of the planning process. To prevent delays in urban development, gravel and aggregate mining, agricultural, and recreational projects, early consultation with the Service on issues concerning the shrimp and its habitat is advised. Section 7 consultation must be completed within 90 days and can be concurrent with other environmental reviews. Therefore, delays, if any, should be minimal. Through formal consultation, the Service determines whether, and in what manner, a Federal agency can carry out its proposed action consistent with the "jeopardy" prohibition of section 7(a)(2) of the Act. If the Service finds that the action is likely to jeopardize the continued existence of the shrimp, the Service will work with the Federal agency, and applicant, if any, to attempt to develop reasonable and prudent alternatives.

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the California freshwater shrimp at this time for reasons given below (see Critical Habitat section below). An economic analysis is done only if critical habitat has been proposed. Regardless, the Secretary is required to base the decision to list a species on the best available scientific and commercial information and not on economic considerations.

Comment 6: One commenter asked why it took so long to propose the shrimp and what was done to prevent the listing.

Service response: The California freshwater shrimp was proposed as a threatened species on January 12, 1977, in the Federal Register (42 FR 2507). That proposal was withdrawn on December 10, 1979 (44 FR 70796) under a provision of the 1978 amendments to the Endangered Species Act of 1973, which required withdrawal of all pending proposals if they were not finalized within 2 years of the proposal. On March 23, and October 30, 1980, the Service received a series of annotated maps delineating the known, current distribution of the shrimp based upon distributional data collected by California Department of Fish and Game in 1979 and 1980. Eng (1981) and Serpa (1985) submitted detailed information on the distribution, life history, and status of the shrimp. These maps and additional data provided significant new information on which to propose endangered status for the shrimp. In addition, work on listing other species precluded the Service from preparing and processing this proposal any earlier.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the California freshwater shrimp (*Syncaris pacifica*) should be classified as an endangered species. Procedures found at section 4 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the California freshwater shrimp (*Syncaris pacifica*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The preferred habitat of the California freshwater shrimp is quiet, tree-lined pools with undercut banks in free-flowing, permanent streams. Livestock, agricultural activities and development, water pollution, heavy earth-moving equipment, and residential development have encroached and/or threatened these stream banks. Siltation from poor soil conservation practices and the building of temporary summer dams have destroyed shrimp habitat. Water diversions from the streams, including pumping directly from the stream bottom, resulting in intermittent stream flow are also detrimental to the species. Many streams currently or historically

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harboring the shrimp maintained a permanent flow. The shrimp is killed and its habitat is polluted if the water in summer dams is treated with chlorine or other chemicals to purify the water. These biocides are routinely placed in the water, resulting in aquatic invertebrate and plant die-offs each year. Various combinations of the above activities have extirpated the species from Stemple Creek, Laguna de Santa Rosa Creek, Santa Rosa Creek, and Atascadero Creek, and seriously reduced its range in the Napa River. These extirpations probably represent more than half of the historical range of the shrimp. The concrete lining of streams and rivers for flood control caused the extinction of *Syncaris pasadenae*, a species historically known from southern California. This flood control technique has extirpated the California freshwater shrimp in Santa Rosa Creek. The channelization and lining is likely to continue and increase as this area experiences rapid urban growth.

B. *Overutilization for commercial, recreational, scientific or educational purposes.* Not applicable.

C. *Disease or predation.* Predation by fish significantly threatens the California freshwater shrimp, especially in altered habitats where cover from tree roots and underwater vegetation has been reduced or is absent. Introduced bluegill (*Lepomis macrochirus*) exist in portions of Huichica Creek. Predation significantly threatens the California freshwater shrimp in East Austin Creek and Big Austin Creek where temporary summer dams confine steelhead (*Salmo gairdneri*), Sacramento squawfish (*Ptychocheilus grandis*), and Tule perch (*Hysterocarpus traski*) with the shrimp in artificial pools (Bill Cox, CDFG, pers. comm., 1985). The effect of these dams on shrimp and steelhead populations is being studied.

D. *The inadequacy of existing regulatory mechanisms.* The California State Fish and Game Commission listed the California freshwater shrimp as endangered. However, State law provides no protection on privately-owned lands. The species receives some protection in those portions of its range within Samuel P. Taylor State Park.

E. *Other natural or man-made factors affecting its continued existence.* In the past, the shrimp was capable of recovering from environmental extremes, such as drought and spring floods, that resulted in localized extirpations. Historic silvicultural practices may have limited the range of the species by altering normal hydrologic regime. Today, these natural events devastate populations of the shrimp because the current loss of suitable habitat makes it difficult to effectively repopulate affected areas.

Vandalism is a threat to the shrimp as more people in the area have become aware of its presence and site specific locations. Acts of vandalism such as placing toxicants into the water or deliberate spills of refined oil can be carried out by a single individual. One case was reported in 1987, when there was a die off of all aquatic invertebrates from East Austin Creek at the Boy Scout dam downstream almost to the confluence with Big Austin Creek as the result of the application of chlorine to the water. Although not carried out with the intention of harming the shrimp, the incident serves to illustrate the potential for vandalism.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the California freshwater shrimp as endangered. The continued degradation and loss of suitable habitat resulting from the threats discussed under Factor A in the "Summary of Factors Affecting the Species" could result shortly in a substantial loss of the remaining populations, especially those colonies in East Austin Creek. Because of conflicts with long standing economic interests and recreational practices in these streams harboring the California freshwater shrimp, the shrimp may shortly become extinct, as was the case with its congener, *Syncaris pasadenae*. Provided with protection from habitat degradation and loss, local isolated colonies may repopulate many portions of its historical range. Critical habitat is not being designated for the species at this time for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the California freshwater shrimp at this time. As discussed under Factor E in the "Summary of Factors Affecting the Species," this species and its habitats are vulnerable to the introduction of water borne toxicants, and spills of refined oil and other such pollutants. Some such incidents could be carried out by a single individual, which makes the species vulnerable to acts of vandalism. These activities are difficult to regulate and control because the habitat of the shrimp predominately occurs on privately-owned land. Publication of critical habitat descriptions and maps would make this species and its habitats more vulnerable and would increase enforcement problems. The U.S. Army Corps of Engineers, the Federal agency most involved with the shrimp, is aware of the known localities. All other involved parties and landowners will be notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard. Therefore, it would not be prudent to determine critical habitat for the California freshwater shrimp at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The only known Federal activities that may affect the California freshwater shrimp is the authorization by the U.S. Army Corps of Engineers (Corps) for the construction of 28 temporary summer gravel dams on the Austin Creek system, and the Soil Conservation Service bank stabilization and repair projects on Salmon and Bulcher Creeks. The summer gravel dams are built by local residents to impound water for swimming and fire control. This permit is valid until 1990, provided that the permittee adheres to the general and special conditions of the permit such as consultation with the appropriate State and Federal agencies. Special permit conditions required the permittee to reduce the number, size, and height of these dams, including the amount of water impounded, and to reduce the number and size of beaches by 1990. The Corps may modify, suspend, revoke, or cancel the permit at any time before 1990 if any of these conditions are not met by the permittee. This permit does not cover the other temporary non-gravel dams and bridges. These projects are handled on a project-by-project basis.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions would apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this rule is Dr. Jeurel Singleton, Sacramento Endangered Species Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E–1823, Sacramento, California. (916/978–4866 or FTS 460–4866).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations is amended, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*). Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under "Crustaceans" to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species							
Common name	Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Crustaceans							
Shrimp, California freshwater	*Syncaris pacifica*	U.S.A.(CA)	NA	E	340	NA	NA

Dated: October 4, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88–25119 Filed 10–28–88; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 32

Refuge-Specific Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) is amending certain regulations in 50 CFR Part 32 that pertain to migratory game bird, upland game, and big game hunting on

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individual national wildlife refuges. Refuge hunting programs are reviewed annually to determine whether the regulations governing individual refuge hunts should be modified, deleted or added to. Changing environmental conditions, State and Federal regulations, and other factors affecting wildlife populations and habitats may warrant modifications to ensure the continued compatibility of hunting with the purposes for which the individual refuges involved were established and, to the extent practical, make refuge hunting programs consistent with State regulations.

EFFECTIVE DATE: October 31, 1988.

FOR FURTHER INFORMATION CONTACT: Larry LaRochelle, Division of Refuges, U.S. Fish and Wildlife Service, 18th and C Streets NW., Room 2343, Washington, DC 20240; Telephone (202) 343–4313.

SUPPLEMENTARY INFORMATION: 50 CFR Part 32 contains provisions governing hunting on national wildlife refuges. Hunting is regulated on refuges to (1) ensure compatibility with refuge purposes, (2) properly manage the wildlife resource, (3) protect other refuge values, and (4) ensure refuge user safety. On many refuges, the Service policy of adopting State hunting regulations is adequate in meeting these objectives. On other refuges, it is necessary to supplement State regulations with more restrictive Federal regulations to ensure that the Service meets its management responsibilities, as outlined under the section entitled "Conformance with Statutory and Regulatory Authorities." Refuge-specific hunting regulations may be issued only after a wildlife refuge is opened to migratory game bird, upland game, or big game hunting through publication in the **Federal Register**. These regulations may list the wildlife species that may be hunted, seasons, bag limits, methods of hunting, descriptions of open areas, and other provisions. Previously issued refuge-specific regulations for migratory game bird, upland game, and big game hunting are contained in 50 CFR 32.12, 32.22, and 32.32 respectively. Many of the amendments to these sections are being promulgated to standardize and clarify the existing language of these regulations. Again this year, regulations for nontoxic shot are required on more refuges and consequently new regulations are being added.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. On July 13, 1988, at 53 FR 26461, the Service published a proposed rulemaking to amend certain regulations in 50 CFR Part 32 and invited the public to comment. The Service's responses to those comments are contained in the following section.

Responses to Comments Received

Written comments on the proposed rule were received from eight parties. In addition, an informal public meeting was held on the proposed deer hunt on the Supawna Meadows National Wildlife Refuge at Pennsville, New Jersey on July 28, 1988. Oral statements were received from several parties at that meeting. Several comments were similar or identical to those received on previous proposed rulemakings opening refuges to hunting and/or fishing contending generically that hunting on refuges is illegal, not in the spirit for which refuges are created, violates the Endangered Species Act, or is not in compliance with the National Environmental Policy Act or various laws or regulations. These issues have been addressed by the Service, see *e.g.* 51 FR 30655 of August 28, 1986, the final rule opening seven refuges to hunting and 11 to sport fishing, and the Service will not here repeat its responses given in that rulemaking.

Substantive comments on pertinent issues not already addressed in hunting and fishing plans, Environmental Assessments or section 7 Endangered Species Act consultations (all of which were available for public review during the comment period) are responded to below:

Issue: There is an inconsistency in the Service allowing toxic shot for hunting squirrels while requiring nontoxic shot to hunt waterfowl on the same refuge area.

Response: The Service does not agree that allowing the use of toxic shot for low intensity hunting of species seldom taking more than one shot per target, while requiring nontoxic shot for high intensity waterfowl hunting, usually requiring multiple shots per target, is an inconsistency but is rather a case of species-specific management of the problem of lead shot deposition/poisoning. Further, the Service has, in some cases, required the use of nontoxic shot for shotgun hunting of all species of game in areas of heavy waterfowl use when so requested by State game departments.

Issue: A National Organization located in Washington, DC claimed that a thirty-day comment period is inadequate to properly analyze changes in hunting programs and their regulations, especially when supporting data, if any, is scattered around the country at the refuges and six regional offices and that there was a lack of data to support the changes.

Response: The Service notes that all documents supporting this action are on file in the Service's Washington, DC Office, available for public inspection. The Service believes that a 30-day comment period is adequate time for a business-like review and response on this and similar actions. To further delay implementing these regulations (by lengthening the comment period) would cause confusion to the public, deny a benefit to the public and related businesses and would not be in the best interest of the Service or the public. See the last paragraph of "Environmental Considerations."

Conformance With Statutory and Regulatory Authorities The National Wildlife Refuge System Administration Act (NWRSAA) of 1966, as amended (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (16 U.S.C. 460k) govern the administration and public use of national wildlife refuges. Specifically, section 4(d)(1)(A) of the NWRSAA authorizes the Secretary of the Interior to permit the use of any area within the Refuge System for any purpose, including but not limited to, hunting, fishing and public recreation, accommodations and access, when he determines that such uses are compatible with the major purpose(s) for which the area was established.

The Refuge Recreation Act authorizes the Secretary to administer areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purpose(s) for which the areas were established. The Refuge Recreation Act also authorizes the Secretary to issue regulations to carry out the purposes of the Act. Hunting plans are developed for each refuge prior to opening it to hunting. In many cases, refuge-specific hunting regulations are included in the hunting plan to ensure the compatibility of the hunting programs with the purposes for which the refuge was established. Initial compliance with the NWRSAA and Refuge Recreation Act is ensured when hunting plans are developed, and the determinations required by these acts are made prior to the addition of refuges to the lists of areas open to hunting in 50 CFR. Continued compliance is ensured by annual review of hunting programs and regulations.

Considering the rapidly approaching hunting seasons and the ones presently taking place, there is an immediate need to place these regulations into effect. The absence of refuge-specific hunting regulations for these hunting seasons would be contrary to the public interest (confusion on hours, bag limits, or firearm restrictions), and wildlife conservation (nontoxic shot requirements). Thus, the Department concludes that good cause exists within the meaning of 5 U.S.C. 553(d)(3) to make these regulations effective upon publication in the **Federal Register**.

Economic Effect

Executive Order 12291 requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; or a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions.

These amendments to the codified refuge-specific hunting regulations will make relatively minor adjustments to existing hunting programs. The regulations are not expected to have any gross economic effect and will not cause an increase in costs or prices for consumers, individual industries, Federal, State, or local governments, agencies, or geographic regions. The benefits accruing to the public are expected to exceed by a large margin the costs of administering this rule. Accordingly, the Department of the Interior has determined that this rule is not a "major rule" within the meaning of E.O. 12291 and will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Paperwork Reduction Act

The Service has received approval from the Office of Management and Budget (OMB) for the information collection requirements of these regulations pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). These requirements are presently approved by OMB under #1018–0014 Economic and Public Use Permits. These regulations impose no new reporting or recordkeeping requirements that must be cleared by OMB.

Environmental Considerations

Compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) is ensured when hunting plans are developed, and the determinations required by these acts are made prior to the addition of refuges to the lists of areas open to hunting in 50 CFR. Refuge-specific hunting regulations are subject to a categorical exclusion from the NEPA process if they do not significantly alter the existing use of a particular national wildlife refuge. The changes enacted in this rulemaking will not substantially alter the existing uses of the refuges involved. Information regarding hunting permits and the conditions that apply to individual refuge hunts and maps of the hunt areas are available at refuge headquarters or can be obtained from the regional offices of the U.S. Fish and Wildlife Service at the addresses listed below:

Region 1—California, Hawaii, Idaho, Nevada, Oregon, and Washington.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 Multnomah Street, Portland, Oregon 97232; Telephone (503) 231–6214.

Region 2—Arizona, New Mexico, Oklahoma and Texas.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 1306, Albuquerque, New Mexico 87103; Telephone (505) 766–1811.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612) 725–3507.

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, South Carolina, Puerto Rico and the Virgin Islands.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Georgia 30303; Telephone (404) 331–0637.

Region 5—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158; Telephone (617) 965–5222.

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 25486, Denver Federal Center, Denver, Colorado 80225; Telephone (303) 236–8145.

Region 7—Alaska (Hunting on Alaska refuges is in accordance with State regulations. There are no refuge-specific hunting regulations for these refuges).
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska 99503; Telephone (907) 786–3545.

Primary Author

Larry LaRochelle, Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC 20240, is the primary author of this rulemaking document.

List of Subjects in 50 CFR Part 32

Hunting, National Wildlife Refuge System, Wildlife, Wildlife refuges.

Accordingly, Part 32 of Chapter I of Title 50 of the Code of Federal Regulations is amended as set forth below:

1. The authority citation for Part 32 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i.

2. Section 32.12 is amended by removing (e)(2), redesignating (e)(1) as (e)(2); adding a new (e)(1); adding (f)(11)(vi); revising (i)(2) introductory text; removing (i)(2) (i) through (vi); revising (l)(2)(i) and (m)(1)(ii); removing (m)(1)(iii); redesignating (m)(1)(iv) as (iii); revising (n)(2), (n)(1) and (2); adding (q)(7)(iv); revising (t)(2) introductory text; removing (t)(2)(i) and (ii), (u)(1)(iii) and (u)(2)(iv); redesignating (u)(2)(v) as (iv); removing (u)(3)(iii); revising (w)(1) introductory text; removing (w)(1) (i) and (ii); revising (aa)(1), (cc)(2) introductory text and (cc)(2)(i); removing (cc)(2) (ii) through (vi); redesignating (gg)(2) through (4) as (3) through (5); adding a new (gg)(2); revising (hh)(4)(i), (hh)(10)(ii) and (hh)(11)(ii) and (iv); removing (11)(2); redesignating (11)(3) and (4) as (2) and (3); revising (mm)(5)(vi) and (mm)(7)(i) and (v); adding (pp)(6); revising (qq)(1)(i) and (4)(ii); adding (qq)(4)(v) and (vi), and (qq)(5)(vi); revising (qq)(6) and (qq)(7)(i), (iii) and (iv); adding (qq)(7)(vi); removing (rr)(1)(iii); revising (rr)(2) introductory text; removing (rr)(2)(i) and (ii); revising (rr)(3) introductory text; and removing (rr)(3)(i) and (ii).

§ 32.12 Refuge-specific regulations; migratory game birds.

* * * * *

(e) *Arkansas—(1) Cache River National Wildlife Refuge.* Hunting of ducks, snow geese, coots, woodcock, snipe, and mourning doves is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(f) *California—*

(11) *San Francisco Bay National Wildlife Refuge* * * *

(vii) Waterfowl and coot hunters, in that portion of the refuge contained in Alameda County, shall possess and use, while in the field, only nontoxic shot.

* * * * *

(i) *Florida—** * *

(2) *Lower Suwannee National Wildlife Refuge.* Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(l) *Illinois—** * *

(2) *Crab Orchard National Wildlife Refuge.* * * *

(i) Waterfowl hunting is permitted on the controlled areas of Grassy Point, Carterville and Greenbrair land areas, plus Orchard, Turkey, Sawmill and Grassy Islands, from sunrise to 12:00 noon each day during the goose season. Goose hunting on these areas, including lake shorelines, is permitted only from existing refuge blinds. Only selected hunters are allowed on these islands or are allowed to occupy any existing refuge blinds during the goose season. Controlled blind hunters may use or possess only ten (10) shells per hunter, except that water blind hunters may possess fifteen (15) shells during the duck season only.

* * * * *

(m) *Iowa—(1) DeSoto National Wildlife Refuge.* * * *

(ii) Hunting is permitted until noon each day from November 1 through the end of the State waterfowl season within the zones.

* * * * *

(2) *Union Slough National Wildlife Refuge.* Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following condition: State regulations regarding the use of decoys, and governing the construction and use of blinds on game management areas shall apply.

* * * * *

(n) *Iowa, Illinois, and Missouri—Mark Twain National Wildlife Refuge.* * * *

(1) Hunting is permitted on the Big Timber Division including Turkey and Otter Islands.

(i) Only temporary wood or brush blinds are permitted.

(2) Hunting is permitted on the Gardner Division.

(i) Blinds may only be constructed on blind sites posted by the Illinois Department of Conservation.

* * * * *

(q) *Louisiana—** * *

(7) *Tensas River National Wildlife Refuge.* * * *

(iv) Waterfowl and coot hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

(t) *Michigan—** * *

(2) *Shiawassee National Wildlife Refuge.* Hunting of geese is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(w) *Missouri—(1) Mingo National Wildlife Refuge.* Hunting of waterfowl is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(aa) *New Jersey—Edwin B. Forsythe National Wildlife Refuge.* * * *

(1) Waterfowl hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

(cc) *New York—** * *

(2) *Montezuma National Wildlife Refuge.* Hunting of waterfowl is permitted on designated areas of the refuge subject to the following condition:

(i) Permits/reservations are required in advance.

* * * * *

(gg) *Oklahoma—** * *

(2) *Salt Plains National Wildlife Refuge.* Hunting of ducks, geese, sandhill cranes and mourning doves is permitted on designated areas of the refuge subject to the following conditions:

(i) Waterfowl hunters shall possess and use, while in the field, only nontoxic shot.

(ii) Hunters are required to check in and out of the refuge.

* * * * *

(hh) *Oregon—** * *

(4) *Cold Springs National Wildlife Refuge.* * * *

(i) Hunting is permitted only on Wednesdays, Saturdays, Sundays, Veterans Day, Thanksgiving Day, Christman Day and New Year's Day.

* * * * *

(10) *McKay Creek National Wildlife Refuge.** * *

(ii) Hunting is permitted only on Wednesdays, Saturdays, Sundays, Veterans Day, Thanksgiving Day, Christmas Day and New Year's Day.

* * * * *

(11) *Umatilla National Wildlife Refuge.* * * *

(ii) Hunting is permitted only on Wednesdays, Saturdays, Sundays, Veterans Day, Thanksgiving Day, and New Year's Day on the McCormack Unit.

* * * * *

(iv) Decoys, boats and other personal property must be removed from the refuge following each days hunt.

* * * * *

(mm) *Texas—** * *

(5) *McFaddin National Wildlife Refuge.** * *

(vi) Use of airboats is permitted only in accordance with specific guidelines as provided in 50 CFR 25.31.

* * * * *

(7) *Texas Point National Wildlife Refuge.** * *

(i) Hunting is permitted only on designated days. Notice of actual hunting days will be issued as provided in 50 CFR 25.31.

* * * * *

(v) Use of airboats is permitted only in accordance with guidelines as provided in 50 CFR 25.31.

* * * * *

(pp) *Virginia—Chincoteague National Wildlife Refuge.* * * *

(6) Waterfowl hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

(qq) *Washington—(1) Columbia National Wildlife Refuge.* * * *

(1) Permits are required for hunting in Farm Unit 226–227.

* * * * *

(4) *McNary National Wildlife Refuge.* * * *

(ii) In the McNary Division, hunting is permitted only on Wednesdays, Saturdays, Sundays, Veterans Day, Thanksgiving Day, Christmas Day and New Year's Day.

* * * * *

(v) No decoys or other personal property may be placed on the refuge earlier than one hour before State shooting time or opening of the State waterfowl season, and must be removed from the refuge within one hour following the close of State shooting time.

(vi) Hunters in marked hunt site area must hunt within fifty (50) feet of designated blind sites except when shooting to retrieve crippled birds.

(5) *Ridgefield National Wildlife Refuge.* * * *

(vi) Hunting is permitted only from assigned blinds except when shooting to retrieve crippled birds.

(6) *Toppenish National Wildlife Refuge.* Hunting of geese, ducks, coots and common snipe is permitted on designated areas of the refuge subject to the following condition: Hunting is permitted only within fifty (50) feet of designated blind sites except when shooting to retrieve crippled birds.

(7) *Umatilla National Wildlife Refuge.*

* * *

(i) In the Paterson Slough Unit, hunting is permitted only on Wednesdays, Saturdays, Sundays, Veterans Day, Thanksgiving Day, Christmas Day and New Year's Day.

* * * * *

(iii) No decoys or other personal property may be placed on the refuge earlier than one hour before State shooting time or opening of the waterfowl season, and must be removed within one hour following the close of State shooting time.

(iv) Hunters may not use or possess more than twenty-five (25) shells per day in the Paterson Unit.

* * * * *

(vi) Digging or hunting from pit blinds is prohibited.

* * * * *

(rr) *Wisconsin—** * *

(2) *Necedah National Wildlife Refuge.* Hunting of migratory game birds is permitted only on designated areas of the refuge.

(3) *Trempealeau National Wildlife Refuge.* Hunting of geese, ducks and coots is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

3. Section 32.22 is amended by revising (a)(4) introductory text; removing (a)(4) (i) through (vi); revising (b)(1) introductory text; redesignating (d) (2) through (6) as (3) through (7); adding a new (d)(2); revising (h)(2) introductory text; removing (h)(2) (i) through (v); revising (h)(3) introductory text; removing (h)(3) (i) through (iii); revising (l)(1) and (1)(2); revising (bb) (2); redesignating (ee) (1) and (2) through (4) as (2) and (4) through (6) respectively; adding new (ee) (1) and (3); removing (ff)(1), (2) and (ll); redesignating (ff) (3) through (10) as (1) through (8); revising the newly redesignated (ff)(1)(i), (6) (ii) and (8)(ii); revising (hh)(3) introductory text; removing (hh)(3) (i) through (iv); revising (nn)(3) (i) and (5)(ii).

§ 32.22 Refuge-specific regulations; upland game.

(a) *Alabama* * * *

(4) *Wheeler National Wildlife Refuge.* Hunting of squirrel, rabbit, racoon and opossum is permitted on designated areas of the refuge subject to the following special condition: Permits are required.

(b) *Arizona—(1) Buenos Aires National Wildlife Refuge.* Hunting of cottontail rabbit, jackrabbit, coyote, fox, bobcat, ringtail, skunk, coatimundi, badger, racoon and weasel is permitted on designated areas of the refuge.

* * * * *

(d) *Arkansas—** * *

(2) *Cache River National Wildlife Refuge.* Hunting of quail, rabbit, squirrel, raccoon, opossum and beaver is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(h) *Florida—** * *

(2) *Lower Suwannee National Wildlife.* Hunting of upland game is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(3) *St. Marks National Wildlife Refuge.* Hunting of squirrel, rabbit, raccoon and armadillo is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(1) *Illinois, Iowa and Missouri—Mark Twain National Wildlife Refuge.* * * *

(1) Hunting is permitted on the Big Timber Division including Turkey and Otter Islands, and on the Gardner Division.

(2) Hunting of squirrel is permitted on the Keithsburg Division from the opening of the Illinois squirrel season until the start of the Illinois waterfowl season.

* * * * *

(bb) *New York—** * *

(2) *Montezuma National Wildlife Refuge.* Hunting of small game mammals and legally hunted furbearers is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required for night hunting of furbearers.

(ii) Hunting is permitted from the close of the refuge deer hunting season through the close of the respective State small game season.

(iii) Shotguns only are permitted, except .22 caliber rimfire firearms may be used to take furbearers at night consistent with State law.

* * * * *

(ee) *Oklahoma—(1) Little River National Wildlife Refuge.* Hunting of squirrel and rabbit is permitted on designated areas of the refuge subject to the following condition: Access is limited to designated roads and trails.

* * * * *

(3) *Salt Plains National Wildlife Refuge.* Hunting of quail and pheasant is permitted on designated areas of the refuge subject to the following condition: Hunters must check in and out of the refuge.

* * * * *

(ff) *Oregon)—(1) Cold Springs National Wildlife Refuge.* * * *

(i) Hunting is permitted only on Wednesdays, Saturdays, Sundays, Veterans Day, Thanksgiving Day, Christmas Day and New Year's Day.

* * * * *

(8) *McKay Creek National Wildlife Refuge.* * * *

(ii) Hunting is permitted only on Wednesdays, Saturdays, Sundays, Veterans Day, Thanksgiving Day, Christmas Day and New Year's day on the McCormack Unit.

* * * * *

(hh) *South Carolina—** * *

(3) *Santee National Wildlife Refuge.* Hunting is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(nn) *Washington—** * *

(3) *McNary National Wildlife Refuge.* * * *

(i) Hunting is permitted, by shotgun or bow and flu-flu arrow, only on Wednesdays, Saturdays, Sundays, Veterans Day, Thanksgiving Day, Christmas Day and New Year's Day.

* * * * *

(5) *Umatilla National Wildlife Refuge.** * *

(ii) Hunting is permitted only on Wednesdays, Saturdays, Sundays, Veterans Day, Thanksgiving Day, Christmas Day and New Year's Day on the Paterson Unit.

* * * * *

4. Section 32.32 is amended by revising (a)(3) introductory text; removing (a)(3)(i) through (iv); revising (b)(1); redesignating (d)(2) through (5) as (3) through (6); adding a new (d)(2); revising (h)(3) introductory text; removing (h)(3)(i) through (v); revising (h)(4) introductory text; removing (h)(4)(i) through (viii); revising (i)(4) introductory text; removing (i)(4)(i)

through (vii); revising (i)(5) introductory text; removing (i)(5)(i) through (x); revising (l)(3); removing (n)(1); redesignating (n)(2) and (3) as (1) and (2); revising newly redesignated (n)(1) and (2); revising (p)(2); revising (r)(3) introductory text; removing (r)(3)(i) through (vii); revising (v)(2) and (5); adding (v)(8) and (x)(4)(iii); revising (bb)(2)(iii); redesignating (dd)(1) through (4) as (dd)(2)(i) through (iv); adding (dd)(1); revising (ff)(2) introductory text; removing (ff)(2)(i) and (ii); adding (gg)(2)(v) through (vii); revising (gg)(4)(ii); removing (gg)(4)(iii); redesignating (gg)(4)(iv) through (vi) as (iii) through (v); revising (11)(4) introductory text; removing (11)(4)(ii) through (vi); and adding (rr)(3)(vi) and (vii).

§ [illegible] Refuge-specific regulations; big game.

(a) *Alabama*—* * *

(3) *Wheeler National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(b) *Arizona—(1) Buenos Aires National Wildlife Refuge.* Hunting of mule and white-tailed deer, javelina, feral hogs and mountain lions is permitted on designated areas of the refuge.

* * * * *

(d) *Arkansas*—* * *

(2) *Cache River National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(h) *Florida*—* * *

(3) *Lower Suwannee National Wildlife Refuge.* Hunting of big game is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(4) *St. Marks National Wildlife Refuge.* Hunting of white-tailed deer, turkeys and feral hogs is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(i) *Georgia*—* * *

(4) *Okefenokee National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(5) *Piedmont National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(l) *Illinois—Crab Orchard National Wildlife Refuge.* * * *

(3) Hunters using Area II are required to check in at the refuge visitor contact center prior to hunting.

* * * * *

(n) *Illinois, Iowa and Missouri—Mark Twain National Wildlife Refuge.* * * *

(1) Firearms hunting is permitted on the Bear Creek Unit of the Gardner Division. Firearms hunting is permitted on the remainder of the Gardner Division only during part of the November firearms season, from one-half hour before sunrise to 3:00 p.m. Permits are required.

(2) Archery hunting is permitted on the Gardner Division.

* * * * *

(p) *Iowa*—* * *

(2) *Union Slough National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) The construction or use of permanent blinds, stands or ladders is prohibited.

(ii) All stands must be removed from the refuge by the end of the season.

* * * * *

(r) *Louisiana*—* * *

(3) *Catahoula National Wildlife Refuge.* Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following condition: Daily permits are required.

* * * * *

(v) *Massachusetts—Parker River National Wildlife Refuge.* * * *

(2) Hunting is permitted from one-half hour before sunrise until 2:00 p.m.

* * * * *

(5) Hunting is permitted on six days within the framework of the State shotgun deer season.

* * * * *

(8) Only antlerless deer may be harvested, under appropriate State permits, on days one and two of the refuge hunt.

* * * * *

(x) *Minnesota*—* * *

(4) *Rice Lake National Wildlife Refuge.* * * *

(iii) Permits are required.

* * * * *

(bb) *Nebraska*—* * *

(2) *DeSoto National Wildlife Refuge.* * * *

(iii) Muzzleloader hunting of deer is permitted only on designated areas of the refuge and only during the special State season. Hunters must check in and out of the refuge.

* * * * *

(dd) *New Jersey—(1) Edwin B. Forsythe National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) A State permit for the appropriate New Jersey Deer Management Zone is required.

(ii) Refuge hunting hours are consistent with State hunting hours. Hunters may enter the refuge no earlier than two hours before shooting time and leave no later than one hour after the end of shooting hours.

(iii) Use or possession of alcoholic beverages while hunting is prohibited.

* * * * *

(3) *Supawna Meadows National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) A State permit for the appropriate New Jersey Deer Management Zone is required.

(ii) In addition to the State permit, a Special Use Deer Hunting Permit issued by the refuge is required.

(iii) All hunters must attend a refuge hunter orientation session.

* * * * *

(ff) *New York*—* * *

(2) *Montezuma National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(gg) *North Carolina*—* * *

(2) *Great Dismal Swamp National Wildlife Refuge.* * * *

(v) Hunters are required to sign in and out on each hunt day.

(vi) The daily bag limit is two (2) deer, either sex.

(vii) Hunting and/or possession of loaded firearms on refuge roads and road rights-of-way is prohibited.

* * * * *

(4) *Pee Dee National Wildlife Refuge.* * * *

(ii) Muzzleloader hunting is permitted on Tuesday and Wednesday following the first Saturday in November.

* * * * *

(11) *South Carolina*—* * *

(4) *Santee National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(rr) *Virginia*—* * *

(3) *Great Dismal Swamp National Wildlife Refuge.* * * *

(vi) Hunters are required to sign in and out on each hunt day.

(vii) Hunting and/or possession of loaded firearms on refuge roads and road rights-of-way is prohibited.

* * * * *

Dated: September 28, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-24908 Filed 10-28-88; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 53, No. 210
Monday, October 31, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Ch. I

Issuance of Quarterly Report on the Regulatory Agenda

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Regulatory Agenda.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued the NRC Regulatory Agenda for the third quarter, July through September, of 1988. The agenda is issued to provide the public with information about NRC's rulemaking activities. Each issue of the agenda includes information for one quarter of the calendar year. The agenda briefly describes and gives the status for each rule that the NRC is considering, has proposed, or has published with an effective date. It also describes and gives the status of each petition for rulemaking that the NRC is considering.

ADDRESSES: A copy of this report, designated NRC Regulatory Agenda (NUREG–0936) Vol. 7, No. 2, is available for inspection and copying for a fee at the Nuclear Regulatory Commission's Public Document Room, 2120 L Street NW., Lower Level, Washington, DC 20555.

In addition, the U.S. Government Printing Office (GPO) sells the NRC Regulatory Agenda. To purchase it, a customer may call (202) 275–2060 or (202) 275–2171 or write to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Acting Chief, Rules Review Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492–7758, toll free number (800) 368–5642.

Dated at Bethesda, Maryland, this 13th day of October 1988.

For the Nuclear Regulatory Commission.

Dennis H. Grimsley,

Director, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management.

[FR Doc. 88–25083 Filed 10–28–88; 8:45 am]

BILLING CODE 7590–01–M

10 CFR Part 20

[Docket No. PRM–20–18]

The Rockefeller University; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of receipt.

SUMMARY: The Commission is publishing for public comment a notice of receipt of a petition for rulemaking dated August 16, 1988, which was filed with the Commission by The Rockefeller University. The petition was docketed by the Commission on September 13, 1988, and has been assigned Docket No. PRM–20–18. The petitioner requests that the Commission amend its regulations to permit a licensee to dispose of solid biomedical waste containing small amounts of radioactivity by on-site incineration. The petitioner believes this to be a reasonable alternative to burial of the wastes at a commercial low-level radioactive waste site.

DATE: Submit comments by December 30, 1988. Comments received after this date will be considered if it is practical to do so but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit written comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

For a copy of the petition, write the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The petition and copies of comments received may be inspected and copied for a fee at the NRC Public Document Room, 2120 L Street NW., Lower Level, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Acting Chief, Rules Review Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–7758 or Toll Free: 800–368–5642.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission (NRC) has established regulations that permit a licensee to dispose of certain materials contaminated with small amounts of certain radioactive isotopes without regard to its radioactivity (10 CFR 20.306). The petitioner requests that the NRC expand this regulation by classifying the disposal of solid biomedical wastes such as paper, glass, and plastic trash containing small amounts of hydrogen-3 and carbon-14 as below regulatory concern. The petitioner would then be able to dispose of the material by on-site incineration. To accomplish the desired amendment, the petitioner suggests that the following specific language be added to 10 CFR 20.306: "Any licensee may dispose of the following licensed material by incineration on site. 0.05 microcuries or less of hydrogen-3 or carbon-14, per gram of solid waste up to 1 Ci of hydrogen-3 and 0.1 Ci of carbon-14 per year," with the application of a summation rule for radionuclide mixtures.

The petitioner believes that the classification of this type of waste as below regulatory concern is a reasonable alternative to burial of the waste at a commercial low-level radioactive waste site. According to the petitioner, a generic rulemaking of the type suggested would reduce the number of waste generators and the amounts of unstable Class A radioactive material that is now shipped for burial. The petitioner believes that the reduction in volume and number of shipments would facilitate better management of remaining radioactive wastes and reduce the potential exposure to waste handlers and individuals along transit routes. The petitioner believes that the suggested amendment would save biomedical institutions significant cost expenditures and that the funds could be better used for basic and clinical research.

According to the petitioner, 90 percent of the radioactive material which must be shipped to commercial low-level radioactive waste sites for burial contains hydrogen-3 and carbon-14. The petitioner asserts that most of the hydrogen-3 and carbon-14 eventually escapes into the atmosphere whether it is buried or incinerated. Furthermore, the petitioner states that incineration results in a monitored, controlled release of basic compounds while releases from burial sites are not monitored. The petitioner states that, in relation to the amounts of hydrogen-3 and carbon-14 present in the environment, the amounts that would be added through the incineration of biomedical waste would be infinitesimal.

The petitioner would incinerate the biomedical waste in an on-site, operating, controlled air incinerator which is permitted to burn 300 pounds of animal tissues and 100 pounds of plastics and hospital wastes per hour. If the petitioner's request is granted, the petitioner anticipates incinerating approximately 5000 pounds of radioactively contaminated solid wastes yearly. Based on inventory and disposal manifests, the incinerated waste would contain less than 500 millicuries of hydrogen-3 and 10 millicuries of carbon-14.

According to the disposal manifests of all institutions in New York City for 1987, 10,000 cubic feet of solid waste, containing a total of 5.4 curies of hydrogen-3 and 0.2 curie of carbon-14, were shipped to commercial disposal facilities. The average concentration of radioactivity in these materials was 0.02 microcurie per gram. Using the IMPACTS-BRC methodology in which all of the material containing hydrogen-3 and carbon-14 from New York City is disposed of through on-site incineration, the maximum dose to an off-site individual would be 0.0065 millirem per year. Thus, the petitioner contends that the total amounts of radioactivity that would be released as a result of the requested action creates no adverse health effects.

The petition has been reviewed in relation to the Commission's policy statement on petitions for disposal of radioactive waste streams below regulatory concern, Appendix B to 10 CFR Part 2 (51 FR 30639; August 29, 1986). It has been found that the petition does not contain sufficient information to qualify for expedited handling in accordance with this policy statement and its staff implementation plan (51 FR 30640; August 29, 1986).

Dated at Rockville, Maryland, this 25th day of October, 1988.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 88–25087 Filed 10–28–88; 8:45 am]

BILLING CODE 7590–01–M

FARM CREDIT ADMINISTRATION

12 CFR Part 611

Organization; Conservatorships and Receiverships

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA) Board proposes for public comment revisions to its regulations governing receiverships and conservatorships that relate to the sale and transfer of loans of an institution in receivership and the definition of insolvency. The FCA Board proposes to delete § 611.1165, which provides direction to the receiver of an association in selling loans. The general authority of the receiver to sell assets of an association is already stated in existing § 611.1161(1). This authority also applies to receivers of banks in liquidation pursuant to § 611.1171, which incorporates § 611.1161 by reference. Insolvency is currently defined in § 611.1156(b)(1). Because the Agricultural Credit Act of 1987 (the 1987 Act) designates a class of stock as "eligible borrower stock," the FCA Board proposes to amend § 611.1156(b)(1) to redefine insolvency as the point at which FCA has confirmed that the institution's permanent capital as defined in section 4.3A(a)(1) of the Farm Credit Act of 1971 (Act) has been exhausted or reasonable cause exists to believe that permanent capital is about to be exhausted. This change would also permit FCA to confirm insolvency through means other than examination.

DATE: Comments must be received by November 21, 1988.

ADDRESSES: Submit any comments in writing (in triplicate) to Anne E. Dewey, General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Eldon Stoehr, Regional Director, Northeast Region, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4251, TDD (703) 883–4444

or

Joanne P. Ongman, Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444

SUPPLEMENTARY INFORMATION: On May 12, 1988 the FCA published for public comment proposed amendments to 12 CFR Part 611, Subparts K, L, M, and N (53 FR 16934). In response, the Farm Credit Corporation of America (FCCA) submitted comments stating that while current § 611.1165 addresses the sale and transfer of loans of an association in receivership, no corresponding provision exists in Subpart M, dealing with liquidation of banks. The FCCA therefore requested FCA to issue proposed regulations addressing the sale of loans of a bank in receivership to expressly authorize the sale of these loans to non-Farm Credit System lenders. This comment was concurred with by the Farm Credit Bank of Baltimore.

In addressing this comment, the FCA Board proposes to amend 12 CFR Part 611, Subpart L by deleting § 611.1165, Sale and Transfer of Loans to clarify the authority of a receiver to sell assets. The general authority of the receiver to sell assets of an association is already stated in existing § 611.1161(1). This authority applies to receivers of banks in liquidation pursuant to § 611.1171, which incorporates § 611.1161 by reference. Receivers for both associations and banks in receivership are therefore already empowered to sell assets to any willing buyer. Section 611.1165 provides direction to the receiver of an association in selling loans, which could be a barrier to the receiver in obtaining the highest return on the sale of assets for the benefit of creditors and stockholders.

Additionally, section 101 of the 1987 Act added section 4.9A to the Act. New section 4.9A designates a class of stock as eligible borrower stock for which holders are guaranteed par value upon its retirement, even when the book value is less than par. Conversely, section 4.3A(a)(1) of the Act, added by section 301 of the 1987 Act, defines permanent capital as all stock with the exception of eligible borrower stock and stock that may be retired upon repayment of the loan or at the option or request of the holder, thereby providing that permanent stock is at risk. Therefore, consistent with the intent of Congress to have permanent capital at risk, the FCA Board proposes to amend § 611.1156(b)(1) to redefine insolvency

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as the point at which FCA has confirmed that the institution's permanent capital as defined in section 4.3A(a)(1) has been exhausted or reasonable cause exists to believe that permanent capital is about to be exhausted. This definition is amended to clearly establish that permanent stock of institutions is at risk, while retaining the flexibility to appoint a receiver before permanent capital is absolutely exhausted. This proposed amendment would also permit the FCA to confirm insolvency through means other than examination.

List of Subjects in 12 CFR Part 611

Agriculture, Banks, Banking, Organization and functions (Government agencies), Rural areas.

For the reasons stated in the preamble, Part 611 of Chapter VI, Title 12 of the Code of Federal Regulations is proposed to be amended to read as follows:

PART 611—ORGANIZATION

1. The authority citation for Part 611 is revised to read as follows:

Authority: Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 3.21, 4.12, 4.15, 5.0, 5.9, 5.10, 5.17, 7.0–7.13; 12 U.S.C. 2011, 2021, 2071, 2091, 2121, 2142, 2183, 2203, 2221, 2243, 2244, 2252, 2279a–2279f–1; secs. 411 and 412 of Pub. L. 100–233.

Subpart K—Appointment of Conservators and Receivers

2. Section 611.1156 is amended by revising paragraph (b)(1) as follows:

§ 611.1156 Grounds for Appointment of Conservators and Receivers.

* * * * *

(b) * * *

(1) The institution is insolvent. "Insolvency" is defined as the point at which the FCA has confirmed that permanent capital as defined in section 4.3A(a)(1) of the Act has been exhausted, or reasonable cause exists to believe that permanent capital is about to be exhausted.

* * * * *

Subpart L—Liquidation of Associations

§ 611.1165 [Removed and Reserved.]

3. Section 611.1165 is removed and reserved.

Date: October 26, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88–25128 Filed 10–28–88; 8:45 am]

BILLING CODE 6705–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 75

[Airspace Docket No. 88–ACE–10]

Proposed Establishment of Jet Route J–233; Iowa

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposed to establish new Jet Route J–233 located in the vicinity of Waterloo, IA. This route would bypass the arrival/departure routes in the Chicago terminal area. This action would improve the traffic flow in the Chicago area, aid flight planning and reduce delays.

DATES: Comments must be received on or before December 12, 1988.

ADDRESSES: Send comments on the proposal in triplicate to:

Director, FAA, Central Region, Attention: Manager, Air Traffic Division, Docket No. 88–ACE–10, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

Comments invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88–ACE–10." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to establish new Jet Route J–233 located in the vicinity of Waterloo, IA. The proposed route would establish a routing to/from Minneapolis, MN, through the Chicago area that would provide a safe, orderly and expeditious flow of traffic. This action would save fuel, aid flight planning, and controller coordination. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

the proposed amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for Part 75 continues to read as follows;

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J–233 [New]

From Waterloo, IA; INT Waterloo 190°T(184°M) and St. Louis, MO, 318°T(313°M) radials; to St. Louis.

Issued in Washington, DC, on October 18, 1988.

Shelomo Wugalter,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 88–25033 Filed 10–28–88; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF LABOR

Wage and Hour Division, Employment Standards Administration

29 CFR Parts 524, 525, and 529

Employment of Workers With Disabilities Under Special Certificates

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Proposed rule; reopening and extension of comment period.

SUMMARY: This document reopens and extends the period for filing comments regarding a proposed rule intended to implement the 1986 Amendments to section 14(c) of the Fair Labor Standards Act (FLSA). This action is taken to permit submission of additional comments from interested parties as well as consideration of comments received after the close of the initial comment period.

DATE: Comments must be received on or before November 15, 1988.

ADDRESS: Send comments to: Paula V. Smith, Administrator, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210. Commenters who wish to receive notification of receipt of comments are asked to include a self-addressed stamped postcard.

FOR FURTHER INFORMATION CONTACT: Nancy M. Flynn, Deputy Administrator, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523–8305. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: In the Federal Register of May 20, 1988 (53 FR 18234), the Department of Labor published a proposed rule intended to revise 29 CFR Parts 524, 525, and 529, which concern the employment of workers with disabilities under special certificates. Interested persons were requested to submit comments on or before July 19, 1988.

Because of the continuing interest in this proposal, the Department believes that it is desirable to reopen and extend the period for public comment by all interested persons. Therefore, the comment period for the proposed rule revising 29 CFR Parts 524 (Special Minimum Wages for Handicapped Workers in Competitive Employment), 525 (Employment of Handicapped Clients in Sheltered Workshops), and 529 (Employment of Patient Workers in Hospitals and Institutions at Subminimum Wages), is reopened and extended to October 31, 1988. Individuals who submitted comments in response to the initial notice which were received after the close of the initial comment period are not required to resubmit such comments.

Signed at Washington, DC, on this 25th day of October, 1988.

Ann McLaughlin,

Secretary of Labor.

Alan McMillan,

Deputy Assistant Secretary for Employment Standards.

Paula V. Smith

Administrator, Wage and Hour Division.

[FR Doc 88–25125 Filed 10–28–88; 8:45 am]

BILLING CODE 4510–27–M

COPYRIGHT ROYALTY TRIBUNAL

37 CFR 301, 302, 305, 308

[CRT Docket No. 88–3–88M]

Modification of Rules of Procedure

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend several of the rules of procedure governing the conduct of Tribunal rate adjustment and distribution proceedings, as well as other agency procedures. This notice is a result of the agency's internal review of its regulations and is intended to improve the efficiency of the proceedings, and in certain cases, to conform to changes in U.S. law.

DATES: Comments are due December 15, 1988.

ADDRESS: An original and five copies of the comments shall be submitted to: Chairman, Copyright Royalty Tribunal, 1111 20th Street, NW., Suite 450, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1111 20th Street, NW., Suite 450, Washington, DC 20036, (202) 653–5175.

SUPPLEMENTARY INFORMATION: The Copyright Royalty Tribunal has initiated a review of its rules regarding the conduct of the copyright royalty rate adjustment and distribution proceedings, as well as other agency practices, and believes that several regulations should be modified to achieve greater efficiency or, in some cases, to conform with certain changes in U.S. law. Three of the proposals should result in a reduction in the paperwork burden on the claimants—reducing the number of copies of pleadings to be filed from 15 to two plus the number of sitting Commissioners, eliminating the third element of the jukebox claim, and eliminating the jukebox procedure called justification of claim. The changes are described as follows:

Section 301.7. For six months in 1985, there were two sitting Commissioners on the Tribunal. The Copyright Act authorizes five Commissioners. The Tribunal issued an interpretation at that time stating that two Commissioners could carry out the business of the agency. To eliminate any remaining ambiguity, the Tribunal is proposing to amend § 301.7(b) to state that a quorum consists of a majority of "sitting" members of the Tribunal.

Section 301.14. The Government in the Sunshine Act requires that the general counsel of an agency certify when a meeting may be properly closed to the public. The Tribunal drafted its Sunshine Act regulations at a time when there was no position of general counsel in the agency, so the function was given to the Chairman. The Tribunal proposes to amend § 301.14(b) and (c) to substitute the general counsel for the Chairman as the agency official to certify that a meeting may be closed to the public.

Section 301.22. The Freedom of Information Reform Act of 1986 (FOIRA) introduced new fee and fee waiver guidelines. The Tribunal proposes to amend § 301.22 to implement a new fee policy based on the FOIRA guidelines.

Subpart E—Procedures and Regulations. Prior to the 1983 cable distribution proceeding, the Tribunal asked the parties to recommend modifications of the Tribunal's hearing procedures. Many of the parties' recommendations were adopted for the 1983 cable distribution proceeding and have been followed regularly since then. Some of the recommendations were already a part of the Tribunal's rules. Therefore, the Tribunal is proposing to revise Subpart E to incorporate many of the procedures the Tribunal has been following since the 1983 proceeding. In addition, the Tribunal proposes to cut down considerably the number of copies required of parties who file pleadings, to require that foreign language submissions be accompanied by English language translations, and to indicate that in the case of a hearing presided by two Commissioners, it takes a "yes" vote by both Commissioners to either sustain an objection, or carry a motion.

Sections 301.63 and 64. As currently written, these sections establish a 90-day period at the beginning of ratesetting years or FCC rule changes when the Tribunal can accept petitions for rate adjustments and can join them together or accept comments on them. However, it states that the Tribunal shall not begin to consider any of the petitions before the expiration of the ninety days. While this provision was originally intended to allow the parties time to negotiate settlements, the Tribunal believes this procedure is too restrictive. The Tribunal proposes to modify §§ 301.63 and 301.64 to permit earlier consideration of rate adjustment petitions.

Section 301.69 and 74. These sections require the Tribunal to publish proposed final determinations in distribution and in rate adjustment proceedings unless to do so would mean going past the statutory deadline. The Tribunal believes that this procedure should not be required, but should be an option for the Tribunal if the Tribunal believes it would serve a useful end.

Subpart H—Multidistrict Appeals. Title 28 of the U.S. Code was amended this year to institute a new procedure to apply when appeals of an agency's decision are taken to more than one U.S. Court of Appeals. A new Subpart H is proposed to indicate the procedures that are to be followed by the parties to the multidistrict litigation and the general counsel.

Sections 302.2, 302.3, 302.6 and 302.7. Section 302.2, 302.3 and 302.6 are out-of-date, as well as certain parts of § 302.7. It is proposed to delete §§ 302.2, 302.3 and 302.6 and to modify § 302.7 to remove the obsolete language.

Section 302.6. The Tribunal has experienced certain problems with late-filed cable claims, and wishes to make clear what constitutes an acceptable filing and what does not. The Tribunal proposes that for a claim to be considered to have been filed during the month of July, it must either be filed in the Tribunal's offices during regular business hours in July or to be postmarked by the United States Postal Service during the month of July. The Tribunal will not consider acceptable mail dated by the business' own postage meter received after July 31.

Section 305.2. The Tribunal proposes to add a sentence to § 305.2 to parallel the provisions in the cable sections which states that failure to file a timely jukebox claim will forfeit all entitlement to the previous years' fund.

Section 305.3. The Tribunal proposes to eliminate the third requirement of a valid jukebox claim. We find that the third requirement, that the claimant agree to abide by the Tribunal's determination, except for the claimant's right to appeal, is a truism that adds nothing to the claim. ASCAP, BMI and SESAC have requested that the Tribunal add a new element to the claim—to require claimants to indicate whether the claimant is a copyright owner or a performing rights society. The Tribunal views that it can get this information from the claimants at a later date, and does not believe this information is necessary to be part of the claim.

Section 305.4. The Tribunal proposes to eliminate the procedure called Justification of Claim. This procedure applied more usefully when the Tribunal conducted "paper" proceedings to determine entitlement to jukebox royalties. It has since been superceded by the oral hearings conducted each year since the 1982/83 consolidated proceeding. However, the Tribunal retains the option to return to "paper" proceedings if and when it believes that the ends of justice are better met.

A new § 305.4 is being proposed which will parallel § 302.6 and make clear what is considered a timely-filed jukebox claim.

Sections 301.70, 302.1, 302.10 and 308.2. In 1988, the Copyright Act was amended to delete section 111(d)(1), the notice requirement for new cable systems. Consequently, subparagraphs (d)(2), (d)(3), (d)(4) and (d)(5) were redesignated. The Tribunal proposes to amend its rules to conform with the change in the Copyright Act.

List of Subjects

37 CFR Part 301

Administrative practice and procedure, Freedom of information, Sunshine Act.

37 CFR Part 302

Cable television, Claims, Copyright. Claims, Copyright, Jukeboxes.

37 CFR Part 305

Claims, Copyright, Jukeboxes

37 CFR Part 308

Cable television, Copyright, Rates.

For the reasons set forth in the preamble, the Tribunal proposes to amend 37 CFR Part 301 as follows:

PART 301—COPYRIGHT ROYALTY TRIBUNAL RULES OF PROCEDURE

1. The authority citation for Part 301 continues to read as follows:

Authority: 17 U.S.C. 803(a).

2. In § 301.7, paragraph (b) is proposed to be revised as follows:

§ 301.7 Proceedings.

* * * * *

(b) *Quorum.* A majority of the sitting members of the Tribunal constitutes a quorum.

* * * * *

3. In § 301.14, paragraphs (b) and (c) introductory text are proposed to be revised as follows:

§ 301.14 Procedure for closing meetings.

* * * * *

(b) Before a discussion to close a meeting or withhold information, the General Counsel must certify that, in his or her opinion, such a step is permissible, and the General Counsel shall cite the appropriate exemption under § 301.13. This certification shall be included in the announcement of the meeting and be maintained as part of the Tribunal's records.

(c) Following such a vote, and by the end of the working day, the General Counsel must transmit the following information to the Federal Register for publication:

* * * * *

4. Section 301.22 is proposed to be revised as follows:

§ 301.22 Public access.

(a) *Requesting information.* Information may be requested from the Tribunal in person, by telephone, or by mail. If the material sought is not a Tribunal record, is exempted, or for some reason is unavailable, the person requesting it will be so informed and, in the case of an "exempted record," will be explained the reason for the exemption and the procedure for appeal under the Freedom of Information Act, § 301.13.

(b) *Fees.* Fees for copies of Tribunal records are $.20 per page; $20 for each hour or fraction thereof spent searching for records; $5 for certification of each document; and the actual costs to the Tribunal for any other costs incurred.

(c) *Imposition of fees.* (1) Commercial use requests—Where a request appears to seek disclosure of records for a commercial use, the requester shall be charged for the time spent by Tribunal personnel in searching for the requested document and in reviewing the record to determine whether it should be disclosed, and for the cost of each page of duplication. "Commercial use" is defined as a use or purpose that furthers the commercial, trade or profit interests of the requester or the person on whose behalf the request is made. Commercial users include all claimants or petitioners for rate adjustments whose interest in the information is to further their case preparation before the Tribunal.

(2) Requests from representatives of news media—Where a request seeks disclosure of records to a representative of the news media, the requester shall be charged only for the actual duplication cost of the records and only to the extent that the number of duplications exceeds 100 pages; provided that the request must reasonably describe the records sought, and it must appear that the records are for use by the requester in such person's capacity as a news media representative. "Representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. A "freelance" journalist not actually employed by a news organization shall be eligible for inclusion under this category if such person can demonstrate a solid basis for expecting publication by a news organization.

(3) Requests from educational and noncommercial scientific institutions—Where a request seeks disclosure of records to an educational or noncommercial scientific institution, the requester shall be charged only for the actual duplication cost of the records and only to the extent that the number of duplications exceed 100 pages; provided, however, that the request must reasonably describe the records sought and it must appear that the records are to be used by the requester in furtherance of its educational or noncommercial scientific research programs. To that extent, educational or noncommercial scientific institutions which are claimants or petitioners before the agency are considered "commercial users." "Educational institution" refers to a preschool, a public or private elementary or secondary school, or an institution of undergraduate, graduate, professional or vocational education which operates a program or programs of scholarly research. "Noncommercial scientific institution" refers to an institution that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular products or industry.

(4) All other requests—Where a request seeks disclosure of records to a person or entity other than paragraphs (c) (1), (2), or (3) of this section, the requester shall be charged the full cost of search and duplication. However, the first two hours of search time and the first 100 pages of duplication shall be furnished without charge.

(d) *Aggregating of requests.* If there exists a substantial basis for concluding that a requester or group of requesters has submitted a series of partial requests for disclosure of records in an attempt to evade assessment of fees, the requests may be aggregated so as to constitute a single request, with fees charged accordingly.

(e) *Interest.* In the event a requester fails to remit payment of fees charged for processing a request within 30 days from the date such fees were billed, interest on such fees may be assessed beginning on the 31st day after the billing date, to be calculated at the rate prescribed in section 3717 of Title 31, United States Code.

(f) *Advance payments.* If, but only if, it is estimated or determined that processing of a request for disclosure of records will result in a charge of fees of more than $250, the requester may be required to pay the fees in advance. If a requester has previously failed to make timely payment of fees, the requester may be required to pay such fees and interest accrued thereon, and to make an advance payment of the full amount of estimated fees chargeable in connection with any pending or new request.

(g) *Nonpayment.* In the event of nonpayment of billed charges for disclosure of records, the provisions of the Debt Collection Act of 1982, including disclosure to consumer credit reporting agencies and referral to collection agencies, may be utilized to obtain payment.

(h) *Waiver or reduction of charges.* The Tribunal shall waive the fee, or grant a fee reduction, if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and is not primarily in the commercial interest of the requester. The Tribunal will not charge if the costs of routine collection and processing of the fee is likely to equal or exceed the amount of the fee. However, the Tribunal has determined that the cost of writing up the invoice and transmitting the fees to the Treasury Department is *de minimis* and is not a basis for not collecting a fee.

5. In Subpart E of Part 301, the table of contents is proposed to be revised as follows:

Subpart E—Procedures and Regulations

Sec.

301.40 Scope.
301.41 Formal Hearings.
301.42 Suspension, amendment, or waiver of rules.
301.43 Notice of proposed rulemaking.
301.44 Written cases.
301.45 Filing and service of written cases and pleadings.
301.46 Discovery.
301.47 Conduct of proceedings—role of Commissioners.
301.48 Conduct of proceedings—witnesses and counsel.
301.49 Rules of evidence.
301.50 Transcript and record.
301.51 Declaratory rulings.
301.52 Closing the hearing.
301.53 Proposed findings and conclusions.
301.54 Promulgation of rules or orders.
301.55 Reopening of proceedings. modification or setting.
301.56 Public sugestions and comments

Subpart E—Procedures and Regulations

§§ 301.44, 301.46, 301.49, 301.52, 301.53 [Removed]

6. Sections 301.44, 301.46, 301.49, 301.52 and 301.53 are proposed to be removed.

[§§ 301.45, 301.47, 301.48, 301.50, 301.51, 301.54, 301.55 (Redesignated as §§ 301.51, 301.50, 301.52, 301.55, 301.49, 301.53, 301.54, respectively)]

7. Sections 301.45, 301.47, 301.48, 301.50, 301.51, 301.54, and 301.55 are proposed to be redesignated 301.51, 301.50, 301.52, 301.55, 301.49, 301.53 and 301.54, respectively.

8. A new § 301.44 is proposed to be added as follows:

§ 301.44 Written cases.

(a) Unless otherwise structured by the Tribunal, rate adjustment proceedings and royalty fee distribution proceedings shall begin with the filing of the written direct cases of the parties who have filed a notice of intent to participate in the hearing. All interested persons will be afforded an opportunity to participate in any proceeding and submit written data, views, or argument, with or without the opportunity to present the same orally.

(b) The written direct case shall include all testimony, including each witness' background and qualifications, along with all the exhibits to be presented in the case.

(c) Each party may designate a portion of past records which it wants included in its direct case. Complete testimony of each witness whose testimony is designated (i.e., direct, cross and redirect) must be referenced.

(d) In the case of a royalty fee distribution proceeding, each party must state in the written direct case its percentage or dollar claim to the fund. In the case of a rate adjustment proceeding, each party must state its requested rate. No party will be precluded from revising its claim or its requested rate at any time during the proceeding up to the filing of reply proposed findings of fact and conclusions of law.

(e) No evidence, including exhibits, may be submitted in the written direct case without a sponsoring witness, except where official notice is proper or in the case of incorporation by reference of past records.

(f) Unless otherwise structured by the Tribunal, written rebuttal cases of the parties shall be filed at a time designated by the Tribunal upon the conclusion of the hearing of the direct case in the same form and manner as the direct case, except that the claim or the requested rate shall not have to be included if it has not changed from the direct case.

9. A new § 301.45 is proposed to be added as follows:

§ 301.45 Filing and service of written cases and pleadings.

(a) *Copies.* In all filings with the Tribunal, the party shall file an original plus two copies plus a copy for each sitting Commissioner. In the case of exhibits whose bulk or whose cost of reproduction would unnecessarily encumber the record or burden the party, the Tribunal may reduce the number of required copies.

(b) *English language translations.* In all filings with the Tribunal, each submission which is in a language other than English shall be accompanied by an English language translation, duly verified under oath to be a true translation. Any other party to the proceeding may, in response, submit its own English language translation, similarly verified.

(c) *Affidavits.* The testimony of each witness in a party's written case, direct or rebuttal, shall be accompanied by an affidavit supporting the testimony.

(d) *Subscription and Verification.* (1) The original of all documents filed by any party represented by counsel shall be signed by at least one attorney of record and list the attorney's address and telephone number. All copies shall be confirmed. Except for English language translations, written cases, or when otherwise required, documents signed by the attorney for a party need not be verified or accompanied by an affidavit. The signature of an attorney constitutes certificates by him that he has read the document, that to the best of his knowledge and belief there is good ground to support it, and that it has not been interposed for delay.

(2) The original of all documents filed by a party not represented by counsel shall be both signed and verified by that party and list that party's address and telephone number.

(3) The original of a document that is not signed, or is signed with intent to defeat the purpose of this section, may be stricken as sham and false and the matter proceed as though the document had not been filed.

(e) *Service.* In all filings with the Tribunal, a copy shall be served upon the counsel of all other parties identified in the Tribunal's service list, or if the party is unrepresented by counsel, upon the party itself. Proof of service shall accompany the filing with the Tribunal.

10. A new § 301.46 is proposed to be added as follows:

§ 301.46 Discovery.

(a) Unless otherwise structured by the Tribunal, a period shall be designated following the filing of the written direct and rebuttal cases in which parties may request of an opposing party non-privileged underlying documents related to the written exhibits and testimony.

(b) Any party may file pre-hearing objections to any portion of another party's written case on any proper ground, including, without limitation, relevance, competency, and failure to provide underlying documents.

(c) Within this period, each party may amend its direct evidence solely to meet the objections raised by the other parties or to respond to requests by the Tribunal. Such amendments must be filed with the Tribunal and exchanged with all parties.

11. A new § 301.47 is proposed to be added as follows:

§ 301.47 Conduct of proceedings—role of Commissioners.

(a) At the opening of the proceeding, the Chairman shall announce the subject under consideration.

(b) Only Commissioners of the Tribunal, authorized Tribunal staff, or counsel as provided in this chapter shall question witnesses.

(c) Subject to the vote of the Tribunal, the Chairman will have the responsibility for:

(1) Setting the order of presentation of evidence and appearance of witnesses;

(2) Administering oaths and affirmations to all witnesses;

(3) Announcing the Tribunal's ruling on objections and motions and all rulings with respect to introducing or excluding documentary or other evidence. In the case where there are two Commissioners sitting at hearing, it takes two affirmative votes to carry a motion or sustain an objection.

(4) Regulating the course of the proceedings and the decorum of the parties and their counsel, and insuring that the proceedings are fair and impartial;

(5) Announcing the schedule of subsequent hearing;

(6) Taking any other action which is consistent with this chapter and which has been authorized by the Tribunal.

(d) Each Commissioner may examine any witness or call upon any party for the production of additional evidence at any time. Further examination, cross-examination, or redirect examination by counsel relevant to the inquiry initiated by a Commissioner may be allowed by the Tribunal but only to the extent it is deemed necessary to complete the record.

12. A new § 301.48 is proposed to be added as follows:

§ 301.48 Conduct of proceedings—witnesses and counsel.

(a) With all due regard for the convenience of the witnesses, proceedings shall be conducted as expeditiously as possible.

(b) Each claimant group or party requesting a rate adjustment may present its opening statement with the presentation of its direct case.

(c) All witnesses at Tribunal proceedings shall be required to take an oath or affirmation before testifying; however attorneys who do not appear as witnesses shall not be required to do an.

(d) Witnesses shall first be examined by their attorney and by opposing attorneys for their competency to support their written testimony and exhibits (voir dire).

(e) Witnesses may then summarize, highlight or read their written testimony. However, they may not go beyond the scope of their written testimony, unless the Tribunal expands the scope to complete the record.

(f) Parties are entitled to raise objections to evidence on any proper ground during the course of the hearing, including that an opposing party has not furnished non-privileged underlying documents. However, they may not raise objections which could have been raised prior to the hearing without leave from the Tribunal.

(g) All written testimony and exhibits will be received into the record, except that to which the Tribunal sustains an objection; no separate motion will be required.

(h) If the Tribunal rejects or excludes testimony and an offer of proof is made, the offer of proof shall consist of a statement of the substance of the evidence which it is contended would have been adduced. In the case of documentary or written evidence, a copy of such evidence shall be marked for identification and shall constitute the offer of proof.

(i) Cumulative evidence will be discouraged by the Tribunal and the Tribunal may limit the number of witnesses that may be heard in behalf of any one party on any one issue.

(j) Parties are entitled to cross-examination and redirect examination. Cross-examination is limited to matters raised on direct examination. Redirect examination is limited to matters raised on cross-examination. The Tribunal, however, may limit cross-examination and redirect examination if in its judgment this evidence or examination would be cumulative or cause undue delay.

(k) Documents which have not been exchanged in advance may be shown a witness on cross-examination. However, copies of such documents must be distributed to the Tribunal and to other participants or their counsel at hearing at the time of cross-examination, unless the Tribunal directs otherwise. If the document is not, or will not be, supported by a witness for the cross-examining party, that document can be used solely to impeach the witness' direct testimony and cannot itself be relied upon in findings of fact as rebutting the witness' direct testimony. However, upon leave from the Tribunal, the document can be admitted as evidence without a sponsoring witness if official notice is proper, or if in the Tribunal's view, the cross-examined witness is the proper sponsoring witness.

(l) The Tribunal will require individuals or groups with the same or similar interests in a proceeding to select a single representative to conduct their examination and cross-examination for them. However, if, within a settled group, the individual parties request to conduct separate questioning, the Tribunal may allow such, so long as the questioning is limited to the particular interests of the individual party and is not cumulative or repetitive of the questioning of other parties within the settled group.

§ 301.49 [Amended]

13. In newly redesignated § 301.49, paragraphs (e), (f), (g), (j), (k) and (l) are proposed to be removed, and paragraphs (h) and (i) are proposed to be redesignated (e) and (f), respectively.

§ 301.53 [Amended]

14. In newly redesignated § 301.53, paragraph (d) is proposed to be removed.

15. Section 301.63 is proposed to be revised as follows:

§ 301.63 Consideration of petition.

To allow time for parties to settle their differences regarding rate adjustments, the Tribunal may delay considering any petition before the expiration of 90 days from the start of the calendar year specified in § 301.61(b) or 90 days from the effective date of the Federal Communications Commission action mentioned in § 301.61(c). Similar petitions may be joined together by the Tribunal for the purpose of determining "significant interest", and the Tribunal may permit written comments or a hearing on pending petitions.

16. Section 301.64 is proposed to be revised as follows:

§ 301.64 Disposition of petition.

At the end of the 90-day period, if the Tribunal has not already done so, the Tribunal shall determine as expeditiously as possible if one or more petitioner's interest is "significant"; and shall publish in the **Federal Register** a notice of its determination and the reasons therefor, together with a notice of the commencement of proceedings if it has been determined to commence a proceeding. Any commencement notice shall, to the extent feasible, describe the general structure and schedule of the proceeding.

17. In § 301.66, paragraph (a) is proposed to be revised as follows:

§ 301.66 Publication of proposed rate determination.

(a) Following the conclusion of the hearings, the Tribunal may publish in the **Federal Register** a notice of its proposed findings and conclusions in the rate adjustment proceeding. The Tribunal shall afford all parties a reasonable opportunity to submit written comments on the proposed determination. The Tribunal may, if necessary, conduct additional hearings.

* * * * *

§ 301.70 [Amended]

18. In § 301.70, the section citation "17 U.S.C. 111(d)(5)" is proposed to be removed, and the section citation "17 U.S.C. 111(d)(4)" is proposed to be added in its place.

19. In § 301.74, paragraph (a) is proposed to be revised as follows:

§ 301.74 Publication of proposed royalty distribution determination.

(a) Following the conclusion of the hearings, the Tribunal may publish in the **Federal Register** a notice of its proposed findings and conclusions in the royalty distribution proceeding. The Tribunal shall afford all claimants a reasonable opportunity to submit written comments on the proposed determination. the Tribunal may, if necessary, conduct additional hearings.

* * * * *

20. Subpart H, consisting of §§ 301.80 through 301.83, is proposed to be added as follows:

Subpart H—Appeals of Tribunal Decisions

Sec.
301.80 Purpose.
301.81 Notice of petition for review of Tribunal decision.
301.82 Judicial Panel on Multidistrict Litigation.
301.83 Filing of proceeding records.

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Subpart H—Appeals of Tribunal Decisions

§ 301.80 Purpose.

The purpose of this subpart is to implement the provisions of Pub. L. 100–236, an amendment to Title 28 of the United States Code to provide for the selection of the court of appeals to decide multiple appeals filed with respect to the same agency order

§ 301.81 Notice of petition for review of Tribunal decisions.

Immediately following the filing by a party of a petition for review of a Tribunal's decision, a copy of such petition for review shall be filed with the General Counsel of the Tribunal and shall include: the date of the relevant decision, the case name of the petition for review, the circuit court of appeals in which the petition for review is pending, the appellate docket number of the petition for review, and the date of filing by the court of appeals of the petition for review.

§ 301.82 Judicial Panel on Multidistrict Litigation.

(a) If, within ten days after issuance of a final Tribunal decision, the General Counsel receives notice of two or more petitions for review with respect to proceedings in at least two courts of appeals, the General Counsel shall, promptly after the expiration of the ten-day period, so notify the Judicial Panel on Multidistrict Litigation, according to Rules 20–23 of the Panel's Procedures.

(b) Upon notification from the Judicial Panel on Multidistrict Litigation that the Panel has consolidated the petitions for review in the court of appeals for the circuit that was randomly selected, the General Counsel shall promptly serve the Panel's consolidation order on all other parties in all petitions for review included in the Panel's consolidation order, and shall promptly submit a proof of that service to the Clerk of the Panel.

§ 301.83 Filing of proceeding records.

(a) In the case of two or more appeals filed within ten days after issuance of a final Tribunal decision, the General Counsel shall file the record of the proceeding in the court of appeals for the circuit named by the Judicial Panel on Multidistrict Litigation.

(b) In the case of fewer than two appeals filed within ten days after issuance of a final Tribunal decision, the General Counsel shall file the record of the proceeding in the court of appeals where the first appeal was filed.

PART 302—FILING OF CLAIMS TO CABLE ROYALTY FEES

For the reasons set forth in the preamble, the Tribunal proposes to amend 37 CFR Part 302 as follows:

21 The authority citation for Part 302 is revised to read as follows:

Authority: 17 U.S.C 111(d)(4)(A)

§ 302.1 [Amended]

22. In § 302.1, the section citation "17 U.S.C. 111(d)(5)(A)" is proposed to be removed, and the section citation "17 U.S.C. 111(d)(4)(A)" is proposed to be added in its place.

§ 302.2 [Removed and Reserved]

23. Section 302.2 is proposed to be removed and reserved.

§ 302.3 [Removed and Reserved]

24. Section 302.3 is proposed to be removed and reserved.

§ 302.6 [Removed and Reserved]

25. Section 302.6 is proposed to be removed and reserved.

26. Section 302.7 (a) and (b) introductory text is proposed to be revised as follows:

§ 302.7 Filing of claims to cable royalty fees.

(a) During the month of July of each year, every person claiming to be entitled to compulsory license fees for secondary transmissions during the preceding calendar year shall file a claim to such fees in the office of the Copyright Royalty Tribunal. No royalty fees shall be distributed to copyright owners for secondary transmissions during the specified period unless such owner has filed a claim to such fees during the following calendar month of July For purposes of this clause claimants may file claims jointly or as a single claim. Such filing shall include such information as the Copyright Royalty Tribunal may require. A joint claim shall include a concise statement of the authorization for the filing of the joint claim.

(b) Claims shall include the following information:

* * * * * *

27 Section 302.8 is proposed to be revised as follows:

§ 302.8 Compliance with statutory dates.

Claims filed with the Copyright Royalty Tribunal shall be considered timely filed if:

(a) they are received in the offices of the Copyright Royalty Tribunal during normal business hours during the month of July, or

(b) they are properly addressed to the Copyright Royalty Tribunal, 1111 20th Street, NW., Suite 450, Washington, DC 20036 and they are deposited with sufficient postage with the United States Postal Service and bear a July U.S. postmark.

§ 302.10 [Amended]

28. In § 302.10, the section citation "17 U.S.C. 111(d)(5)(c)" is proposed to be removed, and the section citation "17 U.S.C. 111(d)(4)(C)" is proposed to be added in its place.

PART 305—CLAIMS TO PHONORECORD PLAYER (JUKEBOX) ROYALTY FEES

For the reasons set forth in the preamble, the Tribunal proposes to amend 37 CFR Part 305 as follows:

29. The authority section for Part 305 continues to read as follows:

Authority: 17 U.S.C 116(c)(2).

30. Section 305.2 is proposed to be revised as follows:

§ 305.2 Time of filing.

During the month of January in each year every person claiming to be entitled to coin-operated phonorecord player fees for performances of nondramatic musical works during the preceding calendar shall file a claim with the Copyright Royalty Tribunal. No royalty fees shall be distributed to any person during the specified period unless such person has filed a claim to such fees during the following calendar month of January Claimants may file jointly or as a single claim. A performing rights society shall not be required to obtain from its members or affiliates separate authorizations, apart from their standard membership or affiliate agreements, for purposes of this filing and fee distribution.

§ 305.3 [Amended]

31 In § 305.3, paragraph (c) is proposed to be removed.

32. Section 305.4 is proposed to be revised as follows:

§ 305.4 Compliance with statutory dates.

Claims filed with the Copyright Royalty Tribunal shall be considered timely filed if:

(a) They are received in the offices of the Copyright Royalty Tribunal during normal business hours during the month of January, or

(b) They are properly addressed to the Copyright Royalty Tribunal, 1111 20th Street, NW., Suite 450, Washington, DC 20036 and they are deposited with sufficient postage with the United States Postal Service and bear a January U.S. postmark.

For the reasons set forth in the preamble, the Tribunal proposes to amend 37 CFR Part 308 as follows:

PART 308—ADJUSTMENT OF ROYALTY FEE FOR COMPULSORY LICENSE FOR SECONDARY TRANSMISSION BY CABLE SYSTEM

33. The authority citation for Part 308 continues to read as follows:

Authority: 17 U.S.C. 801(b)(2)(A) and (D).

§ 308.2 [Amended]

34. In paragraph (a) of § 308.2, the section citation "17 U.S.C. 111(d)(2)(B)" is proposed to be removed, and the section citation "17 U.S.C. 111(d)(1)(B)" is proposed to be added in its place, and in paragraph (b) of § 308.2, the section citation "17 U.S.C. 111(d)(2)(C) and (D)" is proposed to be removed, and the section citation "17 U.S.C. 111(d)(1)(C) and (D)" is proposed to be added in its place.

Mario F. Aguero,

Chairman.

Dated: October 26, 1988.

[FR Doc. 88–25086 Filed 10–28–88; 8:45am]

BILLING CODE 1410–09–M

VETERANS ADMINISTRATION

38 CFR Ch. 1

Agenda of Federal Regulations

AGENCY: Veterans Administration.

ACTION: Publication of agenda of regulations; correction.

SUMMARY: The Veterans Administration (VA) is correcting its Agenda of Regulations for one entry which appeared in the wrong section.

FOR FURTHER INFORMATION CONTACT: M'Liz McLendon, (202) 233–3770.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 24, 1988 (53 FR 42689) the VA published its Agenda of Regulations for all regulations under review, development or revision during the 12-month period from October 1988 to October 1989. One entry concerning Procedural Due Process (RIN 2900–AC54) was incorrectly published in the Completed section of the agenda (53 FR 42711). The VA hereby corrects the error and is republishing that entry in its entirety.

Dated: October 26, 1988.

C.G. Vernon,

Acting Chief, Directives Management Division.

VA **Final Rule Stage**

3397. PROCEDURAL DUE PROCESS

Legal Authority: 38 USC 210(c)

CFR Citation: 38 CFR 3.103; 38 CFR 3.105; 38 CFR 3.109; 38 CFR 3.110; 38 CFR 3.111

LEGAL DEADLINE: None.

ABSTRACT: These changes expand the procedural due process provided to beneficiaries, especially when benefits are proposed to be reduced or terminated. There is also a clarification of the effective date rule applicable to liberalizing laws or administrative issues.

TIMETABLE:

Action	Date	FR Cite
NPRM	9/28/88	53 FR 37797
NPRM Comment Period End	10/28/88	53 FR 37797
Final Action	00/00/00	

SMALL ENTITIES AFFECTED: None.

GOVERNMENT LEVELS AFFECTED: None.

AGENCY CONTACT: Robert M. White, Chief, Regulations Staff, Veterans Administration, Department of Veterans Benefits (211B), 810 Vermont Avenue, NW, Washington, DC 20420, 202–233–3005.

RIN: 2900–AC54.

[FR Doc. 88–25093 Filed 10–28–88; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3409–5]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Extension of Public Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of public comment period.

SUMMARY: On September 8, 1988 (53 FR 34782 and 53 FR 34784), EPA proposed approval of revisions submitted by the Commonwealth of Massachusetts for Boston Whaler, Inc.'s Norwell and Rockland facilities. On October 7, 1988, Boston Whaler, Inc., requested an extension of the public comment period. EPA has evaluated this request and is hereby granting a thirty (30) day extension of the public comment period.

DATES: Comments should be received on or before November 10, 1988.

FOR FURTHER INFORMATION CONTACT: Lorenzo Thantu; (617) 565–3250; FTS 835–3250.

Authority: 42 U.S.C. 7401–7642.

Date: October 19, 1988.

Michael R. Deland,

Regional Administrator, Region I.

[FR Doc. 88–25080 Filed 10–28–88; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 81

[FRL–3409–6]

Designation of Areas for Air Quality Planning Purposes; Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to disapprove the State of Ohio's June 15, 1987, request to redesignate the air quality status of 31 counties for total suspended particulates (TSP). USEPA has determined that the redesignation request was incomplete for these counties because of a lack of sufficient technical support. The purpose of this notice is to discuss the additional data which would be needed to satisfy the requirements of USEPA's Redesignation Policy and to solicit comments on USEPA's proposed action.

USEPA revised the particulate matter standard on July 1, 1987 (52 FR 24634), and eliminated the TSP ambient air quality standard. The revised standard is expressed in terms of particulate matter with nominal diameter of 10 micrometers of less (PM10). The July 1, 1987, preamble to the PM10 implementation regulation describes USEPA's transition policy regarding TSP redesignations (52 FR 24672, 24682). The transition policy states that redesignations will continue to be reviewed for compliance with USEPA's current redesignation policies, until such time as the State has an approved PM10 SIP. Ohio does not have an approved PM10 SIP.

DATE: Comments must be received by November 30, 1988.

ADDRESSES: Copies of the redesignation request and supporting air quality data are available at the following addresses:

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604

Ohio Environmental Protection Agency, Office of Air Pollution Control, 1800 WaterMark Drive, P.O. Box 1049, Columbus, Ohio 43266-0149.

Written Comments should be sent to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Delores Sieja, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6038.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1977 added section 107(d) to the Clean Air Act (Act). This section directed each State to submit, to the Administrator of USEPA, a list of the attainment status for each pollutant for all areas within the State. The Administrator was required to promulgate the State lists, with any necessary modifications. The Administrator published these lists in the **Federal Register** on March 3, 1978 (43 FR 8962), and made necessary amendments in the **Federal Register** on October 5, 1978 (43 FR 45993). These area designations are subject to revision whenever sufficient data become available to warrant a redesignation.

USEPA revised the particulate matter standard on July 1, 1987, (52 FR 24634) and eliminated the TSP ambient air quality standard. The revised standard is expressed in terms of particulate matter with nominal diameter of 10 micrometers or less (PM10). However, USEPA will continue to process redesignations of areas from nonattainment or unclassifiable for TSP in keeping with past policy, because various regulatory provisions such as new source review and prevention of significant deterioration are keyed to the attainment status of areas. The July 1, 1987, preamble to the PM10 implementation regulation describes USEPA's transition policy regarding TSP redesignations (52 FR 24672, 24682). The transition policy states that redesignations will continue to be reviewed for compliance with USEPA's redesignation policies until such time as the State has an approved PM10 SIP. Ohio does not have an approved PM10 SIP. USEPA's redesignation policies are discussed most recently in a September 30, 1985, memorandum from Gerald Emision, Director, Office of Air Quality Planning and Standards (OAQPS), to the Regional Air Division Directors, entitled "Total Suspended Particulate (TSP) Redesignations". USEPA's criteria relevant to TSP redesignations are summarized as follows:

Eight consecutive quarters of the most recent, quality assured ambient air quality data must indicate no violation of the TSP National Ambient Air Quality Standard (NAAQS). The monitors must be placed at points of expected maximum TSP impact, and the monitoring network must be extensive enough to produce fully representative data. If monitoring data are not representative, dispersion modeling must be used to determine the impact of a source.

Improvements in air quality must be attributable to federally enforceable and permanent emission reductions from a fully approved and implemented State Implementation Plan (SIP) control strategy. An exception to the requirement for a fully approved and implemented SIP control strategy can be made if the physical circumstances and long-term economic factors are such that the approved and implemented measures have the same weight as a fully approved SIP control strategy for the purpose of demonstrating attainment. For example, the permanent closing of the major emitting sources, road paving to eliminate fugitive emissions, or other irreversible actions can be such measures.

Emission reductions and the resultant impact on air quality cannot be temporary or the result of an economic downturn. It must be highly unlikely that emission rates will increase at units operating below their allowable emission rates or that any increase will result in a violation of the NAAQS.

Dispersion techniques cannot be responsible for the improvement in air quality. Sources in the nonattainment area must be reviewed for consistency with the requirements of USEPA's July 8, 1987 (50 FR 27892), revised stack height regulations.

At the present time there are 31 counties in Ohio that are designated either partial or full county nonattainment of one or both of the TSP NAAQS (40 CFR 81.336). On June 15, 1987, the State of Ohio submitted a request to revise the TSP attainment status designations for the 31 counties to attainment/unclassifiable. Following is a listing of the 31 counties and a summary of their nonattainment status.

County	Summary of nonattainment status
Belmont	Portions of the county—primary and secondary nonattainment.
Butler	City of Middletown—secondary nonattainment.
Clark	Portion of the county—secondary nonattainment.
Columbiana	Portions of the county—primary and secondary nonattainment.
Cuyahoga	Portions of the county—primary and secondary nonattainment.
Franklin	Portions of the county—primary and secondary nonattainment.
Gallia	Entire county—secondary nonattainment.
Hamilton	Portion of the county—primary nonattainment.
Jackson	Entire county—secondary nonattainment.
Jefferson	Portions of the county—primary and secondary nonattainment.
Lake	Portions of the county—primary and secondary nonattainment.
Lawrence	Cities of Ironton and Coal Grove and Upper and Perry Townships—secondary nonattainment.
Logan	Entire county—primary nonattainment.
Lorain	Portions of the county—primary and secondary nonattainment.
Lucas	Cities of Toledo and Oregon—secondary nonattainment.
Mahoning	Portions of the county—primary and secondary nonattainment.
Medina	Entire county—secondary nonattainment.
Miami	Portions of the county—primary and secondary nonattainment.
Monroe	Portions of the county—primary and secondary nonattainment.
Montgomery	Portions of the county—primary and secondary nonattainment.
Muskingum	Entire county—secondary nonattainment.
Richland	Entire county—primary nonattainment.
Sandusky	Entire county—primary nonattainment.
Scioto	Portions of the county—primary and secondary nonattainment.
Seneca	City of Bettsville and Liberty Township north of the Penn Central Railroad—secondary nonattainment.
Stark	Portions of the county—primary and secondary nonattainment.
Summit	Portions of the county—primary and secondary nonattainment.
Trumbull	Portions of the county—primary and secondary nonattainment.
Tuscarawas	Entire county—primary nonattainment.
Washington	Entire county—primary nonattainment.
Wyandot	Entire county—primary nonattainment.

For a detailed description of the specific portions of the counties that are classified nonattainment, we refer you to the Ohio TSP listing contained in 40 CFR 81.336.

USEPA's Evaluation of Technical Support Data and Proposed Action

To support its request that the primary and secondary nonattainment areas in the above 31 counties be redesignated to attainment/unclassifiable, the State is citing USEPA's July 1, 1987, promulgation of the PM10 standard. Specifically, it is Ohio position that "upon promulgation of the PM10 standard, the TSP NAAQS ceased to exist. Since there are no TSP standards, there cannot be nonattainment areas for TSP, and the corresponding nonattainment designations are also no longer appropriate." No further technical support was provided.

USEPA acknowledges that with the promulgation of the PM10 standard, the TSP NAAQS no longer exists. TSP remains regulated under the Act, however, because the statutory prevention of significant deterioration increments for particulate matter are still expressed in terms of TSP. Thus, for TSP, the prevention of significant deterioration requirements will continue to apply in any area which does not have a section 107 nonattainment designation for TSP. (52 FR 24663, col. 3.)

In the July 1, 1987 preamble, USEPA also stated that it would continue to accept requests by the States to revise area designations from nonattainment to attainment or unclassifiable. It noted that "[t]he requests will continue to be reviewed during the transition period [prior to approval of the state's PM10 control strategy] for compliance with USEPA's redesignation policies as issued in memoranda from the Director of Air Quality Planning and Standards [on] April 21, 1983, and September 30, 1985." (52 FR 24682, col. 1.) The Agency also encouraged states to request redesignation of TSP nonattainment areas to unclassifiable at the time they submit their PM10 control strategies to USEPA. Once USEPA has approved a control strategy as sufficient to attain and maintain the PM10 NAAQS, it will also approve such a redesignation.

USEPA has not approved (nor has Ohio submitted) PM10 control strategies for the 31 counties at issue. Area redesignations for TSP therefore must be reviewed during this transition period according to the policies in the redesignation memoranda discussed above. Since Ohio has not provided any of the required technical support data required by these policies, USEPA cannot approve the redesignations for the 31 counties from nonattainment to attainment or unclassifiable at this time.

USEPA's Proposed Action

Disapproval. The State of Ohio's redesignation request for 31 counties is not approvable because the State did not provide the necessary technical support data.

All interested parties are invited to submit comments on this proposed action notice. USEPA will consider all comments received within 30 days of publication of this notice.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under 5 U.S.C. 605(b), the Administrator has certified that redesignations do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Authority: 42 U.S.C. 7401-7642.

Dated: December 29, 1987.

Frank M. Covington,

Acting Regional Administrator.

[Editorial note.—This document was received by the Office of the Federal Register October 20, 1988.

[FR Doc. 88-25061 Filed 10-28-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 390

[Docket No. R-120]

RIN 2133-AA65

Capital Construction Fund

AGENCY: Maritime Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would incorporate in existing regulations the new requirements imposed on Capital Construction Fund (CCF) program participants by the Tax Reform Act of 1986. In addition, this proposed rule would clarify the constraints on permissible operations for qualified CCF vessels, and would change the financial reporting and "Buy American" requirements, respectively.

DATES:

Proposed Effective Date: The regulations are proposed to be effective for open taxable years beginning after December 31, 1988.

Date for Comments: Written comments must be received by December 15, 1988.

ADDRESS: Submit comments to James E. Saari, Secretary, Maritime Administration Room 7300, 400 Seventh Street SW., Washington, DC 20590. The Maritime Administration requests that commenters submit five copies of their comments.

FOR FURTHER INFORMATION CONTACT: Jean E. McKeever, Chief, Division of Capital Assets Management, 400 Seventh Street SW., Washington, DC 20590, Tel: (202) 366-1905.

SUPPLEMENTARY INFORMATION:

Authority for CCF Program and Regulatory Background

Under section 607 of the Merchant Marine Act, 1936 (Act), as amended, 46 App. U.S.C. 1177, an owner or lessor of an "eligible" vessel may, pursuant to an agreement with the United States, establish a CCF. Generally, a vessel is eligible if it is constructed or reconstructed in the United States, documented under the laws of the United States and operated in the foreign or domestic commerce of the United States. The owner or lessor may then deposit into the CCF certain amounts representing taxable income from such eligible vessel, depreciation on such vessel, net proceeds from the disposition of such vessel, and earnings, on amounts held in the CCF.

Taxation is deferred on amounts deposited into the CCF. Taxation is also deferred on amounts withdrawn from the CCF to the extent they are used to purchase, construct, reconstruct or retire indebtedness on a "qualified" vessel. Generally, a vessel is qualified if it is constructed or reconstructed in the United States, documented under the laws of the United States, and operated in the United States foreign, Great Lakes or noncontiguous domestic trade.

The basis of the qualified vessel is reduced to reflect the amount of tax-deferred funds withdrawn from the CCF to purchase, construct, reconstruct or retire indebtedness on such vessel.

The provisions of section 607 of the Act are implemented in the regulations contained in 46 CFR Parts 390 and 391. The regulations in 46 CFR Part 390, "Capital Construction Fund," govern the administration of the CCF authorized by section 607 of the Act. The regulations in 46 CFR Part 391, "Federal Income Tax Aspects of the Capital Construction Fund," provide rules for determining the income tax liability of any party to a CCF agreement with the United States, and are prescribed and administered jointly by the Secretaries of Transportation and Treasury. These regulations are generally referred to as "joint regulations." This rulemaking would reflect changes in the regulations in 46 CFR Part 390 to conform to provisions in the Tax Reform Act of 1986, (Pub. L. 99-514) as described hereinafter. The Maritime Administration and the Internal Revenue Service will publish a separate proposed joint rule making document amending 46 CFR Part 391, that is under review.

Departmental Reports to Treasury

Under existing regulations, there is no requirement to report to the Secretary of the Treasury. Under proposed 46 CFR 390.14, which reflects section 261(d) of the Tax Reform Act of 1986, the Secretary of Transportation is required to make an annual report to the Secretary of the Treasury regarding the establishment, maintenance, and termination of capital construction funds. The report would also include a determination as to whether a fundholder has failed to fulfill a

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substantial obligation for vessel construction, reconstruction or acquisition under a CCF agreement.

Use of CCF for Lease Payments

Under existing regulations, at 46 CFR 390.5 (c), the acquisition of a qualified vessel is not interpreted to include the lease of a qualified vessel. The legislative history of the Tax Reform Act of 1986 indicates Congressional intent to consider leaseshire payments from the CCF to be considered qualified withdrawals, if such payments are used for the acquisition of a qualified vessel through lease for a period of five years or more. The Maritime Administration is considering proposing to the Internal Revenue Service that the joint proposed regulations treat the tax aspects for qualified withdrawals for leaseshire payments as follows:

The amount withdrawn from the fund for the lease payment by the lessee would be considered a qualified withdrawal to the extent that it does not exceed the amount of the lease payment which is allocated to the reduction of the obligation (excluding the amount allocated to interest expense) capitalizable pursuant to the provisions for capital leases under Statement of Financial Accounting Standards No.

The amount of the lease payment equal to the qualified withdrawal would be deductible as an expense from the lessee's taxable income. The lessee would reduce the basis in an owned vessel to the extent of such withdrawal and, in the event there is insufficient basis to reduce, the difference between the amount of the withdrawal and the reduction to basis shall be considered a nonqualified withdrawal.

The Maritime Administration requests specific comments on the tax aspects of the use of the capital construction funds for lease payments, including the application of the alternative minimum tax to capital construction funds (section 56 (c) (2) of the Internal Revenue Code).

Impermissible Operations for Qualified Agreement Vessels

The present regulatory provisions at 46 CFR 390.5, defining qualified agreement vessels, do not identify and define or and policies of the Act, these regulations would be amended to specifically define and describe impermissible operations for qualified agreement vessels. Examples of impermissible operations are the use of barges as docks and ramps and the positioning of vessels in support of domestic operations prohibited by section 607 of the Act.

Liquidated Damages

The existing regulations, at 46 CFR 390.12, provide for the payment of liquidated damages for each day that a qualified agreement vessel is in violation of geographic trading restrictions set forth in the Act and in the existing regulations at 46 CFR 390.5. However, they do not set out limitations on availability of this option. The proposed rule provides that the payment of liquidated damages would only apply in those situations where a fundholder may, because of operating necessity, operate its vessels impermissibly on a strictly incidental basis.

Buy American Requirement

The existing regulation at 46 CFR 390.9(c)(2) has a "Buy American" requirement which provides that, so far as practicable, qualified withdrawals must be for items produced in the United States. The cost of a foreign component of a vessel cannot be allowed as a qualified withdrawal unless MARAD approves a waiver. MARAD will not approve the waiver unless the article, material or supply is not customarily produced in the United States; or, with respect to a component that is not integral to the hull or superstructure, and any material used in its construction, compliance with the U.S. origin requirement would unreasonably delay completion of a vessel.

The proposed rule would eliminate the "Buy American" requirement and provides that a vessel is to be considered of United States construction if it is built entirely in a U.S. shipyard, all components of the hull and superstructure are fabricated in the United States, and the vessel is assembled entirely in the United States. Other components may be of foreign manufacture without need for waiver by MARAD. This policy is consistent with that which is applied under its obligation guarantee (Title XI) program, set forth at 46 CFR 296.11.

E.O.—12291 Statutory and DOT Requirements

The Maritime Administrator has determined that this regulation is not a major rule, as defined in E.O. 12291, and is nonsignificant under DOT regulatory policies and procedures (49 FR 11034; February 26, 1979). This rule would primarily affect government agencies and ship operators that do not meet the criteria established for small business entities under existing Small Business Administration criteria (13 CFR 121.3). Therefore, the Maritime Administrator certifies that this rule, if finalized, would not exert a significant economic impact on a substantial number of small entities.

This rulemaking implements provisions in the Tax Reform Act of 1986 that amend the Act with respect to administration of a CCF by MARAD. There appears to be little likelihood that these changes will have a significant economic impact on operators. Accordingly, the economic impact of this notice of proposed rulemaking has been found to be minimal so that further evaluation is unnecessary. This action has been analyzed in accordance with the principles and criteria contained in E.O. 12612, and it has been determined that the proposed rulemaking does not have a federalism implication that would warrant the preparation of a Federal Assessment. It contains no new reporting requirements subject to provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 46 CFR Part 390

Maritime administration, Maritime carriers, Reporting requirements.

For the reasons set out in the preamble, it is proposed to amend 46 CFR Par 390, as follows.

PART 390—[AMENDED]

1. The authority citation is revised to read as follows:

Authority: Sections 204(b) and 607, Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1114(b) and 1177); Pub. L. 99-514; 46 CFR 1.66.

2. Section 390.5(c) is amended by adding the following paragraphs (6) and (7).

§ 390.5 [Amended]

* * * * *

(c) * * *

(6) *Impermissible Operations.* Impermissible operations for qualified agreement vessels include:

(i) Positioning vessels in support of domestic operations prohibited by section 607 of the Act;

(ii) Use of barges as docks and ramps;

(iii) Foreign-to-foreign trade, consisting of voyages originating and ending in foreign ports, with no intermediate domestic cargo operations, or of trade to and from U.S. oil rigs in international waters, except in the case of the carrage of liquid or dry bulk cargoes when the carrier has demonstrated to the Administrator—

(A) The need for such foreign-to-foreign shipments (as required by section 905 of the Act and § 390.5(c)(3)(iii) of this part); and

(B) That the proposed cargo would qualify as liquid or dry bulk cargo; and

(iv) Tug assist work in a contiguous domestic port except for the lightering or shifting of a vessel at the end or beginning of a noncontiguous domestic or foreign voyage).

(7) *United States Construction.* An agreement vessel is considered to be of United States construction if:

(i) It is built entirely in a shipyard or shipyards of the United States within the meaning of section 505 of the Act;

(ii) All components of the hull and superstructure are fabricated in the United States; and

(iii) The vessel is assembled entirely in the United States.

§ 390.6 [Amended]

3. Section 390.6 is amended as follows:

(a) In paragraph (b)(2) by striking "semi-annually and;" and

(b) In paragraph (b)(4), by striking the first sentence.

§ 390.9 [Amended]

4. Section 390.9 is amended as follows:

(a) In paragraph (b)(1)(i), by adding at the end of the paragraph the following sentence: "The term 'acquisition of a qualified agreement vessel' shall include the lease of a qualified agreement vessel for a period of five years or more."

(b) By removing paragraph (c)(2) in its entirety and renumbering paragraphs (c)(3) through (c)(5) as (c)(2) through (c)(4).

§ 390.12 [Amended]

5. Section 390.12(a)(1) is amended by adding the following two sentences at the end: "This provision is not intended to permit a fundholder to operate its qualified agreement vessels on a continuing basis in impermissible trades. It is intended only to apply to those situations where a fundholder may, because of operating necessity, operate its vessels in impermissible trades on a strictly incidental basis."

6. By adding a new § 390.14, to read as follows:

§ 390.14 Departmental Reports and Certification.

(a) *In general.* For each calendar year, the Secretary of Transportation shall provide to the Secretary of the Treasury, within 120 days after the close of such calendar year, a written report with respect to those capital construction funds under the Secretary of Transportation's jurisdiction.

(b) *Contents of reports.* Each report shall set forth the name and taxpayer identification number of each person.

(1) Establishing a capital construction fund during such calendar year;

(2) Maintaining a capital construction fund as of the last day of such calendar year;

(3) Terminating a capital construction fund during such calendar year;

(4) Making any withdrawal from or deposit into (and the amounts thereof) a capital construction fund during such calendar year; or

(5) With respect to which a determination has been made during such calendar year that such person has failed to fulfill a substantial obligation under any capital construction fund agreement to which such person is a party.

Date: October 26, 1988.

By Order of the Maritime Administrator.

Approved:

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 88-25110 Filed 10-28-88; 8:45 am]

BILLING CODE 4910-81-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-268; DA 88-1631]

Broadcast Service; Advanced Television System and Their Impact on the Existing Television Broadcast Service

AGENCY: Federal Communications Commission.

ACTION: Tentative decision and further notice of inquiry; extension of time for filing comments.

SUMMARY: This Order extends the time for filing comments on the *Tentative Decision and further Notice of Inquiry* in MM Docket No. 87-268. (*See* 53 FR 38747, October 3, 1988.) Comments were originally to be filed on or before October 31, 1988, and reply comments were due by December 1, 1988. These dates have been extended due to the complex nature of the issues raised in this proceeding, and the importance of the advanced television proceeding to the broadcast industry, other media, and to consumers.

DATE: Comments are now due November 30, 1988, and reply comments are due January 9, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: David R. Siddall, Policy and Rules Division, Mass Media Bureau, (202) 632-7792.

Alex D. Felker,

Chief, Mass Media Bureau.

[FR Doc. 88-25193 Filed 10-28-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

Pacific Halibut of the Bering Sea

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of a draft environmental assessment and regulatory impact review (EA/RIR) and request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has prepared a draft EA/RIR that assesses potential effects of possible regulatory changes affecting the Pacific halibut fishery in the Bering Sea. Public comment is especially requested on environmental quality issues relating to the regulatory changes considered in the draft EA/RIR. Copies of the draft EA/RIR may be obtained from the Council at the address below. The purpose of this notice is to solicit public comments on the draft EA/RIR.

DATE: Comments on the draft EA/RIR are invited until November 30, 1988.

ADDRESSES: Comments should be addressed to James W. Brooks, Acting Director, Alaska Region, National Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802-1668. Copies of the draft EA/RIR may be requested from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, Alaska 99510, telephone 907-274-4563.

FOR FURTHER INFORMATION CONTACT: Jay J.C. Ginter, Fishery Management Biologist, NMFS, telelphone 907-586-7229.

SUPPLEMENTARY INFORMATION: The Pacific halibut fishery is regulated under authority of the International Pacific Halibut Commission (IPHC) established by convention between the U.S. and Canada. The Northern Pacific Halibut Act of 1982 (Halibut Act) gives effect to convention amendments made in 1979 and provides the Council with authority to develop regulations governing halibut fishing off Alaska which are in addition to, but not in conflict with, regulations adopted by the IPHC. Such regulations may only be implemented with approval

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of the Secretary of Commerce (Secretary).

In July 1988, the Council solicited regulatory amendment proposals for the 1989 halibut fishing season. The Council received and reviewed 21 proposals. At its meeting in September 1988, the Council reviewed the recommendations of its Halibut Management Team and Halibut Regulatory Amendment Advisory Group and decided to consider only two of the 21 proposals. These two concern Regulatory Areas 4B (western Aleutians including Atka Island) and 4C (Pribilof Islands).

Specifically, the allocative measures being considered by the Council for Regulatory Areas 4B and 4C include establishment of a series of one- and two-day fishing periods in Area 4B during June and July within a catch limit of 500,000 pounds, and extension of the 10,000 pound trip limit in Area 4C until 80 percent of the catch limit for that area has been harvested.

The Council's Halibut Management Team has prepared a draft EA/RIR that assesses the potential environmental and economic effects of the regulatory alternatives under consideration. Copies of this draft EA/RIR may be requested from the Council at the address listed above. Comments on how any of the alternatives may affect the human environment are especially requested.

The Council intends to make a final decision on these alternatives at its next scheduled meeting, December 5–8, 1988. If necessary, a proposed rule implementing the Council's decision would be published as soon as practicable after that date with an additional opportunity for public comment. Any resulting final rule, if approved by the Secretary, would be in effect before the beginning of the 1989 halibut fishing season.

Authority: 5 U.S.T. 5; T.I.A.S. 2900; 16 U.S.C. 773–773K.

Dated: October 26, 1988.

Alan Dean Parsons,

Acting Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-25130 Filed 10-28-88; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register

Vol. 53, No. 210

Monday, October 31, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for expedited clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration.

Title: Reexports into COCOM Participating Countries.

Form Number: Agency—EAR 774.2(K)(3); OMB—N/A.

Type of Request: New Collection/ Expedited Review Requested—OMB clearance requested 10 days after receipt of the information collection for review.

Burden: 2,000 respondents; 533 reporting/recordkeeping hours—Average burden is 16 minutes per respondent.

Needs and Uses: Reexports of controlled items among COCOM countries and Switzerland will no longer require "pre-approval" from BXA. However, foreign parties will be required to notify BXA when an item has been reexported. The notification shall identify: (1) The reexporter and the ultimate consignee; (2) the type (including the ECCN, if known), quantity and value of the commodity; (3) the date of the reexport; and (4) the original U.S. export license number under which the commodity was exported from the U.S. (if known) and the identify of the U.S. party from whom the reexporter received the goods. The information collected will be used to ensure that U.S.-origin high technology commodities will not be obtained by our adversaries.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Francine Picoult, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC.

Dated: October 26, 1988.

Linda Engelmeier,

Management Analyst, Office of Management and Organization.

[FR Doc. 88-25113 Filed 10-28-88; 8:45 am]

BILLING CODE 3510-CW-M

Export Administration

[Docket No. 8106-01]

Actions Affecting Export Privileges; Richard G. Carter

Summary

Pursuant to the September 7, 1988 Decision and Order of the Administrative Law Judge, which Decision and Order is attached hereto and affirmed by me, Richard G. Carter, with an address at 3300 Medina Court, Las Vegas, Nevada 89121, is denied for a period of (3) three years from the date hereof, all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the regulations (15 CFR Parts 368 and 369).

Order

On September 7, 1988, the Administrative Law Judge (ALJ) entered his recommended Decision and Order in the above referenced matter. That Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. The basis of the ALJ's recommended Decision and Order is an agreement of the parties concerning not only the period of denial, but certain language to be contained in the final order. The ALJ altered a portion of the agreed upon language, to which the Department has taken exception. Having examinerd the record, and based on the facts in this case, I affirm the recommended Decision and Order of the ALJ, with the following modification in accordance with the agreement of the parties (the modification is underlined): On page four of the recommended Decision and Order, the last sentence of paragraph II should read,

Such denial of export privileges shall extend *only to those commodities and technical data* which are subject to the act in the regulations.

This constitutes final Agency action in this matter.

Dated: October 6, 1988.

Paul Freedenberg,

Under Secretary for the Bureau of Export Administration.

[Docket No. 8106-01]

Preliminary Statement

In the Matter of: Richard G. Carter, respondent.

Appearance for Respondent: Richard G. Carter, 3330 Medina Court, Las Vegas, Nevada 89121.

Appearance for Agency: Thomas C. Barbour, Esq., Office of Chief Counsel for Export Administration, Rm. 3329, U.S. Department of Commerce, 14th & Constitution Aves., NW., Washington, DC

This proceeding against Respondent Richard G. Carter began with the issuance of a charging letter, dated April 28, 1988, by the Office of Export Enforcement, Bureau of Export Administration, U.S. Department of Commerce. This letter was issued under the authority of the Export Administration Act of 1979 (50 U.S.C. App. 2401–2420), as reauthorized and amended by the Export Administration Amendments Act of 1985, Pub. L. 99–64, 99 Stat 120 (July 12, 1985) (the Act), and under the authority of the Export Administration Regulations (currently codified at 15 CFR Parts 368–399 (1988)) (the Regulations). The letter charged that between on or about April 2, 1983 and on or about May 14, 1983, Respondent, in his capacity as vice-president of Tekya, Inc., directed the activities of Tekya in exporting or causing to be exported, from the United States to the Netherlands, five separate shipments of U.S.-origin electronic communications equipment with

knowledge that such equipment was intended to be, and in fact was, reexported to Libya without obtaining the required validated export licenses, and in connection with four of the shipments, the Respondent made or caused to be made false representations of material facts on Shipper's Export Declarations. The Agency alleges that these actions violated §§ 387.5 and 387.6 of the Regulations.

To settle this matter, Respondent and Agency, pursuant to § 388.17 of the Regulations, have entered into a consent agreement in which the Respondent admits that the facts as stated in the Charging Letter are true and agrees to an imposition of a denial of U.S. export privileges for a period of three years. The undersigned approves the terms of the consent agreement. Therefore, pursuant to the authority delegated to me by Part 388 of the Regulations, it is ordered that:

Order

I. For a period of three years from the date of the final Agency action, Respondent Richard G. Carter, 3330 Medina Court, Las Vegas, Nevada 89121, and all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Participation prohibited in any such transaction, either in the United States or aboard, shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated export license application;

(ii) In preparing or filing any export license application or reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to matters which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services.

IV. All outstanding individual validated export licenses in which Respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondent's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

V. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure and specific authorization from the Office of Export Licensing, shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related person, or whereby any Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related person denied export privileges, or

(b) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VI. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C. App. 2412(c)(1)).

Date: September 7, 1988.

Hugh J. Dolan,

Administrative Law Judge.

[FR Doc. 88-25088 Filed 10-28-88; 8:45 am]

BILLING CODE 3510-DT-M

Foreign-Trade Zones Board

[Docket No. 32-88]

Foreign-Trade Zone 15, Kansas City, MO; Application for Subzone; Kawasaki Small Engine Plant, Nodaway County, MO

An apoplication has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Kansas City Foreign-Trade Zone, Inc. (KCFTZ), grantee of FTZ 15, requesting special-purpose subzone status for the small engine manufacturing plant of Kawasaki Motors Manufacturing Corp., U.S.A. (KMM) (a subsidiary of Kawasaki Heavy Industries, Ltd., Japan), located in Nodaway County, Missouri. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on October 21, 1988.

The KMM plant (114 acres) is located on U.S. Highway 71 north of Maryville, in Nodaway County, Missouri, some 95 miles northwest of Kansas City. The facility (known as the Maryville plant) will be used to produce two types of small engines: industrial engines for construction, farm and garden equipment (18cc–296cc); and engines for motorcycles, jetskis, and all-terrain vehicles (150cc–1500cc). The industrial engines will primarily be sold to equipment makers, and the motorcycle, jetski and all-terrain vehicle engines will be shipped to Kawasaki's Lincoln, Nebraska, plant (FTZ Subzone 59A). The Applicant indicates that the engines made at the Maryville plant will displace engines imported from Japan. At the outset, all of the components used in the assembly process will be sourced abroad, including blocks, heads, crankshifts, connecting rods, ball bearings, springs, metal fasterners, guages and electrical parts. KMM estimates that 70 percent of the parts will be sourced domestically within four years.

Zone procedures would exempt KMM from Customs duty payments on foreign materials used in its exports (application indicates 35% of production). On domestic sales, the company would be able to choose the same finished product duty rate that applies to the completed engines (0.0–4.2%). The rates on materials and components range from 0.2 to 11.0 percent. The applicant indicates that the savings would help improve the plant's international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Joseph Lowry (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Theodore Galantowicz, District Director, U.S. Customs Service, North Central Region, 7911 Forsythe Boulevard, Suite 625, St. Louis, Missouri 63105; and Colonel John Atkinson, District Engineer, U.S. Army Engineer District Kansas City, 700 Federal Building, 601 East 12th Street, Kansas City, Missouri 64106–2896.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before December 12, 1988.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, Room 635, 601 East 12th Street, Kansas City, MO 64106

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th & Pennsylvania Avenue NW., Washington, DC 20230.

Dated: October 24, 1988.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88-25118 Filed 10-28-88; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with §§ 353.53a or 355.10 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request a Review

Not later than November 30, 1988, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in November for the following periods:

	Period
Antidumping Duty Proceeding	
Argentina: Barbed Wire and Barbless Fencing Wire (A-357-405)	11/01/87–10/31/88
Argentina: Carbon Steel Wire Rods (A-357-007)	11/01/87–10/31/88
Canada: Choline Chloride (A-122-016)	01/09/88–10/31/88
Japan: Bicycle Speedometers (A-588-038)	11/01/87–10/31/88
Japan: Titanium Sponge (A-[illegible])	11/01/87–10/31/88
Republic of Singapore: Rectangular Pipes and Tubes (A-559-502)	11/01/87–10/31/88
West Germany: Drycleaning Machinery (A-428-037)	11/01/87–10/31/88
Suspended Investigation	
Japan: Certain Small Motors (A-588-090)	11/01/87–10/31/88
Countervailing Duty Proceeding	
Argentina: Oil Country Tubular Goods (C-357-403)	01/01/87–12/31/87
Argentina: Woolen Garments (C-357-048)	01/01/87–12/31/87
Peru: Deformed Steel Concrete Reinforcing Bars (C-[illegible])	01/01/87–12/31/87
Republic of Singapore: Certain Refrigeration Compressors (C-559-001)	04/01/87–03/31/88

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, DC 20230.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by November 30, 1988.

If the Department does not receive by November 30, 1988 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Richard Moreland,

Acting Deputy Assistant Secretary for Compliance.

Date: October 24, 1988.

[FR Doc. 88-25117 Filed 10-28-88; 8:45 am]

BILLING CODE 3510-DS-M

[C-355-001]

Leather Wearing Apparel From Uruguay; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on leather wearing apparel from Uruguay. We preliminarily determine the net subsidy to be 1.27 percent *ad valorem* for the period January 1, 1984 through December 31, 1984, and 0.93 percent *ad valorem* for the period January 1, 1985 through December 31, 1985. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: October 31, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Paul J. McGarr, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On December 9, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 44325) the final results of its last administrative review of the countervailing duty order on leather wearing apparel from Uruguay (47 FR 31032, July 16, 1982). On July 30 and July 31, 1986, respectively, the Amalgamated Clothing and Textile Workers Union, AFL–CIO, a domestic interested party, and the Government of Uruguay requested in accordance with 19 CFR 355.10 an administrative review of this order. We published the initiation on August 28, 1986 (51 FR 30259). The Department has now conducted that review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. We will be providing both the appropriate Tariff Schedules of the United States Annotated ("TSUSA") item numbers and the appropriate Harmonized Tariff System ("HTS") item numbers with our product descriptions. As with the TSUSA, the HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HTS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized Tariff System schedules is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by this review are shipments of Uruguayan leather wearing apparel and parts and pieces thereof. Such merchandise is currently classifiable under TSUSA item numbers 791.7620, 791.7640 and 791.7660. These products are currently classifiable under HTS item numbers 4203.10.40.30, 4203.10.40.60 and 4203.10.40.90. We invite comments from all interested parties on these HTS classifications. The review covers the period January 1, 1984 through December 31, 1985 and four programs.

Analysis of Programs

(1) Export Tax Refunds ("ETRs")

On July 25, 1983, the Government of Uruguay instituted a system of indirect tax refunds on exports of leather wearing apparel (Decree 280/983) for all shipments of the merchandise exported on or after January 1, 1983. Until May 24, 1984, the amounts of these refunds, which are issued in the form of tax certificates, ranged from 1.7 to 2.9 percent of the f.o.b., value of the merchandise, depending on the type of leather used in the garment. The Government of Uruguay suspended this program from May 25, 1984 (Decree 200/984) until July 10, 1985, when it was reinstated with the same or slightly lower (1.7 to 2.8 percent) refund rates (Decree 309/985).

In our last review, we established the requisite linkage between the payment of ETRs and the incidence of indirect taxes. In this review, we verified that the total indirect tax incidence of leather wearing apparel exports to the United States was higher than the rebate rates. Accordingly, we preliminarily determine that there were no overrebates under this program during the review period.

(2) Bonification Payments

Bonification payments are export rebates of 22 percent of the value of the processed wool portion of the leather wearing apparel. The Uruguayan government made such payments on eligible shipments to the United States in both 1984 and 1985. Because these payments are limited to exporters and not linked to the payment of indirect taxes, we preliminarily determine that this program confers a subsidy.

Because these payments can be tied to specific shipments, we calculated the benefit by dividing the amount received on U.S. shipments in each year by the total value of Uruguayan exports of this merchandise to the United States in that year. On this basis, we preliminarily determine the benefit from this program to be 1.25 percent *ad valorem* for the period January 1, 1984 through December 31, 1984, and 0.92 percent *ad valorem* for the period January 1, 1985 through December 31, 1985.

(3) Uncollected Social Security Taxes

On May 11, 1982, the Government of Uruguay notified the Department that it had ceased its efforts to collect social security taxes that the leather wearing apparel industry had not paid in 1980.

Because the Government of Uruguay was not able to collect these taxes, we consider the uncollected taxes to be a grant given on the date the government officially declared the taxes uncollectable. We consider the amount of the grant to be the total amount of the uncollected taxes plus the interest which would have accrued from June 10, 1981 (the date on which the Uruguayan government agreed to eliminate all benefits on leather wearing apparel exports to the United States) to May 11, 1982. We used as our benchmark interest rate the prime rate available in Uruguay in 1981.

To calculate the benefit, we used a declining balance methodology. We allocated the grant over 11 years, the average useful life of assets in the leather wearing apparel industry, according to the Asset Guideline Classes of the Internal Revenue Service. We used as the discount rate the short-term 1982 interest rate, as published by the Central Bank of Uruguay, because we have no information on long-term interest rates or on the weighted cost of capital in the leather wearing apparel industry for that year. On this basis, we preliminarily determine the benefit from this program to be 0.02 percent *ad valorem* for the period January 1, 1984 through December 31, 1984, and 0.01 percent *ad valorem* for the 1985 period.

(4) Preferential Export Financing

Central Bank Circular No. 1.229 of July 3, 1985, instituted a system of short-term preferential rate loans for "non-traditional" exports. Leather wearing apparel is considered a non-traditional export. However, Article 3 of Decree 309/985 of July 10, 1985 (the Decree which reinstituted the ETRs), prohibited these loans on certain specified exports, including leather wearing apparel. In addition, we found no evidence of use of this program by any of the leather wearing apparel exporters we verified.

Accordingly, we preliminarily determine that this program was not used by Uruguayan leather wearing apparel exporters during the review period.

Preliminary Results of Review

As a result of our review, we preliminarily determine the net subsidy to be 1.27 percent *ad valorem* for shipments of Uruguayan leather wearing apparel exported to the United States for the period January 1, 1984 through December 31, 1984, and 0.93 percent *ad valorem* for the period January 1, 1985 through December 31, 1985.

The Department intends to instruct the Customs Service to assess countervailing duties of 1.27 percent of the f.o.b. invoice price on all shipments of this merchandise exported on or after January 1, 1984 and on or before December 31, 1984, and 0.93 percent of the f.o.b. invoice price for all shipments exported on or after January 1, 1985 and on or before December 31, 1985.

Further, the Department intends to instruct the Customs Service to collect cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 0.93 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days from the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.10.

Date: October 25, 1988.

Jan W. Mares,

Assistant Secretary, Import Administration.

[FR Doc. 88-25110 Filed 10-28-88; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council's Bering Sea/Aleutian Islands Groundfish Plan Team will convene a public meeting, November 7, 1988, at the National Marine Fisheries Service, Northwest and Alaska Fisheries Center, Room 2143, Building 4, 7600 Sand Point Way, NE., Seattle, WA, to prepare its final Resource Assessment Document, recommend acceptable biological catches and bycatch rates for 1989 fisheries, and review groundfish amendment proposals. The public meeting will adjourn on November 10.

For further information contact Deby Lloyd, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271-2809.

Date: October 26, 1988.

Alan Dean Parsons,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-25131 Filed 10-28-88; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Meeting Cancellation

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The November 1, 1988, public meeting of the Pacific Fishery Management Council's Groundfish Fishery Management Plan Rewrite Oversight Group as published in the **Federal Register** (53 FR 41223, October 20, 1988) has been cancelled. Information regarding rescheduling, if any, will be published at a later date.

For further information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW., First Avenue, Portland, OR 97201; telephone: (503) 221-6352.

Date: October 26, 1988.

Alan Dean Parsons,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-25133 Filed 10-28-88; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council will convene a public meeting, November 16, 1988, at 1 p.m., of the King and Spanish Mackeral Advisory Panel at the Council's Headquarters (addressed below). The advisory panel will discuss proposed Mackeral Amendment #3, a prohibition on use of purse seines and run around gillnets for the Atlantic migratory group of king mackeral and a prohibition on use of drift gillnets for all coastal migratory pelagics (king, and Spanish mackeral, cobia, cero mackeral, little tunny, dolphin, and bluefish in the Gulf of Mexico). The panel also will discuss proposed Mackeral Amendment #4 which would reallocate the division of the Atlantic migratory group of Spanish mackeral equally between recreational and commercial user groups. The panel will review comments received during public hearings regarding Mackeral Amendments #3 and #4 held during the last two weeks of October. Finally, the panel will discuss items to be included in Mackeral Amendment #5. The public meeting will adjourn on November 17 at noon. A detailed agenda will be available to the public on or about November 3, 1988.

For further information contact Carrie R.F. Knight, Public Information Specialist, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407; telephone: (803) 571-4366.

Date: October 26, 1988.

Alan Dean Parsons,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-25132 Filed 10-28-88; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce

The Western Pacific Fishery Management Council's advisory bodies will convene public meetings as follows:

Precious Corals Plan Monitoring Team—will convene a public meeting on November 4, 1988, at 9:30 a.m., at the Honolulu Laboratory, National Marine Fisheries Service (NMFS), 2570 Dole Street, Honolulu, HI, to discuss the fishery management plan (FMP) for precious corals in the Western Pacific region and review research, data, and industry needs for the fishery. The Team also will discuss data collection requirements that should accompany experimental fishing permits (EFPs), observers on vessels fishing under EFPs and, if required, the preparation and training necessary; discuss any EFPs forwarded by the NMFS Regional Director, as well as other Team business.

Bottomfish Advisory Review Board—will convene a public meeting on November 10, 1988, at 1 p.m., at the NMFS Honolulu Laboratory (address above), to introduce Board members, distribute the 1986 and 1987 bottomfish annual reports and Amendment #2 to the Bottomfish FMP, review Board tasks in evaluating the Northwestern Hawaiian Islands bottomfish limited entry program, i.e. recommending to the Council when Ho'omalu zone bottomfish stocks are able to support additional fishing effort, and evaluating equivalency of fishing power between vessel fishing, or intended for fishing in the Ho'omalu zone; review report on Hawaii's bottomfish fishery for the first six months of 1988 and how it compares to previous years, as well as discuss other Board business, including selection of a Board Chairman. The public meeting will adjourn at 3 p.m. For further information contact Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813; telephone: (808) 523-1368.

Date: October 26, 1988.

Alan Dean Fiorenza,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-25134 Filed 10-28-88; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Survey of Air Force Small Business Innovation Research (SBIR) Contract Awardees; No Form; and No. OMB Control Number.

Type of Request: New.

Average Burden Hours/Minutes Per Response: 15 minutes.

Frequency of Response: One time.

Number of Respondents: 900.

Annual Burden Hours: 225.

Annual Responses: 900.

Needs and Uses: The Air Force needs the survey information to determine the benefits and problems of its Small Business Innovation Research program. The Air Force will analyze the data in light of the stated objectives of Pub. L. 97-219 and report to Congress on the quality of its program.

Affected Public: Businesses or other for-profit; Small businesses or organizations.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Dr. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 26, 1988.

[FR Doc. 88-25105 Filed 10-28-88; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Space Human Assurance and Reliability Program AFSC Forms 1669 and 1670, No OMB Control Number.

Type of Request: Existing collection in use without an OMB control number.

Average Burden Hours/Minutes Per Response: 20 minutes.

Frequency of Response: On occasion.

Number of Respondents: 30,000.

Annual Burden Hours: 10,000.

Annual Responses: 30,000.

Needs and Uses: The Air Force uses AFSC Forms 1669 and 1670 to collect personal information from contractor personnel who require unescorted entry to space launch and operations areas at Air Force bases and certain NASA facilities. The Air Force needs this information to evaluate and certify those individuals under the Space Human Assurance and Reliability Program (SHARP). If this information were not collected, the SHARP could not screen personnel adequately and mission failure could result.

Affected Public: Individuals; Businesses or other for-profit.

Frequency: Continuing.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Dr. Timothy Sprehe

Written comments and recommendations on the proposed information collection should be sent to Dr. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 26, 1988.

[FR Doc. 88-25106 Filed 10-28-88; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Revised Rates

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of revised rates.

SUMMARY: This notice provides the updated weights, thresholds, and beneficiary cost-share per diem rates in accordance with changes to the CHAMPUS DRG based payment system published October 21, 1988 (53 FR 41331).

EFFECTIVE DATES: Set #1 Adjusted Standardized Amounts (ASA) are effective for admissions occurring on or after October 1, 1988. The weights and thresholds in table 2 are effective for admissions on or after October 1, 1988. Set #2 Adjusted Standardized Amounts (ASA) are effective for admissions occurring on or after November 21, 1988.

ADDRESS: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Office of Program development, Aurora, CO. 80045-6900.

FOR FURTHER INFORMATION CONTACT: Stephen E. Isaacson, Office of Program Development, OCHAMPUS, telephone (303) 361-4005.

SUPPLEMENTARY INFORMATION: The final rule published October 21, 1988 (53 FR 41331) amended our final rule published August 31, 1988 (53 FR 33461). The minor revisions were made to conform CHAMPUS to the Medicare PPS policies. As a result of these minor revisions, new CHAMPUS weights, thresholds, and a new beneficiary cost-share per diem were calculated. The revised numbers do not involve changes in the CHAMPUS regulation, but rather a slightly different result of applying the regulation. We refer the reader to the final rules for more detailed explanations of the changes to the CHAMPUS DRG-based payment system and the implementing regulations in 32 CFR Part 199. This notice publishes the revised weights, thresholds, and beneficiary cost-share per diem.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 26, 1988.

Table 1.—Champus Weights And Threshold Summary

Effective for Admissions Occurring on or after October 1, 1988.

Editorial Note.—This table will not appear in the Code of Federal Regulations.

The following summary shows the final CHAMPUS DRG weights as well as arithmetic mean lengths of stay, geometric mean lengths of stay and outlier thresholds.

BILLING CODE 3810-01-M

BEST COPY AVAILABLE

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
1	CRANIOTOMY AGE >17 EXCEPT FOR TRAUMA	5.9994	14.3	11.1	1	33
2	CRANIOTOMY FOR TRAUMA AGE >17	5.2152	16.9	9.8	1	32
3	CRANIOTOMY AGE 0 17	2.7086	10.7	6.7	1	30
4	SPINAL PROCEDURES	3.4221	11.3	8.7	1	32
5	EXTRACRANIAL VASCULAR PROCEDURES	1.6697	6.3	5.3	1	29
6	CARPAL TUNNEL RELEASE	0.5390	1.9	1.6	1	8
7	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W CC	2.7812	15.4	8.9	1	32
8	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W/O CC	0.8346	3.5	2.6	1	26
9	SPINAL DISORDERS & INJURIES	2.7562	17.8	9.5	1	33
10	NERVOUS SYSTEM NEOPLASMS W CC	1.4299	8.8	6.1	1	30
11	NERVOUS SYSTEM NEOPLASMS W/O CC	0.9133	6.8	4.1	1	28
12	DEGENERATIVE NERVOUS SYSTEM DISORDERS	1.7610	12.5	6.9	1	30
13	MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA	1.1676	9.2	6.6	1	30
14	SPECIFIC CEREBROVASCULAR DISORDERS EXCEPT TIA	1.3497	8.4	5.6	1	29
15	TRANSIENT ISCHEMIC ATTACK & PRECEREBRAL OCCLUSIONS	0.7195	5.8	3.0	1	22
16	NONSPECIFIC CEREBROVASCULAR DISORDERS W CC	1.6348	6.7	4.9	1	28
17	NONSPECIFIC CEREBROVASCULAR DISORDERS W/O CC	0.9097	5.7	3.3	1	27
18	CRANIAL & PERIPHERAL NERVE DISORDERS W CC	0.9904	6.8	5.0	1	29
19	CRANIAL & PERIPHERAL NERVE DISORDERS W/O CC	0.6677	4.8	3.5	1	27
20	NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS	1.8598	10.6	7.5	1	31
21	VIRAL MENINGITIS	0.5550	3.7	3.3	1	15
22	HYPERTENSIVE ENCEPHALOPATHY	0.7214	5.6	3.7	1	27
23	NONTRAUMATIC STUPOR & COMA	1.2346	6.3	5.0	1	27
24	SEIZURE & HEADACHE AGE >17 W CC	0.9171	5.8	3.7	1	27
25	SEIZURE & HEADACHE AGE >17 W/O CC	0.5813	3.9	2.9	1	26
26	SEIZURE & HEADACHE AGE 0-17	0.4448	3.0	2.3	1	18
27	TRAUMATIC STUPOR & COMA, COMA >1 HR	2.9396	9.8	5.4	1	29
28	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W CC	2.6759	9.6	5.2	1	29
29	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W/O CC	0.7883	4.3	2.8	1	26
30	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE 0-17	0.4677	2.7	1.8	1	18
31	CONCUSSION AGE >17 W CC	0.7197	3.3	2.9	1	26
32	CONCUSSION AGE >17 W/O CC	0.4192	2.3	1.8	1	12
33	CONCUSSION AGE 0-17	0.2794	1.3	1.3	1	5
34	OTHER DISORDERS OF NERVOUS SYSTEM W CC	1.4729	7.6	4.3	1	28
35	OTHER DISORDERS OF NERVOUS SYSTEM W/O CC	0.7782	5.4	3.0	1	27
36	RETINAL PROCEDURES	0.7875	2.8	2.4	1	13
37	ORBITAL PROCEDURES	0.6776	2.6	2.0	1	14
38	PRIMARY IRIS PROCEDURES	0.3692 *	2.8	2.2	1	17
39	LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	0.6466	1.9	1.6	1	8
40	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17	0.9526	2.1	1.7	1	11
41	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0-17	0.4348	1.6	1.3	1	6
42	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS	0.8445	2.8	2.3	1	14
43	HYPHEMA	0.2587	5.6	3.8	1	19
44	ACUTE MAJOR EYE INFECTIONS	0.5122	4.3	3.6	1	21
45	NEUROLOGICAL EYE DISORDERS	0.4562	3.3	2.9	1	20
46	OTHER DISORDERS OF THE EYE AGE >17 W CC	0.5486	3.8	2.9	1	26
47	OTHER DISORDERS OF THE EYE AGE >17 W/O CC	0.4086	3.8	2.6	1	22
48	OTHER DISORDERS OF THE EYE AGE 0-17	0.3857	3.1	2.4	1	20
49	MAJOR HEAD & NECK PROCEDURES	1.5418	12.5	9.1	1	33
50	SIALOADENECTOMY	0.6020	2.2	1.9	1	8
51	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY	0.6567	2.2	1.8	1	10
52	CLEFT LIP & PALATE REPAIR	0.6661	2.8	2.4	1	13

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
53	SINUS & MASTOID PROCEDURES AGE >17	0.6523	2.1	1.6	1	10
54	SINUS & MASTOID PROCEDURES AGE 0-17	0.7303	2.5	1.8	1	17
55	MISCELLANEOUS EAR, NOSE & THROAT PROCEDURES	0.3108	1.3	1.3	1	8
56	RHINOPLASTY	0.3160	1.5	1.3	1	5
57	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	0.6072	2.1	1.8	1	10
58	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	0.3565	1.2	1.1	1	2
59	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	0.2555	1.2	1.1	1	2
60	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	0.3213	1.1	1.1	1	2
61	MYRINGOTOMY W TUBE INSERTION AGE >17	0.5757	1.6	1.3	1	6
62	MYRINGOTOMY W TUBE INSERTION AGE 0-17	0.4265	2.0	1.5	1	10
63	OTHER EAR, NOSE & THROAT O.R. PROCEDURES	1.1123	3.5	2.6	1	23
64	EAR, NOSE & THROAT MALIGNANCY	1.0790	5.9	3.6	1	27
65	DYSEQUILIBRIUM	0.4765	3.1	2.6	1	15
66	EPISTAXIS	0.5011	3.6	3.0	1	18
67	EPIGLOTTITIS	1.0513	5.6	3.3	1	27
68	OTITIS MEDIA & URI AGE >17 W CC	0.6718	4.1	3.4	1	20
69	OTITIS MEDIA & URI AGE >17 W/O CC	0.5105	3.5	2.8	1	18
70	OTITIS MEDIA & URI AGE 0-17	0.3868	3.0	2.6	1	14
71	LARYNGOTRACHEITIS	0.3339	2.4	2.1	1	11
72	NASAL TRAUMA & DEFORMITY	0.4453	1.8	1.4	1	7
73	OTHER EAR, NOSE & THROAT DIAGNOSES AGE >17	0.8644	3.8	2.7	1	26
74	OTHER EAR, NOSE & THROAT DIAGNOSES AGE 0-17	0.5091	2.8	2.1	1	19
75	MAJOR CHEST PROCEDURES	3.2032	11.3	9.8	1	33
76	OTHER RESP SYSTEM O.R. PROCEDURES W CC	2.3618	10.5	7.6	1	31
77	OTHER RESP SYSTEM O.R. PROCEDURES W/O CC	1.2539	5.5	3.7	1	27
78	PULMONARY EMBOLISM	1.4044	8.5	7.5	1	31
79	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W CC	2.9412	11.9	9.4	1	33
80	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W/O CC	1.4661	8.3	6.8	1	30
81	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0-17	1.2919	7.7	5.6	1	29
82	RESPIRATORY NEOPLASMS	1.4872	8.2	5.7	1	29
83	MAJOR CHEST TRAUMA W CC	1.5288	8.1	6.9	1	30
84	MAJOR CHEST TRAUMA W/O CC	0.7941	4.4	3.4	1	27
85	PLEURAL EFFUSION W CC	1.2648	7.6	6.0	1	29
86	PLEURAL EFFUSION W/O CC	0.7254	4.9	3.7	1	27
87	PULMONARY EDEMA & RESPIRATORY FAILURE	2.2598	7.7	5.6	1	29
88	CHRONIC OBSTRUCTIVE PULMONARY DISEASE	1.3250	6.9	5.5	1	29
89	SIMPLE PNEUMONIA & PLEURISY AGE >17 W CC	1.5559	7.5	6.3	1	30
90	SIMPLE PNEUMONIA & PLEURISY AGE >17 W/O CC	0.9214	5.5	4.7	1	26
91	SIMPLE PNEUMONIA & PLEURISY AGE 0-17	0.5854	4.0	3.5	1	17
92	INTERSTITIAL LUNG DISEASE W CC	1.4474	8.4	5.0	1	29
93	INTERSTITIAL LUNG DISEASE W/O CC	0.9419	5.5	3.7	1	27
94	PNEUMOTHORAX W CC	1.5748	7.3	5.6	1	29
95	PNEUMOTHORAX W/O CC	0.7791	5.5	4.3	1	28
96	BRONCHITIS & ASTHMA AGE >17 W CC	1.2898	6.6	5.3	1	29
97	BRONCHITIS & ASTHMA AGE >17 W/O CC	0.7572	4.5	3.8	1	22
98	BRONCHITIS & ASTHMA AGE 0-17	0.5236	3.4	2.9	1	16
99	RESPIRATORY SIGNS & SYMPTOMS W CC	0.9313	4.3	3.5	1	27
100	RESPIRATORY SIGNS & SYMPTOMS W/O CC	0.5621	2.9	2.4	1	15
101	OTHER RESPIRATORY SYSTEM DIAGNOSES W CC	1.3718	7.8	5.8	1	29
102	OTHER RESPIRATORY SYSTEM DIAGNOSES W/O CC	0.8705	5.4	3.8	1	27
103	HEART TRANSPLANT	-	-	-	-	-
104	CARDIAC VALVE PROCEDURE W PUMP & W CARDIAC CATH	7.8539	17.8	14.4	2	38

CHANPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
105	CARDIAC VALVE PROCEDURE W PUMP & W/O CARDIAC CATH	5.9362	12.0	10.4	1	34
106	CORONARY BYPASS W CARDIAC CATH	5.7948	11.9	11.0	3	35
107	CORONARY BYPASS W/O CARDIAC CATH	4.9114	10.0	9.3	3	28
108	OTHER CARDIOTHORACIC OR VASCULAR PROCEDURES, W PUMP	4.8239	10.6	9.0	1	32
109	OTHER CARDIOTHORACIC PROCEDURES W/O PUMP	3.8397	10.0	8.1	1	32
110	MAJOR RECONSTRUCTIVE VASCULAR PROC W/O PUMP W CC	5.8691	11.7	9.8	1	33
111	MAJOR RECONSTRUCTIVE VASCULAR PROC W/O PUMP W/O CC	3.6176	8.6	7.0	2	30
112	VASCULAR PROCEDURES EXCEPT MAJOR RECONSTRUCTION W/O PUMP	2.1286	5.5	4.4	1	26
113	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE	3.5922	19.1	15.8	2	39
114	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS	2.0452	10.7	7.5	1	31
115	PERM CARDIAC PACEMAKER IMPLANT W AMI, HEART FAILURE OR SHOCK	5.9808 *	15.2	12.8	1	37
116	PERM CARDIAC PACEMAKER IMPLANT W/O AMI, HEART FAILURE OR SHOCK	3.0422	6.7	5.3	1	29
117	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT	3.0922	6.7	5.5	1	29
118	CARDIAC PACEMAKER DEVICE REPLACEMENT	2.5922	4.1	3.1	1	25
119	VEIN LIGATION & STRIPPING	0.7259	3.0	2.4	1	16
120	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	3.1943	12.5	7.9	1	31
121	CIRCULATORY DISORDERS W AMI & C.V. COMP/DISCH ALIVE	2.2689	8.6	6.7	1	30
122	CIRCULATORY DISORDERS W AMI W/O C.V. COMP/DISCH ALIVE	1.3571	6.1	4.9	1	28
123	CIRCULATORY DISORDERS W AMI, EXPIRED	2.6192	5.1	2.8	1	26
124	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG	1.1437	4.5	3.3	1	27
125	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG	0.7346	2.5	2.0	1	13
126	ACUTE & SUBACUTE ENDOCARDITIS	2.5847	13.5	9.6	1	33
127	HEART FAILURE & SHOCK	1.3525	6.8	5.3	1	29
128	DEEP VEIN THROMBOPHLEBITIS	0.8827	7.9	7.0	1	30
129	CARDIAC ARREST, UNEXPLAINED	2.6013	6.3	3.5	1	27
130	PERIPHERAL VASCULAR DISORDERS W CC	1.0291	6.8	4.8	1	28
131	PERIPHERAL VASCULAR DISORDERS W/O CC	0.6582	6.5	3.2	1	27
132	ATHEROSCLEROSIS W CC	1.0936	3.4	2.7	1	20
133	ATHEROSCLEROSIS W/O CC	0.9225	2.8	2.2	1	16
134	HYPERTENSION	0.8429	4.8	3.2	1	24
135	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W CC	1.0597	4.8	3.4	1	27
136	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W/O CC	0.7218	5.0	2.3	1	18
137	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0-17	0.8394	4.0	2.3	1	26
138	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W CC	1.0524	4.8	3.5	1	27
139	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC	0.6412	3.2	2.5	1	19
140	ANGINA PECTORIS	0.8148	3.4	2.8	1	19
141	SYNCOPE & COLLAPSE W CC	0.7023	3.9	3.1	1	22
142	SYNCOPE & COLLAPSE W/O CC	0.5306	3.7	2.5	1	19
143	CHEST PAIN	0.6501	2.8	2.3	1	14
144	OTHER CIRCULATORY SYSTEM DIAGNOSES W CC	1.4987	6.7	4.7	1	28
145	OTHER CIRCULATORY SYSTEM DIAGNOSES W/O CC	0.7510	3.7	2.9	1	24
146	RECTAL RESECTION W CC	2.8843	13.3	12.1	3	36
147	RECTAL RESECTION W/O CC	2.2313	9.7	9.0	2	31
148	MAJOR SMALL & LARGE BOWEL PROCEDURES W CC	3.3002	13.2	11.5	2	35
149	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC	2.4152	9.8	8.9	2	32
150	PERITONEAL ADHESIOLYSIS W CC	2.5451	11.0	9.1	1	33
151	PERITONEAL ADHESIOLYSIS W/O CC	1.4581	7.8	6.7	1	30
152	MINOR SMALL & LARGE BOWEL PROCEDURES W CC	1.8511	8.1	6.3	1	30
153	MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.0699	6.4	5.3	1	29
154	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W CC	3.7981	18.7	10.5	1	34
155	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W/O CC	1.9521	8.9	8.0	1	31
156	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0-17	1.1866	6.5	4.7	1	28

CHANPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
157	ANAL & STOMAL PROCEDURES W CC	1.0403	5.4	4.1	1	[illegible]
158	ANAL & STOMAL PROCEDURES W/O CC	0.5865	3.2	2.6	1	18
159	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W CC	1.3253	6.8	5.2	1	[illegible]
160	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC	0.7991	3.8	3.1	1	21
161	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W CC	0.7197	3.6	2.8	1	19
162	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC	0.5522	2.3	1.9	1	16
163	HERNIA PROCEDURES AGE 0-17	0.4505	1.7	1.4	1	7
164	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W CC	2.3501	10.3	9.3	2	33
165	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC	1.3033	6.8	6.1	1	[illegible]
166	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W CC	1.3295	5.6	4.8	1	24
167	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC	0.7071	3.4	3.1	1	11
168	MOUTH PROCEDURES W CC	1.2854	4.7	3.8	1	26
169	MOUTH PROCEDURES W/O CC	0.6589	2.3	1.8	1	14
170	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W CC	2.6991	11.3	7.8	1	31
171	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC	1.4352	6.9	5.0	1	29
172	DIGESTIVE MALIGNANCY W CC	1.6538	9.2	6.7	1	30
173	DIGESTIVE MALIGNANCY W/O CC	0.9004	5.8	4.3	1	28
174	G.I. HEMORRHAGE W CC	1.1337	5.4	4.3	1	28
175	G.I. HEMORRHAGE W/O CC	0.7304	4.0	3.3	1	21
176	COMPLICATED PEPTIC ULCER	0.9613	5.9	5.0	1	36
177	UNCOMPLICATED PEPTIC ULCER W CC	0.9508	5.7	4.6	1	28
178	UNCOMPLICATED PEPTIC ULCER W/O CC	0.6495	4.1	3.4	1	20
179	INFLAMMATORY BOWEL DISEASE	0.9626	6.8	5.5	1	29
180	G.I. OBSTRUCTION W CC	0.9774	6.4	5.1	1	29
181	G.I. OBSTRUCTION W/O CC	0.5539	3.9	3.2	1	21
182	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W CC	0.7209	4.4	3.6	1	27
183	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W/O CC	0.5588	3.6	2.9	1	21
184	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE 0-17	0.5316	2.9	2.4	1	14
185	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE >17	0.7308	4.8	2.8	1	26
186	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE 0-17	0.4580	3.0	2.4	1	17
187	DENTAL EXTRACTIONS & RESTORATIONS	0.4858	2.4	2.1	1	11
188	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W CC	1.0227	5.8	4.2	1	28
189	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W/O CC	0.5499	3.5	2.6	1	25
190	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0-17	0.3685	2.5	1.8	1	13
191	MAJOR PANCREAS, LIVER & SHUNT PROCEDURES	4.0672	21.4	17.3	2	41
192	MINOR PANCREAS, LIVER & SHUNT PROCEDURES	3.2009	12.5	10.4	1	34
193	BILIARY TRACT PROC EXCEPT TOT CHOLECYSTECTOMY W CC	3.5951	15.6	13.1	2	37
194	BILIARY TRACT PROC EXCEPT TOT CHOLECYSTECTOMY W/O CC	2.1617	10.1	8.7	1	32
195	TOTAL CHOLECYSTECTOMY W C.D.E. W CC	1.8817	8.9	7.9	1	31
196	TOTAL CHOLECYSTECTOMY W C.D.E. W/O CC	1.5218	7.3	6.0	2	21
197	TOTAL CHOLECYSTECTOMY W/O C.D.E. W CC	1.4612	7.0	6.2	1	25
198	TOTAL CHOLECYSTECTOMY W/O C.D.E. W/O CC	1.0446	5.5	5.0	1	15
199	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY	2.0357	13.2	12.0	2	36
200	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY	2.0037	9.1	6.6	1	30
201	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES	2.4136	8.7	6.3	1	30
202	CIRRHOSIS & ALCOHOLIC HEPATITIS	1.6759	8.8	6.1	1	30
203	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS	1.2587	7.6	4.9	1	28
204	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	1.2542	7.1	5.6	1	29
205	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W CC	1.7802	8.5	7.7	1	29
206	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W/O CC	0.6510	4.5	3.8	1	27
207	DISORDERS OF THE BILIARY TRACT W CC	1.0542	5.4	4.8	1	27
208	DISORDERS OF THE BILIARY TRACT W/O CC	0.5744	3.3	2.7	1	20

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
209	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES	2.9359	10.3	9.8	3	20
210	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W CC	2.7131	13.0	11.1	2	35
211	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC	1.8910	9.3	7.9	1	31
212	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0-17	1.5930	8.9	6.2	1	30
213	AMPUTATION FOR MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDERS	2.3681	11.4	7.9	1	31
214	BACK & NECK PROCEDURES W CC	2.0436	10.3	8.6	1	32
215	BACK & NECK PROCEDURES W/O CC	1.3218	6.0	5.0	1	29
216	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	2.0062	10.0	5.1	1	29
217	WND DEBRID & SKIN GRFT EXCEPT HAND,FOR MUSCSKELET & CONN TISS DIS	2.5752	11.9	6.4	1	30
218	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 W CC	1.9604	8.1	7.0	1	31
219	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 W/O CC	1.0597	4.7	3.9	1	25
220	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE 0-17	0.8509	3.7	2.6	1	26
221	KNEE PROCEDURES W CC	1.4131	6.8	4.8	1	28
222	KNEE PROCEDURES W/O CC	0.8949	3.2	2.6	1	17
223	MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC	0.9617	3.7	2.8	1	25
224	SHOULDER,ELBOW OR FOREARM PROC,EXC MAJOR JOINT PROC, W/O CC	0.7714	2.6	2.1	1	12
225	FOOT PROCEDURES	0.7531	2.9	2.3	1	14
226	SOFT TISSUE PROCEDURES W CC	1.1863	5.7	3.4	1	27
227	SOFT TISSUE PROCEDURES W/O CC	0.7164	3.0	2.3	1	18
228	MAJOR THUMB OR JOINT PROC,OR OTH HAND OR WRIST PROC W CC	0.8531	3.0	2.2	1	19
229	HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC	0.6333	2.1	1.7	1	10
230	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR	0.6673	3.1	2.8	1	21
231	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES EXCEPT HIP & FEMUR	0.8482	3.6	2.3	1	26
232	ARTHROSCOPY	0.7395	2.8	2.0	1	19
233	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W CC	2.0560	10.4	7.3	1	31
234	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W/O CC	1.0114	4.3	3.3	1	27
235	FRACTURES OF FEMUR	1.2325	12.3	6.9	1	30
236	FRACTURES OF HIP & PELVIS	1.1736	10.4	6.3	1	30
237	SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH	0.6262	4.3	3.1	1	27
238	OSTEOMYELITIS	1.4883	11.3	8.7	1	32
239	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN TISS MALIGNANCY	1.3966	9.5	6.8	1	30
240	CONNECTIVE TISSUE DISORDERS W CC	1.7207	9.5	7.1	1	31
241	CONNECTIVE TISSUE DISORDERS W/O CC	0.7699	3.7	3.3	1	28
242	SEPTIC ARTHRITIS	1.2306	8.8	7.1	1	31
243	MEDICAL BACK PROBLEMS	0.6448	3.0	2.6	1	27
244	BONE DISEASES & SPECIFIC ARTHROPATHIES W CC	0.9989	6.4	4.8	1	28
245	BONE DISEASES & SPECIFIC ARTHROPATHIES W/O CC	0.7386	4.7	3.4	1	27
246	NON-SPECIFIC ARTHROPATHIES	0.8854	6.1	4.8	1	27
247	SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE	0.5951	4.3	3.1	1	27
248	TENDONITIS, MYOSITIS & BURSITIS	0.5781	4.1	3.1	1	27
249	AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	0.5734	4.0	2.7	1	26
250	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W CC	0.9045	6.2	4.4	1	28
251	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W/O CC	0.5686	3.0	2.0	1	21
252	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE 0-17	0.3164	1.3	1.2	1	3
253	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 W CC	1.0818	6.8	4.5	1	28
254	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 W/O CC	0.6789	3.5	2.6	1	26
255	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE 0-17	0.4021	2.9	2.0	1	19
256	OTHER MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE DIAGNOSES	0.6502	4.0	2.7	1	26
257	TOTAL MASTECTOMY FOR MALIGNANCY W CC	1.0912	5.1	4.6	1	20
258	TOTAL MASTECTOMY FOR MALIGNANCY W/O CC	0.9565	4.4	4.0	1	15
259	SUBTOTAL MASTECTOMY FOR MALIGNANCY W CC	1.1409	4.8	3.7	1	27
260	SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC	0.7446	2.9	2.5	1	14

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
261	BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION	0.9205	2.7	2.3	1	13
262	BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY	0.5059	2.1	1.7	1	10
263	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W CC	3.1188	19.0	13.3	1	36
264	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W/O CC	1.8360	13.1	9.3	1	33
265	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W CC	1.8026	7.3	5.6	1	27
266	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W/O CC	0.8957	4.1	3.1	1	27
267	PERIANAL & PILONIDAL PROCEDURES	0.5857	2.6	2.1	1	14
268	SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES	0.6814	2.9	1.9	1	18
269	OTHER SKIN, SUBCUT TISS & BREAST PROC W CC	1.4458	7.5	5.6	1	29
270	OTHER SKIN, SUBCUT TISS & BREAST PROC W/O CC	0.7811	3.4	2.4	1	26
271	SKIN ULCERS	1.7926	11.1	8.3	1	32
272	MAJOR SKIN DISORDERS W CC	1.1588	7.3	5.6	1	29
273	MAJOR SKIN DISORDERS W/O CC	0.7358	5.7	4.1	1	28
274	MALIGNANT BREAST DISORDERS W CC	1.0972	9.5	5.9	1	29
275	MALIGNANT BREAST DISORDERS W/O CC	0.8529	6.8	4.2	1	28
276	NON-MALIGNANT BREAST DISORDERS	0.6056	3.3	2.7	1	26
277	CELLULITIS AGE >17 W CC	1.1792	7.5	6.3	1	30
278	CELLULITIS AGE >17 W/O CC	0.7215	5.1	4.3	1	25
279	CELLULITIS AGE 0-17	0.5183	4.1	3.6	1	20
280	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W CC	0.6954	4.1	2.6	1	26
281	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W/O CC	0.4733	2.9	2.2	1	18
282	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0-17	0.3442	1.9	1.6	1	8
283	MINOR SKIN DISORDERS W CC	1.2250	6.6	4.5	1	28
284	MINOR SKIN DISORDERS W/O CC	0.6609	3.5	2.6	1	26
285	AMPUTAT OF LOWER LIMB FOR ENDOCRINE,NUTRIT,& METABL DISORDERS	4.3375	21.6	15.3	1	37
286	ADRENAL & PITUITARY PROCEDURES	2.3713	8.6	7.9	2	27
287	SKIN GRAFTS & WOUND DEBRID FOR ENDOC, NUTRIT & METAB DISORDERS	2.2307	15.2	11.1	1	35
288	O.R. PROCEDURES FOR OBESITY	1.8053	6.0	5.6	1	16
289	PARATHYROID PROCEDURES	1.1687	4.9	4.6	1	16
290	THYROID PROCEDURES	0.7687	3.0	2.6	1	13
291	THYROGLOSSAL PROCEDURES	0.6854	1.3	1.2	1	3
292	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W CC	3.2166	12.2	9.1	1	33
293	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC	1.2329	6.1	5.1	1	29
294	DIABETES AGE >35	0.7548	5.8	4.9	1	27
295	DIABETES AGE 0-35	0.7139	4.6	3.8	1	27
296	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W CC	1.1113	6.9	4.9	1	28
297	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W/O CC	0.6808	5.0	3.6	1	27
298	NUTRITIONAL & MISC METABOLIC DISORDERS AGE 0-17	0.4202	3.5	2.7	1	20
299	INBORN ERRORS OF METABOLISM	0.8308	5.1	3.9	1	27
300	ENDOCRINE DISORDERS W CC	0.9508	6.2	4.8	1	28
301	ENDOCRINE DISORDERS W/O CC	0.5414	4.1	2.7	1	26
302	KIDNEY TRANSPLANT	1.7943	14.9	14.9	3	38
303	KIDNEY,URETER & MAJOR BLADDER PROCEDURES FOR NEOPLASM	2.5890	10.5	9.6	2	33
304	KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL W CC	2.3105	9.7	7.7	1	31
305	KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL W/O CC	1.4194	6.2	4.7	1	28
306	PROSTATECTOMY W CC	1.3692	8.4	5.6	1	29
307	PROSTATECTOMY W/O CC	0.8706	3.9	3.5	1	16
308	MINOR BLADDER PROCEDURES W CC	1.0615	8.1	5.3	1	29
309	MINOR BLADDER PROCEDURES W/O CC	1.1554	5.9	4.3	1	28
310	TRANSURETHRAL PROCEDURES W CC	1.0122	4.3	3.2	1	27
311	TRANSURETHRAL PROCEDURES W/O CC	0.7349	2.9	2.4	1	16
312	URETHRAL PROCEDURES, AGE >17 W CC	0.7984	5.4	2.8	1	28

CHARGE WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHARGE WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
313	URETHRAL PROCEDURES, AGE >17 W/O CC	0.5777	3.8	2.1	1	23
314	URETHRAL PROCEDURES, AGE 0-17	0.5158	2.7	2.0	1	21
315	OTHER KIDNEY & URINARY TRACT O.R. PROCEDURES	2.2779	9.2	6.6	1	30
316	RENAL FAILURE	1.4710	7.7	5.3	1	29
317	ADMIT FOR RENAL DIALYSIS	0.3494 *	2.8	2.0	1	18
318	KIDNEY & URINARY TRACT NEOPLASMS W CC	1.4310	7.8	5.3	1	29
319	KIDNEY & URINARY TRACT NEOPLASMS W/O CC	0.7113	5.3	3.5	1	27
320	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W CC	1.5223	5.9	4.9	1	28
321	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W/O CC	0.6458	4.4	3.8	1	20
322	KIDNEY & URINARY TRACT INFECTIONS AGE 0-17	0.5134	4.1	3.4	1	20
323	URINARY STONES W CC, &/OR ESW LITHOTRIPSY	0.8548	3.9	2.2	1	19
324	URINARY STONES W/O CC	0.4697	2.2	1.8	1	11
325	KIDNEY & URINARY TRACT GIORD & STRYPTURE AGE >17 W CC	0.6664	4.2	3.4	1	27
326	KIDNEY & URINARY TRACT GIORD & STRYPTURE AGE >17 W/O CC	0.3611	3.3	2.7	1	16
327	KIDNEY & URINARY TRACT GIORD & STRYPTURE AGE 0-17	0.3942	2.4	2.0	1	12
328	URETHRAL STRICTURE AGE >17 W CC	0.6203 *	5.1	3.9	1	28
329	URETHRAL STRICTURE AGE >17 W/O CC	0.9407	3.9	3.0	1	26
330	URETHRAL STRICTURE AGE 0-17	0.2788 *	0.0	1.6	1	9
331	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W CC	1.1529	6.7	4.5	1	28
332	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W/O CC	0.6602	5.0	3.8	1	26
333	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0-17	0.5519	3.0	2.9	1	26
334	MAJOR MALE PELVIC PROCEDURES W CC	2.3572	10.4	6.4	2	33
335	MAJOR MALE PELVIC PROCEDURES W/O CC	1.9104	8.3	6.1	2	22
336	TRANSURETHRAL PROSTATECTOMY W CC	1.0474	5.1	4.6	1	18
337	TRANSURETHRAL PROSTATECTOMY W/O CC	0.7664	4.8	3.7	1	12
338	TESTES PROCEDURES, FOR MALIGNANCY	0.9550	4.7	3.1	1	27
339	TESTES PROCEDURES, NON-MALIGNANCY AGE >17	0.5448	2.0	1.6	1	18
340	TESTES PROCEDURES, NON-MALIGNANCY AGE 0-17	0.4184	1.3	1.3	1	4
341	PENIS PROCEDURES	1.0145	6.1	3.1	1	27
342	CIRCUMCISION AGE >17	0.6699 *	2.9	2.1	1	20
343	CIRCUMCISION AGE 0-17	0.3788 *	0.8	1.7	1	6
344	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY	1.2065	5.8	4.1	1	28
345	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY	0.9216	4.8	3.3	1	27
346	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W CC	1.3648	8.9	5.9	1	29
347	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC	0.6425	6.1	2.3	1	26
348	BENIGN PROSTATIC HYPERTROPHY W CC	0.6210	3.1	2.7	1	14
349	BENIGN PROSTATIC HYPERTROPHY W/O CC	0.5776	2.5	2.0	1	13
350	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM	0.6354	4.8	3.3	1	22
351	STERILIZATION, MALE	0.3333 *	0.0	1.3	1	5
352	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES	0.3205	3.0	1.6	1	19
353	PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY	2.0729	9.6	6.0	2	27
354	UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W CC	1.4270	6.9	6.4	1	20
355	UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC	0.9526	5.1	4.0	1	14
356	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES	0.8814	4.9	4.3	1	17
357	UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIGNANCY	1.7462	8.3	7.3	1	28
358	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W CC	1.2393	5.9	5.4	1	17
359	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC	0.9549	6.7	4.4	1	11
360	VAGINA, CERVIX & VULVA PROCEDURES	0.6193	2.8	2.1	1	19
361	LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION	0.7167	3.8	2.3	1	21
362	ENDOSCOPIC TUBAL INTERRUPTION	0.3890	1.5	1.3	1	4
363	D&C, CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY	0.6896	3.3	2.7	1	18
364	D&C, CONIZATION EXCEPT FOR MALIGNANCY	0.4532	1.8	1.8	1	8

CHARGE WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHARGE WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
365	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES	1.2578	6.5	5.2	1	29
366	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W CC	1.1134	6.3	5.1	1	29
367	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W/O CC	0.6262	3.2	2.5	1	21
368	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM	0.6325	4.8	3.5	1	17
369	MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS	0.4461	2.8	2.3	1	16
370	CESAREAN SECTION W CC	0.9634	5.3	5.0	1	16
371	CESAREAN SECTION W/O CC	0.7681	4.4	4.2	1	9
372	VAGINAL DELIVERY W COMPLICATING DIAGNOSES	0.5089	3.5	3.0	1	11
373	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	0.3996	2.5	2.2	1	7
374	VAGINAL DELIVERY W STERILIZATION &/OR D&C	0.6228	2.7	2.6	1	7
375	VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL &/OR D&C	0.8065	5.8	3.4	1	13
376	POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE	0.4788	3.8	2.5	1	13
377	POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE	0.6996	5.9	2.2	1	19
378	ECTOPIC PREGNANCY	0.7734	3.6	3.3	1	11
379	THREATENED ABORTION	0.3216	2.6	1.9	1	16
380	ABORTION W/O D&C	0.2925	1.6	1.4	1	5
381	ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY	0.5788	1.3	1.2	1	6
382	FALSE LABOR	0.1517	1.3	1.2	1	3
383	OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS	0.3538	3.2	2.6	1	10
384	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS	0.3298	2.7	1.9	1	10
385	NEONATES, DIED OR TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	-	-	-	-	-
386	EXTREME IMMATURITY OR RESPIRATORY DISTRESS SYNDROME, NEONATE	-	-	-	-	-
387	PREMATURITY W MAJOR PROBLEMS	-	-	-	-	-
388	PREMATURITY W/O MAJOR PROBLEMS	-	-	-	-	-
389	FULL TERM NEONATE W MAJOR PROBLEMS	-	-	-	-	-
390	NEONATE W OTHER SIGNIFICANT PROBLEMS	-	-	-	-	-
391	NORMAL NEWBORN	0.1208	2.5	2.3	1	8
392	SPLENECTOMY AGE >17	1.3787	10.8	8.6	1	32
393	SPLENECTOMY AGE 0-17	1.0852	8.3	6.3	1	30
394	OTHER O.R. PROCEDURES OF THE BLOOD AND BLOOD FORMING ORGANS	0.9134	6.6	5.7	1	26
395	RED BLOOD CELL DISORDERS AGE >17	0.5947	5.8	4.1	1	28
396	RED BLOOD CELL DISORDERS AGE 0-17	0.5832	4.3	3.6	1	17
397	COAGULATION DISORDERS	0.7905	6.6	3.6	1	17
398	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W CC	1.4982	9.0	7.0	1	30
399	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC	0.8884	5.3	5.0	1	28
400	LYMPHOMA & LEUKEMIA W MAJOR O.R. PROCEDURE	2.4788	10.6	7.8	1	31
401	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC	3.3226	12.3	9.1	1	33
402	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC	1.0369	4.8	3.5	1	17
403	LYMPHOMA & NON-ACUTE LEUKEMIA W CC	2.2736	11.3	7.1	1	31
404	LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC	1.0252	5.3	3.8	1	27
405	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE 0-17	1.6302	7.3	4.6	1	28
406	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W CC	2.6431	14.8	9.7	1	33
407	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W/O CC	1.7697	7.3	5.9	1	29
408	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R.PROC	1.0195	4.5	3.3	1	17
409	RADIOTHERAPY	0.8922	6.3	5.0	1	28
410	CHEMOTHERAPY	0.6367	2.9	2.3	1	16
411	HISTORY OF MALIGNANCY W/O ENDOSCOPY	0.4562	2.9	2.6	1	25
412	HISTORY OF MALIGNANCY W ENDOSCOPY	0.6334 *	5.1	2.2	1	22
413	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W CC	1.8369	10.3	6.7	1	30
414	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W/O CC	0.9256	6.1	3.8	1	17
415	O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES	2.1186	13.3	9.1	1	33
416	SEPTICEMIA AGE >17	1.8439	9.2	7.0	1	30

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
417	SEPTICEMIA AGE 0-17	0.7899	5.2	4.3	1	28
418	POSTOPERATIVE & POST-TRAUMATIC INFECTIONS	0.9528	6.3	5.1	1	29
419	FEVER OF UNKNOWN ORIGIN AGE >17 W CC	0.9959	5.7	4.4	1	28
420	FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC	0.8508	5.2	4.3	1	28
421	VIRAL ILLness AGE >17	0.6120	4.0	3.3	1	21
422	VIRAL ILLness & FEVER OF UNKNOWN ORIGIN AGE 0-17	0.3966	3.1	2.7	1	13
423	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES	1.3443	7.0	5.6	1	28
424	O.R. PROCEDURE W PRINCIPAL DIAGNOSES OF MENTAL ILLness	2.1774	20.3	15.6	1	57
425	ACUTE ADJUST REACT & DISTURBANCES OF PSYCHOSOCIAL DYSFUNCTION	0.6533	5.8	5.4	1	27
426	DEPRESSIVE NEUROSES	1.3257	10.9	6.9	1	30
427	NEUROSES EXCEPT DEPRESSIVE	1.1091	10.1	6.9	1	30
428	DISORDERS OF PERSONALITY & IMPULSE CONTROL	1.0752	14.0	8.6	1	32
429	ORGANIC DISTURBANCES & MENTAL RETARDATION	1.4913	11.8	7.7	1	31
430	PSYCHOSES	1.4725	13.6	9.4	1	33
431	CHILDHOOD MENTAL DISORDERS	2.7585	25.5	16.3	1	49
432	OTHER MENTAL DISORDERS DIAGNOSES	2.2519	22.5	16.0	1	49
433	ALCOHOL/DRUG ABUSE OR DEPENDENCE, LEFT AMA	0.7825	9.5	6.3	1	30
434	ALC/DRUG ABUSE OR DEPEND, DETOX OR OTH SYMPT TREAT W CC	1.3546	11.9	7.5	1	31
435	ALC/DRUG ABUSE OR DEPEND, DETOX OR OTH SYMPT TREAT W/O CC	-	-	-	-	-
436	ALC/DRUG DEPENDENCE W REHABILITATION THERAPY	1.8212	26.2	21.3	3	45
437	ALC/DRUG DEPENDENCE, COMBINED REHAB & DETOX THERAPY	1.4343	21.5	17.6	1	41
438	NO LONGER VALID	-	-	-	-	-
439	SKIN GRAFTS FOR INJURIES	2.3152	8.9	6.5	1	30
440	WOUND DEBRIDEMENTS FOR INJURIES	1.8740	8.9	5.6	1	29
441	HAND PROCEDURES FOR INJURIES	0.7837	2.6	2.0	1	15
442	OTHER O.R. PROCEDURES FOR INJURIES W CC	2.7987	11.8	6.7	1	30
443	OTHER O.R. PROCEDURES FOR INJURIES W/O CC	1.2483	5.3	3.1	1	27
444	MULTIPLE TRAUMA AGE >17 W CC	0.7912	3.9	3.2	1	25
445	MULTIPLE TRAUMA AGE >17 W/O CC	0.4664	4.1	2.8	1	26
446	MULTIPLE TRAUMA AGE 0-17	0.9038	3.2	2.2	1	23
447	ALLERGIC REACTIONS AGE >17	0.4401	2.2	1.8	1	18
448	ALLERGIC REACTIONS AGE 0-17	0.4015	2.1	1.8	1	9
449	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W CC	0.8769	4.4	2.8	1	26
450	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC	0.5062	2.9	1.9	1	17
451	POISONING & TOXIC EFFECTS OF DRUGS AGE 0-17	0.3465	2.1	1.6	1	18
452	COMPLICATIONS OF TREATMENT W CC	1.2217	8.4	4.1	1	28
453	COMPLICATIONS OF TREATMENT W/O CC	0.5095	3.4	2.4	1	26
454	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W CC	1.0930	5.6	2.9	1	26
455	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W/O CC	0.3835	2.2	1.7	1	12
456	BURNS, TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	0.5754	4.7	3.7	1	27
457	EXTENSIVE BURNS W/O O.R. PROCEDURE	2.6766 *	8.3	3.6	1	28
458	NON-EXTENSIVE BURNS W SKIN GRAFT	3.5899	16.3	12.2	1	36
459	NON-EXTENSIVE BURNS W WOUND DEBRIDEMENT OR OTHER O.R. PROC	1.8541	11.3	7.1	1	31
460	NON-EXTENSIVE BURNS W/O O.R. PROCEDURE	0.9202	6.2	3.8	1	27
461	O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES	0.8785	4.1	2.5	1	26
462	REHABILITATION	2.5679	25.0	21.2	2	45
463	SIGNS & SYMPTOMS W CC	0.8587	7.8	4.7	1	28
464	SIGNS & SYMPTOMS W/O CC	0.4858	3.9	2.9	1	26
465	AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	0.3436 *	2.5	1.9	1	15
466	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	0.5542	3.2	2.2	1	24
467	OTHER FACTORS INFLUENCING HEALTH STATUS	0.4672	3.8	2.0	1	21
468	UNRELATED OPERATING ROOM PROCEDURES	2.1648	8.5	5.1	1	39

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
469	PRINCIPAL DIAGNOSIS INVALID AS DISCHARGE DIAGNOSIS	-	-	-	-	-
470	UNGROUPABLE	-	-	-	-	-
471	BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY	5.0251	14.9	15.8	5	39
472	EXTENSIVE BURNS W O.R. PROCEDURE	12.2265 *	33.6	19.1	1	63
473	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17	4.9093	17.7	8.8	1	32
474	RESPIRATORY SYSTEM DIAGNOSIS WITH TRACHEOSTOMY	11.8134	25.2	20.8	2	43
475	RESPIRATORY SYSTEM DIAGNOSIS WITH VENTILATOR SUPPORT	3.6414	10.2	8.9	1	32
476	UNRELATED PERIANAL OR PROCEDURE	1.7686	10.9	10.0	2	33
477	UNRELATED NON-EXTENSIVE OR PROCEDURE ONLY	1.0834	5.5	3.4	1	27
900	ALC/DRUG ABUSE OR DEP, DETOX, OTH W/O CC AGE 0-21	1.8184	22.2	13.7	1	37
901	ALC/DRUG ABUSE OR DEP, DETOX, OTH W/O CC AGE > 21	1.2304	13.8	8.6	1	32

BILLING CODE 3810-01-C

VOL 53 ISS 210 OCT 31 1988 UMI

Table 2.—National Urban and Rural Adjusted Standardized Amounts, Labor/Nonlabor, and Cost Share Per Diem

Editorial Note.—This table will not appear in the Code of Federal Regulations.

FY 89 CHAMPUS Adjusted Standardized Amounts

Set #1

[Effective for admissions occurring on or after October 1, 1988]

National Large Urban adjusted standardized amount	$2,866.63
Labor portion	2,116.72
Non-Labor portion	749.91
National Other Urban adjusted standardized amount	2,763.65
Labor portion	2,040.68
Non-Labor portion	722.97
National Rural adjusted standardized amount	2,555.90
Labor portion	2,001.53
Non-Labor portion	554.37

FY 89 CHAMPUS Adjusted Standardized Amounts

Set #2

[Effective for admissions occurring on or after November 21, 1988]

National Large Urban adjusted standardized amount	2,905.30
Labor portion	2,145.27
Non-Labor portion	760.03
National Other Urban adjusted standardized amount	2,797.07
Labor portion	2,065.36
Non-Labor portion	731.71
National Rural adjusted standardized amount	2,577.56
Labor portion	2,018.49
Non-Labor portion	559.07
Cost—Share per diem for beneficiaries other than dependents of active duty members	210.00

[FR Doc. 88-25107 Filed 10-28-88; 8:45 am]
BILLING CODE 3810-01-M

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, November 1, 1988; Tuesday, November 8, 1988; Tuesday, November 15, 1988; Tuesday, November 22, 1988; and Tuesday, November 29, 1988 at 10:00 a.m. in Room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92-463, meetings may be closed to the public when they are "concerned with matters lised in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, DC 20301.

Date: October 25, 1988.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 88-25104 Filed 10-28-88; 8:45 am]
BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before November 30, 1988.

ADDRESSES: Written comments should be addressed to the Office of Information adn Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster, (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: October 26, 1988.

Carlos U. Rice,
Director for Office of Information Resources Management.

Office of Educational Research and Improvement

Type of Review: Reinstatement
Title: Application for Grants under the National Diffusion Network
Frequency: Annually
Affected Public: State or local governments and Non-profit institutions
Reporting Burden:
Responses: 50
Burden Hours: 1200
Recordkeeping:
Recordkeepers: 113
Burden Hours: 1356
Abstracts: The application is used by state and local governments and non-profit institutions to apply for discretionary grants under the National Diffusion Network Program. The departemnt uses the information to make grant awards.

Office of Postsecondary Education

Type of Review: Revision
Title: Lender's Interest and Special Allowance Request and Report
Frequency: Quarterly
Affected Public: State or Local Governments; Businesses or other for-profit; Non-profit institutions
Reporting Burden:
Responses: 48,300
Burden Hours: 96,600
Recordkeeping:
Recordkeepers: 12,075
Burden Hours: 18,112
Abstracts: This form is used by lenders participating in the Guaranteed Student Loan (GSL) and Plus Programs to request payment of interest and special allowance The department uses this information to capture data from a lender's portfolio for financial and budgetary projections.

[FR Doc. 88-25114 Filed 10-28-88; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP88-676-000 et al.]

Williams Natural Gas Co. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Williams Natural Gas Company

[Docket No. CP88-676-000]

October 24, 1988.

Take notice that on September 29, 1988, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP88-676-000 a request, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations, for authorization to provide transportation on an interruptible basis for OXY USA, Inc. (OXY), under the blanket certificate issued in Docket No. CP86-631-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

WNG proposes to transport up to 50,000 MMBtu of natural gas for OXY from various receipt points in Kansas, Oklahoma, Texas and Wyoming to various delivery points on WGN's system in Kansas.

WNG also indicates that transportation service for OXY initially started August 4, 1988, as reported in Docket No. ST88-5524-000, pursuant to the self-implementing provision of § 284.223 of the Regulations.

Further, WNG states that the peak day quantities to be transported would be 50,000 MMBtu, the average daily quantities would be 50,000 MMBtu, and the annual quantities would be 18,250,000 MMBtu.

Comment date: December 8, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. Williams Natural Gas Company

[Docket No. CP88-674-000]

October 24, 1988.

Take notice that on September 29, 1988, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP88-674-000 a request, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations, for authorization to provide transportation on an interruptible basis for Enron Gas Marketing, Inc. (Enron) under the blanket certificate issued in Docket No. CP86-631-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

WNG proposes to transport up to 50,000 MMBtu of natural gas for Enron from various receipt points in Kansas to various delivery points on WGN's system in Kansas, Missouri and Nebraska.

Further, WNG states that the peak day quantities to be transported would be 50,000 MMBtu, the average daily quantities would be 50,000 MMBtu, and the annual quantities would be 18,250,000 MMBtu.

WNG also indicates that transportation service for Enron initially started August 1, 1988, as reported in Docket No. ST88-5520-000, pursuant to the self-implementing provision of § 284.223 of the Regulations.

Comment date: December 8, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. Williams Natural Gas Company

[Docket No. CP88-675-000]

October 24, 1988.

Take notice that on September 29, 1988, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP88-675-000 a request, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations, for authorization to provide transportation on an interruptible basis for The Kansas Power and Light Company (KPL), under the blanket certificate issued in Docket No. CP86-631-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

WNG proposes to transport up to 3,000 MMBtu of natural gas for KPL from various receipt points in Kansas to various delivery points on WGN's system in Kansas.

Further, WNG states that the peak day quantities to be transported would be 3,000 MMBtu, the average daily quantities would be 3,000 MMBtu, and the annual quantities would be 1,095,000 MMBtu.

WNG also indicates that transportation service for KPL initially started August 5, 1988, as reported in Docket No. ST88-5593-000, pursuant to the self-implementing provision of § 284.223 of the Regulations.

Comment date: December 8, 1988, in accordance with Standard Paragraph G at the end of this notice.

4. Williams Natural Gas Company

[Docket No. CP88-677-000]

October 24, 1988.

Take notice that on September 29, 1988, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP88-677-000 a request, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations, for authorization to provide transportation on an interruptible basis for Williams Gas Marketing Company (WGM), under the blanket certificate issued in Docket No. CP86-631-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

WNG proposes to transport up to 1,139,985 MMBtu of natural gas for WGM from various receipt points in Colorado, Kansas, Missouri, Oklahoma, Texas and Wyoming to various delivery points on WGN's system in Kansas, Missouri, Nebraska, Oklahoma, Texas and Wyoming.

Further, WNG states that the peak day quantities to be transported would be 1,139,985 MMBtu, the average daily quantities would be 1,139,985 MMBtu, and the annual quantities would be 410,094,525 MMBtu.

WNG also indicates that transportation service for WGM initially started August 5, 1988, as reported in Docket No. ST88-5559-000, pursuant to the self-implementing provision of § 284.223 of the Regulations.

Comment date: December 8, 1988, in accordance with Standard Paragraph G at the end of this notice.

5. Williams Natural Gas Company

[Docket No. CP88-875-000]

October 24, 1988.

Take notice that on September 29, 1988, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP88-875-000 a request, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations, for authorization to provide transportation on an interruptible basis for Vesta Energy Company (Vesta), under the blanket certificate issued in Docket No. CP86-631-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

WNG proposes to transport up to 115,000 MMBtu of natural gas for Vesta from various receipt points in Kansas, Missouri, Oklahoma, Texas and Wyoming to various delivery points on WNG's system in Kansas, Missouri, Oklahoma and Wyoming. NG also indicates that transportation service for Vesta initially started August 5, 1988, as reported in Docket No. ST88-5560-000, pursuant to the self-implementing provision of § 284.223 of the Regulations.

Further, WNG states that the peak day quantities to be transported would be 115,000 MMBtu, the average daily quantities would be 115,000 MMBtu, and the annual quantities would be 41,975,000 MMBtu.

Comment date: December 8, 1988, in accordance with Standard Paragraph G at the end of this notice.

6. Trunkline Gas Company

[Docket No. CP89-27-000]

October 25, 1988.

Take notice that on October 7, 1988, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas, 77251-1642, filed in Docket No. CP89-27-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for James River-Norwalk (Norwalk), an end-user of natural gas, under Trunkline's blanket certificate issued in Docket No. CP86-586-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Trunkline proposes to transport up to 20,000 Dt. equivalent of natural gas per day on behalf of Norwalk pursuant to a transportation agreement dated July 11, 1988, between Trunkline and Norwalk. The transportation agreement, it is said, provides for Trunkline to receive gas from various existing points of receipt on its system. It is said that Trunkline would then transport and redeliver the gas, less fuel and unaccounted for line loss, to Consumers Power Company in Elkhart County, Indiana.

Trunkline states that the estimated daily and annual quantities would be [illegible],000 Dt. equivalent and 7,300,000 Dt., equivalent, respectively. It is further stated that service under § 284.223(a) commenced on August 18, 1988, as reported in Docket No. ST88-5676.

Comment date: December 9, 1988, in accordance with Standard Paragraph G at the end of this notice.

7. United Gas Pipe Line Company

[Docket No. CP89-53-000]

October 25, 1988.

Take notice that on October 13, 1988, United Gas Pipe Line Company, P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-53-000, a request, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223), for authorization to provide an interruptible transportation service on behalf of Texas Gas Marketing (Texaco), a marketer of natural gas, under United's Blanket certificate issued on Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

United states that pursuant to an amendment dated September 2, 1988, to the Interruptible Gas Transportation Agreement T1-21-1759, dated July 25, 1988, it proposes to transport up to 103,000 MMBtu per day of natural gas for Texaco for a primary term of one month from the date of first delivery of gas, and shall continue month to month thereafter. United indicates that it proposes to receive gas at several points located in Texas and proposes to redeliver such gas to points located in Louisiana and Mississippi.

United also states that no construction of facilities will be required to provide this transportation service.

United further states that the maximum day, average day, and annual gas delivered volumes would be approximately 103,000 MMBtu, 103,000 MMBtu and 37,595,000 MMBtu, respectively.

United advises that service under § 284.223(a) commenced September 13, 1988, as reported in Docket No. ST88-5871 (filed September 23, 1988).

Comment date: December 9, 1988, in accordance with Standard Paragraph G at the end of this notice.

8. United Gas Pipe Line Company

[Docket No. CP89-42-000]

October 25, 1988.

Take notice that on October 12, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-42-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of MidCon Marketing Corporation (MidCon), a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United proposes to transport, on an interruptible basis, up to 5,150 MMBtu/day for MidCon from two (2) points of receipt in Cameron Parish, Louisiana to one (1) delivery point in Calcasieu Parish, Louisiana. United states that construction of facilities would not be required to provide the proposed service.

United further states that the estimated daily and annual quantities would be 5,150 MMBtu and 1,879,750 MMBtu respectively, and that service under § 284.223(a) commenced September 1, 1988, as reported in Docket No. ST89-20.

Comment date: December 9, 1988, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary

[FR Doc. 88-25052 Filed 10-28-88; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL HOME LOAN BANK BOARD

[No. AC-744; FHLBB No. 6334]

Community Savings Association, Monroeville, PA; Final Action, Approval of Conversion Application

Date: October 12, 1988.

Notice is hereby given that on October 7, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Community Savings Association, Monroeville, Pennsylvania, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Pittsburgh, One Riverfront Center, 20 Stanwix Street, Pittsburgh, Pennsylvania 15222-4893.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary

[FR Doc 88-25070 Filed 10-28-88; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-745; FHLBB No. 6514]

Port Washington Savings and Loan Association, Port Washington, WI; Final Action Approval of Conservation Application

Date: October 14, 1988.

Notice is hereby given that on October 14, 1988, the Federal Home Loan Bank Board, as operating head of the Federal Savings and Loan Insurance Corporation, pursuant to section 5(i) of the Home Owner's Loan Act of 1933, as amended, approved the application of Port Washington Savings and Loan Association, Port Washington, Wisconsin ("Port Washington") for permission to convert to the stock form of organization and to receive the discretionary authority to merger Port Washington into a subsidiary of Republic Capital Group, Inc., Milwaukee, Wisconsin. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 801 17th Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Chicago, 111 East Wacker Drive, Suite 800, Chicago Illinois 60601.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary

[FR Doc. 88-25071 Filed 10-28-88; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-746]

Tremont Federal Savings and Loan Association, Bronx, NY; Final Action; Approval of Conversion and Holding Company Application

Date: October 17, 1988.

Notice is hereby given that on October 14, 1988, the General Counsel, and the Director of the Office of Regulatory Activities (or their respective designees), acting pursuant to the delegated authority, approved the application of Tremont Federal Savings and Loan Association, Bronx, New York ("Tremont Federal") for permission to convert to the stock form of organization pursuant to a voluntary supervisory conversion, and the application of City and Suburban Financial Corporation, Bronx, New York to acquire control of Tremont Federal.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary

[FR Doc. 88-25072 Filed 10-28-88; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200167

Title: Tampa Port Authority Terminal Agreement.

Parties: Tampa Port Authority, The David J. Joseph Company (DJJ).

Synopsis: The agreement provides DJJ with a ten-year lease of property at Hookers Point for operating a scrap metal processing facility and to import/export scrap and processed metals.

Agreement No.: 224-200166.

Title: Port of Jacksonville Terminal Agreement.

Parties: Jacksonville Port Authority, Port Royal, Inc. Inc. (PRI).

Synopsis: Under the agreement PRI will have exclusive use of two acres of land at the 11th Street Terminal and 440 square feet of office space. The agreement defines the applicable rates and charges for terminal use, storage, wharfage, land rental and equipment rental. Rates are negotiable for volume and guarantee cargos; and small boat rates will be applied when applicable. The term of the agreement is one year from effective date.

Agreement No.: 224-200166.

Title: Port of Jacksonville, Terminal Agreement.

Parties: Jacksonville Port Authority (Port), Empresa Lineas Maritimas Argentinas, S.A. (ELMA).

Synopsis: Under the agreement ELMA guarantees 24 vessel calls at the Port of Jacksonville, Florida within one year commencing October 24, 1988, the effective date of this Agreement. In consideration of the stated guarantee the Port grants ELMA a special tariff discount on container and chassis receiving/delivery and wharfage charges. The term of the agreement is one year.

By Order of the Federal Maritime Commission.

Dated: October 26, 1988.

Joseph C. Polking,

Secretary

[FR Doc. 88-25090 Filed 10-28-88; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Applicants; Jacky Maeder Ltd., et al.

Notice is given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping

Act of 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarder and Passenger Vessel Operations, Federal Maritime Commission, Washington, DC 20573.

Jacky Maeder Ltd, 149–21 177th Street, Jamaica, NY 11434. Officers: Joseph A. Garofalo, President, Rudy Merz, Director, Rolf Gasser, Director, Thomas Heinz, Director

Matrix International Logistics, Inc., 205 South Whiting Street, Alexandria, VA 22304. Officers: Paul Smith, President/Treasurer, Steven Hitchcock, Sen. Vice President, Douglas Cruikshank, Exec. Vice President, John H. Robinson, Secretary, Ronald Cruse, Asst. Secretary

SMG Forwarders, Inc., Greenville-Spartanburg Jetport, Greer, SC 29651. Officers: Goetz W. Steinmetz, President, Dieter B. Macchi, Vice President

Crex Del Sur Shipping, Inc., 1040 Elizabeth Ave., Elizabeth, New Jersey 07201. Officer: Carlos Goncalves, President/Stockholder

Interoceanica Agency, Inc., 2910 Guy N. Verger Blvd., Tampa, Florida 33605. Officers: Guillermo Ferrer, President/Director, Elkin Escobar, Treasurer/Secretary

Transit International Inc., 355–25K, Southend Avenue, New York, N.Y. 11696. Officers: Leonard Tarloff, President, Randye Murname, Stockholder, Mario Yepes, Secretary

Bronson & Sandy, Inc. dba Gladish Export Services, 100 Oceangate Tower, Suite 710, Long Beach, CA 90802. Officers: James A. Bronson, President/Director, Barbara Lynn Sandy, Vice President/Director

A's Philippines Freight Forwarder, 24th Street & Michigan Street, San Francisco, CA 94107. Officer: Cecilio B. Alberto, Jr., Sole Proprietor

Escort Forwarding Inc., 7 Cerro Street, Inwood, NY 11696. Officers: James F. Gill, President/Dir./Stockholder, John Bannister, Vice President/Dir.

FFS Freight International, Inc. (Flying Fish Service), 19401 So. Vermont Ave., Suite A–108, Torrance, CA 90502. Officers: Yutaka Kawi, President/Director, Eiji Miyazato, Vice Pres./Director, Yuki Tachikawa, Vice Pres./Director

Eastport Customs Brokers, Inc., 610 Thimble Shoals Blvd., #203A, Newport News, VA 23606. Officers: Linda Dyer Jones, President/Treasurer, Margaret Ann Adams, Vice President/Sec.

Condor Overseas, Inc., 6663 SW 133 Ct., Miami, Florida 33183. Officer: Carlos L. Orizondo, President

Hitachi Transport System (America), Ltd., 455 West Victoria Street, Compton, CA 90220. Officers: Gyozo Meguro, President/Director, Bobby Y. Kawamoto, Vice President/Sec., Kenichi Shibata, Chief Financial Officer, Jiro Beppu, Director

Chesapeake International Forwarding, Inc., 1801 S. Clinton Street, Baltimore, Maryland 21224. Officers: Matthew Douglas Hogans, President, Melvin Ruzieka, Vice President/Sec./Treas.

International Freight Forwarders of Tampa, Inc., 333 Falkenburg Rd., Suite A116, Tampa, Florida 33619. Officers: Deborah L. Page, President, Charles H. Fallen, Vice President, Richard L. Kimes, Vice President

Asia Trans Line Corp., 163 E. Compton Blvd., Gardena, CA 90248. Kun Sam Lee, President, Taek K. Hwang, Vice President, Seung H. Kim, Treasurer

Associated Customhouse Brokers, Inc., One Airport Way, P.O. Box 22870, Rochester, New York 14692. Officers: Jerry J. Gambino, Jr., President/Dir./Treas., Johanna M. Gambino, Secretary, Jerry J. Gambino, Sr., Director/Stockholder, Robert MacDuffie, Asst. Secretary, Richard J. Springer, Asst. Secretary, Everett Gardner, Controller

By the Federal Maritime Commission.
Dated: October 26, 1988.

Joseph C. Polking,
Secretary.

[FR Doc. 88–25089 Filed 10–28–88; 8:45 am]
BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

1989 Cost-of-Living Increase and Other Determinations

AGENCY: Social Security Administration, HHS.

ACTION: Notice.

SUMMARY: The Secretary has determined—

(1) A 4.0 percent cost-of-living increase in benefits under title II (section 215(i)) of the Social Security Act (the Act);

(2) An increase in the Federal Supplemental Security Income (SSI) (title XVI) monthly benefit amounts for 1989 to $368 for an eligible individual, $553 for an eligible individual with an eligible spouse, and $184 for an essential person (section 1617 of the Act);

(3) The average of the total wages for 1987 to be $18,426.51;

(4) The Social Security contribution and benefit base to be $48,000 for remuneration paid in 1989 and self-employment income earned in taxable years beginning in 1989;

(5) The amount of earnings a person must have to be credited with a quarter of coverage in 1989 to be $500;

(6) The monthly exempt amount under the Social Security retirement earnings test for taxable years ending in calendar year 1989 to be $740 for beneficiaries age 65 through 69 and $540 for beneficiaries under age 65;

(7) the "old-law" contribution and benefit base to be $35,700 for 1989.

We also describe the computation of benefits for a worker and the worker's family who first become eligible for benefits in 1989, and the computation of the old-age, survivors, and disability insurance (OASDI) fund ratio used to determine whether the automatic increase in benefits under title II of the Act is affected by the "stabilizer" provision.

Finally, we are publishing a table of OASDI "special minimum" benefit amounts. This table provides the range of primary insurance amounts and the corresponding maximum family benefits under the "special minimum" benefit provision, as revised to reflect the automatic benefit increase. These benefits are payable to certain individuals with long periods of relatively low earnings.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Kunkel, Office of the Actuary, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, telephone (301) 965–3013.

SUPPLEMENTARY INFORMATION: The Secretary is required by the Act to publish within 45 days after the close of the third calendar quarter of 1988 the benefit increase percentage and the revised table of "special minimum" benefits (section 215(i)(2)(D)). Also, the Secretary is required to publish before November 1 the average of the total wages for 1987 (section 215(i)(2)(C)(iii)) and the OASDI fund ratio for 1988 (section 215(i)(2)(C)(iii). Finally, the Secretary is required to publish on or before November 1 the contribution and benefit base for 1989 (section 230(a)), the amount of earnings required to be credited with a quarter of coverage in 1989 (section 213(d)(2)), the monthly exempt amounts under the Social Security requirement earnings test for 1989 (section 203(f)(8)(A)), the formula for computing a primary insurance amount for workers who first become eligible for benefits or die in 1989 (section 215(a)(1)(D)), and the formula for computing the maximum amount of benefits payable to the family of a worker who first becomes eligible for old-age benefits or dies in 1989 (section 203(a)(2)(C)).

Cost-of-Living Increase

General

The cost-of-living increase is 4.0 percent for benefits under titles II and XVI of the Act.

Under title II, old-age, survivors, and disability insurance benefits will increase by 4.0 percent beginning with the December 1988 benefits, which are payable on January 3, 1989. The kinds of benefits payable to individuals entitled under this program are old-age, disability, wife's, husband's, child's, widow's, widower's, mother's, father's, and parent's insurance benefits. This increase is based on the authority contained in section 215(i) of the Act (42 U.S.C. 415(i)).

Under title XVI, Federal SSI payment levels will also increase by 4.0 percent effective for payments made for the month of January 1989 but paid on December 30, 1988. This is based on the authority contained in section 1617 of the Act (42 U.S.C. 1382f). The percentage increase effective January 1989 is the same as the title II benefit increase and the annual payment amount is rounded, when not a multiple of $12, to the next lower multiple of $12.

Automatic Benefit Increase Computation

Under section 215(i) of the Act, the third calendar quarter of 1988 is a cost-of-living computation quarter for all the purposes of the Act. The Secretary is therefore required to increase benefits, effective with December 1988, for individuals entitled under section 227 or 228 of the Act, to increase primary insurance amounts of all other individuals entitled under title II of the Act, and to increase maximum benefits payable to a family. For December 1988, the benefit increase is the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers from the third quarter of 1987 through the third quarter of 1988. Automatic benefit increases may be modified by a "stabilizer" provision under certain adverse financial conditions that are described in the section on the OASDI fund ratio. The December 1988 benefit increase is not affected by this provision.

Section 215(i)(1) of the Act provides that the Consumer Price Index for a cost-of-living computation quarter shall be the arithmetical mean of this index for the 3 months in that quarter. The Department of Labor's revised Consumer Price Index for Urban Wage Earners and Clerical Workers (reference base of 100 for 1982–1984) for each month in the quarter ending September 30, 1987, was: for July 1987, 112.7; for August 1987, 113.3; and for September 1987, 113.8. The arithmetical mean for this calendar quarter is 113.3 (after rounding to the nearest 0.1). The corresponding Consumer Price Index for each month in the quarter ending September 30, 1988, was: For July 1988, 117.2; for August 1988, 117.7; and for September 1988, 118.5. The arithmetical mean for this calendar quarter is 117.8. Thus, because the Consumer Price Index for the calendar quarter ending September 30, 1988, exceeds that for the calendar quarter ending September 30, 1987 by 4.0 percent, a cost-of-living benefit increase of 4.0 percent is effective for benefits under title II of the Act beginning December 1988.

Title II Benefit Amounts

In accordance with section 215(i) of the Act, in the case of insured workers and family members for whom eligibility for benefits (i.e., the worker's attainment of age 62, or disability or death before age 62) occurred before 1989, benefits will increase by 4.0 percent beginning with benefits for December 1988 which will be received January 3, 1989. In the case of first eligibility after 1988, the 4.0 percent increase will not apply.

For eligibility after 1978, benefits are generally determined by a benefit formula provided by the Social Security Amendments of 1977 (Pub. L. 95–216), as described later in this notice.

For eligibility before 1979, benefits are determined by means of a benefit table. In accordance with section 215(i)(4) of the Act, the primary insurance amounts and the maximum family benefits shown in this table are revised by (1) increasing by 4.0 percent the corresponding amounts established by the last cost-of-living increase and the last extension of the benefit table made under section 215(i)(4) (to reflect the increase in the contribution and benefit base for 1988); and (2) by extending the table to reflect the higher monthly wage and related benefit amounts now possible under the increased contribution and benefit base for 1989, as described later in this notice. A copy of this table may be obtained by writing to: Social Security Administration, Office of Governmental Affairs, Office of Public Inquiries, 4100 Annex, Baltimore, MD 21235.

Section 215(i)(2)(D) of the Act also requires that, when the Secretary determines an automatic increase in Social Security benefits, the Secretary shall publish in the Federal Register a revision of the range of the primary insurance amounts and corresponding maximum family benefits based on the dollar amount and other provisions described in section 215(a)(1)(C)(i). These benefits are referred to as "special minimum" benefits and are payable to certain individuals with long periods of relatively low earnings. In accordance with section 215(a)(1)(C)(i), the attached table shows the revised range of primary insurance amounts and corresponding maximum family benefit amounts after the 4.0 percent benefit increase.

Section 227 of the Act provides flat-rate benefits to a worker who became age 72 before 1969 and was not insured under the usual requirements, and to his or her spouse or surviving spouse. Section 228 of the Act provides similar benefits at age 72 for certain uninsured persons. The currently monthly benefit amount of $146.10 for an individual under sections 227 and 228 of the Act is increased by 4.0 percent to obtain the new amount of $151.90. The present monthly benefit amount of $73.20 for a spouse under section 227 is increased by 4.0 percent of $76.10.

Title XVI Benefit Amounts

In accordance with section 1617 of the Act, Federal SSI benefit amounts for the aged, blind, and disabled are increased by 4.0 percent effective January 1989. Therefore, the yearly Federal SSI benefit amount of $4,248 for an eligible individual, $6,384 for an eligible individual with an eligible spouse, and $2,124 for an essential person, which became effective January 1988, are increased, effective January 1989, to $4,416, $6,636, and $2,208 respectively after rounding. The corresponding monthly amounts for 1989 are determined by dividing the yearly amounts by 12, giving $368, $553, and $184, respectively. The monthly amount is reduced by subtracting monthly countable income. In the case of an eligible individual with an eligible spouse, the amount payable is further divided equally between the two spouses.

Average of the Total Wages for 1987

The determination of the average wage figure for 1987 is based on the 1986 average wage figure of $17,321.82 announced in the Federal Register on October 29, 1987 (52 FR 41672), along with the percentage increase in average wages from 1986 to 1987 measured by annual wage data tabulated by the Social Security Administration (SSA). The average amounts of wages calculated directly from this data were

$16,372.45 and $17,418.59 for 1986 and 1987, respectively. To determine an average wage figure for 1987 at a level that is consistent with the series of average wages for 1951 through 1977 (published December 29, 1978, at 43 FR 61016), we multiplied the 1986 average wage figure of $17,321.82 by the percentage increase in average wages from 1986 to 1987 (based on SSA-tabulated wage data) as follows (with the result rounded to the nearest cent):

Average wage for 1987
=($17,321.82×$17,418.59÷$16,372.45
=$18,426.51.

Therefore, the average wage for 1987 is determined to be $18,426.51.

Contribution and Benefit Base

General

The contribution and benefit base is $48,000 for remuneration paid in 1989 and self-employment income earned in taxable years beginning in 1989.

The contribution and benefit base serves two purposes:

(1) It is the maximum annual amount of earnings on which Social Security taxes are paid.

(2) It is the maximum annual amount used in determining a person's Social Security benefits.

Computation

Section 230(c) of the Act provides a table with the contribution and benefit base for each year 1978, 1979, 1980, and 1981. For years after 1981, section 230(b) of the Act contains a formula for determining the contribution and benefit base. Under the prescribed formula, the contribution and benefit base for 1989 shall be equal to the 1988 base of $45,000 multiplied by the ratio of (1) the average amount, per employee, of total wages for the calendar year 1987 to (2) the average amount of those wages for the calendar year 1986. Section 230(b) further provides that if the amount so determined is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

Average Wages

The average wage for calendar year 1986 was previously determined to be $17,321.82. The average wage for calendar year 1987 has been determined to be $18,426.51 as stated herein.

Amount

The ratio of the average wage for 1987, $18,426.51, compared to that for 1986, $17,321.82, is 1.0637745. Multiplying the 1987 contribution and benefit base of $45,000 by the ratio 1.0637745 produces the amount of $47,869.03 which must then be rounded to $48,000. Accordingly, the contribution and benefit base is determined to be $48,000 for 1989.

Quarter of Coverage Amount

General

The 1989 amount of earnings required for a quarter of coverage is $500. A quarter of coverage is the basic unit for determining whether a worker is insured under the Social Security program. For years before 1978, an individual generally was credited with a quarter of coverage for each quarter in which wages of $50 or more were paid, or an individual was credited with 4 quarters of coverage for every taxable year in which $400 or more of self-employment income was earned. Beginning in 1978, wages generally are no longer reported on a quarterly basis; instead, annual reports are made. With the change to annual reporting, section 352(b) of the Social Security Amendments of 1977 (Pub. L. 95-216) amended section 213(d) of the Act to provide that a quarter of coverage would be credited for each $250 of an individual's total wages and self-employment income for calendar year 1978 (up to a maximum of 4 quarters of coverage for the year). Individuals generally must have self-employment income of at least $400 in a taxable year in order to be credited with any quarters of coverage.

Computation

Under the prescribed formula, the quarter of coverage amount for 1989 shall be equal to the 1978 amount of $250 multiplied by the ratio of (1) the average amount, per employee, of total wages for calendar year 1987 to (2) the average amount of those wages reported for calendar year 1976. The section further provides that if the amount so determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Average Wages

The average wage for calendar year 1976 was previously determined to be $9,226.48. This was published in the Federal Register on December 29, 1978, at 43 FR 61016. The average wage for calendar year 1987 has been determined to be $18,426.51 as stated herein.

Quarter of Coverage Amount

The ratio of the average wage for 1987, $18,426.51, compared to that for 1976, $9,226.48, is 1.99713. Multiplying the 1978 quarter of coverage amount of $250 by the ratio of 1.99713 produces the amount of $449.35 which must then be rounded to $500. Accordingly, the quarter of coverage amount is determined to be $500 for 1989.

Retirement Earnings Test Exempt Amounts

(a) Beneficiaries Aged 70 or Over

Beginning with months after December 1982, there is no limit on the amount an individual aged 70 or over may earn and still receive Social Security benefits.

(b)—Beneficiaries Aged 65 Through 69

The retirement earnings test monthly exempt amount for beneficiaries aged 65 through 69 is stated in the Act at section 203(f)(8)(D) for years 1978 through 1982. A formula is provided in section 203(f)(8)(B) for computing the exempt amount applicable for years after 1982. The monthly exempt amount for 1988 was determined by this formula to be $700. Under the formula, the exempt amount for 1989 shall be the 1988 exempt amount multiplied by the ratio of (1) the average amount, per employee, of the total wages for calendar year 1987 to (2) the average amount of those wages for calendar year 1986. The section further provides that if the amount so determined is not a multiple if $10, it shall be rounded to the nearest multiple of $10.

Average Wages

Average wages for this purpose are determined in the same way for the contribution and benefit base. Therefore, the ratio of the average wages for 1987, $18,426.51, compared to that for 1986, $17,321.82, is 1.0637745.

Exempt Amount for Beneficiaries Aged 65 through 69

Multiplying the 1988 retirement earnings test monthly exempt amount of $700 by the ratio of 1.0637745 produces the amount of $744.64. This must then be rounded to $740. The retirement earnings test monthly exempt amount for beneficiaries aged 65 through 69 is determined to be $740 for 1989. The corresponding retirement earnings test annual exempt amount for these beneficiaries is $8,890.

(c) Beneficiaries Under Age 65

Section 203 of the Act provides that beneficiaries under age 65 have a lower retirement earnings test monthly exempt amount than those beneficiaries aged 65 through 69. The exempt amount for beneficiaries under age 65 is determined by a formula provided in section 203(f)(8)(B) of the Act. Under the formula, the monthly exempt amount for beneficiaries under age 65 is $510 for 1988. The formula provides that the exempt amount for 1989 shall be the 1988 exempt amount for beneficiaries under age 65 multiplied by the ratio of (1) the average amount, per employee, of the total wages for calendar year 1987 to (2), the average amount of those wages for calendar year 1986. The section further provides that if the amount so determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Average Wages

Average wages for this purpose are determined in the same was for the contribution and benefit base. Therefore, the ratio of the average wages for 1987, $18,426.51, compared to that of 1986, $17,321.82, is 1.0637745.

Exempt Amount for Beneficiaries Under Age 65

Multiplying the 1988 retirement earnings test monthly exempt amount of $510 by the ratio 1.0637745 produces the amount of $542.52. This must then be rounded to $540. The retirement earnings test monthly exempt amount for beneficiaries under age 65 is thus determined to be $540 for 1989. The corresponding retirement earnings test annual exempt amount for these beneficiaries is $6,480.

Computing Benefits After 1978

General

The Social Security Amendments of 1977 provided a new method for determining an individual's primary insurance amount. This method uses a formula based on "wage indexing" and was fully explained with interim regulations and final regulations published in the Federal Register on December 29, 1978, at 43 FR 60877 and July 15, 1982, at 47 FR 30731 respectively. It generally applies when a worker after 1978 attains age 62, becomes disabled, or dies before age 62. The formula uses the worker's earnings after they have been adjusted, or "indexed," in proportion to the increase in average wages of all workers. Using this method, we determine the worker's "average indexed monthly earnings." We then compute the primary insurance amount, using the worker's average indexed monthly earnings. The computation formula is adjusted automatically each year to reflect changes in general wage levels.

Average Indexed Monthly Earnings

To assure that a worker's future benefits reflect the general rise in the standard of living that occurs during his or her working lifetime, we adjust or "index" the worker's past earnings to take into account the change in general wage levels that has occurred during the worker's years of employment. These adjusted earnings are then used to compute the worker's primary insurance amount.

For example, to compute the average indexed monthly earnings for a worker attaining age 62, becoming disabled, or dying before attaining age 62, in 1989, we divide the average of the total wages for 1987, $18,426.51, by the average of the total wages for each year prior to 1987 in which the worker had earnings. We then multiply the actual wages and self-employment income as defined in section 211(b) of the Act credited for each year by the corresponding ratio to obtain the worker's adjusted earnings for each year. After determining the number of years we must use to compute the primary insurance amount, we pick those years with highest indexed earnings, total those indexed earnings and divide by the total number of months in those years. This figure is rounded down to the next lower dollar amount, and becomes the average indexed monthly earnings figure to be used in computing the worker's primary insurance amount for 1989.

Computing the Primary Insurance Amount

The primary insurance amount is the sum of three separate percentages of portions of the average indexed monthly earnings. In 1979 (the first year the formula was in effect), these portions were the first $180, the amount between $180 and $1,085, and the amount over $1,085. The amounts for 1989 are obtained by multiplying the 1979 amounts by the ratio between the average of the total wages for 1987, $18,426.51, and for 1977, $9,779.44. These results are then rounded to the nearest dollar. For 1989, the ratio is 1.88421. Multiplying the 1979 amounts of $180 and $1,085 by 1.88421 produces the amounts of $339.16 and $2,044.37. These must then be rounded to $339 and $2,044. Accordingly, the portions of the average indexed monthly earnings to be used in 1989 are determined to be the first $339, the amount between $339 and $2,044, and the amount over $2,044.

Consequently, for individuals who first become eligible for old-age insurance benefits or disability insurance benefits in 1989, or who die in 1989 before becoming eligible for benefits, we will compute their primary insurance amount by adding the following:

(a) 90 percent of the first $339 of their average indexed monthly earnings, plus

(b) 32 percent of the average indexed monthly earnings over $339 and through $2,044, plus

(c) 15 percent of the average indexed monthly earnings over $2,044.

This amount is then rounded to the next lower multiple of $.10 if it is not already a multiple of $.10. This formula and the adjustments we have described are contained in section 215(a) of the Act (42 U.S.C. 415(a)).

Maximum Benefits Payable to a Family

General

The 1977 Amendments continued the long established policy of limiting the total monthly benfits which a worker's family may receive based on his or her primary insurance amount. Those amendments also continued the then existing relationship between maximum family benefits and primary insurance amounts but did change the method of computing the maximum amount of benefits which may be paid to a worker's family. The Social Security Disability Amendments of 1980 (Pub. L. 96-265) established a new formula for computing the maximum benefits payable to the family of a disabled worker. This new formula is applied to the family benefits of workers who first become entitled to disability insurance benefits after June 30, 1980, and who first become eligible for these benefits after 1978. The new formula was explained in a final rule published in the Federal Register on May 8, 1981, at 46 FR 25601. For disabled workers initially entitled to disability benefits before July 1980, or whose disability began before 1979, the family maximum payable is computed the same as the old-age and survivor family maximum.

Computing the Old-Age and Survivor Family Maximum

The formula used to compute the family maximum is similar to that used to compute the primary insurance amount. It involves computing the sum of four separate percentages of portions of the worker's primary insurance amount. In 1979, these portions were the first $230, the amount between $230 and $332, the amount between $332 and $433, and the amount over $433. The amounts for 1989 are obtained by multiplying the 1979 amounts by the ratio between the average of the total wages for 1987, $18,426.51, and the average for 1977, $9,779.44. This amount is then rounded to the nearest dollar. For 1989, the ratio is 1.88421. Multiplying the amounts of $230, $332, and $433 by 1.88421 produces the amounts of $433.37, $625.56, and $815.88. These amounts are then rounded to $433, $626, and $816. Accordingly, the portions of the primary insurance amounts to be used in 1989

are determined to be the first $433, the amount between $433 and $626, the amount between $626 and $816, and the amount over $816.

Consequently, for the family of a worker who becomes age 62 or dies in 1989, the total amount of benefits payable to them will be computed so that it does not exceed:

(a) 150 percent of the first $433 of the worker's primary insurance amount, plus

(b) 272 percent of the worker's primary insurance amount over $433 through $626, plus

(c) 134 percent of the worker's primary insurance amount over $626 through $816, plus

(d) 175 percent of the worker's primary insurance amount over $816.

This amount is then rounded to the next lower multiple of $0.10 if it is not already a multiple of $.10. This formula and the adjustments we have described are contained in section 203(a) of the Act (42 U.S.C. 403(a)).

"Old-Law" Contribution and Benefit Base

General

The 1989 "old-law" contribution and benefit base is $35,700. This is the base that would have been effective under the Act without the enactment of the 1977 amendments. The base is computed under section 230(b) of the Act as it read prior to the 1977 amendments.

The "old-law" contributions and benefit base is used by:

(1) The Railroad Retirement program to determine certain tax liabilities and tier II benefits payable under that program to supplement the tier I payments which correspond to basic Social Security benefits,

(2) The Pension Benefit Guaranty Corporation to determine the maximum amount of pension guaranteed under the Employee Retirement Income Security Act (as stated in section 230(d) of the Act), and

(3) Social Security to determine a "year of coverage" in computing the "special minimum" benefit and in computing benefit for persons who are also eligible to receive pensions based on employment not covered under section 210 of the Act.

Computation

The base is computed using the automatic adjustment formula in section 230(b) of the Act as it read prior to the enactment of the 1977 amendments. Under the formula, the "old-law" contribution and benefit base shall be the "old-law" 1988 base multiplied by the ratio of (1) the average amount, per employee, of total wages for the calendar year of 1987 to (2) the average amount of those wages for the calendar year of 1986. If the amount so determind is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

Average Wages

The average wage for calendar year 1986 was previously determined to be $17,321.82. The average wage for calendar year 1987 has been determined to be $18,426.51, as stated herein.

Amount

The ratio of the average wage for 1987, $18,426.51, compared to that for 1986, $17,321.82, is 1.0637745. Multiplying the 1988 "old-law" contribution and benefit base amount of $33,600 by the ratio of 1.0637745 produces the amount of $35,742.82 which must then be rounded to $35,700. Accordingly, the "old-law" contribution and benefit base is determined to be $35,700 for 1989.

OASDI Fund Ratio

General

Section 215(i) of the Act was amended by section 112 of Pub. L. 98–21, the Social Security Amendments of 1983, to include a "stabilizer" provision that can limit the automatic OASDI benefit increase under certain circumstances. If the combined assest of the OASI and DI Trust Funds, as a percentage of annual expenditures, are below a specified level, the automatic benefit increase is equal to the lesser of (1) the increse in average wages or (2) the increase in prices. The threshold level specified for the OASDI fund ratio is 15.0 percent for benefit increases for December of 1978 through December 1988, and 20.0 percent thereafter. The amendments also provide for subsequent "catch-up" benefit increases for beneficiaries whose previous benefit increases were affected by this provision. "Catch-up" benefit increases occur only when trust fund assets exceed 32.0 percent of annual expenditures.

Computation

Section 215(i) specifies the computation and application of the OASDI fund ratio. The OASDI fund ratio for 1988 is the ratio of (1) the combined assets of the OASI and DI Trust Funds at the beginning of 1988, including advance tax transfers for January 1988, to (2) the estimated expenditures of the OASI and DI Trust Funds during 1988, excluding transfer payments between the OASI and DI Trust Funds, and reducing any transfers to the Railroad Retirement Account by any transfers from that account into either trust fund.

Ratio

The combined assets of the OASI and DI Trust Funds at the beginning of 1988 (including advance tax transfers for January 1988) equaled $90,492 million, and the expenditures are estimated to be $222,471 million. Thus, the OASDI fund ratio for 1988 is 40.7 percent, which exceeds the applicable threshold of 15.0 percent. As a result, the "stabilizer" provision does not affect the benefit increase for December 1988.

(Catalog of Federal Domestic Assistance Programs Nos. 13.802–13.805, and 13.807 Social Security Programs)

Dated: October 27, 1988.

Otis R. Bowen,

Secretary of Health and Human Services.

SPECIAL MINIMUM PRIMARY INSURANCE AMOUNTS AND MAXIMUM FAMILY BENEFITS

Special minimum primary insurance amount payable for Dec. 1987	Number of years required at minimum earings level	Special minimum primary insurance amount payable for Dec. 1988	Special minimum maximum family benefit payable for Dec. 1988
$20.20	11	$21.00	$31.50
40.10	12	41.70	62.50
60.30	13	62.70	94.30
80.30	14	83.50	125.50
100.40	15	104.40	156.70
120.60	16	125.40	188.40
140.70	17	146.30	219.60
160.80	18	167.20	251.00
180.90	19	188.10	282.30
200.90	20	208.90	313.50
221.20	21	230.00	345.10
241.20	22	250.80	376.40

SPECIAL MINIMUM PRIMARY INSURANCE AMOUNTS AND MAXIMUM FAMILY BENEFITS—Continued

Special minimum primary insurance amount payable for Dec. 1987	Number of years required at minimum earings level	Special minimum primary insurance amount payable for Dec. 1988	Special minimum maximum family benefit payable for Dec. 1988
261.50	[illegible]	[illegible]	408.20
281.50	[illegible]	292.70	[illegible]
301.50	[illegible]	313.50	[illegible]
321.80	26	[illegible]	502.30
341.90	27	[illegible]	533.60
361.90	[illegible]	[illegible]	[illegible]
381.90	29	397.10	596.20
402.00	30	418.00	[illegible]

[FR Doc. 88–25169 Filed 10–28–88; 8:45 am]

BILLING CODE 4190–11–M

Health Resources and Services Administration

Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Pub. L. 92–463, the Annual Report for the following Health Resources and Service Administration Federal Advisory Committee has been filed with the Library of Congress:

National Advisory Committee on Rural Health Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE., Washington, DC, or weekdays between 9:00 a.m. and 4:30 p.m. at the Department of Health and Human Services, Department Library, HHS North Building, Room C–400, 330 Independence Avenue, SW., Washington, DC, telephone (202) 245–6791. Copies may be obtained from: Mr. Jeffery C. Human, Executive Secretary, National Advisory Committee on Rural Health, Room 14–22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–0835.

Date: October 25, 1988.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 88–25047 Filed 10–28–88; 8:45 am]

BILLING CODE 4160–15–M

Federal Financial Assistance for Telecommunications Demonstration Project in West Texas

The Health Resources and Services Administration (HRSA), Public Health Service, Department of Health and Human Services, announces the anticipated availability of funds in Fiscal Years 1989, 1990, and 1991 for a grant to the Texas Tech University in Lubbock, Texas 79409, for the purpose of a demonstration project to examine the feasibility of requiring instruction and oversight of rural physicians, in lieu of imposing sanctions, through the use of video communication between small rural hospitals and tertiary care hospitals with established teaching programs. This is intended to be a one-time program and therefore a Catalog of Federal Domestic Assistance number has not been requested.

Authority

This program is authorized under section 4094(e) of the Omnibus Budget Reconciliation Act of 1987 (42 U.S.C. 1320c–5 note).

Single Source Justification

The Department plans to provide Federal financial assistance to the Texas Tech University's proposed model interactive telecommunications network, called MEDNET, which will address needs for consultation, clinical information, and health professional education, in rural and medically underserved urban areas in west Texas, an area covering approximately 135,000 square miles. The medical school at Texas Tech University has a pilot program that is about 4 years old and is a leader in this field. This project provides a unique opportunity to examine the cost-effectiveness of telecommunications in furnishing specialized consultative services to physicians and hospitals in isolated rural areas. The need to assure this type of capability is particularly acute in light of the recent hospital closures and persistent shortage of physicians and other health care personnel in west Texas (over 50 hospitals in Texas have closed during the last 3 years). The proposed technological advances will assist rural hospitals in meeting necessary quality of care standards to continue as approved providers for Medicare and Medicaid services.

The unique circumstances in west Texas and the demonstrated capability and experience of Texas Tech University justify restrictive competition with respect to this project. The specialized focus of the legislation supports the determination to fund this demonstration project in west Texas. The application from the University has undergone objective review by a committee of experts and has been deemed approvable for Federal funding. As called for in the legislative history, the Peer Review Organization (PRO) responsible for monitoring quality of care in Texas will participate in the design and implementation of this demonstration.

Availability of funds

Up to an estimated total of $2.2 million is expected to be available for obligation to support this project during a 3-year project period covering Federal Fiscal Years 1989, 1990 and 1991. The funding will be from several sources within the Department that will potentially benefit from the results of this demonstration project. Continuation awards within the 3-year project period will be made on the basis of satisfactory progress in meeting objectives and on the availability of funds. The funding estimate is subject to change. Funds under this program may not be expended for the acquisition of capital items, including computer hardware. The expected non-Federal share of the project is expercted to exceed $2 million.

Reviews

The application under this program is subject to review, governed by Executive Order 12372 Intergovernmental Review of Federal Programs.

Information may be obtained from and comments directed to:

Dena Puskin, Deputy Director, Office of Rural Health Policy, Health Resources and Services Administration, Public Health Service, Department of Health and Human Services, 5600 Fishers Lane, Room 14–22, Rockville, Maryland 20857, telephone (302) 443–0835.

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Dated: September 21, 1988.

David N. Sundwall,

Administrator, Health Resources and Services Administration.

[FR Doc. 88-25046 Filed 10-28-88; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-920-08-4120-12]

Powder River Regional Coal Team Activities: Public Meeting Announcement

ACTION: Public notice.

SUMMARY: The Powder River Regional Coal Team (RCT) will hold a public meeting on December 15, 1988, to assess the need to resume Federal coal leasing in the Powder River Coal Region; review a proposal to delete from the region Musselshell, Yellowstone, and Golden Valley Counties, all in Montana; and review Federal coal management issues of regional concern. The full agenda and other details for this RCT meeting are set out below.

DATE: The RCT will meet at 8:30 a.m. on December 15, 1988.

ADDRESS: The RCT meeting will be held at the Veterans Administration Medical Center auditorium, 210 South Winchester, Miles City, Montana.

FOR FURTHER INFORMATION CONTACT: Don Bradbson, Telephone (307) 772-2571 or (FTS) 328-2571.

SUPPLEMENTARY INFORMATION: The primary purpose of the meeting will be to develop a recommendation for the Secretary of the Interior on whether or not to resume regional coal leasing activites. Comments about the need for leasing may be submitted in writing by December 5, 1988, to State Director (325), Wyoming State Office, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82003, or presented orally during the meeting. The meeting will also serve as a forum for public discussion on Federal coal management issues of regional concern. If appropriate, the RCT may develop additional regional coal management recommendations for Secretarial consideration.

One specific regional issue which the RCT requests public comments on is the removal from the region of Musselshell, Yellowstone, and Golden Valley counties, all in Montana. The Powder River Coal Production Region was established by the Bureau of Land Management (BLM) on November 9, 1979, together with a number of other regions contained in 43 CFR Part 3420. The Region includes the following counties: Big Horn, Golden Valley, Musselshell, Powder River, Rosebud, Treasure, and Yellowstone, all in Montana; and Campbell, Converse, Crook, Goshen, Johnson, Natrona, Niobrara, Sheridan, and Weston, all in Wyoming. The RCT will consider current and projected market conditions, potential for emergency leasing, level of industrial interest, administrative efficiencies, and public comments prior to making any recommendation to the Director. Public comments may be submitted in writing by December 5, 1988, to State Director (925), Wyoming State Office, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82003.

Musselshell, Yellowstone, and Golden Valley Counties have contributed very little coal production to regional production levels and leasing levels. Only one small surface mine currently operates in Musselshell County producing approximataly 15,000 tons annually. There are two 80-acre coal leases in Musselshell County. One was issued in 1928 and the other in 1982. Future mining ventures for other than local use would likely be by underground methods and have smaller production than surface mining in the remainder of the Region. Impacts from smaller underground mines would likely be less than regional in nature.

On May 3, 1988, Meridian Minerals Company submitted an application to exchange 3,674 acres of Federal coal in the Bull Mountains for surface lands in other parts of the State of Montana. The Bureau of Land Management is preparing an environmental impact statement (EIS) as announced in the **Federal Register** Notice of May 16, 1988, Vol. 53, No. 94. A leasing alternative to the exchange proposal is being analyzed in the EIS. Yellowstone Coal Company, through leasing agreements with Meridian, has announced plans to open an underground mine in the Bull Mountains and is preparing an application to obtain a mining permit from the State of Montana. Mining could begin in early 1991 if the exchange with Meridian is completed or if the Federal coal is made available for competitive leasing.

The BLM cannot respond timely or economically to Yellowstone Coal Company's current development and leasing interest. It would take at least 3 years to prepare for a regional coal lease sale through the activity planning process. There is no current regional leasing schedule. Coal market conditions and projected production levels suggest no immediate need to begin a new round of activity planning. It is doubtful leasing interest in the Bull Mountains is sufficient reason to begin a new round of activity planning. However, processing a lease-by-application could take as little as 12 months. A similar savings in preparation cost would also be expected. Removal of Musselshell, Yellowstone, and Golden Valley countries from the region would provide for leasing-by-application in accordance with 43 CFR Part 3425 in these three counties. Accordingly, competitive leasing, in response to an application, could be considered on the proposed Bull Mountain exchange area.

Public input opportunities will be provided on all agenda items. The agenda for this meeting is as follows:

1. Introductions.
2. Approval of Minutes of November 10, 1987, RCT meeting.
3. Regional Coal Activity Status.
   a. Charter Renewal.
   b. Current production.
   c. Preference Right Lease Applications.
   d. Exchanges.
   e. Other activity.
4. Round I Leases.
   a. Status.
   b. Supplemental EIS.
5. Need for Leasing Comments.
   a. Review written comments.
   b. Hearing additional comments.
6. Market Conditions.
   a. Review current market conditions.
   b. Compare current and recent past conditions.
7. RCT Activity Planning Recommendation.
   a. Resumption or deferral of activity planning.
   b. Establish leasing schedule, if necessary.
8. Action plan.
9. Regional Boundary Modification.
   a. Public comment review.
   b. Regional Coal Team guidance.
10. Other Regional Issues.
11. Adjourn.

Hillary A. Oden,

State Director.

[FR Doc. 88-25059 Filed 10-28-88; 8:45 am]

BILLING CODE 4310-84-M

[NV-930-08-4212-14; N-48516]

Realty Action; Battle Mountain District; Shoshone-Eureka Resource Area; Lander County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Realty action; noncompetitive sale of federal lands in Lander County, Nevada.

SUMMARY: In response to a request from Nevada Department of Transportation (NDOT), the following described Federal lands have been identified as suitable for direct sale under section 203 and 209 of the Federal Land Policy and Management Act of 1976 at not less than the appraised fair market value.

Mount Diablo Meridian

T. 32 N., R. 44 E.,
Sec. 12, S½SE¼SE¼.

A parcel of land containing 20 acres.

NDOT plans to use these lands for construction of a new maintenance station near Battle Mountain, Nevada. The site is adjacent to the west Battle Mountain Interchange on Interstate 80.

These lands are not required for any Federal purpose. Disposal is consistent with the Bureau's planning for this area and would be in the public interest. No conflicts with State or local plans have been identified. the subject lands are within the Battle Mountain Corner grazing allotment. No livestock grazing privileges are adjudicated, therefore no two-year notification to any permittee is required.

Minimum bid for this parcel will be fair market value which will be determined by an appraisal and which will be made available prior to the sale.

The lands described in this Notice will not be offered for sale until all required environmental, archaeological and mineral reports are completed. Under no circumstances will these lands be sold sooner than 60 days after publication of this notice.

Segregation

The subject lands are presently utilized by NDOT under Material Site Right-of-Way NEV-056168 and are, in effect, segregated from the operation of the public land laws, including the mining laws.

Comments

For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 1420, Battle Mountain Nevada 89820. Objections will be reviewed by the State Director who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Date: October 14, 1988.

Terry L. Plummer,

District Manager, Battle Mountain, Nevada.

[FR Doc. 88-25060 Filed 10-28-88; 8:45 am]

BILLING CODE 4310-HC-M

[AA-256-08-4371-02]

Draft Wild Horse Sanctuary Guidelines Available for Comment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of Draft Wild Horse Sancturary Guidelines for public comment.

SUMMARY: Notice is hereby given that draft guidelines for a wild horse sanctuary are available for public review and comment. The Bureau of Land Management (BLM) must submit final guidelines to Congress by January 1, 1989.

DATES: Comments on the draft guidelines must be received by November 30, 1988.

ADDRESS: Director (250), Bureau of Land Management, Premier Building, Room 901, U.S. Department of the Interior, 18th and C Streets NW., Washington, DC 20240.

FOR FURTHER INFORMATION OR TO REQUEST A COPY OF THE DRAFT GUIDELINES, CONTACT: John S. Boyles, Chief, Division of Wild Horses and Burros, at the above address; telephone (202) 653-9215.

SUPPLEMENTARY INFORMATION: The BLM intends to place on sanctuaries on private land those excess wild horses that have been removed from the public lands and that are not adopted. One sanctuary was established in western South Dakota in summer 1988. In the Fiscal Year (FY) 1989 Interior and Related Agencies Appropriations Act (Pub. L. 100-446), Congress directed BLM to establish a second sanctuary in FY 1989 "in more than one climate or geographical type" and to develop sanctuary guidelines "for the humane care and health of the animals." In developing these guidelines, which must be submitted to the congressional committees by January 1, 1989, BLM must seek input from all interested parties. Public comments received by the deadline of November 30, 1988, will be considered in the preparation of the final guidelines.

Robert F. Burford,

Director, Bureau of Land Management.

Date: October 24, 1988.

[FR Doc. 88-25062 Filed 10-28-88; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Reclamation

Quarterly Status Tabulation of Water Service and Repayment Contract Negotiations

AGENCY: Bureau of Reclamation, Department of the Interior.

ACTION: Notice of Proposed Contractual Actions Pending Through December 1988.

Pursuant to section 226 of the Reclamation Reform Act of 1982 (96 Stat. 1273), and to § 426.20 of the rules and regulations published in the **Federal Register** December 6, 1983, Vol. 48, page 54785, the Bureau of Reclamation will publish notice of proposed or amendatory repayment contract actions or any contract for the delivery of irrigation water in newspapers of general circulation in the affected area at least 60 days prior to contract execution. The Bureau of Reclamation announcements of irrigation contract actions will be published in newspapers of general circulation in the areas determined by the Bureau of Reclamation to be affected by the proposed action. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation requirements do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. The Secretary or the district may invite the public to observe any contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act if the Bureau determines that the contract action may or will have "significant" environmental effects.

Pursuant to the "Final Revised Public Participation Procedures" for water service and repayment contract negotiations, published in the **Federal Register** February 22, 1982, Vol. 47, page 7763, a tabulation is provided below of all proposed contractual actions in each of the five Reclamation regions. Each proposed action listed is, or is expected to be, in some stage of the contract negotiation process during October, November, or December of 1988. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the

Secretary, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the Regional Directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved. The identity of the approving officer, and other information pertaining to a specific contract proposal, may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region.

This notice is one of a variety of means being used to inform the public about proposed contractual actions. Individual notices of intent to negotiate, and other appropriate announcements, are made in the Federal Register for those actions found to have widespread public interest. When this is the case, the date of publication is given.

Acronym Definitions Used Herein

(FR) Federal Register
(ID) Irrigation District
(IDD) Irrigation and Drainage District
(M&I) Municipal and Industrial
(D&MC) Drainage and Minor Construction
(R&B) Rehabilitation and Betterment
(O&M) Operation and Maintenance
(CAP) Central Arizona Project
(CUP) Central Utah Project
(CVP) Central Valley Project
(P-SMBP) Pick-Sloan Missouri Basin Program
(CRSP) Colorado River Storage Project
(SRPA) Small Reclamation Projects Act
(BCP) Boulder Canyon Project

Pacific Northwest Region

Bureau of Reclamation, 550 West Fort Street, Box 043, Boise, Idaho 83724, telephone (208) 334–1161.

1. Cascade Reservoir water users, Boise Project, Idaho: Repayment contracts for irrigation and M&I; 29,221 acre-feet of stored water in Cascade Reservoir.

2. Brewster Flat ID, Chief Joseph Dam Project, Washington: Amendatory repayment contract; land reclassification of approximately 360 acres to irrigable; repayment obligation to increase accordingly.

3. Individual Irrigators, M&I, and miscellaneous water users, Pacific Northwest Region, Idaho, Oregon, and Washington: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; Long-term contracts for similar service for up to 1,000 acre-feet of water annually.

4. Rogue River Basin water users, Rogue River Basin Project, Oregon: Water service contracts; $5 per acre-foot or $50 minimum per annum, terms up to 40 years.

5. Willamette Basin water users, Willamette Basin Project, Oregon: Water service contracts; $1.50 per acre-foot or $50 minimum per annum, terms up to 40 years.

6. IDs and similar water user entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

7. Fifty-nine Palisades Reservoir Spaceholders, Minidoka Project, Idaho-Wyoming: Contract amendments to extend term for which contract water may be subleased to other parties.

8. South Columbia Basin ID, Columbia Basin Project, Washington: Supplemental repayment contract for Irrigation Block 24; 1,892 irrigable acres.

9. City of Cle Elum, Yakima Project, Washington: Amendatory or replacement M&I water service contract; 2,200 acre-feet (1,350 gallons per minute) annually for a term of up to 40 years.

10. Three IDs, Flathead Indian Irrigation Project: Repayment of costs associated with rehabilitation of irrigation facilities.

11. Baker Valley ID, Baker Project, Oregon: Irrigation water service contract on a surplus interruptible basis to serve up to 13,000 acres; sale of excess capacity in Mason Reservoir (Phillips Lake) for a term of up to 40 years.

12. Crooked River Project, Oregon: Repayment of water service contracts with several individuals and with North Unit ID for a total of approximately 16,100 acre-feet of storage space in Prineville Reservoir.

13. Various Projects, Pacific Northwest Region: R&B contracts for replacement of needle valves at storage dams.

14. Palisades Water Users, Inc., Minidoka-Palisades Project: Repayment contract for an additional 500 acre-feet of storage in Palisades Reservoir.

15. Willow Creek Project, Oregon: Repayment or water service contracts for a total of up to 3,500 acre-feet of storage space in Willow Creek Reservoir.

16. State of Wyoming, Minidoka-Palisades Project: Repayment contract for 33,000 acre-feet of storage space in Palisades Reservoir reserved under the Snake River Compact.

17. Roza ID, Yakima Project, Washington: Proposed supplementary deferment contract. Defer 1 year (2 installments) of construction payments because of cost incurred by the district to obtain additional water supplies in anticipation of drought.

18. Vale Oregon ID, Vale Project, Oregon: Supplementary deferment contract to defer the 1988 construction installment under authority of the Act of September 21, 1959.

19. Four Project Spaceholders, Minidoka-Palisades Project, Idaho-Wyoming: Contract amendments to provide for rental of water to other parties.

Mid-Pacific Region

Bureau of Reclamation (Federal Office Building), 2800 Cottage Way, Sacramento, California 95825, telephone (916) 978–5030.

1. Tuolumne Regional Water District, CVP, California: Water service contract; up to 9,000 acre-feet from New Melones Reservoir.

2. Calaveras County Water District, CVP, California: Water service contract; 1,000 acre-feet from New Melones Reservoir; FR notice published February 5, 1982, Vol. 47, page 5473.

3. Individual irrigators, M&I, and miscellaneous water users, Mid-Pacific Region, California, Oregon, and Nevada: Temporary (interim) water service contracts for available project water for irrigation, M&I, or fish and wildlife purposes providing up to 10,000 acre-feet of water annually for terms up to 5 years; Temporary Warren Act contracts to wheel nonproject water through project facilities for terms up to 1 year; Long-term contracts for similar service for up to 1,000 acre-feet of water annually. *Note:* Copies of the standard form of temporary water service contract for the various types of service are available, upon written request, from the Regional Director at the address shown above.

4. Friant-Kern Canal Contractors, Friant-Kern Unit, CVP, California: Renewal of existing long-term water service contracts with numerous contractors on the Friant-Kern Canal whose contracts expire 1988–1995. Water quantities in existing contracts range from 1,200 to 175,440 acre-feet.

5. San Luis Water District, CVP, California: Amendatory water service contract providing for a change in point of delivery from Delta-Mendota Canal to the San Luis Canal.

6. ID's and similar water user entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

7. State of California, CVP, California: Contract(s) for, (1) sale of interim water to the Department of Water Resources for use by the State Water Project Contractors, and (2) acquisition of conveyance capacity in the California Aqueduct for use by the CVP, as contemplated in the Coordinated Operations Agreement.

8. Madera ID, Madera Canal, CVP, California: Warren Act contract to convey and/or store nonproject Soquel water through project facilities.

9. County of Tulare, CVP, California: Amendatory water service contract, to provide an additional 1,908 acre-feet and reallocate 400 acre-feet of water from the Ducor ID for a total increase of 2,308 acre-feet.

10. Shasta Dam Area Public Utilities District, CVP, California: Renewal of M&I water supply contract. Less than 6,000 acre-feet.

11. U.S. Fish and Wildlife Service, CVP, California: Long-term contract for water supply for Federal refuge in Grasslands area of California.

12. City of Redding, CVP, California: Amendatory M&I water supply contract.

13. Kanawha Water District—Improvement District No. 2 and 3, CVP, California: Amendatory Pub. L. 84–130 repayment contracts.

14. City of Dos Palos, CVP, California: Contract for the use of surplus capacity in the San Luis Canal. The contract will allow the exchange of water with Central California Irrigation District and transportation to a new point of delivery. The result will be a significant improvement in quality of water made available to the city's water users.

15. North Kern Water Storage District, Buena Vista Water Storage District, Tulare Lake Basin Water Storage District, and Hacienda Water District, Kern River Project, California: Amendatory contract to provide storage space for M&I water.

16. Contra Costa Water District, CVP, California: Amendatory water service contract to add an additional point of delivery to accommodate the district's proposed Los Vaqueros project. Amendment will also conform contract to current water ratesetting policies.

17. East Bay Municipal Utility District, CVP, California: Temporary M&I water service contract for 75,000 acre-feet of water for up to one year.

18. East Bay Municipal Utility District, CVP, California: Amend Contract No. 14–06–200–5128A to provide for the current CVP water rates to conform the contract with the provisions of sections 105 and 106 of Pub. L. 99–546.

19. San Juan Suburban Water District, CVP, California: Amend Contract No. 14–06–200–152A to provide for the current CVP water rates to conform the contract with the provisions of sections 105 and 106 of Pub. L. 99–546.

20. El Dorado Irrigation District, CVP, California: Amend Contract No. 14–06–200–1357A to provide for additional points of delivery under the contract and to provide for the current CVP water rates to conform the contract with the provisions for sections 105 and 106 of Pub. L. 99–546, if requested by the district.

21. Centerville Community Service District, CVP, California: Water service contract for up to 1,560 acre-feet of M&I water annually.

22. Shasta County Water Agency, CVP, California: Amendatory water service contract to provide for reduction in annual entitlement.

23. Clear Creek Community Services District, CVP, California: Amendatory water service contract to provide for reduction in annual entitlement.

Upper Colorado Region

Bureau of Reclamation, P.O. Box 11568 (125 South State Street), Salt Lake City, Utah 84147, telephone (801) 524–5435.

1. Individual irrigators, M&I, and miscellaneous water users, Utah, Wyoming, Colorado, and New Mexico: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

—The Benevolent and Protective Order of the Elks, Lodge No. 1747, Farmington, New Mexico: Navajo Reservoir water service contract; 20 acre-feet per year for municipal use; contract term for 40 years from execution.

2. Revised Hydrological Determination: A hydrologic determination was last made for the Upper Colorado River in December 1984 with the principal conclusion that the Upper Basin could support a depletion level of at least 5.0 million acre-feet. Upon the request of the Secretary of the New Mexico Interstate Stream Commission, a review of water availability in the Upper Basin has been undertaken with regard to the water supply available for use in New Mexico.

3. La Plata Conservancy District, Animas-La Plata Project, New Mexico: Repayment contract; 9,900 acre-feet per year for irrigation. Contract terms consistent with binding cost-sharing agreement, dated June 30, 1986.

4. San Juan Water Commission, Animas-La Plata Project, New Mexico: M&I repayment contract; 30,600 acre-feet per year. Contract terms consistent with binding cost-sharing agreement, dated June 30, 1986.

5. Southern Ute Indian Tribe, Animas-La Plata Project, Colorado: Repayment contract for 26,5000 acre-feet per year for M&I use and 2,600 acre-feet per year for irrigation use in Phase One and 3,300 acre-feet in Phase Two. Contract terms to be consistent with binding cost-sharing agreement and water rights settlement agreement, in principle.

6. Ute Mountain Ute Tribe, Animas-La Plata Project, Colorado and New Mexico: Repayment contract; 6,000 acre-feet per year for M&I use in Colorado; 26,400 acre-feet per year for irrigation use in Colorado; and 900 acre-feet per year for irrigation use in New Mexico. Contract terms to be consistent with binding cost-sharing agreement and water rights settlement agreement.

7. Navajo Indian Tribe, Animas-La Plata Project, New Mexico: Repayment contract; 7,800 acre-feet per year for M&I use.

8. Grand Valley Water Users Association, Orchard Mesa ID, Grand Valley Project, Colorado: Contract to continue O&M of Grand Valley powerplant.

9. Ute Mountain Ute Indian Tribe, Dolores Project, Colorado: Agreement for 1,000 acre-feet per year for M&I use and 22,900 acre-feet per year for irrigation.

10. Central Utah Water Conservancy District, Bonneville Unit, CUP, Utah: D&MC contract; Advancement of $65.7 million for construction of laterals and drains of the irrigation and drainage system.

11. Uintah Water Conservancy District, Jensen Unit, CUP, Utah: Amendatory repayment contract to reduce M&I water supply and corresponding repayment obligation.

12. Florida Water Conservancy District, Florida Project, Colorado: Lease of power privileges to develop the hydroelectric power potential of the Florida Project.

13. Vermejo Conservancy District, Vermejo Project, New Mexico: Amendatory contract to relieve the district of further repayment obligation, presently exceeding $2 million, pursuant to Pub. L. 99–550.

14. Rio Grande Water Conservation District, Alamosa, Colorado: Contract for the district to be the vender of the Closed Basin Division, San Luis Valley Project, suplus water if available.

15. Conejos Water Conservancy District, San Luis Valley Project, Colorado: Amendatory contract to place OM&R costs on a variable basis commensurate with the availability of project water.

16. Carlsbad ID, Carlsbad Project, New Mexico; Repayment contract for the costs incurred by the United States for replacing the needle valves at Fort Sumner Dam.

17. Weber Basin Water Conservancy District, Weber Basin Project, Utah:

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Repayment contract for R&B of the A.V. Watkins Dike.

Lower Colorado Region

Bureau of Reclamation, P.O. Box 427 (Nevada Highway and Park Street), Boulder City, Nevada 89005, telephone [702] 293-8536.

1. Amendment to Contract No. 176r-696 between the Bureau of Reclamation and the Department of the Army to increase the maximum amount of water delivered to the Yuma Proving Grounds from 55 acre-feet to 975 acre-feet, pursuant to the recommendation of the Arizona Department of Water Resources.

2. Agricultural and M&I water users, CAP, Arizona: Water service subcontracts; a certain percent of available supply for irrigation entities and up to 640,000 acre-feet per year for M&I use.

3. Southern Arizona Water Rights Settlement Act: Sale of up to 28,200 acre-feet per year of municipal effluent to the city of Tucson, Arizona.

4. Contracts with five agricultural entities located near the Colorado River, BCP, Arizona: Water service contracts for up to 1,920 acre-feet per year total.

5. Gila River Indian Community, CAP, Arizona: Water Service contract for delivery of up to 173,000 acre-feet per year.

6. ID's and similar water user entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97-293).

7. Indian and non-Indian agricultural and M&I water users, CAP, Arizona: Contracts for repayment of Federal expenditures for construction of distribution systems.

8. Water delivery contracts, BCP, Arizona: For a yet undetermined amount of Colorado River water for M&I use on State-owned land.

9. Contract with the State of Arizona, BCP: for a yet undetermined amount of Colorado River water for agricultural use and related purposes on State-owned land.

10. Contract with four individual holders of miscellaneous present perfected rights to Colorado River water totalling 4.5 acre-feet, pursuant to the January 9, 1979, Supplemental Decree of the United States Supreme Court in *Arizona* v. *California* (439 U.S. 419).

11. AK-Chin Farm, Maricopa, Arizona: Repayment contract for $8.1 million SIRPA escalation loan.

12. Contracts for delivery of Surplus water from the Colorado River, when available, with Emilio Soto and Sons, for 1,836 acre-feet per year; Kennedy Livestock, for 480 acre-feet per year.

13. Central Arizona Water Conservation District, CAP, Arizona: Amendatory contract to increase the district's CAP repayment ceiling and to update other provisions of the contract.

14. Maricopa-Stanfield and Central Arizona IDDs, CAP, Arizona: Contract to transfer O&M of the Santa Rosa Canal to Maricopa-Stanfield.

15. Imperial ID and/or the Coachella Valley Water District, BCP, California: Contract providing for exchange of up to 10,000 acre-feet of water per year from a well field to be constructed adjacent to the All-American Canal for an equivalent amount of Colorado River water and for O&M of the well field, Lower Colorado Water Supply Project, California.

16. Lower Colorado Water Supply Project, California: Water service and repayment contracts with nonagricultural users in California for consumptive use of up to 10,000 acre-feet of Colorado River water per year in exchange or an equivalent amount of water to be pumped into the All-American Canal from a well field to be constructed adjacent to the canal.

17. Golden Shores Water Conservation District, BCP, Arizona: M&I water service for lands within the district and adjacent areas for delivery of up to 2,000 acre-feet of Colorado River water per year pursuant to the recommendation of the Arizona Department of Water Resources.

18. Hutchison Present Perfected Rights contract amendment to reflect the transfer of part of the right to Winterhaven, California, Supreme Court Decree in *Arizona* v. *California* and BCP.

19. Winterhaven Present Perfected Rights contract for portion of Hutchison Present Perfected Rights transfer to Winterhaven, Supreme Court Decree in *Arizona* v. *California* and BCP.

20. Country of San Bernardino, San Bernardino, California: Repayment contract for $28.6 million SRPA loan.

21. Maricopa-Stanfield Irrigation and Drainage District, CAP, Arizona: D&MC contract for $4.5 million to complete the district's distribution system.

22. Central Arizona Irrigation and Drainage District, CAP, Arizona: D&MC contract for $20 million to complete the district's distribution system.

23. Wellton-Mohawk IDD and Gold Dome Corporation (Corporation), Gila Project, Arizona: Contract for delivery of 6.14 acre-feet of water year to the Corporation through Wellton-Mohawk Division facilities.

Great Plains Region

Bureau of Reclamation, P.O. Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59107-6900, telephone (406) 585-6413.

1. Individual Irrigators, M&I, and miscellaneous water users, Great Plains Region, Montana, Wyoming, North Dakota, South Dakota, Colorado, Kansas, Nebraska, Oklahoma, and Texas: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms of up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. Nokota Company, Lake Sakakawea, P-SMBP, North Dakota; Industrial water service contract; up to 16,800 acre-feet of water annually; FR notice published May 5, 1982, Vol. 47, Page 19472.

3. Fort Shaw ID, Sun River Project, Montana: R&B loan repayment contract; up to $1.5 million.

4. ID's and similar water user entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97-293).

5. Oahe Unit, P-SMBP, South Dakota: Cancellation of master contract and participating and security contracts in accordance with Pub. L. 97-293 with South Dakota Board of Water and Natural Resources and Spink County and West Brown ID.

6. Owl Creek ID, Owl Creek Unit, P-SMBP, Wyoming: Amendatory water service contract to reflect reduced water supply benefits being received from Anchor Reservoir.

7. Green Mountain Reservoir, Colorado-Big Thompson Project: Water service contract; proposed contract negotiations for sale of water from the marketable yield to water users within the Colorado River Basin of Western Colorado.

8. Ruedi Reservior, Fryingpan-Arkansas Project, Colorado: Water service contract; second proposed contract negotiations for sale of water from the regulatory capacity of Ruedi Reservior.

9. Fryingpan-Arkansas Project, Colorado: East Slope Storage system consisting of Pueblo Reservior, Twin Lakes, and Turquoise Reservior; Contract negotiations for temporary and long-term storage and exchange contracts.

10. Cedar Bluff ID No. 6 and the State of Kansas, Cedar Bluff Unit, P-SMBP, Kansas: Repayment contract: Negotiate contract with the State of Kansas for use of all or part of the conservation pool of Cedar Bluff Reservior for recreation, and fish and wildlife purposes for payment of the irrigation district's cost obligation.

Amend the Cedar Bluff ID's contract to relieve it of all contract obligations.

11. Northern Colorado Water Conservancy District and the Municipal Subdistrict, Colorado-Big Thompson Project, Colorado: Contract for storage and conveyance of water for the Windy Gap Project; Amendatory contract to make administrative and technical revisions to conform the contract terms and conditions to the Windy Gap project as actually constructed and operated.

12. Department of Natural Resources and Conservation, SRPA, Montana: Grant and loan contract for rehabilitation of Middle Creek Dam to meet required safety criteria and to increase reservior storage capacity by 1917 acre/feet which will be utilized for irrigation and municipal purposes.

13. Garrison Diversion Unit, P-SMBP, North Dakota: Repayment contract; Renegotiation of the master repayment contract with Garrison Diversion Conservancy District to bring the terms in line with the Garrison Diversion Unit Reformulation Act of 1986. Negotiation of repayment contracts with irrigators and M&I users.

14. Grey Goose ID, Gray Goose Unit, P-SMBP, South Dakota: Contract negotiations to integrate Gray Goose ID into the P-SMBP, as authorized pursuant to section 1120 of the Water Resource Development Act of January 21, 1986 (Pub. L. 99-662).

15. Hilltop ID, Hilltop Unit, P-SMBP, South Dakota: Contract negotiations to integrate Hilltop ID into the P-SMBP as authorized prusuant to section 1120 of the Water Resource Development Act of January 21, 1986 (Pub. L. 99-662).

16. Pacific Power and Light Company, Glendo Unit, P-SMBP, Wyoming: Contract negotiations renewal of water storage contract for 2,000 acre-feet of nonproject industrial water.

17. Corn Creek ID, Glendo Unit, P-SMBP, Wyoming: Repayment contract for 10,100 acre-feet of supplemental irrigation water from Glendo Reservior.

18. City of Dickinson, North Dakota: Cancellation of Contract No. 9-07-60-WR062 pursuant to the Act entitled, "Making Continuing Appropriations for the Fiscal Year Ending Sepetmber 30, 1988, and for Other Purposes," Pub. L. 100-202. The contract will be replaced with a new contract for the repayment of $1,625,000 over a period of 40 years at 7.21 percent and payment of operation, maintenance, and replacement costs.

19. Lavaca-Navidad River Authority, Palmetto Bend Project, Texas: Amendatory contract to increase repayment ceiling to cover repairs to a drop structure.

20. Hildalgo County ID No. 1, Lower Rio Grande Valley, Texas: Supplemental SRPA loan contract for approximately $13,205,000. The contracting process is dependent upon final approval of the supplemental loan report.

21. Foss Reservoir Master Conservancy District, Washita Basin Project, Oklahoma: Amendatory repayment contract for remedial work.

22. Arbuckle Master Conservancy District, Arbuckle Project, Oklahoma: Contract for the repayment of costs incurred by the United States for the construction of the Sulphur, Oklahoma, pipeline and pumping plant (if constructed).

23. Arbuckle Master Conservancy District, Arbuckle Project, Oklahoma: Amendatory contract for revised repayment schedule to reflect credit for project lands transferred to National Park Service under Public Law 94-325 for the Chickasaw National Recreation Area.

Opportunity for public participation and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

(1) Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

(2) Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of the Bureau of Reclamation.

(3) All written correspondence regarding proposed contracts will be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

(4) Written comments on proposed contract or contract action must be submitted to the appropriate Bureau of Reclamation officials at locations and within the time limits set forth in the advance public notices.

(5) All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

(6) Copies of specific proposed contracts may be obtained from the appropriate Regional Director or his designated public contact as they become available for review and comment.

(7) In the event modifications are made in the form of proposed contract, the appropriate Regional Director shall determine whether republication of the notice and/or extension of the 60-day comment period is necessary.

Factors which shall be considered in making such a determination shall include, but are not limited to: (i) the significance of the impacts(s) of the modification, and (ii) the public interest which has been expressed over the course of the negotiations. As a minimum, the Regional Director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Darrell D. Mack,

Acting Commissioner of Reclamation.

Date: October 21, 1988.

[FR Doc. 88-24984 Filed 10-28-88; 8:45 am]

BILLING CODE 4310-09-M

[INT-DES-88-50]

San Xavier Development Project; Pima County, AZ

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of draft environmental impact statement (DEIS); INT-DES-88-50.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Bureau of Reclamation has prepared a DEIS on the San Xavier Development Project. The project is an authorized feature of the Southern Arizona Water Rights Settlement Act of 1982 (SAWRSA) (Pub. L. 97-293).

According to SAWRSA, the Secretary of the Interior acting through the Bureau of Reclamation, will deliver 50,000 acre-feet of water to the San Xavier District of the Tohono O'odham Nation. The DEIS addresses the impacts of developing approximately 9,600 to 13,500 acres for irrigation.

DATE: A 60-day public review period commences with the publication of this notice. Comments should be submitted to the Regional Director at the address below within the 60-day review period.

ADDRESSES: Single copies of the DEIS may be obtained on request to the Regional Director or the Arizona Projects Office at the addresses below.

Copies of the DEIS are available for inspection at the following locations:

Director, Public Affairs Office, Department of the Interior, Bureau of Reclamation, Room 7644, Washington, DC 20240; Telephone: (202) 343-4662

Assistant Commissioner—Resources Management, Department of the Interior, Bureau of Reclamation, Program Services Division—Environmental Services, Federal

Center, Building 67, Room 638, Denver, CO 80225; Telephone: (303) 236-9336
Regional Director, Bureau of Reclamation, Lower Colorado Regional Office, P.O. Box 427, Boulder City, NV 89005; Telephone: (702) 293-8710
Arizona Projects Office, Bureau of Reclamation, P.O. Box 9980, Phoenix, AZ 85068; Telephone: (602) 870-6760.

Libraries

Phoenix City Library, Main Library, 12 East McDowell, Phoenix, AZ 85004
Tucson Public Library, Regional Headquarters, 200 South 6th Avenue, Tucson, AZ 85701
San Zavier District Library, San Xavier District, Tucson, AZ 85634.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Rinne (Regional Environmental Office, Lower Colorado Region), (702) 293-8560; or Dr. Wayne O. Deason (Manager of Environmental Services, Federal Center), (303) 236-9336.

SUPPLEMENTARY INFORMATION: The San Xavier Development Project was developed in response to the requirement of SAWRSA to design and construct a new efficient irrigation system for agricultural purposes within the San Xavier District. The DEIS identifies three alternatives and the no Federal action alternative. The proposed project includes land leveling and construction of a main canal, pipelines, field ditches, turnouts, floodways, and operational headquarters. Construction is scheduled to begin in mid-1990 with delivery of water by October 1992.

The DEIS describes the existing environment and analyzes the environmental consequences of construction and operation of the alternatives investigated.

Date: October 13, 1988.

Joe D. Hall,

Deputy Commissioner.

[FR Doc. 88-25057 Filed 10-28-88; 8:45 am]

BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31341]

Arizona Eastern Railway Co.; Acquisition and Operation Exemption; Globe Branch of Southern Pacific Transportation Co.

Arizona Eastern Railway Company (AERC) has filed a notice of exemption to acquire by purchase and to operate approximately 134 route miles of rail line of the Globe Branch of the Southern Pacific Transportation Company (Globe) extending from milepost 1098.87 at Bowie, AZ, to milepost 1231.90 at Miami, AZ. The agreement for the transfer of this rail line between Arizona and Globe was to be consummated approximately on or before October 7, 1988.

A transaction relating to the continuance in control of AERC by Kyle Railways, Inc., a noncarrier holding company, is the subject of a notice of exemption filed concurrently in Finance Docket No. 31341 (Sub-No. 1), *Kyle Railways, Inc.—Continuance In Control Exemption—Arizona Eastern Railway Company.* Any comments must be filed with the Commission and served on: Fritz R. Kahn, Suite 700—The McPherson Building, 901 15th Street NW., Washington, DC 20005.

The transaction will not involve the issuance of securities by AERC, which will be a Class III carrier.

AERC must preserve intact all sites and structures more than 50 years old until compliance with the requirements of section 106 of the National Historic Preservations Act, 16 U.S.C. 470, is achieved. *See Class Exemption—Acq. & Oper. of R. Lines under 49 U.S.C. 10901,* 4 I.C.C.2d 305 (1988).[1]

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: October 19, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-25076 Filed 10-28-88; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31341 (Sub-1)]

Kyle Railways, Inc.; Continuance in Control Exemption; Arizona Eastern Railway Co.

Kyle Railways, Inc., (KYLE) a noncarrier in control of several affiliated railroad companies, has filed a notice of exemption under 49 CFR 1180.2(d)(2) and 1180.4(g) regarding its continuance in control of Arizona Eastern Railway Company (AERC), upon its becoming a nonconnecting carrier.

AERC, a wholly owned noncarrier subsidiary of KYLE, has filed concurrently a notice of exemption in Finance Docket No. 31341, *Arizona Eastern Railway Company—Acquisition and Operation Exemption—Globe Branch of the Southern Pacific Transportation Company,* relating to AERC's purchase and operation of the 134 miles of railroad extending from the main line junction at Bowie, AZ (milepost 1098.87) to the end of the branch at Miami, AZ (milepost 1231.90).

KYLE indicates that: (1) The railroads will not connect with each other or any railroad in their corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a Class I carrier. Therefore, this transaction involves the continuance in control of a nonconnecting carrier and is exempt from the prior review requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(2).

As a condition to the use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.,* 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the the transaction.

Decided: October 17, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-25075 Filed 10-28-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-290 (Sub-45X)]

Norfolk and Western Railway Co.; Abandonment Exemption Between Flipping Creek Junction and Goodwill, WV

Applicant has filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments* to abandon its 3.03-mile line of railroad between milepost BG-7.48, at Flipping Creek Junction, WV, and milepost BG-10.50, at Goodwill, WV.

Applicant has certified that: (1) No local or overhead traffic has moved over the line for at least 2 years; and (2) no formal complaint filed by a user or rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective November 30, 1988 (unless stayed pending reconsideration). Petitions to stay regarding matters that do not involve environmental issues [1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2)[2] must be filed by November 10, 1988 and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by November 21, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Roger A. Petersen, Norfolk Southern Corporation, One Commercial Place, Norfolk, VA 23510-2191.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by November 5, 1988. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE, at (202) 275-7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: October 18, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-25074 Filed 10-28-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Charles J. Bobeck, M.D.; Revocation of Registration

On September 2, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Charles J. Bobeck, M.D., of 1729 Termino Avenue, Suite A, Long Beach, California, proposing to revoke his DEA Certificate of Registration AB1051894, and to deny any pending applications for renewal of such registration as a practitioner under 21 U.S.C. 823(f). The statutory basis for the issuance of the Order to Show Cause was that Dr. Bobeck is not currently authorized to handle controlled substances in the state in which he maintains his DEA Certificate of Registration.

The Order to Show Cause was sent registered mail, return-receipt requested, to Dr. Bobeck's registered address. The returned receipt indicates that the Order to Show Cause was received on September 14, 1988. Dr. Bobeck has not made any response. Therefore, pursuant to 21 CFR 1301.54(d), the Administrator concludes that Dr. Bobeck has waived his opportunity for a hearing, and enters this final order based upon the information contained in the investigative file. 21 CFR 1301.57.

The Administrator finds that on January 7, 1988, the California Board of Medical Quality Assurance (BMQA) ordered the revocation of Dr. Bobeck's physician's and surgeon's license in that state, effective January 22, 1988. As of that date, Dr. Bobeck was no longer authorized to handle controlled substances in the State of California.

The Drug Enforcement Administration does not have statutory authority under the Controlled Substances Act to maintain the registration of an individual who lacks state authority to handle controlled substances. See 21 U.S.C. 823(f); and *Emerson Emory, M.D.,* Docket No. 85-46, 51 FR 9543 (1986); *Avner Kauffman, M.D.,* Docket No. 85-8, 50 FR 34208 (1985); and *Agostino Carlucci, M.D.,* Docket No. 82-20, 49 FR 33148 (1984). Since Dr. Bobeck is no longer authorized to handle controlled substances in the State of California, the DEA Certificate of Registration previously issued to him in that state must be revoked pursuant to 21 U.S.C. 824(a)(3).

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b), orders that DEA Certificate of Registration AB1051894, previously issued to Charles J. Bobeck, M.D., be, and it hereby is, revoked.

It is further ordered that any pending applications for renewal of said registration be, and they hereby are, denied.

This order is effective October 31, 1988.

Dated: October 24, 1988.

John C. Lawn,

Administrator.

[FR Doc. 88-25100 Filed 10-28-88; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 87-72]

J L B, Inc., d/b/a Boyd Drugs; Revocation of Registration

On October 5, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to J L B, Inc., d/b/a Boyd Drugs, of 911 North Dixie Avenue, Elizabethtown, Kentucky 42701, proposing to revoke DEA Certificate of Registration AJ3023467, and to deny any pending applications for renewal of the registration as a retail pharmacy under 21 U.S.C. 823(f). The statutory predicate for seeking revocation of the registration was that the pharmacy's continued registration would be inconsistent with the public interest.

Respondents James F. Jefferson, R.Ph., Gregory V. Barnes, R.Ph., and James A. Lancaster, R.Ph., individually and as corporate officers of J L B, Inc., through counsel, timely filed requests for a hearing on the issues raised in the Order to Show Cause. The matter was placed on the docket of Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, the matter was scheduled for a hearing on August 30, 1988, in Louisville, Kentucky. On August 26, 1988, Respondents' counsel telephonically contacted the Administrative Law Judge's Office to withdraw the pharmacy's request for a hearing. Accordingly, the scheduled hearing was cancelled. Respondents' counsel were instructed to promptly submit written withdrawals of their requests for a hearing to the Administrative Law Judge. On

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[1] FWW has certified that it has identified such sites and structures to the appropriate State historic preservation office for Texas.

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines,* 4 I.C.C.2d 400 (1988).

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987), and final rules published in the Federal Register on December 22, 1987 [52 FR 49215-49265].

September 19, 1988, Judge Bittner issued a Memorandum and Order allowing Respondents until October 3, 1988, to show cause why the proceedings in this matter should not be terminated. Having received no response, on October 11, 1988, the Administrative Law Judge terminated the proceedings before her.

Based upon the foregoing, the Administrator concludes that Respondents waived their opportunity for a hearing on the issues raised in the Order to Show Cause and, pursuant to 21 CFR 1301.57, issues this final order revoking the pharmacy's DEA Certificate of Registration and denying any pending applications for renewal of the registration based upon the DEA investigative file and record of this proceeding.

At the time the Order to Show Cause was issued, James F. Jefferson, R.Ph., Gregory V. Barnes, R.Ph., and James A. Lancaster, R.Ph. each owned one-third interest in J L B, Inc., d/b/a Boyd Drugs (hereinafter referred to as "Boyd Drugs"). Jefferson and Barnes operated the pharmacy. Also at that time, Messrs. Jefferson, Barnes and Lancaster each owned one-third interest in L J B, Inc., d/b/a Jeff's Prescription Shop (hereinafter referred to as "Jeff's Prescription Shop"), and E-Town Surgical Supply Company, both of Elizabethtown, Kentucky. Shortly before the scheduled date for the administrative proceeding regarding Boyd Drugs, Mr. Lancaster relinquished all ownership interest and control in Boyd Drugs and E-Town Surgical Supply Company. Messrs. Jefferson and Barnes also relinquished all ownership interest and control in Jeff's Prescription Shop.

The Administrator finds that in late 1985, the Kentucky State Police received information that James F. Jefferson, R.Ph. was unlawfully selling controlled substances from Boyd Drugs for other than legitimate purposes. Based upon that information, on December 19, 1985, an undercover Kentucky State Police officer approached Mr. Jefferson at Boyd Drugs and handed him a piece of paper marked "360 Darvon Compound-65 and 25 Vicodin" wrapped around $60.00. Mr. Jefferson handed the officer two manufacturer's bottles which were later found to contain 199 dosage units of Darvon Compound-65. The bottles themselves were marked "Ionizer Restoril" and "Upjohn Cleocin HCL." Upon realizing that Mr. Jefferson had not given him the requested Vicodin tablets, the officer returned to Boyd Drugs and informed Mr. Jefferson of his error. Mr. Jefferson then handed the officer a clear vial containing 25 dosage units of Vicodin tablets. On May 12, 1988, Mr. Jefferson was indicted by the Hardin County, Kentucky grand jury on two state felony counts of illegal distribution of controlled substances and one misdemeanor count of false labeling of a controlled substance. The State of Kentucky later dismissed the charges after Mr. Jefferson was indicted by a Federal grand jury for the same offenses on September 10, 1987.

On May 15, 1986, investigators from the Kentucky State Board of Pharmacy and the DEA Louisville Resident Office attempted to conduct a controlled substance accountability audit and inspection at Boyd Drugs. After they informed Gregory Barnes that they planned to conduct a controlled substance audit at the pharmacy, he scattered a large pile of pharmacy records and told them he could not provide them with the pharmacy's last inventory. Investigators also found that the pharmacy's Schedule II order forms were not readily retrievable and many order forms appeared to be missing. Because of the poor conditions of the pharmacy records and controlled substance stock, no audit was conducted on that date. Investigators from the DEA Louisville Resident Office and the Kentucky State Board of Pharmacy returned to Boyd Drugs on March 6, 1987, to conduct an accountability audit of the pharmacy's controlled substance stock and records. The audit included a review of ordering and dispensing activities at the pharmacy for the period from May 22, 1985, to March 6, 1987. It revealed excessive, unexplained shortages or overages for nearly all of the 40 controlled substances included in the audit. The pharmacy could not account for more than 288,000 combined dosage units of controlled substances during the audit period. In addition, the controlled substance records were not uniformly maintained, nor were they readily retrievable, in violation of Federal controlled substance laws and regulations.

After reviewing the pharmacy's controlled substance dispensing records, DEA Investigators interviewed many of the alleged customers and authorizing physicians whose names appeared on the pharmacy's controlled substance prescription records. Many of the customers informed the investigators that they repeatedly received controlled substances from Boyd Drugs either without presenting any prescriptions whatsoever, or by presenting old prescription bottles for which no additional refills were authorized. Two customers admitted to receiving various controlled substances from the pharmacy on an almost daily basis. They also admitted that they would sometimes receive controlled substances from Mr. Jefferson in exchange for marijuana. Two other customers admitted to receiving controlled substances through the mail on a routine basis from Boyd Drugs years after the listed physician stopped treating them. The listed physician told DEA Investigators that he had not issued any prescriptions for those individuals since January 1984. Other physicians stated that they had asked Jefferson and Barnes to stop dispensing controlled substances to their patients without their authorization. Their requests were often ignored.

A lengthy DEA investigation revealed that at least 50 individuals regularly received controlled substances from Boyd Drugs in any one of the following illegal manners: (1) Without presenting any prescription whatsoever, (2) through unauthorized refills of legitimate prescriptions, (3) through alleged "call-in" prescriptions used by the pharmacy to conceal its unlawful dispensing activities, or (4) through refills of the unauthorized "call-in" prescriptions. The investigation revealed that both Jefferson and Barnes were fully aware that they were dispensing unauthorized controlled substances to the various individuals. Their knowledge of the unlawful activities is compounded by evidence that they intentionally deleted much of the unauthorized refill information from the pharmacy's computerized prescription records.

Based upon the results of the investigation conducted by the Kentucky State Police, the Kentucky Board of Pharmacy and the DEA Louisville Resident Office, on September 10, 1987, a Federal grand jury for the Western District of Kentucky issued a 682 count indictment against Jefferson, Barnes and others, alleging numerous instances of unlawful dispensing of controlled substances, conspiracy to unlawfully dispense controlled substances, furnishing of false or fraudulent information in records required to be kept, conspiracy to commit theft of controlled substances, aiding and abetting, and unlawful use of the U.S. mail to send controlled substances. As of this date, Jefferson and Barnes have yet to be tried on these charges.

In determining whether a registrant's continued registration would be inconsistent with the public interest, the Administrator must consider the factors enumerated in 21 U.S.C. 823(f). They are as follows:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's [or registrant's] experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's [or registrant's] conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

There is no requirement that the Administrator must make findings with respect to all five factors listed above. In determining where the public interest lies, the Administrator has the discretion to give each factor the weight he deems appropriate, depending upon the facts and circumstances presented in each case. See *David E. Trawick, D.D.S.*, Docket No. 86-69, 53 FR 5326 (1988); *England Pharmacy*, 52 FR 1674 (1987); *Paul Stepak, M.D.*, 51 FR 17556 (1986); *Felix Seisen, M.D.*, Docket No. 85-53, 51 FR 3863 (1986); and *Anne L. Hendricks, M.D.*, Docket No. 86-4, 51 FR 41030 (1986).

In this case, the second, fourth, and fifth factors under 21 U.S.C. 823(f) are of importance in evaluating whether the continued registration of Boyd Drugs is contrary to the public interest. The Administrator finds no evidence which would support the continued registration of Boyd Drugs. On the contrary, the evidence relating to Boyd Drugs' experience in handling controlled substances is overwhelmingly negative.

Both Jefferson and Barnes routinely dispensed controlled substances to a number of individuals for other than legitimate medical purposes. A majority of the controlled substances dispensed from Boyd Drugs were either not dispensed pursuant to legitimate prescriptions or were not authorized refills of legitimate prescriptions. Rather, controlled substances were freely dispensed illegally to individuals who were willing to pay for them. The pharmacy could not account for more than 288,000 dosage units of controlled substances. Controlled substance records were tampered with, missing, disorganized, and not kept in accordance with Federal and state regulations. Jefferson and Barnes ignored requests by physicians to stop dispensing controlled substances to several individuals.

Jefferson and Barnes blatant disregard for controlled substance laws and regulations turned Boyd Drugs into a haven for illegal drug activity in the Elizabethtown area. They abrogated their responsibilities as registrants and as pharmacists. The only rationale for their activities which can be gleaned from the record is uncontrolled greed and avarice.

Neither Mr. Jefferson nor Mr. Barnes presented any evidence in support of maintaining the DEA registration for Boyd Drugs. Thus, based upon the overwhelming evidence which demonstrates that the pharmacy's continued registration would be contrary to the public interest, and the absence of any evidence to support its continued registration, the Administrator concludes that the DEA registration for Boyd Drugs must be revoked as inconsistent with the public interest.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), orders that DEA Certificate of Registration AJ3023467 be, and it hereby is, revoked. It is further ordered that any pending applications for renewal of said registration be, and they hereby are, denied.

This order is effective November 30, 1988.

John C. Lawn,
Administrator.

Dated: October 24, 1988.

[FR Doc. 88-25099 Filed 10-28-88; 8:45 am]
BILLING CODE 4410-09-M

[Docket No. 88-47]

David W. Bradway, Merchantville, NJ; Notice of Hearing

Notice is hereby given that on July 20, 1988, the Drug Enforcement Administration, Department of Justice, issued to David W. Bradway, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not deny your application for a DEA Certificate of Registration.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, November 1, 1988, commencing at 10:00 a.m., at the United States Claims Court, Courtroom 10, Room 309, 717 Madison Place NW., Washington, DC.

Dated: October 26, 1988.

John C. Lawn,
Administrator Drug Enforcement Administration.

[FR Doc. 88-25094 Filed 10-28-88; 8:45 am]
BILLING CODE 4410-09-M

Richard D. Close; Denial of Application

On July 20, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Richard D. Close, of Merrimac Valley Clinical Laboratory, 411 Merrimac Street, Methuen, Massachusetts, 01844, proposing to deny his application, executed on July 1, 1988, for registration as an analytical laboratory under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent's registration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

On August 19, 1988, Respondent, proceeding pro se, waived his opportunity for a hearing and submitted a written statement on the issues raised by the Order to show Cause. Based upon the waiver of hearing in this matter, the Administrator of the Drug Enforcement Administration enters this final order based upon the investigative file and the written statement submitted by Respondent. See 21 CFR 1301.54(c), 1301.54(d) and 1301.54(e).

The Administrator finds that Respondent is presently being prosecuted by the State of Massachusetts on a four-year felony complaint for obtaining controlled substances by fraud and deceit. A joint investigation of Respondent was undertaken by the Massachusetts State Police/Diversion Investigation Unit and the DEA Boston Office after both agencies received various reports which indicated that Richard Close was writing prescriptions for prescription drugs and purporting to be a medical doctor.

On August 17, 1988, a DEA Diversion Investigator and a Massachusetts State Police Investigator conducted a preregistration interview with Respondent regarding his educational background, training and previous employment history. During the interview, Respondent repeatedly misrepresented his past experience to the investigators. Respondent told investigators that in 1972, he graduated from the University of Brussels School of Medicine in Brussels, Belgium, with an MA in Physiology. However, a check with the University of Brussels revealed that Respondent attended that institution for only one year and dropped out. Although Respondent continued to attend some classes from 1972 to 1975, Respondent did not graduate and he did not receive a degree

The Administrator finds that Respondent was also untruthful about many aspects of his previous employment. Respondent told investigators that from 1978 to 1980 he was director of the ambulatory cardiovascular unit at Peter Bent Brigham Hospital in Boston, Massachusetts. The Administrator of that hospital denied this. Although Respondent was employed from 1978 to 1980 at Brigham Hospital, he was not director of the cardiovascular unit. Respondent was employed as a technician in the cardiovascular unit and his job was merely to monitor equipment.

Respondent's "embellishments" of his past experience are not rare, unintentional inaccuracies. A check of Respondent's records on file at Brigham Hospital revealed that Respondent also supplied inaccurate information on his hospital employment application. That application states that Respondent graduated from Boston University (BU) in 1972 with an MA in Physiology and that he attended the University of Brussels from 1972 to 1975, completing three years of medical school. Respondent, in fact, never attended BU graduate school and did not receive a graduate degree. Respondent was discharged from employment at Brigham Hospital due to his involvement in a financial scandal. Respondent was billing patients for his services when no fee was required. There is also an allegation that Respondent was acting in the capacity of a medical doctor, clearly without the necessary credentials.

Respondent further misrepresented his background to investigators in that he reported that he received his Ph.D. in Physiology from Columbia Pacific University in San Raphael, California in 1985. Respondent, in fact, was awarded a Ph.D in Philosophy. Columbia Pacific University is a mail order degree program which gives full academic credit for an applicant's work, educational, and other "life achievements."

In addition to making fraudulent representations about his educational and employment history, Respondent also posed as a medical doctor. According to the pharmacist at the CVS Pharmacy in Lexington, Massachusetts, Respondent had visited the store since 1978, and always gave the pharmacist the impression that he was a medical doctor. The pharmacist filled out telephone prescriptions for Respondent for Class VI substances under Massachusetts General Laws, Chapter 94C, during a period from 1978 to 1988. Respondent, in fact, signed a prescription "Richard Close, M.D." Respondent also told the CVS pharmacist that he graduated from medical school in Brussels, and that he also had a Ph.D. in Anatomy and Physiology from the same school. Respondent, again, has no degree from medical school in Brussels.

In reviewing the prescriptions at CVS Pharmacy, investigators observed two prescriptions written by a doctor from Massachusetts General Hospital for "Richard Close, M.D." When this doctor was contacted, he confirmed that he had written two prescriptions for "Richard Close," but not "M.D." A closer scrutiny of the prescriptions revealed that the "M.D." was written by a different hand. Another prescription retrieved was written by Respondent for another patient. Prosecution for obtaining drugs by fraud and deceit is pending.

Respondent now requests a DEA Certificate of Registration to do drug testing at the Merrimac Valley Clinical Lab in Methuen, Massachusetts, of which Respondent is President. Respondent has suggested that he might develop an assay for home drug tests for parents to give to their children. Respondent would need small amounts of controlled substances for this purpose. The Administrator finds, however, that Respondent cannot be entrusted with a DEA registration.

In his written statement, Respondent merely denies the allegations raised by the Order to Show Cause. Although Respondent has been issued a license by the State of Massachusetts to conduct chemical analysis with controlled substances, he has provided no other evidence to overcome the overwhelming volume of incalpatory information against him. The written statement provides nothing more than an unsupported, self-serving statement to the effect that his registration would not be inconsistent with the public interest.

In view of the foregoing facts regarding Respondent's behavior, his giving false information about his educational and employment background, misrepresenting himself as a medical doctor to a pharmacist and others, writing unauthorized prescriptions and the fact that criminal charges are pending against him, the Administrator concludes that the issuance of a registration to Respondent would be inconsistent with the public interest. Respondent's repeated exaggerations, embellishments and fraudulent representations about his background reflect the Respondent's intense desire to exercise a power and authority which he is not qualified to exercise. Respondent is not deserving of such public trust and confidence. Respondent's behavior clearly shows that he cannot be entrusted to handle controlled substances in a lawful and responsible manner. His application for registration must be denied.

Having concluded that there are lawful bases for the denial of Respondent's application, and having concluded that his pending application for registration must be denied, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b), orders that the application for registration, executed by Richard D. Close, on July 1, 1988, be, and it hereby is, denied.

John C. Lawn,
Administrator.

Dated: October 24, 1988.

[FR Doc. 88-25105 Filed 10-28-88; 8:45 am]
BILLING CODE 4410-09-M

[Docket No. 88-45]

Donald Curry-Allan, Bradbury, CA; Notice of Hearing

Notice is hereby given that on March 14, 1988, the Drug Enforcement Administration, Department of Justice, issued to Donald Curry-Allan, D.O. an Order to Show Cause as to why the Drug Enforcement Administration should not deny your application for a DEA Certificate of Registration.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Wednesday, November 16, 1988, commencing at 10:00 a.m., at the Alhambra Municipal Court, 191 West Common Wealth Avenue, Division One Courtroom, Second Floor, Alhambra, California.

Dated: October 25, 1988.

John C. Lawn,
Administrator, Drug Enforcement Administration.

[FR Doc. 88-25086 Filed 10-28-88; 8:45 am]
BILLING CODE 4410-09-M

[Docket No. 88-53]

Arthur Sklar, R.Ph., d/b/a King Pharmacy, Brighton, MI; Hearing

Notice is hereby given that on April 12, 1988, the Drug Enforcement Administration, Department of Justice, issued to Arthur Sklar, R.Ph., d/b/a King Pharmacy an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration AK1806085 and deny any pending applications.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, November 8, 1988, commencing at 10:00 a.m., at the Federal Building, 200 East Liberty, 1st floor courtroom, Ann Arbor, Michigan.

Dated: October 24, 1988.

John C. Lawn,
Administrator, Drug Enforcement Administration.

[FR Doc. 88-25099 Filed 10-28-88; 8:45 am]
BILLING CODE 4410-09-M

Arthur Stanley Lightfoot, M.D.; Revocation of Registration

On September 2, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Arthur Stanley Lightfoot, M.D., of 2000 E. Bristol Road, Burton, Michigan, proposing to revoke DEA Certificate of Registration AL3069970, and to deny any pending applications for renewal of his registration on the ground that Dr. Lightfoot is no longer authorized to handle controlled substances in the State of Michigan.

A registered mail receipt indicates that the Order to Show Cause was received by Dr. Lightfoot on September 10, 1988. More than thirty days have passed since Dr. Lightfoot received the Order to Show Cause and the Drug Enforcement Administration has received no response thereto. Therefore, the Administrator concludes that Dr. Lightfoot has waived his opportunity for a hearing on the issues raised by the Order to Show Cause and, pursuant to 21 CFR 1301.54(d) and 1301.54(e), enters this final order based on the investigative file. 21 CFR 1301.57.

The Administrator finds that on December 1, 1987, the State of Michigan Department of Licensing and Regulation, Board of Medicine, issued an Order of Summary Suspension of Dr. Lightfoot's medical license in that state. His state medical license has not yet been reinstated. Consequently, Dr. Lightfoot is no longer authorized to handle controlled substances in that state.

The Drug Enforcement Administration does not have the authority to maintain the registration of a practitioner who is not duly authorized to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 823(f) and 824(a)(3). The Administrator has consistently so held. See *Fazal Ahmad, M.D.*, Docket No. 85-46, 51 FR 9543 (1986); *Avner Kauffman, M.D.*, Docket No. 85-8, 50 FR 34206 (1985); and *Agostino Carlucci, M.D.*, Docket No. 82-20, 49 FR 33184 (1984). In the instant case it is clear that Dr. Lightfoot is not currently authorized to handle controlled substances in the State of Michigan. Without the appropriate state authority to handle controlled substances, Dr. Lightfoot cannot hold a DEA registration.

Therefore, based upon Dr. Lightfoot's lack of state authority to handle controlled substances, the Administrator concludes that his DEA Certificate of Registration must be revoked. Pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b), the Administrator of the Drug Enforcement Administration orders that DEA Certificate of Registration AL3069970, previously issued to Arthur Stanley Lightfoot, M.D., be, and it hereby is, revoked. The Administrator further orders that any pending applications for renewal of said registration be, and they hereby are, denied.

This order is effective October 31, 1988.

John C. Lawn,
Administrator.

Dated: October 24, 1988.

[FR Doc. 88-25102 Filed 10-28-88; 8:45 am]
BILLING CODE 4410-09-M

Emilio H. Marquez, M.D.; Revocation of Registration

On September 2, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Emilio H. Marquez, M.D., 2550 E. Gage Avenue, Huntington Park, California, proposing to revoke DEA Certificate of Registration AM6883462, and to deny any pending applications for renewal of his registration on the ground that Dr. Marquez is no longer authorized to handle controlled substances in the State of California.

A registered mail receipt indicates that the Order to Show Cause was received by Dr. Marquez on September 12, 1988. More than thirty days have passed since Dr. Marquez received the Order to Show Cause and the Drug Enforcement Administration has received no response thereto. Therefore, the Administrator concludes that Dr. Marquez has waived his opportunity for a hearing on the issues raised by the Order to Show Cause and, pursuant to 21 CFR 1301.54(d) and 1301.54(e), enters this final order based on the investigative file. 21 CFR 1301.57.

The Administrator finds that the California Board of Medical Quality Assurance (BMQA) revoked Dr. Marquez's physician's and surgeon's license in that state on July 14, 1987. Consequently, Dr. Marquez is no longer authorized to handle controlled substances in that state.

The Drug Enforcement Administration does not have the authority to maintain the registration of a practitioner who is not duly authorized to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 823(f) and 824(a)(3). The Administrator has consistently so held. See *Fazal Ahmad, M.D.*, Docket No. 85-46, 51 FR 9543 (1986); *Avner Kauffman, M.D.*, Docket No. 85-8, 50 FR 34206 (1985); and *Agostino Carlucci, M.D.*, Docket No. 82-20, 49 FR 33184 (1984). In the instant case it is clear that Dr. Marquez is not currently authorized to handle controlled substances in the State of California. Without the appropriate state authority to handle controlled substances, Dr. Marquez cannot hold a DEA registration.

Therefore, based upon Dr. Marquez's lack of state authority to handle controlled substances, the Administrator concludes that his DEA Certificate of Registration must be revoked. Pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b), the Administrator of the Drug Enforcement Administration orders that DEA Certificate of Registration AM6883462, previously issued to Emilio H. Marquez, M.D., be, and it hereby is, revoked. The Administrator further orders that any pending applications for renewal of said registration be, and they hereby are, denied.

This order is effective October 31, 1988.

Dated: October 24, 1988.

John C. Lawn,
Administrator.

[FR Doc. 88-25101 Filed 10-28-88; 8:45 am]
BILLING CODE 4410-09-M

VOL 53 ISS 210 OCT 31 1988 UMI

[Docket No. 88-49]

Summer Grove Pharmacy, Shreveport, LA; Hearing

Notice is hereby given that on April 12, 1988, the Drug Enforcement Administration, Department of Justice, issued to Summer Grove Pharmacy an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration AS3413755 and deny any pending applications.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Thursday, November 17, 1988, commencing at 10:00 a.m., at the United States Custom House, 423 Canal Street, courtroom, 211, New Orleans, Louisiana.

Dated: October 24, 1988.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 88-25097 Filed 10-28-88; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-54]

Michael C. Vizcarra, Hesperia CA; Notice of Hearing

Notice is hereby given that on April 22, 1988, the Drug Enforcement Administration, Department of Justice, issued to Michael C. Vizcarra, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not deny your application for a DEA Certificate of Registration.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, November 15, 1988, commencing at 10:00 a.m., at the Alhambra Municipal Court, 150 West Common Wealth Avenue, Division One Courtroom, Second Floor, Alhambra, California.

Dated: October 25, 1988.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 88-25098 Filed 10-28-88; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

NUCLEAR REGULATORY COMMISSION

Memorandum of Understanding Between The Nuclear Regulatory Commission and the Occupational Safety and Health Administration; Worker Protection at NRC-licensed Facilities

The Nuclear Regulatory Commission (NRC) and the Occupational Safety and Health Administration (OSHA) have entered into a Memorandum of Understanding (MOU) to provide general guidelines for interface activities between the two agencies. The MOU is designed to ensure that there will be no gaps in the protection of workers at NRC-licensed facilities where the OSHA also has health and safety jurisdiction. At the same time, the MOU is designed to avoid duplication of effort on the part of the two agencies in those cases where it is not always practical to sharply identify boundaries between the NRC's responsibilities for nuclear safety and the OSHA's responsibilities for industrial safety.

The MOU, which replaces an existing procedure for interagency activities, defines the general areas of responsibilities of both agencies, describes generally the efforts of each to achieve worker protection at NRC-licensed facilities, and provides general procedures for the coordination of interface activities and exchange of information between the NRC and OSHA. The text of the MOU is set out below.

Purpose and Background

1. The purpose of this Memorandum of Understanding between the U.S. Nuclear Regulatory Commission (NRC) and the Occupational Safety and Health Administration (OSHA) is to delineate the general areas of responsibility of each agency; to describe generally the efforts of the agencies to achieve worker protection at facilities licensed by the NRC; and to provide guidelines for coordination of interface activities between the two agencies. If NRC licensees observe OSHA's standards and regulations, this will help minimize workplace hazards.

2. Both NRC and OSHA have jurisdiction over occupational safety and health at NRC-licensed facilities. Because it is not always practical to sharply identify boundaries between the nuclear and radiological safety NRC regulates and the industrial safety OSHA regulates, a coordinated interagency effort can ensure against gaps in the protection of workers and at the same time, avoid duplication of effort. This memorandum replaces an existing procedure for interagency activities, "General Guidelines for Interface Activities between the NRC Regional Offices and the OSHA."

Hazards Associated With Nuclear Facilities

3. There are four kinds of hazards that may be associated with NRC-licensed nuclear facilities:

a. Radiation risk produced by radioactive materials;

b. Chemical risk produced by radioactive materials;

c. Plant conditions which affect the safety of radioactive materials and thus present an increased radiation risk to workers. For example, these might produce a fire or an explosion, and thereby cause a release of radioactive materials or an unsafe reactor condition; and,

d. Plant conditions which result in an occupational risk, but do not affect the safety of licensed radioactive materials. For example, there might be exposure to toxic nonradioactive materials and other industrial hazards in the workplace.

Generally, NRC covers the first three hazards listed in paragraph 3 (a, b, and c), and OSHA covers the fourth hazard described in paragraph 3 (d). NRC and OSHA responsibilities and actions are described more fully in paragraphs 4 and 5 below.

NRC Responsibilities

4. NRC is responsible for licensing and regulating nuclear facilities and materials and for conducting research in support of the licensing and regulatory process, as mandated by the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and the Nuclear Nonproliferation Act of 1978; and in accordance with the National Environmental Policy Act of 1969, as amended, and other applicable statutes. These NRC responsibilities cover the first three nuclear facility hazards identified in paragraph 3 (a, b, c). NRC does not have statutory authority for the fourth hazard described in paragraph 3 (d).

NRC responsibilities include protecting public health and safety; protecting the environment; protecting and safeguarding materials and plants in the interest of national security; and assuring conformity with antitrust laws for certain types of facilities, e.g., nuclear power reactors. Agency functions are performed through: Standards-setting and rulemaking; technical reviews and studies; conduct of public hearings; issuance of authorizations, permits and licenses; inspection, investigation and enforcement; evaluation of operating experience, and confirmatory research.

OSHA Responsibilities

5. OSHA is responsible for administering the requirements established under the Occupational Safety and Health Act (OSHA Act) (29 U.S.C. 651 *et seq.*), which was enacted in 1970. OSHA's authority to engage in the kinds of activities described below does not apply to those workplace safety and health conditions for which other Federal agencies exercise statutory authority to prescribe and enforce standards, rules or regulations.

Under the OSH Act, every employer has a general duty to furnish each employee with a place of employment that is free from recognized hazards that can cause death or serious physical harm and to comply with all OSHA standards, rules, and regulations.

OSHA standards contain requirements designed to protect employees against workplace hazards. In general, safety standards are intended to protect against traumatic injury, while health standards are designed to address potential overexposure to toxic substances and harmful physical agents, and protect against illnesses which do not manifest themselves for many years after initial exposure.

OSHA standards cover employee exposures from all radiation sources not regulated by NRC. Examples include x-ray equipment, accelerators, accelerator-produced materials, electron microscopes and betatrons, and naturally occurring radioactive materials such as radium.

It is estimated that the Act covers nearly 6 million workplaces employing more than 80 million workers. Federal OSHA covers approximately three-fifths, or four million, of these workplaces. States which operate OSHA-approved job safety and health programs, or "Plans," cover the remainder.

OSHA State Plan States are encouraged, but not required, to delineate their authority for occupational safety and health at NRC-licensed facilities in the same manner as Federal OSHA.

The OSHA areas of responsibility described in this memorandum are subject to all applicable requirements and authorities of the OSH Act. However, the industrial safety record at NRC-licensed nuclear power plants is such that OSHA inspections at these facilities are conducted normally as a result of accidents, fatalities, referrals, or worker complaints.

Interface Procedures

6. In recognition of the agencies' authorities and responsibilities enumerated above, the following procedures will be followed:

Although NRC does not conduct inspections of industrial safety, in the course of inspections of radiological and nuclear safety, NRC personnel may identify safety concerns within the area of OSHA responsibility or may receive complaints from an employee about OSHA-covered working conditions. In such instances, NRC will bring the matter to the attention of licensee management. NRC inspectors are not to perform the role of OSHA inspectors; however, they are to elevate OSHA safety issues to the attention of NRC Regional management when appropriate. If significant safety concerns are identified or if the licensee demonstrates a pattern of unresponsiveness to identified concerns, the NRC Regional Office will inform the appropriate OSHA Regional Office. In the case of complaints, NRC will withhold, from the licensee, the identity of the employee. In addition, when known to NRC, NRC will encourage licensees to report to OSHA accidents resulting in a fatality or multiple hospitalizations.

When such instances occur within OSHA State Plan States' jurisdiction, the OSHA Regional Office will refer the matter to the State for appropriate action.

7. OSHA Regional Offices will inform the appropriate NRC Regional Office of matters which are in the purview of NRC, when these come to their attention during Federal or State safety and health inspections or through complaints. The following are examples of matters that would be reported to the NRC:

a. Lax security control or work practices that would affect nuclear or radiological health and safety.

b. Improper posting of radiation areas.

c. Licensee employee allegations of NRC license or regulation violations.

8. The NRC and OSHA need not normally conduct joint inspections at NRC-licensed facilities. However, under certain conditions, such as investigations or inspections following accidents or resulting from reported activities as discussed in items 6 and 7 above, it may be mutually agreed on a case-by-case basis that joint investigations are in the public interest.

9. The chemical processing of nuclear materials at some NRC-licensed fuel and materials facilities presents chemical and nuclear operational safety hazards which can best be evaluated by joint NRC–OSHA team assessments. Each agency will make its best efforts to support such assessments at about 20 facilities once every five years. Of these facilities, about one-third are in the OSHA Plan States. OSHA will also assist in promoting such participation by State personnel in OSHA Plan States.

10. Based upon reports of injury or complaints at nuclear power plant sites, OSHA will provide NRC with information on those sites where increased management attention to worker safety is needed. The NRC will bring such information indicating significant breakdown in worker safety to the attention of licensee management and monitor corrective actions. This will not interfere with OSHA authority and responsibility to investigate industrial accidents and worker complaints.

11. Power reactor sites are inspected by NRC Region-based and Resident Inspectors. Personnel from NRC Regional Offices routinely conduct inspections at most fuel and materials licensed facilities. In order to enhance the ability of NRC personnel to identify safety matters under OSHA purview during nuclear and radiological safety inspections, OSHA will provide NRC Regional personnel with basic chemical and industrial safety training and indoctrination in OSHA safety standards, consistent with ongoing OSHA training programs. To enhance the ability of OSHA and State Plan personnel to effectively participate in the Operational Safety Team Assessments, NRC will provide training in basic radiation safety requirements, consistent with ongoing NRC training programs. Details of such training will be as mutually agreed by the NRC Technical Training Center and the OSHA National Training Institute.

12. Resolution of policy issues concerning agency jurisdiction and operational relations will be coordinated by the NRC Deputy Executive Director for Operations, and by the OSHA Director of Policy. Appropriate Headquarters points of contact will be established.

13. Resolution of issues concerning inspection and enforcement activities involving both NRC and OSHA jurisdiction at NRC-licensed facilities will be handled between NRC's Office of Enforcement and OSHA's Directorate of Compliance Programs. Each NRC and OSHA Regional Office will designate points of contact for carrying out interface activities.

For the Nuclear Regulatory Commission.
Victor Stello, Jr.,
Executive Director for Operations.
October 21, 1988.

For the Occupational Safety and Health Administration.
John A. Pendergrass,
Assistant Secretary.
[FR Doc. 88-25085 Filed 10-28-88; 8:45 am]
BILLING CODE 7590-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 88-82]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.
ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC), Informal Executive Subcommittee.
DATE AND TIME: November 18, 1988, 9 a.m. to 5 p.m.
ADDRESS: National Aeronautics and Space Administration, Room 7002, Federal Office Building 6, Washington, DC 20546.
FOR FURTHER INFORMATION CONTACT: Mr. Nathaniel B. Cohen, Code ADI-1, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-8790.
SUPPLEMENTARY INFORMATION: The NAC Informal Executive Subcommittee was established under the NAC to assist the Chair in planning the activities, establishing meeting agendas, and otherwise guiding the activities of the Council. The Council is chaired by Dr. John L. McLucas, and includes eight other members, seven of whom chair standing committees of the Council.

The meeting will be closed to the public. The sole agenda item will be planning for the coming year of the activities of the Council, the committees, and their task forces, with emphasis throughout on prospective future membership of each of these groups and their interactions with NASA and outside parties. Throughout the sessions, the qualifications of these individuals will be candidly discussed and appraised with respect to the tasks to be accomplished. Because the meeting will be concerned throughout with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that this meeting should be closed to the public. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the participants.

TYPE OF MEETING: Closed.

October 25, 1988.
Philip D. Waller,
Director, General Management Division.
[FR Doc. 88-25044 Filed 10-28-88; 8:45 am]
BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

National Science Board; Nominations for Membership November 1, 1988

The National Science Board (NSB) is the policymaking body of the National Science Foundation (NSF). The Board consists of 24 members appointed by the President, with the advice and consent of the Senate, for six-year terms, in addition to the NSF Director *Ex officio*, as follows:

Terms Expire May 10, 1990

Dr. Perry L. Adkisson, Chancellor, The Texas A&M University System, System Administration Building, Executive Offices, Room 219, College Station, Texas.
Dr. Annelise G. Anderson, Senior Research Fellow, The Hoover Institution, Room 301-M, Stanford University, Stanford, California.
Dr. Craig C. Black, Director, Los Angeles County Museum of Natural History, 900 exposition Boulevard, Los Angeles, California.
Dr. Rita R. Colwell, Director, Maryland Biotechnology Institute and Professor of Microbiology, Microbiology Building, University of Maryland, College Park, Maryland.
Dr. Thomas B. Day (Vice Chairman), President, San Diego State University, 5300 Campanile Drive, San Diego, California.
Dr. James J. Duderstadt, President, The University of Michigan, 2074 Fleming Administration Building, Ann Arbor, Michigan.
Dr. K. June Lindstedt-Siva, Manager, Environmental Sciences, Atlantic Richfield Company, 515 South Flower Street, Los Angeles, California.
Dr. Kenneth L. Nordtvedt, Jr., Professor of Physics, Department of Physics, Montana State University, Bozeman, Montana.

Terms Expire May 10, 1992

Dr. Frederick P. Brooks, Jr., Kenan Professor of Computer Science, Department of Computer Science, University of North Carolina, Chapel Hill, North Carolina.
Dr. F. Albert Cotton, W.T. Doherty-Welch Foundation Distinguished Professor of Chemistry and Director, Laboratory for Molecular Structure and Bonding, Texas A&M University, College Station, Texas.
Dr. Mary L. Good (Chairman), Senior Vice President, Technology, Allied-Signal, Inc., P.O. Box 1021R, Morristown, New Jersey.
Dr. John C. Hancock, 4550 Warwick Boulevard, Suite 901, Kansas City, Missouri.
Dr. James B. Holderman, President, University of South Carolina, Columbia, South Carolina.
Dr. James L. Powell, President, Reed College, 3203 Southeast Woodstock Boulevard, Portland, Oregon.
Dr. Frank H. T. Rhodes, President, Cornell University, 300 Day Hall, Ithaca, New York.
Dr. Howard A. Schneiderman, Senior Vice President, Research and Development and Chief Scientist, Monsanto Company, 800 N. Lindbergh Boulevard, St. Louis, Missouri.

Terms Expire May 10, 1994

Dr. Warren J. Baker, President, California Polytechnic State University, San Luis Obispo, California.
Dr. Arden L. Bement, Jr., Vice President, Technical Resources, TRW, Inc., 1900 Richmond Road, Cleveland, Ohio.[1]
Dr. D. Allan Bromley, Director, Wright Nuclear Structure Laboratory, P.O. Box 6666, 272 Whitney Avenue, Yale University, New Haven, Connecticut.[1]
Dr. Daniel C. Drucker, Graduate Research Professor, Department of Aerospace Engineering, Mechanics and Engineering Science, University of Florida, 231 Aerospace Building, Gainesville, Florida.
Dr. Charles L. Hosler, Senior Vice President for Research and Dean of Graduate School, 114 Kern Building, The Pennsylvania State University, University Park, Pennsylvania.
Dr. Miguel Rios, Jr., President, ORION International Technology, 300 San Mateo, N.E., Suite #200, Albuquerque, New Mexico.[1]
Dr. Roland W. Schmitt, President, Rensselaer Polytechnic Institute, Pittsburgh Building, Troy, New York.
(One Vacancy)

Member Ex Officio

Mr. Erich Bloch (Chairman, NSB Executive Committee), Director, National Science Foundation, Washington, DC.

Section 4(c) of the National Science Foundation Act of 1950 as amended.

[1] [illegible]

states that: "The persons nominated for appointment as members of the Board (1) shall be eminent in the fields of the basic, medical, or social sciences, engineering, agriculture, education, research management, or public affairs; (2) shall be selected solely on the basis of established records of distinguished service; and (3) shall be so selected as to provide representation of the views of scientific and engineering leaders in all areas of the Nation."

All members whose terms expire in May 1990 are eligible for reappointment.

The Board and the Director solicit and evaluate nominations for submission to the President. Nominations accompanied by biographical information may be forwarded to the Chairman, National Science Board, Washington, DC, 20550, no later than January 3, 1989.

Any questions should be directed to Mrs. Lois Hamaty, Staff Assistant, National Science Board (202/357-7512).

Mary L. Good,
Chairman, National Science Board.
[FR Doc. 88-25082 Filed 10-28-88; 8:45 am]
BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-410]

Niagara Mohawk Power Corp, Nine Mile Point Nuclear Station, Unit 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuing an exemption from certain requirements of 10 CFR 50.71(e)(3)(i), to the Niagara Mohawk Power Corporation (the licensee), for the Nine Mile Point Nuclear Station, Unit 2 (NMP-2), located at the licensee's site in Oswego County New York.

Environmental Assessment

Identification of Proposed Action

The proposed action would exempt the licensee from meeting certain requirements of 10 CFR 50.71(e)(3)(i). Specifically, 10 CFR 50.71(e)(3)(i) requires licensees to submit a revision of the original FSAR containing those original pages that are still applicable plus new replacement pages within 24 months of either July 22, 1980 or the date of issuance of the operating license, whichever is later. 10 CFR 50.71(e)(3)(i) also requires this revision of the FSAR to be up to date as of a maximum of 6 months prior to the date of filing the revision. A license limited to 5 percent or rated power was issued for NMP-2 on October 31, 1986, and a license authorizing operation up to 100 percent of rated power was issued July 2, 1987. The exemption would allow the licensee to delay the submittal of the updated Final Safety Analysis Report (FSAR) for Nine Mile Point, Unit 2 (NMP-2) for approximately six moths or not later than April 30, 1989. In addition, the exemption would allow the licensee to submit only the revised pages of the FSAR rather than submitting a complete, updated FSAR. When the updated FSAR is submitted no later than April 30, 1989 it will be updated to April 30, 1988. Although this will be up to a year before the actual submittal date, it is only six months before the original required submittal date.

The licensee's request for exemption, and the basis therefor are contained in its letter of September 16, 1988.

The Need for the Proposed Action

The exemption is required in order to permit the licensee to delay the submittal of the updated FSAR and to submit only those pages revised since the last FSAR amendment in May 1987. The NMP-2 FSAR is unusually large (35 volumes) and substantial effort, over 55,000 person hours, is estimated to be involved in the project.

Environmental Impacts of the Proposed Action

The exemption would allow submittal of the updated FSAR to be delayed six months. The exemption would also permit the licensee to submit only those pages of the FSAR which have been revised. This exemption is administrative and will not affect plant hardware or procedures.

The proposed exemption affects only the methods by which the FSAR is kept up-to-date and does not affect plant operations or the risk of facility accidents. Accordingly, the exemption will not increase the probability or consequences of any reactor accident sequence and will not increase the probability or consequences of any reactor accident sequence and will not increase the probability or consequences of any reactor accident sequence and will not otherwise affect any other radiological impact associated with the facility. Consequently, the Commission concludes that there are no significant radioloigcal impacts associated with the proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

The staff has concluded that there is no significant environmental impact associated with the proposed exemption. Therefore, alternatives to the exemption will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemption. Such action would not reduce the environmental impacts of the Nine Mile Point Nuclear Station, Unit 2 operations.

Alternative Use of Resources

These actions associated with the granting of the proposed exemption as detailed above do not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to Operation of Nine Mile Point Nuclear Station, Unit No. 2," dated May 1985.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's submittal that supports the proposed exemption discussed above. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for the exemption as listed herein, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the Penfield, Library, State University College, Oswego, New York 13126.

Dated at Rockville, Maryland, this 27th day of October 1988.

For the Nuclear Regulatory Commission.
Robert A. Capra,
Director, Project Directorate I-1, Division of Reactor Projects, I/II.
[FR Doc. 88-25084 Filed 10-28-88; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-333]

Power Authority of the State of New York, James A. FitzPatrick Nuclear Power Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.62(c)(4) to Power Authority of the State of New York (the licensee), for the James A. FitzPatrick Nuclear Power Plant located in Oswego, New York.

Environmental Assessment

Identification of Proposed Action

The exemption would grant relief from 10 CFR 50.62(c)(4) to allow the FitzPatrick plant to use an injection rate of 50 gallons per minute (gpm) of 11.5 weight percent sodium pentaborate solution in the standby liquid control system (SLCS). The regulation requires that each boiling water reactor must have SLCS equivalent in control capacity to 86 gpm with a boron concentration of 13 weight percent sodium pentaborate.

The Need for the Proposed Action

The exemption is needed because the licensee proposes to depart from 10 CFR 50.62(c)(4) requirements, as a result of the FitzPatrick plant having a reator vessel diameter which is smaller than that used to establish the minimum flow and boron content requirements set forth in the regulation, and the licensee s use of enriched boron in the sodium pentaborate solution. In the licensee s request for amendment dated August 24, 1988, the license proposed to use an injection rate of 50 gallons per minute of 11.5 weight percent sodium pentaborate solution because its vessel diameter is 218 inches, in comparison to the 251 inches which is the basis for the 86 gallons per minute requirement, and because the sodium pentaborate solution will be made up from boron enriched to 34.7 atom percent Boron-10 isotope.

Generic Letter 85-03 "Clarification of Equivalent Control Capacity for Standby Liquid Control Systems," dated January 28, 1985 states, in part:

> The "equivalent in control capacity" wording was chosen to allow flexibility in implementation of the requirement.

The 86 gallons per minute and 13 weight percent sodium pentaborate concentration were values used in NEDE-24222, "Assessment of BWR Mitigation of ATWS, Volumes I and II," December 1979 for BWR/4, BWR/5, and BWR/6 plants with 251–inch diameter vessels. NEDE–24222 recognized that different values would provide equivalent control capacity for smaller plants.

Environmental Impacts of the Proposed Action

The exemption provides a degree of protection for the FitzPatrick reactor equivalent to that required by the regulation for reactors with larger reactor vessels for prompt injection of negative reactivity into a boiling water reactor pressure vessel in the event of an Anticipated Transient Without Scram (ATWS). The exemption will not affect containment integrity, nor the probability of facility accidents. Thus, post-accident radiological, releases will not be greater than previously determined, nor will the granting of the proposed exemption otherwise effect radiological plant effluents, or result in any significant occupational exposure. Likewise, the exemption will not affect non-radiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Because it has been Concluded that there is no measurable environmental impact associated with the proposed exemption, any alternatives to the exemption will have either no environmental impacts or greater environmental impacts.

The principal alternative to granting the exemption would be to deny the requested exemption. Such action would not reduce environmental impacts of the FitzPatrick plant's operation and would not enhance the protection of the environment.

Alternative Use of Resources

This does not involve the use of resources not previously considered in connection with the Final Environmental Statement (construction permit and operating license) for the James A. FitzPatrick Nuclear Power Plant.

Agencies and Persons Consulted

The NRC staff reviewed the licensee s request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based on the foregoing environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of human environment

For further information with respect to this action, see the request for amendment dated August 24, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC and at the Penfield Library, State University College of Oswego, Oswego, New York.

Dated at Rockville, Maryland, this 24th day of October 1988.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director Project Directorate I–1, Division of Reactor Projects, I/II.

[FR Doc. 88-25086 Filed 10-28-88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26216; File Nos. SR-MCC-87-05 and SR-MCC-88-07]

Self-Regulatory Organizations; Order Temporarily Approving Proposed Rule Changes by the Midwest Clearing Corp. To Establish Fund/Serv

On October 21, 1987, the Midwest Clearing Corporation ("MCC") filed a proposed rule change (File No. SR–MCC–87–05), described below, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("the Act") [1] to establish facilities to allow MCC members to use NSCC's Mutual Fund Settlement, Entry, and Registration Verification Service or "Fund/Serv". On March 21, 1988, the Commission published notice of this proposed rule change in the **Federal Register** to solicit comments from interested persons.[2] On June 14, 1988, MCC filed a second proposed rule change (File No. SR–MCC–88–07), also described below, pursuant to section 19(b)(1) of the Act to establish participants fund requirements for Fund/Serv users, to establish Fund/Serv procedures, and to clarify that MCC participants may exchange Fund/Serv data directly with MCC's Fund/Serv facilities manager. On September 8, 1988, the Commission published notice of the second proposed rule change in the **Federal Register** to solicit comments from interested persons.[3] To date no comments have been received on either filing. As discussed below, this Order approves both proposals on a temporary basis through January 31, 1989.

[1] 15 U.S.C. 78s(b)(1)

[2] Securities Exchange Act Release No. 25037 (March 21, 1988), 53 FR 10027.

[3] See Securities Exchange Act Release No. 25867 (September 8, 1988), 53 FR 35044

I. Description

The proposal amends MCC's rules to establish Fund/Serv and to authorize MCC to promulgate procedures to implement that service. Fund/Serv will enable MCC participants to transmit mutual fund purchase and sale transactions, confirmations, settlement and registration data to mutual fund participants.[4] The National Securities Clearing Corporation ("NSCC") will act as MCC's facilities manager for Fund/Serv.[5] In its role as facilities manager, NSCC will receive Fund/Serv data directly from MCC participants and will retransmit that data to the appropriate mutual fund. MCC participants, however, will settle Fund/Serv transactions at MCC.

An MCC participant who wishes to use Fund/Serv must notify MCC of its intention and provide its Fund/Serv clearing fund contribution to MCC.[6] MCC will obtain from NSCC a Fund/Serv account number for the participant and a date when the participant may access the service. After the MCC participant meet these requirements, it will be able to transmit trade information directly to NSCC for retransmission to any mutual fund that is a Fund/Serv participant.

The proposal will require Fund/Serv broker-dealers to submit trade information to MCC's facilities manager, NSCC, by 7:00 p.m. on the day of the trade ("T").[7] NSCC will forward all acceptable trades to the mutual fund. Mutual funds will submit confirmations and rejections of orders to NSCC by 11:00 a.m. on T+1. NSCC will acknowledge receipt of this information to the mutual fund and will forward such information to MCC's participants. NSCC also will notify the mutual funds and the broker-dealers of orders which are neither confirmed nor rejected. Broker-dealers may submit corrections concerning the money values of trades or concerning the number of shares on either T+1 or T+2. Mutual funds will have until T+2 to confirm orders not previously confirmed and may make price changes in orders confirmed on T+1. Purchases and redemptions not involing physical shares will settle on T+5. For redemptions involving physical shares, the mutual fund, once it has received the physical share certificates, will submit a release to settlement. Upon receipt of the release to settlement, Fund/Serv will settle the transaction on the day following the receipt of the release.[8]

On the evening of T+4, NSCC will provide mutual funds, broker-dealers, and MCC with a settlement summary listing transactions that are due to settle the following day. MCC will use this settlement summary to prepare an adjustment report which lists each participant's Fund/Serv debits and credits and to determine whether a Fund/Serv member is in a net pay or collect position. MCC will combine each participant's Fund/Serv net pay or collect figure with its other MCC obligations to obtain each participant's total net pay or collect figure. Participants will pay MCC approximately one hour after MCC notifies them of a "pay" settlement figure, at about 3:00 p.m. on settlement day in next-day funds. MCC pays its participants at approximately 3:00–3:30 p.m. on settlement day in next-day funds.[9] NSCC and MCC will settle their obligations with each other on T+6 in federal funds, which are immediately available.

As with NSCC's Fund/Serv, MCC's Fund/Serv is not a guaranteed service. If an MCC participant defaulted on its Fund/Serv payment obligations before NSCC has paid its participants, MCC will notify NSCC of the default so NSCC could stop payments to affected mutual funds and reverse transactions settled on behalf of the defaulting MCC participant. If NSCC receives notification of the default after it has paid its participants, NSCC could stop payment on those funds (NSCC pays its participants in next-day funds) or, if NSCC is unable to stop payment, it could charge the affected participants the next day. If NSCC is unable to collect the funds it paid on behalf of the defaulting MCC participant, NSCC may declare those mutual fund participants to be in default and may use their clearing fund deposits or liquidate any open contractual commitments on their behalf. If MCC fails to notify NSCC by 10:00 a.m. on settlement day[10] and NSCC suffers a loss or liability as a result of the MCC participant default, MCC will indemnify NSCC. MCD will fund its obligation to NSCC first from the defaulting participant's MCC Fund/Serv clearing fund contribution, and then from that participant's contribution to the general MCC clearing fund. If MCC still has not satisfied the loss, then MCC will allocate that loss, *pro-rata*, among MCC participants using Fund/Serv. If the loss remains unsatisfied then MCC would follow its loss recovery rules and procedures.

If a mutual fund participant defaults on payment obligations arising from transactions with MCC participants, NSCC would inform MCC so that MCC would reverse any settlement credits to MCC participants because of transactions due to settle with the defaulting mutual fund.[11] If MCC receives notice of the default after it has paid its participants, it could stop payment of those checks (like NSCC, MCC pays its participants in next-day funds) or it could charge its participants for the amount of the transactions the next day. If MCC cannot collect the funds recharged to its participants, MCC may declare those participants to be in default and may use their clearing fund deposit or liquidate their securities which MCC has in its possession.

MCC has established a Fund/Serv clearing fund contribution requirement to cover potential Fund/Serv risks. The amount of a participant's clearing fund contribution is based on the settlement debits that a participant may have with any one eligible mutual fund. If the participant s Fund-Serv debits with each

[4] At this time, MCC will not offer Fund/Serv services to mutual fund processing agents. Thus, all mutual fund participants in Fund/Serv are NSCC Fund members.

[5] NSCC received permanent approval to operate its Fund/Serv service in Securities Exchange Act Release No. 34-25146 (November 20, 1987), 52 FR 45418.

[6] Although MCC's proposal creates a new category of membership, Fund/Serv-only participants, MCC has no immediate plans to admit any Fund/Serv-only members. It is the Commission's understanding, however that MCC will submit appropriate membership standards to the Commission as a proposed rule change prior to admitting any Fund/Serv-only members.

[7] Broker-dealers may submit trades, on an exception basis, until 11:00 p.m. if operational or communication difficulties prevent timely data entry. According to NSCC, however no Fund/Serv participant has ever submitted information this late because broker-dealers want to submit their orders before the end of the mutual funds processing day

[8] A mutual fund can not complete redemptions involving physical shares until it receives the share certificates related to the transactions submitted with proper endorsements and guarantees. Therefore the transaction information is retained in the system, but settlement is delayed until the mutual fund receives those physical share certificates.

[9] NSCC pays its mutual fund participants by 1:30 p.m. NSCC pays its broker-dealer participants located in New York between 4:00 and 7:00 p.m. and pays its broker-dealer participants located outside New York between 3:00 and 5:00 p.m.

[10] The MCC–NSCC Mutual Fund Settlement, Entry and Registration Verification Linkage Agreement states that if MCC notifies NSCC by 10:00 a.m. (E.S.T.) on settlement day that it has ceased to act for an MCC participant that MCC's liability shall be limited to the portion of the defaulting Fund member's clearing fund contribution attributable to Fund/Serv. If MCC notifies NSCC later than 10:00 a.m. (E.S.T.) on settlement day and NSCC can not reverse the transaction MCC shall pay NSCC all amounts due resulting from the defaulting participant's Fund/Serv use.

[11] As noted above, Fund/Serv payment obligations are not guaranteed by MCC or NSCC. According, if a mutual fund defaulted on payment obligations to NSCL, MCC can refuse to pay its affected members.

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mutual fund are less than $100,000, then the participant must contribute $1,000 to the Fund/Serv clearing fund; if the participant's Fund/Serv debits with each mutual fund are less than $250,000, then the participant must contribute $10,000 to the Fund/Serv clearing fund; and if the participant's Fund/Serv debits with any one mutual fund are greater than $500,000, then the participant must contribute $50,000 to the Fund-Serv clearing fund. If on any given day a MCC participant's Fund/Serv debits for any one mutual fund exceed the point at which a higher clearing fund contribution is required, that participant must increase his contribution level accordingly.

II. MCC's Rationale

MCC believes the proposal is consistent with section 17A of the Act because it promotes the prompt and accurate clearance and settlement of mutual fund transactions by providing its members with a standardized method of communicating trade information to mutual funds. MCC believes that Fund/Serv's automated processing system is more efficient than the current methods used by its participants. MCC also believes that it has established appropriate risk management procedures, such as monitoring participants' activity, requiring additional clearing fund contributions when necessary, and limiting participants' activity, to protect itself from the potential risks associated with Fund/Serv activity.

III. Discussion

The Commission preliminarily believes that the proposal is consistent with section 17A of the Act because it will facilitate the prompt and accurate clearance and settlement of mutual fund transactions. MCC plans to offer Fund/Serv through the Fund/Serv facilities at NSCC.[12] MCC's Fund/Serv is designed to extend to MCC participants the benefits of a centralized automated processing system for mutual fund purchases and redemptions. This service facilitates the prompt and accurate clearance and settlement of mutual fund transactions by allowing mutual fund purchase and redemption information to be submitted in one standardized format to one central location, instead of submitting such information in different formats to each mutual fund.

MCC's proposed clearing fund requirement for Fund/Serv is based upon an individual member's activity level in Fund/Serv and upon the fact that Fund/Serv is not a guaranteed service. MCC's clearing fund requirements are the same as NSCC's clearing fund requirements for Fund/Serv participants.[13] Specifically, the clearing fund deposits are designed to protect MCC from risk associated with Fund/Serv, including the risk of simultaneous defaults by a MCC participant and a NSCC mutual fund participant. NSCC can withhold payment and reverse any transactions to its mutual funds made by the defaulting MCC participant if it receives notice of a default from MCC by 3:00 p.m., the time NSCC pays its Fund/Serv participants. From 3:00 p.m. until approximately 6:00 a.m. the next day, NSCC could place a stop payment on any funds paid to any mutual fund as a result of transaction by a MCC defaulting participant. Once NSCC participants have received their funds, NSCC could charge those mutual funds that received payment on transaction by defaulting MCC participants and, absent a default of a NSCC mutual fund participant, should be able to recover such funds. Obviously, MCC must notify NSCC as early as possible of a MCC participant's default in order for NSCC and MCC to avoid or minimize their potential financial exposure.

The Commission is approving MCC's proposal for approximately three months in order to permit MCC, NSCC and Commission staff to evaluate the system and financial safeguards and the adequacy of operational arrangements related to this service. Thus, the Commission expects MCC to monitor member Fund/Serv settlement activity, and report on activity levels and any problems encountered during the temporary approval period. Specifically, the Commission directs MCC to report any decision to suspend an MCC member's payment obligations, the dollar amount of suspended obligations, when those obligations were paid, the amount of funds in the participant's clearing fund, and whether MCC sustained any losses as a result of any late payments of defaults.

NSCC has developed and operated Fund/Serv since the pilot program began in February 1986, with no significant operational problems.[14] Extending the benefits of Fund/Serv to MCC participants will help achieve the Act's goal to facilitate the establishment of a safe, efficient, and equitable national clearance and settlement system for mutual fund transactions.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule changes (File Nos. SR–MCC–87–05 and SR–MCC–87–07) be, and hereby are, approved on a temporary basis through January 31, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 23, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-25095 Filed 10-28-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Application for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

October 24, 1988.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Albany International Corp.
Class A Common Stock, $0.001 Par Value (File No. 7–3948)

Atomos Energy Corp.[1]
Common Stock, No Par Value (File No. 7–3949)

Cyprus Minerals Co.
$3.75 Conver. Exch. Pfd. Stock Series B, $1.00 Par Value (File No. 3950)

Dresher Inc.
Common Stock, $.01 Par Value (File No. 7–3951)

FAI Insurances, Ltd.
American Depositary Shares, No Par Value (File No. 7–3952)

Sun Exploration and Production Company
Common Stock, $1.00 Par Value (File No. 7–3953)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

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[12] NSCC received permanent approval to operate its Fund/Serv service in Securities Exchange Act Release No. 24–25148 (November 20, 1987), 52 FR 45618 (November 27, 1987).

[13] NSCC's Fund/Serv clearing fund requirements were approve on a temporary basis until November 30, 1988. *See* Securities Exchange Act Release Nos. 25290 (January 20, 1988), 53 FR 2201, 25983 (June 28, 1988), 53 FR 25408, 25148 (September 20, 1988) 53 FR 36505.

[14] Securities Exchange Act Release No. 25525 (February 23, 1988), 81 FR 6045.

[1] Atomos Energy Corp. was formerly named Energas Co.

Interested persons are invited to submit on or before November 14, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-25096 Filed 10-28-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26214; File No. SR-NASD-88-30]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Amendment to Definition of Qualified Independent Underwriter

The National Association of Securities Dealers, Inc. ("NASD") submitted on July 13, 1988, and amended on September 30, 1988,[1] a proposed rule change pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder. The proposal amends the definition of the term qualified independent underwriter in section 2(1) of Schedule E to the NASD By-Laws.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was provided by the issuance of a Commission release (Securities Exchange Act Release No. 25997, August 15, 1988) and by publication in the Federal Register (53 FR 31786, August 19, 1988).

One comment letter was received on the proposed rule change. The commentator objected to a variety of aspects of the proposal.[2] First, the commentator argues that there has been no wide-spread abuse by firms currently eligible to act as qualified independent underwriters so as to justify the proposed modifications.

Second, the commentator contends that the proposed disqualification of a broker-dealer from serving as a qualified independent underwriter based on findings by self-regulatory organizations and state regulatory bodies of violations of state or federal anti-fraud laws in connection with the distribution of a registered or unregistered offering of securities is inappropriate.[3] In any event, the commentator also argues that requiring firms to seek exemptive relief from the so-called "bad boy" provisions from a committee of the Board of Governors would cause undue delay and increase costs.

Third, the commentator objects to the 5% or more beneficial ownership prohibition in the proposed rule change that would prevent a firm from acting as a qualified independent underwriter in an offering, while allowing the same firm to act as managing lead underwriter in the same offering if the firm owned under 10% of the entity making the offering. The comment letter suggests that merely disclosing ownership would suffice.

Finally, the commentator argues that the proposed rule change will restrict competition by limiting the number of firms eligible to be qualified independent underwriters under Schedule E. Large diversified firms (such as those affiliated with insurance companies, which routinely invest in such securities) could be disqualified based on the holdings.

The Commission has considered carefully the arguments raised by the adverse commentator. Nevertheless, the Commission has concluded that the proposals are rationally related to furthering the purposes of Schedule E and are consistent with the Act. Specifically, Schedule E is prophylactic in nature and intended to address prospectively conflicts of interests that may arise when an affiliated entity is involved in both pricing and underwriting an issue of securities.[4] To that end, the Commission believes it is appropriate for the NASD to seek to identify instances that may create the potential for abuse or the appearance of a conflict even in the absence of demonstrated abuses. In this regard, while the so-called "bad boy" provisions are broad, we believe the exemptive process provides an appropriate forum for reviewing their specific application and is not unduly burdensome. Finally, the fact that some firms have structured their business operations such that these conflicts may arise more frequently is not a reason for exempting those firms from the provisions of Schedule E. Moreover, disclosure alone would not cure the conflict; rather, one purpose of Schedule E is to ensure that the pricing of securities offerings is not tainted by the appearance of conflict.

The Commission, therefore, has determined to approve the proposed rule change based on its belief that the NASD has carefully and narrowly tailored the amendments to more fully achieve the central purpose of Schedule E, which is to address the conflicts of interest that are present in a public distribution by a member of its own securities or those of an affiliate. It does so, in part, by requiring the participation of a qualified independent underwriter in the due diligence and pricing aspects of certain offerings. The proposed rule change is an attempt by the NASD to more fully define the qualifications of such an underwriter by specifying the type of experience, the disciplinary history and equity ownership restrictions deemed necessary. The Commission is satisfied that these amendments to Schedule E will clarify the importance of the high standards to which a qualified independent underwriter should be held.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved. Pursuant to the above-mentioned amendment filed by the NASD, the proposed rule change will become effective on December 1, 1988. On and after that date, any public offering of securities subject to compliance with Schedule E to the NASD By-Laws must comply with the proposed rule change if the offering has not been declared effective prior to December 1, 1988, regardless of whether the offering previously was filed with and reviewed by the Corporate Financing Department of the NASD and that Department has already issued an opinion of "no objections" to the

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[1] The amendment relates only to the date of effectiveness of the proposed rule change.

[2] Letter from John E. Frary, Senior Vice President and Special Counsel, Prudential-Bache Securities, Inc., to Jonathan G. Katz, Secretary, SEC, dated September 19, 1988.

[3] Under the proposed rule change, disqualification also can be based on state or federal court and Commission actions.

[4] See the NASD's statement of the purpose of the proposed rule change in the notice of filing in Securities Exchange Act Release No. 25997, August 15, 1988; 53 FR 31786, August 19, 1988.

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proposed underwriting terms and arrangements.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz,

Secretary.

Dated: October 24, 1988.

[FR Doc. 88-25069 Filed 10-28-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26215; File No. SR-NASD-88-29]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Reporting of Trade Data

The National Association of Securities Dealers, Inc. ("NASD") submitted on June 20, 1988, a proposed rule change pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 [2] thereunder to amend Article VII, section 1 of the NASD By-Laws to require members to provide the NASD with comparison and other trade data that may be required by the Board of Governors ("Board").

In its filing, the NASD states that the purpose of the proposed rule change is to clarify the authority of the Board to mandate trade reporting by members, which will facilitate the prompt and accurate clearance and settlement of securities transactions and will better enable the NASD to carry out its surveillance of the over-the-counter ("OTC") market. Such authority will be used in implementation of the rule change recently approved by the Commission that requires all NASD members that are participants in registered clearing agencies for purposes of clearance of OTC securities transactions to participate in and reconcile eligible transactions through the facilities of the NASD's Trade Acceptance and Reconciliation Service ("TARS").[3] The NASD also intends to use the proposed rule change to facilitate a planned expansion of that requirement that will mandate that all NASD members conducting an interdealer business in OTC securities submit trade reconciliation data as required by the NASD. The expansion would affect those NASD members that are not participants in a registered clearing agency.[4] In addition, the proposed rule change is intended to clarify the NASD's authority to require reporting of trade data, including aggregate volume information, on non-NASDAQ OTC transactions, which will facilitate the gathering of data on these transactions and the increased surveillance of the non-NASDAQ marketplace that has been requested by the Commission.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was provided by the issuance of a Commission release (Securities Exchange Act Release No. 25915, July 14, 1988) and by publication in the **Federal Register** (53 FR 27588, July 21, 1988).

One comment letter was received on the proposed rule change.[5] In its letter, The International Stock Exchange ("ISE") expresses its concern that the main purpose of the proposal is to provide the NASD with the authority to implement ACT, an automated post-execution service that the NASD has not yet submitted to the Commission for approval. To the extent that the ISE letter addresses ACT in connection with the current proposed rule change, its comments are premature. Should the NASD file a proposed rule change under section 19(b)(2) seeking to implement ACT, the ISE will have an opportunity to comment at that time.[6]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: October 25, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-25124 Filed 10-28-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

October 24, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Borman's Incorporated

Common Stock, $1 Par Value (File No. 7-3954)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 14, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-25067 Filed 10-28-88; 8:45 am]

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[1] 15 U.S.C. 78s(b) (1982).

[2] 17 CFR 240.19b-4 (1988).

[3] See Securities Exchange Act Release No. 25805, April 18, 1988, 53 FR 13379.

[4] The NASD indicates that the expansion is in the planning stage of development. In implementing it, the NASD states that it will look for the most cost effective methods to ensure full participation by the broker-dealer community. The NASD has informed the Commission that current plans call for requiring the use of the Automated Confirmation Transaction ("ACT") service, which will lock in transactions and automate much of the post execution process. Moreover, the Commission notes that the current rule change merely provides enabling authority to the NASD and that prior to the implementation of the expansion the NASD must file a proposed rule change with the Commission pursuant to section 19(b)(2) of the Act.

[5] Letter from M.F. Newman, Director, Service Division, The International Stock Exchange, London, England, to Richard Ketchum, Director, Division of Market Regulation, SEC, August 19, 1988.

[6] The ISE letter also requests assurances from the Commission that certain clearance and settlement services will continue to be available and that the United States broker-dealer community will continue to support those services. Although the Commission would expect the NASD to give due consideration to the effects of its proposals on the broker-dealer community, specific assurances that particular programs will continue indefinitely or that the U.S. broker-dealer community will support such programs are beyond the scope of the Act and, in particular, section 19(b)(1).

[File No. 23-18857]

Application and Opportunity for Hearing; Piedmont Aviation, Inc.

October 25, 1988.

Notice is hereby given that Piedmont Aviation, Inc. (the "Company") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 as amended (the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of Meridian Trust Company (the "Bank") under eleven indentures between the Company and the Bank, two dated as of November 1, 1988 relating to the 1988 Equipment Trust Certificates, Series J and K, ("November Indendures") and two dated as of October 15, 1988 relating to the 1988 Equipment Trust Certificates, Series H and I (the "October Indentures"), each of which have been submitted for qualification under the Act and four dated as of September 15, 1988 (the "September Indentures") and three dated as of March 1, 1988 (the "March Indentures"), each of which were heretofore qualified under the Act (collectively, the "Indentures"), is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as trustee under any one of the Indentures.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of that section provides, with certain exceptions stated therein, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture of the same obligor.

The Company alleges:

(1) Pursuant to the November Indenture, the Company will issue $44,800,000 aggregate principal amount of its Equipment Trust Certificates (the "November Certificates"), Series J and K (the "November Series"), respectively. Pursuant to the October Indentures, the Company will issue (or will have issued) $44,800,000 aggregated principal amount of its Equipment Trust Certificates (the "October Certificates"), Series H and I (the "October Series"), respectively. Each November Series will be issued, each under a November Indenture, in the principl amount of $22,400,000. Each October Series will be issued, each under an October Indenture, in the principal amount of $22,400,000. The November and October Certificates will be registered under the Securities Act of 1933 (the "1933 Act"), and the November and October Indentures will be qualified under the Act.

(2) Pursuant to the September Indentures, the Company has issued $89,600,000 aggregate principal amount of its Equipment Trust Certificates, (the "September Certificates"), Series D-G (the "September Series"). Each of Series D, E, F and G was issued, each under a September Indenture, in the principal amount of $22,400,000. The September Certificates were registered under the 1933 Act and the September Indentures were qualified under the Act.

(3) Pursuant to the March Indentures, the Company has issued $56,851,000 aggregate principal amount of its Equipment Trust Certificates (the "March Certificates"), Series A-C (the "March Series"). Each of Series A, B and C was issued, each under a March Indenture, in the principal amount of $19,617,000. The March Certificates were registered under the 1933 Act and the March Indentures were qualified under the Act.

(4) There is no default under any of the Indentures.

(5) The Company's obligations with respect to each Series of Certificates are and will be secured under separate Indentures by separate security interests in separate and distinct property.

(6) Such differences as exist among the Indentures referred to herein and the respective obligations of the Company as obligor are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as trustee under any of the Indentures.

The Company waives notice of hearing and any and all rights to specify procedures under the Rules of Practice of the Commission in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to the application which is on file in the Offices of the Commission's Public Reference Section, File Number 23-18857, 450 Fifth Street, NW., Washington, DC 20549.

Notice is further given that any interested person may, not later than November 21, 1988, request in writing that a hearing be held on such matter stating the nature of his interest, the reasons for such request and the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission orders a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-25122 Filed 10-28-88; 8:45 am]

BILLING CODE 8010-01-M

[File No. 23-18858]

Application and Opportunity for Hearing; Piedmont Aviation, Inc.

October 25, 1988.

Notice is hereby given that Piedmont Aviation, Inc. (the "Company") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 as amended (the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of Meridian Trust Company (the "Bank") under eleven indentures between the Company and the Bank, two dated as of October 15, 1988 relating to the 1988 Equipment Trust Certificates, Series H and I, ("October Indentures") and two dated as of November 1, 1988 relating to the 1988 Equipment Trust Certificates, Series J and K (the "November Indentures"), each of which have been submitted for qualification under the Act and four dated as of September 15, 1988 (the "September Indentures") and three dated as of March 1, 1988 (the "March Indentures"), each of which were heretofore qualified under the Act (collectively, the "Indentures"), is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as trustee under any one of the Indentures.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest, or resign. Subsection (1) of that section provides, with certain exceptions stated therein, that a trustee under a qualified

indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture of the same obligor.

The Company alleges:

(1) Pursuant to the October Indentures, the Company will issue $44,800,000 aggregate principal amount of its Equipment Trust Certificates (the "October Certificates"), Series H and I (the "October Series"), respectively. Pursuant to the November Indentures, the Company will issue (or will have issued) $44,800,000 aggregate principal amount of its Equipment Trust Certificates (the "November Certificates"), Series J and K (the "November Series"), respectively. Each October Series will be issued, each under an October Indenture, in the principal amount of $22,400,000. Each November Series will be issued, each under a November indenture, in the principal amount of $22,400,000. The October and November Certificates will be registered under the Securities Act of 1933 (The "1933 Act"), and the October and November Indentures will be qualified under the Act.

(2) Pursuant to the September Indentures, the Company has issued $89,600,000 aggregate principal amount of its Equipment Trust Certificates (the "September Certificates"), Series D–G (the "September Series"). Each of Series D, E, F and G was issued, each under a September Indenture, in the principal amount of $22,400,000. The September Certificates were registered under the 1933 Act and the September Indentures were qualified under the Act.

(3) Pursuant to the March Indentures, the Company has issued $58,851,000 aggregate principal amount of its Equipment Trust Certificates (the "March Certificates"), Series A–C (the "March Series"). Each of Series A, B and C was issued, each under a March Indenture, in the principal amount of $19,617,000. The March Certificates were registered under the 1933 Act and the March Indentures were qualified under the Act.

(4) There is no default under any of the Indentures.

(5) The Company's obligations with respect to each Series of Certificates are and will be secured under separate Indentures by separate security interests in separate and distinct property.

(6) Such differences as exist among the Indentures referred to herein and the respective obligations of the Company as obligor are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as trustee under any of the Indentures.

The Company waives notice of hearing, hearing and any and all rights to specify procedures under the Rules of Practice of the Commission in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to the application which is on file in the Offices of the Commission's Public Reference Section, File Number 22–16858; 450 Fifth Street, NW., Washington, DC 20549.

Notice is further given that any interested person may, not later than November 21, 1988, request in writing that a hearing be held on such matter stating the nature of his interest, the reasons for such request and the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission orders a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. At any time after said date the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–25123 Filed 10–28–88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 02/02-0623]

Carnegie Hill Capital Fund, L.P.; Application for a Small Business Investment Company License

An application for a license to operate a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*) has been filed by Carnegie Hill Capital Fund, L.P., 730 Fifth Avenue, Suite 20004, New York, New York 10019 (Applicant), with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1988).

The corporate general partner of the Applicant is Carnegie Hill Three Corporations, a Deleware corporation, located at 730 Fifth Avenue, New York, New York, 10019, and is wholly owned by Mr. Dale Krieger, 110 Riverside Drive, New York, New York 10024. The Sole limited Partner of the Applicant is Carnegie Hill Partners, L.P., a Delaware limited partnership, located at 730 Fifth Avenue, New York, New York 10019. No person owns a 10 or more percent equity interest in Carnegie Hill Partners, L.P.

The Investment adviser/Manager of the Applicant will be Carnegie Hill Company, a New York limited partnership, located at 730 Fifth Avenue, New York, New York 10019, which has as its managing general partner Carnegie Hill One Corporation. A Delaware Corporation, located at 730 Fifth Avenue, New York, New York 10019 and includes two other general partners, Richard A. Ruderman, 12 Soxony Way, New Rochelle, New York 10804 and Charles C. West, 413 Waldo Boulevard, Manitowoc, Wisconsin 54220.

The limited partners of the Carnegie Hill Company are Veronica K. Krieger, 110 Riverside Drive, New York, New York 10024 and three trusts for the minor children of Dale and Veronica Krieger of which Veronica Krieger is the Trustee.

The Applicant will begin operations with $1,282,625 paid-in capital and paid-in surplus. The applicant will conduct its activities primarily in the State of New York, Wisconsin and Minnesota, but will consider investments in businesses in other areas in the United States.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: October 19, 1988.

[FR Doc. 88–25083 Filed 10–28–88; 8:45 am]

BILLING CODE 8025-01-M

[License No. 04/05-0211]

Vicksburg Small Business Investment Co.; Surrender of License

Notice is hereby given that Vicksburg Small Business Investment Company (VSBIC), 302 First National Bank Building, Vicksburg, Mississippi 39180, has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (Act). VSBIC was licensed by the Small Business Administration on June 9, 1960.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was effective on October 5, 1988, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

Matters involved in SBA's consideration of the Application include the general business reputation and character of the proposed benefical owners and management, and the probability of successful operations of the company under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this notice, submit written comments on the proposed Applicant. Any such communciation should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" St., NW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in New York, New York.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: October 24, 1988.

[FR Doc. 88–25084 Filed 10–28–88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[CM–6/1229]

Study Group 9 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 9 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on November 16, 1988 in Room 535, 1919 M Street, NW., Washington, DC (Federal Communications Commission) at 9:30 a.m.

Study Group 9 deals with questions relating to line-of-sight and trans-horizon radio-relay systems operating via terrestrial stations at frequencies above about 30 MHz. The purpose of the meeting is to review preparations for the Final Meeting of Study Group 9 set for October 1989.

Members of the general public may attend the meeting and join in the discussions subject to the instructions of the Chairman. Requests for further information should be directed to Mr. Richard E. Shrum, State Department, Washington, DC 20520; telephone (202) 647–1591.

Date: October 11, 1988.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 88–25029 Filed 10–28–88; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM–6/1225]

U.S. Organization for the International Consultative Committees on Radio and Telegraph and Telephone; Joint Meeting

The Department of State announces that there will be a joint meeting of the National Committees of the U.S. Organization for the International Radio Consultative Committee (CCIR) and the International Telegraph and Telephone Consultative Committee (CCITT) on November 2, 1988 in Room 10A/B at 1120 20th Street, NW., Washington, DC. The meeting will begin at 10:00 a.m. and continue until approximately 4:30 p.m. This notice does not meet the 15-day notice requirement, since there is an urgent need to hold the meeting prior to departure on extended travel of key participants in connection with U.S. delegation duties overseas.

The National Committees provide advice on matters of policy and positions in preparation for the respective Plenary Assemblies and international Study Groups meetings, as well as on a broad range of matters relating to the International Telecommunication Union (ITU) in general. The ITU will convene a Plenipotentiary Conference in May, 1989 which will consider issues of considerable interest to U.S. CCIR and CCITT participants.

The main purposes of the meeting will be to:

1. Report on national preparations for the Plenipotentiary;

2. Discussion of specific issues of interest to the CCIs;

3. Consideration of future activities.

Members of the general public may attend the meeting and join in discussions subject to instructions of the Chairman. Admittance of public members will be limited to the seating available. All persons wishing to attend the meeting should contact the office of Early Barbely, telephone (202) 647–5220. All attendees will be required to sign in and obtain badges for entrance to the building. This will be handled in the lobby reception area.

Earl S. Barbely,

Chairman, U.S. CCITT National Committee.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

Date: October 24, 1988.

[FR Doc. 88–25030 Filed 10–27–88; 12:59 pm]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended October 21, 1988

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 45987

Date Filed: October 30, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: November 17, 1988.

Description: Application of United Air Lines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations applies for an amendment of its certificate of public convenience and necessity for Route 130 in order to provide round-trip foreign air transportation of passengers, property and mail between the United States and Australia via Japan.

Docket No. 44092

Date Filed: October 18, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: November 15, 1988.

Description: Amendment to the Application of "Faucett" requests a permit to conduce a total of three weekly round trip combination passenger, property and mail flights between Lima, Peru and Miami, Florida (twice weekly) and between Iquitos, Peru and Miami, Florida (once weekly), pursuant to the terms of the Bilateral

Agreement between Peru and the United States.

Phyllis T. Kaylor,
Chief, Documentary Services Division.

[FR Doc. 88-25121 Filed 10-28-88; 8:45 am]
BILLING CODE 4910-62-M

Federal Aviation Administration

Danbury Municipal Airport, Danbury, CT; FAA Approval of Noise Compatibility Program

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the city of Danbury, Connecticut under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and non-Federal responsibilities in Senate Report No. 96-52 (1980). On February 24, 1988, the FAA determined that the noise exposure maps submitted by the city of Danbury, Connecticut under Part 150, were in compliance with applicable requirements. On August 22, 1988, the Administrator approved the Danbury Municipal Airport (DXR) noise compatibility program. Out of the 12 proposed program elements, 8 were approved and 1 was partially approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the DXR noise compatibility program is August 22, 1988.

FOR FURTHER INFORMATION CONTACT: John Silva, Federal Aviation Administration, New England Region, Airports Division, ANE-610, 12 New England Executive Park, Burlington, Massachusetts 01803, Telephone (617) 273-7300.

Documents reflecting this FAA action may be obtained from the same individual.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the DXR noise compatibility program, effective August 22, 1988.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter the Act), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulation (FAR) Part 150 is a local program, not a federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act, and is limited to the following determinations:

(a) The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

(b) Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

(c) Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

(d) Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the Navigable Airspace and Air Traffic Control Systems, or adversely affecting other powers and responsibilities of the Administrator as prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982. Where federal funding is sought, requests for project grants must be submitted to the FAA Regional Office in Burlington, Massachusetts.

The city of Danbury submitted to the FAA, on July 6, 1987, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from July 1985 through July 1987. The DXR noise exposure maps were determined by FAA to be in compliance with applicable requirements on February 24, 1988. Notice of this determination was published in the Federal Register on March 21, 1988.

The DXR study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to beyond the year 1990. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on February 24, 1988, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such a program within the 180 day period shall be deemed to be an approval of such a program.

The submitted program contained 12 proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the administrator effective August 22, 1988.

Approval was granted for 9 specific program elements. Airport Operations Measure 3, concerning the prohibition of nighttime touch-and-go activity by non-based aircraft was approved in part—that part which permits touch-and-go operations by based aircraft by removing the existing restriction on these aircraft. That part of the measure which prohibits nighttime touch-and-go activity by non-based aircraft, by continuing in force the existing restriction, was disapproved, on the basis that it is not based on the relative noisiness of specific aircraft, favors based airport users over non-based airport users without regard to noise, and is, therefore, unjustly discriminatory. The effect of the disapproval is negligible, however, since almost no non-based aircraft use the airport at night for touch-and-gos.

Airport Operations Measure 4, concerning prohibition of intersection and formation takeoffs was disapproved as a noise abatement proposal because there was no noise benefit supported by the study.

Finally, Land Use Control Measure 1, concerning acquisition of property rights within the Runway 08 clear zone and airport primary surface, was disapproved only because the parcels do not fall within the Ldn 65 noise contour and are thus not considered *noise* incompatible.

The approved program for Danbury includes raising the traffic pattern altitude, increasing the use of Runway 17 and decreasing the use of Runway 26, removing restrictions on touch-and-go activity, including the Airport Administrator in the land use review process, revision of the Danbury multi-family overlay district, simplification and standardization of noise complaint procedures, continuation of a Citizens' Advisory Committee, annual evaluations of changes in the noise environment, and program publicity.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on August 22, 1988. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the office of the Airport Administrator, Danbury, Connecticut.

Issued in Burlington, Massachusetts, on October 12, 1988.

Vincent A. Scarano,
Manager, Airports Division, New England Region.

[FR Doc. 88-25043 Filed 10-28-88; 8:45 am]
BILLING CODE 4910-13-M

National Airspace Review Enhancement Advisory Committee; Termination

Notice is hereby given of the termination of the National Airspace Review Enhancement Advisory Committee. The committee was established to provide the Administrator with independent, expert advice on the operational aspects of transition into the next generation National Airspace System (NAS) and to assist FAA in identifying and implementing changes to the current and future NAS. This committee has been terminated as its continuation is no longer in the public interest in connection with the performance of duties imposed on FAA by law.

Issued in Washington, DC, on October 19, 1988.

Michael L. Evans,
Acting Director of Management Systems.

[FR Doc. 88-25042 Filed 10-28-88; 8:45 am]
BILLING CODE 4910-13-M

Federal Service Station at Cincinnati Municipal Airport, Lunken Field, Cincinnati, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of closing.

SUMMARY: Notice is hereby given that on October 4, 1988, the Flight Service Station (FSS) at Cincinnati, Lunken Field, Cincinnati, Ohio closed. Services to the aviation public in the Cincinnati flight plan area, formerly provided by the Cincinnati, FSS will be provided by the new Automated Flight Service Station at Dayton, Ohio. This information will be reflected in the FAA organization statement the next time it is reissued.

(Sec. 313(a), 72 Stat. 49 U.S.C. 1354.)

Timothy P. Ferté,
Regional Administrator, Great Lakes Region.

Issued in Des Plaines, Illinois, on October 11, 1988.

[FR Doc. 88-25041 Filed 10-28-88; 8:45 am]
BILLING CODE 4910-13-M

Federal Service Station at Dickinson Municipal Airport, Dickinson, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of closing.

SUMMARY: Notice is hereby given that on October 18, 1988, the Flight Service Station (FSS) at Dickinson Municipal Airport, Dickinson, North Dakota was closed. Services to the aviation public in the Dickinson flight plan area, formerly provided by the Dickinson FSS, will be provided by the new automated flight service station at Grand Forks, North Dakota. This information will be reflected in the FAA organization statement the next time it is reissued.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Timothy P. Ferté,
Regional Administrator, Great Lakes Region.

Issued in Des Plaines, Illinois, on October 18, 1988.

[FR Doc. 88-25040 Filed 10-28-88; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: October 25, 1988.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0794.
Form Number: None.
Type of Review: Extension.
Title: Penalties for Underpayment of Deposits and Overstated Deposit Claims, and Time of Filing Information Returns of Owners, Officers and Directors of Foreign Corporations (LR-311-81 (T.D. 7925)).

Description: Section 6046 requires information returns with respect to certain foreign corporations and the regulations provide the date by which these returns must be filed. Section 6656 provides penalties with respect to failure to properly satisfy tax deposit obligations and the regulations provide the method for applying for relief from these penalties.

Respondents: Individuals or households, Businesses or other for-profit, and Small businesses or organizations.

Estimated Number of Respondents: 60,015.

Estimated Burden Hours Per Response: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 30,000 hours.

Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.

[FR Doc. 88-25045 Filed 10-28-88; 8:45 am]
BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

Cost-of-Living Adjustments and Headstone or Marker Allowance Rate

AGENCY: Veterans Administration.

ACTION: Notice.

SUMMARY: As required by law the Veterans Administration (VA) is hereby giving notice of cost-of-living adjustments (COLAs) in certain benefit rates and income limitations. These COLAs affect the pension and parents' dependency and indemnity compensation (DIC) programs. These adjustments are based on the rise in the Consumer Price Index (CPI) during the one year period ending September 30, 1988. The VA is also giving notice of the maximum amount of reimbursement that may be paid for headstones or markers purchased in lieu of Government-furnished headstones or markers in fiscal year 1989 which began on October 1, 1988.

DATES: These COLAs are effective December 1, 1988. The headstone or marker allowance rate is effective October 1, 1988.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Chief, Regulations Staff, Compensation and Pension Service (211B), Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-3005.

SUPPLEMENTARY INFORMATION: Under the provisions of 38 U.S.C. 3112 and section 208 of Pub. L. 95-588 the VA is required to increase the benefit rates and income limitations in the pension and parents' DIC programs by the same percentage, and effective the same date, as increases in the benefit amounts payable under title II of the Social Security Act. The increased rates and income limitations are also required to be published in the **Federal Register.**

The Social Security Administration has announced that there will be a 4.0 percent cost-of-living increase in social security benefits effective December 1, 1988. Therefore, applying the same percentage, the following increased rates and income limitations for the VA's pension and parents' DIC programs will be effective December 1, 1988.

Improved Pension

Table 1

Maximum Annual Rates

(1) Veterans permanently and totally disabled (38 U.S.C. 521).
Veteran with no dependents, *$6,463.*
Veteran with one dependent, *$8,466.*
For each additional dependent, *$1,096.*
(2) Veterans in need of aid and attendance (38 U.S.C. 521).
Veteran with no dependents, *$10,338.*
Veteran with one dependent, *$12,341.*
For each additional dependent, *$1,096.*
(3) Veterans who are housebound (38 U.S.C. 521).
Veteran with no dependents, *$7,899.*
Veteran with one dependent, *$9,902.*
For each additional dependent, *$1,096.*
(4) Two veterans married to one another; combined rates (38 U.S.C. 521).
Neither veteran in need of aid and attendance or housebound, *$8,495.*
Either veteran in need of aid and attendance, *$12,541.*
Both veterans in need of aid and attendance, *$16,374.*
Either veteran housebound, *$9,902.*
Both veterans housebound; *$11,340.*
One veteran housebound and one veteran in need of aid and attendance, *$13,776.*
For each dependent child, *$1,096.*
(5) Surviving spouse alone and with a child or children of the deceased veteran in custody of the surviving spouse (38 U.S.C. 541).
Surviving spouse alone, *$4,331.*
Surviving spouse and one child in his or her custody, *$5,674.*
For each additional child in his or her custody, *$1,096.*
(6) Surviving spouses in need of aid and attendance (38 U.S.C. 541).
Surviving spouse alone, *$6,928.*
Surviving spouse with one child in his or her custody, *$8,267.*
For each additional child in his or her custody, *$1,096.*
(7) Surviving spouses who are housebound (38 U.S.C. 541).
Surviving spouse alone, *$5,295.*
Surviving spouse and one child in his or her custody, *$6,635.*
For each additional child in his or her custody, *$1,096.*
(8) Surviving child alone (38 U.S.C. 542), *$1,096.*

Reduction for income. The rate payable is the applicable maximum rate minus the countable annual income of the eligible person. (38 U.S.C. 521, 541, and 542).

Mexican border period and World War I veterans. The applicable maximum annual rate payable to a Mexican border period or World War I veteran under this table shall be increased by $1,461. (38 U.S.C. 521(g)).

Parents' DIC

DIC (dependency and indemnity compensation) shall be paid monthly to parents of a deceased veteran in the following amounts. (38 U.S.C. 415)

Table 2

One parent. If there is only one parent the monthly rate of DIC paid to such parent shall be $308 reduced on the basis of the parent's annual income according to the following formula:

For each $1 of annual income		
The $308 monthly rate shall be reduced by—	Which is more than—	But not more than—
$0.05	0	$800
.08	$800	$7,351

No DIC is payable under this table if annual income exceeds $7,351.

One Parent Who Has Remarried. If there is only one parent and the parent has remarried and is living with the parent's spouse, DIC shall be paid under table 2 or under table 4, whichever shall result in the greater benefit being paid to the veteran's parent. In the case of remarriage, the total combined annual income of the parent and the parent's spouse shall be counted in determining the monthly rate of DIC.

Two parents not living together. The rates in table 3 apply to (1) two parents who are not living together, or (2) an unmarried parent when both parents are living and the other parent has remarried. The monthly rate of DIC paid to each such parent shall be $217 reduced on the basis of each parent's annual income, according to the following formula:

TABLE 3

For each $1 of annual income		
The $217 monthly rate shall be reduced by—	Which is more than—	But not more than—
0	0	$800
$0.05	$800	900
.07	900	1,100
.08	1,100	7,351

No DIC is payable under this table if annual income exceeds $7,351.

Two parents living together or remarried parents living with spouses. The rates in table 4 apply to each parent living with another parent; and each remarried parent, when both parents are alive. The monthly rate of DIC paid to such parents will be $204 reduced on the basis of the combined annual income of the two parents living together or the remarried parent or parents and spouse or spouses, as computed under the following formula:

TABLE 4

For each $1 of annual income		
The $204 monthly rate shall be reduced by—	Which is more than—	But not more than—
0	0	$1,000
$0.03	$1,000	1,800
.04	1,800	2,000
.05	2,000	2,500
.06	2,500	3,000
.07	3,000	3,300
.08	3,300	8,865

No DIC is payable under this table if combined annual income exceeds $8,865.

The rates in this table are also applicable in the case of one surviving parent who has remarried, computed on the basis of the combined income of the parent and spouse, if this would be a greater benefit than that specified in table 2 for one parent.

Aid and attendance. The monthly rate of DIC payable to a parent under tables 2 through 4 shall be increased by $161 if such parent is (1) a patient in a nursing home, or (2) helpless or blind, or so nearly helpless or blind as to need or require the regular aid and attendance of another person.

Minimum rate. The monthly rate of DIC payable to any parent under tables 2 through 4 shall not be less than $5.

Section 306 Pension Income Limitations

Table 5

(1) Veteran or surviving spouse with no dependents, $7,351 (Pub. L. 95-588, section 306(a)).
(2) Veteran with no dependents in need of aid and attendance, $7,851 (38 U.S.C. 521(d) as in effect on December 31, 1978).
(3) Veteran or surviving spouse with one or more dependents, $9,865 (Pub. L. 95-588, section 306(a)).
(4) Veteran with one or more dependents in need of aid and attendance, $10,365 (38 U.S.C. 521(d) as in effect on December 31, 1978).
(5) Child (no entitled veteran of surviving spouse), $6,008 (Pub. L. 95-588, section 306(a)).
(6) Spouse income exclusion (38 CFR 3.262), $2,343 (Pub. L. 95-588, section 306(a)(2)(B)).

Old-Law Pension Income Limitations

Table 6

(1) Veteran or surviving spouse without dependents or an entitled child, $6,435 (Pub. L. 95-588, section 306(b)).
(2) Veteran or surviving spouse with one or more dependents, $9,279 (Pub. L. 95-588, section 306(b)).

Headstone or Marker Allowance

Under 38 U.S.C. 906(d) the VA may provide reimbursement for the cost of non-Government headstones or markers at a rate equal to the actual cost or the average actual cost of Government-furnished headstones or markers during the fiscal year preceding the fiscal year in which the non-Government headstone or marker was purchased, whichever is less.

The average actual cost of Government-furnished headstones and markers during any fiscal year is determined by dividing the sum of the VA's costs during that fiscal year for procurement, transportation, Monument Service and miscellaneous administration, inspection and support staff by the total number of headstones or markers procured by the VA during that fiscal year and rounding to the nearest whole dollar amount.

The average actual cost of Government-furnished headstones or markers for fiscal year 1988 under the above computation method was $80. Therefore, effective October 1, 1988, the maximum rate of reimbursement for non-Government headstones or markers purchased during fiscal year 1989 is $80.

Dated: October 25, 1988.

Thomas K. Turnage,
Administrator.

[FR Doc. 88-25082 Filed 10-28-88; 8:45 am]
BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 210
Monday, October 31, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

AFRICAN DEVELOPMENT FOUNDATION

Board of Directors Meeting

TIME: 10:00 a.m.–12:00 p.m.

PLACE: African Development Foundation.

DATE: Monday, November 7, 1988.

STATUS: Open.

Agenda

1. Chairman's Report
2. President's Report
3. Other Business

CONTACT PERSON FOR MORE INFORMATION: Ms. Janis McCollim, 673–3916.

Leonard H. Robinson, Jr.,
President.

[FR Doc. 88-25201 Filed 10-27-88; 3:14 pm]

BILLING CODE 6116-01-M

FARM CREDIT ADMINISTRATION

Regular Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board). The regular meeting of the Board is scheduled for November 1, 1988.

DATE AND TIME: The meeting is scheduled to be held at the offices of the Farm Credit Administrative in McLean, Virginia, on November 1, 1988, from 10:00 a.m. until such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4003.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of the meeting will be closed to the public. The matters to be considered at the meeting are:

Open Session

1. Summary Prior Approval Items;
2. Farm Credit Administration Budget Fiscal Year 1989;
3. Task Force Report on Institution Mergers;

Closed Session [1]

4. Examination and Enforcement Matters; and
5. Jackson FLB/FLBA, in Receivership.

Dated: October 25, 1988.

David A. Hill,
Secretary, Farm Credit Administration Board.

[FR Doc. 88-25192 Filed 10-27-88; 3:14 pm]

BILLING CODE 6705-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:00 p.m. on Tuesday, October 25, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to: (1) The possible closing of certain insured banks; (2) assistance agreements pursuant to section 13(c) of the Federal Deposit Insurance Act; and (3) a request for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Mr. Dean S. Marriott, acting in the place and stead of Directive Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: October 26, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,
Deputy Executive Secretary.

[FR Doc. 88-25129 Filed 10-26-88; 4:55 pm]

BILLING CODE 6714-01-M

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[1] Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c)(4), (8) and (9).

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: October 26, 1988, 53 FR 41845.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: October 26, 1988, 10 p.m.

CHANGE IN THE MEETING: The following Docket Numbers have been added to the agenda of October 26, 1988:

Item No., Docket No., and Company

CAG–12
RP88–27–000, United Gas Pipe Line Company
CAG–32
CP87–309–004 and 005, Paiute Pipeline Company
CAG–77(A)
CP87–82–000, 001, 002 and CP87–312–000, Texas Eastern Transmission Corporation and PennEast Gas Services Company
CP87–312–001, Texas Eastern Transmission Corporation
CP88–43–001 and CP88–173–000, Texas Eastern Transmission Corporation
CP88–188–000 and CP88–187–000, PennEast Gas Services Company
CP87–566–000, Texas Eastern Transmission Corporation and Algonquin Gas Transmission Company
CP88–177–000, Transcontinental Gas Pipe Line Corporation
CP87–5–000, CP87–313–000 and CP87–314–000, CNG Transmission Corporation
CP87–124–000, CP88–186–001, CP88–187–000 and
CP88–192–000, Algonquin Gas Transmission Company
CP88–102–000, PennEast Gas Service Company, CNG Transmission Corporation and Texas Eastern Transmission Corporation
CP88–171–000, Tennessee Gas Pipeline Company

Lois D. Cashell,
Secretary.

[FR Doc. 88-25128 Filed 10-28-88; 4:55 pm]

BILLING CODE 6717-01-M

POSTAL SERVICE

Board of Governors; Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a meeting at 1:00 p.m. on Monday, November 7, 1988, in Washington, DC, and at 8:30 a.m. on Tuesday, November 8, 1988, in the Benjamin Franklin Room, U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, DC. The November 7 meeting, at which the Board will consider a proposal for procurement of an existing building in New York City, is closed to the public. The November 8 meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

Monday Session

November 7—1:00 p.m.

1. Consideration of Procurement of Existing Building in New York City. (Stanley W. Smith, Assistant Postmaster General, Facilities Department)

Tuesday Session

November 8—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, October 3–4, 1988.
2. Remarks of the Postmaster General.
3. Board of Governors 1989 Meeting Schedule.
4. Report on Compliance with the Budget Reconciliation Act of 1987. (Comer S. Coppie, Senior Assistant Postmaster General, Finance Group.)
5. Quarterly Report on Service Performance. (Ann McK. Robinson, Consumer Advocate)
6. Report on Administrative Services Group Programs. (Mitchell H. Gordon, Senior Assistant Postmaster General, Administrative Services Group)
7. Report on Human Resources Group Programs. (David H. Charters, Senior Assistant Postmaster General, Human Resources Group)
8. Report on Long-Life Vehicles. (John J. Davin, Assistant Postmaster General, Procurement and Supply Department)
9. Capital Investments. (Stanley W. Smith, Assistant Postmaster General, Facilities Department)
   a. Advanced Facer-Canceler System. (Warren P. Denise, Acting Assistant Postmaster General, Engineering and Technical Support Department)
   b. South Suburban, Illinois, General Mail Facility.
   c. Southwest Suburban, Illinois, Mail Processing Center.
   d. Chicago, Illinois, Bulk Mail Center Expansion.
10. Tentative Agenda for December 5–6, 1988, Meeting in Tampa, Florida.

David F. Harris,
Secretary.

[FR Doc. 88-25229 Filed 10-27-88; 3:15 pm]

BILLING CODE 7715-12-M

POSTAL SERVICE

Board of Governors; Notice of Vote To Close Meeting

By telephone vote, a majority of the members contacted and voting, the Board of Governors voted to close to public observation its meeting scheduled for November 7, 1988, at United States Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, DC. The meeting will involve consideration of a proposal for procurement of an existing building in New York, New York.

The meeting is expected to be attended by the following persons: Governors Alvarado, del Junco, Griesemer, Hall, Nevin, Pace, and Setrakian; Postmaster General Frank; Deputy Postmaster General Coughlin; Secretary for the Board Harris; and General Counsel Cox.

The Board determined that, pursuant to section 552b(c)(9)(B) of Title 5, United States Code, and § 7.3(i) of Title 39, Code of Federal Regulations, the discussion of this matter is exempt from the open meeting requirement of the Government in the Sunshine Act (5 U.S.C. 552b(b)), because it is likely to disclose information, the premature disclosure of which would likely significantly frustrate implementation of a proposed procurement action.

In accordance with section 552b(f)(1) of Title 5, United States Code, and § 7.6(a) of Title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation, pursuant to section 552b(c)(9)(B) of title 5, United States Code, and § 7.3(i) of title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary for the Board, David F. Harris, at (202) 268–4800.

David F. Harris,
Secretary.

[FR Doc. 88-25230 Filed 10-27-88; 3:15 pm]

BILLING CODE 7715-12-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [53 FR 41846 October 24, 1988].

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC

DATE PREVIOUSLY ANNOUNCED: Wednesday, October 19, 1988.

CHANGE IN THE MEETING: Additional item.

The following item was considered at a closed meeting on Tuesday, October 25, 1988, following the 10:00 a.m. open meeting:

Regulatory matter bearing enforcement implications.

Commissioner Fleischman, as duty officer, determined that Commission business required the above change.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Kevin Fogarty at (202) 272–3195.

Jonathan G. Katz,
Secretary.

October 28, 1988.

[FR Doc. 88-25191 Filed 10-27-88; 3:14 pm]

BILLING CODE 8010-01-M

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federal register

Monday
October 31, 1988

Part II

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 761, 785, 816, and 817
Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Areas Unsuitable for Mining; Special Categories of Mining; Surface Mining Activities; Underground Mining Activities; Proposed Rule

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 785, 816 and 817

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Areas Unsuitable for Mining; Special Categories of Mining; Surface Mining Activities; Underground Mining Activities

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the U.S. Department of the Interior (DOI) proposes to amend its permanent program regulations in five general subject areas. Except for the subject area of disposal of excess spoil on preexisting benches, the proposed amendments generally respond to U.S. district court and court of appeals decisions.

In the subject area of values incompatible with surface coal mining operations, the rule would amend the definition of *no significant recreational, timber, economic, or other values incompatible with surface coal mining operations* by removing the phrase "beyond an operators ability to repair." This would eliminate reclaimability as a criterion in determining compatibility with surface coal mining operations.

In the subject area of AOC variances, the rule would revise regulations governing permits incorporating variances from AOC restoration requirements to limit their application to steep slope mining.

In the subject area of disposal of excess spoil on preexisting benches, the rule would revise regulations governing the disposal of excess spoil on preexisting benches to conform them with the general requirements for backfilling and grading.

In the subject area of coal mine waste, the rule would revise the general requirements governing the disposal of coal mine waste to add to the existing requirement that it be placed in a controlled manner the additional requirement that it be hauled or conveyed. This addition would prohibit the end or side dumping of coal mine waste. Also in this subject area, the rule would remove regulations requiring the handling of hazardous noncoal mine waste in accordance with the Resource Conservation and Recovery Act and its implementing regulations.

Finally, in the subject area of contemporaneous reclamation/backfilling and grading, the rule would add new regulations reinstituting backfilling and grading time and distance requirements. It would require the completion of backfilling and grading within a certain time or distance following coal removal, or under a schedule established by the regulatory authority. Also in this subject area, the rule would define *thin overburden* and *thick overburden* using general standards relating to the restoration of AOC, and would establish performance standards governing the backfilling and grading of thin and thick overburden.

Any previous suspensions of these and related regulations that would be obviated by these amendments would be removed.

DATES:

Written Comments: OSMRE will accept written comments on the proposed rule until 5:00 p.m. Eastern time on December 30, 1988.

Public Hearings: Upon request, OSMRE will hold public hearings on the proposed rule in Washington, DC, Pittsburgh, Pennsylvania, and Denver, Colorado, at 9:30 a.m. local time. The hearing in Washington, DC, will be held on December 18, 1988; in Pittsburgh, Pennsylvania, on December 21, 1988, and in Denver, Colorado on December 23, 1988. If sufficient interest is shown, OSMRE may also hold public hearings in other locations at times and on dates to be announced prior to the hearings.

OSMRE will accept requests for public hearings until 4:30 p.m. Eastern time on November 30, 1988. Individuals wishing to attend but not testify at a hearing should contact the person identified under "FOR FURTHER INFORMATION CONTACT" beforehand to verify that the hearing will be held.

ADDRESSES:

Written Comments: Hand-deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131, 1100 L Street NW., Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131–L, 1951 Constitution Avenue NW., Washington, DC 20240.

Public Hearings: Department of the Interior Auditorium, 18th and C Streets NW., Washington, DC; Parkway Center Inn, 875 Greentree Road, Pittsburgh, Pennsylvania; and Brooks Towers, 2nd Floor Conference Room, 1020 15th Street, Denver, Colorado.

Request for public hearing: Submit requests orally or in writing to the person and address specified under "FOR FURTHER INFORMATION CONTACT."

FOR FURTHER INFORMATION CONTACT:

Dermot Winters, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practicable, commenters should submit three copies of their comments (see "ADDRESSES"). Comments received after the close of the comment period (see "DATES") or delivered to addresses other than those listed above may not be considered or included in the Administrative Record for the final rule.

Public Hearings

OSMRE will hold public hearings on the proposed rule on request only. The times, dates, and addresses for the scheduled hearings are specified previously in this notice (see "DATES" and "ADDRESSES").

Any person interested in participating at a hearing should inform Dermot Winters (see "FOR FURTHER INFORMATION CONTACT") either orally or in writing of the desired hearing location by 4:30 p.m. Eastern time on November 30, 1988. If no one has contacted Mr. Winters to express an interest in participating in a hearing at a given location by that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons in attendance wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSMRE requests that persons who testify at a hearing give the transcriber a copy of their testimony. To assist OSMRE in preparing appropriate questions, OSMRE also requests that persons who plan to testify submit to OSMRE at the address previously specified for the submission of written comments (see "ADDRESSES") an advance copy of their testimony.

II. Background

Section 201(c)(2) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act), 30 U.S.C. 1211(c)(2), directs the Secretary of the Interior (the Secretary), acting through the Office of Surface Mining Reclamation and Enforcement (OSMRE), to "publish and promulgate such rules and regulations as may be necessary to carry out the purposes and provisions of this Act." Section 501(b) of the Act, 30 U.S.C. 1251(b), directs the Secretary to "promulgate and publish in the Federal Register regulations covering a permanent regulatory procedure for surface coal mining and reclamation operations performance standards * * *" The resulting OSMRE regulations are codified at 30 CFR Chapter VII.

This proposed rule concerns five general subject areas in Chapter VII. These subject areas have been grouped together in this combined rule for administrative convenience. The pertinent legislative, regulatory and litigation background of each proposed section in these subject areas is discussed in turn under the following general headings, with the affected sections listed in parentheses.

For convenience, where the discussion concerns similar sections in Part 816, which applies to surface mining activities, and Part 817, which applies to underground mining activities, these sections are cited together in the heading as §§ 816.[ ]/817.[ ], but in most cases only Part 816 is discussed in the text. In such cases the discussion applies equally to Parts 816 and 817 unless otherwise noted.

A. Values Incompatible with Surface Coal Mining Operations (§ 761.5)

Section 522(e)(2) of the Act, 30 U.S.C. 1272(e)(2), with certain exceptions, prohibits surface coal mining operations "on any Federal lands within the boundaries of any national forest [unless] the Secretary finds that there are *no significant recreational, timber, economic, or other values* which may be *incompatible with* such *surface* [*coal*] *mining operations* * * *" (Emphasis added). The corresponding OSMRE permanent program regulation appears at 30 CFR 761.11(b).

In implementing this requirement, the 1979 OSMRE regulations at 30 CFR 761.5 defined the emphasized language in section 522(e)(2) in part to mean: "[T]hose significant values which could be damaged by, and are not capable of existing together with, surface coal mining operations because of the undesirable effects mining would have on those values, either on the area included in the permit application or on off-site areas which could be affected by mining. * * *" 44 FR 15341 (March 13, 1979).

On June 10, 1982 (47 FR 25278) OSMRE proposed, and on September 3, 1983 (48 FR 41312) OSMRE promulgated, a rule revising the 1979 definition. The revised definition dropped the introductory term "*no*" as unnecessary, changed the phrase "significant values" to "values to be evaluated for their significance," changed the term "offsite areas which could be affected by mining" to "affected areas," and of particular relevance to this proposed rule, inserted after the word "damage" the phrase "beyond an operator's ability to repair or restore."

Thus, following revision in 1983 the corresponding portion of the definition read: *"Significant recreational, timber, economic, or other values incompatible with surface coal mining operations* means those values to be evaluated for their significance which could be damaged beyond an operator's ability to repair or restore by, and are not capable of existing together with, surface coal mining operations because of the undesirable effects mining would have on those values, either on the area included in the permit application or on other affected areas." 30 CFR 761.5 (1983).

This revised definition was challenged by the citizen and environmental plaintiffs in *In re Permanent Surface Mining Regulation Litigation* (*In re Permanent II (Round III)*), 620 F. Supp. 1519 at 1556–57 (D.D.C. July 15, 1985). The challengers contended that the definition was contrary to the Act because under it mining could be permitted in national forests as long as reclamation was possible. The U.S. District Court for the District of Columbia agreed with this contention and remanded the definition. *Id.* at 1557. On November 20, 1986 (51 FR 41952) OSMRE suspended the definition "insofar as the listed values are evaluated for compatibility solely in terms of reclaimability." *Id.* at 41960–41961.

OSMRE appealed, and the U.S. Court of Appeals for the District of Columbia Circuit affirmed the district court ruling. *NWF v. Hodel*, No. 84–5743, slip op. at 116–121 (DC Cir. January 29, 1988). Like the district court, the court of appeals ruled that the revised regulation was contrary to the intent of the Congress and to elementary principles of statutory construction.

OSMRE now proposes to revise the § 761.5 definition of *significant recreational, timber, economic, or other values incompatible with surface coal mining operations* in conformance with the district court and court of appeals decisions.

B. AOC Variances (§§ 785.16 and 816.133(d)/817.133(d))

Section 515(b)(3) of the Act, 30 U.S.C. 1285(b)(3), generally requires "all surface coal mining and reclamation operations * * * to * * * compact * * * and grade in order to restore the approximate original contour of the land with all highwalls, spoil piles, and depressions eliminated * * *." For steep slope mining, section 515(d)(2), 30 U.S.C. 1285(d)(2), imposes an additional requirement for "[c]omplete backfilling with spoil material * * * to cover completely the highwall and return the site to the approximate original contour * * *."

The term *approximate original contour* (AOC), as used in these sections, is defined in section 701(2) of the Act, 30 U.S.C. 1291(2), and in the regulations at 30 CFR 701.5. For the text of the definition, which is not essential to an understanding of this portion of the proposed rule, see the subsequent heading, E. Contemporaneous Reclamation/Backfilling and Grading.

Sections 515(e)(1) through (e)(6) of the Act, 30 U.S.C. 1285(e)(1) through (e)(6), allow regulatory authorities to permit variances from AOC under certain circumstances. Section 515(e)(1) allows State regulatory programs, and requires Federal regulatory programs, to include procedures for permitting variances for the purposes set forth in section 515(e)(3). Section 515(e)(2) explicitly allows the regulatory authority to grant a variance from the steep-slope requirement of section 515(d)(2).

Accordingly, on March 13, 1979 (44 FR 15372) OSMRE promulgated at 30 CFR 785.16 a regulation which authorized the regulatory authority to grant a variance from AOC for nonmountaintop removal, steep slope mining. This regulation was challenged by the coal industry in *In re Permanent Surface Mining Regulation Litigation* (*In re Permanent I*), No. 79–1144, slip op. at 69–70 (D.D.C. February 26, 1980), as unduly restrictive.

In upholding the § 785.16 limitation of AOC variances to steep slop mining, the U.S. District Court for the District of Columbia in *In re Permanent I* said: "Section 515(e) of the Act contains one variance provision: it applies to steep slopes. Rather than calling for a general variance mechanism, section 515(e)(1) establishes the right to apply for a variance * * *. Section 515(e)(2) restricts the variance application to the contour restoration requirements of subsection 515(d)(2) (steep slopes). Whatever ambiguity may be read into

section 515 is dispelled upon examination of the legislative history." *Id.* at 69–70.

Subsequently, OSMRE reconsidered the legislative history of the Act and concluded "that the section allowing for AOC variances was not limited to steep slope operations." 48 FR 39900 (September 1, 1983). Accordingly, OSMRE expanded the coverage of § 785.16 to permit variances from AOC on both steep and non-steep slope terrain. 48 FR 39892 (September 1, 1983), as amended at 48 FR 44780 (September 30, 1983). At the same time (48 FR 39892), OSMRE revised its regulations governing postmining land use to include at 30 CFR 816.133(d) criteria for permitting variances in accordance with revised § 785.16. OSMRE set out its rationale for these revisions in a detailed analysis of the legislative history of section 515(e), and of the issues considered by the district court in *In re Permanent I*, 48 FR 39895–900.

These revised regulations were challenged by the citizen and environmental plaintiffs in *In re Permanent II (Round III)*, 620 F. Supp. at 1574–1578. In response, the district court remanded the revised regulations "as inconsistent with law to the extent they permit[ted] a variance beyond the variance for steep slopes embodied in section 515(e)(2) [of the Act]." *Id.* at 1577–78.

On November 20, 1986 (51 FR 41952), OSMRE suspended §§ 785.16 and 816.133(d) insofar as they authorized any variance from AOC outside a steep slope area. The district court remand was appealed by the coal industry, and affirmed by the court of appeals in *NWF v. Hodel*. Slip op. at 141–146. In affirming the district court, the court of appeals "rel[ied] on the text of section 515(e)(2), which specifically states that variances may be granted from the AOC requirements of section 515(d)(2), the steep slope mining provision; it does not, as enacted, state that non-steep slope mining AOC requirements may be waived or excused, and neither does it reference section 515(b)(3), the general AOC provision." *Id.* at 145. The court of appeals found nothing in the legislative history that would change its reading of section 515(e). *Id.* at 146.

OSMRE now proposes to revise § 785.16, and to remove the suspension of that section and of §§ 816.133(d) and 817.133(d), in conformance with the district court and court of appeals decisions.

C. Disposal of Excess Spoil on Preexisting Benches (§§ 816.74/817.74)

Section 515(b)(22) of the Act, 30 U.S.C. 1265(b)(22), specifies general performance standards for the placement of excess spoil material resulting from surface coal mining and reclamation activities. Section 516(b)(10) of the Act, 30 U.S.C. 1266(b)(10), authorizes similar performance standards for underground mining activities, with "such modifications as are necessary to accommodate the distinct difference between surface and underground coal mining."

The existing OSMRE permanent program regulations implementing these statutory performance standards appear at 30 CFR 816.71 through 816.74 for surface mining activities. In particular, § 816.74, which is affected by this proposed rule, governs the disposal of excess spoil on preexisting benches.

The original OSMRE permanent program regulations governing the disposal of excess spoil appeared at 30 CFR 816.71 through 816.74 (1979). These 1979 regulations did not provide specifically for the disposal of excess spoil on preexisting benches.

Regulations to allow the disposal of excess spoil on preexisting benches were proposed by OSMRE on May 16, 1980 (45 FR 32331). As a result of public comment, these regulations were reproposed in substantially different form on July 20, 1981 (46 FR 37283). Final regulations at 30 CFR 816.75 were promulgated on April 29, 1982 (46 FR 18553).

On June 8, 1982 (47 FR 24954), as part of an overall revision of its regulations governing the disposal of excess spoil, OSMRE proposed to revise § 816.75. The final revised and renumbered regulations at 30 CFR 816.74 were promulgated on July 29, 1983 (48 FR 32910). Paragraphs (a) through (d) of the revised regulations were essentially the same as the 1982 regulations, and a new paragraph (e) was added to allow in certain circumstances the disposal of excess spoil from an upper actively-mined bench to a lower preexisting bench by means of gravity transport.

In July 1986, OSMRE released for public review and comment the final draft of a study titled, "Encouraging Abandoned Mine Reclamation Via Remining: A Federal, State and Industry Initiative." On September 23, 1986, OSMRE held a public meeting in Washington, DC, to discuss the initiatives identified in this draft study. Copies of the draft study and a transcript of the public meeting have been placed in the administrative record for this rule.

One of the initiatives identified in the draft study and discussed at the public meeting was "Reclaiming Abandoned Mine Lands with Excess Spoil." A subissue within this initiative was the disposal of excess spoil on preexisting benches, and, particularly, whether the requirements for such disposal were excessive as compared to the general requirements for backfilling and grading. Both in written comments and orally at the public meeting, commenters pointed out that the differences in these requirements were inconsistent with the similar geologic and engineering characteristics of preexisting and active-mining benches.

In response to these comments, OSMRE proposes to revise §§ 816.74/817.74 to conform their requirements for disposal of excess spoil on preexisting benches with the backfilling and grading requirements of §§ 816.102/817.102.

D. Coal Mine Waste (§§ 816.81/817.81 and 816.89/817.89)

Recognizing the problems posed by improper disposal of coal waste, the Congress included in the Act a number of performance standards governing waste disposal. These performance standards appear in section 515 of the Act, 30 U.S.C. 1265, for surface mining activities, and in section 516 of the Act, 30 U.S.C. 1266, for underground mining activities.

To implement these statutory performance standards, the 1979 permanent program included at 30 CFR 701.5 a definition of *coal processing waste*, and at 30 CFR 816.81 to 816.93 (44 FR 15305 and 15422 (March 13, 1979)), regulations governing the disposal of coal mine waste. Several changes in the 1979 regulations, which are not otherwise relevant to this discussion but are noted for completeness, were made on August 18, 1980 (45 FR 54753), and on November 20, 1980 (45 FR 76832).

On September 28, 1983 (48 FR 44006) OSMRE promulgated at 30 CFR 701.5 a revised definition of *coal processing waste*, and new definitions of *coal mine waste*, *impounding structure*, and *refuse pile*. At the same time (48 FR 44006), OSMRE promulgated at 30 CFR 816.81, 816.83, 816.87 and 816.89, a comprehensive revision of the 1979 regulations. These new regulations were challenged in *In re Permanent II (Round III)*, 620 F. Supp. at 1534–1538.

In re Permanent II (Round III) involved two coal waste issues that are dealt with by this rule: (1) Controlled transport of coal waste; and (2) Environmental Protection Agency (EPA) regulations on hazardous wastes.

1. Controlled Transport of Coal Waste (§§ 816.81(a)/817.81(a))

In *In re Permanent II (Round III)* the district court rejected §§ 816.81(a)/817.81(a) as arbitrary and capricious to the extent they allowed end or side dumping of coal, a practice in hilly mining areas of placing material at a disposal site by means of gravity. 620 F. Supp. at 1534–1535.

On November 20, 1986 (51 FR 41952), OSMRE suspended §§ 816.81(a)/817.81(a) insofar as they allowed end or side dumping of coal mine waste. OSMRE now proposes to amend these sections, and to remove their suspension, in conformance with the district court decision.

2. EPA Regulations on Hazardous Wastes (§§ 816.89(d)/817.89(d))

Section 816.89(d) of the 1983 regulations required that "any noncoal mine waste defined as 'hazardous' under section 3001 of the Resource Conservation and Recovery Act (RCRA) (Pub. L. 94–580, as amended) and 40 CFR Part 261 shall be handled in accordance with the requirements of Subtitle C of RCRA and any implementing regulations." 48 FR 44006, 44030 and 44032 (September 26, 1983). As OSMRE noted in the preamble to the final rule, this was done at the suggestion of the U.S. Environmental Protection Agency (EPA). *Id.* at 44027.

In *In re Permanent II (Round III)*, 620 F. Supp. at 1538, the coal industry challenged this section of the regulations, which the district court remanded for lack of adequate notice and comment. The district court said:

> "Industry challenges this rule because it contends that Congress gave the Secretary exclusive responsibility to regulate every kind of waste at coal mines in SMCRA permits, and expressly provided that EPA's regulations for hazardous wastes under RCRA shall not be applied to coal mines.
>
> "The court need not spend much time detailing the statutory analysis because it concludes that the rule was promulgated without adequate notice and comment under the APA [(Administrative Procedure Act)] * * *.
>
> "The Secretary * * * did not respond to the Industry's APA challenge, but instead attempted to explain that the rule neither broadens nor diminishes the Secretary's rules on the disposal of noncoal waste. Industry takes a vastly different view of the effect of the regulation, and makes a lengthy argument that has nowhere been considered by the Secretary prior to this litigation. Second, Industry is able to point to legal and practical complications that result from the rules." *Id.*

On November 20, 1986 (51 FR 41952), OSMRE suspended §§ 816.89(d)/817.89(d). OSMRE now proposes to remove these sections from its regulations in conformance with the district court decision.

E. Contemporaneous Reclamation/Backfilling and Grading (§§ 816.100, 816.101, 816.104(a) and 816.105(a))

Section 515(b)(16) of the Act, 30 U.S.C. 1265(b)(16), provides for general performance standards to require surface coal mining and reclamation operations to "insure that all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable with [such operations]."

In addition, section 515(b)(3) of the Act, 30 U.S.C. 1265(b)(3), with two exemptions, provides for general performance standards requiring that "all surface coal mining operations backfill, compact * * * and grade in order to restore the approximate original contour of the land with all highwalls, spoil piles, and depressions eliminated. * * *"

The phrase *approximate original contour* (AOC) is defined in section 701(2) of the Act, 30 U.S.C. 1291(2), and 30 CFR 701.5 generally to mean "that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain. * * *"

The previously noted exemptions to the AOC restoration requirements of section 515(b)(3) pertain to operations involving either "thin" or "thick" overburden. With respect to thin overburden, section 515(b)(3) provides "[t]hat in surface coal mining which is carried out at the same location over a substantial period of time where the operation transects the coal deposit, and the thickness of the coal deposits relative to the volume of the overburden is large and where the operator demonstrates that the overburden and other spoil and waste materials at a particular point in the permit area or otherwise available from the entire permit area is insufficient, giving due consideration to volumetric expension, to restore the approximate original contour, the operator, at a minimum, shall backfill, grade, and compact (where advisable) using all available overburden and other spoil and waste materials to attain the lowest practicable grade but not more than the angle of repose, to provide adequate drainage and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region."

With respect to thick overburden, section 515(b)(3) provides "[t]hat in surface coal mining where the volume of overburden is large relative to the thickness of the coal deposit and where the operator demonstrates that due to volumetric expansion the amount of overburden and other spoil and waste materials removed in the course of the mining operations are more than sufficient to restore the approximate original contour, the operator shall after restoring the approximate contour, backfill, grade, and compact (where advisable) the excess overburden and other spoil and waste materials to attain the lowest grade but not more than the angle of repose, and to cover all acid-forming, and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region and that such overburden or spoil shall be shaped and graded in such a way as to prevent slides, erosion, and water pollution and is revegetated in accordance with the requirements of this Act."

The OSMRE permanent program promulgated on March 13, 1979 included regulations governing contemporaneous reclamation for surface mining activities at 30 CFR 816.100 (44 FR 15411), and backfilling and grading at 30 CFR 816.101, 816.102, 816.104 and 816.105, 44 FR 15411–15413. Section 816.100 required reclamation efforts to occur as contemporaneously as practicable with mining operations. Section 816.101 provided time and distance schedules as general requirements for backfilling and grading. Sections 816.104 and 816.105 provided for the thin and thick overburden exemptions authorized by section 515(b)(3) of the Act.

On May 24, 1983 (48 FR 23356) OSMRE revised its regulations governing contemporaneous reclamation and backfilling and grading. The revision deleted § 816.101 from the regulations, and added to § 816.100 a provision authorizing regulatory authorities to establish schedules for defining contemporaneous reclamation. At the same time the numerical limits on thin and thick overburden that appeared in §§ 816.104 and 816.105, *i.e.*, plus or minus twenty percent, were deleted and replaced with the statutory language. 48 FR 23355 (May 24, 1983).

The 1983 regulations were challenged in *In re Permanent Surface Mining Regulation [In re Permanent II (Round II)]*, 21 ERC 1724, 1744–1748 (D.D.C. October 1, 1984). As a result, the U.S. District Court for the District of Columbia remanded the regulations governing contemporaneous reclamation (§ 816.100; 21 ERC at 1745–46), cut and fill terraces (§ 816.102(g); 21 ERC at 1744–45), thin overburden (§ 816.104(a);

21 ERC at 1746), and thick overburden (§ 816.105(a); 21 ERC at 1746). Generally, the district court found that the remanded regulations lacked sufficient guidance to regulatory authorities beyond what was provided in the Act.

OSMRE appealed the district court ruling, and the court of appeals in *NWF v. Hodel* affirmed the remand with respect to contemporaneous reclamation and thin and thick overburden, but reversed with respect to cut and fill terraces. Slip op. at 78–690. The court of appeals said:

"We hold, in accord with the Secretary, that the Act does not automatically and inevitably *require* him to 'flesh out' the prescriptions of section 515(b)(3) and (b)(16). Nonetheless, we affirm the remand of the contemporaneous reclamation and thick and thin overburden regulations, for only with respect to terracing did the Secretary adequately explain why guidance beyond the statutory requirements sensibly could not be given to local regulators.

"We note that the Act expressly commands the Secretary to flesh out certain statutory provisions. * * * Nothing in the Act, however, expressly requires the Secretary to flesh out sections 515(b)(3) or (b)(16)." Slip op. at 79 (emphasis in original).

"In short," the court of appeals continued, "We read the Act, in light of its legislative history * * * to afford the Secretary discretion, absent an express statutory instruction to regulate, to decide whether fleshing out is appropriate in light of other concerns. Chief among these concerns is the need to accommodate widely varying local conditions that will not admit of a single, nationwide rule. * * *" *Id.* at 80–81 (footnote omitted).

* * * * Under [*Motor Vehicle Mfrs. Ass'n v.*] *State Farm [Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983),] 'the agency must examine the relevant data and articulate a satisfactory explanation' for the revised regulations. * * * The Secretary's accounting for his actions regarding the contemporaneous reclamation, and thin and thick overburden regulations fails to meet this standard: we do not find in the rulemaking record any identified factual basis for, or satisfactory explanation of, the Secretary's conclusion that the variety of local conditions warrants regulations on these matters that simply reiterate the relevant prescriptions in sections 515(b)(3) and (b)(16) of the Act. In contrast, we find that the Secretary adequately explained his revision of the terracing regulation." *Id.* at 81.

In affirming the district court remand of the contemporaneous reclamation regulations, the court of appeals said:

"Section 515(b)(16) of the Act directs mine operators to reclaim land 'as contemporaneously as practicable [to the] mining operations.' In 1979, the Secretary had issued both a general instruction that reclamation occur 'as contemporaneously as practicable with mining operations,' 30 CFR 816.100 (1982), and specific 'time and distance' standards for backfilling and grading spoil at contour and area strip mines, 30 CFR 816.101 (1982)." *Id.* at 82 (footnotes omitted, brackets in original).

"The 1983 revision retained the general prescription in § 816.100, but eliminated § 816.101 entirely. * * * To support his deletion, the Secretary commented 'that "contemporaneous reclamation" is a relative term which must be interpreted by each State on the basis of the mining conditions in its territory.' * * * Because § 816.101 was devised to account for local differences, we do not find entirely satisfying, as an explanation for scrapping the regulations entirely, the observation that '"contemporaneous reclamation" is a relative term' whose precise meaning depends on local conditions. The core deficiency, however, is that the Secretary has published barely more than a *conclusion* that the variety of mining conditions across the nation made § 816.101 of the regulations infeasible. *State Farm* requires a 'satisfactory *explanation*,' one that informs us *why* he drew his conclusion. The Secretary, in other words, if he determines there is no need to 'flesh out' the statute, must 'flesh out' his explanation so that we can review the rationality of his decision." *Id.* at 83–84 (footnote omitted, emphasis in original).

In affirming the district court remand of the thin and thick overburden regulations, the court of appeals said:

"Section 515(b)(3) of the Act directs mine operators to return land to its 'approximate original contour.' The provision contains an exemption, however, for situations where the spoil is either so thin or thick relative to the coal seam that there is insufficient or too much spoil to permit return to approximate original contour. * * * In 1979, the Secretary issued regulations that defined numerically when a variance from the approximate original contour requirement for too little or too much spoil could be granted. 30 CFR 816.104 and 816.105 (1982).

"In 1983, the Secretary eliminated the numerical definition, permitting a variance whenever the mine operator demonstrates that spoil is either 'insufficient' or 'more than sufficient' to restore land to its approximate original contour. 30 CFR 816.104 and 816.105 (1988). The sole support we have found for this revision is the Secretary's cryptic observation that '[t]he mathematical limit * * * has proved to be impractical because of its preciseness.' * * * We do not know from this unadorned statement why no adjusted (less precise) or alternative nationwide rule was ordered in place of the one found impractical. Absent fuller statement of the reason for the revision, we cannot intelligently determine whether the Secretary has a 'satisfactory explanation' for his action." *Id.* at 84–87 (footnotes omitted, brackets in original).

OSMRE now proposes to amend §§ 816.100, 816.104 and 816.105, and to add a new § 816.101, in conformance with the district court and court of appeals decisions.

III. Discussion of Proposed Rule

The proposed rule includes a number of similar sections in Part 816, which applies to surface mining activities, and Part 817, which applies to underground mining activities. For convenience, these similar sections are cited together in the following headings as §§ 816.[]/817.[], but in most cases only Party 816 is discussed in the text. In such cases the discussion applies equally to Part 817 unless otherwise noted.

A. Section 701.5—Definitions

OSMRE proposes to revise its 30 CFR 701.5 definition of *significant recreational, timber, economic, or other values incompatible with surface coal mining operations*. The revised definition would comply with the court of appeals decision upholding the district court remand of this definition. (See related discussion in II. Background, under the heading, A. Value Incompatible with Surface Coal Mining Operations.) In conformance with those decisions, OSMRE proposes to delete from the definition the phrase "beyond an operator's ability to repair or restore." As the courts have ruled, the operator's ability to reclaim the land may not be used as a criterion for determining compatibility under this definition.

B. Section 785.16—Permits Incorporating Variances from AOC Restoration Requirements for Steep Slope Mining

(For a related proposal, see the subsequent heading, I. Sections 816.133/817.133—AOC Variances)

1. Section Heading

OSMRE proposes to revise the section heading of 30 CFR 785.16 to include the phrase "for steep slope mining," and thus emphasize that this section authorizes variances from approximate original contour (AOC) only for steep slope surface coal mining and reclamation operations.

2. Section 785.16(a)

Section 785.16 authorizes the regulatory authority to issue a permit which includes a variance from certain AOC restoration requirements. The district court ruled, and the court of appeals agreed, that such a variance is authorized by the Act only for steep slope mining. (See related dicussion in II. Background, under the heading, B. AOC Variances.)

In accordance with these court decisions, OSMRE proposes to revise § 785.16(a) to limit the granting of AOC variances to "steep slope surface coal mining and reclamation operations."

The quoted phrase duplicates the corresponding wording of the 1979 regulation.

OSMRE further proposes to remove the November 30, 1988, suspension of § 785.16, which the proposed revision would render superfluous. (See II. Background, regarding suspension). The remainder of § 785.16 would remain unchanged.

C. Sections 816.74/817.74—Disposal of Excess Spoil: Preexisting Benches

OSMRE proposes to revise § 816.74 to conform its requirements for the disposal of excess spoil on preexisting benches with the backfilling and grading requirements of 30 CFR 816.102. This proposal was prompted by public comment received in response to an OSMRE draft study on remining initiatives and at a related public meeting. (See related discussion in II. Background, under the heading, C. Disposal of Excess Spoil on Preexisting Benches.)

The proposed rule would redesignate §§ 816.74(b), (c), (d) and (e) as §§ 816.74(c), (d), (e) and (g), respectively; would revise §§ 816.74(e) and (e); and would add new §§ 816.74(b) and (f). A discussion of each of these proposed changes follows under separate subheadings for each paragraph of this section.

1. Sections 816.74(a)/817.74(a)

OSMRE proposes to substitute for the existing references in § 816.74(a) to the general requirements for the disposal of excess spoil, new references to the corresponding general requirements for backfilling and grading. Also, to account for difference in the existing and newly-referenced sections, OSMRE proposes to add to § 816.74(a) a requirement that the affected portion of the preexisting bench be permitted. A detailed explanation follows.

Currently, § 816.74(a) authorizes the regulatory authority to approve the disposal of excess spoil through placement on preexisting benches "provided that all the standards set forth in § 816.71(a), (b)(1) [and] (d) through (f) * * * are met." The referenced § 816.71 contains general requirements for the disposal of excess spoil.

The proposed rule would replace the current references to § 816.71 with references to § 816.102 (c), (e) through (h), and (j). Section 816.102 contains the backfilling and grading counterparts to the excess spoil disposal regulations in § 816.71. This substitution would conform the requirements for the disposal of excess spoil on a preexisting bench with the existing requirements for the backfilling and grading of an active mining bench. As explained subsequently in greater detail, OSMRE proposes to do this in recognition of the similar characteristics of preexisting and active mining benches.

Currently-referenced § 816.71(a) requires that the disposal of excess spoil occur "within the permit area." The substituted paragraphs of § 816.102 do not explicitly refer to the permit area. To account for this difference, proposed § 816.74(a) would explicitly require that "the affected portion of the preexisting bench is permitted." Under this provision, the affected portion of the preexisting bench could be either within the permit area where the excess spoil was generated, or in another permit area.

Currently-referenced § 816.71(a) also covers adverse effects on surface and groundwater, mass stability and movement, and the suitability of the final fill for reclamation and revegetation. The proposed rule addresses effects on surface and ground water by reference to §§ 816.102 (c), (e) through (h), and (j), and by the addition of § 816.74(e)(3). (See subsequent discussion of § 816.74(e)(3).)

The proposed rule addresses effects on mass stability and movement by reference to §§ 816.102 (c), (e), (g) and (j), and by the addition of § 816.74(e)(4). (See subsequent discussion of § 816.74(e)(4).) The suitability of the final fill for reclamation and revegetation are addressed in the proposed rule by reference to § 816.102 (e) through (h), and (j).

Currently-referenced § 816.71(b)(1) requires that excess spoil fill and appurtenant structures be designed using current, prudent engineering practices; meet any design criteria established by the regulatory authority; and be certified by a qualified registered professional engineer. OSMRE proposes to delete from § 816.74(a) the reference to § 816.71(b)(1) because existing § 816.74(c), which requires that "[t]he fill shall be designed, using current, prudent engineering practices," itself provides sufficient design standards. Note, however, that under referenced § 816.102(e), which itself references 30 CFR 816.81, the requirement of § 816.81(c) for design certification would apply to any fill constructed on a preexisting bench using coal processing waste or underground development waste.

Currently-referenced §§ 816.71 (d) and (e)(2) require foundation analysis, keyway cuts, and rock toe buttresses, and prescribe spoil placement and the thickness of spoil lifts. These measures are appropriate where excess spoil is disposed of on sloping ground and there is a need to ensure stability of the fill structure. Corresponding requirements do not appear in § 816.102 since backfilling and grading operations typically are conducted on relatively flat benches where these special measures are not needed to ensure stability. Because preexisting benches are similar to active contour mining benches that are regulated under § 816.102, the reference to the requirements of §§ 816.71 (d) and (e)(2) was deleted from the proposed rule.

Currently-referenced § 816.71(e)(1) provides for the removal of vegetative and organic materials prior to the placement of excess spoil; the removal, segregation, storage and redistribution of topsoil; and the use of organic material as mulch or as an additive to topsoil. Proposed new § 816.74(b) contains corresponding requirements. (See subsequent discussion of § 816.74(b).)

Currently-referenced §§ 816.71(e) (3), (4) and (5) address final fill configuration and terraces, prohibit permanent impoundments, authorize small depressions, and require adequate covering of acid-, toxic-forming and combustible materials. Proposed § 816.74(a) substitutes references to § 816.102(f) through (h), which contain corresponding requirements. Although the rule would not explicitly prohibit permanent impoundments, § 816.74(e) does not reference § 816.102(f), which authorizes permanent impoundments in certain circumstances, and the regulatory authority would not be authorized to allow permanent impoundments on preexisting benches.

Currently-referenced § 816.71(f) addresses drainage control, including diversions and underdrains. Deleting the reference to § 816.71(f), proposed new § 816.74(e)(4) would require that "[t]he preexisting bench shall be backfilled and graded to * * * [p]revent water infiltration into the backfill from springs, water courses, or seeps, and ensure stability." (See subsequent discussion of § 816.74(e)(4).)

Currently-referenced § 816.71(g) addresses surface area stabilization, erosion and revegetation. Proposed § 816.74(a) substitutes a reference to § 816.102(j), the backfilling and grading counterpart in terms of stabilization and erosion. In addition, the last sentence of § 816.71(g) would be replicated as new § 816.74(f) to require that "[a]ll disturbed areas, including diversion channels that are not riprapped or otherwise protected, shall be revegetated upon completion of construction." (See subsequent discussion of § 816.74(f).)

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Currently-referenced § 816.71(h) addresses periodic inspections of excess spoil fill structures during construction. OSMRE proposes to delete this requirement from § 816.74 since the backfilling and grading regulations at § 816.102 do not require these inspections. Because a preexisting bench provides a relatively flat surface, the design and construction of fill structures on preexisting benches are not as critical as for structures regulated under § 816.71, and inspections during construction are not necessary. Note, however, that under referenced § 816.102(e), which itself references 30 CFR 816.83, the requirement of § 816.83(d) for design inspection during construction would apply to any fill constructed on a preexisting bench using coal processing waste or underground development waste.

Currently-referenced § 816.71(i) addresses the disposal of coal mine waste in excess spoil fills. Proposed § 816.74(a) substitutes a reference to § 816.102(e), the backfilling and grading counterpart. While § 816.71(i) requires disposal of coal mine waste only in accordance with § 816.83, § 816.102(e) requires disposal in accordance with both §§ 816.81 *and* 816.83, and thus is more inclusive. While § 816.71(i) limits disposal to coal mine waste that is nontoxic and nonacid forming, proposed § 816.74 would allow the disposal of such materials as long as they were covered adequately, as provided in referenced § 816.102(f).

2. Sections 816.74(b)/817.74(b)

Currently-referenced § 816.71(e)(1) addresses the removal of vegetative and organic materials from the disposal area, and the removal, segregation, storage and the redistribution of topsoil. In place of this reference, proposed new § 816.74(b) would require that "[a]ll vegetation shall be removed from the affected portion of the preexisting bench prior to placement of the excess spoil," would cross-reference the permanent program topsoil performance standards at 30 CFR 816.22, and would allow the use of topsoil substitutes in accordance with § 812.22(b) where insufficient topsoil was available on the preexisting bench.

3. Sections 816.74(c)/817.74(c)

Existing § 816.74(b) would be redesignated as proposed § 816.74(c).

4. Sections 816.74(d)/817.74(d)

Existing § 816.74(c) would be redesignated as proposed § 816.74(d).

5. Sections 816.74(e)/817.74(e)

Existing § 816.74(d) (1) and (2) require that the preexisting bench be backfilled and graded to achieve the most moderate slope possible which does not exceed the angle of repose, and to eliminate the highwall to the maximum extent technically practical. Only minor editorial revisions are proposed for the corresponding redesignated §§ 816.74(e) (1) and (2).

Proposed new § 816.74(e)(3) would require that the preexisting bench be backfilled and graded to "[m]inimize erosion and water pollution both on and off the site." This replicates the backfilling and grading provision at § 816.102(a)(4), which is not referenced by the rule. This requirement, in conjunction with other previously discussed provisions, would provide the requisite hydrologic balance protection.

Proposed new § 816.74(e)(4) would require that the preexisting bench be backfilled and graded to "[p]revent water infiltration into the backfill from springs, water courses, or seeps, and ensure stability." This corresponds with § 816.71(f), which currently is referenced by existing § 816.74(a). (See preceding discussion of § 816.74(a).)

6. Sections 816.74(f)/817.74(f)

Proposed new § 816.74(f) would require that "[a]ll disturbed areas, including diversion channels that are not riprapped or otherwise protected, shall be revegetated upon completion of construction." This replicates the last sentence of § 816.71(g), which currently is referenced by § 816.74(a). (See preceding discussion of § 816.74(a).)

7. Sections 816.74(g)/817.74(g)

Existing § 816.74(e) would be redesignated as proposed § 816.74(g).

D. Sections 816.81/817.81—Coal Mine Waste: General Requirements

This rule would amend § 816.81 in response to the district court decision concerning end or side dumping of coal mine waste. (See related discussion in II. Background, under the heading, D.1. Controlled Transport of Coal Waste.) As previously noted, the district court said that OSMRE was not required to prohibit end or side dumping, but need only explain why this practice was reasonable. Nevertheless, OSMRE proposes to reintroduce into § 816.81 the placement method of "hauled or conveyed" as it appeared prior to the 1983 rule, and thus to prohibit the final placement of coal mine waste by end or side dumping, consistent with the discussion of this issue in the preamble to the 1979 rule at 44 FR 15209–10 (March 13, 1979).

OSMRE continues to maintain, as it did in the preamble to the 1983 rule (48 FR 44011), that the controlled gravity placement of coal mine waste is not inconsistent with the Act, and that the legislative history of the Act does not indicate that the Congress intended to regulate the means of transporting coal mine waste to the disposal site.

The practice of transporting coal mine waste through methods other than direct hauling is well documented in the technical literature. (See, for example, "Engineering and Design Manual—Coal Refuse Disposal Facilities," pp. 8.22–8.75, by E. D'Appolonia Consulting Engineers for the Mine Safety and Health Administration.) These methods include conveyor belts and tramways and particularly useful in mountainous terrain where haul road construction is difficult, or where steep grades greatly decrease the efficiency of individual hauling units. (See *id.* at p. 8.45; and "Pit Slope Manual," "Chapter 9: Waste Embankments," p. 96, by the Canada Center for Mineral and Energy Technology.)

However, OSMRE is aware of the dangers associated with the end or side dumping of coal mine waste, and of the need for placement in a controlled manner. Thus, the requirement of proposed § 816.81 that "[c]oal mine waste shall be hauled or conveyed and placed in a controlled manner" would preclude final placement of material by means of gravity through end or side dumping.

E. Sections 816.89(d)/817.89(d)—EPA Regulations on Hazardous Wastes

The district court, without considering the merits of § 816.89(d), concluded that it was promulgated without adequate notice and comment as required by the Administrative Procedure Act. (See related discussion in II. Background, under the heading, D.2. EPA Regulations on Hazardous Wastes.)

OSMRE proposes to remove § 816.89(d) as superfluous because all noncoal mine waste defined as "hazardous" under section 3001 of the Resource Conservation and Recovery Act (RCRA), P.L. 94–580, as amended, and 40 CFR Part 261 is regulated by EPA in accordance with the requirements of Subtitle C of RCRA and its implementing regulations.

F. Section 816.100—Contemporaneous Reclamation

OSMRE proposes to revise existing § 816.100 to remove a requirement which

duplicates a requirement in proposed § 816.101(b).

Proposed new § 816.101 would govern the scheduling of backfilling and grading. (See the immediately following heading, G. Section 816.101—Backfilling and Grading: Time and Distance Requirements.) Proposed § 816.101(b) would authorize the regulatory authority to establish alternative backfilling and grading schedules. This same authorization currently appears as the last sentence of § 816.100, but is more appropriate in the context of § 816.101.

Thus, upon promulgation of § 816.101 the final sentence of existing § 816.100, which states that "[t]he regulatory authority may establish schedules that define contemporaneous reclamation," would become superfluous and be removed.

G. Section 816.101—Backfilling and Grading: Time and Distance Requirements

As discussed previously, in 1983 OSMRE deleted from its regulations § 816.101, which in paragraph (a) set out time and distance requirements for backfilling and grading. (See II. Background, under the heading, E. Contemporaneous Reclamation/Backfilling and Grading; for a related proposal, also see the immediately preceding heading, F. Section 816.100—Contemporaneous Reclamation.) The district court remanded the deletion of § 816.101, and the court of appeals agreed. OSMRE now proposes to add a new § 816.101 in conformance with the district court and court of appeals decisions.

1. Section 816.101(a)

Proposed § 816.101(a) would establish surface coal mining backfilling and grading time and distance schedules for contour and area mining, and authorize the regulatory authority to establish schedules for other surface mining methods. For contour mining, § 816.101(a)(1) would require the completion of backfilling and grading within 60 days or 1,500 linear feet following coal removal. For area mining, § 816.101(a)(2) would require completion within 180 days following coal removal, and not more than four spoil ridges behind the pit being worked, the spoil from the active pit constituting the first ridge.

Under § 816.101(a)(3) the schedules for surface mining methods other than contour or area mining would be as established by the regulatory authority through the State program approval process. Any schedule established by the regulatory authority under § 816.101(a)(3) would have to incorporate one of the two standards set out in § 816.101(c).

The time and distance requirements of proposed § 816.101(a) are the same as in the 1979 rule. The preamble to that rule (44 FR 15224 (March 13, 1979)) stated that its backfilling and grading schedules were based on an analysis of existing State regulations. During preparation of this proposed rule, OSMRE again reviewed the backfilling and grading schedules in approved State programs. All State programs have adopted either the 1979, or more stringent, schedules. Based on almost ten years of experience, these schedules are fully adequate to meet the goals of the Act for contemporaneous reclamation.

2. Section 816.101(b)

Proposed § 816.101(b) would allow the regulatory authority to establish, through the State program approval process, alternative backfilling and grading schedules in lieu of those set out in § 816.101(a). This responds to comments received during outreach briefings, in which the States requested backfilling and grading guidelines, but also asked to retain discretion in determining alternative schedules. OSMRE is proposing this provision to give State regulatory authorities the flexibility to adopt backfilling and grading schedules which meet State-specific conditions.

The alternative schedules, which would have to be consistent with the schedules set out in § 816.101(a), could apply to geographic units, mining methods, or other categories selected by the regulatory authority. As required by subsequently discussed § 816.101(c), each alternative schedule would be based on either (1) the maximum time interval between removal of the coal and the completion of backfilling and grading; or (2) the maximum extent of the operation between coal removal and the completion of backfilling and grading, as measured in linear feet, number of spoil ridges, or other quantifiable criteria.

Alternative backfilling and grading schedules would be established as State program regulations approved by the Secretary. During the approval process each alternative schedule, with supporting justification, would be reviewed by OSMRE to determine whether it would meet the requirements for contemporaneous reclamation. The review would be based on the climate, terrain, mining methods and other physical conditions in the area to which the schedule would apply.

Under § 816.101(b), for example, a State may wish to demonstrate that the requirement for backfilling and grading to follow coal removal by not more than sixty days is unrealistic for contour mining operations in that State. In that case the Secretary might approve a longer duration as consistent with § 816.101(a).

3. Section 816.101(c)

Proposed § 816.101(c) would require the regulatory authority to incorporate in any backfilling and grading schedule it established either of the two alternative standards set out in the rule. These standards would apply both to schedules for other surface mining methods established under § 816.101(a)(3), and to alternative schedules established under § 816.101(b).

The two alternative standards are (1) the maximum time interval between coal removal and the completion of backfilling and grading; and (2) the maximum extent of the operation between initial coal removal and the completion of backfilling and grading, as measured in lineal feet, number of spoil ridges, or other quantifiable equivalent. These standards correspond with the schedules set out in §§ 816.101(a) (1) and (2), but lack specific numerical requirements, which would be added by the regulatory authority.

4. Section 816.101(d)

Proposed § 816.101(d) would authorize the regulatory authority to extend the time allowed for backfilling and grading a specified portion of the permit area if the permittee demonstrated in accordance with 30 CFR 780.18(b)(3) that additional time was necessary. The 1979 rules at §§ 816.101(a) (1) and (3) for contour and area strip mining, respectively, made similar provision for granting additional time. 44 FR 15411. As under the 1979 rule the regulatory authority could allow additional time for backfilling and grading if, for example, the permittee demonstrated that the time limit of the rule was too restrictive because of weather or local soil conditions. 44 FR 15226.

H. Section 816.104—Backfilling and Grading: Thin Overburden, Section 816.105—Backfilling and Grading: Thick Overburden

As discussed previously, in 1983 OSMRE replaced the numerical limits on thin and thick overburden in §§ 816.104 and 816.105, respectively, with the more general statutory language. (See II. Background, under the heading, E. Contemporaneous Reclamation/Backfilling and Grading.) The district court remanded these sections, and the

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court of appeals agreed, seeking a fuller statement of the reasons for the revision. OSMRE now proposes to revise §§ 816.104 and 816.105, and to explain fully its reasons for doing so, in conformance with the district court and court of appeals decisions.

For convenience, the proposed definitions of *thin overburden* and *thick overburden* in §§ 816.104(a) and 816.105(a), respectively, are discussed together under the following combined subheading. The backfilling and grading performance standards for thin and thick overburden in §§ 816.104(b) and 816.105(b), respectively, are then discussed under separate subheadings.

1. Section 816.104(a)—Definition of Thin Overburden, Section 816.105(a)—Definition of Thick Overburden

OSMRE has reorganized §§ 816.104 and 816.105 so that paragraphs (a) of these sections contain definitions of *thin overburden* and *thick overburden*, respectively, and paragraphs (b) contain the corresponding backfilling and grading performance standards. The definitions were not relocated to 30 CFR 701.5 because of their limited applicability. The term *spoil*, which is used in the definitions, is defined at § 701.5 to mean "overburden that has been removed during surface coal mining operations."

Proposed § 816.104(a) defines *thin overburden* as "insufficient spoil and other waste materials available from the entire permit area to restore the disturbed area to its approximate original contour. Insufficient spoil and other waste materials occur where the overburden thickness times the swell factor, plus the thickness of other available waste materials, is less than the combined thickness of the overburden and coal bed prior to removing the coal, so that after backfilling and grading the surface configuration of the reclaimed area would not: (1) [C]losely resemble the surface configuration of the land prior to mining; or (2) [b]lend into and complement the drainage pattern of the surrounding terrain".

Proposed § 816.105(a) defines *thick overburden* as "more than sufficient spoil and other waste materials available from the entire permit area to restore the disturbed area to its approximate original contour. More than sufficient spoil and other waste materials occur where the overburden thickness times the swell factor exceeds the combined thickness of the overburden and coal bed prior to removing the coal, so that after backfilling and grading the surface configuration of the reclaimed area would not: (1) [C]losely resemble the surface configuration of the land prior to mining; or (2) [b]lend into and complement the drainage pattern of the surrounding terrain".

Each of these two definitions includes three standards which incorporate the requirements of sections 515(b)(3) and 701(2) of the Act. The first standard is the sufficiency of the overburden, and in the case of thin overburden, other waste materials, to restore approximate original contour (AOC). The second and third standards, which are elements of the first, concern the definition of AOC in terms of the surface configuration and drainage pattern off the reclaimed area. OSMRE proposes to adopt these general standards for the following reasons.

The exemptions in section 515(b)(3) of the Act for areas of thin and thick overburden are based on the sufficiency of the overburden to restore the land to AOC. Thin overburden is insufficient to restore AOC; thick overburden is more than sufficient. Thus, whether thin or thick overburden occurs depends fundamentally on the definition of *AOC*.

Section 701(2) of the Act and the corresponding regulation at 30 CFR 701.5 generally define *AOC* as "that *surface configuration* achieved by backfilling and grading of the mined area so that *the reclaimed area* including any terracing or access roads, [1] *closely resembles the general surface configuration of the land prior to mining* and [2] *blends into and complements the drainage pattern of the surrounding terrain*, with all highwalls and spoil piles eliminated * * *." (Emphasis added.)

Under this definition the two principal standards for determining AOC are whether the surface configuration of the reclaimed area would (1) closely resemble the surface configuration of the land prior to mining; and (2) blend into and complement the drainage pattern of the surrounding terrain. In restoring AOC, both of these standards must be met.

The proposed definitions of *thin overburden* and *thick overburden* incorporate these two standards from the definition of *AOC* as the measure of whether the spoil and other available waste materials are sufficient to restore AOC. The definitions apply these two standards for AOC in the disjunctive, using the term *or*, because a failure to meet either standard would prevent the restoration of AOC, and thus establish the occurrence of thin or thick overburden.

Unlike the proposed rule, the 1979 regulations defined thin and thick overburden in precise numerical terms as having a final thickness of twenty percent less or more, respectively, than the initial thickness of the overburden and coal. 44 FR 15412–13. As it did in 1983, OSMRE again rejects those precise numerical terms as impractical for evaluating the utility of the overburden and other available waste materials to restore AOC. As the Congress has stated, "[AOC] is, of necessity, a flexible standard which contemplates different mining circumstances". H.R. Rep. No. 95–218, 95th Cong., 1st Sess. 93 (1977).

Defining thin and thick overburden in precise numerical terms is impractical because of the diversity of surface configurations and drainage patterns to which the proposed rule would apply throughout the coal mining regions of the United States. What might constitute a gross variation from AOC on flat prairie land might be barely perceptible in rugged mountain terrain. Depending on the circumstances, inflexible numerical standards might be either too loose or too stringent, and seldom ideal.

The use of the word *approximate* in the term AOC in itself supports the adoption of a subjective standard. OSMRE is aware of no technical basis for universally relating a standard of twenty percent more or less overburden, or any other numerical standard, to the restoration of AOC. The previously quoted definitions of *AOC* at section 701(2) of the Act and 30 CFR 710.5 employ no such numerical standard. The existing backfilling and grading performance standards at 30 CFR 816.102, which in paragraph (a) require backfilling and grading to "[a]chieve the approximate original contour," employ no such numerical standard.

Evaluations of post-mining surface configuration and drainage pattern involve subjective professional judgments that must be custom-tailored to approximate the terrain at any given mine. The responsible regulatory authority is best equipped to determine the sufficiency of overburden to restore AOC in its own jurisdiction on a case-by-case basis using general standards.

For these reasons OSMRE believes it is preferable to define *thin overburden* and *thick overburden* generally to conform with the standards of the Act, while giving the regulatory authority sufficient discretion to apply these standards in a sound professional manner to the diverse conditions which prevail at individual mines in each particular State.

2. Section 816.104(b)—Thin Overburden Performance Standards

Proposed § 816.104(b) sets out the performance standards that apply where thin overburden, as defined in § 816.104(a), occurs within the permit area. The permittee would establish the occurrence of thin overburden in accordance with 30 CFR 780.18(b)(3), which governs the content of the permit application reclamation plan as it relates to backfilling, soil stabilization, compacting and grading.

Where the occurrence of thin overburden was established, § 816.104(b) would require the permittee at a minimum to (1) use all spoil and other waste materials available from the entire permit area to attain the lower practicable grade, but not more than the angle of repose; and (2) meet the general backfilling and grading requirements of 30 CFR 816.102 (a)(2) through (j).

The performance standards in §§ 816.104(b) (1) and (2) are the same as were adopted by OSMRE in 1983 (48 FR 23369), and are intended to complement the general backfilling and grading performance standards in § 816.102. Section 816.104(b)(1) derives directly from the thin overburden exemption in section 515(b)(3) of the Act. Section 816.104(b)(2) incorporates all of the requirements of § 816.102, which sets out the general requirements for backfilling and grading, except for those in § 816.102(a)(1), which requires the restoration of AOC, and those in § 816.102(k), which lists a number of exemptions, including one for thin overburden.

The only practicable difference between the general performance standards in § 816.102 and those for thin overburden in § 816.104(b) is that for the latter the achievement of AOC is not required. Together, §§ 816.104(b) (1) and (2) incorporate all of the requirements for backfilling, grading and compacting thin overburden that appear in section 515(b)(3) of the Act.

3. Section 816.105(b)—Thick Overburden Performance Standards

Proposed § 816.105(b) sets out the performance standards that apply where thick overburden, as defined in § 816.105(a), occurs within the permit area. The permittee would establish the occurrence of thick overburden in accordance with 30 CFR 780.18(b)(3), which governs the content of the permit application reclamation plan as it relates to backfilling, soil stabilization, compacting and grading.

Where the occurrence of thick overburden was established, § 816.105(b) would require the permittee at a minimum to (1) restrore the approximate original contour and then use the remaining spoil and other water materials to attain the lowest practicable grade, but not more than the angle of repose; (2) meet the general backfilling and grading requirements of 30 CFR 816.102 (a)(2) through (j); and (3) dispose of any excess spoil in accordance with 30 CFR 816.71 through 816.74.

The performance standards in §§ 816.105(b) (1) through (3) are the same as were adopted by OSMRE in 1983 (48 FR 23369), and are intended to complement the general backfilling and grading performance standards in § 816.102. Section 816.105(b)(1) derives directly from the thin overburden exemption in § 515.(b)(3) of the Act. Section 816.105(b)(2) incorporates all of the requirements of § 816.102, which sets out the general requirements for backfilling and grading, except for those in § 816.102(a)(1), which requires the restoration of AOC, and those in § 816.102(k), which lists a number of exemptions, including one for thick overburden. Section 816.105(b)(3) references the existing regulations governing the disposal of excess spoil, and would ensure that any spoil and other waste materials that would exceed the angle of repose are disposed of in accordance with the requirements of the Act.

The only practical differences between the general performance standards in §816.102 and those for thick overburden in §816.105(b) are that under the latter (1) after AOC is restored the permittee may continue to use any remaining spoil and other waste materials to attain the lowest practicable grade, but not more than the angle of repose; and (2) the permitted must dispose of any excess spoil in accordance with §§816.71 through 816.74. Together, these sections incorporate all of the requirements for backfilling, grading and compacting thick overburden that appear in section 515(b)(3) of the Act.

I. Sections 816.133(d)/817.133(d)—AOC Variances

Existing §§816.133(d)/817.133(d) set out criteria for the granting of a variance from the requirement to restore disturbed areas to their approximate original contour, including in paragraphs (d)(1) that the variance be granted in accordance with § 785.16. This reference to remanded § 785.16 promoted the district court to remand §§ 816.133(d)/817.133(d) to the extent they permitted a variance other than for steep slope mining. (See related discussion in II. Background, under the heading, B. AOC Variances, and in this section of the preamble under the heading, B. Section 785.16—Permits Incorporating Variances from AOC Restoration Requirements for Steep Slope Mining.)

As explained previously, OSMRE suspended §§ 816.133(d)/817.133(d) in compliance with the district court decision. The proposed revision of § 785.16 would render these suspensions superfluous. Thus, OSMRE proposes to remove the suspensions of §§ 816.133(d)/817.133(d) upon promulgation of final § 785.16.

IV. Procedural Matters

Federal Paperwork Reduction Act

The collections of information contained in this rule have been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by the Office of Management and Budget.

Public reporting burden for this collection of information is estimated to average 10 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information including suggestions for reducing the burden to, Information Collection Clearance Officer, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Washington, DC 20240; and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Executive Order 12291 and Regulatory Flexibility Act

The DOI has determined that the proposed rule is not a major rule under the criteria of Executive Order 12291 (February 17, 1981), and certifies that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The rule would affect a relatively small number of surface coal mining operations. The rule does not distinguish between small and large entities. The economic effects of the proposed rule are estimated to be minor, and no incremental economic effects are anticipated as a result of the rule.

National Environmental Policy Act

OSMRE has prepared a draft environmental assessment (EA), and has made an interim finding that the proposed rule would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act

of 1969 (NEPA), 42 U.S.C. 4332(2)(C). It is anticipated that a finding of no significant impact will be approved for the final rule in accordance with OSMRE procedures under NEPA. The EA is on file in the OSMRE Administrative Record at the address specified previously (see "ADDRESSES"). The EA will be completed, and a finding on the significance of any resulting impacts will be made, prior to promulgation of the final rule.

Author

The principal author of this proposed rule is Albert A. Kashinski, Division of Surface Mining, Office of the Solicitor, U.S. Department of the Interior, Washington, DC. 20240.

List of Subjects

30 CFR Part 761

Historic preservation, National forests, National parks, National trails system, National wild and scenic rivers system, Surface mining, Underground mining, Wilderness areas, Wildlife refuges.

30 CFR Part 785

Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 816

Environmental protection, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 817

Environmental protection, Reporting and recordkeeping requirements, Underground mining.

Accordingly, it is proposed to amend 30 CFR Parts 761, 785, 816 and 817 as set forth below:

Dated: August 18, 1988.

James E. Cason,

Acting Assistant Secretary—Land and Minerals Management.

PART 761—AREAS DESIGNATED BY ACT OF CONGRESS

1. The authority citation for Part 761 continues to read as follows:

Authority: 30 U.S.C. 1201, *et seq.*

§ 761.5 [Amended]

2. Section 761.5 is amended by removing from the definition of *significant recreational, timber, economic, or other values incompatible with surface coal mining operations* the phrase "beyond an operator's ability to repair or restore."

PART 785—REQUIREMENTS FOR PERMITS FOR SPECIAL CATEGORIES OF MINING

3. The authority citation for Part 785 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended, and Pub. L. 100-34.

4. The suspension published in the Federal Register of November 20, 1980 at 51 FR 41961 is removed for § 785.16.

5. Section 785.16 is amended by revising the heading and the first sentence of paragraph (a) to read as follows:

§ 785.16 Permits incorporating variances from approximate original contour restoration requirements for steep slope mining.

(a) The regulatory authority may issue a permit for nonmountaintop removal, steep slope, surface coal mining and reclamation operations which includes a variance from the requirements to restore the disturbed areas in their approximate original contour that are contained in §§ 816.102, 816.104, and 816.107, or 817.102 and 817.107 of this chapter. * * *

* * * * *

PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES

6. The authority citation for Part 816 continues to read as follows:

Authority: Pub. L. 95-87 (30 U.S.C. 1201 *et seq.*), and Pub. L. 100-34, unless otherwise noted.

7. Section 816.74 is amended by redesignating paragraphs (b), (c), (d) and (e) as paragraphs (c), (d), (e) and (g), respectively, by revising paragraphs (a) and (e), and by adding paragraphs (b) and (f) to read as follows:

§ 816.74 Disposal of excess spoil: Preexisting benches.

(a) The regulatory authority may approve the disposal of excess spoil through placement on a preexisting bench if the affected portion of the preexisting bench is permitted and the standards set forth in §§ 816.102 (c), (e) through (h), and (j), and the requirements of this section are met.

(b) All vegetation shall be removed from the affected portion of the preexisting bench prior to placement of the excess spoil. Any available topsoil on the bench shall be removed, stored and redistributed in accordance with § 816.22 of this part. Substitute or supplemental materials may be used in accordance with § 816.22(b) of this part.

* * * * *

(e) The preexisting bench shall be backfilled and graded to—

(1) Achieve the most moderate slope possible which does not exceed the angle of repose;

(2) Eliminate the highwall to the maximum extent technically practical;

(3) Minimize erosion and water pollution both on and off the site; and

(4) Prevent water infiltration into the backfill from springs, water courses, or seeps, and ensure stability.

(f) All disturbed areas, including diversion channels that are not riprapped or otherwise protected, shall be revegetated upon completion of construction.

* * * * *

8. Section 816.81 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 816.81 Coal mine waste: General requirements.

(a) *General.* All coal mine waste shall be placed in new or existing disposal areas within a permit area, which are approved by the regulatory authority for this purpose. Coal mine waste shall be hauled or conveyed and placed in a controlled manner to—

* * * * *

§ 816.89 [Amended]

9. Section 816.89 is amended by removing paragraph (d).

§ 816.100 [Amended]

10. Section 816.100 is amended by removing the last sentence.

11. Section 816.101 is added to read as follows:

§ 816.101 Backfilling and grading: Time and distance requirements.

(a) Except as provided in paragraphs (b) and (d) of this section, backfilling and grading for surface mining activities shall be completed according to one of the following schedules:

(1) *Contour mining.* Within 60 days or 1,500 linear feet following coal removal;

(2) *Area mining.* Within 180 days following coal removal, and not more than four spoil ridges behind the pit being worked, the spoil from the active pit constituting the first ridge; or

(3) *Other surface mining methods.* In accordance with the schedule established by the regulatory authority through the State program approval process.

(b) In lieu of the schedules set out in paragraph (a) of this section, the regulatory authority may establish through the State program approval process alternative backfilling and grading schedules which are consistent with that paragraph. Alternative schedules may apply to geographic units, mining methods, or other categories selected by the regulatory authority.

(c) Each backfilling and grading schedule established by the regulatory authority shall incorporate one of the following two standards governing the completion of backfilling and grading:

(1) Maximum time interval between coal removal and the completion of backfilling and grading; or

(2) Maximum extent of the operation between coal removal and the completion of backfilling and grading, as measured in linear feet, number of spoil ridges, or other quantifiable equivalent.

(d) The regulatory authority may extend the time allowed for backfilling and grading a specified portion of the permit area if the permittee demonstrates in accordance with § 780.18(b)(3) of this chapter that additional time is necessary.

12. Section 816.104 is revised to read as follows:

§ 816.104 Backfilling and grading: thin overburden.

(a) *Definition. Thin overburden* means insufficient spoil and other waste materials available from the entire permit area to restore the disturbed area to its approximate original contour. Insufficient spoil and other waste materials occur where the overburden thickness times the swell factor, plus the thickness of other available waste materials, is less than the combined thickness of the overburden and coal bed prior to removing the coal, so that after backfilling and grading the surface configuration of the reclaimed area would not:

(1) Closely resemble the surface configuration of the land prior to mining; or

(2) Blend into and complement the drainage pattern of the surrounding terrain.

(b) *Performance standards.* Where thin overburden occurs within the permit area, the permittee at a minimum shall:

(1) Use all spoil and other waste materials available from the entire permit area to attain the lowest practicable grade, but not more than the angle of repose; and

(2) Meeting the requirements of §§ 816.102 (a)(2) through (j) of this part.

13. Section 816.105 is revised to read as follows:

§ 816.105 Backfilling and grading: Thick overburden.

(a) *Definition. Thick overburden* means more than sufficient spoil and other waste materials available from the entire permit area to restore the disturbed area to its approximate original contour. More than sufficient spoil and other waste materials occur where the overburden thickness times the swell factor exceeds the combined thickness of the overburden and coal bed prior to removing the coal, so that after backfilling and grading the surface configuration of the reclaimed area would not:

(1) Closely resemble the surface configuration of the land prior to mining; or

(2) Blend into and complement the drainage pattern of the surrounding terrain.

(b) *Performance standards.* Where thick overburden occurs within the permit area, the permittee at a minimum shall:

(1) Restore the approximate original contour and then use the remaining spoil and other waste materials to attain the lowest practicable grade, but not more than the angle of repose;

(2) Meet the requirements of §§ 816.102 (a)(2) through (j) of this part; and

(3) Dispose of any excess spoil in accordance with §§ 816.71 through 816.74 of this part.

§ 816.133 [Amended]

14. In § 816.133, the suspension of paragraph (d) is removed.

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

15. The authority citation for Part 817 continues to read as follows:

Authority: Pub. L. 95-87 (30 U.S.C. 1201 *et seq.*), and Pub. L. 100-34, unless otherwise noted.

16. Section 817.74 is amended by redesignating paragraphs (b), (c), (d) and (e) as paragraphs (c), (d), (e) and (g), respectively, by revising paragraphs (a) and (e), and by adding paragraphs (b) and (f) to read as follows:

§ 817.74 Disposal of excess spoil: Preexisting benches.

(a) The regulatory authority may approve the disposal of excess spoil through placement on a preexisting bench if the affected portion of the preexisting bench is permitted and the standards set forth in §§ 817.102 (c), (e) through (h), and (j), and the requirements of this section are met.

(b) All vegetation shall be removed from the affected portion of the preexisting bench prior to placement of the excess spoil. Any available topsoil on the bench shall be removed, stored and redistributed in accordance with § 817.22 of this part. Substitute or supplemental materials may be used in accordance with § 817.22(b) of this part.

* * * * *

(e) The preexisting bench shall be backfilled and graded to—

(1) Achieve the most moderate slope possible which does not exceed the angle of repose;

(2) Eliminate the highwall to the maximum extent technically practical;

(3) Minimize erosion and water pollution both on and off the site; and

(4) Prevent water infiltration into the backfill from springs, water courses, or seeps, and ensure stability.

(f) All disturbed areas, including diversion channels that are not riprapped or otherwise protected, shall be revegetated upon completion of construction.

* * * * *

17. Section 817.81 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 817.81 Coal mine waste: General requirements.

(a) *General.* All coal mine waste shall be placed in new or existing disposal areas within a permit area, which are approved by the regulatory authority for this purpose. Coal mine waste shall be hauled or conveyed and placed in a controlled manner to—

* * * * *

§ 817.89 [Amended]

18. Section 816.89 is amended by removing paragraph (d).

§ 817.133 [Amended]

19. In § 817.133, the suspension of paragraph (d) is removed.

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Part III

Department of Justice

Immigration and Naturalization Service

8 CFR Part 100 et al.

Applicant Processing for the Legalization Program; Conforming Amendments and Adjustment of Status for Certain Aliens; Interim Rules With Requests for Comment

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 100, 103, 264, and 299

[INS Number: 1038R-88]

Applicant Processing for the Legalization Program; Conforming Amendments

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends certain regulations to conform to regulation changes published elsewhere in this issue. These provisions relate to the processing of applicants for permanent residence under the Legalization Program as authorized by the Immigration Reform and Control Act of 1986 (IRCA). The purpose of this rule is to effect the necessary changes to the regulations brought about by the Service's intent to process applications for adjustment of temporary resident aliens for lawful permanent residence status.

DATES: Interim rule is effective November 7, 1988. Comments must be received on or before November 30, 1988.

ADDRESSES: Written comments should be mailed in triplicate to Assistant Commissioner, Legalization, Immigration and Naturalization Service, 425 "I" Street, NW., Washington, DC 20536 or delivered to Room 5250 at the same address.

FOR FURTHER INFORMATION CONTACT: Raymond B. Penn, Assistant Commissioner, Legalization, (202) 786-3448.

SUPPLEMENTARY INFORMATION: The Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99-603 was enacted on November 6, 1986. The Service published implementing regulations at 52 FR 16205, May 1, 1987, and amending regulations at 52 FR 43843, November 17, 1987; 53 FR 9274, March 21, 1988; 53 FR 9982, March 28, 1988, and at 53 FR 23382, June 22, 1988.

At 53 FR 18098, May 20, 1988, the Service published in the Federal Register a notice making available to the public the preliminary working draft regulations. More than 170 copies of the preliminary working draft were forwarded to requesters. As a result, 136 individuals and interested organizations submitted written comments. The comments were received and given serious consideration.

In response to the comments received on the preliminary working draft, the Service published a notice of proposed rulemaking at 53 FR 29616 in the Federal Register on August 8, 1988. The proposed rule changed the list of legalization offices; included other Service offices besides legalization offices where interviews will occur; allowed for the approval or denial of permanent resident applications at the district director level; set the application fee; provided the display control number and edition date for Form I-698; allowed for the district director to certify decisions to the Administrative Appeals Unit; and allowed for the submission of I-695, Application for Replacement of Form I-688A, Employment Authorization, or Form I-688, Temporary Residence Card (Under Pub. L. 99-603), to other Service offices besides legalization offices. Eighty-six comments, representing the views and concerns of 183 individuals, attorneys, state agencies, special interest groups, educational and other interested organizations and associations were received in response to the proposed rule. All comments were reviewed and seriously considered in preparing this interim rule. The Service appreciates the time and significant efforts put forth by all concerned parties.

Summary of the Interim Rule

On November 6, 1986, the Immigration Reform and Control Act of 1986, Pub. L. 99-603 was enacted to provide the opportunity for certain aliens to apply for temporary resident status in the United States, and, under certain conditions, to subsequently apply for permanent resident status.

Section 100.4(f) is amended to provide a list of legalization offices which will accommodate applicants for permanent residence. Several commentors stressed that the Service seriously reconsider the decision to close any legalization office for various reasons such as convenience to the public. The Service has carefully considered decisions to close legalization offices. The volume of application receipts (including Special Agricultural Worker applications) is a main factor studied before a decision is made to close a legalization office. The Service agrees with the commentors that the maximum number of legislation offices should remain open within funding constraints. In addition to the legalization offices listed in § 100.4(f) the following Service offices will conduct interviews for permanent residence.

Eastern Region

District offices—Baltimore, MD; Buffalo, NY; Philadelphia, PA; Portland, ME, and San Juan, PR; Sub-offices—Albany, NY; Charlotte Amalie, VI; Christiansted, VI; Camden, NJ; Hartford, CN; Norfolk, VA; Pittsburgh, PA; St. Albans, VT; and Syracuse, NY.

Northern Region

District offices—Anchorage, AK; Cleveland, OH; Detroit, MI; Helena, MT; Kansas City, MO; Omaha, NB; Portland, OR; Seattle, WA; Denver, CO; and Saint Paul, MN; Sub-offices—Boise, ID; Cincinnati, OH; Indianapolis, IN; Milwaukee, WS; Salt Lake City, UT; St. Louis, MO; and Yakima, WA.

Southern Region

District offices—Atlanta, GA; and New Orleans, LA; Sub-offices—Charlotte, NC; Jacksonville, FL; Louisville, KY; Memphis, TN; and Oklahoma City, OK.

Western Region

District offices—Honolulu, HI; Sub-offices—Agana, GU; Reno, NV; and Tucson, AZ.

Section 103.1(n) is amended to provide for the approval or denial of applications for permanent residence by the district directors at both legalization and other Service offices. Numerous commentors raised concerns about the physical and administrative security of conducting permanent resident interviews at INS district and suboffices. Specific concerns were addressed regarding the possible breach of confidentiality of legalization casework and if district office personnel are used, the lack of experience in legalization matters. During the first phase of the program the Service received numerous compliments for the manner in which the program was handled and for not having breached the confidentiality provisions of the legislation. In developing the permanent resident phase of the legalization program, the Service is once again stressing the confidentiality provisions of IRCA to all employees of the Service. In addition, the public can be assured that wherever possible, the legalization operations at district offices will be separate and distinct operations. However, it must be understood that due to physical restrictions at certain field sites such distinct operation may not be feasible.

Section 103.4(b) is amended to provide for the certification of decisions by the district director as well as the Regional Processing Director to the Administrative Appeals Unit.

Section 103.7(b) is amended to provide for an application fee for the filing of an I-698, Application to Adjust Status from Temporary to Permanent Resident (Under the Immigration Reform and Control Act of 1986). Nineteen comments were received concerning the fee structure proposed for the permanent resident program. Eighteen commentors clearly stated that the application fee of $75.00 per application was excessive and if the Service held to such an amount that there should be a cap on the fees for a family. After careful consideration and a review of all projected expenditures, the Service will raise the application fee to $80.00 per application but will limit the filing cost for a family to the first three members of a family (including husband, wife, and minor (under 18 years of age) children living at home) for a "family cap" of $240.00 per family. The increase in the per application fee is necessary to offset the creation of a "family cap".

Section 103.37 is removed with the information formally contained in this section now being incorporated into § 299.5.

Section 264.1(c) is amended to provide for the submission of Form I-695, (Application for Replacement of Form I-688A, Employment Authorization, or Form I-688, Temporary Residence Card (Under Pub. L. 99-603)), to legalization and other Service offices. Five comments were received requesting the appeal rights be extended to replacement of temporary resident card (I-688s). This process was established following the standards that currently exist for individuals who submit Applications for Replacement of Alien Registration Receipt Card (I-551). As individuals who will be adjusted will be lawful permanent residents of the United States they will no longer be entitled to the I-688 and would therefore not have a need for replacement. Further, if an individual has his or her permanent resident application denied and any subsequent appeal dismissed they would not be entitled to such documentation. Therefore, after careful consideration the Service will not modify this section.

Section 299.1 is amended to provide for the edition date for Form I-698, Application to Adjust Status from Temporary to Permanent Resident (Under the Immigration Reform and Control Act of 1986).

Section 299.5 is amended to include Form I-698, Application to Adjustment Status from Temporary to Permanent Resident (Under section 245A of Pub. L. 99-603); Form I-699, Certificate of Satisfactory Pursuit; and Form I-803, Petition for Attorney General Recognition to Provide Course of Study for Legalization: Phase II.

In accordance with 5 U.S.C. 605(b), the Commissioner certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule is not a major rule within the definition of section 1(b) of EO 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E. O. 12612.

The information collection requirements contained in this regulation have been cleared by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The Office of Management and Budget control numbers for these collections are contained in 8 CFR 299.5

List of Subjects

8 CFR Part 100

Administrative practice and procedure, Authority delegations (Government agencies).

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Fees, Reporting and recordkeeping requirements.

8 CFR Part 264

Reporting and recordkeeping requirements.

8 CFR Part 299

Forms, Reporting and recordkeeping requirements.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 100—STATEMENT OF ORGANIZATION

1. The authority citation for Part 100 continues to read as follows:

Authority: 66 Stat. 173; 8 U.S.C. 1103.

2. Section 100.4(f) is amended by revising the list of legalization offices to read as follows:

§ 100.4 Field service.

* * * * *

(f) * * *

Legalization Offices

Eastern Region

BOS—Boston, MA (XBT)
NEW—Paterson, NJ (XPT)
NYC—Manhattan, NY (XMA)
WAS—Arlington, VA (XAR)

Northern Region

CHI—Chicago, IL (XBI), Chicago, IL (XLS), Forest Park, IL (XLI)
KS—Wichita, KS (XWI)

Southern Region

DAL—Arlington, TX (XDA), Lubbock, TX (XLU)
ELP—El Paso, TX (XEL), Albuquerque, NM (XAL)
HLG—Harlingen, TX (XHA)
HOU—Houston, TX (XHU)
MIA—(Miami) Hialeah, FL (XOP), Tampa, FL (XTA), Fort Lauderdale, FL (XWS)
SNA—Austin, TX (XAU), San Antonio, TX (XBH)

Western Region

LOS—Anaheim, CA (XAH), El Monte, CA (XEM), Los Angeles, CA (XHO), Huntington Park, CA (XHP), Indio, CA (XID), East Los Angeles, CA (XLA), Buena Park, CA (XNK), Oxnard, CA (XOX), Pomona, CA (XPO), Riverside, CA (XRV), Santa Maria, CA (XSM), Santa Ana, CA (XSA), San Fernando, CA (XSR), Gardenia, CA (XTO), N. Hollywood, CA (XVN)
PHO—Phoenix, AZ (XPH), Las Vegas, NV (XLV)
SND—Escondido, CA (XES), San Diego, CA (XSD)
SFR—Bakersfield, CA (XBA) Fresno, CA (XFR), San Francisco, CA (XSF), Salinas, CA (XSI), San Jose, CA (XSO), Stockton, CA (XST)

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

3. The authority citation for Part 103 continues to read as follows:

Authority: 5 U.S.C. 522(a); 8 U.S.C. 1101, 1103, 1201, 1301-1305, 1351, 1443, 1454, 1455; 28 U.S.C. 1746; 7 U.S.C. 2243; 31 U.S.C. 9701; E.O. 12356, 3 CFR 1982 Comp., p. 166.

4. In § 103.1, a new paragraph (n)(3) is added to read as follows:

§ 103.1 Delegations of authority.

* * * * *

(n) * * *

(3) Applications for permanent residence filed by legalization applicants pursuant to section 245A may be adjudicated by the district director having jurisdiction over the applicant's residence.

* * * * *

5. Section 103.4(b) is revised to read as follows:

§ 103.4 Certifications.

* * * * *

(b) *Certification of denials of special agricultural worker and legalization applications.* The Regional Processing Facility director or the district director may, in accordance with paragraph (a) of this section, certify a decision to the Associate Commissioner, Examinations (Administrative Appeals Unit) (the appellate authority designated in § 103.1(f)(2)) of this part, when the case involves an unusually complex or novel question of law or fact.

§ 103.7 [Amended]

6. Section 103.7(b)(1) is amended by removing "(fee amount to be determined as required)" for Form I-698, and inserting in its place "A fee of eighty dollars ($80.00) for each application is required at the time of filing with the Immigration and Naturalization Service.

The maximum amount payable by a family (husband, wife, and any minor children (under 18 years of age living at home)) shall be two hundred and forty dollars ($240.00)".

* * * * *

§ 103.37 [Removed]

7. Section 103.37 is removed.

PART 264—REGISTRATION AND FINGERPRINTING OF ALIENS IN THE UNITED STATES

8. The authority citation for Part 264 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1201, 1201a, 1303–1305; 86 Stat. 173, 381, 223–225; 71 Stat. 641.

9. Section 264.1(c) is amended by replacing all existing text beginning with the fifth sentence which reads "Application by an alien lawfully admitted for temporary residence * * *" with the following:

§ 264.1 [Amended]

* * * * *

(c) * * * Application by an alien lawfully admitted for temporary residence for Form I–688, Temporary Resident Card, in lieu of one lost, stolen, mutilated, or destroyed, shall be made on Form I–695 accompanied by the fee required by § 103.7(b)(1) of this chapter, two color photographs, (regardless of the applicant's age, unless the requirement for such photographs has been waived by the director of the legalization or Service office in his or her discretion because of hardship to an applicant who is confined due to age or physical infirmity), and when issuance of Form I–688 is desired in a changed name, by appropriate documentary evidence of such change. Any Form I–688 in applicant's possession must also be submitted with the application. An application by an alien within the United States for replacement of evidence of registration shall be submitted to the legalization or Service office having jurisdiction over the applicant's place of residence in the United States. Prior to the issuance of Form I–688, all applicants, regardless of age, shall appear at the appropriate legalization or Service office for interview and placement of fingerprint and signature on I–688 unless these requirements are waived at the discretion of the district director because of infirmity, illiteracy, or other compelling reasons. An alien who files application Form I–695 may be required to appear in person before an immigration officer prior to the adjudication of the application and be interviewed under oath concerning his or her registration. In addition, the applicant may also be required to present a completed fingerprint card (Form FD–258). The decision on an application for replacement of evidence of registration shall be made by the Regional Processing Facility director having jurisdiction over the alien's place of residence in the United States. No appeal shall lie from the decision of the Regional Processing Facility director denying the application. An alien outside the United States shall appear at an American Consulate or Service office abroad and present a full account of the circumstances involving the loss or destruction of Form I–688. A cable shall be sent to the Service's Central Office Records Management Branch for verification of status. Subsequent to verification that temporary residence was granted, a transportation letter will be issued to the temporary resident alien.

PART 299—IMMIGRATION FORMS

10. The authority citation for Part 299 continues to read as follows:

Authority: 66 Stat. 173; 8 U.S.C. 1103.

11. Section 299.5 is amended by adding, in sequential order, Forms I–698, I–699, and I–700 to read as follows:

§ 299.5 Display of control numbers.

* * * * *

I–698	Application to Adjustment Status from Temporary to Permanent Resident (Under Section 245A of Public Law 99–603).	1115–0163
I–699	Certificate of Satisfactory Pursuit.	1115–0124
I–700	Petition for Attorney General Recognition to Provide Course of Study for Legalization: Phase II.	1115–0130

* * * * *

Dated: October 27, 1988.

Richard E. Norton,

Associate Commissioner.

[FR Doc. 88–25025 Filed 10–28–88; 8:45 am]

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8 CFR Part 245a

[INS No. 1022-87]

Adjustment of Status for Certain Aliens

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: Section 201 of the Immigration Reform and Control Act of 1986 (IRCA) provides for the legalization of certain aliens who have been residing illegally in the United States since before January 1, 1982. This section directs the Attorney General to adjust the status of a temporary resident alien to that of an alien lawfully admitted for permanent residence if the alien meets certain requirements. This rule addresses the adjustment of status of temporary resident aliens to that of aliens lawfully admitted for permanent residence.

DATES: Interim rule is effective November 7, 1988. Comments must be received on or before November 30, 1988.

ADDRESSES: Written comments should be mailed in triplicate to Assistant Commissioner, Legalization, Immigration and Naturalization Service, 425 "I" Street NW., Washington DC 20536 or delivered to Room 5307 at the same address.

FOR FURTHER INFORMATION CONTACT: Raymond B. Fern, Assistant Commissioner, Legalization, (202) 786–3658.

SUPPLEMENTARY INFORMATION: On November 6, 1986, the President signed into law the Immigration Reform and Control Act of 1986, Pub. L. 99–603 ("IRCA"). This legislation, the most comprehensive reform of our immigration laws since the enactment of the Immigration and Nationality Act ("INA") in 1952, reflected a resolve to strengthen law enforcement to control illegal immigration. It also reflected the Nation's concerns for certain aliens who had resided illegally in the United States. The theme of this legislation was focused upon regaining control of our Nation's borders and eliminating the illegal alien problem in this country through the firm yet fair enforcement of our Nation's laws.

The Immigration and Naturalization Service took a number of steps to ensure the new legislation would be implemented effectively, efficiently and fairly. Service officials engaged in continuing dialogue with members of the public and representatives of interested organizations on how the legalization provisions of "IRCA" would be implemented. On January 20, 1987, the Service published in the **Federal Register** a notice making available to the public the preliminary working draft regulation (52 FR 2115). As a result of this notice 164 comments were seriously considered by the Service and were included in the proposed rule published in the **Federal Register** on March 19, 1987 (52 FR 8732).

In response to the proposed rule, 549 written comments were received. After review and consideration of all comments, the Immigration and Naturalization Service published

implementing regulations for the temporary resident phase of the Legalization Program at 52 FR 1620, May 1, 1987, and amending regulations at 52 FR 43843, November 17, 1987, 53 FR 9274, March 21, 1988, 53 FR 9982, March 28, 1988, and at 53 FR 23382, June 22, 1988.

The temporary resident phase of the legalization program began on May 5, 1987 and ended on May 4, 1988. The temporary resident phase of the legalization program was the first step for illegal aliens to become full and active members of the American society. The temporary resident phase of the program proved to be an overwhelming success with more than 1,700,000 applicants taking advantage of the opportunity to come out of the shadows.

In order to complete the process of becoming a lawful permanent resident of the United States, individuals who gained lawful temporary resident status during phase I of the legalization program are required to make application for such permanent resident status. Following the same openness as during the first phase of the program, the Immigration and Naturalization Service published a notice of availability of the preliminary working draft of the regulations in the **Federal Register** (53 FR 18096) on May 20, 1988.

The preliminary working draft addressed how the Service would implement the lawful permanent resident phase of the legalization program. More than 170 copies of the preliminary working draft were made available to requestors. As a result of availability of the preliminary working draft, 135 individuals and interested organizations submitted written comments. All comments were reviewed, given serious consideration, and utilized in preparing the proposed rule.

The Immigration and Naturalization Service published a notice of proposed rulemaking on the implementation of the adjustment status phase of IRCA in the **Federal Register** (53 FR 29804) on August 8, 1988. Eighty-six comments, representing the views and concerns of 183 individuals, attorneys state agencies, special interest groups, educational and other interested organizations and associations were reviewed and considered in preparing the final rule. The Service appreciates the time and significant effort put forth by all concerned parties.

Summary of the Interim Rule

The provisions of the proposed rule which received a significant number of comments will be discussed separately. This interim rule amends 8 CFR Part 245a.3 created under the provisions of the May 1, 1987 final rule published in the **Federal Register** at 52 FR 16205. This interim rule includes all changes made from the proposed rule which include the requirements for certain temporary resident aliens, who are otherwise eligible, to adjust their status to that of aliens lawfully admited for permanent residents of the United States and the procedures to be used during this process.

Under the provisions of the Immigration Reform and Control Act of 1986, a temporary resident alien who has resided in the United States for a period of eighteen (18) months may make application for permanent resident status during the twelve month period beginning on the day after the temporary residence period has been completed. Since the beginning date of the application period falls on a weekend, the Service will, for the mutual convenience of all concerned, begin accepting applications on November 7, 1988, the first workday after November 6, 1988. The Service realizes that applications could be received at Regional Processing Facilities prior to November 7, 1988 or prior to the date an alien would be considered eligible to file an application. Therefore, as a convenience to the public, the Service will hold such applications up to 60 days prior to the alien's eligibility date. In these instances, the application will be considered as "filed" on the applicant's eligibility date.

Numerous comments were received addressing concerns with the processing method outlined by the Service in the proposed rule. The commentors stated that by utilizing a direct mail approach the Service would likely lose the consistency of decisions which have come forth during the temporary resident phase of the program; many applications may get lost in the mail; the applicant's due process rights may be violated if the adjudicative decision is rendered at an INS field or legalization office without benefit of "the record"; and the Service should allow filing of applications at legalization and other field offices.

The following summarizes the processing method that was proposed by the Service for the processing of applications for permanent residence during this phase of the legalization program: The Service proposed utilizing a processing method that features direct mail of applications to four Regional Processing Facilities (RPFs) located at Williston, Vermont (Eastern); Lincoln, Nebraska (Northern); Dallas, Texas (Southern); and Laguna Niguel, California (Western). After preliminary processing of applications at the Regional Processing Facilities, applicants will be interviewed at selected Service offices (including district offices, suboffices, and legalization offices) throughout the country. The adjustment of temporary resident aliens to permanent residence will consist of five major segments: Pre-submission of applications; Regional Processing Facility processing (pre-interview); INS field and legalization office processing; Regional Processing Facility processing (post-interview); and Immigration Card Facility (ICF) processing.

In the pre-submission of applications segment the Service will distribute information and forms for the adjustment to permanent resident phase of the legalization program. An extensive publicity and outreach campaign conducted by the Service helped produce the largest legalization program in world history. In response to the proposed rule commentors urged the Service to continue these publicity and outreach efforts for phase II of the legalization program. The Service is confident that awareness of the legalization program is high. In testimony before the Subcommittee on Immigration and Refugee Affairs, Committee on the Judiciary United States Senate, the Government Accounting Office reported that a market research study found that 92 percent of undocumented Hispanics were aware that the legalization program exists (over 84% of the legalization phase I applicants were Hispanic). The publicity and outreach campaign for Phase II will be more selective since the Service knows who the temporary residents are and where they reside. This being the case, local level publicity and outreach methods should be very effective and will be used in conjunction with national efforts.

In the Regional Processing Facility (RPF) processing (pre-interview) segment, all pre-interview processing tasks (e.g., data entry, fee receipting, application review, scheduling of interviews, etc.) will take place. If during the review of the application at the Regional Processing Facility it is determined that the applicant has met all eligibility requirements (continuous residence, English language/U.S. history and government, etc.) and there was no indication of fraud in the Phase I, the application may be approved. In this situation, the applicant would be notified of such approval by the RPF and would only be scheduled for processing

at the INS field or legalization office for an Alien legalization office for an Alien Registration Receipt Card (I–551).

In the INS field and legalization office segment, the applicants will be interviewed as well as processed for an Alien Registration Receipt Card (I–551). The interview may include an English language/U.S. history and government examination for those applicants who wish to satisfy the standards for section 312 of the Immigration and Nationality Act.

In the RPF processing (post-interview) segment, appeal processing and other post-interview administrative procedures will occur.

In the final segment, the Immigration Card Facility processing segment, Alien Registration Receipt Card (I–551) production will be completed and the card will be mailed to the address specified by the alien as his or her place of residence.

The Service considers direct mail of applications to a regional facility as a viable and cost effective way of doing its business. The Service has had substantial experience in the direct mail realm and has enjoyed considerable success with the direct mail of adjudicative casework to the Regional Service Centers. This process has achieved reduced processing time, consistency of processing, and has been extremely cost effective. With regard to the due process question, it must be understood that the record will be reviewed in totality prior to the final adjudicative decision. If the final decision is adverse to the applicant, the individual will have the right to submit an appeal through the administrative appeal procedures that have been established. The Service has and will continue to ensure that all applicants will be afforded the rights that they are entitled to. Upon consideration of the comments received the Service will maintain its position of the processing method as is. However, the Service will clearly state that the entire record of proceedings will be reviewed prior to issuing a final adverse decision at an INS field office.

Section 245a.1(k) is being amended to permit intending residents to fulfill employment duties abroad without having their absence from the United States effect their ability to meet applicable residence requirements for adjustment from temporary resident to permanent resident status. The Service received comments suggesting expansion of the definition. These comments were considered and the definition will be changed as proposed to allow the Service the flexibility to permit brief and casual absences from the United States that reflect an intention on the part of the alien to ajust to permanent residence. Section 245a.2(b)(2) will also be amended to reflect this change.

New § 245a.1(r) is being added to define the term "in good-standing" as used in referring to qualified designated entities (QDEs) under 8 CFR 245a.3(b)(5). Numerous comments were received concerning this definition. Several commentors suggested that the Service should extend the cooperative agreements with QDEs while others suggested that the Service should not. The Immigration Reform and Control Act of 1986 (IRCA) in section 201 provides for filing of applications for temporary resident status with either the Attorney General or with a qualified designated entity. The statute does not provide for a like situation for the filing of applications for permanent residence. Consequently, the Service will neither extend nor expand QDE cooperative agreements. Other commentors suggested revisions to the definition. The Service considered these comments and will retain the definition appearing in the proposed rule.

New § 245a.1(s) is being added to define the term "satisfactorily pursuing" as used in section 245A(b)(1)(D)(i)(II) of the Act. Numerous comments were received on this section. In general, most commenters supported the Service's proposal of the various options an applicant could pursue in order to meet the definition. The Service is genuinely concerned that temporary residents enter the mainstream of American society in a fair and equitable manner within the statutory framework provided by the Congress. Comments received on § 245a.1(s)(1) recommended the Service return to the preliminary working draft figure of a minimum 60 hour course instead of the 180 hour course in the proposed rule. Several commentors were concerned that the 180 hour course requirement would financially strain course providers by placing additional demands on teacher and classroom resources. In addition, temporary residents would have to pay more for such courses as the costs would have to be passed on. The Service, therefore, will return to the standard recommended by the study it commissioned and will stipulate a minimum 60 hour course length. Several commentors suggested that completion of 30 hours of a course of study was not responsive to the needs of the legalized alien community and that the Service should consider increasing the minimum attendance time to ensure that students have made true effort and progress in achieve the goals specified by Congress. After serious consideration the Service will modify the minimum requirement by increasing the minimum attendance time to 40 hours of a 60 hour course of study.

Commentors generally supported § 245a.1(s)(2), with the State of New York Department of Education suggesting that the general equivalency diploma (GED) be gained in the English language. The Service feels this suggestion has merit and consequently will accept a GED gained in a language other than English only if the GED English proficiency test has been passed.

Commentors considered proposed § 245a.1(s)(3) unclear and vague. The meaning of the "period of one year" and the lack of specificity regarding the course content were concerns. The Service will rewrite this section to quality the period of one year as one "academic" year as opposed to a calendar year, and will establish that the curriculum experienced by the individual include at least 40 hours of instruction in English and U.S. government.

Comments similar to those received on § 245a.1(s)(3) were received on § 245a.1(s)(4). Commentors were concerned about the adequacy and quality of courses provided by entities not normally associated with education. The Service believes that the certification process provided for will address these concerns and is confident that this section will not provide a means for individuals to avoid fulfilling the "satisfactorily pursuing" requirement.

The Service will also change proposed § 245a.1(s)(5) in response to several worthwhile suggestions. Commentors expressed concern that there exists a wide variety of proficiency among temporary resident aliens and it is not really possible to measure equivalency to a 40 hour enrollment in a designated course. One commentor also questioned the need for a "statement of intent" to pursue further education if the test is to serve as an optional equivalency to a course of study. The Service feels the test option is needed for three reasons: First, to help ease the strain on course provider resources; second, to offer an alternative to temporary resident aliens who have the knowledge and do not need to attend a time-consuming course; and to minimize the length of the Phase II interviews. Consequently, § 245a.1(s)(5) is being rewritten to set the standard that the proficiency test indicate that the applicant possesses the ability to read and understand minimal functional English within the context of the history and government of the United States. The results must be accompanied by an attestation by the applicant that they had completed at least 40 hours of home study prior to being tested. Home study may be any combination of studies that will allow the applicant to pass a proficiency test established by the Service. The Service also concurs that a statement of intent is not necessary and that provision has been deleted.

New § 245a.1(t) is being added to define the term "minimal understanding of ordinary English" as used in section 245A(B)(1)(D)(i) of the Act. The comments received in response to the preliminary working draft were most favorable and the Service therefore did not change the definition in its proposed rule. Comments received in response to the proposed rule were still generally favorable; however, commenters questioned the inclusion of the term "written communication". The statute provides that applicants meet a basic citizenship skill requirement similar to section 312 requirements of the Immigration and Nationality Act. Indeed, the passing of a "section 312" type examination at the time of interview for permanent residence will serve to relieve the individual of the basic citizenship skill requirement at the time of application to petition for naturalization. The Service feels that the definition as written is appropriate and consistent with Congressional intent that temporary resident aliens acquire an understanding of English.

New § 245a.1(u) is being added to define the use of a curriculum in a course of study recognized by the Attorney General. As with comments received in response to the preliminary working draft, commentors urged the Service to allow for the use of texts similar to the Federal Citizenship Text series (1987 edition). The Service agrees, but will establish a condition that the similar texts be used in addition to but not in lieu of the Federal Citizenship Text series. The Service realizes that there may be training materials, besides the Federal Textbook series that may achieve the goals established under this section. The Service is willing to consider any such material for use in this program. The definition is also changed to reflect the 60 hour course length requirement. Finally, the definition is changed to identify that what is to be taught should be words and phrases in ordinary, everyday usage. This change was made in response to commentors' suggestions for clarification of what is to be taught.

Section 245a.2(a) is being amended to provide for the acceptance of applications at Regional Processing Facilities. A wide range of comments were received concerning this section. Commentors were concerned that temporary residents may not be able to determine when they are eligible to apply for permanent residence. The statute directs that a temporary resident alien can apply for permanent residence during a one-year period beginning on the first day of the nineteenth month after the date of granting of temporary residence. Temporary resident aliens will be able to determine when they can apply by checking the date indicated on the fee receipt Form I–689, which was produced as a result of their application for temporary residence. The service plans to publicize the above information through outreach efforts (e.g., toll-free information number, informational forums, etc.). The Service will also be mailing notices to temporary resident aliens reminding them to file applications for permanent residence. In the proposed rule's supplementary information section the Service stated its intention, as a convenience to the public, to hold applications received at Regional Processing Facilities up to 60 days prior to the alien's eligibility date. This 60 day period did not appear in § 245a.3(a) in the proposed rule as intended. It is therefore added at this time.

Section 245a.3(b)(2) is being amended in two respects. In response to commentors' suggestions the service will expand this section to assist individuals in returning to the United States in compliance with the 30/90 day rule. Individuals will now have the opportunity to establish that absences exceeding 30/90 days were due to emergency reasons or circumstances beyond the alien's control. This section is also changed by replacing the word "or" with "and" where it appears after the term "(30) days," for clarification purposes.

Section 245a.3(b)(3) is being amended to correct an error by changing the paragraph reference from "(f)" to "(g)".

Section 245a.3(b)(4)(ii) is being amended to correct an error by adding the correct paragraph reference (b)(4)(i). This section is also amended in response to comments that the ages of 16 and 65 be calculated from a specific point in time. Several comments were received concerning the Service's proposals to waive the basic citizenship requirements of the Act for applicants under the age of 16, applicants age 65 and older, and applicants physically unable to comply. Most of the commentors supported the Service's exercise of discretion in this matter. Four commentors requested clarification of the term "physically unable" and recommended that the service exempt persons with a developmental or learning disability from these requirements. The service has given these comments serious consideration. However, to extend the exemption to persons with developmental or learning disabilities, on a blanket basis would be inconsistent with the criteria and precedence established in OI 312.1(1)(2)(iii) of the Act, as amended, which holds that an exemption from the ability to speak and understand, as well as read and write English, requires a physical disability of a nature which renders the applicant unable to acquire all four citizenship skills. The service is amending § 245a.3(b)(4)(ii) to conform with this provision.

Two commentors suggested that the upper age parameter for a waiver be reduced from age 65 to age 50 to be consistent with naturalization requirements. Section 245A(b)(1)(D)(ii) of the Act provides an exception for elderly individuals. The statute specifically states that the Attorney General may waiver all or part of the basic citizenship skills requirements in the case of an alien who is 65 years of age or older. Therefore, the upper age limit will remain at 65. However, the service will allow individuals over 50 years of age and who have been living in the United States for at least twenty years to also be exempt from the requirements of section 245A(b)(1)(D)(i) of IRCA. Evidence must be submitted at the time of application for permanent residence pursuant to requirements contained in § 245a.2(d)(3) of this chapter to establish the twenty year qualification. This is consistent with the requirements found in 312 of the INA. Four commentors recommended that the requirements be waived for applicants under the age of 18 or 19. The Statute does not provide an exception for youthful applicants. However, the Service believes that it is fair and reasonable to waive the basic citizenship requirements for applicants under the age of 16.

Two commentors requested clarification of who is eligible for the waiver and one commentor requested clarification as to when the waiver would take effect. Section 245a(b)(4)(ii) is being amended to resolve these two points.

New § 245a.3(b)(4)(iii) is being added to address the examination for basic citizenship skills. Over 40 comments were received concerning this section. In general, commentors felt that the Federal Citizenship Texts were too

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difficult for the temporary resident aliens. The Service intends to continue to operate a generous and liberal legalization program as the Congress intended. Consequently, the test questions will be selected from a list of 100 standardized questions developed by the Service instead of the review questions provided at the end of each chapter of the Federal Citizenship texts. Commentors also suggested the Service allow for a 6 month retest period even if an applicant's 12 month period of eligibility expires before the 6 month retest period ends. The Service concurs and will provide for an unrestricted 6 month retest period.

New § 245a.3(a)(4)(iv) is being added to address the providing of a "Certificate of Satisfactory Pursuit" to satisfy the basic citizenship skills requirements. The wording of this section differs from that found in the proposed rule in that, for clarification purposes, the Service enumerates the various forms of evidence an applicant can submit to establish satisfactory pursuit. Several commentors suggested that applicants must be enrolled and attending a recognized course of study at the time of application for permanent residence. The Service cannot agree since it is probable that certain applicants have already attended a recognized course of study. To require applicants to be enrolled and attending a recognized course of study at the time of application would not be reasonable. The Service, therefore, will not change its position on this issue from that stated in the proposed rule.

New § 245a.3(b)(4)(v) is being added to set the time period after which the Service will accept enrollment in a recognized course of study and issuance of Certificates of Satisfactory Pursuit. The Service has set this time period as May 1, 1987 as it is the date the regulations for Phase I of legalization were published in the Federal Register.

Section 245a.3(b)(5) of this chapter is being amended to allow for the certification of educational programs by district directors locally as the need arises, as well as the certification of national programs by the Outreach Program of INS. This section is also being amended to clarify the meaning of qualified designated entities as used in this section. Several commentors suggested the Service accept any course providers who have been already certified by State Education Agencies responsible for funding of State Legalization Impact Assistance Grants (SLIAG). The statute places the responsibility for recognizing acceptable courses of study with the Attorney General. The Service, therefore, will not implement this suggestion but will certainly consider the fact that certain course providers have already been certified by State Education Agencies when these course providers petition to the Service for certification.

New § 245a.3(b)(6) is being added to provide for a "notice of participation" to be submitted to the district director by institutions of learning or qualified designated entities in good-standing § 245a.3(b)(5)(i)(A)–(C). Commentors suggested that the Service modify the language to allow greater flexibility in the submission of a "notice of participation". The Service agrees and will provide that notices can also be submitted within thirty (30) days after the creation of the course of study. Concerning the compilation of lists of courses, certain commentors urged the Service to develop the lists at a national level. While the Service agrees in concept it is impractical as such a list would contain hundreds of courses. The Service will, however, provide that the Director of the Outreach Program maintain lists of courses recognized on the national level and will instruct district directors to disseminate district lists as widely as possible.

New § 245a.3(b)(7) is being added to explain the fee structure for courses. Commentors expressed concern that excessive fees not be charged. The Service agrees with these comments and in response will provide that district directors coordinate efforts with State Departments of Education to assist in establishing standard fee schedules. In order to further protect individuals the Service will provide that once a fee is established, any change in fee without prior approval of the district director may result in the decertification of a course provider.

New § 245a.3(b)(8) is being added to provide information on the Federal Textbooks on Citizenship. This section addresses the availability of the Federal Textbooks for interested parties.

New § 245a.3(b)(9) is being added to address the maintenance of student records by course providers. One commentor suggested for clarification purposes that direction be provided in the recording of an individual's name. Consequently, the Service will provide the name of an individual be copied exactly as it appears on the I–688A (Employment Authorization Card) or I–688 (Temporary Resident Card).

New § 245a.3(b)(10) is being added to address the issuance of the Certificate of Satisfactory Pursuit (I–699). Several commentors suggested qualifications in the proposed rule concerning this section. One commentor suggested that the appropriate state agency responsible for SLIAG funding be notified of all decertifications by the district director. The Service agrees and will provide for this notification. Other commentors suggested that the Service accept certificates from course providers who are cited at some point in time after the certificates are submitted for deficiencies or decertified for reasons unrelated to fraud. The Service concurs and will accept such certificates.

New § 245a.3(b)(11) is being added to provide for the "designated official" who will have the authority to sign certificates of satisfactory pursuit. Commentors recommended that the Service change the requirement that the name, title, and sample signature of each designated official be attached to and submitted with each certificate. It was stated that such a practice was burdensome and seemed unnecessary and that a file of such information could be kept by the district director. The Service agrees and will implement this recommendation.

New § 245a.3(b)(12) is being added to provide for the on-site monitoring of courses of study recognized by the Attorney General. Many comments were received which suggested limiting the scope of INS on-site monitoring or delegating the monitoring in whole or in part to other agencies or organizations such as State Departments of Education. The monitoring of course providers is necessary both to ensure that the providers are conducting adequate courses and to ensure that the applicants' needs are adequately served. The Service wishes to work in concert with the various state and local agencies to ensure course instruction is proper and meets the intent of the legislation that applicants achieve a basic understanding of citizenship skills. The Service does not intend to closely monitor established bona-fide educational providers but instead will direct most efforts toward providers who are entering into course instruction for the first time. Commentors also suggested that, as in § 245a.3(b)(10), the appropriate State agency be notified of any decertification taken pursuant to this section. The Service will provide for such notice.

New § 245a.3(b)(13) is being added as guidance for selection of teachers who provide instruction in courses of study recognized by the Attorney General as defined at § 245a.3(b)(5) of this chapter. Several commentors agreed with the Service's position that the implementation of a set of standards is necessary because courses vary from

providers who have had extensive experience in educational services for limited English speakers to new programs with untested skills.

Section 245a.3(c)(2) is being amended to conform with the statute as it relates to general inadmissibility. The wording of the section will be changed to describe a class of ineligible aliens who are inadmissible to the United States as immigrants except those aliens who are subject to the grounds of exclusion not to be applied for IRCA applicants: 212(a)(14); (20); (21); (25); and (32).

Section 245a.3(d)(1) is amended to provide for the filing of an application for adjustment of status to that of a permanent resident alien by direct mailing of the application to the Regional Processing Facility. Commentors expressed concern over mailing applications to the Regional Processing Facility. The Service feels direct mail is a less costly way to operate the permanent resident application phase of the Legalization Program and in many instances, will be more convenient to the alien public in that applications can be submitted without taking time off work and other activities. Large scale direct mail application operations are utilized by this and other government agencies, and the Service is confident that the direct mail method will operate successfully. The Service realizes however, that local district practices (e.g., drop boxes) may be already in operation for direct mail to Regional Service Centers, or may be added at legalization offices as a convenience to the public. If drop-box service is made available by the district director, the alien public may certainly avail itself of this alternative way to submit applications.

Section 245a.3(d)(2) is amended to provide for the district director or Regional Processing Facility director's use of discretion to temporarily retain documents for foreign examination. Commentors agreed with the Service that the submission of original documents is generally not required. The Service will reserve the right to request original documentation as necessary. Original documentation can either be requested by the director, Regional Processing Facility, or the district director.

Some commentors suggested the Service specify the exact documentation required to support the I–698 application. While the Service appreciates this concern it is not possible to exactly specify what documentation may be required as the documentary needs will vary from case in case.

New § 245a.3(d)(4) is being added to provide for the submission of medical examination results on Form I–693 only for those applicants who applied for temporary residence and submitted an I–693 which did not reflect that a serologic test was performed to determine the presence or absence of antibody against HIV, the etiologic agent of acquired immuno-deficiency syndrome (AIDS). As of December 1, 1987, the Immigration and Naturalization Service required serologic testing for HIV infection as part of the medical examination process for aliens applying for lawful resident status under the provisions of IRCA. Commentors suggested that applicants who filed prior to December 1, 1987 and who submitted an I–693 reflecting that a serologic test for HIV was performed should not be required to submit another I–693. The Service agrees and this section will be worded accordingly. It was also recommended that those applicants who are HIV positive be advised of the opportunity to apply for a waiver of this 212(a)(6) exclusion ground. This recommendation will also be included.

New § 245a.3(d)(5) is being added to provide for the extension of the validity of the temporary resident card (I–688) during the pendency of an application for permanent residence made under this chapter. Commentors agreed but suggested the time period be changed to one (1) year. The Service agrees and this section will be worded accordingly.

New § 245a.3(d)(6) is being added to provide for the adjudication of an application for permanent residence based on the existing record. Commentors were concerned that an applicant may not be afforded due process rights if the entire record was not reviewed prior to the issuance of a denial. The Service will assure applicants of their due process rights and to affirm this point, will provide for the application to be adjudicated based on the existing record rather than denied for lack of prosecution if the applicant does not respond to two requests for additional information and/or documentation.

Section 245a.3(e) is amended to provide for interviews taking place at other than Service Legalization Offices. Commentors were concerned that insufficient interview opportunities would be available for applicants. The Service would like to assure the public that all eligible applicants will be able to complete the legalization process in a timely fashion. Applicants should realize, however, that the legalization program is temporary in nature and it is costly to the Service to reschedule interviews and provide numerous interview opportunities. It is in the mutual interest of all concerned that interview opportunities are kept thus helping to ensure a successful completion of the permanent resident phase of the legalization program.

Concerning § 245a.3(f)(1) commentors questioned how INS could require applicants to demonstrate basic citizenship skills when INA section 212(a)(25) is automatically waived. The regulations reflect IRCA requirements that an alien demonstrate that he or she (1) meets the requirements of section 312 of the INA or (2) is satisfactorily pursuing a course of study. The regulations do not exclude any applicant from eligibility because he or she cannot read. The Congress intended that legalization applicants be familiarized with American society and the basic citizenship skill requirement is indicative of this intent. The Service must implement the statute as written.

Concerning § 245a.3(f)(3) one commentor suggested the Service regulate a waiver for aliens excludable under paragraphs 212(a)(10) of the INA. The statute specifically states that waivers cannot be regulated for this ground of exclusion. The Service, therefore, will make no change in this section.

Numerous comments were received concerning § 245a.3(f)(4). Commentors suggested the Service articulate in this rule the policy of the Service concerning the operation of the special rule for determination of public charge and the determination of financial responsibility. The Service concurs and will amend this portion to include this policy guidance which in effect incorporates a two-tiered evaluation for determining whether the applicant is likely to become a public charge.

Section 245a.3(h) is amended to provide for the retention by a temporary resident alien of the temporary resident card (I–688) in the case of an adverse decision. Commentors agreed with this provision.

One commentor also suggested that applicants be afforded the opportunity to explain discrepancies or rebut any adverse information found between information submitted with the adjustment application and information

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previously furnished to the Service. In addition, commentors sought assurance that work authorization would be granted until a final decision had been rendered on an appeal or until the end of the appeal period if no appeal had been filed. Finally, the Department of Health and Human Services requested clarification as to whether an alien would still be considered an "eligible, legalized alien" for the purposes of the administration of SLIAG funding when the appeal period had ended. Such an alien would no longer be considered an eligible legalized alien. The Service agrees with the aforementioned suggestions and will incorporate them in this section.

Section 245a.3(i) is amended to provide for the submission of a brief to support an appeal after the thirty (30) day period allowing for receipt of an appeal has passed. This section is also amended to provide for review of the Record of Processing (ROP) after an appeal has been properly filed. Several commentors suggested longer periods be allowed for submission of appeals. The Service believes the time periods provided are sufficient for a party to submit an appeal and any supporting briefs. Consequently, the Service will not change the appeal periods.

Section 245a.3(k) is amended to provide for certification to the Administration Appeals Unit of decisions of appealed cases subsequently remanded back to either the Regional Processing Facility director of the district director. This section is also amended to provide for certification by district directors. Comments in response to the preliminary working draft were generally in support of the section as written. In response to the proposed rule, commentors recommended that an additional 30 days be allowed for the submission of a brief when a decision has been certified to the AAU for consideration of "usually complex or novel" issues. The Service feels that time provided for the submission of a brief (§ 245a.3(i)) is sufficient and will not change this section.

Section 245a.3(1) is amended to reflect the fact that the adjustment date shall be the date of filing of the application for permanent residence or the applicant's eligibility date, whichever is later. Several commentors objected to the Service proposing to have the adjustment date the date of approval of the application for permanent residence. Various valid reasons were cited. These include precedence for rollback afforded to refugees and asylees, consistency with the temporary resident phase of the legalization program, and delays in the adjustment date caused by slow processing.

New § 245a.3(m) is being added to address confidentiality during the permanent residence plans of the Legalization Program. Commentors expressed their concern about confidentiality. The Service desires to reinforce the confidentiality provisions of IRCA and therefore is adding this new section. Several commentors objected to the inclusion of § 245a.3(n)(4), stating that this provision contravenes the statute concerning the use of information supplied by applicants. The Service supports the provision as written, however; the language found in the statute (section 245A(a)(1)(C)) is indicative of Congressional intent that information supplied to the Service by legalization applicants assist in the determination of applications for benefits for relatives of applicants and to support applications for naturalization.

New § 245a.3(n) is being added to provide for the rescission of adjustment of status under section 245a pursuant to the guidelines set forth in section 246 of the Immigration and Nationality Act.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

The Information Collection Requirements contained in this regulation have been cleared by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. OMB control numbers for these collections are contained in 8 CFR 299.5

List of Subjects in 8 CFR Part 245a

Aliens, Temporary resident status, Permanent resident status.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 245a is revised to read as follows:

Authority: Pub. L. 99-603, 100 Stat. 3359, 8 U.S.C. 1101 note and Pub. L. 100-204, 101 Stat. 1331.

2. The heading for Part 245a is revised to read as follows:

PART 245a—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR LAWFUL TEMPORARY OR PERMANENT RESIDENT STATUS UNDER SECTION 245A OF THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED BY PUB. L. 99-603, THE IMMIGRATION REFORM AND CONTROL ACT OF 1986, AND PUB. L. 100-204, SECTION 902

3. In § 245a.1, paragraph (h) is revised and paragraphs (r), (s), (t), and (u) are added to read as follows:

§ 245a.1 Definitions.

* * * * *

(h) The term "brief and casual absences" as used in section 245a(b)(3)(A) of the Act permits temporary trips abroad as long as the alien establishes a continuing intention to adjust to lawful permanent resident status. However, such absences must comply with § 245a.3(b)(2) of this chapter in order for the alien to maintain continuous residence as specified in the Act.

* * * * *

(r) A qualified designated entity in good-standing with the Service means those designated entities whose cooperative agreements were not suspended or terminated by the Service or those whose agreements were not allowed to lapse by the Service prior to January 30, 1989 (the expiration date of the INS cooperative agreements for all designated entities), or those whose agreements were not terminated for cause by the Service subsequent to January 30, 1989.

(s) "Satisfactorily pursuing," as used in section 245A(b)(1)(D)(i)(II) of the Act, means

(1) An applicant for permanent resident status has attended a recognized program for at least 40 hours of a minimum 60-hour course as appropriate for his or her ability level, and is demonstrating progress according to the performance standards of the English/citizenship course prescribed by the recognized program in which he or she is enrolled (as long as enrollment occurred on or after May 1, 1987, course standards include attainment of particular functional skills related to communicative ability, subject matter knowledge, and English language competency, and attainment of these skills is measured either by successful completion of learning objectives appropriate to the applicant's ability level, or attainment of a determined score on a test or tests, or both of these); or

(2) An applicant presents a high school diploma or general equivalency diploma (GED) from a school in the United States. A GED gained in a language other than English is acceptable only if the GED English proficiency test has been passed; or

(3) An applicant has attended for a period of one academic year, a state recognized, accredited learning institution in the United States and that institution certifies such attendance (as long as the curriculum included at least 40 hours of instruction in English and U.S. government); or

(4) An applicant has attended courses conducted by employers, social, community, or private groups certified (retroactively if necessary, as long as enrollment occurred on or after May 1, 1987) by the district director or the Director of the Outreach Program under § 245a.3(b)(5)(i)(D); or

(5) An applicant attests to the fact that they have completed at least 40 hours of home study and passes a proficiency test for legalization, such test being given by qualified administrators (e.g., State Departments of Education and their designated educational agencies) and indicating that the applicant is able to read and understand minimal functional English within the context of the history and government of the United States.

(t) Minimal understanding of ordinary English as used in section 245A(b)(1)(D)(i) of the Act means an applicant can satisfy basic survival needs and routine social demands. The person can handle jobs that involve following simple oral and very basic written communication.

(u) "Curriculum" means a defined course for an instructional program. Minimally, the curriculum prescribes what is to be taught, how the course is to be taught, with what materials, and when and where. The curriculum must:

(1) Teach words and phrases in ordinary, everyday usage;

(2) Include the content of the Federal Citizenship Text series as the basis for curriculum development (other texts with similar content may be used in addition to, but not in lieu of, the Federal Citizenship Text series);

(3) Be designed to provide at least 60 hours of instruction per class level;

(4) Be relevant and educationally appropriate for the program focus and the intended audience; and

(5) Be available for examination and review by INS as requested.

4. Section 245a.3 is revised to read as follows:

§ 245a.3 Application for adjustment from temporary to permanent resident status.

(a) *Application period for permanent residence.* An alien who has resided in the United States for a period of eighteen (18) months after the granting of temporary resident status may make application for permanent resident status during the twelve month period beginning on the day after the requisite eighteen months' temporary residence has been completed. The date of adjustment to lawful temporary resident status is the date indicated on the fee receipt, Form I-689. The eligibility period for lawful permanent residence under section 245A(b)(1) of the Act will begin on November 7, 1988. Applications received at the Regional Processing Facilities not more than 60 days prior to the beginning of an alien's twelve month application period will be held by the Service and processed but will not be considered properly filed until the beginning of the eligibility period.

(b) *Eligibility.* Any alien physically present in the United States who has been lawfully admitted for temporary resident status under section 245A(a) of the Act, such status not having been revoked or terminated, may apply for adjustment of status to that of an alien lawfully admitted for permanent residence if the alien:

(1) Applies for such adjustment during the one-year period beginning with the nineteenth month that begins after the date the alien was granted such temporary resident status;

(2) Establishes continuous residence in the United States since the date the alien was granted such temporary residence status. An alien shall be regarded as having resided continuously in the United States for the purposes of this part if, at the time of applying for adjustment from temporary to permanent resident status, no single absence from the United States has exceeded thirty (30) days, and the aggregate of all absences has not exceeded ninety (90) days between the date lawful temporary resident status was granted and the date permanent resident status was applied for, unless the alien can establish that due to emergent reasons or circumstances beyond his or her control, the return to the United States could not be accomplished within the time period(s) allowed. A single absence from the United States of more than 30 days, and aggregate absences of more than 90 days during the period for which continuous residence is required for adjustment to permanent residence, shall break the continuity of such residence, unless the temporary resident can establish to the satisfaction of the district director that he or she did not, in fact, abandon his or her residence in the United States during such period;

(3) Is admissible to the United States as an immigrant, except as otherwise provided in paragraph (g) of this section; and has not been convicted of any felony, or three or more misdemeanors; and

(4)(i)(A) Can demonstrate that the alien either meets the requirements of section 312 of the Immigration and Nationality Act, as amended (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States); or,

(B) Is satisfactorily pursuing a course of study recognized by the Attorney General to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States.

(ii) The requirements of paragraph (b)(4)(i) of this section must be met by each applicant, except for those individuals who are under the age of 16 and those individuals who are 65 years of age or older as of the date of application for permanent residence under this part; or individuals over 50 years of age who have resided in the United States for a least 20 years and submit evidence establishing the 20-year qualification requirement. Such evidence must be submitted pursuant to the requirements contained in § 245a.2(d)(3) of this chapter. These requirements shall also be waived for those who are physically unable to comply.

(iii) (A) Literacy and basic citizenship skills may be demonstrated for purposes of complying with paragraph (b)(4)(i)(A) of this section by speaking and understanding English during the course of the interview and processing for permanent resident status. An applicant's ability to read and write English shall be tested by excerpts from one or more parts of the Federal Textbooks on Citizenship at the elementary literacy level. The test of an applicant's knowledge and understanding of the history and form of government of the United States shall be given in the English language. The scope of the testing shall be limited to subject matter covered in the revised (1987) Federal Textbooks on Citizenship or other approved training material. The test questions shall be selected from a list of 100 standardized questions developed by the Service. In choosing the subject matter and in phrasing questions, due consideration shall be given to the extent of the applicant's

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education, background, age, length of residence in the United States, opportunities available and efforts made to acquire the requisite knowledge, and any other elements or factors relevant to an appraisal of the adequacy of his or her knowledge and understanding.

(B) An applicant who fails to pass the English literacy or educational tests at the time of the interview, shall be afforded a second opportunity after six (6) months (or earlier, at the request of the applicant) to pass the tests or submit a "Certificate of Satisfactory Pursuit", Form I-698. The second interview shall be conducted prior to the denial of the application for permanent residence and shall be based solely on the failure to pass the literacy requirements. An applicant whose 12-month period of eligibility expires prior to the end of the six-month re-test period, shall still be accorded the entire six months within which to be re-tested.

(iv) To satisfy the English language and basic citizenship skills requirements under the "satisfactorily pursuing" standard as defined at § 245a.3(e) of this chapter the applicant must submit evidence of such satisfactory pursuit in the form of a "Certificate of Satisfactory Pursuit" issued by the designated school or program official attesting to the applicant's satisfactory pursuit of the course of study as defined at § 245a.1(c)(1) and (4) of this chapter; or a high school diploma or General Equivalency Diploma (GED) under § 245a.3(b)(2) of this chapter; or certification on letterhead stationery from a state recognized, accredited learning institution under § 245a.1(a)(3) of this chapter; or evidence of having passed a proficiency test under § 245a.3(a)(5) of this chapter. Such applicants shall not then be required to demonstrate that they meet the requirements of § 245a.3(b)(4)(i)(A) of this chapter in order to be granted lawful permanent residence provided they are otherwise eligible. Evidence of "Satisfactory Pursuit" may be submitted either at the time of filing Form I-698, or at the time of the interview. An applicant need not necessarily be enrolled in a recognized course of study at the time of application for permanent residency.

(v) Enrollment in a recognized course of study as defined in § 245a.3(b)(5) and issuance of a "Certificate of Satisfactory Pursuit" must occur subsequent to May 1, 1987.

(3)(i) A course of study in the English language and in the history and government of the United States shall satisfy the requirement of paragraph (b)(4)(i) of this section if it is sponsored or conducted by:

(A) An established public or private institution of learning recognized as such by a qualified state certifying agency;

(B) An institution of learning approved to issue Forms I-20 in accordance with § 214.3 of this chapter;

(C) A qualified designated entity within the meaning of section 245A(c)(2) of the Act, in good-standing with the Service; or

(D) Is certified by the district director in whose jurisdiction the program is conducted, or is certified by the Director of the Outreach Program nationally, and

(ii) The course materials for such instruction include textbooks published under the authority of section 246 of the Act.

(5) *Notice of participation.* All courses of study recognized under § 245a.3(b)(5)(i)(A)—(C) which are already conducting or will conduct English and U.S. history and government courses for temporary residents must submit a Notice of Participation either to the district director in whose jurisdiction a local program is conducted or to the Director of the Outreach Program for national programs. The Notice of Participation shall be in the form of a letter typed on the letterhead of the course provider (if available) and contain the following information:

(i) The name(s) of the school(s)/program(s).

(ii) The complete addresses and telephone numbers of sites where courses will be offered, and class schedules.

(iii) The complete names of persons who are in charge of conducting English and U.S. history and government courses of study.

(iv) A statement that the course of study will issue "Certificates of Satisfactory Pursuit" to temporary resident enrollees according to INS regulations.

(v) A list of designated officials of the recognized course of study authorized to sign "Certificates of Satisfactory Pursuit", and samples of their original signatures.

(vi) A statement that if a course provider charges a fee to temporary resident enrollees, the fee will not be excessive.

The Notice of Participation must also include evidence of recognition under 8 CFR 245a.3(b)(5)(i) (A), (B), or (C) (e.g., Certification from a qualified state certifying agency; evidence of INS approval for attendance by nonimmigrant students, such as the school code number; or by providing the INS identification number from the QOE cooperative agreement). The Notice of Participation shall be submitted to the district director within thirty (30) days after publication of this interim rule in the Federal Register or within thirty (30) days after the creation of the course of study. Acceptance of "Certificates of Satisfactory Pursuit" may be delayed if the course provider fails to submit the Notice of Participation within the requisite timeframe. Each district director shall compile and maintain lists of recognized courses within his or her district. The Director of the Outreach Program shall compile and maintain lists of courses recognized on the national level.

(7) *Fee structure.* No maximum fee standard will be imposed by the Attorney General. However, if it is believed that a fee charged is excessive, this factor alone will justify non-certification of the course provider by INS as provided in § 245a.3(b) (10) and/or (12) of this section. Once fees are established, any change in fee without prior approval of the District Director may justify de-certification.

District directors will coordinate efforts with State Departments of Education to assist in establishing standard fee schedules.

(8) The Citizenship textbooks to be used by applicants for lawful permanent residence under section 245A of the Act shall be distributed by the Service to appropriate representatives of public schools. These textbooks may otherwise be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, and are also available at certain public institutions.

(9) *Maintenance of Student Records.* Course providers conducting courses of study recognized under § 245a.3(b)(5) of this chapter shall maintain for each student, for a period of three years from the student's enrollment, the following information and documents:

(i) Name (as copied exactly from the I-688A or I-688);

(ii) A-number (90 million series);

(iii) Date of enrollment;

(iv) Attendance records;

(v) Assessment records;

(vi) Photocopy of signed "Certificate of Satisfactory Pursuit" issued to the student.

(10) *Issuance of "Certificate of Satisfactory Pursuit" (I-698).* (i) Each recognized course of study shall prepare a standardized certificate that is signed by the designated official. The Certificate shall be issued to an applicant who has attended a recognized course of study for at least 40 hours of a minimum of 60-hour course as appropriate for his or her ability level, and is demonstrating progress according to the performance standards of the English and U.S. history and government course prescribed. Such standards shall conform with the provisions of § 245a.1(s) of this chapter.

(ii) The district director shall reject a Certificate if it is determined that the certificate is fraudulent or was fraudulently issued.

(iii) The district director shall reject a Certificate if it is determined that the course provider is not complying with INS regulations. In the case of non-compliance, the district director will advise the course provider in writing of the specific deficiencies and give the provider thirty (30) days within which to correct such deficiencies.

(iv) District directors will accept Certificates from course providers once it is determined that the deficiencies have been satisfactorily corrected.

(v) Course providers which engage in fraudulent activities or fail to conform with INS regulations will be removed from the list of INS approved programs. INS will not accept Certificates from these providers.

(vi) Certificates may be accepted if a program is cited for deficiencies or decertified at a later date and no fraud was involved.

(vii) The appropriate State agency responsible for SLIAG funding shall be notified of all decertifications by the district director.

(11) *Designated official.* (i) The designated official is the authorized person from each recognized course of study whose signature appears on all "Certificates of Satisfactory Pursuit" issued by that course;

(ii) The designated official must be a regularly employed member of the school administration whose office is located at the school and whose compensation does not come from commissions for recruitment of foreign students.

(iii)(A) The head of the school system or school, the director of the Qualified Designated Entity, the head of a program approved by the Attorney General, or the president or owner of other institutions recognized by the Attorney General must specify a "designated official". Such designated official may not delegate this designation to any other person. Each school or institution may have up to three (3) designated officials at any one time. In a multi-campus institution, each campus may have up to three (3) designated officials at any one time;

(B) Each designated official shall have read and otherwise be familiar with the "Requirements and Guidelines for Courses of Study Recognized by the Attorney General". The signature of a designated official shall affirm the official's compliance with INS regulations;

(C) The name, title, and sample signature of each designated official for each recognized course of study shall be on file with the district director in whose jurisdiction the program is conducted.

(12) *Monitoring by INS.* (i) INS Outreach personnel in conjunction with the district director shall monitor the course providers in each district in order to:

(A) Assure that the program is a course of study recognized by the Attorney General under the provisions of § 245a.3(b)(5).

(B) Verify the existence of curriculum as defined in § 245a.1(u) on file for each level of instruction provided in English language and U.S. history and government classes.

(C) Assure that "Certificates of Satisfactory Pursuit" are being issued in accordance with § 245a.3(b)(10).

(D) Assure that records are maintained on each temporary resident enrollee in accordance with § 245a.3(b)(9).

(E) Assure that fees (if any) assessed by the course provider are in compliance in accordance with § 245a.3(b)(7).

(ii) If INS has reason to believe that the service is not being provided to the applicant, INS will issue a 24-hour minimum notice to the service provider before any site visit is conducted.

(iii) If it is determined that a course provided is not performing according to the standards established in either § 245a.3(b)(10) or (12) of this chapter, the district director shall institute decertification proceedings. Notice of Intent to Decertify shall be provided to the course provider. The course provider has 30 days within which to correct performance according to standards established. If after the 30 days, the district director is not satisfied that the basis for decertification has been overcome, the course provider will be decertified. The appropriate State agency shall be notified in accordance with § 245a.3(b)(10)(vii) of this chapter. A copy of the notice of decertification shall be sent to the State agency.

(13) Courses of study recognized by the Attorney General as defined at § 245a.3(b)(5) of this chapter shall provide certain standards for the selection of teachers. Since some programs may be in locations where selection of qualified staff is limited, or where budget constraints restrict options, the following list of qualities for teacher selection is provided as guidance. Teacher selections should include as many of the following qualities as possible:

(i) Specific training in Teaching English to Speakers of Other Languages (TESOL);

(ii) Experience as a classroom teacher with adults;

(iii) Cultural sensitivity and openness;

(iv) Familiarity with competency-based education;

(v) Knowledge of curriculum and materials adaptation;

(vi) And knowledge of a second language.

(c) *Ineligible aliens.* (1) An alien who has been convicted of a felony, or three or more misdemeanors in the United States.

(2) An alien who is inadmissible to the United States as an immigrant, except as provided in § 245a.3(g)(1).

(3) An alien who was previously granted temporary resident status pursuant to section 245A(a) of the Act who has not filed an application for permanent resident status under section 245A(b)(1) of the Act during the one year period which began with the nineteenth month that begins after the date the alien was granted such temporary status.

(4) An alien who was not previously granted temporary resident status under section 245A(a) of the Act.

(d) *Filing the application.* The provisions of Part 211 of this chapter relating to the documentary requirements for immigrants shall not apply to an applicant under this part.

(1) The application must be filed on Form I-698. The application will be mailed to the designated Regional Processing Facility having jurisdiction over the applicant's residence. Form I-698 must be accompanied by the correct fee and documents specified in the instructions.

(2) The submission of original documents is not required at the time of filing Form I-698. Copies certified as true and complete by a qualified designated entity in good-standing, an attorney, or by an alien's representative in the format prescribed § 204.2(j)(1) or (2) of this chapter may be submitted with Form I-698. Original documents must be presented when requested by the Service. Official government records, employment or employment-related records maintained by employers, unions, or collective bargaining organizations, medical records, school records maintained by a school or school board or other records maintained by a party other than the applicant which are submitted in evidence must be certified as true and complete by such parties and must bear

their seal or signature or the signature and title of persons authorized to act in their behalf. At the discretion of the district director and/or the Regional Processing Facility director, original documents may be kept for forensic examination.

(3) A separate application (I–698) must be filed by each eligible applicant. All fees required by § 103.7(b)(1) of this chapter must be submitted in the exact amount in the form of a money order, cashier's check or certified bank check. No personal checks or currency will be accepted. Fees will not be waived or refunded under any circumstances.

(4) Applicants who filed for temporary resident status prior to December 1, 1987, are required to submit the results of a serologic test for HIV virus on Form I–693, "Medical Examination of Aliens Seeking Adjustment of Status, (Pub. L. 99–603)", completed by a designated civil surgeon, unless the serologic test for HIV was performed and the results were submitted on Form I–693 when the applicant filed for temporary resident status. Applicants who did submit an I–693 reflecting a serologic test for HIV was performed prior to December 1, 1987 must submit evidence of this fact when filing the I–698 application in order to be relieved from the requirement of submitting another I–693. Applicants having to submit I–693s pursuant to this section are not required to have a complete medical examination. All HIV-positive applicants shall be advised that a waiver is available and shall be provided the opportunity to apply for the waiver.

(5) If necessary, the validity of an alien's temporary resident card (I–688) will be extended in increments of one (1) year until such time as the decision on an alien's properly filed application for permanent residence becomes final.

(6) An application deficient in any way shall be returned to the applicant with request for correction, additional information, and/or documentation. If response to this request is not received within 60 days, a second and final request for correction, additional information, and/or documentation shall be made. If the second request is not complied with within 60 days, the application will be adjudicated on the basis of the existing record.

(e) *Interview.* Each applicant, regardless of age, must appear at the appropriate Service office and must be fingerprinted for the purpose of issuance of Form I–551. Each applicant shall be interviewed by an immigration officer, except that the interview may be waived for a child under 14, or when it is impractical because of the health or advanced age of the applicant. An applicant failing to appear for the scheduled interview may, for good cause, be afforded another interview.

(f) *Applicability of exclusion grounds.*—(1) *Grounds of exclusion not to be applied.* The following paragraphs of section 212(a) of the Act shall not apply to applicants for adjustment of status from temporary resident to permanent resident status: (14) workers entering without labor certification; (20) immigrants not in possession of valid entry documents; (21) visas issued without compliance of section 203; (25) illiterates; and (32) graduates of non-accredited medical schools.

(2) *Waiver of grounds of excludability.* Except as provided in paragraph (f)(4) of this section, the Service may waive any provision of section 212(a) of the Act only in the case of individual aliens for humanitarian purposes, to assure family unity, or when the granting of such a waiver is otherwise in the public interest. In any case where a provision of section 212(a) of the Act has been waived in connection with an alien's application for lawful temporary resident status under section 245A(a) of the Act, no additional waiver of the same ground of excludability will be required when the alien applies for permanent resident status under section 245A(b)(1) of the Act. In the event that the alien becomes excludable under any provision of section 212(a) of the Act subsequent to the date temporary residence was granted, a waiver of the ground of excludability, if available, will be required before permanent resident status may be granted.

(3) *Grounds of exclusion that may not be waived.* Notwithstanding any other provisions of the Act the following provisions of section 212(a) of the Act may not be waived by the Attorney General under paragraph (g)(2) of this section:

(i) Paragraphs (9) and (10) (criminals);

(ii) Paragraph (15) (public charge) insofar as it relates to an application for adjustment to permanent residence by an alien other than an alien who is eligible for benefits under Title XVI of the Social Security Act or section 212 of Pub.L. 93–90 for the month in which such alien is granted lawful temporary residence status under subsection (a);

(iii) Paragraph (23) (narcotics), except for a single offense of simple possession of thirty grams or less of marijuana;

(iv) Paragraphs (27) (prejudicial to the public interest), (28) (communists), and (29) (subversive);

(v) Paragraph (33) (participated in Nazi persecution).

(4) *Determination of "Likely to become a public charge" and Special Rule.* Prior to use of the special rule for determination of public charge paragraph (f)(4)(iii) of this section, an alien must first be determined to be excludable under 212(a)(15) of the Act. If the applicant is determined to be "likely to become a public charge," he or she may still be admissible under the terms of the Special Rule.

(i) In determining whether an alien is "likely to become a public charge" financial responsibility of the alien is to be established by examining the totality of the alien's circumstances at the time of his or her application for legalization. The existence or absence of a particular factor should never be the sole criteria for determining if an alien is likely to become a public charge. The determination of financial responsibility should be a prospective evaluation based on the alien's age, health, income, and vocation.

(ii) The Special Rule for determination of public charge paragraph (f)(4)(iii) of this section is to be applied only after an initial determination that the alien is inadmissible under the provisions of section 212(a)(15) of the Act.

(iii) *Special Rule.* An alien who has a consistent employment history which shows the ability to support himself or herself and his or her family even though his or her income may be below the poverty level is not excludable under paragraph (f)(3)(ii) of this section. The alien's employment history need not be continuous in that it is uninterrupted. It should be continuous in the sense that the alien shall be regularly attached to the workforce, has an income over a substantial period of the applicable time, and has demonstrated the capacity to exist on his or her income and maintain his or her family without recourse to public cash assistance. The Special Rule is prospective in that the Service shall determine, based on the alien's history, whether he or she is likely to become a public charge. Past acceptance of public cash assistance within a history of consistent employment will enter into this decision. The weight given in considering applicability of the public charge provisions will depend on many factors but the length of time an applicant has received public cash assistance will constitute a significant factor. It is not necessary to file a waiver in order to apply the Special Rule for Determination of Public Charge.

(5) *Public cash assistance and criminal history verification.* Declarations by an applicant that he or she has not been the recipient of public cash assistance and/or has not had a criminal record are subject to a verification of facts by the Service. The applicant must agree to fully cooperate in the verification process. Failure to assist the Service in verifying information necessary for proper adjudication may result in denial of the application.

(g) *Departure.* An applicant for adjustment to lawful permanent resident status under section 245A(b)(1) of the Act who was granted lawful temporary resident status under section 245A(a) of the Act, shall be permitted to return to the United States after such brief and casual trips abroad, as long as the alien reflects a continuing intention to adjust to lawful permanent resident status. However, such absences from the United States must not exeed the periods of time specified in § 245a.3(b)(2) of this chapter in order for the alien to maintain continuous residence as specified in the Act.

(h) *Decision.* The applicant shall be notified in writing of the decision, and, if the application is denied, of the reason therefor. Applications for permanent residence under this chapter will not be denied at local INS offices (districts, suboffices, and legalization offices) until the entire record of proceeding has been reviewed. An application will not be denied if the denial is based on adverse information not previously furnished to the Service by the alien without providing the alien an opportunity to rebut the adverse information and to present evidence in his or her behalf. If inconsistencies are found between information submitted with the adjustment application and information previously furnished to the Service, the applicant shall be afforded the opportunity to explain discrepancies or rebut any adverse information. A party affected under this part by an adverse decision is entitled to file an appeal on Form I–694. If an application is denied, work authorization will be granted until a final decision has been rendered on an appeal or until the end of the appeal period if no appeal is filed. An applicant whose appeal period has ended is no longer considered to be an Eligible Legalized Alien for the purposes of the administration of State Legalization Impact Assistance Grants (SLIAG) funding. An alien whose application is denied will not be required to surrender his or her temporary resident card (I–688) until such time as the appeal period has tolled, or until expiration date of the I–688, whichever date is later. After exhaustion of an appeal, an applicant who believes that the grounds for denial have been overcome may submit another application with fee, provided that the application is submitted within his or her one-year eligibility period.

(i) *Appeal process.* An adverse decision under this part may be appealed to the Associate Commissioner, Examinations (Administrative Appeals Unit) the appellate authority designated in § 103.1(f)(2). Any appeal shall be submitted to the Regional Processing Facility with the required fee within thirty (30) days after service of the Notice of Denial in accordance with the procedures of § 103.3(a) of this chapter. An appeal received after the thirty (30) day period has tolled will not be accepted. The thirty (30) day period for submitting an appeal begins three days after the notice of denial is mailed. If a review of the Record of Proceeding (ROP) is requested by the alien or his or her legal representative and an appeal has been properly filed, an additional thirty (30) days will be allowed for this review from the time the Record of Proceeding is photocopied and mailed. A brief may be submitted with the appeal form or submitted up to thirty (30) calendar days from the date of receipt of the appeal form at the Regional Processing Facility. Briefs filed after submission of the appeal should be mailed directly to the Regional Processing Facility. For good cause shown, the time within which a brief supporting an appeal may be submitted may be extended by the Director of the Regional Processing Facility.

(j) *Motions.* The Regional Processing Facility director may reopen and reconsider any adverse decision sua sponte. When an appeal to the Associate Commissioner, Examinations (Administrative Appeals Unit) has been filed, the INS director of the Regional Processing Facility may issue a new decision that will grant the benefit which has been requested. The director's new decision must be served on the appealing party within forty-five (45) days of receipt of any briefs and/or new evidence, or upon expiration of the time allowed for the submission of any briefs.

(k) *Certifications.* The Regional Processing Facility director or district director may, in accordance with § 103.4 of this chapter, certify a decision to the Associate Commissioner, Examinations (Administrative Appeals Unit) when the case involves an unusually complex or novel question of law or fact. The decision on an appealed case subsequently remanded back to either the Regional Processing Facility director or the district director will be certified to the Administrative Appeals Unit.

(l) *Date of adjustment to permanent residence.* The status of an alien whose application for permanent resident status is approved shall be adjusted to that of a lawful permanent resident as of the date of filing of the application for permanent residence or the eligibility date, whichever is later.

(m) *Limitation on access to information and confidentiality.* (1) No person other than a sworn officer or employee of the Department of Justice or bureau of agency thereof, will be permitted to examine individual applications. For purposes of this part, any individual employed under contract by the Service to work in connection with the Legalization Program shall be considered an "employee of the Department of Justice or bureau or agency thereof".

(2) No information furnished pursuant to an application for permanent resident status under this section shall be used for any purpose except: (i) To make a determination on the application; or, (ii) for the enforcement of the provisions encompassed in section 245A(c)(6) of the Act, except as provided in paragraph (m)(3) of this section.

(3) If a determination is made by the Service that the alien has, in connection with his or her application, engaged in fraud or willful misrepresentation or concealment of a material fact, knowingly provided a false writing or document in making his or her application, knowingly made a false statement or representation, or engaged in any other activity prohibited by section 245A(c)(6) of the Act, the Service shall refer the matter to the United States Attorney for prosecution of the alien or of any person who created or supplied a false writing or document for use in an application for adjustment of status under this part.

(4) Information contained in granted legalization files may be used by the Service at a later date to make a decision on an immigrant visa petition or other status filed by the applicant under section 204(a), or for naturalization applications submitted by the applicant.

(n) *Rescission.* Rescission of adjustment of status under 245a shall occur under the guidelines established in section 246 of the Act.

Date: October 12, 1988.

[redacted]
Associate Commissioner.

[FR Doc. 88–25028 Filed 10–28–88; 8:45 am]

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H.R. 5050/Pub. L. 100-533

Women's Business Ownership Act of 1988. (Oct. 25, 1988; 102 Stat. 2689; 10 pages) Price: $1.00

H.R. 600/Pub. L. 100-534

West Virginia National Interest River Conservation Act of 1987. (Oct. 26, 1988; 102 Stat. 2699; 10 pages) Price: $1.00

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1987. The CFR volume issued January 1, 1987, should be retained.

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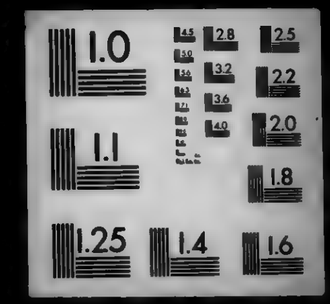
[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1988. The CFR volume issued as of July 1, 1986, should be retained.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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Presidential Documents

Title 3—

The President

Memorandum of October 26, 1988

Interim Directive Regarding Disposition of Certain Mergers, Acquisitions, and Takeovers

Memorandum for the Secretary of the Treasury

By virtue of the authority vested in me by the Constitution and statutes of the United States, including without limitation Section 301 of Title 3 of the United States Code, the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, August 23, 1988) (the "Act"), it is ordered as follows:

Pending the issuance of an Executive order to implement the Act, the Secretary of the Treasury is hereby designated and empowered to perform the following-described functions of the President: The authority vested in the President by Section 721 of the Defense Production Act of 1950, as amended, relative to mergers, acquisitions, and takeovers proposed or pending on or after the date of enactment of the Act by or with foreign persons which could result in foreign control of persons engaged in interstate commerce in the United States.

The Secretary of the Treasury shall consult with the Committee on Foreign Investment in the United States, established pursuant to Executive Order No. 11858 and chaired by the representative of the Secretary of the Treasury, to take such actions or make such recommendations as requested by the Secretary of the Treasury.

The delegation provided herein shall terminate, and this interim directive shall be without any further effect, except as may be provided in the Executive order implementing the Act, upon the effective date of such order.

This interim directive shall be published in the **Federal Register**.

Ronald Reagan

THE WHITE HOUSE,
Washington, October 26, 1988.

[FR Doc. 88-25343
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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 760

Dairy Indemnity Payment Programs

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Interim rule.

SUMMARY: The purpose of this interim rule is to amend the Dairy Indemnity Payment Program regulations to extend the operation of the program through September 30, 1990. This regulation is being promulgated as an interim rule because of an immediate need to reimburse dairy farmers as the result of aflatoxin contamination in milk and dairy cattle in Texas.

DATES: This regulation shall become effective November 1, 1988. Comments must be received by January 3, 1989.

ADDRESSES: Comments concerning this interim regulation should be addressed to: Director, Emergency Operations and Livestock Program Division, ASCS, USDA, South Building, room 4095, Washington, DC 20013. All comments will be available for public inspection, in Room 4095, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC, between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Susan Schneider, Agricultural Program Specialist, Emergency Operations and Livestock Programs Division, ASCS, USDA, Washington, DC 20013; Telephone (202) 447–5171.

SUPPLEMENTARY INFORMATION: Information collection requirements contained in this regulation (7 CFR Part 760) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control No. 0560–0116.

This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major" since it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the federal assistance program to which this rule applies are: Title: Dairy Indemnity Payments; Number: 10.053, as found in the Catalog of Federal Domestic Assistance.

Milton Hertz, Administrator, ASCS, certifies that this action will not increase federal paperwork burden for industry, small business, and other persons and will not have a significant economic impact or a substantive burden on small entities. Therefore the action is exempt from the provisions of the Regulatory Flexibility Act. Additionally, the Regulatory Flexibility Act is not applicable to this rule since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

The Dairy Indemnity Payment Program was originally authorized by section 331 of the Economic Opportunity Act of 1964 (78 Stat. 508). The statutory authority for the program has been extended several times, most recently by section 152 of the Food Security Act of 1985 (99 Stat. 1337) (the 85 Act) which authorized the program to be carried out through September 30, 1990. The objective of the program is to indemnify dairy farmers and manufacturers of dairy products who, through no fault of their own, suffer income losses with respect to milk or milk products which are removed from commercial markets because such milk or milk products contain certain harmful residues. In addition, dairy farmers can be indemnified for income losses with respect to milk which is required to be removed from commercial markets due to residues of chemicals or toxic substances or contamination by nuclear radiation or fallout.

The 85 Act made no substantive changes with respect to the Dairy Indemnity Payment Program but merely extended the time period for conducting the program through September 30, 1990. The regulations governing the program (7 CFR Part 760) currently authorize the operation of the program through January 31, 1988. Accordingly, it is necessary to amend § 760.2 of these regulations to make them effective through September 30, 1990.

This regulation is being promulgated as an interim rule because of an immediate need to reimburse dairy farmers as the result of aflatoxin contamination in milk and dairy cattle in Texas. This rule does not make any substantive changes in the program but merely extends the time period for conducting the program to conform with the 85 Act. A 60-day comment period is being provided to allow interested persons an opportunity to comment on the provisions of this interim rule. A final rule will be issued together with any changes which are necessary as a result of the comments received on the provisions of the interim rule.

List of Subjects in 7 CFR Part 760

Dairy producers, Indemnity payments, Pesticides, Pests.

Interim Rule

Accordingly, the regulations at 7 CFR Part 760 are amended as follows:

PART 760—[AMENDED]

1. The authority citation for 7 CFR Part 760 continues to read:

Authority: 7 U.S.C. 450j, k, and l.

§ 760.2 [Amended]

2. In § 760.2, paragraphs (k) (1) and (2), (l), and (o) are amended by striking out "January 31, 1988" and inserting in lieu thereof "September 30, 1990".

Signed at Washington, DC, on October 26, 1988.

Vern Neppl,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 88-25171 Filed 10-31-88; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 636, Amdt. 1]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action increases the quantity of fresh California-Arizona lemons that may be shipped to market during the period October 23 through October 29, 1988, from 264,000 cartons to 289,000 cartons. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 636, Amendment 1 (§ 910.936) is effective for the period October 23 through October 29, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington DC 20090-6456; telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1988-89. The committee conducted a telephone poll on October 24, 1988, and, upon considering the current and prospective conditions of supply and demand, unanimously recommended that the quantity of lemons deemed advisable to be handled during the specified week be increased from 264,000 cartons to 289,000 cartons. The committee reports that the demand for lemons has improved beyond what was anticipated by the committee on October 19, 1988, when the 264,000 carton recommendation was made.

Pursuant to 5 U.S.C 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.936 is revised to read as follows:

[Note.—This section will not appear in the Code of Federal Regulations.]

§ 910.936 Lemon Regulation 636, Amendment 1.

The quantity of lemons grown in California and Arizona which may be handled during the period October 23, 1988 through October 29, 1988, is established at 289,000 cartons.

Dated: October 27, 1988.

Eric M. Forman,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88-25301 Filed 10-31-88; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No. 80676-8178]

15 CFR Part 775

Documentation Requirements: Grace Period for Requiring a Consignee/Purchaser Statement, International Import Certificate, and Indian Import Certificate

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Office of Export Licensing (OEL) requires a Form ITA-629P, Statement by Ultimate Consignee and Purchaser, an International Import Certificate, or an Indian Import Certificate in support of certain individual export license applications (and reexport authorization requests). The consignee/purchaser statement, International Import Certificate, and Indian Import Certificate assure that foreign consignees and purchasers are aware of their responsibilities for the representations they make to OEL and for the disposition of U.S. origin goods.

A "special license" is an authorization for making multiple exports of a commodity(ies) under a single license. A Form ITA-6052P is required with most applications for special license in lieu of the forms filed with individual validated licenses. Form ITA-6052P provides the assurances normally obtained on the Form ITA-629P, the International Import Certificate, or the Indian Import Certificate.

This rule amends the Export Administration Regulations by requiring exporters to file a consignee/purchaser statement, International Import Certificate, or Indian Import Certificate with license applications for commodities removed from eligibility for

a special license. It also provides for a 45 day grace period before the new documentation requirement becomes effective for those exporters that were actually exporting the commodity under a special license. This grace period allows U.S. exporters, and foreign consignees and purchasers, time to adjust to the different documentation requirements.

EFFECTIVE DATE: November 1, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Regulations Branch, Telephone: (202) 377-2440.

SUPPLEMENTARY INFORMATION:

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of the Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared

2. Section 13(a) of the Export Administration Act of 1979, as amended (Act) (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. This rule is not subject to section 13(b) of the Act because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comments be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Patricia Muldonian, Office of Technology and Policy Analysis, Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule involves a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control numbers 0694-0001 and 0694-0021.

5. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

List of Subjects in 15 CFR Part 775

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 775 of the Export Administration Regulations (15 CFR Parts 768-799) is amended as follows:

The authority citation for 15 CFR Part 735 continues to read as follows:

1. Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

2. Paragraph (b) of § 775.9 is revised to read as follows:

§ 775.9 Special Provisions.

* * * * *

(b) *Grace period.*—(1) *Consignee/purchaser statement.* Whenever the requirement for a consignee/purchaser statement for any commodity is imposed or extended by virtue of one of the following—

(i) The addition of a country group(s) to the paragraph in any entry on the Commodity Control List titled "Validated License Required"; or

(ii) The replacement of the Code letter "A" following the Export Control Commodity Number with another code letter; or

(iii) The removal of a commodity from eligibility for export under a special license described in Part 773, when the exporter holds such as special license and has been exporting the commodity under that special license;

The application for license need not conform to the requirements of § 775.2 for a period of 45 days after the date that the commodity becomes subject to the new requirement. In lieu thereof, applications filed during the 45 day grace period shall be accompanied by any evidence available to the applicant that will support his representations concerning the ultimate consignee, ultimate destination, and end use, such as copies of the order, letters of credit, correspondence between the exporter and ultimate consignee, or other documents received from the ultimate consignee.

(2) *International Import Certificate and the Indian Import Certificate.* Whenever the requirement for an International Import Certificate or an Indian Import Certificate for any commodity is imposed or extended by virtue of one of the following—

(i) The replacement of the code letter following the Export Control Commodity Number with the code letter "A" (in the case of India, this applies also to replacing the code letter with the code letter "B", where the commodity is controlled for national security reasons); or

(ii) The removal of a commodity identified by the code letter "A" from eligibility for export under a special license described in Part 773, when the exporter holds such a special license and had been exporting the commodity under that special license. (In the case of India, this applies also to a commodity identified by the code letter "B" and controlled for national security purposes);

The application for license need not conform to the requirements of § 775.3 or 775.7, as appropriate, for a period of 45 days after the date that the commodity becomes subject to the new requirement.

(3) *Swiss Blue Import Certificates, Yugoslav End-Use Certificates or People's Republic of China End-User Certificates.* Whenever the submission requirement for a Swiss Blue Import Certificate, a Yugoslav End-Use Certificate, or a People's Republic of China End-User Certificate is imposed or extended to any commodity on the Commodity Control List by the addition of Country Group V to the "Validated License Required" paragraph in the applicable entry on the Commodity Control List, a license application to export such commodity need not conform to the submission requirement for 45 days from the date such commodity becomes subject to the requirement.

* * * * *

Dated: October 11, 1988.

Michael E. Zacharia,

Assistant Secretary for Export Administration.

[FR Doc. 25199 Filed 10-31-88; 8:45 am]

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VOL 53 ISS 211 NO 1 1988 UMI

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154, 157, 260, 284, 385 and 388

[Docket No. RM87-17-000]

Natural Gas Data Collection System; Availability of Revised Record Formats for FERC Form Nos. 2 and 2A

October 28, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of availability of revised record formats for FERC form Nos. 2 and 2A.

SUMMARY: This notice provides that, on October 28, 1988, the Commission issued revised record formats for submitting FERC Form Nos. 2 and 2A on an electronic medium. These formats have been revised in accordance with certain recommendations presented at the implementation conference for Order No. 493 (53 FR 15023 (Apr. 27, 1988)) on September 12 and 13, 1988. The revisions also incorporate changes resulting from FERC Order No. 505, issued October 13, 1988 (53 FR 40875 (Oct. 19, 1988)).

DATE: The revised formats are available as of October 28, 1988.

FOR FURTHER INFORMATION CONTACT: Brooks Carter, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8996 or (202) 357-8944.

SUPPLEMENTARY INFORMATION: Order No. 493-A, issued August 1, 1988 (53 FR 30027 (Aug. 10, 1988)) revised the record formats for FERC Form Nos. 2 and 2A, in response to comments filed on Order No. 493. At the implementation conference on Order Nos. 493 and 493-A, held on September 12 and 13, 1988, commenters recommended a simplified procedure for identifying footnotes on an electronic medium. In its response to issues presented at the implementation conference, issued October 7, 1988, staff agreed to revise the footnote procedure by including a footnote ID field in each record format. Staff also indicated that it would review all written comments submitted at the conference and make the needed revisions to FERC Form Nos. 2 and 2A. These revisions are identified in Appendix A.

On October 13, 1988, the Commission issued Order No. 505, which replaced the "Statement of Changes in Financial Position" in certain FERC annual report forms, including FERC Form Nos. 2 and 2A, with a "Statement of Cash Flows." The change complies with the Financial Accounting Standards Board's Statement of Financial Accounting Standards No. 95 (SFAS No. 95). The record formats for FERC Form Nos. 2 and 2A have been revised in accordance with Order No. 505 and SFAS No. 95.

The Commission provides all interested persons an opportunity to inspect or copy the contents of this document and the complete text of the revised record formats during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street NE., Washington, DC 20426.

Due to the size of the record format files for FERC Form Nos. 2 and 2A, these record formats will not be available through the Commission Issuance Posting System (CIPS), the Commission's electronic bulletin board service. However, revised record formats for FERC Form Nos. 2 and 2A on diskette in ASCII file format may be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

Software to print FERC Form Nos. 2 and 2A was scheduled to be available by October 30, 1988. The revisions to these record formats will delay availability of this software until November 30, 1988.

Lois D. Cashell,
Secretary.

Appendix A—Corrections to Record Formats for FERC Nos. 2 and 2A

This appendix identifies the corrections and revisions to FERC Form Nos. 2 and 2A resulting from recommendations at the Order No. 493 implementation conference and FERC Order No. 505 (53 FR 40875 (Oct. 19, 1988)).

I. FERC Form No. 2

A. General Corrections

The item location number (General Instruction No. 4), and reference number (General Instruction No. 5) have been deleted.

The general instructions for footnotes have been revised. The prior General Instruction No. 6 is now No. 5. General Instruction No. 6, pertaining to footnotes, is new.

A Footnote ID (with four character positions) has been added to each non-text record. The Footnote ID may be blank-filled if no footnote applies.

The attached tables of character position changes designate certain items as (new). Check the formats for additional information or instructions under the "Comments" column for each record.

Some records have a (−) sign associated with certain items to indicate that the response should be entered as a negative number.

B. Exhibit B

The first sentence in Submission Procedure No. 1 (referencing volume and file labels) has been deleted.

Character fields may be enclosed by double or single quotes, as well as vertical bars.

Recording of "NA" can now be accomplished by double or single quotes, as well as vertical bars.

C. Exhibit D

Specific Instruction No. 16(f) is new.

D. Schedule F4

Record Nos. 24 and 25 (Statement of Changes in Financial Position) have been replaced by three new records designated Record Nos. 24–26. The three new records are for the Statement of Cash Flows, Parts 1–3.

The Notes to Financial Statements, formerly Record No. 26 is now assigned Record Number 27. Additional changes to Schedule F4 are as follows:

Schedule/Record	Item	New character positions/Comments
F4/6	Title of Officer	56–105.
F4/6	Salary for Year	106–112.
F4/7	Title of Director	56–105.
F4/7	Principal Business Address	106–165.
F4/7	Item No. 29a (New): Director Meetings	166–168.
F4/7	Item No. 29b (New): Fees During Year	169–175.
F4/19	Item No. 199a (New): Other Item Specified	217–241.
F4/20	Utility Plant Reported	12.
F4/20	Net Utility Operation Income	13–24.
F4/20	Item Nos. 171–185	Increase each char. pos. by 13.
F4/20	Item No. 185a (New): Other Item Specified	205–229.
F4/21	Utility Plant Reported (New)	12.
F4/21	Item Nos. 186–194	Increase each char. pos. by 1.
F4/21	Item No. 194a (New): Other Item Specified	121–145.
F4/22	Utility Plant Reported (New)	12.
F4/22	Item Nos. 195–210	Increase each char. pos. by 1.
F4/22	Item No. 210a (New): Other Item Specified	205–229.

E. Schedule F5

Schedule/Record	Item	New character positions/Comments
F5/1	Item No. 277a (New): Other Item Specified	168–192.
F5/2	Item No. 291a (New): Other Item Specified	180–204.
F5/22	Security Owned	15–63.
F5/22	Item Nos. 476b–476c	Increase each char. pos. by 35.
F5/22	Item No. 476d	85–147.
F5/22	Item Nos. 479–485	Increase each char. pos. by 6.
F5/23	Item No. 485	12–82: This item now requires both the name of the security owned and the name of issuer.
F5/23	Item No. 486a	Decrease.
F5/23	Item Nos. 487–488	Decrease each char. pos. by 61.
F5/23	Item No. 488a (New): Additional description of investment	95–147.
F5/23	Item Nos. 489–493	Decrease each char. pos. by 6.
F5/23	Item No. 493a (New): Total Cost Acct. 123.1	216–219.
F5/24	Item No. 504: "various" may now be entered for "Make-up Period Expiration Date"	199–204.
F5/32	Item No. 556: Item revised from "Acct. No. Debited" to "Acct. No. Credited"	172–176.
F5/32	Item No. 557: Item revised from "Acct. No. Credited" to "Acct. No. Debited"	191–197.
F5/32	Item No. 558a (New): Other Item Specified	222–246.
F5/33	Stock Code (New)	11.
F5/33	Item Nos. 559a–560	Increase each char. pos. by 1.
F5/39	Grand Total, Code=3 added to "Information Reported Code"	11.
F5/40	Information Reported Code (New)	11.
F5/40	Account Number (New)	12–16.
F5/40	Long Term Debt Code	18.
F5/40	Item Nos. 593a–601	Increase each char. pos. by 8.
F5/43	Reconciling Type (New)	11.
F5/43	Text	12–143.
F5/44	Grand Total, Code=3 added to "Information Reported Code"	11.
F5/46	Item No. 637a (New): Other Percent	69–84.
F5/47	Account Subdivision Code	11–12.
F5/47	Percentage Reported Code	13–14.
F5/47	Item Nos. 630–636	Decrease each char. pos. by 2.
F5/47	Average Period of Allocation to Income	69–108.
F5/47	Item No. 636 (New): Other Percent	109–109.
F5/47	Item No. 636a (New): Other Item Specified	110–134.
F5/49	Item No. 644: Item revised from "Debit Contra Account" to "Credit to Contra Account"	156–162.
F5/50	Item No. 654 is old Item No. 655	125–136.
F5/50	Item No. 655 is old Item No. 654	137–143.
F5/50	Item No. 656 is old Item No. 654	137–143.
F5/51	Grand Total, Code=13 added to "Account Sub-division Code"	11–12.
F5/51	Item No. 663 is old Item No. 664	73–78.
F5/51	Item No. 665 is old Item No. 663	92–98.
F5/51	Item No. 667a (New): Other Item Specified	123–147.
F5/52	Item No. 674 is old Item No. 676	73–73.
F5/52	Item No. 676 is old Item No. 674	92–98.
F5/52	Item No. 676a (New): Narrative Descriptor of Item Reported	125–636.
F5/52	Item No. 676b (New): Other Item Specified	603–647.

Schedule/Record	Item	New character positions/Comments
F5/53	Item No. 686 is old Item No. 687	73-79.
F5/53	Item No. 687 is old Item No. 685	92-98.
F5/53	Item No. 689 (New): Narrative Descriptor of Item Reported	125-222.
F5/53	Item No. 689a (New): Other Item Specified	223-247.

F. Schedule F6

Schedule F6, Recorded No. 3—Gas Operating Revenues (Account 400)—Part 3, is a new record. The records have been renumbered accordingly. Record numbers in the table below refer to the new record number. Additional changes are:

Schedule/Record	Item	New character positions/Comments
F6/2	Item Nos. 715–733 have been moved from Record 02 to new Record 03	
F6/6	Item No. 753a (New): Other Item Specified	188-192.
F6/7	Average Revenue per Mcf	130-136.
F6/7	Sum of Mthly Billing Demands	137-148.
F6/7	Item Nos. 760b–760d	Decrease each char. pos. by 1.
F6/7	Item No. 760e (New): Other Item Specified	179–203.
F6/8	Item No. 760g (New): Other Item Specified	68–72.
F6/11	Processor Description	11–142.
F6/11	Reconciler's Gas Processed	143–154.
F6/11	Revenue	155–166.
F6/29	Item 1054a (New): Other Item Specified	73–95.
F6/29	Receipt Point Designation	64–67.
F6/38	Item Nos. 1056d–1056e	Increase each char. pos. by 20.
F6/38	Delivery Point Designation	116–155.
F6/39	Item Nos. 1058g–1063	Increase each char. pos. by 40.

G. Schedule F7

The previous Record No. 1—Regulatory Commission Expenses, is now broken down into two records (Part 1 and Part 2). The records have been renumbered accordingly. Record numbers in the table below refer to the new record number.

Schedule/Record	Item	New character positions/Comments
F7/17	Item No. 1251: Fuel or Power	Delete.
F7/17	Item No. 1251a (New): Gas Fuel Cost	162–173.
F7/17	Item No. 1251b (New): Electric Fuel Cost	174–185.
F7/17	Other	186–197.
F7/17	Gas for Compressor Fuel	198–202.
F7/17	Item Nos. 1254–1256	Increase each char. pos. by 5.
F7/19	Information Reported Code	Revised codes.
F7/19	State (Text)	12–13.
F7/19	Item Nos. 1387–1389	Increase each char. pos. by 2.
F7/24	Ownership Type (New)	12.
F7/24	Operation Type (New)	13.
F7/24	Item Nos. 1324–1325	Increase each char. pos. by 2.
F7/27	Item Nos. 1350c, 1351a, and 1352b	Delete.
F7/27	Deliveries to Others	153–164.
F7/31	Total Peak Month Deliveries	165–176.
F7/32	Reference Number	Delete.
F7/32	Footnote ID (New)	11–14.
F7/32	Footnote Text	15–149.

II. FERC Form No. 2A

A. General Corrections

General Instruction No. 1 has been revised to reflect new substitute record numbers.

The item location number (General Instruction No. 5), and reference number (General Instruction No. 6) have been deleted.

The general instructions for footnotes have been revised. The prior General Instruction No. 6 is now No. 5. General Instruction No. 6, pertaining to footnotes, is new.

A Footnote ID (with four character positions) has been added to each non-text record. The Footnote ID may be blank-filled if no footnote applies.

B. Exhibit B

The first sentence in Submission Procedure No. 1 (referencing volume and file labels) has been deleted.

Character fields may be enclosed by double or single quotes, as well as vertical bars.

Recording of "NA" can now be accomplished by double or single quotes, as well as vertical bars.

C. Exhibit D

Specific Instruction Nos. 3 and 15 have been revised.

D. Schedule F8

Record Nos. 12 and 13 (Statement of Changes in Financial Position) have been replaced by new record designated Record Nos. 12–14 (Statement of Cash Flows—Parts 1–3). The records have been renumbered.

Gas Plant in Service (Accounts 101, 102, 103, and 106)—Parts 7 & 8: Records Nos. 46 & 47 have been combined into a single record number 47. The records have been renumbered. Additional changes are as follows:

Schedule/Record	Item	New character positions/comments
F8/2	Item No. 15: Address of Officer	New char. pos. 171–220.
F8/2	Item No. 16: Incorporation State	New char. pos. 220–243.
F8/11	Contra Primary Account Affected	Delete.
F8/11	Item Nos. 135–145	Decrease each char. pos. by 7.
F8/16	Utility Department	"Other" code now specified in new Item 189a.
F8/16	Item No. 188a (New): Other Item Specified	72–95.
F8/36	Item No. 401a (New): Other Item Specified	217–241.
F8/37	Item No. 402: Net Utility Operating Income	Moved from old Record 85 to new Rec. 37, char. pos. 13–24.
F8/37	Item Nos. 403–417	Increase each char. pos. by 13 to allow for addition of Item 402.
F8/38	Utility Plant Reported (New)	12
F8/38	Item Nos. 418–426	Increase each char. pos. by 1.
F8/38	Item 426a (New): Other Item Specified	121–145.
F8/38	Utility Plant Reported (New)	11
F8/38	Item Nos. 427–442	Increase each char. pos. by 1.
F8/38	Item No. 442a (New): Other Item Specified	230–259.
F8/51	Note 12 has been revised	Moved to new Rec. 50.
F8/51	Item Nos. 815–823	32–41.
F8/72	Item No. 860a (New): Special Construction Employees	42–47.
F8/72	Item No. 860b (New): Equivalent Employees	
F8/72	Note 13 (New)	12 items renumbered.
F8/77		189–193.
F8/77	Average Revenue/Mcf	127–148.
F8/77	Sum of Monthly Billing Demands	Decrease each char. pos. by 1.
F8/77	Item No. 934–936	179–202.
F8/77	Item No. 937 (New): Other Item Specified	Items/Notes renumbered.
F8/78–80		

[FR Doc. 25184 Filed 10–31–88; 8:45 am]
BILLING CODE 6717-01-M

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18 CFR Part 271

[Docket No. RM80–33]

Prescribed Maximum Lawful Prices Under the Natural Gas Policy Act of 1978

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order of the Director, OPPR.

SUMMARY: Pursuant to the authority delegated by 18 CFR 375.307(c)(1), the Director of the Office of Pipeline and Producer Regulation revises and publishes the maximum lawful prices prescribed under Title I of the Natural Gas Policy Act (NGPA) for the months of November, December, 1988 and January 1989. Section 101(b)(6) of the NGPA rquires that the Commission compute and publish the maximum lawful prices before the beginning of each month for which the figures apply.

EFFECTIVE DATE: November 1, 1988.

FOR FURTHER INFORMATION CONTACT: Richard P. O'Neill, Director, OPPR, (202) 357–8500.

SUPPLEMENTARY INFORMATION:

Order of the Director, OPPR

Issued October 26, 1988.

Section 101(b)(6) of the Natural Gas Policy Act of 1978 (NGPA) requires that the Commission compute and make available maximum lawful prices and inflation adjustments prescribed in Title I of the NGPA before the beginning of any 6 month for which such figures apply.

Pursuant to this requirement and § 375.307(c)(1) of the Commission's regulations, which delegates the publication of such prices and inflation adjustments to the Director of the Office of Pipeline and Producer Regulation, the maximum lawful prices for the months of November, December 1988 and January 1989 are issued by the publication of the price tables for the

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applicable quarter. Pricing tables are found in § 271.101(a) of the Commission's regulations. Table I of § 271.101(a) specifies the maximum lawful prices for gas subject to NGPA sections 102, 103(b)(1), 105(b)(3), 106(b)(1)(B), 107(c)(5), 108, and 109. Table II of § 271.101(a) specifies the maximum lawful prices for sections 104 and 106(a) of the NGPA. Table III of § 271.102(c) contains the inflation adjustment factors. The maximum lawful prices and the inflation adjustment factors for the periods prior to November, 1988 are found in the Table in §§ 271.101 and 271.102.

List of Subjects in 18 CFR Part 271

Natural gas.

Richard F. O'Neill,

Director, Office of Pipeline and Producer Regulation.

PART 271—[AMENDED]

1. The authority citation for Part 271 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982).

§ 271.101 [Amended]

2. Section 271.101(a) is amended by adding the maximum lawful prices for November, December 1988 and January, 1989 in Tables I and II.

TABLE I—NATURAL GAS CEILING PRICES

[Other than NGPA §§ 104 and 106(a)]

Subpart of part 271	NGPA section	Maximum lawful price per MMBtu for deliveries in—			
		Category of gas	Nov. 1988	Dec. 1988	Jan. 1989
B	102	New Natural Gas, Certain OCS Gas[1].	$5.099	$5.093	$5.139
C	103(b)(1)	New Onshore Production Wells [2]	3.348	3.356	3.371
E	105(b)(3)	Intrastate Existing Contracts	4.879	4.838	4.938
F	106(b)1(B)	Alternative Maximum Lawful Price for Certain Intrastate Rollover Gas[3].	1.913	1.920	1.927
G	107(c)(5)	Gas Produced from Tight Formations.	6.699	6.716	6.742
H	108	Stripper Gas	5.418	5.453	5.481
I	109	Not Otherwise [4] Covered	2.771	2.781	2.791

[1] Commencing January 1, 1985, the price of natural gas finally determined to be new natural gas under section 102(c) was deregulated. (See Part 272 of the Commission's regulations.)

[2] Commencing January 1, and July 1, 1987, the price of some natural gas finally determined to be natural gas produced from a new, onshore production well under section 103 was deregulated. (See Part 272 of the Commission's regulations.) Thus, for all months succeeding June 1987 publication of a maximum lawful price per MMBtu under NGPA section 103(b)(2) is discontinued.

[3] Section 271.602(a) provides that for certain gas sold under an intrastate rollover contract the maximum lawful price is the higher of the price paid under the expired contract, adjusted for inflation or an alternative Maximum Lawful Price specified in this Table. This alternative Maximum Lawful Price for each month appears in this row of Table I. Commencing January 1, 1985, the price of some intrastate rollover gas was deregulated. (See Part 272 of the Commission's regulations.)

[4] The maximum lawful price for tight formation gas is the lesser of the negotiated contract price or 200% of the price specified in Subpart C of Part 271. The maximum lawful price for tight formation gas applies on or after July 16, 1979. (See § 271.703 and § 271.704.)

TABLE II—NATURAL GAS CEILING PRICES: NGPA §§ 104 AND 106(A) (SUBPART D, PART 271)

Category of natural gas	Type of sale or contract	Maximum lawful price per MMBtu for deliveries made in—		
		Nov. 1988	Dec. 1988	Jan. 1989
Post-1974 gas	All producers	$2.771	$2.781	$2.791
1973–1974 Biennium gas	Small producer	2.339	2.348	2.357
	Large producer	1.790	1.797	1.804
Interstate Rollover gas	All producers	1.028	1.032	1.036
Replacement contract gas or recompletion gas	Small producer	1.315	1.320	1.325
	Large producer	1.007	1.011	1.015
Flowing gas	Small producer	0.864	0.868	0.868
	Large producer	0.561	0.563	0.565
Certain Permian Basin gas	Small producer	0.784	0.787	0.790
	Large producer	0.691	0.694	0.697
Certain Rocky Mountain gas	Small producer	0.784	0.787	0.790
	Large producer	0.664	0.666	0.668
Certain Appalachian Basin gas	North subarea contracts dated after 10-7-65.	0.529	0.532	0.534
	Other contracts	0.586	0.587	0.588
Minimum rate gas [1]	All producers	0.347	0.348	0.349

[1] Prices for minimum rate gas are expressed in terms of dollars per Mcf, rather than MMBtu.

[2] This price may also be applicable to other categories of gas (see §§ 271.402 and 271.602).

§ 271.102 [Amended]

3. Section 271.102(c) is amended by adding the inflation adjustment for the months of November, December 1988, and January, 1989.

TABLE III—INFLATION ADJUSTMENT

Month of delivery 1988 and 1989	Factor by which price in preceding month is multiplied
Nov	1.00875
Dec	1.00375
Jan	1.00375

[FR Doc. 88-25236 Filed 10-31-88; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 77F-0277]

Indirect Food Additives: Polymers; Technical Amendments

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is correcting an error in § 177.1310 (21 CFR 177.1310) of the food additive regulations regarding the cross-reference to analytical methods for ethylene-acrylic acid copolymers. This final rule also corrects two typographical errors that appear in § 177.1330(c).

EFFECTIVE DATE: November 1, 1988.

FOR FURTHER INFORMATION CONTACT: Richard H. White, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: FDA is correcting the food additive regulations in § 177.1310(b) (21 CFR 177.1310(b)) regarding the cross-reference to the analytical methods in § 177.1330 *Ionomeric resins* (21 CFR 177.1330), required for ethylene-acrylic acid copolymers. The regulation for ethylene-acrylic acid copolymers, published in the **Federal Register** of April 7, 1987 (32 FR 5675), required that certain net acidified chloroform-soluble extractives be determined by the analytical methods presented in § 121.2562(c) (recodified as § 177.1330(c)). In the **Federal Register** of April 4, 1980 (45 FR 22915), FDA revised § 177.1330 to provide for the safe use of methacrylic acid polymer with ethylene and isobutyl acrylate, sodium and zinc salts, as articles or components of articles intended for contact with food. In that document, FDA removed the analytical methods from § 177.1330(c) and included them in § 177.1330(e). The agency also included the analytical methodology for the newly listed copolymer in § 177.1330(e). In making these changes, FDA inadvertently did not amend § 177.1310(b) to reference the applicable analytical methods now listed in § 177.1330(e).

This document amends § 177.1310(b) by changing the reference to "§ 177.1330(c)" to read "§ 177.1330(e)." It also specifies the analytical methods listed in § 177.1330(e) that are applicable to § 177.1310(b). In addition, this document makes two corrections of typographical errors that appear in § 177.1330(c). The changes made by this document are nonsubstantive.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR Part 177 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 177.1310 is amended by revising paragraph (b) to read as follows:

§ 177.1310 Ethylene-acrylic acid copolymers.

* * * * *

(b) The finished food-contact articles made with no more than 10 percent total polymer units derived from acrylic acid, when extracted with the solvent or solvents characterizing the type of food and under the conditions of its intended use as determined from tables 1 and 2 of § 176.170(c) of this chapter, yield net acidified chloroform-soluble extractives not to exceed 0.5 milligram per square inch of food-contact surface when tested by the methods prescribed in § 177.1330(e)(1), (3)(i) through (iv), (4), (5), and (6), except that

(1) The total residue method using 3 percent acetic acid, as prescribed in § 177.1330(e)(6)(i)(*a*), does not apply, and

(2) The net acidified chloroform-soluble extractives from paper and paperboard complying with § 176.170 of this chapter may be corrected for wax, petrolatum, and mineral oil as provided in § 176.170(d)(5)(iii)(*b*) of this chapter. If the finished food-contact article is itself the subject of a regulation in Parts 174, 175, 176, 177, 178, and § 179.45 of this chapter, it shall also comply with any specifications and limitations prescribed for it by that regulation.

* * * * *

§ 177.1330 [Amended]

3. Section 177.1330 *Ionomeric resins* is amended in paragraph (c) by revising "chapter, yields" to read "chapter, yields" and "(l)(1)" to read "(e)(1)".

Dated: October 7, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-25237 Filed 10-31-88; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Salinomycin, Virginiamycin, and Roxarsone

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by SmithKline Animal Health Products, providing for use of previously approved salinomycin, virginiamycin, and roxarsone Type A medicated articles to make Type C medicated feeds for broiler chickens. The feeds are used for the prevention of coccidiosis and for improved feed efficiency.

EFFECTIVE DATE: November 1, 1988.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4217.

SUPPLEMENTARY INFORMATION: SmithKline Animal Health Products, Division of SmithKline Beckman Corp., 1600 Paoli Pike, West Chester, PA 19380, filed NADA 136–953 providing for combining the separately approved salinomycin, virginiamycin, and roxarsone Type A medicated articles to make Type C medicated feeds for broiler chickens. The feeds contain: Salinomycin sodium 40 to 60 grams per ton, virginiamycin 5 grams per ton, and roxarsone 45.4 grams per ton. The feeds are used for the prevention of coccidiosis caused by *Eimeria tenella*,

E. necatrix, E. maxima, E. acervulina, E. brunetti, and *E. mivati,* including some field strains of *E. tenella* which are more susceptible to roxarsone combined with salinomycin than to salinomycin alone, and for improved feed efficiency. The NADA is approved and 21 CFR 558.550(b)(1) and 558.635(f)(3)(vi) are amended accordingly. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(ii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.550 is amended by adding new paragraph (b)(1)(xii) to read as follows:

§ 558.550 Salinomycin.

* * * * *

(b) * * *

(1) * * *

(xii) (*a*) *Amount per ton.* Salinomycin 40 to 60 grams, virginiamycin 5 grams, and roxarsone 45.4 grams.

(*b*) *Indications for use.* For prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti,* and *E. mivati,* including some field strains of *E. tenella* which are more susceptible to roxarsone combined with salinomycin than to roxarsone alone, and for improved feed efficiency.

(*c*) *Limitations.* Feed continuously as sole ration. Withdraw 5 days prior to slaughter. Use as sole source of organic arsenic. Not approved for use with pellet binders. Do not feed to layers. May be fatal if accidentally fed to adult turkeys or horses. Virginiamycin as provided by No. 000007 in § 510.600(c) of this chapter. Roxarsone as provided by No. 017210 in § 510.600(c) of this chapter.

* * * * *

3. Section 558.635 is amended by revising paragraph (f)(3)(vi) to read as follows:

§ 558.635 Virginiamycin.

* * * * *

(f) * * *

(3) * * *

(vi) Salinomycin alone or with roxarsone as in § 558.550.

Dated: October 24, 1988.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 88–25144 Filed 10–31–88; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 102

Revolving Cattle Pool

September 26, 1988.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule; removal.

SUMMARY: The Bureau of Indian Affairs no longer operates an in-kind revolving cattle pool. The remaining cattle outstanding are on a cash repayment basis to the Revolving Loan Fund. Any future in-kind cattle programs operated by tribal groups or organizations with Bureau financing or support will be submitted under 25 CFR Part 101 or Part 103. The rule at 25 CFR Part 102 is therefore removed. This removal will not have an adverse effect on any ongoing programs.

EFFECTIVE DATE: December 1, 1988.

FOR FURTHER INFORMATION CONTACT: Jennings David Colbert, Division of Financial Assistance, Office of Trust and Economic Development, Bureau of Indian Affairs, Room 4060—Main Interior Building, 18th and C Streets NW., Washington, DC 20240, telephone number (202) 343–3657.

SUPPLEMENTARY INFORMATION: The Act of May 24, 1950 (64 Stat. 190; 25 U.S.C. 443), authorized the deposit into the revolving fund of moneys received in settlement of debts of livestock and from the sale of livestock. The livestock involved originated in drought relief purchases by the Department of Agriculture in 1934 which were turned over to the Bureau to establish foundation herds for Indians. The livestock were loaned to Indians on a "repayment-in-kind" basis. A total of $2.8 million has been deposited in the revolving fund for livestock settlement. Receipt by the Bureau of Indian Affairs of cattle in return for loans of cattle has not been a practice for the past 20 years. All cattle debts have been settled by cash payments.

Pursuant to 5 U.S.C. 553(b)(B), the Bureau of Indian Affairs has determined that notice and public procedures concerning the removal of this rule are unnecessary because there is no longer an active revolving cattle pool activity under this part. Future programs of this type, if any, will be managed under 25 CFR Part 101 or 25 CFR Part 103. Removal of this part is necessary because Part 102 has become obsolete. There will be no effect on the public.

List of Subjects in 25 CFR Part 102

Cattle, Indians—business and finance.

PART 102—[REMOVED AND RESERVED]

Accordingly, for the reasons set out above, 25 CFR Part 102 is removed and reserved.

W.P. Ragsdale,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 88–25257 Filed 10–31–88; 8:45 am]

BILLING CODE 4310–02–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 31, 70, 90, 107, and 188

[COD 88–070]

Editorial Changes Reflecting Recent Coast Guard Reorganization; Correction

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction.

SUMMARY: The Coast Guard is correcting an error to a zip code which appears in rule document 88–070 (FR Doc. 88–21974) published on September 27, 1988 at 53 FR 37570.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Don M. Wrye, Office of Chief Counsel, (202) 267–1534.

In rule document 88–070 (FR Doc. 88–21974) beginning on page 37570 in the issue of Tuesday, September 27, 1988, make the following correction:

PARTS 31, 70, 90, 107, AND 188—[CORRECTED]

1. In amendatory instruction 1 of rule document 88–070 (FR Doc. 88–21974), on page 37570 of the issue dated Tuesday, September 27, 1988, the zip code "07653–0910" is removed and the zip code "07653–0910" is added in its place.

Dated: October 27, 1988.

J.E. Vorbach,

Rear Admiral, U.S. Coast Guard, Chairman, Marine Safety Council.

[FR Doc. 88–25232 Filed 10–31–88; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 80745–8219]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues a final rule to amend the definition of directed fishing in the sablefish hook-and-line fishery. Three other regulatory changes are made, which remove superfluous text, improve regulatory implementation, and clarify the regulations.

EFFECTIVE DATE: November 28, 1988.

ADDRESS: Copies of the documents supporting this rule may be obtained from James W. Brooks, Acting Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802–1668.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Biologist, NMFS), 907–586–7230.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the exclusive economic zone (EEZ) of the Gulf of Alaska are managed by the Director, Alaska Region, National Marine Fisheries Service (NMFS), under the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The FMP prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations for the foreign fishery at 50 CFR Part 611 and for the U.S. fishery at 50 CFR Part 672.

This rulemaking amends four regulations that implement the FMP as follows: (1) The percentage used in the definition of directed sablefish fishing is reduced from 20 percent to 4 percent; (2) definitions of the Central Southeast Outside and Southeast Inside Districts are deleted; (3) reference to the component of domestic annual processing (DAP) that is designated as domestic non-processed (DNP) fish in the processor and purchaser reporting requirements is eliminated; and (4) a starting time of 12:00 noon is established for the sablefish hook-and-line fishery. Reasons for the changes were provided in the notice of proposed rulemaking, which was published on August 19, 1988 (53 FR 31728), and which invited comments until September 19, 1988.

Public Comments

No comments were received.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary for the conservation and management of the sablefish fishery in the Gulf of Alaska and that it is consistent with the Magnuson Act and other applicable law.

The Alaska Region, National Marine Fisheries Service, prepared an environmental assessment/regulatory impact review (EA/RIR) for this rule. The Assistant Administrator for Fisheries concluded that no significant impact on the environment will occur as a result of this rule. You may obtain a copy of the EA/RIR (see **ADDRESS**, above).

The Under Secretary for Oceans and Atmosphere determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the socioeconomic impacts discussed in the EA/RIR.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis was not prepared. The modified definition of sablefish fishing with hook-and-line gear is superior to other alternatives considered. The analysis was summarized in the Classification section of the proposed rule.

This rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

NOAA has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 672

Fisheries.

Dated: October 28, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, Part 672 is amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for Part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 672.2, in the introductory text of the definition for *Regulatory District,* the word "four" is revised to read "the three", paragraphs (1) and (2) are removed, and paragraphs (3), (4), and (5) are redesignated (1), (2), and (3), respectively; also in § 672.2, the definition for *Directed Fishing* is revised to read as follows:

§ 672.2 Definitions.

* * * * *

Directed fishing means (1) with respect to any species, stock, or other aggregation of fish, other than sablefish caught with hook-and-line gear, fishing that is intended or can reasonably be expected to result in the catching, taking, or harvesting of quantities of such fish that amount to 20 percent or more of the catch, take, or harvest, or 20 percent or more of the total amount of fish, or fish products on board at any time. It will be a rebuttable presumption that, when any species, stock, or other aggregation of fish comprises 20 percent or more of the catch, take, or harvest, or 20 percent or more of the total amount of fish or fish products on board at any time, such fishing was directed to fishing for such fish; or

(2) With respect to sablefish caught with hook-and-line gear, fishing that is intended or can reasonably be expected to result in the catching, taking, or harvesting of quantities of sablefish that amount to 4 percent or more of the catch, take, or harvest, or 4 percent or more of the total amount of groundfish or groundfish products on board at any

time. It will be a rebuttable presumption that, when sablefish comprises 4 percent or more of the catch, take, or harvest, or 4 percent or more of the total amount of fish or fish products on board at any time, such fishing was directed to fishing for sablefish.

* * * * *

§ 672.5 [Amended]

3. In § 672.5(b)(3)(v), the words "and domestic non-processed fish (DNP)" are removed.

4. Section 672.23 is amended by revising paragraph (b) to read as follows:

§ 672.23 Seasons.

* * * * *

(b) Directed fishing for sablefish in the regulatory areas and districts of the Gulf of Alaska is authorized for hook-and-line gear from 12:00 noon Alaska local time on April 1 through December 31 and for pot gear from April 1 through December 31, subject to other provisions of this part.

[FR Doc. 88-25178 Filed 10-27-88; 12:50 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 53, No. 211
Tuesday, November 1, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1951

Reporting Delinquent Borrowers to Credit Bureaus

AGENCY: Farmers Home administration, USDA.

ACTION: Proposed rule.

SUMMARY: Farmers Home Administration (FmHA) proposes to amend its Single Family Housing Loan servicing regulations to implement a provision of the Debt Collection Act (Pub. L. 97-365) authorizing Federal agencies to refer loans to credit bureaus. This will result in other potential lenders being made aware that an applicant is indebted to FmHA and the status of that debt. The intended effect of this action is to notify the public that FmHA will disclose information on borrowers to credit bureaus. The regulations are also being amended to eliminate the condition that an inequitable effect on a borrower will allow an exception to be granted to the requirements in the regulations.

DATES: Comments must be received on or before January 3, 1989.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Building, 14th and Independence Avenue SW., Washington, DC 20250. All written comments will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: Bob Nelson, Management Analyst, Financial and Management Analysis Staff, Farmers Home Administration, U.S. Department of Agriculture, Room 5505 South Building, 14th Street and Independence Avenue SW., Washington, DC 20250, telephone (202) 475-4700.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under UDSA procedures established in Department Regulation 1512-1 which implements Executive Order 12291 and has been determined to be "nonmajor." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator, Farmers Home Administration, has determined that this action will not have a significant economic impact on a substantial number of small entities because it contains normal business recordkeeping requirements and minimal essential reporting requirements.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal activity significantly affecting the quality of the human environment and, in accordance with the National Enviromental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

The Debt Collection Act of 1982 (Pub. L. 97-365) authorizes the Federal Government to disclose information on debts to credit reporting agencies. FmHA proposes to change its regulations to implement 31 U.S.C. 3711, which authorizes agencies to disclose information on debts to consumer reporting agencies. FmHA is implementing this procedure to ensure that other lenders are aware if an applicant for credit is indebted to FmHA and the status of that debt. Credit bureau reporting will encourage borrowers to keep their accounts current. This will reduce interest costs to the Government and will reduce the amount of time spent by FmHA servicing loans to delinquent borrowers.

The exception authority provision currently in Subpart G is also being revised to eliminate the condition that an exception may be granted to the requirements in that regulation if there were an inequitable effect on a borrower. This is not consistent with the intent behind the use of the exception authority in general which is to avoid an adverse impact on the Government so long as granting the exception does not violate any statutory authority.

This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.410—Low Income Housing Loans (Section 502 Rural Housing Loans). For the reasons set forth in the Final Rule and related notice(s) to 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983; or 48 FR 54317, December 1, 1983), this activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Lists of Subjects in 7 CFR Part 1951

Account servicing and Low and moderate income housing loans—Servicing.

Therefore, FmHA proposes to amend Chapter XVIII, Title 7, Code of Federal Regulations to read as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for Part 1951 continues to read as follows:

Authority: 7 USC 1989, 42 USC 1480, 5 USC 301, 31 USC 3720A, 7 CFR 2.23 and 7 CFR 2.70

Subpart G—Borrower Supervision, Servicing and Collection of Single Family Housing Loan Accounts

2. Section 1951.318 is redesignated as § 1951.320, new §§ 1951.318 and 1951.319 are added, and newly designated § 1951.320 is revised to read as follows:

§ 1951.318 Reporting to credit bureaus.

The Finance Office will initially report only those borrowers three payments or more past due (or the equivalent of three monthly payments for annual payment borrowers) to credit bureaus. The Finance Office will notify borrowers that their account is to be reported. Borrowers who are to be reported as delinquent will have 60 days to bring the account current. If the account is not brought current during that time, the account will be reported to the credit bureau as delinquent, and the fact that the account was delinquent will be part of the credit bureau file for seven years. Referrals will include any or all of the following information:

BEST COPY AVAILABLE

(a) Case number, including Social Security Number.
(b) Name, including co-borrower, if [illegible].
(c) Association code (e.g., individual or joint).
(d) Special comments code (e.g., account in dispute).
(e) Street address.
(f) City, State, ZIP code.
(g) Date loan was made.
(h) Type of loan (e.g., real estate).
(i) Loan number.
(j) Total loan amount.
(k) Date of last payment.
(l) Status (e.g., in collection, foreclosure started).
(m) Date loan became delinquent.
(n) Unpaid balance.
(o) Amount past due.
(p) Terms.

§ 1951.219 Reviewing account status.

(a) If a borrower desires an explanation of the account or disagrees with the stated delinquency during the 60-day period between notification and referral, the borrower may request a meeting with the County Supervisor to discuss the account. If a borrower questions the account status, the account will not be referred until it is determined if the status is correct. The County Supervisor will notify the Finance Office to withhold the referral until the borrower's questions are resolved.

(b) After an account has been referred, borrowers may question information reported by contacting the credit bureau or any FmHA office. The office receiving the request for review will contact the Finance Office. The Finance Office will ensure that the request for review is resolved within 15 days.

§ 1951.220 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart or address any omission of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that application of the requirement or provision or failure to take action in the case of an ommission would adversely affect the Government's interest. The Administrator will exercise this authority upon the request of the State Director with the recommendation of the Assistant Administrator for Housing; or upon request initiated by the Assistant Administrator for Housing. Requests for exception must be made in writing and supported with documentation to explain the adverse effect, propose alternative courses of action and show how the adverse effect will be eliminated or minimized if the exception is granted.

Dated September 30, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88-25174 Filed 10-31-88; 8:45 am]

BILLING CODE 3410-07-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

[Docket No. PRM-20-17]

Rockefeller University; Receipt of Petition for Rulemaking; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of receipt; correction.

SUMMARY: This document corrects the notice of receipt of a petition for rulemaking dated July 22, 1988, which was filed with the Commission by The Rockefeller University (Docket No. PRM-20-17). The notice of receipt for this petition was published October 21, 1988 (53 FR 41342). This notice corrects an inadvertent typographical error which occurred in the preparation of the notice of receipt.

DATES: The comment period for the notice of receipt for PRM-20-17 has been extended to January 3, 1989. Comments received after this date will be considered if it is practical to do so but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit written comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Acting Chief, Rules Review Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-7758 or Toll Free: 800-368-5642.

SUPPLEMENTARY INFORMATION: On page 41343, in the fourth line of the first sentence of the first full paragraph in the second column, "0.001" should be corrected to read "0.01". The corrected sentence reads as follows:

The petitioner requests that the NRC add Sulfur-35, Calcium-45, Chromium-51, Iodine-125, and Iodine-131 in concentrations not exceeding 0.01 microcurie per gram to the list of radioactive isotopes set out in 10 CFR 20.306(b).

Dated at Bethesda, Maryland, this 26th day of October 1988.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Director, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management.

[FR Doc. 88-25224 Filed 10-31-88; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 872 3151]

JS&A Group, Inc., et al.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Northbrook, Ill. company and its president from falsely claiming that any product for personal or household use has been independently investigated or evaluated. It would also prohibit respondents from misrepresenting that a paid advertisement is an independent consumer or news program.

DATE: Comments must be received on or before January 3, 1989.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: C. Lee Peeler, FTC/S-4002, Washington, DC 20580. (202) 326-3090.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying

at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

List of Subjects in 16 CFR Part 13

Sunglasses, Trade practices.

In the Matter of JS&A Group, Inc., a corporation, and, Joseph Sugarman, individually and as an officer of said corporation.

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of JS&A Group, Inc., a corporation, and Joseph Sugarman, individually and as an officer of said corporation, hereinafter sometimes referred to as proposed respondents, and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between JS&A Group, Inc., by its duly authorized officers, and Joseph Sugarman, individually and as officer of said corporation, and their attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent JS&A Group, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois with its office and principal place of business located at One JS&A Plaza, Northbrook, Illinois 60062.

2. Proposed respondent Joseph Sugarman is President of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, and his address is the same as that of the corporate respondent.

3. Proposed respondents admit all the jurisdictional facts set forth in the draft complaint here attached.

4. Proposed respondents waive:

(a) Any procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access To Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint contemplated thereby, will be placed on the pubic record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft complaint here attached.

7. The agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent: (1) Issue its complaint corresponding in form and substance with the draft complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding; and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to-order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any rights they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered That respondents JS&A Group, Inc., a corporation, its successors and assigns, and its officer, agents, representatives and employees, and Joseph Sugarman, individually and as officer of the said corporation, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, labeling, offering for sale, sale or distribution of any sunglass or any other product for personal or household use, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Misrepresenting, directly or indirectly, that such product has been independently investigated or evaluated.

B. Misrepresenting, directly or indirectly, that an advertisement is an independent consumer or news program and not a paid advertisement.

C. For a period of ten (10) years from the date of service of this Order, failing to disclose clearly and prominently in any program length advertisement that the program is an advertisement or commercial. Such fact shall be disclosed at the beginning of the program. In addition, such fact shall be disclosed each time during the program that ordering instructions are given, or at the end of the program if no ordering instructions are given, provided however, that such additional disclosures need not appear more than twice during any half hour period of the program. For purposes of this Order, "program length advertisement" shall mean any video advertisement that ends fifteen minutes or more after it begins.

II

It is further ordered That respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents such as dissolution, assignment or sale resulting in the emergence of a successor corporation or corporations, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this Order.

III

It is further ordered that respondents shall forthwith distribute a copy of this Order to each of their operating divisions.

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IV

It is further ordered that respondents shall, within sixty (60) days after service of this Order and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted subject to final approval an agreement to a proposed consent order from respondents JS&A Group, Inc. and Joseph Sugarman, its president and owner.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the proposed order contained in the agreement.

This matter concerns the promotion of BluBlocker Sunglasses through a print advertisement and "Consumer Challenge", a program length video advertisement.

The Commission's complaint in this matter charges respondents with disseminating advertisements containing false representations that BluBlocker Sunglasses were independently and objectively investigated and endorsed by "Consumer Challenge", an independent consumer program such as "60 Minutes" or "20/20". The complaint also alleges that advertisements for BluBlockers falsely claimed that the producers and investigative reporters of "Consumer Challenge" conducted an independent and objective investigation of BluBlockers without receiving any reimbursement or other financial benefit from respondents.

The complaint alleges that these claims are, in fact, false and that "Consumer Challenge" is not an independent consumer program but rather was created by respondents for the sole purpose of selling BluBlockers. Moreover, the producers and so-called investigative reporters of "Consumer Challenge" were paid directly or indirectly by respondents for producing and acting in the advertisement.

The consent order contains provisions designed to remedy the advertising violations charged as well as to prevent respondents from engaging in similar acts and practices in the future. Part IA of the consent order prohibits respondents from misrepresenting, directly or indirectly, that is product has been independently investigated or evaluated. Part IB prohibits respondents from misrepresenting, directly or indirectly, that an advertisement is an independent consumer or news program and not a paid advertisement.

Part IC of the consent order prohibits respondents from failing to disclose for a period of ten years in all program length advertisement that the program is an advertisement or commercial. Such fact is to be disclosed at the beginning of the program, and in addition, each time during the program that ordering instructions are given, or at the end of the program if no ordering instructions are given. These additional disclosures need not appear more than twice during any half hour period of the program. The final provision of Part IC defines "program length advertisement" for purposes of this order to mean any video advertisement that ends fifteen minutes or more after it begins.

Part II of the consent order requires that respondents notify the Commission at least thirty days prior to any proposed change in the corporate respondents. Part III orders respondents to distribute a copy of the order to each of their operating divisions. Finally, Part IV requires respondents to provide a report to the Commission on its compliance with the provisions of the consent order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 88-25194 Filed 10-31-88; 8:45 am]

BILLING CODE 6750-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33-6806; File No. S7-23-88]

Resale of Restricted Securities; Changes To Method of Determining Holding Period of Restricted Securities Under Rules 144 and 145

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Securities and Exchange Commission (the "Commission") today is publishing for comment Rule 144A that would provide a safe harbor exemption from the registration requirements of the Securities Act of 1933 (the "Securities Act" or the "Act") for resale of securities to institutional investors.

The Commission additionally is publishing for comment an amendment to Rule 144 under the Act to define the required holding period for restricted securities, whether acquired pursuant to Rule 144A or otherwise, as commencing at the time of sale by the issuer or its affiliate.

DATE: Comments should be received on or before December 31, 1988.

ADDRESS: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comment letters should refer to File No. S7-23-88. All comments received will be available for public inspection and copying in the Commission's Public Reference Room at the same address.

FOR FURTHER INFORMATION CONTACT: Sara Hanks or Samuel Wolff at (202) 272-3246, or (as to changes to Rule 144) Catherine Dixon at (202) 272-2573, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

I. Executive Summary

A. New Rule 144A

The Commission is proposing for comment a new Rule 144A that would provide a non-exclusive safe harbor from the registration requirements of the Securities Act [1] for resales of securities to institutional investors.

The rule provides a safe harbor for three tiers of transactions. The first tier (the "qualified institutional buyer tier") would permit unlimited resales of any securities of any issuer, provided that the purchaser was a specified institution with assets in excess of $100 million or that the seller reasonably believed that the purchaser was such a qualified institution. The second tier (the "non-fungible securities tier") would allow unlimited resales of securities to a wider class of specified institutions, if (i) securities of the class offered or sold were not quoted in an inter-dealer quotation system, listed on a securities exchange in the United States, or issued by an open-end investment company, unit investment trust or face-amount certificate company that is registered under section 8 of the Investment Company Act of 1940 (the "Investment Company Act"),[2] and (ii) the securities were non-convertible debt securities, non-convertible preferred stock or securities issued by a company subject to a continuous reporting obligation under the Securities Exchange Act of 1934 (the "Exchange Act").[3] The third tier of proposed Rule 144A would cover resales of non-convertible debt securities, non-convertible preferred stock and securities of reporting companies that are traded in a public market in the United States ("fungible securities") to the same class of institutions as permitted in the second tier.

The qualified institutional buyer and non-fungible securities tiers of the proposed Rule impose no resale restrictions, requiring only that the seller or any person acting on its behalf take reasonable steps to ensure that the buyer is aware that the seller may rely on the exemption from the Securities Act's registration requirements afforded by Rule 144A. In contrast the fungible securities tier requires that the seller or any person acting on its behalf take reasonable steps to prevent the purchaser from reselling the securities in the United States unless they are registered under the Securities Act or an exemption from registration is available. The rule sets forth a non-exclusive method by which that obligation can be satisfied.

The proposed Rule provides a safe harbor exemption from the registration requirements of the Securities Act that would not be exclusive. Attempted reliance on the new safe harbor would not preclude the availability of any other exemption from registration under the Act.

The Commission also is considering adoption of each tier of the Rule independently, or adoption of two tiers without the third. Moreover, the Commission may choose to proceed with one or two tiers of the Rule prior to reaching a final determination as to adoption of the other(s).

B. Amendments to Rules 144 and 145

The Commission also is proposing for comment amendments to rules 144 and 145. Rule 144 permits the public resale of restricted securities when certain conditions, including a minimum holding period, are met. Under the proposed amendments, the time that must elapse before public resale of restricted securities (whether acquired in reliance on Rule 144A or otherwise) would be redefined to commence when the securities are sold by the issuer or its affiliate. Because Rule 145 holding periods are determined by reference to Rule 144, Rule 145 is proposed to be amended to reflect the proposed changes to Rule 144.

The proposed changes to the holding period requirements, which would permit subsequent unaffiliated purchasers to satisfy the requirements through use of the period in which their seller held the securities, would affect trading in all restricted securities, not only those sold under proposed Rule 144A. The proposals thus involve issues that extend beyond the implications for proposed Rule 144A and may be considered by the Commission separately. Accordingly, commentators should address not only the impact of adoption of the two proposals in tandem, but also the potential separate effect of each.

[1] 15 U.S.C. 77a-z.

[2] 15 U.S.C. 77a *et seq.*

II. The Private Placement Market

A. Market Characteristics

The U.S. private placement market is one of the world's largest securities markets.[4] Its volume of bonds outstanding ranks fifth among the bond markets of the world.[5] About thirty percent of all privately placed bonds outstanding in the world were issued in the U.S. market.[6] At year-end 1987, the aggregate value of outstanding bonds that were issued in the U.S. private market was only slightly less than the aggregate value of outstanding Eurodollar bonds.[7]

While the U.S. private placement market is not new,[8] its importance as a source of funds has increased significantly, especially in the 1980s.[9] The total amount of securities privately placed in the United States increased at an average annual compounded rate of 41% from $18 billion in 1981 [10] to $139 billion in 1987.[11] Table 1 shows new corporate public and private financing for 1970, 1975 and the period 1980–1987.[12]

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[4] *See* Salomon Brothers Inc, *How Big Is the World Bond Market?—1988 Update* 1 (May 20, 1988); H. Lund, R. Silbert and P. Chamberlain [eds.], *Private Placements: National and International Markets* 109 (1984) [hereinafter "Lund"].

[5] *See* Salomon Brothers Inc, *supra* n. 4, at 1 (dollar-denominated corporate bonds issued in the U.S. capital market); *cf.* Lund, *supra* n. 4, at 108.

[6] *See* Salomon Brothers Inc, *supra* n. 4, at 1.

[7] *Id.* Data include straight, convertible and floating-rate debt.

[8] *See* E. Shapiro and C. Wolf, *The Role of Private Placements in Corporate Finance* (1972); A. Brimmer, *Life Insurance Companies in the Capital Market* (1962); A. Cohan, *Private Placements and Public Offerings: Market Shares Since 1935* (1961); Mendel, *Institutional Investment Through Private Placement of Corporate Securities*, 33 Col. L. Rev. 934 (1933); Hale, *The Yearbook of Private Placement Financing* (1985); Cross, *Investment Banking and "Private Placements,"* 175 Comm. & Fin. Chron. 1261 (1952); Whipple and Blakeway, *Direct Placement of Corporate Loans—A Logical Development*, 175 Comm. & Fin. Chron. 1701 (1952); Conklin, *Direct Placements*, 6 J. of Fin. 85 (June 1951); E. Carey, *Direct Placements of Corporate Securities* 3 (1951); Ketchum, *Direct Placements* 6 J. of Fin. (June 1951); Preine, *Direct Sale of Security Issues*, 10 J. Am. Ass'n of Univ. Teachers of Ins. 40 (1949); Kuhn, *The Securities Act and Its Effect Upon the Institutional Investor*, 4 L. & Contemp. Prob. 84 (1937).

[9] Maher, *Leveling Off: The Difference Between Public and Private Market Financing Costs Is Slimmer Than Ever*, Investment Dealers' Digest 17 (Oct. 3, 1988); *Private Placement Use To Grow*, Pens. & Inv. Age 18 (Sept. 19, 1988); Zigas, *The Lowly Mart Investment Never Here Alone*, Bus. Week 152 (Sept. 19, 1988); Parker, *More Issuers Turn to Private Market*, Pens. & Inv. Age 3 (Feb. 8, 1988); Wayne, *A Wall Street Sector Blossoms: The Private Placement*, The New York Times D1 (July 17, 1987); Baker, *Private Offers Up*, Pens. & Inv. Age 23 (Apr. 6, 1987); Picker, *Breaking Records: Private Placements Grow in Popularity, Complexity*, Investment Dealers' Digest 30 (Mar. 9, 1987); Hamilton, *Private Placements Soar*, Investment Dealers' Digest 6 (Feb. 2, 1987).

[10] Christie, *1987—An Innovative Year in the Private Sector*, Investment Dealers' Digest 20 (Mar. 21, 1988).

[11] Bensman, *Shifting Boundaries: Moving the Line Between the Public and Private Markets*, Investment Dealers' Digest 19 (Mar. 21, 1988). Total private placements amounted to $71 billion in the first half of 1988 compared to $62 billion in the first half of 1987. Maher, *supra* n. 9, at 20.

[12] The data in Table 1 and much of the other data cited in this Release are based upon data published in the *Investment Dealers' Digest* and Dealers' Digest, *Directory of Corporate Financing*, or obtained from IDD Information Services, Inc. See Dealers' Digest, *Directory of Corporate Financing: Semi Annual Directory* (Spring 1988); *id.* (Spring 1987); Higgins, *The Big Four of Private Placements*, Investment Dealers' Digest 13 (March 1985); Dealers' Digest, *Five Year Directory of Corporate Financing 1980–1984*; *id.*, *Directory of Corporate Financing: 1970–1980 Decade*. Private placement totals for 1986–1987 are from IDD Information Services, Inc. The *Investment Dealers' Digest* defines "private placement" to include securities that are privately placed through a dealer with non-bank, third-party investors, where the securities have a maturity of at least one year and are non-callable for at least one year. Bensman, *supra* n. 11, at 18. The definition thus would generally exclude privately placed commercial paper. The data do not include securities privately placed directly by the issuer. Bank loans, interest rate and currency swaps and securities that a dealer buys for its own account are not included in the data. Finally, the data exclude school issues, tax-exempt securities, sales of outstanding securities, private placements purchased by foreign investors and bridge loans. *See* Bensman, *supra* n. 11, at 17–18; Bensman, *Equity Kickers* 23–24 (Sept. 14, 1987); Christie, *Private Sector Is Sharp During 1985*, Investment Dealers' Digest 30 (Mar. 3, 1986).

The annual figures published by the *Investment Dealers' Digest* are not in all cases directly comparable, because the publication made various changes to its classifications in some years. Moreover, the data presented appear to be under-inclusive, in view of the narrowness of the definition of private placement. Nonetheless, they provide an estimate of minimum amounts of securities privately placed annually.

The data presented in this Release have not been verified independently by the Commission or its staff.

TABLE 1.—NEW CORPORATE PUBLIC AND PRIVATE FINANCING

[Millions of dollars]

	Public	Percent public	Private	Percent private	Total new financing
1970	31,130	83	6,375	17	37,505
1975	46,826	78	13,515	22	60,343
1980	57,330	78	15,780	22	73,030
1981	56,085	75	18,400	25	74,485
1982	62,566	72	24,300	28	86,866
1983	97,103	73	35,600	27	132,703
1984	82,196	61	53,258	39	135,457
1985	138,280	65	73,093	35	211,280
1986	6,940	70	123,457	30	409,457
1987	271,477	66	139,355	34	410,832

Since 1980, the primary market in private placements has shown a 37 percent compound average annual growth rate in dollar volume and a corresponding 41 percent growth rate since 1983. In the same periods, the compound average annual growth rate of new financing placed in the public sector was approximately 25 percent and 29 percent, respectively.

The private placement market in the United States is primarily a debt market, although private issuances of equity securities began to increase in the mid-1980s.[13] Private placements by type of security are shown in Table 2 for 1965, 1975 and the period 1980–1987.[14]

[13] *See* Parker, *supra* n. 9, at 34.

[14] Higgins, *supra* n. 12, at 13; Dealers' Digest, *Directory of Corporate Financing: 1970–1980 Decade*; Investment Dealers' Digest and Investment Bankers Association, *1980–1988: A Decade of Corporate and International Finance* 12. Data for 1985–1987 are from IDD Information Services, Inc.

TABLE 2.—AMOUNT OF PRIVATE PLACEMENTS BY TYPE OF SECURITY

[Millions of dollars]

	Debt	Percent debt	Equity	Percent equity	Total
1965	8,562	97	258	3	8,820
1975	12,852	95	663	5	13,515
1980	13,800	88	1,900	12	15,700
1981	16,000	87	2,400	13	18,400
1982	20,700	85	3,600	15	24,300
1983	28,800	81	6,800	19	35,600
1984	43,606	82	9,700	18	53,300
1985	60,565	83	12,528	17	73,093
1986	110,534	90	12,933	10	123,457
1987	122,124	88	17,231	12	139,355

In 1987, debt securities privately placed totaled $122 billion, or 88 percent of total new private placements in the United States.[15] Privately placed debt securities include senior, subordinated and convertible debt issued on an unsecured and secured basis.[16] Traditionally, privately placed debt has been long-term,[17] but a trend toward shorter maturities began in the 1970s.[18] The private placement market presently includes securities with a broad range of maturities,[19] including commercial paper and medium-term notes.[20] In general, debt securities that provide a relatively predictable cash flow are attractive to "liability-matching" investors such as insurance companies.[21]

Equity securities privately placed in 1987 totalled $17 billion, or 12 percent of total new private placements in the United States.[22] Privately placed equity securities include preferred stock,[23] common stock and other equity.

[15] IDD Information Services, Inc. This amount includes, *inter alia*, straight debt, lease-, mortgage-, and acquisition-related debt, private debt with registration rights and certificates of deposit placed through a dealer.

[16] *See* Haak, *The Private Placement Alternative*, in *Private Placements* 1988, at 113 (1988).

Of total debt securities issued privately in 1987, the components were as follows: Bonds, 23 percent; notes, 59 percent; certificates of deposit, 9 percent; lease-related, 7 percent; and other, 2 percent. IDD Information Services, Inc.

[17] Interviews of members of the financial services industry ("Market Participants") by the SEC staff. During 1988, the Commission's staff conducted numerous interviews of members of the financial services industry, including investment banks, commercial banks, insurance companies and pension funds, to discuss the private placement market. *See also* Bensman, *supra* n. 11, at 18 (traditional placement was long-term investment grade debt); Lund, *supra* n. 4, at 108, 111; Carey, *supra* n. 8, at 43.

[18] Market Participants, *supra* n. 17 (most common maturity is 10–12 years); Higgins, *supra* n. 12, at 12 (10 years or less maturity predominates); Picker, *supra* n. 9, at 30; Altman, *Financial Handbook*, 4–23 (1981). "[I]n response to shifting needs of both borrowers and lenders, financings of debt with intermediate maturities [5–15 years] have become more prevalent." *Id.*

[19] *See* Parker, *supra* n. 9, at 34 (1–25 years); Market Participants, *supra* n. 17.

[20] Market Participants, *supra* n. 17. To be included in the Investment Dealers' Digest tabulations of "private placement," *see* Table 1, *supra*, securities must have a maturity of at least one year. *See* Bensman, *supra* n. 11, at 18.

[21] Market Participants, *supra* n. 17.

[22] IDD Information Services, Inc.

[23] In 1987, preferred stock accounted for 26 percent of total equity privately placed. IDD Information Services, Inc. During the period 1982–1984, preferred stock accounted for 32 percent of total equity securities privately placed. Higgins, *supra* n. 12, at 13. In 1977, preferred stocks accounted for 92 percent of total private equity. Christie, *1987-An Innovative Year in the Private Sector*, Investment Dealers' Digest 21 (Mar. 30, 1987).

The market for preferred stock began to grow in the 1970s. Altman, *supra* n. 18, at 4–22. This growth is reported to be largely attributable to the increased use of preferred stocks in corporate mergers, and to the increased participation of utility companies in the private placement market. *Id.* The development of an intermediate preferred market in the 1970s also contributed to the expansion of the private preferred market. *Id.*, at 4–23. Today, the preferred market includes a wide range of securities. *E.g.*, Bensman, *supra* n. 11, at 17 (private placement in the United States of Dutch auction preferred stock by foreign issuer).

In 1987, common stock accounted for only 16 percent of total equity privately issued.[24] Excluding equity portions of lease financings, mortgage- and acquisition-related financings and private transactions with registration rights, the amount of equity sold privately in 1987 totalled approximately $12 billion.[25]

In 1987 almost $16 billion in private financing (including debt and equity securities) was acquisition-related.[26] Private placements of securitized assets grew in 1987 to $23 billion, reflecting increases in the overall mortgage and asset-backed market.[27] Lease-related private placements also continued to grow in 1987, reaching about $15 billion by year end.[28]

B. Issuers

A diverse group of issuers supplies securities to the private market.[29] The core segment of the market traditionally has been the "lower investment-quality issuer":

> The core market comprises mainly the large but not giant corporations, those with a bond rating of A or Baa from Moody's, or an A or BBB from Standard & Poor's. * * * Long-term loans to these borrowers are perceived as somewhat risky (at least compared to government obligations) but overall not likely to default. * * * They constitute the lower end of the investment grade securities, which institutions consider prudent fiduciary investments.[30]

Less significant segments of the private placement market are the two ends of the spectrum in terms of risk.[31] At one end are high quality, highly rated issuers whose securities are preferred by conservative investors, such as public retirement funds.[32] Higher quality issuers are more apt than lower quality issuers to use the public markets for financing, given the accessibility of the public market and the ease of registration.[33] At the other end of the spectrum are highly leveraged and other higher risk issuers whose securities frequently are purchased by asset-based lenders (such as commercial finance companies) and venture capitalists, as well as by insurance companies.[34] Private placement of "high yield" debt has increased substantially in the last four years.[35]

By industry type, industrial companies are the largest issuers in the private market, followed by finance companies and utilities,[36] as shown in Table 3.[37]

TABLE 3—PRIVATE PLACEMENTS BY TYPE OF ISSUER

[Millions of dollars]

	Utilities	Industrials	Finance companies	Foreign	Total
1980	2,298	10,052	1,205	719	15,700
1981	3,948	10,080	1,208	1,865	16,400
1982	2,420	13,219	2,162	1,422	24,300
1983	2,786	19,613	8,308	2,861	35,600
1984	4,807	22,600	21,300	8,309	53,300
1985	4,000	34,993	26,200	2,500	73,093
1986	6,400	58,328	38,200	10,700	123,457
1987	8,800	84,855	82,000	8,700	139,355

[24] IDD Information Services, Inc. "Other equity," which includes equity portions of lease financings and limited partnership interests, see Mershon, *Private Placements Soar*, Investment Dealers' Digest 9 (Feb. 8, 1983), accounted for 58 percent of private equity in 1987. IDD Information Services, Inc. *See also* Lund, *supra*, n. 4, at 110 (private equity is largely just participation in various kinds of tax-oriented investments, such as equipment financing and oil-and-gas partnerships); Benaman, *supra* n. 11, at 22 (large amount of limited partnership interests in leveraged buyout funds).

[25] Bensman, *supra* n. 11, at 20.

[26] *Id. See LBOs Forced to Abandon Public Market for Private Investors*, 13 Corp. Fin. Week 2 (Dec. 28, 1987).

[27] Bensman, *supra* n. 11, at 20, 21. Securitized transactions include mortgage-related placements, receivables-backed securities (e.g., securitized car loans, and other asset-backed securities. *Id.* Mortgage-related private placements amounted to $13 billion in 1986. See Picker, *supra* n. 9, at 34 (total includes only mortgage-related placements, and excludes receivables-backed and other asset-backed securities.) *See generally* Cumming, *The Economics of Securitization*, 12 Fed. Res. Bank of N.Y. Q. Rev. 11 (Fall 1987). *See also Holiday Uses Unique Collateral In Private Deal*, 14 Corp. Fin. Week (Feb. 29, 1988) (franchise royalties); Cowan, *World Taking Asset-Backed Idea to Heart*, 19 Pens. & Inv. Age 37 (May 2, 1988); *Mortgage Loans*, 153 Am. Banker (Mar. 28, 1988); Albert, *Auto Leases Used to Back 4 Year Notes*, Am. Banker (Oct. 13, 1987). Fraust, *Loan-Sales Gurus Project Big Growth*, Am. Banker 7 (Aug. 22, 1988); Neustadt, *Insurer Buys $400 Million of Card-Backed Notes*, Am. Banker 2 (June 22, 1988); *Major Mortgage-Backed Securities Offerings*, Am. Banker 13 (May 30, 1988).

[28] Bensman, *supra* n. 11, at 21. The significant increase from the 1986 total of $11.3 billion represents, in part, an increase in aircraft lease finance. *Id. See also* Lund, *supra* n. 4, at 114 (equipment financing also includes railroad stock, freighters, tankers and pipelines). *See generally* Endler, *The Lease Finance Statement is Exploding*, Investment Dealers' Digest 18 (May 16, 1988).

[29] Lund, *supra* n. 4, at 111.

[30] *Id. See also* Cage, *Private Placement: A New Option for the Middle Market*, 8 Cash Flow 46 (Feb. 1987); *Private Window Opens for Bus Issuers*, 13 Corp. Fin. Week 1 (Jan. 26, 1987); *Equitable Nixes Private High Grade Corporates*, 13 Corp. Fin. week 1 (Feb. 2, 1987); *Raising More Cash in Private Placements*, Business Week 98 (Oct. 27, 1975) (lower-grade companies that cannot borrow in the public market are using private market).

[31] Lund, *supra* n. 4, at 112.

[32] *Id.*

[33] Market Participants, *supra* n. 17.

[34] Lund, *supra* n. 4, at 112. *See also Raising More Cash in Private Placements*, Business Week 98 (Oct. 27, 1975).

[35] Market Participants, *supra* n. 17; *see* Bensman, *supra* n. 11, at 17; Picker, *supra*, n. 9, at 30.

[36] *See generally* Shapiro and Wolf, *supra* n. 9, at 30–36 (substantial reliance by utilities on public market); Wolf, *Demand for Funds in the Public and Private Corporate Bond Market*, 65 Rev. of Econ. and Statistics 27 (Feb. 1974) (same). *See also Gas Company Debt Issues*, 112 Pub. Util. Forts. 44 (Dec. 22, 1983) (during period 1981–1983, 33 percent of debt financing by natural gas industry was placed privately). *Mississippi Pol. Turns to Private Market for Junk Bonds*, 13 Corp. Fin. Week 5 (Dec. 28, 1987).

A large amount of real estate securities is also sold privately. Wolf, *supra* at 28. Shapiro, *supra* n. 13, at 45–45, 142.

[37] *A Good Year for Private Placements*, Investment Dealers' Digest 8 (Mar. 13, 1986). Data for 1984–1987 are from IDD Information Services, Inc. The issuers shown do not represent all categories of issuers. The sums of the amounts presented in the four categories does not equal the totals, because not all categories of issuers are shown; also, amounts shown under "foreign issuers" also may be counted in other categories (e.g., industrials). In addition to the categories shown, the totals include government securities and "other" securities. "Industrials" include, *inter alia*, transportation securities and service companies.

Historically, private placements in the United States by foreign issuers have been relatively limited. Recently, however, foreign governments [58] as well as foreign private companies [59] have privately placed substantial amounts of securities in the United States, although such placements still only account for a small percentage of the private market. In 1987, foreign issuers (including Canadian issuers) privately placed securities aggregating $9.7 billion in the United States.[60] These transactions have frequently taken the form of a U.S. private placement made contemporaneously with an offshore offering.[61] The participation of foreign issuers in the U.S. private placement market may be limited by state laws or internal regulations that restrict the percentage of assets that insurance companies and pension funds may invest in foreign securities.[62]

Domestic issuers of equity in private placements are usually non-reporting companies.[63] Secondary market liquidity for reporting companies provides a strong incentive to issue freely resalable securities.[64] At the same time, the existence of secondary market liquidity for these issuers creates concern that fungible privately placed equity securities will be resold into the retail market. On the other hand, a large amount of debt is sold in private placements by reporting companies, in situations where there is no pre-existing public market providing easy resale.[65]

Issuers reportedly participate in the private market to preserve confidentiality; to avoid the rating process; to issue securities with complicated or unusual terms; to reduce costs of issuance; to avoid delays associated with registration; and to delay take-down of funds.[66]

C. Investors

Investors in the private placement market are almost exclusive institutions.[67] Insurance companies became [68] and remain [69] the dominant investors in this market, consistently supplying substantial funds to the U.S. private market since its inception.[70] Acquisitions of privately placed securities by insurance companies account for the vast majority of total private offerings.[71]

Various other institutions participate as investors in the private market, but the extent of their participation is small relative to that of insurance companies. Private pension funds, state and local governments, domestic bank trust departments, bank holding companies, and similar institutions purchase privately placed securities,[72] although their collective purchases in the 1980s have been estimated to account for only about 10 to 20 percent of total private placements.[73]

Venture capitalists invest in the private market [74] and tend to purchase securities of start-up companies, highly leveraged companies or other higher risk enterprises.[75] Foreign institutions, particularly Japanese investors, have participated in the U.S. private placement market in recent years in a wide variety of transactions, including complex placements such as leveraged leases and leveraged buy-outs.[76]

Generally, the reasons given for investors' participation in the U.S. private market are yield incentives, asset/liability matching, the ability to take large participations, better call protection, and better covenant protection.[77]

D. Intermediaries

Intermediaries are used in the private placement market as in other U.S. financial markets. However, the system for placing new issues in the private market is less standardized than that in the public market.[78] While in some cases the issuer and investor deal directly with each other, the major portion of new issues in the private market is placed by intermediaries.[79] The average size of private issues sold by intermediaries tends to be larger than private placements sold directly.[80]

Historically, investment banks have played the major role as intermediaries in the private market; [81] however, in the 1980s, commercial banks have become more active.[82]

Of the 20 private placement agents placing the largest amount of securities in 1987, 12 investment banks placed $90 billion of securities and eight commercial banks placed $34 billion.[83] Traditionally, commercial banks have been most active in placing straight debt securities,[84] but banks are reported to be increasingly active in privately placing asset-backed securities and certificates of deposit.[85] The parameters of commercial banks' participation as intermediaries are set by the Glass-Steagall Act.[86]

III. The Secondary Market for Private Placements

A secondary market for privately placed securities has become an established feature of American corporate finance.[87] In 1979, a Bar committee reported that "an active and substantial [88] secondary market for the resale of privately placed debt securities exists and functions alongside the secondary markets for the resale of other securities." [89] Estimates of total volume of secondary trading in private placements in the 1980s have ranged from $1.5 to $6 billion annually.[90]

In contrast to the primary market for private placements, which includes a significant equity component, the secondary market for private placements reportedly consists almost entirely of debt securities.[91] The majority of these securities have not been rated by a nationally recognized statistical rating organization,[92] although in many cases other debt securities of the issuer are rated, often investment grade.[93] Straight debt securities are resold in the secondary market more frequently than debt securities with complex terms and covenants.[94] Larger original issues are resold more frequently than smaller issues.[95] The secondary market for privately placed commercial paper reportedly is small, due to the short-term nature of the instruments.[96]

Most issuers of securities resold in the secondary private placement market are domestic issuers.[97] Domestic issuers of debt securities resold in the secondary private market are, more often than not, reporting companies.[98] However, the limited equity securities resold in the secondary market usually are issued by non-reporting companies.[99] Buying and selling in the secondary market mirror the activity in the primary market. Buyers and sellers are almost always institutions,[100] and are predominantly insurance companies.[101]

Volume is often higher at year-end,[102] reflecting the tax considerations that

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[58] *E.g., Belgium to Tap Private Placement Market*, 14 Corp. Fin. Week 2 (May 6, 1988).

[59] *Wave of Foreign Debt to Hit U.S. Private Placement Market*, 13 Corp. Fin. Week 1 (Dec. 14, 1987). Several private placement professionals have pointed to "a continuing trend among foreign issuers to use the U.S. private market because it offers competitive rates, and all in financing costs may be lower than U.S. public and Eurobond market rates." *See Belgium to Tap Private Placement Market*, *supra* n. 58, at 1. *See also* Lund, *supra* n. 4, at 114; Bensman, *supra* n. 11, at 17 (U.S. private market desirable for European companies with dollar exposure to get long-term, fixed-rate financing).

[60] IDD Information Services, Inc. The same year, foreign issuers registered with the Commission securities aggregating $12 billion.

[61] Lund, *supra* n. 4, at 42. *E.g., CGE Plans U.S. Placement at Time of Offer in France*, Wall St. J. 31 (Apr. 26, 1987) (CGE Generale D'Electricite).

[62] *See* Lund, *supra* n. 4, at 114. *E.g.*, N.Y. Insurance Law § 1405(a)(7) (McKinney 1985). *Wave of Foreign Debt to Hit U.S. Private Market*, 13 Corp. Fin. Week 1, 12 (Dec. 14, 1987).

[63] Market Participants, *supra* n. 17. Public companies reportedly tend to issue equity securities only in special circumstances, such as a debt transaction with an equity component (e.g., debt with warrants); a takeover defense; a leveraged buy-out; a joint venture; or a restructuring. *Id.* Occasionally, small public companies issue equity privately, but ordinarily only to satisfy a relatively small need for funds.

[64] Restricted securities typically sell at a discount to securities that are freely tradeable in the public market. Market participants, *supra* n. 17. *See* Bolten, *Discounts for the Stocks of Closely Held Corporations*, Trusts & Estates 22 (Dec. 1984); Gelman, *An Economist-Financial Analyst's Approach to Valuing Stock of a Closely-Held Company*, J. of Taxation 353 (June 1972); Feld, *The Implications of Minority Interest and Stock Restrictions in Valuing Closely-Held Shares*, Univ. of Pa. L. Rev. 934 (1974).

[65] Market Participants, *supra* n. 17.

[66] Dash, *supra* n. 16 at 24; Lund, *Supra* n. 4, at 112; W. Cowie, *Direct Placements with Insurance Companies*, to 6 N.Y. State Ins. Dept. Examination of Ins. Companies (1956); Wolf, *supra* n. 26, at 27, 28. *See also*, Bensman, *supra* n. 11, at 19 (private market used for complex transactions); *Small Lenders Heat Up Competition in Private Placement Market*, 14 Corp. Fin. Week 1 (April 11, 1988) (delayed delivery feature permits issues to lock-in rate for securities to be issued in the future).

[67] Market Participants, *supra* n. 17. Indeed, an important catalyst to the development of the private placement market in the United States was the tremendous growth in institutional savings, especially in the form of life insurance reserves. E. Shapiro and Wolf, *supra* n. 8.

[68] Shapiro and Wolf, *supra* n. 8, at 80. "Life insurance companies have been the most active and consistent participants in the private market during the post-war period." *Id.* at 48 (1972). One reason for the dominance of insurance companies as investors in the private market has been the growth in life insurance assets coupled with difficulties in finding qualified outlets for life insurance funds. Covey, *supra* n. 8, at 12. "Competing as they do with other investors for the available supply of investments, life companies as a group face an investment problem created by their own size." *Id.* (1981).

[69] Wayne, *supra* n. 8, at D2; Baker, *Private Offers Up*, Pens. & Inv. Age 23 (Apr. 6, 1987); Higgins, *supra* n. 12, at 12; *Insurance Companies Feed Private Placement Market*, 11 Pens. & Inv. Age 33 (July 11, 1983).

[70] *See* Lund, *supra* n. 4, at 110.

[71] Market Participants, *supra* n. 17; Cebenilla, *Directly Placed Bonds: A Test of Market Efficiency*, 12 J. of Portfolio Management 72 (Winter 1986).

[72] Market Participants, *supra* n. 17; Lund, *supra* n. 4, at 120.

[73] Market Participants, *supra* n. 17. Traditionally, pension funds have tended to prefer securities of higher quality issuers than have insurance companies. *Id.*

[74] Lund, *supra* n. 4, at 113. Benton and Gunderson, *Venture Capital Financings and Exemptions from Registration Under the Securities Act of 1933: Section 4(2), Rule 146 and Rule 242*, 21 Santa Clara L. Rev. 23 (Winter 1981). *Cf.* Torpey and Viecione, *Attracting Money for Smaller Businesses*, 3 Harv. B. Rev. 116 (May-June 1987).

[75] Lund, *supra* n. 4, at 113.

[76] Parker, *supra* n. 9, at 3 (Japanese institutions); Wayne, *A Wall Street Sector Blossoms: The Private Placements*, The New York Times D2 (July 17, 1987) (Japanese investors); Kesler, *Joining in a Private Fight: Commercial Banks Are Doing Private Placements*, Euromoney 175 (Dec. 1986) (Japanese institutions and European banks); Crane, *Every Risk Has Its Price*, Forbes 180 (Nov. 16, 1987); Cage, *Wide Range of Factors Favor Overseas Financing*, 6 Cash Flow 53 (Sept. 1987) (discussing private placements by U.S. corporations to foreign investors offshore); *Fed Approves Sale of Major Stake in CS Bancshares to Japanese*, Am. Bank. 2 (May 12, 1987) (private placement to Japanese finance company); Blanton, *Japanese Companies Help Jet Financing Get Off Ground*, Pens. & Inv. Age 47 (Oct. 1, 1984); Albert, *Banks Sell Notes Backed by Associated Grocers' Assets*, Am. Bank. 20 (Feb. 10, 1988) (foreign banks major purchasers in asset-backed securities transaction); Bensman, *supra* n. 11, at 22 (Japanese investment in privately placed interests in leveraged buyout funds); Parker, *supra* n. 9, at 34 (participation of Japanese investors in leveraged buyouts); Parker, *supra* n. 9, at 30, 35; Hammerick, *Japanese Via for U.S. Debt Market*, Pens. & Inv. Age 6 (Nov. 30, 1987).

[77] Dash, *supra* n. 16, at 128; *see also LBOs Forced to Abandon Public Market for Private Investors*, 13 Corp. Fin. Week (Dec. 28, 1987); Parker, *supra* n. 9, at 34.

[78] *See* Cabenilla, *supra* n. 61, at 72.

[79] Market Participants, *supra* n. 17; Shapiro and Wolf, *supra* n. 8, at 78.

[80] Market Participants, *supra* n. 17.

[81] Keller, Investment Banks Private Placements, Pens. & Inv. Age 17 (October 5, 1987).

[82] Neustadt, *Banks Take Big Share of Private Financing Market*, 153 Am. Bank. 21 (March 21, 1988); Neustadt, *Banks Encroach on Wall Street's Turf*, 153 Am. Bank. 1 (April 4, 1988); Kesler, *Joining in the Private Fight: Commercial Banks Entering the Private Placement Market*, Euromoney 175 (Dec. 16, 1986); Albert, *Banks Forge Ahead with Private Placements*, 151 Am. Bank. 1 (July 17, 1986); Parker, *Commercial Banks Take Aim*, 16 Pens. & Inv. Age 35 (Feb. 22, 1988); *cf. A.G. Becker, Inc. v. Board of Governors of Fed. Res. Sys.*, 519 F. Supp. 602, 604 (D.D.C. 1981), *rev'd*, 693 F.2d 136 (D.C. Cir 1982), *rev'd sub nom., Securities Industry Ass'n v. Board of Governors of the Fed. Reserve Sys.*, 468 U.S. 137 (1984) (discussing placement activities of banks in commercial paper markets). *See also Long-Term Credit Bank of Japan Looks to Become Private Placement Agent*, 13 Corp. Fin. Week (Mar. 23, 1987).

Until Board of Governors of the Federal Reserve System, *Statement Regarding Determination Not to Initiate Enforcement Action* (Sept. 20, 1960) (Bankers Trust), it was generally assumed that the Glass-Steagall Act barred banks (and bank holding companies) from acting as intermediaries in private placements. *See also* Staff of the Board of Governors of the Federal Reserve System, *Commercial Bank Private Placement Activities* 85-87 (1977).

[83] Bensman, *supra* n. 11, at 18. Three commercial banks were included in the top ten placement agents for 1987. *Id.* According to the *Investment Dealers' Digest*, the top ten placement agents in 1987, and the amounts of securities placed (in billions) were Salomon Brothers Inc $14.8; The First Boston Corp., $11.5; Drexel Burnham Lambert Incorporated, $11.4; Goldman, Sachs & Co., $11.3; Shearson Lehman Hutton Inc., $10.1; Merrill Lynch, Pierce, Fenner & Smith, Inc., $9.5; Bankers Trust Company, $8.0; Morgan Stanley & Co., Incorporated, $7.2; Paine Webber Incorporated, $7.2; and Morgan Guaranty Trust Company of New York, $6.8. *See* Bensman, *supra* n. 11, at 18.

[84] Picker, *supra* n. 9, at 38.

[85] Neustadt, *Banks Take Big Share of Private Financing Market*, Am. Banker 10 (Mar. 21, 1988) (commercial banks strongest in asset-backed securities, private certificates of deposit and straight debt, and weakest in acquisition-related transactions). *See also* Albert, *Banks Sell Notes Backed by Associated Grocers' Assets*, Am. Banker 20 (Feb. 10, 1988).

[86] The United States Court of Appeals for the District of Columbia Circuit ruled, in a case involving a bank's placements of commercial paper, that the Glass-Steagall Act's prohibition of underwriting by banks does not prevent agency private placements. *Securities Industry Ass'n v. Board of Governors of the Fed. Reserve Sys.*, 807 F.2d 1052 (1986), *cert. denied*, 107 S. Ct. 3228 (D.C. Cir. 1987). *See also* Comptroller Staff No-Objection Letter No. 87-4 (May 18, 1987); Comptroller Staff No-Objection Letter No. 87-3 (March 24, 1987); S. 1886); 100th Cong., 2d Sess., 134 Cong. Rec. S3360-79 (1988); H.R. 5094, 100th Cong., 2d Sess., H.R. Rep No. 100-822, Part 1, 1-69. *Cf.* H.R. Rep. No. 100-822, Part 2, 100th Cong., 2d Sess. (1988) (version of H.R. 5094 favorably reported by Committee on Energy and Commerce).

[87] *See* Monahan, *Trading in Private Placements: Secondary Market Liquidity and Volume are Increasing*, Investment Dealers' Digest 5 (Apr. 28, 1983). As indicated below, the secondary market for privately placed debt securities is well established, while the secondary market for private equity is relatively small.

Published data regarding the secondary market for privately placed securities is almost completely unavailable. Much of the following discussion is based, therefore, on information compiled by the Commission's staff in a series of interviews with market participants. *See supra* n. 17.

[88] Footnote in original omitted.

[89] Committee on Developments in Business Financing of the Section of Corporation, Banking and Business Law of the American Bar Association, *Resale by Institutional Investors of Debt Securities Acquired in Private Placements*, 34 Bus. L. 1927, 1931 (July 1979) (hereinafter "Committee"). "The secondary market for privately placed debt securities provides to institutional investors, and to dealers in such securities, a market place for the offering and resale of substantial amounts of such securities on the basis of quality and yield." *Id.* at 1937.

Volume in the secondary market appears to have increased significantly in the mid-late 1970s. *See generally* Monahan, *supra* n. 87; *Raising More Cash in Private Placements*, Business Week 98 (Oct. 27, 1975) (forty-four percent of 200 institutions surveyed indicated they had bought or sold privately placed securities in the past year). In earlier periods, the secondary market for privately placed securities was not considered a liquid market. E. Altman,

[90] Committee, *supra* n. 89, at 1931-32; Market Participants, *supra* n. 17.

[91] Market Participants, *supra* n. 17.

[92] *Id.*

[93] *Id.* Currently, the nationally recognized statistical rating organizations include Moody's Investor Services; Standard & Poor's Corporation; Duff & Phelps, Inc.; Fitch Investor Services, Inc.; and McCarthy, Crisanti & Maffei, Inc.

[94] *Id.*

[95] *Id.*

[96] *Id.*

[97] *Id.*

[98] *Id.*

[99] *Id.*

[100] Committee, *supra* n. 89, at 1931-32; Market Participants, *supra* n. 17.

[101] Market Participants, *supra* n. 17.

[102] *Id.*

may prompt an institution to sell a portion of its private portfolio at that time.[83] Portfolio and asset management, including matching assets and liabilities, responding to interest rate fluctuations and reacting to deteriorations in credit quality, also motivates institutions to sell in the secondary market.[84] Resales in the secondary market reportedly range from $500,000 to $20 million per transaction.[85]

Decisions to buy privately placed debt securities in the secondary market are reported to be "influenced particularly by the differences between the yields in the secondary market for such securities and for other debt securities, as well as by the relatively more advantageous redemption and sinking fund provisions of many privately placed securities."[86]

Intermediaries, such as investment and commercial banks, are almost always involved in resales of privately placed securities, although direct resales occasionally do occur.[87] While the intermediary sometimes acts on an agency basis, it usually operates on a principal basis. Resales generally are intermediated by the original placing agent.[88]

IV. Institutional Sales Under the Federal Securities Laws

The Congress and the Commission historically have recognized the ability of professional institutional investors to make investment decisions without the protections mandated by the registration requirement of the Securities Act. The Commission has not until now, however, formally addressed the difference between the institutional and public resale markets. The institutional resale market for restricted securities has evolved to a point where its existence should be acknowledged.

Proposed Rule 144A could have a significant impact on both the primary and secondary domestic markets for unregistered securities of reporting as well as nonreporting issuers.[89] Removing uncertainties as to the legitimacy of resales to institutional buyers by providing a safe harbor from registration could permit some transactions to take place that otherwise might not occur. Such transactions might include resales by persons that purchased securities privately with a view to their immediate resale to a number of institutions. Providing a framework in which institutional resales could be made freely may increase the efficiency of the private placement market. Liquidity in the market may increase,[90] not only as the result of increased efficiency, but also as a consequence of the resale provisions of proposed Regulation S.[91] The potential increase in efficiency and liquidity could significantly lower the discount commonly associated with private placements,[92] which in turn may attract an increasing number of issuers to the private placement market.[93]

The Rule may have significant implications for offerings by foreign issuers. Foreign issuers who previously may have foregone raising capital in the United States due to the compliance costs and liability exposure associated with registered public offerings, and the costs of financing inherent in placing restricted securities, may find private placements in the United States a more viable capital-raising option as a result of the combined effect of proposed Rule 144A and proposed Regulation S. Greater participation by foreign issuers in the U.S. capital market also would have the benefit of reducing the costs borne by U.S. institutional investors that wish to invest in foreign securities and are compelled at present to go overseas to obtain such securities. Moreover, U.S. intermediaries who may have lost business to foreign competitors simply because such securities may be available only offshore may be afforded more opportunities to participate in the internationalization of investment strategies.

While the Commission recognizes that a substantial institutional resale market currently exists, it anticipates that the development under Rule 144A of more formal, active trading markets will raise questions as to the effect of institutional markets on the efficiency and liquidity of the public trading markets. Those consequences need to be understood in considering adoption of Rule 144A, and, if the Commission determines to proceed, in determining whether to adopt the three tiers of the proposed Rule as a package, separately at different points in time, or in some combination.

The Commission anticipates that resales made in reliance on Rule 144A, whether executed on proposed closed systems such as PORTAL or SITUS[94] or elsewhere, would be used principally for transactions involving debt securities, preferred stock or common equity securities of a class not already publicly traded in the United States. While the qualified institutional buyer and fungible securities tiers of the Rule would be available for transactions in securities that are fungible with securities publicly traded in the United States, the Commission does not expect that Rule 144A would give rise to any significant volume of private transactions in classes of publicly traded securities. That is not currently the case,[95] and, notwithstanding the potential for increased efficiency in the private resale market and the ability to avoid costs and delays associated with registration, it may not be financially advantageous in the future for companies to sell securities in a market that was comparatively limited in its depth and liquidity.

Nonetheless, the Commission requests comment on the likelihood that an active, liquid private market will develop alongside a public market for the same class of securities in the United States. If such a development is viewed as likely, comment is requested on the nature of such markets, the consequences to the liquidity and efficiency of the public market for such securities, and whether any steps should be taken to prevent such a development. For example, should reliance on Rule 144A be precluded with respect to any class of securities that is registered under the Securities Act or the Exchange Act? Comment also is requested on the likelihood that arbitrage would occur between the public and private markets for common stock, if dual markets were to develop; whether such arbitrage would be beneficial or harmful to the U.S. markets; if harmful, how it might be discouraged, and if beneficial, how it might be encouraged? Commenters should indicate whether their responses to the above questions would differ depending on whether the qualified institutional buyer tier of proposed Rule 144A, the fungible securities tier, or both were adopted.

The Commission also requests comment as to whether the risks of market manipulation and insider trading will increase significantly enough with the evolution of a more active institutional market that the Commission should permit such a market to develop only in a more formalized structure subject to surveillance, Commission oversight, and transaction reporting requirements.

The Commission also anticipates that proposed Rule 144A will facilitate, and thereby encourage, dealers' purchases of securities, particularly foreign securities, either in primary offerings or secondary transactions, with a view to resale in the United States. The Commission requests comment on the appropriateness, and the potential consequences, of the use of the Rule to exempt from registration such resales to institutions purchasers.

The Commission also recognizes that, by increasing the efficiency of the resale market for "restricted securities," issuers, particularly foreign issuers, that eventually might have chosen to register their securities for public sale in the United States, may forego registration and still have the benefits of access to the U.S. markets. Market participants have suggested that foreign issuers choosing to sell securities publicly in the United States do so for reasons not directly related to capital-raising needs, such as obtaining name recognition in the U.S. capital markets. The Commission requests comment on the likelihood that adoption of any of the three tiers of proposed Rule 144A, or some combination of the three tiers, might diminish the number of foreign issuers that eventually would choose to make a public offering in the United States. Similarly, how would the adoption of any or all of the three tiers affect the process by which domestic issuers typically first access the private market and then graduate to registered public offerings?

To the extent that an active institutional trading market continues to evolve, the trading market interest, both institutional and retail, in the securities of the issuer is likely to increase. In such case, the potential for "leakage" into the retail market would be greater, particularly in the case of common equity securities. Under section 12(g) of the Exchange Act, the public markets would be protected in the case of domestic issuers because reporting obligations generally will be incurred when any class of equity securities is held by 500 or more persons.[96] In the case of foreign securities, however, under current rules, there would be no such protection because Rule 12g3–2(b)[97] would permit the securities to be held by any number of shareholders so long as the securities were not quoted in NASDAQ or listed on U.S. securities exchanges. Rule 144A can thus be expected to create the potential for greater trading in foreign securities in the United States. In addition, the proposed changes to rule 144, which will in many cases telescope the required holding period for securities, could further accelerate this development. In light of this potential, the Commission requests comment on the appropriateness of continuing the exemption provided by Rule 12g3–2(b) for issuers whose securities are widely held by non-institutional investors, if proposed Rule 144A (particularly the qualified institutional buyer tier), the proposed change to Rule 144 or both were adopted.

A. Historical Treatment of Institutions

1. Legislative History

The Securities Act was remedial legislation designed "to protect the investing public and honest business."[98] The "investing public" intended to benefit from the registration provisions of the Securities Act was unsophisticated, individual investors.[99] Despite measurable institutional presence in the capital markets,[100] Congress concentrated on the protection of individuals.[101]

James Landis, a principal draftsman of the Securities Act and the second Chairman of the Commission, recalled that the draftsmen believed that "[t]he sale of an issue of securities to insurance companies or to a limited group of experienced investors, was certainly not a matter of concern to the Federal government."[102] Writing at the same time as Landis, the Commission itself stated that the 1933 Congress imposed upon the industry "standards of conduct * * * basic to any proper relationship to *public* investors."[103]

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[83] *Id.*

[84] *Id.*; *see also* Committee, *supra* n. 69, at 1933 (increase liquidity, create or use capital gains or losses, diversify portfolios).

[85] Market Participants, *supra* n. 17.

It has been reported that, in the secondary market for privately placed debt, "the credit quality of the debt securities being sold, their yield to maturity and the extent to which each yield is or may be affected by redemption provisions, are much more important factors in establishing resale prices than is the identity of the particular issuer or transient economic factors affecting the current market prices of its common stock." Committee, *supra* n. 69 at 1932, *citing* Exchange Act Release No. 15220 (Oct. 18, 1978) [43 FR 47538]. Credit quality and yield appear still to be critical elements in the pricing of debt securities, at least with respect to investment grade debt.

[86] Committee, *supra* n. 69, at 1933.

[87] Market participants, *supra* n. 17. *See also* Kleinfield, *Prudential to Sell Pieces of Its Private Placements*, The New York Times D3 (Aug. 11, [illegible])

[88] *Id.*

[89] Issuers in the "non-reporting" category would include start-up companies and foreign issuers.

[90] The perception among investors of illiquidity in the private placement market has been cited as a reason why some investors avoid the market. Market Participants, *supra* n. 17.

[91] Proposed Regulation S (17 CFR 230.901–230.908), Securities Act Release No. 6779 (June 10, 1988) [53 FR 23469]. The resale safe harbor of Rule 903 of proposed Regulation S, which allows persons other than issuers or underwriters to sell specified unregistered securities on foreign securities exchanges without imposing resale restrictions, should provide significantly more liquidity for restricted securities of foreign issuers.

[92] *See supra* n. 44.

[93] Market Participants, *supra* n. 17. For example, U.S. issuers who now raise capital through the [illegible] market might instead elect to offer their securities through private placements in the United States.

[94] *See infra* n. 191.

[95] *See supra* n. 48.

[96] 15 U.S.C. 78*l*(g). Section 12(g) requires issuers to file reports under the Exchange Act if they have assets of over $1 million or a class of equity securities held of record by 500 or more persons. Rules 12g–1 under the Exchange Act (17 CFR 240.12g–1) exempts issuers from this obligation if they have total assets not exceeding $5 million.

[97] 17 CFR 240.12g3–2(b).

[98] S. Rep. No. 47, 73rd Cong., 1st Sess. 1 (1933) (hereinafter "Senate Report"):

The aim [of the legislation] is * * * to protect honest enterprise, seeking capital by honest presentation, against the competition afforded by dishonest securities offered to the public through crooked promotion; * * * to bring into productive channels of industry and development capital which has grown timid to the point of hoarding; and to aid in providing employment and restoring buying and [illegible] power.

See generally J. Seligman, *The Transformation of Wall Street* 1–72 (1982).

[99] *See infra* nn. 101, 102.

[100] *See Proposed Amendments to the Securities Act of 1933 and to the Securities Exchange Act of 1934: Hearings on H.R. 4344, H.R. 5065, and H.R. 5835 Before the House Comm. on Interstate and Foreign Commerce*, 77th Cong., 1st Sess. pt. II, 586 (1941) (statement of Commissioner Purcell):

There seems to be practically no statistical information on private placements prior to 1932. However, * * * the private placement is by no means a novelty, putting in its appearance coincident with the passage of the Securities Act * * *. [I]t appears that in a good many instances subsequent to 1907, and prior to 1933, the insurance companies did in fact purchase securities in substantial blocks directly from issuers.

See also 1 SEC, *Institutional Investor Study Report*, 59 (1971): ("The stock market boom of the 1920's was accompanied by a rather dramatic increase in the institutional share of the market, as investment companies in particular increased their holdings."); *id.* at 58 ("[T]here was greater institutional participation in the 1923–29 boom period, particularly among investment companies, than either before or after 1945 * * *"); Kuhn, *supra* n. 8, at 84 ("[M]any corporations * * * have sold their securities privately. The larger institutions in general have been the principal purchasers of such issues").

[101] References to investors in the legislative history of the Securities Act are to "the poor woman who ha[d] a little money to invest" (77 Cong. Rec. 2936 (1933) (statement of Rep. Beck)), "poor men and women who turned over their live savings" (*id.* at 2942 (statement of Rep. Cannon)), and "widows who owned Liberty bonds, having invested the accumulations of a lifetime" (*id.* at 2937 (statement of Sen. Fletcher)), not to sophisticated institutions. Speaking of the "rank and file of the people" who "possess stocks and bonds," Representative Rayburn concluded that "[m]illions of citizens" had been "swindled into exchanging their savings for worthless stocks." 77 Cong. Rec. 2913. Ferdinand Pecora's account of the exhaustive hearings conducted by the Senate Committee on Banking and Currency dealt solely with the abuses suffered by individual investors. *See* F. Pecora, *Wall Street Under Oath* (1939).

[102] Landis, *The Legislative History of the Securities Act of 1933*, 28 Geo. Wash. L. Rev. 29, 37 [illegible]

[103] SEC, *25th Annual Report* xviii (1959) (emphasis added). *Cf.* SEC, *18th Annual Report* 1 (1953) (emphasis added): "[T]he prospectus, which must be furnished to prospective investors at or before delivery of the security, effectually brings the prescribed disclosure directly to the attention of the *individual* investor."

Two early bills introduced in the Congress exempted "isolated transactions" in securities, and it was suggested that the proposed legislation should be revised "to exempt from its provisions all types of securities which are not customarily sold to the small investor." [104] This wish was broadly consistent with the developing Congressional decision to "carefully exempt[]" from the application of the Securities Act those "types of * * * securities transactions where there is no practical need for its application or where the public benefits are too remote." [105] H.R. 5480 deleted the isolated transactions exemption and in its place exempted trading transactions [106] as well as private placements; that is, "[t]ransactions by an issuer not with or through an underwriter." [107] A clarifying amendment later added the language "and not involving a public offering" to the latter exemption. This was the form in which the exemption eventually became law.

As Manuel Cohen later explained, this "private placement" exemption had its roots in transactions with institutions that had no practical need for registration protection:

> Private placements had their beginnings and early development in the negotiated sale of specially tailored debt securities to a limited number of large institutional investors who were in a position to insist upon and to receive more information than that provided by registration and to require such protective covenants and restrictions which, together with their ability to supervise constantly and to take appropriate action instantly, supported the view that such offerings were non-public in character for which the registration provisions were probably unnecessary.[108]

In 1934, the phrase "not with or through an underwriter" was eliminated so that the exemption would cover "transactions by an issuer not involving a public offering." The conference report explained that no substantive change was intended:

> The Commission has recognized by its interpretations that a "public offering" is necessary for "distribution." Therefore, there can be no underwriter within the meaning of the act in the absence of a public offer and the phrase eliminated in the sarmal clause is really superfluous.[109]

In 1980, Congress added section 4(6) to the Securities Act.[110] Section 4(6) provides an exemption from registration for certain offers or sales made by an issuer solely to accredited investors[111] without general solicitation.[112] Congress stated in the Report of the Committee sending H.R. 7554 to the House Floor that the "accredited investor" concept is "based on the assumption that accredited investors are sophisticated and able enough to protect their own financial interests without regulatory assistance."[113]

2. Judicial Interpretation

In considering the applicability of the registration provisions of the Securities Act, the courts have focused on the need of investors for the information provided by registration. In *SEC v. Ralston Purina Co.*,[114] the seminal Supreme Court construction of section 4(2) of the Securities Act,[115] the court considered an offering to "key employees," a category defined broadly enough by the company to include many blue collar workers. The company's private placement claim was rejected, the Court reasoning as follows:

> Since exempt transactions are those as to which "there is no practical need for [the registration provisions] application," the applicability of section 4[2[] should turn on whether the particular class of persons affected needs the protection of the Act. An offering to those who are shown to be able to fend for themselves is a transaction "not involving any public offering."[116]

Subsequently, the lower courts attempted to implement the Supreme Court's directive to "focus * * * on the need of the offerees for the protections afforded by registration."[117] In this connection, "courts seem never to have doubted that an institutional investor, such as a life insurance company, is sophisticated, since the institution undoubtedly employs investment analysts who are able to ferret out all relevant information and who then carefully consider such information before approving a proposed investment."[118]

Case law dealing specifically with resales to institutional investors is sparse. A notable case holding that institutions are able to "fend for themselves" as envisaged by *Ralston Purina* is *The Value Line Fund, Inc. v. Marcus*,[119] which involved a dispute between a mutual fund and the issuer's principal shareholder and president, as well as his brokerage firm. The principal shareholder had offered stock to several mutual funds, including the plaintiff, through the broker-dealer. After the purchase was made, the stock price declined, whereupon the plaintiff sued for rescission, alleging violations of section 5. The court, however, ruled that the offering was private because all of the offerees "were sophisticated, knowledgeable, experienced institutional investors with great resources, and plainly were 'able to fend for themselves'."[120] Since "[t]he term

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[104] Henderson & Dean, Memorandum on H.R. 4314 Submitted to Rep. Rayburn 2 (Apr. 4, 1933), *reprinted in* 1 SEC, *Legislative History of the Securities Act of 1933* at tab 18 (available in the SEC library).

[105] H.R. Rep. No. 85, 73rd Cong., 1st Sess. 5 (1933).

[106] *See* 15 U.S.C. 77d(1) (1982), exempting "transactions by any person other than an issuer, underwriter, or dealer."

[107] H.R. 5480, 73 Cong., 1st Sess. section 4(1) [illegible].

[108] Cohen, *Federal Legislation Affecting the Public Offering of Securities*, 28 Geo. Wash. L. Rev. 119, 142 n.84 (1959). *Accord*, Kuhn, *supra* n. 8 ("From an institutional viewpoint, the purpose of the Securities Act is primarily to protect the small investor—institutions do not need such protection).

[109] H.R. Report No. 1838, 73d Cong., 2d Sess. 41 (1933). In 1964, this language, originally part of Section 4(1), became Section 4(2).

[110] *See* Small Business Issuers' Simplification Act of 1980, Pub. L. 96-477, section 552, 94 Stat. 2274, 2294 (codified at 15 U.S.C. 77d(6) (1982).

[111] The definition of accredited investors for this purpose included certain individuals.

[112] According to the Commission, "the rationale underlying the adoption of section 4(6) is that financial institutions and other sophisticated investors purchasing in a small private offering are able to 'fend for themselves'." Securities Act Release No. 6258 [Nov. 7, 1980).

[113] H.R. Rep. No. 1341, 96th Cong., 2d Sess. 21 [1980].

[114] 346 U.S. 119 (1953).

[115] 15 U.S.C. 77d(2).

[116] 346 U.S. at 125. Thus, at least in the case of "the larger institutional investor," *Ralston Purina* excuses registration "for obvious reasons." Steffen, *the Private Placement Exemption: What To Do About a Fortuitous Combination in Restraint of Trade*, 30 U. Chi. L. Rev. 211, 230 (1963). "It seems almost tautological to say that persons possessing sufficient knowledge and experience in financial and business matters, so that they are capable of evaluating the risks of an investment, are less in need of the protection of the [A]ct than persons who are not so endowed." Horton & Rifkind, *Private Placement and Proposed Rule 146*, 25 Hastings L. J. 287, 305 (1973).

[117] *Ralston Purina*, 346 U.S. at 127. *See, e.g., General Life of Missouri Investment Corp. v. Shamberger*, 346 F.2d 774, 781 n.10 (8th Cir. 1976); *Stoppelman v. Owens*, [1984 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶91,311, at 98,578-80 (D.D.C. 1984) ("prohibited distribution or resale occurs only when the ultimate purchaser of the security is a person or entity that [needs] the information contained in a registration statement").

[118] Note, *Reforming the Initial Sale Requirements of the Private Placement Exemption*, 88 Harv. L. Rev. 403, 415 (1973-1973). *Cf.* Kessler, *Private Placement Rules 146 and 240—Safe Harbor?*, 46 Fordham L. Rev. 27, 40 (1975-1976):

> In this type of placement, the investors, ordinarily all sizeable corporations whose decisions are guided by financial experts, have little need for the protections of the Securities Act. They are well able to take care of themselves, no matter how large or small their investment, or how many investors are included in the group.

See also Comment, *Institutional Investment Through Private Placement of Corporate Securities*, 33 Cohen. L. Rev. 804, 807 (1963) ("[institutions welcomed the opportunity to assume direct responsibility for their own protection").

[119] [1984-1985 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 91,523 (S.D.N.Y. 1985) (MacMahon, J.).

[120] *Id.* at 94,870. Additionally, the investors in this case all had access to information about the issuer, an important factor in the courts' analyses of

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'distribution in section 2(11) (of the Act) is substantially equivalent to 'public offering' in section 4([2])," [121] the court held that there was no "distribution." Given the absence of a distribution, there was no "underwriter" within the meaning of section 2(11) of the Act,[122] an exemption from registration was available under Section 4 of the Act, and there was no sustainable claim that section 5 had been violated.[123]

3. Commission Treatment of Institutions; State Laws

The Commission publicly has acknowledged the existence and legality of the private resale market since at least 1956, when it first proposed Rule 155.[124] Rule 155 dealt with convertible and converted securities. Adopted in 1982, it made clear that the ultimate public offering of a security issued upon conversion was subject to section 5 of the Act.[125] What matters for present purposes, however, was the recognition by the Commission in paragraph (b) of the rule that "the initial, and intermediate, holder" of the convertible security, or of the converted security, is not an "underwriter," assuming that the holder did not acquire the security with a view to "distribution" and is not participating in a "public offering."[126]

In the view of one commentator, this was a signal development in that it justified the private placement secondary market:

> [T]o have it declared that the intial places, and "any intermediate" places, may make such private sales as they please, was a positive gain * * *. It is true the Rule applies in terms only to convertible and converted securities, but, that being so, there is no apparent reason why it should not apply, a fortiori, to any security.[127]

Rule 155 was rescinded prospectively upon the adoption of Rule 144 [128] and rescinded altogether in 1979.[129]

In June 1988, the Commission addressed the needs of institutional investors when it issued for comment a proposed rule [130] that would exempt from the broker-dealer registration requirements [131] foreign broker-dealers that engage in securities transactions only with specified U.S. institutional investors under limited conditions. Such activities would have to be conducted through a U.S. affiliate of the foreign broker-dealer. For purposes of the proposed rule, a U.S. institutional investor was defined as an entity that, *inter alia*, was described in Rule 501(a) (1), (2), or (3) of Regulation D under the Securities Act [132] and that, with the exception of registered broker-dealers, had total assets in excess of $100 million. While not treated as an accredited investor under Regulation D, a registered investment adviser also would be included as a U.S. institutional investor within the proposed rule if it had $100 million in assets under management. Further, if a registered investment company itself did not have total assets in excess of $100 million, it could still qualify as a U.S. institutional investor if it was part of a "family" (as defined) of investment companies that had total assets in excess of $100 million.

Exemptions for sales to institutional investors, whether by issuers or by third parties, are a common provision of state securities laws. All blue sky statutes that provide for registration of securities exempt institutional resales to some extent.[133] The draftsmen's commentary to the Uniform Securities Act states:

> The obvious justification for this exemption is that institutional investors and broker dealers are "sophisticated" buyers who do not need the protection of registration. At the same time they do have the protection of the antifraud provisions of §§ 101 and 410(a)(2).[134]

B. Present Legal Basis for Institutional Sales

Section 4(2) of the Securities Act provides an exemption from registration for "transactions by an issuer not involving any public offering."[135] Within the parameters of section 4(2), Rule 506 of Regulation D [136] provides a non-exclusive safe harbor for offerings made in accordance with its terms. This rule imposes a filing requirement, prohibits general solicitation, and requires the provision of information in circumstances where persons other than accredited investors are among the purchasers. In general, private placements with large institutions are made in reliance on section 4(2) rather than on the safe harbor provisions of Regulation D.[137]

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private offerings: "Marcus clearly gave Value Line access to whatever information it wished, and it is plain that any of the other offerees would have been in a position to insist on complete access to information." *Id.*

[121] *Id.* at 94,869 citing *Gilligan, Will & Co. v. SEC*, 267 F.2d 461, 468-69 (2d Cir.), *cert. denied*, 361 U.S. [illegible].

[122] 15 U.S.C. 77b(11).

[123] *See The Value Line Fund*, Fed. Sec. L. Rep. ¶ 91,523 at 94,869, 94,872; *infra* text accompanying n. 144. *But also Newmark Investment Fund, Ltd. v. Swanson*, [1975-1976 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 95,372 (S.D.N.Y. 1975), which also involved resales to institutional investors; specifically, to two registered investment companies. The court basically adhered to the *Ralston Purina-Value Line* approach, considering the following factors in determining the availability of section 4(1): "the number of offerees, the offerees' access to relevant information and the purchaser's intent at the time of purchase." The offerees numbered no more than four. Moreover, as in *Value Line*, they "possessed enough sophistication to demand, and enough leverage at the bargaining table to receive, all information relevant to make a fully informed decision on whether or not to buy." *Id.* at 96,882.

[124] *See* Securities Act Release No. 4162, [1957-1961 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 76,577 (Dec. 2, 1959). Rule 155 was revised and reproposed in Securities Act Release No. 4249, [1957-1961 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 76,710 (July 14, 1960).

[125] *See* Securities Act Release No. 4450 [1961-1964 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 76,821 (Feb. 7, 1962).

[126] 17 CFR 230.155(b) (rescinded 1972).

[127] Steffen, *The Private Placement Exemption: What To Do About a Fortuitous Combination in Restraint of Trade*, 30 U. Chi. L. Rev. 211, 228 (1963).

[128] *See* Securities Act Release No. 5223, [1971-1972 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 78,487, at 81,064 (Jan. 11, 1972) (37 FR 661).

[129] *See* Securities Act Release No. 6332, [1978 Transfer Binder] Fed. Sec. L.Rep. (CCH) ¶ 81,982 (Mar. 8, 1979) (44 FR 16810).

[130] Proposed Rule 15a-6(a) [17 CFR § 240.15a-6], proposed in Exchange Act Release No. 25801 [June 15, 1988] [53 FR 23601].

[131] Section 15(b) of the Exchange Act (15 U.S.C. 78o(b))

[132] 17 CFR 230.501(a)(1), (2) or (3).

[133] Section 402(b)(8) of the Uniform Securities Act of 1956 provides an exemption from registration for "any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity."

Section 402(b)(8) has been adopted, or substantially adopted with modifications, in 36 jurisdictions. In addition, those jurisdictions which have not adopted that section all have some provision for an exemption for sales to some classes of institutional investors. Some jurisdictions have expanded the exemption to include sales to certain corporations and non-profit organizations. The Uniform Securities Act of 1985, which has been adopted by three jurisdictions, contains an exemption similar to that in the 1956 Act. Section 402(10) of the 1985 Act provides an exemption for "an offer to sell or sale of a security to a financial or institutional investor or to a broker-dealer." Unif. Sec. Act (1985) 402(10). Section 101(5) of the 1985 Act defines the term "financial or institutional investor" as including, in addition to those institutions enumerated in the 1956 Act, "an employee pension, profit-sharing, or benefit plan if the plans has total assets in excess of $5,000,000 or its investment decisions are made by a named fiduciary as defined in the Employee Retirement Income Security Act of 1974, that is either a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, a depositary institution or an insurance company."

[134] L. Loss & E. Cowett, *Blue Sky Law* 367, draftsmen's commentary to Uniform Securities Act, [illegible] (1958).

[135] 15 U.S.C. 77d(2).

[136] 17 CFR 230.506.

[137] 17 CFR 230.501-230.508, *see* Unofficial Participation, *supra* n. 17.

No specific statutory exemption exists for non-public offerings by persons other than issuers. Instead, section 4(1) of the Securities Act provides that the registration requirements of section 5 shall not apply to "transactions by a person other than an issuer, underwriter or dealer." [138] The term "underwriter" is defined in section 2(11) of the Securities Act to include, with certain exceptions not relevant here,

> any person who has purchased from an issuer or with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in the direct or indirect underwriting of any such undertaking * * *.[139]

With respect to transactions by a dealer,[140] section 4(3) of the Securities Act provides an exemption, with certain exceptions. The exemption is not available if the dealer is selling securities within 40 days after "the first date upon which the security was bona fide *offered to the public* by the issuer or by or through an underwriter * * *."[141] Nor is it available with respect to "transactions as to securities constituting the whole or a part of an unsold allotment to or subscription by such dealer as a participant in the *distribution* of such securities by the issuer or by or through an underwriter." [142]

In the absence of a distribution, a non-issuer transactions is exempt from the registration requirements of section 5; a seller who is a dealer may use the section 4(3) exemption,[143] and a non-dealer may use the section 4(1) exemption. The absence of a "distribution" can be determined in a variety of ways.[144]

The key to the analysis of proposed Rule 144A is that certain institutions can fend for themselves and that, therefore, offers and sales to such institutions do not involve a public offering. "The Commission has recognized by its interpretations that a 'public offering' is necessary for 'distribution.' " [145] Since the offering to eligible institutions under proposed Rule 144A is not public, no distribution takes place, and an exemption from registration would be available.

V. Proposed Rule 144A

A. General

Proposed Rule 144A sets forth a non-exclusive safe harbor from the registration requirements of section 5 of the Securities Act for the sale of securities to specified institutions by persons other than the issuer of such securities. The transactions covered by the safe harbor are those private transactions that on the basis of a few objective standards can be defined as outside the purview of section 5, without the necessity of undertaking the more usual analysis under sections 4(1) and 4(3) of the Securities Act. The Commission wishes to emphasize that proposed Rule 144A is not intended to preclude reliance on traditional facts-and-circumstances analysis to prove the availability of an exemption outside the safe harbor it provides.

The Rule would provide that, if its conditions were met, any person (other than the issuer or a dealer) who offered or sold securities would be deemed not to be engaged in a "distribution" and therefore not to be an "underwriter" within the meaning of sections 2(11) and 4(1) of the Securities Act.[146] Similarly, if the conditions of the proposed Rule were met, a dealer would be deemed not to be a participant in the "distribution" of securities within the meaning of seciton 4(3)(C) of the Act, and the securities would be deemed not to have been offered "to the public" within the meaning of section 4(3)(A) of the Act.[147] The Rule, in effect, defines a class of transactions as outside the term "distribution." It does not, however, provide the exclusive means to establish the lack of a "distribution," and thus an exemption from the Securities Act registration requirements.[148] Each transaction would be assessed under the Rule individually. The exemption for an offer and sale complying with the Rule would be unaffected by other transactions of the seller.

Nothing in the Rule would remove the needed to comply with any applicable state law relating to the offer and sale of securities.[149] Similarly, the Rule does not affect the securities registration requirements of section 12 of the Exchange Act or the broker-dealer registration requirements of section 15(a) of the Exchange Act for a broker or dealer who effects private placement transactions.[150]

Resales made in reliance on proposed Rule 144A could only be made to the institutions specified in the three tiers of the Rule or to persons the seller reasonably believed were such institutions. Sales to individual investors could not be made in reliance on Rule 144A. Sales to individuals would continue to be subject to the traditional analysis under section 4(1) or 4(3) of the Securities Act.[151]

The Rule is not intended to eliminate or otherwise affect the availability of any exemption for resales under the Securities Act on which a seller might be able to rely.[152] Securities sold in reliance on Rule 144A would not be included in determining the amount of securities which could be sold by a person in compliance with the volume limitations in subsection (e) of Rule 144.[153]

There may be some concern regarding possible integration of an otherwise exempt transaction with resales under Rule 144A. In order to eliminate uncertainty in this area, the proposed Rule specifically provides that resales made in reliance on Rule 144A shall be deemed not to affect the availability of any exemption for the previous or subsequent sale of the securities by the issuer or any prior or subsequent holder.[154]

Foreign issuers may have concerns regarding inadvertent entry into the Exchange Act registration and reporting system if the proposed Rule is used to make resales in the United States. Rule 12g3–2(a) provides an exemption from the reporting requirements of section 12(g) of the Exchange Act for classes of securities of foreign private issuers held by fewer than 300 U.S. residents.[155] If that threshold is reached, Rule 12g3–2(b) under the Exchange Act at present provides an exemption from this obligation for a foreign private issuer if it furnishes to the Commission specified information it otherwise makes publicly available.[156] As noted above, the Commission is concerned that the availability of Rule 12g3–2(b) may be inappropriate if a large U.S. non-NASDAQ, non-exchange market develops for a foreign issuer's securities, and has requested comments on that issue.[157] Even if the Commission eventually were to determine to eliminate or limit the availability of Rule 12g3–2(b) in the case of substantial market activity, it would retain the power under section 12(h) of the Exchange Act [158] to exempt an issuer by order from, *inter alia*, the reporting requirements of section 12(g), where it finds such exemption appropriate and in the public interest. Thus, for example, the Commission could provide specific relief where a substantial market is shown to be composed largely of institutional holders.

B. The Three Tiers of the Rule

Proposed Rule 144A contains three tiers. The Commission solicits comment on adoption of each of the three separately and in any combination, as well as adoption of different tiers at different times.

The first, or qualified institutional buyer, tier would cover any securities of any issuer.[159] It would not require the seller to take any specific steps to prevent an unregistered distribution, other than taking reasonable steps to ensure that the buyer is aware that the seller may rely on the exemption from the Securities Act registration requirements provided by the Rule. This tier would, however, be limited to potential buyers that are very large institutions, long involved in the resale market for restricted securities, as to which there has been little concern with respect to section 5 implications. The breadth of the securities covered by this tier of the proposed Rule gives full effect to the concept that these large institutional investors are fully able to fend for themselves.

The second, or non-fungible securities, tier of the proposed Rule is less restricted as to potential purchasers, but more restricted as to the types of securities covered.[160] The securities covered would be non-convertible debt securities, non-convertible preferred stock, and securities issued by reporting companies. Historically, a wide range of institutions has been engaged in the private resale market for senior securities. These institutions may not need the protections attendant to registration under the Securities Act with respect to such senior securities. Furthermore, where the information required by the Exchange Act is publicly available, institutions of this broader class may be able adequately to fend for themselves even with respect to common equity securities.

The securities that could be sold under this tier of the proposal must be of a class that is not publicly traded in the United States. Given this requirement of non-fungibility, the securities would be less likely to leak into the public, retail, markets. With the general lack of a public market for the securities, it would not be difficult to identify and trace such securities in the event of leakage. Moreover, in the case of debt and preferred stock, the market is generally institutional. Thus, like the qualified institutional buyer tier of the proposed Rule, the non-fungible securities tier would not impose resale restrictions.

The third tier of the Rule would cover offers and sales of securities of a class that is publicly traded in the United States, to the same range of institutions covered by the non-fungible securities tier.[161] Like the non-fungible securities tier, the covered securities are limited to non-convertible debt, non-convertible preferred stock and securities issued by reporting companies. Given the greater likelihood for leakage of fungible securities into the retail markets and the greater difficulty in tracing that leakage, this tier of proposed Rule 144A would require the seller to take reasonable steps to prevent the purchaser from reselling the securities in the United States in an unregistered, non-exempt distribution.

C. The Qualified Institutional Buyer Tier

1. Qualified Institutional Buyers

The first tier of proposed Rule 144A would permit resales of any securities of any issuer to a class of institutional investors defined as "qualified institutional buyers." [162] Under the

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[138] 15 U.S.C. 77d(1).

[139] 15 U.S.C. 77b(11). Thus, in exempting specified trading transactions from registration under section 4(1) of the Securities Act, Rule 144(b) (17 CFR 240.144(b)) states that a person selling securities under the conditions specified in the rule "shall be deemed not to be engaged in a distribution of such securities and therefore not to be an underwriter thereof within the meaning of section 2(11) of the Act * * *."

[140] Under section 2(12) of the Securities Act (15 U.S.C. 77b(12), "(t)he term 'dealer' means any person who engages either for all or part of his time, directly or indirectly, as agent, broker, or principal, in the business of trading in securities issued by another person." It thus encompasses both brokers and dealers, as defined in the Exchange Act. *See* sections 3(a)(4) and 3(a)(5) of the Exchange Act (15 U.S.C. 78c(a)(4), 78c(a)(5)).

[141] Section 4(3)(A) of the Act (15 U.S.C. 77d(3)(A)) [emphasis supplied]; *see also* section 4(3)(B) (15 U.S.C. 77d(3)(B)), with respect to transactions taking place within 40 days after the effective date of a registration statement covering the securities or the first bona fide offering of those securities.

[142] Section 4(3)(C) of the Act (15 U.S.C. 77d(3)(C)) [emphasis supplied].

[143] *See* Throop & Lane, *Some Problems of Exemption Under the Securities Act of 1933*, 4 Law & Contemp. Prob. 89, 122 (1937).

[144] *See, e.g.*, Preliminary Note to Rule 144 (17 CFR 230.144): "In determining when a person is deemed not to be engaged in a distribution several factors shall be considered."

[145] H.R. Rep. No. 1838, 73 Cong., 2d Sess. 41 (1934); *see supra* text accompanying n. 109; H.R. Rep. No. 85, 73d Cong., 1st Sess. 13–14 (1933) [affiliates are treated as issuers for purposes of the definition of underwriter in section 2(11) of the Securities Act, because a "redistribution" of outstanding stock in a "public offering may possess all the dangers attendant upon a new offering of securities."]; *Gilligan, Will*, 267 F.2d at 466; Loss, *Fundamentals of Securities Regulation* 255 (2d ed. 1988); Whitney, *Rule 10b–6: The Special Study's Rediscovered Rule*, 62 Mich. L. Rev. 587 (1964) (also noting that the term "distribution" used in Rule 10b–6 under the Exchange Act is not limited to offerings required to be registered under the Securities Act); 2 L. Loss, *Securities Regulation* 551 (2d ed. 1961); Throop & Lane, *supra* n. 143, at 116–17.

The Commission stated in *In the Matter of Oklahoma-Texas Trust*, 2 SEC 764, 769 (1937), *aff'd*, 100 F.2d 668 (10th Cir. 1939), that "distribution, although not expressly defined in the [Securities] Act, comprises the entire process by which in the course of a public offering a block of securities is dispersed and ultimately comes to rest in the hands of the investing public." *See Securities Industry Ass'n v. Board of Governors*, 807 F.2d 1052, 1062–64 (D.C. Cir.) (construing the term "underwriting," as used in the Glass-Steagall Act, to mean a public offering, in reliance on Congress' understanding that, under the Securities Act, legislation enacted contemporaneously, a distribution, and thus an underwriting, involves a public offering), *rev'g* 627 F. Supp. 695, 709 (D.D.C. 1986) (ruling that "distribution" in the Securities Act does not mean only public offerings), *cert. denied*, 107 S. Ct. 3228 (1987). The district court opinion in that case had cited the Commission release adopting Rule 3b–6 under the Securities Exchange Act (17 CFR 240.3b–6 (1987)), which was subsequently invalidated by the United States Court of Appeals for the District of Columbia Circuit. *American Bankers Ass'n v. SEC*, 804 F.2d 739 (1986); *see* Exchange Act Release No. 22205 (July 12, 1985) (50 FR 28325, 28392 n. 58) ("Rule 3b–6 release"). In the Rule 3b–6 release, the Commission had stated that "the fact that an offering is exempt from registration pursuant to one of the exemptions specified in paragraph (b)(6) (of Rule 3b–6) does not necessarily mean that no 'distribution' has occurred as that term is used in the definition of 'underwriter' in section 2(11) of the Securities Act of 1933." 50 FR 28392 n. 58. Among other exemptions specified in paragraph (b)(6) of Rule 3b–6 was section 3(b) of the Securities Act (15 U.S.C. 77c(b)), which encompasses transactions that are public offerings. Footnote 58 of the Rule 3b–6 release should not be read as a Commission statement that a "non-public offering" can be a "distribution."

[146] *See* paragraph (b) of the Proposal. This formulation was used by the Commission in establishing Rule 144. *See* Rule 144(b) (17 CFR 230.144(b)), *supra* n. 139.

[147] *See* paragraph (c) of the Proposal.

[148] *See, e.g.*, Rule 144 under the Securities Act (17 CFR 230.144).

[149] *See* Preliminary Note 3 of the Proposal. *See also supra* n. 132.

[150] 15 U.S.C. 78*l*, 78o(a). *See* Preliminary Note 2 of the Proposal. Likewise, the proposed Rule would have no effect on the application of Rule 10b–6 under the Exchange Act (17 CFR 240.10b–6) to an offer and sale of securities pursuant to Rule 144A "that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods." Rule 10b–6(c)(5) (17CFR 240.10b–6(c)(5)).

[151] *See supra* text accompanying nn. 139–144.

[152] *See* Preliminary Note 1 of the Proposal.

[153] *See* Rule 144(e)(1)(i) under the Securities Act (17 CFR 230.144(e)(1)(i)).

[154] *See* paragraph (e) of the Proposal.

[155] 17 CFR 240.12g3–2(a).

[156] 17 CFR 240.12g3–2(b). Information furnished pursuant to Rule 12g3–2(b) is not deemed "filed" with the Commission or otherwise subject to the liabilities of Section 18 of the Exchange Act (15 U.S.C. 78r).

[157] *See supra* text accompanying n. 98–97.

[158] 15 U.S.C. 78*l*(h).

[159] *See* paragraph (d)(1) of the Proposal.

[160] *See* paragraph (d)(2) of the Proposal.

[161] *See* paragraph (d)(3) of the Proposal.

[162] *See* paragraph (d)(1) of the Proposal.

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proposal, resale would be permitted if the purchaser was a qualified institutional buyer or its nominee, or if the seller and any persons acting on its behalf reasonably believed that the purchaser was such an eligible buyer or its nominee. In determining whether a particular entity is a qualified institutional buyer, the seller and any person acting on its behalf would be permitted to rely on financial statements or other material filed with the Commission, unless the seller or any person acting on its behalf knew or had reason to believe that the buyer was not a qualified institutional buyer.[163]

Qualified institutional buyers are defined in the proposed Rule to include institutional buyers [164] that have total assets in excess of $100 million.[165] While the rule excludes corporations, partnerships, business trusts and charitable organizations formed for the purpose of acquiring the securities offered, the Commission is considering and requests comment on inclusion of such entities in the qualified institutional buyer tier because of their size. This tier of the Rule specifically includes investment advisers as eligible buyers. Eligibility is conditioned upon their having in excess of $100 million combined assets and assets under management.[166] Comment is requested as to whether registered investment advisers should be specifically included as qualified institutional buyers, and as to the appropriateness of the asset test proposed. Also included are investment companies that are part of a family of related investment companies that has aggregate total assets in excess of $100 million.[167] An entity also would be included if all of its equity owners were qualified institutional buyers.[168]

In defining a "qualified institutional buyer," the Commission has attempted to establish a level at which it can be confident that participating investors have extensive experience in the private resale market for restricted securities. In addition, the Commission is seeking to identify a class of investors that can be conclusively assumed to be sophisticated and in little need of the protection afforded by the Securities Act's registration provisions.

The $100 million threshold for assets or funds under management, moreover, follows that set forth in proposed Rule 15a–6 under the Exchange Act, which exempts from the broker-dealer registration provisions foreign broker-dealers doing business only with major institutional investors.[169] The proposed asset limitation in Rule 15a–6(a) is based on the view that direct U.S. oversight of foreign sales personnel might be of less significance where such personnel solicit only U.S. institutional investors with high levels of assets. The $100 million asset level, derived from the reporting standard of section 13(f) of the Exchange Act,[170] is designed to increase the likelihood that the institution would have prior experience in foreign markets that provided insight into the reliability and reputation of various foreign broker-dealers.

Comment also is requested on the appropriateness of the threshold proposed for identifying those institutions with the least need for the protection provided by registration. Should the treshold be lower (for example, assets of $50 million) or higher (assets of $150 million or $200 million)? Comment is further requested on whether the qualified institutional buyer tier should contain more stringent purchaser qualifications than those suggested in the proposal, such as including fewer categories of institutions, or imposing different asset tests for different types of institutional investors. Would a net worth test be preferable to an asset test, and if so, what level would be appropriate—$10–$25–$50–$100–million? Finally, comment is specifically requested as to whether a "reasonable belief" standard regarding the purchaser's qualifications is appropriate in this tier of the proposed rule.

[163] *See* paragraph (d)(1)(i) of the Proposal.

[164] "Institutional buyers" are eligible to purchase under the non-fungible securities and fungible securities tiers of the Proposal. *See infra* Sections V.D.1. and V.E.1. This term generally includes the types of institutional investors permitted to purchase from the issuer under Regulation D under the Act. The qualified institutional buyer tier omits the asset tests set by Regulation D for certain institutions because it provides its own asset tests.

[165] *See* paragraph (a)(2) of the Proposal. Under paragraph (a)(3) of the Proposal, "total assets" is generally determined in accordance with the provisions of Regulation S–X under the Act (17 CFR Part 210) and refers to the larger of the person's total assets or the total assets of the person and its consolidated subsidiaries.

[166] *See* paragraphs (a)(2)(ii) and (a)(3)(ii) of the Proposal. With respect to investment advisers registered under the Investment Advisers Act, and solely for purposes of the qualified institutional buyer tier, "total assets" includes any assets as to which the investment adviser, as an investment manager, exercises investment discretion, in addition to the total assets of the investment adviser. *See* paragraph (a)(3)(ii) of the Proposal.

[167] *See* paragraph (a)(2)(iii) of the Proposal.

[168] *See* paragraph (a)(2)(iv) of the Proposal.

[169] *See supra* text accompanying nn. 130–132. Proposed Rule 15a–6, however, does not include a "reasonable belief" standard as regards an institution's meeting the $100 million threshold.

[170] 15 U.S.C. 78m(f).

2. Securities Covered

The qualified institutional investor tier of the proposed Rule would apply to any securities of any issuer. As drafted, this tier of the proposal would not require that buyers be provided with any information regarding the issuer of the securities sold. Comment is requested on whether the proposed Rule should require that an issuer undertake either in the terms of the security or by contract to provide upon request of the security holder basic information concerning the issuer. Commenters who believe that access to information should be required should also address what information should be required. Should the level of information be comparable to that required under Rule 15c2–11 of the Exchange Act,[171] or should more or less extensive information be required? Should an access requirement be limited to information the issuer provides to holders of its publicly traded securities, if any? The Commission also requests comments as to whether if access is to be mandated, there are other more efficient and less costly means of providing adequate information.

3. Resale Restrictions

Based on the sophistication and experience in the private resale market of the proposed class of qualified institutional buyers, this tier of the proposed Rule does not impose resale restrictions. It would require only that the seller or any person acting on its behalf take reasonable steps to ensure that each buyer is aware that the seller may rely on the registration exemption provided by Rule 144A.[172] It is the Commission's understanding that, under current industry practice, the obtaining of agreements as to the manner of resale is considered unnecessary in many cases where large institutional investors are involved, because they are sufficiently aware of the resale limitations on restricted securities and their potential liabilities under section 5 for improper disposition of such securities. In such cases, therefore, buyers would be expected to take adequate steps to guard against a subsequent unregistered and non-exempt distribution of the securities sold under proposed Rule 144A without any policing by the seller.

Where the required notice was given, a seller's transaction would be protected by the safe harbor, notwithstanding any unregistered, *non-exempt* offer or sale by a purchaser in the United States. In such cases the reselling purchaser would violate section 5, but not the prior holder that sold in compliance with the safe harbor rule.

[171] 17 CFR 240.15c2–11. Information required under this rule would include, for non-reporting issuers, information regarding the issuer and its business, the issuer's most recent balance sheet and profit and loss and retained earnings statements for the last two years; or the information filed with the Commission pursuant to Rule 12g3–2(b) (*See supra* n. 156). In the case of foreign issuers, if information was mandated, use of financial statements prepared under accounting principles of foreign jurisdictions would be acceptable. Audited statements would not be required.

[172] *See* paragraph (d)(1)(ii) of the Proposal. See the discussion and solicitation of comments in Section V.E.3. below concerning the adequacy of that notice procedure.

D. The Non-Fungible Securities Tier

1. Institutional Buyers

Institutions specified in the non-fungible securities tier of proposed Rule 144A as eligible "institutional buyers" include banks, broker-dealers, insurance companies, investment companies and certain employee benefit plans, and private business development companies.[173] Corporations, charities, and partnerships would be included to the extent that they had assets in excess of $5 million.[174] An entity also would be included if all its equity holders were institutional buyers.[175] Investment advisers are not specifically included, but would be eligible institutional buyers to the extent that they were corporations or partnerships with total assets over $5 million.[176] Comment is sought on the appropriateness of specifically including investment advisers with total assets over $5 million, or whether only investment advisers with some higher amount of total assets should be specifically included. Comment is also requested as to whether assets under management should be included in determining total assets for investment advisers. Finally, the Commission requests comment on whether there should be an asset test (*e.g.*, $10 million, $25 million) applicable to all institutional purchasers covered by this second tier.

The Commission currently has a proposal pending to add certain pension plans established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions for the benefit of its employees to the list of accredited investors under the Regulation D.[177] The Commission plans to include in the list of institutional buyers in paragraph (a)(1)(i) of proposed Rule 144A those plans that ultimately are defined to be accredited investors for purposes of Regulation D.

As is the case with the qualified institutional buyer tier, the seller would be permitted to rely on the exemption provided by the non-fungible securities tier of the proposed Rule even if the buyer was not an eligible institutional buyer, provided that the seller and any person acting on its behalf reasonably believed that the purchaser was such an eligible person.[178] Comment is requested as to the appropriateness of this reasonable belief standard for the non-fungible securities tier.

2. *Securities Covered*

The availability of the non-fungible securities tier is limited to securities of a class that is neither quoted in an inter-dealer quotation system within the meaning of Rule 15c2–7(c) under the Exchange Act [179] nor listed on a national securities exchange registered under Section 6 of the Exchange Act.[180] This tier of the Rule also would not be available for securities issued by an open-end investment company, unit investment trust or face-amount certificate company that is registered under section 8 of the Investment Company Act. The second tier is thus limited to securities that are not publicly traded in the United States, but would cover securities that are publicly traded outside this country. American Depository Receipts and the underlying foreign securities would be viewed as separate classes of securities for purposes of the Proposed Rule. Comment is requested as to this proposed separate treatment.

In addition to being non-fungible, securities covered by the non-fungible securities tier must be either non-convertible debt securities or non-convertible preferred stock, or be issued by a company subject to the reporting obligations imposed under the Exchange Act.[181]

The current resale market for restricted securities largely involves debt and preferred stock. Such senior securities are commonly held by institutions, making resale into the retail markets less likely than with common stock. These securities also are generally issued in distinct classes or series, making it more likely that the securities can be traced in the event that leakage does occur.

The Commission requests comment on the appropriateness of including in the non-fungible securities tier all non-convertible debt securities and non-convertible preferred stock, including those debt or preferred securities that by their subordination or other terms trade more like common equity and less like senior securities. Is the need for issuer information so much greater in the case of non-investment grade debt and preferred stock that the rule should be limited to the more senior securities? Alternatively, recognizing that privately placed securities may not be rated, should this tier require that the issuer have outstanding at the time of the transaction securities rated investment grade by one or more nationally recognized statistical rating organizations and that the securities offered and sold in reliance on the Rule rank *pari passu* or senior to the issuer's investment grade securities?

In addition, common equity could be offered and sold in reliance on the non-fungible securities tier if it were issued by a reporting company. This requirement for the availability of information assures the broad range of institutions covered by the second tier will have access to the same issuer information that would have been made available in a registration statement under the Securities Act. To be eligible, issuers must have been subject to the reporting requirements of section 13(a) or 15(d) of the Exchange Act for a period of at least 90 calendar days immediately preceding the offer or sale, and have filed all reports required to be filed pursuant to those provisions for at least a year (or such shorter period that the issuer was required to file such reports).[182]

[173] *See* paragraphs (a)(1)(i) and (a)(1)(ii) of the Proposal.

[174] *See* paragraph (a)(1)(iii) of the Proposal.

The term "institutional buyer" encompasses substantially the same institutions as those specified in Rule 215 and Regulation D under the Securities Act. Self-directed pension plans, which relate to individuals, are excluded.

[175] *See* paragraph (a)(1)(iv) of the Proposal.

[176] For purposes of the non-fungible securities tier (as well as the fungible securities tier), "total assets" is limited to the total assets of the person or of that person and any consolidated subsidiaries thereof, whatever is larger and does not include assets under management. *See* paragraph (a)(3) of the Proposal.

[177] Securities Act Release No. 33–6758 (March 8, 1988) [53 FR 7870].

[178] *See* paragraph (d)(2)(i) of the Proposal.

[179] CFR 240.15c2–7(c). This tier thus not only excludes securities quoted in an automated inter-dealer quotation system (NASDAQ), but also those securities quoted in the "pink sheets."

[180] 15 U.S.C. 78*l*. *See* paragraph (d)(2)(ii) of the Proposal.

[181] *See* Sections 13(a) and 15(d) of the Exchange Act (15 U.S.C. 78m, 78 (d) and the rules thereunder; paragraphs (d)(2)(ii) (A) and (B) of the Proposal.

[182] *See* paragraph (d)(2)(iii)(A) of the Proposal. The criteria to be met by the issuer are the same as those set forth in Rule 144 [17 CFR 230.144 (1987). In determining whether or not the issuer has complied with this requirement, a seller would be entitled to rely on either a written statement from the issuer or

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The Commission requests comment on the appropriateness of omitting the requirement that the issuer be a reporting company in the case of debt securities and preferred stock. In the event that the issuer is not a reporting company, should the rule require that the issuer undertake either as a term of the security or contractually to provide the holder of the security, upon request, certain basic information, such as that specified in Rule 15c2–11 under the Exchange Act? [185] Should such a requirement be imposed only for preferred stock and non-investment grade debt, since investment grade debt trades primarily on the basis of yield and rating, rather than on publicly available information? Finally, the Commission requests comment on whether the requirements that the securities be issued by a reporting company or be non-convertible debt securities or non-convertible preferred stock are unnecessary for the protection of the institutinal buyers covered by the non-fungible securities tier.

3. Resale Restrictions

As under the qualified institutional buyer tier of the proposed Rule, the non-fungible securities tier imposes no resale restrictions. The lack of required resale restrictions in the non-fungible securities tier of the Rule reflects the private resale market's extensive experience with senior securities, the traditionally institutional nature of the market for those securities, and the ability to trace any leakage of restricted securities into the retail markets where a public market does not otherwise exist.

The non-fungible securities tier, like the qualified institutional buyer tier, does, however, require that the seller or any person acting on its behalf take reasonable steps to ensure that the purchaser is aware that the seller may rely on the exemption from registration provided under Rule 144A.[184] Where the mandated procedure was followed, a seller would be entitled to rely on the safe harbor provided by the proposed Rule, even if the buyer subsequently offered or sold the securities in the United States in an unregistered, *non-exempt* transaction. If that occurred, the reselling purchaser would violate Section 5, but not the prior holder that sold in compliance with the safe harbor rule.

E. The Fungible Securities Tier

1. Institutional Buyers

Eligible offerees and purchasers under the fungible securities tier of proposed Rule 144A are the same as those under the non-fungible securities tier.[186] Commentators should address the questions raised with respect to eligible purchasers under the non-fungible securities tier of the proposed Rule with respect to the fungible securities tier as well.[186]

2. Securities Covered

The distinction between the securities covered by this third tier and the second tier is that the third tier covers non-convertible debt, non-convertible preferred stock and securities issued by reporting companies of a class that is quoted in an inter-dealer quotation system or listed on a registered national securities exchange, as well as such securities issued by open-end investment companies, face-amount certificate companies and unit investment trusts registered under section 8 of the Investment Company Act.[187] However, any securities that could be offered or sold under the second tier could also be traded under the third. As in the case of the non-fungible securities tier, the Commission requests comment on whether the requirements that the securities be issued by a reporting company or be non-convertible debt securities or non-convertible preferred stock are unnecessary for the protection of the institutional buyers involved.

3. Resale Restrictions

In contrast to the qualified institutional buyer and non-fungible securities tiers of the proposed Rule, the fungible securities tier of the proposed Rule would impose resale restrictions. Under this tier, an offer or sale of securities would be protected by the safe harbor only where made pursuant to procedures designed to prevent "leakage" of the securities into the retail market in such a manner as to result in an unregistered public offering.

The proposed Rule would require that the seller or any person acting on its behalf take reasonable steps to prevent the purchaser of such securities from reselling the securities in the United States without registration or an available exemption.[188] Where precautionary procedures were implemented and followed properly, a seller's transaction would be protected by the safe harbor, notwithstanding any subsequent *non-exempt* unregistered distribution by a purchaser. In such cases, the reselling purchaser would be in violation of section 5, but not the prior holder that sold in compliance with the safe harbor rule.

The Rule provides that reasonable steps to guard against an unregistered, non-exempt public offering would be conclusively established where the purchaser agreed in writing not to resell the securities in the United States absent registration or an applicable exemption, and the securities were in registered (as opposed to bearer) form, and appropriately legended [189] or subject to stop transfer instructions in the case of non-exempt transactions not registered under the Securities Act.[190] These are traditional precautions that have been taken to guard against an unregistered public offering, particularly in the case of common equity. These steps would provide a non-exclusive means of demonstrating compliance with the mandated precautionary procedure. The seller's failure to take the particular steps specified in the Rule would not create a presumption that it had acted unreasonably. In the absence of taking the specified steps, the seller would remain free to establish that reasonable steps had been taken to prevent an unregistered distribution in the United States by the buyer through other means.

The Commission requests comment on whether the measures proposed as conclusive proof that the seller acted reasonably to prevent an unregistered, non-exempt distribution are adequate. Commenters are also requested to address whether there are more efficient and effective means of protecting against retail leakage.

An alternative method of protecting against an unregistered public offering is to establish trading systems that limit trading to qualifying institutions and establish depositary and clearance systems such that trades may be made only to other such institutions. The American Stock Exchange and the National Association of Securities Dealers both have announced plans to establish such systems for the trading of unregistered securities.[191]

The operating procedures for such systems have not yet been finalized. However, the Commission, as an alternative to the procedures described above, could deem a system to establish adequate procedures under Rule 144A if it (i) provided for a deposit or book entry of securities, (ii) restricted transferees to qualifying institutions buying for their own account or the account of other qualifying institutions, and (iii) limited the transactions allowed for exiting the closed system to those adequately documented and verifiable transactions that were not subject to registration under the Securities Act (for example, sales made under proposed Regulation S). In addition, such system would provide adequate surveillance procedures for the market and the Commission to verify that such eligibility criteria were maintained. Sellers of securities in such systems, by compliance with the terms of such systems, could meet the requirements of Rule 144A. They would not be required to inquire as to the purchaser's status or obtain its written agreement to resell the securities in accordance with the Rule, as these functions would be performed through the operating procedures of the closed system. Participation in such a system would be conditional only within that system or in transactions exempt from registration. The Commission requests comments as to whether, in the case of fungible securities, it should require participation in the kind of closed trading system discussed above, or would the resale restrictions proposed adequately protect against an unregistered, non-exempt public offering in the United States?

The procedures proposed under the third tier have not been proposed with respect to fungible securities covered by tier 1. The distinction is based on the premise that the qualified institutions are sufficiently sophisticated and experienced in the trading of restricted securities to protect adequately against an illegal unregistered distribution from being effected. The Commission requests comment on the soundness of this premise, and on whether any of the resale restrictions proposed under the fungible securities tier should be applied to all or some portion of the qualified institutional buyer and non-fungible securities tiers. In particular, the Commission requests comment on the adequacy of relying on notice to the buyer that the seller may rely on Rule 144A to assure against leakage into the public market of fungible securities traded in the U.S. public markets, as would be permitted under the qualified institutional buyer tier. Similarly, is such notice sufficient in the case of non-fungible common stock of reporting companies, that would be covered by the non-fungible securities tier?

VI. Changes to Rule 144 and Rule 145

In connection with its consideration of proposed Rule 144A, the Commission has reexamined the principles underlying the determination of holding periods for purposes of Rule 144. As a result, the Commission is today proposing amendments to Rule 144's tacking concept.

While the proposed amendments to Rule 144 arose in the context of the development of Rule 144A, they would be applicable to all restricted securities, not only those sold under Rule 144A. The Commission's assessment of the advisability and effect of the Rule 144 changes must take into account their full scope. The Commission may determine to adopt one or more tiers of proposed Rule 144. Commentators therefore should address the merits of the proposals both independently and as a package.

Under the current Rule, restricted securities [192] generally are required to be held for at least two years before the holder may sell the securities in reliance upon the safe harbor provisions of Rule 144.[193] Except in limited instances,[194] the holding period of prior owners is not combined with, or "tacked" on to, the holding period of the person wishing to sell in reliance on Rule 144.[195]

The holding period condition incorporated in Rule 144 is intended to protect against an indirect public offering.[196] The prohibition against tacking of a prior holder's holding period derived in part from pre-Rule 144 theories pursuant to which a holder could be deemed to have acquired restricted securities with an investment intent rather than "with a view to distribution." [197] Finding that these

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statements in reports filed by the issuer with the Commission indicating that the issuer has met this requirement. The annual report on Form 10–K (17 CFR 249.310), the quarterly report on Form 10–Q 17 CFR (249.308a), and Form 20–F (17 CFR 249.220f) (on which annual reports are made by foreign issuers) require that the filer indicate whether it "(1) has filed all reports required to be filed by section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days."

[184] *See supra* text accompanying nn. 171.

[185] *See* paragraph (d)(2)(iv) of the Proposal. See discussion and solicitation of comments in Section V.E.3. below concerning the adequacy of that notice procedure.

[186] *See* paragraph (d)(3)(i) of the Proposal.

[187] *See supra* Section V.D.1.

[188] *See* paragraph (d)(3)(ii) of the Proposal.

[189] *See* paragraph (d)(3)(iii) of the Proposal.

[190] *See* 17 CFR 230.502(d).

[191] *See* paragraph (d)(3)(iii)(A) and (B) of the Proposal.

[191] The American Stock Exchange, Inc. has proposed a domestic market for institutional trading of unregistered foreign securities to be known as SITUS, for "System for Institutional Trading of Unregistered Securities." The National Association of Securities Dealers, Inc. is developing a NASDAQ-type system for the trading of unregistered securities of major foreign and domestic issuers. The NASD system will be known as PORTAL, for "Private Offerings, Resales and Trading through Automated Linkages." The proponents of these systems have not yet established the availability of exemptions from the applicable provisions of the Securities Act or the Exchange Act, and this discussion should not be read to indicate that the Commission has made any determination as to the application of the provisions of such Acts to either SITUS or PORTAL.

[192] The term "restricted securities" presently is defined in Rule 144(a)(3), 17 CFR 230.144(a)(3), as securities that are acquired directly or indirectly from the issuer, or from an affiliate of the issuer, in a transaction or chain of transactions not involving any public offering, or securities acquired from the issuer that are subject to the resale limitations of Regulation D or Rule 701(c) (§ 230.701(c) of this chapter) under the Act, or securities that are subject to the resale limitations of Regulation D and are acquired in a transaction or chain of transactions not involving any public offering.

The Commission proposes to amend this provision to reflect the inclusion of securities acquired in Rule 144A transactions.

[193] Rule 144(d)(1) (17 CFR 230.144(d)(1)).

[194] Rule 144(d)(4) sets forth specific provisions that permit a holder or transferee of restricted securities to "tack" (a) the holding period of the transferor, based on an identity of interest between such transferors and transferees as a pledgor and pledgee Rule 144(d)(4)(iv)), donor and donee (Rule 144(d)(4)(v)), settlor and trust (Rule 144(d)(4)(vi)), and a decedent and his estate (Rule 144(d)(4)(vii)); and (b) the period of time certain restricted securities have been held to the holding period of "related" securities subsequently acquired from the issuer as a dividend or pursuant to a stock split or recapitalization (Rule 144(c)(4)(i)), for consideration consisting solely of such other securities of the same issuer surrendered for conversion (Rule 144(d)(4)(ii)), or as a contingent payment of the purchase price of an equity interest in a business, or the assets of a business, sold to the issuer or an affiliate of the issuer (Rule 144(d)(4)(iii)).

[196] *See* Securities Act Release No. 5223 (Jan. 11, 1972) [37 FR 581]. *See also* J. Halperin, *Private Placement of Securities* § 8.10, at 270 (1984); D. Cuthbertson, *A Guide to Rule 144* 430 [247?] Securities Act Release No. 6099 (Aug. 2, 1979) (44 FR 44792) [Questions 23 and 24].

[196] *See* Preliminary Note to Rule 144.

[197] *See* Section 2(11) of the Securities Act of 1933 (15 U.S.C. 77b(11)). *See also In Re. The Crowell-Collier Publishing Co.*, Securities Act Release No. 3825 (Aug. 12, 1957) ("one evidentiary fact" to be considered in ascertaining whether a purchaser took with investment intent, rather than with the intent to distribute that would render him a statutory underwriter, is the length of the period between acquisition and resale).

Prior to the adoption of Rule 144, the Commission focused on two factors in ascertaining whether a holder of unregistered securities had purchased with the requisite investment intent: (1) The length of time the securities were held, as determined by the holder's execution of an "investment letter" on the date of purchase containing the assertion that he was not taking the securities with a view to their later distribution, but instead intended to hold them for investment (*see, e.g., Riker-Maxson Corp.* (avail. Dec. 27, 1971)); and (2) any "change in circumstances" between purchase and resale indicating that such resale was not contemplated at the time the security was acquired (*see, e.g., Computest Corp.* (avail. Oct. 6, 1971)). *See* Preliminary Note to Rule 144; *see also U.S. Securities and Exchange Commission, Disclosure to Investors—A Reappraisal of Federal Administrative Policies Under the '33 and '34 Acts; The Wheat Report* 162–71 (1969); 7B J. Hicks, *Exempted Transactions Under the Securities Act of 1933* § 9.02(2)(a) (1988 rev'd ed.).

theories had generated substantial uncertainty in the application of the securities Act's registration provisions, while failing to assure adequate protection of investors, the Commission adopted Rule 144 to provide a more objective and certain standard for determining when securities could be sold to the public without concern for the seller being found to be a statutory underwriter.[198] In 1981, paragraph (k) was added to the Rule to provide a defined holding period beyond which the previously restricted securities could be resold freely by non-affiliates.[199] And, in 1983, the public information requirement was dropped from Rule 144(k).[200]

As a result of its reexamination of the resale issue, the Commission today is proposing to amend Rule 144 to permit holders of securities acquired in a transaction or chain of transactions not involving any public offering to include the holding period of prior unaffiliated holders. The proposed changes to Rule 144 would apply to securities acquired in reliance upon proposed Rule 144A as well as to other restricted securities. Requiring securities to be held for two years by each successive holder before permitting Rule 144 resales, without regard to the time elapsed from the date of the sale of the security by the issuer or an affiliate, appears to be unnecessarily restrictive. A single period running from the date of the purchase from the issuer or its affiliate would appear sufficient to prevent the distribution of restricted securities to the public.

Rule 144(d)(1) thus is proposed to be amended to allow the two-year period prescribed therein to run continuously from the acquisition of restricted securities from the issuer, or from any affiliate thereof, until the subsequent resale of the securities by either the initial holder or a subsequent holder. Because of its "issuer" status for purposes of the rule,[201] an affiliate's resale of securities acquired at some point in a chain of transactions occurring within two years of a non-affiliate's acquisition of such securities from the issuer or an affiliate will trigger the commencement of a new period.

As proposed, Rule 144(k) similarly would be amended to permit a non-affiliate, who has been a non-affiliate for at least three months, to resell restricted securities free of the restrictions imposed by paragraphs (c), (e), (f), and (h) of Rule 144 if a period of at least three years, as computed in accordance with paragraph (d) of the rule, had elapsed since the later of the date the securities originally were acquired from the issuer or the date they were acquired from an affiliate of the issuer.

Comment is sought, first, regarding the impact on the secondary private markets for debt and equity securities, respectively, of the present general rule barring tacking by successive purchasers of such securities, and second, the anticipated consequences to such markets of the proposed amendments. Commentators should identify, to the extent possible, the particular effect of such change on sales to non-institutional investors. Commentators also should address the impact of the adoption of Rule 144A if the current bar on tacking is retained.

As under existing Rule 144, where the initial acquisition is a sale, the two-year period would not begin to run until the full purchase price had been paid by the person acquiring the securities from the issuer or an affiliate of the issuer.[202] Likewise perpetuating the requirements of the present Rule, amended subdivision (d)(2) of the rule would provide that payment for the securities acquired from the issuer or an affiliate by means of a promissory note, other obligation or installment contract would not be deemed full consideration unless specific conditions were met.[203]

Consistent with the focus of the revised approach to determination of the period required prior to the resale of restricted securities in reliance upon Rule 144's safe harbor, the Commission is proposing to rescind existing Rule 144(d)(3). Proposed subdivisions (d)(1) and (k) would provide for a single two or three year period running from the date of acquisition from the issuer or an affiliate of the issuer. Under such an approach, the question whether the initial or any subsequent holder sold short or otherwise held a contingent position in restricted securities is irrelevant, provided the person acquiring the securities from the issuer or an affiliate of the issuer paid full consideration for the securities and the prescribed period had run. The Commission seeks comment on any potential adverse or beneficial effects of the rescission of Rule 144(d)(3), if any, on institutional and non-institutional participants in the secondary private markets.

As discussed, the two and three year periods established by proposed Rule 144(d)(1) and proposed amended Rule 144(k) would begin anew for persons acquiring securities from an affiliate of the issuer. Exceptions to this general rule would be preserved expressly in proposed Rules 144(d)(3)(iv) through (vii) [204] for the benefit of persons taking securities from an affiliated pledgor, donor, trust settler or deceased person.[205] The existing Rule enables a holder of securities to combine with his own holding period, the holding period of either an affiliated or a non-affiliated transferor under these circumstances. By contrast with the "sale" transactions contemplated by existing and proposed Rule 144(d)(1), pursuant to which an affiliate seller's holding period may not be tacked to that of the buyer, there is an identity of interest between a transferee who acquires securities in what the Commission traditionally has considered to be a non-sale transaction. Regardless of whether the transferor in such a non-sale transaction is an affiliate or non-affiliate of the issuer, the transferee should be permitted to avail himself of the holding periods of his respective transferor.

The proposed revisions to Rules 144(d)(1) and (k) render such provisions unnecessary for transferees of a non-affiliate. Under paragraphs (d)(3) (iv) through (vii), the holding period of an affiliate's pledgee, donee, trust or estate similarly would continue to relate back to the date of acquisition by the affiliate. As under current paragraph (d)(3)(vii), the two and three year periods would not be required for estates and beneficiaries thereof that are not affiliates of the issuer. Paragraphs (c), (f), (g), (h) and (i) of the Rule would continue to apply to securities sold by such persons in reliance upon Rule 144's safe harbor in less than three years.

Comment is sought as to the continuing validity of the Commission's position regarding tacking of holding of securities acquired from an affiliated pledgor, donor, settlor or deceased individual. Commentators should address the merits of the Commission's view of proposed (d)(3)(iv) through (d)(3)(vii) [206] transactions, and of the possibility that the different treatment of affiliates engaged in such transactions would give rise to a distribution of restricted securities.

Currently, the acquisition or securities pursuant to a transaction of the type specified in Rule 145(a) is considered a purchase from the issuer for purposes of Rule 144.[207] Proposed subdivision (d)(3)(viii) makes it clear, consistent with this view, that the two and three year periods established by Rules 144 (d) and (k) and incorporated in Rule 145(d) would commence running on the date the holder is deemed to have acquired the securities in a Rule 145(a) transaction. Proposed Rule 145(d) would provide for the resale by such person or party of the securities thus acquired after a period of two or three years as computed under amended Rules 144(d) or (k). Finally, an exception set forth in new Rule 144(d)(3)(viii) would codify the staff's interpretation position that a transaction effected solely for the purposes of forming a holding company will be deemed a "recapitalization" within the meaning of existing Rule 144(d)(4)(i); [208] therefore, the holding period of the holding company's securities is tacked to that of the predecessor operating company's securities.[209] In determining whether a transaction is solely for the purposes of forming a holding company, the analysis outlined in the *Morgan, Olmstead, Kennedy & Gardner Capital Corp.* letter would be followed.

Comment is sought on the continuing applicability of the non-tacking principal proposed to be codified in Rule 144(d)(3)(viii), as well as codification of the exception to the principle that is proposed in this new subdivision.

The proposed amendments to Rule 144 are intended only to establish the commencement date for determining the two and three year periods, and do not change the required aggregation of the seller's and buyer's sales in determining compliance with the volume limitations prescribed by Rule 144(e)(2).[210] If the transaction, while denoted as a purchase acquisition, were found in substance to be a transaction specified in paragraphs (d)(3) (iv) through (vii) of the Rule, as proposed to be amended, the substance of the transaction would govern and the applicable aggregation principles set forth in Rule 144(e) therefore would apply. Where two or more affiliates or other persons agree to act in concert for the purpose of selling restricted securities, aggregation also may be required under Rule 144(e)(3)(vi).

VII. Cost-Benefit Analysis

To evaluate fully the benefits and costs associated with proposed Rule 144A, the Commission requests commenters to provide views and data as to the costs associated with private resales under current law as compared to such estimated costs under the proposed Rule. In this regard, the Commission notes that the proposed Rule should facilitate resales by providing a rule to accommodate existing practice. The Commission also requests commenters to provide views and data regarding the costs and benefits of the proposed Rule to issuers of securities, institutional and other investors and the trade markets.

By providing clearer guidance as to the applicability of the Securities Act registration provisions, the proposed Rule should increase the marketability of unregistered securities sold and thus result in reduced capital-raising costs to issuers, since a deeper secondary market should enable them to obtain more favorable prices for their securities. In addition, purchasers and sellers should benefit from the increased liquidity provided by this secondary market.

As the proposed Rule sanctions certain existing practices, is non-exclusive, and does not impose any record keeping or reporting requirements, the Commission is not aware of any additional costs that would result from the proposal.

The Commission also requests commenters to provide views and data on the costs associated with resales under Rule 144 and Rule 145 as presently in force and as proposed to be amended. As the proposed amendments would not require any different procedures for resale, and would allow resales to be made under Rule 144 sooner than is presently the case in many instances, the Commission does not anticipate any additional costs to result from the proposed amendment.

VIII. Initial Regulatory Flexibility Act Analysis

This initial regulatory flexibility analysis relates to proposed new Rule 144A and amendments to Rules 144 and 145 under the Securities Act of 1933 ("Securities Act"), and has been prepared in accordance with the Regulatory Flexibility Act.[211]

A. Reasons for Proposed Action

The Commission is proposing Rule 144A because it appears that, in certain circumstances, specified institutional investors may not need the protection of the registration provisions of the Securities Act. Further, registration in such circumstances may impose undue burdens on the parties to these transactions. If this Rule is adopted, a more efficient market for resales to institutional investors should develop.

The Commission is proposing to amend Rules 144 and 145 to provide a more equitable means of determining the period for which restricted securities must be held before public resale is protected by the rules. The effect of these changes would be that restricted securities could be sold subject to certain conditions after two years from the date of their acquisition from an issuer or an affiliate thereof, and would be freely resalable three years after such acquisition.

B. Objectives

The proposed Rule 144A is intended to provide a nonexclusive safe harbor from the registration requirements of the Securities Act for resales of securities to institutional investors. The proposed Rule includes three tiers. The first (the "qualified institutional buyer tier") would allow resales of any securities to institutions with assets of $100 million or more. The second (the "non-fungible

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[198] Preliminary Note to Rule 144, citing Section 2(11) of the Securities Act (15 U.S.C. 77b(11)).

[199] Securities Act Release No. 6258 (Feb. 6, 1981) [46 FR 16771]. *See* Securities Act Release No. 6425 (Sept. 23, 1983) [48 FR 42196].

[200] Securities Act Release No. 6467 (Sept. 23, 1983) [48 FR 44824].

[201] For purposes of Rule 144, an affiliate of an issuer "is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such issuer." Rule 144(a)(1). *See* Rule 405 [17 CFR 230.405]. Section 2(11) of the Securities Act defines the term "issuer" to include an affiliate of the issuer. Accordingly, any person purchasing from an affiliate may be deemed a statutory underwriter.

[202] Proposed paragraph (d)(1) of Rule 144.

[203] Proposed paragraph (d)(2) of Rule 144.

[204] Present Rules 144(d)(4)(iv) through (d)(4)(vii) [17 CFR 230.144(d)(4)(iv) through (d)(4)(vii)]. Rule 144(d)(4) would be renumbered as 144(d)(3) if the Commission rescinds existing Rules 144(e)(3) as proposed.

[205] *See supra* n. 194

[206] Present Rules 144(d)(4)(iv) through (d)(4)(vii) [17 CFR 230.144(d)(4)(iv) through (d)(4)(vii)].

[207] 17 CFR 230.145(a). As explained in the Preliminary Note to Rule 145, persons who are offered securities in business combinations of the following types may avail themselves of the safe harbor available under the Rule: (1) Reclassification, other than a stock split, reverse stock split or change in par value, that involves the substitution of one security for another; (2) merger or consolidation; and (3) transfer of assets in consideration of the issuance of securities under certain conditions.

[208] Proposed Rule 144(d)(3)(i).

[209] *See Morgan, Olmstead, Kennedy & Gardner Capital Corp.*, [1987–1988 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 78,672 (avail. Dec. 8, 1987) (permitting such tacking subject to four conditions: (1) The holding company stock must be issued solely in exchange for the operating stock; (2) security holders receive securities of the same class and in the same proportions as exchanged; (3) the holding company is newly formed has not significant assets except operating company securities immediately after the transaction and, at that time, has substantially the same assets and liabilities, on a consolidated basis, as those of the operating company immediately prior to the transaction; (4) the rights and interests of common stockholders in the holding company are substantially the same as they had as holders of the operating company's common stock).

[210] 17 CFR 230.144(e)(2).

[211] 5 U.S.C. 603.

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securities tier") would permit unlimited resales of restricted securities of a class not publicly traded in the United States to specified institutions of a smaller size, provided the securities to be offered or sold were non-convertible debt securities or non-convertible preferred stock, or securities of an issuer reporting under the Securities Exchange Act of 1934. The third tier (the "fungible securities tier") would allow unlimited resales of restricted securities of a class publicly traded in this country, if the securities were non-convertible debt securities, non-convertible preferred stock, or securities of a reporting company. In addition, the fungible securities tier would require that the seller take reasonable steps to guard against an unlawful distribution in the United States by the purchaser.

The proposed changes to Rule 144 (and thus, Rule 145) would have the effect of enabling holders of restricted securities to "tack" the holding period of sellers other than the issuer or affiliates of the issuer of the securities. Currently, Rule 144 permits the public resale of restricted securities when certain conditions, including a minimum holding period of two years (Rule 144(d)(1)) or three years (Rule 144(k)), are met. Tacking generally is not permitted in calculating Rule 144 holding periods. Rule 145 in turn permits public resales of securities issued in certain business combinations, provided in part that minimum holding periods prescribed by Rule 144 have run.

Under the proposed amendments to Rule 144, the two or three year period for restricted securities, including securities acquired meeting the requirements of Rule 144A, would commence at the time the securities were acquired or deemed to have been acquired from the issuer or an affiliate of the issuer. Thus, the periods imposed by Rule 144 would run continuously from the initial acquisition of restricted securities to the resale of such securities two or three years later by either the holder or a subsequent holder. Only an affiliate's acquisition and resale of the securities, at some point in a chain of transactions occurring during the running of the period, would trigger the commencement of a new holding period for any person taking from such affiliate. Because Rule 145 holding periods are determined by reference to Rule 144, Rule 145 would be amended to reflect the proposed amendments to Rule 144.

C. Legal Basis

Rule 144A and the amendments to Rules 144 and 145 are being proposed by the Commission pursuant to sections 2(11), 4(1), 4(3) and 19(a) of the Securities Act.[215]

D. Small Entities Subject to the Rule

The Commission has adopted definitions of the term "small entity" for the various entities subject to Commission rulemaking. When used with reference to an "issuer," other than an investment company, the term is defined by Rule 157 [216] under the Securities Act as an issuer whose total assets on the last day of its most recent fiscal year were $5,000,000 or less and that is engaged or proposing to engage in an offering of securities which does not exceed $1,000,000. The Commission has no data on the number of such small entities that would be affected by proposed Rule 144A, and an estimation of such number is not currently feasible. However, during 1987, about 750 small issuers engaged in public offerings of $5,000,000 or less. If the non-fungible securities or fungible securities tier of proposed Rule 144A were ultimately adopted, the Rule 144A might affect small issuers disproportionately. The Rule would not be available for the resale of common equity securities issued by most small issuers. Therefore, the effect of the Rule could be to ease certain burdens for larger rather than small entities with respect to resales covered by the Rule. To the extent that small issuers are directly affected by the proposed Rule, however, the Rule's enhancement of the liquidity of the private secondary markets should make it easier for such issuers to sell securities in that market. If the qualified institutional buyer tier ultimately were adopted, small issuers would not be disproportionately affected by Rule 144A, as that tier is not limited to debt securities, preferred stock and securities issued by reporting issuers.

As regards broker-dealers subject to the proposed Rule, Rule 0–10(c) under the Exchange Act [217] indicates that a "small entity" or "small organization" for the purposes of the Regulatory Flexibility Act shall mean a broker or dealer that (1) had total capital of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a–5(d) [218] or if it is not required to file such statements, a broker or dealer that had total capital of less than $500,000 on the last business day of the preceding fiscal year, and (2) is not affiliated with any person that is not a small business or small organization as defined in this section. The Commission has no data on the number of such small entities or organizations that would be affected by proposed Rule 144A, and an estimation of such number is not currently feasible. However, as of the end of 1987, approximately 7,233 broker-dealers were small entities or organizations as defined by this rule. Small entities that are broker-dealers generally would be affected by the proposed Rule 144A in the same way as other investment firms.

The proposed Rule 144A may affect small businesses that are institutional investors. To the extent that these investors are affected by the proposed Rule, the Rule should make it easier for them to resell privately placed securities principally due to the improved liquidity of this market. However, the qualified institutional buyer tier of the proposal would provide a wider safe harbor to institutional investors having total assets in excess of $100 million.

The proposed amendments to Rules 144 and 145 are expected to reduce the costs associated with sales of restricted securities by small and large issuers alike. As stated above, the Commission has no data on the number of such small entities or organizations that would be affected by the proposed amendments, and an estimation of such number is not currently feasible.

E. Reporting, Recordkeeping and other Compliance Requirements

Rule 144A, if adopted, would provide a safe harbor from the registration provisions of the Securities Act, and thus may result in the filing of fewer registration statements under that Act. If so, adoption of the Rule may result in decreased reporting, recordkeeping, and other complaince requirements with respect to transactions covered by the Rule.

The amendments to Rules 144 and 145 would have no significant effect on reporting, recordkeeping, and other compliance requirements.

F. Overlapping or Conflicting Federal Rules

It does not appear that the proposed Rule 144A and the proposed amendments to Rules 144 and 145 duplicate, overlap, or conflict with any existing Federal Rule.

G. Significant Alternatives

Proposed new Rule 144A and the amendments to Rules 144 and 145 are intended to benefit all issuers, regardless of size, by providing clarification of the circumstances in which resales of securities made to institutional investors may be made without registration under the Securities Act.

A possible alternative to the proposed Rule 144A and the amendments to Rules 144 and 145 might include the establishment of differing compliance or reporting requirements for small entities. Such an alternative, however, based only on the size of the issuer and no other criteria, would not be consistent with the goal of the Securities Act to protect investors. Further clarification, consolidation, or simplification of compliance and reporting requirements under the regulation for small entities also would not be appropriate. The proposed Rule and the amendments are themselves a clarification and simplification of compliance and reporting requirements, and additional simplification for small entities would not be consistent with the Commission's statutory mandate.

Another alternative could be the adoption of performance rather than design standards with regard to resales and holding periods for such resales. Use of performance rather than design standards in a safe-harbor context would frustrate the ability of persons relying on Rule 144A and the amendments to Rules 144 and 145 to ascertain whether all the conditions for meeting the safe harbor were satisfied. An exemption from the provisions of the regulation for small entities would exclude such entities from coverage of the safe harbor. Application of the Rule and the amendments to both large and small entities is consistent with the Commission's mandate.

An alternative to the amendments to Rules 144 and 145 could be the elimination of all holding periods for resales of restricted securities. However, it appears that a period of two years (Rule 144(d)(1)) or three years (Rule 144(k)) is necessary to prevent the distribution of restricted securities from affecting the market for publicly-held securities of the issuer.

H. Solicitation of Comments

The Commission encourages the submission of written comments with respect to any aspect of this initial regulatory flexibility analysis. Such written comments will be considered in the preparation of the final regulatory analysis if the proposed Rule is adopted. Persons wishing to submit written comments should file four copies of such comments with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. All submissions should refer to File No. S7–23–88 and will be available for public inspection and copying at the Commission's Public Reference Room.

IX. Requests for Comments

Any interested persons wishing to submit written comments on proposed Rule 144A and the proposed amendments to Rules 144 and 145, as well as on other matters that may have an impact on the proposals, are requested to do so. The Commission specifically requests that commenters address whether the qualified institutional buyer tier, the non-fungible securities tier or the fungible securities tier of proposed Rule 144A, or a combination of two or three of the tiers, would be preferable.

In addition to the specific requests for comments appearing elsewhere in this release, the Commission generally seeks comment on the potential market impact of proposed Rule 144A and on the usefulness of the proposed Rule for resales of securities by institutional investors.

X. Statutory Basis for Proposals

Rule 144A is being proposed by the Commission and Rules 144 and 145 are proposed to be amended by the Commission pursuant to sections 2(11), 4(1), 4(3), and 19(a) of the Securities Act of 1933.

List of Subjects in 17 CFR Part 230

Reporting and recordkeeping requirements, Securities.

XI. Text of Proposals

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 is amended by adding the following citation: (citations before * * * indicate general rule making authority).

Authority: Sec. 19, 48 Stat. 85, as amended, 15 U.S.C. Section 77S * * * Section 230.144A also issued under sec. 2, 48 Stat. 74, as amended, 15 U.S.C. 77b; and also sec. 10, 48 Stat. 81 as amended, 15 U.S.C. 77j.

2. By adding § 230.144A to read:

§ 230.144A Private resales of securities to institutions.

Preliminary Notes

1. Attempted compliance with this rule does not act as an exclusive election; any seller hereunder may also claim the availability of any other applicable exemption from the registration requirements of the Act.

2. Nothing in this rule obviates the need for any issuer or any other person to comply with the securities registration or broker-dealer registration requirements of the Securities Exchange Act of 1934 (the "Exchange Act"), whenever such requirements are applicable.

3. Nothing in this rule obviates the need for any person to comply with any applicable state law relating to the offer and sale of securities.

4. Securities acquired in a transaction meeting the conditions of this rule are considered to be "restricted securities" within the meaning of § 230.144(a)(3) of this chapter.

(a) *Definitions.* The following definitions shall apply for purposes of this § 230.144A.

(1) "Institutional buyer" means any of the following:

(i) Any bank as defined in section 3(a)(2) of the Act, or any savings and loan association or other institution as defined in section 3(a)(5)(A) of the Act, whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to section 15 of the Exchange Act; any insurance company as defined in section 2(13) of the Act; any investment company registered under the Investment Company Act of 1940 (the "Investment Company Act") or business development company as defined in section 2(a)(48) of that Act; any small business investment company licensed by the U.S. Small Business Administration under section 301(c) or (d) of the Small Business Investment Act of 1958; any employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974, if the investment decision is made by a plan fiduciary, as defined in section 3(21) of that Act, which is either a bank, savings and loan association, insurance company, or investment adviser registered under the Investment Advisers Act of 1940 (the "Investment Advisers Act"), or if the employee benefit plan has total assets of $5,000,000;

(ii) Any private business development company as defined in section 202(a)(22) of the Investment Advisers Act;

(iii) Any corporation, Massachusetts or similar business trust, organization described in section 501(c)(3) of the Internal Revenue Code, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of $5,000,000; or

(iv) Any entity all of the equity owners of which are institutional buyers.

(2) "Qualified institutional buyer" means any of the following:

(i) Any institutional buyer that has total assets in excess of $100,000,000;

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[215] 15 U.S.C. 77b(11), 77d(1), 77d(3), and 77s(a).

[216] 17 CFR 230.157.

[217] 17 CFR 240.0–10(c).

[218] 17 CFR 240.17a–5(d).

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(ii) Any investment adviser registered under the Investment Advisers Act that has total assets in excess of [illegible];

(iii) Any investment company registered under the Investment Company Act that is part of a family of investment companies with aggregate total assets in excess of $100,000,000. "Family of investment companies" means:

(A) Except for insurance company separate accounts, any two or more investment companies separately registered under the Investment Company Act that share the same investment adviser or principal underwriter and that hold themselves out as related companies for purposes of investment and investor services; or

(B) With respect to insurance company separate accounts, any two or more separate accounts separately registered under the Investment Company Act that share the same investment adviser or principal underwriter and that function under operational or accounting or control systems that are substantially similar; or

(iv) Any entity all of the equity owners of which are qualified institutional buyers.

(3) "Total assets" of a person means the sum of:

(i) The total assets of that person or of that person and any consolidated subsidiaries thereof, whichever is larger, as determined in accordance with the provisions of Regulation S-X under the Act; and

(ii) For purposes of paragraph (d)(1) of this § 230.144A, with respect to an investment adviser registered under the Investment Advisers Act, any assets as to which that person, as an investment manager, exercises investment discretion.

(b) Any person, other than the issuer or a dealer, who offers or sells securities in compliance with the conditions set forth in paragraph (d)(1), (2) or (3) of this § 230.144A shall be deemed not to be engaged in a distribution of such securities and therefore not to be an underwriter thereof within the meaning of sections 2(11) and 4(1) of the Act.

(c) Any dealer who offers or sells securities in compliance with the conditions set forth in paragraph (d)(1), (2) or (3) of this § 230.144A shall be deemed not to be a participant in the distribution of such securities within the meaning of section 4(3)(C) of the Act, and such securities shall be deemed not to have been offered to the public within the meaning of section 4(3)(*A*) of the Act.

(d) *Conditions to be Met.* To qualify for exemption under this § 230.144A, an offer or sale must satisfy the conditions of paragraph (d)(1), (2) or (3) of this section:

(1) *Securities offered and sold to qualified institutional buyers.* (i) The securities are offered and sold only to a qualified institutional buyer or nominee thereof, or the seller and any person acting on its behalf reasonably believe that the offeree or purchaser is a qualified institutional buyer or nominee thereof. In determining whether a particular person is a qualified institutional buyer, the seller and any person acting on its behalf shall be entitled to rely on financial statements or other material filed with the Commission pursuant to the Act, the Exchange Act, the Investment Company Act, or the Investment Advisers Act, unless the seller or any person acting on its behalf knows or has reason to believe that such person is not a qualified institutional buyer; and

(ii) The seller or any person acting on its behalf takes reasonable steps to ensure that the purchaser is aware that the seller may rely on an exemption from the provisions of section 5 of the Act pursuant to this § 230.144A.

(2) *Non-convertible debt securities, non-convertible preferred stock and securities of reporting companies offered and sold to institutional buyers and of a class not traded in any U.S. public market.* (i) The securities are offered and sold only to an institutional buyer or nominee thereof, or the seller and any person acting on its behalf reasonably believe that the offeree or purchaser is an institutional buyer or nominee thereof;

(ii) Securities of the same class as the securities offered or sold are not quoted in an inter-dealer quotation system within the meaning of § 240.15c2–7(c) under the Exchange Act or listed on a national securities exchange registered under section 6 of the Exchange Act, nor are securities of an open-end investment company, unit investment trust or face-amount certificate company that is registered under section 8 of the Investment Company Act;

(iii) Either:

(A) For a period of at least 90 days immediately preceding the offer or sale of securities pursuant to this § 230.144A, the issuer shall have been subject to the reporting requirements of section 13 or 15(d) of the Exchange Act and shall have filed all reports required to be filed thereunder during the 12 months preceding such offer or sale (or for such shorter period that the issuer was required to file such reports). The seller shall be entitled to reply upon (*1*) a written statement from the issuer, or (*2*) statements in quarterly or annual reports filed with the Commission by the issuer, that such issuer has met such reporting requirements unless the seller knows or has reason to believe that the issuer has not compiled with such requirements; or

(B) The securities offered or sold are non-convertible debt securities or non-convertible preferred stock; and

(iv) The seller or any person acting on its behalf takes reasonable steps to ensure that the purchaser is aware that the seller may rely on an exemption from the provisions of section 5 of the Act pursuant to this § 230.144A.

(3) *Non-convertible debt securities, non-convertible preferred stock and securities of reporting companies sold to institutional buyers, whether or not of a class traded in a U.S. public market.*

(i) The securities are offered and sold only to an institutional buyer or nominee thereof, or the seller and any person acting on its behalf reasonably believe that the offeree or purchaser is an institutional buyer or nominee thereof;

(ii) Either:

(A) For a period of at least 90 days immediately preceding the offer and sale of securities pursuant to this § 230.144A, the issuer shall have been subject to the reporting requirements of section 13 or 15(d) of the Exchange Act and shall have filed all reports required to be filed thereunder during the 12 months preceding such offer or sale (or for such shorter period that the issuer was required to file such reports). The seller shall be entitled to rely upon (*1*) a written statement from the issuer, or (*2*) statements in quarterly or annual reports filed with the Commission by the issuer, that such issuer has met such reporting requirements unless the seller knows or has reason to believe that the issuer has not compiled with such requirements; or

(B) The securities offered or sold are non-convertible debt securities or non-convertible preferred stock; and

(iii) The seller or any person acting on its behalf takes reasonable steps to prevent the purchaser of the securities from reselling the securities in the United States unless they are registered under the Act or in exemption from registration is available. Such reasonable steps will be conclusively established where:

(A) The purchaser agrees in writing that the securities will not be resold in the United States unless they are registered under the Act or an exemption from registration is available; and

(B) The securities are in registered form, and are appropriately legended or

subject to stop transfer instructions (in the case of non-exempt transactions not registered under the Securities Act).

(e) Offers and sales of securities pursuant to this § 230.144A shall be deemed not to affect the availability of any exemption relating to the previous or subsequent offer or sale of such securities by the issuer or any prior or subsequent holder thereof.

3. By revising § 230.144 paragraphs (a)(3) and (c)(2) to read as follows:

§ 230.144 Persons deemed not to be engaged in a distribution and therefore not underwriters.

(a) * * *

(3) The term "restricted securities" means securities that are acquired directly or indirectly from the issuer, or from an affiliate of the issuer, in a transaction or chain of transactions not involving any public offering, or securities acquired from the issuer that are subject to the resale limitations of Regulation D (§ 230.501 through § 230.508 of this chapter) or Rule 701(c) (§ 230.701(c) of this chapter) under the Act, or securities that are subject to the resale limitations of Regulation D and acquired in a transaction or chain of transactions not involving any public offering, or securities that are acquired in a transaction meeting the requirements of Rule 144A (§ 230.144A of this chapter).

* * * * *

(c) * * *

(2) *Other Public Information.* If the issuer is not subject to section 13 or 15(d) of the Securities Exchange Act of 1934, there is publicly available the information concerning the issuer specified in paragraphs (i) to (xiv), inclusive, and paragraph (xvi) of paragraph (a)(5) of Rule 15c2–11 (§ 240.15c2–11 of this chapter) under that Act or, if the issuer is an insurance company, the information specified in section 12(g)(2)(G)(i) of that Act.

* * * * *

4. By further amending § 230.144 by revising paragraphs (d)(1) and (d)(2), removing paragraph (d)(3), redesignating (d)(4) as (d)(3), by revising newly redesignated (d)(3)(iv) through (d)(3)(vii), removing paragraph (a) of the note after (vii), removing the designation of paragraph (b) of the note after (vii), and adding a new (d)(3)(vii) as follows:

* * * * *

(d) * * *

(1) A minimum of two years must elapse between the later of the date of the acquisition of the securities from the issuer or from an affiliate of the issuer, and any resale of such securities pursuant to this rule by the acquiror or any subsequent holder of those securities. If the acquisition is a sale, the two-year period shall not begin to run until the full purchase price is paid by the person acquiring the securities from the issuer or from an affiliate of the issuer.

(2) Promissory Notes, Other Obligations or Installment Contracts. If the person making the acquisition of the securities from the issuer or from an affiliate of the issuer gives such seller a promissory note or other obligation to pay the purchase price or enters into an installment purchase contract with such seller, such consideration shall not be deemed full payment of the purchase price unless the promissory note, obligation or contract—

(3) * * *

(iv) *Securities pledged by an affiliate.* Securities which are bona fide pledged by an affiliate of the issuer when sold by the pledge, or by a purchaser, after a default in the obligation secured by the pledge, shall be deemed to have been acquired when they were acquired by the pledgor, except that if the securities were pledged without recourse they shall be deemed to have been acquired by the pledge at the time of the pledge or by the purchaser at the time of purchase.

(v) *Gifts of Securities by an affiliate.* Securities acquired from an affiliate of the issuer by gift shall be deemed to have been acquired by the donee when they were acquired by the donor.

(vi) *Trusts established by an affiliate.* Where a trust settlor is an affiliate of the issuer, securities acquired from the settlor by the trust, or acquired from the trust by the beneficiaries thereof, shall be deemed to have been acquired when such securities were acquired from the settlor.

(vii) *Estates.* Where a deceased person was an affiliate of the issuer, securities held by the estate of such person or acquired from such estate by the beneficiaries thereof shall be deemed to have been acquired when they were acquired by the deceased person, except that no holding period is required if the estate is not an affiliate of the issuer or if the securities are sold by a beneficiary of the estate who is not such an affiliate.

Note.—While there is no holding period or amount limitation for estates and beneficiaries thereof which are not affiliates of the issuer, paragraphs (c), (f), (g), (h) and (i) of the rule apply to securities sold by such persons in reliance upon the rule.

(viii) *Rule 145(a) transactions.* The holding period for securities acquired in a transaction specified in Rule 145(a) shall be deemed to commence on the date the securities were issued in such transaction. This provision shall not apply, however, to a transaction effected solely for the purpose of forming a holding company.

* * * * *

5. By further amending § 230.144 by revising paragraph (k) as follows:

* * * * *

(k) Termination of certain restrictions on sales of restricted securities by persons other than affiliates. The requirements of paragraphs (c), (e), (f) and (h) of this rule shall not apply to restricted securities sold for the account of a person who is not an affiliate of the issuer at the time of the sale and has not been an affiliate during the preceding three months, provided a period of at least three years has elapsed since the later of the date the securities were acquired from the issuer or from an affiliate of the issuer. In computing the three-year period for purposes of this provision, reference should be made to paragraph (d) of this section.

6. By reviewing § 230.145(d to read as follows:

§ 230.145 Reclassification of securities, mergers, consolidations and acquisition of assets.

* * * * *

(d) *Resale provisions for persons and parties deemed underwriters.* Notwithstanding the provisions of paragraph (c), a person or party specified therein shall not be deemed to be engaged in a distribution and therefore not to be an underwriter of registered securities acquired in a transaction specified in paragraph (a) of this section if:

(1) Such securities are sold by such person or party in accordance with the provisions of paragraphs (c), (e), (f) and (g) of § 230.144;

(2) Such person or party is not an affiliate of the issuer and a period of at least two years, as determined in accordance with paragraph (d) of § 230.144, has elapsed since the date the securities were issued in such transaction, and the issuer meets the requiremens of paragraph (c) of § 230.144; or

(3) Such person or party is not, and has not been for at least three months, an affiliate of the issuer and a period of at least three years, as determined in accordance with paragraph (d) of § 230.144, has elapsed since the date the securities were issued in such transaction.

* * * * *

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By the Commission.
Jonathan G. Katz,
Secretary.
October 25, 1988.

Concurring Statement of Commissioner Fleischman

The Committee paper cited in footnote [illegible] to the Commission's Release is now nearing the tenth anniversary of its publication. In that paper a "distinctive and definable" secondary market for resales of institutionally-held, privately-placed debt securities is described at some length [1] and, as part of the analysis of the availability of the section 4(1) and section 4(3) exemptions for such resales, the operation of that market in essentially the manner described is predicated in order to assess whether the "'factors' relevant to a determination of the absence of a 'distribution'" are met with respect to resales effected in that market.[2]

While my own experience sustains the thesis that the market to which the Committee paper refers continues to function as described, personal experience is not acceptable as a basis for Commission rulemaking, and in any event my direct knowledge ended nearly three years ago. Therefore, with respect to paragraph (d)(1) of proposed Rule 144A, I shall appreciate additional comments on the extent to which the Committee paper is accurate in 1988–89 in its description of the secondary market for institutionally-held, privately-placed securities of all types, with particular reference to whether the commenters believe that the conclusion that factors relevant to determining the absence of a distribution are met [3] is sustained by the manner in which that market presently operates.

Otherwise, I heartily concur in the Commission's action in proposing Rule 144A.

[FR Doc. 88-25088 Filed 10-31-88; 8:45 am]
BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD13 88-19]

Drawbridge Operation Regulations; Isthmus Slough, OR

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Oregon Department of Transportation (ODOT), the Coast Guard is considering a change to the regulations for the bascule bridge across Isthmus Slough, mile 1.0, at Coos Bay, Oregon. This change would require that 24 hours advance notice be given for bridge openings. The current regulation requires 4 hours notice. ODOT desires to change the locking mechanism of the bridge from electrical to manual. This mode of operation will require sending a crew to the bridge to open the draw. The proposed regulation would enable the bridge to be operated in a more economical, but slower fashion. It has not opened for the passage of a vessel since 1983.

DATE: Comments must be received on or before December 16, 1988.

ADDRESSES: Comments should be mailed to Commander (ob), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174–1067. The comments and other materials referenced in this notice will be available for inspection and copying at 915 Second Avenue, Room 3410. Normal office hours are between 7:45 a.m. and 4:15 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Bridge Section, Aids to Navigation and Waterways Management Branch, (Telephone: (206) 442-5864).

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, indentify the bridge, and give reasons for concurrence with, or any recommended changes in, the proposal. Persons desiring acknowledgement that their comments have been received should include a stamped, self-addressed postcard or envelope. The Commander, Thirteenth Coast Guard District, will evaluate all communications and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are: Austin Pratt, project officer, and Lieutenant Commander Lawrence I. Kiern, project attorney.

Discussion of the Proposed Regulations

The Oregon Department of Transportation has asked the Coast Guard to approve a change to the operating regulations which would require that vessels request openings at least 24 hours in advance of the time they wish to pass the Isthmus Slough Bridge. This change would allow the bridge owner to convert the locking mechanism to a manual model that would require less maintenance. A crew would then be dispatched to operate the bridge. Since 1972 the regulations have required 4 hours advance notice for opening of the drawspan. Records show a decline in openings since 1973 and the bridge has not opened for a vessel since 1983. Before this time a lumber company located upstream of the bridge shipped out finished products on vessels large enough to require the bridge to open. This is no longer the case. The waterway continues to be used commercially for log towing, but all vessels presently navigating Isthmus Slough are able to pass under the bridge while it is closed. The proposed regulation would permit the bridge owner to reduce maintenance costs and still serve the reasonable needs of navigation on Isthmus Slough.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that full regulatory evaluation is unnecessary. Navigation and marine related interests will not be significantly affected by this proposed rule because the subject bridge is opened infrequently for vessels. The reasonable needs of these interests would still be met by the proposed operating regulation. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); 33 CFR 117.43.

2. Section 117.879 is revised to read as follows:

§ 117.879 Isthmus Slough.

The draw of the Oregon State secondary highway bridge, mile 1.0, at Coos Bay, shall open on signal if at least 24 hours notice is given.

Dated: October 20, 1988.

R.E. Kramek,
Rear Admiral, Coast Guard Commander, 13th Coast Guard District.

[FR Doc. 88-25233 Filed 10-31-88; 8:45 am]
BILLING CODE 4910-14-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 585, 587 and 588

[Docket No. 88-24]

Regulations To Adjust or Meet Conditions Unfavorable To Shipping in the Foreign Trade of the United States; Actions To Address Adverse Conditions Affecting U.S.-Flag Carriers That Do Not Exist for Foreign Carriers in the United States

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to add a new part to its regulations to implement the Foreign Shipping Practices Act of 1988. The new part sets forth general procedures for investigatory proceedings to address adverse conditions affecting U.S.-flag carriers that do not exist for foreign carriers in the United States. The Commission also proposes to amend its rules implementing section 19(1)(b) of the Merchant Marine Act, 1920 and section 13(b)(5) of the Shipping Act of 1984, to add new sanctions made available to the Commission in proceedings under those statutes, pursuant to the Foreign Shipping Practice Act.

DATES: Comments due January 15, 1989.

ADDRESS: Comments (Original and fifteen (15) copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5740.

SUPPLEMENTARY INFORMATION: The Omnibus Trade and Competitiveness Act of 1988, recently enacted by Congress and effective with the President's signing on August 23, 1988, contains at Title X, Subtitle A, the Foreign Shipping Practices Act of 1988 ("1988 Act"). The 1988 Act directs the Commission to address adverse conditions affecting United States carriers in U.S.-foreign oceanborne trades, which conditions do not exist for carriers of those countries in the United States, either under U.S. law or as a result of acts of U.S. carriers or others providing maritime or maritime-related services in the U.S. The 1988 Act prescribes an investigatory-type proceeding, which may be initiated by the Commission upon its own motion or upon a petition for investigation from an interested person. It also authorizes the Commission to require any person to furnish to the Commission any material or information which it considers necessary or appropriate. Upon determining that adverse conditions exist, the Commission is directed to take appropriate action to offset those conditions. The actions, or sanctions, authorized for the administration of the 1988 Act are also made by that statute applicable to the administration and enforcement of section 13(b)(5) ("section 13(b)(5)") of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1712(b)(5), and section 19(1)(b) ("section 19") of the Merchant Marine Act, 1920 ("1920 Act"), 46 U.S.C. app. 876(1)(b). The Commission regulations implementing those provisions are codified at 46 CFR Parts 585 and 587.

The rules proposed herein to implement the 1988 Act largely track the language of the statue itself. The proposal also parallels, where appropriate, the regulations implementing sections 19 of the 1920 Act and 13(b)(5) of the 1984 Act. The more significant departures from the language of existing regulations or of the statute itself are discussed herein.

In the proposed rules's definitions section, § 588.2, the defintions repeat those in the 1988 Act, with two exceptions. One is the definition of "United States carrier." The statute's definitions of foreign and United States carriers are such that the two may overlap to some degree. A foreign carrier is one "a majority of whose vessels are documented under the laws of a country other than the United States." 46 U.S.C. app. 10002(a)(2). A United States carrier "operates vessels documented under the laws of the United States." 46 U.S.C. app. 10002(a)(5). Thus, an ocean common carrier which operates some U.S.-flag vessels but even a greater number of foreign-flag vessels could be argued to fit both definitions. Because it appears that the definition of foreign carrier is more specific than that of United States carrier, language has been added to the definition of the latter in the proposed rule to clarify that a carrier which meets both definitions shall be considered a foreign carrier for the purpose of the administration of the statute. The Commission has also added a definition of the term "voyage," as used in the context of assessments of a fee of up to $1,000,000 per voyage as an available action or sanction. The term is defined as an inbound or outbound movement in the oceanborne trade.

The 1988 Act provides that "any person" may petition for the initiation of an investigation under that statute. There is no requirement that the petitioning party allege harm to itself; a shipper, shippers' association, forwarder, terminal operator, or any "branch, department, agency, or other component" of the U.S. Government may file a petition for relief. The Commission is therefore not imposing any requirement that petitioners produce statistical data describing harm to U.S. carriers lest that effectively preclude parties other than the U.S. carriers themselves from being able to meet the petition-filing criteria—a result which would contravene the intent of the legislation. Rather, the proposed rule contains a general requirement that petitioners present evidence of the existence of adverse conditions, and requires statistical data documenting the alleged harm only if available to the petitioner. This flexibility as to the *type* of evidence presented should not be viewed as an indication that a mimimal *amount* of evidence is expected or acceptable in these proceedings. It is important that petitions contain as much information as is obtainable and producible, particularly inasmuch as the Commission intends to review petitions expeditiously to determine whether sufficient factual basis exists to justify the initiation of an investigation, and also because the time limits imposed by the 1988 Act preclude the protracted development of a factual record during the course of a proceeding.

The 1988 Act at section 10002(d) authorizes the Commission to require any person to file under oath any material or information which the Commission considers necessary or appropriate. It also states that the Commission "may, in its discretion," determine that any information submitted to it in response to a request for information, "or otherwise," shall be withheld from public disclosure. This provision is clear that a grant of confidentiality is permissive, not mandatory, and is within the discretion of the Commission. To this end, the proposed rule at § 588.6(c) invites persons submitting information or comments, whether voluntarily or

[1] Committee paper at 1931–37.
[2] *Id.* at 1940 (emphasis in original).
[3] *See* text of the Release accompanying notes 144 and 146.

pursuant to a section 10002(d) information demand or subpoena, to advise the Commission whether they wish their submission to remain confidential, and why. Such advice will not itself determine whether the submission will be subject to disclosure, but will simply assist the Commission in making that determination. It should be noted, therefore, that a request for confidentiality will not necessarily ensure such treatment by the Commission. In the event, however, that a request for confidentiality is not accommodated, the person making the request will be so advised before the subject information is disclosed.

Consistent with the 1988 Act, § 588.6 of the proposed rule enumerates some of the actions against foreign carriers which the Commission may take, and also authorizes "any other action" found necessary to effectuate the statute. The enumerated actions are not, in either the statute or the regulations, intended to constitute an exhaustive list; the statute states that Commission action "may include" the four cited sanctions, and the proposed rule emphasizes that said action "is not limited to" those sanctions. A more comprehensive list of actions has not been attempted lest such a list prove too restrictive or confining to the Commission, thereby diminishing the flexibility and discretion which the statute intends the Commission to exercise in offsetting adverse conditions. It is the Commission's intention to impose, to the extent administratively feasible, sanctions under this section which are carefully crafted so as to meet effectively the adverse foreign shipping practices, while minimizing the likelihood of causing undue or unnecessary disruption to the trade or harm to innocent third parties.

The statute directs the Commission, before a "determination" that adverse conditions exist becomes effective, to submit the "determination" immediately to the President, who may then disapprove it within ten days for reasons of national defense or foreign policy. One could read the statute as using the term "determination" to refer to the finding of the existence of conditions and the term "actions" to mean the sanctions to be imposed by the Commission upon a determination that such conditions exist. It does not appear, however, that a mere "determination" is what the statute intends be submitted to the President, but rather that the Commission also submit its proposed *actions*, *i.e.*, the prescribed remedy. This interpretation is supported by the Summary of the Conference Agreement on H.R. 3 (April 19, 1988), which states at page 56:

> Before the FMC takes any *action*, the FMC must submit it to the President, who may disapprove the *proposed action* on national defense or foreign policy grounds.

(Emphasis added.) Such an interpretation would also appear to better meet the objectives of the statute, in that it is unlikely the President could evaluate national defense and foreign policy implications of a mere determination that adverse conditions exist, absent knowledge of the proposed actions to meet those conditions. Therefore, the proposed rule at § 588.6(c) requires the submission to the President of both the Commission's determination as to adverse conditions, and its proposed actions.

Section 19 of the 1920 Act and section 13(b)(5) of the 1984 Act are implemented at 46 CFR Parts 585 and 587 of the Commission's regulations. Sections 585.9 and 587.7 of those regulations enumerate the "actions" or "sanctions" available to the Commission when invoking remedies under sections 19 and 13(b)(5). It is proposed herein that each of these regulatory provisions be amended to incorporate the additional actions made applicable to sections 19 and 13(b)(5) proceedings by the 1988 Act, including the requests to other U.S. governmental departments authorized by section 10002(f) of the 1988 Act. Some of these newly available actions are similar to but somewhat broader than the existing regulatory language for sections 19 and 13(b)(5), and in those instances, it is proposed that the existing provisions be replaced by the "new" sanctions. Other language authorizing entirely new types of actions has also been added.

Finally, the 1988 Act requires the Commission to include certain information relevant to the administration of the statute in the Commission's annual report to Congress. Because that reporting requirement is imposed only on the Commission and does not directly affect the implementation of the statue, it was not included in the regulations themselves.

The Federal Maritime Commission has determined that this proposed rule is not a "major rule" as defined in Executive Order 12291, 46 FR 12193, February 27, 1981, because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effect on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Chairman of the Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., that this proposed rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units, and small governmental jurisdictions.

In accordance with 44 U.S.C. 3518(c)(1)(B), and except for investigations undertaken with reference to a category of individuals or entities (e.g., an entire industry), any information request or requirement in this part is not subject to the requirements of section 3507(f) of the Paperwork Reduction Act because such collection of information is pursuant to a civil, administrative action or investigation by an agency of the United States against specific individuals or entities.

List of Subjects

46 CFR Part 585

Administrative practice and procedure, Maritime carriers.

46 CFR Part 587

Administrative practice and procedure, Confidential business information, Foreign trade, Maritime carriers, Trade practices, Transportation.

Therefore, pursuant to 5 U.S.C 553; section 19(1)(b) of the Merchant Marine Act, 1920 (46 U.S.C. app. 876(1)(b)); sections 13(b)(5), 15 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1712(b)(5), 1714 and 1716); Reorganization Plan No. 7 of 1961 (75 Stat. 840); and section 10002 of the Foreign Shipping Practices Act of 1988, the Federal Maritime Commission proposes to amend parts 585 and 587 and to add a new part 588 to Title 46 of the Code of Federal Regulations as follows:

PART 585—[AMENDED]

1. The authority citation for Part 585 is revised to read as follows:

Authority: 5 U.S.C. 553; sec. 19(1)(b) of the Merchant Marine Act, 1920 (46 U.S.C. app. 876(1)(b)); secs. 15 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1714 and 1716); Reorganization Plan No. 7 of 1961 (75 Stat. 840); sec. 10002 of the Foreign Shipping Practices Act of 1988.

2. In § 585.9, paragraphs (b), (c), and (d) are revised and paragraphs (e), (f), (g) and (h) are added to read as follows:

§ 585.9 Actions to meet conditions unfavorable to shipping in the foreign trade of the United States

* * * * *

(b) Limitations on sailings to and from United States ports or on the amount or type of cargo carried;

(c) Suspension, in whole or in part, of any or all tariffs filed with the Commission, including the right of an ocean common carrier to use any or all tariffs of conferences in United States trades of which it is a member for such period as the Commission specifies;

(d) Suspension, in whole or in part, of the right of an ocean common carrier to operate under an agreement filed with the Commission, including agreements authorizing preferential treatment at terminals, preferential terminal leases, space chartering, or pooling of cargo or revenues with other ocean common carriers;

(e) Imposition of a charge, not to exceed $1,000,000 per inbound or outbound movement between a foreign country and the United States by a vessel engaged in the United States oceanborne trade;

(f) A request to the collector of customs at any port or place of destination in the United States to refuse the clearance required by section 4197 of the Revised Statutes, 46 U.S.C. app. 91, to any vessel of a foreign carrier which is or whose government is identified as contributing to the unfavorable conditions described in § 585.3 of this part;

(g) A request to the Secretary of the department in which the Coast Guard is operating to deny entry, for purposes of oceanborne trade, of any vessel of a foreign carrier which is or whose government is identified as contributing to the unfavorable conditions described in § 585.3 of this part to any port or place in the United States or the navigable waters of the United States, or to detain any such vessel at the port or place in the United States from which it is about to depart for any other port or place in the United States; and

(h) Any other action the Commission finds necessary and appropriate in the public interest to adjust or meet any condition unfavorable to shipping in the foreign trade of the United States.

PART 587—[AMENDED]

3. The authority citation for Part 587 is revised to read as follows:

Authority: 5 U.S.C. 553; secs. 13(b)(5), 15 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1712(b)(5), 1714, and 1716; sec. 10002 of the Foreign Shipping Practices Act of 1988.

4. In § 587.7, paragraphs (b)(2) and (4) are revised and paragraphs (b)(5), (6), (7) and (8) are added to read as follows:

§ 587.7 Decision; sanctions; effective date.

* * * * *

(b) * * *

(2) Limitations on sailings to and from United States ports or on the amount of type of cargo carried;

* * * * *

(4) Suspension, in whole or in part, of the right of an ocean common carrier to operate under any agreement filed with the Commission, including agreements authorizing preferential treatment at terminals, preferential terminal leases, space chartering, or pooling of cargo or revenues with other ocean common carriers;

(5) Imposition of a charge not to exceed $1,000,000 per inbound or outbound movement between a foreign country and the United States by a vessel engaged in the United States oceanborne trade;

(6) A request to the collector of customs at any port or place of destination in the United States to refuse the clearance required by section 4197 of the Revised Statutes, 46 U.S.C. app. 91, to any vessel of a foreign carrier which is or whose government is identified as contributing to the conditions described in § 587.2 of this part;

(7) A request to the Secretary of the department in which the Coast Guard is operating to deny entry, for purposes of oceanborne trade, of any vessel of a foreign carrier which is or whose government is identified as contributing to the conditions described in § 587.2 of this part to any port or place in the United States or the navigable waters of the United States, or to detain any such vessel at the port or place in the United States from which it is about to depart for any other port or place in the United States; and

(8) Any other action the Commission finds necessary and appropriate to address conditions unduly impairing access of a U.S.-flag vessel to trade between foreign ports.

5. A new Part 588 is added to Subchapter D to read as follows:

PART 588—ACTIONS TO ADDRESS ADVERSE CONDITIONS AFFECTING U.S.-FLAG CARRIERS THAT DO NOT EXIST FOR FOREIGN CARRIERS IN THE UNITED STATES

Sec.

588.1 Purpose.
588.2 Definitions.
588.3 Scope.
588.4 Petitions.
588.5 Investigations.
588.6 Information demands and subpoenas.
588.7 Notification to Secretary of State.
588.8 Action against foreign carriers.

Authority: 5 U.S.C. 553; Pub. L. 100-418, sec. 10002 of the Foreign Shipping Practices Act of 1988 (46 U.S.C. App. 1710a)

§ 588.1 Purpose.

It is the purpose of the regulations of this part to establish procedures to implement the Foreign Shipping Practices Act of 1988, which authorizes the Commission to take action against foreign carriers, whose practices or whose government's practices result in adverse conditions affecting the operations of United States carriers, which adverse conditions do not exist for those foreign carriers in the United States. The regulations of this part provide procedures for investigating such practices and for obtaining information relevant to the investigations, and also afford notice of the types of actions included among those the Commission is authorized to take.

§ 588.2 Definitions.

For the purposes of this part:

(a) "Common carrier," "marine terminal operator," "non-vessel-operating common carrier", "ocean common carrier," "person," "shipper," "shippers' association," and "United States" have the meanings given each such term, respectively, in section 3 of the Shipping Act of 1984 (46 U.S.C. app. 1702);

(b) "Foreign carrier" means an ocean common carrier a majority of whose vessels are documented under the laws of a country other than the United States;

(c) "Maritime services" means port-to-port carriage of cargo by the vessels operated by ocean common carriers;

(d) "Maritime-related services" means intermodal operations, terminal operations, cargo solicitation, forwarding and agency services, non-vessel-operating common carrier operations, and all other activities and services integral to total transportation systems of ocean common carriers and

their foreign domiciled affiliates on their own and others' behalf;

(e) "United States carrier" means an ocean common carrier which operates vessels documented under the laws of the United States and which does not also meet the definition of "foreign carrier" above;

(f) "United States oceanborne trade" means the carriage of cargo between the United States and a foreign country, whether direct or indirect, by an ocean common carrier; and

(g) "Voyage" means an inbound or outbound movement between a foreign country and the United States by a vessel engaged in the United States oceanborne trade. Each inbound or outbound movement constitutes a separate voyage.

§ 588.3 Scope.

The Commission shall take such action under this part as it considers necessary and appropriate when it determines that any laws, rules, regulations, policies, or practices of foreign governments, or any practices of foreign carriers or other persons providing maritime or maritime-related services in a foreign country, result in conditions that adversely affect the operations of United States carriers in United States oceanborne trade, and do not exist for foreign carriers of that country in the United States under the laws of the United States or as a result of acts of United States carriers or other persons providing maritime or maritime-related services in the United States.

§ 588.4 Petitions.

(a) A petition for investigation to determine the existence of adverse conditions as described in § 588.3 may be submitted by any person, including any common carrier, shipper, shippers' association, ocean freight forwarder, or marine terminal operator, or any branch, department, agency, or other component of the Government of the United States. Petitions for relief under this part shall be in writing, and filed in the form of an original and fifteen copies with the Secretary, Federal Maritime Commission, Washington, DC 20573.

(b) Petitions shall set forth the following:

(1) The name and address of the petitioner;

(2) The name and address of each party (foreign government, agency or instrumentality thereof, carrier, or other person) against whom the petition is made, a statement as to whether the party is a foreign government, agency or instrumentality thereof, and a brief statement describing the party's function, business or operations;

(3) A precise description and, if applicable, citation of any law, rule, regulation, policy or practice of a foreign government or practice of a foreign carrier or other person causing the conditions complained of;

(4) A certified copy of any law, rule, regulation or other document involved and, if not in English, a certified English translation thereof;

(5) Any other evidence of the existence of such laws and practices, evidence of the alleged adverse effects on the operations of United States carriers in United States oceanborne trade, and evidence that foreign carriers of the country involved are not subjected to similar adverse conditions in the United States;

(6) With respect to the harm already caused, or which may reasonably be expected to be caused, the following information, if available to petitioner:

(i) Statistical data documenting present or prospective cargo loss by United States carriers due to foreign government or commercial practices for a representative period, if harm is alleged on that basis, and the sources of the statistical data;

(ii) Statistical data or other information documenting the impact of the foreign government or commercial practices causing the conditions complained of, and the sources of those data; and

(iii) A statement as to why the period used is representative.

(7) A separate memorandum of law or a discussion of the relevant legal issues; and

(8) A recommended action, including any of those enumerated in § 588.8, the result of which will, in the view of the petitioner, address the conditions complained of.

(c) A petition which the Commission determines fails to comply substantially with the requirements of paragraph (b) of this section shall be rejected promptly and the person filing the petition shall be notified of the reasons for such rejection. Rejection is without prejudice to filing of an amended petition.

§ 588.5 Investigations.

(a) An investigation to determine the existence of adverse conditions as described in § 588.3 may be initiated by the Commission on its motion or on the petition of any person pursuant to § 588.4. An investigation shall be considered to have been initiated for the purposes of the time limits imposed by the Foreign Shipping Practices Act of 1988 upon the publication in the **Federal Register** of the Commission's notice of investigation, which shall announce the initiation of the proceeding upon either the Commission's own motion or the filing of a petition.

(b) The provisions of Part 502 of this chapter (Rules of Practice and Procedure) shall not apply to this part except for those provisions governing *ex parte* contacts (§ 502.11 of this chapter) and except as the Commission may otherwise determine by order. The precise procedures and timetables for participation in investigations initiated under this part will be established on an *ad hoc* basis as appropriate and set forth in the notice. Proceedings may include oral evidentiary hearings, but only when the Commission determines that these are likely to be genuine issues of material fact that cannot be resolved on the basis of written submissions, or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. In any event, investigations initiated under this part shall proceed expeditiously, consistent with due process, to conform with the time limits specified in the Foreign Shipping Practices Act and to identify promptly the conditions described in § 588.3 of this part.

(c) Upon initiation of an investigation, interested persons will be given the opportunity to participate in the proceeding pursuant to the procedures set forth in the notice. Submissions filed in response to a notice of investigation may include written data and statistics, views, and legal arguments. Factual information submitted shall be certified under oath. An original and 15 copies of such submissions will be filed with the Secretary, Federal Maritime Commission, Washington, DC. 20573. Persons who receive information requests from the Commission pursuant to § 588.6 of this part are not precluded from filing additional voluntary submissions in accordance with this paragraph.

(d) An investigation shall be completed and a decision rendered within 120 days after it has commenced as defined in paragraph (a) of this section, unless the Comission determines that an additional 90-day period is necessary in order to obtain sufficient information on which to render a decision. When the Commission determines to extend the investigation period for an additional 90 days, it shall issue a notice clearly stating the reasons therefor.

§ 588.6 Information demands and subpoenas.

(a) In furtherance of this part, the Commission may, by order, require any person (including any common carrier, shipper, shippers' association, ocean freight forwarder, or marine terminal operator, or any officer, receiver, trustee, lessee, agent or employee thereof) to file with the Commission any periodic or special report, answers to questions, documentary material, or other information which the Commission considers necessary or appropriate, and in the form and within the time prescribed by the Commission. Responses to such orders may be required by the Commission to be made under oath.

(b) The Commission may issue subpoenas to compel the attendance and testimony of witnesses and the production of records or other evidence as it deems necessary and appropriate in conducting an investigation under § 588.5 of this part.

(c) The Commission may, in its discretion, determine that any information submitted to it in response to a request (including a subpoena) under this section, or accompanying a petition under § 588.4, or voluntarily submitted by any person pursuant to § 588.5(c), shall not be disclosed to the public. To this end, persons submitting information for consideration in a proceeding or investigation under this part may indicate in writing any factors they wish the Commission to consider relevant to a decision on confidentiality under this section; however, such information will be advisory only, and the actual determination will be made by the Commission. In the event that a request for confidentiality is not accommodated, the person making the request will be so advised before any disclosure occurs.

§ 588.7 Notification to Secretary of State.

Upon the publication of a petition in the **Federal Register**, or on its own motion should it determine to initiate an investigation pursuant to § 588.5, the Commission will notify the Secretary of State of same, and may request action to seek regulation of the matter through diplomatic channels. The Commission may request the Secretary to report the results of such efforts at a specified time.

§ 588.8 Action against foreign carriers.

(a) Whenever, after notice and opportunity for comment or hearing, the Commission determines that the conditions specified in § 588.3 of this part exist, the Commission shall take action as it considers necessary and appropriate against any foreign carrier which it identifies as a contributing cause to, or whose government is a contributing cause to, such conditions, in order to offset such conditions. Such action may include, but is not limited to:

(1) Limitations on sailing to and from United States ports or on the amount or type of cargo carried;

(2) Suspension, in whole or in part, of any or all tariffs filed with the Commission, including the right of an ocean common carrier to use any or all tariffs of conferences in United States trades of which it is a member for such period as the Commission specifies;

(3) Suspension, in whole or in part, of the right of an ocean common carrier to operate under any agreement filed with the Commission, including agreements authorizing preferential treatment at terminals, preferential terminal leases, space chartering, or pooling of cargo or revenues with other ocean common carriers;

(4) Imposition of a charge, not to exceed $1,000,000 per voyage;

(5) A request to the collector of customs at any port or place of destination in the United States to refuse the clearance required by section 4197 of the Revised Statutes 46 U.S.C. app. 91, to any vessel of a foreign carrier that is identified by the Commission under this section;

(6) A request to the Secretary of the department in which the Coast Guard is operating to deny entry, for purposes of oceanborne trade, of any vessel of a foreign carrier that is identified by the Commission under this section to any port or place in the United States or the navigable waters of the United States, or to detain any such vessel at the port or place in the United States from which it is about to depart for any port or place in the United States; and

(7) Any other action the Commission finds necessary and appropriate to address adverse foreign shipping practices as described in § 588.3 of this part.

(b) The Commission may consult with, seek the cooperation of, or make recommendations to other appropriate U.S. Government agencies prior to taking any action under this section.

(c) Before any action against foreign carriers under this section becomes effective or a request under this section is made, the Commission's determination as to adverse conditions and its proposed actions and/or requests shall be submitted immediately to the President. Such actions will not become effective not requests made if, within 20 days of receipt of the Commission's determination and proposal, the President disapproves it in writing, setting forth the reasons for the disapproval, if the President finds the disapproval is required for reasons of the national defense or the foreign policy of the United States.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 88-25176 Filed 10-31-88; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 33

Refuge-Specific Fishing Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) would amend certain regulations in 50 CFR Part 33 that pertain to fishing on individual national wildlife refuges (NWRs). Refuge fishing programs are reviewed annually to determine whether the regulations governing fishing on individual refuges should be modified. Changing environmental conditions, State and Federal regulations and other factors affecting fish populations and habitats may warrant such amendments. The modifications would ensure the continued compatibility of fishing with the purposes for which the individual refuges involved were established, and to the extent practical, make refuge fishing programs consistent with State regulations.

DATE: Comments must be received on or before December 1, 1988.

ADDRESS: Send comments to: Assistant Director, Refuges and Wildlife, Fish and Wildlife Service, Room 2343, 18th and C Streets NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Larry LaRochelle, Division of Refuges, Fish and Wildlife Service, 18th and C Streets NW., Washington, DC 20240; Telephone 202-343-4313.

SUPPLEMENTARY INFORMATION: 50 CFR Part 33 contains the provisions that govern fishing on NWRs. Fishing is regulated on refuges to (1) ensure compatibility with refuge purposes, (2) properly manage, the fishery resource and (3) protect other refuge values. On many refuges, the Service policy of adopting State fishing regulations is an adequate way of meeting these objectives. On other refuges it is necessary to supplement State regulations with refuge-specific fishing regulations which will ensure that the Service meets its management

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responsibilities, as outlined under the section entitled "Conformance with Statutory and Regulatory Authorities." Refuge-specific fishing regulations are issued only after the final publication of the opening of a wildlife refuge to fishing. These regulations may list the seasons, methods of taking fish, descriptions of open areas and other provisions. The Service previously issued refuge-specific fishing regulations in 50 CFR Part 33.

This proposed rule would amend and supplement certain refuge-specific regulations in 50 CFR Part 33, §§ 33.6 through 33.51, which pertain to fishing on individual refuges in their respective alphabetically listed State.

The policy of the Department of the Interior (Department) is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. It is, therefore, the purpose of this proposed rulemaking to seek public input regarding the proposed amendments to refuge-specific fishing regulations. Accordingly, interested persons may submit written comments, suggestions or objections concerning this proposal to the Assistant Director, Refuges and Wildlife (address above), by the end of the comment period. All substantive comments will be considered by the Department prior to issuance of a final rule.

Conformance with Statutory and Regulatory Authorities The National Wildlife Refuge System Administration Act (NWRSAA) of 1966, as amended (16 U.S.C. 668dd), and the Refuge Recreation Act (RRA) of 1962 (16 U.S.C. 460k) govern the administration and public use of NWRs. Specifically, section 4(d)(1)(A) of the NWRSAA authorizes the Secretary of the Interior (Secretary), under such regulations as he may prescribe, to permit the use of any area within the System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations and access when he determines that such uses are compatible with the major purposes for which such areas were established.

The RRA authorizes the Secretary to administer refuge areas within the National Wildlife Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the area was established. The RRA also authorizes the Secretary to issue regulations to carry out the purposes of the Act.

Fishing plans are developed for each fishing program on a refuge prior to its opening to fishing. In many cases, refuge-specific fishing regulations are included as part of fishing plans to ensure the compatibility of the fishing programs with the purposes for which the refuge was established. Compliance with the NWRSAA and RRA is ensured when fishing plans are developed and the determinations required by these Acts are made prior to the addition of the refuge to the list of areas open to fishing in 50 CFR Part 33. Continued compliance is ensured by annual review of fishing programs and regulations.

Economic Effect

Executive Order 12291 requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in cost or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions.

The proposed amendments to the codified refuge-specific fishing regulations would make relatively minor adjustments to existing fishing programs. The regulations are not expected to have any gross economic effect and will not cause an increase in costs or prices for consumers, individual industries, Federal, State or local governments, agencies or geographic regions. The benefits accruing to the public are expected to exceed the costs of administering this rule. Accordingly, the Department has determined that this rule is not a "major rule" within the meaning of Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Paperwork Reduction Act

The Service has received approval from the Office of Management and Budget (OMB) for the information collection requirements of these regulations pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). These requirements are presently approved by OMB under # 1018–0014 Economic and Public Use Permits. Public reporting burden for these forms is estimated to average .1038 hours or 6.2 minutes per response for a total burden for all forms used of 15,146 hours, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments on the burden estimate or any other aspect of these forms to Information Collection Office, U.S. Fish and Wildlife Service, Washington, DC 20240; and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Environmental Considerations

Compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(2)(C)) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) is ensured when fishing plans are developed and the determinations required by these Acts are made prior to the addition of refuges to the list of areas open to sport fishing in 50 CFR Part 33. Refuge-specific fishing regulations are subject to a categorical exclusion from the NEPA process if they do not significantly alter the existing use of a particular refuge. The changes proposed in this rulemaking would not significantly alter the existing uses of the refuges involved.

Information regarding the conditions that apply to individual refuge fishing programs, any restrictions related to public use on the refuge and a map of the refuge are available at refuge headquarters. This information can also be obtained from the Regional Offices of the Service at the addresses listed below.

Region 1—California, Hawaii, Idaho, Nevada, Oregon and Washington: Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 Multnomah Street, Portland, Oregon 97232; Telephone (503) 231–6214.

Region 2—Arizona, New Mexico, Oklahoma and Texas: Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 1306, Albuquerque, New Mexico 87103; Telephone (505) 766–1829.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin: Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612) 725–3507.

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Puerto Rico, Tennessee and the Virgin Islands: Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Richard B. Russell Federal Building, 75 Spring Street SW., Atlanta, Georgia 30303; Telephone (404) 331–3588.

Region 5—Connecticut, Delaware, District of Columbia, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia: Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158, Telephone (617) 965–5222.

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming: Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 25486, Denver Federal Center, Denver, Colorado 80225; Telephone (303) 236–7920.

Region 7—Alaska: Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; Telephone (907) 786–3538.

Larry LaRochelle, Division of Refuges, Fish and Wildlife Service, Washington, DC, is primary author of this proposed rulemaking document.

List of Subjects in 50 CFR Part 33

Fishing, National Wildlife Refuge System, Wildlife refuges.

PART 33—[AMENDED]

Accordingly, it is proposed to amend Part 33 of Chapter I of Title 50 of the *Code of Federal Regulations* as set forth below:

1. The authority citation for Part 33 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd and 715i.

Refuge-Specific Fishing

2. Section 33.6 would be amended by redesignating paragraphs (b) through (e) as paragraphs (c) through (f), adding new paragraph (b); and revising newly redesignated paragraph (d) to read as follows:

§ 33.6 Arkansas.

* * * * *

(b) *Cache River National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following conditions:

(1) Fishing or entry is not permitted in the waterfowl sanctuary areas from November 1 through February 28.

(2) The ends of trotlines must consist of a length of cotton line that extends from the points of attachment into the water.

* * * * *

(d) *Holla Bend National Wildlife Refuge.* Fishing, boating and frogging are permitted subject to the following conditions:

(1) Fishing and boating in all waters from March 1 through October 31 only from one-half hour before sunrise to one-half hour after sunset.

(2) Frogging from April 15 through October 31 only on that part of the old river channel that connects to the Arkansas River channel.

* * * * *

3. Section 33.9 would be amended by revising paragraph (i) to read as follows:

§ 33.9 California.

* * * * *

(i) *Salton Sea National Wildlife Refuge.* Fishing is permitted only on designated areas of the refuge inundated by the Salton Sea subject to the following conditions:

(1) Fishing is permitted from April 1 through September 30.

(2) Only boat fishing is permitted.

* * * * *

4. Section 33.13 would be amended by revising paragraph (g)(1), adding two new sentences to the end of paragraph (g)(2) and revising (m)(4) as follows:

§ 33.13 Florida.

* * * * *

(g) *Lower Suwanee National Wildlife Refuge.** * *

(1) Fishing is permitted in interior creeks, sloughs and ponds from March 1 through October 31 only from sunrise to sunset except that fishing is not permitted in interior creeks, sloughs and ponds during quota big game hunts.

(2) * * * Boats are not permitted in refuge ponds. Boats may not be left on the refuge overnight.

* * * * *

(m) *St. Vincent National Wildlife Refuge.** * *

* * * * *

(4) Fishing seasons and largemouth bass length limits are as posted.

* * * * *

5. Section 33.17 would be amended by revising (a) (1) through (3), removing paragraph (a)(4); revising the last sentence of (b)(1), correcting the spelling of the word "Managers" in (b)(2), adding a last sentence to paragraph (b)(3), adding paragraphs (b) (4) through (6); revising paragraph (c)(1), removing paragraph (c)(6) as follows:

§ 33.17 Illinois.

(a) *Chautauqua National Wildlife Refuge.** * *

(1) From December 15 through October 15 bank fishing is permitted and all refuge waters are open to fishing. From October 16 through December 14 fishing is permitted in the posted area that extends one-eighth of a mile around the Recreation Area, along Goofy Ridge Ditch, along the cross dike, and in all waters within the Public Hunting Area. Fishing is permitted during daylight hours only.

(2) The use of boats with motors greater than 25 horsepower is prohibited.

(3) Private boats must be removed from refuge waters overnight or moored at Boatyard No. 3.

(b) Crab Orchard National Wildlife Refuge.* * *

(1) * * * All noncommercial fishing methods are permitted except underwater breathing apparatus is prohibited.

(2) * * * Managers.* * *

(3) * * * It is unlawful to take largemouth bass between 12" to 15" in length from these lakes.

(4) Largemouth bass under 15" in length may not be taken from A–41, Bluegill, Blue Heron, Managers and Honkers Ponds.

(5) Largemouth bass under 21" in length may not be taken from Visitors Pond.

(6) It is unlawful to take catfish from their beds by submerging any object except hands under the water.

(c) Mark Twain National Wildlife Refuge.* * *

(1) Fishing is permitted all year in the Big Timber and Gardner Divisions.

6. Section 33.18 would be amended by adding paragraph (a)(6) as follows:

§ 33.18 Indiana.

(a) Muscatatuck National Wildlife Refuge.* * *

* * * * *

(6) Frogs and turtles may be taken by hook and line during daylight hours from areas open to fishing.

7. Section 33.22 would be amended by revising paragraph (f) to read as follows:

§ 33.22 Louisiana.

* * * * *

(f) Sabine National Wildlife Refuge.* * *

(1) Only fishing with rod and reel or pole and line is permitted. Shrimp may be taken only with a cast net. Crabs and crayfish may be taken only with ring nets up to 18 inches in diameter or hand lines. The use or possession of any other type of fishing, crabbing, crayfishing, and shrimping gear is prohibited except that persons using Hog Gulley, Headquarter, or West Cove Canals may only transport shrimp trawls, butterfly nets, or other nets from the boat ramps to Calcasieu Lake and return with their

catch. Permits are required for sport jug fishing and gill netting.

(2) Fishing and public access is permitted from March 1 through October 15 on designated waterways and pools. Only bank fishing along Highway 27 is permitted year round.

(3) Fishing, crabbing, crayfishing, and shrimping is permitted from one hour before sunrise to one hour after sunset.

(4) Fishing in the East Cove unit is permitted year round except during the regular State duck hunting season. A 250-foot zone around Grand Bayou and Lambert Bayou water control structure is closed to public access and use except that boat access is permitted through the Grant Bayou water control structure.

(5) No person may take or possess more than 5 quarter of shrimp per vehicle per day except that the daily shrimp and possession limit is 5 gallons per vehicle during the State open inshore water season. Daily crab and crayfish limit is 100 pounds each per vehicle.

(6) Boats may not be dragged across levees. Outboard motors up to 25 horsepower are permitted in refuge pools. Outboard motors may be operated in designated refuge canals, waterways, and pools. The operation of any type of boat motor in the refuge marshes is prohibited.

* * * * *

8. Section 33.37 would be amended by amending (b)(2) by adding new words to the end of the sentence, revising paragraph (b)(5), adding paragraphs (b)(6) and revising (c)(3) as follows:

§ 33.37 North Carolina.

* * * * *

(b) Mattamuskeet National Wildlife Refuge.* * *

* * * * *

(2) * * * from one-half hour before sunrise to one-half hour after sunset except that the Highway 94 causeway is open to fishing and crabbing 24 hours per day.

* * * * *

(5) Airboats and sailboats are not permitted.

(6) Bank fishing is prohibited along the entrance road from Highway 94 to the Refuge Headquarters.

(c) Pee Dee National Wildlife Refuge * * *

* * * * *

(3) Only nonmotorized boats and boats with electric motors are permitted on Arrowhead Lake, Andrews Pond and Beaver ponds.

* * * * *

9. Section 33.40 would be amended by redesignating (a) through (e) as (b) through (f) and adding new paragraph (a) to read as follows:

§ 33.40 Oklahoma.

(a) *Little River National Wildlife Refuge.* Fishing and frogging are permitted on designated areas of the refuge subject to the following conditions:

(1) Fishing is permitted in the area designated on the refuge fishing map brochure.

(2) Access to refuge fishing is limited to designated roads and trails.

* * * * *

10. Section 33.41 would be amended by revising paragraph (g)(2) and adding paragraphs (3) through (5) as follows:

§ 33.41 Oregon.

(g) Umatilla National Wildlife Refuge * * *

* * * * *

(2) Only nonmotorized boats are permitted on refuge impoundments and ponds.

(3) Fishing is permitted only from 5:00 a.m. to 10:00 p.m.

(4) Impoundments and ponds in the Boardman Unit are closed to fishing.

(5) Bowfishing is prohibited.

* * * * *

11. Section 33.46 would be amended by revising the second sentence and adding a third sentence to paragraph (a)(7), revising paragraphs (e)(1), removing paragraph (e)(3) and adding paragraph (f) as follows:

§ 33.46 Tennessee.

(e) Cross Creeks National Wildlife Refuge * * *

* * * * *

(7) * * * Largemouth bass from 12 inches to 15 inches must be immediately released unharmed. Possession of largemouth bass between 12 and 15 inches is prohibited.

* * * * *

(e) Reelfoot Lake National Wildlife Refuge * * *

(1) Fishing is permitted on the Long Point Unit (north of Upper Blue Basin) from March 15 through October 15 and on the Grassy Island Unit (south of the Upper Blue Basin) from February 1 through November 15.

* * * * *

(f) *Tennessee National Wildlife Refuge.* Fishing is permitted on designated portions of the refuge subject to the following conditions.

(1) The Duck River Bottoms and Busseltown Unit are closed to boat fishing from November 1 through March 15.

(2) Swamp Creek, Button Ford and Bennett's Creek embayments are closed to fishing from November 1 through March 15.

(3) Boats are restricted to "slow speed/minimum wake" on all refuge impoundments open to fishing.

12. Section 33.47 would be amended by adding (b) (4) and (5) and revising paragraph (d) as follows:

§ 33.47 Texas.

* * * * *

(b) *Aransas National Wildlife Refuge*

* * *

* * * * *

(4) Fishermen must be off the refuge by dark.

(5) Fishermen must satisfy the Entrance Fee requirement authorized by the Emergency Wetlands Resources Act.

(d) *Hagerman National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following conditions:

(1) All refuge waters are open to fishing from April 1 through September 30.

(2) Fishing is restricted to the shoreline of Lake Texoma and Big Mineral Creek from October through March 31. Lines may not be attached to rubber bands, sticks, poles, trees or other fixed objects and are not permitted in refuge ponds as impoundments.

(3) Trotlines may be strung between anchored floats only. Lines may not be attached to rubber bands, sticks, poles, trees or other fixed objects and are not permitted in refuge ponds as impoundments.

(4) Fishing is not permitted from bridges or roadways.

* * * * *

13. Section 33.51 would be amended by by revising (b) (1) through (2) and adding (b) (4) through (5) to read as follows:

§ 33.51 Washington.

(b) *McNary National Wildlife Refuge* * * *

(1) Fishing is permitted on the Hanford Islands and Strawberry Divisions from July 1 through September 30.

(2) Fishing is permitted on the McNary Division from February 1 through September 30.

* * * * *

(4) Fishing is permitted only from sunrise to sunset.

(5) Bowfishing is prohibited.

* * * * *

Dated: September 22, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-24905 Filed 10-31-88; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

[Docket No. 81006-8206]

Fee Schedule for Foreign Fishing

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA proposes the 1989 fee schedule for foreign vessels fishing in the exclusive economic zone (EEZ). Under this fee schedule, owners or operators of foreign vessels would pay $354 per fishing permit application and $8.420 million of the FY 1988 Magnuson Fishery Conservation and Management Act (Magnuson Act) costs in poundage fees. No surcharge is proposed for the Fishing Vessel and Gear Damage Compensation Fund. Comments are requested on this fee schedule. This action complies with section 204(b)(10) of the Magnuson Act.

DATES: Comments must be received on or before December 1, 1988.

ADDRESSES: Send comments to: Fees and Permits Branch, F/CM, National Marine Fisheries Service, 1335 East West Highway, Silver Spring, MD 20910 or telex 467856 US COM FISH CL. Mark envelopes "Foreign Fees."

Copies of the regulatory impact review (RIR) are available at this address.

FOR FURTHER INFORMATION CONTACT: Alfred J. Bilik, 202-673-5319.

SUPPLEMENTARY INFORMATION: NOAA proposes a schedule of permit application and poundage fees for fishing during 1989 by foreign vessels in the EEZ. The new schedule would target collections of about $8.620 million from foreign fishing in 1989 but would not require an additional amount under provisions of Pub. L. 99-272. These amounts are set for the reasons described below. NOAA has consulted with the Coast Guard and the Department of State (DOS) on this proposal. The Department of State agrees with its publication for public comments.

NOAA is publishing the proposed 1989 fee schedule as a single unit containing both foreign poundage and permit application fees. Readers are advised, however, that the final fees may be published separately should there be delays in adopting either final poundage or final permit application fees.

Background

Subparagraph 204(b)(10)(B) of the Magnuson Act requires the Secretary of Commerce to impose fees on the owners or operators of foreign fishing vessels for which permits are issued "at least in an amount sufficient to return to the United States an amount which bears to the total cost of carrying out the provisions of [the Magnuson] Act during * * * fiscal year [1988] the same ratio as the aggregate quantity of fish harvested by foreign fishing vessels within the fishery conservation zone during [1988] bears to the aggregate quantity of fish harvested by both foreign and domestic fishing vessels within such zone and the territorial waters of the United States during [1987]." (16 U.S.C. 1824(b)(10)(B)). Pub. L. 99-659 replaced references to the "fishery conservation zone" in the Magnuson Act with "exclusive economic zone."

However, if the Secretary of Commerce, in consultation with the Secretary of State, finds a fishing nation to be "harvesting anadromous species of United States origin at a level that is unacceptable to the Secretary", or "failing to take sufficient action to benefit the conservation and development of United States fisheries", subparagraph 204(b)(10)(C) applies. Subparagraph 204(b)(10)(C) requires the Secretary to impose fees for that nation which bear to the ratio of the fish harvested by foreign vessels in the EEZ to the aggregate quantity of fish harvested by both foreign and domestic vessels in the EEZ *only*. Removing the quantity of U.S. harvested fish caught in the territorial waters from the formula increases the ratio and thereby the fees that the nation must pay.

Foreign fees are assessed for the whole weight of fish harvested (poundage fees) and for processing foreign fishing applications (permit application fees).

Fees have been collected for foreign fishing since 1977 under annual schedules set forth at 50 CFR 611.22. Fees collected under these schedules were $43.4 million from 1977 through 1980, and $227.9 million from 1981 through 1987. The increase in fees since 1981 stems from the current Magnuson Act requirement to recover at least costs attributed to foreign fishing. A decrease in collected fees occurred in 1986 and continues to the present as the result of large reductions in foreign fishing. Fees collected in 1987 were $13.6 million and another reduction is expected in 1988.

The Proposed Fee Target for 1989

NOAA is changing its procedures for proposing the fee target. These changes reflect the decisions made in the final rule on the 1988 foreign fishing fees, (53 FR 134, January 5, 1988). The final 1988 fees were implemented at levels which would not seriously undermine U.S. fisheries development and trade. NOAA believed that fees assessed at 44.4 percent of the exvessel value of each species harvested by foreign vessels would meet the requirements of the Magnuson Act by seeking to recover $13.5 million in final poundage fees and permit application fees. The final fees were down substantially from the $20.5 million proposed for 1988 (52 FR 42408, November 4, 1987). The difference between the proposed fees and final fees, $7.0 million, was an adjustment made by NOAA in response to a preponderance of comments onthe adverse effect of the proposed fees on U.S. efforts to develop and trade in production from the Atlantic mackerel and Pacific whiting joint venture fisheries. These are the only remaining foreign directed fisheries. Reasonable fees for the foreign catch of allocated fish are necessary to sustain joint venture operations and promote development of foreign markets for U.S. harvested mackerel and whiting. Foreign fishing companies offset expenses from joint venture operations with their directed fisheries for allocated fish to make the composite operations profitable. It is also in the U.S. interest to have foreign vessels available on grounds to process fish during peaks in U.S. joint venture deliveries.

NOAA has monitored these fisheries and found that the 1988 fees set at 44.4 percent of the exvessel value did not undermine U.S. efforts in development and trade during the year. It concluded that the 1989 fees should be continued at the same level if such fees can be shown to be appropriate under the current requirements of section 204(b)(10).

Consistency with Section 204(b)(10)

Total costs of administering the Magnuson Act increased in 1988 because of revisions in the applicable costs but have remained at about or under $200 million since that time. FY 87 costs used for the 1988 fee schedule were $186.7 million.

Section 204(b)(10) states that the foreign fees must be at least in an amount to recover costs in same ratio as the fish caught by foreign vessels relate

in the total catch in the EEZ and territorial waters. This ratio using the latest available catch statistics, i.e. catches in 1987, is 2.6 percent, see Table 1(A).

Applying the above information, NOAA is confident that a fee target in excess of $5.2 million ($200 million x 0.026) will be consistent with section 204(b)(10) because that target would be at least the amount which would be required by the Magnuson Act. Any amount in excess of that which could be determined after reviewing actual FY88 Magnuson Act costs should be attributed to a recovery of shortfalls from prior years when collected fees fell short of the fee targets computed by the Magnuson Act formula because of unanticipated reductions in foreign allocations for certain species.

TABLE 1.—ESTIMATED RATIOS OF FOREIGN CATCH TO TOTAL CATCH, 1987

(A) Including territorial waters	(MT)	(B) Excluding territorial waters	(MT)
U.S. Commercial catch [1]	4,983,241	U.S. Commercial catch [1]	4,983,241
Exclusions:		Exclusions:	
International waters	274,146	International waters	274,146
Tuna (0–200 miles)	14,676	Tuna (3–200 miles)	14,564
Freshwater (incl. G. Lakes Alewives)	66,928	All catch inside 3 miles [2]	1,847,727
U.S. Commercial catch less exclusions	4,625,766	U.S. Commercial catch less exclusions	2,846,764
Additions:		Additions:	
Correction for Mollusks [2]	717,586	Correction for Mollusks [2]	413,211
Recreational catch [3]	178,879	Recreational catch [3]	81,582
Total U.S. catch	5,522,254	Total U.S. catch	3,321,747
Foreign catch [4]	148,952	Foreign catch [4]	148,869
Total catch	5,671,213	Total catch	3,470,706
Ratio including territorial waters	2.6	Ratio excluding territorial waters	4.3

[1] This figure and all following figures for U.S. Commercial catch from pages 6–9 of "Fisheries of the United States, 1987." (Calculated in pounds and converted to metric tons). Figures may not add due to rounding.
[2] Except for Texas and west coast of Florida, where boundary line is nine nautical miles from shore. Also excludes any waters beyond three nautical miles from shore considered to be internal (E.G., areas of Puget Sound).
[3] Addition of Mollusk shells (U.S. statistics for internal use include only edible meat weight, whereas international standard includes shell weights).
[4] Based on 1987 data for Atlantic, Gulf and Pacific; 1981 data for western Pacific and Caribbean. Includes catch types A and B1 and assumes average weight of B1 is similar to A.
[5] From page 28, "Fisheries of the United States, 1987".

NOAA's experience has been that exvessel values for both species have been difficult to establish. Thus the relationship between the values of mackerel and whiting established in the 1988 fee schedule are probably as valid today for the 1989 schedule as they were for the prior year. Since the only other species taken in 1989 will be very limited bycatch amounts, NOAA proposes to adopt the exvessel values used in 1988 for the 1989 fee schedule.

The Fee Target

Based on the above and estimates of the foreign catch shown in Table 1, NOAA calculates a fee target of $6.420 million in poundage fees and $0.2 million in permit fees for a total of $6.620 million. It is calculated by multiplying the fee for a species by the estimated catch of that species in 1989. Since this target exceeds the threshold amount of $5.2 million calculated earlier, NOAA believes it is consistent with the requirements of section 204(b)(10) and based on the experience with fees at that level in 1988, will not adversely affect U.S. efforts in fishery development and trade.

In addition to the above subparagraph 204(b)(10)(C) includes a provision for higher fees in each fiscal year for any nation found to be harvesting anadromous species of U.S. origin at levels unacceptable to the Secretary or found not taking actions to benefit the conservation and development of United States fisheries. The level is determined by the ratio of foreign catch to the total catch in the EEZ only. Table 1(B) shows the 1987 catches in the EEZ and appropriate adjustments of tuna and mollusk catches. The ratio of catches so determined shows that 4.3 percent of the 1987 catch in the EEZ was taken by foreign vessels. That ratio was 17.43 percent in 1986. Nations falling under one or both of the above criteria ("high fee nations") in calendar year 1989 should pay against 4.3 percent of the total Magnuson Act costs resulting in a fee assessment rate of 73.4 percent of the exvessel value. To achieve this amount, such vessels would pay an incremental amount equal to 67.42 percent of their poundage fees in addition to the poundage fees proposed in this schedule for their catches in 1989.

TABLE 2.—ESTIMATED 1989 FOREIGN CATCH/VALUE WITH RECOVERED COSTS OF $6,420,000

Species	Fishery	Exvessel value ($/MT)	Estimated foreign catch (MT)	Estimated foreign catch value ($)	Species fee ($/MT)	Recovered costs ($)
Alaska Pollock	BSA/GOA	214	0	0	95	0
Atka Mackerel	BSA/GOA	357	0	0	119	0
Pacific Cod	BSA/GOA	324	0	0	144	0
Flatfish	BSA/GOA	187	0	0	165	0
Pacific Ocean Perch	BSA/GOA	441	0	0	195	0
Other Rockfish	BSA/GOA	734	0	0	326	0

TABLE 2.—ESTIMATED 1989 FOREIGN CATCH/VALUE WITH RECOVERED COSTS OF $6,420,000—Continued

Species	Fishery	Exvessel value ($/MT)	Estimated foreign catch (MT)	Estimated foreign catch value ($)	Species fee ($/MT)	Recovered costs ($)
Pacific Squid	BSA/GOA	169	0	0	75	0
Other Species	BSA/GOA	240	0	0	107	0
Slabfish	BSA	473	0	0	210	0
Sharks	BSA	286	0	0	128	0
Sablefish	GOA	998	0	0	998	0
Jack Mackerel	WOC	573	1,286	697,899	255	305,529
Flatfish	WOC	713	40	28,539	317	12,673
Pacific Ocean Perch	WOC	721	25	18,025	998	6,420
Other Rockfish	WOC	758	295	223,690	998	294,367
Sablefish	WOC	925	69	64,515	415	28,667
Pacific Whiting	WOC	176	40,000	7,040,000	76	3,038,196
Other Species	WOC	915	200	183,000	407	81,315
Butterfish	NWA	618	5	3,090	275	1,373
Red Hake	NWA	369	0	0	164	0
Silver Hake	NWA	998	17	8,561	173	2,969
River Herring	NWA	1,198	64	8,896	44	3,902
Atlantic Mackerel	NWA	154	43,000	6,160,000	998	2,737,145
Squid, Illex	NWA	234	0	0	104	0
Squid, Loligo	NWA	553	4	2,212	246	983
Other Species	NWA	268	85	22,780	114	10,137
Atlantic Sharks	ATS	423	0	0	188	0
Pacific Billfish	PBS	1,998	0	0	862	0
Dolphin Fish	PBS	8,518	0	0	3,451	0
Striped Marlin	PMS	1,854	0	0	824	0
Pacific Sharks	PBS	1,103	0	0	490	0
Pacific Swordfish	PBS	2,337	0	0	1,038	0
Wahoo	PBS	2,209	0	0	980	0
Seamount Groundfish	SMT	398	0	0	176	0
Coral ($/Kilogram)	WPC	206	0	0	998	0
Totals			89,704	14,448,339		10,420,000

Application of the high rate of fees under section 204(b)(10)(C) would have the effect of undermining U.S. support for important joint venture operations. No nation will be required to pay the higher fees in 1989. Allocations for fishing will be made only to nations which are conducting joint venture operations for Pacific whiting and Atlantic mackerel. So these nations are taking actions to benefit conservation and development of the U.S. fisheries. None of the nations expected to receive allocations in 1989 have been found to be taking anadromous species of U.S. origin at unacceptable levels. The nations considered in this determination are: The European Community (the Kingdom of the Netherlands), the German Democratic Republic, the Union of Soviet Socialist Republics, the Polish People's Republic, the People's Republic of China, and the Republic of Korea. Japan has also been included although there are no allocations currently being made to that nation.

Surcharge

The surcharge for the Fishing Vessel and Gear Damage Compensation Fund is proposed to be effectively waived in 1989. The proposed waiver is consistent with the policy decision, at 53 FR 134, January 5, 1988, that the surcharge will not be used to continue capitalization of the fund beyond the projected duration of foreign fishing in the EEZ. The current balance in the fund is sufficient for that purpose.

Summary of Proposed 1989 Species Fees

The fee per ton for each species is proposed to remain unchanged from the final fee adopted in 1988. The species fees are listed in Table 1 of § 611.22(b). Section 611.22(b) and Table 1 are identical to the existing text but are reprinted for the convenience of readers. Permit application fees for 1989 will also be $354 per vessel application as in 1988. Readers should refer to 53 FR 134 and the documents referenced within that final rule for calculations on which these fees are based.

The higher fee assessment rate required by section 204(b)(10)(F) is 73.4 percent of the exvessel value of each species. This would require that vessels of any nation required to pay such fees pay an additional 67.42 percent of the species fee for their catch. However, no nation has been found to be in violation of section 204(b)(10)(F) at this time, and the higher fees will not be required in 1989.

NOAA also proposed that the surcharge for the Fishing Vessel and Gear Damage Compensation Fund be effectively waived in 1989 as it was in 1988.

Classification

NOAA prepared a regulatory impact review (RIR) that discussed the economic consequences and impacts of the final fee schedule for 1988 and its alternatives. Copies of the RIR are available at the above address. Based on the RIR, the Administrator, NOAA, determined that the 1988 fee schedule complied with the requirements of section 2 of E.O. 12291. Since the species fees proposed for 1989 are unchanged from 1988, NOAA anticipates no new economic impacts.

The General Counsel for the Department of Commerce has certified that the proposed fee schedule if adopted will not have significant economic impact upon a substantial number of small entities for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Because the proposed fee schedule will not have a significant economic impact upon a substantial number of small domestic entities, a regulatory flexibility analysis is not required, and has not been prepared.

NOAA Directive 02–10 published at 45 FR 49312 (July 24, 1980) adopts internal procedures to implement the National Environmental Policy Act (NEPA), as amended (42 U.S.C. 4321 *et seq.*). Under those procedures, programmatic functions with no potential for

significant environmental impacts are generally excluded from NEPA requirements. The proposed fee schedule has no direct impact on the fishery resources in the EEZ. At the most, a fee schedule might affect the harvesting strategy of foreign fishing vessels and result in a different species mix being removed from the environment; however, the proposed schedule meets the criterion that fees should minimize disruption of traditional fishing patterns on target species. The environmental impact of harvesting the TALFF is described for each fishery management plan, and no further environmental assessment is necessary.

This proposed rule has no information collection provisions for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*

This proposed rule would not directly affect the Coastal Zone of any state with an approved Coastal Zone Management program. Neither does the proposed rule contain policies with federalism implications sufficient to warrant a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 611

Fish, Fisheries, Foreign relations, Reporting requirements.

Dated: October 26, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

PART 611—[AMENDED]

For the reasons above, 50 CFR Part 611 is proposed to be amended as follows:

1. The authority citation for Part 611 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 971 *et seq.*, 22 U.S.C. 1971 *et seq.*, and 16 U.S.C. 1361 *et seq.*

2. Paragraphs § 611.22(b)(1), (c) and (d) are revised as follows:

§ 611.22 Fee Schedule for foreign fishing.

* * * * *

(b) *Poundage fees.*

(1) *Rates.* If a nation chooses to accept an allocation, poundage fees must be paid at the rate specified in Table 1, plus the surcharge required by paragraph (d) of this section.

(c) *Incremental amount.* An additional incremental amount will be added to the poundage fee Bill for Collection for fish harvested by a nation during the first quarter of the next fiscal year following notification under paragraph (10)(C) of section 204(b) of the Magnuson Act [16 U.S.C. 1824(b)(10)(C)]. This incremental amount will be added to all subsequent quarterly bills until the quarter specified when the Assistant Administrator notifies that nation that it has taken appropriate corrective action. The incremental amount in 1989 will be 67.4 percent of the total poundage fee in each quarter during which this provision applies.

(d) *Surcharges.* The owner or operator of each foreign vessel who accepts and pays permit application or poundage fees under paragraph (a) or (b) of this section must also pay a surcharge. The Assistant Administrator may reduce or waive the surcharge if it is determined that the Fishing Vessel and Gear Damage Compensation Fund is capitalized sufficiently. The Assistant Administrator also may increase the surcharge during the year to a maximum level of 20 percent, if needed, to maintain capitalization of the fund. The Assistant Administrator has effectively waived the surcharge on 1989 fees.

* * * * *

TABLE 1. SPECIES AND POUNDAGE FEES

[Dollars per metric ton, unless otherwise noted]

Species	Poundage fees
Northwest Atlantic Ocean fisheries:	
1. Butterfish	419.16
2. Hake, red	250.27
3. Hake, silver	265.53
4. Herring, river	84.26
5. Mackerel, Atlantic	104.45
6. Other groundfish	181.77
7. Squid, illex	138.71
8. Squid, *Loligo*	373.67
Atlantic and Gulf fisheries:	
9. Shark, Atlantic	266.90
10. Shrimp, royal red	(1)
Alaska fisheries:	
11. Pollock, Alaska	145.15
12. Cod, Pacific	218.75
13. Pacific ocean perch	399.11
14. Rockfish, other	497.84
15. Mackerel, Atka	181.08
16. Squid, Pacific	114.62
17. Flounders	126.83
18. Sablefish (Gulf of Alaska)	609.70
19. Sablefish (Bering Sea and Aleutian Islands)	320.81
20. Groundfish, other	162.78
21. Snails	196.01
Pacific fisheries:	
22. Whiting, Pacific	119.37
23. Sablefish	534.17
24. Pacific ocean perch	469.02
25. Rockfish, other	512.76
26. Flounders	483.50
27. Mackerel, jack	388.64
28. Groundfish, other	525.60
Western Pacific fisheries:	
29. Coral [1]	138.72
30. Dolphin fish	2,745.56
31. Wahoo	1,486.22
32. Sharks	748.11
33. Marlin, striped	1,257.48
34. Billfish	1,245.33
35. Swordfish	1,582.07

[1] Reserved.

[2] Dollars per kilogram.

[FR Doc. 88-25280 Filed 10-31-88; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 53, No. 211
Tuesday, November 1, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of Advocacy and Enterprise; Citizens' Advisory Committee on Equal Opportunity Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name: Citizens' Advisory Committee on Equal Opportunity.

Date: November 16-18, 1988.

Place: University of California at Davis, Foster Room, Myer Hall, Davis, California 95616.

Time: 8:30 a.m.—5:00 p.m.

Purpose:

—Review aspects of the U.S. Department of Agriculture's policies, practices and procedures on Equal Opportunity;

—Recommend changes in Department rules, regulations, and orders to ensure USDA activities are free of discrimination;

—Advise the Secretary on the effectiveness of compliance program directives;

Additionally, the Committee will focus on:

—Handicap accessibility and accommodations for handicap persons, and;

—Small Scale Agriculture.

The meeting is open to the public. Persons may participate in the meeting as time and space permit. Persons who wish to address the Committee at the meeting or who wish to file written comments before or after the meeting should contact:

Naomi Churchill, Esq., Associate Director, Equal Opportunity, Office of Advocacy and Enterprise, U.S. Department of Agriculture, 14th and Independence Avenue, SW., Room 1228 South Building, Washington, DC 20250, (202) 447-5681, TTD (202) 447-5681.

or

Michael Campbell, University of California at Davis, Davis, California 95616, (916) 752-0360, TTD (202) 752-6446.

Written statements may be submitted until November 30, 1988.

Naomi Churchill,

Associate Director, Equal Opportunity.

[FR Doc. 88-25170 Filed 10-31-88; 8:45 am]

BILLING CODE 3410-04-M

Federal Grain Inspection Service

Designation Renewal of the Idaho (ID) and Lewiston (ID) Agencies and the State of Utah (UT)

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of the Idaho Grain Inspection Service (Idaho), Lewiston Grain Inspection Service, Inc. (Lewiston), and the Utah Department of Agriculture as official agencies responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: December 1, 1988.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that Idaho's, Lewiston's, and Utah's designations terminate on November 30, 1988, and requested applications for official agency designation to provide official services within specified geographic areas in the June 1, 1988, Federal Register (53 FR 19976). Applications were to be postmarked by July 1, 1988. Idaho, Lewiston, and Utah were the only applicants for designation in those areas and each applied for designation renewal in the entire area currently assigned to that agency.

The Service announced the applicant names in the August 2, 1988, Federal Register (53 FR 29074) and requested comments on the applicants' designation. Comments were to be postmarked by September 15, 1988; a total of five comments were received. One favorable comment was received from a trade group, recommending the designation renewal of Idaho; three favorable comments, one from a trade group and two from applicants for service recommended the designation renewal of Lewiston; and one favorable comment was received from an applicant for service, recommending the designation renewal of Utah.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and, in accordance with section 7(f)(1)(B), determined that Idaho, Lewiston, and Utah are able to provide official services in the geographic area for which the Service is renewing their designation. Effective December 1, 1988, and terminating November 30, 1991, Idaho, Lewiston, and Utah will provide official inspection services in their specified geographic area, previously described in the June 1 Federal Register.

Interested persons may obtain official services by contacting the agencies at the following telephone numbers: Idaho at (208) 233-8303, Lewiston at (208) 746-0451, and Utah at (801) 392-0603.

Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: October 25, 1988.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 88-25137 Filed 10-31-88; 8:45 am]

BILLING CODE 3410-EN-M

Request for Comments on Designation Applicants in the Geographic Area Currently Assigned to the Frankfort (IN), Jinks (IL), and Paris (IL) Agencies

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the geographic areas currently assigned to the Frankfort Grain Inspection, Inc. (Frankfort), Jinks

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Grain Weighing Service (Jinks), and Paris, Illinois Grain Inspection (Paris).

DATE: Comments to be postmarked on or before December 16, 1988.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., RM, FGIS, USDA, Room 0628 South Building, P.O. Box 96454, Washington, DC 20090–6454.

Telemail users may respond to [LLEBAKKEN/FGIS/USDA] telemail.

Telex users may respond as follows:

To: Lewis Lebakken
TLX:7607351, ANS FGIS US.

All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue SW., during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 475–3428.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service requested applications for official agency designation to provide official services within specified geographic areas in the September 1, 1988, **Federal Register** (53 FR 33829). Applications were to be postmarked by October 3, 1988. Frankfort was the only applicant for designation in its area and applied for designation renewal in the entire area currently assigned to that agency. Jinks was the only applicant for designation in its area and applied for designation renewal in the following area:

Bounded on the North by the Iroquois County line east to Illinois State Route 1; Illinois State Route 1 south to U.S. Route 24; U.S. Route 24 east into Indiana, to U.S. Route 41;

Bounded on the East by U.S. Route 41 south to the southern Fountain County line; the Fountain County line west to Vermillion County (in Indiana); the eastern Vermillion County line south to U.S. Route 36;

Bounded on the South by U.S. Route 36 west into Illinois, to the Douglas County line; the eastern Douglas and Coles County lines; the southern Coles County line; and

Bounded on the West by the western Coles and Douglas County lines; the western Champaign County line north to Interstate 72; Interstate 72 southwest to the Piatt County line; the western Piatt County line; the southern McLean County line west to a point 10 miles west of the western Champaign County line; a staight line running north to U.S. Route 136; U.S. Route 136 east to Interstate 57; Interstate 57 north to the Champaign County line; the northern Champaign County line; the western Vermilion (in Illinois) and Iroquois County lines.

Jinks did not apply for designation in the following locations, all in Illinois, outside of the above contiguous geographic area: Moultrie Grain Association, Cadwell, Moultrie County; Tabor and Company, Weedman Grain Company, and Pacific Grain Company, all in Farmer City, Dewitt County; Moultrie Grain Association, Lovington, Moultrie County; Monticello Grain Company, Monticello, Piatt County; and Pittwood Grain Company, Pittwood, Iroquois County (located inside Decatur Grain Inspection, Inc.'s area). Since first designated on March 1, 1983, there have been no requests for official weighing services at these locations.

In addition, the September 1, 1988, Federal Register notice listed as exceptions to the geographic area assigned to Jinks the following locations which were said to be serviced by other official agencies:

1. Paris, Illinois Grain Inspection: Tabor Grain Co., Newman, Douglas County, Illinois; Tabor Grain Co., Oakland, Coles County, Illinois; and Cargill, Inc., Dana, Vermillion County, Indiana; and

2. Titus Grain Inspection, Inc.: Boswell Grain Company, Boswell, Benton County, Indiana; Dunn Grain, Dunn, Benton County, Indiana; York Richland Grain Elevator, Inc., Earl Park, Benton County, Indiana; and Raub Grain Company, Raub, Benton County, Indiana.

While these two official agencies have been and will continue to provide official inspection services to these locations, these agencies have not been designated to provide official weighing services at any location. Accordingly, these locations should not have been listed as exceptions to the geographic area available for assignment. Jinks will continue to provide official weighing services, if requested, to these locations until February 28, 1989, and those locations inside the contiguous geographic area are available for assignment to the applicant selected for designation to provide official weighing services in the geographic area presently assigned to Jinks.

There were two applicants for the Paris application: Paris applied for designation renewal in the entire area currently assigned to that agency; and Champaign-Danville Grain Inspection Departments, Inc., a neighboring official agency, applied for designation in the entire area currently assigned to Paris.

This notice provides interested persons the opportunity to present their comments concerning the applicants' designation. Commenters are encouraged to submit reasons for support or objection to these designation actions and include pertinent data to support their views and comments. All comments must be submitted to the Resources Management Division, at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicants will be informed of the decision in writing.

Pub. L. 94–582, 90 Stat. 2867, as amended. (7 U.S.C. 71 *et seq.*)

Date: October 26, 1988.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 88–25138 Filed 10–31–88; 8:45 am]

BILLING CODE 3410-EN-M

Request for Designation Applicants To Provide Official Services in the Geographic Area Currently Assigned to the Detroit (MI), Keokuk (IA), and Michigan (MI) Agencies

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of three agencies will terminate, in accordance with the Act, and requests applications from parties interested in being designated as the official agency to provide official services in the geographic area currently assigned to the specified agencies. The official agencies are the Detroit Grain Inspection Service, Inc. (Detroit), John H. Oliver, Inc., dba Keokuk Grain Inspection Service (Keokuk), and Michigan Grain Inspection Services, Inc. (Michigan).

DATE: Applications to be postmarked on or before December 1, 1988.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. All applications received will be made available for public inspection at this address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Detroit, located at 12840 Inlay City Road, Yale, MI 48097; Keokuk, located at 22 Prices Creek, Keokuk, IA 52632; and Michigan, located at 189 Lyon Lake Road, Marshall, MI 49068; were each designated under the Act as an official agency on May 1, 1988, to provide official inspection functions.

Each official agency's designation terminates on April 30, 1989. Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Detroit, in the State of Michigan, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Bounded on the North by the northern Clinton County line; the eastern Clinton County line south to State Route 21; State Route 21 east to State Route 52; State Route 52 north to the Shiawassee County line; the northern Shiawassee County line east to the Genesee County line; the western Genesee County line; the northern Genesee County line east to State Route 15; State Route 15 north to Barnes Road; Barnes Road east to Sheridan Road; Sheridan Road north to State Route 46; State Route 46 east to State Route 53; State Route 53 north to the Michigan State line;

Bounded on the East by the Michigan State line south to State Route 50;

Bounded on the South by State Route 50 west to U.S. Route 127; and

Bounded on the West by U.S. Route 127 north to U.S. Route 27; U.S. route 27 north to the northern Clinton County line.

The following location, outside of the above contiguous geographic areas, is part of this geographic area assignment: St. Johns Coop., St. Johns, Clinton County (located inside Michigan Grain Inspection Services, Inc.'s area).

The geographic area presently assigned to Keokuk, in the States of Illinois and Iowa, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

In Illinois: Hancock and McDonough Counties.

In Iowa: Davis, Lee, and Van Buren Counties.

The following locations, all in Illinois, outside of the above contiguous geographic area, are part of this geographic area assignment: Continental Grain Co., Dallas City, and Lomax Grain Elevator, Lomax, both in Henderson County (located inside Eastern Iowa Grain Inspection and Weighing Service, Inc.'s area); and Ursa Farmers Co-op, Meyer, and Ursa Farmers Co-op, Ursa, both in Adams County (located inside Quincy Grain Inspection & Weighing Service's area).

The geographic area presently assigned to Michigan, in the State of Michigan, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Bounded on the North by the northern and eastern Mason and Newago County lines; the northern Montcalm County line; the western, northern, and eastern Isabella County lines; the northern Gratiot and Saginaw County lines; the western Bay County line; the western and northern Arenac County lines; the western and northern Iosco County lines;

Bounded on the East by the Lake Huron and Saginaw Bay shorelines south and east to State Route 53; State Route 53 south to State Route 46;

Bounded on the South by State route 46 west to Sheridan Road; Sheridan Road south to Barnes Road; Barnes Road west to State Route 15; State Route 15 south to the Genesee County line; the northern Genesee County line west to the Shiawassee County line; the northern Shiawassee County line west to State Route 52; State Route 52 south to State Route 21; State Route 21 west to Clinton County; the eastern and northern Clinton County lines west to U.S. Route 27; U.S. Route 27 south to U.S. Route 127; U.S. Route 127 south to the Jackson County line; the southern Jackson, Calhoun, Kalamazoo, and Van Buren County lines; and

Bounded on the West by the Lake Michigan shoreline north to the northern Mason County line.

An exception to Michigan's assigned geographic area is the following location inside Michigan's area which has been and will continue to be serviced by the following official agency:

Detroit Grain Inspection Service, Inc.: St. Johns Coop., St. Johns, Clinton County.

Interested parties, including Detroit, Keokuk, and Michigan, are hereby given opportunity to apply for official agency designation to provide the official services in each geographic area, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in each specified geographic area is for the period beginning May 1, 1989, and ending April 30, 1992. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Date: October 26, 1988.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 88–25139 Filed 10–31–88; 8:45 am]

BILLING CODE 3410-EN-M

Rural Electrification Administration

Intent to Conduct Public Scoping Meetings Potentially Leading to the Preparation of an Environmental Impact Statement

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of intent to conduct public scoping meetings potentially leading to the preparation of an environmental impact statement.

SUMMARY: The Rural Electrification Administration (REA) intends to conduct three public scoping meetings possibly leading to the preparation of an Environmental Impact Statement (EIS) in connection with possible requests by Old Dominion Electric Cooperative (ODEC) of Glen Allen, Virginia for financing assistance in connection with the construction and operation of a 400 megawatt (MW) coal-fired generating unit. Three alternative sites have been identified. They are: (1) Passapatanzy Site—located east of Fredericksburg

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near the Rappahannock River in King George County; (2) Sutherland Site—located west of Petersburg near Lake Chesdin in Dinwiddie County and; (3) Clover Site—located north of South Boston near the Roanoke River in Halifax County. Each site would be large enough to support two 400 MW units.

DATE: REA will conduct the public scoping meetings as follows:

Monday, December 5, 1988, 7:30 p.m.—King George County Citizens Center, Route 3, King George, VA 22485

Tuesday, December 6, 1988, 7:30 p.m.—Halifax County Senior High School Cafeteria, Route 129, South Boston, VA 24592

Wednesday, December 14, 1988, 7:30 p.m.—Dinwiddie High School Auditorium, Route 627, Dinwiddie, VA 23841

ADDRESS: All interested parties are invited to submit written comments to REA prior to, at, or within 30 days after the scoping meeting in order for comments to be part of the formal record. Comments should be sent to Mr. James A. Ruspi, Chief, Distribution and Transmission Engineering Branch, Northeast Area—Electric, Rural Electrification Administration, Room 0250, South Agriculture Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Ruspi, Northeast Area—Electric, above address, telephone (202) 382–1432 or FTS 382–1432, or Mr. Edward D. Tatum, Jr., Old Dominion Electric Cooperative, 4201 Dominion Boulevard, Glen Allen, Virginia 23060, telephone (804) 747–0592.

SUPPLEMENTARY INFORMATION: REA, in order to meet requirements under the National Environmental Policy Act (NEPA) of 1969, the Council on Environmental Quality Regulations (40 CFR Part 1500) and REA Environmental Policy and Procedures (7 CFR Part 1794), intends to conduct public scoping meetings possibly leading to the preparation of an Environmental Impact Statement. This notice is in connection with a potential request for financial assistance from REA by ODEC for the construction and operation of a 400 MW coal-fired generating unit and associated facilities at a site within the State of Virginia.

ODEC is a non-profit electric cooperative serving nearly all the electric requirements of nine electric cooperatives in the State of Virginia with 212 MW of nuclear generating capacity and wholesale power purchased from Virginia Power Company and Allegheny Power System (APS). Those nine systems also purchase small amounts of power from the Southeastern Power Administration and ODEC purchases a small amount of power from the Potomac Edision Company. ODEC is also responsible for providing power to three cooperatives in Maryland, Delaware and the Virginia portion of the Delmarva peninsula via power supply contracts with utilities in those localities. The needs of those three members are not being considered as part of this proposal.

ODEC's Virginia load in 1987 totaled 872 MW and 4,228,742 MWh. The 300 MW power supply contract with the APS will terminate in 1994.

At this time, ODEC must determine how it will replace the APS purchases and provide for member load growth and is investigating the most economical and effective ways of meeting its power supply obligation. As part of its investigation of alternatives, ODEC is evaluating the possibility of constructing a 400 MW coal-fired generating station.

Alternatives to be considered by REA include, among other options: (1) No action; (2) conservation and load management; (3) purchased power from another utility or an independent power producer; (4) joint participation in the generation project of another utility; (5) alternative generation methods; and (6) alternative sites.

The public scoping meetings to be conducted by REA will be held to solicit public input and comments including, but not limited to, the nature of the proposed project, its possible location, alternatives, and any significant issues and environmental concerns that should be addressed in the EIS.

Requests for additional information concerning the meetings may be directed to either REA or ODEC at the addresses shown above. Copies of the Site Selection Study and Power Supply Alternatives Study are available for public review at the offices of REA, ODEC, Southside Electric Cooperative; P.O. Box 7, Crewe, Virginia 23930, Rappahannock Electric Cooperative, P.O. Box 7388, Fredericksburg, Virginia 22404 and at public libraries in King George, Spotsylvania, Dinwiddie and Halifax Counties.

Any REA approval will be subject to and contingent upon reaching satisfactory conclusions with respect to the environmental effects of the projects, and final action will be taken only after compliance with environmental procedures required by NEPA.

This program is listed in the Catalog of Federal Domestic Assistance under 10.850—Rural Electrification Loans and Loan Guarantees. For reasons set forth in the final rule related Notice to 7 CFR Part 3015, Subpart V, this program is excluded from the scope of Executive Order 312372 which requires intergovernmental consultation with state and local officials.

Date: October 26, 1988.

John H. Arnesen,

Assistant Administrator—Electric.

[Fk Doc. 88–25172 Filed 10–31–88; 8:45 am]

BILLING CODE 3410–15–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee will be held November 15, 1988, at 9:30 a.m., Herbert C. Hoover Building, Room 4830, 14th Street and Constitution Avenue NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to computer peripherals and related test equipment or technology.

Agenda

General Session

1. Introduction of Members and Visitors.
2. Introduction of Invited Guests.
3. Presentation of Papers or Comments by the Public.
4. Discussion on Deregulation of Low Level Peripherals.
5. Discussion on Protocol Converters.
6. Discussion on Peripheral Devices Containing Lasers.
7. Discussion on G-COM/GFW Treatment of Removable Recording Media.
8. Discussion of Flow Charts for Graphic Workstations.

Executive Session

9. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related therein.

The meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting and can be directed to: Technical Support Staff, Office of Technology & Policy Analysis, Room 4066, 14th & Constitution Avenue NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Ruth D. Fitts, 202–377–4959.

Date: October 27, 1988.

Betty A. Ferrell,

Acting Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 88–25242 Filed 10–31–88; 8:45 am]

BILLING CODE 3510–DT–M

International Trade Administration

[A–588–032]

Large Power Transformers From Japan; Amendment to Final Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of amendment of final results of administrative review of antidumping finding in accordance with decision upon remand.

SUMMARY: As a result of a remand from the United States Court of International Trade, the Department of Commerce is amending its final results of administrative review published June 8, 1983. We will direct the U.S. Customs Service to terminate its suspension of liquidation of close coupled S-Formers manufactured by Fuji Electric Co., Ltd., and to liquidate the transformer components of close coupled S-Formers without assessment of antidumping duties.

EFFECTIVE DATE: November 1, 1988.

FOR FURTHER INFORMATION CONTACT: Laurie A. Lucksinger or David P. Mueller, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5255.

SUPPLEMENTARY INFORMATION:

Background

On June 8, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 26466) the final results of its administrative review of the antidumping finding on large power transformers from Japan (37 FR 11773, June 14, 1972). The review covered various periods through June 30, 1980. The results of that review were challenged in the United States Court of International Trade ("the Court") by a producer, Fuji Electric Co., Ltd., and an importer, Fuji Electric Corp. of America ("Fuji") in *Fuji Electric Co., Ltd.* v. *United States* (Court No. 83–7–00965).

In its final results of administrative review, the Department had found that the rectifier transformer component of Fuji's rectifier transformers assemblies, known as close coupled S-Formers, were covered by the finding on large power transformers. Fuji asserted that the Treasury Department ("Treasury"), which administered antidumping findings until the enactment of the Trade Agreements Act of 1979, had ruled in 1978 that rectifier transformer components were excluded from the scope of the finding. The Court determined that Treasury had excluded these units from the scope and the Department did not have the authority to change Treasury's decision and remanded the review to the Department to amend the scope of review (Slip Op. 88–87, July 7, 1988, amended August 11, 1988).

Remand Results

In light of the Court's decision and remand, the Department is revising its final results of review to reflect the earlier Treasury determination on this merchandise. Accordingly, we amend the description of those units not within the scope of the finding to read: "Not included are combination rectifier-transformer units, commonly known as rectiformers, if the entire assembly is imported in the same shipment and entered on the same entry, and the assembly has been ordered and invoiced as a unit, without a separate price for the transformer portion of the assembly."

In addition, in accordance with the Court's order, we are instructing the U.S. Customs Service to terminate its suspension of liquidation of close coupled S-Formers manufactured by Fuji Electric Co., Ltd., and to liquidate the transformer components of Fuji's close coupled S-Formers without assessment for antidumping duties.

Date: October 22, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88–25243 Filed 10–31–88; 8:45 am]

BILLING CODE 3510–DS–M

[A–549–404]

Neoprene Laminate From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On June 15, 1988, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on fabric expanded neoprene laminate from Japan. The review covers two manufacturers/exporters of this merchandise to the United States and the period July 1, 1986, through June 30, 1987.

We gave interested parties an opportunity to comment on the preliminary results. We received comments from one respondent, Heiwa Rubber Industries. Based on our analysis of comments received and correction of certain clerical errors, we have changed the final results from those presented in the preliminary results of review.

EFFECTIVE DATE: November 1, 1988.

FOR FURTHER INFORMATION CONTACT: Marquita Steadman or Phyllis Derrick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2923.

SUPPLEMENTARY INFORMATION:

Background

On June 15, 1988, the Department of Commerce published in the **Federal Register** (53 FR 22369) the preliminary results of its administrative review of the antidumping duty order on fabric expanded neoprene laminate ("FENL") from Japan. The Department has now completed the administrative review in accordance with section 751 of the Tariff Act of 1930 ("The Tariff Act").

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Scope of the Review

Imports covered by the review are shipments of FENL currently classifiable under item numbers 268.81, 268.82, 350.50 and 350.60 of the *Tariff Schedules of the United States Annotated*, and under item numbers 5602.10.00, 5905.91.20, 5905.91.25, 5905.99.20, 5909.99.25 and 5911.10.20 of the *Harmonized Tariff Schedule*.

The review covers two manufacturers/exporters of Japanese FENL, and the period July 1, 1986, through June 30, 1987. Yamamoto provided an untimely and inadequate response to the Department's questionnaire for this review period. The Department consequently used the best information available for assessment and deposit purposes which is the margin from the fair value investigation. The details of the calculation are described in the notice of preliminary results published in the Federal Register on June 15, 1988 (53 FR 22369).

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from one respondent, Heiwa Rubber Industries.

Comment 1: The Department compared U.S. sales of BPCC J12 material for May of 1987 to sales of the same material in the domestic market in June of 1987. Heiwa states that this comparison is inappropriate because the data previously submitted for those sales contained a clerical error. The domestic sales were actually sales of a higher value product. Therefore, this correction leaves no contemporaneous domestic sales of BPCC J12 material. Heiwa suggests that the appropriate comparison is to PCC J12, adjusting for differences in physical characteristics.

Department's Position: We agree. A review of the sales listing and respective invoices indicates that this was a bona fide coding error. Therefore, we have compared the U.S. sales of BPCC J12 to contemporaneous sales of PCC J12 in the domestic market, adjusting for differences in physical characteristics.

Comment 2: Heiwa states that the weighted average foreign market value used for comparison for July of 1986 is not representative of the average selling price because it is based on one sales transaction of a limited quantity. It argues that this sale price is aberrational when compared with the weighted average of the previous and following months for the same product, and recommends use of sales of this product in October 1986 as the basis of FMV (although it is not contemporaneous) or sales of similar merchandise in the same month, adjusting for differences in physical characteristics.

Department's Position: We disagree. Our ordinary practice is to compare a U.S. sale to home market sales of identical or similar merchandise in the same month if possible, then to compare the U.S. sale with home market sales up to 90 days prior to the U.S. sale, and finally to compare the U.S. sale with home market sales up to 60 days after the U.S. sale. No evidence was provided that the quantities of the merchandise sold affected prices. Review of the sales data does not show the July 1986 sale to be outside the ordinary course of trade by reason of quantity or selling price. The sale is, therefore, appropriately used as the basis of FMV for this month.

Comment 3: Heiwa states that the weighted average foreign market value used for comparison of CFSC material for May of 1987 is inappropriate because the material chosen by the Commerce Department for comparison, FSC material, was not the most similar available. Although Heiwa's October 1987 submission suggested that these two products were made of the same type of rubber, it was incorrect in this respect. Heiwa suggests that the Department use for comparison another CFSC material of a different thickness, adjusting for the difference in thickness. Heiwa recommends that the Department adjust for the difference in thickness based on weighted average price comparisons.

Department's position: We have changed our comparison of CFSC as suggested by Heiwa. However, the methodology suggested by Heiwa for adjusting for the difference in thickness of the two products is not consistent with the Department's practice. The Department prefers to base its adjustments for differences in physical characteristics on differences in the cost of direct materials, labor and factory overhead (*see* 19 CFR 353.16). Therefore, we have adjusted for the difference in thickness between these products according to the materials cost of this type of rubber reported in Heiwa's October 1987 submission.

Comment 4: The Department compared U.S. sales of FFSC J4 material for May of 1987 to sales of FCC J4 in the domestic market in the same month, and in March of 1987. Heiwa states that both of the reported domestic sales involved a clerical error. Both should have been reported as FCC J4, a higher value product. Heiwa suggests that the appropriate comparison is to domestic sales of FFSC in May of 1987, adjusting for differences in physical characteristics.

Department's Position: We agree. A review of the sales listing and respective invoices, indicates this was a bona fide coding error. Therefore, we have compared the U.S. sales of FFSC J4 to contemporaneous sales of FFSC J3 in the domestic market, adjusting for differences in physical characteristics.

Final Results of Review

As a result of our review of the comments received and correction of clerical errors, we determine that the following margins exist:

Manufacturer/Exporter	Margin (percent)
Heiwa Rubber Industries	.85
Yamamoto Corporation	3.09

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for in § 353.48 of the Commerce regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required for all shipments by the reviewed firms of Japanese fabric expanded neoprene laminate. For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after June 30, 1988, and who is unrelated to any reviewed firm, a cash deposit of .85 percent shall be required. These deposit requirements are effective for all shipments of Japanese fabric expanded neoprene laminate entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce regulations (19 CFR 353.53a).

Date: October 25, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88-25244 Filed 10-31-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-028]

Roller Chain, Other Than Bicycle, From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by Tsubakimoto Chain Co. and the petitioner, the Department of Commerce has conducted an administrative review of the antidumping finding on roller chain other than bicycle, from Japan. The review covers Tsubakimoto Chain Co., a manufacturer/exporter of this merchandise to the United States and the period April 1, 1986 through March 31, 1987. The review indicates the existence of dumping margins during this period.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the calculated differences between United States price and foreign market value.

We used best information available for certain U.S. sales when Tsubakimoto did not report data on foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE NOTICE: November 1, 1988.

FOR FURTHER INFORMATION CONTACT: Edward F. Haley or Robert J. Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On May 8, 1987, the Department published in the Federal Register (52 FR 17425) the final results of its last administrative review of the antidumping findings on roller chain, other than bicycle, from Tsubakimoto Chain Co. (Tsubakimoto), Japan. The petitioner and Tsubakimoto requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published a notice of initiation of the antidumping duty administrative review on May 20, 1987 (52 FR 18937). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules will be fully converted to this Harmonized Tariff System ("HTS"). Until that time, the Department will be providing both the appropriate Tariff Schedules of the United States Annotated ("TSUSA") item numbers and the appropriate HTS item numbers with our product descriptions on a test basis. As with the TSUSA, the HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HTS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact Import Specialists at their local Customs office to consult the schedule.

Imports covered by this review are shipments of roller chain, other than bicycle, from Japan. The term "roller chain, other than bicycle" as used in this review includes chain, with or without attachments, whether or not plated or coated, and whether or not manufactured to American or British standards, which is used for power transmission and/or conveyance. Such chain consists of a series of alternately-assembled roller links and pin links in which the pins articulate inside the bushings and the rollers are free to turn on the bushings. Pins and bushings are press fit in their respective link plates. Chain may be single strand, having one row of roller links, or multiple strand, having more than one row of roller links. The center plates are located between the strands of roller links. Such chain may be either single or double pitch and may be used as power transmission or conveyor chain.

This review also covers leaf chain, which consists of a series of link plates alternately assembled with pins in such a way that the joint is free to articulate between adjoining pitches. This review further covers chain model numbers 25 and 35. Roller chain, other than bicycle, is currently classifiable under various provisions of the Tariff Schedules of United States Annotated item item numbers 652.1400 through 652.3800, and under various HTS item numbers, from 7315.11.00 through 7616.90.00.

The review covers Tsubakimoto, a manufacturer/exporter of Japanese roller chain, other than bicycle, to the United States and the period April 1, 1986 through March 31, 1987.

For certain models of roller chain, other than bicycle, sold in the U.S. Tsubakimoto did not provide foreign market data for comparison purposes. Therefore, the Department used the best information available for those sales, which was the weighted-average margin of all exporter's sales price sales which were compared to a foreign market value.

United States Price

In calculating United States price the Department used purchase price or exporter's sales price ("ESP"), both as defined in section 772 of the Tariff Act, as appropriate. Purchase price and exporter's sales price were based on packed, duty-paid, delivered prices to unrelated purchasers in the United States. Where applicable, we made adjustments for U.S. and foreign inland freight, ocean freight, insurance, import duties, brokerage and handling charges, credit, commissions to unrelated parties, and indirect selling expenses. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price when sufficient quantities of such or similar merchandise were sold in the home market to provide a basis of comparison, or constructed value, both as defined in section 773 of the Tariff Act.

Home market price was based on packed, delivered prices to unrelated purchasers in Japan. Constructed value was calculated as the sum of materials, fabrication costs, general expenses, profit, and U.S. packing. The amount added for general expenses was actual general expenses because actual expenses were higher than the statutory minimum of 10 percent of the sum of materials and fabrication costs. Because actual profit was less than 8 percent of the sum of materials, fabrication, and general expenses, the Department added the statutory minimum of 8 percent for profit. We made adjustments, where applicable, for discounts, sales reward, inland freight, differences in packing and credit costs, and indirect selling expenses to offset U.S. selling expenses for ESP calculations and when commissions were paid in one market and not the other. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market

value we preliminarily determine that a weighted-average margin of 0.57 percent exists during the period April 1, 1986 through March 31, 1987.

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 8 days of publication. Any hearing, if requested, will be held 35 days after the date of publication, or the first workday thereafter. Prehearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 32 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions on Tsubakimoto directly to the Customs Service.

Further, as provided by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margin shall be required for this firm. For any shipments of this merchandise manufactured and/or exported by the remaining known manufacturers and/or exporters not covered in this review, the cash deposit will continue to be at the rate published in the final results of the last administrative review for those firms. For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after March 31, 1987 and who is unrelated to Tsubakimoto or any other previously reviewed firm, a cash deposit of 0.57 percent shall be required. These deposit requirements are effective for all shipments of Japanese roller chain, other than bicycle, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: October 25, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88-25245 Filed 10-31-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-045]

Steel Wire Rope From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by the petitioner, importers, and manufacturers, the Department of Commerce has conducted an administrative review of the antidumping finding on steel wire rope from Japan. The review covers 30 manufacturers and/or exporters of this merchandise to the United States, and various periods from March 1, 1975 through September 30, 1984. The review indicates the existence of dumping margins during these periods.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the calculated differences between United States price and foreign market value. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: November 1, 1988.

FOR FURTHER INFORMATION CONTACT: Linda L. Pasden or Robert J. Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On July 31, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 28585) the final results of its last administrative review of the antidumping finding on steel wire rope from Japan (38 FR 28571, October 15, 1973). The petitioner, importers, and manufacturers requested in accordance with § 353.53a(a) of the Commerce Regulations, that we conduct an administrative review. We published a notice of initiation of the antidumping duty administrative review on September 21, 1987 (52 FR 35466). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules will be fully converted to this Harmonized Tariff System ("HTS"). Until that time, the Department will be providing both the appropriate Tariff Schedules of the United States Annotated ("TSUSA") item numbers and the appropriate HTS item numbers with our product descriptions on a test basis. As with the TSUSA, the HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HTS item numbers as well as the TSUSA item numbers in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation in the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by this review are shipments of steel wire rope, except brass electroplated steel truck tire cord of cable construction specially packaged for protection against moisture and atmosphere. Such steel wire rope is currently classifiable under TSUSA item numbers 642.1200, 642.1400, 642.1500, 642.1600, and 642.1700, and HS item numbers 7312.1060, 7312.1090, 7312.1090 and 7312.1050.

The review covers 30 manufacturers and/or exporters of Japanese steel wire rope and various periods for which reviews were requested, from March 1, 1975 through September 30, 1984. Shipments made by J. Gerber & Co. (Japan) Ltd. and Mitsui are being covered in a separate administrative review.

Ataka, Chrysanthemum, Kent-Moore, Far East, Vanguard, Kanematsu-Gosho, C. Itoh, Higashishiba, Kohshin (Koshin), Kokoku, Okura, Shinyo, Taisei Int'l, Teikoku, and Yutoku did not respond or provided an inadequate response to the Department's antidumping questionnaire for *certain periods*. (Ataka and Taisei Int'l are reported to be out of business.) For these periods and firms, the Department used the best information available for assessment and cash deposit purposes.

Best information available for time periods through December 31, 1979, was the bonding rate at time of entry. Beginning January 1, 1980, we used the highest rate for any firm previously reviewed because those rates were higher than any rates found during this review. For non-shipping firms we used their most recent rate.

United States Price

In calculating United States price the Department used purchase price as defined in section 772 of the Tariff Act. Purchase price was based on the packed, f.o.b. or c.i.f. price to unrelated purchasers in the United States, as appropriate. We made adjustments, where applicable, for ocean freight, insurance, and U.S. and foreign inland freight. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, or third country price as defined in section 773 of the Tariff Act. Third-country price was based on Union Wire Rope's packed f.o.b. price to unrelated purchasers for export to Australia. For Shinyo Ropes we used the price to unrelated purchasers in the home market. We made adjustments, where applicable, for foreign inland freight and differences in packing. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margins exist:

Manufacturer/exporter	Margin (percent)	
Chrysanthemum (a.k.a. Kiku)/Ataka:		
10/01/82-09/30/84	11.88	2
Chrysanthemum/C. Itoh:		
10/01/82-09/30/83	-0-	1
10/01/83-09/30/84	11.88	2
Chrysanthemum/Kent-Moore Japan:		
10/01/82-09/30/83	7.29	2
10/01/83-09/30/84	7.29	1
Chrysanthemum/Watanabe Trading:		
10/01/83-09/30/84	1.00	1
Daiyu Kogyo (a.k.a. Dai Steel Wire and Dai Kogyo):		
02/01/82-02/28/83	7.29	1
Hamton Rope:		
02/01/82-09/30/84	7.29	1
Hamton Rope/Far East:		
10/01/82-09/30/83	7.29	2
10/01/83-09/30/84	7.29	1
Hamton Rope/Higashishiba:		
03/01/75-03/31/78	18.32	2
10/01/82-09/30/84	7.29	2
Higashishiba:		
04/01/82-09/30/84	11.88	2
Kawasetsu Wire/Taisei Int'l:		
06/01/75-03/31/78	28.80	2
10/01/80-09/30/83	28.80	2
Kokoku/Kanematsu-Gosho:		
10/01/82-03/31/84	7.29	1
Kokoku/Kohshin (Koshin):		
10/01/82-03/31/84	7.29	2
Kokoku/Tenshō Iwai:		
10/01/82-03/31/84	7.29	2
Kokoku/Shinsho (a.k.a. Shinkyo Shoji, Shinko Shoji and Shinko Wire Corp.):		
10/01/82-03/31/84	7.29	1
Shinko Wire Rope/Kanematsu-Gosho:		
10/01/83-09/30/84	-0-	1
Shinko Wire Rope/Nisho-Iwai:		
10/01/82-09/30/84	-0-	1
Shinyo Ropes/Higashishiba:		
03/01/83-09/30/84	7.29	2
Shinyo Ropes/Vanguard:		
10/01/83-03/31/84	7.29	1
Shinyo Ropes/Yutoku (a.k.a. S.M. Industries):		
10/01/82-09/30/83	4.62	2
10/01/83-09/30/84	-0-	
Teikoku/C. Itoh:		
04/01/78-01/31/82	11.88	2
Teikoku/Kanematsu-Gosho:		
12/01/76-01/31/82	20.57	2
Teikoku/Okura Trading:		
12/01/76-09/30/81	20.57	2
10/01/81-09/31/82	20.57	1
Teikoku/Sakai:		
12/01/76-03/31/78	20.57	1
10/01/80-01/31/82	20.57	1
Teikoku/Shinko Wire:		
04/02/78-01/31/82	20.57	1
Teikoku/Showa Boeki:		
10/01/80-01/31/82	-0-	1
Teikoku/Taisei Int'l:		
12/01/76-03/31/78	20.57	2
04/01/79-01/31/82	20.57	2
Tokyo Rope/Alaska Boeki:		
01/01/77-09/30/81	17.16	1
Tokyo Rope/Ataka:		
04/01/78-09/30/84	17.16	2
Tokyo Rope/Mitsubishi Corp.:		
04/01/78-02/28/83	-0-	1
Union Wire Rope/Sanyo Bussan (a.k.a.Senyu):		
10/01/82-09/30/84	-0-	

1. No shipments during the period, margins are their most recent rate.
2. Used best information available.

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 8 days of publication. Any hearing, if requested, will be held 35 days after the date of publication or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 32 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins for the most recent period for each firm shall be required. For any shipments from the remaining known manufacturers and exporters not covered by this review, the cash deposit will continue to be at the latest rate applicable for each of those firms (47 FR 3395, January 25, 1982; 48 FR 8524, March 1, 1983; 49 FR 12295, March 29, 1984; and, 52 FR 28585, July 31, 1987). For any future entries of this merchandise manufactured or exported by a new manufacturer and/or exporter, whose first shipments occurred after July 31, 1987, and who is unrelated to any reviewed firm, a cash deposit of zero percent shall be required. These deposit requirements are effective for all shipments of Japanese steel wire rope entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1) and 19 CFR 353.53(a)).

Date: October 25, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88-25246 Filed 10-31-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-045]

Steel Wire Rope From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping finding on steel wire rope from Japan. The review covers one exporter of this merchandise to the U.S., Mitsui, and the period January 1, 1974

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through September 30, 1985. The review indicates the existence of dumping margins for some of the period.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value.

Where information received in response to our antidumping questionnaires and supplemental letters was inadequate, we used the best information available for assessment purposes.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: November 1, 1988.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-4195/ 3601.

SUPPLEMENTARY INFORMATION:

Background

On October 15, 1973, the Treasury Department published in the **Federal Register** (38 FR 28571) the antidumping finding on steel wire rope from Japan. The Department of Commerce ("the Department") published a notice of initiation of this antidumping duty administrative review on June 17, 1987 (52 FR 23063). The Department has now conducted that administrative review in accordance with Section 751 of the Tariff Act of 1930 ("the Tariff Act").

The substantive provisions of the Antidumping Act of 1921 ("the 1921 Act") and the appropriate Customs Service regulations apply to all unliquidated entries made prior to January 1, 1980.

Scope of the Review

Imports covered by the review are shipments of steel wire rope, except brass electroplated steel truck tire cord of cable construction specifically packaged for protection against moisture and atmosphere. Such steel wire rope is currently classifiable under Tariff Schedules of the United States Annotated items 642.1200, 642.1400, 642.1531, 642.1805, and 642.1705 and Harmonized System item numbers 73.12.1060, 73.12.1080, 73.12.1090, and 73.12.8901. The review covers one exporter of this merchandise to the U.S., Mitsui, and the period January 1, 1974 through September 30, 1985. Mitsui failed to respond to our request for additional information for the period January 1, 1974 through April 30, 1978. Therefore, for this period the Department used the best information otherwise available, which is the highest rate from the fair value investigation. There were no known shipments by Mitsui of this merchandise to the U.S. during the period October 1, 1982 through September 30, 1985, and there are no known unliquidated entries for this period. For sales between May 1, 1978 and September 30, 1982, United States price and foreign market value were calculated using the methodologies described below.

United States Price

In calculating United States price the Department used purchase price, because all sales were made to unrelated parties prior to importation, as defined in section 772 of the Tariff Act or section 203 of the 1921 Act, as appropriate. Purchase price was based on the f.o.b., or delivered, packed, price to unrelated purchasers in the United States. Where appropriate, we made adjustments for handling, foreign inland freight, marine insurance, and ocean freight. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price as defined in section 773 of the Act or section 204 of the 1921 Act, since there were sufficient sales of such or similar merchandise in the home market. Home market price was based upon the delivered price to unrelated purchasers in the home market. We made adjustments for inland freight and differences in credit and packing expenses. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margins exist:

Exporter	Time period	Margin (percent)
Mitsui	1/1/74-4/30/78	9.68
	5/1/78-9/30/82	[1]
	10/1/82-9/30/85	[1] 0

[1] No shipments during the period; margin from last period in which there were shipments.

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 8 days of publication. Any hearing, if requested, will be held 35 days after the date of publication, or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 32 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Further, as provided for by section 751(a)(1) of the Tariff Act, the Department shall not require a cash deposit of estimated antidumping duties for Mitsui. These cash deposit requirements are effective for all shipments by Mitsui of Japanese steel wire rope, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.53a.

Jan W. Mares,

Assistant Secretary for Import Administration.

Date: October 24, 1988.

[FR Doc. 88-25247 Filed 10-31-88; 8:45 am]

BILLING CODE 3510-DS-M

[C-357-002]

Wool From Argentina; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On July 11, 1988, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on wool from Argentina. We have now completed that review and determine the total bounty or grant to be 6.23 percent *ad valorem* during the period January 1, 1986 through December 31, 1986.

EFFECTIVE DATE: November 1, 1988.

FOR FURTHER INFORMATION CONTACT: Sylvia Chadwick or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On July 11, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 26101) the preliminary results of its administrative review of the countervailing duty order on wool from Argentina (48 FR 14423, April 4, 1983). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Argentine wool. Such merchandise is currently classifiable under items 306.3152, 306.3172, 306.3253, 306.3273, 306.3354, and 306.3374 of the Tariff Schedules of the United States Annotated and under item numbers 510.111.50, 510.121.35 and 510.121.40 of the Harmonized Tariff Schedule.

Final Results of Review

We gave interested parties an opportunity to comment on the preliminary results. We received no comments.

As a result of our review, we determine the total bounty or grant to be 6.23 percent *ad valorem* for the period January 1, 1986 to December 31, 1986.

The Department will instruct the Customs Service to assess countervailing duties of 6.23 percent of the f.o.b. invoice price on all shipments exported on or after January 1, 1986, and on or before December 31, 1986.

The Department will instruct the Customs Service to collect cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 6.23 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.10.

Date: October 24, 1988.

Timothy N. Bergan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 88-25248 Filed 10-31-88; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

AGENCY: Department of Commerce.

ACTION: Notice of application for an amendment to an export trade certificate of review.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an amendment to an export trade certificate of review. This notice summarizes the amendment and requests comments relevant to whether the certificate should be amended.

FOR FURTHER INFORMATION CONTACT: Thomas H. Stillman, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue export trade certificates of review. A certificate of review protects the holder and the members identified in the certificate from private treble damage actions and from civil and criminal liability under Federal and State antitrust laws for the export conduct specified in the certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 87-2A004."

OETCA has received the following application for a second amendment to Export Trade Certificate of Review #87-00004, which was issued on May 19, 1987 (52 FR 19371, May 22, 1987) and first amended on December 11, 1987 (52 FR 46454, December 22, 1987).

Applicant: National Machine Tool Builders' Association ("NMTBA"), 7901 Westpark Drive, McLean, Virginia 22102-4269. Contact: James R. Atwood, legal counsel; Telephone: 202/862-8000.

Application #: 87-2A004.

Date Deemed Submitted: October 17, 1988.

Summary of the Application

NMTBA seeks to amend its certificate to:

1. Add each of the following companies as a new "Member" of the certificate: Compumachine Inc.; Elox Corporation; Fayscott Company; Innovec; J.M. Montgomery Mfg. Inc.; PH Hydraulics & Automation, Inc.; The Pratt & Whitney Company, Incorporated; Productivity Systems, Inc.; Strippit, Inc.; Trumpf Industrial Lasers, Inc.

2. Reinstate both of the following companies as a "Member" of the certificate and change their company names to the new listing cited in this paragraph in parentheses as follows: Acme-Cleveland Corporation (National Acme Co.); MG Cutting Systems (MG Systems Div.).

3. Delete each of the following companies as a "Member" of the certificate: Acro Automation Systems, Inc.; Automation Associates, Inc.; Colt Industries, Inc.; Continental M.D.M., Inc.; Engis Corporation; GM Industries, Inc.; GT Acoustical Technologies; Grinders for Industry; Houdaille Industries, Inc.; Industrial Development Systems, Inc.; The OK Tool Company, Inc.; Reno Machinery and Engineering Co.; Universay Engineering Div., Stanwich Industries, Inc.; Wotan Machine Tool, Inc.; Zero Manufacturing Co.

4. Change the listing of the company name for each current "Member" cited in this paragraph to the new listing cited in this paragraph in parentheses as follows: APEC/CPM Guill Technologies Inc. (A.P.E.C.); Centro-Morgardshammer Inc. (Centro-Metalcut, Inc.); Danley Machine Division (Danley Machine Division/Connell Ltd. Partnership); Equipment Systems (ES/TECH-Equipment Systems Technology Co.); Sciaky Bros. Inc. (Ferranti Sciaky, Inc.); Gehring LP (Gehring Corporation); Bohle Machine Tools Inc. (George Fisher-Bohle Machine Tool Corp.); Geometric Tool-Division Greenfield Industries (Greenfield Industries); USI Clearing (HZ Clearing Inc.); Hansvedt (Hansvedt Industries, Inc.); Kayex-Spitfire Tool & Machine Co. (Kayex-Spitfire); Lodge & Shipley/Manuflex (Manuflex Corporation); Pneumo Precision Inc. (Rank Pneumo Inc.); Surf/Tran (Surf/Tran Division, Robert Bosch Corporation); Ex-Cell-O Corporation (Textron Inc./North American Machine Tool Division); Eitel Presses Inc.

(Transmares Corp.); White Consolidated Industries (WCI Machine Tool & Systems Co.).

5. Identify the certificate holder as "National Machine Tool Builders' Association (a.k.a. NMTBA—The Association for Manufacturing Technology)."

Date: October 27, 1988.

Therese H. Stillman,

Director, Office of Export Trading Company Affairs.

[FR Doc. 88-25200 Filed 10-31-88; 8:45 am]

BILLING CODE 3510-DR-M

Short-Supply Review on Certain Flat-Rolled Carbon Spring Steel; Request for Comments

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-EC Arrangment on Certain Steel Products, with respect to certain flat-rolled carbon spring steel.

DATE: Comments must be submitted on or before November 11, 1988.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230, (202) 377-0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC Arrangement on Certain Steel Products provides that if the U.S. "* * * determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such products." * * *"

We have received a short-supply request for certain flat-rolled carbon spring steel, general specification AISI 1060, hardened, tempered, grinded, polished, in coils, in thicknesses ranging from 0.250 to 0.060 inch and widths ranging from 0.120 to 0.360 inch.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than November 11, 1988. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments on this request in a public file. Anyone submitting business proprietary information should clearly identify that portion of their submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B-099, Import Administration, U.S. Department of Commerce at the above address.

Jan W. Mares,

Assistant Secretary for Import Administration.

October 28, 1988.

[FR Doc. 88-25250 Filed 10-31-88; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review on Certain Steel Tubing; Request for Comments

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products, with respect to certain steel tubing.

EFFECTIVE DATE: Comments must be submitted on or before November 11, 1988.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230, (202) 377-0159.

SUPPLEMENTARY INFORMATION: Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products provides that if the U.S. "* * * determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular category or sub-category (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such category or sub-category * * *"

We have received a short-supply request for steel tubing meeting ASME specifications SA 178 Grade C, SA 209 Grade T-1, SA 210 Grade A-1, SA 210 Grade C, SA 213 Grade T-2, SA 213 Grade T-11, and SA 213 Grade T-22. This tubing ranges from 1.75 to 5.563 inches in diameter and 0.165 to 0.560 inch in wall thickness.

Any party interested in commenting on this request should send written comments as soon as possible, but no later than November 11, 1988. Comments should focus on the economic factors involved in granting or denying the request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly identify the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B-099, at the above address.

Jan Mares,

Assistant Secretary for Import Administration.

October 28, 1988.

[FR Doc. 88-25249 Filed 10-31-88; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Applications: Austin, Texas

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first 12 months is estimated at $165,000 for the project performance of April 1, 1989 to March 31, 1990. The MBDC will operate in the Austin, Texas, Standard Metropolitan Statistical Area (SMSA). The first year cost for the MBDC will consist of $165,000 in Federal Funds and a minimum of $29,116 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDC supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals for firms; offer them a full range of management and technical assistance; and service as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical asistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDC based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for receipt of applications is November 30, 1988. Applications must be postmarked on or before November 30, 1988.

ADDRESS: Dallas Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 1100 Commerce, Room 7B23, Dallas, Texas 75242-0790, (214) 767-8001.

FOR FURTHER INFORMATION CONTACT: Desolene Crenshaw, Business Development Clerk, Dallas Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

A pre-bid conference will be held in Dallas on November 14, 1988 at 1:00 P.M. Conference site information may be obtained by contacting the individual designated above.

Additional RFAs will be available at the conference site.

Melda Cabrera,

Regional Director Dallas Regional Office.

Date: October 26, 1988.

PROJECT SPECIFICATIONS

PROJECT IDENTIFICATION

1. Program Number and Title: 11.800 Minority Business Development.
2. Project Name: Austin, Texas MBDC. (Geographic Area or SMSA)

BUDGET PERIOD DURATION

1. Budget Period (Check One): First X Second —— Third ——
2. Start Date: April 1, 1989.
3. End Date: March 31, 1990.

PROJECT COST

1. Required Federal Funding Level: $165,000.00.
2. Minimum Non-Federal Contribution: $29,116.00.
3. Total Project Cost: $194,116.00.

PROJECT MINIMUM PERFORMANCE GOAL LEVELS

1. Combined Financial Package and Procurement Minimum Goal Level: $10,670,000.00.
2. Billable SMATA Minimum Goal Level: $100,000.00.
3. Number of Clients Minimum Goal Level: 880.

OTHER PROJECT SPECIFICATIONS

1. Closing Date for Submission of this Application: November 31, 1988.
2. *Geographic Specification:* The Minority Business Development Center shall offer assistance in the geographic area of: Austin, Texas.
3. *Eligibility Criteria:* There are no eligibility restrictions for this project. Eligible applications may include individuals, non-profit organizations, for-profit firms, local and state governments, American Indian tribes and educational institutions.
4. *Budget Period:* The competitive award period will be approximately three (3) years consisting of three (3) separate budget periods. Performance evaluations will be conducted, and funding levels will be established for each of three (3) budget periods. The MBDC will receive continued funding, after the initial competitive year, at the discretion of MBDC based upon the availability of funds, the MBDC's performance and Agency priorities.

[FR Doc. 88-25313 Filed 10-31-88; 8:45 am]

BILLING CODE 3510-21-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of an Import Limit for Certain Cotton, Wool and Man-Made Fiber Sweaters Assembled in Guam From Imported Parts

October 27, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit for the new agreement year.

EFFECTIVE DATE: November 1, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: The provision for sweaters assembled in Guam from imported parts and exported from Guam to the United States is being continued for the period November 1, 1988 through October 31, 1989. The limit established for the previous period is being increased to 178,232 dozen.

A certification will continue to be required and will be issued by the authorities in Guam prior to exportation as verification of assembly in Guam. A facsimile of the certification stamp was published in the Federal Register on March 4, 1985 (50 FR 8649).

For those sweaters properly certified, no export visa or license will be required from the country of origin of the merchandise, and imports entered under this procedure will not be charged to limits established for exports from the country of origin. Exports of sweaters in Categories 345, 445, 446, 645 and 646, which are not accompanied by a certification and those in excess of 178,232 dozen, will require the appropriate visa or export license from the country of origin and will be subject to any other applicable restriction.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 52 FR 39677, published on October 23, 1987.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

October 27, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, effective on November 1, 1988, you are directed to permit entry or withdrawal from warehouse for consumption in the United States of 178,232 dozen cotton, wool and man-made fiber textile products in Categories 345, 445, 448, 845 and 848, the product of any foreign country or foreign territory, as determined under Customs Regulation Part 12, Section 12.130 and which have been certified as assembled in Guam and exported to the United States during the twelve-month period beginning on November 1, 1988 and extending through October 31, 1989. You are directed not to require any otherwise applicable import restriction sweaters subject to this provision. A certification will be issued by the authorities in Guam prior to exportation as verification to assembly in Guam. A facsimile of the certification stamp has been provided.

Imports of cotton, wool and man-made fiber textile products in Categories 345, 445, 448, 845 and 848 assembled in Guam, but not of Guam origin, which are not accompanied by a certification and those in excess of 178,232 dozen exported during the twelve-month period beginning on November 1, 1988 and extending through October 31, 1989 will require the appropriate visa or export license from the country of origin and will be charged to any applicable quota.

Imports charged to the category limit for the period November 1, 1987 through October 31, 1988 shall be charged against the level of restraint to the extent of any unfilled balances. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-25198 Filed 10-31-88; 8:45 am]

BILLING CODE 3510-DR-M

CONSUMER PRODUCT SAFETY COMMISSION

Request for Extension of Approval of Information Collection Requirements; Labels and Instructions for Certain Coal and Wood Burning Appliances

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1981 (44 U.S.C. 3501 *et seq.*), the Consumer Product Safety Commission has submitted a request to the Office of Management and Budget for an extension through April 20, 1991, of its approval of collection of information requirements in 16 CFR Part 1406. That rule requires the manufacturers (including importers) of certain wood and coal burning appliances to provide safety labels on, and directions with, the products and to send copies of the labels and directions to the Commission. The manufacturers are also required to send the Commission an explanation of how the appropriate clearance distances stated on the labels and directions were determined. Since the requirement to submit information on clearances and copies of current materials to the Commission is already in effect, the future burden of this requirement applies only to manufacturers introducing new models or making changes to required information in previously submitted materials.

The purposes of these reporting requirements are to reduce the risks associated with the installation, operation, and maintenance of these appliances and to help determine the extent to which manufacturers are complying with 16 CFR Part 1406.

Information About the Requested Extension of Approval of Requirements for Collection of Information

Agency Address: Consumer Product Safety Commission, Washington, DC 20207.

Title of Information Collection: Coal and Wood Burning Appliances—Notification of Performance and Technical Data; 16 CFR Part 1406.

Type of Request: Extension of approval.

Frequency of Collection: One time, plus updates when new models are introduced or previously submitted materials are changed.

General Description of Respondents: Manufacturers and importers of coal and wood burning fireplace stoves, heaters, and similar appliances.

Estimated Number of Respondents: 80.

Number of Responses per Respondent: 1.

Estimated Average Number of Hours per Response: 3.

Estimated Number of Hours for all Respondents: 60 per year.

Comments: Comments on this requested extension of approval of information collection requirements should be addressed to Pamela Barr, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395-7340. Copies of the request for extension of information collection requirements are available from Francine Shacter, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 492-6415.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: October 25, 1988.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 88-25186 Filed 10-31-88; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

October 21, 1988.

The USAF Scientific Advisory Board HQ Air Force Test and Evaluation Center Advisory Group will meet on November 30–December 1, 1988, from 8:00 a.m. to 5:00 p.m., at Kirtland, AFB, NM.

The purpose of this meeting is to review the status of current and proposed HQ AFOTEC managed Initial Operational Test and Evaluation test programs. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88-25146 Filed 10-31-88; 8:45 am]

BILLING CODE 3910-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

October 21, 1988.

The USAF Scientific Advisory Board Ad Hoc Committee on Hypersonic Test Facilities will meet on 21 November 1988, from 8:00 a.m. to 5:00 p.m., at the Pentagon, Washington DC, Room 5D982.

The purpose of this meeting is to review the status of the study's final report. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Liaison Officer.

[FR Doc. 88-25156 Filed 10-31-88; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. QF89-13-000 et al.]

Chevron U.S.A. Inc., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

October 26, 1988.

Take notice that the following filings have been made with the Commission:

1. Chevron U.S.A. Inc.

[Docket No. QF89-13-000]

On October 18, 1988, Chevron U.S.A. Inc. (Applicant), of P.O. Box 1392, Bakersfield, California 93302 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is located in Fresno County, California. The facility will consist of two gas turbine generators and two heat recovery steam generators. The electric power production capacity of the facility will be 4800 kW. The primary source of energy is natural gas. The thermal energy recovered from the facility will be used for tertiary petroleum production. Construction is scheduled to begin the last quarter of 1988.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

2. Warrensburg Hydro Power Limited Partnership

[Docket No. QF89-12-000]

On October 17, 1988, Warrensburg Hydro Power Limited Partnership (Applicant), submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 2,835 KW hydroelectric facility (FERC P. 9074) will be located on the Schroon River in Warren County, New York.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

3. Greenleaf Unit Two Associates, Inc. (Yuba City Facility)

[Docket No. QF89-9-000]

On October 14, 1988, Greenleaf Unit Two Associates, Inc. (Applicant), c/o LFC Energy Corp., 3 Randor Corporate Center, 100 Matsonford Road, Radnor, Pennsylvania 19087-4574 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping-cycle cogeneration facility will be located in Yuba City, California near the intersection of California State Highway 99 and Route 20. The facility will consist of a combustion turbine generator and a supplementary fired heat recovery steam generator (HRSG). High pressure steam from HRSG will be reinjected into the combustion turbine for emission control and power augmentation, low pressure steam will be used for processing of agriculture products at The Sunsweet Growers, Inc. The maximum net electric power production capacity of the facility will be 49.5 MW. The primary source of energy will be natural gas. The installation of the facility was scheduled to begin on October 1, 1988.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-25159 Filed 10-31-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF89-7-000 et al.]

Colorado Power Partners et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take Notice that the following filings have been made with the Commission:

1. Colorado Power Partners

[Docket No. QF89-7-000]

October 25, 1988.

On October 12, 1988, Colorado Power Partners (Applicant), of 303 East Seventeenth Avenue, Suite 1070, Denver, Colorado 80203, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Brush,

Colorado. The facility will be constructed in two phases. Each phase of the project will consist of two combustion turbine generators and one extraction/condensing steam turbine generator. Thermal energy recovered from the facility will be used for the year-round heating of a 42-acre greenhouse complex. The total net electric power production capacity of the facility will be 118 MW. The primary energy source will be natural gas. Installation of phase one of the facility will begin in April 1989.

Comment date: Thirty days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

2. Maine Yankee Atomic Power Company

[Docket No. ER88-505-000]

Take notice that on October 20, 1988, Maine Yankee Atomic Power Company (Maine Yankee) tendered for filing a compliance filing pursuant to Commission's letter order issued September 20, 1988 in the above-captioned docket. The compliance filing contains a tariff sheet which amends Maine Yankee's current Tariff by incorporating a Unit License Life clause. As explained in its transmittal letter, Maine Yankee's filing does not include a tariff sheet incorporating an Equity Return Reopener Clause. Nor does Maine Yankee include in its filing a Compliance Refund Report.

Comment date: November 14, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. New York State Electric & Gas Corporation

[Docket No. ER88-508-001 and ER88-520-001]

Take notice that on October 21, 1988, New York State Electric & Gas Corporation (NYSEG) tendered for filing information requested by the Commission, after finding the agreement between NYSEG and GPU Service Corporation (GPU) for the interchange of excess energy (Docket No. ER88-508-000) and the amendment to NYSEG's agreements with Connecticut Light and Power Company, Central Hudson Gas & Electric Corporation, and the New York Power Authority for the sale of short-term energy (Docket No. ER88-520-000) were deficient with respect to the Commission's Regulations.

NYSEG requests that the 60-day filing requirement be waived and that June 1, 1988 be allowed as the effective date of the filing in Docket No. ER88-508-000 and that January 1, 1988 be allowed as the effective date for the filing in Docket No. ER88-520-000.

Comment date: November 14, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Empire District Electric Company

[Docket No. ER88-513-001]

Take notice that on October 14, 1988, Empire District Electric Company (EDE) tendered for filing its compliance report in compliance with the Commission's Order of September 1, 1988.

Copies of this filing are being sent to all parties of record.

Comment date: November 14, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. New England Power Company

[Docket No. ER88-531-000]

Take notice that on September 30, 1988, New England Power Company (NEP) tendered for filing a proposed change in its Service Agreement for Primary Service for Resale with the Narragansett Electric Company (Narragansett). The proposed change would decrease the fixed credits allowed Narragansett on its purchased power billing by NEP in the amount of $739,100 annually based on the 12-month period ending December 31, 1989.

NEP requests an effective date of December 1, 1988. However, NEP requests that the amendment be suspended for no longer than one month to become effective January 1, 1989, in order to coincide with the effective date of its W-10 wholesale rate filing also filed on September 30, 1988.

Copies of the filing were served upon Narragansett and the Rhode Island Public Utilities Commission.

Comment date: November 14, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Pennsylvania Power & Light Company

[Docket No. ER89-16-000]

Take notice that on October 19, 1988, Pennsylvania Power & Light Power (PP&L) tendered for filing changes to the Power Supply Agreement, dated as of the 25th day of May, 1983, between PP&L and the Borough of Kutztown, as supplemented, presented on file with the Commission as Rate Schedule FERC No. 79. The Supplement to the Power Supply Agreement redefines PP&L's supply obligations to the Borough of Kutztown. Currently, the Borough of Kutztown receives its entire supply of electric energy for its municipal electric system from PP&L. On October 1, 1988, the Borough of Kutztown began to receive a portion of its electric energy requirements from the New York Power Authority (NYPA). The Supplement to the Power Supply Agreement establishes rates for the delivery of NYPA hydroelectric energy to the Borough of Kutztown.

Copies of PP&L's filing have been served upon the Borough of Kutztown and the Pennsylvania Public Utility Commission.

Comment date: November 14, 1988, in accordance with Standard Paragraph E at the end of the document.

7. Cincinnati Gas & Electric Company

[Docket No. ER89-17-000]

Take notice that on October 20, 1988, Cincinnati) Gas & Electric Company (Cincinnati) tendered for filing a First Supplemental Agreement dated as of October 1, 1988, to the Interconnection Agreement, dated August 4, 1961, between Cincinnati and the City of Hamilton, Ohio (Hamilton).

The new First Supplemental Agreement is for the transmission of electric power and energy to be obtained by Hamilton from the Power Authority of the State of New York. The First Supplemental Agreement is to become effective October 1, 1988.

Cincinnati states that the reason for the First Supplemental Agreement is to provide Hamilton with up to 8,000 kW of supplemental transmission service to enable Hamilton to obtain power and energy from the Power Authority of the State of New York.

A copy of the filing was served upon the City of Hamilton and the Public Utilities Commission of Ohio.

Comment date: November 14, 1988, in accordance with Standard Paragraph E at the end of this notice.

8. Carolina Power & Light Company

[Docket No. ER89-19-000]

Take notice that on October 21, 1988, Carolina Power & Light Company tendered for filing a Supplement to the Service Agreement with South River Electric Membership Corporation to reflect the installation of 115kV metering at the Grays Creek Point of Delivery. The Supplement is requested to become effective 60 days after filing.

Comment date: November 14, 1988, in accordance with Standard Paragraph E at the end of this notice.

9. Gulf States Utilities Company

[Docket No. ER88-558-021]

Take notice that on October 21, 1988, Gulf States Utilities Company tendered for filing an additional refund to a compliance report with refund made to the Brazos Electric Power Cooperative, Inc. dated May 24, 1988. This additional refund reflects principal and interest on the refund portion of the February 1988 bill for the Cincinnati metering point.

Copies of this filing have been served upon all parties affected by this proceeding.

Comment date: November 14, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Prededure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-25285 Filed 10-31-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-24-000 et al.]

Panhandle Eastern Pipe Line Co. et al.; Natural Gas Certificate Filings

October 27, 1988.

Take notice that the following filings have been made with the Commission:

1. Panhandle Eastern Pipe Line Company

[Docket No. CP89-24-000]

Take notice that on October 7, 1988, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-24-000 a request, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations, for authorization to provide transportation on an interruptible basis for Quantum Chemical Corporation (Quantum), an end user, under the blanket certificate issued in Docket No. CP86-585-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Panhandle proposes to transport up to 20,000 Dt of natural gas for Quantum from various existing receipt points in Texas, Oklahoma, Kansas, Colorado, Wyoming, and Illinois and deliver such gas to Quantum in Douglas County, Illinois.

Panhandle indicated that the estimate daily quantities of gas to be transported is 15,000 Dt, peak day quantities is estimated to be 20,000 Dt, and 5,475,000 Dt is estimated for annual quantities.

Further, Panhandle states that transportation service for Quantum commenced on August 4, 1988, as reported in Docket No. ST88-5641, pursuant to the self-implementing provision of § 284.223 of the Regulations.

Comment date: December 12, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. Northwest Pipeline Corporation

[Docket No. CP89-57-000]

Take notice that on October 13, 1988, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-57-000, a request, pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Conoco Inc. (Conoco), a producer of natural gas, under Northwest's blanket certificate issued in Docket No. CP86-578-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest states that pursuant to a Transportation Agreement dated July 14, 1988, as amended, under Rate Schedule TI-1, it proposes to transport up to 75,000 MMBtu of natural gas per day for Conoco from points of receipt located in Daggett and Uintah Counties, Utah, Rio Blanco and Delores Counties, Colorado and Sweetwater County, Wyoming to delivery points on Northerwest's system located in Idaho, Oregon and Washington.

Northwest further states that the maximum day, average day, and annual transportation volumes would be approximately 75,000 MMBtu, 300 MMBtu and 110,000 MMBtu, respectively.

Northwest advises that service under § 284.223(a) commenced September 1, 1988, as reported in Docket No. ST89-33-000.

Comment date: December 12, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. Northwest Pipeline Corporation

[Docket No. CP89-46-000]

Take notice that on October 12, 1988, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-46-000 a request pursuant to §§ 157.205 and 157.212 (18 CFR 157.205 and 157.212) of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate two new taps on the North Seattle lateral pipeline in Snohomish County, Washington, for the sale of gas to Washington Natural Gas Company (Washington Gas), under Northwest's blanket certificate authorization which was issued by Commission order on September 1, 1982, in Docket No. CP82-433, 20 FERC ¶62,412(1982), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

By letter agreement with Washington Gas dated August 11, 1988, Northwest agreed to construct two new sales taps on its North Seattle lateral pipeline in Snohomish County, Washington. Washington Gas informed Northwest that the sales taps were required to provide increased natural gas service to the City of Seattle, Washington. However, it is stated that the total quantity of gas to be transported for Washington Gas will not exceed currently authorized maximum levels. Northwest states the proposed interruptible deliveries will have no significant impact on its peak day and annual deliveries.

Gas delivered to these proposed sales taps will be sold under Northwest's ODL-1 Rate Schedule.

It is stated Washington Gas has agreed to reimburse Northwest for all direct construction costs, estimated to be $17,920 plus $3,715 to compensate for any income tax impact. Northwest will pay all labor and expense costs of $2,251.

Comment date: December 12, 1988, in accordance with Standard Paragraph G at the end of this notice.

4. Northwest Pipeline Corporation

[Docket No. CP89-53-000]

Take notice that on October 13, 1988, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-53-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Loutex Energy, Inc. (Loutex), a marketer of natural gas, under Northwest's blanket certificate issued in Docket No. CP86-578-000 pursuant to section 7 of the Natual Gas Act, all as more fully set forth in the request which is on file with the

Commission and open to public inspection.

Northwest states that pursuant to a Transporation Agreement dated February 10, 1988, as amended June 29, 1988, under Rate Schedule TI–1, it proposes to transport up to 100,000 MMBtu of natural gas per day for Loutex from the Stanfield and Starr Road interconnects with Pacific Gas Transmission Company located in Umatilla and Spokane Counties, Washington, respectively, and the Sumas interconnect with Westcoast Energy Company in Whatcom County, Washington, to various interconnects with other pipeline companies located in Daggett and Uintah Counties, Utah, Sweetwater County, Wyoming, La Plata County, Colorado, Umatilla and Whatcom Counties, Washington.

Northwest states that no construction of facilities would be required to provide the transportation service.

Northwest further states that the maximum day, average day, and annual transportation volumes would be approximately 100,000 MMBtu, 2,760 MMBtu and 1,000,000 MMBtu, respectively.

Northwest advises that service under § 284.223(a) commenced September 3, 1988, as reported in Docket No. ST88–12–001.

Comment date: December 12, 1988, in accordance with Standard Paragraph G at the end of this notice.

5. Northwest Pipeline Corporation

[Docket No. CP89–55–000]

Take notice that on October 13, 1988, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89–55–000, a request, pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Amoco Energy Trading Company (Amoco), a marketer of natural gas, under Northwest's blanket certificate issued in Docket No. CP86–578–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest states that pursuant to a Transportation Agreement dated February 10, 1988, as amended September 1, 1988, under Rate Schedule TI–1, it proposes to transport up to 400,000 MMBtu of natural gas per day for Amoco from various sources and interconnects with other pipeline companies located in New Mexico, Colorado, Wyoming, Utah and Washington to essentially all delivery points located on Northwest's system and interconnects with other pipeline companies in Colorado, Idaho, Oregon, Utah, Washington and Wyoming.

Northwest states that no construction of facilities would be required to provide the transportation service.

Northwest further states that the maximum day, average day, and annual transportation volumes would be approximately 400,000 MMBtu, 5,000 MMBtu and 1,825,000 MMBtu, respectively.

Northwest advises that service under § 284.223(a) commenced September 2, 1988, as reported in Docket No. ST88–15–001.

Comment date: December 12, 1988, in accordance with Standard Paragraph G at the end of this notice.

6. United Gas Pipe Line Company

[Docket No. CP89–43–000]

Take notice that on October 12, 1988, United Gas Pipeline Company (United), P.O. Box 1478, Houston, Texas 77251, filed in Docket No. CP89–43–000, an application pursuant to section 7 of the Natural Gas Act for authorization to abandon a firm direct sales service, and a certificate of public convenience and necessity authorizing a revised interruptible direct sales service, all as more fully set forth in the application on file with the Commission and open to public inspection.

United proposes to abandon firm direct sales service to International Paper Company (International Paper). United explains that it was authorized to provide service by certificate authority issued in Docket Nos. G–6060, G–232, and CP86–210. In lieu of the firm service, United proposes to render interruptible service to International Paper as follows:

Location	Prior Certificating Docket Nos.	Proposed MDQ (MMBtu)
(1) Mobile County Alabama	G–6060	14,300
(2) Jackson County Mississippi	G–232	23,000
(3) Warren County Mississippi	CP86–210	17,710
(4) Webster Parish Louisiana	G–232	2,000

United explains that it would continue to use existing facilities to provide the interruptible sales service to International Paper.

Comment date: November 17, 1988, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in the subject to jurisdication conferred upon the Federal Energy regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believe that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as a application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 88–25286 Filed 10–31–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP89–76–000 et al.]

Southern Natural Gas Company et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Southern Natural Gas Company

[Docket No. CP89–76–000]

October 25, 1988.

Take notice that on October 21, 1988, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP89–76–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for Rangeline Corporation (Rangeline), a marketer, under Southern's blanket certificate issued in Docket No. CP88–36–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern proposes to transport, on an interruptible basis, up to 5,000 MMBtu of natural gas equivalent per day pursuant to a transportation agreement dated August 5, 1988, between Southern and Rangeline. Southern would receive gas at various receipt points in Louisiana, offshore Louisiana, Mississippi and Alabama and redeliver equivalent volumes of gas, less the applicable fuel charge set forth in Rate Schedule IT and any shrinkage, at a deliver point in South Caroline.

Southern further states that the estimated average daily and annual quantities would be 2,000 MMBtu and 730,000 MMBtu, respectively. Service under § 284.223(a) commenced on August 6, 1988, as reported in Docket No. ST88–5717, it is stated.

Comment date: December 9, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. Southern Natural Gas Company

[Docket No. CP89–80–000]

October 25, 1988.

Take notice that on October 21, 1988, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP89–80–000 a request pursuant to §§ 284.223 and 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide an interruptible transportation service for EnTrade Corporation (EnTrade), under Southern's blanket authorization issued in Docket No. CP88–316–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern states that pursuant to a transportation agreement dated August 5, 1988, it proposes to receive up to 50 billion Btu of natural gas per day at existing receipt points located in Louisiana, offshore Louisiana, Texas, Alabama, and Mississippi and redeliver the gas to EnTrade at existing interconnections in Whitfield County, Georgia. Southern states that the peak day, average day, and annual quantities would be 50 billion Btu, 10 billion Btu, and 3,650 billion Btu, respectively. It is indicated that a 120-day transportation service under § 284.223(a) commenced on August 6, 1988, as reported in Docket No. ST88–5510.

Southern states that no facilities need be constructed to implement the service. Southern indicates that the agreement provides for a one month primary term but that the agreement would extend for successive terms of one month unless and until cancelled by either party giving five days written notice. Southern proposes to charge the rates and abide by the terms and conditions of its Rate Schedule IT.

Comment date: December 9, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. Natural Gas Pipeline Company of America

[Docket No. CP89–73–000]

October 26, 1988.

Take notice that on October 20, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89–73–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform an interruptible transportation service for MidCon Marketing Corp. (MMC), a marketer, under Natural's blanket certificate issued in Docket No. CP86–582–000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural states that pursuant to a transportation agreement dated July 5, 1988, as amended on August 17, 1988, it proposes to receive up to 750 billion Btu of natural gas per day from MMC at specified receipt points located in the states of Oklahoma, Texas, Louisiana, New Mexico, Kansas, Iowa, and Wyoming, as well as offshore Texas and Louisiana, and redeliver the gas at delivery points in the states of Illinois, New Mexico, Kansas, Louisiana, and Texas. Natural states that the peak day, average day, and annual volumes would be 750 billion Btu, 100 billion Btu, and 36,500 billion Btu, respectively. It is stated that on August 20, 1988, Natural initiated a 120-day transportation service for MMC under § 284.223(a) as reported in Docket No. ST88–259–000.

Natural further states that no facilities need be constructed to implement the service. Natural states that the primary term of the transportation service would expire December 31, 1988, and continue month-to-month unless cancelled by five day's notice by either party. Natural proposes to charge rates and abide by the terms and conditions of its Rate Schedule ITS.

Comment date: December 12, 1988, in accordance with Standard Paragraph G at the end of this notice.

4. Trunkline Gas Company

[Docket No. CP89–71–000]

October 26, 1988.

Take notice that on October 19, 1988, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–71–000 a request pursuant to § 157.205 of the Commission's Regulations to transport gas on behalf of Loutex Energy, Inc. (Loutex), under Trunkline's blanket certificate issued in Docket No. CP86–586–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline requests authorization to transport, on an interruptible basis, up to a maximum of 60,000 dekatherms of natural gas per day for Loutex, a marketer of natural gas, from various points of receipt on its system to Acadian Natural Gas Company (Acadian) in St. Mary Parish, Louisiana. Trunkline anticipates transporting a daily quantity of 20,000 dekatherms and an annual quantity of 7,300,000 dekatherms.

Trunkline states that the transportation of natural gas for Loutex commenced July 1, 1988, as reported in Docket No. ST88–4946, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the

blanket certificate issued to Trunkline in Docket No. CP88-536-000.

Comment date: December 12, 1988, in accordance with Standard Paragraph G at the end of the notice.

5. United Gas Pipe Line Company

[Docket No. CP89-35-000]

October 26, 1988.

Take notice that on October 7, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-35-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide interruptible transportation service on behalf of Texaco Gas Marketing, a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that pursuant to an interruptible gas transportation agreement executed May 6, 1988, as amended, it proposes to transport a maximum daily quantity of 360,500 MMBtu of natural gas from one hundred three (103) points of receipt located in Louisiana, offshore Louisiana, Texas, and Mississippi to twenty-seven (27) points of delivery located in various counties within the States of Louisiana and Mississippi. United further states that the service commenced August 25, 1988, as reported in Docket No. ST88-5830, pursuant to § 284.223(a) of the Commission's Regulations.

Comment date: December 12, 1988, in accordance with Standard Paragraph G at the end of this notice.

6. Williams Natural Gas Company

[Docket No. CP89-48-000]

October 26, 1988.

Take notice that on October 12, 1988, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-48-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide transportation for Rangeline Corporation (Rangeline) under WNG's blanket certificate issued in Docket No. CP86-631-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

WNG requests authorization to transport, on an interruptible basis, up to a maximum of 91,405 MMBtu of natural gas per day for Rangeline from various receipt points in Kansas, Oklahoma, Texas and Wyoming to various delivery points on WNG's pipeline system located in Kansas and Missouri. WNG anticipates transporting 40,000 MMBtu on an average day and 15,381,200 MMBtu on an annual basis.

WNG states that the transportation of natural gas for Rangeline commenced on August 12, 1988, as reported in Docket No. ST88-5647-000, for a 120-day period pursuant to § 284.223(a)(1) of the Commission's Regulations and the blanket certificate issued to WNG in Docket No. CP86-631-000. WNG proposes to continue this service in accordance with §§ 284.221 and 284.223 of the Commission's Regulations.

Comment date: December 12, 1988, in accordance with Standard Paragraph G at the end of this notice.

7. Williams Natural Gas Company

[Docket No. CP89-64-000]

October 26, 1988.

Take notice that on October 13, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed an application in Docket No. CP89-64-000 pursuant to section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations for permission and approval to abandon all sales services to the Cities of Hamilton, Lebo, McLouth and Sharon, Kansas, referred to collectively as "Cities", all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Williams requests authorization under section 7(b) of the Natural Gas Act to abandon existing full requirements sales service to the Cities under Williams' prior Rate Schedules F, C, and I, retroactively effective as on August 5, 1988, with respect to Hamilton, Lebo and McLouth, and August 18, 1988, for Sharon, the dates Williams indicates that the Cities began receiving all of their gas requirements from third-party suppliers under transportation agreements between Williams and Vesta Energy Company. Williams states that such abandonment authorization is consistent with the Commission's order issued July 5, 1988 (44 FERC ¶ 61,009) as an option for which sales customers could negotiate with Williams upon expiration of their sales contracts.

Williams states further that abandonment authorization retroactive to the time at which the Cities commenced receipt of 100 per cent of their requirements from third-party sources is appropriate and within the Commission's authority under the Natural Gas Act.

Pursuant to 18 CFR 284.10(d)(2), the exercise of the customers' option to convert constitutes consent to the proposed abandonment.

Comment date: November 16, 1988, in accordance with Standard Paragraph F at the end of this notice.

8. Williams Natural Gas Company

[Docket No. CP89-67-000]

October 26, 1988.

Take notice that on October 14, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed an application in Docket No. CP89-67-000 pursuant to section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations for permission and approval to abandon all sales services to the Cities of Argonia and Howard, Kansas, The Ramona Gas Authority, Washington County, Oklahoma, and The Northwest Oklahoma Public Facilities Authority, referred to collectively as the "Cities," all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Williams requests authorization under section 7(b) of the Natural Gas Act to abandon existing full requirements sales service to the Cities under Williams's prior Rate Schedules F, C and I, retroactive effective as of August 5, 1988, with respect to Argonia, August 18, 1988, with respect to Howard, and September 1, 1988, with respect to the other two customers, the dates Williams indicates that the Cities began receiving all of their gas requirements from third-party suppliers under transportation agreements between Williams and Vesta Energy Company. Williams states that such abandonment authorization is consistent with the Commission's order issued on July 5, 1988 (44 ¶ 61,009) as an option for which sales customers could negotiate with Williams upon expiration of their sales contracts.

Williams states further that abandonment authorization retroactive to the time at which the Cities commenced receipt of 100 percent of their requirements from third-party sources is appropriate and within the Commission's authority under the Natural Gas Act.

Pursuant to 18 CFR 284.10(d)(2) the exercise of the customers' option to convert constitutes consent to the proposed abandonment.

Comment date: November 16, 1988, in accordance with Standard Paragraph F at the end of this notice.

9. Sea Robin Pipeline Company

[Docket No. CP89-68-000]

October 27, 1988.

Take notice that on October 13, 1988, Sea Robin Pipeline Company (Sea Robin), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-68-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing an interruptible transportation service on behalf of Texas Gas Transmission Company (Texas Gas), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Sea Robin would receive up to 500 Mcf per day of natural gas made available to Texas Gas from Eugene Island Block 273 and then deliver equivalent volumes to Columbia Gulf Transmission Company (Columbia Gulf) and United Gas Pipe Line Company (United) for the account of Texas Gas, at or near the onshore terminus of Sea Robin's pipeline near Erath, Louisiana.

It is further stated that for each Mcf of gas delivered by Sea Robin to Columbia Gulf and United on behalf of Texas Gas, Sea Robin will charge Texas Gas the currently effective rate for ITS Service as set forth on Sheet No. 4-A1 of Sea Robin's FERC Gas Tariff, Original Volume No. 1 or as it may be amended from time to time.

The term of the transportation agreement between Sea Robin and Texas Gas is stated to be for a primary term of 2 years from the date of initial deliveries and continue in full force and effect from year to year thereafter for successive 1 year terms, subject to termination upon 180 days prior written notice.

Comment date: November 17, 1988, in accordance with Standard Paragraph F at the end of this notice.

10. Panhandle Eastern Pipe Line Company

[Docket No. CP89-29-000]

October 27, 1988.

Take notice that on October 7, 1988, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-29-000 a request pursuant to section 7 of the Natural Gas Act and §§ 157.205 and 157.212 of the Commission's Regulations thereunder, for authorization to install, own and operate certain pipeline facilities to provide an additional delivery point to Ohio Gas Company (Ohio Gas), an existing sales customer, and to reassign among delivery points the existing volumes of gas delivered to Ohio Gas, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle indicates that it was granted blanket certificate authorization in Docket No. CP83-83 on January 10, 1983.

Panhandle proposes to construct and operate a new delivery point (Carpenter Road Point) where Ohio Gas' facilities connect with Panhandle's mainline in Defiance County, Ohio. Panhandle estimates that the proposed delivery point would cost $77,670.

Panhandle states that currently pending before the Commission in Docket No. CP83-674 is Panhandle's application to partially abandon the sales contract demand of seven customers including Ohio Gas. Panhandle indicates that the instant application reflects this reduced level of sales service due to conversion to firm transportation. The application states that Ohio Gas has requested that, of the total of 58,553 Mcf of natural gas per day for which Ohio Gas has contracted, Panhandle deliver a total of 10,511 Mcf of natural gas per day to four Ohio Gas delivery points, including the proposed Carpenter Road Point. It is further stated that no specific volumes of gas are to be assigned for delivery only at the Carpenter Road Point, however the addition of the proposed delivery point would not change the total maximum sales delivery obligation to Ohio Gas (58,553 Mcf per day).

Panhandle also states that the proposed Carpenter Road Point would not impact Panhandle's peak day and annual deliveries.

Comment date: December 12, 1988, in accordance with Standard Paragraph G at the end of this notice.

11. Panhandle Eastern Pipe Line Company

[Docket No. CP89-30-000]

October 27, 1988.

Take notice that on October 7, 1988, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-30-000 a request under sections 7(b) and 7(c) of the Commission's Regulations under the Natural Gas Act for an amended certificate of public convenience and necessity and for limited-term and permanent orders permitting and approving partial abandonment of jurisdictional sales service provided to Michigan Gas Storage Company (Storage Company), an existing jurisdictional sales customer under Rate Schedule CS-1 of Panhandle's FERC Gas Tariff Original Volume No. 1, and to provide the resulting level of sales service under Rate Schedule LS-1, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Panhandle states that Rate Schedule CS-1 provides for a contract demand of 120,000 Mcf of natural gas per day from November through March and 105,000 Mcf of natural gas per day from April through October. It is stated that Rate Schedule CS-1 also provides for an annual contracted volume (ACV) of 51,945,000 Mcf annually.

Panhandle states that it has entered into an interim contract with Storage Company dated August 25, 1988 (Interim Contract), and that the volumes specified under section A of article 1 of such contract represent a monthly contract demand of 35,000 Mcf of natural gas per day for the period of time from October 1, 1988 through October 31, 1989. It is further stated that the volumes specified under section B of article 1 of the Interim Contract represent a monthly contract demand of 80,000 Mcf of natural gas per day for the period from November 1, 1989 until termination of the Interim Contract.

Panhandle proposes that upon approval of the instant application, the ACV sales service pursuant to Rate Schedule CS-1 be abandoned effective October 1, 1988.

Panhandle submits that at Docket Nos. RP88-240 and RP88-241, it filed revised tariff sheets to recover from its customers, including Storage Company, portions of prudently incurred take-or-pay buy-out and buy-down costs. Panhandle states that the portions of these which are attributable to Storage Company are detailed in those filings and may be amended, supplemented, revised or modified pursuant to Commission authorizations or otherwise as permitted or required by law. Panhandle further states that nothing in its application shall be prejudicial to Panhandle's rights to recover these costs from Storage Company or to recover any other costs attributable to Storage Company.

Comment date: November 17, 1988, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest

in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 88-25165 Filed 10-31-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-248-001]

Arkla Energy Resources; Filing of Revised Tariff Sheets in Compliance with Commission Order Dated September 30, 1988

October 26, 1988.

Take notice that on October 20, 1988, Arkla Energy Resources (AER), a division of Arkla, Inc., tendered for filing the following tariff sheets:

Rate Schedule No. X-36

Original Volume No. 3

Substitute Original Sheet No. 185.2

Rate Schedule No. G-2

First Revised Volume No. 1

Substitute Original Sheet No. 4.1

AER states these tariff sheets are filed in compliance with the Commission order dated September 30, 1988 to reflect the revised allocation of take-or-pay costs to AER's jurisdictional customers after omitting all reference to Williams Natural Gas Company during the 1980-1982 base period on Schedule A. These sheets also track the total revised take-or-pay costs allocated by United Gas Pipe Line Company to AER in its filing dated August 31, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.214). All such motions or protests should be filed on or before November 2, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-25160 Filed 10-31-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-8-000]

Northwest Pipeline Corp; Waiver Request

October 25, 1988.

Take notice that on October 19, 1988, Northwest Pipeline Corporation ("Northwest") filed with the Federal Energy Regulatory Commission ("Commission") for permission to exclude the jurisdictional portion of Rate Schedule T-1 commodity revenues from the refund subaccount of Account No. 191 effective July 3, 1988. Northwest notes that in its pending rate case in Docket No. RP88-47-000, several different proposals have been made for the treatment of Rate Schedule T-1 commodity revenues. In light of such uncertainty beginning July 3, 1988, Northwest believes that the Rate Schedule T-1 commodity revenues should be excluded from the refund subaccount until the issue is resolved in Docket No. RP88-47-000.

A copy of this filing has been served on Northwest's jurisdictional sales customers and affected state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 2, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 88-25161 Filed 10-31-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP77-559-002]

Southern Natural Gas Co.; Proposed Cancellation of Rate Schedule

October 26, 1988.

Take notice that on October 19, 1988, Southern Natural Gas Company (Southern) tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 3, to be effective November 18, 1988:

Nineteenth Revised Sheet No. 1
First Revised Sheet No. 121
First Revised Sheet No. 160
First Revised Sheet No. 278
First Revised Sheet No. 319
First Revised Sheet No. 352
First Revised Sheet No. 361
First Revised Sheet No. 434
First Revised Sheet No. 454
First Revised Sheet No. 496
First Revised Sheet No. 529

Southern states that the proposed tariff sheets are being filed to effect the cancellation of Rate Schedules F-5, F-6, F-9, F-10, F-12, F-13, F-14, F-15, F-16 and F-18 of Original Volume No. 3 of Southern's FERC Gas Tariff. Southern states that it has been authorized by the Commission to abandon the services rendered pursuant to such rate schedules and, in fact, has not rendered any service under such rate schedules since 1981.

Southern states that copies of the filing have been mailed to all of Southern's former customers under the subject rate schedules.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protest should be filed on or before November 2, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-25162 Filed 10-31-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ88-2-17-002]

Texas Eastern Transmission Corp.; Compliance Filing

October 26, 1988.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on October 21, 1988, tendered for filing as a part of its FERC Gas Tariff, six copies each of the following tariff sheets:

Fifth Revised Volume No. 1

Substitute Fifth Revised Sheet No. 50
Substitute Fifth Revised Sheet No. 50A
Substitute Fifth Revised Sheet No. 50B
Substitute Fifth Revised Sheet No. 50C
Substitute Fifth Revised Sheet No. 50D
Substitute Fifth Revised Sheet No. 51
Substitute Third Revised Sheet No. 51A
Substitute Third Revised Sheet No. 51B
Substitute Third Revised Sheet No. 51C
Substitute Third Revised Sheet No. 51D

Original Volume No. 2

Substitute Thirty-first Revised Sheet No. 235
Substitute Twenty-third Revised Sheet No. 241
Substitute Thirty-first Revised Sheet No. 322
Substitute Fifth Revised Sheet No. 1274

Texas Eastern states that these substitute tariff sheets are being filed for the sole purpose of complying under protest with Ordering Paragraph (C) of the Commission's ORDER ACCEPTING COMPLIANCE FILING AND DISALLOWING ELECTRIC POWER COST ADJUSTMENT issued October 4, 1988, in Docket No. TQ88-2-17 and TM88-1-17. Texas Eastern is filing concurrently its application for rehearing of such order which denied Texas Eastern recovery of approximately $5.7 million of electric power fuel cost, pursuant to tariff provisions previously approved by the FERC.

Consequently, Texas Eastern states that even though Texas Eastern is filing the above substitute tariff sheets in compliance with the FERC order to remove the $5.7 million adjustment, Texas Eastern does so under protest and only, as stated, for the purpose of complying with the order. Texas Eastern believes that the FERC will reconsider the matter based upon Texas Eastern's application for rehearing and find that Texas Eastern should be allowed to recover the $5.7 million in electric power costs pursuant to its FERC Gas Tariff, in which case the above substitute sheets should be rejected. On this basis, Texas Eastern has requested the FERC to stay acceptance and implementation of these substitute sheets until such time as they have considered and ruled on Texas Eastern's application for rehearing.

The proposed effective date of the above tariff sheets strictly in compliance with the FERC order of October 4, 1988, is August 1, 1988. However, Texas Eastern has respectfully requested the Commission to stay acceptance and implementation of these substitute sheets until such time as they have considered and ruled on Texas Eastern's application for rehearing.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 2, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-25163 Filed 10-31-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

Information Collection Activities

[FRL-3470-1]

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*,) this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review. Because EPA is requesting expedited review, this notice includes the actual data collection instrument. The ICR itself is also available to the public for review and comment. It describes the nature of the information collection and its expected cost and burden.

FOR FURTHER INFORMATION CONTACT: Ms. Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: Pesticide Manufacturing Facility Census for 1988, Part B: Financial and Economic Information (EPA ICR #1028) [Note: On April 11, 1988, OMB approved Part A (Technical Information) of the Census, and disapproved Part B. Today's submission consists of a revised Part B questionnaire.]

Abstract: EPA is surveying pesticide manufacturers on production, wastewater generation and treatment, and financial data. The information will be used to develop effluent limitation and pretreatment regulations.

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Respondents: Manufacturers of pesticide active ingredients.

Burden Statement: Public reporting burden for this collection of information is estimated to average 60 hours per response. This includes time for reviewing instructions, gathering data, and completing and reviewing the questionnaire.

Estimated No. of Respondents: 120.

Frequency of Collection: One time.

Estimated total burden on Respondents: 7200 hours.

Collection instrument: The questionnaire begins on the following page.

BILLING CODE [illegible]

OMB No :
Expiration Date

U.S. ENVIRONMENTAL PROTECTION AGENCY

PESTICIDE MANUFACTURING FACILITY CENSUS FOR 1986

PART B. FINANCIAL AND ECONOMIC INFORMATION

October 21, 1988

Public reporting burden for this collection of information is estimated to average 60 hours per response The reporting burden includes time for reviewing instructions, gathering data, and completing and reviewing the questionnaire.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to

Chief, Information Policy Branch
U S Environmental Protection Agency
401 M Street, SW
Washington, DC 20460

and

Office of Information and Regulatory Affairs
Office of Management and Budget
Washington, DC 20503

ENVIRONMENTAL PROTECTION AGENCY
PESTICIDE MANUFACTURING FACILITY CENSUS FOR 1988
Part B Financial and Economic Information

OMB No.:
Expiration Date:

Part B: General Instructions

The Pesticide Manufacturing Facility Census has three parts:

Introduction
Part A: Technical Information; and
Part B: Financial and Economic Information.

The Introduction and Part A were mailed separately and have been completed by your facility. This package contains the Part B questionnaire and its instructions. All recipients who completed the Introduction and Part A of the Pesticide Manufacturing Facility Census must complete Part B at this time.

Throughout this questionnaire you will be asked about the Pesticide Active Ingredients listed in Table 1, pages 4 through 12, of this booklet. It may be helpful to review the list and identify active ingredients handled at this facility before completing the questionnaire.

Authority

This mandatory census is conducted under the authority of Section 308 of the Clean Water Act (the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., as amended). Late filing or failure otherwise to comply with these instructions may result in criminal fines, civil penalties and other sanctions as provided by law. Provisions concerning confidentiality of the data collected are explained below.

Purpose

The Pesticide Manufacturing Facility Census questionnaire is designed to collect data on pesticide manufacturing activities and waste treatment practices for the calendar year beginning January 1, 1986 and ending December 31, 1986. Part B requests financial and economic information for the calendar years 1985, 1986 and 1987.

Who Must Respond

All recipients who completed the Introduction and Part A of the Census questionnaire must complete Part B at this time. The entire Pesticide Manufacturing Facility Census questionnaire must be completed by all manufacturers of the Pesticide Active Ingredients listed in Table 1, pages 4 through 12, of this booklet.

Completing the Census

Although Part B may be completed by different officials, the individual who signed the certification for Part A should also certify all parts of the questionnaire by completing and signing the Part B Certification Statement located on page 3 of this questionnaire.

If the space allotted for the answer to any question is not adequate for your complete response, please continue the response in the Comments space at the end of each section. Reference the comments to the appropriate question.

ENVIRONMENTAL PROTECTION AGENCY
PESTICIDE MANUFACTURING FACILITY CENSUS FOR 1988
Part B Financial and Economic Information

GENERAL INSTRUCTIONS - Continued

When and How to Return the Part B Questionnaire

The Pesticide Manufacturing Facility Census Part B questionnaire must be completed and returned within 60 days of receipt to:

Dr. Thomas Fielding WH552
U.S. Environmental Protection Agency
Industrial Technology Division
401 M Street, SW
Washington, D.C. 20460

Questions on the Part B Questionnaire

Questions pertaining to any item in Part B may be directed to:

Dr. Lynne Tudor WH586
U.S. Environmental Protection Agency
Analysis and Evaluation Division
401 M Street, SW
Washington, D.C. 20460
(202) 382 5834

Provisions Regarding Data Confidentiality

Regulations governing the confidentiality of business information are contained in 40 CFR Part 2 Subpart B and 43 Fed. Reg. 40001 (Sept. 8, 1978). Under these regulations, all records, reports, or information supplied to the EPA may be made public by the EPA without further notice if not accompanied by a business confidentiality claim. You may assert a business confidentiality claim covering part or all of the information you submit, other than effluent data, as described in 40 CFR 2.203(b):

> "(b) *Method and time of asserting business confidentiality claim.* A business which is submitting information to EPA may assert a business confidentiality claim covering the information by placing on (or attaching to) the information, at the time it is submitted to EPA, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as 'trade secret,' 'proprietary,' or 'company confidential.' Allegedly confidential portions of otherwise non-confidential documents should be clearly identified by the business, and may be submitted separately to facilitate identification and handling by EPA. If the business desires confidential treatment only until a certain date or until the occurrence of a certain event, the notice should so state."

Information covered by a claim of confidentiality will be disclosed by EPA only to the extent, and by means of the procedures, set forth in 40 CFR Part 2 Subpart B. In general, submitted records, reports, or information protected by a business confidentiality claim may be disclosed to other employees, officers, or authorized representatives of the United States concerned with carrying out the Clean Water Act, or when relevant to any proceeding under the Act. Effluent data are not eligible for confidential treatment.

ENVIRONMENTAL PROTECTION AGENCY
PESTICIDE MANUFACTURING FACILITY CENSUS FOR 1988
Part B Financial and Economic Information

INTRODUCTION

1. Enter the name of this facility.

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ENVIRONMENTAL PROTECTION AGENCY
PESTICIDE MANUFACTURING FACILITY CENSUS FOR 1988
Part B Financial and Economic Information

TABLE 1. PESTICIDE ACTIVE INGREDIENTS - Continued

CODE	ACTIVE INGREDIENT
27	2-Methyl-4-chlorophenoxyacetic acid or any salt or ester
27a	
27b	
27c	
27d	
28	2-n-Octyl-4-isothiazolin-3-one
29	2-Pivalyl-1,3-indandione
30	2-(2,4-Dichlorophenoxy)propionic acid or any salt or ester
30a	
30b	
30c	
30d	
31	2-(2-Methyl-4-chlorophenoxy)propionic acid or any salt or ester
31a	
31b	
31c	
31d	
32	2-(4-Thiazolyl)benzimidazole
33	2-(Methylthio)-4-(ethylamino)-6-(1,2-dimethylpropyl)amino-s-triazine
34	2-(m-Chlorophenoxy)propionic acid or any salt or ester
34a	
34b	
34c	
34d	
35	2-(Thiocyanomethylthio)benzothiazole
36	2-((Hydroxymethyl)amino) ethanol
37	2-((p-Chlorophenyl)phenylacetyl)-1,3-indandione
38	3,4,5-Trimethylphenylmethylcarbamate
39	3,5-Dichloro-N-(1,1-dimethyl-2-propynl)benzamide
40	3,5-Dimethyl-4-(methylthio)phenyl dimethylcarbamate
41	3',4'-Dichloropropionanilide
42	3-Iodo-2-propynyl butylcarbamate
43	3-(a-Acetonylfurfuryl)-4-hydroxycoumarin
44	4,6-Dinitro-o-cresol
45	4-Amino-6-(1,1-dimethylethyl)-3-(methylthio)-1,2,4-triazin-5(4H)-one
46	4-Chlorophenoxyacetic acid or any salt or ester
46a	
46b	
46c	
46d	
47	4-(2-Methyl-4-chlorophenoxy)butyric acid or any salt or ester
47a	
47b	
47c	
47d	
48	4-(Dimethylamino)-m-tolyl methylcarbamate
49	5-Ethoxy-3-(trichloromethyl)-1,2,4-thiadiazole
50	6-Ethoxy-1,2-dihydro-2,2,4-trimethyl quinoline

ENVIRONMENTAL PROTECTION AGENCY
PESTICIDE MANUFACTURING FACILITY CENSUS FOR 1988
Part B Financial and Economic Information

TABLE 1. PESTICIDE ACTIVE INGREDIENTS - Continued

CODE	ACTIVE INGREDIENT
51	8-Quinolinol sulfate
52	Acephate (O,S-Dimethyl acetylphosphoramidothioate)
53	Acifluoren (5-(2-Chloro-4-(trifluoromethyl)phenoxy)-2-nitrobenzoic acid) or any salt or ester
54	Alachlor (2-Chloro-2',6'-diethyl-N-(methoxymethyl)acetanilide)
55	Aldicarb (2-Methyl-2-(methylthio)propionaldehyde O-(methylcarbamoyl)oxime)
56	Alkyl* dimethyl benzyl ammonium chloride *(50% C14, 40% C12, 10% C16)
57	Allethrin (all isomers and allethrin coil)
58	Ametryn (2-(Ethylamino)-4-(isopropylamino)-6-(methylthio)-s-triazine)
59	Amitraz (N'-2,4-Dimethylphenyl)-N-(((2,4-dimethylphenyl)imino)methyl)-N-methylmethanimidamide)
60	Atrazine (2-Chloro-4-(ethylamino)-6-(isopropylamino)-s-triazine)
61	Bendiocarb (2,2-Dimethyl-1,3-benzodioxol-4-yl methylcarbamate)
62	Benomyl (Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate)
63	Benzene hexachloride
64	Benzyl benzoate
65	Beta-Thiocyanoethyl esters of mixed fatty acids containing from 10 - 18 carbon atoms
66	Bifenox (Methyl 5-(2,4-dichlorophenoxy)-2-nitrobenzoate)
67	Biphenyl
68	Bromacil (5-Bromo-3-sec-Butyl-6-Methyluracil) or any salts or esters
68a	
68b	
68c	
68d	
69	Bromoxynil (3,5-Dibromo-4-hydroxybenzonitrile) or any salt or ester
69a	
69b	
69c	
69d	
70	Butachlor (N-(Butoxymethyl)-2-chloro-2',6'-diethylacetanilide)
71	b-Bromo-b-nitrostyrene (Note: b = beta)
72	Cacodylic acid (Dimethylarsenic acid) or any salts or ester
72a	
72b	
72c	
72d	
73	Captafol (cis-N-((1,1,2,2-Tetrachloroethyl)thio)-4-cyclohexene-1,2-dicarboximide)
74	Captan (N-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide)
75	Carbaryl (1-Naphthylmethylcarbamate)
76	Carbofuran (2,3-Dihydro-2,2-dimethyl-7-benzofuranyl methylcarbamate)
77	Carbosulfan (2,2-Dihydro-2,2-dimethyl-7-benzofuranyl(dibutylamino)thio)methylcarbamate)
78	Chloramben (3-Amino-2,5-dichlorobenzoic acid) or any salt or ester
78a	
78b	
78c	
78d	
79	Chlordane (Octachloro-4,7-methanotetrahydroindane)
80	Chloroneb (1,4-Dichloro-2,5-dimethoxybenzene)
81	Chloropicrin (Trichloronitromethane)
82	Chlorothalonil (2,4,5,6-Tetrachloro-1,3-dicyanobenzene)

ENVIRONMENTAL PROTECTION AGENCY
PESTICIDE MANUFACTURING FACILITY CENSUS FOR 1988
Part B Financial and Economic Information

TABLE 1. PESTICIDE ACTIVE INGREDIENTS - Continued

CODE	ACTIVE INGREDIENT
83	Chloroxuron (3-(4-(4-Chlorophenoxy)phenyl)-1,1-dimethylurea)
84	Chloro-1-(2,4,5-trichlorophenyl)vinyl dimethyl phosphate
85	Chlorpyrifos methyl (O,O-Dimethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate)
86	Chlorpyrifos (O,O-Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorthioate)
87	Coordination product of Manganese 16%, Zinc 2% and Ethylenebisdithiocarbamate 82%
88	Copper 8-quinolinolate
89	Copper ethylenediaminetetraacetate
90	Cyano(3-phenoxyphenyl)methyl 4-chloro-a-(1-methylethyl)benzeneacetate (9CA)
91	Cycloheximide (3-(2-(3,5-Dimethy-2-oxocyclohexyl)-2-hydroxyethyl)glutarimide)
92	Dalapon (2,2-Dichloropropionic acid) or any salt or ester
92a	_____
92b	_____
92c	_____
92d	_____
93	Decachloro-bis(2,4-cyclopentadiene-1-yl)
94	Demeton (O,O-Diethyl O-(and S-) (2-ethylthio)ethyl)phosphorothioate)
95	Desmedipham (Ethyl m-hydroxycarbanilate carbanilate)
96	Diammonium salt of ethylenebisdithiocarbamate
97	Dibromo-3-chloropropane
98	Dicamba (3,6-Dichloro-o-anisic acid) or any salt or ester
98a	_____
98b	_____
98c	_____
98d	_____
99	Dichlone (2,3-Dichloro-1,4-naphthoquinone)
100	Diethyl 4,4'-o-phenylenebis(3-thioallophanate)
101	Diethyl diphenyl dichloroethane and related compounds
102	Diethyl dithiobis(thionoformate)
103	Diethyl O-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
104	Diflubenzuron (N-(((4-Chlorophenyl)amino)carbonyl)-2,6-difluorobenzamide)
105	Diisobutylphenoxyethoxyethyl dimethyl benzyl ammonium chloride
106	Dimethoate (O,O-Dimethyl S-((methylcarbamoyl)methyl)phosphorothioate)
107	Dimethyl O-p-nitrophenyl phosphorothioate
108	Dimethyl phosphate ester of 3-hydroxy-N,N-dimethyl-cis-crotonamide
109	Dimethyl phosphate ester of a-methylbenzyl 3-hydroxy-cis-crotonate
110	Dimethyl tetrachlorophthalate
111	Dimethyl (2,2,2-trichloro-1-hydroxyethyl) phosphonate
112	Dinoseb (2-sec-Butyl-4,6-dinitrophenol)
113	Dioxathion (2,3-p-Dioxanedithiol S,S-bis(O,O-diethyl phosphorodithioate))
114	Diphacinone (2-(Diphenylacetyl)-1,3-indandione)
115	Diphenamid (N,N-Dimethyl-2,2-diphenylacetamide)
116	Diphenylamine
117	Dipropyl isocinchomeronate
118	Disodium cyanodithioimidocarbonate
119	Diuron (3-(3,4-Dichloro...enyl)-1,1-dimethylurea)
120	Dodecylguanidine hydrochloride
121	Dodine (Dodecylguanidine acetate)
122	Endosulfan (Hexachlorohexahydromethano-2,4,3-benzodioxathiepin-3-oxide)

ENVIRONMENTAL PROTECTION AGENCY
PESTICIDE MANUFACTURING FACILITY CENSUS FOR 1988
Part B Financial and Economic Information

TABLE 1. PESTICIDE ACTIVE INGREDIENTS - Continued

CODE	ACTIVE INGREDIENT
123	Endothall (7-Oxabicyclo(2 2 1)heptane-2,3-dicarboxylic acid) or any salt or ester
123a	_____
123b	_____
123c	_____
123d	_____
124	Endrin (Hexachloroepoxyoctahydro-endo,endo-dimethanonaphthalene)
125	Ethalfluralin (N-Ethyl-N-(2-methyl-2-propenyl)-2,6-dinitro-4-(trifluoromethyl)benzeneamine)
126	Ethion (O,O,O',O'-Tetraethyl S,S'-methylene bisphosphorodithioate)
127	Ethoprop (O-Ethyl S,S-dipropyl phosphorodithioate)
128	Ethyl 3-methyl-4-(methylthio)phenyl 1-(methylethyl) phosphoramidate
129	Ethyl 4,4'-dichlorobenzilate
130	Ethyl diisobutylthiocarbamate
131	Famphur (O,O-Dimethyl O-(p-(dimethylsulfamoyl)phenyl)phosphorothioate)
132	Fenarimol (a-(2-Chlorophenyl)-a-(4-chlorophenyl)-5-pyrimidinemethanol)
133	Fenthion (O,O-Dimethyl O-(4-methylthio)-m-tolyl)phosphorothioate)
134	Ferbam (Ferric dimethyldithiocarbamate)
135	Fluometuron (1,1-Dimethyl-3-(a,a,a-trifluoro-m-tolyl)urea)
136	Fluoroacetamide
137	Folpet (N-((Trichloromethyl)thio)phthalimide)
138	Glyphosate (N-(Phosphonomethyl)glycine) or any salt or ester
138a	_____
138b	_____
138c	_____
138d	_____
139	Glyphosine (N,N-bis(Phosphonomethyl)glycine)
140	Heptachlor (Heptachlorotetrahydro-4,7-methanoindene)
141	Hexadecyl cyclopropanecarboxylate
142	Hexazinone (3-Cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4(1H,3H)-dione)
143	Isofenphos (1-Methylethyl 2-((ethoxy((1-methylethyl)amino)phosphinothioyl)oxy)benzoate)
144	Isopropalin (2,6-Dinitro-N,N-dipropylcumidine)
145	Isopropyl N-phenyl carbamate
146	Karbutilate (tert-Butylcarbamic acid ester of 3-(m-hydroxyphenyl)-1,1-dimethylurea)
147	Lindane (gamma isomer of benzene hexachloride) 99% pure
148	Linuron (3-(3,4-Dichlorophenyl)-1-methoxy-1-methylurea)
149	Malachite green (Ammonium (4-(p-(dimethylamino)-alpha-phenylbenzylidine)-2, 5-cyclohexadien-1-ylidene)-dimethyl chloride
150	Malathion (O,O-Dimethyl dithiophosphate of diethyl mercaptosuccinate)
151	Maneb (Manganese salt of ethylenebisdithiocarbamate)
152	Manganese dimethyldithiocarbamate
153	Mefluidide (N-(2,4-Dimethyl-5-(((trifluoromethyl)sulfonyl)amino)phenyl acetamide) or any salt or ester
153a	_____
153b	_____
153c	_____
153d	_____
154	Methamidophos (O,S-Dimethyl phosphoramidothioate)
155	Methidathion (O,O-Dimethyl phosphorodithioate, S-ester of 4-(mercaptomethyl)-2-methoxy-delta 2-1,3,4-thiadiazolin-5-one)
156	Methomyl (S-Methyl N-((methylcarbamoyl)oxy)thioacetimidate)

ENVIRONMENTAL PROTECTION AGENCY
PESTICIDE MANUFACTURING FACILITY CENSUS FOR 1988
Part B Financial and Economic Information

TABLE 1. PESTICIDE ACTIVE INGREDIENTS - Continued

CODE	ACTIVE INGREDIENT
157	Methoprene (Isopropyl(E,E)-11-methoxy-3,7,11-trimethyl-2,4-dodecadienoate)
158	Methoxychlor (2,2-bis(p-Methoxyphenyl)-1,1,1-trichloroethane)
159	Methyl benzethonium chloride
160	Methyl bromide
161	Methylarsonic acid or any salt or ester
161a	
161b	
161c	
161d	
162	Methyldodecylbenzyl trimethyl ammonium chloride 80% and methyldodecylxylylene bis(trimethylammonium chloride) 20%
163	Methylene bisthiocyanate
164	Methyl-2,3-quinoxalinedithiol cyclic S,S-dithiocarbonate
165	Metolachlor (2-Chloro-N-(2-ethyl-6-methylphenyl)-N-(2-methoxy-1-methylethyl)acetamide)
166	Mexacarbate (4-(Dimethylamino)-3,5-xylyl methylcarbamate)
167	Mixture of 83 9% Ethylenebis(dithiocarbamato) zinc and 16 1% Ethylenebisdithiocarbamate, bimolecular and trimolecular cyclic anhydrosulfides and disulfides
168	Monuron TCA = Monuron trichloroacetate
169	Monuron (3-(4-Chlorophenyl)-1,1-dimethylurea)
170	N,N-Diethyl-2-(1-naphthalenyloxy)propionamide
171	N,N-Diethyl-meta-toluamide and other isomers
172	Nabam (Disodium salt of ethylenebisdithiocarbamate)
173	Naled (1,2-Dibromo-2,2-dichloroethyl dimethyl phosphate)
174	Norea (3-Hexahydro-4,7-methanoindan-5-yl-1,1-dimethylurea)
175	Norflurazon (4-Chloro-5-(methylamino)-2-(a,a,a,a-trifluoro-m-tolyl)-3(2H)-pyridazinone)
176	N-1-Naphthylphthalamic acid or any salt or ester
176a	
176b	
176c	
176d	
177	N-2-Ethylhexyl bicycloheptene dicarboximide
178	N-Butyl-N-ethyl-a,a,a-trifluoro-2,6-dinitro-p-toluidine
179	O,O,O,O-Tetraethyl dithiopyrophosphate
180	O,O,O,O-Tetrapropyl dithiopyrophosphate
181	O,O-Diethyl O-(3-chloro-4-methyl-2-oxo-2H-1-benzopyran-7-yl) phosphorothioate
182	O,O-Diethyl O-(p-(methylsulfinyl)phenyl) phosphorothioate
183	O,O-Diethyl S-(2-(ethylthio)ethyl) phosphorodithioate
184	O,O-Dimethyl O-(4-nitro-m-tolyl)phosphorothioate
185	O,O-Dimethyl S-(phthalimidomethyl)phosphorodithioate
186	O,O-Dimethyl S-((4-oxo-1,2,3-benzotriazin-3(4H)-yl)methyl)phosphorodithioate
187	O,O-Dimethyl S-((ethylsulfinyl)ethyl phosphorothioate
188	Organo-arsenic pesticides (not otherwise listed)
188a	
188b	
188c	
188d	

ENVIRONMENTAL PROTECTION AGENCY
PESTICIDE MANUFACTURING FACILITY CENSUS FOR 1988
Part B Financial and Economic Information

TABLE 1. PESTICIDE ACTIVE INGREDIENTS - Continued

CODE	ACTIVE INGREDIENT
189	Organo-cadmium pesticides
189a	
189b	
189c	
189d	
190	Organo-copper pesticides
190a	
190b	
190c	
190d	
191	Organo-mercury pesticides
191a	
191b	
191c	
191d	
192	Organo-tin pesticides
192a	
192b	
192c	
192d	
193	Orthodichlorobenzene
194	Oryzalin (3,5-Dinitro-N4,N4-dipropylsulfanilamide) (Note: N4 = N superscript 4)
195	Oxamyl (Methyl N',N'-dimethyl-N-((methylcarbamoyl)oxy)-1-thiooxamidate)
196	Oxyfluorfen (2-Chloro-1-(3-ethoxy-4-nitrophenoxy)-4-(trifluoromethyl)benzene)
197	O-Ethyl O-(4-(methylthio)phenyl) S-propyl phosphorodithioate
198	O-Ethyl O-(4-(methylthio)phenyl) S-propyl phosphorothioate (9CA)
199	O-Ethyl O-(p-Nitrophenyl)phenylphosphonothioate
200	O-Ethyl S-phenyl ethylphosphonodithioate
201	O-Isopropoxyphenyl methylcarbamate
202	Paradichlorobenzene
203	Parathion (O,O-Diethyl O-(p-nitrophenyl)phosphorothioate)
204	Pendimethalin (N-(1-Ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine)
205	Pentachloronitrobenzene
206	Pentachlorophenol or any salt or ester
206a	
206b	
206c	
206d	
207	Perfluidone (1,1,1-Trifluoro-N-(2-methyl-4-(phenylsulfonyl)phenyl)methanesulfonamide)
208	Permethrin ((3-Phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate)
209	Phenmedipham (Methyl m-hydroxycarbanilate m-methyl carbanilate)
210	Phenothiazine
211	Phenylphenol
212	Phorate (O,O-Diethyl S-((ethylthio)methyl)phosphorodithioate)
213	Phosalone (O,O-Diethyl S-((6-chloro-2-oxobenzoxazolin-3-yl)methyl) phosphorothioate)
214	Phosphamidon (2-Chloro-N,N-diethyl-3-hydroxycrotonamide ester of dimethyl phosphate)

ENVIRONMENTAL PROTECTION AGENCY
PESTICIDE MANUFACTURING FACILITY CENSUS FOR 1986
Part B Financial and Economic Information

TABLE 1. PESTICIDE ACTIVE INGREDIENTS - Continued

CODE	ACTIVE INGREDIENT
215	Picloram (4-Amino-3,5,6-trichloropicolinic acid) or any salts or esters
215a	
215b	
215c	
215d	
216	Piperonyl butoxide ((Butylcarbityl)(6-propylpiperonyl)ether)
217	Poly(oxyethylene(dimethyliminio)ethylene(dimethyliminio)ethylene dichloride
218	Potassium dimethyldithiocarbamate
219	Potassium N-hydroxymethyl-N-methyldithiocarbamate
220	Potassium N-methyldithiocarbamate
221	Potassium N-(a-(nitroethyl)benzyl)ethylenediamine
222	Profenofos (O-(4-Bromo-2-chlorophenyl) O-ethyl S-propyl phosphorothioate)
223	Prometon (2,4-bis(Isopropylamino)-6-methoxy-s-triazine)
224	Prometryn (2,4-bis(Isopropylamino)-6-(methylthio)-s-triazine)
225	Propargite (2-(p-tert-Butylphenoxy)cyclohexyl 2-propynyl sulfite)
226	Propazine (2-Chloro-4,6-bis(isopropylamino)-s-triazine)
227	Propionic acid
228	Propyl (3-dimethylamino)propyl carbamate hydrochloride
229	Pyrethrin cols
230	Pyrethrin I
231	Pyrethrin II
232	Pyrethrum (synthetic pyrethrin)
233	Resmethrin ((5-Phenylmethyl)-3-furanyl)methyl 2,2-dimethyl-3-(2-methyl-1-propenyl)cyclopropanecarboxylate)
234	Ronnel (O,O-Dimethyl O-(2,4,5-trichlorophenyl)phosphorothioate)
235	Rotenone
236	S,S,S-Tributyl phosphorotrithioate
237	Siduron (1-(2-Methylcyclohexyl)-3-phenylurea
238	Silvex (2-(2,4,5-Trichlorophenoxypropionic acid)) or any salt or ester
238a	
238b	
238c	
238d	
239	Simazine (2_Chloro-4,6-bis(ethylamino)-s-triazine)
240	Sodium bentazon (3-Isopropyl-1H-2,1,3-benzothiadiazin-4(3H)-one 2,2-dioxide)
241	Sodium dimethyldithiocarbamate
242	Sodium fluoroacetate
243	Sodium methyldithiocarbamate
244	Sulfoxide (1,2-Methylenedioxy-4-(2-(octylsulfidynyl)propyl) benzene
245	S-Ethyl cyclohexylethylthiocarbamate
246	S-Ethyl dipropylthiocarbamate
247	S-Ethyl hexahydro-1H-azepine-1-carbothioate
248	S-Propyl butylethylthiocarbamate
249	S-Propyl dipropylthiocarbamate
250	S-(2-Hydroxypropyl)thiomethanesulfonate
251	S-(O,O-Diisopropyl phosphorodithioate ester of N-(2-mercaptoethyl)benzenesulfonamide
252	Tebuthiuron (N-(5-(1,1-Dimethylethyl)-1,3,4-thiadiazol-2-yl)-N,N'-dimethylurea)
253	Temephos (O,O,O',O'-Tetramethyl-O,O'-thiodi-p-phenylenephosphorothioate)

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TABLE 1. PESTICIDE ACTIVE INGREDIENTS - Continued

CODE	ACTIVE INGREDIENT
254	Terbacil (3-tert-Butyl-5-chloro-6-methyluracil)
255	Terbufos (S-(((1,1-Dimethylethyl)thio)methyl) O,O-diethyl phosphorodithioate)
256	Terbuthylazine (2-(tert-Butylamino)-4-chloro-6-(ethylamino)-s-triazine
257	Terbutryn (2-(tert-Butylamino)-4-(ethylamino)-6-(methylthio)-s-triazine)
258	Tetrachlorophenol or any salt or ester
258a	
258b	
258c	
258d	
259	Tetrahydro-3,5-dimethyl-2H-1,3,5-thiadiazine-2-thione
260	Thiophanate-methyl (Dimethyl 4,4'-o-phenylenebis(3-thioallophanate))
261	Thiram (Tetramethylthiuram disulfide)
262	Toxaphene (technical chlorinated camphene (67-69% chlorine))
263	Tributyl phosphorotrithiolte
264	Trifluralin (a,a,a-Trifluro-2,6-dinitro-N,N-dipropyl-p-toluidine)
265	Warfarin (3-(a-Acetonylbenzyl)-4-hydroxycoumarin) or any salt or ester
265a	
265b	
265c	
265d	
266	Zinc 2-mercaptobenzothiazolate
267	Zineb (Zinc ethylenebisdithiocarbamate)
268	Ziram (Zinc dimethyldithiocarbamate)
269	(2,3,3-Trichloroallyl)diisopropylthiocarbamate
270	(3-Phenoxyphenyl)methyl d-cis and tran* 2,2-dimethyl-3-(2-methylpropenyl)cyclopropanecarboxylate *(Max. d-cis 25% ; Min. trans 75%)
271	(4-Cyclohexene-1,2-dicarboximido)methyl 2,2-dimethyl-3-(2-methylpropenyl)cyclopropanecarboxylate
272	Isopropyl N-(3-chlorophenyl) carbamate

ENVIRONMENTAL PROTECTION AGENCY
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SECTION 1: FIRM FINANCIAL INFORMATION

1-A. Was this facility owned or controlled by a parent firm or firms on December 31, 1988?

YES ..... 1 (GO TO BOX 1-A)
NO ..... 2 (SKIP TO SECTION 2, PAGE 18)

BOX 1-A

If there is more than one parent firm, such as in a joint venture, photocopy Section 1, pages 13 through 16, and complete all Section 1 questions for each parent firm.

1-B. Report the name, mailing address and DUNS number of the parent firm.

[1] Name of Parent Firm

|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|

[2] Mailing Address of Headquarters

|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|
Street or P.O.Box

|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|
City or Town | State | Zip Code

[3] What is the DUNS Number of the parent firm?

|_|_|_|-|_|_|_|-|_|_|_|_| ☐ Not Applicable

1-C. Report the percentage of the parent firm's total 1988 sales (in dollars) generated by each of the activities listed below. (Enter zero if the activity was not applicable. The sum of all percentages must be 100%).

[1] Percentage of sales generated by manufacturing pesticides listed in Table 1, pages 4 through 12 ..... |_|_|_|%

[2] Percentage of sales generated by formulating or packaging pesticides listed in Table 1, pages 4 through 12 ..... |_|_|_|%

[3] Percentage of sales generated by other activities (SPECIFY) ..... |_|_|_|%

_____

Total ..... 1 0 0 %

ENVIRONMENTAL PROTECTION AGENCY
PESTICIDE MANUFACTURING FACILITY CENSUS FOR 1988
Part B Financial and Economic Information

SECTION 1: FIRM FINANCIAL INFORMATION

1-D. Did the parent firm acquire this facility after December 31, 1980?

YES ..... 1 (CONTINUE)
NO ..... 2 (SKIP TO QUESTION 1-E)

[1] In what year was this facility acquired by the parent firm?

|1|9|_|_|
Year

[2] How was this facility acquired by the parent firm? (CHECK ONE):

☐ Purchase

☐ Merger: Please list names of the companies that merged

|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|

|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|

|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|

☐ Takeover

☐ Founded

☐ Other (SPECIFY) _____

1-E. On December 31, 1988, did the parent firm own or control any other U.S. facilities at which any of the pesticides listed on Table 1, pages 4 through 12, were manufactured or formulated and/or packaged?

YES ..... 1 (CONTINUE)
NO ..... 2 (SKIP TO QUESTION 1-G)

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SECTION 1: FIRM FINANCIAL INFORMATION

1-F. Report the names and EPA Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) Establishment Numbers (as reported to the EPA on Form 3540-16) for all other facilities owned or controlled by the parent firm at which any of the pesticides listed on Table 1, pages 4 through 12, were manufactured or formulated and/or packaged. Check the box next to "Not Applicable" if the facility does not have an EPA FIFRA Establishment Number. Check whether each facility was a manufacturer or formulator/packager of the pesticides listed on Table 1. If more space is required to give a complete answer to this question, photocopy this page.

[1] |_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|
Name of Facility

|_|_|_|_|_|_|-|_|_|_|-|_|_|_|_| ☐ Not Applicable
EPA FIFRA Establishment Number

☐ Manufacturer ☐ Formulator/Packager

[2] |_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|
Name of Facility

|_|_|_|_|_|_|-|_|_|_|-|_|_|_|_| ☐ Not Applicable
EPA FIFRA Establishment Number

☐ Manufacturer ☐ Formulator/Packager

[3] |_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|
Name of Facility

|_|_|_|_|_|_|-|_|_|_|-|_|_|_|_| ☐ Not Applicable
EPA FIFRA Establishment Number

☐ Manufacturer ☐ Formulator/Packager

[4] |_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|
Name of Facility

|_|_|_|_|_|_|-|_|_|_|-|_|_|_|_| ☐ Not Applicable
EPA FIFRA Establishment Number

☐ Manufacturer ☐ Formulator/Packager

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SECTION 1: FIRM FINANCIAL INFORMATION

1-G. Report the total revenue of the parent firm for 1985, 1986, and 1987 in thousands of dollars.

($000)

[1] 1985 Revenue ..... _____

[2] 1986 Revenue ..... _____

[3] 1987 Revenue ..... _____

1-H. Was the parent firm (listed on question 1B) itself owned or controlled by another company?

YES ..... 1 (CONTINUE)
NO ..... 2 (SKIP TO SECTION 2)

1-I. Report the name, mailing address and DUNS number of the controlling firm.

[1] Name

|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|

[2] Mailing Address of Headquarters

|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|
Street or P.O.Box

|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|
City or Town | State | Zip Code

[3] DUNS Number

|_|_|-|_|_|_|-|_|_|_|_| ☐ Not Applicable

ENVIRONMENTAL PROTECTION AGENCY
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SECTION 1: FIRM FINANCIAL INFORMATION

Section 1 Comments. Reference entry by question number.

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SECTION 2: FACILITY FINANCIAL INFORMATION

All of the information requested in Section 2 applies to this facility.

2-A. Report the percent by quantity of total 1986 production volume generated by each of the following activities at this facility. (Enter zero if the activity was not applicable. The sum of all percentages must be 100%).

[1] Production generated by manufacturing and/or formulating and packaging pesticide active ingredients listed in Table 1, pages 4 through 12 ..... |__|__|__|%

[2] Production generated by manufacture of intermediates that are sold ..... |__|__|__|%

[3] Production generated by manufacturing and/or formulating and packaging EPA registered pesticides not listed in Table 1, pages 4 through 12 ..... |__|__|__|%

[4] Production generated by manufacturing and/or formulating and packaging chemicals other than EPA registered pesticides ..... |__|__|__|%

[5] Production generated by other activities (SPECIFY) ..... |__|__|__|%

Total ..... 1 0 0 %

2-B. Report the calendar year during which:

[1] Operations began at this facility ..... |__|__|__|__| Year

[2] Manufacturing and/or formulating/packaging of either pesticide active ingredients or pesticide products began at this facility ..... |__|__|__|__| Year

[3] The most recent major expansion of plant and equipment with respect to pesticides occurred at this facility ..... |__|__|__|__| Year

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SECTION 2: FACILITY FINANCIAL INFORMATION

2-C. Instructions for reporting Balance Sheet information on page 21.

Question 2-C on page 21 requests facility Balance Sheet information. Please read the instructions and definitions below before completing Question 2-C. The number in brackets, for example, "[1] Inventories," correspond to Balance Sheet entries.

Reporting Period

Amounts for items in the Balance Sheets must be reported as of December 31, of calendar years 1985, 1986 and 1987 or the last day of the facility fiscal year. If your facility does not operate on a calendar year, you may substitute fiscal year data.

Reporting Conventions

Report all data for the facility. Report all dollar amounts in thousands.

If, for certain items, you do not have amounts at the facility level, you may use the balance sheets of the firm that owns and controls your facility to estimate the amounts at the facility level. Base the estimate on your facility's share of sales. If you have estimated an amount for a particular item, then place an asterisk (*) to the right of the entry.

Balance Sheet Definitions

Current Assets: Report current assets, including cash and other assets that are reasonably expected to be converted to cash, sold or consumed during the year.

[1] **Inventories:** Report the total value of all inventories owned by this facility regardless of where the inventories are held. Inventories consist of finished products, products in the process of being manufactured, raw materials, supplies, fuels etc. Report inventories at cost or market value, whichever is lower.

[2] **Other Current Assets:** Report all other current assets such as prepaid expenses like rent, operating supplies, and insurance; also include cash and accounts receivable.

[3] **Total Current Assets:** Report the sum of items [1] and [2].

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SECTION 2: FACILITY FINANCIAL INFORMATION

2-C. Instructions for reporting Balance Sheet information on page 21 - continued

Noncurrent Assets: Report the total dollar value of all noncurrent assets, including physical items such as property, plant and equipment; long-term investments and intangibles. Include:

Land: Report the original cost of land.
Buildings/Plant: Report the cost of buildings including expansions and renovations net of depreciation.
Equipment and Machinery: Report the cost of all equipment and machinery net of depreciation.
Intangibles: Report intangibles including franchises, patents, trademarks, copyrights net of accumulated amortization.
Other Noncurrent Assets: Report all noncurrent assets, like investments in capital stocks and bonds.

[4] **Total Noncurrent Assets:** Report the total noncurrent assets from each of the items listed above that apply.

[5] **Total Current and Noncurrent Assets:** Report the sum of items [3] and [4].

Current Liabilities: Report the total dollar value of all current liabilities that fall due for payment within the year.

[6] **Total Current Liabilities:** Report all current liabilities like accounts payable, accrued expenses and taxes and the current portion of long-term debt.

Noncurrent Liabilities and Equity: Report all noncurrent liabilities that fall due beyond one year.

[7] **Long Term Debt and Other Noncurrent Liabilities:** Report all long-term debt such as bonds, debentures, and bank debt, and all other noncurrent liabilities like deferred income taxes.

[8] **Owner Equity:** Report the difference between total assets and total liabilities. The amount obtained should include contributed or paid in capital (preferred and common stock) and retained earnings.

[9] **Total Noncurrent Liabilities and Equity:** Report the sum of items [7] and [8].

[10] **Total Liabilities and Equity:** Report the sum of items [6] and [9].

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2-C. Complete the facility Balance Sheet: Table 2-C below. Enter all information in thousands of dollars as of December 31 for calendar years 1985, 1986, and 1987. If the facility fiscal year does not correspond to the calendar year, please enter the months of the facility fiscal year below.

Facility 1988 fiscal year was from _____ month to _____ month.

TABLE 2-C. BALANCE SHEET

ASSETS

		1985 ($000)	1986 ($000)	1987 ($000)
Current assets				
[1]	Inventories			
[2]	Other current assets			
[3]	Total current assets			
Noncurrent assets				
[4]	Total noncurrent assets			
[5]	Total current and noncurrent assets			

LIABILITIES AND EQUITY

		1985 ($000)	1986 ($000)	1987 ($000)
Current liabilities				
[6]	Total current liabilities			
Noncurrent liabilities and equity				
[7]	Long term debt and other noncurrent liabilities			
[8]	Owner equity			
[9]	Total noncurrent liabilities and equity			
[10]	Total liabilities and equity			

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SECTION 2: FACILITY FINANCIAL INFORMATION

2-D. Instructions for reporting facility Income Statement information on page 24.

Question 2-D on page 24 requests facility income and expense information. Please read the instructions and definitions below before completing Question 2-D. The numbers in brackets, for example, "[1] Sales of Pesticide Chemicals," correspond to the entries on Table 2-D.

Reporting Period

Amounts for items in the Income Statements must be reported as of December 31 of calendar years 1985, 1986 and 1987 or the last day of the facility fiscal year. If your facility does not operate on a calendar year basis, you may substitute fiscal year data.

Reporting Conventions

Report all data for the facility. Report all dollar amounts in thousands.

If, for certain items, you do not have amounts at the facility level, you may use the Income Statements of the firm that owns and controls your facility to estimate the amounts at the facility level. If you need to estimate any items, estimate them based on your facility's share of sales. If you have estimated an amount for a particular item, then place an asterisk (*) to the right of the entry.

Income Statement Definitions

Revenues

[1] **Sale of Pesticide Chemicals:** Report the total sales value of all pesticide chemicals. This should include all pesticide active ingredients, intermediates, and finished pesticide products. In cases where the pesticide chemical is not sold (there is no known sales price) but is transferred to another facility owned by the company for further processing and/or formulating/packaging, the facility share of sales generated by the final product should be allocated to the facility. This share should be estimated based on its percent of total production costs. Divide the sale of pesticide chemicals into the following categories:

[a] **Pesticide chemicals listed in Table 1:** Report revenues from the manufacture and/or formulating/packaging of pesticide active ingredients listed in Table 1, pages 4 through 12 or intermediates produced during the manufacture of active ingredients listed in Table 1.

[b] **Other Registered Pesticide Chemicals:** Report revenues from pesticide chemicals not reported in [1a].

[2] **Revenue from Pesticide Contract Work or Tolling:** Report the revenue from pesticide contract work done by this facility for other facilities or firms.

[3] **Other Revenue:** Report all other revenues like the sales value of products and services not reported in items [1] and [2].

[4] **Total Facility Revenues:** Report the sum of items [1] through [3].

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SECTION 2: FACILITY FINANCIAL INFORMATION

2-D. Instructions for reporting facility income Statement information on page 24 - continued

Expenses

Manufacturing Costs (Cost of Materials and Services Used): Include all manufacturing and/or formulating/packaging costs like direct materials, direct labor and indirect costs that were either put into production, used as operating supplies, or used in repair and maintenance. Report total delivered cost after discounts and including freight of materials actually consumed or put into production during the year. Include purchases, cost of interplant transfers to the facility, and withdrawal from inventories.

Pesticides

[5] **Material and Product Costs:** Report the total cost of all raw materials including packaging materials that were used in the production and/or formulating/packaging of pesticide chemicals/products. Include cost of products bought and sold.

[6] **Direct Labor Costs:** Report the total cost, including fringe benefits, of all direct labor that can be traced to the production and/or formulating/packaging of pesticide chemicals/products.

[7] **Cost of Pesticide Contract Work or Tolling:** Report the cost of all contract work done for you by others using materials furnished by your facility. Include the total payments made during the year for such work, including freight out and in.

[8] **Other Pesticide Costs:** Include all other pesticide related expenses, such as effluent treatment and disposal, and energy used directly in producing the product, not included in [5] through [7].

Non Pesticides

[9] **Nonpesticide Costs:** Report all other manufacturing costs not included in items [5] through [8]. Include manufacturing costs associated with nonpesticide chemicals or products. Report the types of cost for items [5] through [8] for nonpesticide products and services.

Report the expenses listed below for the whole facility, not just pesticides.

[10] **Depreciation:** Report the depreciation on buildings, plant, equipment, and machinery at your facility.

[11] **Fixed Overheads:** Report the total from all types of overhead. Include rent, nonproduction utilities, selling costs, administration and general expenses for your facility.

[12] **Research and Development:** Report all research and development costs incurred during the year.

[13] **Interest:** Report the total interest expense on all funds during the year.

[14] **Federal, State and Local Taxes:** Report the total federal, state and local taxes payable during the year.

[15] **Other Expenses:** Report all other expenses not reported in items [10] through [14].

[16] **Total Costs and Expenses:** Report the sum of items [5] through [15].

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SECTION 2: FACILITY FINANCIAL INFORMATION

2-D. Complete the facility Income Statements, Table 2-D below. Enter all information in thousands of dollars as of December 31 for calendar years 1985, 1986, and 1987. If the facility fiscal year does not correspond to the calendar year, please enter the months of the facility fiscal year below.

Facility 1988 fiscal year was from _____ month to _____ month.

TABLE 2-D. INCOME STATEMENTS

REVENUES	1985 ($000)	1986 ($000)	1987 ($000)
[1] Sales of pesticide chemicals			
[a] Pesticide chemicals listed in Table 1			
[b] Other registered pesticide chemicals			
[2] Revenue from pesticide contract work or tolling			
[3] Other revenue			
[4] Total facility revenues			

EXPENSES	1985 ($000)	1986 ($000)	1987 ($000)
Manufacturing costs			
[5] Pesticide material and product costs			
[6] Pesticide direct labor costs			
[7] Cost of pesticide contract work			
[8] Other pesticide costs			
[9] Nonpesticide costs			
Facility costs			
[10] Depreciation			
[11] Fixed overheads			
[12] Research and development			
[13] Interest			
[14] Federal, state and local taxes			
[15] Other expenses			
[16] Total costs and expenses			

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2-E. Did this facility borrow funds to finance a capital investment during calendar year 1986?

YES ..... 1 (CONTINUE)
NO ..... 2 (SKIP TO QUESTION 2-G)

2-F. What was the 1986 interest rate charged? ..... |__|__|__|%

2-G. Enter the number of years over which a typical capital project is financed.

_____ years

Comments for Section 2: Questions 2-A through 2-G. Reference entry by question number.

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SECTION 2: FACILITY FINANCIAL INFORMATION

2-H. This section requests information on Table 1 Pesticide Active Ingredients produced at your facility in 1986.

Instructions for completing Table 2-H Pesticide Production: Technical Grade Products, p. 26.

Column [1] **Active Ingredient Code.** Enter the code for every Table 1 active ingredient that your facility produced in 1986 as a technical grade product. If part of the production was transferred to another facility, list that part as a separate entry as described by Product Code B. If you need additional space to report, photocopy the table before making any marks on it.

Column [2] **Product Code.** Enter the code that best describes the product reported in column [1].

Code Definition

A Table 1 Pesticide Active Ingredients produced at this facility in 1986 to be sold as technical grade products by this facility.

B Table 1 Pesticide Active Ingredients produced at this facility in 1986 and transferred to another facility owned by this firm.

C Table 1 Pesticide Active Ingredients produced at this facility in 1986 for another firm (i.e., tolling).

Column [3] **1986 Average Unit Production and Packaging Cost in Dollars.** Provide the average production cost for one unit of the item reported in column [1]. Include such costs as material costs (i.e., the costs of all raw materials, including packaging materials that were used in the production and packaging of pesticide products), direct labor costs, and any other pesticide costs.

Note that the column [3] entry corresponds to items [5] through [8] under question 2-D on page 23.

Express the costs in dollars. Do not include allocations for corporate overhead, administrative expenses, research and development, capital costs or interest expense.

Column [4] **1986 Average Unit Sales Price in Dollars.** Report the average selling price for one unit of the item reported in column [1]. Express the selling price in dollars. If the pesticide chemical is not sold when it leaves the facility, but is transferred to another facility owned by the firm for further processing, the sales price of the final product should be allocated to both facilities based on their share of the costs to produce the product. This is referred to as the "percentage of cost procedure." An example of the percentage of cost procedure can be found on pages 28-30.

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SECTION 2: FACILITY FINANCIAL INFORMATION

Instructions for completing Table 2-1 Pesticide Production: Technical Grade Products - continued

Column [5] **1988 Production Quantity.** In column [5], report the total quantity of the item reported in column [1] that was manufactured at this facility during 1988.

Column [6] **Unit of Measure.** In column [6], circle the code that corresponds to the unit of measure you used to calculate the information you reported in columns [3], [4], [5] and [7].

P = Pounds
T = Short tons
M = Metric tons
G = Gallons

Column [7] **Sum Annual Production Over Three Years (1985-1987).** Provide the total amount (sum) of the product reported in column [1] that was produced by this facility in 1985, 1986, and 1987 combined.

Column [8] **Percent Exported Over Three Years (1985-1987).** Report the percent of the product in column [1] exported in 1985, 1986, and 1987 combined, i.e., what percentage of column [7] was exported?

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SECTION 2: FACILITY FINANCIAL INFORMATION

EXAMPLE OF PERCENT OF COST PROCEDURES

The following is an example of a hypothetical facility that both produces and formulates/packages active ingredients. It demonstrates use of the "Percentage of Cost Procedure."

Assume the facility produces 1,200 lbs of active ingredient 000 in 1988, of which:

400 lbs are sold as technical grade.

200 lbs are formulated and packaged on site as product group P01.

200 lbs are formulated and packaged by another facility owned by this company also as product group P01

200 lbs are formulated and packaged as product group P01 under contract by another facility not owned by this firm. The contract work is paid for by this plant.

200 lbs are combined with 100 lbs of active ingredient 001 to formulate 300 lbs of product group P02. Active ingredient 001 is purchased from another firm.

Unit sales are:

$2.50/lb for technical grade

$4.00/lb for formulated product group P01

$4.25/lb for formulated product group P02

Unit production, formulating and packaging costs are:

Production of active ingredient 000	$1.50/lb
Purchase of active ingredient 001	$2.00/lb
Formulating and packaging on site	$0.50/lb
Formulating and packaging at other facility owned by this company	$0.50/lb
Formulating and packaging at other facility not owned by this company	$0.60 lb

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SECTION 2: FACILITY FINANCIAL INFORMATION

EXAMPLE (continued)

Instructions for completing the 1985-1987 Pesticide Production Tables. This facility would complete the Pesticide Production Table for Technical Grade Products and Formulated/Packaged Products as follows:

Technical Grade Products (Table 2-H, p. 30)

Line 1 400 lbs of AI 000 are sold as technical grade. The unit cost of production is $1.50/lb and the unit sales price is $2.50/lb. This corresponds to Product Code A on page 26.

Line 2 200 lbs of AI 000 are transferred to another facility owned by this firm to be formulated and packaged. The unit cost of production to this facility remains $1.50/lb and the selling price of the formulated product is $4.00/lb. Since the production cost represents 3/4 of the total cost to produce the formulated product, the unit sales price for this facility is 3/4 of the total unit sales price of $4.00/lb or $3.00/lb. This corresponds to Product Code B on page 26.

Formulated/Packaged Products (Table 2-I, p. 31)

Line 1 200 lbs of AI 000 are formulated/packaged on site by this facility. The total unit cost of the formulated and packaged product is $2.00/lb ($1.50/lb for production plus $.50 for formulating and packaging. Since all unit costs are incurred by this facility, the total unit sales price of $4.00/lb is allocated to this facility. This corresponds to Product Code A on page 35. (Note: This 200 lbs is in addition to the 400 lbs + 200 lbs listed on Line 1 and Line 2 under Technical Grade Products.)

Line 2 200 lbs of AI 000 are produced by this facility and formulated/packaged by another firm under contract to this facility. This facility pays for the contract work. The total unit cost of the formulated/packaged product is $2.10/lb ($1.50/lb for production plus $.60/lb for formulating/packaging). Since all unit costs are incurred by this facility, the total unit sales price of $4.00/lb is allocated to this facility. This corresponds to Product Code B on page 35.

Line 3 200 lbs of AI 000 are combined with 100 lbs of AI 001 to formulate 300 lbs of products in Product Group P02. AI 001 is purchased from another firm. The total cost of production is $2.16/lb (2/3 of $1.50 + 1/3 of $2.00 for active ingredients plus $.50 for formulating/packaging). Since this facility incurred the total unit cost, the total unit sales price is allocated to this facility. This corresponds to Produce Code E on page 35. (Note: If the facility purchases active ingredient 001 from another firm and then formulates/packages it, this would be product group P03 and would also be assigned Product Code E.

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2-H. EXAMPLE PESTICIDE PRODUCTION: TECHNICAL GRADE PRODUCTS

[1] Active ingredient code	[2] Product code	[3] Average unit production and packaging cost in $	[4] Average unit sales in $	[5] 1988 Production quantity	[6] Unit of measure	[7] Sum annual production over 3 yrs. (1985 - 1987)	[8] Percent exported over 3 yrs. (1985 - 1987)
0 0 0	A	1.50	2.50	400	(P) T M G	1,000	1 0
0 0 0	B	1.50	3.00	200	(P) T M G	600	1 5

2-J. EXAMPLE PESTICIDE PRODUCTION: FORMULATED OR PACKAGED PRODUCTS

[1] Product group	[2] Active ingredient code	[3] Product or trade name	[4] Product code	[5] Average unit product and formulating/ packaging cost in $	[6] Average unit sales in $	[7] 1988 Production quantity	[8] Unit of measure	[9] Sum annual production over 3 yrs. (1985 - 1987)	[10] Percent exported over 3 yrs. (1985 - 1987)
P 0 0 1	0 0 0	RDX	A	2.00	4.00	200	(P) T M G	500	1 5
							Other (specify)		
P 0 0 1	0 0 0	RDX	B	2.10	4.00	200	(P) T M G	700	1 5
							Other (specify)		
P 0 0 2	0 0 0	BANY	C	2.16	4.25	300	(P) T M G	600	1 0
							Other (specify)		

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B-H. PESTICIDE PRODUCTION: TECHNICAL GRADE PRODUCTS

[1] Pesticide active ingredient code	[2] Product code	[3] 1988 Average unit production and formulating/packaging cost in $	[4] 1988 Average unit sales in $	[5] 1988 Production quantity	[6] Unit of measure	[7] Sum annual production over 3 yrs. (1985 - 1987)	[8] Percent exported over 3 yrs. (1985 - 1987)
|__|__|__|	|__|	|_____.__|	|_____.__|	|_____|	P T M G Other (specify)	|_____|	|__|__|__|
|__|__|__|	|__|	|_____.__|	|_____.__|	|_____|	P T M G Other (specify)	|_____|	|__|__|__|
|__|__|__|	|__|	|_____.__|	|_____.__|	|_____|	P T M G Other (specify)	|_____|	|__|__|__|
|__|__|__|	|__|	|_____.__|	|_____.__|	|_____|	P T M G Other (specify)	|_____|	|__|__|__|
|__|__|__|	|__|	|_____.__|	|_____.__|	|_____|	P T M G Other (specify)	|_____|	|__|__|__|
|__|__|__|	|__|	|_____.__|	|_____.__|	|_____|	P T M G Other (specify)	|_____|	|__|__|__|
|__|__|__|	|__|	|_____.__|	|_____.__|	|_____|	P T M G Other (specify)	|_____|	|__|__|__|

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2-I. During calendar year 1986, did this facility sell any intermediates produced during the manufacture of pesticide products containing a pesticide active ingredient listed in Table 1? (CIRCLE YES OR NO)

YES ..... > (READ THE INSTRUCTIONS BELOW AND COMPLETE TABLE 2-I ON PAGE 34)

NO ..... > (GO TO QUESTION 2-J ON PAGE 36)

Instructions for completing Table 2-I Pesticide Production Intermediates.

Column [1] **Intermediate Name.** Enter the name of every intermediate produced in 1986 during the manufacture of Table 1 Pesticide Active Ingredients and sold. Please include all chemicals and codes that you listed in Part A of the Pesticide Manufacturing Facility Census questionnaire. If you need additional space to report, photocopy the table before making any marks on it.

Column [2] **Active Ingredient Code.** Enter the code for every Table 1 active ingredient associated with your production of the intermediate listed in column [1].

Column [3] **Average Unit Production Cost in Dollars.** Provide the average production cost for one unit of the item reported in column [1]. Include such costs as material costs (i.e., the costs of all raw materials, including packaging materials that were used in the production and packaging of pesticide products), direct labor costs, the costs of pesticide contract work or tolling done for you by others, and any other pesticide costs.

Note that the column [3] entry corresponds to items [5] through [8] under question 2-D on page 23.

Express the costs in dollars. Do not include allocations for corporate overhead, administrative expenses, research and development, capital costs or interest expense.

Column [4] **1986 Average Unit Sales Price in Dollars.** Report the average selling price for one unit of the item reported in column [1]. Express the selling price in dollars. If the pesticide chemical is not sold when it leaves the facility, but is transferred to another facility owned by the firm for further processing, the sales price of the final product should be allocated to both facilities based on their share of the costs to produce the product. This is referred to as the "percentage of cost procedure."

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Instructions for completing Table 2-1 Pesticide Production Intermediates - continued

Column [5] **1986 Quantity Sold.** In column [5], report the total quantity of the item reported in column [1] that was produced at this facility during 1986 and sold.

Column [6] **Unit of Measure.** In column [6], circle the code that corresponds to the unit of measure you used to calculate the information you reported in columns [3], [4], [5] and [7].

P = Pounds
T = Short tons
M = Metric tons
G = Gallons

Column [7] **Sum Annual Quantity Sold Over Three Years (1985-1987).** Provide the total amount (sum) of the product reported in column [1] that was produced and sold by this facility in 1985, 1986, and 1987 combined.

Column [8] **Percent Exported Over Three Years (1985-1987).** Report the percent of the product in column [1] exported in 1985, 1986, and 1987 combined, i.e., what percent of column [7] was exported.

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2-I. PESTICIDE PRODUCTION: INTERMEDIATES

[1] Intermediate name	[2] Active ingredient code	[3] 1986 Average unit production cost in $	[4] 1986 Average unit sales price in $	[5] 1986 Quantity sold	[6] Unit of measure	[7] Sum annual production over 3 yrs. (1985 - 1987)	[8] Percent exported over 3 yrs. (1985 - 1987)
_____	|__|__|__|	|__.__|	|__.__|	|_____|	P T M G _____ Other (specify)	|_____|	|__|__|__|
_____	|__|__|__|	|__.__|	|__.__|	|_____|	P T M G _____ Other (specify)	|_____|	|__|__|__|
_____	|__|__|__|	|__.__|	|__.__|	|_____|	P T M G _____ Other (specify)	|_____|	|__|__|__|
_____	|__|__|__|	|__.__|	|__.__|	|_____|	P T M G _____ Other (specify)	|_____|	|__|__|__|
_____	|__|__|__|	|__.__|	|__.__|	|_____|	P T M G _____ Other (specify)	|_____|	|__|__|__|
_____	|__|__|__|	|__.__|	|__.__|	|_____|	P T M G _____ Other (specify)	|_____|	|__|__|__|

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2-J. During calendar year 1986, did this facility produce any formulated or packaged products containing a pesticide active ingredient listed in Table 1? (CIRCLE YES OR NO)

YES -----> (READ THE INSTRUCTIONS BELOW AND COMPLETE TABLE 2-J ON PAGE 37)

NO -----> (GO TO QUESTION 2-K ON PAGE 38)

Instructions for completing Table 2-J Pesticide Production: Formulated or Packaged Products.

Column [1] **Product Group.** Group all formulated/packaged products according to the active ingredient(s) they contain, regardless of relative proportions or concentrations and assign each group a number. For example, if your products contain two active ingredients (say A and B), group all products containing only A into one group (call it #1), group all products containing B into a second group (call it #2) and all products containing both A and B into a third group (call it #3). Report dry and wet formulations separately. If you need additional space to report, photocopy this table before making any marks on it.

Column [2] **Active Ingredient Code.** For each product group formulated/packaged in 1986, enter the code for every Table 1 active ingredient that it contained.

Column [3] **Product or Trade Name.** Enter the trade name or name of the product.

Column [4] **Product Code.** Enter the code that best describes the product reported in column [1].

Code Definition

A Table 1 pesticide products produced and formulated/packaged at this facility in 1986.

B Table 1 pesticide products produced at this facility in 1986 and formulated/packaged for you by another firm on a contract basis.

C Table 1 pesticide products formulated/packaged by this facility in 1986, and produced by another facility owned by the firm that owns this facility.

D Table 1 pesticide products formulated/packaged by this facility on a contract basis in 1986, for a firm other than the firm that owns this facility.

E Table 1 pesticide products formulated/packaged by this facility from active ingredients purchased from another firm.

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Instructions for completing Table 2-J Pesticide Production: Formulated or Packaged Products - continued

Column [5] **1986 Average Unit Production and Formulating/Packaging Cost in Dollars.** Provide the average production cost for one unit. Include such costs as material costs (i.e., the costs of all raw materials, including packaging materials that were used in the production and/or formulation and packaging of pesticide products), direct labor costs, the costs of pesticide contract work or tolling done for you by others, and any other pesticide costs.

Note that the column [5] entry corresponds to items [5] through [8] under question 2-D on page 23.

Express the costs in dollars. Do not include allocations for corporate overhead, administrative expenses, research and development, capital costs or interest expense.

Column [6] **1986 Average Unit Sales Price in Dollars.** Report the average selling price for one unit of the item reported in column [1]. Express the selling price in dollars. If the pesticide chemical is not purchased by your facility, but is transferred to your facility from another facility owned by the firm for further processing, the sales price of the final product should be allocated to both facilities based on their share of the costs to produce the product. This is referred to as the "percentage of cost procedure." An example of the percentage of cost procedure can be found on pages 28 and 29.

Column [7] **1986 Production Quantity.** In column [5], report the total quantity of the item reported in column [1] that was formulated/packaged by this facility during 1986.

Column [8] **Unit of Measure.** In column [6], circle the code that corresponds to the unit of measure you used to calculate the information you reported in columns [5], [6], [7] and [8].

P = Pounds
T = Short tons
M = Metric tons
G = Gallons

Column [9] **Sum Annual Production Over Three Years (1985-1987).** Provide the total amount (sum) of the product reported in column [1] that was formulated/packaged by this facility in 1985, 1986, and 1987 combined.

Column [10] **Percent Exported Over Three Years (1985-1987).** Report the percent of the product exported in 1985, 1986, and 1987 combined, i.e., what percent of column [9] was exported.

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B-J. PESTICIDE PRODUCTION TABLE: FORMULATED OR PACKAGED PRODUCTS

[1] Product group	[2] Active ingredient code	[3] Product or trade name	[4] Product code	[5] 1988 Average unit production and formulating/ packaging cost in $	[6] 1988 Average unit sales price in $	[7] 1988 Production quantity	[8] Unit of measure	[9] Sum annual production over 3 yrs. (1985 - 1987)	[10] Percent exported over 3 yrs. (1985 - 1987)
P							P T M G Other (specify)		
P							P T M G Other (specify)		
P							P T M G Other (specify)		
P							P T M G Other (specify)		
P							P T M G Other (specify)		

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2-K. Facility 1986 Markets

Estimate the percentage of this facility's total 1986 production that was delivered to the markets listed below. (Enter zero if the market is not applicable. The percentages should sum to 100%).

[1]	Agriculture (U.S.A.)	___%
[2]	Industry, commerce, government (U.S.A.)	___%
[3]	Home, garden (U.S.A.)	___%
[4]	Export (Outside U.S.A.)	___%
[5]	Other markets (SPECIFY)	___%
	Total	100%

2-L. Facility Operations

Report the operational information listed below for calendar year 1986. (Enter zero if the category is not applicable).

[1]	The number of days the entire facility was in operation	___
[2]	The number of days part or all of the facility manufactured pesticide chemicals	___
[3]	The number of days part or all of the facility formulated/packaged pesticide chemicals	___

2-M. Employee Information

In lines [1] through [4], report the total employee hours worked at this facility in the months of January 1986, May 1986 and November 1986 in the categories indicated. In lines [5] and [6], enter the average number of shifts run in the entire facility in a week, and the average number of hours per shift for the months of January 1986, May 1986 and November 1986.

	January 1986	May 1986	November 1986
[1] Total employee hours in pesticide chemicals production			
[2] Total employee hours in pesticide formulating and packaging			
[3] Total employee hours in other production			
[4] Total employee hours in non-production			
[5] Average number of shifts run in the entire facility in a week			
[6] Average number of hours per shift in the entire facility			

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2-N. Estimate the liquidation values less closure and post-closure costs of the pesticide production and pesticide formulating/packaging lines at this facility if you were to close them permanently within the next three years. Include the value of fixed assets, working capital and real estate in your calculation of liquidation values. Report the estimates in thousands of dollars and enter zero dollars if the item is not applicable.

Pesticide production lines	($000)
[1] Liquidation value (less closure and post-closure cost)	
Closure and post-closure cost	
[2] Cost to convert to non-Table 1 pesticide active ingredients or non-pesticide products	
Pesticide formulating/packaging lines	
[1] Liquidation value	
[2] Cost to convert to non-Table 1 pesticide active ingredients or non-pesticide products	

2-O. Did this facility have any property tax assessment for 1986?

YES ..... 1 (CONTINUE)
NO ..... 2 (SKIP TO QUESTION 2R)

2-P. What was the 1986 property tax assessment value of the items listed below? Report the values in thousands of dollars and enter zero if the item listed is not applicable.

State tax assessment value	($000)
[1] Land	
[2] Buildings	
[3] Equipment and machinery	
[4] Total property tax assessment value	
Local tax assessment value	
[5] Land	
[6] Buildings	
[7] Equipment and machinery	
[8] Total property tax assessment value	

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2-Q. What was the 1986 assessed value of the property expressed as a percentage of market value (1986 level of assessment)? (Enter zero if the item was not applicable).

[1] State assessment percentage ..... |__|__|__|%
[2] Local assessment percentage ..... |__|__|__|%

2-R. Overall, what is the major source of competition for pesticide products produced at this facility in each of the three markets listed below?

The same products means competing products containing identical or nearly identical pesticide active ingredients or percentages of active ingredients but having different trade or brand names. Substitute products means competing products performing the same pesticidal functions but containing different pesticide active ingredients.

Competition	Market: Local/Regional	National	International
[1] Domestic producers of the same products	☐	☐	☐
[2] Foreign producers of the same products	☐	☐	☐
[3] Domestic producers of the substitute products	☐	☐	☐
[4] Foreign producers of the substitute products	☐	☐	☐
[5] No competition	☐	☐	☐
[6] No market share	☐	☐	☐

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Comments for Section 2. Reference entries by question number.

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SECTION 3: FACILITY CONTACT

Enter the name, title, telephone number and address (if different from the facility mailing address) of the facility representative to be contacted with questions regarding your responses to Part B:

|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|
Name (First and Last)

|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|
Title

|_|_|_| - |_|_|_| - |_|_|_|_|
Telephone Number

Address (if different from facility mailing address):

|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|
Firm or Facility Name

|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|
Street or P.O. Box

|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|
City or Town | State | Zip Code

CERTIFICATION: The information provided in Part B of the questionnaire, as well as that provided in all others, must be certified by having the responsible individual for your facility complete and sign the Certification Statement item 6 on page 3 of this questionnaire.

BILLING CODE 6560-50-C

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Send comments regarding the burden estimates, or any other aspects of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street, SW., Washington, DC 20460

and

Timonthy Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20503, [Telephone (202) 395-3084]

Date: October 24, 1988.

Daryl Salmerts,

Acting Director, Information and Regulatory Systems Division.

[FR Doc. 88-25195 Filed 10-31-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-[illegible]; FRL-3479-8]

FIFRA Scientific Advisory Panel Subpanel; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 1-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) Subpanel to review a set of scientific issues being considered by the Agency in connection with a proposed rule under 40 CFR Part 172 to amend its experimental use permit (EUP) regulations for pesticides. The proposed rule clarifies the circumstances under which an EUP is required for small scale field testing of genetically microbial pesticides.

DATE: Tuesday, November 22, 1988, from 9:00 p.m. to 2:00 p.m.

ADDRESSES: The meeting will be held at: U.S. Environmental Protection Agency, Room 1112, Cyrstal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: By Mail:

Robert B. Jaeger, Executive Secretary, FIFRA Scientific Advisory Panel, Office of Pesticide Programs (TS-769C), 401 M Street SW., Washington, DC 20460

Office location and phone number: Rm. 816G, Crystal Mall, Building No. 2, Arlington, VA, (703-557-4389).

SUPPLEMENTARY INFORMATION: The agenda for the meeting is:

Review of the scientific issues being considered by the Agency on a proposed regulation amending the Agency's Experimental Use Permit (EUP) for pesticides to clarify the circumstances under which an EUP is presumed not to be required and to specify that the presumption is based upon risk. The Agency also proposed to require notification before initiation of any small-scale testing of nonindigenous and genetically altered microbial pesticides. However, notification to the Agency would not be required for tests involving certain of these microorganisms if the test has been approved by an Environmental Biosafety Committee (EBC). In addition, tests involving nonindigenous microorganisms approved by the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture are excluded from the notification requirement. For notifications reviewed by the Agency, a determination may be made as to whether an experimental use permit will be required. This notification scheme would implement provisions of the Agency's policy statement of June 26, 1986, (51 FR 23302) and is intended to provide sufficient oversight of the early testing of these microorganisms to mitigate any adverse human or environmental effects.

The Agency has convened a Subpanel of the SAP to review the scientific issues on the proposed rule. The Subpanel will be chaired by Dr. James Tiedje, a member of the SAP. Disciplines of the Subpanel will include expertise in microbiology, entomology molecular biology, human pathology, plan pathology, and soil science.

Copies of documents relating to the item listed above, may be obtained by contacting:

Information Services Branch, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Rm. 240, Crystal Mall No. 2, Arlington, VA, 703-557-2613

Any member of the public wishing to submit written comments should contact Robert B. Jaeger at the address or phone listed above to be sure that the meeting is still scheduled and to confirm the Subpanel's agenda. Interested persons are permitted to file such statements before the meeting. To the extent that the time permits and upon advance notice to the Executive Secretary, interested persons may be permitted by the Chairman of the Subpanel to present oral statements at the meeting. There is no limit on written comments for consideration by the Subpanel, but oral statements before the Subpanel are limited to approximately 5 minutes. Since oral statements will be permitted only as time permits, the Agency urges the public to submit written comments in lieu of oral presentations. Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket will be available for public inspection in Rm. 236 at the address given, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. All statements will be made part of the record and will be taken into consideration by the Subpanel. Persons wishing to make oral/written statements should notify the Executive Secretary and submit 10 copies of written comments and oral written testimony no later than November 15, 1988, in order to ensure appropriate consideration by the Subpanel.

Dated: October 25, 1988.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 88-25197 Filed 10-31-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-00095; FRL-3485-8]

Toxics Release Inventory; Open Meeting on Magnetic Media Submissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: There will be a meeting to discuss magnetic media submissions of data under section 313 of the Emergency Planning and Community-Right-to-Know Act of 1986 (otherwise known as Title III of the Superfund Amendments and Reauthorization Act of 1986). For submissions made on or before July 1, 1988, for emissions occuring during calendar year 1987, EPA allowed the submission of data to satisfy the reporting requirements under 40 CFR Part 372 in a magnetic media format. Because of the success of that effort, EPA would like to meet with all interested persons to consider ways to increase the number of facilities that choose this means to satisfy their reporting requirements.

DATES: The meeting will be held on Thrusday, November 10, 1988, starting at 12:30 p.m., and ending at approximately 2 p.m.

ADDRESS: The meeting will be held in: Room 542 East Tower, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Steven D. Newburg-Rinn, Chief, Public Data Branch, Office of Toxic Substances (TS-793), 401 M St., SW., Washington, DC 20460, (202-382-3757).

SUPPLEMENTARY INFORMATION: Attendance by the public will be limited to available space. The Public Data Branch will provide summaries of the meeting at a later date. In order to insure that adequate space is available, persons planning to attend should notify the undersigned of their intention to do so no later than 12:00 noon on November 4, 1988.

Dated: October 25, 1988.

Steven D. Newburg-Rinn,

Acting Director, Information Management Division, Office of Pesticides and Toxic Substances.

[FR Doc. 88-25196 Filed 10-31-88; 8:45 am]

BILLING CODE 6560-50-M

EXPORT-IMPORT BANK OF THE UNITED STATES

Advisory Committee of the Export-Import Bank of the United States; Meeting

SUMMARY: The Advisory Committee was established by Pub. L. 98-181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank to the United States Congress.

Time and Place: Tuesdday, November 15, 1988 from 9:30 a.m. to 12 noon. The meeting will be held in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

Agenda: The meeting agenda will include a discussion of the following topics: Financial Report, Lundine Discussion, Mixed Credit Status, State/City Report, Financial Institution Subcommitte, and other topics.

Public Participation: The meeting will be open to public participation; and the last 20 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Joan P. Harris, Room 935, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 566-8871, not later than November 14, 1988. If any person wishes auxiliary aids (such as a language interpreter) or other special accommodations, please contact prior to November 10, 1988 the Office of the Secretary, Room 935, 811 Vermont Avenue, NW., Washington, DC 20571, Voice : (202) 566-8871 or TDD: (202) 535-3913.

FURTHER INFORMATION: For further information, contact Joan P. Harris, Room 935, 811 Vermont Avnue, NW., Washington, DC 20571 (202) 566-8871.

Joan P. Harris,

Corporate Secretary.

[FR Doc. 88-25282 Filed 10-31-88; 8:45 am]

BILLING CODE 6690-01-M

FEDERAL HOME LOAN BANK BOARD

[No. 88-1157]

General Recordkeeping by Savings and Loan Associations

Date: October 26, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board ("Board") has submitted for extension, without revision, an information collection request, "General Recordkeeping by Savings and Loan Associations" to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

This information is required by Bank Board examiners to determine whether institutions are being operated safely, soundly, and in regulatory compliance. The Board estimates that it takes an average of 218 hours per institution per year for recordkeeping purposes.

DATES: Comments on the information collection request are welcome and should be received on or before November 16, 1988.

ADDRESS: Comments regarding the paperwork-burden aspects of the request should be direct to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503. Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Request for copies of the proposed information collection requests and supporting documentation are obtainable at the Board address given below: Director, Information Services Division, Office of Secretariat, Federal Home Loan Bank Board, 801 17th Street, NW., Washington, DC 20552. Phone: 202-377-2751.

FOR FURTHER INFORMATION CONTACT: Francis Raue, Office of Regulatory Activities, 202-331-4586, Federal Home Loan Bank Board, 801 17th Street, NW., Washington, DC 20552.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-25202 Filed 10-31-88; 8:45 am]

BILLING CODE 6720-01-M

Capitol Federal Savings Bank; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 406(c)(1)(B)(i)(1) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Capitol Federal Savings Bank, Oklahoma City, Oklahoma, on August 31, 1988.

Dated: October 25, 1988.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-25203 Filed 10-31-88; 8:45 am]

BILLING CODE 6720-01-M

Champion Savings Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Champion Savings Association, Houston, Texas, on September 23, 1988.

Dated: September 23, 1988.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-25204 Filed 10-31-88; 8:45 am]

BILLING CODE 6720-01-M

Delta Savings Association of Texas; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed

the Federal Savings and Loan Insurance Corporation as sole receiver for Delta Savings Association of Texas, Alvin, Texas, on September 30, 1988.

Dated: September 30, 1988.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-25205 Filed 10-31-88; 8:45 am]

BILLING CODE 6720-01-M

First Federal Savings and Loan Association of Austin; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for First Federal Savings and Loan Association of Austin, Austin, Texas, on September 30, 1988.

Dated: September 30, 1988.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-25206 Filed 10-31-88; 8:45 am]

BILLING CODE 6720-01-M

First Federal Savings and Loan Association of Elk City; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for First Federal Savings and Loan Association of Elk City, Elk City, Oklahoma, on August 31, 1988.

Dated: October 28, 1988.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-25207 Filed 10-31-88; 8:45 am]

BILLING CODE 6720-01-M

First Oklahoma Savings Bank, FA; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for First Oklahoma Savings Bank, FA, Tulsa, Oklahoma, August 31, 1988.

Dated: October 25, 1988.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-25209 Filed 10-31-88; 8:45 am]

BILLING CODE 6720-01-M

Frontier Federal Savings and Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Frontier Federal Savings and Loan Association, Ponca City, Oklahoma, on August 31, 1988.

Dated: October 25, 1988.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-25208 Filed 10-31-88; 8:45 am]

BILLING CODE 6720-01-M

Guaranty Federal Savings and Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Guaranty Federal Savings and Loan Association of Dallas, Texas, on September 30, 1988.

Dated: September 30, 1988.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-25210 Filed 10-31-88; 8:45 am]

BILLING CODE 6720-01-M

Heritage Savings and Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Heritage Savings and Loan Association, Elk City, Oklahoma on August 31, 1988.

Dated: October 25, 1988.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-25211 Filed 10-31-88; 8:45 am]

BILLING CODE 6720-01-M

Home Savings and Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. § 1464(d)(6)(A), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Home Savings and Loan Association, FA, Bartlesville, Oklahoma, on August 31, 1988.

Dated: October 25, 1988.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-25212 Filed 10-31-88; 8:45 am]

BILLING CODE 6720-01-M

Home Savings Bank, FA; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Home Savings Bank, FA, Lawton, Oklahoma on August 31, 1988.

Dated: October 25, 1988.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-25213 Filed 10-31-88; 8:45 am]

BILLING CODE 6720-01-M

Kingfisher Federal Savings and Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A) the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Kingfisher Federal Savings and Loan Association, Kingfisher, Oklahoma on August 31, 1988.

Dated: October 25, 1988.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-25214 Filed 10-31-88; 8:45 am]

BILLING CODE 6720-01-M

Midamerica Federal Savings and Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A) the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Midamerica Federal Savings and Loan Association, Tulsa, Oklahoma on August 31, 1988.

Dated: October 25, 1988.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-25215 Filed 10-31-88; 8:45 am]

BILLING CODE 6720-01-M

Mutual Federal Savings and Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Mutual Federal Savings and Loan Association, Oklahoma City, Oklahoma, on August 31, 1988.

Dated: October 28, 1988.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-25216, Filed 10-31-88; 8:45 am]

BILLING CODE 6720-01-M

Peoples Federal Savings and Loan Association of Ardmore; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Peoples Federal Savings and Loan Association of Ardmore, Ardmore, Oklahoma, on August 31, 1988.

Dated: October 28, 1988.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-25217, Filed 10-31-88; 8:45 am]

BILLING CODE 6720-01-M

Phoenix Federal Savings and Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Phoenix Federal Savings and Loan Association, Muskogee, Oklahoma, on August 31, 1988.

Dated: October 28, 1988.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-25218, Filed 10-31-88; 8:45 am]

BILLING CODE 6720-01-M

Sunbelt Savings; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Sunbelt Savings, A Federal Savings and Loan Association, Watonga, Oklahoma, on August 31, 1988.

Dated: October 28, 1988.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-25219, Filed 10-31-88; 8:45 am]

BILLING CODE 6720-01-M

[Nos. AC-747; FHLBB Nos. 2365 and 2467]

Cheltenham Federal Savings and Loan Association and North East Federal Savings and Loan Association; Final Action; Approval of Conversion Application

Dated: October 26, 1988.

Notice is hereby given that on October 11, 1988, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the applications of Cheltenham Federal Savings and Loan Association, Philadelphia, Pennsylvania, [FHLBB No. 2365] and North East Federal Savings and Loan Association, Southampton, Pennsylvania, [FHLBB No. 2467] for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Pittsburgh, One Riverfront Center, Twenty Stanwix Street, Pittsburgh, Pennsylvania 15222-4893.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-25220 Filed 10-31-88; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-748; FHLBB Nos. 2468]

Great Northwest Federal Savings and Loan Association; Final Action; Approval of Conversion Application

Dated: October 26, 1988.

Notice is hereby given that on October 18, 1988, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the applications of Great Northwest Federal Savings and Loan Association, Bremerton, Washington for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Seattle, 1501 4th Avenue, 19th Floor, Seattle, Washington 98101-1693.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-25221 Filed 10-31-88; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties

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may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200168.
Title: Seagate Corporation Terminal Agreement.
Parties: Seagate Corporation, Delaware River Stevedore, Inc. (DRS).
Synopsis: The agreement provides DRS a license to use Piers 83-84 South at the Port of Philadelphia for the discharge, transfer, consolidation and storage of waterborne cargo, and for the docking and berthing of ocean going vessels.

By Order of the Federal Maritime Commission.

Dated: October 27, 1988.

Joseph C. Polking,
Secretary.

[FR Doc. 88-25236 Filed 10-31-88; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Dorothy Cornwall et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 15, 1988.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Dorothy E. Cornwall,* to increase her ownership percentage by 22.9 percent as a result of a stock redemption; James A. Wick, Kevin J. Wick, Mark D. Wick, Mary K. Wick, Patrick A. Wick, and Paul D. Wick, to each acquire an additional 6.0 percent of the voting shares of Turtle Bancshares, Incorporated, Turtle Lake, Wisconsin, and thereby indirectedly acquire Bank of Turtle Lake, Turtle Lake, Wisconsin.

2. **Duane S. Amundson** and E.J. Amundson, Henning, Minnesota; to acquire 28.86 percent of the voting shares of Culbertson Ban Corp, Culbertson, Montana, and thereby indirectly acquire Culbertson State Bank, Culbertson, Montana.

Board of Governors of the Federal Reserve System, October 26, 1988.

James McAfee,
Associated Secretary of the Board.

[FR Doc. 88-25140 Filed 10-31-88; 8:45 am]
BILLING CODE 6210-01-M

Fairfield County Bancorp, Inc., et al., Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governor. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 21, 1988.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Fairfield County Bancorp, Inc.,* Stamford, Connecticut; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Stamford, Stamford, Connecticut.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Farmers State Bancorp,* Union City, Ohio; to acquire 100 percent of the voting shares of Farmers State Bank, Losantville, Indiana.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Community Financial Corporation,* Harbor Beach, Michigan; to acquire 100 percent of the voting shares of The Peoples State Bank of Caro, Michigan, Caro, Michigan.

2. *First Colonial Bankshares Corporation,* Chicago, Illinois; to acquire 99.14 percent of the voting shares of DuPage County Bank of Glendale Heights, Glendale Heights, Illinois.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Bainum Bancorp,* Glenwood, Arkansas; to become a bank holding company by acquiring at least 80 percent of the voting shares of The Bank of Glenwood, Glenwood, Arkansas.

2. *Old National Bancorp,* Evansville, Indiana; to acquire 100 percent of the voting shares of First Service Bancshares, Inc., Greenville, Kentucky, and thereby indirectly acquire The First State Bank of Greenville, Kentucky, Inc., Greenville, Kentucky.

Board of Governors of the Federal Reserve System, October 26, 1988.

James McAfee,
Associate Secretary of the Board

[FR Doc. 88-25140 Filed 10-31-88; 8:45 am]
BILLING CODE 6210-01-M

First Denham Bancshares, Inc., et al., Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 2125.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843 (c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of RegulationY as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 21, 1988.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First Denham Bancshares, Inc.,* Denham Springs, Louisiana; to engage *de novo* through First Advantage Insurance, Inc., Springfield, Louisiana, and Walker, Louisiana, in insurance activities, pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y. Specifically, to act as an agent for insurance companies in soliciting, procuring, receiving and forwarding applications for property and casualty, life and accident and health, credit life, and all kinds of insurance, together with the collection of premiums and the doing of such other business as may be designated to agents by insurance companies and to conduct a general insurance agency and insurance brokerage business.

2. *Public Bank Corporation,* St. Cloud, Florida; to engage *de novo* through Public Mortgage Corporation, St. Cloud, Florida, in mortgage banking activities, pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Tennessee National Corporation,* Memphis, Tennessee; to engage *de novo* through FTB Futures Corporation, Memphis, Tennessee; in providing investment advice, including counsel, publications, written analyses and reports, with respect to the purchase and sale of futures contracts and options on futures for the commodities and instruments pursuant to § 225.25(b)(19)(i) and (ii) of the Board's Regulation Y. Corporation will not trade for its own account, and it will limit its advice to financial institutions and other financially sophisticated customers that have significant dealings or holdings in the underlying commodities, securities, or instruments.

2. *Mid-America Bancorp,* Louisville, Kentucky; to engage *de novo* through Eton Life Insurance Company, Louisville, Kentucky; in investing in public obligations through direct loans to municipalities pursuant to § 225.25(b)(1)(iv) of the Board's Regulation Y.

C. Federal Reserve Bank of Kansas City (Thomas Mc. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Kansas National Bancorporation, Inc.,* Goodland, Kansas; to engage *de novo* in providing management consulting to nonaffiliated depository organizations and in providing data processing activities, pursuant to § 225.25(b)(11) and 225.25(b)(7) of the Board's Regulation Y.

2. *United Banks of Colorado, Inc.,* Denver, Colorado; to engage *de novo* in insurance and data processing activities through a partnership joint venture between its 4(c)(8)(G) insurance subsidiary: United Banks Insurance Services, Inc., and an unaffiliated company Thompson and Company Insurance Services, Inc. Pasadena, California, pursuant to § 225.25(b)(8)(vii) and 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 26, 1988.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 88-25150 Filed 10-31-88; 8:45 am]
BILLING CODE 6210-01-M

First Tennessee National Corp., et al., Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than November 21, 1988.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Tennessee National Corporation,* Memphis, Tennessee; to acquire Check Consultants, Inc., Memphis, Tennessee, and thereby engage in check processing activities pursuant to § 225.25(b)(7) of the Board's Regulation Y. Applicant intends for Company to continue doing business on a national and international basis.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation,* Minneapolis, Minnesota; to acquire through its wholly-owned subsidiary, Norwest Insurance, Inc., assets of Hopkins Insurance Agency, Inc., which has its office located in Des Moines, Iowa, where it is engaged in a general insurance agency business. Norwest Corporation and its subsidiaries are authorized to engage in insurance agency activities pursuant to section 4(c)(8)(G) of the Bank Holding Company Act of 1956, as amended, and § 225.25(b)(8) of the Board's Regulation Y. Upon consummation of this transaction, Norwest Insurance, Inc.,

will engage in such activities at its existing office in Des Moines, Iowa, as well as at the current location of Hopkins Insurance Agency, Inc., and will continue to serve Des Moines, and nearby communities. Comments on this application must be received by November 18, 1988.

Board of Governors of the Federal Reserve System, October 26, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-25181 Filed 10-31-88; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Buford and Ruby Thompson et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 18, 1988.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Buford Thompson and Ruby Thompson*, Hartsville, Tennessee, to acquire control over additional shares. The largest shareholder is transferring 3,200 shares to Notificants, who will receive 1,600 each. As a result of these transfers, Notificants' total ownership will increase to 23.7 percent, and they will become the largest shareholders.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *John C. Bumgarner, Jr.*, Tulsa, Oklahoma; to acquire an additional 14.05 percent of the voting shares of Western National Bancorporation of Tulsa, Tulsa, Oklahoma, and thereby indirectly acquire Western National Bank of Tulsa, Tulsa, Oklahoma.

Board of Governors of the Federal Reserve System, October 26, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-25182 Filed 10-31-88; 8:45 am]

BILLING CODE 6210-01-M

Westpac Banking Corp., Sydney, Australia; Proposal To Underwrite and Deal in Certain Securities to a Limited Extent

Westpac Banking Corporation, Sydney, Australia ("Applicant"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a), of the Board's Regulation Y (12 CFR 225.23(a)), for permission to engage through Westpac Pollock Government Securities Inc., New York, New York ("Company"), in the activity of underwriting and dealing in, to a limited degree, commercial paper, municipal revenue bonds (including "public ownership" industrial development bonds), 1-4 family mortgage-related securities and consumer-receivable-related securities ("ineligible securities"). These securities are eligible for purchase by banks for their own account but not eligible for banks to underwrite and deal in.

Company is currently authorized to engage in underwriting and dealing in U.S. government securities pursuant to § 225.25(b)(16).

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order of regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." Applicant has applied to underwrite and deal in ineligible securities in accordance with limitations similar to those set forth in the Board's Orders approving those activities for a number of bank holding companies. *See, e.g., Citicorp, J.P. Morgan & Co. Incorporated and Bankers Trust New York Corporation*, 73 Federal Reserve Bulletin 473 (1987).

The application presents issues under section 20 of the Glass-Steagall Act (12 U.S.C. 377). Applicant states that, consistent with section 20, it would not be "engaged principally" in such activities on the basis of the restriction on the amount of the proposed activity relative to the total business conducted by the underwriting subsidiary previously approved by the Board.

Any request for a hearing on this application must comply with § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Any comments or requests for hearing should be sumitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than November 21, 1988.

Board of Governors of the Federal Reserve System, October 26, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-25147 Filed 10-31-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food And Drug Administration

[Docket No. 88M-0327]

G.T. Laboratories, Inc.; Premarket Approval Of Fluorex™ 700 (Flusilocon A) Rigid Gas Permeable Contact Lens (Clear And Tinted)

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by G.T. Laboratories, Inc., Chicago, IL, for premarket approval, under the Medical Device Amendments of 1976, of the spherical Fluorex ™ 700 (fluslifocon A) Rigid Gas Permeable Contact Lens for daily wear (clear and tinted). After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of September 15, 1988, of the approval of the application.

DATE: Petitions for administrative review by December 1, 1988.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, 301-427-7940.

SUPPLEMENTARY INFORMATION: On March 21, 1988, G.T. Laboratories, Inc., Chicago, IL 60602, submitted to CDRH an application for premarket approval of the Fluorex™ 700 (fluslifocon A) Rigid Gas Permeable Contact Lens (clear and tinted). The spherical lens is indicated for daily wear for the correction of visual acuity in not-aphakic persons with nondiseased eyes that are myopic or hyperopic and have an astigmatism of 1.5 diopters (D) or less that does not interfere with visual acuity. The lens ranges in power from −20.00 D to +12.00 D and is to be disinfected using the chemical lens care system specified in the approved labeling. The tinted lens contains the color additive D&C Green No. 6 in accordance with the color additive listing provisions of 21 CFR 74.3206.

On June 21, 1988, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On September 15, 1988, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ-460), address above.

The labeling of the approved contact lens states that the lens is to be used only with certain solutions for disinfection and other purposes. The retrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only. The restrictive labeling needs to be updated periodically, however, to refer to new lens solutions that CDRH approves for use with approved contact lenses made of polymers other than polymethylmethacrylate, to comply with the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*), and regulations thereunder, and with the Federal Trade Commission Act (15 U.S.C. 41-58), as amended. Additionally, the labeling of solutions needs to be updated periodically to refer to new lenses that CDRH approves for use with approved solutions. Accordingly, whenever CDRH publishes a notice in the **Federal Register** of approval of a new solution for use with an approved lens, each contact lens manufacturer or PMA holder shall correct its labeling to refer to the new solution at the next printing or at any other time CDRH prescribes by letter to the applicant.

Opportunity For Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before December 1, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: October 21, 1988.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 88-25145 Filed 10-31-88; 8:45 am]

BILLING CODE 4160-01-M

Office of Human Development Services

Administration for Native Americans

AGENCY: Administration for Native Americans, Office of Human Development Services, Department of Health and Human Services.

ACTION: Notice of description of panel review process for review of applications.

SUMMARY: Pursuant to section 806(a) of the Native American Programs Act of 1974, as amended, the Administration for Native Americans (ANA) herein describes the formal panel review process that is to be used for evaluating applications for financial assistance under sections 803 and 805 of the Act and determining the relative merits of the projects for which assistance is requested.

DATES: The deadline for receipt of comments is January 3, 1989.

ADDRESS: Send comments on this notice to Martin Koenig, Director, Planning and Support Division, Administration for Native Americans, 3rd Floor Corridor F, 200 Independence Ave., SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Martin Koenig, (202) 245-7730.

SUPPLEMENTARY INFORMATION: Sections 806 (a)(1) and (2) of the Native American Programs Act, (the Act), as amended by Pub. L. 100-175, require the Administration for Native Americans (ANA) to establish a formal panel review process for the purpose of reviewing applications for financial assistance and to exercise Native American preference in panelist selection. This notice serves to fulfill those requirements.

Review Process

ANA's formal panel review process consists of the following steps:

I. Publication of Program Announcement

For each fiscal year, ANA will publish program announcements in the **Federal Register**. The announcements will solicit grant applications for projects which promote self-sufficiency for Indian Tribes and American Indians, Native Hawaiians, and Native American Pacific Islander groups in accordance with sections 803 and 805 of the Act. They also will contain criteria for their acceptance and evaluation. The announcement for section 803 of the Act will include multiple dates (closing dates) for receipt and consideration of applications.

Research, demonstration, and evaluation applications which are funded under section 805 of the Act are sometimes solicited in a different **Federal Register** announcement and sometimes in combination with similar announcements from other program

components of the Office of Human Development Services.

II. Receipt and Screening

ANA receives applications and ANA staff screen them against the eligibility criteria specified in the program announcment, including adherence to administrative requirements such as whether the application is filed by the closing date and whether the application package is complete. An applicant is ineligible for funding if the organization has been identified for debarment by the Department of Health and Human Services. Applications meeting the eligibility criteria are distributed to independent panels for rating. Applications which ANA staff have determined do not meet the eligibility criteria will not be forwarded to a panel and the applicants will be notified accordingly.

III. Panel Formation and Panel Reviews

Review panels are composed of several persons who have knowledge of the experience in Native American affairs. The panel members are selected by the Commissioner of ANA from a list of individuals who are qualified and have indicated an interest in serving in this capacity.

Pursuant to section 808(a)(2) of the Act, ANA gives preference to American Indians, Native Hawaiians and other Native American Pacific Islanders (including American Samoan Natives), and Alaska Natives in making appointments to these panels. Persons interested in serving on a review panel should contact Rene Gross, Administration for Native Americans, 3rd Floor Corridor F, 200 Independence Ave., SW., Washington, DC 20201, (202) 245–7720.

IV. Panel Review Process

A number of panels are formed depending on the number of applications received in response to the specific closing date. Each panel may review between five an ten applications.

ANA sends written guidance to the panelists prior to their reviews. This guidance generally includes: The program announcement; the Grant Application Review Form; the Application Reviewer Work Agreement; the agenda for Panel Review Week; and listings of the responsibilities of panelists, panel chairpersons, and ANA liaisons during the review process.

Panelists also receive additional training materials and a briefing immediately before beginning their review of applications. Panelists score the applications strictly on the information included in the applications and the guidance in the program announcement. Each panelist scores the applications assigned to him or her and prepares documentation supporting the scores. The panel, as a group, then develops a summary score and a summary of comments on each application being considered by the panel. All applications received by all panels are then listed in descending score order.

V. Commissioner's Decision

The Commissioner of ANA reviews each application, including all supporting material submitted by the applicant; the review panels' scores and comments on each criterion; and ANA staff comments beginning with the application which received the highest score from the panels.

Under authority delegated from the Secretary of the Department of Health and Human Services, the Commissioner decides whether an application is to be fully funded, partially funded, or not funded. In making the decision, the Commissioner considers the views of the panel and other relevant factors not available to the panel, e.g., fiscal or management problems of the applicant, duplication of projects previously funded, or failure to secure necessary additional funding from other sources. The Commissioner's decisions are final. A compilation of reviewers' comments on the application is sent to each unsuccessful applicant.

(Catalog of Federal Domestic Assistance Number 13.612 Native American Programs)

Dated: October 6, 1988.

William Lynn Eagles,

Commissioner, Administration for Native Americans.

Approved: October 28, 1988.

Sydney Olson,

Assistant Secretary for Human Development Services.

[FR Doc. 88–25241 Filed 10–31–88; 8:45 am]

BILLING CODE 4130–01–M

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; National Digestive Diseases Advisory Board; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Digestive Diseases Advisory Board on November 14, 1988, from 8:00 a.m. to approximately 5 p.m. at the Stuffer Concourse Hotel, 2300 Jefferson Davis Highway, Arlington, Virginia 22202. The meeting, which will be open to the public, is being held to discuss the Board's activities and to continue evaluation of the implementation of the long-range digestive diseases plan. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Mr. Raymond M. Kuehne, Excutive Director, National Digestive Diseases Advisory Board, 1601 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496–6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: October 24, 1988.

William F. Raub,

Deputy Director, NIH.

[FR Doc. 88–25255 Filed 10–31–88; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

National Institutes of Health; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 53 FR 27567, July 21, 1988) is amended to reflect the following changes in the Office of Director, NIH: (1) Revise the functional statement of the Division of Program Analysis (HNA62) and retitle it to the Division of Planning and Evaluation (HNA62); (2) revise the functional statement of the Division of Legislative Analysis (HNA64); (3) establish the Division of Science Policy (HNA63).

Section HN–B, Organization and Functions is amended as follows: (1) Under the heading *Division of Program Analysis (HNA62), delete the title and functional statement in its entirety and substitute the following:*

Division of Planning and Evaluation (HNA62)

(1) Plans and conducts a comprehensive program of policy research, evaluation, economic, and resource analyses, and program planning activities of NIH; (2) advises the Associate Director for Science Policy and Legislation on program planning issues and policies, and on evaluation of the programs of the operating organizations of NIH; and (3) carriers out staff functions relating to program development, policy research, economic and resource analysis, and program evaluation.

(2) Under the heading *Division of Legislative Analysis (HNA64),* delete the functional statement in its entirety and substitute the following:

Division of Legislative Analysis (HNA64)

(1) Advises the Director, NIH, and staff and provides leadership and direction for NIH legislative analysis, development, and liaison; (2) identifies, analyzes, and reports on legislative developments relevant to NIH programs and activities; (3) assesses the need for and proposes changes in the statutory base of NIH activities; (4) plans and develops new legislative proposals; (5) coordinates and controls NIH Congressional communications; (6) provides coordination on NIH legislative matters with the Office of the Assistant Secretary for Health, the Department, the Congress, Federal and non-Federal national and international organizations concerned with health, and other bodies; (7) coordinates preparation of testimony or statements for OD/NIH before Congressional committees or other groups; and (8) develops special reports, staff documents, or other studies concerning NIH interests, activities, and relationships.

(3) After the statement for the newly retitled *Division of Planning and Evaluation (HNA62),* insert the following:

Division of Science Policy (HNA63)

(1) Plans, directs, coordinates, and conducts a comprehensive program of policy analysis and development designed to meet the needs of the Director, NIH, in making policy and program decisions affecting the size, scope, direction, and effectiveness of NIH programs; (2) manages the Advisory Committee to the Director, NIH (ACD), and the NIH Recombinant DNA Advisory Committee (RAC); (3) organizes and conducts special *ad hoc* public forums on selected aspects of science and public policy designed to broaden participation of the scientific community in science policy decisions; (4) identifies emerging policy issues; (5) implements NIH policies and procedures for the safe conduct of recombinant DNA activities; (6) coordinates activities of the Division with those of the Division of Planning and Evaluation and the Division of Legislative Analysis on all matters related to science policy analysis, formulation, and implementation; and (7) provides liaison with Federal and non-Federal national and international organizations concerned with health.

Date: October 18, 1988.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 88–25187 Filed 10–31–88; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permits; Dave Teach

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

FRT–731159

Applicant: Dave Teach, Fort Wayne, IN.

The applicant requests a permit to export and re-import one female Asian elephant (*Elephas maximus*) previously imported from the wild n 1961. This elephant is to be exported and re-imported for the purpose of conservation education. In the future, the applicant will export and re-import this animal for the same purpose.

Documents and other information submitted with this application is available to the public during normal business hours (7:45 a.m. to 4:15 p.m.), Room 403, 1375 K Street NW., Washington, DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Washington, DC 20038–7329.

Interested persons may comment on this application within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate applicant and PRT number when submitting comments.

Dated: October 25, 1988.

R.K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 88–25141 Filed 10–31–88; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Indian Affairs

Indian Tribes Performing Law Enforcement Functions

October 19, 1988.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Withdrawal of Notice of determination.

SUMMARY: This notice withdraws the notice of determination published in the **Federal Register,** Volume 53, Number 170, Thursday, September 1, 1988, pages 33867–33877 which was premature and is subject to further review.

EFFECTIVE DATE: November 1, 1988.

FOR FURTHER INFORMATION CONTACT: James P. Donovan, Chief, Division of Law Enforcement Services, Bureau of Indian Affairs, Mail Stop 1364 MIB, 18th & C Street NW., Washington, DC 20245.

W.P. Ragsdale,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 88–25256 Filed 10–31–88; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[CO–610–09–4410–01]

Availability of the Revised Proposed Little Snake Resource Management Plan; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the revised proposed Little Snake Resource Management Plan.

SUMMARY: Pursuant to the Federal Land Policy and Management Act of 1976 (FLPMA), the Bureau of Land Management has prepared the Revised Proposed Little Snake Resource Management Plan (RMP) for the public lands in the Little Snake Resource Area in northwest Colorado.

DATE: Protests and comments must be received in writing by December 5, 1988.

ADDRESS: Protests should be sent to: Director (760), Bureau of Land Management, Premier Building, Room 909, 1725 Eye Street, Washington, DC 20240. Comments should be sent to: Duane Johnson, Project Manager, Little Snake Resource Area, 1280 Industrial Avenue, Craig, Colorado 81625.

FOR FURTHER INFORMATION CONTACT: Duane Johnson, Project Manager, Bureau of Land Management, Little Snake Resource Area, 1280 Industrial Avenue, Craig, Colorado 81625. Telephone (303) 824–4441.

SUPPLEMENTARY INFORMATION: The Revised Proposed Little Snake RMP incorporates changes and revisions made as a result of protests filed with the Director, Bureau of Land Management, in November 1986. The changes involve text revisions made to clarify management prescriptions. Some format changes also have been made to eliminate confusion, primarily in relation to the display of management

prescriptions including those for proposed management of federal minerals underlying nonfederal surface areas within the resource area. The clarifications and edits made in response to the plan protests have not changed the plan decisions set forth in the proposed plan published in 1986 and repeated herein. Oil and gas leasing will be further addressed in a document to follow approval of this plan.

Also, any person (who participated in the Little Snake planning process and has an interest which is or may be adversely affected by the plan approval) believing the clarifications and edits made in this document do change the proposed decisions, may protest to the Director, BLM. Any protest filed with the Director must show what decision(s) the protesting party believes was changed and how it was changed. Other aspects of the proposed plan are not opened to further protest, given the previous protest opportunity. Any protest filed must be in accord with the procedures set forth at 43 CFR 1610.5-2.

Availability: Single copies of the Revised Proposed RMP may be obtained from the address listed above, or from: Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

Tom Walker,

Associate State Director.

Date: October 21, 1988.

[FR Doc. 88-25177 Filed 10-31-88; 8:45 am]

BILLING CODE 4310-JB-M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given Hughes-Denny Offshore Exploration, Inc. has submitted a DOCD describing the activities it proposes to conduct on Leases OCS–G 5604 and 5605, Blocks 144 and 145, respectively, South Timbalier Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on October 19, 1988. Comments must be received within 15 days of the publication date of this Notice of 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Managment Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the COCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10565).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

October 24, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-25168 Filed 10-31-88; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 22, 1988. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by November 16, 1988.

Patrick Andrus,

Acting Chief of Registration, National Register.

CONNECTICUT

New Haven County

Baldwin, Timothy, House (Colonial Houses of Branford TR), 186 Damascus Rd., Branford, 88002832

Baldwin, Zaccheus, House (Colonial Houses of Branford TR), 154 Damascus Rd., Branford, 88002831

Beach, Samuel, House (Colonial Houses of Branford TR), 94 E. Main St., Branford, 88002834

Blackstone House (Colonial Houses of Branford TR), 37 First Ave., Branford, 88002839

Bradley, Timothy, House (Colonial Houses of Branford TR), 12 Bradley St., Branford, 88002830

Prisbie, Edward, House (Colonial Houses of Branford TR), 699 E. Main St., Branford, 88002836

Harrison, Thomas, House (Colonial Houses of Branford TR), 23 N. Harbor St., Branford, 88002844

Hoadley, Isaac, House (Colonial Houses of Branford TR), 9 Totoket Rd., Branford, 88002847

Hoadley, John, House (Colonial Houses of Branford TR), 213 Leetes Island Rd., Branford, [illegible]

Hoadley, Orrin, House (Colonial Houses of Branford TR), 15 Sunset Hill Rd., Branford, 88002846

House at 181 Damascus Road (Colonial Houses of Branford TR), 181 Damascus Rd., Branford, [illegible]

House at 29 Flat Rock Road (Colonial Houses of Branford TR), 29 Flat Rock Rd., Branford, [illegible]

Howd, Eliphalet, House (Colonial Houses of Branford TR), 675 E. Main St., Branford, 88002837

Norton House (Colonial Houses of Branford TR), 200 Pine Orchard Rd., Branford, [illegible]

Palmer, Hezekiah, House (Colonial Houses of Branford TR), 340—408 Leetes Island Rd., Branford, [illegible]

Palmer, Isaac, House (Colonial Houses of Branford TR), 736—756 Main St., Branford, [illegible]

Rogers, John, House (Colonial Houses of Branford TR), 695 Leetes Island Rd., Branford, 88002842

Tyler, John, House (Colonial Houses of Branford TR), 242—250 E. Main St., Branford, 88002835

Tyler, Solomon, House (Colonial Houses of Branford TR), 280—286 E. Main St., Branford, 88002838

Windham County

Ashford Academy, Pitts Rd., Ashford, 88002849

Church Farm, 390 Mansfield Rd., Ashford, 88002850

DELAWARE

New Castle County

Chambers House, Hopkins Rd. and Creek Rd., Newark vicinity, 88002089

IOWA

Dubuque County

Dubuque Trading Post—Village of Kettle Chief Archeological District (Mines of Spain Archeological MPS), Address Restricted, Dubuque vicinity, [illegible]

Dubuque, Julien, Monument (Mines of Spain Archeological MPS), Confluence of Mississippi River and Catfish Creek in Mines of Spain State Recreation Area, Dubuque vicinity, 88002862

Mines of Spain Area Rural Community Archeological District (Mines of Spain Archeological MPS), Address Restricted, Dubuque vicinity, 88002863

Mines of Spain Lead Mining Community Archeological District (Mines of Spain Archeological MPS), Address Restricted, Dubuque vicinity, 88002864

Mines of Spain Prehistoric District (Mines of Spain Archeological MPS), Address Restricted, Dubuque vicinity, 88002866

KENTUCKY

Jefferson County

Drumanard (Louisville and Jefferson County MPS), 8401 Wolf Pen Branch Rd., Louisville vicinity, [illegible]

Gardencourt Historic District (Louisville and Jefferson County MPS), 1010 Alta Vista Rd., Louisville, 88002853

LOUISIANA

Ascension Parish

St. Joseph's School, LA 75 and 44, Brunside, 88002881

De Soto Parish

Swearingen House, LA 5, Keachi, 88002858

Madison Parish

Hermione Plantation House, Parish Rd. 3030, Tallulah, 88002862

NORTH CAROLINA

Henderson County

Mills River Chapel, SR 1328, 0.7 mi. N of jct. with NC 280, Mills River vicinity, 88002860

OREGON

Klamath County

Comfort Station No. 69 (Crater Lake National Park MRA), Rim Dr., near Rim Village Campground, Fort Klamath vicinity, 88002824

Comfort Station No. 72 (Crater Lake National Park MRA), Rim Dr., in Rim Village Campground, Fort Klamath vicinity, 88002825

Munson Valley Historic District (Crater Lake National Park MRA), Jct. of Crater Lake Hwy. and Rim Dr., Fort Klamath vicinity, 88002832

Sinnott Memorial Building No. 67 (Crater Lake National Park MRA), Rim Dr., near Rim Village Campground, Fort Klamath vicinity, [illegible]

Watchman Lookout Station No. 69 (Crater Lake National Park MRA), Off Rim Dr. on the Watchman, Fort Klamath vicinity, 88002826

PENNSYLVANIA

Bucks County

Palmer, Ames, House, Township Line Rd., Langhorne, 88002881

TENNESSEE

Fayette County

Crisscross Lodge, 10088 Poplar Ave., Collierville vicinity, 88002827

Warren County

Stone—Pennebaker House, 239 Towles Ave., McMinnville, [illegible]

VERMONT

Windham County

Bellows Falls Petroglyph Site (VT–WD–8) (Bellows Falls Island MRA), Address Restricted, Bellows Falls, [illegible]

WEST VIRGINIA

Jefferson County

Falling Spring—Morgan's Grove, SR 480, Shepherdstown vicinity, 88002870

Glenburnie, CR 16/Ridge Rd., Shenandoah Junction vicinity, 88002868

Mason County

Southam House, US 35, Point Pleasant vicinity, [illegible]

Ohio County

Good, L. S., House, 95 14th St., Wheeling, 88002867

WISCONSIN

Kenosha County

Library Park Historic District, Roughly bounded by 59th St., 7th Ave., 61st St., and 8th Ave., Kenosha, [illegible]

The following property erroneously appeared on the October 18, 1988, pending list as being located in Lackawanna County, Pennsylvania. It should read as follows:

NEW YORK

Oneida County

Warner, Oliver, Farmstead, NY 69, Clifton Springs vicinity, [illegible]

[FR Doc. 88-25269 Filed 10-31-88; 8:45]

BILLING CODE 4310-70-M

Golden Gate National Recreation Area Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Golden Gate National Recreation Area Advisory Commission will be held at 7:30 p.m. (PST) on Tuesday, December 13, 1988, at Building 201, Fort Mason, San Francisco, California.

The Advisory Commission was established by Pub. L. 92–589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems, in Marin, San Francisco and San Mateo Counties.

Members of the Commission are as follows:

Mr. Frank Boerger, Chairman
Mr. Amy Meyer, Vice Chair
Mr. Ernest Ayala
Mr. Richard Bartke
Dr. Howard Cogswell
Brig. Gen. John Crowley, USA (ret)
Mr. Margot Patterson Doss
Mr. Neil D. Eisenberg
Mr. Jerry Friedman
Mr. Steve Jeong
Ms. Daphne Greene
Ms. Ginny Park Li
Mr. Gary Pinkston
Mr. Merritt Robinson
Mr. R.H. Schanni
Mr. John J. Spring
Dr. Edgar Wayburn
Mr. Joseph Williams

The main agenda item will be a presentation of a Staff Report by the staff of the Golden Gate National Recreation Area on the plans for development of the Presidio Bayfront/Crissy Field area in San Francisco. Recommendations for the Crissy Field area were derived from four alternatives under consideration for this San Francisco beachfront site. Each alternative would implement the approved General Management Plan for the Golden Gate National Recreation Area, which recommended restored dunes, natural landscaping, lawn, parking, and visitor amenities, such as restrooms and picnic facilities. The amount and location of parking and the balance between the urban and natural landscapes varies under each alternative. Twenty acres of open space will be created by removal of paving and nonhistoric structures. New and restored landscapes would include dunes, grassland, lawn and a seasonal wetland reminiscent of Crissy Field's past as a saltwater marsh. One alternative considers a saltwater lagoon.

The formal presentation of the Crissy Field Bayfront plans were presented at the Golden Gate National Recreation Area Advisory Commission meeting on March 10, 1988. A presentation of broad development plans was made before the GGNRA Advisory Commission on November 10, 1987. Plans for the Golden Gate National Recreation Area portions of Presidio Bayfront/Crissy Field were developed with the assistance of John Northmore Roberts, Landscape Architects and Land Planners, of Berkeley, California, under the auspices of the Golden Gate National Park Association.

Plans for those Presidio Bayfront/Crissy Field lands under U.S. Army management were developed by the Directorate of Engineering and Housing at the Presidio of San Francisco. The San Francisco City Planning Commission staff has also participated in the formulation of this plan. The four alternatives were presented to the public at the joint meeting of the Golden Gate National Recreation Area Advisory Commission and San Francisco City Planning Commission on July 7, 1988.

The meeting is open to the public. Persons wishing to receive the Environmental Assessment for the Crissy Field plans or the Staff Report should contact the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123 or telephone (415) 556–4484.

This meeting will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. A transcript is available after January 6, 1989. For copies of the minutes contact the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

Dated: October 12, 1988.

Stanley T. Albright,

Regional Director, Western Region.

[FR Doc. 88-25282 Filed 10-31-88; 8:45 am]

BILLING CODE 4310-70-M

Bureau of Reclamation

Realty Action; Competitive Sale of Public Land; Arizona

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of realty action.

SUMMARY: The following described land has been indentified for disposal under the Act of February 2, 1911 (36 Stat. 895, 43 U.S.C. 374). The Bureau of Reclamation will accept bids on the following land, and will reject any bids, written or oral, for less than $631,000, the appraised fair market value.

DATE: January 3, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis Burgett, Realty Specialist, Bureau of Reclamation, P.O. Box 9980, Phoenix, Arizona 85068, telephone (602) 870–6734, (FTS) 765–1734.

Land Identified for Disposal as Follows

Tract APO–GR–11–88–3

A strip of land 100 feet wide lying southerly and contiguously to Reach 11 of the Granite Reef Aqueduct, Central Arizona Project, westerly of Pima Road and easterly and northerly of Frank Lloyd Wright Boulevard in the southeast quarter of Section 1, Township 3 North, Range 4 East, Gila and Salt River Meridian, City of Scottsdale, Arizona, containing an area of 3.82 acres, more or less. A more complete legal description may be obtained from the local Reclamation office referenced above.

The land will be offered for sale through the competitive bidding process. The sale will be held at the Bureau of Reclamation, Arizona Projects Office, 23636 North Seventh Street, Phoenix, Arizona 85068, on January 3, 1989, at 9:00 a.m., at which time the sealed bids will be opened and oral bids will be accepted. Sealed bids will be received at the foregoing address until close of business January 2, 1989. The Bureau of Reclamation may accept or reject any or all offers, or withdraw any land or interest in land for sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with the Act of February 2, 1911 (36 Stat. 895, 43 U.S.C. 374) or other applicable laws.

The sale of the land is consistent with the Bureau of Reclamation land use planning and it was determined that the public interest would best be served by offering these lands for sale; the parcel listed and platted is offered for sale "as is" and "where is."

Resource clearances consistent with the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*) requirements have been completed and approved. A land report including categorical exclusion No. APO–87–30 dated October 13, 1987, is available for review at the Bureau of Reclamation, Arizona Projects Office, 23636 North Seventh Street, Phoenix, Arizona 85068.

The deed issued for the parcel sold will be subject to right-of-way for ditches and canals constructed by the authority of the United States in accordance with the Act of August 30, 1890 (26 Stat. 391, 43 U.S.C. 945), and reservations for public road and utility easements identified by the City of Scottsdale and the County of Maricopa. This land sale will be for the surface estate only.

For a period of 45 days from the date of this notice, interested parties may submit comments to the Regional Director, Lower Colorado Region, Bureau of Reclamation, P.O. Box 427, Boulder City, Nevada 89005. Any adverse comments will be evaluated by the Regional Director who may vacate or modify this Notice of Realty Action and issue a final determination. In the absence of any action by the Regional Director, this Notice of Realty Action will become the final determination of the Department of the Interior.

John D. Brown,

Acting Regional Director, Lower Colorado Region, Bureau of Reclamation.

[FR Doc. 88-25155 Filed 10-31-88; 8:45 am]

BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

Forms Under Review by Office of Management and Budget

The following proposal for collection of information under the provisions of the Paper Reduction Act (44) U.S.C. Chapter 35 is being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Ray Houser (202) 275–6723. Comments regarding this information collection should be addressed to Ray Houser, Interstate Commerce Commission, Room 1325, 12th and Constitution Ave., NW., Washington, DC 20423 and to Gary Waxman, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503, (202) 395–7340.

Type of Clearance: Reinstatement
Bureau/Office: Bureau of Accounts
Title of Form: Motor Carrier Quarterly Report Form
OMB Form No.: 3120–0012
Agency Form No.: QFR
Frequency: Quarterly
Respondents: Class I and II Motor Carriers of Property and Household Goods
No. of Respondents: 952
Total Burden Hrs.: 7,615 (average 2 hours per response)
Brief Description of the Need & Proposed Use: Data is used by the Commission to Assess industry growth, sudden changes in carrier financial stability and to identify changes and trends that may affect the National Transportation Industry.

Type of Clearance: Reinstatement
Bureau/Office: Bureau of Accounts
Title of Form: Annual Report of Class I and II Motor Carriers of Property and Household Goods
OMB Form No.: 3120–0032
Agency Form No.: M
Frequency: Annually
Respondents: Class I and II Motor Carriers of Property and Household Goods.
No. of Respondents: 2,117
Total Burden Hrs.: 52,925 (average 25 hours per response)
Brief Description of the Need & Proposed Use: Data is used by the Commission to assess industry growth, sudden changes in carrier financial stability and the effect on the transportation system. It is also used for evaluating proposals for changes in ownership and mergers.

Type of Clearance: Reinstatement
Bureau/Office: Bureau of Accounts
Title of Form: Uniform System of Accounts
OMB Form No.: 3120–0106
Agency Form No.: N/A
Frequency: Quarterly/Annually
Respondents: 2,117
Total Burden Hrs.: 298,497 (average 141 hours per response)
Brief Description of the Need & Proposed Use: The Uniform System of Accounts is the prescribed system that a reporting carrier must follow to account for their financial, operating and equipment transactions and records. Data collected under the USOA is used by the Commission and carriers.

Noreta R. McGee,

Secretary.

[FR Doc. 88-25179 Filed 10-31-88; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier Applications To Consolidate, Merge or Acquire Control

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. If the protest includes a request for oral hearing, the request shall meet the requirements of 49 CFR 1182.3 and shall include the required certification. Failure seasonable to oppose will be construed as a waiver of opposition and participation in the proceeding.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice.

Applicants must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application on a non-complying applicant shall stand denied.

Findings

The findings for these applications are set forth at 49 CFR 1182.8. MC–F–19280, filed October 21, 1988. Jefferson Lines, Inc. (Jefferson)–Merger–Oklahoma Transportation Company (OTC), *et al.* Representative: Elliott Duncan, Suite 1001, 1800 Wilson Blvd., Arlington, VA 22209. Motor common carrier of passengers Jefferson (MC–60325) seeks approval of the merger into it of common carriers of passengers OTC (MC–840), K. G. Lines, Inc. (KG) (MC–30008), MK&O Lines, Inc. (MK&O) (MC–38264), and Midland Lines, Inc. (Midland) (MC–44770), and contract carrier of passengers Jefferson Charters and Tours, Inc. (JC&T) (MC–158469). Jefferson will be the surviving corporation, and all of the merger carriers' authorities will be transferred to it.

Jefferson presently controls KG and OTC, and Midland presently controls MK&O and JC&T. Jefferson and Midland are controlled by noncarrier Jefferson Transportation Group, Inc., which is controlled by noncarrier JTG Acquisition Corporation (JTG). The stock of JTG is owned by Bruck & Co. (Zelle Estate), Mary Susan Zelle Reed, Charles A. Zelle, Michael N. Zelle, and 7 other stockholders, none of whom owns more than 5 percent of the outstanding stock.

OTC holds authority to transport passengers, between specified points in AR, KS, OK, and TX, and passengers, in charter and special operations, between points in the U.S. (except HI), and passengers between specified points in OK. KG holds authority to transport passengers, between specified points in KS, MO, and OK. JC&T holds authority to transport passengers, in charter operations, between points in the U.S. (except HI), under continuing contract(s) with Jefferson Tours and Travel, Inc., a division of MTS Company of Minneapolis, MN, and in charter and special operations, between points in the U.S. (except HI). Midland holds authority to transport passengers, between specified points in MI, MN, ND, SD, and WI, and passengers, in charter and special operations, between points in the U.S. (except HI), beginning and ending at specified points in MN, SD, and WI, and extending to points in the United States (except AK and HI). MK&O holds authority to transport passengers, between specified points in OK, passengers, in charter operations, beginning and ending at specified points in MO and OK and extending to points in the United States (except HI), and passengers, in charter and special operations, between points in the U.S., under continuing contract(s) with Think Snow and Tulsa Ski Club, to Tulsa, OK, Oklahoma City Ski Club, the Ski Haus, Sun and Snow, and Colorado Bound, of Oklahoma City, OK, Al's Tours, of St. Louis, MO, and Presley Tours, of Makanda, IL.

Decided: October 25, 1988.

By the Commission, Motor Carrier Board, Members Hodge, Taylor, and Brown (member Brown not participating).

Noreta R. McGee,

Secretary.

[FR Doc. 88-25181 Filed 10-31-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB–7 (Sub-No. 114X)]

CMC Real Estate Corp.; Abandonment Exemption; Chicago, IL; Modification of Exemption [1]

The Commission is reopening and modifying the notice of exemption served December 2, 1987 and published in the Federal Register on the same date (52 FR 45677) which permitted CMC Real Estate Corporation to abandon a 1.54-mile line of railroad (the Deering Line) between engineering stations 00+00 and 81+56. The modified exemption narrows the scope of the abandonment to that segment of line between engineering station 23+11 and engineering station 81+56 and deletes from the abandonment the line owned by Soo Line Railroad Company between engineering station 00+00 and engineering station 23+11. Use of this exemption will continue to be

[1] Corrected to reflect a new procedural schedule.

conditioned on appropriate labor protection, as earlier imposed.

The modified exemption will become effective on December 1, 1988. Petitions for stay must be filed November 14, 1988, and petitions for reconsideration must be filed by November 21, 1988.

Send pleadings referring to Docket No. AB-7 (Sub-No. 114X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: John Broadley, Jenner & Block, 21 DuPont Circle, Washington, DC 20036.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357/4359 (DC Metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc. in Room 2229 at Commission headquarters).

Decided: October 3, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 88-25180 Filed 10-31-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extension, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New Collection

Employment Standards Administration

Application of the Employee Polygraph Protection Act of 1988—29 CFR Part 801.

On occasion.

Businesses or other for-profit; Non-profit institutions; Small businesses or organizations.

261,000 respondents; 122,310 total hours; 1-30 minutes per response.

The reporting and recordkeeping requirements for employers and polygraph examiners are necessary to insure polygraph examinees receive the protections and rights mandated by the Employee Polygraph Protection Act of 1988.

Signed at Washington, DC this 27th day of October, 1988.

Terry O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 88-25270 Filed 10-31-88; 8:45 am]

BILLING CODE 4510-27-M

LIBRARY OF CONGRESS

American Folklife Center; Board of Trustees Meeting; Postponement

AGENCY: Library of Congress.

ACTION: Postponement of meeting.

SUMMARY: This notice announces the postponement of a meeting of the Board of Trustees of the American Folklife Center originally scheduled for October 14, 1988. New dates to be announced. Notice of meeting dates is required in accordance with Pub. L. 94-553.

FOR FURTHER INFORMATION CONTACT: Raymond L. Dockstader, Deputy Director, American Folklife Center, Washington, DC 20540. Telephone (202) 707-6590.

Dated: October 19, 1988.

Arthur J. Lieb,

Executive Officer Office of the Librarian, Library of Congress.

[FR Doc. 88-25154 Filed 10-31-88; 8:45 am]

BILLING CODE 1410-01-M

NATIONAL COMMUNICATIONS SYSTEM

Industry Executive Subcommittee of the National Security Telecommunications Advisory Committee; Meeting

A meeting of the Industry Executive Subcommittee of the National Security Telecommunications Advisory Committee will be held Tuesday, November 29, 1988. The meeting will be held at the MITRE Corporation, 7525 Colshire Drive, McLean, VA. Registration will begin at 8:30 a.m. and the meeting will start at 9 a.m. The agenda is as follows:

A. Opening remarks.

B. Administrative remarks.

C. Briefings on industry and Government activities.

Due to the requirement to discuss classified information, in conjunction with the issues listed above, the meeting will be closed to the public in the interest of National Defense. Any person desiring information about the meeting may telephone (202) 692-8274 or write the Manager, National Communications System, Washington, DC 20305-2010.

Edward R. Falese,

Master Sergeant, USAF.

Steven E. Klenz,

Major, USA.

Terrence N. Dezner,

Captain, USN, Assistant Manager, NCS Joint Secretariat.

Bruce C. Wallace,

Lieutenant Colonel, USAF.

[FR Doc. 88-25239 Filed 10-31-88; 8:45 am]

BILLING CODE 3610-05-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment on the Arts; Dance Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Presenters Section) to the National Council on the Arts will be held on November 17-18, 1988, from 9:00 a.m.-8:00 p.m.; and on November 19, 1988, from 9:00 a.m.-6:00 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on November 19, from 4:00-6:00 p.m. The topic for discussion will include policy issues.

The remaining sessions of this meeting on November 17 and 18 from 9:00 a.m.-8:00 p.m.; and on November 19 from 9:00 a.m.-4:00 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5498 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

October 25, 1988.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88-25160 Filed 10-31-88; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 72-4 (50-269, -270, -287)]

Duke Power Co.; Issuance of Environmental Assessment and Finding of No Significant Impact for Oconee Independent Spent Fuel Storage Installation at Oconee Nuclear Station

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a materials license under the requirements of Title 10 Part 72 of the Code of Federal Regulations (10 CFR Part 72) to Duke Power Company (DPC or the Applicant), authorizing receipt and storage of spent fuel in an Independent Spent Fuel Storage Installation (ISFSI) located onsite at its Oconee Nuclear Station, Oconee County, South Carolina. The Commission's Office of Nuclear Material Safety and Safeguards, Division of Industrial and Medical Nuclear Safety, has completed its environmental review in support of the issuance of a materials license. The "Environmental Assessment (EA) Related to the Construction and Operation of the Oconee Nuclear Station Independent Spent Fuel Storage Installation" has been issued in accordance with 10 CFR Part 51.

Description of the Proposed Action

The proposed licensing action would authorize the applicant to construct and operate a dry storage ISFSI. The function of the ISFSI is to provide interim storage of up to 2112 spent fuel assemblies from Oconee Units 1, 2 and 3. Twenty-four fuel assemblies are stored in an inert atmosphere inside a stainless steel canister, which provides confinement, shielding, criticality control and heat removal. Spent fuel loading and canister preparation takes place within the Oconee Plant reactor buildings. The canister is then transported inside a transfer cask to the onsite ISFSI where the canister is placed inside a concrete horizontal storage module (HSM), which provides additional shielding. Up to a total of 86 concrete storage modules would be required under the requested license.

Need for the Proposed Action

After twice reracking the spent fuel storage pools at the Oconee Nuclear Station, the pools have reached their maximum structural capacity. The Oconee Unit 3 spent fuel pool exceeded its prudent operating reserve capacity in January 1987 and is expected to exceed its ability to hold an entire offloaded reactor core in May 1991. The shared Oconee Unit 1/2 spent fuel pool is expected to exceed its prudent operating reserve capacity in February 1989 and its ability to hold an entire offloaded reactor core in December 1990. Additional spent fuel is being generated as the three Oconee reactors continue to operate, and additional storage capacity will be required in order to recover and maintain a prudent operating reserve of spent fuel storage capability. The proposed action would provide the additional capacity required to store spent fuel expected to be generated at the Oconee Nuclear Station through the year 2003, and maintain prudent operating reserve storage capacities.

Environmental Impacts of the Proposed Action

As discussed in the EA, no significant construction impacts are anticipated. Similarly, no significant impacts are expected from ISFSI operations. The activities will affect only about three to four acres of land area on the Oconee site, resulting in a loss of less than one percent of the biological production onsite. Construction will be phased according to storage requirements. The potentials for fugitive dust, erosion and noise impacts, typical of the planned construction activities, are minimal, and with good construction practices will be controlled to insignificant levels.

The radiological impacts from liquid and gaseous effluents arising from cask loading and preparation are minimal, and fall within the scope of impacts evaluated for licensed routine operations and are controlled by the existing Oconee Nuclear Station reactor Technical Specifications. The primary radiological exposure pathway associated with ISFSI operation is direct irradiation of nearby residents and site workers. The dose to the nearest resident is about 0.03 mrem/yr and when added to that from Oconee Nuclear Station reactor operations is well within the 25 mrem/yr requirement of 10 CFR 72.104. The collective dose to residents within one to two miles of the ISFSI is about 0.007 person-rem/yr. The occupational dose to site workers due to construction and operations is a small fraction of the total occupational dose

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[illegible] at the Oconee Nuclear Station. The radiological impacts due to postulated accidents at the Oconee ISFSI are only a small fraction of the 5 rem criteria specified in 10 CFR 72.106(b), and are less than the Environmental Protection Agency Protective Action Guides for individuals exposed to radiation as a result of accidents.

Alternatives to the Proposed Action

Several alternatives were discussed in the EA, but none sufficiently met the spent fuel storage requirements for the Oconee Nuclear Station. The alternative of no action would force a shutdown of power generation at the Oconee Nuclear Station. The "Final Generic Environmental Impact Statement on Handling and Storage of Spent Light Water Power Reactor Fuel," NUREG-0575, found this alternative to be undesirable. Because the Commission has concluded there are no significant environmental impacts associated with the proposed action, any alternative of equal or greater environmental impacts need not be evaluated.

Alternative Use of Resources

The only resources committed irretrievably not previously considered in environmental documents relating to the Oconee Nuclear Station are the steel, concrete and other construction materials used in the ISFSI storage canisters and modules.

Agencies and Persons Contacted

Outside agencies were contacted for supporting documentation in connection with the preparation of the Environmental Assessment: Anderson County Planning Commission, Appalachian Council of Governments, National Severe Storms Forecast Center, Oak Ridge National Laboratory, Oconee County Planning Commission, and Pickens County Planning Commission.

Finding of No Significant Impact

In summary, the ISFSI is located in a highly disturbed area within the confines of the Oconee Nuclear Station exclusion area and will result in a minor commitment of land resources. The proposed action involves no significant change in the type, or increase in the amounts of effluents currently released from Oconee operations. There is no significant increase in the individual and collective radiation doses to both the public and occupational workers. Therefore, the proposed action will not significantly affect the quality of the human environment. According, pursuant to 10 CFR 51.31 and 10 CFR 51.32, the Commission has determined that a finding of no significant impact is appropriate and an environmental impact statement (EIS) need not be prepared for the issuance of a materials license for the Oconee ISFSI.

The EA for the proposed action, on which this Finding of No Significant Impact is based, relied on several environmental documents: (1) "Final Environmental Statement Related to Operation of Oconee Nuclear Station Units 1, 2 and 3," dated March 1972; (2) "Supplement to Environmental Quality Features of the Duke Power Company's Keowee-Toxaway Project," dated October 1971; (3) "Independent Spent Fuel Storage Installation Environmental Report Duke Power Company Oconee Nuclear Station," dated March 1986; (4) Supplemental information to the "Independent Spent Fuel Storage Installation Environmental Report Duke Power Company Oconee Nuclear Station," contained in a letter from Duke Power Company dated August 16, 1988, and (5) "Final Generic Environmental Impact Statement on Handling and Storage of Spent Light Water Power Reactor Fuel," NUREG-0575, Volumes 1-3, August 1979.

The EA and other documents related to this proposed action are available for public inspection and for copying for a fee at the NRC Public Document Room, 2021 L Street, NW., Washington, DC 20555 and at the Local Public Document Room at the Oconee County Public Library, 501 West South Broad Street, South Carolina, 29691.

Dated at Rockville, Maryland, this 25th day of October 1988.

For the Nuclear Regulatory Commission.

John P. Roberts,

Acting Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 88-25225 Filed 10-31-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-311]

Public Service Electric & Gas Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a temporary exemption from the requirements of Paragraph 50.46(a)(1)(i) to 10 CFR Part 50 to Public Service Electric and Gas Company et al. (the licensee) for the Salem Generating Station, Unit 2, located at the licensee's site in Salem County, New Jersey.

Environmental Assessment

Identification of proposed Action: The licensee's request for an exemption and the basis therefore are contained in a letter dated October 31, 1988. During the fourth refueling outage at Salem, Unit 2, all row 1 steam generator tubes were plugged and some unrecoverable loose parts were left in the Reactor Coolant System. The licensee has performed an analysis to demonstrate that the aforementioned conditions have no safety significant impact on the operation of the facility. However, the current Emergency Core Cooling System (ECCS) evaluation model (Westinghouse 1978) is no longer acceptable for further licensing actions as detailed in Generic Letter 88-16, Westinghouse ECCS Evaluation Models, dated October 22, 1988. Paragraph 50.46(a)(1)(i) of 10 CFR Part 50 requires ECCS cooling performance to be calculated in accordance with an acceptable model. The proposed exemption would temporarily exempt the licensee from this requirement until March 31, 1989, thus allowing Salem, Unit 2, to operate while the analysis is being performed.

The Need for the Proposed Action: The proposed temporary exemption from the regulation is required to allow Salem, Unit 2, to restart from the fourth refueling outage and operate until March 31, 1989 when the ECCS reanalysis will be completed. Without this temporary exemption, Salem, Unit 2, would be forced to remain shut down until the ECCS reanalysis is completed, a period of about five months.

Environmental Impacts of the Proposed Action: There are no adverse environmental impacts associated with the proposed action. During the period of the exemption the plant will continue with normal operations. The licensee has analyzed the existing conditions (i.e. 2.7% of the steam generator tubes plugged and loose parts in the reactor coolant system) for their effect on the large break Loss of Coolant Accident (LOCA) analysis. The results show that the plugged steam generator tubes would increase the peak clad temperature (PCT) by 28°F. In addition, if the loose parts were to be lodged in their most unfavorable location and a LOCA occurred, the PCT for that location would increase by 22°F. However, the current licensing models use a higher fuel rod backfill pressure than actually exists in fuel rods that are currently in use. If this change in actual fuel rod backfill pressure is accounted for, the PCT is reduced by about 100°F. The net calculated change in PCT is a reduction of about 50°F. The criteria of 10 CFR 50.46(b) will continue to be satisfied. Therefore, the proposed change does not increase the probability or consequences of accidents, no changes are being made in the allowable amounts and no significant changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Likewise, the exemption does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or nonradiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action: Because we have concluded that there is no measurable environmental impact associated with the proposed exemption, any alternatives to the exemption will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemption. Such action would not reduce environmental impacts of Salem, Unit 2 operations, and would result in a delay of about five months in restarting Salem, Unit 2.

Alternative Use of Resources: These actions do not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to Operation of Salem Generating Station, Units 1 and 2," dated April 1973.

Agencies and Persons Consulted: The NRC reviewed the licensee's request that supports the proposed exemption. The NRC staff did not consult other agencies or persons.

Findings of No Significant Impact

Based upon the foregoing environmental assessment, we conclude that the proposed exemption will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For futher details with respect to the proposed action, see the licensee's request for the exemption dated October 31, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Steet, NW., Washington, DC, and at the Salem Free County Public Library, 112 W. Broadway, Salem, New Jersey 08079.

Dated at Rockville, Maryland this 27th day of October 1988.

Walter R. Butler,

Director, Project Directorate I-2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-25347 Filed 10-31-88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on November 17-19, 1988, in Room P-114, 7920 Norfolk Avenue, Bethesda, MD. Notice of this meeting was published in the Federal Register on October 20, 1988.

Thursday, November 17, 1988

8:30 a.m.-8:45 a.m.: Comments by ACRS Chairman (Open)—The ACRS Chairman will report briefly regarding items of current interest.

8:45 a.m.-10:45 a.m.: NRC Quantitative Safety Goals (Open)—Review and discuss proposed implementation plan for the NRC Quantitative Safety Goals. Meeting with representatives of NRC Staff, as appropriate.

11:00 a.m.-12:00 Noon: Supply of Misrepresented Equipment (Open)—Briefing by NRC Staff regarding NRC activities to identify misrepresented equipment supplied to nuclear power plants.

1:30 p.m.-3:00 p.m.: PRISM Nuclear Power Plant (Open)—Discuss proposed ACRS report to NRC regarding this liquid metal cooled nuclear power plant design concept.

3:15 p.m.-4:00 p.m.: Future ACRS Activities (Open)—Discuss anticipated ACRS subcommittee activities and matters proposed for consideration by the full Committee.

4:00 p.m.-5:15 p.m.: ACRS Subcommittee Activities (Open)—Hear reports and discuss the status of assigned subcommittee activities.

5:15 p.m.-5:45 p.m.: Nomination of Officers (Closed)—Discuss report of Nominating Committee and qualifications of candidates for ACRS officers for FY 1989.

This session will be closed to discuss information of a personal nature.

Friday, November 18, 1988

8:30 a.m.-10:30 a.m.: Motor Operated Valve Testing and Surveillance (Open/Closed)—Review and comment regarding proposed NRC generic letter regarding requirements for MOV valve testing and surveillance.

Portions of this session will be closed as necessary to discuss Proprietary Information regarding this subject.

10:45 a.m.-12:30 p.m.: Operator Requalification (Open)—Briefing regarding lessons learned for implementation of revised operator qualification methodology (Draft Examiner Standard 601).

1:30 p.m.-3:30 p.m.: NRC Quantitative Safety Goals (Open)—Discuss proposed ACRS report to NRC regarding the proposed implementation plan for the NRC Quantitative Safety Goals.

3:45 p.m.-5:30 p.m.: PRISM Nuclear Plant (Open)—Discuss proposed ACRS report to NRC regarding the proposed design concept (preapplication review) of this liquid-metal cooled reactor.

Saturday, November 19, 1988

8:30 a.m.-12:00 Noon: Preparation of ACRS Reports (Open/Closed)—Discuss proposed reports to NRC regarding items considered during this meeting.

Portions of this session will be closed as necessary to discuss Proprietary Information.

1:00 p.m.-2:30 p.m.: Miscellaneous (Open)—Complete discussion of items considered during this meeting.

Procedures for the conduct of and participation in ACRS meetings were published in the Federal Register on October 2, 1987 (51 FR 37241). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Pub. L. 92-463 that it is necessary to close portions of this meeting as noted above to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)) and to discuss Proprietary Information applicable to the matters being considered (5 U.S.C. 552b(c)(4)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301/492-8049), between 8:15 a.m. and 5:00 p.m.

Date: October 27, 1988.

Andrew L. Bates,

Acting Advisory Committee Management Officer.

[FR Doc. 88-25226 Filed 10-31-88; 8:45 a.m.]

BILLING CODE 7590-01-M

[Docket Nos. 50-454, 50-455]

Commonwealth Edison Co.; Withdrawal of Application for Amendments to Facility Operating Licenses

The United States Nuclear Regulatory Commission (the Commission) has granted the withdrawal of an amendment application dated August 5, 1988, filed by Commonwealth Edision Company (the licensee). The application requested amendments to Facility Operating License Nos. DPR-37 and DPR-66 for operation of Byron Station, Units 1 and 2, located in Ogle County, Illinois.

The proposed amendment would have changed the Technical Specification action statement involving Rock River water flow. The Commission issued a Notice of Consideration of Issuance of Amendment which was published in the Federal Register on August 26, 1988 (53 FR 32803).

On September 26, 1988, two petitions for leave to intervene were filed: one by the League of Women Voters of Rockford, the other by Mrs. Betty Johnson and the DeKalb Area Alliance for Responsible Energy (DAARE). On September 27, 1988, a petition for leave to intervene was filed by Sinnissippi Alliance for the Environment (SAFE).

By letter dated October 3, 1988, the licensee withdrew the application for the proposed amendment, stating that recent rains in the Byron area have made the proposed amendment unnecessary. The Commission has considered that licensee's October 3, 1988, letter and has determined that permission to withdraw the August 5, 1988, application for amendment should be granted.

For further details with respect to this action, see (1) the application for amendment dated August 5, 1988, and (2) the licensee's letter dated October 3, 1988 withdrawing the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room located at the Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101.

Dated at Rockville, Maryland this 26th day of October 1988.

For the Nuclear Regulatory Commission.

Leonard N. Olshan,

Project Manager, Project Directorate III-2, Division of Reactor Projects--III, IV, V and Special Projects.

[FR Doc. 88-25227 Filed 10-31-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 9999004, etc.]

Wrangler Laboratories et al.; Hearing

October 26, 1988.

Notice is hereby given that, by Memorandum and Order dated October 26, 1988, the Atomic Safety and Licensing Board for this proceeding has granted the request of Wrangler Laboratories, Larsen Laboratories, Orion Chemical Co. and John P. Larsen (Licensees) for a hearing in the above-titled proceeding (Docket No. 9999004; General License Authority of 10 CFR 40.22; E.A. 87-223; ASLBP No. 89-582-01-SC). The hearing concerns the Order Revoking Licenses issued by the NRC Staff on August 15, 1988 (53 FR 32125, August 23, 1988). The parties to the proceeding are the Licensees and the NRC Staff. The issue to be considered at the hearing is whether the Order should be sustained.

For further information concerning this proceeding, see the Order Revoking Licenses, cited above; and the Order Suspending Licenses, dated February 25, 1988 (53 FR 7452, March 8, 1988). Other materials concerning this proceeding are on file at the Commission's Public Document Room, 2120 L Street NW., Washington DC 20555, and at the Commission's Region IV Office, Parkway Central Plaza Building, 611 Ryan Plaza Drive, Suite 1000, Arlington, Texas 76011.

During the course of this proceeding, the Licensing Board will conduct one or more prehearing conferences and, as necessary, evidentiary hearing sessions. The time and place of these sessions will be announced in later Licensing Board orders. Members of the public will be invited to attend these sessions.

Persons who are not parties to the proceeding are invited to submit limited appearance statements with regard to the Order Revoking Licenses, as permitted by 10 CFR 2.715(a). During certain prehearing conference and/or evidentiary hearing sessions, such persons will be afforded the opportunity to make oral limited appearance statements. These statements do not constitute testimony or evidence in this proceeding, but may help the Board and/or parties in their deliberations as to the proper boundaries of the issue to be considered. Written statements, or requests to make oral statements, should be submitted to the Office of the Secretary, Docketing and Service Branch, U.S. Nuclear Regulatory Commission, One White Flint North, 11155 Rockville Pike, Rockville, Maryland 20852. A copy of such statement or request should also be served on the Chairman, Atomic Safety and Licensing Board.

Dated at Bethesda, Maryland, this 26th day of October, 1988.

For the Atomic Safety and Licensing Board.

Charles Bechhoefer,

Chairman, Administrative Judge.

[FR Doc. 88-25228 Filed 10-31-88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

October 26, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Cypress Semiconductor Corp. Common Stock, $.01 Par Value (File No. 7-3971)
Cypress Minerals Co. Common Stock, No Par Value (File No. 7-3972)
Midway Airlines Common Stock, $.01 Par Value (File No. 7-3973)
Manville Corp. $2.70 Preferred (File No. 7-3974)
Organogenesis, Inc. Common Stock, $.01 Par Value (File No. 7-3975)
Sovran Financial Corp. Common Stock, $5.00 Par Value (File No. 7-3976)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 16, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-25229 Filed 10-31-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

October 26, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Canada Southern Petroleum Common Stock, $1.00 Par Value (File No. 7-3955)
Global Income Plus Fund Inc. Common Stock, $.001 Par Value (File No. 7-3956)
Astrotech International Corporation Common Stock, $.01 Par Value (File No. 7-3957)
Astrotech International Corporation Warrants expiring 3/31/93 (File No. 7-3958)
PHH Corporation Common Stock, Without Par Value (File No. 7-3959)
Zero Corporation Common Stock, $1.00 Par Value (File No. 7-3960)
Acuson Corporation Common Stock, $.0001 Par Value (File No. 7-3961)
Cypress Semiconductor Corporation Common Stock, $.01 Par Value (File No. 7-3962)
Interstate Securities, Inc. Common Stock, $.20 Par Value (File No. 7-3963)
Bearings, Inc. Common Stock, No Par Value (File No. 7-3964)
Longview Fibre Co. Common Stock, $7.50 Par Value (File No. 7-3965)
Manville Corporation Common Stock, $.01 Par Value (File No. 7-3966)
Manville Corporation Series B Cumulative Preference Stock, $1.00 Par Value (File No. 7-3967)
Sterling Chemical Inc. Common Stock, $.01 Par Value (File No. 7-3968)
VM Software, Inc. Common Stock, $.01 Par Value (File No. 7-3969)
High Income Advantage Trust II Shares of Beneficial Interest, $.01 Par Value (File No. 7-3970)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 16, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-25180 Filed 10-31-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26216; File No. SR-MSE-88-9]

Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Filing and Order Granting Temporary Accelerated Approval to Proposed Rule Change Relating to Market Circuit Breaker Proposal

Pursuant to section 19(b)(1) of the Securities and Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 17, 1988, the Midwest Stock Exchange, Inc. ("MSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

This proposed rule change adds the following new Rule 10A to Article IX. This rule change shall be effective for a one-year pilot period ending on the last day of the month in which the first anniversary of its effective date falls.[1] The text of the rule change is as follows:

Trading Halts Due to Extraordinary Market Volatility

Rule 10A. If the Dow Jones Industrial Average SM [2] reaches a value 250 or more points below its closing value on the previous trading day, trading in stocks shall halt on the Exchange and may not reopen for one hour. If, on the same day, the average subsequently reaches a value 400 or more points below that closing value, trading in stocks shall halt on the Exchange and may not reopen for two hours.

* * * *Interpretations and Policies*

.10 The restrictions in this Rule 10A shall apply whenever the Dow Jones Industrial Average reaches the trigger values notwithstanding the fact that, at any given time, the calculation of the value of the average may be based on the prices of less than all of the stocks included in the average.

.20 The reopening of trading following a trading halt under this Rule 10A shall be conducted pursuant to procedures adopted by the Exchange and communicated by notice to its members and member organizations.

.30 If the 250-point trigger is reached within one hour of the scheduled close of trading for a day, or if the 400-point trigger is reached within two hours of the scheduled close of trading for a day, trading in stocks shall halt for the remainder of the day; *provided, however,* that if the 250-point trigger is reached between one hour and one-half hour before the scheduled closing, or the 400-point trigger is reached between two hours and one hour before the scheduled

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[1] The MSE originally stated that the rule would not become effective until all other U.S. stock and options exchanges, the NASD, and U.S. futures exchanges that trade futures contracts on stock indexes and options on such futures contracts adopted corresponding rules. The MSE subsequently amended its filing to eliminate this contingency. Letter from Craig Long, Vice President, General Counsel and Secretary, MSE, to Mary Revell, Attorney, Commission, dated October 21, 1988.

[2] "Dow Jones Industrial Average" is a service mark of Dow Jones & Company, Inc.

closings, the Exchange may use abbreviated reopening procedures either to permit trading to reopen before the scheduled closing or to establish closing prices.

.40 Nothing in this Rule 10A should be construed to limit the ability of the Exchange to otherwise halt or suspend the trading in any stock or stocks traded on the Exchange pursuant to any other Exchange rule or policy.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Over the last year, the securities markets have experienced unprecedented volatility. This volatility has been the subject of a number of market studies and reports.

The most recent of these reports was the Interim Report ("Report") of the Working Group on Financial Markets ("Working Group") issued by the Under Secretary for Finance of the Department of the Treasury and the Chairmen of the Commission, the Commodity Futures Trading Commission, and the Board of Governors of the Federal Reserve System in May 1988. In its Report, the Working Group recommends "coordinated trading halts and reopenings for large, rapid market declines that threaten to create panic conditions." The Working Group specifically recommended that all U.S. markets for equity and equity-related products—stocks, individual stock options, stock index options, futures and options on futures—halt trading for one hour if the Dow Jones Industrial Average ("DJIA") declines 250 or more points from its previous day's closing level and for two hours if the DJIA declines 400 points from the previous day's close.

In light of the Working Group Report, the NYSE adopted Rule 80B which will provide for temporary halts in the trading of all stocks, stock options, and stock index options on the NYSE when the DJIA reaches the trigger values discussed in the Working Group's Report.[3] The NYSE asserted that halts will promote stability in the stock market by allowing market participants time to reestablish an equilibrium between buying and selling interest and to help ensure that all market participants have a reasonable opportunity to become aware of and respond to significant market price movements. The NYSE originally conditioned the effectiveness of Rule 80B upon the adoption of corresponding rules by all other U.S. stock and option exchanges, as well as other U.S. futures markets that trade futures on stock index groups (and options on such futures), and upon such rules receiving all necessary regulatory approvals and becoming effective. The NYSE subsequently amended its filing to make its rule effective upon approval by the Commission.[4] The MSE is filing its proposed Rule 10A in response to the NYSE's filing and anticipates that its effectiveness will be coordinated with the other exchanges' corresponding rule effective dates. Rule 10A is proposed for a pilot period of one year, during which time the Exchange will analyze its experience with proposed Rule 10A and will determine in conjunction with the Commission and other market places whether to continue the pilot beyond one year.

Statutory basis—The basis under the Act for this proposed rule change is the requirement under section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding this proposed rule change.

[3] File No. SR-NYSE-88-23, approved in Securities Exchange Act Release No. 25198 (October 19, 1988).

[4] Letter from Richard A. Grasso, President and Chief Operating Officer, NYSE, to Richard Ketchum, Director, Division of Market Regulation, Commission, dated October 17, 1988.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds good cause for approving the MSE proposed rule change prior to the thirtieth day after the date of publication of the proposal in the Federal Register. The proposal is substantially identical to the NYSE circuit breaker proposal contained in File No. SR–NYSE–88–23 that was published for the full thirty-day period and was approved by the Commission in Securities Exchange Act Release No. 25198 (October 19, 1988). In light of the absence of any comments on the NYSE's filing and the Commission's view of the benefits that may accrue from adoption of coordinate circuit breakers that respond to stock market volatility and that may increase investor confidence in the markets, the Commission believes a good cause finding is justified.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing also will be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 22, 1988.

The Commission finds that the proposed rule change filed by the MSE is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6[5] and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change is approved for a one-year pilot period ending October 31, 1989.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[7]

Date: October 26, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-25188 Filed 10-31-88; 8:45 am]

BILLING CODE 8010-01-M

[5] 15 U.S.C. 78f (1982).

[6] 15 U.S.C. 78s(b)(2) (1982).

[7] 17 CFR 200.30-3(a)(12) (1988).

DEPARTMENT OF STATE

[CM-8/1231]

The U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Study Group C; Meeting

The Department of State announces that Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on December 14, 1988 at the Newark Marriott hotel from 9:00 a.m. to 12:00 p.m.

The purpose of the meeting will be to make final preparations for the first meeting of Study Group XV.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. Prior to the meeting, persons who plan to attend should so advise Ms. Cindy Perfumo—(201) 234 4047.

Dated: October 17, 1988.

Earl S. Barbely,

Director, Office of Telecommunications and Information Standards, Chairman, U.S. CCITT National Committee.

[FR Doc. 88-25143 Filed 10-31-88; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/1233]

The U.S. Organization For The International Telegraph and Telephone Consultative Committee (CCITT) Integrated Service Digital Network (ISDN) Joint Working Party and Study Group C; Meeting

The Department of State announces that the Integrated Services Digital Network (ISDN), Joint Working Party, and Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet at 8:00 a.m. on December 16, 1988 at the McLean Hilton Hotel, McLean, Virginia.

The purpose of the meeting is to review corporate position papers as well as the results of agreed papers from the T1S1 Committee for submission to the first relevant official CCITT Study Group meeting of Study Groups I, XI, XII, XV, and XVIII. The proposed agenda reflects that this meeting will be held jointly with T1S1 Plenary session, and is as follows:

1. T1S1 Roll Call.
2. Approval of Agenda.
3. Approval of Minutes of October 14 T1S1 Session (T1S1/88–217) and October 21 JWP/Study Group C Meeting.
4. Reports. a. CCITT Plenary, November 14–25, 1988, Melbourne. b. X3S3 Liaison.
5. Election of Working Group T1S1.3 Officers—A letter indicating organizational support of a nomination is required.
6. Working Group Activity Summaries and Actions on Working Group Recommendations Regarding Documents Ready for Consideration by T1S1 (Including Possibly 3 Roll Call Ballots on Draft Proposed American National Standards)—JWP/SG C Approval of Documents for the first meetings of Groups I, XI, XII, XV, and XVIII during the next Plenary period.
7. Future Meetings.
8. Other business.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, those intending to attend should notify the office of Mr. Earl S. Barbely, State Department, Washington, DC; telephone (202) 647 5220, not later than December 14, 1988.

Date: October 21, 1988

Earl S. Barbely,

Director, Office of Telecommunications and Information Standards, Chairman U.S. CCITT National Committee.

[FR Doc. 88-25153 Filed 10-31-88; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

Chemical Transportation Advisory Committee, Subcommittee on Coal Transportation; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Subcommittee on Coal Transportation of the Chemical Transportation Advisory Committee (CTAC). The meeting will be held on Tuesday, December 13, 1988, in Room 2230, Department of Transportation, Nassif Building, 400 Seventh Street SW., Washington, DC. The subcommittee is considering requirements for the safe transportation of coal in ships and barges. The meeting is scheduled to begin at 9:00 a.m. and end at 4:00 p.m.

The agenda for the meeting follows:

1. Call to order.
2. Opening remarks.
3. Review and discussion of CTAC Task Statement
4. Subcommittee organization.
5. Consideration of regulatory proposals.
6. Assignment of Subcommittee work.
7. Adjournment.

Attendance is open to the public. Members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the Executive Director of CTAC no later than the day before the meeting. Any member of the public may present a written statement to the Subcommittee at any time.

FOR FURTHER INFORMATION CONTACT: Mrs. D. Anderson or Mr. F. Wybenga, U.S. Coast Guard Headquarters (G–MTH–1), 2100 Second Street SW., Washington, DC 20593, (202) 267–1217.

Dated: October 21, 1988.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 88-25234 Filed 10-31-88; 8:45 am]

BILLING CODE 4910-14-M

[COD 88-094]

Chemical Transportation Advisory Committee, Subcommittee on Vapor Control, Lightering Working Group; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given of a meeting of the Chemical Transportation Advisory Committee (CTAC) Subcommittee on Vapor Control, Lightering Working Group, which will be held on Wednesday, November 30, 1988, in Room 3442 and 3444, Department of Transportation, Nassif Building, 400 Seventh Street SW., Washington, DC. The meeting is scheduled to begin at 9:00 a.m. and end at 5:00 p.m. The subcommittee is considering

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requirements for tank vessels and waterfront facilities which use vapor control systems. At this meeting, the group will consider requirements for vapor control systems used on tank vessels in conjunction with lightering operations.

The agenda is as follows:

1. Call to order.
2. Opening remarks.
3. Consideration of requirements for vapor control systems used in conjunction with lightering operations.
4. Assignment of Subcommittee work.
5. Adjournment.

Attendance is open to the public. Members of the public may present oral statements at the meetings. Persons wishing to present oral statements should notify the Executive Director of CTAC no later than the day before the meeting. Any member of the public may present a written statement to the Subcommittee at any time.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander R. H. Fitch, U.S. Coast Guard Headquarters (G-MTH-1), 2100 Second St. SW., Washington, DC 20593-0001, (202) 267-1217.

Dated: October 21, 1988.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 88-25235 Filed 10-31-88; 8:45 am]

BILLING CODE 4910-14-M

Federal Highway Administration

Environmental Impact Statement; Travis County, TX

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Travis County, Texas.

FOR FURTHER INFORMATION CONTACT: Gamaliel E. Olvera, District Engineer, Federal Highway Administration, 826 Federal Office Building, Austin, Texas 78701, Telephone: (512) 482-5988.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Texas State Department of Highways and Public Transportation (SDHPT), intends to prepare an environmental impact statement (EIS) on a proposal to reconstruct a segment of Interstate Highway 35 (IH 35) in Travis County. The project area is located within the Austin city limits. The project limits extend from Farm-to-Market Road 926 (Martin Luther King, Jr. Blvd.) south to State Highway 71 (Ben White Blvd.). The IH 35 project area is extensively urbanized and nearly fully developed. Traffic volumes in the area have doubled in the past ten years and projected to nearly double again in the next ten years. The traffic capacity of the existing interstate is not adequate to meet future demand. Segments of the interstate already operate at essentially full capacity during portions of the morning and afternoon peak hours. Without improvements, as future traffic growth occurs, significant congestion will occur more frequently and for longer periods of the day. Further, the existing roadway does not conform to present day geometric standards. Examples of existing deficiencies include: insufficient distance between on-ramps and successive off-ramps, insufficient ramp lengths, excessive vertical grades, and inadequate shoulder widths. These deficiencies adversely affect both capacity and safety. The goals of the proposed project are to provide cost effective improvements to IH 35 which increase capacity and improve safety while providing a transportation solution which is not adversely disruptive to the existing and future environment of the IH 35 corridor.

At least four alternatives will be considered and evaluated in the EIS. They include three possible build alternatives and a no-build alternative.

There are currently no plans to hold a formal scoping meeting for the proposed project. A public meeting and a public hearing will be held. Public notices will be given of the time and place of the meeting and hearing. The Environmental Assessment is available for review by the public or any interested party. The draft EIS will be available for public and agency review and comment.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning the proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on October 24, 1988.

Gamaliel E. Olvera,

District Engineer, Austin, Texas.

[FR Doc. 88-25167 Filed 10-31-88; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 88-70]

Revocation of Individual Broker's License No. 5502; Robert J. Fusco

October 21, 1988.

AGENCY: U.S. Customs Service, Treasury.

ACTION: General notice.

SUMMARY: Notice is hereby given that the Secretary of the Treasury on July 15, 1987, pursuant to section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and Part 111.74 of the Customs Regulations, as amended (19 CFR 111.74), revoked the individual broker's license No. 5502 issued to Robert J. Fusco. This action having been upheld by the United States Court of International Trade (Court No. 87-11-01061) is effective as of September 14, 1988.

Dated: October 21, 1988.

Victor G. Weeren,

Director, Office of Trade Operations.

[FR Doc. 88-25165 Filed 10-31-88; 8:45 am]

BILLING CODE 4820-02-M

Internal Revenue Service

Appointment of Members of the Legal Division to the Performance Review Board, Internal Revenue Service; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice.

SUMMARY: This document contains a correction to a notice which was published in the Federal Register for Wednesday, August 24, 1988 (53 FR 32320). The notice related to the appointment of members of the Legal Division to the Performance Review Board, Internal Revenue Service.

FOR FURTHER INFORMATION CONTACT: Sylvia Compton, Secretary, Executive Resources Board at 202-566-3363 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice that is the subject of this correction provided the public with a list of persons appointed to the Legal Division Performance Review Board, Internal Revenue Service Panel. These appointments were made under the authority delegated by the General Counsel of the Department of the Treasury by General Counsel Order No. 21 (Rev. 4), and pursuant to the Civil Service Reform Act.

Need for Correction

As published, the notice contains an error in the title of one of the panel members.

Correction of Publication

Accordingly, the notice of appointments, which was the subject of FR Doc. 88-19188, is corrected as follows:

1. The line listing the second member of the panel should read "2. Jeanne S. Archibald, Deputy General Counsel;".

Dale D. Goode,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 88-25240 Filed 10-31-88; 8:45 am]

BILLING CODE 4830-01-M

UNITED STATES INFORMATION AGENCY

English Teaching Advisory Panel, Meeting

The English teaching Advisory Panel will conduct a meeting on November 14 and 15, 1988, in Room 600, 301 4th Street SW., Washington, DC. Below is the intended agenda.

Monday, November 14, 1988

9:00 Welcome by Dr. Mark Blitz, Associate Director, Bureau of Educational and Cultural Affairs.
9:15 Introduction of Panel Members and USIA Officers by Dr. Betty W. Robinett, Chairperson, English Teaching Advisory Panel.
9:30 Remarks by Mr. Philip W. Pillsbury, Acting Director, Office of Cultural Centers and Resources.
9:40 Remarks by Mr. William B. Royer, Chief, English Language Programs Division.
9:50 Discussions chaired by Dr. Betty W. Robinett: March 1988 Advisory Panel Report: Action taken.
10:00 ELTB (English Language Teaching by Broadcast) up-date, provided by Macmillan Publishing Company.
10:30 Coffee break.
10:45 Discussions continued: Worldnet—current English teaching broadcasts.
11:15 E/CE Division, activities review.
1. E/CE Budget for FY-89.
2. E/CEP Program Branch.
3. E/CEM Materials Development Branch.
4. E/CEF English Teaching Forum Branch.
12:00 Lunch
1:30 Discussions continued:
5. English Teaching Fellow Program.
1:45 Open Discussion between E/CE staff and Advisory Panel members on topics of professional concern affecting the carrying out of Division responsibilities.
3:00 Coffee break.
3:15 Panel members: An informal update on relevant EFL developments in theory and practice.

Tuesday, November 15, 1988

9:00 Remarks by Robert R. Gosende, Deputy Associate Director, Bureau of Educational and Cultural Affairs.
9:30 General discussion: Report to the Agency.
10:45 Coffee break.
11:00 Meeting with USIA Director Charles Z. Wick.
11:15 General discussion continued.
12:30 Lunch.
1:30 General discussion and adjournment.

Members of the public interested in attending the November 14-15 meeting should contact William Royer, (202) 485-2869 to make prior arrangements as access to the building is controlled.

Dated: October 20, 1988.

Philip W. Pillsbury,

Acting Director, Office of Cultural Centers and Resources.

[FR Doc. 88-25142 Filed 10-31-88; 8:45 am]

BILLING CODE 8230-01-M

United States Advisory Commission on Public Diplomacy; Meeting

A meeting of the U.S. Advisory Commission on Public Diplomacy will be held at the National Press Building, Rom 898, 529 14th St. NW., Washington, DC on November 16, 1988 from 11:15 a.m. to 12:15 p.m.

The Commission will visit USIA's Foreign Press Center and receive a briefing from Press Center Director Carol Ludwig.

Please call Gloria Kalamets, (202) 485-2468, if you are interested in attending the meeting.

Dated: October 26, 1988.

Ledra L. Dildy,

Staff Assistant, Federal Register Liaison.

[FR Doc. 88-25272 Filed 10-31-88; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 211
Tuesday, November 1, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, November 4, 1988.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 88-25336 Filed 10-28-88; 12:30 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Thursday, November 10, 1988.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 88-25337 Filed 10-28-88; 12:30 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, November 18, 1988.

PLACE: 2033 K St., NW., Washington, DC., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 88-25338 Filed 10-28-88; 12:30 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, November 25, 1988.

PLACE: 2033 K St., NW., Washington, DC., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 88-25339 Filed 10-28-88; 12:30 pm]

BILLING CODE 6351-01-M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, November 1, 1988.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS:

MATTERS TO BE CONSIDERED:

Open to the Public

1. Cigarette Lighters—Status Report

The staff will brief the Commission on activities related to the child resistant cigarette lighter project.

Closed to the Public

2. Enforcement Matter OS# 4273

The Commission will consider Enforcement Matter OS# 4273.

3. Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301-492-6800.

Sheldon D. Butts,
Deputy Secretary.

October 28, 1988.

[FR Doc. 88-25287 Filed 10-27-88; 4:51 pm]

BILLING CODE 6355-01-M

FEDERAL RESERVE SYSTEM, BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, November 7, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: October 28, 1988.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 88-25370 Filed 10-28-88; 3:54 pm]

BILLING CODE 6210-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

AGENCY: Institute of Museum Services.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the agenda of a forthcoming meeting of the National Museum Services Board. This notice also describes the functions of the Board. Notice of this meeting is required under the Government in the Sunshine Act (Pub. L. 94-409) and regulations of the Institute of Museum Services, 45 CFR 1180.84.

TIME AND DATE: 9:00 a.m., Friday, November 18, 1988.

STATUS: Open.

ADDRESS: The Hirshhorn Museum and Sculpture Garden, Eighth Street and Independence Avenue SW., Fifth Floor Board Room, Washington, DC 20506. (202) 357-1300.

FOR FURTHER INFORMATION CONTACT: William Laney, Executive Assistant to the National Museum Services Board, Room 510, 1100 Pennsylvania Avenue NW., Washington, DC 20506 (202) 786-0536.

SUPPLEMENTARY INFORMATION: The National Museum Services Board is established under the Museum Services Act, Title II of the Arts, Humanities, and Cultural Affairs Act of 1976, Pub. L. 94-462. The Board has responsibility for the general policies with respect to the powers, duties, and authorities vested in the Institute under the Museum Services Act.

The meeting of November 18, 1988 will be open to the public.

If you need special accommodations due to a disability, please contact: Institute of Museum Services, Room 510, 1100 Pennsylvania Avenue NW. Washington, DC 20506, (202) 786-0536, TDD (202) 682-5496 at least seven (7) days prior to the meeting.

National Museum Services Board November 18, 1988 Meeting Agenda

I. NMSB Chairman's Report & Approval of Minutes of July 21, 1988 Meeting
II. IMS Director's Report
III. IMS Legal Counsel Regulatory Report
IV. Program Director's Report & NMSB Action Items
  A. Conservation Assessment
  B. MAP III Proposal
  C. GOS—Recommendations—Statisticians Report
V. Working Lunch—Speaker on Trusteeship
VI. General Board Discussion

Dated: November 28, 1988.

Lois Burke Shepard,
IMS Director.

[FR Doc. 88-25345 Filed 10-28-88; 1:35 pm]

BILLING CODE 7036-01-M

NEIGHBORHOOD REINVESTMENT CORPORATION

Board Meeting

TIME AND DATE: 2:00 p.m.—Wednesday, November 9, 1988.

PLACE: Neighborhood Reinvestment Corporation, 1325 G Street, NW., Suite 800, Washington, DC 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Martha A. Diaz-Ortiz, 376-2421.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes, August 4, 1988.
2. Executive Director's Activity Report.
3. Treasurer's Report.
4. Appointment of Assistant Secretary.
5. Establishment of CY 1989 Board Meetings Dates.
6. Personnel Committee Report.

Carol J. McCabe,
Secretary.

[FR Doc. 88-25286 Filed 10-27-88; 4:51 pm]

BILLING CODE 7570-01-M

NEIGHBORHOOD REINVESTMENT CORPORATION

Personnel Committee Meeting

TIME AND DATE: 3:45 p.m.—Tuesday, November 8, 1988.

PLACE: National Credit Union Administration, 1776 G Street, NW., 6th Floor, Chairman's Conference Room, Washington, DC 20456.

STATUS: Closed.

CONTACT PERSON FOR MORE INFORMATION: Martha A. Diaz-Ortiz, 376-2421.

AGENDA:
1. Approval of FY 1989 Officer Salaries.
2. Merit Award.

Carol J. McCabe,
Secretary.

[FR Doc. 88-25289 Filed 10-27-88; 4:51 pm]

BILLING CODE 7570-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of October 31, November 7, 14, and 21, 1988.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of October 31

Wednesday, November 2

10:00 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. 10 CFR Part 73—Safeguards Requirements for Fuel Facilities Possessing Formula Quantities of Strategic Special Nuclear Material (Tentative)

Week of November 7—Tentative

Wednesday, November 9

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Thursday, November 10

10:00 a.m.
Briefing on Final Rule on Standards for Protection Against Radiation—Part 20 (Public Meeting)

Week of November 14—Tentative

Wednesday, November 16

10:30 a.m.
Briefing on Status of Resolution of Concerns with Location of Exploratory Shaft at Yucca Mountain (Public Meeting)

Thursday, November 17

2:00 p.m.
Briefing by DOE on High Level Waste Program (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of November 21—Tentative

Wednesday, November 23

10:00 a.m.
Briefing on Effectiveness of Diagnostic Evaluations (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)
2:00 p.m.
Briefing on Accident Management Program (Public Meeting)

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (301) 492-0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

William M. Hill, Jr.,
Office of the Secretary.

October 27, 1988.

[FR Doc. 88-25346 Filed 10-28-88; 2:27 pm]

BILLING CODE 7590-01-M

Corrections

Federal Register
Vol. 53, No. 211
Tuesday, November 1, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rules, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 251

Ski Area Permits

Correction

In proposed rule document 88-24825 beginning on page 40739 in the issue of Tuesday, October 18, 1988, make the following corrections:

1. On page 40739, in the third column, in the third complete paragraph, in the fourth line, "by" should read "be".

§ 251.58 [Corrected]

2. On page 40741, in the third column, in § 251.56(b)(2)(ii), in the third line, "as" should read "a".

BILLING CODE 1505-01-D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 87-212]

Amendment Of Commission's Rules To Permit Commercial Enterprises To Be Licensed Directly In the Special Emergency Radio Service

Correction

In rule document 88-24091 appearing on page 40894 in the issue of Wednesday, October 19, 1988, make the following correction:

In the second column, in the heading, the docket number was inaccurate and should appear as set forth above.

BILLING CODE 1505-01-D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 95

[PCC 88-298]

Personal Radio Services

Correction

In rule document 88-21668 beginning on page 36788 in the issue of Thursday, September 22, 1988, make the following corrections:

§ 95.635 [Corrected]

On page 36791, in the third column, in § 95.635(c)(2), in the fifth line, "of" should read "or"; and in the eighth line, "Whichever" should read "whichever".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 312 and 314

[Docket No. 86N-0339]

Investigational New Drug, Antibiotic, and Biological Drug Product Regulations; Procedures for Drugs Intended to Treat Life-Threatening and Severely Debilitating Illnesses

Correction

In rule document 88-24457 beginning on page 41516 in the issue of Friday, October 21, 1988, make the following correction:

On page 41524, in the third column, a signature line was inadvertently omitted and should be inserted above the signature line for Secretary Bowen to read as follows:

Frank E. Young,

Commissioner of Food and Drugs.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[OACT-217-N]

Medicare Program; Inpatient Hospital Deductible for 1989

Correction

In notice document 88-22829 beginning on page 36357 in the issue of Friday, September 30, 1988, make the following corrections:

1. On page 36358, in the first column, in the first complete paragraph, in the 20th line, "with" was misspelled.

2. On the same page, in the same column, in the same paragraph, in the 26th line, beginning with "Therefore" the text should read as follows: "Therefore, there is no reason to believe that real case mix increase has not also returned to the long-term trend level of 0.5 percent. As a consequence, we believe that the case mix increase associated with coding changes totals 2.36 percent and, for purposes of determining the 1989 inpatient hospital deductible, we are estimating the real case mix increase at 0.5 percent."

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 773

Requirements for Surface Coal Mining and Reclamation Permit Approval; Ownership and Control

Correction

In rule document 88-22541 beginning on page 38666 in the issue of Monday, October 3, 1988, make the following corrections:

1. On page 38670, in the second column, in the first complete paragraph, in the 12th line, "50 CFR 700.5" should read "30 CFR 700.5"

2. On page 38677, in the second column, in the sixth line, "whenever" should read "whomever".

3. On the same page, in the same column, in the first complete paragraph, in the fifth line, "annual" should read "annul".

4. On page 38679, in the third column, in the last paragraph, "GSMRE" should read "OSMRE".

5. On page 38680, in the first column, in the first complete paragraph, in the last line, "GSMRE" should read "OSMRE".

6. On page 38682, in the first column, in the first complete paragraph, in the seventh line, "is" should read "in".

7. On page 38683, in the second column, in the fourth complete paragraph, in the 13th line, "30 CFR 773.15(B)(i)" should read "30 CFR 773.15(b)(1)(i)".

§ 773.5 [Corrected]

8. On page 38690, in the first column, in § 773.5(a)(1), in the third line, "instrument" should read "instruments".

9. On the same page, in the same column, in § 773.5(b)(1), in the first line, "of director" should read "director or".

10. On the same page, in the second column, in § 773.5(b)(4), "is" should read "in".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION
Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-AWP-10]

Revision to Flagstaff Pulliam Airport, Arizona Transition Area

Correction

In rule document 88-23554 appearing on page 40054 in the issue of Thursday, October 13, 1988, make the following correction:

§ 71.181 [Corrected]

In the second column, in § 71.181, under **Flagstaff Pulliam Airport, AZ, [Revised]**, the 15th line should read, "35°24'00"N., long."

BILLING CODE 1505-01-D

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federal register

Tuesday
November 1, 1988

Part II

Department of Health and Human Services

Food and Drug Administration

Bacteriological Analytical Manual, Chapter 29—Listeria Isolation; Revised Method of Analysis; Notice

VOL 53 ISS 211 NO 1 1988 UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88D-0247]

Bacteriological Analytical Manual, Chapter 29—Listeria Isolation; Revised Method of Analysis

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of revised methodology for detecting and confirming the presence of *Listeria monocytogenes* in foods. The revised method will reduce the time required to analyze foods for *L. monocytogenes* and, therefore, will allow FDA to more quickly obtain analytical results necessary to support the agency's regulatory or administrative actions. The revised method will be incorporated into and replace the *Listeria* isolation method in Chapter 29—"*Listeria* Isolation" of the *Bacteriological Analytical Manual* (6th Edition, Supplement, 1987). The revised *Listeria* method is as analytical sensitive as the method that is being replaced.

FOR FURTHER INFORMATION CONTACT: George J. Jackson, Center for Food Safety and Applied Nutrition (HFF–234), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, 202–245–1091.

SUPPLEMENTARY INFORMATION: The analytical methods used by FDA for the microbiological examination of foods and cosmetics are published by the Association of Analytical Chemists (AOAC) in a manual entitled *Bacteriological Analytical Manual* (BAM). Chapters contained in the BAM each generally deal with the methodology that is to be utilized for the isolation of particular microorganisms, are subjected to a peer review process by scientists within FDA, as well as scientists not affiliated with FDA, and must be determined to be scientifically justified and acceptable before they are published in the BAM.

The revised *Listeria* isolation method has undergone the peer review process and has been determined to be scientifically justified and acceptable for publication in Chapter 29 of the BAM. The revised method is as sensitive as the method that is being replaced. In addition the revised method will save analytical time and will allow FDA to more quickly determine analytical results necessary to support regulatory or administrative actions involving *L. monocytogenes*.

Before these changes, all FDA regulatory actions taken since 1986 against food adulterated with *L. monocytogenes* have been based on the method widely known as the "Lovett Method" (BAM, 6th Edition, Supplement, 1987). This method requires that portions be taken from enrichment broth cultures at 24 hours and 7 days and streaked onto the surface of the selective modified McBride agar. Full confirmation of *L. monocytogenes* requires additional tests on bacteria isolated from the selective medium. A total of 10 to 11 days is needed to isolate and identify *L. monocytogenes* from a food sample.

Many new methods have been developed since 1985 and reported in the scientific literature, some specific for *L. monocytogenes*, others for detection of the genus *Listeria*. Detection methods for a pathogenic bacterium historically undergo periodic modifications as more is learned about the bacterium, its ecology and characteristics, and the applicability of a method for determining presence of the bacterium in a specific food. Thus, the evolution of methodology for *L. monocytogenes*, as for other microganisms, is a reflection of normal scientific progress.

FDA has found that the following changes of the *L. monocytogenes* testing procedures will reduce the total time it takes to confirm the presence of *L. monocytogenes* in a food from 11 days to 5 to 6 days:

1. Isolation from the enrichment culture by streaking onto the surface of lithium chloride-phenylethanol-moxalactam (LPM) plating medium in addition to the usual modified McBride agar medium.

2. Elimination of the alkali (KOH) pretreatment before streaking onto modified McBride agar. This pretreatment will also not be done in conjunction with the LPM medium.

3. Reduction of the enrichment culture incubation time from 7 days to 2 days. Hence, the enrichment culture will be sampled at both 1 and 2 days only.

. Data show that no sensitivity is lost by reducing the 7-day enrichment to 2 days if the LPM plating medium is used in addition to the currently used modified McBride agar medium. Comparative studies have been conducted by FDA in which a variety of foods were "spiked" with known numbers of healthy and heat-injured *L. monocytogenes* over a broad range of decimal dilutions. Comparisons of recovery between the 7-day enrichment plated onto McBride agar (as currently done by FDA) and a 2-day enrichment plated onto both McBride and LPM agars show essentially no differences in recovery efficiency.

In addition, FDA has made the following minor modifications:

1. Provision for the optional use of a concave mirror for the Henry oblique illumination system according to the preference of the observer; the obliquely illuminated colony may be viewed unaided or with low power microscopy. The discretional use of positive and negative control colonies to "tune" the observer's eyes is recommended.

2. Inclusion of references to rapid methods in the BAM, but these methods are not described in detail. They are mentioned solely as optional supplemental methods that give advance warning or identification of pathogenic and/or nonpathogenic *Listeria*. They are not intended in any way to be substituted for any part of the BAM *Listeria* isolation procedure which is FDA's current, definitive test.

FDA notes that it is not obligated to publish in the Federal Register changes in methodology contained within the BAM (21 CFR 10.90(b)(10)). However, because of the public health ramifications associated with *L. monocytogenes*, FDA believes that it is the public interest to provide notice in the Federal Register of the revised methodology for isolating *L. monocytogenes* and is therefore publishing this revised method.

Dated: October 26, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

FDA BACTERIOLOGICAL ANALYTICAL MANUAL

Chapter 29. *Listeria* Isolation

(Revised 13 October 1988)

Joseph Lovett and A.D. Hitchins

The ninth edition of *Bergey's Manual of Determinative Bacteriology* (1) lists eight species in the genus *Listeria*: *L. monocytogenes*, *L. innocua*, *L. seeligeri*, *L. welshimeri*, *L. ivanovii*, *L. grayi*, *L. murrayi*, and *L. denitrificans*. Recently, *L. denitrificans* has been allotted to a new genus, *Jonesia* (2). Differentiation of the seven accepted species is possible by Table 1. Stuart and Welshimer (3) have proposed a new family, *Listeriaceae*, to contain two monospecific genera, *Listeria* and *Murrayа*. Under this classification system, *L. monocytogenes* would contain a heterogeneous group of organisms distinguishable from *Murrayа* spp. by their inability to ferment mannitol. The genus *Murrayа* would contain two subspecies, *M. grayi* ssp. *grayi* and *M. grayi* ssp. *murrayi*, distinguishable by the ability of *M. grayi* ssp. *murrayi* to reduce nitrates. In this chapter we list the two species as they appear in the ninth edition of Bergey's Manual (1). Two groups within *L. monocytogenes*, the hemolytic pathogenic strains and the nonhemolytic nonpathogenic strains, were readily apparent. Nonpathogenic *L. monocytogenes* (4) became known as *L. innocua* from the Latin word harmless. Two other nonpathogenic species, *L. welshimeri* and *L. seeligeri* (5), are now recognized.

The most recently described species is *L. ivanovii* (6), a strongly hemolytic genomic group formerly called *L. monocytogenes* serovar 5 and *L. bulgarica*. It is associated with animal pathology and is rarely isolated from human sources. Only *L. monocytogenes* is consistently associated with human illness. Both *L. ivanovii* and *L. monocytogenes* are pathogenic for mice.

The classical tests for *Listeria* pathogenicity are the Anton test (rabbits), inoculation of mice, and inoculation of embryonated eggs (7). The mouse test, using intraperitoneal (i.p.) injection is most frequently used and is described later in this chapter. Recently, the immunocompromised mouse model of Stelma *et al.* (8) has become available. It is recommended because of its greatly improved sensitivity. Animal confirmation of *L. monocytogenes* pathogenicity is not routine for clinical isolates and is optional for regulatory isolates. An isolate should be identified as *L. monocytogenes* if it meets all the other criteria outlined in this chapter.

Table 2 contains the information relating to serological characterization of *Listeria* species. Most of the *L. monocytogenes* isolates from patients and the environment are type 1 or 4. More than 90% of *L. monocytogenes* isolates can be serotyped by using commercial (Difco) sera. All the nonpathogenic species, except *L. welshimeri*, share one or more somatic antigens with *L. monocytogenes*. Serotyping alone without thorough characterization, therefore, is not adequate for identification of *L. monocytogenes*.

TABLE 1.—DIFFERENTIATION OF LISTERIA SPECIES

Species	Hemolysis (Beta)	Nitrate reduction	Utilization			Growth (stab)	Virulence (mouse test)
			Mannitol	Rhamnose	Xylose		
L. monocytogenes	+	−	−	+	−	+	+
L. ivanovii	+	−	−	−	+	+	+
L. innocua	−	−	−	V*	−	−	−
L. welshimeri	−	−	−	V*	+	−	−
L. seeligeri	+	−	−	−	+	+	−
L. grayi	−	−	+	−	−	−	−
L. murrayi	−	+	+	V*	−	−	−

*V, variable.

TABLE 2.—SEROLOGY OF LISTERIA SPECIES

Species	Serotype
L. monocytogenes	1/2A, 1/2B, 1/2C, 3A, 3B, 3C, 4A, 4AB, 4B, 4C, 4D, 4E, "7".
L. ivanovii	5
L. innocua	4AB, 6A, 6B, Un*.
L. welshimeri	6A, 6B.
L. seeligeri	1/2B, 4C, 4D, 6B, Un*.

*Un, undefined.

Of the biochemical tests, the rhamnose and xylose fermentation patterns are essential for differentiating *Listeria* species. Exceptions are *L. monocytogenes* and *L. innocua*, both of which do not ferment xylose. These two species can be separated, however, by the absence of hemolytic activity in *L. innocua*, as demonstrated by sheep blood agar stab or the CAMP test, described below. *L. seeligeri*, on the other hand, may be slightly hemolytic on sheep blood agar. Because it shares antigens with *L. monocytogenes*, it might be incorrectly identified without the xylose-rhamnose reactions and/or mouse pathogenicity. The importance of doing a complete characterization of each isolate cannot be overemphasized. Partial characterization, although accurately done, may be misleading.

The Christie-Atkins-Munch-Peterson (CAMP) test (Table 3 and Figure 1) is useful in confirming species. The test is performed by streaking a *beta*-hemolytic *Staphylococcus aureus* and a *Rhodococcus equi* culture in parallel and diametrially opposite to each other on a sheep blood agar plate, with several test cultures streaked parallel to one another, but at right angles to and between the *S. aureus* and *R. equi*. After incubation at 35° C for 24–48 h, the plates are examined for hemolysis. *L. monocytogenes* hemolysis is enhanced in the zone of influence of the *S. aureus* streak; *L. ivanovii* hemolysis is enhanced near the *R. equi* streak, and *L. seeligeri* is hemolytic near the *S. aureus* streak. The other species remain nonhemolytic. Hemolysis is more easily read when the blood agar is thinner than usual. The *L. monocytogenes* reaction is often optimal at 24 h rather than 48 h. In order to obtain enough *R. equi* to give a good streak of growth, the inoculum slant culture usually requires more than 24-h incubation. Use of known control *Listeria* species on a separate sheep blood agar plate is recommended. Sheep blood agar plates should be as fresh as possible.

TABLE 3.—CAMP TEST REACTIONS OF *Listeria* SPECIES

Species	Hemolytic reaction	
	Staphylococcus aureus	Rhodococcus equi
L. monocytogenes	++	+−
L. ivanovii	+−	++
L. innocua	+−	+−
L. welshimeri	+−	+−
L. seeligeri	++	+−

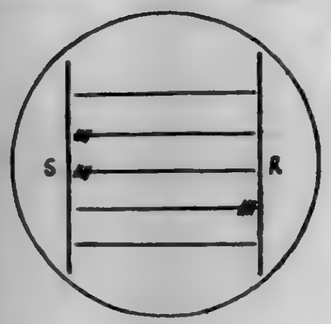


Figure 1. CAMP test for *Listeria monocytogenes:* Inoculation pattern of the sheep blood agar plate. Horizontal lines represent streak inoculations of 5 test strains. Vertical lines represent streak inoculations of *Staphylococcus aureus* (S) and *Rhodococcus equi* (R). Hatched lines indicate (diagrammatically only) the locations of hemolysis enhancement regions.

Refrigeration at 4 °C is recommended for handling, storing, and shipping materials to be analyzed for *L. monocytogenes*, which will grow, although slowly, at this temperature. However, if the test laboratory sample is already frozen, it should be kept frozen until it is ready for analysis.

A. Equipment and Materials

1. Balance (gram range)
2. Cover slips, glass
3. Erlenmeyer flask, 500 ml
4. Fermentation tubes (Durham)
5. Grease pencil or magic marker
6. Incubators, 30 and 35 °C
7. Immersion oil
8. Inoculating loops
9. Inoculating needles
10. Microscope slides
11. Needle, 25 gauge, ⅝ inch
12. Phase microscope with oil immersion objective
13. Petri plates
14. Pipets, 25, 10, and 1 ml
15. Tubes, 16 x 125 mm, screw-cap
16. Blender and jars or stomacher and stomacher bags
17. Syringe, tuberculin, sterile, disposable
18. Dissecting regular or low power microscope with illuminator

B. Media and Reagents (See Formulations at end of This Chapter)

(*Note:* Alternative Companies may be Used When the Products Are Equivalent.)

1. Acetic acid, 5 N
2. Acriflavin HCl (Sigma)
3. Agar (Difco Bacto)
4. *alpha*-Naphthylamine
5. *alpha*-Naphthol, 5% in absolute ethanol
6. Blood agar base No. 2 (Oxoid)
7. Cycloheximide (Sigma)
8. Sheep blood, defibrinated
9. Ethanol, absolute
10. Fluorescent antibody (FA) buffer (Difco)
11. Glycine anhydride (Sigma)
12. Gram stain kit
13. Hydrogen peroxide solution, 3% (R16)
14. KOH, 40% solution (R77)
15. *Listeria*-typing sera set (Difco)
16. Lithium chloride (Sigma)
17. Moxalactam (Sigma)
18. Nalidixic acid (sodium salt) (Sigma)
19. NaCl, physiological saline solution, 0.85% (R75)
20. Nutrient broth (M101)
21. Phenylethanol agar (Difco)
22. Purple carbohydrate fermentation broth base (M116), containing 0.5% solutions of dextrose, esculin, maltose, rhamnose, mannitol, and xylose
23. SIM motility medium (Becton Dickinson Microbiology Systems;BDMS)
24. Sulfanilic acid (crystal)
25. Trypticase soy broth (M137)
26. Trypticase soy agar (M136)
27. Tryptose (Difco Bacto)
28. Triple sugar iron (TSI) agar (M124)
29. Yeast extract (BDMS)

C. Enrichment Procedure

Care should be taken to make the sample representative of the food's outer surface as well as its interior.

Add 25 ml liquid or 25 g cream or solid test material to 225 ml enrichment broth (EB) in blender or stomacher. Blend or stomach as required for thorough mixing. Incubate EB culture in blender jar or stomacher bag, or transfer to 500 ml Erlenmeyer flask. Incubate EB culture for 2 days at 30°C.

D. Isolation Procedure

At 24 h and at 2 days, streak EB culture onto modified McBride agar (MMA) and onto Lithium chloride-Phenylethanol-Moxalactam (LPM) agar. Incubate MMA plates at 30°C for 48 h and LPM plates at 30°C for 48 h. Examine MMA plates for suspect colonies by using beamed white light powerful enough to illuminate plate well, striking plate bottom at 45° angle (Figure 2). When examined in this oblique-transmitted light from an eye position directly above the plate (i.e., at 90° to the plate) either directly or via a low power microscope or dissecting microscope (with mirrors detached), colonies of *Listeria* species appear blue-gray to blue on MMA. On LPM plating medium the colonies appear sparkling blue (bluish crushed glass) or white. The use of positive and negative control colonies on MMB and LPM (not the test plates) to attune the observer's eyes is recommended. Although there are variations in the components of the optical systems used, the important points are the 45° angle of incident light and the 90° angle of emergent light. Pick 5 or more typical colonies to trypticase soy agar with 0.6% yeast extract (TSA-YE), streaking for isolated colonies. Incubate TSA-YE plates at 30°C for 24 h or until growth is satisfactory.

E. Identification Procedure

Isolates must be identified by the following classical tests (E1–E13). Rapid kits are available to facilitate biochemical testing to genus level (see E14). In addition, there are now rapid novel methods available (see section J) employing monoclonal antibodies and gene probes which provide advance indication of the presence of *Listeria* species (genus only) in 48-h samples of the enrichment broth or of *L. Monocytogenes* colonies on the isolation agar (these tests are optional).

1. Examine TSA-YE plates for typical colonies. Using the oblique illumination system (Henry illumination) already described, the colonies will have a similar appearance to that described for MMB (section D). Again, the use of known controls on TSA-YE is recommended.

2. Pick a typical colony and examine by wet mount, using 0.85% saline for suspending medium and oil immersion objective of phase-contrast microscope. Be sure to choose a colony with enough growth to make a fairly heavy suspension; emulsify thoroughly. If too little growth is used, the few cells present will stick to the glass slide and appear nonmotile. *Listeria* species appear as slim, short rods with slight rotating or tumbling motility. Always compare with known culture. Cocci, large rods, or rods with rapid, swimming motility are not *Listeria* species.

3. Test typical colony for catalase. *Listeria* species are catalase-positive.

4. Gram stain 16- to 24-h cultures. All *Listeria* species are small, Gram-positive rods, but Gram stain reaction can be variable with older cultures.

5. Pick a typical colony to a tube of trypticase soy broth supplemented with 0.6% yeast extract (TSB-YE) for inoculating biochemicals and fermentations. Incubate at 35°C for 24 h. This culture may be kept at 4°C for several days and used as inoculum.

6. Inoculate heavily (from a TSA-YE colony) sheep blood agar by stabbing plates that have been poured thick and dried well (check for moisture before using). Draw grid of 20–25 spaces on plate bottom. Stab one culture per grid space. Always stab positive controls (*L. ivanovii* and *L. monocytogenes*) and a negative control (*L. innocua*). Incubate for 48 h at 35°C.

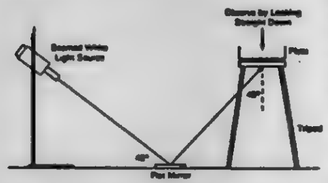


Figure 2. Examination of plates for suspect colonies of *Listeria* species. Light source used, Bausch & Lomb Nicholas Illuminator, Cat. No. 31–33–05–28; *see* a current Fisher Catalog. Ref. Seeliger, H.P.R., 1961, Listeriosis, Hafner Publishing Co., New York, NY. Note: some observers prefer a concave mirror.

7. Examine blood agar plates containing culture stabs by using a bright light. *L. monocytogenes* and *L. seeligeri* produce a slightly cleared zone around stab. *L. innocua* shows no zone of hemolysis, whereas *L. ivanovii* produces as well-defined zone of clearing around stab. Do not try to differentiate species at this point, but note nature of the hemolytic reaction.

8. Using the TSB–YE culture, inoculate urea agar slant by covering the slant well without stabbing the butt. Incubate at 35 °C for 5 days. Observe daily for development of a purple color (a positive test). *Listeria* species do not hydrolyze urea and no color should develop.

9. Nitrate reduction test. To perform this test, use a TSB–YE culture to inoculate nitrate broth. Incubate at 35 °C for 5 days. Add 0.2 ml reagent A, followed by 0.2 ml reagent B (*see* Media No. 6 at end of this chapter). A red color indicates the presence of nitrite, i.e., nitrate has been reduced. If no color develops, add powdered zinc and let stand 1 h. A developing red color indicates that nitrate is still present and has not been reduced. Only *L. murrayi* reduces nitrates.

As an alternative procedure, add 0.2 ml reagent A followed by 0.2 ml reagent C. An orange color indicates reduction of nitrate. If not color develops, add 0.2 ml cadmium reagent. The development of an orange color indicates unreduced nitrate. This procedure eliminates the use of the carcinogen *alpha*-naphthylamine.

10. Inoculate SIM motility medium from TSB–YE. Incubate for 7 days at room temperature. Observe daily. *Listeria* species are motile, giving a typical umbrella-like growth pattern.

11. Inoculate an MR–VP medium tube, using the TSB–YE culture. Incubate at 35 °C for 48 h. Remove 1 ml to a clean tube and add 0.6 ml *alpha*-naphthol solution followed by 0.2 ml 40% KOH solution. Shake and examine. A strong red color indicates a positive test. Incubate remaining culture for additional 2 days. Add methyl red to tube; it should turn red for a positive test. *Listeria* species are both MR- and VP-positive.

12. Using the TSB–YE culture, inoculate TSI by streaking slant and stabbing butt. Incubate up to 5 days at 35 °C *Listeria* species give an acid slant and an acid butt, but no H_2S.

13. From TSB–YE culture, inoculate the following carbohydrates set up as 0.5% solutions in purple carbohydrate broth: dextrose, esculin, maltose, rhamnose, mannitol, and xylose. Incubate 7 days at 35 °C. *Listeria* species produce acid with no gas or no reaction. Consult Table 1 for xylose-rhamnose reactions of *Listeria* species. All species should be positive for dextrose, esculin, and maltose. All *Listeria* species except *L. grayi* and *L. murrayi* should be mannitol-negative.

14. Purified isolates with known hemolytic reactions can be rapidly identified (to *genus* level only) using the commercial kits 20 S™ (Analytical Products, Plainview, N.Y. USA) and Gram Positive Identification card (Vitek Systems, McDonnell Douglas, Hazelwood, MO). The later kit is used in conjunction with the Vitek Automicrobic System.

F. Serology

This test is used when epidemiological considerations are crucial. Use TSB–YE culture to inoculate tryptose broth. Make two successive transfers of cultures incubated in tryptose broth for 24 h. at 35 °C. Make a final transfer to two tryptose agar slants and incubate 24 h. at 35 °C. Wash both slants in a total of 3 ml Difco FA buffer and transfer to sterile 16 x 125mm screw-cap tube. Heat in water bath at 80 °C for 1 h. Spin at 1600 x T3g for 30 min. Remove 2.2–2.3 ml of supernatant fluid and resuspend pellet in remainder of buffer. Follow manufacturer's recommendations for serum dilution and agglutination procedure. If flagellar (H) and sub-factor (0) serotyping is required, the procedures can be obtained from the Division of Microbiology, FMMD Branch, FDA, 200 C Street, SW., Washington, DC 20204.

G. Mouse Pathogenicity (Optional)

Grow isolate for 24 h at 35°C in TSB-YE. Transfer to two tubes of TSB-YE for another 24 h at 35°C. Place a total of 10 ml culture broth from both tubes into 16 x 125 mm tube and spin at 1600 x *g* for 30 min. Discard supernatant and resuspend pellet in 1 ml 0.85% saline diluent. This suspension will contain approximately 10^{10} bacteria/ml and the actual concentration should be determined by a pour or spread plate count. Inject (i.p.) 16- to 18-g Swiss white mice (5 mice/culture) with 0.1 ml of the concentrated suspension. Each mouse will receive 10^9 bacterial cells. Observe for death over a 7-day period. Nonpathogenic strains will not kill, but 10^9 pathogenic cells will kill, usually within 5 days. This test should be controlled with known pathogenic and nonpathogenic strains.

H. CAMP Test. CAMP Test Cultures of *S. Aureus* and *R. Equi* Are Available From the Division Microbiology, FMMD Branch, FDA, 200 C Street, S.W, Washington, DC 20204.

Streak *beta*-hemolytic *S. aureus* (CIP 5710 or NCTC 7428) and *R. equi* (NCTC 1621) vertically on sheep blood agar. Separate vertical streaks so that test strains may be streaked horizontally between them without quite touching them. After 24 and 48 h incubation at 35°C, examine plates for hemolysis in the zone of influence of the vertical streaks. Figure 1 shows the arrangement of the streak cultures on a CAMP plate. *L. monocytogenes* hemolysis is enhanced in the vicinity of the *S. aureus* streak; *L. invanovii* hemolysis is enhanced in the vicinity of the *R. equi* streak; and hemollysis of *L. seeligeri* is

enhanced near the *S. aureus* streak. The other species remain nonhemolytic in this test. The CAMP test differentiates *L. ivanovii* from *L. seeligeri* and can differentiate a weakly hemolytic *L. seeligeri* (that may have been read as nonhemolytic) from *L. welshimeri*. Isolates giving reactions typical for *L. monocytogenes* except for the hemolysis production should be CAMP-tested before they are identified as nonhemolytic *L. innocua*. (A factor easily prepared from *S. aureus* cultures can be used to enhance hemolysis by *L. monocytogenes* and *L. seeligeri* in sheep blood agar plates.)

I. Interpretation of Analyses Data for Speciation

All *Listeria* spp. are small Gram-positive rods that demonstrate motility in wet mount and in SIM. They are catalase-positive, do not hydrolyze urea, and produce acid slant and acid butt in TSI without production of H_2S. They utilize dextrose, esculin, and maltose, and some species utilize mannitol, rhamnose, and xylose with production of acid. All species give +/+ reactions in MR-VP broth. An isolate utilizing mannitol with acid production is *L. grayi* *L.* or *murrayi*. Nitrate reduction differentiates between the two because only *L. murrayi* reduces nitrate.

L. monocytogenes, *L. ivanovii*, and *L. seeligeri* produce hemolysis in sheep blood stabs and are consequently CAMP test-postive. Of the three, only *L. monocytogenes* fails to utilize xylose and is positive for rhamnose utilization. The difficulty in differentiating *L. ivanovii* from *L. seeligeri* can be resolved by the CAMP test. *L. seeligeri* shows enhanced hemolysis at the *S. aureus* streak. *L. ivanovii* shows enhanced hemolysis at the *R. equi* streak. Of the nonhemolytic species, *L. innocua* may give the same rhamnose-xylose reactions as *L. monocytogenes* but is negative in the CAMP test. *L. innocua* is the only species that sometimes gives negative results for utilization of both rhamnose and xylose. *L. welshimeri* that is rhamnose-negative may be confused with a weakly hemolytic *L. seeligeri* unless resolved by the CAMP test.

After all other results are available, the serotyping of *Listeria* isolates becomes meaningful. Biochemical, serological, and pathogenicity data are summarized in Tables 1–3. All data collection must be completed before speciation.

J. Rapid Presumptive Identification Methods (Optional)

Several rapid methods are available for identifying *Listeria* isolates to genus or species (*L. monocytogenes*) level. These methods can accelerate the identification process. The methods are supplementary to the conventional procedures and are not intended as substitutes for them since their reliability and acceptability has not yet been fully evaluated by widespread use. Details of the methods can be found in the provided references.

1. Identification in enrichment culture. Members of the genus *Listeria* can be identified in the 48-h enrichment broth culture by using a commercial ELISA kit (Organon Teknika Corp., Durham, NC) (9) or a radiolabeled DNA probe hybridization kit (GeneTrak, Framingham, MA) (10). The genus *Listeria* can be detected directly in enrichment broths containing esculin and iron (11).

(2) Identification of colonies on isolation agar. Colonies of *L. monocytogenes* on LPM agar can be identified by using an FDA-developed radiolabeled gene probe that is specific for a DNA sequence located either within or close to a hemolysin gene (12). Colonies of *Listeria* spp. can be recognized on an esculin and iron selective medium (Oxford formulation) which is marketed by Oxoid Ltd., Basingstoke, Hampshire, U.K.

K. Quantification (optional)

There are no official methods of quantification. However, if a sample is directly implicated as being a cause of foodborne listeriosis, an attempt should be made to quantitate *Listeria* prior to enrichment by direct plate count (on both MMB and LPM) and/or by MPN procedure using EB. Such data would be useful in estimating infectious-dose values.

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Chapter 29. Media Supplement

1. Sheep Blood Agar

Blood agar base (Oxoid No. 2)	39 ml
Sheep blood, defibrinated	5 ml

Rehydrate and sterilize as recommended by manufacturer. Agar and blood should both be at 45–46°C before adding blood and pouring plates. Sheep blood agar plates are available commercially.

2. Purple Carbohydrate Fermentation Broth Base (MI 16)

Purple broth base (BBL)	15 g
Distilled water	900 ml

Add purple broth base to distilled water. Dispense 9 ml to 16×125 mm tubes containing a Durham tube.

Autoclave at 121°C for 15 min. Prepare all carbohydrates, except esculin, as sterile 5% solutions. Filter-sterilize. Add 1 ml carbohydrate solution to 9 ml broth base to yield 0.5% carbohydrate in broth.

Add esculin directly into base broth to make a 0.5% solution and autoclave 15 min at 115°C. A 5% solution of esculin at room temperature is a gel that cannot be pipetted.

3. Enrichment Broth (EB), pH 7.3

TSB–YE (*see* No. 11, below) supplemented with:

Acriflavin HCl (Sigma)	15 mg/L
Nalidixic acid (sodium salt) (Sigma)	40 mg/L
Cycloheximide (Sigma)	50 mg/L

Add the three supplementary ingredients aseptically to TSB–YE after autoclaving and just before use. Make acriflavin and naladixic supplements as 0.5% stock solutions in distilled water. Make cycloheximide supplement as 1.0% stock solution in a 40% solution of ethanol in water. Filter-sterilize all three supplementary ingredients. Add 0.68 ml acriflavin stock solution, 1.6 ml nalidixic stock solution, and 1.15 ml cycloheximide stock solution to 225 ml TSB–YE to achieve the stated amounts in mg/L. EB is commercially available. (*Note*: Cycloheximide is very toxic. Care should be exercised in its disposal, especially if large volumes of EB (and MMA) are used. Refer to a current edition of the Merck Index (Merck Co. Inc., Rahway NJ) for information on its stability properties in relation to disposal methods.)

4. Modified McBride Agar (MMA), pH7.3

Phenylethanol agar (Difco)	35.5 g
Glycine anhydride (Sigma)	10.0 g
Lithium chloride (Sigma)	0.5 g
Cycloheximide (add *after* autoclaving)	200.0 mg
Distilled water	1 liter

Heat to boiling to dissolve agar and dispense into bottles. Autoclave at 121°C for 15 min. Store in refrigerator. Melt and temper agar, and then add cycloheximide (filter-sterilized) before pouring plates. These plates may be stored in refrigerator for 1 week. Do not dry plates. Commercial dehydrated MMA with glycine anhydride is not available.

5. MR–VP Medium (M92)

MR–VP reagents

Methyl red. 0.1 g methyl red in 300 ml 95% ethanol made up to 500 ml in distilled water.

alpha-Naphthol solution. 5% *alpha*-Naphthol in absolute ethanol.

KOH solution. 40% W/V KOH in distilled water.

6. Nitrate Reduction Medium—Nutrient Broth (M101) with 1.0 g/L Potassium Nitrate (M96)

Reagent A. Dissolve 0.5 g *alpha*-naphthylamine in 100 ml 5 N acetic acid by gently heating. Prepare 5N acetic acid by adding distilled water to 28.7 ml of glacial acetic acid (17.4 N) to give a final volume of 100 ml.

Reagent B. Dissolve 0.8 g sulfanilic acid in 100 ml 5*N* acetic acid by gently heating.

Reagent C. Dissolve 1 g *alpha*-naphthol in 200 ml acetic acid.

Zinc powder. For nitrate reduction test, follow directions described in this chapter under E–8.

Cadmium reagent. Place zinc rods in 20% solution of cadmium sulfate for several hours. Draw off precipitated cadmium and add to 1 N HCl.

7. SIM Motility Medium (BBL)

Rehydrate and sterilize according to manufacturer's instructions. Add 6 ml medium per 16 x 125 mm screw-cap tube.

8. Triple Sugar Iron (TSI) Agar (M134)

Use either BBL or Difco TSI, prepared per manufacturer's instructions. Streak and stab butt.

9. Tryptose Broth and Agar for Serology

Difco Bacto tryptose	20 g
NaCl, 0.85% solution	8.5 g
Dextrose	1 g
Agar	15 g
Distilled water	1 liter

For broth, omit agar from formulation.

10. Trypticase Soy Agar with 0.6% Yeast Extract (TSA–YE)

Trypticase soy agar (BBL)	40 g
Yeast extract (BBL)	6 g
Distilled water	1 liter

11. Trypticase Soy Broth with 0.6% Yeast Extract (TSB–YE)

Trypticase soy broth (BBL)	30 g
Yeast extract (BBL)	6 g
Distilled water	1 liter

12. Urea Hydrolysis Medium

Agar	1.5 g
Distilled water	90 ml
Urea agar concentrate (Difco)	1 tube (10 ml)

Add agar to distilled water and heat to boiling to dissolve. Autoclave at 121°C for 15 min. Temper agar to 50–55°C and aseptically add contents of one 10-ml tube of urea agar concentrate. Mix thoroughly. Dispense to sterile tubes and slant generously.

13. Lithium Chloride-Phenylethanol-Moxalactam (LPM) Medium

Phenylethanol agar (Difco)	35.5 g
Glycine anhydride (*Note*: not glycine)	10 g
Lithium chloride	5 g
Moxalactam stock solution, 1% in pH 6.0 phosphate buffer	2 ml
Distilled water	1 liter

Sterilize the medium (without moxalactam) at 121°C for 15 min. Cool to 48–50°C and add filter-sterilized moxalactam solution.

Moxalactam stock solution consists of 1 g of moxalactam salt (ammonium or sodium) in 100 ml of 0.1 M potassium phosphate buffer pH 6.0. Store the filter-sterilized stock solution frozen in 2-ml aliquots.

Moxalactam (E. Lilly Co.) is retailed by Sigma Chemical Co. The LPM medium is most effective in the Henry illumination system when poured thin, i.e., 12–15 ml per standard petri dish. The greater tendency of this agar to dry is avoided by refrigeration and/or rapid use of the plates. LPM basal medium is commerically available as a powder.

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Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 39
Airworthiness Directives; Boeing Model 737 Series Airplanes; Final Rules and Proposed Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-66-AD; Amdt. 39-6069]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes two existing airworthiness directives (AD), applicable to certain Boeing Model 737 series airplanes, which currently require external inspection of the skin at certain fuselage lap joints for cracks, corrosion, and delamination and repair, if necessary. This amendment retains certain current requirements, but increases the area to be inspected and intensifies the methods of inspection. In addition, this amendment imposes a cabin differential pressure restriction to reduce fuselage skin stresses, thus increasing the level of safety until required initial eddy current inspections are completed. This action is prompted by reports of numerous cracks found during inspections of airplanes that have accumulated more than 40,000 landings. This condition, if not corrected, could result in rapid decompression of the airplane.

DATES: Effective November 21, 1988.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara J. Mudrovich, Airframe Branch, ANM-120S; telephone (206) 431-1927. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations by superseding AD 87-21-08, Amendment 39-5752 (52 FR 36395; October 16, 1987), and telegraphic AD T88-10-51, applicable to certain Boeing Model 737 series airplanes, to require external and internal inspections of the skin along certain fuselage skin lap joints and bonded doublers for cracks, corrosion, and delamination; repair, if necessary; and eventual modification, was published in the Federal Register on May 31, 1988 (53 FR 19653).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

In addition to requirements that were proposed in the Notice of Proposed Rulemaking (NPRM) this final rule includes several additional requirements, discussed in detail below, which were not subject to notice and comment.

The Air Transport Association (ATA) of America, the manufacturer, and eight airlines requested that the requirement for use of a 10 power magnifying glass in the external inspections be made optional, as necessary, due to the eye strain involved and concentration required which might be detrimental to the inspection. The FAA concurs, but has further determined that a more reliable means of detecting small cracks is required and has, therefore, substituted high frequency eddy current inspections for the proposed visual inspections for cracks, as discussed below. With respect to disbond and corrosion inspections, the FAA has further determined that a 10 power magnifying glass would be of little benefit because evidence of these problems can be reliably detected with the unaided eye. The final rule has been revised accordingly.

Several commenters also requested that paint stripping be required only to confirm positive findings. Since issuance of the NPRM, one operator found a 12-inch crack in one bay of skin along the upper rivet row of the Stringer (S)-14 lap splice, and 13 fasteners with cracks emanating from both sides in the critical upper row in the bay directly aft. This cracking was discovered while repainting the airplane and not as a result of any inspections required by previous AD's. This area had been visually inspected on a painted surface in accordance with AD T88-09-51 just 6 months and approximately 700 landings prior to discovery. Based on this incident, and the human factors difficulties associated with the performance of these inspections, the FAA has determined paint stripping is required unless the fastener is clearly visible through the paint and there are no more than 2 coats of paint on the airplane skin. The final rule has been revised accordingly. In addition, a Note has been added to the final rule to emphasize that inspections performed in accordance with existing AD's where paint stripping was not accomplished are not to be given credit for the purpose of determining compliance times with these requirements unless they were performed in accordance with the above criteria.

Additionally, one airline requested the use of sanding as an alternative to paint stripping. The FAA does not concur that the use of sanding is an adequate alternate method since the sanding process may adversely effect the detection of cracks. The FAA has determined that plastic bead paint stripping may also hide the evidence of cracking. For these reasons the final rule specifically requires chemical stripping.

The commenters objected to the use of a 5% corrosion limit for deferring repairs due to the inadequacy of equipment being used and the tolerance of the skin thickness. After further discussion with the manufacturer and certain non-destructive test (NDT) inspectors, the FAA has determined that a 10% corrosion limit will provide an acceptable level of safety, while allowing for material and equipment tolerances. The final rule has been revised accordingly.

The manufacturer requested that the threshold for the external inspections of the lap joints be changed from 40,000 landings to 45,000 landings for airplanes line number 001 through 291, based on a report that no cracks had been found on airplanes that had accumulated fewer than 47,000 landings. The FAA does not concur that the threshold for airplanes line number 001 through 291 should be extended to 45,000 landings because of a report of cracking on one airplane at 44,000 landings. This threshold remains at 40,000 landings in the final rule. The manufacturer also requested these inspections be deleted for airplanes line number 292 through 464 based on a lack of adverse service experience and the change in lap joint design for the later line number airplanes. The FAA concurs that external inspections for airplanes line number 292 through 464 can be deleted based on the service history for these airplanes, and the fact that at line number 292, Boeing made a complete redesign of the lap splice which resulted in nearly 50% reduction in the material stress level of the joint. The final rule has been revised accordingly.

The manufacturer and one operator requested that the initial compliance time be extended to 1,500 landings for the external inspections of the lap joints. The FAA concurs. Based on the fact that AD T88-10-51 required an eddy current inspection of the lap joints at Stringers 4 and 10 and a detailed visual inspection of the other lap joints, the FAA has determined that a 1,500 landing inspection threshold will provide an acceptable level of safety. In addition, the FAA has added a requirement to operate affected airplanes in accordance with a fuselage pressure differential restriction until the initial inspections are accomplished. This reduces skin stresses and provides for an increased level of safety, further supporting the 1,500 landing compliance requirement. The final rule has been revised accordingly.

The manufacturer requested that the threshold for the external inspections of the skin along S-17 be changed from 40,000 to 45,000 landings for airplanes line number 001 through 291 because this stringer area is less critical than the lap joint, and to 60,000 landings for airplanes line number 292 through 464 based on the lack of adverse service experience in this area. The FAA does not concur with the first request because there have been reports of significant cracking on airplanes in the first group with as few as 43,000 landings. The second group of airplanes has an improved bonding process and there is no history of cracking in this group. Therefore, the FAA has revised the final rule to reflect a threshold of 60,000 landings for airplanes line number 292 through 464, while maintaining the proposed threshold for the earlier group of airplanes.

The manufacturer and two operators requested an increase in the initial compliance time for the external inspections of the skin along S-17 from 500 to 1,500 landings since this area of the fuselage is less critical than the lap joints. The FAA does not concur. While the skin at S-17 may be less critical than the lap joints, severe cracking in this area would still lead to rapid decompression of the fuselage. Particularly in light of recent reports of serious cracks, the FAA has determined that the initial compliance time of 500 landings is necessary to maintain an acceptable level of safety.

The manufacturer and three operators requested that the initial compliance time for the internal inspections on airplanes line number 001 through 291 be extended from 6 months to 24 months after the effective date of the AD for airplanes that have the external inspections accomplished at one half the required interval of 4,500 cycles or 15 months, which would maintain the structural integrity via frequent external inspections. The FAA concurs that such additional external inspections will maintain an acceptable level of safety for the interim period and the final rule has been revised accordingly.

One operator requested that the initial compliance time for the internal inspections of airplanes line number 001 through 291 be extended to the next heavy maintenance visit because it claimed the tearstraps were not disbonded. The FAA does not concur with this commenter. Due to the design of these early model lap joints and bonding techniques, the internal inspections must be accomplished, or additional external inspections performed as outlined in the previous paragraph because reports have indicated that tearstrap disbonding exists on many airplanes and the inspections are required to maintain an acceptable level of safety.

The manufacturer and one operator requested that the initial compliance time for the internal inspections of airplanes line number 292 through 464 be extended to the next heavy maintenance visit after the effective date of the final rule due to the lap joint design improvement and lack of cracking reported in this group of airplanes. The FAA concurs with the commenters and the AD has been changed to require inspection within 12,000 landings or 4 years after the effective date of the AD.

The manufacturer and one operator requested that the internal inspection of the tearstraps be limited to an area two bays above and one bay below the lap joints at S-4 and S-10, since the tearstraps adjacent to S-14, S-19, and S-25(28) are riveted to the frames, providing load transfer capability and prevention of massive disbond. The FAA concurs. The FAA has determined that this level of inspection would provide an acceptable level of safety, provided the entire panel is inspected if signs of disbond or corrosion are discovered. The final rule has been revised accordingly.

The manufacturer and one operator requested that the internal inspection between BS 250 and BS 360 be limited to the tearstraps adjacent to S-4 since forward of BS 360 the tearstraps are riveted to the frames surrounding all lap joints except at S-4, providing load transfer and prevention of massive disbond. The FAA concurs that this level of inspection would provide an acceptable level of safety and the final rule has been revised accordingly.

One operator requested that the terminating action for the inspections of the skin along S-17 and the lap joints be separated for clarity. The FAA concurs with this commenter and has revised the final rule accordingly.

Another operator commented that the terminating modification for the inspections of the skin along S-17 be optional for all airplanes affected since this area of the skin is less critical than the lap joint. The FAA does not totally concur. While the skin at S-17 may be less critical than the lap joints, severe cracking in this area would still lead to rapid decompression of the fuselage. For the reasons discussed below, however, the FAA has determined that the proposed compliance time for that aciton was excessive, and reducing the compliance time would have been beyond the scope of the Notice for this AD. Accordingly, while this final rule has been revised to make the terminating actions optional, the FAA, by separate rulemaking action, is proposing to mandate the terminating action with reduced compliance times.

An operator requested clarification of the terminating modification with respect to the tearstraps. The FAA notes that the final rule requires that tearstraps two bays above and one bay below the lap joint be assured functional by the use of mechanical fasteners where disbonding has occurred.

An operator opposed mandating the terminating action due to the average cycle time of aircraft in use by this operator. The FAA does not concur. The FAA has determined that mandating terminating action on the early airplanes, line number 001 through 291, is required to maintain safety due to: (1) the early inadequate lap joint configuration and bonding techniques; (2) a recent incident where a 15-foot long portion of skin departed an airplane in flight; (3) a recent 12-inch crack found on an airplane only 700 landings after it was inspected; and (4) a determination that long term continued airworthiness of airplanes with widespread multiple site damage cannot be assured by inspection because of the large number of these inspections and the human factors difficulties associated with the repetitious nature of the inspections. For the reasons discussed below, however, the FAA has determined that the proposed compliance time for that action was excessive, and reducing the compliance time would have been beyond the scope of the Notice for this AD. Accordingly, while this final rule has been revised to make the terminating actions optional, the FAA, by separate rulemaking action, is proposing to mandate the terminating action with reduced compliance times.

One operator requested that specific alternate methods to the eddy current inspection techniques be specified in the AD. The FAA does not concur. However, the FAA is aware that the industry is developing a sliding probe eddy current inspection technique and will review the technique upon presentation. Provisions for alternate

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methods of compliance are contained in paragraph J., and requests will be approved on an individual basis, if found to be acceptable.

Based on the foregoing considerations, the FAA has determined that certain requirements which were not included in the proposed rule, must be added to the final rule in order to ensure the timely detection and proper repair of fuselage cracks. In addition to the requirement for paint stripping previously discussed, the FAA has determined that the following requirements must also be added:

- Repetitive eddy current inspections of all lap joints in addition to the detailed visual inspections originally proposed, which will increase the reliability for detection of small cracks.
- Cabin pressure differential restriction until the initial eddy current inspections are accomplished, which will reduce stresses in fuselage skins and decrease the potential for rapid decompression. This pressure differential was derived by dividing the maximum cabin pressure differential of 7.55 psi by a 1.33 safety factor. This will reduce fuselage stresses, thereby increasing the time to reach the critical crack length by an approximate factor of 3, which will provide additional safety until further action can be taken.
- Inspection of previously accomplished repairs on the skin at all lap joint and S–17 locations to ensure that these repairs were made in accordance with FAA-approved procedures, thereby assuring that the repair will not accelerate the initiation of additional cracks.
- Within 3,000 landings following any repair, replacement of all upper row fasteners in panels found to have cracks, since cracking in an area of the skin is generally indicative of widespread cracking throughout the panel, and of blind fasteners, since blind fasteners provide adequate structural integrity as an interim measure only.

Based on considerations discussed previously, the FAA has determined that the deadline for accomplishing the terminating modifications is inadequate. As discussed above, total reliance on inspections is not adequate to maintain safety. Therefore, the FAA in a companion document is proposing reduced compliance times to accomplish the modifications which will terminate the inspections of this airworthiness directive and restore the airplanes to an acceptable level of safety.

Since the issuance of the NPRM, the FAA has reviewed and approved Boeing Service Bulletin 737–53–1089, Revision 1, dated October 13, 1988, which defines the procedure for the eddy current inspection that was identified in the NPRM to be performed "in accordance with an FAA-approved procedure." The final rule has been revised to reflect the procedures in this service bulletin as an acceptable means to accomplish the required inspection. This change does not increase the scope of the final rule, nor does it increase the economic burden on any operator.

The proposed requirement to report the findings of the inspections to the Manager, Seattle Aircraft Certification Office, has been deleted from the final rule because it has been determined that this additional data is not needed.

Additional questions concerning the ongoing corrosion inspection of the lap joints have been raised. The FAA has determined that these inspections are only required to maintain an acceptable level of safety if the joint is not separated and thoroughly cleaned as described by one option in the service bulletin. The final rule has been clarified appropriately in paragraph I.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule.

There are approximately 464 Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 100 airplanes of U.S. registry will be affected by this AD, that those required actions set forth in the NPRM will take approximately 2,000 manhours per airplane to accomplish, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $8,000,000.

The FAA has determined that a situation exists that requires immediate adoption of this regulation. Therefore, it is found that notice and public procedure for requirements not previously proposed are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By superseding AD 87–21–08, Amendment 39–5752 (52 FR 38395; October 16, 1987); and Telegraphic AD T88–10–51, issued May 4, 1988, with the following new airworthiness directive:

Boeing: Applies to Model 737 series airplanes, line numbers 001 through 464, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent rapid decompression of the airplane accomplish the following:

A. For airplanes line numbers 001 through 291, prior to the accumulation of 40,000 landings, or within 10 calendar days after the effective date of this AD, whichever occurs later, restrict all flight operations to a maximum cabin pressure differential of 5.67 psi until the inspections required by paragraph B.1., below, are accomplished.

B. 1. For airplanes line numbers 001 through 291, within the next 1,500 landings after the effective date of this AD, or prior to the accumulation of 42,000 landings, whichever occurs later, unless previously accomplished within the last 3,000 landings; and thereafter at intervals not to exceed 4,500 landings or 15 months, whichever occurs first; accomplish the requirements of paragraph C., below, along the skin at all fuselage lap joints between BS 259 and BS 1016.

2. For airplanes line numbers 001 through 464 within the next 500 landings after the effective date of this AD, or prior to the accumulation of: a. 40,000 landings for airplanes line numbers 001 through 291; or b. 60,000 landings for airplanes line numbers 292 through 464; whichever occurs later, unless previously accomplished within the last 4,500 landings and thereafter at intervals not to exceed 4,500 landings or 15 months, whichever occurs first; accomplish the requirements of paragraph C., below, along the skin at S–17 between BS 360 and BS 540 and between BS 727 and BS 937.

C. For airplanes identified in paragraphs B.1 and B.2. above, remove paint with an approved chemical stripper, or ensure that the fastener head is clearly visible and that no more than 2 coats of paint are on the airplane skin, prior to the inspections required by this paragraph:

1. Perform a high frequency eddy current inspection for cracks along the upper rivet line at the lap joints and along both rivet lines at S–17, in accordance with Boeing Service Bulletin 737–53A1028, Revision 4, dated April 14, 1988, or Boeing Service Bulletin 737–53–1089, Revision 1, dated October 13, 1988, accordingly.

Note.—No credit will be given for previous inspections accomplished on a painted surface where the fastener head was not clearly visible or where more than 2 coats of paint were on the airplane skin.

2. Perform a detailed external visual inspection, using adequate lighting for evidence of corrosion or delamination. Inspect for small cracks, bulging skin between fasteners, blistered paint, dished or popped rivet heads, or loose fasteners. If evidence of corrosion or delamination is found, prior to further flight, perform a low frequency eddy current inspection for corrosion to determine material loss, of the entire length of the affected panel, in accordance with Boeing Alert Service Bulletin 737–53A–1088, Revision 4, dated April 14, 1988, or Boeing Service Bulletin 737–53–1089, Revision 1, dated October 13, 1988.

3. Repair cracks, corrosion, and delamination prior to further flight (except as permitted by paragraph G., below), in accordance with Boeing Alert Service Bulletin 737–53A1039, Revision 4, dated April 14, 1988, or Boeing Service Bulletin 737–53–1089, Revision 1, dated October 13, 1988. All upper row fasteners at the lap joint and both rows of fasteners at S–17 of any skin panel, in which cracks are found, must be replaced with standard protruding head solid fasteners, in accordance with the applicable service bulletin, within 3,000 cycles following the repair. Blind fasteners are to be used as an interim repair only, and replaced with protruding head solid fasteners within 3,000 cycles following installation. Repairs installed with blind fasteners prior to the effective date of this AD must be inspected for loose or missing fasteners within 1,000 cycles after the effective date of this AD and all upper row fasteners in the affected panel must be replaced with standard protruding head solid fasteners within 3,000 cycles after the effective date of the AD. Repairs of the skin installed with countersunk fasteners, at any fuselage lap joint or along S–17, prior to the effective date of the AD must be inspected and verified as FAA-approved within 1,000 cycles after the effective date of this AD. Repairs determined not to be FAA-approved, must be replaced or modified in accordance with the FAA-approved method, prior to further flight.

D. For airplanes line numbers 001 through 291, within the next 2,250 landings or within 6 months after the effective date of this AD, whichever occurs first, or prior to the accumulation of 40,000 landings, whichever occurs later, unless accomplished within the last 9,750 landings, and thereafter at intervals not to exceed 12,000 landings or 4 years, whichever occurs first, accomplish the inspections described in paragraph F., below. If the inspections required by paragraph C., above, are repeated at intervals not to exceed 2,250 landings or 7½ months, whichever occurs first, then the requirements of paragraph F., below, may be deferred until the accumulation of 7,000 landings or 24 months after the effective date of this AD, whichever occurs first.

E. For airplanes line numbers 292 through 464, within the next 12,000 landings or 4 years after the effective date of this AD, whichever occurs first, or prior to the accumulation of 40,000 landings whichever occurs later, and thereafter at intervals not to exceed 12,000 landings or 4 years, whichever occurs first, accomplish the inspections described in paragraph F., below.

F. As required by paragraphs D. and E., above, perform a detailed internal visual inspection of tearstraps (circumferential portion of the bonded waffle doubler), not mechanically fastened to the skin between BS 360 and BS 1016 two bays above and one bay below the lap joints at S–4 and S–10, and between BS 259 and BS 360 two bays above and one bay below the lap joint at S–4 for delamination and corrosion, in accordance with Boeing Alert Service Bulletin 737–53A1039, Revision 4, dated April 14, 1988. Adequate lighting must be used for this inspection. Inspect for bulges in the doubler, white powder or a thin black line at the edges of the doubler, and missing or dished fasteners. Check for disbond by pushing outward on the skin while attempting to insert a feeler gage between the doubler and skin. If inspection areas are obscured by sealant, dirt, etc., these areas must be cleaned. If disbond or corrosion is found, inspect entire skin panel as described above in addition to one bay of the adjacent skin panel (above and below), and repair prior to further flight in accordance with Boeing Alert Service Bulletin 737–53A1039, Revision 4, dated April 14, 1988, or Boeing Service Bulletin 737–53–1089, Revision 1, dated October 13, 1988, as appropriate.

G. If corrosion found as a result of the external inspection does not exceed 10% of the skin thickness, reinspect for corrosion in accordance with paragraph C.2. or I., of this AD, as appropriate, at intervals not to exceed 2,250 cycles or 6 months, whichever occurs first, until a repair is accomplished. If such corrosion exceeds 10% of skin thickness or if cracking is found, repair prior to further flight, in accordance with Boeing Alert Service Bulletin 737–53A1032, Revision 4, dated April 14, 1988, for the skin along the lap joints, or Boeing Service Bulletin 737–53–1089, Revision 1, dated October 13, 1988, for the skin along S–17. Following such repair, resume inspections in accordance with paragraph C.2. or I. of this AD, as appropriate.

H. The accomplishment of the following two subparagraphs constitutes terminating action for the inspections indicated:

1. Accomplishment of the terminating repair at all lap joints between BS 259 and BS 1016, in accordance with Boeing Alert Service Bulletin 737–53A1039, Revision 4, dated April 14, 1988, constitutes terminating action for paragraphs A., C., and F., as they apply to lap joint areas. This repair includes replacing all upper row fasteners with standard protruding head solid fasteners and assuring the tearstraps are functional 2 bays above and 1 bay below each lap joint, by the use of mechanical fasteners where disbonding of the tearstrap has occurred.

2. Accomplishment of the preventative modification as described in Boeing Service Bulletin 737–53–1083, Revision 1, dated October 13, 1988, constitutes terminating action for the requirements of paragraphs A., C., and F. as they apply to the skin at S–17.

The repair requires using standard protruding head solid fasteners, and assuring that the tearstraps are functional 2 bays above and 1 bay below S–17, by the use of mechanical fasteners where disbonding of the tearstraps has occurred, in accordance with the Structural Repair Manual.

I. For aircraft on which the procedures described in paragraph H.1., above, have been accomplished in accordance with Part IV, A.2., of Boeing Alert Service Bulletin 737–53A1039, Revision 4, dated April 14, 1988, within 15 months after accomplishment, or within 6 months after the effective date of this AD, whichever occurs later, perform an external visual inspection of the skin for corrosion and delamination at all lap joints in accordance with that service bulletin. If corrosion is found, prior to further flight, perform a low frequency eddy current inspection of the entire length of the affected panel to determine material loss. If cracks are found, prior to further flight, perform a high frequency eddy current inspection of the entire length of the affected skin panel in accordance with the service bulletin. Repair cracks, corrosion, and delamination, prior to further flight (except as permitted by paragraph G., above), in accordance with the service bulletin. Inspections are to continue at intervals not to exceed 15 months.

J. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

K. Special flight permits may be issued in accordance with FARs 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway

South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective November 21, 1988.

Issued in Seattle, Washington, on October 27, 1988.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-25264 Filed 10-27-88; 4:55 pm]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-67-AD; Amdt. 39-6060]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which requires external inspections of the circumferential fuselage splices and internal inspections of certain bonded doublers for delamination, cracking, and corrosion. This amendment is prompted by two reports of cracking on the circumferential fuselage skin splice and several reports of delamination of the bonded doubler. This condition, if not corrected, could result in rapid decompression of the airplane.

DATE: Effective December 1, 1988.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Barabara J. Mudrovich, Airframe Branch, ANM-120S; telephone (206) 431-1927. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires external inspections of the circumferential fuselage splices and internal inspections of certain bonded doublers, for delamination, cracking, and corrosion, was published in the Federal Register on May 31, 1988 (53 FR 19881).

Interest persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

This Notice was published concurrently with the Notice for Amendment 39-6059, Docket No. 88-NM-66-AD, which proposed similar inspection requirements for longitudinal lap joints. That final rule has been changed to require a cabin pressure differential limitation of 5.67 psi, eddy current inspection of all lap joints, and chemical paint stripping in the inspection area under certain circumstances. This final rule does not impose all these additional requirements, since the service history on the circumferential joints has not shown the same propensity for multiple site cracking. The requirement for paint stripping under certain circumstances is required, however, due to the need for increased reliability for crack detection.

The Air Transport Association (ATA) of America, the manufacturer, and eight airlines requested that the requirement for use of a 10 power magnifying glass in the external inspections be optional, as necessary, due to the eye strain involved and concentration required which might be detrimental to the inspection. The FAA concurs with the commenters and has determined that a close detailed visual inspection with the use of a 10 power magnifying glass is not justified based on the lack of service experience indicating that use of such a glass is necessary.

Several commenters also requested that paint stripping be required only to confirm positive findings. Since issuance of the NPRM, one operator found a 12-inch crack in one bay of skin along the upper rivet row of the S-14 lap splice, and cracks emanting from both sides of 13 fasteners in the critical upper row in the bay directly aft. This area had been visually inspected, with the paint intact, just 6 months and approximately 700 landings prior to discovery. Based on this incident, and the human factors difficulties associated with the performance of these inspections, the FAA has determined paint stripping is required to maintain an acceptable level of safety, unless the fastener is clearly visible through the paint and there are no more than two coats of paint on the airplane. The final rule has been revised to state more specifically when paint stripping is required.

Additionally, one airplane requested the use of sanding as an alternate to paint stripping. The FAA does not concur that the use of sanding is an adequate alternate method since the sanding process may adversely effect the detection of cracks.

The commenters objected to the use of a 5% corrosion limit for deferring repairs due to the inadequacy of equipment being used and the tolerance of the skin thickness. After further discussion with the manufacturer and certain non-destructive test (NDT) inspectors, the FAA has determined that a 10% corrosion limit will provide an acceptable level of safety while allowing for material and equipment tolerances. The final rule has been revised accordingly.

One commenter requested that ferry flights be allowed for ferrying airplanes to a base to perform the necessary requirements. The FAA notes that paragraph E. of the final rule (paragraph G. of the Notice) provides for the issuance of special flight permits.

Three airlines requested better definition of the doublers to be inspected. The FAA concurs that more specificity is warranted. The final rule has been revised to include this identification of specific doublers that must be inspected. Because the identified doublers do not include tearstrap areas, the proposed exclusion of tearstrap areas is unnecessary and has been deleted from the final rule. This change does not increase the scope of the AD nor does it increase the economic burden on any operator.

One operator requested that specific alternate methods to the eddy current inspection techniques be specified in the AD. The FAA does not concur. However, the FAA is aware that the industry is developing a sliding probe eddy current inspection technique and will review the technique upon presentation. Provisions for alternate methods are contained in paragraph D., and requests will be approved on an individual basis, if found to be acceptable.

The manufacturer requested that the threshold for the external inspections be changed from 40,000 landings to 45,000 landings for airplanes line number 001 through 291, and to 60,000 landings for airplanes line number 292 through 464. The FAA concurs that the threshold for airplanes line number 292 through 464 can be extended to 60,000 landings, based on the improved bonding techniques used during manufacturing and service history of these airplanes. The final rule has been revised to reflect this comment. However, the FAA does not concur that the threshold for airplanes line number 001 through 291 can be extended to 45,000 landings based on the reports of delamination in this group of airplanes.

The manufacturer and one operator requested that the initial compliance time be extended to 1,500 landings for the external inspections. The FAA does not concur since the commenters have provided no data to warrant this change and the final rule remains as proposed.

The manufacturer requested that initial compliance time for the internal inspections for airplanes line numbers 001 through 291 be extended to the next heavy maintenance visit after the effective date of the AD. The FAA does not concur. The FAA has determined that the compliance time, as proposed, represents the maximum interval of time allowable for all affected airplanes to continue to operate prior to the required inspections without compromising safety. Since maintenance schedules may vary from operator to operator, there would be no assurance that the inspection will be accomplished during that time.

The manufacturer also requested that the internal inspection requirements for airplanes line number 292 through 464 be deleted from the AD due to a lack of adverse service experience. After further review of the service experience and because of the improved bonding technique used on these airplanes, the FAA concurs with this comment and has revised the final rule accordingly.

The manufacturer and one operator requested that all requirements for inspections of the lower skin on airplanes on which the terminating modification specified in AD 82-01-09 (paragraph D. of the Notice) be withdrawn since the existing AD has proven to be adequate in maintaining structural capability of the lower skin. After further review of the service experience, the FAA has determined that the requirements for lower skin inspections are not necessary, as the requirements of AD 82-01-90 are adequate to maintain safety in this area. The final rule has been revised by deleting the proposed paragraph D.

One operator commented that internal inspections forward of BS 360 should be deleted from the AD because of a lack of adverse service experience and reduced loading in that area. Forward of BS 360, doublers around the forward entry and galley doors and along the BS 259 circumferential splice are the areas of concern to this commenter. This commenter also noted that some electrical components affecting safety of flight are mounted in the crown forward of BS 277 and required inspections in this area could interfere with these components. The FAA concurs. After further review of the structure and the related service history, the FAA has defined specific doublers to be inspected, and has determined that deleting the requirement for internal inspection of areas forward of BS 277 is appropriate. The final rule has been revised accordingly. The FAA has determined that this revision will not adversely affect safety due to structural configuration and service experience.

One operator commented that there was no terminating action for the inspections required in the proposed rule. The FAA concurs that the external inspection for cracks of the circumferential joints may be terminated upon the incorporation of protruding head solid fasteners, and has added a paragraph to the final rule to state this.

The requirement to report the findings of the inspections to the Manager, Seattle Aircraft Certification Office, has been deleted from the final rule because it has been determined that additional data is not needed.

The FAA has determined that clarification is necessary with respect to the use of blind fasteners, and the final rule has been revised to permit the use of blind fasteners for 3,000 landings following a repair. The FAA has determined that blind fasteners provide structural integrity as an interim measure, but must not be used as a long term modification.

Additionally, a statement has been added to the final rule to clarify the requirement for an eddy current inspection to be accomplished if a crack is found in a circumferential splice during visual inspections.

There are approximately 464 Model 737 series airplanes in the worldwide fleet. It is estimated that 100 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2,000 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD and U.S. operators is estimated to be $8,000,000.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that his regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Boeing Model 737 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation Safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 40 U.S.C. 106(g) (Revised Pub. L. 97-449; January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 737 series airplanes, line numbers 001 through 464, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent decompression of the airplane, accomplish the following:

A. Within 500 landings after the effective date of this AD, or prior to the accumulation of 40,000 landings for airplanes line number 001 through 291 or 60,000 landings for airplanes line number 292 through line number 464, whichever occurs later, unless previously performed within the past 4,000 landings, accomplish the following:

1. Perform a detailed external visual inspection, using adequate lighting and, where necessary, inspection aids such as mirrors and a 10x magnifying glass, of the bonded doublers around major cutouts (i.e., entry, galley, and cargo doors and overwing exits) between body station (BS) 259 and BS 1016, in accordance with Boeing Service Bulletin 737-53-1076, dated October 30, 1988, for evidence of corrosion and delamination. Inspect for small cracks (in paint and skin), bulging skin between fasteners, blistered paint, dished or popped rivet heads, or loose fasteners.

2. Perform a detailed external visual inspection along all circumferential splices between BS 259 and BS 1016 for cracks, corrosion, and delamination of accordance with Boeing Service Bulletin 737-53-1076, dated October 30, 1988. Remove paint within an approved chemical stripper prior to inspection, or assure that the fastener head is clearly visible and that no more than 2 coats of paint are on the skin. If cracks are visually

detected, perform a high frequency eddy current inspection for cracks along the rivet row the entire length of the affected panel in accordance with the FAA-approved method as described in Boeing Service Bulletin 737–53A1039, Revision 4, dated April 14, 1988. Regardless of whether cracks are found by the visual inspections required above, perform a high frequency eddy current inspection for cracks for S–10R to S–10L in accordance with the FAA-approved method described previously, along the most forward and most aft rivet row of each circumferential splice. Terminating action for the inspections required by this subparagraph, is the replacement of the most forward and most aft fastener rows with standard protruding head solid fasteners at all circumferential fuselage splices, in accordance with an FAA-approved method. If no cracks, corrosion, or delamination are found as a result of the inspections required by paragraph A.1. or A.2., above, repeat all visual and eddy current inspections at intervals not to exceed 4,500 landings or 15 months, whichever occurs first.

B. In areas where evidence of cracks, corrosion, or delamination are found as a result of the inspections required by paragraph A., above, accomplish the following:

1. If corrosion depth, as determined by an FAA-approved low frequency eddy current (LFEC) procedure, does not exceed 10% of skin thickness, conduct the repetitive external detailed visual inspections required by paragraph A., above, at intervals not to exceed 2,250 landings or 6 months, whichever occurs first, until repair is accomplished. Following the accomplishment of such a repair, continue to inspect at intervals not to exceed 4,500 landings or 15 months, whichever occurs first, in accordance with paragraph A., above.

2. If corrosion depth, as determined by an FAA-approved LFEC procedure, found by the external inspections exceeds 10% of skin thickness, or if cracks or delamination is found, repair prior to further flight, in accordance with Boeing Service Bulletin 737–53–1078, dated October 30, 1986. Following the accomplishment of such a repair, continue to inspect at intervals not to exceed 4,500 landings or 15 months, whichever occurs first, in accordance with paragraph A., above.

3. Cracks found must be repaired, prior to further flight, in accordance with an FAA-approved method. Blind fasteners may be used as an interim repair only and must be replaced with standard protruding head solid fasteners within 3,000 cycles following installation. Repairs installed with blind fasteners prior to the effective date of this AD must be inspected for loose or missing fasteners within 1,000 cycles after the effective date of this AD, and thereafter at intervals not to exceed 3,000 cycles until replaced.

C. For airplanes line number 001 through 291, within the next 4,500 landings or 15 months, after the effective date of this AD, whichever occurs first, or prior to the accumulation of 40,000 landings, whichever occurs later, unless previously performed within the last 7,500 landings, perform an internal detailed visual inspection of the bonded doublers around major cutouts (i.e., entry, galleys, and cargo doors and overwing exits) and along circumferential splices between BS 277 and BS 1016 for evidence of corrosion or delamination in accordance with Boeing Service Bulletin 737–53–1078, dated October 30, 1986. Using adequate lighting, inspect for bulges in the doubler, white powder or a thin black line at the edges of the doubler, and missing or dished fasteners. Inspect for disbond by pushing outward on the skin while attempting to insert a feeler gage between the doubler and skin. If inspection areas are obscured by sealant, dirt, etc., these areas must be cleaned. In areas where no evidence of corrosion or delamination is found, repeat the inspection at intervals not to exceed 12,000 landings or 4 years, whichever occurs first. In areas where evidence of corrosion or delamination is found, repair in accordance with the above service bulletin prior to further flight. Following such a repair, continue to inspect at intervals not to exceed 12,000 landings or 4 years, whichever occurs first.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective December 1, 1988.

Issued in Seattle, Washington, October 27, 1988.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88–25253 Filed 10–27–88; 4:58 pm]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

(Docket No. 88–NM–190–AD)

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which would require that protruding head solid fasteners be installed in the upper row of all lap splices in the fuselage and in the two rows of Stringer 17. This action is prompted by reports of cracking on Boeing Model 737 series airplanes from which the FAA has determined that widespread multiple site cracking cannot be reliably detected over the long term by visual or other non-destructive inspection (NDI) techniques. This action is necessary to ensure that undetected widespread cracking is minimized in these fuselage skins. Cracks, if allowed to grow undetected, could lead to structural failure and rapid decompression of the airplane.

DATES: Comments must be received no later than December 12, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 88–NM–190–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington, 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara J. Mudrovich, Airframe Branch, ANM–120S; telephone (206) 431–1927. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 88–NM–190–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

On October 27, 1988, the FAA issued Amendment 39–6059 (Docket No. 86–NM–66–AD), to require external visual and eddy current inspections of the skin along certain lap joints and Stringer (S)–17 and internal visual inspections of the tearstraps for corrosion, delamination, and cracks.

The Notice of Proposed Rulemaking (NPRM) (53 FR 19858; May 31, 1988) for that AD included the requirement to incorporate a terminating modificaiton. Prior to the issuance of that final rule, the FAA has determined that, for the reasons discussed below, the proposed compliance time for that action was excessive; however, reducing that compliance time would have been beyond the scope of the Notice for that AD. The terminating modificaiton, which consists of replacing the upper row of fasteners of the lap splices and the two rows of fasteners of S–17 with protruding button head fasterners was, therefore, made optional in that final rule. This NPRM proposes to mandate this modificaiton in accordance with a series of compliance times that are inversely proportional to the number of landings on the airplane. This modification is the same as the modification described in paragraph H. of the final rule referenced above.

An operator recently reported finding a 12-inch crack in the skin in the upper fastener row along S–14, and 27 fasteners with cracks emanating from both sides of the fastener holes in the two bays directly aft of the crack. These cracks were found approximately 700 landings after a detailed visual inspection performed in accordance with an earlier version of the AD. Based on this incident and extensive consultation with several fracture mechanics and aeronautical structures experts, the FAA has determined that continued airworthiness of airplanes with widespread multiple site damage cannot be assured over the long term by repetitive inspection because of the large number of required inspections and the human factors difficulties associated with the repetitious nature of the inspections. Widespread cracking, if not corrected could lead to rapid decompression of the fuselage.

Since this condition is likley to exist or develop on other airplanes of this same type design, this action proposes to require that the upper row of fasteners of the lap splices and the two rows of fasteners in S–17 be replaced with solid protruding head fasteners. Compliance times range from 6 months for airplanes with more than 70,000 landings to 36 months for airplanes with less than 40,000 landings. It is the intent of the FAA to propose future rulemaking to add this modification to the lower fastener row of the lap splices.

In addition, the FAA is interested in assuring that certain lap splices are modified on a priority schedule. Comments addressing this issue are specifically requested.

There are approximately 291 affected Model 737 series airplanes in the worldwide fleet. It is estimated that 100 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2,016 manhours per airplane to accomplish the required modifications, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $8,064,000.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is

not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 737 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation Safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Section 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 737 series airplanes, line numbers 001 through 291, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent decompression of the airplane accomplish the following:

A. In accordance with the schedule set forth in paragraph B. of this AD:

1. Accomplish the terminating repair at all lap joints between BS 259 and BS 1016, which includes replacing all upper row fasteners with standard protruding head solid fasteners and assuring the tearstraps are functional 2 bays above and 1 bay below each lap joint, by the use of mechanical fasteners where disbonding of the tearstraps has occurred, in accordance with Boeing Alert Service Bulletin 737-53A1039, Revision 4, dated April 14, 1988.

2. Accomplish the preventative modification as described in Boeing Service Bulletin 737-53-1039, Revision 1, dated October 13, 1988, along S-17, using standard protruding head solid fasteners and assure the tearstraps are functional 2 bays above and 1 bay below S-17, by the use of mechanical fasteners where disbonding of the tearstraps has occurred, in accordance with the Structural Repair Manual.

B. Airplanes are to be modified as required by paragraph A., above, in accordance with the following times after the effective date of this AD:

Number of landings on effective date of this AD—	Modify within the next (months)
70,000 or more	8
60,000 to 69,999	12
50,000 to 59,999	18
40,000 to 49,999	24
Less than 40,000	36

C. For aircraft on which the procedures described in paragraph A., above, have been accomplished in accordance with Part IV, A.2., of Boeing Alert Service Bulletin 737-53A1039, Revision 4, dated April 14, 1988, within 15 months after accomplishment, or within 8 months after the effective date of this AD, whichever occurs later, perform an external visual inspection of the skin for corrosion and delamination at all lap joints in accordance with that service bulletin. If corrosion is found, prior to further flight, perform a low frequency eddy current inspection of the entire length of the affected panel to determine material loss. If cracks are found, prior to further flight, perform a high frequency eddy current inspection of the entire length of the affected skin panel in accordance with the service bulletin. Repair cracks, corrosion, and delamination, prior to further flight (except as permitted by paragraph D., below), in accordance with the service bulletin. Inspections are to continue at intervals not to exceed 15 months.

D. If corrosion found as a result of the external inspection does not exceed 10% of the skin thickness, reinspect for corrosion in accordance with paragraph C., above, at intervals not to exceed 2,250 cycles or 8 months, whichever occurs first, until a repair is accomplished. If such corrosion exceeds 10% of skin thickness or if cracking is found, repair prior to further flight, in accordance with Boeing Alert Service Bulletin 737-53A1039, Revision 4, dated April 14, 1988, for the skin along the lap joints, or Boeing Service Bulletin 737-53-1039, Revision 1, dated October 13, 1988, for the skin along S-17. Following such repair, resume inspections in accordance with paragraph C., above.

E. Accomplishment of the requirements of this AD constitutes terminating action for the requirements of Amendment 39-6059.

F. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on October 27, 1988.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-25252 Filed 10-27-88; 4:55 pm]

BILLING CODE 4910-13-M

federal register

Tuesday
November 1, 1988

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 67

Falsification of Airman Medical Certificate Applications; Record of Traffic Convictions; Notice of Enforcement Policy

VOL 53 ISS 211 NOV 1 1988 UMI

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 67

Falsification of Airman Medical Certificate Applications; Record of Traffic Convictions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Enforcement Policy.

SUMMARY: Applicants for an airman medical certificate who have failed to disclose information with respect to traffic convictions (such as convictions for driving while intoxicated) on their applications may have violated § 67.20 of the Federal Aviation Regulations (14 CFR 67.20) by making intentionally false or fraudulent statements. This notice announces the termination of a previously announced policy allowing any such applicant to avoid enforcement action against his or her certificates, based on such a falsification, by providing the FAA with corrected information before the FAA became aware of any incorrect statement.

EFFECTIVE DATE: December 1, 1988.

FOR FURTHER INFORMATION CONTACT: Peter J. Lynch, Manager, Enforcement Proceedings Branch, AGC-250, Office of the Chief Counsel, 800 Independence Avenue SW., Washington DC 20591; telephone (202) 267-9956.

SUPPLEMENTARY INFORMATION: On October 22, 1987, the FAA issued a notice of enforcement policy with respect to persons who may have violated § 67.20 by falsifying their applications for airman medical certification with regard to their record of traffic convictions. The notice was published at 52 FR 41557 (October 29, 1987). That notice announced a policy which allowed such persons to avoid related FAA enforcement action against his or her airman, ground instructor, or medical certificates by providing corrected information before January 1, 1988, even if by that date the FAA had become aware of the apparent falsification. As to the FAA's policy which has remained in effect since January 1, 1988, the notice stated:

> * * * from the date of this notice and *until further notice*, where the airman has voluntarily supplied to the FAA's Aeromedical Certification Branch information regarding a record of traffic convictions in his or her medical application prior to the FAA's becoming aware of any incorrect statement in the application, the FAA will not take action against the airman's certificates on the basis of falsification for any falsification disclosed by such voluntarily disclosed information.

(Emphasis supplied.) As the FAA stated in its notice of October 1987, the Inspector General of the United States Department of Transportation (IG) has identified some airmen who appear to have falsified their applications with regard to their record of traffic convictions. The notice further indicated that the IG was referring these cases to the FAA for appropriate action. The IG has made a large number of such referrals to the FAA.

This notice is to advise that the previously announced policy for allowing any airman to avoid possible FAA certificate action (often referred to as the FAA's "amnesty program") is terminated, effective December 1, 1988.

Availability of this Notice

Any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484.

Issued in Washington, DC, on October 27, 1988.

T. Allan McArtor,
Administrator.

[FR Doc. 88-25251 Filed 10-31-88; 8:45 am]
BILLING CODE 4910-13-M

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CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List October 31, 1988

TABLE OF EFFECTIVE DATES AND TIME PERIODS—NOVEMBER 1988

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
November 1	November 16	December 1	December 16	January 3	January 30
November 2	November 17	December 2	December 19	January 3	January 31
November 3	November 18	December 5	December 19	January 3	February 1
November 4	November 21	December 5	December 19	January 3	February 2
November 7	November 22	December 7	December 22	January 6	February 6
November 8	November 23	December 8	December 23	January 9	February 6
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November 10	November 25	December 12	December 27	January 9	February 8
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November 29	December 14	December 29	January 13	January 30	February 27
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federal register

Wednesday
November 2, 1988

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Wednesday
November 2, 1988

Briefing on How To Use the Federal Register—
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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Presidential Documents

Title 3—

The President

Proclamation 5892 of October 28, 1988

National AIDS Awareness and Prevention Month, 1988

By the President of the United States of America

A Proclamation

Nearly 75,000 Americans have been diagnosed as having the fatal disease AIDS, and more than 41,000 have already died from it. The Public Health Service estimates that an additional one to one-and-a-half million Americans have been infected by the Human Immunodeficiency Virus (HIV), which causes AIDS. Most of the infected individuals now show no symptoms, but it is likely that over the next few years they will develop AIDS or AIDS-related illnesses.

Extensive efforts by Government and the private sector are underway in the fight against AIDS and HIV infection, and great strides have been made. In the 7 years since the first reports of AIDS cases, the virus has been identified; the ways in which it is spread have been pinpointed; an AIDS antibody screening test has been developed and is being used to protect blood supplies; the first steps toward development of a protective vaccine have been taken; and promising drugs to fight the HIV and its manifestations are being synthesized and tested.

Nevertheless, today we have neither a cure for AIDS nor a vaccine against HIV infection. For this reason, it is vital that every individual know how HIV infection is spread—and that we understand how to prevent the spread. The virus is most commonly spread through sexual contact with an infected person, especially through homosexual practices; through intravenous drug use with contaminated needles; and through other transmissions of infected blood. The virus is not commonly spread through ordinary, everyday, nonsexual contact.

To prevent the further spread of AIDS and HIV infection, we must heed lessons taught by medicine and morality alike. The Surgeon General has reminded all of us that the best way to prevent AIDS and the HIV is to abstain from sexual activity until adulthood and then to restrict sex to a faithful, monogamous relationship. This wise counsel, along with saying "no" to illegal drugs, can prevent the spread of most AIDS and HIV cases. Parents should explain to their children the goodness and blessings of chastity before marriage, of solid family life, and of a drug-free way of life.

One of America's greatest strengths has always been our ability to work together in times of adversity. We must rely on this strength to sustain us as we work to prevent the spread of AIDS and the HIV and as we care for those already afflicted.

The Congress, by Senate Joint Resolution 192, has designated October 1988 as "National AIDS Awareness and Prevention Month" and authorized and requested the President to issue a proclamation in observance of this occasion.

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NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim October 1988 as National AIDS Awareness and Prevention Month, and I call upon Americans to observe this occasion with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of October, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-25468
Filed 10-31-88; 2:39 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5893 of October 28, 1988

Fire Safety at Home Day—Change Your Clock, Change Your Battery, 1988

By the President of the United States of America

A Proclamation

Sunday, October 30, 1988, is the day on which Americans in jurisdictions on Daylight Savings Time must turn their clocks back 1 hour to Standard Time. That offers all of us an excellent opportunity to do one other thing simultaneously—replace our smoke detectors' batteries and then test every detector.

This easy task, maintaining and testing our smoke detectors, is one we cannot afford to neglect. The vast majority of the more than 6,000 fire fatalities in our land each year occur in fires in the home. Smoke detectors are a simple and economical way to prevent needless deaths in fires, because they can alert people and allow them to escape during the early stages of fires. Most American homes have at least one fire detector, but nearly half of these life-saving devices are inoperable at any one time because their batteries are dead or missing. We must all remember that we can avert tragedy by taking a few seconds to replace smoke detector batteries and to check our detectors' operation. That will go a long way toward protecting lives and property all across our Nation.

The Congress, by Senate Joint Resolution 381, has designated Sunday, October 30, 1988, as "Fire Safety at Home Day—Change Your Clock, Change Your Battery" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim Sunday, October 30, 1988, as Fire Safety at Home Day—Change Your Clock, Change Your Battery. I call upon all Americans to observe this day by replacing their smoke detectors' batteries and by testing their detectors at the same time they return their clocks to Standard Time.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of October, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 275

[Amdt. No. 358]

Food Stamp Program; Quality Control Variance Exclusions

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: This action amends Food Stamp Program regulations as a result of the Hunger Prevention Act of 1988 (Pub. L. 100–435), enacted September 19, 1988. In accordance with that Act, the Food Stamp Program must exclude from the quality control payment error rate certain types of errors. This action implements this error exclusion provision.

DATES: This action is effective October 1, 1988 and affects all quality control case reviews beginning with the October 1988 sample. Comments must be received on or before January 3, 1989.

ADDRESS: Send comments to the Quality Control Policy Section, Quality Control Branch, Program Accountability Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302. All written submissions will be available for public inspection at 3101 Park Center Drive, Alexandria, Virginia 22302 during regular business hours (8:30 a.m. to 5:00 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Duane Maddox, Branch Chief, Quality Control Branch (703) 756–3474.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Department has reviewed this action under Executive Order 12291 and Secretary's Memorandum No. 1512–1. It has been determined that the action will not result in an annual effect on the economy of $100 million or more or a major increase in costs or prices for consumers, individuals, industries, Federal, State, or local government agencies, or geographic regions. Additionally, this action will not result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, this action has been classified as "not major".

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule related Notice of 7 CFR Part 3015, Subpart V (48 FR 29115), this program is excluded from the scope of Executive Order 12372 which requries intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This action has also been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980. 5 U.S.C. 601 through 612. Anna Kondratas, Administrator of the Food and Nutrition Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities. The requirements will affect the State and local agencies which administer the Program.

Paperwork Reduction Act

This rulemaking does not contain recordkeeping or reporting requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Public Participation and Effective Date

This action is being published without prior notice of proposed rulemaking or an opportunity for public comment prior to publication. Section 701(b)(5)(A)(ii) of Pub. L. 100–435 mandates that the amendment made by Pub. L. 100–435 at section 604, establishing a new section 16(c)(3) of the Food Stamp Act of 1977, as amended, is effective on October 1, 1988. Thus, good cause is found for publication less than 30 days prior to the effective date of this rule pursuant to 5 U.S.C. 553(d)(3). Also, since prior notice and public comment procedures cannot be completed before the statutory implementation date and because delays in implementation of the requirement could adversely affect State agencies, Anna Kondratas, Administrator of the Food and Nutrition Service, has determined, pursuant to 5 U.S.C. 553(b)(B), that public comment on this action prior to implementation is impracticable. However, because the Department believes that the rule may be improved by public comment, the Department is soliciting comments on this rule for 60 days. All comments received will be analyzed and appropriate changes in the rule will be incorporated in the subsequent publication of a final rule.

Background

Current regulations at 7 CFR 275.10 provide that quality control reviews shall be conducted by measuring the validity of food stamp cases on the review date against the Food Stamp Program standards established in the Food Stamp Act and the Regulations. Quality control errors are determined based on variances from these standards. At 7 CFR 275.12(d)(2) the regulations specify the variances that shall be excluded from the determination of a household's eligibility and basis of issuance for the sample month, and thus from the payment error rate. Public Law 100–435 establishes three additional types of errors that shall be excluded from the payment error rate determination: (1) Any errors resulting from the application of a new regulation promulgated under the Food Stamp Act of 1977, as amended, during the first 60 days (or 90 days at the discretion of the Secretary) from the required implementation date of the regulation; (2) any error resulting from the use by a State agency of correctly processed information concerning households or individuals received from Federal agencies; and (3) any error resulting from the use by the State agency of incorrect, written policy information approved or disseminated by the Secretary or the Secretary's designee.

Under the first exclusion, a State agency would not cite any variance in a case that resulted from application of a new food stamp program regulation during the first 60 days from the

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required implementation date of the regulation. A State agency is eligible for exclusion of such errors from the date of actual implementation by the agency through the sixtieth day of required implementation. This exclusion would not be provided for any variances which occur beyond the 60th day after the implementation date. Thus, a State agency which did not implement until after that 60-day period would not be eligible for exclusion of such errors. Any rule for which a 90 day exclusion is being provided will contain a provision specifying the 90 day exclusion.

The second exclusion modifies an existent exclusion at § 275.12(d)(2)(v) that excludes errors resulting from the use by State agencies of information received from automated Federal information exchange (FIX) systems. Public Law 100-435 extends this exclusion to all Federal agency sources, not just automated FIX systems.

The third exclusion provides for exclusion of errors resulting from incorrect written policy that a State agency acts on correctly. Such written policy must be approved or disseminated by the Secretary or his designee.

The Secretary has the authority to require that these three types of errors be reported for management purposes. Such reporting will be addressed at a later time.

Implementation

In accordance with section 701(b)(5)(A)(ii), Pub. L. 100-435, section 604 of Pub. L. 100-436 establishing a new section 16(c)(3) of the Food Stamp Act of 1977, as amended, is effective October 1, 1988. Accordingly, this action amends 7 CFR 272.1 to provide that State agencies implement the provision of this action October 1, 1988 for all quality control cases beginning with the October 1988 quality control cases.

Consequently, in accordance with this action, State agencies shall exclude the types of errors described in this action in the determination of households' eligibility and basis of issuance for the sample month, and thus, from the payment error rate.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 275

Administrative practice and procedure, Food stamps, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 7 CFR Parts 272 and 275 are amended as follows.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

1. The authority citation for Parts 272 and 275 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

2. In § 272.1, a new paragraph (g)(103) is added in numerical order to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(103) *Amendment No. 308.* The quality control changes to § 275.12(d)(2) shall be implemented for the quality control review period beginning October 1, 1988.

PART 275—PERFORMANCE REPORTING SYSTEM

3. In § 275.12, paragraph (d)(2)(v) is being revised and new paragraphs (d)(2)(vii) and (d)(2)(viii) are added. The revisions and additions read as follows:

§ 275.12 Review of active cases.

* * * * *

(d) *Variance identification.* * * *

(2) *Variances excluded from error analysis.* * * *

(v) Any variances resulting from use by the State agency of information concerning households or individuals received from any Federal source, provided that such information is correctly processed by the State agency.

* * * * *

(vii) Any variance resulting from application of a new Food Stamp Program regulation during the first 60 days from the required implementation date, or during the first 90 days from the required implementation date if the regulation specifies 90 days. A State agency which did not implement until after that 60-day (or 90-day, where appropriate) period would not be eligible for exclusion of such errors.

(viii) Any variance resulting from incorrect written policy that a State agency acts on that is provided by a Departmental employee authorized to issue Food Stamp Program policy and that the State agency correctly applies.

* * * * *

Anna Kondratas,
Administrator.

Date: October 27, 1988.

[FR Doc. 88-25060 Filed 11-1-88; 8:45 am]
BILLING CODE 3410-30-M

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 88-105]

Citrus Canker; All of Louisiana Designated Commercial Citrus-Producing Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that designated the entire State of Louisiana as a commercial citrus-producing area. Our action was necessary because Louisiana no longer meets the criteria for having less than an entire state designated as a commercial citrus-producing area. As a result of the interim rule, regulated fruit produced in certain areas quarantined because of citrus canker may be moved interstate into Louisiana, for other than experimental or scientific purposes, only if accompanied by a certificate.

EFFECTIVE DATE: December 1, 1988.

FOR FURTHER INFORMATION CONTACT: Eddie W. Elder, Chief Operations Officer, Domestic and Emergency Operations Staff, PPQ, APHIS, USDA, Room 661, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; 301-436-8645.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective April 18, 1988, and published in the Federal Register on April 22, 1988 (53 FR 13241–13242, Docket Number 88-050), we designated the entire state of Louisiana as a commercial citrus-producing area. Comments on the interim rule were required to be postmarked or received on or before June 21, 1988. We did not receive any comments. The facts presented in the interim rule still provide a basis for this rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

Florida is the only area of the United States quarantined because of citrus canker. Prior to the effective date of this interim rule, regulated fruit produced in Florida could be moved into those areas of Louisiana not designated as commercial citrus-producing areas, for other than experimental or scientific purposes, if accompanied by a limited permit. As a result of the interim rule, regulated fruit produced in Florida may be moved interstate into Louisiana, for other than experimental or scientific purposes, only if accompanied by a certificate. Regulated Florida fruit qualifying for a certificate is currently available to adequately supply the portion of Louisiana which is affected by this rule. Furthermore, less than 20 percent of regulated Florida fruit is consumed as fresh fruit, and most of this is consumed within the state or is exported to foreign countries. We estimate that less than one percent of the fresh fruit shipped from Florida is shipped to Louisiana. No change in the availability or price of this fruit is anticipated as a result of this action.

Also, prior to the effective date of the interim rule, fruit from groves of fewer than 10 regulated trees could be moved interstate from Florida to Louisiana with a limited permit under certain conditions. The interim rule does not allow regulated fruit from groves of fewer than 10 trees to be moved interstate to Louisiana. However, we do not expect this limitation to have any significant economic effect on small-grove owners since most regulated fruit moved interstate from Florida as fresh fruit goes to the northeastern United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Citrus canker, Plant disease, Plant pests, Plants (Agriculture), Quarantine, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule amending 7 CFR Part 301 that was published at 53 FR 13241–13242 on April 22, 1988.

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 27th day of October, 1988.

James W. Glosser,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-25316 Filed 11-1-88; 8:45 am]
BILLING CODE 3410-34-M

Rural Telephone Bank

7 CFR Part 1610

Determination of the 1988 Fiscal Year Interest Rate on Rural Telephone Bank Loans

AGENCY: Rural Telephone Bank, USDA.

ACTION: Correction of notice of 1988 fiscal year interest rate determination.

SUMMARY: This notice revises information previously published in the Federal Register on October 25, 1988 (53 FR 42938) regarding the Rural Telephone Bank's Fiscal Year 1988 cost of money rate. Due to additional data received, the amounts for total Fiscal Year 1988 advances, issuances of Class B and C stock, and the excess of total advances over stock issuances and debentures have been revised and are provided in Table 1.

The Bank's Fiscal Year 1988 cost of money rate, however, did not change as a result of the revisions. The calculated cost of money rate remains at 4.98%; and since it remains less than the minimum rate allowed under 7 U.S.C. 946(b)(3)(A) the cost of money rate remains set at the minimum rate of 5.00%. Thus, except for loans approved from October 1, 1987 through December 21, 1987 where borrowers elected to remain at interest rates set at loan approval, all loan advances made from December 22, 1987 through September 30, 1988 under Bank loans approved on or after October 1, 1987 shall bear interest at the rate of 5.00%.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Chief, Loans and Management Branch, Telecommunications Staff Division, Rural Electrification Administration, Room 2250, South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone number (202) 382–9550.

SUPPLEMENTARY INFORMATION: The revised calculation of the Bank's cost of money rate for Fiscal Year 1988 is provided in Table 1. The methodology required to calculate the cost of money rate is established in 7 CFR 1610.10(c). The revised calculation includes the following corrections:

1. Rescissions of loan funds advanced in Fiscal Year 1988 for Class B stock were given as $1,592,799 and should be $1,775,721. Fiscal Year 1988 issuance of Class B stock was given as $8,802,151 and should be $8,619,253.

2. Fiscal Year 1988 issuance of Class C Stock was given as $16,976 and should be $18,449.

3. Total Fiscal Year 1988 loan advances were given as $119,696,363 and should be $119,480,307.

4. The excess of Fiscal Year 1988 loan advances over amounts received from issuances of Class A, B, and C stocks and debentures and other obligations was given as $82,167,226 and should be $82,140,630.

In addition, Table 2 of the previously published notice contains a misprint. The Fiscal year 1980 (advances × cost rate)/total advances was given as .05 and should be 1.014. This correction is provided in Table 2. Also, the calculated figures in the last column of Tables 1 and 2 have been carried out to additional decimal places to indicate clearly that the numbers add up to the total.

Jack Van Mark,
Acting Administrator.

October 28, 1988.

TABLE 1.—RURAL TELEPHONE BANK FY 1988 COST OF MONEY RATE

Source of bank funds	Amount	Cost rate (percent)	Amount × cost rate	(Amount × rate)/ advances (percent)
FY 1988 Issuance of Class A Stock	$20,710,000	2.50%	$571,000	0.4805
FY 1988 Issuance of Class B Stock	8,818,000	.00	0	.0000
FY 1988 Issuance of Class C Stock	18,448	8.60	1,586	.0013
FY 1988 Issuance of Debentures and Other Obligations	0		0	.0000
Excess of Total Advances Over 1988 Issuances	82,140,809	6.55	5,380,215	4.5507
Total FY 1988 Advances	119,488,257	Calculated cost of money rate		4.98
		Minimum cost rate allowable		5.00

TABLE 2.—RURAL TELEPHONE BANK HISTORICAL COST OF MONEY

Fiscal year	Bank cost of money	Bank loan advances	Advances × cost rate	(Advances × cost rate)/ total advances (percent)
1974	5.01	$111,022,574	$5,562,231	0.3362
1975	5.85	130,883,197	7,643,757	.466
1976	5.33	99,515,089	5,325,473	.347
1977	5.86	80,907,425	4,045,371	.263
1978	5.87	142,897,998	8,362,886	.544
1979	5.93	225,540,047	7,741,038	.504
1980	8.10	169,944,255	16,185,459	1.054
1981	9.46	148,559,322	14,057,591	.915
1982	8.39	112,252,127	9,416,275	.613
1983	6.99	80,482,830	6,539,859	.426
1984	6.55	90,466,549	5,924,511	.386
1985	6.00	72,585,354	3,529,170	.230
1986	5.00	71,202,365	3,562,618	.234
1987	5.00	51,374,888	2,568,747	.169
Total advances		1,536,596,360	Cost of money rate	6.55

[FR Doc. 88-25367 Filed 11-1-88; 8:45 am]
BILLING CODE 3410-15-M

Rural Electrification Administration

7 CFR Part 1736

Electric Standards and Specifications

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) amends 7 CFR Part 1736, Electric Standards and Specifications, by adding REA Bulletin 50-2, Electric Transmission Specifications and Drawings. This new bulletin contains construction specifications and drawings for 34.5 kV to 69 kV transmission structures. REA Bulletin 50-1 when revised will contain up-to-date construction specifications and drawings for 115 kV to 230 kV. Bulletins 50-1 and 50-2 will eventually replace Bulletin 50-1 (REA Form 805) which covered 34.5 kV to 230 kV structures.

The new bulletin will provide: (1) A common format for all structures and assemblies; (2) strength information for some assemblies; (3) clear construction details; (4) several new structures; (5) additional guying attachments and assemblies; and (6) expanded specifications to reflect state-of-the-art practices. The new Bulletin 50-2 when combined with a completed REA Form 831, Electric Transmission Construction Contract, will provide a transmission line bidding specification package.

EFFECTIVE DATE: November 2, 1988. The incorporation by reference of the publications mentioned in this rule has been approved by the Director, Office of the Federal Register, effective July 12, 1988.

Construction of high voltage transmission lines 34.5 kV to 69 kV using the old standards found in REA Bulletin 50-1 for 34.5 kV to 230 kV will still be permitted. When the publication covering 115 kV to 230 kV is completed, Bulletin 50-1 will be rescinded.

FOR FURTHER INFORMATION CONTACT: Mr. Donald G. Heald, Structural Engineer, Transmission Branch, Electric Staff Division, Rural Electrification Administration, Room 1246, Washington, DC 20250, telephone 202-382-0066. The Final Impact Statement describing the options considered in developing these rules and the impact of implementing the chosen option are available on request from Mr. Donald G. Heald at the above address.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act of 1936 as amended (7 U.S.C. 901 *et seq.*), the Rural Electrification Administration (REA) is amending 7 CFR Part 1736, Electric Standards and Specifications, by adding REA Bulletin 50-2. This action has been reviewed in accordance with Executive Order 12291, Federal Regulation. The action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies; or (3) result in significant adverse effects on competition, employment, investment or productivity, and therefore, has been determined to be "not major." REA has concluded that promulgation of this rule will not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.* (1976)) and, therefore, does not require an environmental impact statement or an environmental assessment.

This regulation contains no information or recordkeeping requirements which require approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*).

This action does not fall within the scope of the Regulatory Flexibility Act. This program is listed in the Catalog of Federal Domestic Assistance as 10.850, Rural Electrification Loans and Loan Guarantees. For the reasons set forth in the final rule related Notice in 7 CFR Part 3015 Subpart V in 50 FR 47034, November 14, 1985, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

Background

The Rural Electrification Administration (REA) maintains a system of bulletins which contain construction standards and specifications for materials and equipment applicable to electric system facilities constructed in accordance with the REA loan contract. These standards and specifications contain REA's requirements for construction units and material items and equipment units commonly used in REA electric borrowers' systems. REA Bulletin 50-2, Electric Transmission Specifications and Drawings, for 34.5 kV to 69 kV contains construction specifications and drawings for lower voltage transmission lines.

A notice of the proposed rulemaking was published in the Federal Register on June 11, 1982, Volume 47, Number 133. Interested parties were given sixty (60) days in which to express their views on the proposed rule. However, comments reviewed after that date were still considered. Comments were received from several consultants and REA cooperatives. A sampling of comments received are as follows:

a. One person suggested that the instructions of this bulletin include a statement concerning the responsibilities of the engineer in checking the strength of all arms, bolts, braces, insulators and connections.

Although some of the structure assemblies indicate strength information, it is the responsibility of the design engineer to determine if the standard structure or assembly without this information will be able to sustain required loads. The instructions were modified to highlight this fact.

b. Several comments concerned conflicts between parts of the final construction documents which when assembled, constitute the contract package for specific projects. Problems may arise since the final package is composed not only of standard forms, specifications and drawings, but often include instructions, drawings, specifications, exceptions and addenda added by borrowers. Differences between parts of the final contract package should be resolved by the following sequence of priority:

Contract change orders, addenda to bid documents, minutes of any prebid meeting, drawings, special requirement sections of the general specification, general specifications and REA Form 831.

REA recognizes that different sections of the contract documents may have conflicts between them. The order for resolving differences between parts of the documents should be developed by the engineer and found in a General Condition Section (see page 1a, information to be completed). However, since the technical specifications include wording and drawings, REA felt it is necessary to identify which controls in the event of conflict.

Common consensus is that the written word controls over the drawings. Paragraph I.C.2 will indicate that the worded specifications will govern over the drawings.

c. One person strongly urged significant changes in Paragraph II.B.3, Clearing Methods and Equipment. This suggested revision centered around the use of herbicides and chemical treatment of stumps. He suggested adding the following:

The chemical application (of herbicide) shall be generous to saturate the entire above-ground surface of the stump with a small amount to run down the sides and collect at the base where it will penetrate below the ground line into the roots and prevent resurgent growth at or above the ground line. Any stumps showing resurgent growth prior to completion of the line construction shall be retreated to kill all such growth.

Herbicide shall be done during proper dry weather conditions to be most effective. It shall be done carefully so as to prevent drift and damage to adjacent, desirable plants, animals, or persons. It shall not be done when the ground is continuously frozen or when marsh or low ground is or may be flooded.

Most of the above wording with minor editing is now included in the construction specification. In REA Form 831, Electric Transmission Construction Contract, Section 7, Right-of-Way Clearing Units, the treatment of stumps is required only when the TMC unit is specified. Section B of the construction specification will be revised to reflect that chemical treatment of stumps is optional and is required only when the TMC unit is specified. Also in Section B, REA felt it was necessary to emphasize that disposal of trees, brush, branches, and refuse shall be in accordance with the methods specified in the Right-of-Way Clearing Units. The Environmental Specialist at REA elaborated on the application of herbicides. Section B will indicate that spraying shall be performed in such a manner, at such pressure, and under such wind conditions that drift of spray material to adjacent plants, animals or persons will be avoided. Application of herbicides shall *not* be made: (1) When the ground is continuously frozen; (2) adjacent to streams or other water bodies; (3) when the ground is or may be flooded during the period in which the herbicide retains its toxicity; or (4) in a marsh or other wetland.

d. One comment questioned the need to address access roads and culverts since they are usually temporary, and it is also in the best interests of the contractor to install these units properly since he will be the one using and repairing them during the construction period.

REA basically agrees with this comment that it is in the best interests of the contractor to maintain access roads and culverts, but this may not always happen. Also, where the building of a line goes through sensitive environmental areas, location of access roads and maintenance of roads and culverts need more restrictive controls. Both sections concerning access roads and culvert are only appropriate if the engineer develops drawings concerning roads and culverts.

e. One person indicated that in Section VII the statement that "single crossarms should be erected with crossarms on alternating sides of the poles" may result in noncompliance with the National Electrical Safety Code (NESC), unless plan and profile or staking sheets are very specific on crossarm location.

This paragraph of the REA specification will be revised to reflect the wording of Rule 261D6 of the NESC. The specification will indicate that tangent structures with single crossarms shall be erected with the crossarms on alternating sides of the poles. At crossings, single crossarms, should be attached in the face of the structure away from the crossing.

f. In Section VII, one person protested that the REA specification requires all guy angle and deadend poles to be plumb. The cooperative prefers tangent poles to be plumb but a rake to be put in the poles at angle structures.

This specification and the previous construction specification are orientated around poles at tangent and angles remaining plumb. If one desires to rate poles at angle structures, the proposed construction specification can be modified by including this requirement in the Special Requirements paragraph of Section VII. We point out, however, that in most design calculations the assumption is made that the pole is plumb.

g. One comment suggested changing Paragraph VII.B.9 concerning backfill. Where the backfill has settled or poles are no longer plumb because of poor tamping the backfill should be completely dug out, the pole readjusted if necessary, and the backfill retamped at no additional cost to the owner.

Digging out the backfill and replacing and tamping of new backfill can be costly. However, the quality of the backfill and compaction is extremely important. As such, the specification has been revised to give the engineer doing the inspection the option to require complete removal of the backfill or to have this backfill retamped at any pole location.

h. One comment was received on Section VIII, Paragraphs B.4 and 5 concerning testing of anchors. It was felt that testing of anchors when required by the engineer could unnecessarily cost the owner. The specification is completely indefinite as to how many anchors (if any at all) the contractor must test.

In order to eliminate possible extra costs which a contractor might put in a bid to cover anchor tests, the section of REA Form 431, Electric Transmission Construction Contract, covering bid construction units has been modified. The owner or engineer would request bid units for testing of the anchors.

i. Several comments concerned the location of splices in the section on Conductors and Overhead Ground Wires. One person wanted splices to be located a minimum of 50 feet from structures and no splices be allowed at other public utility line crossings, at major highway or railroad crossings, or at deadend. Another person wished to retain the 10 foot restriction in the old specification.

The new requirement of 25 feet is greater than the previous requirement of 10 feet so that splices will not interfere with the location of dampers, if dampers should be required at a later time. The suggestion not to allow splices at other utility crossings and where the conductor is deadended is appropriate and is incorporated on the final document.

j. One person suggested that the TS–1 structure be dropped from the standards. Since a 6 psf wind is used in insulator swing calculations, the TS–1 structure has become of little value. The TSS–1 structure is much superior.

Once REA has performed an appropriate survey and it is found that cooperatives prefer the TSS–1 structure, we will remove the TS–1 from the construction standards. The TS–1 structure is still occasionally used.

k. Concerning the guy assemblies, one person suggested that short connecting links and a guy roller are much more standard equipment than the thimble clevis. There is only one supplier of the thimble clevis. Also with the pole band assemblies, only the roller and bolt are needed with links, the rollers being available from several sources.

Because the thimble clevis is available from at least three suppliers, we do not foresee any supply problem. We are including a drawing, TM–120, which will show pole band connecting links and twisted links with guy rollers as alternate hardware for the thimble clevis when pole bands are used. We are also including in the drawings the previous guy assemblies of TG–11, 12, 13, 14, 15 and TG–22 which use the short connecting link and guy roller.

l. A comment was received concerning the Right-of-Way Clearing Guides, TM–12, 12(1), 13. In order to identify danger trees in the bid units, an arc is drawn from the top of the tree to the ground. The arc helps to clarify what is considered a danger tree when the tree is at a lower or higher elevation relative to the ground under the outside conductor.

The suggestion is excellent and modification to the drawings has been made.

List of Subjects in 7 CFR Part 1736

Electric Utilities, Engineering Standards, Incorporation by Reference.

In view of the above, 7 CFR Part 1736 is amended as follows:

PART 1736—ELECTRIC STANDARDS AND SPECIFICATIONS

1. The authority citation for 7 CFR Part 1736 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 7 U.S.C. 1921 *et seq.*

2. The list in § 1736.97(b) is amended by adding the following entry:

§ 1736.97 Incorporation by Reference of Electric Standards and Specifications.

* * * * *

(b) *List of bulletins.*

* * * * *

Bulletin 50–2 (T–805–A), Electric Transmission Specifications and Drawings for 34.5 kV to 69 kV (2–73).

* * * * *

Date: October 12, 1988.

Harold V. Hunter,

Administrator.

[FR Doc. 88–25173 Filed 11–1–88; 8:45 am]

BILLING CODE 3410–15–M

Farmers Home Administration

7 CFR Part 1944

Section 502 Rural Housing Loan Policies, Procedures and Authorizations

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations concerning Section 502 Rural Housing (RH) loans. Form FmHA 440–16 is being renumbered for consistency within our directives system and revised to remove references to program requirements other than Single Family Housing, update covenants to comply with the Garn-St. Germain Act, and add a provision to clarify that certain agreements do not apply to non-program borrowers. The intended effect of this action is to reflect the correct form number for the Promissory Note form in FmHA regulations.

EFFECTIVE DATE: November 2, 1988.

FOR FURTHER INFORMATION CONTACT: Michael S. Feinberg, Senior Loan Specialist, Single Family Housing Processing Division, Farmers Home Administration, USDA, Room 5234–S, South Agriculture Building, 14th and Independence Avenue SW., Washington DC 20250, Telephone (202) 382–1474.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Department Regulation 1512–1 which implements Executive Order 12291, and has been determined to be exempt from those requirements because it involves only the updating of a form reference which is a matter of Agency procedure. It is the policy of this Department of publish for comment rules relating to public property, loans, grants, benefits, or contracts notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking, since it involves only Agency procedure and publication for comment is unnecessary.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G "Environmental Program". It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 19–190, an Environmental Impact Statement is not required.

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.410. For the reasons set forth in the Final Rule related Notice to 7 CFR Part 3015, Subpart V, 48 FR 29115, June 24, 1983, this program/activity is excluded from the scope of Executive Order 12372. This action does not directly affects any FmHA programs or projects which are subject to intergovernmental consultation.

List of Subjects in 7 CFR Part 1944

Home improvement, Loan program-Housing and community development, Low and moderate-income housing-Rental, Mobile homes, Mortgage, Rural housing, Subsidies

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1944—HOUSING

1. The authority citation for Part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Section 502 Rural Housing Loan Policies, Procedures and Authorizations

2. Section 1944.33 is amended by revising the introductory text of paragraph (c) and paragraph (c)(1) to read as follows:

§ 1944.33 Loan Closing

* * * * *

(c) *Promissory Note.* Form FmHA 1940–16 "Promissory Note," will be prepared and signed in accordance with Part 1807 of this Chapter (FmHA Instructions 427.1), and the FMI for the form.

(1) The payment alternatives of the note will be completed in accordance with the FMI for the form. Payments of principal and interest will be deferred during the period the dwelling is not expected to be suitable for occupancy as a residence because of construction or repairs to be made. In such cases if the loan is closed before any funds are advanced by the Finance Office or loan funds are distributed by multiple advance, accrued interest is added to principal and repaid in regular amortized installments (payment alternative I) after the deferment period.

* * * * *

Dated: June 9, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88–25368 Filed 11–1–88; 8:45 am]

BILLING CODE 3410–07–M

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7 CFR Part 1951

Implementation of Salary Offset

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: By this final rule, the Farmers Home Administration (FmHA), adopts and revises its interim rule published May 18, 1987, permitting salary offset to collect debts owed by Federal employees arising from delinquent FmHA loans and other debts. The objective is to inform the public of the procedures that will be used by FmHA to exercise salary offset. This action allows FmHA to collect from an employee's current salary, to increase collections and reduce delinquencies.

EFFECTIVE DATE: November 2, 1988.

FOR FURTHER INFORMATION CONTACT: Bob Nelson, Management Analyst, Farmers Home Administrator, U.S. Department of Agriculture, Room 5505, South Agriculture Building, Washington, DC 20250. Telephone (202) 475–4705.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined "non-major." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

This activity is listed in the Catalog of Federal Domestic Assistance under Farm Labor Housing Loans (No. 10.405), Farm Ownership Loans, specifically related to non-farm enterprise loans (No. 10.407), Rural Housing Site Loans (No. 10.411), Resource Conservation and Development Loans (No. 10.414), Rural Rental Housing Loans (No. 10.415), Soil and Water Loans (SW Loans) (No. 10.416), Water and Waste Disposal Systems for Rural Communities (No. 10.418), Watershed Protection and Flood Prevention Loans (No. 10.419), Rural Self-Help Housing Technical Assistance (Section 523 Technical Assistance (No. 10.420), Business and Industrial Loans (No. 10.422), Community Facilities Loans (No. 10.423), and Rural Rental Assistance Payments (Rental Assistance) (No. 10.427), and are subject to the provisions of Executive Order 12371 which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983.) Emergency loans (No. 10.404), Farm Operating Loans (No. 10.406), Farm Ownership Loans (No. 10.407), Low-Income Housing Loans (Section 502 Rural Housing Loans) (No. 10.410), Very Low-Income Housing Repair Loans (Section 504 Rural Housing Loans) (No. 10.417), Indian Tribes and Tribal Corporation Loans (No. 10.421), and Economic Emergency Loans (No. 10.428) are excluded from the Executive Order.

Discussion of Final Rule

FmHA published an interim rule in the **Federal Register** on May 18, 1987 (52 FR 18543). FmHA allowed a 30 day comment period ending June 17, 1987, and received no comments from the public. FmHA is making minor changes in the final rule for consistency throughout the regulation and to clarify that salary offset cannot be used to collect money from retirement benefits.

List of Subjects in 7 CFR Part 1951

Account servicing, Loan programs, Agriculture, Loan programs—Housing and community development, Low and moderate income housing loans—Servicing, Accounting, Credit.

Accordingly, the interim rule published in the **Federal Register** on May 18, 1987 (52 FR 18543) concerning Subpart C of Part 1951, Chapter XVIII, Title 7, Code of Federal Regulations, is adopted as a final rule, as amended, to read as follows:

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PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for Part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart C—Offsets of Federal Payments to FmHA Borrowers

2. Section 1951.111 is amended by revising the introductory text; by redesignating current paragraphs (b)(1), (b)(3), (b)(4), (b)(5), (b)(6) and (b)(7) as paragraphs (b)(7), (b)(1), (b)(5), (b)(4), (b)(3) and (b)(6), respectively; by revising newly designated paragraphs (b)(5) and (b)(7); by revising paragraph (c)(2); by revising the introductory text of paragraph (e); by redesignating current paragraphs (e)(2) through (e)(14) as paragraphs (e)(4) through (e)(16), respectively; by adding new paragraphs (e)(2) and (e)(3); by revising newly designated paragraph (e)(9); and by revising paragraphs (f)(1), (h)(3), (i)(2), (k)(4), (l)(1), (l)(3), and (o) to read as follows:

§ 1951.111 Salary offset.

Salary offset may be used to collect debts arising from delinquent FmHA loans and other debts which arise through such activities as theft, embezzlement, fraud, salary overpayments, underwithholding of amounts payable for life and health insurance, and any amount owed by former employees from loss of federal funds through negligence and other matters. Salary offset may also be used by other Federal agencies to collect delinquencies or debts owed to them by employees of FmHA, excluding County Committee members. Administrative offset, rather than salary offset, will be used to collect money from retirement benefits. Salary offset will not be initiated until after other servicing options available to the borrower have been utilized. In addition, for farmer program loans, salary offset will not be instituted if the federal salary has been considered on the farm and home plan, and it was determined the funds were to be used for another purpose other than payment of the FmHA loan. When salary offset is used, payment for the debt will be deducted from the employee's pay and sent directly to the creditor agency. Not more than 15 percent of the employee's disposable pay can be offset per pay period, unless the employee agrees to a larger amount. The debt does not have to be reduced to judgment or be undisputed, and the payment does not have to be covered by a security instrument. This section describes the procedures which must be followed before FmHA can ask a Federal agency to offset any amount. Decisions made under the following section are not appealable under Subpart B of Part 1900 of this chapter.

* * * * *

(b) * * *

(5) *Hearing Officer.* An Administrative Law Judge of the USDA or another individual not under the supervision or control of the USDA, designated by the Certifying Official to review the determination of the alleged debt.

* * * * *

(7) *Salary Offset.* The collection of a debt due to the U.S. by deducting a portion of the disposable pay of a Federal employee without the employee's consent.

(c) * * *

(2) There are not any legal restrictions to the debt, such as the debtor being under the jurisdiction of a bankruptcy court, or the statute of limitations having expired. The Debt Collection Act of 1982 permits offset of claims that have not been outstanding for more than 10 years.

* * * * *

(3) *Notice requirement before salary offset.* Salary offset will not be made unless the employee receives 30 calendar days written notice. This Notice of Intent (FmHA Guide Letter 1951–C–4) will be addressed to the debtor or the debtor's representative. The Notice of Intent must be modified if it is addressed to the debtor's representative. In either case, the Notice of Intent will state:

* * * * *

(2) The cost to the Government of collecting salary offset does not exceed the amount of the debt;

(3) There are not any legal restrictions that would bar collecting the debt;

* * * * *

(9) That the employee has a right to a hearing conducted by an Administrative Law Judge of USDA or a hearing official not under the supervision or control of the Secretary of Agriculture, concerning the agency's determination of the existence or amount of the debt and the percentage of disposable pay to be deducted each pay period, if a petition for a hearing is filed by the employee as prescribed by FmHA;

* * * * *

(f) *Debtor's request for records, offer to repay, request for a hearing or request for information concerning debt settlement.*

(1) If a debtor responds to FmHA Guide Letter 1951–C–4 by asking to review and copy FmHA's records relating to the debt, the Certifying Official will promptly respond by sending a letter which tells the debtor the location of the debtor's FmHA files and that the files may be reviewed and copied within the next 30 days. Copying costs (see Subpart F of Part 2018 of this Chapter) will be set out in the letter, as well as the hours the files will be available each day. If a debtor asks to have FmHA copy the records, a copy will be made within 30 days of the request.

* * * * *

(h) * * *

(3) If the debtor is an USDA employee, Form AD–343 will be sent to the National Finance Center (NFC), New Orleans, LA., and a copy to the Finance Office, S. Louis, MO, Attn: Account Settlement Unit. This form can be signed for the Certifying Official by an employment officer, an Administrative Officer, or a personnel management specialist, or signed by the Certifying Official.

* * * * *

(i) * * *

(2) Deductions will be made only from basic pay, incentive pay, retainer pay, or, in the case of an employee not entitled to basic pay, other authorized pay. If there is more than one salary offset, the maximum deduction for all salary offsets against an employee's disposable pay is 15 percent unless the employee has agreed in writing to a greater amount.

* * * * *

(k) * * *

(4) The Certifying Official shall furnish a copy of the memorandum and supporting documentation for paragraphs (k) (1) and (2) of this section to the Deputy Administrator for Management for distribution to the Financial and Management Analysis Staff (FMAS) and Employee Relations Branch, Personnel Division.

(l) * * *

(1) If a debtor is delinquent or indebted on more than one FmHA loan or debt, amounts collected by offset will be applied as specified on Form AD–343, based on the advantage to agency or debtor. The check date will be used as the date of credit in applying payments to the borrower's accounts.

* * * * *

(3) If a debtor does not request a hearing within the required time and it is later determined that the delay was due to circumstances beyond the debtor's control, any amount collected before the hearing decision is made will be refunded promptly by the Certifying Official in accordance with paragraphs (l) (1) and (2) of this section.

* * * * *

(o) *Liquidation from final checks.* Upon the determination that an employee owing a debt to FmHA is to retire, resign, or employment otherwise ends, the Certifying Official should forward a telegram with the appropriate employee identification and amount of the debt to the NFC. The telegram should request that the debt be collected from final salary/lump sum leave or other funds due the employee, and, if necessary, to put a hold on the retirement funds. The telegram information should be confirmed by completion of Form AD–343. Collection from retirement funds will be in accordance with Departmental Administrative Offset procedures (7 CFR Part 3, Subpart B, § 3.32).

* * * * *

Dated: August 2, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88–25301 Filed 11–1–88; 8:45 am]

BILLING CODE 3410-07-M

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 88–152]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Arizona from a split status of Class Free/Class A to all Class Free.

EFFECTIVE DATE: December 2, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. Jan Huber, Senior Staff Veterinarian, Domestic Programs Support Staff, VS, APHIS, USDA, Room 812, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–5965.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective July 20, 1988, and published in the Federal Register on July 25, 1988 (53 FR 27843–27844, Docket Number 88–074), we removed an area of Arizona from the list of Class A states in § 78.41(b) and added it to the list of Class Free states in § 78.41(a). This action changed the status of Arizona from Class Free and Class A to all Class Free, and relieved certain restrictions on moving cattle interstate from Arizona.

Before the publication of the interim rule, Arizona—except those portions of Mohave and Coconino Counties north of the Grand Canyon—was classified as a Class A state because of its herd infection rate and its MCI reactor prevalence rate. Those portions of Mohave and Coconino Counties north of the Grand Canyon were classified as Class Free. However, after reviewing its brucellosis program records, we concluded that the entire state of Arizona meets the standards for Class Free status.

Comments on the interim rule were required to be postmarked or received on or before September 23, 1988. We did not receive any comments. The facts presented in the interim rule still provide a basis for this rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of Arizona from Class Free/Class A to all Class Free reduces certain testing and other requirements governing the interstate movement of cattle from Arizona. Testing requirements for cattle moved interstate for immediate slaughter or quarantined feedlots are not affected by this change. Cattle from certified brucellosis free herds moving interstate are not affected by this change.

The groups affected by this action are certain herd owners in Arizona, as well as buyers and importers of Arizona cattle. Approximately 60,826 cattle are tested for brucellosis in Arizona each year, at an average cost to the seller of $7 per test. Therefore, Class Free status could result in a potential savings of $425,782 for Arizona's livestock industry. Since Arizona has 3,700 herds, the annual savings to each herd owner will be approximately $115 per herd. We have therefore determined that changing Arizona's brucellosis status will not significantly affect market patterns, and will not have a significant economic impact on the small entities affected by this interim rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR Part 78 and that was published at 53 FR 27843–27844 on July 25, 1988.

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC this 27th day of October.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–25318 Filed 11–1–88; 8:45 am]

BILLING CODE 3410-34-M

9 CFR Part 78

[Docket No. 88–141]

Validated Brucellosis-Free States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

BEST COPY AVAILABLE

SUMMARY: We are affirming without change an interim rule that amended the brucellosis regulations concerning the interstate movement of swine by adding Tennessee to the list of validated brucellosis-free states.

EFFECTIVE DATE: December 2, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. Mitchell A. Essey, Senior Staff Veterinarian, Program Planning Staff, VS, APHIS, USDA, Room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8961.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule published in the **Federal Register** on July 1, 1988 (53 FR 24925-24930, Docket Number 88-019), and effective July 27, 1988, we added Tennessee to the list of validated brucellosis-free states in § 78.43. Comments on the interim rule were required to be postmarked or received on or before August 30, 1988. We did not receive any comments. The facts presented in the interim rule still provide the basis for this rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

This action will allow breeding swine to move interstate from Tennessee without being tested for brucellosis. The groups affected by this action are herd owners in Tennessee. We expect the economic impact to be minimal; of the approximately 4,000 herd owners nationwide who regularly ship breeding swine interstate, less than 50 regularly ship breeding swine interstate from Tennessee.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR Part 78 and that was published at 53 FR 24929-24930 on July 1, 1988.

(Authority: 21 U.S.C. 111-114a-1, 114g, 115, 117, 120, 121, 123-126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 27th day of October.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-25317 Filed 11-1-88; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-CE-15-AD; Amdt. 39-6096]

Airworthiness Directives; Mitsubishi Models MU-2B, MU-2B-10, -15, -20, -25, -26, -26A, -30, -35, -36, -36A, -40, and -60 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to certain Mitsubishi Models MU-2B, MU-2B-10, -15, -20, -25, -36, -36A, -30, -35, -36, -36A, -40, and -60 airplanes which requires inspection and, if necessary, replacement of the flap control torque tube joints. This amendment is the result of a field report indicating that a fatigue crack has been found in the torque tube joint of a MU-2B airplane. Failure of one of these joints can lead to flap control failure and possible asymmetric flap deployment resulting in loss of the airplane.

DATE: *Effective Date:* December 4, 1988.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Mitsubishi Heavy Industries (MHI) Service Bulletin (S/B) No. 189B, dated May 27, 1988, or MHI S/B No. 067/27-008, dated November 16, 1987, applicable to this AD may be obtained from the Beech Aircraft Corporation (Licensee for Mitsubishi), Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201-0085; Telephone (316) 681-7279. This information may also be examined at the Rules Docket, Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 88-CE-15-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: For Type Certificate (TC) A10SW registered airplanes: Brian Yanez, Aerospace Engineer, Wichita Aircraft Certification Office, ACE-120W, FAA, Central Region, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4409. For MHI TC A2PC registered airplanes: Silton Thomas, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM-120L, FAA, 3229 East Spring Street, Long Beach, California 90806-2425; Telephone (213) 988-5236.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD requiring inspection and, if necessary, replacement of the flap control torque tube joints on certain MU-2B airplanes, was published in the Federal Register on July 28, 1988 (53 FR 28006). The proposal resulted from a report that a fatigue crack was found in the torque tube joints of the flap control system on a Mitsubishi Model MU-2B Airplane that had been in service for more than 4,000 hours. Failure of the torque tube joints can lead to flap control failure and possible asymmetric flap deployment. As a result, MHI issued two mandatory Service Bulletins, No. 067/23-008, dated November 16, 1987, and No. 189A, dated June 16, 1987, which cover inspection of the torque tube joint and procedures for replacement of cracked parts. The MHI Service Bulletin No. 189A, pertains to the models listed on U.S. Type Certificate (TC) A2PC, whereas the MHI Service Bulletin No. 067/27-008, pertains to the models listed on U.S. TC A10SW. The proposed AD specified an inspection program in accordance with the applicable service bulletin.

The Japan Civil Aviation Bureau (JCAB) issued AD No. TCD-2252-1-87, dated August 10, 1987, covering this subject. The JCAB, which has responsibility and authority to maintain the continuing airworthiness of these airplanes in Japan, has classified S/B No. 189A and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under Japanese registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the JCAB combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness conformity of products of this type design certificated for operation in the United States.

The FAA examined the available information related to the issuance of MHI S/B No. 189A, dated June 16, 1987, and MHI S/B No. 067/27-008, dated November 16, 1987, and the mandatory classification of S/B No. 189A by the JCAB. Based on the foregoing, the FAA found that the condition addressed by these service bulletins was an unsafe condition that may exist on other products of this type certificated for operation in the United States. Accordingly, the FAA proposed an amendment to Part 39 of the FAR to include an AD on this subject. Interested persons have been afforded an opportunity to comment on the proposal.

No comments or objections were received on the proposal. Subsequent to the issuance of the proposal it came to the attention of the FAA that Mitsubishi revised S/B No. 189A, as proposed in the NPRM, to correct typogrpahical errors in Figure 1, and reissued the S/B as No. 189B, dated May 27, 1988. Therefore, since the substitution of the S/B 189b reference, in lieu of S/B No. 189A, does not have a substantive impact on the AD, it is hereby incorporated without further notice.

The FAA has determined there are approximately 477 airplanes affected by this AD. The cost of the inspection, as required by this AD is estimated to be $320 per airplane. The maximum total cost to the private sector is estimated to be $152,640. The cost of compliance with this AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Mitsubishi Heavy Industries, Ltd. (MHI): Applies to Models MU-2B, MU-2B-10, -15, -20, -25, -26, -26A, -30, -35, -36, -36A, -40, and -60 airplanes (all serial numbers with or without the SA suffix) certificated in any category. Compliance: As indicated in the Ad, unless already accomplished. To preclude flap control failure, accomplish the following:

(a) On airplanes with more than 4,000 hours Time-in-Service (TIS), within the next 100 hours TIS, and on airplanes with less than 4,000 hours TIS, before reaching 4,100 hours TIS:

(1) Inspect torque tube joint Part Number (P/N) 010A-61254, of torque tube assembly P/N 010A-61250 for cracks, and replace a cracked joint with a serviceable unit. If no crack is found, repeat the inspection at intervals not to exceed 100 hours TIS, as follows:

(i) For airplanes type certificated in accordance with U.S. Type Certificate (TC) A2PC (those without the serial number suffix SA) as described in MHI MU-2B Service Bulletin (S/B) No. 189B, dated May 27, 1988.

(ii) For airplanes type certificated in accordance with U.S. TC A10SW (those airplanes with the serial number suffix SA) as described in MHI MU-2B S/B No. 067/27-008, dated November 16, 1987.

(2) Inspect all other torque tube joints listed as "existing joints" in Figure 1 of the applicable S/B for cracks, and replace a cracked joint with a serviceable unit. If no crack is found, repeat the inspection thereafter at intervals not to exceed 500 hours TIS, as follows:

(i) For TC A2PC airplanes as described in MHI S/B 189B.

(ii) For TC A10SW airplanes as described in MHI S/B No. 067/27-008.

(b) Accomplish the inspections and replacement requirements of paragraph (a) of this AD, as applicable, prior to 4,100 hours TIS on each replacement joint listed as an "existing joint," as follows:

(1) For TC A2PC airplanes (without S/N suffix SA) in Figure 1 of MHI S/B No. 189B.

(2) For TC A10SW airplanes (with S/N suffix SA) in Figure 1 of MHI S/B No. 067/27-008.

(c) Repetitive inspections of a torque tube joint are terminated upon installation of a joint listed as an "improved joint," as follows:

(1) For TC A2PC airplanes (without S/N suffix S/A) in figure 1 of MHI S/B No. 189B.

(2) For TC A10SW airplanes (with S/N suffix SA) in Figure 1 of MHI S/B No. 067/27-008.

(d) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(e) An equivalent method of compliance with this AD may be used on the A2PC airplanes, if approved by the Manager, Los Angeles Aircraft Certification Office, ANM-120L, FAA 3229 East Spring Street, Long Beach, California 90806-3425, Telephone (213) 988-5200, and on the A10SW airplanes, if approved by the Manager, Wichita Aircraft Certification Office, ACE-115W, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4409.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Beech Aircraft Corporation (Licensee to Mitsubishi), P.O. Box 85, Wichita, Kansas 67201; Telephone (316) 681-6111; or may examine these documents at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on December 4, 1988.

Issued in Kansas City, Missouri, on October 19, 1988.

J. Robert Hall,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-25333 Filed 11-1-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 99

[Docket No. 25099; Amdt. No. 99-14]

RIN: 2120-AC29

Flight Plan and Transponder Requirements in an Air Defense Identification Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: On October 12, 1988, the FAA published a final rule revising the flight plan and position reporting requirements for civil aircraft conducting operations into or out of the U.S. into, within, or across the Contiguous U.S. Air Defense Identification Zone (ADIZ) and establishing a new transponder-on requirement for operations in an ADIZ. Flight plan filing provisions concerning operations in the Hawaii, Guam, and Alaska ADIZ were inadvertently omitted. This action corrects that error.

EFFECTIVE DATE: December 12, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Reginald C. Matthews, Air Traffic Rules Branch, ATO-230, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-8783.

Adoption of the Corrections

Accordingly, pursuant to the authority delegated to me, Docket No. 25099; Amdt. No. 99-14, as published October 12, 1988 (53 FR 39842) is corrected as follows:

PART 99—[CORRECTED]

1. The authority citation for Part 99 continues to read:

Authority: 49 U.S.C. 1348, 1354(a), 1510, and 1522; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. On page 39845, in the second column, § 99.1(b) is correctly revised to read as follows:

§ 99.1 Applicability.

* * * * *

(b) Except for §§ 99.7 and 99.12, this subpart does not apply to the operation of any aircraft—

(1) Within the 48 contiguous States and the District of Columbia, or within the State of Alaska, on a flight which remains within 18 nautical miles of the point of departure;

(2) Operating at true airspeed of less than 180 knots in the Hawaii ADIZ or over any island, or within 3 nautical miles of the coastline of any island, in the Hawaii ADIZ;

(3) Operating at true airspeed of less than 180 knots in the Alaska ADIZ while the pilot maintains a continuous listening watch on the appropriate frequency; or

(4) Operating at true airspeed of less than 180 knots in the Guam ADIZ.

* * * * *

3. On page 39845, in the third column, § 99.11(a) is correctly revised to read as follows:

§ 99.11 ADIZ flight plan requirements.

(a) Unless otherwise authorized by ATC, no person may operate an aircraft into, within, or across an ADIZ unless that person has filed a flight plan with an appropriate aeronautical facility.

* * * * *

Issued in Washington, DC, on October 27, 1988.

John H. Cassady,

Assistant Chief Counsel.

[FR Doc. 88-25333 Filed 11-1-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 121

[Docket No. 25990; Amdt. No. 121-196]

Smoking Aboard Aircraft; Final Rule; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: On April 13, 1988, the FAA published a final rule to implement the congressionally mandated ban on smoking during flights which are scheduled for 2 hours or less. This action corrects an error in that final rule.

EFFECTIVE DATE: April 23, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia A. Abdullah, Operations Law Branch (AGC-220), Regulations and Enforcement Division, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, Telephone (202) 267-3284.

SUPPLEMENTARY INFORMATION: On April 13, 1988, the FAA issued a final rule prohibiting smoking in the passenger cabin or lavatory on airline flights scheduled to be 2 hours or less in duration, except for flights between the United States and other countries. (53 FR 12356).

Certain sections in Part 121 were amended and redesignated to implement the smoking ban. Former § 121.317(b) required air carriers to post a sign or placard stating "Fasten Seat Belt While Seated." As part of the amendments, § 121.317(b) was redesignated as § 121.317(d). Current § 121.317(d) requires that the sign or placard state "Fasten Belt While Seated." (53 FR 12362). The word "Seat" was inadvertently omitted from the quote in the redesignated paragraph. That omission is corrected below.

Correction to Federal Aviation Regulation Section 121.317(d)

Section 121.317(d) is correctly revised to read as follows:

§ 121.317 Passenger information.

* * * * *

(d) No person may operate a passenger-carrying airplane under this part unless there is affixed to each forward bulkhead and each passenger seat back a sign or placard that reads "Fasten Seat Belt While Seated." These signs or placards need not meet the requirements of paragraph (a) of this section.

* * * * *

Donald P. Byrne,

Deputy Assistant Chief Counsel, Regulations and Enforcement Division.

Issued in Washington, DC, on October 27, 1988.

[FR Doc. 88-25334 Filed 11-1-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 381

[Docket No. RM88-23-000; Order No. 503]

Revision of Filing Fees For Natural Gas Rate and Tariff Filings

Issued October 27, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Interim rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is adopting this interim rule revising its regulations on filing fees for natural gas rate and tariff filings made pursuant to §§ 381.204 and 381.205. Under the revised regulations, the Commission will not charge a filing fee for rate and tariff filings made in response to an order requiring compliance issued by the Commission to a specifically identified pipeline with respect to a specific tariff previously filed by the pipeline. Also, the Commission is providing a categorical reduction of sixty percent of the fees for rate and tariff filings made by nonmajor natural gas companies pursuant to §§ 381.204 and 381.205. The Commission is adopting this rule

partially in response to the U.S. Court of Appeals' decision and remand in *Raton Gas Transmission Co. v. FERC*, 852 F.2d 612 (D.C. Cir. 1988). The Commission is amending its regulations in this interim rule while, at the same time, seeking comments on its changes. After reviewing the comments submitted on the action taken in this rulemaking docket, the Commission will issue a final rule.

DATES: This rule is effective October 27, 1988. An original and 14 copies of the written comments on this proposed rule must be filed with the Commission by December 19, 1988.

ADDRESS: Interested persons are invited to submit written comments on the interim rule to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Comments should refer to Docket No. RM88-23-000 on the outside of the envelope and on all documents submitted to the Commission.

FOR FURTHER INFORMATION CONTACT: Julia Lake White, Office of General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357-8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this rule will be available on CIPS for 10 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

Before Commissioners: Martha O. Hesse, Chairman; Charles G. Stalon, Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is adopting this interim rule revising its regulations on filing fees for natural gas rate and tariff filings made pursuant to §§ 381.204 and 381.205. Under the revised regulations, the Commission will not charge a filing fee for rate and tariff filings made in response to an order requiring compliance issued by the Commission to a specifically identified pipeline with respect to a specific tariff previously filed by the pipeline. Also, the Commission is providing a categorical reduction of sixty percent of the fees for rate and tariff filings made by nonmajor natural gas companies[1] pursuant to §§ 381.204 and 381.205.[2] The Commission is adopting this rule partially in response to the U.S. Court of Appeals' decision and remand in *Raton Gas Transmission Co. v. FERC*.[3]

II. Background and Discussion

The Commission assesses filing fees and annual charges under certain statutory provisions. These provisions either authorize filing fees set at levels calculated to reimburse the government agencies involved for the average cost of rendering a specific service [4] or authorize annual charges for broad classes of entities to reimburse the Commission for the costs of regulating entire industry groups.[5]

The Independent Offices Appropriations Act of 1952 (IOAA), which authorizes the Commission to establish fees for specific services and benefits it renders to identifiable beneficiaries, provides only general guidance on the manner in which agencies are to assess fees. It instructs agencies to be fair in imposing any fees required and to consider such factors as the costs to the Government, the value of the service to the recipient, the public policy or other interest served and other relevant facts.[6]

The principal administrative interpretation of the IOAA is the Office of Management and Budget's Circular A-25,[7] which states that a fee should be assessed against each identifiable recipient of a measurable unit or amount of Government service or property from which the recipient derives a special benefit.[8] The IOAA, OMB Circular A-25

[1] The term "major" is defined in Part 201, General Instructions, of the Commission's accounting regulations, to mean each natural gas company as defined in the Natural Gas Act whose combined gas sold for resale and gas transported or stored for a fee exceeds 20 million Mcf at 14.73 psi (60 °F) in each of the three previous calendar years. The term "nonmajor" is defined in Part 201, General Instructions, of the Commission's accounting regulations, as including natural gas companies that are not classified as a "major company" and that had total gas sales of volume transactions exceeding 200,000 Mcf at 14.73 psi (60 °F) in each of the three previous calendar years. *See* Uniform System of Accounts Prescribed for Natural Gas Companies, (General) Instructions, 18 CFR Part 201, General Instructions (1988).

[2] 18 CFR 381.204 and 381.205 (1988). Section 381.204 establishes the fee for a tariff filing for general changes in rates and for changes other than rates. Section 381.205 establishes the fee for tariff filings that track certain costs.

[3] 852 F.2d 612 (D.C. Cir. 1988). The sixty percent categorical reduction in gas rate filing fees for nonmajor pipelines is in response to the Court's remand in *Raton*. That change, as well as the elimination of filing fees for certain gas rate and tariff compliance filings (which is peripherally related to the issues in *Raton*) have been under internal consideration for several years.

[4] *See* Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982). The Commission established fees applicable to natural gas pipeline rates in Order No. 361, 49 FR 5083 (Feb. 10, 1984); FERC Stats. & Regs. [Regulations Preambles 1982-1985] ¶ 30,463 (Feb. 6, 1984). Its companion rule established fees applicable to producer matters under the Natural Gas Act. Order No. 360, 49 FR 5074 (Feb. 10, 1984); FERC Stats. & Regs. [Regulations Preambles 1982-1985] ¶ 30,342 (Feb. 6, 1984). A third rule established fees applicable to natural gas pipeline certificate proceedings. Order No. 493, 50 FR 40332 (Oct 3, 1985), FERC Stats. & Regs. [Regulations Preambles 1985-1987] ¶ 30,806 (Sept. 26, 1985). Order Nos. 360 and 361 were upheld on review in Phillips Petroleum Co. v. FERC, 798 F.2d 978 (8th Cir. 1986).

[5] Section 3401 of the Omnibus Budget and Reconciliation Act of 1986, 42 U.S.C. 7178 (1988), provides that the Commission must "assess and collect fees and annual charges in any fiscal year in amounts equal to all the costs incurred by the Commission in that fiscal year." The Commission established these annual charges in May, 1987, Order No. 472, Annual Charges Under the Omnibus Budget and Reconciliation Act of 1986, 52 FR 21263 (June 5, 1987); FERC Stats. & Regs. ¶ 30,746 (1987). The annual charges, codified at 18 CFR 382.201-382.208, are based on volumes of energy transported and sold by interstate gas pipelines, electric utilities, power marketing administrations and electric cooperatives and on the operating revenues received by oil pipelines, *appeal pending sub nom. Interstate Natural Gas Association of America v. Federal Energy Regulatory Commission*, D.C. Cir. No. 87-1678.

[6] 31 U.S.C. 9701(b)(2)(A)-(3) (1982).

[7] Issued as Bureau of the Budget Circular A-25 (Sept. 23, 1959). The United States Supreme Court expressed general approval for the interpretation of the IOAA embodied in Circular A-25. Federal Power Commission v. New England Power Co., 415 U.S. 345, 348-51 (1974).

[8] A "special benefit" accrues when a Government-rendered service "enables the beneficiary to obtain more immediate or substantial gains or values (which may or may not be measurable in monetary terms) than those which accrue to the general public," provides business stability or assures public confidence in the business activity of the beneficiary, or is performed at the request of the recipient and is above and beyond the services regularly received by the same industry or group or by the general public. OMB Circular A-25 § 3(a)(1).

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and subsequent case law have established certain criteria that must be met in levying a fee under the IOAA. In establishing its fees, the Commission (1) identifies the service for which the fee is to be assessed; [9] (2) explains why the particular service benefits the identifiable recipient more than it benefits others in the industry or the general public; [10] (3) bases the fee on as small a category of service as possible; [11] and (4) demonstrates calculation of the cost basis of each fee assessed.[12] This last criterion is satisfied when the Commission presents a reasonable, not necessarily exact, relationship between its costs and the fee assessed.[13] The Commission's fees and general procedures for determining them are codified at 18 CFR Part 381.

On July 29, 1988, the U.S. Court of Appeals for the District of Columbia Circuit remanded *Raton Gas Transmission Co. v. FERC* (*Raton*) to the Commission.[14] The case involved an attempt by Raton to obtain relief from a fee charged by the Commission for processing a six-page "Purchased Gas Adjustment" (PGA) filing made by Raton pursuant to § 154.38 of the Commission's regulations.[15] Noting that the IOAA requires fees assessed for agency service to be cost-justified and fair, the Court questioned whether the Commission's current fees for PGA filings continue to be cost-justified. The Court also questioned whether the uniform application of the fees to all pipelines may be substantially unfair to smaller pipelines. The Court required the Commission to reconsider its decision to charge Raton the full fee and to supply a fuller explanation of its result. The Court also suggested that the Commission may want to reevaluate the situation to determine whether it is time to devise a new fee schedule better assuring fairness of the fees charged to small pipelines.[16]

In response to the Court's mandate in *Raton*, and in consideration of its experience implementing filing fees for gas rate filings during the four years since the present fee structure was adopted in Order No. 361, the Commission is revising its fees schedule for rate and tariff filings made pursuant to §§ 381.204 and 381.205. One revision will eliminate all filing fees for gas rate and tariff filings that respond to a specific order requiring compliance issued by the Commission to a specifically identified pipeline with respect to a specific tariff previously filed by that pipeline. This revision will be effective prospectively from October 27, 1988.

The Commission's experience in implementing the fees schedule adopted in Order No. 361 indicates that compliance filings which are normally required for the majority of filings made do not take a significant amount of time to process. The time-consuming analysis was performed in processing the original rate filing; the compliance filing merely implements the result of that analysis. Thus, compliance filings should not require the same fee as other rate filings. Additionally, compliance filing fees generate numerous complaints and waiver requests and, in fact, may discourage natural gas companies from making compliance filings. The Commission believes that eliminating filing fees for compliance filings will largely end these complaints and will encourage companies to make these filings.

The Commission will recover the revenue lost by elimination of fees for compliance filings through a proportionate increase in the fees for the other rate filings in future years. The present fees are based on the total amount of time spent in processing all rate and tariff filings divided by the total number of all these filings. Since compliance filings take less time to process than the current fees would indicate, it follows that more time is in fact being spent (and more costs incurred) in processing the other rate filings, and that the fees collected for processing those other filings have been understated commensurate with the overstatement of the fees for processing the compliance filings. Accordingly, by eliminating the fees for compliance filings, there will be a commensurate increase in the fees for those other rate filings in future years. The total fees collected for all rate filings will remain the same; the only difference is that the fees will now be allocated in manner that more accurately reflects the time and cost of processing tariff filings.

Additionally, the Commission is providing a categorical reduction of sixty percent of the fees for rate and tariff filings made by nonmajor natural gas companies pursuant to §§ 381.204 and 381.205.[17] In Order No. 361, the Commission recognized that there may be instances in the future when full cost recovery fees may have an adverse impact on certain classes of applicants or may undermine Commission activities.[18] Subsequently, in Order No. 395, the Commission first applied a categorical reduction of sixty percent in fees applicable to certain general activities, *i.e.*, fees for petitions for declaratory order, review of Department of Energy (DOE) denials of adjustments and review of DOE remedial orders.[19] The Commission stated that the average cost per completion for these filings is such that full recovery of these costs would substantially discourage the use of these services. Accordingly, the Commission, as a matter of administrative fairness, adopted a categorical reduction for each of these three categories of general activities.

Similarly, in response to the Court's remand in *Raton*, the Commission has decided that a reduction in fees for nonmajor natural gas companies [20] to less than full cost recovery is necessary in order to prevent a disproportionate economic impact on nonmajor pipelines. Accordingly, the Commission adopts a categorical reduction of sixty percent of the fees for rate and tariff filings made by nonmajor natural gas companies pursuant to §§ 381.204 and 381.205. This sixty percent categorical reduction is a policy judgment by the Commission representing its best estimate of the magnitude of reduction necessary to avoid a disproportionate economic impact on nonmajor companies.[21]

Pursuant to this interim rule, the Commission will apply the sixty percent categorical reduction to Raton's tariff filing at issue in the *Raton* decision. Additionally, the sixty percent categorical reduction will be applied retroactively to any rate or tariff filing made by nonmajor companies on or after July 29, 1988, the date of the Court's decision in *Raton*.

The Commission is amending its regulations in this interim rule while, at the same time, seeking comments on these changes. Since the *Raton* decision, numerous small natural gas companies have made rate and tariff filings and paid the Commission's fees under protest. The Commission believes that a prompt response to the Court's remand in *Raton* can alleviate the industry's uncertainty about the status of the Commission's gas rate fees schedule as it applies to smaller natural gas companies. After reviewing the comments submitted on the action taken in this rulemaking docket, the Commission will issue a final rule.

III. Administrative Findings and Effective Date

The Commission is adopting a rule prior to providing a notice and obtaining comments, as generally required by the Administrative Procedure Act (APA) for any rulemaking proceeding.[22] The Commission is invoking exceptions to this requirement to provide an immediate response to the Court's remand in *Raton* while the Commission seeks written comments on its proposal. This rule will be in effect for an interim period while the Commission studies the issues related to providing a categorical reduction for nonmajor pipelines. The Commission is making a special effort to implement this interim rule promptly in order to minimize the impact of the filing fees, and to provide some measure of certainty about these filing fees that Raton and similar shall pipelines must pay while the Commission responds to the Court's mandate in the *Raton* case.

The Commission, therefore, finds good cause to issue this rule without prior notice and comment. The Commission believes the public interest is best served in this instance with the promulgation of an interim rule consistent with the Court's concerns.

This interim rule is effective October 27, 1988.

IV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA)[23] generally requires a description and analysis of rules that will have a significant economic impact on a substantial number of small entities.

The revised fees adopted in the rule may have a significant impact on a substantial number of small entities. In effect, the Commission's rule will lessen the economic impact of its fees on small natural gas companies. The Commission believes this rule will have a beneficial impact on small entities rather than a negative impact. The Commission concludes, therefore, that this impact will not be "significant" within the meaning of the RFA. Accordingly, the Commission certifies that this rule will not have a "significant economic impact of a substantial number of small entities".

V. Environmental Statement

The Commission concludes that promulgating this rule does not represent a major Federal action having a significant adverse effect on the human environment of the Commission's regulations implementing the National Environmental Policy Act.[24] This rule is procedural in nature and therefore falls within the categorical exemptions provided in the Commission's regulations. Consequently, neither an environmental impact statement nor an environmental assessment are required.[25]

VI. Public Comment Procedures

Interested persons are invited to submit written comments on the interim rule to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. Comments should refer to Docket No. RM88-28-000 on the outside of the envelope and on all documents submitted to the Commission. Fourteen copies should be submitted with the original.

Comments must be filed on or before December 19, 1988. Copies of the written comments may be obtained from the Commission's Division of Public Information, Room 1000, 825 North Capitol Street NE., Washington, DC 20426. Comments are available for public inspection during business hours at the same location. Copies of comments will be available for purchase.

List of Subjects in 18 CFR Part 381

Natural gas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Part 381, Chapter I, Title 18 of the Code of Federal Regulations as set forth below.

By the Commission.

Lois D. Cashell,

Secretary.

PART 381—FEES

1. The authority citation for Part 381 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Natural Gas Act, 15 U.S.C. 717–717w (1982); Federal Power Act, 16 U.S.C. 791–828c (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1979).

2. Section 381.204 is revised to read as follow:

§ 381.204 Pipeline tariff filing for general changes in rates and for changes other than in rates.

(a) Except as provided in paragraphs (b) and (c) of this section, the fee established for a tariff filings for general changes in rates and for changes other than rates is $4,350.

(b) *Categorical reduction.* Effective July 29, 1988, with respect to nonmajor natural gas companies, as defined in Part 201, General Instructions, of this chapter, the fee established for a tariff for general changes in rates and for changes other than rates is $1,720.

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[9] National Cable Television Association, Inc. v. FCC, 554 F.2d 1094, 1100 (D.C. Cir. 1976) (the agency "must identify the activity which justifies each particular fee it assesses"). *See also* Federal Power Commission v. New England Power Co. at 349–351 (considering assessments against jurisdictional utilities in proportion to their wholesale sales and interchange of electricity since the "thrust of the Act" reached only specific charges for specific services to "specific individuals or companies" and the Commission's formula could result in charges to companies which had no proceedings before the Commission during the year in question).

[10] Electronic Industries Association v. FCC, 554 F.2d 1109, 1116 (D.C. Cir. 1976) ("require a certain nexus, a threshold level of private benefit between the regulatee and the agency before a fee can be assessed against the recipient of the service").

[11] *Id.* at 1116 ("we interpret the statute and the Supreme Court decisions to require reasonable particularization of the basis for the fees, accomplished by an allocation of costs to the smallest unit that is practical").

[12] *Id.* at 1117 ("This involves (a) an allocation of the specific direct and indirect expenses which form the cost basis for the fee to the smallest practical unit; (b) exclusion of any expenses incurred to serve no independent public interest; and (c) a public explanation of the specific expenses included in the cost basis for a particular fee, and an explanation of the criteria used to include or exclude particular items.").

[13] National Cable Television Association, Inc. v. FCC at 1105–06 ("Any computation such as these must necessarily be based on numerous approximations and can only be expected to be accurate within reasonable limits. It is sufficient for the Commission to identify the specific items of direct or indirect cost incurred in providing each service or benefit for which it seeks to assess a fee, and then to divide that cost among the members of the recipient class ' ' ' in such a way as to assess each a fee which is roughly proportional to the 'value' which that member has thereby received.").

[14] See note 2.

[15] See 18 CFR 154.38 (1988). On November 10, 1987, the Commission revised its Purchased Gas Adjustment regulations in Order No. 483, 52 FR 43824 (Nov. 17, 1987); III FERC Stats. & Regs. ¶ 30,778 (1987), codified at 18 CFR 154.301–154.310 (1988).

[16] 842 F.2d at 878.

[17] See note 2.

[18] FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶ 30,843 at 30,878.

[19] Order No. 395, 49 FR 36348 (Sept. 7, 1984); FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶ 30,552 (Aug. 31, 1984).

[20] Raton Gas Transmission Company is a nonmajor natural gas company within the meaning of Part 201 of the Commission's regulations. See 18 CFR Part 201, General Instructions (1988).

[21] Unlike the reallocation of rate filing fees to eliminate the fees for compliance filings, discussed above, the sixty percent categorical reduction for nonmajor companies is not based on reevaluation of the cost of processing particular types of filings. Rather, it is based on potential hardship to the small companies. The Commission's experience is that the average time required to process the rate filings of nonmajor companies is not significantly lower than the average time required to process the rate filing of major companies. Hence, there will be no change in the rate filing fees for major pipelines (although the effect of the sixty percent categorical reduction for nonmajor companies will be reflected in the amount of money to be recovered through the Commission's annual charges).

[22] 5 U.S.C. 553 (b) and (c) (1982).

[23] 5 U.S.C. 601–612 (1982).

[24] 52 FR 47897 (Dec. 17, 1987), III FERC Stats. & Regs. ¶ 30,788 (Dec. 10, 1987) (codified at 18 CFR Part 380).

[25] See 18 CFR 380.4[a][2][ii] (1988).

(c) There is no fee for a tariff filing that responds to an order requiring compliance issued by the Commission to a specifically identified pipeline with respect to a specific tariff previously filed by that pipeline.

3. Section 381.205 is revised to read as follows:

§ 381.205 Pipeline tariff filings that track certain costs.

(a) *General rule.* Except as provided in paragraphs (b) and (c) of this section, the fees established for a tariff filings that track costs are:

(1) $4,440 for annual filing under § 154.302;

(2) $910 for a quarterly filing under § 154.303;

(3) $910 for an interim adjustment filing under § 154.309; and

(4) $910 for any other tariff filing that tracks costs.

(b) *Categorical reduction.* Effective July 29, 1988, with respect to nonmajor natural gas companies, as defined in Part 201, General Instructions, of this chapter, the fees established for tariff filings that track costs are:

(1) $1,770 for annual filing under § 154.302;

(2) $360 for a quarterly filing under § 154.303;

(3) $360 for an interim adjustment filing under § 154.309; and

(4) $360 for any other tariff filing that tracks costs.

(c) There is no fee for a tariff filing that responds to an order requiring compliance issued by the Commission to a specifically identified pipeline with respect to a specific tariff previously filed by that pipeline.

[FR Doc. 88-25372 Filed 11-1-88; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 111

Annual User Fee for Customs Brokers' Permit

AGENCY: U.S. Custom Service, Treasury.

ACTION: Notice of due date of broker's user fee.

SUMMARY: This document advises Customs brokers that for 1989 the annual user fee of $125 that is assessed for each permit held by an individual, partnership, association, or corporate broker is due by January 3, 1989. This announcement is being published to comply with the Tax Reform Act of 1986.

DATES: Date of notice: November 2, 1988. Due date for fee: January 3, 1989.

FOR FURTHER INFORMATION CONTACT: Raymond Janiszewski, Chief, Broker Compliance and Evaluation Branch, (202) 535-4161.

SUPPLEMENTARY INFORMATION:

Background

Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272) established that an annual user fee of $125 is to be assessed for each customs broker's permit held by an individual, partnership, association or corporate broker. This fee is set forth in the Customs Regulations in § 111.96 (19 CFR 111.96).

Section 111.96, Customs Regulations, provides that the fee is payable for each calendar year in each district where a broker has a permit to do business by the due date, which will be published in the **Federal Register** annually.

Section 1893 of the Tax Reform Act of 1986 (Pub. L. 99-514), provides that notice of the date on which payment is due of the user fee for each broker permit shall be published by the Secretary of the Treasury in the **Federal Register** by no later than 60 days before such due date.

This document notifies brokers that for 1989 the due date for payment of the user fee is January 3, 1989. It is expected that annual user fees for brokers for subsequent years will be due on the first of January each year.

Dated: October 26, 1988.

Michael H. Lane,

Acting Commissioner of Customs.

[FR Doc. 88-25367 Field 11-1-88; 8:45 am]

BILLING CODE 4820-02-M

19 CFR Part 113

[T.D. 88-46]

Customs Regulations Amendments Concerning Access to Customs Security Areas at Airports; Correction

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule; correction.

SUMMARY: In **Federal Register** Document 88-17439, published on August 3, 1988 (53 FR 29228), the Customs Regulations were amended relating to access to Customs security areas at airports. On page 29230, third column, it was stated that "Section 113.64 is amended by redesignating paragraph (d) as paragraph (e) and adding a new paragraph (d) to read as follows:" it should have read "Section 113.64 is amended by redesignating paragraphs (d) and (e) as paragraphs (e) and (f) and adding a new paragraph (d) to read as follows:"

FOR FURTHER INFORMATION CONTACT: Arnold Sarasky, Office of Regulations and Rulings (202-566-8237).

Dated: October 20, 1988.

John E. Elkins,

Acting Director, Regulatory Procedures and Penalties Division.

[FR Doc. 88-25366 Filed 11-1-88; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. N-88-1869; FR 2564]

UDAG Funding Rounds for FY 1989

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of UDAG Funding Rounds for FY 1989.

SUMMARY: This Notice is to announce the FY 1989 schedule of funding rounds for the Urban Development Action Grant Program (UDAG). On August 29, 1988 (53 FR 33028) the Department published a final rule amending 24 CFR Part 570, which provides that the Secretary must announce, within 30 days of the start of a fiscal year, any change for that year in the funding schedule set out in 570.460. This Notice is to announce that there will be two funding rounds in FY 1989: (1) July 1989 for small cities; and (2) September 1989 for large cities/urban counties. Additional rounds may be announced later if a change in funding makes such additional rounds possible.

FOR FURTHER INFORMATION CONTACT: Stanley Newman, Director, Office of Urban Development Action Grants, Department of Housing and Urban Development, Room 7282, 451 Seventh Street SW., Washington, DC 20410, (202) 755-6290. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 119 of the Housing and Community Development Act of 1974 (42 U.S.C. 5318) (1974 Act) establishes the Urban Development Action Grant (UDAG) program, under which HUD is authorized to award grants to economically distressed cities and urban counties to help stimulate economic development activity needed to aid in economic recovery. HUD allocates the grant funds each fiscal year in separate funding rounds for small cities and for large cities/urban counties. The schedule for the funding rounds is set forth at 24 CFR 570.460.

Section 515 of the Housing and Community Development Act of 1987 (1987 Act) amended section 119 of the 1974 Act by modifying UDAG selection criteria and definitions of eligible cities. The Department implemented these amendments by revisions to 24 CFR Part 570 in a final rule published August 29, 1988 (53 FR 33028). Section 515(b) of the 1987 Act requires that the Secretary announce within 30 days of the start of each fiscal year the number of funding rounds to be held in that fiscal year. The new rule provides that there will be three funding rounds for small cities and three rounds for large cities/urban counties each year unless, within 30 days of the start of a fiscal year, the Secretary announces by **Federal Register** Notice a revised schedule applicable to the upcoming fiscal year (24 CFR 570.460).

The purpose of this Notice is to announce that in FY 1989 there will be only one funding round for small cities and one for large cities/urban counties. The funding round for small cities will be in July 1989, and the funding round for large cities/urban counties will be in September 1989. (The dates refer to the date of the decision.) Funding rounds scheduled for small cities in November 1988 and March 1989 and for large cities/urban counties in January 1989 and May 1989 are cancelled, unless the funding situation should change, making additional rounds possible.

In addition to requiring that the Secretary announce the number of funding rounds to be held each year, section 515(b) also provides that there are to be no less than two and no more than three competitions for grants each fiscal year. The legislative history indicates that Congress intends one competition to include to funding rounds, *i.e.*, one for small cities and one for large cities/urban counties. HUD interprets this provision to be predicated on the assumption that there will be sufficient funds to hold at least two competitions, or four funding rounds. No funds were appropriated for the UDAG program for FY 1989. Therefore, the reduced number of funding rounds for FY 1989 is necessary because of the limited resources available for the program.

For the past five years, appropriations for this program have steadily decreased (from $440 million in 1983 to $216 million in 1988). No funds were appropriated for the UDAG program for FY 1989 in the Department of Housing and Urban Development—Independent Agencies Appropriations Act of 1989 (Pub. L. 100-404, approved August 19, 1988). However, HUD is authorized to continue making grants with funds recaptured from FY 1986-1988 appropriations. HUD estimates that approximately $50 million may be recaptured from these past appropriations during the next year. Because it will take the better part of the year to know exactly how much will be recaptured, the two funding rounds announced by this Notice for FY 1989 are scheduled for the latter part of the fiscal year. If, however, the funding situation changes, it may be possible to hold additional rounds. HUD will publish a Notice announcing any change in the funding round schedule.

The two FY 1989 funding rounds announced today will follow the normal schedule for submission of applications, review, and decision contained in 24 CFR 570.460. The application submission period for small cities will be May 1-31, 1989; the review period will be June 1-July 31, 1989; and the decision date will be by July 31, 1989. For large cities/urban counties, the application submission period will be July 1-31, 1989; review period, August 1-September 30, 1989; and decisions made by September 30, 1989. HUD expects sufficient funds to have been recaptured by July 1989 and September 1989 to have viable funding competitions.

Any new applications received by HUD prior to the application submission periods for the scheduled funding rounds will be returned to applicants. However, applicants will be notified if there is a change in the UDAG funding situation that makes additional funding rounds possible. HUD will also keep applications held over from the July 1988 small cities funding round and the September 1988 large cities/urban counties funding round, and these applicants will be contacted during the next funding rounds so that their applications may be updated.

Other Matters

An environmental assessment is unnecessary, since the subject matter of this Notice is categorically excluded from the Department's National Environmental Policy Act procedures under 24 CFR 50.20(k).

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this Notice has no federalism implications and, therefore, does not require a review under that Order. The Notice merely announces a change in the schedule of UDAG funding rounds from the schedule contained in 24 CFR 570.460.

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has also determined that this Notice does not have potential significant impact on family formation, maintenance, and general well-being and, therefore, is not subject to review under the Order.

The Catalog of Federal Domestic Assistance number is 14.221—Urban Development Action Grants.

Dated: October 27, 1988.

Jack R. Stokvis,

Assistant Secretary for Community Planning and Development.

[FR Doc. 88-25346 Filed 11-1-88; 8:45 am]

BILLING CODE 4210-32-M

POSTAL SERVICE

39 CFR Part 111

Mailer Endorsement Specifications for Requesting Ancillary Services

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rulemaking modifies a final rule published on May 6, 1988 revising the requirements for mailer ancillary service endorsements. This modification will provide for greater flexibility in complying with the type face requirement and the requirement for placement of the return address on letter size mail.

EFFECTIVE DATE: November 3, 1988.

FOR FURTHER INFORMATION CONTACT: Bonnie Goetzke, (202) 268-3525.

SUPPLEMENTARY INFORMATION: On May 6, 1988, the Postal Service published a final rule to modify the requirements for mailer ancillary service endorsements. 53 FR 16258-61. The final rule adopted revised postal regulations improving and standardizing the endorsements through which a mailer requests certain forwarding or address correction services if a mail piece is undeliverable as addressed. The regulations prescribe the location, wording, and print size of endorsements mailers may use to request these ancillary services. When the regulations become effective on November 5, 1988, a mail piece bearing a nonstandard endorsement will be returned.

After the publication of the final rule, the Postal Service received a number of comments on the final rule from the mailing industry. These mailers stated that it would be impossible to meet the requirement, in Domestic Mail Manual

sections 122.17 and 159.151, that endorsements must be "no smaller than 8 point Helvetica medium type or a manufacturer's generic equivalent" with current ink jet printing technology. They expressed concern that ink jet technology, widely used in the printing industry, would become unusable, since that technology is unable to print Helvetica type.

In addition, other mailers objected to the requirement in the same sections that endorsements had to be printed in the upper left hand corner on letter-size mail under the return address. These mailers stated that they do not always use the entire mail piece for the return address, recipient's address and postage. For example, some use mailing labels affixed to the center of the piece. These mailers requested some flexibility in this requirement to maintain their creative "ownership" on a portion of the mail piece face.

Based upon these comments, the Postal Service has decided to make two modifications to the final rule. The type face requirement of 8 point Helvetica medium type has been revised to remove the reference to "Helvetica medium type or a manufacturer's generic equivalent". The requirement, on letter-size mail, that the endorsement must appear in the upper left corner of the address side of the piece, directly below the return address, has been revised to provide that "the endorsement must appear in either the upper left corner of the address side of the piece or the upper left corner of the addressing area of the piece, directly below the return address."

For the above reasons, the Postal Service hereby amends the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR 111.1.), as follows:

PART 111—[AMENDED]

1. The authority citation in 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

PART 122—DELIVERY ADDRESS

2. In Part 122, 122.17 is revised to read as follows:

122.17 Endorsements.

A mailer's specific instructions for forwarding mail (see 159.2), as well as requests for address correction service or return (see 159.3), must appear below the sender's return address. A full return address must be used with these endorsements. On all mail, the endorsement must appear in either the upper left corner of the address side of the piece or the upper left corner of the addressing area of the piece, directly below the return address. (While not a requirement, it is strongly recommended that endorsements on letter-size mail not appear lower than 2¾" from the bottom edge of the envelope. Endorsements in the lower 2 ¾" of the envelope could result in misrouting of the piece on Postal Service automated letter mail equipment.) Endorsements must be no smaller than 8 point type. Endorsements and return addresses must be printed so that they read in the same direction as the delivery address. There must be clear space of at least ¼ inch both above and below the endorsement. An endorsement must stand out clearly against its background. A reasonable degree of color contrast (see 324.614 for acceptable specifications) must be maintained between the endorsement and the background of the mail piece. Black ink on a white background is strongly preferred, but other color combinations may be used. Brilliant colored envelopes and reverse printing are not permitted. See Exhibits 159.151a–f for specific mailer endorsements authorized for each class of mail. Mail bearing an endorsement that does not meet the requirements of this section and 159.151 will not be acceptable for mailing.

Examples:

a. Frank B White
2416 FRONT STREET
ST LOUIS MO 63135-1234

FORWARDING & RETURN
POSTAGE GUARANTEED

b. Frank B White
2416 FRONT STREET
ST LOUIS MO 63135-1234

ADDRESS CORRECTION
REQUESTED

c. Frank B White
2416 FRONT STREET
ST LOUIS MO 63135-1234

FORWARDING & RETURN
POSTAGE GUARANTEED
ADDRESS CORRECTION
REQUESTED

d. Frank B White
2416 FRONT STREET
ST. LOUIS MO 63135-1234

FORWARDING & ADDRESS
CORRECTION REQUESTED

* * * * *

PART 159—UNDELIVERABLE MAIL

3. In Part 159, 159.151 is revised to read as follows:

159.151 Treatment of Undeliverable-as-Addressed Mail.

.151. Except as provided in 159.153, mail that is undeliverable as addressed may be forwarded, returned to the sender, or treated as dead mail, depending on the treatment authorized for that particular class of mail. A summary of the procedures for handling undeliverable as addressed mail is presented in Exhibits 159.151a–f. The chapters covering each class of mail contain more detailed provisions. A full return address must be used with these endorsements. On all mail, the information must appear in either the upper left corner of the address side of the piece or the upper left corner of the addressing area of the piece, directly below the return address. (While not a requirement, it is strongly recommended that endorsements on letter size mail not appear lower than 2¾" from the bottom edge of the envelope. Endorsements in the lower 2¾" of the envelope could result in misrouting of the piece on Postal Service automated letter mail equipment.) Endorsements must be no smaller than 8 point type. Endorsements and return addresses must be printed reading in the same direction as the delivery address. There must be a clear space of at least ¼ inch both above and below the endorsement. An endorsement must stand out clearly against its background. A reasonable degree of color contrast (see 324.614 for acceptable specifications) must be maintained between the endorsement and the background of the mail piece. Black ink on a white background is strongly preferred, but other color combinations may be used. Brilliant colored envelopes and reverse printing are not permitted. Mail bearing an endorsement that does not meet these requirements will not be accepted for mailing.

Note: These requirements are to be applied only by trained acceptance personnel. Delivery personnel are not to make determinations about the correctness of endorsements. If mail, bearing an endorsement that does not meet these requirements, is accepted, that Postal Service will make reasonable efforts to honor the mailer's service request.

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided by 39 CFR 111.3.

Fred Eggleston,
Assistant General Counsel, Legislative Division.

[FR Doc. 88-25371 Filed 11-1-88; 2:21 pm]
BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 3444-8]

Approval and Promulgation of Implementation Plans; Michigan

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: The purpose of this notice is to announce final rulemaking action on portions of Michigan's State Implementation Plan (SIP), on which USEPA deferred regulatory action when approving and conditionally approving the Part D Clean Air Act (CAA) requirements contained in the State's 1979 SIP on May 6, 1980, (45 FR 29790). This action approves the regulations submitted to USEPA on April 25, 1979 (effective at the State level on January 18, 1980), concerning: Open burning; continuous emission monitoring (CEM); air pollution episodes; organization, operation and procedures; and hearings.

DATE: The action is effective January 3, 1989, unless notice is received on or before December 2, 1988, that someone wishes to submit comments.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Ms. Toni Lesser, at (312) 886–6037, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604

Michigan Department of Natural Resources, Air Quality Division, Stevens T. Mason Building, 530 West Allegan, Lansing, Michigan 48909

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC 20460

Comments on these proposed rules should be addressed to: (Please submit an original and three copies, if possible.)

Gary Gulezian, Chief, Regulatory Analysis Section, U.S. Environmental Protection Agency, Air and Radiation Branch (5AR–28), 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Ms. Toni Lesser, Michigan Regulatory Specialist, U.S. Environmental Protection Agency, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6037.

SUPPLEMENTARY INFORMATION: On May 6, 1980 (45 FR 29790), USEPA published a final rulemaking action approving the State of Michigan's Part D SIP. However, Michigan's submittal of April 25, 1979, contained additional regulations which were not required under the CAA's Part D SIP requirements. Therefore, at the time of USEPA's May 6, 1980, final rulemaking, USEPA decided to defer rulemaking and indicated that a separate rulemaking notice addressing these elements would be prepared.

The State of Michigan submitted the rules which are the subject of this notice on April 29, 1979. These rules are Rule 336.1310 (Open Burning); R336.2101–336.2189 (Continuous Emission Monitoring); R336.2301–336.2308 (Air Pollution Episodes); R336.2601–336.2606 (Organization, Operation and Procedures); and R336.2701–336.2706 (Hearings). These rules have been in effect at the State level since January 18, 1980.

On January 15, 1988, USEPA sent the State of Michigan a letter addressing these rules. In response to USEPA's letter, the State submitted a letter on February 22, 1988, requesting USEPA to continue processing these rules with the exception of the sulfur dioxide compliance date extension rules 336.1501–336.1507.

1. Open Burning

Michigan's Rule 336.1310 limits the open burning of materials. It prohibits open burning of waste, refuse, garbage, or any other waste materials with the five exceptions presented below. These exceptions do not authorize open burning where prohibited by local law or regulation.

(a) Waste disposal of material from one or two-family dwellings where the burning does not violate any other Commission rules.

(b) Structures and other materials used exclusively for fire prevention training if prior approval is obtained from the Commission.

(c) Trees, logs, brush, and stumps in accordance with applicable state and local regulations if the burning is not conducted within a Priority I area as listed in Table 33, a Priority II area as listed in Table 34, nor closer than 1400 feet to an incorporated city or village limit and the burning does not violate any other Commission rule.

(d) Beekeeping equipment and products, including frames, hive bodies, hive covers, combs, wax and honey when burned for bee disease control.

(e) Logs, brush, charcoal, and similar materials for the purpose of food preparation or recreation.

Regulatory Action

USEPA approves Michigan's Rule 336.1310 as an acceptable additional element of Michigan's current federally approved SIP. This rule reduces the particulate matter concentrations and other products of combustion throughout the state and it in no way relaxes control requirements contained in the approved Michigan SIP.

2. Continuous Emission Monitoring (CEM)

Under section 110(a)(2)(F) of the CAA, States must submit a plan for the installation of equipment by owners or operators of stationary sources to monitor emissions from these sources. Michigan submitted sixteen rules: 336.2101; 336.2102; 336.2103; 336.2150; 336.2151; 336.2152; 336.2153; 336.2154; 336.2156; 336.2159; 336.2170; 336.2175; 336.2176; 336.2180; 336.2183; and 336.2189 which address the requirements related to CEM. The requirements of these rules are summarized below. USEPA prepared a technical support document (TSD) dated October 1, 1987, which contains an analysis of these CEM rules.

Rule 336.2101

Michigan's Rule 336.2101 requires fossil fuel-fired steam generators to install, calibrate, maintain, and operate CEM for opacity, sulfur dioxide, nitrogen oxide, oxygen and carbon dioxide. In addition, it requires all subject sources to begin monitoring and recording within 18 months from the effective date of the rule. Rule 336.2101 is consistent with section 110(a)(2)(F) of the CAA and meets the minimum emission monitoring requirement of 40 CFR Part 51; Appendix P, section 2.1.

Rule 336.2102

Michigan's Rule 336.2102 requires continuous SO_2 emission monitoring for sulfuric acid plants having production capacity of more than 300 tons per day. Rule 336.2102 meets the requirements of 40 CFR Part 51; Appendix P, section 2.3.

Rule 336.2103

Michigan's Rule 336.2103 requires continuous opacity monitoring for Fluid Bed Catalytic Cracking Regenerators at petroleum refineries. Rule 336.2103 meets the requirements of 40 CFR Part 51; Appendix P, section 2.4.

Rule 336.2150

Michigan's Rule 336.2150 contains performance specifications for CEM systems. Rule 336.2150 meets the requirements of 40 CFR Part 51; Appendix P, section 3.1.

Rule 336.2151

Michigan's Rule 336.2151 discusses calibration gases for CEM systems. Rule 336.2151 meets the requirements of 40 CFR Part 51; Appendix P, section 3.3.

Rule 336.2152

Michigan's Rule 336.2152 deals with cycling time for CEM systems. Rule 336.2152 requires that CEM systems for measuring opacity, complete a minimum of one cycle of sampling and analyzing for each successive 10-second period and one cycle of data recording for each successive 6-minute period. CEM systems for measuring nitrogen, carbon dioxide, oxygen, or SO_2 shall complete a minimum of one cycle of operation for each successive 15-minute period. Rule 336.2152 meets the requirements of 40 CFR Part 51; Appendix P, section 3.4.

Rule 336.2153

Michigan's Rule 336.2153 discusses zero and drift factors for CEM systems. Rule 336.2153 meets the requirements of 40 CFR Part 51; Appendix P, section 3.5.

Rule 336.2154

Michigan's Rule 336.2154 discusses instrument span for CEM systems. Rule 336.2154 requires that instrument span be approximately 200 percent of the expected instrument data display output corresponding to the emission standard for the source. Rule 336.2154 meets the requirements of 40 CFR Part 51; Appendix P, section 3.7.

Rule 336.2155

Michigan's Rule 336.2155 discusses location of monitors. Rule 336.2155 meets the requirements of 40 CFR Part 51; Appendix P, section 3.8.

Rule 336.2156

Michigan's Rule 336.2156 discusses an alternative continuous emission monitoring system. Rule 336.2156 complies with the requirements of 40 CFR Part 51; Appendix P, Section 3.9.

Rule 336.2170

Michigan's Rule 336.2170 discusses data reporting and recordkeeping for a CEM system. Rule 336.2170 meets the requirements of 40 CFR Part 51; Appendix P, sections 4.1 to 4.8.

Rule 336.2175

Michigan's Rule 336.2175 discusses the data reduction procedure for analyzing emissions from fossil fuel-fired steam generators. Rule 336.2175 meets the requirements of 40 CFR Part 51; Appendix P, section 5.0.

Rule 336.2176

Michigan's Rule 336.2176 discusses data reduction for analyzing emissions from sulfuric acid plants. Rule 336.2176 meets the requirements of 40 CFR Part 51; Appendix P, section 5.1.

Rule 336.2189

Michigan's Rule 336.2189 discusses the usage of alternative data reporting or reduction procedures. Rule 336.2189 meets the requirements of 40 CFR Part 51; Appendix P, section 5.2.

Rule 336.2190

Michigan's Rule 336.2190 discusses monitoring system malfunctions. Rule 336.2190 meets the requirements of 40 CFR Part 51; Appendix P, section 1.4.

Rule 336.2199

Michigan's Rule 336.2199 discusses exemptions from CEM requirements. Rule 336.2199 meets the requirements of 40 CFR Part 51 Appendix P, section 3.2.

Regulatory Action

USEPA is approving the State of Michigan's rules 336.2101–336.2199 for CEM, which were submitted on April 20, 1979. USEPA believes that these rules meet the specific requirements and guidelines of section 110(a)(2)(F) of the CAA and the minimum emission monitoring criteria specified in 40 CFR Part 51; Appendix P.

3. Air Pollution Episodes

Under 40 CFR 51.11, States are required to submit to USEPA as a SIP revision a plan that provides for public announcement concerning air pollution emergency episodes. Michigan submitted 8 rules, 336.2301–336.2308, which address air pollution episodes.

Rule 336.2301

Michigan's Rule 336.2301 defines "air pollution episode" as a condition that may lead to, or result in, the buildup of atmospheric contaminants in the State, or any part thereof, which adversely affect the health of the people.

Rule 336.2302

Michigan's Rule 336.2302 defines "air pollution forecast" as a national weather service advisory, or local equivalent, that an atmospheric stagnation condition exists.

Rule 336.2303

Michigan's Rule 336.2303 defines "air pollution alert" as a concentration of contaminants at which control actions begins.

Rule 336.2304

Michigan's Rule 336.2304 defines "air pollution warning" as a level which indicates that air quality is continuing to deteriorate and that additional control actions are necessary.

Rule 336.2305

Michigan's Rule 336.2305 defines "air pollution emergency" to mean that air quality is continuing to deteriorate to a critical level and that the most stringent control actions are necessary.

Rule 336.2306

Michigan's Rule 336.2306 discusses the declaration of air pollution episodes.

Rule 336.2307

Michigan's Rule 336.2307 discusses episode emissions abatement programs.

Rule 336.2308

Michigan's Rule 336.2308 discusses episode orders. The rule states that when an air pollution episode has been declared, the Commission may order a source of air pollution to put into effect the applicable episode emission abatement program.

Regulatory Action

USEPA is approving Rules 336.2301–336.2308 since the regulations conform with the minimum criteria for air pollution emergencies or episodes specified in 40 CFR Part 51; Appendix L and 40 CFR 52.11.

4. Organization, Operations and Procedures

Michigan submitted Rules 336.2601–336.2608 which address organization, operation and procedures.

Rule 336.2601

Michigan's Rule 336.2601 discusses organizational structure and responsibilities of the air pollution control commission.

Rule 336.2602

Michigan's Rule 336.2602 provides general information related to offices and meetings.

Rule 336.2603

Michigan's Rule 336.2603 discusses the availability of documents for inspection and copying.

Rule 336.2604

Michigan's Rule 336.2604 discusses document inspection and copying procedures as well as tape recording transcriptions.

Rule 336.2605

Michigan's Rule 336.2605 discusses various functions related to organizational structures.

Rule 336.2606

Michigan's Rule 336.2606 discusses declaratory rulings requests regarding a statute, rule, order, or permit administered by the Michigan Commission.

Rule 336.2607

Michigan's Rule 336.2607 discusses consideration and disposition of declaratory rulings requests.

Rule 336.2608

Michigan's Rule 336.2608 discusses hearings and informal conferences.

Regulatory Action

USEPA is approving Rule 336.2601–336.2608 for incorporation into the Michigan SIP. These are State requirements only and were adopted pursuant to Act 348 of the Michigan Public Acts of 1965.

5. Hearings

Michigan submitted Rules 336.2701–336.2708 which outline procedures for public hearings.

Rule 336.2701

Michigan's Rule 336.2701 discusses procedures required by Michigan's Administrative Procedures Act.

Rule 336.2702

Michigan's Rule 336.2702 discusses the service of notices and orders; as well as appearances at a hearing or proceeding.

Rule 336.2703

Michigan's Rule 336.2703 discusses voluntary agreements, performance contracts, stipulations, and consent orders.

Rule 336.2704

Michigan's Rule 336.2704 discusses hearings held by hearing commissioners.

Rule 336.2705

Michigan's Rule 336.2705 discusses agency files and records used in connection with hearings.

Rule 336.2706

Michigan's Rule 336.2706 discusses commission hearings after hearing commissioner hearings.

Regulatory Action

USEPA is approving Rules 336.2701–336.2708 for incorporation into the Michigan SIP. These regulations are State and Federal requirements, which were adopted pursuant to the Michigan Administrative Procedures Act described in section 11 of the Act No. 34 of the Michigan Public Acts of 1965, and section 110(a)(1) of the CAA.

Because USEPA believes today's action to be noncontroversial and routine, we are approving it without prior proposal. This action will become effective January 3, 1989. However, if we receive notice by December 2, 1988, that someone wishes to submit comments, then USEPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period. Since this notice contains more than one type of regulation, USEPA requests that commentors identify the exact regulation subject to the comment. USEPA will withdraw rulemaking action and repropose action only on the portions receiving comments.

Under Executive Order 12291, today's action is not "Major". The Office of Management and Budget has exempted this rule from the requirements of section 3, Executive Order 12291.

Under 5 U.S.C. 605(b), I certify that this SIP approval action will not have a significant economic impact on a substantial number of small entities.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 3, 1989. This action may not be challenged later in proceedings to enforce its requirements (See section 307 (b)(2)).

List of Subjects in 40 CFR Part 52

Air Pollution Control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Date: August 26, 1988.

Lee M. Thomas,

Administrator.

Title 40 of the Code of Federal Regulations, Chapter I, Part 52, is amended as follows:

PART 52-APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart X—Michigan

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1170 is amended by adding paragraph (c)(85) to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(c) * * *

(85) On April 25, 1979, the State of Michigan submitted as revisions to the Air Quality Implementation Plan, Michigan Department of Natural Resources Air Pollution Control Commission General Rules for Open Burning; Continuous Emission Monitoring; Air Pollution Episodes; Organization, Operation and Procedures; and Hearings.

(i) Incorporation by reference.

(A) R 336.1310, Open Burning, effective January 18, 1980.

(B) R 336.2101–3, R 336.2150–5, R 336.2156–2159, R 336.2170, R 336.2175–6, R 336.2189–92, and R 336.2192; Continuous Emission Monitoring, effective January 18, 1980.

(C) R 336.2301–8, Air Pollution Episodes, effective January 18, 1980.

(D) R 336.2601–8, Organization, Operating, and Procedures, effective January 18, 1980.

(E) R 336.2701–6, Hearings, effective January 18, 1980.

[FR Doc. 88-25012 Filed 11-1-88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[FRL-3407-7]

Approval and Promulgation of Implementation Plan for State of New Mexico; Good Engineering Practice—Stack Height Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: EPA today approves a revision to the New Mexico State Implementation Plan (SIP) to incorporate the New Mexico Air Quality Control Regulation (AQCR) 710, Stack Height Requirements. Although the EPA generally approves the New Mexico stack height rules on the grounds that the State satisfies the requirements of 40 CFR Part 51, the EPA also provides notice that this action may be subject to modification when EPA completes rulemaking to respond to the decision in *NRDC v. Thomas* 838 F. 2d 1224 (D.C. Cir. 1988). This SIP revision enables the State to ensure that the degree of emission limitation required for the control of any pollutant under New

Mexico's SIP is not affected by that portion of any stack height which exceeds good engineering practice stack height (GEP–SH) or by any other dispersion technique.

The EPA published the notice of proposed rulemaking in the **Federal Register** of September 25, 1987 (52 FR 36054), for public comment. No comment was received on the proposal.

The rationale for this approval is contained in today's notice, the proposed rulemaking, and is further documented in a publicly available *Technical Support Document.*

EFFECTIVE DATE: This action is effective on December 2, 1988.

ADDRESSES: Copies of the State's submittal; and EPA's *Technical Support Document* may be obtained by writing to:

Chief, SIP New Source Section, Air Programs Branch, Air, Pesticides and Toxics Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, Telephone: (214) 655–7214, or

Chief, New Mexico Air Quality Bureau, New Mexico Department of Environmental Improvement Division, P.O. Box 968, 1190 St. Francis, Santa Fe, New Mexico 87504, Telephone: (505) 827–0187

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P.E.; SIP New Source Section, Air Programs Branch, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, telephone (214) 655–7214.

SUPPLEMENTARY INFORMATION: On August 15, 1986, the Governor of New Mexico submitted a copy of New Mexico's GEP–SH, AQCR 710, adopted by the New Mexico Environmental Improvement Board (NMEIB) on July 11, 1986, as a SIP revision along with the supporting documents. The EPA reviewed this SIP revision and preliminary determined that, with one exception, New Mexico AQCR 710 was adequate for implementation of section 123 of the Clean Air Act and the State's new source review actions. This exception concerned 40 CFR 51.164 which requires that states provide notice, public disclosure, and opportunity for public hearing on approved fluid modeling or field studies before using them to establish GEP–SH in excess of that allowed by 40 CFR 51.100(ii)(1) or (2). Since AQCR 710 did not incorporate the provision of 40 CFR 51.164 by reference nor did New Mexico otherwise impose the procedural limitation on determining GEP–SH pursuant to 40 CFR 51.100(ii)(3), EPA requested the State to correct this deficiency. Additionally, AQCR 710 did not incorporate nor did New Mexico otherwise adopt provisions equivalent to 40 CFR 51.118 (a)–(b) which allow states to exempt certain older source category from GEP–SH requirements. Since lack of exemption provisions do not impact new source review actions adversely, EPA only requested clarification on whether New Mexico intended to forego this exemption in promulgating AQCR 710. Subsequently, EPA published the proposed approval notice in the **Federal Register** of September 25, 1987, conditioned upon the State's incorporation of the absent provisions of 40 CFR 51.164.

In the interim, the EPA's stack height regulations were challenged in *NRDC v. Thomas*, 838 F. 2d 1224 (D.C. Cir. 1988). On January 22, 1988, the U.S. Appeals Court for the D.C. Circuit issued its decision affirming the regulations in large part, but remanding three provisions to the EPA for reconsideration. These provisions are: (1) Grandfathering pre-October 11, 1983, within-formula stack height increases from demonstration requirements (40 CFR 51.100(kk)(2)); (2) Dispersion credit for sources originally designed and constructed with merged or multiflue stacks (40 CFR 51.100(h)(2)(ii)(A)); and (3) Grandfathering pre-1979 use of the refined H + 1.5L formula (40 CFR 51.100 (ii)(2)).

Since the publication of the proposed rulemaking, the New Mexico Environmental Improvement Division has revised the State regulation, AQCR 710, to correct the deficiency which was identified in the proposed notice of September 25, 1987. On April 26, 1988, the Governor of New Mexico submitted the revised New Mexico GEP–SH, AQCR 710, adopted by NME IB on March 10, 1988, as a proposed SIP revision to the EPA. EPA has reviewed the revised regulation and determined that the State GEP–SH regulation is equivalent to the Federal stack height requirements and meet the provisions of the New Source Review program in 40 CFR 51.164 adequately. Also, the State decided to include the exemption provisions found in 40 CFR 51.118(a)–(b) in the State regulation. Therefore, EPA is now approving the New Mexico GEP–SH regulation, AQCR 710, as a revision to the New Mexico SIP.

Although the EPA generally approves New Mexico's stack height rules on the grounds that the State satisfies the requirements of 40 CFR Part 51, the EPA also provides notice that this action may be subject to modification when EPA completes rulemaking to respond to the decision in *NRDC v. Thomas*, 838 F .2d 1224 (D.C. Cir. 1988). If the EPA's response to the *NRDC* remand modifies the July 8, 1985, regulations, the EPA will notify the State of New Mexico that its rules must be changed to comport with the EPA's modified requirements. This may result in revised emissions limitations or may affect other actions taken by the State of New Mexico and source owners or operators.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 3, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Under 5 U.S.C. 605(b), I certify that this SIP approval will not have a significant economic impact on a substantial number of small entities (46 FR 8709).

This final rulemaking is issued under the authority of sections 110, 123, and 301 of the Clean Air Act, 42 U.S.C. 7410, 7423, and 7601.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Incorporation by reference, Hydrocarbons.

Date: October 12, 1988.

Lee M. Thomas,
Administrator.

Title 40, Part 52 of the Code of Federal Regulations is being amended as follows:

PART 52—[AMENDED]

Subpart GG—New Mexico

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1620 is amended by adding paragraph (c)(39) to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

(39) On April 26, 1988, the Governor of New Mexico submitted a revision to the State Implementation Plan that contained Air Quality Control Regulation No. 710—Stack Height Requirements, as adopted by the New Mexico Environmental Improvement Board on March 10, 1988. Regulation No. 710 enables the State to ensure that the degree of emission limitation required for the control of any air pollutant under its SIP is not affected by that portion of any stack height that exceeds GEP or by any other dispersion technique.

(i) Incorporation by reference.

(A) New Mexico Air Quality Control Regulation No. 710—Stack Height Requirements, effective April 14, 1988.

(ii) Other material—None.

[FR Doc. 88-25733 Filed 11-1-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 63

National Flood Insurance Program; Erosion Benefits

AGENCY: Federal Insurance Administration (FIA), Federal Emergency Management Agency (FEMA).

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule contains a clarification in the provisions of a previous interim regulation, effective on September 23, 1988, for the implementation of section 1306(c) of the National Flood Insurance Act of 1968, as amended (the Act). Section 544 of the Housing and Community Development Act of 1987 (Pub. L. 100–242) amended the Act by adding subsection (c) to section 1306 of the Act. Under this amendment, effective February 5, 1988, section 1306(c) of the Act provides for benefit payments under the Standard Flood Insurance Policy (SFIP) for demolition or relocation of a structure insured under the Act that is located along the shore of a lake or other body of water and that is certified by an appropriate State or local land use authority to be subject to imminent collapse or subsidence as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels. This interim rule clarifies what the relevant date is for determining the amount of building coverage and the deductible applicable to a claim for benefits under section 1306(c) of the Act.

DATES: *Effective Date:* November 2, 1988. *Comment Date:* January 3, 1989.

ADDRESS: Send comments or inquiries to Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Charles M. Plaxico, Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street SW., Washington, DC 20472; telephone number (202) 646–3422.

SUPPLEMENTARY INFORMATION: Section 544 of the Housing and Community Development Act of 1987 (Pub. L. 100–242) amended the National Flood Insurance Act of 1968, as amended (the Act), by adding subsection (c) to section 1306 of the Act. Under this amendment, effective February 5, 1988, section 1306(c) of the Act provides for benefit payments under the Standard Flood Insurance Policy for demolition or relocation of a structure insured under the Act that is located along the shore of a lake or other body of water and that is certified by an appropriate State or local land use authority to be subject to imminent collapse or subsidence as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels. Also, section 1306(c) of the Act provides for an alternative procedure involving condemnation of the insured structure under State or local law.

On September 23, 1988, an interim rule was published in the **Federal Register** (53 FR 36973), effective that same day, containing provisions for implementation of section 1306(c) of the Act. One of those provisions was that the amount of building coverage and the deductible applicable to a claim for benefits under section 1306(c) of the Act were the amounts that were in effect on the date of condemnation or certification. However, unlike condemnation, certification involves an application by the property owner for the certification. In recognition of this significant difference and in the interest of giving the insured property owner greater certainty in establishing the relevant date for determining the amount of building coverage and the deductible applicable to a claim for benefits under section 1306(c) of the Act, this interim rule clarifies what that date is for claims based on certification by specifying the relevant date to be the date of application for certification.

For the reasons stated in the September 23, 1988 interim regulation Supplementary Information, FEMA has determined that sufficient cause exists for making this rule effective immediately.

FEMA has determined, based upon the Environmental Assessment prepared in connection with the September 23, 1988 interim rule, that this interim rule will not have significant impact upon the quality of the human environment. As a result, an Environmental Impact Statement will not be prepared. A finding of no significant impact is included in the formal docket file and is available for public inspection and copying at the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

This interim rule will not have a significant economic impact on a substantial number of small entities and has not undergone a regulatory flexibility analysis.

This interim rule is not a "major rule" as defined in Executive Order 12291, dated February 27, 1981, and, hence, no regulatory analysis has been prepared.

FEMA has determined that this interim rule does not contain a collection of information requirement, as described in section 3504(h) of the Paperwork Reduction Act, beyond any such requirements in the interim rule of September 23, 1988.

List of Subjects in 44 CFR Part 63

Flood insurance, Flood plains, Claims.

Accordingly, 44 CFR Chapter 1, Subchapter B is amended as follows:

PART 63—IMPLEMENTATION OF SECTION 1306(c) OF THE NATIONAL FLOOD INSURANCE ACT OF 1968

1. The authority citation for Part 63 continues to read as follows:

Authority: 42 U.S.C. 4001, *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 63.7 [Amended]

2. Section 63.7 is amended by adding immediately before the word "certification" the words "the date of application for".

§ 63.17 [Amended]

3. Section 63.17 is amended by removing in paragraph (a) the words "the date of, and" and adding in their place the words "the date of application for certification, and the date of and".

Date: October 27, 1988.

Harold T. Duryee,
Federal Insurance Administrator.

[FR Doc. 88-25308 Filed 11-1-88; 8:45 am]

BILLING CODE 6718-01-M

44 CFR Part 64

[Docket No. FEMA 6716]

Suspension of Community Eligibility; Maine et al.

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the Federal Register.

EFFECTIVE DATES: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 *et seq.*). Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the Federal Register. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance, floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region I					
Maine	Bucksport, town of, Hancock County.	230065	Oct. 17, 1975, Emerg.; Nov. 4, 1988, Reg.; Nov. 4, 1988, Susp.	Nov. 4, 1988	Nov. 4, 1988.
Do.	Ellsworth, city of, Hancock County.	230066	Jan. 16, 1975, Emerg.; Nov. 4, 1988, Reg.; Nov. 4, 1988, Susp.	do.	Do.
Region III					
Pennsylvania	Amity, township of, Erie County.	421388	Aug. 8, 1975, Emerg.; Nov. 4, 1988, Reg.; Nov. 4, 1988, Susp.	do.	Do.
Do.	Conway, Borough of, Beaver County.	420107	Feb. 20, 1975, Emerg.; Nov. 4, 1988, Reg.; Nov. 4, 1988, Susp.	do.	Do.
Do.	Mead, township of, Warren County.	422123	Oct. 3, 1975, Emerg.; Nov. 4, 1988, Reg.; Nov. 4, 1988, Susp.	do.	Do.
Do.	Ohio, township of, Allegheny County.	421069	Sept. 26, 1975, Emerg.; Nov. 4, 1988, Reg.; Nov. 4, 1988, Susp.	do.	Do.
Do.	Shippensburg, township of, Cumberland County.	421585	Jan. 13, 1981, Emerg.; Nov. 4, 1988, Reg.; Nov. 4, 1988, Susp.	do.	Do.
West Virginia	Friendly, town of, Tyler County.	540258	Dec. 23, 1975, Emerg.; Nov. 4, 1988, Reg.; Nov. 4, 1988, Susp.	do.	Do.
Do.	Middlebourne, town of, Tyler County.	540195	May 13, 1975, Emerg.; Nov. 4, 1988, Reg.; Nov. 4, 1988, Susp.	do.	Do.
Do.	Sistersville, city of, Tyler County.	540197	June 23, 1975, Emerg.; Nov. 4, 1988, Reg.; Nov. 4, 1988, Susp.	do.	Do.
Do.	Tyler County, unincorporated areas.	540277	Aug. 8, 1975, Emerg.; Nov. 4, 1988, Reg.; Nov. 4, 1988, Susp.	do.	Do.
Region IV					
Florida	Waldo, city of, Alachua County.	120003	June 24, 1975, Emerg.; Nov. 4, 1988, Reg.; Nov. 4, 1988, Susp.	do.	Do.
Kentucky	Hardin County, unincorporated areas.	210094	Feb. 1, 1979, Emerg.; Nov. 4, 1988, Reg.; Nov. 4, 1988, Susp.	do.	Do.
Region V					
Illinois	Clark County, unincorporated areas.	170040	Sept. 23, 1985, Emerg.; Nov. 4, 1988, Reg.; Nov. 4, 1988, Susp.	do.	Do.
Ohio	Geauga County, unincorporated areas.	390190	Feb. 16, 1977; Emerg.; Nov. 4, 1988, Reg.; Nov. 4, 1988, Susp.	do.	Do.
[illegible]	Montreal, city of, Iron County.	550184	Apr. 3, 1975, Emerg.; Nov. 4, 1988, Reg.; Nov. 4, 1988, Susp.	do.	Do.
Ohio	Rittman, city of, Wayne and Medina Counties.	390578	Oct. 20, 1972, Emerg.; Dec. 31, 1976, Reg.; Nov. 4, 1988, Susp.	do.	Do.
Michigan	Grosse Pointe, city of, Wayne County.	260228	Feb. 16, 1973, Emerg.; Sept. 1, 1988, Reg.; Nov. 4, 1988, Susp.	do.	Do.
Region VII					
Missouri	Marshall, city of, Saline County.	290403	Mar. 24, 1975, Emerg.; Nov. 4, 1988, Reg.; Nov. 4, 1988, Susp.	do.	Do.
Region I					
Connecticut	North Canaan, town of, Litchfield County.	090149	Feb. 21, 1975, Emerg.; Nov. 18, 1988, Reg.; Nov. 18, 1988, Susp.	Nov. 18, 1988	Nov. 18, 1988.
Maine	Machias, town of, Washington County.	230140	Apr. 24, 1975, Emerg.; Nov. 18, 1988, Reg.; Nov. 18, 1988, Susp.	do.	Do.
[illegible]	Walpole, town of, Norfolk County.	250254	July 25, 1973, Emerg.; Sept. 30, 1977, Reg.; Nov. 18, 1988, Susp.	do.	Do.
Region III					
Pennsylvania	Findlay, township of, Allegheny County.	421286	July 18, 1975, Emerg.; Nov. 18, 1988, Reg.; Nov. 18, 1988, Susp.	do.	Do.
Region IV					
Florida	St. Augustine, city of St. Johns County.	125145	Sept. 25, 1970, Emerg.; Oct. 6, 1972, Reg.; Nov. 18, 1988, Susp.	do.	Do.
North Carolina	Guilford County, unincorporated areas.	370111	Apr. 30, 1974, Emerg.; June 4, 1980, Reg.; Nov. 18, 1988, Susp.	do.	Do.
Region VI					
Texas	Fort Worth, city of, Tarrant and Denton Counties.	480596	September 17, 1971, Emerg.; June 4, 1980, Reg.; November 18, 1988, Susp.	do.	Do.

Code for reading fourth column: Emerg.—Emergency Reg.—Regular Susp.—Suspension.

Harold T. Duryee,
Administrator, Federal Insurance Administration.

Issued: October 28, 1988.

[FR Doc. 88-25307 Filed 11-1-88; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[FCC 88-332]

Practice and Procedure; Ex Parte Presentations; Correction

AGENCY: Federal Communications Commission.

ACTION: Correction to order on minor corrections and changes.

SUMMARY: This action corrects an error in a Commission order amending Part 1 of the Commission's regulations. The Order was published in 53 FR 26598 (July 14, 1988). The Order amended the rules regarding ex parte presentations.

EFFECTIVE DATE: November 2, 1988.

FOR FURTHER INFORMATION CONTACT: David H. Solomon, Office of General Counsel, (202) 632-6990.

SUPPLEMENTARY INFORMATION: In the matter of amendment of Subpart H, Part 1 of the Commission's rules and

regulations concerning ex parte communications and presentations in Commission proceedings.

This is a summary of the Commission's Erratum, Mimeo No. 57470, released September 28, 1988, correcting an error in the Commission's Order, 3 FCC Rcd 3995, 53 FR 28586 (July 14, 1988). The full text of this Erratum is available for public inspection and copying in Room 616, FCC, 1919 M Street, NW., Washington, DC. A copy may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037

Summary of Erratum

On June 24, 1988, the Commission released an Order concerning the above-captioned matter, 3 FCC Rcd 3995, 53 FR 28586 (July 14, 1988). That document failed to include changes to § 1.1203(c). In this connection, the following amendment is made to the Commission's Rules:

List of Subjects in 47 CFR Part 1

Practice and procedure. Ex parte presentations.

Part 1 of Title 47 of the CFR is amended as follows:

PART 1—[AMENDED]

The authority citation for Part 1 continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; implement, 5 U.S.C. 552, unless otherwise noted.

1. Section 1.1203(c) is revised to read (the note following (c) remains unchanged):

§ 1.1203 Sunshine period prohibition.

* * * * *

(c) The prohibition in § 1.1203(a) above shall not apply to presentations (not otherwise exempted under § 1.1204(b)) made by members of Congress or their staff or by other agencies or branches of the Federal Government or their staff in non-restricted proceedings under § 1.1206(b), exempt proceedings under § 1.1204(a)(2) (not involving the allotment of a channel in the radio broadcast or television broadcast services), or exempt proceedings under § 1.1204(4)–(11).

* * * * *

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 88-25283 Filed 11-1-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 1

[General Docket No. 86-141, FCC 87-343]

Practice and Procedure; Computation of Time; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This action corrects errors in a Commission report and order amending Part 1 of the Commission's regulations. The Report and Order was published in 52 FR 49159 (December 30, 1987). The Report and Order amended the rules regarding computation of time.

EFFECTIVE DATE: November 2, 1988.

FOR FURTHER INFORMATION CONTACT: Marjorie Bertman, Office of General Counsel, (202) 254-6530.

SUPPLEMENTARY INFORMATION: In the matter of amendment of the rules regarding computation of time.

This is a summary of the Commission's Erratum, DA 88-1625, released October 20, 1988, correcting some errors in the Commission's Report and Order, 2 FCC Rcd 7402, 52 FR 49,159 (December 30, 1987). The full text of this Erratum is available for public inspection and copying in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. A copy of the full text of this Erratum may also be purchased from the Commission's copy contractor, International Transcription Service (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Erratum

On December 15, 1987, the Commission released a Report and Order concerning the above-captioned matter, 2 FCC Rcd 7402, 52 FR 49158 (December 30, 1987). That document contained a few errors. In this correction, the following amendments are made to the Commission's Rules:

List of Subjects in 47 CFR Part 1

Practice and procedure, Computation of time.

Part 1 of Title 47 of the CFR is amended as follows:

PART 1—[AMENDED]

The authority citation for Part 1 continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; implement, 5 U.S.C. 552, unless otherwise noted.

§ 1.4 [Corrected]

1. In § 1.4(b)(1), Example 3, the second sentence is removed.

2. Section 1.4(b)(4), Example 7, is correctly revised to read:

(b) * * *

(4) * * *

Example 7: A Public Notice of petitions for rule making filed with the Commission is released on Wednesday, September 2, 1987; public notice of these petitions is given at 3 p.m. Eastern Standard Time September 3, 1987, the day after release. The first day to be counted in computing filing times is Friday, September 4, 1987.

3. Section 1.4(d), Example 10 is correctly amended by changing the section cited in the second sentence to read: § 1.4(b).

4. In § 1.4(d), Example 11, the next to the last sentence is corrected by removing the quotation mark preceding the third word (day), and inserting the missing quotation mark at the beginning of the phrase "day after the day."

5. In § 1.4(h), Example 13, the citation in the next to last sentence is corrected to read: § 1.4(c).

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 88-25284 Filed 11-1-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Parts 1 and 43

[CC Docket 87-339, FCC 88-310]

Common Carrier Reporting Requirements; Elimination of FCC Form 901; Telephone Reports

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission eliminated Report Form 901, the monthly report filed by large exchange carriers, AT&T and Comsat. The telephone company report became obsolete when a new uniform system of accounts became effective January 1, 1988. Quarterly submissions are replacing the current monthly reporting. This rule is part of the Commission's overall effort to eliminate unnecessary regulatory paperwork.

EFFECTIVE DATE: October 31, 1988.

FOR FURTHER INFORMATION CONTACT: Alan Feldman, Common Carrier Bureau, Industry Analysis Division, (202) 632-0743.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's report and order, CC Docket 87-339, adopted October 4, 1988 and released October 25, 1988.

The full text of this Commission order is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M St. NW., Washington, DC. The complete text of this order may be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M St. NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

Sections 1.786 and 43.31 of the Commission's Rules, 47 CFR 1.786, 43.31, require each telephone common carrier which had operating revenues in excess of $100 million for the preceding year to file monthly reports of financial, operating and statistical information. In this Report and Order we eliminated these sections because the reporting requirement is no longer necessary. Specifically, the FCC eliminated the telephone company monthly FCC Form 901. Forty-one companies, AT&T plus the largest exchange carriers, currently file Form 901. In addition, the Communications Satellite Corporation (Comsat) files a report that is designated as a modified Form 901.

Last year the FCC adopted an automated reporting system for the largest telephone companies that provide for easy, commission-wide access to reliable, consistent data. The new procedures require Tier 1 telephone companies (those with annual earnings of $100 million or more for five consecutive years) to submit in computer-readable form new reports containing the financial and operating data that the FCC needs to administer the accounting, joint cost, jurisdictional separations, rate base disallowances and access charge rules. It also directed the staff to review existing reporting requirements to evaluate their relationship to automated filings and determine whether such requirements remain necessary for regulatory activities.

The FCC pointed out that the data contained in Form 901 have only been used on a limited basis. Furthermore, the new reporting requirements contain similar, yet far more comprehensive, information than is currently contained in Form 901. Accordingly, the FCC concluded that eliminating Form 901 would further its goals of reducing unnecessary regulatory paperwork.

Since the new reporting system does not require information from AT&T, the FCC prescribed a format for quarterly reports from AT&T that will replace the information received from AT&T on Form 901. The FCC also reduced Comsat's reporting burdens by requiring quarterly, rather than monthly reports.

Eliminating the Form 901 does not preclude the FCC from directing the affected carriers to file detailed information should the need arise. Most of the need for data will be adequately met with the new automated reporting system. When necessary, special data requests can be tailored to specific needs. Since there is no ongoing need for monthly data, special studies will eliminate the need for telephone carriers to submit monthly reports. This will not only reduce the costs to the carriers, it will also reduce the Commission's costs.

The rule contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to reduce information collection requirements on the public. The request for information is not subject to section 3507 of that Act.

In compliance with the provisions of section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), we certify that the elimination of the reporting of telephone carriers on monthly Form 901 will not have a significant economic impact and will ease the recordkeeping and reporting requirement of these carriers. The rationale for the elimination is outlined in the above discussions.

Ordering Clauses

It is ordered, that pursuant to the provisions of section 4(i), 219, 403 and 404 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 219, 403 and 404, FCC Form 901, Monthly Reports of telephone carriers, is eliminated, effective with the monthly reports for calendar year 1988.

It is further ordered, that Parts 1 and 43 of the FCC Rules and Regulations are amended as set forth below effective October 31, 1988.

It is further ordered, that this proceeding is hereby terminated.

List of Subjects

47 CFR Part 1

Communication common carriers, Reporting requirements, Telephone.

47 CFR Part 43

Communication common carriers, Reporting requirements, Telephone.

Donna R. Searcy,

Secretary.

Parts 1 and 43 of the Code of Federal Regulations are amended as follows:

PART 1—[AMENDED]

1. The authority citation for Part 1 continues to read:

Authority: Secs. 4.303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; implement, 5 U.S.C. 552, unless otherwise noted.

§ 1.786 [Removed]

2. Part 1 is amended by removing § 1.786.

PART 43—[AMENDED]

3. The authority citation for Part 43 continues to read:

Authority: Section 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply Secs. 211, 219, 48 Stat. 1073, 1077, as amended; 47 U.S.C. 211, 219, 220.

§ 43.31 [Removed]

4. Part 43 is amended by removing § 43.31.

§ 43.22 [Amended]

5. Section 43.22 is amended by designating the current paragraph (a) and adding new paragraph (b) as follows:

(a) * * *

(b) Each designated interstate carrier with operating revenues for the preceding year of $100 million or more shall file, by March 31, June 30, September 30, and December 31 of each year, a report showing for the previous calendar quarter its revenues, expenses, taxes, plant in service, other investment and depreciation reserves, and such other data as is required by the Commission on computer media prescribed by the Commission. The total operating results shall be allocated between regulated and nonregulated operations, and the regulated data shall be further divided into the following categories: State and interstate, and the interstate, will be further divided into the major services.

[FR Doc. 88-25285 Filed 11-1-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-154, RM-6250]

Radio Broadcasting Services; Grifton, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of MC Radio Partnership, substitutes Channel 258C2 for Channel 257A at Grifton, North Carolina, and modifies its construction permit for Station WVVY to specify operation on the higher powered channel. Channel 258C2 can be allotted to Grifton in

compliance with the Commission's minimum distance separation requirements with a site restriction of 27.7 kilometers southeast to avoid a short-spacing to Station WMAG, Channel 258C, High Point, North Carolina, and to unused but applied for Channel 258A at Emporia, Virginia. The coordinates for this allotment are North Latitude 35–13–05 and West Longitude 77–12–01. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 12, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–154, adopted September 30, 1988, and released October 26, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for North Carolina is amended by revising the entry for Grifton to delete Channel 257A and add Channel 258C2.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–25288 Filed 11–1–88; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 88–232; RM–6219]

Radio Broadcasting Services; Georgetown, Marlin & San Saba, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 244C1 for Channel 243C2 at Georgetown, Texas, and modifies the license of Station KQFX(FM) to specify operation on the higher class adjacent channel, at the request of Capitol Broadcasting Corporation. This document also substitutes Channel 225A for Channel 244A at Marlin, Texas, and modifies Station KRXX(FM) to specify the new channel, and substitutes Channel 246A for Channel 244A at San Saba, Texas, in order to accomplish the substitution at Georgetown. Mexican concurrence has been obtained on the San Saba substitution. A site restriction is imposed on Channel 244C1 at Georgetown of 1.8 kilometers (1.1 miles) northwest of the city, at coordinates 30–38–47 and 97–41–14. The coordinates for Channel 225A at Marlin are 31–19–31 and 96–56–38 and Channel 246A at San Saba are 31–11–40 and 98–43–08. With this action, the proceeding is terminated.

EFFECTIVE DATE: December 9, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–232, adopted September 30, 1988, and released October 25, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM allotments, is amended under Texas, by deleting Channel 243C2 and adding Channel 244C1 at Georgetown; deleting Channel 244A and adding Channel 225A at Marlin; and deleting Channel 244A and adding Channel 246A at San Saba.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–25287 Filed 11–1–88; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 53, No. 212
Wednesday, November 2, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 300

[Docket No. 88–128]

Incorporation by Reference; Plant Protection and Quarantine Treatment Manual

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Plant Protection and Quarantine regulations to give notice that we are adding a dry heat treatment for papayas from Hawaii to the Plant Protection and Quarantine Treatment Manual (PPQ Treatment Manual). This treatment can be completed with less complicated equipment in a shorter time than the existing treatment. The PPQ Treatment Manual is incoporated by reference in the regulations at 7 CFR 300.1.

DATE: Consideration will be given only to comments postmarked or received on or before December 2, 1988.

ADDRESSES: Send an original and three copies of written comments to Regulatory Analysis and Development, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 88–133. Comments received may be inspected at USDA, 14th and Independence Avenue, SW., Room 1141-South Building, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: James F. Fons, Senior Staff Officer, Technology Development Staff, PPQ, APHIS, USDA, Room 624A, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8896.

SUPPLEMENTARY INFORMATION:

Background

Chapter III of Title 7, Code of Federal Regulations (regulations), contains the regulations of Plant Protection and Quarantine (PPQ) of the Animal and Plant Health Inspection Service. Section 300.1 of the regulations incorporates by reference the Plant Protection and Quarantine Treatment Manual (PPQ Treatment Manual). The PPQ Treatment Manual contains procedures and schedules for treating various regulated articles so that these articles may move into or within the United States and not present a plant pest risk.

Papayas from Hawaii must be treated for three species of fruit flies, *Ceratitis capitata, Dacus dorsalis,* and *D. curcubitae,* before being moved into the continental United States. Recent research indicates that treating papayas from Hawaii with a dry heat treatment also destroys the fruit flies. This treatment can be completed with less complicated equipment and in a shorter time than the existing treatments. Further, the dry heat treatment results in less product damage.

We propose to update the PPQ Treatment Manual to include this dry heat treatment to provide Hawaiian papaya shippers an additional treatment option. Specifically, we propose to amend § 300.1 of the regulations to show that the PPQ Treatment Manual, which is incorporated by reference and on file at the Office of the Fededal Register, is being revised to include a dry heat treatment for papayas from Hawaii.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

This proposed rule would give an additional treatment option to the seven packinghouses in Hawaii that ship papayas to the United States mainland. The additional treatment option could be completed with less complicated equipment in a shorter time period, and would result in a higher quality product. No change in price or production is anticipated as a result of this rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations in this rule contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 7 CFR Part 300

Incorporation by reference, Plant diseases, Plant pests.

Accordingly, Title 7, Chapter III of the Code of Federal Regulations would be amended as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for Part 300 would continue to read as follows:

Authority: 7 U.S.C. 150ee, 161.

2. Section 300.1, paragaph (a) would be revised to read as follows:

§ 300.1 Materials incorporated by reference.

(a) The Plant Protection and Quarantine Treatment Manual, which was reprinted May 1985, and includes all revisions issued through _____, has been approved for incorporation by reference in 7 CFR Chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51.

* * * * *

BEST COPY AVAILABLE

Done in Washington, DC, this 28 day of October 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-25363 Filed 11-1-88; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Part 54

[Docket No. 88-131]

Animals Destroyed Because of Scrapie

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: We are soliciting public comment on whether to discontinue the Scrapie Eradication Program. This action would require removing the regulations concerning animals destroyed because of scrapie. In May 1988, a panel of representatives from the sheep and goat industries, purebred associations, state veterinarians, and the Animal and Plant Health Inspection Service met to review the current Scrapie Eradication Program (the Program) and the status of research on scrapie. The panel determined that the Program has not been effective in eliminating scrapie and has recommended abolishing it. We are considering whether, based upon the panel's recommendations, we should remove the regulations for destroying animals because of scrapie.

DATE: Consideration will be given only to written comments postmarked or received on or before January 3, 1989.

ADDRESSES: Send an original and three copies of your comments to APHIS, USDA, P.O. Box 96464, Room 1143, South Building, Washington, DC 20090-6464. Please state that your comments refer to Docket No. 88-131. Comments received may be inspected at Room 1141 of the South Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Chester A. Gipson, Senior Staff Veterinarian, Program Planning Staff, VS, APHIS, USDA, Room 848, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8321.

SUPPLEMENTARY INFORMATION: Scrapie is a highly transmissible and fatal disease of sheep and goats. It is a progressive degenerative disease of the central nervous system. The disease develops slowly, with an incubation period lasting several years. The symptoms which then become manifest include nervousness, slight muscular tremors, loss of appetite and visible weight loss, lack of luster in the animal's wool, and itching. Infected animals become debilitated and die.

There is no diagnostic test for confirming the presence of the disease in a live animal and generally the presence of the disease cannot be detected until the animal becomes symptomatic. Due to the lack of a diagnostic test, efforts to control and eliminate the disease depend upon the cooperation of flock owners in reporting symptomatic animals. There is no known treatment for the disease. Eradication efforts have therefore focused upon the need to destroy certain animals in order to control and prevent the spread of scrapie.

A Cooperative Scrapie Eradication Program (the Program) was developed in 1952 between the federal government and the states in an effort to contain and ultimately eradicate the disease. The Program's provisions are not mandated by federal regulation, however, making it largely dependent upon state regulations and resources for its effective implementation.

Under the Scrapie Eradication Program and the regulations in 9 CFR Part 54, indemnity for an animal destroyed because of scrapie is paid to its owner following appraisal of the animal at fair market value. The appraisal is done by an appraiser selected and employed by Veterinary Services, or, if the owner and State representative approve, may be done by a Veterinary Services representative either alone or with a State representative. The owner must first agree, in writing, to accept this compensation from the United States government before the indemnity is paid. The indemnity ceiling has been raised several times since the regulations were first promulgated in 1954 and is provided in § 54.7(a) of the regulations. Currently, the amount paid to the owner as indemnity is equal to two-thirds of the appraised value of the animal, not to exceed $300 per head.

The regulations authorizing slaughter and indemnification for certain animals because of scrapie have been amended several times since they were first promulgated in 1954. The amendments have been variously attributed to revised assessments of the effectiveness of the Program, the risks presented by certain animals in infected flocks (flocks in which scrapie has been detected), and the availability of funds for indemnification of animal owners, flock surveillance, and disease detection programs.

The regulations that were in effect from 1975-1983 provided that exposed animals as well as affected and bloodline animals were authorized for slaughter and indemnity. An affected animal was defined in the 1975 amendment of the regulations to mean, "any sheep or goat for which a diagnosis of scrapie is confirmed." The definition was revised in 1978 to mean, "[a]n animal for which a diagnosis of scrapie has been made by a Veterinary Services representative or State representative." A bloodline animal was defined to mean "any sheep or goat which is: the sire or dam of an affected animal; the descendant of an affected animal; or the full or half brother or sister of an affected animal." The regulations were intended to prevent lateral spread of the disease by contact, and required depopulation of entire infected and source flocks if scrapie was reported. Under those regulations, flock owners risked losing valuable bloodline animals if they reported the disease.

Following an analysis of flock depopulation and indemnification under the Program, the regulations were amended in 1983 by providing less drastic means for eradicating the disease and controlling its spread. Under the 1983 amendment of the regulations, destruction of animals and the payment of indemnity was authorized for: (1) Affected animals, that is, animals diagnosed by a Veterinary Services or State representative as having scrapie, and (2) bloodline animals. The definition of "bloodline animal" was amended to mean "[t]he dam of an affected animal and the dam's first generation progeny, the maternal granddam of an affected animal, the first generation progeny of an affected animal, and all succeeding generations of female progeny from female progeny of an affected female animal." Depopulation of entire flocks was no longer required. Except for a recent amendment of the regulations in 1988, explained below, the regulations as amended in 1983 are currently in effect.

The 1983 amendment restricting authorization for indemnity to affected and female bloodline animals was prompted by the unavailability of sufficient funds to indemnify owners for all affected and exposed animals. The supplementary information accompanying the proposed rule stated that the change was justified because most of the indemnities paid were for exposed animals believed to present minimal risk of spreading the disease. (*See* 43 FR 16235, April 15, 1983).

Some industry representatives have expressed concern that the more extensive slaughter policy under the regulations in effect from 1975 to 1983 may have posed a disincentive to keeping accurate flock records and to accurate reporting of the disease by flock owners, and was therefore not effective in eradicating the disease. We share their concern. The statistics compiled by the Agency indicate that fewer flocks were reported as infected during the 1975-1983 period than following the 1983 amendment under which only affected and female bloodline animals would be slaughtered and indemnity paid under the regulations. We cannot verify whether the increased level of reporting of scrapie following the 1983 amendment is due to the less serious consequences for flock owners who report scrapie, or if it is due to reduced effectiveness of the current Program as a result of not requiring flock depopulation.

Under the current Program, once a scrapie-affected animal is found by an Animal and Plant Health Inspection Service representative or State representative the entire flock is designated as an infected flock and all animals in the flock are considered either infected or exposed. All affected and bloodline animals must be destroyed and federal indemnity is paid. The remaining animals are maintained under surveillance for 42 months following the most recent exposure to scrapie and are subject to periodic inspection by APHIS or State representatives. Surveillance involves significant costs to federal and state governments for personnel, travel time, and travel expenses. As a result, the regulations in § 54.8 were amended in January 1988, to provide that, in addition to indemnities paid to owners of affected and bloodline animals, the Administrator shall authorize the payment of a federal indemnity to any owner of scrapie-exposed animals when a cost-benefit analysis establishes that it is more cost effective to destroy the flock than to maintain it under surveillance: Provided, That sufficient funds appropriated by Congress appear to be available for this purpose for the remainder of the fiscal year.

The procedures outlined in the Scrapie Eradication Program are not mandated by federal regulation, and there is no requirement in the regulations for surveillance by APHIS officials. Due to these factors and the fact that there is no known diagnostic test that can confirm the presence of the disease in a live animal, the Program is dependent upon state efforts and funds directed at controlling the disease, cooperation from the industry, and accurate reporting by flock owners. Each participating state maintains regulations governing quarantine, surveillance, and inspections, and variations exist between the participating states' requirements. We believe that without a uniform national program, we cannot eradicate or control scrapie.

Based upon the information available to us, we are concerned that the Scrapie Eradication Program has not been effective and should be discontinued. Similar concerns have been echoed by the industry as well. During the 1985 United States Animal Health Association (USAHA) meeting, we advised the Sheep and Goat Committee of our concerns. The USAHA passed a resolution to encourage APHIS to conduct an in-depth review of the Program to determine the cost-benefit ratio and effectiveness of the eradication program. We undertook this effort and presented our findings to the Sheep and Goat Committee at the USAHA meeting the following year.

APHIS representatives met in May 1987, to further evaluate the current Scrapie Eradication Program. The meeting participants identified the following deficiencies in the Program: Lack of industry commitment; failure of flock owners to report sick sheep; lack of a diagnostic test for live animals; inadequate or falsified flock records; insufficient funds to conduct effective surveillance; insufficient funds for indemnities; inflated appraisals of animals causing overpayments of indemnities; and disagreement over the length of the recommended surveillance period for scrapie-exposed animals.

In September 1987, APHIS in cooperation with the National Institutes of Health (NIH), coordinated a meeting to discuss the public health significance of scrapie and to review efforts to develop a diagnostic test for live animals. Based upon extensive study, the meeting participants concluded that there is no evidence that scrapie is hazardous to human health. It was also concluded that a diagnostic test for scrapie has yet to be developed, and that one is not likely to be developed in the very near future.

The conclusions from the 1987 meetings were presented to an expert panel (referred to as the panel in this document) at the Scrapie Research Review Meeting conducted by APHIS on May 10-11, 1988. Representatives from the sheep industry and purebred associations, including the National Wool Growers and National Suffolk Sheep Association, served on the panel with representatives from NIH, the United States Animal Health Association, and state and federal veterinarians. The panel was requested to examine the current Program and to make recommendations to USDA and to the sheep industry concerning the future of the Scrapie Eradication Program.

The panel expressed reservations abut the effectiveness of the Program, ranging from the potential for abuse of the indemnity provisions of the regulations to the possible inadequacy of destroying only affected and bloodline animals instead of depopulating infected flocks.

One of the concerns about the existing Program was that reporting by flock owners may be dependent, at least in part, upon indemnity levels and market forces. Without accurate reporting, the program cannot be effective in accomplished its goal.

Based upon its review of the Program, the panel considered various alternatives. One alternative would require returning to a program of destroyng all infected and exposed sheep. Depopulating entire flocks would cost the federal government millions of dollars in indemnity payments, and would result in vast losses to the industry. Both APHIS and the industry view this approach as undesirable because most of the animals that would be destroyed would likely present minimal risk of spreading the disease and, by sheer volume, would account for most of the indemnity paid. This could also lead to abuse of the indemnity provisions by flock owners who fail to report scrapie when the market price of sheep and goats is high because they would stand to lose many animals worth far more than the indemnity would compensate. If the market price is depressed, however, this approach could result in increased reporting of infected flocks in order to receive the indemnity.

The panel considered other alternatives, including development of new programs, such as a scrapie certification program, under which program participants could have their flocks certified as free of scrapie under terms and conditions to be developed. The panel also urged that efforts to develop a diagnostic test for scrapie be intensified and that more funds be allocated for research.

The panel recommended that we immediately abolish the existing Scrapie Eradication Program because it has not been effective. The panel recommended that we do so while alternatives are being considered in order to remove any opportunities for costly abuses of the Program. They suggested that we solicit public comment regarding the possible elimination of the Program.

We are seeking comments on whether to remove the regulations in 9 CFR Part 54, which provide for payment of indemnities for animals destroyed because of scrapie, and discontinue the Scrapie Eradication Program.

Done in Washington, DC, this 28th day of October, 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-25306 Filed 11-1-88; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR-88-13]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petititons for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: January 2, 1989.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. ____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington DC 20591; telephone (202) 267-3132.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on October 28, 1988.

Denise Donohue Hall,

Manager, Program Management Staff.

Petitions for Rulemaking

Docket No.: 25700.

Petitioner: David W. Galvin.

Regulations Affected: 14 CFR 121.599 and 121.601.

Description of Petition: The petition, if granted would require all domestic carriers and supplemental air carriers to provide its dispatchers access to professional meteorological advice by having a meteorological department or office in the flight dispatch center, adequate for the operations to be conducted, and necessary to ensure proper operational control of each flight. The petition also requests that no domestic commercial carrier or supplemental air carrier may use any person, nor may any person serve, as an advisory aviation meteorologist in a flight dispatch office unless that person has satisfactorily completed and graduated from an accredited university or college with a degree in meteorology.

Petitioner's Reason for the Rule: To reflect the new science of meteorology, the science of satellites and computers, and to add additional safety to the airline system and the airlines themselves. Also, the recent firing of all staff meteorologists at Eastern Airlines, the recent airline crashes in New Orleans and Dallas-Fort Worth due to weather, and the reduction of National Weather Service employees.

[FR Doc. 88-25303 Filed 11-1-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

New Mexico Permanent Regulatory Program; Public Comment Period and Opportunity for Public Hearing on Proposed Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing the receipt of a proposed amendment to the New Mexico permanent regulatory program (hereinafter referred to as the New Mexico program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment pertains to historic properties. If approved, the amendment will become part of the State's permanent regulatory program. The amendment is intended to revise the State program to be consistent with the corresponding Federal regulations.

This notice sets forth the times and locations that the New Mexico program and the proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m., m.s.t. December 2, 1988. If requested, a public hearing on the proposed amendments will be held on November 28, 1988, at the location shown under ADDRESSES. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m., m.s.t. on November 17, 1988.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. Robert H. Hagen at the address listed below. If a public hearing is requested, it will be held at the office of the New Mexico Mining and Minerals Division. Copies of the New Mexico program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the OSMRE offices and the office of the New Mexico Mining and Minerals Division listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contacting the OSMRE Albuquerque Field Office listed under ADDRESSES.

Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., Suite 310, Albuquerque, NM 87102, Telephone: (505) 766-1486;

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5215, 1100 "L" Street, NW., Washington, DC 20240, Telephone: (202) 343-5492; and

New Mexico Energy and Minerals Department, Mining and Minerals Division, 525 Camino de los Marquez, Santa Fe, NM 87501, Telephone: (505) 827-5970.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., Suite 310, Albuquerque, NM 87102, Telephone: (505) 766-1486.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior conditionally approved the New Mexico program on December 31, 1980. Information regarding the general background of the New Mexico program including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the New Mexico program can be found in the December 31, 1980, **Federal Register** (46 FR 86459). Subsequent actions taken with regard to New Mexico's program and program amendments can be found at 30 CFR 931.15 and 931.16.

II. Proposed Amendment

By letter dated September 1, 1988, New Mexico submitted a proposed amendment on historic properties (Administrative Record No. NM-441) to its permanent regulatory program under SMCRA. This amendment, is in response to OSMRE's 30 CFR 732 letter on historic properties dated June 9, 1987 (Administrative Record No. NM-361).

New Mexico proposes to amend its regulations at CSMC Rule 80-1-11-19 concerning historic properties. It proposes to add a new subsection (p) to Section 11-19 requiring the Director of the Mining and Minerals Division to take into account the effect of the proposed permitting action on properties listed on, and eligible for listing on, the National Register of Historic Places. Section 11-19 requires written findings to be made by the Director regarding criteria for permit approval or denial. The proposed subsection would provide for permit conditions or changes in the operation plan in order to minimize adverse effects to properties listed on and eligible for listing on the National Register of Historic Properties.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h)(10), OSMRE is now seeking comment on whether the amendment proposed by New Mexico satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the New Mexico program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking, or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed at "FOR FURTHER INFORMATION CONTACT" by 4:00 p.m., m.s.t. on November 17, 1988. The time of day of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested, as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "ADDRESSES." A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 931

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: October 21, 1988.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 88-25301 Filed 11-1-88; 8:45 am]

BILLING CODE 4310-05-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Parts 1250 and 1254

Freedom of Information Act Access Procedures

AGENCY: National Archives and Records Administration.

ACTION: Proposed rule.

SUMMARY: The National Archives and Records Administration (NARA) proposes to amend its Freedom of Information Act (FOIA) access regulations for NARA administrative records and for records transferred to the custody of the Archivist of the United States. This will implement the procedural requirements of Executive Order 12600 of June 23, 1987 (52 FR 23781) governing the disclosure to the public of information that may be of a commercially confidential nature.

DATE: Comments must be received on or before December 2, 1988.

ADDRESS: Address comments to: Director, Program Policy and Evaluation Division (NAA), National Archives and Records Administration, Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Adrienne C. Thomas (202-523-3621) or Nancy Allard (202-523-3214).

SUPPLEMENTARY INFORMATION: Executive Order 12600 establishes procedural requirements to be met by agencies in responding to FOIA requests for commercial information. Agencies must provide submitters with: (1) A means to designate information as commercially confidential; (2) notice of the receipt of an FOIA request for the information; (3) a reasonable time period in which to defend a commercially confidential designation through the demonstration of a reasonable expectation of substantial competitive harm; (4) notification of what information is proposed for release prior to its disclosure; and (5) a reasonable time to initiate judicial action to block disclosure. Agencies need not notify submitters of the receipt of an FOIA request when: (1) The agency determines the information may not be disclosed because release could reasonably be expected to cause the submitter substantial competitive harm;

(2) the information has already been officially made available to the public; (3) disclosure is required by law (other than 5 U.S.C. 552); (4) an agency rule adopted pursuant to notice and public comment requires disclosure; or (5) the submitter did not make a good faith designation of the information as commercially confidential when submitted or within a reasonable time thereafter and there is no reasonable expectation that release would result in substantial competitive harm to the submitter. Executive Order 12600 requires that proposed agency regulations be subject to notice and public comment.

Section 1250.75 is added to implement the provisions of the Executive order for NARA administrative records.

Part 1254 is revised to separate FOIA procedures from other access matters. The only substantive changes are those necessary to implement E.O. 12600.

This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on small business entities.

List of Subjects in 36 CFR Parts 1250 and 1254

Archives and records, Confidential business information, Freedom of information.

For the reasons set forth in the preamble, NARA proposes to amend Chapter XII of Title 36 as follows:

PART 1250—PUBLIC AVAILABILITY OF NARA ADMINISTRATIVE RECORDS AND INFORMATIONAL MATERIALS

1. The authority citation for Part 1250 is revised to read as follows:

Authority: 44 U.S.C. 2104(a); 5 U.S.C. 552; E.O. 12600.

Subpart G—[Redesignated as Subpart H]

2. Subpart G, consisting of § 1250.80, is redesignated Subpart H. The section number is unchanged.

3. A new Subpart G—Predisclosure Notification Procedures for Commercial Information, is added to read as follows:

Subpart G—Predisclosure Notification Procedures for Commercial Information

§ 1250.76 Predisclosure Notification Procedures for Commercial Information.

(a) *General.* Commercial information provided to NARA shall not be disclosed to the public except in accordance with this subpart.

(b) *Definitions.* "Potentially confidential commercial information" means records provided to NARA by a submitter that may contain material exempt from release under 5 U.S.C. 552(b)(4) because disclosure could reasonably be expected to cause the submitter substantial competitive harm.

"Submitter" means any person or entity providing potentially confidential commercial information to an agency. The term "submitter" includes, but is not limited to, corporations, state governments, and foreign governments.

(c) *Designation of potentially confidential commercial information.* Submitters of commercial information may designate the information as commercially confidential. The designation must:

(1) Be made by the submitter when the information is submitted to NARA or within 30 workdays thereafter;

(2) Specify precisely which information is claimed as commercially confidential;

(3) Be made in good faith;

(4) Be supported by a certification by the submitter that the information has not been published or previously officially disclosed to the public.

(d) *Notice of receipt of a request to release information.* (1) NARA shall give the submitter prompt written notice of receipt of a FOIA request for the submitter's potentially confidential commercial information when:

(i) The submitter, in good faith, has designated the material as commercially confidential in accordance with paragraph (c) of this section; and

(ii) The FOIA request is received within 10 years of the date of submission.

(2) The written notice of receipt of an FOIA request shall either describe the potentially confidential commercial information requested, or provide copies of the records containing the information. The notice shall be mailed to the last known address of the submitter.

(3) When notice is given to a submitter pursuant to this section, NARA shall inform the requester that:

(i) The notice has been sent to the submitter;

(ii) That NARA's response to the request may be delayed beyond the limitations specified in 5 U.S.C. 552(a)(6)(A) and (B) to allow for time to notify the submitter, and to consider any response; and

(iii) That the delay may be considered a denial of access to records and the requester may seek judicial review. However, the requester shall be invited to agree to a voluntary extension of time so that NARA may consider any claims of confidentiality by the submitter.

(e) *Opportunity to object to disclosure.* (1) Through the notice described in paragraph (d) of this section, NARA shall afford a submitter 10 workdays from the date of mailing within which to provide NARA:

(i) A detailed statement of any objections to disclosure. The statement shall specify which information is claimed to be of a confidential commercial nature, and shall specify all grounds for withholding any of the information under the exemptions of the FOIA. If exemption (b)(4) of the FOIA is cited, the statement shall explain how the release of the information can be reasonably expected to cause substantial competitive harm to the submitter; and

(ii) Certification that the information has not been published or previously disclosed to the public.

(2) The statement provided pursuant to this subsection may itself be subject to disclosure under the FOIA.

(f) *Notice of intent to disclose.* (1) NARA shall consider any good faith designations of commercial confidentiality made when the information was initially submitted to NARA, and the submitter's timely objections and specific grounds for nondisclosure received in response to the notice of receipt of a request prior to determining whether to disclose the information in question.

(2) When NARA decides to disclose commercial information over the objections of a submitter, whether in response to a request to release or as the result of an appeal of a denial of access, NARA shall provide the submitter a written notice which:

(i) States the reasons why the submitter's objections were not sustained;

(ii) Describes or contains a copy of the information to be disclosed; and

(iii) Specifies a disclosure date, which shall be not less than 10 workdays after the date of the notice of intent to disclosure. NARA shall inform the submitter that disclosure will be made on the specified disclosure date, unless barred by court order.

(3) NARA shall inform the requester that such notice has been given to the submitter and of the proposed disclosure date.

(4) When NARA and the submitter are in agreement concerning disclosure, disclosure may take place before 10 workdays after the date of the notice of intent to disclose.

(5) The notice of receipt of a request shall serve as the notice of intent to disclose when the submitter fails to respond to the initial notice within 20 workdays of the date of the notice.

(g) *Notice of lawsuit.* NARA will promptly inform the requester and the submitter of any law suit filed by the other concerning possible disclosure.

(h) *Exceptions to notice requirement.* The notice requirements of this section do not apply when:

(1) NARA determines that the information should not be disclosed in accordance with one or more FOIA exemptions;

(2) The information has been published or officially made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(4) NARA has no substantial reason to believe that disclosure would result in competitive harm.

PART 1254—AVAILABILITY OF RECORDS AND DONATED HISTORICAL MATERIALS

4. The authority citation for Part 1254 is revised to read as follows:

Authority: 44 U.S.C. 2101–2118, 5 U.S.C. 552, and E.O. 12600.

5. Section 1254.30 is revised to read as follows:

§ 1254.30 Archives.

The use of archives is subject to the restrictions prescribed by statute or Executive order or by the restrictions specified in writing in accordance with 44 U.S.C. 2108 by the agency from which the records were transferred. NARA will make available any reasonably segregable portion of a record after the restricted portion has been deleted. The restrictions are published in the "Guide to the National Archives of the United States," which is incorporated by reference, and supplemented by restriction statements approved by the Archivist of the United States and set forth in Part 1256 of this Chapter. The Guide is available from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. The Guide may also be consulted at the NARA research facilities listed in Part 1253, at depository libraries, and is available for inspection at the Office of the Federal Register, Room 8301, 1100 L Street NW., Washington, DC. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. These materials are incorporated by reference as they exist on the date of approval and a notice of any change in these materials will be published in the Federal Register.

6. A new § 1254.38 is added to read as follows:

§ 1254.38 Freedom of Information Act requests.

(a) *Applicability.* This section applies to Freedom of Information Act requests for unclassified and classified archives. This section does not apply to requests for FRC records or donated historical materials.

(b) *Definitions.* "Potentially confidential commercial information" means records submitted to any agency by a submitter that may contain material exempt from release under 5 U.S.C. 552(b)(4) because disclosure could reasonably be expected to cause a submitter substantial competitive harm.

"Submitter" means any person or entity providing potentially confidential commercial information to an agency. The term "submitter" includes, but is not limited to, corporations, state governments, and foreign governments.

(c) *Requirements.* Requests for access to archives under the FOIA shall reasonably describe the records requested, shall be made in writing to the director of the appropriate NARA depository listed in Part 1253 or to the Assistant Archivist for the National Archives, and shall clearly indicate that the request is being made under the Act.

(d) *Processing time.* NARA shall inform requesters of the availability of records within 10 workdays after receiving a request, except when precluded from doing so by conditions as described in 5 U.S.C. 552a(6)(B), or by the need to consult with a submitter, as set forth in § 1254.39.

(e) *Denial of access.* Denials under the FOIA of access to archives are made by the appropriate director of a Presidential library or by the Assistant Archivist for the National Archives, who, within 10 workdays, shall notify the requester of the reasons for denial and of the procedures for appeal.

(f) *Appeals.* (1) A requester whose request is denied in whole or in part, may appeal that decision within NARA. The requester should direct a written appeal to the Deputy Archivist of the United States (ND), Washington, DC 20408.

(2) The Deputy Archivist must receive an appeal no later than 30 calendar days after the date of the NARA letter of denial to be considered timely.

(3) The appeal letter shall include the words "Freedom of Information Act Appeal" on both the letter and the envelope, and the requester shall enclose with the appeal letter a copy of the initial request and the denial.

(4) In the appeal letter the requester shall briefly state the reasons why NARA should release the records.

(5) The Deputy Archivist shall consult with the agency specifying the restriction, when appropriate, and make a determination within 20 workdays after the date of receipt by the Deputy Archivist of the appeal. If an extension is required, the Deputy Archivist shall notify the requester within 20 workdays from receipt of the request. Time extensions shall not exceed 10 workdays in the aggregate: Either solely in the initial stage or solely in the appellate stage, or divided between them.

(6) If the determination is adverse in whole or in part, the Deputy Archivist shall notify the requester of the right to judicial review.

(7) Denials and appeals of denials of access to information under the FOIA exemption 552(b)(1), National security information, are processed in accordance with the provisions of § 1254.40.

7. A new § 1254.39 is added to read as follows:

§ 1254.39 Requests for commercial information.

(a) *Notice of receipt of request.* (1) Submitters of potentially confidential commercial information shall be given written notice and an opportunity to object to release when a request is received for information the submitter designated in accordance with the recipient agency's regulations as commercial confidential, and the request is received less than 10 years after submission of the information.

(2) When the request is for information from a single or small number of submitters, the notice shall be sent to the submitter's last known address.

(3) When the request is for information from a large number of submitters, notice shall be provided by publication of a notice in the Federal Register.

(4) The notice shall either describe the potentially commercially confidential information requested (if the notice is published in the Federal Register), or provide copies of the records containing the information.

(5) NARA shall inform the requester that:

(i) Notice of receipt of a request has been provided to the submitter;

(ii) The response to the request may be delayed beyond the limitations specified in 5 U.S.C. 552(a)(6)(A) and (B) to allow for time to provide notice to the submitter, and to consider any response;

(iii) The delay may be considered as a denial of access to records and that the requester may seek judicial review. However, the requester shall be invited to agree to a voluntary extension of time so that NARA may consider any claims of commercial confidentiality provided by the submitter.

(b) *Opportunity to object to disclosure.* (1) Through the notice described in paragraph (a)(1) of this section, NARA shall afford a submitter 10 workdays from the date of the notice within which to provide NARA with a detailed statement of any objections to disclosure. A reasonable extension of the time limit for response may be granted when appropriate.

(2) The statement shall specify which information is claimed to be of a confidential commercial nature, and shall specify all grounds for withholding any of the information under the exemptions of the FOIA. If exemption (b)(4) of the FOIA is cited, the statement shall explain how the release of the information can be reasonably expected to cause substantial competitive harm to the submitter.

(3) The statement shall contain a certification that the information has not been published or officially released to the public.

(4) The statement provided pursuant to this subsection may itself be subject to disclosure under the FOIA under § 1258.7a.

(c) *Notice of intent to disclose.* NARA shall carefully consider any good faith designations of commercial confidentiality made when the information was initially submitted to an agency, and any timely objections submitted in response to the NARA notice of receipt of a request to release. Except as provided for in paragraph (e) of this section, when NARA determines to disclose, whether in response to a request to release or as the result of an appeal of a denial of access, notice shall be sent to the submitter that:

(1) States why the initial designation or the objections were not sustained;

(2) Describes or encloses a copy of the information proposed for disclosed; and

(3) Specifies a date, not less than 10 workdays after the date of the notice of intent to release, on which it is proposed to release the information unless barred by court order. The requester shall be simultaneously informed of the disclosure date.

(d) *Notice of law suit.* NARA will promptly inform the requester and submitter of any law suit filed by the other concerning possible disclosure.

(e) *Exception to notice requirements.* The notice requirements of this section do not apply when:

(1) NARA determines that the information should not be disclosed in accordance with one or more FOIA exemptions;

(2) The information has been published or officially made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or,

(4) More than 10 years have passed since the date of submission, regardless of any designation as commercially confidential made by the submitter in accordance with the recipient agency's regulations, and NARA has no substantial reason to believe that disclosure would result in competitive harm.

(5) The submitter failed to respond to a notice of receipt of request, in which case this initial notice shall serve as the notice of intent to disclose.

§ 1254.44 [Amended]

8. Section 1254.44(a) is amended by removing "§ 1254.30(b)" and inserting in its place "§ 1254.30".

Claudine J. Weiler,

Acting Archivist of the United States.

[FR Doc. 88-25342 Filed 11-1-88; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 221

Approval of Vessel Charters to Noncitizens

ACTION: Advance Notice of proposed rulemaking.

SUMMARY: The Maritime Administration (MARAD) has received a petition for rulemaking requesting amendment of its regulations governing the Documentation, Transfer or Charter of Vessels. Petitioner has requested amendments that relate only to the charter of "mobile offshore drilling units" (MODUs) to noncitizens. These amendments would expand MARAD's current general approval of vessel charters to noncitizens to include certain charters and subcharters of MODUs. the ANPRM seeks public comment, specifically on the merits of this petition for rulemaking, and on any other situations where MARAD pre-approval of charters to noncitizens would be appropriate.

DATE: MARAD will consider all written comments by interested persons received on or before January 3, 1989. Those submitting comments that wish to receive acknowledgement that MARAD received the comments should include a stamped, self addressed postcard.

ADDRESS: Send comments (the original plus five copies are requested, but not required) to the Secretary, Maritime Administration, Room 7210, Department of Transportation, 400 Seventh St., SW., Washington, DC 20590. All comments will be made available for inspection during normal business hours in Room 7300.

FOR FURTHER INFORMATION CONTACT: Jessie Fernanders, Vessel Transfer and Disposal Officer, Maritime Administration, Room 2112, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Section 9 of the Shipping Act, 1916 (46 App. U.S.C. 808) makes it unlawful, without the approval of MARAD, to charter or agree to charter to a noncitizen of the United States an interest in a vessel documented, or last documented under the laws of the United States, or owned wholly or partially by a United States citizen. Violation of this requirement for MARAD approval is a misdemeanor and subjects the violator to a fine of not more than $5,000 or to imprisonment for not more than five years, or both. Under existing regulations at 46 CFR 221.7, MARAD grants general approval of specified types of charters for a period of not more than six months. This approval, specifically, is made inapplicable to all bareboat charters or subcharters. A bareboat charter is where the charterer takes possession of the vessel and exercises direct control over the actual operation of the vessel.

Petitioner, the International Association of Drilling Contractors (IADC) alleges that amendments providing MARAD's pre-approval of intra-company charters, and short-term bareboat charters and subcharters, irrespective of duration, are necessary to ensure that American offshore drilling companies obtain their fair share of overseas drilling contracts. The IADC represents offshore and onshore drilling and well-servicing companies that it claims are responsible for producing over 80 percent of all onshore and offshore wells drilled around the world since March 31, 1987. IADC membership includes drilling and well-servicing contractors, oil and gas producing firms, and associate member companies.

Petitioner states that MARAD general approval of intra-company charters is needed because such charters are an integral part of doing business abroad in the offshore drilling industry, and much of the new offshore drilling activity now occurs outside of the United States and its contiguous waters. It projects that future opportunities will continue to be concentrated in foreign countries. While Petitioner states that MARAD routinely approves applications for intra-company charters of MODUs, approval can take at least several weeks and as much as one month. A necessary response time on many solicitations for foreign drilling contracts is often very short, typically, 14 days.

Offerors that must wait for MARAD approval to enter a charter or drilling contract are at a disadvantage in competing with foreign competitors that do not need to get approval.

Petitioner states that many drilling contracts and related bareboat charters are of short duration and require the shortest response time.

MARAD, in this ANPRM, wishes to solicit public comment on the amendments to 46 CFR 221.7 proposed by the Petitioner, as well as on the need to expand MARAD general approval of vessel charters and subcharters to noncitizens for any other type of vessel. MARAD is not committed to developing a rule and will be guided by the comments in deciding whether to proceed with this rulemaking. Any further rulemaking action would not be major, pursuant to E.O. 12291 (February 17, 1981). It would not be a significant regulation under DOT regulatory policies and procedures (49 FR 11034, February 26, 1979), and would not exert a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) There would be no federalism implication that would warrant the preparation of a Federalism Assessment under the criteria contained in E.O. 12612.

Comments are requested on amendments to 46 CFR 221.7 discussed in this ANPRM, including the following amendments proposed by Petitioner:

1. Revise § 221.7(a)(1) to read as follows (additions underlined):

(1) Demise or bareboat charters, including subcharters, consecutive charters, renewals or extensions of such charters (other than bareboat charters or bareboat subcharters of vessels documented recreational and to be operated personally by the charterer for recreation only, *and bareboat charters or bareboat subcharters of mobile offshore drilling units).*

2. Add a new paragraph (f) to § 221.7 to read as follows:

(f) *Intra-Company Charters of Mobile Offshore Drilling Units.* The Maritime Administration hereby approves under Sections 9 and 41 of the Shipping Act, 1916, as amended (46 U.S.C. 808 and 839), charters of any mobile offshore drilling unit [as defined in 46 CFR 107.111) which is documented under the laws of the United States, or which is owned in whole or in part by any person who is a citizen of the United States, or by a corporation organized under the laws of the United States or of any State, Territory, District or possession thereof, to a person not a citizen of the United States but which is an affiliate of a citizen of the United States.

(1) "Affiliate," for purposes of this paragraph, means a corporation, partnership or other legal entity that owns or controls, is owned or controlled by, or is under common ownership or control with, the owner or entity making available the vessel for charter.

(2) "Control," for purposes of this paragraph only, means the possession, direct or indirect, or the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise. Assertion of control in a charter shall be accepted as *prima facie* evidence of control.

(3) Not later than 20 days after the beginning of the charter period, the vessel owner or owner's representative shall file with the Maritime Administration a copy of any charter which is approved under this paragraph.

By the Order of the Maritime Administrator.

James Saalt,

Secretary, Maritime Administration.

Date: October 28, 1988.

[FR Doc. 88-25287 Filed 11-1-88; 8:45 am]

BILLING CODE 4910-81-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 88-475, RM-5854; FCC 88-304]

Public Mobile Service; Construction Authorization

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission, in response to a Petition for Rulemaking filed on August 19, 1988, by the Radio Common Carrier Division of Telocator Network of America, is proposing to revise § 22.43(a)(1) of its rules to delete the requirement that Public Mobile Service (PMS) applicants obtain an authorization prior to beginning construction. This requirement has caused difficulty for some applicants in scheduling the construction of their facilities. The intended effect of the proposed rule is to provide greater efficiency in getting service to the public and to eliminate unnecessary regulations.

DATES: Comments must be filed on or before December 19, 1988. Reply comments must be filed on or before January 3, 1989.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Pamela Gerr, Mobile Services Division, Common Carrier Bureau, (202) 632-6450.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, CC Docket No. 88-475, adopted September 27, 1988, and released October 27, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rulemaking

1. Section 319(d) of the Communications Act of 1934, 47 U.S.C. 319(d), provides that construction permits shall not be required for common carriers unless the Commission finds that such permits are in the public interest. Although the Commission technically eliminated construction permits in the Public Mobile Service (PMS) a few years ago, 47 CFR 22.43(a)(1) still requires applicants to obtain Commission authorization prior to beginning construction. It appears that this pre-construction authorization requirement may no longer serve the public interest. The requirement has restricted the flexibility of applicants to construct at times available in their individual needs and thereby caused delays in storing service to the public.

2. Accordingly, the Commission has proposed revising § 22.43(a)(1) to allow both cellular and non-cellular PMS applicants to begin construction prior to receiving an authorization. Under the proposed rule, an applicant may begin construction after he has filed his application and a preliminary waiting period has passed, if no mutually exclusive applications or petitions to deny are filed, and certain other requirements are met. Pre-constructing applicants will assume the risk of not being granted an authorization, of errors or time lags in the public notice system, of having to move or dismantle the facility and of incurring whatever costs may be necessary to bring the facility into compliance with Commission rules.

3. The issues addressed by the Commission in the Notice of Proposed Rulemaking include the following: (1) The Commission's need for information on the location and nature of the proposed facility; (2) ensuring efficient spectrum allocation and utilization; (3) ensuring that applicants complete the frequency coordination process prior to beginning construction; (4) petitions to deny and mutually exclusive applications; (5) time lags and errors in the public notice system; (6) defective applications; (7) air safety and environmental regulations; (8) coordination of certain facilities with Canada and Mexico; and (9) modification of forms.

4. The Commission determined that the first three issues could be dealt with by requiring applicants to file a completed application (Form 401) before starting construction. The application will give the Commission information on the proposed facility. Furthermore, in preparing the application, the applicant will have to complete the frequency coordination process, or show non-interference, thus ensuring efficient spectrum allocation and utilization.

5. The Commission dealt with the problem of petitions to deny, mutually exclusive applications (non-cellular) and time lags or errors in the public notice system by proposing a preliminary waiting period. Under the proposed rule, cellular applicants would have to wait 60 days from the date of public notice announcing the tentative selectee, and non-cellular applicants would have to wait 90 days from the date of public notice listing the application as acceptable for filing, before such applicants can begin pre-authorization construction. In addition to the waiting period, the proposed rules provide that applicants assume the risk of time lags or errors in the public notice system.

6. The Commission deals with the remaining issues as follows: Defective applications are to be returned without opportunity to amend and all preconstructing applicants will assume the risk of not receiving an authorization to operate their pre-built facility. To ensure compliance with air safety and environmentally regulations, the Commission proposes that prior to construction, an applicant must, first, either determine that notice to the Federal Aviation Administration (FAA) is not required, or notify the FAA and obtain lighting and marking specifications from the Commission; and second, the applicant must determine whether the proposed facility may have a significant environmental impact, and may pre-construct only if he determines that the facility will not have such an impact, and so indicates on the Form 401. The Commission eliminates the problem of having to coordinate certain non-cellular facilities with Canada by providing that such facilities can be preconstructed only if built between lines A and C. Similarly, the Commission eliminates the problem of having to coordinate certain cellular facilities with Mexico by providing that such facilities may be pre-constructed only if the proposed facility will be on the United States side, and at least 45 miles away, from the United States-Mexican border. Finally, the Commission requested comments on how the FCC forms should be modified to accommodate the proposed rule change.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

List of Subjects in 47 CFR Part 22

Communications Common Carriers.

Part 22 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 22—[AMENDED]

1. The authority citation for Part 22 would continue to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended (47 U.S.C. 154, 303), sec. 553 of the Administrative Procedure Act (5 U.S.C. 553), unless otherwise noted.

2. Section 22.43 is amended by revising paragraph (a)(1) to read as follows:

§ 22.43 Period of construction.

(a)(1)(i) Non-cellular facilities. Once an applicant has filed a Form 401 with the Commission and 90 days have elapsed from the date the application is listed on public notice as acceptable for filing, the applicant may commence construction, provided that:

(A) The application is not mutually exclusive with another application and no petition to deny has been filed;

(B) the applicant has not requested waiver of a Commission rule pursuant to § 22.19;

(C) The applicant has either determined that notice to the Federal Aviation Administration (FAA) is not required, *see* §§ 17.7 to 17.17 of this chapter, or has notified the FAA of the proposed construction and received marking and lighting specifications from the Commission;

(D) The applicant has considered whether the facility may have a significant environmental effect in accordance with §§ 1.1301–1.1319 of this chapter, determined that it will not, and indicated that determination on the Form 401; and

(E) The applicant has determined that the facility will be on the United States side of lines A and C. *See* § 22.117(b)(2).

(ii) Cellular facilities. Once 60 days have elapsed from the date of public notice announcing the tentative selectee for a particular market, the tentative selectee may commence construction provided that:

(A) No petitions to deny have been filed;

(B) The tentative selectee has not requested waiver of a Commission rule pursuant to § 22.19;

(C) The tentative selectee has either determined that notice to the Federal Aviation Administration (FAA) is not required, *see* §§ 17.7 to 17.17 of this chapter, or has notified the FAA of the proposed construction and received marking and lighting specifications from the Commission;

(D) The tentative selectee has considered whether the facility may have a significant environmental effect in accordance with §§ 1.1301–1.1319 of this chapter, determined that it will not, and indicated that determination on the Form 401; and

(E) The tentative selectee has determined that the facility will be on the United States side, and at least 45 miles away, from the United States-Mexican border.

(iii) Applicants who commence construction prior to receiving an authorization, pursuant to § 22.43(a)(1)(i) and (ii), assume the risk of:

(A) Not receiving an authorization;

(B) Errors and time lags in the public notice system;

(C) Having to alter, relocate or dismantle the facility; and

(D) Incurring whatever costs may be necessary to bring the facility into compliance with Commission rules.

* * * * *

[FR Doc. 88-25288 Filed 11-1-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-505, RM-6447]

Radio Broadcasting Services; Fitzgerald, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by William L. Taylor, Jr. proposing the allotment of Channel 245A to Fitzgerald, Georgia, as the community's first local FM service. Channel 245A can be allotted to Fitzgerald in compliance with the Commission's minimum distance separation requirements with a site restriction of 12 kilometers (7.5 miles) north to avoid a shortspacing to the proposed substitution of Channel 244C2 for Channel 244A at Valdosta, Georgia, and the modification of Station WZLS's license accordingly (RM-6359).

DATES: Comments must be filed on or before December 16, 1988, and reply comments on or before January 3, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: William L. Taylor, Jr., 1444 Dauset Drive, Griffin, Georgia 30223 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-505, adopted September 23, 1988, and released October 25, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW; Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-25289 Filed 11-1-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-504, RM-6446]

Radio Broadcasting Services; Ossian, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Mega Media, Ltd. to allot a first local FM channel to Ossian, Iowa. Mega Media requests the allotment of Channel 240A to Ossian and its deletion from New Hampton, where it is unoccupied and unapplied for. However, the Commission has found that Channel 241A can be alloted to Ossian in compliance with the Commission's minimum distance separation requirements and without requiring any other changes in the FM Table of Allotments. Therefore, we have substituted Channel 241A for consideration as a first local FM allotment to Ossian, Iowa. The coordinates for this allotment are North Latitude 43–06–42 and West Longitude 91–45–48.

DATES: Comments must be filed on or before December 16, 1988, and reply comments on or before January 3, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Robyn G. Nietert, Esq., Brown, Finn & Nietert, Chartered, 1920 N Street, NW., Suite 510, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-504, adopted September 30, 1988, and released October 25, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-25290 Filed 11-1-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-506, RM-6448]

Radio Broadcasting Services; Martin, SD

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by the South Dakota State Board of Directors for Educational Television proposing the allotment of Channel 275C1 to Martin, South Dakota, as the community's first local FM service. The Commission is not proposing to reserve the channel for noncommercial educational use since there is no problem with use of a channel within the noncommercial educational portion of the band due to either TV Channel 6 interference or Mexican or Canadian allotments. Channel 275C1 can be allotted to Martin in compliance with the Commission's minimum distance separation requirements without a site restriction. The coordinates for this allotment are North Latitude 43–10–30 and West Longitude 101–44–12.

DATES: Comments must be filed on or before December 16, 1988, and reply comments on or before January 3, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Roy R. Russo, Esq., Richard A. Helmick, Esq., Cohn and Marks, 1333 New Hampshire Avenue, NW., Suite 600, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-506, adopted September 30, 1988, and released October 25, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW; Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW; Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited on Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.
Steve Kaminer,
Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-25289 Filed 11-1-88; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-503, RM-6432]

Radio Broadcasting Services; Bowling Green, VA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Rappahannock Communications Group, proposing the allotment of Channel 245A to Bowling Green, Virginia, as that community's first local FM service. A site restriction of 1.8 kilometers (1.1 miles) south of the city is required. The coordinates for the proposal are 38-02-03 and 77-21-12.

DATES: Comments must be filed on or before December 16, 1988, and reply comments on or before January 3, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Denise B. Moline, Esquire, Putbrese & Hunsaker, 6800 Fleetwood Road, P.O. Box 539, McLean, Virginia 22101 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-503, adopted September 23, 1988, and released October 25, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.
Steve Kaminer,
Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-25292 Filed 11-1-88; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 80

[PR Docket No. 88-507; FCC 88-319]

Maritime Services; Restriction of the Frequency Selection Capability of VHF Maritime Transmitters to Maritime Frequencies

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The proposed rule would restrict the frequency selection capability of VHF maritime transmitters to maritime frequencies. This would be accomplished by establishing new technical standards for transmitter type acceptance and by phasing out the manufacture, sale and installation of transmitters capable of indiscriminate frequency selection. This will reduce interference to public safety and other radio services.

DATES: Comments must be received on or before February 24, 1989, and reply comments must be received on or before March 31, 1989.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: William P. Berges, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632-7175.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making*, PR Docket No. 88-507, adopted October 13, 1988, and released October 25, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The full text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rule Making

Many VHF maritime transmitters now being manufactured employ frequency synthesizers that are capable of being programmed by station operators to operate on maritime as well as other frequency channels not available to the maritime service. This leads to operations on unauthorized channels and can cause interference to public safety and other radio services. Establishing new type acceptance technical standards for VHF maritime transmitters is an efficient and effective means of restricting operations of VHF maritime frequencies. The proposed rule provides for equipment phase out periods designed to minimize any adverse impact upon manufacturers, dealers and consumers.

Ordering Clauses

This is a non-restricted notice and comment rule making proceeding. *See* § 1.1231 of the Commission's Rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 604, an initial regulatory flexibility analysis has been prepared. It is available for public viewing as part of the full text of this decision, which may be obtained from the Commission or its copy contractor.

The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

Authority for issuance of this *Notice* is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r). Pursuant to applicable procedures set forth in § § 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments as indicated in the "DATES" paragraph of this document. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

A copy of the Notice of Proposed Rule Making will be served on the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 80

Ship stations, Coast stations, Communications equipment.

Federal Communications Commission.
Donna R. Searcy,
Secretary.

Proposed Rules

Part 80 of Chapter I of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for Part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303 unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609; 3 UST 3450, 3 UST 4726, 12 UST 2377, unless otherwise noted.

2. In § 80.203 paragraphs (b), (c), (d), (e), (f), (g), (h), (i) and (j) are redesignated (c), (d), (e), (f), (g), (h), (i) (j) and (k) respectively and a new paragraph (b) is added to read as follows:

§ 80.203 Authorization of transmitters for licensing.

* * * * *

(b) The external controls of VHF maritime station transmitters that are capable of operation in the 156-162 MHz band and are manufactured in or imported into the United States (one year after release of a Report and Order in this proceeding), or sold or installed (two years after release of a Report and Order in this proceeding) must be able to select only preprogrammed maritime frequencies and such transmitters must not be programmable by maritime station operators. The procedures and special devices for programming must only be made available to licensed service and maintenance personnel and must not be made available with the information normally provided to consumers. Transmitters capable of being programmed by maritime station operators by means of external controls that are installed in a maritime station by (two years after release of a Report and Order in this proceeding) are authorized for use indefinitely at the same maritime station. Furthermore, the programming of frequencies must be limited to those frequencies contained in this Part of the rules or Appendix 18 of the international Radio Regulations and must be performed only by a person holding a first or second class radiotelegraph operator's certificate or a general radiotelephone operator's license using any of the following procedures:

(1) Internal adjustment of the transmitter;

(2) Use of controls normally inaccessible to the station operator;

(3) Use of external devices or equipment modules made available to service and maintenance personnel only; and

(4) Copying of a frequency selection program directly from another transmitter (cloning) using devices and procedures made available to service and maintenance personnel only.

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[FR Doc. 88-25293 Filed 11-1-88; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a petition for rulemaking filed by Dennis G. Moore of Livermore, California. Mr. Moore sought an amendment of Standard No. 108 to eliminate license plate lamps as an item of required equipment, averring that they serve no safety purpose. He suggested the evaluation of new reflective materials for license plates which could serve as a substitute for license plate lamps. The agency denies his petition on the basis that illumination of the license plate enhances safety by improving vehicle conspicuity. It also aids law enforcement officers in reading the plates of traffic law violators such as speeders and hit and run drivers.

FOR FURTHER INFORMATION CONTACT: Kevin Cavey, Office of Rulemaking, NHTSA, Washington, DC (202-366-5271).

SUPPLEMENTARY INFORMATION: On June 20, 1988, Dennis G. Moore of Livermore, California, petitioned the agency for an amendment to the Federal motor vehicle safety standard on lighting. The amendment would delete license plate lamps as a required item of motor vehicle lighting equipment. Mr. Moore acknowledged the rationale that the light is needed to illuminate the plate, as an aid to law enforcement officials, but believes that at best the light makes the plate legible only at close distances, and only when the plate itself is new. He cites the fact that States such as California are now using reflective license plates so that even a small amount of backlighting from street lamps and headlamps illuminates the plates. He suggests that new reflective materials for license plates should be evaluated.

The agency has carefully considered Mr. Moore's petition. The license plate lamp serves a safety function in contributing to vehicle conspicuity from the rear under conditions requiring the use of headlamps. As Mr. Moore noted, illumination of the plate also provides a potential means of identification of a vehicle to law enforcement officials and eyewitnesses when safety violations occur, such as exceeding the speed limit, or leaving the scene of an accident. Although retroflective license plates may enhance these purposes even more, the agency has no authority to issue a standard specifying license plate performance. This is because a license plate is not considered an "item of motor vehicle equipment" as defined by 15 U.S.C. 1391(4). The design and composition of license plates is a matter under the authority of the individual [illegible].

In accordance with 49 CFR Part 552, the agency has completed its technical

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review of the petition, and has determined that there is no reasonable possibility that the requested amendment would be issued at the conclusion of a rulemaking proceeding. Therefore, the petition is denied.

With reference to the fact that some States still require two license plates, Mr. Moore also suggested that the presence of the front plate is unnecessary, and penalizes fuel economy by acting as a "sail", and increasing vehicle drag. The agency cannot take any action on this suggestion since the number of plates required for vehicle registration is a matter within the jurisdiction of the individual States.

(15 U.S.C. 1410a; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: October 26, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88-25364 Filed 11-1-88; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 53, No. 212
Wednesday, November 2, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Special Committee on Ethics in Government; Public Meeting Action: Special Committee on Ethics in Government; Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Special Committee on Ethics in Government of the Administrative Conference of the United States. The committee has scheduled the meeting to discuss pending projects, including a draft report on the Ethics in Government Act's financial reporting requirements by Professor Thomas Morgan and a draft report on conflict-of-interest rules for federal advisory committee members by Richard K. Berg. Copies of the draft reports will be available for distribution to the public on or about November 10. Requests for these draft reports should be made to the Office of the Chairman at the address and telephone number given below.

DATE: Tuesday, November 22, 1988 at 9:30 a.m.

LOCATION: Library of the Administrative Conference, 2120 L Street, NW., Suite 500, Washington, DC.

Public Participation: The committee meeting is open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to the meeting. The committee chairman may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

FOR FURTHER INFORMATION CONTACT: Michael W. Bowers, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037. Telephone: (202) 254-7065.

Dated: October 27, 198.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 88-25375 Filed 11-1-88; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

October 28, 1988.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Revision

- Rural Electrification Administration

7 CFR Part 1785, Telephone Materials, Equipment, and Construction—Telephone Program
REA Forms 281, 527, 553, 771, 157, 158, and 159
On Occasion
Small businesses or organizations; 4,565 responses; 3,517 hours; not applicable under section 3504(h)
John D. Soma, (202) 382-8529.

New

- Forest Service

Supplemental Information to Support Determination of Term for Special Use Permit Issued Under Authority of the National Forest Ski Area Permit Act of 1986.
N/A
One-time data collection
Businesses or other for-profit; 10 responses; 1200 hours; not applicable under section 3504(h)
John Shilling, (202) 382-9428.

- Food and Nutrition Service

Child Nutrition Program Operations Study
N/A
One-time data collection
State or local governments; Non-profit institutions; 3,586 responses; 1,751 hours; not applicable under section 3504(h)
John Endahl, (703) 756-3115.

Larry K. Roberson,

Acting Departmental Clearance Officer.

[FR Doc. 88-25386 Filed 11-1-88; 8:45 am]

BILLING CODE 3410-01-M

Office of the Secretary

Intent to Establish Dietary Guidelines Advisory Committee

The Department of Agriculture, in cooperation with the Department of Health and Human Services, intends to establish a Dietary Guidelines Advisory Committee to advise the Secretary of Agriculture and the Secretary of Health and Human Services as to whether a review of Dietary Guidelines for Americans is warranted at the present time based on advances in scientific knowledge and if such a review is warranted to advise the Secretaries regarding any recommended revision to the Guidelines. The Advisory Committee will be composed of nine members selected by the Department of Agriculture and the Department of

Health and Human Services. The Advisory Committee will meet initially at the call of the Secretaries and thereafter on call by the Chairman as necessary. The Committee will report to the Secretaries of Agriculture and Health and Human Services.

It has been determined that the establishment of the Committee is in the public interest in connection with the work to the U.S. Department of Agriculture and the Department of Health and Human Services.

Interested persons may send comments to Dr. Susan Welsh, Director Nutrition Education Division, Human Nutrition Information Service, Federal Building, Room 363, 6505 Belcrest Road, Hyattsville, Maryland 20782, on or before November 17, 1988.

Done at Washington, DC this 27th day of October 1988.

John J. Franke, Jr.,

Assistant Secretary for Administration.

[FR Doc. 88-25319 Filed 11-1-88; 8:45 am]

BILLING CODE 3410-01-M

Federal Crop Insurance Corporation

Nominations for Appointment to the Federal Crop Insurance Commission

The Federal Crop Insurance Corporation (FCIC) solicits, on behalf of the Secretary of Agriculture, nominations for appointment to the Congressionally created Federal Crop Insurance Commission, signed into law by the President on October 28, 1988.

The Act provides for the establishment of a commission to study problems with respect to participation in the crop insurance program; program operations; and, ways to improve crop insurance. The Commission is to consist of twenty-one voting members and four non-voting members. The Secretary of Agriculture is to appoint ten (10) individuals representing various constituencies of the insurance industry, and ten (10) individuals representing agricultural producer interests. The Manager of FCIC will also serve as a voting member and the Chairman and Ranking Minority Members of the House and Senate Agriculture Committees will also serve as non-voting members of the Commission.

Nominations from interested parties are hereby solicited to fill positions on the Commission according to the following criteria:

(A) Four (4) individuals who will represent the views of the companies (or managing general agencies which write crop insurance through other companies) that:

(1) Have a 1989 Reinsurance Agreement under the Federal Crop Insurance Act; and

(2) For the 1987 crop year, wrote the greatest dollar volume of federally reinsured crop insurance;

(B) Two (2) individuals who will represent the views of companies writing lesser dollar volumes of federally reinsured crop insurance, and one of whom will represent the views of the companies writing Federal crop insurance whose primary business is the writing of crop insurance for losses due to hail;

(C) Two (2) individuals who will represent the views of the two largest agencies selling non-reinsured Federal crop insurance;

(D) Two (2) individuals who will represent the views of national organizations of insurance agents;

(E) One (1) individual who will represent the views of the largest national association representing wheat producers;

(F) One (1) individual who will represent the views of the largest national association representing corn producers;

(G) One (1) individual who will represent the views of the largest national association representing cotton producers;

(H) One (1) individual who will represent the views of the largest national association representing soybean producers;

(I) Three (3) individuals who will represent the views of the three largest national general farm organizations; and

(J) Three (3) individuals who will represent the views of producers of fruits, vegetables, specialty crops, and other crops not specified in sections (E), (F), (G), or (H) above.

The Department of Agriculture's programs are open to all individuals without regard to race, color, religion, sex, national origin, age, mental or physical handicap, or marital status. Further, it is the Secretary of Agriculture's policy that membership on USDA boards and committees reflect, to the extent practicable, the diversity of individuals served by the programs.

Nominations to the Commission are accepted by filing of a National Agency Check Standard Form (SF-85A).

Interested parties may request a National Agency Check Standard Form (SF-85A), either in writing or by telephone, from Peter F. Cole, Secretary, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

Nominations should be mailed to Peter F. Cole at the above address. For timely consideration, completed SF-85A Forms must be received by not later than November 17, 1988.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 88-25544 Filed 11-1-88; 10:59 am]

BILLING CODE 3410-08-M

Forest Service

Transfer of Administrative Jurisdiction; Lake Ouachita, AR; Correction

AGENCY: Forest Service, USDA.

ACTION: Final notice, correction.

SUMMARY: On February 25, 1988, at 53 FR 5603, the Forest Service published a Notice of joint interchange of lands for Lake Ouachita, Ouachita National Forest, Arkansas. This notice corrects elements of the legal land description as follows:

1. On page 5607, in the 1st column, Section 18 should be deleted.

2. On page 5607, in the third column, Section 33 should read: NW¼NW¼ NE¼, S½SE¼NE¼, SW¼NE¼, N½ NE¼NW¼, SW¼NE¼NW¼, N½SE¼ NE¼NW¼, SW¼NW¼NW¼, E½ NW¼NW¼, S½NW¼All above 610 feet elevation N.G.V.D., containing 137.9 acres, more or less.

3. On page 5611, in the second column, Garland County, T2S, R21W, Section 6 should read: W½NW¼.

4. On page 5612, in the first column, T1S, R22W, Section 25 should read Pt. N½SW¼above 610'.

5. On page 5612, in the second column, T1S, R22W, Section 28 should read: Pt. N½NW¼above 610', Pt. NE¼SW¼ above 610', Pt. W½SE¼above 610'.

6. On page 5612, in the second column, T1S, R23W, Section 13 should read: Pt. S½SE¼above 610'.

7. On page 5612, in the second column, T1S, R23W, Section 27 should read: Pt. SE¼NE¼ above 610', Pt. NE¼SW¼ above 610'.

8. On page 5612, in the second column, T1S, R23W, Section 30 should read: Pt. S½W¼above 610', Pt. SW¼SE¼above 610'.

Date: October 25, 1988.

George M. Leonard,

Associate Chief.

[FR Doc. 88-25605 Filed 11-1-88; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

West Virginia Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the West Virginia Advisory Committee to the Commission will convene at 11:00 a.m. and adjourn at 1:00 p.m. on November 15, 1988, at the WSAZ TV Station, Conference Room, 111 Colombia Ave., Charleston, WV 25301. The purpose of the meeting is (1) to receive a briefing from its planning subcommittee regarding the feasibility of holding a community forum on "Civil Rights Legislation in West Virginia" in March 1989, and (2) to decide whether or not to proceed with the Planning of the Forum.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Adam R. Kelly 304/652-4141 or John I. Binkley, Director of the Eastern Regional Division of the Commission at 202/523-5264 or TDD 202/376-8117. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

Meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 20, 1988.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 88-25377 Filed 11-1-88; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Case No. OEE-3-88]

Order Renewing Temporary Denial of Export Privileges; S.A. Marli et al.

In the Matter of: Marli S.A., 3 Chemin Taverney, CH-1218 Geneva, Switzerland; Graphic Data Products S.A., 3 Chemin Taverney, CH-1218 Geneva, Switzerland; Fincosid S.A., Galleria Benedettini, CH-6500 Bellinzona, Switzerland; Tuorimex S.A., Via Gordemo, CH-6596 Gordola, Switzerland and Lilly Merchandising Co., Taborstrasse 39, 1020 Vienna, Austria, Respondents.

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), pursuant to the provisions of § 788.19 of the Export Administration Regulations, 15 CFR Parts 768-799 (the Regulations),[1] issued pursuant to the Export Administration Act of 1979, 50 U.S.C. app. 2401-2402 (1982 and Supp. III 1985), as amended by Pub. L. 100-418, 102 Stat. 1107 (August 23, 1988) (the Act), has asked the Assistant Secretary for Export Enforcement to renew an order initially issued on April 22, 1988, and renewed on June 22, 1988 and again on August 22, 1988, temporarily denying all United States export privileges to Marli S.A., Graphic Data Products S.A., Fincosid S.A., Tuorimex S.A. and Lilly Merchandising Co. (hereinafter collectively referred to as respondents). 53 FR 15567, May 2, 1988, 53 FR 24334, June 28, 1988, and 53 FR 32837, August 29, 1988.

In its renewal request dated September 29, 1988, the Department states that, as a result of an ongoing investigation, it continues to have reason to believe that respondents have taken possession of controlled U.S.-origin commodities in Switzerland and then reexported them, oftentimes to proscribed destinations. The Department also has reason to believe that respondents have provided false and misleading statements of material fact concerning the intended end-users of U.S.-origin equipment respondents ordered from a company in Switzerland which was the foreign consignee under a U.S. distribution license. Based on the orders placed by the respondents, the foreign consignee in turn ordered the U.S.-origin goods from the distribution license holder, representing that the goods were intended for use by the Western European companies, respondents had named in their orders as the end-users. In fact, it appears that the Western European companies identified by respondents as being the intended end-users had no involvement in the transactions. The Department has reason to believe that, once the U.S.-origin goods were received by the respondents in Switzerland, the respondents reexported the goods, which are controlled for reasons of national security, to end-users in the Soviet bloc.

The Department believes that respondents' past activities establish that the violations of the Act and the Regulations which they are suspected of having committed and which the Department is presently investigating were deliberate and covert and are likely to occur again unless appropriate action is taken to reduce the likelihood that respondents can continue to acquire U.S.-origin goods either inside or outside of the Untied States. The Department believes that respondents' activities show a clear pattern of disregard for the Act and the Regulations.

Furthermore, the Department believes that in order to reduce the likelihood that respondents will continue to engage in activities which are in violation of the Act and the Regulations, a renewal of the temporary denial order naming Marli S.A., Graphic Data Products S.A., Fincosid S.A., Tuorimex S.A. and Lilly Merchandising Co. is necessary to give notice to companies in the United States and abroad that they should cease dealing with these parties in transactions involving U.S.-origin goods.

None of the respondents opposed the request for renewal submitted by the Department on September 29, 1988. Therefore, based on the showing made by the Department, I find that renewal of the order temporarily denying export privileges to the respondents is necessary in the public interest to prevent an imminent violation of the Act and the Regulations and to give notice to companies in the United States and abroad to cease dealing with the respondents in goods and technical data subject to the Act and the Regulations in order to reduce the substantial likelihood that respondents will continue to engage in activities which are in violation of the Act and the Regulations.

Accordingly, it is hereby Ordered:

I. All outstanding individual validated export licenses in which any respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of respondents' privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Respondents Marli S.A. and Graphic Data Products S.A., both with an address at 3 Chemin Tavernay, CH-1218 Geneva, Switzerland; Fincosid S.A., Galleria Benedettini, CH-6500 Bellinzona, Switzerland; Tuorimex S.A., Via Gordemo, CH-6596 Gordola, Switzerland; and Lilly Merchandising Co., Taborstrasse 39, 1020 Vienna, Austria, their successors or assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving

[1] Effective October 1, 1988, the Export Administration Regulations were redesignated as 15 CFR Parts 768-799 (53 FR 37751, September 28, 1988). The transfer merely changed the first number of each Part from "3" to "7". Until such time as the Code of Federal Regulations is republished, the Regulations may be found in 15 CFR Parts 368-399 (1988).

commodities or technical data exported or to be exported from the United States, in whole or in part, or that are otherwise subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of a party to any export license application submitted to the Department, (b) in preparing or filing with the Department any export license application or reexport authorization, or any document to be submitted therewith, (c) in obtaining or using any validated or general export license or other export control document, (d) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported, and (e) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial may be made applicable to any person, firm, corporation, or business organization with which any respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

IV. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any respondent or any related party, or whereby any respondent or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any respondent or any related party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States. These prohibitions apply only to those commodities and technical data which are subject to the Act and the Regulations.

V. In accordance with the provisions of § 788.19(e) of the Regulations, any respondent may, at any time, appeal this order by filing with the Office of Administrative Law Judges, U.S. Department of Commerce, Room H–6716, 14th Street and Constitution Avenue, NW., Washington, DC 20230, a full written statement in support of the appeal.

VI. This order shall remain in effect for 60 days.

VII. In accordance with the provisions § 788.19(d) of the Regulations, the Department may seek renewal of this temporary denial order by filing a written request not later than 20 days before the expiration date. Any respondent may oppose a request to renew this temporary denial order by filing a written submission with the Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of this order. The Regulations further provide that any respondent may request that a hearing be held on the renewal request.

A copy of this Order shall be served on each respondent and this Order shall be published in the **Federal Register**.

Effective date: October 21, 1988.

William Skidmore,

Acting Assistant Secretary for Export Enforcement.

[FR Doc. 88-25276 Filed 11-1-88; 8:45 am]

BILLING CODE 3510-DT-M

Electronic Instrumentation Technical Advisory Committee; Partially Closed Meeting

A meeting of the Electronic Instrumentation Technical Advisory Committee will be held November 30 and December 1, 1988, in the Herbert C. Hoover Building, 14th Street & Constitution Avenue NW., Washington, DC. On November 30 the meeting will convene at 9:00 a.m. in Room 1617–F. The meeting will reconvene in Executive Session on December 1 and continue to its conclusion in Room 1617–F. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to electronics and related equipment and technology.

Agenda

General Session

1. Opening Remarks by the Chairman.

2. Presentation of papers or comments by the public.

3. Public discussion on matters related to activities of the Electronic Instrumentation Technical Advisory Committee. Comments should consider the need for revision (strengthening, relaxation or decontrol) of the current regulations based on technological trends, foreign availability and national security.

4. Election of new Chairman.

Executive Session

5. Discussion on matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting and can be directed to: Betty Anne Ferrell, Acting Director, Technical Support Staff, Office of Technology & Policy Analysis, Room 4066, 14th Street & Constitution Avenue NW., Washington, DC 20230.

For further information or copies of the minutes contact Betty Anne Ferrell, 202–377–2583. The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes please call Betty Ferrell, 202–377–2583.

Date: October 28, 1988.

Betty Anne Ferrell,

Acting Director, Technical Support Staff, Office of Technology & Policy Analysis.

[FR Doc. 88-25360 Filed 11-1-88; 8:45 am]

BILLING CODE 4510-DT-M

Minority Business Development Agency

Business Development Center Application; Buffalo, NY

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to the availability of funds. The cost of performance for the first 12 months is estimated at $165,000 in Federal funds and a minimum of $29,116 in non-Federal contributions for the budget period March 1, 1989 to February 28, 1990. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Buffalo, New York SMSA geographic service area.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, State and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the applications (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

Closing Date: The closing date for applications is December 5, 1988. Applications must be postmarked on or before December 5, 1988.

ADDRESS: New York Regional Office, Minority Business Development Agency, Jacob K. Javits Federal Building, Room 3720, New York, New York 10278, Area Code/Telephone Number (212) 264–3262.

FOR FURTHER INFORMATION CONTACT: Gina A. Sanchez, Regional Director, New York Regional Office. (212) 264–3262.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above addresses.

(Catalog of Federal Domestic Assistance, 11.800 Minority Business Development)

Date: October 27, 1988.

William R. Pellier,

(Deputy) Regional Director, New York Regional Office.

[FR Doc. 88-25311 Filed 11-1-88; 8:45 am]

BILLING CODE 3510-21-M

Business Development Center Application; Queens, NY

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for approximately a 3-year period, subject to the availability of funds. The cost of performance for the first 12 months is estimated at $165,000 in Federal funds and a minimum of $29,118 in non-Federal contributions for the budget period April 1, 1989 to March 31, 1990. Cost-sharing contributions may be in the form of cash contributions, client fees and for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Queens, New York SMSA geographic service area.

The funding instrument for the MBDC will be a cooperative agreement and Competition is open to individuals, non-profit and for-profit organizations, State and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms, offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDCs shall be required to contribute at least 15% of the total project cost

through non-Federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for the firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and the Agency priorities.

Closing Date: The closing date for applications is December 5, 1988.

Applications must be postmarked on or before December 5, 1988.

ADDRESS: New York Regional Office, Minority Business Development Agency, Jacob K. Javits Federal Building, Room 3720, New York, New York 10278, Area Code/Telephone Number (212) 264–3262.

FOR FURTHER INFORMATION CONTACT: Gina A. Sanchez, Regional Director, New York Regional Office at (212) 264–3262.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(Catalog of Federal Domestic Assistance, 11.800 Minority Business Development)

Date: October 26, 1988.

William R. Fuller,

(Deputy) Regional Director, New York Regional Office.

[FR Doc. 88-25310 Filed 11-1-88; 8:45 am]

BILLING CODE 3510-21-M

Business Development Center Application; Rochester, NY

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for approximately a 3 year period, subject to the availability of funds. The cost of performance for the first 12 months is estimated at $165,000 in Federal funds and a minimum of $29,118 in non-Federal contributions for the budget period March 1, 1989 to February 28, 1990. Cost-sharing contributions may be in the form of cash contributions, client fees and for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Rochester, New York SMSA geographic service area.

The funding instrument for the MBDC will be a cooperative agreement and Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms, offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at $20% of the total cost for the firms with gross sales of $500,000 or less and 35% of the total cost for firms with sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and the Agency priorities.

Closing Date: The closing date for applications is December 5, 1988. Applications must be postmarked on or before December 5, 1988.

ADDRESS: New York Regional Office, Minority Business Development Agency, Jacob K. Javits Federal Building, Room 3720, New York, New York 10278, Area Code/Telephone Number (212) 264–3262.

FOR FURTHER INFORMATION CONTACT: Gina A. Sanchez, Regional Director, New York Regional Office at (212) 264–3262.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(Catalog of Federal Domestic Assistance, 11.800 Minority Business Development)

Date: October 27, 1988.

William R. Fuller,

(Deputy) Regional Director, New York Regional Office.

[FR Doc. 88-25312 Filed 11-1-88; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Taking of Marine Mammals Incidental to Commercial Fishing Operations

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of finding of conformance.

SUMMARY: The Assistant Administrator for Fisheries, NMFS, announces that the Government of Ecuador has submitted information which demonstrates that Ecuador and the tuna purse seine fishing vessels under its control are in conformance with U.S. marine mammal regulations. As a result of this finding, yellowfin tuna from Ecuador may be imported into the United States.

DATE: This finding is effective November 1, 1988, and remains in effect until December 31, 1989.

ADDRESS: A copy of the administrative record for this determination may be obtained, at cost, by contacting the Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: E. Charles Fullerton, Regional Director, or J. Gary Smith, Deputy Regional Director, Southwest Region, NMFS at 213-514-6196.

SUPPLEMENTARY INFORMATION: On March 18, 1988 (53 FR 8910), the NMFS promulgated interim final rules concerning the importation of yellowfin tuna caught by purse seines in the eastern tropical Pacific Ocean (ETP). Under this rule, in order to import yellowfin tuna into the United States, any nation which has purse seine vessels of 400 tons carrying capacity or greater operating in the ETP, must supply documentary evidence that it has a regulatory program governing the incidental taking of marine mammals (porpoise) in the tuna fishery and a resultant mortality rate of marine mammals which are comparable to that of the United States.

The Government of Ecuador has submitted its laws for the protection of marine mammals involved in the tuna purse seine fishery and the required information relating to the tuna vessels fishing under its laws and marine mammal mortality performance of those vessels. The Assistant Administrator finds, after consultation with the Department of State, that the laws and program for the protection of porpoise are comparable to those of the United States (50 CFR 216.24). Data relating to fleet performance during 1986, 1987 and part of 1988, were prepared by the Inter-American Tropical Tuna Commission (IATTC) based on reports from observers placed aboard fishing vessels by the IATTC. The Assistant Administrator accepts these data as accurate and meet the requirements of the interim rule.

The interim rule does not require that a nation's fleet porpise mortality performance meet either the negative trend test or the comparability test for 1988. Therefore, the Government of Ecuador has met all of the current requirements for importing yellowfin tuna into the United States.

Dated: October 27, 1988.

James W. Brennan,

Assistant Administrator for Fisheries.

[FR Doc. 88-25340 Field 11-1-88; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Women in the Services; Meeting

AGENCY: Defense Advisory Committee on Women in the Services (DACOWITS), DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Pub. L. 92–463, notice is hereby given of a forthcoming meeting of the Executive Committee of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of the meeting is to review the recommendations, requests for information, and continuing concerns made by the Committee at the 1988 Fall Conference; review the Subcommittee Issue Agenda; discuss current issues relevant to women in the Services; and complete any unfinished business for 1988. All meeting sessions will be open to the public.

DATE: December 16, 1988, 9:30 a.m.–5 p.m.

ADDRESS: OSD Conference Room 1E801, The Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Major Ilona E. Prewitt, Director, DACOWITS and Military Women Matters, OASD (Force Management and Personnel), The Pentagon, Room 3D769, Washington, DC 20301–4000, telephone (202) 697–2122.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 28, 1988.

[FR Doc. 88-25365 Filed 11-1-88; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

National Assessment Governing Board, Education; Meeting

AGENCY: Notice of partially closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: November 18 and 19, 1988.

ADDRESS: Embassy Square Hotel, 2000 N Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Eunice E. Henderson, Designated Federal Official, Office of Assistant Secretary for Educational Research, and Improvement, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 602C, Washington, DC 20208, Telephone: (202) 357–60.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), Title III–C of the Augustus F. Hawkins-Robert T. Stafford Elementary and Seconday School Improvement Amendments of 21988 (Pub. L. 100–297); 20 U.S.C. 1221e–1).

The Board is established to advise the Commissioner of the National Center for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Education Progress, and develop specifications for the design, methodology, analysis and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons.

The National Assessment Governing Board will meet in Washington, DC on November 18 and 19, 1988. The Board will meet from 12:30 p.m. to 5:30 p.m. on November 18 and from 9:00 a.m. to 5:30 p.m. on November 19. On November 19, a portion of the meeting will be closed to the public. From 11:30 a.m. to 2:00 p.m. on November 19, the meeting will be closed to the public for discussion of qualifications of specific individuals for positions on the Board's staff. This portion of the meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. Appendix 2) and under exemptions (2) and (6) of section 552b(c) of the Government in the Sunshine Act (Pub. L. 94–049; 5 U.S.C. 552b(c) (2) and (6)). A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting.

The proposed agenda includes: (a) Initial administrative business, including the administration of the oath of office; and (b) discussion of the history and current status of the National Assessment of Education Progress, pertinent issues, and Board

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responsibilities. The Board also will consider its organization, budget, and staff requirements.

Records are kept of all Board proceedings, and until a permanent office site for the Board has been established, are available for public inspection at the U.S. Department of Education, Office of Educational Research and Improvement, 555 New Jersey Avenue, NW., Room 600, Washington, DC from 8:30 a.m. to 5:00 p.m.

Bruce V. Mason,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 88-25315 Filed 11-1-88; 8:45 am]

BILLING CODE 4000-01-M

Office of Educational Research and Improvement

Library Services and Construction Act; Promulgation of Federal Shares

Sections 7(b)(1) and 7(b)(2) of the Library Services and Construction Act, as amended (20 U.S.C. 351 *et seq.*), require the Secretary of Education to promulgate the Federal share for each State and Territory every second fiscal year beginning with fiscal 1971. Per capita income data from the Department of Commerce for the years 1985, 1986, and 1987 have been used to establish the Federal shares applicable to Titles I and II of the Act. The Federal shares published in the table below are effective for the fiscal years ending September 30, 1990 and September 30, 1991.

(Catalog of Federal Domestic Assistance Program Number 84.034, Library Services—Grants for Public Libraries and 84.154, Public Library Construction)

Dated: October 25, 1988.

Bruce V. Mason,

Acting Assistant Secretary, Office of Educational Research and Improvement.

State	Federal Share (percent)
Alabama	62.27
Alaska	39.48
Arizona	54.47
Arkansas	63.28
California	43.71
Colorado	49.56
Connecticut	34.37
Delaware	47.89
District of Columbia	38.53
Florida	50.94
Georgia	55.11
Hawaii	50.68
Idaho	62.36
Illinois	48.11
Indiana	56.12
Iowa	55.37
Kansas	51.69
Kentucky	63.05
Louisiana	62.20
Maine	57.00
Maryland	43.26
Massachusetts	40.98
Michigan	50.85
Minnesota	49.89
Mississippi	66.00
Missouri	53.43
Montana	50.98
Nebraska	54.53
Nevada	46.31
New Hampshire	42.19
New Jersey	36.66
New Mexico	61.60
New York	43.73
North Carolina	58.42
North Dakota	58.46
Ohio	53.65
Oklahoma	58.26
Oregon	55.53
Pennsylvania	52.12
Rhode Island	51.18
South Carolina	63.17
South Dakota	60.66
Tennessee	59.53
Texas	54.61
Utah	63.34
Vermont	55.52
Virginia	48.48
Washington	50.50
West Virginia	64.75
Wisconsin	53.46
Wyoming	57.48
American Samoa	66.00
Guam	66.00
Puerto Rico	66.00
Palau	100.00
Virgin Islands	66.00
Northern Mariana Islands	66.00

[FR Doc. 88-25309 Filed 11-1-88; 8:45 am]

BILLING CODE 4000-1-M

Office of Postsecondary Education

Stafford Loan Program, SLS Program, PLUS Program, and Consolidation Loan Program; Special Allowance

AGENCY: Department of Education.

ACTION: Notice of special allowance for quarter ending September 30, 1988.

The Assistant Secretary for Postsecondary Education announces a special allowance to holders of eligible loans made under the Stafford Loan Program (formerly the Guaranteed Student Loan Program), the Supplemental Loans for Students (SLS) Program, the PLUS Program or the Consolidation Loan Program. This special allowance is provided for under section 438 of the Higher Education Act of 1965 (the Act), as amended (20 U.S.C. 1087–1).

Except for loans subject to section 438(b)(2)(B) of the Act, 20 U.S.C. 1087–1(b)(2)(B), for the quarter ending September 30, 1988, the special allowance will be paid at the following rates:

Applicable interest rate (percent)	Annual special allowance rate (percent)	Special allowance rate (percent) for quarter ending Sept. 30, 1988
I. Stafford, PLUS or Consolidation loans made prior to October 1, 1981:		
7	3.75	0.9375
9	1.76	0.4375
II. Stafford, SLS or PLUS loans made on or after October 1, 1981, but prior to November 16, 1986, for periods of enrollment beginning prior to November 16, 1986; Consolidation loans made on or after October 1, 1981, but prior to November 16, 1986:		
7	3.74	0.935
8	2.74	0.685
9	1.74	0.435
12	0.00	0.00
14	0.00	0.00
III. Stafford loans made on or after November 16, 1986, or made for periods of enrollment beginning on or after November 16, 1986; SLS or PLUS loans made at a fixed rate of interest either on or after November 16, 1986, or for periods of enrollment beginning on or after November 16, 1986; Consolidation loans made on or after November 16, 1986:		
7	3.45	0.8725
8	2.49	0.6225
9	1.45	0.3725
10	0.49	0.1225
11	0.00	0.00
12	0.00	0.00
13	0.00	0.00
14	0.00	0.00

The Assistant Secretary determines the special allowance rate in the manner specified in the Act, for loans at each applicable interest rate, by making the following four calculations:

(a) *Step 1.* Determine the average bond equivalent rate of the 91-day Treasury bills auctioned during the quarter for which this notice applies (7.24 percent for the quarter ending September 30, 1988);

(b) *Step 2.* Subtract from that average the applicable interest rate of loans for which a holder is requesting payment;

(c) *Step 3.* (1) Add 3.5 percent to the remainder, and, in the case of loans made before October 1, 1981, round the sum upward to the nearest one-eight of one percent; or

(2) Add 3.25 percent in the case of (i) GSLP loans made on or after November 16, 1986, or made for periods of enrollment beginning on or after November 16, 1986, (ii) SLS or PLUS loans made at a fixed rate of interest either on or after November 16, 1986, or made for periods of enrollment beginning on or after November 16, 1986, or (iii) Consolidation loans made on or after November 16, 1986; and

(d) *Step 4.* Divide the resulting percent in Step 3 (either (c)(1) or (c)(2), as applicable) by four.

FOR FURTHER INFORMATION CONTACT: Ralph B. Madden, Program Analyst, Guaranteed Student Loan Branch, Division of Policy and Program Development, Department of Education on (202) 732–4242.

Dated: October 27, 1988.

Kenneth D. Whitehead,

Acting Assistant Secretary for Postsecondary Education.

(Catalog of Federal Domestic Assistance No. 84.032, Guaranteed Student Loan Program and PLUS Program)

[FR Doc. 88-25388 Filed 11-1-88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 88-53-NG]

Gas Masters, Inc.; Application To Import Natural Gas From Canada and Mexico

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for blanket authorization to import natural gas from Canada and Mexico.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on September 26, 1988, of an application from Gas Masters, Inc. (GMI) for blanket authorization to import up to 100 Bcf of natural gas from Canada and Mexico over a two-year term beginning on the date of first delivery. GMI, a Texas corporation with its principal place of business in Houston, intends to import the gas on its own behalf or as agent on behalf of Canadian and Mexican suppliers or domestic purchasers, including pipelines, local distribution companies, and commercial and industrial end-users. GMI contemplates using existing pipeline facilities for the transportation of the proposed imports, and indicates it proposes to comply with ERA reporting requirements.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention, requests for additional procedures and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than December 2, 1988.

FOR FURTHER INFORMATION CONTACT:

Robert M. Stronach, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room 3F–070, 1000 Independence Avenue SW., Washington, DC 20585 (202) 586–9622

Diane J. Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585 (202) 586–6667

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement will be competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room 3F–056, RG–23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m. est., December 2, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. A request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of GMI's application is available for inspection and copying in the Natural Gas Division Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC October 27, 1988.

Anthony J. Como,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-25403 Filed 11-1-88; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 87-71-NG]

Pepperell Power Associates; Conditional Order Granting a Long-Term Authorization To Import Natural Gas From Canada and Granting Interventions

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of conditional order granting authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued a conditional order granting authorization to Pepperell Power Associates to import up to 9,795 Mcf per day and up to a total of 53,627,625 Mcf of Canadian natural gas to fuel a new cogeneration facility over a 15-year term to begin on the date of initial firm delivery of the gas after the cogeneration facility and all transporting pipeline facilities are in place and accepted for commercial operation as provided for under the provisions of its gas purchase contract with TransCanada PipeLines Limited.

This order is conditioned on the subsequent review and acceptance of unfinished environmental documentation related to construction of new pipeline facilities for delivering the gas to the site, the construction of the cogeneration facility and DOE's compliance with the National Environmental Policy Act requirements relative to the issuance of a final order in this docket.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays.

Issued in Washington, DC, October 25, 1988.

Anthony J. Como,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-25404 Filed 11-1-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP89-81-000, et al.]

Tennessee Gas Pipeline Company et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Tennessee Gas Pipeline Company

[Docket No. CP89-81-000]

October 27, 1988.

Take notice that on October 24, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in docket No. CP-89-81-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Chevron U.S.A. Inc. (Chevron), a producer, under the certificate issued in docket No. CP87-115-000 on June 16, 1987, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated September 22, 1988, it proposes to transport up to 11,000 dekatherms (dt) per day equivalent of natural gas on an interruptible basis for Chevron from point(s) of receipt listed in Exhibit "A" of the agreement to delivery point(s) also listed in Exhibit "A", which transportation service may involve interconnections between Tennessee and various transporters. Tennessee states that it would receive the gas at an existing point on its system offshore Louisiana and that it would transport and redeliver the gas for Chevron to Southern Natural Gas Company in St. Mary Parish, Louisiana. It is further stated that the ultimate delivery point is in the state of Alabama.

Tennessee advises that service under § 284.223(a) commenced September 23, 1988, as reported in Docket No. ST89-202 (filed October 17, 1988). Tennessee further advises that it would transport 11,000 dt on an average day and 4,105,000 dt annually.

Comment date: December 12, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. Sabine Resources Group, Inc., West Texas Gas, Inc.

[Docket No. CP89-15-000]

October 26, 1988.

Take notice that on October 7, 1988 [1] Sabine Resources Group, Inc. (Sabine), 2288 Benton Road, LTM Building, Bossier City, Louisiana 7111, and West Texas Gas, Inc. (WTG), 211 North Colorado, Midland, Texas 79701, filed in Docket No. CP89-15-000 a joint application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing Sabine to acquire and operate certain jurisdictional natural gas facilities currently owned and operated by WTG; and for permission and approval for WTG to abandon its operation of these same jurisdictional facilities, as more fully set forth in the application which is on file with the Commission and open to public inspection.

Sabine proposes to acquire from WTG and operate the Dalhart System which consists of a 22-inch main transmission line and related sales laterals extending from a point near Bivins, Texas to Clayton, New Mexico. WTG currently owns as part of its Dalhart System two compressors described as (1) 5790G Waukesha (TC) driving joy WBF 72, two cylinders and (2) 8G825 White Superior driving W-82, 2 cylinders and coolers, scrubbers, and a building (Unused Dalhart Facilities). Sabine states that it is not purchasing the Unused Dalhart Facilities and that they are not in service and are not used and useful in providing natural gas service. It is stated that Sabine intends to operate the Dalhart System in the same manner as it is presently operated by WTG. Sabine states it will offer the same service, make the same sales and charge the same rates as WTG. Sabine proposes to adopt, ratify and make its own the currently effective FERC Gas Tariff, Original Vol. No. 1, of WTG and the two currently effective service agreements with Felt Water Development Company and Gas Company of New Mexico covering the natural gas service under this tariff.

WTG seeks a complementary order permitting and approving the abandonment of the Dalhart System including the Unused Dalhart Facilities. It is stated that Sabine is purchasing these facilities pursuant to a purchase agreement dated June 27, 1988.

Comment date: November 18, 1988, in accordance with Standard Paragraph F at the end of this notice.

3. East Tennessee Natural Gas Company

[Docket No. CP89-65-000]

October 25, 1988.

Take notice that on October 17, 1988, East Tennessee Natural Gas Company (East Tennessee) P.O. Box 10245, Knoxville, Tennessee 37939-0245, filed in Docket No. CP89-65-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate new delivery points for its existing customers, the Knoxville Utilities Board (KUB) and the Middle Tennessee Utility District (MTUD) of Cannon, Cumberland, Dekalb, Hamilton, Putnam, Rhea, Rutherford, Smith, Warren, White and Wilson Counties, Tennessee, under East Tennessee's blanket certificate issued in Docket No. CP82-412-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

East Tennessee states that it proposes to establish a new delivery point for its existing customer, KUB, in northwest Knox County, Tennessee, at Hickey Road, 235 feet north of the north right-of-way of Chesney Road. The new delivery points for MTUD would be (1) in Smith County, Tennessee, on East Tennessee's Carthage Lateral between the Monoville and Pleasant Shade Communities, and (2) in Franklin County, Tennessee, on East Tennessee's 3200 line at the location of East Tennessee's purchase facilities from Hickory Creek Development Corporation. East Tennessee further states that estimated peak day volumes to be delivered to KUB at the new delivery point would be 19,800 Mcf. East Tennessee indicates that the estimated peak day volumes to be delivered to MTUD at the new delivery points in Smith County and Franklin County would be 28 Mcf and 1,500 Mcf, respectively.

East Tennessee states that the volumes to be delivered to KUB and MTUD at the proposed delivery points would not exceed the total volumes currently authorized for delivery to KUB and MTUD by East Tennessee. East Tennessee further states that the estimated cost to construct the proposed facilities would be $7,700 for KUB; $28,500 for MTUD (Franklin County); and $6,400 for MTUD (Smith County). East Tennessee indicates that the facilities would be financed with cash on hand.

Comment date: December 12, 1988, in accordance with Standard Paragraph G at the end of this notice.

4. Williston Basin Interstate Pipeline Company

[Docket No. CP89-33-000]

October 28, 1988.

Take notice that on October 7, 1988, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP89-33-000 a request pursuant to § 157.205 and 175.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to add a tap metering and appurtenant facilities, under pursuant to section 7 of the Natural Gas Act all or more fully set forth in the request on file with the Commission and open to public inspection.

Williston Basin states that it proposes to construct the tap and metering and appurtenant facilities at Richland County, Montana to redeliver interruptible transportation gas for Western Gas Processors, Ltd. to Holly Sugar Company for their sugar beet processing requirements.

Comment date: December 12, 1988, in accordance with Standard Paragraph G at the end of this notice.

5. United Gas Pipe Line Company

[Docket No. CP89-867-000]

October 28, 1988.

Take notice that on September 28, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP88-867-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of International Paper Company (International Paper), an end user of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United proposes to transport, on an interruptible basis, up to 14,420 MMBtu/day for International Paper from two (2) points of receipt, one in Vermilion Parish, Louisiana and one in Webster Parish, Louisiana to one (1) delivery point in Warren County, Mississippi. United states that construction of facilities would not be required to provide the proposed service.

United further states that the estimated daily and annual quantities would be 14,420 MMBtu and 5,263,000 MMBtu respectively, and that service under § 284.223(a) commenced July 21, 1988, as reported in Docket No. ST88-5344.

Comment date: December 12, 1988, in accordance with Standard Paragraph G at the end of the notice.

6. Tennessee Gas Pipeline Company

[Docket No. CP89-82-000]

October 28, 1988.

Take notice that on October 24, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-82-000 a prior notice request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to provide a transportation service for Houston Gas Exchange Corporation (Houston), a marketer, under Tennessee's blanket certificate issued in Docket No. CP87-115-000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to transport up to 50,000 dt of natural gas per day for Houston from points of receipt located offshore Louisiana for redelivery to CNG Transmission Corporation at various points off Tennessee's system. Tennessee further states that the average day and annual quantities would be 50,000 dt and 36,500,000 dt, respectively. Tennessee states that service commenced September 6, 1988, as reported in Docket No. ST89-77 filed on October 6, 1988, pursuant to § 284.223(a) of the Commission's Regulations.

Comment date: December 12, 1988, in accordance with Standard Paragraph G at the end of this notice.

7. Southern Natural Gas Company

[Docket No. CP89-77-000]

October 28, 1988.

Take notice that on October 21, 1988, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP89-77-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88-316-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern proposes to transport natural gas on an interruptible basis for Rangeline Corporation (Rangeline). Southern explains that service commenced August 4, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88-5511. Southern explains that the peak day quantity would be 30,000 MMBtu, the average daily quantity would be 15,000 MMBtu, and that the annual quantity would be 5,475,000 MMBtu. Southern explains that it would receive natural gas for Rangeline's account at existing receipt points in Louisiana, offshore Louisiana, Mississippi, and Alabama for delivery at a delivery point in Georgia.

Comment date: December 12, 1988, in accordance with Standard Paragraph G at the end of this notice.

8. Southern Natural Gas Company

[Docket No. CP89-79-000]

October 28, 1988.

Take notice that on October 21, 1988, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP89-79-000 a request pursuant to

[1] The application was tendered for filing on October 6, 1988; however, the fee required by § 381.207 of the Commission's Rules (18 CFR 381.207) was not paid until October 7, 1988. Section 381.301 of the Commission's Rules provides that the filing date is the date on which the fee is paid.

§§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP86–316–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern proposes to transport natural gas for Rangeline Corporation (Rangeline) pursuant to Rate Schedule IT. Southern explains that service commenced August 17, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88–5714. Southern explains that the peak day quantity would be 6,000 MMBtu, the average daily quantity would be 300 MMBtu, and that the annual quantity would be 109,500 MMBtu. Southern explains that it would receive natural gas for Rangeline's account at existing receipt points in Louisiana, offshore Louisiana, Mississippi, and Alabama for delivery at a delivery point in Alabama.

Comment date: December 12, 1988, in accordance with Standard Paragraph G at the end of the notice.

8. Northwest Pipeline Corporation

[Docket No. CP88–58–000]

October 26, 1988.

Take notice that on October 13, 1988, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP88–58–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86–578–000 pursuant to section 7 of the Natural Gas Act for IGI Resources Inc. (IGI), all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest proposes to transport natural gas for IGI, on an interruptible basis, pursuant to a transportation agreement dated February 10, 1988, as amended April 12, 1988, and July 22, 1988. Northwest explains that service commenced September 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88–34. Northwest further explains that the peak day quantity would be 70,000 MMBtu, the average daily quantity would be 7,500 MMBtu, and that the annual quantity would be 2,700,000 MMBtu. Northwest explains that it would receive natural gas for IGI's account from various sources and interconnects with other pipeline companies in Wyoming, Colorado, Utah, Washington, and Oregon and would redeliver the gas for IGI's account at essentially all the delivery points located on Northwest's system in Oregon, Idaho, Colorado, Utah, Washington, and Wyoming. Northwest indicates that IGI has entered into sales contracts with CP National Corporation, Cascade Natural Gas Corporation, and Intermountain Gas Company.

Comment date: December 12, 1988, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in the subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 88–25374 Filed 11–1–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. (ST88–6979–000 et al.)]

Delhi Gas Pipeline Corp. et al.; Self-Implementing Transactions

October 21, 1988.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations, and sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA).[1]

The "Recipient" column in the following table indicate the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's Regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's Regulations and section 311(a)(2) of the NGPA. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and the expiration date of the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a motion to intervene with the Secretary of the Commission on or before November 18, 1988.

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the notice filing is in compliance with the Commission's Regulations.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's Regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G–S" indicates transportation by an interstate pipeline company on behalf of any shipper pursuant to § 284.223 and a blanket certificate issued under § 284.221 of the Commission's Regulations or pursuant to blanket certificate authority granted under § 284.225 or § 284.226 of the Commission's Regulations.

A "G(LT)" or "G(LS)" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's Regulations.

A "G(HT)" or "G(HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's Regulations.

Lois D. Cashell,

Secretary.

Docket No.[1] and transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (cents per MMBtu)
ST88–6978 Delhi Gas Pipeline Corp	Transwestern Pipeline Co	9–01–88	C	12–29–88	35.00
ST88–6979 Texas Eastern Transmission Corp	East Ohio Gas Co	9–01–88	B		
ST88–6980 Texas Eastern Transmission Corp	Philadelphia Electric Co	9–01–88	B		
ST88–6981 Exxon Gas System, Inc	Texas Industrial Energy Co	9–01–88	C	12–29–88	15.00
ST88–6982 Ong Transmission Co	Panhandle Eastern Pipe Line Co	9–01–88	C	12–29–88	24.32
ST88–6983 Valero Transmission, L.P	Trunkline Gas Co	9–01–88	C		
ST88–6984 Ong Transmission Co	ANR Pipeline Co	9–01–88	C	12–29–88	21.00
ST88–6985 Louisiana Intrastate Gas Corp	ANR Pipeline Co	9–01–88	C	12–29–88	27.44
ST88–6986 Texas Eastern Transmission Corp	Philadelphia Electric Co	9–01–88	B		
ST88–6987 Texas Eastern Transmission Corp	United Cities Gas Co	9–01–88	B		
ST88–6988 Sabine Pipe Line Co	Northern Intrastate Pipeline Co	9–01–88	B		
ST88–6989 Sabine Pipe Line Co	ACME Natural Gas Co., et al	9–01–88	B		
ST88–6990 Transcontinental Gas Pipe Line Corp	Union Gas Co	9–01–88	B		
ST88–6991 Transcontinental Gas Pipe Line Corp	City of Winder	9–01–88	B		
ST88–6992 Transcontinental Gas Pipe Line Corp	City of Toccoa	9–01–88	B		
ST88–6993 Transcontinental Gas Pipe Line Corp	City of Lawrenceville	9–01–88	B		
ST88–6994 Transcontinental Gas Pipe Line Corp	South Carolina Pipeline Corp	9–01–88	B		
ST88–6995 Transcontinental Gas Pipe Line Corp	Philadelphia Gas Works, Inc	9–01–88	B		
ST88–6996 Transcontinental Gas Pipe Line Corp	Philadelphia Electric Co	9–01–88	B		
ST88–6997 Transcontinental Gas Pipe Line Corp	South Carolina Pipeline Corp	9–01–88	B		
ST88–6998 Transcontinental Gas Pipe Line Corp	Clinton Newberry Nat. Gas Authority	9–01–88	B		
ST88–6999 Transcontinental Gas Pipe Line Corp	United Cities Gas Co., SC Div	9–01–88	B		
ST88–7000 Transcontinental Gas Pipe Line Corp	City of Commerce	9–01–88	B		
ST88–7001 Transcontinental Gas Pipe Line Corp	City of Buford	9–01–88	B		
ST88–7002 Transcontinental Gas Pipe Line Corp	City of Covington	9–01–88	B		
ST88–7003 Transcontinental Gas Pipe Line Corp	City of Sugar Hill	9–01–88	B		
ST88–7004 Transcontinental Gas Pipe Line Corp	City of Monroe	9–01–88	B		
ST88–7005 Transcontinental Gas Pipe Line Corp	City of Social Circle	9–01–88	B		
ST88–7006 Texas Eastern Transmission Corp	Philadelphia Gas Works, Inc	9–01–88	B		
ST88–7007 ARKLA Energy Resources	Arkansas Louisiana Gas Co	9–01–88	B		
ST88–7008 ARKLA Energy Resources	Oceana Heights Gas Co	9–01–88	B		
ST88–7009 ARKLA Energy Resources	Southeastern Natural Gas Co	9–01–88	B		
ST88–7010 El Paso Natural Gas Co	Valero Transmission, L.P	9–01–88	B		
ST88–7011 Northwest Pipeline Corp	Intermountain Gas Co	9–01–88	B		
ST88–7012 Northwest Pipeline Corp	Washington Natural Gas Co	9–01–88	B		
ST88–7013 Northwest Pipeline Corp	CP National Corp	9–01–88	B		
ST88–7014 Northwest Pipeline Corp	City of Ellensburg	9–01–88	B		
ST88–7015 Northwest Pipeline Corp	Cascade Natural Gas Corp	9–01–88	B		
ST88–7016 Tennessee Gas Pipeline Co	City of Holly Springs	9–01–88	B		
ST88–7017 Tennessee Gas Pipeline Co	Wellhead Ventures Corp	9–01–88	B		
ST88–7018 [illegible]	American Central Gas Marketing Co	9–01–88	[illegible]		
ST88–7019 Natural Gas Pipeline Co. of America	Northern Indiana Public Service Co	9–01–88	B		
ST88–7020 Natural Gas Pipeline Co. of America	Consolidated Edison Co. of NY, Inc	9–01–88	B		
ST88–7021 Tennessee Gas Pipeline Co	Creole Gas Pipeline Co	9–01–88	B		
ST88–7022 United Gas Pipe Line Co	Wellhead Ventures Corp	9–01–88	B		
ST88–7023 Southern Natural Gas Co	Atlanta Gas Light Co	9–01–88	B		
ST88–7024 Southern Natural Gas Co	Llano, Inc	9–01–88	B		
ST88–7025 Southern Natural Gas Co	Atlanta Gas Light Co	9–01–88	B		
ST88–7026 Southern Natural Gas Co	USX a Division of USX	9–01–88	[illegible]		
ST88–7027 Southern Natural Gas Co	End Users Supply System	9–01–88	[illegible]		
ST88–7028 Southern Natural Gas Co	End Users Supply System	9–01–88	[illegible]		
ST88–7029 Sea Robin Pipeline Co	Atlanta Gas Light Co., et al	9–01–88	B		
ST88–7030 Sea Robin Pipeline Co	Bridgeline Gas Distribution Co., et al	9–01–88	B		
ST88–7031 Colorado Interstate Gas Co	Prairie Gas Pipeline Co	9–01–88	B		
ST88–7032 Colorado Interstate Gas Co	Columbia Gas of Ohio, Inc	9–01–88	B		
ST88–7033 Colorado Interstate Gas Co	Southern California Gas Co	9–01–88	B		
ST88–7034 Colorado Interstate Gas Co	Peoples Natural Gas Co	9–01–88	B		

Docket No.[1] and transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (cents per MMBtu)
ST88-5035 Northwest Pipeline Corp	Washington Water Power Co	8-02-88	B		
[illegible] Gas Co. of NM (Div. Public Serv. Co. NM)	El Paso Natural Gas Co	8-02-88	B(HT)		
ST88-5037 Delhi Gas Pipeline Corp	Northern Natural Gas Co	8-02-88	C	12-30-88	35.00
ST88-5039 Delhi Gas Pipeline Corp	Transwestern Pipeline Co	8-02-88	C	12-30-88	35.00
[illegible] Tarpon Transmission	Amoco Gas Co., et al	8-01-88	B		
ST88-5040 United Gas Pipe Line Co	Jala Pipe Line Corp., et al	8-02-88	B		
ST88-5041 United Gas Pipe Line Co	Southern Gas Co., et al	8-02-88	B		
[illegible] United Gas Pipe Line Co	City of Reidsville Gas Systems	8-02-88	B		
[illegible] United Gas Pipe Line Co	Illinois Power Co., et al	8-02-88	B		
ST88-5044 United Gas Pipe Line Co	City of Vicksburg, et al	8-02-88	B		
[illegible] United Gas Pipe Line Co	Baltimore Gas & Electric Co., et al	8-02-88	B		
ST88-5046 Delhi Gas Pipeline Corp	Neches Gas Distribution Co et al	8-02-88	C	12-30-88	35.00
ST88-5047 Delhi Gas Pipeline Corp	Natural Gas Pipeline Co. of America	8-02-88	C	12-30-88	35.00
[illegible] Delhi Gas Pipeline Corp	Neches Gas Distribution Co	8-02-88	C	12-30-88	35.00
ST88-5049 Gulf Energy Pipeline Co	Tennessee Gas Pipeline Co	8-02-88	C		
ST88-5050 Tennessee Gas Pipeline Co	Natural Gas Clearing, Intra. Pipeline Co	8-02-88	B		
ST88-5051 Tennessee Gas Pipeline Co	Texas Gas Transmission Corp	8-02-88	G		
ST88-5052 Tennessee Gas Pipeline Co	Louisiana Industrial Gas Supply System	8-02-88	B		
[illegible] Columbia Gas Transmission Corp	Gypsum Energy Management Co	8-02-88	G-S		
[illegible] Natural Gas Pipeline Co. of America	Columbia Gas of KY, Inc., et al	8-03-88	B		
[illegible] Natural Gas Pipeline Co. of America	North Shore Gas Co	8-03-88	B		
[illegible] Natural Gas Pipeline Co. of America	ANR Pipeline Co	8-03-88	G		
[illegible] United Gas Pipe Line Co	Amalgamated Pipeline Co	8-03-88	B		
ST88-5056 United Gas Pipe Line Co	Polaris Corp	8-03-88	B		
ST88-5059 Trunkline Gas Co	Tejas Power Corp	8-03-88	G-S		
[illegible] Northwest Pipeline Corp	Mobil Natural Gas, Inc	8-03-88	G-S		
[illegible] Northwest Pipeline Corp	Thermal Exploration, Inc	8-03-88	G-S		
ST88-5062 Northwest Pipeline Corp	ITRP Natural Gas Ventures, Inc	8-03-88	G-S		
ST88-5063 Northwest Pipeline Corp	Phillips Petroleum Co	8-03-88	G-S		
ST88-5064 Northwest Pipeline Corp	Southwest Gas Corp	8-03-88	G-S		
[illegible] Northwest Pipeline Corp	Presidio Energy Co	8-03-88	G-S		
ST88-5066 Northwest Pipeline Corp	Terra Resources, Inc	8-03-88	G-S		
ST88-5067 Northwest Pipeline Corp	Northwest Marketing Co	8-03-88	G-S		
ST88-5068 Northwest Pipeline Corp	Chandler & Associates, Inc	8-03-88	G-S		
ST88-5069 Northwest Pipeline Corp	Mobil Natural Gas, Inc	8-03-88	G-S		
[illegible] Texas Eastern Transmission Corp	Columbia Gas of Ohio, Inc	8-03-88	B		
[illegible] Texas Eastern Transmission Corp	Connecticut Light & Power Co	8-03-88	B		
ST88-5072 Texas Eastern Transmission Corp	Bay State Gas Co	8-03-88	B		
[illegible] Texas Eastern Transmission Corp	Niagara Mohawk Power Corp	8-03-88	B		
ST88-5074 Texas Eastern Transmission Corp	Lavaca Pipe Line Co	8-03-88	B		
ST88-5075 Texas Eastern Transmission Corp	PPG Pipeline Inc	8-03-88	B		
[illegible] Texas Eastern Transmission Corp	Long Island Lighting Co	8-03-88	B		
[illegible] Texas Eastern Transmission Corp	Peoples Natural Gas Co	8-03-88	B		
ST88-5078 Texas Eastern Transmission Corp	Niagara Mohawk Power Corp	8-03-88	B		
ST88-5079 Texas Eastern Transmission Corp	Philadelphia Gas Works, Inc	8-03-88	B		
ST88-5080 Texas Eastern Transmission Corp	Peoples Natural Gas Co	8-03-88	B		
[illegible] Texas Eastern Transmission Corp	UGI Corp	8-03-88	B		
ST88-5082 Texas Eastern Transmission Corp	Niagara Mohawk Power Corp	8-03-88	B		
[illegible] Texas Eastern Transmission Corp	Peoples Natural Gas Co	8-03-88	B		
ST88-5084 Texas Eastern Transmission Corp	Long Island Lighting Co	8-03-88	B		
[illegible] Texas Eastern Transmission Corp	Boston Gas Co	8-03-88	B		
[illegible] Texas Eastern Transmission Corp	Niagara Mohawk Power Corp	8-03-88	B		
[illegible] Texas Eastern Transmission Corp	Commonwealth Gas Co	8-03-88	B		
[illegible] Texas Eastern Transmission Corp	Southern Connecticut Gas Co	8-03-88	B		
[illegible] Texas Eastern Transmission Corp	UGI Corp	8-03-88	B		
ST88-5090 Northern Natural Gas Co	Lake Park Municipal Utilities	8-03-88	B		
[illegible] Northern Natural Gas Co	Petrofina Gas Pipeline Co	8-03-88	G-S		
ST88-5092 Texas Gas Transmission Corp	Alabama Gas Corp., et al	8-04-88	B		
[illegible] Texas Gas Transmission Corp	Quivira Gas Co	8-04-88	B		
ST88-5094 Natural Gas Pipeline Co. of America	Quarles Drilling Corp	8-04-88	G-S		
[illegible] Natural Gas Pipeline Co. of America	Hadson Gas Systems, Inc	8-04-88	G-S		
[illegible] Questar Pipeline Co	Prairie Gas Transportation Co., et al	8-04-88	B		
[illegible] Panhandle Eastern Pipe Line Co. of America	Amarillo Natural Gas Co., Inc	8-04-88	B		
ST88-5098 Panhandle Eastern Pipe Line Co. of America	Sunrise Energy Co	8-04-88	B		
ST88-5099 ANR Pipeline Co	Llano, Inc	8-04-88	B		
ST88-5100 Southern Natural Gas Co	Access Energy Pipeline Corp	8-05-88	B		
ST88-5101 Southern Natural Gas Co	Atlanta Gas Light Co	8-05-88	B		
[illegible] Southern Natural Gas Co	Atlanta Gas Light Co	8-05-88	B		
[illegible] Southern Natural Gas Co	Atlanta Gas Light Co	8-05-88	B		
ST88-5104 Southern Natural Gas Co	Louisiana State Gas Corp	8-05-88	B		
ST88-5105 Southern Natural Gas Co	South Carolina Pipeline Corp	8-05-88	B		
ST88-5106 Southern Natural Gas Co	Chattanooga Gas Co	8-05-88	B		
[illegible] Southern Natural Gas Co	Atlanta Gas Light Co	8-05-88	B		
[illegible] Southern Natural Gas Co	SNG Intrastate Pipeline, Inc	8-05-88	B		
ST88-5109 Southern Natural Gas Co	Atlanta Gas Light Co	8-05-88	B		
ST88-5110 Southern Natural Gas Co	Atlanta Gas Light Co	8-05-88	B		
[illegible] Southern Natural Gas Co	Atlanta Gas Light Co	8-06-88	B		
ST88-5112 El Paso Natural Gas Co	Pacific Gas and Electric Co	8-05-88	B		
[illegible] Natural Gas Pipeline Co. of America	Associated Intrastate Pipeline Co	8-25-88	B		

Docket No.[1] and transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (cents per MMBtu)
ST88-5114 ANR Pipeline Co	Pontchartrain Natural Gas System	8-05-88	B		
ST88-5115 ANR Pipeline Co	DOW Intrastate Gas Co	8-05-88	B		
ST88-5116 Ong Transmission Co	Natural Gas Pipeline Co of America	8-05-88	C	01-02-89	24.32
ST88-5117 Arkansas Western Gas Co	Columbia Gas Transmission Corp	8-05-88	B(HT)		
ST88-5118 Natural Gas Pipeline Co. of America	Trunkline Gas Co	8-08-88	G		
ST88-5119 Texas Gas Transmission Corp	Bridgeline Gas Distribution Co	8-08-88	B		
ST88-5120 Texas Gas Transmission Corp	Western Kentucky Gas Co	8-08-88	B		
ST88-5121 Texas Gas Transmission Corp	Louisiana Gas System, Inc	8-08-88	B		
ST88-5122 Texas Gas Transmission Corp	Indiana Gas Co., Inc	8-08-88	B		
ST88-5123 Tennessee Gas Pipeline Co	Texas Power Corp	8-08-88	G-S		
ST88-5124 Northwest Pipeline Corp	Internationaler Energie Fonds, GMBH	8-08-88	G-S		
ST88-5125 Texas Eastern Transmission Corp	Public Service Electric and Gas Co	8-08-88	B		
ST88-5126 Texas Eastern Transmission Corp	UGI Corp	8-08-88	B		
ST88-5127 Texas Eastern Transmission Corp	Mississippi Fuel Co	8-08-88	B		
ST88-5128 Texas Eastern Transmission Corp	Allied Gas Co	8-08-88	B		
ST88-5129 Texas Eastern Transmission Corp	Elizabethtown Gas Co	8-08-88	B		
ST88-5130 Texas Eastern Transmission Corp	Midwest Natural Gas Corp	8-08-88	B		
ST88-5131 Texas Eastern Transmission Corp	New Jersey Natural Gas Co	8-08-88	B		
ST88-5132 Texas Eastern Transmission Corp	Philadelphia Electric Co	8-08-88	B		
ST88-5133 Texas Eastern Transmission Corp	East Ohio Gas Co	8-08-88	B		
ST88-5134 Texas Eastern Transmission Corp	Hope Gas, Inc	8-08-88	B		
ST88-5135 Texas Eastern Transmission Corp	Connecticut Light & Power Co	8-08-88	B		
ST88-5136 Texas Eastern Transmission Corp	New York State Electric and Gas Co	8-08-88	B		
ST88-5137 Texas Eastern Transmission Corp	Baltimore Gas and Electric Co	8-08-88	B		
ST88-5138 Texas Eastern Transmission Corp	Elizabethtown Gas Co	8-08-88	B		
ST88-5139 Trunkline Gas Co	Transcontinental Gas Pipe Line Corp	8-08-88	G		
ST88-5140 Tarpon Transmission	Transcontinental Gas Pipe Line Corp	8-08-88	G-S		
ST88-5141 United Gas Pipe Line Co	Commonwealth Gas Co., et al	8-08-88	B		
ST88-5142 United Gas Pipe Line Co	Mississippi Fuel Co	8-08-88	B		
ST88-5143 Algonquin Gas Transmission Co	Bay State Gas Co	8-08-88	B		
ST88-5144 ONG Transmission Co	Northern Natural Gas Co	8-08-88	C	01-06-89	24.32
ST88-5145 Tennessee Gas Pipeline Co	Mobil Natural Gas, Inc	8-09-88	G-S		
ST88-5146 Tennessee Gas Pipeline Co	Citizens Gas Supply Corp	8-09-88	G-S		
ST88-5147 Panhandle Eastern Pipe Line Co	James River—Norwalk	8-09-88	G-S		
ST88-5148 Panhandle Eastern Pipe Line Co	James River-KVP Group	8-09-88	G-S		
ST88-5149 Panhandle Eastern Pipe Line Co	Central Illinois Light Co	8-09-88	B		
ST88-5150 Tennessee Gas Pipeline Co	Valero Transmission, L.P	8-10-88	B		
ST88-5151 Tennessee Gas Pipeline Co	Wellhead Ventures Corp	8-10-88	B		
ST88-5152 Tennessee Gas Pipeline Co	Citizens Gas Supply Corp	8-10-88	G-S		
ST88-5153 Texas Eastern Transmission Corp	Niagara Mohawk Power Corp	8-10-88	B		
ST88-5154 Texas Eastern Transmission Corp	Bishop Pipeline Corp	8-10-88	B		
ST88-5155 Natural Gas Pipeline Co. of America	Reliance Pipeline Co	8-10-88	B		
ST88-5156 Natural Gas Pipeline Co. of America	General Energy Operating, Ltd	8-10-88	B		
ST88-5157 Natural Gas Pipeline Co. of America	ONG Transmission Co	8-10-88	B		
ST88-5158 Trunkline Gas Co	Baltimore Gas & Electric, et al	8-10-88	B		
ST88-5159 United Gas Pipe Line Co	Prior Intrastate Corp	8-10-88	B		
ST88-5160 United Gas Pipe Line Co	Public Service Co. of N. Caroline	8-10-88	B		
ST88-5161 United Gas Pipe Line Co	Wilmut Oil & Gas Co	8-10-88	B		
ST88-5162 Sea Robin Pipeline Co	Excel Intra. Pipeline Co., et al	8-10-88	B		
ST88-5163 Sea Robin Pipeline Co	Oceana Heights Gas Co., et al	8-10-88	B		
ST88-5164 Williams Natural Gas Co	Reliance Gas Marketing Co	8-10-88	G-S		
ST88-5165 Transcontinental Gas Pipe Line Corp	Columbia Gas Transmission Corp	8-10-88	G		
ST88-5166 Transcontinental Gas Pipe Line Corp	Columbia Gas Transmission Corp	8-10-88	G		
ST88-5167 Transwestern Pipeline Co	Southern California Gas Co	8-10-88	B		
ST88-5168 Questar Pipeline Co	Mountain Fuel Supply Co	8-11-88	B		
ST88-5169 Questar Pipeline Co	Mountain Fuel Supply Co	8-11-88	B		
ST88-5170 Questar Pipeline Co	Phillips Natural Gas Co	8-11-88	B		
ST88-5171 Northwest Pipeline Corp	Northwest Natural Gas Co	8-11-88	B		
ST88-5172 Northern Natural Gas co	Maxus Exploration Co	8-12-88	G-S		
ST88-5173 El Paso Natural Gas Co	Peoples Natural Gas Co	8-12-88	B		
ST88-5174 Northwest Pipeline Corp	Northwest Natural Gas Co	8-12-88	B		
ST88-5175 Northwest Pipeline Corp	Southwest Gas Corp	8-12-88	B		
ST88-5176 Tennessee Gas Pipeline Corp	Enron Gas Marketing	8-12-88	G-S		
ST88-5177 Tennessee Gas Pipeline Corp	Florida Gas Transmission Co	8-12-88	G		
ST88-5178 Tennessee Gas Pipeline Corp	Essex County Gas Co	8-12-88	B		
ST88-5179 Tennessee Gas Pipeline Corp	Reliance Pipeline Co	8-12-88	B		
ST88-5180 Tennessee Gas Pipeline Corp	UGI Corp	8-12-88	B		
ST88-5181 Trunkline Gas Co	Tenngasco Corp	8-12-88	G-S		
ST88-5182 Trunkline Gas Co	Quantum Chemical Corp	8-12-88	G-S		
ST88-5183 Sea Robin Pipeline Co	Columbia Gas of NY, Inc., et al	8-12-88	B		
ST88-5184 Transcontinental Gas Pipe Line Corp	B & A Pipeline Co	8-12-88	B		
ST88-5185 Transcontinental Gas Pipe Line Corp	Long Island Lighting Co	8-12-88	B		
ST88-5186 Transcontinental Gas Pipe Line Corp	UGI Corp	8-12-88	B		
ST88-5187 Transcontinental Gas Pipe Line Corp	Commonwealth Gas Pipeline Corp	8-12-88	B		
ST88-5188 United Gas Pipe Line Co	Entex, Inc	8-12-88	B		
ST88-5189 United Gas Pipe Line Co	Delhi/Louisiana Intrastate Pipeline Co	8-12-88	B		
ST88-5190 United Gas Pipe Line Co	Eastex Gas Transmission Co	8-12-88	B		
ST88-5191 United Gas Pipe Line Co	Associated Intra Pipeline Co., et al	8-12-88	B		
ST88-5192 United Gas Pipe Line Co	Ven Gas Pipeline Co	8-12-88	B		

Docket No.[1] and transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (cents per [illegible])
ST88-5193 United Gas Pipe Line Co	Union Texas Transmission Co	8-12-88	B		
ST88-5194 United Gas Pipe Line Co	Entex, Inc	8-12-88	B		
ST88-5195 United Gas Pipe Line Co	Tejas Power Corp	8-12-88	G-S		
ST88-5196 United Gas Pipe Line Co	Entex, Inc	8-12-88	B		
ST88-5197 Sabine Pipe Line Co	Columbia Gas of Kentucky, Inc	8-15-88	B		
ST88-5198 Natural Gas Pipeline Co. of America	ANR Pipeline Co	8-15-88	G		
ST88-5199 Natural Gas Pipeline Co. of America	TransAmerican Transmission Corp	8-15-88	B		
ST88-5200 El Paso Natural Gas Co	Pacific Gas and Electric Co	8-15-88	B		
ST88-5201 El Paso Natural Gas Co	Southern California Gas Co	8-15-88	B		
ST88-5202 Panhandle Eastern Pipe Line Co	Miami Pipeline Co	8-15-88	B		
ST88-5203 Panhandle Eastern Pipe Line Co	Illinois Power Co	8-15-88	B		
ST88-5204 Panhandle Eastern Pipe Line Co	Central Illinois Light Co	8-15-88	B		
ST88-5205 Texas Eastern Transmission Corp	Columbia Gas of Ohio, Inc	8-15-88	B		
ST88-5206 Texas Eastern Transmission Corp	Philadelphia Electric Co	8-15-88	B		
ST88-5207 Texas Eastern Transmission Corp	TransAmerican Gas Transmissin Corp	8-15-88	B		
ST88-5208 Texas Eastern Transmission Corp	City of Smyrna	8-15-88	B		
ST88-5209 Transcontinental Gas Pipe Line Corp	Philadelphia Electric Co	8-15-88	B		
ST88-5210 Transcontinental Gas Pipe Line Corp	Piedmont Natural Gas Co	8-15-88	B		
ST88-5211 Transcontinental Gas Pipe Line Corp	Union Gas Co	8-15-88	B		
ST88-5212 Transcontinental Gas Pipe Line Corp	North Carolina Natural Gas Corp	8-15-88	B		
ST88-5213 Transcontinental Gas Pipe Line Corp	Commonwealth Gas Pipeline Corp	8-15-88	B		
ST88-5214 Transcontinental Gas Pipe Line Corp	Baltimore Gas and Electric Co	8-15-88	B		
ST88-5215 Transcontinental Gas Pipe Line Corp	Neches Pipeline System	8-15-88	B		
ST88-5216 Transcontinental Gas Pipe Line Corp	PSI, Inc	8-15-88	G-S		
ST88-5217 United Gas Pipe Line Co	Central Illinois Light Co., et al	8-15-88	B		
ST88-5218 United Gas Pipe Line Co	Polaris Corp	8-15-88	B		
ST88-5219 Southern Natural Gas Co	Sonat Marketing Co	8-15-88	G-S		
ST88-5220 Southern Natural Gas Co	Atlanta Gas Light Co	8-15-88	B		
ST88-5221 ANR Pipeline Co	Columbia Gas of Ohio, Inc	8-15-88	B		
ST88-5222 ANR Pipeline Co	NGC Intrastate Pipeline Co	8-15-88	B		
ST88-5223 ANR Pipeline Co	Wisconsin Public Service Corp	8-15-88	B		
ST88-5224 ANR Pipeline Co	Coastal States Gas Transmission Co	8-15-88	B		
ST88-5225 United Gas Pipe Line Co	Louisiana State Gas Corp	8-15-88	B		
ST88-5226 United Gas Pipe Line Co	City of Bay St. Louis, et al	8-15-88	B		
ST88-5227 United Gas Pipe Line Co	Columbia Gas of Pennsylvania, Inc	8-15-88	B		
ST88-5228 United Gas Pipe Line Co	Parker Gas Gathering Company, Inc	8-15-88	G-S		
ST88-5229 United Gas Pipe Line Co	Midcon Marketing Corp	8-15-88	G-S		
ST88-5230 United Gas Pipe Line Co	Resource Group, Inc	8-15-88	G-S		
ST88-5231 United Gas Pipe Line Co	Riverway Gas Pipeline Co	8-15-88	B		
ST88-5232 United Gas Pipe Line Co	Gulf Fuels, Inc	8-15-88	B		
ST88-5233 Panhandle Eastern Pipe Line Co	Gastrak Corp	8-15-88	G-S		
ST88-5234 Panhandle Eastern Pipe Line Co	Entrade Corp	8-15-88	G-S		
ST88-5235 Panhandle Eastern Pipe Line Co	Central Soya Company, Inc	8-15-88	G-S		
ST88-5236 Panhandle Eastern Pipe Line Co	Michigan Consolidated Gas Co	8-15-88	B		
ST88-5237 Panhandle Eastern Pipe Line Co	Natural Gas Clearinghouse, Inc	8-15-88	G-S		
ST88-5238 Panhandle Eastern Pipe Line Co	American Cyanamid Co	8-15-88	G-S		
ST88-5239 Panhandle Eastern Pipe Line Co	Union Electric Co	8-15-88	B		
ST88-5240 Panhandle Eastern Pipe Line Co	Michigan Gas Utilities Co	8-15-88	B		
ST88-5241 Panhandle Eastern Pipe Line Co	Sunrise Energy Co	8-15-88	B		
ST88-5242 Panhandle Eastern Pipe Line Co	Northern Illinois Gas Co	8-15-88	B		
ST88-5243 Delhi Gas Pipeline Corp	Transwestern Pipeline Co	8-16-88	D	01-13-89	35.00
ST88-5244 Channel Industries Gas Co	Northern Natural Gas Co	8-16-88	C		
ST88-5245 Northwest Pipeline Corp	Grand Valley Transmission Co	8-16-88	G-S		
ST88-5246 Northwest Pipeline Corp	Utah Gas Service Co	8-16-88	B		
ST88-5247 Valero Transmission, L.P	El Paso Natural Gas Co	8-16-88	C		
ST88-5248 Valero Transmission, L.P	El Paso Natural Gas Co	8-16-88	C		
ST88-5249 Natural Gas Pipeline Co. of America	Consumers Power Co	8-16-88	B		
ST88-5250 Natural Gas Pipeline Co. of America	Interstate Power Co	8-16-88	G		
ST88-5251 Tennessee Gas Pipeline Co	Florida Gas Transmission Co	8-16-88	G		
ST88-5252 Tennessee Gas Pipeline Co	Long Island Lighting Co	8-16-88	B		
ST88-5253 Tennessee Gas Pipeline Co	Bay State Gas Co	8-16-88	B		
ST88-5254 Tennessee Gas Pipeline Co	Polaris Pipeline Corp	8-16-88	G-S		
ST88-5255 Valero Transmission, L.P	Tennessee Gas Pipeline Co	8-17-88	C		
ST88-5256 Valero Transmission, L.P	El Paso Natural Gas Co	8-17-88	C		
ST88-5257 Colorado Interstate Gas Co	MGTC, Inc	8-15-88	B		
ST88-5258 Colorado Interstate Gas Co	MGTC, Inc	8-15-88	B		
ST88-5259 Colorado Interstate Gas Co	MGTC, Inc	8-15-88	B		
ST88-5260 Colorado Interstate Gas Co	MGTC, Inc	8-15-88	B		
ST88-5261 Colorado Interstate Gas Co	Vesgas Co	8-15-88	B		
ST88-5262 Natural Gas Pipeline Co. of America	Texas Eastern Transmission Corp	8-17-88	G		
ST88-5263 United Gas Pipe Line Co	Yankee Pipeline Co	8-17-88	B		
ST88-5264 United Gas Pipe Line Co	Michigan Power Co., et al	8-17-88	B		
ST88-5265 United Gas Pipe Line Co	Access Energy Pipeline Corp	8-17-88	B		
ST88-5266 United Gas Pipe Line Co	Transco Energy Marketing	8-17-88	G-S		
ST88-5267 United Gas Pipe Line Co	Shreveport Intrastate Gas Trans., Inc	8-17-88	B		
ST88-5268 Northwest Pipeline Corp	Robert L. Bayless	8-17-88	G-S		
ST88-5269 Northwest Pipeline Corp	Hixon Development Co	8-17-88	G-S		
ST88-5270 Northwest Pipeline Corp	Jerome P. McHugh and Associates	8-17-88	G-S		
ST88-5271 Northwest Pipeline Corp	Williams Gas Co	8-17-88	B		

Docket No.[1] and transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (cents per [illegible])
ST88-5272 Tennessee Gas Pipeline Co	UGI Corp	8-17-88	B		
ST88-5274 Iowa-Illinois Gas & Electric Co	Natural Gas Pipeline Co. of America	8-11-88	(3)(H7)		
ST88-5275 Iowa-Illinois Gas & Electric Co	Natural Gas Pipeline Co. of America	8-25-88	(3)(H7)		
ST88-5276 Northern Natural Gas Co	Transwestern Pipeline Co	8-17-88	G		
ST88-5277 Northern Natural Gas Co	Northern Illinois Gas Co	8-17-88	B		
ST88-5278 Northern Natural Gas Co	Northern Illinois Gas Co	8-17-88	B		
ST88-5279 Northern Natural Gas Co	Damson Gas Processing Corp	8-17-88	G-S		
ST88-5280 Northern Natural Gas Co	American Central Gas Marketing Co	8-17-88	G-S		
ST88-5281 Lone Star Gas Co	El Paso Natural Gas Co	8-18-88	C		
ST88-5282 United Gas Pipe Line Co	Perry Gas Companies, Inc	8-18-88	B		
ST88-5283 United Gas Pipe Line Co	Delmarva Power and Light Co	8-18-88	B		
ST88-5284 Transcontinental Gas Pipe Line Corp	Florida Gas Transmission Co	8-18-88	G		
ST88-5285 Transcontinental Gas Pipe Line Corp	Superior Natural Gas Corp	8-18-88	G-S		
ST88-5286 Panhandle Eastern Pipe Line Co	Panhandle Trading Co	8-18-88	G-S		
ST88-5287 Natural Gas Pipeline Co. of America	Enron Gas Marketing	8-18-88	G-S		
ST88-5288 Colorado Interstate Gas Co	Northern Illinois Gas Co	8-19-88	B		
ST88-5289 Colorado Interstate Gas Co	Associated Intrastate Pipeline Co	8-19-88	B		
ST88-5290 Colorado Interstate Gas Co	Southern Union Gas Co	8-19-88	B		
ST88-5291 El Paso Natural Gas Co	JAL Gas Co	8-19-88	B		
ST88-5292 Northern Natural Gas Co	Apache Marketing, Inc	8-19-88	G-S		
ST88-5293 Northern Natural Gas Co	VLDC Co	8-19-88	B		
ST88-5294 Northern Natural Gas Co	Natural Gas Pipeline Co. of America	8-19-88	G		
ST88-5295 Texas Eastern Transmission Corp	Bridgeline Gas Distribution Co	8-19-88	B		
ST88-5296 Texas Eastern Transmission Corp	New Jersey Natural Gas Co	8-19-88	B		
ST88-5297 Texas Eastern Transmission Corp	Connecticut Light & Power Co	8-19-88	B		
ST88-5298 Texas Eastern Transmission Corp	North Penn Gas Co	8-19-88	B		
ST88-5299 Texas Eastern Transmission Corp	Long Island Lighting Co	8-19-88	B		
ST88-5300 Texas Eastern Transmission Corp	Bridgeline Gas Distribution Co	8-19-88	B		
ST88-5301 Texas Eastern Transmission Corp	Long Island Lighting Co	8-19-88	B		
ST88-5302 Texas Eastern Transmission Corp	Public Service Electric and Gas Co	8-19-88	B		
ST88-5303 Texas Eastern Transmission Corp	Philadelphia Electric Co	8-19-88	B		
ST88-5304 Texas Eastern Transmission Corp	Columbia Gas of Ohio, Inc	8-19-88	B		
ST88-5305 Texas Eastern Transmission Corp	Central Hudson Gas and Electric Co	8-19-88	B		
ST88-5306 Texas Eastern Transmission Corp	Mississippi Fuel Co	8-19-88	B		
ST88-5307 Texas Eastern Transmission Corp	Enmark Gas Corp	8-19-88	B		
ST88-5308 Texas Eastern Transmission Corp	Commonwealth Gas Co	8-19-88	B		
ST88-5309 Texas Eastern Transmission Corp	Bridgeline Gas Distribution Co	8-19-88	B		
ST88-5310 Texas Eastern Transmission Corp	Allied Gas Co	8-19-88	B		
ST88-5311 Texas Eastern Transmission Corp	Equitable Gas Co	8-19-88	B		
ST88-5312 Texas Eastern Transmission Corp	Colonial Gas Corp	8-19-88	B		
ST88-5313 Texas Eastern Transmission Corp	Philadelphia Electric Co	8-19-88	B		
ST88-5314 Texas Eastern Transmission Corp	Philadelphia Electric Co	8-19-88	B		
ST88-5315 Texas Eastern Transmission Corp	East Ohio Gas Co	8-19-88	B		
ST88-5316 Texas Eastern Transmission Corp	Public Service Electric and Gas Co	8-19-88	B		
ST88-5317 Texas Eastern Transmission Corp	Corning Natural Gas Corp	8-19-88	B		
ST88-5318 Texas Eastern Transmission Corp	New Jersey Natural Gas Co	8-19-88	B		
ST88-5319 Texas Eastern Transmission Corp	Rochester Gas & Electric Corp	8-19-88	B		
ST88-5320 Texas Eastern Transmission Corp	Sabine Gas Transmission Co	8-19-88	B		
ST88-5321 Texas Eastern Transmission Corp	Central Illinois Public Service Co	8-19-88	B		
ST88-5322 Texas Eastern Transmission Corp	Central Hudson Gas and Electric Co	8-19-88	B		
ST88-5323 Texas Eastern Transmission Corp	Chambersburg Gas Dept., Chambersburg	8-19-88	B		
ST88-5324 Texas Eastern Transmission Corp	Central Illinois Public Service Co	8-19-88	B		
ST88-5325 Texas Eastern Transmission Corp	Louisville Gas & Electric Co	8-19-88	B		
ST88-5326 Palo Duro Pipeline Co., Inc	Natural Gas Pipeline Co. of America	8-22-88	C		
ST88-5327 Texas Gas Transmission Corp	Iowa Southern Utilities Co., et al	8-22-88	B		
ST88-5328 Texas Gas Transmission Corp	Excel Intrastate Pipeline Co	8-22-88	B		
ST88-5329 Texas Gas Transmission Corp	City of Clay	8-22-88	B		
ST88-5330 Texas Gas Transmission Corp	Seagull Louisiana Intrastate Pipeline Co	8-22-88	B		
ST88-5331 Texas Gas Transmission Corp	Connecticut Natural Gas Corp	8-22-88	B		
ST88-5332 Texas Gas Transmission Corp	City of Providence	8-22-88	B		
ST88-5333 Webb/Duval Gatherers	Natural Gas Pipeline Co. of America	8-22-88	C		
ST88-5334 Webb/Duval Gatherers	Natural Gas Pipeline Co. of America	8-22-88	C		
ST88-5335 ONG Transmisson Co	Northern Natural Gas Co	8-22-88	C	01-19-89	24.32
ST88-5336 Columbia Gulf Transmission Co	Lafayette Gas Intrastate Co	8-22-88	B		
ST88-5337 Columbia Gulf Transmission Co	Central Illinois Light Co., et al	8-22-88	B		
ST88-5338 Tennessee Gas Pipeline Co	Endevco Oil and Gas Co	8-22-88	G-S		
ST88-5339 United Gas Pipe Line Co	Heath & Associates, et al	8-22-88	B		
ST88-5340 Sea Robin Pipeline Co	Columbia Gas of KY, et al	8-22-88	B		
ST88-5341 ARKLA Energy Resources	Arkansas Louisiana Gas Co	8-22-88	B		
ST88-5342 Webb/Duval Gatherers	Texas Eastern Transmission Corp	8-23-88	C		
ST88-5343 United Gas Pipe Line Co	Jala Pipe Line Corp	8-23-88	B		
ST88-5344 United Gas Pipe Line Co	International Paper Co	8-23-88	G-S		
ST88-5345 United Gas Pipe Line Co	NGC Intrastate Pipeline Co	8-23-88	B		
ST88-5346 United Gas Pipe Line Co	NGC Intrastate Pipeline Co	8-23-88	B		
ST88-5347 United Gas Pipe Line Co	Midcon Marketing Corp	8-23-88	G-S		
ST88-5348 Tejas Gas Corp	Panhandle Eastern Pipe Line Co	8-23-88	C	01-20-89	36.00
ST88-5349 Northern Natural Gas Co	Panda Resources, Inc	8-23-88	G-S		
ST88-5351 Northern Natural Gas Co	Arco Oil & Gas Co	8-23-88	G-S		
ST88-5352 Northern Natural Gas Co	Kimball Resources, Inc	8-23-88	G-S		

Docket No.[1] and transporter/seller	Recipient	Date filed	Subpart	Expiration date[2]	Transportation rate (cents per MMBtu)
[illegible] Texas Eastern Transmission Corp	Philadelphia Gas Works, Inc	9-23-88	B		
[illegible] Trunkline Gas Co	Citizens Gas Supply Corp	9-23-88	G-S		
[illegible] Columbia Gas Transmission Corp	Equitrans, Inc	9-23-88	G		
ST88-5356 Texas Eastern Transmission Corp	Rochester Gas & Electric Corp	9-24-88	B		
[illegible] Texas Eastern Transmission Corp	City of Batesville	9-24-88	B		
ST88-5359 Texas Eastern Transmission Corp	North Alabama Gas District	9-24-88	B		
ST88-5360 Texas Eastern Transmission Corp	Elizabethtown Gas Co	9-24-88	B		
[illegible] Texas Eastern Transmission Corp	Union Electric Co	9-24-88	B		
ST88-5362 Texas Eastern Transmission Corp	Niagara Mohawk Power Corp	9-24-88	B		
ST88-5363 United Gas Pipe Line Co	Texaco Gas Marketing, Inc	9-24-88	G-S		
ST88-5364 United Gas Pipe Line Co	Wisconsin Public Service Corp., et al	9-24-88	B		
ST88-5365 Tennessee Gas Pipeline Co	Energy Marketing Exchange, Inc	9-24-88	G-S		
ST88-5366 Tennessee Gas Pipeline Co	Mississippi Fuel Co	9-24-88	B		
ST88-5367 Tennessee Gas Pipeline Co	Granite State Gas Transmission, Inc	9-24-88	G		
[illegible] Tennessee Gas Pipeline Co	Equitable Gas Co	9-24-88	B		
[illegible] Tennessee Gas Pipeline Co	Superior Natural Gas Corp	9-24-88	G-S		
[illegible] Tennessee Gas Pipeline Co	Amalgamated Pipeline Co	9-24-88	B		
[illegible] Tennessee Gas Pipeline Co	Citizens Gas Supply Corp	9-24-88	G-S		
ST88-5372 Tennessee Gas Pipeline Co	Hardeman-Fayette Utilities	9-24-88	B		
ST88-5373 Tennessee Gas Pipeline Co	Access Energy Corp	9-24-88	G-S		
[illegible] Tennessee Gas Pipeline Co	Louisiana Natural Gas Pipeline, Inc	9-24-88	B		
ST88-5375 Tennessee Gas Pipeline Co	Superior Natural Gas Corp	9-24-88	G-S		
ST88-5376 Tennessee Gas Pipeline Co	City of Adamsville	9-24-88	B		
[illegible] Natural Gas Pipeline Co. of America	Tejas Power Corp	9-25-88	G-S		
ST88-5378 Natural Gas Pipeline Co. of America	Peoples Gas Light & Coke Co	9-25-88	B		
[illegible] Natural Gas Pipeline Co. of America	Westar Transmission Co	9-25-88	B		
ST88-5380 Algonquin Gas Transmission Co	Central Hudson Gas and Electric Co	9-25-88	B		
[illegible] Algonquin Gas Transmission Co	Commonwealth Gas Co	9-25-88	B		
ST88-5382 Panhandle Eastern Pipe Line Co	ANR Gathering Co	9-25-88	G-S		
ST88-5383 Panhandle Eastern Pipe Line Co	Central Illinois Public Service Co	9-25-88	B		
[illegible] United Gas Pipe Line Co	Air Products & Chemicals, Inc	9-25-88	G-S		
[illegible] United Gas Pipe Line Co	Eastex Gas Transmission Co	9-25-88	B		
ST88-5386 United Gas Pipe Line Co	Consolidated Fuel Corp	9-25-88	G-S		
[illegible] United Gas Pipe Line Co	Apache Transmission Corp	9-25-88	B		
[illegible] El Paso Natural Gas Co	Southwest Gas Corp	9-26-88	B		
[illegible] Texas Sea Rim Pipeline, Inc	Apache Transmission Corp	9-26-88	B		
ST88-5390 Oasis Pipe Line Co	El Paso Natural Gas Co	9-26-88	C		
[illegible] Houston Pipe Line Co	Texas Eastern Transmission Corp	9-26-88	C		
[illegible] Houston Pipe Line Co	Northern Natural Gas Co	9-26-88	C		
[illegible] Houston Pipe Line Co	El Paso Natural Gas Co	9-26-88	C		
[illegible] Oasis Pipe Line Co	El Paso Natural Gas Co	9-26-88	C		
ST88-5395 Colorado [illegible] Gas Co	Iowa Public Service Co., et al	9-26-88	B		
ST88-5396 Tennessee Gas Pipeline Co	Columbia Gas of Ohio, et al	9-26-88	B		
[illegible] Tennessee Gas Pipeline Co	Exxon Corp	9-26-88	G-S		
ST88-5398 Tennessee Gas Pipeline Co	Kimball Resources, Inc	9-26-88	G-S		
ST88-5399 Tennessee Gas Pipeline Co	Mobil Natural Gas, Inc	8-29-88	G-S		
[illegible] Tennessee Gas Pipeline Co	NGC Intrastate Pipeline Co	9-26-88	B		
[illegible] Tennessee Gas Pipeline Co	Intercon Gas, Inc	9-26-88	G-S		
[illegible] Northwest Pipeline Corp	Enron Oil & Gas Co	9-26-88	G-S		
[illegible] Northwest Pipeline Corp	Union Oil Co. of CA	9-26-88	G-S		
[illegible] Northwest Pipeline Corp	Northwest Natural Gas Co	9-26-88	B		
ST88-5405 Northwest Pipeline Corp	Southern California Gas Co	9-26-88	B		
[illegible] Transwestern Pipeline Co	Llano, Inc	9-26-88	B		
[illegible] Transwestern Pipeline Co	Gas Co. of NM (Div. Public Serv. Co. NM)	9-26-88	B		
[illegible] Columbia Gulf Transmission Co	Consumers Power Co	9-26-88	B		
[illegible] Gas Co. of NM (Div. Public Serv. Co. NM)	El Paso Natural Gas Co	9-26-88	B(FT)		
ST88-5410 Superior Pipeline Co	United Gas Pipe Line Co	8-29-88	C	01-26-89	11.00
[illegible] Texas Eastern Transmission Corp	Columbia Gas of Ohio, Inc	9-26-88	B		
[illegible] Texas Eastern Transmission Corp	East Ohio Gas Co	9-29-88	B		
[illegible] Texas Eastern Transmission Corp	Valero Transmission, L.P	9-26-88	B		
[illegible] Texas Eastern Transmission Corp	Philadelphia Electric Co	9-26-88	B		
ST88-5415 Tennessee Gas Pipeline Co	Enron Gas Marketing	9-26-88	G-S		
[illegible] Texas Eastern Transmission Corp	Commonwealth Gas Co	9-26-88	B		
[illegible] Texas Eastern Transmission Corp	Columbia Gas of Ohio, Inc	9-26-88	B		
[illegible] El Paso Natural Gas Co	Gulf Gas Utilities Co	9-26-88	B		
[illegible] Gulf States Pipeline Corp	United Gas Pipe Line Co	9-26-88	C	01-26-89	15.00
[illegible] [illegible]/Duval Gathering	Natural Gas Pipeline Co. of America	9-26-88	C		
ST88-5421 Transwestern Pipeline Co	Southern California Gas Co	9-26-88	B		
[illegible] Valero Transmission, L.P	El Paso Natural Gas Co	9-26-88	C		
[illegible] Natural Gas Pipeline Co. of America	Midcon Marketing Corp	9-26-88	G-S		
ST88-5424 Williams Natural Gas Co	Mobil Natural Gas, Inc	9-26-88	G-S		
ST88-5425 Williams Natural Gas Co	Delta Gas Resources, Inc	9-26-88	G-S		
[illegible] Williams Natural Gas Co	Mobil Natural Gas, Inc	9-26-88	G-S		
[illegible] Williams Natural Gas Co	American Central Gas Marketing Co	9-26-88	G-S		
[illegible] Williams Natural Gas Co	Kansas City Power & Light Co	9-26-88	G-S		
ST88-5429 Williams Natural Gas Co	Associated Natural Gas Co., Inc	9-26-88	G-S		
ST88-5430 Williams Natural Gas Co	Heartland Gas Marketing, Inc	9-26-88	G-S		
[illegible] Williams Natural Gas Co	Veata Energy Co	9-26-88	G-S		
[illegible] Williams Natural Gas Co	Mountain Iron & Supply Co	9-26-88	G-S		

Docket No.[1] and transporter/seller	Recipient	Date filed	Subpart	Expiration date[2]	Transportation rate (cents per MMBtu)
[illegible] ANR Pipeline Co	Consolidated Edison Co. of NY, Inc	9-30-88	B		
[illegible] ANR Pipeline Co	Wisconsin Natural Gas Co	9-30-88	B		
[illegible] ANR Pipeline Co	Community Natural Gas Co	9-30-88	B		
ST88-5436 ANR Pipeline Co	NGC Intrastate Pipeline Co	9-30-88	B		
[illegible] ANR Pipeline Co	Coastal States Gas Transmission Co	9-30-88	B		
[illegible] ANR Pipeline Co	Seagull Louisiana Intrastate Pipeline Co	9-30-88	B		
ST88-5439 Texas Gas Transmission Corp	Alabama Gas Co., et al	9-30-88	B		
[illegible] Texas Gas Transmission Corp	East Ohio Gas Co., et al	9-30-88	B		
[illegible] Texas Gas Transmission Corp	Alabama Gas Corp., et al	9-30-88	B		
[illegible] Texas Gas Transmission Corp	TPC Pipeline Co	9-30-88	B		
ST88-5443 Tennessee Gas Pipeline Co	Berkshire Gas Co	9-01-88	B		
[illegible] Williams Natural Gas Co	Williams Gas Marketing Co	9-31-88	G-S		
[illegible] Williams Natural Gas Co	OXY U.S.A., Inc	9-31-88	G-S		
[illegible] Williams Natural Gas Co	Golden Gas Energies, Inc	9-31-88	G-S		
[illegible] Williams Natural Gas Co	National By-Products, Inc	9-31-88	G-S		
ST88-5447 Williams Natural Gas Co	North Alabama Gas District	9-31-88	B		
ST88-5448 Texas Eastern Transmission Corp	Columbia Gas Transmission Corp	9-31-88	G		
[illegible] Tennessee Gas Pipeline Co	Excel Intrastate Pipeline Co	9-31-88	B		
ST88-5450 Tennessee Gas Pipeline Co	Enron Gas Marketing	9-31-88	G-S		
ST88-5451 Northern Natural Gas Co	Miami Pipeline Co	9-31-88	B		
[illegible] Panhandle Eastern Pipe Line Co	Panhandle Eastern Pipe Line Co	9-31-88	C	[illegible]	[illegible]
ST88-5453 Delhi Gas Pipeline Corp	Public Service Electric and Gas Co	9-31-88	B		
ST88-5454 United Gas Pipe Line Co	Entex, Inc	9-31-88	B		
ST88-5455 United Gas Pipe Line Co	Monterey Pipeline Co., et al	9-31-88	B		
ST88-5456 United Gas Pipe Line Co	Lafayette Gas Intrastate Co	9-31-88	B		
ST88-5457 United Gas Pipe Line Co	Amalgamated Pipeline Co	9-31-88	B		
ST88-5458 United Gas Pipe Line Co	Long Island Lighting Co	9-31-88	B		
[illegible] United Gas Pipe Line Co	Hadson Gas Systems, Inc	9-31-88	G-S		
ST88-5460 United Gas Pipe Line Co	City of Milton	9-31-88	B		
ST88-5461 United Gas Pipe Line Co	Alabama Gas Co., et al	9-31-88	B		
[illegible] Sea Robin Pipeline Co	Northern Natural Gas Co	9-31-88	C	01-26-89	24.32
ST88-5463 ONG Transmission Co	Natural Gas Pipeline Co. of America	9-31-88	C	[illegible]	[illegible]
ST88-5464 ONG Transmission Co	El Paso Natural Gas Co	9-31-88	C	[illegible]	[illegible]
ST88-5465 ONG Transmission Co	Natural Gas Pipeline Co. of America	9-31-88	C		
[illegible] [illegible]/Duval Gathering	Kimball Resources, Inc	9-31-88	G-S		
ST88-5467 Trunkline Gas Co	Quivira Gas Co	9-31-88	B		
[illegible] Tennessee Gas Pipeline Co	CNG Transmission Corp	9-01-88	G		
ST88-5470 Tennessee Gas Pipeline Co	Columbia Gas Transmission Corp	9-31-88	G		
ST88-5471 Tennessee Gas Pipeline Co	Great River Gas Co	9-31-88	B		
ST88-5472 Arkla Energy Resources	City of Pulaski, Natural Gas Dept	9-31-88	B		
[illegible] Arkla Energy Resources	Westar Transmission Co	9-31-88	B		
ST88-5474 Arkla Energy Resources	City of Batesville	9-31-88	B		
ST88-5475 Arkla Energy Resources	Houston Pipe Line Co	9-31-88	B		
[illegible] Texas Eastern Transmission Corp	Northern Indiana Public Service Co	9-31-88	B		
[illegible] Texas Eastern Transmission Corp	Columbia Gas of Ohio, Inc	9-31-88	B		
ST88-5478 Texas Eastern Transmission Corp	Sabine Gas Transmission Co	9-31-88	B		
ST88-5479 Texas Eastern Transmission Corp	Entrade Corp	9-01-88	G-S		
ST88-5480 United Gas Pipe Line Co	Consumers Power Co	9-31-88	B		
[illegible] Transcontinental Gas Pipe Line Corp	Washakie Gathering Co	9-01-88	G-S		
[illegible] Northwest Pipeline Corp	Stauffer Wyoming Pipeline Co	9-01-88	B		
[illegible] Northwest Pipeline Corp	Amoco Production Co	9-01-88	G-S		
[illegible] Northwest Pipeline Corp	Colorado Interstate Gas Co	9-01-88	G		
[illegible] Northwest Pipeline Corp	Dugan Production Co	9-01-88	G-S		
ST88-5486 Northwest Pipeline Corp	Tri-County Natural Gas Co	9-31-88	B		
ST88-5487 Transcontinental Gas Pipe Line Corp	Monterey Pipeline Co	9-31-88	B		
ST88-5488 Transcontinental Gas Pipe Line Corp	Commission of Public Works, Laurens	9-31-88	B		
ST88-5489 Transcontinental Gas Pipe Line Corp	Commonwealth Gas Pipeline Corp	9-31-88	B		
ST88-5490 Transcontinental Gas Pipe Line Corp	American Steel & Wire	9-31-88	G-S		
[illegible] CNG Transmission Corp	Consolidated Fuel Corp	9-31-88	G-S		
[illegible] CNG Transmission Corp	Ohio Gas Marketing Corp	9-31-88	G-S		
[illegible] CNG Transmission Corp	CNG Trading Co	9-31-88	G-S		
[illegible] CNG Transmission Corp	Pipeline Marketing	9-31-88	G-S		
[illegible] CNG Transmission Corp	Kogas Inc	9-31-88	G-S		
[illegible] CNG Transmission Corp	Tennessee Gas Pipeline Co	9-31-88	G		
[illegible] CNG Transmission Corp	P & N Energy Services	9-31-88	G-S		
ST88-5499 CNG Transmission Corp	James River Corp	9-31-88	G-S		
ST88-5500 CNG Transmission Corp	Resource Group, Inc	9-31-88	G-S		
ST88-5501 CNG Transmission Corp	Ladd Gas Marketing	9-31-88	G-S		
ST88-5502 CNG Transmission Corp	Kogas Inc	9-31-88	G-S		
ST88-5503 CNG Transmission Corp	Kogas Inc	9-31-88	G-S		
ST88-5504 CNG Transmission Corp	Reliance Gas Maketing Co	9-31-88	G-S		
ST88-5505 Northwest Pipeline Corp	Blackwood & Nichols Co	9-31-88	G-S		
ST88-5506 Northwest Pipeline Corp	Meridian Oil Inc	9-31-88	G-S		
ST88-5507 Northwest Pipeline Corp	First Zone Production, Inc	9-31-88	G-S		

Below are two petitions for rate approval. They are noticed at this time to give interested parties the appropriate 150-day comment period.

ST88-3006 Texas Corp	Northern Natural Gas Co	9-01-88	C	12-29-88	40.00

Docket No.[1] and transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (cents per MMBtu)
ST88-4062 Texas Corp	Northern Natural Gas Co	9-01-88	C	12-25-88	40.00

[1] Notice of transactions does not constitute a determination that filings comply with Commission regulations in accordance with Order No. 436 (Final Rule and Notice Requesting Supplemental Comments, 50 FR 42,372, 10/18/85).

[2] The Interstate Pipeline has sought Commission approval of its transportation rate pursuant to section 284.123(b)(2) of the Commission's Regulations (18 CFR 284.123(b)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated.

[FR Doc. 88-25327 Filed 11-1-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CS87-16-000, et al.]

DEKALB Energy Co. (Depco, Inc.) et al.; Applications For Small Producer Certificates [1]

October 11, 1988.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Commission's Regulations thereunder for a small producer certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before November 14, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petiton to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No.	Date Filed	Applicant
CS87-16-000	10-12-88 [1]	DEKALB Energy Company, (Depco, Inc.), 110 Sixteenth Street, Suite 1000, Denver, CO 80202.
CS72-512	10-19-88 [2]	Pegasus Holding Corp., (Gruss Petroleum Corp.), 407 N. Big Spring, Suite 220, Midland, TX 79701.
CS77-541-S01	10-3-88 [3]	Marsh Operating Company and Tecovas, L.P. (Tom F. Marsh), P.O. Box 460, Dallas, TX 75221.
CS88-100-000	9-30-88	EP Operating Company, 1817 Wood Street, Dallas, TX 75201.
CS86-1-000	10-17-88	The Bovard Supply Company, P.O. Box 2580, Tulsa, OK 74102.

[1] By letter dated October 11, 1988, Applicant states that on August 31, 1988, Depco, Inc. was merged into its parent corporation, DEKALB Corporation. Applicant further states that effective September 6, 1988, DEKALB Corporation changed its name to DEKALB Energy Company. Applicant requests that the small producer certificate issued to Depco, Inc. in Docket No. CS87-16 be redesignated under the name of DEKALB Energy Company.

[2] By letter dated October 6, 1988, Applicant states that by amendment to Gruss Petroleum Corp.'s Articles of Incorporation, adopted by the shareholders on March 7, 1988, the name of Gruss Petroleum Corp. was changed to Pegasus Holding Corp. Applicant requests that the small producer certificate issued to Gruss Petroleum Corp. in Docket No. CS72-512 be redesignated under the name of Pegasus Holding Corp.

[3] By letter dated September 28, 1988, Applicant advises that Tom F. Marsh has formed several new entities, one being Marsh Operating Company. Applicant requests that the small producer certificate issued in Docket No. CS77-541 be transferred from Tom F. Marsh, as individual, to Marsh Operating Company, a Texas General Partnership, whose general partners are Marsh Investments Management Corp. and TFMOC, Inc. In addition, Applicant states that Tom F. Marsh has formed another new entity, Tecovas, L.P., a Texas Limited Partnership, whose general partners are James C. Crain and Marsh Investments Management Corp.

[FR Doc. 88-25323 Filed 11-1-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-5-001]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff Pursuant to Order No. 497

October 27, 1988.

Take notice that on October 11, 1988, Carnegie Natural Gas Company tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, First Revised Volume No. 1:

Second Revised Sheet No. 94c
Original Sheet Nos. 94b through 94i
Second Revised Sheet No. 98
Second Revised Sheet No. 99
Third Revised Sheet No. 121
Second Revised Sheet No. 122

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214. All such motions or protests must be filed by November 3, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-25320 Filed 11-1-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2541 North Caroline]

Cascade Power Co.; Intent To File an Application for a New License

October 28, 1988.

Take notice that on October 13, 1988, Cascade Power Company, the existing licensee for the Cascade Hydroelectric Project No. 2541, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2541 was issued effective January 1, 1966, and expires December 31, 1993.

The project is located on the Little River, a tributary of the French Broad River, in Transylvania County, North Carolina. The principal works of the Cascade Project include a concrete arch dam, 60 feet high and 300 feet long; a reservoir of 100 acres; a 1,125-foot-long penstock with a surge tank; a powerhouse with an installed capacity of 875 kw; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 225 East Main Street, P.O. Box 1137, Brevard, NC 28712, Attn: Mr. Charles Pickelsimer, Jr.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 30, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 88-25322 Filed 11-1-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP85-58-000 and TA85-1-33-011]

El Paso Natural Gas Co., Compliance Filing

October 31, 1988.

Take notice that El Paso Natural Gas Company ("El Paso"), on October 24, 1988, tendered for filing in compliance with the Federal Energy Regulatory Commission's ("Commission") letter order dated September 30, 1988 at Docket Nos. RP85-58-021 and TA85-1-33-010, *et al.*, and with ordering paragraph (B) of the Commission's order issued May 18, 1988 at Docket Nos. TA85-1-33-004, TA84-1-33-011, and TA84-2-33-013, certain tariff sheets which reflect a reduction in jurisdictional sales rates. Such tariff sheets are identified on the attached appendix, for inclusion in El Paso's FERC Gas Tariff, Original Volume No. 1, First Revised Volume No. 1, Third Revised Volume No. 2 and Original Volume No. 2A.

El Paso states that by letter order dated September 30, 1988, at Docket Nos. RP85-58-021 and TA85-1-33-010, *et al.*, the Commission rejected El Paso's tariff sheets filed August 17, 1988 in compliance with ordering paragraph (B) of the Commission's May 18, 1988 order. Such tariff sheets reflected the rate impact of deducting deferred income taxes related to El Paso's company-owned production that was repriced from a cost of service basis to NGPA prices effective October 1, 1983, from rate base.

El Paso states the September 30, 1988 letter order directed it to refile tariff sheets along with detailed supporting workpapers utilizing the appropriate rate of return to compute the rate reduction for the Docket No. RP82-33-000 rate period and eliminate the adjustment for the amortization of unfunded Federal and state income tax liability (South Georgia add-back) used in computing the impact on income taxes for each rate period.

El Paso states that it has recalculated the dollar amount attributable to the time value of the average of the deferred tax reserve for each period of time involving Docket Nos. RP82-33-000, RP85-58-000, and RP88-44-000 as directed by the September 30, 1988 letter order.

Copies of El Paso's filing were served upon all parties of record in Docket Nos. RP85-58-000 and TA85-1-33-000 and otherwise upon all interstate pipeline system customers of El Paso and all interested state regulatory commissions.

Any person desiring to be herd or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 7, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 88-25321 Filed 11-1-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2590 Wisconsin]

Consolidated Water Power Co.; Intent to File an Application for a New License

October 28, 1988.

Take notice that on June 28, 1988, Consolidated Water Power Company, the existing licensee for the Wisconsin River Division Hydroelectric Project No. 2590, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2590 was issued effective July 1, 1943, and expires June 30, 1993.

The project is located on the Wisconsin River in Portage County, Wisconsin. The principal works of the Wisconsin River Project include a concrete dam; a reservoir of 80 acres; a powerhouse with an installed capacity of 6,341 kW; and appurtenant facilities. Energy generated is utilized in the adjacent paper mill owned by Consolidated Papers, Inc.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 231 First Avenue North, Wisconsin Rapids, WI 54495-8050.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 30, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 88-25395 Filed 11-1-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-1-21-000]

Interstate Power Co.; Filing

October 28, 1988.

Take notice that on October 24, 1988, Interstate Power Company (Interstate Power) submitted the tariff sheet listed below:

First Revised Volume No. 2

First Revised Sheet No. 19 replacing Original Sheet No. 19.

Interstate Power states it submits the tariff sheet to revise the rate Interstate charges to recover the annual charges assessed by the Commission pursuant to Part 382 of the Commission's regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214. All such motions or protests must be filed on or before November 7, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-25306 Filed 11-1-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2677-002]

City of Kaukauna, WI; Issuance of Annual License

October 28, 1988.

On August 29, 1986, the City of Kaukauna, Wisconsin, licensee for the Badger-Rapide Croche project No. 2677, filed an application for a new license pursuant to the Federal Power Act and the Commission's regulations thereunder. Project No. 2677 is located on the Fox River in Outagamie County, Wisconsin.

The license for Project No. 2677 was issued for a period ending October 31, 1988. In order to authorize the continued operation and maintenance of the project pending Commission action on the licensee's application, an annual license must be issued to the City of Kaukauna pursuant to section 15(a) of the Federal Power Act, 16 U.S.C. 808(a).

Take notice that an annual license is issued to the City of Kaukauna, Wisconsin for a period effective November 1, 1988, to October 31, 1989, or until the issuance of a new license for the project, whichever comes first, for the continued operation and maintenance of Project No. 2677, subject to the terms and conditions of the original license.

Take further notice that if issuance of a new license does not take place on or before October 31, 1989, an annual license will be issued each year thereafter, effective November 1, of each year, until such time as new license is issued, without further notice being given by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 88-25325 Filed 11-1-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA89-6-37-003]

Northwest Pipeline Corp.; Supplement to Compliance Filing

October 27, 1988.

Take notice that on October 12, 1988, Northwest Pipeline Corporation (Northwest) filed a supplement to its September 2, 1988, compliance filing in the referenced docket. Northwest states that the information details the calculation of revenue credits associated with the transportation of volumes of gas over 65 million MMBtu during the period extending from May 1, 1988 through April 30, 1987. Northwest further states that in compiling this information, Northwest corrected certain minor errors that had been made in the original calculation. It is stated that these corrections reduce the amount of the refund shown on Schedule A of Northwest's filing by $1,786 but that such reduction is so small that the calculation of the revised surcharge rate is unchanged.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's regulations. All such motions or protests should be filed on or before November 4, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 88-25324 Filed 11-1-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-6-001]

Tennessee Gas Pipeline Co.; Filing

October 28, 1988.

Take notice that on October 24, 1988, Tennessee Gas Pipeline Company (Tennessee) tendered for filing the following revised tariff sheets in Second Revised Volume No. 1 of its FERC Gas Tariff to be effective November 16, 1988:

Substitute Original Sheet No. 109A
Third Substitute Third Revised Sheet No. 115

Tennessee states that the purpose of this filing is to revise Original Sheet No. 109A and Second Substitute Third Revised Sheet No. 115 that were filed on October 17, 1988 in order to clarify Tennessee's policy on construction of facilities associated with rendering transportation services under Rate Schedules IT and FT-A. In particular, the revised tariff sheets clarify that Tennessee will construct the identified facilities under the authorization provided in Part 157 of the Commission's regulations or where no prior Commission approval is required to construct such facilities. For all other types of facilities, Tennessee will file section 7(c) applications which the Commission and other parties will be able to review on a case-by-case basis.

Tennessee states that copies of its filing are available for inspection at its principal place of business in the Tenneco Building, Houston, Texas and have been mailed to all affected customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 7, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-25307 Filed 11-1-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-80-011 and RP88-251-002]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 31, 1988.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on October 24, 1988 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the tariff sheets listed on Appendix A to this filing.

Texas Eastern states that the purpose of this filing is to file revised tariff sheets to (1) establish the procedures pursuant to which Texas Eastern will recover a portion of United Gas Pipe Line Company's (United) take-or-pay charges as proposed by United in Docket No. RP88-264, (2) to track modifications to Southern Natural Gas Company's, (Southern) flowthrough of United's take-or-pay charges in Paragraph (B) of the Commission's order issued October 7, 1988 in Docket No. RP86-251-002.

(1) Texas Eastern Docket No. RP88-80 Relating to United Docket No. RP88-264

The tariff sheets proposed for filing in Item 1 of Appendix A are being filed solely to track United's take-or-pay charges proposed to be billed to Texas Eastern by United in their filing made on September 30, 1988 in Docket No. RP88-264. Third Revised Sheet Nos. 52 through 55 set forth the principal amount plus the allocation factor for carrying costs that each Texas Eastern customer will be required to pay in order to recover United's and Texas Gas Transmission Corporation's (Texas Gas) portion of United's take-or-pay charges billed to Texas Eastern in Docket No. RP88-27 and United's take-or-pay charges billed to Texas Eastern in Docket No. RP88-264. Workpapers setting forth Texas Eastern's determination of the allocation factor for the principal amount (which includes a predetermined carrying charge) and a breakdown of the total and monthly principal amounts (which) include a predetermined carrying charge) each Texas Eastern customer will be required to pay are set forth under Appendix B to this filing.

(2) Texas Eastern Docket No. RP88-80 Relating to Southern Docket No. RP88-229

Pursuant to the allocation Methodology proposed by Southern in Docket No. RP88-229-001, Southern proposes to bill and recover from Texas Eastern an aggregate principal amount of $1,994, 848 which excludes amortization interest, by means of a monthly charge including amortization interest of $46,249 for the first year of a five year period commencing September 1, 1988.

The tariff sheets listed in Item 2 of Appendix A are being filed in compliance with Section 31 of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Fifth Revised Volume No. 1 and the Commission's order issued September 16, 1988 in Texas Eastern's Docket No. RP88-80-007. The tariff sheets proposed for filing herein are being filed solely to track the modifications proposed by Southern on September 15, 1988 in Docket No. RP88-229-001. Sheet Nos. 64 through 67 set forth the principal amount plus the allocation factor for carrying costs that each Texas Eastern customer will be required to pay in order to recover Southern's flowthrough of United take-or-pay charges in Docket No. RP88-229-001 billed to Texas Eastern by Southern. Workpapers setting forth Texas Eastern's determination of the allocation factor for the total principal amount (which excludes a predetermined carrying charge) and a breakdown of the monthly principal amounts (which include a predetermined carrying charge) each Texas Eastern customer will be required to pay are set forth under Appendix C.

(3) Texas Eastern Docket No. RP88-251 Relating to Texas Gas Docket No. RP88-230

Paragraph (B) of the Commission's order issued October 7, 1988 Docket No. RP88-251-000 requires Texas Eastern to file, within 15 days of the date of the order, a revised Sheet No. 483D which contains tariff language giving customers whose service has been abandoned after September 9, 1988, the option to pay in a lump sum or to continue to pay over the amortization period. The tariff sheet proposed for filing in Item 3 of Appendix A reflects the aforementioned modifications.

The tariff sheets are proposed to become effective as of the dates proposed on Appendix A.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions. In addition, Texas Eastern is mailing a copy of this filing to all parties of record in Docket Nos. RP88-80 and RP88-251.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 7, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-25308 Filed 11-1-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-59-000]

Texas Gas Transmission Corp.; Application October 28, 1988.

Take notice that on October 14, 1988, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP89-59-000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for permission and approval to decrease the contract demands of nine (9) existing customers and increase the contract demands of eight (8) existing customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Gas states that the contract demand adjustments are the result of nominations of new daily volume levels which Texas Gas afforded its customers in conjunction with its pending rate increase filed in Docket No. RP88-115-000. It is said that three (3) of the nine (9) customers requesting decreases intend to convert all or a portion of such decrease to firm transportation on the Texas Gas System.

Pursuant to 18 CFR 284.10(d)(2) the exercise of the customer's option to convert constitutes consent to the proposed abandonment. Accordingly, any person desiring to be heard or any person, other than the converting customers, desiring to make any protest with reference to said application should on or before November 18, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the

Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate, and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas Gas to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 88-25325 Filed 11-1-88; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL COMMUNICATIONS COMMISSION

[Mass Media Bureau Docket No. 88-420; FCC 88-280]

Order to show Cause, Hearing Designation Order, and Notice of Apparent Liability in the Matter of Black Television Workshop of Los Angeles, Inc., Permittee of Noncommercial Educational Television Station KEEF-TV, Los Angeles, CA

AGENCY: Federal Communications Commission (FCC).

ACTION: Order to show cause, hearing designation order, and notice of apparent liability.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order to Show Cause, Hearing Designation Order, and Notice of Apparent Liability* in Mass Media Bureau Docket 88-420, FCC 88-280, Adopted August 16, 1988, and Released September 12, 1988.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Order to Show Cause, Hearing Designation Order, and Notice of Apparent Liability

1. In this *Order*, we designate for hearing several applications filed on behalf of Black Television Workshop of Los Angeles, Inc. (BTW), permittee of noncommercial television station KEEF-TV, Los Angeles, California, and order BTW to show cause why its permit should not be revoked. As a result of a dispute over control of BTW, information has come to our attention that raises substantial and material questions about BTW's qualifications to be a permittee or licensee.

2. The hearing shall determine whether control of BTW was transferred without Commission approval, or exercised by persons not authorized to do so, in violation of section 310(d) of the Comminications Act; whether the Commission was purposefully misled as to the true ownership and control of BTW; whether and to what extent the failure to file timely ownership reports amended articles of incorporation, bylaws, and other agreements or documents reflecting ownership and control of the permittee, are attributable to the actions or inactions of Mary Woodfork, Clint Wilson, Gary Cordell, Roy Campanella, Jr., Linda Pate, Titilola Payne Parker, Jerrome Duncan, Rosa Ware, Booker T. Wade, Jr., Gwendolyn May, Hope S. Smith, or others presently or formerly associated with BTW.

3. In light of the evidence adduced pursuant to the foregoing issues, the hearing shall determine whether revocation of the permit is warranted; whether BTW's pending applications for modification of construction permit, license to cover construction permit, and special temporary authority, should be granted; or whether an order of forfeiture should be issued.

4. The *Order* also grants special temporary authority for the station to resume operations under the direction and supervision of those eight persons who were represented to be BTW's original Board of Directors, upon the submission of proposed bylaws to the Mass Media Bureau within 20 days of release of the *Order*.

5. Those individuals specifically named above in paragraph 2 of this summary are made parties to this proceeding.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 88-25294 Filed 11-1-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-010636-050.

Title: U.S. Atlantic-North Europe Conference.

Parties:

Atlantic Container Line, B.V.
Orient Overseas Container Container Line (UK) Ltd.
Hapag-Lloyd AG
Sea-Land Service, Inc.
A. P. Moller-Maersk Line
Gulf Container Line (GCL), B.V.
P & O Containers (TFL) Limited
Compagnie Generale Maritime (CGM)
Nedlloyd Lijnen, B.V.

Synopsis: The proposed modification would enlarge the exception to the restrictions of Article 17.1 to include the carriage of non-containerizable cargo in vessels operated by a member's related company from any port in South Carolina, Georgia, and Florida not served by roll-on/roll-off vessels of that member.

Agreement No.: 207-011144-003.

Title: Australia-New Zealand Direct Line Service Agreement ("the Service").

Parties:

Pacific Australia Direct Line ("PAD")
Australia-New Zealand Container Line ("ANZCL")

Synopsis: Under the terms of the proposed amendment a company known as Australia-New Zealand Container Line S.A. ("ANZCL S.A.") will replace ANZCL as a party to the Service. The amendment would also provide that any arbitration under the terms of the agreement would take place in Paris and that the agreement would be subject to the laws of France. Finally, the amendment would add as parties to the Service Societe Navale et Commercial DELMAS-VIELJEUX, the sole owner of ANZCL S.A., and Compagnie Generale Maritime, owner of a fifty percent interest in PAD Line.

Agreement No.: 217-011216.

Title: Australia-New Zealand Direct Line/Hyundai Australia Direct Line Space Charter.

Parties:

Australia-New Zealand Direct Line ("ANZDL")
Hyundai Australia Direct Line ("HADL")

Synopsis: The proposed Agreement would authorize ANZDL to charter space on vessels operated by HADL in the trades between ports in Australia and ports on the West Coast of North America.

Agreement No.: 232-011217.

Title: P & O Containers (TFL) Limited, Nedlloyd Lijnen, B.V., Sea-Land Service, Inc./Compania Transatlantica Espanola, S.A. Space Charter Agreement d/b/a 11171/CTE Space Charter.

Parties:

P & O Containers (TFL) Limited ("11171 Party")
Sea-Land Service, Inc. ("11171 Party")
Nedlloyd Lijnen, B.V. ("11171 Party")
Compania Trasatlantica Espanola, S.A. ("CTE")

Synopsis: The proposed agreement would authorize the 11171 parties to charter space on their vessels to CTE in the trade between ports on the U.S. East Coast (excluding Florida), and Mediterranean ports in Italy, France and Spain. The parties would also be authorized to agree upon restrictions on resale of chartered space, restrictions on use of non-11171 vessels in the trade, rights to carry certain government preference cargoes reserved to national-flag lines, and the withdrawal of vessels from CTE's service.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: October 27, 1988.

[FR Doc. 88-25275 Filed 11-1-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Barnett Banks, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 23, 1988.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Barnett Banks, Inc.*, Jacksonville, Florida; to merge with FMB Financial Holdings, Inc., Fayetteville, Georgia, and thereby indirectly acquire Farmers & Merchants Bank, Fayetteville, Georgia.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166.

1. *Cordova Bancshares, Inc.*, Memphis, Tennessee; to become a bank holding company by acquiring at least 92.5 percent of the voting shares of Cordova Bank & Trust Co., Cordova, Tennessee, a *de novo* bank.

Board of Governor of the Federal Reserve System, October 27, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-25277 Filed 11-1-88; 8:45 am]

BILLING CODE 6210-01-M

William E. Hathorn; Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 16, 1988.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *William E. Hathorn*, Prentiss, Mississippi; James A. Tatum, Hattiesburg, Mississippi; Forrest Wood, Jr., Hattiesburg, Mississippi; G. Richard Muton, Jr., Hattiesburg, Mississippi; John Fraiser, Greenwood, Mississippi; L. Craig Ratliff, Hattiesburg, Mississippi; to each acquire 10 percent for a total of 60 percent of the voting shares of Walthall Capital Group, Ltd., Tylertown, Mississippi, and thereby indirectly acquire Walthall Citizens Bank, Tylertown, Mississippi.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Anthony R. Di Giovanni*, San Clemente, California; to retain 22.2 percent of the voting shares of Mariners Bancorp, San Clemente, California, and thereby indirectly acquire Mariners Bank, N.A., San Clemente, California.

Board of Governor of the Federal Reserve System, October 27, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-25276 Filed 11-1-88; 8:45 am]

BILLING CODE 6210-01-M

The National Bank of Washington; Corporation to do Business Under Section 25(a) of the Federal Reserve Act

An application has been submitted for the Board's approval of the organization of a corporation to do business under section 25(a) of the Federal Reserve Act ("Edge Corporation"). The Edge Corporation would operate as a subsidiary of the applicant. The factors that are to be considered in acting on the application are set forth in § 211.4(a) of the Board's Regulation K (12 CFR 211.4(a)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank listed for that notice. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identify specifically any questions of fact that are in dispute, and

summarize the evidence that would be presented at a hearing. Any person wishing to comment on the application should submit views in writing to be received not later than November 16, 1988.

A. Board of Governors of the Federal Reserve System (William W. Wiles, Secretary) Washington, DC 20551:

1. *The National Bank of Washington,* Washington, DC; to establish a corporation to be known as NBW International Banking Corporation, Miami, Florida. This application may be inspected at the Federal Reserve Bank of Richmond.

Board of Governors of the Federal Reserve System, October 27, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-25279 Filed 11-1-88; 8:45 am]

BILLING CODE 6210-01-M

The Sanwa Bank, Ltd.; Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 23, 1988.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *The Sanwa Bank, Limited,* Osaka, Japan; to engage *de novo* through its subsidiary, Sanwa-BGK Securities Co., L.P., New York, New York, in making, acquiring, or servicing loans or other extensions of credit (including issuing letters of credit and accepting drafts) for Sanwa-BGK's account or for the account of others pursuant to § 225.25(b)(1) (iii) and (iv) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 27, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-25280 Filed 11-1-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Advisory Commission; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following national advisory body scheduled to meet during the month of October 1988:

Name: Secretary's Commission on Nursing

Date: Friday, November 18, 1988

Time: 8:30 a.m.

Place: Room 727A, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC

Purpose: Secretary's Commission on Nursing will advise the Secretary of Health and Human Services on how the public and private sectors can work together to address problems and implement solutions regarding the supply of active registered nurses. The Commission will also consider the recruitment and retention of nurses in the U.S. Public Health Service, the Veterans Administration and the Department of Defense. As appropriate for its work, the Commission will consider the findings of studies which are relevant to the development of a multi-year action plan for implementation by the public and private sectors.

The agenda for the November 18 meeting will consist of discussion and review of materials intended for inclusion in the Commission's final report. Among these will be drafts of recommendations and implementation strategies, and other materials providing background and contextual information about the nurse shortage and the Commission's work.

Agenda items are subject to change as priorities dictate.

Anyone wishing to attend these meetings who is hearing impaired and requires the services of an interpreter for the deaf should contact the Commission at least one week before the scheduled meeting. All such requests, as well as requests for information, should be addressed to the Secretary's Commission on Nursing, Hubert H. Humphrey Building, Room 600E, 200 Independence Avenue SW., Washington, DC 20201, telephone 202/245-0430.

Date: October 27, 1988.

Lillian K. Gibbons,

Executive Director, Secretary's Commission on Nursing.

[FR Doc. 88-25369 Filed 11-1-88; 8:45 am]

BILLING CODE 4150-04-M

Statement of Organization, Functions and Delegations of Authority;

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) covers the Social Security Administration (SSA). Notice is given that Chapter S1, of the Office of the Deputy Commissioner, Management, is being amended to reflect some internal realignments of subordinate offices in that Office. The Office of Information Management and Logistics (S1G) is being retitled the Office of Materiel and Information Resources (S1G). The Office of Information Management (S1GA) remains unchanged. Two new office-level components will be established in lieu of the Office of Materiel Resources. They are the Office of Communications and Facilities Management (S1GE) and the Office of Publications and Logistics Management (S1GJ).

The changes are as follows:

Section S1.10 The Office of the Deputy Commissioner, Management—(Organization):

Delete:

G. The Office of Information Management and Logistics (S1G).

Add:

G. The Office of Materiel and Information Resources (S1G).

Section S1.20 The Office of the Deputy Commissioner, Management—(Functions):

Delete:

G. The Office of Information Management and Logistics (S1G).

Add:

G. The Office of Materiel and Information Resources (S1G).

Delete:

Section S1G.00 The Office of Information Management and Logistics—(Mission):

Add:

Section S1G.00 The Office of Materiel and Information Resources—(Mission):

Delete:

In the first sentence, "The Office of Information Management and Logistics (OIML) * * *"

Add:

In the first sentence, "The Office of Materiel and Information Resources (OMIR) * * *"

Delete:

Section S1G.10 The Office of Information Management and Logistics—(Organization):

Add:

Section S1G.10 The Office of Materiel and Information Resources—(Organization):

Delete:

In the first sentence, "The Office of Information Management, Acquisition and Logistics * * *

Add:

In the first sentence, "The Office of Materiel and Information Resources * * *"

Delete:

A. The Associate Commissioner for Information Management, Acquisition and Logistics (S1G).

B. The Immediate Office of the Associate Commissioner for Information Management, Acquisition and Logistics (S1G).

D. The Office of Materiel Resources (S1GB).

Add:

A. The Associate Commissioner for Materiel and Information Resources (S1G).

B. The Immediate Office of the Associate Commissioner for Materiel and Information Resources (S1G).

D. The Office of Communications and Facilities Management (S1GE).

E. The Office of Publications and Logistics Management (S1GJ).

Delete:

Section S1G.20 The Office of Information Management and Logistics—(Functions):

Add:

Section S1G.20 The Office of Materiel and Information Resources—(Functions):

Delete:

A. The Associate Commissioner for Information Management and Logistics (S1G).

B. The Immediate Office of the Associate Commissioner for Information Management and Logistics (S1G).

D. The Office of Materiel Resources (S1GB) in its entirety.

Add:

A. The Associate Commissioner for Materiel and Information Resources (S1G). In lines 6 and 8 change OIMAL to OMIR.

B. The Immediate Office of the Associate Commissioner for Materiel and Information Resources (S1G).

D. The Office of Communications and Facilities Management (S1GE) directs the SSA real property program including short- and long-range facilities planning; design, construction and leasing of central office facilities and maintenance, repair and construction projects and policy development related to these operations. It acquires, utilizes and manages space at SSA headquarters and develops a comprehensive space inventory and utilization system. The Office of Communications and Facilities Management develops, implements and evaluates SSA's environmental protection, safety and protective services programs. It ensures that these programs are responsive to the needs of the Agency and serves as a focal point for inquiries and guidance concerning these programs. It directs the planning, analysis, design and operation of SSA's voice, facsimile and related telecommunications systems. The Office directs the SSA mail management program.

E. The Office of Publications and Logistics Management (S1GJ) directs a comprehensive SSA printing and publications management program and develops pertinent policies, standards, and procedures for SSA's forms and publications management, printing, reprographics and distribution programs. It directs the administration and maintenance of the SSA library, the historical research program and records management program. It administers the SSA logistics management program, directs the SSA equipment management program, manages the operation of SSA warehousing facilities including receipt, storage and issuance of forms publications, supplies and equipment for SSA-wide use. The Office directs activities related to employee transportation including providing headquarters passenger, mail and freight transportation services.

Dated: October 26, 1988.

Otis R. Bowen,

Secretary of Health and Human Services.

[FR Doc. 88-25368 Filed 11-1-88; 8:45 am]

BILLING CODE 4150-11-M

Food and Drug Administration

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

Blood Products Advisory Committee

Date, time, and place. November 18, 1988, 8 a.m., Conference Rms. G and H, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 10:30 a.m.; closed committee deliberation, 10:30 a.m. to 11:30 a.m.; open committee discussion, 12:30 p.m. to 4 p.m.; closed committee deliberations, 4 p.m. to 5 p.m.; Linda A. Smallwood, Division of Blood and Blood Products (HFB-400), Center for Biologics Evaluation and Research, Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301-496-4396.

General function of the committee. The committee reviews and evaluates available data on the safety, effectiveness, and appropriate use of blood products intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons requesting to present data, information, open views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. The committee will discuss a medical device premarket approval application (PMA) for a test for hepatitis B core antibody (Ortho), and will discuss recommendations for blood and blood products testing and licensure.

Closed committee deliberations. The committee will discuss trade secret and/or confidential commercial information

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regarding the PMA listed above, investigational new biological product applications, and biological product license applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

General And Plastic Surgery Devices Panel

Date, time, and place. November 22, 1988, 9 a.m., North Auditorium, Wilbur J. Cohen Bldg., 330 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 4 p.m.; closed committee deliberations, 4 p.m. to 5 p.m.; Paul F. Tilton, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7236.

General function of the committee. The committee reviews and evaluates available data concerning the safety and effectiveness of medical devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 31, 1988, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss premarket approval requirements for silicone breast prostheses.

Closed committee deliberations. The committee may review and discuss trade secret and/or confidential commercial or financial information regarding the manufacture of silicone breast prostheses. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Circulatory System Devices Panel

Date, time, and place. November 28 and 29, 1988, 8:30 a.m., Room 503A–529A, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, November 28, 1988, 8:30 a.m. to 9:30 a.m.; open committee discussion, 9:30 a.m. to 2:30 p.m.; closed committee deliberations, 2:30 p.m. to 4 p.m; open public hearing, November 29, 1988, 8:30 a.m. to 9:30 a.m.; open committee discussion, 9:30 a.m. to 2:30 p.m.; closed committee deliberations, 2:30 p.m. to 4 p.m.; Keith Lusted, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7594.

General function of the committee. The committee reviews and evaluates available data concerning the safety and effectiveness of medical devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 14, 1988, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss PMA's for a vascular graft, prosthetic heart valves, an intravascular filter, a percutaneous transluminal coronary angioplasty catheter, and possibly a pulse generator system.

Closed committee deliberations. The committee will discuss trade secret and/or confidential commercial or financial information regarding the PMS's listed above. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, Rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94–409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: October 27, 1988.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 88–25296 Filed 10–28–88; 11:13 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Southern Alaska Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94–579 that a meeting of the Southern Alaska Advisory Council will be held November 29, 1988 at 8:30 a.m. at the BLM Anchorage District Office, 6881 Abbott Loop Road, Anchorage, Alaska. The council will be briefed on priority multiple use issues confronting the Anchorage and Glennallen District Managers.

The agenda is as follows:

1. Approve last meetings minutes.
2. Introduce new Anchorage district manager.
3. Update on select Anchorage/Glennallen district programs.
4. Public Comment.
5. Discussion.
6. Adjourn.

The meeting is open to the public. The public may present oral testimony to the council by making prior arrangements with Public Affairs at (907) 271–5555.

FOR FURTHER INFORMATION CONTACT: Danielle Allen, (907) 271–5555, BLM Public Affairs, 701 C Street, Box 13, Anchorage, Alaska 99513.

Richard Vrooman,

Anchorage District Manager.

[FR Doc. 88–25309 Filed 11–1–88; 8:45 am]

BILLING CODE 4310-JA-M

[CA-940-08-5410-10-ZBKC; CACA 21775]

Conveyance of Mineral Interests in California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of segregation.

SUMMARY: The private lands described in this notice, aggregating 308.27 acres, are segregated and made unavailable for filings under the public land laws, including the mining laws, to determine their suitability for conveyance of the reserved mineral interest pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976.

The mineral interests will be conveyed in whole or in part upon favorable mineral examination.

The purpose is to allow consolidation of surface and subsurface of minerals ownership where there are no known mineral values or in those instances where the reservation interferes with or precludes appropriate nonmineral development and such development is a more beneficial use of the land than the mineral development.

FOR FURTHER INFORMATION CONTACT: Judy Bowers, California State Office, Federal Office Building, 2800 Cottage Way, Room 2841, Sacramento, California 95825, (916) 978–4815.

Serial No.—CACA 21775

T. 3 N., R. 4 W., San Bernardino Meridian,
Sec. 16, NW¼NE¼, Fractional W½.
County—San Bernardino.
Minerals Reservation—All minerals except oil and gas.

Upon publication of this Notice of Segregation in the Federal Register as provided in 43 CFR 2720.1–1(b), the mineral interests owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate by publication of an opening order in the Federal Register specifying the date and time of opening; upon issuance of a patent or other document of conveyance to such mineral interests; or two years from the date of publication of this notice, whichever occurs first.

Date: October 25, 1988.

Nancy J. Alex,

Chief, Lands Section, Branch of Adjudication and Records.

[FR Doc. 88–25378 Filed 11–1–88; 8:45 am]

BILLING CODE 4310-40-M

[NV-930-09-4213-13; N-44680]

Issuance of Exchange Patent and Order Providing for Opening of Public Lands; Nevada

October 24, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and opening order.

SUMMARY: This notice notifies Federal and non-Federal lands involved in a recently completed exchange

transaction. The lands acquired by the United States will become open to the operation of the public land laws on the date specified below. The mineral estates were not exchanged in the transaction.

EFFECTIVE DATE: December 2, 1988.

FOR FURTHER INFORMATION CONTACT: Rod Harris, District Manager, Elko District Office, Bureau of Land Management, P.O. Box 831, Elko, Nevada 89801, (702) 738–4071.

SUPPLEMENTARY INFORMATION: The United States issued Patent No. 27–88–0002 to Lands of Sierra, Inc. on October 11, 1988, for the following described lands pursuant to section 206 of the Act of October 21, 1976 (43 U.S.C. 1716):

Mount Diablo Meridian, Nevada

T. 40 N., R. 69 E.,
sec. 4, lots 1 and 4, SE¼NE¼, E½SE¼;
sec. 6, lots 8 to 23, inclusive;
sec. 8, NW¼NE¼, NE¼NW¼, SW¼NW¼, SW¼,NW¼SE¼, S½SE¼;
sec. 14, N½NE¼, NW¼NW¼;
sec. 16, NE¼, NE¼SE¼;
sec. 18, lots 1 to 4, inclusive, E½, E½W½;
sec. 20, all;
sec. 28, W½, W½SE¼, SE¼SE¼.
T. 41 N., R. 69 E.,
sec. 18, lots 1 to 4, inclusive, NW¼NE¼, S½NE¼, E½W½, N½SE¼, SW¼SE¼;
sec. 20, W½W½, SE¼SW¼;
sec. 30, lots 1 to 4, inclusive, E½, E½W½;
sec. 32, W½NW¼, SW¼.

The area described contains 4,841.67 acres in Elko County, Nevada.

In exchange for these lands, the United States acquired the following described lands from Lands of Sierra, Inc.:

Mount Diablo Meridian, Nevada

T. 40 N., R. 62 E.,
sec. 1, lots 1 to 9, inclusive;
sec. 2, lots 1, 2, 3, 4, 6 and 7, SE¼NW¼, NE¼SW¼;
sec. 12, W½NW¼, SE¼SW¼.
T. 41 N., R. 62 E.,
sec. 26, E½, S½NW¼, N½SW¼;
sec. 27, all;
sec. 34, all;
sec. 35, all;
sec. 36, S½SW¼, SW¼SE¼.

The area described contains 3,383.55 acres in Elko County, Nevada.

The purpose of this exchange was to acquire non-Federal lands in the Snake Mountain Range with demonstrated recreation, wildlife, and riparian potential. The public interest was served through completion of this exchange.

The Federal and non-Federal lands in the exchange were of equal value, $250,000.00.

At 10:00 a.m., on December 2, 1988, the lands acquired by the United States will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10:00 a.m., on December 2, 1988, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Mineral estates were not exchanged; therefore, the lands acquired in this exchange remain closed to the general mining and mineral leasing laws.

Fred Wolf,
Associate State Director, Nevada.

[FR Doc. 88-25340 Filed 11-1-88; 8:45 am]
BILLING CODE 4310-HC-M

[AZ 020-4212-13; A-22558]

Realty Action; Noncompetitive Sale; Public Land in Gila County, AZ

The following described land has been determined as suitable for direct sale in accordance with section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at not less than the estimated fair market value of $1,200. The land will not be offered for sale until at least 60 days after the date of this notice.

Gila and Salt River Meridian, Arizona

T. 1 N., R. 15½ E.,
Sec. 27, lot 7.

Containing .62 acres.

The land described is hereby segregated from appropriation under the public land laws and the mining laws, pending disposition of this action or 270 days from the date of this notice, whichever occurs first.

The land is being offered by direct sale to Mr. David W. Johnson to protect equities arising from inadvertent unauthorized use. Mr. Johnson is authorized to act in behalf of several adjoining landowners.

This sale is consistent with the Middle Gila MFP. The land conveyance will accommodate the subject inadvertent trespass upon public land and comply with the Gila County Planning Department requirements.

Acceptance of the direct sale offer will constitute an application for conveyance of those mineral interests. A mineral report will be completed to determine if the sale is in the public interest. Minerals may be conveyed per section 209(b) (90 Stat. 2757; 43 U.S.C. 1719) for an administrative fee of $50.00.

The patent, when issued, will contain certain reservations to the United States and be subject to a road right-of-way. Detailed information concerning these reservations, as well as conditions of the sale, is available for review at the Phoenix District Office, Bureau of Land Management, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Phoenix District Office, at the above address. Objection will be reviewed by the Arizona State Director, who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Henri R. Bisson,
District Manager.
Date: October 17, 1988.

[FR Doc. 88-25341 Filed 11-1-88; 8:45 am]
BILLING CODE 4310-32-M

[ID-943-09-4214-10; I-9793]

Termination of Proposed Withdrawal and Reservation of Lands; Idaho

Notice of an application, serial number I–9793, for withdrawal and reservation of lands was published as **Federal Register** Document No. 75–25602 on page 44560 in the issue of September 29, 1975. The applicant's agency has cancelled its application insofar as it involves the lands described below. Therefore, pursuant to the regulations contained in 43 CFR, Subpart 2091, such lands will be at 9:00 a.m., on November 30, 1988, relieved of the segregative effect of the above-mentioned application.

The lands involved in this notice of termination are:

Boise Meridian

T. 8 S., R. 10 E.,
Sec. 7, all;
Sec. 8, all;
Sec. 9, NW¼SW¼, S½SW¼;
Sec. 11, SE¼SW¼, S½SE¼;
Sec. 12, S½SW¼, SE¼SE¼;
Sec. 13, NW¼NE¼, S½NE¼, W½, SE¼;
Sec. 14, all;
Sec. 15, S½;
Sec. 17, all;
Sec. 18, E½E½, NW¼NE¼;
Sec. 19, E½NE¼, NE¼SE¼;
Sec. 20–25, inclusive;
Sec. 26, NE¼, NE¼NW¼, E½SE¼;
Sec. 27, all;
Sec. 28, all;
Sec. 29, NE¼, NE¼NW¼;
Sec. 34, N½N½;
Sec. 35, NE¼NE¼.
T. 8 S., R. 11E.,
Sec. 18, lots 2, 3, 4, E¼SW¼, W½SE¼;
Sec. 19, lots 1, 2, 3, 4, W½NE¼, E¼W½, SE¼;
Sec. 20, NW¼SW¼, S½SW¼, SW¼SE¼;
Sec. 28, SW¼NW¼, S½SW¼, SW¼SE¼;
Sec. 29, all;
Sec. 30, all;
Sec. 31, all;
Sec. 32, E½, NE¼NW¼, W½W½, 33;
Sec. SW¼NE¼, W½, W½SE¼.
T. 9 S., R. 11 E.,
Sec. 4, lots 2, 3, 4, S½NW¼;
Sec. 5, lots 1, 2, SE¼NE¼.

The area described aggregates 14,282.20 acres in Owyhee County.

William E. Ireland,
Chief, Realty Operations Section.
Dated: October 25, 1988.

[FR Doc. 88-25379 Filed 11-1-88; 8:45am]
BILLING CODE 4310-84-M

[NV-930-09-4214-10; N-49779]

Proposed Withdrawal; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw approximately 21,000 acres of public land in aid of legislation to authorize a conveyance to Clark County for an industrial park. This notice closes the land for up to two years from all forms of appropriation under the public land laws, including the mining laws, and from operation of the mineral leasing and geothermal leasing laws.

FOR FURTHER INFORMATION CONTACT: Mary Clark, Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, 702–784–5413.

SUPPLEMENTARY INFORMATION: On October 28, 1988, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from all forms of appropriation under the public land laws, including the mining laws, and from operation of the mineral leasing and geothermal leasing laws, subject to valid existing rights:

Mount Diablo Meridian

T. 17 S., R. 63 E.,
Sec. 32, all that portion lying west of U.S. 93, excluding lands in Bureau of Land Management Wilderness Study Area NV–050–217, Fish and Wildlife No. 3;
Sec. 33, that portion lying west of U.S. 93.
T. 18 S., R. 63 E.,
Sec. 3, all, excluding that portion lying east of U.S. 93;
Sec. 4, all, excluding that portion lying east of U.S. 93;
Sec. 5, all, excluding that portion included in Bureau of Land Management Wilderness Study Area NV–050–217, Fish and Wildlife No. 3;
Sec. 8, all, excluding that portion included in Bureau of Land Management Wilderness Study Area NV–050–217, Fish and Wildlife No. 3;
Sec. 9, all;
Sec. 10, all, excluding that portion lying east of U.S. 93;
Sec. 11, all, excluding that portion lying east of U.S. 93;
Sec. 13, all, excluding that portion lying east of U.S. 93;
Sec. 14, all, excluding that portion lying east of U.S. 93;
Sec. 15, all;
Sec. 16, all;
Sec. 17, all, excluding that portion included in Bureau of Land Management Wilderness Study Area NV–050–217, Fish and Wildlife No. 3;
Sec. 18, all, excluding that portion included in Bureau of Land Management Wilderness Study Area NV–050–217, Fish and Wildlife No. 3;
Sec. 19, all, excluding that portion included in Bureau of Land Management Wilderness Study Area NV–050–217, Fish and Wildlife No. 3;
Sec. 20, all;
Sec. 21, all;
Sec. 22, all;
Sec. 23, all;
Sec. 24, all;
Sec. 26, all;
Sec. 27, all;
Sec. 28, all;
Sec. 29, all, excluding that portion included in Bureau of Land Management Wilderness Study Area NV–050–217, Fish and Wildlife No. 3;
Sec. 30, all, excluding that portion included in Bureau of Land Management Wilderness Study Area NV–050–217, Fish and Wildlife No. 3;
Sec. 31, all, excluding that portion included in Bureau of Land Management Wilderness Study Area NV–050–217, Fish and Wildlife No. 3 and that portion within the Nellis Air Force Base Ground Gunnery Range;
Sec. 32, all;
Sec. 33, all;
Sec. 34, all;
Sec. 35, all;
T. 19 S., R. 63 E.,
Sec. 2, all;
Sec. 3, all;
Sec. 4, all;
Sec. 5, all;
Sec. 6, all;
Sec. 7, all;
Sec. 8, all;
Sec. 9, all, excluding that portion included in Bureau of Land Management Las Vegas Dunes Recreation Area.
T. 18 S., R. 64 E.,
Sec. 7, S½;
Sec. 18, all;
Sec. 19, all;
Sec. 20, N½.

The area described contains approximately 21,000 acres in Clark County.

The purpose of the proposed withdrawal is to protect the land pending legislation to authorize conveyance of the land to Clark County for an industrial park.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is canceled or the legislation is enacted prior to that date. The temporary uses which may be permitted during this segregative period are grazing and other discretionary uses which would not be incompatible with the intent of the proposed legislation.

October, 28, 1988.

Vincent J. Hecker,
Acting Assistant Director—Land and Renewable Resources.

[FR Doc. 88-25382 Filed 11-1-88; 8:45 am]
BILLING CODE 4310-HC-M

Bureau of Mines

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone (202) 395–3470.

Title: Blast Furnace and Steel Furnace Report.

OMB Approval Number: 1032–0024.

Abstract: Respondents supply the Bureau of Mines with domestic production and consumption data on nonfuel mineral commodities. This information is published in Bureau of Mines publications including the Mineral Industry Surveys (MIS), Minerals Yearbook Volumes I, II, and III, Mineral Facts and Problems, Mineral Commodity Summaries, Mineral Commodity Profiles, and Minerals and Materials/A Bimonthly Survey for use by private organizations and other Government agencies.

Bureau Form Number: 6–1067–A.

Frequency: Annual.

Description of Respondents: Operations that produce pig iron.

Estimated Completion Time: 4 hours.

Annual Responses: 45.

Annual Burden Hours: 180.

Bureau Clearance Officer: James T. Hereford, (202) 634–1125.

T.S. Ary,

Director, Bureau of Mines.

October 24, 1988.

[FR Doc. 88-25273 Filed 11-1-88; 8:45 am]

BILLING CODE 4310-04-M

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted For OMB Review

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Commission has submitted a proposal for the collection of information to the Office of Management and Budget (OMB) for review.

Purpose of Information Collection: The proposed information collection is for use by the Commission in connection with investigation No. 332–263, Competitive Conditions in the U.S. and World Markets for Fresh Cut Roses, instituted under the authority of section 332 of the Tariff Act of 1930 (19 U.S.C. 1332).

Summary of Proposal:

(1) *Number of Forms Submitted:* Three.

(2) *Title of Form:* Competitive Conditions in the U.S. and World Markets for Fresh Cut Roses—Questionnaires for U.S. (1) Growers, (2) Shippers, and (3) Importers.

(3) *Type of Request:* New.

(4) *Frequency of Use:* Nonrecurring.

(5) *Description of Respondents:* Firms which grow, ship, or import fresh cut roses.

(6) *Estimated Number of Respondents: Growers:* 130, based on an estimated response rate of 50 percent. *Shippers:* 60, based on an estimated response rate of 60 percent. *Importers:* 60, based on an estimated response rate of 60 percent.

(7) *Estimated Total Number of Hours to Complete the Forms:* Field testing of the questionnaires yielded an estimated response time of 60 hours per questionnaire for growers and 40 hours per questionnaire for shippers and importers.

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Additional Information or Comment: Copies of the proposed form and supporting documents may be obtained from David L. Ingersoll (USITC tel. no. 202–252–1309). Comments about the proposal should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Attention: Francine Picoult, Desk Officer for U.S. International Trade Commission. Any comments should be specific, indicating which part of the questionnaire or study plan is objectionable, describing the problem in detail, and including specific suggested revisions or language changes.

Submission of Comments: Comments should be submitted to OMB within 2 weeks of the date this notice appears in the **Federal Register**. If you are unable to submit them promptly you should advise OMB within the 2 week period of your intent to comment on the proposal. Ms. Picoult's telephone number is 202–395–7340. Copies of any comments should be provided to Charles Ervin (United States International Trade Commission, 500 E Street SW., Washington, DC 20436).

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 252–1810.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: October 26, 1988.

[FR Doc. 88-25383 Filed 11-1-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-283]

Certain Electronic Dart Games; Commission Decision Not To Review an Initial Determination Amending Complaint and Investigation To Add Two Additional Respondents

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) issued by the presiding administrative law judge (ALJ) amending the complaint and notice of investigation in the above-captioned investigation to add Jui-Sheng, Lin (Lin) and Cortina International Corporation (Cortina) as respondents.

ADDRESSES: Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street Sw., Room 112, Washington, DC 20436, telephone 202–252–1000.

FOR FURTHER INFORMATION CONTACT: Randi Field, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–252–1099. Hearing impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–2810.

SUPPLEMENTARY INFORMATION: On September 1, 1988, complainant Arachnid, Inc. filed a motion (Motion No. 283–2) to amend the complaint and notice of investigation to add Lin and Cortina as respondents. The Commission investigative attorney filed a response in support of the motion.

On September 19, 1988, the ALJ issued an ID (Order No. 4), granting complainant's motion to amend the complaint and notice of investigation to add Lin and Cortina as respondents. No petitons for review of the ID or government agency comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission interim rule 210.53 (53 FR 33070, Aug. 29, 1988).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: October 27, 1988.

[FR Doc. 88-25385 Filed 11-1-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 332-135]

Synthetic Organic Chemical (SOC) Reports

AGENCY: International Trade Commission.

ACTION: Request for comments on the SOC reports.

BACKGROUND: The Commission has collected and published production and sales data on synthetic organic chemicals since 1917. This program was formalized as investigation No. 332–135 effective February 1, 1982, conducted under the authority of section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b)). Effective May 13, 1988, the authority to conduct this investigation was changed to section 332(g) (U.S.C. 1332(g)) after receipt of a letter from the Honorable Sam M. Gibbons, Chairman of the Subcommittee on Trade, Committee on Ways and Means, U.S. House of Representatives, requesting on behalf of the Committee on Ways and Means that the Commission continue publication of the SOC reports under the authority of section 332(g) of the Tariff Act of 1930.

In order to enhance the usefulness of these annual and quarterly reports, the Commission solicits comments from the public at large on changes to the reports and their questionnaires in such areas as definitions, scope of coverage, format, etc. An example of a change already suggested by a major industry association is the removal from the annual report of data on butane, ethane, and propane. It has been suggested that production and sales data on these products are already covered on a more comprehensive basis by other organizations.

ADDRESS: A signed original of each set of comments should be sent to James A. Emanuel, Energy and Chemicals Division, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, by December 31, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Emanuel or Mr. John J. Gersic, Energy and Chemicals Division, Office of Industries (telephone 202–252–1367 and 202–252–1342, respectively).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: October 28, 1988.

[FR Doc. 88-25384 Filed 11-1-88; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31304]

Columbia-Astoria Rail Service, Inc.; Construction and Operation Exemption at Tongue Point, OR

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 10901 the construction and operation by Columbia-Astoria Rail Service, Inc. (CARS) of a turnout switch and 5 to 10 thousand feet of track at a port facility at Tongue Point, OR.

DATES: The exemption will be effective on December 2, 1988. Petitions for stay must be filed by November 14, 1988 and petitions to reopen must be filed by November 22, 1988.

ADDRESSES: Send pleadings referring to Finance Docket No. 31304 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Richard L. Sadler, Esq., Copeland, Landye, Bennett & Wolf, 3500 First Interstate Tower, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. [TDD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289–4357/4359 (DC Metropolitan Area).

Decided: October 20, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 88-25314 Filed 11-1-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-114 (Sub-No. 13)]

Clarendon & Pittsford Railroad Co.; Abandonment Exemption in Rutland County, VT

Applicant has filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments* to abandon: (1) A portion of its West Rutland Main, extending from Station S280+00 to end of track at Station S404+09.4, a distance of 2.729 miles; and (2) a portion of its Rutland Main, extending from station R45+00 to end of track at Station R71+28.7, a distance of 0.498 miles. Both lines are located in Rutland County, VT.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years and that any overhead traffic may be rerouted; and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent of file an offer of financial assistance has been received, this exemption will be effective December 2, 1988 (unless stayed pending reconsideration). Petitions to stay regarding matters that do not involve environmental issues [1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [2], must be filed by November 14, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by November 22, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: John R. Pennington, Clarendon & Pittsford Railroad Company, One Railway Lane, Burlington, VT 05401.

If the notice of exemption contains false or misleading information, use of the exemption is viod *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by November 7, 1988. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE, at (202) 275–7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: October 26, 1988.

By the Commission, Jane F. Mackall, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-25182 Filed 11-1-88; 8:45 am]

BILLING CODE 7035-01-M

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[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 400 (1988).

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440–48446).

DEPARTMENT OF JUSTICE

National Institute of Justice

Research Program Plan for Fiscal Year 1989

AGENCY: National Institute of Justice, Department of Justice.

SUMMARY: The National Institute of Justice announces the publication of its *Research Program Plan, Fiscal Year 1989*. It outlines the Institute's criminal justice research agenda for which funds will be awarded this fiscal year, and provides application instructions and forms.

Justice Assistance Act of 1984 (Pub. L. 98-473)

For a copy of *Research Program Plan, Fiscal Year 1989*, write: National Institute of Justice/NCJRS, Box 6000, Rockville, Maryland 20850, ATTN: *Research Program Plan.*

For further information, call: (800) 851-3420, or, in Maryland or Metropolitan D.C. (301) 251-5500.

James K. Stewart,

Director, National Institute of Justice.

[FR Doc. 88-25380 Filed 11-1-88; 8:45 am]

BILLING CODE 4410-18-M

NATIONAL ECONOMIC COMMISSION

Commission Meetings

AGENCY: National Economic Commission.

ACTION: Notice of Commission meetings.

SUMMARY: The National Economic Commission ("the commission") will hold public meetings on November 15, 16 and 18, 1988. The commission was established by section 2101 of the Omnibus Reconciliation Act of 1987, Pub. L. 100-203, enacted December 22, 1987.

Date, Time and Place: November 15, 1988, 3 p.m.—6 p.m.; November 16, 1988, 9 a.m.—12 noon, 1 p.m.—6:30 p.m.; room 214 Hart Senate Office Building, Washington, DC November 18, 1 p.m.—3 p.m., Room 406, Senate Dirksen Office Building.

Agenda: As a supplement to the commission's request for written submissions **Federal Register** June 14, page 22236) the commission meetings on November 15 and 16 will be organized as public hearings to provide an opportunity for invited witnesses from a wide range of perspectives to present their views on how the commission should meet the mandate of the commission. The first session, November 15, 3 p.m.—6 p.m. will be devoted to hearing from Members of Congress. The November 16 sessions, 9 a.m.—12 noon and 1 p.m.—6:30 p.m. will be devoted to hearing from representative of business, finance, labor and major constituent groups. The meeting on November 18, 1 p.m.—3 p.m. will be an introductory work session of the commission.

FOR FURTHER INFORMATION CONTACT: Jim Hildreth at 425-6986, National Economic Commission, 734 Jackson Place, NW., Washington, DC 20503.

SUPPLEMENTARY INFORMATION: See **Federal Register**, volume 53, No. 80, Tuesday, April 26, 1988, page 14871.

Drew Lewis,

Co-Chairman.

Robert S. Strauss,

Co-Chairman.

[FR Doc. 88-25281 Filed 11-1-88; 8:45 am]

BILLING CODE 4810-43-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-255]

Consumers Power Co., Palisades Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of Appendix J to 10 CFR Part 50 to Consumers Power Company (the licensee) for the Palisades Plant, located in Van Buren County, Michigan.

Environmental Assessment

Identification of Proposed Action

The licensee requested an exemption from Paragraph III.A.3 of 10 CFR Part 50, Appendix J, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors." In 1973, Appendix J was issued to establish requirements for primary containment leakage testing and incorporated, by reference, ANSI N45.4-1972, "Leakage Rate Testing of Containment Structures for Nuclear Reactors." This standard requires that containment leakage calculations be performed by using either the Point-to-Point method or the Total Time method. The Total Time method was used the most by the nuclear industry until about 1976.

At this time, licensees who wish to use the Mass-Point method of calculating containment integrated leakage must submit an application for exemption from the Appendix J requirement that containment integrated leak rate tests will conform to ANSI N45.4. The exemption proposed by the licensee would be granted until pending changes to Appendix J are promulgated. In the Mass-Point method, the mass of air in containment is calculated and plotted as a function of time, and leakage is calculated from the slope of the linear least squares.

With the present developments in technology, the Mass-Point method has gained increasing recognition.

The superiority of the Mass-Point method becomes apparent when it is compared with the two other methods. In the Total Time method, a series of leakage rates are calculated on the basis of air mass differences between an initial data point and each individual data point thereafter. If for any reason (such as instrument error, lack of temperature equilibrium, ingassing or outgassing) the initial data point is not accurate, the results of the test will be affected. In the Point-to-Point method, the leak rates are based on the mass difference between each pair of consecutive points which are then averaged to yield a single leakage rate estimate. Mathematically, this can be shown to be the difference between the air mass at the beginning of the test and the air mass at the end of the test expressed as percentage of the containment air mass. It follows from the above that the Point-to-Point method ignores any mass readings during the test and thus the leakage rate is calculated on the basis of the difference in mass between two measurements taken at the beginning and at the end of the test, which are 24 hours apart.

The licensee's request and bases for exemption are contained in a letter dated September 9, 1988, as supplemented by letter dated September 16, 1988. The exemption would permit the licensee to use the Mass-Point method for calculating containment leakage rates as an acceptable alternative to the Point-to-Point and Total Time methods currently specified in Appendix J.

The Need for the Proposed Action

The proposed exemption is needed to allow use of the Mass-Point analysis method at Palisades Plant and for improved analysis of the test results.

Environmental Impacts of the Proposed Action

The erraticism of the Total Time method creates a higher probability of unnecessarily failing a containment integrated leakage rate test (note that the calculational procedure is independent of containment tightness) possibly resulting in increased test frequency, critical path outage time, and exposure to test personnel.

Radiological releases will not be greater than previously determined, nor does the proposed exemption otherwise affect radiological plant effluents, or have any other environmental impact. Therefore, the Commission concludes that there are no measurable radiological or nonradiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

The Commission has concluded that there is no measurable impact associated with the proposed exemption; any alternatives to the exemption will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources beyond the scope of resources used during normal plant operation, which have been considered previously by the Commission in the Final Environmental Statement dated June 1972.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request that supports the proposed exemption. The staff did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the request for the exemption dated September 9, 1988, as supplemented by letter dated September 16, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, 20555 and at the Van Zoeren Library, Hope College, Holland, Michigan 49423.

Dated at Rockville, Maryland, this 21st day of October 1988.

For the Nuclear Regulatory Commission.

John J. Stefano,

Acting Director, Project Directorate III-1, Division of Reactor Projects—III, IV, V & Special Projects.

[FR Doc. 88-25350 Filed 11-1-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-289]

Metropolitan Edison Co., Jersey Central Power & Light Co., Pennsylvania Electric Co., and GPU Nuclear Corp.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of Appendix R to 10 CFR Part 50 to GPU Nuclear Corporation (the licensee), for the Three Mile Island Nuclear Station, Unit 1 (TMI-1), located in Dauphin County, Pennsylvania.

Environmental Assessment

Identification of Proposed Action

The exemption would grant relief from the requirements of Appendix R, section III.G.2.b as these requirements relate to circuit separation for reactor coolant letdown system valves MU-V-2A, -2B, -3, -4 and -5. Appendix R would require the circuits for these valves to be separated by 20 feet with no intervening combustibles. Although the 20 feet separation exists in the as-built plant, intervening combustibles exist in the form of cables in trays which supply other, unrelated circuitry.

The exemption is responsive to the licensee's application for exemption dated May 21, 1988.

The Need for the Proposed Action

The proposed exemption is needed because the features described in the licensee's request regarding the existing and proposed fire protection at the plant for this item are the most practical method for meeting the intent of Appendix R and literal compliance would not significantly enhance the fire protection capability.

Environmental Impacts of the Proposed Action

The proposed exemption will provide a degree of fire protection such that there is no increase in the risk of fires at this facility. Consequently, the probability of fires has not been increased and the potential post-fire radiological releases will not be greater than previously determined nor does the proposed exemption otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemption.

With the regard to potential nonradiological impacts, the proposed exemption involves features located within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impacts. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

It has been concluded that there is no measurable impact associated with the proposed exemption; any alternatives to the exemption will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action involves no use of resources not previously considered in the Final Environmental Statement for the Three Mile Island Nuclear Station, Unit 1.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated May 21, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland, this 24th day of October 1988.

For the Nuclear Regulatory Commission.

John F. Stolz, Director,

Project Directorate I-4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-25351 Filed 11-1-88; 8:45 am]

BILLING CODE 7590-01-M

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular

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biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from October 11, 1988 through October 21, 1988. The last biweekly notice was published on October 19, 1988 (53 FR 40961).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC The filing of requests for hearing and petitions for leave to intervene is discussed below.

By December 2, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: October 3, 1988

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) for the H. B. Robinson Steam Electric Plant, Unit No. 2, by adding a new TS Section 3.10.5, Reactor Trip Breakers. The proposal is made for compliance with the guidance provided in the NRC Generic Letters 85-09 and 83-28, Item 4.3. The proposed change would revise the TS by adding operability requirements for reactor trip and bypass breakers, diverse trip features and the trip logic. This request supplements an earlier request submitted on January 12, 1987, which was noticed in the **Federal Register** on February 26, 1987 at 52 FR 5851. The earlier request proposes to amend the TS to include surveillance testing requirements of the reactor trip and bypass breakers and associated diverse trip features.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR Part 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Carolina Power & Light Company (CP&L) has reviewed this proposed change in accordance with 10 CFR Part 50.92(c) and has determined that the proposed change does not constitute a significant hazards consideration based upon the following evaluation.

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously analyzed because the amendment incorporated originally installed reactor protection equipment into TS to ensure safe plant operation. In addition this amendment would add operability requirements that are not currently governed by TS.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated because this change adds originally installed reactor protection equipment to the specifications. Since no physical modification or relaxation to current procedures have been made, no new or different kind of accident can be created by the proposed amendment.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in the margin of safety because operability requirements assure that the equipment is maintained in a state of operational readiness. Operating parameters and setpoints are not being changed, therefore, the margin of safety is not affected.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. In addition, the Commission has provided guidance concerning the application of the criteria for determining whether or not a no significant hazards consideration exists by providing certain examples of actions not likely to involve significant hazards considerations and examples of actions likely to involve significant hazards considerations (51 FR 7751). One of the examples of actions not likely to involve significant hazards considerations is example (ii) "a change that constitutes an additional limitation, restriction or control not presently included in the Technical Specifications, e.g., a more stringent surveillance requirement." The changes in this case fall within the scope of the example. Accordingly, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551 Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: May 3, 1988

Description of amendment request: The proposed amendment would change the Technical Specification for refueling boron concentration to ensure that the reactor core is maintained at least 5 percent subcritical during refueling operations.

Basis for proposed no significant hazards consideration determination: The licensee performed an evaluation, as required by 10 CFR 50.91, to determine whether a significant hazards consideration is involved in the proposed amendment and reported the results of that evaluation as follows:

The purpose of the proposed Technical Specification change is to ensure that the reactor is maintained at least 5% subcritical during refueling operations. The present Technical Specification limit for refueling boron concentration is 1720 ppm. Since this boron concentration may not always ensure a k-effective of 0.95 or less, the definition has been expanded to require that the more restrictive of the two boron concentrations be maintained. Changes have also been made to delete reference to refueling boron concentration in the basis of the Emergency Core Cooling System Technical Specification 3.3 and to more accurately define when refueling boron concentration is required to be maintained and sampled. Reference to 5% shutdown margin was strictly a refueling requirement and did not apply to Section 3.3 of the Technical Specifications. The revised wording is consistent with the assumptions in the Palisades Safety Analysis. There is no increase in the probability or consequences of a previously evaluated accident, nor has a new or different kind of accident been created, and there has been no reduction in the margin of safety.

The NRC staff agrees with this evaluation and, therefore, proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esq., Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: Theodore Quay, Acting.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: October 6, 1988

Description of amendment request: The proposed amendment would reformat and clarify action statements for the existing Technical Specification for linear heat rate limit.

Basis for proposed no significant hazards consideration determination: The licensee performed an evaluation to determine whether a significant hazards consideration is involved in the proposed amendment, as required by 10 CFR 50.91, and reported the results, in part, as follows:

Consumers Power Company finds that activities associated with the change request involve no significant hazards, and, accordingly, a no significant hazards determination per 10 CFR 50.92(c) is justified. The following evaluation supports that finding.

Evaluation

1. Involve a significant increase in the probability or consequences of an accident previously evaluated:

Existing requirements in the Linear Heat Rate Technical Specifications are all maintained in this proposed Technical Specifications change. The Technical Specifications change is written to clarify required actions and time limits and thereby assist in prompt, proper operator actions to satisfy Technical Specification requirements.

Proposed changes 3.23.1.1 thru 3.23.1.3 are administrative changes which reformat former Actions 1, 2, and 3. These changes are made to clarify the former Action Statements. Proposed Technical Specification 3.23.1.4 requires a timely response to complete loss of ability to monitor LHR. The action statement for proposed Technical Specification 3.23.1.4 also allows power increases up to 50% of rated thermal power without monitoring LHR per 3.23.1.1, 3.23.1.2 or 3.23.1.3. This provision is necessary during plant startup and is consistent with Technical Specification 4.19.1.1. Therefore, the proposed Technical Specifications change does not increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated:

The proposed Technical Specifications change is an administrative revision. It maintains all requirements which currently exist in the Technical Specifications and provides additional time limits for reduction of reactor power when the ability to monitor LHR is completely lost. Thus, the Technical Specifications change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety: The proposed Technical Specifications change maintains all requirements which currently exist. The Technical Specifications change also requires a more rapid response to complete loss of ability to monitor LHR than is currently required by Technical Specification 3.0.3. Therefore, the Technical Specifications change does not alter the margin of safety.

The NRC staff agrees with this evaluation and, therefore, proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esq., Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: Theodore Quay, Acting.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: October 7, 1988

Description of amendment request: The proposed amendment would delete the steam generator differential pressure limit from the Technical Specifications.

Basis for proposed no significant hazards consideration determination: The licensee reports its evaluation of the significant hazards consideration, as required by 10 CFR 50.91, as follows:

The following evaluation supports a determination that no significant hazards exist.

1. The change to remove the differential pressure limit does not involve a significant increase in the probability or consequences of an accident previously evaluated. The Palisades steam generator operating differential pressure of 1360 psid was used by Combustion Engineering to establish the current steam generator tube repair criteria in Technical Specification 4.14.4. The structural integrity of the steam generator tubes is assured by appropriate application of the repair criteria. Since Technical Specification 3.1.1.f limits the primary system pressure and Specification 4.14.4 establishes the repair criteria, all appropriate parameters are specified, thus, the probability and consequences of an accident have not increased.

2. The change does not create the possibility of a new or different kind of accident from any accident previously evaluated. Since application of the repair criteria, which incorporates [sic] the steam generator operating differential pressure, ensures the structural integrity of the steam generator tubes, removal of the specification does not involve any new or different kind of accident.

3. The change does not involve a significant reduction in the margin of safety. The margin of safety, as it affects safety limits, is defined for the steam generator tube repair criteria. This change only removes a value that is not a safety limit and, therefore, the margin of safety is not affected.

The NRC staff agrees with this evaluation and, therefore, proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esq., Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: Theodore R. Quay, Acting Director

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendments request: September 12, 1988

Description of amendments request: The proposed amendments would revise Sections 6.2 and 6.3 of the Administrative Controls Section of the Technical Specifications (TS). The proposed revision would relax the requirement that the Operations Superintendent (OST) hold a senior reactor operator (SRO) license on the Turkey Point Plant. The proposed change would require that the OST either hold, or have held in the past, an SRO license on the Turkey Point plant, or have held an SRO license on a similar nuclear power plant (i.e., another pressurized water reactor).

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed change in accordance with the standards of 10 CFR 50.92 and has determined that operation of Turkey Point Units 3 and 4 in accordance with the proposed amendments would not:

(1)&(2) Involve a significant increase in the probability or consequences of an accident previously evaluated, or create the possibility of a new or different kind of accident than previously evaluated. The proposed change is administrative in nature, and does not involve a change in the operation, physical configuration of the plant, or affect the accident analysis.

(3) Involve a significant reduction in a margin of safety. The proposed change modifying the requirement that the Operations Superintendent hold an SRO license would continue to ensure that he has the knowledge and experience required to fulfill the duties of that functional level. The Operations Supervisor, directly responsible for operations, will continue to hold a current SRO on the Turkey Point Plant.

Therefore, operation of the facility in accordance with the proposed amendment would pose no threat to the public and safety, and would not involve a significant hazards consideration.

The staff agrees with the licensee's determination above, and therefore proposes to determine that the amendments do not involve a significant hazards consideration.

Local Public Document Room location: Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzer, P.C., 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-321, Edwin I. Hatch Nuclear Plant, Unit 1, Appling County, Georgia

Date of amendment request: September 6, 1988

Description of amendment request: The amendment would: (1) modify the definitions of Hot Shutdown and Cold Shutdown so that changing of operational modes would not be necessary when performing hydrostatic and leakage pressure testing; and (2) modify Technical Specifications (TS) sections 3.5.A.2, 3.5.B.1.b, 3.5.B.2.c, 3.5.C.2, 3.8.G, and 3.7.C.1.a.[7] and the notes to TS Table 3.2-1 to specify which equipment must be, or need not be, operable during performance of the hydrostatic and leakage pressure testing. A minor editorial change also would be made to TS 4.5.C.2.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee's September 6, 1988 submittal provided the following evaluation of the proposed changes with respect to these standards:

The proposed changes add a footnote to Technical Specifications Section 1.0, modifying the Operational Condition definitions of Hot Shutdown and Cold Shutdown during non-nuclear hydrostatic/leak testing per ASME Code, Section XI requirements. The revised definitions will allow for the reactor to be considered in Cold Shutdown during the performance of a test, even when the reactor coolant temperature is above 212° F. The proposed changes also revise Technical Specifications to require secondary containment integrity and to require certain core and containment cooling systems be operable when performing the tests. Since hydrostatic/leak tests are performed water solid with all rods inserted into the reactor core at low decay heat values, and at or near Cold Shutdown Condition, the stored energy in the core and containment will be very small. The amount of reactivity contained in any postulated steam leak would also be small. Additionally there is a proposed change that clarifies one Specification 4.5.C.2.

The proposed changes do not involve a significant hazards consideration for the following reasons:

(1) They do not involve a significant increase in the probability or consequences of an accident previously evaluated because the hydrostatic/leak tests to which these changes apply occur when primary system energy is minimal; all control rods are inserted; and low temperature and low fuel decay heat values are established. Under these test conditions, the systems specified to be operable will function to ensure a significant increase in the consequences or the probability of an accident will not occur.

(2) The proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed because no change in plant design or operation will occur as a result of the change. The changes described herein apply only to the performance of ASME Code-required hydrostatic or leak testing (with all control rods inserted), and are in addition to those changes granted with Amendment 137.

(3) The proposed changes do not involve a significant reduction in the margin of safety because plant operation is not affected, and analyzed margins of safety are unchanged.

The proposed editorial change which changes "RHR" to "RHR service water" in Specification 4.5.C.2 corrects a typographical error, and is administrative in nature.

The staff has considered the proposed changes and agrees with the licensee's evaluation with respect to the three standards.

On this basis, the Commission has determined that the requested amendment meets the three standards and, therefore, has made a proposed determination that the amendment application does not involve a significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Attorney for licensee: Bruce W. Churchill, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: David B. Matthews

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: September 6, 1988

Description of amendment request: The amendments would modify the Technical Specifications (TS) for Units 1 and 2 to change the action level regarding suppression pool temperature from 95° F to 100° F. The existing TS require that the suppression pool temperature be maintained at or below 95° F, that pool cooling be initiated if the temperature exceeds 95° F, and that the reactor be shut down if the pool temperature cannot be restored to 95° F within a 24-hour period. The proposed changes would raise the 95° F limit to 100° F.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee's September 6, 1988, submittal provided an evaluation of the proposed changes with respect to these three standards:

(1) This change does not involve a significant increase in the probability or consequences of an accident because applicable accident analyses that could be impacted by raising the suppression pool operating limit have been examined and found to be acceptable. The immediate shutdown (scram) and depressurization limits and the allowable operating temperature limit of 105° F when performing testing (adding heat to the pool) are unchanged.

(2) The possibility of a different kind of accident from any analyzed previously is not created by this change since the proposed change would only revise an operating limit on permissible pool temperature. This change does not involve the potential for a new accident type since plant design and function are unchanged

(3) Margins of safety are not significantly reduced by this change because the impact of the proposed pool temperature has been evaluated relative to safety analyses and margins have been shown to be insignificantly impacted. Sufficient heat capacity remains in the suppression pool for complete condensation of decay and sensible heat following an accident or reactor shutdown.

The staff has considered the proposed changes and agrees with the licensee's evaluations with respect to the three standards.

On this basis, the Commission has determined that the requested amendments meet the three standards and, therefore, has made a proposed determination that the amendment application does not involve a significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Attorney for licensee: Bruce W. Churchill, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: David B. Matthews

Mississippi Power & Light Company, System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Dates of amendment request: August 19, 1988, as supplemented October 10, 1988

Description of amendment request: The amendment would change the Technical Specifications (TS) by changing the downtravel power cutoff setpoints for the refueling platform hoist in TS 3/4.9.6, "Refueling Equipment," to allow for expected irradiation and thermal growth of fuel assemblies. The downtravel power cutoff for the hoist is specified to prevent the fuel assembly grapple from being lowered below the fuel top guide thus precluding reactor internals or grapple damage by inadvertently engaging the top guide with the grapple. The present specification uses the fuel assembly handles as a reference point and as fuel assemblies grow slightly with burnup, the setpoint is raised with respect to the fuel bottom support plate. For the third refueling, it may not be possible for the grapple to latch the handles of control blade guides used during refueling to support fuel assemblies because they do not grow in length. The proposed specification would use the reactor vessel top guide as a reference point so the setpoint would not change over the fuel lifetime. In addition, the setpoint would be lowered to ensure that all assemblies and control blade guides can be engaged by the grapple.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis of no significant hazards considerations in its request for a license amendment. The licensee's analysis of the proposed amendment against the three standards in 10 CFR 50.92 is reproduced below.

1. No significant increase in the probability or consequences of an accident previously evaluated results from this change.

a. Since the main hoist is used during refueling to handle fuel assemblies, the accident previously evaluated that is applicable to the proposed change is the fuel handling accident inside containment. The probability of a fuel handling accident occurring is not altered by the proposed change. This is because the downtravel cutoff interlock does not affect the manner in which a fuel assembly is handled other than allowing the grapple to be lowered a sufficient distance to generate a slack cable signal which allows a fuel assembly to be engaged or disengaged by the main hoist. In addition, the downtravel cutoff interlock is not assumed to prevent any design basis accident.

b. The consequences of a previously evaluated accident are not increased by the proposed change because the downtravel cutoff interlock is not assumed to function to mitigate the consequences of any design basis accident, including a fuel handling accident. The downtravel limit is based on sound engineering judgment and equipment protection rather than nuclear safety concerns or refueling operation safeguards. Fuel damage and offsite doses remain unaffected by the change to the downtravel interlock.

c. Therefore, there is no increase in the probability or consequences of previously analyzed accidents due to the proposed change.

2. This change would not create the possibility of a new or different kind of accident from any previously evaluated.

a. The downtravel cutoff interlock is used for the refueling platform main hoist. The main hoist is used to handle fuel assemblies and the dropping of a fuel assembly is already an evaluated accident.

b. The lowering of the downtravel cutoff setpoint by 0.5 inches will not permit the grapple to contact anything it could not contact previously. The impact force from contacting the fuel assembly or fuel channel with the grapple does not result in damage to either during fuel handling operation and is enveloped by the impact force of the dropped fuel assembly analyzed in the fuel handling accident.

c. Therefore, the possibility of a new or different kind of accident from any previously evaluated is not created.

3. This change would not involve a significant reduction in the margin of safety.

a. The downtravel cutoff interlock is not assumed to function to mitigate any design basis accident. Since the interlock is not assumed in any safety analyses, changing the setpoint cannot affect any safety margin.

b. By allowing the grapple to travel downward an additional 0.5 inches, the margin of safety will not be significantly reduced. The grapple will still be prevented from contacting the top guide by the proposed setpoint, the only difference is the grapple will be 1.0 inch above the top guide rather than 1.5 inches.

c. Therefore, this proposed change will not involve a reduction in the margin of safety.

The licensee has concluded that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards consideration.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

Attorney for licensee: Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW, Washington, DC 20036

NRC Project Director: Elinor G. Adensam

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: September 13, 1988

Description of amendment request: By application for license amendment dated February 3, 1988, Northeast Nuclear Energy Company et al. (the licensee), requested a change to Technical Specifications (TS) 4.4.5.1.4.a.8 for Millstone Unit 2. The proposed change to the TS would allow the licensee to inspect steam generator tubes by insertion of the probe from the cold leg side of the steam generator tube.

Basis for proposed no significant hazards consideration determination: Millstone Unit 2 utilizes a steam generator tube design shaped as an inverted 'U". These steam generator tubes traverse the steam generator from the hot leg to the cold leg side of steam generator tube sheet. Steam generator tubes are periodically subjected to ultrasonic testing (UT) to detect flaws in the tubes. The testing is accomplished by inserting a probe into the tube. At the present time, TS 4.4.5.1.4.a.8 defines a steam generator "tube inspection" as, "...an inspection of the steam generator tube from the point of entry (hot leg side) completely around the U - Bend to the top support of the cold leg." The licensee has proposed that the definition of "tube inspection" be expanded to also include: "from the point of entry (hot leg or cold leg side) completely around the U-bend to the opposite tube end."

Title 10 CFR 50.92, "Issuance of amendment" contains standards for determining if a proposed license amendment involves no significant hazards considerations. In this regard, the proposed change to TS 4.4.5.1.4.a.8 would not involve a significant increase in the probability or consequences of an accident previously evaluated. The purpose of steam generator tube inspections is to locate flaws that could potentially result in a steam generator tube rupture. The proposed change to the TS would maintain the ability of the licensee to identify steam generator tube flaws and take preventive measures to limit the probability of a steam generator tube rupture. Since steam generator tube inspection is only a preventative measure, there is no impact on the potential consequences of a steam generator tube rupture.

The proposed change to the TS would not create the possibility of a new or different kind of accident. The use of UT for steam generator tubes is an established form of inspection that has no adverse effects on the tubes. The proposed change to the TS does not involve a change in the test method, and retains inspection of the hot leg and U-bend sections of the tubes. Probe entry point (hot leg vs. cold leg) will become optional. The choice of entry side has no adverse effect on inspection capability or results.

Finally, the proposed change to the TS would not involve a significant reduction in a margin of safety. Because of the large number of steam generator tubes, the surface area of the tubes represents a substantial fraction of the total primary system boundary area. Thus, steam generator tube integrity is an important part of the overall primary system integrity. The location and repair of excessive steam generator tube degradation will retain the margin of safety with regard to primary system integrity.

Based upon the above, the Commission proposes to determine that the proposed change to TS 4.4.5.1.4.a.8 involves no significant hazards considerations.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry and Howard, One Constitution Plaza, Hartford, Connecticut 06101.

NRC Project Director: John F. Stolz

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: September 20, 1988

Description of amendment request: By application for license amendment dated September 20, 1988, Northeast Nuclear Energy Company, et al. (the licensee), requested changes to the Technical Specification (TS) for Millstone Unit 2. The proposed change to the TS involves the maximum linear heat rate shown in TS Figure 3.2.1 which would be reduced from 15.6 to 14.0 Kw/ft, and a factor of 1.115 would be applied to the planar peaking for reactor operation during Cycle 9 beyond a core average burnup of 10,000 MWD/MTU.

Basis for proposed no significant hazards consideration determination: Coastdown operation of a reactor involves decreasing the average reactor coolant temperature in order to increase reactivity. This mode of operation is used to extend the length of the fuel cycle beyond what would be considered end-of-cycle. Operation of Millstone Unit 2, beyond the end of Cycle 8 (Cycle 8 coastdown), was approved with issuance of Amendment No. 113 on November 16, 1987. The licensee's evaluation supporting Cycle 8 coastdown involved addressing the applicability of the Millstone Unit 2 Loss of Coolant Accident (LOCA) analysis for Cycle 8 coastdown conditions.

Westinghouse has evaluated the Millstone Unit 2 LOCA analysis and found that Cycle 9 coastdown operation is acceptable provided that:

(1) The maximum linear heat rate is reduced from 15.6 Kw/ft to 14.0 Kw/ft.

(2) An additional multiplier of 1.115 (equal to 15.6/14.0, the ratio of the maximum linear heat rates) is included in the total planar radial peaking factor.

These additional restrictions apply only for operation past a core average burnup of 10,000 MWD/MTU, the predicted full power end of life for Cycle 9. The restriction on maximum linear heat rate would be incorporated in proposed TS Figure 3.2-3b while planar radial peaking factor would be incorporated into proposed TS 3/4.2.2. The proposed changes to the TS are identical to those incorporated in the TS for Cycle 8 coastdown. A change to the TS is needed to make these values specific for Cycle 9 coastdown.

Based upon the September 20, 1988 application, we conclude that the proposed amendment does not increase the probability or consequences of an accident previously evaluated. The proposed changes to the TS assure that the consequences of the design basis (LOCA) accident are not more severe than previously calculated. The proposed amendment also does not increase the probability of a LOCA, create the possibility of a new or different type of accident or a decrease in safety margin since no changes to plant equipment or new operating modes are involved. In this regard the use of plant coastdown, a decrease in power and/or average coolant temperature to extend the fuel cycle, is a routine end-of-cycle mode for Millstone Unit 2.

Based upon the above, we proposed to determine that the proposed changes to TS Figure 3.2.1 and TS 3/4.2.2 involve no significant hazards considerations.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry and Howard, One Constitution Plaza, Hartford, Connecticut 06103.

NRC Project Director: John F. Stolz

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Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: September 30, 1988

Description of amendment request: By application for license amendment dated September 30, 1988, Northeast Nuclear Energy Company, et al. (the licensee), requested changes to Millstone Unit 2 Technical Specifications (TS) 3.4.6.1, "Reactor Coolant System Leakage", to decrease the allowable primary-to-secondary leakage (through any one steam generator) from 0.15 to 0.10 gpm.

Basis for proposed no significant hazards consideration determination: The proposed change to the TS involves the limit for primary-to-secondary leakage through a single steam generator. At the present time, TS 3.4.6.2 limits the primary-to-secondary leakage, in a single steam generator, to 0.15 gpm. The proposed change to TS 3.4.6.2, which would decrease the allowed leakage from 0.15 to 0.10 gpm, resulted from the licensee's January 1987 shutdown of Millstone Unit 2 for high primary-to-secondary leakage. Following the plant shutdown, the licensee identified a steam generator tube with a circumferential crack which was through-wall over at least a portion of the 220° circumferential extent.

Assessments of the safety significance of the leaking tube were performed and concluded that operation of the steam generator continued to be safe provided that structural limits could be met for a circumferentially oriented crack. Based on calculations which concluded that a circumferential crack of the size which would allow 0.15 gpm primary-to-secondary leakage was structurally acceptable, an administrative reduction of the allowable leakage from 0.5 gpm to 0.15 gpm per steam generator was adopted for subsequent reactor operation. The 0.15 gpm leakage rate was incorporated in the TS with issuance of Amendment No. 121 on November 13, 1987.

Based upon further examination of the circumferential crack, the licensee now concludes that a further reduction in allowable primary-to-secondary leak rate, from 0.15 gpm to 0.10 gpm per TS 3.4.6.2 is desirable.

On March 6, 1986, the NRC provided guidance in the **Federal Register** (51 FR 7751) concerning examples of amendments that are not likely to involve significant hazards consideration. One example of amendments not likely to involve significant hazards considerations is example (ii) which involves "A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications, e.g., a more stringent surveillance requirement." The proposed change to TS 3.4.6.2 would decrease the existing primary-to-secondary leakage limit from 0.15 gpm to 0.10 gpm. The proposed change to the TS is judged to be within the scope of example (ii), above. Accordingly, the Commission proposes to determine that the proposed change to the TS involves no significant hazards considerations.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry and Howard, One Constitution Plaza, Hartford, Connecticut 06103.

NRC Project Director: John F. Stolz

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of amendment request: July 7, 1988

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) to delete reference to the cooldown mode of operation for the Unit 1 Reactor Enclosure Recirculation System (RERS) and the common plant Standby Gas Treatment System (SGTS). The revision will permit a modification to be made to the Limerick Unit 1 RERS and SGTS similar to that which the Commission has previously approved for Limerick Unit 2 (Letter, Robert Bernero, Director, Division of BWR Licensing, NRC to Edward G. Bauer, Vice President and General Counsel, PECo, dated March 18, 1987).

Basis for proposed no significant hazards consideration determination: The Unit 1 RERS and common plant SGTS are safety related air recirculation and filtration systems. The proposed modification which would be implemented if this proposed amendment is approved would be to remove the charcoal adsorber cooldown mode of operation. The cooldown mode is designed to supply air to the charcoal adsorber beds in the RERS and SGTS filter trains to limit potentially excessive charcoal temperature increases due to radioactive decay heat buildup in the charcoal adsorbers during and following a loss of Coolant Accident or Refueling Accident.

The licensee has performed an analysis which concludes that the post accident conditions are such that elimination of the RERS and SGTS cooldown modes will not result in excessive charcoal temperature increases which were the reason for including the cooldown modes. In recognition of the lack of need for the cooldown modes, the NRC has previously approved the deletion of the cooldown mode from the Limerick Unit 2 RERS filter trains as noted above.

The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee's analysis contained in their July 7, 1988 letter states the following in response to the three NRC criteria referenced above:

(1) Plant operation with the RERS and SGTS cooldown modes removed does not involve a significant increase in the probability or consequences of any accident previously evaluated.

The purpose of the cooldown modes is to limit excessive charcoal temperature increases to prevent 1) auto-ignition of the charcoal and 2) potential iodine desorption. [The Limerick Generating Station Final Safety Analysis Report] LGS FSAR Section 6.5.1 presents the response to a rise in RERS or SGTS charcoal adsorber bed temperatures when indicated by three different high temperature setpoint alarms (200 degrees F, 250 degrees F, and 550 degrees F). Upon receipt of the first high temperature setpoint alarm, 200 degrees F, the cooldown mode is actuated. If the other two alarms are activated, the cooldown mode is manually stopped and the water system is used for fire suppression. The results of the conservative bounding case calculations [have been presented in the Safety Assessment section of this application.] The maximum cumulative post-LOCA charcoal temperatures of 153.2 degrees F for the RERS filters and 172.7 degrees F for the SGTS filters resulting from radioactive decay heat buildup are significantly less than the 626 degrees F charcoal auto-ignition temperature and the 300 degrees F iodine desorption temperature referenced in ANSI N509-1980. For the bounding cases, the margin to the iodine desorption temperature is 146.8 degrees F for RERS and 127.3 degrees F for SGTS. The charcoal adsorber bed temperatures will not rise to the charcoal auto-ignition temperature or the iodine desorption temperature or the first high temperature setpoint alarm unless there is a fire; therefore, operation of the cooldown mode is unnecessary. In the event of a fire, the fire protection system provided for the RERS and the SGTS, which is not affected by the proposed change, would be initiated as stated in the FSAR.

Based upon the results of the conservative bounding case calculations, plant operation with the cooldown mode removed from the RERS and SGTS does not increase the probability or consequences of any accident previously evaluated.

(2) Plant operation with the RERS and SGTS cooldown modes removed does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Plant operation with the cooldown mode removed from the RERS and SGTS would continue to meet the requirements of section 2.2.4 of [Energy Research and Development Administration] (ERDA) Nuclear Air Cleaning Handbook 76-21, Section 4.6 of ANSI N509-1980, and Position C.1.f. of Regulatory Guide 1.52. The cooldown modes are considered to be the response to the lowest high temperature setpoint alarm for the charcoal beds. The conservative boundary case calculations discussed previously have shown operation of the cooldown mode to be unnecessary. Each charcoal adsorber filter bed is equipped with high temperature setpoint alarms and water spray or flooding systems. These fire protection systems provide acceptable means of charcoal adsorber fire detection and suppression in accordance with Regulatory Guide 1.52; therefore, plant operation with the RERS and SGTS cooldown modes removed does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Plant operation with the RERS and SGTS cooldown modes removed does not significantly reduce a margin of safety.

The conservative bounding case calculation discussed in the Safety Assessment produced maximum cumulative post-LOCA charcoal temperatures of 153.2 degrees F for the RERS and 172.7 degrees F for the SGTS filters. [The Safety Assessment provided] a comparison of the post-LOCA safety margins to the limiting temperatures for plant operation with and without the cooldown mode in operation. The reduction in margins to the iodine desorption temperature (300 degrees F) of 3 percent (9.2 degrees F) for RERS and 15 percent (22.7 degrees F) for SGTS are not significant relative to the resultant margins of 146.8 degrees F for RERS and 127.3 degrees F for SGTS. Plant operation with the cooldown mode removed from the RERS and SGTS does not affect the systems' ability to perform their safety related functions as required by Technical Specifications 3/4.6.5.3 and 3/4.6.5.4 and their bases and therefore, does not significantly reduce the margin of safety as defined in the basis for any technical specification.

As noted initially in this notice, the staff has previously reviewed and approved a similar modification for Limerick Unit 2. Our acceptance was based on either (1) conformance with applicable Regulatory Guides and other staff guidance, or (2) sufficient conservatism to account for uncertainties in the analysis. The bases for acceptance was that (1) the expected maximum charcoal temperature rise in the adsorber due to potential radioactive decay heat buildup during and following an accident is well below the minimum charcoal ignition temperature and (2) a separate water deluge system within each adsorber is provided with temperature alarm set points. Hence, the modification would not significantly affect the risk of a charcoal fire following an accident and the safety function of the filters will be preserved. The design of the Unit 1 filters is the same as for Unit 2 and thus the staff's previous analysis for Unit 2 is applicable to the subject amendment. Although elimination of the cooldown mode will reduce the margin of safety (i.e., the margin between the maximum postulated air temperature under conservative accident conditions and the minimum potential charcoal ignition temperature), the reduction in margin is not significant and is acceptable.

On the basis of the licensee's analyses and the staff's independent analyses using more conservative assumptions, we have concluded that the proposed amendment satisfies the three criteria listed in 10 CFR 50.92(c). Based on this conclusion, the staff proposes to make a "no significant hazards" determination.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Rochester Gas and Electric Corporation, Docket No. 50-244, R.E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: October 10, 1988.

Description of Amendment: The proposed amendment would modify the Technical Specification to reflect the appropriate titles for corporate positions having responsibility for overall plant safety.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed revisions to the Technical Specifications are changes in title from Senior Vice President, Production and Engineering to Vice President, Production and Engineering; and changes to achieve consistency in the use of the title, Superintendent, GINNA Station. The changes are administrative in nature because they do not change the physical aspects of the plant, equipment, or previously approved operations. Accordingly, the Commission proposes to determine that this revision does not involve a significant hazard.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Attorney for licensee: Harry Voigt, Le Boeuf, Lamb, Leiby and MacRae, Suite 1100, 1333 New Hampshire Avenue, NW., Washington, DC 20036.

NRC Project Director: Richard H. Wessman

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Cleveland Electric Illuminating Company, et al., Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: June 9, 1988

Brief description of amendment: The amendment would revise Technical Specification Table 3.8.4.1-1 to delete circuit breakers that are not Containment Penetration Conductor Overcurrent Protection Devices (spare

breakers) and to correct typographical errors in the table.

Date of publication of individual notice in Federal Register: September 15, 1988 (53 FR 35941).

Expiration date of individual notice: October 17, 1988.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: August 4, 1988

Brief description of amendment: The proposed license amendment would change and add Technical Specifications related to the operability and surveillance for certain post-accident monitoring instrumentation. Specifically, the operability requirements for the Subcooling Margin Monitor will be extended from 515 ° F and greater to 325 ° F and greater, and operability and surveillance requirements for the Reactor Vessel Level Monitoring System are being added to the Technical Specifications to cover the system which is being installed for the first time during the 1988 refueling outage.

Date of publication of individual notice in Federal Register: October 11, 1988 [53 FR 39976]

Expiration date of individual notice: November 10, 1988

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: August 4, 1988

Brief description of amendment: The proposed license amendment would change the Technical Specifications to reflect the secondary system safety valve setpoint tolerances. The proposed change would raise these tolerances from 985 psig (2710 psig) and 1025 psig (271%) to 985 psig (2730 psig) and 1025 psig (273%).

Date of publication of individual notice in Federal Register: October 11, 1988 [53 FR 39977]

Expiration date of individual notice: November 10, 1988

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: August 4, 1988

Brief description of amendment: The proposed license amendment would revise the Technical Specifications to reflect the changes in the pressurizer level instrumentation to provide two environmentally qualified, wide range channels to meet the criteria of Regulatory Guide 1.97, "Instrumentation to Follow the Course of an Accident." The surveillance requirement would also be revised to specify comparison of channels of similar range of pressurizer level for the once per shift check.

Date of publication of individual notice in Federal Register: October 11, 1988 [53 FR 39980]

Expiration date of individual notice: November 10, 1988

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: August 11, 1988

Brief description of amendment: The proposed license amendment would change the Technical Specifications related to the method of the monthly surveillance test to be performed on the Area Radiation Monitors. This change is required because a new digital monitor is being installed to replace an Area Monitor at the Evaporator Control Panel. The existing test consists of inserting a remotely operated integral check source while the proposed test applies an electronic check of the monitor response and continuous self diagnostic testing and the immediate display of error codes if a problem exists.

Date of publication of individual notice in Federal Register: October 11, 1988 [53 FR 39980]

Expiration date of individual notice: November 10, 1988

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Virginia Electric and Power Company, Docket Nos. 50-336 and 50-338, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: September 20, 1988, as supplemented October 6, 1988

Description of amendment request: The amendments would change the Technical Specifications regarding the containment integrated leak rate test schedule.

Date of publication of individual notice in Federal Register: October 11, 1988 (53 FR 39987)

Expiration date of individual notice: November 10, 1988

Local Public Document Room location: The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the Federal Register as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Boston Edison Company Docket No. 50-293, Pilgrim Nuclear Power Station Plymouth County, Massachusetts

Date of application for amendment: August 6, 1988

Brief description of amendment: This amendment revises License Condition 3.F, Fire Protection, to allow some fire barriers to have a rating of less than three hours.

Date of issuance: October 13, 1988

Effective date: October 13, 1988

Amendment No.: 123

Facility Operating License No. DPR-35: Amendment revised the license.

Date of initial notice in Federal Register: August 24, 1988 (53 FR 32290). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 13, 1988, and a Notice of Environmental Assessment and Finding of No Significant Impact was published in the Federal Register on October 13, 1988 (53 FR 40146).

No significant hazards consideration comments received: No

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Unit Nos. 1 and 2, Lake County, Illinois

Date of application for amendments: November 25, 1986, January 14, 1988 and June 30, 1988

Brief description of amendments: The amendments modify paragraph 2.C(6) of the license to require compliance with the amended Physical Security Plan. This Plan was amended to conform to the requirements of 10 CFR 73.55. Consistent with the provisions of 10 CFR 73.55, search requirements must be implemented within 60 days and miscellaneous amendments within 180 days from the effective date of this amendment.

Date of issuance: October 11, 1988

Effective date: October 11, 1988

Amendment Nos.: 113, 102

Facility Operating License Nos. DPR-39 and DPR-48. Amendments revised paragrah 2.C(6) of the license.

Date of initial notice in Federal Register: September 7, 1988 (53 FR 34615). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 11, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant Middlesex County, Connecticut; Northeast Nuclear Energy Company, et al; Docket Nos. 50-245, 50-336, and 50-423, Millstone Nuclear Power Station, Unit Nos. 1, 2, and 3, New London County, Connecticut

Date of application for amendments: May 25, 1988

Brief description of amendments: The change modifies the Technical Specifications (TS) to provide for uniform addresses for the following classes of reports for Haddam Neck and Millstone Units 1, 2 and 3:

- Routine Reports including Monthly Operating Reports (TS 6.9.1)
- Special Reports (TS 6.9.2)

In addition to the above, the same addresses would apply to reporting of Radial Peaking Factor Limits for Millstone Unit 3 per TS 6.9.1.6.

Date of issuance: September 28, 1988

Effective date: September 28, 1988

Amendment Nos.: 107, 23, 132, 24

Facility Operating License Nos. DPR-61, DPR-21, DPR-65 and NPF-49. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: June 29, 1988 (53 FR 24507). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 28, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06103 and Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: August 15, 1988

Brief description of amendments: The amendments modified the operating licenses to allow an extension of time for resolution of the accumulator tank instrumentation issue.

Date of issuance: October 13, 1988

Effective date: October 13, 1988

Amendment Nos.: 55 and 48

Facility Operating License Nos. NPF-35 and NPF-52. Amendments revised the Operating Licenses.

Date of initial notice in Federal Register: September 7, 1988 (53 FR 34802). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 13, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Duke Power Company, Docket Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units 1, 2 and 3, Oconee County, South Carolina

Date of application for amendments: February 6, 1986, as supplemented August 20, 1986, and December 1, 1987

Brief description of amendments: The amendments revised the Technical Specifications related to the reactor building spray system to test only the initial control circuitry without actually energizing the pump.

Date of issuance: October 14, 1988

Effective date: October 14, 1988

Amendment Nos.: 171, 171, and 168

Facility Operating License Nos. DPR-38, DPR-47 and DPR-55. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: May 6, 1987 (52 FR 16941). Because the December 1, 1987, submittal clarified certain aspects of the original request, the substance of the changes noticed in the Federal Register and the proposed no significant hazards consideration determination were not affected.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 14, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691.

Duquesne Light Company, Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Units 1 and 2, Shippingport, Pennsylvania

Date of application for amendment: June 11, 1988

Brief description of amendment: The amendment revises the Technical Specification for each unit to reflect the licensee's current management organization, and to comply with guidance in the NRC's Generic Letter 88-06.

Date of issuance: October 6, 1988

Effective date: October 6, 1988

Amendment No. 131 for Unit 1, 7 for Unit 2

Facility Operating License No. DPR-65. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 27, 1988 (53 FR 28288). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 6, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: February 11, 1988

Brief description of amendments: The amendments modified the description of the reactor core in the Technical Specifications (TS) to provide for the replacement of individual fuel rods within fuel assemblies with stainless steel rods or vacant rod positions. These amendments also revised the TS to provide for the use of a natural uranium axial blanket in the core and to provide for the elimination of the use of part-length control rods.

Date of issuance: October 12, 1988

Effective date: October 12, 1988

Amendment Nos. 133 and 127

Facility Operating Licenses Nos. DPR-31 and DPR-41: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: April 6, 1988 (53 FR 11371). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 12, 1988. The addition of a special reporting requirement in TS did not alter the action noticed or affect the staff's initial determination.

No significant hazards consideration comments received: No

Local Public Document Room location: Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: December 2, 1986, as supplemented October 27, 1987 and July 6, 1988

Brief description of amendment: The amendment modified paragraph 2.C.(6) of the license to require compliance with the amended Physical Security Plan. This Plan was amended to conform to the requirements of 10 CFR 73.55. Consistent with the provisions of 10 CFR 73.55, search requirements must be implemented within 60 days and miscellaneous amendments within 180 days from the effective date of this amendment.

Date of Issuance: October 11, 1988

Effective date: October 11, 1988

Amendment No.: 127

Provisional Operating License No. DPR-16. Amendment revised the license.

Date of initial notice in Federal Register: September 7, 1988 (53 FR 34605). The Commission's related evaluation of this amendment is contained in a letter to GPU Nuclear Corporation dated October 11, 1988 and a Safeguards Evaluation Report dated October 11, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: June 21, 1988

Brief description of amendment: The amendment deleted the requirement for a daily exercise of the Main Steam Isolation Valves (MSIV's). Specifically these changes are (1) Section 4.5.I.3.a of the Technical Specifications (TS) has been deleted and Section 4.5.I.3.b of the TS has been incorporated in Section 4.5.I.3 of the TS and (2) the bases for MSIV Testing has been revised to reflect the requirements of the ASME Boiler and Pressure Vessel Code, Section XI, 1974 edition with winter 1973 addendum.

Date of Issuance: October 12, 1988

Effective date: October 12, 1988

Amendment No.: 128

Provisional Operating License No. DPR-16. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 27, 1988 (53 FR 28287). The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated October 12, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: August 5, 1988.

Brief description of amendment: The amendment revised the definition of core alteration to exclude the normal movement of local power range monitors from this definition.

Date of issuance: October 12, 1988

Effective date: October 12, 1988

Amendment No.: 29

Facility Operating License No. NPF-47. The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: September 7, 1988 (53 FR 34606). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 12, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: July 19, 1988

Brief description of amendment: The amendment revised the Technical Specifications to clarify that an Assistant Plant Manager, if not acting as chairman, may be a member of the Plant Operations Review Committee for purposes of determining a quorum.

Date of issuance: October 12, 1988

Effective date: October 12, 1988

Amendment No.: 43

Facility Operating License No. NPF-38. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: September 7, 1988 (53 FR 34607). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 12, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: July 18, 1988

Brief description of amendment: The amendment revised the Technical Specifications to allow 4.10 weight percent U-235 enriched fuel to be stored in the spent fuel pool, new fuel storage vault, and containment temporary storage racks.

Date of issuance: October 19, 1988

Effective date: October 19, 1988

Amendment No.: 44

Facility Operating License No. NPF-38. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 10, 1988 (53 FR 30137). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 19, 1988 and an Environmental Assessment dated September 30, 1988 (53 FR 38380).

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Northeast Nuclear Energy Company, et al., Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of application for amendment: June 3, 1988

Brief description of amendment: The Technical Specification reduces the Maximum Average Planar Linear Heat Generation Rate limit by 2 percent to compensate for potentially degraded Emergency Core Cooling System flow due to debris-induced strainer plugging following a loss-of-coolant accident.

Date of issuance: October 11, 1988

Effective date: October 11, 1988

Amendment No.: 24

Facility Operating License No. DPR-21. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: September 7, 1988 (53 FR 34608). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 11, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: April 29, 1988 supplemented June 24, 1988.

Brief description of amendment: The amendment revises the Technical Specifications to allow a decrease in the Boric Acid Storage Tanks. Accordingly, the heat tracing for piping which contains a concentrated boric acid solution will no longer be required to be maintained in an operable condition.

Date of issuance: October 11, 1988

Effective date: October 11, 1988

Amendment No.: 133

Facility Operating License No. DPR-65. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 13, 1988 (53 FR 28527). The June 24, 1988 submittal provided additional clarifying information and did not change the action or proposed no significant hazards determination in the initial notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 11, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: June 21, 1988

Brief description of amendment: The amendment changes Millstone Unit 3 Technical Specification (TS) 3/4.7.14, "Air Temperature Monitoring," to redefine the temperature zones inside containment and establish temperature limits for these zones as listed in Table 3.7-6.

Date of issuance: October 3, 1988

Effective date: October 3, 1988

Amendment No.: 25

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 10, 1988 (53 FR 30139). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 3, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Southern California Edison Company, et al., Docket Nos. 50-206, 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 1, 2, and 3, San Diego County, California

Date of application for amendments: September 13, 1988

Brief description of amendments: The amendments deleted the on-site and off-site organizational charts from the technical specifications and substituted therefor written requirements with respect to the essential elements of organizational matters. The amendments also revised the reporting arrangements for the Nuclear Safety Group and the Independent Safety and Engineering Group to allow organizational flexibility consistent with deleting the organization charts.

Date of issuance: October 18, 1988

Effective date: The license amendments are effective the date of issuance and must be fully implemented to later than 30 days from date of issuance.

Amendment Nos.: 110, 68 and 37

Provisional Operating License No. DPR-13 and Facility Operating Licenses No. NPF-10 and NPF-15.: Amendments revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes (53 FR 36681, dated September 21, 1988). That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by October 21, 1988, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendments. The Commission's related evaluation is contained in a Safety Evaluation dated October 18, 1988.

Local Public Document Room location: General Library, University of California, Post Office Box 19557, Irvine, California 92713

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment requests: September 15, 1987, November 23, 1987 and May 24, 1988.

Description of amendment requests: The amendments modified paragraph 2.C.11 of the licenses for Units 1 and 2 and paragraph 2.C.6 for Unit 3 to require compliance with the amended Physical Security Plan. This plan was amended to conform to the requirements of 10 CFR 73.55. Consistent with the provisions of 10 CFR 73.55, search requirements must be implemented within 60 days and miscellaneous amendments within 180 days from the effective dates of these amendments.

Date of issuance: October 8, 1988

Effective date: October 8, 1988

Amendment Nos.: 157, 153, 128

Facility Operating License Nos. DPR-77 and DPR-79. Amendments revised the Licenses.

Date of initial notice in Federal Register: September 7, 1988 (53 FR 34612). The Commission's related

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evaluation of the amendment is contained in a Safety Evaluation dated October 6, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

Tennessee Valley Authority, Docket No. 50-327, Sequoyah Nuclear Plant, Unit 1, Hamilton County, Tennessee

Date of application for amendment: August 15, 1988 (TS 88-20), as supplemented by letter dated September 21, 1988.

Brief description of amendment: This amendment revises the surveillance requirements (SR) on the upper head injection accumulators (UHIA) in the Sequoyah Unit 1 Technical Specification (TS). The UHIA level switch setpoint and tolerances in SR 4.5.1.2.c.1 are changed from 87.1 27 5.6 inches above the tank vendor working line to 92.0 + 2.6/-5.6 inches above this line, when corrected for the mass of cover gas. This application also withdrew Technical Specification Change 74, for both Unit 1 and Unit 2, which was submitted in the licensee's letter dated August 8, 1988.

Date of issuance: October 14, 1988

Effective date: October 14, 1988

Amendment No.: 69

Facility Operating License No. DPR-77. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 29, 1988 (53 FR 32980). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 14, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Tennessee Valley Authority, Docket No. 50-327, Sequoyah Nuclear Plant, Unit 1 Hamilton County, Tennessee

Date of application for amendments: May 29, 1987 (TS 87-06)

Brief description of amendments: This amendment revises the surveillance requirements (SR) on pressure/temperature limits in the Sequoyah Unit 1 Technical Specifications (TS). The changes delete (1) Table 4.4-5, "Reactor Vessel Material Surveillance Program - Withdrawal Schedule," and (2) references to the Table in SR 4.4.9.1.2.

Date of issuance: October 14, 1988

Effective date: October 14, 1988

Amendment No: 67

Facility Operating License No. DPR-77. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 20, 1988 (53 FR 13018). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 14, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: April 17, 1987 (TS 87-10) and supplemented by latter dated July 15, 1988.

Brief description of amendments: The amendments modify Surveillance Requirements (SR) 4.6.1.8.d.1, 4.7.7.e.1, 4.7.8.d.1 and 4.9.12.d.1 of the Sequoyah Units 1 and 2 Technical Specifications (TS). The amendments decrease the maximum allowable pressure drop across the high efficiency particulate air (HEPA) and charcoal filters in the emergency gas treatment system, auxiliary building gas treatment system, and the control room emergency ventilation system.

Date of issuance: October 14, 1988

Effective date: October 14, 1988

Amendment Nos.: 88, 77

Facility Operating Licenses Nos. DPR-77 and DPR-79. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: July 15, 1987 (52 FR 26598). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 14, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: May 29, 1987 (TS 87-19)

Brief description of amendments: These amendments delete Action statement "b" of Sequoyah Units 1 and 2 Technical Specifications (TS) 3.6.5.2. This statement allows power operation for up to 30 days when the ice bed temperature monitoring system is inoperable, provided that, among other things, required air handling and refrigerant equipment is operable. With deletion of this statement, Action statement "c" would apply, which allows power operation to continue for only up to six days with an inoperable ice bed temperature monitoring system, under certain conditions.

Date of issuance: October 14, 1988

Effective date: October 14, 1988

Amendment Nos.: 86, 78

Facility Operating Licenses Nos. DPR-77 and DPR-79. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: October 21, 1987 (52 FR 39308). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 14, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant Units 1 and 2, Hamilton County, Tennessee

Dates of application for amendments: March 1 and July 25, 1988 (TS 87-46 and 88-09)

Brief description of amendments: These amendments revise Table 3.6-1, "Bypass Leakage Paths to the Auxiliary Building," of the Sequoyah Units 1 and 2 Technical Specifications. The revision adds four potential bypass leakage paths associated with the hydrogen analyzer system to the table for each unit. In addition, two penetration entries in the table for each unit are revised for clarification.

Date of issuance: October 14, 1988

Effective date: October 14, 1988

Amendment Nos.: 90, 79

Facility Operating Licenses Nos. DPR-77 and DPR-79. Amendments revise the Technical Specifications.

Date of initial notices in Federal Register: April 20, 1988 (53 FR 13019) and August 10, 1988 (53 FR 30145). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 14, 1988.

No significant hazards consideration comments received: None

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Wolf Creek Nuclear Operating Corporation, Kansas Gas and Electric Company, Kansas City Power & Light Company, Kansas Electric Power Cooperative, Inc., Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: July 6, 1988

Brief description of amendment: The amendment revised Technical Specification 3.4.8 and its associated Bases to modify the requirements for reporting iodine spiking from a short-term report to an item which is to be included in the Annual Report, and eliminates the requirement to shut down the plant after 800 hours of operation with a dose equivalent I-131 value of 1 microcurie per gram or greater. This amendment request complied with the guidance provided by the NRC in Generic Letter 85-19, dated September 27, 1985.

Date of issuance: October 5, 1988

Effective date: October 5, 1988

Amendment No.: 18

Facility Operating License No. NPF-42. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 24, 1988 (53 FR 32303). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 5, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas.

Wolf Creek Nuclear Operating Corporation, Kansas Gas and Electric Company, Kansas City Power & Light Company, Kansas Electric Power Cooperative, Inc., Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: July 22, 1988

Brief description of amendment: The amendment revised Technical Specification 5.3.1, Fuel Assemblies, to allow the replacement of a limited number of fuel rods with filler rods or vacancies if such replacement is acceptable based on the results of a cycle-specific reload analysis.

Date of issuance: October 12, 1988

Effective date: October 12, 1988

Amendment No.: 19

Facility Operating License No. NPF-42. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: September 9, 1988 (53 FR 35136). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 12, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas.

Wolf Creek Nuclear Operating Corporation, Kansas Gas and Electric Company, Kansas City Power & Light Company, Kansas Electric Power Cooperative, Inc., Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: February 20, 1988

Brief description of amendment: The amendment revised Technical Specifications Section 6.5.1.2, which addresses the composition of the Plant Safety Review Committee, Figure 6.2-1, which addresses the Operating Corporation Organization and Figure 6.2-2, which addresses the Operations Division Organization.

Date of issuance: October 13, 1988

Effective date: October 13, 1988

Amendment No.: 20

Facility Operating License No. NPF-42. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 20, 1988 (53 FR 13026). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 13, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas.

Yankee Atomic Electric Company, Docket No. 50-029, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of application for amendment: June 27, 1988

Brief description of amendment: The amendment modifies the Technical Specifications to enable modifications to the non-safety class portion of the neutron shield tank cavity leakage collection piping.

Date of issuance: October 12, 1988

Effective date: When subject hardware changes are complete and declared operable

Amendment No.: 116

Facility Operating License No. DPR-3: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 29, 1988 (53 FR [illegible]). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 12, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Yankee Atomic Electric Company, Docket No. 50-029, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of application for amendment: June 27, 1988

Brief description of amendment: The amendment modifies the Technical Specifications by adding four isolation valves, in two spare penetrations, to Table 2.8-1, Containment Barriers.

Date of issuance: October 14, 1988

Effective date: When the two penetrations are installed and declared operable

Amendment No.: 117

Facility Operating License No. DPR-3. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 24, 1988 (53 FR 32303). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 14, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Yankee Atomic Electric Company, Docket No. 50-029, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of application for amendment: August 11, 1988

Brief description of amendment: The amendment changes Technical Specifications related to specific values of boron concentration.

Date of issuance: October 17, 1988

Effective date: October 17, 1988

Amendment No.: 118

Facility Operating License No. DPR-3: Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: September 21, 1988 (53 FR 36875). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 17, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Dated at Rockville, Maryland, this 27th day of October, 1988.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.

[Doc. 88-25222 Filed 11-1-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 72-3 (50-261)]

Carolina Power and Light Co.; Receipt of Application for Amendment to Materials License SNM-2502

The U.S. Nuclear Regulatory Commission (Commission) has received a request, dated August 11, 1988, and revised on September 9, 1988, for amendment to Materials License No. SNM-2502 held by the Carolina Power and Light Company for the receipt and storage of spent fuel at the H.B. Robinson Independent Spent Fuel Storage Installation, located on the H.B. Robinson Steam Electric Plant Unit No. 2 site, Darlington County, South Carolina.

The proposed amendment request seeks changes to Technical Specification (T.S.) 2.4.1; increasing the removable beta and gamma contamination allowed on the surface of the Dry Shielded Canister (DSC) from the current limit a 22,000 disintegrations per minute per 100 square centimeters (dis/min/100 cm^2) to 220,000 dis/min/100 cm^2. It also seeks changes to T.S. 2.4.1; surveillance requirements changes that reflect the change in T.S. 2.4.1 and to provide assurance that contamination limits are met.

Prior to issuance of the requested license amendment, the Commission will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The issuance of the proposed amendment will not be approved until the Commission has reviewed the proposal and has concluded that the amendment will not be inimical to the common defense and security and will not constitute an unreasonable risk to the health and safety of the public. The NRC will complete an environmental evaluation, in accordance with 10 CFR Part 51, to determine if the preparation of an environmental impact statement is warranted or if an environmental assessment and Finding of No Significant Impact are appropriate. This action will be the subject of a subsequent notice in the **Federal Register.**

Pursuant to 10 CFR 2.105 by December 2, 1988, the licensee may file a request for a hearing; and any person whose interest may be affected by this proceeding may file a request for a hearing in the form of a petition for leave to intervene with respect to the subject materials license amendments in accordance with the provisions of 10 CFR 2.714. If a request for hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Designated by the commission or by the Chairman of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order. In the event that no request for hearing or petition for leave to intervene is filed by the above date, the Commission may upon satisfactory completion of all evaluations, issue the materials license amendment without further prior notice.

A petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene and should identify whether such aspect relates to the requested materials license amendment. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend a petition, without prior approval of the presiding officer at any time up to 15 days prior to the holding of the first prehearing conference, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, the petitioner shall file a supplement to the petition to intervene which must include a list of contentions that are sought to be litigated in the matter, and the bases for such contention set forth with reasonable specificity. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Richard E. Cunningham, Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of the **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to R.E. Jones, Esq., Carolina Power & Light Company, P.O. Box 1551, Raleigh, North Carolina, 27602, attorney for the applicant.

Nontimely fillings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upn a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

The application is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the local public document room at the Hartsville Memorial Library County Library, 220 N. Fifth Street, Hartsville, South Carolina 29550.

Dated at Rockville, Maryland, this 25th day of October 1988.

For the Nuclear Regulatory Commission.

John F. Roberts,

Acting Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety.

[FR Doc. 88-25352 Filed 11-1-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-213]

Connecticut Yankee Atomic Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-61, issued to Connecticut Yankee Atomic Power Company (the licensee), for operation of the Haddam Neck Plant located in Middlesex County, Connecticut.

The proposed amendment consists of new Technical Specifications and revisions to the existing Technical Specifications that provide limiting conditions for operation (LCO) and surveillance requirements in response to Generic Letter 83-37, as applicable to the Haddam Neck Plant. The following items are addressed in the proposed amendment: (1) Reactor Coolant System Vents, (2) Post Accident Sampling, (3) Long Term Auxiliary Feedwater System, (4) Noble Gas Effluent Monitors, (5) Sampling and Analysis of Plant Effluents, (6) Containment High-Range Radiation Monitor, (7) Containment Pressure Monitor, (8) Containment Water Level Monitor, (9) Containment Hydrogen Monitor, (10) Instrumentation for Inadequate Core Cooling, and (11) Control Room Habitability. Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By December 2, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interst. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearng conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L St., NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: (petitioner's name and telephone number); (date Petition was mailed); (plant name); and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Garfield, Esquire, Berry and Howard, Counselors of Law, City Place, Hartford, Connecticut 06103-3499.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated July 1, 1988, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, 20555, and at the Russel Library, 123 Broad Street, Middletown, Connecticut.

Dated at Rockville, Maryland, this 24th day of October 1988.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I-4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-25353 Filed 11-1-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket NO. 50-424]

Georgia Power Co. et al.; Exemption

I

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and City of Dalton, Georgia (the licensee), are the holders of Facility Operating License No. NPF-68 issued March 16, 1987, which authorizes full power operation of the Vogtle Electric Generating Plant, Unit 1 (the facility). The license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission.

The facility consists of a pressurized water reactor at the licensee's site location in Burke County, Georgia.

II

10 CFR Part 20, Appendix A, "Protection Factors for Respirators," establishes protection factors of air-purifying respirators for protection against particulates only. Furthermore, footnote d-2(c) states, "No allowance is to be made for the use of sorbents against radioactive gases or vapors." This restricton was needed since an inadequate data base had existed for evaluating the complex interaction of many factors affecting the service life and removal efficiency of radioactive gases and vapors by sorbent canisters. Also, due to the lack of a data base, a NIOSH/MSHA certification schedule to ensure that canisters meet acceptable performance criteria has not been established.

10 CFR 20.103(c) allows authorization by the Commission in lieu of a NIOSH/MSHA certification schedule based on adequate testing, material and performance characteristics. An applicaton by a licensee for this authorization must include a demonstration by testing, or on the basis of reliable test information, that the material and performance characteristics of the equipment are capable of providing the proposed degree of protection under anticipated conditions of use. The licensee made such an application.

10 CFR 20.501 allows an exemption to be granted by the Commission from the requirements of the regulations in 10 CFR Part 20 as it determines are authorized by law and will not result in undue hazard to life or property.

By letter dated August 26, 1988, as supplemented October 6, 1988, the licensee requested an exemption based on 10 CFR 20.501 to allow the use of radioiodien MSA GMR-I canisters with a protection factor of 50 for personnel respiratory protection during scheduled refueling outage work. The licensee cited research data, test results, test protocol and quality assurance sampling plan that it stated satisfies the recommended qualification process of NUREG/CR-3403, "Criteria and Test Methods for Certifying Air-Purifying Respirator Cartridges and Canisters Against Radioiodine." The NRC staff evaluated the information provided by the licensee to support the exemption request. The NRC staff's safety evaluation on this matter relating to the use of a radioiodine protection factor for GMR-I cansiters at Vogtle 1 has been issued. The safety evaluation concludes that the licensee's proposed use of radioiodine MSA GMR-I canisters with certain usage restrictions and controls can result in significant dose savings over alternative methods while still providing effective protection.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 20.501, an exemption as requested by the licensee's letter of August 26, 1988, as supplemented October 6, 1988, is authorized by law and will not result in undue hazard to life or property. The Commission hereby grants an exemption from the restriction of 10 CFR Part 20, Appendix A, footnote d-2(c), and authorizes the use of the MSA-GMR-I canister, with restrictions as shown in Attachment 1 to this exemption. The exemption is subject to modification by rule, regulation or Order of the Commission.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the exemption will have no significant impact on the environment (53 FR 38925).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 27th day of October 1988.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

Attachment 1—Limitations, Usage Restrictions, and Controls Applicable to the Use of MSA GMR-I Canister at the Vogtle Electric Generating Plant, Unit 1

1. Protection factor equal to 50 as a maximum value.

2. The maximum permissible continuous use time is eight hours after which the canister will be discarded.

3. Canisters are not to be used in the presence of organic solvent vapors.

4. Canisters are to be stored in a Class A or better environment, as defined in ANSI [illegible].

5. The allowable service life for sorbent canisters is to be calculated from the time of unsealing the canister, including periods of [illegible].

6. Canister is to be used with a full facepiece capable of providing a protection factor equal to or greater than 500.

7. Canisters are not to be used in total challenge concentrations of organic iodines and other halogenated compounds greater than 1ppm, including nonradioactive compounds.

8. Canisters are not to be used in environments where temperatures are greater than 110 °F, or up to 120 °F if the dewpoint is equal to or less than 107 °F.

In addition to the limitations and usage restrictions noted above, the following additional controls will be utilized by the licensee:

1. Temperatures will be measured prior to and/or during the use of GMR-I canisters to assure that work temperatures are within limits.

2. Air samples will be taken prior to and during any activities that involve the use of the GMR-I canister for protection against radioactive iodine.

3. A GMR-I canister found to have exceeded 3 years from date of manufacture will not be used for protection against radioactive iodine.

4. In the initial implementation of the GMR-I program, the following verification measures will be in effect:

a. Weekly whole body counts for individuals using the GMR-I canisters for radioiodine protection:

b. A whole body count for individuals that exceed 10 MPC in a week and used the GMR-I canister for respiratory protection in that period:

c. Anyone that measures 70 nCi or greater iodine uptake to the thyroid during a whole body count will be restricted from entering a radioiodine atmosphere pending Health Physics evaluation;

d. The radiological survey and whole body count information will be compiled to evaluate the effectiveness of the program.

[FR Doc. 88-25354 Filed 11-1-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-87]

Westinghouse Electric Corp. (Nuclear Training Reactor Facility); Order Terminating Facility Operating License

By application dated July 8, 1987, as supplemented, the Westinghouse Electric Corporation (the licensee) requested the Nuclear Regulatory Commission (the Commission) for authorization to dispose of the component parts of its Nuclear Training Reactor Facility located in Zion, Illinois and to terminate Facility Operating License No. R-119. A Notice of "Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License", was published in the **Federal Register** on September 14, 1987, (52 FR 32732). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action. By Order dated January 29, 1988, the Commission authorized dismantling of the facility and disposal of component parts as proposed in the licensee's dismantling plan.

The reactor was shut down in February 1987 and all fuel has been removed from the core and shipped to a DOE facility for processing. The reactor facility has been completely dismantled and all requirements, particularly those relevant to residual radioactivity and the packing and shipping of fuel and radioactive material, have been met. Accordingly, the Commission has found that the facility has been dismantled and decontaminated pursuant to the Commission's Order dated January 29, 1988. Satisfactory disposition has been made of the component parts and fuel in accordance with the Commission's regulations in 10 CFR Ch. I, and in a manner not inimical to the common defense and security, or to the health and safety of the public. Therefore, based on the application filed by the Westinghouse Electric Corporation, located in Pittsburgh, Pennsylvania, and pursuant to section 104 and 161 b, i, of the Atomic Energy Act of 1954, as amended, and in 10 CFR 50.82(b), Facility Operating License No. R-119 is terminated as of the date of this Order. In accordance with 10 CFR Part 51, the Commission has determined that the issuance of this termination Order will have no significant impact. The Environmental Assessment was published in the **Federal Register** on October 25, 1988 (53 FR 43057).

For further details with respect to this action see (1) the application for termination of Facility Operating License No. R-119, dated July 8, 1987, as supplemented, (2) the Commission's Safety Evaluation related to the termination of the license, (3) the Environmental Assessement, and (4) the Notice of "Proposed Issuance of Order Authorizing Disposition of Component Parts, and Terminating Facility Operating License," published in the **Federal Register** on September 14, 1987 (52 FR 34732). Each of these items is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555. Copies of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland this 27th day of October 1988.

For the Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-25355 Filed 11-1-88; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Demonstration Project; Department of Transportation/Federal Aviation Administration

AGENCY: Office of Personnel Management.

ACTION: Notice of proposed demonstration project.

SUMMARY: Title VI of the Civil Service Reform Act authorizes the Office of Personnel Management (OPM) to conduct demonstration projects which experiment with new and different personnel management concepts to determined whether a specified change in personnel management policies or procedures would result in improved Federal personnel management. This notice meets the legal requirement that OPM publish a project plan in the Federal Register before conducting, or entering into any agreement or contract to conduct, a demonstration project.

DATE: Comment Date: To be considered, written comments must be received on or before January 3, 1989. A public hearing will be held on the proposed project plan on December 14, 1988, at FAA Great Lakes Region Headquarters, O'Hare Lake Office Center, 2300 East Devon Avenue, Room 170, Des Plaines, Illinois, beginning at 9:00 a.m.

ADDRESSES: Comments may be mailed or delivered to Donna Beecher, Assistant Director for Systems Innovation and Simplification, U.S. Office of Personnel Management, 1900 E Street, NW., Room 7638, Washington, DC 20415. Public hearing address: FAA Great Lakes Region Headquarters, O'Hare Lake Office Center, 2300 East Devon Avenue, Room 170, Des Plaines, Illinois, December 14, 1988.

FOR FURTHER INFORMATION CONTACT: (1) On proposed project and public hearing: Edward Curran, DOT/FAA, (202) 267-7035; (2) on proposed project at OPM: Dr. Francoise T. Gianoutsos, (202) 632-6164.

SUPPLEMENTARY INFORMATION: The Department of Transportation has submitted a proposed demonstration project for consideration under chapter 47 of title 5, U.S. Code entitled, "The Department of Transportation/Federal Aviation Administration Demonstration Project."

The purpose of the demonstration project is to enhance the ability of the Federal Aviation Administration to recruit and retain experienced, qualified employees in designated occupations in certain hard-to-staff facilities. Improved staffing at these facilities is also expected to result.

To accomplish this purpose, this demonstration project proposes to provide for payment of a retention allowance to employees occupying safety-related positions at selected hard-to-staff facilities in the Chicago, New York city, and Los Angeles areas. The allowance may be as much as 20 percent of an employee's rate of basic pay. The retention allowance is not an addition to the employee's rate of basic pay. However, the retention allowance is considered to be part of "total remuneration" for the purposes of computing overtime pay entitlements under the Fair Labor Standards Act (FLAS).

The demonstration project would cover employees at participating facilities who occupy safety-related positions, such as air traffic controllers, aviation safety inspectors, and airway facilities maintenance technicians (approximately 2,000). The demonstration would run for five years from the date of implementation.

On public hearing: A public hearing will be held by OPM at FAA Great Lakes Region Headquarters, O'Hare Lake Office Center, 2300 East Devon Avenue, Room 170, Des Plaines, Illinois, on December 14, 1988, during which interested persons or organizations may present their written or oral views on the proposed demonstration project. The hearing will be informal in nature. However, anyone who wishes to testify at the hearing should contact the person listed under "For Further Information Contact" for a specific scheduled time, so that OPM can regulate the course of the hearing and provide enough time for all interested persons and organizations to present their comments. Priority will be given to those scheduled, and others will be heard in any remaining available time. Each speaker's presentation will be limited to 10 minutes. The hearing record will be left open for two weeks after the conclusion of the hearing to receive additional written data, views, and arguments from hearing participants.

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U.S. Office of Personnel Management.
Constance Horner.
Director.

The proposed demonstration project plan reads as follows:

The Department of Transportation/ Federal Aviation Administration Demonstration Project

A proposal for an Office of Personnel Management (OPM) Demonstration Project Submitted by the Department of Transportation (DOT)

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I. Executive Summary

Purpose

The purpose of the demonstration project is to test the effectiveness of a quarterly retention allowance in recruiting and retaining experienced, qualified employees in selected occupations at hard-to-staff Federal Aviation Administration (FAA) facilities.

Participating Facilities

The following ten facilities have been selected for participation in the demonstration project:

Chicago Air Route Traffic Control Center, Aurora, Illinois
Chicago O'Hare International Airport, Chicago, Illinois (includes Air Traffic Control Tower and Terminal Radar Approach Control)
Coast Terminal Radar Approach Control, Santa Ana, California
Farmingdale Flight Standards District Office, Farmingdale, New York
Los Angeles International Airport, Los Angeles, California (includes Air Traffic Control Tower and Terminal Radar Approach Control)
Los Angeles Standards District Office, Los Angeles, California
New York Air Route Traffic Control Center, Ronkonkoma, New York
New York Terminal Radar Approach Control, Westbury, New York
New York Flight Standards District Office, Valley Stream, New York
Teterboro Flight Standards District Office, Teterboro, New Jersey

Participating Employees

The demonstration project will cover employees at the ten participating facilities who occupy safety-related positions, such as air traffic controllers, aviation safety inspectors, and airway facilities maintenance technicians. The employees include approximately 1,632 non-supervisory employees and approximately 327 supervisory employees for a total of approximately 1,959 employees as of September, 1988.

Labor Participation

Employees covered by this project are represented by three unions: The National Air Traffic Controllers Association (NATCA) representing 62.2 percent of bargaining unit employees, the Professional Airway Systems Specialists (PASS), representing approximately 13.5 percent of bargaining unit employees, and the American Federation of Government Employees (AFGE), Local 2791, representing approximately 5.5. percent of employees.

Proposed Personnel System Change

The invervention is described in detail in the proposal and consists of a quarterly retention allowance not to exceed 20% of the annual rate of basic pay.

Implementation and Training

Briefings will be conducted for all employees at the participating facilities

While the project does not affect training directly, it is expected to result in improvements in the training process because the overall experience level is expected to rise. There will be more fully qualified employees and fewer trainees.

Evaluation Plan

A rigorous evaluation will be conducted to assess project outcomes and to evaluate their applicability to other Federal organizations. Because the project will be conducted at the ten facilities which have been deemed difficult to staff, comparison with any non-equivalent control sites would be difficult to interpret. Much of the evaluation will consist of pre- and post-demonstration comparisons.

Costs

The estimated costs for the demonstration project for the first year will be approximately $17.8 million for the ten identified facilities, based on current pay rates. The estimated cost of the allowance is expected to rise to approximately $21.6 million, based on current pay rates, by the fifth year of the project.

Benefits of Proposed Project

The anticipated benefits of the demonstration project include the full and stable employment at the selected facilities; more experienced employees occupying safety-related positions; higher levels of full-performance-level employees; reduced use of overtime.

II. Introduction

A. Purpose

The purpose of the demonstration project is to determine whether pay incentives will enhance the ability of the FAA to recruit and retain experienced, qualified employees in designated occupations at certain hard-to-staff facilities. Staffing levels are expected to improve at these facilities.

To accomplish this purpose, this demonstration project proposes to provide for payment of a retention allowance to employees occupying safety-related positions at selected hard-to-staff facilities. The allowance may be as much as 20 percent of an employee's rate of basic pay. The retention allowance is not considered part of an employee's rate of basic pay. However, the retention allowance is considered to be part of "total remuneration" for the purpose of computing overtime pay entitlements under FLSA.

B. Problems With the Present Pay System

Adequate staffing of FAA facilities with experienced personnel is vital to ensuring a high level of public safety. As part of its safety responsibilities, FAA is currently engaged in a full-scale effort to increase the size and quality of its safety-related work force. Comprehensive changes are being made to the recruitment, pre-employment processing, and the technical training programs and processes. A study of the existing pay system for air traffic controllers has identified numerous problems with the inflexibility of current methods for classifying and

compensating these employees. Similar studies of other safety-related occupations will be undertaken. The results and recommendations of these studies will serve as a foundation for future proposals to revise current laws and regulations. Once implemented, all these changes should improve DOT's ability to preserve the safest, most complex aviation system in the worlds. However, DOT is still confronted with a more persistent and immediate problem—some facilities continue to be hard to staff.

Staffing of certain facilities is a problem that has plagued DOT and FAA for many years. Problems associated with staffing include difficulty in attracting adequate numbers of employees, high turnover rates, a low percentage of employees at the full performance level, and high overtime usage. These problems also contribute to difficulty in granting employees' request to move to other facilities, difficulty in approving annual leave requests, and low morale.

The agency has tried many approaches at hard-to-staff facilities, within the limitations of existing laws and regulations, in an effort to solve these problems, with only limited success. For example, FAA has given additional credit for promotion consideration to employees who have experience at a variety of facilities; developed a "farm team" system of progression where surrounding facilities feed personnel into larger facilities; reorganized facilities and job functions; developed revised classification standards and re-evaluated positions; conducted nationwide recruiting campaigns; developed a cross-option recruitment program for air traffic control specialists; guaranteed employees who are not successful at the most complex facilities the opportunity to return to their former facility; and guaranteed employees a choice of duty assignment after a specified length of service and attainment of full performance level. Yet, in spite of these efforts, staffing diffculties continue to plague certain facilities.

Those facilities which are difficult to staff are characterized by some combination of the following conditions:

- Cost-of-living. The initial cost of a house, annual real estate taxes, and costs associated with utilities and consumer goods act as major deterrents to employees locating in high-cost areas.
- Location. Many individuals do not wish to live in large cities such as New York, Chicago, and Los Angeles. It becomes more difficult to attract and retain employees in those locations due to an increase in the number of comparably graded facilities that are located in areas such as Tampa, Dallas/Ft. Worth, Phoenix, and Denver.
- Commute. In many instances, employees must commute 30 to 50 miles or more to work in heavy traffic in order to reside in acceptable and affordable homes.
- Weather. The climate in northern locations like Chicago adds to the complexity of safety-related work and may not appeal to as many individuals as the climate in "sun belt" locations.
- Complexity of the work. The complexity of the operation at some facilities can intimidate many potential candidates and discourage them from transferring to the facility. For example, in 1987, Chicago O'Hare International Airport was one of the busiest airports in the nation. There are 23 possible runway configurations at O'Hare, many more than at most major airports, with many configurations including aircraft operating on intersecting runways. There are 28 satellite airports in the Chicago area, which adds to the complexity of controlling air traffic at O'Hare.
- Disparities in workload. Employees at different facilities may have considerably different workloads but still be classified at the same level and receive the same pay. For example, all full performance level controllers at each facility level are classified at the same grade although the amount of air traffic activity at the most active tower is significantly greater than that of the "lowest" active tower at the same facility level.
- Competition with private industry. In some areas which have a large concentration of aviation industry companies, competition for employees qualified for many airway facilities positions and for aviation safety inspectors is very high. Private sector firms often can offer considerably higher salaries than the federal government, and can therefore attract many current and potential FAA employees.

Several of these problems are strictly monetary in nature, i.e., the high cost of living, the availability of affordable and conveniently located housing, and competition with private industry. Pay incentives should theoretically help in attracting and retaining employees who are primarily influenced by these factors. The other factors are more difficult to address, since the agency has not control over the weather, commuting patterns, or general undesirability of a particular community. Neither can the agency simply decide to move work activities to more desirable locations, since the locations where the agency provides its services are dictated by the public's demand for air service.

FAA's staffing problems have captured the attention of numerous public and private sector organizations and individuals, including members of Congress, the General Accounting Office (GAO), the news media, and the Aviation Safety Commission.

On June 2, 1988, in testimony given before the Subcommittee on Aviation of the House Committee on Public Works and Transportation, the GAO reported that "* * * Personnel rules do not permit FAA to correct significant work force shortages, especially in high cost locations." In its report dated October 8, 1987, the Senate Appropriations Committee directed the administration to develop proposals to eliminate the constraints found under current personnel law and regulations that prohibit FAA from providing incentives to compensate for cost-of-living or similar factors in order to provide the needed staff at certain hart-to-staff facilities. Additionally, H.R. 4650 and S. 1600, bills introduced during the current congressional session, provide for the FAA to develop compensation systems tailored to "* * * facilitate the use of flexibilities in assigning rates of basic pay in order to better recruit, motivate and retain a well-qualified work force" (S. 1600); and to "* * * establish a pay rate and grade system * * * designed to * * * recruit and retain a well-qualified workforce * * *" (H.R. 4650).

This demonstration project addresses problems in the pay area.

C. Proposed Personnel System Change

Many researchers have shown that pay is one of the most important and influential incentives an employer can offer in an attempt to alter employee behavior. Offering a pay allowance at hard-to-staff facilities could influence potential employees to accept or overlook the negative factors associated with a practicular facility or geographic area. It can be expected that more employees will be motivated to apply for positions at the participating facilities, and to remain in those facilities for longer periods of time. The demonstration project will test whether a retention allowance of up to 20 percent of basic pay will help to attract and retain experienced employees for hard-to-staff facilities.

The demonstration project provides for payment of a retention allowance to employees occupying saftey-related positions at ten hard-to-staff facilities. The retention allowances will be paid at the end of the 6th, 13th, 19th, and 26th pay periods of each calendar year.

Except as explained below, the quarterly retention allowance will be computed as a specified percentage (not to exceed 20 percent on an annual basis) of the employee's rate of basic pay in effect at the beginning of the quarterly allowance period.

In the case of an employee who is initially employed in or reassigned to a covered position after the beginning of the quarterly allowance period, the basis for the computation will be the rate of basic pay in effect on the date the employee was employed in or reassigned to the covered position. The amount will then be prorated on the basis of the number of full weeks of employment in a covered position during the period. In the case of a part-time employee, the quarterly retention allowance will be prorated on the basis of the employee's scheduled tour of duty as of the beginning of the quarterly allowance period (or the date of initial employment in or assignment to a covered position). Allowances will not be prorated on the basis of hours worked or hours in a pay status.

Except as provided below, employees who leave covered positions during a quarterly allowance period will not receive an allowance for that period. In the case of an employee who is involuntarily assigned by FAA after the beginning of a quarterly allowance period to a position at the same or higher grade level which is not covered by the demonstration project, the quarterly retention allowance for that period will be prorated on the basis of the number of full weeks of employment in a covered position during the period. Employees who are absent without leave or suspended during the quarterly allowance peirod will not receive an allowance for that period. All covered employees will be told at the beginning of each allowance period (or upon initial employment in or assignment to a covered position) what the amount of the allowance for that period will be, and eligible employees will receive the full allowance proffered them.

The retention allowance is not considered part of an employee's rate of basic pay for any purpose. However, the retention allowance is considered to be part of "total remuneration" for the purpose of computing overtime pay entitlements under the Fair Labor Standards Act (FLSA). Additional FLSA overtime pay entitlements deriving from the payment of a quarterly retention allowance will be paid at the same time the allowance is paid.

The allowance may be as much as 20 percent of an employee's rate of basic pay. It is anticipated that all eligible employees will recieve the maximum allowance in the first full year of the project. However, the Director of OPM and the Secretary of Transportation will periodically assess the progress made toward the project's objectives. The Secretary, in consultation with the Director of OPM, may cap allowances below 20% or may discontinue the allowances altogether if staffing problems are significantly ameliorated or eliminated and allowances are no longer required. The Secretary's decisions may apply uniformly to all covered positions or may differentiate among sites, occupations, or grade levels. Furthermore, the Secretary may authorize the Administrator of FAA to set allowances, for all or for certain categories of covered positions, on an individual, case-by-case basis.

Although it does not require waiver of laws or regulations, this personnel system change is being conducted as a demonstration project because it involves the creation of a new pay system in which retention allowances serve as an alternative to other pay adjustments.

D. Project Goals

The demonstration retention allowance is intended to achieve two primary goals: (1) To attract a sufficient number of experienced, qualified employees to apply for positions at the selected hard-to-staff facilities; and (2) to retain experienced, qualified employees at these facilities.

E. Participating Focilities

Numerous factors were considered when designating a facility as "hard-to-staff" including: Cost-of-living; undesirability of the location; commuting problems; weather conditions; complexity of work; and workload.

The facilities selected for the demonstration project represent a cross section of the causal factors described above. These facilities do not have all the problems to the same degree, but represent the best group for testing the use of pay incentives to solve staffing problems.

The following facilities have been selected to participate in the demonstration project:

Chicago Air Route Traffic Control Center, Aurora, Illinois Chicago O'Hare International Airport, Chicago, Illinois (includes Air Traffic Control Tower and Terminal Radar Approach Control)
Coast Terminal Radar Approach Control, Santa Ana, California
Farmingdale Flight Standards District Office, Farmingdale, New York
Los Angeles International Airport, Los Angeles, California (includes Air Traffic Control Tower and Terminal Radar Approach Control)
Los Angeles Flight Standards District Office, Los Angeles, California
New York Air Route Traffic Control Center, Ronkonkoma, New York
New York Terminal Radar Approach Control, Westbury, New York
New York Flight Standards District Office, Valley Stream, New York
Teterboro Flight Standards District Office, Teterboro, New Jersey

Other facilities may be added to the project during the course of the 5-year demonstration period. The process for adding facilities will be the Secretary's recommendation, the Director's approval, and the publication of a notice in the **Federal Register** at least 30 days in advance of the start of the first quarter of eligibility.

F. Participating Employees

For all of the facilities except the Flight Standards District Offices, all employees occupying the following safety-related positions will be covered by the demonstration project:

Position Title	Pay Plan, Series, and Grade
Airway Facilities Sector Manager	GM-301-15
Assistant Sector Manager	GM-301-13/14
Supervisory Computer Operator	GS-332-10
Computer Operator	GS-332-9
Supervisory General Engineer	GM-801-14
General Engineer	GS-801-9/13
Supervisory Engineering Technician	GS-802-11/12
Engineering Technician	GS-8/7
Mechanical Engineer	GS-830-9/13
Supervisory Electronics Engineer	GM-855-13/14
Electronics Engineer	GS-855-9/13
Supervisory Electronics Technician	GM-856-13/15
Electronics Technician	GS-856-5/13
Supervisory Air Traffic Control Specialist	GM-2152-14/15
Air Traffic Control Specialist	GS-2152-4/14
For the Flight Standards District Offices, all employees occupying the following positions will be covered:	
Aviation Cabin Safety Specialist	GS-1801-5/14
Supervisory Aviation Safety Inspector	GM-1825-14/15
Aviation Safety Inspector	GS-1825-5/14

Other positions may be added during the course of the project. The process for adding positions will be the same as that for adding facilities. The addition of new facilities and positions may not cause the number of covered employees to exceed 5,000.

Total current employment in these positions at the ten participating facilities is approximately 1,959. Current employment statistics for the selected facilities, itemized by series and grade, are provided in Appendix A.

G. Labor Participation

The employees covered by this proejct are in exclusive bargaining units represented by the National Air Traffic Controllers Association (NATCA), representing approximately 62.2 percent of bargaining unit employees, the Professional Airway Systems Specialists (PASS) representing approximately 13.5 percent of bargaining unit employees, and the American Federal of Government Employees (AFGE), Local 2791, representing approximately 5.5 percent of bargaining unit employees. Meetings to brief all three organizations on the details of the project were held in late September and early October, 1988. Further consultations and negotiations with the unions will take place during the comment period for this project.

DOT is proceeding to fulfill its obligation to consult or negotiate with the unions, as appropriate, in accordance with 5 U.S.C. 4703(f).

III. Methodology

A. Project Design

The purpose of a demonstration project is to test changes under controlled conditions before making commitments to put them into effect for a wider population of Federal employees. The project at this point is a simple before/after design. There are no designated control sites at this time and much of the analysis will rely on pre/post measures. However, efforts will be made to make comparisons between this treatment and alternative treatments for comparable staffing problems at other Federal agencies.

B. Selection of Demonstration Sites

The facilities which have been selected are a sample of a larger group of FAA facilities which have experienced staffing problems. Among the factors considered in selecting facilities were cost of living, desirability of location, weather conditions, complexity of the work, workload, and local market competition.

C. Project Implementation and Training

Briefings on the demonstration project will be conducted for management officials in FAA headquarters and regional offices. On-site briefings for all employees will be done at each of the participating facilities and will include detailed orientation on the background and purpose of the project, implementation and administrative procedures, and anticipated results. These orientations will ensure that all employees have a thorough understanding of the project. Appropriate human resource management and accounting/payroll organizations will receive detailed orientation and training.

D. Project Duration

The demonstration project is proposed to begin no sooner than 180 days after preliminary approval by the Office of Personnel Management and no sooner than 90 days after the final notice has been published. After implementation, the project will be conducted for a period of up to five years. During this period, the staffing situation at each facility participating in the project will be closely monitored and analyzed. After the five-year active stage of the project the overall results will be analyzed to determine the success of the project in fulfilling the stated objectives and goals.

IV. Evaluation Plan

A rigorous evaluation will be conducted to assess project outcomes and to evaluate their generalizability to other Federal organizations. Because the project will be conducted at ten facilities which have been deemed difficult to staff, comparison with non-equivalent control sites would be difficult to interpret. Much of the evaluation will consist of pre- and post-demonstration comparisons.

The evaluation model will postulate both specific and general effects for the retention allowance. The evaluation will consist of three elements: (1) A formative evaluation to determine whether the project has been implemented as designed and whether the institutional and administrative arrangements are operating appropriately; (2) assessments of the 5-year experimental phase, annually as a minimum; and (3) a summative evaluation of the project's overall impact upon completion of the project.

Some baseline data, including vacancy rates, use of overtime, and output measures have been collected in the process of diagnosis. Additional measures including staff experience levels, training requirements, and employee attitudes will be taken periodically throughout the demonstration.

V. Costs

The estimated costs for the demonstration project for the first year will be approximately $17.8 million for the ten identified facilities, based on current pay rates. The estimated cost of the allowance could vary over the duration of the project but in no case should exceed $21.8 million for the ten identified facilities, based on current rates. This estimate assumes little change in job market conditions and an increase in employment levels at the participating facilities. Detailed cost estimates by facility are included in Appendix B. These costs will be offset somewhat by the anticipated reduction in overtime and costs associated with reduction turnover such as reduced permanent-change-of-station travel. The demonstration also avoids costs that would be incurred by alternative solutions.

VI. Benefits

The retention allowances are expected to result in the following benefits for the FAA:

- Full and stable employment at the selected facilities. The agency should be able to attract a larger number of experienced employees to the participating facilities. Once they are on board at the facilities, employees should be more likely to remain there for a longer period of time, and turnover will therefore be reduced.
- More experienced employees occupying safety-related positions/higher numbers of full-performance-level employees. The allowance should enable the agency to attract a larger number of fully-trained employees from other facilities. These employees will need less training to become fully qualified than new employees hired from outside the agency. Reduced turnover among employees will also increase experience levels.
- Reduced overtime. Higher staffing levels, reduction in turnover, higher experience levels, and more full-performance-level employees should result in a reduction in overtime use.

These benefits in turn should help to ensure a continued high level of safety. All of these benefits may not be experienced at all of the participating facilities, since the staffing problems and their causes vary among the facilities.

VII. Responsibilities

The Office of Personnel Management has overall responsibility for designing and implementing the evaluation plan (5 U.S.C. 4703(b)(1)(H)) and for monitoring the evaluation. FAA's Office of the Associate Administrator for Human Resource Management (AHR) will have responsibility for conducting and coordinating the evaluation to ensure that it is accomplished as planned. Responsibility for data collection will be shared by the participating facilities,

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regional offices, the organizations responsible for agency databases, FAA's Office of Management Systems (AMS), and OPM. Analysis of data will be the responsibility of AHR and AMS, with additional support to be provided by contractor organizations. Data will also be supplied to OPM on request.

Reports will be provided by AHR to the FAA Administrator, the Secretary of the Transportation, and the Office of Personnel Management, as well as to the air traffic facilities, airway facilities, and aviation standards organizations in FAA. The reports will be provided in a summary manner and in detail on an annual basis. At the end of the demonstration project, a final report will be prepared which provides an analysis of the overall results of the demonstration project and recommendations for action.

Appendix A—Employees Covered by the Demonstration Project

On-board figures as of end of September 1988:

	Chicago Center	Chicago O'Hare	N.Y. Center	N.Y. TRACON	Coast TRACON	L.A. Int'l.	Total
GM-301-15	2	0	1	0	0	1	4
GM-301-14	0	1	1	0	0	3	5
GM-301-13	1	0	0	0	0	0	1
GM-332-10	0	0	1	0	0	0	1
GM-332-9	7	0	6	0	0	0	13
GM-801-14	1	0	1	0	0	0	2
GM-801-13	0	0	1	0	0	0	1
GM-801-12	1	0	1	0	0	0	2
GM-802-12	1	1	1	0	0	3	6
GM-802-11	7	4	7	6	0	2	26
GM-802-10	3	0	0	0	0	0	3
GM-802-9	0	0	1	0	0	3	4
GM-830-12	0	0	1	0	0	0	1
GM-855-14	1	0	0	0	0	0	1
GM-855-13	0	0	0	0	0	1	1
GM-855-12	2	0	0	0	0	0	2
GM-855-11	1	0	0	0	0	0	1
GM-855-10	0	0	0	1	0	0	1
GM-855-14	5	0	8	8	0	0	21
GM-856-13	8	11	14	10	1	5	47
GM-856-13	11	0	3	0	0	0	14
GM-856-12	36	27	52	20	6	19	110
GM-856-11	2	0	5	3	0	4	14
GM-856-9	2	0	5	3	4	17	31
Subtotal	80	44	109	51	11	58	362

	Chicago Center	Chicago O'Hare	N.Y. Center	N.Y. TRACON	Coast TRACON	L.A. Int'l.	Total
Air Traffic:							
GM-2152-15	60	27	51	44	13	22	217
GM-2152-14	0	0	0	0	1	1	2
GS-2152-14	215	94	202	126	35	62	734
GS-2152-13	0	15	6	10	6	15	85
GS-2152-12	0	7	21	0	3	3	37
GS-2152-11	0	1	38	16	4	6	124
GS-2152-9	119	1	51	33	6	8	218
GS-2152-7	0	0	0	0	0	0	0
GS-2152-5	5	0	9	0	0	0	14
GS-2152-4	0	0	0	0	0	0	3
Subtotal	525	145	378	231	66	117	1,464
Total	614	189	487	282	73	175	1,826

	N.Y. FSDO	Phila. FSDO	Tel. FSDO	L.A. FSDO	Total
Flight Standards:					
GS-1801-11	0	0	0	1	1
GM-1825-15	6	1	4	3	14
GM-1825-14	4	1	1	5	11
GS-1825-14	6	1	4	5	16
GS-1825-13	15	7	11	14	47
GS-1825-12	10	4	4	16	34
GS-1825-11	0	2	2	4	8
GS-1825-9	0	0	0	1	1
GS-1825-7	0	0	0	0	0
GS-1825-5	0	0	0	1	1
Total	41	16	26	50	133
Total number of employees covered	1,959				

Appendix B—Cost Estimates

Facility	Current Employment	Fist-Year Costs	1993 Employment Goal	5th-Year Costs
Chicago Center:				
Air Traffic	252	$4,545,000	330	$5,405,027
Airway Facilities	99	673,227	99	732,851
Chicago O'Hare:				
Air Traffic	145	1,638,828	174	1,867,753
Airway Facilities	44	334,873	53	403,370
Coast TRACON:				
Air Traffic	66	666,874	81	818,817
Airway Facilities	11	74,202	13	94,440
Farmingdale FSDO	16	134,877	24	202,315
Los Angeles Int'l:				
Air Traffic	117	1,231,952	140	1,474,130
Airway Facilities	58	400,717	69	483,623
Los Angeles FSDO	50	417,567	66	701,546
New York Center:				
Air Traffic	376	3,517,562	453	4,213,490
Airway Facilities	109	814,569	121	904,268
New York TRACON:				
Air Traffic	231	2,315,000	277	2,775,432
Airway Facilities	51	397,857	57	444,663
New York FSDO	71	378,604	83	551,757
Teterboro FSDO	36	226,665	40	264,130
Totals	1,959	17,801,189	2,378	21,821,652

(The cost estimates for the first year are computed using the annual base salary for the representative rate (step 4) of each GS grade level. Fifth-year cost estimates were computed based on the average cost per employee during the first year, multiplied by the 1993 demonstration project employment goal.)

[FR Doc. 88-25308 Filed 11-1-88; 8:45 am]
BILLING CODE 6325-41-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26222; File No. SR-AMEX-88-25]

Self-Regulatory Organizations; Filing and Accelerated Approval of Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Expansion of the Number of Component Stocks in the Oil and Gas Index

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 20, 1988 the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. ("Amex" or "Exchange") proposes to expand to 16 the number of component stocks in its Oil Index ("XOI" or "Index").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In September, 1983, the Exchange began trading options on the XOI, an industry index composed of 30 component securities known as the Oil and Gas Index. In September, 1984, the index was revised to delete companies engaged in gas exploration and production activities, reduce the number of component stocks to fifteen, and changed to a price-weighted index. It was renamed the Oil Index and the same symbol, XOI, has remained.[1]

[1] *See* Securities Exchange Act Release No. 21409 (October 18, 1984), 49 FR 43011.

The Sun Company ("Sun") has been a component stock of the XOI since its inception. Recently, Sun announced that it will be spinning off the company's exploration and production unit to be called Sun Exploration Co. ("Sun Exploration"). Each shareholder of Sun will receive one share of Sun Exploration for each Sun share held.

At the time of the spinoff, which is expected to occur on or about November 1, 1988, the Exchange proposes to add Sun Exploration as a sixteenth component stock of the XOI. Since the pricing of the Index has historically reflected the value of the total assets of Sun before the spinoff, the inclusion of those same assets after the spinoff would appear advisable in order to maintain continuity in the pricing of the XOI. Therefore, it is necessary to increase the number of component stocks from fifteen to sixteen.

The Exchange will advise its membership of this change prior to its effective date via circulars and other communications.

In addition, the Exchange requests the authority to add or delete component securities to maintain the continuity of the composition of the Index.

The Amex believes the proposed change is consistent with section 6(b)(5) of the Securities Exchange Act of 1934 ("Act") in that it will facilitate transactions in securities and protect investors and the public interest.

Therefore, the Amex believes the proposed rule change is consistent with section 6(b)(5) of the Act, which provides in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex believes that the proposed rule change will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Options Committee, a committee of the Amex Board of Governors comprised of members and representatives of member firms, has endorsed the proposed rule change.

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Amex has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act so that the Exchange can modify the index and give appropriate notice to its membership before the effective date of the Sun Exploration spinoff, which is currently scheduled to occur on or about November 1, 1988.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a securities exchange, and in particular, the requirements of section 6.[5] Specifically, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act because inclusion of Sun Exploration in the index after the spinoff will maintain continuity in the pricing of the XOI, thereby facilitating transactions in securities and promoting just and equitable principles of trade. In particular, the Commission believes that since the pricing of the Index has historically reflected the value of the total assets of Sun before the Sun Exploration spinoff, inclusion of those same assets after the spinoff will maintain continuity in the pricing of the XOI. Moreover, the Commission finds that the revised XOI is consistent with the standards for Amex-listed stock index options contained in Amex Rule 901C(a).

[5] 15 U.S.C. 78f (1982).

The Exchange has also requested the authority to add or delete component securities of the XOI to maintain the continuity of the composition of the Index. The Commission notes that the Amex has the authority to change the composition of the Index to maintain the quality and/or character of the Index pursuant to Amex Rule 901C(b). The Commission, nevertheless, believes that any deletions from or additions to the Index that change the Index in a material way must be submitted to the Commission in a proposed rule change pursuant to section 19(b) of the Act.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof so that the Exchange can modify the Index contemporaneously with the Sun Exploration spinoff, which is expected to occur on or about November 1, 1988.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 23, 1988.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (SR-AMEX-88-25) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Dated: October 27, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-25529 Filed 11-1-88; 8:45 am]

BILLING CODE 8010-01-M

[6] 15 U.S.C. 78s(b) (1982).

[7] 17 CFR 200.30-3(a)(12) (1988).

[Rel. No. IC-16813; 812-7081]

ML Oklahoma Venture Partners, Limited Partnership, et al.; Application

October 28, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant: ML Oklahoma Venture Partners, Limited Partnership (the "Partnership"), ML OK Co., Limited Partnership (the "Managing General Partner"), and Merrill Lynch Venture Capital Inc. (the "Management Company") (collectively, the "Applicants").

Relevant 1940 Act Section: Exemption requested under section 6(c) from the provisions of sections 2(a)(19) and 2(a)(3)(D) of the 1940 Act.

Summary of Application: Applicants seek an order determining that (i) the Independent General Partners (as hereinafter defined) of the Partnership are not "interested persons" of the Partnership, the Managing General Partner of the Management Company by reason of being general partners of the Partnership and co-partners of the Managing General Partner and (ii) persons who become limited partners (the "Limited Partners") of the Partnership who own less that 5% of the limited partnership interests in the Partnership will not be "affiliated persons" of the Partnership or any of its other partners solely by reason of their status as Limited Partners.

Filing Date: The application was filed on August 3, 1988 and amended on October 28, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on November 21, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicants: ML Oklahoma Venture

Partners, Limited Partnership and ML OK Co., Limited Partnership: 211 N. Robinson, Suite 1800, One Leadership Square, Oklahoma City, Oklahoma 73102; Merrill Lynch Venture Capital Inc.: 717 Fifth Avenue, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: Bibb L. Strench, Law Clerk, (202) 272-2850 or Karen L. Skidmore, Branch Chief, (202) 272-3023, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; proper terms are those defined in the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. The Partnership is a recently-formed limited partnership organized under Oklahoma law on July 15, 1988 pursuant to a Certificate of Limited Partnership dated July 14, 1988. The Partnership has elected to be a business development company and, therefore, will be subject to sections 55 through 65 of the 1940 Act and to those sections of the 1940 Act made applicable to business development companies by section 59 thereof.

2. The investment objective of the Partnership is to seek long-term capital appreciation by making venture capital investments in new and developing companies, primarily Oklahoma companies, which management believes offer significant long-term growth possibilities. The Partnership has been organized to qualify as a "qualified venture capital company" under Oklahoma law. Accordingly, its Partners will be entitled to claim a credit up to 20% of the cash amount of their investment in the Partnership against their Oklahoma State income tax for the year of their investment. The Partnership intends to invest at least 55% of its net proceeds in companies which constitute "Oklahoma business ventures" under Oklahoma law. The remainder of the Partnership's assets will be available for investments in portfolio companies located in other areas of the United States. The Partnership is an investment vehicle of unlimited duration which will have definite stages of development and will terminate no later than December 31, 2001.

3. On September 23, 1988, the Partnership filed a registration statement on Form N-2 (File No. 33-24547) under the Securities Act of 1933 with respect to a public offering by the Partnership of up to 25,000 units ("the Units") (35,000 Units if the increased sale right is exercised in full) at a price of $1,000 per Unit of limited partnership interest in the Partnership.

These proceeds will be invested in 20 to 30 venture capital investments over a period of up to three to four years. Each of these investments will be liquidated after it reaches a state of maturity when disposition can be considered, which typically will be four to seven years from the date of investment. The proceeds of liquidation will not be reinvested except in limited circumstances but will be distributed to the partners. Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") will act as the selling agent for the Units on a "best efforts" basis.

4. The General Partners of the Partnership will consist of the Individual General Partners, of which there must be at least three, and the Managing General Partner. The Individual General Partners will include (i) the Independent General Partners (defined to be individuals who are natural persons and who are not "interested persons" of the Partnership within the meaning of section 2(a)(19) of the 1940 Act); (ii) one General Partner who is an individual and who is an "affiliated person" of the Managing General Partner; and/or (iii) any individual who becomes a successor or additional Individual General Partner as provided in the Partnership Agreement. A majority of the General Partners will be Independent General Partners. The Partnership Agreement will provide that if at any time the number of Independent General Partners is less than a majority of the General Partners, then within 90 days thereafter, the remaining Individual General Partners shall designate and admit one or more Independent General Partners so as to restore the number of Independent General Partners to a majority of the General Partners.

5. The Managing General Partner, an Oklahoma Limited Partnership, is the managing general partner of the Partnership and will be responsible for finding, evaluating, structuring, monitoring and liquidating the Partnership's venture capital investments but its actions will be subject to the supervision of the Individual General Partners. The Managing General Partner will receive the Managing General Partner's Allocation which is summarized below and described in the Application. The Management Company, a Delaware Corporation, will perform the management and administrative services necessary for the operation of the Partnership pursuant to a Management Agreement. For these services, the Management Company will receive an annual fee equal to 2.5% of the amount of the Partner's capital contributions (net of selling commissions and organizational expenses paid by the Partnership), reduced by capital distributed to the Partners and realized capital losses, subject to a minimum annual payment of $200,000. The Managing General Partner and the Management Company will be registered as investment advisers under the Investment Advisers Act of 1940, as amended (the "Advisers Act)". The Management Company is an indirect subsidiary of Merrill Lynch & Co., Inc., the parent of Merrill Lynch.

6. The Individual General Partners of the Partnership, acting by majority vote, will provide overall guidance and supervision of Partnership operations and will perform the same functions as directors of a corporation. The Independent General Partners will assume the responsibilities and obligations imposed by the 1940 Act and the regulations thereunder on the non-interested directors of a business development company.

7. The Limited Partners of the Partnership have no right to control the Partnership's business, but may exercise certain rights and powers of a Limited Partners under the Partnership Agreement, including voting rights and the giving of consents and approvals provided for in the Partnership Agreement. Limited Partners will be afforded all voting rights required by the 1940 Act. It is the opinion of Oklahoma counsel to the Partnership that the existence of these voting rights does not subject the Limited Partners to liability as general partner under the Oklahoma Revised Uniform Limited Partnership Act. In addition, the Partnership Agreement will obligate the General Partners of the Partnership to take all the action which may be necessary or appropriate to protect the limited liability of the Limited Partners. An insurance policy to provide coverage to persons who become Limited Partners in the Partnership has not been been obtained. However, the Independent General Partners will review periodically the question of the appropriateness of obtaining an errors and ommissions insurance policy for the Partnership.

8. The Partnership Agreement will provide that the Independent General Partners may be removed either (i) for cause by the action of at least two-thirds of the remaining Individual General

Partners at a meeting of the Limited Partners called for the purpose of electing General Partners; (ii) by failure to be re-elected by the Limited Partners; or (iii) with the consent of a majority in interest of Limited Partners. The Partnership Agreement will also provide that the Managing General Partner may be removed either (i) by a majority of the Independent General Partners; (ii) by failure to be re-elected by the Limited Partners at a meeting of the Limited Partners called for the purpose of electing General Partners; or (iii) with the consent of a majority in interest of the Limited Partners.

9. The Partnership Agreement will provide that the Managing General Partner will not resign or withdraw unless a successor managing general partner has been appointed and consented to by the Limited Partners of the Partnership in compliance with the Partnership Agreement. The Managing General Partner may voluntarily resign or withdraw from the Partnership only upon compliance with certain specified procedures which will be set forth in the Partnership Agreement.

10. The allocation of profits and losses of the Partnership will be made in accordance with the Partnership Agreement. The Partnership Agreement will provide that the profits and losses of the Partnership will be determined and allocated as of the end of, and within sixty days after the end of, each calender year. If the aggregate of the investmen.. ...ome and new realized capital gains and losses from venture capital investments is positive, calculated on a cumulative basis over the life of the Partnership through such year, the Managing General Partner will be allocated income and capital gains or losses for such year so that, together with all investment income and gains and losses previously allocated to the Managing General Partner, it has received 20% of the aggregate of such income and gains calculated on a cumulative basis over the life of the Partnership through such year. Such allocation is referred to as the "Managing General Partner's Allocation." To the extent that there is available cash, the Partnership will make distributions not less frequently than annually. Under certain limited circumstances detailed in the Partnership Agreement, the Partnership may also make in-kind distributions of its portfolio securities. As soon after the date of termination as possible, the Partners will receive a liquidating distribution of the remaining assets of the Partnership based upon their allocable shares thereof. If, at the time of the liquidation of the Partnership, the Managing General Partner has received cumulative distributions in excess of the Managing General Partner's Allocation, calculated over the life of the Partnership, the Managing General Partner will be obligated to return any such excess amount to the Partnership. Cash or other assets otherwise distributable to the Managing General Partner shall not be distributed to the Managing General Partner (but will remain credited to its Capital Account) to the extent that and so long as the net realized gains allocated to the Managing General Partner are offset by an amount equal to 20% of the net unrealized losses of the Partnership. Distributions of investment income allocated to the Managing General Partner as part of the Managing General Partner's Allocation will be deferred until the Partnership has sold or otherwise disposed of the security from which the investment income was derived or until such security is otherwise not carried as an asset of the Partnership and any realized gain or loss from such security has been allocated to the Partners.

Applicants' Legal Analysis

1. By virtue of their status as partners of the Partnership, the Independent General Partners could be deemed to be "affiliated persons" of the Partnership within the meaning of section 2(a)(3) of the Act and, consequently, "interested persons" of the Partnership. The Independent General Partners could also be construed to be "interested persons" of an investment adviser and principal underwriter to the Partnership by virtue of their status as "co-partners" (and, consequently, "affiliated persons") with the Managing General Partner in the Partnership. The Managing General Partner could be construed to be an investment adviser of the Partnership. Furthermore, the Managing General Partner is under "common control" with the Management Company, an investment adviser to the Partnership and the principal underwriter with respect to the sale of the Partnership's Units, which makes the Managing General Partner an "affiliated person" of the Management Company. Each person who becomes a Limited Partner will be a partner of the Partnership and of each other Limited Partner, as well as of each Individual General Partner and the Managing General Partner. Therefore, each Limited Partner could be deemed to be an "affiliated person" of the Partnership as well as of each other Limited and General Partner merely by having purchased a Unit to become a Limited Partner.

2. Applicants request that the Partnership and the Independent General Partners be exempted from the provisions of section 2(a)(19) of the 1940 Act to the extent that the Independent General Partners would otherwise be deemed to be "interested persons" of the Partnership, the Managing General Partner or the Management Company solely because such Independent General Partners are general partners of the Partnership and "copartners" of Managing General Partner. The Partnership has been structured so that the Independent General Partners are the functional equivalents of the non-interested directors of an incorporated investment company. Section 2(a)(19) of the 1940 Act excludes from the definition of "interested persons" of an investment company those individuals who would be "interested persons" solely because they are directors of an investment company, but there is no equivalent exception for partners of an investment company.

3. Applicants request further that under section 2(a)(3)(D) of the 1940 Act any Limited Partner owning less than 5% of the Units of the Partnership not be deemed an "affiliated person" of the Partnership, any other Limited Partner, any of the Individual General Partners, the Managing General Partner or the Management Company solely because such Limited Partner is a partner of the Partnership or a partner with any of such other persons in the Partnership. Since such Limited Partners have no exclusion under the 1940 Act comparable to that provided under section 2(a)(3) to corporate shareholders with less than a 5% ownership interest, the requested relief will place investments in the Partnership on a footing more equal with investments in business development companies organized as corporations.

4. Applicants submit that it is consistent with the purposes fairly intended by the policy and provisions of the Act to grant the requested exemptions from the provisions of sections 2(a)(19) and 2(a)(3)(D).

Applicants' Conditions

If the requested order is granted, Applicants agree to the following conditions:

1. The Partnership will be structured so that the Independent General Partners are the functional equivalents of the non-interested directors of an incorporated investment company registered under the 1940 Act.

2. Under the Partnership Agreement, the Partnership will be authorized to make in-kind distributions of portfolio securities to its Partners. Applicants agree not to make any in-kind distributions of securities to Partners of a Partnership until such Partnership has either obtained a no-action letter from the staff of the SEC confirming Applicant's interpretation of section 205 of the Advisory Act (i.e. that unrealized gains or losses attributable to securities distributed in-kind to Partners are properly deemed realized upon such distribution) or, alternatively, has obtained an order pursuant to Section 206A of the Advisers Act permitting such distribution.

3. Applicants will obtain an opinion of counsel that the distributions and allocations to the Managing General Partner can be paid in accordance with Section 205 of the Advisers Act.

Applicants have not requested Commission review or approval of such opinion letter and the Commission expresses no opinion as to counsel's interpretation that section 205 of the Advisers Act permits the proposed allocation.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-25331 Filed 11-1-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 35-24738]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

October 27, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 21, 1988 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, as filed or as amended, may be granted and/or permitted to become effective.

New England Electric System (70-6838)

New England Electric System ("NEES"), 25 Research Drive, Westborough, Massachusetts 01582, a registered holding company, has filed a post-effective amendment to its declaration pursuant to sections 6(a) and 7 of the Act and Rule 40(a)(5) thereunder.

By orders dated September 14, 1977, July 6, 1979, and March 15, 1984 (HCAR Nos. 20173, 21133, and 23246, respectively), the Commission authorized NEES to issue and sell from time to time through December 31, 1988, up to 1,975,000 shares of its authorized but unissued common shares, $1 par value, pursuant to the NEES Employees' Share Ownership ("Plan"). Through September 30, 1988, NEES issued 1,432,684 shares pursuant to the Plan leaving a balance of 542,316 authorized but unissued shares.

NEES seeks authority to extend the period for issuing the remaining common shares pursuant to the Plan through December 31, 1992. The terms and conditions for the sale of shares otherwise remain unchanged.

New England Electric System (70-6965)

New England Electric System ("NEES"), 25 Research Drive, Westborough, Massachusetts 01582, a registered holding company, has filed a post-effective amendment to its declaration pursuant to sections 6(a) and 7 of the Act and Rule 40(a)(5) thereunder.

By order dated July 12, 1984 (HCAR No. 23365), the Commission authorized NEES to issue and sell from time to time through December 31, 1988, up to 200,000 shares of its authorized but unissued common shares, $1 par value, pursuant to the NEES Tax Deferred Savings Plan ("Plan"). A subsequent common share split on January 24, 1986 resulted in an increase in authorization to a total of 391,804 shares. Through September 30, 1988, NEES issued 140,016 shares pursuant to the Plan leaving a balance of 251,788 authorized but unissued shares.

NEES seeks the Commission's authorization to extend the period for issuing the remaining common shares pursuant to the Plan through December 31, 1992. The terms and conditions for the sale of shares otherwise remain unchanged.

New England Electric Systems (70-7008)

New England Electric System ("NEES"), 25 Research Drive, Westborough, Massachusetts 01582, a registered holding company, has filed a post-effective amendment to its declaration pursuant to sections 6(a) and 7 of the Act and Rule 40(a)(5) thereunder.

By orders dated December 10, 1984 (HCAR No. 23523), the Commission authorized NEES to issue and sell from time to time through December 31, 1988, up to 500,000 shares of its authorized but unissued common shares, $1 per value, pursuant to the NEES Goals Program ("Program"). A subsequent common share split on January 24, 1986 resulted in an increase in authorization to a total of 926,638 shares. Through September 30, 1988, NEES issued 267,817 shares pursuant to the Program leaving a balance of 658,821 authorized but unissued shares.

NEES seeks authority to extend the period for issuing the remaining common shares pursuant to the Plan through December 31, 1992. The terms and conditions for the sale of shares otherwise remain unchanged.

Arkansas Power & Light Company (70-7140)

Arkansas Power & Light Company ("AP&L"), 425 West Capitol, Little Rock, Arkansas 72201, a subsidiary of Middle South Utilities, Inc., a registered holding company, has filed an application pursuant to sections 6(b), 9(a), 10 and 12(c) of the Act and Rules 42 and 50(a)(5) thereunder. A notice was previously issued on January 15, 1987 (HCAR No. 24302).

AP&L has filed a further amendment to this application-declaration. AP&L now proposes to issue and sell not more than $270 million principal amount of its first mortgage bonds ("Bonds"). The Bonds will be issued in one or more new series from time to time not later than February 29, 1991. The interest rate to be borne by each series of the Bonds and the price, exclusive of accrued interest, to be paid to AP&L for each series of the bonds will be determined at the time of sale of such series. Each series of the Bonds will mature on such date and have such other terms and provisions, including those relating to redemption, as shall be determined at the time of sale.

AP&L further purposes to issue and sell, from time to time not later than February 28, 1991, one or more new series of its preferred stock, cumulative,

of either $25 par value ("$25 Preferred") or $100 par value ("$100 Preferred" and, collectively with the $25 Preferred, the "Stock"). Each series of the Stock shall consist of such number of shares of the $25 Preferred or the $100 Preferred as authorized and as AP&L may elect, but the total number of shares of the Stock may not exceed $150 million aggregate par value.

In addition, AP&L may amend its Agreement of Consolidation or Merger ("Charter"), subject to receiving requisite stockholder approval, in order to, among other things, create a new class of its preferred stock, $0.01 par value ("Class A Preferred"), which will have the same rank and be identical with the existing classes of $100 Preferred and $25 Preferred, except as to the par value of the shares of such class and in certain other limited respects. If issued, each series of Class A Preferred will be assigned a Liquidation Value ("Class A Liquidation Value"), which will be the basis of, among other things, the price of the shares of such series. In the event the creation of the Class A Preferred is approved by AP&L's shareholders and the Charter is amended accordingly, AP&L proposed to have the option to issue Class A Preferred as part of the Stock.

AP&L may determine that, in light of the current market conditions at the time any series of the Stock is offered, it is in the best interest of AP&L and its investors and consumers that the terms of such Stock provide for an adjustable dividend rate thereon to be determined on a periodic basis, subject to specified maximum and minimum rates, rather than a fixed rate dividend.

Due to the uncertainties facing the Middle South Utilities System and AP&L, and AP&L's complex financial, legal and regulatory environment, AP&L states that the interest of AP&L, its investors and consumers require that AP&L have the flexibility to sell each series of the Bonds and the Stock by means of a negotiated public offering or private placement with institutional investors in order to secure the advantages of an advance marketing effort and/or the best available terms. AP&L requests an exception from the competitive bidding requirements of Rule 50, pursuant to subparagraph (a)(5), so that AP&L can undertake negotiations with respect to the issuance and sale of the Bonds and the Stock. AP&L may proceed to negotiate the terms of the Bonds and the Stock.

AP&L proposes to use the net proceeds derived from the issuance and sale of the Bonds and the Stock for general corporate purposes, including, but not limited to, the possible acquisition of certain outstanding securities. AP&L further proposes to use, in addition to, or as alternative for, the proceeds from the sale of Bonds and/or Stock, other available funds to acquire, at any time or from time to time prior to February 28, 1991, by means of tender offer, open market, negotiated or other forms of purchases or otherwise, in whole or in part, prior to their respective maturities certain outstanding securities of AP&L.

Northeast Utilities (70-7545) and Charter Oak Energy, Inc.

Northeast Utilities ("NU"), a registered holding company, located at 174 Brush Hill Avenue, West Springfield, MA 01090-0010, and its proposed wholly owned subsidiary, Charter Oak Energy, Inc. ("Energy"), located at Selden Street, Berlin, CT 06037-1616, have filed an application-declaration pursuant to sections 6(a) 7, 9(a), 10, 12(b), and 13(b) of the Act and Rules 45, 87, 90, and 91 thereunder.

NU proposes to organize, acquire the capital stock of, and provide initial financing for a new wholly owned subsidiary, Energy. The primary business of Energy will be the investment and participation in qualifying cogeneration facilities and in qualifying small power production facilities as defined by the Public Utility Regulatory Policies Act of 1978 ("PURPA") and the rules and regulations promulgated thereunder by the Federal Energy Regulatory Commission ("FERC") (hereinafter collectively, "Qualifying Facilities"). The qualifying cogenegeration facilities may be located in any geographic area, but participation by Energy in qualifying small power production facilities will be limited to the service territories of the NU System and other members of the New England Power Pool. The initial financing for Energy will be provided by the purpose by NU of 100 shares of Energy common stock par value $1 per share, for $10,000.

NU requests authorization to invest up to an additional $200 million in Energy through December 31, 1992, through acquisitions of common stock, capital contributions, open account advances and/or subordinated loans. Such open account advances and subordinated loans will bear interest at a rate based on NU's cost of funds in effect on the date of issue, but in no event in excess of the prime rate on such date at a bank designated by NU. In addition, Energy may obtain debt financing from non-affiliated third parties which NU will guarantee if required. The aggregate amount of such financings, both from NU and/or third parties will not exceed $200 million.

It is further proposed by Energy, through December 31, 1992, to make investments, capital contributions and/or commitments in connection with the Qualifying Facilities up to a total of $200 million. It is stated that Energy may invest or participate directly in specific Qualifying Facilities on a project-by-project basis with one or more nonaffiliated companies by acquiring equity interests in corporations, partnerships, joint ventures or other entities created for the purpose of constructing, owning and/or operating particular projects. Alternatively, Energy may choose to participate indirectly in Qualifying Facilities through partnerships, joint ventures or similar arrangements ("Joint Ventures") with nonaffiliates. In addition, investments may be made through special purpose companies to be formed by Energy. All investments will be subject to applicable provisions of PURPA and FERC rules which presently limit participation by electric utilities and affiliates to 50% of the equity thereof.

Energy's investment and/or participation in Qualifying Facilities, Joint Ventures or any special purpose company formed by Energy may take the form of the purchase of shares or other acquisitions of interest, the loaning of money, the guarantee of indebtedness or other contractual arrangements. The exact nature of contractual and investment opportunites cannot yet be specified and Energy request the flexibility to negotiate specific provisions with third parties without further Commission authorization, subject to the $200 million maximum financial commitment requested.

Allegheny Generating Company (70-7548)

Allegheny Generating Company ("AGC"), 320 Park Avenue, New York, New York 10022, an indirect wholly owned subsidiary of Allegheny Power System, Inc, a registered holding company, has filed a declaration subject to sections 6(a) and 7 of the Act and Rule 50(a)(5) thereunder.

AGC proposes to issue and sell in one or more transactions form time-to-time through December 31, 1990, an aggregate principal amount not exceeding $150 million of medium-term notes ("Notes") with maturities of from nine months to ten years as selected by the purchasers and agreed to by AGC.

Offers to purchase Notes will be solicited through an agent or agents. In connection with the sale of each Note, AGC will pay the agent a commission in

the form of a discount from par value equal to a percentage of the principal amount of each Note sold by AGC as a result of a solicitation made by the agent. The commissions are expected to range from 0.100% to 0.625% of principal amount, depending primarily upon maturity. A Note may be non-redeemable, but in no circumstance would a Note be non-redeemable for a period exceeding seven years.

AGC has requested that the proposed issuance and sale of Notes be excepted from the competitive bidding requirements of Rule 50 of the Act, pursuant to Rule 50(a)(5). AGC states that the standard structure of a Note program could not be operational under the conditions of Rule 50.

Southern Electric Generating Company (70-7788)

Southern Electric Generating Company ("SEGCO"), 600 North 18th Street, Birmingham, Alabama 35203, an electric generating subsidiary of Alabama Power Company and Georgia Power Company, electric utility subsidiaries of The Southern Company, a registered holding company, has filed an application pursuant to Section 6(b) of the Act.

SEGCO proposes to borrow from banks or other lenders from time to time through December 31, 1990, up to a maximum aggregate principal amount at any one time outstanding of $70,000,000. The borrowings will be evidenced by notes to be dated on or before the date of the loans.

Arkansas Power & Light Company (70-7971)

Arkansas Power & Light Company ("Arkansas"), Capitol and Broadway, Little Rock, Arkansas 72201, a subsidiary of Middle South Utilities, Inc., a registered holding company, has filed an application pursuant to sections 9(a) and 10 of the Act.

Pursuant to authority granted in prior Commission orders, Arkansas is currently leasing a portion of the nuclear fuel, including facilities incident to its use ("Nuclear Fuel"), required for use at its Arkansas Nuclear One Generating Station ("ANO") from Russell Energy, Inc. ("Russell") (HCAR No. 21938, February 27, 1981), and from Ozark Fuel Corporation ("Ozark") (HCAR Nos. 22272, 24239, and 24502, November 13, 1981, November 19, 1986, and November 17, 1987, respectively). In order to restructure its leasing arrangement, Arkansas now proposes to enter into a Lease Agreement ("Lease") for the Nuclear Fuel with River Fuel Trust #1 ("Trust"). The Trust will be formed under the laws of the State of New York pursuant to a Trust Agreement between a commercial bank as trustor ("Trustor"), Bankers Trust Company, not in its individual capacity, but solely as trustee ("Trustee") and Arkansas, as beneficiary. The Trust will be specifically created for this restructuring by the Trustor.

It is proposed that the Trust will acquire the Nuclear Fuel owned by Russell and Ozark along with certain Nuclear Fuel owned by Arkansas. Promptly after such acquisiton, Arkansas will terminate its Lease Agreement with Russell and its Lease Agreement with Ozark. Russell will terminate its Credit Agreement with Bank of America National Trust and Savings Association, and Ozark will terminate its Credit Agreement with Swiss Bank Corporation, New York Branch.

Under the terms of the Lease, the Trust will make payments to suppliers, processors and manufacturers necessary to provide Nuclear Fuel for both units of ANO, or Arkansas will make such payments and will be reimbursed by the Trust. The maximum obligation of the Trust to make payments for Nuclear Fuel initially will be $192 million at any one time outstanding, although the Trust may make such payments of up to $195 million.

Under the Lease, Arkansas will be responsible for operating, maintaining, repairing, replacing, and insuring the Nuclear Fuel and for paying all taxes and costs arising out of the ownership, possession or use thereof. The term of the Lease will be through December 31, 1993, which may be extended for one year by Arkansas giving notice prior to December 1, 1991, and each succeeding December 1 up to 2036, of its desire to so extend the term, and by the Trust's consenting to each such extension by December 31, of the year in which such notice is given. In any event the Lease will terminate no later than December 31, 2038. Authorization is requested for additoinal extensions of the Lease through December 31, 2038 without seeking further Commission authorization prior to entering such extentions.

Payments under the Lease will be payable quarterly and will include (A) a Quarterly Lease Charge, as defined in the Lease, which will include allocated operational and financing costs of the Trust, and (B) a Burn-Up Charge, as defined, equal to the cost of the Nuclear Fuel consumed while the Nuclear Fuel is in the reactor and producing heat. When the Nuclear Fuel is not in the reactor and producing heat, Arkansas may elect to capitalize Quarterly Lease Charges or daily portions thereof so long as the commitment outstanding exceeds the sum of (i) the Stipulated Loss Value, as defined in the Lease, of the Nuclear Fuel, (ii) the amount of such charges and (iii) $3 million. Arkansas may consequently, subject to the foregoing limitation, defer rental payments until those times during commercial operation when the Nuclear Fuel is in the reactor and producing heat in the production of electric energy.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-25330 Filed 11-1-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16614; (812-7131)]

T.H. Lee Acquisition Fund II, L.P., et al.; Application

October 28, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: T.H. Lee Acquisition Fund II, L.P. ("Fund II"), T.H. Lee Acquisition Fund (Retirement Accounts) II, L.P. (collectively with Fund II, the "New Funds"), and Thomas H. Lee Advisors, II, L.P. ("Advisors II").

Relevant 1940 Act Sections: Order requested pursuant to section 6(c) for exemption from sections 2(a)(19) and 2[illegible](D).

Summary of Application: Applicants seek an order determining that (i) the Independent General Partners (as hereinafter defined) of each of the New Funds are not "interested persons" of such New Fund or of Advisors II by virtue of being general partners of such New Fund, (ii) the Independent General Partners of a Fund (as hereinafter defined) will not be deemed to be "interested persons" of such Fund by virtue of their service as Independent General Partners of the other Funds, and (iii) Limited Partners owning less than 5% of the limited partnership units of a Fund are not "affiliated persons" of the Fund within the meaning of section 2(a)(3)(D) of the 1940 Act solely by reason of their status as limited partners.

Filing Dates: The application was filed on September 23, 1988, and counsel for Applicants submitted a letter dated October 17, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application

will be granted. Any interested persons may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on November 22, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549; Applicants, One Boston Place, Suite 3207, Boston, Massachusetts 02108.

FOR FURTHER INFORMATION CONTACT: Thomas Mira, Staff Attorney (202) 272-3047, or Brion Thompson, Branch Chief (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. The New Funds are newly-formed Delaware limited partnerships, each governed by an Agreement of Limited Partnership ("Partnership Agreements"). The New Funds will operate as business development companies pursuant to section 55 of the 1940 Act and will be subject to sections 56 through 65 of the 1940 Act and to those sections of the 1940 Act made applicable to business development companies by section 59 thereof.

2. The New Funds intend to file a joint registration statement on Form N-2 under the 1940 Act, with respect to an offering of up to 1,000,000 units of limited partnership interests for each of the New Funds. Merrill Lynch, Pierce Fenner & Smith Inc. ("Merrill Lynch") will act as the selling agent for such units on a "best efforts" basis.

3. Advisors II, the Managing General Partner of the investment adviser to the New Funds, is a limited partnership controlled by its general partner, T.H. Lee Mezzanine II, Inc., a Massachusetts corporation controlled by Thomas H. Lee. Advisors II will be a registered investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). Advisors II will be responsible for purchasing investments for the New Funds which have been approved by the Independent General Partners, for providing administrative services to the New Funds, and for the Admission of additional or assignee limited partners to a New Fund.

4. ML-Lee acquisition Fund, L.P. ("Fund I") is a business development company whose investment adviser, Thomas H. Lee Advisors, Inc. ("Advisers I"), is under common control with Advisors II. (New Funds and Fund I, collectively, "Funds"). On August 12, 1987, Fund I, Advisers I and Mezzanine Investments, L.P. were granted an exemptive order pursuant to section 6(c) of the 1940 Act declaring that the Independent General Partners of Fund I shall not be deemed interested persons, within the meaning of section 2(a)(19) of the 1940 Act, of Fund I, Mezzanine Investments, L.P., Advisors, and/or Merrill Lynch solely by reason of being general partners of Fund I, subject to the conditions to which such applicants agreed. See Investment Company Act Rel. No. 15818 (August 12, 1987).

5. The General Partners of the New Funds will consist of three Independent General Partners (defined to be individuals who are not "interested persons" of each new Fund) and Advisers II as Managing General Partner. The Independent General Partners for the New Funds will be the same individuals who are the Independent General Partners for Fund I.

6. The Partnership Agreements require that there be three Independent General Partners and that a majority of the General Partners be Independent General Partners. Under the Partnership Agreements, each Fund is managed solely by its General Partners who will provide overall guidance and supervision of Fund operations and perform the same functions as directors of a corporation. The Individual General Partners undertake to assume the responsibilities and obligations imposed by the 1940 Act and the regulations thereunder on the non-interested directors of a registered investment company.

7. The Partnership Agreements provide that Independent General Partners may be removed either (i) for cause by the action of two-thirds of the remaining Independent General Partners or (ii) by vote of the limited partners. The Managing General Partner may be removed either (i) by a majority of the Independent General Partners or (ii) by vote of the limited partners. The limited partners have no right to control a New Fund's business, but may exercise certain rights and powers of a limited partner under the respective Partnership Agreements. Under the Partnership Agreements, limited partners are afforded all voting rights required by the 1940 Act. The Partnership Agreements also authorize limited partners to vote on certain other matters. It is the opinion of counsel to the New Funds that the existence of these voting rights does not subject the limited partners to liability as general partners under the Revised Uniform Limited Partnership Act of the State of Delaware.

8. Insurance policies which would provide coverage to persons who become limited partners of the New Funds have not been obtained at the filing date of the application because (i) the New Funds have been advised by its counsel that subscribers to the units of the New Funds will be limited partners under the Partnership Agreement and the Revised Uniform Limited Partnership Act of the State of Delaware; (ii) based upon the nature of the business to be conducted by the New Funds, the New Funds submit that the risk of liability for actions against the limited partners, including actions based upon contract or tort claims, is remote; and (iii) the Partnership Agreements will obligate the General Partners of the New Funds to take all action which may be necessary or appropriate to protect the limited liability of the limited partners. In light of SEC staff's position that substantial insurance coverage is appropriate in view of the special problems created by using the limited partnership form for registered investment companies, the New Funds will review periodically the question of the appropriateness of obtaining an errors and omissions insurance policy for the New Funds.

Applicants' Legal Analysis

1. Applicants request an order pursuant to section 6(c) of the 1940 Act determining that (i) the Independent General Partners of each New Fund are not "interested persons" of such New Fund or of Advisors II, which is the Managing General Partner of an investment adviser to each New Fund, within the meaning of section 2(a)(19) of the 1940 Act by virtue of being general partners of the New Fund, and (ii) the Independent General Partners of a Fund will not be deemed to be "interested persons" of such Fund by virtue of their service as Independent General Partners of the other two Funds.

2. Section 2(a)(19) in pertinent part, states that an "Interested person" of another person includes any "affiliated person" of such other person. Section 2(a)(3)(D) of the 1940 Act provides, in pertinent part, that an "affiliated person" of another person means any officer, director, partner, co-partner, or employee of such other person. Section 2(a)(19) excludes from the definition of "interested person" of an investment company those individuals who would be interested persons solely because they are directors of an investment company. There is no equivalent exception for partners of a limited partnership such as the partners of the New Funds. Accordingly, the requested order is sought to ensure compliance with section 56(a) of the 1940 Act, which requires that a majority of a business development company's directors or general partners be persons who are not interested persons of such company. As noted, the Independent General Parners will assume the responsibilities imposed upon the directors of an incorporated investment company who are not "interested persons" within the meaning of the 1940 Act.

3. Each person who becomes a limited partner of a New Fund will be a partner of such New Fund and therefore a "co-partner" with each other limited partner and with each Independent General Partner, as well as with Advisors II. Because section 2(a)(3)(D) of the 1940 Act provides that an "affiliated person" of an entity includes any "partner" or "co-partner" thereof, each limited partner of a New Fund might be deemed to be an "affiliated person" of such New Fund, as well as of each other limited and general partner, merely because the investor has purchased a limited partnership unit and become a limited partner.

4. Accordingly, Applicants request that any limited partner owning less than 5% of the units of a Fund not be deemed an "affiliated person" of such Fund, any other limited partner, any of the Individual General Partners, any of the Managing General Partners, or Advisors II within the meaning of section 2(a)(3)(D) of the 1940 Act merely because such limited partner is a partner of a Fund or a partner with any of such other persons in a Fund. Applicants believe that the question of affiliation and the applicability of related prohibitions should not turn on the mere form of organization of the investment vehicle. Applicants also assert the requested order will place investments in the Funds on a footing more equal with investments in business development companies organized as corporations.

Applicants' Conditions

If the requested order is granted, Applicants agree to the following conditions:

1. The New Funds will be structured so that the Independent General Partners are the functional equivalents of the non-interested directors of an incorporated investment company registered under the 1940 Act.

2. Under the Partnership Agreements, each of the Funds are authorized to make in-kind distribution of its portfolio securities to its partners upon liquidation of a Fund. However, the Funds agree not to make any in-kind distributions of portfolio securities to their respective partners until obtaining either a "no-action" letter from the staff of the SEC confirming the Funds' interpretation of section 205 of the Advisers Act (i.e., that unrealized gains or losses attributable to securities distributed in-kind to partners are properly deemed realized upon such distribution) or, in the alternative, the Funds have obtained an exemption from section 205 by a SEC order issued pursuant to section 206A of the Advisers Act, permitting the Funds to deem such gains or losses to be realized upon in-kind distributions.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-25381 Filed 11-1-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map; Fairbanks International Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the State of Alaska for Fairbanks International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is September 22, 1988.

FOR FURTHER INFORMATION CONTACT: James S. Perham, 907-271-5448.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Fairbanks International Airport are in compliance with applicable requirements of Part 150, effective September 22, 1988.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR), Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the State of Alaska. The specific maps under consideration are identified as parts 1 and 2 for 1987 and 1992 in the sponsor certification segment of the Noise Exposure Maps Amendment submittal. The FAA has determined that these maps for Fairbanks International Airport are in compliance with applicable requirements. This determination is effective on September 22, 1988. The FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from

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the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through the FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying on noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., Room 617, Washington, DC 20591

Federal Aviation Administration, Airports Division, 701 C Street, Box 14, Anchorage, Alaska 99513

Mr. Chris Birch, Manager, Fairbanks International Airport, P.O. Box 60369, Fairbanks, Alaska 99706

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Anchorage, Alaska, September 22, 1988.

[redacted] B. Hathaway,

Manager, Airports Division, Alaskan Region.

[FR Doc. 88-25335 Filed 11-1-88; 8:45 am]

[redacted]

[Summary Notice No. PE-88-42]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before November 23, 1988.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No _____, 800 Independence Avenue SW., Washington, DC 20591 .

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Indpendence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on October 28, 1988.

Denise Donohue Hall,

Manager, Program Management Staff.

Docket No.: 25676.

Petitioner: Northwest Airlines, Inc.

Sections of the FAR Affected: 14 CFR 121.434(e).

Description of Relief Sought: To allow flight attendants with experience in Group II aircraft to operate in Group I aircraft without requiring the 5 hours of supervised operating experience in Group I aircraft.

Docket No.: 25678.

Petitioner: Messerschmitt-Bolkow-Blohm GmbH.

Regulations Affected: 14 CFR 145.73 and 43.3(e)

Description of Relief Sought: To allow petitioner to perform warranty and other maintenance work on petitioner's helicopters and their subsystems and parts which petitioner manufactures and which are operated and registered in the United States, without limitations as to where such helicopters operate.

Docket No.: 16324.

Petitioner: American Airlines, Inc.

Sections of the FAR Affected: 14 CFR 43.3 and 121.709(b)(3).

Description of Relief Sought/ Disposition: To extend Exemption No. 267E, as amended, that allows petitioner's certified flight engineers to stow supplemental oxygen masks during flight and to make an entry in the aircraft maintenance logbook.

GRANT, September 30, 1988, Exemption No. 2678F

Docket No.: 24808.

Petitioner: Pan American World Airways.

Regulations Affected: 14 CFR 121.433(c)(1).

Description of Relief Sought/ Disposition: To amend Exemption No. 4833 to allow petitioner, when performing training and checking under that exemption, to permit Line Oriented Flight Training (LOFT) to be accomplished prior to proficiency training.

GRANT, September 30, 1988, Exemption No. 4833A

Docket No.: 25605.

Petitioner: Ameriflight, Inc.

Sections of the FAR Affected: 14 CFR 135.89(b)(3).

Description of Relief Sought/ Disposition: To allow petitioner to operate pressurized jet aircraft engaged in cargo operations between 35,000 and 41,000 MSL without requiring one pilot at the controls to wear an oxygen mask.

DENIAL, September 30, 1988, Exemption No. 4967

Docket No.: 25637.

Petitioner: Air Specialties Corporation dba Air America.

Sections of the FAR Affected: 14 CFR 121.371(a) and 121.378.

Description of Relief Sought/ Disposition: To allow Hong Kong Aircraft Engineering Company (HAECO) to undertake full-scale component and structural maintenance pursuant to petitioner's FAA-approved maintenance program on two L-1011 aircraft, identified as N304EA and EI-BTN, operated by petitioner.

GRANT, October 4, 1988, Exemption No. 4937

Docket No.: 25500.

Petitioner: American Airlines, Inc.

Sections of the FAR Affected: 121.371(a) and 121.378.

Description of Relief Sought/ Disposition: To allow petitioner to contract with original equipment manufacturers and their designated foreign repair agencies for the inspection, repair, overhaul, and modification of parts to support the Airbus A300B4 and British Aerospace (BAe) model 146 aircraft.

GRANT, September 30, 1988, Exemption No. 4954

Docket No.: 24187.

Petitioner: Florida Department of Law Enforcement (FDLE).

Sections of the FAR Affected: 91.79(c) and 91.109(a).

Description of Relief Sought/ Disposition: To allow petitioner to conduct law enforcement air support. Petitioner has safely conducted aircraft operations under a grant of exemption for more than 6 years, and states that relief granted under Exemption 3596B has enhanced its ability to accomplish its mission.

PARTIAL GRANT, September 29, 1988, Exemption No. 3596C

Docket No.: 054CE.

Petitioner: Air Tractor Incorporated.

Sections of the FAR Affected: 23.49(b)(1).

Description of Relief Sought/ Disposition: To allow petitioner to permit certification of the air Tractor Model AT-503 and AT-802 airplane with stall speeds (Vso) greater than the 61 knots requirements.

GRANT, September 29, 1988, Exemption No. 4969

[FR Doc. 88-25304 Filed 11-1-88; 8:45 am]

[redacted]

[Summary Notice No. PE-88-41]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously, received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before November 23, 1988.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on October 28, 1988.

Denise Donohue Hall,

Manager, Program Management Staff.

Petitions for Exemption

Docket No.: 22872.

Petitioner: Air Transport Association of America.

Regulations Affected: 14 CFR Part 121, Appendix A.

Description of Relief Sought: To amend Exemption No. 4418, as amended, to allow the second-in-command pilots, of airplanes requiring only two flight crewmembers, of the petitioner's member airlines and other qualifying Part 121 certificate holders to receive training and checking by the use of advanced pictorial means that have been specifically aproved for this purpose.

Docket No.: 25694.

Petitioner: FlightSafety International.

Sections of the FAR Affected: 14 CFR 61.57(a)(1); 61.58(b)(2) and (c)(1); 61.65(g); 61.161(b)(2), (3), and (4); 61.163(a); 61.165(a)(1) and (2); 61.191(c); and 61.57(c) and (d).

Description of Relief Sought: To allow petitioner to use the S-76B simulator to conduct practical tests for its students in lieu of the aircraft for various training, checking, and recurrency requirements.

Docket No.: 25532.

Petitioner: The French Connection Air Show.

Regulations Affected: 14 CFR 45.29.

Description of Relief Sought/ Disposition: To allow petitioner's management to continue to disply 2-inch-high registration marks on their two aircraft (N82BW and N986KB) after they are repainted.

DENIAL, October 7, 1988, Exemption No. 4965

[FR Doc. 88-25305 Filed 11-1-88; 8:45 am]

[redacted]

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: October 27, 1988.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0020.

Form Number: 709.

Type of Review: Resubmission.

Title: United States Gift (and Generation-Skipping Transfer) Tax Return.

Description: Form 709 is used by individuals to report transfers subject to the gift and generation-skipping transfer taxes and to compute these taxes. IRS uses the information to enforce these taxes and to compute the estate tax.

Respondents: Individuals or households.

Estimated Number of Respondents: [redacted]

Estimated Burden Hours Per Response/ Recordkeeping:

Recordkeeping—40 minutes
Learning about the law or the form—51 minutes
Preparing the form—1 hour 50 minutes
Copying, assembling, and sending the form to IRS—1 hour 3 minutes

Frequency of Response: Annually.

Estimated Total Recordkeeping/ Reporting Burden: 309,495 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-25295 Filed 11-1-88; 8:45 am]

[redacted]

Public Information Collection Requirements Submitted to OMB for Review

Date: October 27, [illegible]

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Alcohol, Tobacco and Firearms

OMB Number: 1512/0207.
Form Number: ATF REC 5110/04; ATF F 5110.43.
Type of Review: Extension.
Title: Distilled Spirits Plant (DSP) Denaturation Records and Reports.
Description: The information collected is necessary to account for and verify the denaturation of distilled spirits. It is used to audit plant operations, monitor the industry for the efficient allocation of personnel resources, and compile statistics for government economic planning analysis.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: [illegible].
Estimated Burden Hours Per Response: 1 hour.
Frequency of Response: Monthly.
Estimated Total Reporting Burden: 1,032 hours.
Clearance Officer: Robert Masaraky (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue NW., Washington, DC 20220.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.
Dale A. Morgan,
Departmental Reports Management Officer.
[FR Doc. 88-25296 Filed 11-1-88; 8:45 am]
BILLING CODE [illegible]

Public Information Collection Requirements Submitted to OMB for Review

Date: October 27, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0122.
Form Number: Form 1118, Schedules I and J.
Type of Review: Revision.
Title: Computation of Foreign Tax Credit—Corporations.
Description: Form 1118 and separate Schedules I and J are used by domestic and foreign corporations to claim a credit against tax for taxes paid to foreign countries. The IRS uses Form 1118 and related schedules to determine if the corporation has computed the foreign tax credit correctly.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 10,000.

ESTIMATED BURDEN HOURS PER RESPONSE/RECORDKEEPING

	1118	Sched I	Sched J
Recordkeeping	71 hrs/16 mins	8 hrs/51 mins	[illegible] hrs/12 mins
Learning about the law or the form	14 hrs/32 mins	1 hr	1 hr/15 mins.
Preparing and sending the form to IRS	18 hrs/45 mins	1 hr/11 mins	2 hrs/35 mins.

Frequency of Response: Annually.
Estimated Total Recordkeeping/Reporting Burden: 3,151,083 hours.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.
Dale A. Morgan,
Departmental Reports Management Officer.
[FR Doc. 88-25297 Filed 11-1-88; 8:45 am]
BILLING CODE 4810-35-M

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 675; REF: ATF O 1100.63D]

Delegation to the Associate Director (Compliance Operations), Division Chiefs (Compliance) and Regional Directors (Compliance) To Accept or Reject Offers in Compromise

1. *Purpose.* This order delegates the authority to accept or reject certain offers in compromise of liabilities incurred under Chapters 51, 52, 53, and 78 of the Internal Revenue Code, And liabilities incurred under the Federal Alcohol Administration Act.

2. *Cancellation.* ATF O 1100.63C, Delegation to Associate Director (Compliance Operations) and Regional Directors (Compliance) to Accept or Reject Offers in Compromise, October 14, 1987, is canceled.

3. *General.* The authority to accept or reject offers in compromise of liabilities arising under Chapters 51, 52, and 53, and sections 7652 and 7653 (Chapter 78) of Title 26 U.S.C., and the provisions of the Federal Alcohol Administration Act is vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by Treasury Department Order No. 120-01 (formerly Order No. 221), dated June 6, 1972, and 26 CFR 301.7122-1.

4. *Delegations.* Pursuant to the authority vested in the Director of ATF by Treasury Department Order No. 120-01, and subject to the limitations contained in applicable regulations and procedures, there is hereby delegated the following authority relating to the offers in compromise of liabilities (other than forfeiture) arising under Chapters 51, 52, 53, and 78 of Title 26 U.S.C., and under the Federal Alcohol Administration Act.

a. *Associate Director (Compliance Operations).*

(1) The Associate Director (Compliance Operations) is authorized to accept or reject offers in compromise of all liabilities arising from:

(a) Violations of Chapters 51, 52 and 53.

(b) Violations of sections 7652 and 7653 (Chapter 78) of Title 26 U.S.C., insofar as those sections relate to commodities subject to tax under Chapters 51, 52, and 53.

(c) Violations of the Federal Alcohol Administration Act.

(d) Cases which combine liabilities arising from violations of Chapter 51 of the IRC and the FAA Act.

(2) This delegation is limited to offers in compromise which do not exceed $1,000,000.

b. *Division Chiefs (Compliance).*

(1) Each division chief (compliance) is authorized to accept or reject offers in compromise of all liabilities arising from:

(a) Violations of Chapters 51, 52, and 53 and section 7652 and 7653 (Chapter 78) of Title 26 U.S.C. as follows:

1 Cases in which the offer in compromise does not exceed $100,000 and the tax liability sought to be compromised does not exceed $250,000.

2 Cases of late filed tax returns or late paid excise tax where the penalties sought to be compromised do not exceed $500,000 and the offer in compromise does not exceed $100,000.

(b) Violations of the Federal Alcohol Administration Act where cases include an offer in compromise which does not exceed $100,000.

(c) Cases that combine liabilities arising under Chapter 51 and the FAA Act where the tax liability sought to be compromised does not exceed $250,000 and the offer in compromise does not exceed $100,000.

(2) The division chief (compliance) in whose area of responsibility the majority of violations pertains will be the deciding official to accept or reject offers which compromise the liabilities including those cases which are designated as national investigations/cases by Bureau Headquarters.

Note: The tax liability sought to be compromised in paragraphs 4b(1)(a)1, 4b(1)(c) and 4b(2) is to include any interest, additional amount, addition to the tax, or assessable penalty.

c. *Regional Directors (Compliance).*

(1) Each regional director (compliance) is authorized to accept or reject offers in compromise of tax liabilities and penalties arising from:

(a) Chapter 51, Title 26 U.S.C., as follows:

1 Illegal production of untaxpaid distilled spirits, wines, or beer.

2 Failure to file returns of, or to pay, occupational taxes with respect to distilled spirits, wines, or beer.

(b) Chapter 53, Title 26 U.S.C. (failure to pay firearms making, transfer, and occupational taxes).

(2) Each regional director (compliance) is authorized to accept or reject offers in compromise of criminal liabilities of retail dealers in liquor arising from violations of the Internal Revenue laws relating to liquor, including the refilling or reuse of liquor bottles.

(3) Each regional director (compliance) is authorized to accept or reject offers in compromise of all liabilities arising from:

(a) Violations of Chapters 51, 52, and 53 and sections 7652 and 7653 (Chapter 78) of Title 26 U.S.C., not enumerated in paragraph 4c (1) and (2), as follows:

1 Cases in which the offer in compromise does exceed $10,000 and the tax liability sought to be compromised does not exceed $20,000.

2 Cases of late filed tax returns or late paid excise tax where the penalties sought to be compromised do not exceed $50,000 and the offer in compromise does not exceed $10,000.

3 Cases that pertain to specially denatured alcohol (SDA) or tax-free (TF) alcohol where the offer in compromise does not exceed $10,000 and the tax liability sought to be compromised is based upon either (a) use of SDA or TF alcohol for unauthorized purposes or (b) activities to which no liability would normally attach if the proponent completed required notification and/or approval procedures, but for which the proponent failed to complete such procedures. This delegation is limited to cases in which the misuse of SDA or TF alcohol or the activities in question are:

a No willful, and

b Not for beverage purposes, and

c Not for a purpose that poses a health risk to the public, and

d Not for any purpose that poses a jeopardy to the revenue.

(b) Violations of the Federal Alcohol Administration Act where cases include an offer in compromise which does not exceed $10,000.

(c) Cases that combine liabilities arising under Chapter 51 and the FAA Act where the tax liability sought to be compromised does not exceed $20,000 and the offer in compromise does not exceed $10,000.

(4) *Offers encompassing violations in multiple regions.* The regional director (compliance) in whose region the permittee or brewer responsible for the majority of violations is located will be the deciding official to accept or reject offers which compromise the liabilities of proprietors with operations in more than one region. However, cases that include a previously issued order to show cause will be resolved by the regional director who authorized issuance of the order. Tax cases regarding members of controlled groups as defined in 26 U.S.C. 1563(a) will generally be resolved by the regional director (compliance) in whose region the members are located. However, if multiple liabilities for the same tax period(s) have occurred as a result of preparation of late filed tax returns or late paid tax handled by a central location, the penalties will be resolved by the regional director (compliance) in whose region the controlling interest is located. This authority does not include:

(a) Cases which are designated as national investigations/cases by Bureau Headquarters, or

(b) Cases where the total amount of such a liability exceeds the levels delegated to regional director (compliance).

Note.—The tax liability sought to be compromised in paragraphs 4c(3)(a)1, 4c(3)(c) and 4c(4)(b) is to include any interest, additional amount, addition to the tax, or assessment penalty.

5. *Redelegation.* The authority delegated herein may not be redelegated.

Approved: October 25, 1988.
Stephen E. Higgins,
Director.
[FR DOC. 88-25175 Filed 11-1-88; 8:45 am]
BILLING CODE 4810-31-M

VETERANS ADMINISTRATION

Agency Information Collection Under OMB Review

AGENCY: Veterans Administration.
ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act [44 U.S.C. Chapter 35]. This document lists the following information: (1) The responsible department or staff office; (2) the title of the collection(s); (3) the agency form number(s), if applicable; (4) a description of the need and its use; (5) how often the information collection must be completed, if applicable; (6) who will be required or asked to report;

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(7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to respond; and (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Department of Veterans Benefits (203C), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–2744.

Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: October 24, 1988.

By direction of the Administrator.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Revision

1. Department of Veterans Benefits.
2. Fiduciary Agreement.
3. VA Form 27–4703.
4. The form constitutes a legally binding contract for the use of VA funds. It is used when payment of VA benefits is made to a fiduciary on behalf of a beneficiary who is incompetent, a minor, or under legal disability.
5. On occasion.
6. Individuals or households; State or local governments; Federal agencies or employees; Non-profit institutions.
7. 24,450 responses.
8. 2,037 hours.
9. Not applicable.

[FR Doc. 88–25363 Filed 11–1–88; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 212
Wednesday, November 2, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

NATIONAL LABOR RELATIONS BOARD

TIME AND DATE: Wednesday, November 2, 1988, immediately following a 9:30 a.m., Board adjudicatory meeting.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue, NW.

STATUS: Closed to public observation pursuant to 5 U.S.C. 552b(c)(2) (Internal personnel rules and practices and (c)(6) (personal information where disclosure would constitute a clearly unwarranted invasion of personal privacy).

MATTERS CONSIDERED: Personnel matters.

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, Washington, DC 20570, Telephone: (202) 254–9430.

Dated, Washington, DC, October 31, 1988.

By direction of the Board.

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 88–25470 Filed 10–31–88; 3:46 pm]

BILLING CODE 7545-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Thursday, November 10, 1988.

PLACE: The Board Room, Eighth Floor, 800 Independence Avenue SW., Washington, DC 20594.

STATUS: The first three items will be open to the public. The last two items will be closed under Exemption 10 of the Government in Sunshine Act.

MATTERS TO BE CONSIDERED:

1. Marine Accident Report: Ramming of the Maltese Bulk Carrier MONT FORT by the British Tank Vessel MAERSK NEPTUNE, Upper New York Bay, February 15, 1988.
2. Railroad Accident Report: Rear-end Collision of Amtrak/Massachusetts Bay Transportation Authority Commuter Trains 8110 and 8114, Boston, Massachusetts, November 12, 1987.
3. Recommendation to AMTRAK re Emergency Response to In-Tunnel Incidents. (Calendared by Member Nall.)
4. Opinion and Order: Administrator v. Heisner and Diaz, Dockets SE–7862 and –7874; disposition of appeals of both the Administrator and respondents. (Calendared by Member Burnett.)
5. Opinion and Order: Administrator v. Hughes, Docket SE–7875; disposition of respondent's appeal. (Calendared by Member Burnett.)

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Bea Hardesty,

Federal Register Liaison Officer.

October 28, 1988.

[FR Doc. 88–25401 Filed 10–28–88; 5:10 pm]

BILLING CODE 7533-01-M

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federal register

Wednesday
November 2, 1988

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 813 and 885

Loans for Housing for the Elderly or Handicapped, Section 202, Projects for Nonelderly Handicapped Families; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 913 and 885

[Docket No. R-88-1419; FR-2476]

Loans for Housing for the Elderly or Handicapped; Section 202, Projects for Nonelderly Handicapped Families

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: Section 202 of the Housing Act of 1959 authorizes HUD to provide direct loans for the development of projects to serve elderly or handicapped families and individuals. Section 202 was amended by section 162 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) to ensure that the Section 202 program will meet the special housing and related needs of nonelderly handicapped families and individuals. The revised program authorizes a new type of project assistance payment to replace assistance payments made under section 8 of the United States Housing Act of 1937. This proposed rule would implement the new program.

DATE: Comments must be submitted on or before January 3, 1989.

ADDRESSES: Comments on proposal: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Comments should refer to the above docket number and title. A copy of each comment received will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Margaret Milner, Office of Policy, Financial Management and Administration, Room 9106, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755-6400 (voice or TDD). (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the Federal Register. Public reporting burden for this collection of information is estimated to include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading *Other Matters*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., Room 10276, Washington DC 20410 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Background

Section 202 of the Housing Act of 1959 authorizes HUD to provide direct loans for the development of projects to serve elderly or handicapped families and individuals. Projects selected for section 202 loans also receive commitments for rental assistance payments under section 8 of the United States Housing Act of 1937. To improve the direct loan program and to better serve the special housing and related needs of nonelderly handicapped families and individuals, section 162 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) (1987 Act) amended section 202. Section 162 includes a new type of assistance payment to replace section 8 assistance payments made in connection with section 202 projects for handicapped families and individuals. This proposed rule would implement the new program.

Procedural Matters

I. Issuance of Final Rules

Section 162(e) of the 1987 Act directed HUD to publish a notice of fund availability in the Federal Register implementing the provisions of section 162 to the extent that funds are approved in an appropriations act for use for section 202 housing for handicapped families and individuals. This notice was to be published not later than 120 days following the date of the enactment of the 1987 Act (February 5, 1988). This section also directed HUD to issue such rules as may be necessary to carry out these provisions and amendments for fiscal year 1989 and thereafter.

Since no appropriation for the new program was contained in HUD's regular appropriation for Fiscal Year 1988, HUD did not issue the described notice of fund availability. Final rules based on the proposed rule published today, however, should be effective for projects to be funded with Fiscal Year 1989 appropriations.

II. Compliance With the Federal Advisory Committee Act

Section 202(h)(3)(A), as amended by section 162, provides that in adopting standards and procedures for allocating funds and processing loans and assistance payments, HUD shall ensure adequate participation by representatives of the disability community through the provisions available under the Federal Advisory Committee Act.

Notwithstanding this statutory mandate for the participation of the disability community through the formation of an advisory committee in accordance with FACA, HUD does not believe that it is necessary to form the advisory committee prior to the issuance of this proposed rule. As noted above, HUD is also required to issue such rules as may be necessary to carry out section 162 for the 1989 fiscal year program. In order to issue such final rules in compliance with legislative review requirements under section 7(o) of the Department of Housing and Urban Development Act, HUD was required to complete the development of this proposed rule by September 1988, and will be required to issue a final rule in early 1989. In light of these deadlines, HUD did not believe that there was a sufficient amount of time to charter a committee, notify the public of the committee's meetings, and afford the members of the committee an opportunity to address the new section 202 requirements. Accordingly, this proposed rule was developed without the benefit of an advisory committee under FACA. (HUD has, however, initiated informal consultations with the members of the disability community in the preparation of this proposed rule.) HUD intends to establish and consult with an advisory committee in accordance with FACA requirements in the development of the final rule.

III. Prototype Demonstration

Section 202(h)(3)(B) of the Act provides that the Secretary may, on a demonstration basis, determine the feasibility and desirability of reducing processing time and costs for housing for handicapped families by limiting project design to a small number of prototype designs. HUD is currently examining the feasibility of developing such a prototype program but has not, as yet, determined whether the prototype demonstration will be implemented. If HUD decides to pursue the prototype demonstration, the requirements of the program will be set forth in a separate notice. HUD encourages interested parties to address the desirability of such a prototype demonstration in their comments on this proposed rule.

Section 202 Program—Housing for Handicapped Families

I. Overview

Prior to the 1987 Act, housing for nonelderly handicapped families was assisted under section 202 of the Housing Act of 1959 and section 8 of the United States Housing Act of 1937. Because the section 202/8 housing program was designed and implemented primarily to assist in the development and operation of multifamily rental projects for elderly families, Congress found that the program was often inappropriate for dealing with the specialized needs of physically impaired, developmentally disabled, and chronically mentally ill people, and was often more expensive than necessary, thereby reducing the number of families that could be assisted with available funds.

To make the section 202 program more efficient and less costly, section 162 of the Act provides for the adoption of standards and procedures applicable only to housing for handicapped families. Such standards and procedures are intended to: (1) Eliminate cost containment procedures that do not adequately reflect the necessity for building designs to meet the needs of the residents, and do not recognize State and local standards for the operation of the homes; (2) eliminate procedures and requirements that are time consuming and unnecessarily costly and that prevent the development of section 202 housing for handicapped families in some areas; (3) substitute a more appropriate subsidy method for the section 8 housing assistance payment; (4) increase the emphasis on supportive services and greater use of State and local funds; (5) provide an improved program of section 202 housing for handicapped families that will assist in providing shelter and supportive services for mentally ill persons that would otherwise be homeless. (See section 162(a)(1).)

While the proposed rule adopts many of the same standards and procedures currently employed in the section 202/8 program, the rule includes several major changes to these procedures designed to serve the cited purposes. These include:

—Allocation procedures that provide greater flexibility with regard to the selection of allocation areas and that eliminate requirements that a specified percentage of funds be available for use in nonmetropolitan areas.
—Provisions that eliminate the time consuming, costly and potentially unnecessary requirement that each Sponsor form a Borrower corporation before the application for fund reservation is submitted.
—Elimination of the limit on the number of units for which a Sponsor may apply.
—Revised requirements that provide for the timely development of projects by encouraging Sponsors and Borrowers to submit site information expeditiously.
—Requirements that increase the emphasis of the program on supportive services and the greater use of State and local funds.
—Cost containment procedures that rely on a limited number of cost containment and modest design requirements, and eliminate the need for detailed cost containment reviews.
—Minimum design standards that increase project design flexibility.
—Maximum loan amounts that are based on total development costs and on unit cost limits developed separately for group homes and independent living complexes.
—Operating cost budgets that are based on the reasonable and necessary cost of operating the project rather than the amount supportable within the Fair Market Rent limits.
—Provisions that encourage acquisition as a development method for group homes by allowing the same funding levels for acquisition as for new construction or substantial rehabilitation.
—Construction contracting provisions that eliminate competitive bid requirements.

II. Applicability

The proposed rule would revise § 885.1 ("Purposes and policy") to add a new paragraph (c) addressing the applicability of the various subparts of Part 885. Paragraph (c)(1) would provide that existing Subparts B through D would apply to projects for the elderly or handicapped that receive loans under section 202 of the Housing Act of 1959 and housing assistance payments under section 8 of the United States Housing Act. This paragraph would also implement the requirements of section 162(d) of the 1987 Act ("Termination of Section 8 Assistance") which provides that "on and after the first date that amounts approved in an appropriations Act for any fiscal year become available for contracts under section 202(h)(4)(A) * * * no project for handicapped (primarily nonelderly) families approved for such fiscal year pursuant to section 202 * * * shall be provided assistance payments under section 8 of the United States Housing Act of 1937, except pursuant to a reservation for a contract to make such assistance payments that was made before that date."

Section 885.1(c)(2) would state that Subpart G applies to projects for handicapped families receiving loans under section 202 and project assistance under section 202(h) of the Housing Act of 1959. In accordance with section 162(f) of the 1987 Act, this proposed paragraph would also provide that Subpart G may apply to a project that received a reservation of loan authority under section 202 of the Housing Act of 1959 and a reservation of contract authority under section 8 of the United States Housing Act of 1937 under Subparts B through D, under the circumstances described in § 885.775. Under § 885.775, a Sponsor or Borrower of such a project may, at any time before initial loan closing, request HUD to substitute project assistance payments under Subpart G for the section 8 housing assistance payments. After HUD completes its selections for funding in a fiscal year and to the extent that funds are available for the substitution, HUD may approve such a request if: (1) The project is eligible for assistance under Subpart G; and (2) the project is financially infeasible with contract rents limited by the section 8 Fair Market Rents, or the substitution would otherwise facilitate the development of the project in a timely manner.

III. Application Procedures

A. Allocation of Authority

1. *Allocation of funds.* Section 213(d) of the Housing and Community Development Act of 1974 sets forth the requirements for the allocation of funds under various HUD programs, including the Section 202 program. Under this statute, section 202 funds are currently allocated in the following manner. Up to 15 percent of the total available funds are retained in the Headquarters Reserve for subsequent allocation to

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specific areas meeting stated statutory requirements. The remaining funds, less an estimated amount for amendments, are allocated to each field office on the basis of a "fair share" distribution. The fair share distribution is based on a formula which considers the following elements: Number of total elderly renter households; number of elderly renter households with incomes at or below the very low-income limits and with specified housing deficiencies; and number of handicapped individuals as determined from census data on the disabled. From 20 to 25 percent of the available funds are allocated to nonmetropolitan areas to meet rural housing needs. Amounts allocated to a State cannot be reallocated for use in another State unless the Secretary determines that other areas in the State cannot utilize the amounts within the same fiscal year. See Section 202 Loans for Housing for the Elderly or Handicapped—Announcement of Fund Availability Fiscal Year 1988, published April 13, 1988 (53 FR 12270) and Notice H 88–11—Fiscal Year 1988 Policy for Loan Authority Assignments for the Section 202 Direct Loan Program.

Section 202(h)(3)(A) (added by section 162 of the 1987 Act) provides that in allocating funds for loans and assistance payments for the program of housing for handicapped families, "the Secretary shall adopt such distinct standards and procedures as the Secretary deems appropriate due to the differences between housing for handicapped families and other housing assisted under this section." HUD believes that this section provides the Secretary with discretion to establish procedures for housing for handicapped families that vary from the allocation requirements otherwise required for the section 202 program under section 213 of the Housing and Community Development Act of 1974. Accordingly, HUD intends to use allocation procedures for the section 202 program for handicapped families that differ in two significant respects from the allocation procedures used in the current section 202 program.

First, HUD believes that field office allocations for the section 202 program for handicapped families may not always be practicable and may result in such small dollar allocations in many field offices that feasible projects could not be developed. Accordingly, the proposed rule permits HUD, based on the amount of loan authority available during a fiscal year and the number of feasible projects that the loan authority will support, to allocate to various sized allocation areas. (Given the anticipated funding levels, HUD currently plans to make allocations on a regional basis for fiscal year 1989.)

Second, HUD does *not* intend to allocate from 20 to 25 percent of the available funds for section 202 housing for handicapped families for use in nonmetropolitan areas. The emphasis of the new program primarily is on the range of services provided to the handicapped families, the opportunities for independent living and participation in normal activities, and access by handicapped families to the community at large and to employment opportunities. HUD believes that it is in the best interest of the program to fund the highest ranked applications serving these goals, regardless of whether the location of the project is in a nonmetropolitan or metropolitan area. Accordingly, the proposed rule would not include a nonmetropolitan allocation requirement. Funds available for housing for the elderly under the section 202/8 program, however, would continue to be subject to the nonmetropolitan allocation. In computing the amount of the nonmetropolitan allocation for elderly housing, the 20 to 25 percent factor will be applied against the amount of section 202 funds available for housing for the elderly rather than the total amount of section 202 funds available.

In accordance with this discussion on allocations:

—Section 885.700(a) of the proposed rule states that up to 15 percent of the section 202 loan authority made available for the development costs of housing for handicapped families may be retained by the Assistant Secretary for subsequent allocation to specific areas and communities under the Headquarters Reserve.

—Paragraph (b) would provide that the Assistant Secretary will allocate the amounts available for development costs of housing for handicapped families (less any amounts made available for amendments and for the Headquarters Reserve) to the allocation areas. The size of the allocation area will depend on the amount of loan authority available for allocation and the number of feasible applications that the authority will support. The allocation of loan authority to the allocation areas would be based on a formula that weighs the relative needs of the areas as reflected in available data on the number of handicapped persons in the area from Census data. This data will be adjusted to take into consideration the relative differences between the areas in the costs of providing housing. Funds allocated to one area would be reallocated to another area if the amount of loan authority allocated to the area exceeds the amount necessary to fund all approvable applications for housing for handicapped families in that area.

2. *Availability of loan authority for housing for the elderly.* Section 202(h)(1) of the Act provides that if the amount required for any fiscal year for approvable applications for loans for housing for handicapped families is less than the amount available, the balance shall be made available for loans under other provisions of section 202. In accordance with this statutory requirement, § 885.700(c) would provide that unneeded funds made available for the development costs of housing for handicapped families under subpart C may be made available for housing for the elderly to the extent that housing assistance under section 8 of the United States Housing Act of 1937 is available in connection with such loan authority.

B. Announcement of Fund Availability and Invitations for Applications

Section 885.705 would require HUD to publish an announcement of fund availability in the **Federal Register** for this program in addition to the announcement published for the section 202/8 program for housing for the elderly, and would require each field office to publish an invitation for applications for section 202 fund reservations in newspapers of general circulation serving the field office jurisdiction. The notice will also announce the schedule for workshops where applicants may receive further instruction on preparing applications.

C. Application Contents

Applications for section 202 loan reservations for housing for handicapped families are addressed in § 885.710. The proposed rule would generally reflect the related requirements used in the section 202/8 program (see § 885.210), with adjustments to reflect the needs of handicapped families. The major changes are summarized below.

1. *Borrower formation.* The related regulations for the section 202/8 program require the Borrower to be in existence when the application for the section 202 fund reservation is submitted and the application to include specific information concerning the Borrower. Because the formation of a Borrower may be time consuming, costly, and unnecessary if the application is not selected for funding, the proposed rule for section 202 housing for handicapped families would allow the Sponsor to delay the formation of the Borrower until after HUD's issuance of a fund reservation. A similar procedure was followed in Fiscal Years 1986 and 1988 for the section 202/8 program. (Section 202 Loans for Housing for the Elderly or Handicapped; Announcements of Fund Availability—Fiscal Year 1986, published June 20, 1986 (51 FR 22568), and Fiscal Year 1988, published April 13, 1988 (53 FR 12270)).

To incorporate these changes, the proposed rule would impose all application submission requirements on the Sponsor, and would require the Sponsor to provide satisfactory evidence in the application that it will form a Borrower, cause the Borrower to file a request for determination of eligibility and request for direct loan processing under § 885.800, and provide sufficient resources to the Borrower to ensure the establishment and long-term operation of the project. (See § 885.710(b)(12)(iii).) The proposed rule at § 885.750 (review of applications for fund reservation) would provide that HUD will review and rate applications based on the experience and financial ability of the Sponsor, rather than the Borrower.

The proposed rule would require the submission of all information concerning the eligibility of the Borrower with the request for determination of Borrower eligibility under § 885.800. Section 885.800(b) would require the Borrower to submit evidence concerning its identity; organization; corporate purposes; legal authority; financial capacity; and tax exempt status; and the identity of the Borrower's officers and directors, their past participation in HUD programs, and their certifications as to the absence of conflicts of interest. The Borrower would also be required to demonstrate that the Sponsor has fulfilled its commitment to provide certain resources (see proposed § 885.710(b)(12)(iii)). Additionally, if housing consultant services have been used by the Sponsor, the Borrower would be required to execute the consultant contract, and to submit the contract to HUD with the request for determination of Borrower eligibility.

2. *Site information.* Under the related section 202/8 program, applications involving projects for handicapped families are required to identify the locality in which the proposed project will be developed. Such projects are reviewed, rated and ranked without the site information.

HUD has revised these procedures slightly for section 202 housing for handicapped families in order to expedite development of such projects. For example, HUD would encourage applicants to submit site information at the application for fund reservation stage by permitting the assignment of additional rating points in the selection process to applications that include satisfactory evidence of an approvable site (see § 885.750(c)(2)). (Such applicants, however, would not be penalized in the selection process if HUD finds that the site is not approvable.) Further, if an application is selected and the Sponsor has not submitted site information by the date of issuance of the notice of fund reservation, the notice would specify a deadline (generally not more than 60 days from the date of issuance of the notice of fund reservation) for the submission of the site information (see § 885.755(a)(5)).

Section 885.780 (discussed at section VI.A. below) describes the site specific information that must be submitted before the request for conditional commitment and describes HUD's review of proposed sites. Section 885.800 (discussed at section VI.B., below) describes the site information that must be submitted with the request for conditional commitment.

3. *Other application requirements.* Other application requirements for section 202 housing for handicapped families that do not reflect the related section 202/8 program requirements include the following:

a. *Anticipated occupancy.* Section 885.710(b)(5) provides that the Sponsor must submit a narrative description that includes proposed project requirements that limit occupancy to chronically mentally ill, developmentally disabled or physically handicapped residents and must demonstrate a capacity to serve the proposed occupancy group or groups. The Sponsor must also demonstrate that the proposal does not conflict with State or local plans and policies governing the development and operation of facilities to serve handicapped persons meeting the proposed project occupancy requirements, including policies and plans involving State funding for and support of supportive services and facilities for handicapped individuals.

b. *Supportive service plan description.* Section 162(c) of the 1987 Act amended section 202(f) to add requirements for the submission of a supportive service plan description. Section 885.710(b)(6) of the proposed rule implements these requirements. It provides that the supportive service plan must include:

—A description of the category or categories, by disability type, of families the housing and facilities are intended to serve.

—A description of the range of necessary services to be provided to the families occupying the housing, including: the names of the agency or agencies that will be responsible for providing the supportive services and, if an agency is not the Sponsor, a letter of intent from the agency including its willingness and ability to provide the services; the manner in which the services will be provided to the families; the services that will be provided on- and off-site; and a staffing plan indicating the residential supervision, if any, and other staff necessary to provide the proposed supportive services.

—Identification of all funding sources for supportive services that will be provided for compensation, including State and local funds available to assist in the provision of services; and evidence of commitment to provide supportive services from those agencies that will provide supportive services without compensation.

HUD believes that its implementation of the supportive service plan requirements for section 202 housing for handicapped families will serve the statutory goals of increasing the emphasis of the program on supportive services and making greater use of State and local funds.

c. *Unmet needs.* At proposed § 885.710(b)(7), HUD has included a requirement for the submission of evidence demonstrating that there is effective demand for the proposed housing in the areas to be served by the project and that the need is likely to continue for the term of the project.

d. *Conflict of interest certification.* Related section 202/8 program requirements (§ 885.210(b)(12)) call for a certification from each officer and director of the Borrower and Sponsor indicating that he or she will not receive compensation from the Borrower for services, and does not have any financial interest in any contract with the Borrower or in any firm or corporation that has a contract with the Borrower. This certification is required as part of the application. Notice H87–9 (extended by Notice H 88–9) permitted the Sponsor to defer the submission of these certifications. In lieu of certification, the application must include a resolution adopted by the Sponsor's board of directors agreeing that the Sponsor will require all officers and directors of the Sponsor and Borrower to execute conflict of interest certifications. The proposed rule would codify that procedure at § 885.710(b)(11).

Board member and officer certifications would be submitted with

the Borrower's request for direct loan financing, and at initial and final loan closing for any new officers and directors of the Borrower or Sponsor not included in a previous certification. The contents of the certification would be the same as those required under the related section 202/8 program regulations. A provision reflecting the fact that management contracts between the Borrower and the Sponsor (or the Sponsor's nonprofit affiliate) are not prohibited would be included at § 885.800(b). This provision is included in the definition of "Sponsor" in the current program regulation.

e. *Evidence of nonprofit status.* In order to determine whether the Borrower and Sponsor are eligible for participation in the section 202 program, the proposed regulation would require the Borrower and Sponsor to provide evidence of their nonprofit status. Section § 885.710(b)(12)(ii) would require a Sponsor to demonstrate that (1) it has an effective tax exemption from the Internal Revenue Service; (2) is a nonprofit organization organized in the Commonwealth of Puerto Rico; or (3) is a nonprofit consumer cooperative that is exempt from taxation under State law, has never been liable for the payment of Federal income taxes, and does not pay patronage dividends.

Consistent with the new provisions permitting deferral of formation of the Borrower, the proposed rule would require a Borrower to submit evidence of its nonprofit status when it submits the request for determination of Borrower eligibility. (See proposed § 885.800(b).) The proposed rule would permit the Borrower to demonstrate that it has *applied* for (rather than received) an income tax exemption under section 501(c) (3) or (4) before the request for determination of Borrower eligibility is filed. The tax exemption ruling, however, must be submitted before initial closing as required under § 885.815(a).

f. *Experience of the Sponsor, including experience with minority business enterprises.* Consistent with the Department's commitment to encourage participation by minority business enterprises in HUD programs, under proposed § 885.710(b)(15) a Sponsor would be required to include a description of its involvement in programs or in the provision of services that demonstrate the Sponsor's management experience, including a description of the Sponsor's experience, in contracting with minority business enterprises or minority groups.

g. *Financial data.* To assist the Department in determining the financial capabilities of applicants for section 202 fund reservations, proposed § 885.710(b)(19) would require the submission of evidence of the Sponsor's financial ability and willingness to ensure the establishment and long-term operation of the project and to fund the minimum capital investment described at § 885.810(i), including balance sheets and statements of income and expenses for the past three years the Sponsor has operated.

h. *Intergovernmental review.* The proposed rule would also modify HUD's procedures for compliance with Executive Order No. 12372, Intergovernmental Review of Federal Programs. The related section 202/8 regulations state that HUD will submit, or require the applicant to submit, the application to the State's single point of contact (SPOC) for review under 24 CFR Part 52. The proposed rule for section 202 housing for handicapped families would require the Sponsor, rather than HUD, to submit the application to the SPOC. HUD believes that this change will expedite the intergovernmental review process. These changes are incorporated in proposed § 885.710(b)(21).

i. *Intermediate care facilities serving the mentally retarded or developmentally disabled.* To ensure that intermediate care facilities are eligible for assistance and will be feasible, the proposed rule at § 885.710(b)(4) would require Sponsors of such projects to demonstrate that the proposed project will primarily provide housing rather than medical facilities, is or will be licensed by appropriate State agencies, and will receive funding for a rent contribution and the cost of intermediate care from sources other than HUD.

IV. Program Requirements

A. Minimum Design Standards

One of the major problems preventing the development of housing for handicapped families under the section 202/8 program was the requirement that HUD conduct a detailed cost containment review of all projects. This cost containment review was conducted even where a project fell within applicable limitations on loan amounts. These detailed reviews often delayed the construction of housing for handicapped families and, in many cases, unduly limited the flexibility of the project design.

To remedy this problem, the proposed program would eliminate HUD's detailed cost containment reviews. Cost containment would be achieved through the establishment of development cost limits for projects and the application of certain cost containment and modest design standards applicable to all projects. These standards identify specific items that HUD will not ordinarily fund with direct loan proceeds. HUD's cost containment review under the proposed rule would be limited to determining whether the project falls within the development cost limits and meets the specified cost containment and modest design standards.

At the same time, to assure that projects provide an acceptable environment for handicapped residents, minimum standards for all projects would be established. These include minimum property standards, accessibility requirements, project size limitations, facility prohibitions, etc. These minimum standards would give Borrowers the flexibility to design projects appropriate to their location and occupancy group within broadly defined parameters.

The applicable minimum design standards and cost containment and modest design standards are discussed below. The maximum development cost limits are discussed at section VI.D., below.

1. *Project standards.* Section 885.717 addresses project standards. The rule would require all projects to comply with HUD's minimum property standards; would prescribe accessibility requirements for all projects; and would announce minimum design requirements applicable to group homes. The group home design requirements address such matters as the minimum amount of prorated space for each resident, minimum space per resident in shared bedrooms and single occupancy rooms, and bathroom requirements. These standards are based upon HUD's experience with the development of group homes under the section 202/8 program, a review of available publications and a survey of group home standards established by 22 States and submitted to the Department of Health and Human Services in connection with their implementation of the Keyes Amendment to the Social Security Act of 1979.

2. *Project size limitations.* The proposed rule would include limitations on project size at § 885.720. With the exception of the limitation on the number of residents in independent living complexes for developmentally disabled or physically handicapped individuals—which has been reduced from 40 to 24 units, the proposed limitations have regularly been incorporated in past years' announcements of fund availability for the section 202/8 program (see 1987 NOFA). The limitations reflect HUD's policy of encouraging housing that provides for the integration of the nonelderly handicapped in the community among the nonhandicapped of all ages.

The proposed rule would impose the following limitations: (1) Group homes may not serve more than 15 persons on one site; (2) independent living complexes for chronically mentally ill individuals may not serve more than 20 persons on one site; and (3) independent living complexes for handicapped families in developmentally disabled or physically handicapped occupancy categories may not have more than 24 units on one site. As a related matter, the proposed rule would also add definitions of group home (*i.e.*, a single family residential structure designed or adapted for occupancy by nonelderly handicapped individuals) and for independent living complex (*i.e.*, a project designed for occupancy by nonelderly handicapped families in separate dwelling units where each dwelling unit includes a kitchen and a bath).

Additionally, under the proposed rule HUD may establish a smaller number of units or residents as a maximum that may be proposed under an application. The limitation would vary from year to year and would be based on the amount of loan fund authority appropriated for the fiscal year. The purpose of this requirement is to permit HUD to provide an equitable distribution of the limited number of units that may be funded each year. The annual announcement of fund availability issued under § 885.705 would announce this limitation.

3. *Cost containment and modest design standards.* The proposed rule would address cost containment and modest design standards at § 885.725. In general, this provision codifies basic requirements that have been imposed upon section 202/8 applicants in past years. Some of the requirements reflect statutory provisions that were added by the Housing and Urban Rural Recovery Act of 1983 (1983 Act). The requirements are discussed below.

a. *Restrictions on amenities.* Proposed § 885.725(a) contains the general requirement that housing assisted under Subpart G must be modest in design and that amenities must be limited to those amenities, as determined by HUD, that are generally provided in unassisted decent, safe, and sanitary housing for lower income families in the market area. The proposed section lists specific prohibited amenities. (The list is based on HUD Handbook 4571.1 REV–2, Paragraph 1–5h.)

b. *Unit sizes.* Proposed § 885.725(b) states that HUD will establish limitations on the size of units (*i.e.*, floor space) and the number of bathrooms that may be included in various sizes of units in independent living complexes. HUD intends to continue applying the standards currently in effect (e.g., 415 square feet of rentable space and one bathroom in a 0-bedroom unit; 1,150 square feet and two bathrooms in a 4-bedroom unit). (These standards are published in Handbook 4571–1 Rev. 2.)

c. *Special spaces and accommodations.* Section 885.725(c) would limit the costs of construction of special spaces and accommodations to ten percent of the total cost of construction. This section would also list the spaces and accommodations that are subject to this limitation. These limitations are based on requirements that have been imposed in recent announcements of fund availability and in the section 202 handbook.

d. *Exceptions.* Section 202(m), as added by the 1983 Act, provides:

> Nothing in this section authorizes the Secretary to prohibit any Sponsor from voluntarily providing funds from other sources for amenities and other features of appropriate design and construction suitable for inclusion in such project if the cost of such amenities is (1) not financed by the loan and (2) not taken into account in determining the amount of Federal subsidy or of the rent contribution of tenants.

Proposed § 885.725(d)(1) would implement section 202(m). Under this section, HUD would approve projects with amenities and features that do not comply with HUD's cost containment and modest design standards. Such projects will be approved if the Sponsor demonstrates that it is willing and able to contribute the incremental development cost and operating costs associated with the nonconforming items. To ensure that the additional costs are not included in the loan amount or taken into account when determining the amount of the Federal subsidy or the rent contribution of the tenants, a mortgage amount limitation would be added at § 885.810(b). The limitation would restrict the amount of loan financing to the total development cost, less the incremental development cost and capitalized incremental operating costs associated with additional amenities and design features approved by HUD under § 885.725(d)(1).

Proposed § 885.725(d)(2) would provide an additional exception to the cost containment and modest design standards if: The proposed project involves substantial rehabilitation or acquisition with or without moderate rehabilitation; the additional amenities or design features were incorporated into the existing structure before the submission of the application; and the total development cost of the project with the additional amenities or design features does not exceed the cost limits described in § 885.812.

4. *Prohibited facilities.* Section 885.727 would list the facilities that are prohibited in all projects in order to assure that the residential nature of the housing is maintained. These include commercial spaces, infirmaries, nursing stations, spaces dedicated to the delivery of medical treatment or physical therapy, padded rooms, or space for respite care or sheltered workshops. The project facilities may not include office space, except for that to be used exclusively for project administration.

B. Other Program Requirements

1. *Site and neighborhood standards.* The proposed rule at § 885.730(a) would state that site and neighborhood standards contained in § 885.206 (a)–(h) and (j) (new construction projects) or § 881.206 (a)–(g) and (i) (rehabilitation projects) apply to projects under Subpart G. These site and neighborhood standards are currently applied to section 202 housing developed under Subparts B through D.

The proposed rule would also require that all projects must be located in neighborhoods where other family housing is located. Projects may not be located adjacent to certain facilities (schools or day care centers for handicapped persons, workshops, medical facilities or other housing primarily serving handicapped individuals) or in areas where such facilities are concentrated. Projects would, however, be permitted to be located adjacent to other housing primarily serving handicapped persons if the projects together do not exceed the project size limitations of § 885.720(a).

2. *Prohibited relationships.* The existing regulations under Subparts B through D contain several provisions addressing conflicts of interest and other impermissible relationships. The proposed rule would consolidate, in § 885.735, prohibitions currently contained in the definitions of Borrower and Sponsor in § 885.5 that state that no officer, director, trustee, member, shareholder or authorized representative of the Borrower or officer or director of the Sponsor is permitted to have a financial interest in described contracts; state that no part of the net earnings of the Sponsor or Borrower may inure to the benefit of any private shareholder, contributor, or individual;

and state that the Borrower and the Sponsor may not be under the direction or control of persons or entities seeking to derive profit or gain from the Borrower or Sponsor.

Proposed § 885.735(d) would contain new prohibition stating that a person or an entity (including an affiliated entity) may not provide services to a project in more than one of the following capacities: Attorney, architect, contractor, housing consultant, management agent or seller of the site for the project. The provision, however, would permit a person or an entity to serve as both the management agent and the housing consultant.

3. *Other Federal requirements.* Section 885.740 of the proposed rule would consolidate references to nondiscrimination and equal opportunity requirements, environmental requirements, requirements regarding flood areas and flood insurance, labor standards, relocation assistance requirements, lead-based paint, and requirements for intergovernmental review. As required under section 162(b)(3) of the Act, the applicability of the Davis-Bacon provisions has been limited to projects designed for dwelling use by 12 or more families.

The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–46) (LBPPP Act) does not apply to housing for handicapped families *except* for any dwelling (other than a zero-bedroom dwelling unit) in such housing which was constructed or substantially rehabilitated before 1978 and in which any child who is less than seven years of age resides or is expected to reside. Since handicapped families with children may reside in projects assisted under Subpart G, and since projects other than new construction may involve housing constructed or substantially rehabilitated before 1978, the proposed rule provides that the requirements of the LBPPP Act and HUD's implementing regulations at 24 CFR Part 35 apply to covered dwellings.

In accordance with 24 CFR 35.24(b)(4), the proposed rule imposes procedures for the elimination of lead-based paint hazards that supersede the requirements of 24 CFR Part 35, Subpart C. These requirements reflect the Section 8 Existing Housing regulations (24 CFR 882.109) published in the Federal Register on January 15, 1987, (52 FR 1878, 1893–94), as amended on June 6, 1988 (53 FR 20790). The rule includes: Requirements for initial inspections of buildings constructed before 1978; abatement of defective paint on applicable surfaces; testing for lead-based paint on chewable surfaces where the structure is occupied by a child under the age of seven who has an elevated blood level; tenant protection during abatement; and recordkeeping requirements.

V. Selection of Applications

A. Review of Applications for Fund Reservation

Section 885.750 would describe the process for the review and selection of applications for fund reservation. Under the proposed process there would no longer be an initial screening of applications. Each of the steps of the process are discussed below.

1. *Preliminary evaluation.* The provisions governing the preliminary evaluation of applications are set forth in proposed § 885.750(a). Initially, HUD would determine if the application was received at the appropriate address and within the time period specified in the invitation, and is complete. Under the section 202/8 regulations (§ 885.220(b)), applicants submitting incomplete applications are given 10 days to provide additional information. While HUD will continue a policy of requesting clarifications from Sponsors when needed to evaluate the application, the Department believes that it is inappropriate to provide Sponsors with an opportunity following the submission of the application to add missing documents to the application or otherwise to overcome defects in the original submission.

Under the preliminary review, HUD would also screen each application to determine if it meets the following minimum eligibility requirements:

—The Sponsor must be eligible to participate in the program.

—The proposed facilitities and proposed occupancy requirements must be eligible under the program.

—The application must include a supportive services plan meeting the requirements set forth in § 885.710(b)(6).

HUD would notify Sponsors of unapprovable applications following the preliminary evaluation of all applications.

2. *Technical review processing.* Following preliminary review, HUD would perform a technical review of each application that is found to be acceptable under the preliminary review. HUD would review each application to determine whether:

—The Sponsor demonstrated financial and management capability to carry the project through to completion.

—The Sponsor has previous experience in the development or operation of housing, medical, or other facilities, or experience in the provision of services to handicapped individuals meeting the project occupancy requirements.

—The Sponsor has made a commitment and will be able to provide preliminary development costs and the minimum capital investment.

—The application demonstrates that the proposed housing is appropriate for handicapped individuals meeting the project occupancy requirements, and indicates that the project is likely to comply with applicable project standards, project size limitations, modest design and cost containment requirements, and facility prohibitions.

—The locality (or the site, if the Sponsor submitted site specific evidence) is likely to meet the site and neighborhood standards. If the Sponsor submits site specific information with its application, HUD would determine if the site is acceptable under § 885.760 (see discussion below). If HUD determines the site is unacceptable, however, the application would be processed as if no site specific information was submitted.

—The Sponsor has submitted a service plan description that is directed to the needs of handicapped individuals meeting the project occupancy requirements, and that demonstrates the Sponsor's ability to provide or assure the provision of supportive services to such individuals. In reviewing the service plan description, HUD will invite comments from State agencies serving the proposed occupancy group.

—The proposed project does not conflict with State or local plans and policies governing the development and operation of facilities to serve handicapped individuals.

—There is evidence of effective demand for the proposed project.

—The Sponsor is in compliance with nondiscrimination and equal opportunity requirements.

—The application is otherwise responsive to the invitation for applications and the requirements of Part 885.

During technical review processing, HUD would also review any comments received from the State single point of contact and determine if the proposed project is located in a locality that is acceptable under flood hazard and flood insurance requirements.

3. *Ranking.* Section 885.750(c) of the proposed rule provides that HUD will assign a rating to each application that is found to be approvable following technical review and would rank all applications in order of their assigned ratings within each allocation area.

In assigning rating points, HUD would assess the extent to which the Sponsor has demonstrated, relative to other proposals:

—Its capacity and commitment to assist the Borrower to carry the project through to long-term operation.

—Its ability and commitment to provide the financial resources to the Borrower to establish and ensure the long-term operation of the proposed project.

—The need in the locality for a project serving handicapped individuals meeting the proposed project occupancy requirements.

—Support for the proposed project from the local community, including State and local organizations familiar with the needs of handicapped individuals meeting the proposed project occupancy requirements.

—The Sponsor's ability to provide or facilitate the provision of proposed supportive services to handicapped individuals meeting the proposed project occupancy requirements.

HUD would also assess the degree to which the application supports minority enterprise, involves a small research or demonstration project, or provides an innovative housing program or alternative method of meeting lower income housing need.

In order to encourage applicants to obtain site control and to present site specific evidence at the earliest possible time, the proposed rule would permit HUD to assign additional rating points to applications that include satisfactory evidence of an approvable site. If HUD assigns these additional rating points, the announcement of fund availability will include the maximum number of points that will be awarded under this factor.

4. *Selection.* Following ranking, HUD would select applications in the descending order of funding priority that approximates the loan authority provided to the allocation area. If the amount of loan authority allocated to an area exceeds the amount necessary to fund all approvable applications, the Department would transfer the unused loan authority from the area to another area or area in which there is insufficient loan authority for all approvable applications.

After the selection of applications that can be funded with the allocated loan authority, HUD may select unfunded, but otherwise approvable, applications for funding from available amounts in the Headquarters Reserve. Since the special needs factors used in making selections from the Headquarters Reserve under section 213(d)(4) of the Housing and Community Development Act of 1974 include support for the needs of the handicapped, all approvable applications would be eligible for funding from the Reserve.

Following completion of the selection process, HUD would notify the Sponsors of applications that are not approvable as a result of technical review processing and the Sponsors of applications that were approvable but were not selected for funding. The notification would be in writing and would explain the reasons for HUD's action.

B. Approval of Applications

Under § 885.755, a Sponsor whose application is approved would be issued a notice of section 202 fund reservation that states the amount of the loan reservation and the amount of project assistance reserved for the project. Under the proposed rule, the amount of the loan reservation would be based on the development cost limit computed under § 885.810(c) (see section VI.D.1., below). The amount of project assistance reserved for the project would be an amount equal to the sum of the operating cost standard applicable to the project (see section VI.B.1., below) plus the annual debt service on the amount of the section 202 loan reservation. The debt service on the amount of the loan reservation would be computed using the annual rate of interest (described under § 885.810(g)(1)) in effect on the date that the notice was issued.

The notice would also include the number and mix of units approved for an independent living complex (or number of residential spaces approved for a group home); the approved project occupancy requirements; the deadlines for Sponsor acceptance of the reservation, the submission of site information, the submission of a request for direct loan processing; and other guidance. If the Sponsor did not submit site information with the application, generally the date for submission of site information will be 60 days from the issuance of the notice of fund reservation.

Proposed § 885.755 would also address the withdrawal of the approval of the application if the Sponsor does not accept the notification by the specified date; the transfer of the fund reservation upon the formation of the Borrower; the restriction of use of the fund reservation to the approved project; and amendments of the fund reservation.

C. Duration of Section 202 Fund Reservation

1. *Extension and cancellation of fund reservation.* The duration of the initial fund reservation under the proposed rule would be 18 months.

Under related regulations for the section 202/8 program (see § 885.230), the field office, subject to the approval of the Assistant Secretary, is permitted to cancel a fund reservation at any time if it can be established that the Borrower is not making satisfactory progress toward the start of construction, rehabilitation, or acquisition. The field office is required to cancel a fund reservation if construction is not begun within 18 months after the issuance of the fund reservation, but may extend this time period for up to six additional months.

The proposed rule for the section 202 program for housing for handicapped families adopts these cancellation provisions with one revision. HUD has found that many Borrowers are not able to start construction, rehabilitation or acquisition within the 24-month period permitted under the related regulations for reasons beyond the Department's or the Borrower's control. (For example, such activities are often delayed by litigation involving the Borrower or the Department, by local opposition to a project or by a lack of cooperation from local governments.) To ensure that such projects are not prematurely terminated, the proposed rule adds a provision permitting HUD to extend the 24 month peroid to up to 36 months.

2. *Notification procedures.* Section 202(n) of the Housing Act of 1959 (as added by section 161(e) of the 1987 Act) provides that the Secretary shall notify the project sponsor not less than 30 days prior to cancelling any loan authority provided under section 202. During the 30-day period following the receipt of the notice, the Sponsor is permitted to appeal the proposed cancellation of loan authority. The appeal, including review by the Secretary, must be completed not later than 45 days after the appeal is filed.

The proposed rule would add procedures for the appeal of the cancellation of loan authority at § 885.770(b). The rule would provide that if HUD determines that a fund reservation must be cancelled, the field office must mail a notice of loan cancellation to the Borrower by certified mail, return receipt requested. The notice of cancellation would describe the reasons for the cancellation of the loan authority, would advise the Borrower that it may file an appeal within 30 days of the receipt of the notice, and would state that failure to file an appeal will result in the cancellation of the fund reservation upon the expiration of the 30-day period.

If the Borrower files a timely appeal, HUD headquarters would review the appeal and would issue a decision within 45 days of the receipt of the appeal. The standard for approval of the appeal under this proposed section is the same as that prescribed for the extension of the fund reservation (*i.e.*, the Borrower must demonstrate that it is making satisfactory progress under an established timetable toward the start of construction, rehabilitation or acquisition with or without substantial rehabilitation). The rule states that HUD would provide a written notification to the Borrower of its determination on the appeal. If the appeal is granted, the notification would include the duration of the extended fund reservation.

VI. Direct Loan Processing Procedures

A. Site Approval

As discussed above, the application would identify the locality in which the proposed project will be developed. While Sponsors would be encouraged to provide site information as soon as possible and HUD may offer incentives to Sponsors that expeditiously provide such information, specific site information would not be *required* until after the issuance of the notice of fund reservation. Site approval must be obtained before the Borrower applies for the conditional commitment under § 885.800(c).

Section 885.760(a) prescribes the information that must be submitted for site approval, including: A map showing the location of the site and the racial composition of the neighborhood; evidence of compliance with local zoning ordinances and regulations; information concerning the displacement of site occupants; and evidence of HAP compliance. HUD would review this information to determine whether the site meets the site and neighborhood standards of §885.730; the development of the site is permissible under applicable zoning ordiances and regulations (or will be permissible before the receipt of the commitment for direct loan financing); and the proposed relocation is feasible and necessary relocation payments will be funded from sources other than section 202 loan proceeds. In addition, HUD would forward a notification to the chief executive officer of the unit of general government for the purpose of determining whether the proposed site is approvable under section 213 of the Housing and Community Development Act of 1974, would conduct an environmental review of the site in accordance with the National Environmental Policy Act of 1969, the related authorities cited in 24 CFR Part 50 and the Coastal Barriers Resources Act of 1982 (16 U.S.C. 3601), and would review the site to ensure that flood hazard and flood insurance requirements are met.

Following HUD's review of the site, HUD would issue a notice approving or disapproving the proposed site. If HUD determines that a site is not approvable, HUD would notify the Sponsor of the reasons for the disapproval. The Sponsor may, consistent with its application file under § 885.710, obtain a new site and resubmit a request for site approval.

B. Request for Direct Loan Processing

Following site approval, a Borrower established by the Sponsor must submit a request for direct loan processing (including the request for determination of Borrower eligibility discussed at section III.C.1., above). There are two stages to direct loan processing, the conditional commitment and the firm commitment.

1. *Conditional commitment processing.* During the conditional commitment stage, HUD would evaluate the request for determination of Borrower's eligibility, would determine the amount of the initial contract rents and any initial utility allowances to be provided in independent living complexes; would review the site and project design; would evaluate the overall financial feasibility of the project; and would review the Borrower's affirmative fair housing marketing plan.

(a) *Initial contract rents and initial utility allowances.* Under § 885.800(c)(2), the amount of the initial contract rents plus any utility allowances may not exceed the reasonable costs of operating a project plus the debt service on the amount of the section 202 loan (see section 202(h)(4)(B) of the Act).

To estimate the reasonable costs of operating a section 202 project for handicapped families, the proposed rule at § 885.807 provides for the establishment of operating cost standards. These operating cost standards would be based on the average annual operating cost of comparable housing for handicapped families in each field office jurisdiction. The operating cost standards would be developed for group homes based on the number of residents, and for independent living complexes based on the number of units. HUD would adjust the operating cost standard applicable to an approved project to reflect the additional operating costs necessary to serve handicapped individuals meeting the project occupancy requirements, and to reflect differences in costs based upon project location within the field office jurisdiction. Operating costs included in the standard would be administrative expenses (including salary and management expenses related to the provision of shelter); maintenance expenses (including routine and minor repairs and groundskeeping); security expenses; utility expenses (excluding telephone service for families); and allowances for reserves. As required by statute, operating costs do not include the costs of providing or obtaining the provision of the assured range of services described in the supportive service description, such as expenses for administering or managing the provision of such services.

The operating cost standards are used as guidelines to evaluate the reasonableness of the proposed operating costs of the project. Operating costs for a project in excess of the operating cost standard (as adjusted) may be approved if HUD determines that the Borrower has demonstrated that the costs are reasonable and necessary costs of operating the project.

Under the proposed rule, HUD would establish utility allowances for independent living complexes if the cost of utilities (excluding telephones) and other housing services are not included in the initial contract rent. The utility allowance would be based upon the monthly cost of a reasonable consumption of utilities and other services for the unit by an energy conservative household of modest circumstances, consistent with the requirements of a safe, sanitary and healthful living environment.

The amount of the debt service would be based on the amount of the section 202 loan reservation (as computed in accordance with the development cost limits described in § 885.810(c)). The rate of interest would be the optional interest rate (if requested by the Borrower) or the annual interest rate computed under § 885.810(f).

(b) *Site and design information.* At the conditional commitment stage, HUD would establish land value, review the site to determine whether the Borrower has site control, and review the project design to determine whether it will comply with the project standards, the project size limitations, the modest design and cost containment standards, and facility prohibitions applicable to the program. To enable HUD to make these determinations, the proposed rule would require the Borrower to submit described information with the request for conditional commitment processing.

2. *Firm commitment processing.* At the firm commitment stage, HUD would review final plans and specifications, cost estimates, and HUD's findings under the conditional commitment stage. Generally, Borrowers would be required to submit a request for conditional commitment followed by a request for firm commitment. However, HUD may permit the Borrower to submit a request for firm commitment without previous conditional commitment processing (e.g., a project involving acquisition with or without rehabilitation or a construction project utilizing a design that has been previously submitted to, and approved by, HUD).

C. Approval of Requests for Direct Loan Processing

Proposed § 885.805 states that HUD would review the request for direct loan financing (including the request for Borrower eligibility) and notify the Borrower of approval or disapproval. Paragraph (a) describes the contents of the conditional commitment notification. Paragraph (b) describes the contents of the firm commitment notification.

D. Amount of Financing

Proposed § 885.810 would govern the amount of section 202 loan for housing for handicapped families. Under paragraph (a) of this section, the amount of financing approved for section 202 housing for handicapped families is limited to the lesser of the estimated development cost and the development cost limit.

1. *Development cost limitations.* Section 202(i)(1) of the Housing Act of 1959 requires HUD, in establishing per unit cost limits for the section 202 program, to take into account design features necessary to meet the needs of elderly or handicapped residents, and requires the limits to reflect the cost of providing those features. The provision also requires HUD to adjust the unit cost limits to reflect changes in the general level of construction cost.

Section 426 of the 1987 Act increased the per unit mortgage limits for HUD's multifamily mortgage insurance programs, including the limits under section 221(d)(3) of the National Housing Act. The Conference Report on the 1987 Act (H. Rep. No. 428, 100th. Cong., 1st Sess. 218 (1987)) expressed the Conferees' intent that HUD "raise the mortgage limits for Section 202 projects in levels commensurate with the new limits established in [section 426(d)] for Section 221(d)(3)". On March 18, 1988 (53 FR 8874) HUD published a final rule revising the per unit loan limitations for the section 202/8 program. In making this revision the Department found that the section 221(d)(3) per unit mortgage limits met the requirements of section 202(i)(1) of the Act.

Today's proposed rule would also establish development cost limitations for section 202 independent living complexes for handicapped families based upon the section 221(d)(3) limits. This development cost limitation would apply to the total development cost of the property or project attributable to dwelling use (less the costs associated with excess amenities and design features).

The section 221(d)(3) per unit mortgage limits upon which the development cost limits for independent living complexes are based were created to reflect the costs of multifamily projects. Group homes, on the other hand, are basically single family residential structures designed or adapted for occupancy by nonelderly handicapped individuals. Accordingly, HUD does not believe that development cost limits for such projects should be based on the multifamily project cost limits. Instead, the proposed rule provides that HUD would periodically establish cost limits for group homes by publishing a notice of the cost limits in the **Federal Register**. The cost limits would reflect those reasonable and necessary costs of developing a project of the size that will accommodate the specified number of residents and that would comply with HUD minimum property standards, the minimum square footage requirements, the bathroom and recreational area requirements for group homes, cost containment and modest design standards, and other design requirements applicable to group homes under Subpart G. To develop the cost limits for group homes, HUD would use commercially available cost indices and construction cost data for recently completed group homes.

The proposed rule would permit HUD to adjust the base development cost limit for independent living complexes and group homes. Adjustments include:

—The application of high cost percentages that are reviewed annually to assure that the development cost limit will reflect changes in construction costs. The high cost area adjustment is limited to an increased of 110 percent of the base unit cost in a geographic area, and an increase of 140 percent on a project-by-project basis.

—The application of additional adjustments of up to 50 percent over the high cost area adjustment in Alaska, Guam and Hawaii to reflect high construction cost in these areas.

2. *Maximum loan limit.* In addition to the development cost limits discussed above, the proposed rule would limit the amount of the section 202 loan to the total estimated development cost of the project as determined by HUD. If the Borrower will provide excess amenities or design features under § 885.725(d)(1), the incremental development cost and capitalized operating costs associated with the excess amenities and design features would be subtracted from the total development cost.

HUD is concerned that the two limitations on the loan amount would offer Borrowers no incentive to control costs. *I.e.*, without additional requirements, Borrowers would be encouraged to incur total development costs up to the maximum development cost limit described above. Therefore the Department invites comment on ways to encourage Borrowers to contain total development costs to the maximum extent possible. For example, Sponsors might be offered bonus points on future applications when a project is developed for less than the applicable development cost limit. Another alternative might be to permit Borrowers to retain in a development contingency account some portion of the savings when the total development cost is less than the development cost limit. Such funds could be used only for eligible development purposes as determined by HUD. (These purposes could include such items as the cost of movables necessary to the basic operation of the project.)

3. *Rehabilitation projects and leaseholds.* The proposed rule would also include limitations on the loan amount for rehabilitation projects and loans secured by a leasehold estate that reflect requirements contained in the related section 202/8 program.

E. *Terms of the Loan*

1. *Loan interest rate.* In addition to provisions addressing housing for handicapped families, the 1987 Act revised the formula for the calculation of the section 202 loan interest rate, set a ceiling of 9.25 percent on all section 202 loans, and provided the Borrower with an option to have loan interest rate calculations based on the date that the request for conditional or firm commitment is submitted, rather than on the date that the loan is made. (See section 161 of the 1987 Act.) On June 1, 1988 (53 FR 19899) HUD published an interim rule in FR-2477 which amended the section 202/8 program to incorporate the interest rate provisions. These same provisions are incorporated in the proposed rule at § 885.810(f) and (g). (Miscellaneous loan interest rate provisions are also contained in § 885.800 and 885.805.)

2. *Miscellaneous.* The proposed rule at § 885.810 (h) and (i) would adopt the provisions for security for loans and minimum capital investment currently contained in the related section 202/8 program at § 885.410 (i) and (j).

F. Other Direct Loan Processing Procedures

Subpart G would contain provisions governing: Prepayment of loans and the assignment or transfer of physical or financial assets (§ 885.812), requirements prior to initial loan closing (§ 885.815), requirements for awarding construction contracts (§ 885.816), loan disbursement procedures (§ 885.820) and completion of project certification (§ 885.825). These provisions would reflect similar provisions governing the related section 202/8 program with the modifications discussed below:

1. *Requirements for initial loan closing.* Proposed § 885.815 would prescribe the same requirements for initial loan closing as required under the section 202/8 program (see § 885.415), except that the contractor and subcontractor certifications concerning labor standards (paragraph (p)) have been deleted since these forms, formerly used in initial closing, have been eliminated.

2. *Requirements for the award of construction contracts.* Under the section 202/8 program, Borrowers are required to use competitive bidding (formal advertising) in selecting a construction contractor unless the development cost of the project is less than $2,000,000, the project rents fall within certain limits, or the Sponsor is a labor organization.

Based on its experience under the section 202/8 program, HUD has found that the development of smaller projects, including group homes and independent living complexes, is more economical and expeditious if negotiated, noncompetitive contracts are allowed for the selection of the contractor. Such contractors are more likely to be involved in the development of the project in its early stages and, thus, are more likely to develop an efficient working relationship with all members of the development team and to have a greater knowledge of project design, which enables them to make accurate construction cost estimates. Based on HUD's experience, proposed § 885.816 would permit negotiated, noncompetitive construction contracts for all section 202 projects for handicapped families.

3. *Completion of cost certification.* Section 885.825 contains the requirements for final disbursement of the loan. This proposed section substantially reflects the related section 202/8 program requirements contained in § 885.415, except for simplified cost certification provisions. Under the proposed rule, HUD would not offer the simplified cost certification procedure for projects with mortgages of $500,000 or less. However, HUD would not require the Borrower's certification of actual cost to be verified by an independent public accountant for projects with mortgages of $750,000 or less. HUD believes that this procedure will expedite the processing of final requisitions for disbursement of loan proceeds by using uniform procedures on all loans, and at the same time would save Borrowers the cost of obtaining a verification by an independent public accountant.

VII. Project Assistant Contract and Project Management

Section 162 of the 1987 Act substituted new subsidy payments for the section 8 housing assistance payments that were provided in connection with housing for handicapped families under the section 202 program. HUD is proposing regulations governing the project assistance contract and management requirements that are based, to the maximum extent possible, on the section 8 requirements currently applicable to section 202/8 projects. HUD believes that this approach is appropriate because: (1) The statute requires the continued use of income eligibility and tenant rent calculations that are in effect in the section 8 program; (2) many Sponsors and Borrowers are familiar with section 8 requirements; and (3) HUD would like to maintain uniformity in assisted housing programs as much as possible, allowing programmatic differences only based on statutory requirements and on the needs of the handicapped populations served. HUD believes that issues of tenant and management rights and responsibilities and similar cross-cutting aspects should be based on consistent rules in all programs that provide rental assistance.

Existing Part 885 does not contain regulations governing project management or the HAP contract. However, regulations codifying existing contract and management requirements imposed on section 202/8 projects were proposed in FR–1761 on December 9, 1987 (52 FR 46614). Those proposed rules were based upon the contract and management regulations for section 8 projects involving new construction (24 CFR Part 880) and substantial rehabilitation (24 CFR Part 881). A final rule is pending in FR–1761. To the maximum extent possible, HUD has used the proposed regulations in FR–1761 as the basis for the regulations for housing for handicapped families. The section-by-section discussion below addresses the major provisions of the proposal.

A. Project Assistance Contract (PAC) (Sections 885.900 through 885.930)

1. *PAC (Section 885.900).* Section 885.900 would provide a general description of the PAC including provisions governing contract execution, effective date, project assistance payments, and utility allowance payments.

2. *Term of PAC (Section 885.905).* Section 202(h)(4)(A) provides that the term of the contract for assistance shall be 240 months. Accordingly, § 885.905 would limit the term of the PAC to 20 years. If the project is completed in stages, the term of the PAC for all stages of a project may not exceed 22 years.

3. *Maximum annual commitment and project account (Section 885.910).* Section 885.910 would govern the maximum annual commitment under the PAC, and the establishment and maintenance of a project account. In accordance with section 202(h)(4)(A), this proposed rule would provide that the annual contract amount for any project shall not exceed the total of the initial contract rents and utility allowances for all assisted units in the project.

To ensure that any contract amounts not used by a project in any year shall remain available to the project until the expiration of the contract, as required under the statute, § 885.910(b)(1) would require HUD to maintain a project account established out of the amounts by which the maximum annual commitment exceeds the amount actually paid out under the PAC each year. The statute permits the Secretary to adjust the annual contract amount if the sum of the project income and the amount of assistance payments are inadequate to provide for reasonable project costs. In accordance with these provisions, § 885.910(b)(2) provides "If the HUD-approved estimate of required annual payments under the contract for a fiscal year exceeds the maximum annual commitment for that fiscal year plus the current balance in the project account, HUD will within a reasonable time, take such steps authorized by section 202(h)(4)(A) as may be necessary to assure that payments under the PAC will be adequate to cover increases in contract rents and decreases in tenant income."

4. *Leasing to eligible families (Section 885.915).* Section 202(h)(4)(C) provides that the Secretary shall require that, during the term of each PAC, all units in a project must be made available for occupancy by lower income families, as such term is defined in section 3(b)(2) of the United States Housing Act of 1937.

Section 885.915 would implement this requirement. This section would require the Borrower to make available for occupancy by eligible families the total number of units (or residential spaces in group homes) for which assistance is provided under the PAC. If the Borrower is temporarily unable to lease all assisted units (or residential spaces in a group home) to families that are eligible to occupy them, one or more units (or residential spaces) may, with the prior approval of HUD, be leased to "ineligible" families (*e.g.*, to handicapped families that cannot meet the income eligibility requirements under section 3(b)(2) of the United States Housing Act of 1937). In addition to other sanctions that may be imposed on the Borrower for failure to lease to eligible families, the proposed rule would authorize HUD to reduce the number of assisted units (or residential spaces) if the Borrower fails to comply with these requirements or if HUD determines that the inability to lease to eligible families is not a temporary problem. The proposed rule would permit the restoration of any reduction, under stated circumstances.

In addition to the income eligibility requirements applicable to section 202 housing for handicapped families, families occupying assisted or unassisted units (or residential spaces in group homes) in projects must meet the definition of handicapped family (see § 885.5). In recognition of situations where there may be an insufficient number of handicapped families requesting admission to the project to ensure the maintenance of solvent operations, the proposed regulation would permit HUD to relieve the Borrower of the requirement that all units in the project (or residential spaces in the group home) must be leased to handicapped families if: (1) The Borrower has made reasonable efforts to lease assisted and unassisted units (or residential spaces) to eligible families; (2) the Borrower has been granted HUD approval under paragraph (a) of this section for all unoccupied, assisted units (or residential spaces); and (3) the Borrower is temporarily unable to achieve or maintain a level of occupancy sufficient to prevent financial default and foreclosure under the section 202 loan documents. HUD approval under this paragraph would be of limited duration. HUD may impose terms and conditions on this approval that are consistent with the program's objectives or necessary to protect HUD's interest in the section 202 loan. Such terms and conditions may include limiting the terms of leases to nonhandicapped families to one year or less and requiring the Borrower to replace these families at the end of their lease term with eligible handicapped applicants for admission to the project. HUD believes that permitting a suspension of the eligibility requirement might be essential to preserving the project for the benefit of the present eligible tenants, as well as for occupancy by future eligible families.

To prevent abuses in the determination of eligibility of families and to ensure necessary supervision, HUD will handle each suspension on an individual basis, rather than by built-in exceptions to the project occupancy criteria stated in the regulations. Similarly, HUD will limit the duration and scope of each suspension to the narrowest extent possible to achieve needed occupancy and will impose other terms and conditions that are consistent with the program objectives and are necessary to protect HUD's interest in the loan.

5. *PAC administration (Section 885.920).* Section 885.920 would provide that HUD is responsible for the administration of the PAC.

6. *Default (Section 885.925).* Section 885.925(a) would provide that if the Borrower is in default under the PAC, HUD will notify the Borrower of the actions necessary to cure the default and of the remedies to be applied by HUD. If the Borrower fails to cure the default, HUD would have the right to terminate the PAC or take other corrective action. In addition, paragraph (b) of § 885.925 would notify Borrowers that additional provisions governing default under the section 202 loan, rather than the PAC, are included in the regulatory agreement and other loan documents (*e.g.*, the note and first mortgage or deed of trust).

7. *Notice upon PAC expiration (Section 885.930).* While Section 202 does not require the Borrower to notify the families of rent increases that may occur as a result of the contract's expiration (compare section 8(c)(8) of the United States Housing Act of 1937), the proposed rule would administratively impose this same requirement on Borrowers. The proposed rule would require that the PAC provide that the Borrower will, at least 90 days before the end of the PAC contract term, notify each family occupying an assisted unit (or residential space in a group home) of any increase in the amount that the family would be required to pay as a result of the expiration. The notice of expiration would contain such information and would be served in such a manner as HUD may prescribe.

B. Management provisions (Sections 885.940 through 985)

1. *Responsibilities of borrower (Section 885.940).* Section 885.940 would describe the Borrower's marketing, management, maintenance, and fiscal responsibilities regarding the project. Under paragraph (a), the Borrower's marketing activities would include: (1) The commencement of diligent marketing activities for 90 days before the date of availability for occupancy of the group home or the first unit in an independent living complex; (2) marketing in accordance with the HUD-approved affirmative fair housing marketing plan and all fair housing and equal opportunity requirements; and (3) the submission to HUD of a list of leased and unleased assisted units (or, in the case of a group home, leased and unleased residential spaces) on the date of PAC execution.

Paragraph (b) would provide that the Borrower is responsible for all management functions including tenant selection and the admission of tenants, reexamination of incomes of families occupying assisted units or residential spaces, collection of rents, termination of tenancy, eviction, and repair and maintenance functions.

Paragraph (c)(1) would permit the Borrower to contract with a public or private entity for the performance of marketing, management and maintenance duties. The proposed rule would subject all such contracts to the provisions governing prohibited contractual relationships that were added in the interim rule amending § 885.5, published April 10, 1986 (51 FR 12308). These prohibitions do not extend to management contracts entered into by the Borrower with the Sponsor or its nonprofit affiliate. Paragraph (c)(2) would require the Borrower to promote awareness and participation of minority and women's business enterprises in contracting and procurement activities, consistent with objectives of Executive Orders 11625, 12432 and 12138.

Section 885.940(d) would provide for the submission of audited financial and operating statements by the Borrower 60 days after the end of each fiscal year of project operations and other financial statements as HUD may require. These financial statements must be audited by an independent public accountant.

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Under paragraph (e), the Borrower would be required to maintain a project fund account in HUD-approved depository and to deposit all rents, charges, income and revenue arising from project operation or ownership to this account. Project funds would be used for the operation of the project, to make required principal and interest payments on the Section 202 loan, and to make required deposits on the replacement reserve account in accordance with a HUD-approved budget. All funds remaining in the account after the end of fiscal year would be deposited in the replacement reserve account under § 885.945.

Paragraph (f) would require the Borrower to submit such reports as HUD may prescribe to demonstrate conformance with applicable civil rights and equal opportunity requirements.

2. *Replacement reserve (Section 885.945).* Section 885.945 would require the Borrower to establish and maintain a replacement reserve to aid in funding extraordinary repair and replacement of capital items. The Borrower would be required to make monthly deposits in the reserve. The amount of the deposits for the initial year of operations would be 0.8 percent of the cost of total structures (for new construction projects), 0.4 percent of the initial mortgage amount (for other projects), or such higher rates as may be required by HUD. This section proposes to adjust the amount of the deposit each year by the appropriate annual adjustment factor under Part 888; the Department invites comment on application of this factor or recommendations for more suitable methods of adjusting the amount of the reserve. All earnings on the account would be added to the balance of the account. Under existing HUD policies, the replacement reserve must be held in a HUD-approved depository in an interest-bearing account. The proposed rule would amend this practice to permit the Borrower to deposit the funds with HUD or in a HUD-approved depository. Consistent with existing practice, replacement reserve funds would be used only with the approval of HUD and in accordance with HUD guidelines. The proposed rule would provide that HUD may reduce the rate of deposit to the account if it finds that the reserve is sufficient to meet projected extraordinary maintenance and capital replacement needs.

3. *Selection and admission of tenants (Section 885.950 (a) and (b)).* Requirements governing the selection and admission of tenants are described in the proposed rule at § 885.950(a) and (b). To initiate the tenant selection process, an applicant for admission would be required to complete and sign an application for admission. Applicants for an assisted unit or residential space would be required, as part of the application, to complete a certification of eligibility (*i.e.*, Owner's Certification of Compliance with HUD's Tenant Eligibility and Rent Procedures—HUD-[illegible]).

Housing for handicapped families means housing and related facilities to be occupied by handicapped families who are primarily nonelderly handicapped families. Accordingly, in order to be eligible for admission to housing assisted under Subpart C, the applicant-family must meet the definition of handicapped family currently included in the regulations at § 885.5. The fact that an applicant meets this definition, however, does not mean that the applicant is eligible for occupancy in each section 202 housing project for handicapped families. As noted above, section 202 housing for handicapped families may limit project occupancy to one or more specific eligible populations. These eligible populations include the chronically mentally ill, the developmentally disabled, or the physically handicapped or combination of such populations. Accordingly, § 885.950(b) of the proposed rule would provide that to be eligible for admission the applicant-family must be a handicapped family as described under § 885.5 and must meet the HUD-approved project occupancy requirements submitted at the time of application for loan reservation. (As a related matter, the definition of handicapped person would be amended to reflect a revised definition of developmentally disabled individual as defined under section 102(a)(7) of the Developmental Disabilities Services and Facilities Construction Amendments of 1970—as required under section 170(g) of the 1987 Act, and to add a new definition of "chronically mentally ill".)

In addition to these requirements, section 202(b)(4)(C) provides that during the term of each PAC, all units in the project must be made available for occupancy by lower income families, as that term is defined in section 3(b)(2) of the United States Housing Act of 1937. In accordance with this provision, § 885.950(b) would require that the applicant-family must be eligible for admission under the income eligibility standards of § 813.102. Related definitions for "annual income", "contract rent", "gross rent", "rent", "tenant rent", "total tenant payment", "utility allowance", and "utility reimbursement" would be added to § 885.5. With the exception of "annual income", all of these definitions would incorporate the definitions contained in Part 813. The definition of annual income would incorporate the Part 813 definition with the additional language implementing section 202(h)(4)(C). This section provides that the gross income of a family occupying an intermediate care facility assisted under title XIX of the Social Security Act shall be the same amount as if the family were being assisted under title XVI of the Social Security Act. HUD invites comment on other issues related to income determination that may apply exclusively to the occupancy groups in housing under this subpart, *e.g.*, issues involving State supplementary allowances or special practices in disbursement of payments under the Social Security Act.

In addition to the admission requirements governing handicap and income, Borrowers under the section 202 program for handicapped families would be permitted to develop and implement additional family selection criteria. For example, an owner could find an otherwise eligible applicant to be "unsuitable" if the applicant is unable to live independently in the project without support services that he or she needed but which are not available. Accordingly, § 885.950(b) also provides that the Borrower is reponsible for the selection of families.

The proposed rule also addresses (1) local residency requirements and preferences, (2) procedures for assignment of available units or residential spaces and provisions for waiting lists, (3) procedures for rejecting applicants and for informal review of rejections, and (4) records maintenance.

4. *Reexamination of family income and composition (Section 885.950(c)).* Provisions governing the reexamination of family income and composition are included at § 885.950(c). Under the proposed rule, if the Borrower receives project assistance payments for a family, the Borrower would be required to examine and verify income and family composition at least once every 12 months; make appropriate adjustments to total tenant payment, tenant rent and the project assistance payments; and make appropriate unit transfers. This provision also would require assisted families to comply with lease provisions governing interim reporting of income changes. When a Borrower receives information between regularly scheduled reexaminations, the proposed rule requires the Borrower to consult with the family, verify certain information and make appropriate adjustments, as discussed above.

The proposed rule also provides that a family's eligibility for project assistance payments continues until the total tenant payment equals or exceeds gross rent (or pro rata share of the gross rent in a group home). The termination of project assistance payments, however, would not affect the family's rights under the lease or preclude the resumption of payments if, as a result of later changes, the family again were to meet the income eligibility requirements, and if project assistance for the family's unit or residential space was available under the PAC. To be eligible for resumed payments, a family would not be required to reestablish its eligibility for occupancy under other tenant selection criteria. Termination of assistance in accordance with other HUD requirements such as failure to submit requested verification information is treated at proposed § 885.950(c)(3)(ii).

5. *Obligations of the family (Section 885.955).* To ensure that the major obligations of the families occupying projects for handicapped families are addressed, the proposed rule would add § 885.955. This section would require the family to (1) pay amounts due under the lease directly to the Borrower; (2) provide necessary certifications, releases, information or documentation as HUD or the Borrower determine to be necessary; (3) permit the Borrower to conduct reasonable inspections; and (4) notify the Borrower before vacating the dwelling unit or residential space. The section would also contain restrictions on the use of the unit or residential space and on transfer of the unit or residential space and the assignment of the lease, and would prohibit the family from receiving assistance under any other Federal housing assistance program while occupying, or receiving assistance for the occupancy of, a unit or residential space governed by Part 885.

6. *Overcrowded and underoccupied units (Section 885.960).* Section 885.960 would provide that the Borrower is responsible for determining whether an assisted unit is overcrowded or underoccupied. If the Borrower makes such a determination, the project assistance payments would not be reduced or terminated until the family is relocated. (Vacancy payments for the vacated unit would be governed by § 885.945.)

7. *Lease requirements (Section 885.965).* Section 885.965 of the proposed rule provides that the initial term of the lease must be for at least one year. Occupancy limited by transitional programs is not permitted. Unless the lease has been terminated by appropriate action by the Borrower or family, upon expiration of the lease term the family and the Borrower may execute a new lease for a term of at least one year, or may take no action. If no action is taken, the lease would automatically be renewed for successive terms of one month. Under this proposed section, all leases may contain (and in the case of a lease term for more than one year must contain) a provision permitting the family to terminate on 30 days' notice. The form of the lease would be prescribed in a HUD handbook. In addition to the required provisions in the handbook, this section would permit the Borrower to include a lease provision permitting the Borrower to enter the leased premises at any time without advance notice where there is reasonable ground to belive that an emergency exists or that the health or safety of a family member is endangered.

8. *Termination of tenancy and modification of lease (Section 885.970).* Subpart A of 24 CFR Part 247—Evictions from Certain Subsidized and HUD-owned Projects, applies to all decisions by a landlord to terminate the occupancy of tenants in a subsidized project and prescribes procedures for modification of leases. As defined in § 247.2(e), "subsidized project" includes a multifamily housing project which receives the benefit of a subsidy in the form of direct loans under section 202. Proposed § 885.970 would apply the Part 247 provisions to section 202 projects for handicapped families.

9. *Security deposits (Section 885.972).* Provisions governing security deposits would be covered at § 885.972. Under the proposed rule, the Borrower: (1) Must require each family occupying an assisted unit or residential space to pay a security deposit equal to the greater of $50 or one month's total tenant payment, and (2) may require each family occupying an unassisted unit or residential space to pay a security deposit equal to one month's rent payable by the family. The family would be expected to pay the security deposit from its own resources and other available public or private resources.

The Borrower would be required to place all security deposits in a segregated interest-bearing account and would be required to maintain a record of the amount in this account that is attributable to each family in residence in the project. Interest accrued would be allocated to each family's balance annually and at the time the family vacates the unit or residential space. Unless prohibited under State or local law, the Borrower would be permitted to deduct the administrative cost of computing each family's allocation up to the amount of the family's annual accrued interest. The amount in the segregated interest-bearing account must at all times be equal to the total amount collected from families in occupancy, plus accrued interest, less allowable administrative cost adjustments. The Borrower would also be required to comply with applicable State and local law concerning interest payments on security deposits.

The Borrower would be permitted to use the security deposit as reimbursement for any unpaid family contribution and other amounts that the family owes under the lease. If the family owes no amounts under the lease, the proposed rule would require the Borrower to refund the security deposit balance to the family. If the family owes amounts under the lease and the amount is less than the security deposit balance, the excess balance would be remitted to the family. If the security deposit balance is not sufficient to reimburse the Borrower for the amount owed under the lease of an assisted unit or residential space, § 885.972 would permit the Borrower to claim reimbursement from HUD for the lesser of the amount owed, or one month's contract rent less the amount of the family's security deposit balance.

The proposed rule would required the Borrower to provide itemized statements of security deposit disbursement and other documents; would require the family to provide forwarding addresses or to arrange for refund pick up; and would provide for informal meetings to resolve security deposit disagreements between the parties. Additionally, the proposed rule would provide that upon the death of a member of a family, the decedent's interest, if any, in the security deposit would be governed by State or local law.

As noted above, the security deposit provision would contain numerous references to State or local law. For example, the Borrower would be required to comply with applicable State and local law governing the payment of interest on security deposits (§ 885.972(b)(1)). The intent of these provisions is to ensure that the law which is most protective of the family's interest will be applied.

10. *Adjustment of rents (Section 885.975).* To ensure that the contract rents continue to reflect the total actual necessary and reasonable costs of developing and operating the project (see section 202(b)(4)(B)), § 885.975(e) provides for the adjustment of contract

rents. The proposed rule provides that HUD would compute the contract rent adjustment based on the sum of the budgeted project operating costs and debt service with adjustments for vacancies, for the project's non-rental income and for other factors HUD determines to be appropriate.

(It should be noted that one of the items used in the computation of the HUD-approved budget will be affected by the annual adjustment factor for the section 8 program. As provided in § 885.945, the amount of the annual deposit for the replacement reserve for all projects is adjusted based on the automatic adjustment factor.)

Paragraph (b) of this section would provide that during the term of the PAC the rent payable by families occupying units or residential spaces that are not assisted under the contract will be equal to the contract rent computed under paragraph (a). This paragraph reflects HUD's existing policy with regard to such rents and is necessary to prevent the subsidization of unassisted units by assisted units and *vice versa*.

11. *Adjustment of utility allowances [Section [illegible]].* Section [illegible] addresses the adjustment of utility allowances for assisted units in independent living complexes. This provision would state that, in connection with contract rent adjustments under § 885.975(a), the Borrower must submit an analysis of the project's utility rate. If a change would result in a cumulative increase of 10 percent or more in the most recently approved utility allowance, the Borrower would be required to advise HUD and request approval of new utility allowance for assisted units. The Borrower would also be required to notify families of the adjustment and to make a corresponding adjustment of tenant rent and the project assistance payment for the assisted unit.

12. *Vacancy payments [Section [illegible]].* Section [illegible] would prescribe the conditions for the receipt of vacancy payments under the PAC. This section generally would provide for vacancy payments in the amount of 80 percent of contract rents for the first 60 days of vacancy during or after rent-up. For vacancies longer than 60 days, the Borrower could receive additional vacancy payments in an amount equal to the principal and interest payments required to amortize the portion of the debt service attributable to the vacant unit or residential space for up to 12 months. Conditions governing the receipt of vacancy payments would vary depending on whether the vacancy began during or after rent-up and whether it continues for longer than 60 days.

VIII. Other Matters

In addition to the provisions discussed above, the proposed rule would revise Part 812 to reflect the addition of the project assistance payments provisions, and would add various new definitions to Part 885 to reflect the requirements of the section 202 program for handicapped families.

IX. Findings and Certifications

A finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410–0500.

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule does not affect the amount of funds available under the section 202 program. Rather, the rule modifies and updates the program requirements to implement recent statutory revisions designed to ensure that the program will meet the special housing and related needs of nonelderly handicapped families. While the rule will modify the subsidy mechanism and the development procedures for the section 202 program, HUD does not believe that the economic impact on small entities will be substantial.

This rule was listed as item 920 in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13854, 13872) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number is 14.157, Housing for the Elderly or Handicapped.

The collection of information requirements contained in this rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980. The sections of the proposed rule identified in the matrix below have been determined by the Department to contain collection of information requirements. Information on these requirements is provided as follows:

TABULATION OF ANNUAL REPORTING BURDEN,[1] PROPOSED RULE—SECTION 202 PROJECTS FOR NONELDERLY HANDICAPPED FAMILIES

Description of information collection	Section of 24 CFR affected	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
Application submission requirements, initial loan closing requirements (2502-0267)	885.710, 885.815	480	1	480	26.7	12,816.0
Affirmative Fair Housing marketing requirements (2502-0267)	885.740(a)(6)	480	1	480	(†)	(†)
Fair Housing advertising and poster guidelines (2502-0267)	(a)(7)	480	1	480	(†)	(†)
Davis-Bacon Labor Standards (2502-0267)	60	480	1	480	(†)	(†)
Relocation assistance (2502-0267)	(a)	480	1	480	(†)	(†)
Inspection for lead-based paint hazards	(f)	10	1	10	2	20.0
Borrower's appeal of loan cancellation (2502-0267)	885.770(b)(2)	10	1	10	(†)	(†)

TABULATION OF ANNUAL REPORTING BURDEN,[1] PROPOSED RULE—SECTION 202 PROJECTS FOR NONELDERLY HANDICAPPED FAMILIES—Continued

Description of information collection	Section of 24 CFR affected	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
Request to substitute Subpt. G project assistance payments for Sec. 8 assistance payments	[illegible]	10	1	10	1	1
Site information (2502-0267)	[illegible]	200	1	200	(†)	(†)
Request for direct loan processing (2502-0267)	885.800	[illegible]	1	200	11.2	[illegible]
Request for loan disbursement (2502-0187)	885.829	200	12	2,400	.8	[illegible]
Cost certification (2502-0044)	885.825	[illegible]	1	[illegible]	58	[illegible]
Project Assistance Contract	885.900	200	1	200	8	[illegible]
Leasing to eligible families (2502-0371)	885.915	200	1	200	.1	20.0
Notice upon PAC expiration	[illegible]	0	[2]1	0	0	0
FHEO marketing plan and requirements (2502-0371)	[illegible]	200	1	200	.75	150.0
List of leased and unleased units; justification for latter (2502-0371)	(a)(3)	200	12	2,400	.25	[illegible]
HUD approval of contracting for services (2502-0371)	(c)(1)	50	1	50	1	50.0
Borrower's promotion of minority and women's business enterprises (2502-0371)	(c)(2)	200	1	200	1	[illegible]
Audited financial statements (2502-0371)	(d)	200	1	200	2	400.0
Maintenance of records of racial, ethnic, gender and place of previous residency data (2502-0371)	(f)	200	1	200	.25	[illegible]
Administration of reserve (2502-0371)	885.945(d)	200	1	200	.5	100.0
Application for admission (2502-0371)	885.950(a)	200	1	3,800	[illegible]	900.0
Waiting list (2502-0371)	[illegible]	200	12	[illegible]	.25	[illegible]
Notification of rejection due to ineligibility; review if appealed (2502-0371)	(b)(3)	50	1	50	.25	12.5
Re-examination of family income and composition (2502-0371)	(c)	200	1	3,600	.25	900.0
Obligation of family (2502-0371)	885.955	200	1	3,800	.1	380.0
Lease requirements (2502-0371)	885.965	200	1	[illegible]	.1	[illegible]
Security deposits (2502-0371)	885.972	[illegible]	1	[illegible]	.1	380.0
Justification for rent Adjustments (2502-0371)	885.975	20	1	20	2	[illegible]
Analysis of utility cost increases (2502-0371)	885.980	200	1	[illegible]	8	400.0
Conditions for receipt of vacancy payments (2502-0371)	885.985	10	1	[illegible]	.5	5.0
Total Annual Burden						[illegible]

[1] The annual reporting burden itemized for OMB clearance numbers 2502-0267, 2502-0187, 2502-0044 and 2502-0371 on this table was included in the calculation of annual burden at the most recent approval of each, and therefore does not represent an increase in the Office of Housing information collection inventory.

[2] Not necessary until end of 20-year contract.

(†) The burden hours for these items are included under application submission requirements.

List of Subjects

24 CFR Part 813

Low- and moderate-income housing.

24 CFR Part 885

Aged, Grant programs, Housing and community development, Handicapped, Loan programs: housing and community development, Low- and moderate-income housing.

For the reasons set forth in the preamble, Title 24 of the Code of Federal Regulations Parts 813 and 885 would be amended to read as follows:

PART 813—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS AND RELATED PROGRAMS

1. The authority citation for Part 813 would continue to read as follows:

Authority: Secs. 3, 5(b), 8 and 16, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f and 1437n); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Section 813.101 would be revised to read as follows:

§ 813.101 Purpose and applicability.

This part establishes definitions, policies and procedures related to income limits and the determination of eligibility, income and rent for applicants and tenants in housing assisted under section 8 of the United States Housing Act of 1937 ("the 1937 Act"). However, § 813.107 and the definitions of Gross Rent, Tenant Rent, Total Tenant Payment, Utility Allowance and Utility Reimbursement found in § 813.102 do not apply to families assisted under the Housing Voucher Program (24 CFR Part 887). The definitions, policies and procedures also apply to projects that are assisted with loans under section 202 of the Housing Act of 1959 and that receive housing assistance payments under section 8 of the 1937 Act (see 24 CFR Part 885, Subparts B through D) or project assistance payments under section 202(h) of the Housing Act of 1959 (see 24 CFR Part 885, Subpart G). (See 24 CFR Part 913 for the analogous rule applicable to the Public Housing and Indian Housing Programs.)

3. In § 813.102, the definitions of owner and utility allowance would be revised to read as follows:

§ 813.102 Definitions.

* * * * *

Owner. The meaning ascribed to such term in the pertinent program regulations. As used in this Part, where appropriate, Owner shall also include a Borrower as defined in 24 CFR Part 885.

* * * * *

Utility Allowance. If the cost of utilities (except telephone) and other housing services for an assisted unit is not included in the Contract Rent but is the responsibility of the Family occupying the unit, an amount equal to the estimate made or approved by a PHA or HUD under applicable sections of these regulations (see 24 CFR Parts 880, 881, 882, 883, 884, 885, and 886) of the monthly costs of reasonable consumption of such utilities and other services for the unit by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment. (In the case of shared housing, the amount of

the Utility Allowance for an assisted Family is calculated by multiplying the Utility Allowance for the entire unit by the ratio derived by dividing the number of bedrooms in the Assisted Family's private space by the number of bedrooms in the entire unit. In the case of an assisted individual sharing a one-bedroom unit with another person, the amount of the Utility Allowance for the assisted individual is one-half of the Utility Allowance for the entire unit.

* * * * *

4. Section 813.109(a) would be revised to read as follows:

§ 813.109 Initial determination, verification, and reexamination of Family income and composition.

(a) *Responsibility for initial determination and reexamination.* The Owner of PHA shall be responsible for determination of eligibility for admission, for determination of Annual Income, Adjusted Income and Total Tenant Payment, and for reexamination of Family income and composition at least annually, as provided in pertinent program regulations and handbooks (see, *e.g.*, Part 860, Subpart F and Part 861, Subpart F, which, for the purposes of this part shall also apply, as appropriate, to projects developed under Part 885, Subparts B through D; Part 882, Subparts B and E; Part 883, Subpart C; Part 884, Subpart B; Part 885, Subpart G; Part 886, Subparts A and C; and Part 887, Subpart H). As used in this part, the "effective date" of an examination or reexamination refers:

(1) In the case of examination for admission, to the effective date of initial occupancy; and

(2) In the case of a reexamination of an existing tenant, to the effective date of the redetermined housing assistance payment with respect to the Housing Voucher Program (Part 887) and the effective date of the redetermined Total Tenant Payment for all programs.

* * * * *

PART 885—LOANS FOR HOUSING FOR THE ELDERLY OR HANDICAPPED

5. The authority citation for Part 885 would be revised to read as follows:

Authority: Sec. 202, Housing Act of 1959 (12 U.S.C. 1701q); sec. 8, United States Housing Act of 1937 (42 U.S.C. 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

6. Section 885.1 would be revised to read as follows:

§ 885.1 Purpose and policy.

(a) *Purpose.* The program under this part provides direct Federal loans under section 202 of the Housing Act of 1959 (42 U.S.C. 1701q) for housing projects serving elderly or handicapped families and project assistance payments for projects serving nonelderly handicapped families. The housing projects shall provide the necessary services for the occupants, which may include, but are not limited to: Health, continuing education, welfare, informational, recreational, homemaking, counseling, and referral services, as well as transportation where necessary to facilitate access to these services.

(b) *General policy.* A loan made under this part shall be used to finance the construction or the substantial rehabilitation of projects for elderly or handicapped families, or for the acquisition, with or without moderate rehabilitation, of existing housing and related facilities for group homes for nonelderly handicapped individuals.

(c) *Applicability.* (1) Subparts B through D of this part apply to projects for elderly or handicapped families that receive loans under section 202 of the Housing Act of 1959 and housing assistance payments under section 8 of the United States Housing Act of 1937. No project for handicapped (primarily nonelderly) families is eligible for loans or housing assistance payments under Parts B through D, except under a reservation of loan and contract authority made before (*insert effective date of final rule*).

(2) Subpart G of this part applies to projects for nonelderly handicapped families receiving loans under section 202 and project assistance payments under section 202(h) of the Housing Act of 1959. Subpart G may also apply to projects for handicapped families that received a reservation of loan authority under Subparts B through D under the circumstances described in § 885.775.

7. In § 885.5, the definition of "Elderly or Handicapped Families" would be removed, the definitions of "Application" and "Handicapped Person" would be revised and definitions for "Agreement to Enter into Project Assistance Contract", "Annual Income", "Assisted Unit", "Contract Rent", "Elderly Family", "Family", "Gross Rent", "Group Home", "Handicapped Family", "Housing for Handicapped Families", "Independent Living Complex", "Independent Public Accountant", "Nonelderly Handicapped Families", "Project Account", "PAC", "Project Assistance Payment", "Rent", "Tenant Rent", "Total Tenant Payment", "Utility Allowance", "Utility Reimbursement", and "Vacancy Payment" would be added, in alphabetical order, to read as follows:

§ 885.5 Definitions.

* * * * *

Agreement to enter into project assistance contract means the agreement between the Borrower and HUD which provides that, upon satisfactory completion of the project, HUD will enter into the PAC with the Borrower.

Annual income is defined in Part 813 of this chapter. In the case of an individual residing in an intermediate care facility for the mentally retarded that is assisted under Title XIX of the Social Security Act and this part, the annual income of the individual shall exclude protected personal income as provided under that Act. For the purposes of determining the total tenant payment, the income of such individuals shall be imputed to be the amount that the family would receive if assisted under Title XVI of the Social Security Act.

Application means the application for a section 202 fund reservation, including all required forms and exhibits submitted in response to an invitation for such applications, or a request for admission to a project made by a family on a form prescribed by HUD.

* * * * *

Assisted unit means a dwelling unit that is eligible for assistance under a PAC.

* * * * *

Contract rent means the total amount of rent specified in the PAC as payable by HUD and the family to the Borrower for an assisted unit or residential space.

* * * * *

Elderly family means:

(a) Families of two or more persons the head of which (or his or her spouse) is sixty-two years of age or older;

(b) The surviving member or members of any family described in paragraph (a) living in a unit assisted under this part with the deceased member of the family at the time of his or her death;

(c) A single person who is sixty-two years of age or older; or

(d) Two or more elderly persons living together, or one or more such persons living with another person who is determined by HUD, based upon a licensed physician's certificate provided by the family, to be essential to their care or well being.

Family (eligible family) means an elderly family or a handicapped family (as defined in this section) that meets the project occupancy requirements approved by HUD and, if the family occupies an assisted unit, meets the lower-income requirements described in § 813.102 of this chapter, as modified by the definition of annual income in this section above.

* * * * *

Gross rent is defined in Part 813 of this chapter.

Group home means a single family residential structure designed or adapted for occupancy by nonelderly handicapped individuals.

Handicapped family means:

(a) Families of two or more persons the head of which (or his or her spouse) is handicapped;

(b) The surviving member or members or any family described in paragraph (a) of this definition living in a unit assisted under this part with the deceased member of the family at the time of his or her death;

(c) A single handicapped person between the ages of 18 and 62; or

(d) Two or more handicapped persons living together, or one or more such persons living with another person who is determined by HUD, based upon a licensed physician's certificate provided by the family, to be essential to their care or well being.

Handicapped person or individual means any adult having an impairment which is expected to be of long-continued and indefinite duration, is a substantial impediment to his or her ability to live independently, and is of a nature that such ability could be improved by more suitable housing conditions. A person shall also be considered handicapped if he or she is developmentally disabled, *i.e.*, if he or she has a severe chronic disability that:

(a) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(b) Is manifested before the person attains age twenty-two;

(c) Is likely to continue indefinitely;

(d) Results in substantial functional limitations in three or more of the following areas of major life activity:

(1) Self-care,

(2) Receptive and responsive language,

(3) Learning,

(4) Mobility,

(5) Self-direction,

(6) Capacity for independent living, and

(7) Economic self-sufficiency; and

(e) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

A person shall also be considered to be handicapped if he or she is chronically mentally ill, *i.e.*, if he or she has a severe and persistent mental or emotional impairment that seriously limits his or her ability to live independently (*e.g.*, by limiting functional capacities relative to primary aspects of daily living such as personal relations, living arrangements, work, recreational, etc.), and whose impairment could be improved by more suitable housing conditions. Alcoholism and drug addiction are not included within the definition of chronically mentally ill.

* * * * *

Housing for handicapped families means housing and related facilities occupied by handicapped families that are primarily nonelderly handicapped families.

Independent living complex means a project designed for occupancy by nonelderly handicapped families in separate dwelling units where each dwelling unit includes a kitchen and a bath.

Independent public accountant means a certified public accountant or a licensed or registered public accountant, having no business relationship with the Borrower or Sponsor except for the performance of audit, systems work and tax preparation. If not certified, the independent public accountant must have been licensed or registered by a regulatory authority of a State or other political subdivision of the United States on or before December 31, 1970. In States that do not regulate the use of the title "public accountant", only certified public accountants may be used.

Nonelderly handicapped family means a handicapped family where the head of the family (and spouse, if any) are less than 62 years of age at the time of the family's initial occupancy of a project.

Project account means a specifically identified and segregated account for each project which is established in accordance with § 885.910(b) out of the amounts by which the maximum annual commitments exceeds the amount actually paid out under the PAC each year.

PAC (project assistance contract) means the contract entered into by the Borrower and HUD setting forth the rights and duties of the parties with respect to the project and the payments under the PAC.

Project assistance payment means the payment made by HUD to the Borrower for assisted units as provided in the PAC. The payment is the difference between the contract rent and the tenant rent. An additional payment is made to a family occupying an assisted unit in an independent living complex when the utility allowance is greater than the total tenant payment. A project assistance payment, known as a "vacancy payment", may be made to the Borrower when an assisted unit (or residential space in a group home) is vacant, in accordance with the terms of the PAC.

* * * * *

Rent, in the case of a unit in a cooperative project, means the carrying charges payable to the cooperative with respect to occupancy of the unit.

* * * * *

Tenant rent means the monthly amount defined in, and determined in accordance with Part 813 of this chapter.

Total tenant payment means the monthly amount defined in, and determined in accordance with Part 813 of this chapter.

Utility allowance is defined in Part 813 of this chapter and is determined or approved by HUD.

Utility reimbursement is defined in Part 813 of this chapter.

Vacancy payment means the project assistance payment made to the Borrower by HUD for a vacant assisted unit (or residential space in a group home) if certain conditions are fulfilled, as provided in the PAC. The amount of the vacancy payment varies with the length of the vacancy period and is less after the first 60 days of any vacancy.

Subparts E and F—[Reserved]

8. Subparts E and F would be reserved.

9. Subpart G would be added to read as follows:

Subpart G—Projects for Nonelderly Handicapped Families

Application Procedures and Program Requirements

Sec.

885.700 Allocation of authority.

885.705 Announcement of fund availability and invitation for applications.

885.710 Application contents.

885.717 Project standards.

885.720 Project size limitations.

885.725 Cost containment and modest design standards.

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Selection of Applications and Duration of Fund Reservation

885.750 Review of applications for fund reservation.

885.755 Approval of applications.

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Direct Loan Financing Procedures

885.780 Submission of site information.

Sec.
885.800 Request for direct loan financing.
885.805 Approval of requests for direct loan financing.
885.807 Operating cost standard.
885.810 Amount and terms of financing.
885.812 Prepayment of loans.
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885.905 Term of PAC.
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885.915 Leasing to eligible families.
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885.970 Termination of tenancy and modification of lease.
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Subpart G—Projects for Nonelderly Handicapped Families

Application Procedures and Program Requirements

§ 885.700 Allocation of authority.

§ 885.705 Announcement of fund availability and invitation for applications.

§ 885.710 Application contents.

§ 885.715 Selection system.

§ 885.717 Project standards.

§ 885.720 Site and neighborhood standards.

§ 885.725 Cost containment and modest design standards.

§ 885.727 Development method.

§ 885.730 Processing applications.

§ 885.735 Environmental review.

§ 885.740 Other requirements.

the areas and will be adjusted to take into consideration the relative differences between the areas in the costs of providing housing. Funds allocated to an allocation area may be reallocated to another area under the circumstances described at § 885.730(d)(2).

(c) *Availability of loan authority for housing for the elderly.* If the approvable applications under this subpart require less than the loan authority that is made available for development costs of housing under this subpart, the remaining loan authority shall be made available for housing for the elderly under Subparts B through D of this part, to the extent that housing assistance under section 8 of the United States Housing Act of 1937 is available in connection with such loan authority.

§ 885.705 Announcement of fund availability and invitation for applications.

(a) *Announcement of fund availability.* Following an allocation of authority under § 885.700 above, HUD will publish an announcement of fund availability in the **Federal Register**. The announcement will indicate:

(1) The amount of loan authority (and approximate number of units) made available for housing for handicapped families within each allocation area;

(2) The deadline for receipt of applications; and

(3) Other appropriate guidance to prospective Sponsors.

(b) *Invitation for applications.* Each field office shall publish an invitation for applications for section 202 fund reservation in newspapers of general circulation serving the field office jurisdiction. The field office shall also notify minority media, minority organizations involved in housing and community development, and groups with special interest in housing for handicapped families. Copies of the invitation will be available in the field office.

§ 885.710 Application contents.

(a) *Application.* Each application must include all of the information, materials, forms, and exhibits listed in paragraph (b) of this section. In addition, the application may include site information specified under § 885.730. HUD will review applications and make selections under § 885.750 based on information provided in the application.

(b) *Application contents.* Each application must include:

(1) The name, address, and telephone number of the Sponsor.

(2) The name, title, address, and telephone number of the officer or member of the board of directors of the Sponsor to whom communications should be addressed.

(3) The dollar amount of the section 202 direct loan requested.

(4) A narrative description of the proposed housing, consistent with requirements of §§ 885.717 through 885.727, including:

(i) The name of the locality in which the proposed project is to be developed;

(ii) The development method proposed to be used (New construction, substantial rehabilitation, or, if a group home, acquisition with or without moderate rehabilitation);

(iii) Numbers and types of structures;

(iv) Number of stories;

(v) Number of units by size (number of bedrooms) for an independent living complex, or the number of bedrooms and the number of residents housed in each group home;

(vi) Special amenities or features. If the narrative description indicates that the housing would not comply with the cost containment and modest design standards of § 885.725 (a) through (c), the Sponsor must submit evidence demonstrating that the proposed housing is eligible for an exception from these standards under § 885.725(d).

(vii) For Intermediate Care Facilities serving the mentally retarded, evidence demonstarting that the proposed project will primarily provide housing rather than medical facilities, is or will be licensed by appropriate State agencies, and will receive funding from sources other than HUD for a rent contribution and for the costs of the intermediate care, and such other information as HUD may require to determine the feasibility of the intermediate care facility.

(5) A narrative description of the anticipated occupancy.

(i) The Sponsor must propose project occupancy requirements that limit occupancy to one or more of the following groups: the chronically mentally ill, the developmentally disabled, or the physically handicapped, and must demonstrate a capacity to serve the proposed occupancy group or groups.

(ii) The Sponsor must demonstrate that the proposal does not conflict with State or local plans and policies governing the development and operation of facilities to serve handicapped individuals meeting the proposed project occupancy requirements, including policies and plans involving State funding for and support of supportive services or facilities for handicapped individuals.

(6) A service plan description that includes:

(i) A description of the category or categories of families the housing and facilities are intended to serve;

(ii) A description of the range of supportive services to be provided to the families including:

(A) The name(s) of the agency(s) that will be responsible for providing supportive services and, if an agency is not the Sponsor, a letter of intent from the agency indicating its willingness and ability to provide the services;

(B) The manner in which such services will be provided to the families;

(C) The services that will be provided on- and off-site; and

(D) The staffing plan including residential supervision (if any) and other staff necessary to provide the proposed supportive services.

(iii) Evidence of funding sources for the supportive services that will be provided for compensation, including State and local funds available to assist in the provision of such services, or evidence of commitment to provide the supportive services from agencies that will not be compensated.

(7) Evidence demonstrating that there is an unmet need for the proposed housing in the areas to be served by the project and demonstrating that this need is likely to continue through the term of the project.

(8) A statement whether the Sponsor or any affiliated entity has submitted or is planning to submit other applications as a Sponsor or CoSponsor under this part during the current fiscal year. The Sponsor must also indicate the city and State where any other proposed project will be located, the number of units requested, and the field office where the proposal was or will be submitted.

(9) A request for preliminary determination of eligibility as a nonprofit Sponsor, on a form prescribed by HUD.

(10) A statement describing the Sponsor's ties to the community including any statements of support for the project by members of the community in which the project is to be located and State and local organizations familiar with the needs of handicapped individuals meeting the proposed occupancy requirements.

(11) The names and addresses of the officers and directors of the Sponsor, and such other information as required by HUD, together with a resolution, on a form prescribed by HUD, adopted by the Sponsor's board of directors, agreeing that all officers and directors of the Sponsor and the Borrower will be required to submit conflict of interest certifications.

(12) Satisfactory evidence that the Sponsor:

(i) Has the necessary legal authority to sponsor the project and to assist the Borrower to finance, acquire (with or without moderate rehabilitation), construct or substantially rehabilitate and maintain the project, and to apply for and receive the proposed loan;

(ii) Has an effective tax exemption ruling from the Internal Revenue Service, is a nonprofit corporation organized in the Commonwealth of Puerto Rico that is exempt from income taxation under Puerto Rican law, or is a nonprofit consumer cooperative that is exempt from income taxation under State law; has never been liable for the payment of Federal income taxes; and does not pay patronage dividends; and

(iii) Will form a Borrower (as defined in § 885.5) after the issuance of the section 202 fund reservation, will cause the Borrower to file a request for determination of eligibility and a request for direct loan financing under § 885.800, and will provide sufficient resources to the Borrower to ensure the development and long-term operation of the project.

(13) Evidence of previous participation in HUD programs, if any, by the Sponsor, its officers or directors, on such form as may be prescribed by HUD, and identification of all section 202 fund reservations issued to the Sponsor or any entity affiliated with the Sponsor since May 1, 1976.

(14) A description of any other rental housing projects or any medical facilities sponsored, owned or operated by the Sponsor.

(15) A description of the Sponsor's past or current involvement in any programs or of its provision of services, other than housing, that demonstrates the Sponsor's management capabilities and experience, including a description of the Sponsor's experience in contracting for services with minority business enterprises or minority groups.

(16) A description of any financial default, modification of terms and conditions of financing, or legal action taken or pending against the Sponsor or its officers, directors, or trustees in their corporate capacity.

(17) A description of the Sponsor's ability and willingness to sponsor and to assist the Borrower to develop, own, manage, and provide appropriate services in connection with housing for the nonelderly handicapped.

(18) An estimate of start-up expenses and the source of funds to meet these expenses. If the Sponsor plans to use section 106(b) seed money loans, an application for such loan must be submitted, with required attachments.

(19) Evidence of the Sponsor's financial ability and willingness to fund the minimum capital investment under § 885.810(i) and to ensure the development and long-term operation of the project, including copies of balance sheets and statements of income and expenses for each of the past three years that the Sponsor has operated.

(20) A housing consultant's certificate and contract (if consultant services have been used by the Sponsor).

(21) Evidence that the Sponsor has submitted copies of the application to the State single point of contact for review and comment under 24 CFR Part 52 and Executive Order No. 12372—Intergovernmental Review of Federal Programs.

(22) A signed certification of the Sponsor's intention to comply with the nondiscrimination and equal opportunity requirements of § 885.740(a).

(23) A demonstration that the Sponsor meets all other requirements imposed by HUD. Notice of such requirements will be made available to Sponsors before submission of their applications.

§ 885.717 Project standards.

(a) *Property standards.* Projects under this subpart must comply with HUD Minimum Property Standards.

(b) *Minimum group home standards.* Each group home must provide a minimum of 290 square feet of pro rated space for each resident, including a minimum area of 80 square feet for each resident in a shared bedroom (with no more than two residents occupying a shared bedroom) and a minimum area of 100 square feet for a single occupant bedroom; at least one full bathroom for every four residents; space for recreation at indoor and outdoor locations on the project site; and sufficient storage for each resident in the bedroom and other storage space necessary for the operation of the home.

(c) *Accessibility requirements.* (1) Projects under this subpart must comply with the Uniform Federal Accessibility Standards and 24 CFR Part 8.

(2) All entrances, common areas, units to be occupied by a residential supervisor, and amenities must be readily accessible to and usable by persons with physical handicaps.

(3) In projects for chronically mentally ill individuals, a minimum of 10 percent of all dwelling units in an independent living complex (or 10 percent of all bedrooms and bathrooms in a group home), but at least one of each such space, must be designed to be accessible or adaptable for persons with physical handicaps.

(4) In projects for developmentally disabled or physically handicapped individuals, all dwelling units in an independent living complex (or all

bedrooms and bathrooms in a group home) must be designed to be accessible or adaptable for persons with physical handicaps. A project involving substantial rehabilitation or an acquisition with or without moderate rehabilitation may provide a lesser number if:

(i) The cost of providing full accessibility makes the project financially infeasible;

(ii) Less than one-half of the intended occupants have mobility impairments; and

(iii) The project complies with the requirements of 24 CFR 8.23.

§ 885.720 Project size limitations.

(a) *Maximum project size.* Projects under this subpart are subject to the following project size limitations:

(1) Group homes may not be designed to serve more than 15 persons on one site;

(2) Independent living complexes for chronically mentally ill individuals may not be designed to serve more than 20 persons on one site; and

(3) Independent living complexes for handicapped families in developmental disability or physically handicapped occupancy categories may not have more than 24 units on one site.

(b) *Additional limitations.* Based on the amount of loan authority appropriated for a fiscal year, HUD may impose additional limitations on the number of units or residents that may be proposed under an application for section 202 loan fund reservation. This unit limitation will be published in the annual announcement of fund availability or the invitation for section 202 fund reservation under § 885.705.

§ 885.725 Cost reimbursement and modest design standards.

(a) *Restrictions on amenities.* Projects must be modest in design. Except as provided in paragraph (d) of this section, amenities must be limited to those amenities, as determined by HUD, that are generally provided in unassisted decent, safe and sanitary housing for lower income families in the market area. Amenities not eligible for HUD funding include balconies, atriums, decks, bowling alleys, swimming pools, saunas and jacuzzis. Dishwashers, trash compactors, and space or mechanical hook-ups for washers and dryers in individual units will not be funded in independent living complexes. The use of durable materials to control or reduce maintenance, repair and replacement costs is not an excess amenity.

(b) *Unit sizes.* For independent living complexes, HUD will establish limitations on the size of units and number of bathrooms, based on the number of bedrooms that are in the unit.

(c) *Special spaces and accommodations.* The costs of construction of special spaces and accommodations may not exceed 10 percent of the total cost of construction, except as provided in paragraph (d) of this section. Special spaces and accommodations include multipurpose rooms, game rooms, libraries, lounges and, in independent living complexes, central kitchens and dining rooms. Special spaces and accommodations exclude offices, halls, mechanical rooms, laundry rooms, and parking areas, and dwelling units and lobbies in independent living complexes; and bedrooms, living rooms, dining and kitchen areas, shared bathrooms, and resident staff dwelling units in group homes.

(d) *Exceptions.* HUD may approve a project that does not comply with the cost containment and modest design standards of paragraphs (a) through (c) of this section if:

(1) The Sponsor demonstrates a willingness and ability to contribute the incremental development cost and continuing operating costs associated with the additional amenities or design features; or

(2) The proposed project involves substantial rehabilitation or acquisition with or without moderate rehabilitation, the additional amenities or design features were incorporated into the existing structure before the submission of the application, and the total development cost of the project with the additional amenities or design features does not exceed the cost limits described in § 885.310.

§ 885.727 Prohibited facilities.

Project facilities may not include commercial spaces, infirmaries, nursing stations, spaces dedicated to the delivery of medical treatment or physical therapy, padded rooms, or space for respite care or sheltered workshops. Except for office space used by the Borrower exclusively for the administration of the project, project facilities may not include office space.

§ 885.730 Site and neighborhood standards.

(a) The site and neighborhood standards of § 880.206 (a) through (h), and (j) of this chapter apply to new construction projects. The site and neighborhood standards of § 881.206 (a) through (g), and (i) of this chapter apply to substantial rehabilitation projects and projects involving acquisition with or without moderate rehabilitation.

(b) Projects must be located in neighborhoods where other family housing is located. Except as provided below, projects may not be located adjacent to the following facilities, or in areas where such facilities are concentrated: schools or day-care centers for handicapped persons, workshops, medical facilities, or other housing primarily serving handicapped persons. Projects may be located adjacent to other housing primarily serving handicapped persons if the projects together do not exceed the project size limitations under § 885.720(a).

§ 885.735 Prohibited relationships.

(a) *Conflicts of interest.* Officers, directors, trustees, members, stockholders and authorized representatives of the Borrower, and officers and directors of the Sponsor may not have any financial interest in any contract in connection with the rendition of services, the provision of goods or supplies, project management, procurement of furnishings or equipment, construction of the project, procurement of the site or other matters related to the development and operation of the project. Management contracts (including associated management fees) entered into by the Borrower with the Sponsor or the Sponsor's nonprofit affiliate will not constitute a conflict of interest if no more than one person salaried by the Sponsor or management affiliate serves on the Borrower's board of directors.

(b) *Interest in earnings.* No part of the net earnings of the Borrower or Sponsor may inure to the benefit of any private shareholder, contributor, or individual.

(c) *Control of Borrower or Sponsor.* Neither the Borrower nor the Sponsor may be controlled by, or under the direction of, persons or entities seeking to derive profit or gain as a result of activities undertaken by the Borrower or Sponsor.

(d) *Provision of services.* A person or an entity (including an affiliated entity) may not provide services to a project in more than one of the following capacities: Attorney, architect, contractor, housing consultant, management agent, or seller of the site for the project, except that the same person or entity may serve a project as management agent and housing consultant.

§ 885.740 Other Federal requirements.

(a) *Nondiscrimination and equal opportunity.* Participation in this program requires compliance with:

(1) The requirements of Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601–19) (Fair Housing Act) and its implementing regulations; Executive Order No. 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR Part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR Part 1;

(2) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR Part 146, and the prohibitions against discrimination against otherwise qualified individuals with handicaps under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8;

(3) The requirements of Executive Order No. 11246 (Equal Employment Opportunity) and the regulations issued under the Order at 41 CFR Chapter 60;

(4) The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects) and the implementing regulations at 24 CFR Part 135;

(5) The requirements of Executive Order Nos. 11625, 12432, and 12138 (Minority and Women's Business Enterprises);

(6) The affirmative fair housing marketing requirements of 24 CFR Part 200, Subpart M and the implementing regulations at 24 CFR Part 108;

(7) The fair housing advertising and poster guidelines, 24 CFR Parts 109 and 110.

(b) *Environmental.* The National Environmental Policy Act of 1969, HUD's implementing regulations at 24 CFR Part 50, including the related authorities described in 24 CFR 50.4, and the Coastal Barrier Resources Act of 1982 (16 U.S.C. 3601) apply to this program. For the purposes of Executive Order No. 11988, Floodplain Management, all applications under this program shall be treated as critical actions requiring consideration of the 500-year flood plain.

(c) *Flood insurance.* The Flood Disaster Protection Act of 1973 (42 U.S.C. 4001) applies to this program.

(d) *Labor standards.* For projects that are designed for dwelling use by 12 or more handicapped families (other than projects acquired without rehabilitation), participation in this program is subject to the following requirements.

(1) Not less than the wages prevailing in the locality, as determined by the Secretary of Labor under the Davis-Bacon Act (40 U.S.C. 276a–276a–5), must be paid to all laborers and mechanics employed in the construction or rehabilitation of the project. HUD may waive the Davis-Bacon requirements if laborers or mechanics voluntarily donate their services without full compensation for the purposes of lowering the costs of construction or rehabilitation; the laborers or mechanics are not otherwise employed in the construction or rehabilitation of projects that are assisted under this part and designed for dwelling use by 12 or more families; and HUD determines that any amounts saved are fully credited to the Borrower undertaking the construction or rehabilitation.

(2) Except where the Davis-Bacon requirements have been waived under paragraph (c)(1) of this section, contracts involving employment of laborers and mechanics shall be subject to the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333).

(3) Sponsors, Borrowers, contractors and subcontractors must comply with all related rules, regulations, and requirements.

(e) *Relocation assistance.* The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601) and governmentwide implementing regulations at 49 CFR Part 24 apply to this program.

(f) *Lead-based paint.* (1) The requirements of the Lead-Based Point Poisoning Prevention Act (42 U.S.C. 4821–4846) and implementing regulations at 24 CFR Part 35 (except as superseded in paragraph (f)(2) of this section apply to the dwellings (except zero-bedroom dwelling units) in housing assisted under this Subpart which was constructed or substantially rehabilitated before 1978 and in which any child under seven years of age resides or is expected to reside.

(2)(i) This paragraph implements the provisions of section 302 of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4822, by establishing procedures to eliminate, as far as practicable, the hazards of lead-based paint poisoning with respect to covered structures for which assistance is provided under this program. This paragraph is promulgated under 24 CFR 35.24(b)(4) and supersedes, with respect to the program, the requirements prescribed in Subpart C of 24 CFR Part 35.

(ii) The following definitions apply to this paragraph (f):

Applicable surface means all intact and nonintact painted interior and exterior surfaces of a residential structure.

Chewable surface means all chewable protruding painted surfaces up to five feet from the floor or ground, which are readily accessible to children under seven years of age, e.g., protruding corners, windowsills and frames, doors and frames, and other protruding woodworks.

Defective paint surfaces means paint on applicable surfaces that is cracking, scaling, chipping, peeling, or loose.

Elevated blood lead level or EBL means excessive absorption of lead: that is, a confirmed concentration of lead in whole blood of 25 ug/dl (micrograms of lead per deciliter of whole blood) or greater.

Lead-based paint means a paint surface, whether or not defective, identified as having a lead content greater than or equal to 1 mg/cm^2.

(iii) In the case of a structure constructed before 1978 or substantially rehabilitated prior to 1978, the Sponsor must inspect the structure for defective paint surfaces before it submits site information under § 885.780. If defective paint surfaces are found, treatment in accordance with 24 CFR 35.24(b)(2)(ii) is required. Correction of defective surfaces found during the initial inspection must be completed before initial occupancy of the project.

(iv) In the case of a structure constructed before 1978 or substantially rehabilitated prior to 1978, if the Borrower is presented with test results that indicate that a child under the age of seven years occupies the structure and has an elevated blood lead level (EBL), the Borrower must cause the unit to be tested for lead-based paint on chewable surfaces. Testing must be conducted by a State or local health or housing agency, by an inspector certified or regulated by a State or local health or housing agency, or an organization recognized by HUD. Lead content shall be tested by using an X-ray fluorescence analysis (XRF) or other method approved by HUD. Test readings of 1 mg/cm^2 or higher using an XRF shall be considered positive for presence of lead-based paint. Where lead-based paint on chewable surfaces is identified, covering or removal of the paint surface in accordance with 24 CFR 35.24(b)(2)(ii) is required.

(v) Where abatement will result from rehabilitation activities planned (*i.e.*, where all applicable surfaces will be replaced, covered or otherwise abated as described in this part), these surfaces need not be tested.

(vi) In lieu of the procedures set forth in the proceding clause, the Borrower

may, at its discretion, abate all interior and exterior chewable surfaces in accordance with the methods set out at 24 CFR 35.24(b)(2)(ii).

(vii) The Borrower must take appropriate action to protect tenants from hazards associated with abatement procedures.

(viii) The Borrower must keep a copy of each inspection report for at least three years. If a unit requires testing, or treatment of chewable surfaces based on the testing, the Borrower must keep the test results, and, if applicable, the certification of treatment indefinitely. The records must indicate which chewable surfaces in the units have been tested or treated. If records establish that certain chewable surfaces were tested, or tested and treated, in accordance with the standards prescribed in this section, these surfaces do not have to be tested or treated at any subsequent time.

(g) *Intergovernmental review.* The requirements for intergovernmental review in Executive Order No. 12372 and the implementing regulations at 24 CFR Part 52 are applicable to this program.

Selection of Applications and Duration of Fund Reservation

§ 885.790 Review of applications for fund reservation.

(a) *Preliminary evaluation.* (1) HUD will perform a preliminary review of every application. To be eligible for technical review, the application must meet each of the criteria described below.

(i) The application must be received by HUD at the appropriate address within the time period specified in the invitation, and must be complete.

(ii) The Sponsor must be eligible to participate in the program.

(iii) The proposed facilities and proposed occupancy requirements must be eligible under the program.

(iv) The application must include a supportive services plan meeting the requirements of § 885.710(b)(6).

(2) Following the completion of the preliminary evaluation of all applications, HUD will notify Sponsors of applications that are found to be unapprovable. The notification will be in writing and will explain the reasons for HUD's action.

(b) *Technical review processing.* (1) HUD will perform a technical review of each application that is found to be acceptable under the preliminary evaluation. Technical review processing will consist of the following:

(i) HUD will review the application to determine if:

(A) The Sponsor has demonstrated financial and management capability to carry the project through to completion.

(B) The Sponsor has previous experience in developing or operating housing, medical, or other facilities, or experience in providing supportive services to individuals of the disability group(s) proposed to be housed.

(C) The Sponsor has made a commitment and will be able to provide the preliminary development costs and the minimum capital investment.

(D) The narrative description submitted under § 885.710(b)(4) is appropriate for handicapped individuals meeting the proposed project occupancy requirements, and indicates that the proposed project is likely to comply with the project standards described in § 885.717, the project size limitations of § 885.720, the modest design and cost containment standards of § 885.725, and the facility prohibitions of § 885.727.

(E) The locality (or the site, if the Sponsor has submitted evidence under § 885.780) is likely to meet the site and neighborhood standards of § 885.730. If the Sponsor has submitted site information with the application, HUD will also determine if the site is acceptable under § 885.780, including environmental review and flood hazard requirements. If a Sponsor has provided site evidence and HUD determines that the site is unacceptable, HUD will process the application as if no site evidence has been submitted.

(F) The service plan description under § 885.710(b)(6) is directed to the needs of individuals with the type of disability the project proposes to serve, and demonstrates the Sponsor's ability to provide or assure the provision of the proposed supportive services to such individuals.

(G) The proposed project does not conflict with State or local plans and policies governing the development and operation of facilities to serve individuals with the type of disability the project proposes to serve.

(H) There is evidence of effective demand for the proposed project.

(I) The Sponsor is in compliance with nondiscrimination and equal opportunity requirements.

(J) The application is otherwise responsive to the invitation for applications and the requirements of this part.

(ii) During technical review processing, HUD will also review the comments (if any) received from the State single point of contact, and will determine if the proposed project is located in a locality that is acceptable under § 885.780(c)(3)(i).

(2) Based on the factors set forth in this paragraph (b), HUD will determine which applications are approvable. Selections will be made in accordance with paragraphs (c) and (d) of this section.

(c) *Ranking.* (1) HUD will assign a rating to each application found to be approvable under technical review processing, based upon HUD's assessment of:

(i) The degree to which the Sponsor has demonstrated, relative to other proposals:

(A) Its capacity and commitment to assist the Borrower to carry the project through to long-term operation;

(B) The Sponsor's ability and commitment to provide the Borrower with the financial resources to establish and ensure the long-term operation of the proposed project;

(C) The need in the locality for a project serving handicapped invividuals meeting the proposed project occupancy requirements;

(D) Support for the proposed project from the local community, including State and local organizations familiar with the needs of handicapped individuals meeting the proposed project occupancy requirements; and

(E) The Sponsor's ability to provide or facilitate the provision of the proposed supportive services to handicapped individuals meeting the proposed project occupancy requirements.

(ii) The degree to which the application supports minority enterprise; involves a small research or demonstration project; or provides an innovative housing program or alternative method of meeting lower income housing needs.

(2) HUD may also assign additional rating points to applications that include satisfactory evidence of approvable site (see § 885.780) or, for group homes, that propose to use acquisition with or without moderate rehabilitation as the development method. If additional points for these factors will be awarded, the announcement of funds availability under § 885.705 will include the maximum number of points that may be awarded under each factor.

(3) Within each allocation area, HUD shall rank all approvable applications in order of their rating scores.

(d) *Selection.* (1) Based on the ranking under paragraph (c) of this section, HUD shall select applications in the descending order of funding priority that most closely approximates the loan authority provided to the allocation area.

(2) If the amount of loan authority allocated to an area exceeds the amount necessary to fund all approvable applications in the area, the Department shall transfer the unused loan authority from the area to another area or areas in which there is insufficient loan authority for all approvable applications.

(3) After selection of applications that can be funded with the loan authority allocated to the allocation areas, HUD may select unfunded but otherwise approvable applications for funding from available amounts in the Headquarters Reserve.

(4) Following the selection of applications, HUD will notify the Sponsors of applications that are not approvable after technical review processing under paragraph (b) of this section, and the Sponsors of applications that are not selected for funding under this paragraph (d). The notification will be in writing and will explain the reasons for HUD's action.

§ 885.795 Approval of applications.

(a) *Notice of fund reservation.* A Sponsor whose application is approved will be issued a notice of section 202 fund reservation in a format prescribed by HUD. The notice of fund reservation will specify:

(1) The number and mix of units for an independent living complex or the number of residents approved for a group home, the locality of the proposed project, and the project occupancy requirements approved by HUD;

(2) The amount of the section 202 fund reservation equal to the development cost limit computed under § 885.810(c);

(3) The amount of annual project assistance reserved for the project equal to the sum of the operating cost standard developed under § 885.807 plus the annual debt service on the amount of the section 202 fund reservation (computer at an annual interest rate equal to the loan interest rate under § 885.810(f)(1) is effect on the date the notice is issued);

(4) The deadline for the Sponsor to return a copy of the notification to HUD with an indication of its acceptance;

(5) If the Sponsor did not submit the site information required under § 885.780 with the application, the deadline for the Sponsor to submit such information;

(6) The deadline for the Borrower to submit a request for direct loan financing and a request for determination of Borrower eligibility under § 885.800; and

(7) Other guidance to Sponsors and Borrowers (including any additional evidence required under § 885.800(b)(1)(vii)).

(b) *Withdrawal of approval.* If the Sponsor does not accept the notification by the date specified in the notice of fund reservation, HUD may notify the Sponsor that approval of the application is withdrawn.

(c) *Transfer of reservation.* Except for a transfer of loan fund reservation from the Sponsor to the HUD-approved Borrower established by the Sponsor, no part of the loan fund reservation may be transferred.

(d) *Use of loan funds.* A section 202 fund reservation may be used only for the project that has been approved under the application.

(e) *Amendments.* Subject to the availability of funds, HUD may amend the amount of a fund reservation approved under paragraph (a)(1) of this section at any time before the final closing of a loan.

§ 885.770 Duration of Section 202 fund reservations.

(a) *Extension and cancellation of fund reservation.* The duration of the initial fund reservation is 18 months from the date of issuance of the notice under § 885.755. Subject to the approval of the Assistant Secretary:

(1) The field office may, at any time, issue a notice of loan cancellation if the field office determines that the Borrower is not making satisfactory progress toward the start of construction, rehabilitation, or acquisition.

(2) The field office shall issue a notice of loan cancellation if the construction, substantial rehabilitation, or acquisition with or without moderate rehabilitation of a project is not begun within 18 months after the notice of section 202 fund reservation under § 885.755(a) is issued. This 18-month time period may be extended if HUD determines that the Borrower is making satisfactory progress toward the start of construction, rehabilitation or acquisition with or without rehabilitation. The field office may extend this time period up to 24 months after the notice of section 202 fund reservation is issued. HUD may grant additional extensions of up to 36 months after the notice of section 202 fund reservation is issued.

(b) *Notification procedures.* (1) If HUD determines that a fund reservation must be cancelled under paragraph (a) of this section, the field office shall mail a notice of loan cancellation to the Borrower by certified mail, return receipt requested. The notice of loan cancellation must:

(i) Describe the reasons for the cancellation of the loan authority; and

(ii) Advise the Borrower that it may file an appeal of the cancellation with the field office within 30 days of the receipt of the cancellation notice, and that the failure to file an appeal will result in the cancellation of the loan reservation upon the expiration of the 30-day period.

(2) If the Borrower fails to file an appeal of the loan cancellation within 30 days of the receipt of the cancellation notice, the field office shall cancel the fund reservation and provide a written notice of the cancellation to the Borrower.

(3) If the Borrower files an appeal within 30 days of the receipt of the cancellation notice, HUD Headquarters will review the appeal and will issue a decision on the appeal within 45 days of the receipt of the appeal. HUD will approve the appeal if the Borrower demonstrates that it is making satisfactory progress toward the start of construction, rehabilitation, or acquisition with or without moderate rehabilitation.

(i) If HUD approves the appeal, it shall provide a written notification of the approval to the Borrower. The notification shall indicate the duration of the extended fund reservation.

(ii) If HUD disapproves the appeal, it shall notify the Borrower in writing of the determination, and cancel the fund reservation.

§ 885.775 Transition.

At any time before initial loan closing, a Sponsor or Borrower that received a reservation of loan authority under section 202 of the Housing Act of 1959 and a reservation of contract authority for housing assistance payments under section 8 of the United States Housing Act of 1937 for a project for nonelderly handicapped families under Subparts B through D of this Part, may submit a request to HUD to substitute project assistance payments under this Subpart G for the Section 8 housing assistance payments. After HUD completes its selections for funding in a fiscal year and to the extent that funds are available for the substitution of project assistance, HUD may approve a request if: (a) The project is eligible for assistance under the requirements of this Subpart G; and (b) the project is financially infeasible with contract rents limited by the Section 8 Fair Market Rents or the substitution would otherwise facilitate the development of the project in a timely manner.

Direct Loan Financing Procedures

§ 885.780 Submission of site information.

(a) *Required information.* The following information with respect to the proposed project is not required with the application, but must be provided within the time period specified in § 885.795(a)(5).

(1) A map showing the location of the site and the racial composition of the neighborhood, with any area of racial concentration delineated.

(2) Evidence that the proposed acquisition, construction or rehabilitation is permissible under applicable zoning ordinances or regulations, or a description of the actions required to make the acquisition, construction or rehabilitation permissible under such laws and ordinances and the basis for the Sponsor's belief that proposed actions will be completed successfully before the receipt of commitment for direct loan financing (*e.g.*, a summary of the results of any recent requests for rezoning classifications and the time required for such rezoning, preliminary indications of acceptability from zoning bodies, etc.).

(3) A statement whether the proposed project will displace site occupants. If so, the proposal must state the number of families, individuals, and business concerns to be displaced (identified by race or minority group, and status as owners or renters), must demonstrate that relocation is feasible, and must explain how necessary relocation payments, if any, will be funded. Relocation payments may not be funded from loan proceeds.

(4) A showing that the proposal meets any special requirements or restrictions necessary for compliance with the local HAP.

(b) *HUD review of site information.* HUD will review the Sponsor's submission under paragraph (a) of this section. A site may be approved if:

(1) The site meets the site and neighborhood standards of § 885.730.

(2) The Sponsor has demonstrated that the development of the site is permissible under applicable local zoning ordinances or regulations or will be permissible under such ordinances and regulations before the receipt of the commitment for direct loan financing; and

(3) Any proposed relocation is feasible and necessary relocation payments will be funded from sources other than section 202 loan proceeds.

(c) *Additional site requirements*—(1) *Notification to local government.* When site specific information is received, HUD will forward (if not previously submitted by the Sponsor) a notification, in the form prescribed by HUD, to the chief executive officer (or such persons as that office may designate) of the unit of general local government in which the proposed housing is to be located, and shall invite a response within 30 calender days from the date of the notification letter. HUD will review the comments, if any, received during the response period from the appropriate unit of general local government to determine if the proposed site for the project is approvable under section 213 of the Housing and Community Development Act of 1974.

(2) *Environmental review.* HUD will complete an environmental review in compliance with the National Environmental Policy Act of 1969 and the related authorities in 24 CFR Part 50.

(3) *Flood insurance.* Assistance will not be provided for the acquisition, construction, reconstruction, repair, or improvement of a building located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless (i)(A) the community in which the area is situated is participating in the National Flood Insurance Program in accordance with 44 CFR Parts 59 through 79, or (B) less than a year has passed since FEMA notification to the community regarding such hazards; and (ii) flood insurance on the structure is obtained in accordance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001).

(4) *Coastal barriers.* Assistance will not be provided for projects in an undeveloped coastal barrier designated under the Coastal Barrier Resources Act of 1982 (16 U.S.C. 3601).

(d) *HUD approval.* (1) If HUD determines that a site is approvable under this section, HUD will notify the Sponsor of the approval, including a statement of any specific environmental conditions that must be met as a condition of HUD approval. The Sponsor must obtain site approval under this section before it applies for conditional commitment under § 885.800(c).

(2) If HUD determines that a site is not approvable under this section, HUD will notify the Sponsor of the Disapproval and the reasons for disapproval. If a site is disapproved, the Sponsor may, consistent with its application under § 885.710, obtain a new site and resubmit a request for site approval under this section.

§ 885.800 Request for direct loan financing.

(a) *Request for direct loan financing.* A Borrower established by a Sponsor receiving a fund reservation must submit a request for direct loan financing within the time limit specified in the notice of section 202 fund reservation to the field office serving the area in which the proposed project will be located.

(b) *Request for determination of Borrower eligibility.* Simultaneously with the request for direct loan financing, the Borrower must submit a request for determination of eligibility, on a form or forms prescribed by HUD.

(1) The Borrower will be required to submit the information required of Sponsors under §885.710(b)(1), (2), (11), (12)(ii) and (iii), (13) and (16), as modified by this paragraph:

(i) Borrowers may omit the board of director's resolution required under § 885.710(b)(11), but will be required to submit certifications signed by all officers and directors of the Sponsor and the Borrower certifying that they have not had and will not have any financial interest in any contract, or in any firm or corporation that has a contract, with the Borrower in connection with the rendition of services, the provision of goods or supplies, procurement of furnishings and equipment, construction of the project, procurement of the site, or other matters, whatsoever. In the case of officers and directors of the Sponsor, this certification does not apply to management contracts (including management fees associated with such contracts) entered into by the Borrower with the Sponsor or its nonprofit affiliate. However, more than one person salaried by the Sponsor or management affiliate may serve on the Borrower's board of directors.

(ii) A Borrower will meet the requirements for a tax exemption ruling under § 885.710(b)(12)(ii) if it demonstrates that it applied for a tax exemption ruling under section 501(c) (3) or (4) before filing the request for determination of Borrower eligibility.

(2) Borrowers will be required to submit sufficient evidence to demonstrate:

(i) The Borrower is a nonprofit corporation incorporated separately from the Sponsor;

(ii) The Borrower has the necessary legal authority to finance, acquire (with or without moderate rehabilitation), construct, or substantially rehabilitate and maintain the project, and to apply for and receive the section 202 loan.

(iii) The Borrower meets all corporate organization requirements that HUD may impose, including requirements that: (A) The purposes of the Borrower include the promotion of the welfare of handicapped families; (B) the articles of incorporation and by-laws do not include any references to religion or religious purposes; (C) the articles of incorporation must provide that upon the dissolution of the Borrower, its assets remaining after payment of all debts and liabilities will be conveyed or distributed only to an organization created and operated for nonprofit purposes similar to the Borrower, other

than one created for a religious purpose; (D) the articles of incorporation must permit the Sponsor to appoint and remove a majority of the voting members of the Borrower's board of directors; and (E) the articles of incorporation must provide that the board of directors will be composed of a minimum of seven individuals.

(iv) The Borrower is not authorized to engage in any other business or activity (including the operation of another rental property) or incur any liability or obligation not related to the project.

(v) The Sponsor has fulfilled its commitment to provide resources to the Borrower, as described in the Sponsor's application under § 885.710(b) (12)(iii) and (19).

(vi) The Borrower has submitted a request for preliminary determination of eligibility as a mortgagor, on a form prescribed by HUD.

(vii) The Borrower has submitted such additional evidence as HUD may require in the notice of section 202 fund reservation under § 885.755.

(3) If housing consultant services have been used by the Sponsor, the Borrower must execute the housing consultant contract and submit it to HUD with the request for determination of Borrower eligibility.

(c) *Conditional commitment processing.* The request for conditional commitment processing must be on a form or forms prescribed by HUD and must include all required exhibits. During conditional commitment, HUD will:

(1) Determine whether the Borrower has established its eligibility under paragraph (b) of this section.

(2) Establish the amount of the initial contract rents and any initial utility allowances to be provided in independent living complexes.

(i) The amount of the initial contract rent plus any utility allowances shall not exceed the annual reasonable and necessary operating costs of the project plus the debt service on the amount of the section 202 loan.

(ii) Operating cost standards developed under § 885.807 are used to evaluate the reasonableness of the operating costs of the proposed project. HUD may approve operating costs that exceed the applicable operating cost standard (including adjustments under § 885.807(e)).

(iii) If the cost of utilities (except telephone) and other housing services are not included in the initial contract rent for an independent living complex, HUD will establish initial utility allowances for the project based on the monthly cost of a reasonable consumption of utilities and other services for the unit by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment. The cost of utilities and other housing services for group homes will be included in the initial contract rent.

(3) Review the site and project design to determine if the Borrower has presented adequate evidence of site control, and the proposed project complies with the project standards described in § 885.717, the project size limitations of § 885.720, the modest design and cost containment standards of § 885.725, and the facility prohibitions of § 885.727. To assist in this review, Borrowers will be required to submit the following information with their request for conditional commitment:

(i) Documentary evidence that the Sponsor has control of the site.

(ii) A sketch of the site plan showing the general development of the site including the location of the proposed buildings, streets, parking areas and drives, service areas, and unusual site features, and architectural sketches of typical unit plans (including the square feet per unit), floor plans for typical units, floor plans showing special spaces, accommodations and common areas, and the main elevation of each building.

(iii) If the proposed housing does not comply with the cost containment and modest design standards of § 885.725(a) through (c), evidence demonstrating that the proposed housing is eligible for an excepton from these standards under § 885.725(d).

(iv) A statement describing any proposed methods to be used in the construction and rehabilitation of the project that will promote construction efficiencies.

(4) Establish land value.

(5) Evaluate the overall financial feasibility of the project.

(6) Evaluate the adequacy of the Borrower's affirmative fair housing marketing plan.

(d) *Firm commitment processing.* The request for firm commitment processng must be on a form or forms prescribed by HUD and must include all required exhibits. Processing of a request for a firm commitment will include review of the final plans and specifications, review of environmental conditions to site approval, review of the contractor/Borrower's cost estimate, and a review of the conclusions reached during conditional commitment processing. HUD may permit the Borrower to submit a request for firm commitment without previous conditional commitment processing under certain circumstances (*e.g.*, the project involves acquisition with or without moderate rehabilitation or construction projects utilizing designs that have been previously submitted to, and approved by, HUD). Under such circumstances, HUD will perform the steps set forth in paragraph (c) of this section, during firm commitment processing.

(e) *Loan interest rate.* When the request for conditional or firm commitment for direct loan financing is submitted, the Borrower may request that the loan interest rate be computed at the optional interest rate as provided under § 885.810(f)(2). If the Borrower makes such a request, the loan interest rate used for the processing of the request for conditional or firm commitment under paragraph (c) or (d) of this section shall be the optional loan interest rate. If the Borrower does not make a request for the optional rate, the interest rate used for processing the request shall be the interest rate computed under § 885.810(f)(1).

(f) *Modification of contract rents.* Contract rents proposed by a Borrower may be modified by HUD at any time before execution of the agreement to enter into a project assistance contract.

§ 885.805 Approval of requests for direct loan financing.

HUD will review the request for direct loan financing (including the request for determination of Borrower eligibility) and all required exhibits and will notify the Borrower of its approval by issuance of a conditional or firm commitment, as appropriate, or of its disapproval of the request.

(a) *Issuance of conditional commitment.* A conditional commitment will include the following:

(1) The estimated cost of the project;

(2) The land value fully improved (with offsite improvements installed) and, if the proposal involves the rehabilitation of a project, the "as is" value of the site;

(3) The detailed estimates of operating expenses;

(4) The financial requirements;

(5) The loan amount;

(6) The interest rate used in processing the request;

(7) The approved contract rents and utility allowances; and

(8) The deadline for the submission of the Borrower's request for a firm commitment for direct loan financing.

(b) *Issuance of firm commitment.* A firm commitment will include the following:

(1) Approval of the final plans and specifications;

(2) A statement that the contractor/Borrower's cost estimates have been reviewed;

(3) Reaffirmation of the conclusions reached during conditional commitment processing or a statement describing the approved changes to earlier conclusions;

(4) The interest rate used n the processing of the request.

If the Borrower was permitted to apply for a firm commitment without going through conditional commitment processing, the items listed in paragraph (a) of its section shall be included in the issuance of the firm commitment for direct loan financing. Issuance of a firm commitment evidences HUD's approval of the request for direct loan financing, and sets forth the terms and conditions upon which the loan shall be made and the loan proceeds disbursed.

(c) *Cancellation.* If a request for Borrower eligibility or a request for conditional or firm commitment for direct loan financing is not submitted within the time periods specified in the notice of section 202 fund reservation or in the conditional commitment (as appropriate), HUD may cancel the fund reservation under § 885.770.

§ 885.807 Operating cost standard.

(a) *General.* At least annually, HUD shall establish operating cost standards based on the average annual operating cost of comparable housing for handicapped families in each field office. The operating cost standards shall be developed for group homes based on the number of residents, and for independent living complexes based on the number of units. HUD may adjust the operating cost standard applicable to an approved project to reflect additional operating costs necessary to serve handicapped individuals meeting the project occupancy requirements, and to reflect differences in costs based on location within the field office jurisdiction. The operating cost standard will be used to determine the amount of the project assistance reserved for a project under § 885.755(a)(3) and to review the reasonableness of operating costs for the establishment of initial contract rents at the time of issuance of the conditional commitment under under § 885.800(a).

(b) *Operating cost.* Costs included in the computation of the operating cost standard are:

(1) Administrative expenses, including salary and management expenses related to the provision of shelter. Operating costs exclude expenses related to administering, or managing the provision of, supportive services.

(2) Maintenance expenses, including routine and minor repairs and groundskeeping.

(3) Security expenses.

(4) Utilities expenses, including gas, oil, electricity, water, sewer, trash removal, and extermination services. Operating costs exclude telephone services for families.

(5) Taxes and insurance.

(6) Allowances for reserves.

§ 885.810 Amount and terms of financing.

(a) *Amount of financing.* The amount of financing approved shall be the amount stated in the notice of fund reservation, including any increase approved by HUD before the final closing of a loan. The amount of financing may not exceed the lesser of the amounts provided in paragraphs (b) through (e) of this section.

(b) *Estimated development cost.* The amount of the loan may not exceed the total estimated development cost of the project (as determined by HUD), less the incremental development cost and capitalized operating costs associated with excess amenities and design features to be paid for by the Sponsor under § 885.725(d)(1).

(c) *Development cost limit.* (1) For independent living complexes, the total development cost of the property or project attributable to dwelling use (less the incremental development cost and capitalized operating costs described in paragraph (b) of this section) may not exceed:

(i) For independent living complexes without elevators:

(A) $28,032 per family unit without a bedroom;

(B) $32,321 per family unit with one bedroom;

(C) $38,979 per family unit with two bedrooms;

(D) $49,693 per family unit with three bedrooms;

(E) $55,583 per family unit with four or more bedrooms.

(ii) For independent living complexes with elevators:

(A) $29,500 per family unit without a bedroom;

(B) $33,816 per family unit with one bedroom;

(C) $41,120 per family unit with two bedrooms;

(D) $53,195 per family unit with three bedrooms;

(E) $58,392 per family unit with four or more bedrooms.

(2) For group homes, the total development cost of the project may not exceed the cost limit for the project. HUD will periodically establish cost limits for various sizes of group homes by publishing a notice of the cost limits in the **Federal Register**. The cost limits will reflect those costs reasonable and necessary to develop a project of a size that will accommodate the specified number of residents and comply with HUD minimum property standards; the minimum square footage requirements, bathroom and recreational area requirements of § 885.717; cost containment and modest design standards of § 885.725 and other design requirements applicable to group homes under this part. To develop the cost limit for group homes, HUD will use commercially available construction cost indices and construction cost data for recently completed comparable group homes.

(3) Increased mortgage limits.

(i) The Assistant Secretary may increase the cost limits set forth in paragraphs (c) (1) and (2) of this section by up to 110 percent in any geographic area where the cost levels require, and may increase the cost limits by up to 140 percent on a project-by-project basis.

(ii) If the Assistant Secretary finds that high construction costs in Alaska, Guam or Hawaii make it infeasible to construct dwellings, without the sacrifice of sound standards of construction, design, and livability, within the cost limits provided in this paragraph (c), the principal amount of mortgages may be increased to compensate for such costs. The increase may not exceed the limitations established under this section (including any high cost area adjustment) by more than 50 percent.

(d) *Rehabilitation projects—additional limits.* A loan that involves a project to be rehabilitated is subject to the following additional limitations:

(1) *Property held in fee.* If the Sponsor is the fee simple owner of a property unencumbered by a mortgage, the maximum loan amount may not exceed 100 percent of the cost of the proposed rehabilitation.

(2) *Property subject to existing mortgage.* If the Sponsor owns the property subject to an outstanding indebtedness that is to be refinanced with part of the section 202 loan, the maximum loan amount may not exceed the cost of rehabilitation plus the portion of the outstanding indebtedness that does not exceed the fair market value of the land and improvements before the rehabilitation, as determined by HUD.

(3) *Property to be acquired.* If the property is to be acquired by the Borrower from an entity other than the Sponsor, and the purchase price is to be financed with a part of the section 202 loan, the maximum loan amount may not exceed the cost of the rehabilitation plus the portion of the purchase price that does not exceed the fair market value of such land and improvements before the rehabilitation, as determined by HUD.

(e) *Leaseholds.* If a loan is secured by a leasehold estate rather than by a fee simple estate, the amount of the loan attributable to the cost of the property may not exceed the value of the leasehold estate.

(f) *Loan interest rate.* The loan is made on the date of the initial loan closing under § 885.815. Loans shall bear interest at a rate determined by HUD in accordance with this section.

(1) *Annual interest rate.* Except as provided under paragraph (f)(2), loans shall bear interest at the rate in effect at the time the loan is made. The loan interest rate shall not exceed:

(i) The average yield on the most recently issued 30-year marketable obligations of the United States during the three-month period immediately preceding the fiscal year in which the loan is made (adjusted to the nearest one-eighth of one percent), plus an allowance to cover administrative costs and probable losses under the program; and

(ii) Any applicable statutory ceiling on the loan interest rate including the allowance to cover administrative costs and probable losses.

(2) *Optional interest rate.* The Borrower may elect an optional loan interest rate. To elect the optional rate, the Borrower must request that HUD determine the loan interest rate at the time of the Borrower's request for conditional or firm commitment for direct loan financing under § 885.800.

(i) If the Borrower elects the optional loan interest rate, the loan interest rate shall not exceed:

(A) The average yield on the most recently issued 30-year marketable obligations of the United States during the three-month period immediately preceding the fiscal year in which the request for commitment is submitted (adjusted to the nearest one-eighth of one percent), plus an allowance to cover administrative costs and probable losses under the program;

(B) The average yield on the most recently issued 30-year marketable obligations of the United States during the one-month period immediately preceding the month in which the request for commitment is submitted (adjusted to the nearest one-eighth of one percent), plus an allowance to cover the administrative costs and probable losses under the program; and

(C) Any applicable statutory ceiling on the loan interest rate including an allowance to cover administrative costs and probable losses under the program.

(ii) The date of submission of a request for conditional or firm commitment is the date that the Borrower submits the complete and acceptable request to HUD under § 885.800. The date of the submission of a request for commitment will not be affected by any subsequent resubmission of the request by the Borrower or by any reprocessing of the request by HUD.

(iii) The Borrower may withdraw its election of the optional interest rate at any time before initial loan closing. If the Borrower elected the optional interest rate with its request for conditional commitment and withdraws its election, the loan will bear interest at the rate determined under paragraph (f)(1), of this section, unless the Borrower elects an optional interest rate with its request for firm commitment. If the Borrower withdraws its election after the date of submission of its request for firm commitment, the loan will bear interest at the rate determined under paragraph (f)(1) of this section.

(iv) If initial loan closing has not occurred within 18 months after the Notice of Section 202 Fund Reservation is issued, the Borrower's election of the optional rate will be cancelled and the loan will bear interest at the rate determined under paragraph (f)(1) of this section.

(3) *Allowance for administrative costs and probable losses.* For the purpose of computing the loan interest rate under paragraphs (f)(1) and (2) of this section, the allowance to cover administrative costs and probable losses under the program is one-fourth of one percent (.25%) per annum for both the construction and permanent loan periods.

(g) *Announcement of interest rates.* (1) HUD will annually announce the loan interest rate determination under paragraph (f)(1) of this section by publishing notice of the rate in the **Federal Register**. The **Federal Register** notice will include a statement explaining the basis for the interest rate determination.

(2) Upon the Borrower's request, HUD will provide available current information concerning the determination of the interest rate under paragraph (f)(2) of this section.

(h) *Security for loan.* The loan will be secured by a first mortgage on real estate in fee simple or a long-term leasehold. The mortgage will be repayable during a term not to exceed 40 years and will be subject to such terms and conditions as HUD may prescribe.

(i) *Minimum capital investment.* Borrowers must provide a minimum capital investment of one-half of one percent (0.5%) of the mortgage amount commited to be disbursed, not to exceed $10,000. Loans made under section 106 of the Housing Act of 1968 may not be used to meet the minimum capital investment requirement. The minimum capital investment will be placed in escrow at the initial closing of the section 202 loan and will be held by HUD or by a HUD-approved escrow agent for not less than three years following the date of initial occupancy. The escrow account may be used for operating expenses or deficits as may be directed by HUD. Any unexpended balance remaining in the minimum capital investment account at the end of the escrow period will be returned to the Borrower.

§ 885.812 Prepayment of loans.

(a) *Prepayment prohibition.* The prepayment (whether in whole or in part) or the assignment or transfer of physical and financial assets of any section 202 project is prohibited, unless the Assistant Secretary gives prior written approval.

(b) *HUD-approved prepayment.* Approval for prepayment or transfer will not be granted unless HUD determines that the prepayment or transfer of the loan is a part of a transaction that will ensure the continued operation of the project until the original maturity date of the loan in a manner that will provide rental housing for the handicapped families on terms at least as advantageous to existing and future tenants as the terms required by the original section 202 loan agreement and any other loan agreements entered into under other provisions of law.

§ 885.815 Requirements prior to initial loan closing.

Before the initial loan closing, the Borrower must furnish such executed documents in such form as HUD may require, including the following:

(a) Agreement to enter into a project assistance contract.

(b) Certificate of incorporation of the Borrower as required by applicable State or local law.

(c) Internal Revenue Service Section 501(c)(3) or (4) tax exemption ruling.

(d) Certification of relationships and nonprofit motives of the Borrower.

(e) Attorney's opinion as to the legal status of the Borrower, building permit, and compliance with zoning laws and requirements.

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(f) Regulatory agreement for nonprofit section 202 Borrowers.

(g) Borrower's oath that the project will not be used for hotel or transient purposes.

(h) Agreement and certification to certify actual costs and as to any financial and family relationships between the Borrower, the architect, general contractor and subcontractors.

(i) Assurance of compliance with HUD regulations under Title VI of the Civil Rights Act of 1964.

(j) Note and first mortgage or deed of trust.

(k) A title policy insuring that the mortgage constitutes a first lien on the project.

(l) Building loan agreement setting forth the conditions for loan disbursement.

(m) Construction, moderate rehabilitation or substantial rehabilitation contract between the Borrower and the general contractor (see § 885.816 for contract award requirements).

(n) Assurance of completion of construction, moderate rehabilitation or substantial rehabilitation contract in the form of corporate surety bonds for payment and performance, each in the amount of 100 percent of the amount of the HUD-estimated construction or rehabilitation cost, or a cash escrow in the amount of 25 percent of the HUD-estimated construction or rehabilitation cost. The corporate surety bond must be issued by a surety company that is satisfactory to HUD.

(o) Escrow agreement in the amount of the cost of any off-site facilities funded by a cash deposit or letter of credit to assure completion of the facilities.

§ 885.816 Requirements for awarding construction contracts.

(a) *Construction contract award.* Awards shall be made only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed construction contract. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(b) *Negotiated noncompetitive construction contracts.* Competitively bid contracts are not required. Negotiated noncompetitive contracts must be cost-reimbursement contracts with a ceiling price, and may provide an incentive payment to the contractor for early completion.

§ 885.820 Loan disbursement procedures.

(a) *General.* Disbursements of loan proceeds shall be made directly by HUD to or for the account of the Borrower and may be made through an approved lender, mortgage servicer, title insurance company, or other agent satisfactory to the Borrower and HUD.

(b) *Timing and amount of disbursement.* Disbursements to the Borrower will be made on a periodic basis, and in amounts not to exceed the HUD-approved cost of the portions of construction or rehabilitation work complete and in place (except as modified in paragraph (d) of this section), minus the appropriate holdback, as determined by HUD.

(c) *Content of disbursement requisition.* Requisitions for loan disbursements must be submitted by the Borrower on forms prescribed by HUD and must be accompanied by such additional information as HUD may require in order to approve loan disbursements under this part, including but not limited to evidence of compliance with the labor standards described at § 885.740(d), Department of Labor regulations, all zoning, building and other governmental requirements, and such evidence of continued priority of the Borrower's mortgage as HUD may prescribe.

(d) *Disbursements for building components stored off-site.* In loan disbursements for building components stored off-site, the term "building component" will mean any manufactured or pre-assembled part of a structure as defined by HUD and which HUD has designated for off-site storage because it is of such size or weight that storage of the components required for timely construction progress at the construction site is impracticable, or because weather damage or other adverse conditions prevailing at the construction site would make storage at the site impracticable or unduly costly. Each building component must be specifically identified for incorporation into the property as provided under paragraph (d)(1)(ii) of this section.

(1) Storage. (i) A loan disbursement may be made for up to 90 percent of the invoice value (to exclude cost of transportation and storage) of the building components stored off-site if the components are stored at a location approved by HUD.

(ii) Each building component shall be adequately marked to be readily identifiable in the inventory of the off-site location. It shall be kept together with all other building components of the same manufacturer intended for use in the same project for which loan disbursements have been made and separate and apart from similar units not for use in the project.

(iii) Storage costs, if any, shall be borne by the general contractor.

(2) Responsibility for transportation, storage and insurance of off-site building components. The general contractor of the project shall have the responsibility for insuring the components in the name of the Borrower while in transit and storage and for delivering or contracting for the delivery of the components to the storage area and to the construction site, including the payment of freight.

(3) Loan disbursements. (i) Before a loan disbursement for a building component stored off-site is made, the Borrower shall:

(A) Obtain a bill of sale for the component;

(B) Provide HUD with a security agreement pledged by a first lien on the building components with the exception of such other liens or encumbrances as may be approved by HUD;

(C) File a financing statement in accordance with the Uniform Commercial Code.

(ii) Before each loan disbursement for building components stored off-site is made, the manufacturer and the general contractor shall certify to HUD that the components, in their intended use, comply with HUD-approved contract plan and specifications.

(iii) Loan disbursements may be made only for components stored off-site in a quantity required to permit the uninterrupted installation on the site.

(iv) The outstanding amount of advances for building components stored off-site may not exceed 50 percent of the total estimated construction cost for the project as specified in the construction contract.

(v) Payments for building components stored off-site will not be approved unless the contractor has a corporate surety bond for payment and performance each in the amount of 100 percent of the amount of the construction contract.

(vi) No single loan disbursement shall be made in an amount less than $10,000.

§ 885.825 Completion of cost certification.

(a) *Requisition for final disbursement.* The Borrower must satisfy the requirements for completion of construction, substantial rehabilitation, or acquisition with or without moderate rehabilitation and receive all required approvals from HUD before submitting a final requisition for disbursement of loan proceeds.

(b) *Cost certification.* The Borrower shall submit to the field office all

documentation required for final disbursement of the loan including:

(1) A certification of actual cost to the Borrower of the construction contract, architectural, legal, organizational, off-site costs, and all other items of eligible expense. The certificate shall not include as actual costs any kickbacks, rebates, trade discounts, or other similar payments to the Borrower or to any of its officers, directors, or members.

(2) For projects with a mortgage of $750,000 or more, a verification of the certificate of actual cost by an independent public accountant acceptable to the field office.

(3) A certification of the general contractor (and of such subcontractors, material suppliers, and equipment lessors as HUD may require) on a form prescribed by HUD, as to all actual costs paid for labor, materials, and subcontract work under the general contract exclusive of the builder's fee and kickbacks, rebates, trade discounts, or other similar payments to the general contractor, the Borrower and any of its officers, directors, stockholders, partners or members.

(c) *Reduction of loan amount and contract rents.* If the certified costs provided under paragraph (b) of this section and approved by HUD are less than the loan amount established under § 885.805, the loan amount and the contract rents will be reduced accordingly.

(d) *Recovery of overpayment.* If the contract rents are reduced under paragraph (c) of this section, the maximum annual commitment under the PAC will be reduced. If contract rents are reduced based on cost certifications made after PAC execution, any overpayment after the effective date of the contract will be recovered from the Borrower by HUD.

Project Assistance Contract

§ 885.900 Project assistance contract.

(a) *Project assistance contract (PAC).* The PAC sets forth rights and duties of the Borrower and HUD with respect to the project and the project assistance payments.

(b) *PAC execution.* (1) Upon satisfactory completion of the project, the Borrower and HUD shall execute the PAC on the form prescribed by HUD.

(2) The effective date of the PAC may be earlier than the date of execution, but no earlier than the date of HUD's issuance of the permission to occupy.

(3) If the project is completed in stages, the procedures of this paragraph (b) shall apply to each stage.

(c) *Project assistance payments to owners under the PAC.* The project assistance payments made under the PAC are:

(1) Payments to the Borrower to assist eligible families leasing assisted units. The amount of the project assistance payment made to the Borrower for an assisted unit (or residential space in a group home) that is leased to an eligible family is equal to the difference between the contract rent for the unit (or pro rata share of the contract rent in a group home) and the tenant rent payable by the family.

(2) Payments to the Borrower for vacant assisted units ("vacancy payments"). The amount of and conditions for vacancy payments are described in § 885.905.

The project assistance payments are made monthly by HUD upon proper requisition by the Borrower, except payments for vacancies of more than 60 days, which are made semiannually by HUD upon requisition by the Borrower.

(d) *Payment of utility reimbursement.* Where applicable, a utility reimbursement will be paid to a family occupying an assisted unit in an independent living complex as an additional project assistance payment. The PAC will provide that the Borrower will make this payment on behalf of HUD. Funds will be paid to the Borrower in trust solely for the purpose of making the additional payment. The Borrower may pay the utility reimbursement jointly to the family and the utility company, or, if the family and utility company consent, directly to the utility company.

§ 885.905 Term of PAC.

The term of the PAC shall be 20 years. If the project is completed in stages, the term of the PAC for each stage shall be 20 years. The term of the PAC for stages of a project shall not exceed 22 years.

§ 885.910 Maximum annual commitment and project account.

(a) *Maximum annual commitment.* The maximum annual amount that may be committed under the PAC is the total of the initial contract rents and utility allowances for all assisted units in the project.

(b) *Project account.* (1) HUD will establish and maintain a specifically identified and segregated project account for each project. The project account will be established out of the amounts by which the maximum annual commitment exceeds the amount actually paid out under the PAC each year. HUD will make payments from this account for project assistance payments as needed to cover increases in contract rents or decrease in tenant income and other payments for cost specifically approved by the Secretary.

(2) If the HUD-approved estimate of required annual payments under the PAC for a fiscal year exceeds the maximum annual commitment for that fiscal year plus the current balance in the project account, HUD will, within a reasonable time, take such steps authorized by section 202(b)(4)(A) of the Housing Act of 1959, as may be necessary, to assure that payments under the PAC will be adequate to cover increases in contract rents and decreases in tenant income.

§ 885.915 Leasing to eligible families.

(a) *Availability of assisted units for occupancy by eligible families.* During the term of the PAC, a Borrower shall make all units (or residential spaces in a group home) available for eligible families. For purposes of this section, making units or residential spaces available for occupancy by eligible families means that the Borrower:

(1) Is conducting marketing in accordance with § 885.940(a);

(2) Has leased or is making good faith efforts to lease the units or residential spaces to eligible and otherwise acceptable families, including taking all feasible actions to fill vacancies by renting to such families; and

(3) Has not rejected any such applicant family except for reasons acceptable to HUD.

If the Borrower is temporarily unable to lease all units or residential spaces to eligible families, one or more units or residential spaces may, with the prior approval of HUD, be leased to otherwise eligible families that do not meet the income requirements of Part 813, as modified by § 885.5. Failure on the part of the Borrower to comply with these requirements is a violation of the PAC and grounds for all available legal remedies, including an action for specific performance of the PAC, suspension or debarment from HUD programs, and reduction of the number of units (or in the case of group homes, reduction of the number of residential spaces) under the PAC as set forth in paragraph (b) of this section.

(b) *Reduction of number of units covered by the PAC.* HUD may reduce the number of units (or in the case of group homes, the number of residential spaces) covered by the PAC to the number of units or residential spaces available for occupancy by eligible families if:

(1) The Borrower fails to comply with the requirements of paragraph (a) of this section; or

(2) Notwithstanding any prior approval by HUD, HUD determines that the inability to lease units or residential spaces to eligible families is not a temporary problem.

(c) *Restoration.* HUD will agree to an amendment of the PAC to provide for subsequent restoration of any reduction made under paragraph (b) of this section if:

(1) HUD determines that the restoration is justified by demand;

(2) The Borrower otherwise has a record of compliance with the Borrower's obligationsunder the PAC; and

(3) Contract and budget authority is available.

(d) *Occupancy by families that are not handicapped.* HUD may relieve the Borrower of the requirement that all units in the project (or residential spaces in a group home) must be leased to handicapped families if:

(1) The Borrower has made reasonable efforts to lease to eligible families;

(2) The Borrower has been granted HUD approval under paragraph (a) of this section; and

(3) The Borrower is temporarily unable to achieve or maintain a level of occupancy sufficient to prevent financial default and foreclosure under the section 202 loan documents.

HUD approval under this paragraph will be of limited duration. Hud may impose terms and conditions to this approval that are consistent with program objectives and necessary to protect its interest in the section 202 loan.

§ 885.930 PAC Administration.

HUD is responsible for the administration of the PAC.

§ 885.935 Default by Borrower.

(a) *PAC provisions.* The PAC will provide:

(1) That if HUD determines that the Borrower is in default under the PAC, HUD will notify the Borrower of the actions required to be taken to cure the default and of the remedies to be applied by HUD including an action for specific performance under the PAC, reduction or suspension of project assistance payment and recovery of overpayments, where appropriate; and

(2) That if the Borrower fails to cure the default, HUD has the right to terminate the PAC or to take other corrective action.

(b) *Loan provisions.* Additional provisions governing default under the section 202 loan are included in the regulatory agreement and other loan documents described in § 885.615.

§ 885.940 Notice upon PAC expiration.

The PAC will provide that the Borrower will, at least 90 days before the end of the PAC contract term, notify each family occupying an assisted unit (or residential space in a group home) of any increase in the amount the family will be required to pay as rent as a result of the expiration. The notice of expiration will contain such information and will be served in such manner as HUD may prescribe.

Project Management

§ 885.940 Responsibilities of Borrower.

(a) *Marketing.* (1) The Borrower must commence and continue diligent marketing activities not later than 90 days before the anticipated date of availability for occupancy of the group home or the anticipated date of availability of the first unit in an independent living complex.

(2) Marketing must be done in accordance with HUD-approved affirmative fair housing marketing plan and all fair housing and equal opportunity requirements. The purpose of the plan and requirements is to achieve a condition in which eligible families of similar income levels in the same housing market have a like range of housing choices available to them regardless of their race, color, creed, religion, sex or national origin.

(3) At the time of PAC execution, the Borrower must submit to HUD a list of leased and unleased assisted units (or in the case of a group home, leased and unleased residential spaces) with a justification for the unleased units or residential spaces, in order to qualify for vacancy payments for the unleased units or residential spaces.

(b) *Management and maintenance.* The Borrower is responsible for all management functions. These functions include selection and admission of tenants, required reexaminations of incomes for families occupying assisted units or residential spaces, collection of rents, termination of tenancy and eviction, and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All functions must be performed in compliance with equal opportunity requirements.

(c) *Contracting for services.* (1) With HUD approval, the Borrower may contract with a private or public entity for performance of the services or duties required in paragraphs (a) and (b) of this section. However, such an arrangement does not relieve the Borrower of responsibility for these services and duties. All such contracts are subject to the restrictions governing prohibited contractual relationships described in § 885.735. (These prohibitions do not extend to management contracts entered into by the Borrower with the Sponsor or its non-profit affiliate.)

(2) Consistent with the objectives of Executive Orders 11625, 12432 and 12138, the Borrower will promote awareness and participation of minority and women's business enterprises in contracting and procurement activities.

(d) *Submission of financial and operating statements.* The Borrower must submit to HUD:

(1) Within 60 days after the end of each fiscal year of project operations, financial statements for the project audited by an independent public accountant and in the form required by HUD, and

(2) Other statements regarding project operation, financial conditions and occupancy as HUD may require to administer the PAC and to monitor project operations.

(e) *Use of project funds.* The Borrower shall maintain a project fund account in a HUD-approved depository and shall deposit all rents, charges, income and revenues arising from project operation or ownership to this account. Project funds must be used for the operation of the project, to make required principal and interest payments on the section 202 loan, and to make required deposits to the replacement reserve under § 885.945, in accordance with a HUD-approved budget. Any funds remaining in the project funds account following the expiration of the fiscal year shall be deposited in the replacement reserve account under § 885.945.

(f) *Reports.* The Borrower shall submit such reports as HUD may prescribe to demonstrate compliance with applicable civil rights and equal opportunity requirements.

§ 885.945 Replacement reserve.

(a) *Establishment of reserve.* The Borrower shall establish and maintain a replacement reserve to aid in funding extraordinary maintenance, and repair and replacement of capital items.

(b) *Deposits to reserve.* The Borrower shall make monthly deposits to the replacement reserve. The amount of the deposit for the initial year of operation shall be an amount equal to 0.8 percent of the cost of the total structures (for new construction projects), 0.4 percent of the cost of the initial mortgage amount (for all other projects), or such higher rate as required by HUD. For the purposes of this section, total structures include main buildings, accessory buildings, garages and other buildings. The amount of the deposits will be adjusted each year by the amount of the annual adjustment factor as described in Part 888.

(c) *Level of reserve.* The reserve must be built up to and maintained at a level determined by HUD to be sufficient to meet projected requirements. Should the reserve reach that level, the amount of the deposit to the reserve may be reduced with the approval of HUD.

(d) *Administration of reserve.* Replacement reserve funds must be deposited with HUD or in a HUD-approved depository in an interest-bearing account. All earnings including interest on the reserve must be added to the reserve. The Borrower shall maintain separate records indicating the amount of funds deposited to the replacement reserve under §§ 885.940(e) and 885.950(b). Funds may be drawn from the reserve and used only in accordance with HUD guidelines and with the approval of, or as directed by, HUD.

§ 885.950 Selection and admission of tenants.

(a) *Application for admission.* The Borrower must accept applications for admission to the project in the form prescribed by HUD. Applicant families applying for assisted units (or residential spaces in a group home) must complete a certification of eligibility as part of the application for admission. Both the Borrower and the applicant family must complete and sign the application for admission. On request, the Borrower must furnish copies of all applications for admission to HUD.

(b) *Determination of eligibility and selection of tenants.* The Borrower is responsible for determining whether applicants are eligible for admission and for the selection of families. To be eligible for admission, an applicant family must be a handicapped family as defined in § 885.5, must meet any project occupancy requirements approved by HUD under § 885.755(a)(1), and must be a lower income family as defined in § 813.102 of this chapter, as modified under § 885.5. Under certain circumstances, HUD may permit the leasing of units (or residential space in a group home) to ineligible families under § 885.915.

(1) Local residency requirements are prohibited. Local residency preferences may be applied in selecting tenants only to the extent that they are not inconsistent with affirmative fair housing marketing objectives and the Borrower's HUD-approved affirmative fair housing marketing plan. Preferences may not be based on the length of time the applicant has resided in the jurisdiction. With respect to any residency preference, persons expected to reside in the community as a result of current or planned employment will be treated as residents.

(2) If the Borrower determines that the family is eligible and is otherwise acceptable and units (or residential spaces in a group home) are available, the Borrower will assign the family a unit or residential space in a group home. If the family will occupy an assisted unit the Borrower will assign the family a unit of the appropriate size in accordance with HUD standards. If no suitable unit (or residential space in a group home) is available, the Borrower will place the family on a waiting list for the project and notify the family when a suitable unit or residential space may become available. If the waiting list is so long that the applicant would not be likely to be admitted for the next 12 months, the Borrower may advise the applicant that no additional applications for admission are being considered for that reason.

(3) If the Borrower determines that an applicant is ineligible for admission or the Borrower is not selecting the applicant for other reasons, the Borrower will proptly notify the applicant in writing of the determination, the reasons for the determination, and that the applicant has a right to request a meeting to review the rejection, in accordance with HUD requirements. The review, if requested, may not be conducted by a member of the Borrower's staff who made the initial decision to reject the applicant. The applicant may also exercise other rights if the applicant believes the applicant is being discriminated against on the basis of race, color, creed, religion, sex, handicap or national origin.

(4) Records on applicants and approved eligible families, which provide racial, ethnic, gender and place of previous residency data required by HUD, must be maintained and retained for three years.

(c) *Reexamination of family income and composition*—(1) *Regular reexaminations.* If the family occupies an assisted unit (or residential space in a group home), the Borrower must reexamine the income and composition of the family at least every 12 months. Upon verification of the information, the Borrower shall make appropriate adjustments in the total tenant payment in accordance with Part 813, as modified by § 885.5, and determine whether the family's unit size is still appropriate. The Borrower must adjust tenant rent and the project assistance payment and must carry out any unit transfer in accordance with HUD standards.

(2) *Interim reexaminations.* If the family occupies an assisted unit (or residential space in a group home) the family must comply with provisions in the lease regarding interim reporting of changes in income. If the Borrower receives information concerning a change in the family's income or other circumstances between regularly scheduled reexaminations, the Borrower must consult with the family and make any adjustments determined to be appropriate. Any change in the family's income or other circumstances that results in an adjustment in the total tenant payment, tenant rent and project assistance payment must be verified.

(3) *Continuation of project assistance payment.* (i) A family occupying an assisted unit (or residential space in a group home) shall remain eligible for project assistance payment until the total tenant payment equals or exceeds the gross rent (or a pro rata share of the gross rent in a group home). The termination of subsidy eligibility will not affect the family's other rights under its lease. Project assistance payment may be resumed if, as a result of changes in income, rent or other relevant circumstances during the term of the PAC, the family meets the income eligibility requirements of Part 813 (as modified in § 885.5) and project assistance is available for the unit or residential space under the terms of the PAC. The family will not be required to establish its eligibility for admission to the project under the remaining requirements of paragraph (b) of this section.

(ii) A family's eligibility for project assistance payment also may be terminated in accordance with HUD requirements for such reasons as failure to submit requested verification information.

§ 885.955 Obligations of the family.

(a) *Requirements.* The family shall:

(1) Pay amounts due under the lease directly to the Borrower.

(2) Supply such certification, release, information or documentation as the Borrower or HUD determines to be necessary. (For families occupying assisted units (or residential spaces in a group home), this will include submissions required for an annual or interim reexamination of family income and composition.)

(3) Allow the Borrower to inspect the dwelling unit or residential space at reasonable times and after reasonable notice.

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(4) Notify the Borrower before vacating the dwelling unit or residential space.

(5) Use the dwelling unit or residential unit space solely for residence by the family, and as the family's principal place of residence.

(b) *Prohibitions.* The family shall not:

(1) Assign the lease or transfer the unit or residential space.

(2) Occupy, or receive assistance for the occupancy of, a unit or residential space governed under this part while occupying, or receiving assistance for occupancy of, another unit assisted under any Federal housing assistance program, including any section 8 program.

§ 885.960 Overcrowded and underoccupied units.

If the Borrower determines that because of change in family size, an assisted unit is larger or smaller than appropriate for the eligible family to which it is leased, project assistance payment with respect to the unit will not be reduced or terminated until the eligible family has been relocated to an appropriate alternate unit. If possible, the Borrower will, as promptly as possible, offer the family an appropriate alternate unit. The Borrower may receive vacancy payments for the vacated unit if the Borrower complies with the requirements of § 885.965.

§ 885.965 Lease requirements.

(a) *Term of lease.* The term of the lease may not be less than one year. Unless the lease has been terminated by appropriate action, upon expiration of the lease term, the family and Borrower may execute a new lease for a term not less than one year, or may take no action. If no action is taken, the lease will automatically be renewed for successive terms of one month.

(b) *Termination by the family.* All leases may contain a provision that permits the family to terminate the lease upon 30 days' advance notice. A lease for a term, that exceeds one year must contain such provision.

(c) *Form.* The form of lease must contain all required provisions, and none of the prohibited provisions specified in HUD handbooks. In addition to required provisions in the handbook governing the Borrower's entry onto the leased premises during tenancy, the Borrower may include a provision in the lease permitting the Borrower to enter the leased premises, at any time, without advance notice, where there is reasonable cause to believe that an emergency exists or that health or safety of a family member is endangered.

§ 885.970 Termination of tenancy and modification of lease.

The provisions of Part 247 of this title apply to all decisions by a Borrower to terminate the tenancy or modify the lease of a family residing in a unit (or residential space in a group home).

§ 885.975 Security deposits.

(a) *Collection of security deposit.* At the time of the initial execution of the lease, the Borrower: (1) Will require each family occupying an assisted unit (or residential space in a group home) to pay a security deposit in an amount equal to one month's total tenant payment or $50, whichever is greater; and (2) may require each family occupying an unassisted unit (or residential space in a group home) to pay a security deposit equal to one month's rent payable by the family. The family is expected to pay the security deposit from its own resources and other available public or private resources. The Borrower may collect the security deposit on an installment basis.

(b) *Security deposit provisions applicable to assisted and unassisted units—(1) Administration of security deposit.* The Borrower must place the security deposits in a segregated interest-bearing account. The Borrower shall maintain a record of the amount in this account that is attributable to each family in residence in the project. Annually for all families, and when computing the amount available for disbursement under paragraph (b)(3) of this section, the Borrower shall allocate to the family's balance the interest accrued on the balance during the year. Unless prohibited by State or local law, the Borrower may deduct for the family, from the accrued interest for the year, the administrative cost of computing the allocation to the family's balance. The amount of the administrative cost adjustment shall not exceed the accrued interest allocated to the family's balance for the year. The amount of the segregated, interest-bearing account maintained by the Borrower must at all times equal the total amount collected from the families then in occupancy, plus any accrued interest and less allowable administrative cost adjustments. The Borrower must comply with any applicable State and local laws concerning interest payments on security deposits.

(2) *Family notification requirement.* In order to be considered for the refund of the security deposit, a family must provide the Borrower with a forwarding address or arrange to pick up the refund.

(3) *Use of security deposit.* The Borrower, subject to State and local law and the requirements of this paragraph, may use the family's security deposit balance as reimbursement for any unpaid family contribution or other amount which the family owes under the lease. Within 30 days (or shorter time if required by State or local law) after receiving notification under paragraph (b)(2) of this section the Borrower must:

(i) Refund to a family owing no rent or other amount under the lease the full amount of the family's security deposit balance;

(ii) Provide to a family owing rent or other amount under the lease a list itemizing any unpaid rent, damages to the unit, and estimated costs for repair, along with a statement of the family's rights under State and local law. If the amount which the Borrower claims is owed by the family is less than the amount of the family's security deposit balance, the Borrower must refund the excess balance to the family. If the Borrower fails to provide the list, the family will be entitled to the refund of the full amount of the family's security deposit balance.

(4) *Disagreements.* If a disagreement arises concerning reimbursement of the security deposit, the family will have the right to present objections to the Borrower in an informal meeting. The Borrower must keep a record of any disagreements and meetings in a tenant file for inspection by HUD. The procedures of this paragraph do not preclude the family from exercising its rights under State or local law.

(5) *Decedent's interest in security deposit.* Upon the death of a member of a family, the decedent's interest, if any, in the security deposit will be governed by State or local law.

(c) *Reimbursement by HUD for assisted units.* If the family's security deposit balance is insufficient to reimburse the Borrower for any unpaid tenant rent or other amount which the family owes under the lease for an assisted unit or residential space and the Borrower has provided the family with the list required by paragraph (b)(3)(ii) of this section, the Borrower may claim reimbursement from HUD for an amount not to exceed the lesser of:

(1) The amount owed the Borrower, or

(2) One month's contract rent, minus the amount of the family's security deposit balance. Any reimbursement under this section will be applied first toward any unpaid tenant rent due under the lease. No reimbursement may be claimed for unpaid rent for the period after termination of the tenancy. The Borrower may be eligible for vacancy payments following a vacancy in accordance with the requirements of § 885.965.

§ 885.975 Adjustment of rents.

(a) *Contract rents.* HUD will calculate contract rent adjustments based on the sum of the project's operating costs and debt service (as calculated by HUD), with adjustments for vacancies, the project's non-rental income, and other factors that HUD deems appropriate. The calculation will be made on the basis of information provided by the Borrower on a form prescribed by HUD.

(b) *Rent for unassisted units.* The rent payable by families occupying units or residential spaces that are not assisted under the PAC shall be equal to the contract rent computed under paragraph (a) of this section.

§ 885.980 Adjustment of utility allowances.

In connection with adjustments of contract rents as provided in § 885.975(a), the Borrower must submit an analysis of any utility allowances applicable in an independent living complex. Such data as changes in utility rates and other facts affecting utility consumption should be provided as part of this analysis to permit appropriate adjustments in the utility allowances for assisted units. In addition, when approval of a utility rate change would result in a cumulative increase of 10 percent or more in the most recently approved utility allowances, the Borrower must advise HUD and request approval of new utility allowances. Whenever a utility allowance for an assisted unit is adjusted, the Borrower will promptly notify affected families and make a corresponding adjustment of the tenant rent and the amount of the project assistance payment.

§ 885.985 Conditions for receipt of vacancy payments for assisted units.

(a) *General.* Vacancy payments under the PAC will not be made unless the conditions for receipt of these project assistance payments set forth in this section are fulfilled.

(b) *Vacancies during rent-up.* For each unit (or residential space in a group home) that is not leased as of the effective date of the PAC, the Borrower is entitled to vacancy payments in the amount of 80 percent of the contract rent (or pro rata share of the contract rent for a group home) for the first 60 days of vacancy, if the Borrower:

(1) Conducted marketing in accordance with § 885.940(a) and otherwise complied with § 885.940;

(2) Has taken and continues to take all feasible actions to fill the vacancy; and

(3) Has not rejected any eligible applicant except for good cause acceptable to HUD.

(c) *Vacancies after rent-up.* If an eligible family vacates an assisted unit (or residential space in a group home) the Borrower is entitled to vacancy payments in the amount of 80 percent of the contract rent (or pro rata share of the contract rent in a group home) for the first 60 days of vacancy if the Borrower:

(1) Certifies that it did not cause the vacancy by violating the lease, the PAC, or any applicable law;

(2) Notified HUD of the vacancy or prospective vacancy and the reasons for the vacancy immediately upon learning of the vacancy or prospective vacancy;

(3) Has fulfilled and continues to fulfill the requirements specified in § 885.940(a) (2) and (3) and § 885.965(b) (2) and (3); and

(4) For any vacancy resulting from the Borrower's eviction of an eligible family, certifies that it has complied with § 885.970.

(d) *Vacancies for longer than 60 days.* If an assisted unit (or residential space in a group home) continues to be vacant after the 60-day period specified in paragraph (b) or (c) of this section, HUD may approve additional vacancy payments for 60-day periods up to a total of twelve months in an amount equal to the principal and interest payments required to amortize that portion of the debt service attributable to the vacant unit (or, in the case of group homes, the residential space). Such payments may be approved if:

(1) The unit was in decent, safe and sanitary condition during the vacancy period for which payment is claimed;

(2) The Borrower has fulfilled and continues to fulfill the requirements specified in paragraph (b) or (c) of this section, as appropriate; and

(3) The Borrower has demonstrated to the satisfaction of HUD that:

(i) For the period of vacancy, the project is not providing the Borrower with revenues at least equal to project expenses (exclusive of depreciation) and the amount of payments requested is not more than the portion of the deficiency attributable to the vacant unit (or residential space in a group home) and

(ii) The project can achieve financial soundness within a reasonable time.

(e) *Prohibition of double compensation for vacancies.* If the Borrower collects payments for vacancies from other sources (tenant rent, security deposits, payments under § 885.972(c), or governmental payments under other programs), the Borrower shall not be entitled to collect vacancy payments to the extent these collections from other sources plus the vacancy payment exceed contract rent.

Dated: September 21, 1988.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 88-24884 Filed 11-1-88; 8:45 am]

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Part III

Federal Reserve System

12 CFR Part 229

Availability of Funds and Collection of Checks; Final and Proposed Rules and Interpretations

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FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Regulation CC; Docket No. R-0643]

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is adopting as a final rule, with minor technical changes, the interim amendment to Regulation CC it adopted in August. The Board adopted the interim rule to conform the definition of "paying bank" in Regulation CC to the Expedited Funds Availability Act as interpreted by a court decision. The court found that in defining a payable through bank as the paying bank where a check is written on one bank but payable through another, Regulation CC was inconsistent with the language of the Act.

EFFECTIVE DATE: October 25, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph R. Alexander, Senior Attorney (202/452-2489), Stephanie Martin, Attorney (202/452-3198), Legal Division; Louise L. Roseman, Assistant Director, Division of Federal Reserve Bank Operations (202/452-3874); Kathleen Brueger, Staff Attorney, Division of Community and Consumer Affairs (202/452-2412). For the hearing impaired only: Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION: On May 13, 1988, the Board issued its Regulation CC—Availability of Funds and Collection of Checks (12 CFR Part 229) to implement the Expedited Funds Availability Act (the "Act") (Title VI of Pub. L. 100-86). 53 FR 19373 (May 27, 1988). In keeping with the Board's view that the Act established a clear link between the time it normally takes a check to be cleared and returned, and the time within which the depositary bank [1] must make the funds available to the depositor, the regulations provided that where a check is payable by one bank but payable through [2] another and sent to the payable through bank for payment or collection, the location of the payable through bank would determine whether a check is local or nonlocal vis-a-vis the despositary bank for the purposes of the funds availability schedules in the regulation.

Shortly after the Board issued Regulation CC, a trade association of credit unions and one credit union whose checks are payable through a nonlocal bank filed suit against the Board seeking to overturn the definition of paying bank to the extent that the definition included a payable through bank where the check was drawn on a credit union. The court granted the plaintiffs' motion for a summary judgment and invalidated Regulation CC's definition of paying bank to the extent that it includes a payable through bank where the check is drawn on a credit union. *Credit Union National Association* v. *Board of Governors*, No. 88-1295 OG (D.D.C. July 28, 1988). The court found that the Board's regulation was inconsistent with the Act to the extent that it defined the payable through bank as the paying bank for purposes of the Act's funds availability requirements.

The Act and Regulation CC took effect five weeks after the court rendered its decision. In order to clarify the duties of banks and others in light of the court's order, the Board issued temporary conforming amendments to Regulation CC. The Board also requested comment on the interim rules pending the Board's consideration of a final rule. 53 FR 31290 (August 18, 1988).

The interim rule primarily affected the definitions and the disclosure rules. Where a check is payable by one bank but payable through another bank, the interim rule provided that the check would be considered local or nonlocal by reference to the location of the payor bank, not by reference to the payable through bank. The interim rule did not affect payable through checks payable by nonbank payors. Further, as payable through checks bear the routing number of the payable through bank, not the payor, provisions in Regulation CC that allowed a depositary bank to rely on the routing number to determine whether a check is local or nonlocal were amended. The interim rule also permitted banks whose initial disclosures were affected by the court's decision to comply with the Act by sending to their customers simple clarifying notices in regularly scheduled mailings.

Approximately 93 percent of the 155 comments the Board received on the interim rule objected to the treatment of bank payable through checks as local or nonlocal based on the location of the payor bank, because the rule creates operational difficulties and increases risks for depositary banks. Many of the commenters suggested means of addressing these operational problems and risks. In a related action today, the Board has requested comment on several proposals to alleviate these operational problems and risks. (See Docket No. R-0648.)

After consideration of the comments, the Board has determined to adopt in final form the interim rule with two technical changes:

(1) To insert the word "or" after the fourth element in the definition of "paying bank," and

(2) Clarify in the disclosure rules and the Commentary that a bank that makes funds available within the time periods required for local checks is not required to make the special disclosure.

List of Subjects in 12 CFR Part 229

Banks, Banking, Federal Reserve System.

Accordingly, the interim rule amending Regulation CC, 12 CFR Part 229, which was published at 53 FR 31290-31296 on August 18, 1988, is adopted as a final rule with the following changes:

PART 229—AVAILABILITY OF FUNDS AND COLLECTION OF CHECKS

1. The authority citation for Part 229 continues to read as follows:

Authority: Title VI of Pub. L. 100-86, 101 Stat. 552, 635; 12 U.S.C. 4001 *et seq.*

2. Section 229.2(z)(4) is revised to read as follows:

§ 229.2 Definitions.

* * * * *

(z) * * *

(4) The bank through which a check is payable and to which it is sent for payment or collection, if the check is not payable by a bank; or

* * * * *

§ 229.16 [Amended]

3. Section 229.16(b)(2) is amended by adding after the first sentence of the footnote the following new sentence to read as follows:

[1] * * * A bank that makes funds from nonlocal checks available for withdrawal within the time periods required for local checks under §§ 229.11, 229.12, and 229.13 is not required to provide this disclosure on payable through checks to its customers. * * *

4. Appendix E—Commentary to Part 229, is amended by adding following the fourth paragraph of the Commentary to § 229.16(b) a new paragraph to read as follows:

Appendix E—Commentary

* * * * *

Section 229.16 Specific Availability Policy Disclosures

(b) * * *

Generally, a bank that distinguishes in its disclosure between local and nonlocal checks based on the routing number on the check must disclose to its customers that certain checks, such as some credit union payable through drafts, will be treated as local or nonlocal based on the location of the bank by which they are payable (e.g., the credit union), and not on the basis of the location of the bank whose routing number appears on the check. A bank is not required to provide this disclosure, however, if it makes the proceeds of both local and nonlocal checks available for withdrawal within the time periods required for local checks in §§ 229.11, 229.12, and 229.13.

* * * * *

By order of the Board of Governors of the Federal Reserve System, October 25, 1988.

William S. Wiles,

Secretary of the Board.

[FR Doc. 88-25038 Filed 11-1-88; 8:45 am]

BILLING CODE 6210-01-M

[1] The Act uses the term "receiving depository institution" to mean "the branch of a depository institution or the proprietary ATM in which a check is first deposited." 12 U.S.C. 4001(20). Because the term "receiving depository institution" is unique to the Act, the Board used the term "depositary bank," which, because it is used in the Uniform Commercial Code ("U.C.C.") and the Board's Regulation J (12 CFR Part 210), is familiar to the banking industry.

[2] When a check states on its face that it is "payable through" a bank, that bank is referred to as the "payable through bank." Under the U.C.C., a payable through bank is not named as the payor, but is designated as a "collecting bank to make presentment." U.C.C. § 3-120. Under the Board's Regulation J, a payable through bank is the "paying bank." 12 CFR 210.2(j).

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Regulation CC; Docket Nos. R-0640 and R-0644]

Availability of Funds and Collection of Checks; Preemption Determinations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final interpretations.

SUMMARY: The Board is publishing final official Board interpretations concerning preemption determinations under its Regulation CC, Availability of Funds and Collection of Checks, for the laws of California, Connecticut, Maine, Massachusetts, New Mexico, New York, and Rhode Island. The Expedited Funds Availability Act provides standards for determining whether State law governing funds availability supersedes, or is preempted by Federal law. Under Regulation CC, the Board will issue preemption determinations with respect to State law upon request.

EFFECTIVE DATE: October 25, 1988.

FOR FURTHER INFORMATION CONTACT: Oliver Ireland, Associate General Counsel (202/452-3625), Joseph R. Alexander, Senior Attorney (202/452-2489), or Stephanie Martin, Attorney (202/452-3198), Legal Division; or Louise L. Roseman, Assistant Director (202/452-3874), Division of Federal Reserve Bank Operations; for the hearing impaired only: Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION:

Background

On May 13, 1988, the Board adopted Regulation CC to carry out the provisions of the Expedited Funds Availability Act (the "Act") (12 U.S.C. 4001-4010). The regulation requires banks to make funds available to their customers within specified time frames and to disclose their funds availability policies to their customers. A number of states have also enacted rules governing funds availability. The Act (Section 606) and Regulation CC (§ 229.20) provide that any provision of state law in effect on or before September 1, 1989, that provides for a shorter hold for a category of checks than is provided under federal law will supersede the federal provision.

Provisions of state law governing funds availability that permit a bank to make funds available for withdrawal in a longer period than permitted under Regulation CC are considered inconsistent and are preempted by Regulation CC. In addition, state disclosure and notice requirements concerning funds availability related to accounts covered by Regulation CC are preempted by the federal disclosure scheme.

Regulation CC provides for Board determinations of whether state law related to the availability of funds is preempted by federal law upon the request of a state, bank, or other interested party.

Discussion

The Board issued for public comment proposed preemption determinations with respect to the laws of Illinois, Maine, and New York on June 22, 1988. 53 FR 24315 (June 28, 1988). At that time, the Board also requested comment on the preemption of proposed amendments to the New York law. The Board issued a final determination with respect to Illinois and New York law on August 18, 1988. 53 FR 32354 (August 24, 1988). The Board deferred final action with respect to Maine law, at the request of the Maine Attorney General's Office, pending the adoption of a revised state regulation. Maine and New York subsequently adopted amendments to their funds availability regulations to conform the state laws more closely to the federal Regulation CC requirements. The revised regulations of both states became effective on September 1, 1988. The Board is now publishing final preemption determinations with respect to the recently adopted laws of Maine and recently amended New York rules.

On August 18, 1988, the Board issued for public comment proposed preemption determinations with respect to the laws of California, Connecticut, Massachusetts, New Mexico, and Rhode Island. 53 FR 32359 (August 24, 1988). The Board received 14 comments on the proposals, which are summarized below. The Board is now publishing final preemption determinations with respect to the laws of these states.

The Board set out principles, at the time it adopted several final state preemption determinations in August, as guides for future preemption determinations. 53 FR 32354 (August 24, 1988). Those principles have been followed in these determinations as well.

Notice of exception hold. The Board adopted in August a preemption principle stating that the state exceptions continue to apply only in those cases where the state schedule is shorter than or equal to the federal schedule, and then only up to the limit permitted by the Regulation CC schedule. The hold can then be further extended by the federal exception in accordance with Regulation CC. Only one exception notice is required where a bank applies a state exception to extend a shorter state schedule to the federal limit, and also a federal exception to further extend the hold. This notice, which must be provided in accordance with § 229.13(g), need only include as the reason the exception was invoked the applicable federal exception.

Disclosures. Section 229.20(c) of Regulation CC provides that state law may be inconsistent with Regulation CC, and therefore may be preempted, where it provides for disclosures or notices concerning funds availability relating to accounts. This rule avoids redundant disclosures and variations in disclosures between states that may confuse bank customers. Some states, however, such as Maine and Massachusetts, require by state law that depository institutions in those states disclose their funds availability policies in accordance with the federal law. Such laws permit the state to enforce disclosure requirements, but do not result in redundancy or variations in disclosure requirements. Because such disclosures are not

inconsistent with the disclosure requirements of Regulation CC, they are not preempted by the federal law.

California. California has different funds availability regulations governing (1) commercial banks and branches and agencies of foreign banks, (2) savings and loan associations and savings banks, (3) credit unions, and (4) industrial loan companies. The California State Banking Department and the State of California Department of Savings and Loan requested, in their comments, that the Board defer adoption of final preemption determinations with respect to the regulations governing commercial banks, branches and agencies of foreign banks, savings and loan associations, and savings banks. The state Banking Department adopted emergency amendments to its funds availability regulations on October 18 to conform those regulations more closely to Regulation CC, while preserving some of the shorter holds contained in the current state regulations. The Department of Savings and Loan adopted emergency regulations on October 7, deferring to the Regulation CC availability requirements. These amendments become effective upon adoption, but are subject to a subsequent public comment period. The state regulators anticipate that the regulations will be adopted in final form in early 1989, and asked that the Board issue final preemption determinations with respect to these regulations at that time. The Board has deferred adoption of final preemption determinations with respect to the regulations issued by the California State Banking Department and the Department of Savings and Loan, pending final adoption of their emergency amendments.

The California Department of Corporations, which regulates credit unions and industrial loan companies, has indicated to Board staff that the Board should not defer adoption of a final preemption determination with respect to the regulations governing credit unions. In addition, the Department of Corporations noted that it had promulgated separate regulations governing FDIC-insured industrial loan companies. Because these institutions are also subject to the Regulation CC requirements, the Department of Corporations suggested that the final preemption determination also address these regulations. Although a preemption determination with respect to the regulations governing industrial loan companies was not issued for public comment, these regulations are identical to those governing credit unions in all but a few details. The Board is publishing a final preemption determination under Regulation CC with respect to the California funds availability regulations applicable to credit unions and industrial loan companies.

The state regulations applicable to California credit unions and industrial loan companies generally provide for longer availability than required under Regulation CC, and are thus preempted by the federal regulation. The availability schedules applicable to certain in-state nonlocal checks, however, are shorter than the nonlocal temporary schedule in Regulation CC, and therefore supersede the federal law. In addition, the state regulation supersedes the federal regulation to the extent that it provides for fewer conditions for next-day availability of certain check deposits.

Under the Board's preemption standards, all state disclosure and notice requirements concerning funds availability relating to accounts subject to Regulation CC are preempted by the federal law. California law requires an institution to provide a general disclosure of its availability policy to customers when the account is opened and provide a notice to the customer when a hold is placed on a particular deposit. A California consumer organization commented that the California requirement for individual hold notices should not be preempted by Regulation CC, because the state requirement is not inconsistent with the federal disclosure scheme, and because the notice requirement can be viewed as a condition to placing a hold on a deposit and thus is an availability requirement in addition to a disclosure requirement.

The Board does not believe that this particular notice requirement should be treated differently from other state disclosure and notice requirements, and therefore the Board has preempted this requirement in California law. The State Banking Department, in a discussion with Board staff, agreed with the Board's proposed determination, in which this requirement would be preempted. The State Banking Department concurred with the view of Board staff that this notice requirement is separate from the availability requirements and is not a condition precedent to the placing of a hold. The specific notice is required by the same section of the statute (§ 866.2(b)) that requires other disclosures to an institution's customers.[1] There is thus no reason for the Board to depart from the general rule that state disclosures that are different from federal disclosures are preempted by the federal law.

Connecticut. Connecticut law provides availability schedules for deposits of on us checks, in-state checks, and out-of-state checks. The state law also provides certain exceptions to those schedules. Generally, the state schedules and exceptions allow longer hold periods than the federal schedules and Regulation CC will preempt; however, out-of-state nonlocal checks will continue to be governed by the shorter state schedule. The state schedules will also continue to apply to items such as nonnegotiable instruments that are not covered by Regulation CC. In addition, the Connecticut law, including disclosure requirements, will continue to apply to accounts, such as savings and time accounts, not subject to Regulation CC. The Board has adopted the proposed Connecticut determination, with revisions addressing a commenter's question relating to the treatment of certain payable through drafts.

Maine. On June 22, 1988, the Board published for public comment a proposed preemption determination under Regulation CC with respect to the Maine funds availability law that was in effect at that time. The Maine Attorney General's office, in its comments to the Board, asked that the Board not issue a final preemption determination based on the state's current regulation, because the state was considering amendments to its regulation. The state anticipated that its revised regulation would be adopted in August 1988, and would become effective on September 1, 1988. Consequently, the Board deferred issuance of a preemption determination with respect to Maine law.

Maine subsequently adopted a revised funds availability regulation that requires funds deposited to any deposit account to be made available for withdrawal in accordance with the Act and Regulation CC. Funds availability policies for transaction accounts must be disclosed in accordance with Regulation CC. Funds availability policies for nontransaction accounts must be disclosed in accordance with state law. The Board has determined that the revised Maine regulation is consistent with Regulation CC with respect to accounts, and therefore the state law is not preempted by the federal law and does not supersede the federal law.

Massachusetts. Massachusetts enacted a law in July 1988, repealing its previous funds availability statute, and replacing it with a requirement that institutions make funds available for withdrawal and disclose their funds availability policies, in accordance with the Act and Regulation CC. Massachusetts law provides, however, that all in-state checks are considered to be local, even though the state is included in two check processing regions. The Board has determined that the state law generally incorporates the federal law, except that state law supersedes Regulation CC to the extent that in-state nonlocal checks must be made available for withdrawal in accordance with the local schedule in Regulation CC. Several technical changes were made to the proposed determination, including a revision reflecting a comment submitted by the Massachusetts Bankers Association, requesting that the Board not infer in its determination that Massachusetts law governs term deposits and interbank deposits.

New Mexico. New Mexico's statute applies only to retail accounts and does not apply to certain instruments that are covered by Regulation CC; Regulation CC would therefore apply to accounts or instruments not covered. New Mexico law, however, applies to time and savings accounts, and is not preempted with respect to these accounts. New Mexico provides different availability schedules for checks payable by banks in the same municipality, for in-state checks, and for out-of-state checks. For certain categories of checks, the state schedule supersedes the federal. New Mexico law provides for certain exceptions to its availability schedules; these will continue to apply where the state schedule is not preempted by Regulation CC, to the extent that the hold does not exceed the federal schedule for that category of check. An applicable federal exception can be invoked to extend a hold beyond the federal schedule.

No comments were received on the proposed New Mexico preemption determination. The Board has adopted the New Mexico determination as proposed, with editorial revisions.

New York. The Board published for public comment a proposed preemption determination with respect to the New York funds availability law on June 22, 1988. At that time, the Board also requested comment on the preemption of proposed amendments to the New York law. Because the Board was not requested to defer its final preemption determination pending the adoption of the proposed revision to New York law, it issued a final determination with respect to New York law on August 18, 1988.

New York recently adopted, in final form, amendments to its funds availability regulation. The amendments generally exclude accounts covered by Regulation CC from the scope of the state funds availability requirements. The revised New York law, however, continues to apply the state schedule for in-state nonlocal checks to deposits of these checks to accounts subject to Regulation CC. The amendment also provides that, with respect to time and savings accounts, New York institutions could continue to follow the New York availability and disclosure requirements, or could comply with those contained in Regulation CC. The Board has determined that New York law supersedes federal law to the extent that it requires shorter availability for deposits of in-state nonlocal checks to accounts subject to Regulation CC.

Rhode Island. Rhode Island law requires depository institutions to make funds deposited by check in a personal transaction account available for withdrawal within certain specific periods. Different schedules apply to deposits in commercial banks and thrift institutions. The Rhode Island statute also provides exceptions to the schedules and requires institutions to make certain disclosures to their customers. No portion of the Rhode Island availability schedule supersedes the federal law, except to the extent that the state schedules apply to deposits at nonproprietary ATMs. No comments were received on the proposed Rhode Island preemption determination.

The Board has adopted the Rhode Island preemption determination as proposed, with editorial revisions.

Summary of Comments

The Board received 14 comments on the proposed preemption determinations issued in August 1988. Twelve of the comments addressed the proposed preemption determination for California. One comment addressed the proposal for Connecticut, and one addressed the proposal for Massachusetts. The Board received no comments concerning the proposals for New Mexico and Rhode Island.

California. Eight commenters, including the California State Banking Department and the California Department of Savings and Loan, requested that the Board defer its final preemption determination for California. These commenters reported that the state banking regulators are in the process of amending their funds availability regulations in light of Regulation CC, and that the amended regulations are expected to be issued in October 1988.

A California consumer organization requested that California's requirement for individual hold notices not be preempted by Regulation CC. The commenter argued that the state notice requirement is not inconsistent with federal law and that because the state notice requirement is "more than a mere disclosure rule" it should be allowed to stand in addition to federal notice requirements.

The commenter agreed that a state law that provides for funds availability within the same time as federal law should not be preempted. The commenter also agreed that because California does not require special deposit slips for next-day availability of certain types of checks, the state law provides faster availability for such checks and should supersede the federal law. Similarly, the commenter agreed that because California law does not provide a one-day delay in availability for cash withdrawal purposes, the state law provides faster availability than does the federal law and should supersede the federal law.

Four commenters (two commercial banks and two trade associations) disagreed with the proposed California preemption determination as it pertains to certain requirements for next-day availability. The commenters opposed the proposal's provision that California law supersedes Regulation CC to the extent that it requires commercial banks to provide next-day availability for cashier's checks that are not issued for remittance purposes, and to the extent that it does not condition next-day availability on receipt at a staffed teller station or use of a special deposit slip. The commenters argued that because California Financial Code § 867(a) contains the staffed teller station and special deposit slip requirements for

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[1] This commenter cites a law review article by a drafter of the California statute, Emma Jordan, *Ending the Floating Check Game: The Policy Arguments for Delayed Availability Reform*, 36 Hast. L. J. 515 (1985), for the proposition that general disclosures and individual notice are two separate elements of California's legislative solution to the delayed availability problem. While that article does set out general policy disclosures and individual notices as separate requirements, this does not indicate that the individual notice is anything other than a disclosure requirement. *Id.* at 549. Elsewhere in the article, where the author discusses disclosure and notice, providing information to a customer is discussed as disclosure, while the term "notice" refers to notice of nonpayment given to a depositary bank. *Id.* at 550–52.

Even if the article cited did support this commenter's position, the views of a drafter are not generally considered to be an appropriate ground on which to interpret a statute; there is no necessary correlation between the views of a drafter and the understanding or intention of the legislature. Sutherland Stat. Const. § 48.12 (4th ed. 1984).

second-day availability for cashier's, certified, and teller's checks, those requirements would also apply to next-day availability checks under the federal schedules, thus rendering the above provision unnecessary. One commenter suggested that the Board should specifically state that § 867 is completely preempted by federal law.

The commenters also argued that Regulation CC's definition of "cashier's check" should supersede the state definition. Under this interpretation, there would not be a special category of cashier's checks (those that are not issued for remittance purposes) that continue to be subject to state next-day availability requirement.

Three commenters made a similar argument for federal preemption of all the requirements for next-day availability for state and local government checks, even though California law contains no special deposit slip condition for such checks. The commenters argue that section 606(b) of the Act provides that all inconsistent state law provisions, other than shorter availability schedules, will be preempted by federal law, and that the next-day availability conditions are covered by this provision of the Act.

One commenter pointed out that Regulation CC's provision that certain checks must be deposited to an account of a payee of the check to receive next-day availability supersedes the more stringent California provision that the names of all payees must be on the account. The commenter argued that all federal conditions for next-day availability should preempt state law to avoid undue confusion.

One commercial bank made the general comment that state law should supersede federal law only in cases where it provides shorter availability schedules than the federal law and that all other than inconsistencies discussed in the California preemption determination should be preempted by federal law. Three commenters requested that California's new account and overdraft exceptions be preempted in their entirety.

A credit union commented that all of the proposed preemption determinations, California's in particular, are too complex, and recommended that banks be exempted from liability for inadvertent lack of compliance with state or federal law.

Connecticut. One Connecticut law firm commented on the proposed preemption determination for Connecticut. The commenter pointed out that Connecticut law defines "item" as "any instrument for the payment of money even though it is not negotiable." The commenter asked for clarification as to whether the Board considers the state's definition to exclude payable through drafts payable by a nondepository institution.

The commenter requested that when a state exception hold is placed on deposited funds and consequently a federal exception is also invoked, a single notice to the customer should be sufficient. The commenter noted that because Connecticut's reasonable cause exception could conceivably encompass all of the exceptions listed in § 229.13 of Regulation CC, the reason for hold contained in the notice could be any of the federal exceptions that applied to the deposit.

Finally, the commenter asked that, in cases where the Connecticut new account exception is invoked, Regulation CC's definition of "new account" should apply, i.e., the state new account exception should apply during the first 30 days the account is open rather than only to those items which are received for deposit at the moment the account is opened. The commenter argues that, under the temporary schedule, banks should be able to use the federal new account exception for both local checks (which are subject to the federal availability schedule) and nonlocal out-of-state checks (which are subject to the state availability schedule).

Massachusetts. One Massachusetts trade association commented on the proposed determination for Massachusetts. The commenter forwarded an opinion letter from the Massachusetts Commissioner of Banks that stated that term deposit accounts are not considered "accounts" for the purposes of the state funds availability law. The commenter stated that interbank deposits are also exempt from the state funds availability law.

List of Subjects in 12 CFR Part 229

Banks, Banking, Federal Reserve System.

For the reasons set out in the preamble, 12 CFR Part 229 is amended as follows:

PART 229—[AMENDED]

1. The authority citation for Part 229 continues to read as follows:

Authority: Title VI of Pub. L. 100-86, 101 Stat. 552, 636, 12 U.S.C. 4001 *et seq.*

2. Appendix F is amended by removing the New York preemption determination, and adding preemption determinations for the states of California, Connecticut, Maine, Massachusetts, New Mexico, New York, and Rhode Island alphabetically to read as follows:

Appendix F—Official Board Interpretations; Preemption Determinations

* * * * *

California

Background

The Board has been requested, in accordance with § 229.20(d) of Regulation CC (12 CFR Part 229), to determine whether the Expedited Funds Availability Act (the "Act") and Subpart B (and in connection therewith, Subpart A) of Regulation CC preempt the provisions of California law concerning availability of funds. This preemption determination specifies those provisions of the California funds availability law that supersede the Act and Regulation CC. (See also the Board's preemption determination regarding the Uniform Commercial Code, section 4–213(5), pertaining to availability of cash deposits.)

California has four separate sets of regulations establishing maximum availability schedules. The regulations applicable to commercial banks and branches of foreign banks located in California (Cal. Admin. Code tit. 10, §§ 10.190400–10.190407) were promulgated by the Superintendent of Banks. The regulations applicable to savings banks and savings and loan associations (Cal. Admin. Code tit. 10, §§ 106.200–106.205) were adopted by the Savings and Loan Commissioner. The regulations applicable to credit unions (Cal. Admin. Code tit. 10, section 901) and to industrial loan companies (Cal. Admin. Code tit. 10, section 1101) were adopted by the Commissioner of Corporations.

All the regulations were adopted pursuant to California Financial Code § 866.5 and California Commercial Code section 4213(4)(a), under which the appropriate state regulatory agency for each depository institution must issue administrative regulations to define a reasonable time for permitting customers to draw on items received for deposit in the customer's account. California Financial Code section 867 also establishes availability periods for funds deposited by cashier's check, certified check, teller's check, or depository check under certain circumstances. Finally, California Financial Code § 866.2 establishes disclosure requirements.

The Board's determination with respect to these California laws and regulations governing the funds availability requirements applicable to depository institutions in California are as follows.

Commercial Banks and Branches of Foreign Banks

[Reserved]

Savings Institutions

[Reserved]

Credit Unions and Industrial Loan Companies

Each credit union and federally-insured industrial loan company that maintains an office in California for the acceptance of deposits must make funds deposited by check available for withdrawal in accordance with the following table:

	Availability	
	Credit Union	Industrial Loan Company
$100 or less checks; U.S. Treasury checks; state/local gov't checks.	1st day	1st day
On us checks; cashier's/ certified/teller's/ depository checks.	2nd day	2nd day
In-state checks	6th day	6th day
Out-of-state checks	10th day	12th day

Note: These time periods are stated in terms of availability for withdrawal not later than the 10th business day following the banking day of deposit to facilitate comparison with Regulation CC. State regulations are stated in terms of availability at the start of the business day subsequent to the number of days specified in the regulation.

Coverage

The California law and regulations govern the availability of funds to "demand deposits, negotiable order of withdrawal draft accounts, savings deposits subject to automatic transfers, share draft accounts, and all savings deposits and share accounts, other than time deposits." (California Financial Code section 866(b)) The federal preemption of state funds availability laws only applies to "accounts" subject to Regulation CC, which generally includes transaction accounts. Thus, the California funds availability regulations continue to apply to deposits in savings and other accounts (such as accounts in which the account-holder is another bank) that are no "accounts" under Regulation CC. (Note, however, that under § 229.19(e) of Regulation CC, *Holds on other funds*, the federal availability schedules may apply to savings, time, and other accounts not defined as "accounts" under Regulation CC in certain circumstances.)

The California law applies to any "item" (California Financial Code § 866.5 and California Commercial Code section 4213(4)(a)). The California Commercial Code defines "item" to mean "any instrument for the payment of money even though it is not negotiable * * *" (Cal. Com. Code section 4104(g)). This term is broader in scope than the definition of "check" in the Act and Regulation CC. The Commissioner's regulations, however, define the term "item" to include checks, negotiable orders of withdrawal, share drafts, warrants, and money orders. As limited by the state regulations, the state law applies only to instruments that are also "checks" as defined in § 229.2(k) of Regulation CC.

Availability Schedules

Temporary schedule. The California regulations provide that in-state nonlocal checks must be made available for withdrawal not later than the sixth business day following deposit. This time period is shorter than the seventh business day availability required for nonlocal checks under § 229.11(c) of Regulation CC, although it is not shorter than the schedules for nonlocal checks set forth in § 229.11(c)(2) and Appendix B–1 of Regulation CC. Thus, the state schedules for in-state nonlocal checks supersede the federal schedule to the extent that they apply to an item payable by a California institution that is defined as a nonlocal check under Regulation CC, and is not subject to reduced schedules under § 229.11(c)(2) and Appendix B–1.

Under the California regulations, credit unions and industrial loan companies must provide next-day availability to first-indorsed items issued by any federally-insured institution. This regulatory requirement, however, has been superseded by section 867 of the California Financial Code, which requires depository institutions to make funds deposited by cashier's check, teller's check, certified checks, or depository check available for withdrawal on the second business day following deposit, if certain conditions are met. This requirement became effective January 1, 1988.

The Regulation CC next-day availability requirement for cashier's checks and teller's checks applies only to those checks issued for remittance purposes. To the extent that the state second business day availability requirement applies to cashier's and teller's checks issued for other than remittance purposes, the state two-day requirement supersedes the federal local and nonlocal schedules.

The California regulations do not specify whether they apply to deposits of checks at nonproprietary ATMs. Under the temporary schedule in Regulation CC, deposits at nonproprietary ATMs must be made available for withdrawal at the start of the seventh business day after deposit. To the extent that the California schedules provide for shorter availability for deposits at nonproprietary ATMs, they would supersede the temporary schedule in Regulation CC for deposits at nonproprietary ATMs specified in § 229.11(d).

Permanent schedule. Under the California regulations, credit unions and industrial loan companies must provide next-day availability to first-indorsed items issued by any federally-insured institution. This regulatory requirement, however, has been superseded by section 867 of the California Financial Code, which requires depository institutions to make funds deposited by cashier's check, teller's check, certified check, or depository check available for withdrawal on the second business day following deposit, if certain conditions are met. This requirement became effective January 1, 1988.

The Regulation CC next-day availability requirement for cashier's and teller's checks applies only to those checks issued for remittance purposes. To the extent that the state second business day availability requirement applies to cashier's and teller's checks issued for other than remittance purposes, the state two-day requirement supersedes the federal local and nonlocal schedules.

Next-day availability. Credit unions and industrial loan companies in California are required to give next-day availability to items drawn by the State of California or any of its departments, agencies, or political subdivisions. California law supersedes the federal law in that the state law does not condition next-day availability on receipt at a staffed teller station or use of a special deposit slip.

California credit unions and industrial loan companies must provide second business day availability to checks drawn on the depositary bank. Regulation CC requires next-day availability for checks deposited in a branch of the depositary bank and drawn on the same or another branch of the same bank if both branches are located in the same state or the same check processing region. Thus, generally, the Regulation CC rule for availability of on us checks preempts the California regulations. To the extent, however, that an on us check is (1) drawn on an out-of-state branch of the depositary bank that is not in the same check processing region as the branch in which it was deposited, or (2) deposited at an off-premises ATM or another facility of the depositary bank that is not considered a branch under federal law, the state regulation supersedes the Regulation CC availability requirements.

Exceptions to the availability schedules. California law provides exceptions to the state availability schedules for large deposits, new accounts, repeated overdrafters, doubtful collectibility, foreign items, and emergency conditions. In all cases where the federal availability schedule preempts the state schedule, only the federal exceptions will apply. For deposits that are covered by the state availability schedule (e.g., in-state nonlocal checks under the temporary schedule; cashier's or teller's checks that are not deposited with a special deposit slip or at a staff teller station), the state exceptions may be used to extend the state availability schedule up to the federal availability schedule. Once the deposit is held up to the federal availability limit under a state exception, the depositary bank may further extend the hold under any federal exception that can be applied to the deposit. Any time a depositary bank invokes an exception to extend a hold beyond the time periods otherwise permitted by law, it must give notice of the extended hold to its customer in accordance with § 229.13(g) of Regulation CC.

Business day/banking day. The definitions of "business day" and "banking day" in the California regulations are preempted by the Regulation CC definition of those terms. Thus, for determining the permissible hold under the California schedules that supersede the Regulation CC schedule, deposits are considered made on the specified number of "business days" following the "banking day" of deposit.

Disclosures

California law (Cal. Fin. Code § 866.2) requires depository institutions to provide written disclosures of their general availability policies to potential customers prior to opening any deposit account. The law also requires that preprinted deposit slips and ATM deposit envelopes contain a conspicuous summary of the general policy. Finally, the law requires a depository institution to provide specific notice of the time the customer may withdraw funds

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deposited by check or similar instrument into a deposit account if the funds are not available for immediate withdrawal.

Section 229.3(c)(2) of Regulation CC provides that inconsistency may exist when a state law provides for disclosures or notices concerning funds availability relating to accounts. California Financial Code § 866.1 requires disclosures that differ from those required by Regulation CC, and therefore is preempted to the extent that it applies to "accounts" as defined in Regulation CC. The state law continues to apply to savings accounts and other accounts not governed by Regulation CC disclosure requirements.

Connecticut

Background

The Board has been requested, in accordance with § 229.30(d) of Regulation CC (12 CFR Part 229), to determine whether the Expedited Funds Availability Act (the "Act") and Subpart B (and in connection therewith, Subpart A) of Regulation CC, preempt provisions of Connecticut law relating to the availability of funds. This preemption determination specifies those provisions of the Connecticut funds availability law that supersede the Act and Regulation CC. (See also the Board's preemption determination regarding the Uniform Commercial Code, section 4–213(5), pertaining to availability of cash deposits.)

In 1987, Connecticut amended its statute governing funds availability (Conn. Gen. Stat. section 36–9v), which requires Connecticut depository institutions to make funds deposited in a checking, time, interest, or savings account available for withdrawal with specified periods.

Generally, the Connecticut statute, as amended, provides that items deposited in a checking, time, interest, or savings account at a depository institution must be available for withdrawal in accordance with the following table:

	Availability
On us checks	2nd day
In-state checks	4th day
Out-of-state checks	6th day

Exceptions to the schedules are provided for items received for deposit for the purpose of opening an account and for items that the depositary bank has reason to believe will not clear. The Connecticut statute also requires availability policy disclosures to depositors in the form of written notices and notices posted conspicuously at each branch.

Coverage

The Connecticut statute governs the availability of funds deposited in savings and time accounts, as well as "accounts" as defined in § 229.2(a) of Regulation CC. The federal preemption of state funds availability requirements only applies to "accounts" subject to Regulation CC, which generally consist of transaction accounts. Regulation CC does not affect the Connecticut statute to the extent that the state law applies to deposits in savings and other accounts (including transaction accounts where the account holder is a bank, foreign bank or the U.S. Treasury) that are not "accounts" under Regulation CC. (Note, however, that under § 229.19(a) of Regulation CC, *Holds on other funds*, the federal availability schedules may apply to savings, time, and other accounts not defined as "accounts" under Regulation CC, in certain circumstances.)

The Connecticut statute applies to "items" deposited in accounts. This term encompasses instruments that are not defined as "checks" in Regulation CC (§ 229.2(k)), such as nonnegotiable instruments, and are therefore not subject to Regulation CC's provisions governing funds availability. Those items that are subject to Connecticut law but are not subject to Regulation CC will continue to be covered by the state availability schedules and exceptions.

Availability Schedules

Temporary schedule. Connecticut law provides that certain checks that are nonlocal under Regulation CC must be available in a shorter time (sixth business day after deposit for checks payable by depository institutions not located in Connecticut) than under the federal regulation (seventh business day after deposit under the temporary schedule for nonlocal checks). Accordingly, the Connecticut law supersedes Regulation CC with respect to nonlocal checks (other than checks covered by Appendix B–1) deposited in "accounts" until the federal permanent availability schedules take effect on September 1, 1990.

The Connecticut statute does not specify whether it applies to deposits of checks at nonproprietary ATMs. Under the temporary schedule in Regulation CC, deposits at nonproprietary ATMs must be made available for withdrawal at the start of the seventh business day after deposit. To the extent that the Connecticut schedules provide for shorter availability for deposits at nonproprietary ATMs, they would supersede the temporary schedule in Regulation CC for deposits at nonproprietary ATMs specified in § 229.11(d).

Exceptions to the availability schedule. The Connecticut law provides exceptions for items received for deposit for the purpose of opening new accounts and for items that the depositary bank has reason to believe will not clear. In all cases where the federal availability schedule preempts the state schedule, only the federal exceptions will apply. For deposits that are covered by the state availability schedule (e.g., nonlocal out-of-state checks under the temporary schedule), the state exceptions may be used to extend the state availability schedule (of six business days) to meet the federal availability schedule (of seven business days). Once the deposit is held up to the federal availability schedule limit under a state exception, the depositary bank may further extend the hold under any federal exception that can be applied to the deposit. Any time a depositary bank invokes an exception to extend a hold beyond the time periods otherwise permitted by law, it must give notice of the extended hold to its customer, in accordance with § 229.13(g) of Regulation CC.

Disclosures

The Connecticut statute (Conn. Gen. Stat. Section 36–9v(b)) requires written notice to depositors of an institution's check hold policy and requires a notice of the policy to be posted in each branch.

Regulation CC preempts state disclosure requirements concerning funds availability that relate to "accounts" that are inconsistent with the federal requirements. The state requirements are different from, and therefore inconsistent with, the federal disclosure rules. (§ 229.20(c)(2)). Thus, the Connecticut statute is preempted by Regulation CC to the extent that these disclosure provisions apply to "accounts" as defined by Regulation CC. The Connecticut disclosure rules would continue to apply to accounts, such as savings and time accounts, not governed by the Regulation CC disclosure requirements.

Maine

Background

The Board has been requested, in accordance with § 229.30(d) of Regulation CC (12 CFR Part 229), to determine whether the Expedited Funds Availability Act (the "Act") and Subpart B (and in connection therewith, Subpart A) of Regulation CC, preempt the provisions of Maine law concerning the availability of funds. This preemption determination addresses the relation of the Act and Regulation CC to the Maine funds availability law. (See also the Board's preemption determination regarding the Uniform Commercial Code, section 4–213(5), pertaining to availability of cash deposits.)

In 1985, Maine adopted a statute governing funds availability (Title 9–B MRSA section 241(5)), which requires Maine financial institutions to make funds deposited in a transaction account, savings account, or time account available for withdrawal within a reasonable period. The Maine statute gives the Superintendent of Banking for the State of Maine the authority to promulgate rules setting forth time limitations and disclosure requirements governing funds availability.

The Superintendent of Banking issued regulations implementing the Maine funds availability statute, effective July 1, 1987 (Regulation 18(IV)), and adopted amendments to this regulation, effective September 1, 1988. Under the revised regulation, funds deposited to any deposit account in a Maine financial institution must be made available for withdrawal in accordance with the Act and Regulation CC (Regulation 18–IV(A)(1)). The state regulation provides that an institution's funds availability policies for accounts subject to Regulation CC be disclosed in a manner consistent with the Regulation CC requirements. Funds availability policies for accounts not subject to Regulation CC must be disclosed in accordance with the state regulation (Regulation 18–IV(A)(2)).

Coverage

The Maine law and regulation govern the availability of funds to any deposit account, as defined in the Board's Regulation D (12 CFR 204.2(a)). This coverage is broader than the "accounts" covered in Regulation CC. The Maine law continues to apply to all deposit accounts, including those that are not accounts under Regulation CC. (Note, however, that under § 229.19(a) of Regulation CC, *Holds on other funds*, the federal availability schedules may apply to savings, time, and other accounts not defined as "accounts" under Regulation CC, in certain circumstances.)

Availability Schedules and Disclosures

The Maine regulation incorporates the Regulation CC availability and disclosure requirements with respect to deposits to accounts covered by Regulation CC. Because the state requirements are consistent with the federal requirements, the Maine regulation is not preempted by, nor does it supersede, the federal law.

Massachusetts

Background

The Board has been requested, in accordance with § 229.30(d) of Regulation CC (12 CFR Part 229), to determine whether the Expedited Funds Availability Act (the "Act") and Subpart B (and in connection therewith, Subpart A) of Regulation CC, preempt provisions of Massachusetts law relating to the availability of funds. This preemption determination addresses the relationship of the Act and Regulation CC to the Massachusetts funds availability law. (See also the Board's preemption determination regarding the Uniform Commercial Code, section 4–213(5), pertaining to availability of cash deposits.)

In 1988, Massachusetts amended its statute governing funds availability (Mass. Gen. L. ch. 167D, section 35), to require Massachusetts banking institutions to make funds available for withdrawal and disclose their availability policies in accordance with the Act and Regulation CC. The Massachusetts law, however, provides that "local originating depository institution" is to be defined as any originating depository institution located in the Commonwealth.

Coverage

The Massachusetts statute governs the availability of funds deposited in "any demand deposit, negotiable order of withdrawal account, savings deposit, share account or other asset account." Regulation CC applies only to "accounts" as defined in § 229.2(a). Regulation CC does not affect the Massachusetts statute to the extent that the state law applies to deposits in savings and other accounts (including transaction accounts where the account holder is a bank, foreign bank, or the U.S. Treasury) that are not "accounts" under Regulation CC. (Note, however, that under § 229.19(a) of Regulation CC, *Holds on other funds*, the federal availability schedules may apply to savings, time, and other accounts not defined as "accounts" under Regulation CC, in certain circumstances.)

Availability Schedules

The Massachusetts definition of "local originating depository institution" (local paying bank in Regulation CC terminology) requires that in-state checks that are nonlocal checks under Regulation CC be made available in accordance with the Regulation CC local schedule. The Massachusetts law supersedes Regulation CC under the temporary and permanent schedule with respect to nonlocal checks payable by banks located in Massachusetts and deposited into "accounts." Regulation CC preempts the Massachusetts law, however, to the extent the state law does not define banks located outside of Massachusetts, but in the same check processing region as the paying bank, as "local originating depository institutions."

Disclosures

The Massachusetts regulation incorporates the Regulation CC disclosure requirements with respect to both accounts covered by Regulation CC and savings and other accounts not governed by the federal regulation. Because the state requirements are consistent with the federal requirements, the Massachusetts regulation is not preempted by, nor does it supersede, the federal law. The Massachusetts disclosure rules would continue to apply to accounts not governed by the Regulation CC disclosure requirements.

New Mexico

Background

The Board has been requested in accordance with § 229.20(d) of Regulation CC (12 CFR Part 229), to determine whether the Expedited Funds Availability Act (the "Act") and Subpart B (and in connection therewith, Subpart A) of Regulation CC, preempt provisions of New Mexico law relating to the availability of funds. This preemption determination specifies those provisions in the New Mexico funds availability law that supersede the Act and Regulation CC. (See also the Board's preemption determination regarding the Uniform Commercial Code, section 4–213(5), pertaining to availability of cash deposits.)

In 1987, New Mexico adopted a statute governing funds availability (N.M. Stat. Ann. section 58–3–4 (1978, Supp. 1987)), which requires New Mexico financial institutions to make funds deposited into retail accounts available for withdrawal after a reasonable period of time. Section 4A of the New Mexico statute establishes the time frames within which financial institutions must make funds deposited by checks or share drafts available for withdrawal if the checks or share drafts are drawn and payable on demand at other financial institutions located in the continental United States. Section 4B of the statute defines terms and specifies availability for checks deposited in branch offices of certain financial institutions, section 4C specifies exceptions to the availability schedules, and section 4D specifies damages recoverable for a violation of this statute.

Generally, the New Mexico law provides that checks and share drafts, other than "on us" checks, drawn and payable on demand at a financial institution and deposited into an individual or household account must be made available for withdrawal at the beginning of the third business day after deposit for checks or share drafts drawn and payable on demand at financial institutions located within the same municipality as the depositary bank, and for checks or share drafts deposited in a branch office of a financial institution if the main office of that financial institution is located in the same municipality as the depositary bank. Other in-state checks or share drafts must be made available at the opening of the fourth business day after deposit. Checks or share drafts drawn and payable on demand at any other financial institutions located within continental United States must be made available at the beginning of the sixth business day after deposit.

Exceptions to the schedules are provided for documentary drafts, accounts which have been open less than 60 days, checks or share drafts with two-party indorsements, checks or share drafts in an amount greater than the average balance in the account over the last 12 months or the average balance since the account was opened, whichever is less, and checks or share drafts deposited in an account on which six or more insufficient fund checks or share drafts were presented in the prior six month period.

Coverage

The New Mexico statute is limited to retail accounts and does not apply to business accounts. No portion of the New Mexico statute supersedes Regulation CC for any "account" as that term is defined in Regulation CC that is not held by an individual or household. Regulation CC does not affect the New Mexico statute to the extent that the state law applies to time, savings, and other deposits that are not defined as "accounts" under Regulation CC. (Note, however, that under § 229.19(a) of Regulation, CC, *Holds on other funds*, the federal availability schedules may apply to savings, time, and other accounts not defined as "accounts" under Regulation CC, in certain circumstances.)

The New Mexico statute is limited to checks and share drafts payable by financial institutions. The term "financial institutions" corresponds generally to the term "bank" in Regulation CC. The terms "check" and "share draft" are narrower than the term "check" in Regulation CC because they do not appear to apply to Treasury checks, checks payable by state or local governments (i.e. warrants), checks payable by Federal Reserve Banks or Federal Home Loan Banks, or U.S. Postal Service money orders. No portion of the New Mexico statute supersedes Regulation CC with respect to these instruments.

Availability Schedules

Temporary schedules. The New Mexico statute requires checks and share drafts drawn and payable on demand at an office of financial institution located in the same municipality as the depositary bank and checks and share drafts drawn and payable on demand at offices of financial institutions located in New Mexico whose main office is located in the same municipality as the depositary bank to be made available at the opening of the third business day after deposit. (N.M. Stat. Ann. section 58–3–4–A(1)).[1] New Mexico is served by two Federal

[1] It is not clear from the New Mexico statute whether days stated in the schedules include the

Continued

Reserve check processing regions and, therefore, while most checks and share drafts subject to this schedule will be local under Regulation CC, some checks and share drafts covered by this schedule may be nonlocal under Regulation CC. Under the temporary schedule in Regulation CC, the proceeds of local checks must be available for withdrawal at the start of the third business day after deposit, but Regulation CC permits a time period adjustment for withdrawals by cash and similar means that permits a depositary bank to delay the time it must make funds available for deposits of local checks cleared outside a check clearinghouse arrangement. Under the temporary schedule in Regulation CC, the proceeds of nonlocal checks must be made available for withdrawal at the opening of the seventh business day following deposit. No time period adjustment is provided. New Mexico law supersedes this time period adjustment for local checks under the temporary schedule and for nonlocal checks coming within the portion of the New Mexico schedule calling for availability on the third banking day after deposit.

The New Mexico statute calls for the proceeds of checks and share drafts to be made available at the opening of the fifth day after deposit for checks and share drafts drawn and payable on demand at other offices of financial institutions located in New Mexico. (N.M. Stat. Ann. section 58-9-4A(2)). To the extent that this schedule applies to nonlocal checks as defined by Regulation CC, it supersedes the temporary schedules in Regulation CC. The New Mexico statute also provides for availability of checks and share drafts drawn and payable on demand at financial institutions located in the continental United States, excluding Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands, at the opening of the seventh banking day after deposit. (N.M. Stat. Ann. section 58-9-4A(3)). This schedule is the same as Regulation CC with respect to nonlocal checks.

The New Mexico statute does not specify whether it applies to deposits of checks at nonproprietary ATMs. Under the temporary schedule in Regulation CC, deposits at nonproprietary ATMs must be made available for withdrawal at the opening of the seventh business day after deposit. To the extent that the New Mexico schedules described above provide for shorter availability for deposits at nonproprietary ATMs, they would supersede the temporary schedule in Regulation CC for deposits at nonproprietary ATMs specified in § 229.11(d).

Permanent schedules. Under the permanent schedule in Regulation CC, the proceeds of checks must be made available at the opening of the second business day after deposit for local checks and the fifth business day after deposit for nonlocal checks. Both of these schedules are subject to time period adjustments for withdrawal by cash or similar means. The New Mexico statute supersedes the permanent schedules in Regulation CC for nonlocal checks subject to the third day withdrawal requirement (N.M. Stat. Ann. section 58-9-4A(1)) and the time period adjustment for nonlocal checks subject to the fifth day withdrawal requirement (N.M. Stat. Ann. section 58-9-4A(2)) of the New Mexico statute.

Exceptions to availability schedules. The New Mexico statute provides for exceptions to the state schedules for: (1) Documentary drafts; (2) accounts opened less than 60 days; (3) checks or share drafts with two-party indorsements; (4) a check or share draft in a face amount greater than the average balance of the depositor's account for the prior 12 months or the average balance since the account was opened, whichever is less; and (5) a check or share draft deposited in an account on which six or more nonsufficient fund checks or share drafts were presented for payment in the prior six month period.

The state exceptions will continue to apply when the state schedules are not preempted Regulation CC, but holds may be placed under the state schedules only up to the limits permitted by the Regulation CC schedules. Where the Regulation CC schedules are subject to exceptions, holds placed on checks under the State schedules that would also be permissible under Regulation CC may be continued up to the limit on holds under Regulation CC. Notice of holds as required by Regulation CC (§ 229.13(g)) must be given whenever a hold is placed so that availability is extended beyond the applicable state or federal schedule.

Business day/banking day. Under New Mexico law a bank is authorized to establish its own banking days except that it must observe certain holidays (N.M. Stat. Ann. sections 58-6-6 and 58-8-7). This definition is preempted by the Regulation CC definitions of "business day" and "banking day." Thus, for determining the permissible hold under the New Mexico schedules that supersede the Regulation CC schedule, deposits are considered made on the specified number of "business days" following the "banking day" of deposit.

Disclosures

The New Mexico law does not contain funds availability disclosure requirements applicable to accounts subject to Regulation CC.

New York

Background

The Board has been requested, in accordance with § 229.20(d) of Regulation CC (12 CFR Part 229), to determine whether the Expedited Funds Availability Act (the "Act") and Subpart B (and in connection therewith, Subpart A) of Regulation CC, preempt the provisions of New York law concerning the availability of funds. This preemption determination addresses the relation of the Act and Regulation CC to the New York funds availability law. (See also the Board's preemption determination regarding the Uniform Commercial Code, section 4-213(5), pertaining to availability of cash deposits.)

In 1983, the New York State Banking Department, pursuant to section 14-d of the New York Banking law, issued regulations requiring that funds deposited in an account be made available for withdrawal within specified time periods, and provided certain exceptions to those availability schedules. Part 34 of the New York State Banking Department's General Regulations established time frames within which commercial banks, trust companies, and branches of foreign banks ("banks"); and savings banks, savings and loan associations, and credit unions ("savings institutions") must make funds deposited in customer accounts available for withdrawal.

The Banking Department amended Part 34, effective September 1, 1988, generally to exclude accounts covered by Regulation CC from the scope of the state regulation. Part 34.4 (a)(2) and (b)(2) of the revised New York rules, however, continue to apply to checks deposited to accounts, as defined in Regulation CC. These provisions require that the proceeds of nonlocal checks payable by a New York institution be made available for withdrawal not later than the start of the fourth business day following deposit, if deposited in a bank, or the fifth business day following deposit, if deposited in a savings institution. The revised regulation also provides that, with respect to savings accounts and time deposits, New York institutions could elect to comply with either the state or federal availability and disclosure requirements.

This preemption determination supersedes the determination issued by the Board on August 18, 1988 (53 FR 32367 (August 24, 1988)).

Coverage

The New York law and regulation govern the availability of funds in savings accounts and time deposits, as well as "accounts" as defined in § 229.2(a) of Regulation CC. The New York law continues to apply to deposits to savings accounts and time deposits that are not accounts under Regulation CC. (Note, however, that under § 229.19(e) of Regulation CC, *Hold on other funds*, the federal availability schedules may apply to savings, time, and other accounts not defined as "accounts" under Regulation CC, in certain circumstances.)

The New York law and regulation apply to "items" deposited to accounts. Part 34.3(e) defines "item" as "a check, negotiable order of withdrawal or money order deposited into an account." The Board interprets the definition of "item" in New York law to be consistent with the definition of "check" in Regulation CC (§ 229.2(k)).

Availability Schedules

The provisions of New York law governing the availability of in-state nonlocal items provide for shorter hold than is provided under Regulation CC, and supersede that federal availability requirements. With the exception of these provisions, the New York regulation does not apply to deposits to accounts covered by Regulation CC.

Temporary schedule. The time periods for the availability of in-state nonlocal checks, contained in Part 34.4 (a)(2) and (b)(2), are shorter that the seventh business day availability required for nonlocal checks under § 229.11(c) of Regulation CC, although they are not necessarily shorter than the schedules for nonlocal checks set forth in § 229.11(c)(2) and Appendix B-1 of Regulation CC. Thus, these state schedules supersede the federal schedule to the extent that they apply to an item payable by a New York bank or savings institution that is defined as a nonlocal checks under Regulation CC and the applicable state schedule is less than the applicable schedule specified in § 229.11(c) and Appendix B-1.

Permanent schedule. The New York schedule for banks supersedes the Regulation CC requirement in the permanent schedule, effective September 1, 1990, that nonlocal checks be made available for withdrawal by the start of the fifth business day following deposit, to the extent that the in-state checks are defined as nonlocal under Regulation CC, and the Regulation CC schedule for nonlocal checks is not shortened under § 229.12(c)(2) and Appendix B-2 of Regulation CC. In addition, the New York schedule for savings institutions supersedes the Regulation CC time period adjustment for withdrawal by cash or similar means in the permanent schedule, to the extent that the in-state checks are defined as nonlocal under Regulation CC, and the Regulation CC schedule for nonlocal checks is not shortened under § 229.12(c)(2) and Appendix B-2.

Exceptions to the availability schedules. New York law provides exceptions to the state availability schedules for large deposits, new accounts, repeated overdrafters, doubtful collectibility, foreign items, and emergency conditions (Part 34.4). The state exceptions apply only with respect to deposits of in-state nonlocal checks that are subject to the state availability schedule. For these deposits, the depositary bank may invoke a state exception and place a hold on the deposit up to the federal availability schedule limit for that type of deposit. Once the federal availability schedule limit is reached, the depositary bank may further extend the hold under any of the federal exceptions that apply to that deposit. Any time a depositary bank invokes an exception to extend a hold beyond the time periods otherwise permitted by law, it must give notice of the extended hold to its customer in accordance with § 229.12(g) of Regulation CC.

Disclosures

The revised New York regulation does not contain funds availability disclosure requirements applicable to accounts subject to Regulation CC.

Rhode Island

Background

The Board has been requested, in accordance with § 229.20(d) of Regulation CC (12 CFR Part 229), to determine whether the Expedited Funds Availability Act (the "Act") and Subpart B (and in connection therewith, Subpart A) of Regulation CC, supersede provisions of Rhode Island law relating to the availability of funds. This preemption determination specifies those provisions in the Rhode Island funds availability law that supersede the Act and Regulation CC. (See also the Board's preemption determination regarding the Uniform Commercial Code, section 4-213(5), pertaining to availability of cash deposits.)

In 1988, Rhode Island adopted a statute governing funds availability (R.I. Gen. Laws tit. 6A, sections 4-601 through 4-606), which requires Rhode Island depository institutions to make checks deposited in a personal transaction account available for withdrawal within certain specific periods. Commercial banks and thrift institutions (mutual savings banks, savings banks, savings and loan institutions and credit unions) must make funds available for withdrawal in accordance with the following table:

	Commercial banks	Thrift institutions
Treasury checks, Rhode Island Government checks, first-indorsed.	2nd	2nd
In-state cashier's checks less than $2,500.	2nd	2nd
On-us checks	2nd	3rd
In-state clearinghouse checks	3rd	4th
In-state nonclearinghouse checks.	5th	6th
1st or 2nd Federal Reserve District checks (out-of-state).	7th	7th
Other checks	9th	10th

Note: These time periods are stated in terms of availability for withdrawal not later than the Xth business day following the banking day of deposit to facilitate comparison with Regulation CC. State regulations are stated in terms of availability at the start of the business day subsequent to the number of days specified in the regulation.

The Rhode Island statute also provides restrictions and exceptions to the schedules and requires institutions to make certain disclosures to their customers.

Coverage

The Rhode Island statute governing the availability of funds deposited in "personal transaction accounts," a term not defined in the statute. The federal law would continue to apply to "accounts," as defined in § 229.2(a), that are not "personal transaction accounts."

The Rhode Island statute applies to "items," defined as checks, negotiable orders of withdrawal, or money orders. The Board interprets the definition of item to be consistent with the definition of "check" in Regulation CC (§ 229.2(k)).

Availability Schedules

Temporary schedule. Rhode Island law requires availability for certain checks in the same time as does Regulation CC. Thus, in these instances, the federal law does not preempt the state law. Rhode Island law requires commercial banks (but not thrift institutions) to make checks payable by a depositary institution that uses the same in-state clearing facility as the depositary bank available for withdrawal on the third business day following the day of the deposit. This is the same time period contained in Regulation CC for local checks payable by a bank that is a member of the same local clearinghouse as the depositary bank. (The Board views the definition of "the same in-state clearing facility" as having the same meaning as the term "the same check clearinghouse association" in the federal law's provision that allows banks to limit the customer's ability to withdraw cash on the third business day if the local check being deposited is payable by a bank that is not a member of the same local clearinghouse as the depositary bank.) Since the Rhode Island law and the federal law both require the funds to be made available no later than the third business day, the state law is not preempted by the federal law.

The Rhode Island law also requires commercial banks and savings institutions to make checks payable by a depository institution located in the First or Second Federal Reserve District (outside of Rhode Island) available on the seventh business day following deposit. To the extent that this provision applies to checks payable by institutions located outside the Fourth check processing region, it provides for availability in the same time as required for nonlocal checks under the temporary federal schedule, and thus is not preempted by the federal law.

The Rhode Island statute does not specify whether it applies to deposits of checks at nonproprietary ATMs. Under the temporary schedule in Regulation CC, deposits at nonproprietary ATMs must be made available for withdrawal at the opening of the seventh business day after deposit. To the extent that the Rhode Island schedules provide for shorter availability for deposits at nonproprietary ATMs, they would supersede the temporary schedule.

Exceptions to the availability schedules. The Rhode Island law contains exceptions for reason to doubt collectibility or ability of the depositor to reimburse the depositary bank, for new accounts, for large checks, and for foreign checks. In all cases where the federal availability schedule preempts the state schedule, only the federal exceptions will apply. For deposits that are covered by the state availability schedule, the state exceptions may be used to extend the state availability schedule to meet the federal availability schedule. Once the deposit is held up to the federal availability schedule limit under a state exception, the depositary bank may further extend the hold under any federal exception that can be applied to the deposit. Thus, if the state and federal availability schedules are the same for a particular deposit, both a state and a federal exception must be applicable to that deposit in order to extend the hold beyond the schedule. Any time a depositary bank invokes an exception to extend a hold beyond the time periods otherwise permitted by law, it must give notice of the extended hold to its customer, in accordance with § 229.13(g) of Regulation CC.

Business day/banking day. The Rhode Island statute defines "business day" as excluding Saturday, Sunday and legal holidays. This definition is preempted by the Regulation CC definitions of "business day" and "banking day". Thus, for determining the permissible hold under the Rhode Island schedules that supersede the Regulation CC schedule, deposits are considered made on the specified number of "business days" following the "banking day" of deposit.

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day of deposit. For the purposes of this interpretation, it is assumed that the stated days do include the day of deposit. References to days included in the New Mexico schedules have also been revised to reflect Regulation CC terminology.

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Disclosures

The Rhode Island statute requires written notice to depositors of an institution's check hold policy and requires a notice on deposit slips. Regulation CC preempts state disclosure requirements concerning funds availability that relate to accounts that are inconsistent with the federal requirements. The state requirements are different from, and therefore inconsistent with, the federal rules. (§ 229.26(c)(2)) Thus, Regulation CC preempts the Rhode Island disclosure requirements concerning funds availability.

By order of the Board of Governors of the Federal Reserve System, October 25, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-25034 Filed 11-1-88; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Regulation CC; Docket No. R-0648]

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for comment proposed amendments to its Regulation CC, Availability of Funds and Collections of Checks (12 CFR Part 229). The proposed rule changes would alleviate the operational difficulties and additional risks associated with the acceptance for deposit of payable through checks.

DATES: Comments must be submitted on or before December 30, 1988.

ADDRESSES: Comments, which should refer to Docket No. R-0648, may be mailed to the Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, Attention: Mr. William W. Wiles, Secretary; or may be delivered to Room B-2223 between 8:45 a.m. and 5:00 p.m. All comments received at the above address will be included in the public file and may be inspected at Room B-1122 between 8:45 a.m. and 5:15 p.m.

FOR FURTHER INFORMATION CONTACT: Louise L. Roseman, Assistant Director (202/452-3874), Gayle Thompson, Program Leader (202/452-2934), Division of Federal Reserve Bank Operations; Oliver Ireland, Associate General Counsel (202/452-3625), Stephanie Martin, Attorney (202/452-3198), Legal Division; for the hearing impaired *only*: Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION: The Board has adopted, with minor technical changes, the interim rule issued on August 18, 1988, to amend Regulation CC to treat "bank payable through checks" as local or nonlocal based on the location of the bank [1] on which they are written rather than the location of the bank through which they are payable, as a final rule. (See Docket R-0643, published elsewhere in today's **Federal Register**.) The Board is issuing, for a 60-day public comment period, proposed amendments to Regulation CC designed to alleviate the operational difficulties and additional risks resulting from this final rule.

Background

As adopted in May 1988, Regulation CC provided that checks written on an account at one bank but payable through another bank were to be considered local or nonlocal under Regulation CC and the Expedited Funds Availability Act ("Act") based on the location of the bank designated as the payable through bank. This treatment of "bank payable through checks" was consistent with the scheme set forth in the Act to permit banks to place longer holds on checks that must be sent to nonlocal banks for collection because such checks generally take longer to collect and return than checks sent to local banks for collection and, therefore, could pose greater risks for depositary banks.[2] In addition, treating the payable through bank as the paying bank would facilitate the handling of these checks by depositary banks because it would permit them to use automated equipment to read the routing number of the payable through bank encoded on a check, which indicates the check processing region where the payable through bank is located, and to assign availability for the check on the basis of that number.

Shortly after the Board adopted Regulation CC defining the payable through bank as the paying bank and thus allowing bank payable through checks to be treated as local or nonlocal according to the location of the payable through bank, the Credit Union National Association ("CUNA") and one of its member credit unions brought suit asserting that this rule was contrary to the provisions of the Act, and that such checks, in particular credit union share drafts, should be treated as local or nonlocal on the basis of the location of the bank on which they are written, rather than the location of the payable through bank. CUNA believed that the treatment of bank payable through checks adopted by the Board would have an adverse effect on the acceptability of these checks as a form of payment because most credit union payable through checks would be treated as nonlocal, even though they would generally be deposited in a bank local to the credit union. CUNA argued that if these checks were generally treated as nonlocal, a large number of credit unions that offer payable through share draft accounts would be disadvantaged.

On July 28, 1988, the U.S. District Court for the District of Columbia ruled that under the language of the Act, bank payable through checks should be treated as local or nonlocal on the basis of the location of the credit union rather than the location of the payable through bank. On August 18, 1988, the Board adopted interim amendments to Regulation CC to implement the court's decision and requested comment on the interim rule pending consideration of a longer term response to the court's interpretation of the Act. 53 FR 31290 (August 18, 1988). The interim rule applied the court's decision to all bank payable through checks rather than only those written on credit unions.

The Board received 155 comments on the interim rule. (A summary of the comments appears below.) The overwhelming majority of the commenters (144) objected to the treatment of bank payable through checks as local or nonlocal on the basis of the location of the bank on which they are written, because this rule creates operational difficulties and increased risks for depositary banks. Many of the commenters suggested various means of addressing these operational problems and risks.

The Board has adopted the interim rule, with minor technical changes, and is also proposing for comment amendments to Regulation CC designed to alleviate the operational difficulties and increased risks resulting from the interim rule. These proposed amendments are based on specific suggestions of the commenters and on subsequent discussions with industry representatives and the Industry Return Item Advisory Group, which includes representatives of commercial banks, savings and loan associations, and credit unions. The Board is issuing these proposals for comment to gain further information concerning whether the proposals are necessary to facilitate compliance with the revised regulation and to improve the check system by speeding the collection and return of payable through checks, and whether they impose undue burdens on the banks on which bank payable through checks are written.

[1] Regulation CC defines bank to include all depositary institutions, including commercial banks, savings and loan associations, and credit unions. A depositary bank is defined as the first bank to which a check is transferred.

[2] Under the regulation, depositary banks may differentiate funds availability based on whether the check is written on a local or nonlocal paying bank. A local paying bank is one located in the same check processing region as the depositary bank. As of September 1, 1988, depositary banks must make the proceeds of local checks available for withdrawal not later than three business days following deposit; nonlocal checks must be made available for withdrawal not later than seven business days following deposit. On September 1, 1990, these schedules are reduced to two and five business days for local and nonlocal checks, respectively.

Discussion

Although bank payable through checks represent only two to three percent of the approximately 47 billion checks written each year, they are sufficiently prevalent to create substantial operational problems for banks in complying with the Act, as interpreted by the court, and Regulation CC, as amended by the interim rule, and to increase the risk of check fraud for depositary banks. Available data indicate that the two largest payable through processors handle approximately 700 million bank payable through checks each year. Although the majority of bank payable through checks are written on the more than 4,000 credit unions that use such checks, they are also used by some savings and loan associations and commercial banks. The Board has identified at least 65 banks across the country that serve as payable through banks and believes that others exist that have not yet been identified.

Ordinarily, many banks that provide different availability for local and nonlocal checks identify the checks as local or nonlocal based on the routing number in the Magnetic Ink Character Recognition ("MICR") line on the bottom of the checks. This routing number is either entered into the bank's computer system by the teller at the time the transaction is made (on-line processing) or read from the check using automated equipment during subsequent processing (batch processing). The first four digits of the nine-digit routing number are used to identify the Federal Reserve check processing region to which the check is sent for payment and thus permit the bank to readily identify whether a check is local or nonlocal. In the case of a bank payable through check, however, the routing number cannot be used to determine whether the check is local or nonlocal because it identifies the payable through bank rather than the bank on which the check is written.

Accordingly, in order to determine whether a check is local or nonlocal, depositary banks must first determine whether it is a payable through check. Generally, there are two ways to identify these checks. First, they can be identified by visual inspection by the teller at the time that the checks are received for deposit. This procedure is labor intensive, and therefore costly, and prone to the high level of errors associated with manual processing. Once a check is identified as a payable through check, it may still be difficult to determine whether the check is local or nonlocal because some bank payable through checks do not contain on the face of the check the location of the bank on which they are written. Even if this information is included on the face of the check, the local/nonlocal determination may be difficult to make due to the information's placement on the check or its type size. In addition, in cases where the location is clearly identifiable, it may be a difficult task to determine whether the bank on which the check is written is in the same check processing region as the depositary bank, because most check processing regions contain only portions of states. The depositary bank may need to refer to a list of cities and towns in its check processing region to determine if the bank payable through check is local for purposes of Regulation CC.[5]

The second way to identify bank payable through checks is to program a check reader-sorter to outsort all checks bearing the routing number of the payable through banks and either to assign those checks local availability, even when they are not payable by a local bank, or to inspect them visually to determine whether they should be assigned local or nonlocal availability. Although many bank payable through checks bear routing numbers that are used almost exclusively for such checks, others bear routing numbers that are also used for significant numbers of non-payable through checks. In addition, some payable through banks serve banks in a number of Federal Reserve check processing regions. Treating all checks bearing the routing number of a payable through bank as local also results in giving local availability to an unknown number of checks that may be treated as nonlocal. In addition, it creates an incentive for banks to act as payable through banks so that their checks may be considered local by banks that use this approach to comply. Further, as noted above, it is difficult to identify all banks that serve as payable through banks. A bank may begin or cease acting as a payable through bank at any time. Any listing of payable through bank routing numbers is likely to omit certain payable through banks, thus causing banks relying on that list to violate the Act by giving nonlocal availability to checks that should receive local availability under the Act. Finally, commenters indicated that if a bank wishes to inspect bank payable through checks visually once they have been identified in order to determine whether they are local or nonlocal, that process will be costly and error-prone and may delay the collection of those checks.

In addition to the operating problems caused by bank payable through checks, these checks are attractive vehicles for check fraud. The time that it takes bank payable through checks to travel to and from the depositary banks is a function of its location in relation to the payable through bank, not the bank on which the check is written.[6] Consequently, it generally takes longer for checks that are sent to a nonlocal payable through bank to be collected and returned than it does for checks that are sent to a local bank. In the case of many depositary banks, these collection and return times will regularly exceed the availability schedules in the Act for local checks. Persons wishing to commit check fraud on those depositary banks would be able to rely on the fact that the bank must make the proceeds of the checks available for withdrawal before it had an opportunity to learn that the checks had been dishonored.

Under the Expedited Funds Availability Act, the Board has the authority to adopt regulations to address these problems. Although the language of the Act governing the availability of checks in sufficiently specific for the court to conclude that the Act requires local availability for bank payable through checks written on local banks but payable through nonlocal banks, the Act gives the Board general authority to regulate the check collection system. Section 609(c)(1) of the Act provides:

> RESPONSIBILITY FOR PAYMENT SYSTEM—In order to carry out the provisions of this title, the Board of Governors of the Federal Reserve System shall have the responsibility to regulate—
>
> (A) Any aspect of the payment system, including the receipt, payment, collection, or clearing of checks; and
>
> (B) Any related function of the payment system with respect to checks.

This authority is extremely broad and, together with section 609(a) of the Act, which authorizes the Board to prescribe rules to facilitate compliance with the Act, gives the Board the authority to adopt reasonable changes to the way that checks are handled, provided that those changes further the purposes of

[5] Listings of cities and states in individual Federal Reserve check processing regions are available upon request from local Federal Reserve Bank offices.

[6] Chase Manhattan, one of the two major national payable through processors, stated in its comments: "* * * if the payor bank decides not to pay a draft, the time that it takes the draft to travel to the depositary bank is a function of its location in relation to the payable through bank, not the payor bank. Therefore, when a payable through bank returns a draft received from a nonlocal depositary bank, it must be afforded the benefit of the longer return time for nonlocal items nowithstanding that the payor bank may be in the same check processing region as the depositary bank."

the Act, such as by expediting the collection and return of checks or facilitating compliance with the availability schedules.

The Board believes that there are a number of approaches to dealing with the operational and risk problems associated with bank payable through checks, including: (1) Requiring such checks to be presentable locally and to bear a local routing number in the MICR line; (2) requiring such checks to be conspicuously labeled as payable through checks, specifying the name and location of the payable through bank and the name, location, and nine-digit routing number of the bank on which the check is written; (3) authorizing collecting banks to present such checks directly to the bank on which they are written; and (4) shifting to the bank on which the check is written the risks of loss due to the time required for the return of such checks from nonlocal payable through banks.

1. *Require bank payable through checks to be presentable locally and bear a local routing number in the MICR line.* Eighty-nine commenters expressed concern about the operational problems posed by the court ruling and interim amendments. A number of these commenters suggested that the Board require credit unions to encode their own routing numbers on their checks, or that of a local payable through bank. This would permit depositary banks to determine whether any check is local or nonlocal through the use of automated equipment, because the routing number encoded on the check would indicate the check processing region of the bank on which the check is written. Therefore, this approach would effectively remove the operational difficulties in assigning appropriate availability to these checks.

In addition, this proposal would address the concerns expressed by 111 commenters the potential risk of additional losses and increased exposure to fraud for depositary banks as a result of the revised rule defining the bank on which the payable through check is written as the paying bank for determining funds availability. The proposal would eliminate the likelihood that these checks would become attractive vehicles for check fraud because a bank payable through check with a local routing number could be presented to the local address associated with the routing number, maintaining a clear link between the time it takes to collect and return the check and the time within which the depositary bank must make the funds available to the depositor.

This proposal would require the reissuance of payable through checks encoded with routing numbers not associated with the same check processing region as the bank on which the checks are written and may also require a bank to change its payable through check processor. The cost of reissuing checks and converting to a different processor depends, in part, on the lead time between the adoption of the proposal in final form and the effective date of this requirement. These costs would have to be weighed against the costs to the banking industry in general of identifying bank payable through checks by other means and the risks arising from the use of nonlocal payable through banks for these checks.[7]

When some credit unions began offering share draft accounts to their members in the mid-1970s, they used payable through banks exclusively to process checks written on those accounts (predominantly two national payable through processors), in part due to competitive concerns with having local banks processing their checks. With the enactment of the Monetary Control Act of 1980, credit unions were able to obtain their own routing numbers, and thus had greater processing options. In addition, other service providers began offering share draft processing services to credit unions, including correspondent banks, corporate credit unions, state credit union leagues, credit union service organizations, regional data processors, and service bureaus.

According to CUNA, the current trend is for credit unions to shift to local processors or in-house processing. CUNA reports that six percent of credit unions now process in-house, while 25 percent use local processors in an intercept arrangement, rather than a payable through arrangement. (In an intercept arrangement, the credit union uses its own routing number on its checks, rather than the routing number of the processor.) The remaining 69 percent of credit unions use a payable through bank for processing, a small portion of which use a local payable through bank.

The proposed requirement would not necessarily preclude nonlocal processing of payable through checks. Currently, arrangements exist whereby payable through checks are delivered to a local presentment point and subsequently transported to the nonlocal processing site. For example, some corporate credit unions serve market areas that encompass multiple check processing regions, and thereby provide services to members located in one or more nonlocal check processing regions. Such arrangements tend to be regional rather than national in scope due to transportation times necessary to move the payable through checks from the presentment point to the processing site. Thus, this proposal might cause a shift from national payable through processing to regional or in-house processing. On the other hand, national payable through processors could develop regional operations in order to continue to provide services to banks that issue payable through checks.[8]

The Board considered, as an alternative to this proposal, a proposal to require payable through checks to be identified as such in the MICR line of the check. There is only one field in the MICR line (position 44) that such information can be contained. Because this field is also used to identify checks, including payable through checks, for other purposes (e.g., to identify the check as eligible for truncation), and because the industry is interested in reserving the use of this field for a number of other purposes, this alternative is not attractive. Moreover, this approach would only indicate to the depositary bank whether the check is a payable through check; it would not provide sufficient information to determine, in an automated environment, whether a payable through check is local or nonlocal.

The Board is publishing for comment a proposed amendment to Regulation CC to require bank payable through checks to bear a routing number in the MICR line that is associated with the same check processing region as the location of the bank on which the check is written, and to require a presentment point for such checks in that check processing region. This requirement would be effective one year following

[7] One industry consultant indicated that "on average, 80 to 90% of [credit union] members will reorder [share drafts] in a nine to twelve month period." (July 19, 1988, affidavit of David McCarroch, President of McCarroch & Company.) Dearborn Federal Credit Union, in a June 13, 1988 affidavit, noted that, if it were to convert to local processing, it must either incur the costs of reprinting share drafts for all of the credit union's members (estimated at $7 per member), or incur the cost of operating a full-scale dual processing system for one year while some members are converting to new share drafts and others are using up their old payable through share drafts.

[8] Traveler's Express, one of the two major national payable through processors, has established three regional processing centers in the past four years, and has stated that it plans to establish additional regional processing sites in the future, in order to retain credit union customers that are seeking local processing.

adoption of the amendment. The Board specifically requests comment on the cost savings to depositary banks and the costs to banks using such checks so that the benefits and costs of this proposal can be more fully assessed.

2. *Require bank payable through checks to be conspicuously labeled with the name, location, and nine-digit routing number of the bank on which the check is written and the legend "payable through" followed by the name and location of the payable through bank.* In order for banks to be able to separate payable through checks from other check deposits and determine by visual inspection the appropriate hold, rather than rely on the routing number encoded on the check to determine availability, certain information pertaining to the payable through bank and the bank on which the check is written must be included on the check. Commenters indicated that information on the face of the check indicating the name and location of the credit union and the legend "payable through" followed by the name and location of the payable through bank is crucial to the visual identification of these checks, although it would not permit their identification by automated equipment. In addition, 10 commenters indicated that the assignment of availability to these checks would be facilitated by requiring the routing number of the bank on which they are written to be included on the face of the check. Furthermore, CUNA stated in its submissions to the court that printing the name, address, and first four digits of the routing number of the bank by which the check is payable on the face of the check would be a reasonable way to help depositary banks determine whether a payable through check is local or nonlocal.

Inclusion of the routing number on the face of the check would permit bank personnel to assign availability to these checks without the need to refer to a list of cities and towns in the depositary bank's Federal Reserve check processing region to determine if the location of the bank on which the check is written is local for purposes of Regulation CC.[7] The need for the routing number of the bank on which the check is written to be printed on the face of bank payable through checks would be eliminated if the Board adopts the requirement that all bank payable through checks bear a local routing number in the MICR line. The other required information would still be needed, even if the first proposal were adopted. For example, the name and location of the payable through bank may be needed in those cases where the routing number on the check cannot be properly read.[8] Furthermore, the name of the payable through bank and some indication that the check is payable through that bank appears to be required by current law.[9] The requirement that specified information be printed on the face of the check would not address the potential risks of bank payable through checks becoming attractive vehicles for fraud. If this proposal were adopted, the bank on which the payable through checks are written may incur costs to reissue its checks, if the checks currently do not contain the required information. Unlike the first proposal, however, this proposal would not require any bank to move its payable through check processing to a different bank.[8]

The Board is publishing for comment an amendment to Regulation CC that would require bank payable through checks to conspicuously state the name and location of the payable through bank and the bank on which they are written, as well as the routing number of the bank on which they are written, and the legend "payable through" on the face of the check. If adopted, this requirement would be effective one year following adoption of the amendment. The Board specifically requests comment on the cost savings and operational benefits to depositary banks and the costs to banks using such checks that would result from the adoption of this proposal.

3. *Authorize direct presentment.* Currently, the law is unclear as to whether a bank payable through check can be presented directly to the bank on which it is written or whether such checks must be presented to the payable through bank. In its Share Draft Operating Manual published in 1983, ICU Services, a CUNA affiliate, states "the credit union management has the right to refuse to accept a payable through share draft which is presented directly to the credit union." On the other hand, the American Bankers Association ("ABA") commented that, while old case law and Article 3 of the Uniform Commercial Code ("U.C.C.") might suggest that a payor bank may properly refuse direct presentment of payable through checks, "it can be argued that present section 4–204(2) of the UCC (which overrides Article 3 of the UCC in the event of a conflict of provisions) already authorizes collecting banks to send items directly to the payor bank." The ABA also commented that even if some depository institutions assert that they are "nonbank payors" in order to avoid direct presentment under U.C.C. 4–204(2)(a), the Board has the power to promulgate regulations permitting direct presentment under U.C.C. 4–204(2)(c) and section 609(c)(1) of the Expedited Funds Availability Act.

Expressly permitting such checks to be presented directly to the bank on which they are written would enable banks to have such checks collected and returned locally, and thus would avoid the delays in collection and return that occur when the depository bank sends the checks to nonlocal payable through banks. Although direct presentment of bank payable through checks would not alleviate the operational burdens of identifying these checks and assigning them the appropriate availability, it may reduce the likelihood that they would become attractive vehicles for check fraud because depositors could not rely on the longer collection and return time for nonlocal checks.

If this proposal is adopted, the Federal Reserve Banks may consider expanding their fine sort check collection service to facilities direct presentment of payable through checks to the bank on which the checks are written. Under this service, collecting banks that want the Federal Reserve Bank to present payable through checks directly to the bank on which they are written, rather than to the payable through bank, would be required to fine sort these checks according to the routing number of the bank on which the checks are written.

The extent to which a rule expressly permitting direct presentment of these checks to the bank on which they are written could impose burdens on such banks is not clear. The banks generally already receive direct presentment of some checks over the counter for their customers. Further, the extent to which the volume of checks presented directly would increase is unknown. The presentment of a significant number of such checks may cause operational burdens for these banks because they are generally not equipped to process large volumes of checks. The need for this rule would be diminished if bank payable through checks were required to have a local routing number in the MIRC line, and a corresponding local presentment point.

The Board is publishing for comment an amendment to Regulation CC that would authorize direct presentment of bank payable through checks. The Board specifically requests comment on the cost and operational burden of this proposal on banks that use payable through checks, the potential cost savings to depositary banks, and the appropriate lead time for implementation of the proposal, if it is adopted.

4. *Shift risk of loss to bank on which check is written.* One hundred eleven commenters expressed concern regarding the potential risks of losses and increased exposure to fraud for depositary banks as a result of the revised rule defining the bank on which the payable through check is written as the paying bank for determining funds availability.

Commenters argued that checks considered local for determining availability should also be considered local for determining whether the checks are returned expeditiously so that the risks to depositary banks would not be increased by the revised rule. These commenters suggested that the revised definition of paying bank also be applied to the expeditious return rules in Subpart C of the regulation.

The effect of the revision suggested by the commenters can also be achieved by requiring that the bank on which a payable through check is written bear any losses incurred by the depositary bank due to return of a check from a nonlocal payable through bank in a time longer than would have been required for return of the check if it had been presented directly to the bank on which it was written. This rule would not address the operational difficulties in identifying these checks and would not protect the depositary bank from risks due to any longer time required to present such checks to a nonlocal payable through bank. On the other hand, the burden that this rule would place on banks on which such checks are written would be minimal and would be limited to losses for which they were responsible because of the location and return procedures of the payable through bank that they selected. The need for such a rule would be eliminated if bank payable through checks were required to have a local routing number in the MICR line and would be diminished if direct presentment of payable through checks were authorized.

The Board is publishing for comment an amendment to Regulation CC that would place the risk of loss for return of bank payable through checks from nonlocal payable through banks on the banks on which such checks are written, to the extent that the return from the nonlocal payable through bank took longer than would have been required if the check had been returned expeditiously by the bank on which it is written. The Board requests comment as to whether this allocated liability should be computed solely under the two-day/four-day test in § 229.30(a)(1) of Regulation CC or whether it is possible to also compute such liability under the forward collection test in § 229.30(a)(2). The Board also requests comment on the appropriate lead time for implementation of this proposal if it is adopted.

Summary of Proposals

These proposed amendments address many of the operational and risk concerns raised by the commenters in response to the revised rule adopted by the Board to treat bank payable through checks as local or nonlocal based on the location of the bank on which they are written rather than the location of the bank through which they are payable. The Board is publishing for public comment, the following proposed amendments to Regulation CC, to determine whether they would facilitate compliance with Regulation CC and improve the check system by speeding the collection and return of payable through checks, and whether they would impose undue burdens on the banks on which payable through checks are written.

1. Require bank payable through checks to be presentable locally and to bear a local routing number in the MICR line (See proposed regulatory language—amendments to § 229.36(b), (f) (Alternative 1), and (g) (Alternative 1);

2. Require bank payable through checks to be conspicuously labeled with the name, location, and nine-digit routing number of the bank on which the check is written and the legend "payable through" followed by the name and location of the payable through bank (See proposed regulatory language—amendment to § 229.36(g) (Alternative 2). Alternative 3 combines Alternatives 1 and 2);

3. Authorize direct presentment to the bank on which bank payable through checks are written (See proposed regulatory language—amendments to § 229.36 (b) and (f) (Alternative 2); and

4. Allocate losses for return of bank payable through checks from a nonlocal payable through bank to the bank on which such checks are written, to the extent the process of return took longer than would have been required if the check had been returned by the bank on which they are written (See proposed regulatory language—amendment to § 229.38(d)(2)).

In addition, elsewhere in today's Federal Register, the Board is proposing for comment several other technical amendments to Regulation CC relating to payable through checks (see Docket R–0616).

Summary of Comments

The Board received a total of 155 comments on the interim rule. The following table reflects these comments by category of respondent:

Commercial Banks and Bank Holding Companies [1]	129
Credit Unions	8
Savings and Loan Associations	12
Trade Associations	6
Individuals	3

[1] Identical comments submitted by three employees of the same bank are counted as one comment.

A total of 144 commenters opposed the definition of paying bank as interpreted by the court decision. Fifty-three percent of the commenters urged the Board to appeal the court ruling. Ten commenters suggested that the Board should request that Congress amend the law. Five commenters concurred with the revisions made in the interim rule. The majority of the commenters discussed the operational concerns and the increased risk of fraud loss caused by the court ruling. They indicated the need for longer term initiatives aimed at easing the operational burden of identifying payable through drafts and minimizing the risk of fraud losses for depositary banks.

Operational concerns. A total of 89 commenters expressed concern about the operational problems caused by the ruling. Banks will no longer be able to rely on the routing number to determine whether a bank payable through check is local or nonlocal. Commenters stated that they will have operational difficulties in assigning availability to

[7] An ancillary benefit to requiring that the nine-digit routing number of the bank on which the check is written be printed on the face of the check is that it would provide information needed to establish arrangements for automated clearinghouse transfers to or from an account at the bank on which the check is written so that the ACH transfers would be sent to the bank on which the check is written rather than to the payable through bank, which generally rejects the transfer. The bank routing number and account number information that is necessary to establish an ACH transfer arrangement is often obtained from a voided check supplied by the bank customer. If this information is obtained from a bank payable through check, the routing number does not identify the bank to which the ACH transfer should be directed, resulting in problems for the payable through bank, the customer, the originator of the payment, and the bank to which the ACH transfer should be directed.

[8] The Federal Reserve Operating Circular on the Collection of Cash Items and Returned Checks states that banks should not send to a Reserve Bank for forward collection a check that "does not state on its face the name and city and state address of the paying bank associated with the routing number on the item". (Paragraph 7(e).)

[9] See U.C.C. § 3–120, *Engine Parts, Inc. v. Citizens Bank of Clovis*, 92 N.M. 37, 582 P.2d 809, 28 UCC Rep. Serv. 1248 (1978), and *Phelps v. University National Bank*, 85 Ill. App. 2d 68, 229 N.E. 2d 372, 4 UCC Rep. Serv. 635 (1967).

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payable through checks. They expressed concern that depositary banks will have to revert to a complex manual process in order to distinguish share drafts payable by local credit unions from other checks for the purpose of determining availability. Personnel will have to be trained to inspect each check visually to determine whether the check is local or nonlocal. Individual handling and visual inspection will create a larger probability of error and possibly cause delays in collection and return. Commenters were also concerned that tellers would have difficulty determining the availability of payable through checks based on the geographic location of the credit union, because most check processing regions contain only portions of certain states. Reference to a detailed listing of cities and towns in the depositary bank's check processing region would often be required to determine accurately whether a credit union is local or nonlocal to the depositary bank.

Commenters stated that determination of holds on a manual, rather than automated, basis would increase the expense of processing deposits and would decrease the efficiency of the processing, contrary to Congress' expressed intent in the Act that the Board takes steps to improve the check system. Camden National Bank, Camden, Maine, commented, "we are no longer in the Stone Age of check processing where an individual examines each item and sorts it. We are a small bank; however we do our own check processing and handle an average of 25,000 checks for deposit nightly." The Huntington National Bank, Huntington, Ohio, stated, "we process 20 million items per month on the basis of the routing transit number; the time and expense of sorting through these items by hand would be prohibitive." The commenters stated that the burden of identifying a local or nonlocal check has been placed on the depositary bank without a standard industry identification procedure. The majority of the commenters believe that the routing number should continue to be the controlling determination for availability. They referred to the routing number method as efficient and proven.

Some commenters proposed initiatives to ease the operational burdens created by the interim rule. A few commenters requested that the Board develop an alternative method of identifying checks as local or nonlocal in an automated check processing environment. One commenter suggested that the credit union should be required to encode a character in the MICR line to identify the check as a payable through check.

Ten commenters suggested that the credit union should have its own routing number printed on the face of the check. Commenters also recommended that, at a minimum, the credit unions should identify their checks as payable through and include their own name and address and the name of the payable through bank on the face of the check.

A number of commenters suggested that a list should be developed of the credit unions that use nonlocal payable through banks. Another alternative suggested was a list of routing numbers for all payable through banks in each Federal Reserve district.

Fifteen commenters recommended that the Board should allow depositary banks to require the use of a special deposit slip for payable through checks that are to be treated as local items. They noted that Regulation CC currently requires special deposit slips for certain next-day items and suggested that the same rules apply to payable through checks. The special deposit slips would make these items more easily identifiable for tellers.

Risk of fraud loss. One hundred eleven commenters expressed concern regarding the potential risk of losses and increased exposure to fraud for depositary banks. They stated that the interim rule will expose depositary banks that accept share drafts for deposit that are payable by a local credit union but payable through a nonlocal bank to additional risk because such share drafts would not have to be returned as expeditiously as local checks would normally be returned. The commenters indicated that most share drafts payable through a nonlocal bank would not be received by the depositary bank before funds must be made available under the local availability schedule. Home Loan Savings Bank, Fort Wayne, Indiana, commented that "in the past, we have on many occasions, experienced inordinate delays of from 12 to 18 days in the return of local credit union share drafts payable through distant nonlocal banks."

Commenters argued that checks considered local for the purposes of determining availability should also be considered local for determining whether the checks are returned expeditiously. They recommended that the revised definition of paying bank be applied to the rules of Subpart C, in particular the expeditious return rules, as well as the availability rules of Subpart B. They noted that this would also reestablish the clear connection between the availability requirements and the time required for a check to be cleared and returned. Commenters also suggested that the credit union on which the check is written should be responsible for any losses incurred. American Bankers Association, Washington, DC, stated:

> To relieve the unfair risk imposed on banks in this situation, we strongly recommend that the Board extend the revised definition of paying bank to Subpart C relating to the collection of checks. The expeditious return standard should be determined by the location of the payor bank since that location determines whether a local or nonlocal check funds availability schedule applies.

Thirty-five commenters stated that the interim rule promotes delayed disbursement. They noted that the revised definition of paying bank is inconsistent with the Federal Reserve Board's proposal to restrict remote disbursement of teller's checks and the Board's overall efforts to discourage delayed disbursement.

Eight commenters recommended that the final rule authorize direct presentment to credit unions that use payable through checks. They indicated that, under direct presentment, depositary banks would have the option of collecting payable through checks locally in those cases where local availability must be provided, and thus would generally learn if a check has not been paid prior to the time funds must be made available for withdrawal.

Twenty-five commenters favored requiring a credit union to use a local payable through bank. They noted that this requirement would reduce the risks to the depositary bank by maintaining the clear link between the time it takes to collect and return a check and the time within which the depositary bank must make the funds available to the depositor. They stated that if the credit unions want their checks to be treated as local they should be willing to use a local payable through bank. They also noted that this proposal would eliminate the operational problems created by the interim rule, by enabling depositary banks to rely on the routing number encoded on the check to determine availability.

Miscellaneous issues. Twenty commenters discussed the additional disclosure requirements, with the majority of the commenters opposing them due to the added cost to the depositary bank, which would be passed on to bank customers. These commenters also indicated that these extra notices would create additional confusion to their customers. Further, some commenters indicated that it was operationally difficult to provide the added disclosures to their customers because of printing backlogs and quarterly versus monthly statements. The American Bankers Association indicated that the proposed disclosure requirement was generally an appropriate solution, but suggested additional language that would be applicable to those depositary banks that give availability of funds for all checks within the local schedule. Finally, some commenters supported the time frame for disseminating the disclosures.

Eight commenters generally favored the bona fide error proposal, but most asked that additional clarification be provided in § 229.21(c). Some commenters requested that "safe harbor" procedures for determining whether a check is local or nonlocal be identified or examples given with respect to the type of procedure that would be considered reasonable. Further, other commenters believed the provision offered only limited protection and suggested additional language so that depositary banks relying on the list of routing numbers of payable through banks compiled by the Federal Reserve would not be liable for related mistakes.

One commenter indicated that it will maintain records of any losses incurred as a result of the payable through amendment and suggested that the Federal Reserve and other banks monitor these matters carefully, so that appropriate action can be taken if losses reach an unacceptable level.

One commenter indicated that the interim amendment was not clear as to what type of checks, other than credit union share drafts, were covered by the amendment, and requested that a more precise identification be given.

One commenter was not in favor of the technical revisions to Regulation CC that were made to conform other provisions of the regulation to the payable through amendment. This commenter requested that the Federal Reserve retain or modify in different ways the provisions that contained references to the use of the routing number versus the actual location of the bank offering payable through checks.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (12 U.S.C. 601–612) requires an agency to publish an initial regulatory flexibility analysis with any notice of proposed rulemaking. Two of the requirements of an initial regulatory flexibility analysis (12 U.S.C. 603(b)), a description of the reasons why action by the agency is being considered and a statement of the objectives of, and legal basis for, the proposed rule, are contained in the supplementary material above. The proposed rules require no additional reporting or record-keeping requirements nor are there relevant federal rules that duplicate, overlap, or conflict with the proposed rule.

Another requirement for the initial regulatory flexibility analysis is a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply. The above supplementary material contains the Board's best estimates of the number of institutions that use payable through checks and that would therefore be affected by the proposed rules. Many of the affected institutions would be small entities, generally credit unions, however the Board does not have information on the sizes of all of the affected entities.

The Board has included in its proposal several alternative rules and is requesting comment on the cost and risk associated with each alternative for all affected entities, both large and small. The Board has not, however, proposed an exemption from coverage for small institutions that use payable through checks. The purpose of the proposed rules is to alleviate the operational difficulties and risk associated with the acceptance of payable through checks by depositary banks. This purpose would be defeated if the rules did not apply to small institutions that use payable through checks because the operational and risk problems for their checks would remain.

List of Subjects in 12 CFR Part 229

Banks, Banking, Federal Reserve System.

For the reasons set out in the preamble, 12 CFR Part 229 is proposed to be amended as follows:

PART 229—AVAILABILITY OF FUNDS AND COLLECTION OF CHECKS

1. The authority citation for Part 229 continues to read as follows:

Authority: Title VI of Pub. L. 100–86, 101 Stat. 552, 635, 12 U.S.C. 4001 *et seq.*

2. In § 229.36, the heading is revised, paragraphs (b)(3) and (b)(4) are revised, and new paragraphs (b)(5), (f), and (g) are added to read as follows:

§ 229.36 Presentment and issuance of checks.

* * * * *

(b) * * *

(3) At any branch or head office, if the bank is identified on the check by name without address;

(4) At a branch, head office, or other location consistent with the name and address of the bank on the check if the bank is identified on the check by name and address; or

(5) In the case of a check that is payable by a bank and payable through another bank,

(i) At a location to which delivery is requested by the bank by which the check is payable;

(ii) At any branch or head office of the bank by which the check is payable, if that bank is identified by name without address;

(iii) At any branch, head office, or other location consistent with the name and address of the bank by which the check is payable, if that bank is identified on the check by name and address; or

(iv) At any location described in paragraphs (b)(1) through (b)(4) of this section for the bank through which the check is payable.

* * * * *

(e) [Reserved]

Alternative 1

(f) *Presentment of payable through checks.* A check that is payable by a bank and payable through another bank may be presented for payment at any of the locations set forth in paragraphs (b)(4) (i) through (iii) of this section unless the routing number of the bank through which the check is payable is associated with a location in the same check processing region as the depositary bank, in which case the check may only be presented for payment at the location referred to in paragraph (b)(5)(iv) of this section.

Alternative 2

(f) *Presentment of payable through checks.* A check that is payable by a bank and payable through another bank may be presented for payment at any of the locations set forth in paragraph (b)(5) of this section.

Alternative 1

(g) *Issuance of payable through checks.* A bank that arranges for checks payable by it to be payable through another bank shall require that the routing number printed in magnetic ink characters on each check be associated with an address in the same check processing region as the bank by which the check is payable. This provision shall be effective [one year after its publication as a final rule], and after that date banks that use payable through arrangements must require their customers to use checks that meet the requirements of this provision.

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Alternative 2

(g) Issuance of payable through checks. A bank that arranges for checks payable by it to be payable through another bank shall require that the following information be printed conspicuously on the face of each check:

(1) The words "payable through" followed by the name and location of the payable through bank; and

(2) The name, location, and nine-digit routing number of the bank by which the check is payable.

This provision shall be effective [one year after its publication as a final rule], and after that date banks that use payable through arrangements must require their customers to use checks that meet the requirements of this provision.

Alternative 3

(g) Issuance of payable through checks. A bank that arranges for checks payable by it to be payable through another bank shall require that:

(1) The routing number printed in magnetic ink characters on each check be associated with an address in the same check processing region as the bank by which the check is payable; and

(2) The following information is printed conspicuously on the face of the check:

(i) The words "payable through" followed by the name and location of the payable through bank; and

(ii) The name and location of the bank by which the check is payable.

This provision shall be effective [one year after its publication as a final rule], and after that date banks that use payable through arrangements must require their customers to use checks that meet the requirements of this provision.

3. In § 229.30, paragraph (d) is redesignated as paragraph (d)(1), a new heading is added to paragraph (d), and a new paragraph (d)(2) is added to read as follows:

§ 229.30 Liability.

* * * * *

(d) *Responsibility for certain aspects of checks*—(1) * * *

(2) *Responsibility for payable through checks.* In the case of a check that is payable by a bank and payable through a paying bank located in a different check processing region than the bank by which the check is payable, the bank by which the check is payable is responsible for damages under paragraph (a) of this section to the extent that the check is not returned to the depositary bank through the payable through bank as quickly as would have been required had the bank by which the check is payable been the bank to which the check was sent for payment. Responsibility under this paragraph shall be treated as negligence of the bank by which the check is payable for purposes of paragraph (c) of this section.

* * * * *

4. Appendix E—Commentary to Part 229 is amended as follows:

a. The commentary on § 229.30 is amended by revising the second paragraph of paragraph (b), by adding a new paragraph (b)5. immediately after paragraph (b)4., and by adding new paragraphs (f) and (g).

Appendix E—Commentary

* * * * *

Section 229.30 Presentment and Issuance of Checks

* * * * *

(b) * * *

The paragraph specifies the locations at which checks are considered received by the paying bank. Where the check is payable through a bank and the check is sent to that bank, the payable through bank is the paying bank for purposes of this subpart, regardless of whether the paying bank must present the check to another bank or to a nonbank payor for payment. If, however, the payable through check is payable by a bank and sent to that bank, the bank by which the check is payable is the paying bank.

* * * * *

5. If a check is payable by a bank and payable through another bank, the check is considered received by the paying bank upon delivery to any location described in paragraphs 1, 2, 3, or 4 above for the bank by which the check is payable. If such a check is sent to the payable through bank for payment and therefore the payable through bank is the paying bank with respect to that check, it is also considered received by the paying bank upon delivery to any location described in paragraphs 1, 2, 3, or 4 above for the bank through which the check is payable.

* * * * *

[g] [Reserved]

Alternative 1

(f) Presentment of payable through checks. This paragraph authorizes a depositary or collecting bank to present a check that is payable by a bank, and payable through another bank, directly to the bank by which the check is payable unless the check is payable through a local bank, in which case the check must be presented to the local payable through bank.

Alternative 2

(f) Presentment of payable through checks. This paragraph authorizes a depositary or collecting bank to present a check that is payable by a bank, and payable through another bank, directly to the bank by which the check is payable. A bank may also present such a check to the payable through bank. Presentment of such checks may take place at any of the locations set forth in § 229.30(b)(5).

Alternative 1

(g) Issuance of payable through checks. This paragraph provides that if a bank arranges for a check payable by it to be payable through another bank, that check must bear a routing number in its MICR line associated with an address at which presentment may be made in accordance with § 229.30(b) that is in the same check processing region as the bank by which the check is payable. Under this requirement, the check could bear the routing number of the bank by which it is payable or the routing number of a local payable through bank. The address associated with the routing number of the bank by which the check is payable could function as an intercept point from which the check could be forwarded to a nonlocal payable through bank.

This provision takes effect one year after its publication as a final rule. The bank by which these checks are payable is responsible for requiring its customers to meet the new requirements after the effective date.

If a payable through check does not meet the requirements of this paragraph, the bank by which the check is payable may be liable to the depositary bank or others as provided in § 229.30. For example, a bank by which a payable through check is payable could be liable to a depositary bank that suffers a loss, such as lost interest or liability under Subpart B, that would not have occurred had the check met the requirements of this paragraph. The bank by which the check is payable may be liable for additional damages if it fails to act in good faith.

Alternative 2

(g) Issuance of payable through checks. This paragraph requires that if a bank arranges for a check payable by it to be payable through another bank, that check must contain conspicuously on its face the name, location, and nine-digit routing number of the bank by which the check is payable and the legend "payable through" followed by the name and location of the payable through bank. The routing number need not be in the MICR line. The required information is presumed to be conspicuous if it is in a type not smaller than six-point type.

This provision takes effect one year after its publication as a final rule. The bank by which these checks are payable is responsible for requiring its customers to meet the new requirements after the effective date.

If a payable through check does not meet the requirements of this paragraph, the bank by which the check is payable may be liable to the depositary bank or others as provided in § 229.30. For example, a bank by which a payable through check is payable could be liable to a depositary bank that suffers a loss, such as lost interest or liability under Subpart B, that would not have occurred had the check met the requirements of this paragraph. The bank by which the check is payable may be liable for additional damages if it fails to act in good faith.

Alternative 3

(g) Issuance of payable through checks. This paragraph provides that if a bank arranges for a check payable by it to be payable through another bank, that check must bear a routing number in its MICR line associated with an address at which presentment may be made in accordance with § 229.30(b) that is in the same check processing region as the bank by which the check is payable. Under this requirement, the check could bear the routing number of the bank by which it is payable or the routing number of a local payable through bank. The address associated with the routing number of the bank by which the check is payable could function as an intercept point from which the check could be forwarded to a nonlocal payable through bank.

This paragraph also requires that if a bank arranges for a check payable by it to be payable though another bank, that check must contain conspicuously on its face the name, location, and nine-digit routing number of the bank by which the check is payable and the legend "payable through" followed by the name and location of the payable through bank. The routing number need not be in the MICR line. The required information is presumed to be conspicuous if it is in a type not smaller than six-point type.

This provision takes effect one year after its publication as a final rule. The bank by which these checks are payable is responsible for requiring its customers to meet the new requirements after the effective date.

If a payable through check does not meet the requirements of this paragraph, the bank by which the check is payable may be liable to the depositary bank or others as provided in § 229.30. For example, a bank by which a payable through check is payable could be liable to a depositary bank that suffers a loss, such as lost interest or liability under Subpart B, that would not have occurred had the check met the requirements of this paragraph. The bank by which the check is payable may be liable for additional damages if it fails to act in good faith.

* * * * *

b. The commentary on § 229.30 is amended by redesignating the first three paragraphs of paragraph (d) as paragraph (d)(1); by adding a heading for paragraph (d); by adding a new paragraph (d)(2) to follow the third paragraph of newly redesignated paragraph (d)(1); and by revising the last paragraph of paragraph (d) to read as follows:

Section 229.30 Liability

* * * * *

(d) Responsibility for certain aspects of checks—(1) * * *

(2) *Responsibility for payable through checks.* This paragraph provides that the bank by which a payable through check is payable will be liable for damages under paragraph (a) to the extent that the check is not returned through the payable through bank as quickly as would have been required under § 229.30 had the check been sent to the bank by which it is payable for payment. This responsibility does not include responsibility for the time required for the forward collection of a check.

Responsibility under paragraphs (d)(1) and (d)(2) is treated as negligence for comparative negligence purposes, and the contribution to damages under paragraphs (d)(1) and (d)(2) is treated in the same way as the degree of negligence under paragraph (c) of this section.

By order of the Board of Governors of the Federal Reserve System, October 25, 1988.

William W. Wiles,
Secretary of the Board.

[FR Doc. 88-25088 Filed 11-1-88; 8:45 am]
BILLING CODE 6210-01-M

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12 CFR Part 229

[Regulation CC; Docket No. R-0649]

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is proposing for comment several amendments to Regulation CC and its Commentary (Appendix E to Regulation CC). The regulation requires banks to make funds available to their customers within specified times, to disclose their funds availability policies to their customers, and to handle returned checks expeditiously. Since the publication of Regulation CC, the Board has received numerous requests from banks and others for clarification of various provisions of the regulation. The Board believes that the proposed changes to Regulation CC and its Official Commentary (Appendix E) respond to many of these questions and would aid banks in understanding and complying with the regulation.

The proposed amendments may be summarized as follows:

Section 229.2 Definitions.

(d) *Available for withdrawal.* The Commentary states that funds are considered to be available for withdrawal even though they cannot be used because they are subject to garnishment, tax levy, or court order restricting disbursements from the account. The Board proposes to amend the Commentary to make it clear that when a bank places a hold on funds or sets funds aside as a result of the certification of a check, a check guaranty, purchase of a cashier's check, or similar transaction, the bank has not failed to make funds available for withdrawal. This change would make it clear that banks are permitted under the regulation to place a hold on the funds represented by a check certified or purchased and not debit the account until the check is presented for payment.

(e) *Bank.* the Board proposes to amend the definition of "bank" by adding agencies of foreign banks that are located in the United States. The Expedited Funds Availability Act definition of "depository institution" includes "an office, branch, or agency of a foreign bank located in the United

DATE: Comments must be submitted on or before December 30, 1988.

ADDRESSES: Comments, which should refer to Docket No. R-0649, may be mailed to the Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, Attention: Mr. William W. Wiles, Secretary; or may be delivered to Room B-2223 between 8:45 a.m. and 5:15 p.m. All comments received at the above address will be made available to the public, and may be inspected at the Freedom of Information Office, Room B-1122 between 8:45 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Louise L. Roseman, Assistant Director (202/452-3674) or Gayle Thompson, Program Leader (202/452-2934), Division of Federal Reserve Bank Operations; Joseph R. Alexander, Senior Attorney (202/452-2489) or Stephanie Martin, Attorney (202/452-3198), Legal Division; Kathleen S. Brueger, Staff Attorney (202/452-2412) or Thomas J. Noto, Staff Attorney (202/452-3667), Division of Community and Consumer Affairs; or for the hearing impaired *only*, Telecommunications device, Dorothea Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION: On May 13, 1988, the Board adopted Regulation CC (12 CFR Part 229) to carry out the provisions of the Expedited Funds Availability Act (12 U.S.C. 4001 *et seq.*). 53 FR 19372 (May 27, 1988). The regulation requires banks [1] to make funds available to their customers within specified times to disclose their funds availability policies to their customers, and to handle returned checks expeditiously. Since the publication of Regulation CC, the Board has received numerous requests from banks and others for clarification of various provisions of the regulation. The Board believes that the proposed changes to Regulation CC and its Official Commentary (Appendix E) respond to many of these questions and would aid banks in understanding and complying with the regulation.

The proposed amendments may be summarized as follows:

Section 229.2 Definitions.

(d) *Available for withdrawal.* The Commentary states that funds are considered to be available for withdrawal even though they cannot be used because they are subject to garnishment, tax levy, or court order restricting disbursements from the account. The Board proposes to amend the Commentary to make it clear that when a bank places a hold on funds or sets funds aside as a result of the certification of a check, a check guaranty, purchase of a cashier's check, or similar transaction, the bank has not failed to make funds available for withdrawal. This change would make it clear that banks are permitted under the regulation to place a hold on the funds represented by a check certified or purchased and not debit the account until the check is presented for payment.

(e) *Bank.* the Board proposes to amend the definition of "bank" by adding agencies of foreign banks that are located in the United States. The Expedited Funds Availability Act definition of "depository institution" includes "an office, branch, or agency of a foreign bank located in the United

[1] Regulation CC defines the term "bank" to include all depository institutions. 12 CFR 229.2(e).

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States." 12 U.S.C. 4001(12). The definition of bank in Regulation CC originally included only branches of foreign banks as defined in the International Banking Act (12 U.S.C. 3101). In some cases, agencies of foreign banks, however, may hold accounts and pay checks. Accordingly, it is appropriate to cover agencies of foreign banks as well as branches. Other offices of foreign banks in the United States are not permitted to hold accounts. This amendment would become effective 120 days following its final adoption to provide agencies of foreign banks sufficient time to implement the requirements of Subpart B.

The Board also proposes to amend the Commentary to the definition of "bank" by clarifying the status of Edge Act corporations, agreement corporations, and commercial lending companies (such as banking companies incorporated under Article XII of the New York Banking Law) under the regulation. Congress did not include these corporations under the definition of "depository institution;" consequently, the Board did not subject them to the availability and disclosure requirements of Subpart B of Regulation CC. For purposes of Subpart C, however, the term "bank" also includes any person engaged in the business of banking. Edge Act coprorations, agreement corporations, and commercial lending companies do pay checks and drafts and would generally be considered to be engaged in the business of banking. Therefore, the board proposes to amend the Commentary to clarify that Subpart C also applies to these entities.

(f) *Banking day* and (g) *Business day.* The commentary to these definitions states that deposits made to an ATM are considered made at the branch holding the account into which the deposit is made for the purpose of determining the day of deposit. The Board believes that it is appropriate to apply this rule to deposits made at off-premise facilities, such as remote depositories and lock boxes, as well as at ATMs. All other deposits should be considered made at the branch at which the deposit is received. The Board proposes to revise the Commentary accordingly.

(k) *Check.* The Commentary states that a credit card draft is not considered a check for purposes of the regulation. The Board proposes to clarify the term "credit card draft" by revising the Commentary to specify that the term includes sales drafts used by merchants or generated by banks, but excludes checks that banks provide to their customers as a means of accessing credit lines without the use of credit cards.

(z) *Paying bank.* The definition of paying bank includes the state or unit of general local government on which a check is drawn. Some states and local governments issue drafts drawn on themselves, but designate the drafts as payable through or at a bank. The Board proposes to amend the definition of paying bank to provide that a state or unit of general local government is a paying bank only if the check is actually sent to the state or unit of general local government for payment or collection. A related amendment is proposed for the warranty provisions in § 229.34 (a) and (b).

(bb) *Qualified Return Check.* The regulation defines a qualified returned check ("QRC") as one that has been prepared for automated return to the depositary bank by placing the check in a carrier envelope or placing a strip on the check and encoding the strip or envelope in magnetic ink. Under § 229.31(a), a returning bank's return deadline is extended by one business day if the returning bank converts a returned check to a QRC.

Under the current regulation, returning banks that might want to use another technology for automating returned check processing may not extend their return deadline when using a methodology other than that defined for a qualified returned check. A broader definition of qualified returned check would provide incentives for banks to develop other methods for automating returns that might be more efficient. If, however, the definition of qualified returned check were broadened to make various methods of automating the return of unpaid checks more acceptable, the likelihood that all banks involved in handling a given return will be using the same automated system is diminished, thus reducing the efficiency of any of the systems. Therefore, it might be desirable to continue the current restrictions on the use of alternative technologies.

The Board requests comment on whether banks need a broader definition of qualified returned checks to accommodate different technologies. For example, an alternative of the qualified returned checks, the "Speedy Return Plan," was issued for comment in December 1987 as part of longer-term initiatives for improving returned check processing. See 52 FR 47179 (December 11, 1987). This alternative program differs from the qualified returned check because it would use electronic files rather than envelopes or strips to direct the returned check to the depositary bank. Comments on this alternative method of automating returns indicated that it should be explored further.

In addition, the Board requests comment on whether banks would use an alternative method of qualifying returns if it were available and whether the number of alternative methodologies allowed should be limited. The Board also requests comment on whether a returning bank should be permitted to extend its return deadline by the additional day to prepare the return for processing using another technology if the return had originally been qualified by the paying bank.

In addition, the Board proposes to clarify the Commentary to indicate that QRCs prepared using envelopes preprinted with the return item identifier may conform to the guidelines established in *Specification for the Placement and Location of MICR Printing, X9.13* by the American National Standards Committee on Financial Services (Sept. 8, 1983) ("ANSI guidelines") for the external processing code ("EPC") field for printing the identifier. The ANSI guideline states that the EPC field is located within ¾ inch to the left of the routing number, thus allowing the identifier to be in either position 44 or position 45 on preprinted envelopes.

(cc) *Returning bank.* The definition of "returning bank" in Regulation CC states that a returning bank is a collecting bank for purposes of U.C.C. § 4–202(1)(e), which specifies a collecting bank's duty to notify its transferor of delays in transit. On further consideration, the Board does not believe that it is necessary for Regulation CC to require that a returning bank notify its transferor or any loss or delay in transit, and therefore proposes to delete this reference from the definition. A returning bank would still be a collecting bank for purposes of U.C.C. § 4–202(2), which sets out when a collecting bank's action would be considered to be seasonable.

(kk) *Unit of general local government.* The Board has been asked whether Indian nations are considered to be units of general local government within the meaning of Regulation CC. The Act provides next-day availability for checks drawn by a unit of general local government. Under the Act, a unit of general local government is defined as any city, county, town, township, parish, village, or other general purpose political subdivision of a state. As Indian nations are not subdivisions of the states, Indian nations are not units of general local governments within the meaning of the Act, and the Board consequently proposes to revise the Commentary to make it clear that Indian nations are not included within the meaning of this term.

Section 229.10 Next-day availability.

Certain check deposits. The Board proposes to clarify that banks are required to provide next-day availability (or two-day availability under § 229.10(c)(2)) only for those Federal Reserve Bank and Federal Home Loan Bank checks that are encoded with a routing number listed in Appendix A to the regulation. Bank generally must rely on the routing number to determine whether these checks are subject to next-day availability, because the banks cannot require the use of special deposit slips to identify them. The routing numbers assigned to the Federal Reserve Banks and Federal Home Loan Banks may change from time to time, and the Board does not believe that banks should be held liable for not providing next-day availability for a Federal Reserve Bank or Federal Home Loan Bank check that contains a newly issued routing number that has not yet been included in Appendix A. The Board will update Appendix A periodically to incorporate recently issued Federal Reserve Bank and Federal Home Loan Bank routing numbers.

The Board proposes to add a sentence to the Commentary to § 229.10 that points out that traveler's checks are also entitled to next-day availability when they are deposited to new accounts, cross-referencing the new account exception in § 229.13.

Deposits made to an employee of the depositary bank. In most cases, § 229.10(c) conditions next-day availability on the check being deposited in person to an employee of the depositary bank. Deposits made through the mail or at an ATM or night depository must be made available not later than the second business day after the banking day of deposit. Some questions have been raised about the meaning of the term "in person to an employee of the depositary bank," e.g., does it cover situations where a bank sends a courier to the customer to pick up checks for deposit? The language used by the Act is "deposited in a receiving depository institution which is staffed by individuals employed by such institution," 12 U.S.C. 4002(a)(2), and the Act defines "receiving depository institution" to mean "the branch of a depository institution or the proprietary ATM in which a check is first deposited." 12 U.S.C. 4001(20). The Board interprets these provisions as requiring next-day availability only for deposits made to staff of the depositary bank at a branch of the bank. Under § 229.10(c)(2), second-day availability would apply to deposits described in this section that are made at a teller station staffed by a person that is not an employee of the depositary bank (e.g. a shared staffed teller facility located in a retail store), and to deposits picked up at the customer's premises by an employee of the depositary bank. Accordingly, the Board proposes to revise this section of the Commentary to make these clarifications.

Fees for withdrawals. The Commentary to § 229.10(c) prohibits a depositary bank from imposing a fee on a customer when the customer withdraws funds that must be made available under the regulation, but for which the bank has not yet received credit. The Board intended this provision to prevent practices designed to discourage customers from exercising their right to withdraw these funds in accordance with the regulation.

Banks have expressed concern, however, that this provision could be interpreted to prohibit the application of account analysis programs commonly used by banks under which interest or earnings credits are computed on the basis of collected balances. The Board believes that such programs are generally adopted for legitimate purposes and not for purposes of evading the requirements of the Act. Because of the difficulties in distinguishing these programs from devices to evade the requirements of the Act, the Board proposes to delete this provision of the Commentary. The Board, however, plans to monitor the practices of banks in this area, and may consider specific restrictions if it determines that abuses are occurring.

Special deposit slips. The regulation permits depositary banks to require the use of special deposit slips as a condition to providing next-day availability for certain types of checks. Banks imposing this requirement must make the slips reasonably available to their customers. The Commentary states that if a bank only provides the special deposit slips upon the request of a customer, the bank's tellers must advise depositors of the special slips' availability. Since the publication of the final rule, a number of banks have stated that this requirement places a difficult burden on tellers. The Board proposes to amend this portion of the Commentary by deleting the reference to the teller's duties.

Section 229.11 Temporary availability schedule.

(c) *Nonlocal checks.* Under the temporary schedule, funds deposited by nonlocal check may be made available for withdrawal no later than the seventh business day following the banking day of deposit. There are exceptions for deposits in accounts of banks located outside the 48 contiguous states and for deposits made to nonproprietary ATMs. The Board proposes to delete the reference to nonproprietary ATM deposits because § 229.11(d) already requires that all checks deposited at nonproprietary ATMs be made available no later than the seventh business day following the banking day of deposit.

Section 229.13 Exceptions.

(b) *Large deposits.* This provision permits a depositary bank to extend the hold placed on local and nonlocal check deposits to the extent that the aggregate amount of the deposit on any banking day exceeds $5,000. Since the final rule was adopted, several banks have asked if there is any rule that applies when a large-dollar deposit is made up of both local and nonlocal checks to determine which checks or portions of checks should be made available in accordance with the schedule and which checks may be held for a longer period of time under this exception. The Board intended to leave this determination to the discretion of the depositary bank, and proposes to amend the Commentary to clarify this point.

(e)(2) *Overdraft and returned check fees.* The last sentence of this paragraph of the regulation states that "[t]he overdraft and returned check notice must state that the customer may be entitled to a refund of overdraft or returned check fees * * *." This sentence, when read with the notice requirement of § 229.13(g), could be interpreted to require banks to provide duplicate notices to their customers in certain cases. Thus, the Board proposes to amend the last sentence of this paragraph to clarify that only one notice is required.

Section 229.16 Specific availability policy disclosure.

The Board proposes to clarify two disclosure issues that have been raised since Regulation CC took effect. These clarifications would not require banks to change disclosures that have already been printed or mailed.

(a) *General.* The Board proposes two revisions to the Commentary to § 229.16(a). First, the Board would clarify that if a bank discloses the policy

it follows in most cases, it need not disclose to some customers that they may get faster availability. In addition, the Board would clarify that a bank does not violate the disclosure requirements of the regulation if it pays checks written on an account prior to the day funds in the account become available for withdrawal according to its disclosure. As long as funds are not available for withdrawal for all uses permitted to the customers, they are not "available for withdrawal" as that term is defined in the regulation and, generally, disclosures based on the time that funds are available for all uses are proper.

(b) *Content of specific availability policy disclosure.* The Board also proposes a revision to the Commentary to § 229.16(b) to clarify that a bank that provides availability based on when the bank generally receives credit for deposited checks need not disclose the time when a check drawn on each bank will be available for withdrawal. Instead, the bank may disclose the categories of deposits that must be available on the first business day after the day of deposit, state the other categories of deposits and the time periods that will be applicable to those deposits, and state that the customer may request a copy of the bank's schedule for when deposits of those checks will be available for withdrawal.

(c)(3) *Overdraft and returned check fees.* The last sentence of this paragraph of the regulation states that "[t]he overdraft and returned check notice must state that the customer may be entitled to a refund of overdraft or returned check fees * * *." This sentence, when read with the notice requirement in § 229.16(c)(2), could be interpreted to require banks to provide duplicate notices to their customers in certain cases. The Board proposes to amend the last sentence of this paragraph to read "[t]he notice must state that the customer may be entitled to a refund of overdraft or returned check fees * * *."

Section 229.19 Miscellaneous.

(a) *When funds are considered deposited.* This paragraph establishes rules to determine when funds are considered received in various circumstances. Rules applicable to deposits made at staffed teller stations differ from those that apply to deposits made at off-premises facilities, such as lock boxes or night depositories. The Board believes that the rule for when funds deposited in a deposit box located in the lobby of the bank should be similar to the rule for funds received at a staffed teller station, and proposes to amend the Commentary accordingly.

Section 229.19(a)(5)(ii) permits a bank to establish a cut-off hour of 2:00 p.m. or later, after which deposits may be considered made on the following banking day. This provision is similar to U.C.C. § 4–107. Recognizing that many banks close before 2:00 p.m., the Commentary notes that this provision does not require banks to stay open until 2:00 p.m. The language in the Commentary has raised a number of questions, e.g., what is the effect of closing most of the bank but leaving drive-up teller windows open? The Board proposes to amend the Commentary to clarify the effect of closing practices on cut-off hours.

(c) *Holds on other funds.* Section 229.19(c) of the regulation limits the hold a depositary bank may place on any funds of the customer due to a deposit to an account covered by the regulation. For example, for deposits made to a customer's checking account, if a bank places a hold on funds in a nontransaction account, such as certain savings accounts, rather than the customer's checking account, the bank may place such a hold only to the extent that the funds held do not exceed the amount of the deposit, and the length of the hold does not exceed the time periods permitted by the regulation. This restriction is intended to prevent evasion of a principal purpose of the Act, i.e, to limit holds on deposits to transaction accounts.

The regulation also limits holds that a bank can place on funds of the customer if the customer cashes a check over the counter to holds that do not exceed the time periods prescribed in the regulation and do not exceed the amount of the check cashed. A number of banks have argued that, as to checks cashed over the counter, this restriction is overly broad because cashing a check over the counter and placing a hold on a nontransaction account does not involve an "account" covered by the Act.

The Board proposes to amend § 229.19(c) so that, in the case of checks cashed over the counter, the regulation does not limit holds placed on funds that are not held in accounts as defined by the regulation.

Section 229.20 Relation to State law.

The Act (section 606, 12 U.S.C. 4007) provides that any state law in effect on or before September 1, 1989, that provides for a shorter hold for a category of checks than is provided under federal law will supersede the federal provision. Section 229.20 of the regulation provides for Board determinations, upon request, of whether state law relating to the availability of funds is preempted by federal law and also provides certain preemption standards.

In August 1988 and October 1988, the Board adopted preemption determinations with respect to the laws of several states. See, for example, 53 FR 32359 (August 24, 1988). In formulating those preemption determinations, the Board adopted certain uniform principles that will apply in all Board preemption determinations. The Board proposes to amend the Commentary to § 229.20 of Regulation CC to incorporate these principles for preemption determinations.

Section 229.30 Paying bank's responsibility for return of checks.

(a) *Return of checks.* Prior to the effective date of Regulation CC, a paying bank usually returned a check to the presenting bank and automatically received a refund of any provisional settlement it may have made. Under Regulation CC, the paying bank must make an expeditious return, which may or may not involve returning the check through the presenting bank. If the paying bank does not return through the presenting bank, it will receive payment for the check from the bank to which the check is returned (a returning bank or the depositary bank). In these cases, any credit given to the presenting bank is not charged back.

In rare cases, a paying bank that returns a check may not have settled for the check with the presenting bank. In such cases, if the paying bank returns the check other than through the presenting bank, it should be required to make immediate payment for the amount of the check to the presenting bank. The Board proposes to amend the Commentary to § 229.30(a) to clarify this point.

(b) *Unidentifiable depositary bank.* If a paying bank is unable to identify the depositary bank, it may return the check to any bank that handled the check for forward collection, even if that bank has not agreed to act as a returning bank. If a paying bank chooses this option, it must advise the collecting bank that it is unable to identify the depositary bank. The Board proposes to amend the Commentary to provide that this notice must be conspicuous, and that the paying bank may not prepare the check for automated processing.

Section 229.31 Returning bank's responsibility for return of checks.

(b) *Unidentifiable depositary bank.* This paragraph provides, among other things, that a returning bank that receives a check from a paying bank that could not identify the depositary bank must return the check expeditiously to the depositary bank if it is able to identify the depositary bank. The Board proposes to amend the regulation to clarify that this requirement also applies to checks that a returning bank receives from another returning bank where the prior returning bank is not able to identify the depositary bank.

(f) *Notice in lieu of return.* This paragraph provides that a returning bank may send a notice of nonpayment in lieu of the physical check if the check is lost or otherwise unavailable. The Board does not believe that a check is unavailable merely because a bank has filed it in a way that makes its retrieval inconvenient or difficult. Notice in lieu of the return of the actual check should be permitted only when a bank does not have and cannot obtain possession of the check or must retain possession of the check for protest. The Board proposes an amendment to the Commentary to clarify this point.

Section 229.32 (Depositary bank's responsibility for returned checks.

Under § 229.32(a)(2), a depositary bank must accept returned checks at a location consistent with the name and address of the depositary bank in its indorsement on the check, or, if no address appears in the indorsement, at a branch or head office associated with the routing number of the depositary bank in its indorsement. A depositary bank's indorsement could contain an address that is in a different check processing region from an address associated with the routing number in the indorsement. As returned checks will be routed on the basis of the routing number in the depositary bank's indorsement, the return of checks will be facilitated if returns can be made to an address in the same check processing region as the location associated with the routing number. Therefore, the Board proposes to amend § 229.32(a)(2) to provide that if the address in the depositary bank's indorsement is not in the same check processing region as the address associated with the routing number in its indorsement, the depositary bank must accept returned checks at a branch or head office associated with the routing number in the indorsement.

Section 229.32(a) also permits depositary banks to require that returned checks be sorted separately from forward collection checks. The intent of this provision is to require paying or returning banks to present returned checks to the depositary bank separately sorted from forward collection checks, unless the depositary bank agrees to take returned checks commingled with forward collection checks. The Board proposes to clarify the regulation and the Commentary on this point.

Similarly, the Board also proposes to amend § 229.32 to state that a depositary bank may require returned checks for which it is the depositary bank to be separately sorted from checks for which it is a returning bank, including those for which it is a prior indorser. This amendment would facilitate the handling of checks that are returned to prior indorsers because of difficulty in identifying the depositary bank.

Section 229.33 Notice of nonpayment.

(a) *Requirement.* A paying bank's failure to give notice of nonpayment may be offset by a depositary bank's breach of warranty of title or other warranty regarding a check. The Board believes that a paying bank should not be responsible to a depositary bank for failure to give notice in a case where the depositary bank has breached its warranty, such as where the check has been stolen. This is consistent with the Uniform Commercial Code's allocation of loss for the late return of a check in such a case. See U.C.C. § 4–032; see also *First American Savings* v. *M & I Bank*, 685 F. Supp. 473 (E.D. Pa. 1988); 50 FR 5739–40 (Feb. 12, 1985). The Commentary to this section has been revised to clarify the notice of nonpayment requirement in such cases.

Section 229.35 Indorsements

(a) *Indorsement standards.* The indorsement standard specifies the information that must be included in a depositary bank's indorsement. The standard also permits depositary banks to include other identifying information in their indorsements. Some banks have included nine-digit ZIP codes in their indorsements. The Board believes that the inclusion of the nine-digit ZIP code could lead paying and returning banks to confuse the ZIP code with the routing number, which also contains nine digits. In order to prevent this confusion, the Board proposes to amend the Commentary to advise depositary banks not to include in their indorsements information, such as a nine-digit ZIP code, that could be confused with required information, such as the depositary bank's routing number.

(b) *Liability of bank handling check.* This paragraph provides that a bank handling a check for collection or return may have the rights of a holder. The Board proposes to revise the Commentary to clarify that a bank may become a holder or a holder in due course regardless of whether prior banks have complied with the regulation's indorsement standards.

Section 229.37 Variation by agreement.

The Commentary to this section notes that the Board did not adopt the rule stated in U.C.C. section 4–103(2), which provides that Federal Reserve regulations and operating letters, clearinghouse rules, and the like have the effect of agreements under the U.C.C. that apply to parties that have not specifically assented to them. The Board did not, however, intend to affect the status of such agreements under the U.C.C., and the Board accordingly proposes to clarify this point in the Commentary.

Appendix A—Routing Number Guide to Next-Day Availability Checks and Local Checks

The Board proposes to update the list of Federal Home Loan Bank routing numbers to include a newly-issued routing number of the Houston Branch of the Federal Home Loan Bank of Dallas.

Miscellaneous Amendments

In a related action today (Docket No. R–0648), the Board is proposing a number of substantive amendments to Regulation CC to alleviate the problems associated with treating checks payable by one bank but payable through another as local or nonlocal based on the location of the bank by which they are payable. Several other technical amendments are also necessary to accommodate cases where a check is payable by one bank but payable through another; these include amendments to § 229.34 (Warranties by paying bank and returning bank) and § 229.38 (Liability) to clarify that in cases of payable through drafts payable by a bank, the bank by which the check is payable, not the payable through bank, makes the paying bank's warranties or is liable for the condition of the back of a check. These proposed technical amendments related to payable through checks are included in this notice.

Initial Regulatory Flexibility Act Analysis

These proposals are primarily clarifications to Regulation CC that the Board is proposing in response to questions and requests for clarification that the Board has received since the final rule was adopted. The Board does not believe that adoption of the

proposals will result in any significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 229

Banks, Banking, Federal Reserve System.

For the reasons set out in the preamble, Title 12, Chapter II, Part 229 of the Code of Federal Regulations is amended as follows:

PART 229—AVAILABILITY OF FUNDS AND COLLECTION OF CHECKS

1. The authority of Part 229 continues to read as follows:

Authority: Title VI of Pub. L. 100-86, 101 Stat. 552, 636, 12 U.S.C. 4001 *et. seq.*

2. In § 229.2, paragraphs (e)(7), (z)(5), and (cc) are revised to read as follows:

§ 229.2 Definitions.

* * * * *

(e) "Bank" means—

* * * * *

(7) An "agency" or a "branch" of a "foreign bank" as defined in section 1(b) of the International Banking Act (12 U.S.C. 3101).

* * * * *

(z) "Paying bank" means—

* * * * *

(5) The state or unit of general local government on which a check is drawn and to which it is sent for payment or collection.

* * * * *

(cc) "Returning bank" means a bank (other than the paying or depositary bank) handling a returned check or notice in lieu of return. A returning bank is also a collecting bank for purposes of U.C.C. §4–202(2).

* * * * *

3. In § 229.13, paragraph (e)(2) is revised to read as follows:

§ 229.13 Exceptions.

* * * * *

(e)(2) *Overdraft and returned check fees.* * * * The notice must state that the customer may be entitled to a refund of overdraft or returned check fees that are assessed if the check subject to the exception is paid and how to obtain a refund.

4. In § 229.16, paragraph (c)(3) is revised to read as follows:

§ 229.16 Specific availability policy disclosure.

* * * * *

(c)(3) *Overdraft and returned checks.* The notice must state that the customer may be entitled to a refund of overdraft or returned check fees that are assessed if the check subject to the delay is paid and state how to obtain a refund.

5. In § 229.19, paragraph (e) is revised to read as follows:

§ 229.19 Miscellaneous.

* * * * *

(e) *Holds on other funds.* (1) A depositary bank that receives a check for deposit in an account may not place a hold on any funds of the customer at the bank, where—

(i) The amount of funds that are held exceeds the amount of the check; or

(ii) The funds are not made available for withdrawal within the times specified in §§ 229.10, 229.11, 229.12, and 229.13.

(2) A depositary bank that cashes a check for a customer over the counter, other than a check drawn on the depositary bank, may not place a hold on funds in an account of the customer at the bank, if—

(i) The amount of funds that are held exceeds the amount of the check; or

(ii) The funds are not made available for withdrawal within the times specified in §§ 229.10, 229.11, 229.12, and 229.13.

* * * * *

6. In § 229.31, the last sentence of paragraph (b) is revised to read as follows:

§ 229.31 Returning bank's responsibility for return of checks.

* * * * *

(b) Unidentifiable depositary bank.

* * *

(2) * * *;

* * * A returning bank that receives a returned check from a paying bank under § 229.30(b), or from a returning bank under this paragraph, but which is able to identify the depositary bank, must thereafter return the check expeditiously to the depositary bank.

* * * * *

7. In § 229.32:

a. Paragraph (a)(2)(ii) is revised to read as follows:

§ 229.32 Depositary bank's responsibility for returned checks.

(a) * * *

(2) * * *

(ii) If no address appears in the indorsement, or if the address in the indorsement is not in the same check processing region as the address associated with the routing number of the bank in its indorsement on the check, at a branch or head office associated with the routing number in the bank's indorsement; or

* * * * *

b. The last sentence of paragraph (a) is revised to read as follows: "A depositary bank may require returned checks to be separated from forward collection checks and returned checks for which the bank is depositary bank to be separated from checks for which it is a returning bank (including those for which it is a prior indorser)."

8. In § 229.34, paragraph (a)(1), the undesignated paragraph following paragraph (a)(4), paragraph (b)(1), and the undesignated paragraph after (b)(3) are revised to read as follows:

§ 229.34 Warranties by paying and returning bank.

(a) *Warranties.* * * *

(1) The paying bank, or in the case of a check payable by a bank and payable through another bank, the bank by which the check is payable, returned the check within its deadline under the U.C.C., Regulation J (12 CFR Part 210), or § 229.30(c) of this part: * * *

These warranties are not made with respect to checks drawn on the Treasury of the United States, U.S. Postal Service money orders, or checks drawn on a state or a unit of general local government that are not payable through or at a bank.

(b) *Warranty of notice of nonpayment.* * * *

(1) The paying bank, or in the case of a check payable by a bank and payable through another bank, the bank by which the check is payable, returned or will return the check within its deadline under the U.C.C., Regulation J (12 CFR Part 210), or § 229.30(c) of this part; * * *

These warranties are not made with respect to checks drawn on a state or a unit of general local government that are not payable through or at a bank.

9. In § 229.36(d), the first sentence is amended to read as follows:

§ 229.36 Liability.

* * * * *

(d) *Responsibility for back of check.* A paying bank is responsible for damages under paragraph (a) of this section to the extent that the condition of the check when issued by it, its customer, or, in the case of a check payable through the paying bank, the bank (or customer of the bank) by which the check is payable, adversely affects that ability of a bank to indorse the check legibly in accordance with § 229.35. * * *

* * * * *

Appendix A—[Amended]

10. Appendix A is amended by adding a new routing number to the list, under the heading *Federal Home Loan Banks*, in numerical order, as follows:

* * * * *

1130 1750 8

Appendix E—[Amended]

11. Appendix E—Commentary to Part 229 is amended as set forth below:

a. The Commentary to § 229.2(d) last sentence of the second paragraph, (e) second paragraph, (k) last paragraph, and (cc) is revised; in (f) and (g) a new sentence is added at the end of the second paragraph; in (bb) two new sentences are added at the end of the first paragraph; and a new Commentary to § 229.2(kk) is added as follows:

Section 229.2 Definitions

* * * * *

(d) *Available for withdrawal.* * * * For purposes of this regulation, funds are considered available for withdrawal even though they cannot be withdrawn because they are subject to garnishment, tax levy, or court order restricting disbursements from the account, or because the bank has set aside the funds as the result of the certification of a check, sale of a cashier's or teller's check, or guaranty or acceptance of a check.

(e) *Bank.* * * *

"Bank" is defined to include depository institutions, such as commercial banks, savings banks, savings and loan associations, and credit unions as defined in the Act, and U.S. branches and agencies of foreign banks. For purposes of Subpart B, the term does not include corporation organized under section 25(a) of the Federal Reserve Act, 12 U.S.C. 611–631 (Edge corporations) or corporations having an agreement or undertaking with the Board under section 25 of the Federal Reserve Act, 12 U.S.C. 601–604a (agreement corporations). For purpose of Subpart C, and in connection therewith, Subpart A, any Federal Reserve Bank, Federal Home Loan Bank, or any other person engaged in the business of banking is regarded as a bank. The phrase "any other person engaged in the business of banking" is derived from U.C.C. § 1–201(4), and is intended to cover entities that handle checks for collection and payment, such as Edge and agreement corporations, commercial lending companies under 12 U.S.C. 3101, certain industrial banks, and private bankers, so that virtually all checks will be covered by the same rules for forward collection and return, even though they may not be covered by the requirements of Subpart B. For the purposes of Subpart C, and in connection therewith, Subpart A, the term may also include states and units of general local government to the extent that they pay warrants or other drafts drawn directly on the State or local government itself.

* * * * *

(f) *Banking day* and (g) *Business day.* * * *

* * * A deposit made at an ATM or off-premise facility (such as a remote depository or a lock box) is considered made at the branch holding the account into which the deposit is made for purposes of determining the day of deposit. All other deposits are considered made at the branch at which the deposit is received.

* * * * *

The definition of check does not include an instrument payable in a foreign currency (i.e., other than the United States money as defined in 31 U.S.C. 5101) or a credit card draft (i.e., a sales draft used by a merchant or a draft generated by a bank as a result of a case advance; "credit card draft" does not include a check that a bank may supply to a customer as a means of accessing a credit line without the use of a credit card).

* * * * *

(bb) *Qualified Returned Check (QRC).* * * *

* * * Banks using preprinted envelopes for qualifying returns may place the return identifier according to the ANSI X9.13 guidelines for the external processing code ("EPC") field, which allows placement within 1/4 inch to the left of the routing number field. This area would include position 45 as well as position 44.

* * * * *

(cc) *Returning bank* is defined to mean any bank (excluding the paying bank and the depositary bank) handling a returned check. A returning bank may or may not be a bank that handled the returned check in the forward collection process. A returning bank includes a bank that agrees to handle a returned check for expeditious return to the depositary bank under § 229.31(a). A returning bank is also a collecting bank for the purpose of a collecting bank's duty to act seasonably under U.C.C. § 4–202(2).

* * * * *

(kk) *Unit of general local government* is defined to include a city, county, parish, town, township, village, or other general purpose political subdivision of a state. The term does not include special purpose units, such as school districts, water districts, or Indian nations.

Section 229.10 [Amended]

b. The Commentary to § 229.10 is amended as follows:

i. Revising the last sentence in the first paragraph and adding a sentence to the end of the first paragraph of paragraph (c).

(c) *Certain check deposits.* * * * For the purposes of this section, all checks drawn on a Federal Reserve Bank or a Federal Home Loan Bank that contain in the MICR line a routing number that is listed in Appendix A are subject to the next-day availability requirement if they are deposited in an account held by a payee of the check and in person to an employee of the depositary bank, regardless of the purposes of which the checks were issued. For all new accounts, even if the new account exception is not invoked, the first $5,000 of traveler's checks, as well as checks described in this paragraph, deposited on any one banking day is subject to the next-day availability requirement. (See § 229.13(a).)

ii. Revising the heading "Deposit at Staffed Teller Station" and the first paragraph under that heading to read as follows:

Deposits Made to an Employee of the Depositary Bank

In most cases, next-day availability of the proceeds of checks subject to this section is conditioned on the deposit of these checks in person to an employee of the depositary bank. If the deposit is not made to an employee of the depositary bank on the premises of such bank, the proceeds of the deposit must be available for withdrawal by the start of business on the second business day after deposit, under paragraph (c)(2) of this section. For example, second-day availability rather than next-day availability would be allowed for deposits of checks subject to this section made at a proprietary ATM (and at a nonproprietary ATM under the permanent schedule), night depository, through the mail or a lock box, or at a teller station staffed by a person that is not an employee of the depositary bank. Second-day availability may also be allowed for such deposits picked up by an employee of the depositary bank at the customer's premises.

iii. Removing the heading "Fees for Withdrawals" and the paragraph appearing under it.

iv. In the fifth paragraph under the heading "Special Deposit Slips," removing the second sentence.

c. The Commentary to § 229.11(c) is amended by revising the first sentence to read as follows:

Section 229.11 Temporary Availability Schedule

* * * * *

(c) *Nonlocal checks.* Under the temporary schedule, funds deposited by nonlocal checks must be made available for withdrawal not later than the seventh business day following the banking day the funds are deposited, except in the case of deposits in accounts of banks located outside the 48 contiguous states. * * *

* * * * *

d. The Commentary to § 229.13(b) is amended by adding a new sentence after the second sentence of the first paragraph as follows:

Section 229.13 Exceptions

(b) * * * When the large deposit exception is applied to deposits composed of both local and nonlocal checks, the depositary bank has the discretion to choose the portion of the deposit to which it applies the exception. * * *

* * * * *

Section 229.16 [Amended]

e. The Commentary to § 229.16(a) is amended by adding the following new paragraphs to the end thereof:

(a) * * *

The disclosure must reflect the policy and practice of the bank regarding availability as to most accounts and most deposits into those accounts. In disclosing the availability policy that it follows in most cases, a bank may provide a single disclosure that reflects one policy for all its transaction account customers, even though some of its customers may receive faster availability than that reflected in the policy disclosure. Thus, a bank need not disclose to some customers that they receive faster availability than indicated in the disclosure. If, however, a bank has a policy of imposing delays in availability on any customers longer than those specified in its disclosure, those customers must receive disclosures that reflect the longer applicable availability periods.

A bank may disclose that funds are "available for withdrawal" on a given day notwithstanding the fact that the bank uses the funds to pay checks received before that day. For example, a bank may disclose that its policy is to make funds available from deposits of local checks on the third business day following the day of deposit even though it may use the deposited funds to pay checks prior to the third business day; the funds used to pay checks in this example are not available for withdrawal until the third business day after deposit because the funds are not available for all uses until the third business day. (See the definition of "available for withdrawal" in § 229.2(d).)

f. The Commentary to § 229.16(b) is amended by adding the following new paragraph to the end thereof:

(b) * * *

A bank that provides availability based on when the bank generally receives credit for deposited checks need not disclose the time when a check drawn on a specific bank will be available for withdrawal. Instead, the bank may disclose the categories of deposits that must be available on the first business day after the day of deposit (deposits subject to § 229.10), and state the other categories of deposits and the time periods that will be applicable to those deposits. For example, a bank might disclose the routing number for local checks and indicate that such checks as well as certain nonlocal checks will be available for withdrawal on the first or second business day following the day of deposit, depending on the location of the particular bank on which the check is drawn, and disclose that funds from all other checks will be available on the second or third business day. The bank must also disclose that the customer may request a copy of the bank's detailed schedule that would enable the customer to determine the availability of any check, and must provide such schedule upon request.

Section 229.19[Amended]

g. The Commentary to § 229.19(a) is amended by

i. Revising the third sentence of the first paragraph to read as follows:

(a) * * * For example, funds received at a staffed teller station, a deposit box located in a bank lobby, or an ATM are considered deposited when received by the teller or placed in the lobby deposit box or ATM. * * *

ii. Removing the last sentence of the last paragraph and adding a new paragraph at the end thereof to read as follows:

A bank is not required to remain open until 2:00 p.m. If a bank closes before 2:00 p.m., deposits received after the closing may be considered received on the next banking day. Further, as § 229.2(f) defines the term "banking day" as the portion of a business day on which a bank is open to the public for substantially all of its banking functions, a day, or a portion of a day, is not necessarily a banking day merely because the bank is open for only limited functions, such as keeping drive-in or walk-up teller windows open, when the rest of the bank is closed to the public. For example, a banking office that usually provides a full range of banking services may close at 12:00 noon but leave a drive-in teller window open for the limited purpose of receiving deposits and making cash withdrawals. Under these circumstances, the bank is considered closed and may consider deposits received after 12:00 noon as having been received on the next banking day. The fact that a bank may reopen for substantially all of its banking functions after 2:00 p.m., or that it continues its back office operations throughout the day, would not affect this result. A bank may not, however, close individual teller stations and reopen them for next-day's business before 2:00 p.m. during a banking day.

h. The Commentary to § 229.19(e) is amended by revising the second paragraph and adding a third paragraph to read as follows:

(e) *Holds on other funds.* * * *

This paragraph clarifies that, if a customer deposits a check in an account (as defined in § 229.2(a)), the bank may not place a hold on any of the customer's funds so that the funds that are held exceed the amount of the check deposited, or the total amount of funds held are not made available for withdrawal within the times required in this subpart. For example, if a bank places a hold on funds in a customer's nontransaction account, rather than a transaction account, for deposits made to the customer's transaction account, the bank may place such a hold only to the extent that the funds held do not exceed the amount of the deposit, and the length of the hold does not exceed the time periods permitted by this regulation.

These restrictions also apply to holds placed on funds in a customer's account (as defined in § 229.2(a)), if a customer cashes a check (other than an "on us" check) over the counter. The regulation does not prohibit holds that may be placed on other funds of the customer for checks cashed over the counter, to the extent that the transaction does not involve a deposit to an account.

i. The Commentary to § 229.20(c) is revised to read as follows:

Section 229.20 Relation to State Law

* * * * *

(c) *Standards for preemption.* This section describes the standards the Board will use in making determinations on whether federal law will preempt state laws governing funds availability. A provision of state law is considered inconsistent with federal law if it permits a depositary bank to make funds available to a customer in a longer period of time than the maximum period permitted by the Act and this regulation. For example, a state law that permits a hold of four business days or longer for local checks permits a hold that is longer than that permitted under the Act and this regulation, and therefore is inconsistent and preempted. State availability schedules that provide for availability in a shorter period of time than required under Regulation CC supersede the federal schedule.

Under a state law, some categories of deposits could be available for withdrawal sooner or later than the time required by this subpart, depending on the composition of the deposit. For example, the Act and this regulation (§ 229.10(c)(1)(vii)) require next-day availability for the first $100 of the aggregate deposit of local or nonlocal checks on any day, and a state law could require next-day availability for any check of $100 or less that is deposited. Under the Act, if either one $150 check or three $50 checks are deposited on a given day, $100 must be made available for withdrawal on the next business day, and $50 must be made available in accordance with the local or nonlocal schedule. Under the state law, however, the two deposits would be subject to different availability rules. In the first case, none of the proceeds of the deposit would be subject to next-day availability; in the second case, the entire proceeds of the deposit would be subject to next-day availability. In this example, because the state law would, in some situations, permit a hold longer than the maximum permitted by the Act, this provision of state law is inconsistent and preempted in its entirety.

In addition to the differences between state and federal availability schedules, a number of state laws contain exceptions to the state availability schedules that are different from those provided under the Act and this regulation. The state exceptions continue to apply only in those cases where the state schedule is shorter than or equal to the federal schedule, and then only up to the limit permitted by the Regulation CC schedule. Where a deposit is subject to a state exception under a state schedule that is not preempted by Regulation CC and is also subject to a federal exception, the hold on the deposit cannot exceed the hold permissible under the federal exception in accordance with Regulation CC. In such cases, only one exception notice is required, in accordance with § 229.13(g). This notice need only include the applicable federal exception as the reason the exception was invoked. For those categories of checks for which the state schedule is preempted by the federal schedule, only the federal exceptions may be used.

State law that provide maximum availability periods for categories of deposits that are not covered by the Act would not be preempted. Thus, state funds availability law that apply to funds in time and savings deposits are not affected by the Act or this regulation. In addition, the availability schedules of several states apply to "items" deposited to an account. The term "items" may encompass deposits, such as nonnegotiable instruments, that are not subject to the Regulation CC availability schedules. Deposits that are not covered by Regulation CC continue to be subject to the state availability schedules. State laws that provide maximum availability periods for categories of institutions that are not covered by the Act would also not be preempted. For example, a state law that governs money market mutual funds would not be affected by the Act or this regulation.

Generally, state rules governing the disclosure or notice of availability policies applicable to accounts are also preempted, if they are different from the federal rules. Nevertheless, a state law requiring disclosure of funds availability policies that apply to deposits other than "accounts," such as savings or time deposits, are not inconsistent with the Act and this subpart. Banks in these states would have to follow the state disclosure rules for these deposits.

* * * * *

Section 229.30 [Amended]

j. The Commentary to § 229.30(a) is amended by adding to the end of the third paragraph after the fourth numbered example the following new sentence:

(a) *Return of checks.* * * *

Examples

* * * * *

4. * * *

* * * If a paying bank returns a check on its banking day of receipt without paying for the check, as permitted under U.C.C. § 4-[illegible](a), and receives settlement for the returned check from a returning bank, it must promptly pay the amount of the check to the collecting bank from which it received the check.

* * * * *

k. The Commentary to § 229.30(b) is amended by:

i. Revising the fourth sentence of the second paragraph and, immediately after it, adding a new sentence to read as follows:

(b) *Unidentifiable depositary bank.* * * *

* * * A paying bank returning a check under this paragraph to a bank that has not agreed to handle the check expeditiously must advise that bank that it is unable to identify the depositary bank. This advice must be conspicuous, and the returned check may not be prepared for automated return. * * *

ii. Revising the first sentence of the third paragraph to read as follows:

The sending of a check to a bank that handled the check for forward collection under this paragraph is not subject to the requirements for expeditious return by the paying bank. * * *

* * * * *

Section 229.31 [Amended]

l. The Commentary to § 229.31(b) is amended by:

i. Revising the last sentence of the first paragraph to read as follows:

(b) *Unidentifiable depositary bank.* * * *

In the limited cases where the returning bank cannot identify the depositary bank, the returning bank may send the returned check to a returning bank that agrees to handle the returned check for expeditious return under § 229.31(a), or it may send the returned check to a bank that handled the check for forward collection even if that bank does not agree to handle the returned check expeditiously under § 229.31(a).

* * * * *

ii. Revising the last paragraph to read as follows:

As in the case of a paying bank returning a check under § 229.30(b), a returning bank that sends a check to a collecting bank under this paragraph must advise the collecting bank that the returning bank is unable to identify the depositary bank, and the advice must be conspicuous.

m. The Commentary to § 229.31(f) is amended by adding a new sentence before the parenthetical phrase to read as follows:

(f) *Notice in lieu of return.* * * * Notice in lieu of return is permitted only when a bank does not have and cannot obtain possession of the check or must retain possession of the check for protest. A check is not unavailable for return if it is merely difficult to retrieve from a filing system. * * *

Section 229.32 [Amended]

n. The Commentary to § 229.32(a) is amended by:

i. Adding to item 2(ii) two new sentences to be inserted immediately after the first sentence to read as follows:

(a) * * *

2. * * *

(ii) * * * The depositary bank must also accept returned checks at an address associated with its routing number in the indorsement if the written address in the indorsement and the address associated with the routing number in the indorsement are not in the same check processing region. Under §§ 229.30(g) and 229.31(g), a paying or returning bank may rely on the depositary bank's routing number in its indorsement in handling returned checks and is not required to send returned checks to an address in the depositary bank's indorsement that is not in the same check processing region as the address associated with the routing number in the indorsement.

ii. Adding a new sentence at the end of the last paragraph and adding a new last paragraph to read as follows:

(a) * * *

2. * * *

(iii) * * *

* * * In addition, a bank may require returned checks for which it is the depositary bank be separated from returned checks for which it is a returning bank (including for which the bank is a prior indorser).

Under § 229.33(d), a depositary bank receiving a returned check or notice of nonpayment must notify its customer by its midnight deadline, or within a longer reasonable time.

o. The Commentary to § 229.33(a) is amended by adding at the end thereof the following new paragraph:

Section 229.33 Notice of Nonpayment

(a) *Warranty of returned check.* * * *

A paying bank is not responsible for failure to give notice of nonpayment to a party that has breached a presentment warranty under the Uniform Commercial Code. See U.C.C. §§ 4-207(1) and 4-302.

p. The Commentary to § 229.34(a) is amended by revising the first and last sentence thereof to read as follows:

Section 229.34 Warranties by Paying Bank and Returning Bank

(a) *Warranty of returned checks.* This paragraph includes warranties that a returned check, including a notice in lieu of return, was returned by the paying bank, or in the case of a check payable by a bank and payable through another bank, the bank by which the check is payable, within the deadline under the U.C.C., Regulation J, or § 229.30(c); that the paying or returning bank is authorized to return the check; that the returned check has not been materially altered; and that, in the case of notice in lieu of return, the original check has not and will not be returned. * * * These warranties do not apply to checks drawn on the United States Treasury, to Postal Service money orders, or to checks drawn on a state or a unit of general local government that are not payable through or at a bank (see § 229.42).

Section 229.35 [Amended]

q. The Commentary to § 229.35(a) is amended by adding at the end of the fourth paragraph two sentences and in the fifth paragraph revising the first two sentences to read as follows:

* * * Depositary banks should not include information that can be confused with required information. For example, a nine-digit ZIP code could be confused with the nine-digit routing number.

A depositary bank is not required to place a street address in its indorsement; however, a bank may want to put an address in its indorsement in order to limit the number of locations at which it must accept returned checks and, in instances where this address is not consistent with the routing number in the indorsement, the depositary bank is required to accept returned checks at a branch or head office consistent with the routing number. Banks should note, however, that § 229.32 requires a depositary bank to

accept returned checks at the location(s) it accepts forward collection checks. * * *

* * * * *

r. The Commentary to § 229.35(a) is amended by adding the following sentence to the end of the last paragraph to read as follows:

* * * The standard requires collecting and returning banks to indorse the check for tracing purposes.

s. The Commentary to § 229.35(b) is amended by adding the following new paragraph after the fifth paragraph to read as follows:

(b) *Liability of bank handling check.* * * *

* * * * *

This paragraph also provides that a bank may have the rights of a "holder" based on the handling of the check for collection or return. A bank may become a holder or a holder in due course regardless of whether prior banks have complied with the indorsement standard in § 229.35(a) and Appendix D.

* * * * *

Section 229.37 [Amended]

t. The Commentary to § 229.37 is amended by

i. Revising the second sentence of the first paragraph to read as follows:

* * * To achieve consistency, the official comment to U.C.C. § 4–103(1) (which in turn follows U.C.C. § 1–201(3)) should be followed in construing this section. * * *

ii. Revising the second paragraph to read as follows:

The Board has not followed U.C.C. § 4–103(2), which permits Federal Reserve regulations and operating letters, clearinghouse rules, and the like to apply to parties that have not specifically assented. Nevertheless, this section does not affect the status of such agreements under the Uniform Commercial Code.

u. In the commentary to § 229.38(d), the first two sentences of the second paragraph are amended to read as follows:

(d) Responsibility for back of check. * * *

* * * * *

The paying bank is responsible for the condition of the check when it is issued by it, its customer, or, in the case of a check payable through the paying bank, the bank (or customer of the bank) by which the check is payable. (It would not be responsible for a check issued by a person other than such a bank or customer.) * * *

* * * * *

By order of the Board of Governors of the Federal Reserve System, October 25, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–25035 Filed 11–1–88; 8:45 am]

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12 CFR Part 229

[Regulation CC; Docket No. R–0647]

Availability of Funds and Collection of Checks; Preemption Determinations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed interpretations.

SUMMARY: The Board is publishing for comment a proposed official Board interpretation concerning a preemption determination under its Regulation CC, Availability of Funds and Collection of Checks, with respect to the law of New Jersey. The Expedited Funds Availability Act provides standards for determining whether State law governing funds availability supersedes, or is preempted by Federal law. Under Regulation CC, the Board with issue preemption determinations with respect to State law upon request.

DATES: Comments must be submitted on or before November 30, 1988.

FOR FURTHER INFORMATION CONTACT: Oliver Ireland, Associate General Counsel (202/452–3625), Legal Division, or Louise L. Roseman, Assistant Director (202/452–3874), Division of Federal Reserve Bank Operations; for the hearing impaired *only*: Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION:

Background

On May 13, 1988, the Board adopted Regulation CC to carry out the provisions of the Expedited Funds Availability Act (the "Act") (12 U.S.C. 4001–4010). The regulation requires banks to make funds available to their customers within specified time frames, and to disclose their funds availability policies to their customers. A number of states have also enacted rules governing funds availability. The Act (section 606) and Regulation CC (§ 229.20) provide that any provision of state law in effect on or before September 1, 1988, that provides for a shorter hold for a category of checks than is provided under federal law will supersede the federal provision.

Provisions of state law governing funds availability that permit a bank to make funds available for withdrawal in a longer period than permitted under Regulation CC are considered inconsistent, and are preempted by Regulation CC. In addition, state disclosure and notice requirements concerning funds availability related to accounts covered by Regulation CC are preempted by the federal disclosure scheme.

Regulation CC provides for Board determinations of whether state law related to the availability of funds is preempted by federal law upon the request of a state, bank, or other interested party.

Discussion

The Board is publishing, for a 30-day public comment period, a proposed preemption determination with respect to New Jersey law. The Board set out principles, at the time it adopted several final state preemption determinations in August, as guides for future preemption determinations 53 FR 32354. Those principles have been followed in this proposed determination as well.

The State of New Jersey Department of Banking requested that the Board issue a preemption determination under Regulation CC with respect to New Jersey law. New Jersey does not have a law or regulation establishing maximum time periods within which funds deposited to accounts must be made available for withdrawal. New Jersey does, however, have regulations governing the disclosure of an institution's availability policy. Regulation CC provides that state funds availability disclosure or notice requirements applicable to accounts covered by the federal rules are preempted by the federal disclosure scheme. The Board is publishing for public comment the following proposed determination preempting New Jersey's disclosure regulations.

List of Subjects in 12 CFR Part 229

Banks, Banking, Federal Reserve System.

For the reasons set out in the preamble, 12 CFR Part 229 is proposed to be amended as follows:

PART 229—[AMENDED]

1. The authority citation for Part 229 continues to read as follows:

Authority: Title VI of Pub. L. 100–86, 101 Stat. 522, 635, 12 U.S.C. 4001 *et seq.*

2. Appendix F is amended by adding a preemption determination for the state of New Jersey alphabetically to read as follows:

Appendix F—Official Board Interpretations; Preemption Determinations

* * * * *

New Jersey

Background

The Board has been requested, in accordance with § 229.20(d) of Regulation CC (12 CFR Part 229), to determine whether the Expedited Funds Availability Act (the "Act") and Subpart B (and in connection therewith, Subpart A) of Regulation CC preempt the provisions of New Jersey law concerning disclosure of a bank's funds availability policy. (See also the Board's preemption determination regarding the Uniform Commercial Code, § 4–213(5), pertaining to availability of cash deposits.)

New Jersey does not have a law or regulation establishing the maximum time periods within which funds deposited by check or electronic payment must be made available for withdrawal. New Jersey does, however, have regulations concerning the disclosure of a banking institution's availability policy (N.J.A.C. 3:1–15.1 *et seq.*).

Disclosures

New Jersey law requires every banking institution (defined as any state or federally chartered commercial bank, savings bank, or savings and loan association) to provide written disclosure to all holders of and applicants for deposit accounts which describes the institution's funds availability policy. Institutions must also disclose to their customers any significant changes to their availability policy.

Regulation CC preempts state disclosure requirements concerning funds availability that relate to "accounts" that are inconsistent with the federal requirements. The state requirements are different from, and therefore inconsistent with, the federal disclosure rules. (§ 229.20(c)(2)). Thus, the New Jersey statute (N.J.A.C. §§ 3:1–15.1 *et seq.*) is preempted by Regulation CC to the extent that these disclosure provisions apply to "accounts" as defined by Regulation CC. The New Jersey disclosure rules would continue to apply to other "deposit accounts," as defined by New Jersey law, including money market accounts and savings accounts established by a natural person for personal or family purposes, which are not governed by the Regulation CC disclosure requirements.

By order of the Board of Governors of the Federal Reserve System, October 25, 1988.

William W. Wiles,

Secretary of the Board.

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Part IV

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 700

Surface Coal Mining and Reclamation Operations; Coal Exploration Operations; Termination of Jurisdiction; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 700

Surface Coal Mining and Reclamation Operations; Coal Exploration Operations; Termination of Jurisdiction

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) is amending its regulations to clarify the circumstances whereby a regulatory authority may terminate regulatory jurisdiction under a regulatory program approved under the Surface Mining Control and Reclamation Act of 1977 (the Act) for the reclaimed sites of completed surface coal mining and reclamation operations and coal exploration operations. This final rule requires the regulatory authority either to make a written determination that the permittee has met all reclamation requirements, or to decide to release fully a permanent program performance bond before regulatory jurisdiction over the reclaimed site of a completed surface coal mining and reclamation operation, or increment thereof, or of a coal exploration can be terminated.

EFFECTIVE DATE: This rule is effective as December 2, 1988.

FOR FURTHER INFORMATION CONTACT: George M. Stone, Jr., Chief, Branch of Inspection and Enforcement, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: 202–343–4550 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of the Rule and Response to Comments
III. Procedural Matters

I. Background

As discussed in the preamble to the proposed rule (52 FR 24092, June 26, 1987), the general practice among State regulatory authorities has been to terminate regulatory jurisdiction under State programs upon the final release of the performance bond for a completed surface coal mining and reclamation operation or, where no bond was required, upon a finding that all reclamation has been successfully completed. The effect of terminating regulatory jurisdiction under the regulatory program is that inspections at the site are terminated, and the regulatory authority then lacks authority to enforce the program at the particular site. The practice of terminating regulatory jurisdiction upon final bond release has been an established practice predating the Act (in States where bonds were required) and is not inconsistent with the provisions of approved State programs, the Act or OSMRE's implementing regulations. OSMRE has not objected to the States' general practice of terminating regulatory jurisdiction in this manner. However, OSMRE, in its oversight capacity, has conducted some oversight inspections after the State has released the final bond. When notified that OSMRE has reason to believe violations may exist at bond release sites, the State regulatory authorities normally have declined to take any action because they contend that, under State law, enforcement authority has terminated with final bond release. As a result, OSMRE has sometimes taken Federal enforcement actions at such sites.

Because Federal inspections and resultant enforcement actions have sometimes occurred long after a State released the final bond, factual issues are raised as to whether the condition existed at the time of final bond release, arose subsequently, or was the result of actions or inactions of the operator. Also, the issue of whether or not a particular condition constitutes a violation or whether its acceptance was within the discretion of the regulatory authority is sometimes disputed. These OSMRE enforcement actions occasionally have resulted in disagreements between OSMRE and the States and between OSMRE and operators. Upon appeal, some enforcement actions have been upheld while others have not. States with approved programs have objected that OSMRE's enforcement actions on post-bond release sites where the State considers regulatory jurisdiction to have terminated undermine the concept of primacy as envisioned by the Act and that these enforcement actions amount to second-guessing the State regulatory authority on a matter of interpretation of State program requirements. The industry objects that OSMRE enforcement actions after final bond release and termination of jurisdiction subject operators to perpetual liability and a dual regulatory scheme when the regulatory authority has already determined that they have met all reclamation requirements.

OSMRE has not and does not object to the long standing practice by the States to terminate regulatory jurisdiction at some definite point under the regulatory programs. Under *Haydo v. Amerikohl Mining*, 830 F.2d 494 (3rd Cir. 1987), surface coal mining and reclamation operations are subject to approved State or Federal programs, and not directly to the Act. Therefore, it is appropriate that OSMRE by regulation set specific standards for such terminations to be included in State and Federal programs. On June 26, 1987, at 52 FR 24092, OSMRE proposed a rule that would clarify the circumstances under which regulatory authority jurisdiction may end over reclaimed surface coal mining and reclamation operations and coal exploration sites, which no longer are "surface coal mining and reclamation operations" as defined in section 701(27) of the Act or "coal explorations" within the meaning of the Act. OSMRE solicited and received public comments through September 4, 1987. An opportunity for a public hearing on the proposed rule was offered but none was requested or held. Eighteen comment submissions were received from among six coal industry representatives, five environmental groups, five State regulatory authorities, one Federal agency and one private citizen. Both the State regulatory authorities and industry representatives strongly supported the rule and urged its adoption. In contrast, the environmental groups opposed the rule.

II. Discussion of the Rule and Response to Comments

In this section, OSMRE will discuss the final rule, how it operates, and the differences between the proposed and final rules. Also, OSMRE will respond to the comments received as related to each section of the final rule.

30 CFR 700.10 Information Collection

Section 700.10 is being revised to codify the current information collection burden for Part 700. Sections 700.11(d), 700.12(b) and 700.13 of Part 700 contain information collection requirements requiring approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Section 700.11(d) is part of the rule being published today. The information collected in § 700.11(d) is used by OSMRE and States to establish standards for determining when a mine site is no longer a surface coal mining and reclamation operation and thereby when regulatory jurisdiction may end.

The information collected under section § 700.12(b) is used by OSMRE to consider need, costs and benefits of a proposed regulatory change in order to grant or deny a petition that has been submitted.

The information collected in § 700.13 identifies the person and nature of a citizen's suit, so that OSMRE or a State can respond appropriately.

These collections of information have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029–0094.

30 CFR 700.11(d)(1) General

A new paragraph (d) has been added to 30 CFR 700.11. Paragraph (d)(1) specifies that a regulatory authority may terminate its jurisdiction under the regulatory program over the reclaimed site of a completed surface coal mining and reclamation operation, as defined under the regulatory program, when the regulatory authority either makes a written determination that all requirements of the regulatory program have been successfully completed or releases fully the permanent program bond in accordance with all the requirements of the State or Federal program counterpart to 30 CFR Part 800, as set forth in paragraphs (d)(1) (i) and (ii).

The final rule is similar to that proposed by OSMRE on June 26, 1987 (52 FR 24092) with the following modifications. OSMRE has modified the introductory language of paragraph (d) to clarify that successful completion of an operation and termination of regulatory authority jurisdiction may occur for the entire permit area on an increment within that permit area. This modification is consistent with 30 CFR 800.40(c), which authorizes the release of performance bonds for increments within a permit area.

The final rule has also been modified to use the phrase "reclaimed site of a completed surface coal mining and reclamation operation, or increment thereof, or of a coal exploration" rather than the proposed phrase "completed surface coal mining and reclamation operation or coal exploration operation." The term "reclaimed site of" emphasizes the fact that the jurisdiction may terminate over the site because the site no longer constitutes a surface coal mining and reclamation operation or coal exploration subject to the regulatory program.

The final rule specifies when the regulatory authority may terminate its jurisdiction under the regulatory program, instead of specifying when the applicability of 30 CFR Chapter VII shall terminate, as proposed. This change from the proposal stems from the comments received, and has a number of implications. It recognizes that the regulatory program applies to sites within a state and not OSMRE's national regulations, as may have been inferred from the proposal. This is in keeping with the decision of the U.S. Court of Appeals for the 3rd Circuit in *Haydo v. Amerikohl Mining* where the court affirmed that operators are bound to the regulatory provisions under a State program rather than the Act. This concept is discussed more fully in the OSMRE final rule published on July 14, 1988 (53 FR 26728). By specifying when the regulatory authority *may* terminate jurisdiction, the final rule recognizes that the Secretary's rule imposes minimum standards upon State programs.

Several commenters argued that there is no basis in the Act for the rule because the Act does not contain specific language providing for the termination of regulatory jurisdiction. On the other hand, several commenters agreed with OSMRE that at a certain point in time a reclaimed site is no longer a surface coal mining and reclamation operation subject to regulation.

A reclaimed site of a surface coal and reclamation operation, or increment thereof, or of a coal exploration is no longer subject to regulatory jurisdiction under either a Federal or State regulatory program when all reclamation requirements of the regulatory program have been successfully completed and the period of extended liability for revegetation has expired. Nothing in the Act requires a permittee to be subject to regulatory jurisdiction beyond this point.

It was not the intent of the Surface Mining Act that the regulatory authority maintain perpetual jurisdiction over all lands that were mined. It is recognized that the Surface Mining Act does not impose requirements upon fully reclaimed land. Termination of jurisdiction may occur when reclamation is in fact accomplished and the period of extended responsibility for revegetation has run. The regulatory authority is vested with the authority to determine that reclamation has been completed.

The statutory provisions supporting this fundamental principle include sections 102, 201, 501, 502, 503, 507(f), 509, 512, 515, 516, 519, 701(27), and 701(28) of the Act, as well as the overall scheme embraced in the implementing regulations. Title V of the Act, which contains the regulatory program, applies to "surface coal mining operations", "surface coal mining and reclamation operations," and to "coal exploration." The first two terms are defined in section 701 of the Act. The term "coal exploration" is not defined in the Act, but has been defined by OSMRE at 30 CFR 701.5. The term "surface coal mining operations" is defined in section 701(28) to include activities performed in connection with coal mines and the areas where such activities disturb the natural land surface. Section 701(27) defines "surface coal mining and reclamation operations" to include surface coal mining operations as defined in section 701(28), and "all activities necessary and incident to the reclamation of such operations * * *."

The Act establishes performance standards for coal exploration operations in section 512 and for surface coal mining and reclamation operations in section 502, for initial program operations, and in sections 515 and 516 for permanent program operations. These latter performance standards, imposed through permits issued pursuant to an approved regulatory program, include a requirement under section 515(b)(20) that the operator assume responsibility for successful revegetation for a period of five or ten full years after the last year of augmented seeding, fertilizing, irrigation or other work. The period of extended operator responsibility under section 515(b)(2) did not apply to initial program operations subject to the requirements of section 502.

Section 509 of the Act requires an operator to post a performance bond in an amount sufficient to assume the completion of the reclamation plant by the regulatory authority in the event of forfeiture. Section 509(b) establishes that liability under the bond shall be "for the duration of the surface coal mining and reclamation operation *and* for a period coincident with operator's responsibility for revegetation requirements in section 515" (emphasis added).

Section 519 of the Act establishes the timing of and conditions for bond release. In specifying the timing of bond release, paragraph (c)(3) provides that "[w]hen the operator has completed successfully all surface coal mining and reclamation activities," the regulatory authority may release the remaining portion of the bond, "but not before the expiration of the period specified for operator responsibility in section 515: *Provided, however,* That no bond shall be fully released until all reclamation requirements of this Act are fully met." Thus, at the time of final bond release, the period for "operator responsibility" must have expired and all reclamation must be complete. At this point, the reclaimed site is no longer a "surface

coal mining and reclamation operation" by statutory definition because "all activities necessary and incident to the reclamation of such operations" have been successfully completed.

Furthermore, section 507(f) of the Act requires the permittee to secure a public liability insurance policy which "shall be maintained in full force and effect during the terms of the permit or any renewal, *including the length of all reclamation operations.*" 30 U.S.C. 1257 (emphasis added). Indeed, rather than such a policy having to be maintained perpetually, Congress envisioned that once the operator has satisfied all the reclamation obligations for a site, and the specified additional responsibility period has run, operator liability for that site terminates. If Congress intended otherwise, it could have stated that operator liability for a reclaimed site never ends or that regulatory jurisdiction attaches forever to the site of completed "surface coal mining and reclamation operation." It did not.

The sections discussed above demonstrate that Congress intended regulatory jurisdiction to end at the time of bond release under section 519, rather than extending forever. This conclusion draws support from the fact that imposing perpetual regulatory authority jurisdiction over coal operators for every site they mine would necessarily—perhaps drastically—limit the number of coal production projects which any person or group, no matter how efficient and responsible, would be willing or able to undertake. This would run afoul of the Act's purpose to "assure that the coal supply essential to the Nation's energy requirements, and to its economic and social well-being is provided * * *." Section 102(f), 30 U.S.C. 1202.

The legislative history of the Act also supports this rule. The 1977 Senate Report interpreted section 509(b) in the context of operator liability and specifically stated "bond liability extends for a period coincident with the operator's liability * * *." S. Rep. 95–128, 95th Cong., 1st Sess. 78 (1977). This rule recognizes that coal mining is, and should be, a temporary land use. Upon successful completion of all reclamation obligations and the extended period of bond liability, the land "returns" to its previous status and non-coal mining status.

The same logic applies to initial program sites and to coal exploration sites. Neither section 502 nor section 512 of the Act specifies continuing regulatory jurisdiction over such sites following the successful completion of applicable reclamation requirements.

Consistent with these principles, State regulatory authorities have been terminating regulatory jurisdiction at reclaimed sites for many years. In the absence of any explicit provisions to the contrary, such actions have been consistent with approved State programs unless States are terminating jurisdiction at sites where reclamation activities have not been completed.

To ensure these principles will continue to be consistently applied and because jurisdiction may have been terminated at some sites without full completion of reclamation requirements, OSMRE has decided to codify the minimum standard all regulatory authorities will apply in future decisions to terminate regulatory jurisdiction. This final rule provides that standard.

A commenter stated that there is a distinction between the bonded liability of the operator and the residual, long-term liability of the operator for failures of reclamation after bond release. The commenter asserted that while bonded liability may terminate with bond release, all liability and jurisdiction cannot be extinguished under any circumstances.

The commenter cited two cases, *Northeast Marine Terminal Co. v. Caputo*, 432 U.S. 249, 276–9 (1977); and *Rodriguez v. Compass Shipping Ltd.*, 451 U.S. 596 (1981), arguing that an agency cannot adopt a position which operates to restrict the remedial purposes of the Act.

An operator's obligations under the approved program, bonded or otherwise, and regulatory authority jurisdiction under the approved program may simultaneously terminate at the time of proper final bond release under the permanent program because the period of extended responsibility will have run, all reclamation obligations will have been met successfully and, by definition in the statute, a surface coal mining and reclamation operation no longer exists. Liability under the approved program for a failure of reclamation, however, may be subject of a Secretarial or regulatory authority inquiry or a civil suit in the courts pursuant to section 520 of the Act. Such liability would depend upon whether the reclamation failure was caused by a violation by the operator of the regulatory program. Partially in response to the commenter's concern, a regulatory authority will be required to reassert jurisdiction under § 700.11(d)(2) if it can be shown that the bond release was based upon fraud, collusion, or any other misrepresentation of a material fact at the time of bond release.

The two cases cited supporting the commenter's position concerned interpretation of the Longshoremen's and Harbor Workers' Compensation Act. This final rule is consistent with the principles in those cases because nothing in it restricts the remedial purposes of the Act. The remedial purposes of the Act are achieved with successful completion of all reclamation requirements, which under this rule is demonstrated by a valid final bond release or a written determination to that effect.

A commenter agreed with the statement in the preamble to the proposed rule which stated that citizen suits under section 520(a)(1) may be commenced after termination of regulatory jurisdiction. Other commenters disagreed with OSMRE's conclusion that citizen suits under section 520(a)(1) may continue after termination of regulatory jurisdiction, suggesting that instead OSMRE meant to cite section 520(e).

This final rule does not modify the civil remedies afforded by Congress under sections 520 (a)(1), (e), and (f), nor is the rule intended to preclude the jurisdiction of the courts. Section 520(a)(1) establishes the right on an adversely affected person to commence a civil suit to compel compliance against any person who is alleged to be in violation of any rule, regulation, order or permit issued under the Act. Section 520(f) establishes such a right for damages. States with approved programs must have similar provisions providing access to State courts. In addition, Congress preserved existing common law and statutory remedies under section 520(e).

Where a person brings an action under section 520 following a bond release, the court will determine if a cause of action exists and this regulation cannot add to or decrease the jurisdiction of the court to make that determination. In situations where citizen suits are allowed, such suits provide a backstop of protection, regardless of whether regulatory authorities reassert regulatory jurisdiction.

The same commenter added that the rule improperly absolves OSMRE or the regulatory authority of its duty by shifting the burden of environmental protection to the public if violations are overlooked at final bond release or occur thereafter.

OSMRE disagrees with the commenter's assertion that the rule shifts the burden of environmental protection to the public. Unsatisfied reclamation requirements should not go undetected at the time of final bond release. The regulatory scheme designed by Congress and the Secretary contains multiple safeguards to detect violations. For example, until making a decision to release the bond fully, the regulatory authority performs regular and frequent inspections of the site as required under 30 CFR 840.11. Each inspection is conducted to assure that regulatory requirements are being met. At any time prior to bond release, including the 5 or 10 year extended period of responsibility, citizens may bring possible violations to the attention of State regulatory authorities under State laws and rules promulgated pursuant to 30 CFR 840.15 and Part 842. For initial program sites, citizens also have had opportunities for several years to bring possible violations to the attention of regulatory authorities.

Moreover, bond release proceedings under regulatory program counterparts to 30 CFR Part 800 provide additional opportunities to detect violations prior to a final bond release. Persons with a valid legal interest which might be adversely affected by release of the bond are given the opportunity to become aware of, object to, and request public hearings or informal conferences concerning bond release applications. Under 30 CFR Part 800, the regulatory authority must perform an inspection and evaluation of the reclamation work involved. Also, any person with an interest in the bond release may visit the site to gather information relevant to the proceeding. All of these procedures insure that all mining and reclamation activities have been properly completed. At that point, it is reasonable to terminate jurisdiction under the regulatory program since a surface coal mining and reclamation operation as defined under the regulatory program no longer exists.

The commenter's concern that violations which did not exist at the time of bond release will occur thereafter is unwarranted. Potential problems resulting from the quality of reclamation, if any, will most likely appear during the congressionally mandated 5 or 10 year period of extended responsibility for revegetation following completion of augmentative activities. Should a problem appear despite the safeguards of permit planning, regular inspections, opportunity for citizen participation, and the extended period for responsibility, it may be likely that the problem was not caused by the permittee's violation of the regulatory program. In such circumstances, it would not be appropriate for the regulatory authority to reassert jurisdiction under the approved program as discussed later in this preamble. The need for administrative finality justifies the termination of jurisdiction under the approved regulatory program at the time of a proper bond release.

However, in response to this and other concerns expressed by the commenters, OSMRE has decided to codify the proposed preamble language describing the circumstances under which the regulatory authority must reassert jurisdiction and has modified the standard to "misrepresentation of a material fact" rather than "intentional wrongdoing." If, following final bond release, any reasonable person could determine that the bond release was based upon fraud, collusion, or a misrepresentation of a material fact at the time of release, under final § 700.11(d)(2), the regulatory authority would have to reassert regulatory jurisdiction. Moreover, this rule is not intended to preclude any person's rights to challenge a bond release decision under the applicable regulatory program. The Secretary retains a proper and carefully designed oversight role under this rule. If, at any time, the Secretary has reason to believe a violation of the regulatory program exists, he will notify the State regulatory authority when required by 30 CFR Part 842. If, in response to the OSMRE notice, a State regulatory authority maintains that it has no jurisdiction over the alleged violation because final bond release has occurred or a written determination under section 700(d)(1)(i) was made, then OSMRE must determine whether the State was arbitrary, capricious, or abused its discretion under the State program by not reasserting jurisdiction over the site under the standards established in this final rule.

30 CFR 700.11(d)(1)(i) Initial Program Operations

Final paragraph 700.11(d)(1)(i) provides that a regulatory authority may terminate its jurisdiction under the regulatory program over reclaimed sites of initial program surface coal mining and reclamation operations, if the regulatory authority determines in writing that all requirements imposed under 30 CFR Chapter VII, Subchapter B (the initial program regulations) have, in fact, been successfully completed. Paragraph (d)(1)(i) is not applicable to coal exploration because the Act does not provide for the regulation of coal exploration operations under the initial program.

The principal difference between permanent program sites and both initial program sites and coal exploration sites is that for the latter two categories, the Act does not impose a requirement to file performance bonds or specify a procedure, such as that set forth in section 519, under which a regulatory authority signifies that reclamation is complete. Therefore, paragraph (d)(1)(i) is not couched in terms of bond release because the Act does not require performance bonds for initial program operations, even though some States did. Where performance bonds were required, the written determination required by this rule could take the form of an approved bond release application or other document that the State regulatory authority uses to accompany final bond release, provided that the document relied upon meets the requirement of paragraph (d)(1)(i) for a written determination of compliance with the initial program standards. Where no bond was required or where bond release does not include the written determination required by paragraph (d)(1)(i), the State regulatory authority must make such a determination for regulatory jurisdiction to terminate.

One commenter argued that the rule improperly delegates OSMRE's initial program responsibilities under section 502(e) to the States. The same commenter maintained that the proposed rule is inconsistent with judicial decisions which have determined that OSMRE's jurisdiction over initial program sites is independent of and unaffected by State partial or complete bond release, citing *Grafton Coal Co.*, 3 IBSMA 175 (1981); and *Bannock Coal Co.* v. *OSM*, 93 IBLA 225 (1986).

The rule does not improperly delegate the Secretary's responsibilities under section 502(e). Under that section, OSMRE was required to implement an initial Federal enforcement program in each State. The initial program was to remain in effect in each State until the Secretary approved a permanent State program or promulgated a Federal program for the State. Upon the approval of a State program, section 503 of the Act grants the State exclusive jurisdiction for the regulation of surface coal mining and reclamation operations on lands within such State, except for Secretarial responsibilities under sections 521 and 523. In addition to responsibility for permanent program operations, States have accepted the responsibility for regulating initial program operations under the State programs. This regulatory responsibility delegated to the State includes not only inspection and enforcement authority

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but also the authority to determine when reclamation under the initial regulatory program has been successfully completed. Only for situations where state regulatory authorities have not accepted responsibility over initial program sites does the Secretary continue to be the regulatory authority.

With respect to the case law cited by the commenter, the cases cited are administrative cases heard before the Interior Board of Surface Mining and Reclamation Appeals, later the Interior Board of Land Appeals (the Board). *Grafton* upheld the Secretary's authority to issue a Federal NOV before the partial release of an initial State program bond. *Bannock* upheld the Secretary's authority to issue a Federal NOV after final State bond release. Neither case affects OSMRE's authority to promulgate this rule which is not written in the context of initial program bond release, but instead requires a written determination that the initial program reclamation requirements have been satisfied.

One commenter cited OSMRE's 1985 Semiannual Report on the Kentucky Permanent Program to allege that the proposed rule is capricious because OSMRE has knowledge through oversight inspections and special studies that State regulatory authorities have improperly released performance bonds on interim program sites. The commenter asserted that in response to this problem OSMRE is attempting to promulgate a rule which would arbitrarily extinguish jurisdiction in order to avoid "conflict" with States. The commenter then cited OSMRE's June 4, 1987 Directive on State Bond Release Oversight Inspections to assert that Federal oversight of State bond releases would be eliminated. Other commenters submitted a 1982 newspaper article and a General Accounting Office (GAO) report entitled "Surface Coal Mining Operations in Two Oklahoma Counties Raise Questions About Prime Farmland Reclamation and Bond Adequacy (GAO/RCED–85–148)," dated August 8, 1985. Both were submitted to show that States are improperly releasing performance bonds.

OSMRE acknowledges that there have been some initial program final bond releases by States without full reclamation. The fact that OSMRE took special notice of the problems and conducted special studies demonstrates OSMRE's commitment to resolve these problems. Because States have been using initial program bond releases as a mechanism for terminating regulatory jurisdiction, OSMRE recognizes the need to clarify the standard for termination. Post-bond release problems which occurred in the past support the need for such a rule. This rule will clarify what standard the States must meet to terminate regulatory jurisdiction, the mechanism to be used for future terminations, and the standard OSMRE would use to review such terminations. As such, this rule is essential to preclude further actions terminating jurisdiction by State regulatory authorities in the absence of full and complete reclamation in accordance with the applicable standards.

The Secretary has the general authority under section 201(c)(2) of the Act to "publish and promulgate such rules and regulations as may be necessary to carry out the purposes and provisions" of the Act. He may exercise that authority to establish a procedure for initial program sites similar in purpose to section 519(c)(3). Under such a procedure, when a regulatory authority determines an operator has in fact successfully completed all reclamation activities at an initial program surface coal mining and reclamation operation site, regulatory authority jurisdiction may be terminated over such reclaimed sites. Such a procedure is allowable because, by operation of the statutory definition, such sites are no longer "surface coal mining and reclamation operations."

Contrary to the commenters' allegation, the OSMRE Directive referenced does not eliminate Federal oversight of State bond releases but rather recognizes that States are currently terminating jurisdiction through bond release and dropping such sites from their list of inspectable units subject to normal oversight as surface coal mining and reclamation operations. It then identifies a separate procedure to be used in evaluating the effectiveness of the State's bond release process which may include inspections of sites where final bond has been released.

30 CFR 700.11(d)(1)(ii) Permanent Program Operations

Final paragraph 700.11(d)(1)(ii) provides that a regulatory authority may terminate its jurisdiction under the regulatory program over the reclaimed site of a permanent program surface coal mining and reclamation operation, or increment thereof, or of a coal exploration site, if the regulatory authority determines in writing that all the requirements imposed under the applicable regulatory program have been successfully completed or, where a performance bond was required, the regulatory authority has made a final decision to fully release the performance bond in accordance with Federal or State program equivalent to 30 CFR Part 800. A bond release decision is not final until all administrative and judicial appeals have been resolved. For surface coal mining and reclamation operations which operated under the permanent program, the written determination will be the written decision required by 30 CFR Part 800, or program counterpart for the release of final performance bonds.

Both the public and OSMRE have the right to participate in State bond release proceedings and to voice any objections to such releases. The bond release pursuant to 30 CFR 800.40 may not occur until "all reclamation requirements of the Act are fully met." Because the Act does not require performance bonds for coal exploration activities, the written determination before regulatory authority jurisdiction may terminate over a coal exploration site is a new procedure and is similar to the way unbonded initial program sites will be handled under § 700.11(d)(1)(i) as explained above.

Several commenters argued that the final release of a performance bond does not justify termination of agency jurisdiction. The commenters alleged that some regulatory authorities rely on visual observations during their bond release evaluations, and do not conduct any of the technical analyses necessary to assure that at the time of final bond release all performance standards have been satisfied. The commenters indicated that they are unaware of situations in which the regulatory authority performs independent testing of actual compliance with performance standards, such as compaction of backfilled areas, stability of slake testing for hollow fills, core sampling of impoundments and other structures, underground investigations to validate subsidence control measures, or other analyses to measure full compliance.

The commenters' premise appears to be that all of these things should be done at the time of bond release. Such a premise is inconsistent with the overall regulatory program that monitors each phase of each mining and reclamation operation from beginning to end. Approval of the reclamation and operation plan required for each permit is predicated on a demonstration by the permit applicant that the design and performance standards of the regulatory program will be met. Throughout the conduct of both mining and reclamation operations, the regulatory authority performs periodic inspections to ensure compliance with the approved reclamation and operation plan. Also, certifications are required both during and upon completion of construction for certain critical structures cited by the commenters. Where operations are inconsistent with the approved plan or certifications are not provided or are inaccurate, the regulatory authority will require corrective measures, either through enforcement actions or permit revisions. Relying on this process, which includes extensive documentation, the regulatory authority can legitimately conclude that reclamation has been completed according to engineering designs at the time of final bond release, without conducting further extensive testing.

Under Part 800 or an approved Federal or State program counterpart, the regulatory authority must perform an onsite inspection and evaluate the reclamation work involved as part of the bond release process. Under Part 800, the regulatory authority has the discretion to determine on a site-specific basis the extent and type of additional technical analysis, if any, necessary to evaluate whether reclamation has been successfully completed. Also, it must be remembered that under the permanent program the bond release process entails extensive public participation and allows any person with a legal interest in the bond release to file written objections and request a public hearing. Persons with an interest in the bond release may also be provided access to the permit area and access to all relevant inspection documents. In addition, written notification is provided of a decision to release a performance bond and such a decision is appealable. The bond release is not final until appeals have been resolved.

One commenter stated that since the Act has been in existence for only ten years, OSMRE does not have the data to demonstrate the point at which reclamation is complete. As an example, the commenter cited a mine site described in an unsuitability petition. At that site, leaching through acidic overburden, not noted or anticipated at the time of final bond release, subsequently occurred.

OSMRE recognizes the potential for unanticipated events to occur after final bond release which may have adverse environmental consequences. The occurrence of such an event, however, is not automatically a basis for a regulatory authority to disturb an administratively final decision to release a bond and to terminate regulatory jurisdiction. Whether reclamation was in fact successfully completed by a permittee and whether jurisdiction must be reasserted by the regulatory authority are factual questions, the answers to which are dependent upon particular circumstances. In the example provided by the commenter, the occurrence of an acid seep subsequent to bond release does not, by itself, establish the cause of the seep, whether reclamation had been completed, whether intervening events occurred, or the circumstances surrounding bond release. This rule establishes the circumstances when a regulatory authority must reassert jurisdiction.

As, over time, OSMRE and State regulatory authorities gain greater knowledge of successful reclamation techniques, these would be reflected in new permit approvals. However, it would not be appropriate through a reassertion of regulatory jurisdiction to require the operators who had long ago left completed sites which had met the standards of their permits and the applicable regulatory program to return to such sites and reclaim them in accordance with new technology.

One commenter submitted part of the March 13, 1979, **Federal Register** preamble to OSMRE's 1979 permanent program rules on coal waste disposal and impoundments, and the cover sheet without accompanying text of an Office of Technology Assessment (OTA) report entitled "Western Surface Mining Permitting and Reclamation (OTA–E–279)," dated June 1986. Another commenter submitted an OTA report entitled "Staff Memorandum—Reclaiming Prime Farmlands and Other High-Quality Croplands After Surface Coal Mining," dated December 1985. Citing the report, this commenter asserted that the bond release success standards are inadequate to guarantee reclamation will be achieved and that long term productivity problems may exist on prime farmlands after the operator has successfully met the bond release test. While the first commenter did not provide a rationale for submitting the preamble segment of the 1979 regulations nor the OTA report, OSMRE presumes the intent was to also express concern about long term reclamation success. However, OSMRE considered the June 1986 OTA report and it should be noted that this rule will not modify any performance, design, or construction standards for coal waste disposal.

As discussed in response to a previous comment, the permitting and inspection processes are the mechanisms designed by the Act and implementing regulations to ensure long term reclamation success. Each permit subject to the prime farmlands provisions of a regulatory program must contain an approved operation and reclamation plan which includes pre-mining soil mapping and soil analysis and a topsoil and subsoil removal, storage, and restoration plan. The operation is inspected at least monthly to ensure compliance with the approved permit. Before the final bond can be released an operator must demonstrate, among other things, that soil productivity is equal to or better than similar non-mined areas based on crop yield measurements for at least three years. The bond release decision process includes the opportunity for public participation, meaning that in reaching its decision the regulatory authority must consider any objections raised. Once these processes are satisfied, the operator is considered to have met all obligations under a regulatory program, the site is recognized as no longer being a surface coal mining and reclamation operation as defined in the regulatory program, and regulatory jurisdiction may therefore terminate. Should, at some time after bond release, it become apparent the techniques currently being approved at some sites are not yielding the desired long term results, or new technologies have become available, that does not justify requiring the reconstruction of past operations which were conducted in accordance with approved plans and met soil productivity and revegetation success standards at the time of bond release.

One commenter questioned how coal slurry impoundments fit into the scheme of the rule, given that many such impoundments will not be dewatered or reclaimed for decades, and may require chemical and physical treatment for an indefinite period.

No operator can obtain a final bond release as long as a site constitutes a surface coal mining and reclamation operation as defined under the regulatory program. In cases where a structure such as a coal slurry impoundment continues to require additional or ongoing reclamation work by the operator, then no final bond release is possible. Only when the operator's work is done and all reclamation required under the regulatory program has been completed and, for permanent program sites, the period of extended responsibility has run can the regulatory authority decide to cease its jurisdiction.

A commenter questioned how OSMRE will apply the rule to mining operations with post-closure drainage which will continue to require chemical and physical treatment to meet effluent limitations.

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This rule does not affect the standard required for full bond release which requires full compliance with the applicable performance standards. In order for a release to be appropriate under such circumstances, it should include assurances which are provided through a contract or other mechanism enforceable under other provisions of law to provide, for example, long term treatment of an alternative water supply or acid discharge. When such assurances are provided, the failure of such maintenance following bond release is not sufficient reason to reassert regulatory jurisdiction under the regulatory program. If, subsequent to bond release, a problem occurs related to inadequate maintenance, the contract or agreement would be enforceable through other provisions of law. Should such contract or agreement prove unenforceable, then the bond release would have been based on misrepresentation and jurisdiction should be reasserted.

One commenter was concerned about the effect of the rule regarding previously made written determinations of successful completion of reclamation required by paragraph (d)(1)(ii) of this rule for coal exploration sites. The commenter stated that it would be unreasonable for the regulatory authority to have to locate a written determination for such sites because the files may have been archived.

This comment relates to an approach outlined in the proposed preamble (52 FR 24094) concerning the status of sites where mining or exploration was determined to be completed by the regulatory authority prior to the effective date of this rule. That approach, for which OSMRE specifically invited comment, suggested that if States wished to terminate jurisdiction at completed sites where no bond was required or where bond release did not include a written determination of compliance, they would need to revisit such cases and make the written determination required by this rule. OSMRE believes that the approach outlined in the proposed rule provided inadequate recognition of the fact that States already terminate jurisdiction under their approved programs and therefore no need exists for States to disturb past final determinations unless such determinations were inconsistent with the approved programs. Accordingly, this rule is prospective only. It does not invalidate previous actions by State regulatory authorities to terminate their jurisdiction but instead formalizes the standards that must be incorporated into approved programs and applied thereafter.

One commenter wrote that a Federal surface management agency should play a primary role in the determination of whether reclamation goals have been met, and in determining when regulatory jurisdiction ends on Federal lands.

The comment concerns OSMRE's Federal lands program and bond release procedures, which are beyond the scope of this rule. Under 30 CFR 740.4(e), the Federal land management agency is responsible for determining post-mining land uses. In States where responsibility for administering the Federal lands program has been delegated to the State under a Federal/State cooperative agreement, a Federal responsibility exists to concur in State bond releases when leased Federal coal is involved. *See* 30 CFR 740.15(d)(3). Under some cooperative agreements, the Federal land management agency has assumed the responsibility to concur in the State bond release. Moreover, under 30 CFR Part 800, any Federal surface management agency may participate in the final bond release proceeding, and thus play a role in the determination of whether reclamation goals have been met. However, the regulatory authority has the responsibility to decide whether to terminate regulatory jurisdiction, and not the Federal surface management agency.

30 CFR 700.11(d)(2) Reassertion of Regulatory Authority Jurisdiction

As noted previously in response to concerns that States may improperly release final bonds and terminate their jurisdiction over sites which have not been fully reclaimed, OSMRE has added a new paragraph (d)(2) to § 700.11(d) to make explicit the effect of the final rule and to codify the preamble discussion to the proposed rule explaining what circumstances would warrant requiring a State regulatory authority to reassert jurisdiction over a site as a "surface coal mining and reclamation operation" following an earlier termination of jurisdiction. Paragraph (d)(2) establishes the circumstances under which the regulatory authority has the obligation to reassert regulatory jurisdiction over a site where bond has been fully released or written determination made and regulatory jurisdiction was terminated.

The preamble to the proposed rule explained that jurisdiction over specific sites should not exist following bond release or other written determination, except where the final release or determination involved fraud, collusion, or any other intentional wrongdoing (52 FR 24094). The final rule removes the proposed requirement to establish intentional wrongdoing as one of the bases for the mandatory reassertion of regulatory jurisdiction, and replaces it with the requirement that regulatory authority jurisdiction be reasserted if the bond release was based upon a misrepresentation of a material fact at the time of bond release.

Establishing intentional wrongdoing would have required evidence relating to the intent of the persons involved with the bond release proceeding. Such proof would have been difficult to obtain in most instances, and would not have required the reassertion of regulatory jurisdiction in situations where it is clear that reclamation was never successfully performed, but the intent of the parties could not be established.

The standard adopted, bond release or written determination based upon misrepresentation of a material fact, can be established by objective evidence relating to whether the reclamation plan was fully complied with and completed at the time of bond release, and, in certain instances, can be inferred from an examination of the site on which jurisdiction was terminated. This standard is consistent with the environmental protection purposes of the Act, and is responsive to the commenters' concerns that bond release can occur and jurisdiction terminate without reclamation having been successfully accomplished.

If the regulatory authority has terminated jurisdiction at sites where OSMRE has reason to believe that reclamation was not complete at the time of such termination, whether by bond release or other means, under the rule OSMRE will notify the State of possible violations (including incomplete reclamation) it believes exist at the site. Should the State decline to reassert jurisdiction under § 700.11(d)(2), OSMRE will determine whether or not the State's decision not to reassert regulatory jurisdiction was arbitrary, capricious, or an abuse of discretion under the approved State program.

III. Procedural Matters

Effect in Federal Program States and on Indian Lands

The final rule applies through cross-referencing in those States with Federal programs and on Indian lands. The States with Federal programs are California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for these States appear at 30 CFR Parts 905, 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947, respectively. The Indian lands program appears at 30 CFR Part 750.

Effect on State Programs

Following promulgation of the final rule, OSMRE will evaluate permanent State regulatory programs approved under section 503 of the Act to determine whether any changes in these programs will be necessary. If the Director determines that certain State provisions should be amended in order to be made no less effective than the revised Federal rules, the individual States will be notified in accordance with the provisions of 30 CFR 732.17.

Federal Paperwork Reduction Act

The collection of information contained in this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029-0094. Public reporting burden of this information is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Information Collection Clearance Officer, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Washington, DC 20240; and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Executive Order 12291 and Regulatory Flexibility Act

The DOI has determined that this document is not a major rule under the criteria of Executive Order 12291 (February 17, 1981) and certifies that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The rule does not distinguish between small and large entities. These determinations are based on the findings that the regulatory additions in the rule will not change costs to industry or to the Federal, State, or local governments. Furthermore, the rule produces no adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete with foreign-based enterprises in domestic or export markets.

National Environmental Policy Act

OSMRE has prepared a final environmental assessment (EA), and has determined that the final rule will not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4332(2)(C). A finding of no significant impact has been approved for the final rule in accordance with OSMRE procedures under NEPA. The EA is on file in the OSMRE Administrative Record at the address specified previously (see "ADDRESSES").

Authors

The principal authors of this rule are George M. Stone, Jr., and Daniel E. Stocker, Branch of Inspection and Enforcement, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202-343-4550 (Commercial or FTS).

List of Subjects in 30 CFR Part 700

Administrative practice and procedures, Reporting and recordkeeping requirements, Surface mining, Underground mining.

Accordingly, 30 CFR Part 700 is amended to read as follows:

Dated: September 30, 1988.

J. Steven Griles,

Assistant Secretary—Land and Minerals Management.

PART 700—GENERAL

1. The authority citation for Part 700 continues to read as follows:

Authority: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*, and Pub. L. 100-34.

2. Section 700.10 is revised as follows:

§ 700.10 Information collection.

The collection of information, and recordkeeping requirements, contained in 30 CFR 700.11(d), 700.12(b) and 700.13 has approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029-0094. The information collected in § 700.11(d) is used by OSMRE and States to establish standards for determining when a mine site is no longer a surface coal mining and reclamation operation and thereby when regulatory jurisdiction may end. The information collection under § 700.12(b) is used by OSMRE to consider need, costs, and benefits of a proposed regulatory change in order to grant or deny a petition that has been submitted. Information collected in § 700.13 identifies the person and nature of a citizen's suit, so that OSMRE or a state can respond appropriately.

3. In § 700.11, paragraph (d) is added to read as follows:

§ 700.11 Applicability.

* * * * *

(d)(1) A regulatory authority may terminate its jurisdiction under the regulatory program over the reclaimed site of a completed surface coal mining and reclamation operation, or increment thereof, when:

(i) The regulatory authority determines in writing that under the initial program, all requirements imposed under Subchapter B of this chapter have been successfully completed; or

(ii) The regulatory authority determines in writing that under the permanent program, all requirements imposed under the applicable regulatory program have been successfully completed or, where a performance bond was required, the regulatory authority has made a final decision in accordance with the State or Federal program counterpart to Part 800 of this chapter to release the performance bond fully.

(2) Following a termination under paragraph (d)(1) of this section, the regulatory authority shall reassert jurisdiction under the regulatory program over a site if it is demonstrated that the bond release or written determination referred to in paragraph (d)(1) of this section was based upon fraud, collusion, or misrepresentation of a material fact.

[FR Doc. 88-25300 Filed 11-1-88; 8:45 am]

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Part V

Department of Justice

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

28 CFR Part 31

Policy Guidance for Nonsecure Custody of Juveniles in Adult Jails and Lockups; Notice of Final Policy

DEPARTMENT OF JUSTICE

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

28 CFR Part 31

Policy Guidance for Nonsecure Custody of Juveniles in Adult Jails and Lockups

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of final policy.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, (JJDP Act) is publishing a policy to provide guidance to states participating in the JJDP Act Formula Grants Program for determining when a juvenile held within a building that houses an adult jail or lockup facility is considered to be in nonsecure custody for purposes of state monitoring for compliance with section 223(a)(14) of the JJDP Act.

EFFECTIVE DATE: This policy is effective November 2, 1988.

FOR FURTHER INFORMATION CONTACT: Emily C. Martin, Director, State Relations and Assistance Division, Office of Juvenile Justice and Delinquency Prevention (OJJDP), 633 Indiana Avenue, NW., Room 768, Washington, DC 20531; telephone [202] 724-5921.

I. Introduction and Background

In an effort to comply with the jail lockup removal mandate, section 223(a)(14) (42 U.S.C. 5633(a)(14)) of the JJDP Act, staff of state administering agencies and facility administrators are often called upon to identify alternatives to holding juveniles in jail cells or lockups while law enforcement officers carry out their responsibilities of identification, investigation, processing, release to parent(s) or guardian, hold for transfer to an appropriate juvenile detention or shelter facility, or transfer to court. the OJJDP recognizes that during this interim period, a balance must be struck between the statutory objective of not holding juveniles in jail cells or lockup areas beyond the six hour temporary holding period permitted for accused criminal-type offenders (a juvenile alleged to have committed, or charged with an offense that would be a crime if committed by an adult); and, not allowing juveniles in temporary law enforcement custody to disrupt police operations or to leave a police, sheriff or municipal facility without authorization.

Section 31.304(m) of the OJJDP Formula Grants Regulation published in the June 20, 1985, Federal Register on pages 25550–25561 (28 CFR Part 312, defines an *adult jail* as:

> A locked facility, administered by state, county, or local law enforcement and correctional agencies, the purpose of which is to detain adults charged with violating criminal law, pending trial. Also considered as adult jails are those facilities used to hold convicted adult criminal offenders sentenced for less than one year.

Section 31.304(n) of the Formula Grants Regulation defines an *adult lockup* as:

> Similar to an adult jail except that an adult lockup is generally a municipal or police facility of a temporary nature which does not hold persons after they have been formally charged.

While these definitions provide general parameters, the efforts of state agency staff to monitor compliance with the JJDP Act jail and lockup removal requirement and to identify alternatives indicate a need for specific guidelines to identify when a juvenile is being securely detained or confined in an adult jail or lockup area. In making this determination, it is critical to distinguish between nonsecure custody and secure detention or confinement (for purposes of this policy, the terms secure detention or confinement, secure cutsody, and secure holding are synonymous). A juvenile may be in law enforcement custody and, therefore, not free to leave or depart from the presence of a law enforcement officer or at liberty to leave the premises of a law enforcement facility, but not be in a secure detention or confinement status.

A secure detention or confinement status has occurred within a jail or lockup facility when a juvenile is physically detained or confined in a locked room, set of rooms, or a cell that is designated, set aside or used for the specific purpose of securely detaining persons who are in law enforcement custody. Secure detention or confinement may result either from being placed in such a room or enclosure and/or from being physically secured to a cuffing rail or other stationary object.

This policy is designed to assist state agency staff and facility administrators in identifying non-secure alternatives for custody of juveniles within law enforcement facilities. The policy assumes that immediate access or transfer of a juvenile to a juvenile detention canter or appropriate nonsecure facility is not possible, and that no area is available within the building or on the grounds that qualifies as a separate juvenile detention facility under the requirements set forth in the Formula Grants Regulation at 28 CFR 31.303(e)(3)(i). This policy provides guidance in identifying practices that do not constitute violations of the statutory jail removal requirement. As such, it reflects the effective strategies many law enforcement jurisdictions are using to achieve jail removal. The policy is not offered as standards for practice, nor does it supersede any state laws, policies or guidelines.

II. Discussion of Comments

A proposed policy was published was published in the Federal Register on January 28, 1988, for public comment. Comments were received from 12 national, state, and local organizations. All comments have been considered by the OJJDP in the issuance of a final policy.

The following is a summary of the comments and the response by OJJDP:

1. *Comment:* Booking areas used to process juveniles and adults are different to classify because there are wide variations in their configurations and levels of security. Respondents indicated that it is unclear whether OJJDP considers booking areas to be secure or nonsecure.

Response: While a booking area may be secure, a juvenile being processed "through" this area is not considered to be in a secure detention status.

Where a secure booking area is all that is available, and continuous visual supervision is provided throughout the booking process, and the juvenile only remains in the booking area long enough to be photographed and fingerprinted (consistent with state law and/or judicial rules), the juvenile will not be considered in a secure detention status. Continued nonsecure custody for the purposes of interrogation, contacting parents, or arranging an alternative placement must occur outside the booking area.

2. *Comment:* Two respondents indicated that a prohibition on handcuffing juveniles to a cuffing rail or other stationary objects is not a viable restriction given safety and cost considerations.

Response: OJJDP understands that many juveniles taken into custody pose a potential risk to self and/or law enforcement officers. Clearly, the officer taking a juvenile into custody must rely on his or her judgement of the level of risk posed by the juvenile.

It is, however, OJJDP's responsibility to clearly define when a juvenile taken into custody enters a secure detention status. Where an officer determines that a juvenile taken into custody as an *accused* criminal-type offender must be handcuffed to a cuffing rail or other stationary object, or placed in a cell or lockup area, this is permissible under § 31.303(f)(5)(iv)(H) of the OJJDP Formula Grants Regulation (28 CFR 31), for up to six hours. It should be noted, however, that for monitoring purposes, the six hour, "grace period" begins to run when the juvenile enters a secure detention status and ends six hours later.

It is also important to point out that handcuffing techniques that do not involve cuffing rails or other stationary objects will be considered nonsecure custody where the additional criteria for nonsecure custody set forth in this policy are adhered to. Thus, juvenile offenders can be considered in nonsecure custody, even though handuffed, where necessary, so long as a stationary object is not in use.

3. *Comment:* Two respondents expressed concern that without a time limit on nonsecure custody, juveniles could end up spending more time in law enforcement facilities than at present. It was recommended that nonsecure custody be limited to six hours.

Response: One criterion in the policy for determining that custody is nonsecure is that the area where the juvenile remains not be designed or intended for use as a residential area. This reflects OJJDP's policy that if a juvenile is to remain in custody long enough to require residential services, the juvenile should be moved to an apppropriate juvenile residential facility as soon as this need is identified. Once an area of a jail or lockup facility begins to be used for residential purposes, the juvenile will be considered to be in a secure detention status.

Beyond this "nonresidential" requirement, and the other limiting criteria in this policy, the JJDP Act does not confer upon the OJJDP the authority to limit the length of nonsecure custody.

4. *Comment:* One respondent stated that recordkeeping deficiencies at the facility level often make it difficult to determine when juveniles are placed in cells or other secure holding areas, and that this problem will also exist in attempting to monitor the handcuffing of juveniles to cuffing rails or other stationary objects.

Response: Each participating state is required, pursuant to section 223(a)(15) of the JJDP Act, to have an adequate monitoring system. It is expected that states will work with local facilities to develop adequate recordkeeping procedures.

As for recording juveniles placed in a holding cell or other secure area, many police departments handle this by adding the designation "cell" or "secure" to their juvenile admission/booking log. Departments should be particularly willing to do this when liability factors are taken into consideration, i.e., in the event of litigation, departments need to know if a juvenile was or was not placed in a secure area or in a secure detention status, and if so, for how long.

5. *Comment:* Three respondents suggested that the policy does not address the separation provision, section 223(a)(13) of the JJDP Act.

Response: The policy is designed to identify nonsecure alternatives for the custody and handling of juveniles within law enforcement facilities. The section 223(a)(13) separation requirement of the JJDP Act does not apply to juveniles in a nonsecure custody status.

6. *Comment:* One respondent indicated that court holding facilities should be subject to the Deinstitutionalization of Status Offenders provision, section 223(a)(12)(A) of the JJDP Act. Another suggested adding requirements for staff supervision and time limits for court holding facilities.

Response: Section 223(a)(12)(A) of the JJDP Act requires the removal of status and nonoffenders from secure detention and correctional facilities. Section 103 of the Act defines both facility categories to mean "residential" facilities.

This policy clearly states that in order for a court holding facility to be exempt from the adult jail and lockup removal provision of the JJDP Act, it must be nonresidential. The policy also states that the court holding facility cannot be used for punitive purposes or other purposes unrelated to a court appearance, and it confirms that the section 223(a)(13) separation requirement applies to court holding facilities. These requirements pertain to status and nonoffenders, as well as to criminal-type offenders.

As for time limitations, the nonresidential requirement does impose an inherent or practical time limitation. That is, the juvenile must be brought to and removed from the facility during the same judicial day.

The final policy does not address the level of supervision necessary in court holding facilities. However, it is clearly essential that sufficient levels of supervision be provided to ensure the safety of those juveniles before the court, and the integrity of the court process itself.

Executive Order 12291

This notice does not constitute a "major" rule as defined by Executive Order 12291 because it does not result in: (a) An effect on the economy of $100 million or more, (b) a major increase in any costs or prices, or (c) adverse effects on competition, employment, investment, productivity, or innovation among American enterprises.

Regulatory Flexibility Act

This policy does not have a "significant" economic impact on a substantial number of small "entities", as defined by the Regulatory Flexibility Act (Pub. L. 96.354).

Paperwork Reduction Act

No collection of information requirements are contained in or effected by this guideline (See the Paperwork Reduction Act, 44 U.S.C. 3504(h)).

List of Subjects in 28 CFR Part 31

Grant programs—law, Juvenile delinquency, Reporting and recordkeeping requirement.

III. Policy: Criteria for Law Enforcement Facilities

The following policy criteria, if satisfied, will constitute nonsecure custody of a juvenile in a building that houses an adult jail or lockup facility:

(1) The area(s) where the juvenile is held is an unlocked multi-purpose area, such as a lobby, office, or interrogation room which is not designated, set aside or used as a secure detention area or is not a part of such an area, or, if a secure area, is used only for processing purposes; (2) The juvenile is not physically secured to a cuffing rail or other stationary object during the period of custody in the facility; (3) the use of the area(s) is limited to providing nonsecure custody only long enough and for the purposes of identification, investigation, processing, release to parents, or arranging transfer to an appropriate juvenile facility or to court; (4) in no event can the area be designed or intended to be used for residential purposes; and (5) the juvenile must be under continuous visual supervision by a law enforcement officer or facility staff during the period of time that he or she is in nonsecure custody.

IV. Policy: Criteria for Court Holding Facilities

A court holding facility is a secure facility, other than an adult jail or lockup, that is used to temporarily detain persons immediately before or after detention hearings, or other court proceedings. Court holding facilities, where they do not detail individuals

overnight (i.e., are not residential) and are not used for punitive purposes or other purposes unrelated to a court appearance, are not considered adult jails or lockups for purposes of section 223(a)(14) of the JJDP Act. However, such facilities remain subject to the section 223(a)(13) (42 U.S.C. 5633(a)(13)) separation requirement of the Act.

Verne L. Speirs,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 88-25376 Filed 11-1-88; 8:45 am]

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Part VI

Department of Justice

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

28 CFR Part 31

Criteria for de Minimis Exceptions to Full Compliance With the Jail Removal Requirement; Final Rule

DEPARTMENT OF JUSTICE

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

28 CFR Part 31

Criteria for De Minimis Exceptions to Full Compliance With the Jail Removal Requirement

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Final rule.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to section 282(d) (42 U.S.C. 5672(d)) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. 5601 *et seq.* (JJDP Act), revises its Formula Grants Regulation to include criteria for determining full compliance with de minimis exceptions to the jail removal requirement of section 223(a)(14) (42 U.S.C. 5633(a)(14)) of the JJDP Act, as amended.

EFFECTIVE DATE: This rule is effective November 2, 1988.

FOR FURTHER INFORMATION CONTACT: Emily C. Martin, Director, State Relations and Assistance Division, OJJDP, 633 Indiana Avenue NW., Room 768, Washington, DC 20531, (202) 724–5921.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

Section 223(a)(14) of the JJDP Act requires that States participating in the Formula Grants Program "(14) provide that, beginning after the five-year period following December 8, 1980, no juvenile shall be detained or confined in any jail or lockup for adults, except that the Administrator shall through 1988, promulgate regulations which make exceptions with regard to the detention of juveniles accused of non-status offenses who are awaiting an initial court appearance pursuant to an enforceable State law requiring such appearance within twenty-four hours after being taken into custody (excluding weekends and holidays) * * *." Section 223(a)(14) limits this exception to areas that are outside a standard metropolitan statistical area.

Section 233(c) of the JJDP Act further provides that a State's "(c) * * * Failure to achieve compliance with the requirements of Subsection (a)(14) within the five-year time limitation shall terminate any State's eligibility for funding under this subpart, unless the Administrator determines that: (1) The State is in substantial compliance with such requirement through the achievement of not less than 75 percent removal of juveniles from jails and lockups for adults; and (2) the State has made through appropriate executive or legislative action, an unequivocal commitment to achieving full compliance within a reasonable time, not to exceed three additional years."

Section 31.303(f)(6)(iii) of the OJJDP Formula Grants Regulation, which was published in the June 20, 1985, **Federal Register**, at pages 25550–25561, 28 CFR Part 31, establishes three ways for a State to demonstrate full compliance with the section 223(a)(14) requirement. First, "Full compliance is achieved when a State demonstrates that the last submitted monitoring report, covering a full and actual 12 months of data, demonstrates that no juveniles were held in adult jails or lockups in circumstances that were in violation of section 223(a)(14)" (28 CFR 31.303(f)(6)(iii)).

The remaining two ways to demonstrate full compliance involve the legal concept of de minimis. First, a State may be found in full compliance with de minimis exceptions where all instances of noncompliance violated a State law, court rule, or other statewide executive or judicial policy; the instances of noncompliance do not indicate a pattern or practice; an enforcement mechanism exists; and, an acceptable plan has been developed to eliminate the noncompliant incidents (28 CFR 31.303(f)(6)(iii)(A)).

Second, a State may demonstrate full compliance by achieving a rate of noncompliant incidents, per 100,000 juvenile population in the State, that falls below the de minimis rate established by OJJDP. This de minimis rate, as set forth below, is being added to the OJJDP Formula Grants Regulation at § 31.303(f)(6)(iii)(B) which is currently designated "Reserved."

Office of Justice Programs Office of General Counsel Legal Opinion 76–7 provides the legal basis upon which OJJDP establishes this de minimis exception. Specifically, the legal opinion allows OJJDP to tolerate a limited number of instances of noncompliance (the legal opinion addressed the deinstitutionalization of status offenders requirement) that are of "slight consequence" or "insignificant" in making a determination regarding a State's achieving full compliance.

II. Discussion of Comments

A proposed policy was published in the **Federal Register** on June 9, 1988, for public comment. One comment was received and has been considered by the OJJDP in the issuance of a final policy.

1. *Comment:* Each State should have the option of providing the juvenile population figure to be used in calculating the de minimis rate for the year in which this exception is requested. The U.S. Bureau of Census juvenile population figures used by the OJJDP may not accurately reflect rapid changes in a State's juvenile population.

Response: The OJJDP will continue to use the U.S. Bureau of Census juvenile population figures, which are annually updated by the Bureau, to calculate each State's rate of compliance with the jail removal provision of the JJDP Act. This is necessary in order to ensure a uniform basis for making de minimis calculations.

However, when juvenile population figures available within the State demonstrate a rate below the allowable de minimis rate, while use of U.S. Bureau of Census figures indicate a rate above the allowable de minimis rate, the State may request the OJJDP to accept the State's figures. Such requests will be reviewed on a case by case basis, and must be submitted each year the State wishes to be exempted from the requirement to use U.S. Bureau of Census figures. The OJJDP may accept the State's juvenile population figures when they are the product of an established annual information collection system. The information collection system and its primary usage must be described in the State's annual request for a finding of full compliance with de minimis exceptions, and must be approved by the Administrator as valid and reliable.

III. Policy and Criteria for De Minimis Exceptions to Full Compliance with the Jail Removal Requirement

The criteria presented below and set forth in the final regulation will be applied by OJJDP in determining whether a State has achieved, and subsequently maintained, a numerical finding of full compliance with de minimis exceptions with the jail and lockup removal requirement of section 223(a)(14). Also specified is the time frame for submitting information which each State must provide when requesting an initial or subsequent finding of full compliance with a de minimis exceptions under 28 CFR 31.303(f)(6)(iii)(B).

Discussion of Criteria

The criteria for finding full compliance with de minimis exceptions is that the incidents of noncompliance are insignificant, or of slight consequence, in terms of the total juvenile population in the State.

In applying this criteria, OJJDP will compare each State's noncompliance rate per 100,000 population under age 18 to the average rate that has been calculated for 12 States (three States from each of the four Bureau of Census regions). The 12 States selected by OJJDP were those having the lowest rates of noncompliance per 100,000 juvenile population and which had an adequate system of monitoring for compliance. Those States using the non-MSA exception, provided for in section 223(a)(14), were not included in calculating the average. Inclusion of these States would have created an artifically low average because the exception expires in 1989.

The information provided by the 12 States' 1986 Monitoring Reports indicated an average annual rate of nine (9) incidents of noncompliance per 100,000 juvenile population. Consequently, those States which have a noncompliance rate in excess of nine (9) per 100,000 juvenile population will be considered presumptively ineligible for a finding of full compliance with de minimis exceptions, pursuant to § 31.303(f)(6)(iii)(B) of the Formula Grants Regulation.

When a State can demonstrate, however, that recently enacted changes in State law which have gone into effect can reasonably be expected to have a substantial, significant and positive impact on the State's level of compliance, OJJDP will consider this exceptional circumstance in making its determination of full compliance with de minimis exceptions. This exceptional circumstance will only be applied where the legislation is expected to produce full (100%) compliance or full compliance with de minimis exceptions by the end of the monitoring period immediately following the monitoring period under consideration.

OJJDP deems it to be a requirement of critical importance that all States annually demonstrate continued and meaningful progress toward 100 percent compliance in order to remain eligible for a finding of full compliance with de minimis exceptions pursuant to § 31.303(f)(6)(iii)(B) of the Formula Grants Regulation.

Executive Order 12291

This regulation does not constitute a "major" rule as defined by Executive Order 12291 because it does not result in: (a) An effect on the economy of $100 million or more, (b) major increase in any costs or prices, or (c) adverse effects on competition, employment, investment, productivity, or innovation among American enterprises.

Regulatory Flexibility Act

This regulation does not have "significant" economic impact on a substantial number of small "entities," as defined by the Regulatory Flexibility Act (Pub. L. 96–354).

Paperwork Reduction Act

No new collection of information requirements are contained in this regulation (See the Paperwork Reduction Act, 44 U.S.C. 3504(h)).

List of Subjects in 28 CFR Part 31

Grant programs-law, Juvenile delinquency, Reporting and recordkeeping requirement.

Final Regulation

PART 31—[AMENDED]

1. The authority citation for Part 31 continues to read as follows:

Authority: Juvenile Justice and Delinquency Prevention Act of 1974, as amended (42 U.S.C. 5601 *et seq.*).

2. A new paragraph (f)(6)(iii)(B), currently designated as "Reserved" in 28 CFR 31.303, is added to read as follows:

§ 31.303 Substantive requirements.

* * * * *

(f) * * *

(6) * * *

(iii) * * *

(B)(*1*) *Standard.* The State must demonstrate that each of the following requirements have been met.

(*i*) The incidents of noncompliance reported in the State's last submitted monitoring report do not exceed an annual rate of 9 per 100,000 juvenile population of the State; and

(*ii*) An acceptable plan has been developed to eliminate the noncompliant incidents through the enactment or enforcement of State law, rule, or statewide executive or judicial policy, education, the provision of alternatives, or other effective means.

(*2*) *Exception.* When the annual rate for a State exceeds 9 incidents of noncompliance per 100,000 juvenile population, the State will be considered ineligible for a finding of full compliance with de minimis exceptions under the numerical de minimis standard unless the State has recently enacted changes in State law which have gone into effect and which the State demonstrates can reasonably be expected to have a substantial, significant and positive impact on the State's achieving full (100%) compliance or full compliance with de minimis exceptions by the end of the monitoring period immediately following the monitoring period under consideration.

(*3*) *Progress.* Beginning with the monitoring report due by December 31, 1990, any State whose prior full compliance status is based on having met the numerical de minimis standard set forth in paragraph (*f*)(6)(iii)(B)(*1*) (*i*) and (*ii*) of § 31.303, must annually demonstrate, in its request for a finding of full compliance with de minimis exceptions, continued and meaningful progress toward achieving full (100%) compliance in order to maintain eligibility for a continued finding of full compliance with de minimis exceptions.

(*4*) *Request Submission.* Determinations of full compliance and full compliance with de minimis exceptions are made annually by OJJDP following submission of the monitoring report due by December 31 of each calendar year. Any State reporting less than full (100%) compliance in any annual monitoring report may request a finding of full compliance with de minimis exceptions under paragraph (f)(6)(iii) (A) or (B) of § 31.303. The request may be submitted in conjunction with the monitoring report, as soon thereafter as all information required for a determination is available, or be included in the annual State plan and application for the State's Formula Grant Award.

Date: October 28, 1988.

Verne L. Speirs,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 88-25382 Filed 11-1-88; 8:45 am]

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Title 3—

The President

Presidential Determination No. 89-1 of October 3, 1988

Determination Pursuant to Section 2(b)(2) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for the Secretary of State

Pursuant to Section 2(b)(2) of the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2601(b)(2)), as amended, I hereby designate Afghans returning to and resettling in Afghanistan and Afghans internally displaced within Afghanistan as persons qualifying for assistance under Section 2(b)(2) of the Act, having determined that such assistance will contribute to the foreign policy interests of the United States.

You are authorized and directed to advise the appropriate congressional committees of this Determination and to publish it in the Federal Register.

Ronald Reagan

THE WHITE HOUSE,
Washington, October 3, 1988.

[FR Doc. 88-25636
Filed 11-1-88; 4:52 pm]
Billing code 3195-01-M

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Presidential Determination No. 89-3 of October 13, 1988

Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for the Secretary of State

Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended (22 U.S.C. 2601(c)(1)), in order to meet unexpected urgent refugee and migration needs in the Middle East and Africa, I hereby determine that it is important to the national interest that $17 million be made available from the United States Emergency Refugee and Migration Assistance Fund for assistance to persons in Africa and the Middle East. Up to $15 million will be contributed to the United Nations High Commissioner for Refugees and the League of Red Cross Societies for assistance to African refugees. Up to $2 million will be contributed to the United Nations Relief and Works Agency for medical assistance to Palestinian refugees in Gaza and the West Bank.

You are authorized and directed to inform the appropriate committees of Congress of this Determination and the obligation of funds under this authority.

This Determination shall be published in the Federal Register.

Ronald Reagan

THE WHITE HOUSE,
Washington, October 13, 1988.

[FR Doc. 88-25638
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Presidential Documents

Presidential Determination No. 89-4 of October 20, 1988

Determination Pursuant to Section 550 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989

Memorandum for the Secretary of State

Pursuant to Section 550 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (Public Law 100-461), I hereby certify that the withholding of funds to the multilateral development banks and other international organizations and programs, pursuant to the limitation contained therein prohibiting the obligation of funds appropriated by that Act to finance indirectly any assistance or reparations to certain specific countries, is contrary to the national interest.

This determination shall be published in the Federal Register.

Ronald Reagan

THE WHITE HOUSE,
Washington, October 20, 1988.

[FR Doc. 88-25037
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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF ENERGY

10 CFR Part 1013

Implementation of the Program Fraud Civil Remedies Act

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy is adopting procedural regulations implementing the Program Fraud Civil Remedies Act of 1986. These regulations establish administrative procedures for imposing the statutorily authorized civil penalties and assessments against any person who makes, submits, or presents a false, fictitious, or fraudulent claim or written statement to the Department of Energy.

EFFECTIVE DATE: October 31, 1988.

FOR FURTHER INFORMATION CONTACT: D. Clifford Crook III, Esq., Office of the Deputy General Counsel for Legal Services, 1000 Independence Avenue, SW., Room 6A–197, Washington, DC 20585, (202) 586–5246.

SUPPLEMENTARY INFORMATION: The Program Fraud Civil Remedies Act (the Act), Pub. L. 99–509, enacted on October 21, 1986, codified at 31 U.S.C. 3801 through 3812, generally provides that any person who knowingly submits a false claim or statement to the Federal Government in an amount less than $150,000 may be liable for an administrative civil penalty of not more than $5,000 for each false claim or statement, and, in certain cases, to an assessment equal to double the amount falsely claimed.

On May 26, 1987, DOE issued a notice of proposed rulemaking (52 FR 20403, June 1, 1987) announcing its intention to implement the Act. Comments on the proposed rule were requested through July 31, 1987 The specific comments, and the response thereto, are set forth as follows:

A. General

1. *Comment:* One commenter found the proposed regulations too detailed and technical in view of Congress' intent that they simply encompass the safeguards afforded by the Administrative Procedure Act (APA). For example, the commenter regarded the filing of post-hearing briefs as unnecessary and wasteful. Believing that the proposed rules would make the proceedings too involved and costly, the commenter suggested that the agency adopt general guidelines and allow the parties to work out procedures for their individual cases. Alternatively, the agency was urged to create two sets of procedures, one incorporating the Federal Rules of Civil Procedure, and another, less formal set.

Response: The commenter is correct that Congress intended authorities already bound by the Administrative Procedure Act (APA) to conform to its requirements in conducting hearings under the Program Fraud Civil Remedies Act (PFCRA, or the Act) and for authorities not so bound to issue regulations under the Act incorporating the APA requirements. 31 U.S.C. 3803(g). However, Congress required *all* authorities covered by the statute to promulgate rules and regulations implementing the Act (31 U.S.C. 3809), and Congress intended such regulations to "be substantially uniform throughout the government." S. Rep. No. 99–212, 99th Cong., 1st Sess. 12 (1985). Furthermore, Congress provided that the ALJ would send to each defendant a description of the procedures that would govern the proceeding. 31 U.S.C. 3803(g)(3)(B)(i).

Congress clearly intended the affected agencies to develop comprehensive procedures for the conduct of hearings under PFCRA through notice and comment rulemaking. It did not envision that each agency would develop general guidelines and leave procedures to be negotiated among the parties and the ALJ in every particular case, as suggested by the commenter. Nor is there any indication that Congress intended the agencies to develop two sets of procedures—one for experienced litigants and another for the less sophisticated.

As the APA provides only general guidelines, which cover the broad range of agency adjudications, the implementing regulations make these requirements specific to proceedings under the Act. Moreover, the Act itself imposes a number of detailed procedural requirements that go beyond those mandated by the APA, such as provisions for prehearing discovery, the disclosure to the defendant of exculpatory information, limiting the venue of the hearing, internal review by a neutral reviewing official, and appeal of an ALJ's initial decision to the authority head. Ironically, many of these requirements were inserted into the Act at the instance of the commenter. The regulations must implement these provisions, as well.

First, we disagree with the commenter's premise—that somehow a lack of specificity and detail ensures that proceedings will be more expeditious or less costly. To the contrary, an agency's failure to anticipate problems and to establish mechanisms for resolving them in regulations often delays litigation while solutions are created ad hoc. That is not only costly to litigants, but it is less fair than informing them in advance of the rules of play.

We disagree that the procedures prescribed in these regulations are too detailed or too technical. We believe that the proposed regulations and those here adopted closely track the prescriptions of the statute and the provisions of the APA, except to the extent necessary to fill in gaps left by the statute. For example, the regulations provide a mechanism for the ALJ to enter a default judgment if a defendant fails to respond to the complaint within the time allowed by the statute, an event not anticipated in the text of the Act.

Although the rules are not so technical that a layperson could not represent him or herself, we believe that an allegation that a person has violated the statute is a very serious matter and that in most instances defendants will choose to be represented by an attorney.

Finally, we think the regulations are sufficiently flexible to permit the ALJ and the parties to tailor the process to their needs and the circumstances of each case. The prehearing conference offers an opportunity for the parties to explore ways to streamline the proceedings by mutual agreement. For example, the parties may agree to submit the case for decision on a stipulated record or on written statements. Sections 1013.19(c) (4) and

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(5). Contrary to the commenter's remark, post-hearing briefs are optional with the parties unless required by the ALJ. Section 1013.36.

In sum, we believe that these requirements, which will be sent to all defendants, will provide them with a clear and comprehensive roadmap of the procedures for the conduct of the hearing.

II. Specific

1. *Comment:* The proposed regulation expands the term "benefit" to include anything of value; whereas, Congress used the term as a subset of "money."

Response: The statute uses the term "benefit" in three different places—in the definition of "claim," in the definition of "statement," and in section 3803(c)(2), where it is defined narrowly to refer to benefits under specific governmental assistance programs to individuals. Only in the definition of "claim" is the term referred to parenthetically as a subclass of "money." No such restriction applies when "benefits" is used in the definition of "statement." In that context, we believe that Congress intended the term to be defined broadly to suit the remedial purposes of the statute. The authority dispenses things of value other than money, property, or services—such things as licenses, permits, certificates, employment, etc. We believe that by providing a remedy against making false statements, as well as against false claims, Congress intended the Act to cover material false statements in obtaining these items of value, as well. To make our intention clear, we have amended the definition of "benefit" in § 1013.2 to restrict it to application within the context of "statement."

2. *Comment:* A commenter believed that by defining "representative" as an attorney, the proposed regulation would prevent corporations and other entities from appearing pro se by a corporate owner or officer.

Response: The general rule is that corporations have no right to appear pro se. *Jones v. Niagra Frontier Transportation Authority*, 722 F.2d 20, 22 (2nd Cir. 1983), and cases cited therein. However, the definition of "representative" is not intended to foreclose a corporation or other entity from appearing pro se by a corporate owner, officer, or employee. Individuals, of course, are also free to appear pro se. However, if either individuals or entities choose to be represented by another individual, that representative must be an attorney.

3. *Comment:* A commenter found the proposed definition of "reviewing official" deficient. It permits redelegation of authority to a designee of the General Counsel, allegedly in violation of section 3801(a)(8) of the Act requiring the authority head to designate the reviewing official.

Response: We disagree with the commenter's reading of the statute. The statute neither explicitly nor implicitly prevents the authority head from choosing to vest this responsibility in one agency official or to specify one official with responsibility to manage it through designated subordinates. Contrast section 3801(a)(8) of the Act with section 3812, which expressly prohibits the Attorney General or Assistant Attorney General designated by the Attorney General from redelegating to others the duties assigned to them by the statute. Especially as the statute provides for the disqualification of a particular reviewing official in a given case, the General Counsel must have the flexibility to reassign responsibility for reviewing that case to another reviewing official.

4. *Comment:* A commenter criticized the definition of "statement" because it appears to permit the authority to impose civil penalties and assessments under the Act on the basis of a false statement made to a State or intermediary in a program administered by any agency of the United States.

Response: The definition of "statement" is taken directly from section 3801(a)(9) of the Act. We believe that the commenter's concern that the authority's jurisdiction is impermissibly broad is answered when the definition of "statement" is read in conjunction with section 3801(c)(2) of the Act and § 1013.3(b)(3), which provide that statements are considered *made to the authority* when they are made to an agent, fiscal intermediary, or other entity, including a State or political subdivision thereof, acting for or on behalf of the authority.

5. *Comment:* A commenter criticized § 1013.3(b)(2) of the proposed regulation for leaving open the possibility that the agency will seek dual penalties, one based on a false statement and another based on a false certification accompanying it.

Response: The regulation at issue quotes verbatim section 3801(c)(1) of the Act. However, we agree with the commenter that Congress did not intend that an authority could impose penalties against both the false statement and the certification accompanying it, even though the language of the statute and the proposed regulation appears to permit it.

The statute and regulation broadly define "statement" as "any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made." Section 3801(a)(9) of the Act; § 1013.2 of the regulations. The statute then clarifies that definition by stating that each written "representation, certification or affirmation" is a separate statement. Section 3801(c)(1) of the Act. Because the latter provision is relevant primarily in calculating the number of civil penalties for which a defendant may be liable, we incorporated it into § 1013.3 of the regulations, Basis for civil money penalties and assessments.

The ambiguity arises from the fact that to be actionable under the final version of the statute, any of the types of statements defined in section 3801(a)(9) must either contain or be accompanied by an express certification or affirmation of the truthfulness and accuracy of the statement. Section 3802(a)(2)(C) of the Act. We conclude that Congress intended that where a certification independently asserts a material fact, rather than affirming the truth of facts asserted elsewhere, such certification may be a statement for purposes of section 3802(a)(2) of the Act. On the other hand, where a statement in the form of a representation or a bookkeeping entry, for example, is "accompanied" by a certification as to the truthfulness and accuracy of the representation or entry, the certification is an integral element in making actionable the underlying representation or bookkeeping entry. Hence, only the representation or entry may be counted as a statement subject to liability, not both the representation and the accompanying certification.

6. *Comment:* A commenter believes that there is no statutory basis for proposed § 1013.3(e), which would permit the authority to hold each person found liable for making a claim or statement in contravention of the statute, liable for a civil penalty.

Response: We disagree and have retained § 1013.3(e) as proposed. Congress stated in section 6102(b) of the Act that in addition to recompensing agencies for losses they have sustained as a result of false, fictitious, or fraudulent claims and statements, the statute would serve to deter the making of such claims and statements. That deterrent purpose is clearly better served if each person found liable under the statute may be held liable for a civil penalty without regard to contribution by others also liable for the claim or statement. As to the commenter's claim that this proposal is without precedent, we note that this section follows the precedent set in the regulations implementing the first Civil Monetary

Penalties Act enacted as part of the Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, 95 Stat. 789-792 (1981), codified at 42 U.S.C. 1320a-7(c) and 1320a-7a. *See* 42 CFR 1003.102(c)(1) (1988). Congress used this statute as a model in devising the PFCRA. S. Rep. No. 99-212, 99th Cong., 1st Sess. 3-4, 8-9 (1985).

7. *Comment:* A commenter noted that § 1013.4 of the proposed regulations should incorporate limitations on the investigating official's subpoena authority stated in section 3804(a) of the Act, *viz.*, that a subpoena may be issued only for materials "not otherwise reasonably available to the authority," and only for the purpose of conducting an investigation under the Act.

Response: The statutory limitations are incorporated by reference. However, we disagree that the statute permits the investigating official to issue subpoenas *only* for the purposes of an investigation under the Act. Section 3804(a) of the Act states prefatorily, "For the purposes of an investigation under section 3803(a)(1) of this title, an investigating official is authorized" to issue a subpoena. Compare it with section 3804(b) of the Act, which begins, "For the purposes of conducting a hearing under section 3803(f) of this title," in authorizing ALJs to issue subpoenas. At the outset of an investigation into allegations of false claims or statements, an investigating official does not have all the facts necessary to formally elect from among all remedies and sanctions available to the Government. Furthermore, an agency's authority to compel the production of documents by subpoena has been given wide scope by the courts if the subpoena serves a legitimate statutory purpose; the agency's inquiry need not be focused on the forecast of a probable outcome. *Oklahoma Press Publishing Co. v. Walling*, 327 U.S. 186 (1946); *United States v. Morton Salt Co.*, 338 U.S. 632 (1950); *United States v. Powell*, 379 U.S. 48 (1964). We believe the statutory language to be satisfied if *a* purpose of issuing a subpoena under section 3804(a) of the Act is to investigate possible violations under the Act.

8. *Comment:* A commenter protested that by requiring the person producing subpoenaed documents to make the certifications required by § 1013.4(a)(3), the proposed regulation purports to authorize the investigating official to compel testimony, which Congress considered and rejected.

Response: While it is true that Congress ultimately declined to grant the investigating official testimonial subpoena authority, the certifications required by § 1013.4(a)(3) of the proposed regulations are auxiliary to the production of documents pursuant to a subpoena *duces tecum*. A custodian of records, with some exceptions, can be compelled, either in the administrative hearing or in a civil action to enforce the subpoena, to identify and authenticate the documents produced or to claim that he or she does not have possession of the records sought. *See Curcio v. United States*, 354 U.S. 118 (1957); *McPhaul v. United States*, 364 U.S. 372 (1960); *United States v. O'Henry's Film Works, Inc.*, 598 F. 2d 313 (2d Cir. 1979); *United States v. Austin-Bagley Corp.* 31 F.2d 229, 234 (2d Cir. 1929). Hence, to ensure compliance with the subpoenas *duces tecum* short of resorting to an enforcement proceeding in federal court in every instance, we have required custodians to attest to their compliance. Likewise, with respect to documents protected by privilege, the regulation provides for the assertion of such privileges in advance of enforcement proceedings. We believe this will help to expedite investigations under the Act and will result in fewer expensive trips to the federal courthouse simply to ensure compliance with the terms of documentary subpoenas.

9. *Comment:* A commenter believes that § 1013.4(b) is contrary to section 3803(a)(1) of the Act. The statute states that the investigating official shall report the findings and conclusions of an investigation, while the proposed regulation requires the investigating official to report such findings and conclusions to the reviewing official only if he or she believes an action under the PFCRA to be warranted.

Response: We disagree with the commenter. The language of the statute is not mandatory in the context of section 3803(a)(1), which gives the investigating official discretion to begin an investigation of allegations of liability under PFCRA. By requiring the investigating official to report the findings and conclusions of his or her investigations to the reviewing official, Congress sought to ensure that a case considered meritorious by the investigating official was subjected to "independent prosecutorial review" by an official "free from any possible 'prosecutorial bias.'" S. Rep. No. 99-212, 99th Cong., 1st Sess. 12 (1985). Congress cannot reasonably have intended an investigating official to write and submit for formal review a program fraud report where the investigation revealed no violation or no possibility of collection, or a *de minimus* or technical violation of no real consequence to the authority's programs or operations. Hence, we decline to adopt the commenter's impractical reading of the statutory provision.

10. *Comment:* The same commenter also found that § 1013.4(c) conflicts with the investigating official's obligation to report his or her findings and conclusions to the reviewing official: only the Attorney General or a designated Assistant Attorney General can delay a proceeding under PFCRA because it may interfere with a criminal investigation.

Response: We likewise reject the commenter's conclusion here. Section 3803(a)(1) of the Act itself explicitly states that the investigating official's responsibility to report on PFCRA investigations "does not modify any responsibility of an investigating official to report violations of criminal law to the Attorney General." Under the Inspector General Act of 1978 and similar enabling statutes, the Inspectors General (generally the investigating officials under PFCRA) are obligated to report violations of Federal criminal law expeditiously to the Attorney General. 5 U.S.C. App. 4(d); 42 U.S.C. 7138(j). Congress intended that the Inspectors General "would be required to contact the Justice Department directly, without clearing the referrals with the agency head, the General Counsel of the agency or any other individual in the agency." S. Rep. No. 95-1071, 95th Cong., 2d Sess. 30 (1978).

Clearly, conduct that could subject a person to liability under the PFCRA also might subject the person to liability under a number of criminal statutes, such as 18 U.S.C. 286, 287, 1001, or 1341. Also, at a particular point in an investigation, it may become clear that an agent of a corporation is personally liable under the PFCRA. However, the investigating official may believe that further investigation would show that the corporation, corporate officers, and perhaps the government contract officer are criminally liable. Premature disclosure to the reviewing official of the agent's liability under PFCRA might jeopardize that ongoing investigation.

Sections 1013.4 (c) and (d) of the proposed regulations make it clear that the investigating official is not obliged to report to the reviewing official under section 3803(a)(1) just because he or she has evidence that a person's conduct may fall within the scope of the PFCRA. Congress required that this responsibility be vested in a highly placed government official, who must exercise discretion and judgment in the performance of his or her duties.

That the Attorney General or Assistant Attorney General has authority to cause a stay of a hearing

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under the Act, as provided in section 3803(b)(3), in no way implies that the investigating official *lacks* the authority to prevent interference with similar interests *before* such a hearing has been commenced.

Congress has made clear its intention that remedies under the Act are in addition to any other remedies that may be prescribed by law (section 3802(a) of the Act) and has stated explicitly that it does not intend to limit the independent authority of the investigating official to investigate and report criminal violations (section 3803(a)). Thus, it would be ironic if Congress' attempt to add weapons to the agency's arsenal against fraud were used to rob it of weapons already at its disposal.

11. *Comment:* A commenter does not believe that proposed § 1013.5(b)(6) satisfies the statutory requirement that the reviewing official determine that there is a reasonable prospect of collecting from the defendant the amount for which the person may be liable.

Response: We have concluded that the sufficiency of the basis for the reviewing official's statement concerning the financial condition of possible defendants is a matter best left to the authority and the Department of Justice. Hence, without agreeing with the commenter's position, we have deleted the final sentence in § 1013.5(b)(6).

Section 3809(2) of the Act directs the authority to promulgate regulations requiring the reviewing official to include in his notice to the Attorney General a statement that there is a reasonable prospect of collecting the amount for which the person may be held liable. Congress thus sought to ensure that in each case the authority and the Department of Justice would weigh the benefits and costs of pursuing remedies under the Act or others. The reviewing official's statement is obviously intended to assist the authority and the Attorney General in determining how best to deploy their limited enforcement resources, not to confer a right upon potential defendants. This intent is underscored by the fact that a defendant cannot obtain the reviewing official's notice to the Attorney General. Section 3803(g)(3)(B)(ii) of the Act. Also, Congress included the requirement that the reviewing official make such a statement in section 3809(2) rather than list it among the criteria related to the merits of a proposed action, which it specified in section 3803(a)(2) of the Act.

Congress recognized that obtaining financial information is a difficult and uncertain process. The Fair Credit Reporting Act, 15 U.S.C. 1681b, the Right to Financial Privacy Act of 1978, 12 U.S.C. 3401–3422, and the Tax Reform Act of 1976, 26 U.S.C. 6103, for example, limit or prohibit easy access to the kinds of records which typically would illuminate the financial circumstances of a potential defendant. Consequently, judgments about collectability are particularly difficult to make, especially before formal proceedings have been commenced.

Under the circumstances, we believe that § 1013.5(b)(6) as currently worded satisfies the statutory requirement and leaves the authority and the Department of Justice to determine what will constitute sufficient support for the reviewing official's statement.

12. *Comment:* One commenter accused the agency of attempting to circumvent the $150,000 jurisdictional ceiling on agency adjudications under PFCRA by defining "related" claims under section 3803(c)(1) of the Act too narrowly.

Response: Congress provided in section 3803(c)(1) of the Act that no allegations of liability could be referred to an ALJ if the reviewing official determines that an amount of money, or property or services with a value, of more than $150,000 was requested or demanded in a claim or "in a group of related claims which are submitted at the time such claim is submitted." By imposing the cap, Congress sought to ensure that a group of related false claims submitted together that could result in hundreds of thousands or millions of dollars in penalties should be prosecuted jointly in court, not separately in an administrative proceeding. S. Rep. No. 99–212, 99th Cong., 1st Sess. 24–25 (1985).

Claims must satisfy two statutory requirements if they are to be aggregated for purposes of computing the jurisdictional amount: They must be "related," and they must be "submitted at the same time." The commenter's suggestion that the term "related" means that the claims in question were filed at the same time would reduce the term "related" to surplusage. We reject a construction so clearly at odds with the principles of statutory construction. Claims submitted at the same time must also be "related." That is, the mere fact that a contractor chooses to "batch" claims under several contracts together for submission to the agency does not make them "related."

Congress gave little clue as to what it meant by "related," but it did remark that claims for progress payments under the *same* contract would be related. S. Rep. No. 99–212, 99th Cong., 1st Sess. 25 (1985). Section 1013.6(b) of the regulation thus defines "a related group of claims submitted at the same time" as "claims arising from the same transaction (*e.g.*, grant, loan, application, or contract) that are submitted simultaneously as part of a single request, demand, or submission." This definition is both reasonable and fully consistent with the language of the statute and the intent of Congress.

13. *Comment:* A commenter took exception to the incorporation of Fed. R. Civ. P. 4(d) into § 1013.8 of the proposed regulation, noting that section 3803(d)(1) specifies that service of a complaint must be by registered or certified mail or by delivery.

Response: The regulation implements the statute by providing that if the complaint is delivered, delivery of the complaint may be made as permitted under Rule 4(d) of the Federal Rules of Civil Procedure.

14. *Comment:* The same commenter found § 1013.9 of the proposed regulation inconsistent with the statute, in that the former would require a defendant to request a hearing within 30 days of service, whereas the statute measures the 30 days from receipt.

Response: We have modified § 1013.8(b) to clarify that service under § 1013.8 is complete upon receipt, either through the mail, as evidenced by an acknowledged return receipt card or by delivery as attested to by the person who made delivery or who received the complaint. Section 1013.9(a), by allowing the defendant 30 days from service to request a hearing, is fully consonant with section 3803(d)(2) of the Act.

15. *Comment:* A commenter does not believe that the statute permits the agency to require an answer and recommended deleting § 1013.9.

Response: We disagree. The statute provides that a person receiving a notice of allegations of liability (section 3803(d)(1) of the Act) may get a hearing before an ALJ if such person requests a hearing within 30 days of receipt. Congress conceived of the notice of allegations of liability as a "complaint" (S. Rep. No. 99–212, 99th Cong., 1st Sess. 14 (1985)), and we have adopted that concept in these regulations (*See* §§ 1013.7 and 1013.8). Consistent with that approach, we have denominated a defendant's request for a hearing as an "answer" and have specified that the defendant shall admit or deny the allegations in the complaint and shall state any defenses on which the defendant intends to rely. This will expedite the proceeding by focusing the issues for the parties and the ALJ, as well as giving the ALJ important information about the complexity of the case for the purpose of scheduling a hearing, as he is required to do by statute and § 1013.12 upon receiving the answer.

To the objection that the defendant has only 30 days to respond, it should be noted that persons are required to answer a summons and complaint within 20 days under Fed. R. Civ. P. 12(a). However, we have amended the regulation to provide that a defendant may file within 30 days of receipt of the complaint, a request for hearing and a request for an extension of time for up to an additional 30 days to file a complete answer in accordance with § 1013.9. *Cf.* 42 CFR 1003.109(b) (1988).

16. *Comment:* One commenter recommended that we delete § 1013.10 of the proposed regulation allowing for the entry of an order of default upon failure to answer because the statute does not expressly provide for it.

Response: Although the statute does not expressly provide for default upon a defendant's failure to request a hearing, this regulation is necessary to implement the Act. *See* section 3809 of the Act. There must be a provision by which the process may be formally concluded when a defendant concedes the validity of the charge, or chooses not to contest it. Were there no such provision, a defendant's failure or refusal to answer the complaint alone would defeat the process Congress has envisioned for the administrative adjudication of false claims and statements. Congress clearly could not have intended such a result.

17. *Comment:* A commenter challenged proposed § 1013.18(c) as an unauthorized limitation on an ALJ's inherent powers.

Response: Section 1013.18(c) has been revised slightly to state that "the ALJ does not have the authority to find Federal statutes or regulations invalid." This proposition follows from the fact that administrative agencies themselves have no jurisdiction to pass upon the constitutionality of legislative or administrative action. *See, e.g., Motor and Equipment Manufacturers Ass'n., Inc.* v. *EPA*, 627 F.2d 1095, 1114–15 (D.C. Cir. 1979), *cert. denied*, 446 U.S. 952 (1980); *Spiegel* v. *FTC*, 540 F.2d 287, 294 (7th Cir. 1976); *Finnerty* v. *Cowen*, 508 F.2d 979, 982 (2d Cir. 1974). *See also Buckeye Industries, Inc.* v. *Secretary of Labor*, 567 F.2d 231, *reh'g denied*, 591 F.2d 1343 (5th Cir. 1979) ("No administrative tribunal of the United States has the authority to declare unconstitutional the Act it is called upon to administer."). *Cf. Public Utilities Commission* v. *United States*, 355 U.S. 534, 539–40 (1958). The ALJ making an initial decision on behalf of the authority head obviously has no greater authority than the authority head to declare Federal statutes and regulations invalid, and the regulation simply articulates that principle.

Moreover, "[o]n matters of law and policy," the ALJ is "entirely subject to the agency." *Association of Administrative Law Judges* v. *Heckler*, 594 F. Supp. 1132, 1141 (D.D.C. 1984). *See also* Scalia, *The ALJ Fiasco—A Reprise*, 47 U. Chi. L. Rev. 57, 62 (1980). As the agency is given rulemaking authority under 5 U.S.C. 553 and many substantive statutes, the ALJ is powerless to usurp that authority by declaring duly promulgated regulations invalid. The ALJ's role is interpretation not legislation.

18. *Comment:* One commenter believes that the agency is obligated to disclose to the defendant any exculpatory evidence contained in the reviewing official's report to the Attorney General, contrary to proposed § 1013.20(c).

Response: Section 3803(g)(3)(B)(ii) of the Act directly prohibits the disclosure of the reviewing official's report, and § 1013.20(c) implements that provision. However, the reviewing official is to include exculpatory circumstances in his or her report to the Attorney General (§ 1013.5(b)(5)) and the agency is obligated to disclose exculpatory information in the possession of the investigating or reviewing official. Hence, the information that goes into the report will be disclosed to the defendant even though the report itself may not be disclosed.

19. *Comment:* A commenter believed that § 1013.31 of the proposed regulations would create a presumption that the maximum amount of penalties and assessments should be imposed. The commenter noted that the statute vested broad discretion in the ALJ to determine the appropriate amount of penalties and assessments and recommended that the last sentence of proposed § 1013.31 be deleted as inappropriate.

Response: The commenter is correct in noting that the ALJ and the authority head on appeal have broad discretion under the statute in fixing the amount of penalties and assessments. We disagree that § 1013.31 as proposed creates a presumption that the statutory maximum should be imposed in every contested case. However, given the broad range within which penalties and assessments may fall, we believe that it is useful to give some guidance to the ALJ and the authority head, as well as notice to the public. Because of the intangible costs associated with fraud against the government, as well as the tangible cost of investigating and prosecuting it, and the need to deter others, the regulation suggests that the agency ordinarily should recoup double damages and a significant penalty. This gives the decisionmakers a starting point from which to increase or decrease the penalties and assessments depending upon whether there are proven in the individual case factors that aggravate or mitigate the offense.

The regulations are not intended to rob the ALJ or the authority head of their authority to fix penalties and assessments within the range according to the nature and circumstances of the offense. However, there is a tension between the need for flexibility, on the one hand, and the need for fairness and predictability, on the other. We believe that the regulations achieve an appropriate balance between those competing needs by giving the decisionmakers a departure point in exercising their judgment in individual cases. We believe that establishing a regulatory benchmark is particularly important insofar as this is a completely new program without a history of administratively-imposed penalties and assessments that could supply one for the "average" case. Compare § 1013.31 with the regulation adopted in the Civil Monetary Penalty Law administered by the Department of Health and Human Services, 42 CFR 1003.106 (1988).

20. *Comment:* One commenter criticized § 1013.32 of the proposed regulation for failing to create a presumption that the hearing would be held where the defendant resides.

Response: The proposed regulation tracks the statute. Section 3803(g)(4) of the Act specifies three alternative sites for the hearing: (1) Where the defendant resides or transacts business; (2) where the claim or statement was made; or (3) in some place agreed upon by the defendant and the ALJ. It does not create a presumptive venue, nor should it. That determination is best left to the ALJ and the parties framing the case.

21. *Comment:* Considering the gravity of allegations of false claims or statements and the amounts at stake, a commenter recommended that evidence generally should be limited to what is admissible in court. Alternatively, § 1013.34 should be revised to exclude hearsay evidence or at least to create a presumption against the admission of hearsay.

Response: We decline to accept the commenter's suggestions. First, it is well-established that technical rules of evidence—such as the Federal Rules of Evidence—do not apply in an administrative proceeding absent a

regulation expressly making them applicable. *See* 5 U.S.C. 556(d); *Richardson* v. *Perales*, 402 U.S. 389 (1971). That Congress chose to provide for the adjudication of allegations of false claims and statements against the government in an administrative forum under the APA strongly suggests that Congress also intended the less restrictive evidentiary standards of the APA to appy. The very advantages of expediency and lower cost that Congress sought to achieve by providing this administrative remedy as an alternative to civil actions, would be lost if the Federal Rules of Evidence and the Federal Rules of Civil Procedure were imported into it from the judicial context. Moreover, the reasons for the more rigorous exclusionary rules of the Federal Rules of Evidence, such as those against hearsay, do not obtain where no jury can be misled. *See, e.g.*, 3 K.C. Davis, *Administrative law Treatise*, § 16.4 (2d ed. 1980); Davis, *An Approach to Rules of Evidence for Nonjury Cases*, 50 A.B.A.J. 723 (1964); Davis, *Hearsay in Administrative Proceedings*, 32 Geo. Wash. L. Rev. 669 (1964); Gellhorn, *Rules of Evidence and Official Notice in Formal Administrative Hearings*, 1971 Duke L.J. 1.

Instead, the provisions of §§ 1013.34 (a) through (d) are based on Recommendation 86–2 of the Administrative Conference of the United States, 1 CFR 305.86–2, published at 51 FR 25,642 (July 16, 1986). They provide that an ALJ shall exclude evidence that is irrelevant and immaterial and may exclude relevant evidence that is unreliable or if its probative value is substantially outweighed by other factors, such as unfair prejudice or the undue consumption of time.

With respect to a defendant's right to confront adverse witnesses, § 1013.33(b) provides that an ALJ may permit testimony to be admitted in the form of a written statement or deposition. If the ALJ allows such testimony, the party seeking to introduce it must provide it to all other parties with the declarant's last known address in a manner which affords other parties sufficient time to subpoena the witness for cross-examination at the hearing. This satisfies due process. *Richardson* v. *Perales*, *supra*.

22. *Comment:* A commenter objected that § 1013.38 of the proposed regulations conflicts with section 3803(i)(1) of the Act, which provides that the decision of an ALJ is final unless it is appealed by the defendant.

Response: We do not believe that § 1013.38 conflicts with the statute. By providing for reconsideration of the initial decision, the regulation allows for the expeditious resolution of errors of law and fact by the trier of fact, who can most expeditiously resolve these matters, perhaps without resort to an appeal to the authority head.

Under section 3803(h) and (i) of the Act, it appears that an ALJ's decision becomes the final decision of the authority unless it is appealed within 30 days by a person determined to be liable for penalties and assessments. This marks a radical departure from adjudications under the APA. Under 5 U.S.C. 557(b), an ALJ makes an initial or recommended decision, while the agency retains full authority to make a *de novo* determination as to issues of law and fact on the record either on appeal or by review on its own motion. The agency thus can ensure consistency in its decisions and adherence to agency policy—including uniform interpretations of the statutes it administers and its own regulations. Moreover, where novel issues of law arise in the context of adjudications, the agency may articulate its policy in the first instance, subject, of course, to judicial review.

It is difficult to conceive that Congress intended to rob the authorities completely of the prerogative of speaking the final word on statutes and regulations within its purview. Yet, without a process of reconsideration, the agency would be powerless even to seek, let alone make, corrections of misstatements of law and fact in ALJ decisions unless a defendant were found liable and chose to appeal. We do not believe Congress intended to sacrifice uniformity and consistency in decisions under this Act and other substantive statutes that will be subject to interpretation in adjudications thereunder. Hence, we have provided an opportunity for both parties to seek reconsideration of the ALJ's initial decision as necessary for the effective implementation of this statute.

23. *Comment:* The same commenter argued that § 1013.39 of the proposed regulation eliminated for 25 days a defendant's right to appeal to the authority head, as provided in section 3803(i)(2)(A) of the Act. The commenter also took exception to the requirement that the defendant file exceptions to the initial decision and a brief on appeal, stating that a brief letter ought to suffice in some cases.

Response: With regard to the first comment, we have amended § 1013.39(b) to provide that a defendant may file a notice of appeal at any time within 30 days after the ALJ issues a decision, but that if another party files a request for reconsideration in accordance with § 1013.38, action on the appeal will be stayed automatically pending disposition of the motion for reconsideration.

We find the second comment completely meritless. Especially insofar as Congress provided that an ALJ's decision would stand as the authority's own, absent an appeal by the defendant, Congress clearly did not intend for the authority to sort through the decision in search of error or to redetermine all issues *de novo* without any guidance from the aggrieved party. The agency's authority to limit its consideration on appeal to specific exceptions pointing out error is both well-established and of obvious practical value. *See Marshall Field & Co. v. National Labor Relations Board*, 318 U.S. 253, (1943); *National Labor Relations Board v. Cheney California Lumber Co.*, 327 U.S. 385, 387–88 (1946). The Attorney General's Committee on Administrative Procedure long ago urged the agencies to insist upon "meaningful content and exactness in [an] appeal from the [ALJ's] decision * * *" and to cease from shouldering "the burden of complete reexamination. Review of the [ALJ's] decision should in general and in the absence of clear error be limited to grounds specified in the appeal." *Administrative Procedure in Government Agencies*, S. Doc. No. 8, 77th Cong., 1st Sess. 52 (1941) (Final Report of the Attorney General's Committee on Administrative Procedure). We agree.

24. *Comment:* A commenter believes that § 1013.43 should be revised to reflect the fact that investigating and reviewing officials may not make collections under section 3806 of the Act, as provided in section 3809(1) of the Act.

Response: This limitation is already contained in § 1013.14, pertaining to separation of functions.

25. *Comment:* A commenter recommended that § 1013.44 be revised to indicate that only a final decision imposing penalties or assessments may constitute the basis for an administrative offset under section 3807 of the Act.

Response: Section 1013.44 of the regulation reiterates the statutory language. A final decision is defined in §§ 1013.10(d) and (1), 1013.37(d), 1013.38(g), and 1013.39( ).

26. *Comment:* A commenter, on behalf of 13 States, objected to including States in the definition of "person" in proposed regulation § 1013.2.

Response: The proposed regulatory definition expanded on the definition found in the Act. The final regulation now reiterates the narrower statutory definition.

27. *Comment:* A Departmental commenter recommended that a section be added which would address the need to consider appropriate protection for documents, information, testimony, etc., which may include classified or otherwise sensitive information which requires protection from uncontrolled disclosure. This may involve the use of a protective order or other administrative mechanism to restrict access to certain information and materials.

Response: While noteworthy, we believe that sufficient protection is built in the proposed regulation under the powers of the ALJ in § 1013.18 to allay this commenters fears. Motions practice is established under § 1013.28, while protective orders are provided for under § 1013.24. Thus, we decline to add a new section, as suggested.

After comparison of the proposed regulations with those published by other agencies, the Department believes that an expanded definition of "representative" is preferable. Accordingly, that portion of § 1013.2 has been changed to reflect this decision to enlarge the term "attorney."

Technical changes to the Department's regulations have been made to conform with the final model regulations issued by the President's Council on Integrity and Efficiency, and thereby to conform with the congressional intent that regulations under the Program Fraud Civil Remedies Act of 1986 be "substantially uniform throughout government." [S. Rep. No. 99–212, 99th Cong., 1st Sess. 12 (1986).]

The Federal Energy Regulatory Commission [FERC] reviewed the proposed regulations, and had no substantive comments or changes regarding same. The FERC is covered by these regulations as a component of the Department of Energy, and by the terms of the Act.

C. Executive Order 12291

The rule was reviewed under Executive Order 12291, 46 FR 12193, dated February 27, 1981. The Department of Energy has concluded that the rule is not a "major rule" under the Executive Order, because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, State, Federal, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Pursuant to section 3(c)(3) of Executive Order 12291, this rule was submitted to the Director of the Office of Management and Budget for review. The Director has concluded his review under that Executive Order.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), requires Federal agencies to consider the impact of proposed regulations on small businesses, small governmental units, and other small entities; to consider the ability of small entities to comply with the proposed regulations; and to consider less stringent alternative compliance standards for small entities. An agency is required to prepare a regulatory flexibility analysis to document its consideration of these factors except in the situation where the agency determines that a regulation will not have a significant economic impact on a substantial number of small entities. These procedural regulations will not impose any additional burdens or impact on small entities. Therefore, DOE does not believe the obligations involved have a significant impact on small entities. Thus, a regulatory flexibility analysis will not be prepared.

E. Paperwork Reduction Act

Since there are no information gathering or reporting requirements in these statutorily mandated procedural regulations, no action is necessary under the Paperwork Reduction Act (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*).

List of Subjects in 10 CFR Part 1013

Administrative practice and procedure, Fraud, Penalties, Department of Energy.

In consideration of the foregoing, the addition to Title 10 of the Code of Federal Regulations, Chapter III is set forth below.

Issued in Washington, DC, this 28th day of October, 1988.

Eric J. Fygi,

Acting General Counsel.

1. Part 1013 is added to read as follows:

PART 1013—PROGRAM FRAUD CIVIL REMEDIES AND PROCEDURES

Sec.

1013.1 Basis and purpose.
1013.2 Definitions.
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Authority: 31 U.S.C. 3801–3812.

§ 1013.1 Basis and purpose.

(a) *Basis.* This part implements the Program Fraud Civil Remedies Act of 1986, Pub. L. 99–509, sections 6101–6104, 100 Stat. 1874 (October 21, 1986), codified at 31 U.S.C. 3801–3812. 31 U.S.C. 3809 of the statute requires each authority head to promulgate regulations necessary to implement the provisions of the statute.

(b) *Purpose.* This part (1) establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to authorities or to their agents, and (2) specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments.

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§ 1013.2 Definitions.

ALJ means an Administrative Law Judge in the authority appointed pursuant to 5 U.S.C. 3105 or detailed to the authority pursuant to 5 U.S.C. 3344.

Authority means the Department of Energy.

Authority head means the Secretary or the Under Secretary of the Department of Energy.

Benefit means, in the context of "statement," anything of value, including but not limited to any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan guarantee.

Claim means any request, demand, or submission—

(a) Made to the authority for property, services, or money (including money representing grants, loans, insurance, or benefits);

(b) Made to a recipient of property, services, or money from the authority or to a party to a contract with the authority—

(1) For property or services if the United States—

(i) Provided such property or services;

(ii) Provided any portion of the funds for the purchase of such property or services; or

(iii) Will reimburse such recipient or party for the purchase of such property or services; or

(2) For the payment of money (including money representing grants, loans, insurance, or benefits) if the United States—

(i) Provided any portion of the money requested or demanded; or

(ii) Will reimburse such recipient or party for any portion of the money paid on such request or demand; or

(c) Made to the authority which has the effect of decreasing an obligation to pay or account for property, services, or money.

Complaint means the administrative complaint served by the reviewing official on the defendant under § 1013.7 of this part.

Defendant means any person alleged in a complaint under § 1013.7 of this part to be liable for a civil penalty or assessment under § 1013.3 of this part.

Department means the Department of Energy.

Government means the United States Government.

Individual means a natural person.

Initial decision means the written decision of the ALJ required by § 1013.10 or § 1013.37 of this part, and includes a revised initial decision issued following a remand or a motion for reconsideration.

Investigating official means the Inspector General of the Department of Energy or an officer or employee of the Inspector General designated by the Inspector General and serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

Knows or has reason to know, means that a person, with respect to a claim or statement—

(a) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(b) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(c) Acts in reckless disregard of the truth or falsity of the claim or statement.

Makes, wherever it appears, shall include the terms presents, submits, and causes to be made, presented, or submitted. As the context requires, *making or made*, shall likewise include the corresponding forms of such terms.

Person means any individual, partnership, corporation, association, or private organization, and includes the plural of that term.

Representative means an attorney, who is a member in good standing of the bar of any State, Territory, or possession of the United States or of the District of Columbia or the Commonwealth of Puerto Rico, and designated by a party in writing.

Reviewing official means the General Counsel of the Department or his designee who is—

(a) Not subject to supervision by, or required to report to, the investigating official;

(b) Not employed in the organizational unit of the authority in which the investigating official is employed; and

(c) Serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

Statement means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made—

(a) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(b) With respect to (including relating to eligibility for)—

(1) A contract with, or a bid or proposal for a contract with; or

(2) A grant, loan, or benefit from, the authority, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the Government will reimburse such State, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan, or benefit.

§ 1013.3 Basis for civil penalties and assessments.

(a) *Claims.* (1) Except as provided in paragraph (c) of this section, any person who makes a claim that the person knows or has reason to know—

(i) Is false, fictitious, or fraudulent;

(ii) Includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;

(iii) Includes or is supported by any written statement that—

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and

(C) Is a statement in which the person making such statement has a duty to include such material fact; or

(iv) Is for payment for the provision of property or services which the person has not provided as claimed, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such claim.

(2) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.

(3) A claim shall be considered made to the authority, recipient, or party when such claim is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of such authority, recipient, or party.

(4) Each claim for property, services, or money is subject to a civil penalty regardless of whether such property, services, or money is actually delivered or paid.

(5) If the Government has made any payment (including transferred property or provided services) on a claim, a person subject to a civil penalty under paragraph (a)(1) of this section shall also be subject to an assessment of not more than twice the amount of such claim or that portion thereof that is determined to be in violation of paragraph (a)(1) of this section. Such assessment shall be in lieu of damages sustained by the Government because of such claim.

(b) *Statements.* (1) Except as provided in paragraph (c) of this section, any person who makes a written statement that—

(i) The person knows or has reason to know—

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in such statement, and

(ii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement,

shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such statement.

(2) Each written representation, certification, or affirmation constitutes a separate statement.

(3) A statement shall be considered made to the authority when such statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of such authority.

(c) *Application for certain benefits.* (1) In the case of any claim or statement made by any individual relating to any of the benefits listed in paragraph (c)(2) of this section received by such individual, such individual may be held liable for penalties and assessments under this section only if such claim or statement is made by such individual in making application for such benefits with respect to such individual's eligibility to receive such benefits.

(2) For purposes of paragraph (c) of this section, the term "benefits" means benefits under part A of the Energy Conservation in Existing Buildings Act of 1976, which are intended for the personal use of the individual who receives the benefits or for a member of the individual's family.

(d) No proof of specific intent to defraud is required to establish liability under this section.

(e) In any case in which it is determined that more than one person is liable for making a claim or statement under this section, each such person may be held liable for a civil penalty under this section.

(f) In any case in which it is determined that more than one person is liable for making a claim under this section on which the Government has made payment (including transferred property or provided services), an assessment may be imposed against any such person or jointly and severally against any combination of such persons.

§ 1013.4 Investigation.

(a) If an investigating official concludes that a subpoena pursuant to the authority conferred by 31 U.S.C. 3804(a) is warranted—

(1) The subpoena so issued shall notify the person to whom it is addressed of the authority under which the subpoena is issued and shall identify the records or documents sought;

(2) The investigating official may designate a person to act on his or her behalf to receive the documents sought; and

(3) The person receiving such subpoena shall be required to tender to the investigating official or the person designated to receive the documents a certification that the documents sought have been produced, or that such documents are not available and the reasons therefor, or that such documents, suitably identified, have been withheld based upon the assertion of an identified privilege.

(b) If the investigating official concludes that an action under the Program Fraud Civil Remedies Act may be warranted, the investigating official shall submit a report containing the findings and conclusions of such investigation to the reviewing official.

(c) Nothing in this section shall preclude or limit an investigating official's discretion to refer allegations directly to the Department of Justice for suit under the False Claims Act or other civil relief, or to preclude or limit such official's discretion to defer or postpone a report or referral to the reviewing official to avoid interference with a criminal investigation or prosecution.

(d) Nothing in this section modifies any responsibility of an investigating official to report violations of criminal law to the Attorney General.

§ 1013.5 Review by the reviewing official.

(a) If, based on the report of the investigating official under § 1013.4(b) of this part, the reviewing official determines that there is adequate evidence to believe that a person is liable under § 1013.3 of this part, the reviewing official shall transmit to the Attorney General a written notice of the reviewing official's intention to issue a complaint under § 1013.7 of this part.

(b) Such notice shall include—

(1) A statement of the reviewing official's reasons for issuing a complaint;

(2) A statement specifying the evidence that supports the allegations of liability;

(3) A description of the claims or statements upon which the allegations of liability are based;

(4) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in violation of § 1013.3 of this part;

(5) A statement of any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

(6) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments.

§ 1013.6 Prerequisites for issuing a complaint.

(a) The reviewing official may issue a complaint under § 1013.7 of this part only if—

(1) The Department of Justice approves the issuance of a complaint in a written statement described in 31 U.S.C. 3803(b)(1), and

(2) In the case of allegations of liability under § 1013.3(a) of this part with respect to a claim, the reviewing official determines that, with respect to such claim or a group of related claims submitted at the same time such claim is submitted (as defined in paragraph (b) of this section), the amount of money or the value of property or services demanded or requested in violation of § 1013.3(a) of this part does not exceed $150,000.

(b) For the purposes of this section, a related group of claims submitted at the same time shall include only those claims arising from the same transaction (*e.g.*, grant, loan, application, or contract) that are submitted simultaneously as part of a single request, demand, or submission.

(c) Nothing in this section shall be construed to limit the reviewing official's authority to join in a single complaint against a person claims that are unrelated or were not submitted simultaneously, regardless of the amount of money, or the value of property or services, demanded or requested.

§ 1013.7 Complaint.

(a) On or after the date the Department of Justice approves the issuance of a complaint in accordance with 31 U.S.C. 3803(b)(1), the reviewing official may serve a complaint on the defendant, as provided in § 1013.8 of this part.

(b) The complaint shall state—

(1) The allegations of liability against the defendant, including the statutory basis for liability, an identification of the claims or statements that are the basis for the alleged liability, and the reasons why liability allegedly arises from such claims or statements;

(2) The maximum amount of penalties and assessments for which the defendant may be held liable;

(3) Instructions for filing an answer to request a hearing, including a specific statement of the defendant's right to request a hearing by filing an answer

and to be represented by a representative; and

(4) That failure to file an answer within 30 days of service of the complaint will result in the imposition of the maximum amount of penalties and assessments without right to appeal, as provided in § 1013.10 of this part.

(c) At the same time the reviewing official serves the complaint, he or she shall serve the defendant with a copy of these regulations.

§ 1013.8 Service of complaint.

(a) Service of a complaint must be made by certified or registered mail or by delivery in any manner authorized by Rule 4(d) of the Federal Rules of Civil Procedure. Service is complete upon receipt.

(b) Proof of service, stating the name and address of the person on whom the complaint was served, and the manner and date of service, may be made by—

(1) Affidavit of the individual serving the complaint by delivery;

(2) A United States Postal Service return receipt card acknowledging receipt; or

(3) Written acknowledgment of receipt by the defendant or his or her representative.

§ 1013.9 Answer.

(a) The defendant may request a hearing by filing an answer with the reviewing official within 30 days of service of the complaint. An answer shall be deemed to be a request for hearing.

(b) In the answer, the defendant—

(1) Shall admit or deny each of the allegations of liability made in the complaint;

(2) Shall state any defense on which the defendant intends to rely;

(3) May state any reasons why the defendant contends that the penalties and assessments should be less than the statutory maximum; and

(4) Shall state the name, address, and telephone number of the person authorized by the defendant to act as defendant's representative, if any.

(c) If the defendant is unable to file an answer meeting the requirements of paragraph (b) of this section within the time provided, the defendant may, before the expiration of 30 days from service of the complaint, file with the reviewing official a general answer denying liability and requesting a hearing, and a request for an extension of time within which to file an answer meeting the requirements of paragraph (b) of this section. The reviewing offical shall file promptly with the ALJ the complaint, the general answer denying liability, and the request for an extension of time as provided in § 1013.11 of this part. For good cause shown, the ALJ may grant the defendant up to 30 additional days within which to file an answer meeting the requirements of paragraph (b) of this section.

§ 1013.10 Default upon failure to file an answer.

(a) If the defendant does not file an answer within the time prescribed in § 1013.9(a) of this part, the reviewing official may refer the complaint to the ALJ.

(b) Upon the referral of the complaint, the ALJ shall promptly serve on defendant in the manner prescribed in § 1013.8 of this part, a notice that an initial decision shall be issued under this section.

(c) The ALJ shall assume the facts alleged in the complaint to be true, and, if such facts establish liability under § 1013.3 of this part, the ALJ shall issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, by failing to file a timely answer, the defendant waives any right to further review of the penalties and assessments imposed under paragraph (c) of this section, and the initial decision shall become final and binding upon the parties 30 days after it is issued.

(e) If, before such an initial decision becomes final, the defendant files a motion with the ALJ seeking to reopen on the grounds that extraordinary circumstances prevented the defendant from filing an answer, the initial decision shall be stayed pending the ALJ's decision on the motion.

(f) If, on such motion, the defendant can demonstrate extraordinary circumstances excusing the failure to file a timely answer, the ALJ shall withdraw the initial decision in paragraph (c) of this section, if such a decision has been issued, and shall grant the defendant an opportunity to answer the complaint.

(g) A decision of the ALJ denying a defendant's motion under paragraph (e) of this section is not subject to reconsideration under § 1013.38 of this part.

(h) The defendant may appeal to the authority head the decision denying a motion to reopen by filing a notice of appeal with the authority head within 15 days after the ALJ denies the motion. The timely filing of a notice of appeal shall stay the initial decision until the authority head decides the issue.

(i) If the defendant files a timely notice of appeal with the authority head, the ALJ shall forward the record of the proceeding to the authority head.

(j) The authority head shall decide expeditiously whether extraordinary circumstances excuse the defendant's failure to file a timely answer based solely on the record before the ALJ.

(k) If the authority head decides that extraordinary circumstances excused the defendant's failure to file a timely answer, the authority head shall remand the case to the ALJ with instructions to grant the defendant an opportunity to answer.

(l) If the authority head decides that the defendant's failure to file a timely answer is not excused, the authority head shall reinstate the initial decision of the ALJ, which shall become final and binding upon the parties 30 days after the authority head issues such decision.

§ 1013.11 Referral of complaint and answer to the ALJ.

Upon receipt of an answer, the reviewing official shall file the complaint and answer with the ALJ.

§ 1013.12 Notice of hearing.

(a) When the ALJ receives the complaint and answer, the ALJ shall promptly serve a notice of hearing upon the defendant in the manner prescribed by § 1013.8 of this part. At the same time, the ALJ shall send a copy of such notice to the representative for the Government.

(b) Such notice shall include—

(1) The tentative time, date, and place, and the nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the representative of the Government and of the defendant, if any; and

(6) Such other matters as the ALJ deems appropriate.

§ 1013.13 Parties to the hearing.

(a) The parties to the hearing shall be the defendant and the authority.

(b) Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff under the False Claims Act may participate in these proceedings to the extent authorized by the provisions of that Act.

§ 1013.14 Separation of functions.

(a) The investigating official, the reviewing official, and any employee or agent of the authority who takes part in investigating, preparing, or presenting a particular case may not, in such case or a factually related case—

(1) Participate in the hearing as the ALJ;

(2) Participate or advise in the initial decision or the review of the initial decision by the authority head, except as a witness or a representative in public proceedings; or

(3) Make the collection of penalties and assessments under 31 U.S.C. 3806.

(b) The ALJ shall not be responsible to, or subject to the supervision or direction of, the investigating official or the reviewing official.

(c) Except as provided in paragraph (a) of this section, the representative for the Government may be employed anywhere in the authority, including in the offices of either the investigating official or the reviewing official.

§ 1013.15 Ex parte contacts.

No party or person (except employees of the ALJ's office) shall communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 1013.16 Disqualification of reviewing official or ALJ.

(a) A reviewing official or ALJ in a particular case may disqualify himself or herself at any time.

(b) A party may file with the ALJ a motion for disqualification of a reviewing official or an ALJ. Such motion shall be accompanied by an affidavit alleging personal bias or other reason for disqualification.

(c) Such motion and affidavit shall be filed promptly upon the party's discovery of reasons requiring disqualification, or such objections shall be deemed waived.

(d) Such affidavit shall state specific facts that support the party's belief that personal basis or other reason for disqualification exists and the time and circumstances of the party's discovery of such facts. It shall be accompanied by a certificate of the representative of record that it is made in good faith.

(e) Upon the filing of such a motion and affidavit, the ALJ shall proceed no further in the case until he or she resolves the matter of disqualification in accordance with paragraph (f) of this section.

(f)(1) If the ALJ determines that a reviewing official is disqualified, the ALJ shall dismiss the complaint without prejudice.

(2) If the ALJ disqualifies himself or herself, the case shall be reassigned promptly to another ALJ.

(3) If the ALJ denies a motion to disqualify, the authority head may determine the matter only as part of his or her review or the initial decision upon appeal, if any.

§ 1013.17 Rights of parties.

Except as otherwise limited by this part, all parties may—

(a) Be accompanied, represented, and advised by a representative;

(b) Participate in any conference held by the ALJ;

(c) Conduct discovery;

(d) Agree to stipulations of fact or law, which shall be made part of the record;

(e) Present evidence relevant to the issues at the hearing;

(f) Present and cross-examine witnesses;

(g) Present oral arguments at the hearing as permitted by the ALJ; and

(h) Submit written briefs and proposed findings of fact and conclusions of law.

§ 1013.18 Authority of the ALJ.

(a) The ALJ shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The ALJ has the authority to—

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery;

(8) Regulate the course of the hearing and the conduct of representatives and parties;

(9) Examine witnesses;

(10) Receive, rule on, exclude, or limit evidence;

(11) Upon motion of a party, take official notice of facts; decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;

(12) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(13) Exercise such other authority as is necessary to carry out the responsibilities of the ALJ under this part.

(c) The ALJ does not have the authority to find Federal statutes or regulations invalid.

§ 1013.19 Prehearing conferences.

(a) The ALJ may schedule prehearing conferences as appropriate.

(b) Upon the motion of any party, the ALJ shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The ALJ may use prehearing conferences to discuss the following:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations and admissions of fact or as to the contents and authenticity of documents;

(4) Whether the parties can agree to submission of the case on a stipulated record;

(5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objection of other parties) and written argument;

(6) Limitation of the number of witnesses;

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(8) Discovery;

(9) The time, date, and place for the hearing; and

(10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

(d) The ALJ may issue an order containing all matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

§ 1013.20 Disclosure of documents.

(a) Upon written request to the reviewing official, the defendant may review any relevant and material documents, transcripts, records, and other materials that relate to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official under § 1013.4(b) are based, unless such documents are subject to a privilege under Federal law. Upon payment of fees for duplication, the defendant may obtain copies of such documents.

(b) Upon written request to the reviewing official, the defendant also may obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint, even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only that

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portion containing exculpatory information must be disclosed.

(c) The notice sent to the Attorney General from the reviewing official as described in § 1013.5 of the part is not discoverable under any circumstances.

(d) The defendant may file a motion to compel disclosure of the documents subject to the provisions of this section. Such a motion may only be filed with the ALJ following the filing of an answer pursuant to § 1013.9 of this part.

§ 1013.21 Discovery.

(a) The following types of discovery are authorized:

(1) Requests for production of documents for inspection and copying;

(2) Requests for admissions of the authenticity of any relevant document or of the truth of any relevant fact;

(3) Written interrogatories; and

(4) Depositions.

(b) For the purpose of this section and §§ 1013.22 and 1013.23 of this part, the term "documents" includes information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence. Nothing contained herein shall be interpreted to require the creation of a document.

(c) Unless mutually agreed to by the parties, discovery is available only as ordered by the ALJ. The ALJ shall regulate the timing of discovery.

(d) *Motions for discovery.* (1) A party seeking discovery may file a motion with the ALJ. Such a motion shall be accompanied by a copy of the requested discovery, or in the case of depositions, a summary of the scope of the proposed deposition.

(2) Within ten days of service, a party may file an opposition to the motion and/or a motion for protective order as provided in § 1013.24 of this part.

(3) The ALJ may grant a motion for discovery only if he or she finds that the discovery sought—

(i) Is necessary for the expeditious, fair, and reasonable consideration of the issues;

(ii) Is not unduly costly or burdensome;

(iii) Will not unduly delay the proceeding; and

(iv) Does not seek privileged information.

(4) The burden of showing that discovery should be allowed is on the party seeking discovery.

(5) The ALJ may grant discovery subject to a protective order under § 1013.24 of this part.

(e) *Depositions.* (1) If a motion for deposition is granted, the ALJ shall issue a subpoena for the deponent, which may require the deponent to produce documents. The subpoena shall specify the time, date, and place at which the deposition will be held.

(2) The party seeking to depose shall serve the subpoena in the manner prescribed in § 1013.8 of this part.

(3) The deponent may file with the ALJ a motion to quash the subpoena or a motion for a protective order within ten days of service.

(4) The party seeking to depose shall provide for the taking of a verbatim transcript of the deposition, which it shall make available to all other parties for inspection and copying.

(f) Each party shall bear its own costs of discovery.

§ 1013.22 Exchange of witness lists, statements and exhibits.

(a) At least 15 days before the hearing or at such other time as may be ordered by the ALJ, the parties shall exchange witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with § 1013.33(b) of this part. At the time the above documents are exchanged, any party that intends to rely on the transcript of deposition testimony in lieu of live testimony at the hearing, if permitted by the ALJ, shall provide each party with a copy of the specific pages of the transcript it intends to introduce into evidence.

(b) If a party objects, the ALJ shall not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to the opposing party as provided above unless the ALJ finds good cause for the failure or that there is no prejudice to the objecting party.

(c) Unless another party objects within the time set by the ALJ, documents exchanged in accordance with paragraph (a) of this section shall be deemed to be authentic for the purpose of admissibility at the hearing.

§ 1013.23 Subpoenas for attendance at hearing.

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may request that the ALJ issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.

(c) A party seeking a subpoena shall file a written request therefor not less than 15 days before the date fixed for the hearing unless otherwise allowed by the ALJ for good cause shown. Such request shall specify any documents to be produced and shall designate the witnesses and describe the address and location thereof with sufficient particularity to permit such witnesses to be found.

(d) The subpoena shall specify the time, date, and place at which the witness is to appear and any documents the witness is to produce.

(e) The party seeking the subpoena shall serve it in the manner prescribed in § 1013.8 of this part. A subpoena on a party or upon an individual under the control of a party may be served by first class mail.

(f) A party or the individual to whom the subpoena is directed may file with the ALJ a motion to quash the subpoena within ten days after service or on or before the time specified in the subpoena for compliance if it is less than ten days after service.

§ 1013.24 Protective order.

(a) A party or a prospective witness or deponent may file a motion for a protective order with respect to discovery sought by an opposing party or with respect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) In issuing a protective order, the ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only through a method of discovery other than that requested;

(4) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the ALJ;

(6) That the contents of discovery or evidence be sealed;

(7) That a deposition after being sealed be opened only by order of the ALJ;

(8) That a trade secret or other confidential research, development, commercial information, or facts pertaining to any criminal investigation, proceeding, or other administrative investigation not be disclosed or be disclosed only in a designated way; or

(9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the ALJ.

§ 1013.25 Witness fees.

The party requesting a subpoena shall pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage shall accompany the subpoena when served, except that when a subpoena is issued on behalf of the authority, a check for witness fees and mileage need not accompany the subpoena.

§ 1013.26 Form, filing and service of papers.

(a) *Form.* (1) Documents filed with the ALJ shall include an original and two copies.

(2) Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the ALJ, and a designation of the paper (*e.g.*, motion to quash subpoena).

(3) Every pleading and paper shall be signed by, and shall contain the address and telephone number of the party or the person on whose behalf the paper was filed, or his or her representative.

(4) Papers are considered filed when they are mailed. Date of mailing may be established by a certificate from the party or its representative or by proof that the document was sent by certified or registered mail.

(b) *Service.* A party filing a document with the ALJ shall, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document other than those required to be served as prescribed in § 1013.8 of this part shall be made by delivering a copy or by placing a copy of the document in the United States mail, postage prepaid, and addressed to the party's last known address. When a party is represented by a representative, service shall be made upon such representative in lieu of the actual party.

(c) *Proof of service.* A certificate by the individual serving the document by personal delivery or by mail, setting forth the manner of service, shall be proof of service.

§ 1013.27 Computation of time.

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal government, in which event it includes the next business day.

(b) When the period of time allowed is less than seven days, intermediate Saturday, Sundays, and legal holidays observed by the Federal government shall be excluded from the computation.

(c) Where a document has been served or issued by placing it in the mail, an additional five days will be added to the time permitted for any response.

§ 1013.28 Motions.

(a) Any application to the ALJ for an order or ruling shall be by motion. Motions shall state the relief sought, the authority relied upon, and the facts alleged, and shall be filed with the ALJ and served on all other parties.

(b) Except for motions made during a prehearing conference or at the hearing, all motions shall be in writing. The ALJ may require that oral motions be reduced to writing.

(c) Within 15 days after a written motion is served, or such other time as may be fixed by the ALJ, any party may file a response to such motion.

(d) The ALJ may not grant a written motion before the time for filing responses thereto has expired, except upon consent of the parties or following a hearing on the motion, but may overrule or deny such motion without awaiting a response.

(e) The ALJ shall make a reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

§ 1013.29 Sanctions.

(a) The ALJ may sanction a person, including any party or representative, for—

(1) Failing to comply with an order, rule, or procedure governing the proceeding;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Any such sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the ALJ may—

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, deem each matter of which an admission is requested to be admitted;

(3) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) If a party fails to prosecute or defend an action under this part commenced by service of a notice of hearing, the ALJ may dismiss the action or may issue an initial decision imposing penalties and assessments.

(e) The ALJ may refuse to consider any motion, request, response, brief or other document which is not filed in a timely fashion.

§ 1013.30 The hearing and burden of proof.

(a) The ALJ shall conduct a hearing on the record in order to determine whether the defendant is liable for a civil penalty or assessment under § 1013.3 of this Part, and, if so, the appropriate amount of any such civil penalty or assessment considering any aggravating or mitigating factors.

(b) The authority shall prove defendant's liability and any aggravating factors by a preponderance of the evidence.

(c) The defendant shall prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing shall be open to the public unless otherwise ordered by the ALJ for good cause shown.

§ 1013.31 Determining the amount of penalties and assessments.

(a) In determining an appropriate amount of civil penalties and assessments, the ALJ and the authority head, upon appeal, should evaluate any circumstances that mitigate or aggravate the violation and should articulate in their opinions the reasons that support the penalties and assessments they impose. Because of the intangible costs of fraud, the expense of investigating such conduct, and the need to deter others who might be similarly tempted, ordinarily double damages and a significant civil penalty should be imposed.

(b) Although not exhaustive, the following factors are among those that may influence the ALJ and the authority head in determining the amount of penalties and assessments to impose with respect to the misconduct (*i.e.*, the false, fictitious, or fraudulent claims or statement) charged in the complaint:

(1) The number of false, fictitious, or fraudulent claims or statements;

(2) The time period over which such claims or statements were made;

(3) The degree of the defendant's culpability with respect to the misconduct;

(4) The amount of money or the value of the property, services, or benefit falsely claimed;

(5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the costs of investigation;

(6) The relationship of the amount imposed as civil penalties to the amount of the Government's loss;

(7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of Government programs and operations, including particularly the impact on the intended beneficiaries of such programs;

(8) Whether the defendant has engaged in a pattern of the same or similar misconduct;

(9) Whether the defendant attempted to conceal the misconduct;

(10) The degree to which the defendant has involved others in the misconduct or in concealing it;

(11) Where the misconduct of employees or agents is imputed to the defendant, the extent to which the defendant's practices fostered or attempted to preclude such misconduct;

(12) Whether the defendant cooperated in or obstructed an investigation of the misconduct;

(13) Whether the defendant assisted in identifying and prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of the defendant's sophistication with respect to it, including the extent of the defendant's prior participation in the program or in similar transactions;

(15) Whether the defendant has been found, in any criminal, civil, or administrative proceeding to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State, directly or indirectly; and

(16) The need to deter the defendant and others from engaging in the same or similar misconduct.

(c) Nothing in this section shall be construed to limit the ALJ or the authority head from considering any other factors that in any given case may mitigate or aggravate the offense for which penalties and assessments are imposed.

§ 1013.32 Location of hearing.

(a) The hearing may be held—

(1) In any judicial district of the United States in which the defendant resides or transacts business;

(2) In any judicial district of the United States in which the claim or statement in issue was made; or

(3) In such other place as may be agreed upon by the defendant and the ALJ.

(b) Each party shall have the opportunity to present argument with respect to the location of the hearing.

(c) The hearing shall be held at the place and at the time ordered by the ALJ.

§ 1013.33 Witnesses.

(a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition. Any such written statement must be provided to all other parties along with the last known address of such witness, in a manner which allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts shall be exchanged as provided in § 1013.22(a) of this part.

(c) The ALJ shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

(d) The ALJ shall permit the parties to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(e) At the discretion of the ALJ, a witness may be cross-examined on matters relevant to the proceeding without regard to the scope of his or her direct examination. To the extent permitted by the ALJ, cross-examination on matters outside the scope of direct examination shall be conducted in the manner of direct examination and may proceed by leading questions only if the witness is a hostile witness, an adverse party, or a witness identified with an adverse party.

(f) Upon motion of any party, the ALJ shall order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize exclusion of—

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party appearing for the entity *pro se* or designated by the party's representative; or

(3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by the Government engaged in assisting the representative for the Government.

§ 1013.34 Evidence.

(a) The ALJ shall determine the admissibility of evidence.

(b) Except as provided in this part, the ALJ shall not be bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence where appropriate, *e.g.*, to exclude unreliable evidence.

(c) The ALJ shall exclude irrelevant and immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) The ALJ shall permit the parties to introduce rebuttal witnesses and evidence.

(h) All documents and other evidence offered or taken for the record shall be open to examination by all parties, unless otherwise ordered by the ALJ pursuant to § 1013.24 of this part.

§ 1013.35 The record.

(a) The hearing will be recorded and transcribed. Transcripts may be obtained following the hearing from the ALJ at a cost not to exceed the actual cost of duplication.

(b) The transcript of testimony, exhibits and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the authority head.

(c) The record may be inspected and copied (upon payment of a reasonable fee) by anyone, unless otherwise ordered by the ALJ pursuant to § 1013.24 of this part.

§ 1013.36 Post-hearing briefs.

The ALJ may require the parties to file post-hearing briefs. In any event, any party may file a post-hearing brief. The ALJ shall fix the time for filing such briefs, not to exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

§ 1013.37 Initial decision.

(a) The ALJ shall issue an initial decision based only on the record, which shall contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The findings of fact shall include a finding on each of the following issues:

(1) Whether the claims or statements identified in the complaint, or any portions thereof, violate § 1013.3 of this part;

(2) If the person is liable for penalties or assessments, the appropriate amount of any such penalties or assessments considering any mitigating or aggravating factors that he or she finds in the case, such as those described in § 1013.31 of this part.

(c) The ALJ shall promptly serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired. The ALJ shall at the same time serve all parties with a statement describing the right of any defendant determined to be liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the authority head. If the ALJ fails to meet the deadline contained in this paragraph, he or she shall notify the parties of the reason for the delay and shall set a new deadline.

(d) Unless the initial decision of the ALJ is timely appealed to the authority head, or a motion for reconsideration of the initial decision is timely filed, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued by the ALJ.

§ 1013.38 Reconsideration of initial decision.

(a) Except as provided in paragraph (d) of this section, any party may file a motion for reconsideration of the initial decision within 20 days of receipt of the initial decision. If service was made by mail, receipt will be presumed to be five days from the date of mailing in the absence of contrary proof.

(b) Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Such motion shall be accompanied by a supporting brief.

(c) Responses to such motions shall be allowed only upon request of the ALJ.

(d) No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(e) The ALJ may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(f) If the ALJ denies a motion for reconsideration, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after the ALJ denies the motion, unless the initial decision is timely appealed to the authority head in accordance with § 1013.39.

(g) If the ALJ issues a revised initial decision, that decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued, unless it is timely appealed to the authority head in accordance with § 1013.39 of this part.

§ 1013.39 Appeal to authority head.

(a) Any defendant who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the authority head by filing a notice of appeal with the authority head in accordance with this section.

(b)(1) A notice of appeal may be filed at any time within 30 days after the ALJ issues an initial decision. However, if any party files a motion for reconsideration under § 1013.38 of this part, consideration of the appeal shall be stayed automatically pending resolution of the motion for reconsideration.

(2) If a motion for reconsideration is timely filed, a notice of appeal may be filed within 30 days after the ALJ denies the motion or issues a revised initial decision, whichever applies.

(3) The authority head may extend the initial 30-day period for an additional 30 days if the defendant files with the authority head a request for an extension within the initial 30-day period and shows good cause.

(c) If the defendant files a timely notice of appeal with the authority head and the time for filing motions for reconsideration under § 1013.38 of this part has expired, the ALJ shall forward the record of the proceeding to the authority head.

(d) A notice of appeal shall be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions.

(e) The representative for the Government may file a brief in opposition to exceptions within 30 days of receiving the notice of appeal and accompanying brief.

(f) There is no right to appear personally before the authority head.

(g) There is no right to appeal any interlocutory ruling by the ALJ.

(h) In reviewing the initial decision, the authority head shall not consider any objection that was not raised before the ALJ unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

(i) If any party demonstrates to the satisfaction of the authority head that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the authority head shall remand the matter to the ALJ for consideration of such additional evidence.

(j) The authority head may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment determined by the ALJ in any initial decision.

(k) The authority head shall promptly serve each party to the appeal with a copy of the decision of the authority head and a statement describing the right of any person determined to be liable for a penalty or an assessment to seek judicial review.

(l) Unless a petition for review is filed as provided in 31 U.S.C. 3805 after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the authority head serves the defendant with a copy of the authority head's decision, a determination that a defendant is liable under § 1013.3 of this part is final and is not subject to judicial review.

§ 1013.40 Stays ordered by the Department of Justice.

If at any time the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to the authority head a written finding that continuation of the administrative process described in this part with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, the authority head shall stay the process immediately. The authority head may order the process resumed only upon receipt of the written authorization of the Attorney General.

§ 1013.41 Stay pending appeal.

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the authority head.

(b) No administrative stay is available following a final decision of the authority head.

§ 1013.42 Judicial review.

Section 3805 of title 31, United States Code, authorizes judicial review by an appropriate United States District Court of a final decision of the authority head imposing penalties or assessments under this part and specifies the procedures for such review.

§ 1013.43 Collection of civil penalties and assessments.

Sections 3806 and 3808(b) of title 31, United States Code, authorizes actions for collection of civil penalties and assessments imposed under this part and specify the procedures for such actions.

§ 1013.44 Right to administrative offset.

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under § 1013.42 or § 1013.43 of this part, or any amount agreed upon in a compromise or settlement under § 1013.46 of this part, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be made under this subsection against a refund of an overpayment of Federal taxes, then or later owing by the United States to the defendant.

§ 1013.45 Deposit in Treasury of United States.

All amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(g).

§ 1013.46 Compromise or settlement.

(a) Parties may make offers of compromise or settlement at any time.

(b) The reviewing official has the exclusive authority to compromise or settle a case under this part at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the ALJ issues an initial decision.

(c) The authority head has exclusive authority to compromise or settle a case under this part at any time after the date on which the ALJ issues an initial decision, except during the pendency of any review under § 1013.42 of this part or during the pendency of any action to collect penalties and assessments under § 1013.43 of this part.

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any review under § 1013.42 of this part or of any action to recover penalties and assessments under 31 U.S.C. 3806.

(e) The investigating official may recommend settlement terms to the reviewing official, the authority head, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the authority head, or the Attorney General, as appropriate.

(f) Any compromise or settlement must be in writing.

§ 1013.47 Limitations.

(a) The notice of hearing with respect to a claim or statement must be served in the manner specified in § 1013.8 of this part within 6 years after the date on which such claim or statement is made.

(b) If the defendant fails to file a timely answer, service of notice under § 1013.10(b) of this part shall be deemed a notice of a hearing for purposes of this section.

(c) The statute of limitations may be extended by agreement of the parties.

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FEDERAL HOME LOAN BANK BOARD

12 CFR Part 522

[No. 88-1102]

Election of Directors of the Federal Home Loan Bank System

Date: October 25, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Temporary rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") is issuing a new rule to implement special procedures for the election of directors to the boards of the Federal Home Loan Banks ("Banks") during 1988. The rule will add a qualification for election to Bank directorships. Specifically, in order to qualify to become a Bank director, a candidate may not currently be serving as an officer or director of any member institution that fails to meet its minimum regulatory capital requirement. The rule applies only to the election of Bank directors during calendar year 1988, and will expire on December 31, 1988.

EFFECTIVE DATE: October 25, 1988. Section 522.28a shall expire on December 31, 1988.

FOR FURTHER INFORMATION CONTACT: William Carey, (202) 377-6656, Director, Bank Liaison Division, and Patrick G. Berbakos, Director (202) 377-6720, Office of District Banks, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Board is issuing a new rule, § 522.28a, to implement special procedures for the 1988 election of Bank directors. The rule adds a specific qualification for election to become a Bank director. In particular, to qualify to become a director in the 1988 election, a candidate may not currently be serving as an officer or director of any member institution that does not meet its minimum regulatory capital requirement. This action is being taken as a part of the Board's overall review of its procedures for the election of Bank System directors. This review includes the issuance of an advance notice of proposed rulemaking, published elsewhere in this edition of the **Federal Register**. The advance notice seeks public comment on how best to address the Board's concerns over the potential for even the appearance of conflicts-of-interest which may adversely effect the public's perception of the Bank System's regulatory process. The Board believes that it may be inappropriate for personnel from institutions that have been the subject of heightened regulatory concern and scrutiny to then serve on the boards of entities, like the Banks, that play an integral role in the Board's regulation and supervision of the entire thrift industry.

The specific action taken today in the form of new § 522.28a will be of limited duration and effect. By its terms, the new rule affects only the elections for this year and will expire at the end of the year. The Board contemplates possible additional regulatory action in this important area that will be of broader scope and effect than the temporary measure taken today.

The Board's action today is taken pursuant to its broad statutory powers and obligations to establish and oversee the Federal Home Loan Bank System, including the specific, express responsibility for overseeing the election and appointment of directors to the boards of the various Banks. In particular, the twelve district Banks are established and overseen by the Board pursuant to the Congressional mandate contained in the Federal Home Loan Bank Act ("FHLBank Act"), 12 U.S.C. 1421 et seq. The Banks may and do act as the Board's agents pursuant to section 17 of the FHLBank Act, 12 U.S.C. 1437, which provides that the Board may authorize officers, employees, agents, or administrative units of the Banks to perform a wide variety of Board functions. Pursuant to that authority, the Board has delegated a number of critical supervisory, examination, and regulatory functions to the Banks. The President of each Bank is the Principal Supervisory Agent ("PSA") of the Board and the Federal Savings and Loan Insurance Corporation ("FSLIC") for that Bank district. 12 CFR 501.11(a). Other Bank employees may act as Supervisory Agents. In addition to such supervisory and examination functions on behalf of the Board, the Banks also perform a crucial credit function. Specifically, the FHLBank Act empowers the Banks to make advances to their member institutions, thereby performing an essential liquidity function for the thrift industry. 12 U.S.C 1430.

Congress has charged the Board with supervising the Bank System and has given it plenary rulemaking authority "to adopt, amend, and require the observance of such rules, regulations, and orders as shall be necessary from time to time for carrying out the purposes of the provisions" of the FHLBank Act. 12 U.S.C. 1437. This section further provides the Board with the authority to "suspend or remove any director, officer, employee, or agent" of any Bank upon providing written notice to the Bank and to the person suspended or removed.

Section 7 of the FHLBank Act deals specifically with the directors of the Banks. 12 U.S.C. 1427. The board of directors of a Bank is to "administer the affairs of the bank fairly and impartially and without discrimination in favor of or against any member or nonmember borrower, and shall, subject to the provisions hereof, extend to each institution authorized to secure advances such advances as may be made safely and reasonably with due regard for the claims and demands of other institutions, and with due regard to the maintenance of adequate credit standing for the Federal Home Loan Bank and its obligations." 12 U.S.C. 1427(g).

Furthermore, the statute provides the Board with broad authority over the selection of directors of a Bank. Under this statutory scheme, certain directors are to be appointed by the Board while others are to be elected by the member institutions. Elective directors are to be elected by the members of a particular Bank in accordance with regulations of the Board. In particular, section 7(d) of the FHLBank Act, 12 U.S.C. 1427(d) provides:

> The Board is hereby authorized to prescribe such rules and regulations as it may deem necessary or appropriate for the nomination and election of directors of Federal home loan banks, including, without limitation on the generality of the foregoing, rules and regulations with respect to the breaking of ties and with respect to the inclusion of more than one directorship on a single ballot and the methods of voting and of determining the results of voting in such cases.

Pursuant to this specific grant of rulemaking authority, as well as its broad authority under section 17 of the FHLBank Act, 12 U.S.C. 1437, the Board has set forth detailed regulations dealing with the appointment and election of directors of the Banks. 12 CFR 522.20–522.28. Pursuant to this statutory authority, the Board is issuing new § 522.28a which will operate in conjunction with the Board's existing rules administering the Bank System elections, but only as pertains to the elections during 1988. As stated above, the Board is considering whether the best interests of the industry require that these provisions be amended to provide permanent eligibility requirements for elective directors.

Section 522.28a will add a requirement, applicable to candidates for election as Bank directors during the current calendar year, that such a candidate may not currently be serving as an officer or director of any member institution that does not meet its minimum regulatory capital requirement. This temporary measure will help address significant concerns the Board has with regard to the service of personnel from certain types of institutions as elective directors of the Banks. Pursuant to the Board's statutory responsibilities to oversee the Bank System, the measures taken today will help prevent potential conflicts of interest, or even the appearance of such conflicts, which may adversely impact other specific measures being taken to reinforce the ongoing integrity of the Bank System.

In particular, an increasing number of the Board's regulations are tied to an institution's capital position. Congress recently provided the Board with enhanced authority to establish minimum capital levels for insured institutions and authorized the Board to treat an institution's failure "to maintain capital at or above the minimum level" as an unsafe or unsound practice. 12 U.S.C. 1464(s), 1730(t). Institutions that fail to meet their minimum capital requirements are subject to increased regulatory scrutiny. This scrutiny often takes the form of requiring PSA approval before the institution may engage in certain activities or levels of activities. See e.g., 12 CFR 563.4(c) (permissible levels of brokered deposits); 563.13–3(a) (purchase and sale of Federal Home Loan Mortgage Corporation stock); 563.9–8(c)(2)(iii) (making equity risk investments). Given the extensive authority granted to the directors of the Banks to administer the Banks, subject to the Board's authority, and the involvement of the Banks generally in the supervision of individual institutions, the new rule will help avoid any potential for any conflicts of interest, as between the various responsibilities and loyalties of particular persons in the thrift industry. Of course, Bank directors have no responsibility for the supervisory and examination activities performed by any Bank employee on behalf of the Board or FSLIC pursuant to authority delegated by the Board. 12 CFR 522.62. But, for example, where a Bank director also serves as an officer with an institution that is under such heightened regulatory control, there may be a tension between that person's responsibilities to the Bank System at large, and the specific business needs of his institution (for example, for greater advances).

Furthermore, the Board believes that this action will help avoid even the appearance of any conflicts by directors serving on a Bank's board of directors. As required in section 7(j) of the FHLBank Act, special sensitivity must be used by a director in administering the affairs of the Bank fairly and impartially and without discrimination in favor of or against any member. Here again the troubled financial condition of a director's institution might actually or apparently affect the impartial judgment of a director as it pertains to matters affecting individual institutions. Avoidance of even the appearance of such conflicts is necessary to protect fully the overall integrity of the Federal Home Loan Bank System. For example, the condition of one potential director's institution might be unduly imputed to the financial state of a District Bank or the Federal Home Loan Bank System. Even the existence of such an incorrect belief would run counter to the Board's obligation to protect to the utmost the overall integrity of the Bank System. It is important that all the District Banks in the Federal Home Loan Bank System maintain the confidence they presently enjoy in the financial community as well as with the public at large.

Therefore, the Board is adopting special provisions for the election of directors during 1988. New § 522.28a will operate in conjunction with the existing provisions of § 522.26, to accomplish the Board's intent of establishing a new qualification for election during 1988 to become a Bank director. Specifically, directors and officers from institutions not meeting their capital requirement, as of June 30, 1988, are declared ineligible for election to an open Bank directorship under new § 522.28a(b). Furthermore,

paragraph (c) of the new rule directs the Board's Office of District Banks to determine which of the current candidates are ineligible for election as a consequence of the ineligibility for election declared in new § 522.26a(b). Simultaneously with the adoption of this rule, the Board is instructing the staff to prepare a schedule which lists all the nominees and their institutions in every Federal Home Loan Bank District and to determine whether any nominee will not be eligible to be declared a new director under the revised criteria. For any state in which a nominee is determined to be ineligible for election, thereby potentially affecting the outcome of the election in that the state under § 522.26, the staff will issue a set of revised ballot materials that do not contain the nominees who are ineligible for election. For those states, a reballoting will then be conducted in accordance with the procedures and time frames described in new § 522.26a.

In a state where a revised balloting process is necessary, the Office of District Banks will notify all members in that state by November 4, 1988. Each member will be asked to cast its vote for the candidates using the revised ballot submitted with the notification. This material must be forwarded and received in the Office of District Banks no later than November 21, 1988. Tabulation of these ballots will not begin until 5 p.m., e.s.t., November 21, 1988. Only those ballots that were furnished by the Bank Board will be considered. Tabulation will also be accomplished for all the other ballots, which had already been received pursuant to section 522.26(c), for states in which no such reballoting was necessary under section 522.26a. The Board will declare who the new elective directors are by December 9, 1988.

The Board notes that the specially revised election procedures for calendar year 1988 will result in only minimal delay in the completion of this year's election and the final declaration of the results to the industry pursuant to sections 522.26(e) and 522.26a(e). These provisions will be applied consistently throughout the Bank System, although the necessity for reballoting is anticipated for only a portion of the states in which there is an open directorship. Therefore, the Board will announce the results of the 1988 election for the Federal Home Loan Bank System no later than December 9, 1988. Finally, the Board notes that new § 522.26a is a temporary rule (expiring on December 31, 1988), that will affect only the elections during the current calendar year. It is the Board's intention to address these issues as they pertain to future elections through the rulemaking process initiated by the advance notice or proposed rulemaking issued today.

Since the action taken herein pertains to rules for the internal organization, practice, and procedures of the Federal Home Loan Bank System, specifically those rules implementing procedures for the elections of Bank System directors, the Board finds that a notice and comment procedure is not necessary under the Administrative Procedures Act. Moreover, for the reasons discussed herein, it is in the public's interest to provide prompt action on these matters. The action taken does not result in any additional burdens to third parties outside the Bank System, and is the alternative least disruptive to the internal operation of the System. The Board has plenary authority to remove directors at any time upon providing notice of cause, and may appoint their replacements. 12 U.S.C. 1427(f), 1437(a). With this rule, the Board has avoided possible recourse to this authority with regard to any new directors elected during this calendar year. Therefore, the Board finds that good cause exists for suspension of the usual thirty-day delayed effective date, as well as the notice and comment procedure. *See* 5 U.S.C. 553.

List of Subjects in 12 CFR Part 522

Conflicts of interest, Federal home loan banks.

Accordingly, the Board hereby amends Part 522, Subchapter B, Chapter V of Title 12, Code of Federal Regulations as set forth below.

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

PART 522—ORGANIZATION OF THE BANKS

1. The authority citation for Part 522 continues to read as follows:

Authority: Sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); secs. 6–7, 47 Stat. 727, 730, as amended (12 U.S.C. 1426–1427); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402–403, 407, 48 Stat. 1256–1257, 1260, as amended (12 U.S.C. 1725–1726, 1730); sec. 207, 62 Stat. 892, as added by sec. 1a, 76 Stat. 1123, as amended (12 U.S.C. 207); sec. 602, 92 Stat. 2115, as amended (42 U.S.C. 3301 *et seq.*); Reorg. Plan No. 6 of 1961, *reprinted in* 12 U.S.C.A. 1437 App. (West Supp. 1988).

2. Following § 522.26, a new § 522.26a is added to Subchapter B, Part 522, which will read as follows:

§ 522.26a Special provisions for election of directors during calendar year 1988.

(a) This section shall apply to the election of directors of the Banks during calendar year 1988. As described herein, this section shall operate in conjunction with § 522.26 which generally governs the election of directors. Until it expires, the special provisions of this section shall govern in the case of any conflict with the provisions of § 522.26. This § 522.26a shall expire on December 31, 1988.

(b) Directors and officers of any member that did not meet its minimum regulatory capital requirement pursuant to § 563.13 as of June 30, 1988, are not eligible for election during calendar year 1988 to become a director of any Bank.

(c) The Board's Office of District Banks shall determine which candidates are ineligible for election as a director as a consequence of the ineligibility for election established under paragraph (b) of this section. By November 4, 1988, the Office of District Banks shall mail to each member in each state in which a candidate has been determined to be ineligible for election a set of revised ballot materials in a form prescribed in § 522.26(a), which revised ballots shall not include the candidates that were determined to be ineligible for election pursuant to paragraph (b) of this section.

(d) Each member entitled to receive a ballot under this section may, by resolution of its governing body, cast its votes or authorize one of its directors or officers to cast its votes for each of as many candidates as there are directorships to be filled. These revised ballot materials shall be sent to the Office of District Banks and must be received on or before November 21, 1988. No ballot may be changed after it is delivered to the Office of District Banks, which will preserve all such ballots until the end of the next calendar year. Election ballots shall not be opened until after 5 p.m., e.s.t., November 21, 1988. Only ballots executed on forms supplied by the Board shall be counted.

(e) By December 9, 1988, the Board shall declare elected those candidates who have won the balloting as determined pursuant to the procedures set forth in § 522.26(d), and the election results will be recorded, the elected directors notified, and all members informed of the results, pursuant to the procedures set forth in § 522.26(e).

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88–25469 Filed 11–2–88; 8:45 am]

BILLING CODE 6725-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 87F-0366]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of tris(2,4-di-*tert*-butylphenyl)phosphite (CAS Reg. No. 31570–04–4) as a stabilizer in lubricants with incidental food contact. This action is in response to a petition filed by Ciba-Geigy Corp.

DATES: Effective November 3, 1988; written objections and requests for a hearing by December 5, 1988.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gillian Robert-Baldo, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of December 2, 1987 (52 FR 45867), FDA announced that a food additive petition (FAP 8B4046) had been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 178.3570 *Lubricants with incidental food contact* (21 CFR 178.3570) be amended to provide for the safe use of tris(2,4-di-*tert*-butylphenyl)phosphite as a stabilizer in lubricants with incidental food contact.

FDA has evaluated data in the petition and other relevant material and concludes that the proposed food additive is safe for food-contact use. Therefore, the agency is revising the table in § 178.3570(a)(3) to include an entry that identifies the stabilizer and prescribes a maximum weight level for its safe use in a lubricant.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before December 5, 1988, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 178.3570 is amended in paragraph (a)(3) by alphabetically adding a new entry in the table to read as follows:

§ 178.3570 Lubricants with incidental food contact.

* * * * * * *

(a) * * *

(3) * * *

Substances	Limitations
* * *	* * *
Tris(2,4-di-*tert*-butylphenyl)phosphite (CAS Reg. NO. 31570–04–4).	For use only as a stabilizer at levels not to exceed 0.5 percent by weight of the lubricant.
* * *	* * *

* * * * * * *

Dated: October 20, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88–25410 Filed 11–2–88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 500

Supplemental List of Specially Designated Nationals (Vietnam)

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice of Additions to the List of Specially Designated Nationals.

SUMMARY: This notice provides the names of firms that have been added to the list of Specially Designated Nationals under the Treasury Department's Foreign Assets Control Regulations (31 CFR Part 500).

ADDRESS: Copies of the list of Specially Designated Nationals are available upon request at the following location: Office of Foreign Assets Control, 1331 G Street NW., Room 300, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Richard J. Hollas, Chief, Enforcement Division, Office of Foreign Assets Control, Tel: (202) 376–0400.

SUPPLEMENTARY INFORMATION: Under the Foreign Assets Control Regulations, persons subject to the jurisdiction of the United States are prohibited from engaging, directly or indirectly, in transactions with any nationals or specially designated nationals of Vietnam, or involving any property in which there exists an interest of any national or specially designated national of Vietnam, except as authorized by the Treasury Department's Office of Foreign Assets Control by means of a general or specific license.

Section 500.302 of Part 500 defines the term "national," in part, as (a) a subject or citizen domiciled in a particular country, or (b) any partnership, association, corporation, or other organization owned or controlled by nationals of that country, or that is organized under the laws of, or that has had its principal place of business in that foreign country since the effective date (for North Vietnam, i.e., Vietnam north of the 17th parallel of north latitude: May 5, 1964; for South Vietnam, i.e., Vietnam south of the 17th parallel of north latitude: April 30, 1975, at 12:00 p.m. e.d.t.), or (c) any person that has directly or indirectly acted for the benefit or on behalf of any designated foreign country. Section 500.306 defines the term "designated national" as Vietnam or any national thereof, including any person who is a specially designated national. Section 500.306 defines "specially designated national" as any person who has been designated as such by the Secretary of the Treasury; any person who, on or since the effective date, has either acted for or on behalf of the government of, or authorities exercising control over any designated foreign country; or any partnership, association, corporation or other organization that, on or since the applicable effective date, has been owned or controlled directly or indirectly by such government or authorities, or by any specially designated national. Section 500.201 prohibits any transaction, except as authorized by the Secretary of the Treasury, involving property in which there exists an interest of any national or specially designated national of Vietnam. The list of Specially Designated Nationals is a partial one, since the Department of the Treasury may not be aware of all the persons located outside Vietnam that might be acting as agents or front organizations for Vietnam, thus qualifying as specially designated nationals of Vietnam. Also, names may have been omitted because it seemed unlikely that those persons would engage in transactions with persons subject to the jurisdiction of the United States. Therefore, persons engaging in transactions with foreign nationals may not rely on the fact that any particular foreign national is not on the list as evidence that it is not a specially designated national. The Treasury Department regards it as incumbent upon all U.S. persons engaging in transactions with foreign nationals to take reasonable steps to ascertain for themselves whether such foreign nationals are specially designated nationals of Vietnam, or other designated countries (at present, Cambodia, Cuba, and North Korea). The list of Specially Designated Nationals was last published on December 10, 1986, in the **Federal Register** (51 FR [illegible]).

Please take notice that section 16 of the Trading with the Enemy Act (the "Act"), as amended, provides in part that whoever willfully violates any provision of the Act or any license, rule or regulation issued thereunder:

"Shall, upon conviction, be fined not more than $50,000, or, if a natural person, imprisoned for not more than ten years, or both; and the officer, director, or agent of any corporation who knowingly participates in such violation shall be punished by a like fine, imprisonment, or both, and any property, funds, securities, papers, or other articles or documents, or any vessel, together with her tackle, apparel, furniture, and equipment, concerned in such violation shall be forfeited to the United States."

In addition, persons convicted of an offense under the Act may be fined a greater amount than set forth in the Act, as provided in 18 U.S.C. 3623.

Authority: 50 U.S.C. App. 5(b) and 18 U.S.C. 3623.

Specially Designated Nationals of Vietnam

Agate Maritime, S.A., Panama
Aquamarine Maritime, S.A., Panama
Golden Star Shipping, Ltd., 20–24 Lockhart Rd., Hong Kong
Great Neptune Star Shipping, S.A., Panama
Mercury Shipping Co., Ltd., 171 Old Bakery St., Valletta, Malta
Pearl Star Maritime, S.A., Panama
Pioneer Shipping, Ltd., 171 Old Bakery St., 171 Old Bakery St., Valletta, Malta,
Quartz Maritime, S.A., Panama
Vietnam Finance Company, 20 Lockhart Rd., Hong Kong

Property in Which Designated Nationals of Vietnam Have an Interest

For purposes of the prohibitions in 31 CFR Part 500, there is reasonable cause to believe that the following vessels constitute property in which a designated national of Vietnam has an interest:

AGATE (Agate Maritime S.A.)
JADE STAR (Pearl Star Maritime S.A.)
LONG AN (Pearl Star Maritime S.A.)
LONG HAI (Pearl Star Maritime S.A.)
LONG THANH (Mercury Shipping Co.)
NEPTUNE STAR (Great Neptune Star Shipping S.A.)
NEW PIONEER (Pioneer Shipping Ltd.)
ORIENTAL JADE (Aquamarine Maritime S.A.)
QUARTZ (Quartz Maritime S.A.)

Date: October 17, 1988.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: October 21, 1988.

Salvatore R. Martoche,

Assistant Secretary (Enforcement).

[FR Doc. 88-25450 Filed 11-2-88; 10:03 am]

BILLING CODE 4810-25-M

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31 CFR Part 515

Supplemental List of Specially Designated Nationals (Cuba)

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Notice of Additions to the List of Specially Designated Nationals.

SUMMARY: This notice provides the names of firms that have been added to the list of Specially Designated Nationals under the Treasury Department's Cuban Assets Control Regulations (31 CFR Part 515).

ADDRESS: Copies of the list of Specially Designated Nationals are available upon request at the following location: Office of Foreign Assets Control, 1331 G Street NW., Room 300, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Richard J. Hollas, Chief, Enforcement Division, Office of Foreign Assets Control, Tel: (202) 376-0400.

SUPPLEMENTARY INFORMATION: Under the Cuban Assets Control Regulations, persons subject to the jurisdiction of the United States are prohibited from engaging, directly or indirectly, in transactions with any nationals or specially designated nationals of Cuba, or involving any property in which there exists an interest of any national or specially designated national of Cuba, except as authorized by the Treasury Department's Office of Foreign Assets Control by means of a general or specific license.

Section 515.302 of Part 515 defines the term "national," in part, as (a) a subject or citizen domiciled in a particular country, or (b) any partnership, association, corporation, or other organization owned or controlled by nationals of that country, or that is organized under the laws of, or that has had its principal place of business in that foreign country since the effective date (for Cuba, 12:01 a.m., e.s.t., July 8, 1963), or (c) any person that has directly or indirectly acted for the benefit or on behalf of any designated foreign country. Section 515.305 defines the term "designated national" as Cuba or any national thereof, including any person who is a specially designated national. Section 515.306 defines "specially designated national" as any person who has been designated as such by the Secretary of the Treasury; any person who, on or since the effective date, has either acted for or on behalf of the government of, or authorities exercising control over any designated foreign country; or any partnership, association, corporation or other organization that, on or since the applicable effective date, has been owned or controlled directly or indirectly by such government or authorities, or by any specially designated national. Section 515.201 prohibits any transaction, except as authorized by the Secretary of the Treasury, involving property in which there exists an interest of any national or specially designated national of Cuba. The list of Specially Designated Cuban Nationals is a partial one, since the Department of the Treasury may not be aware of all the persons located outside Cuba that might be acting as agents or front organizations for Cuba, thus qualifying as specially designated nationals of Cuba. Also, names may have been omitted because it seemed unlikely that those persons would engage in transactions with persons subject to the jurisdiction of the United States. Therefore, persons engaging in transactions with foreign nationals may not rely on the fact that any particular foreign national is not on the list as evidence that it is not a specially designated national. The Treasury Department regards it as incumbent upon all U.S. persons engaging in transactions with foreign nationals to take reasonable steps to ascertain for themselves whether such foreign nationals are specially designated nationals of Cuba, or other designated countries (at present, Cambodia, North Korea, and Vietnam). With respect to Cuba, see 31 CFR 515.306, and the supplemental list of specially designated nationals of Cuba published in this issue of the **Federal Register**. The list of Specially Designated Nationals was last published on December 10, 1986, in the **Federal Register** (51 FR 44459).

Please take notice that section 16 of the Trading with the Enemy Act (the "Act"), as amended, provides in part that whoever willfully violates any provision of the Act or any license, rule or regulation issued thereunder:

"Shall, upon conviction, be fined not more than $50,000, or, if a natural person, imprisoned for not more than ten years, or both; and the officer, director, or agent of any corporation who knowingly participates in such violation shall be punished by a like fine, imprisonment, or both, and any property, funds, securities, papers, or other articles or documents, or any vessel, together with her tackle, apparel, furniture, and equipment, concerned in such violation shall be forfeited to the United States."

In addition, persons convicted of an offense under the Act may be fined a greater amount than set forth in the Act, as provided in 18 U.S.C. 3623.

Authority: 50 U.S.C. App. 5(b) and 18 U.S.C. 3623.

Specially Designated Nationals of Cuba

Acechilly Nav. Co. Ltd., 171 Old Bakery Street, Valletta, Malta
Antamallo Shipping Co., Ltd., Valletta, Malta
Antillana Salvage Co., Ltd., 171 Old Bakery St., Valletta, Malta
Arion Shipping Co., Ltd., 60 South Street, Valletta, Malta
Bettina Shipping Co., Ltd., Valletta, Malta
Bradfield Maritime Corp. Inc., Panama
Canipel, S.A., Panama
East Island Shipping Co., Ltd., Limassol, Cyprus
Epamac Shipping Co., Ltd., 60 South Street, Valletta, Malta
Flight Dragon Shipping, Ltd., 171 Old Bakery Street, Valletta, Malta
Golden Comet Nav. Co., Ltd., Panama
Grete Shipping Co., S.A., Panama
Hermann Shipping Corp., Inc., Panama
Heywood Nav. Corp., Panama
Huntsland Nav. Co., Ltd., Valletta, Malta
Huntsville Nav. Co., Ltd., Valletta, Malta
Kasper Shipping, S.A., Panama
Maryol Enterprises, Inc., Panama
Navigable Water Corp., Ltd., Panama
North Islands Shipping Co., Limassol, Cyprus
Pamit C. Shipping Co., Ltd., Limassol Cyprus
Peony Shipping Co., Ltd., Limassol, Cyprus
Piranha Nav. Co., Ltd., Limassol, Cyprus
Redestos Shipping Co., Ltd., Limassol, Cyprus
Senanque Shipping Co., Ltd., Limassol, Cyprus
South Islands Co., Ltd., Limassol, Cyprus
Standwear Shipping Co., Ltd., Limassol, Cyprus
Tramp Pioneer Shipping Co., Ltd., Panama
Valletta Shipping Corp., Panama
Wadena Shipping Corp., Monrovia, Liberia
West Islands Shipping Co., Limassol, Cyprus
Whiteswan Shipping Co., Ltd., Limassol, Cyprus

Property in Which Designated Nationals of Cuba Have an Interest

For purposes of the prohibitions in 31 CFR Part 515, there is reasonable cause to believe that the following vessels constitute property in which a designated national of Cuba has an interest:

ANA 1 (Naviable Water Corp.)
AVIS FAITH (Bradfield Maritime Corp.)
CARIBBEAN SALVOR (Antillana Salvage Co.)
CASABLANCA (Epamac Shipping Co.)
EAST ISLANDS (East Islands Shipping Co.)
EMERALD ISLANDS (Bettina Shipping Co.)
GRETE (Grete Shipping Co.)
HERMANN (Hermann Shipping Corp.)
HUNTSLAND (Huntsland Nav. Co.)
HUNTSVILLE (Huntsville Nav. Co.)
HYALITE (White Swan Shipping Co.)
KASPAR (Kaspar Shipping S.A.)
LILAC ISLANDS (Valletta Shipping Corp.)
LOTUS ISLANDS (Wadena Shipping Corp.)
NORTH ISLANDS (North Islands Shipping Co.)
ONYX ISLANDS (Maryol Enterprises Inc.)
PAMIT C. (Pamit C. Shipping Co.)
PEONY ISLANDS (Peony Shipping Co.)
PIONEER (Tramp Pioneer Shipping Co.)
PRIMROSE ISLANDS (Piranha Nav. Co.)
RAVENS (Antamallo Shipping Co.)
REDESTOS (Redestos Shipping Co.)
RUBY ISLANDS (Golden Comet Nav. Co.)
SENANQUE (Senanque Shipping Co.)
SOUTH ISLANDS (South Islands Co.)
STANDWEAR (Standwear Shipping Co.)
STAR 1 (Canapel S.A.)
WEST ISLANDS (West Islands Shipping Co.)

Date: October 17, 1988.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: October 21, 1988.

Salvatore R. Martoche,

Assistant Secretary (Enforcement).

[FR Doc. 88-25401 Filed 11-1-88; 10:03 am]

BILLING CODE 4810-25-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD1-87-058]

Special Anchorage Area; Shelter Island, NY

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a special anchorage area in the waters adjacent to the Town of Shelter Island, New York. This area will provide an anchorage well away from fairways where vessels less than 65 feet in length can safely remain unlighted at night. There is a considerable amount of recreational boating in this area during the summer months. There are no such anchorages currently available in the immediate area.

EFFECTIVE DATE: December 5, 1988.

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FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) G.S. Lapaley, Vessel Movement Officer, Captain of the Port, New York, at (212) 668–7933.

SUPPLEMENTARY INFORMATION: On March 17, 1988 the Coast Guard published a notice of proposed rulemaking in the **Federal Register** for these regulations (53 FR 4422). Interested persons were requested to submit written comments and no comments were received.

Drafting information: The drafters of this notice are LTJG A.J. DiNinno, Project Officer, Captain of the Port, New York and CDR M.A. Leone, Project Attorney, First Coast Guard District Legal Office.

Discussion of comments: As previously stated, no comments regarding the NPRM were received. The areas being designated as special anchorages are already being used as recreational anchorages. Officially recognizing and charting them will provide an added measure of safety. This regulation is issued pursuant to 33 U.S.C. 2030, 2035, and 2070 as set out in the authority citation for all of Part 110.

Environmental Impact

These proposed regulations do not alter the use of these areas in any way. They have been and will continue to be places for vessels to anchor.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be minimal, thus a full regulatory evaluation is unnecessary. Establishment of this proposed special anchorage area will not require dredging or result in increased cost to any segment of the public. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Lists of Subjects in 33 CFR Part 110

Anchorage grounds.

Final Regulations

In consideration of the foregoing, Part 110 of Title 33, Code of Federal Regulations, is amended as follows:

PART 110—[AMENDED]

1. The authority citation for Part 110 is revised to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a is also issued under 33 U.S.C. 1223 and 1231.

2. In § 110.60, two new paragraphs (y) and (y–1) are added to read as follows:

§ 110.60. Port of New York and vicinity.

(y) *Coecles Harbor at Shelter Island, New York.* That portion of Coecles Harbor bounded on the North by a line drawn between the northernmost point of land at Sungic Point and latitude 41°04'09" North, longitude 72°17'54" West, thence eastward along the shoreline to the point of origin.

(y–1) *West Neck Harbor at Shelter Island, New York.* That portion of West Neck Harbor bounded on the North by a line drawn between latitude 41°02'48" North, longitude 72°20'27" West and a point on Shell Beach located at latitude 41°02'29" North, longitude 72°20'59" West; thence eastward along the shoreline to the point of origin.

Dated: October 21, 1988.

R.I. Rybacki,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 88–25507 Filed 11–2–88; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

38 CFR Part 36

Decrease in Maximum Permissible Interest Rates on Guaranteed Manufactured Home Loans, Home and Condominium Loans, and Home Improvement Loans

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The VA (Veterans Administration) is decreasing the maximum interest rates on guaranteed manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans. In addition, the maximum interest rates applicable to fixed payment and graduated payment home and condominium loans, and to home improvement and energy conservation loans are also decreased. These decreases in interest rates are possible because of recent improvements in the availability of funds in various credit markets. The decrease in the interest rates will allow eligible veterans to obtain loans at a lower monthly cost.

EFFECTIVE DATE: November 1, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. George D. Moerman, Loan Guaranty Service (264), Department of Veterans' Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 (202–233–3042).

SUPPLEMENTARY INFORMATION: The Administrator is required by section 1812(f), title 38, United States Code, to establish maximum interest rates for manufactured home loans guaranteed by the VA as he finds the manufactured home loan capital markets demand. Recent market indicators—including the prime rate, the general decrease in interest rates charged on conventional manufactured home loans, and the decrease of other short-term and long-term interest rates—have shown that the manufactured home capital markets have improved. It is now possible to decrease the interest rates on manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans while still assuring an adequate supply of funds from lenders and investors to make these types of VA loans.

The Administrator is also required by section 1803(c), title 38, United States Code, to establish maximum interest rates for home and condominium loans including graduated payment mortgage loans, and loans for home improvement purposes. Market indicators similarly favor reductions in the maximum interest rates for these types of loans. These lower interest rates should assist more veterans in the purchase of homes and condominiums or to obtain improvement loans because of the decrease in the montly loan payments for principal and interest.

Regulatory Flexibility Act/Executive Order 12291

For the reasons discussed in the May 7, 1981 **Federal Register** (46 FR 25443), it has previously been determined that final regulations of this type which change the maximum interest rates for loans guaranteed, insured, or made pursuant to chapter 37 of title 38, United States Code, are not subject to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

These regulatory amendments have also been reviewed under the provisions of Executive Order 12291. The VA finds that they are not "major rules" as defined in that Order. The existing process of informal consultation among representatives within the Executive Office of the President, OMB, the VA and the Department of Housing and Urban Development has been determined to be adequate to satisfy the intent of this Executive Order for this category of regulations. This alternative consultation process permits timely rate adjustments with minimal risk of premature disclosure. In summary, this consultation process will fulfill the intent of the Executive Order while still permitting compliance with statutory responsibilities for timely rate adjustments and a stable flow of mortgage credit at rates consistent with the market.

These final regulations come within exceptions to the general VA policy of prior publication of proposed rules as contained in 38 CFR 1.12. The publication of notice of a regulatory change in the VA maximum interest rates for VA guaranteed, insured or direct loans would deny veterans the benefit of lower interest rates pending the final rule publication date which would necessarily be more than 30 days after publication in proposed form. Accordingly, it has been determined that publication of proposed regulations prior to publication of final regulations is impracticable, unnecessary, and contrary to the public interest.

(Catalog of Federal Domestic Assistance Program numbers 64.113, 64.114, and 64.119).

These regulations are adopted under authority granted to the Administrator by sections 210(c), 1803(c)(1), 1811(d)(1) and 1812 (f) and (g) of title 38, United States Code.

These decreases are accomplished by amending sections 36.4212(a) (1), (2), and (3), and 36.4311 (a), (b), and (c) and 36.4503(a), title 38, Code of Federal Regulations.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing, Loan programs—housing and community development, Manufactured homes, Veterans.

Approved: October 31, 1988.

Thomas K. Turnage,

Administrator.

PART 36—[AMENDED]

38 CFR Part 36, Loan Guaranty, is amended as follows:

1. In § 36.4212, paragraph (a) is revised as follows:

§ 36.4212 Interest rates and late charges.

(a) The interest rate charged the borrower on a loan guaranteed or insured pursuant to 38 U.S.C. 1819 may not exceed the following maxima except on loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the Veterans Administration prior to the respective effective date:

(Authority: 38 U.S.C. 1819(f))

(1) Effective November 1, 1988, 12½ percent simple interest per annum for a loan which finances the purchase of a manufactured home unit only.

(2) Effective November 1, 1988, 12 percent simple interest per annum for a loan which finances the purchase of a lot only and the cost of necessary site preparation, if any.

(3) Effective November 1, 1988, 12 percent simple interest per annum for a loan which will finance the simultaneous acquisition of a manufactured home and a lot and/or the site preparation necessary to make a lot acceptable as the site for the manufactured home.

* * * * *

2. In § 36.4311, paragraphs (a), (b), and (c) are revised as follows:

§ 36.4311 Interest rates.

(a) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 10 per centum per annum, effective November 1, 1988, the interest rate on any home or condominium loan, other than a graduated payment mortgage loan, guaranteed or insured wholly or in part on or after such date may not exceed 10 per centum per annum on the unpaid principal balance.

(Authority: 38 U.S.C. 1803(c)(1))

(b) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 10¼ per centum per annum, effective November 1, 1988, the interest rate of any graduated payment mortgage loan guaranteed or insured wholly or in part on or after such date may not exceed 10¼ per centum per annum.

(Authority: 38 U.S.C. 1803(c)(1))

(c) Effective November 1, 1988, the interest rate on any loan solely for energy conservation improvements or other alterations, improvements or repairs, which is guaranteed or insured wholly or in part on or after such date may not exceed 11½ per centum per annum on the unpaid principal balance.

(Authority: 38 U.S.C. 1803(c)(1))

* * * * *

3. In § 36.4503, paragraph (a) is revised as follows:

§ 36.4503 Amount and amortization.

(a) The original principal amount of any loans made on or after October 1, 1980, shall not exceed an amount which bears the same ratio to $33,000 as the amount of the guaranty to which the veteran is entitled under 38 U.S.C. 1810 at the time the loan is made bears to $27,500. This limitation shall not preclude the making of advances, otherwise proper, subsequent to the making of the loan pursuant to the provisions of § 36.4511. Except as to home improvement loans, loans made by the VA shall bear interest at the rate of 10 percent per annum. Loans solely for the purpose of energy conservation improvements or other alterations, improvements, or repairs shall bear interest at the rate of 11½ percent per annum.

(Authority: 38 U.S.C. 1811(d)(1) and (2)(A))

* * * * *

[FR Doc. 88–25476 Filed 11–2–88; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180, 185, and 186

[PP 7F3507 and FAP 7H5534/R967; FRL-3471-4]

Pesticide Tolerances For Fenarimol

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: These rules establish tolerances for residues of the fungicide fenarimol in or on certain raw agricultural commodities, food additives, and feed additives. These regulations, to establish maximum permissible levels of residues of fenarimol in or on the commodities, food additives, and feed additives, were requested in petitions submitted by Elanco Products Co.

DATES: Effective on October 26, 1988. Objections by December 5, 1988.

ADDRESS: Written objections, identified by the document control number [PP 7F3507 and FAP 7H5534/R967] may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. M–3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

Lois A. Rossi, Product Manager (PM) 21, Registration Division (TS–767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–1900.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of September 19, 1988 (53 FR 36368), which announced that Elanco Products Co., 740 South Alabama St., Indianapolis, IN 46285, amended pesticide petition (PP) 7F3507 to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal

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Food, Drug, and Cosmetic Act, propose the establishment of tolerances for the fungicide fenarimol [alpha-(2-chlorophenyl)-alpha-(4-chlorophenyl)-5-pyrimidinemethanol] in or on the following raw agricultural commodities: Apples at 0.1 part per million (ppm); eggs at 0.01 ppm; poultry, fat at 0.01 ppm; poultry, meat at 0.01 ppm; and poultry, meat byproducts at 0.01 ppm. Elanco also proposed that tolerances be established for combined residues of fenarimol and its metabolites, alpha-(2-chlorophenyl)-alpha-(4-chlorophenyl)-1,4-dihydor-5-pyrimidinemethanol and 5-[(2-chlorophenyl) (4-chlorophenyl)methyl]-3,4-dihydor-4-pyrimidinol measured as the total of fenarimol and 5-[(2-chlorophenyl)-(4-chlorophenyl)methyl]pyrimidine (DHF, calculated as fenarimol) in or on grapes at 0.2 ppm.

The notice also announced that Elanco amended food-feed additive petition (FAP) 7H5534 to amend 21 CFR Part 561 (redesignated as 40 CFR Part 186 in the **Federal Register** of June 29, 1988 (53 FR 24666)) by establishing a regulation to permit residues of the fungicide fenarimol in or on the following feed commodity: Apple pomace (wet and dry) at 2.0 ppm and to permit the combined residues of fenarimol and its metabolites, alpha-(2-chlorophenyl)-alpha-(4-chlorophenyl)-1,4-dihydro-5-pyrimidinemethanol and 5-[(2-chlorophenyl) (4-chlorophenyl)methyl]-3,4-dihydro-4-pyrimidinol measured as the total of fenarimol and 5-[(2-chlorophenyl)-(4-chlorophenyl)methyl]pyrimidine (DHF, calculated as fenarimol), in or on the following food additive commodities (former 21 CFR Part 193, redesignated as 40 CFR Part 185 in the **Federal Register** of June 29, 1988 (53 FR 24666)): Grape juice at 0.6 ppm and raisins at 0.6 ppm and the feed commodities grape pomace (wet and dry) at 2.0 ppm and raisin waste at 3.0 ppm.

There were no comments received in response to the notice of filings.

The data submitted in support of the petitions and other relevant material have been evaluated. The pesticide is considered useful for the purposes for which the tolerances are sought. The toxicological data considered in support of the tolerances include the following:

1. A 1-year dog feeding study using doses of 0, 1.25, 12.5, and 125 milligrams/kilograms (mg/kg) body weight (bwt)/day. The no-observed-effect level (NOEL) is 12.5 mg/kg bwt/day. The 125 mg/kg bwt/day dose level caused increased serum alkaline phosphatase, increased liver weights, increase in *p*-nitroanisole *o*-demethylase activity, and mild hepatic bile stasis.

2. An initial 2-year chronic feeding/oncogenicity study in rats using dietary concentrations of 0, 50, 130, and 350 ppm (equivalent to doses of 0, 2.5, 6.5, and 17.5 mg/kg bwt/day). In a previous **Federal Register** Notice (51 FR 7567; March 5, 1986), the Agency indicated fenarimol to be oncogenic. In that Notice, the Agency's initial conclusion that fenarimol was oncogenic was based on a finding in the 2-year rat study of a statistically significant increase in hepatic lesions (adenomas and hyperplastic nodules) at the highest dose tested (17.5 mg/kg bwt/day), when data for male and female rats were combined.

Since that time, the compound has been reevaluated since the Agency now considers it more appropriate to separate data for males and females and to also separate hyperplastic nodules from tumors (adenomas and carcinomas). When a reevaluation of the hepatic lesions for males and females was performed separately with the elimination of hyperplastic nodules, the data did not demonstrate a statistically significant increased incidence in adenomas and/or carcinomas in either sex. Moreover, the mouse oncogenicity study did not demonstrate oncogenic potential at dose levels up to and including a dose level of 85.7 mg/kg bwt/day (the highest dose level tested).

Because of the appearance of a low incidence of fatty change of the liver (nonneoplastic pathological lesions) in the low-dose groups in this study, it was unclear if a NOEL for fatty change of the liver was established in this study.

3. Additional 2-year chronic feeding/oncogenicity studies in rats using dietary concentrations of 0, 12.5, 25, and 50 ppm (equivalent to doses of 0, 0.63, 1.25, and 2.5 mg/kg bwt/day). The purpose of these additional studies was to assist in determining a NOEL for fatty liver changes. The first of these two studies was compromised, however, by an outbreak of chronic respiratory disease which reduced survival in all experimental groups, including control. The study was then repeated with the same dose levels. In the second study, no fatty liver changes or oncogenic effects were observed at the doses tested under the conditions of the study. Using data from all three 2-year studies, a NOEL for fatty liver change of 6.5 mg/kg bwt/day was established.

4. A 2-year oncogenicity study in mice using dietary concentrations of 0, 50, 170, and 600 ppm (equivalent to doses of 0, 7, 24.3, and 85.7 mg/kg bwt/day) that was negative for oncogenic effects at all doses tested under the conditions of the study. A 600 ppm, an increase in fatty change of the liver was demonstrated. The NOEL for this effect was 170 ppm (24.3 mg/kg/bwt/day).

5. A rabbit teratology study that was negative for teratogenic effects at all doses tested (0, 5, 10, and 35 mg/kg).

6. A rat teratology study that demonstrated hydronephrosis at 35 mg/kg (doses tested were 0, 5, 13, and 35 mg/kg). A second study in rats (with a postpartum evaluation) again demonstrated hydronephrosis at 35 mg/kg, but also indicated that the dose level of 35 mg/kg was associated with a maternal toxic effect (decreased body weight gain during treatment). The Agency considers the NOEL for hydronephrosis and for maternal toxicity to be 13 mg/kg.

7. A multigeneration reproduction study in rats that demonstrated decreased fertility in males and delayed parturition and dystocia in females at 5 mg/kg bwt/day. The NOEL for reproductive effects in this study was 2.5 mg/kg bwt/day.

8. Multigeneration reproduction studies in guinea pigs and mice that were negative for reproductive effects at doses up to 35 mg/kg bwt/day (highest dose tested) and 20 mg/kg bwt/day, respectively.

9. An aromatase inhibition study in rats that showed fenarimol to be a moderately weak inhibitor of aromatase activity.

The adverse reproductive effects observed in the rat multigeneration reproduction study are considered to be a species-specific effect caused by aromatase inhibition. This enzyme promotes normal sexual behavior in rats and mice, but not in guinea pigs, primates, or man. A NOEL of 35 mg/kg bwt/day for reproductive effects relevant to humans was established in the multigeneration reproduction study in guinea pigs.

10. A mouse lymphoma forward mutation assay; a DNA repair synthesis study in rat liver culture systems; gene mutation assays in *Salmonella typhimurium* (Ames test) and in *Escherichia coli*; a dominant lethal assay in Wistar rats; an assay for transformation activity in the C3H/10T ½ embryonic mouse fibroblast; and an *in vivo* assay for chromosome aberration in the Chinese hamster. Fenarimol did not demonstrate mutagenic activity in any of these studies.

The mutagenic potential of fenarimol has been evaluated in several assay systems (see item 10 above). Fenarimol did not demonstrate a mutagenic effect in any of these studies. Furthermore, fenarimol did not induce altered foci or neoplastic nodules in an initiation and promotion study in rat liver tissue.

Based on the above findings, the Agency concludes that fenarimol was not oncogenic in long-term studies in rats and mice under test conditions in which the highest dose tested for both species approached a maximum tolerated dose as evidenced by increased fatty change in the liver.

The acceptable daily intake (ADI) based on the 2-year rat chronic feeding study (NOEL of 6.5 mg/kg bwt/day), and using a hundredfold safety factor, is calculated to be 0.065 mg/kg bwt/day. The theoretical maximum residue contribution from previously established tolerances and the tolerances established here is 0.0004 mg/kg/bwt/day and utilizes 0.6 percent of the ADI. Previous tolerances have been established for fenarimol in pecans, pears, apples, apple pomace, milk, meat and meat byproducts of cattle, goats, hogs, horses, and sheep; fat and liver of cattle, goats, hogs, horses, and sheep.

The nature of the residue is adequately understood, and adequate analytical methods are available for enforcement purposes. Because of the long lead time from establishing this tolerance to publication of the enforcement methodology in the *Pesticide Analytical Manual*, Vol. II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from:

William Grosse, Chief, Information Service Branch Program Management and Support Division (TS-757C), 401 M St., SW., Washington, DC 20460.
Office location and telephone number: Rm. 223, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2613.

The pesticide is considered useful for the purposes for which the tolerances are sought. Based on the information and data considered, the Agency concludes that the establishment of the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

Pursuant to the requirement of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

The Office of Management and Budget has exempted this rule from the requirement of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Parts 180, 185, and 186

Administrative practice and procedures, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 20, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

1. In Part 180:

PART 180—[AMENDED]

a. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

b. Section 180.421 is amended by designating the existing text as paragraph (a) and by amending the table therein by amending the 0.01 ppm tolerance for apples to read "0.1", and by adding and alphabetically inserting the following entries for the raw agricultural commodities eggs and poultry fat, meat, and meat byproducts, and by adding new paragraph (b), to read as follows:

§ 180.421 Fenarimol; tolerances for residues.

(a) * * *

Commodity	Parts per million
Apples	0.1
Eggs	0.01
Poultry, fat	0.01
Poultry, meat	0.01
Poultry, mbyp	0.01

(b) A tolerance is established for combined residues of the fungicide fenarimol [alpha(2-chlorophenyl)-alpha-(4-chlorophenyl)-5-pyrimidinemethanol] and its metabolites, [alpha-(2-chlorophenyl)-alpha-(4-chlorophenyl)-1,4-dihydro-5-pyrimidinemethanol and 5-[(2-chlorophenyl) (4-chlorophenyl) methyl]-3,4-dihydro-4-pyrimidinol measured as the total of fenarimol and 5-[(2-chlorophenyl)-(4-chlorophenyl) methyl]pyrimidine (calculated as fenarimol), in or on grapes at 0.2 part per million.

2. In Part 185:

PART 185—[AMENDED]

a. The authority citation for Part 185 continues to read as follows:

Authority: 21 U.S.C. 346.

b. By adding new § 185.3200, to read as follows:

§ 185.3200 Fenarimol.

Tolerances are established for combined residues of the fungicide fenarimol [alpha-(2-chlorophenyl)-alpha-(4-chlorophenyl)-5-pyrimidinemethanol] and its metabolites, alpha-(2-chlorophenyl)-alpha-(4-chlorophenyl)-1,4-dihydro-5-pyrimidinemethanol and 5-[(2-chlorophenyl) (4-chlorophenyl)methyl]-3,4-dihydro-4-pyrimidinol measured as the total of fenarimol and 5-[(2-chlorophenyl)-(4-chlorophenyl) methyl]pyrimidine (calculated as fenarimol), in or on the following food additive commodities:

Commodities	Parts per million
Grape juice	0.6
Raisins	0.6

3. In Part 186:

PART 186—[AMENDED]

a. The authority citation for Part 186 continues to read as follows:

Authority: 21 U.S.C. 346.

b. By amending § 186.3200 by designating the existing text as paragraph (a), and revising the table (by amending the 0.2 ppm tolerance entry therein for apple pomace (wet and dry) to read "2.0"), and by adding new paragraph (b), to read as follows:

§ 186.3200 Fenarimol.

(a) * * *

Commodities	Parts per million
Apple pomace (wet and dry)	2.0

(b) Tolerances are established to permit the combined residues of the

fungicide fenarimol [alpha-(2-chlorophenyl)-alpha-(4-chlorophenyl)-5-pyrimidinemethanol] and its metabolites, alpha(2-chlorophenyl)alpha-(4-chlorophenyl)-1,4-dihydro-5-pyrimidinemethanol and 5[(2-chlorophenyl) (4-chlorophenyl)methyl]-3,4-dihydro-4-pyrimidinol measured as the total of fenarimol and 5-[(2chlorophenyl)-(4-chlorophenyl)methyl]pyrimidine (calculated as fenarimol) in or on the following feed additive commodities:

Commodities	Parts per million
Grape pomace (wet & dry).....	2.0
Raisin waste.....	3.0

[FR Doc. 88-25445 Filed 11-2-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-547; RM-6053]

Radio Broadcasting Services; Kelso, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 233A to Kelso, Washington, as that community's first FM service, at the request of P-N-P Broadcasting, Inc. A site restriction of 6.8 kilometers (4.2 miles) west of the community, at coordinates 40-09-27 and 122-59-29, is required. In addition, Canadian concurrence has been obtained. With this action, this proceeding is terminated.

DATES: Effective December 12, 1988. The window period for filing applications will open on December 13, 1988, and close on January 12, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-547, adopted August 31, 1988, and released October 27, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended under Washington, by adding Channel 233A at Kelso.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau

[FR Doc. 88-25460 Filed 11-2-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-43; RM-6119]

Radio Broadcasting Services; La Grande, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Grande Radio, Inc., substitutes Channel 254C2 for Channel 252A at La Grande, Oregon, and modifies its license for Station KKUC(FM) to specify operation on the higher powered channel. Channel 254C2 can be allotted to La Grande in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction and can also be used at the site 12.5 kilometers (7.8 miles) north of the community specified by the petitioner. The coordinates for this allotment are North Latitude 45-26-15 and West Longitude 118-05-27. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 12, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-43, adopted September 30, 1988, and released October 26, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the FM Table of Allotments for La Grande, Oregon, is amended by deleting Channel 252A and adding Channel 254C2.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division Mass Media Bureau.

[FR Doc. 88-25459 Filed 11-2-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-130; RM-6195]

Radio Broadcasting Services; Old Forge, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Ross Broadcasting Company, allots Channel 231A to Old Forge, New York, as the community's second local FM service. Channel 231A can be allotted to Old Forge in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 43-42-42 and West Longitude 74-58-24. Canadian concurrence has been received. With this action, this proceeding is terminated.

DATES: Effective December 12, 1988. The window period for filing applications will open on December 13, 1988, and close on January 12, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-130, adopted September 30, 1988, and released October 27, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also

be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the FM Table of Allotments for New York is amended by revising the entry for Old Forge to add Channel 231A.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division Mass Media Bureau.

[FR Doc. 88-25457 Filed 11-2-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-129; RM-6196]

Radio Broadcasting Services; Bridgeport, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Programmed Communications, Inc., allots Channel 258A to Bridgeport, New York, as the community's first local FM service. Channel 258A can be allotted to Brideport in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.0 kilometers (1.9 miles) east to avoid a short-spacing to Station WOKW, Channel 260B, Cortland, New York. The coordinates for this allotment are North Latitude 43-09-22 and West Longitude 75-55-58. Canadian concurrence has been received. With this action, this proceeding is terminated.

DATES: Effective December 12, 1988. The window period for filing aplications will open on December 13, 1988, and close on January 12, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-129, adopted September 30, 1988, and released October 26, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the FM Table of Allotments for New York is amended by adding the following entry, Bridgeport, Channel 258A.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-25456 Filed 11-2-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-178; RM-5534]

Radio Broadcasting Services; Five Points, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Entertainment Communications, Inc., allots Channel 293A to Five Points, Florida, as the community's first local FM service. After the adoption of the *Notice of Proposed Rule Making* in this proceeding, but prior to its release, a timely filed counterproposal was filed by Casey Broadcasting Co., in MM Docket 87-77, 2 FCC Rcd 2033 (1987), requesting, among other things, the substitution of Channel 271A for Channel 289A at Watertown, Florida. Since Watertown and Five Points are separated by less than the required 105 kilometers for co-channel Class A allotments, the two proposals are mutually exclusive. However, it was found that Channel 293A could be allotted to Five Points and thus avoid a delay in providing the community with its first local FM service. Channel 293A can be allotted to Five Points in compliance with the Commission's distance separation requirements with a site restriction of 4.1 kilometers (2.5 miles) northwest to avoid a short-spacing to Station WEAC-FM, Channel 292A, Starke, Florida. The coordinates for this allotment are North Latitude 30-13-47 and West Longitude 82-40-30. With this action, this proceeding is terminated.

DATES: Effective December 12, 1988. The window period of filing applications will be open on December 13, 1988, and closed on January 12, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-178, adopted October 6, 1988, and released October 27, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the FM Table of Allotments for Florida is amended by adding the following entry, Five Points, Channel 293A.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-25455 Filed 11-2-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-41; RM-6144]

Radio Broadcasting Services; McArthur, OH

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Hometown Broadcasting of McArthur, Inc., allots Channel 254A to McArthur, Ohio, as the community's first local FM service. Channel 254A can be allotted to McArthur in compliance with the Commission's minimum distance separation requirements. The

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coordinates for this allotment are North Latitude 39–14–42 and West Longitude 82–28–48. Canadian concurrence has been received since McArthur is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective December 12, 1988. The window period for filing applications will open on December 13, 1988, and close on January 12, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–41, adopted September 30, 1988, and released October 28, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the FM Table of Allotments for Ohio is amended by adding the following entry, McArthur, Channel 254A.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–25458 Filed 11–2–88; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 53, No. 213
Thursday, November 3, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 919

[Docket No. AO–102–A8; FV–88–132]

Peaches Grown in Mesa County, Colorado; Hearing on Proposed Amendment of Marketing Agreement and Order No. 919, Both as Amended

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: Notice is hereby given of a public hearing to consider amending Marketing Agreement and Marketing Order No. 919 [7 CFR Part 919]. The marketing order, hereinafter referred to as the "order," regulates the handling of peaches grown in Mesa County, Colorado.

The purpose of the hearing is to receive evidence on proposals to amend provisions of the order. The principal proposals would: (1) Authorize regulation of shipments of fresh peaches within the State of Colorado as well as shipments to locations outside of the State; (2) change the name and composition of the Administrative Committee and the committee nomination procedures; (3) limit the tenure of committee members to six consecutive years and specify two-year terms of office for all members and alternate members; (4) authorize the committee to nominate persons to fill vacancies if no candidate is chosen at a nomination meeting or if an unexpected vacancy occurs; (5) authorize production research projects; (6) authorize a late payment charge on past due assessments; and (7) require a referendum every eight years to determine whether growers favor continuance of the order. These proposals were submitted by the Administrative Committee. The proposals are intended to improve the administration and functioning of the marketing order.

DATE: The hearing will begin at 9:30 a.m., November 16, 1988.

ADDRESS: The hearing will be held at the Palisade Veterans Memorial Community Center, 120 East Eighth Street (Main Street and Highway 6), Palisade, Colorado 81526.

FOR FURTHER INFORMATION CONTACT: Copies of this notice of hearing may be obtained from George J. Kelhart, Section Head, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone: (202) 475–3919, or Joseph C. Perrin, Officer-In-Charge, Northwest Marketing Field Office, Green-Wyatt Federal Building, 1220 SW Third Avenue, Room 369, Portland, Oregon 97204, telephone: (503) 221–2724.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291 and Departmental Regulation 1512–1. The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 6601 *et seq.*], governing proceedings to formulate marketing agreements and marketing orders [7 CFR Part 900].

The Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], effective January 1, 1981, applies, and seeks to ensure that, within the statutory authority of a program, the regulatory and reporting requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the reporting requirements and the probable economic impact of the proposals on small businesses.

Except for the last proposal on conforming changes which is submitted by the Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, the proposals have been submitted by the Administrative Committee. The committee works with the Department in administering the marketing agreement and order. These proposals have been widely discussed within the Colorado peach industry but have not received the approval of the Secretary of Agriculture.

The public hearing is for the purposes of: (1) Receiving evidence about the economic and marketing conditions which relate to the proposed amendments of the marketing agreement and order and to any appropriate modifications thereof; (2) determining whether there is a need for the proposed amendments to the marketing agreement and order; and (3) determining whether the proposed amendments or appropriate modifications thereof will tend to effectuate the declared policy of the Act.

All persons wishing to submit written material in evidence at the hearing should be prepared to submit four copies of such material at the hearing and have any prepared testimony available for presentation at the hearing.

From the time this hearing notice is issued and until the issuance of a final decision in this proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, Agricultural Marketing Service; Office of the General Counsel, except Regional Attorneys; and the Fruit and Vegetable Division, Agricultural Marketing Service.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

List of Subjects in 7 CFR Part 919

Marketing agreements and orders, Peaches, Colorado.

1. The authority citation for 7CFR Part 919 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Testimony is invited on the following proposals or appropriate modifications of such proposals:

PART 919—PEACHES GROWN IN MESA COUNTY, COLORADO

Proposals submitted by the Administrative Committee:

Proposal No. 1:

Amend § 919.4 to read as follows:

§ 919.4 Production area.

"Production area" means all territory included within Mesa County, Colorado.

Proposal No. 2:

Add a new § 919.4a to read as follows:

§ 919.4a Peaches.

"Peaches" means all varieties of peaches, grown in the production area, classified botanically as Prunus persica.

Proposal No. 3:

Amend § 919.5 to read as follows:

§ 919.5 Committee.

"Committee" means the Colorado Peach Administrative Committee established pursuant to the provisions of this subpart.

Proposal No. 4:

Amend § 919.6 to read as follows:

§ 919.6 Producer.

"Producer" is synonymous with "grower" and means any person engaged in growing peaches for market in fresh form in the production area, and who has a proprietary interest therein.

Proposal No. 5:

Amend § 919.7 to read as follows:

§ 919.7 Handler.

"Handler" is synonymous with "shipper" and means any person (except a common or contract carrier of peaches owned by another person) who, as owner, agent, or otherwise, handles peaches, or causes peaches to be handled as defined in § 919.9.

Proposal No. 6:

Amend § 919.9 to read as follows:

§ 919.9 Handle.

"Handle" is synonymous with "ship" and means to pack, sell, consign, transport, offer for transportation, or ship peaches in fresh form by any means whatsoever in the current of commerce within the production area or between the production area and any points outside thereof: *Provided,* That the term "handle" shall not include the transportation within the production area of peaches from the orchard where grown to a packing facility located within such area for preparation for market.

Proposal No. 7:

Amend § 919.10 to read as follows:

§ 919.10 Fiscal period.

"Fiscal period" is synonymous with fiscal year and means the 12-month period beginning and ending on the dates as recommended by the committee and approved by the Secretary.

Proposal No. 8:

Amend § 919.11 to read as follows:

§ 919.11 District.

"District" means any one of the geographical areas into which the production area is divided as recommended by the committee and approved by the Secretary.

Proposal No. 9:

Add a new § 919.12 to read as follows:

§ 919.12 Grade.

"Grade" means any one of the officially established grades of peaches as defined and set forth in the United States Standards for Peaches (§§ 51.1210–51.1223 of this title) or any amendment, or modification recommended by the committee and approved by the Secretary.

Proposal No. 10:

Add a new § 919.13 to read as follows:

§ 919.13 Size.

"Size" means the smallest diameter, measured through the center of the peach, at right angles to a line running from the stem to the blossom end, or such other specifications as may be recommended by the committee and approved by the Secretary.

Proposal No. 11:

Amend the center heading "Administrative Committee" and § 919.20 to read as follows: Colorado Peach Administrative Committee.

§ 919.20 Establishment and membership.

(a) A Colorado Peach Administrative Committee is hereby established consisting of nine members, each of whom shall have an alternate. The provisions of this part applicable to number, nomination, eligibility, qualification, and selection of the members shall also apply to the number, nomination, eligibility, qualification, and selection of the alternate members. Five (5) of the members, one for each district established pursuant to § 919.11 or modified pursuant to § 919.22(b), shall represent and be selected from producers or officers or employees of producers and be referred to as "producer members"; one (1) member shall represent and be selected from the cooperative marketing association of producers, and be a member or director, officer, or employee of such an association exercising a supervisory or managerial function for that association, and be referred to as a "cooperative handler member"; and three (3) members shall represent and be selected from handlers or producers who are also handlers or directors, officers, or employees exercising supervisory or managerial functions of handlers, not affiliated with the cooperative marketing association of producers, and be referred to as "independent handler members." The members of the committee and their respective alternates shall be nominated in accordance with the provisions of § 919.21.

(b) Every two years the committee, with the approval of the Secretary, may revise the composition of the committee and reapportion the committee membership among industry groups pursuant to § 919.22.

Proposal No. 12:

Amend § 919.21 to read as follows:

§ 919.21 Nomination and selection.

(a) Nominations from which the Secretary may select the members of the committee and their respective alternates may be made in the following manner:

(1) The committee shall hold or cause to be held meetings of producers and handlers not less than 45 days prior to the expiration date of the terms of office or the date in which vacancies otherwise occur in the producer or independent handler member positions.

(2) At each such meeting at least one nominee shall be nominated by producers pursuant to paragraph (b) of this section, any by independent handlers pursuant to paragraph (d) of this section, for each member or alternate member position to be filled. Such nominations may be by ballot or by motion at the option of those present in voting capacity. The person receiving the highest number of votes shall be the nominee for each position to be filled. Proxy voting shall be prohibited.

(b) Nominations of producer members and their respective alternates shall be made at meetings of producers in each district, at such times and places as the committee shall designate. Only producers, including duly authorized officers or employees of corporate producers, who are present at such nomination meetings may participate in the nomination and election of nominees. Each producer shall be entitled to cast only one vote for each nominee to be elected in the district that producer produces peaches. No grower shall participate in the election of nominees in more than one district in any one fiscal year.

(c) Nominations of cooperative handler members and their respective alternates shall be made as follows:

(1) When there is only one cooperative marketing association, that association may nominate its representatives in any manner as the members of that association deem appropriate; and

(2) when there is more than one cooperative marketing association, and there is a lack of agreement, the vote for each position shall be weighted by the volume of peaches each association acquired from producers and handled during the preceding fiscal period.

(d) Nominations of independent handler members and their respective alternates shall be made at a meeting of such persons at such time and place as the committee shall designate. Only independent handlers, including duly authorized officers or employees of such handlers present at such nomination meeting, may participate in the nomination and election of nominees. Each independent handler shall be entitled to cast only one vote for each nominee to be elected.

(e) The committee, with the approval of the Secretary, may issue rules and regulations necessary to carry out the provisions of this section or to change the procedures in this section in the event they are no longer practical.

(f) In the event that nominees for all available positions are not provided by the aforesaid procedures, then such unfilled positions shall be treated as vacancies and the provisions of § 919.29 shall apply.

Proposal No. 13:

Amend § 919.22 to read as follows:

§ 919.22 Reapportionment of committee and reestablishment of districts.

(a) The committee may recommend, and pursuant thereto the Secretary may approve, reapportioning producer, cooperative marketing association, and independent handler member representation on the committee to reflect changes in the relative importance of these segments of the industry, and, if necessary, the size of the committee may be increased or decreased; the ratio between grower and handler members including their alternates may be changed; and the industry groups represented on the committee may be changed. Any such changes shall reflect, insofar as practicable, structural changes within the peach industry and shifts in peach production within the production area.

(b) The committee, with the approval of the Secretary, may redefine the districts into which the production area is divided, increase or decrease the number of districts, and reapportion representation among the various districts: *Provided,* That in recommending any such changes, the committee shall consider (a) the relative importance of production and the number of growers in each district, (b) the geographic locations of the producing districts and how the changes would affect the efficiency of administering this part, and (c) other relevant factors.

Proposal No. 14:

§ 919.23 [Removed and Reserved].

Remove and reserve § 919.23.

Proposal No. 15:

§ 919.24 [Removed and Reserved].

Remove and reserve § 919.24.

Proposal No. 16:

Amend § 919.25 to read as follows:

§ 919.25 Failure to nominate.

In the event the committee fails to report nominations to the Secretary in the manner specified in § 919.21 at least 30 days prior to the beginning of the term of office, the Secretary may select the members and alternate members without nomination. Such selections shall be from the groups and in the numbers specified pursuant to this subpart.

Proposal No. 17:

Amend § 919.26 to read as follows:

§ 919.26 Qualification by members and alternates.

Each person to be selected by the Secretary as a member or as an alternate member of the committee shall, prior to selection, qualify by filing a written background and acceptance statement advising the Secretary that that person agrees to serve in the position for which nominated for selection.

Proposal No. 18:

Amend § 919.27 to read as follows:

§ 919.27 Term of office.

(a) The term of office of each member and alternate member of the committee shall be for two years beginning January 1 and ending December 31, or such other beginning and ending dates as recommended by the committee and approved by the Secretary: *Provided,* That members and alternate members of the committee serving immediately prior to the effective date of this amended subpart shall serve on the committee as initial members until their successors have qualified and been selected: *And provided further,* That a portion of the members and alternates of the new committee under the amended order shall be selected for one-year terms so that approximately one-half of the members and alternates may be replaced each year: *And Provided further,* That such terms may be shorter than specified if the committee composition is changed pursuant to § 919.22.

(b) Committee members and alternates shall serve during the term of office for which they have qualified and are selected, and until their successors have qualified and are selected: *Provided,* That no member shall serve more than three consecutive terms as member.

Proposal No. 19:

Amend § 919.29 to read as follows:

§ 919.29 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the committee to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor for the unexpired term of such member or alternate member of the committee shall be nominated and selected in the manner specified in §§ 919.21 and 919.28: *Provided,* That the committee may in its discretion submit its recommendation to the Secretary of a nominee eligible to serve in accordance with the requirements specified in § 919.20. If the vacancy is in a member position, the committee shall recommend appointment of the alternate member if that person is willing to serve in that position. In the case of a declination to serve or to fill an alternate member vacancy, the committee's recommended nominee for a producer member or alternate producer member position to represent a particular district shall be a grower recommended to the committee by the incumbent producer from that particular district; the recommended nominee for a handler member or alternate handler member position representing the cooperative marketing association shall be a person recommended to the committee by the cooperative marketing association with which the former member or employee was associated; and the recommended nominee for an independent handler member or alternate independent handler member position shall be a person recommended to the committee by the incumbent independent handlers. If the committee's recommendation to fill such vacancy is

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not submitted to the Secretary within 45 days after such vacancy occurs, the Secretary may fill such vacancy without regard to nomination.

Proposal No. 20:

Amend § 919.30 to read as follows:

§ 919.30 Compensation and expenses.

The members and alternate members of the committee shall serve without salary but may be compensated for attendance at meetings at a rate not to exceed $10 per meeting. The amount of compensation may be adjusted upon a recommendation by the committee and approval by the Secretary. Such members and alternates may also be reimbursed for reasonable expenses necessarily incurred by them in the performance of duties, specifically assigned by the committee, other than attendance at committee meetings.

Proposal No. 21:

§ 919.31 [Amended].

Amend § 919.31 by changing the words "Administrative Committee" in the first sentence to "committee."

Proposal No. 22:

Amend § 919.32 by changing the words "Administrative Committee" in the first sentence, paragraphs (b), (h), (j), and (k) to "committee," revising paragraph (d), and removing paragraph (l) to read as follows:

§ 919.32 Duties.

* * * * *

(d) Prepare and submit a marketing policy pursuant to § 919.50.

* * * * *

Proposal No. 23:

Amend § 919.33 to read as follows:

§ 919.33 Procedure.

(a) A majority of all members of the committee shall be necessary to constitute a quorum or to pass any motion or approve any committee action.

(b) Each committee may provide for the members thereof, including the alternate members when acting as members, to vote by mail, telegraph, telephone, or other means of communication, provided that any such vote cast orally shall be confirmed promptly in writing. If any assembled meeting is held all votes shall be cast in person.

Proposal No. 24:

§ 919.34 [Amended]

Amend § 919.34 by changing the words "Administrative Committee" in the first sentence to "committee."

Proposal No. 25:

§ 919.35 [Amended]

Amend § 919.35 by changing the words "Administrative Committee" in paragraphs (a) and (b) to "committee."

Proposal No. 26:

Amend § 919.40 to read as follows:

§ 919.40 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by such committee for its maintenance and functioning under this part during the then current fiscal year. The committee shall prepare, and submit to the Secretary, a proposed budget of expenses and a proposed rate of assessment for the then current fiscal year. The funds to cover such expenses shall be acquired by the levying of assessments as provided in § 919.41. For projects conducted pursuant to § 919.60, other funds approved by the Secretary may also be used.

Proposal No. 27:

Amend § 919.41 by designating that paragraph as "(a)", changing the words "Administrative Committee" in the first sentence to "committee", and adding a new paragraph "(b)" to read as follows:

§ 919.41 Assessments.

* * * * *

(b) The committee may impose a late payment charge on any handler who fails to pay any assessment within the time prescribed by the committee. In the event the handler thereafter fails to pay the amount outstanding, including the late payment charge, within the prescribed time, the committee may impose an additional charge in the form of interest on such outstanding amounts. Such rate of interest shall be added to the bill monthly until the delinquent handler's assessment plus applicable interest and late payment charges have been paid. The rate of such charges shall be prescribed by the committee, with the approval of the Secretary.

Proposal No. 28:

§ 919.43 [Amended]

Amend § 919.43 by changing the words "Administrative Committee" in the first sentence to "committee."

Proposal No. 29:

Amend § 919.50 to read as follows:

§ 919.50 Marketing policy.

Each marketing season, prior to or at the same time as recommendations are made pursuant to § 919.51, the committee shall prepare and submit to the Secretary a report setting forth its marketing policy for the ensuring season. Additional reports shall be submitted if it is deemed advisable by the committee to change its marketing policy because of changes in the demand or supply situation with respect to peaches. The committee shall maintain and make available in the committee office a copy of these marketing policies, and any revisions thereof, for the examination by growers and handlers. In determining each such marketing policy, the committee shall give due consideration to the following:

(a) The estimated total production of peaches within the production area;

(b) The expected general quality and size of peaches in the production area;

(c) The expected demand conditions for peaches in different market outlets;

(d) The expected shipments of peaches from other production areas;

(e) Anticipated marketing problems;

(f) Supplies of competing commodities;

(g) Trend and level of consumer income;

(h) Establishing and maintaining such orderly marketing conditions for peaches as will be in the public interest;

(i) The type of regulations expected to be recommended during the season; and

(j) Other relevant factors having a bearing on the marketing of peaches.

Proposal No. 30:

Amend § 919.51 to read as follows:

§ 919.51 Recommendations for regulation.

(a) Whenever the committee deems it advisable to regulate, during any period or periods, the shipment of one or more varieties of peaches by grades or sizes, or both, or by minimum standards of quality or maturity, or both, it shall so recommend to the Secretary.

(b) At the time of submitting each such recommendation for the regulation by grades, sizes, minimum standards of quality or maturity, or any combination thereof the committee shall furnish to the Secretary, in addition to all pertinent data and information on which it acted in making such recommendation, such other data and information as the Secretary may request. The committee shall promptly give adequate notice to handlers and producers of each such recommendation.

Proposal No. 31:

Amend § 919.52 to read as follows:

§ 919.52 Establishment of regulation.

Whenever the Secretary finds from the recommendations and information submitted by the committee, or from other available information, that such regulation would be in the public interest and tend to effectuate the declared policy of the Act, the Secretary shall regulate the handling of peaches in the manner specified herein. Such regulation may limit during any period or periods the shipments of any particular grade, size, quality, or maturity, or any combination thereof, of any variety or varieties of peaches grown in the production area. The Secretary shall promptly notify the committee of each such regulation and the committee shall promptly give adequate notice thereof to handlers and producers.

Proposal No. 32:

§ 919.53 [Amended]

Amend § 919.53 by changing the words "Administrative Committee" in paragraphs (a), (e), and (f) to "committee."

Proposal No. 33:

§ 919.54 [Amended]

Amend § 919.54 by changing the words "Administrative Committee" in the last sentence to "committee."

Proposal No. 34:

§ 919.55 [Amended]

Amend § 919.55 by changing the words "Administrative Committee" in the first sentence to "committee."

Proposal No. 35:

Amend § 919.60 to read as follows:

§ 919.60 Research and development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research or marketing development projects designed to assist, improve, or promote the marketing, distribution, consumption, or efficient production of peaches. The expense of such projects shall be paid from funds collected pursuant to § 919.41, or other funds approved by the Secretary.

Proposal No. 36:

§ 919.65 [Amended]

Amend § 919.65 by changing the words "Administrative Committee" in the first sentence to "committee."

Proposal No. 37:

§ 919.66 [Amended]

Amend § 919.66 by changing the words "Administrative Committee" in the first sentence to "committee."

Proposal No. 38:

Add a new § 919.67 to read as follows:

§ 919.67 Verification of reports and records.

For the purpose of checking compliance with recordkeeping requirements and verifying reports filed by handlers, the Secretary and the committee, through its duly authorized employees, shall have access to any premises where peaches are held and, at any time during reasonable business hours, shall be permitted to examine any peaches held, and any and all records with respect to matters within the purview of this part. Handlers shall furnish labor necessary to facilitate such examinations at no expense to the committee. All handlers shall maintain complete records which accurately show the quantity of peaches held, sold, and shipped. The committee, with the approval of the Secretary, may establish the type of records to be maintained. Such records shall be retained by handlers for not less than two years subsequent to the termination of each fiscal period.

Proposal No. 39:

Add a new § 919.68 to read as follows:

§ 919.68 Confidential information.

All data or other information constituting a trade secret or disclosing a trade position, or business condition of a particular handler, shall be treated as confidential and shall at all times, be received by and kept in the custody and under the control of one or more designated employees of the committee. Information which would reveal the circumstances of a single handler shall be disclosed to no person other than the Secretary.

Proposal No. 40:

Amend § 919.71 by changing the words "Administrative Committee" in the last sentence of paragraph (c) to "committee" and revising the first sentence of paragraph (c) to read as follows:

§ 919.71 Peaches not subject to regulations.

* * * * *

(c) Peaches to any one person on any one conveyance during any one day if such peaches are not for resale and do not aggregate more than 19 bushels or an equivalent amount. * * *

Proposal No. 41:

Amend § 919.81 by revising paragraph (d) to read as follows:

§ 919.81 Termination.

* * * * *

(d) Within eight years of the effective date of the amendment of this paragraph the Secretary shall conduct a continuance referendum to ascertain whether continuance of this subpart is favored by producers. Subsequent referenda to ascertain continuance shall be conducted within every eight years thereafter. The Secretary may terminate the provisions of this part at the end of any fiscal period in which the Secretary has found that continuance of this subpart is not favored by producers who, during a representative period determined by the Secretary, have been engaged in the production for market of peaches in the production area. Such termination shall be announced on or before February 1 of the current marketing period.

Proposal No. 42:

§ 919.82 [Amended]

Amend § 919.82 by changing the words "Administrative Committee" in paragraphs (a), (b), and (d) to "committee".

Proposal No. 43:

§ 919.84 [Amended]

Amend § 919.84 by changing the words "Administrative Committee" in the first sentence to "committee."

Proposal submitted by the Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture. Make such changes as may be necessary to make the marketing agreement and order conform with any amendments thereto that may result from the hearing.

Dated: November 1, 1988.

J. Patrick Boyle,

Administrator.

[FR Doc. 88-25521 Filed 11-2-88; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

Rule on the Submission and Management of Records and Documents Related to the Licensing of a Geologic Repository for the Disposal of High-Level Radioactive Waste

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of proposing rulemaking.

SUMMARY: The Nuclear Regulatory Commission is proposing revisions to the Commission's Rules of Practice in 10 CFR Part 2 for the adjudicatory proceeding on the application for a license to receive and possess high-level radioactive waste at a geologic

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repository operations area pursuant to 10 CFR Part 60. The proposed revisions would establish the basic procedures for the licensing proceeding, including procedures for the use of the Licensing Support System, an electronic information management system, in the proceeding. The proposed revisions are based on the deliberations of the Commission's High-Level Waste Licensing Support System Advisory Committee. The Advisory Committee was composed of organizations representing the major interests likely to be affected by the rulemaking, and was established by the Commission pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 1, in September 1987.

DATES: The comment period expires December 5, 1988. Comments received after this date will be considered if it is practical to do so, but assurance of consideration is given only for comments filed on or before that date.

ADDRESSES: Submit written comments to: Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Francis X. Cameron, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–1623.

SUPPLEMENTARY INFORMATION:

Background

On August 5, 1987, the Commission announced (52 FR 29024) the formation of the High-level Waste Licensing Support System Advisory Committee ("negotiating committee") to develop recommendations for revising the Commission's Rules of Practice in 10 CFR Part 2 for the adjudicatory proceeding on the application for a license to receive and possess high-level radioactive waste ("HLW") at a geologic repository operations area ("HLW licensing proceeding"). The negotiating committee sought consensus on the procedures that would govern the HLW licensing proceeding, including the use of the Licensing Support System ("LSS"), an electronic information management system, in the HLW licensing proceeding. The objective of the negotiated rulemaking was to provide for the effective review of the U.S. Department of Energy (DOE) license application within the three-year time period required by section 114(d) of the Nuclear Waste Policy Act of 1982 (NWPA), as amended.

The LSS would contain the information supporting the DOE license application, as well as the potentially relevant documents generated by NRC and other parties to the licensing proceeding, in a standardized electronic format. All parties would then have access to this system. Because the relevant information would be readily available through access to the LSS, the initial time-consuming discovery process, including the physical production and on-site review of documents by parties to the HLW licensing proceeding, will be substantially reduced. The use of the LSS during the HLW licensing proceeding will provide for timely review of the DOE license application by—

—Providing comprehensive and early access to potentially relevant licensing information;
—Providing full text search capability of much of the potentially relevant licensing information; and
—Providing for the electronic transmission of the formal papers during the licensing proceeding.

The LSS is designed to provide for the entry of, and access to, potentially relevant licensing information as early as practicable before DOE submits the license application for the repository to the Commission. Early availability to potential parties is expected to facilitate preparation for the adjudicatory hearing, and also may assist in the early identification and resolution of licensing issues.

The Commission used the process of negotiated rulemaking to develop the proposed rule. In negotiated rulemaking, the representatives of parties who may be affected by a proposed rule, including the Commission, convene as a group over a period of time to attempt to reach consensus on the proposed rule. Where consensus is reached, it forms the basis for the Commission's proposed rule which is then issued for notice and comment. In establishing the negotiating committee, the Commission agreed to issue for comment any proposed rule resulting from a consensus of the negotiating committee unless the Commission found that the proposed rule was inconsistent with its statutory authority or was not appropriately justified.

In the December 18, 1986, Federal Register Notice announcing the Commission's intent to conduct a negotiated rulemaking (51 FR 45338), the Commission identified several interests that might be affected by this particular rulemaking. These interests included Indian Tribes, State governments, local governments, and public interest groups affected by repository siting, utilities, ratepayers, and Federal agencies such as the NRC and DOE. The Commission stated that it would consider parties for membership on the negotiating committee on the basis of: (1) Whether they have a direct, immediate, and substantial stake in the rulemaking, (2) whether they may be adequately represented by another party on the committee, and (3) whether their participation is essential to a successful negotiation. Based on these criteria, the Commission invited a number of groups to participate in the negotiated rulemaking. The first meeting of the negotiating committee was held in September, 1987. The negotiating committee completed its deliberations in July, 1988.

On February 5, 1988 (53 FR 3404), the Commission revised the membership of the negotiating committee to reflect the changes in the HLW siting process due to the enactment of the Nuclear Waste Policy Amendments Act of 1987 (Pub. L. No. 100–203). The primary effect of the Act was to focus the Department of Energy site characterization efforts on a single site in Nevada to determine its suitability for a geologic repository. Efforts in regard to other first round sites for a geologic repository and the search for a second round geologic repository were terminated. With this change in the statutory framework, the Commission revised the membership of the negotiating committee to reflect the focus on characterizing the Nevada site.

The members of the revised negotiating committee are—

—DOE
—NRC
—State of Nevada
—A coalition of Nevada local governments
—A coalition of industry groups (Edison Electric Institute/Utility Nuclear Waste Management Group/U.S. Council for Energy Awareness)
—National Congress of American Indians
—A coalition of national environmental groups (Environmental Defense Fund/Sierra Club/Friends of the Earth)

The Commission emphasizes that the groups who were invited to participate as members of the negotiating committee were those who might be broadly affected by the LSS rulemaking. Those groups do not necessarily correspond to the groups or persons who might have standing to participate as a party to the Commission's HLW licensing proceeding.

In accordance with the Commission's regulations in 10 CFR Part 7, the Commission chartered the negotiating committee as an advisory committee pursuant to the Federal Advisory Committee Act (FACA), 5 U.S.C. App.1. Under these regulations, advance notice of negotiating committee meetings was provided in the Federal Register, the meetings of the full negotiating committee were open to the public, members of the publice were offered the opportunity to submit written statements or make oral comments to the committee, and detailed minutes of each meeting were made available for public review and copying.

The Commission retained the Conservation Foundation, a nonprofit organization with expertise in the area of mediation and negotiated rulemaking, to assist the Commission in facilitating the meetings of the negotiating committee. Mr. Howard S. Bellman of the Conservation Foundation served as the senior facilitator for the negotiated rulemaking, assisted by Timothy J. Mealey, also of the Conservation Foundation, and Matthew A. Low of TLI Systems. The facilitators chaired the negotiating sessions, assisted individual parties in forming and presenting their positions, and offered suggestions and alternatives to help the negotiating committee reach consensus.

The negotiating committee established detailed procedures for conducting committee meetings, including a protocol specifying that the committee would operate by consensus. "Consensus" was defined as no dissenting vote being cast by any committee member on a decision before the committee for approval. All members of the negotiating committee, with the exception of the industry coalition, agreed to the draft negotiating text of the proposed rule that was discussed by the negotiating committee at its final meeting ("final negotiating text"). Under the committee protocols, the dissenting vote by the industry precluded consensus on the proposed rule.

The industry coalition's concerns focus on the ability of the LSS, as it was conceived in the final negotiating text, to meet the NWPA timeframe for a Commission decision on the construction authorization for the repository. Consequently, industry coalition representatives argued that the cost of the LSS is unjustified.

The Commission believes that the DOE cost estimate of approximately $200 million for the LSS over a ten-year life cycle would at least include some of the costs that would be incurred by DOE and NRC as part of its normal records management process for repository licensing apart from the LSS. Furthermore, even if the $200 million estimate is attributed solely to litigation support, it is the Commision's belief that these costs are outweighed by the benefits of the proposed rulemaking. The DOE cost-benefit analysis indicates that approximately $200 million would be saved for each year of licensing delay that is estimated due to the LSS. The proposed rule, if implemented, sets in place a procedure for hearings that will allow the Commission to reach a decision on the construction authorization within the timeframe specified in section 114(d) of the NWPA. However, even if the process were to take up to one-third longer than the proposed rule envisions, the LSS would still result in eliminating substantial time from current licensing practice. Under these circumstances, the benefits of the draft proposed rule would exceed the costs of implementing the Licensing Support System. In this regard, Commissioner Roberts specifically requests public comment on alternatives to the Licensing Support System that would lead to a further reduction in the time for licensing the repository.

The Commission is publishing the final negotiating text as a proposed rule for public comment. The final negotiating text received the endorsement of all participants on the negotiating committee with the exception of the industry coalition. Those participants who approved the final negotiating text are DOE, The State of Nevada, the coalition of Nevada local governments, the National Congress of American Indians, the coalition of national environmental groups, and the NRC staff. The proposed rule is carefully drafted with the full participation of people with strong experience and background in NRC practice. It reflects the concerns of the major interests affected by the rulemaking. In fact, the industry coalition, although dissenting on the final negotiating text, fully participated in the drafting of the final negotiating text, and was complimentary concerning the effectiveness of the negotiating process.

The proposed rule is being issued for a thirty-day comment period. The participants on the negotiating committee who approved the final negotiating text have agreed to refrain from commenting negatively on the final negotiating text. The industry coalition, as well as any non-participants in the negotiation, are free to comment critically on any aspect of the proposed rule, including cost aspects of the LSS. Consistent with the negotiating committee's function to advise the Commission on the LSS rulemaking, the staff intends to submit the comments on the proposed rule to the negotiating committee for review and comment, at which time participants who approved the final negotiating text would be afforded a full opportunity to comment and respond to any criticism or potential revision of the text. They would also be free to reassess their positions on the LSS in light of any change in the NRC position with regard to the rulemaking due to comments on the proposed rule.

DOE has assumed the responsibility for designing the LSS consistent with the requirements of the proposed rule, and the LSS is now in the preliminary design stage. DOE has issued a series of reports that are intended to provide the basis for determining the LSS design specifications. (*See* U.S. Department of Energy, "Licensing Support System Preliminary Needs Analysis" February 1988; "Licensing Support System Preliminary Data Scope Analysis" March 1988; "Licensing Support System Conceptual Design Analysis" May 1988; Licensing Support System Benefit-Cost Analysis" July 1988. Copies of these documents are available from F.X. Cameron, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Telephone: (301) 492–1623. When access to the LSS becomes available (currently projected for January, 1991), the NRC, as LSS Administrator, will be responsible for management and operation of the LSS.

The participants on the negotiating committee are currently providing information to DOE on the design of the LSS, and will continue to provide comments to DOE on the LSS design until the LSS Advisory Committee has been appointed by the Commission pursuant to proposed § 2.1011(e)(2). The LSS Advisory Committee will be composed of the State of Nevada, the coalition of affected units of local government in Nevada that served on the negotiating committee, DOE, NRC, the National Congress of American Indians, the coalition of national environmental groups that served on the negotiating committee, and other members as the Commission may from time-to-time designate. The LSS Advisory Committee will serve as an interim advisory group until the LSS Advisory Review Panel is established by the LSS Administrator.

In addition, the LSS Administrator will consult with DOE on the design and development of the LSS. It is anticipated that the NRC and DOE will enter into a Memorandum of Understanding that will set forth the detailed responsibilities of each agency in regard

to the LSS, and will provide for the coordination of these responsibilities.

The proposed rule would apply to the HLW licensing proceeding and would be used in connection with any hearings in that proceeding. In this regard, it may be useful to summarize the Commission's HLW licensing process. After the DOE license application to receive and possess waste at a geologic repository is docketed, the Commission's regulations in 10 CFR Part 60 provide for the Commission to review DOE's plans with respect to a geologic repository before the commencement of construction. Accordingly, DOE may not commence construction of a geologic repository unless it has first filed a license application and obtained the Commission's construction authorization. 10 CFR 60.3(b). A construction authorization is not itself a license, since it does not authorize possession or use of nuclear materials, but DOE's failure to apply for and obtain a construction authorization constitutes grounds for denial of the license that DOE would later need in order to receive high-level waste at the repository. Moreover, the Commission may, if necessary, issue orders to secure compliance with construction authorization conditions and to protect the integrity of the repository. Under 10 CFR 2.101(f)(8), a hearing is required on the issuance of a construction authorization. In order for the Commission to issue a construction authorization, the Commission must determine that the requirements of 10 CFR 60.31 have been met, including that the site and design comply with the performance objectives and criteria in Subpart E of 10 CFR Part 60.

The Commission's action on the construction authorization is part of the Commission's review of the application for a license to receive and possess waste at the repository. If the Commission does authorize construction, the Commission must later review, and approve or disapprove, the license application amendment to emplace waste at the repository. Under 10 CFR 2.105(a)(9), the Commission may authorize a hearing on the issue of emplacement of waste at the repository. In order for the Commission to issue the license to receive and possess waste at the repository, the Commission must determine that the requirements of 10 CFR 60.41 have been met, including that construction of the repository has been substantially completed in conformity with the license application, the provisions of the Atomic Energy Act, and the rules and regulations of the Commission.

The NWPA differentiates between an application for a construction authorization and an application for a license, whereas 10 CFR Part 60 refers solely to a license to receive and possess waste (to be filed prior to construction). The Commission considers this differentiation to lack any substantive significance. In the view of the Commission, the information it needs in order to be able to consider the issuance of a construction authorization is generally the same as will be needed prior to the issuance of a license to receive and possess HLW. For this reason, the Commission regulations call for the application to be as complete as possible.

The Proposed Rule

Section 2.1000 Scope of Subpart

The proposed rule establishes a new Subpart J in 10 CFR Part 2 setting forth the procedures that govern the Commission's HLW licensing proceeding, including the use of the LSS for the submission and management of documents in the proceeding. Generally, the procedures in the new Subpart take precedence over the provisions of general applicability in 10 CFR Subpart G. However, § 2.1000 cross-references any sections of general applicability in Subpart G that will continue to apply to the HLW licensing proceeding. The proposed rule applies only to the HLW proceeding, and does not apply to licensing proceedings for any other type of facility or activity licensed by the Commission. The rule will be applicable to all parties to the HLW licensing proceeding regardless of whether a particular party was a member of the negotiating committee.

Section 2.1001 Definitions

Section 2.1001 sets forth the definitions of terms used throughout Subpart J. These definitions will be discussed with the relevant sections of the proposed rule.

Section 2.1002 High-level Waste Licensing Support System

Proposed § 2.1002 describes the purpose and scope of the LSS. The LSS is intended to provide full text search capability of, or easy access to, the "documentary material" of DOE, NRC, other parties to the HLW licensing proceeding; government entities participating in the HLW proceeding as "interested governmental participants" under 10 CFR 2.715(c); persons who qualify as "potential parties" under proposed § 2.1006; and their contractors ("parties," "interested governmental participants," and "potential parties," will be collectively referred to hereinafter as "LSS participants"). LSS participants must ensure that their contractors, consultants, grantees, or other agents, comply with the applicable requirements of Subpart J.

For the purposes of the information that will be in the LSS, "documentary material" means any material or other information generated by or in the possession of an LSS participant that is relevant to, or likely to lead to the discovery of information that is relevant to, the licensing of the likely candidate site for a geologic repository. The identification of material that is within the universe of "relevant to, or likely to lead to the discovery of information that is relevant to, the licensing of the likely candidate site for a geologic repository" will be determined by the topical guidelines set forth later in this Supplementary Information. It is also the Commission's intent to issue these topical guidelines as an NRC Regulatory Guide. The Commission expects all LSS participants to make a good faith effort to identify the documentary material within the scope of proposed § 2.1003. However, a rule of reason must be applied to an LSS participant's obligation to identify all documentary material within the scope of the topical guidelines. For example, DOE will not be expected to make an exhaustive search of its archival material that conceivably might be within the topical guidelines but has not been reviewed or consulted in any way in connection with DOE's work on its license application. It is also anticipated that the LSS Advisory Review Panel established pursuant to proposed § 2.1011(e), in evaluating the implementation of the LSS, may make occasional recommendations to the Commission on whether particular categories of documentary material (e.g., those limited by date or subject) should still be included within the topical guidelines.

Although the topical guidelines will guide the selection of relevant information for entry into the LSS, they will not be used for the purpose of determining the scope of contentions that can be offered in the HLW proceeding under proposed § 2.1014. The scope of contentions will be governed by the Commission's authority under relevant statutes and regulations.

Proposed § 2.1002(d) specifies that Subpart J is not intended to affect any independent right of a potential party, interested governmental participant, or party to receive information or documents. These independent rights consist of statutory rights under such statutes as the Freedom of Information Act (FOIA), or the Nuclear Waste Policy Act, as amended, or rights derived from grant requirements such as those between DOE and the State of Nevada.

Section 2.1003 Submission of Material to the LSS

Proposed § 2.1003 sets forth the requirements for the submission of documentary material by LSS participants to the LSS Administrator for entry into the LSS. LSS participants, excluding DOE and NRC, must submit an ASCII file, a bibliographic header, and an image for all documents generated by the LSS participant or its contractor after the LSS participant gains access to the LSS pursuant to either proposed § 2.1008 or proposed § 2.1014. Submission of these documents must be made reasonably contemporaneous with their creation. For documents generated or acquired before the LSS participant gains access to the LSS, the LSS participant need only submit a header and an image for each document. The LSS Administrator will be responsible for entering these documents into the LSS in searchable full text. DOE and NRC, the generators of the largest volumes of documentary material, will be responsible for submitting to the LSS Administrator ASCII files, bibliographic headers and images of documents within the scope of the topical guidelines. The format criteria for the submission and acceptance of ASCII, images, and headers will be initially established by DOE in concert with the LSS Advisory Committee established pursuant to proposed § 2.1011(e)(2), to be later supplemented as necessary by the LSS Administrator in concert with the LSS Advisory Review Panel.

The submission requirements of proposed § 2.1003 generally apply only to final documents, e.g., a document bearing the signature of an employee of an LSS participant or its contractors. However, paragraphs (a) and (b) of proposed § 2.1003 also require the submission of "circulated drafts" for entry into the LSS. A "circulated draft" means a nonfinal document circulated for supervisory concurrence or signature and in which the original author or others in the concurrence process have non-concurred. The intent of this exception to the general rule on final documents is to capture those documents to which there has been an unresolved objection by the author or other person in the internal management review process (the concurrence process) of an LSS participant or its contractor. In effect, the Commission and the other government agencies who are LSS participants are waiving their deliberative process privilege for these circulated drafts. The objection or non-concurrence must be unresolved. Any draft documents to which such a formal, unresolved objection exists must be submitted for entry into the LSS. Although many of the LSS participants or their contractors do not have the same type of concurrence process as DOE and NRC, the Commission expects all LSS participants to make a good faith effort to apply the intent of this provision to their document approval process.

This requirement applies regardless of whether any final document ultimately emerges from the LSS participant's decision-making process. A determination not to issue a final document, or allowing a substantial period of time to elapse with no action being taken to issue a final document, shall be deemed to be the completion of the decision-making process. If a decision is made not to finalize a document to which there has been an objection, the draft of that document must be entered into the LSS after the decision-making process on the document has been completed, i.e., the requirements of proposed § 2.1003 do not require a LSS participant to submit a circulated draft to the LSS while the internal decision-making process is ongoing. In addition, under proposed § 2.1008(c), circulated drafts that are subject to withholding under a privilege or exception other than the deliberative process privilege (e.g., attorney work product), are not required to be submitted for entry in searchable full text to the LSS under proposed § 2.1003.

As a general rule, all documentary material is to be in the LSS in searchable full text. However, the proposed rule provides for exceptions to this general rule. Proposed § 2.1003(c) addresses graphic-oriented documentary material that is not appropriate for entry into the Licensing Support System in searchable full text. Graphic-oriented documentary material is material that is printed, scripted, handwritten, or otherwise displayed in hard copy form, and is capable of being captured in electronic image by a digital scanning device. Graphic-oriented material includes raw data, computer runs, computer programs and codes, field notes, laboratory notes, maps, and photographs which have been printed, scripted, handwritten or otherwise displayed in any hard copy form and which, while capable of being captured in electronic image by a digital scanning device, may be captured and submitted to the LSS Administrator in any form of image, along with a bibliographic header. Proposed § 2.1003(c) also addresses documentary material that is not suitable for entry into the Licensing Support System in either image or searchable full text. Such material shall be described in the Licensing Support System by a sufficiently descriptive bibliographic header. The timeframe for entry of graphic-oriented material, or material that is not suitable for entry in either image or searchable full text, will be established pursuant to the access protocols in proposed § 2.1011(d)(10). However, in any case, this type of documentary material must be entered into the LSS after the principal investigator decides that the data are in a usable form, including the completion of quality assurance procedures. The access protocol should ensure that any collection or "package" of documentary material, as the term is used in proposed § 2.1003(c)(3), which relates to a study, should be submitted reasonably contemporaneous with the completion of such a "package," including any quality assurance that may be required.

Proposed § 2.1005 sets forth categories of documents that are to be completely excluded from the LSS, and proposed § 2.1006 sets forth the categories of documents that may be withheld from entry into the LSS on the basis of a privilege or exception. The details of these provisions will be discussed below.

To ensure that progress is made in designing, developing and loading the LSS, proposed § 2.1003(h) provides for evaluations of DOE compliance with the requirements of proposed § 2.1003 at six month intervals. The DOE license application cannot be docketed under Subpart J, thus losing the benefits of Subpart J, unless the LSS Administrator certifies at least six months before the license application is submitted that DOE is in substantial compliance with the provisions of the Subpart. Although proposed § 2.1003(h)(1) requires the certification decision six months before submission of the DOE license application, the Commission anticipates that the LSS participants wil have access to the LSS well before the license application is submitted. The LSS Administrator's decision on DOE compliance may be reviewed by the Pre-License Application Licensing Board established pursuant to proposed § 2.1010, if the Board receives a properly filed petition. Under proposed § 2.1003(a)(2) and (b)(2), LSS participants are required to submit any documentary material generated or acquired before the LSS participant is given access to the LSS ("backlog"), no later than six months before the license

application for the repository is submitted. However, the Commission encourages LSS participants to submit this material for entry as soon as possible after they have been given access to the LSS.

In the event that the LSS Administrator cannot certify DOE compliance with Subpart J, DOE may either postpone the filing of the application until compliance is certified, or can file the license application for docketing under 10 CFR Part 2, Subpart G. In the latter event, the Commission would note that it will be unlikely to meet the three year NWPA timeframe for a decision on the issuance of a construction authorization, in the event of a contested adjudicatory proceeding. Although DOE may ultimately come into compliance with the provisions of Subpart J at some point after the license application has been docketed under Subpart G, the Commission may still not be able to certify that the statutory timeframe will be met. However, proposed § 2.1003(h)(3)(ii) does authorize the Commission to specify the extent to which Subpart J will apply if DOE later comes into compliance. The Commission is optimistic that the effective implementation of the rule proposed in this notice will allow the Commission to meet the schedule set forth in section 114(d) of the NWPA.

Section 2.1004 Amendments and Additions

This section provides for the addition to, and amendment of, records submitted by the LSS participants. The submitter has sixty days to verify whether a document has been entered correctly in the pre-license application phase, and five days to verify correct entry after the license application has been submitted. Any errors in entry discovered during the sixty and five day periods may be corrected by the submitter. After the time period for verification has run, any errors may not be corrected by revising the original document. Rather, the submitter must submit a corrected version to the LSS Administrator, with a separate bibliographic header. Both the bibliographic header for the revised document and the original document must note that two versions of the document are in the LSS.

Proposed § 2.1004 also addresses the issue of updates of documents that are already in the LSS. Updated pages must be submitted to the LSS Administrator for entry as a separate document with a separate bibliographic header. The bibliographic header of the original document must specify that an update is available. All the pages in a particular update will be entered as a single document.

Proposed § 2.1004(e) requires that any document that has been incorrectly excluded from the LSS must be submitted to the LSS Administrator for entry within two days of its identification by the LSS participant who is responsible for the submission of the document.

Section 2.1005 Exclusions

Proposed § 2.1005 establishes several categories of documents that do not have to be entered into the LSS, either under the requirements of proposed § 2.1003 or under the derivative discovery requirements of proposed § 2.1019. These exclusions include documents typically referred to as official notice material; reference books and text books; administrative materials such as general distribution cover memoranda, budget, finance, personnel, and procurement materials; press clippings and press releases; junk mail; and classified material. The scope of work on a procurement related to repository siting, construction, or operation, or the transportation of spent nuclear or high-level waste is not within the scope of these exclusions.

Section 2.1006 Privilege

The submission of documents to the LSS is subject to the traditional privileges from discovery recognized in NRC adjudicatory proceedings, as well as all the exceptions from disclosure contained in 10 CFR 2.790 of the Commission's regulations. These privileges and exceptions include the attorney-client privilege, the attorney work product privilege, the government's deliberative process exemption, protection for privileged or confidential commercial or financial information, and the protection of safeguards information. The Pre-License Application Licensing Board, pursuant to § 2.1010(b), will rule on any claims of withholding based on these privileges or exceptions. As in any NRC adjudicatory proceeding, the Board may rule that the release of privileged or excepted material is necessary to a proper decision in the proceeding, or may order the disclosure of a document under a protective order. Proposed § 2.1006(a) extends the deliberative process privilege normally available to federal government agencies to state and local governments and Indian Tribes. Safeguards information is to be protected under the provisions of 10 CFR 73.21. Subpart I of 10 CFR Part 2 will govern the protection and disclosure of any Restricted Data and National Security Information during the proceeding. The existence of any material of this type should be identified to the Licensing Board and the parties pursuant to 10 CFR 2.907 and is not subject to the requirements of proposed § 2.1003. Accordingly, no headers need be submitted for Subpart I information.

Section 2.1007 Access

Proposed § 2.1007 establishes the provisions for access to the LSS by the public and by LSS participants. In terms of public access, the NRC and DOE will provide public access terminals at their respective Public Document Rooms at headquarters in Washington, DC, at NRC regional offices, and at various locations in the vicinity of the likely candidate site for the repository. In the pre-license application phase, access to the LSS through these public access terminals will consist of full text search capability of the full headers for documents in the LSS. The NRC and DOE Public Document Rooms will provide access, consistent with current practice, to the paper copy of microfiche of the documents of that agency before access to the LSS is available (currently projected for January 1991). Once the LSS is operational, public access to the LSS headers will be available within the same timeframe that the headers and LSS documents are available to LSS participants. In addition, copies of specific DOE or NRC documents may be requested under the procedures of the agencies' Public Document Rooms and the FOIA regulations of the NRC, 10 CFR Part 9, or DOE, 10 CFR Part 1004. These regulations provide for a ten day response time to requests, 10 CFR 9.25(e) and 10 CFR 1004.5(d)(1), and the waiver of copying fees to qualified persons, 10 CFR 9.39 and 10 CFR 1004.9(a). Public access to the full text of all documents in the LSS, except for documents withheld from disclosure under proposed § 2.1006, shall be provided after the notice of hearing is issued for the HLW licensing proceeding. DOE and NRC will ensure that adequate terminal access facilities are provided at the public document rooms.

Remote access to the LSS from individual computer facilities will be available to LSS participants both during the pre-license application phase and after the notice of hearing has been issued. The cost of the computer facility and the telephone connect charge must be borne by the LSS participant. However, they will not be assessed a central processing unit (CPU) charge for access to the LSS. LSS participants will be able to file an electronic request for paper copies of LSS documents from their individual computer facilities, and also will be able to file an electronic request for a fee waiver when requesting paper copies of documents in the LSS. This waiver is currently available to qualified persons or groups seeking a fee waiver for copies of NRC documents who submit a written request to the Commission under the Commission's Freedom of Information Act (FOIA) regulations in 10 CFR Part 9. The criteria in 10 CFR 9.39 would be used to determine if the requestor should be granted a fee waiver. Proposed § 2.1007(c)(4) would authorize the Commission to grant a generic fee waiver to a qualifying LSS participant after the initial request for a fee waiver has been made.

Documents in the LSS will not be considered NRC agency records solely by virtue of the NRC being the LSS Administrator. However, any of those documents that were generated by or submitted to the NRC as part of the NRC's licensing responsibility for the repository will be NRC agency records. As noted above, documents considered agency records may be requested under a FOIA request to the NRC. Similarly, DOE records may be requested from DOE under a FOIA request, and the records of any other governmental entity that may be obligated to provide documents by virtue of a freedom of information statute (e.g., a State agency) may be requested. It is anticipated that the public availability of headers for LSS documents will facilitate freedom of information requests and responses.

Section 2.1008 Potential Parties

Proposed § 2.1008 establishes the procedures for a person becoming a potential party during the pre-license application phase, thereby gaining access to the LSS during this period. Upon a petition from an interested person, the Pre-License Application Licensing Board, established pursuant to proposed § 2.1010, will determine in accordance with proposed § 2.1008(c) if the person meets the criteria in proposed § 2.1008(b). These criteria consist of the factors for determining intervention status under proposed § 2.1014(c) or the criteria in 10 CFR 2.715 for interested governmental participation, both as evaluated in reference to the topical guidelines set forth below.

A grant of access to the LSS pursuant to proposed § 2.1008 before an application is filed does not carry a presumption that a potential party will be admitted as a party after an application is filed under § 2.1014 or as an interested governmental participant under 10 CFR 2.715. However, the Hearing Licensing Board will consider this as one factor in ruling on petitions for intervention under proposed § 2.1014(c). An LSS participant's access to the LSS obligates it to comply with the rergulations in Subpart J, including compliance with all orders of the Pre-License Application Licensing Board.

Section 2.1009 Procedures

Proposed § 2.1009 specifies the procedures each LSS participant must follow to ensure implementation of the requirements in Subpart J, including establishing procedures to ensure that documentary material is identified and submitted for entry into the LSS. Each LSS participant must identify a specific individual as the LSS point-of-contact. This individual must certify, at six month intervals, that all documentary material for which the LSS participant is responsible under this subpart has been identified and submitted to the LSS.

Section 2.1010 Pre-License Application Licensing Board

Proposed § 2.1010 establishes an NRC Pre-License Application Licensing Board to rule on requests for access to the LSS during the pre-license application phase, and to resolve disputes over the entry of documents and the development and implementation of the LSS by DOE and the LSS Administrator. The Board will be appointed six months before access to the LSS is scheduled to become available. The Board possesses the same general powers as other NRC Licensing Boards possess under 10 CFR 2.718 and 10 CFR 2.721(d). In order to gain access to the LSS during the pre-license application phase, an LSS participant must agree to comply with all orders of the Pre-License Application Licensing Board, and all LSS regulations.

Section 2.1011 LSS management and Administration

Proposed § 2.1011 establishes an LSS Administrator who will be responsible for managing, operating, and maintaining the LSS. Because the LSS will contain in electronic form, the documentary material constituting the Commission's docket and official record for the repository licensing proceeding, and because use of the LSS will be an integral part of the Commission's adjudicatory hearing on the license application, the NRC will serve as the LSS Administrator. The LSS Administrator is to be appointed sixty days after the effective date of the final LSS rule. In order to avoid any conflict-of-interest problems, the LSS Administrator cannot be any person or organizational unit that either represents the U.S. Nuclear Regulatory Commission staff as a party to the high-level waste licensing proceeding or a part of the management chain reporting to the Director of the Office of Nuclear Material Safety and Safeguards. On a related issue, with the exception of the Commission in its role as LSS Administrator (see the definition of "LSS Administrator" in proposed § 2.1001), the LSS cannot reside in any computer system that is controlled by any LSS participant, including its contractors, and cannot be physically located on the premises of any LSS participant or its contractors.

The LSS is to be designed and developed by DOE consistent with the requirements in Subpart J. This responsibility includes all procurement of hardware and software. However, the design and development of the LSS by DOE must be undertaken in consultation with the LSS Administrator. After the LSS has been designed and becomes operational, all redesign and procurement by DOE must be with the concurrence of the LSS Administrator.

Proposed § 2.1011(e) provides for the establishment of an LSS Advisory Review Panel, which will be chartered under the Federal Advisory Committee Act, to advise DOE on the design and development of the LSS, and to advise the LSS Administrator on the implementation of the LSS. The LSS Administrator appoints the members of the Advisory Review Panel from members of the Licensing Support System Advisory Committee established pursuant to proposed § 2.1011(e)(2) within sixty days after the LSS Administrator has been designated. The Licensing Support System Advisory Committee will be composed of the State of Nevada, the coalition of affected units of local government in Nevada that served on the negotiating committee, DOE, NRC, the National Congress of American Indians, the coalition of national environmental groups that served on the negotiating committee, and other members as the Commission may from time to time designate. Because DOE is now in the process of designing the LSS, the Advisory Review Panel is not yet available to provide advice and recommendations to DOE. In the interim period between publication of the proposed rule and appointment of the Advisory Panel by the LSS Administrator, the LSS Advisory Committee will perform the functions of the Advisory Review Panel set forth in proposed § 2.1011(e).

It is anticipated that the DOE and NRC will enter into a Memorandum of Understanding (MOU), consistent with the requirements of the proposed rule,

on the design and development of the LSS.

Proposed § 2.1011(d) sets forth the responsibilities of the LSS Administrator including providing the necessary personnel, materials, and services for the operation and maintenance of the LSS, and entering the documentary material submitted pursuant to proposed § 2.1003 in searchable full text, as appropriate.

Section 2.1012 Compliance

Proposed § 2.1012 established provisions to ensure compliance with the requirements of Subpart J, particularly the document submission requirements of proposed § 2.1003. DOE may not submit the license application for docketing under Subpart J unless the LSS Administrator certifies that DOE is in substantial and timely compliance with proposed § 2.1003. In addition, under proposed § 2.1012(b)(1), no person may be granted party or interested governmental participant status in the hearing if it is not in substantial and timely compliance with the requirements of proposed § 2.1003. A person who is not in substantial and timely compliance at the time specified for the submission of pettions to intervene or to become an interested governmental participant, may later come into compliance and be admitted to the hearing, assuming they meet all the other requirements in proposed § 2.1014 or 10 CFR 2.715(c) for admission. However, persons admitted to the hearing under this provision must take the proceeding as they find it. The Hearing Licensing Board will not entertain any requests from such a person to delay the proceeding in order for that person to compensate for time missed in the hearing. Proposed § 2.1012(d) provides for the termination or suspension of an LSS participant's access rights if it is in noncompliance with any applicable order of the Pre-License Application Licensing Board or the Hearing Licensing Board. However, any loss of access under this section does not relieve an LSS participant of its responsibilities in connection with the service of pleadings under proposed § 2.1013 of this subpart.

Section 2.1013 Use of LSS During Adjudicatory Proceeding

Proposed § 2.1013 established procedures for the electronic submission of pleadings during the hearing, or during the pre-license application phase for practice before the Pre-License Application Licensing Board under proposed § 2.1010, for the electronic transmission of Board and Commission issuances and orders, as well as for on-line access to the LSS during the hearing. Under proposed § 2.1013(a) the Secretary of the Commission maintains the official docket pursuant to the reqirements of 10 CFR 2.702. In this regard, each potential party, party, or interested governmental participant must submit a signed paper copy of each electronic adjudicatory filing to the Secretary. The proposed rule gives the Secretary the flexibility to establish the official docket in either hard copy or electronic form depending on the details of LSS design and the records management requirements of the Federal Archives. Absent good cause, all exhibits tendered during the hearing must have already been entered into the LSS prior to the commencement of that portion of the hearing where the exhibit is to be offered.

Section 2.1014 Intervention

Proposed § 2.1014 established the standards for intervention in the HLW proceeding. Proposed § 2.1014 incorporates several of the provisions currently in the 10 CFR 2.714 general standards for intervention. Accordingly, any provisions of proposed § 2.1014 that remain unchanged from the 10 CFR 2.714 provisions are to be interpreted according to the existing practice. Proposed § 2.1014(a) requires petitions for intervention and proposed contentions to be filed at the same time, as well as petitions to participate under § 2.715(c)—both within thirty days after the notice of hearing. In addition to the factors now in 10 CFR 2.714(a)(2), proposed § 2.1014(a)(2) requires the petition to reference with particularity the specific documentary material, or absence thereof, that provides the basis for the contention, and the specific regulatory or statutory requirement to which the contention is relevant. This codifies existing Commission practice in regard to contentions.

Proposed § 2.1014(a)(4) allows the adding or amending of contentions, including contentions based on the NRC Staff Safety Evaluation Report (SER). Contentions added or amended before the issuance of the SER will be evaluated according to the factors for nontimely filings in proposed § 2.1014(a)(1). Contentions based on information or issues raised in the SER must be made within forty days after the issuance of the SER and will be evaluated according to the factors in § 2.1014(a)(1). The SER is to be issued within eighteen months after the license application is docketed. Any petitions to amend or add contentions made more than forty days after the issuance of the SER, in addition to the factors for nontimely filing in proposed § 2.1014(a)(1), must include a showing that the contention involves a significant safety or environmental issue or raises a material issue related to the performance evaluation anticipated by 10 CFR 60.112 or 10 CFR 60.113. In this context, "material" may involve items that are material to demonstrating compliance with § 60.112 or 113 but which in and of themselves may not constitute a significant safety or environmental issue.

Although proposed § 2.1014(a)(4) places some added restrictions on the amending or adding of contentions compared to 10 CFR 2.714, the Commission believes that the early availability of documents through access to the LSS will facilitate the preparation of timely and better based contentions at the outset of the proceeding, as compared to the traditional NRC licensing proceeding where contentions must be prepared without the benefit of prior discovery.

Proposed § 2.1014(c) established the standards for permitting intervention in the HLW proceeding. Intervention is permitted as a matter of right by an affected unit of local government as defined in section 2(31) of the NWPA or by any affected Indian Tribe as defined in 10 CFR Part 60 of the Commission's regulations. The State of Nevada, like DOE or the NRC, is automatically a party to the HLW proceeding, assuming that a Nevada site is the subject of the DOE license application. All other petitions to intervene will be evaluated according to the factors in proposed § 2.1014(c)(1) through (4).

Section 2.1015 Appeals

Proposed § 2.1015 sets forth the procedures for appealing decisions of the Pre-License Application Board or of the Hearing Licensing Board. Unlike the existing appeals process, appeals from certain types of interlocutory orders, such as rulings on the admissibility of contentions, must be filed within ten days, rather than at the conclusion of the proceeding.

Section 2.1016 Motions

Proposed § 2.1016 established the procedures for motions practice in the HLW proceeding. The proposed rule does not contain a provision similar to 10 CFR 2.730(d) in regard to oral arguments on motions. However, this omission is not intended to change existing practice, i.e., requests for oral argument on substantive motions are liberally granted. It is within the discretion of the Board to allow arguments on motions under 10 CFR 2.751.

Section 2.1017 Computation of time

Proposed § 2.1017 specifies the computation of time for an act or an event for the HLW licensing proceeding. Because of the availability of the electronic transmission of pleadings through the LSS, one day instead of five days is allowed for the transmission of documents in response to the service of a notice or other document. This will save substantial time during the hearing. The use of electronic transmission is addressed in proposed § 2.1013. If the LSS is unavailable for more than four access hours of any day that would normally be counted in the computation of the time for filing, that day will not be counted in the computation of time. However, this would not include periods of LSS unavailability due to a malfunction of the LSS participant's equipment or to the operation of that equipment.

Section 2.1018 Discovery

Proposed § 2.1018 specifies the scope and timing of discovery in the HLW licensing proceeding. The LSS provides the document discovery in the HLW licensing proceeding, supplemented by the derivative discovery in proposed § 2.1019. Discovery is limited to access to the documentary meterial in the LSS; entry upon land for inspection and access to raw data; oral depositions; requests for admissions; and informal requests for information. These informal requests would be for the type of information normally gathered through the use of written interrogatories. Therefore, the proposed rule does not generally provide for the use of written interrogatories or depositions upon written questions. However, if the informal discovery process does not satisfy a request for information, proposed § 2.1018(a)(2) provides a mechanism for the use of written interrogatories or depositions upon written questions, by order of a Discovery Master appointed under proposed § 2.1018(g). If no Discovery Master has been appointed, the Hearing Licensing Board itself may consider these petitions. Although informal discovery may begin in the pre-license application phase, an order compelling discovery through written interrogatories or through depositions on written questions can be issued by the Discovery Master or the Hearing Licensing Board only after the license application has been docketed.

The required showing of substnatial need in regard to discovery for an LSS participant's "representatives" in proposed § 2.1018(b)(2) does not incude "consultants" to a LSS participant, unless the consultant's responsibilities are to assist in preparation for litigation.

Proposed § 2.1018(c) empowers the Board to issue an order to protect a party from abuse of the discovery process. As noted earlier, the objective of the negotiated rulemaking is to provide for the effective review of and hearing on the DOE license application within the three year time period specified in section 114(d) of the NWPA. Consistent with this objective, proposed § 2.1018(c) includes criteria to prevent abuse of the discovery process from frustrating this objective. In ruling on motions to protect a party from a particular discovery request, the Board may consider any "undue delay" that would result form the discovery request, as well as the failure to respond to a discovery request. Under this criterion, the Board will review any motion for a protective order from a particular discovery request, including a request for a written deposition, to determine whether the request creates the potential for unresonably interfering with meeting the three year schedule. When a party or an interested governmental participant reasonably believes that the Board has not ruled in acordance with this rule and its underlying policy, it may seek review pursuant to directed certification under § 2.718(i) of this part. The Commissin itself may entertain such request and will apply the criteria for granting directed certification liberally. The Hearing Licensing Board or Discovery Master may also consider undue delay as a basis for granting a petition for the use of written interrogatories or depositions on written questions under proposed § 2.1018(a)(2).

In addition, proposed § 2.1021 and 2.1022, on the first and second per-hearing conferences respectively, provide for the establishment of discovery schedules by the Board. In establishing these discovery schedules, the Board must consider the objective of meeting the three-year schedule specified in the NWPA, as well as the early availability of information made possible by the Licensing Support System. Furthermore, the Board should exercise all due diligence to ensure that discovery is completed within two years of the notice of hearing. However, this would not prevent the Board from establishing a schedule that provided for less than a continuous two-year period of discovery, or determining whether any discovery is necessary after the second pre-hearing conference.

Proposed § 2.1018(f) anticipates the application of the traditional sanctions by the Licensing Board for failure to respond to a discovery request, including the issuance of an order for a response or answer to a discovery request.

Section 2.1019 Depositions

Proposed § 2.1019 provides for discovery through the taking of depositions. Proposed § 2.1019 basically follows the content of the general deposition rule in 10 CFR 2.740a. However, proposed § 2.1019(i) provides for the derivative discovery of documents during the deposition. This provision establishes requirements for the disclosure, and entry into the LSS, of material in a deponent's possession that would not be required to be initially entered into the LSS under proposed § 2.1003. This includes personal records, travel vouchers, speeches, preliminary drafts, and marginalia. "Preliminary drafts" means any nonfinal document that is not a circulated draft, i.e., on which no formal, unresolved objection or nonconcurrence has been made. "Marginalia"' means handwritten, printed, or other types of notations added to a document, excluding underlining and highlighting.

Section 2.1020 Entry Upon Land for Inspection

Proposed § 2.1020 establishes the procedures for parties to gain access to the land or property in the possession or control of another party or its contractor for the purpose of inspection and access to raw data. However, this provision should not be construed as expanding any of the rights contained in section 116 or section 118 of the NWPA, or any other applicable statutory restrictions, related to site investigation.

Section 2.1021 First Prehearing Conference

Proposed § 2.1021 establishes a first pre-hearing conference in the HLW proceeding. The first pre-hearing conference will identify the key issues in the proceeding, and consider petitions for itervention.

Section 2.1022 Second Prehearing Conference

Proposed § 2.1022 establishes a second pre-hearing conference in the HLW licensing proceeding. The second pre-hearing conference is to be held not later than seventy days after the NRC staff Safety Evaluation Report is issued. The second pre-hearing conference will consider new or amended cotentions, stipulations and admissions of fact, identification of witnesses, and the setting of a hearing schedule.

Section 2.1023 Immediate Effectiveness

Proposed § 2.1023 provides for an immediate effectiveness review of the Licensing Board's initial decision on the issuance of a construction authorization. The Commission's existing regulations in 10 CFR 2.764 do not provide for an immediate effectiveness review. Rather 10 CFR 2.764 requires a Commission decision on the substantive merits of the Licensing Board decision before a construction authorization decision can be final. Proposed § 2.1023 would authorize the Director of the NRC Office of Nuclear Material Safety and Safeguards to allow DOE to proceed with construction, assuming a favorable Licensing Board decision, if the Commission did not suspend the Licensing Board decision after its supervisory immediate effectiveness review, or the Appeal Board did not stay the effectiveness of the initial decision under 10 CFR 2.788. The Appeal Board and the Commission would then undertake a review of the substantive merits of the initial Licensing Board decision. Issuance of the construction authorization under these circumstances would be the event that tolls the time period for determining whether the NWPA three year time frame for the decision on the construction authorization had been satisfied.

Schedule

In order to assist the Hearing Licensing Board in establishing a schedule for the HLW proceeding that will facilitate meeting the timeframe specified in the NWPA for a Commission decision on construction authorization, the Commission has prepared the following model timeline. This timeline is intended for general guidance only, and is not intended to suggest any predisposition by the Commission on the merits of DOE's future license application.

Day	Regulation (10 CFR)	Action
0	2.1014(a)(1), 2.1051(a)(1),	Federal Register Notice of Hearing.
30	2.1014(a)(1)	Pet. to intervene/ request for hearing, w/ contentions.
	2.715(c)	Pet. for status as interested govt. participant (IGP).
50	2.1014(b)	Answers to intervention & IGP petitions.
70	2.1021	1st Prehearing Conference.
100		1st Prehearing Conference Order: identifies participants in proceeding, admits contentions, and sets discovery and other schedules.
	2.1018b(1) 2.1019	Deposition discovery begins.
110	2.1015(b)	Appeals from 1st Prehearing Conference Order, w/briefs.
120	2.1015(b)	Briefs in opposition to appeals.
150		AB order ruling on appeals from 1st Prehearing Conference Order.
540		NRC staff issues SER.
590	2.1014(a)(4)	Petitions to amend contentions based on SER.
605	2.1014(b)	Answers to petitions to amend SER-related contentions.
615	2.1022	2nd Prehearing Conference.
645		2nd Prehearing Conference.
		Order: Rules on amended contentions, sets any further discovery schedule, and sets schedule for prefiled testimony and hearing.
655	2.1015(b)	Appeals from 2nd Prehearing Conference Order, w/briefs.
665	2.1015(b)	Briefs in opposition to appeals.
695		AB order ruling on appeals from 2nd Prehearing Conference Order.
705	2.749 (set by LB)	Final motions for summary disposition.
720	2.749	Replies to final motions for summary disposition.
730	Supp. Info	Discovery complete.
740		LB order on final motions for summary disposition.
750	2.1015(b)	Appeals from final summary disposition order, w/briefs.
760		Evidentiary hearing begins.
	2.1015(b)	Briefs in opposition to appeals from final summary disposition orders.
790		AB order on appeals from final summary disposition orders.
850		Evidentiary hearing ends.
880	2.754(a)(1)	Applicant's proposed findings.
890	2.754(a)(2)	Other parties' (except NRC staff's) proposed findings.
900	2.754(a)(2)	NRC staff's proposed findings.
905	2.754(a)(3)	Applicant's reply to proposed findings.
[illegible]	2.760	Initial Decision.
1005	2.788(a)	Stay motions to AB.
	2.762(a) 2.788(a)	Notices of Appeal.
1015	2.786(d)	Replies to stay motions.
1025		AB ruling on stay motion.
	2.762(b)	Appellant's briefs.
1045	2.788(a)	Stay motions to Commission.
1055	2.786(d)	Replies to stay motions.
1065	2.762(c)	Appellee's brief.
1075	2.762(c)	NRC staff brief.
1085	2.1023 Supp. Info	Completion of NMSS and Commission regulatory review; Commission ruling on any stay motions; issuance of construction authorization; NWPA 3-year period tolled.
1105	2.763	Oral argument on appeals.
1185		Appeal Board decision.
1195	2.1015(e) 2.786(b)(1).	Petitions for Commission review.
1180	2.786(b)(3)	Replies to petitions.
1250		Commission decision

Topical Guidelines

The following topical guidelines are to be used for identifying the documentary material that should be submitted by LSS participants for entry into the LSS under proposed § 2.1003. The topical guidelines will also be used by the Pre-License Application Licensing Board for evaluating petitions for access to the LSS during the pre-license application phase under proposed § 2.1008.

I. Categories of Documents

—Technical reports and analyses including those developed by contractors
—QA/QC records including qualification and training records
—External correspondence
—Internal memoranda
—Meeting minutes, including DOE/NRC meetings, Commission meetings
—Drafts (i.e., those submitted for decision beyond the first level of management or similar criterion)
—Congressional Q's & A's
—"Regulatory" documents related to HLW site selection and licensing, such as:
—Draft and final environmental assessments
—Site characterization plans
—Site characterization study plans
—Site characterization progress reports
—Issue resolution reports
—Rulemakings
—Public and agency comments on documents
—Response to public comments
—Environmental Impact Statement, Comment Response Document, and related references
—License Application (LA), LA data base, and related references
—Topical reports, data, and data analysis
—Recommendation Report to President
—Notice of Disapproval, if submitted

II. General Topics

1. Any document pertaining to the location and potential of valuable natural resources, hydrology, geophysics, tectonics (including volcanism), geomorphology, seismic activity, atomic energy defense activities, proximity to water supplies, proximity to populations, the effect upon the rights of users of water, proximity to components of the National Park System, the National Wildlife Refuge System, the National Willdife and Scenic River System, the National Wilderness Preservation System, or National Forest Lands, proximity to sites where high-level radioactive waste and spent nuclear fuel is generated or temporarily stored, spent fuel and nuclear waste transportation, safety factors involved in moving spent fuel or nuclear waste to a repository, the cost and impact of transporting spent fuel and nuclear waste to a repository site, the advantages of regional distribution in siting of repositories, and various geologic media in which sites for repositories may be located.

2. Any document related to repository design, siting, construction, or operation, or the transportation of spent nuclear fuel and high-level nuclear waste, not categorized as an "excluded document", generated by or in the possession of any contractor of the Department of Energy, the Nuclear Regulatory Commission, or any other party to the HLW licensing proceeding.

3. All documents related to the physical attributes of the Basin and Range Province of the continental United States.

4. Any document listing and/or considering any site or location other than Yuca Mountain as a possible location for a high-level nuclear waste repository, or any alternative technology to deep geologic disposal.

5. Any document analyzing the effect of the development of a repository at Yucca Mountain on the rights of users of water in the Armagosa ground-water basin in Nevada.

6. Any document analyzing the health and safety implications to the people and environment of the transportation of spent fuel between locations where spent fuel is generated or stored and Yucca Mountain, Nevada, or any other site nominated for repository characterization on May 28, 1986, including, but not limited to:

a. Any analysis of possible human error in the manufacture of spent fuel casks;

b. Any analysis of the actual population density along all of any specific projected routes of travel;

c. Any analysis of releases from any actual radioactive material transportation incidents;

d. Any analysis of the emergency response time in any actual radioactive materials transportation incident;

e. Any actual accident data on any specific projected routes of travel;

f. Any calculations or projections of the probabilities of accidents on any specific projected routes of travel;

g. Any data on the physical properties or containment capabilities of spent fuel casks which have been used or which are projected to be used at any hypothetical or actual projected repository;

h. Any analysis of modeling of the containment capabilities of spent fuel casks under a stress scenario;

i. any analysis or comparison of spent fuel casks projected to be used against the spent fuel cask certification standards of the Nuclear Regulatory Commission;

j. Any analysis of the containment capabilities of spent fuel casks containing spent fuel which has been burned up over an extended period.

7. Any document analyzing or comparing Yucca Mountain, Nevada, with any other site in the same geohydrologic setting.

8. Any document relating to potential interference or incompatibility between a Yucca Mountain, Nevada, high-level nuclear waste repository and atomic energy defense activities at the Nevada Test Site and Nellis Airforce base.

9. Any document related to the land status, use or ownership of Yucca Mountain, Nevada.

10. Any document considering or analyzing the attributes or detriments of any engineered barrier upon the radionuclide isolation capability of Yucca Mountain, Nevada, or any other site considered.

11. Any document evaluating the effect of extended fuel burn-up on Yucca Mountain, Nevada's adequacy as a repository site for disposal of spent fuel or upon the design of any such theoretical repository.

12. Any document analyzing or investigating the potential for discharge of radionuclides into the Death Valley National Monument.

13. Any document analyzing the recharge of the underlying saturated zone or the hydroconductivity of the unsaturated zone at Yucca Mountain.

14. Any document containing any data or analysis of volcanism in the geologic setting of which Yucca Mountain is a part.

15. Any document containing any data or analysis of tectonic events at Yucca Mountain, or pertaining to the tectonic framework of the Yucca Mountain area or any document containing any data or analysis of faults with or without surface expression in the area of Yucca Mountain.

16. Any document containing instructions or other limitations on the scope of work to be performed by Department of Energy personnel or contractors' personnel.

17. Any document pertaining to prevention or control of human intrusion at the Yucca Mountain site.

III. Specific Topics

1. The Site
A. Location, General Appearance and Terrain, and Present Use
B. Geologic Conditions
1. Stratigraphy and volcanic history of the Yucca Mountain area
a. Caldera evolution and genesis of ash flows
b. Timber Mountain Tuff
c. Paintbrush Tuff
d. Tuffaceous beds of Calico Hills
e. Crater Flat Tuff
f. Older tuffs
g. sedimentary units
h. basalts
2. Structure
3. Seismicity
4. Energy and mineral resources
a. Energy resources
b. Metals
c. Nonmetals
5. Paleontology
6. Mineralology
7. Geomorphology
8. Tectonics
a. Faulting
b. Stress
c. Uplift/subsidence
d. Volcanism
C. Hydrologic Conditions
1. Surface water
2. Ground water
a. Ground water movement
b. Ground water quality
3. Present and projected water use in the area
4. Groundwater resources
5. Climatology
6. Meterology
D. Geochemistry
1. Rock chemistry of the overlying and underlying host units
2. Water chemistry of unsaturated or saturated zones
3. Alteration
4. Retardation and transport
E. Environmental Setting
1. Land use
a. Federal use

b. Agricultural
i. Grazing land
ii. Cropland
c. Mining
d. Recreation
e. Private and commercial development
2. Terrestrial and aquatic ecosystems
a. Terrestrial vegetation
i. Larrea-Ambrosia
ii. Larrea-Ephedra or Larrea-Lycium
iii. Coleogyne
iv. Mixed transition
v. Grassland-burn site
b. Terrestrial wildlife
i. Mammals
ii. Birds
iii. Reptiles
c. Special-interest species
d. Aquatic ecosystems
3. Air quality and weather conditions: Air quality
4. Noise
5. Aesthetic resources
6. Archeological, cultural, and historical resources
7. Radiological background
a. Monitoring program
b. Dose assessment
F. Transportation
1. Highway infrastructure and current use
2. Railroad infrastructure and current use
G. Socioeconomic conditions
1. Economic conditions
a. Nye County
b. Clark County
c. Lincoln County
d. Methodology
2. Population density and distribution
a. Populations of the State of Nevada
b. Population of Nye County
c. Population of Clark County
d. Population of Lincoln County
3. Community services
a. Housing
b. Education
c. Water supply
d. Waste-water treatment
e. Solid waste
f. Energy utilities
g. Public safety services
h. Medical and social services
i. Library facilities
j. Parks and recreation
4. Social conditions
a. Existing social organization and social structure
i. Rural social organization and structure
ii. Social organization and structure in urban Clark County
b. Culture and lifestyle
i. Rural culture
ii Urban culture
c. Community attributes
d. Attitudes and perceptions toward the repository
5. Fiscal and governmental structure

2. Expected Effects of the Site Characterization Activities

A. Site Characterization Activities
1. Field studies
a. Exploratory drilling
b. Geophysical surveys
c. Geologic mapping
d. Standard operating practices for reclamation of areas disturbed by field studies
e. trenching
2. Exploratory shaft facility
a. Surface facilities
b. Exploratory shaft and underground workings
c. Secondary egress shaft
d. Exploratory shaft testing program
e. Final disposition
f. Standard operating practices that would minimize potential environmental damage
3. Other studies
a. Geodetic surveys
b. Horizontal core drilling
c. Studies of past hydrologic conditions
d. Studies of tectonics, seismicity, and volcanism
e. Studies of seismicity induced by weapons testing
f. Field experiments in G-Tunnel facilities
g. Laboratory studies
h. Waste package design, testing, and analysis

B. Expected Effects of Site Characterization
1. Expected effects on the environment
a. Geology, hydrology, land use and surface soils
i. Geology
ii. Hydrology
iii. Land use
iv. Surface soils
b. Ecosystems
c. Air quality
d. Noise
e. Aesthetics
f. Archaeological, cultural, and historical resources
2. Socioeconomic and transportation conditions
a. Economic conditions.
i. Employment
ii. Materials
b. Population density and distribution
c. Community services
d. Social conditions
e. Fiscal and governmental structure
f. Transportation
3. Worker safety
4. Irreversible and irretrievable commitment of resources

C. Alternative Site Characterization Activities

3. Regional and Local Effects of Locating a Repository at the Site

A. The Repository
1. Construction
a. The surface facilities
b. Access to the subsurface
c. The subsurface facilities
d. Other construction
i. Access route
ii. Railroad
iii. Mined rock handling and storage facilities
iv. Shafts and other facilities
e. Utilities
2. Operations
a. Emplacement phase
i. Waste receipt
ii. Waste emplacement
b. Caretaker phase
3. Retrievability
4. Decommissioning and closure
5. Schedule and labor force
6. Material and resource requirements

B. Expected Effects on the Physical Environment
1. Geologic impacts
2. Hydrologic impacts
3. Land use
4. Ecosystems
5. Air quality
a. Ambient air-quality regulations
b. Construction
c. Operations
d. Decommissioning and closure
6. Noise
a. Construction
b. Operations
c. Decommissioning and closure
7. Aesthetic resources
8. Archaeological, cultural, and historical resources
9. Radiological effects .
a.Construction.
b. Operations
i. Worker exposure during normal operation
ii. Public exposure during normal operation
iii. Accidental exposure during operation

C. Expected Effects of Transportation Activities
1. Transportation of people and materials
a. Highway impacts
i. Construction
ii. Operations
iii. Decommissioning
b. Railroad impacts
2. Transportation of nuclear waste shipments
a. Shipment and routing nuclear waste shipments
i. National shipment and routing
ii. Regional shipment and routing
b. Radiological impacts
i. National impacts
ii. Regional impacts
iii. Maximally exposed individual impacts
c. Nonradiological impacts
i. National impacts
ii. Regional impacts
d. Risk summary
i. National risk summary
ii. Regional risk summary
e. Costs of nuclear waste transportation
f. Emergency response

D. Expected Effects on Socioeconomic Conditions
1. Economic conditions
a. Labor
b. Materials and resources
c. Cost
d. Income
e. Land use
f. Tourism
2. Population density and distribution
3. Community services
a. Housing
b. Education
c. Water supply
d. Waste-water treatment
e. Public safety services
f. Medical services
g. Transportation
4. Social conditions
a. Social structure and social organization
i. Standard effects on social structure and social organization
ii. Special effects on social structure and social organization
b. Culture and lifestyle

c. Attitudes and perceptions
5. Fiscal conditions and government structure

4. Suitability of the Yucca Mountain Site for Site Characterization and for Development as a Repository

A. Suitability of the Yucca Mountain Site For Development as a Repository: Evaluation Against The Guidelines That Do Not Require Site Characterization
1. Technical guidelines
a. Postclosure site ownership and control
i. Data relevant to the evaluation
ii. Favorable condition
iii. Potentially adverse condition
iv. Evaluation and conclusion for the qualifying condition on the postclosure site ownership and control guidelines
b. Population density and distribution
i. Data relevant to the evaluation
ii. Favorable conditions
iii. Potentially adverse conditions
iv. Disqualifying condition
v. Evaluation and conclusion for the qualifying condition on the population density and distribution guideline
c. Preclosure site ownership and control
i. Data relevant to the evaluation
ii. Favorable condition
iii. Potentially adverse condition
iv. Evaluation and conclusion for the qualifying condition on the preclosure site ownership and control guideline
d. Meteorology
i. Data relevant to the evaluation
ii. Favorable condition
iii. Potentially adverse condition
iv. Evaluation and conclusioin for the qualifying condition on the meteorology guideline
e. Offsite installations and operations
i. Data relevant to the evaluation
ii. Favorable conditions
iii. Potentially adverse conditions
iv. Disqualifying condition
v. Evaluation and conclusion for the qualifying condition on the offsite installations operations guideline
f. Environmental quality
i. Data relevant to the evaluation
ii. Favorable conditions
iii. Potentially adverse conditions
iv. Disqualifying conditions
v. Evaluation and conclusion for the qualifying condition on the environmental quality guidelines
g. Socioeconomic impacts
i. Data relevant to the evaluation
ii. Favorable conditions
iii. Potentially adverse conditions
iv. Disqualifying condition
v. Evaluation and conclusion for the qualifying condition on the socieconomic guideline
h. Transportation
i. Data relevant to the evaluation
ii. Favorable conditions
iii. Potentially adverse conditions
iv. Evaluation and conclusion for the qualifying condition on the transportation guideline
2. Preclosure System
a. Preclosure system: radiological safety
i. Data relevant to the evaluation
ii. Evaluation of the Yucca Mountain site
iii. Conclusion for the qualifying condition on the preclosure system guideline radiological safety
b. Preclosure system: environment, socioeconomics, and transportation
i. Data relevant to the evaluation
ii. Evaluation of the Yucca Mountain site
iii. Conclusion for the qualifying condition on the preclosure system guideline: environment, socioeconomics, and transportation
3. Postclosure technical
a. Geohydrology
i. Data relevant to the evaluation
ii. Favorable conditions
iii. Potentially adverse conditions
iv. Disqualifying condition
v. Evaluation and conclusion for the qualifying condition on the postclosure geohydrology guideline
b. Geochemistry
i. Data relevant to the evaluation
ii. Favorable conditions
iii. Potentially adverse conditions
iv. Evaluation and conclusion for the qualifying condition on the postclosure geochemistry guideline
v. Plans for site characterization
c. Rock characteristics
i. Data relevant to the evaluation
ii. Favorable conditions
iii. Potentially adverse conditions
iv. Evaluation and conclusion for the qualifying condition on the postclosure rock characteristics guideline
d. Climatic changes
i. Data relevant to the evaluation
ii. Favorable conditions
iii. Potentially adverse conditions
iv. Evaluation and conclusion for the climate changes qualifying condition
e. Erosion
i. Data relevant to the evaluation
ii. Favorable conditions
iii. Potentially adverse conditions
iv. Disqualifying condition
v. Qualifying condition
f. Dissolution
i. Data relevant to the evaluation
ii. Favorable condition
iii. Potentially adverse condition
iv. Disqualifying condition
v. Evaluation and conclusion for the qualifying condition on the postclosure and dissolution guideline
g. Tectonics
i. Data relevant to the evaluation
ii. Favorable condition
iii. Potentially adverse condition
iv. Disqualifying condition
v. Evaluation and conclusion for the qualifying condition on the postclosure tectonics guideline
h. Human interference: Natural resources and site ownership and control
i. Data relevant to the evaluation
ii. Favorable conditions
iii. Potentially adverse conditions
iv. Disqualifying conditions
v. Evaluation and conclusion for the qualifying condition on the postclosure human interference and natural resources technical guideline
4. Postclosure system
a. Evaluation of the Yucca Mountain Site
i. Quantitative analyses
ii. Qualitative analysis
b. Summary and conclusion for the qualifying condition on the postclosure system guideline
5. Preclosure technical
a. Surface characteristics
i. Data relevant to the evaluation
ii. Favorable conditions
iii. Potentially adverse conditions
iv. Evaluation and conclusion for the qualifying condition on the preclosure surface characteristics guideline
b. Rock characteristics
i. Data relevant to the evaluation
ii. Favorable conditions
iii. Pontentially adverse conditions
iv. Disqualifying condition
v. Evaluation and conclusion for the qualifying condition on the preclosure rock characteristics guideline
c. Hydrology
i. Data relevant to the evaluation
ii. Favorable conditions
iii. Potentially adverse condition
iv. Disqualifying condition
v. Evaluation and conclusion for the qualifying condition on the preclosure hydrology guideline
d. Tectonics
i. Data relevant to the evaluation
ii. Favorable condition
iii. Potentially adverse conditions
iv. Disqualifying condition
v. Evaluation and conclusion for the qualifying condition on the preclosure tectonics guideline
6. Ease and cost of siting, construction, operation, and closure
a. Data relevant to the evaluation
b. Evaluation
c. Conclusions for the qualifying condition on the ease and cost of siting, construction, operation, and closure guideline
7. Conclusion regarding suitability of the Yucca Mountain Site for site characterization

B. Performance Analyses
1. Preclosure radiological safety assessments
a. Preclosure radiation protection standards
b. Methods for preclosure radiological assessment
i. Radiological assessment of construction activities
ii. Radiological assessment of normal operations
iii. Radiological assessment of accidental releases
2. Preliminary analysis of postclosure performance
a. Subsystem descriptions
i. Engineered barrier subsystem
ii. The natural barrier subsystem
b. Preliminary performance analyses of the major components of the system
i. The waste package lifetime
ii. Release rate from the engineered barrier subsystem
c. Preliminary system performance description and analysis
d. Comparisons with regulatory performance objectives
e. Preliminary evaluation of disruptive events: disruptive natural processes

f. Conclusions
5. Transportation
A. Regulations Related to Safeguards
1. Safeguards
2. Conclusion
B. Packagings
1. Packaging design, testing, and analysis
2. Types of packaging
a. Spent fuel
b. Casks for defense high-level waste and West Valley high-level waste
c. Casks for use from an MRS to the repository
3. Possible future developments
a. Mode-specific regulations
b. Overweight truck casks
c. Rod consolidation
d. Advanced handling concepts
e. Combination storage/shipping casks
C. Potential Hazards of Transportation
1. Potential consequences to an individual exposed to a maximum extent
a. Normal transport
b. Accidents
2. Potential consequences to a large population from very severe transportation accidents
3. Risk assessment
a. Outline of method for estimating population risks
b. Computational models and methods for population risks
c. Changes to the analytical models and methods for population risks
d. Transportation scenarios evaluated for risk analysis
e. Assumption about wastes
f. Operational considerations for use in risk analysis
g. Values for factors needed to calculate population risks
h. Results of population risk analyses
i. Uncertainties
4. Risks associated with defective cask construction, lack of quality assurance, inadequate maintenance and human error
D. Cost Analysis
1. Outline method
2. Assumptions
3. Models
4. Cost estimates
5. Limitations of results
E. Barge Transport to Repositories
F. Effect of a Monitored Retrievable Storage Facility on Transportation Estimates
G. Effect of At-Reactor Rod Consolidation on Transportation Estimates
H. Criteria for Applying Transportation Guidelines
I. Doe Responsibilities for Transportation Safety
1. Prenotification
2. Emergency response
3. Insurance coverage for transportation accidents
J. Modal Mix
1. Train shipments
a. Ordinary
b. Dedicated train
2. Truck shipments
a. Legal weight
b. Overweight

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

Paperwork Reduction Act Statement

This proposed rule does not contain information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Regulatory Analysis

The DOE analysis of the costs and benefits of the LSS (U.S. Department of Energy, "Licensing Support System Benefit-Cost Analysis" July, 1988) and companion DOE reports ("Preliminary Needs Analysis;" "Preliminary Data Scope Analysis;" and "Conceptual Design Analysis;") are available for inspection in the NRC Public Document Room, 2120 L Street NW., Washington, DC. Single copies may be obtained from Francis X. Cameron, Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington DC, 20555; Telephone: (301)–492–1623.

Regulatory Flexibility Analysis

In accordance with the Regulatory Flexibility Act of 1980, (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The proposed rule affects participants in the Commission's HLW licensing proceeding. The substantial majority of these participants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and, therefore, that a backfit analysis is not required for this proposed rule because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 2.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for Part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 and Table 1A of Appendix C also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99–240, 99 Stat. 1842 (42 U.S.C. 2021) *et seq.*).

2. Section 2.700 is revised to read as follows:

§ 2.700 Scope of subpart.

The general rules of this subpart govern procedure in all adjudications initiated by the issuance of an order to show cause, an order pursuant to § 2.205 (e), a notice of hearing, a notice of proposed action pursuant to § 2.105, or a notice issued pursuant to § 2.102(d)(3). The procedure applicable to the proceeding on an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area are set forth in subpart J of this part.

3. A new paragraph (i) is added to § 2.714 to read as follows:

§ 2.714 Intervention.

(i) The provisions of this section do not apply to license applications docketed under Subpart J of this part.

* * * * *

4. In § 2.722, paragraph (a)(4) is added to read as follows:

§ 2.722 Special assistants to the presiding officer.

(a) * * *

(4) Discovery Master to rule on the matters specified in § 2.1018(a)(2) of this part.

* * * * *

5. In § 2.743, paragraph (f) is revised to read as follows:

§ 2.743 Evidence.

* * * * *

(f) Exhibits. A written exhibit will not be received in evidence unless the original and two copies are offered and a copy is furnished to each party, or the parties have been previously furnished with copies or the presiding officer directs otherwise. The presiding officer may permit a party to replace with a true copy an original document admitted in evidence. Exhibits in the proceeding on an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area are governed by § 2.1013 of this part.

* * * * *

§ 2.764 [Amended]

6. In § 2.764, paragraph (d) is removed and reserved.

7. In Part 2, a new Subpart J is added to read as follows:

Subpart J—Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository

Sec.
2.1000 Scope of subpart.
2.1001 Definitions.
2.1002 High-level Waste Licensing Support System.
2.1003 Submission of material to the LSS.
2.1004 Amendments and additions.
2.1005 Exclusions.
2.1006 Privilege.
2.1007 Access.
2.1008 Potential parties.
2.1009 Procedures.
2.1010 Pre-License Application Licensing Board.
2.1011 LSS management and administration.
2.1012 Compliance.
2.1013 Use of LSS during adjudicatory proceeding.
2.1014 Intervention.
2.1015 Appeals.
2.1016 Motions.
2.1017 Computation of time.
2.1018 Discovery.
2.1019 Depositions upon oral examination and upon written questions.
2.1020 Entry upon land for inspection and other purposes.
2.1021 First prehearing conference.
2.1022 Second prehearing conference.
2.1023 Immediate effectiveness of initial decision.

§ 2.1000 Scope of Subpart.

The rules in this subpart govern the procedure for applications for a license to receive and possess high-level radioactive waste at a geologic repository operations area noticed pursuant to §§ 2.101(f)(8) or 2.105(a)(5) of this part. The procedures in this subpart take precedence over the 10 CFR Subpart G, rules of general applicability, except for the following provisions: §§ 2.702, 2.703, 2.704, 2.707, 2.709, 2.711, 2.713, 2.715, 2.715a, 2.717, 2.718, 2.720, 2.721, 2.722, 2.732, 2.733, 2.734, 2.742, 2.743, 2.749, 2.750, 2.751, 2.753, 2.754, 2.755, 2.756, 2.757, 2.758, 2.759, 2.760, 2.761, 2.762, 2.763, 2.770, 2.771, 2.780, 2.781, 2.785, 2.786, 2.787, 2.788, and 2.790.

§ 2.1001 Definitions.

"ASCII File" means a computerized text file conforming to the American Standard Code for Information Interchange which represent characters and symbols.

"Bibliographic header" means the minimum series of descriptive fields that a potential party, interested governmental participant, or party must submit with a document or other material. The bibliograph header fields are as subset of the fields in the full header.

"Circulated draft" means a nonfinal document circulated for supervisory concurrence or signature in which the original author or others in the concurrence process have non-concurred. A "circulated draft" meeting the above criterion includes a draft of a document that eventually becomes a final document, and a draft of a document that does not become a final document due to either a decision not to finalize the document or the passage of a subtantial period of time in which no action has been taken on the document.

"Document" means any written, printed, recorded, magnetic, graphic matter, or other documentary material, regardless of form or characteristic.

"Documentary material" means any material or other information that is relevant to, or likely to lead to the discovery of information that is relevant to, the licensing of the likely candidate site for geologic repository. The scope of documentary material shall be guided by the topical guidelines in Regulatory Guide—,—.

"DOE" means the U.S. Department of Energy or its duly authorized representatives.

"Full header" means the series of descriptive fields and subject terms given to a document or other material.

"Image" means a visual likeness of a document, presented on a paper copy, microform, or a bit-map on optical or magnetic media.

"Interested governmental participant" means any person admitted under § 2.715(c) of this part to the proceeding on an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to Part 60 of this chapter.

"LSS Administrator" means the person within the U.S. Nuclear Regulatory Commission responsible for administration, management, and operation of the Licensing Support System. The LSS Administrator shall not be in any organizational unit that either represents the U.S. Nuclear Regulatory Commission staff as a party to the high-level waste licensing proceeding or is a part of the management chain reporting to the Director of the Office of Nuclear Material Safety and Safeguards. For purposes of this subpart the organizational unit within the NRC selected to be the LSS Administrator shall not be considered to be a party to the proceeding.

"Marginalia" means handwritten, printed, or other types of notations added to a document excluding underlining and highlighting.

"NRC" means the U.S. Nuclear Regulatory Commission or its duly authorized representatives.

"Party" for purposes of this subpart means the DOE, the NRC staff, the host State and any affected Indian Tribe in accordance with § 60.63(a) of this chapter, and a person admitted under § 2.1014 of this subpart to the proceeding on an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to Part 60 of this chapter; provided that a host State or affected Indian Tribe shall file a list of contentions in accordance with the

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provisions of § 2.1014(a)(2)(ii), (iii), and (iv) of this subpart.

"Personal record" means a document in the possession of an individual associated with a party, interested governmental participant, or potential party that was not required to be created or retained by the party, interested governmental participant, or potential party, and can be retained or discarded at the possessor's sole discretion, or documents of a personal nature that are not associated with any business of the party, interested governmental participant, or potential party.

"Potential party" means any person who, during the period before the issuance of the first pre-hearing conference order under § 2.1021(d) of this subpart, is granted access to the Licensing Support System and who consents to comply with the regulations set forth in Subpart J of this part, including the authority of the Pre-License Application Licensing Board established pursuant to § 2.1010 of this subpart.

"Pre-license application phase" means the time period before the license application to receive and possess high-level radioactive waste at a geologic repository operations area is docketed under § 2.101(f)(3) of this part.

"Preliminary draft" means any nonfinal document that is not a circulated draft.

"Searchable full text" means the electronic indexed entry of a document in ASCII into the Licensing Support System that allows the identification of specific words or groups of words within a text file.

§ 2.1002 High-Level Waste Licensing Support System.

(a) The Licensing Support System is an electronic information management system containing the documentary material of the DOE and its contractors, and the documentary material of all other parties, interested governmental participants and potential parties and their contractors. Access to the Licensing Support System by the parties, interested governmental participants, and potential parties provides the document discovery in the proceeding. The Licensing Support System provides for the electronic transmission of filings by the parties during the high-level waste proceeding, and orders and decisions of the Commission and Commission adjudicatory boards related to the proceeding.

(b) The Licensing Support shall include documentary material not privileged under § 2.1006 or excluded under § 2.1005 of this subpart.

(c) The participation of the host State in the Licensing Support System during the pre-license application phase shall not have any affect on the State's exercise of its disapproval rights under section 116(b)(2) of the Nuclear Waste Policy Act, as amended, 42 U.S.C. 10136(b)(2).

(d) This subpart shall not affect any independent right of a potential party, interested governmental participant or party to receive information.

§ 2.1003 Submission of material to the LSS.

(a) Subject to the exclusions in § 2.1005 of this subpart and paragraphs (c) and (d) of this section, each potential party, interested governmental participant or party, with the exception of the DOE and the NRC, shall submit to the LSS Administrator—

(1) Subject to paragraph (a)(3) of this section, an ASCII file, an image, and a bibliographic header, reasonably contemporaneous with its creation or acquisition, for all documentary material (including circulated drafts but excluding preliminary drafts) generated by, or at the direction of, or acquired by, a potential party, interested governmental participant, or party after the date on which such potential party, interested governmental participant or party is given access to the Licensing Support System.

(2) An image, a bibliographic header, and, if available, an ASCII file, no later than six months before the license application is submitted under § 60.22 of this chapter, for all documentary material (including circulated drafts but excluding preliminary drafts), generated by, or at the direction of, or acquired by, a potential party, interested governmental participant, or party, on or before the date on which such potential party, interested governmental participant, or party was given access to the Licensing Support System.

(3) An image and bibliographic header for documentary material included under paragraphs (a)(1) of this section that were acquired from a person that is not a potential party, party, or interested governmental participant.

(b) Subject to the exclusions in § 2.1005 of this subpart, and subject to paragraphs (c) and (d) of this section, the DOE and the NRC shall submit to the LSS Administrator—

(1) An ASCII file, an image, and a bibliographic header, reasonably contemporaneous with its creation or acquisition, for all documentary material (including circulated drafts but excluding preliminary drafts) generated by, or at the direction of, or acquired by, the DOE or the NRC after the date on which the Licensing Support System is available for access.

(2) An ASCII file, an image, and a bibliographic header no later than six months before the license application is submitted under § 60.22 of this chapter for all documentary material (including circulated drafts but excluding preliminary drafts) generated by, or at the direction of, or acquired by, the DOE or the NRC on or before the date on which the Licensing Support System is available for access.

(c)(1) Each potential party, interested governmental participant, or party shall submit, subject to the claims of privilege in § 2.1006, an image and a bibliographic header, in a time frame to be established by the access protocols under § 2.1011(d)(10) of this subpart, for all graphic oriented documentary material. Graphic-oriented documentary material includes, raw data, computer runs, computer programs and codes, field notes, laboratory notes, maps, diagrams and photographs which have been printed, scripted, hand written or otherwise displayed in any hard copy form and which, while capable of being captured in electronic image by a digital scanning device, may be captured and submitted to the LSS Administrator in any form of image. Text embedded within these documents need not be separately entered in searchable full text. Such graphic-oriented documents may include: Calibration procedures, logs, guidelines, data and discrepancies; gauge, meter and computer settings; probe locations; logging intervals and rates; data logs in whatever form captured; test data sheets; equations and sampling rates; sensor data and procedures; data descriptions; field and laboratory notebooks; analog computer, meter or other device print-outs; digital computer print-outs; photographs; graphs, plots, strip charts, sketches; descriptive material related to the information above.

(2) Each potential party, interested governmental participant, or party, in a time frame to be established by the access protocols under § 2.1011(d)(10) of this subpart, shall submit, subject to the claims of privilege in § 2.1006, only a bibliographic header for each item of documentary material that is not suitable for entry into the Licensing Support System in image or searchable full text. The header shall include all required fields and shall sufficiently describe the information and references to related information and access protocols. Whenever any documentary material is transferred to some other media, a new header shall be supplied. Any documentary material for which a header only has been supplied to the system shall be made available to any other party, potential party or interested governmental participant through the access protocols determined by the LSS administrator under § 2.101(d)(10) or through entry upon land for inspection and other purposes pursuant to § 2.1020.

(3) Whenever documentary material described in paragraphs (c)(1) or (c)(2) of this section has been collected or used in conjunction with other such information to analyze, critique, support or justify any particular technical or scientific conclusion, or relates to other documentary material as part of the same scope of technical work or investigation, then an appropriate bibliographic header shall be submitted for a table of contents describing that package of information, and documentary material contained within that package hsall be named and identified.

(d) Each potential party, interested governmental participant, or party shall submit a bibliographic header for each documentary material—

(1) For which a claim of privilege is asserted; or

(2) Which constitutes confidential financial or commercial information; or

(3) Which constitutes safeguards information under § 73.21 of this chapter.

(e) In addition to the submission of documentary material under paragraphs (a) and (b) of this section, potential parties, interested governmental participants, or parties may request that another potential party's interested governmental participant's, party's, or third party's documentary material be entered into the Licensing Support System in searchable full text if they or the other potential party, interested governmental participant, or party intend to rely on such documentary material during the licensing proceeding.

(f) Submission of ASCII files, images, and bibliographic headers shall be in accordance with established criteria.

(g) Basic licensing documents generated by DOE, such as the Site Characterization Plan, the Environmental Impact Statement, and the license application, or by NRC such as the Site Characterization Analysis, and the Safety Evaluation Report, shall be submitted to the LSS Administrator by the respective agency that generated the document.

(h)(1) Docketing of the application for a license to receive and possess high-level radioactive waste at a geologic repository operations area shall not be permitted under subpart J of this part unless the LSS Administrator has certified, at least six months in advance of the submission of the license application, that the DOE has substantially complied with its obligations under this section.

(2)(i) The LSS Administrator shall evaluate the extent of the DOE's compliance with the provisions of this section at six month intervals beginning six months after his or her appointment under § 2.1011 of this subpart.

(ii) The LSS Administrator shall issue a written report of his or her evaluation of DOE compliance under paragraph (h)(1) of this section. The report shall include recommendations to the DOE on any actions necessary to achieve substantial compliance pursuant to paragraph (h)(1) of this section.

(iii) Potential parties may submit comments on the report prepared pursuant to paragraph (h)(2)(ii) to the LSS Administrator.

(3)(i) In the event that the LSS Administrator does not certify substantial compliance under paragraph (h)(1) of this section, the proceeding on the application for a license to receive and possess high-level radioactive waste at a geologic repository operations area shall be governed by subpart G of this part.

(ii) If, subsequent to the submission of such application under subpart G of this part, the LSS Administrator issues the certification described in paragraph (h)(1) of this section, the Commission may, upon request by any party or interested governmental participant to the proceeding, specify the extent to which the provisions of subpart J of this part may be used in the proceeding.

§ 2.1004 Amendments and additions.

(a) Within sixty days after a document has been entered into the Licensing Support System by the LSS Administrator during the pre-license application phase, and within five days after a document has been entered into the Licensing Support System by the LSS Administrator after the license application has been docketed, the submitter shall make reasonable efforts to verify that the document has been entered correctly, and shall notify the LSS Administrator of any errors in entry.

(b) After the time period specified for verification in paragraph (a) of this section has expired, a submitter who desires to amend and correct document shall—

(1) Submit the corrected version to the LSS Administrator for entry as a separate document; and

(2) Submit a bibliographic header for the corrected version that identifies all revisions to the corrected version.

(3) The LSS Administrator shall ensure that the bibliographic header for the original document specifies that a corrected version is also in the Licensing Support System.

(c)(1) A submitter shall submit any revised pages of a document in the Licensing Support System to the LSS Administrator for entry into the Licensing Support System as a separate document.

(2) The LSS Administrator shall ensure that the bibliographic header for the original document specifies that revisions have been entered into the Licensing Support System.

(d) Any document that has been incorrectly excluded from the Licensing Support System must be submitted to the LSS Administrator by the potential party, interested governmental participants, or party responsible for the submission of the document within two days after its exclusion has been identified unless some other time is approved by the Pre-License Application Licensing Board or the Licensing Board established for the high-level waste proceeding, hereinafter the "Hearing Licensing Board"; provided, however, that the time for submittal under this paragraph will be stayed pending Board action on a motion to extend the time of submittal.

§ 2.1005 Exclusions.

The following material is excluded from entry into the Licensing Support System, either through initial entry pursuant to § 2.1003 of this subpart, or through derivative discovery pursuant to § 2.1019(i) of this subpart—

(a) Official notice materials;

(b) Reference books and text books;

(c) Material pertaining exclusively to administration, such as material related to budgets, financial management, personnel, office space, general distribution memoranda, or procurement, except for the scope of work on a procurement related to repository siting, construction, or operation, or to the transportation of spent nuclear fuel or high-level waste;

(d) Press clippings and press releases;

(e) Junk mail;

(f) References cited in contractor reports that are readily available;

(g) Classified material subject to Subpart I of this Part.

§ 2.1006 Privilege.

(a) Subject to the requirements in § 2.1003(d) of this subpart, the traditional discovery privileges recognized in NRC adjudicatory proceedings and the exceptions from disclosure in § 2.790 of this part may be

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asserted by potential parties, interested governmental participants, and parties. In addition to Federal agencies, the deliberative process privilege may also be asserted by State and local government entities and Indian Tribes.

(b) Any document for which a claim of privilege is asserted but is denied in whole or in part by the Pre-license Application Licensing Board or the Hearing Licensing Board shall be submitted by the party, interested governmental participant, or potential party that asserted the claim to—

(1) The LSS Administrator for entry into the Licensing Support System into an open access file; or

(2) To the LSS Administrator or to the Board, for entry into a Protective Order file, if the Board so directs under §§ 2.1010(b) or 2.1018(c) of this subpart.

(c) Notwithstanding any availability of the deliberative process privilege under paragraph (a) of this section, circulated drafts not otherwise privileged shall be submitted for entry into the Licensing Support System pursuant to §§ 2.1003(a) and 2.1003(b) of this subpart.

§ 2.1007 Access.

(a)(1) Terminals for access to full headers for all documents in the Licensing Support System during the pre-license application phase, and images of the non-privileged documents of DOE, shall be provided at the headquarters of DOE, and at all DOE Local Public Document Rooms established in the vicinity of the likely candidate site for a geologic repository.

(2) Terminals for access to full headers for all documents in the Licensing Support System during the pre-license application phase, and images of the non-privileged documents of NRC, shall be provided at the headquarters Public Document Room of NRC, and at all NRC Local Public Document Rooms established in the vicinity of the likely candidate site for a geologic repository, and at the NRC Regional Offices, including the Uranium Recovery Field Office in Denver, Colorado.

(3) The access terminals specified in paragraphs (a)(1) and (a)(2) of this section shall include terminals at Las Vegas, Nevada; Reno, Nevada; Carson City, Nevada; Nye County, Nevada; and Lincoln County, Nevada.

(4) The headers specified in paragraphs (a)(1) and (a)(2) of this section shall be available at the same time that those headers are made available to the potential parties, parties, and interested governmental participants.

(5) Public access to the searchable full text and images of all the documents in the Licensing Support System, not privileged under § 2.1006, shall be provided by the LSS Administrator at all the locations specified in paragraphs (a)(1) and (a)(2) of this section after a notice of hearing has been issued pursuant to §§ 2.101(f)(8) or 2.105(a)(5) on an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area.

(b) Public availability of paper copies of the records specified in paragraph (a) of this section, as well as duplication fees, and fee waiver for those records, will be governed by the Freedom of Information Act regulations of the respective agencies.

(c) Access to the Licensing Support System for potential parties, interested governmental participants, and parties will be provided in the following manner—

(1) Full text search capability through dial-up access from remote locations at the requestor's expense;

(2) Image access at remote locations at the requestor's expense;

(3) The capability to electronically request a paper copy of a document at the time of search;

(4) Generic fee waiver for the paper copy requested under paragraph (c)(3) of this section for requestors who meet the criteria in § 9.41 of this chapter.

(d) Documents submitted to the LSS Administrator for entry into the Licensing Support System shall not be considered as agency records of the LSS Administrator for purposes of the Freedom of Information Act (FOIA), 5 U.S.C. 552, and shall remain under the custody and control of the agency or organization that submitted the documents to the LSS Administrator. Requests for access pursuant to the FOIA to documents submitted by a Federal agency shall be transmitted to that federal agency.

§ 2.1008 Potential parties.

(a) A person may petition the Pre-License Application Licensing Board established pursuant to § 2.1010 of this subpart for access to the Licensing Support System.

(b) A petition must set forth with particularity the interest of the petitioner in gaining access to the Licensing Support System with particular reference to—

(1) The factors set out in § 2.1014(c)(1), (2), and (3) of this subpart as determined in reference to the topical guidelines in Regulatory Guide _____; or

(2) The criteria in § 2.715(c) of this part as determined in reference to the topical guidelines in Regulatory Guide _____.

(c) The Pre-License Application Licensing Board shall, in ruling on a petition for access, consider the factors set forth in paragraph (b) of this section.

(d) Any person whose petition for access is approved pursuant to paragraph (c) of this section shall comply with the regulations set forth in this subpart, including § 2.1003, and agree to comply with the orders of the Pre-License Application Licensing Board established pursuant to § 2.1010 of this subpart.

§ 2.1009 Procedures.

(a) Each potential party, interested governmental participant, or party shall—

(1) Designate an official who will be responsible for administration of its Licensing Support System responsibilities;

(2) Establish procedures to implement the requirements in § 2.1003 of this subpart;

(3) Provide training to its staff on the procedures for implementation of Licensing Support System responsibilities;

(4) Ensure that all documents carry the submitter's unique identification number;

(5) Cooperate with the advisory review process established by the LSS Administrator pursuant to § 2.1011(e) of this subpart.

(b) The responsible official designated pursuant to paragraph (a)(1) of this section shall certify to the LSS Administrator, at six month intervals designated by the LSS Administrator, that the procedures specified in paragraph (a)(2) of this section have been implemented, and that to the best of his or her knowledge, the documentary material specified in § 2.1003 of this subpart has been identified and submitted to the Licensing Support System.

§ 2.1010 Pre-License Application Licensing Board.

(a)(1) A Pre-License Application Licensing Board designated by the Commission shall rule on all petitions for access to the Licensing Support System submitted under § 2.1008 of this subpart; disputes over the entry of documents during the pre-license application phase, including disputes relating to relevance and privilege; disputes relating to the LSS Administrator's decision on substantial compliance pursuant to § 2.1003(b) of this subpart; discovery disputes; disputes relating to access to the Licensing Support System; disputes relating to the design and development of the Licensing Support System by DOE or the operation of the Licensing Support System by the LSS Administrator under § 2.1011 of this subpart, including disputes relating to the implementation of the recommendations of the LSS Advisory Review Panel established under § 2.1011(e) of this subpart.

(2) The Pre-License Application Licensing Board shall be designated six months before access to the Licensing Support System is scheduled to be available.

(b) The Board shall rule on any claim of document withholding to determine—

(1) Whether it is documentary material within the scope of this subpart;

(2) Whether the material is excluded from entry into the Licensing Support System under § 2.1005 of this subpart;

(3) Whether the material is privileged or otherwise excepted from disclosure under § 2.1006 of this subpart;

(4) If privileged, whether it is an absolute or qualified privilege;

(5) If qualified, whether the document should be disclosed because it is necessary to a proper decision in the proceeding;

(6) Whether the material should be disclosed under a protective order containing such protective terms and conditions (including affidavits of non-disclosure) as may be necessary and appropriate to limit the disclosure to potential participants, interested governmental participants and parties in the proceeding, or to their qualified witnesses and counsel. When Safeguards Information protected from disclosure under section 147 of the Atomic Energy Act, as amended, is received and possessed by a potential party, interested governmental participant, or party, other than the Commission staff, it shall also be protected according to the requirements of § 73.21 of this chapter. The Board may also prescribe such additional procedures as will effectively safeguard and prevent disclosure of Safeguards Information to unauthorized persons with minimum impairment of the procedural rights which would be available if Safeguards Information were not involved. In addition to any other sanction that may be imposed by the Board for violation of an order issued pursuant to this paragraph, violation of an order pertaining to the disclosure of Safeguards Information protected from disclosure under section 147 of the Atomic Energy Act, as amended, may be subject to a civil penalty imposed pursuant to § 2.205 of this part. For the purpose of imposing the criminal penalties contained in section 223 of the Atomic Energy Act, as amended, any order issued pursuant to this paragraph with respect to Safeguards Information shall be deemed an order issued under section 161b of the Atomic Energy Act.

(c) Upon a final determination that the material is relevant, and not privileged, exempt from disclosure, or otherwise exempt from entry into the Licensing Support System under § 2.1005 of this subpart, the potential party, interested governmental participant, or party who asserted the claim of withholding must submit the document to the LSS Administrator within two days for entry into the Licensing Support System.

(d) The service of all pleadings, discovery requests and answers, orders and decisions during the pre-license application phase shall be made according to the procedures specified in § 2.1013(c) of this subpart.

(e) The Pre-License Application Licensing Board shall possess all the general powers specified in § 2.721(d) and 2.718 of this part.

§ 2.1011 LSS Management and Administration.

(a) The Licensing Support System shall be administered by the LSS Administrator who will be designated within sixty days after the effective date of the rule.

(b)(1) Consistent with the requirements in this subpart, and in consultation with the LSS Administrator, DOE shall be responsible for the design and development of the computer system necessary to implement the Licensing Support System, including the procurement of computer hardware and software, and, with the concurrence of the LSS Administrator, the follow-on redesign and procurement of equipment necessary to maintain the Licensing Support System.

(2) With respect to the procurement undertaken pursuant to paragraph (b)(1) of this section, a respresentative of the LSS Administrator shall participate as a member of the Source Evaluation Panel for such procurement.

(3) DOE shall implement consensus advice from the LSS Advisory Review Panel under paragraph (f)(1) of this section that is consistent with the requirements of this subpart.

(c)(1) The Licensing Support System, described in § 2.1002, shall not be part of any computer system that is controlled by any party, interested governmental participant, or potential party, including DOE and its contractors, or that is physically located on the premises of any party, interested governmental participant, or potential party, including DOE and that of its contractors.

(2) Nothing in this subpart shall preclude DOE, NRC, or any other party, potential party, or interested governmental participant, from using the Licensing Support System computer facility for a records management system for documentary material independent of the Licensing Support System.

(d) The LSS Administrator shall be responsible for the management and administration of the Licensing Support System, including the responsibility to—

(1) Implement the consensus advice of the LSS Advisory Review Panel under paragraph (f) of this section that is consistent with the requirements of this subpart;

(2) Provide the necessary personnel, materials, and services for operation and maintenance of the Licensing Support System;

(3) Identify and recommend to DOE any redesign or procurement actions necessary to ensure that the design and operation of the Licensing Support System meets the objectives of this subpart;

(4) Make a concurrence decision, within thirty days of a request from DOE, on any redesign and related procurement performed by DOE under paragraph (b) of this section;

(5) Consult with DOE on the design and development of this Licensing Support System under paragraph (b) of this section;

(6) Evaluate and certify compliance with the requirements of this subpart under § 2.1003(b);

(7) Ensure LSS availability and the integrity of the LSS data base;

(8) Receive and enter the documentary material specified in § 2.1003 of this subpart into the Licensing Support System in the appropriate format;

(9) Maintain security for the Licensing Support System data base, including assigning user password security codes;

(10) Establish access protocols for raw data, field notes, and other items covered by § 2.1008(c) of this subpart;

(11) Maintain the thesaurus and authority tables for the Licensing Support System;

(12) Establish and implement a training program for Licensing Support System users;

(13) Provide support staff to assist users of the Licensing Support System;

(14) Other duties as specified in this subpart or necessary for Licensing Support System operation and maintenance.

(e)(1) The LSS Administrator shall establish an LSS Advisory Review Panel composed of the LSS Advisory Committee members indentified in paragraph (e)(2) of this section who wish to serve within sixty days after designation of the LSS Administrator pursuant to paragraph (a) of this section. The LSS Administrator shall have the authority to appoint addional representatives to the Advisory Review Panel consistent with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App. I, giving particular consideration to potential parties, parties, and interested governmental participants who were not members of the the NRC HLW Licensing Support System Advisory Committee.

(2) Pending the establishment of the LSS Advisory Review Panel under paragraph (e)(1) of this section, the NRC will establish a Licensing Support System Advisory Committee whose membership will initially include the State of Nevada, a coaliton of affected units of local government in Nevada who were on the NRC High-Level Waste Licensing Support System Advisory Committee, DOE, NRC, the National Congress of American Indians, the coalition of national environmental groups who were on the NRC High-Level Waste Licensing Support System Advisory Committee and such other members as the Commission may from time to time designate to perform the responsibilities in paragraph (f) of this section.

(f)(1) The LSS Advisory Review Panel shall provide advice to—

(i) DOE on the fundamental issues of the design and development of the computer system necessary to implement the Licensing Support System under paragraph (b) of this section; and

(ii) The LSS Administrator on the operation and maintenance of the Licensing Support System under paragraph (d) of this section.

(2) The responsibilities of the LSS Advisory Review Panel shall include advice on—

(i) Format standards for the submission of documentary material to the Licensing Support System by the parties, interested governmental participants, or potential parties, such as ASCII files, bibliographic headers, and images;

(ii) The procedures and standards for the electronic transmission of filings, orders, and decisions during both the pre-license application phase and the high-level waste licensing proceeding;

(iii) Access protocols for raw data, field notes, and other items covered by § 2.1003(c) of this subpart;

(iv) A thesaurus and authority tables;

(v) Reasonable requirements for headers, the control of duplication, retrieval, display, image delivery, query response, and "user friendly" design;

(vi) Other duties as specified in this subpart or as directed by the LSS Administrator.

§ 2.1012 Compliance.

(a) In addition to the requirements of § 2.101(f) of this part, the Director of the NRC Office of Nuclear Materials Safety and Safeguards may determine that the tendered application is not acceptable for docketing under ths subpart, if the LSS Administrator has not issued the certification described in § 2.1003(h)(1) of this part.

(b)(1) A person, including a potential party granted access to the Licensing Support System under § 2.1006 of this subpart, shall not be granted party status under § 2.1014 of this part, or status as an interested governmental participant uder § 2.715(c) of this part, if it cannot demonstrate substantial and timely compliance with the requirements of § 2.1003 of this subpart at the time it requests participation in the high-level waste licensing proceeding under either § 2.1014 or 2. 715(c) of this part.

(2) A person denied party status or interested governmental participant status under paragraph (b)(1) of this section may request party status or interested governmental participant status upon a showing of subsequent compliance with the requirements of § 2.1003 of this subpart. Admission of such a party or interested governmental participant under § 2.1014 of this subpart or § 2.715(c) of this part, respectively, shall be conditioned on accepting the status of the proceeding at the time of admission.

(c) The Hearing Licensing Board shall not make a finding of substantial and timely compliance pursuant to paragraph (b) of this section for any person who is not in compliance with all applicable orders of the Pre-License Application Licensing Board established pursuant to § 2.1010 of this subpart.

(d) Access to the Licensing Support System may be suspended or terminated by the Pre-license Application Licensing Board or the Hearing Licensing Board for any potential party, interested governmental participant or party who is in noncompliance with any applicable order of the Pre-license Application Licensing Board or the Hearing Licensing Board or the requirements of this subpart.

§ 2.1013 Use of LSS during adjudicatory proceeding.

(a)(1) Pursuant to § 2.702, the Secretary of the NRC will maintain the official docket of the proceeding on the application for a license to receive and possess waste at a geologic repository operations area.

(2) Commencing with the docketing of the license application to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to Part 60 of this chapter, the LSS Administrator shall establish a file within the Licensing Support System to contain the official record materials of the high-level radioactive waste licensing proceeding in searchable full text, or for material that is not suitable for entry in searchable full text, by header and image, as appropriate.

(b) Absent good cause, all exhibits tendered during the hearing must have been entered into the Licensing Support System before the commencement of that portion of the hearing in which the exhibit will be offered. The official record file in the Licensing Support System will contain a list of all exhibits, showing where in the transcript each was marked for identification and where it was received into evidence or rejected. Transcripts will be entered into the Licensing Support System by the LSS Administrator on a daily basis in order to provide next-day availability at the hearing.

(c)(1) All filing in the adjudicatory proceeding on the license application to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to Part 60 of this chapter shall be transmitted electronically by the submitter to the board(s), parties, the LSS Administrator, and the Secretary, according to established format requirements. Parties and interested governmental participants will be required to use a password security code for the electronic transmission of these documents.

(2) Filings required to be served shall be served upon either the parties and interested governmental participants, or their designated representatives. When a party or interested governmental participant has appeared by attorney, service must be made upon the attorney of record.

(3) Service upon a party or interested governmental participant is complete when the sender receives electronic acknowledgment ("delivery receipt") that the electronic submission has been placed in the recipient's electronic mailbox.

(4) Proof of service, stating the name and address of the person on whom served and the manner and date of service, shall be shown for each document filed, by—

(i) Electronic acknowledgment ("delivery receipt"); or

(ii) The affidavit of the person making the service; or

(iii) The certificate of counsel.

(5) One signed paper copy of each filing shall be served promptly on the Secretary by regular mail pursuant to the requirements of § 2.708 and 2.701 of this part.

(6) All Board and Commission issuances and orders will be transmitted electronically to the parties, interested governmental participants, and the LSS Administrator.

(d) Online access to the Licensing Support System, including a Protective Order File if authorized by a Board, shall be provided to the board(s), the representatives of the parties and interested governmental participants, and the witnesses while testifying, for us during the hearing. Use of paper copy and other images will also be permitted at the hearing.

§ 2.1014 Intervention.

(a)(1) Any person whose interest may be affected by a proceeding on the application for a license to receive and posses high-level radioactive waste at a geologic repository operations area pursuant to Part 60 of this chapter and who desires to participate as a party shall file a written petition for leave to intervene. In a proceeding noticed pursuant to § 2.105 of this part, any person whose interest may be affected may also request a hearing. The petition and/or request, and any request to participate under § 2.715(c) of this part, shall be filed within thirty days after the publication of the notice of hearing in the **Federal Register**. Nontimely filings will not be entertained absent a determination by the Commission, or the Hearing Licensing Board designated to rule on the petition and/or request, that the petition and/or request should be granted based upon a balancing of the following factors, in addition to satisfying those set out in paragraphs (a)(2) and (c) of this section:

(i) Good cause, if any, for failure to file on time;

(ii) The availability of other means whereby the petitioner's interest will be protected;

(iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record;

(iv) The extent to which the petitioner's interest will be represented by existing parties;

(v) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

(2) The petition shall set forth with particularity—

(i) The interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding, including the reasons why petitioner should be permitted to intervene, with particular reference to the factors in paragraph (c) of this section;

(ii) A list of the contentions that petitioner seeks to have litigated in the matter, and the bases for each contention set forth with reasonable specificity;

(iii) Reference to the specific documentary material, or the absence thereof, that provides a basis for each contention; and

(iv) As to each contention, the specific regulatory or statutory requirement to which the contention is relevant.

(3) Any petitioner who fails to satisfy paragraphs (a)(2)(ii), (iii), and (iv) of this section with respect to at least one contention shall not be permitted to participate as a party.

(4) Any party may amend its contentions specified in paragraph (a)(2)(ii) of this section. The Hearing Licensing Board shall rule on any petition to amend such contentions based on the balancing of the factors specified in paragraph (a)(1) of this section. Petitions to amend that are based on information or issues raised in the Safety Evaluation Report (SER) issued by the NRC staff shall be made no later than forty days after the issuance of the SER. Any petition to amend contentions that is filed after this time shall include, in addition to the factors specified in paragraph (a)(1) of this section, a showing that a significant safety or environmental issue is involved or that the amended contention raises a material issue related to the performance evaluation anticipated by § 60.112 and 60.113 of this chapter.

(b) Any party or interested governmental participant may file an answer to a petition for leave to intervene or a petition to amend contentions within twenty days after service of the petition.

(c) Subject to paragraph (a)(3) of this section, the Commission, or the Hearing Licensing Board designated to rule on petitions to intervene and/or requests for hearing shall permit intervention, in any hearing on an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area, by an affected unit of local government as defined in section 2(31) of the Nuclear Waste Policy Act of 1982, as amended, 42 U.S.C. 10101. In all other circumstances, the Commission or Board shall, in ruling on a petition for leave to intervene, consider the following factors, among other things:

(1) The nature of the petitioner's right under the Atomic Energy Act to be made a party to the proceeding;

(2) The nature and extent of the petitioner's property, financial, or other interest in the proceeding;

(3) The possible effect of any order that may be entered in the proceeding on the petitioner's interest;

(4) The petitioner's participation as a potential party under § 2.108(c) of this subpart.

(d) An order permitting intervention and/or directing a hearing may be conditioned on such terms as the Commission, or the designated Hearing Licensing Board may direct in the interests of:

(1) Restricting irrelevant, duplicative, or repetitive evidence and argument.

(2) Having common interests represented by a spokesman, and

(3) Retaining authority to determine priorities and control the compass of the hearing.

(e) In any case in which, after consideration of the factors set forth in paragraph (c) of this section, the Commission or the Hearing Licensing Board finds that the petitioner's interest is limited to one or more of the issues involved in the proceeding, any order allowing intervention shall limit the petitioner's participation accordingly.

(f) A person permitted to intervene becomes a party to the proceeding, subject to any limitations imposed pursuant to paragraph (e) of this section.

(g) Unless otherwise expressly provided in the order allowing intervention, the granting of a petition for leave to intervene does not change or enlarge the issues specified in the notice of hearing.

§ 2.1015 Appeals.

(a) No appeals from any board order or decision issued under this subpart are permitted, except as prescribed in paragraph (b), (c), (d), and (e).

(b) A notice of appeal from (i) A Pre-License Application Licensing Board order issued pursuant to § 2.1010 of this subpart, (ii) a Hearing Licensing Board First or Second Prehearing Conference Order issued pursuant to § 2.1021 or 2.1022 of this subpart, (iii) a Hearing Licensing Board order granting or denying a motion for summary disposition issued in accordance with § 2.749 of this part, or (iv) a Hearing Licensing Board order granting or denying a petition to amend one or more contentions pursuant to § 2.1014(a)(4) of this subpart, shall be filed with the

Atomic Safety and Licensing Appeal Board no later than ten (10) days after service of the order. A supporting brief shall accompany the notice of appeal. Any other party, interested governmental participant, or potential party may file a brief in opposition to the appeal no later than ten days after service of the appeal.

(c) Appeals from Hearing Licensing Board initial decision or partial initial decision shall be filed and briefed before the Atomic Safety and Licensing Appeal Board in accordance with the requirements of § 2.762 of this part.

(d) When, in the judgment of a Board, prompt appellate review of an order not immediately appealable under paragraph (b) of this section is necessary to prevent detriment to the public interest or unusual delay or expense, the Board may refer the ruling promptly to the Appeal Board or Commssion, as appropriate, and shall provide notice of this referral to the parties, interested governmental participants, or potential parties. The parties, interested governmental participants, or potential parties may also request that the Board certify, pursuant to § 2.718(i) of this part, rulings not immediately appealable under paragraph (b) of this section.

(e) A party, interested governmental participant, or potential party may seek Commission review of any Appeal Board decision or order issued under this section in accordance with the procedures in § 2.786(b) of this part.

(f) Unless otherwise ordered, the filing of an appeal, petition for review, referral, or request for certification of a ruling shall not stay the proceeding or extend the time for the performance of any act.

§ 2.1016 Motions.

(a) All motions shall be addressed to the Commission or, when a proceeding is pending before a Board, to the Board. All motions, unless made orally on the record, shall be filed according to the provisions of § 2.1013(c) of this subpart.

(b) A motion shall state with particularity the grounds and the relief sought, and shall be accompanied by any affidavits or other evidence relied on, and, as appropriate, a proposed form of order.

(c) Within ten days after service of a motion a party, potential party, or interested governmental participant may file an answer in support of or in opposition to the motion, accompanied by affidavits or other evidence. The moving party shall have no right to reply, except as permitted by the Board or the Secretary or the Assistant Secretary.

(d) The Board may dispose of motions either by order or by ruling orally during the course of a prehearing conference or hearing.

(e) Where the motion in question is a motion to compel discovery under § 2.720(h)(2) of this part of § 2.1018(f) of this subpart, parties, potential parties, and interested governmental participants may file answers to the motion pursuant to paragraph (c) of this section. The Board in its discretion may order that the answer be given orally during a telephone conference or other prehearing conference, rather than filed electronically. If responses are given over the telephone the Board shall issue a written order on the motion which summarizes the views presented by the parties, potential parties, and interested governmental participants unless the conference has been transcribed. This does not preclude the Board from issuing a prior oral ruling on the matter which is effective at the time of its issuance, provided that the terms of the ruling are incorporated in the subsequent written order.

§ 2.1017 Computation of time.

In computing any period of time, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period so computed is included unless it is a Saturday, Sunday, or legal holiday at the place where the action or event is to occur, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor holiday. Whenever a party, potential party, or interested governmental participant has the right or is required to do some act within a prescribed period after the service of a notice or other document upon it, one day shall be added to the prescribed period. If the Licensing Support System is unavailable for more than four access hours of any day that would be counted in the computation of time, that day will not be counted in the computation of time.

§ 2.1018 Discovery.

(a)(1) Parties, potential parties, and interested governmental participants in the high-level waste licensing proceeding may obtain discovery by one or more of the following methods: access to the documentary material in the Licensing Support System submitted pursuant to § 2.1003 of this subpart; entry upon land for inspection, access to raw data, or other purposes pursuant to § 2.1020 of this subpart; access to, or the production of, copies of documentary material for which bibliographic headers only have been submitted pursuant to § 2.1003(c) and 2.1003(d) of this subpart; depositions upon oral examination pursuant to § 2.1019 of this subpart; requests for admission pursuant to § 2.742 of this part; informal requests for information not available in the Licensing Support System; and interrogatories and depositions upon written questions, as provided in paragraph (a)(2) of this section.

(2) Interrogatories and depositions upon written questions may be authorized by order of the discovery master appointed under paragraph (g) of this section, or if no discovery master has been appointed, by order of the Hearing Licensing Board, in the event that the parties are unable, after informal good faith efforts, to resolve a dispute in a timely fashion concerning the production of information.

(b)(1) Parties, potential parties, and interested governmental participants, pursuant to the methods set forth in paragraph (a) of this section, may obtain discovery regarding any matter, not privileged, which is relevant to the licensing of the likely candidate site for a geologic repository, whether it relates to the claim or defense of the person seeking discovery or to the claim or defense of any other person. Except for discovery pursuant to § 2.1018(a)(2) and § 2.1019 of this subpart, all other discovery shall begin during the pre-license application phase. Discovery pursuant to § 2.1018(a)(2) and § 2.1019 of this subpart shall begin after the issuance of the first pre-hearing conference order under § 2.1021 of this subpart, and shall be limited to the issues defined in that order or subsequent amendments to the order. It is not ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) A party, potential party, or interested governmental participant may obtain discovery of documentary material otherwise discoverable under paragraph (b)(1) of this section and prepared in anticipation of, or for the hearing by, or for another party's, potential party's or interested governmental participant's representative (including its attorney, surety, indemnitor, insurer, or similar agent) only upon a showing that the party, potential party, or interested governmental participant seeking discovery has substantial need of the materials in the preparation of its case and that it is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of these materials when the required showing has been made, the Board shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party, potential party, or interested governmental participant concerning the proceeding.

(c) Upon motion by a party, potential party, interested governmental participant, or the person from whom discovery is sought, and for good cause shown, the Board may make any order that justice requires to protect a party, potential party, interested governmental participant, or other person from annoyance, embarrassment, oppression, or undue burden, delay, or expense, including one or more of the following: (1) That the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party, potential party, or interested governmental participant seeking discovery; (4) that certain matters not be inquired into, or that the scope of discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the Board; (6) that, subject to the provisions of § 2.700 of this part, a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (7) that studies and evaluations not be prepared. If the motion for a protective order is denied in whole or in part, the Board may, on such terms and conditions as are just, order that any party, potential party, interested governmental participant or other person provide or permit discovery.

(d) Except as provided in paragraph (b) of this section, and unless the Board upon motion, for the convenience of parties, potential parties, interested governmental participants, and witnesses and in the interest of justice, orders otherwise, methods of discovery may be used in any sequency, and the fact that a party, potential party, or interested governmental participant is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's potential party's, or interested governmental participant's discovery.

(e) A party, potential party, or interested governmental participant who has included all documentary material relevant to any discovery request in the Licensing Support System or who has responded to a request for discovery with a response that was complete when made is under no duty to supplement its response to include information thereafter acquired, except as follows:

(1) To the extent that written interrogatories are authorized pursuant to paragraph (a)(2) of this section, a party or interested governmental participant is under a duty to seasonably supplement its response to any question directly addressed to the identity and location of persons having knowledge of discoverable matters, and the identity of each person expected to be called as an expert witness at the hearing, the subject matter on which the witness is expected to testify, and the substance of the witness's testimony.

(2) A party, potential party, or interested governmental participant is under a duty seasonably to amend a prior response if it obtains information upon the basis of which it knows that the response was incorrect when made, or it knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the Board or agreement of the parties, potential parties, and interested governmental participants.

(f)(1) If a deponent or a party, potential party, or interested governmental participant upon whom a request for discovery is served fails to respond or objects to the request, or any part thereof, the party, potential party, or interested governmental participant submitting the request or taking the deposition may move the Board, within five days after the date of the response or after failure to respond to the request, for an order compelling a response in accordance with the request. The motion shall set forth the nature of the questions or the request, the response or objection of the party, potential party, interested governmental participant, or other person upon whom the request was served, and arguments in support of the motion. For purposes of this paragraph, an evasive or incomplete answer or response shall be treated as a failure to answer or respond. Failure to answer or respond shall not be excused on the ground that the discovery sought is objectionable unless the person, party, potential party, or interested governmental participant failing to answer or respond has applied for a protective order pursuant to paragraph (c) of this section.

(2) In ruling on a motion made pursuant to this section, the Board may make such a protective order as it is authorized to make on a motion made pursuant to paragraph (c) of this section

(3) An independent request for issuance of a subpoena may be directed to a nonparty for production of documents. This section does not apply to requests for the testimony of the NRC regulatory staff pursuant to § 2.720(h)(2)(i) of this part.

(g) The Hearing Licensing Board pursuant to § 2.722 of this part may appoint a discovery master to resolve disputes between parties concerning informal requests for information as provided in paragraphs (a)(1) and (a)(2) of this section.

§ 2.1019 Depositions upon oral examination and upon written questions.

(a) Any party or interested governmental participant desiring to take the testimony of any person by deposition or oral examination shall, without leave of the Commission or the Hearing Licensing Board give reasonable notice in writing to every other party and interested governmental participant, to the person to be examined, and to the Hearing Licensing Board of the proposed time and place of taking the deposition; the name and address of each person to be examined, if known, or if the name is not known, a general description sufficient to identify him or her or the class or group to which he or she belongs; the matter upon which each person will be examined and the name or descriptive title and address of the officer before whom the deposition is to be taken.

(b) Within the United States, a deposition may be taken before any officer authorized to administer oaths by the laws of the United States or of the place where the examination is held. Outside of the United States, a deposition may be taken before a secretary of an embassy or legation, a consul general, vice consul or consular agent of the United States, or a person authorized to administer oaths designated by the Commission. Depositions may be conducted by telephone or by video teleconference at the option of the party or interested governmental participant taking the deposition.

(c) The deponent shall be sworn or shall affirm before any questions are put to him or her. Examination and cross-examination shall proceed as at a hearing. Each question propounded shall be recorded and the answer taken down in the words of the witness. Objections on questions of evidence shall be noted in short form without the arguments. The officer shall not decide on the competency, materiality, or relevancy of

evidence but shall record the evidence subject to objection. Objections on questions of evidence not made before the officer shall not be deemed waived unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(d) When the testimony is fully transcribed, the deposition shall be submitted to the deponent for examination and signature unless the deponent is ill or cannot be found or refuses to sign. The officer shall certify the deposition or, if the deposition is not signed by the deponent, shall certify the reasons for the failure to sign, and shall promptly transmit the deposition to the LSS Administrator for submission into the Licensing Support System.

(e) Where the deposition is to be taken on written questions as authorized under § 2.1018(a)(2) of this subpart, the party or interested governmental participant taking the deposition shall serve a copy of the questions, showing each question separately and consecutively numbered, on every other party and interested governmental participant with a notice stating the name and address of the person who is to answer them, and the name, description, title, and address of the officer before whom they are to be asked. Within ten days after service, any other party or interested governmental participant may serve cross-questions. The questions, cross-questions, and answers shall be recorded and signed, and the deposition certified, returned, and transmitted to the LSS Administrator as in the case of a deposition on oral examination.

(f) A deposition will not become a part of the evidentiary record in the hearing unless received in evidence. If only part of a deposition is offered in evidence by a party or interested governmental participant, any other party or interested governmental participant may introduce any other parts. A party or interested governmental participant shall not be deemed to make a person its own witness for any purpose by taking his or her deposition.

(g) A deponent whose deposition is taken and the officer taking a deposition shall be entitled to the same fees as are paid for like services in the district courts of the United States, to be paid by the party or interested governmental participant at whose instance the deposition is taken.

(h) The deponent may be accompanied, represented, and advised by legal counsel.

(i)(1) After receiving written notice of the deposition under paragraph (a) or paragraph (e) of this section, and ten days before the scheduled date of the deposition, the deponent shall submit an index of all documents in his or her possession, relevant to the subject matter of the deposition, including the categories of documents set forth in paragraph (i)(2) of this section, to all parties and interested governmental participants. The index shall identify those records which have already been entered into the Licensing Support System. All documents that are not identical to documents already in the Licensing Support System, whether by reason of subsequent modification or by the addition of notations, shall be treated as separate documents.

(2) The following material is excluded from initial entry into the Licensing Support System, but is subject to derivative discovery under paragraph (i)(1) of this section—

(i) Personal records;
(ii) Travel vouchers;
(iii) Speeches;
(iv) Preliminary drafts;
(v) Marginalia.

(3) Subject to paragraph (i)(6) of this section, any party or interested governmental participant may request from the deponent a paper copy of any or all of the documents on the index that have not already been entered into the Licensing Support System.

(4) Subject to paragraph (i)(6) of this section, the deponent shall bring a paper copy of all documents on the index that the deposing party or interested governmental participant requests that have not already been entered into the Licensing Support System to an oral deposition conducted pursuant to paragraph (a) of this section, or in the case of a deposition taken on written questions pursuant to paragraph (e) of this section, shall submit such documents with the certified deposition.

(5) Subject to paragraph (i)(6) of this section, a party or interested governmental participant may request that any or all documents on the index that have not already been entered into the Licensing Support System, and on which it intends to rely at hearing, be entered into the LSS by the deponent.

(6) The deposing party or interested governmental participant shall assume the responsibility for the obligations set forth in paragraphs (i)(1), (i)(3), (i)(4), and (i)(5) of this section when deposing someone other than a party or interested governmental participant.

(j) In a proceeding in which the NRC is a party, the NRC staff will make available one or more witnesses designated by the Executive Director for Operations, for oral examination at the hearing or on deposition regarding any matter, not privileged, which is relevant to the issues in the proceeding. The attendance and testimony of the Commissioners and named NRC personnel at a hearing or on deposition may not be required by the Board, by subpoena or otherwise: Provided, That the Board may, upon a showing of exceptional circumstances, such as a case in which a particular named NRC employee has direct personal knowledge of a material fact not known to the witnesses made available by the Executive Director for Operations, require the attendance and testimony of named NRC personnel.

§ 2.1020 Entry upon land for inspection and other purposes.

(a) Any party, potential party, or interested governmental participant may serve on any other party, potential party, or interested governmental participant a request to permit entry upon designated land or other property in the possession or control of the party, potential party, or interested governmental participant upon whom the request is served for the purpose of access to raw data, inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of § 2.1018 of this subpart.

(b) The request may be served on any party, potential party, or interested governmental participant without leave of the Commission or the Board.

(c) The request shall describe with reasonable particularity the land or other property to be inspected either by individual item or by category. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

(d) The party, potential party, or interested governmental participant upon whom the request is served shall serve on the party, potential party, or interested governmental participant submitting the request a written response within ten days after the service of the request. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which case the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified.

§ 2.1021 First prehearing conference.

(a) In any proceeding involving an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area

pursuant to Part 60 of this chapter the Commission or the Hearing Licensing Board will direct the parties, interested governmental participants and any petitioners for intervention, or their counsel, to appear at a specified time and place, within seventy days after the notice of hearing is published, or such other time as the Commission or the Hearing Licensing Board may deem appropriate, for a conference to:

(1) Permit identification of the key issues in the proceeding;

(2) Take any steps necessary for further identification of the issues;

(3) Consider all intervention petitions to allow the Hearing Licensing Board to make such preliminary or final determination as to the parties and interested governmental participants, as may be appropriate;

(4) Establish a schedule for further actions in the proceeding; and

(5) Establish a discovery schedule for the proceeding taking into account the objective of meeting the three-year time schedule specified in section 114(d) of the Nuclear Waste Policy Act of 1982, as amended, 42 U.S.C. 10134(d).

(b) The Board may order any further formal and informal conferences among the parties and interested governmental participants including teleconferences, to the extent that it considers that such a conference would expedite the proceeding.

(c) A prehearing conference held pursuant to this section shall be stenographically reported.

(d) The Board shall enter an order which recites the action taken at the conference, the schedule for further action in the proceeding, and any agreements by the parties, and which identifies the key issues in the proceeding, makes a preliminary or final determination as to the parties and interested governmental participants in the proceeding, and provides for the submission of status reports on discovery.

§ 2.1022 Second prehearing conference.

(a) The Commission or the Hearing Licensing Board in a proceeding on an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area shall direct the parties, interested governmental participants, or their counsel to appear at a specified time and place not later than seventy days after the Safety Evaluation Report is issued by the NRC staff for a conference to consider:

(1) Any amended contentions submitted under § 2.1014(a)(4) of this subpart;

(2) Simplification, clarification, and specification of the issues;

(3) The obtaining of stipulations and admissions of fact and of the contents and authenticity of documents to avoid unnecessary proof;

(4) Identification of witnesses and the limitation of the number of expert witnesses, and other steps to expedite the presentation of evidence;

(5) The setting of a hearing schedule;

(6) Establishing a discovery schedule for the proceeding taking into account the objective of meeting the three year time schedule specified in section 114(d) of the Nuclear Waste Policy Act of 1982, as amended, 42 U.S.C. 10134(d); and

(7) Such other matters as may aid in the orderly disposition of the proceeding.

(b) A prehearing conference held pursuant to this section shall be stenographically reported.

(c) The Board shall enter an order which recites the action taken at the conference and the agreements by the parties, limits the issues or defines the matters in controversy to be determined in the proceeding, sets a discovery schedule, and sets the hearing schedule.

§ 2.1023 Immediate effectiveness of initial decision.

(a) Pending review and final decision by the Commission, an initial decision resolving all issues before the Hearing Licensing Board in favor of issuance or amendment of a construction authorization pursuant to § 60.31 of this chapter or a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to § 60.41 of this chapter, will be immediately effective upon issuance except—

(1) As provided in any order issued in accordance with § 2.788 of this part that stays the effectiveness of an initial decision; or

(2) As otherwise provided by the Commission in special circumstances.

(b) The Director of Nuclear Material Safety and Safeguards, notwithstanding the filing or pendency of an appeal or a petition for review pursuant to § 2.1015 of this subpart, promptly shall issue a construction authorization or a license to receive and possess high-level radioactive waste at a geologic repositiory operations area, or amendments thereto, following an initial decision resolving all issues before the Hearing Licensing Board in favor of the licensing action, upon making the appropriate licensing findings, except—

(1) As provided in paragraph (c) of this section; or

(2) As provided in any order issued in accordance with § 2.788 of this part that stays the effectiveness of an initial decision; or

(3) As otherwise provided by the Commission in special circumstances.

(c)(1) Before the Director of Nuclear Material Safety and Safeguards may issue a construction authorization or a license to receive and possess waste at a geologic repository operations area in accordance with paragraph (b) of this section, the Commission, in the exercise of its supervisory authority over agency proceedings, shall undertake and complete a supervisory examination of those issues contested in the proceeding before the Hearing Licensing Board to consider whether there is any significant basis for doubting that the facility will be constructed or operated with adequate protection of the public health and safety, and whether the Commission should take action to suspend or to otherwise condition the effectiveness of a Hearing Licensing Board decision that resolves contested issues in a proceeding in favor of issuing a construction authorization or a license to receive and possess high-level radioactive waste at a geologic respository operations area. This supervisory examination is not part of the adjudicatory proceeding. The Commission shall notify the Director in writing when its supervisory examination conducted in accordance with this paragraph has been completed.

(2) Before the Director of Nuclear Material Safety and Safeguards issues a construction authorization or a license to receive and possess high-level radioactive waste at a geologic respository operations area, the Commission shall review those issues that have not been contested in the proceeding before the Hearing Licensing Board but about which the Director must make appropriate findings prior to the issuance of such a license. The Director shall issue a construction authorization or a license to receive and possess high-level radioactive waste at a geologic respository operations area only after written notification from the Commission of its completion of its review under this paragraph and of its determination that it is appropriate for the Director to issue such a construction authorization or license. This Commission review of uncontested issues is not part of the adjudicatory proceeding.

(3) No suspension of the effectiveness of a Hearing Licensing Board's initial decision or postponement of the Director's issuance of a construction authorization or license that results from a Commission supervisory examination of contested issues under paragraph

(c)(1) of this section or a review of uncontested issues under paragraph (c)(2) of this section will be entered except in writing with a statement of the reasons. Such suspension or postponement will be limited to such period as is necessary for the Commission to resolve the matters at issue. If the supervisory examination results in a suspension of the effectiveness of the Hearing Licensing Board's initial decision under paragraph (c)(1) of this section, the Commission will take review of the decision sua sponte and further proceedings relative to the contested matters at issue will be in accordance with procedures for participation by the DOE, the NRC staff, or other parties and interested governmental participants to the Hearing Licensing Board proceeding established by the Commission in its written statement of reasons. If a postponement results from a review under paragraph (c)(2) of this section, comments on the uncontested matters at issue may be filed by the DOE within ten days of service of the Commission's written statement.

Dated at Rockville, MD this 25th day of October, 1988.

Samuel J. Chilk,
Secretary of the Commission.

[FR Doc. 88-25223 Filed 11-2-88; 8:45 am]
BILLING CODE 7590-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Chapter V

[No. 88-1104]

Mutual Savings and Loan Holding Companies

Date: October 6, 1988

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice of public hearing and extension of comment period for advance notice of proposed rulemaking.

SUMMARY: By this notice, the Federal Home Loan Bank Board (the "Board") is announcing a public hearing to consider the issues raised in the Board's advance notice of proposed rulemaking regarding mutual holding companies, which was published at 53 FR 41343 (October 21, 1988). In order to accommodate the hearing, the Board is also extending the comment period on the advance notice of proposed rulemaking to December 5, 1988.

DATE: The public hearing will be held Monday, November 28, 1988, 1:00 p.m. through 5:00 p.m. Requests to participate in the hearing must be received no later than 5:00 p.m., November 18, 1988. Comments regarding the advance notice of proposed rulemaking that do not relate to a request to participate in the hearing may be submitted up to and including December 5, 1988.

ADDRESS: Requests to participate in the hearing must be in writing and either mailed to the Secretary, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, or hand delivered to the same address between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday. Comments regarding the advance notice of proposed rulemaking that do not relate to a request to participate in the hearing should be submitted in the manner specified in the advance notice. *See* 53 FR 41343 (October 21, 1988).

Copies of the Board's advance notice of proposed rulemaking and any comments or other materials received by the Board regarding the advance notice will be available for review in the Board's reading room, at 801 17th Street NW., Washington, DC 20006

Hearing Location: The Federal Home Loan Bank Board's Amphitheater, 2nd Floor, 1700 G Street NW., Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT: Jeff Miner, Assistant Deputy Director, Corporate and Securities Division, (202) 377-7546; V. Gerard Comizio, Director, Corporate and Securities Division, (202) 377-6411; or Julie L. Williams, Deputy General Counsel for Securities and Corporate Structure, (202) 377-6458; Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: Recently the Board adopted an advance notice of proposed rulemaking (the "ANPR") that sets forth and discusses a number of significant issues that must be resolved by the Board when it promulgates regulations implementing the mutual holding company provisions of the National Housing Act (the "NHA"), NHA Section 408(s), 12 U.S.C. 1730a(s), as amended by the Competitive Equality Banking Act of 1987, Pub. L. No. 100-86, 101 Stat. 552, 577-579 (1987). 53 FR 41343 (October 21, 1988). Due to the novel and complex nature of many of these issues, the Board has decided to hold a public hearing at which interested persons will be permitted to express their views. The purpose of the hearing will be to consider the issues specified in the ANPR, as well as any other issues relating to mutual holding companies that participants and the Board deem significant.

Any person wishing to participate in the public hearing should send a written request to the Secretary, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20442. Alternatively, requests may be hand delivered to the above address between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday. No requests received after 5:00 p.m. Friday, November 18, 1988, will be considered. This deadline is necessary in order to provide sufficient time to respond to the requests and to prepare the schedule of the hearing. It will also enable alternative arrangements to be made for the hearing if more persons wish to attend than the Amphitheater will accommodate.

Requests to participate in the hearing must include the following information: (i) The name, address, and business telephone number of the participant; (ii) the company or organization, if any, that the participant represents; (iii) a brief summary of the participant's anticipated remarks; and (iv) the time of day that the participant would prefer to testify. Although the Board will attempt to accommodate the participants as to time, there can be no guarantee that the Bord will be able to honor all such preferences. Each person's summary of remarks should identify with specificity the issues that he or she wishes to address and the comments expected to be made on those issues.

Depending upon the number of requests received, the time allotted to participants for their oral presentations may be limited and/or the Board may decide to conduct the hearing over more than one day (although the Board does not contemplate such an extension at this time). The Board reserves the right to limit the number of participants and to select, in its discretion, those persons who may make oral presentations if the Board receives more requests for participation than may be accommodated in the time available. Additionally, the Board anticipates that it may establish panels of participants for presentations. The Board will endeavor to ensure that the persons selected to participate in the hearing constitute a representative sample of the types of, and points of view expressed by, persons requesting permission to participate. All persons requesting permission to participate will be advised whether they have been selected and of the scheduled time for their testimony and other procedural details.

All persons, regardless whether they are selected to participate in the public hearing, are invited to submit written statements for consideration by the Board. Such statements may be

submitted any time during the ANPR comment period, which the Board has extended to December 5, 1988, so as to accommodate the public hearing and to give the public opportunity to respond to issues discussed at the hearing. Detailed instructions regarding the procedure to follow in filing written comments unrelated to requests to participate in the hearing may be found in the ANPR.

By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.

[FR Doc. 88-25402 Filed 11-2-88; 8:45 am]
BILLING CODE 6720-01-M

12 CFR Part 522

[No. 88-1104]

Election of Directors of the Federal Home Loan Banks

Date: October 25, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Federal Home Loan Bank Board (the "Board"), as operating head of the Federal Home Loan Bank System ("Bank System"), is considering and seeks public comment on changes to the rules and regulations governing the election of directors of the Federal Home Loan Banks ("Banks"). The Banks play an important role as agents of the Board in a substantial number of regulatory and supervisory areas. The Board is concerned about the appearance of conflicts of interest that may exist when officers or directors of institutions not meeting certain regulatory requirements are elected to positions as directors of the Banks.

DATE: Comments must be received on or before December 5, 1988.

ADDRESS: Send comments to: Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G St. NW., Washington, DC 20552. Comments will be available for public inspection at Information Services, Federal Home Loan Bank Board, 801 17th Street, NW., Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT: William Carey, (202) 377-6656, Director, Bank Liaison Division, or Patrick Berbakos, (202) 377-6720, Director, Office of District Banks, Federal Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Board today seeks public comment on possible avenues to address the appearance of conflicts that may arise when officers or directors of insured institutions that are the subject of heightened regulatory scrutiny are elected to the boards of directors of the Banks. The Board also believes that it may be inappropriate for persons who have personally been the subject of regulatory concern to serve on the boards of entities that form such an integral part of the Board's supervision and regulation of the thrift industry.

The Banks may and do act as the Board's agents pursuant to the Federal Home Loan Bank Act, 12 U.S.C. 1437 ("FHLBank Act"), which provides that the Board may authorize officers, employees, agents, or administrative units of the Banks to perform a wide variety of Board functions. Pursuant to that authority, the Board has delegated a number of critical supervisory, examination, and regulatory functions to the Banks. The President of each Bank is the Principal Supervisory Agent ("PSA") of the Board and the Federal Savings and Loan Insurance Corporation ("FSLIC") for that Bank district. 12 CFR 501.11(e). Other Bank employees may act as Supervisory Agents. Under the FHLBank Act, the Banks may make advances to their member institutions, filling an essential liquidity role for the thrift industry. 12 U.S.C. 1430.

In turn, the Board supervises the Bank System and has plenary rulemaking authority "to adopt, amend, and require the obsevance of such rules, regulations, and orders as shall be necessary from time to time for carrying out the purposes of the provisions" of the FHLBank Act. 12 U.S.C. 1437. The section further provides the Board with the authority to "suspend or remove any director, officer, employee, or agent" of any Bank upon providing written notice of the cause therefor to the person suspended or removed and to the Bank. Section 7 of the FHLBank Act deals specifically with the directors of the Banks. 12 U.S.C. 1427. The board of directors of a Bank is to "administer the affairs of the bank fairly and impartially and without discrimination in favor of or against any member or nonmember borrower, and shall, subject to the provisions hereof, extend to each institution authorized to secure advances such advances as may be made safely and reasonably with due regard for the claims and demands of other institutions, and due regard to the maintenance of adequate credit standing for the Federal Home Loan Bank and its obligations."

The statute provides the Board with broad authority over the selection of directors of a Bank. Certain directors are to be appointed by the Board. The remaining directors are to be elected by the members of a particular Bank, in accordance with regulations of the Board. Section 7(d) of the FHLBank Act, 12 U.S.C. 1427(d) provides:

> The Board is hereby authorized to prescribe such rules and regulations as it may deem necessary or appropriate for the nominations and election of directors of Federal home loan banks, including, without limitation on the generality of the foregoing, rules and regulations with respect to the breaking of ties and with respect to the inclusion of more than one directorship on a single ballot and the methods of voting and of determining the results of voting in such cases.

Pursuant to this specific grant of rulemaking authority, as well as its broad authority under section 17 of the FHLBank Act, 12 U.S.C. 1437, the Board has set forth detailed regulations specifically dealing with the appointment and election of directors of the Banks. 12 CFR 522.20-522.28. The Board is considering whether the best interests of the industry would require that these provisions be amended to provide explicit eligibility requirements for elective directors.

The FHLBank Act set forth eligibility requirements that must be met by all Bank directors, including U.S. citizenship and residence in the district where the Bank is located. 12 U.S.C. 1427(a). An elective director, who will represent member institutions of a state within a Bank district, must be an officer or director of an institution located in that state. 12 U.S.C. 1427(b). Persons who have served all or part of three consecutive terms are ineligible for election to a term beginning within two years of the expiration of the last term. 12 U.S.C. 1427(d).

Currently, the Board has several specific areas of concern in regard to the election and service of certain persons as elective directors of the Banks. First, an increasing number of the Board's regulations are tied to an institution's capital position. Congress recently provided the Board with enhanced authority to establish minimum capital levels for insured institutions and authorized the Board to treat an institution's failure "to maintain capital at or above the minimum level" as an unsafe or unsound practice. 12 U.S.C. 1464(s), 1730(t). Institutions that fail to meet their minimum capital requirements are subject to increased regulatory scrutiny. This scrutiny often takes the form of requiring PSA approval before the institution may engage in certain activities or levels of activities. See, e.g., 12 CFR 563.4(c) (permissible levels of brokered

deposits); 563.13–3(e) (purchase and sale of Federal Home Loan Mortgage Corporation stock); 563.9–8(c)(2)(iii) (making equity risk investments). Additionally, the Banks' directors have the authority to determine whether to extend advances to member institutions. Institutions not meeting their capital requirements often rely heavily on such advances.

Given the extensive authority granted to the directors of the Banks to administer the Banks, subject to the Board's authority, there may be potential for even the appearance of conflicts to arise in a Bank director's role with respect to policies toward groups of institutions that are similar to and may include his or her institution if that institution is under tighter regulatory supervision or control by the Bank President, as PSA, or has a greater need for advances. Of course, Bank directors have no responsibility for the supervisory and examination activities performed by any Bank employees on behalf of the Board of FSLIC pursuant to any authority delegated by the Board. See 12 CFR 522.62. The Board seeks comment about whether it is appropriate for an officer or director of an insured institution not meeting its minimum capital requirements to be eligible for election to a Bank directorship. A related concern arises when an institution is insolvent under regulatory accounting principles. The Board seeks comments about whether insolvency, rather than failure to meet capital requirements, should be a criterion for determining eligibility. The Board also requests comment on the policy concerns raised by a Bank director's continued service in that role if his or her institution falls below its minimum capital requirement, or becomes insolvent, during the director's term.

Second, nothing in Part 522 currently prohibits or in any way limits the ability of a person against whom a cease and desist order is outstanding to be an eligible candidate for a Bank directorship or to continue to serve as a Bank director. While the Board believes that the removal of such a person from the directorship position is within its authority pursuant to section 17 of the FHLBank Act, it seeks comment as to whether its regulations should be amended to deal specifically with this issue by, for example, precluding the election of such a person to the directorate of a Bank or by providing that the existence of such an order against an individual constitutes a ground for removal.

A separate but related issue arises when the cease and desist order has been issued against the institution of which the person serves as officer or director, but not against the person individually. Such a cease and desist order may not carry any negative implication about the person's capability to serve as a Bank director. It may be argued, however, that the appearance of conflict in that situation carries with it potential for injury to the integrity of the Bank System significant enough to constitute cause for removing such persons from service as a Bank director. Just as in the case of institutions not meeting their minimum capital requirements, institutions operating under cease and desist orders are under close regulatory scrutiny by the Board and the Banks as agents of the Board. Similar concerns may arise when an insured institution enters into a supervisory agreement which may require it to submit to heightened regulatory involvement by its PSA in its management.

The Board notes that the FHLBank Act provides that directors who do not continue to meet statutory eligibility requirements throughout their terms may continue to serve until the Board appoints a successor or their term expires, whichever occurs first. 12 U.S.C. 1427(f). The Board seeks comments as to whether similar provisions should accompany any regulatory eligibility requirements, or whether, if a director becomes ineligible during his or her term for one or more of the reasons discussed above, the director should be automatically removed.

Although regulations involving the management and directors of the Banks are matters of internal organization practice and procedure of the Federal Home Loan Bank System, and public notice and comment is therefore not required by the Administrative Procedure Act, the Board is today seeking comment from the public on these issues in order to assist it in determining the appropriate avenue to address these concerns. Today, by temporary regulation published elsewhere in this issue of the Federal Register, the Board is addressing the eligibility requirements for a candidate for an elective Bank directorship to be declared elected to the Bank's board of directors. This temporary regulation governs only the election taking place in the 1988 calendar year. This advance notice of proposed rulemaking seeks to address broader, long-term concerns about the nomination and election process, as well as the propriety of allowing persons to continue to serve as Bank directors after their personal and/or institution's circumstances change during their tenure of office such that they would no longer be eligible for nomination.

The Board is currently considering requiring that persons nominated as candidates meet eligibility requirements both at the time of nomination and at the time candidates are declared elected. Additionally, the Board is considering specifying in its regulations certain circumstances under which it will exercise its removal powers pursuant to § 17 of the FHLBank Act, 12 U.S.C. 1437, when a director would no longer meet the same eligibility requirements. This would in no way indicate that the Board is in any way limiting its full statutory authority to remove a director for reasons not listed, but would merely provide notice of circumstances where such authority generally would be exercised.

The Board is currently considering regulatory eligibility requirements based upon whether the nominee's institution is meeting its minimum capital requirements and the existence of a cease and desist order against the nominee individually. The Board seek comments on the appropriateness of these eligibility requirements at both the nomination and election state, as well as whether the same standards should be automatically applied to existing directors. It has been suggested that in the case of directors currently serving it may be appropriate for such decisions to be made on a case-by-case basis, without a regulatory presumption. The Board's current view is that similar concerns may arise at any stage and that the regulation should therefore provide similar standard, but seeks comment on alternatives.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88–25404 Filed 11–2–88; 8:45 am]

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FARM CREDIT ADMINISTRATION

12 CFR Parts 613, 614, 615, 616, 618, and 619

Eligibility and Scope of Financing; Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Coordination; General Provisions; Definitions

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board), publishes for comment proposed amendments to 12 CFR Parts 613, 614, 615, 616, 618, and 619 to implement changes made necessary as a result of enactment of the Agricultural Credit Act of 1987 (1987 Act) [Pub. L. 100–233]. These proposed amendments reconcile the authorities of Farm Credit Banks created by the mandatory merger of Federal land banks and Federal intermediate credit banks. They also reconcile the authorities of an agricultural credit association created by the merger of a Federal land bank association and production credit association and an Agricultural Credit Bank created by the merger of a bank for cooperatives with a Farm Credit Bank. The transfer of real estate lending authorities to individual Federal land bank associations is an additional area dealt within the proposed amendments. The proposed amendments also accommodate changes in authorities resulting from the voluntary restructuring of the banks for cooperatives. Other proposed amendments clarify related issues not specifically addressed in the 1987 Act and delete the requirement for FCA approval contained in selected credit-related regulations to reflect FCA's role as an arms-length regulator.

DATE: Comments should be received on or before December 5, 1988.

ADDRESSES: Submit any comments in writing (in triplicate) to Anne E. Dewey, General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Dennis K. Carpenter, Senior Credit Specialist, Financial Analysis and Standards Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444.

or

Joanne P. Ongman, Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: The proposed regulations discussed below address three areas. In Part I, the FCA Board proposes regulations reconciling the authorities of Farm Credit System banks and associations that are reorganized pursuant to the 1987 Act. Part II sets forth proposed amendments to clarify related issues not specifically addressed in the 1987 Act. Deletion of FCA credit-related approvals is dealt with in Part III.

I. Proposed Regulations Addressing Restructuring of System Institutions

The 1987 Act establishes requirements for restructuring the Farm Credit System. This restructuring may result in the creation of new institutions or the modification of the authorities of existing institutions. The FCA Board therefore proposes the following new regulations and amendments to existing regulations reconciling the powers and obligations of the restructured institutions. In addition, the FCA Board proposes to delete Part 616 in its entirety. The System restructuring required by the 1987 Act has eliminated the need for Part 616, which addresses the manner in which specified activities are to be coordinated by System institutions.

A. Formation of Farm Credit Banks

Section 410 of the 1987 Act required the Federal land bank (FLB) and Federal intermediate credit bank (FICB) in each district to merge to form a Farm Credit Bank no later than July 6, 1988. Pursuant to this provision, the Federal land banks and Federal intermediate credit banks in eleven Farm Credit districts have merged forming eleven Farm Credit Banks. The Farm Credit District of Jackson is the only district in which a merger did not occur because the FLB had been placed in receivership prior to the mandatory merger date.

Section 411 of the 1987 Act amended Title I of the Farm Credit Act of 1971 (1971 Act) to reflect the creation of Farm Credit Banks. Amended section 1.7 authorizes these recently formed FCBs to make long-term real estate mortgage loans in rural areas, to provide financial assistance to Federal land bank associations (FLBAs), and to extend intermediate credit to production credit associations (PCAs) or any national bank, State bank, trust company, agricultural credit corporation, incorporated livestock loan company, savings institution, credit union, or any association of agricultural producers engaged in the making of loans of farmers and ranchers, and any corporation engaged in the making of loans to producers or harvesters of aquatic products.

The FCA Board therefore proposes to revise § 614.4170 to state the lending authorities of FCBs as set forth in section 107. Section 614.4170 is also proposed to be amended to state the loan terms and conditions applicable to FCB loans and to incorporate amended section 1.10(a)(1) of the 1971 Act, which limits the loan-to-appraised value of real estate security to 85 percent (97 percent if guaranteed by a Federal, State, or other governmental agency) or 75 percent in certain instances. In addition, a new § 614.4170(a)(3) is proposed, which requires FCB borrowers to file financial reports with the bank at least annually. This provision is proposed pursuant to FCA's authority under section 1.10(a)(5) to issue regulations requiring financial reporting to FCBs from their borrows more frequently than once every 3 years. This requirement applies to real estate mortgage loans, excluding amortized loans to borrowers for rural residence, consumer-type, or other similarly amortized loans in which regular and frequent payments are required. A new paragraph (c) is also proposed to be added to § 614.4170 to describe the lending authorities and security requirements applicable to FCB direct loans to associations. The proposed regulation provides that these direct loans should be secured by certain assets of the association, although unsecured loans may be made if the overall condition of the association warrants such lending. The proposed regulation also requires each association to execute a financing agreement which will set forth the terms, conditions and limitations under which the FCB will advance funds to the association. Finally, paragraph (d) of § 614.4170 is proposed to be added, which describes an FCB's lending authorities in relation to commercial banks and other non-Farm Credit lending institutions.

B. Restructuring of the Banks for Cooperatives

1. Formation of the National Bank for Cooperatives (NBC)

Pursuant to section 413 of the 1987 Act, stockholders in eight of the twelve Farm Credit districts have voted to approve the merger of their district bank for cooperatives (BC) with the Central Bank for Cooperatives (CBS) to form a National Bank for Cooperatives. The NBC will begin operations January 1, 1989, and will have nationwide lending authority as described in section 413(b)(4)(B) of the 1987 Act. The four district BCs that did not approve the merger will also have nationwide lending authority and will remain as individual banks with the option to seek merger with other independent BCs, FCBs, or the new NBC. The FCA Board therefore proposes new § 619.9080 to define "bank for cooperatives" to incorporate all bank entities operating under Title III of the 1971 Act.

Section 614.4334 addresses the loan participation authority of banks for cooperatives. It is proposed to be amended to reflect the new participation authorities between the individual BCs, the NBC, and the FCBs. In particular, the CBC, which spread loan risk of the large BC loans throughout the BC system, has been merged into the NBC and the concentration of such loans with the NBC makes it unnecessary to require loan participations of individual BCs to be offered first to the NBC. In the case of individual BCs with loans in excess of their lending limit, participations with other Farm Credit System banks, commercial banks and financial institutions that are not Farm Credit System institutions will be authorized for such excess amounts. However, to avoid undue concentration of loan risk within a specific region the individual BCs will not be authorized to participate such excess amounts with their affiliated FCB.

2. Formation of Agricultural Credit Banks (ACBs)

The foregoing discussion has already noted that FCBs have been created from the merger of FLBs and FICBs pursuant to section 410 of the 1987 Act. It has also been noted that, pursuant to section 413 of the 1987 Act, stockholders in eight of the twelve Farm Credit districts have approved consolidation of the bank for cooperatives with the Central Bank for Cooperatives to form the National Bank for Cooperatives, which will begin operations January 1, 1989. Therefore, the FCB will be the only bank in all but four districts, after January 1, 1989. In three of the four remaining districts (excluding the Jackson District which currently has no FCB), the remaining two banks (FCB and BC) may merge to form an Agricultural Credit Bank (ACB) pursuant to new section 7.0, added by section 416 of the 1987 Act. ACBs are defined in proposed new § 619.9020. New section 7.2 provides that an ACB has all the powers of the constituent entities. Section 610.4180 is therefore proposed to be revised to define the lending authorities and the terms and conditions applicable to ACB loans by incorporating and revising the loan terms and conditions applicable to FCBs and BCs. New § 614.4335 is proposed to address the authority of ACBs to enter into loan participation agreements and provides that ACBs enter into such agreements under the authorities of FCBs and BCs, as prescribed under new section 7.2 of the 1971 Act.

3. Proposed Regulations Addressing Eligibility to Borrow from Banks for Cooperatives

In addition to the proposed revisions that reflect the restructuring of the banks for cooperatives, the following amendments are proposed to incorporate two changes made to section 3.8 of the 1971 Act by section 421 of the 1987 Act. Specifically, § 613.3110(b)(4), which deals with the eligibility of cooperatives to borrow from BCs, is proposed to be amended to incorporate the provision in section 421 stating that, for entities that are rural utility borrowers with loans fully guaranteed by the United States Government, no stock ownership requirements shall apply other than the requirement to hold a single share of voting stock. Section 421 of the 1987 Act also expands the eligibility criteria contained in section 3.8 of the 1971 Act to include, as eligible borrowers, legal entities that hold more than 50 percent voting control of an eligible entity and legal entities more than 50 percent of whose voting stock is held by eligible entities. Section 613.3110(b)(5) is proposed to be amended to incorporate this revision of eligibility requirements.

C. Formation of Agricultural Credit Associations (ACAs)

Section 416 of the 1987 Act added section 7.6 to the 1971 Act which authorizes the transfer of direct lending authority from the FCB to the FLBAs operating within the bank's chartered territory. Section 7.6(d) provides that when one or more PCAs merge with one or more FLBAs within a district to form an agricultural credit association (ACA), the bank affiliated with the constituent FLBA(s) will transfer its direct lending authority to the merged association. In addition, section 411 of the 1987 Act requires the boards of directors of each PCA and FLBA that share substantially the same geographic territory to submit, for stockholder vote, a plan for merging the two associations into an ACA. The plan must be submitted not later than 6 months from the date of the merger of the FLB and FICB into an FCB, and must be submitted to the affiliated bank and the FCA for their approval.

The FCA Board therefore proposes to define the term "agricultural credit association" in proposed new § 619.9015, and to define the lending authority and the terms and conditions applicable to loans made by ACAs in proposed new § 614.4205. The latter proposed new regulations states that upon creation of an ACA the FCB will transfer its authority to make and participate in long-term real estate mortgage loans to the ACA. ACAs also possesses the lending authority held by the PCA. It also allows ACAs the option to make real estate mortgage loans without requiring a first lien if the term is 10 years or less to incorporate PCA lending authority. Finally, this proposed regulation incorporates the security requirements for FCBs described in § 614.4170 and the traditional PCA loan terms and conditions stated in § 614.4200. Proposed § 614.4336 addresses the authority of ACAs to enter into loan participation agreements. It provides that ACAs enter into such agreements under the authorities prescribed by new section 7.8 of the 1971 Act. The FCA Board proposes to define the term "direct lender" in proposed new § 619.9135 to refer to the Farm Credit System banks and associations that have vested or transferred direct lending authorities pursuant to Titles I, II, III, and VII of the 1971 Act. Associations that are direct lenders operating under Titles II and VII of the 1971 Act will establish and maintain a debtor-creditor relationship with their affiliated banks as addressed in Part 614 Subpart A of these regulations.

D. Transfer of Long-Term Real Estate Lending Authority to FLBAs

Section 416 of the 1987 Act added new section 7.6 to the 1971 Act. New section 7.6(a) permits an FCB, or an ACB, to transfer its authority to make and participate in long-term real estate mortgage loans to an FLBA and subjects such transfers to FCA approval. The FCA Board therefore proposes new § 614.4060 to address the FCB's and ACB's responsibility to assure that policies and procedures are established before the transfer of lending authority to an FLBA. Proposed new § 614.4190 states the basic lending authority of FLBAs receiving a transfer of authority to make and participate in long-term real estate loans. It provides that FLBAs that have received a transfer of long-term real estate mortgage lending authority shall make long-term real estate mortgage loans under the same terms and conditions as an FCB that has not transferred this authority. Section 614.4332 is proposed to be revised to address the loan participation authority of an FLBA receiving a transfer of long-term real estate mortgage lending authority.

Sections 614.4090, 614.4100, 614.4110, 614.4120, and 614.4130, which address Farm Credit System institutions' lending authorities, are proposed to be removed and reserved. These sections have been revised and incorporated into Part 614 Subpart D, as redesignated, which addresses the banks' and associations' lending authorities as well as loan terms and conditions.

E. Issues Related to More Than One System Institution

1. Appraisal Standards

Section 614.4220 presently sets forth guidelines to be used by bank and association boards in the development of appraisal policies. The proposed amendments to § 614.4220 require Farm Credit banks and associations to develop a more structured and uniform collateral appraisal process that is independent of the loan-making decision and that utilizes several methods for determining appraised and market values for the collateral. This approach is consistent with pending legislation (H.R. 3675, Real Estate Appraisal Reform Act of 1987) requiring the development of a uniform set of basic appraisal standards by the appraisal industry. The revision to this section also eliminates the use of recovery value as a method of evaluating additional collateral, chattels, and other personal property and substitutes appraised and market values as the accepted methods of evaluation.

Sections 614.4230, 614.4240, 614.4250, 614.4260, and 614.4261 are proposed to be removed and reserved. These sections addressed the security requirements applicable to Farm Credit System institutions that have been incorporated into the lending authorities and loan terms and conditions sections of Part 614 Subpart D, as redesignated.

2. Lending Limit

Proposed new § 614.4351 contains the individual borrower lending limits applicable to FCBs and ACBs and proposed new § 614.4354 states the individual borrower lending limit for ACAs. These lending limits are set at the level applicable to the individual banks prior to the mergers required pursuant to enactment of the 1987 Act, with the inclusion of an overall lending limit applicable to the sum of operating and term debt. The establishment of an overall single borrower lending limit is consistent with the current lending philosophy utilized for bank for cooperative borrowers with term and seasonal loans.

Proposed new § 614.4352 prescribes individual borrower limits for FLBAs that have received a transfer of real estate mortgage lending authority. The FLBA lending limit is the former FLB individual borrower lending limit of 20 percent of capital and surplus. For lending limit purposes, "capital and surplus" will include guaranteed member stock. Applying the FCB lending limit to FLBAs does result in a smaller dollar limitation for FLBAs than it does when applied to FCBs. However, assuming that existing capital levels remain essentially unchanged at the association level, it is FCA's position that when considered together with the authority of FLBAs to participate loans with other lenders, the 20 percent limit should not result in substantial disruption of credit services.

On May 12, 1988, FCA published for comment proposed regulations (53 FR 16948) that would establish minimum permanent capital standards for System institutions, and on August 10, 1988, FCA solicited additional comments on several issues involving these capital standards (53 FR 30071). At the same time, Farm Credit System banks and associations are in the process of considering various merger and reorganization proposals. The transfer of lending authorities from FCBs and ACBs to the FLBAs and ACAs is among the reorganization proposals under consideration. The manner in which capital and assets are adjusted between the banks and associations will have a major influence on the individual bank and association lending limits and this adjustment will be affected by the final capital adequacy regulations. Therefore, upon finalization of the minimum capital adequacy standards and receipt of merger and authority transfer proposals from the Farm Credit System banks and associations, the lending limit for FLBAs, as well as for FCBs, ACBs, ACAs, and PCAs, may require review to take into account the impact of the new capital requirements upon the asset, capital and organizational structures of System institutions.

F. Technical Amendments

In addition to the foregoing substantive proposed regulations, the FCA Board proposes technical amendments throughout Parts 613, 614, 615, 616, and 619 to reflect the System restructuring authorized by the 1987 Act. For example, references to Federal land bank and Federal intermediate credit bank are proposed to be changed to Farm Credit Bank or Agricultural Credit Bank, as appropriate; certain references to production credit association are proposed to be replaced with the term "association" or agricultural credit association, as appropriate; and statutory references are proposed to be changed to reflect revisions made by the 1987 Act.

II. Proposed Amendments Clarifying Existing Regulations

The FCA Board proposes amendments to the following existing regulations to reflect earlier amendments to the 1971 Act and clarify issues not specifically addresses in the 1987 Act.

PART 613—ELIGIBILITY AND SCOPE OF FINANCING

Subpart D—Eligibility of Cooperatives to Borrow From a Bank for Cooperatives

Section 613.3110(b)(5) deals with eligibility of cooperatives to borrow from BCs. It is proposed to be amended to incorporate changes made by prior amendments to the 1971 Act that allow noncooperative rural utilities to be eligible borrowers if they have been declared eligible to borrow from the Rural Electrification Administration or the Rural Telephone Bank.

PART 614—LOAN POLICIES AND OPERATIONS

Subpart A—General

Section 614.4051, which addresses the conduct of credit reviews by FLBs and FICBs, is proposed to be removed from FCA regulations. This section was adopted when FLBs and FICBs were responsible for conducting credit reviews on behalf of FCA. Prior amendments to the 1971 Act make FCA directly responsible for examining Farm Credit System institutions. Deletion of this regulation does not relieve Farm Credit System institutions of the responsibility to develop and implement adequate internal control procedures including procedures to monitor credit quality and compliance with the institutions' policies. Such procedures are discussed in the proposed amendments to §§ 614.4050 and 619.9131.

Subpart D—General Loan Policies

Existing § 614.4170, which addresses borrower liability, is proposed to be removed. Borrower liability is a credit area that is more appropriately addressed in credit and operations manuals as part of the discussion of loan terms and conditions, rather than in regulations.

Subpart E—Loan Terms and Conditions

Section 614.4200 addresses the terms and conditions applicable to PCA loans. A new paragraph (e) is proposed to be added to require PCAs to develop

policies to ensure they obtain a verifiable balance sheet and income statement at least annually (or more often if deemed necessary) to monitor risk and repayment ability. This amendment is consistent with guidance provided by the FCA Board on August 18, 1987 on the subject of loan documentation as it relates to borrower financial information.

Subpart J—Lending Limits

Existing § 614.4354(a)(4) requires BC loans to be reduced to established lending limits over a reasonable period of time if a decline in a BC's net worth causes its lending limit to be exceeded. This paragraph is proposed to be deleted. The purpose of this deletion is to require such excess loan amounts to be participated with other lenders as described in § 614.4334, as opposed to permitting a BC to retain the excess loan amounts. Paragraph (b) is also proposed to be revised to require BCs to report to FCA whenever loans made within previously established limits become excessive because of changes in the prescribed lending limit which is based upon the combined net worth of the BCs available to support the loan. In the future, such occurrences will be reported to FCA and reviewed as part of FCA's examination process. Remedial actions will be initiated as appropriate. Paragraph (b) is also proposed to be amended to clarify that the total loan limit requirements stated in § 614.4350 apply to BCs. Section 614.4350 provides that total loan limits are to be based on the total amount of loans, advances, commitments and financial assistance and funds through the purchase of loan participations outstanding at any one time to any one borrower, exclusive of participations sold to others. In addition, existing § 614.4354(a) and (d) are proposed to be revised to require the BCs to establish net worth calculations on an ongoing basis (at least monthly).

Section 614.4360 deals with lending limit computations. It is proposed to be amended by adding a new paragraph (d), which allows banks for cooperatives to eliminate from lending limit computation that portion of a loan balance that is guaranteed by the United States Government. This change is consistent with action taken by FCA on February 13, 1987 when FCA approved an exception to the CBC lending limit, whereby loans with 100 percent REA/United States Government guarantees were eliminated from calculations of this lending limit.

Subpart O—Special Lending Programs

Section 614.4520, redesignated as § 614.4525 (53 FR 36427, September 14, 1988) (Borrower Rights regulations), addresses the authority of Farm Credit System banks and associations to offer and participate in special lending programs. Section 614.4520(d), relating to memoranda of understanding for simultaneous processing and closing of loans, is proposed to be deleted because the manner in which banks and associations enter into memoranda of understanding is more appropriately left to their discretion.

Subpart Q—Banks for Cooperatives Financing International Trade

Section 614.4710(a)(1)(i) is proposed to be amended to remove FCA authority to select interim dates for net worth determinations used to calculate the total amount of bankers acceptances outstanding for a BC. This section is revised to require net worth calculations be completed by the BCs on an ongoing basis (at least monthly).

Section 614.4800 addresses the ability of the banks for cooperatives to provide guarantees and contracts of suretyship. This section is proposed to be amended to identify this activity as a compensable service and allow BCs to be remunerated for providing such guarantees and sureties. This proposed amendment is consistent with the remuneration policy contained in § 614.4720, which requires BCs to charge a fee for issuing or confirming letters of credit. This proposed amendment is issued pursuant to FCA's general regulatory authority over BCs stated in section 3.1 of the 1971 Act.

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

Subpart E—Investments

Section 615.5160 currently deals with PCA investment in farmers' notes. An amendment is proposed to include ACAs as associations authorized to invest in these notes and to limit the total amount of an association's investment in specified obligations originated by any one cooperative or private dealer to 50 percent of association capital and surplus. The proposed 50 percent limitation is based upon current limitations on PCA investments that apply if no loss-sharing agreements exist as stated in § 614.4353.

PART 618—GENERAL PROVISIONS

Subpart J—Internal Controls

Section 618.8430 is proposed to be amended by adding a new paragraph (b) which incorporates the responsibility of banks and associations for adequate review and assessment of their loans and loan-related assets. The proposed amendment requires banks and associations to adopt policies for the evaluation and assessment of credit, operations, financial, and management functions. This expansion of internal controls is promulgated pursuant to FCA's general regulatory authority stated in section 5.17 of the 1971 Act and is proposed in order to ensure that adequate controls over the lending function are maintained.

III. Proposed Amendments Deleting Existing FCA Credit-Related Approvals

The FCA Board proposes revisions to the following regulations to remove the requirement for FCA approval or review of items such as bank policies, standards, programs, and loan actions. These FCA approvals and reviews of credit-related items are inconsistent with FCA's role as an arms-length regulator as reflected in the 1971 Act.

PART 613—ELIGIBILITY AND SCOPE OF FINANCING

Subpart B—Eligibility to Borrow from Federal Land Banks and Production Credit Associations

The requirement for bank approval and FCA post-review of loans made to legal entities which are controlled by another legal entity, contained in existing § 613.3020(c), is proposed to be deleted. Instead new paragraph (b)(3) is proposed, which requires associations to report such loans to their affiliated bank and FCA.

Section 613.3045(b), which presently requires FCA approval of policies addressing the financing of processing and/or marketing activities, is proposed to be deleted.

Subpart D—Eligibility of Cooperatives to Borrow from a Bank for Cooperatives

Section 613.3110(a)(4) is proposed to be amended to remove FCA approval of cooperatives to be included in the definition of "service cooperatives". Section 613.3110(b)(2) is proposed to be amended to remove FCA approval of resolutions and policies of BC boards of directors concerning voting control of eligible cooperatives.

PART 614—LOAN POLICIES AND OPERATIONS

Subpart B—Chartered Territories

Section 614.4070(c) is proposed to be amended to remove FCA approval of policies for loans made to finance eligible borrowers conducting operations wholly outside the chartered territory of the lending bank or association. Loans to finance eligible borrower operations conducted wholly outside the chartered territory of a bank or association may be made provided such loans are authorized by the policies of the bank and association and the requirement for FCA approval is limited to situations in which a bank or association is proposing to finance a significant amount of loan volume in another institution's territory. FCA solicit comments on using 5 percent of existing loan volume as the measurement of a "significant amount of loan volume." It is FCA's position that 5 percent would allow the banks and associations to continue to provide requested lending services up to the specified level without substantial disruption of loan requests while maintaining control of institutions accumulating undue risk associated with out of territory loans. In addition, a new paragraph (e) is proposed to set forth the reporting requirements for monitoring the volume of loans made to borrowers conducting operations wholly outside of a bank's or association's chartered territory. Similarly, § 614.4080(c), which presently requires FCA approval of loans made to eligible cooperatives headquartered outside a bank for cooperatives' chartered territory, is proposed to be deleted. As discussed earlier, when the National Bank for Cooperatives is established, banks for cooperatives will have nationwide lending authority.

Subpart C—Lending Authorities

Section 614.4130 is proposed to be removed to eliminate FCA approval of district policies governing lending authorities.

Subpart D—General Loan Policies for Banks and Associations

Section 614.4160(c) is proposed to be amended to remove FCA approval of bank board policy addressing credit and lending standards.

Section 614.4165(f) is proposed to be deleted to remove FCA approval of bank and association policies relating to the special credit needs of eligible borrowers. The banks shall be required to provide to PCA an annual report summarizing the operations and achievements under such programs. The format of these reports shall be prescribed by FCA.

Subpart E—Loan Terms and Conditions

Section 614.4200(c)(3) is proposed to be deleted to remove FCA approval of district board policies concerning PCA or ACA 10-year term loans.

Subpart H—Loan Participations

Section 614.4330 is proposed to be deleted to remove FCA approval of district board policies concerning the implementation and operation of loan participation programs by Farm Credit System banks and associations.

Section 614.4334 is proposed to be deleted to remove FCA approvals relating to loan participation agreements between banks for cooperatives and the Central Bank for Cooperatives.

Subpart Q—Banks for Cooperatives Financing International Trade

Section 614.4700(a) is proposed to be amended to remove FCA approval of BC board policies concerning the financing of foreign trade receivables.

Section 614.4720 is proposed to be amended to remove FCA approval of BC policies concerning the issuance of letters of credit. Section 614.4720(a) is also proposed to be amended to require letters of credit to be written, instead of oral commitments.

Section 614.4800 is proposed to be amended to remove FCA approval of BC board policy governing guarantees and contracts of suretyship.

Section 614.4900(a) is proposed to be amended to remove FCA approval of BC policies concening financial transactions which transport monetary instruments into or out of the United States. Section 614.4900(b) is proposed to be amended to remove FCA approval of BC policies relating to currency exchange activities.

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

Subpart E—Investments

Section 615.5160(a) is proposed to be amended to remove FCA approval of programs pertaining to PCA investment in farmer's notes given to cooperatives and private dealers.

Subpart Q—Bankers Acceptances

Section 615.5550 is proposed to be amended to remove FCA approval of BC board policies delegating to bank management the authority to rediscount bankers acceptances.

PART 618—General Provisions

Subpart A—Technical Assistance and Financially Related Services

Section 618.8000 is proposed to be amended to remove FCA approval of district and bank board policies relating to ongoing technical assistance and financially related service programs. However, the requirement in § 628.8000(c) that FCA approve proposals for new district technical and finacially related service programs submitted for approval is retained. The bank will submit to FCA for approval the related service progams proposed for implementation by the associations within its chartered territory.

List of Subjects in 12 CFR Parts 613, 614, 615, 616, 618, and 619

Accounting, Aged, Agriculture, Archives and records, Banks, banking, Civil rights, Credit, Fair housing, Foreign trade, Government securities, Investments, Insurance, Marital status discrimination, Reporting and recordkeeping requirements, Religious discrimination, Rural areas, Sex discrimination, Signs and symbols, Technical assistance.

For the reasons stated in the preamble, Parts 613, 614, 615, 616, 618 and 619 of Capter VI, Titel 12 of the Code of Federal Regulations are proposed to be amended as follows

PART 613—ELIGIBILITY AND SCOPE OF FINANCING

1. The authority citation for Part 613 is revised to read as follows and the authority citations throughout Part 613 are removed.

Authority: Secs. 1.5, 1.7, 1.9, 1.10, 1.11, 2.2, 2.4, 2.12, 3.1, 3.7, 3.8, 3.22, 5.9, 5.17; 12 U.S.C. 2013, 2015, 2017, 2018, 2019, 2073, 2075, 2093, 2122, 2128, 2129, 2143, 2243, 2252.

Subpart A—general

2. Section 613.3000 is revised to read as follows;

§ 613.3000 Authority.

Farm Credit Banks, Agricultural Credit Banks, production credit associations and agricultural credit associations are authorized, under Titles I and II of the Act, to make loans to bona fide farmers (defined in § 613.3020(a)(1)), ranchers, producers or harveters of aquatic products, rural residents, and persons furnishing services directly related to the on-farm operating needs of farmers and

ranchers. Federal land bank associations that have received a transfer of real estate lending authority pursuant to section 7.6 of the Act are authorized to make long-term real estate mortgage loans to eligible borrowers (defined in § 613.3020(b)). Banks for cooperatives are authorized, under Title III of the Act, to make loans to eligible cooperatives and loans to domestic or foreign parties that substantially benefit an eligible cooperative which is a voting stockholder of the bank for cooperatives.

3. The heading of Subpart B is revised to read as follows:

Subpart B—Eligibility to Borrow From Farm Credit Banks, Agricultural Credit Banks, Production Credit Associations, Agricultural Credit Associations and Federal Land Bank Associations Which Are Direct Lenders

4. Section 613.3020 is amended by removing paragraph (c); redesignating paragraph (d) as paragraph (c) and revising paragraphs (b) and newly redesignated (c) to read as follows:

§ 613.3020 Farmers, ranchers and producers or harvesters of aquatic products

* * * * *

(b) *Eligibility.* (1) To be eligible to borrow, an individual's qualification as a bona fide farmer (defined in § 613.3020(a)(1)), rancher, or producer or harvester of aquatic products shall be established as a part of the application for credit. The applicant shall establish that its farming or aquatic business is compatible with normal farm or aquatic businesses operating in the area of general agricultural or aquatic economy. The applicant shall submit documentation describing the ownership structure and the business affiliations of those owning or controlling the agricultural or aquatic operation. In addition, if a legal entity owns or controls the applicant, the applicant must demonstrate that such legal entity can operate as a counterpart to the normal agricultural or aquatic business eligible to borrow, without jeopardy to such normal agricultural or aquatic business or general agriculture or aquatic economy.

(2) A legal entity that is a loan applicant shall meet the same requirements in either paragraph (a) (1) or (2) of this section. In addition, such applicant shall meet at least one of the following qualifications to be eligible to borrow:

(i) More than 50 percent of the value or number of shares of its outstanding voting stock or equity is owned by the individuals conducting the agricultural or aquatic operation.

(ii) More than 50 percent of the value of its assets consists of assets related to the production of agricultural products or production or harvest of aquatic products.

(iii) More than 50 percent of its income originates from its production of agricultural products or production or harvest of aquatic products.

(3) In addition, before a loan is made to a legal entity in which 50 percent or more of the ownership or control is vested directly or indirectly in another legal entity not meeting the requirements of paragrpah (b)(2) of this section, the basic loan requirements described in paragraph (b)(1) of this section shall be met. Such loans made by an association shall be reported to the association's affiliated bank and to the Farm Credit Administration as part of the association's examination.

(c) A legal entity engaged in agriculture or production or harvesting of aquatic products for the primary purpose of conducting its operation at a loss to absorb taxable income from nonagricultural or nonaquatic sources shall not be eligible. The legal entity shall demonstrate compliance with this paragraph.

5. Section 613.3040 is amended by revising paragraphs (d)(2) and (d)(3) to read as follows:

§ 613.3040 Rural residents.

* * * * *

(d) *Program limitations.* * * *

(2) No Farm Credit Bank or Agricultural Credit Bank (hereinafter bank) may at any time have outstanding rural residence loans in an amount exceeding 15 percent of the total of all loans outstanding. No Federal land bank association, production credit association or agricultural credit association may have outstanding rural residence loans in an amount exceeding 15 percent of its total loans outstanding at the end of the preceding fiscal year, without prior approval by the affiliated bank, nor shall the aggregate of such loans exceed 15 percent of the outstanding loans of all associations in the bank's chartered territory at the end of the bank's preceding fiscal year.

(3) Whenever the loan volume in rural residence loans of any Federal land bank association, production credit association or agricultural credit association approaches 15 percent, the affiliated bank shall make periodic reviews to assure that agricultural and aquatic credit needs are being adequately served in its chartered territory, in accordance with the objectives of the Act.

* * * * *

6. Section 613.3045 is revised to read as follows:

§ 613.3045 Financing of basic processing and marketing activities.

(a) Farm Credit Banks and Agricultural Credit Banks (hereinafter banks), and production credit associations, agricultural credit associations, and Federal land bank associations which have been transferred long-term real estate lending authority pursuant to section 7.6 of the Act, are authorized to provide financing for processing (including storage) and marketing activities.

(b) Eligibility requirements to obtain loans to finance basic processing and marketing activities.

(1) If the applicant or owners of the applicant provides 50 percent or more of the annual throughput used in the basic processing and/or marketing operation, then eligibility is determined as prescribed in § 613.3020.

(2) If the applicant provides more than 20 percent but less than 50 percent of the annual throughput, the applicant must meet three conditions.

(i) The basic processing and/or marketing activities shall constitute a logical and actual extension of a farmer's, rancher's, or aquatic producer's or harvester's operation for financing forward integration from the production stage through the basic processing and/or marketing stage.

(ii) The applicant or, as provided for in paragraph (iii) of this section, the owners of the applicant processing or marketing unit, shall produce on a sustained basis a minimum of 20 percent of the annual throughput of the basic processing and/or marketing operation or such higher percentage established by the Farm Credit System bank. Essentially all of the additional throughput utilized in the processing and/or marketing stage shall be purchased from or handled for eligible borrowers as defiend in §§ 613.3010 and 613.3030.

(iii) Where the ownership of the processing and/or marketing activities differs from that of the basic production unit, all of the ownership of the processing and/or marketing operation shall be vested in persons eligible to borrow as defined in §§ 613.3010 and 613.3030.

(c) Farm Credit System banks and associations shall develop policies that embody at least the following:

(1) The minimum "throughput" requirement;

(2) The method for defining basic processing and/or marketing activities by commodity or groups of commodities;

(3) Limitations on financing extended under the processing and marketing authority to those needs directly associated with the processing and/or marketing operation;

(4) Analysis and documentation of the ownership and operational features of the borrower sufficient both to establish loan eligibility under this section each time a loan is made or renegotiated, and to identify processing and/or marketing loans where less than 50 percent of the throughput is produced by the borrower or owners of the processing and/or marketing activity; and

(5) Authorities and limitations applicable to the Farm Credit System banks and associations.

7. Section 613.3050 is amended by revising paragraph (c) to read as follows:

§ 613.3050 Farm-related business.

* * * * *

(c) *Scope of financing.* Farm Credit Banks, Agricultural Credit Banks, production credit associations, agricultural credit associations, and Federal land bank associations which have been transferred long-term real estate lending authority, may make long-term real estate mortgage loans to farm-related businesses for necessary sites, capital structures, equipment and initial working capital for such services. Farm Credit Banks, Agricultural Credit Banks, production credit associations and agricultural credit associations may make operating and intermediate-term loans to farm-related businesses for any working capital, equipment, and operating need incident to the operation of farm-related businesses.

8. The heading of Subpart C is revised to read as follows:

Subpart C—Eligibility of Financial Institutions To Borrow From the Farm Credit Bank or Agricultural Credit Bank

9. Section 613.3060 is revised to read as follows:

§ 613.3060 Institutions eligible.

The Farm Credit Banks and Agricultural Credit Banks may make loans to and discount paper for production credit associations, agricultural credit associations, Federal land bank associations which have been transferred long-term real estate lending authority, and other financing institutions in accordance with provisions in Part 614 of this chapter.

Subpart D—Eligibility of Cooperatives to Borrow From a Bank for Cooperatives

10. Section 613.3110 is amended by revising paragraphs (a)(4), (b)(2), (b)(4) and (b)(5) to read as follows:

§ 613.3110 Cooperative eligibility.

(a) *Definitions.* * * *

(4) "Service cooperative" is a cooperative predominantly involved in providing a specialized business service related to the agricultural or aquatic business operations of farmers, ranchers, or producers or harvesters of aquatic products, or cooperatives.

(b) *Eligibility.* * * *

(2)(i) Requirements for a higher percentage of voting control by farmers, ranchers, producers or harvesters of aquatic products, or eligible cooperatives may be established by resolution of the bank for cooperatives board of directors with respect to any type of cooperative. Such higher voting control percentage requirements shall be applied uniformly and consistently to any type of cooperative so designated in the bank for cooperatives board resolution.

(ii) Bank for cooperatives board policies shall ensure that bank for cooperatives procedures require good faith representations on the part of borrowers in applications for loans and in loan covenants to affirm that the minimum farmer, rancher, and aquatic producer or harvestor voting control percentage requirements established by the Act are met. The procedures shall require documentation in bank loan files of the basis upon which such representations are made and accepted in the case of those cooperatives whose records do not establish the percentage of voting control held by agricultural or aquatic producers.

* * * * *

(4) No member of the cooperative has more than one vote because of the amount of stock or membership capital owned therein; or, the cooperative must restrict dividends on stock or membership capital to 10 percent per year or the maximum percentage per year permitted by the applicable State statutes, whichever is less. Notwithstanding the provisions of section 3.9(a) of the Act, the board of directors of a bank of cooperatives may determine that, with respect to a loan to any borrower eligible to borrow under § 613.3110(b)(5)(i) that is fully guaranteed by the United States Government, no stock purchase requirement shall apply, other than the requirement that a borrower eligible to own voting stock shall purchase one share of such stock.

(5) Entities eligible to borrow from a bank for cooperatives.

(i) Cooperatives and other entities that have received a loan, loan commitment, or loan guarantee from the Rural Electrification Administration, or a loan or loan commitment from the Rural Telephone Bank, or that have been certified by the Administrator of the Rural Electrification Administration to be eligible for such a loan, loan commitment, or loan guarantee, and subsidiaries of such cooperatives or other entities.

(ii) Any legal entity, more than 50 percent of the voting control of which is held by one or more associations or other entities that are eligible to borrow from a bank for cooperatives under § 613.3110 (b)(1) and (b)(2) or (b)(5)(i). However, any such legal entity, when considered together with one or more such associations or other legal entities that hold such control, shall also meet the requirements of § 613.3110 (b)(3) or (b)(5)(i).

(iii) Any legal entity that:

(A) holds more than 50 percent of the voting control of an association or other entity that is eligible to borrow from a bank for cooperatives under § 613.3110(b); and

(B) borrows for the purpose of making funds available to that association or entity, under the same terms and conditions as the funds are obtained from the bank for cooperatives.

* * * * *

PART 614—LOAN POLICIES AND OPERATIONS

11. The authority citation for Part 614 is revised to read as follows and the authority citations throughout Part 614 are removed:

Authority: Secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.19, 4.36, 4.37, 5.9, 5.10, 5.17(a)(10), 7.0, 7.2, 7.6, 7.7, 7.8, 7.12, 7.13, 8.0, 8.5; 12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2096, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2207, 2219a, 2219b, 2243, 2244, 2252(a)(10), 2279a, 2279a–2, 2279b, 2279b–1, 2279b–2, 2279f, 2279f–1, 2279aa, 2279aa–5; sec. 413 of Pub. L. 100–233.

Subpart A—General

12. Section 614.4000 is revised to read as follows:

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§ 614.4020 Basic responsibilities.

The Act vests certain responsibilities with the Farm Credit System banks, associations and the Farm Credit Administration which pertain to the development of a credit system responsive to the credit needs of all eligible creditworthy applicants.

13. Section 614.4030 is amended by revising paragraph (a) to read as follows:

§ 614.4030 Policies for loanmaking.

(a) Farm Credit Banks and Agricultural Credit Banks (hereinafter banks), shall adopt policies and procedures governing the exercise of loanmaking authority by the Federal land bank associations acting as agents for the bank. The banks may delegate loanmaking authority to Federal land bank associations that demonstrate the ability to extend and administer credit soundly, provided the association develops and implements adequate credit administration guidelines and standards.

The banks shall adopt lending policies and procedures governing the extension of credit to associations which are direct lenders and other financing institutions which include the lending and financial standards for these institutions. These policies and procedures shall restrict the exercise of loanmaking authority of those associations with direct lending authority that do not demonstrate the ability to extend and administer credit soundly. The boards of directors of each association shall develop policies and procedures within which the association shall conduct its lending operations. Such policies and procedures shall require each association to maintain an adequate system of internal controls and shall also address particular enterprise financing and limitations with respect to lending in specialized or hazardous areas.

* * * * *

14. Section 614.4060 is revised to read as follows:

§ 614.4060 Bank and association lending relationship.

Farm Credit Bank and Agricultural Credit Bank (hereinafter bank) loans to associations shall be granted in accordance with the terms of a written financing agreement executed by both parties. The agreement shall specify the terms and conditions under which the bank has agreed to extend credit to the associations, limitations on the amount to be loaned, the definition of default, the remedies for default and such other items as may be necessary to define lending relationship.

§ 614.4061 [Removed and Reserved]

15. Section 614.4061 is removed and reserved.

§ 614.4080 [Redesignated as § 614.4065].

16. Section 614.4080 is redesignated as § 614.4065 and a new § 614.4080 is added to read as follows:

§ 614.4080 Transfer of loanmaking authorities in Federal land bank associations.

The authority for making and participating in long-term real estate mortgage loans may be transferred to a Federal land bank association (hereinafter association) pursuant to section 7.6 of the Act and Part 611 Subpart E of these regulations. The association shall have in place, prior to the transfer, policies and procedures guiding the extension and administration of credit within its territory.

17. Newly redesignated § 614.4065 is revised to read as follows:

§ 614.4065 Association responsibilities.

(a) Associations shall conduct their lending operations within their vested, delegated or transferred authority in compliance with these regulations and the policies of the association board and affiliated bank. Demonstrated capability in extending sound credit, including the extent to which association boards have established policies and procedures with adequate controls and accountability, shall be major factors in determining the terms under which the bank shall lend to the association.

(b) Associations with transferred direct lending authority pursuant to sections 7.0 of the Act or vested lending authority will be responsible for their individual lending operations. Such associations will operate under policies and procedures established by the association board in accordance with subject to the terms and conditions of the financing agreement between the bank and association.

(c) Federal land bank associations with delegated authority acting as agents for the Farm Credit Bank's or Agricultural Credit Bank's (hereinafter bank's) lending operations are to follow the bank's established policies and procedures, subject to the bank's supervision according to the terms stated in the delegations of authority and contractual agreement between the bank and association.

Subpart B—Chartered Territories

18. Section 614.4070 is revised to read as follows:

§ 614.4070 Loans and chartered territory—Farm Credit Banks, Agricultural Credit Banks, Federal land bank associations, production credit associations, and agricultural credit associations.

(a) A loan to finance eligible borrower operations conducted wholly within the chartered territory of a Farm Credit Bank or Agricultural Credit Bank (hereinafter bank) or Federal land bank association, production credit association or agricultural credit association (hereinafter association) may be made by the bank or association in whose territory the operations are conducted regardless of the residence of the applicant.

(b) A loan to finance eligible borrower operations which are conducted partially within the territory of a bank or association may be made if concurrence is obtained from all institutions providing similar credit for territories in which the operations are conducted.

(c) Loans to finance eligible borrower operations conducted wholly outside the chartered territory of a bank or association may be made, provided such loans are authorized by the policies of the bank and association and do not constitute a significant shift in loan volume away from the bank's or association's assigned territorial limits as addressed in paragraph (d) of this section.

(1) If a loan is made to an eligible borrower whose operation is conducted wholly outside the chartered territory of the lending bank or association, the lending institution shall obtain concurrence of like associations and the affiliated bank(s) in those territory(ies) the operation is conducted.

(2) Policies under which a bank or association proposes to finance a significant amount of loan volume (more than 5 percent of its existing loan volume) in another institution's chartered territory, require prior approval of the Farm Credit Administration.

(3) Loans to finance eligible borrower operations wholly outside of the bank's or association's territory shall be appropriately designated by the bank or association to provide adequate identification of the number and volume of such loans that are included in the loan portfolio and shall be monitored by the bank and associations.

19. Section 614.4080 is amended by revising the heading, removing existing paragraph (c) and redesignating paragraph (d) as new paragraph (c) and revising paragraphs (a) and (b) to read as follows:

§ 614.4080 Loans and chartered territory—banks for cooperatives.

(a) Pursuant to Title III of the Act, each bank for cooperatives is authorized to operate under a national charter permitting it to lend to cooperatives headquartered within any territory that may be served by Farm Credit System institutions under section 5.0 of the Act, or to any borrower otherwise eligible under section 3.7(b) of the Act.

(b) Territorial limitations for Agricultural Credit Bank loans that are not made pursuant to bank for cooperatives lending authorities are described in § 614.4070.

* * * * *

§§ 614.4090, 614.4100, 614.4110, 614.4120 and 614.4130 (Subpart C) [Removed].

20. Subpart C consisting of §§ 614.4090, 614.4100, 614.4110, 614.4120 and 614.4130 is removed.

Subpart D—[Redesignated as Subpart C]

21. Subpart D is redesignated as Subpart C.

Subpart C—General Loan Policies for Banks and Association

22. Section 614.4150 is amended by revising introductory text and paragraphs (c) and (e) to read as follows:

§ 614.4150 Credit factors.

Each Farm Credit System bank and association shall develop policies and procedures to evaluate credit factors to ensure that its lending operations result in sound loans and should, at a minimum, discuss the following:

* * * * *

(c) *Repayment capacity:* The determination of repayment capacity requires an analysis of cash flow history and projections. A cash flow projection shall reflect reasonably expected cash flow generation from the applicant's operation and all other sources. The flow of cash shall be sufficient to meet all obligations on a timely basis and provide a remainder for contingencies.

* * * * *

(e) *Collateral:* Collateral needs are contingent upon the requirements of the law and the strengths and weaknesses of all other credit factors. Collateral requirements shall be designed to reasonably protect the lender and provide the necessary control of equity and repayment. In addition, personal liability or entity liability in the form of comakers or guarantors may be required to provide added strength in extending credit. The creditworthiness of such comakers or guarantors shall be analyzed to assure that their signatures actually provide added credit support for the loan.

23. Section 614.4160 is amended by revising paragraph (c) to read as follows:

§ 614.4160 Lending objective.

* * * * *

(c) Farm Credit System bank and association boards shall adopt policies providing adequate direction to management in administering credit and lending standards. These policies shall ensure that nonagricultural assets owned by applicants or included in collateral appraisals are not given undue weight in the final loan decision. These policies shall also require that the nature of loans made under the eligibility provisions of §§ 613.3020 and 613.3030 shall be predominantly agricultural or aquatic. Management shall prescribe operating procedures to effectively administer board policies, that include provisions to ensure that proper weight is given to the wide variety of combinations of person, property, and purpose which can exist. These management procedures shall also require identification of that portion of mixed value (agricultural and nonagricultural) assets which may be considered agricultural for lending purposes.

24. Section 614.4165 is amended by removing paragraph (f) and revising paragraph (c) introductory text and paragraph (d) to read as follows:

§ 614.4165 Special credit needs.

* * * * *

(c) Farm Credit Bank, Agricultural Credit Bank, and association boards shall adopt policies that address the establishment of programs by production credit associations, agricultural credit associations, and Federal land bank associations to provide credit and related services to young, beginning, or small farmers, ranchers, and producers or harvesters of aquatic products. Such policies shall outline objectives of the programs and shall include, but are not limited to, the following:

* * * * *

(e) Each Farm Credit Bank and Agricultural Credit Bank shall provide to the Farm Credit Administration an annual report summarizing the operations and achievements in their chartered territory under such programs. The format for these reports shall be prescribed by the Farm Credit Administration and shall be based on the reports from each association providing services under these programs.

* * * * *

§ 614.4170 [Removed].

25. Section 614.4170, in newly redesignated Subpart C is removed.

Subpart E—[Redesignated as Subpart D]

26. Subpart E is redesignated as Subpart D and amended by revising the heading to read as follows:

Subpart D—Lending Authorities, Terms, and Conditions

27. Section 614.4170 is added to Subpart D, to read as follows:

§ 614.4170 Farm Credit Banks.

(a) Farm Credit Banks are authorized to make long-term real estate mortgage loans in rural areas (as defined in § 613.3040) or to farmers, ranchers or producers or harvesters of aquatic products, for a term of not less than 5 years nor more than 40 years. Subject to limitations applicable to making long-term real estate mortgage loans, the Farm Credit Banks are authorized to make continuing commitments to make such loans. To assure proper understanding, provide needed controls, and protect the lender, a formal written loan agreement shall be developed between the borrower and the lender. The notice of approval shall set out the terms and conditions under which a loan is approved based on the following:

(1) The outstanding loan balance on any loan shall not at any time during the life of the loan exceed 85 percent (97 percent if guaranteed by a Federal, State, or other governmental agency) of the appraised value established by the most recent appraisal report on the real estate taken as primary security. As deemed necessary by the Farm Credit Administration, the maximum loan balance-to-appraised value percentage may be reduced to 75 percent, where other than sound loan and business decisions are prevalent. These limitations shall not, however, prohibit advancing taxes or insurance premiums with respect to the real estate, rescheduling loan payments, or granting partial releases of security interests in the real estate, or other actions necessary to protect the lender's collateral position:

(i) If there is adequate collateral to support the total amount of the outstanding debt and such action will increase the ability of the debtor to repay the debt, or

(ii) If there is not adequate collateral to support the debt, the actions are considered necessary to protect the financial interest of the bank and/or association in the collateral. Such credit extensions shall be in accordance with specific board policy and shall be reported to the board on a regular basis.

(2) Such loans must be secured by a first lien on an interest in real estate. Additional security may be required, but shall only be considered supplementary protection and may not be included in the value of the security for purposes of applying the loan-to-security limitations that exist for real estate mortgage loans. A request for additional security must comply with the provisions of § 614.4443.

(3) As a condition precedent for making any long-term real estate mortgage loan, Farm Credit Banks shall obtain a verifiable balance sheet and income statement from each borrower. Thereafter, Farm Credit Bank board policies shall require that a verifiable balance sheet and income statement be obtained at least annually from each borrower; however, loans with regular and frequently scheduled payment periods, such as rural housing or other similar amortized consumer type loans, may be excluded from this requirement.

(b) Farm Credit Banks are authorized to participate in loans with Federal land bank associations, production credit associations, and agricultural credit associations as set forth in §§ 614.4190, 614.4200, and 614.4205, respectively, and with Farm Credit System banks and lenders which are not Farm Credit System institutions as set forth in §§ 614.4330 and 614.4331.

(c) Farm Credit Banks are authorized to make loans and extend other similar financial assistance to production credit associations, agricultural credit associations, and Federal land bank associations with direct long-term real estate lending authority, and discount for, or purchase from, such associations, with their endorsement or guaranty, any note, draft, and other obligations for loans which have been made for eligible purposes in accordance with the provisions of Part 614 of these regulations. The Farm Credit Banks shall have defined standards under which loans to associations will be granted and administered. Farm Credit Banks shall require execution of a financing agreement as a condition to making direct loans to production credit associations, Federal land bank associations, and agricultural credit associations. The Agreement will contain the terms, conditions and limitations under which Farm Credit Banks will advance funds to associations. Normally, direct loans to these associations will be secured by a pledge of certain or all assets of the association. However, the Farm Credit Banks may lend to associations on an unsecured basis if the overall condition of the association warrants such lending. The amount loaned shall at all times be consistent with sound financial and credit practices. The basis for evaluation of the creditworthiness of the association shall be as set forth in §§ 614.4140 and 614.4150.

(d) Farm Credit Banks are authorized to make loans and extend other similar financial assistance to, discount for, and purchase with recourse from, any national bank, State bank, trust company, agricultural credit corporation, incorporated livestock loan company, savings institution, credit union, or any association of agricultural producers engaged in the making of loans to farmers and ranchers, and any corporation engaged in the making of loans to producers or harvesters of aquatic products (hereinafter other financing institutions), notes, drafts, and other obligations for loans which have been made for eligible purposes in accordance with the provisions of Part 614 Subpart P of these regulations. All such financial instruments shall bear the endorsement or guaranty of the originating lender. Farm Credit Banks shall require execution of a financing agreement as a condition to making and discounting loans for other financing institutions. The agreement will contain the terms, conditions and limitations under which Farm Credit Banks will advance funds to other financing institutions.

(e) All of the foregoing shall be subject to policies prescribed by the Farm Credit Bank board.

28. Section 614.4180 is revised to read as follows:

§ 614.4180 Agricultural Credit Banks.

(a) Agricultural Credit Banks are authorized to make long-term real estate mortgage loans in rural areas (as defined in § 613.3040) or to farmers, ranchers, or producers or harvesters of aquatic products, for a term of not less than 5 years nor more than 40 years subject to the conditions set forth in § 614.4170(a). Subject to limitations applicable to making long-term real estate mortgage loans, Agricultural Credit Banks are authorized to make continuing commitments to make such loans.

(b) Agricultural Credit Banks are authorized to participate in loans with Federal land bank associations with direct long-term real estate lending authority, production credit associations, and agricultural credit associations as set forth in §§ 614.4190, 614.4200, and 614.4205, respectively, and with Farm Credit System banks and lenders which are not Farm Credit System institutions as set forth in Part 614 Subpart H.

(c) Agricultural Credit Banks are authorized to make loans to production credit associations, agricultural credit associations, and Federal land bank associations with direct long-term real estate lending authority subject to the conditions set forth in § 614.4170(c). Agricultural Credit Banks are also authorized to provide and extend financial assistance to and discount for, or purchase from, such associations, with their endorsement or guaranty, any note, draft, and other obligations for loans which have been made for eligible purposes as set forth in § 614.4170(c). Agricultural Credit Banks shall require execution of a financing agreement as a condition to making direct loans to production credit associations, Federal land bank associations, and agricultural credit associations. The agreement will contain the terms, conditions and limitations under which Agricultural Credit Banks will advance funds to associations.

(d) Agricultural Credit Banks are authorized to make loans and extend other similar financial assistance to, discount for, and purchase with recourse from, any national bank, State bank, trust company, agricultural credit corporation, incorporated livestock loan company, savings institution, credit union, or any association of agricultural producers engaged in the making of loans to farmers and ranchers, and any corporation engaged in the making of loans to producers or harvesters of aquatic products (hereinafter other financing institutions), notes, drafts, and other obligations for loans which have been made for eligible purposes in accordance with provisions of Part 614 Subpart P of these regulations. All such financial instruments shall bear the endorsement or guaranty of the originating lender. Agricultural Credit Banks shall require execution of a financing agreement as a condition to making and discounting loans for other financing institutions. The agreement will contain the terms, conditions and limitations under which Agricultural Credit Banks will advance funds to other financing institutions.

(e) Agricultural Credit Banks are authorized to make loans and commitments to eligible cooperatives and to extend to them other financial assistance, including but not limited to, discounting notes and other obligations,

guarantees, and collateral custody as set forth in § 614.4210.

(f) All of the foregoing shall be subject to policies prescribed by the Agricultural Credit Bank board.

29. Section 614.4190 is revised to read as follows:

§ 614.4190 Federal land bank associations.

Subject to the terms contained in § 614.4170(a), each Federal land bank association receiving a transfer of direct long-term real estate lending authority pursuant to section 7.6 of the Act, under the policies required in § 614.4060, is authorized to make long-term real estate mortgage loans in rural areas (as defined in § 613.3040) or to farmers, ranchers, producers or harvesters of aquatic products, for a term of not less than 5 years nor more than 40 years. The authority of these associations to participate in loans with other Farm Credit System banks and associations, and lenders which are not Farm Credit System institutions, is set forth in §§ 614.4330 and 614.4332. Subject to limitations applicable to making long-term real estate mortgage loans, these associations are authorized to make continuing commitments to make such loans. In addition, in making long-term real estate mortgage loans, these associations shall comply with the guidelines for obtaining financial reports described in § 614.4170(a)(3). All of the foregoing shall be subject to policies prescribed by the Federal land bank association board.

30. Section 614.4200 is amended by adding an introductory paragraph; removing paragraphs (c)(2) (iii), (iv), and (c)(3); revising paragraphs (b), (c) introductory text and (c)(2) introductory text; and adding a new paragraph (e) to read as follows:

§ 614.4200 Production credit associations.

Production credit associations, under policies established by the board of directors, are authorized to make and guarantee short- and intermediate-term loans and provide other similar financial assistance to eligible borrowers. Short- and intermediate-term loans may be made for a term not exceeding 7 years, or such longer periods not to exceed 10 years, as set forth in association policy. Loans for a term not exceeding 15 years may be made pursuant to the terms of paragraph (d) of this section. In addition, production credit associations may participate in loans and other similar financial assistance with other Farm Credit System institutions and with commercial banks or financial institutions as set forth in §§ 614.4330 and 614.4333. The notice of approval shall set out the terms and conditions under which a loan is approved based on the following:

* * * * *

(b) Intermediate-term loans may be made with maturities not to exceed 7 years from the date of initial disbursement, under policies established by the affiliated bank and association boards.

(c) Longer intermediate-term loans may be made for a term not to exceed 10 years from date of initial disbursement. Adoption of this longer intermediate-term loan program is optional with each Farm Credit Bank, Agricultural Credit Bank board and association board.

* * * * *

(2) Farm Credit Bank, Agricultural Credit Bank and production credit association boards shall adopt policies relating to:

* * * * *

(e) As a condition precedent to making any loan, the association shall have an enforceable right to obtain a verifiable balance sheet and income statement from each borrower. The association shall develop a policy that requires a verifiable balance sheet and income statement to be obtained at least annually thereafter from each borrower, and may exclude those loans with regular and frequently scheduled payment periods, such as rural housing, consumer related and other similar types of amortizing loans, and loans made under district minimum information programs.

31. Section 614.4205 is added to read as follows:

§ 614.4205 Agricultural credit associations.

(a) Agricultural credit associations are authorized to make loans to purchase real estate, to refinance the purchase of real estate, or to finance improvements to real estate when the value of the improvements being financed exceeds the value of the land and when the maturity is not less than 10 years and not more than 40 years. Such loans shall be secured by a first lien on an interest in real estate and shall not exceed 85 percent (97 percent if guaranteed by a Federal, State, or other government agency) of the appraised value established by the most recent appraisal report on the real estate taken as primary security. The additional advance terms applicable to Farm Credit Bank loans described in § 614.4170(a)(1) are also applicable to agricultural credit associations. As a condition precedent to making any long-term real estate mortgage loan, the association shall obtain a verifiable balance sheet and income statement from each borrower. The association shall develop a policy that requires a verifiable balance sheet and income statement to be obtained at least annually thereafter from each borrower, and may exclude those loans with regular and frequently scheduled payment periods, such as rural housing or other similar types of amortizing loans.

(b) Agricultural credit associations are authorized to make loans to finance the short-term operating needs of the borrower. Maturities should coincide with the purpose of the loan and the normal business cycle of the enterprises being financed. Such loans may be made on a secured or unsecured basis.

(c) Agricultural credit associations are authorized to make term loans with maturities which exceed the normal business cycle of the enterprise receiving financing for such items as real estate, equipment, breeding stock, facility improvements and vehicles. Such loans shall have maturities that assure that the useful life and value after depreciation of the items being financed at all times exceeds the outstanding indebtedness. Term loans shall not have maturities that exceed 7 years from the date of the initial disbursement unless the affiliated bank and association board authorize special term loans with maturities not to exceed 10 years. Term loans having maturities not to exceed 15 years may be made to producers and harvesters of aquatic products to finance major capital expenditures directly related to the producing or harvesting operation. Normally term loans are secured by the items being financed; however, they may be made on an unsecured basis when justified by the strength of other credit factors.

(d) As a condition precedent to making any loan described in paragraphs (b) and (c) of this section, the association shall have an enforceable right to obtain a verifiable balance sheet and income statement from each borrower. The association shall develop a policy that requires a verifiable balance sheet and income statement to be obtained at least annually thereafter from each borrower, and may exclude those loans with regular and frequently scheduled payment periods, such as rural housing, consumer related and other similar types of amortizing loans, and loans made under district minimum information programs.

(e) Agricultural credit associations are authorized to participate in loans and other similar financial assistance with

Farm Credit System banks, associations, and with other lenders which are not Farm Credit System institutions as set forth in §§ 614.4330 and 614.4336.

(f) All of the foregoing shall be subject to policies prescribed by the agricultural credit association board.

32. Section 614.4210 is amended by adding introductory text and revising paragraph (c) introductory text to read as follows:

§ 164.4210 Banks for cooperatives.

Banks for cooperatives as defined in Part 619 are authorized to make loans and commitments to eligible cooperatives and to extend to them other financial assistance, including but not limited to, discounting notes and other obligations, guarantees, and collateral custody. Banks for cooperatives are authorized to participate with Farm Credit System banks, associations, and other financial institutions in loans as set forth in §§ 614.4330 and 614.4334. Banks for cooperatives are authorized to make or participate in loans, commitments, and extend other technical and financial assistance to a domestic or foreign party with respect to its transactions with a voting stockholder of the bank and to a domestic or foreign party in which such stockholder has at least a minimum ownership interest for the export or import of agricultural commodities, farm supplies, or aquatic products through purchases, sales, or exchanges. The voting stockholder must substantially benefit as a result of such a loan, commitment, or assistance for the purpose of facilitating the eligible cooperative's export or import operations. This type of activity shall be made under policies established by the bank's board of directors. Banks for coooperatives are authorized to make or participate in loans and commitments to finance and extend technical and financial assistance to domestic noncooperative lessors for the purpose of providing leased assets to eligible cooperative borrowers. The terms of the contract between the lessor and lessee shall establish that the leased assets are effectively under the control of the lessee and that such control shall continue in effect for essentially all of the term of the lease. The term of such a loan or financial assistance shall not be longer than the total period of the lease. The lessee must be a stockholder of the bank for cooperatives, and the leased equipment and facilities may only be for use in its operations in the United States. The following terms and conditions apply to loans made by banks for cooperatives:

* * * * *

(c) Term loans authorized to finance a foreign or domestic party with respect to export or import transactions with an eligible cooperative and to finance such transactions of a foreign or domestic party in which an eligible cooperative has at least a minimum ownership interest shall be subject to the following conditions:

* * * * *

33. A new Subpart E is added to read as follows:

Subpart E—Security Requirements for Cooperative Lending

§ 164.4280 [Redesignated as § 614.4215]

34. Section 614.4280 is redesignated as § 614.4215 of Subpart E and amended by revising the heading and introductory text to read as follows:

§ 164.4215 Security requirements for cooperative lending.

Bank for cooperatives as defined in Part 619 are authorized to make both secured and unsecured loans.

* * * * *

35. The heading for Subpart F is revised to read as follows:

Subpart F—Appraisal Requirements

36. Section 614.4220 is revised to read as follows:

§ 164.4220 Appraisal standards.

The boards of directors of each Farm Credit System bank and association are responsible for the development of well-defined and effective appraisal standards and policies.

(a) The appraisal policies and standards shall incorporate the following minimum requirements:

(1) All appraisals shall be made according to uniform standards of the appraisal industry and professional appraisal practices. Such appraisals should follow a reasonable valuation method which considers the approaches to appraised value described in paragraph (b)(1) of the section, unless the appraiser fully explains and documents the elimination of an approach.

(2) Appraisal documentation should also, at a minimum, comply with professional appraisal practices and the requirements of uniform standards established by the appraisal industry. Appraisal reports shall contain sufficient information and data concerning the subject property to substantiate the value of the security described in such reports.

(3) The banks and associations shall establish standards for the qualifications and competence of fee and staff appraisers. Such policies shall require the appraiser to be independent from the loan decision process.

(4) Bank and association policies should include a process for reviewing, on an annual basis, new and existing appraisal reports for adequacy and accuracy, as well as a process for ordering reappraisals when additional or updated information is required.

(5) Real estate appraisals shall properly identify all nonagricultural influences, i.e., mineral deposits, commercial building development value, etc. These nonagricultural influences shall be documented in the final appraisal report.

(6) Real estate shall be valued on the basis of appraised value described in paragraph (b)(1) of this section.

(7) Chattel or personal property shall be appraised based on market value decribed in paragraph (b)(2) of this section.

(8) Collateral closely aligned with, an integral part of, and normally sold with the real estate may be included in the appraised value of the primary security upon which a loan is based. The appraised value of such collateral shall be determined according to the appraisal standards prescribed by the bank and association.

(b) In order to ensure standardization of appraisal terminology among the Farm Credit System banks and associations, the following definitions shall apply.

(1) *Appraised value.* Appraised value shall be the basis for valuing real estate. It incorporates the evaluation of the subject property by the three primary valuation approaches (cost, income, and comparable sales) to obtain a reasonably supportable value. These terms are defined as follows:

(i) *Cost Value* is the estimate of cost to reproduce or replace the property at the date of the appraisal, less an appropriate allowance for depreciation. (Physical deterioration, or functional, and/or economic obsolescence) made by market comparisons of cost and depreciation.

(ii) *Income Value* is the estimate of net income to be derived from future operations of the property, converted to an estimate of property value by application of an appropriate capitalization rate divided by the new income. The capitalization rate will be determined by analysis of the rate of return received by similar operations at the time of the appraisal. The capitalization rate may be influenced by favorable or unfavorable market features such as commodity markets, roads, transportation, community facilities, dwelling value, and other amenities which must be considered in the final estimate of value.

(iii) *Comparable Sales* is the process of comparing a subject property with similar properties located in relatively close proximity, having similar size and utility, and recently sold in arms-length transactions. Such comparisons will include adjustments for the variances used in valuing the subject property.

(2) *Market Value* is defined as the estimated sales price of a property based on the collective action of fully informed buyers and sellers over a reasonable period of time, which generally requires giving consideration to the full range of sales over at least the previous 6 months. Market price is distinguished from market value in that market price indicates the amount for which an individual property may have sold. In order to reflect the customary and current legal use of the property, single purpose sales, limited highest and best use sales, and sales based on speculative assumptions will be excluded from consideration in performing market value analysis. In addition, the following conditions must be met for a sale to be included in market value analysis:

(i) Buyer and seller are free of undue stimulus and are motivated by no more than the reactions of typical owners;

(ii) Both parties are well informed, well advised and act prudently according to their own best interests;

(iii) A reasonable time is allowed to test the market; and

(iv) Payment is made in cash or in accordance with financing terms generally available in the community for similar types of property.

§§ 614.4230, 614.4240, 614.4250 and 614.4261 [Removed]

37. Sections 614.4230, 614.4240, 614.4250 and 614.4261 are removed.

Subpart H—Loan Participations

38. Section 614.4330 is amended by revising the introductory text of paragraph (a), paragraphs (a)(1), (a)(3), (a)(6), (b) including text, (d)(1), (d)(3); and adding (d)(6); and removing paragraphs (e)(3) and (e)(4) to read as follows:

§ 614.4330 General.

(a) Under policies established by the boards of directors of the respective banks and associations, Farm Credit System banks and agricultural credit associations, production credit associations, and Federal land bank associations with direct long-term real estate lending authority (hereinafter collectively referred to as association(s)) may enter into loan participation agreements, as set forth in this subpart, to enable joint financing of individuals or legal entities authorized by the Act and the FCA regulations to borrow from Farm Credit System institutions. The areas to be addressed in these policies are stated in the list that follows.

(1) The basis upon which banks and associations may enter into loan participations.

(2) * * *

(3) Criteria regarding the credit quality of loan participations that Farm Credit System banks and associations may purchase.

* * * * *

(6) The aggregate amount of loan participations that a bank or association may purchase based on a percentage of total net loan volume.

* * * * *

(b) * * *

(4) * * *

Loan participations shall not be used to circumvent the operations or financial requirements of any Farm Credit System institution.

* * * * *

(d) * * *

(1) Each participating bank or association shall analyze each loan independently to ensure that the interest of the stockholders of each institution are protected.

* * * * *

(3) Participating institutions shall be issued certificates evidencing an undivided interest in the loan.

* * * * *

(6) Participation agreements among associations or between Farm Credit System banks and associations shall be executed in accordance with the term and conditions of the existing association and affiliated bank financing agreement.

39. Section 614.4331 is amended by revising the heading, paragraphs (a), (b), (c), introductory text of paragraph (d)(1) to read as follows:

§ 614.4331 Farm Credit Banks.

(a) Farm Credit Banks may enter into loan participation agreements with Farm Credit System banks and associations, commercial banks and financial institutions only on loans that Farm Credit Banks are authorized to make under Title I of the Act and FCA regulations and in accordance with the provisions of § 614.4330.

(b) All Farm Credit Bank loan participation agreements may finance eligible borrower operations located within its chartered territory, and may finance operations outside its chartered territory if the requirements of § 614.4070 are met.

(c) In addition to the provisions contained in § 614.4330, participation agreements between Farm Credit Banks and lenders which are not Farm Credit System institutions shall be subject to the limitations stated in the list that follows.

(d) * * *

(1) To assure that a non-System lender participating in such an agreement continues to use at least the same proportion of its resources for agricultural, aquatic, farm-related service, and rural home loans, the lender with which the Farm Credit Bank participates shall fulfill one of the following:

* * * * *

40. Sections 614.4332 is revised to read as follows:

§ 614.4332 Federal land bank associations.

(a) Federal land bank associations with direct long-term real estate lending authority (hereinafter Federal land bank association(s)), may enter into participation agreements for long-term real estate mortgage loans with one or more Farm Credit System banks or associations, commercial banks, or financial institutions which are not Farm Credit System institutions in accordance with § 614.4330.

(b) Participation agreements with commercial banks and financial institutions which are not Farm Credit System institutions will include the same limitations as contained in § 614.4333(c).

(c) Federal land bank associations shall only enter into loan participation agreements with lenders other than Federal land bank associations with direct long-term real estate lending authority to finance eligible borrower operations located within the association's chartered territory, and outside the chartered territory if the requirements of §614.4070 are met.

41. Section 614.4333 is amended by revising paragraph (a) to read as follows:

§ 614.4333 Production credit associations.

(a) Production credit associations may enter into participation agreements with one or more Farm Credit System banks and associations, commercial banks, and financial institutions which are not Farm Credit institutions in accordance with § 614.4330.

* * * * *

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42. Section 614.4334 is revised to read as follows:

§ 614.4335 Banks for cooperatives.

(a) Banks for cooperatives may enter into loan participation agreements with other Farm Credit System banks and associations. Banks for cooperatives may enter into loan participation agreements with commercial banks and financial institutions which are not Farm Credit System institutions only on loans that banks for cooperatives are authorized to originate under Title III the Act and FCA regulations and in accordance with § 614.4330.

(b) A bank for cooperatives exceeding its lending limit for loans to a single borrower will offer the loan for participation as follows:

(1) If the loan is originated by an individual or regional bank for cooperatives, a written offer to participate the loan shall be made to any of the following:

(i) The National Bank for Cooperatives;

(ii) A Farm Credit System bank other than the originating bank for cooperatives' affiliated Farm Credit Bank(s); or

(iii) Commercial bank or financial institution that is not a Farm Credit System institution.

(2) Loans originated by a bank for cooperatives that exceed the lending limit for the National Bank of Cooperatives may be made only when such excess amounts are sold as participations to other banks for cooperatives, commercial banks or financial institutions that are not Farm Credit System institutions.

(c) Loans to a single borrower which are less than the lending limit of the originating bank for cooperatives may be offered for participation to other Farm Credit System banks and associations, commercial banks, or other financial institutions that are not Farm Credit System institutions.

43. Sections 614.4335 and 614.4336 are added to read as follows:

§ 614.4335 Agricultural Credit Banks.

(a) Agricultural Credit Banks may enter into loan participation agreements with Farm Credit System banks and associations, commercial banks and other financing institutions on loans that Agricultural Credit Banks are authorized to make under Titles I and III of the Act and FCA regulations and in accordance with § 614.4330.

(b) All Agricultural Credit Bank loan participation agreements may finance eligible borrower operations located within its chartered territory, and may finance operations outside its chartered territory if the requirements of § 614.4070 are met.

(c) In addition to the provisions contained in § 614.4330, participation agreements between Agricultural Credit Banks and lenders which are not Farm Credit System institutions shall be subject to the same limitations described in § 614.4331 (d)(1) and (d)(2).

§ 614.4336 Agricultural credit associations.

(a) Agricultural credit associations may enter into participation agreements with one or more Farm Credit System banks or associations, commercial banks, or other financing institutions in accordance with § 614.4330. Participation agreements with commercial banks and financial institutions which are not Farm Credit System institutions will be executed under the same limitations contained in § 614.4333(c).

(b) Agricultural credit associations shall only enter into loan participation agreements with lenders which are not Farm Credit System institutions to finance eligible borrower operations located within these associations' chartered territories, and may finance operations outside their chartered territory if the requirements of § 614.4070 are met.

Subpart J—Lending Limit

44. Sections 614.4351 and 614.4352 are revised to read as follows:

§ 614.4351 Farm Credit Banks or Agricultural Credit Banks.

The total amount of loans, advances, commitments, financial assistance and funds through the purchase of loan participations that a Farm Credit Bank or Agricultural Credit Bank (hereinafter bank) may extend directly or through loan participations to any one borrower, except Farm Credit System associations and other financing institutions, shall not exceed the following:

(a) Loans made to eligible borrowers described in §§ 613.3020, 613.3040, 613.3045 and 613.3050 shall not exceed 20 percent of the capital and surplus of the bank (including guaranteed member stock).

(b) Loans to organizations eligible to borrow from banks for cooperatives described in § 613.3110 shall not exceed the amount applicable to banks for cooperatives under § 614.4355.

§ 614.4352 Federal Land Bank Associations.

The total amount of loans, advances, commitments, and financial assistance and funds through the purchase of loan participations that may be extended to any one borrower by a Federal land bank association, which has received a transfer of long-term real estate lending authority pursuant to section 7.6 of the Act, shall not exceed 20 percent of its capital and surplus (including guaranteed member stock).

§ 614.4354 [Redesignated as § 614.4355]

45. Section 614.4354 is redesignated as § 614.4355 and a new § 614.4354 is added to read as follows:

§ 614.4354 Agricultural Credit Associations.

The total amount of loans, advances, commitments and financial assistance and funds through the purchase of loan participations that an agricultural credit association may extend to any one borrower shall not exceed the limitations described in the list which follows.

(a) A lending limit of 20 percent of its capital and surplus (including guaranteed member stock) for long-term real estate mortgage loans having maturities of 10 years or longer.

(b) A lending limit of 50 percent of its capital and surplus (including guaranteed member stock) for operating and intermediate term loans having maturities of less than 10 years, or not to exceed 15 years for aquatic loans.

(c) A lending limit of 100 percent of its capital and surplus (including guaranteed member stock) for operating and intermediate term loans if an approved loss-sharing agreement is in force.

(d) A lending limit of 50 percent of its capital and surplus (including guaranteed member stock for the sum of paragraphs (a) and (b) of this section (100 percent in those cases where an approved loss-sharing agreement is in force).

46. Newly redesignated § 614.4355 is amended by removing paragraphs (a)(3), (a)(4), and (c); redesignating paragraphs (d), (e), and (f), as (c), (d), and (e); and revising the introductory text of paragraph (a), paragraph (b), newly redesignated paragraphs (c) introductory text, (c)(1) and (c)(4) to read as follows:

§ 614.4355 Banks for cooperatives.

(a) *Individual banks.* The total amount of loans, advances, commitments, financial assistance and funds through the purchase of loan participations outstanding at any one time to any one borrower, exclusive of participations sold to others, shall be limited to the following percentages of the net worth

of a bank for cooperatives as calculated on an ongoing basis.

* * * * *

(b) *Total System.* The total amount of loans, advances, commitments, financial assistance and funds through the purchase of loan participations outstanding at any one time to any one borrower from one or more banks for cooperatives, exclusive of participations sold to lenders that are not Farm Credit System institutions, shall not exceed the percentages, specified in paragraph (a)(1) of this section, applied to the combined net worth of the banks for cooperatives available to support the loan. Loans made within previously established limits that become excessive because of changes in prescribed lending limits may be held and liquidated in accordance with existing loan terms and conditions. Such occurrences will be reported to the Farm Credit Administration.

(c) *Determination for purchases of participations from other banks for cooperatives.* A bank for cooperatives shall determine leading limits for the purpose of purchasing participations in loans of another bank for cooperatives as follows:

(1) Determine its balance sheet net worth total on an ongoing basis.

* * * * *

(4) The resulting total equals the amount of a loan to any one borrower which a bank for cooperatives may purchase from another bank for cooperatives.

* * * * *

47. Section 614.4360 is amended by adding a new paragraph (d) to read as follows:

§ 614.4360 Computation of obligation for lending limit determination.

* * * * *

(d) Loans that carry a full faith and credit performance guaranty or surety of the United States Government shall not be included in the computation of lending limit. The board of directors of banks for cooperatives shall adopt policies which require adherence to the conditions of the agency providing the guarantee.

Subpart O—Special Lending Programs

48. Section 614.4525 is revised to read as follows:

§ 614.4525 General.

(a) To provide the best possible credit service to farmers, ranchers, and producers or harvesters of aquatic products, a Farm Credit System bank (hereinafter bank(s)) board may adopt policies permitting banks and Farm Credit System associations to enter into agreements with agents, dealers, cooperatives, other lenders, and individuals to facilitate the making of loans to eligible farmers, ranchers, and producers or harvesters of aquatic products.

(b) A bank, or an association pursuant to bank policy, may enter into an agreement (which will accrue to the benefit of the borrower and lender) with third parties to perform functions in loanmaking or servicing other than the evaluation and approval of loans. When such an agreement is developed, and the territory covered by the agreement extends outside the territorial limits of the originating bank or association, the written consent of all affected banks or associations is required. Reasonable compensation may be paid for services rendered in connection with such agreements.

(c) Production credit associations and agricultural credit associations (hereinafter association(s)) may enter into agreements with private dealers or cooperatives permitting them to take applications for loans from the association to purchase farm or aquatic equipment, supplies, and machinery. Such agreements shall normally be limited to persons or businesses selling to farmers, ranchers, or producers or harvesters of aquatic products and shall contain credit limits consistent with sound credit standards. When the sales territory of a dealer or cooperative extends outside the territory of the originating bank or association, written consent of each bank and association affected shall be obtained before making such loans. Reasonable compensation may be paid or charged to a dealer or cooperative for services rendered in connection with such programs.

§ 614.4530 Special Loan, Production Credit Associations and Agricultural Credit Associations. [Amended]

49. Section 614.4530 is amended by adding the words "and Agricultural Credit Associations" after the works "Production Credit Associations" in the heading and in the introductory paragraph:

Subpart P—Farm Credit Bank and Agricultural Credit Bank Financing of Other Financing Institutions

50. The heading of Subpart P is amended by removing the words "Federal Intermediate Credit Bank" and adding in their place, the words "Farm Credit Bank and Agricultural Credit Bank."

51. Section 614.4540 is amended by revising paragraph (e) and adding paragraphs (h) and (i) to read as follows:

§ 614.4540 Definitions.

* * * * *

(e) The term "other financing institution" (hereinafter referred to as "OFI") means any person enumerated in section 1.7(b)(1)(B) of the Act, except to the extent that depository institutions, as defined herein, are specifically excluded from the term.

* * * * *

(h) The term "bank(s)" refers collectively to a Farm Credit Bank(s) and Agricultural Credit Bank(s) as defined in Title I of the Act and Part 619 of these regulations, respectively.

(i) The term "association" refers collectively to production credit associations and agricultural credit associations defined in Title II of the Act and Part 619 of these regulations, respectively.

§ 614.4545 General. [Amended]

52. Section 614.4545 is amended by removing the words "Federal intermediate credit" in paragraphs (a), (c) introducting text (d) and (e); and by adding the words "or Agricultural Credit Associations" after the words "production credit associations" in the second sentence of paragraph (b).

§ 614.4550 Basic eligibility criteria. [Amended]

53. Section 614.4550 is amended by removing the words "Federal intermediate credit" in paragraphs (a) introductory text, (a)(1), (a)(2), (a)(3) and (b).

§ 614.4555 Review of denial of access based on eligibility. [Amended]

54. Section 614.4555 is amended by removing the words "Federal intermediate credit" in the first sentence.

§ 614.4560 Establishing and maintaining access. [Amended]

55. Section 614.4560 is amended by removing the words "Federal intermediate credit" in paragraphs (a) introductory text, (b)(1), (b)(2), (b)(3), (b)(4) and (b)(5) each place it appears, by removing the words "production credit"in paragraphs (b)(2), (b)(3) and (b)(4) each place it appears; and by removing the acronym "FICB" and adding in its place the word "bank" in the third sentence of paragraph (b)(5).

§ 614.4630 Insolvency of another financing institution. [Amended]

56. Section 614.4630 is amended by removing the words "Federal

intermediate credit" in the first sentence of paragraph (a), §§ 614.4565, 614.4570, 614.4580, 614.4590, 614.4600, 614.4610, 614.4620, 614.4630, 614.4640, 614.4650 and 614.4660 [Amended]

§§ 614.4565, 614.4570, 614.4580, 614.4590, 614.4600, 614.4610, 614.4620, 614.4630, 614.4640, 614.4650, 614.4660 [Amended]

57. In addition to the amendments set forth above and below, 12 CFR Part 614 is amended by removing the words "Federal intermediate credit" in the following sections; and in addition in §§ 614.4610 and 614.4640, removing the words "production credit".

(a) Section 614.4565;
(b) Section 614.4570;
(c) Section 614.4580;
(d) Section 614.4590;
(e) Section 614.4600 (a) introductory text, (a)(1) and (a)(2);
(f) Section 614.4610;
(g) Section 614.4620;
(h) Section 614.4630(a);
(i) Section 614.4640;
(j) Section 614.4650 (a) introductory text, (a)(1) and (b); and
(k) Section 614.4660.

Subpart Q—Banks for Cooperatives Financing International Trade 58. Section 614.4700 is amended by revising paragraph (a) to read as follows:

§ 614.4700 Financing foreign trade receivables.

(a) Banks for cooperatives as defined in Part 619 (hereinafter bank(s) for cooperatives or bank(s)) under policies adopted by their boards of directors, are authorized to finance foreign trade receivables on behalf of eligible cooperatives to include the following:

(1) Advances against collections.
(2) Trade acceptances.
(3) Factoring.
(4) Open accounts.

* * * * *

59. Section 614.4710 is amended by removing paragraph (b); redesignating paragraphs (c), (d), and (e) as paragraphs (b), (c) and (d) and revising the introductory text, (a) heading; paragraphs (a)(1) introductory text, (a)(1)(i), (a)(2), (a)(3), and redesignated paragraphs (b), (c)(1) and (d) to read as follows:

§ 614.4710 Bankers acceptance financing.

The Federal Farm Credit Banks Funding Corporation (Funding Corporation) is authorized to accept drafts or bills of exchange drawn upon banks for cooperatives as defined in Part 619 (hereinafter bank(s) for cooperatives or bank(s)). With the exception of acceptances eligible for purchase by the Federal Reserve banks under the direction and regulation of the Federal Open Market Committee and rediscounted, acceptances shall be subject to the provisions of §§ 614.4350, 614.4355, and 614.4360 of this part and must be combined with any other loans to the account party by the banks for cooperatives for the purpose of applying the lending limits of § 614.4355 of this part.

(a) *Banks for Cooperatives.* (1) The Funding Corporation's authority to accept drafts or bills of exchange drawn upon a bank for cooperatives having not more than 6 months' sight to run, exclusive of days of grace, that are derived from transactions involving the importation or exportation of agricultural commodities, farm supplies, or aquatic products into or out of the United States; or are derived from transactions involving the domestic shipment of goods that were produced from agriculture or commercial fishing or that have an agriculturally or aquatically related purpose; or are secured at the time of acceptance by totally covering readily marketable staples.

(i) The dollar amount of such acceptances outstanding at any one time to any one borrower, exclusive of participations sold to others, shall be limited to 10 percent of the net worth of a bank for cooperatives as calculated on an ongoing basis. However, if such acceptances are secured either by attached documents or by some other actual security growing out of the same transaction as the acceptance, the 10-percent limit shall not apply.

* * * * *

(2) The limit specified in paragraph (a)(1)(i) of this section is separate from and in addition to the lending limits of § 614.4355 of this part if the acceptances are rediscounted.

(3) During any period within which a bank for cooperatives holds its own acceptance, having given value therefor, the amount thereof shall be included against the lending limits set forth in § 614.4355 of this part of the customer for whom the acceptance was made.

* * * * *

(b) *Total system.* Liabilities for drafts accepted at any one time from all of the banks for cooperatives shall not exceed 100 percent of the combined net worth of the banks for cooperatives. However, the aggregate of acceptances growing out of domestic transactions shall not exceed 50 percent of net worth. Discounted acceptances outstanding at any one time to any one borrower from one or more banks for cooperatives, exclusive of participations sold to institutions other than banks for cooperatives, shall not exceed the percentage specified in paragraph (a)(1) of this section applied to the net worth of the banks for cooperatives available to support such acceptances. Acceptances created or discounted within previously established limits that have become excessive because of changes in accepting and/or discounting limits prescribed herein may be held and liquidated in accordance with terms individually specified by the Farm Credit Administration.

(c) *Purchases of participations in bankers acceptances.* (1) A bank for cooperatives shall determine limits on purchasing participations in discounted acceptances of another bank for cooperatives on the same basis as prescribed in § 614.4355 of this part for purchasing participations in loans of another bank for cooperatives.

* * * * *

(d) *Funding Corporation.* All acceptances created by the banks for cooperatives shall be physically accepted by the Funding Corporation when intended for rediscount.

60. Section 614.4720 is amended by revising the introductory paragraph and paragraph (a) to read as follows:

§ 614.4720 Letters of credit.

Banks for cooperatives, under policies adopted by the board of directors, may issue, advise, or confirm import or export letters of credit in accordance with the Uniform Commercial Code, or the Uniform Customs and Practice for Documentary Credits, to or on behalf of its customers. In addition, as a matter of sound banking practice, letters of credit shall be issued in conformity with the list which follows.

(a) Each letter of credit shall be in writing and shall conspicuously state that it is a letter of credit, or be conspicuously entitled as such.

* * * * *

61. Section 614.4800 is revised to read as follows:

§ 614.4800 Guarantees and contracts of suretyship.

A bank for cooperatives (hereinafter bank), under a policy approved by the bank's board of directors, may lend its credit, be itself a surety to indemnify another, or otherwise become a guarantor if an eligible cooperative substantially benefits from the performance of the transaction involved. A bank may guarantee the debt of eligible cooperatives and foreign parties or otherise agree to make payments on the occurrence of readily ascertainable events if the guarantee or agreement specifies a maximum monetary liability. Guarantees may be secured or unsecured, and can include, but are not limited to, such events as nonpayment of taxes, rentals, customs duties, costs of transport, and loss of or nonconformance of shipping documents. The bank may be remunerated for the guarantee or surety. The bank's customer shall have an unqualified obligation to reimburse the bank for payments made under a guarantee or surety.

62. Section 614.4900 is amended by revising paragraph (a) (b) introductory text, and (i) to read as follows:

§ 614.4900 Foreign exchange.

(a) Before a bank for cooperatives (hereinafter bank) may engage in any financial transaction which transports monetary instruments

(1) From any place within the United States to or through any place outside the United States; or

(2) To any place within the United States from or through any place outside the United States,

The bank must have policies adopted by the bank's board of directors governing such transactions and must have established bank procedures to safeguard the interests of the stockholders of the bank in regard to such transactions.

(b) Under policies adopted by the bank's board of directors, a bank for cooperatives may engage in currency exchange activities necessary to service individual transactions that may be financed under the regulations authorizing export, import, and other internationally related credit and financial services. These currency exchange activities shall not include any loans or commitments intended to finance speculative futures transactions by eligible borrowers in foreign currencies. The bank may engage on behalf of the eligible borrowers or on its own behalf in bona fide hedging transactions and positions, where such transactions or positions normally reduce risks in the conduct and management of international financial activities. The bank's policies should include established guidelines for:

* * * * *

(i) The banks for cooperatives shall use the Federal Farm Credit Banks Funding Corporation (Funding Corporation) for purposes of trading foreign exchange. All foreign exchange transactions shall be made by the Funding Corporation on behalf of the bank's customer with instructions received from the respective bank.

* * * * *

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

63. The authority citation for Part 615 is revised to read as follows and the authority citations throughout Part 615 are removed.

Authority: Secs. 1.5, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 4.3, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26; 12 U.S.C. 2013, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2154, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6; sec. 301(a) of Pub. L. 100–233.

Subpart E—Investments

64. Section 615.5160 is amended by revising paragraphs (a) and (d) to read as follows:

§ 615.5160 Production credit association and agricultural credit association investment in farmers' notes given to cooperatives and dealers.

(a) In accordance with policies prescribed by the board of directors of its affiliated Farm Credit Bank or Agricultural Credit Bank, each production credit association and agricultural credit association (hereinafter association(s)) may invest in notes, conditional sales contracts, and other similar obligations given to cooperatives and private dealers by farmers and ranchers eligible to borrow from such associations.

* * * * *

(d) The total amount which an association may invest in such obligations at any one time shall not exceed 15 percent of the balance of loans outstanding at the close of the association's preceding fiscal year. In addition, the total amount which an association may invest in such obligations that are originated by any one cooperative or private dealer, at any one time, shall not exceed 50 percent of association capital and surplus.

* * * * *

Subpart G—Deposit of Funds

65. Section 615.5190 is amended by revising paragraph (a) to read as follows:

§ 615.5190 General.

(a) Farm Credit System banks and associations may deposit securities and current funds with and receive interest from any member bank of the Federal Reserve System or any insured State nonmember bank (within the meaning of section 3 of the Federal Deposit Insurance Act). Associations may also deposit funds with their affiliated Farm Credit System bank.

* * * * *

Subpart Q—Bankers Acceptance

66. Section 615.5550 is revised to read as follows:

§ 615.5550 Bankers acceptances.

Subject to the provisions of § 614.4710, banks for cooperatives may rediscount with other purchasers the acceptances they have created. The bank for cooperatives board, under established bank for cooperatives policies, may delegate this authority to management.

67. Part 616 is removed and reserved, to read as follows:

PART 616—[RESERVED]

PART 618—GENERAL PROVISIONS

68. The authority citation for Part 618 is revised to read as follows and the authority citations throughout Part 618 are removed:

Authority: Secs. 1.5, 1.11, 1.12, 2.2, 2.4, 2.5, 2.12, 3.1, 3.7, 4.12, 4.13A, 4.25, 4.29, 5.9, 5.10, 5.17; 12 U.S.C. 2013, 2019, 2020, 2073, 2075, 2076, 2093, 2122, 2128, 2183, 2200, 2211, 2218, 2243, 2244, 2255.

Subpart A—Technical Assistance and Financially Related Services

69. Section 618.8000 is amended by removing paragraph (c)(3) and revising paragraphs (a), introductory texts of paragraphs (b) and (c), and paragraph (b)(5) to read as follows:

§ 618.8000 Policy Guidelines.

(a) Farm Credit System banks and associations are authorized to provide those technical assistance and financially related services programs that are both appropriate to the on-farm, aquatic, and cooperative operations of persons and cooperatives eligible for assistance (as defined in Part 613) and permitted under policies adopted by Farm Credit System bank and association boards.

(b) Farm Credit System bank and association boards are authorized to establish policies governing the development, implementation, marketing, and offering of technical assistance and financially related services programs. These policies shall meet the following general guidelines:

* * * * *

(5) Each Farm Credit System bank and association board shall evaluate the financial feasibility of the financially related services programs based on annual reports from their respective managements. Costs and benefits of

closely related programs may be combined in making the financial feasibility evaluation. Bank and association management shall determine the cost effectiveness of each program through a cost accounting system that records both direct and indirect costs. Indirect benefits may be included but must be determined in a systematic and consistent fashion.

(c) Each newly proposed technical assistance and financially related services program to be offered in a bank's chartered territory must be approved by the Farm Credit Administration. In submitting proposed programs for approval, banks and associations shall provide the following documentation to Farm Credit Administration:

* * * * *

Subpart C—Leasing

70. Section 616.8050 is revised to read as follows:

§ 616.8060 Leasing authority.

Farm Credit System banks and associations with direct lending authority may own and lease, or lease with option to purchase, to persons and cooperatives eligible for assistance (as defined in Part 613 of these regulations), equipment or facilities needed in the farming and aquatic operations of such persons and cooperative.

Subpart J—Internal Controls

71. Section 616.8430 is revised to read as follows:

§ 616.8430 Internal controls.

(a) Each Farm Credit System institution's (hereinafter institution) board of directors shall adopt an internal control policy which provides adequate direction to the institution in establishing effective control over and accountability for operations, programs, and resources. The policy should include the items enumerated in the list which follows:

(1) Direction to management which ensures the fixation of responsibility for the internal control function (financial, credit, and administrative) in an officer (or officers) of the institution.

(2) Requirements that the institution adopt internal audit and control procedures that evidence responsibility for review and maintenance of comprehensive and effective internal controls.

(b) Each institution's board of directors shall adopt policies addressing the operation of a program to review and assess its loans and related assets. These policies shall include standards which address the administration of this program, described in the list which follows:

(1) Loan and asset review standards, including standards for scope of review selection and standards for workpapers and supporting documentation.

(2) Asset quality classification standards to be utilized in accordance with a uniform classification system.

(3) Credit administration standards.

(4) Standards for the training required to initiate the program.

PART 619—DEFINITIONS

72. The authority citation for Part 619 is revised to read as follows and the authority citations throughout Part 619 are removed.

Authority: Secs. 1.7, 2.4, 5.9, 5.12, 5.17, 5.18, 7.0, 7.8, 7.7, 7.8; 12 U.S.C. 2015, 2075, 2243, 2244, 2252, 2253, 2279a, 2279b, 2279b–1, 2279b–2.

§ 619.9020 [Redesignated as § 619.9025]

§ 619.9060 [Redesignated as § 619.9065]

§ 619.9135 [Redesignated as § 619.9145]

§ 619.9140 [Redesignated as § 619.9150]

§ 619.9150 [Redesignated as § 619.9155]

73. Part 619 is amended by redesignating § 619.9020 as new § 619.9025; adding new §§ 619.9015 and 619.9020; revising § 619.9060; redesignating § 619.9060 as new § 619.9065; adding a new § 619.9060; redesignating §§ 619.9135, 619.9140, 619.9150 as new §§ 619.9145, 619.9150, 619.9155; adding new §§ 619.9135 and 619.9140; and revising newly redesignated § 619.9145, to read as follows:

§ 619.9015 Agricultural credit associations.

Agricultural credit associations are associations created by the merger of one or more Federal land bank association(s) and production credit association(s) and which have received a transfer of authority to make and participate in long-term real estate mortgage loans pursuant to § 7.6 of the Act.

§ 619.9020 Agricultural Credit Banks.

Agricultural Credit Banks are those banks created by the merger of a Farm Credit Bank and a bank for cooperatives pursuant to § 7.0 of the Act.

§ 619.9060 Associations.

The term associations includes Federal land bank associations that are agents of its affiliated Farm Credit Bank or Agricultural Credit Bank, and production credit associations, agricultural credit associations, and Federal land bank associations that have received a transfer of direct long-term real estate lending authority.

§ 619.9080 Bank for cooperatives.

Bank for cooperatives refers to any bank chartered under Title III of the Act or exercising the authorities contained in Title III. The term "bank for cooperatives" includes the National Bank for Cooperatives, individual and regional banks for cooperatives and Agricultural Credit Banks.

§ 619.9130 Direct lender.

The term direct lender refers to Farm Credit System banks and associations authorized to lend to eligible borrowers identified in § 613.3000.

§ 619.9140 Farm Credit System bank(s).

The term Farm Credit System bank(s) includes Farm Credit Banks, Agricultural Credit Banks and banks for cooperatives.

§ 619.9145 Farm Credit System institutions.

The term Farm Credit System institutions refers to all institutions chartered and regulated by the Farm Credit Administration as described in § 1.2 of the Act.

Date: October 28, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-25127 Filed 11-3-88; 8:45 am]

BILLING CODE 6705-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 433

Regulatory Flexibility Act Review of the Trade Regulation Rule Concerning Preservation of Consumers' Claims and Defenses

AGENCY: Federal Trade Commission.

ACTION: Proposed rule; Request for Comments.

SUMMARY: In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and a published plan for Periodic Review of Commission Rules (46 FR 35,118 (July 7, 1981)), the Federal Trade Commission is soliciting comments and data on whether the Trade Regulation Rule Concerning Preservation of Consumers' Claims and Defenses (16 CFR Part 433) (the "Holder Rule") has had a significant economic impact on a substantial number of small entities and, if it has, whether the Rule should be amended to minimize any significant economic impact on small entities.

DATES: Comments and data must be received on or before February 1, 1989.

ADDRESS: Comments and data should be sent to: Secretary, Federal Trade Commission, Washington, DC 20580. Submissions should be marked "Holder Rule Comments."

FOR FURTHER INFORMATION CONTACT: Jonathan D. Jerison or Richard C. Sauer, Division of Credit Practices, Federal Trade Commission, 6th and Pennsylvania Avenue NW., Washington, DC 20580. Tel: (202) 326–3223.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act requires the Federal Trade Commission to conduct a periodic review of rules issued by the Commission that have or will have a significant economic impact upon a substantial number of small entities.

The Holder Rule was promulgated by the Commission on November 18, 1975 (40 FR 53,506) and became effective on May 14, 1976. This periodic review is conducted in accordance with the Commission's plan for periodic review of rules (46 FR 35,118 (July 7, 1981)).

The Rule applies to sellers who offer or arrange for consumer credit to finance consumers' purchases of their goods or services. The Rule requires sellers entering into "consumer credit contracts" [1] or accepting the proceeds of "purchase money loans" to assure that sales finance contracts and loan contracts contain one of two clauses [2] that preserve the buyer's right to assert against any "holder" of the credit contract the sales-related claims and defenses that the buyer may have against the seller.

A "purchase money loan" is defined in the Rule as "a cash advance received by a consumer which is applied, in whole or in substantial part, to a purchase of goods or services from a seller who (1) refers consumers to the creditor or (2) is affiliated with the creditor by common control, contract, or business arrangement." 16 CFR 433.1(d). A "holder" refers to a person or entity who is in possession of an instrument drawn, issued or indorsed to him or to his order or to bearer or in blank.

In promulgating the Rule, the Commission found that: (1) In the course of arranging the financing of a consumer sale, sellers used procedures (including contractual devices) that separated the buyer's duty to pay for goods or services from the seller's reciprocal duty to perform as promised; (2) consumers are generally not in a position to evaluate the likelihood of seller misconduct in a particular transaction; (3) consumers lacked information to comprehend the significance of waivers of defenses in credit contracts or the use of promissory notes; (4) consumers, therefore, assumed all risks of seller misconduct; and (5) creditors dunned consumers and collected debts despite the consumers' claims and defenses against the seller.

At the same time the Commission promulgated the Holder Rule, it commenced a proceeding ("Holder II") to amend the Rule to extend it to third-party creditors. 40 FR 53,506 (1975). In 1979, the Commission approved the Holder II amendment in principle. Before final action on the amendment, however, the Commission articulated more specific criteria for exercising its unfairness authority and for issuing trade regulation rules.[3] The record for the Holder II amendment, therefore, was developed under a different legal standard from the one the Commission now applies. The Commission has re-evaluated the Holder II record in light of its current legal standards for determinations of unfairness and for the evaluation of proposed trade regulation rules, and has determined that the evidence is inadequate to support issuance of the proposed amendment. In particular, the record contains little evidence of consumer injury occurring after the Holder Rule became effective and little evidence to suggest that creditor participation in cutting off consumers' claims is prevalent. Accordingly, the Commission has decided to terminate the Holder II proceeding without issuing an amended rule.[4]

The objective of the review initiated by this notice is to determine whether any part of the Holder Rule has had a significant impact on a substantial number of small entities and, if so, whether any such impact can be reduced consistent with the objectives of the Rule. In addition, the Commission requests comments on a number of other issues relating to the operation of the Rule.

For purposes of this review, the Commission poses the following questions for public comment:

* * * * *

1. Has the Rule had a significant economic impact (costs and/or benefits) on a substantial number of small entities? What kinds of costs has the rule imposed on small entities? Have small but established entities found it more difficult to obtain credit since the Rule became effective in May 1976? Have new small entities found it more difficult to arrange sources of closed-end credit (purchasers for sales finance contracts or third parties to make purchase money loans) for their customers since May 1976? Has the interest rate paid for closed-end consumer credit risen as a result of the rule? What evidence is there that the increase in interest rates for closed-end consumer credit is attributable to the Rule?

2. Are consumers more likely to purchase goods or services at newly established entities as a result of the rule? Have small entities experienced other benefits from the rule?

3. To what extent did consumers try to assert against creditors the claims and defenses they have against sellers before the Rule became effective? To what extent, after the Rule became effective, have consumers asserted against creditors the claims and defenses they have against the seller? In what percentage of these cases was the seller judgment-proof (through bankruptcy, corporate dissolution, or otherwise)?

4. To what extent do creditors attempt to mediate disputes between an aggrieved consumer and a seller?

5. To what extent have the claims and defenses asserted by consumers against creditors since the Rule became effective included tort claims?

6. How much do consumers' assertions of claims and defenses cost creditors on an annual basis? Have creditors attempted to recover these costs from sellers? If so, by what means and how much has been recovered? Do sellers in turn attempt to recover these costs from manufacturers?

7. In the past year, what percentage of sales finance contracts resulted in claims and defenses asserted against creditors? What percentage of "purchase money loans"? How do these percentages compare to 1975–76, the year prior to the effective date of the Rule? In the past year, what percentage of claims or defenses under sales finance contracts were resolved without recourse to litigation? Of purchase money loans? How do these percentages

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[1] "Consumer credit contract" is defined as "[A]ny instrument which evidences or embodies a debt arising from a 'purchase money loan' transaction or a 'financed sale' as defined [in the Rule]". 16 CFR § 433.1(i). "Financing a sale" is defined as "[e]xtending credit to a consumer in connection with a 'credit sale' within the meaning of the Truth in Lending Act." *See* 15 U.S.C. § 1601 *et seq.*

[2] *See* 16 CFR 433.2(a). The language of the required clause differs slightly in purchase money loans. *See* 16 CFR 433.2(b).

[3] *See* Letter from the Federal Trade Commission to the Hon. Wendell H. Ford and the Hon. John C. Danforth (December 17, 1980) (the Commission's "Unfairness Statement"); Statement of Basis and Purpose for the Credit Practices Rule, 49 FR. 7740 (1984).

[4] This decision does not, of course, foreclose the Commission from considering in the future whether the Rule should be extended to creditors. *See* question 19, *infra*.

compare to the year prior to the effective date of the Rule?

8. Is there evidence that consumers' expectations about their right to assert claims and defenses against the creditor may differ between financed sales and purchase money loans? If so, what evidence?

9. Since the Rule became effective, what kinds of procedures have creditors used to determine whether to purchase credit contracts from sellers or to make purchase money loans to customers of different sellers? Do creditors more carefully investigate sellers before agreeing to finance their consumer credit transactions than they did prior to the Rule?

For sales finance contracts, do discounts imposed by creditors vary by the identity of the seller? For purchase money loans, does the interest rate charged to the consumer depend upon the seller from whom the consumer plans to buy? If so, what kinds of factors lead a creditor to apply a higher discount to the contracts of some sellers or a higher interest rate on purchase money loans spent at some sellers? Have any of these practices changed since the Rule became effective? If so, how?

10. Have sellers (especially small sellers) experienced difficulty in obtaining creditors' cooperation in meeting sellers' compliance obligations for consumer credit contracts in financed sale transactions since the Rule became effective? In purchase money loans? How do sellers insure that the credit agreement in a purchase money loan transaction contains the clause required by the Rule?

11. What arrangements do creditors require of sellers to avoid the losses from the assertion of claims and defenses under the Holder Rule (*e.g.*, reserve accounts, indemnification agreements, recourse or repurchase agreements)? What kinds of costs do creditors incur in such arrangements? What kinds of costs do sellers incur? To what extent do the arrangements and costs for purchase money loans differ from those for sales finance contracts? Do the kinds of arrangements made and costs incurred differ for small and large sellers? For new and established sellers? If so, how do they differ?

12. Does the experience of third-party credit card issuers differ from the experience of closed-end creditors regarding the assertion of consumers' claims and defenses? If so, how does it differ?

13. Has the Rule improved the match between seller promises and seller performance as a result of closer creditor scrutiny of sellers (if such closer scrutiny has occurred)? What indications are there of a better match?

14. Has the incidence of closed-end credit transactions covered by the Rule decreased as a result, for example, of the increased use of third-party credit card? To what factors is the decrease, if any, attributable?

15. Is there a continued need for the Rule and all of its requirements? What changes in the Rule would make it more useful to consumers? Should the Commission alter the dollar limitation on transactions covered by the Rule from the present $25,000? If so, by what amount?

16. Is the Rule unduly complex? Should the contract clauses set forth at 16 CFR 433.2 be rewritten to make them easier to understand? How? What changes in the Rule would minimize the Rule's economic impact on small entities?

17. To what extent does the Rule overlap, duplicate, or conflict with other federal, state, or local laws or regulations? To what extent are the compliance burdens that the Rule imposes on small entities similar to those that small entities would experience under standard and prudent business practices or other existing federal, state, or local laws or regulations? To what extent would other federal, state, or local laws provide equivalent protection for the buyer in sales finance transactions if the Rule were repealed? In purchase money loans?

18. Have technology, economic conditions, or other factors changed in the area affected by the Rule since late 1975? If so, what effect do these changes have on the Rule or those covered by it?

19. What evidence, if any, is there now that the Rule should be extended to creditors? If the Commission were again to propose extending the Rule to creditors, what changes, if any, ought to be made in the Rule?

* * * * *

In responding to these questions, please distinguish to the extent possible between smaller and larger sellers and between new firms and more established firms. In addition, please submit the factual data (*e.g.*, economic and accounting information, statistical analysis, surveys, studies, etc.) upon which comments are based together with the comments.

List of Subjects in 16 CFR Part 433

Federal Trade Commission, Trade practices, Consumer credit transactions.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 88-25428 Filed 11-2-88; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 292

[Docket No. RM88-17-000]

Regulations Governing The Public Utility Regulatory Policies Act of 1978

Issued October 31, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of change in procedural schedule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) issued a Notice of Proposed Rulemaking (NOPR) on July 29, 1988 (53 FR 31021, Aug. 17, 1988) proposing to amend its regulations governing implementation of Title II of the Public Utility Regulatory Policies Act. The NOPR provided for a public hearing on November 16, 1988 and for the filing of reply comments on November 28, 1988. This notice changes the date of the public hearing to December 1, 1988. In accordance with our original schedule the date for the filing or reply comments is changed to December 12, 1988, i.e., 10 days after the public hearing date.

DATE: The date for the public hearing is changed from November 16, 1988 to December 1, 1988. The date for filing reply comments is changed from November 28, 1988 to December 12, 1988.

ADDRESS: 825 N. Capitol Street NE, Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Lois D. Cashell, Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8400.

SUPPLEMENTARY INFORMATION:

Change in Procedural Schedule

The Federal Energy Regulatory Commission (Commission) issued a Notice of Proposed Rulemaking (NOPR) on July 29, 1988 (53 FR 31021, Aug. 17, 1988). The NOPR provided for a public hearing on November 16, 1988 and for the filing of reply comments on November 28, 1988. This notice changes the date of the public hearing to December 1, 1988. In accordance with our original schedule the date for filing reply comments is changed to December 12, 1988, i.e., 10 days after the public hearing date.

Lois D. Cashell,

Secretary.

[FR Doc. 88-25497 Filed 11-2-88; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4, 101, 123, 148

Customs Regulations Amendments Concerning Reporting Requirements For Vessels, Vehicles and Persons

AGENCY: Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations to implement recent legislative changes to enhance Customs enforcement of the currency reporting and controlled substances laws and assist in preventing the importation of merchandise contrary to law. The statutory changes concern the reporting procedure for vessels, vehicles and persons, departure from the reporting locations and the penalties for the violation thereof. They provide that the arrival of those entities must be immediately reported to Customs at the reporting locations, and that permission must be obtained to depart those locations. In addition to the reporting requirements, the amendments also inform the public of legislative provisions which provide for civil and criminal monetary penalties and for the seizure and forfeiture of conveyances used in violation of the arrival and departure requirements.

DATES: Comments must be received on or before January 3, 1989.

ADDRESS: Written comments (preferably in triplicate) may be submitted to and inspected at the Regulations and Disclosure Law Branch, Customs Service Headquarters, Room 2119, 1301 Constitution Avenue NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: (Operational matters) Sam McLinn, Office of Passenger Enforcement and Facilitation (202) 556-5607, (Legal matters) Larry L. Burton, Carrier Rulings Branch (202) 566-5706, or (Penalty matters) Jeremy Baskin, Penalties Branch (202) 566-5746.

SUPPLEMENTARY INFORMATION:

Background

The Anti-Drug Abuse Act of 1986 (Pub. L. 99-570) (the Act), made various changes to the Tariff Act of 1930 relating to the arrival in the U.S. and the reporting to Customs by persons and of transportation conveyances; penalties; search and seizure of persons and conveyances; forfeiture and disposition of articles and conveyances; the Customs Forfeiture Fund; aviation smuggling; preclearance; investigative matters such as records production; undercover Customs operations; informer compensation; and the exchange of information with foreign Customs and law enforcement agencies. The reporting requirements for conveyances are consolidated in section 433, Tariff Act of 1930, as amended (19 U.S.C. 1433), which provides, in pertinent part, that vessels and vehicles must immediately report their arrival at a designated Customs facility, comply with arrival and entry formalities and remain at that location until granted permission to depart from the arrival point. It also provides that a vessel or vehicle may only discharge any passenger or merchandise (including baggage) in accordance with regulations prescribed by the Secretary of the Treasury. In connection therewith, the Act has amended section 401(k), Tariff Act of 1930, as amended (19 U.S.C. 1401(k)), to clarify that a vessel arriving in the U.S. after visiting a bovering vessel or a point or place where it has received merchandise is deemed to be arriving from a foreign port or place and that controlled substances are generally to be considered as prohibited merchandise.

The Act further amended section 459, Tariff Act of 1930, as amended (19 U.S.C. 1459), to provide that individuals arriving in the U.S., by whatever means, must immediately report their arrival at one of the designated arrival points. This alters the prior provision under which only persons importing or bringing merchandise into the country needed to report, and requiring that they needed only to report to the port of entry or customhouse nearest to the point they crossed the border. It also places a reporting obligation on the individuals arriving by a conveyance in addition to the reporting requirement already placed on the master, person in charge of a vehicle, or aircraft pilot.

The regulations would permit the district director to provide alternate means of reporting the arrival of persons and conveyances. They would also permit the district director to change the reporting locations and hours of service and to otherwise specify local arrival and reporting requirements. The district director would make this information available to interested parties by posting in appropriate Customs offices, publication in a newspaper of general circulation in the Customs district that supervises the particular location, and other appropriate means.

Comments

Before adopting this proposal, consideration will be given to any written comments (preferably in triplicate) timely submitted. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, Customs Service Headquarters, Room 2119, 1301 Constitution Avenue NW., Washington, DC 20229.

Executive Order 12291

This document does not meet the criteria for a "major rule" as defined in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendment will not have a significant impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was Arnold L. Sarasky, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 4

Cargo vessels, Coastal zone, Customs duties and inspection, Fishing vessels, Freight, Harbors, Imports, Maritime carriers, Reporting and recordkeeping requirements, Seamen, Vessels and Yachts.

19 CFR Part 101

Customs duties and inspection, Harbors, Imports, Organization and functions (Government agencies), Seals and insignia.

19 CFR Part 123

Canada, Customs duties and inspection, Freight, Imports, International boundaries, Mexico, Motor carriers, Railroads, Reporting and recordkeeping requirements, and Vessels.

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19 CFR Part 148

Airmen, Alcohol and alcoholic beverages, Customs duties and inspection, Foreign officials, Government employees, Household goods, Imports, International organizations, Military personnel, Motor vehicles, Seamen, Tobacco, and Taxes.

Proposed Amendments

It is proposed to amend Part 4, Customs Regulations (19 CFR Part 4), as set forth below:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority for Part 4 and the specific authority for §§ 4.80, 4.82, 4.83, and 4.94 would be revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Headnote 11), 1624, 46 U.S.C. 3, 2103;

Section 4.80 also issued under 46 U.S.C. 13, 251, 295, 313, 672, 808, 883, 883-1, 1211;

Section 4.82 also issued under 19 U.S.C. 283, 294; 46 U.S.C. 123, 12107;

Section 4.83 also issued under 46 U.S.C. 91, 111, 123, 12107;

Section 4.94 also issued under 19 U.S.C. 1433, 1434, 1435, 1441; 46 U.S.C. 91, 104, 313, 314.

2. It is proposed to amend Part 4 by adding new paragraphs (f) and (g) to § 4.0, to read as follows:

§ 4.0 Definitions.

* * * * *

(f) *Arrival of a vessel.* The term "arrival of a vessel" means that time when the vessel first comes to rest, whether at anchor or at a dock, in any harbor within the Customs territory of the U.S.

(g) *Departure of a vessel.* The term "departure of a vessel" means that time when the vessel gets under way on its outward voyage and proceeds on the voyage without thereafter coming to rest in the harbor from which it is going.

3. It is proposed to revise § 4.2 to read as follows:

§ 4.2 Reports of arrival of vessels.

(a) Upon arrival in any port or place within the U.S., including, for purposes of this section, the U.S. Virgin Islands, of any vessel from a foreign port or place, any foreign vessel from a port or place within the U.S., or any vessel of the U.S. carrying bonded merchandise or foreign merchandise for which entry has not been made, the master of the vessel shall immediately report that arrival to the nearest Customs facility or other location designated by the district director. The report of arrival, except as prescribed in § 4.2a of this Part, or as supplemented in local instructions issued by the district director and made available to interested parties by posting in Customs offices, publication in a newspaper of general circulation, and other appropriate means, shall be made by any means of communication to the district director or to a Customs officer assigned to board a vessel. The Customs officer may require the production of any documents or papers deemed necessary for the proper inspection/examination of a vessel, cargo, passenger, or crew.

(b) For purposes of this part, "foreign port or place" includes a hovering vessel (defined in 19 U.S.C. 1401(k)) and any point in Customs waters beyond the territorial sea or the high seas at which a vessel arriving in a port or place in the U.S. has received merchandise.

(c) In the case of vessels described in Section 441(4), Tariff Act of 1930, as amended,[4] the report may be filed by either the master, owner, or agent, and shall be in the form and give the information required by that statute, except that the report need not be under oath. A derelict vessel shall be considered one in distress and any person bringing it into port may report its arrival.

(d) The report of baggage and merchandise on a vessel within the purview of Section 441(2), Tariff Act of 1930, as amended,[4] shall be made as provided for in that section and shall be in addition to the required report of arrival.

4. It is proposed to amend § 4.2a by removing paragraph (b)(1) and by designating the current paragraphs (b)(2) and (b)(3) as (b)(1) and (b)(2) respectively. Section 4.2a(b)(1) and (2) as revised will read as follows:

§ 4.2a Small vessel reporting of arrival, Miami district.

* * * * *

(b) *Definitions.* For the purposes of this section:

(1) *"Small vessel"* includes any vessel of less than 5 net tons, and any private pleasure vessel, regardless of displacement.

(2) *"Arrival of a vessel"* occurs when a small vessel comes to rest within the waters of the Miami District, whether at anchor or at a dock, in any harbor or other location.

* * * * *

5. It is proposed to amend § 4.3 by revising paragraph (a) and (b) to read as follows:

§ 4.3 Vessels required to enter.

(a) Except as specified in Section 441, Tariff Act of 1930, as amended,[4] R.R. 2792,[7] or R.S. 2793, as amended,[8] or as otherwise specified in this part,[9] every American vessel arriving in the U.S. from a foreign port or place and every foreign vessel [9] arriving at a port in the U.S. from another such port or from a foreign port or place shall make entry [10] at the customhouse within 48 hours after arrival in accordance with § 4.9.[11]

(b) For the purposes of the vessel entry requirement in this section and § 4.9, a "foreign port or place" includes a hovering vessel (defined in 19 U.S.C. 1401(k)) and any point in the Customs waters beyond the territorial sea or the high seas at which a vessel arriving in a port or place in the U.S. has received merchandise, or a vessel on the high seas when the vessel arriving in the U.S. is returning from the vessel on the high seas after having transported export merchandise out of the U.S. to the vessel on the high seas and there transhipped the merchandise to that vessel.

* * * * *

6. It is proposed to amend Part 4 by adding a new § 4.3a to read as follows:

§ 4.3a. Vessel entry violation penalties.

Violation of the entry requirements in this section, or the report of arrival requirements in § 4.2, results in the master being subject to civil penalties in the amount of $5,000 for the first violation and $10,000 for each subsequent violation, and any conveyance used in connection with any such violation is subject to seizure and forfeiture. The master is also subject to civil penalties in an amount equal to the value of merchandise (other than sea stores) imported or brought into the U.S. in or on board the vessel which was not properly reported or entered and the merchandise may be seized and forfeited unless properly entered by the importer or consignee. In addition to these civil penalties, the master is, upon conviction, subject to criminal penalties consisting of a fine of not more than $2,000 or imprisonment for 1 year, or both, for intentionally violating these provisions. If the vessel has or is discovered to have had on board any merchandise (other than sea stores) the importation of which in to the U.S. is prohibited, the master shall be subject to an additional fine of not more than $10,000 or imprisonment for not more than 5 years, or both (19 U.S.C. 1436).

7. It is proposed to revise § 4.5 to read as follows:

§ 4.5 Departure or unloading before report or entry.

(a) No vessel which has arrived within the limits of any Customs district from a foreign port or place shall depart or attempt to depart, except from stress of weather or other necessity, without reporting and making entry as required in this Part. These requirements shall not apply to vessels merely passing through waters within the limits of a Customs district in the ordinary course of a voyage, except for those arriving in the U.S. otherwise than by sea which are provided for in Part 123 of this chapter.[12]

(b) The "limits of any Customs district" as used herein are those defined in § 101.1(b) of this chapter, including the marginal waters of the 3-mile limit on the seaboard and the waters to the boundary line on the northern and southern boundaries.

(c) For purposes of this section, "foreign port or place" includes a hovering vessel (defined in 19 U.S.C. 1401(k)) and any point in Customs waters beyond the territorial sea or the high seas at which a vessel arriving in a port or place in the U.S. has received merchandise.

(d) Violation of this provision shall result in the master being subject to a penalty of $5,000 for the first violation and $10,000 for each subsequent violation and the vessel to arrest and forfeiture (19 U.S.C. 1586).

8. It is proposed to amend § 4.9 by revising paragraph (a) and by adding a new paragraph (f) to read as follows:

§ 4.9 Formal entry.

(a) Section 4.3 provides which vessels are subject to formal entry and which are exempt from formal entry requirements. The formal entry of an American vessel from a foreign port or place (see § 4.3(b) of this Part) shall be in accordace with Section 434, Tariff Act of 1930 (19 U.S.C. 1434).[13] The term "American vessel" means a vessel of the United States (see § 4.0(b)), as well as, when arriving by sea, a vessel entitled to be documented except for its size (see § 4.0(c) of this Part). (For vessels of less than 5 net tons arriving otherwise than by sea, see Part 123 of this Chapter). The formal entry of a foreign vessel arriving within the limits of any Customs district shall be in accordance with Section 435, Tariff Act of 1930 (19 U.S.C. 1435).[14] The required oath on entry shall be executed on Customs Form 1300.

* * * * *

(f) Any master or person in charge of a vessel who fails to make entry as required by this section or who presents any document required by this section which is forged, altered, or false, shall be liable for a civil penalty of $5,000 for the first violation and $10,000 for subsequent violations. Furthermore, a vessel used in connection with any such violation is subject to seizure and forfeiture as provided in 19 U.S.C. 1436.

9. It is proposed to revise § 4.30(a) to read as follows:

§ 4.30 Permits and special licenses for unlading and lading.

(a) Except as prescribed in paragraph (f), (g), or (k) of this section or in § 123.6 of this chapter, and except in the case of a vessel exempt from entry and clearance under 19 U.S.C. 288 no passengers, cargo,[57] baggage,[57] or other article [58] shall be unladen from a vessel which arrives directly or indirectly from any port or place outside the Customs territory of the U.S., including the adjacent waters (see § 4.0 of this Part), or from a vessel which transits the Panama Canal and no cargo, baggage, or other article shall be laden [59] on a vessel destined to a port or place outside the Customs territory of the U.S., including the adjacent waters (see § 4.0 of this Part) if Customs supervision of such lading is required,[61] until the district director shall have issued a permit or special license therefor on Customs Form 3171.

* * * * *

10. It is proposed to amend § 4.50(a) to read as follows:

§ 4.50 Passenger lists.

(a) The master of every vessel arriving at a port of the United States from a port or place outside the Customs territory (see § 4.0 of this part) and required to make entry, except a vessel arriving from Canada, otherwise than by sea, at a port on the Great Lakes, or their connections or tributary waters, shall submit passenger and crew lists as required by § 4.7(a) of this part. If the vessel is arriving from noncontiguous foreign territory and is carrying steerage passangers, the additional information respecting such passengers required by Customs and Immigration Form I–418 shall be included therein.

* * * * *

11. It is proposed to amend Part 4 by adding a new § 4.51 reading as follows:

§ 4.51 Reporting requirements for individuals arriving by vessel.

(a) *Arrival of vessel reported.* Individuals on a vessel whose arrival have been reported to Customs in accordance with 19 U.S.C. 1433 and § 4.2 of this Part, shall remain on board until authorized by Customs to depart. Upon departing the vessel, such individuals shall immediately report to a designated Customs location together with all of their accompanying articles.

(b) *Arrival of vessel not reported.* Individuals on vessels whose arrival have not been reported to Customs in accordance with 19 U.S.C. 1433 and § 4.2 of this part, shall immediately notify Customs and report their arrival together with appropriate information regarding the vessel, and shall present themselves and their accompanying articles at a designated Customs location.

(c) *Departure from designated Customs location.* Individuals required to report to designated Customs locations under this section shall not depart from such locations until authorized to do so by any appropriate Customs officer.

12. It is proposed to amend Part 4 by adding a new § 4.52 reading as follows:

§ 4.52 Penalties applicable to individuals.

Individuals violating any of the provisions of 19 U.S.C. 1459 or § 4.51 of this part, including the presentation of any forged, altered, or false document or paper to Customs in connection with those lawful provisions, shall be liable for a civil penalty of $5,000 for the first violation, and $10,000 for each subsequent violation. Additionally, such individuals convicted of intentionally violating any provisions of 19 U.S.C. 1459 are liable for a fine of not more than $5,000, or imprisonment for not more than 1 year, or both.

§ 4.81 [Amended]

13. It is proposed to amend § 4.81 by removing the phrase "withing 24 hours" where it appears in the 9th sentence of paragraph (e), the 5th sentence of paragraph (g)(1) and the 4th sentence of paragraph (g)(2) and, in each instance, inserting in its place "immediately upon arrival".

§ 4.84 [Amended]

14. It is proposed to amend § 4.84 by removing the phrase "shall report its arrival within 24 hours" where the phrase appears in paragraph (b) and in the first sentence of paragraph (d) and, in each instance, inserting in its place "immediately report its arrival".

§ 4.85 [Amended]

15. It is proposed to amend § 4.85 by removing the phrase "report arrival and make entry within 24 hours" where it appears in the first sentence of paragraph (c) and inserting in its place "immediately report its arrival and make entry within 48 hours".

§ 4.87 [Amended]

16. It is proposed to amend § 4.87 by removing the phrase "shall report arrival within 24 hours" in the first sentence of paragraph (d) and inserting in its place "shall immediately report arrival".

§ 4.91 [Amended]

17. It is proposed to amend § 4.91 by removing the phrase "report arrival within 24 hours" where it appears in the

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3rd sentence of paragraph (b) and inserting in its place "shall immediately report arrival".

18. It is proposed to revise § 4.94(a) to read as follows:

§ 4.94 Yacht privileges and obligations.

(a) Any documented vessel with a pleasure license endorsement, as well as any undocumented American pleasure vessel, shall be used exclusively for pleasure and shall not transport merchandise nor carry passengers for pay. Such a vessel which is not engaged in any trade nor in any way violating the Customs or navigation laws of the U.S. may proceed from port to port in the U.S. or to foreign ports without clearing and is not subject to entry upon its arrival in a port of the U.S., provided it has not visited a hovering vessel, received merchandise while in the customs waters beyond the territorial sea, or received merchandise while on the high seas. Such a vessel shall immediately report arrival to Customs when arriving in any port or place within the U.S., including the U.S. Virgin Islands, from a foreign port or place.

* * * * *

19. It is proposed to amend § 4.94(c) by removing the last sentence and replacing it with:

* * * * *

(c) * * * Upon the vessel's arrival at any port or place within the U.S. or the U.S. Virgin Islands, the master shall comply with 19 U.S.C. 1433 by immediately reporting arrival at the nearest Customs facility or other place designated by the district director. Individuals shall remain on board until directed otherwise by the appropriate Customs officer, as provided in 19 U.S.C. 1459.

* * * * *

20. It is proposed to amend § 4.94(d) by removing in the second paragraph of the cruising license form the sentence "Such report shall be made within 24 hours, exclusive of any day on which the customhouse is not open for marine business" and replacing it with "Such report shall be immediately made."

21. It is proposed to amend Part 4 by removing footnotes 15, 16, 23, 55, 56, 65, 72, 91, 95, and 98.

PART 101—GENERAL PROVISIONS

1. The general authority for Part 101 would be revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Headnote 11), 1624, Reorganization Plan 1 of 1965; 3 CFR 1966 Supp.

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The general authority for Part 123 would be revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Headnote 11), 1433, 1624, unless otherwise noted.

2. It is proposed to revise § 123.1(a), (b), and (d) to read as follows:

§ 123.1 Report of arrival from Canada or Mexico and permission to proceed.

(a) *Individuals.* Section 1459 of title 19, United States Code (19 U.S.C. 1459), provides certain requirements for the reporting by individuals of their arrival in the U.S. Civil penalties of $5,000 for the first violation and $10,000 for subsequent violations of the requirements set forth in this paragraph are provided in section 1459, as are criminal penalties of up to $5,000 in fines and/or 1 year imprisonment upon conviction for intentionally violating the requirements. The specific requirements are as follows:

(1) Persons arriving otherwise than by conveyance may enter the U.S. only at a location or locations specified by the appropriate district director. Any such persons shall immediately report their arrival to Customs. Such persons shall not depart from the Customs port or station until authorized to do so by the appropriate Customs officer.

(2) Persons aboard a conveyance the arrival of which has been reported to Customs at a location or locations specified by the appropriate district director in accordance with sections 1433 or 1644 of title 19, United States Code (19 U.S.C. 1433, 1644), or section 1509 of title 49, United States Code (49 U.S.C. 1509), shall remain on board until authorized by Customs to depart, and shall then immediately report to the designated Customs facility together with all articles accompanying them.

(3) Persons aboard a conveyance the arrival of which has not been reported in accordance with the laws referred to in paragraph (a)(2) of this section, shall immediately notify a Customs officer and report their arrival, together with appropriate information concerning the conveyance on or in which they arrived at a location or locations specified by the appropriate district director and shall present themselves and their property for Customs inspection and examination.

(b) *Vehicles.* Vehicles may arrive in the U.S. only at a designated port of entry (see § 101.3 of this chapter) or Customs station if the district director of the district in which the station is located authorizes entry at that station (see § 101.4 of this chapter). The person in charge of any such vehicle shall, immediately upon arrival of the vehicle in the U.S., report the arrival to Customs. No vehicle shall, after arriving in the U.S., depart or discharge any passenger or merchandise (including baggage) without authorization by the appropriate Customs officer.

* * * * *

(d) Report of arrival under paragraphs (a), (b), and (c) of this section shall be made in person unless the appropriate district director, by local instructions, requires that it be made by some other specific means. Such local instructions issued by the district director will be made available to interested parties by posting in Customs offices, publication in a newspaper of general circulation in the Customs district that supervises the location, and other appropriate means.

3. It is proposed to amend § 123.2 by revising paragraphs (a) and adding paragraph (c) to read as follows:

§ 123.2 Penalty for failure to report arrival or for proceeding without a permit.

(a) *Persons.* Any person arriving otherwise than by conveyance who enters the U.S. at other than a designated port of entry, or Customs station if authorization exists for entry at that station, who fails to report arrival as required in § 123.1(a) of this Part, or who departs from the port of entry or Customs station without authorization by the appropriate Customs officer, whether or not intentionally, shall be subject to a penalty as prescribed in § 123.1 of this Part.

* * * * *

(c) *Vehicles.* (1) *Civil penalties.* The person in charge of any vehicle who—

(i) Enters the vehicle into the U.S. at other than a designated port of entry, or Customs station if authorization exists for entry at that station;

(ii) Fails to report arrival and present the vehicle and all persons and merchandise (including baggage) on board for inspection as required in § 123.1(b) of this Part;

(iii) Fails to file a manifest or any other document required to be filed in connection with arrival in the U.S. under this Part; or

(iv) Without authorization by the appropriate Customs officer, removes such vehicle from the port of entry or Customs station or discharges any passenger or merchandise (including baggage) shall be subject to civil penalties of $5,000 for the first offense, and $10,000 for subsequent offenses, as prescribed in § 436, Tariff Act of 1930, as amended (19 U.S.C. 1436). Any conveyance used in connection with any such violation shall be subject to seizure and forfeiture. He also may be subject to an additional civil penalty equal to the value of the merchandise on he conveyance which was not entered or reported as required by §123.1(b) of this Part, and that merchandise may be subject to seizure and forfeiture unless properly unless properly entered by the importer or consignee.

(2) *Criminal penalties.* Upon conviction, any person in charge of a vehicle who intentionally commits any of the violations described in paragraph (c) (1) of this section shall, in addition to the penalties described therein, be subject to criminal penalties of a fine of not more than $2000, or imprisoment for not more than 1 year, or both, as prescribed in section 436, Tariff Act of 1930, as amended (19 U.S.C. 1436). If the vehicle has or is discovered to have had on board any merchandise (other than the equivalent, for a vessel, of sea stores) the importation of which into the U.S. is prohibited, the person in charge of the vehicle is subject to an additional fine of not more than $10,000 or imprisonment for not more than 5 years, or both, as prescribed in section 436, Tariff Act of 1930, as amended (19 U.S.C. 1436). If the merchandise consists of any controlled substances, additional penalties may be assessed, as prescribed in section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584).

4. It is proposed to revise § 123.9(a) to read as follows

§ 123.9 Explanation of a discrepancy in a manifest.

(a) *Provisions Applicable*—(1) *Overages.* If any merchandise (including sea stores or its equivalent) is found on board a vessel or vehicle arriving in the U.S. that is not listed on a manifest filed in accordance with § 123.5 of this Part, or after having been unladen from such vessel or vehicle, is found not to have been included or described in the manifest or does not agree therewith (an overage), the master, person in charge, or owner of the vessel or vehicle or any person directly or indirectly responsible for the discrepancy is subject to a penalty as prescribed in section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584). Any such merchandise belonging or consigned to the master, person in charge, or owner of the vehicle is subject to seizure and forfeiture.

(2) *Shortages.* If merchandise is manifested but not found on board a vessel or vehicle arriving in the U.S. (a shortage), the master, person in charge, or owner of the vessel or vehicle or any person directly or indirectly responsible for the discrepancy is subject to a penalty as prescribed in section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584).

(3) *Failure to file a manifest.* The master or person in charge of a vessel or vehicle arriving in the U.S. or the U.S. Virgin Islands who fails to present a manifest to Customs is liable for a civil penalty of $5,000 for the first violation and $10,000 for each subsequent violation, and the conveyance used in connection with the failure to file is subject to seizure and forfeiture. A criminal conviction for intentional failure to file shall make the master or person in charge liable for a fine of not more than § 2,000 or imprisonment for 1 year, or both, except that the criminal penalty may be increased to a fine of not more that $10,000 and/or imprisonment for not more than 5 years if any merchandise is found or determined to have been on board (other than sea stores or the equivalent for vehicles), the importation of which is prohibited.

* * * * *

5. It is proposed to further amend §123.9 by removing the words "19 U.S.C. 1460 or" in paragraphs (d)(3) and (e) and "1460 or" in paragraph (f).

6. It is proposed to revise § 123.9(d)(2) to read as follows:

§ 123.9 Explanation of a discrepancy in a manifest.

* * * * *

(d) *Action on the discrepancy report.*

* * *

(2) If the criteria in paragraph (d)(1) of this section are not met, applicable penalties under 19 U.S.C. 1584 shall be assessed.

* * * * *

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

1. The general authority for Part 148 would be revised to read as follows:

Authority: 19 U.S.C. 66, 1498, 1624, 1629. The provisions of this part, except for Subpart C, are also issued under 19 U.S.C. 1202 (Gen. Headnote 11).

William von Raab,

Commissioner of Customs.

Approved September 30, 1988

Salvatore R. Martoche,

Assistant Secretary of the Treasury.

[FR Doc. 88-25358 Filed 11-2-88; 8:45 am]

BILLING CODE 4820-02-M

INTERNATIONAL TRADE COMMISSION

19 CFR Part 210

Proposed Interim Rules Governing the Posting of Temporary Relief Bonds by Complainants and the Possible Forfeiture of Such Bonds

AGENCY: U.S. International Trade Commission.

ACTION: Proposed interim rules.

SUMMARY: The Commission proposes to revise certain rules in 19 CFR Part 210 on an interim basis to implement the following: (1) A new statutory provision authorizing the Commission to require complainants who are seeking a temporary exclusion order under subsection (e) of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337(e)) to post a bond as a prerequisite to the issuance of such relief; and (2) Congressional authorization in the legislative history of the statutory bonding provision for the Commission to order forfeiture of the bond if, after issuing a temporary exclusion order conditioned on a bond, the Commission determines that the respondents have not violated section 337.

DATES: Comments on the proposed interim rules will be considered by the Commission in promulgating "final" interim rules if received no later than 4:00 p.m. EST on Wednesday, November 9, 1988. Owing to the short amount of time remaining before the effective date of the bonding provision and the desired deadline for issuing Commission interim rules (November 21, 1988) requests for an extension of time to file comments cannot be granted.

ADDRESSES: A signed original and fourteen (14) copies of each set of comments, along with a cover letter addressed to Kenneth R. Mason, Secretary, should be sent to the U.S. International Trade Commission, Office of the Secretary, 500 E Street SW., Room 112, Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: P.M. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1061. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. For further information concerning the Treasury Department regulations, circulars, and federal laws pertaining to the posting of bonds that are referred to in the proposed Commission rules, interested persons should contact the Surety Bond Branch, Financial

Management Service, Department of the Treasury, Washington, DC 20220, telephone 202–287–3821.

SUPPLEMENTARY INFORMATION:

The Omnibus Trade and Competitiveness Act of 1988 and Its Legislative History

The temporary relief provisions of section 337 of the Tariff Act of 1930 ("the Tariff Act") (19 U.S.C. 1337(e) and (f)) were amended in several important respects by the recently enacted Omnibus Trade and Competitiveness Act of 1988 ("the Omnibus Trade Act"), Pub. L. No. 100–418, 102 Stat. 1107 (1988). Among other things,[1] complainants can be required to post a bond as a prerequisite to the issuance of a temporary exclusion order. *See* 19 U.S.C. 1337(e)(2), created by section 1342(a)(3)(B) of the Omnibus Trade Act. The purposes of requiring a bond are to deter frivolous requests for temporary relief and to deter use of temporary relief for harassment of respondents and other improper purposes. *See* H.R. Rep. No. 576, 100th Cong., 2d Sess. 635–636 (1988); 133 CONG. REC. S10364–S10365 (July 21, 1987) (Statement of Sen. Lautenberg). The Commission's authority to require a bond also is intended by Congress as a means of overcoming Commission hesitation to issue temporary exclusion orders. *See* 133 CONG. REC. S10365; H.R. Rep. No. 576 at 635.

The legislative history of the statutory bonding provision indicates that if the Commission issues a temporary exclusion order conditioned on a bond and subsequently determines that the respondents have not violated section 337, the bond may be forfeited to the U.S. Treasury in accordance with rules prescribed by the Commission. *See* H.R. Rep. No. 576 at 635; 133 CONG. REC. S10365; H.R. Rep. No. 40, 100th Cong., 1st Sess. 159 (1987). The forfeiture authorization is intended to provide a further disincentive to abuse of temporary relief requests by complainants. *See* H.R. Rep. No. 576 at [illegible].

The statutory bonding provision does not become effective until the earlier of the 90th day after enactment of the Omnibus Trade Act (*i.e.* November 21, 1988) or the day on which the Commission issues interim regulations setting forth procedures relating to the posting of such bonds. *See* section 1342(d)(1)(B) of the Omnibus Trade Act; H.R. Rep. No. 576 at 635. The Commission will therefore endeavor to promulgate interim rules governing the posting and possible forfeiture of such bonds no later than November 21, 1988. The rules will apply only to motions for temporary exclusion orders filed on or after that date.

The Procedure for Adopting Interim Rules

The legislative history of the bonding provision admonished the Commission to issue interim rules as expeditiously as possible. *See* H.R. No. 576 at 635. Ordinarily, Commission rules to implement new legislation are promulgated in accordance with the rulemaking provision of section 553 of the Administrative Procedure Act ("the APA") (5 U.S.C. 553). That procedure encompasses the following steps: (1) Publication of a notice of proposed rulemaking; (2) solicitation of public comment on the proposed rules; (3) Commission review of such comments prior to developing final rules; and (4) publication of the final rules 30 days prior to their effective date.

Because of the amount of time needed to develop interim bonding and forfeiture rules and the Congressional admonition to issue such rules as expeditiously as possible, it will not be possible for the Commission to give interested persons the customary 30 to 60 days to file comments on the proposed interim rules set forth in this notice.[2] Time constraints imposed by the statutory effective date of the bonding provision also will make it impossible for the Commission to publish the "final" interim bonding and forfeiture rules 30 days prior to their effective date.[3]

The interim bonding and forfeiture regulations the Commission will adopt will respond only to the exigencies created by the statutory bonding provision and the legislative history authorizing the Commission to order forfeiture of bonds. Final rules governing the posting of temporary relief bonds and the possible forfeiture of such bonds will be promulgated in accordance with the usual APA notice, public comment, and advance publication procedure.

The Commission also has determined, for the following reasons, that the proposed interim rules contained in this notice will not be subject to the provisions of Executive Order 12291 of February 17, 1981 (46 FR 13193, Feb. 19, 1981) governing federal regulation. Some of the proposed interim rules pertain to administrative actions governed by the provisions of sections 556 or 557 of title 5 of the United States Code (*e.g.*, the issuance of an initial determination by a Commission administrative law judge and discretionary review by the Commission) and thus are not "regulations" or "rules" within the meaning of section 1(a) of Executive Order 12291.

The interim rules also will not qualify as "major rules" under section 1(b) of Executive Order 12291 because they do not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, geographic regions, or individual industries (apart from the litigation costs of obtaining temporary relief in an investigation under section 337 of the Tariff Act of 1930); or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete in domestic or export markets.

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[1] *See* 53 FR 33043 (Aug. 29, 1988) for a summary of all the Omnibus Trade Act's amendments to section 337 and for the text of interim Commission rules implementing those amendments that became effective on August 23, 1988.

[2] Under section 553 of the APA, an agency may dispense with publication of a notice of proposed rulemaking when the following circumstances exist: (1) The proposed rules are interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice; or (2) the agency for good cause finds that a notice and public comment procedure are impracticable, unnecessary, or contrary to the public interest, and (3) that finding and the reasons therefor are incorporated into the rules adopted by the agency. *See* 5 U.S.C. 553(b). In this instance, the interim rules to be adopted will consist of interpretive rules, general statements of policy, and rules of procedure or practice governing the posting of temporary relief bonds and the possible forfeiture of such bonds. Moreover, the November 21, 1988, effective date of the statutory bonding provision and the Congressional intent that the interim rules be promulgated within 90 days make the customary public comment period (30 to 60 days) impossible.

Instead of dispensing altogether with the public comment phase of the APA rulemaking procedure as it could have done, the Commission had decided to have a shortened public comment period that would leave sufficient time for the Commission to review the comments it receives and to issue "final" interim rules by November 21, 1988.

[3] Under section 553 of the APA, an agency may dispense with the publication of a notice of "final" interim rules 30 days prior to their effective date if (1) the rules are interpretive rules or statements of policy, or (2) the agency finds that "good cause" exists for not meeting the advance publication requirement, and (3) that finding is published along with the rule. *See* 5 U.S.C. 553(d)(3). In this instance, the Commission has determined that the amount of time needed to develop interim bonding rules, the short period allotted for promulgating such rules, and the Congressional admonition to implement the statutory bonding provision as expeditiously as possible constitutes "good cause" for not complying with the 30-day advance publication requirement.

Overview of the Proposed Bonding and Forfeiture Processes and Explanation of the Specific Proposed Interim Revisions to 19 CFR Part 210 (53 FR 33043 Aug. 29, 1988)

1. Determining Whether the Complainant Should be Required to Post a Bond and, if so, the Amount of the Bond

The current procedures governing the disposition of motions for temporary relief are found primarily in current interim rules §§ 210.24(e), 210.41, 210.53, 210.56, and 210.59. *See* 53 FR 33043, 33060–33063, 33068, 33070, and 33072 (Aug. 29, 1988). The proposed interim rules governing the posting of bonds by complainants as a prerequisite to the issuance of a temporary exclusion order and the amount of such bonds will be incorporated into those rules. Where appropriate, the proposed interim rules are based on or contain citations to Treasury Department and U.S. Customs Service regulations and statutes.

Commission decisions on whether to require a complainant to post a bond and, if so, the amount of the bond, will be made by the initial determination/discretionary Commission review procedure that is currently used to determine whether to grant or deny motions for temporary relief. The factors the Commission expects to consider in determining whether to require a bond will include those specified in the legislative history of the bonding provision, as well as consideration of the public interest, which is to be paramount in the administration of section 337. *See* 133 CONG. REC. at S10365; H.R. Rep. No. 576 at 635; S. Rep. No. 1298, 93 Cong., 2d Sess. 193 (1974). Complainants seeking a temporary exclusion order will be required to address the issue of bonding and the amount of the bond and to provide corroborating documentation in or along with the motion for temporary relief. Each respondent's response to the complaint must respond to the bonding arguments in the motion for temporary relief to the extent possible.[4] In light of the stringent statutory deadlines for determining whether to grant temporary relief and the intent of Congress that the Commission issue temporary relief orders more quickly than it issued them under the previous enactment of section 337 (*see* H.R. Rep. No. 40, 100th Cong., 1st Sess. 159 (1987); S. Rep. No. 71, 100th Cong., 1st Sess. 131 (1987), the Commission believes that having as much relevant bonding data as possible before the administrative law judge at the outset of the temporary relief proceeding will foster the development of a more complete record (since the respondents and the Commission investigative attorney can conduct discovery and challenge the complainant's bonding data and assertions). It also will facilitate the expeditious issuance of a temporary exclusion order if the motion for such an order is granted and a bond is required.

The proposed rules set forth a policy favoring the requirement of a bond in every case where the complainant will receive a temporary exclusion order. In a case where the complainant seeks to be excused from posting a bond, the complainant would have the burden of persuading the Commission that exemption from the bond requirement is warranted. Such a policy would be consistent with the stated purpose of the bonding provision, which is to deter complainants from filing frivolous motions for temporary relief or using the temporary relief proceeding as a means of harassing the respondents. *See* H.R. Rep. No. 576 at 635–636; 133 CONG. REC. S10364–S10365. A Commission policy favoring the imposition of a bond also would be consistent with the Congressional intent that the bond serve as a means of overcoming Commission hesitation to grant temporary relief (*e.g.*, in cases where the motion for temporary relief does not appear to be frivolous but the strength of the complainant's case is not overwhelming). *See* 133 CONG. REC. at S10365; H.R. Rep. No. 576 at 635.

The Commission also believes that any perceived unfairness to complainants stemming from a Commission policy favoring the posting of bonds by complainants to secure temporary exclusion orders would be mitigated somewhat by the fact that the Commission has considerable discretion in determining the amount of the bond and thus would be free to require only a nominal bond in appropriate cases.

As noted above, the legislative history of the statutory bonding provision indicates that the purposes of requiring a bond are to deter frivolous requests for temporary exclusion orders and to deter the use of such relief by complainants to harass respondents or for other improper purposes. *See* H.R. Rep. No. 576, 100th Cong., 2d Sess. 635–636 (1988); 133 CONG. REC. S10364–S10365. The Commission's goal in computing the amount of the bond is therefore to select an amount that is sufficient to deter the complainant in question from abusing the use of a temporary exclusion order if such relief is granted.

In light of (1) the stringent new statutory deadlines for granting temporary relief (90 days in an ordinary investigation and up to 150 days in a "more complicated" investigation),[5] (2) the wide range of issues the parties conceivably could raise in their arguments concerning the posting of a temporary relief bond by complainant, and (3) the Commission's lack of prior experience with complainant's temporary relief bonds, the Commission believes that it would be appropriate for it to adopt an interim rule containing a specific formula for calculating the amount of the bond. A prescribed formula would not only make the computation relatively easy, it also would ensure, to a certain extent, that the bonding provision is applied in a reasonably consistent fashion and that a complainant considering seeking temporary relief would have some idea of the amount at issue.

For those reasons, the proposed rule states that in cases where a domestic industry exists and domestic sales have commenced and have not been de minimis, the Commission generally will require a bond in an amount ranging from 10 to 100 percent of sales revenues and licensing royalties from the domestic product at issue, as reported in the complainant's annual financial statements for the most recently completed fiscal year. The advantages of this formula are the following:

(1) In most cases, the Commission would not have to rely on allocations. Financial statement sales revenue figures generally are audited numbers and hence specific product revenues should be readily available.

(2) Since a sales revenue figure generally is an audited number, it has some validity. Hence, the only verification documents that the Commission need require the complainant to file along with the motion for temporary relief would be (a) the audited financial statements (or the equivalent thereof) for the most recently completed fiscal year, (b) the back-up income statements, work sheets, or other documents showing product revenues tied to the aggregate revenue listed on the financial statements, and (c) a certification under oath by the complainant's chief financial officer indicating that the detail provided in the work sheets or other documents tied to the audited financial statements is correct.

(3) A bond computation formula keyed to a percentage of sales revenues

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[4] *See infra* n. 10.

[5] 19 U.S.C. 1337(e)(2) as amended by section 1342(a)(3)(B) of the Omnibus Trade Act.

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and licensing royalties would be appropriate because a bond amount computed by that formula could be tailored to provide a meaningful deterrent to complainant's abuse of temporary relief by taking into account the extend of the complainant's involvement with articles of the type under investigation and the complainant's relative financial strength.[6]

Since the Commission has wide discretion in the amount of the bond it may require the complainant to post, the Commission believes that it would be helpful for potential complainants to be able to estimate their potential bonding costs when they are determining whether to seek temporary relief.

If the facts and circumstances so warrant, the presiding administrative law judge can recommend in the initial determination on temporary relief and bonding by the complainant (if a temporary exclusion order is requested) that the Commission order waiver and the Commission subsequently can agree to waive, application of the prescribed formula and can require, for example, a bond in an amount equal to less than 10 percent or more than 100 percent of the relevant product sales revenues and licensing royalties.[7] The Commission expects, however, that exceptions to the range set forth in the general rule would be rare. Moreover, even though an occasional exception may arise, the Commission believes that it still would be desirable to have a range for the possible amount of the bond set forth in the interim rules in order to lessen the possibility that a complainant would, in good faith, pursue a temporary exclusion order and then decide after the Commission determines to grant such relief that it cannot afford to post the required bond.

In certain types of cases, the proposed formula may not be suitable, *e.g.* cases in which the complaint alleges prevention of the establishment of an industry, cases in which the complainant's domestic operations are newly established and commercial sales of the domestic product have not yet commenced or have been de minimis, or cases in which the complainant is a large multinational conglomerate with substantial litigation resources and the domestic product at issue accounts for only a small portion of the complainant's total revenues from sales and licensing royalties. In such cases, the administrative law judge's initial determination on temporary relief could recommend and the Commission could agree to waive application of the rule requiring computation of the bond by the percentage-of-product-sales-revenues-and-licensing-royalties formula. The Commission could then use whatever criteria would be more appropriate to determine the bond in that case. The proposed interim rules thus provide that in cases where the aforesaid formula would not be appropriate—*e.g.*, cases where the domestic industry is embryonic and domestic sales have been de minimis, or cases involving the alleged prevention of the establishment of a domestic industry or the alleged restraint of trade or commerce in the United States—the amount of the bond will be determined on the basis of the facts on the record, the complainant's financial strength, the parties' arguments, and any other factors which the presiding administrative law judge or the Commission deems relevant. If the motion falls into one of those categories, the proposed interim rule requires that the motion for temporary relief state the theory that the complainant believes is appropriate for computing the amount of the bond (if the Commission determines to require a bond) and that the complainant provide supporting financial and economic data with a certification under oath executed by the complainant's chief financial officer attesting to the veracity of the data. Finally, the proposed interim rules state that all complainants who are seeking a temporary exclusion order (including complainants who have provided the audited financial statements and back-up data), must be prepared to provide upon short notice any additional financial or economic data requested by the presiding administrative law judge in connection with the issue of bonding and a certification under oath by the complainant's chief financial officer that the information submitted is accurate.

The statutory provision authorizing the Commission to require that the complainant post a bond to secure a temporary exclusion order and other provisions of federal law (cited in the proposed rules) provide that: (1) The surety need not be a guarantee corporation, and the Government cannot require that the person posting the bond use a particular guarantee corporation; and (2) in lieu of the surety bond of a guarantee corporation, the person may post the surety bond of an individual, or other types of Government obligations,[8] *viz.*, a certified check, a postal money order, cash, United States bonds, or Treasury notes. *See* 31 U.S.C. 9301, 9303, and 9304(b). *See* also 31 CFR Part 225. For those reasons, the proposed rules provide for the posting of individual or corporate surety bonds, as well as other types of government obligations such as a certified check, a bank draft, a postal money order, cash, United States bonds, or Treasury notes, in lieu of a surety bond in accordance with the applicable Treasury statutes and regulations.

Federal law also requires that the Commission formally approve any bond posted to secure a temporary relief order. The proposed rules designate the Commission Secretary as the Commission's bond approval officer. The bond approval process will entail verification of the information provided in and with the bond (with assistance from the Commission's Office of Investigations, where necessary) in accordance with the governing Treasury regulations or circulars. The proposed interim rules authorize the Secretary to disapprove and reject a bond submitted by a complainant for (1) noncompliance with the Commission order, notice, determination, or opinion requiring the complainant to post a bond, (2) noncompliance with governing Commission or Treasury regulations, (3) evidence of fraud or misrepresentation on the face of the bond or any supporting documentation (*e.g.*, powers of attorney) or in the instrument governing the posting and disposition of the certified check, the bank draft, postal money order, cash, United States bond, or Treasury note submitted in lieu of a surety bond, or (4) any other reason deemed appropriate by the Secretary. If the complainant believes that the Secretary's rejection of the bond was erroneous as matter of law, the complainant may appeal to the Commission by filing a petition in the form of a letter to the Chairman of the Commission within 10 days after service of the Secretary's rejection letter.

The Commission notes that the bond approval process will be expedited if the complainant chooses to use a corporate surety that is licensed to do business in the United States and is on the list of approved corporate sureties maintained by the Clerk of the U.S. District Court for the District of Columbia. The administrative advantage of using such a company is that the Commission can seek advice and assistance from the clerk of that court in connection with the verification needed to approve a bond posted by such a company. The advantage to the complainant is that using a corporate surety that is on file with the U.S. District Court may expedite the bond approval process and the issuance of the temporary relief order which the bond is intended to secure.

The bond approval process can be expected to take longer if the complainant chooses to use the bond of an individual surety, or a certified check, a bank draft, a post office money order, cash, United States bond, or a Treasury note in lieu of a corporate surety bond to secure a temporary exclusion order. This is due to the verification that must be performed before the bond or Government obligation tendered in lieu of a corporate surety bond can be accepted by the Commission. For example, when the bond of an individual surety is tendered, the verification entails investigation to ensure the solvency and financial responsibility of the individual.

If the bond or Government obligation is in the form of a certified check, a bank draft, a post office money order, cash, a United States bond, or a Treasury note, the bond approval officer must conduct the verification specified in 31 CFR 225.6. That verification entails ascertaining ownership of the Government obligation in question, as well as the sufficiency of the accompanying power of attorney and bond agreement or the equivalent thereof. In the cases where a registered bond or note is posted, the bond approval officer must verify the regularity of the assignments and that the deposit is made in conformity with the provisions of 31 CFR Part 225.

Since federal law prohibits the Commission from requiring complainants to use a surety corporation or a particular surety corporation, the proposed interim rules do not *require* that complainants post bonds of corporate sureties registered with the U.S. District Court for the District of Columbia or that the complainant post a corporate surety bond rather than the bond of an individual surety or other types of Government obligation in lieu of a surety bond (such as a certified check, a bank draft, a post office money order, cash, a United States bond, or a Treasury note).

The manner in which the Commission proposes to incorporate the procedures discussed above into the existing Commission rules is summarized below.

Interim rule section 210.1

The current interim rule § 210.1 (53 FR 33043 and 33056, August 29, 1988) describes the applicability of the rules in Part 210 and lists the statutory provisions that authorize the enactment of such rules. As indicated above, the Commission's authority to require a complainant to post a bond as a prerequisite to the issuance of a temporary exclusion order is found in subsection (e)(2) of section 337 of the Tariff Act (created by section 1342(a)(3)(B) of the Omnibus Trade Act), and the authority to issue interim bonding rules to implement that provision is found in section 1342(d)(1)(B) of the Omnibus Trade Act. The Commission's authority to require forfeiture of the bond to the U.S. Treasury is found not in a statutory provision but rather in the legislative history of the aforesaid bonding provision. *See* H.R. Rep. No. 576 at 636 and 133 CONG. REC. S10365. The proposed amendments to interim rule 210.1 therefore consist of the following: (1) The addition of the words "expressly or implicitly" before the word "authorized" in the sentence beginning "These rules are authorized by * * *"; and (2) the insertion of citations to the relevant statutory provisions and legislative history at the end of that sentence.[9]

Interim rule section 210.24(e)

The current interim rule § 210.24(e) (53 FR 33043 and 33060, August 29, 1988) sets out the procedure for filing, processing, and the ultimate disposition of motions for temporary relief. Paragraph (1) of rule § 210.24(e) (53 FR 33043 and 33060, August 29, 1988) sets forth the mandatory content of motions for temporary relief. The proposed revision consists of requiring the motion to address the following issues when the complainant is seeking a temporary exclusion order: (1) Whether the complainant should be required to post a bond as a prerequisite to the issuance of such an order; and (2) the appropriate amount of the bond, if the Commission determines (despite any arguments to the contrary) that a bond will be required. Paragraph (1) of interim rule § 210.24(e) also will be revised to include the following: (1) A recitation of the factors the Commission will consider in determining whether to require a bond; (2) the Commission's policy favoring the posting of temporary relief bonds in every case in which the complainant seeks and the Commission determines to issue a temporary exclusion order; (3) the formula for computing the amount of the bond in cases where the domestic industry is established and sales of the domestic product in question have not been de minimis; and (4) the documentation that must be provided to support the bonding arguments in the motion for temporary relief.

Paragraph (7) of interim rule § 210.24(e) (53 FR 33043 and 33061, August 29, 1988) governs the amendment of motions for temporary relief. It currently states, in pertinent part, that if the complainant amends the motion for temporary relief in a manner that expands the scope of the motion, the 35-day period allotted under paragraph (8) of interim rule § 210.24(e) (53 FR 33043 and 33061, August 29, 1988) for determining whether to institute an investigation and to initiate temporary relief proceedings shall begin to run anew from the date the amendment is filed with the Commission. The proposed revision of paragraph (7) consists of the addition of a provision stating that if the complainant amends the motion for temporary relief in a manner that changes the complainant's original assertions on whether a bond is to be required or the appropriate amount of the bond, the 35-day period allotted for determining whether to institute an investigation and to initiate temporary relief proceedings shall begin to run anew from the date the amendment is filed with the Commission. The Commission believes that this change is appropriate because the issue of bonding is likely to be vigorously contested and each respondent's response to the motion for temporary relief must address the complainant's arguments on bonding to the extent possible. (*See* proposed revision of paragraph (9) of interim rule § 210.24(e).) The Commission notes further that this proposed revision of paragraph (7) of interim rule § 210.24(e) is consistent with the Commission's intent that the

[6] Hardship to the complainant is one of the factors which the Commission is expected to consider in determining whether to require a bond (*see* 133 CONG. REC. S10366; H.R. Rep. No. 576 at 636), and thus should also be considered in computing the amount of the bond if a bond is required.

[7] Commission rule § 201.4(b) provides that Commission rules may be amended, waived, suspended, or revoked by the Commission when, in the judgment of the Commission, there is good and sufficient cause therefor, as long as the rule is not a matter of procedure required by law. *See* 19 CFR 201.4(b).

[8] A "Government obligation" is a public debt obligation of the United States Government and an obligation whose principal and interest is unconditionally guaranteed by the Government. 31 U.S.C. 9301

[9] Section 2 of the Omnibus Trade Act is cited in the proposed revised version of interim rule § 210.1 (in addition to the relevant legislative history) for the following reasons: Although the bill that became the Omnibus Trade Act is H.R. 4848, 100th Cong., 2d Sess. (1988), the reports comprising the relevant legislative history expressly pertain to H.R. 3, 100th Cong., 2d Sess. (1988), a trade bill which the President vetoed. The provisions of H.R. 4848 that amend section 337 of the Tariff Act are identical to provisions of H.R. 3. For that reason, section 2 of the Omnibus Trade Act provides that the legislative history of H.R. 3 also serves as the legislative history of the relevant provisions of H.R. 4848.

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respondents have at least 30 days in which to review the motion in its entirety, to consult an attorney, and to decide prior to the tolling of the period for filing a response to the motion what course of action and arguments would be appropriate if an investigation is instituted.

Paragraph (9) of interim rule § 210.24(e) (53 FR 33043 and 33061, August 29, 1988) sets forth the required content of responses to motions for temporary relief. The proposed revisions to this paragraph consist of the addition of the following: (1) A statement that if the motion requests that the Commission issue a temporary exclusion order, each response to the motion must address, to the extent possible, the complainant's arguments concerning whether a bond should be required and the appropriate amount of the bond;[10] and (2) a statement that each response to the motion for temporary relief may also contain counter proposals concerning the amount of the bond or the manner in which the bond amount should be determined.

Paragraph (10) of interim rule § 210.24(e) (53 FR 33043 and 33061, August 29, 1988) currently provides that following provisional Commission acceptance of a motion for temporary relief and upon institution of an investigation, the motion for temporary relief shall be forwarded to an administrative law judge for an initial determination on whether there is reason to believe there is a violation of section 337 of the Tariff Act and whether temporary relief is appropriate. Since the Commission has determined that the question of bonding will be determined by using the initial determination/discretionary Commission review procedure, the proposed revision of paragraph (10) of interim rule § 210.24(e) is new language to provide that the initial determination on temporary relief must also address whether the complainant should be required to post a bond as a prerequisite to the issuance of a temporary exclusion order (if such an order is to be issued), and if so, the amount of the bond.

Paragraph (11) of interim rule § 210.24(e) (53 FR 33043 and 33061, August 29, 1988) pertains to designating an investigation "more complicated" for purposes of adjudicating a motion for temporary relief. That paragraph currently provides, in pertinent part, that after a motion for temporary relief is referred to the administrative law judge for an initial determination, the administrative law judge may issue an order, sua sponte or on motion, designating the investigation "more complicated" in order to obtain additional time to adjudicate the motion for temporary relief. The issues of bonding by the complainant and computing the amount of the bond are likely to be contested in most investigations. Moreover, Commission resolution of those issues may pose procedural and substantive difficulties, at least until the administrative law judges and the Commission gain experience with bonding. For those reasons and because the issue of bonding must be addressed in the initial determination on temporary relief, the proposed revision of paragraph (11) of interim rule § 210.24(e) consists of clarification that the "more complicated designation" may be applied because of the complexity of the bonding issues and/or the complexity of issues relating to whether there is reason to believe the respondents have violated section 337 (as discussed in interim rule § 210.56(a)(1)).

Paragraph (12) of interim rule § 210.24(e) (53 FR 33043 and 33062, August 29, 1988) discusses the administrative law judge's discretion to control the time, place, nature, and extent of discovery relating to the motion for temporary relief and the administrative law judge's authority to compel discovery on certain issues. The proposed revisions to paragraph (12) include new language expressly authorizing the administrative law judge to compel discovery on matters relating to (1) whether the complainant should be required to post a bond as a prerequisite to the issuance of a temporary exclusion order and (2) if so, the amount of the bond. The proposed revisions to paragraph (12) also include changing the current reference to "bonding" to "bonding by respondents." This change will avoid confusion since complainants may soon be required to post a bond as a prerequisite to the issuance of a temporary exclusion order.

Paragraph (13) of interim rule § 210.24(e) (53 FR 33043 and 33062, August 29, 1988) relates to evidentiary hearings on motions for temporary relief. Paragraph (13) currently discusses the administrative law judge's authority to rule on such motions with or without a hearing, his or her discretion to control the form and scope of the hearing, and the matters that are to be addressed at the hearing. The proposed revisions to paragraph (13) include a statement that the following issues must be discussed at the hearing (if a hearing is conducted): (1) Whether the complainant should be required to post a bond as a prerequisite to the issuance of a temporary exclusion order (if such an order is to be issued) and (2) if so, the amount of the bond. The proposed amendments to paragraph (13) of interim rule § 210.24(e) also include changing the current reference to "bonding" to "bonding by respondents" where appropriate.

Paragraph (14) of interim rule § 210.24(e) (53 FR 33043 and 33062, August 29, 1988) discusses the administrative law judge's discretion to permit the parties to file proposed findings of fact, conclusions of law, and briefs concerning the grant or denial of temporary relief. The proposed revision of paragraph (14) consists of clarification that the administrative law judge has the same discretion with respect to the filing of written submissions on whether the complainant should be required to post a bond as a prerequisite to the issuance of a temporary exclusion order and the amount of the bond.

Paragraph (15) of interim rule § 210.24(e) (53 FR 33043 and 33062, August 29, 1988) discusses interlocutory appeals and review by the Commission of the administrative law judge's actions and findings relating to motions for temporary relief. No revision is being proposed for the directive set forth in this rule. However, for purposes of internal consistency in the references to the initial determination concerning temporary relief, paragraph (15) of interim rule § 210.24(e) will be revised by changing the present reference to "an initial determination granting or denying a motion for temporary relief" to "an initial determination granting or denying a motion for temporary relief and, if applicable, a ruling on the issue of bonding by the complainant as a prerequisite to the issuance of a temporary exclusion order."

The Commission proposes to make the same type of clarification in paragraph (16) of interim rule § 210.24(e) (53 FR 33043 and 33062, August 29, 1988), which pertains to certification of the record to the Commission.

Paragraph (17) of interim rule § 210.24(e) (53 FR 33043 and 33062, August 29, 1988) discusses the content of the initial determination on temporary relief and Commission action thereon. The proposed revision to paragraph (17)(i) of this rule (53 FR 33043 and 33062, August 29, 1988) consists of the same type of clarification the Commission proposes to make in paragraphs (15) and (16) of rule § 210.24(e). The proposed revisions to paragraph (13) also include changing the current reference to "bonding" to "bonding by respondents" where appropriate. This change will avoid confusion since, as noted, complainants may soon be required to post a bond as a prerequisite to the issuance of a temporary exclusion order.

Paragraph (17)(ii) of interim rule § 210.24(e) (53 FR 33043 and 33062, August 29, 1988) remains unchanged. Although the issue of bonding by the complainant will be included in the initial determination in cases involving a request for a temporary exclusion order, the scope of review by the Commission continues to be limited to alleged errors of law and policy. Neither the ruling on bonding by the complainant nor any other aspect of the initial determination will be reviewed by the Commission for alleged errors of fact.

Paragraphs (17)(iii) and (v) of interim rule § 210.24(e) (53 FR 33043 and 33063, August 29, 1988) discuss, among other things, the page limits for comments and responses thereto which the parties may file concerning the presence or absence of alleged errors of fact or law in the initial determination on temporary relief. The proposed revisions to paragraphs (17)(iii) and (v) include the same type of clarification the Commission proposes to make in paragraphs (15) and (16) of interim rule § 210.24(e). Additionally, since the initial determination must address the question of bonding by the complainant is seeking a temporary exclusion order and that issue is likely to be vigorously contested (at least in the first few investigations), the amendments to paragraphs (17)(iii) and (v) of interim rule § 210.24(e) also include 5-page increases in the current page limits imposed for the parties' comments on the initial determination and the responses thereto.

Paragraph (17)(vi) of interim rule § 210.24(e) (53 FR 33043 and 33063, August 29, 1988) currently provides that if the Commission determines to modify or vacate the initial determination, a notice and (if appropriate) a Commission opinion will be issued, and if the Commission does not modify or vacate the initial determination, it will automatically become the determination of the Commission and a notice of that fact will not be issued. The operation of the statutory bonding provision will necessitate modification of this rule to indicate that if the Commission determines (either by reversing or modifying the administrative law judge's initial determination, or by adopting the initial determination) that a temporary exclusion order should be issued and that the complainant must post a bond as a prerequisite to the issuance of the order, the Commission may issue (on the statutory deadline for determining whether to grant temporary relief or as soon as possible thereafter) a notice setting forth condition for the bond if any (in addition to those outlined in the initial determination) and the deadline for filing the bond with the Commission.

Paragraph (18) of interim rule § 210.24(e) (53 FR 33043 and 33063, August 29, 1988) sets forth the Commission's procedure for determining (1) the appropriate form of temporary relief, (2) whether the statutory public interest factors preclude such relief, and (3) the amount of the bond under which respondents' merchandise will be permitted to enter the United States during the pendency of the investigation and any temporary relief order issued in response to the motion. The proposed amendments to paragraph (18) of interim rule § 210.24(e) consist of changing all references to "bonding" to "bonding by respondents" where appropriate.

Interim rule section 210.41

The current interim rules § 210.41 (53 FR 33043 and 33068, August 29, 1988) sets forth general provisions governing hearings in section 337 investigations. Paragraph (a)(2) of that rule currently states that "[e]xcept as provided under § 120.24(e)(13), an opportunity for a hearing shall also be provided to take evidence and hear argument for the purpose of determining whether there is reason to believe there is a violation of section 337 of the Tariff Act." For internal consistency with the other interim rules governing the initial adjudication of motions for temporary relief by the administrative law judge, the proposed revision consists of clarification that the hearing may also address the issue of whether the complainant should be required to post a bond as a prerequisite to the issuance of a temporary exclusion order (if such order is being requested) and, if so, the amount of the bond.

Interim rule section 210.53

Interim rule § 210.53 (53 FR 33043 and 33068, August 29, 1988) currently discusses the issuance and disposition of initial determinations for all matters that are to be adjudicated by the initial determination/discretionary review procedure, including motions for temporary relief. Paragraph (b) of that rule currently states that "[t]he disposition of an initial determination concerning temporary relief is governed by the provisions of § 210.24(e)(17)." For internal consistency with the proposed amendments to interim rule § 210.24(e) relating to bonding by the complainant, the Commission proposed to revise paragraph (b) of rule § 210.53 to state that "[t]he disposition of an initial determination concerning temporary relief (and if appropriate, the posting of a bond by the complainant and the amount of the bond) is governed by the provisions of § 210.24(e)(17)."

Interim rule section 210.56

Interim rule § 210.56 (53 FR 33043 and 33068, August 29, 1988) currently discusses the process of reviewing initial determinations, including the filing of briefs, requests for oral argument, the scope of the review, what action the Commission can take upon completion of the review, and the time basis for concluding a review of an initial determination concerning temporary relief. For consistency with other temporary relief rules and to avoid confusion, the Commission proposes to change the references in paragraph (d) of interim rule § 210.56 to "an initial determination concerning temporary relief and, possibly, bonding by the complainant and the respondents)."

Interim rule section 210.58

Interim rule § 210.58 (53 FR 33043 and 33071, August 29, 1988) currently governs the Commission's adjudication of the issues of remedy, the public interest, and bonding by respondents in section 337 investigations. Since the Commission will soon be authorized to require complainants to post a bond as a prerequisite to the issuance of a temporary exclusion order, the bonding issues encompassed in that determination should be noted in paragraph (b) of that rule. The definition of the "bond" to be posted by the complainant, the criteria the Commission will use in determining the amount of the bond, the standard bond provisions that will be required in every case, the restrictions and requirements relating to individual and corporate sureties, are also discussed in the proposed revision of paragraph (b).

Interim rule section 210.59

Paragraph (b) of interim rule § 210.59 (53 FR 33043 and 33072, August 29, 1988) currently discusses designating an investigation "more complicated" for purposes of determining whether to grant a motion for temporary relief. The Commission proposes to amend

[10] The Commission recognizes that a respondent's ability to respond to the complainant's arguments on the issue of whether the complainant should be required to post a bond and the appropriate amount of the bond may be limited by the fact that much of the data upon which the complainant may rely to support its position is likely to be confidential business information, which would not be served on the respondents along with the motion and the complaint.

paragraph (b) of this rule by clarifying that the "more complicated" designation can be applied for purposes of determining whether to grant a motion for temporary relief and/or determining (1) whether to require the complainant to post a bond as a prerequisite to the issuance of a temporary exclusion order, and (2) if so, the amount of the bond.

2. Determining Whether the Complainant Should Be Required To Forfeit the Bond in Whole or in Part

The legislative history of the statutory provision authorizing the Commission to require a complainant to post a bond as a prerequisite to the issuance of a temporary exclusion order authorizes the Commission to require forfeiture of the bond when the Commission determines, after issuing a temporary exclusion order conditioned on a bond, that the respondents have not violated section 337. Congress intends that the forfeiture provision operate in the same way that respondents' section 337 import bonds "revert" to the U.S. Treasury when the Commission determines that imported articles permitted to enter the United States under a bond violate section 337.[11]

The proposed interim rule on forfeiture of complainant's bond, *viz.*, paragraph (c) of interim rule § 210.58, provides that if the Commission issues a temporary exclusion order secured by a bond and subsequently determines that one or more of the respondents whose merchandise was covered by the temporary exclusion order has not violated section 337 to the extent alleged in the motion for temporary relief and contemplated by the temporary exclusion order,[12] the Commission will determine whether to order forfeiture of the bond in whose or in part to the U.S. Treasury. Unlike the proposed interim rule governing the posting of temporary relief bonds by complainants, there is no Commission policy favoring forfeiture of the bond. Nor is there a prescribed policy disfavoring favoring forfeiture. The decision concerning forfeiture will be made on a case-by-case basis.

When the Commission determines that one or more of the respondents whose merchandise was covered by the temporary exclusion order had violated section 337 to the extent alleged in the motion for temporary relief, the complainant must file within 30 days after the effective date of the aforesaid Commission determination,[13] a written submission discussing whether the Commission should or should not order forfeiture of the bond. The factors the Commission will consider (and which the complainant's submission must address) in determining whether forfeiture of the bond should be ordered in whole or in part include the following: (1) The extent to which the Commission determined that the respondents have not violated section 337; (2) whether the complainant's assertions with respect to the violation alleged as the basis for obtaining a temporary exclusion order were substantially justified, taking into account the record of the investigation as whole; (3) whether forfeiture would be consistent with the legislative intent of the forfeiture authority (which is to provide a "disincentive" to the abuse of temporary relief by complainant); (4) whether forfeiture (in whole or in part) would be in the public interest; and (5) any other legal, equitable, or policy considerations that are relevant to the issue of forfeiture.

Factors (3), (4), and (5) are derived from the legislative history of the bonding and forfeiture authority and the legislative history of other provisions of section 337. Factor (2) is based on the criteria of the Equal Access to Justice Act, 5 U.S.C. 504, providing for the award of attorneys fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings before Federal agencies under that statute and the implementing Commission and Treasury regulations (19 CFR Part 212 and 31 CFR Part 6). An eligible party may receive an award when it prevails over an agency unless the agency's position in the proceeding was substantially justified or special circumstances make such an award unjust.

The proposed rule also provides that the decision on whether to order forfeiture of the bond will be made by using the criteria set forth in interim rules §§ 210.53(j) and §§ 210.54 through 210.56(c), which allow for longer filing deadlines, petitions for review and responses thereto with no page limitations, and broader criteria for reviewing, modifying, and reversing an initial determination than the procedures and criteria set forth in paragraphs (17) and (18) of proposed interim rule § 210.24(e), which govern the disposition of motions for temporary relief and the posting of bonds by complainants. The Commission believes that the procedures set forth in interim rules §§ 210.53(c) and §§ 210.54 through §§ 210.56(c) are preferable for determining whether to order forfeiture of a complainant's temporary relief bond, since forfeiture decisions are not subject to statutory deadlines.

Although there are no statutory deadlines applicable to forfeiture of bonds, the proposed interim forfeiture rule provides that motions to stay forfeiture proceedings or the effective date of a forfeiture order pending the outcome of judicial reiview of the violation determination will not be granted, for the following reasons. The legislative history of the forfeiture authority indicates that "[b]onds posted by [complainants], if forfeited, would revert to the Treasury in the same way as bonds now posted by respondents" (133 CONG. REC. S10365; H.R. Rep. No. 576 and 635). The Customs Service regulations governing the assessment of liquidated damages under a bond posted pursuant to 19 CFR 12.39(b) do not provide for stays on the assessment of liquidated damages under 19 CFR Part 172 pending the outcome of judicial review of the subject Commission determination concerning the violation of section 337. Moreover, preliminary information we have received from the Treasury Department indicates that if the negative violations determination supporting the forfeiture order is reversed on judicial review, the complainant would not have to file suit against the United States in order to recover the money forfeited pursuant to the Commission order.[14] The Commission hopes to have more information on this subject in the notice of "final" interim bonding and forfeiture rules.

In accordance with proposed interim rules § 210.53 (a) and (h) (as revised in the manner proposed below), the initial determination on forfeiture of the bond would become the determination of the Commission within 45 days after issuance of the presiding administrative law judge's initial determination on forfeiture unless the Commission orders a review or extends the deadline for determining whether to order a review.

Interim rule §§ 210.53 (currently governing initial determinations) and interim rule §§ 210.56(b) (currently governing Commission action, the public interest, and bonding by respondents) will be modified to incorporate the foregoing procedures governing the possible forfeiture of bonds.

Interim rule § 210.53 (53 FR 33053 and 33070, August 29, 1988) will be revised by creating a new subsection (j) to provide for the issuance of an initial determination on whether the Commission should order a complainant to forfeit a temporary bond in whole or in part when the Commission determines, after issuing a temporary exclusion order conditioned on the bond, that the respondents have not violated section 337 to the extent alleged in the motion for temporary relief. The proposed amendments to this rule also include a statement that the provision of interim rules §§ 210.54 through 210.56(c) will govern the disposition of an initial determination issued pursuant to paragraph (j) of interim rule §§ 210.53 and that if the Commission does not order a review, the initial determination on forfeiture will become the determination of the Commission within 45 days after service of the initial determination. Corresponding and appropriate amendments will be made in interim rule § 210.54 concerning the filing of petitions for review and responses thereto to indicate that such petitions may be filed within 10 days after service of the initial determination on forfeiture and that responses to the petitions may be filed within 5 days after service of the petition.

All other aspects of the forfeiture procedures discussed above have been incorporated into interim rule § 210.58 (53 FR 33053 and 33072, August 29, 1988).

List of Subjects in 19 CFR Part 210

Administrative practice and procedure, Investigations.

The Commission proposes to amend Chapter II, Subchapter C, Part 210 of Title 19 of the Code of Federal Regulations as follows:

PART 210—ADJUDICATIVE PROCEDURES

1. The authority citation for Part 210 will be revised to read as follows:

Authority: 19 U.S.C. 1333, 1335, and 1337, and sections 2 and 1342(d)(1)(B) of Pub. L. 100-418, 102 Stat. 1107 (1988).

2. Section 210.1 will be revised to read as follows:

§ 210.1 Applicability of part.

The rules in this Part govern procedure relating to proceedings under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). These rules are expressly or implicitly authorized by sections 333, 335, and 337 of the Tariff Act of 1930 (19 U.S.C. 1333, 1335, and 1337), 133 CONG REC. S10365 (Statement of Sen. Lautenberg) (July 21, 1987) (H.R. Rep. No. 576, 100th Cong., 2d Sess. 635 (1988), and sections 2 and 1342(d)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988, and sets legislative history, Pub. L. No. 100-418, 102 Stat. 1107 (1988).

3. The introductory text of paragraph (e) and paragraphs (e) (1), (7), and (9) through (18) of § 210.24 will be revised to read as follows:

§ 210.24 Motions.

* * * * *

(e) *Motions for temporary relief.* Requests for temporary relief pursuant to subsection (e) or (f) of section 337 of the Tariff Act shall be made through a motion to be filed and adjudicated in accordance with the following provisions.

(1) *Motion accompanying complaint.* (i) A complaint requesting temporary relief pursuant to § 210.20(e)(10) shall be accompanied by a motion that sets forth complainant's request for temporary relief. The motion must contain a detailed statement of specific facts bearing on:

(A) Complainant's probability of success on the merits;

(B) Immediate and substantial harm to the domestic industry in the absence of the requested temporary relief;

(C) Harm, if any, to the proposed respondents if the requested temporary relief is granted; and

(D) The effect, if any, that the issuance of the requested temporary relief would have on the public interest.

(ii) If the motion requests that the Commission issue a temporary exclusion order under subsection (e) of section 337, the motion must also contain a detailed statement of facts bearing on:

(A) Whether the complainant should be required to post a bond as a prerequisite to the issuance of a temporary exclusion order; and

(B) The appropriate amount of the bond, if the Commission determines that a bond will be required.

(iii) The factors the Commission will consider in determining whether to require a bond include the following:

(A) The strength of the complainant's case;

(B) Whether posting a bond would impose an undue hardship on the complainant;

(C) Whether the respondent has responded to the motion for temporary relief (in the time and manner specified by paragraph (e) (9) of this section or by order of the Commission or the presiding administrative law judge);

(D) Whether the respondent will be harmed by issuance of the temporary exclusion order sought by the complainant; and

(E) Any other legal, equitable, or public interest consideration that is relevant to whether complainant should be required to post a bond as a condition precedent to obtaining temporary relief.

No single factor will be determinative. The Commission's policy is to favor the posting of a bond in every case. Therefore, a complainant who believes that a bond should not be required has the burden of persuading

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[11] The Customs Service regulations provide that after the date on which the Commission's final determination and remedial order concerning the violation of section 337 become final (*i.e.*, after Presidential review), imported articles that were allowed to enter the United States under a bond must either be exported or destroyed under Customs supervision within 30 days after the date on which Customs district directors notify the importer or consignee that the exclusion order has become final. 19 CFR 12.39(b)(2). If the exporter or consignee fails to take the required action within 30 days, the district director who allowed the articles to enter must assess liquidated damages in the full amount of the bond.

If that happens, a written notice of the claim for liquidated damages and a demand for payment are served on the principal and the surety. The principal and the surety also are advised of their right to petition for relief from the payment of such damages under section 623(c) of the Tariff Act (19 U.S.C. 1623(c)) or any other applicable statute authorizing the cancellation of any bond or any bond charge that may have been made against such bond. The surety and the principal then have 30 days to take the following action: (1) Petition for relief from the payment of liquidated damages; (2) pay the damages; or (3) make arrangements to pay the damages. If the parties who are liable for liquidated damages fail to take the aforesaid action, the district director must refer the claim to the U.S. Attorney (unless otherwise ordered by the Commissioner of Customs or the importer files one or more supplemental petitions for relief). [See *generally* 19 CFR Part 172 for the procedure governing assessment of liquidated damages under the bond and the cancellation of a claim for such damages.]

[12] *E.g.*, because the importation or sale of certain merchandise covered by the order does not violate section 337 owing to the invalidity, unenforceability, or noninfringement of the intellectual property right(s) in question, or the absence of other types of unfair acts and unfair methods of competition alleged in the complaint or motion for temporary relief, or because a domestic industry for the subject domestic merchandise does not exist and is not in the process of being established as required by paragraphs (a) (2) and (3) of section 337 of the Tariff Act.

[13] Interested persons are reminded that a wholly negative final determination on the violation of section 337 or the negative portions of a mixed determination concerning the violation of section 337 are not subject to Presidential review and are final on the effective date specified in the Commission rules or when issued (*see* current interim rules §§ 210.53(h), 210.56(c), and 210.57(d), 53 FR 33043, 33070, and 33071, Aug. 29, 1988).

[14] Our preliminary information is that money forfeited to the U.S. Treasury pursuant to the bond forfeiture authorization in the Omnibus Trade Act will be deposited into a miscellaneous receipts account. If the Commission determines that a refund is needed (following issuance of a judicial determination reversing or vacating the Commission determination of no violation providing the basis for the forfeiture proceedings the Commission can arrange through its Office of Finance to have a check in the appropriate amount issued to the complainant (after executing certain formalities with Treasury's Financial Management Service). The Commission notes that the Custom's Service's liquidated damages assessment regulations provide for the filing of a petition setting forth an appeal of the final Customs' decision requiring the assessment and payment of liquidated damages (*i.e.*, the adverse ruling on the party's original petition for relief from liquidated damages) within 60 days after an administrative or judicial decision which reduces the loss of duties upon which the mitigated penalty amount was based. *See* 19 CFR 172.33(c).

the Commission that a bond should not be required.

(iv) The following documents and information shall be filed along with all motions for temporary relief:

(A) A memorandum of points and authorities in support of the motion;

(B) Affidavits executed by persons with knowledge of the facts specified in the motion; and

(C) All documentary information and other evidence in complainant's possession that complainant intends to submit in support of the motion.

(v) If the motion requests issuance of a temporary exclusion order, the complainant must also provide information and documents that will assist the presiding administrative law judge and the Commission in computing the amount of the bond if a bond is to be required. (A complainant also may file, if it chooses, a draft of the bond it expects to submit if a bond is to be required.) In cases where a domestic industry exists and domestic sales of the product in question have commenced and have not been de minimis, the amount of the bond is likely to be an amount ranging from 10 to 100 percent of the sales revenues and licensing royalties (if any) from the domestic product at issue, as reported in the complainant's audited annual financial statements for the most recent fiscal year. In such cases, the complainant must provide the following documents:

(A) The audited financial statements (or the equivalent thereof, if audited statements do not exist) for the most recently completed fiscal year;

(B) The back-up income statements work sheets, or other documents showing revenues for the domestic product at issue in the investigation, which are tied to the aggregate revenue listed on the financial statements; and

(C) A certification under oath by the complainant's chief financial officer indicating that the detail provided in the work sheets or other documents tied to the audited financial statements is correct.

In cases where the aforesaid formula would not be appropriate—*e.g.*, cases where there the domestic industry is embryonic and domestic sales have been de minimis, or cases involving the alleged prevention of the establishment of a domestic industry or the alleged restraint of trade or commerce in the United States—the amount of the bond will be determined on the basis of the facts on the record, the complainant's financial strength, the parties' arguments, and any other factors which the presiding administrative law judge or the Commission deem relevant. If the motion falls into one of those categories, the motion for temporary relief should state the theory the complainant believes is appropriate for computing the amount of the bond (if the Commission determines to require a bond) and should also provide supporting financial and economic data with certification under oath executed by the complainant's chief financial officer attesting to the veracity of the data provided. All complainants who are seeking a temporary exclusion order (including complainants who have provided the audited financial statements and back up data listed above in paragraph (e)(v)(B) of this section) must be prepared to provide upon short notice any additional financial or economic data requested by the presiding administrative law judge in connection with the issue of bonding and the certification under oath by the complainant's chief financial officer that the information submitted is accurate.

(vi) If the complaint, the motion for temporary relief, and the supporting documentation contain confidential business information as defined in § 201.6(a), of this chapter, the complainant must follow the procedure outlined in § 210.6(a), § 201.6(a) and (c), of this chapter and paragraph (e)(5) of this section.

* * * * *

(7) *Amendment of the motion.* A motion for temporary relief may be amended at any time prior to the institution of an investigation. However, all material filed to amend the motion (or the complaint) must be served on all proposed respondents and on the embassies in Washington, DC of the foreign governments that they represent, in accordance with paragraph (e)(4) of this section. If the amendment expands the scope of the motion or changes the complainant's assertions on the issue of whether a bond is to be required as a prerequisite to the issuance of a temporary exclusion order or the appropriate amount of the bond, the 35-day period allotted under paragraph (e)(8) of this section for determining whether to institute an investigation and to initiate temporary relief proceedings shall begin to run anew from the date the amendment is filed with the Commission. Motions for temporary relief may not be amended after an investigation is instituted.

* * * * *

(9) *Responses to the motion and the complaint.* Any party may file a response to a motion for temporary relief. Responses shall be filed within ten (10) days after services of the motion by the Commission upon institution of an investigation, unless otherwise ordered by the administrative law judge. The response must comply with the requirements of § 201.8 of this chapter and § 210.5, and shall contain the following information:

(i) A statement that sets forth with particularity any objection to the motion for temporary relief;

(ii) A statement that sets forth with specificity facts bearing on:

(A) Complainant's probability of success on the merits;

(B) Immediate and substantial harm, if any, to the domestic industry in the absence of the requested temporary relief;

(C) Harm, if any, to the proposed respondents if the requested temporary relief is granted; and

(D) The effect, if any, that issuance of the requested temporary relief would have on the public interest;

(iii) A memorandum of points and authorities in opposition to the motion;

(iv) Affidavits, where possible, executed by persons with knowledge of the facts specified in the response. If the motion requests that the Commission issue a temporary exclusion order, each response to the motion must address, to the extent possible, the complainant's assertions regarding whether a bond should be required and the appropriate amount of the bond. Responses to the motion for temporary relief also may contain counter proposals concerning the amount of the bond or the manner in which the bond amount should be calculated.

Each response to the motion for temporary relief must also be accompanied by a response to the complaint and notice of investigation. Response to the complaint and notice of investigation must comply with § 201.8 of this chapter and §§ 210.5 and 210.21

(10) *Referral to an administrative law judge.* Following provisional Commission acceptance of a motion for temporary relief and upon institution of an investigation, the motion for temporary relief shall be forwarded to an administrative law judge for an initial determination of whether there is reason to belief there is a violation of section 337 of the Tariff Act, whether temporary relief is appropriate, whether the complainant should be required to post a bond as a prerequisite to the issuance of a temporary exclusion order (if such an order is to be issued) and, if so, the amount of the bond.

(11) *Designating an investigation "more complicated" for the purpose of adjudicating a motion for temporary relief.* At the time the Commission determines to institute an investigation and provisionally accepts a motion for temporary relief pursuant to paragraph (e)(8) of this section, the Commission may designate the investigation "more complicated" pursuant to § 210.59(b) for the purpose of obtaining additional time to adjudicate the motion for temporary relief. In the alternative, after the motion for temporary relief is referred to the administrative law judge for an initial determination under paragraphs (e)(10) and (17) of this section, the administrative law judge may issue an order, sua sponte or on motion, designating the investigation "more complicated" for purpose of obtaining additional time to adjudicate the motion for temporary relief. Such order shall constitute a final determination of the Commission, and notice of the order shall be published in the **Federal Register**. The "more complicated designation may be applied by the Commission or the presiding administrative law judge pursuant to this paragraph on the basis of the complexity of issues relating to whether there is reason to believe that the respondents have violated section 337 and whether temporary relief is appropriate. The "more complicated" designation also may be applied by the Commission or the presiding administrative law judge because of complications in determining whether the complainant should be required to post a bond as a prerequisite to the issuance of a temporary exclusion order and, if so, the amount of the bond.

(12) *Discovery and compulsory process.* The administrative law judge shall place such limits upon the kind or amount of discovery to be had or the period of time during which discovery may be carried out as shall be consistent with the time limitation set forth in paragraph (e)(17)(i) of this section relating to issuance of an initial determination concerning the motion for temporary relief. The administrative law judge's authority to compel discovery includes discovery relating to the following issues:

(i) The effect, if any, that issuance of the temporary relief requested in the motion would have on the public interest;

(ii) The form of temporary relief the Commission should issue if it determines to grant temporary relief;

(iii) Whether the public interest factors enummrated in the statute preclude that form of relief;

(iv) The amount of the bond under which the respondent(s)' merchandise will be permitted to enter the United States during the pendency of any temporary relief order issued by the Commission;

(v) Whether the complainant should be required to post a bond as a prerequisite to the issuance of a temporary exclusion order; and, if so,

(iv) The amount of bond.

As part of the standard analysis for determining whether to grant a motion for temporary relief (see paragraphs (e)(1)(i) and (9) of this section), the administrative law judge should make findings on the issue specified in paragraph (e)(12) (v) and (vi) of this section. The administrative law judge may, but is not required to, make findings on issues specified in paragraphs (e)(12 (ii), (iii), and (iv) of this section. Evidence and information obtained through discovery on those issues will be used by the parties and considered by the Commission in the context of the parties' written submissions on remedy, the public interest, and bonding by respondents, which are filed with the Commission pursuant to paragraph (e)(18) of this section.

(13) *Evidentiary hearing.* A motion for temporary relief and the matter of bonding by the complainant may be ruled upon without a hearing by the administrative law judge when a motion for summary determination under § 210.50(a) is granted in favor of respondents or other parties opposing the motion for temporary relief, or if the administrative law judge determines that the motion should be dismissed for some other reason (*e.g.*, failure to comply with some portion of paragraph (e)(1) of this section). (Such rulings by the administrative law judge shall be in the form of an initial determination issued under paragraph (e)(17)(i) of this section.) If a hearing is conducted, the precise form and scope of the hearing are left to the discretion of the administrative law judge. At the hearing or as directed by the administrative law judge, the parties shall address the following issues:

(i) Whether there is reason to believe that there is a violation of section 337 of the Tariff Act;

(ii) Whether temporary relief is appropriate;

(iii) Whether the complainant should be required to post a bond as a prerequisite to the issuance of a temporary exclusion order (if such an order is to be issued); and, if so,

(iv) The amount of the bond.

The administrative law judge may, but is not required to take evidence at the hearing concerning remedy, the public interest, and bonding by respondents as specified in paragraphs (e)(12) (ii), (iii), and (iv) of this section. However, as part of the standard analysis for determining whether to grant or deny a motion for temporary relief (see paragraphs (e) (1) and (9) of this section), the administrative law judge should take evidence on the question of what effect the form of temporary relief requested in the motion for temporary relief would have on the public interest, and the questions of whether the complainant should be required to post a bond as a prerequisite to the issuance of a temporary exclusion order (if applicable) and, if so, the amount of the bond.

(14) *Proposed findings and conclusions and briefs.* The administrative law judge shall determine whether and, if so, to what extent the parties shall be permitted to file proposed findings of fact, proposed conclusions of law, and/or briefs (pursuant to § 210.52) concerning:

(i) The grant or denial of temporary relief;

(ii) Whether the complainant should be required to post a bond as a prerequisite to the issuance of a temporary exclusion order (if such an order is to be issued); and, if so,

(iii) The amount of the bond.

(15) *Interlocutory appeals and review by the Commission.* There will be no interlocutory appeals to the Commission (pursuant to § 210.71) of the administrative law judge's ruling on any matter delegated to him or her for decision under paragraph (e) of this section. After the administrative law judge has certified the following materials to the Commission (pursuant to paragraphs (e) (16) and (17) of this section) an initial determination granting or denying a motion for temporary relief, a ruling on the issue of bonding by the complainant as a prerequisite to the issuance of a temporary exclusion order, and the administrative record upon which the initial determination is based, the Commission's review of the administrative law judge's actions and ruling relating to the motion for temporary relief and the question of bonding by the complainant will be limited to the issues specified in paragraph (e) (17)(ii) of this section.

(16) *Certification of the record.* At the close of the reception of evidence in any hearing held pursuant to paragraph (e)(13) of this section or as soon as possible thereafter, the administrative law judge shall certify the record to the Commission prior to issuance of an initial determination concerning temporary relief and, if applicable, bonding by the complainant as a prerequisite to the issuance of a temporary exclusion order. However, if such advance certification is not

feasible, the record shall be certified to the Commission when the administrative law judge issues a reviewable initial determination, in accordance with paragraph (e)(17)(i) of this section.

(17) *Initial determination concerning temporary relief and Commission action thereon.* (i) On the 70th day after publication of the notice of investigation in an ordinary investigation, or on the 120th day after such publication in a "more complicated" investigation, the administrative law judge will issue an initial determination concerning whether there is reason to believe that respondents have violated section 337 of the Tariff Act and, if applicable, the issue of bonding by the complainant as a prerequisite to the issuance of a temporary exclusion order. The initial determination may, but is not required to, address appropriate relief, the public interest, and bonding by the respondents as specified in paragraphs (e)(12) (ii), (iii), and (iv) of this section. However, as part of the standard analysis for determining whether to grant or deny a motion for temporary relief (*see* paragraphs (e) (1) and (9) of this section), the initial determination shall address the questions of:

(A) What effect the form of relief requested in the motion would have on the public interest (except when the initial determination is granting a summary determination denying the motion for temporary relief (pursuant to paragraph (e)(13) of this section);

(B) Whether the complainant should be required to post a bond as a prerequisite to the issuance of a temporary exclusion order (if such an order is to be issued); and, if so,

(C) The amount of the bond.

(ii) The initial determination will become the Commission's determination twenty (20) calendar days after issuance thereof in an ordinary case, and thirty (30) calendar days after issuance in a "more complicated" investigation, unless the Commission modifies or vacates the initial determination within that period. Such modification or vacation may be ordered on the basis of errors of law or for policy reasons articulated by the Commission. The existence of alleged errors of fact will not be considered. In computing the aforesaid 20-day and 30-day deadlines, intermediary Saturdays, Sundays, and federal holidays shall be included. However, if the last day of the period is a Saturday, Sunday, or federal holiday as defined in § 201.14(a) of this chapter, the filing deadline shall be extended to the next business day. Because of the time constraints imposed by the statutory deadlines for determining whether to order temporary relief under section 337 of the Tariff Act, the additional time ordinarily alloted under § 201.16(d) of this chapter cannot be provided.

(iii) In order to assist the Commission to determine whether modification or revocation of the initial determination is warranted, all parties may file written comments concerning the presence (or absence) of errors of law in the initial determination and/or policy reasons that justify such action (or show that would not be justified). Such comments will be limited to thirty-five (35) pages and must be filed no later than seven (7) calendar days after service of the initial determination in an ordinary case and ten (10) calendar days after service of the initial determination in a "more complicated" investigation. In computing the aforesaid 7 day and 10 day deadlines, intermediary Saturdays, Sundays, and federal holidays shall be included. However, if the last day of the period is a Saturday, Sunday, or federal holiday as defined in § 201.14(a) of this chapter, the filing deadline shall be extended to the next business day. Because of the time constraints imposed by the statutory deadlines for determining whether to order temporary relief under section 337 of the Tariff Act, the additional time ordinarily allotted under § 201.16(d) of this chapter cannot be provided.

(iv) Nonconfidential copies of the initial determination also will be served on other agencies, and they will be given ten (10) calendar days in which to file comments on the initial determination.

(v) Each party may file a response to other parties' comments within ten (10) calendar days after issuance of the initial determination in an ordinary case, and within fourteen (14) calendar days after issuance of an initial determination in a "more complicated" investigation. The reply comments will be limited to twenty (20) pages. If the last day of the 10-day or 14-day period is a Saturday, Sunday, or federal holiday as defined in § 201.12(a) of this chapter, the filing deadline shall be extended to the next business day. Because of the constraints imposed by the statutory deadlines, additional time ordinarily allotted under § 201.16(d) of this chapter will not be provided. The parties are expected to facilitate the filing of timely and useful responses to each other's initial comments by serving the initial comments by the fastest means available.

(vi) If the Commission determines to modify or vacate the initial determination within twenty (20) calendar days after issuance thereof in an ordinary case, or thirty (30) calendar days after issuance in a "more complicated" case, a notice and (if appropriate) a Commission opinion will be issued. If the Commission does not modify or vacate the administrative law judge's initial determination within the time provided, the initial determination will automatically become the determination of the Commission and a notice of that fact will not be issued. However, if the Commission determines (either by reversing or modifying the administrative law judge's initial determination, or by adopting the initial determination) that a temporary exclusion order should be issued and that the complainant must post a bond as a prerequisite to the issuance of the order, the Commission may issue (on the statutory deadline for determining whether to grant temporary relief or as soon as possible thereafter), a notice setting forth conditions for the bond if any (in addition to those outlined in the initial determination) and the deadline for filing the bond with the Commission.

(18) *Remedy, the public interest, and bonding by respondents.* The procedure for arriving at the Commission's determination of the issues of the appropriate form of temporary relief, whether the public interest factors enumerated in the statute preclude such relief, and the amount of the bond under which the respondent'(s) merchandise will be permitted to enter the United States during the pendency of any temporary relief order issued by the Commission, as follows:

(i) While the motion for temporary relief is before the administrative law judge, he or she may compel discovery on matters relating to remedy, the public interest, and bonding by repondents (as provided in paragraph (e)(12) of this section). The administrative law judge also is authorized to make findings pertaining to the public interest, as provided in paragraph (e)(17)(i) of this section. However, such findings may be superseded by Commission findings on that issue as provided in paragraph (e)(18)(iii) of this section.

(ii) On the 60th day after institution in an ordinary case or on the 105th day after institution in a "more complicated" investigation, all parties may file written submissions with the Commission addressing those issues. The submissions shall refer to information and evidence already on the record, but additional information and evidence germane to the issues of appropriate relief, the statutory public interest factors, and bonding by respondents may be provided along with the parties' submissions.

(iii) On or before the 90-day or 150-day statutory deadline for determining whether to order temporary relief under subsection (b) of section 337 of the Tariff Act, the Commission will determine what relief is appropriate in light of any violation that appears to exist, whether the public interest factors enumerated in the statute preclude the issuance of such relief, and the amount of the bond under which the respondents' merchandise will be permitted to enter the United States during the pendency of any temporary relief order issued by the Commission. In the event that Commission's findings on the public interest pursuant to paragraph (e)(18)(iii) of this action are inconsistent with findings made by the administrative law judge in the initial determination pursuant to paragraph (e)(17)(i) of this section, the Commission's findings are controlling.

4. In § 210.41, the introductory text of paragraph (a) will be republished and paragraph (a)(2) will be revised to read as follows:

§ 210.41 General provisions for hearings.

(a) *Purpose of hearings.* Unless otherwise ordered by the Commission:

* * * * *

(2) Except as provided under § 210.24(e)(13), an opportunity for a hearing shall also be provided to take evidence and hear argument for the purpose of determining whether there is reason to believe there is a violation of section 337 of the Tariff Act, whether the complainant should be required to post a bond as a prerequisite to the issuance of a temporary exclusion order (if such an order is being requested) and, if so, the amount of the bond.

* * * * *

5. In § 210.53 paragraph (b) will be revised and paragraph (j) will be added to read as follows:

§ 210.53 Initial determination.

* * * * *

(b) *On issues concerning temporary relief.* The disposition of an initial determination concerning temporary relief (and if appropriate, the posting of a bond by the complainant and the amount of the bond) is governed by the provisions of § 210.24(c)(17).

* * * * *

(j) *Concerning the possible forfeiture of a complainant's temporary relief bond in whole or in part.* The disposition of an initial determination pursuant to § 210.58(c) concerning the possible forfeiture of a complainant's temporary relief bond in whole or in part shall be governed by the provisions of §§ 210.54 through 210.56(c). The initial determination shall become the determination of the Commission forty-five (45) days after the date on which it is served on the parties by the Secretary unless the Commission orders a review pursuant to §§ 210.54(b) or 210.55 or extends the deadline for determining whether to order a review.

6. Paragraph (a)(1) sentence two and paragraph (b)(1) sentence one of § 210.54 will be revised to read as follows:

§ 210.54 Petition for review.

(a) * * *

(1) * * * A petition for review of an initial determination filed pursuant to § 210.53(a) or (j) shall be filed within ten (10) days after the service of the initial determination. * * *

* * * * *

(b) * * *

(1) The Commission shall decide whether to grant, in whole or in part, a petition for review filed pursuant to § 210.53 (a) or (j) within forty-five (45) days of the service of the initial determination on the parties, or by such other time as the Commission may order. * * *

* * * * *

6. Paragraph (d) of § 210.56 will be revised to read as follows:

§ 210.56 Review by Commission.

* * * * *

(d) *Initial determinations concerning temporary relief and bonding by the complainant and the respondents.* Commission action on an initial determination concerning temporary relief and, possibly, bonding by the complainant and the respondents is governed by the provisions of § 210.24(e) (17) and (18).

7. In § 210.58, paragraph (b) will be revised and a new paragraph (c) will be added to read as follows:

§ 210.58 Commission action, public interest factor, and bonding.

* * * * *

(b) (1) With respect to addressing the issues of appropriate Commission action, the public interest, and bonding by the respondents for purposes of an initial determination concerning the grant or denial of a motion for temporary relief, see § 210.24(e) (12), (13), and (17). Unless otherwise ordered by the Commission or permitted by this paragraph, and except as provided in § 210.24(e) (12) and (13), the administrative law judge shall not take evidence or other information or hear arguments from the parties and other interested persons with respect to the subject matter of paragraphs (a) (1), (2), (3) and (4) of this section.

(2) Regarding settlements by agreement or consent order under § 210.51 (b) and (c), the parties may file statements regarding the impact of the proposed settlement on the public interest, and the administrative law judge may in his or her discretion hear argument, although no discovery may be compelled with respect to issues relating solely to the public interest. Thereafter, the administrative law judge shall consider and make appropriate findings in the initial determination regarding the effect of the proposed settlement on the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers.

(3) Regarding the issuance of an initial determination concerning the granting of a motion for a temporary exclusion order and whether the complainant should be required to post a bond as a prerequisite to the issuance of such an order, see § 210.24(e) (1), (9), (10), (12), (13), and (17). If the Commission determines under § 210.24(e)(17)(ii) that the complainant must post a bond as a prerequisite to the issuance of a temporary exclusion order, the "bond" which the complainant submits may consist of one or more of the following:

(i) The surety bond of a surety or current corporation licensed to do business with the United States in accordance with 31 U.S.C. 9304–9308 and 31 CFR Parts 223 and 224;

(ii) The surety bond of an individual, a trust, an estate, or a partnership, pursuant to 31 U.S.C. 9301 and 9303(c), whose solvency and financial responsibility will be investigated and verified by the Commission; or

(iii) A certified check, a bank draft, a post office money order, cash, a United States bond, a Treasury note, or other Government obligation within the meaning of 31 U.S.C. 9301 and 31 CFR Part 225, which are owned by the complainant and tendered in lieu of a surety bond, pursuant to 31 U.S.C. 9303(c) and 31 CFR Part 225.

The same restriction and requirements relating to individual and corporate sureties on Customs bonds, which are set forth in 19 CFR Part 113, shall apply with respect to bonds posted by complainants by opinion, order, notice, or determination of the Commission pursuant to this paragraph and § 210.24(e)(17).

(4) The "bond" must be submitted to the Commission within the time specified in the Commission document requiring the posting of a bond or with within such other time as the Commission may order. If the bond is

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not submitted within the specified period, a temporary exclusion order will not be issued.

(5) The corporate or individual surety on a bond or the person posting a certified check, a bank draft, a post office money order, cash, a United States bond, a Treasury note, or other Government obligation in lieu of a surety bond must provide the following information on the face of the bond or in the instrument authorizing the Government to collect or sell the bond, certified check, bank draft, post office money order, cash, United States bond, Treasury note, or other Government obligation in response to a Commission order requiring forefeiture of the bond pursuant to paragraph (c) of this section:

(i) The investigation caption and docket number;

(ii) The names, addresses, and seals (if appropriate) of the principal, the surety, the obligee, as well as the "attorney in fact" and the registered process agent (if applicable) (*see* Customs Service regulations 19 CFR Part 113 and Treasury Department regulations in 31 CFR Parts 223, 224, and 225);

(iii) The terms and conditions of the bond obligation, including the reason the bond is being posted, the amount of the bond, the effective date and duration of the bond (as prescribed by the Commission order, notice, determination, or opinion requiring the complainant to post a bond; and

(iv) A section at the bottom of the bond or other instrument for the date and authorized signature of the Commission Secretary to reflect Commission approval of the bond.

(6) Complainants who wish to post a certified check, a bank draft, a post office money order, cash, a United States bond, a Treasury note, or other Government obligation in lieu of a surety bond must notify the Commission in writing immediately upon receipt of the Commission document requiring the posting of a bond, and must contact the Secretary to make arrangements for Commission receipt, handling, management, and deposit of the certified check, bank draft, post office money order, or cash in accordance with 31 U.S.C. 9303, 31 CFR Parts 202, 206, 225 and 240, and other governing Treasury regulations and circular(s). If required by the governing Treasury regulations and circulars, a certified check, a bank draft, a post office money order, cash, a United States bond, a Treasury note, or other Government obligation tendered in lieu of a surety bond may have to be collateralized. *See, e.g.*, 31 CFR 202.6 and the appropriate Treasury Circular.

(7) In accordance with 31 U.S.C. 9304(b), all bonds posted by complainants must be approved by the Commission before the temporary exclusion order which the bond will secure will be issued. *See* 31 U.S.C. 9303(a) and 9304(b) and 31 CFR 225.1 and 225.20. The Commission's "bond approval officer" within the meaning of 31 CFR 225.1 and 225.20 shall be the Commission Secretary. The bond approval process will entail investigation by the Secretary or the Commission's Office of Investigations to determine the veracity of all factual information set forth in the bond and the accompanying documentation (*e.g.*, powers of attorney), as well as any additional verification required by 31 CFR Parts 223, 224, and 225, or the Commission rules. The Secretary may reject a bond on one or more of the following grounds:

(i) Failure to comply with the instructions in the Commission determination, order, or notice directing the complainant to post a bond;

(ii) Failure of the surety or the bond to provide information supporting documentation required by the Commission rules, 31 U.S.C. 9304 and 31 CFR Parts 223 and 224, or governing Treasury circulars;

(iii) Failure of an individual surety to execute the file with the bond an affidavit corresponding to Customs Form 3579 (19 CFR 113.35) which sets forth information about the surety's assets, liabilities, net worth, real estate and other property of which the individual surety is the sole owner, other bonds on which the individual surety is a surety, (which must be updated at 3 month intervals while the bond is in effect, measured from the date on which the bond is approved);

(iv) Any question about the solvency or financial responsibility of the surety, or any question of fraud, misrepresentation, or perjury which comes to light as a result of the verification inquiry during the bond approval process; and

(v) Any other reason deemed appropriate by the Secretary. If the complainant believes that the Secretary's rejection of the bond was erroneous as a matter of law, the complainant may appeal the Secretary's rejection of the bond by filing a petition with the Commission contesting the Secretary's rejection within ten (10) days after service of the rejection letter.

(8) After the bond is approved and the temporary exclusion order it secures is issued, if any question concerning the continued solvency of the individual or the legality or enforceability of the bond or undertaking develops, the Commission may take the following action, sua sponte or on motion:

(i) Revoke the Commission approval of the bond and require complainant to post a new bond; or

(ii) Revoke or vacate the temporary exclusion order for public interest reasons or changed conditions of law or fact (criteria that are the basis for modification or rescission of final Commission action pursuant to § 211.57(a)(1) of this chapter; and/or

(iii) Notify the Treasury Department if the problem involves a corporate surety licensed to do business with the United States under 31 U.S.C. 9303–9308 and 31 CFR Parts 223 and 224; and/or

(iv) Refer the matter to the U.S. Department of Justice if there is a suggestion of fraud, perjury, or related conduct.

(c) Forfeiture of complainant's bonds. (1) When the Commission determines that one or more of the respondents whose merchandise was covered by the temporary exclusion order has not violated section 337 to the extent alleged in the motion for temporary relief and provided for in the temporary exclusion order, the complainant must file within thirty (30) days after the effective date of the aforesaid Commission determination, a written submission discussing whether the Commission should or should not order forfeiture of the bond. The factors the Commission will consider (and which the complainant's submission must address) in determining whether forfeiture of the bond should be ordered in whole or in part include the following:

(i) Whether the complainant's assertions with respect to the violation alleged as the basis for obtaining a temporary exclusion order were substantially justified, taking into account the record of the investigation as a whole;

(ii) Whether forfeiture would be consistent with the legislative intent of the forefeiture authority (which is to provide a "disincentive" to the abuse of temporary relief by complainants);

(iii) Whether forfeiture would be in the public interest; and

(iv) Any other legal, equitable, or policy considerations that are relevant to the issue of forfeiture.

(2) The Commission's determination on whether to order forfeiture of the bond will be made by using the initial determination/discretionary Commission review procedure set forth in §§ 210.53(j) and 210.54 through 210.56(c), which allow for longer filing deadlines, petitions for review and responses thereto with no page limitations, and broader criteria for

reviewing, modifying and reversing an initial determination than the procedures and criteria set forth in § 210.24(e) (17) and (18) which govern the disposition of motions for temporary relief and the posting of bonds by complainants. In accordance with § 210.53 (a) and (h), the initial determination on forfeiture of the bond will become the determination of the Commission within forty-five (45) days after issuance of the presiding administrative law judge's initial determination on forfeiture unless the Commission orders a review or extends the deadline for determining whether to order a review.

(3) Motions to stay forfeiture proceedings or the effective date of a forefeiture order pending the outcome of judicial review of the violation determination will not be granted. If the negative violation determination supporting the forefeiture order is reversed on judicial review, within sixty (60) days after the judgment or judicial order becomes final, the complainant may file a petition with the Commission for a refund of the amount of the bond forfeited to the Treasury (if any). The other parties to the investigation may file responses to the forfeiture refund petition within five (5) days after service of the petition. If the Commission determines in response to the complainant's petition or sua sponte that the bond amount forfeited to the Treasury should be refunded in whole or in part, the Commission shall issue an order directing that the appropriate sum be refunded as expeditiously as possible in accordance with the governing Treasury procedures and regulations.

8. Paragraph (b) of § 210.59 will be revised to read as follows:

§ 210.59 Period for concluding Commission investigation.

* * * * *

(b) An investigation may be designated "more complicated" by the Commission or the presiding administrative law judge pursuant to § 210.24(e)(11) for the purpose of extending the statutory deadline for determining whether to grant or deny a motion for temporary relief, as well as the issues of bonding by the complainant if a temporary exclusion order is to be issued and the amount of the bond. The Commission's or the administrative law judge's reasons for designating the investigation "more complicated" for that purpose shall be published in the **Federal Register**. In computing the statutory deadline for determining whether to grant or deny a motion for temporary relief in an investigation designated "more complicated" pursuant to this paragraph (and § 210.24(e)(11)), there shall be excluded any period of time during which the investigation is suspended because of proceedings in a court or agency of the United States involving similar questions concerning the subject matter of such investigation.

* * * * *

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: November 1, 1988.

[FR Doc. 88-25545 Filed 11-2-88; 8:45 am]

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RAILROAD RETIREMENT BOARD

20 CFR Part 218

Annuity Beginning and Ending Dates

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) hereby proposes to amend its regulations to implement sections 103 and 104 of the Railroad Retirement Solvency Act of 1983, which amended section 5 of the Railroad Retirement Act covering annuity beginning and ending dates. Regulations concerning these subjects are contained in Part 218 of Chapter II of the Board's regulations. This proposed rule also revises Part 218 to simplify the language and make the regulation easier to use.

DATE: Comments must be received by the Secretary to the Board on or before December 5, 1988.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, General Attorney, Bureau of Law, Railroad and Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4513 (FTS 386–4513).

SUPPLEMENTARY INFORMATION: The Board's regulations concerning annuity beginning and ending dates were issued in December 1981 and do not reflect the addition of new categories of beneficiaries provided for in the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–86) namely, divorced spouses, surviving divorced spouses and remarried widow(er)s, nor do they reflect amendments made to the Act by the Railroad Retirement Solvency Act of 1983. These amendments generally limited annuity beginning dates for most annuities to a maximum of six months before the application for the annuity was filed. Part 218 is proposed to be revised to reflect these changes. In addition, proposed Part 218 sets forth in greater detail than present Part 218 the rules restricting when annuities may begin and end.

The Board proposes to replace current Part 218 Subpart A, General, with a new Subpart A, General. The proposed Subpart A provides a better explanation of the contents of Part 218, and contains a new § 218.3 which describes the actions the Board takes when notice is received of an employee's disappearance.

The Board proposes to revise the current Part 218 Subpart B, When An Annuity Begins, and portions of Subpart E, When Windfall Benefit Begins and Ends, by replacing it with a new Subpart B which provides a better explanation of the requirements for establishing when any annuity under the Act may begin. New § 218.7 is a redesignation of the current § 218.8 and is revised to explain that the three-month rule for an annuity beginning dates does not apply to a disability annuity.

The Board proposes to revise current Part 218 Subpart C, How Work and Special Payments Affect An Employee Or Spouse Annuity Beginning Date, by replacing it with a new Subpart C, How Work and Special Payments Affect An Employee, Spouse, or Divorced Spouse Annuity Beginning Date, which provides a better explanation of how work and special payments affect an employee or spouse annuity beginning date. New § 218.28 is a redesignation of the current § 218.18 and is revised to explain the effect of sick pay received from a government employer.

Bracketed language in sections 218.9, 218.11, 218.12, and 218.28 represents language which will be deleted if legislation removing the disqualification for last person service found in section 2(e) of the Railroad Retirement Act (45 U.S.C. 231(a)(e)) becomes law. See S. 2238, § 532, 100th Cong., 2d Sess. (1988).

The Board proposes to revise current Part 218 Subpart D, When Annuity Ends, by replacing it with a new Subpart D which provides a better explanation of the requirements for when any annuity under the Act may end.

The Bureau of Law within the Board is currently involved in a project to revise all regulations for which it has responsibility. It is the aim of the project to incorporate the latest legislative, legal and policy changes while using plain language in order to make the regulations easier to use and understand. As a result, this part has been written to be an integral part of the planned revised and reorganized regulations and may, in certain instances, refer to parts of regulations which are not currently in effect. The Board believes that any minor

inconveniences that might arise as a result of publishing the regulations on a part-by-part basis are outweighed by the benefits derived from publishing current, more easily useable and understandable regulations on a consistent basis.

The Board has determined that this is not a major rule under Executive Order 12291. Therefore, no regulatory impact analysis is required. The information collections associated with this rule have been approved by the Office of Management and Budget.

In order to enable users to check the completeness, accuracy and reasoning behind these proposed revisions to the regulations, Derivation and Distribution Tables follow:

Derivation Table

New section and name	Current section and name
Part 218—Annuity Beginning And Ending Dates	Part 218—Annuity Beginning And Ending Dates
Subpart A—General	
218.1 Introduction	218.1 Introduction (except 2nd and 3rd sentences).
218.2 Definitions	218.2 Definitions (except definition of "Claimant").
218.3 When an employee disappears.—New.	
Subpart B—When An Annuity Begins	
218.5 General rules.	218.5 General rules.
(a) New	(b)
(b)	218.7 How to choose an annuity beginning date.
218.6 How to choose an annuity beginning date.	(a)
(a)	(b)
(b)	218.8 When chosen annuity beginning date is more than three months after filing date.
218.7 When chosen annuity beginning date is more than three months after filing date.	218.9 When an applicant can change the annuity beginning date.
218.8 When an individual can change the annuity beginning date.	(a)
(a)	(b)
(b)	218.9 When a supplemental annuity begins.
218.9 When an employee annuity begins.—New.	
218.10 When a supplemental annuity begins.	
218.11 When a spouse annuity begins.—New.	
218.12 When a divorced spouse annuity begins.—New.	
218.13 When a widow(er) annuity begins.—New.	
218.14 When a child annuity begins.—New.	
218.15 When a parent annuity begins.—New.	

Derivation Table—Continued

New section and name	Current section and name
Part 218—Annuity Beginning And Ending Dates	Part 218—Annuity Beginning And Ending Dates
218.16 When a surviving divorced spouse annuity begins.—New.	
218.17 When a remarried widow(er) annuity begins.—New.	
Subpart C—How Work and Special Payments Affect An Employee, Spouse, or Divorced Spouse Annuity Beginning Date	
218.25 Introduction	218.15 Introduction.
218.26 Work started after annuity beginning date.	218.16 Work started after annuity beginning date.
218.27 Vacation pay	218.17 Vacation pay.
218.28 Sick pay	218.18 Sick pay.
(a)	(a)
(b)	(b)
218.29 Pay for time lost.	218.19 Pay for time lost.
218.30 Separation, displacement, or termination pay.	218.20 Separation, displacement, or termination pay.
(a)	218.20 1st paragraph.
(b)	(b)
(c)	(c)
Subpart D—When an Annuity Ends	
218.35 When an employee age annuity ends.	218.25 Employee age annuity.
(a)	218.25
(b) New	
218.36 When an employee disability annuity ends.	218.26 Employee disability annuity.
218.37 When a supplemental annuity ends.	218.27 Supplemental annuity.
218.38 When a spouse annuity ends—New.	218.28 Spouse annuity. [Reserved]
218.39 When a divorced spouse annuity ends.—New.	
218.40 When a widow(er) annuity ends.—New.	218.29 Surviving spouse annuity. [Reserved].
218.41 When a child annuity ends—New.	218.30 Child's annuity [Reserved].
218.42 When a parent annuity ends.	218.31 Parent's annuity.
(a) New	
(b)	218.31 Except parenthetical statement at end of (c).
218.43 When a surviving divorced spouse annuity ends.—New.	
218.44 When a remarried widow(er) annuity ends.—New.	

Distribution Table

Current section and name	New section and name
218.1 Introduction—except second sentence.	218.1 Introduction.
218.2 Definitions—except words following "Claimant".	218.2 Definitions.
218.5 General Rules—except paragraph (a).	218.5 General Rules.
218.6 When a supplemental annuity begins.	218.10 When a supplemental annuity begins.
218.7 How to choose an annuity beginning date.	218.6 How to choose an annuity beginning date.
(a)	(a)
(b) except words "claimant" and "preparing".	(b)
218.8 When chosen annuity beginning date is more than three months after filing date.	218.7 When chosen annuity beginning date is more than three months after filing date.
218.9 When an applicant can change the annuity beginning date.	218.8 When an applicant can change the annuity beginning date.
(a) Before an annuity is awarded. —except word "applicant" in introductory sentence.	(a) Before annuity is awarded.
(1) —except word "applicant".	(1)
(2)	(2)
(b) After annuity is awarded—introductory sentence words "If annuity has been awarded", and second sentence except words "However", and "as described in § 218.5(a)(2) of this chapter" and "as described in § 218.20(b)(1) of this chapter"	(b) After annuity is awarded.
	(1)
	(2)
218.15 Introduction	218.25 Introduction.
218.16 Work started after annuity beginning date.	218.26 Work started after annuity beginning date.
(a) General	(a) General.
(b) Intent to retire	(b) Intent to retire.
(1)	(1)
(2) —except word "or" following "railroad" in paragraph (f).	(2)
218.17 Vacation pay	218.27 Vacation pay.
218.18 Sick pay	218.28 Sick pay.
218.19 Pay for time lost.	218.29 Pay for time lost.
218.20 Separation, displacement, or termination pay. —introductory paragraph except words "as follows:".	218.30 Separation, displacement, or termination pay.
(a) Separation allowance.	(a) General.
(b) Monthly compensation payments.	(b) Separation allowance.
	(c) Monthly compensation payments.

Distribution Table—Continued

Current section and name	New section and name
218.25 Employee age annuity.	218.35 When an employee age annuity ends (a) Entire annuity.
218.26 Employee disability annuity.	218.36 When an employee disability annuity ends.
(a) Ending date	(a) Ending date.
(1)	(1)
(2) except word "becomes".	(2)
(3)	
(b) Effect of ended disability annuity on eligibility for a later annuity—except word "becomes" in second sentence.	(b) Effect of ended disability annuity on eligibility for a later annuity.
218.27 Supplemental annuity.	218.37 When a supplemental annuity ends.
(a) —plus introductory paragraph except words "with earliest of.".	
(b)	Obsolete.
218.28 Spouse Annuity [Reserved].	218.38 When a spouse annuity ends.
218.29 Surviving spouse annuity. [Reserved].	218.39 When a [illegible] annuity ends.
218.30 Child's annuity. [Reserved].	218.40 When child annuity ends.
218.31 Parent's annuity—introductory paragraph.	218.41 When a parent annuity ends. Obsolete.
(a)	(a)(1) and (b)(1).
(b)	[illegible]
(c)	(b)(3).
218.35 When an employee windfall benefit begins. [Reserved].	Unnecessary.
218.36 When an employee windfall benefit ends. [Reserved].	218.36 When an employee age annuity ends.
	(b) Vested dual benefit based on disability.
218.37 When a spouse windfall benefit begins. [Reserved].	Unnecessary.
218.38 When a spouse windfall benefit ends. [Reserved].	Unnecessary.
218.39 When a surviving spouse windfall benefit begins. [Reserved].	Unnecessary.
218.40 When a surviving spouse windfall benefit ends. [Reserved].	Unnecessary.

List of Subjects in 20 CFR Part 218

Railroad employees, Railroad retirement.

For the reasons set out in the preamble, Chapter II of Title 20 of the *Code of Federal Regulations* is proposed to be amended as follows:

1. Part 218, Annuity Beginning and Ending Dates, is revised to read as follows:

PART 218—ANNUITY BEGINNING AND ENDING DATES

Subpart A—General

Sec.
218.1 Introduction.
218.2 Definitions.
218.3 When an employee disappears.

Subpart B—When an Annuity Begins

218.5 General rules.
218.6 How to choose an annuity beginning date.
218.7 When chosen annuity beginning date is more than three months after filing date.
218.8 When an individual may change the annuity beginning date.
218.9 When an employee annuity begins.
218.10 When a supplemental annuity begins.
218.11 When a spouse annuity begins.
218.12 When a divorced spouse annuity begins.
218.13 When a widow(er) annuity begins.
218.14 When a child annuity begins.
218.15 When a parent annuity begins.
218.16 When a surviving divorced spouse annuity begins.
218.17 When a remarried widow(er) annuity begins.

Subpart C—How Work and Special Payments Affect an Employee, Spouse, or Divorced Spouse Annuity Beginning Date

218.25 Introduction.
218.26 Work started after annuity beginning date.
218.27 Vacation pay.
218.28 Sick pay.
218.29 Pay for time lost.
218.30 Separation, displacement, or dismissal allowance.

Subpart D—When an Annuity Ends

218.35 When an employee age annuity ends.
218.36 When an employee disability annuity ends.
218.37 When a supplemental annuity ends.
218.38 When a spouse annuity ends.
218.39 When a divorced spouse annuity ends.
218.40 When a widow(er) annuity ends.
218.41 When a child annuity ends.
218.42 When a parent annuity ends.
218.43 When a surviving divorced spouse annuity ends.
218.44 When a remarried widow(er) annuity ends.

Authority: 45 U.S.C. 231f(b)(5).

Subpart A—General

§ 218.1 Introduction.

This part tells when a person's entitlement to a monthly railroad retirement annuity begins and ends. Ordinarily, an annuity begins on the earliest date permitted under the Railroad Retirement Act (Act). This part also tells when and how a person may select a later beginning date. Included is an explanation of how work and certain types of special payments affect the beginning date of an employee or spouse annuity.

§ 218.2 Definitions.

As used in this part:

"Applicant" means a person who signs an application for an annuity for himself, herself or for some other person.

"Application" means a form described in Part 217 of this chapter.

"Award" means to process a form to make a payment.

"Claimant" means the person for whom an annuity application is filed.

"Filing date" means the date on which an application or written statement is filed with the Board.

"Tier I benefit" means the benefit calculated using the Social Security formulas and is based upon earnings, both in and outside the railroad industry.

"Tier II benefit" means the benefit calculated under a formula found in the Act and is based only upon railroad earnings.

§ 218.3 When an employee disappears.

(a) *General.* If an employee who is entitled to an annuity disappears, the employee annuity ends on the last day of the month before the month of the disappearance.

(b) *Employee has a current connection.* (1) The Board may pay survivor benfits from the month of the employee's disappearance if both of the following conditions are met at the time of the disappearance:

(i) The employee has a current connection with the railroad industry as defined in Part 216 of this chapter, and

(ii) The employee's spouse is entitled, or would have been entitled if he or she had filed an application, to a spouse annuity in the month that the employee disappeared.

(2) If the employee is later found to have been alive during any month for which a survivor annuity was paid, the amount of any incorrect payment must be recovered under the rules of Part 255, Erroneous Payments, of this chapter. The incorrect payment is the amount of any survivor benefits which were paid minus any spouse benefits which were paid minus any spouse benefits that would have been paid.

(c) *Employee has no current connection.* If the employee does not have a current connection and the employee's spouse is entitled to an annuity in the month of the employee's disappearance, the spouse annuity will continue to be paid until one of the following events occurs:

(1) The employee's death is established.

(2) The spouse annuity ends for another reason.

Subpart B—When an Annuity Begins

§ 216.6 General rules.

(a) An annuity begins either on the earliest date permitted by law, or on a specific date chosen by the applicant. If the applicant chooses a specific date, that date must not be before the earliest date permitted by law.

(b) An annuity may not begin on the thirty-first day of a month, unless the claimant would lose benefits if the annuity begins on the first day of the following month. No annuity is payable for the thirty-first day of any month.

§ 216.8 How to choose an annuity beginning date.

(a) *When application is filed.* The applicant may choose an annuity beginning date by—

(1) Naming the month, day and year in an application accepted by the Board; or

(2) Including with the application a signed statement which tells the date (month, day and year) when the annuity should begin.

(b) *After application is filed.* After an application is filed, the claimant may choose an annuity beginning date by submitting a signed statement which tells the month, day and year when the annuity should begin.

[Approved by the Office of Management and Budget under Control Nos. 3220–0002, 3220–0030 and 3220–0042]

§ 216.7 When chosen annuity beginning date is more than three months after filing date.

If the applicant for any type of annuity other than a disability annuity, or a spouse annuity based upon the disabled applicant's compensation, chooses an annuity beginning date in a month which is more than three months after the date the application is filed, the Board will deny the application as explained in Part 217 of this chapter. The applicant must file a new application no earlier than three months before the month he or she wants the annuity to begin.

[Approved by the Office of Management and Budget under Control Nos. 3220–0002, 3220–0030 and 3220–0042]

§ 216.8 When an individual may change the annuity beginning date.

(a) *Before annuity is awarded.* A claimant may change the annuity beginning date if—

(1) The claimant requests the change in a signed statement; and

(2) The statement is received by the Board on or before the date of the claimant's death.

(b) *After annuity is awarded.* An award can be reopened to change the annuity beginning date to a later date if—

(1) The annuitant requests the change in a signed statement;

(2) The statement is received by the Board on or before the date of the annuitant's death;

(3) The annuitant shows that it is to his or her advantage to have a later annuity beginning date; and

(4) All payments made for the period before the later annuity beginning date are recovered by cash refund or setoff.

§ 216.9 When an employee annuity begins.

(a) *Full-age annuity*—employee has completed 10 years but less than 30 years of service. An employee full-age annuity begins on the later of either the date chosen by the applicant or the earliest date permitted by law. The earliest date permitted by law is the latest of—

(1) The day after the day the claimant last worked for a railroad employer [or for his or her last non-railroad employer];

(2) The first day of the month in which the claimant attains age 65; or

(3) The first day of the sixth month before the month in which the application is filed.

(b) *Reduced-age annuity*—employee has completed 10 years but less than 30 years of service. An employee reduced-age annuity begins on the later of either the date chosen by the applicant, or the earliest date permitted by law. The earliest date permitted by law is the latest of—

(1) The day after the day the claimant last worked for a railroad employer [or for his or her last non-railroad employer];

(2) The first day of the month in which the claimant is age 62; or

(3) The first day of the month in which the application is filed if the claimant does not have a spouse (or divorced spouse) who would be entitled to a retroactive unreduced spouse (or divorced spouse) annuity. If the claimant has such a spouse (or divorced spouse) the claimant's annuity can begin on the first day of the month in which the spouse (or divorced spouse) annuity begins.

(c) *Disability annuity.* An employee disability annuity begins on the later of either the date chosen by the applicant or the earliest date permitted by law. The earliest date permitted by law is the latest of—

(1) The day after the day the claimant last worked for a railroad employer [or for his or her last non-railroad employer];

(2) The first day of the twelfth month before the month in which the application is filed;

(3) The first day of the sixth month after the month of disability onset; or

(4) The first day of the month of disability onset if the claimant was previously entitled to an employee disability annuity which ended within five years of the current disability onset month.

(d) *Annuity based on at least 30 years of service.* An employee annuity based on at least 30 days of service begins on the later of either the date chosen by the applicant or the earliest date permitted by law. The earliest date permitted by law is the latest of—

(1) The day after the day the claimant last worked for a railroad employer [or his or her last non-railroad employer];

(2) The first day of the month in which the claimant attains age 60 and will accept a reduced annuity;

(3) The first day of the month in which the claimant attains age 62; or

(4) The first day of the sixth month before the month in which the application is filed.

§ 216.10 When a supplemental annuity begins.

An employee supplemental annuity begins on the latest of—

(a) The beginning date of the employee age or disability annuity;

(b) The first day of the month in which the employee meets the age and years of service requirements as shown in Part 216 of this chapter; or

(c) The first day of the twelfth month before the month in which the employee disability annuitant under age 65 gives up the right to return to work as explained in Part 216 of this chapter.

§ 216.11 When a spouse annuity begins.

(a) A spouse annuity begins on the later of either the date chosen by the applicant or the earliest date permitted by law.

(b) *Earliest date permitted by law*—(1) *General rules.* The earliest date permitted by law is the latest of—

(i) The day after the day the claimant last worked for a railroad employer [or for his or her last non-railroad employer];

(ii) The beginning date of the employee annuity;

(iii) The first day of the month in which the claimant meets the marriage requirement as shown in Part 216 of this chapter; or

(iv) The first day of the month in which the employee annuitant meets the age requirement to qualify the claimant a shown in Part 216 of this chapter.

(2) *Full-age annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the month in which the claimant meets the age requirement a shown in Part 216 of this chapter; or

(iii) The first day of the sixth month before the month in which the application is filed.

(3) *"Child in care" annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the month in which the claimant becomes eligible for a spouse annuity based on having a "child in care" as shown in Part 216 of this chapter; or

(iii) The first day of the sixth month before the month in which the application is filed.

(4) *Reduced-age annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the first full month in which the spouse is age 62 if the employee has less than 30 years of service;

(iii) The first day of the month in which the spouse is age 60, if the employee has at least 30 years of service;

(iv) The first day of the sixth month before the month in which the application is filed; or

(v) The first day of the month in which the application is filed if beginning the annuity in an earlier month would increase the age reduction factor applied to the annuity.

§ 216.12 When a divorced spouse annuity begins.

(a) A divorced spouse annuity begins on the later of either the date chosen by the applicant or the earliest date permitted by law.

(b) *Earliest date permitted by law.* (1) *General rules.* The earliest date permitted by law is the latest of—

(i) The day after the day the claimant last worked for a railroad employer [or for his or her last non-railroad employer];

(ii) The beginning date of the employee annuity;

(iii) The first day of the first full month in which the employee annuitant is age 62 if the employee has not been granted a period of disability;

(iv) The first day of the month in which the employee annuitant attains age 62 if the employee has been granted a period of disability; or

(v) The first day of the month in which the final decree of divorce is effective.

(2) *Full-age annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the month in which the claimant attains age 65;

(iii) The first day of the twelfth month before the month in which the application is filed if the employee is a disability annuitant or has been granted a period of disability; or

(iv) The first day of the sixth full month before the month in which the application is filed if the employee is not entitled to a disability annuity or a period of disability.

(3) *Reduced-age annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the first full month the claimant is age 62 if the application is filed in or before that month; or

(iii) The first day of the month in which the application is filed.

§ 216.13 When a widow(er) annuity begins.

(a) A widow(er) annuity begins on the later of either the date chosen by the applicant or the earliest date permitted by law.

(b) *Earliest date permitted by law*—(1) *Full-age annuity.* The earliest date permitted by law is the latest of—

(i) The first day of the month in which the employee dies;

(ii) The first day of the month in which the claimant attains age 65; or

(iii) The first day of the sixth month before the month in which the application is filed.

(2) *Reduced-age annuity*—(i) *Widow(er) age 60 through age 62.* The earliest date permitted by law is the latest of—

(A) The first day of the month in which the employee dies;

(B) The first day of the month in which the claimant attains age 60; or

(C) The first day of the sixth month before the month in which the application is filed.

(ii) *Widow(er) over age 62 but under age 65.* The earliest date permitted by law is the lastest of—

(A) The first day of the month in which the employee dies;

(B) The first day of the month in which the claimant attains age 62 and one month; or

(C) The first day of the month in which the application is filed.

(3) *Disability annuity.* The earliest date permitted by law is the latest of—

(i) The first day of the month in which the employee dies;

(ii) The first day of the month in which the claimant attains age 50;

(iii) The first day of the twelfth month before the month in which the application is filed; or

(iv) The first day of the sixth month after the month of disability onset.

(4) *"Child in care" annuity.* The earliest date permitted by law is the latest of—

The first day of the month in which the employee dies;

(ii) The first day of the month in which the claimant becomes eligible for a widow(er) annuity based on having a "child in care" as explained in Part 216 of this chapter; or

(iii) The first day of the sixth month before the month in which the application is filed.

§ 216.14 When a child annuity begins.

(a) A child annuity begins on the later of either the date chosen by the applicant or the earliest date permitted by law.

(b) *Earliest date permitted by law*—(1) *General rules.* The earliest date permitted by law is the later of—

(i) The first day of the month in which the employee dies; or

(ii) The first day of the month in which the claimant becomes eligible for a child annuity as explained in Part 216 of this chapter.

(2) *Child age annuity.* The earliest date permitted by law is the later of—

(i) The month shown in paragraph (b)(1) of this section; or

(ii) The first day of the sixth month before the month in which the application is filed.

(3) *Child annuity based on full-time school attendance.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the sixth month before the month in which the application is filed;

(iii) The first day of the month in which the claimant is in full-time school attendance at an elementary or secondary educational institution; or

(iv) The first day of the month in which the claimant attains age 18.

(4) *Child disability annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the sixth month before the month in which the application is filed;

(iii) The first day of the month in which the claimant meets the definition of disability as explained in Part 220; or

(iv) The first day of the month in which the claimant attains age 18.

§ 218.15 When a parent annuity begins.

A parent annuity begins on the later of either the date chosen by the applicant or the earliest date permitted by law. The earliest date permitted by law is the latest of—

(a) The first day of the month in which the employee dies;

(b) The first day of the month in which the claimant attains age 60; or

(c) The first day of the sixth month before the month in which the application is filed.

§ 218.16 When a surviving divorced spouse annuity begins.

(a) A surviving divorced spouse annuity begins on the later of either the date chosen by the applicant or the earliest date permitted by law.

(b) *Earliest date permitted by law*—(1) *General rules.* The earliest date permitted by law is the latest of—

(i) The first day of the month in which the employee dies; or

(ii) The first day of the month in which the claimant becomes eligible for a surviving divorced spouse annuity as shown in Part 216 of this chapter.

(2) *Full-age annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the month in which the claimant attains age 65; or

(iii) The first day of the sixth month before the month in which the application is filed.

(3) *Reduced age annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the month in which the claimant attains age 60; or

(iii) The first day of the twelfth month before the month in which the application is filed; or

(iv) The first day of the sixth month after the month of disability onset.

(4) *Disability annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the month in which the claimant attains age 50; or

(iii) The first day of the twelfth month before the month in which the application is filed; or

(iv) The first day of the sixth month after the month of disability onset.

(5) *"Child in Care" annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section; or

(ii) The first day of the sixth month before the month in which the application is filed.

§ 218.17 When a remarried widow(er) annuity begins.

(a) A remarried widow(er) annuity begins on the later of either the date chosen by the applicant or the earliest date permitted by law.

(b) *Earliest date permitted by law*—(1) *General rules.* The earliest date permitted by law is the later of—

(i) The first day of the month in which the employee dies; or

(ii) The first day of the month in which the claimant becomes eligible for a remarried widow(er) annuity as shown in Part 216 of this chapter.

(2) *Full-age annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the month in which the claimant attains age 65; or

(iii) The first day of the sixth month before the month in which the application is filed.

(3) *Reduced-age annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the month in which the claimant attains age 60; or

(iii) The first day of the month in which the application is filed or the first day of the month preceding the month in which the application is filed if the employee died in that preceding month.

(4) *Disability annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the month in which the claimant attains age 50; or

(iii) The first day of the twelfth month before the month in which the application is filed; or

(iv) The first day of the sixth month after the month of disability onset.

(5) *"Child in care" annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section; or

(ii) The first day of the sixth month before the month in which the application is filed.

Subpart C—How Work and Special Payments Affect an Employee, Spouse, or Divorced Spouse Annuity Beginning Date

§ 218.25 Introduction.

The rules in this subpart apply only to an employee, spouse, divorced spouse, and supplemental annuity. They do not apply to any type of survivor annuity.

§ 218.26 Work started after annuity beginning date.

(a) *General.* An annuity can begin only after an employee, spouse, or divorced spouse stops any work for a railroad [or last non-railroad employer]. However, if the employee, spouse or divorced spouse starts work after an "intent to retire" is established, that work will have no effect on the annuity beginning date. An annuity cannot be paid for any month the empolyee, spouse or divorced spouse returns to work for a railroad [or for the last non-railroad employer] for whom he or she worked before the "intent to retire" was established.

(b) *Intent to retire*—(1) *Disability annuity.* An "intent to retire" is established to pay a disability annuity when—

(i) The employee files for a disability annuity; or

(ii) The employee gives up all rights to return to work for a railroad [and any last non-railroad] employer before starting any new work.

(2) *Age annuity.* An "intent to retire" is established to pay an employee age, spouse or divorced spouse annuity when the employee, spouse or divorced spouse gives up all rights to return to work for a railroad [and any last non-railroad] employer before starting any new work.

§ 218.27 Vacation pay.

(a) *From railroad employer.* Vacation pay may be credited to the vacation period due the employee or to the last day of actual work for the railroad employer. If the vacation pay is credited to the vacation period, the annuity can begin no earlier than the day after the vacation period ends. (Part 211 of this chapter discusses how vacation pay is credited as compensation.)

(b) *From non-railroad employer.* Vacation pay will not usually affect the annuity beginning date. The annuity can begin as early as the day after the day the employee, spouse or divorced spouse last works for a non-railroad employer. However, if an employee, spouse or divorced spouse is carried on the payroll during a vacation period, the annuity can begin no earlier than the day after the vacation period ends.

§ 218.28 Sick pay.

(a) *From railroad employer.* If the employee is carried on the payroll while sick, the annuity can begin no earlier than the day after the last day of sick pay. However, sick pay is not considered compensation and does not affect the annuity beginning date if it is a payment described in § 211.2(c)(6) of these regulations.

(b) *From non-railroad employer.* An employee, spouse or divorced spouse who receives sick pay under a formal system or plan maintained by the employer is not considered to be working after the last day of actual work. The annuity may begin as early as the day after the employee, spouse or divorced spouse last works for the employer. However, if the employer does not maintain a formal system or plan, the annuity can begin no earlier than the day after the last day of sick pay.

§ 218.29 Pay for time lost.

Pay for time lost because of personal injury must be credited to an actual period of time lost. The annuity can begin no earlier than the day after that period ends.

§ 218.30 Separation, displacement or dismissal allowance.

(a) *General.* When an employee receives a separation, displacement or dismissal allowance from a railroad employer, the annuity beginning date depends on whether the payments are a separation allowance as described in paragraph (b), or monthly compensation payments as described in paragraph (c) of this section. (Part 211 of this chapter discusses how a separation, displacement or dismissal allowance is credited as compensation.)

(b) *Separation allowance.* When an employee accepts a separation allowance, the employee gives up his or her job rights. Regardless of whether a separation allowance is paid in a lump sum or in installments, the annuity can begin as early as the day after the day the separation allowance is credited.

(c) *Monthly compensation payments.* An employee who receives monthly compensation payments keeps his or her job rights while the payments are being made. The annuity cannot begin until after the end of the period for which payments are made.

Subpart D—When an Annuity Ends

§ 218.35 When an employee age annuity ends.

(a) *Entire annuity.* An employee annuity based on age ends with the last day of the month before the month in which the employee dies.

(b) *Vested dual benefit based on disability.* An employee vested dual benefit based on disability ends with the last day of the second month following the month in which the employee's disability ends.

§ 218.36 When an employee disability annuity ends.

(a) *Ending date.* An employee annuity based on disability ends with the earliest of—

(1) The last day of the month before the month in which the employee dies;

(2) The last day of the second month following the month in which the employee's disability ends; or

(3) The last day of the month before the month in which the employee attains age 65 (the disability annuity is changed to an age annuity).

(b) *Effect of ended disability annuity on eligibility for later annuity.* The ending of a disability annuity will not affect an employee's rights to receive any annuity to which he or she later becomes entitled. When a disability annuity ends before an employee attains age 65, any additional railroad service the employee has after the disability annuity ends can be credited as if no annuity had previously been paid.

§ 218.37 When a supplemental annuity ends.

A supplemental annuity ends when the employee age or disability annuity ends.

§ 218.38 When a spouse annuity ends.

(a) *General rules.* A spouse annuity ends with the earliest of—

(1) The last day of the month before the month in which the spouse dies;

(2) The last day of the month before the month in which the employee dies or the employee's entitlement to an annuity ends;

(3) The last day of the month before the month in which the spouse's marriage to the employee is ended by absolute divorce, annulment, or other judicial action (the spouse may be entitled to a divorced spouse annuity as explained in Part 216 of this chapter); or

(4) The month shown in paragraphs (b) and (d) of this section.

(b) *Annuity entitlement based on "child in care."* A spouse annuity based on having a "child in care" ends as shown in this paragraph if he or she is not also eligible for a full-age spouse annuity as explained in Part 216 of this chapter. However, see also paragraph (c) of this section. If the spouse is eligible for a full-age spouse annuity when he or she is no longer entitled on the basis of a child, his or her annuity is changed to a spouse annuity based on age. A spouse annuity based on having a "child in care" ends with the earliest of—

(1) The last day of the month shown in paragraphs (a) and (d) of this section;

(2) The last day of the month before the month in which the child is no longer in the spouse's care, as explained in Part 216 of this chapter;

(3) The last day of the month before the month in which the child attains age 18 and is not disabled;

(4) The last day of the month before the month in which the child marries;

(5) The last day of the month before the month in which the child dies; or

(6) The last day of the second month after the month in which the child's disability ends, if the child is over age 18.

(c) *Tier I benefit entitlement based on "child in care."* The tier I benefit of a spouse entitled because he or she has a "child in care" and is not otherwise entitled to a tier I benefit based on age, ends with the earliest of—

(1) The last day of the month shown in paragraphs (a) and (d) of this section;

(2) The last day of the month before the month in which the child is no longer in the spouse's care as explained in Part 216 of this chapter;

(3) The last day of the month before the month in which the child attains age 16 and is not disabled;

(4) The last day of the month before the month in which the child marries;

(5) The last day of the month before the month in which the child dies; or

(6) The last day of the second month after the month in which the child's disability ends, if the child is over age 16.

(d) *Entitlement based on deemed marriage.* If the spouse entitlement is based on a deemed valid marriage, the annuity ends with the earliest of—

(1) The last day of the month shown in paragraphs (a) and (b) of this section;

(2) The last day of the month before the month in which the deemed spouse enters a valid marriage with someone other than the employee; or

(3) The last day of the month before the month in which the Board approves an award to someone else as the employee's legal spouse.

§ 218.39 When a divorced spouse annuity ends.

A divorced spouse annuity ends with the earliest of the last day of the month before the month in which the—

(a) Divorced spouse dies;

(b) Employee's entitlement to an annuity ends;

(c) Divorced spouse marries;

(d) Employee dies; or

(e) Divorced spouse becomes entitled to a retirement or disability insurance benefit under the Social Security Act based on a primary insurance amount which equals or exceeds the amount of the full divorced spouse annuity before reduction for age.

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§ 218.40 When a widow(er) annuity ends.

(a) *Entitlement based on age.* When a widow(er)'s annuity is based on age, the annuity ends with the earliest of the last day of the month before the month in which—

(1) The widow(er) dies;

(2) The widow(er) remarries (the widow(er) may be entitled to benefits as a remarried widow(er) as explained in Part 216 of this chapter);

(3) The widow(er) becomes entitled to another survivor annuity in a larger amount, unless he or she elects to be paid the smaller annuity; or

(4) The Board approves an award to someone else as the employee's legal widow(er) if entitlement is based on a deemed valid marriage.

(b) *Disabled widow(er).* If entitlement is based on the widow(er)'s disability, the annuity ends with the earliest of—

(1) The last day of the month shown in paragraph (a) of this section;

(2) The last day of the second month following the month in which the disability ends; or

(3) The last day of the month before the month in which the widow(er) attains age 60 (the disability annuitant then becomes entitled to an annuity based upon age).

(c) *Annuity entitlement based on "child in care."* A widow(er) annuity based on having a "child in care" ends as shown in this paragraph if he or she is not eligible for a widow(er) annuity based on age as explained in Part 216 of this chapter. However, see also paragraph (d) of this section. If the widow(er) is eligible for a widow(er) annuity based on age, when he or she is no longer entitled on the basis of having a "child in care", his or her annuity is changed to a widow(er) annuity based on age. A widow(er) annuity based on having a "child in care" ends with the earliest of—

(1) The last day of the month shown in paragraph (a) of this section;

(2) The last day of the month before the month in which the child is no longer in the widow(er)'s care as explained in Part 216 of this chapter (in this case entitlement to the annuity does not terminate, but no annuity is payable while the child is no longer in care);

(3) The last day of the month before the month in which the child attains age 18 and is not disabled;

(4) The last day of the month before the month in which the widow(er) attains age 65 (the "child in care" annuity is changed to an age annuity);

(5) The last day of the month before the month in which the child marries;

(6) The last day of the month before the month in which the child dies; or

(7) The last day of the second month after the month in which the child's disability ends, if the child is over age 18.

(d) *Tier I benefit entitlement based on child in care.* The tier I benefit of a widow(er), entitled because he or she has a "child in care" and is not otherwise entitled to a tier I benefit based on age, ends with the earliest of—

(1) The last day of the month shown in paragraph (a) of this section;

(2) The last day of the month before the month in which the child is no longer in the widow(er)'s care as explained in Part 216 of this chapter;

(3) The last day of the month before the month in which the child attains age 16 and is not disabled;

(4) The last day of the month before the month in which the child marries;

(5) The last day of the month before the month in which the child dies; or

(6) The last day of the second month after the month in which the child's disability ends, if the child is over age 16.

§ 218.41 When a child annuity ends.

A child annuity ends with the earliest of—

(a) The last day of the month before the month in which the child marries;

(b) The last day of the month before the month in which the child dies;

(c) The last day of the month before the month in which the child attains age 18 if the child is not eligible for an annuity as a disabled or student child;

(d) The last day of the last month in which the child is considered a full-time student, as defined in Part 216 of this chapter, if the child is a full-time student age 18 through 19; or

(e) The last day of the second month after the month in which the child's disability ends, if the child is over age 18.

§ 218.42 When a parent annuity ends.

(a) *Tier I.* The Tier I benefit of a parent annuity ends with the earliest of the last day of the month before the month in which the parent—

(1) Dies;

(2) Becomes entitled to an old age benefit under the Social Security Act that is equal to or larger than the tier I benefit of the parent annuity before any reduction for the family maximum, unless he or she is also entitled to a tier II benefit (reduction for the family maximum is discussed in Part 228 of this chapter);

(3) Becomes entitled to another survivor annuity in a larger amount, unless he or she elects to be paid the smaller annuity; or

(4) Remarries after the employee's death, unless he or she marries a person who is entitled to Social Security or Railroad Retirement Act benefits as a divorced spouse, widow, widower, mother, father, parent, or disabled child.

(b) *Tier II.* The Tier II benefit of a parent annuity ends with the earliest of the last day of the month before the month in which the parent—

(1) Dies;

(2) Remarries after the employee's death; or

(3) Becomes entitled to another survivor annuity in a larger amount, unless he or she elects to be paid the smaller annuity.

§ 218.43 When a surviving divorced spouse annuity ends.

(a) *Entitlement based on age.* When the surviving divorced spouse annuity is based on age, the annuity ends with the earliest of the last day of the month before the month in which the surviving divorced spouse—

(1) Dies;

(2) Becomes entitled to an old age benefit under the Social Security Act that is equal to or larger than the amount of the full surviving divorced spouse annuity before reduction for age; or

(3) Becomes entitled to a spouse or survivor annuity in a larger amount, unless he or she elects to be paid the smaller annuity.

(b) *Entitlement based on disability.* When the surviving divorced spouse annuity is based on disability, the annuity ends with the earliest of—

(1) The last day of the month shown in paragraph (a) of this section;

(2) The last day of the second month following the month in which the disability ends; or

(3) The last day of the month before the month in which the surviving divorced spouse attains age 65 (the disability annuitant then becomes entitled based upon age).

(c) *Entitlement based on "child in care."* When the surviving divorced spouse annuity is based on having a "child in care" as explained in Part 216 of this chapter, the annuity ends as shown in this paragraph unless he or she is at least age 60 and was married to the employee for at least 10 years. In that case, the surviving divorced spouse annuity based on having a child in care is changed to an annuity based on age. If the surviving divorced spouse is not entitled to an annuity based on age, the surviving divorced spouse annuity based on "child in care" ends with the earliest of—

(1) The last day of the month shown in paragraph (a) of this section;

(2) The last day of the month before the month in which the child is no longer in the surviving divorced spouse's care, as explained in Part 216 of this chapter (in this case entitlement to the annuity does not terminate, but no annuity is payable while the child is no longer in care);

(3) The last day of the month before the month in which the child attains age 16, unless the child is disabled;

(4) The last day of the month before the month in which the surviving divorced spouse remarries unless the marriage is to an individual entitled to a retirement, disability, widow(er)'s, father's/mother's, parent's or child's disability benefit under the Railroad Retirement Act or Social Security Act;

(5) the last day of the second month after the month in which the child's disability ends, if the child is over age 16; or

(6) The last day of the month before the month in which the surviving divorced spouse attains age 65 (the annuitant then becomes entitled to an annuity based upon age).

§ 218.44 When a remarried widow(er) annuity ends.

(a) *Entitlement based on age.* When the remarried widow(er) annuity is based on age, the annuity ends with the earlier of the last day of the month before the month in which the remarried widow(er)—

(1) Dies;

(2) Becomes entitled to an old age benefit under the Social Security Act that is equal to or larger than the amount of the full remarried widow(er) annuity before reduction for age or the family maximum (see Part 228 of this chapter); or

(3) Becomes entitled to a spouse or survivor annuity in a larger amount, unless he or she elects to be paid the smaller annuity.

(b) *Entitlement based on disability.* When the remarried widow(er) annuity is based on disability, the annuity ends with the earliest of—

(1) The last day of the month shown in paragraph (a) of this section;

(2) The last day of the second month following the month in which the disability ends; or

(3) The last day of the month before the month in which the remarried widow(er) attains age 65 (the disability annuitant then becomes entitled to an annuity upon age).

(c) *Entitlement based on "child in care."* When the remarried widow(er) annuity is based on having a "child in care," as explained in Part 216 of this chapter, the annuity ends as shown in this paragraph unless the remarried widow(er) is at least age 60. In that case, the remarried widow(er) annuity based on having a "child in care" is changed to an annuity based on age. If the remarried widow(er) is not entitled to an annuity based on age, the remarried widow(er) annuity based on having a "child in care" ends with the earliest of—

(1) The last day of the month shown in paragraph (a) of this section;

(2) The last day of the month before the month in which the child is no longer in the remarried widow(er)'s care, as explained in Part 216 of this chapter (in this case entitlement to the annuity does not terminate but no annuity is payable while the child is no longer in care);

(3) The last day of the month before the month in which the child attains age 16, unless the child is disabled;

(4) The last day of the month before the month in which the remarried widow(er) remarries unless the marriage is to an individual entitled to a retirement, disability, widow(er)'s, father's/mother's, parent's or child's disability benefit under the Railroad Retirement Act or Social Security Act;

(5) The last day of the second month after the month in which the child's disability ends, if the child is over age 16; or

(6) The last day of the month before the month in which the remarried widow attains age 65 (the annuitant then becomes entitled to an annuity based upon age).

Dated: October 27, 1988.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 88-25435 Filed 11-2-88; 8:45 am]

BILLING CODE 7905-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3479-8; NC-009]

Approval and Promulgation of Implementation Plans; North Carolina: SO_2 and Particulate Revision for Appalachian State University

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a source-specific revision to the North Carolina State Implementation Plan (SIP) for sulfur dioxide (SO_2) and particulate matter (PM). The four boilers at Appalachian State University (ASU) were originally subject to the federally-approved sulfur dioxide limit of 1.6 pound per million BTU (lb SO_2/mBTU) of heat input. This revision would approve new emission limits of 1.55 lb SO_2/mBTU for the three oil-fired boilers and 1.7 lb SO_2/mBTU for the coal/wood-fired boiler. The State has demonstrated that the National Ambient Air Quality Standards (NAAQS) for SO_2 would be protected if this change is approved. New particulate emission limits have also been set for the four boilers at the school. Total particulate emissions from the boilers would not increase as a result of the new permit conditions, and the NAAQS for total suspended particulate (TSP) and PM_{10} would also be protected.

DATES: To be considered, comments must be received on or before December 5, 1988.

ADDRESSES: Comments on this notice should be addressed to Gregg Worley at the Region IV address below. Copies of the State's submittals are available for review during normal business hours at the following locations:

Air Quality Section, Division of Environmental Management, North Carolina Department of Natural Resources and Community Development, Archdale Building, 512 N. Salisbury Building, Raleigh, North Carolina 27611.

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Gregg Worley of the Region IV EPA Programs Branch, at the above address and the following phone number: (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: On July 28, 1985, the North Carolina Divison of Environmental Management submitted a sulfur dioxide (SO_2) SIP revision and an alternate particulate emission reduction plan for Appalachian State Univesity (ASU) in Boone (Watauga County). The University's physical plant operates four boilers to produce steam for the campus' heating needs. Three of those boilers (Nos. 1, 2, and 3) are designed to burn No. 6 fuel oil and the fourth (No. 4) has been converted to burn coal or wood.

The State's submittal contained certification that the revisions were preceded by adequate notice and a public hearing. EPA is proposing to approve the new emission limits for ASU submitted on July 28, 1985. All interested persons are invited to comment on this action; comments received within 30 days of publication of

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this notice will be considered by EPA. A discussion of these two revisions and the basis for EPA action now follows.

Sulfur Dioxide SIP Revision

On December 7, 1982 (47 FR 54934), EPA approved for all but 24 sources a revision to North Carolina SIP regulation 2D.0516 which relaxed the SO_2 limit for fuel-burning sources from 1.6 lb/mBTU to 2.3 lb/mBTU. ASU is one of the 24 sources excluded from that approval action. EPA indicated in the **Federal Register** that if dispersion modeling analyses could demonstrate that an alternate emissions limitation was adequate to protect the National Ambient Air Quality Standard (NAAQS), then the federally-approved limit of 1.6 lb SO_2/mBTU of heat input could be changed.

On July 19, 1985, operating permit No. 3990R4 was issued to ASU by the State of North Carolina. This permit limits operations and emissions as necessary to protect the NAAQS for SO_2. This permit was submitted to EPA on July 26, 1985, for approval as part of the North Carolina SIP. Also included in the submittal was an air quality modeling analysis which demonstrates the validity of the permit conditions.

Permit No. 3990R4 contains 22 operating limitations which must be met by ASU. Six of the 22 pertain directly to SO_2 emissions. These restrictions are as follows:

- Sulfur dioxide emissions from the three (3) No. 6 oil-fired boilers (Nos. 1, 2, and 3) shall not exceed 1.55 pounds per million BTU heat input.
- Sulfur dioxide emissions from the coal/wood-fired boiler (No. 4) shall not exceed 1.7 pounds per million BTU heat input.
- No more than two boilers shall operate at the same time, including startup and shutdown.
- The sulfur content of the No. 6 oil burned shall not exceed 1.4% by weight.
- The sulfur content of the coal burned shall not exceed 1.1% by weight.
- The maximum heat inputs to boilers 1, 2, 3, and 4 shall not exceed 100, 60, 37.5 and 35 million BTU per hour, respectively.

The permit also contains the reporting and recordkeeping requirements necessary to monitor compliance with the above operating conditions. The test methods for testing compliance with SO_2 emission limits are found in regulation 2D.0501(c)(4) of the North Carolina Administrative Code. This section has been amended by the State to assure that when a source chooses to use fuel analysis as their method of compliance determination, the short-term standards will be protected. The revised regulation is State-effective and was approved by EPA on June 9, 1988 (53 FR 21036). As such, this regulation supercedes ASU's permit condition #15 which allowed a monthly average fuel analysis rather than a short-term analysis.

The technical information submitted included computer dispersion modeling analyses which are based on EPA's VALLEY dispersion model and are consistent with EPA's modeling guidelines. This type of model was used because ASU is located in an area with complex terrain in all directions. The modeling analyses predict the maximum possible ambient SO_2 impact of all allowable boiler combinations to be 364.5 micrograms per cubic meter ($\mu g/m^3$) (24-hour average), 49 $\mu g/m^3$ (annual average), and 1144.6 $\mu g/m^3$ (3-hour average). Since the NAAQS for SO_2 is 365 $\mu g/m^3$ on a 24-hour average, 80 $\mu g/m^3$ on an annual average and 1300 $\mu g/m^3$ on a 3-hour average, the modeling shows that the emission limitations and permit conditions are adequate to protect the standards for SO_2. It should be noted that the predicted maximum 24-hour concentration is only 0.5 $\mu g/m^3$ less than the standard. The modeling analyses supporting this SIP revision are based on a block average interpretation of the SO_2 NAAQS.

EPA's stack height regulations published in the **Federal Register** on July 8, 1985, do not apply to this SIP revision. All four of the stacks at ASU are below 65 meters. Also, there are no merged plume issues associated with this revision as all four furnaces at ASU have individual stacks.

EPA has also reviewed the SO_2 revision for consistency with section 110(a)(2)(E) of the Clear Air Act. Due to present limitations on modeling, the modeling was limited to a 50 km radius around the Appalachian State University boilers. As shown in the technical support for this revision, the applicable EPA reference model demonstrated that ambient SO_2 concentrations resulting from these boilers' emissions would decrease markedly within a short distance from the plant and fall well below the ambient standards. Therefore, in EPA's judgment, the revision would not contribute significantly to SO_2 nonattainment in Tennessee, Virginia, Kentucky, or more distant states.

According to emissions data supplied by North Carolina, the revision will not result in an increase in actual SO_2 emissions above the actual emissions levels of the past several years. Consequently, the revision will not consume PSD increment in any areas in which the PSD baseline has already been triggered. In areas in which the PSD baseline has not yet been triggered, emissions under this revision will be reflected in the baseline concentration established in the future, and therefore will not consume PSD increment above those eventual baselines. ASU is located in Watauga County, where the SO_2 baseline has not been triggered. For those reasons, EPA has concluded that this revision will not interfere with PSD measures within North Carolina or in any other states.

Particulate SIP Revision

EPA revised the particulate matter standard on July 1, 1987 (54 FR 24634), and eliminated the TSP ambient air quality standard. The revised standard is expressed in terms of particulate matter with a nominal diameter of 10 micrometers or less (PM_{10}). However, at the State's option, EPA continued to process this TSP SIP revision which was in process at the time the new PM_{10} standards was promulgated. In the policy published on July 1, 1987 (p. 24679, column 2), EPA stated that it would regard existing TSP SIP's as necessary interim particulate matter plans during the period preceding the approval of state plans specifically aimed at PM_{10}.

ASU's alternate emission reduction plan for particulates prescribes new particulate limits for each of their four boilers. This plan was submitted prior to the issuance of the PM_{10} regulations. As a result all the modeling and demonstrations were done only for TSP. However, the predicted concentrations can be used to show compliance with the PM_{10} NAAQS. This demonstration is accomplished using the results of a national study that showed there is a 95% probability that 63% of the TSP background is PM_{10}. This is explained further in the TSD.

ASU operates a coal/wood-fired boiler (No. 4) and three oil-fired boilers. The SIP revision will allow boiler No. 4 to achieve compliance by increasing its allowable emission rate. At the same time the allowable limits for particulate from boilers Nos. 1, 2 and 3 will be reduced. Thus, the net allowable emissions change will be negligible, less than 25 tons per year, and there will be little environmental impact. As a result of the negligible increase in emissions, a PSD review is unnecessary.

The new emission rates are specified in the permits, which restrict boilers 1 through 4 to 0.18, 0.18, 0.18, 0.52 lbs of particulate per mBTU. These limits assure that the particulate standards are not violated. The old limit for boilers 1 through 4 was 0.292 lbs of particulate per mBTU. Another permit condition is that ASU can operate only 2 boilers at a time. The maximum combined impact of any two of the boilers is 133.3 ug/m^3 for a 24/hour period and 50.3 ug/m^3 on an annual basis. These TSP concentrations are well below the TSP NAAQS and once converted to PM_{10} values fall below the PM_{10} NAAQS as well.

Further details supporting this SIP revision are contained in the Technical Support Document which is available for inspection at EPA's Region IV office.

Proposed Action

EPA is proposing to approve the new SO_2 and particulate emission limits applicable to Appalachian State University. These limits are contained in Permit No. 3990R4, which was issued by the State of North Carolina on July 19, 1985, and submitted to EPA on July 26, 1985. As a result of this action, ASU will no longer be subject to the original federally approved SO_2 SIP limit of 1.6 lb/mBTU.

The modeling techniques used in the demonstration supporting this revision are, for the most part, based on modeling guidance in place at the time that the analysis was performed, i.e., the EPA "Guideline on Air Quality Models (1978). Since that time, revisions have been promulgated by EPA (51 FR 32176, September 9, 1986 and 53 FR 392, January 6, 1988). Since the modeling analysis was under way prior to the publication of the revised guidance, EPA accepts the analysis.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401–7642.

Date: November 20, 1987.

Charles H. Sutfin,

Acting Deputy Regional Administrator.

Editorial Note: This document was revised at the Office of the Federal Register October 31, 1988.

[FR Doc. 88–25450 Filed 11–2–88; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[FRL-3471-3]

Approval and Promulgation of Implementation Plans; Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: By this Notice, EPA invites public comment on its proposed approval of numerous revisions to the Oregon state implementation plan (SIP) submitted by the Oregon Department of Environmental Quality (ODEQ) on May 31, 1988 and July 11, 1988. This action will result in an updated SIP, rescinding provisions which are no longer needed, revising and updating certain rules and sections of the SIP, and adding rules which were not previously included in the SIP. These revisions were submitted to satisfy the requirements of section 110 of the Clean Air Act (hereinafter referred to as the Act).

DATE: Comments must be postmarked on or before December 5, 1988.

ADDRESSES: Comments should be addressed to: Laurie M. Kral, Air Programs Branch, Environmental Protection Agency, 1200 Sixth Avenue AT–082, Seattle, Washington 98101.

Copies of the materials submitted to EPA may be examined during normal business hours at:

Air Programs Branch (10A–87–2), Environmental Protection Agency, 1200 Sixth Avenue AT–082, Seattle, Washington 98101.

State of Oregon Department of Environmental Quality, 811 S.W. Sixth Avenue, Portland, Oregon 97204.

FOR FURTHER INFORMATION CONTACT: David C. Bray, Environmental Protection Agency, 1200 Sixth Avenue AT–082, Seattle, Washington 98101, Telephone: (206) 442–4253, FTS: 399–4253.

SUPPLEMENTARY INFORMATION:

I. Background

The Clean Air Act of 1970 required states to submit state implementation plans (SIPs) to EPA which provided for implementation, maintenance and enforcement of the national ambient air quality standards. The SIP contains statutes, rules, strategies, and programs which demonstrate a state's ability to attain and/or maintain compliance with the national ambient air quality standards (NAAQS) in all areas. In 1972, the Oregon Environmental Quality Commission adopted the initial Oregon SIP which was approved by EPA on May 31, 1972 (37 FR 10888). As a result of the Clean Air Act Amendments of 1977, the Oregon Department of Environmental Quality (ODEQ) submitted a revised SIP on June 27, 1979, and July 6, 1979, portions of which were approved by EPA on June 24, 1980 (45 FR 42265).

Since 1972 ODEQ has been responsible for developing revisions and additions to the SIP as needed to maintain the NAAQS. During the past 16 years there have been numerous SIP revisions submitted by ODEQ, some of which have been approved by EPA and some of which have yet to be acted upon. As a result, the contents of the EPA-approved Oregon SIP were often in question. To rectify this problem, ODEQ undertook a several-year effort to revise and reorganize its entire SIP.

II. Discussion of Submittal

In order to provide a better understanding to the reader the contents of this proposed rulemaking, please note that the "Discussion of the Submittal" has been divided into five subsections. Each subsection, listed below, provides the reader with a brief narrative of its content and/or tabular index of the various portions of the proposed Oregon SIP.

Discussion of Submittal—Table of Contents

A. Description of the May 30, 1988 submittal from DEQ
B. Discussion of the EPA-approved Oregon SIP
C. Discussion of Proposed Approval Actions
D. Discussion of Deferred Actions of the May 30, 1988 submittal
E. Additional Rulemaking Actions Currently Being Processed

A. Description of Submittal

On May 30, 1988, ODEQ submitted to EPA a request to rescind the existing SIP and replace it with an updated SIP. The proposed updated SIP would contain the following sections:

State of Oregon Air Quality Control Program

Volume 2—The Federal Clean Air Act Implementation Plan (and Other State Regulations)

Section

1. Introduction
2. General Administration
  2.1 Agency Organization
  2.2 Legal Authority
  2.3 Resources
  2.4 Intergovernmental Cooperation and Consultation
  2.5 Miscellaneous Provisions
3. Statewide Regulatory Provisions
  3.1 Oregon Administrative Rules—Chapter 340
Division 12—Civil Penalties (Sections 030–050, 070–075)

Division 14—Procedures for Issuance, Denial, Modification, and Revocation of Permits
Division 20—General (Section 001–003)
—Registration (Section 005–015)
—Notice of Construction and Approval of Plans (Section 020–032)
—Sampling, Testing and Measurement of Air Contaminant Emissions (Section 035–045)
—"State of Oregon Clean Air Act, Implementation Plan" (Section 047)
—Air Contaminant Discharge Permits (Section 140–155)
—Conflict of Interest (Section 200–215)
—New Source Review (Section 220–276)
—Plant Site Emission Limits (Section 300–320)
—Stack Heights and Dispersion Techniques (Section 340–345)
Division 21—General Emission Standards for Particulate Matter (Section 005–030)
—Particulate Emissions From Process Equipment (Section 035–045)
—Fugitive Emissions (Section 050–060)
—Upset Conditions (Section 065–075)
—Woodstove Certification (Section 100–190)
Division 22—General Gaseous Emissions
—Sulfur Content of Fuels (Section 005–025)
—General Emission Standards for Sulfur Dioxide (Section 050–055)
—General Emission Standards for Volatile Organic Compounds (Section 100–102)
—Limitations and Requirements Section (104–220)
Division 23—Rules for Open Burning (Section 022–045)
—Open Burning Prohibitions (Section 055–115)
Division 24—Motor Vehicle Emission Control Inspection Test Criteria, Methods and Standards (Section 300–310, 315–335, 340–350)
Division 25—Specific Industrial Standards
—Construction and Operation of Wigwam Waste Burners (Section 005–025)
—Hot Mix Asphalt Plants (Section 105–125)
—Kraft Pulp Mills (Section 150–205)
—Primary Aluminum Plants (Section 255–285)
—Board Products Industries (Veneer, Plywood, Particleboard, Hardboard) (Section 305–325)
—Regulations for Sulfite Pulp Mills (Section 350–380)
—Laterite Ore Production of Ferronickel (Section 405–430)
Division 26—Rules for Open Field Burning (Willamete Valley) (Section 001–045)
Division 27—Air Pollution Emergencies (Section 005–025)
Division 30—Specific Air Pollution Control Rules for the Medford-Ashland Air Quality Maintenance Area (Section 005–070)
Division 31—Ambient Air Quality Standards (Section 005–040, 055)
—Prevention of Significant Deterioration (Section 100–130)
3.2 Lane Regional Air Pollution Authority Regulations
Title 11 Policy and General Provisions
Title 12 General Duties and Powers of Board and Director (except Section 030)
Title 13 Enforcement Procedures
Title 14 Definitions
Title 31 Ambient Air Standards (except sections 010 and 020)
Title 32 Emission Standards
Title 33 Prohibited Practices and Control of Special Cases
Title 34 Air Contaminant Discharge Permits
Title 38 New Source Review
Title 47 Rules for Outdoor Burning
Title 51 Air Pollution Emergencies
4. Control Strategies for Nonattainment Areas
4.1 Portland-Vancouver AQMA-Total Suspended Particulate
4.2 Portland-Vancouver AQMA-Carbon Monoxide
4.3 Portland-Vancouver AQMA-Ozone
4.4 Salem Nonattainment Area-Carbon Monoxide
4.5 Salem Nonattainment Area-Ozone
4.6 Eugene-Springfield AQMA-Total Suspended Particulate
4.7 Eugene-Springfield AQMA-Carbon Monoxide
4.8 Medford-Ashland AQMA-Ozone
4.9 Medford-Ashland AQMA-Carbon Monoxide
4.10 Medford-Ashland AQMA-Particulate Matter
4.11 Grants Pass Nonattainment-Carbon Monoxide
5. Control Strategies for Attainment and Nonattainment Areas
5.1 Statewide Control Strategies for Lead
5.2 Visibility Protection Plan
5.3 Prevention of Significant Deterioration
6. Ambient Air Quality Monitoring Program
6.1 Air Monitoring Network
6.2 Data Handling and Analysis Procedures
6.3 Episode Monitoring
7. Emergency Action Plan
8. Public Involvement
9. Plan Revisions and Reporting

Volume 3—State Implementation Plan Appendices
Appendix A Statewide Regulatory Provisions and Administration
Appendix A1 Slash Burning Smoke Management Plan
Appendix A2 Field Burning Smoke Management Plan
Appendix A3 Interagency Memorandum of Understanding Lead Agency Designations
Appendix A4 Source Sampling Manual
Appendix A5 Air Quality Monitoring Quality Assurance Procedures Manual
Appendix B Control Strategies for Nonattainment Areas
Appendix B1 Portland-Vancouver AQMA
Appendix B2 Salem Nonattainment Area
Appendix B3 Eugene-Springfield AQMA
Appendix B4 Medford-Ashland AQMA
Appendix C Statewide Control Strategies
Appendix C1 Lead

As part of the proposed update of the Oregon SIP, ODEQ requested the repeal of certain sections of the federally approved SIP. Those sections proposed to be deleted from the SIP are:

In Volume 2, Section 3, Subsection 3.1 Oregon Administrative Rules Chapter 340:

OAR–340–11–005 to 035 Rules of Practice and Procedure
OAR–340–13–005 to 035 Wilderness, Recreational, and Scenic Area Rules
OAR–340–20–100 to 135 Rules for Indirect Sources
OAR–340–24–100 to 040 Motor Vehicle Rules
OAR–340–24–311 to 337 Motor Vehicle Noise Rules
OAR–340–25–055 to 060 Reduction of Animal Matter
OAR–340–28–001 to 090 Specific Air Pollution Control Rules for Clackamas, Columbia Multnomah, and Washington Counties
OAR–340–31–045 Particle Fallout
OAR–340–31–050 Calcium Oxide (Lime Dust)

In Volume 2, Section 3, Subsection 3.2 Lane Regional Air Pollution Authority Regulations:

Title 12–030 Advisory Committee
Title 20 Indirect Sources
Title 21 Registration, Reports and Test Procedures
Title 22 Permits
Title 31–010 Particle Fallout Rate
Title 31–020 Odors
Title 42 Rules of Practice and Procedure—Hearing Procedure
Title 44 Rules of Practice and Procedure—Evidence
Title 45 Rules of Practice and Procedure—Decision and Appeal

All of Volume 4—State Implementation Plan References

In addition to the May 30, 1988 submittal, ODEQ on July 11, 1988 submitted to EPA proposed action on revisions to the "Specific Air Pollution Control Rules for Medford-Ashland Air Quality Maintenance Area" (OAR 340–30–015, 030, 031, 040 and 055). These revisions change the averaging time for particulate matter emission standards for wood waste boilers, wood particle dryers, hardboard manufacturing plants, and charcoal producing plants, from an annual average to the duration of a source test. The proposed amendments would also omit from the testing regulation large woodwaste boilers and charcoal plants subsequent to an emission limit exceedance on an annual test results in the Medford-Ashland Air Quality Maintenance Area.

B. Discussion of Approved Portions

Many of the rules and provisions contained in the May 31, 1988, and July 11, 1988 submittals had already been approved by EPA and were resubmitted by ODEQ without change. The following sections are already contained in the EPA-approved Oregon SIP:

In Volume 2—The Federal Clean Air Act Implementation Plan:

Section 3.1 Oregon Administrative Rule—Chapter 340
Division 12—Civil Penalties (Section 030–050, 070–075)
Division 20—General (Section 001–003)
—Registration (Section 005–015)
—Notice of Construction and Approval of Plans (Section 020–032)
—Sampling, Testing, and Measurement of Air Contaminant Emissions (Section 035–045)
—Air Contaminant Discharge Permits (Section 140–150, 160–185)
—Conflicts of Interest (Section 200–215)
—New Source Review (Section 220–240, 245–276)
—Plant Site Emission Limits (Section 300–320)
—Stack Heights and Dispersion Techniques (Section 340–345)
Division 21—General Emission Standards for Particulate Matter (Section 005–030)
—Particulate Emissions From Process Equipment (Section 035–045)
—Fugitive Emissions (Section 050–060)
—Upset Conditions (Section 065–075)
—Woodstove Certification (Section 100–190)
Division 22—General Gaseous Emissions
—Sulfur Content of Fuels (Section 005–025)
—General Emission Standards for Sulfur Dioxide (Section 050–055)
Division 23—Rules for Open Burning (Section 022–045)
—Open Burning Prohibitions
Division 24—Motor Vehicle Emission Control Inspection Test Criteria, Methods and Standards (Section 300–310, 315–335, 340–350)
Division 25—Specific Industrial Standards
—Construction and Operation of Wigwam Waste Burners (Section 005–025)
—Hot Mix Asphalt Plants (Section 105–125)
—Primary Aluminum Plants (Section 225–285)
—Regulations for Sulfite Pulp Mills (Section 350–380)
—Laterite Ore Production of Ferronickel (Section 405–430)
Division 26—Rules for Open Field Burning (Willamette Valley) (Section 001–045)
Division 27—Air Pollution Emergencies (Section 005–025)
Division 30—Specific Air Pollution Control Rules for the Medford-Ashland Air Quality Maintenance Area (Section 005–070, except 015(b))
Division 31—Ambient Air Quality Standards (Section 005–040, 055)
—Prevention of Significant Deterioration (Section 100, 110–130)
In Section 3.2 Lane Regional Air Pollution Authority Regulations
Title 33 Prohibited Practices and Control of Special Cases
Title 51 Air Pollution Emergencies
Section 4 Control Strategies for Nonattainment Areas
4.1 Portland-Vancouver AQMA—Total Suspended Particulate
4.2 Portland-Vancouver AQMA—Carbon Monoxide
4.4 Salem Nonattainment Area—Carbon Monoxide
4.5 Salem Nonattainment Area—Ozone
4.6 Eugene-Springfield AQMA—Total Suspended Particulate
4.7 Eugene-Springfield AQMA—Carbon Monoxide
4.8 Medford-Ashland AQMA—Ozone
4.9 Medford-Ashland AQMA—Carbon Monoxide
4.10 Medford-Ashland AQMA—Particulate Matter
4.11 Grants Pass Nonattainment Area—Carbon Monoxide
Section 5 Control Strategies for Attainment Nonattainment Areas:
5.1 Statewide Control Strategies for Lead
5.3 Prevention of Significant Deterioration
Section 7 Emergency Action Plan

Volume 3—State Implementation Plan Appendices
Appendix A Statewide Regulatory Provisions and Administration
Appendix A1 Slash Burning Smoke Management Plan
Appendix A2 Field Burning Smoke Management Plan
Appendix A3 Interagency Memoranda of Understanding Lead Agency Designations
Appendix A4 Source Sampling Manual
Appendix A5 Air Quality Monitoring Quality Assurance Procedures Manual
Appendix B Control Strategies for Nonattainment Areas
Appendix B1 Portland-Vancouver AQMA
Appendix B2 Salem Nonattainment Area
Appendix B3 Eugene-Springfield AQMA
Appendix B4 Medford-Asland AQMA
Appendix C Statwide Control Strategies
Appendix C1 Lead

C. Discussion of Proposed Approval Actions

EPA is proposing action on the following portions of the May 30, 1988, submission which have not been previously approved:

Volume 2—The Federal Clean Air Act Implementation Plan (And Other State Regulations)

Section 1 Introduction
Section 2 General Administration
Section 3 Statewide Regulatory Provisions, Subsection 3.1 Oregon Administrative Rule—Chapter 340
OAR 340–11–005 to 035 Rules of Practice and Procedure
OAR 340–13–005 to 035 Wilderness, Recreational, and Scenic Area Rules
OAR 340–14–005 to 050 Procedures for Issuance of Permits
OAR 340–20–046 Records, Maintaining and Reporting
OAR 340–20–047 "State of Oregon Clean Air Act, Implementation Plan"
OAR 340–20–100 to 135 Rules for Indirect Sources
OAR 340–24–005 to 040 Motor Vehicle Rules
OAR 340–24–311 and 337 Motor

Vehicle Noise Rules
OAR 340-25-855 to 890 Reduction of Animal Matter
OAR 340-28-001 to 090 Specific Air Pollution Control Rules for Clackamas, Columbia, Multnomah, and Washington Counties
OAR 340-30-015(2) Specific Air Pollution Control Rules for the Medford-Ashland Air Quality Maintenance Area
OAR 340-31-045 Particle Fallout
OAR 340-31-050 Calcium Oxide (Lime Dust)
OAR 340-31-105 PSD Definitions
Section 4 Control Strategies for Nonattainment Areas
Section 5 Control Strategies for Attainment and Nonattainment Areas
Section 6 Ambient Air Quality Monitoring Program
Section 8 Public Involvement
Section 9 Plan Revisions and Reporting

Volume 4—State Implementation Plan References

In addition to the May 30, 1988, submittal, EPA is also proposing action on revisions to the Specific Air Pollution Control Rules for Medford-Ashland Air Quality Maintenance Area (OAR 340-30-015, 030, 031, 040 and 055) which were submitted to EPA on July 11, 1988.

D. Deferred Action

Two of the revisions which were submitted to EPA on May 30, 1988, will not be processed in this rulemaking action. Instead EPA will prepare a separate **Federal Register** Notice of Rulemaking proposing action on OAR 340-25-150 to 205 Kraft Pulp Mills and OAR 340-25-305 to 325 Board Products Industries.

On February 24, 1988, ODEQ submitted extensive revisions to the ozone control strategy for the Portland-Vancouver Air Quality Maintenance Area (Section 4.3) and certain implementing rules (OAR 340-22-100 to 220, OAR 340-20-155(i) Table 1, and OAR 340-20-241). These revisions supersede the respective sections in the May 30, 1988 submittal (even though they predate that submittal). EPA will not be acting on these provisions in this rulemaking, but instead, will prepare a separate **Federal Register** Notice of Rulemaking.

On August 5, 1985, and December 5, 1986, ODEQ submitted extensive revisions to Title 14, 34, and 38 of Lane Regional Air Pollution Authority's (LRAPA) rules. Since portions of these submittals supersede parts of the May 30, 1988 submittal, EPA will take action on all of these requested revisions to the LRAPA rules in a separate **Federal Register** Notice of Rulemaking.

E. Proposed Actions in Process

On March 3, 1987, ODEQ submitted revisions to Oregon's Visibility Protection Plan (Section 5.2) which superseded the revision of Section 5.2 included in the May 30, 1986 submittal. On June 22, 1988 (53 FR 23418) EPA published a **Federal Register** Notice of Proposed Rulemaking, asking for public comment on its proposed approval of Section 5.2 Visibility Protection Plan as part of the Oregon SIP. The public comment date expired July 22, 1988. EPA will take action on this portion of the SIP in the near future.

III. Discussion of Proposed Action

The following is a brief discussion of each provision which EPA is proposing to approve:

Volume 2—The Federal Clean Air Act Implementation Plan (And Other State Regulations)

EPA is proposing to approve the addition of "Section 1 Introduction". This new section provides a general explanation of the contents of the Oregon SIP.

EPA is proposing to approve numerous revisions to "Section 2 General Administration" which generally bring it up to date. "Subsection 2.1 Agency Organization" outlines the organizational structure of the Department of Environmental Quality and the Environmental Quality Commission (EQC). "Subsection 2.2 Legal Authority" contains a discussion of the EQC and ODEQ legal authority for adopting and enforcing air quality standards, including an Attorney General's opinion on legal authority and the complete text of the relevant statutes. "Subsection 2.3 Resources" updates the resources available to ODEQ and the Lane Regional Air Pollution Authority (LRAPA). "Subsection 2.4 Intergovernmental Cooperation and Consultation" summarizes Oregon's approach to comply with requirements of Section 126 (Interstate Pollution Abatement) and Section 121 (Consultation) in the Clean Air Act. "Subsection 2.5 Miscellaneous Provisions" summarizes ODEQ's and LRAPA's programs for Air Contaminant Discharge Permits, Maintenance Plans, Assurance of Adequacy of State Plans, and Maintenance of Pay.

EPA is proposing to approve revisions to the introductory statement for "Section 3 Statewide Regulatory Provisions" which bring it up to date.

EPA is proposing to approve numerous revisions to "Section 3.1 Oregon Administrative Rules—Chapter 340" as follows:

(1) EPA is proposing to delete "OAR 340-11-005 to 035 Rules of Practice and Procedure" as they do not pertain to air pollution control procedures.

(2) EPA is proposing to delete "OAR 340-13-005 to 035 Wilderness, Recreational, and Seasonal Area Rule" as they do not pertain to air pollution control procedures.

(3) EPA is proposing to approve the addition of "OAR 340-14-005 to 050 Procedures for Issuance, Denial, Modification, and Revocation of Permits" which establishes uniform administrative procedures for obtaining permits from ODEQ.

(4) EPA is proposing to approve the addition of "OAR 340-20-046 Records, Maintaining and Reporting" which establishes requirements for written reports by owners or operators of stationary air contaminant sources.

(5) EPA is proposing to approve revisions to "OAR 340-20-047 State of Oregon Clean Air Act, Implementation Plan" which indicates where to obtain materials referred to or incorporated by reference from the office of the ODEQ.

(6) EPA is proposing to delete "OAR 340-30-100 to 135 Rules for Indirect Sources" which are the regulations for controlling the concentrations of air contaminants which result from motor vehicle trips and/or aircraft operations associated with the use of indirect sources.

(7) EPA is proposing to delete "OAR 340-24-005 to 200 Motor Vehicle Rules" which are rules for motor vehicle visibility emissions and obsolete motor vehicle inspections rules.

(8) EPA is proposing to delete "OAR 340-24-311 and 337 Motor Vehicle Noise Rules" which are rules for the noise emission control test method for motorcycles.

(9) EPA is proposing to delete "OAR 340-25-055 to 080 Reduction of Animal Matter" since these rules do not pertain to criteria air pollutants under the SIP.

(10) EPA is proposing to delete "OAR 340-001 to 080 Rules for Clackamas, Columbia, Multnomah, and Washington Counties" as the local agency with jurisdiction has been abolished.

(11) EPA is proposing to approve the recodification of "OAR 340-30-016" to "OAR 340-30-015(2)" and revisions to "OAR 340-30-015(1), 030, 031, 040(1) and 055(1)" in the "Specific Air Pollution Control Rules for the Medford-Ashland Air Quality Maintenance Area."

(12) EPA is proposing to delete "OAR 340-31-045 Particle Fallout" since these rules do not pertain to criteria air pollutants under the SIP.

(13) EPA is proposing to delete "OAR 340-31-050 Calcium Oxide (Lime Dust)" since these rules do not pertain to criteria air pollutants under the SIP.

(14) EPA is proposing to approve the renumbering of "OAR 340-31-105 PSD Definitions."

EPA is proposing to approve revisions to the introduction to Section 4 "Control Strategies for Nonattainment Areas" which has been updated to include references to control strategies which have been added or revised since the 1979 SIP submittal.

EPA is proposing to approve revisions to the introduction to Section 5 "Control Strategies for Attainment/ Nonattainment Areas" which has been updated to include references to control strategies which have been added or revised since the 1979 submittal.

EPA is proposing to approve revisions to Section 6 "Ambient Air Quality Monitoring Program" which updates Oregon's monitoring program to be consistent with the current network. This program fully complies with the air monitoring regulations as set forth in Title 40, Part 58 of the Code of Federal Regulations.

EPA is proposing to approve revisions to Section 8 "Public Involvement" which updates the procedures which ODEQ uses to cooperate with and solicit public comment from all groups interested in air quality issues.

EPA is proposing to approve revisions to Section 9 "Plan Revisions and Reporting" which updates provisions for revising the SIP, publishing reports to inform the public and EPA on air quality in Oregon, and reporting the daily air pollution index in Portland, Eugene, and Medford.

EPA is proposing to delete all of the appendices contained in Volume 4 "State Implementation Plan References" from the previously approved Oregon SIP. This volume contains only technical support information and documentation which was used for the development of control strategies. Although this information was useful background material for the control strategies' demonstrations of adequacy, it is not necessary for it to be a part of the EPA-approved Oregon SIP.

IV. Proposed Rulemaking Action

In summary, EPA is proposing to approve numerous revisions to the Oregon SIP. Specifically, EPA is proposing to approve revisions to the following sections of "Volume 2—The Federal Clean Air Act Implementation Plan (and Other State Regulations)" which were submitted on May 30, 1988:

Section 1 "Introduction;"
Section 2 "General Administration;"
Section 3 "Statewide Regulatory Provisions," "Subsection 3.1 Oregon Administrative Rule—Chapter 340" (OAR 340-14-005 to 050, OAR 340-20-046, OAR 340-20-047, OAR 340-30-015, and OAR 340-31-105);
Section 4 "Control Strategies for Nonattainment Areas;"
Section 5 "Control Strategies for Attainment and Nonattainment Areas;"
Section 6 "Ambient Air Quality Monitoring Program;"
Section 8 "Public Involvement ;" and
Section 9 "Plan Revisions and Reporting."

EPA is also proposing to approve revisions to Section 3 "Statewide Regulatory Provisions," "Subsection 3.1 Oregon Administrative Rule—Chapter 340," specifically OAR 340-30-015, 030, 031, 040, and 055, submitted on July 11, 1988.

EPA is proposing to approve the deletion of a number of provisions in Section 3 "Statewide Regulatory Provisions," "Subsection 3.1 Oregon Administrative Rule—Chapter 340," specifically OAR 340-11-005 to 035; OAR 340-13-005 to 035; OAR 340-20-100 to 135; OAR 340-24-005 to 040, 311, and 337; OAR 340-25-055 to 080; OAR 340-28-001 to 090; and OAR 340-31-045 and 050. EPA is also proposing to delete all of the appendices in "Volume 4—State Implementation Plan References."

Interested parties are invited to comment on all aspects of this proposed approval. Comments should be submitted in triplicate, to the address listed in front of this Notice. Public comments postmarked by December 5, 1988 will be considered in the final rulemaking action taken by EPA.

V. Administrative Review

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under 5 U.S.C. section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities (46 FR 8709).

Authority: 42 U.S.C. 7401-7642.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by Reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and Recordkeeping requirements, Sulfur oxides.

Date: August 22, 1988
Gary L. O'Neal,
Acting Regional Administrator.
[FR Doc. 88-25451 Filed 11-2-88; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 52

[FRL-3470-9]

Approval and Promulgation of Implementation Plans, Illinois

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA is proposing rulemaking to disapprove a revision to the Illinois State Implementation Plan (SIP) for Ozone. The revision pertains to an alternative control strategy (ACS or bubble) for the General Electric Major Appliance Business Group (GE) plant located in Cook County, Illinois. USEPA's action is based upon a revision request which was submitted by the State.

DATE: Comments on this revision and on the proposed USEPA action must be received by December 5, 1988.

ADDRESSES: Copies of the SIP revision are available at the following addressess for review: (It is recommended that you telephone Randolph O. Cano, at (312) 886-6036, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706.

Comments on this proposed rule should be addressed to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Air and Radiation Branch (5AR-26), Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604 (312) 886-6036.

SUPPLEMENTARY INFORMATION:

Summary of the Proposed Revision

GE currently operates two surface coating systems at its Major Appliance Business Group plant located in Cook County, Illinois. These coating systems are identified as the refrigerator

electrostatic (E/S) system, consisting of two spray coating lines, and the range dip system. These lines are subject to Rule 205(n)(1)(H), which limits the VOC content of coatings used on large appliance surface coating lines to 2.8 pounds of VOC per gallon of coating, excluding water. In lieu of compliance with this limit, GE has proposed an ACS or bubble.

Under the proposed bubble, GE would use credits generated from the shutdown of its laundry dip, laundry E/S, and refrigerator dip lines to offset the excess emissions from the refrigerator E/S and range dip lines. The laundry products lines were shut down in 1982, and production was shifted to GE's Louisville plant. The refrigerator dip line was shut down in 1983, and production was shifted to the range dip line and to Louisville. The operating permits for these lines were withdrawn upon issuance of a July 25, 1983, operating permit for the refrigerator E/S and range dip lines. The three lines that were shut down were located in two separate buildings at the Chicago/Cicero complex. The remaining coating lines are located in two other buildings at the same complex.

The actual and allowable emissions before the bubble and with the bubble-allowable emissions are summarized in the following table:

EMISSIONS (TONS/YEAR)

Source	Actual	Allowable	Bubble
Laundry dip	7.8	2.8	0
Laundry E/S	156.8	60.6	0
Refrigerator dip	744.8	124.9	0
Refrigerator E/S	201.8	103.6	1 285
Range dip	76.3	22.4	
Total	1,187.3	314.1	285

[1] Combined for the refrigerator E/S and range dip.

The actual emissions are based on average 1973 and 1974 production data. The allowable emissions are based on average 1973 and 1974 solids usage, the SIP-allowable emission rate (2.8 lb VOC/gallon of coating), actual transfer efficiencies of 85% for the dip lines and 90% for the E/S spray lines, and a baseline transfer efficiency of 60%. The bubble-allowable emissions for the refrigerator E/S and range dip lines are based on the limit contained in the permit. At the time GE initially applied to the State for credit, actual emissions from all lines were lower than allowable emissions.

The Illinois Environmental Protection Agency (IEPA) initially submitted a proposed revision for GE to USEPA on January 24, 1984. The revision contained the following VOC emissions limits:

a. Organic material emissions from the refrigerator E/S and range dip systems shall not exceed a total of 1.74 tons/day.

b. Organic material emissions from the refrigerator E/S and range dip systems shall not exceed a total of 320 tons/year.

c. The paints in the refrigerator E/S and range dip systems shall not have organic material emissions in excess of 5.3 and 5.7 pounds per gallon of coating as applied, respectively.

On October 15, 1986, (IEPA) submitted additional information concerning the proposed revision for GE. This information included a new operating permit for the refrigerator E/S and range dip lines dated December 13, 1985, which contained the following VOC emission limits:

a. Organic material emissions from the refrigerator E/S and range dip systems shall not exceed a total of 1.74 tons/day.

b. Organic material emissions from the refrigerator E/S and range dip systems shall not exceed a total of 320 tons/year.

c. The paints in the refrigerator E/S and range dip systems shall not have organic material emissions in excess of 5.0 pounds per gallon of coating as applied, on a weighted-average basis determined monthly.

On April 21, 1987, IEPA submitted additional information intended to correct the deficiencies cited by USEPA in a January 28, 1987, technical support document (TSD). This information included a revised permit containing the following VOC emission limits:

a. Organic material emissions from the refrigerator E-S and range dip systems shall not exceed a total of 1.55 tons/normal working day, with an additional 0.195 ton/hour for each hour beyond 8.5 hours that the systems operate during a day.

b. Organic material emissions from the refrigerator E-S and range dip systems shall not exceed a total of 285 tons/year, determined from a running total of 12 months of data.

c. The coatings used in the refrigerator E/S and range dip systems shall not have organic material emissions in excess of the following:

i. 16.2 pounds per gallon of coating solids on a daily basis, weighted for actual usage of the two systems. Compliance shall be considered shown if individual samples of coatings do not exceed 2.8 pounds and 4.8 pounds VOC per gallon less water, for the range dip and refrigerator E/S systems, respectively.

ii. 16.2 pounds per gallon of coating solids, as applied, on a weighted average basis determined monthly.

The annual, daily, and emission rate limits are based on 1973 and 1974 coating usage, the SIP limit of 2.8 pounds of VOC per gallon of coating, excluding water, and transfer efficiency credit. The 16.2 pounds of VOC per gallon of solids is equivalent to 4.8 pounds of VOC per gallon of coating, assuming a solvent density of 6.84 pounds per gallon.

This permit expires on December 31, 1988. If a new permit is issued it would have to be submitted as a new SIP revision.

State of the Cook County Ozone SIP

Cook County is part of the Chicago demonstration area which is a nonattainment area lacking an approved 1982 ozone SIP. Illinois has submitted a SIP with an attainment demonstration, but USEPA proposed to disapprove it on July 14, 1987 (52 FR 26404). In addition Cook County is included (as part of the Chicago Metropolitan Statistical Area) in Appendix A of the November 24, 1987, proposed Post-1987 ozone policy (52 FR 45044) in Table A-1, "Potential 1988 SIP call Areas-Ozone", as an area which will exceed the ozone standard in the period from 1985–1987. Finally, on May 25, 1988, USEPA notified the Governor of Illinois that the Cook County Ozone SIP is substantially inadequate to assure the attainment of the Ozone NAAQS.

Evaluation of the Proposed Revision

A. Bubble

The criteria for evaluation bubbles are contained in USEPA's December 4, 1986, Emissions Trading Policy Statement (ETPS; 51 FR 43814). This policy states that only reductions which are surplus, enforceable, permanent, and quantifiable can qualify for credit and be used in a bubble.

In order to determine the quantity of surplus reductions, a baseline must be established. Baseline emissions for any source are the product of three factors: emission rate, capacity utilization, and hours of operation. For a source located in an area lacking an approved demonstration of attainment, the baseline is determined using the lowest of actual, SIP-allowable, or RACT-allowable values for each of the baseline factors, as of the time of application for credit.

At the time GE applied for credit, the actual emission rate for all five lines was higher than the SIP-allowable rate, which is considered RACT. Therefore, the SIP-allowable emission rate should be used for the baseline. Actual values for capacity utilization or hours of operation must be determined using the source's average historical values for the 2-year period preceding the source's application to trade, unless another 2-year period can be shown to be more representative.

Bubbles in such areas must also provide a substantial net reduction in actual emissions (i.e., a reduction of at least 20% in emissions remaining after application of the specified baseline) and must be accompanied by a State assurance that the bubble is consistent with ambient progress and future air quality planning goals.

The bubble was previously evaluated under the final ETPS in a January 28, 1987, TSD. This TSD states that GE's bubble does not satisy the requirements of the ETPS because GE calculated the baseline using actual 1973 solids usage, while it initially applied for credit in November 1981. First, GE has not demonstrated that 1973 is more representative of typical operations than the 2 years prior to its application for credit. Second, GE must use 2 years of data, rather then just one, to calculate the baseline. Third, this bubble does not provide any extra reductions. Fourth, there is no State assurance that the proposed bubble is consistent with air quality planning.

IEPA addressed these four deficiencies in its April 21, 1987, submittal. IEPA's discussion of these issues is presented below, along with an evaluation of each issue.

1. IEPA believes that 1973/1974 is representative due to the cyclical variation in production of the appliance industry. The 1973/1974 time period represents peak production in the cycle. GE feels that the use of the 2-year period prior to its application for credit (1980/1981) would impose an unreasonable restriction on operations because those were low production years. However, it is USEPA's position that the high production years (1973/1974) cannot be considered more representative of typical operations because they reflect maximum production, rather than typical production. Therefore, 1973/1974 production levels should not be used to determine baseline emissions.

2. The revised permit changes the annual, daily, and emission rate limits to reflect the use of average 1973 and 1974 production data, rather than 1973 data. The baseline was also adjusted downward from 314.1 tpy to 289 tpy to account for unusually high dryer production in 1973. Notwithstanding the other deficiencies in its submittal, IEPA now has provided data for a period of 2 years, as required.

3. The annual limit of 285 tons provides reductions of 4 tons per year beyond the baseline of 289 tons per year determined by IEPA using adjusted 1973/1974 production data. IEPA considers this to be a sufficient amount of extra reductions because it feels that this is a pending bubble. A pending bubble in a nonattainment area lacking an approved demonstration of attainment only needs to provide "some" extra reductions rather than the 20 percent required for new bubbles. However, according to the ETPS, bubbles which were submitted to USEPA by States, but which were withdrawn or rejected as inadequate under the 1982 policy are not pending. In a May 31, 1984, letter, Region V informed IEPA that this revision did not meet the requirements of the 1982 policy. Therefore, this cannot be considered a pending bubble, and must meet the policy requirements for new bubbles. Region V informed IEPA that this bubble must meet the new requirements in a December 31, 1986, letter. This means that the bubble should provide at least 20 percent extra reduction beyond the appropriate baseline in order to be approvable.

4. In order to satisfy the requirements of the ETPS, the State must make the following representations in or with a letter formally submitting the bubble as a SIP revision:

a. The emission limits are consistent with the policy requirements for ambient air quality progress.

b. The bubble emission limits will be included in any new SIP and associated control strategy demonstration.

c. The bubble will not constrain the State's ability to obtain any additional emission reductions needed to expeditiously attain and maintain the ozone standard.

d. The State is making reasonable efforts to develop a complete approvable SIP and intends to adhere to the schedule for such development stated in the letter formally submitting the bubble as a SIP revision or in previous such letters.

e. The baseline used to calculate the bubble emission limits is consistent with the policy requirements.

IEPA has not satisfied this requirement because it did not provide these assurances that the bubble is consistent with its efforts to attain the ozone standard.

For the reasons stated above, this bubble does not satisfy the requirements of USEPA's ETPS.[1]

B. Averaging Time

The December 13, 1985, permit allowed monthly averaging of VOC emissions to determine compliance. The January 28, 1987, TSD states that this provision is unacceptable because it does not meet the requirements of USEPA's policy on long-term averaging. In order to correct this deficiency, the revised permit removes the monthly averaging provision and requires compliance on a daily basis.

C. Transfer Efficiency Credit

IEPA determined the baseline emissions using credit for transfer efficiency. According to a November 28, 1980, memorandum titled "Appropriate Transfer Efficiencies for Metal Furniture and Large Appliance Coating," large appliance coaters can receive credit for achieving transfer efficiency greater than 60 percent. IEPA assumed the transfer efficiencies of the E/S and dip lines to be 85 percent and 90 percent, respectively and allowed credit for the difference between the 85 and 90 percent "actual" transfer efficiencies and the 60 percent baseline transfer efficiency. However IEPA has not demonstrated that the 85 and 90 percent values are correct. The transfer efficiency values are not actual measured values.

An April 11, 1986, memorandum from Gerald Emison, Director, Office of Air Quality Planning and Standards, titled "Responses to Five VOC Issues Raised by the Regional Offices and Department of Justice," states that unless the SIP already specifically incorporates new source performance standards (NSPS), table values for transfer efficiency, actual measured values should be used.

Because the table values are not incorporated in the Illinois SIP, GE would have to measure the actual transfer efficiency of the refrigerator E/S and range dip lines. Obviously, GE would not be able to measure the transfer efficiency of the three lines that have been shut down. However, GE should estimate what the transfer efficiency of these lines was. This could be done, for example, by measuring the transfer efficiency of similar coating equipment or evaluating historical data. If GE measured the actual transfer efficiency of the refrigerator E/S and

[1] It should be noted that even if this could be considered a "pening" bubble, it still would not be approvable under the ETPS due to the baseline issue.

range dip lines and estimated the actual transfer efficiency of the other lines, it would be able to use these values in determining the baseline emissions for the sources.

Proposed Rulemaking Action

Because of the deficiencies cited above, USEPA proposes to disapprove the incorporation of a bubble for General Electric in the Illinois Ozone SIP. This notice identifies major deficiencies which cause the revision to be unapprovable. However, if the State corrects these major deficiencies, it should also ensure conformance with USEPA requirements specified in (1) Appendix D of the Post-1987 ozone policy, titled "Discrepancies and Inconsistencies Found a Current SIP's" and (2) the "SIP Approvability Checklist-Enforceability," which is attached to a September 23, 1987, policy memorandum titled "Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency," before resubmitting the revision for approval by USEPA. These documents contain USEPA requirements (largely dealing with enforceability) which must be met for a site-specific SIP revision to be approved.

Under the Regulatory Flexibility Act, 5 U.S.C. Section 605(b), USEPA must assess the impact of any final rule on small entities. If this ACS is finally disapproved, it will not have a significant economic impact on a large number of small entities. Only a single entity, General Electric, is involved.

Under Executive Order 12291, this action is not "Major." It has been submitted to the Office of Management and Budget (OMB) for review.

Authority: 42 U.S.C. 7401–7642.

Dated: September 28, 1987.

Frank M. Covington,

Acting Regional Administrator.

Editorial Note: This document was received by the Office of the Federal Register, October 31, 1988.

[FR Doc. 88–25447 Filed 11–2–88; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[FRL-3471-1]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA is proposing to approve a revision to the Illinois State Implementation Plan (SIP) for total suspended particulates (TSP) from fuel combustion sources. The revision pertains to the incorporation of new rules to replace those remanded by the courts. USEPA's action is based upon a revision request which was submitted by the State to satisfy the requirements of Part D of the Clean Air Act (Act).

The USEPA revised the particulate matter standard on July 1, 1987 (52 FR 24634), and eliminated the TSP ambient air quality standard. The revised standard is expressed in terms of particulate matter with a nominal diameter of 10 micrometers or less (PM_{10}). However, at the State's option, USEPA continues to process TSP SIP revisions which were in process at the time the new PM_{10} standard was promulgated. In the policy published on July 1, 1987 (p. 24679, column 2), USEPA stated that it would regard existing TSP SIPs as necessary interim particulate matter plans during the period preceeding the approval of State plans specifically aimed at PM_{10}. If the TSP SIP revision is judged to include more stringent provisions than are in the existing TSP plan, USEPA's general policy is to approve it. It is USEPA's judgement that the regulations in this action would increase the stringency of the TSP plan and are, therefore, likely to result in better control of PM_{10} as well. Thus, USEPA is proposing this TSP SIP for approval.

DATE: Comments on this revision and on the proposed USEPA action must be received by December 5, 1988.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Randolph O. Cano, at (312) 886–6036, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706

Comments on this proposed rule should be addressed to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886–6036.

SUPPLEMENTARY INFORMATION: On May 31, 1972 (37 FR 10862), USEPA approved the incorporation of Illinois Pollution Control Board (IPCB) Rule 203(g)(1) and Rule 202(b) into the Illinois SIP. These rules were vacated and remanded by the Illinois Appellate Court on September 22, 1978, along with similar regulations concerning sulfur dioxide and, therefore, are no longer enforceable as part of the Illinois SIP.

Because these regulations were vacated, on July 12, 1979 (44 FR 40723), USEPA issued a notice of deficiency regarding the Illinois SIP. Today's rulemaking concerns regulations adopted to replace the fuel combustion regulations remanded by the Court. The regulations submitted by the State of Illinois to replace the remanded SO_2 regulations are the subject of a separate **Federal Register** notice.

On March 13, 1986, the Illinois Environmental Protection Agency (IEPA) submitted proposed regulations then being considered by the IPCB to replace the regulations vacated by the Illinois Appellate Court. In submitting these proposed regulations the State requested USEPA to initiate proposed rulemaking on these regulations. On July 2, 1986, the IPCB finally adopted regulations to replace Rule 203(g)(1). These regulations were submitted to USEPA on July 30, 1986, with a request to incorporate them into the SIP.

It should be noted that subsequent to the invalidation of these regulations the State of Illinois recodified all of its environmental regulations into Title 35 of the Illinois Administrative Code (IAC). The regulations being considered to replace Rule 203(g)(1) have been recodified as part of Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board. USEPA's description and evaluation of these regulations will utilize the revised numbering scheme.

Description and Evaluation of Rules

Section 212.201 Existing Sources Using Solid Fuel Exclusively Located in the Chicago Area

This Section provides an emission limit of 0.10 lbs/million British Thermal Units (Btu). This is the same limit that was approved in 1972. USEPA considers this rule to represent Reasonably Available Control Technology (RACT) for TSP sources in Illinois.

Section 212.202 Existing Sources Using Solid Fuel Exclusively located Outside the Chicago Area

This Section provides the following emission limits:

Actual heat input of sources in million Btu/hr (MI)	Emission limit in pounds per million Btu
Less than or equal to 10	1.0
Greater than 10 but less than 250	$5.18H^{-0.14}$
Greater than or equal to 250	0.1

These are the same limits that were approved in 1972. USEPA believes that these rules do represent RACT. They would apply both in attainment and nonattainment areas. USEPA solicits comment on whether the limits for boilers of less than 250 MBTU and located outside the Chicago area are RACT.

Section 212.203 Existing Controlled Sources Using Solid Fuel Exclusively

This Section allows for degradation of control equipment at sources subject to Sections 212.201 and 212.202. Emissions from these sources would in no case exceed 0.20 lbs per million Btu. The rule approved in 1972 would allow a source to degrade up to 0.05 lbs per million Btu from original design or acceptance performance test conditions. Proposed section 212.203 would additionally allow a source to degrade up to 0.05 lbs per million Btu from the most recent stack test submitted prior to April 1, 1985. This rule would apply in attainment and nonattainment areas alike. USEPA considers these Illinois rules, even with this relaxation, to represent RACT.

This rule, in effect, sets up a generic procedure for the State agency to provide an alternate emission limit for sources subject to Sections 212.201 or 212.202. If this provision is finally approved USEPA will require that each alternative emission limit issued pursuant to this provision be submitted to USEPA as a SIP revision.

Section 212.204 New Sources Using Solid Fuel Exclusively

This section would provide an emission limit of 0.1 lbs per million Btu in any one hour period for new solid fuel sources. This is the same limit that was approved as representing reasonably available control technology (RACT) in 1972 and is still approvable as RACT. Under the Clean Air Act's regulatory scheme new sources would also be subject to any applicable emission limits required by Part D, Section 111 or Section 112. These include lowest achievable emission limits rate (LAER), new source performance standards (NSPS) and national emission standards for hazardous air pollutants (NESHAPS).

Section 212.209 Village of Winnetka Generating Station

This section would provide as a variance a temporary emission limit of 0.25 lbs per million Btu for the Village of Winnetka if the Village files a petition to establish site-specific particulate standards within 60 days of the effective date of this rule. This variance would be effective until January 1, 1988, or until a final determination is made by the Illinois Pollution Control Board on the site-specific rulemaking, whichever occurs sooner; any site-specific emission limit must be submitted to USEPA as a SIP revision. This emission limit represents status quo emissions.

Winnetka is an attainment area with respect to TSP. Section 212.209 would not relax any regulations because there is no current particulate limit for this source.

Proposed Rulemaking Action

USEPA proposes to approve the following Illinois regulations: §§ 212.201, 212.202, 212.203, 212.204 and 212.209 of Title 35 of the Illinois Administrative Code. USEPA believes that, with the exception of § 212.209, these regulations represent RACT. Section 212.209 applies only to one source in an attainment area and would not relax any existing emission limits. Although USEPA proposes to approve these regulations today, it is noted that the Section 110 and Part D requirements of the act will not be fully satisfied until the State adopts and USEPA finally approves a replacement for the State's vacated opacity rule, Rule 202(b). Public comment is solicited on the proposed SIP revision, especially on the issue of RACT for boilers of less than 250 MMBTU, and on USEPA's proposed rulemaking action. Comments should be submitted to the Region V address at the beginning of this **Federal Register** notice. Public comments received by the date indicated above will be considered in the development of USEPA's final rulemaking.

Under 5 U.S.C. section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Authority: 42 U.S.C. 7401–7642.

Dated: January 2, 1987.

Valdas V. Adamkus,

Regional Administrator.

Editorial note.—This document was received by the Office of the Federal Register October 31, 1988.

[FR Doc. 88–25448 Filed 11–2–88; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[FRL-3470-7; NC-010]

Approval and Promulgation of Implementation Plans; North Carolina; SO_2 SIP Revision for Alba Waldensian and Valdese Manufacturing

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a source-specific revision to the North Carolina State Implementation Plan (SIP) for sulfur dioxide (SO_2). Ambient air quality modeling to support this SIP relaxation was submitted to EPA by the State on April 2, 1986. The modeling demonstrated that a less stringent SO_2 limit is approvable for Alba Waldensian, Inc., and Valdese Manufacturing Company and that the National Ambient Air Quality Standards (NAAQS) for SO_2 will be protected. No interstate impacts or attainment problems are expected as a result of approving this SIP revision.

DATE: To be considered, comments must be received on or before December 5, 1988.

ADDRESSES: Comments should be addressed to Gregg Worley at the Region IV EPA address below. Copies of the State's submittals are available for review during normal business hours at the following locations.

Air Quality Section, Division of Environmental Management, North Carolina Department of Natural Resources and Community Development, Archdale Building, 512 North Salisbury Street, Raleigh, North Carolina 27611

Air Programs Branch, Region IV, U.S. Environmental Protecuon Agency, 345 Courtland Street NE., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Gregg Worley of the Region IV EPA Air Programs Branch, at the above address and the following phone: (404) 347–2864, or (FTS) 257–2864.

SUPPLEMENTARY INFORMATION: On December 7, 1982 (47 FR 54934), EPA approved, for all but 24 sources in the State of North Carolina, a revision to the

State's regulation (2D.0516) which relaxed the SO_2 limit for fuel-burning sources. The original version of 2D.0516 prescribed a stepdown in SO_2 emissions for all fuel-burning sources (from 2.3 pounds per million BTU (lb/MBTU) to 1.6 lb/MBTU) by July 1, 1980. Air quality dispersion modeling submitted by the State in 1982 indicated that removal of the SO_2 stepdown requirement was approvable for all but 24 sources.

EPA indicated in the December 7, 1983, Federal Register notice that if future modeling could show that the relaxed SO_2 limit of 2.3 lb/MBTU was adequate to protect the NAAQS, then the stepdown requirement could be eliminated for other sources as well.

Alba Waldensian, Inc., and Valdese Manufacturing Company were two of the sources excluded from EPA's approval of the revised fuel-burning regulation. On April 2, 1986, North Carolina submitted the ambient air quality analysis necessary to show that Alba Waldensian and Valdese Manufacturing Company could be allowed to emit 2.3 lb SO_2/MBTU without jeopardizing the NAAQS.

The modeling analysis differs from the modeling submitted January 11, 1982, in that the load capacities for the Alba Waldensian facilities and the Valdese Manufacturing plant have been reduced. The new load capacities for the Alba Waldensian facilities are contained in permits No. 4766 and No. 4920. The new Valdese Manufacturing load capacities are in permit number 504R3. EPA proposes to incorporate the permits into the SIP so that the load capacities they contain will become federally enforceable.

The VALLEY dispersion model was used to estimate the ambient impact of the allowable SO_2 emission limit because the sources are located close together in complex terrain. The results of the analysis showed a maximum 24-hour concentration of 346 $\mu g/m^3$, which is below the 24-hour NAAQS of 365 $\mu g/m^3$. Demonstration of attainment with the 3-hour and annual ambient SO_2 standards was also made. In addition, the ISCST model was used to determine the downwash effects of nearby buildings on SO_2 concentrations near the two facilities. The maximum impacts predicted by this model were well below the NAAQS for SO_2. The determination was based on a block average interpretation of the SO_2 NAAQS. The modeling techniques supporting the demonstration are primarily based on modeling guidance in place at the time that the analysis was performed, i.e., the EPA Guidance on Air Quality Modeling (1978). Since that time, revisions to the modeling guidance have been promulgated (51 FR 32176 September 9, 1986). Since the modeling was completed and reviewed by EPA prior to publication of the revised guidance, EPA accepts the analysis.

In its review of the State's submittal for these two sources, EPA became aware of deficiencies in North Carolina's compliance test method for SO_2. The State has since worked to revise their compliance test method. The new method is State-effective and has been approved by EPA as a SIP revision on June 9, 1986 (53 FR 21638).

Actual SO_2 emissions at the two facilities have not increased as a result of eliminating the SO_2 stepdown requirement. Therefore, EPA's Prevention of Significant Deterioration (PSD) regulations (August 7, 1980, 45 FR 52676) do not apply to this SIP revision.

No analysis is required for compliance with the Good Engineering Stack Height rule revision because the stacks of both sources are below 65 meters. Also, there are no merged plume issues associated with this source-specific SIP revision.

EPA has also reviewed this SIP revision for consistency with section 110(a)(2)(E) of the Clean Air Act, and has found that the interstate impact of these sources will be significantly less than the significant impact concentrations for each averaging period. Due to present limitations on air quality modeling, the ambient analysis was limited to a 50 km radius around the Alba Waldensian and Valdese Manufacturing facilities. Both plants are located further than 50 km from any interstate boundary. Also, as shown in the Technical Support Document for this SIP revision, the VALLEY model demonstrated that the 3-hour and 24-hour ambient SO_2 concentrations resulting from these two sources' emissions would decrease markedly a short distance from the plant and that predicted ambient concentrations would fall in every case below the SO_2 standards. Therefore, in EPA's judgment, the revision will not contribute to SO_2 nonattainment in Tennessee, South Carolina, Virginia or more distant states. Neither will this revision interfere with PSD measures in the states surrounding North Carolina.

For further discussion of these issues and the air quality modeling analysis, please consult the Technical Support Document, which is available for public inspection at the EPA Region IV Office in Atlanta, Georgia.

Proposed Action

EPA is proposing to approve the revision to North Carolina regulation 2D.0516, submitted to EPA on March 22, 1977, as it applies to Alba Waldensian and Valdese Manufacturing. This will replace the existing federally approved limit of 1.6 lb SO_2/MBTU with the limit of 2.3 lb SO_2/MBTU for these two sources.

All interested persons are invited to comment on this action; comments received within 30 days of the publication of this notice will be considered by EPA in the final rulemaking.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Sulfur oxides.

Authority: 42 U.S.C. 7401–7642

Date: October 25, 1988.

Charles H. Sutfin,

Acting Deputy Regional Administrator.

Editorial note.—This document was received by the Office of the Federal Register October 31, 1988.

[FR Doc. 88-25449 Filed 11-2-88; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

Grants for Faculty Training Projects in Geriatric Medicine and Dentistry

AGENCY: Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes rules which would govern the program for Grants for Faculty Training Projects in Geriatric Medicine and Dentistry authorized by section 788(e) of the Public Health Service Act (the Act), as amended by the Omnibus Health Act of 1988 and the Public Health Service Amendments of 1987.

DATES: Comments on this proposed rule are invited. To be considered, comments must be received no later than January 3, 1989.

ADDRESSES: Written comments should be addressed to J. Jarrett Clinton, M.D., Director, Bureau of Health Professions (BHPr), Health Resources and Services Administration, Room 8-05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received will be available for public inspection and copying at the Office of Program Development, BHPr, Room 7–74, Parklawn Building, at the above address weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Donald L. Weaver, M.D., Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Room 4C–25, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone: 301–443–6793.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Health, Department of Health and Human Services, with the approval of the Secretary, proposes to add a new Subpart PP to Part 57 of Title 42 of the Code of Federal Regulations to implement section 788(e) of the Act, as amended by Pub. L. 99–660, the Omnibus Health Act of 1986, on November 14, 1986; and Pub. L. 100–177, the Public Health Service Amendments of 1987, on December 1, 1987. Section 788(e) authorizes the Secretary to make grants to and enter into contracts with schools of medicine, schools of osteopathy, teaching hospitals, and graduate medical education programs to provide support for projects to train physicians and dentists who plan to teach geriatric medicine or geriatric dentistry including traineeships and fellowships for participants in the programs. The Act requires that the geriatrics training be provided through one or both of the following projects: (1) A 1-year retraining program in geriatrics for physicians who are faculty members in departments of internal medicine, family medicine, gynecology, geriatrics, and psychiatry at schools of medicine and osteopathy, and dentists who are faculty members at schools of dentistry or at hospital departments of dentistry; and (2) a 1-year or 2-year internal medicine or family medicine fellowship program with emphasis in geriatrics, which shall provide training in clinical geriatrics and geriatric research for physicians who have completed graduate medical education programs in internal medicine, family medicine, psychiatry, neurology, gynecology, geriatrics, or rehabilitation medicine, and dentists who have completed postdoctoral dental education programs.

The Act further requires each project for which a grant is made under this provision to:

1. Be staffed by full-time teaching physicians who have experience or training in geriatric medicine;
2. Be staffed by full-time or part-time teaching dentists who have experience or training in geriatric dentistry;
3. Be based in a graduate medical education program in internal medicine or family medicine, or in a department of geriatrics in existence as of December 1, 1987;
4. Provide participants in the project with exposure to a diversified population of elderly individuals; and
5. Provide training in geriatrics and exposure to the physical and mental disabilities of elderly individuals through a variety of service rotations, such as geriatric consultation services, acute care services, dental services, geriatric psychiatry units, day and home care programs, rehabilitation services, extended care facilities, geriatric ambulatory care and comprehensive evaluation units, and community care programs for elderly mentally retarded individuals.

The major provisions of these proposed regulations are described below.

Section 57.4101 Definitions.

The term "extended care facility", is defined as a health care institution or distinct part of an institution that furnishes, in lieu of hospitalization, room and board and medically-prescribed skilled nursing care or rehabilitative services 24 hours a day by an organized medical staff. This definition would specify the type of facility and type of nursing care necessary to assure that trainees receive clinical experiences appropriate for geriatric care.

The term "fellowship program" is defined as a 1- or 2-year organized training effort sponsored by an allopathic or osteopathic medical school, a teaching hospital, or a graduate medical education program which is designed to provide training for: (a) Physicians who have completed graduate medical education programs in internal medicine, family medicine (including osteopathic general practice), psychiatry, neurology, gynecology, or rehabilitation medicine; and (b) dentists who have completed postdoctoral dental education programs. The minimal acceptable level of postdoctoral preparation for medical primary care disciplines would be 3 years of formal training or board certification.

The Department is proposing to include osteopathic general practice within the term "family medicine" to provide consistency with the use of "family medicine" with other health professions training programs authorized by the Act. (See Grants for Predoctoral, Graduate and Faculty Development Education Programs in Family Medicine, 42 CFR 57.1602.) The Department is proposing to require physicians in the medical primary care disciplines who wish to participate in the fellowship programs to have either 3 years of formal residency training or board certification because the Department views these alternatives as equal preparation. Although some physicians who are board certified have had less than 3 years of formal training to receive board certification, they must meet the established requirements for formal training and practice experience and pass a qualifying examination.

The term "full-time teaching physician" is defined as an allopathic or osteopathic physician faculty member of the grantee institution who is engaged in teaching, research, clinical, and administrative activities normally performed by teaching faculty employed on a full-time basis as defined by the grantee institution. The Department believes the use of the institution's definition will simplify project management without compromising the quality of the training provided.

The term "longitudinal care" is defined as the provision of medical or dental care to the same panel of elderly patients for a period of at least 9 months in each year of training. There is no standard regarding the period of time needed to gain the benefit of following specific patients through the course of their illnesses. The Department considers 9 months of continuous involvement with the same panel of patients to be sufficient to provide fellows with experience in managing the care of a number of patients with long-term illness or disability. Limiting the required period to 9 months would also provide curricular flexibility for participating programs. The Department notes that a 9-month period has been used to define longitudinal care for purposes of Grants for Residency Training in General Internal Medicine and Pediatrics, 42 CFR 57.3105(k).

The term "retraining program" is defined as a 1-year program of full-time individualized training in clinical geriatrics and geriatric research for physicians who are faculty members in departments of internal medicine, family medicine (including osteopathic general practice), gynecology, geriatrics, or psychiatry at schools of medicine and osteopathy, and dentists who are faculty members at schools of dentistry or at hospital departments of dentistry. The retraining program is expected to

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provide geriatric instruction for all fellows and also focus on one or more faculty skills that are determined to be most appropriate for each individual. Full-time training for a period of 1 year is needed to enhance fellows' knowledge in geriatrics, pedagogical skills, and research skills to the level needed for leadership roles in academic geriatric medicine or dentistry.

Section 57.4105 Project Requirements.

Among others, this section would establish the following project requirements:

1. The project must be under the programmatic control of a graduate medical education program in internal medicine or family medicine (including osteopathic general practice), or in a department of geriatrics in existence as of the date of enactment of the Public Health Service Amendments of 1987, December 1, 1987. The Department believes that programmatic control is a strong and reasonable indicator of the level of project involvement intended by the statute.

2. The project must be staffed by at least two physicians in full-time teaching positions who have experience or training in geriatric medicine and by at least one dentist who is employed in a full-time or part-time teaching position and has experience or training in geriatrics. A minimum of two physicians actively involved in the project is considered appropriate to provide academic input, clinical supervision, and a diversity of perspectives to fellows.

3. The project must provide fellows with exposure to a diverse population of elderly individuals. The population shall include: (a) Elderly in various levels of wellness from fully independent and well, to patients confined to bed with serious illness; and (b) elderly from a range of socioeconomic, racial and ethnic backgrounds. This requirement would implement the statutory requirement of a diverse population of patients by providing fellows with an understanding of the full range of functional capacities found in elderly populations. Exposure to individuals from different socioeconomic, racial and ethnic groups is needed to assure that psychosocial and culturally-relevant issues are an integral part of the training program.

4. The project must provide medical and dental training experiences in: (a) An ambulatory care setting, (b) an inpatient service, and (c) an extended care facility. During the course of the training, each fellow must receive experience in primary care, consultation, and longitudinal care. This requirement would implement the statutory requirements by specifying the types of settings and clinical experiences that all programs must offer to fellows. These categorizations of experiences and training sites encompass most of the rotations which are cited as examples in the Act and generically describe the clinical experiences in which physicians and dentists will typically encounter older individuals. Training in other settings, such as the home and community care programs, is encouraged but not required in this program.

5. Fellowship programs must have a curriculum which includes training in clinical geriatrics, teaching skills, administrative skills, and research skills for physicians and dentists. In addition to the statutory requirements of clinical geriatrics and research skills, it is proposed to require that administrative and teaching skills be included in the curriculum for fellowship programs. This requirement would assure that participants in the fellowship program, who generally have no faculty experience, would receive training in all the general areas that are considered necessary to prepare physicians and dentists for academic leadership positions in geriatrics.

6. Retraining programs must provide 1 year of full-time training suited to the individual needs of each fellow. To assure that the needs of all fellows can be met, each applicant must have the resources available to provide clinical, research and teacher-training experiences. The purpose of this requirement is to ensure that a program could meet the varied needs of existing faculty who wish to redirect their efforts to geriatrics.

7. Effective in the second year of grant support, a minimum of three entering fellows, including at least one physician and one dentist, must be enrolled in each training program for which grants support is received. The purpose of this requirement is to assure that the legislative intent to increase the number of faculty members with training in geriatrics is addressed by all applicants. A larger number was not considered appropriate in view of the uncertain number of quality applicants for this type of training. This proposed requirement would not be effective until the second year of the project to permit time for grantees to initiate new programs and recruit fellows.

Section 57.4106 How will applications be evaluated?

To further emphasize the importance of increasing the number of training positions available, the extent to which a project increases the number of training opportunities is proposed as a review criterion.

Section 57.4108 What financial support is available to fellows?

The Public Health Service Amendments of 1987, Pub. L. 100-177, amended the Act by authorizing traineeships and fellowships as available means of support. Since the participants in the training programs would be defined as "fellows" in § 57.4102, all such support would be in the form of fellowships. In accordance with established Department policy, the use of fellowship funds would be limited to: (1) Tuition and fees; (2) stipend support at the postdoctoral levels established by the Public Health Service; and (3) an allowance for travel to field training if the site is beyond reasonable commuting distance and requires the establishment of a temporary residence.

Regulatory Flexibility Act and Executive Order 12291

This notice governs a financial assistance program in which participation is voluntary. The rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291. For these reasons, the Secretary has determined that this rule is not a major rule under Executive Order 12291 and a regulatory impact analysis is not required. Further, because the rule does not have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980 is not required.

Paperwork Reduction Act of 1980

Sections 57.4110(a), 57.4112(b), and 57.4115 contain information collection requirements which are subject to OMB review. We have submitted an information request to OMB for approval of these requirements under section 3504(h) of the Paperwork Reduction Act of 1980. Other organizations and individuals desiring to submit comments on the information collection should direct them to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, DC 20505, ATTN: Desk Officer for HHS.

List of Subjects in 42 CFR Part 57

Dental health, Education of the disadvantaged, Educational facilities, Educational study programs, Emergency medical services, Grant programs-education, Grant programs-health, Health facilities, Health professions, Loan programs-health, Medical and dental schools, Student aid.

Accordingly, the Department of Health and Human Services proposes to add a new Subpart PP to Part 57 of Title 42 of the Code of Federal Regulations as set forth below.

Dated: July 18, 1988.

Ralph E. Reed,

Acting Assistant Secretary for Health.

Approved: October 18, 1988.

Otis R. Bowen,

Secretary.

(*Catalog of Federal Domestic Assistance, No. 13.158,* Grants for Faculty Training Projects in Geriatric Medicine and Dentistry)

PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENT, SCHOLARSHIPS AND STUDENT LOANS

1. 42 CFR Part 57 is amended by adding a new Subpart PP, entitled, "Grants for Faculty Training Projects in Geriatric Medicine and Dentistry" to read as follows:

Subpart PP—Grants for Faculty Training Projects in Geriatric Medicine and Dentistry

Sec.

57.4101 To what projects do these regulations apply?
57.4102 Definitions.
57.4103 Who is eligible to apply for a grant?
57.4104 For what projects may grant funds be requested?
57.4105 Project requirements.
57.4106 How will applications be evaluated?
57.4107 How long does grant support last?
57.4108 What financial support is available to fellows?
57.4109 Who is eligible for financial assistance as a fellow?
57.4110 What are the requirements for fellowships and the appointment of fellows?
57.4111 Duration of fellowships.
57.4112 Termination of fellowships.
57.4113 For what purposes may grant funds be spent?
57.4114 What additional Department regulations apply to grantees?
57.4115 What other audit and inspection requirements apply to grantees?
57.4116 Additional conditions.

Subpart PP—Grants for Faculty Training Projects in Geriatric Medicine and Dentistry

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, 87 Stat. 631 (42 U.S.C. 216); sec. 788(e) of the Public Health Service Act, 100 Stat. 3797, as amended by section 401 of Pub. L. 100-177, 101 Stat. 1007 (42 U.S.C. 295g-8).

§ 57.4101 To what projects do these regulations apply?

These regulations apply to grants to eligible schools and programs under section 788(e) of the Act for the purpose of providing support for projects to train physicians and dentists who plan to teach geriatric medicine or geriatric dentistry, including traineeships and fellowships for participants in these programs.

§ 57.4102 Definitions.

"Act" means the Public Health Service Act, as amended.

"Budget period" means the interval of time (usually 12 months) into which the project period is divided for budgetary and funding purposes.

"Council" means the National Advisory Council on Health Professions Education established by section 702 of the Act.

"Elderly" means a population with health care conditions and needs which differ significantly from those of younger people, which are often complicated by the physical, behavioral, and social changes associated with aging. This would include all persons over 60, but may include slightly younger people who are subject to similar physical and/or mental conditions.

"Extended care facility" means a health care institution or distinct part of an institution that furnishes, in lieu of hospitalization, room and board and medically-prescribed skilled nursing care or rehabilitative services 24 hours a day by an organized medical staff.

"Fellow" means an allopathic physician, osteopathic physician, or dentist participating in a retraining program or fellowship program supported by a grant under section 788(e).

"Fellowship program" means a 1- or 2-year organized training effort sponsored by an allopathic or osteopathic medical school, a teaching hospital, or a graduate medical education program which is designed to provide training for—

(a) Physicians who have completed graduate medical education programs in internal medicine, family medicine (including osteopathic general practice), psychiatry, neurology, gynecology, or rehabilitation medicine; and

(b) Dentists who have completed postdoctoral dental education programs.

The minimal acceptable level of postdoctoral preparation for medical primary care disciplines is 3 years of formal training or board certification.

"Full-time teaching physician" means an allopathic or osteopathic physician who is a faculty member of the grantee institution and who is engaged in teaching, research, clinical, and administrative activities normally performed by teaching faculty employed on a full-time basis, as defined by the grantee institution.

"Full-time teaching dentist" means a dentist who is a faculty member and who is engaged in teaching, research, clinical, and administrative activities normally performed by teaching faculty employed on a full-time basis, as defined by the institution.

"Full-time training" means full-time training, as defined by the grantee institution.

"Geriatric dentistry" means the provision of dental care for elderly persons, particularly those with one or more chronic or debilitating, physical or mental illnesses with associated medication or psychosocial problems.

"Geriatric medicine" means the prevention, diagnosis, and medical treatment of illness and disability as required by the needs of the elderly.

"Graduate medical education program" means a program sponsored by a school of medicine, a school of osteopathy, a hospital, or a public or nonprofit private institution, which:

(1) Offers postgraduate medical training in the specialties and subspecialties of medicine; and

(2) Has been accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association through its Committee on Postdoctoral Training.

"Grantee" means an entity that receives a grant and assumes legal and financial responsibility both for the awarded funds and for the performance of the grant-supported activity.

"Longitudinal care" means the provision of medical or dental care to the same panel of elderly patients for a period of at least 9 months in each year of training.

"Postdoctoral dental education program" means a program sponsored by a school of dentistry, a hospital, or a public or nonprofit private institution, which:

(1) Offers postdoctoral training in the specialties of dentistry, advanced education in general dentistry, or a dental general practice residency; and

(2) Has been accredited by the Commission on Dental Accreditation.

"Primary care" means health care which may be initiated by the patient or the provider, or both, in a variety of settings, and which consists of a broad range of personal health care services including promotion and maintenance of health, prevention of illness and disability, basic care during acute and chronic phases of illness, guidance and

counseling of individuals and families, and referral to other health care providers and community resources when appropriate. In providing the services:

(1) The physical, emotional, social, and economic status of the patient is considered in the context of his or her cultural and environmental background, including the family and community; and

(2) The patient is provided timely access to the health care system.

"Project" means all activities, including training programs, specified or described in a grant application as approved for funding.

"Project director" means an individual designated by the recipient and approved by the Secretary to direct the project being supported under section 749(a).

"Project period" means the total time for which support for a project has been approved, including any extension thereof, by the awarding unit.

"Retraining program" means a 1-year program of full-time individualized training in clinical geriatrics and geriatric research for physicians who are faculty members in departments of internal medicine, family medicine (including osteopathic general practice), gynecology, geriatrics, or psychiatry at schools of medicine and osteopathy, and dentists who are faculty members at schools of dentistry or at hospital departments of dentistry.

"School of medicine" or "school of osteopathy" means a public or nonprofit private school which provides training leading, respectively, to a degree of doctor of medicine or a degree of doctor of osteopathy, and which is accredited as provided in section 701(5) of the Act.

"Secretary" means the Secretary of Health and Human Services, and any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

"State" means, in addition to the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands (the Republic of Palau), the Republic of the Marshall Islands, and the Federated States of Micronesia.

"Teaching hospital" means a public or nonprofit private hospital which is:

(1) Accredited by the Joint Commission on Accreditation of Hospitals or the American Osteopathic Association; and

(2) Operates at least one postdoctoral training program which is fully or provisionally accredited by the Accreditation Council for Graduate Medical Education or approved by the American Osteopathic Association.

§ 57.4103 Who is eligible to apply for a grant?

Public or nonprofit private schools of medicine, schools of osteopathy, teaching hospitals, and graduate medical education programs located in a State are eligible to apply for a grant under this subpart. Each eligible applicant desiring a grant under this subpart shall submit an application in the form and at such time as the Secretary may prescribe.[1]

§ 57.4104 For what projects may grant funds be requested?

Each eligible applicant must propose a fellowship program or a retraining program.

§ 57.4105 Project requirements.

A project supported under this subpart must be conducted in accordance with the following requirements:

(a) The project must have a project director who is employed full time by the grantee institution;

(b) Projects must have an appropriate administrative and organizational plan, and adequate faculty, physical, and administrative resources for the achievement of stated objectives;

(c) Projects must systematically evaluate the training program, including the performance and competence of trainees and faculty, the administration of the program, and the degree to which program and educational objectives are met;

(d) The project must be under the programmatic control of a graduate medical education program in internal medicine or family medicine (including osteopathic general practice) or in a department of geriatrics in existence as of December 1, 1987;

(e) The project must be staffed by at least two physicians in full-time teaching positions who have experience or training in geriatric medicine and by at least one dentist who is employed in a full- or part-time teaching position and has experience or training in geriatrics;

(f) The project must provide fellows with exposure to a diverse population of elderly individuals. The population must include:

(1) Elderly in various levels of wellness from fully independent and well, to patients confined to bed with serious illness; and

(2) Elderly from a range of socioeconomic and racial and ethnic backgrounds;

(g) The project must provide medical and dental training experiences in:

(1) An ambulatory care setting;

(2) An inpatient service; and

(3) An extended care facility.

During the course of the training, each fellow must receive experience in primary care, consultation, and longitudinal care;

(h) Fellowship programs must have a curriculum which includes training in clinical geriatrics, teaching skills, administrative skills, and research skills for physicians and dentists;

(i) Retraining programs must provide 1 year of full-time training suited to the individual needs of each fellow. To assure that the needs of all fellows can be met, each retraining program must have the resources available to provide clinical, research, and teacher-training experience; and

(j) Effective in the second year of grant support, a minimum of three entering fellows, including at least one physician and one dentist, must be enrolled in each training program for which grant support is received.

§ 57.4106 How will applications be evaluated?

(a) After consultation with the National Advisory Council on Health Professions Education established by section 702 of the Act, the Secretary will approve projects which best promote the purposes of section 788(e) of the Act. The Secretary will consider, among other factors:

(1) The extent to which the proposed training program will prepare physicians and dentists to perform the research, teaching, administrative and clinical duties of a faculty member specializing in geriatrics;

(2) The degree to which the project plan adequately provides for meeting the requirements set forth in § 57.4105;

(3) The administrative, management and resource capability of the applicant to carry out the proposed project in a cost-effective manner;

(4) The potential for the applicant to continue the program without Federal support after completion of the requested project period; and

(5) The extent to which the project will increase the number of geriatric fellowship and retraining positions available for individuals who want to prepare for academic careers in geriatric medicine and dentistry.

[1] Applications and instructions (PHS Form 6025-1, OMB # 0915-0060) may be obtained from the Grants Management Officer, Bureau of Health Professions, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

(b) In determining the funding of applications approved under paragraph (a) of this section, the Secretary will consider any special factors relating to national needs as the Secretary may from time to time announce in the Federal Register.

§ 57.4107 How long does grant support last?

(a) The notice of grant award specifies the length of time the Secretary intends to support the project without requiring the project to recompete for funds. This period, called the project period, will not exceed 3 years.

(b) Generally, the grant will initially be funded for 1 year, and subsequent continuation awards will also be for 1 year at a time. Decisions regarding continuation awards and the funding levels of these awards will be made after consideration of such factors as the grantee's progress and management practices, existence of legislative authority, and the availability of funds. In all cases, continuation awards require a determination by the Secretary that continued funding is in the best interest of the Federal Government.

(c) Neither the approval of any application nor the award of any grant shall commit or obligate the United States in any way to make any additional, supplemental, continuation, or other award with respect to any approved application or portion of an approved application. For continuation support, grantees must make separate application at such times and in such a form as the Secretary may prescribe.

§ 57.4108 What financial support is available to fellows?

Expenditures from fellowship funds are limited to:

(a) Tuition and fees, in accordance with the established rates of the institution, except as limited by the Secretary;

(b) Stipend support, in accordance with established Public Health Service postdoctoral stipend levels; and

(c) Travel to field training if the site is beyond a reasonable commuting distance and requires the fellow to establish a temporary new residence. However, fellowship funds may not be used for daily commuting from the new place of residence to the field training headquarters.

§ 57.4109 Who is eligible for financial assistance as a fellow?

To be eligible for a fellowship an individual must:

(a) Be a resident of the United States and either a United States citizen, a United States National, an alien lawfully admitted for permanent residence in the United States, a citizen of the Commonwealth of the Northern Mariana Islands (CNMI), a citizen of the Trust Territory of the Pacific Islands (TTPI) (consisting of the Republic of Palau), or a citizen of the Republic of the Marshall Islands (RMI) or the Federated States of Micronesia (FSM) (both formerly part of the TTPI);

(b) Be a physician or a dentist enrolled in a "fellowship program" or a "retraining program" as defined in § 57.4102; and

(c) Not be receiving concurrent support for the same training from another Federal education award which provides a stipend or otherwise duplicates financial provisions except education benefits under the Veteran's Readjustment Benefits Act and loans from Federal sources.

§ 57.4110 What are the requirements for fellowships and the appointment of fellows?

(a) The grantee must complete a statement which documents the appointment of each fellow. To complete this statement the grantee must require the provision of information and documentation of eligibility by each fellow. The statement of appointment must be completed by the beginning of the training period or as soon thereafter as possible if the fellow receives notice of his or her fellowship appointment after the training period has begun. The statement of appointment must include information to document the eligibility of the fellow and certify that there will be compliance with all applicable Public Health Service terms and conditions governing the appointment. The program director must sign the statement on behalf of the grantee, and the fellow must sign it thus certifying the statements are true and complete. The original copy of the statement must be retained by the grantee to be available for program review and financial audit. A copy shall be provided to the fellow for his or her records.

(b) The grantee may not require fellows to perform work which is not an integral part of the geriatric training program, or to perform services which detract from or prolong their training.

§ 57.4111 Duration of fellowships.

An appointment to a fellowship may be made for a period not to exceed 12 months. Fellowship assistance for participants in 1-year fellowship programs and retraining programs is limited to 12 months. Participants in 2-year fellowship programs may receive a second 12-month appointment for a total period of 24 months.

§ 57.4112 Termination of fellowships.

(a) The grantee must terminate a fellowship:

(1) Upon request of the fellow;

(2) If the fellow withdraws from the grantee institution; or

(3) If the grantee determines that:

(i) The fellow is no longer an active participant in the training program; or

(ii) The fellow is not eligible or able to continue in accordance with its standards and practices.

(b) The grantee must deposit any Federal portion of the tuition refund owed to a fellow into the grant account and provide written notice to the fellow that it is doing so.

§ 57.4113 For what purposes may grant funds be spent?

(a) A grantee shall only spend funds it receives under this subpart according to the approved application and budget, the authorizing legislation, terms and conditions of the grant award, applicable cost principles specified in Subpart Q of 45 CFR Part 74, and the requirements of this notice.

(b) Grantees may not spend grant funds for sectarian instruction or for any religious purpose.

(c) Any balance of federally-obligated grant funds remaining unobligated by the grantee at the end of a budget period may be carried forward to the next budget period, for use as prescribed by the Secretary, provided a continuation award is made. If at any time during a budget period, it becomes apparent to the Secretary that the amount of Federal funds awarded and available to the grantee for that period, including any unobligated balance carried forward from prior periods, exceeds the grantee's needs for the period, the Secretary may adjust the amounts awarded by withdrawing the excess. A budget period is an interval of time (usually 12 months) into which the project period is divided for funding and reporting purposes.

§ 57.4114 What additional Department regulations apply to grantees?

Several other regulations apply to grants under this subpart. These include, but are not limited to:

42 CFR Part 50, Subpart D—Public Health Service grant appeals procedure
45 CFR Part 16—Procedures of the Departmental Grant Appeals Board
45 CFR Part 46—Protection of human subjects
45 CFR Part 74—Administration of grants
45 CFR Part 75—Informal grant appeals procedures

45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of Title VI of the Civil Rights Act of 1964

45 CFR Part 81—Practice and procedure for hearings under Part 80 of this Title

45 CFR Part 83—Regulation for the administration and enforcement of sections 794A and 855 of the Public Health Service Act [1]

45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance

45 CFR Part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance

45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance

§ 57.4115 What other audit and inspection requirements apply to grantees?

Each grantee must, in addition to the requirements of 45 CFR Part 74, meet the requirements of section 705 of the Act, concerning audit and inspection.

§ 57.4116 Additional conditions.

The Secretary may impose additional conditions in the grant award before or at the time of the award if he or she determines that these conditions are necessary to assure or protect the advancement of the approved activity, the interest of the public health, or the conservation of grant funds.

[FR Doc. 88-25474 Filed 11-2-88; 8:45 am]

BILLING CODE 4160-16-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-512, RM-5418, RM-5527]

Radio Broadcasting Services; Bonita Springs and Cape Coral, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule.

SUMMARY: The Commission requests comments on two mutually exclusive petitions. Jacor Communications, Inc. seeks the allotment of Channel 283A to Bonita Springs, Florida, as the community's second local FM service. Channel 281A can be allotted to Bonita Springs in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.9 kilometers (4.3 miles) west to avoid a short-spacing to Channel 282C at West Beach, Florida. The coordinates for this allotment are North Latitude 26-20-36 and West Longitude 81-50-50. Radio Cape Coral requests the substitution of Channel 280C1 for Channel 279C2 at Cape Coral, Florida, and the modification of its license for Station WRCC(FM) to specify operation on the higher powered channel. Channel 280C1 can be allotted to Cape Coral in compliance with the Commission's minimum distance separation requirements with a site restriction of 29.7 kilometers (18.5 miles) northeast to accommodate petitioner's desireed transmitter site. The cordinates for this allotment are North Latitude 26-47-43 and West Longitude 81-40-04.

DATES: Comments must be filed on or before December 19, 1988, and reply comments on or before January 3, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Mr. Frank Wood, President and Chief Operating Officer, Jacor Communications, Inc., 1300 Central Trust Center, 201 East Fifth Street, Cincinnati, Ohio 45202 (Petitioner for Bonita Springs), Peter A. Rohrbach, Esq., Marissa G. Repp, Esq., Hogan & Hartson, 555 13th Street, NW., Washington, DC 20004-1109 (Counsel to Jacor), and John T. Scott, III, Esq., Crowell and Moring, 1001 Pennsylvania Avenue, NW., Washington, DC 20004-2505 (Counsel to Radio Cape Coral).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 734-8530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-512, adopted September 30, 1988, and released October 27, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-25461 Filed 11-2-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-511, RM-5410]

Radio Broadcasting Services; Clearwater, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule.

SUMMARY: The Commission requests comments on a petition by Gulf Coast Radio, Inc. proposing the substitution of Channel 250C for Channel 250C1 Clearwater, Florida, and the modification of its license for Station WKRL(FM) to specify operation on the higher powered channel. Channel 250C can be allotted to Clearwater in compliance with the Commission's minimum distance separation requirements with a site restriction of 15.1 kilometers (9.4 miles) northeast to accommodate petitioner's desired location. The coordinates for this allotment are North Latitude 28-02-34 and West Longitude 82-40-16. In accordance with § 1.420 of the Commission's Rules, we shall not accept competing expressions of interest in use of Channel 250C at Clearwater or require petitioner to demonstrate the availability of an additional equivalent channel for use by other interested parties.

DATE: Comments must be filed on or before December 15, 1988, and reply comments on or before December 30, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Donald P. Zelfang, Esq., Jack W. Whitley, Esq., Baker & Hostetler, 1050 Connecticut Avenue, NW., Suite 1100, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-500, adopted September 26, 1988, and released October 24, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete test of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this preceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel involve channel allotments. See 47 CFR 1.1205(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Police and Rules Division, Mass Media Bureau.

[FR Doc. 88-25462 Filed 11-2-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-503; RM-5515]

Radio Broadcasting Services; Fort Myers Villas, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule; denial of petition.

SUMMARY: The Commission dismisses the request of Sunshine Broadcasting, Inc. to substitute Channel 291A for Channel 292A at Fort Myers Villas, Florida, and to modify its construction permit accordingly. Additionally, Sunshine Broadcasting, Inc.'s request to substitute Channel 275A for Channel 292A at Fort Myers Villas and to substitute Channel 292A for Channel 276A at Naples, Florida, which requires the modification of Station WSGL's license, is denied. With the action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-80, adopted September 30, 1988, and released October 27, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-25463 Filed 11-2-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-496, RM-5435]

Radio Broadcasting Services; Lumpkin, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by William L. Taylor, Jr. seeking the allotment of Channel 257C2 to Lumpkin, Georgia, as the community's first local FM service. Channel 257C2 can be allotted to Lumpkin in compliance with the Commission's minimum distance separation requirements with a site restriction of 19 kilometers (11.8 miles) southwest to avoid a short-spacing to Station WAYS, Channel 256C1, Macon, Georgia, and to the construction permit of Station WDMG-FM, Channel 258C, Douglas, Georgia. The coordinates for this allotment are North Latitude 31-54-30 and West Longitude 84-54-38.

DATES: Comments must be filed on or before December 15, 1988, and reply comments on or before December 30, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: William L. Taylor, Jr., 1444 Dauset Drive, Griffin, Georgia 30223 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-499, adopted September 23, 1988, and released October 24, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-25464 Filed 11-2-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-495, RM-5436]

Radio Broadcasting Services; Walpolon, MD

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Guderian Broadcasting Inc. seeking the

[1] Section 794A of the Public Health Service Act was redesignated as section 704 by Pub. L. 94-484; section 855 of the Public Health Service Act was redesignated as section 855 by Pub. L. 94-63.

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substitution of Channel 295C2 for Channel 296A at Wahpeton, ND, and the modification of its construction permit for Station KGWB to specify operation on the higher powered channel. Channel 295C2 can be allotted to Wahpeton in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.6 kilometers (5.3 miles) northeast to avoid a short-spacing to Station KGIM–FM, Channel 294C1, Aberdeen, SD. The coordinates for this allotment are North Latitude 46–18–00 and West Longitude 96–29–36. Canadian concurrence is required. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest in use of Channel 295C2 at Wahpeton or require the petitioner to demonstrate the availability of an additional equivalent channel for use by such parties.

DATES: Comments must be filed on or before December 15, 1988, and reply comments on or before December 30, 1988.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Samuel Miller, Esq., Miller & Fields, P.C., 1990 M Street, NW., Suite 700, Washington, DC 20036 and Vincent A. Pepper, Pepper & Corazzini, 1776 K Street, NW., Suite 200, Washington, DC 20006 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, [202] 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–498, adopted September 23, 1988, and released October 24, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–25465 Filed 11–2–88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88–500 RM–6436]

Radio Broadcasting Services; South Webster, OH

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Christian R. Caggiano seeking the allotment of Channel 235A to South Webster, Ohio, as the community's first local FM service. Channel 235A can be allotted to South Webster in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.3 kilometers (1.4 miles) each to avoid a short-spacing to the pending application of Station WLLT, Channel 235B, Fairfield, Ohio, to relocate its transmitter and improve its facilities (BPH–880304IA). The coordinates for this allotment are North Latitude 38–48–48 and West Longitude 82–42–00. Canadian concurrence is required since South Webster is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before December 15, 1988, and reply comments on or before December 30, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Christian R. Caggiano, 6126 Sagimore Court, FT. Wayne, Indiana 46835 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–500, adopted September 28, 1988, and released October 24, 1988. The full text of this Commission decision is available for inspection and copying during business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–25466 Filed 11–2–88; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 53, No. 213
Thursday, November 3, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

National Advisory Council on Rural Development; Meetings

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776), the Office of the Secretary schedules the fourth meeting of the National Advisory Council on Rural Development:

Name: National Advisory Council on Rural Development

Date: November 16–17, 1988

Time and Place: November 16–17, 1988; Holiday Inn, Capitol 550 C Street SW., Washington, DC. November 16, 8:00 a.m.—5:00 p.m.; November 17, 8:00 a.m.—2:00 p.m.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: To advise the Secretary on the rural development needs, goals, objectives, plans, and recommendations of multistate, State, substate and local organizations and jurisdictions. The Council will provide the Secretary with assistance in idenfiying rural problems and supporting efforts and initiatives in rural development.

Contact Person: Leslie Schuchart, Confidential Assistant, Office of the Under Secretary for Small Community and Rural Development, U.S. Department of Agriculture, Room 219–A, Administration Building, Washington, DC 20250, telephone (202) 447–5371.

Done at Washington, DC, this 31st day of October, 1988.

Roland R. Vautour,

Under Secretary for Small Community and Rural Development.

[FR Doc. 88–25495 Filed 11–2–88; 8:45 am]

BILLING CODE 3410-01-M

Farmers Home Administration

Technical Assistance and Training Grants Program; Proposal To Exclude Program and Activity; From Executive Order 12372

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice.

SUMMARY: This notice proposes to inform all interested persons that the Farmers Home Administration's Technical Assistance and Training Grants Program (TAT) is being proposed for exclusion from coverage under Executive Order (EO) 12372, "Intergovernmental Review of Federal Programs." This notice sets forth the justification to exclude this program on the basis that it does not directly affect State and local governments. A full understanding of the requirements of the Order may be gained by referring to the final rules published in 7 CFR Part 3015, Subpart V, at 48 FR 29100, dated June 24, 1983.

DATE: Comments must be received on or before December 5, 1988.

ADDRESS: Submit written comments, in duplicate, to the Office of the Chief Directives and Forms Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, Washington, DC 20250. All written comments made pursuant to this Notice will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. T.W. Davis, Loan Specialist, Water and Waste Disposal Division, Farmers Home Administration, Room 6334, South Agriculture Building, Washington, DC 20250 (Telephone: 202–382–9586).

SUPPLEMENTARY INFORMATION: The program listed below by Catalog of Federal Domestic Assistance (CFDA) number is being proposed for exclusion from coverage under EO 12372.

Farmers Home Administration

10.438 Technical Assistance and Training Grants

The objectives of this program are to: (a) Identify and evaluate solutions to water and waste disposal problems in rural areas; (b) assist applicants in preparing applications for water and waste disposal grants made in accordance with Subpart H of Part 1942; and (c) improve operation and maintenance of existing water and waste disposal facilities in rural areas. Organizations eligible for TAT Grants are private nonprofit organizations that have been granted tax exempt status by the Internal Revenue Service of the United States and have the proven ability and actual capacity to provide technical assistance and/or training to associations.

No construction or development of water and waste disposal projects will be funded by this program.

Date: October 27, 1988.

Robert Sherman,

Acting Administrator, Farmers Home Administration.

[FR Doc. 88–25360 Filed 11–2–88; 8:45 am]

BILLING CODE 3410-07-M

Food and Nutrition Service

Food Stamp Program; Thrifty Food Plan (TFP) and Income Eligibility Standards and Deductions for the 48 States and DC, Alaska, Hawaii, Guam, and the Virgin Islands

AGENCY: Food and Nutrition Service, USDA.

ACTION: General notice.

SUMMARY: The Department of Agriculture is updating: (1) The TFP which determines the maximum amount of food stamps which participating households receive, (2) the limits on gross and net income which certain households may have and still be eligible for food stamps, and (3) the standard deduction and the maximum amounts for the excess shelter expense deduction available to certain households. These adjustments, required by law, take into account new legislation and changes in the cost of living.

EFFECTIVE DATE: October 1, 1988.

FOR FURTHER INFORMATION CONTACT: Judith M. Seymour, Supervisor, Eligibility and Certification Regulations Section, Certification Policy Branch, Program Development Division, Food Stamp Program, Food and Nutrition Service, USDA, Alexandria, Virginia 22302, (703) 756–3496. Copies of the Regulatory Impact Analysis, which is

BEST COPY AVAILABLE

summarized in this preamble, are also available from Ms. Seymour.

SUPPLEMENTARY INFORMATION:

Publication

State agencies must implement this action on October 1, 1988 and need advance notice of the new amounts to meet the implementation deadline. Based on regulations published at 47 FR 46485–46487 (October 19, 1982) annual statutory adjustments to the TFP, income eligibility standards, and deductions are issued by General Notices pubished in the **Federal Register** and not through rulemaking proceedings.

Classification

Executive Order 12291. This action has been reviewed under Executive Order 12291 and Secretary's Memorandum 1512–1. The Department considers it a major action because it will increase the Food Stamp Program's cost by more than $100 million. It will not result in a major increase in costs or prices except to the Federal Government, nor will it affect competition, productivity, employment, investment or innovation.

Executive Order 12372. The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final rule related Notice(s) to 7 CFR Part 3015, Subpart V (Cite 48 *FR* 29115, June 24, 1983; or 48 FR 54317, December 1, 1983, as appropriate, and any subsequent notices that may apply), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act. Anna Kondratas, Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. The action will increase the amount of money spent on food through food stamps. However, this money will be distributed among the nation's food vendors, so the effect on any one vendor will not be significant.

Paperwork Reduction Act. This action does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB).

Regulatory Impact Analysis

Need for Action. This action is required by Sections 3(o), 5(c) and 5(e) of the Food Stamp Act of 1977, as amended. Section 3(o), as amended by Pub. L. 100–435, the Hunger Prevention Act of 1988, requires that the October 1, 1988 change in food stamp allotments be based upon 100.65 percent of the June 1988 cost of the TFP for a family of four persons consisting of a man and woman ages 20–50 and children 6–8 and 9–11. Adjustments are made to take into account household size, economies of scale and a requirement to round the final results down to the nearest dollar increments. Section 5(c) requires that the income eligibility standards for the program be adjusted on October 1, 1988 based on changes in the Federal income poverty guidelines. Section 5(e) requires that the standard deductions and the maximum amounts for the excess shelter expense deductions be adjusted on October 1, 1988 to the nearest lower dollar increments to reflect certain changes for the 12 months ending June 30, 1988.

Benefits. This action increases maximum food stamp allotments, income eligibility standards, and deductions based on the changing cost of living.

Costs. It is estimated that this action will increase the cost of the Food Stamp Program by approximately $665 million in Fiscal Year 1989.

Background

Income Eligibility Standards. The eligibility of households for the Food Stamp Program, except those in which all members are receiving public assistance (PA) or supplemental security income benefits (SSI), is determined by comparing their incomes to the appropriate income eligibility standards (limits). Households containing an elderly or disabled member need to have net incomes below the net income limits. Households which do not contain an elderly or disabled member must have net incomes below the net income limit and gross incomes below the gross income limit. Households in which all members are receiving PA or SSI are categorically eligible; their incomes do not have to be below the income limits.

In addition, elderly individuals (and their spouses) who are unable to prepare meals because of certain disabilities, may be considered separate households, even if they are living and eating with another household. The Act limits separate household status to those persons who meet both of the following requirements:

(1) Their own income may not exceed the net income eligibility standards, and

(2) The income of those with whom they reside does not exceed 165 percent of the poverty line.

The net and gross income limits are derived from the Federal income poverty guidelines. The net income limit is 100 percent of the guidelines; the gross income limit is 130 percent of the guidelines. The guidelines are updated annually. Based on that update, the Food Stamp Program's income eligibility standards are updated annually.

Formerly, the updates of the Food Stamp Program's income eligibility standards were effective July 1 of each year. This schedule was changed by section 803 of Pub. L. 100–77, the Stewart B. McKinney Homeless Assistance Act (see 52 FR 36392), which amended section 5(c) of the Food Stamp Act.

Therefore, beginning with this update, the change in the income eligibility standards will be effective each October 1.

The revised income eligibility standards are as follows:

Food Stamp Program

NET MONTHLY INCOME ELIGIBILITY STANDARDS

(100 percent of poverty level)

Household size	48 States [1]	Alaska	Hawaii
1	$461	$601	$535
2	645	805	742
3	808	1,010	930
4	971	1,214	1,117
5	1,135	1,418	1,305
6	1,298	1,622	1,492
7	1,461	1,826	1,680
8	1,625	2,030	1,867
Each additional member	+164	+206	+188

GROSS MONTHLY INCOME ELIGIBILITY STANDARDS

(130 percent of poverty level)

Household size	48 States [1]	Alaska	Hawaii
1	$599	$782	$721
2	838	1,047	965
3	1,050	1,312	1,208
4	1,263	1,578	1,452
5	1,475	1,843	1,696
6	1,687	2,109	1,940
7	1,900	2,374	2,183
8	2,112	2,639	2,427
Each additional member	+213	+266	+244

GROSS MONTHLY INCOME ELIGIBILITY STANDARDS FOR HOUSEHOLDS WHERE ELDERLY/DISABLED ARE A SEPARATE HOUSEHOLD

(165 percent of poverty level)

Household size	48 States [1]	Alaska	Hawaii
1	$794	$992	$915
2	1,068	1,329	1,224
3	1,353	1,666	1,534
4	1,602	2,002	1,843
5	1,872	2,338	2,152
6	2,141	2,675	2,462
7	2,411	3,013	2,771
8	2,680	3,350	3,080
Each additional member	+270	+337	+310

[1] Includes District of Columbia, Guam and the Virgin Islands.

Thrifty Food Plan. The TFP is a plan for the consumption of foods of different types (food groups) that families might use to provide nutritious meals and snacks for family members. The plan suggests amounts of food for men, women, and children of different ages, and it meets all dietary standards. The cost of the TFP is adjusted to reflect changes in the costs of the food groups.

The TFP also constitutes the basis for allotments for food stamp households. Food stamp allotments are adjusted periodically to reflect changes in cost levels. Section 3(o) of the Food Stamp Act of 1977, as amended by Public Law 100–435, provides that the next adjustment will take place on October 1, 1988, based upon 100.65 percent of the June 1988 cost of the TFP for a family of four persons consisting of a man and woman ages 20–50 and children 6–8 and 9–11. In June 1988, the cost of the TFP was $298.10 in the 48 States and DC, $376.70 in Alaska, $454.10 in Hawaii, $439.30 in Guam, and $383.20 in the Virgin Islands.

To obtain the maximum food stamp benefit for each household size, the TFP costs for the four-person household were increased by 0.65 percent, divided by four, multiplied by the appropriate household size and economy of scale factor, and the final result was rounded down to the nearest dollar. The maximum benefit, or allotment, is paid to households which have no net income. For households which have some income, their allotment is determined by reducing the maximum allotment for their household size by 30 percent of the household's net income.

Maximum food stamp benefits for Guam and the Virgin Islands cannot exceed those in the 50 States and DC, so they are based upon the lower of their respective TFPs or the TFP for rural II Alaska. TFPs for Alaska and Hawaii are based upon an adjusted average for the six-month period that includes June 1988 (see 52 FR 49055–6). The adjusted average provides a proxy for actual June 1988 TFP costs. In addition, in Alaska, where the TFP is based on Anchorage prices, the urban allotment is the higher of the allotment that was in effect in urban areas on October 1, 1985 or 100.79 percent of the Anchorage TFP. The allotment for rural I areas is the higher of the allotment that was in effect in each area on October 1, 1985 or 100.79 percent of the Anchorage TFP. The allotment for rural I areas is the higher of the allotment that was in effect in each area on October 1, 1985 or 128.52 percent of the Anchorage TFP. (Thus, the allotment for Nenana, Alaska will be at the previous level for rural Alaska.) The rural II allotment is 156.42 percent of the Anchorage TFP. For further information concerning the allotments for urban Alaska, rural I Alaska, Nenana, and rural II Alaska, see 50 FR 13759–13761. Allotments for urban Alaska, rural I Alaska, rural II Alaska, Nenana, Hawaii, Guam and the Virgin Islands are based on 100.65 percent of the June 1988 TFP to reflect the provisions of the Hunger Prevention Act.

The following table shows the new allotments for the 48 States and DC, urban Alaska, rural I Alaska, rural II Alaska, Nenana, Hawaii, Guam, and the Virgin Islands.

ALLOTMENT AMOUNTS [1]—OCTOBER 1988, AS ADJUSTED

Household size	48 States and DC	Urban Alaska [2]	Rural I Alaska [3]	Rural II Alaska [4]	Nenana [5]	Hawaii	Guam [6]	Virgin Islands [6]
1	$90	$114	$146	$177	$158	$127	$119	$119
2	165	210	268	339	290	243	219	212
3	236	300	383	487	415	348	314	303
4	299	382	487	593	527	442	399	385
5	356	453	578	704	626	525	474	458
6	427	544	694	845	752	630	569	549
7	472	601	767	934	831	696	629	607
8	540	687	877	1067	949	795	719	694
Each additional member	+68	+86	+110	+113	+119	+103	+90	+87

[1] Adjusted to reflect the cost of food in June, adjustments for each household size, economies of scale, a 0.65 percent increase, in the TFP and rounding.
[2] These levels are 100.79 percent of the Anchorage TFP, as adjusted.
[3] These levels are 128.52 percent of the Anchorage TFP, as adjusted. With the exception of Nenana, all rural 1 areas formerly received the allotment for urban Alaska.
[4] These levels are 156.42 percent higher than the Anchorage TFP, as adjusted.
[5] These levels were in effect in Nenana on October 1, 1985. They are higher than the allotment for rural 1 Alaska.
[6] Admusted to reflect changes in the cost of food in the 48 States and DC, which correlate with price changes in these areas. TFP costs in these areas cannot exceed costs in rural II Alaska.

Deductions. Food stamp benefits are calculated on the basis of an individual household's net income. Deductions serve to lower household net income and thus to increase household benefits. As household net income decreases, its food stamp benefits increase.

The standard deduction is available to all households. The excess shelter expense deduction is available to households with extremely high shelter costs. There is a maximum amount for the excess shelter deduction for households with no elderly members are being adjusted by this Notice.

Adjustment of the Standard Deduction

Section 5(e) of the Food Stamp Act of 1977, as amended, provides that in computing household income, households shall be allowed a standard deduction. The Act also requires that this deduction be adjusted periodically. This deduction was last adjusted effective October 1, 1987. The Act requires that the adjustment in the level of the standard deduction shall take into account changes in the Consumer Price Index for All Urban Consumers (CPI–U) published by the Bureau of Labor Statistics (BLs) for items other than food. The admustments are, by law, rounded to the nearest lower dollar. There are separate standard deductions for the 48 States and DC, Alaska, Hawaii, Guam, and the Virgin Islands.

The following table shows the deductions resulting from the last adjustment, the unrounded results of this adjustment, and the new deduction amounts that go into effect on October 1, 1988.

STANDARD DEDUCTIONS FOR ALL HOUSEHOLDS

	Previous deductions (effective 10-1-87)	New unrounded numbers (10-1-87)	Standard deductions (effective 10-1-88)
48 States and DC	$102	$108.78	$106
Alaska	176	182.13	182
Hawaii	144	150.75	150
Guam	205	213.63	213
Virgin Islands	90	94.20	94

Adjustment of the Shelter Deduction

Section 5(e) of the Food Stamp Act of 1977, as amended, also provides that, in computing household income, households shall be allowed a deduction for certain excess shelter expenses. There is a maximum amount for the excess shelter expense deduction, unless the household has an elderly or disable member, in which case there is no maximum. The maximum amount for the excess shelter expense deduction is adjusted annually each October 1 based on changes in the shelter, fuel and utilities components of housing costs in the CPI–U published by BLS. There are separate shelter deductions for the 48 States and DC, Alaska, Hawaii, Guam, and the Virgin Islands.

The following table shows the shelter deductions resulting from the last adjustment, the unrounded results of this adjustment, and the new maximum excess shelter deductions that go into effect October 1, 1988.

SHELTER DEDUCTIONS FOR HOUSEHOLDS WITHOUT ELDERLY OR DISABLED MEMBERS

	Previous shelter deductions (effective 10-1-87)	New unrounded numbers (10-1-88)	Shelter deductions (effective 10-1-88)
48 States and DC	$164	$170.45	$170
Alaska	285	296.25	296
Hawaii	234	243.23	243
Guam	189	196.52	196
Virgin Islands	121	125.76	125

(91 Stat. 958 (7 U.S.C. 2011, et seq.))

Date: October 28, 1988.

John W. Bode,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 88-25419 Filed 11-2-88; 8:45 am]

BILLING CODE 3410-30-M

Soil Conservation Service

Finding of No Significant Impact for Mill Creek Watershed, Page County, Iowa, and Nodaway County, Missouri

Introduction

Mill Creek Watershed is a federally assisted action authorized under the authority of the Watershed Protection and Flood Prevention Act, Pub. L. 83–566, as amended (16 U.S.C. 1001–1008). Sponsors of this project are the Page County Board of Supervisors, Page County Soil and Water Conservation District, Nodaway County Commission and the Nodaway County Soil and Water Conservation District. The environmental evaluation was conducted in consultation with local, state, and federal agencies along with other interested organizations and individuals. Data developed during the evaluations is available for review at the following location: U.S. Department of Agriculture, Soil Conservation Service, 693 Federal Building, 210 Walnut Street, Des Moines, Iowa 50309.

Recommended Action

The project plan includes the installation of land treatment measures. They are: 11,910 acres of conservation tillage systems, 13,050 acres of contour farming, and 440 miles of terraces on 13,050 acres.

Effects of Recommended Action

Planned land treatment measures will increase protection of the soil resource base from excessive sheet, rill, and ephemeral cropland gully erosion. This is an increase of 13,050 acres which will be protected from depletion and destruction due to erosion. Damage due to sheet, rill, ephemeral cropland gully, and gully erosion will be reduced by $378,290 annually. Benefits from reduced production costs due to conservation tillage of $67,300 annually will accrue. These annual benefits will occur over the entire 25-year life of the project.

Erosion rates on 2,870 acres of prime farmland will be lowered to tolerable limits by the installation of land treatment measures.

Tree and shrub plantings or improvements in existing woodland areas on 170 acres will replace the 85 habitat units of woody cover affected by project action. All these areas will be fenced to exclude livestock grazing.

Approximately 640 acres will be converted from cropland to grassland by installation of terraces. These acres of grassland will be available for use as wildlife habitat.

The total project will result in a net loss of 64 habitat units of cropland, and a net gain of 36 habitat units of grassland.

Annually, terrace systems installed will prevent loss of the soil resource base through voiding of 0.9 acres and depreciation of 3.9 acres by gully erosion. Soil loss from gully erosion will be reduced from 211,000 to 184,470 tons per year.

Fish habitat will be improved in existing and proposed farm ponds by reduction of sediment deposition.

Terraces will reduce peak flows by either temporarily storing runoff water or increasing the time required for runoff from areas above terraces to reach stream channels.

Land treatment measures will protect lands from gully and excessive sheet and rill erosion. This will help maintain yields, reduce production costs, and improve efficiency of operations. Farmers will realize a more dependable income from the area.

Annualized project benefits are estimated to be $266,490. Project installation costs are $3,715,640. Annualized costs are $241,860 giving a benefit cost ratio of 0.9 to 1.0.

Landscape and visual diversity and contrast will be enhanced by addition of grassed terrace backslopes in cropland, wildlife plantings and vegetation on each structure.

Conservation tillage will have a beneficial effect on cultural resources by reducing soil erosion and minimizing mechanical disturbances. The installation of land treatment measures and grade stabilization structures may have an adverse effect on buried cultural resources and cultural resources on the land's surface. The exact locations of significant cultural resources and specific effects of structural measures will be determined on a measure by measure basis. If adverse effects on significant cultural resources are likely to occur, the SCS in consultation with the SHPO will seek to avoid adverse effects. Where adverse effects cannot be avoided, the SCS will consult further with the SHPO to mitigate the effects.

Alternatives

The recommended plan includes land treatment measures that will provide protection from erosion to valuable agricultural land. Several alternative methods of controlling erosion were considered before arriving at the recommended plan.

The no-project action alternative consists of the ongoing program to install land treatment measures. Many acres would be depleted by sheet and rill erosion and damaged by gully erosion before land would be adequately protected from erosion.

Conclusion

The Environmental Assessment indicates that this federal action will not cause significant local, regional, or national impacts on the environment. Therefore, based on these findings, I have determined that an environmental impact statement for Mill Creek Watershed is not required.

J. Michael Nethery,

State Conservationist.

Date: October 25, 1988.

[FR Doc. 88-25509 Filed 11-2-88; 8:45 am]

BILLING CODE 3410-16-M

Mill Creek Watershed, Iowa

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of availability of the Interagency Review Draft Plan-EA.

SUMMARY: J. Michael Nethery, responsible Federal official for projects administered under the provision of Pub. L. 83–566, 16 U.S.C. 1001–1008, in the State of Iowa, is hereby providing notification that the draft interagency review plan-EA is available for review and comment at this time. Single copies of the draft plan-EA may be obtained from J. Michael Nethery at the address shown below.

FOR FURTHER INFORMATION CONTACT: J. Michael Nethery, State Conservationist, Soil Conservation Service, 693 Federal Building, 210 Walnut Street, Des Moines, Iowa 50309, telephone (515) 284–4280.

J. Michael Nethery,

State Conservationist.

October 25, 1988.

[FR Doc. 88-25510 Filed 11-2-88; 8:45 am]

BILLING CODE 3410-16-M

Mill Creek PL–566 Watershed, Iowa and Missouri; Availability of a Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of availability of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Mill Creek PL–566 Watershed, Page County, Iowa and Nodaway County, Missouri.

FOR FURTHER INFORMATION CONTACT: J. Michael Nethery, State Conservationist, Soil Conservation Service, 693 Federal Building, 210 Walnut Street, Des Moines, Iowa 50309, telephone 515–284–4280.

SUPPLEMENTARY INFORMATION: The environmental assessment of this Federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, J. Michael Nethery, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for accelerated land treatment. The planned works of improvement include terraces, contour farming and conservation tillage systems.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI and draft plan-environmental assessment are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting J. Michael Nethery.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

J. Michael Nethery,

State Conservationist.

Date: October 25, 1988.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

[FR Doc. 88-25508 Filed 11-2-88; 8:45 am]

BILLING CODE 3410-16-M

Whites Creek Watershed, MS

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of availability of a record of decision.

SUMMARY: L. Pete Heard, responsible Federal official for projects administered under the provisions of Pub. L. 83–566, 16 U.S.C. 1001–1008, in the State of Mississippi, is hereby providing notification that a record of decision to proceed with the installation of the Whites Creek Watershed project is available. Single copies of this record of decision may be obtained from L. Pete Heard at the address shown below.

FOR FURTHER INFORMATION CONTACT: L. Pete Heard, State Conservationist, Soil Conservation Service, 100 West Capitol Street, Suite 1321, Jackson, Mississippi 39269, telephone 601–965–5205.

L. Pete Heard,

State Conservationist.

Date: October 25, 1988.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernment consultation with State and local officials.)

[FR Doc. 88-25430 Filed 11-2-88; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census

Title: Professional Skills Development Program Training Survey

Form Number: PSDP

Type of Request: Extension

Burden: 516 hours

Avg Hours Per Response: .082

Needs and Uses: Used to train new employees in survey development, forms design, and enumeration skills. Data will be used internally to demonstrate the processing, development, analysis, and presentation of tables.

Affected Public: Farms and Households

Frequency: Nonrecurring

Respondent's Obligation: Voluntary

OMB Desk Officer: Francine Picoult 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: October 31, 1988.

[redacted]

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-25472 Filed 11-2-88; 8:45 am]

[redacted]

Foreign-Trade Zones Board

[Order No. 396]

Resolution and Order Approving the Application of the Calhoun-Victoria Foreign-Trade Zone, Inc., for a Foreign-Trade Zone and Special-Purpose Subzones in Calhoun and Victoria Counties, TX

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Calhoun-Victoria Foreign-Trade Zone, Inc., a Texas non-profit corporation, filed with the Foreign-Trade Zones Board (the Board) on April 27, 1988, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone at sites in Calhoun and Victoria Counties, Texas, adjacent to the Point Comfort Customs port of entry, and special-purpose subzones at the railroad freight car repair and rebuilding facilities of Safety Railway Service and Safety Steel Service (divisions of CMC Steel Fabricators, Inc.) in Victoria County, the Board, finding that the requirements of the Foreign Trade Zones Act, as amended, and the Boards' regulations would be satisfied, and that the proposal would be in the public interest if approval were given subject to a restriction requiring Safety Railway and Safety Steel to elect privileged foreign status (19 CFR 146.41) on all foreign merchandise admitted to the subzones, approves the general-purpose zone and approves the subzones subject to the foregoing restriction.

As the general-purpose zone proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to § 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operation within the general-purpose zone. The Secretary of Commerce, as Chairman and executive Office of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant—to Establish, Operate, and Maintain a Foreign-Trade Zone in Calhoun and Victoria Counties, Texas, With Subzone Sites in Victoria County, Texas

Whereas, by an act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Calhoun-Victoria Foreign-Trade Zone, Inc. (the Grantee), a Texas non-profit corporation, has made application (filed April 27, 1988, FTZ Docket 23–88, 53 FR 17739) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone at sites in Calhoun and Victoria Counties, Texas, adjacent to the Point Comfort Customs port of entry, and special-purpose subzones for the railroad freight car repair and rebuilding facilities of the Safety Railway Service and Safety Steel Service Division of CMC Fabricators, Inc., in Victoria County, Texas;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard;

Whereas, CMC has made a commitment to purchase only domestic steel and foreign steel licensed under the President's Steel Program while the program is in effect; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) would be satisfied and that the proposal would be in the public interest if approval is given subject to the condition in the resolution accompanying this action;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 155 and Subzone Nos. 155A and 155B, at the locations mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations, and to the restriction in the resolution accompanying this action, and also to the following express conditions and limitations:

Operation of the foreign-trade zone and subzones shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from federal, state, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone and subzone sites in the performance of their official duties.

The grant does not include authority for manufacturing within the general-purpose zone, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing operations within the general-purpose zone, and any new manufacturing within the subzones.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the persons or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be afixed hereto by its Chairman and Executive Officer at Washington, DC, this 24th day of October, 1988, pursuant to Order of the Board.

Foreign-Trade Zones Board.

[redacted]

Deputy Secretary of Commerce.

Attest:

[redacted]

Executive Secretary.

[FR Doc. 88-25478 Filed 11-2-88; 8:45 am]

[redacted]

International Trade Administration

Postponement of Preliminary Antidumping Duty Determinations: Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured from Israel (A–508–601), Italy (A475–802), Japan (A–588–807), Singapore (A–559–802), South Korea (A–580–601), Taiwan (A–583–804), United Kingdom (A–412–802), and the Federal Republic of Germany (A–428–812)

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from the petitioner in this investigation to postpone the preliminary determinations, as permitted in section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act), (19 U.S.C. 1673b(c)(1)(A)).

Based on this request, we are postponing our preliminary determinations as to whether sales of industrial belts and components and parts thereof, whether cured or uncured from Israel, Italy, Japan, Singapore, South Korea, Taiwan, United Kingdom, and the Federal Republic of Germany have occurred at less than fair value until not later than January 26, 1989.

EFFECTIVE DATE: November 3, 1988.

FOR FURTHER INFORMATION CONTACT: Charles Wilson or Louis Apple at (202) 377–5288 or (202) 377–1769, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On July 26, 1988 (53 FR 28033–28042), we published notice of initiations of antidumping duty investigations to determine whether industrial belts and components and parts thereof, whether cured or uncured from Israel, Italy, Japan, Singapore, South Korea, Taiwan, United Kingdom, and the Federal Republic of Germany are being, or are likely to be, sold in the United States at less than fair value. The notice stated that we would issue our preliminary determination by December 7, 1988.

On October 24, 1988, counsel for the petitioner requested that the Department extend the period for the preliminary determination by 50 days, until January 26, 1989, in accordance with section 733(c)(1)(A) of the Act. Section 733(c)(1)(A) of the Act provides that the Department may postpone its preliminary determination concerning sales at less than fair value until not later than 210 days after the date on which a petition is filed if the petitioner makes a timely request for such an extension. Counsel for the petitioner has done so. Accordingly, we are postponing the date of the preliminary determinations until not later than January 26, 1989.

The U.S. International Trade Commission is being advised of these postponements in accordance with section 733(f) of the Act.

This notice is published pursuant to section 733(c)(2) of the Act.

Jan W. Mares,

Assistant Secretary for Import Administration.

October 28, 1988.

[FR Doc. 88-25479 Filed 11-2-88; 8:45 am]

[redacted]

University Medical Center Corp.; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC.

Docket No.: 88–212. *Applicant:* University Medical Center Corporation, Tucson, AZ 85724. *Instrument:* Lithotripter. *Manufacturer:* Dornier Medizintechnik, GmbH, West Germany. *Intended Use:* See 51 FR 21013, June 10, 1986.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instruments, for such purposes as it is intended to be used, was being manufactured in the United States at the time it was ordered (February 10, 1988).

Reason: At the time the foreign instrument was ordered there was no domestic manufacturer of lithotripters or comparable devices capable of noninvasively pulverizing kidney stones.

Our consultants in the National Institutes of Health have advised us with respect to this application that there were no known domestic instruments available, at the time of order, which were equivalent to the Dornier lithotripter.

We know of no comparable instrument that was being manufactured in the United States which was of equivalent scientific value to the foreign instrument for the purposes for which the instrument was intended to be used at the time it was ordered (See also 52 FR 22512, June 12, 1987).

Frank W. Creel,

Director, Statutory Import Program Staff.

[FR Doc. 88-25480 Filed 11-2-88; 8:45 am]

[redacted]

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council's Halibut Management Team will convene a public meeting, November 10, 1988, at 9 a.m., at the National Marine Fisheries Service, Northwest and Alaska Fisheries Center, Room 2143, Building 4, 7600 Sand Point Way NE., Seattle, WA, to review analyses of allocative regulatory proposals for halibut in Areas 4B and 4C in the Bering Sea and Aleutian Islands.

For further information contact Denby Lloyd, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) [redacted]

Date: October 27, 1988.

[redacted]

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-25408 Filed 11-2-88; 8:45 am]

[redacted]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Limited Entry Workshop Committee will convene a public meeting on November 8, 1988, at 11:30 a.m., at Oregon State University, Room 204 in the Memorial Union, Corvallis, OR, to review the limited entry questionnaire, to meet with the questionnaire design consultant, and to review the draft white paper.

For farther information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 221–6352.

Date: October 31, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-25488 Filed 11-2-88; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic and Gulf of Mexico Fishery Management Councils Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council (SAFMC) and its Committees will convene a joint public meeting with the Gulf of Mexico Fishery Management Council (GMFMC) and its Committees on November 28, 1988, at the Omni Hotel at Charleston Place, 130 Market Street, Charleston, SC, to discuss king and Spanish mackerel, spiny lobster, and other issues of interest to the Councils.

In separate sessions the SAFMC will also meet to discuss law enforcement matters, red drum, billfish, bluefish, snapper/grouper, and other fishery management business. Finance Committee and Advisory Panel Selection Committee meetings also will be held.

The GMFMC also will convene in separate sessions to discuss habitat protection issues, the Reef Fish Amendment #1, and other fishery management business. A closed session (not open to the public) Personnel Committee meeting also will be held. The public meeting will adjourn on December 2.

A detailed agenda will be available to the public on or about November 14, 1988. For further information contact Carrie R.F. Knight, Public Information Specialist, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407; telephone: (803) 571-4366.

Date: October 31, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-25489 Filed 11-2-88; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Singapore

October 31, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: October 31, 1988.

AUTHORITY: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535-6736. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: At the request of the Government of the Republic of Singapore, the current designated consultation level is being increased for Category 611.

A description of the textile and apparel categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 52 FR 49168, published on December 30, 1987.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 31, 1988.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 24, 1987 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Singapore and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on October 31, 1988, the directive of December 24, 1987 is being amended to increase to 2,400,000 square yards [1] the limit for man-made fiber textile products in Category 611.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-25436 Filed 11-2-88; 8:45 am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to account for imports exported after December 31, 1987.

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Manufacturing Board; Meeting

AGENCY: Under Secretary of Defense (Acquisition), DoD.

ACTION: Notice of meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub.L. 92-463), the Office of the Under Secretary of Defense for Acquisition announces a forthcoming meeting of the Defense Manufacturing Board (DMB).

DATE AND TIME: 1 December 1988, 0830-1630.

ADDRESS: Atlanta Marriott Marquis, 265 Peachtree Center Avenue, Atlanta, GA 30303.

The agenda for the meeting will focus on Department of Defense initiatives in the areas of manufacturing technology and modernization incentives.

FOR FURTHER INFORMATION CONTACT: Mrs. Sherry Fitzpatrick of the DMB Secretariat, (703) 756-2310.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 31, 1988.

[FR Doc. 88-25481 Filed 11-2-88; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force to Review the Strategic Force Modernization Program; Advisory Committee Meetings

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force to Review the Strategic Force Modernization Program will meet in closed session on January 18-19, 1989 at Science Applications International Corporation, Falls Church, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will examine strategic force modernization issues within the context of evolving Soviet threat capabilities, potential strategic arms control restraints, and an increasingly austere fiscal environment.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c) (1) (1982), and that accordingly this meeting will be closed to the public.

October 31, 1988.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 88-25483 Filed 11-2-88; 8:45 am]

BILLING CODE 3810-01-M

Strategic Defense Initiative Advisory Committee; Meetings

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Strategic Defense Initiative (SDI) Advisory Committee will meet in closed session in Washington, DC, on November 18, 1988.

The mission of the SDI Advisory Committee is to advise the Secretary of Defense and the Director, Strategic Defense Initiative Organization on scientific and technical matters as they affect the perceived needs of the Department of Defense. At the meeting on November 18, 1988 the committee will discuss status of SDI research and management issues.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C., App II, (1982)), it has been determined that this SDI Advisory Committee meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 31, 1988.

[FR Doc. 88-25482 Filed 11-2-88; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Scientific Advisory Board; Meeting

October 24, 1988.

The USAF Scientific Advisory Board Ad Hoc Committee on Electronic Warfare will meet on 21 Nov 88 from 8:00 a.m. to 5:00 p.m. at the Aeronautical Systems Division, Wright-Patterson, AFB, Ohio 45433.

The purpose of this meeting is to review Air Force electronic warfare programs. This meeting will involve discussions of classified defense matters listed in section 552(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88-25420 Filed 11-2-88; 8:45 am]

BILLING CODE 3910-01-M

Scientific Advisory Board; Meeting

October 24, 1988.

The USAF Scientific Advisory Board Ad Hoc Committee on Electronic Warfare will meet on 23 Nov 88 from 8:00 a.m. to 5:00 p.m. at Headquarters Strategic Air Command, Offutt AFB, NE 68113.

The purpose of this meeting is to review Air Force electronic warfare programs. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88-25421 Filed 11-2-88; 8:45 am]

BILLING CODE 3910-01-M

Scientific Advisory Board; Meeting

October 24, 1988.

The USAF Scientific Advisory Board Ad Hoc Committee on Electronic Warfare will meet on 22 Nov 88 from 8:00 a.m. to 5:00 p.m. at Headquarters Air Force Operational Test and Evaluation Command, Kirtland AFB, MN 87185.

The purpose of this meeting is to review Air Force electronic warfare programs. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88-25422 Filed 11-2-88; 8:45 am]

BILLING CODE 3910-01-M

Scientific Advisory Board; Meeting

November 1, 1988.

The USAF Scientific Advisory Board High Energy Density Matter and Antiproton Technology Committee will meet on 17 November 1988 from 8:00 a.m. to 5:00 p.m. at the Pentagon, Washington, DC.

The purpose of the meeting is to review the progress in high energy density matter and antiproton technology research and make recommendations for future funding. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88-25500 Filed 11-2-88; 8:45 am]

BILLING CODE 3910-01-M

Defense Mapping Agency

Privacy Act of 1974; Amendment to System of Records Notice

AGENCY: Defense Mapping Agency, DOD.

ACTION: Amendment of an existing system of records.

SUMMARY: The purpose of this notice is to add a new routine use to the system of records known as BO303-01A, Individual Pay Record Files.

DATE: This action shall be effective without further notice December 5, 1988, unless comments are received which would result in a contrary determination.

ADDRESS: Sent any comments to Ms. Mary Jane Stafford, Director, Administration Office, Defense Mapping Agency, Bldg. 56, U.S. Naval Observatory, Washington, DC 20305-3000.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Jane Stafford, address as above, at 202/653-1376.

SUPPLEMENTARY INFORMATION: Section 7114(b)(4) of Title 5, United States Code, requires an agency to furnish, to the extend not prohibited by law, to officials of labor organizations recognized under 5 U.S.C. Chapter 71, data which are normally maintained by the agency in the regular course of business and are reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining. In a number of judicial proceedings, it has been held that bargaining unit representatives access to the names and addresses of bargaining unit employees was necessary to union representation of those employees, and that agencies must disclose such information, upon request, pursuant to 5 U.S.C. 7114(b)(4).

In order to enable the Defense Mapping Agency to comply with 5 U.S.C. 7114(b)(4), a routine use of its Individual Pay Record Files, BO303-01A, is being added to allow the Defense Mapping Agency to disclose the names and home or designated mailing addresses of bargaining unit employees to officials of recognized labor organizations.

Accordingly, the Comptroller is amending its systems of records known as BO303-01A published at 50 FR 22262 et seq., May 29, 1985. The proposed amendment is not within the purview of the provisions of 5 U.S.C. 552a(o) which requires the submission of an altered system report.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 31, 1988.

BO303-01A

SYSTEM NAME:

Individual Pay Record Files (50 FR 22262, May 29, 1985)

CHANGE:

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add at the end of the paragraph "Name and home addresses, or designated mailing addresses, of bargaining unit employees to labor organizations recognized under 5 U.S.C. Chapter 71".

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "Blanket Routine Uses" at the beginning of DMA's listing of the record system notices. Name and home addresses, or designated mailing addresses, of bargaining unit employees to labor organizations recognized under 5 U.S.C. Chapter 71.

* * * * *

[FR Doc. 88-25464 Filed 11-2-88; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.116B]

Notice Inviting Applications for New Awards under the Comprehensive Program Final Year Dissemination Competition Conducted by the Fund for the Improvement of Postsecondary Education (FIPSE) for Fiscal year 1989

Purpose: Provides grants to institutions of postsecondary education and other public and private institutions and agencies to improve postsecondary education by supporting the efforts of current grantees to disseminate project ideas and results. Applications under the Final Year Dissemination Competitions are limited to grantees of FIPSE whose projects are in their final year of funding, except that a recipient of a single-year grant may apply for assistance under this competition within one year following the termination of his or her project.

Deadline for Transmittal of Applications: January 20, 1989.

Applications Available: November 28, 1988.

Available Funds: $100,000.

Estimated Size of Awards: $8,000 maximum.

Project Period: Not to exceed 12 months.

Applicable Regulations: (a) The regulations governing the Fund for the Improvement of Postsecondary Education, 34 CFR Part 630; and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78 with the exceptions noted in 34 CFR 630.4(b).

For Applications or Information Contact: Sharon Burke, 400 Maryland Avenue, SW., (Room 3100, ROB-3), Washington, DC 20202. Telephone number (202) 732-5766.

Program Authority: 20 U.S.C. 1135.

Date: October 12, 1988.

Kenneth D. Whitehead,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 88-25499 Filed 11-2-88 8:45 am]

BILLING CODE 4000-01-M

Office of the Secretary

Stafford Loan Defaults; Reduction Initiatives

AGENCY: Department of Education.

ACTION: Notice of request for public comment on initiatives to reduce Stafford Loan defaults.

SUMMARY: The Secretary of Education invites written comments from the public regarding initiatives to reduce Stafford Loan defaults.

DATES: Written comments must be submitted on or before December 2, 1988.

ADDRESSES: Written comments should be addressed to: Kenneth D. Whitehead, Acting Assistant Secretary for Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., ROB-3, Room 4060, Washington, DC 20202-5121.

FOR FURTHER INFORMATION CONTACT: Kenneth D. Whitehead at 202/732-3547.

SUPPLEMENTARY INFORMATION:

Background

The increasing default costs in the Stafford Loan program is one of the major issues facing the postsecondary education community today. A total of approximately $1.5 billion was expended in fiscal year 1988 to cover defaults on loans issued under the Stafford Loan Program, representing a 200 percent increase over the last 5 years and an estimated 43 percent of the Department's fiscal year 1988 expenditures for the Stafford Loan program.

To meet the challenge of reducing defaults, a strong cooperative effort will be required among all parties involved: the public, the Department, the Congress, schools, lenders, guarantee agencies, and borrowers. Several default reduction initiatives have already been proposed.

To ensure an opportunity for public participation, the Secretary invites public comments and recommendations regarding potential administrative, regulatory or legislative initiatives to reduce defaults.

Comments received that relate to aspects of the existing Notice of Proposed Rulemaking on Stafford Loan defaults (published in the Federal

Register on September 16, 1988, 53 FR 36216, with the comment period extended until February 28, 1989, 53 FR 39317) will also be considered in the context of that rulemaking.

Issues for Public Comment

The Secretary solicits comments and suggestions regarding Stafford Loan default reduction initiatives, especially on such issues as the following:

Institutional Issues

To what extent should lenders, guarantee agencies, and schools share in the risk and cost of defaults?

What should be the scope of a school's responsibilities in default reduction?

Should a school be permitted to refuse to certify a loan application for a student whom the school believes to be likely to default?

Should a school's default rate be used as an absolute cut-off for participation in Higher Education Act Title IV programs?

What differences exist between types of institutions, programs of study, student populations, and/or geographic areas that should be accounted for in law or regulations intended to reduce defaults?

Should factors other than the default rate be used to evaluate an institution, such as enrollment levels of low-income students?

What should a school have to demonstrate to remain in the program notwithstanding a high default rate?

Should default management plans be imposed on schools, lenders, and guarantee agencies? On what basis should such plans be imposed? Who should impose and monitor these plans? What default reduction measures ought to be included in a school's default management plan?

Given the close link between defaults and such measures of educational outcomes as completion rates, job placement rates, and licensing examination pass rates, how can the Department most effectively encourage schools to improve their performance in those areas?

Should the definition of default be changed? What is an equitable definition?

What promotional restrictions should be placed on institutions?

What, if any, tuition refund policy should be mandated?

What approach to the regulation of institutional refund policies would most effectively address the default problem?

What types of assistance do you believe the Department could provide to help a school reduce its default rate?

How frequently and at what levels should program reviews be performed and how encompassing should these reviews be?

On what basis and how should penalties and fines be determined?

Communication Issues

What efforts should the Department undertake to educate better the public as to the nature and importance of the loan repayment obligation?

How can consumer and debt management materials and student loan counseling be used most effectively?

Who should be responsible for the development and dissemination of these materials?

What role should national and institutional student associations, and other educational organizations assume in public education efforts and other default reduction initiatives?

What should be included in entrance and exist interviews?

How might toll-free consumer hotlines be an effective tool for reducing defaults?

How can communications be improved among all parties involved with making, servicing, and repaying loans?

Should there be regulated information exchange and specified deadlines with penalties for non-compliance for each of the parties involved?

What is the best way to share information regarding new and successful default management/reduction strategies?

What additional training in program administration and default management should be provided?

Who should be responsible for training and what organizational and staff levels should be trained?

How might the National Student Loan Data System be used as a default reduction tool? What type of information and reporting periods should be required?

Borrower Issues

Would an amnesty program for defaulted borrowers be effective and equitable?

Should extended delinquency periods and flexible repayment plans be available to borrowers?

Should borrowers be required to make in-school repayments?

Would greater verification of borrower application data be an effective default reduction mechanism?

Should credit reports and co-signers for borrowers with poor credit histories be required?

should students admitted under the "ability-to-benefit" provision be eligible to borrow? If so, how should this category of eligibility be regulated to prevent abuse?

General

What steps should be taken to increase the role of guarantee agencies and lenders in default reduction?

What enhancements to the enforcement authority and resources of the Department and guarantee agencies are needed to combat default related waste, fraud, and abuse?

Format for Comments

This request for comments is designed to elicit views of interested parties on how the current Stafford Loan default reduction initiatives can be improved.

The Secretary requests that each respondent identify his or her role in postsecondary education.

The Secretary urges each commenter to be specific regarding his or her suggestions and to include, if possible, the data requirements, procedures, technology, delegation of responsibility, and actual legislative language changes that the commenter suggests for the Stafford Loan default reduction initiatives.

Dated: November 1, 1988.

Laura F. Cavazos,

Secretary of Education.

[FR Doc. 88-25563 Filed 11-2-88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of American and the Government of Spain concerning Civil Uses of Atomic Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval for the following retransfer: RTD/EU(SP)-16, for the transfer from Spain to the Netherlands of 4.070 grams of uranium enriched to 40.09 percent in the isotope uranium-235, and 900 grams of uranium enriched 15.25 percent in the isotope

uranium-235, and 18.5 grams of plutonium contained in irradiated fuel assemblies for modifications and later shipment to the U.S. Department of Energy for reprocessing.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

The subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: October 28, 1988.

David E. Waller,

Assistant Secretary of Energy, International Affairs and Energy Emergencies.

[FR Doc. 88-25502 Filed 11-2-88; 8:45 am]

BILLING CODE 6450-01-M

Conduct of Employees; Waiver of Divestiture Requirements

Section 602(a) of the Department of Energy Organization Act (Pub. L. 95-91 hereinafter referred to as the "Act") prohibits a "supervisory employee" (defined in section 601(a) of the Act) of the Department from knowingly receiving compensation from, holding any official relation with, or having any pecuniary interest in any "energy concern" (defined in section 601(b) of the Act).

Section 602(c) of the Act authorizes the Secretary of Energy to waive the requirements of section 602(a) in cases of exceptional hardship or where the interest is a pension, insurance, or other similarly vested interest.

Mr. Donald A. Juckett is under consideration for the position of the Director of the Office of Geoscience Research, Assistant Secretary for Fossil Energy of the Department of Energy. Mr. Juckett has a vested pension interest in the Retirement Income Plan of Phillips Petroleum Company and Subsidiary and Affiliated Companies, as a result of his past employment by Phillips Petroleum Company.

It has been established to my satisfaction that requiring Mr. Juckett to divest his interest in the Retirement Income Plan of Phillips Petroleum Company and Subsidiary and Affiliated Companies, would impose an exceptional hardship on him and that such interest is a vested pension interest, within the meaning of section 602(c) of the Act. Accordingly, I have granted Mr. Juckett a waiver of the divestiture requirements of section 602(a) of the Act, for the duration of his employment with the Department, with respect to his interest in the Retirement Income Plan of Phillips Petroleum Company and Subsidiary and Affiliated Companies.

In accordance with section 208 of title 18, United States Code, Mr. Juckett will be directed not to participate personally and substantially, as a Government employee, in any particular matter the outcome of which could have a direct and predictable effect upon Phillips Petroleum Company, unless his supervisor and the Counselor agree that his financial interest in the particular matter is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect of him.

In addition, in accordance with subsection (a) of section 606 of the Department of Energy Organization Act, Mr. Juckett will be directed not to participate, for a period of one year since terminating his employment with Phillips Petroleum Company in any Department proceeding in which Phillips Petroleum Company is substantially, directly, or materially involved, other than in a rulemaking proceeding which has a substantial effect on numerous energy concerns.

Also, in accordance the subsection (b) of section 606 of the Department of Energy Organization Act, Mr. Juckett will be directed not to participate for a period of one year since commencing service in the Department, in any Department proceeding for which he had direct responsibility, or in which he participated personally and substantially, within the previous five years while in the employment of Phillips Petroleum Company.

Date: October 26, 1988.

John S. Herrington,

Secretary of Energy.

[FR Doc. 88-25503 Filed 11-2-88; 8:45 am]

BILLING CODE 6450-01-M

Bonneville Power Administration

Availability of the Record of Decision on the Power Sale and Exchange Agreement With Southern California Edison Co.

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of availability of record of decision.

SUMMARY: BPA is entering into a power sale and exchange agreement (Agreement) with Southern California Edison Company (SCE). Beginning July 1, 1989, BPA will make available, and SCE will purchase, surplus firm power. Amounts equal 250 megawatts (MW) of contract demand and 134 average MW of energy with a take-or-pay obligation, according to the terms of the Agreement. The power sale will continue until BPA no longer has sufficient surplus firm power to serve SCE, or until specified rate or economic triggers take effect, at which time the sale converts to an exchange. Upon SCE's request, BPA must provide an additional 250 MW of capacity during the June-through-October period. In addition, BPA may request optional energy from SCE up to 624,000 megawatthours each delivery year.

FOR FURTHER INFORMATION CONTACT: Anthony R. Morrell, Assistant to the Administrator for Environment—AJ, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208, telephone 503-230-5136. To request a copy of the Record of Decision, please call one of BPA's toll-free document request lines: 800-841-5867 for Oregon or 800-624-9495 for other western states. Information may also be obtained from:

Mr. George E. Gwinnutt, Lower Columbia Area Manager, Suite 243, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503-230-4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503-687-6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509-456-2518.

Mr. George R. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59807, 406-329-3001.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98807, 509-662-4377, extension 379.

Mr. Terence G. Esvelt, Puget Sound Area Manager, 201 Queen Anne Ave., Suite 400, Seattle, Washington 98109-1030, 206-442-4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509-522-6225.

Mr. Robert N. Laffel, Idaho, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208-523-2706.

Mr. Thomas H. Blankenship, Boise District Manager, Room 494, 550 West Fort Street, Boise, Idaho 83724, 208-334-9137.

SUPPLEMENTARY INFORMATION: The Administrator relied on the Intertie Development and Use Final Environmental Impact Statement (IDU Final EIS, DOE/EIS-0125F) in making this decision. The IDU Final EIS analysed the effect of firm marketing activities such as this agreement with SCE. The alternative actions considered were: (1) To take no action, i.e., not enter into an agreement with SCE; and (2) to enter into such an agreement with SCE. In making a decision, the Administrator considered environmental, economic, and legal factors.

Except for potential effects on resident fish and cultural resources, there are not significant adverse environmental impacts in the Pacific Northwest, California, Inland Southwest, or British Columbia resulting from firm marketing activities such as the Agreement with SCE. To mitigate potential adverse effects on resident fish, BPA, in consultation with the U.S. Fish and Wildlife Service and the State of Montana, is funding imprint planting and habitat improvements on Hungry Horse Reservoir tributaries to mitigate potential adverse impacts to resident fish, an important food source for bald eagles. To mitigate potential adverse effects on cultural resources at the five major Federal storage reservoirs studied, BPA is developing a Programmatic Memorandum of Agreement (PMOA) with appropriate parties. The PMOA will fully satisfy BPA's National Historic Preservation Act obligations. All other consultation, review, and permit requirements have been met.

Economic analysis of the Agreement shows that the present value of expected revenues from the power sale is $387 million, versus the present value of forecast spot market sales of $266 million over the same period, Fiscal Years 1989 through 2003. After 2003, it is projected that the sale will convert to a capacity-energy exchanged through the end of the contract period.

The Agreement with SCE is consistent with applicable legislation including Pub. L. 88-552, 16 U.S.C. 837-837h (Northwest Preference Act) and the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 839-839h (Northwest Power Act).

Entering into the Agreement with SCE is the environmentally preferred alternative because the environmental effects of such firm marketing transactions result in slight, near-term reductions in air pollution in densely populated areas in California, reduced near-term consumption of nonrenewable oil and gas fuels, and the added potential to defer building new resources.

As mentioned above, BPA is undertaking mitigation and monitoring activities in order to preclude potential adverse impacts on cultural resources at the Federal storage reservoirs. BPA is also undertaking mitigation and monitoring activities for potential impacts on resident fish in Hungry Horse Reservoir and its tributaries in order to preclude potential adverse effects on bald eagles.

Issued in Portland, Oregon, on October 18, 1988.

James J. Jura,

Administrator.

[FR Doc. 88-25501 Filed 11-2-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

North American Electric Reliability Council; Public Conference

November 1, 1988.

On Thursday, November 10, 1988, the staff of the North American Electric Reliability Council will conduct a briefing on the technical operations of the electric power transmission system. The briefing will be conducted from 9:00 a.m. until 11:00 a.m. in a hearing room to be posted the day of the briefing.

Lois D. Cashell,

Secretary.

[FR Doc. 88-25622 Filed 11-2-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER88-451-000 et al.]

Florida Power Corp. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Florida Power Corporation

[Docket Nos. ER88-451-000]

October 31, 1988.

Take notice that on October 24, 1988, Florida Power Corporation (Florida Power) tendered for filing a letter agreement between itself and Seminole Electric Cooperative, Inc. (Seminole) extending the term of a letter of commitment providing for negotiated interchange service under an interchange agreement between Florida Power and Seminole. The letter of commitment provided for service from Florida Power during the period June 1, 1988 through August 31, 1988 when Seminole needed the service because of an emergency outage at Seminole's Unit No. 1. The outage has continued beyond August 31, 1988 and Florida Power and Seminole have agreed to continue the letter of commitment in effect until the unit has been returned to service; i.e., it has been operated at a net output level of 400 MW or higher for a period of 16 consecutive hours.

Comment date: November 14, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Ocean State Power

[Docket Nos. ER88-627-000]

October 28, 1988.

Take notice that on October 25, 1988, Ocean State Power (Ocean State) tendered for filing an amendment (Amendment) to the Third Amendment to its rate schedules which Ocean State filed with the Federal Energy Regulatory Commission (Commission) on September 29, 1988. The Amendment contains supplements to Ocean State's rate schedule clarifying that the acquisition adjustment for the purchase of the site for the facility will be included in Ocean State's rate base. The supplements are:

Supplement No. 2 to Rate Schedule FERC No. 1
Supplement No. 2 to Rate Schedule FERC No. 2
Supplement No. 2 to Rate Schedule FERC No. 3
Supplement No. 2 to Rate Schedule FERC No. 4

Copies of the filing were served upon Boston Edison Company, New England Power Company, Montaup Electric Company, Newport Electric Corporation, the Massachusetts Department of Public Utilities, the Rhode Island Public Utilities Commission and TransCanada PipeLines Limited.

Comment date: November 14, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. El Paso Electric Company

[Docket Nos. ER88-368-021 *et al.*]

October 31, 1988.

Take notice that on October 25, 1988, El Paso Electric Company (EPE) tendered for filing a revised Attachment 1 (designated Attachment 1.1) to Exhibit B of the Power Sales Agreement under which EPE provides contract demand service to Texas-New Mexico Power Company (TNP). As explained below, Attachment 1.1 reduces the Stipulated Demand Charges, the Stipulated Demand Charge Cap and the Stipulated Demand Charge Floor to reflect the sale/leaseback of the Company's ownership interest in the Palo Verde No. 3 nuclear unit consummated in December 1987.

The Power Sales Agreement, as recently agreed to in settlement of the rate proceeding in Docket Nos. ER86-368

et al., provides for contract demand service to TNP at Stipulated Demand Charges set out in Attachment 1 to Appendix B for the period January 1, 1987 through December 31, 1993. Therefore through December 31, 2001 the service is to provide at rates set through cost-of-service ratemaking within a range established by a Stipulated Demand Charge Floor and a Stipulated Demand Charge Cap. The Stipulated Demand Charges, the Stipulated Demand Charge Cap and the Stipulated Demand Charge Floor cannot be changed except in case of certain events, one of which, under Article 9.1.3.1 of Appendix B, is a sale/leaseback of any ownership interest EPE has in the Palo Verde project. When such an event occurs, Article 9.2.1 of Appendix B requires EPE to notify TNP of that event and to provide TNP with a statement of EPE's proposed changes in the Stipulated Demand Charges, Stipulated Demand Charge Floor and Stipulated Demand Charge Cap which EPE believes are required as a result of that event, (b) requires TNP to respond with its own proposed changes in those figures and, finally, (C) requires both parties to negotiate in good faith to resolve any differences. Under Article 9.2.2 of Appendix B the adjusted figures as agreed to are to become effective in billings for the month after the occurrence of the event.

Since the sale/leaseback of Palo Verde No. 3 occurred in December 1987, an adjustment was required to be effective as of January 1, 1988. EPE and TNP, following the procedure spelled out in Article 9.2.1, agreed to the reductions shown in the enclosed Attachment 1.1 to Exhibit B on January 15, 1988 and below:

Period	Original $/KW per month of billing demand	As reduced $/KW per month of billing demand
1/1/88-12/31/88	$4.70	22.50
1/1/89-12/31/89	24.20	22.00
1/1/90-12/31/90	23.25	21.50
1/1/91-12/31/91	21.70	20.00
1/1/92-12/31/92	21.25	19.50
1/1/93-12/31/93	[1] 21.20	[2] 18.50
1/1/94-12/31/2002		

[1] Lesser of (1) $19.00 (Stipulated Demand Charge Cap) or (2) Cost of Service Demand Charge, but not less than $15.00 (Stipulated Demand Charged Floor).

[2] Lesser of (1) $18.00 (Stipulated Demand Charge Cap) or (2) Cost of Service Demand Charge, but not less than $14.00 (Stipulated Demand Charge Floor).

In order to avoid the need for refunds they agreed to reduce the Stipulated Demand Charge for 1988 beginning with billings for January 1988 service to reflect the sale/leaseback from $24.70 to $22.50 per kilowatt per month and on January 11, 1988 amended an earlier motion to place settlement rates in effect as interim rates pending the Commission's approval of the settlement in order to implement the reduction. All billings to TNP for 1988 service under the settlement rates, as subsequently approved by the Commission, have thus been at the $22.50 Stipulated Demand Charge. As a result, the present filing will not affect bills to TNP until January 1, 1989 when the Stipulated Demand Charge will be reduced to $22.00. EPE requests that this filing be accepted to become effective as of that date.

The Stipulated Demand Charges, Stipulated Demand Charge Cap and Stipulated Demand Charge Floor as revised in this filing are negotiated reductions not based on any particular cost of service calculations. The Company requests waiver of the Commission's filing requirements to the extent that the Commission considers that any waiver is needed.

Comment date: November 14, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Northern California Power Agency

[Docket No. EL89-4-000]

October 31, 1988.

Take notice that on October 25, 1988, Northern California Power Agency (NCPA) pursuant to Sections 205, 206 and 309 of the Federal Power Act, U.S.C. 824d, 824e, and 825h, and Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206 tendered for filing a Compliant against Pacific Gas & Electric Company (G&E). NCPA states that it seeks reformation of Appendix A-4 to the Interconnection Agreement (IA) between PG&E, NCPA and the NCPA member Cities of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palto Alto, Roseville and Ukiah, and the Plumas-Sierra Rural Electric Cooperative, also a member of NCPA. The IA is currently on file with the Commission as Rate Schedule No. 84, and NCPA asserts, on behalf of itself and its members who are signatories to the IA that PG&E's actions and practices in performing under the IA are unjust and unreasonable and, therefore, warrant relief.

Copies of this filing have been served upon all parties affected by this proceeding.

Comment date: November 30, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-25423 Filed 11-2-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-62-000, et al.]

Tennessee Gas Pipeline Company, et al; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Tennessee Gas Pipeline Company

[Docket No. CP89-62-000]

October 28, 1988.

Take notice that on October 14, 1988, Tennessee Gas Pipeline Company (Applicant), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-62-000 a request for authorization pursuant ot §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act and Applicant's blanket certificate issued in Docket No. CP87-115-000 for authorization to provide a transportation service for Texaco Gas Marketing, Inc. (Texaco), a producer, all as more fully set out in the request on file with the Commission and open to public inspection.

Applicant states that pursuant to a transportation agreement dated August 24, 1988, and an amendment dated August 25, 1988, it proposes to transport natural gas for Texaco from various receipt points located offshore Louisiana and offshore Texas, and in the states of Texas, Louisiana and Mississippi, to various points off Tennessee's system, said points located in multiple states.

The Applicant further states that the maximum daily quantity is 100,000 dt., 100,000 dt. on an average day, and 36,500,000 dt. on an annual basis under the contract. It is asserted that service under § 284.223(a) commenced September 2, 1988, as reported in Docket No. ST88-5833 (filed September 28, 1988).

Comment date: December 12, 1988, in accordance with Standard Paragraph G at the *end* of this notice.

Mobil Oil Exploration & Producing Southeast Inc., Mobil Producing Texas & New Mexico Inc. and Mobil Exploration and Producing North America Inc.

[Docket No. CI88-514-002; Docket No. CI88-57-001]

October 31, 1988.

Take notice that on October 20, 1988, Mobil Oil Exploration & Producing Southeast Inc., Mobil Producing Texas & New Mexico Inc. and Mobil Exploration and Producing North America Inc. (Mobil) of Nine Greenway Plaza, Suite 2700, Houston, Texas 77046, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for amendment of their blanket limited-term certificates with pregranted abandonment previously issued by the Commission for terms which expire December 31, 1988, to extend such authorization for an unlimited term, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: November 16, 1988, in accordance with Standard Paragraph J at the end of this notice.

3. Trunkline Gas Company

[Docket No. CP89-69-000]

October 31, 1988.

Take notice that on October 17, 1988, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in [Docket No. CP89-69-000 a request for authorization pursuant to Sections 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act and Trunkline's blanket certificate issued in Docket No. CP86-586-000 for authorization to transport natural gas for Kimball Resources, Inc. (Kimball), a shipper and marketer of natural gas, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Trunkline states that it would transport up to 50,000 dt. per day on behalf of Kimball pursuant to a Transportation Agreement dated August 9, 1988, between Trunkline and Kimball (Transportation Agreement). It is further stated that the Transportation Agreement provides for Trunkline to receive gas from various existing points of receipt on its system. Trunkline would then transport and redeliver the subject gas, less fuel and unaccounted for line loss, to the following pipelines: Acadian Natural Gas Company (Acadian) in St. Mary Parish, Louisiana; Southern Natural Gas Company (Southern Natural) in St. Mary Parish, Louisiana; and to Texaco, Inc. in Vermillion Parish, Louisiana. Trunkline proposes this service for a primary term of one month, and month to month thereafter.

Trunkline further states that the estimated daily and estimated annual quantities would be 40,000 dt. and 14,600,000 dt., respectively. It is maintained that service under § 284.223(a) commenced on August 11, 1988, as reported in Docket No. ST88-5467.

Comment date: December 15, 1988, in accordance with Standard Paragraph G at the end of this notice.

4. Williams Natural Gas Company

[CP89-45-000; CP89-47-000; CP89-49-000]

October 31, 1988.

Take notice that on October 12, 1988, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket Nos. CP89-45-000, CP89-47-000, and CP89-49-000 [1] requests, pursuant to Sections 157.205 and 284.223 of the Commission's Regulations, for authorizations to provide transportation services for the Kansas Power and Light Company (KPL), Gulf Energy Marketing Company (Gulf Energy), and OXY NGL, Inc. (OXY), respectively, under WNG's blanket certificate issued in Docket No. CP86-631-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

WNG proposes to transport, on an interruptible basis, up to 14,535 MMBtu of natural gas per day for KPL, up to 551,170 MMBtu per day for Gulf Energy, and up to 80,000 MMBtu per day for OXY from numerous receipt points to several delivery points in various states.

The peak day volumes, average daily volumes and annual volumes as indicated for each end-user are listed on the attached appendix. WNG states that services respective to the provisions stipulated under Section 284.223(a) are reported in Docket No. ST88-5771-000 for Docket No. CP89-45-000, ST88-5805-000 for Docket No. CP89-47-000 and ST88-5646-000 for Docket No. CP89-49-000. WNG further states service commenced August 19, 1988 in Docket Nos. CP89-45-000 and CP89-47-000, and on August 12, 1988, in Docket No. CP89-49-000.

[1] These dockets are not consolidated.

	Docket No.	Shipper	Volumes [illegible]
Peak day	CP89-45-000	KPL	14,535
Average day			14,535
Annual			5,305,275
Peak day	CP89-47-000	Gulf Energy	551,170
Average day			551,170
Annual			201,177,050
Peak day	CP89-49-000	OXY	80,000
Average day			80,000
Annual			29,200,000

Comment date: December 15, 1988, in accordance with Standard Paragraph G at the end of this notice.

5. Natural Gas Pipeline Company of America

[Docket No. CP89-74-000]

October 31, 1988.

Take notice that on October 21, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89-74-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Loutex Energy, Inc. (Loutex), a marketer of natural gas, under the blanket certificate issued in Docket No. CP86-

582-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural proposes to transport on an interruptible basis up to 200,000 MMBtu of gas on a peak day plus excess volumes pursuant to the overrun provisions of its Rate Schedule ITS, 40,000 MMBtu on an average day and 14,600,000 MMBtu on an annual basis for Loutex. It is stated that Natural would receive the gas for Loutex's account at designated existing receipt points in Texas, offshore Texas, Louisiana, offshore Louisiana, Kansas, Oklahoma, Iowa, New Mexico, Missouri, Illinois, and Arkansas. It is further stated that Natural would deliver equivalent volumes of gas at designated delivery points in Texas, offshore Texas, Louisiana, offshore Louisiana, Oklahoma, New Mexico, Missouri, Kansas, Iowa, and Illinois. It is asserted that the transportation service commenced August 18, 1988, under the automatic authorization provisions of Section 284.221 of the Commission's Regulations, as reported in Docket No. ST88-261.

Comment date: December 15, 1988, in accordance with Standard Paragraph G at the end of this notice.

Transcontinental Gas Pipe Line Corporation

[Docket No. CP89-61-000]

October 31, 1988.

Take notice that on October 14, 1988, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP89-61-000 a request for authorization to transport gas for American Distribution Company (Shipper) under the prior notice procedure prescribed in §§ 157.205 and 284.223 of the Commission's Regulations and Transco's blanket certificate issued in CP88-328-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Pursuant to a July 26, 1988, transportation agreement Transco proposes to transport 30,000 dt on a peak day; 30,000 dt on an average day; and 18,250,000 dt on an annual basis for shipper.

Transco states it will receive the gas at West Cameron Block 342, Offshore Louisiana and deliver the gas at West Cameron Block 167, Offshore Louisiana.

Transco states that it will construct no new facilities in order to provide this transportation service. Transco will utilize existing facilities as reflected in Exhibit A of the transportation agreement.

Transco states that there is no agency relationship under which a local distribution company or an affiliate of Shipper will receive gas on behalf of Shipper.

Transco states that service for Shipper commenced September 1, 1988 pursuant to the 120-day automatic authorization in Docket No. ST89-22.

Transco knows of no other applications that are related to this transaction.

Transco has verified that transportation hereunder will be pursuant to Subpart F, Part 157 of the Regulations, and Subpart G, Part 284 of the Regulations.

Comment date: December 15, 1988, in accordance with Standard Paragraph G at the end of this notice.

7. Tennessee Gas Pipeline Company

[Docket No. CP89-40-000]

October 31, 1988.

Take notice that on October 14, 1988,[1] Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-40-000 a prior notice request pursuant to §§ 157.205, 157.211 and 284.223 of the Commission's Regulations for authorization to transport natural gas for Shell Gas Trading Company (Shell) a marketer, and to construct, prior to commencement of the transportation service, a sales tap to accommodate the deliver of the natural gas under the blanket certificates issued Tennessee in Docket Nos. CP82-413-000 and CP87-115-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee proposes to transport up to 500 dt of natural gas per day, pursuant to a September 15, 1988, transportation agreement. Tennessee would provide the service to Shell under its Rate Schedule IT, it is indicated. Tennessee further proposes to construct a tap and measuring facilities with an estimated cost of $27,078 to accommodate the delivery of gas to Shell at Shell's Nairn Pump Station located in Plaquemines Parish, Louisiana for gas lift operations. Tennessee states that Shell would reimburse Tennessee one-hundred percent of the construction cost. Tennessee further states that the average and annual quantities would be 500 dt and 182,500 dt. respectively.

Comment date: December 15, 1988, in accordance with Standard Paragraph G at the end of this notice.

8. Trunkline Gas Company

[Docket No. CP89-72-000]

October 31, 1988.

Take notice that on October 19, 1988, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-72-000 an application pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas for Tejas Power Corporation (Tejas), a shipper and marketer, under Trunkline's blanket certificate issued in Docket No. CP86-586-000 pursuant to section 7 of the Natural Gas Act and for waiver of the Commission's Regulations, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Trunkline proposes to transport up to 50,000 dt per day on behalf of Tejas pursuant to a transportation agreement dated June 30, 1988, between Trunkline and Tejas. It is stated that the transportation agreement provides for Trunkline to receive gas from various existing points of receipt on its system and to transport and redeliver the gas, less fuel and unaccounted for line loss, to CSX, Unocal Inc., in Vermillion Parish, Louisiana. Trunkline states that the estimated daily and annual quantities would be 10,000 dt and 3,650,000 dt, respectively.

It is stated that service under Section 284.223(a) commenced on July 1, 1988, as reported in Docket No. ST88-5059. Trunkline states that the self-implemented transportation will cease prior to the expiration of the notice period for this application, and that for this reason, Trunkline requests waiver of § 284.223(a) of the Commission's Regulations so that it may be permitted to continue the transportation of gas on behalf of Tejas until the end of the notice period established for this application.

Comment date: December 15, 1988, in accordance with Standard Paragraph G at the end of this notice.

9. Natural Gas Pipeline Company of America

[Docket No. CP89-84-000]

October 31, 1988.

Take notice that on October 24, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89-84-000 a request pursuant to §§ 157.205 and 284.223(2)(b) of the Commission's Regulations under the Natural Gas Act for authorization to transport gas for American Central Gas Marketing Company (American), a marketer of natural gas, under Natural's blanket certificate issued in Docket No. CP86-582-000 under section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Natural states that it would transport, on an interruptible basis, up to a maximum of 200,000 MMBtu of natural gas per day (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS), for American. Natural states that the receipt points would be located in Louisiana, offshore Louisiana, Texas, offshore Texas, Illinois, Oklahoma, New Mexico, Kansas, Iowa, Nebraska and Wyoming and the delivery point would be located in Texas. Natural indicates that the total volume of gas to be transported for American on a peak day would be 200,000 MMBtu; on an average day would be 35,000 MMBtu; and an annual basis would be 12,775,000 MMBtu. Natural indicates it would perform the proposed transportation service for American pursuant to a service agreement dated August 3, 1988, as amended September 1, 1988 and September 28, 1988, between Natural and American.

Natural states that it commenced the transportation of natural gas for American on August 23, 1988, at Docket No. ST89-288-000 for a 120-day period ending December 21, 1988, pursuant to § 284.223(a)(1) of the Commission's Regulations. Natural states that it proposes to continue this service in accordance with §§ 284.221 and 284.223(2)(b). Natural states that no new facilities are proposed in order to provide this transportation service.

Natural also states that it is not aware of any agency relationship under which a local distribution company or an affiliate of American is to receive natural gas on behalf of American, and that it has none and is not aware of other applications that are related to this transaction.

Comment date: December 15, 1988, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Fedeal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 15.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 88-25486 Filed 11-2-88; 8:45 am]

BILLING CODE 6717-01-M

[1] The request was tendered for filing on October 11, 1988; however the fee required by § 381.207 of the Commission's rules (18 CFR 381.207) was not paid until October 14, 1988. Section 381.108 of the Commission's Rules provide that the filing date is the date on which the fee is paid.

Cases Filed With the Office of Hearings and Appeals; Week of September 16 Through September 23, 1988

During the week of September 16 through September 23, 1988, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

October 25, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

List of Cases Received by the Office of Hearings and Appeals

[Week of September 16 through September 23, 1988]

Date	Name and location of applicant	Case No.	Type of submission
May 6, 1988	Economic Regulatory Administration, St. James, LA	KRZ-0087	Interlocutory. If granted: The Office of Hearings and Appeals would issue a Special Report Order to LaJet, Inc. (Case No. HRO-0297) requiring the firm to supply the Economic Regulatory Administration with certain information and documentary evidence.
Sept. 15, 1988	Amoco II/Indiana, Indianapolis, IN	RM251-128	Request for Modification/Rescission. If granted: The January 8, 1987, Decision and Order issued to Indiana would be modified, regarding the state's plan submitted in the Amoco second-stage refund proceeding.
Sept. 19, 1988	Hood Goldaberry d/b/a Goldaberry Operating Co., Washington, DC	KEF-0118	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R., Part 205, Subpart V, in connection with the August 19, 1986 Consent Order entered into with Hood Goldaberry d/b/a Goldaberry Operating Company.
Sept. 19, 1988	James R. Hutton, Kingston, TN	KFA-0221	Appeal of an Information Request Denial. If granted: The September 6, 1988 Freedom of Information Request Denial issued by the Oak Ridge Operations Office would be rescinded and James R. Hutton would receive access to award proposals within the Oak Ridge Safety & Health Division.
Sept. 19, 1988	State of Minnesota, St. Paul, MN	KEA-0002	Appeal of Energy Conservation Program Decision. If granted: The July 28, 1988 Decision issued to the State of Minnesota by the DOE's Chicago Area Office denying funding under the State Energy Conservation Program, 10 C.F.R., Part 420, for a project would be reversed.
Sept. 19, 1988	Tom O'Neal, Washington, DC	KEF-0117	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R., Part 205, Subpart V, in connection with a Remedial Order issued to Tom O'Neal.
Sept. 20, 1988	The Hertz Corporation, Washington, DC	RR272-11	Request for Modification/Rescission. If granted: The August 25, 1988 Decision and Order issued to Hertz Corporation (Case No. RF272-42811) would be rescinded, regarding the firm's application in the Crude oil refund proceeding.

Refund Applications Received

[Week of September 16 through September 23, 1988]

Date received	Name of refund proceeding/name of refund applicant	Case No.
4/29/88	Joseph P. Francis	RF265-2765
4/29/88	Joseph P. Francis	RF265-2766
9/1/88	Amoco II/Indiana	RQ251-481
9/1/88	Belridge/Indiana	RQ8-480
9/15/88	Amerada Hess Corporation	RF300-10525
9/15/88	Flying J. Inc.	RF139-180
9/16/88	Pete's Apco	RF310-159
9/16/88	Paxson Oil Company	RF310-160
9/16/88 thru 9/23/88.	Crude Oil Refund	RF272-74896 thru RF272-74921
9/16/88 thru 9/23/88.	Exxon Refund	RF307-5440 thru RF307-5689
9/16/88 thru 9/23/88.	Atlantic Richfield Refund	RF304-5686 thru RF304-6149
9/16/88 thru 9/23/88.	Total Petroleum Refund	RF310-161 thru RF310-208
9/16/88	Celadex Corporation	RF305-14
9/19/88	Hullinger Oil	RF310-199
9/19/88	Rendel Oil Company	RF310-200
9/19/88	Palcom Oil Company	RF310-201
9/19/88	Sutter Crafts Oil Company	RF310-202
9/19/88	Ted E. Warlick	RF300-10526
9/20/88	The Werner Company	RF139-181
9/20/88	Owen Oil & Gas Company	RF139-182
9/20/88	Owen Oil Company, Inc	RF139-183
9/23/88	U.S. Naval Ordnance Station	RF200-10527
9/23/88	Amoco Corporation	RF139-184

[FR Doc. 88-25504 Filed 11-2-88; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders by the Office of Hearings and Appeals; Week of June 27 through July 1, 1988

During the week of June 27 through July 1, 1988, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Richard M. Neal, Jr., M.D., 7/1/88 [KFA-0195]

Richard M. Neal, Jr., M.D. (Neal) filed an Appeal from a denial by the Director of the Executive Secretariat (the Authorizing Official) of a Request for Information which Neal had submitted under the Freedom of Information Act. In considering the Appeal, the DOE determined that the Authorizing Official made an adequate search for the Atomic Energy Commission records identified and requested by Neal. The DOE concluded that it does not presently possess such records. The DOE informed Neal of the other agencies and depositories where these records might be found. Accordingly, the Appeal was denied.

Remedial Order

Port Petroleum, Inc., 6/29/88 [KRO-0150]

Port Petroleum, Inc., Morris M. James, T. Michael Howell and C. Gregory Crafts (collectively "Port") objected to an amended Proposed Remedial Order (PRO) issued to Port by the Economic Regulatory Administration (ERA) on August 13, 1985. In the PRO, the ERA alleged that Port received illegal revenues totalling $6,292,351.65 as a result of selling crude oil at prices in excess of those permitted by 10 CFR 212.186 during the period October 1978 through December 1980. In considering those alligations, the DOE determined that in six of the transactions cited in the PRO the ERA did not meet its burden of persuasion in regards to either the existence of a violation or the amount of a violation. Thus, the DOE reduced the amount of Port's liability under the PRO by $242,738.19, to a total of $6,049,613.46, plus interest. The DOE concluded that the PRO should be issued as a final Remedial Order, as modified by this Decision and Order. The DOE also found that Messers James, Howell and Crafts should be held personally liable with Port for the violations established in the PRO.

Refund Applications

Colfax County Highway Department, et al., 6/30/88 [RF272-16401, et al.]

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 140 claimants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant calculated the volume of its purchases by either consulting actual purchase records or by formulating reasonable estimates. Each applicant was an end-user of the products it purchased, and therefore was presumed to have been injured by those purchases. The sum of the refunds granted in this Decision and Order is $4,767.

Dairymen, Inc., 6/28/88 [RR272-7]

The DOE issued a Decision and Order concerning a Motion for Reconsideration filed by Dairymen, Inc. Dairymen requested that the DOE reverse a Decision which had dismissed Dairymen's Application for Refund in the crude oil Subpart V proceeding. In considering Dairymen's Motion, the DOE found that the Middle Atlantic Division of Dairymen (Mid-Atlantic) filed an Application for Refund from the Surface Transporters (ST) escrow. Included in that application was a properly executed ST Waiver, in which Mid-Atlantic waived both its rights and the rights of any of its affiliates to seek refunds from any crude oil Subpart V proceeding. The DOE determined that Dairymen was an affiliate of Mid-Atlantic, and therefore was bound by that waiver. In addressing other arguments advanced by Dairymen, the DOE determined that: (1) OHA had no reason to question the apparent authority of the Assistant Manager of Mid-Atlantic to file an ST claim on behalf of the Division; and (2) OHA should not be estopped from dismissing the firm's application because of Dairymen's reliance on alleged oral representations made by the OHA staff. Accordingly, Dairymen's Motion for Reconsideraiton was denied.

Edwin D. Boice, et al., 6/30/88 [RF272-15400, et al.]

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 140 claimants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant calculated the volume of its purchases by either consulting actual purchase records or by formulating reasonable estimates. Each applicant was an end-user of the products it purchased, and therefore was presumed to have been injured by those purchases. The sum of the refunds granted in this Decision and Order is $1,543.

Farmers Cooperative, 7/1/88 [RF272-[illegible]]

The DOE issued a Decision and Order supplementing an Order issued to the Farmers Cooperative on June 23, 1988. *Farmers Cooperative*, 17 DOE ¶ _____ No. RF272-6872 (June 23, 1988). In the Supplemental Order, the DOE required the cooperative to distribute the refund previously granted to it to its member customers.

Getty Oil Co./Amoco Oil Co., 6/27/88 [RF265-0958; RF265-2654; RF265-2655]

The DOE issued a Decision and Order concerning three Applications for Refund filed by the Amoco Oil Company (Amoco), a reseller of petroleum products covered by a consent order entered into by the DOE and the Getty Oil Company. Amoco limited its claim on the basis of the percentage presumption of injury methodology, and submitted information adequately establishing the volume of its Getty purchases. Accordingly, the DOE concluded that Amoco should received a refund from the Getty escrow account. The sum of the refunds granted in this Decision and Order is $31,136 ($15,292 in principal and $15,844 in interest).

Getty Oil Co./Hartzler's Store, et al., 6/27/88 [RF265-2646, et al.]

The DOE issued a Decision and Order concerning seven Applications for Refund filed by resellers/retailers of petroleum products covered by the terms of a consent order entered into by the DOE and the Getty Oil Company. Each applicant submitted information indicating its purchase volumes from Getty during the consent order period. In five of the claims, the applicants were eligible for claims below the threshold amount of $5,000. In the remaining two claims, the applicants limited their claims to $5,000. The sum of the refunds granted in this Decision and Order is $33,382 ($16,385 in principal and $16,997 in interest).

Getty Oil Co./Home Oil Co., 6/30/88 [RF265-1999]

The DOE issued a Decision and Order concerning three Applications for Refund filed by Home Oil Co. (HOME), a reseller of petroleum products covered by the terms of a consent order entered

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into by the DOE and the Getty Oil Company. HOME submitted volume information indicating that it was eligible for a refund of less than the small claims threshold of $5,000. The sum of the refunds granted in this Decision and Order is $8,374 ($4,105 in principal and $4,269 in interest).

Getty Oil Co./Lampe Hardware, Inc., et al., 6/30/88 [RF265–2668, et al.]

The DOE issued a Decision and Order concerning ten Applications for Refund filed by resellers/retailers of petroleum products covered by the terms of a consent order entered into by the DOE and the Getty Oil Company (Getty). Each applicant submitted information indicating its purchase volumes from Getty during the consent order period. In four of the claims, the applicants were eligible for refunds below the threshold amount of $5,000. In the remaining six claims, the applicants elected to limit their claims to $5,000. The sum of the refunds granted in this Decision and Order is $108,184 ($52,999 in principal and $55,185 in interest).

Harrison School District No. 23, et al., 6/27/88 [RF272–13601, et al.]

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 166 claimants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant calculated the volume of its purchases by either consulting actual purchase records or by formulating reasonable estimates. Each applicant was an end-user of the products it purchased, and therefore was presumed to have been injured by those purchases. The sum of the refunds granted in this Decision and Order is $1,551.

Martin Bartels, et al., 6/30/88 [RF272–20200, et al.]

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 136 claimants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant calculated the volume of its purchases by either consulting actual purchase records or by formulating reasonable estimates. Each applicant was an end-user of the products it purchased, and therefore was presumed to have been injured by those purchases. The sum of the refunds granted in this Decision and Order is [illegible]

Mobil Oil Corp./Beaulier Oil Co., 6/30/88 [RF225–8165; RF225–8166; RF225–11025; RF225–11026; RF225–11028]

The DOE issued a Decision and Order concerning three Applications for Refund in the Mobil Oil Special Refund Proceeding, by the Beaulier Oil Company (Beaulier), an Ashland, Maine, reseller of Mobil products. *Mobil Oil Corp.*, 13 DOE ¶85,339 (1985). Beaulier based its application on Mobil print-outs of its purchases and on estimates of its Mobil purchases. These estimates, however, were not based on any extrinsic evidence, but rather solely on the recollections of Mr. Beaulier. Accordingly, OHA rejected Beaulier's estimates. OHA then contacted Mobil directly and received additional information regarding Beaulier's purchases. Based on this additional information, OHA determined that Beaulier should receive a refund of $1,998 ($1,601 in principal and $395 in interest).

Mobil Oil Co./Beem Oil & LP Gas Co., 6/30/88 [RF225–5024; RF225–5025; RF225–5026; RF225–5027; RF225–9770; RF225–9771; RF225–9772; RF225–9773]

The DOE issued a Decision and Order granting an Application for Refund filed by representatives of the Beem Oil & LP Gas Company (Beem) in the Mobil Oil Special Refund Proceeding. *Mobil Oil Corp.*, 13 DOE ¶85,339 (1985) (*Mobil*). Applications on behalf of Beem were filed by both the individual who owned Beem during the Mobil consent oil period as well as by the individual who purchased the firm after that period. Based on prior holdings and the sales documents in question, OHA concluded that the refund due from Beem's purchases should be awarded to the party who owned Beem during the consent order period. Based on the documentation supplied, OHA awarded Beem a refund of $810 ($650 in principal and $160 in interest).

Mobil Oil Corp./BTU Energy Corp., 6/27/88 [RF225–10239]

The DOE issued a Decision and Order to the BTU Corporation (BTU), a Tulsa, Oklahoma, reseller of Mobil natural gas liquids, in the Mobil Oil Special Refund Proceeding. *Mobil Oil Corp.*, 13 DOE ¶85,339 (1985) (*Mobil*). BTU's application sought a refund in excess of the $5,000 small claims presumption. In support of its application, BTU submitted convincing documentation that it should receive a full volumetric allocation for its purchases of butane and natural gasoline. Accordingly, BTU was granted a refund of $8,434 ($5,163 in principal plus $1,271 in interest).

Mobil Oil Corp./Enterprise Products Co. 6/27/88 [RF225–3507]

The DOE issued a Decision and Order to the Enterprise Products Company (Enterprise), a Houston, Texas, reseller of Mobil NGLPs, in the Mobil Oil Special Refund Proceeding. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985) (*Mobil*). Enterprise's application sought a refund in excess of the $5,000 small claims presumption. In support of its application, Enterprise submitted convincing documentation that it purchased 79,144,333 gallons of normal butane, commercial butane, propane, iso-butane and natural gasoline from Mobil. Enterprise, however, was unable to submit cost bank information supporting its request for a refund for all of those products. After a careful analysis of all of the data submitted by Enterprise, the DOE concluded that the firm should receive a refund for its purchases of 14,879,161 gallons of normal butane, 1,289,235 gallons of iso-butane, and 11,954,789 gallons of propane. The total refund granted to Enterprise was $14,090 ($11,306 in principal and $2,784 in interest).

Mobil Oil Corp./Fellows Fuel Service, Inc., 6/30/88 [RF225–8775; RF225–8776; RF225–8777; RF225–8778]

The DOE issued a Decision and Order granting an Application for Refund filed by Fellows Fuel Service, Inc. (Fellows) in the Mobil Oil Special Refund Proceeding. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). Fellows, a reseller/retailer of refined petroleum products, attempted to rebut the level-of-distribution presumptions for its purchases of Mobil motor gasoline. The DOE, however, concluded that the cost bank information presented by Fellows was inadequate. Accordingly, Fellows was granted a refund of $5,891 for its purchases of Mobil motor gasoline. Fellows also claimed a refund of greater than $5,000 for its purchases of Mobil distillates; however, the firm made no demonstration of injury in support of that claim. Accordingly, it was denied. The total refund granted to Fellows in this Decision and Order is $7,342 ($5,891 in principal and $1,451 in interest).

Mobil Oil Corp./Jack L. Grace, et al., 7/1/88 [RF225–458, et al.]

The DOE issued a Decision and Order denying Applications for Refund filed by five applicants in the Mobil Oil Corporation Special Refund Proceeding. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). Each firm claimed to be a reseller/retailer of Mobil products during the consent order period. Two of the applicants, however, failed to submit any purchase volume information in support of their claims, and the other three applicants failed to adequately support the information they did submit. Accordingly, all five applicants were denied.

Mobil Oil Corp./Topper Petroleum Co., Inc., 6/27/88 [RF225–8764; RF225–8765; RF225–8766; RF225–11037]

The DOE issued a Decision and Order granting an Application for Refund filed by the Topper Petroleum Company (Topper) in the Mobil Oil Special Refund Proceeding. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). Topper, a reseller/retailer of refined petroleum products, claimed a refund based on its purchases of middle distillates and motor gasoline during the Mobil consent order period. After considering the application, the DOE determined that Topper should receive a refund of $10,984 ($8,813 in principal and $2,171 in interest).

Nappi Distributors, Inc., et al., 6/30/88 [RF272–18401, et al.]

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 127 claimants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant calculated the volume of its purchases by either consulting actual purchase records or by formulating reasonable estimates. Each applicant was an end-user of the products it purchased, and therefore was presumed to have been injured by those purchases. The sum of the refunds granted in this Decision and Order is $3,440.

Standard Oil Co. (Indiana)/The State of Colorado, 6/30/88 [RM251–100; RQ251–455]

The DOE issued a Decision and Order approving a Motion for Modification of a second-stage refund application submitted by the State of Colorado in the Standard Oil Co. (Amoco-II) Special Refund Proceeding. *Standard Oil Co./Indiana*, 14 DOE ¶ 85,161 (1986). In that Decision, OHA authorized Colorado's use of previously approved Amoco-II funds as well as the disbursement of Colorado's remaining Amoco-II funds as well as the disbursement of Colorado's remaining Amoco-II funds for a traffic signal coordination program. The OHA found that the program would provide energy-related restitution to the State's injured motorists. Accordingly, the State was granted a total of $164,074.

Vickers Energy Corp./The State of North Dakota, 6/30/88 [RQ1–463]

The DOE issued a Decision and Order approving a second-stage refund application submitted by the State of North Dakota in the *Vickers Energy* Vickers Energy Corp. special refund proceeding. *Vickers Energy Corp.*, 12 DOE ¶ 85,104 (1985). Because pending Vickers litigation has been resolved, the DOE determined that the Vickers funds previously granted to North Dakota in *Vickers Energy Corp./North Dakota*, 15 DOE ¶ 85,451 (1987), could be disbursed to the State. The State indicated that it wished to use its Vickers funds for two previously approved programs, the city bus funding project and the elderly and handicapped persons transportation project. Accordingly, the DOE granted North Dakota a total of $134 for use in those programs.

Wilbert Nuehring, et al., 6/30/88 [RF272–18200, et al.]

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 182 claimants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant calculated the volume of its purchases by either consulting actual purchase records or by formulating reasonable estimates. Each applicant was an end-user of the products it purchased, and therefore was presumed to have been injured by those purchases. The sum of the refunds granted in this Decision and Order is $4,133.

Dismissals

The following submissions were dismissed:

Name	Case No.
Ann Arundel County, MD	RF272–55055
Beacon Station No. 388	RF225–7
Holiday Associates Partnership	RF272–4434
	RF272–4544
	RF272–4681
Knolls Atomic Power Laboratories	KFA–0166

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

October 25, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 88–25505 Filed 11–2–88; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 3470–4]

Science Advisory Board Global Climate Change Subcommittee, Meeting

November 17–18, 1988.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given of a public meeting of the Global Climate Change Subcommittee of the Environmental Protection Agency's Science Advisory Board. The meeting will be held from 9:00 a.m. to 4:00 p.m. on November 17–18, 1988 at the Howard Johnson's National Airport Hotel, Dominion 1 Conference Room, 2650 Jefferson Davis Highway, Arlington, Virginia 22202.

Background: In order to help identify the effects of global climate changes brought about by addition of greenhouse gases to the atmosphere, the Congress asked the U.S. EPA to undertake two studies on the greenhouse effect. One study deals with the potential health and environmental effects of climate change including, but not limited to the potential impacts on agricultural, forests, wetlands, human health, rivers, lakes, estuaries as well as societal impacts. The second study examines policy options that if implemented would stabilize current levels of greenhouse gas concentrations. Prior to submitting these two reports to the Congress, the EPA's Office of Policy, Planning, and Evaluation (OPPE) has requested Science Advisory Board review of the documents.

Purpose: The purpose of this meeting is for the Subcommittee to review the draft of the first of these studies entitled "The Potential Effects of Global Climate change on the United States". The second report will be reviewed at a second meeting tentatively scheduled for December 1988.

SUPPLEMENTARY INFORMATION: For information concerning this draft document and its availability, please contact Mr. Chris Parker (202) 479–1004. Copies of the draft report are not available from the Science Advisory Board.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning the Subcommittee or the meeting should contact Mr. Robert Flaak, Executive Secretary, Science Advisory Board (A–101F), U.S. EPA, 401 M Street, SW., Washington, DC, (202) 382–2552, (FTS)

BEST COPY AVAILABLE

382–2552. Seating at the meeting will be on a first come basis.

Kathleen Conway,

Acting Director, Science Advisory Board.

Date: October 21, 1988.

[FR Doc. 88–25462 Filed 11–2–88; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3479–2]

Science Advisory Board Clean Air Scientific Advisory Committee; Open Meeting

November 29–30, 1988.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given of a public meeting of the Visibility Subcommittee on the Clean Air Scientific Advisory Committee (CASAC) of the Environmental Protection Agency's Science Advisory Board. The meeting will be held from 9:00 a.m. to 4:00 p.m. on November 29–30, 1988 at the Embassy Suites Hotel, 1881 Curtis Street, Denver, Colorado 80202 (303) [illegible].

Background: The CASC Visibility Subcommittee was established to review the state of technical knowledge concerning visibility research, to provide scientific advice and recommendations to EPA on the direction of future research to support regulatory development, and to serve as a form from which to coordinate EPA's visibility research activities with those outside EPA.

Purpose: The purpose of this first meeting is to review the status of visibility research, including but not limited to monitoring, modeling, perception, and trends analysis. EPA staff will present information on their research plan, the status of EPA's regulatory program for visibility protection, and the status of visibility research. Presentations are solicited from Federal and State agencies, industry, and members of the interested public.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning the Subcommittee or the meeting should contact Mr. Robert Flaak, Executive Secretary, Clean Air Scientific Advisory Committee, Science Advisory Board (A–101F), U.S. EPA, 401 M Street, SW; Washington, DC 20460, (202) 382–2552, (FTS) 382–2552. Seating at the meeting will be on a first come basis. Persons wishing to make a brief presentation (5–10 minutes) at the meeting must contact Mr. Flaak no later than November 21, 1988, to reserve space on the agenda. It is requested that 15 copies of a written statement for the record be submitted to Mr. Flaak at the time of the meeting for distribution to the members of the Subcommittee. Oral presentation should supplement the written statement.

Donald G. Barnes,

Director, Science Advisory Board.

Date: October 24, 1988.

[FR Doc. 88–25463 Filed 11–2–88; 8:45 am]

BILLING CODE 6560–50–M

[FRL 3479–6]

Proposed Administrative Penalty Assessment and Opportunity to Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment.

SUMMARY: EPA is providing notice of a proposed administrative penalty assessment for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue these orders after the commencement of either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessments pursuant to 33 U.S.C. 1319(g)(4)(a).

Class I proceedings are conducted under EPA's Guidance on Class I Clean Water Act Administrative Penalty Procedures. The procedures through which the public may submit written comment on a proposed Class I order or participate in a Class I proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Guidance. The deadline for submitting public comment on a proposed Class I order is thirty (30) days after issuance of public notice.

On the date identified below, EPA commenced the following Class II proceeding for the assessment of penalties:

In the Matter of the Town of Patagonia, Arizona; EPA Docket No. IX–FY89–1; filed on October 21, 1988, with Mr. James Casuscelli, Regional Hearing Clerk, U.S. EPA, Region 9, 215 Fremont St., San Francisco, California 94105, (415) 974–8600; proposed penalty of $25,000 for failure to comply with the effluent limitations and operation and maintenance requirements in National Pollutant Discharge Elimination System Permit No. AZ0021679.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Guidance, review the complaint or other documents filed in this proceeding, comment upon a proposed assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above. The administrative record for this proceeding is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by the respondent is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in these proceedings prior to thirty (30) days after the date of publication of this notice.

Dated: October 21, 1988.

Harry Seraydarian,

Director, Water Management Division.

[FR Doc. 88–25454 Filed 11–2–88; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3483–4]

Auburn Church Road Drum Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has agreed to settle claims for response costs at Auburn Church Road Drum Site, Raleigh, North Carolina with John R. Baucom, Jr. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Anita L. Davis, Environmental Scientist, Investigation and Cost Recovery Unit, Site Investigation and Support Branch, Waste Management Division, U.S. EPA, Region IV, 345 Courtland St., NE., Atlanta, GA 30365, [illegible].

Written comments may be submitted to the person above by December 5, 1988.

Date: September 14, 1988.

Lee A. DeHihns, II,

Acting Regional Administrator.

[FR Doc. 88–21780 Filed 11–2–88; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3482–5]

Peachtree Mercury Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has agreed to settle claims for response costs at Peachtree Mercury Site, Norcross, Georgia, with Transcon Lines Inc. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Tex Ann Reid, Environmental Specialist, Investigation and Cost Recovery Unit, Site Investigation and Support Branch, Waste Management Division, U.S. EPA, Region IV, 345 Courtland St., NE., Atlanta, GA 30365, 404–347–5059.

Written comments may be submitted to the person above by December 5, 1988.

Date: September 14, 1988.

Lee A. DeHihns, II,

Acting Regional Administrator.

[FR Doc. 88–21782 Filed 11–2–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearings; State Line Broadcasting, et al.

1. The Commission has before it the following groups of mutually exclusive applications for new FM stations:

I

Applicant, city, and State	File No.	MM Docket No.
A. State Line Broadcasting, Texarkana, AR.	[illegible]	88–480
B. Radio Four, Inc., Texarkana, AR.	[illegible]	
C. Texarkana Broadcasting, Inc., Texarkana, AR.	[illegible]	
D. Susan Lundborg, Texarkana, AR.	[illegible]	
E. Gayland and Sheri Gaut, Texarkana, AR.	[illegible]	

Issue Heading and Applicant(s)

1. City Coverage-FM, All
2. Air Hazard, E
3. Comparative, All
4. Ultimate, All

II

Applicant, city, and State	File No.	MM Docket No.
A. Michael R. Barnett & Robert L. Terry d/b/a/ Hazard Broadcasting Services, Hazard, KY.	[illegible]	88–481
B. C&F Broadcasting, Ltd., Hazard, KY.	[illegible]	
C. Haz Broadcasting, Inc., Hazard, KY.	[illegible]	
D. Black Gold Broadcasting, Inc., Hazard, KY.	[illegible]	
E. Perry Broadcasting, Hazard, KY.	[illegible]	

Issue Heading and Applicants

1. Comparative, A, B, C, D
2. Ultimate, A, B, C, D

III

Applicant, city, and State	File No.	MM Docket No.
A. Erath Broadcasting, a Partnership in Commerdem, Erath, Louisiana.	BPH–851230MM	88–482
B. Keith Frederick, et al. d/b/a/ Solo Music Company of Louisiana, Ltd., Erath, Louisiana.	[illegible]	
C. Jay-Winn Broadcasting, Ltd., Erath, Louisiana.	[illegible]	
D. Tri-Parish Broadcasting Limited, Erath, Louisiana.	BPH–860102QD	

Issue Heading and Applicants

1. Air Hazard, D
2. Comparative, A–D
3. Ultimate, A–D

IV

Applicant, city and State	File No.	MM Docket No.
A. Juniata College, Huntingdon, PA.	[illegible]	[illegible]
B. Mary Lou Manifestic, Huntingdon, PA.	[illegible]	

Issue Heading and Applicants

1. City Coverage, A
2. Comparative, A, B
3. Ultimate, A, B

V

Applicant, city, and State	File No.	MM Docket No.
A. Illini Broadcasting, Inc., Taos, NM.	[illegible]	[illegible]
B. Ann C Mansfield d/b/a/ Taos County Radio, Taos, NM.	[illegible]	

Issue Heading and Applicants

1. Comparative, A, B
2. Ultimate, A, B

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in consolidated proceedings upon the issues listed above for each proceeding. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used to signify whether the issue in question applies to that particular applicant.

3. Non-standardized issues in these proceedings, are set forth in an Appendix to this Notice. A copy of the complete HDO's in these proceedings are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. [Telephone (202) 857–3800].

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–25467 Filed 11–2–88; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-010929-001

Title: City of Los Angeles Terminal Agreement.

Parties:

City of Los Angeles (City)
Yang Ming Marine Transport, Ltd. (Yang Ming)

Synopsis: The agreement authorizes Yang Ming to remain at its existing terminal on a month-to-month basis on the same terms and conditions of its current lease except that the City agrees to delete the current minimum yearly guarantee.

By Order of the Federal Maritime Commission.

Joseph C. Polking,
Secretary.

Dated: October 31, 1988.

[FR Doc. 88-25410 Filed 11-2-88; 8:45 am]
BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Revision of Fees for Sanitation Inspections of Cruise Ships

AGENCY: Centers for Disease Control (CDC), Public Health Service, HHS.

ACTION: Revision of Fees for Sanitation Inspections of Cruise Ships.

SUMMARY: Notice of revised fees for vessel sanitation inspections effective January 1, 1989. The method of determining fees is also presented.

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Linda Anderson, Chief, Special Programs Group, Center for Environmental Health and Injury Control, CDC, Atlanta, Georgia, 30333. Telephones: FTS: 236-4595, Commercial: (404) 488-4595.

SUPPLEMENTARY INFORMATION:

Purpose and Background

Collection of fees for sanitation inspections of passenger cruise ships currently inspected under the Vessel Sanitation Program (VSP), Centers for Disease Control (CDC) began on March 1, 1988; the fee schedule published in the **Federal Register** on Tuesday, November 24, 1987, (52 FR 45019) expires December 31, 1988. The cost per inspection has been determined by dividing the full costs of the VSP by the estimated number of inspections and multiplying by a size/cost factor based on the size of the vessel and the number of vessels in each size category.

The fee for inspections has been calculated as follows:

—Approximate number of vessels in the program..... 78
—Approximate number of routine periodic inspections..... 142
—Approximate number of reinspections..... 64
—Approximate number of total inspections annually..... 206

The formula used to determine the fees is as follows:

$$\text{Cost per inspection} = \frac{\text{Total cost of VSP}}{\text{No. of Inspections annually}} \times \text{Size/cost factor}$$

The size/cost factor used in the formula was established in the fee schedule published in the **Federal Register** on Friday, July 17, 1987, (52 FR 27080) and is as follows:

—Cost for small vessel (<15,000 GRT [1]).....0.5
—Cost for medium vessel (15-30,000 GRT).....1.0
—Cost for large vessel (>30-65,000 GRT).....1.5
—Cost for extra large vessel (>65,000 GRT).....2.0

Fees

The following fee schedule will apply through December 31, 1989.

Vessel Size and Fee

<15,000 GRT..... $1,085
15-30,000 GRT..... 2,170
>30-65,000 GRT..... 3,255
>65,000 GRT..... 4,340

[1] GRT—Gross Register tonnage in cubic feet, as shown in Lloyd's Register of Shipping.

Inspections and reinspections involve the same procedure, require the same amount of time and will therefore be charged at the same rate.

Applicability

The fees will be applicable to all passenger cruise vessels for which sanitation inspections are conducted as part of the Vessel Sanitation Program, CDC.

Dated: October 27, 1988.

Signed by:

Robert L. Foster

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 88-25412 Filed 11-2-88; 8:45 am]
BILLING CODE 4160-18-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-88-1874; FR 2547]

Impact of 1989 Appropriations Act on Lead-Based Paint Hazard Elimination Rule for Public and Indian Housing

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The purpose of this notice is to state the policy of the Department with respect to the impact of a provision of the Fiscal Year 1989 Department of Housing and Urban Development—Independent Agencies Appropriations Act (Pub. L. 100-404) ("1989 Appropriations Act") on testing and abatement of lead-based paint in public and Indian housing.

EFFECTIVE DATE: November 2, 1988.

FOR FURTHER INFORMATION CONTACT: Janice Rattley, Director, Project Management Division, Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 755-1600. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice were submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and were assigned OMB control number 2577-0065. Public reporting burden for each of these collections of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the heading, *Other Matters*, in this notice. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., Room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Impact of Appropriations Act

The purpose of this notice is to announce that the Department is temporarily postponing enforcement of the Lead-Based Paint Hazard Elimination Rule, promulgated on June 6, 1988 (53 FR 20790) ("June 6, 1988 regulation"), with respect to the testing and abatement of lead-based paint (LBP) in public and Indian housing. The notice also contains instructions to public housing agencies ("PHAs") and Indian Housing Authorities ("IHAs") for LBP-related activities contracted for or begun under the Comprehensive Improvement Assistance Program (CIAP) before August 19, 1989, the date of enactment of the 1989 Appropriations Act. (Unless otherwise noted, the use of PHAs in this notice refers to both PHAs and IHAs.) The notice applies only to public and Indian housing programs. It does not apply to any Housing or Community Development programs. On September 21, 1988, HUD distributed a similar notice to PHAs entitled "Amended Lead-Based Paint Requirements" (PIH 88-27), in which notice of the effect of the Appropriations action, together with other matters, was discussed.

The June 6, 1988 regulation was promulgated to implement amendments in section 303 of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C 4822) ("LBPPA") by section 566 of the Housing and Community Development Act of 1987 (1987 Act). A provision of the 1989 Appropriations Act prohibits the use of funds appropriated by the 1989 Appropriations Act or any previously appropriated funds to implement or enforce the June 6, 1988 regulation with respect to testing and abatement of lead-based paint "until the Secretary develops comprehensive technical guidelines on reliable testing protocols, safe and effective abatement techniques, cleanup methods, and acceptable post-abatement lead dust levels." The Department has contracted for the development of such guidelines to be available to the Department on February 15, 1989.

The instructions in this notice are based on the Department's understanding of a letter, dated September 13, 1988, from the Chairmen and Ranking Minority Members of the Senate and House Appropriation Subcommittees on HUD-Independent Agencies, which stated the subcommittees' interpretation of the 1989 Appropriations Act provision. The letter states that the 1989 Appropriations Act provision was intended to postpone enforcement through the June 6, 1988 regulation of section 566 of the 1989 Act. They added that, despite this language, a compelling need for LBP abatement persists. Therefore, at the very least, it is important to rely upon the provisions of the previous regulation promulgated on August 1, 1988 (51 FR 27774) ("1988 regulation"). Projects funded under the CIAP program that involve LBP testing and abatement should proceed in a responsible manner during this interim period (while enforcement of the June 6, 1988 regulation is suspended awaiting the technical guidelines). However, the letter also cautions that standards for LBP abatement and cleanup under the guidelines "will be stringent and work undertaken in the interim should be cognizant of this fact." In light of the Committee advice, the Department strongly urges PHAs to take into account the provisions of the 1987 Act. To follow a lesser standard may eventually result in duplicate modernization.

Instructions

The following instructions apply to CIAP and Development/Major Reconstruction of Obsolete Projects (MROP) contracts, emergency modernization, and other LBP testing and abatement activities:

1. The temporary suspension of enforcement of the June 6, 1988 regulation does not affect the expanded definition of "applicable surfaces" as that term is used in the 1987 Act and the June 6, 1988 regulation. That term is defined as "all intact and nonintact interior and exterior painted surfaces of a residual structure."

2. Except as necessary to proceed with a CIAP or development project described below, the Department is temporarily suspending the requirement of the 1987 Act and the June 6, 1988 regulation to conduct public housing vacant unit inspections at re-renting or random sampling of all occupied dwellings until the technical guidelines are available. The Department discourages any testing of units outside of approved CIAP or development/MROP programs before the issuance of the guidelines.

3. PHAs must proceed with their architectural and engineering contracts, construction contracts, and force account work where started ("contracts") under the following conditions:

a. Comprehensive modernization contracts awarded before May 4, 1988

PHAs were instructed by an administrative directive (Notice PIH 88-7 (PHA)), dated March 4, 1988, to follow the requirements of the 1988 regulation. PHAs with projects in this group are *required* to conduct random sampling of the comprehensive modernization projects. Since all the requirements of the 1987 Act must be complied with when the technical guidelines are issued, PHAs are urged to implement the requirement of the 1987 Act for testing and abatement of all applicable surfaces.

b. Special purpose and homeownership modernization, and development/MROP contracts awarded before June 6, 1988

PHAs are urged to comply with the applicable surfaces requirement of the 1987 Act. Although these projects were not specifically mentioned in the 1988 regulation, they are covered by the 1987 Act and, therefore, will be required to comply with those requirements when the technical guidelines are issued. PHAs should use the 1988 regulation as a guide, particularly with regard to the

random sampling requirement for contracts in this group.

c. Comprehensive modernization contracts awarded on or after May 4, 1988

PHAs must comply with the applicable surfaces requirement of the 1987 Act. PHAs should use the 1988 regulation as a guide, particularly with regard to the random sampling requirement for comprehensive modernization contracts.

d. Special purpose and homeownership modernization, and development/MROP contracts awarded on or after June 6, 1988

PHAs must comply with the applicable surfaces requirement of the 1987 Act. PHAs should use the 1988 regulation as a guide, particularly with regard to the random sampling requirement for contracts in this group.

e. Emergency modernization contracts

All modernization contracts involving emergency work items may proceed. For Group 1 emergency work items that include procedures involving either a dwelling unit of a resident child identified with an elevated blood lead level (EBL) or a PHA-owned or operated child care facility used by a resident or non-resident EBL child, PHAs must proceed with the proposed work under the following conditions:

(1) *Contracts awarded before May 4, 1988:* PHAs are urged to implement the applicable surfaces requirement of the 1987 Act for dwelling units and child care facilities. PHAs should use the 1988 regulation as a guide when performing work in common areas and on exterior surfaces.

(2) *Contracts awarded on or after May 4, 1988:* PHAs must comply with the applicable surfaces requirements of the 1987 Act for dwelling units and child care facilities. PHAs should use the 1988 regulation as a guide when performing work in common areas and on exterior surfaces.

4. Field Offices may grant time extensions for obligation of funds because of the Department's delay on LBP instructions. PHAs must submit revised Project Implementation Schedules for consideration of such extensions.

There are further amendments to the LBPPPA in the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (H.R. 4352, 100th Cong., 2d Sess., 134 Cong. Rec. H10282–10279 (daily ed. Oct. 13, 1988)), which passed both the House of Representatives and the Senate on October 18, 1988 and is awaiting approval by the President. Upon final enactment of the amendments, the Department will provide future additional public notice of their effect on the June 6, 1988 regulation.

Other Matters

The collection of information requirements contained in this notice were submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Item 4 under *Instructions*, above, has been determined by the Department to contain collection of information requirements. The burden of filing revised Project Implementation Schedules was included in the original submission of information collection requirements to OMB under the CIAP program, which was approved by OMB on December 1, 1986, and given control number 2577-0157. Information on those annual requirements is as follows:

Requirement	Responses per year	Responses per respondent per year	Hours per response	Total
Project Implementation Schedule	960	2.5	1	2,400

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this notice do not contain federalism implications and, thus, are not subject to review under the Order. This notice informs the public of the effect of a provision of the 1988 Appropriations Act on the Department's Lead-Based Paint Hazard Elimination Rule.

The General Counsel has also determined, as the Designated Official under Executive Order 12606, *The Family*, that this notice does not have a potential significant impact on family formation, maintenance, and general well-being and, thus, is not subject to review under the Order.

Dated: October 27, 1988.

Jacqueline Rogers,

Associate General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 88-25430 Filed 11-2-88; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-040-09-4126-09-24-1; OK NM 0141015 and OK ELM 0170121]

Intent to Amend Southeast Oklahoma Management Framework Plan; LeFlore County, OK

AGENCY: Bureau of Land Management, Interior, Tulsa District, Oklahoma.

ACTION: Notice of intent to prepare a management framework plan amendment for coal lease modifications in LeFlore County, Oklahoma.

SUMMARY: The Bureau of Land Management (BLM), Oklahoma Resource Area, Oklahoma, is initiating the preparation of a Management Framework Plan (MFP) Amendment and Environmental Assessment (EA). The amendment is in response to two applications to modify Federal coal leases in LeFlore County, Oklahoma. The Code of Federal Regulations, Title 43, Subparts 1600 and 3400, will be followed for this planning effort. The public is invited to express their comments on the proposal to amend the MFP.

DATE: Comments relating to the identification of issues for the amendment will be accepted until December 5, 1988. An additional public comment period will be provided at the time the EA is completed.

ADDRESS: Comments should be sent to: Bureau of Land Management, 200 NW Fifth Street, Room 548, Oklahoma City, OK 73102.

FOR FURTHER INFORMATION CONTACT: Paul Tanner, Area Manager, or Jim Gegen, Team Leader, Oklahoma Resource Area, (405) 231-5491.

SUPPLEMENTARY INFORMATION: The planning area involves split estate, private surface and Federal coal ownership in two locations within LeFlore County, Oklahoma. Evans Coal Company proposes to modify Federal lease OK ELM 017012, by adding 120 acres contiguous to the lease, located 4 miles west of Spiro, Oklahoma. Laredo Solid Fuels, Inc., proposes to modify Federal lease OK NM 0141015, by adding 50 acres contiguous to the lease, located 2 miles southwest of Heavener, Oklahoma. Maps showing the modification areas are available in the Oklahoma Resource Area Office.

Public participation activities during the planning process will include consultation with affected landowners and governmental entities. The draft and final amendment and EA will be distributed for public review. An individual may protest approval of the planning amendment only with respect to those items submitted in writing to the Area Manager during the amendment process.

Complete records of the planning amendment process will be available for public review at the Oklahoma Resource Area Office at the address above.

Monte G. Jordan,

Associate State Director.

[FR Doc. 88-25414 Filed 11-2-88; 8:45 am]

BILLING CODE 4310-FB-M

Bureau of Land Management

[ID-943-09-4214-11; I-04203, I-06357]

Proposed Continuation of Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Forest Service proposes that a 7,470.43 acre withdrawal for the Boise Basin Experimental Forest and the Boise Basin Branch Headquarters Units and a 1,255.16 acre withdrawal for the Experimental Forest, Bear Run Unit, continue for an additional 50 years based upon the anticipated remaining useful life of the sites for research purposes. The land will remain closed to surface entry and mining, but has been and will remain open to mineral leasing.

EFFECTIVE DATE: Comments should be received within 90 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1735.

The U.S. Forest Service proposes that the existing land withdrawals made by Public land Order Nos. 993 for the Boise Basin Experimental Forest and Boise Basin Branch Headquarters Unit and No. 5347, for the Experimental Forest, Bear Run Unit, be continued for a period of 50 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The land is described as follows:

Boise Meridian

(I-04203, PLO 993)

T. 5 N., R. 6 E.,
- Sec. 4, lots 3–6, 11, 12, SW¼;
- Sec. 5, all;
- Sec. 6, all;
- Sec. 7, all;
- Sec. 8, all;
- Sec. 9, all;
- Sec. 10, SW¼;
- Sec. 15, W½;
- Sec. 16, all;
- Sec. 17, all;
- Sec. 18, all;
- Sec. 19, lots 1, 2, NE¼, E½NW¼;
- Sec. 20, N½.

T. 6 N., R. 5 E.,
- Sec. 22, NE¼, W½NW¼, SE¼NW¼, SW¼, N½SE¼, W½SW¼SE¼, E½SE¼SE¼;
- Sec. 23, SW¼NW¼, NW¼SW¼;
- Sec. 27, W½NW¼NE¼.

(I-06357, PLO 5357)

T. 6 N., R. 5 E.,
- Sec. 13, E½E½;
- Sec. 24, E½E½, SE¼SW¼, SW¼SE¼.

T. 6 N., R. 6 E.,
- Sec. 7, lots 3 and 4;
- Sec. 18, lots 1–4, W½E½;
- Sec. 19, lots 1–4, W½E½.

The areas described aggregate 8,725.59 acres in Elmore and Boise Counties.

The withdrawals are essential for protection of the experimental forests for forestry research. The withdrawals closed the land to surface entry and mining but not to mineral leasing. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuations may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued; and if so, for how long. The final determination of the withdrawals will be published in the Federal Register. The existing withdrawals will continue until such final determination is made.

William E. Ireland,

Chief, Realty Operations Section.

Dated: October 28, 1988.

[FR Doc. 88-25409 Filed 11-2-88; 8:45 am]

BILLING CODE 4310-GG-M

[NV-030-09-4213-11; N-48582]

Classification Termination and Opening Order; Nevada

October 17, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates Recreation and Public Purposes classification N-48582 and opens a portion of the affected lands to the operation of the public land laws including location under the mining laws.

EFFECTIVE DATE: December 5, 1988.

FOR FURTHER INFORMATION CONTACT: Terry Plumer, District Manager, Battle Mountain District Office, Bureau of Land Management, 2nd and Scott Streets, P.O. Box 1420, Battle Mountain, Nevada 89820, (702) 635-5181.

SUPPLEMENTARY INFORMATION: In July 1988, a Notice of Realty Action (NORA) was issued which identified the following described land as being suitable for lease/purchase pursuant to the Recreation and Public Purposes Act (43 U.S.C. 869, 869-1 to 869-4):

Mount Diablo Meridian, Nevada

T. 12 S., R. 47 E.,
- Sec. 19, W½SE¼, SE¼SE¼;
- Sec. 30, W½NW¼NE¼NE¼, E½NW¼NE¼, NE¼SW¼NE¼.

The area described contains 155 acres in Nye County.

The NORA provided for classification of the lands as well as segregation against all forms of appropriation under the public land laws and location under the mining laws, but not the Recreation and Public Purposes Act or the mineral leasing laws. Subsequently, policy guidance which prohibited the use of the Recreation and Public Purposes Act to authorize waste disposal on the public lands was clarified and broadened to include sewage sludge disposal sites, sewage treatment plants, waste water filteration fields, and sewer lagoons. Therefore, a determination has been made that the Recreation and Public Purposes classification and segregation are no longer appropriate.

At 10:00 a.m. on December 5, 1988, the lands described above will be open to all forms of appropriation under the public land laws, including location under the mining laws, subject to any valid existing rights and the requirements of applicable laws, rules, and regulations.

At 10:00 a.m. on December 5, 1988, the same land will also be open to the operation of the mining laws.

Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts. All of the land remains open to the mineral leasing laws.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 88-25432 Filed 11-2-88; 8:45 am]

BILLING CODE 4310-HC-M

[(NV-930-08-4212-13; N-46463)]

Issuance of Land Exchange Patent; Nevada

October 28, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice identified Federal and non-Federal lands involved in a recently completed exchange. The surface and mineral estates were conveyed in this transaction.

FOR FURTHER INFORMATION CONTACT: Ben F. Collins, District Manager, Las Vegas District Office, Bureau of Land Management, 4765 Vegas Drive, P.O. Box 26569, Las Vegas, Nevada 89126, (702) 646-5001.

SUPPLEMENTARY INFORMATION: The United States issued Patent No. 27-88-0029 to Howard Hughes Properties on September 29, 1988, for the following described lands pursuant to section 206 of the Act of October 21, 1976 (43 U.S.C. 1716):

Mount Diablo Meridian, Nevada

T. 21 S., R. 59 E.,
- Sec. 11, lots 3 to 8, inclusive, lots 12 to 21, inclusive, and lots 24 to 27, inclusive;
- Sec. 13, lots 1 to 12, inclusive;
- Sec. 14, lots 1 to 12, inclusive;
- Sec. 23, lots 1 to 10, inclusive;
- Sec. 24, lots 1 to 10, inclusive;
- Sec. 25, lots 1 to 14, inclusive, and lots 17 to 20, inclusive;
- Sec. 36, lots 1 to 3, inclusive, and lots 18, 20, and 21.

The area described contains 3,768.39 acres.

In exchange for these lands, the United States acquired the following described lands from Howard Hughes Properties:

Mount Diablo Meridian, Nevada

T. 20 S., R. 59 E.,
- Sec. 19, lots 3 and 4, E½,SW¼, SE¼;
- Sec. 30, lots 1 to 4, inclusive, E½, E½W½;
- Sec. 31, lots 1 to 4, inclusive, E½, E½W½;
- Sec. 32, all that portion of the S½ lying south of the following described line: Beginning at the standard corner of Sections 32 and 33 also being the Southeast corner of said Section 32, T. 20 S., R. 59 E.; thence North 58°14' West, 39.16 chains distance to angle point No. 2; thence North 66°28' West, 56.28 chains distance to the one-quarter section corner of Sections 31 and 32. As shown upon the Dependent Resurvey and Subdivision of certain Sections in T. 20 S., R. 59 E., MDM, Nevada: by U.S. Department of Interior, Bureau of Land Management Plat dated July 15, 1987.

T. 21 S., R. 59 E.,
- Sec. 4, S½NW¼, SW¼, and all that portion of lots 3 and 4 lying south of the following described line: Beginning at the Center North one-sixteenth corner of Section 4, T. 21 S., R. 59 E.; thence North 60°09' West, 38.07 chains to the standard corner of Sections 32 and 33 also being the Southeast corner of said Section 32, T. 20 S., R. 59 E;
- Sec. 5, lots 1 to 4, inclusive, S½N½, S½;
- Sec. 7, E½E½, NE¼SW¼SE¼, S½SW¼SE¼;
- Sec. 8, all;
- Sec. 9, all;
- Sec. 16, N½NW¼;
- Sec. 17, N½N½;
- Sec. 18, N½NE¼, NE¼NW.
- Sec. 6, lots 1 and 2, S½NE¼, E½,SE¼, as shown upon the plat of Subdivision of Section 6, T. 21 S., R. 59 E., MDM, Nevada; by U.S. Department of Interior, Bureau of Land Management, dated May 7, 1981.

Excepting therefrom that portion of said land as condemned by that certain Final Order of condemnation in favor of the State of Nevada, ex rel. Nevada Department of Transportation, as Case No. A 251539 recorded in the Office of the County Recorder, June 6, 1988, in Book 88060 as Document Number 00431. Said parcel of land, for reference purposes only, further shown as Parcel 1 on page 27 of File 58 of Parcel Maps, as recorded in the Office of the County Recorder, Clark County, Nevada. The area described contains 4,883.57 acres.

The purpose of this exchange was to acquire non-Federal lands immediately adjacent to the Bureau of Land Management administered Red Rock Canyon Recreation Lands. Acquisition of these lands will enable the Bureau to better manage the uses which occur within the Red Rock Canyon area.

The values of the Federal lands and non-Federal lands in the exchange were appraised at $18,840,000.00 and $19,300,000.00, respectively. The difference, $460,000.00 was a donation/gift to the United States from Howard Hughes Properties.

The non-Federal lands acquired by the United States in this exchange will remain closed to the operation of the public laws and the mining and mineral leasing laws.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 88-25433 Filed 11-2-88; 8:45am]

BILLING CODE 4310-HC-M

[NV-930-08-4212-14; N-49614]

Realty Action; Noncompetitive Sale of Federal Land in Nye County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The 11.25 acres of public land described herein is proposed for direct sale to the Beatty Water and Sanitation District for the purpose of establishing rapid infiltration basins for sewage treatment. This notice closes the land for a period of 270 days to all other forms of appropriation under the public land laws, including the general mining laws.

EFFECTIVE DATE: November 3, 1988.

FOR FURTHER INFORMATION CONTACT: Diane Ross, Realty Specialist, Tonopah Resource Area, Bureau of Land Management, P.O. Box 911, Bldg. 102, Military Circle, Tonopah, Nevada 89049, (702) 482-6214.

SUPPLEMENTARY INFORMATION: The following described land has been examined and identified as suitable for disposal through a direct sale under sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713 and 1719) at no less than the appraised fair market value:

Mount Diablo Meridian, Nevada

T. 12 S., R. 47 E.,
- Sec. 18, S½N½NE¼SE¼SW¼SE¼, S½N½SE¼SW¼SE¼, S½SE¼SW¼SE¼, S½N½NW¼SW¼SE¼SE¼, S½NW¼SW¼SE¼SE¼, SW¼SW¼SE¼SE¼.

The area described contains 11.25 acres in Nye County.

The sale is consistent with the Bureau's planning system and the Esmeralda-Southern Nye Resource Management Plan. The land is not needed for any resource program. The land will not be offered for sale for at least 60 days after the publication of this Notice in the Federal Register.

The grazing lessee has been given a two-year notice.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, in accordance with the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

2. Oil, gas, geothermal steam and associated geothermal resources, saleable and locatable minerals, together with the right to prospect for, mine, and remove these minerals. (A more detailed description of this reservation which will be incorporated in the patent document, is available for review at the Battle Mountain District Office, Bureau of Land Management, North Second and Scott Streets, P.O. Box 1420, Battle Mountain, Nevada 89820.)

And will be subject to:

1. All valid existing rights documented on the official land records at the time of patent issuance.

2. Any other reservations the Authorized Officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

The lands are proposed to be offered for direct sale to the Beatty Water and Sanitation District. Conveyance of the mineral estate, except for oil, gas, geothermal steam and associated geothermal resources, saleable and locatable minerals, will occur simultaneously with the sale of the land. Acceptable of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 non-returnable filing fee for conveyance of the available mineral interests.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 1420, Battle Mountain, Nevada 89820. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Publication of this notice in the Federal Register segregates the public lands from all other forms of appropriation under the public land laws, including the general mining laws. The segregate effect will end upon issuance of a patent to these lands, upon publication in the Federal Register of a notice of termination, or 270 days from the date of publication of this notice, whichever comes first.

Terry L. Plummer,

District Manager, Battle Mountain.

[FR Doc. 88-25434 Filed 11-2-88; 8:45 am]

BILLING CODE 4310-HC-M

[WY-930-08-4212-13; WYW 88313]

Notice of Conveyance and Opening Order; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public of the completion of an exchange of land between the United States, Bureau of Land Management, and the State of Wyoming. The order opens the land acquired by the United States to operation of the public land laws. The land was acquired for public recreation use and will be managed as part of the Rock Springs District's Greater Sand Dune Area of Critical Environmental Concern.

EFFECTIVE DATE: At 8:30 a.m. on November 21, 1988, the land described in paragraph 2 shall be open to operation of the public land laws, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law.

FOR FURTHER INFORMATION CONTACT: Jon Johnson, BLM Wyoming State Office, 2515 Warren Avenue, Cheyenne, Wyoming 82001, 307-772-2074.

SUPPLEMENTARY INFORMATION: 1. In accordance with the provisions of section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716, the following Federal land, surface estate only, has been conveyed to the State of Wyoming:

Sixth Principal Meridian

T. 22 N., R. 102 W.,
- Sec. 36, E½ and E½W½.

The land described contains 480.00 acres.

All minerals in the above described land are owned by the State of Wyoming.

2. In exchange for the above land, the United States acquired the following land, surface estate only, from the State of Wyoming:

Sixth Principal Meridian

T. 23 N., R. 103 W.,
- Sec. 16, all.

The land described contains 640.00 acres.

All minerals in the above described land were reserved by the State of Wyoming.

Hillary A. Oden,

State Director.

October 25, 1988.

[FR Doc. 88-25431 Filed 11-2-88; 8:45 am]

BILLING CODE 4310-22-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31201]

Claremont & Concord Railroad, Inc.; Acquisition and Operation

Claremont & Concord Railroad, Inc. (Claremont), a noncarrier, has filed a notice of exemption to acquire and operate two segments of rail line owned by Claremont and Concord Railway Company and Claremont Railway Company. The line extends (1), from valuation station 2887+37, near Pleasant Street in the City of Claremont, NH, to an intersection point with a line of the Boston and Maine Railroad at valuation station 2969+10, at Claremont Junction, NH, a distance of approximately 2 miles; and (2), from a point near the intersection of Banks and Sullivan Streets in the City of Claremont to an intersection point with the above-specified line segment near Mulberry Street in the City of Claremont, a distance of approximately 0.5 mile. The transaction was expected to be consummated on or about October 13, 1988. Any comments must be filed with the Commission and served on: Robert L. Calhoun, Sullivan & Worcester, Suite 800, 1025 Connecticut Avenue, Washington, DC 20036.

Claremont must preserve intact all sites and structures more than 50 years old until compliance with the requirements of Section 106 of the National Historic Preservation Act, 16 U.S.C. 470, is achieved. *See Class Exemption—Acq. & Oper. of R. Lines Under 49 U.S.C. 10901,* 4 I.C.C. 2d 305 (1988).[1]

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: October 18, 1988.

[1] Claremont has certified that it has identified such sites and structures to the appropriate State historic preservation office for New Hampshire.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-25183 Filed 11-2-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-290 (Sub-No. 37X)]

Central of Georgia Railroad Co.; Discontinuance Exemption for Operations Between Madison and Bishop, GA

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances* to discontinue operations over its 16-mile line of railroad between milepost F-75.5 near Madison and milepost F-91.5 at Bishop, GA.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years and that overhead traffic has been rerouted; and (2) no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the discontinuance shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective December 3, 1988 (unless stayed pending reconsideration). Petitons to stay regarding matters that do not involve environmental issues [1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1142.27(c)(2) [2] must be filed by November 14, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by November 23, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Virginia K. Young, Norfolk Southern Corporation, One Commercial Place, Norfolk, VA 23510-2191.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this discontinuance.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by November 8, 1988. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: October 21, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-25184 Filed 11-2-88; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C. 2d 400 (1988).

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 [52 FR 49465-49481].

NATIONAL LABOR RELATIONS BOARD

Appointments of Individuals To Serve as Members of Performance Review Boards

5 U.S.C. 4314(c)(4) requires that the appointments of individuals to serve as members of performance review boards be published in the **Federal Register**. Therefore, in compliance with this requirement, notice is hereby given that the individuals whose names and position titles appear below have been appointed to serve as members of performance review boards in the National Labor Relations Board for the rating year beginning October 1, 1987 and ending September 30, 1988.

Name and Title

Robert E. Allen—Associate General Counsel, Enforcement Litigation

Harold J. Datz—Associate General Counsel, Advice

Joseph E. DeSio—Associate General Counsel, Operations Management

Michael J. Fogerty—Chief Counsel to Board Member

Joseph E. Moore—Deputy Executive Secretary

S.F. Timonthy Mullen—Deputy Director of Administration

Anne G. Purcell—Chief Counsel to Board Member

Rosemary Pye—Chief Counsel to Board Member

Ernest Russell—Director of Administration

W. Garrett Stack—Deputy Associate General Counsel, Operations Management

Elinor H. Stillman—Chief Counsel to the Chairman

Berton B. Subrin—Director, Office of Representation Appeals

John C. Truesdale—Executive Secretary

Melvin J. Welles—Chief Administrative Law Judge

Dated: Washington, DC. By Direction of the Board.

John C. Truesdale,

Executive Secretary.

[FR Doc. 88-25471 Filed 11-2-88; 8:45 am]

BILLING CODE 7545-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-206]

Southern California Edison Company et al.; San Onofre Nuclear Generating Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR-13 issued to Southern California Edison Company, *et al.*, (the licensee), for operation of San Onofre Nuclear Generating Station, Unit No. 1, located in San Diego County, California.

Environmental Assessment

Identification of Proposed Action

The proposed amendment is a request to delete from the technical specifications the requirement to conduct a turbine deck load bearing test every four years. The load bearing test was required to assure safe movement of the single-element spent fuel handling cask across the turbine deck using the air pallet system. The air pallet system and the single-element cask will no longer be used.

The Need for the Proposed Action

The proposed amendment is required to allow the licensee to stop conducting the turbine deck load test every four years.

Environmental Impacts of the Proposed Action

Since the air pallet system would no longer be used, the turbine deck load test is not longer required. Therefore, the proposed action would not involve a significant change in the probability or consequences of any accident previously evaluated, nor does it involve a new or different kind of accident. Consequently, any radiological releases resulting from an accident would not be significantly greater than previously determined. The proposed amendment does not otherwise affect routine radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendment. The Commission also concludes that the proposed action will not result in a significant increase in individual or cumulative occupational radiation exposure.

With regard to nonradiological impacts, the proposed amendment does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on June 24, 1988 (53 FR 23820). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action

Because the Commission has concluded that there are no significant environmental impacts associated with the proposed action, there is no need to examine alternatives to the proposed action.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Final Environmental Statement related to operation of San Onofre Nuclear Generating Station, Unit No. 1, dated October 1973.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request that supports the proposed amendment. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated April 28, 1988 which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 28th day of October, 1988.

For the Nuclear Regulatory Commission.

George W. Knighton,

Director, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-25440 Filed 11-2-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-368]

Arkansas Power & Light Co., Arkansas Nuclear One, Unit 2; Exemption

I

Arkansas Power & Light Company (AP&L or the licensee) is the holder of Facility Operating License No. NPF-6 which authorizes the operation of Arkansas Nuclear One, Unit 2 (the facility) at a steady state power level not in excess of 2815 megawatts thermal. This license provides, among other things, that the facility is subject to all rules, regulations, and Orders of the Nuclear Regulatory Commission (the Commission or the staff) now or hereafter in effect. The facility is a pressurized water reactor (PWR) located at the licensee's site in Pope County, Arkansas.

II

The 10 CFR 50.48, "Fire Protection," and Appendix R to 10 CFR Part 50, "Fire Protection Program for Nuclear Facilities

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Operating Prior to January 1, 1979" set forth certain fire protection features required to satisfy the General Design Criterion related to fire protection (Criterion 3, Appendix A to 10 CFR Part 50).

Section III.G of Appendix R requires fire protection for equipment important to post-fire shutdown. Such fire protection is achieved by various combinations of fire barriers, fire suppression systems, fire detectors, and separation of safety trains (III.G.2) or alternate post-fire shutdown equipment free of the fire area (III.G.3). The objective of this protection is to assure that one train of equipment needed for hot shutdown would be undamaged by fire, and that systems needed for cold shutdown could be repaired within 72 hours (III.G.1).

Section III.J of Appendix R requires that emergency lighting units with at least an 8-hour battery power supply be provided in all areas needed for operation of safe shutdown equipment and in access and egress routes thereto.

Section III.O of Appendix R requires that facilities have a reactor coolant pump oil collection system if the containment is not inerted during normal operation. This system must be so designed, engineered, and installed that failure during normal or design basis accident conditions will not lead to fire, and that there is reasonable assurance that the system will withstand the Safe Shutdown Earthquake. Additionally the system must drain to a vented closed container that can hold the entire lube oil system inventory.

III

By letter dated August 15, 1984, the licensee provided details of their fire protection program and requested approval of a number of exemptions from the technical requirements of Sections III.O, III.J, and III.O of Appendix R to 10 CFR Part 50. By letters dated August 30, 1985 and October 29, 1987 the licensee requested approval of a number of additional exemptions from Appendix R. Supplemental information was provided by the licensee in letters dated October 20, 1986 and April 22 and June 24, 1987, and September 13, 1988. A description of the exemptions requested and a summary of the Commission's evaluation follow.

Exemption Requested

The licensee requested exemption from Section III.G.2.b due to a lack of 20 feet of separation free of intervening combustible materials between the redundant diesel generator exhaust fan outlets (Fire Area B, Fire Zone 2114–I).

The staff's principle concerns were that a pathway existed which could allow fire to spread and damage the redundant systems, and that the lack of fixed suppression systems and fire detectors throughout this fire area could permit a fire to spread and result in the loss of safe shutdown capability. However, because of the light combustible loading in these fire zones, it is not expected that a fire of significant duration or magnitude will occur. There are no intervening combustibles between the redundant safe shutdown systems.

If a fire were to occur in or near one of the exhaust fans, it would be expected to develop slowly with initial low heat release and slow temperature rise. The lack of a roof over Fire Zone 2114–I would preclude any accumulation of hot gases over this equipment. Further, in order for the fire to seriously affect the redundant equipment, it would have to spread over and down into the room below, which is not considered credible. Additionally the licensee has completed the installation of 3-hour rated fire doors between redundant trains of equipment. Therefore, the possibility of a single fire in one of these fire zones damaging redundant equipment becomes extremely unlikely, despite the horizontal separation distance of less than 20 feet between redundant trains. On this basis, the staff concludes that the licensee's alternative fire protection configuration provides an equivalent level of fire safety to that achieved by compliance with section III.G.2.b.

The special circumstances of 10 CFR 50.12 apply in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. In this case, the light combustible loading, the non-credible path necessary for the fire to spread to the redundant safe shutdown equipment, and the installation of 3-hour fire rated doors committed to by the licensee, all provide assurance that the redundant train will be adequately protected. Thus the underlying purpose of the rule would be satisfied without requiring spatial separation of the exhaust fan outlets.

Exemption Requested

The licensee requested exemption from section III.G.3 due to a lack of a fixed fire suppression system in the control room and printer room (Fire Area G, Zone 2199–G), which are rooms for which an alternate shutdown capability has been provided.

The combustible loading in these rooms is moderate, consisting of paper, clothing, and electrical cable insulation. If a fire were to occur, it is expected that it would develop at a slow to moderate rate. Ionization smoke detectors are provided in the safety-related control cabinets and the rooms are continually occupied. The separation between adjacent control panels limits the spread of fire. The alarms for the detectors annunciate in the control room. If a fire occurs, it is expected to be promptly detected. The control room operators will alert the plant fire brigade to extinguish the fire manually if the operators have not. Separation of adjacent control panels, smoke detectors, continual occupancy of the control rooms, portable extinguishers, and alternate shutdown capability for this fire area all provide reasonable assurance that a fire in Fire Zone 2198–G will not prevent a safe plant shutdown. On this basis, the staff concludes that the licensee's alternative fire protection configuration provides an equivalent level of fire safety to that achieved by compliance with section III.G.3.

The special circumstances of 10 CFR 50.12 apply in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The rule is meant to ensure that a fire in the control room or printer room would not prevent a safe plant shutdown. The existing fire protection features provide reasonable assurance that the ability to achieve safe shutdown of the plant is maintained. Thus the underlying purpose of the rule would be satisfied without requiring a fixed fire suppression system.

Exemption Requested

The licensee requested exemption from section III.G.2.b due to the lack of an automatic fire suppression system in the upper and lower south piping penetration rooms (Fire Area EE, Zone 2084–DD and 2055–JJ). These rooms contain cables, equipment, and associated non-safety circuits of redundant trains which are separated by a horizontal distance of at least 20 feet free of intervening combustible material or fire hazards and are protected by fire detection systems.

The staff's principle concern was that a lack of an automatic suppression system could permit a fire to spread and result in the loss of safe shutdown capability. However, because of the moderate combustible loading in these fire zones and the arrangement of cables in trays a fire of significant magnitude is not expected to occur. Also because the cable trays are located at least 4 feet above the redundant safe shutdown related valves, the cables in them are not considered to be an intervening combustible. The redundant valves are greater than 20 feet apart, so it is very unlikely that they would all be damaged by a single fire. If a fire were to occur it would be detected by the fire detection system, which would annunciate an alarm in the control room. The fire brigade would arrive shortly and extinguish the fire using existing fire fighting equipment. If fire damage occurred to the electrical circuits supplying the valve motor operators, the valves could still be operated manually locally. Also, only one of the redundant valves is needed for safe shutdown and is not required until at least 1½ hours after a fire. On this basis the staff concludes that the licensee's alternative fire protection configuration provides an equivalent level of fire safety to that achieved by compliance with section III.G.2.b.

The special circumstances of 10 CFR 50.12 apply in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. In this case the moderate fire loading, the spatial separation free of intervening combustibles between redundant safe shutdown related valves, the capability of the fire brigade to respond quickly once a fire is detected by the automatic fire detection system all provide assurance that redundant safe shutdown components will be adequately protected. Thus the underlying purpose of the rule would be satisfied without requiring automatic suppression systems in the upper and lower south piping penetration rooms.

Exemption Requested

The licensee requested an exemption from section III.G.2.a due to a lack of a complete 3-hour fire-related barrier between redundant level transmitters for the safety grade condensate storage tank (QCST) (Yard Area).

The staff's principle concern was that a fire could result in damage to redundant components or cables associated with the QCST level indication. However, there are no significant unmitigated in-situ fire hazards which would represent a risk to these components. In addition, the introduction of significant quantities of transient combustibles is precluded by the difficult access to the location of the components. Should a fire occur it would probably be of limited magnitude, and the resulting smoke and hot gases would tend to be dissipated in the open air, away from the subject components. The physical configuration of the areas where the QCST level indication components are located will provide sufficient protection to assure that at least one safe shutdown train will remain free of fire damage until the fire brigade arrives to extinguish the fire, utilizing existing fire fighting equipment. On this basis the staff concludes that the licensee's alternate fire protection configuration provides an equivalent level of fire safety to that achieved by compliance with section III.G.2.a.

The special circumstances of 10 CFR 50.12 apply in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. In this case the absence of significant in-situ fire hazards, and the physical location and arrangement of the equipment provide assurance that the redundant level indication equipment would be adequately protected until the fire was brought under control by the fire brigade. Thus the underlying purpose of the rule would be satisfied without requiring a 3-hour fire-rated barrier between the redundant QCST level transmitters.

Exemption Requested

The licensee requested an exemption from Section III.O due to a lack of a reactor coolant pump oil collection system that is designed to withstand a safe shutdown earthquake (SSE) and sized to hold the oil from all reactor coolant pumps, (RCPs).

The licensee stated in a letter dated August 15, 1984 that the reactor coolant pump lube oil systems are qualified to remain functional during and after an SSE. Therefore the following guidance of Generic Letter 86–10, "Implementation of Fire Protection Requirements," applies:

> Where the RCP lube oil system is capable of withstanding the safe shutdown earthquake (SSE), the analysis should assume that only random oil leaks from the joints could occur during the lifetime of the plant. The oil collection system, therefore, should be designed to safely channel the quantity of oil from one pump to a vented closed container. Under this set of circumstances, the oil collection system would not have to be seismically designed.

The existing oil collection system is designed to safely channel the quantity of oil from one pump to a vented closed container, and so conforms with the above staff guidance. On this basis the staff concludes that the licensee's alternate design of the oil collection system provides an equivalent level of fire safety to that achieved by compliance with Section III.O.

The special circumstances of 10 CFR 50.12 apply in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. In this case the design of the reactor coolant pump lubricating systems and the oil collection systems meets certain criteria previously determined by the staff to be acceptable for assuring adequate fire safety. Thus the underlying purpose of the rule would be satisfied without requiring the oil collection system to be seismically qualified and capable of holding the oil contained in all of the reactor coolant pumps.

Exemption Requested

The licensee requested an exemption from Section III.J due to a lack of 8-hour battery powered emergency lighting units in the access paths to the intake structure, and diesel fuel storage vaults which are areas required to be manned for safe shutdown. Because these locations are essentially identical to locations involved in an exemption from Section III.J granted for Unit 1, there is no need for an exemption for Unit 2.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, this Exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission has further determined that special circumstances, as set forth in 10 CFR 50.12(a)(2)(ii), are present justifying the Exemption, namely that the application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. Specifies are discussed in each exemption request, but in general the underlying purpose of the rule is to accomplish safe shutdown in the event of a single fire and maintain the plant in a safe condition. This is accomplished by assuring that sufficient undamaged equipment is available to support safe shutdown, assuming a fire within the area of concern. In the areas for which an exemption is being requested, passive as well as active fire protection features assure that any single fire will not result in the loss of safe shutdown capability. These features include separation distance, fire barriers, water spray systems to preclude propagation, and manual actions. The fire protection features, in conjunction with low combustible loading and in some cases physical location and configuration, provide a high degree of assurance that a single fire will not result in loss of post-fire shutdown capability.

Accordingly, the Commission hereby grants the exemptions from the

requirements of 10 CFR Part 50, Appendix R as described in Section III above.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the environment (53 FR 29366).

The Safety Evaluation concurrently issued and related to this action and the above referenced submittals by the licensee are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Tomlinson Library, Arkansas Technical University, Russellville, Arkansas 72801.

This Exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

Dated at Rockville, Maryland, this 26th day of October, 1988.

[FR Doc. 88-25441 Filed 11-2-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-313]

Arkansas Power & Light Co., Arkansas Nuclear One, Unit 1; Exemption

I

Arkansas Power & Light Company (AP&L or the licensee) is the holder of Facility Operating License No. DPR-51 which authorizes the operation of Arkansas Nuclear One, Unit 1 (the facility) at a steady state power level not in excess of 2568 megawatts thermal. This license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission or the staff) now or hereafter in effect. The facility is a pressurized water reactor (PWR) located at the licensee's site in Pope County, Arkansas.

II

The 10 CFR 50.48, "Fire Protection," and Appendix R to 10 CFR Part 50, "Fire Protection Program for Nuclear Facilities Operating Prior to January 1, 1979" set forth certain fire protection features required to satisfy the General Design Criterion related to fire protection (Criterion 3, Appendix A to 10 CFR Part 50).

Section III.G of Appendix R requires fire protection for equipment important to post-fire shutdown. Such fire protection is achieved by various combinations of fire barriers, fire suppression systems, fire detectors, and separation of safety trains (III.G.2) or alternate post-fire shutdown equipment free of the fire area (III.G.3). The objective of this protection is to assure that one train if equipment needed for hot shutdown would be undamaged by fire, and that systems needed for cold shutdown could be repaired within 72 hours (III.G.1).

Section III.J of Appendix R requires that emergency lighting units with at least an 8-hour battery power supply be provided in all areas needed for operation of safe shutdown equipment and in access and egress routes thereto.

Section III.O of Appendix R requires that facilities have a reactor coolant pump oil collection system if the containment is not inerted during normal operation. This system must be so designed, engineered, and installed that failure during normal or design basis accident conditions will not lead to fire, and that there is reasonable assurance that the system will withstand the Safe Shutdown Earthquake. Additionally the system must drain to a vented closed container that can hold the entire reactor coolant pump lube oil system inventory.

III

By letters dated August 15, 1984 and August 30, 1985, the licensee provided details of their fire protection program and requested approval of a number of exemptions from the technical requirements of section III.G, III.J, and III.O of Appendix R to 10 CFR Part 50. Supplemental information was provided in AP&L letters dated October 21, 1986, April 22 and June 24, 1987, and April 25, 1988. A description of the exemptions requested and a summary of the Commission's evaluation follow.

Exemption Requested

The licensee requested an exemption from section III.G.2.b due to a lack of 20 feet of separation free of intervening combustible materials between redundant shutdown-related systems in the diesel generator room exhaust fan outlets area (Fire Area B, Zones 1–E and 2–E).

The staff's principle concern was that because of the absence of at least 20 feet of separation between the exhaust fan outlets, a pathway exists which could allow fire to spread and damage the redundant systems. Also, the lack of fixed suppression systems and fire detectors throughout this fire area could permit a fire to spread and result in the loss of safe shutdown capability. However, because of the light combustible loading in these fire zones and the absence of intervening combustibles between the redundant safe shutdown systems, it is not expected that a fire of significant duration or magnitude will occur. Additionally, with the licensee's commitment to install 3-hour rated fire doors between redundant trains of equipment completed, the possibility of a single fire in one of these fire zones damaging redundant equipment is very unlikely, despite the horizontal separation distance of less than 20 feet between redundant trains. The staff finds that there is reasonable assurance that a fire in these fire zones will not result in the loss of safe shutdown capability. On this basis the staff concludes that the licensee's alternative fire protection configuration provides an equivalent level of fire safety to that achieved by compliance with section III.G.2.b.

The special circumstances of 10 CFR 50.12 apply in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. In this case the low fire loading, the absence of intervening combustibles, and the installation of the 3-hour rated fire doors between redundant trains, minimize the possibility of a fire in one train spreading and causing damage to the redundant train equipment. Thus the underlying purpose of the rule would be satisfied without requiring the 20 foot minimum separation distance free of intervening combustible material between the diesel generator room exhaust fan outlets.

Exemption Requested

The licensee requested an exemption from section III.G.2.b due to a lack of 20 feet of separation free of intervening combustible materials between redundant shutdown-related systems, the borated water storage tank (BWST) outlet valves in the radwaste processing area (Fire Area C, Zone 38–Y).

The staff's principle concern was that a fire of significant magnitude could damage these valves and prevent safe shutdown conditions from being achieved and maintained. However, the combustible loading in this area is low. Should a fire occur the existing fire detection system would sound an alarm in the control room. Soon thereafter the fire brigade would arrive and put out the fire using manual fire fighting equipment. Until the fire is controlled the 1-hour barrier installed around the cables associated with one of the BWST outlet valves would provide sufficient passive protection to assure one shutdown train would be free of fire damage. Also due to the low fire loading and the nature of the valve construction, should the valve electrical circuits become damaged, local manual valve operation would still be possible to align the proper shutdown flowpath in sufficient time. On this basis the staff concludes that the licensee's alternate fire protection configuration provides an equivalent level of fire safety to that achieved by compliance with section III.G.2.b.

The special circumstances of 10 CFR 50.12 apply in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. In this case the low fire loading, the fire brigade response to the fire detection system control room alarm, and the 1-hour rated barrier on the cables for one of the two valves provides reasonable assurance that the redundant valve would be adequately protected. Additionally, local manual operation of the valves would be possible despite fire damage to electrical circuits. Thus the underlying purpose of the rule would be satisfied without requiring equipment separation.

Exemption Requested

The licensee requested an exemption from section III.G.2.b due to a lack of 20 feet of separation free of intervening combustible materials between redundant shutdown-related systems in the emergency feedwater (EFW) pump room (Fire Area C, Zone 38–Y).

The staff's principle concern was that a fire of significant magnitude could damage redundant EFW trains and prevent safe shutdown from being achieved and maintained. However, the lack of 20 feet of separation between redundant divisions is not significant from a fire safety standpoint for the following reasons. The combustible loading is low in the EFW pump room. Any fire that occurred would be detected in its formative stages by the existing fire detection system before a significant room temperature rise occurred. This would sound an alarm in the control room. Soon thereafter the fire brigade would arrive and put the fire out using the existing manual fire fighting equipment. Pending arrival of the fire brigade, should rapid fire propagation occur the existing and proposed cable fire barriers, the missile barrier between the two EFW pumps, and the proposed automatic sprinkler system would provide reasonable assurance that one division of EFW-related systems would remain free of damage. On this basis the staff concludes that the licensee's proposed alternative fire protection configuration provides an equivalent level of fire safety to that achieved by compliance with section III.G.2.b.

This exemption is granted in part based on the licensee's commitment to complete the following modifications, by the end of the eighth refueling outage to provide additional protection for the turbine driven EFW pump: installation of 1-hour rated fire wrapping on the cables associated with automatic operation and an automatic sprinkler system.

The special circumstances of 10 CFR 50.12 apply in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. In this case, the low fire loading, the automatic fire detection system combined with the timely response of the fire brigade, and the proposed installation of automatic fire suppression and fire wrappir.; committed to by the licensee, all provide assurance that the redundant safe shutdown equipment will be adequately protected. Thus, the underlying purpose of the rule would be satisfied without requiring the minimum of 20 feet of separation between redundant equipment.

Exemption Requested

The licensee requested an exemption from section III.G.2.c due to a lack of an automatic fire suppression system to protect redundant shutdown-related systems separated by a 1-hour fire barrier and protected by a fire detection system in the pipe area (Fire Area C, Zone 34–Y).

The staff's principle concern was that the lack of an automatic fire suppression system would permit a fire in the area to spread and result in the loss of safe shutdown capability. However due to the light fire loading in the area and the 1-hour rated fire wrapping on the B-train makeup/high pressure injection pump power cables, there is reasonable assurance that a fire in this area would not result in the loss of redundant trains of makeup pumps. Also, the existing fire detection system would sense the presence of a fire and sound an alarm in the control room. Soon thereafter the fire brigade would arrive and put the fire out manually with the existing fire fighting equipment. On this basis the staff concludes that the licensee's alternative fire protection configuration provides an equivalent level of protection to that achieved by compliance with section III.G.2.c.

The special circumstances of 10 CFR 50.12 apply in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. In this case the low fire loading, the existing fire detection system combined with the timely response of the fire brigade, and the 1-hour rated barrier around the power cables for the B-train makeup pump, all provide assurance the the redundant safe shutdown equipment will be adequately protected. Thus the underlying purpose of the rule would be satisfied without requiring automatic fire suppression in this area.

Exemption Requested

The licensee requested an exemption from section III.J due to a lack of 8-hour battery powered emergency lighting units on elevation 317 feet and portions of the access paths to the steam pipe area on elevation 404 feet, the intake structure, and diesel fuel storage vaults, all of which are areas required to be manned for safe shutdown.

The staff's principle concern was that a lack of adequate emergency lighting could hinder or prevent licensee personnel from performing tasks necessary to achieve safe shutdown. The need for operators to access the safe shutdown equipment on elevation 317 feet occure after the 8-hour battery powered emergency lighting time frame expires. By then normal lighting is expected to be restored.

For the remaining areas, the access paths were determined to be adequately lighted by the yard lighting which is backed up by the security diesel generator. This generator is not vulnerable to fire loss under the postulated fire scenarios. Additionally, the yard lighting is maintained as part of the licensee's plant security plan requirements. On this basis the licensee's alternate lighting arrangement in the subject areas achieves an equivalent level of safety to that required by compliance with section III.J.

The special circumstances of 10 CFR 50.12 apply in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. In this case the existing lighting is adequate. Thus the underlying purpose of the rule would be satisfied without requiring installation of emergency lighting.

Exemption Requested

The licensee requested an exemption from section III.G.2.a due to a lack of a complete 3-hour fire-rated barrier between redundant level transmitters for the safety grade condensate storage tank (QCST) (Yard Area).

The staff's principle concern was that a fire could result in damage to

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redundant components or cables associated with the QCST level indication. However, there are no significant unmitigated in-situ fire hazards which would represent a risk to these components. In addition, the introduction of significant quantities of transient combustibles is precluded by the difficult access to the location of the components. Should a fire occur it would probably be of limited magnitude, and the resulting smoke and hot gases would tend to be dissipated in the open air, away from the subject components. The physical configuration of the areas where the QCST level indication components are located will provide sufficient protection to assure that at least one safe shutdown train will remain free of fire damage until the fire brigade arrives to extinguish the fire utilizing existing fire fighting equipment. On this basis the staff concludes that the licensee's alternate fire protection configuration provides an equivalent level of fire safety to that achieved by compliance with section III.G.2.a.

The special circumstances of 10 CFR 50.12 apply in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. In this case the absence of significant in-situ fire hazards, and the physical location and arrangement of the equipment provide assurance that the redundant level indication equipment would be adequately protected until the fire was brought under control by the fire brigade. Thus the underlying purpose of the rule would be satisfied without requiring a 3-hour fire-rated barrier between the redundant QCST level transmitters.

Exemption Requested

The licensee requested an exemption from Section III.O due to a lack of a reactor coolant pump oil collection system that is designed to withstand a safe shutdown earthquake (SSE) and sized to hold the oil from all reactor coolant pumps.

The licensee stated in a letter dated August 15, 1984 that the reactor coolant pump lube oil systems are qualified to remain functional during and after an SSE. Therefore, the following guidance of Generic Letter 86–10, "Implementation of Fire Protection Requirements," applies:

> Where the RCP lube oil system is capable of withstanding the safe shutdown earthquake (SSE), the analysis should assume that only random oil leaks from the joints could occur during the lifetime of the plant. The oil collection system, therefore, should be designed to safely channel the quantity of oil from one pump to a vented closed container. Under this set of circumstances, the oil collection system would not have to be seismically designed.

The existing oil collection system is designed to safely channel the quantity of oil from one pump to a vented closed container, and so conforms with the above staff guidance. On this basis the staff concludes that the licensee's alternate design of the oil collection system provides an equivalent level of fire safety to that achieved by compliance with Section III.O.

The special circumstances of 10 CFR 50.12 apply in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. In this case the design of the reactor coolant pump lubricating systems and the oil collection systems meets certain criteria previously determined by the staff to be acceptable for assuring adequate fire safety. Thus the underlying purpose of the rule would be satisfied without requiring the oil collection system to be seismically qualified and capable of holding the oil contained in all of the reactor coolant pumps.

Exemption Requested

The licensee requested an exemption from Section III.G.2.b due to a lack of an automatic fire suppression system to protect redundant emergency feedwater (EFW) pump cables (Fire Area C, Zones 20–Y and 34–Y).

The staff's principle concern was that a fire of significant magnitude would occur and damage the redundant EFW pump cables. However, the fire loading in the area is low, consisting of primarily of cables in trays. A fire in this area would be characterized initially by low heat release and limited flame propagation. The existing smoke detection system would be expected to actuate and sound an alarm in the control room. The fire brigade would promptly respond and extinguish the fire with the existing manual fire fighting equipment. Pending their arrival the spatial separations which is at least 28 feet between the cables of the redundant trains, provides reasonable assurance that at least one train would remain free of fire damage. On this basis the staff concludes that the licensee's existing fire protection provides an equivalent level of fire safety to that achieved by compliance with Section III.G.2.B.

The special circumstances of 10 CFR 50.12 apply in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. In this case the low fire loading, the spatial separation between redundant cable trains, and the automatic smoke detection system combined with the timely response of the fire brigade to the control room alarm, all provide assurance that the redundant safe shutdown equipment would be adequately protected until the fire is brought under control. Thus the underlying purpose of the rule would be satisfied without requiring an automatic fire suppression system.

IV

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12, this Exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission has further determined that special circumstances, as set forth in 10 CFR 50.12(a)(2)(ii), are present justifying the exemption, namely that the application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. Specifics are discussed in each exemption request, but in general the underlying purpose of the rule is to accomplish safe shutdown in the event of a single fire and maintain the plant in a safe condition. This is accomplished by assuring that sufficient undamaged equipment is available to support safe shutdown, assuming a fire within the area of concern. In the areas for which an exemption is being requested, passive as well as active fire protection features assure that any single fire will not result in the loss of a safe shutdown capability. These features include separation distance, fire barriers, water spray systems to preclude propagation, and manual actions. The fire protection features, in conjunction with low combustible loadings and in some cases physical location and configurations, provide a high degree of assurance that a single fire will not result in loss of post-fire shutdown capability. At this time, the licensee has not completed two of the modifications upon which one of these exemptions is based. However, the licensee has in place acceptable compensatory measures and is committed to the completion of the modifications by the end of the eighth refueling outage.

Accordingly, the Commission hereby grants the exemptions from the requirements of 10 CFR Part 50, Appendix R as described in Section III above.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the environment (53 FR 27091).

The Safety Evaluation concurrently issued and related to this action and the above referenced submittals by the licensee are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Tomlinson Library, Arkansas Techical University, Russellville, Arkansas 72801.

This Exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

Dated at Rockville, Maryland, this 20th day of October, 1988.

[FR Doc. 88-25442 Filed 11-2-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-206]

Southern California Edison Co., San Diego Gas and Electric Co.; Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 112 to Provisional Operating License No. DPR–13, issued to Southern California Edison Company and San Diego Gas and Electric Company (the licensees), which revised the Technical Specifications for operation of the San Onofre Nuclear Generating Station, Unit 1, located in San Diego County, California.

The amendment was effective as of the date of issuance.

The amendment (1) revises Technical Specification 3.9, "Core Average Burnup," to be based on moderator temperature coefficient rather than core average burnup, (2) incorporates more frequent correlation verification of the excore axial offset monitoring instrumentation and (3) revises the formula for determining incore axial offset.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter 1, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on July 6, 1988 (52 FR 25713). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined that an environmental impact statement will not be prepared and that issuance of this amendment will have no significant adverse effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated August 31, 1987, (2) Amendment No. 112 to License No. DPR–13, (3) the Commission's related Safety Evaluation and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III, IV, V and Special Projects.

Dated at Rockville, Maryland this 28 day of October, 1988.

For the Nuclear Regulatory Commission.

Charles M. Trammell,

Senior Project Manager, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-25443 Filed 11-2-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-327]

Tennessee Valley Authority, Sequoyah Nuclear Plant, Unit 1; Exemption

I

The Tennessee Valley Authority (the licensee) holds Facility Operating License No. DPR 77, which authorizes operation of the Sequoyah Nuclear Plant, Unit 1 (the facility, Unit 1). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility is a pressurized water reactor located on the licensee's site in Hamilton County, Tennessee.

II

Section 50.46(a)(1) to 10 CFR Part 50 requires, in part, that for a pressurized light-water reactor, its ECCS cooling performance shall be calculated in accordance with an acceptable evaluation model and plant operating conditions. Furthermore, § 50.46(b)(1) to 10 CFR Part 50 requires that the calculated maximum fuel element cladding temperature or peak clad temperature (PCT) shall not exceed 2200°F.

By letter dated September 19, 1988 the licensee requested a temporary exemption from the requirement of 10 CFR 50.46(a)(1) until the ECCS cooling performance calculations for Unit 1 are completed. The ECCS cooling performance calculations will be performed using plant specific operating conditions with an approved ECCS evaluation model. By letter dated September 21, 1988, the licensee has informed the Commission that the existing ECCS cooling performance calculations for the Upper Head Injection (UHI) calculation model for Unit 1, as discussed in section 15.4 of the Final Safety Analysis Report (FSAR), are no longer representative of the operating conditions for the facility. The licensee also stated that for upcoming cycle 4 operation, there are changes needed for the UHI model. The licensee also provided an assessment demonstrating the safe operation of Unit 1 under the conditions discussed below.

The large break Loss-of-Coolant Accident (LOCA) ECCS analysis for Unit 1, as documented in FSAR section 15.4.1, was performed with the Westinghouse 1974 Evaluation Model. It resulted in a PCT of 2113°F. This analysis was based on a heat flux hot channel factor, (Fq), of 2.32, a discharge coefficient, (Cd), of 0.6, and a lower bounding value of UHI water volume delivery of 900 cubic feet (ft^3).

A TVA Condition Adverse to Quality Report identified that the current level switches used in the UPI system potentially may allow more water to be injected during a postulated accident than the analytical limit of 1,130.5 ft^3. The over injection of water can result in the accidental injection of nitrogen into the reactor coolant system. Nitrogen in the reactor coolant system could result in the restriction of heat removal from the fuel cladding. TVA implemented two corrective actions to resolve the above mentioned CAQR. Specifically, the first is a proposed actual reduction in the total amount of water injected by the UHI system from the current minimum requirement of 900 ft^3 to 850 ft^3, thereby, decreasing the probability of over injecting water from the UHI system. The reduction of the lower bounding value for UHI water volume delivery changes some of the original assumptions of the ECCS analysis. The second CAQR corrective action is the

replacement of the level switches with modified switches whose characteristics present less instrument setpoint drift.

10 CFR 50.46(a)(1) requires an acceptable ECCS cooling analysis for calculating the expected PCT for operation of Unit 1. Changing the amount of water injected from the UHI system impacts the PCT analysis; therefore, a re-analysis of the PCT using an approved ECCS cooling performance evaluation model is required. Since Westinghouse, the Nuclear Steam Supply System supplier, is presently modifying the computer codes used to perform the analysis, an acceptable ECCS analysis to account for changing the lower bounding value for UHI water volume delivery, cannot be submitted before the current schedule for the restart of Unit 1. Thus, despite the licensee good faith efforts, it cannot at this time satisfy the requirements to submit a calculation in conformance with 10 CFR 50.46(a). Because of this delay, the licensee has requested a temporary exemption to 10 CFR 50.46(a)(1).

The licensee has performed a sensitivity assessment of the impact of delivering 50 ft ^{3} less of UHI water for the existing analysis to demonstrate that the PCT would remain below the regulatory limit of 2200°F. This assessment was provided to the Commission by submittals dated August 15 and 17, 1988. The submittal dated August 17, 1988 is a duplicate of the submittal dated August 15, 1988. These submittals requested a change in Unit 1 Technical Specifications (TS) on the UHI accumulators level switch setpoints. This requested TS change for Unit 1 is the proposed reduction in the total amount of water injected by the UHI system discussed above. The sensitivity assessment of delivering 50 ft ^{3} less UHI water was submitted originally to support the requested TS change.

The calculations showed that the new PCT was 2,196°F. To provide assurance that Unit 1 is below the PCT limit of 2200°F, the licensee has limited the heat flux hot channel factor, Fq, by administrative control, to a value of 2.51, and lowered the steam generator tube plugging limit form 10 to 5 percent. The licensee has stated that these two changes result in lowering the PCT to 109°F below the limit of 2200°F. The licensee has proposed a reduction in the current Fq cooling in the Unit 1 Technical Specifications from 2.237 to 2.15 by submittal dated September 21, 1988.

Based on the above disussion, and the licensee's assessment of the impact on the calculated PCT with 5 percent steam generator tube plugging and the reduction of Fq to a value of 2.15, the staff finds that a temporary exemption is warranted. This is a one-time temporary exemption from the requirement of 10 CFR 50.46(a)(1) regarding having a calculated plant specific ECCS cooling performance evaluation using plant operating conditions and an acceptable evaluation model. The staff also finds acceptable the schedule proposed by the licensee in their September 19, 1988 letter to have completed and submitted the re-analysis to the staff no later than May 31, 1989.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 501.2(a)(2)(v), are present justifying the exemption, namely that his exemption provides only temporary relief from the application of the regulation and that the licensee has made good faith efforts to comply with the regulation. The application of the regulation is not necessary during this temporary period to assure the integrity of the fuel cladding in the event of a postulated design basis LOCA. Based on the discussion above and on its experience with similarly designed and operated four-loop Westinghouse plants, the staff concludes that requiring the delay of startup of the facility solely to perform a re-analysis confirming the submitted assessment for Unit 1 is not necessary for this temporary period.

Accordingly, the Commission hereby grants a temporary exemption from 10 CFR 50.46(a)(1) as described above, provided:

1. Heat flux hot channel factor, Fq, shall not exceed 2.15.

2. Steam Generator Tube Plugging shall not exceed five percent.

3. The licensee shall complete a revised plant specific ECCS analysis for Unit 1 and shall submit the results of such analysis no later than May 31, 1989.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the environment.

For further details with respect to this action, see the request for exemption dated July 11, 1988, superseded by letter dated August 8, 1988, which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC, and at the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

This Exemption is effective upon issuance.

Dated at Rockville, Maryland, this 26th day of October, 1988.

For the Nuclear Regulatory Commission.

James G. Partlow,

Director, Office of Special Projects.

[FR Doc. 88-25444 Filed 11-2-88; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Services Policy Advisory Committee and Investment Policy Advisory Committee; Meetings and Determination of Closing of Meetings

The meetings of the Services Policy Advisory Committee to be held November 2, 1988 from 9:30 a.m. to 12:00 Noon, in Washington, DC, and the Investment Policy Advisory Committee to be held November 2, 1988 from 1:30 p.m. to 4:00 p.m., in Washington, DC, will include the development, review and discussion of current issues which influence the trade policy of the United States. Pursuant to section 2155(f)(2) of Title 19 of the United States Code, I have determined that these meetings will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

More detailed information can be obtained by contacting Barbara W. North, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President, Washington, DC 20506.

Clayton Yeutter,

United States Trade Representative.

[FR Doc. 88-25473 Filed 11-2-88; 8:45 am]

BILLING CODE 3190-01-M

Initiation of Study of Subsidies Code Commitments

AGENCY: Office of the U.S. Trade Representative.

ACTION: Notice of initiation of study of Subsidies Code commitments.

SUMMARY: Pursuant to section 1336 of the Omnibus Trade and Competitiveness Act of 1988, the Office of the U.S. Trade Representative has initiated a study of the bilateral Subsidies Code commitments that have been entered into by foreign governments with the United States.

FOR FURTHER INFORMATION CONTACT: Warren Maruyama, Associate General Counsel, Office of the U.S. Trade Representative, at (202) 395-6800.

SUPPLEMENTARY INFORMATION: Section 1336 of the Omnibus Trade and Competitiveness Act of 1988 directs the U.S. Trade Representative (USTR) to initiate a review of all bilateral Subsidies Code commitments that have been entered into by foreign governments with the United States. This review shall include:

(1) An evaluation of the extent to which the commitments have been complied with;

(2) With respect to those commitments found under paragraph (1) not to have been complied with, an estimate regarding when compliance is likely;

(3) Recommendations regarding how compliance can be improved.

Section 1336 directs the USTR to report on the results of this review to the House Ways and Means and Senate Finance Committees within 180 days of the enactment of this Act.

Accordingly, USTR requests information and advice from interested persons regarding compliance with existing bilateral commitments. Information is particularly requested regarding export subsidy programs that are inconsistent with the terms of such commitments and the appropriate U.S. response. *See* section 1314 of the Omnibus Trade and Competitiveness Act and Report of the Committee on Finance, Rept. No. 100-71, pp. 123-34.

Comments should be filed in accordance with the regulations at 15 CFR Part 2003 *et seq.* and are due no later than 5:00 p.m. on December 15, 1988. Comments must be in English and provided in twenty copies to Carolyn Frank, Secretary, Trade Policy Staff Committee, Office, of the U.S. Trade Representaitves, Room 523, 600 17th Street, NW., Washington, DC 20506.

Sandra J. Kristoff,

Chairwoman, Trade Policy Staff Committee.

[FR Doc. 88-25437 Filed 11-2-88; 8:45 am]

BILLING CODE 3190-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S).

(1) *Collection title:* Withholding Certificate for Railroad Retirement Monthly Annuity Payments.

(2) *Form(s) submitted:* Form W-4P(RRB).

(3) *OMB Number:* 3220-0149.

(4) *Expiration date of current OMB clearance:* 12-31-88.

(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* Individuals or households.

(8) *Total annual responses:* 55,000.

(9) *Estimated annual number of respondents:* 55,000.

(10) *Average time per response:* .000018 minutes.

(11) *Total annual reporting hours:* 1.

(12) *Collection description:* Under Pub. L. 98-76, railroad retirement beneficiaries' Tier 2, dual vested and supplemental benefits are subject to income tax under private pension rules. Under Pub. L. 98-514, the non-social security equivalent benefit portion of Tier I is also taxable under private pension rules. The collection obtains the information needed by the Board to implement the incomes tax withholding provisions.

Additional Information or Comments: Copies of the proposed forms and supporting documents can be obtained from Pauline Lohens, the agency clearance officer (312-751-4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Justin Kopca (202-395-7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Pauline Lohens,

Director of Information Resources Management.

[FR Doc. 88-25438 Filed 11-2-88; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26227; File No. SR-CBOE-88-16]

Self-Regulatory Organizations; Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Underlying Treasury Securities Options

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 20, 1988, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

(italics indicates additions; brackets indicate deletions)

Rule 21.7 No change.

. . . Interpretations and Policies

.01 No change.

.02 In order to limit underlying Treasury securities for specific coupon options to the most recently issued and actively traded issues, ordinarily the approval of such an underlying security will only extend for a period of no more than 15 months from the date of its initial approval, and series of options open thereafter will relate to more recently issued Treasury securities; provided, however, that such approval may be extended in the event of the reopening of the underlying security by the Treasury, *or in the event of issues where a reasonably active secondary market exists.* Further, even prior to the end of such 15-month period, the Board (or the Committee designated by the Board) shall withdraw approval of an underlying Treasury security at any time if it determines on the basis of information made publicly available by the Treasury that the security has a public issuance of less than $750 million, *excluding stripped securities.*

.03 No change

.04 The Exchange may list [a] Treasury bonds that either [has] *have* never been listed on the Exchange or [has] *have* been delisted when, based on information made publicly available by the Treasury, the bonds [has] *have* a public issuance of $1 billion, excluding stripped securities.

Rule 21.7 and Interpretations and Policies 21.7.01, .02, .03, and .04 replace Rules 5.3 and 5.4.

Terms of Treasury Security Options (Treasury Bonds and Notes)

Rule 21.8 (a) No change.

(b) Expiration Months. Unless the Board (or the Committee designated by the Board) otherwise provides and so indicates at the post at which the option is traded, Treasury security options may expire at three-month intervals or in [consecutive months] *sequential monthly expirations*. There may be up to five expiration months, none further out than [nine] *fifteen* months.

(c) Exercise Price. The exercise price of each series of Treasury security options shall be fixed at a percentage of principal amount which is an integral multiple of [1%] *0.5%* [for Treasury securities having a remaining term to maturity of six years or less, or 2% for Treasury securities having a remaining term to maturity of more than six years]. In the case of a specific coupon Treasury security option, the exercise price so determined shall be reasonably close to the percentage of principal amount at which the underlying security is traded in the primary market at the time the series of options is first opened for trading. The exercise price of such additional series will ordinarily be fixed at an integral multiple of [1% or 2%] *0.5%*, but the Board (or the Committee designated by the Board), upon two business days' notice, may fix exercise prices at different intervals, provided that all such exercise prices are reasonably close to the market prices of the underlying securities. Notice of any additional series oened for trading shall be posted on the bulletin board on the Exchange floor. In the case of market basket Treasury bond options, the exercise price so determined shall be a percentage of principal amount of a hypothetical underlying Treasury bond bearing an 8% nominal rate of interest and a 15-year nominal term to maturity which results in a yield reasonably close to the highest market yield of Treasury bonds qualified for delivery upon exercise in accordance with Rule 21.24(b), as determined by the Exchange at the time the series of options is first opened for trading.

Rule 21.8 Supplements Rule 5.5

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The modifications to the Interpretations and Policies of Exchange Rule 21.7 are proposed in order to conform the contracts to the standards and current practices of the industry. Interpretation .02 extends the initial trading period for a Treasury security beyond 15 months in certain circumstances where a reasonably active secondary market exists; while the modification of Interpretation .04 provides the Exchange the opportunity to list more than one Treasury security that has not been recently issued.

The proposed modification to Rule 21.8(b) is intended to standardize the language so that it conforms to language contained elsewhere in the Rules regarding sequential monthly expirations. The change to 15 months is intended to conform the paragraph to the expirations provided for in Rule 21.9(a).

The modificaitons to Paragraph (c) of Rule 21.8 allow for .5 point strike price intervals to be responsive to inyestor interest in at-the-money contracts. The proposed change will not result in a prolifertion of strike prices. The Exchange intends to drop series in which no open interest exists thus limiting the number of series outstanding. The .5 point intervals will provide investors with exchange-listed contracts similar to those traded in the over-the-counter market, where customized at-the-market contracts are standard. The Exchanges' Product Development Committee has recently authorized .5 strike intervals in Treasury securities options pursuant to the power under the present rule. A copy of the announcement is attached as Exhibit A.

(B) Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 24, 1988.

For the Commission by the Divison of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: October 28, 1988.

[FR Doc. 88-25488 Filed 11-2-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26123; File No. SR-MCC-88-9]

Self-Regulatory Organizations; Filing of Proposed Rule Change by Midwest Clearing Corporation Regarding a "Y" Account to Process Correspondent Market Activity.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 30, 1988, the Midwest Clearing Corporation ("MCC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement on the Terms of Substance of the Proposed Rule Change

The Midwest Clearing Corporation has established a special secondary account, known as a "Y account," to facilitate additional trade recording, clearance and settlement. The primary purpose of the Y account is to process correspondent market activity (trades executed in one account and sent to another for settlement.)

Participants will be charged an account maintenance fee of $125.00 for the first Y account requested and $10.00 for each subsequent account. A separate Y account is required for each correspondent customer.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MCC has prepared summaries, set forth in Sections (A), (B) and (C) of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change established an account maintenance fee for MCC Participants utilizing a special secondary account ("Secondary Account") for trade recording and clearance. The Secondary Account will be used primarily by MCC Participants for those trades are sent or otherwise "flipped" to another MCC Participant account for settlement, *e.g.*, correspondent market trades.

The Secondary Account Maintenance fee is consistent with section 17A of the Securities Exchange Act of 1934 in that it provides for the equitable allocation of reasonable dues, fees and other charges among MCC's Participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Clearing Corporation does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number (SR-MCC-88-9) and should be submitted by November 24, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 28, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-25485 Filed 11-2-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16815; 812-7132]

Fidelity Investments Life Insurance Company, et al.; Application

October 28, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

Applicants: Fidelity Investments Life Insurance Company ("Fidelity Life"), Fidelity Investments Variable Annuity Account I ("Separate Account") and Fidelity Distributors Corporation ("Distributors").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from sections 26(a)(2)(C) and 27(c)(2).

Summary of Application: Applicants request an exemption from sections 26(a)(2)(C) and 27(c)(2) of the Act to the extent necessary to permit the deduction of a mortality and expense risk charge from the assets of the Separate Account in connection with the issuance and sale of variable annuity contracts.

Filing Date: The application was filed on September 23, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on November 22, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 82 Devonshire Street, Boston, Massachusetts 02109, Attention: Rodney R. Rohda.

FOR FURTHER INFORMATION CONTACT: Cindy J. Rose, Financial Analyst (202) 272-2058 or Clifford E. Kirsch, Special Counsel (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

BEST COPY AVAILABLE

Applicants' Representations

1. Fidelity Life, a stock life insurance company, established the Separate Account under Pennsylvania law on July 22, 1987, for the purpose of funding variable annuity contracts. The Separate Account is registered under the Act as a unit investment trust. Fidelity Life intends to use the Separate Account to fund new variable annuity contracts (the "Contracts"). The Applicants previously applied for, and were granted, an order of the Commission pursuant to section 6(c) of the Act, permitting the deduction of a mortality and expense risk charge in connection with Applicants' offering of certain variable annuity contracts. Release No. IC–16047, File No. 812–6861 (Oct. 13, 1987) (Notice); Release No. IC–16120 (Nov. 12, 1987) (Order). Applicants intend to offer the Contracts and phase out the sale of the initial contracts as necessary state approvals of the Contracts are obtained. The expense charges under the Contracts differ from those under the initial contract described in Applicants' initial application for exemption.

2. The Separate Account currently has six subaccounts. Five subaccounts will invest in shares of the portfolios of the Variable Insurance Products Fund and one subaccount will invest in shares of the portfolio of the Variable Insurance Products Fund II. Each fund is a Massachusetts business trust registered under the Act as an open-end, diversified management investment company.

3. Fidelity Life imposes two administrative charges: (1) An annual maintenance charge assessed against each contract annually, initially set at $30 and guaranteed not to exceed $50; and (2) a daily administrative charge deducted from the assets of the subaccounts at an annual rate of 0.25%. Fidelity Life waives the annual charge prior to the annuity date for any contracts under which purchase payments, less any withdrawals, equal at least $25,000. The charges compensate Fidelity Life for expenses incurred in administering the Contract. These expenses include the costs of issuing the contract, maintaining necessary systems and records, and providing reports. The application states that the administrative charges contain no element of anticipated profit and their deduction meets the standards specified in Rule 26a–1 under the Act.

4. Fidelity Life deducts a daily charge from the assets of the subaccounts at an annual rate of 0.75% for its assumption of certain mortality and expense risks under the Contracts. Of this 0.75% charge, 0.65% is for assuming mortality risks. The mortality risks borne by Fidelity Life include: The obligation to make the monthly annuity payments for the life of the annuitant; the provision of a death benefit if the annuitant dies prior to the annuity date (and prior to age 70) which may be greater than the value of the contract; and the provision of annuity rates guaranteed in the Contract. The remaining portion of this charge (0.10%) is allotted to the expense risk. Fidelity Life assumes the expense risk that the deduction of the administrative charges may prove insufficient to cover the actual costs of administering the Contracts.

5. Fidelity Life will realize a gain from the mortality and expense risk charge to the extent that amounts derived from that charge are not needed to provide for benefits and expenses under the Contracts.

6. Fidelity Life does not assess a sales charge under the contract if the owner maintains the contract in force for more than five years. If the owner surrenders all or withdraws part of the contract within the first five contract years, Fidelity Life will reduce the amount payable to the owner by a contingent deferred sales charge equal to 5% in the first contract year and declining 1% each year for four years thereafter. After the fifth contact year, no contingent deferred sales charge will be applied to withdrawals or surrenders under the contract. In addition, during the first five contract years, no contingent deferred sales charge is assessed against the total withdrawals in each contract year of an amount up to 10% of the owner's purchase payments (less any amounts previously withdrawn that were subject to a withdrawal charge) as of the date of withdrawal.

7. Applicants expect that the contingent deferred sales charge will not be sufficient to cover the expenses incurred in selling the Contracts. To the extent that the contingent deferred sales charge fails to cover distribution expenses, Fidelity Life will pay these expenses from its general assets which may include proceeds from the mortality and expense risk charge.

8. Fidelity Life represents that the charge of 0.75% for mortality and expense risks is within the range of industry practice with respect to comparable annuity products. This representation is based upon Fidelity Life's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, and guaranteed annuity rates. Fidelity Life will maintain at its executive office, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

9. Applicants acknowledge that the surrender or withdrawal charge for sales expenses may be insufficient to cover all costs relating to the distribution of the Contracts. Fidelity Life has concluded that there is reasonable likelihood that the proposed distribution financing arrangement will benefit the Separate Account and the contract owners. The basis for this conclusion is set forth in a memorandum which will be maintained by Fidelity Life at its executive office and will be available to the Commission.

10. Fidelity Life represents that the Separate Account will only invest in open-end management investment companies which have undertaken to have a board of directors, a majority of whom are not interested persons of the open-end management company, formulate and approve any plan pursuant to Rule 12b–1 under the Act to finance distribution expenses.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–25467 Filed 11–2–88 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATE: Comments should be submitted within 30 days of this publication in the **Federal Register**. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: William Cline, Small Business Administration, 1441 L Street NW., Room 200, Washington, DC 20416. Telephone: (202) 653–6536.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503. Telephone: (202) 395–7340.

Title: PASS Company Profile Form & Validation of PASS Registration.

Form No.: 1167 & 1395.

Frequency: One Occasion.

Description of Respondents: Used to create a data base containing information on small and small disadvantaged contractors seeking Federal procurement opportunities.

Annual Responses: 190,000.

Annual Burden Hours: 23,300.

William A. Cline,

Chief, Administrative Information Branch.

[FR Doc. 88–25407 Filed 11–2–88; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #6055; Amdt. 1]

South Dakota; Declaration of Disaster Loan Area

The above-numbered declaration is hereby amended to include Jones and Jackson Counties, in the State of South Dakota, as a result of damages from forest fires which occurred on July 5 and July 26, 1988. All other information remains the same; i.e., the termination date for filing applications for economic injury assistance is the close of business on June 13, 1989.

(Catalog of Federal Domestic Assistance Program No. 59002)

Date: October 27, 1988.

James Abdnor,

Administrator.

[FR Doc. 88–25408 Filed 11–2–88; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: October 31, 1988.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–1038

Form Number: 8703

Type of Review: Resubmission

Title: Annual Certification by Operator of a Qualified Residential Rental Project

Description: Operators of qualified residential projects will use this form to certify annually that their projects meet the requirements of Internal Revenue Code section 142(d). Operators are required to file this certification under section 142(d)(7).

Respondents: Businesses or other for-profit

Estimated Number of Respondents: 2,100

Estimated Burden Hours Per Response:

Recordkeeping: 3 hours 35 minutes

Learning about the law or the form: 30 minutes

Preparing and sending the form to IRS: 35 minutes

Frequency of Response: Annually

Estimated Total Reporting Burden: 23,300 hours

Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 88–25475 Filed 11–2–88; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: October 28, 1988.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0106.

Form Number: None.

Type of Review: Extension.

Title: Special form of Entry of Articles for Exhibition, 19 CFR 147.11(c).

Description: This form for entry is needed to provide a means by which U.S. Customs may control the entry of materials for exhibits.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 35

Estimated Burden Hours Per Response: 20 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 502 hours.

Clearance Officer: B. J. Simpson, (202) 566–7529, U.S. Customs Service, Room 6426, 1301 Constitution Avenue NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 88–25415 Filed 11–2–88; 8:45 am]

BILLING CODE 4810–25–M

UNITED STATES INFORMATION AGENCY

Meeting of Advisory Board for Radio Broadcasting to Cuba

The Advisory Board for Radio Broadcasting to Cuba will conduct a meeting on November 17, 1988, in Room 3557, 400 Sixth Street, SW., Washington, DC. Below is the intended agenda.

Thursday, November 17, 1988

Part One—Closed to the Public

10:00 a.m. 1. Report by the Director of Radio Marti

10:45 a.m. 2. TV Marti

11:30 a.m. 3. Status of selection of executive director

Part Two—Open to the Public

11:45 a.m. 4. Status of annual report

12:00 noon 5. Renewal of Board charter

Lunch

1:00 p.m. 6. Public testimony period

Items one through three, which will be discussed from 10:00 a.m. to 11:45 a.m., will be closed to the public. Items one and two involve discussion of classified information. Closing such deliberations to the public is justified under 5 U.S.C. 552b(c)(1). Item three relates solely to internal personnel rules and practices. Authority for closing such deliberations is provided by 5 U.S.C. 552b(c)(2).

Members of the public interested in attending the meeting should contact Kathy Litwak (202) 485–7013 to make prior arrangements, as access to the building is controlled.

Dated: October 28, 1988.

Charles E. Wick,

Director.

[FR Doc. 88–25488 Filed 11–3–88; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 213
Thursday, November 3, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, November 10, 1988.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88–25532 Filed 11–1–88; 10:38 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., Friday, November 18, 1988.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Sales practice reviews.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88–25533 Filed 11–1–88; 10:38 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, November 22, 1988.

PLACE: 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Applications for designation as contract markets for:

—Nikkei Stock Average future/Chicago Mercantile Exchange
—Nikkei Stock Average option on future/Chicago Mercantile Exchange
—Long-Term U.K. Gilt future/Chicago Mercantile Board of Trade
—Long-Term Japanese Government Bond Future/Chicago Board of Trade
—Japanese Stock Index future/Chicago Board of Trade
—Federal Funds Rate Future/Chicago Mercantile Exchange

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88–25534 Filed 11–1–88; 10:38 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Tuesday, November 22, 1988.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88–25535 Filed 11–1–88; 10:38 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, November 29, 1988.

PLACE: 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Program Objectives, second quarter, FY 89.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88–25536 Filed 11–1–88; 10:38 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Tuesday, November 29, 1988.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Objectives.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88–25537 Filed 11–1–88; 10:38 am]

BILLING CODE 6351–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 12:12 p.m. on Friday, October 28, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to: (1) Requests for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act; and (2) recommendations regarding the Corporation's assistance agreement with an insured bank.

In calling the meeting, the Board determined, on motion of Director D.C. Hope, Jr. (Appointive), seconded by Mr. Dean S. Marriott, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), concerred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: October 31, 1988.

Federal Deposit Insurance Corporation.

M. Jane Williamson,

Assistant Executive Secretary (Operations).

[FR Doc. 88–25550 Filed 11–1–88; 12:29 pm]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, November 9, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: November 1, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-25600 Filed 11-1-88; 3:55 pm]

BILLING CODE 6210-01-M

DEPARTMENT OF JUSTICE

Parole Commission

Record of Vote of Meeting Closure; Public Law 94-409

I, Benjamin F. Baer, Chairman of the United States Parole Commission, presided at a meeting of said Commission which started at nine o'clock a.m. on Tuesday, October 25, 1988 at the Commission's Central Office, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815. The meeting ended at or about 4:30 p.m. The purpose of the meeting was to decide approximately 23 appeals from National Commissioners' decisions pursuant to 28 CFR 2.27. Nine Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcements further descibing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Benjamin F. Baer, Saundra Brown Armstrong, Cameron M. Batjer, Jasper Clay, Jr., Vincent Fechtel, Jr., Carol Pavilack Getty, Daniel R. Lopez, G. MacKenzie Rest, and Victor M.F. Reyes.

In witness whereof, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Date: October 28, 1988.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 88-25575 Filed 11-1-88; 1:39 am]

BILLING CODE 4410-01-M

Corrections

Federal Register

Vol. 53, No. 213

Thursday, November 3, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 928

[Docket No. AO-371-A1]

Papayas Grown in Hawaii; Order Amending the Marketing Order

Correction

In rule document 88-630 beginning on page 862 in the issue of Thursday, January 14, 1988, make the following corrections:

1. On page 862, in the third column, in the seventh line, "Papayas" should read "Papaya".

§ 928.31 [Corrected]

2. On page 864, in the third column, in § 928.31(o), in the 11th line, after "and" add "handler"; and in the 12th line, after "changes" add "shall reflect, insofar as practicable, structural changes".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

48 CFR Parts 307 and 332

Acquisition Regulation; Miscellaneous Amendments

Correction

In rule document 88-24721 beginning on page 43205 in the issue of Wednesday, October 26, 1988, make the following corrections:

307.105-2 [Corrected]

1. On page 43207, in the third column, in section 307.105-2(a)(9), in the first line, "*Production*" should read "*Reduction*".

332.905 [Corrected]

2. On page 43208, in the second column, in section 332.905(a)(2)(ii) and (b)(3), in the last line, "scheduled" should read "authorized".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 801

[Docket No. 86N-0479]

Medical Devices; Labeling; User Labeling for Menstrual Tampons; Proposed Ranges of Absorbency for Menstrual Tampons

Correction

In proposed rule document 88-21664 beginning on page 37250 in the issue of Friday, September 23, 1988, make the following corrections:

1. On page 37250, in the first column, under SUPPLEMENTARY INFORMATION, immediately before "A. Toxic Shock Syndrome (TSS)", insert "Table of Contents".

2. On the same page, in the third column, in the first complete paragraph, in the 19th line, "unavailable" should read "available".

3. On page 37251, in the second column, in the first complete paragraph, in the 11th line, "basis" should read "basic".

4. On page 37253, in the second column, in the first complete paragraph, in the ninth line, "(21 U.S.C. 260d)" should read "(21 U.S.C. 360d)".

5. On page 37255, in the first column, beginning in the 13th line, "§ § 15.004, 15.007" should read "§§15.004, 15.007."

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

Federal Old—Age, Survivors, and Disability Insurance Benefits; U.S. Coverage

Correction

In rule document 88-22829 beginning on page 38943 in the issue of Tuesday, October 4, 1988, make the following correction:

§ 404.1018 [Corrected]

On page 38945, in the third column, in § 404.1018(g)(2)(iii), in the last line, "33 U.S.C." should read "38 U.S.C.".

BILLING CODE 1505-01-D

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Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 150
Airport Noise Compatibility Planning; Request for Public Comment

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 150

[Docket No. 25660; Notice No. 88-12]

Airport Noise Compatability Planning, Request for Public Comment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request for public comment.

SUMMARY: This notice announces an opportunity for public comment concerning the preparation and submission of Airport Noise Exposure Maps and Airport Noise Compatibility Programs. The purpose of the opportunity for public comment is to obtain input on the effectiveness of the current rule and recommendations for possible changes to the regulations from airport operators; airport users, including air carriers; persons residing in areas surrounding airports and representatives of groups of such persons; Federal, State, and local officials; and other interested persons. All such parties are encouraged to participate in the opportunity for public comment by submitting comments to the FAA Rules Docket No. 25660 before January 9, 1989.

DATES: FAA Rules Docket No. 25660 will be open through January 9, 1989.

ADDRESS: Written comments must be mailed or delivered, in duplicate, to the Federal Aviation Administration, Office of the Chief Counsel, ATTN: Rules Docket (AGC-204), Room 915G, Docket No. 25660, 800 Independence Avenue, SW., Washington, DC 20591. Comments must be marked "Docket No. 25660." The comments may be reviewed in Room 915G between 8:20 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Robert B. Hixson or Ms. Patricia A. Cline, Policy and Regulatory Division (AEE-300), Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone, (202) 267-3565.

SUPPLEMENTARY INFORMATION:

Background

Federal Aviation Regulation, Part 150, Airport Noise Compatibility Planning, is the primary Federal regulation guiding and controlling planning for aviation noise compatibility on and around airports. Part 150 was issued as an interim regulation (46 FR 8316; January 19, 1981) under the authority of the Aviation Safety and Noise Abatement Act of 1979 [49 U.S.C. App. 2104(c)] (ASNA Act). Implementation of noise compatibility planning under the ASNA Act was delegated to the FAA. Part 150 established procedures, standards, and methodologies to be used by airport operators for the preparation of Airport Noise Exposure Maps (NEM's) and Airport Noise Compatibility Programs (NCP's) which they may submit to the FAA under Part 150 and the ASNA Act. The final rule was issued on January 18, 1985 (49 FR 49260) and, on March 16, 1988, was amended to include free-standing heliports (53 FR 8722). Program activity has continued to accelerate. Thirty-nine NCP's have been approved to date, and 150 or more are currently in some state of development or review under the program.

Congress recently has required, as part of the Airport and Airway Safety and Capacity Act of 1987 (Pub.L. 100-223), that the FAA conduct a study of the procedures established under Part 150 to determine whether expedited and simplified procedures which meet the objectives of the ASNA Act could be developed to take into account special circumstances at certain airports, and has further requested that the FAA report its findings to the Congress not later than June 30, 1989. In compliance with this request and consistent with the principles of consultation laid down in Part 150, the FAA now seeks factual information from the public to determine whether expedited and simplified procedures meeting the full objectives of the ASNA Act can be developed for the preparation and submission of airport NEM's and NCP's.

The objective of this consultation is to obtain public input on these or other pertinent modifications to the regulation that would have the net effect of achieving and maintaining the highest practicable degree of noise compatibility between airports and their environs, while minimizing the burdens on those involved in the process.

Airport-related noise currently affects several million people in the United States. Current estimates are that aproximately 3.5 million people live within the noise-impacted areas. In the effort to resolve these noise problems, a minimum of 10 percent of annual airport improvement program funding will be spent for this purpose over the next several years; most airport users will experience some additional burden of cost or change, and thousands of people and hundreds of businesses will be relocated or experience some improvement in the noise levels to which they are exposed. FAA's Part 150 program is the primary Federal program guiding this effort.

The FAA believes that the Part 150 process is a balanced approach for mitigating the noise impacts of airports upon their neighbors while protecting or increasing both airport access and capacity, as well as maintaining the efficiency of the national aviation system. Part 150 provides for the following:

—Establishes standard noise methodologies and units.
—Establishes the Integrated Noise Model (INM) as the standard noise-modeling methodology.
—Identifies the land uses which normally are compatible or noncompatible with various levels of airport noise.
—Provides for voluntary development of NEM's and NCP's by airport operators.
—Provides for review of NEM's to insure compliance with the Part 150 regulations.
—Provides for review and approval or disapproval of Part 150 NCP's submitted to the FAA by airport operators.
—Establishes procedures and criteria for making projects eligible for funding through the Airport and Airway Safety and Capacity Expansion Act of 1987, which provides for a 10 percent set-aside of airport grant funds for development and implementation of the compatibility programs.

The regulations contained in Part 150 are voluntary and airport operators are not required to participate. However, an approved Part 150 NCP is the primary vehicle for gaining approval of applications for Federal grants for noise abatement projects, and provides the required analyses for evaluating the impacts of any proposed constraints upon an airport's operations. The Part 150 program responds to the principles set forth in the Aviation Noise Abatement Policy Statement of 1976, as well as to the requirements of the ASNA Act.

Noise Methodologies and Metrics

The ASNA Act requires the FAA to designate two noise metrics: a single system for measuring aviation noise in the community; and a single system for determining the exposure of individuals to noise resulting from the operation of an airport:

—The system for measuring aviation noise in the community required a demonstrated relationship between projected noise exposure and the surveyed reactions of people to noise. For these purposes, the A-weighted sound level and its derivatives were selected.
—The system for determining the exposure of individuals to airport noise (i.e., for evaluating the cumulative impacts of multiple noise events) required consolidation of the effects of intensity, duration, frequency, and time of occurrence. The metric selected is the yearly day-night average sound level (Ldn or DNL), which was derived from the A-weighted sound level.

The Integrated Noise Model

A standard noise forecasting methodology is required to assure uniformity and comparability of the NEM's submitted under the program. The FAA Integrated Noise Model (INM) has been adopted as the program's standard noise modeling methodology. The FAA believes that this is a well-proven model and has refined the model to its third version. The INM is available for use on microcomputers, as well as on mainframe computers, thus reducing the costs of running noise contours and permitting more alternatives to be explored in developing NCP's. For free-standing heliports, the Heliport Noise Model is used.

Land Use and Noise Compatibility

A standard table of land uses normally compatible, or noncompatible, with various exposures of individuals to airport-related noise is essential to assure uniform treatment of both airport operations and noise-sensitive land uses or activities. Part 150's Table 1, entitled "Land Use Compatibility With Yearly Day-Night Average Sound Levels," provides a standard reference for land uses compatible with various levels of airport noise, and contains the basic criteria used in preparing Part 150 programs. This is the only noise and land use compatibility table currently in the Code of Federal Regulations (14 CFR Part 150).

Noise Exposure Map

The Part 150 Noise Exposure Map (NEM) is designed to identify clearly an airport's present and future noise patterns and the land uses which are not compatible with those noise patterns. When reviewed and found in compliance with applicable rules and regulations, an airport's NEM serves as a standard reference to the airport's existing and future noise impacts for anyone proposing noise-sensitive development in the vicinity of the airport. An NEM consists of two maps of the airport with noise contours plotted over land uses, plus supporting documentation. The noise contours for the Ldn 65, 70, and 75 noise levels are shown on these maps. The first map indicates the current conditions and, in effect, identifies the airport's noise compatibility problems. The second map projects the noise contours which can reasonably be predicted five years in the future taking into account changes in land use and in airport operations, plus any improvements in compatibility from noise mitigation actions which may be planned for that 5-year period. An NEM is prepared in consultation with airport users, the public, local governments, land use control agencies, and the FAA.

Noise Compatibility Program

The purpose of the Part 150 Noise Compatibility Program (NCP) for an airport is to show what measures the airport operator has taken, or proposes to take, to reduce noncompatible land uses and for preventing the introduction of additional noncompatible uses within the area covered by the airport's NEM. The NCP serves as the primary vehicle for guiding and coordinating the efforts and actions of all the agencies and individuals whose combined efforts are essential to achieving the maximum degree of noise compatibility between an airport and its neighbors while taking into account the requirements of the national aviation system.

The NCP is also the primary analytical tool for appraising the possible impact of any proposed airport operational constraints or restrictions on interstate or foreign commerce.

Developing a Part 150 NCP is a multi-step process. It must be carried out in close consultation with the affected local governments, the airport's users, those people impacted by either the noise or the solutions, and the FAA. The airport's NEM is a basic element of the NCP. It gives a clear indication of the nature of the airport's noise problems. Also, the FAA can not accept an airport's NCP for review until its NEM has been found to be in compliance with all applicable laws and regulations.

A series of alternative measures, or combinations of measures, to mitigate an airport's noise impact is developed by the airport operator. These measures must be reasonably consistent with achieving the goals of reducing, or mitigating the impact on, existing noncompatible land uses around the airport and of preventing the introduction of additional noncompatible land uses. As a minimum, a range of alternative measures specified in Part 150 must be considered, but others may be considered as well. Reasons must be given for those measures not selected. The social and economic consequences, both landside and airside, of each alternative must be considered in selecting the combination of alternatives which will finally be proposed to the FAA as the airport's NCP. Consideration of the environmental consequences of the proposed noise compatibility actions should be an integral part of this planning process; however, formal environmental assessment is required only in conjunction with the decision to implement an action. Alternatives must not unduly burden interstate commerce, discriminate unjustly, reduce the level of aviation safety, adversely affect efficient use of the navigable airspace, or adversely affect any other powers or responsibilities of the Administrator of the FAA.

Each NCP must include an agreed-upon schedule for implementation of the program, including: The period covered by the program, identification of the entity responsible for implementing each of its proposed noise compatibility actions, plus identification and sources of the necessary funds. These are intended to be working programs. Finally, the NCP must include specific provision for its own timely revision so that it remains a live and viable program responding to changes in both the aviation and the local environmental components of the plan.

Federal Funding

Implementation of NCP's depends on two basic things: Enactment and implementation of the local noise compatibility actions, including land use controls; and the provision of the funds necessary to carry out the planning, acquisitions, relocations, and construction involved. Federal funding totaling approximately $396.2 million in matching grants was provided to airport operators and adjacent communities under the ASNA Act and the Airport and Airway Improvement Act of 1982 for fiscal years 1983 through 1987 for compatibility planning and for the implementation of FAA-approved NCP's.

The Airport and Airway Safety and Capacity Expansion Act of 1987 provides for continued funding of noise compatibility planning and implementation through a 10 percent set aside of the $8.7 billion authorized through fiscal year 1992. This Federal funding is provided in the form of matching grants obtained from the Aviation Trust Fund, providing a 75 percent to 90 percent Federal share, dependent upon the enplanement level of the airport. The Aviation Trust Fund

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is sustained by an 8 percent tax on tickets, by other taxes on air cargo, and by taxes on fuel and other expendables, such as tires, used by general aviation. Thus, the monetary cost of the program is largely paid for by those who benefit from aviation services.

Issues for Consideration

A number of suggestions for improving the Part 150 program have come to the attention of the FAA. The following is a selection from among those suggestions and is intended to stimulate additional suggestions for improving the program. The FAA requests general comments upon the procedures contained within Part 150, as well as upon these suggestions:

—Establish uniform formats for NCP's and NEM's to simplify preparation and expedite FAA review.

—Have two kinds of Part 150 NCP's, the present comprehensive study for airports with complex noise problems, and a new "Short Form" Part 150 NCP for airports where one or two noncontroversial actions having obvious and easily quantifiable compatibility benefits will largely solve the noise problems.

—Establish uniform formats for presentation of data in both NCP's and the documentation for the NEM's.

—Add provisions for "Seasonal" Ldn's and NEM's for airports with seasonal peaks or other anomalies in their traffic.

—Incorporate significant improvements to the consultation process to more closely involve community decision-makers and those persons most affected by the noise; improve Notification procedures so that airport neighbors and all airport users are aware that the planning process is underway; and add a specific Comment Period Cut-Off time.

—Require a 5-year "report card" in each NCP to measure the compatibility improvement actually achieved as a result of the NCP.

—Include installation of an airport noise monitoring system as a required compatibility action item to monitor the performance of the NCP by measuring the noise contours actually achieved as a result of the compatibility program.

This sampling of issues or suggested changes to the Part 150 program has been included only to help stimulate additional constructive thought for improving the program and public input to the docket, and does not reflect the FAA's position on any of these issues. Your participation in this opportunity for public comment is encouraged.

Issued in Washington, DC on October 27, 1988.

James E. Dennemore,

Director, Office of Environment and Energy.

[FR Doc. 88-25411 Filed 10-31-88; 11:30 am]

BILLING CODE 4910-13-M

federal register

Thursday
November 3, 1988

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

Public Housing Homeownership; Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-88-1880; FR-2499]

Public Housing Homeownership

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This Notice invites public housing agencies (PHAs) and public housing resident management corporations (RMCs) to apply for participation in the new public housing homeownership program authorized by section 21 of the United States Housing Act of 1937.

The program authorizes an RMC with at least three years' experience in successfully managing public housing to purchase one or more multifamily buildings from the PHA. An RMC may offer the units involved for sale to lower income project residents and other lower income families. The program contains a number of protections for families that choose not to purchase their units. It also contains specific features, including requirements that the PHA replace all units sold to an RMC; that the sales prices to the RMC be approved by HUD; and that the PHA retain all net sales proceeds (from both original sales and resales) for use to increase the number of public housing units that are available for occupancy.

EFFECTIVE DATE: November 3, 1988. RMCs and PHAs that wish to participate in the public housing homeownership program under this Notice should jointly advise the Department of their interest as soon as possible, but not later than December 5, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy Chisholm, Director, Office of Policy, Office of Public and Indian Housing (PIH), Department of Housing and Urban Development, Room 4118, 451 Seventh Street, SW., Washington, DC 20410. Telephone number (202) 755-6713. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Information Collection Requirements

The information collection requirements contained in this Notice have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**. Public reporting burden for the collection of information requirements contained in this rule is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, *Other Matters*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, NW., Room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Eligibility of Resident Management Corporations

To be eligible to participate in section 21's homeownership program, RMCs must meet the following conditions:

1. *Organizational requirements.* The adult residents of a public housing project must have formed an RMC that meets the following requirements, adapted from 24 CFR Part 964, as revised to incorporate the resident management provisions of section 20 of the 1937 Act (published on September 7, 1988, at 53 FR 34676).

i. It must be a non-profit organization that is incorporated under the laws of the State in which it is located.

ii. If it was established by more than one tenant or resident organization, each organization must have approved its establishment. If there was no organization, a majority of the households of the project must have approved the establishment of such an organization to determine the feasibility of establishing an RMC to manage the project.

iii. It must have an elected Board of Directors.

iv. Its by-laws must require the Board of Directors to include representatives of each tenant or resident organization involved in establishing the RMC.

v. Its voting members must be tenants of the project or projects it manages.

If an RMC that was formed before November 3, 1988, does not meet one or more of these organizational requirements, the Department may accord the RMC some time to bring itself into compliance with these requirements. The RMC must meet all these requirements before a homeownership contract with the Department may be executed. It should be noted that any time that HUD provides an RMC to meet these organizational requirements is subject to the September 30, 1990 "sunset" on the Department's authority to approve RMC purchases of public housing.

2. *Management contract.* The RMC must have entered into a management contract under 24 CFR Part 964 with the PHA, establishing the respective rights and responsibilities of the RMC and the PHA.

3. *Management ability.* The RMC must have demonstrated its ability to manage public housing effectively and efficiently for a period of not less than three years.

Summary of the New Program

Section 123 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) (the 1987 Act) added a new section 21 to the 1937 Act. Section 21 establishes a program under which public housing residents and other lower income families may purchase units in public housing projects through a qualifying RMC. (Section 21(a))

A qualifying RMC may purchase one or more multifamily buildings in a public housing project if a number of conditions are met, including:

1. The RMC must apply for, and be prepared to undertake, the ownership, management, and maintenance of the property.

2. The PHA must hold one or more public hearings to obtain the views of interested citizens on the proposed purchase.

3. The PHA must certify, in consultation with HUD, that the purchase will not interfere with the rights of other families living in public housing, will not harm the efficient operation of other public housing, and is in the interest of the community.

4. The PHA must certify that it will replace all of the units sold to an RMC within 30 months of their sale, through (a) the development of new units or the modernization of vacant units by the PHA or (b) the acquisition of privately owned units by the RMC to be operated as rental housing subject to tenant income and rent limitations comparable to those for public housing. (In meeting this replacement housing requirement, it should be noted that, at best, very limited funds are likely to be available for the acquisition or development of public housing.)

5. The property must meet the safety and livability standards of the Comprehensive Improvement Assistance Program (CIAP) under section 14 of the 1937 Act. Where other assistance is provided in connection with a property purchased by an RMC, such as Vouchers or Certificates under section 8 of the 1937 Act, the requirements of these other authorities govern their provision and use.

6. The physical condition, management, and operation of the property must be sufficient to permit affordable homeownership by residents of the project. (Section 21(a)(3)(A))

HUD must approve the purchase price of the property, in consultation with the PHA and the RMC. Factors to be taken into account are the property's fair market value, the ability of resident families to afford and maintain the property, and such other factors as the Department determines are consistent with increasing the supply of dwelling units affordable to very low-income families. (Section 21(a)(3)(B))

An RMC that purchases public housing under section 21 may sell the units involved only to lower income residents of the project and to other lower income families, and only if HUD determines that the sale will not interfere with the rights of other families in the project or harm the efficient operation of the project, and that the family will be able to purchase and maintain the property. (Section 21(a)(4)(A)(i))

Offers to sell individual units must be made to the following categories of lower income families and in the following order: those residing in the project in which the unit to be sold is located; those residing in any of the PHA's projects; those receiving Federal housing assistance and residing within the PHA's jurisdiction; and those on the PHA's waiting list for public housing or Section 8 assistance, with priority given in the order of their appearance on the list. These sales may involve a number of arrangements, including limited dividend cooperative; condominium; fee simple; shared appreciation, with below-market financing from the PHA; or any other arrangement determined by the Department to be appropriate. (Sections 21(a)(4)(A)(ii) and (B)) All requirements covering the sale of individual units by the RMC must be incorporated into the contract of sale between the PHA and the RMC.

Units purchased by lower income families may only be resold to the RMC, the PHA, or a lower income family residing, or eligible to reside, in public housing or in housing assisted under section 8. (Section 21(a)(4)(C)) The consideration that a family may receive when reselling a unit may not exceed the family's equity contribution; the value of improvements made by the family; and a portion of the unit's "appreciated value." The unit's "appreciated value" is to be determined by applying an inflation allowance to the family's contribution to equity. The allowance will be based on a cost of living, income, or market index determined by HUD and agreed to by the purchaser and the RMC. (Section 21(a)(4)(D))

Proceeds from the sale of the property to the RMC and to lower income families must be retained by the PHA for the purpose of increasing the number of public housing units available for occupancy. (Section 21(a)(5))

If financing is unavailable for the purchase of a property by the RMC or a unit by a lower income family, the PHA is authorized to provide the necessary financing, with the property as security. The interest rate on the PHA's loan may not be lower than 70 percent of the market rate for conventional mortgages on the date on which the loan is made (Section 21(a)(6))

Section 21 contains a number of protections for families that reside in public housing when the RMC purchases the property. These include:

1. No public housing resident may be evicted by reason of the sale of the property to an RMC.

2. Families renting a unit purchased by an RMC will have all the rights provided to public housing residents.

3. HUD is required to offer a Housing Certificate or Voucher to any family that resides in a dwelling unit in a building purchased by an RMC, but that rejects an opportunity to purchase its unit from the RMC. Assistance under these authorities would be for use by the family as long as it continues to reside in the building. HUD may adjust the fair market rent (FMR) for Certificates to take into account conditions under which the building was purchased: *e.g.*, where the purchase price is $1.

4. HUD is required to provide assistance to families that reside in a dwelling unit in a project in which other units are purchased under the program, but that elect not to purchase their units from the RMC. The assistance is for the purposes of (1) helping the family relocate to an appropriate unit in another project and reimbursing the family for the cost of relocation, and (2) permitting the family to stay in the dwelling unit or to move to another appropriate unit and to pay no more for rent than the rent formula under section 3(a)(1) of the 1937 Act. (Section 21(b))

Section 21 contains a September 30, 1990 "sunset" date on HUD's approval of RMC purchases of public housing and the provision of CIAP and technical and related assistance under the program. (Section 21(a)(2)(C) and (3)(C))

Assistance Under the Program

1. In general

Section 21 authorizes a variety of forms of assistance for the new homeownership program. These include:

a. Section 21(a)(2)(A) provides that CIAP funding may be used for assistance to a "public housing project in which homeownership activities under [Section 21] are conducted."

b. Section 21(a)(2)(B) authorizes HUD and PHAs to provide training, and technical and educational assistance, to prepare RMCs and families residing in the project for homeownership.

c. Section 21(a)(5) authorizes PHAs to use the proceeds of sales of dwelling units "to increase the number of public housing units available for occupancy."

d. Section 21(a)(6) authorizes PHAs to make loans to finance purchases by RMCs and families under the program. Loans would be secured by the property, and may have below market interest rates.

e. Section 21(a)(7) requires HUD to continue annual contributions contract assistance for debt service to PHAs whose debt has not been forgiven, notwithstanding the purchase under the program of buildings in the public housing project.

f. As noted above, section 21(b)(3) authorizes the use of Section 8 Vouchers or Certificates for families that reside in units in RMC-purchased buildings, but that do not purchase dwelling units.

g. Also as noted above, section 21(b)(4)(A) authorizes HUD to provide rental and relocation assistance to families that reside in dwelling units in a public housing project in which other dwellings are purchased under the program, but that elect not to purchase their units.

h. Section 21(c) authorizes HUD to provide to PHAs "such financial assistance as is necessary to permit such agencies to carry out the provisions of this section."

Section 21(g) contains a limitation on the Department's ability to fund these authorities. This provision specifies that HUD's authority under section 21 to provide financial assistance, or to enter into contracts to provide financial assistance, is effective only to such extent or in such amounts as are or have been provided in advance in an appropriation Act. Thus, the Department's ability to fund any category of assistance under the program—either at all or at a level necessary to meet program demand—

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depends entirely on the existence and amount of appropriations for these purposes. It should be noted that if Congress has not appropriated funds for a given category of assistance, and neither the PHA nor the RMC arranges for the provision of the assistance involved, HUD may not be able to approve the purchase of the public housing by an RMC.

The remaining paragraphs of this section discuss, among other things, the current availability of amounts to provide the financial assistance specified in each of these categories.

2. CIAP

a. *Funding authority.* HUD is authorized to provide CIAP assistance to a public housing project in which homeownership activities under section 21 are conducted. It should be noted that the statute provides a simple funding authorization, not a funding requirement or priority for section 21 projects. Thus, CIAP applications under the new program will be subject to the regulations that apply to CIAP funding generally (24 CFR Part 968).

b. *CIAP and technical and related assistance.* CIAP funds may be provided for physical and management improvements to a project to be purchased by an RMC under section 21, pursuant to the provision for comprehensive modernization in general under 24 CFR Part 968. Subject to Part 968, when physical improvements under CIAP are being done, CIAP management improvement funds may be used for technical assistance under a section 21 sale plan.

c. *Funding availability.* Amounts appropriated for CIAP are available for use in connection with section 21.

d. *Role of RMCs in the CIAP funding process.* All CIAP applications must be made by the PHAs which should, however, afford RMCs as much opportunity for substantial responsibility in applying for and using CIAP monies as is practicable, including CIAP management improvement funds to meet the RMC's technical assistance needs if physical improvements are also taking place.

For example, the PHA might give lead responsibility for preparation of the application to the RMC, and might permit the RMC to carry out the CIAP activities under contract with the PHA. (Of course, if the RMC is to conduct CIAP activities, full responsibility for all aspects concerning the use of the funds, as provided by 24 CFR Part 968, remains with the PHA.) Whatever involvement in the CIAP funding process the PHA and RMC agree upon, all CIAP applications must have the concurrence of the RMC.

e. *"Sunset" dates for CIAP funding.*

i. *New assistance.* The Department will not approve new requests for CIAP assistance in connection with the section 21 program after September 30, 1990.

ii. *Use of assistance.* The September 30, 1990 "sunset" date will not affect the expenditure, on or after that date, of CIAP assistance under the program that was approved before then.

3. Technical and related assistance.

a. *General authority.* The statute requires HUD and the PHA to provide such training, and technical and educational assistance, as HUD determines necessary to prepare the RMC and the families residing in the project for homeownership.

b. *Types of assistance.* Two forms of assistance are authorized: providing the assistance directly through HUD staff or through the purchase of the necessary services. HUD may also provide the assistance, as appropriate, through PHAs.

c. *Funding availability.*—1. *Assistance through HUD staff.* As noted above, the language of section 21(g) refers only to financial assistance, and, thus, imposes no restriction on the use of HUD staff in the provision of the assistance involved. HUD will use its staff to provide technical and related assistance under the program, where HUD determines that such action is necessary to prepare RMCs and families for homeownership under the program.

ii. *Purchase of assistance.* The Department will determine the availability of amounts to purchase technical and other assistance under the program in the context of specific proposals. Any amounts that may be available for these purposes will likely be quite small.

d. *Technical assistance under CIAP.* HUD funding for technical assistance may be provided as a management improvement component under a CIAP proposal, if physical improvements are also taking place. This mode of funding is subject to the regulations at 24 CFR Part 968.

e. *"Sunset" dates for technical assistance.*

i. *New assistance.* The Department will not approve new requests for any type of technical and related assistance under section 21 after September 30, 1990.

ii. *Use of assistance.* The September 30, 1990 "sunset" will not affect the expenditure, on or after that date, of financial assistance, or the use of HUD or PHA staff, for technical and related assistance under the program that was approved before then.

It should be noted, however, that the statute specifies that the assistance is for the purpose of preparing RMCs and residents of public housing for homeownership. The Department interprets this as prohibiting the use of any assistance—direct financial or through staff—after the RMC has assumed ownership of the property. Any amounts that have not been expended after the RMC has assumed ownership will be subject to deobligation.

4. Debt service annual contributions

a. *General authority.* Notwithstanding the purchase of a building in a public housing project under section 21, the Department will continue to pay debt service annual contributions under section 5 of the 1937 Act with respect to the project. Payments may not exceed the maximum contributions authorized in section 5(a) of the 1937 Act.

No payments may be made under this paragraph with respect to the indebtedness of the PHA on any loan made by HUD under section 4(a) of the 1937 Act that has been forgiven pursuant to section 4(c)(1) of the Act.

b. *Funding availability.* Since the payment of debt service annual contributions involves a continuation of assistance and since there is a permanent indefinite appropriation for liquidating this continuing responsibility, the limitation in section 21(g) regarding appropriations does not reach this authority.

5. *Operating subsidy.* No operating subsidy amounts under 24 CFR Part 990 may be made available with respect to property under the program after the date of sale.

6. *Section 8 Certificates and Vouchers.* Section 21(b)(3) authorizes HUD to provide Section 8 Vouchers and Certificates to families that reside in a building purchased by an RMC, but that elect not to purchase their units. As in the case of CIAP, amounts are expected to be available for this purpose.

7. *PHA use of sales proceeds and PHA financing.* Section 21(a)(5) authorizes PHAs to use certain sales proceeds to increase the supply of public housing. Section 21(a)(6) authorizes PHAs to provide their own financing in certain instances. Section 21(g) provides a restraint on *HUD's* provision of assistance. It does not reach assistance made available from other sources, such as sales proceeds or PHA funds.

8. *Relocation and rental assistance.* Sections 21(b)(4) (A) and (B) authorize HUD to provide certain rental and relocation assistance to families that reside in a dwelling unit in a public housing project in which other dwelling units are purchased under the program, but that choose not to purchase their unit. Section 21(c) contains a "catch-all" authorization for necessary assistance to carry out section 21. No funds are available for activities under these elements of section 21 and, thus, the Department may not fund them at this time.

Nondiscrimination and Equal Opportunity

If selected to participate in the program, and RMC must certify that it will operate the program in compliance with all relevant civil rights and equal opportunity authorities, that it will promote awareness and participation of minority- and women-owned businesses, and that it will conduct outreach and marketing in accordance with the requirements set forth by HUD and stated in the contract.

Other Matters

Information Collection Requirements

The collection of information requirements contained in this Notice have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Information on these requirements is provided as follows:

	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
PHA and RMC Certification of Tenants' Rights and of the Provision of Replacement Housing	10	1	10	40	400
Recordkeeping	10	1	10	10	100
Total Burden Hours					500

Proceeding by Notice

The Department has determined that issuing the initial invitation to PHAs and RMCs to participate in the section 21 public housing homeownership program only after public notice and opportunity to comment would be unnecessary, impracticable, and not in the public interest. Given the statutory requirement that participating RMCs have at least three years' experience in managing public housing, the Department believes that only a very small number of RMCs will be eligible to participate in the program at this time. Of those few that are eligible, probably even a smaller number will actually seek to participate in the program. In addition, the September 30, 1990 "sunset" date on the Department's authority to approve RMC purchases of public housing, and the number and complexity of the statutory requirements that must be met before approval may be given, make it imperative that the invitation to apply be issued at the earliest practicable time.

Requiring notice and comment rulemaking would make it exceedingly difficult for those few eligible RMCs to meet the program's requirements within the September 30, 1990 "sunset" date. The Department believes that both the small number of eligible RMCs and the press of the "sunset" date make proceeding by Notice the only feasible option. Otherwise this important program may be effectively unavailable to its intended beneficiaries. The Department will proceed to implement the program through notice and comment rule making, if prospects for continuation of the program past its FY 1990 "sunset" seem good.

Findings and Certifications

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Executive Order 12606, the Family. The General Counsel, as the Designated Official under Executive Order 12606, *the Family*, has determined that this Notice will not have potential significant impact on family formation, maintenance, and general well-being, and, therefore, is not subject to review under the Order. The Notice would likely have positive family impacts, because it extends homeownership opportunities to certain public housing residents. This effect is not likely to be significant, however, because of the relatively small number of PHAs and RMCs that are expected to participate in the program.

Executive Order 12612, Federalism. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this Notice will not have substantial, direct effects on PHAs, on their relationship with the Federal government, or on the distribution of power and responsibilities between them and other levels of government. PHA participation in the program is voluntary: there must be agreement between the PHA and an RMC. Thus, the Notice provides PHAs with an additional homeownership option that serves to enhance the range of PHA discretion in the homeownership area, consistent with the Order's precepts. The Notice's federalism implications are not likely to be substantial, since the Department expects a relatively small number of PHAs/RMCs to participate in the program.

Authority: Sec. 21, United States Housing Act of 1937 (42 U.S.C. 1437s); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: October 27, 1988.

Jacqueline Austell,

Associate General Deputy Assistant Secretary for Public and Indian Housing.

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48 CFR Parts 28, 52, and 53
Federal Acquisition Regulation (FAR); Individual Sureties; Proposed Rule

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 28, 52, and 53

Federal Acquisition Regulation (FAR); Individual Sureties

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to FAR 28.106, 28.203, and to add FAR 28.204 and a clause at 52.228–11 concerning individual surety procedures. Among other things, the revisions would require a pledge of assets by an individual surety, prescribe the type of acceptable assets to be submitted, provide for exclusion of individual sureties for cause, revise Standard Form (SF) 28, and add an Optional Form.

DATES: *Comments:* Comments should be submitted to the FAR Secretariat at the address shown below on or before January 3, 1989, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 88–57 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Background

The Miller Act (40 U.S.C. 270a–270f), requires that performance and payment bonds are to be furnished in support of every Federal construction contract exceeding $25,000, unless otherwise provided. The Act has been implemented in FAR Part 28. FAR 28.1 also prescribes conditions for inclusion of bid guarantee requirements for construction and nonconstruction contracts as well as performance and payment bonds for nonconstruction contracts. The purpose for including bonding requirements in solicitation is to protect the Government's interests by ensuring fulfillment of the contractor's obligations to the Government and to suppliers under Government contracts where payment bonds are required. FAR 28.2 currently permits individual sureties to be submitted in support of a bonding requirement. An individual surety is a person who is liable for the entire penal amount of the bond.

Based upon recent experience with the use of individual sureties, it has been determined that existing FAR coverage concerning individual sureties is inadequate to ensure that the interests of the Government and suppliers under Government contracts which require a payment bond, are protected. A task force established by the Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council found widespread evidence of systematic problems with the current method of handling individual sureties. Also, see the report of Senate Hearing 100–384 before the Subcommittee on Federal Spending, Budget and Accounting of the Committee on Governmental Affairs entitled Personal Sureties Under the Miller Act: Inadequate Payment Protection for Small Business Construction Subcontractors.

Current provisions in the FAR provide that in support of each bond, an individual surety is required to submit an affidavit of individual surety (Standard Form (SF) 28) including among other things, the individual surety's assets liabilities, and net worth. The financial information contained on the SF 28 is to be certified as to sufficiency by any one of a number of parties. The Government is relying on the validity of the SF 28 information in the event of contractor default of its obligations.

Experience has shown that the information contained on the SF 28 is inadequate. The frequent result is that bonds submitted by individual sureties are uncollectable to the detriment of the Government and suppliers under Government contracts. The Government is inadequately protected even though (for construction contracts) it generally reimburses the contractor for the premium paid for the performance and payment bonds. (See 52.232–5.)

Accordingly, it has been determined that certain revisions are warranted to strengthen procedures governing individual sureties. The proposed rule would accomplish these objectives by the following revisions:

1. A bond supported by an individual surety will be accepted only with a pledge of specific assets equal to the penal amount of the bond.

(a) To pledge real estate, the individual surety will be required to furnish the Government with a recorded covenant not to convey supported by a title search, evidence that local taxes have been paid for the last three years, the current tax assessment on the property and evidence of recordation.

(b) To pledge assets other than real estate, an escrow account will be required.

2. Coverage providing for an individual's subetitution of pledged assets and a release of a lien by the Government on the pledged assets based upon completion of the bond obligations in whole or in part (see proposed Optional Form XX, Satisfaction of Pledge).

3. Coverage providing for the exclusion of an individual from acting as a surety for cause.

4. A revision to Standard Form 28.

In addition, minor revisions are proposed to the instructions on SF's 24, 25, 25A, 34, 35, and 1416. A copy of the proposed revised standard forms and the new optional form may be obtained from the FAR Secretariat.

B. Regulatory Flexibility Act

The revision of Parts 28, 52, and 53 concerning individual sureties may have a significant economic impact on a substantial number of small entities. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat, Attn: Margaret A. Willis, Room 4041, GS Bldg., 18th & F Streets, NW., Washington, DC 20405. Comments are invited. Comments from small entities concerning the affected FAR sections will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite FAR Case 88–610 in correspondence.

C. Paperwork Reduction Act

This proposed rule contains information collection requirements. Accordingly, a revised burden estimate for OMB Clearance Number 9000–0001 with respect to certain aspects of the proposed certification provision and clause and also an information requirement pertaining to the revision of SF 28, Affidavit of Individual Surety, are being submitted to the Office of Management and Budget for approval under 44 U.S.C. 3501, et seq. Public comments concerning the two requests will be invited through subsequent Federal Register notices.

List of Subjects in 48 CFR Parts 28, 52, and 53

Government procurement.

Dated: October 27, 1988.

Roger M. Schmaltz,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Parts 28, 52, and 53 be amended as set forth below:

1. The authority citation for 48 CFR Parts 28, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 28—BONDS AND INSURANCE

2. Section 28.106–1 is amended by revising paragraphs (e), (h), (i), and (j), and by adding paragraph (n) to read as follows:

28.106–1 Bonds and bond related forms.

* * * * *

(e) SF 28, Affidavit of Individual Surety (see 28.203).

* * * * *

(h) SF 273, Reinsurance Agreement for a Miller Act Performance Bond (see 28.202(a)(4)).

(i) SF 274, Reinsurance Agreement for a Miller Act Payment Bond (see 28.202(a)(4)).

(j) SF 275, Reinsurance Agreement in Favor of the United States (see 28.202(a)(4)).

* * * * *

(n) Optional Form XX, Satisfaction of Pledge.

28.202 [Removed]

3. Section 28.202 is removed.

4. Section 28.202–1 is redesignated as 28.202, and the section title and paragraph (d) are revised to read as follows:

28.202 Acceptability of corporate sureties.

* * * * *

(d) The Department of the Treasury Circular 570 may be obtained from the U.S. Department of the Treasury, Financial Management Service, Surety Bond Branch, 401 14th St., SW, 2nd Floor—West Wing, Washington, DC 20227.

5. Section 28.203 is redesignated as 28.204 and new section 28.203 is added to read as follows:

28.203 Acceptability of individual sureties.

(a) An individual surety is acceptable for all types of bonds except position schedule bonds. The contracting officer shall determine the acceptability of individuals proposed as sureties and shall ensure that the surety's pledged assets are sufficient to cover the bond obligation.

(b) An individual surety must execute the bond and the net value of the assets pledged by the individual surety must equal or exceed the penal amount of each bond. The individual surety shall execute the Standard Form 28 and provide a security interest in accordance with 28.203–1. One individual surety is adequate support for a bond provided the assets pledged by that individual surety equal or exceed the amount of the bond. An offeror may submit up to two individual sureties for each bond.

(c) If the contracting officer determines that the individual surety in support of a bid guarantee is not acceptable, the offeror utilizing the individual surety shall be rejected as nonresponsible, except as provided in paragraph (e) of this section. A finding of nonresponsibility based on unacceptability of an individual surety, need note referred to the Small Business Administration for a competency review. (See 61 Comp. Gen. 456 (1982).)

(d) In a sealed bid acquisition, an offeror submitting a bid guarantee executed by an unacceptable surety may not substitute an acceptable surety after bid opening.

(e) In a negotiated acquisition, the contracting officer may permit an offeror submitting a bid guarantee executed by an unacceptable surety to remedy the deficiency prior to award. However, if the offeror proposes the lowest overall cost to the Government, the contracting officer shall permit such a deficiency to be remedied through a revised proposal (see 15.610).

(f) A contractor submitting an unacceptable individual surety in satisfaction of a performance or payment bond requirement may be permitted to substitute an acceptable surety for a surety previously determined to be unacceptable.

(g) Assistance in evaluating individual sureties may be obtained from the office cited in 28.202(d) at (202) 287–3915.

(h) Assistance in evaluating the acceptability of securities may be obtained from the Securities and Exchange Commission, Division of Enforcement, at (202) 272–2331.

(i) Contracting officers shall obtain the concurrence of legal counsel as to the adequacy of the documents pledging the assets.

(j) Evidence of possible criminal or fraudulent activities by an individual surety shall be referred to the appropriate agency official in accordance with agency procedures.

6. Section 28.203–1 is redesignated as 28.204–1 and new section 28.203–1 is added to read as follows:

28.203–1 Security interests by an individual surety.

(a) An individual surety may be accepted only if a security interest in assets acceptable under 28.203–2 is provided to the Government by the individual surety.

(b) The market value or accepted value of the assets pledged must be equal to the aggregate penal amounts of the bonds required by the solicitation and may be provided by one or a combination of the following methods:

(1) An escrow account with a federally insured financial institution in the name of the contracting agency. (See 28.203–2(b)(2) with respect to Government securities in book entry form.) Acceptable securities for deposit in escrow are discussed in 28.203–2. While the offeror is responsible for establishing the escrow account, the terms and conditions must be acceptable to the contracting officer. At a minimum, the escrow account shall provide for the following:

(i) The account must provide the contracting officer the sole and unrestricted right to draw upon all or any part of the funds deposited in the account. A written demand for withdrawal would be sent to the financial institution by the contracting officer with a copy to the offeror/contractor. Within a specified period of time after the demand, the financial institution would pay the Government the amount demanded up to the amount on deposit. If any dispute should arise between the Government and the offeror/contractor, or with any other party with respect to the offer or contract, the financial institution would be authorized, unless precluded by order of a court of competent jurisdiction, to disburse monies to the Government as directed by the contracting officer.

(ii) The financial institution would be authorized to release to the offeror/contractor all or part of the balance of the escrow account upon receipt of written authorization from the contracting officer.

(iii) The Government would not be responsible for any costs attributable to the establishment, maintenance, administration, or any other aspect of the account.

(iv) The financial institution would not be liable or responsible for the interpretation of any provisions or terms and conditions of the solicitation or contract.

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(v) The financial institution would provide periodic account statements to the contracting officer.

(vi) The terms of the escrow account could not be amended without the consent of the contracting officer.

(2) A lien on real property, subject to the restrictions in 28.203–2 and 28.203–3.

7. Section 28.203–2 is redesignated as 28.204–2 and new section 28.203–2 is added to read as follows:

28.203–2 Acceptability of assets.

(a) The Government will accept only readily marketable assets from individual sureties to satisfy the underlying bond obligations.

(b) Acceptable assets include:

(1) Cash or certificate of deposit with a federally insured financial institution.

(2) United States Government securities at market value. (An escrow account is not required if an individual surety offers Government securities held in book entry form at a depository institution. In lieu thereof, the individual shall provide evidence that the depository institution has (i) placed a notation against the individual's book entry account indicating that the surety has been pledged in favor of the respective agency, (ii) agreed to notify the agency prior to maturity of the security, and (iii) agreed to hold the proceeds of the security subject to the pledge in favor of the agency until a substitution of securities is made or the individual's obligations are formally released by the agency).

(3) Stocks and bonds actively traded on a national U.S. security exchange with certificates issued in the name of the individual surety. National security exchanges are: (i) The New York Stock exchange, (ii) the American Stock exchange, (iii) the Boston Stock exchange, (iv) The Cincinnati Stock exchange, (v) the Midwest Stock exchange, (vi) the Philadelphia Stock exchange, (vii) the Pacific Stock exchange, and (viii) the Spokane Stock exchange. These assets will be accepted at 80% of their 52-week low, as reflected at the time of submission of the bond. Stock options and stocks on the over the counter (OTC) market or NASDQ exchanges will not be accepted.

(4) Real property owned in fee simple by the surety without any form of concurrent ownership, except as provided in subdivision (c)(3)(iii) of this subsection, and located within the 50 United States, its territories, or possessions. These assets will be accepted at 100% of the most current tax [illegible] value or 75% of the properties' unencumbered market value provided a current appraisal is furnished. (See 28.203–3.)

(c) Unacceptable assets include but are not limited to:

(1) Notes or accounts receivable.

(2) Foreign securities.

(3) Real property as follows:

(i) Real property located outside the United States, its territories, or possessions.

(ii) Real property which is a principal residence of the surety.

(iii) Real property owned concurrently regardless of the form of co-tenancy (including joint tenancy, tenancy by the entirety, and tenancy in common) except where all co-tenants agree to act jointly.

(iv) Life estates, leasehold estates, or future interests in real property.

(4) Personal property other than that listed in paragraph (b) of this subsection (e.g., jewelry, furs, antiques).

(5) Stocks and bonds of the individual surety in a controlled, affiliated, or closely held concern of the offeror/contractor.

(6) Corporate assets (e.g., plant and equipment).

(7) Speculative assets (e.g., mineral rights).

(8) Letters of credit.

(8) Sections 28.203–3 through 28.203–7 are added to read as follows:

28.203–3 Acceptance of real property.

(a) Prior to accepting a security interest in real property, the contracting officer shall ensure that the individual surety provides (1) evidence that local property taxes have been paid for the last 3 years, (2) the current tax assessment on the property or, a current appraisal prepared by a member of a nationally recognized professional real estate organization, (3) a copy of the deed as recorded (and proof of recording if not evident from the deed), and (4) evidence of title by the conduct of a title search on each piece of pledged property.

(b) At the time the bond is submitted, the individual surety shall provide evidence to the contracting officer that the Government's lien on the real property has been properly recorded on the land records of the jurisdiction where the property is located.

(c) The following format or any document substantially the same may be attached when a surety pledges real estate on Standard Form 28, Affidavit of Individual Surety.

LIEN ON REAL ESTATE

I/we agree that this instrument constitutes a lien on the subject property in the amount of $_____. The rights of the United States Government shall take precedence over any subsequent lien or encumbrance until the lien is formally released by a duly authorized representative of the United States. I/we hereby grant the United States the power of sale of subject property in the event of contractor default if I/we otherwise fail to satisfy the underlying bond obligations as an individual surety on solicitation/contract number _____. The lien is upon the real estate now owned by me/us described as follows: (legal description, street address or other identifying description)

IN WITNESS HEREOF, I/we have hereunto affixed my/our hand(s) and seal(s) this _____ day of _____.

WITNESS:

_____

_____

[SEAL]

[SEAL]

I, _____, a Notary Public in and for the _____ (STATE) _____, do hereby certify that _____, a party to a certain Agreement bearing the date _____ day of _____ 19____, and hereunto annexed, personally appeared before me, the said _____

_____

being personally well known to me as the person(s) who executed said lien, and acknowledged the same to be his/her act and deed.

GIVEN under my hand and seal this _____ day of _____ 19____.

_____

NOTARY PUBLIC, STATE

—My Commission expires: _____

28.203–4 Substitution of assets.

An individual surety may request the Government to accept a substitute asset for that currently pledged by submitting a written request to the responsible contracting officer. The responsible contracting officer may agree only after determining that the substitute assets to be pledged are adequate to protect the outstanding bond or guarantee obligations. If acceptable, the substitute assets shall be pledged as provided for in this subpart.

28.203–5 Release of lien.

(a) After consultation with legal counsel, the contracting officer shall release the security interest on the individual surety's assets using the Satisfaction of Pledge, Optional Form XX, or a similar release as soon as possible consistent with the following:

(1) *Contracts subject to the Miller Act.* The security interest shall be maintained for the later of (i) one year following final payment, (ii) until completion of any warranty period, or (iii) pending resolution of all claims filed against the payment bond during the one year period following final payment. A surety's assets pledged in support of a payment bond may be released to a subcontractor or supplier upon Government receipt of a court judgment.

(2) *Contracts not subject to the Miller Act.* The security interest shall be maintained for 90 days following final payment or until completion of any warranty period, whichever is later.

(b) Upon request, the contracting officer may release the security interest on the individual surety's assets in support of a bid guarantee based upon evidence that the offer supported by the individual surety will not result in contract award.

(c) Upon request, for contracts not subject to the Miller Act, the contracting officer may release a portion of the security interest on the individual surety's assets based upon significant completion of the contractor's obligations under its performance or payment bond provided that the contracting officer ensures that the unreleased portion of the lien is sufficient to cover the remaining contract obligations.

28.203–6 Solicitation provision and contract clause.

Insert the clause at 52.228–11 in solicitations and contracts which require the submission of bid guarantees, performance, or payment bonds.

28.203–7 Exclusion of individual sureties.

(a) An individual may be excluded from acting as a surety on bonds submitted by offerors on procurement by the executive branch of the Federal Government, by the acquiring agency's head or designee utilizing the general procedures in Subpart 9.4. The exclusion shall be for the purpose of protecting the Government.

(b) An individual may be excluded for any of the following causes:

(1) Failure to fulfill the obligations under any bond.

(2) Failure to disclose all bond obligations.

(3) Misrepresentation of available assets or outstanding liabilities.

(4) Any false or misleading statement, signature or representation on a bond or affidavit of individual suretyship.

(5) Any other cause affecting responsibility as a surety of such serious and compelling nature as may be determined to warrant exclusion.

(c) An individual excluded from acting as an individual surety shall be included on the list entitled Parties Excluded from Procurement Programs. (See 9.404.)

(d) Contracting officers shall not accept the bonds of individual sureties whose name appears on the list entitled Parties Excluded from Procurement Programs (see 9.404) unless the acquiring agency's head or a designee states in writing the compelling reasons justifying acceptance.

28.204–1 [Amended]

9. New section 28.204–1 is amended as follows: In the first sentence the citation "5 U.S.C. 15" is removed and "31 U.S.C. 9303" is inserted in its place, and the date "February 6, 1935" is removed and "July 1, 1978" is inserted in its place.

28.204–2 [Amended]

10. New section 28.204–2 is amended by revising the section heading to read: "28.204–2 Certified or cashier's checks, bank drafts, money orders, or currency".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

11. Section 52.228–11 is added to read as follows:

52.228–11 Pledges of assets.

As prescribed in 28.203–6, insert the following clause:

PLEDGES OF ASSETS (NOV 1988)

(a) Offerors shall obtain from each person acting as an individual surety on a bid guarantee, a performance bond, or a payment bond:

(1) Pledge of assets, and

(2) Standard Form 28, Affidavit of Individual Surety.

(b) Pledges of assets from each person acting as an individual surety shall be in the form of:

(1) Evidence of an escrow account containing cash, certificates of deposits, commercial or Government securities, or other assets identified in FAR 28.203–6 (except see 28.203–2(b)(2) with respect to Government sureties held in book entry form) and/or;

(2) A recorded lien on real estate. The offeror will be required to provide: (A) evidence of clear title by (i) the conduct of a title search on each piece of pledged property and (ii) evidence that local taxes have been paid for the past three years, (B) a copy of the current tax assessment on the property or a current appraisal prepared by a member of a nationally recognized professional real estate organization, and (C) a copy of the deed as recorded (and proof of recording if not evident from the deed.

PART 53—FORMS

12. Section 53.228 is amended by revising the section title and paragraphs (a), (b), (c), (e), (f), (g), and (m) and by adding paragraph (n) to read as follows:

53.228 Bonds and Insurance (SF's 24, 25, 25–A, 25–B, 28, 34, 35, 273, 274, 275, 1414, 1415, 1416, OF XX).

* * * * *

(a) *SF 24 (REV. 11/88), Bid Bond.* [See 28.106–1.)

(b) *SF 25 (REV. 11/88), Performance Bond.* (See 28.106–1(b).)

(c) *Sf 25–A (REV. 11/88), Payment Bond.* (See 28.106–3(c).)

* * * * *

(e) *SF 28 (REV. 11/88), Affidavit of Individual Surety.* (See 28.106–1(e) and 28.203(b).)

(f) *SF 34 (REV. 11/88), Annual Bid Bond.* (See 28.106–1(f).)

(g) *SF 35 (REV. 11/88), Annual Performance Bond.* (See 28.106–1.).

* * * * *

(m) *SF 1416 (REV. 11/88), Payment Bond for Other than Construction Contracts.* (See 28.106–1(m).)

(n) *OF XX (11/88), Satisfaction of Pledge.* (See 28.106–1(n) and 28.203–5(a).)

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Part V

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Program Announcement; Testing Juvenile Detainees for Illegal Drug Use; Notice

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DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Program Announcement; Testing Juvenile Detainees for Illegal Drug Use

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to section 224(a)(5) and section 243 (2) of the Juvenile Justice and Delinquency Prevention Act, as amended, announces a new OJJDP development initiative to assess, develop, test and disseminate information on new and innovative prototypical approaches to test for illegal drug use among juvenile detention populations.

The purpose of the program is to improve resource allocation and treatment services for youth in detention by developing more accurate and complete information on their use of illegal drugs.

This is a developmental effort composed of four incremental stages:

(1) An assessment of relevant information on drug testing strategies and technologies, drug use and crime among juveniles in detention; and existing juvenile drug testing programs;

(2) The development of program prototypes (models) and related policies and procedures to guide juvenile detention facilities in implementing useful, reliable, and cost-effective drug testing programs, and in utilizing the information to inform resource allocation and service provision;

(3) The development and provision of intensive training, technical assistance and information materials to transfer the prototype programs to selected detention center test sites; and

(4) The implementation and testing of the prototype programs.

OJJDP invites public agencies or nonprofit private agencies, or combinations thereof, to submit competitive applications to develop prototypical (model) approaches for detecting illegal drug use among detained youths.

OJJDP has allocated up to $425,000 to conduct the first three (3) stages which are to be completed in twenty-four (24) months. The initial budget period will be for twenty-four (24) months. Upon completion of the training and technical assistance materials a decision will be made regarding support for the last stage. The project period is four years. One cooperative agreement will be awarded. Applicants are encouraged to present cost-competitive proposals.

The deadline for receipt of applications is November 30, 1988.

FOR FURTHER INFORMATION CONTACT: Douglas W. Thomas, Research and Program Development Division, (202) 724-5929 or Frank O. Smith, Special Emphasis Division, (202) 724-5914, OJJDP, Room 784, 633 Indiana Avenue NW., Washington, DC 20531.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background
II. Program Goals and Objectives
III. Program Strategy
IV. Dollar Amount and Duration
V. Eligibility Requirements
VI. Application Requirements
VII. Procedures and Criteria for Selection
VIII. Deadline for Receipt of Applications
IX. Civil Rights Compliance

I. Introduction and Background

Illegal drug use among youth is a major problem in this country. Moreover, a link between illegal drug use and crime, although not fully understood, is well documented. Frequent use and abuse of drugs is more common among youths who engage in chronic delinquent behavior than among other adolescents. (Hawkins, et al., 1988). The National Youth Survey, a self-report study of a national probability sample of adolescents, found that nearly 50% of serious juvenile offenders were also multiple illicit drug users. Youth who are involved in illegal drugs, beyond experimentation, report the highest rates of participation in serious crimes (Elliott and Huizinga, 1984). Research has shown that some youth by virtue of individual characteristics and environmental conditions are at higher risk of using illegal drugs than the general youth population. Youth involved with the juvenile justice system are one of the high risk populations.

For every referral to the intake unit of the juvenile justice system a decision is made to detain or release the juvenile. Typically, juveniles who are detained are charged with a serious crime or have a history of involvement in serious crime, and are among youth at greatest risk for illegal drug use. Youth assigned to detention who use illegal drugs represent a significant threat to themselves as well as to other youth and staff in the facility.

Effective programming for detained juveniles requires accurate and complete information on their use of illegal drugs. Recently, chemical drug testing technologies have been developed and widely used in the criminal justice system.

The purpose of this initiative is to develop, implement and test model policies and procedures for juvenile detention facilities to assist them in incorporating chemical drug testing into the intake diagnosis and classification process. A comprehensive model should address identification and screening, the testing procedure itself, and the use of the results by the detention programs, as well as other parts of the juvenile justice system. In developing the model, certain basic questions should be addressed: (1) Why test for illegal drugs; (2) who should be tested; (3) when should testing take place; (4) what is the most appropriate technology for testing; and (5) how should the results of the tests be used?

Why Test? What is the purpose of drug testing strategies in juvenile detention settings? Drug testing may be initiated by a juvenile detention administrator for one or all of the following reasons: (1) To assess the types of drugs used by the residents of the detention home as well as the scope of that use; (2) to maintain security; and (3) to facilitate drug treatment modalities. An effective drug testing strategy for the juvenile detention setting must establish a purpose for testing that is consistent with the mission and goals of that setting.

Who is to be tested? The answer to the first question will, in large part, provide guidance to answering the question of who to test. Does one test all juveniles in detention? Does one take a sample (randomly or otherwise) of juveniles from the population or are juveniles selected for testing based on pre-existing identification and screening information?

When do you test? At what point in the process should individuals be tested: Upon assignment to the detention program?; at random intervals during their stay in detention?; when pre-established criteria are met? Questions regarding the frequency of testing must also be addressed.

What is the most appropriate technology? There are numerous techniques and procedures for testing for illegal drug use. Which technology(s) is most appropriate for testing within the juvenile detention setting?

How will the results be used? Who, within the detention program, will have access to the results, and what information will be shared, and under what circumstances with other agencies? How can the test results inform resource allocation and development, and service provision?

The "Testing for Illegal Drug Use in Detention" program is a component of OJJDP's response to illegal drug use among high risk youth that addresses a systemwide approach to prevention, intervention, and treatment. The

recipient of this award will be encouraged to share information and experience with the staff of related OJJDP programs.

II. Program Goals and Objectives

A. Goals

(1) To assist detention facilities in developing more effective responses to juveniles involved in illegal use and serious crime by developing prototype designs;

(2) To deterine the extent and scope of drug use based on existing testing programs among juvenile detention populations; and

(3) To support the expansion of existing testing programs in juvenile detention settings through the dissemination of prototype drug testing program designs.

B. Objectives

(1) Assess existing information regarding strategies for testing for illegal drug use in juvenile detention settings; develop criteria for identifying promising approaches; review and describe operational promising programs; and collect and analyze data from existing data sets;

(2) Develop prototypes based on research and the assessment of selected operational programs;

(3) Develop a dissemination strategy and related training and technical assistance materials to transfer the prototypes to selected sites; and

(4) Test program prototypes: (Applicants are advised that this stage of the program development initiative will not be funded during the initial budget period).

III. Program Strategy

OJJDP's planning and program development activities are guided by a framework that specifies four sequential phases of development: Research, Development, Demonstration and Dissemination. This framework guides the decision-making process regarding the funding of future stages of the program.

This program is a developmental initiative. The purpose of the development initiative is to develop prototype/models and to determine their effectiveness through a controlled testing process. The program will be conducted in four discrete incremental stages. The four stages include: (1) An assessment of the available information on testing for illegal drug use within juvenile detention settings; (2) a comprehensive description of how to develop, implement and operate a prototypical program; (3) the development of a training and technical assistance package in order to provide intensive training to test sites that are implementing the prototype; and, (4) testing of the prototypes. During the 24 month budget period, it is expected that stages I, II, and III will be completed.

All technical and subject matter portions of the program will be guided by recommendations of an advisory committee established specifically for the program. The advisory committee will provide comments and recommendations regarding the strategies and activities for this program. It may be necessary to change or supplement advisory committee members for different stages of the program. However, the objective will be to select technical and subject matter experts capable of addressing issues related to each of the program stages.

The advisory committee members should have combined expertise in drug testing policies and procedures, research and evaluation of supervision strategies in the criminal/juvenile justice system, training and technical assistance development and delivery, and knowledge of juvenile detention programs.

Each stage of the incremental program development process detailed below is designed to result in a complete and publishable product (e.g. final assessment report), and a dissemination strategy to inform the field of the development of the program and the results and products of each stage. This award is providing funds for stages I, II and III. A decision is made at the completion of each stage, based on availability of funds, and the quality and utility to complete the current stage or terminate the program.

A. Stage I-Assessment

The first stage of the program consists of an assessment that will include a review of the literature and of operational programs. The literature review will be designed to identify significant issues and problems involved in developing comprehensive drug testing policies and procedures for juvenile detention programs. The purpose of the literature review is to identify the most definitive theoretical and empirical research findings in order to apply them to the review of existing programs, and the development of prototype(s) (models).

The recipient will apply the results of the literature review to the development of criteria for identifying promising approaches to testing for illegal drug use among detained juveniles and use the criteria to select programs for review and documentation. Information to be collected and assessed should include, at a minimum: The historical development of drug testing programs; literature and reports that will lead to the development of a conceptual framework, including theoretical assumptions, definition of the parameters of drug testing programs as they relate specifically to detention within the juvenile justice system; and program costs per unit of service and per client. Of particular interest will be the compilation of data collected from existing drug testing programs in order to begin to monitor trends in the nature and extent of illegal drug use among the more serious offenders in the juvenile justice system.

The assessment should provide the basis for refining the goals and objectives of the development program. Specifically, it should identify the key questions that need to be answered regarding the implementation and effectiveness of drug testing programs in juvenile detention settings. Therefore, based on the literature review and the results of the program assessment, the recipient will recommend specific programs or components of programs to be used as a basis for program prototype development.

This project is to be a companion program to other OJJDP sponsored drug related initiatives. Specifically, it is expected that the recipient will coordinate activities with OJJDP's "Drug Testing Guidelines" and "Promising Approaches to the Prevention, Intervention and Treatment of Illegal Drug and Alcohol Use Among Juveniles" projects. These projects are designed to provide guidelines and models for all components of the juvenile justice system.

1. Activities

The major activities of this stage are:

- Establishment of a program advisory committee;
- Development of the assessment plan;
- Review of the literature;
- Development of criteria for identifying promising programs;
- Identification and description of operational promising programs;
- Identification and compilation of existing data sets reflecting the results of already established drug testing programs;
- Development of preliminary testing design guidelines;
- Preparation of the assessment report; and
- Development and implementation of a dissemination strategy.

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1. Products

The products to be completed during this stage are:

- Assessment Plan—specifying in detail, the approach and activities to be undertaken for each step of the assessment stage;
- Draft and final report on the results of the assessment that includes:

—Literature review;
—Criteria for identifying promising programs;
—Description of operational promising programs and approaches;
—Recommendations for refining the goals and objectives of the program;
—Recommendations for developing prototypical/model approaches; and
—Preliminary testing design guidelines.

- Dissemination strategy to inform the field of the development of the program, and the products and results of this stage.

B. Stage II—Prototype Development

Upon successful completion of stage I, and with the approval of OJJDP, the recipient will develop prototype designs for the development, implementation, and operation of drug testing programs among juvenile detention populations. The prototype designs will be accompanied by detailed policy and procedure manuals to be developed by the recipient. The activities and products of this stage will be based on the information generated by the assessment. Appropriate technical and subject matter expertise will be utilized to design the prototypes that will be based, in part, on the operational programs described in the preceding stage.

The prototype design and related policies and procedures will provide guidance regarding identification of the appropriate target group; relationship of the program to other public and private youth-serving agencies; funding; program organization and management; the philosophy and content of the intervention; resource development; program monitoring; and evaluation of program effectiveness. The prototype designs and accompanying policies and procedures manuals will be used as the basis for the development of a training and technical assistance package. The information will become part of the package to be disseminated to appropriate state and local agencies, depending on the nature and auspices of each prototype.

1. Activities

The major activities of this stage are:

- Preparation of a plan for developing the prototypes and related policies and procedures;
- Development of the prototypes and related policies and procedures;
- Participation and review by the program advisory committee; and
- Development and implementation of a dissemination strategy.

2. Products

The products to be completed during this stage are:

- Plan for prototype development specifying, in detail, the approach and activities to be undertaken for each step of this stage, and the projected costs on a monthly basis;
- Draft and final prototype design(s) and related policies and procedures manual(s); and
- Dissemination strategy to inform the field of the development of the program, products and results of this stage.

C. Stage III—Training and Technical Assistance

Upon successful completion of stage II, and with the approval of OJJDP, the recipient will transfer the prototype design(s), including policies and procedures, into a training and technical assistance package. A comprehensive training manual must be developed to encourage and facilitate implementation of the prototypes. The training manual must outline the major issues that need to be addressed in developing programs for testing for illegal drug use among juvenile detention populations and explain the program prototypes in detail. The training manual should be the focal point of the entire training and technical assistance package.

The primary audience will be policy makers and practitioners involved in resource allocation and program development related to prevention and intervention programs for high risk youth. The manual must be designed for a formal training setting and for independent use in jurisdictions that do not participate in formal training session. Therefore, the manual should include a complete description of the prototype and incorporate related policies and procedures. The manual should contain instructions and supplementary materials for trainers to facilitate presentation, and ensure understanding and successful adaption and implementation of the prototypes.

1. Activities

The major activities of this stage are:

- Preparation of a plan for developing the training and technical assistance package;
- Development of the training and technical assistance materials;
- Recruitment and preparation of the training and technical assistance personnel;
- Testing of the training curriculum manual;
- Participation and review by the advisory committee; and
- Development and implementation of a dissemination strategy that may include workshops or seminars for juvenile detention centers.

2. Products

The products to be completed during this stage are:

- Plan for the development of the training and technical assistance package;
- Identification of training and technical assistance personnel;
- Draft and final training and technical assistance package, including the training curriculum manual and information materials; and
- Dissemination strategy to inform the field of the development of the program, and the products and results of this stage.

D. Stage IV— Prototype Implementation and testing

While a decision to test the prototypes will be made during or following completion of the prototype development stage, the applicant is expected to explain the methods and approaches that would be employed to implement this stage.

This stage of the program consists of testing in selected jurisdictions and prototypes developed in stage II. The recipient will be required to assist the OJJDP in developing a solicitation to make awards to test sites. It will also be required to provide intensive training and technical assistance to help the test sites implement the prototypes on an experimental basis. Finally, the recipient will be expected to work cooperatively with an independent evaluator to ensure the integrity of the data collection and feedback activities.

The funds for this stage will be provided through a non-competitive continuation award(s).

1. Activities

The major activities of this stage are:

- Develop recommendations for a program announcement to select test sites;
- Assist OJJDP in review and selection of test sites;
- Provide intensive training and technical assistance to test sites regarding the implementation of prototypes on an experimental basis;
- Develop procedures for working cooperatively with the program evaluator, particularly in the area of data collection and feedback; and
- Develop and implement a dissemination strategy.

2. Products

The major products for this stage are:

- Recommendations for the program announcement for test sites;
- Plan for providing training and technical assistance to test sites; and
- Dissemination strategy to inform the field of the development of the program and the products and results of this stage.

IV. Dollar Amount and Duration

Up to $425,800 has been allocated for the initial award. One cooperative agreement will be awarded competitively, with an initial budget period of twenty-four (24) months. This development program will consist of four stages (assessment; prototype development; policies and procedures; training, technical assistance; and testing). The initial award will provide support for stages I and II and III. One or more noncompetitive continuation awards will be considered to complete a four year project period.

The noncompetitive continuation awards for the additional budget periods may be withheld for justifiable reasons. They include: (1) The results of Stages I, II and III do not justify further program activity; (2) the recipient is delinquent in submitting required reports; (3) adequate grantor agency funds are not available to support the project; (4) the recipient has failed to show satisfactory progress in achieving the objectives of the project or otherwise failed to meet the terms and conditions of the award; (5) a recipient's management practices have failed to provide adequate stewardship of grantor agency funds; (6) outstanding audit exceptions have not been cleared; and (7) any other reason that would indicate continued funding would not be in the best interest of the Government.

A separate competition will be held to select an organization to perform independent evaluation of the selected prototypes/models. The organization selected for this award will be ineligible to compete for the evaluation.

V. Eligibility Requirements

Applications are invited from public agencies and nonprofit private organizations. Applicant organizations may choose to submit joint proposals with other eligible organizations as long as one organization is designated in the application as the applicant and any co-applicants are designated as such. Applications and co-applicants must demonstrate that they have prior experience in the design, conduct and implementation of research and development programs; demonstrated knowledge of issues associated with drug testing in juvenile or criminal justice settings; prior experience in the development and delivery of training or technical assistance; and research and evaluation of the juvenile justice system.

The applicant must also demonstrate that they have the management and financial capability to effectively implement a project of this size and scope. Applicants who fail to demonstrate that they have the capability to manage this program will be ineligible for funding consideration.

VI. Application Requirements

All applicants must submit a completed Application for Federal Assistance (Standard Form 424), including a program narrative, a detailed budget, and budget narrative. All applications must include the information outlined in this section of the solicitation (Section VI) in Part IV, Program Narrative of the application (SF–424). The program narrative of the application should not exceed 70 double-spaced pages in length.

In submitting applications that contain more than one organization, the relationships among the parties must be set forth in the application. As a general rule, organizations that describe their working relationship in the development of products and the delivery of services as primarily cooperative or collaborative in nature will be considered co-applicants. In the event of a co-applicant submission, one co-applicant must be designated as the payee to receive and disburse project funds and be responsible for the supervision and coordination of the activities of the other co-applicant. Under this arrangement, each organization would agree to be jointly and severally responsible for all project funds and services. Each co-applicant must sign the SF–424 and indicate their acceptance of the conditions of joint and several responsibility with the other co-applicant.

Applications that include non-competitive contracts for the provision of specific services must include a sole source justification for any procurement in excess of $10,000.

The following information must be included in the application:

A. Organizational Capability—Applicants must demonstrate that they are eligible to compete for this cooperative agreement on the basis of the eligibility criteria established in Section V of this solicitation. Applicants must concisely describe their organizational experience with respect to the eligibility criteria specified in Section V above. Applicants must demonstrate how their organizational experience and capabilities will enable them to achieve the goals and objectives of this initiative. Applicants are invited to append one example of prior work products of a similar nature to their application.

Applicants must also demonstrate that their organization has or can establish fiscal controls and accounting procedures that assure Federal funds available under this agreement are disbursed and accounted for properly. Applicants who have not previously received Federal funds will be asked to submit a copy of the Office of Justice Program (OJP) Accounting System and Financial Capability Questionnaire (OJP Form 7120/1). Copies of the form will be provided in the application kit and must be prepared and submitted along with the application. Other applications may be requested to submit this form. All questions are to be answered regardless of instructions (Section C.1.B. note). The CPA certification is required only of those applicants who have not previously received Federal funding.

B. Program Goals and Objectives—A succinct statement of your understanding of the goals and objectives of the program should be included. The application should include a problem statement and a discussion of the potential contribution of this program to the field.

C. Program Strategy—Applicants should describe the proposed approach for achieving the goals and objectives of the development program. A detailed discussion of how each of the initial three stages of the program will be accomplished should be included. Stage four should be outlined.

D. Program Implementation Plan—Applicants should prepare a plan that outlines the major activities involved in implementing the program, describe how they will allocate available resources to implement the program, and how the program will be managed.

The plan must include an annotated organizational chart depicting the roles and describing the responsibilities of key organizational/functional components, and a list of key personnel responsible for managing and implementing the two major elements of the program. Applicants must present detailed position descriptions,

qualifications, and selection criteria for each position. Applicants should provide recommendations for program advisory committee members. This documentation and individual résumés may be submitted as appendices to the application.

E. Time-Task Plan—Applicants must develop a time-task plan for the 24-month project period, clearly identifying major milestones and products. This must include designation of organizational responsibility and a schedule for the completion of the tasks and products identified in Section III and indicate the anticipated cost schedule per month for the entire project period.

F. Products—Applicants must concisely describe the interim and final products of each stage of the program, and must address the purpose, audience, and usefulness to the field of each product.

G. Program Budget—Applicants shall provide a 24-month budget with a detailed justification for all costs, including the basis for computation of these costs. Applicants should include a budget estimate to complete the balance of the program. Applications submitted by co-applicants and/or those containing contract(s) must include detailed budgets for each organization's expenses. The budget should include funds for a three-person Program Advisory Committee to meet three times during the 24 month project period.

VII. Procedures and Criteria for Selection

All applications will be evaluated and rated based on the extent to which they meet the following weighted criteria. In general, all applications received will be reviewed in terms of their responsiveness to the minimum program application requirements, organizational capability, and thoroughness and innovativeness in responding to strategic issues in project implementation. Applications will be evaluated by a peer review panel according to the OJJDP Competition and Peer Review Policy, 28 CFR Part 34, Subpart B, published August 2, 1985, at 50 FR 31366–31367. The selection criteria and their point values (weights) are as follows:

A. Organizational Capability (20 Points)

1. The extent and quality of organizational experience in the development, delivery and coordination of research programs that have been national in scope. (10 points)

2. Adequate fiscal controls and accounting procedures to ensure that the applicant can effectively implement a project of this size and scope, and to ensure the proper disbursal and accounting of Federal funds. (10 points)

B. Soundness of the Proposed Strategy (30 Points)

Appropriateness and technical adequacy of the approach to each stage of the program for meeting the goals and objectives; and potential utility of proposed products.

C. Qualifications of Project Staff (20 Points)

1. The qualifications of staff identified to manage and implement the program including staff to be hired through contracts. (10 Points)

2. The clarity and appropriateness of position descriptions, required qualifications and selection criteria relative to the specific functions set out in the Implementation Plan. (10 Points)

D. Clarity and Appropriateness of the Program Implementation Plan (15 Points)

Adequacy and appropriateness of the activities, and the project management structure; and the feasibility of the time-task plan.

E. Budget (15 Points)

Completeness, reasonableness, appropriateness and cost-effectiveness of the proposed costs, in relationship to the proposed strategy and tasks to be accomplished.

Applications will be evaluated by a peer review panel. The results of peer review will be a relative aggregate ranking of applications in the form of "Summary of Ratings." These will ordinarily be based on numerical values assigned by individual peer reviewers. Peer review recommendations, in conjunction with the results of internal review and any necessary supplementary reviews, will assist the Administrator in considering competing applications and in selection of the application for funding. The final award decision will be made by the OJJDP Administrator.

VIII. Deadline for Receipt of Applications

Applicants must submit the original signed application and three copies to OJJDP. The necessary forms for applications (Standard Form 424) will be provided upon request.

Applications must be received by mail or hand delivered to the OJJDP by 5:00 p.m. EST on November 30, 1988. Those applications sent by mail should be addressed to: NIJJDP/OJJDP, U.S. Department of Justice, 633 Indiana Avenue, NW., Washington, DC 20531. Hand delivered applications must be taken to the NIJJDP, Room 784, 633 Indiana Avenue, NW., Washington, DC between the hours of 8:00 a.m. and 5:00 p.m. except Saturdays, Sundays or Federal holidays.

The NIJJDP/OJJDP will notify applicants in writing of the receipt of their application. Subsequently, applicants will be notified by letter as to the decision made regarding whether or not their submission will be recommended for funding.

IX. Civil Rights Compliance

A. All recipients of OJJDP assistance including any contractors, must comply with the non-discrimination requirements of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended; Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973 as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Department of Justice Non-Discrimination Regulations (28 CFR Part 42, Subparts C, D, E, and G).

B. In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office of Civil Rights Compliance (OCRC) of the Office of Justice Programs.

C. Applicants shall maintain such records and submit to the OJJDP upon request timely, complete and accurate data establishing the fact that no person or persons will be or have been denied or prohibited from participation in benefits of, or denied or prohibited from obtaining employment in connection with, any program activity funded in whole or in part with funds made available under this program because of their race, national origin, sex, religion, handicap or age. In the case of any program under which a primary financial assistance to any other recipient of Federal funds extends financial assistance to any other recipient or contracts with any other person(s) or group(s), such other recipient, person(s) or group(s) shall submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to assure its civil rights compliance obligations under any award.

Reference

Elliot, D.S. and Huizinga, D. (1984). The relationship between delinquent behavior and ADM problem behaviors. Paper prepared for the ADAMHA/OJJDP State of the Art Research Conference on Juvenile Offenders with Serious Drug/Alcohol and Mental Health Problems, Bethesda, MD, April 17–18, 1984.

Hawkins, J.D., Lishner, D.M., Jenson, J.M., and Catalano, R.F. (1986) Delinquents and Drugs: What the Evidence Suggests about Prevention and Treatment Programming. Paper presented at the NIDA Technical Review on Special Youth Populations, Rockville, MD, July 16–17, 1986.

Date: October 19, 1988.

Verne L. Speirs,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

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Part VI

Department of Education

34 CFR Parts 757 and 758

Fund for the Improvement and Reform of Schools and Teaching; Notice of Proposed Rulemaking

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DEPARTMENT OF EDUCATION

34 CFR Parts 757 and 758

Fund for the Improvement and Reform of Schools and Teaching

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary issues a notice of proposed rulemaking for the Fund for the Improvement and Reform of Schools and Teaching (FIRST). These regulations are needed to implement the program as authorized in the Fund for the Improvement and Reform of Schools and Teaching Act (Act), Part B of Title III of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988. The proposed regulations would establish two new discretionary grant programs.

DATES: Comments must be received on or before December 19, 1988.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Daniel Schecter, U.S. Department of Education, Fund for the Improvement and Reform of Schools and Teaching, 400 Maryland Ave., SW., Room 4132, Washington, DC, 20202–5500.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Daniel Schecter, (202) 732–3566.

SUPPLEMENTARY INFORMATION: The Fund for the Improvement and Reform of Schools and Teaching (FIRST) will award discretionary grants for two kinds of projects. Schools and Teachers projects must be designed to improve educational opportunities for, and the performance of, elementary and secondary school teachers and students. Family-School Partnership projects must be designed to increase the involvement of families in the improvement of the educational achievement of their children in preschool, elementary, and secondary schools.

The provisions in these proposed regulations that cite other applicable regulations, §§ 757.6 and 758.6, do not include the usual reference to 34 CFR Part 78 (hearing procedures of the Education Appeal Board), because the Education Appeal Board will be superseded, with respect to filing new appeals, by the time the FIRST programs are operating. In Pub. L. 100–297, Congress amended Part E of the General Education Provisions Act (GEPA) effective October 25, 1988, requiring the Secretary to establish an Office of Administrative Law Judges to replace the Education Appeal Board, and establishing new hearing procedures (20 U.S.C. 1234–1234i). The Department plans to publish regulations implementing the amended Part E of GEPA as soon as possible, and those regulations, when final, will apply to the FIRST programs. Sections 757.5 and 758.6 of these regulations will then be amended to include references to the revised regulations under Part E.

Schools and Teachers Program

State educational agencies (SEAs), local educational agencies (LEAs), institutions of higher education (IHEs), private non-profit organizations, individual schools, and consortia of these entities are eligible to apply for grants and to conduct Schools and Teachers projects. A variety of activities involving teachers, students, and other educational personnel, and directed to the overall objective of improving educational opportunities for and the performance of students and teachers, are authorized.

The Act requires that each fiscal year at least 25 percent of the funds appropriated for FIRST be used for School-Level projects to be carried out at an individual school or consortium of schools under the responsibility of a full-time teacher or school administrator. The regulations would establish an absolute priority for the 25 percent of the funds appropriated for FIRST for these projects. Projects would be selected for funding according to the same selection criteria as for other Schools and Teachers projects, but through separate competitions. Individual schools or groups of schools will be able to apply for School-Level projects, but an applicant for a School-Level project will have to apply through the appropriate LEA, and the LEA will have to serve as the fiscal agent. The Act provides that all funds awarded for School-Level projects must be spent at the school level, and thus, notwithstanding 34 CFR 80.22, which permits a higher indirect cost rate for LEAs, indirect costs would be limited to the greater of two percent of the total direct costs or the actual indirect costs that the applicant demonstrates are incurred at the school level.

The Act requires the Secretary to give priority to proposed projects under the Schools and Teachers Program that will benefit students or schools with below average academic performance, that will increase the access of all students to a high quality education, and that will develop or implement systems for providing incentives to students and educational personnel to work toward specific goals of improved educational performance. In addition, the regulations would allow the Secretary to select additional priorities for each competition from among the authorized activities for the program.

In addition to other available review procedures, SEAs may review and comment on applications submitted from their States for funding under the Schools and Teachers Program. SEAs that choose this form of review must complete their review and comments within thirty calendar days of their receipt of each application.

Family-School Partnership Program

LEAs eligible for funding under Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended, are eligible to apply for grants to carry out Family-School Partnership activities. Projects must be designed to increase the involvement and participation of families in the improvement of their children's educational achievement, and may include training and other activities for parents, teachers, and other educational personnel.

Involvement of Private Schools

The opportunity for involvement of private schools in FIRST programs will differ for the two categories of projects. For the Schools and Teachers Program, private schools are eligible to apply for and operate their own projects. Private schools would not be eligible for the funds specifically set aside for the priority on School-Level projects because the Act requires that an LEA be the fiscal agent for those projects. However, private schools are eligible for funding for projects at the school level under the remaining funds available under the Schools and Teachers Program. Also pursuant to the Act, private schools are not eligible applicants under the Family-School Partnership Program. However, LEAs may include private school teachers, students, and their families in project activities. The Secretary intends to encourage LEAs to consult with appropriate representatives of private schools in their districts in preparing applications.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these proposed regulations are small LEAs and small private non-profit organizations receiving Federal funds under this program. However, the regulations would not have a significant economic impact on the small LEAs and organizations affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

Sections 757.21 and 758.21 contain information collection requirements.

As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget for its review. (44 U.S.C. 3504(h))

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 4132, 400 Maryland Avenue SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Executive Order 12606

The Secretary certifies that these proposed regulations have been reviewed in accordance with Executive Order 12606, The Family, and that they will not have a negative impact on family well-being.

The regulations for the FIRST: Schools and Teachers Program will not have a direct impact on the family. The indirect impact of the regulations will be positive to the extent that the Secretary may fund projects promoting closer ties among school teachers, administrators, families, and the local community. The regulations for the FIRST: Family-School Partnership Program are intended to increase the involvement and participation of families in improving the educational achievement of their children at the preschool, elementary, and secondary education levels through the various types of demonstration projects that may be funded by the Secretary.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Parts 757 and 758

Education, Educational research, Grant programs—education, Reporting and recordkeeping requirements.

Dated: October 7, 1988.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance numbers: 84.211, 84.212 Fund for the Improvement and Reform of Schools and Teaching.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by adding new Parts 757 and 758, to read as follows:

PART 757—FIRST: SCHOOLS AND TEACHERS PROGRAM

Subpart A—General

Sec.
757.1 What is the FIRST: Schools and Teachers Program?
757.2 What types of projects may the Secretary support under this program?
757.3 Who is eligible for an award?
757.4 What activities may the Secretary fund?
757.5 What priorities may the Secretary establish?
757.6 What regulations apply?
757.7 What definitions apply?

Subpart B—How Does One Apply for an Award?

757.10 What are the procedures for SEA review?

Subpart C—How Does the Secretary Make an Award?

757.20 How does the Secretary evaluate an application?
757.21 What selection criteria does the Secretary use?
757.22 What additional factors does the Secretary consider in making new awards?
757.23 Under what circumstances does the Secretary consider an unsolicited application?

Subpart D—What Conditions Must Be Met After an Award?

757.30 How must funds be used under Schools and Teachers projects?
757.31 What indirect costs are allowed for School-Level projects?
757.32 How does the Secretary limit the use of grant funds?

Authority: 20 U.S.C. 4611–4612, unless otherwise noted.

Subpart A—General

§ 757.1 What is the FIRST: Schools and Teachers Program?

Under the FIRST: Schools and Teachers Program, the Secretary supports activities designed to improve educational opportunities for, and the performance of, elementary and secondary school students and teachers.

(Authority: 20 U.S.C. 4611)

§ 757.2 What types of projects may the Secretary support under this program?

(a) The Secretary may support the following types of projects under this program:

(1) Schools and Teachers projects designed to improve educational opportunities for, and the performance of, elementary and secondary school students and teachers.

(2) School-Level projects, a type of Schools and Teachers project, conducted at an individual school or a consortium of schools, under the

direction of a full-time teacher or administrator.

(b) If a proposed project could be funded under the Family-School Partnership Program (34 CFR Part 758), the Secretary may decline to consider the application under the Schools and Teachers Program, and instead consider it under the Family-School Partnership Program.

(Authority: 20 U.S.C. 4811)

§ 757.3 Who is eligible for an award?

(a) State educational agencies (SEAs), local educational agencies (LEAs), institutions of higher education (IHEs), nonprofit organizations, individual public or private schools, consortia of individual schools, and consortia of these schools and institutions may apply for a Schools and Teachers project.

(b) An LEA, acting as the fiscal agent for a full-time teacher or administrator, may apply for a School-Level project described in § 757.2(a)(2).

(Authority: 20 U.S.C. 4811, 4812)

§ 757.4 What activities may the Secretary fund?

The Secretary may fund projects that are designed to improve educational opportunities for, and the performance of, elementary and secondary school students and teachers through one or more of the following activities:

(a) Helping educationally disadvantaged or at-risk children to meet higher educational standards.

(b) Providing incentives for improved performance.

(c) Strengthening school leadership and teaching.

(d) Promoting closer ties among school teachers, administrators, families, and the local community.

(e) Providing opportunities for teacher enrichment and other means to improve the professional status of teachers.

(f) Refocusing priorities and reallocating existing human and financial resources to serve children better.

(g) Establishing closer ties between local schools and an institution of higher education to increase educational achievement.

(h) Increasing the number and quality of minority teachers.

(i) Providing entry-year assistance to new teachers and administrators.

(j) Improving the teacher certification process, especially for schools, school districts, and States facing serious shortages of teachers.

(k) Teaching students to be responsible for their school environment by involving them in the care and maintenance of their classrooms, and promoting individual responsibility and involvement in civic activities.

(Authority: 20 U.S.C. 4811)

§ 757.5 What priorities may the Secretary establish?

(a) The Secretary may select as priorities one or more of the activities listed in § 757.4 or combinations of these activities.

(b) The Secretary gives a competitive preference to a proposed project that meets one or more of the following priorities:

(1) Benefits students or schools with below-average academic performance.

(2) Leads to increased access of all students to a high quality education.

(3) Develops or implements a system for providing incentives to schools, administrators, teachers, students, or others to make measurable progress toward specific goals of improved educational performance.

(c) The Secretary established an absolute priority each year by setting aside at least 25 percent of the funds appropriated for FIRST for School-Level projects described in § 757.2(a)(2).

(Authority: 20 U.S.C. 4811, 4812)

(See the Education Department General Administrative Requirements (EDGAR) at 34 CFR 75.105 for a description of how the different types of priorities are implemented.)

§ 757.6 What regulations apply?

The following regulations apply to the Schools and Teachers Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), (except for the definition of "equipment" in 34 CFR 77.1), Part 79 (Intergovernmental Review of Department of Education Activities), and Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(b) The regulations in this Part 757.

(Authority: 20 U.S.C. 4811–4812)

§ 757.7 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this Part are defined in 34 CFR 77.1:

Applicant, Application, Award, Budget period, Department, EDGAR, Equipment, Facilities, Grantee, Local educational agency (LEA), Nonprofit, Project, Private, Public, Secretary, State educational agency (SEA).

(b) *Other definitions:* The following definitions also apply to this Part:

"Act" means the Fund for the Improvement and Reform of Schools and Teaching Act, Part B, Title III of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988.

"At-Risk" means students who, because of learning deficiencies, lack of school readiness, limited English proficiency, poverty, educational or economic disadvantage, or physical or emotional handicapping conditions face greater risk of low educational achievement and have greater potential of becoming school dropouts.

"Captial equipment" means "equipment" as defined in 34 CFR 77.1.

"FIRST" means the Fund for the Improvement and Reform of Schools and Teaching.

"Full-time teacher" means a teacher who taught full-time in the school year preceding the school year in which a School-Level project under § 757.2(a)(2) would operate.

"Goals" means increased graduation rates, reduced dropout rates, increased attendance rates, increased student achievement, other goals, of improved educational performance, or reduced rates of juvenile delinquency or vandalism.

"Incentives" means financial rewards, regulatory waivers, open enrollment among schools, grants to schools for innovative projects, or other rewards for meeting specific goals of educational improvement.

"Institution of higher education" or "IHE" means an institution of high education as defined in section 1201(a) of the Higher Education Act of 1965, as amended.

"Regulatory waiver" means the authorization by a State or local government of an exception to its regulations, provided that the regulatory waiver does not constitute a waiver of Federal regulations.

"School" means an elementary or secondary school legally authorized by a State to provide elementary or secondary education in the State.

(Authority: 20 U.S.C. 4811, 4843)

Subpart B—How Does One Apply for an Award?

§ 757.10 What are the procedures for SEA review?

(a) Each application for a grant under this part (other than an application from an SEA) must be forwarded to the appropriate SEA for review and

comment, if the SEA requests the opportunity for review.

(b) The Secretary considers comments by the SEA if the comments are received within 30 calendar days of the closing date for the competition.

(Authority: 20 U.S.C. 4812)

Subpart C—How Does the Secretary Make an Award?

§ 757.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 757.21.

(b) The Secretary awards up to 100 points for the criteria in § 757.21.

(c) The maximum possible score for each criterion is indicated in parentheses.

(d) The Secretary awards up to 25 additional points to an application that addresses one or more of the priorities in § 757.5(b).

(Authority: 20 U.S.C. 4811, 4812)

§ 757.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Need for the project.* (15 points) The Secretary reviews each application to determine the magnitude of the need for the proposed project, including the magnitude of the need to improve the performance of students or teachers, or both.

(b) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the design of the proposed project and the applicant's plans for carrying it out, including the extent to which the proposed project is likely to improve teaching and learning at the school level.

(c) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used on the project;

(iii) The time that each person referred to in paragraph (c)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine the qualifications of personnel referred to in paragraphs (c)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the project.

(d) *Educational value.* (25 points) The Secretary reviews each application to determine the educational value of the proposed project, including the extent to which the proposed project would address goals such as—

(1) Strengthening the content of instruction;

(2) Ensuring disadvantaged students equal opportunity for high quality education;

(3) Improving school climate and establishing high standards and the expectation of achievement;

(4) Building a staff of outstanding teachers and principles; or

(5) Instituting accountability for the results of educational activity.

(e) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) The applicant has plans to continue the project after the grant has ended.

(f) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective and will produce data that are quantifiable.

(g) *National significance.* (15 points) The Secretary reviews each application to determine the national significance of the project, including—

(1) The likely impact of the proposed project;

(2) The magnitude of the expected outcomes; and

(3) The potential transferability of the proposed project to other settings with the likelihood of accomplishing similar results.

(Authority: 20 U.S.C. 4811, 4812)

§ 757.22 What additional factors does the Secretary consider in making new awards?

In determining the order of selection under EDGAR § 75.217(d) for new awards under the Schools and Teachers Program, the Secretary considers, in addition to the criteria in § 757.21, the extent to which funding an application would contribute to—

(a) The diversity of projects funded under a particular competition or under this program; and

(b) The geographical distribution of projects funded under a particular competition or under this program.

(Authority: 20 U.S.C. 4811, 4812, 4831)

§ 757.23 Under what circumstances does the Secretary consider an unsolicited application?

(a)(1) At any time during a fiscal year, the Secretary may accept and consider for funding unsolicited applications for projects that—

(i) Are designed to carry out one or more of the activities in § 757.4; and

(ii) Do not meet any of the absolute priorities established under any competitions for the FIRST: Schools and Teachers Program announced in the Federal Register for that fiscal year.

(2) In a fiscal year in which the Secretary does not establish absolute priorities, the Secretary does not consider unsolicited applications for funding.

(b) Notwithstanding the provisions of 34 CFR 75.100, the Secretary may fund an unsolicited application without publishing an application notice in the Federal Register.

(c) Notwithstanding 34 CFR 75.105(b)(1), the Secretary may award up to 25 points to applications that meet one or more of the priorities in § 757.5(b) without publishing a notice in the Federal Register.

(d) The Secretary evaluates an unsolicited application for funding in accordance with the procedures described in § 757.20.

(Authority: 20 U.S.C. 4811, 4812)

Subpart D—What Conditions Must Be Met After an Award?

§ 757.30 How must funds be used under Schools and Teachers projects?

(a) A grantee shall use funds awarded under this program to supplement but not supplant other resources available to the grantee.

(b) For a School-Level project under § 757.2(a)(2), a grantee shall use funds awarded under this program for activities at the individual school or consortium of schools participating in the project.

(Authority: 20 U.S.C. 4812, 4831)

§ 757.31 What indirect costs are allowed for a School-Level project?

Notwithstanding 34 CFR 80.22, for a School-Level project described in § 757.2(a)(2), indirect costs may not exceed the greater of 2 percent of the direct costs or the actual indirect costs

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that the grantee can demonstrate are incurred for activities at the individual school or consortium of schools participating in the project.

(Authority: 20 U.S.C. 4841)

§ 757.22 How does the Secretary limit the use of grant funds?

The Secretary may restrict the amount of funds made available for capital equipment purchases to a certain percentage of the total grant for a project.

(Authority: 20 U.S.C. 4841)

Part 758—FIRST: FAMILY-SCHOOL PARTNERSHIP PROGRAM

Subpart A—General

Sec.

758.1 What is the FIRST: Family-School Partnership Program?
758.2 Who is eligible for an award?
758.3 How may private schools participate in Family-School Partnership projects?
758.4 What activities may the Secretary fund?
758.5 What priorities may the Secretary establish?
758.6 What regulations apply?
758.7 What definitions apply?

Subpart B—How Does One Apply for an Award? [Reserved]

Subpart C—How Does the Secretary Make an Award?

Sec.

758.20 How does the Secretary evaluate an application?
758.21 What selection criteria does the Secretary use?
758.22 What additional factors does the Secretary consider in making new awards?
758.23 Under what circumstances does the Secretary consider an unsolicited application?

Subpart D—What Conditions Must Be Met After an Award?

Sec.

758.30 How must funds be used under Family-School Partnership projects?
758.31 How does the Secretary limit the use of grant funds?

Authority: 20 U.S.C. 4821–4823, unless otherwise noted.

Subpart A—General

§ 758.1 What is the FIRST: Family-School Partnership Program?

Under the FIRST: Family-School Partnership Program, the Secretary awards demonstration grants for developing family-school partnerships to increase the involvement of families in improving the educational achievement of their children at the preschool, elementary, and secondary education levels.

(Authority: 20 U.S.C. 4821)

§ 758.2 Who is eligible for an award?

An LEA that is eligible to receive a grant under Chapter 1 of Title I of the Elementary and Secondary Act of 1965, as amended, may apply for a Family-School Partnership award. (See 34 CFR Part 200 for the regulations governing eligibility of an LEA to participate in the Chapter 1 Program.)

(Authority: 20 U.S.C. 4822)

§ 758.3 How may private schools participate in Family-School Partnership projects?

A grantee may provide, consistent with the number of children enrolled in public and private elementary and secondary schools located in the grantee's school district, for the participation of private elementary and secondary school teachers, students, and students' families in the activities of a project funded under this program.

(Authority: 20 U.S.C. 4823)

§ 758.4 What activities may the Secretary fund?

The Secretary may fund demonstration projects to develop and carry out innovative family-school partnership activities designed to do one or more of the following:

(a) Support the efforts of families, through training and other means, to work with children in the home both to attain the instructional objectives of the schools and instill positive attitudes toward education.

(b) Train teachers and other educational personnel involved in the applicant LEA's Chapter 1 program to work effectively as educational partners with the families of Chapter 1 students.

(c) Train families, teachers, and other educational personnel in the LEA's schools to build an educational partnership between home and school.

(d) Provide training for families on the family's educational responsibilities.

(e) Evaluate how well family involvement activities of the LEA's schools are working, what barriers exist to greater participation, and what steps need to be taken to expand participation in such family involvement activities.

(f) Develop new school procedures and practices to meet the changing demographic characteristics of families of school-age children.

(g) Develop modifications of school procedures and practices necessary to encourage the involvement of parents of special groups of students including minorities, disadvantaged, gifted and talented students, and students with handicaps.

(h) Hire, train, and use educational personnel to coordinate family involvement activities and to foster communication among families, educators, and students.

(i) Develop or purchase educational materials to reinforce school learning at home and assist in implementing other home-based education activities that reinforce and extend classroom instruction and student motivation.

(j) Secure technical assistance, including training, to design and carry out family involvement programs.

(Authority: 20 U.S.C. 4823)

§ 758.5 What priorities may the Secretary establish?

(a) The Secretary may select as priorities one or more of the activities listed in § 758.4, or combinations of these activities.

(b) The Secretary may limit a priority to a specified instructional level, such as preschool, elementary, or secondary.

(Authority: 20 U.S.C. 4823)

§ 758.6 What regulations apply?

The following regulations apply to the Family-School Partnership Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), (except for the definition of "equipment" in 77.1), Part 79 Intergovernmental Review of Department of Education Activities), and Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(b) The regulations in this Part 758.

(Authority: 20 U.S.C. 4821–4823)

§ 758.7 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this Part are defined in 34 CFR 77.1:

Applicant, Application, Award, Budget period, Department, EDGAR, Equipment, Facilities, Grantee, Local educational agency (LEA), Nonprofit, Project, Private, Public, Secretary, State educational agency (SEA).

(b) *Other definitions:* The following definitions also apply to this Part:

"Act" means the Fund for the Improvement and Reform of Schools and Teaching Act, Part B, Title III of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988.

"Capital equipment" means "equipment" as defined in 34 CFR 77.1.

"FIRST" means the Fund for the Improvement and Reform of Schools and Teaching.

Authority: (20 U.S.C. 4821–4823, 4841)

Subpart B—How Does One Apply for an Award? [Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 758.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application according to the criteria in § 758.21.

(b) The Secretary awards up to 100 points for the criteria in § 758.21.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 4821–4823)

§ 758.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Need for the project.* (15 points) The Secretary reviews each application to determine the magnitude of the need for the project, including the magnitude of the need for improving educational achievement among the students whom the proposed project is designed to benefit.

(b) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the design of the proposed project and the applicant's plans for carrying it out, including the extent to which the project is likely to increase the involvement of families in the education of their children.

(c) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualification of each of the other key personnel to be used on the project;

(iii) The time that each person referred to in paragraph (c)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine the qualifications of personnel referred to in paragraphs (c)(1) (i) and (ii) of this section, the Secretary considers—

(a) Experience and training in fields related to the objectives of the project; and

(b) Any other qualifications that pertain to the project.

(d) *Educational value.* (25 points) The Secretary reviews each application to determine the educational value of the proposed project, including the extent to which the proposed project would address goals such as—

(1) Ensuring disadvantaged students equal opportunity for a high quality education;

(2) Establishing an environment and expectation of achievement for those students; and

(3) Fostering accountability among teachers, students, and families for the results of educational activity.

(e) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) The applicant plans to continue the project after the grant has ended.

(f) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective and will produce data that are quantifiable.

(g) *National significance.* (15 points) The Secretary reviews each application to determine the national significance of the proposed project, including:

(1) The likely impact of the proposed project;

(2) The magnitude of the expected outcomes; and

(3) The potential transferability of the proposed project to other settings with the likelihood of accomplishing similar results.

(Authority: 20 U.S.C. 4821–4823)

§ 758.22 What additional factors does the Secretary consider in making new awards?

(a) In determining the order of selection under EDGAR § 75.217(d) for new awards under the Family-School Partnership Program, the Secretary considers, in addition to the selection criteria in § 758.21, the extent to which funding an application would contribute to—

(a) The diversity of projects funded under a particular competition or under this program; and

(b) The geographical balance of projects funded under a particular competition or under this program.

(Authority: 20 U.S.C. 4821–4823)

§ 758.23 Under what circumstances does the Secretary consider an unsolicited application?

(a)(1) At any time during a fiscal year, the Secretary may accept and consider for funding unsolicited applications for projects that—

(i) Are designed to carry out one or more of the activities in § 758.4; and

(ii) Do not meet any of the absolute priorities established under any competitions for the FIRST: Family-School Partnership Program announced in the Federal Register for that fiscal year.

(2) In a fiscal year in which the Secretary does not establish absolute priorities, the Secretary does not consider unsolicited applications for funding.

(b) Notwithstanding the provisions of 34 CFR 75.100, the Secretary may fund an unsolicited application without publishing an application notice in the Federal Register.

(c) The Secretary evaluates an unsolicited application for funding in accordance with the procedures described in § 758.20.

(Authority: 20 U.S.C. 4821–4823)

Subpart D—What Conditions Must Be Met After an Award?

§ 758.30 How must funds be used under Family-School Partnership projects?

A grantee shall use funds awarded under this program to supplement but not supplant other resources available to the grantee.

(Authority: 20 U.S.C. 4841)

§ 758.31 How does the Secretary limit the use of grant funds?

The Secretary may restrict the amount of funds made available for capital equipment purchases to a certain percentage of the total grant for a project.

(Authority: 20 U.S.C. 4841)

[FR Doc. 88-25500 Filed 11-2-88; 8:45 am]

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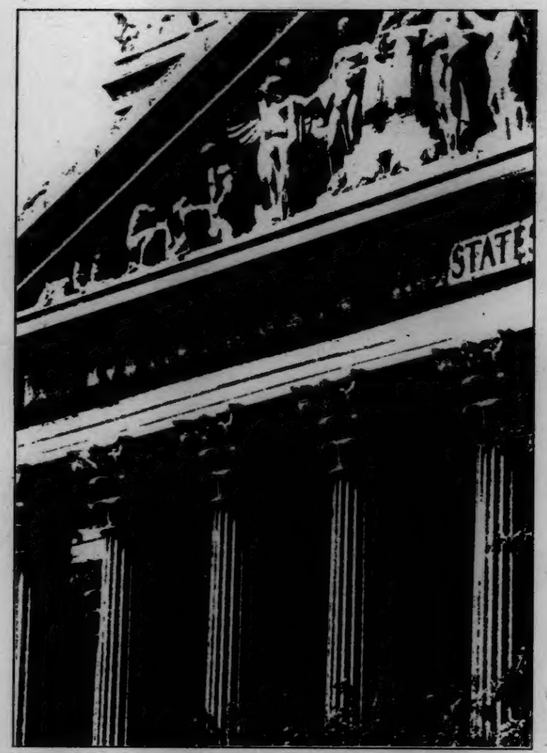
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